New Jersey Court of Errors and Appeals.

JACOB KEIM, Appellant, vs. CATHARINE C. O'REILLY, AND AL., Respondents.	ON APPEAL FROM CHANCERY.

10

COMPLAINANT'S BOOK OF EXHIBITS.

EXHIBIT C4.

Copy of Receipt of Gardner, Agent of O'Reilly, to Keim, August 27, 1873.

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ATLANTIC CITY, August 27, 1873.

$100. Received of Jacob Keim the sum of one hundred dollars on account of purchase money of a lot of land in Atlantic City, New Jersey, owned by Patrick O'Reilly, of Reading, Pennsylvania, said lot being in front of the Chester County House; bounded on the north by Pacific avenue, on the west by lands of George

A. Binder, and on the east by lands of said Jacob Keim; said lot being about forty-three feet front on Pacific avenue, coming to a point between the lines of said Binder and Keim, at a point about seven hundred feet south of Pacific avenue, the conveyance to include the entire lot of said O'Reilly between said boundaries. Price to be one thousand dollars ($1,000). Deed to be made as soon as practicable, and balance of money to be paid on delivery of deed.

J. J. GARDNER,
Agt. for P. O'Reilly.

EXHIBIT C50.

Testimony of James A. O'Reilly in Kuehnle Ejectment suit.

LEWIS KUEHNLE VS. CAMDEN & ATLANTIC RAILROAD COMPANY.	BEFORE REED, J. AND A JURY.

MAYS LANDING, DECEMBER 30, 1889.

MESSRS. POTTER & STEPHANY,
For Plaintiff.
PETER L. VOORHEES, ESQ.,
JOSEPH THOMPSON, ESQ.,
For Defendant.

Testimony of James A. O'Reilly, taken at Mays Landing, December 30, 1889.

Reported by
A. E. IRWIN,
Official Stenographer.

MAYS LANDING, DECEMBER 30, 1889.

JAMES A. O'REILLY, sworn.

By Mr. Voorhees:

Ques. Where do you live?
Ans. At Reading.
Ques. What is your business?
Ans. Attorney-at-law.
Ques. Are you the son of the late Patrick O'Reilly?
Ans. Yes, sir.
Ques. Did your father formerly own premises in Atlantic City?
Ans. Yes, sir.
Ques. Were you in litigation about a part of it?
Ans. Yes, sir.
Ques. Does the family own any of these lands which are described?
Ans. Yes; I believe we have some matters there yet.
Ques. Do you remember whom your father bought of?
Ans. He bought of Richard Hackett and wife.
Ques. Do you know whether he laid those lands out in building lots?
Ans. I believe he did.

(Objected to.)

I don't know it from actual knowledge.
Ques. Did he have a map by which he sold lots on?
Ans. Yes, sir.

(Map shown witness).

Ques. Do you know that paper?
Ans. Very well.
Ques. What is it?
Ans. It is the map that father sold his lots during

his lifetime, and which I had in my possession also in his lifetime, from which I sold lots.

Ques. You sold lots for him from that map?

Ans. Yes, sir.

Ques. Does that represent the tract described in the Hackett deed?

Ans. Yes, sir; it does. It has been verified.

Ques. How long have you known that map?

Ans. I judge between 1859 and 1860.

Ques. Your father had it before 1860?

Ans. Yes, sir; I recollect that map before 1860.

Ques. He held it during his life time, and since his death who had it?

Ans. I had it before his death, and I had it in my possession since 1873, that I took actual control for him of the property in Atlantic City, and I had it until I gave it into your possession, in the Lindley trials.

Ques. In other litigation you had in reference to land in Atlantic City?

Ans. Yes.

Ques. That is in the same condition it was when he held it?

Ans. Always except the marks on it of property sold.

Ques. There are marks of property sold on it.

Ans. Yes; with his own handwriting, a great many of them.

Ques. In whose handwriting is that name there (indicating), do you know?

Ans. Yes; my brother John's.

Ques. Is the name William Conover there?

Ans. Yes.

Ques. Is that your brother John's handwriting on the map?

Ans. Yes.

Mr. Voorhees: We want to offer in evidence the map.

Cross-examined.

By Mr. Potter:

Ques. Do you know who made this map?
Ans. From actual knowledge? No.
Ques. Yes.
Ans. No; from hearsay, I do.
Ques. Do you know any other handwriting except your brother John's on it?
Ans. Yes.
Ques. Whose handwriting is that?
Ans. The person who made the map.
Ques. You do not know who did make it?
Ans. That is mine. (Indicating). Here is father's; that is and this (indicating); that is Gardner's (indicating).

Mr. Potter: I object to this map being put in evidence, on the ground—I do not think it is competent evidence. There is no reference in any deeds to any maps; it is not connected with any map by the deeds.

The Court: It will be an admission of the predecessory title. I will admit it.

Exception for plaintiff.

By Mr. Voorhees:

Ques. Is the railroad represented on that map?
Ans. Yes; and the old depot is there.
Ques. The name "Wm. Conover" on lots one hundred and six and seven is written by your brother John?
Ans. Yes.
Ques. Do you know anything about whether your father had anything to do with the Camden & Atlantic Railroad?
Ans. Yes, sir.
Ques. What was it?

Ans. Sub-contractor.

Ques. Do you know whether he built any part of it?

Ans. He built the whole of it from Camden to Atlantic City.

EXHIBIT C72.

RELEASE. Between the O'Reilly Devisees, &c., dated Sept. 9th, 1890.

Whereas, Patrick O'Reilly, late of the city of Reading, county of Berks and State of Pennsylvania, deceased, in and by his last will and testament, with codicil thereto annexed, said will and codicil being since his death duly probated and remaining on file in the office of the Register of Wills, &c., for Berks county, at Reading, devised and bequeathed all of his estate, real and personal, to his wife, Catharine C. O'Reilly, for and during her natural life, with remainder to his five children to wit: John F. O'Reilly, Francis P. O'Reilly, Anthony J. O'Reilly, James A. O'Reilly and Mary A. O'Reilly, subject to certain trusts and conditions, as in said will and codicil fully are set forth, of which said will he appointed his said wife, Catharine C. O'Reilly, and his sons, Francis P. O'Reilly and James A. O'Reilly, as executors, to whom letters testamentary were in due form granted.

And whereas, John F. O'Reilly, one of the above named children and heirs, did, by writing dated October 29, 1889, and recorded in Recorder's office for Berks county, in Deed Book No. 187, page 378, grant, bargain, sell, alien, release and confirm unto his mother Catharine C. O'Reilly, all his right, title, interest and share in and to the estate, real and personal, of his late father, Patrick O'Reilly, deceased, as by the provisions of the said writing will fully appear.

And whereas, Mary A. O'Reilly, one of the above named children and heirs, after arriving at the age of twenty-one years and after the death of her said father, died without issue, having made her last will and testament, since her death duly probated and remaining on file in the office of the Register of Wills, &c., for Berks county, at Reading, in which she devised and bequeathed all her right, title, interest and share in the estate of her deceased father, to her mother, the said Catharine C. O'Reilly, absolutely.

And whereas, the said Catharine C. O'Reilly, becoming as above set forth the owner of two-fifth share or part of the remainder of said estate, in addition to the estate for life given her by the terms of said Will, and being willing and desirous that the whole of said estate should be divided among the legatees and devisees in remainder, and their legal representatives, freed and discharged of the life estate given to her in the said Will as aforesaid, an agreement was made and executed, signed by all the parties interested in the estate of the said Patrick O'Reilly, deceased, dated July 25, 1890, in which the said Catharine C. O'Reilly, released, surrendered, conveyed and assigned to the persons legally entitled to the remainder of said estate all her right, title and interest in the said estate, devised and bequeathed to her in the said last will of Patrick O'Reilly, deceased, and gave to the executors of said will full power and authority to divide, distribute and apportion all the principal of said estate, real and personal, to the persons thereunto entitled in remainder.

And whereas, in said agreement the executors covenanted and agreed to prepare a full and complete account of all receipts and payments made by them on account of said estate; an account of all moneys received by them as income, as well as other statements exhibiting a full and complete account of all

matters, receipts, expenditures and business done by them, or any of them, for and on account of the estate aforesaid, as in said agreement more fully set forth; which said various accounts and statements have been prepared as in said agreement required, and have been fully examined and approved by all the parties to this release.

And whereas, it appears by said several accounts and statements that there remains unsettled and unaccounted for of the said estate, real and personal, the following items:

PERSONAL ESTATE.

Account against J. J. Gardner .	$1,595 00	
Account against Thos. J. Hunt .	81 00	
		$1,676 00

REAL ESTATE.

Missouri lands.
Avondale Farm, Maryland.
Lots in Atlantic City, New Jersey. (In suit.)
½ interest in lands in Cumrer Township.
33 acres on Neversink Hill.
½ interest in 6¼ acres Ninth and South streets.
Lot in Atlantic City, N. J. (Sold and in process of conveyance.)

And whereas, it further appears by said several Accounts and Statements that there remained in the hands of the executors for distribution the following amounts:

Balance in income account as stated . . .		$47,132 97
Balance in estate account as stated	$249,604 14	
(Less uncollected accounts, $1,676.00)	1,676 00	
		247,928 14

Increase in value of securities on hand over costs and inventory	$12,983 11
Interest on debts and advancement to legatees	17,745 20
Value of real estate, divided	97,240 00
Total	$423,029 42

Which said sum in cash, securities and real estate, was amicably divided and distributed to and among the parties thereunto entitled.

Now know ye, that we, Catharine C. O'Reilly, as legatee under the said will of Patrick O'Reilly, deceased, as well as assignee of John F. O'Reilly, and as well as legatee and devisee under the will of Mary A. O'Reilly, deceased, Francis P. O'Reilly, Anthony J. O'Reilly, James A. O'Reilly, and John F. O'Reilly (the said John F. O'Reilly herein joining in approval of the same) do hereby acknowledge that we, this day, have had and received of and from Catharine C. O'Reilly, Francis P. O'Reilly, and James A. O'Reilly, executors of the last will and testament of Patrick O'Reilly, deceased, the sum of four hundred and twenty-three thousand and twenty-nine dollars and forty-two cents, in full satisfaction and payment of all the real and personal estate of the said Patrick O'Reilly, deceased, and of all such sum or sums of money, legacies and bequests (excepting only the real and personal estate above set forth which yet remains unsettled) as are given and bequeathed to us and each and every of us, by the last will and testament aforesaid, and all interest accrued thereon.

And therefore we do, by these presents, remise, release, quit claim and forever discharge the said Catharine C. O'Reilly, Francis P. O'Reilly, and James A. O'Reilly, their heirs, executors and administrators, of and from the said legacies and bequests, and of and from all liabilities to further account for their manage-

ment of said estate (excepting as above reserved), and of and from all and any liability at law for failure to file an account or failure to perform any other duty, or the misperformance of any duty devolving on them as executors, and of and from all actions, suits, payments, accounts, claims and demands whatsoever, for or by reason thereof, or of any other act, matter, cause or thing whatsoever, to the day of the date of these presents; and we do further covenant and agree that this release shall fully and effectually bar and stop all proceedings at law, or otherwise, for any cause whatsoever, whether for allegations of error in judgment in the management of the estate, or in the valuation and distribution made thereof.

In witness whereof, the said parties to these presents have hereunto set their hands and seals this ninth day of September, A. D. one thousand eight hundred and ninety.

CATHARINE C. O'REILLY, [SEAL]
ANTHONY J. O'REILLY, [SEAL]
JOHN F. O'REILLY, [SEAL]
FRANCIS P. O'REILLY, [SEAL]
JAMES A. O'REILLY, [SEAL]

Sealed and delivered in the presence of
FRANK G. SOUDERS,
as to A. J. O'R.
H. K. GITTELMAN,
as to Jno. F. O'R.
THEO. I. HEIZMAN,
as to F. P. O'R. and J. A. O'R.
A. HOWARD SHARMAN,
as to C. C. O'R.
H. A. ZIEBER.

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

Before me, a Notary Public in and for said county and State, residing in the city of Reading, personally came the above named Catharine C. O'Reilly, Francis P. O'Reilly, Anthony J. O'Reilly, James A. O'Reilly and John F. O'Reilly and in due form of law acknowledged the foregoing release to be their and each of their act and deed, to the end that the same might be recorded as such.

Witness my hand and notarial seal this ninth day of September, A. D. 1890.

H. A. ZIEBER, [SEAL.]
Notary Public.

Recorded this 15th September, A. D. 1890.

JAMES F. DUNN,
Recorder.

I, SIMSON BECKER, Recorder of Deeds of Berks county and State of Pennsylvania, do hereby certify that the foregoing release from the heirs of Patrick O'Reilly to Catharine C. O'Reilly, et al., executors, is a true and correct copy of the release as recorded in Miscellaneous Book No. 36, page 436.

Witness my hand and official seal this twenty-eighth day of February, A. D. 1893.

AMOS M. DUNN,
Deputy Recorder.

EXHIBIT C57.

AGREEMENT. Cath. C. O'Reilly with Alfred Adams, Jr. April 15, 1892.

CATHARINE C. O'REILLY, Executrix, &c. and ALFRED ADAMS, JR. — AGREEMENT OF SALE OF LAND.

Alfred Adams, Jr., Atlantic City, N. J.:

DEAR SIR: As the sole executrix in N. J. of the last will and testament of Patrick O'Reilly, deceased, under which I have power to sell and convey lands, I will sell to you the lot of land extending from Pacific avenue to the ocean, being lot lying at a point one hundred feet westward from Tennessee avenue and extending westerly along Pacific avenue fifty feet, and southward of that width between lines parallel with Tennessee avenue to the ocean, for the sum of twenty-five thousand ($25,000) cash; provided you pay the same within thirty days after I tender you a deed for said premises and after the question of Mrs. Williamson's possession shall be legally determined or compromised.

Yours respectfully,
CATHARINE C. O'REILLY, [SEAL.]
Executrix.

ATLANTIC CITY, April 15th, 1892.

Catharine C. O'Reilly:

MADAM, EXECUTRIX, &C.: In answer to your letter of this date I will say I accept your offer to sell me the

lot set forth and will pay you $25,000 cash within thirty days after the tender to me of a clear deed for said premises and after the question of Mrs. Williamson's possession is settled.

Yours truly,

ALFRED ADAMS, JR., [SEAL.]

Copy of letter sent to Mrs. Catharine C. O'Reilly.

Registry Department sent 4, 18, 1892.
Reg. No. M. I. From Post-office, Atlantic City, N. J.
*Reg. Letter } Addressed to Catharine C. O'Reilly.
Reg. Parcel } Post-office at Reading, Pa.
Recived the above described registered letter.

CATHARINE C. O'REILLY,
Per H. A. ZIEBER.

(Sender's name on other side.)
Sign on dotted lines to the right when delivery is made to other than addressee, the name of both addressee and recipient must appear.

*Erase letter or parcel, according to which is sent.

NEW JERSEY, }
CAMDEN COUNTY. } ss.

Personally appeared before me, a Master in Chancery of New Jersey, on the fifteenth day of April, eighteen hundred and ninety-two, Catharine C. O'Reilly, Executrix, to me personally known; and also on the twenty-second day of April, 1892, personally appeared before me, Alfred Adams, Jr., to me also personally known, and I being satisfied that they are the parties mentioned in above agreement of sale, and I having respectively made known to them the contents of above agreement of sale of land, they did severally and respectively acknowledge that they signed, sealed and delivered the

same as their voluntary act and deed, all of which is hereby certified.

THOMAS B. HARNED,
M. C. C.

Received and recorded April 23d, A. D. 1892.
LEWIS EVANS, Cl'k.

I, LEWIS EVANS, Clerk of the county of Atlantic, do hereby certify that the foregoing is a full, true and correct copy of an agreement as recorded in my said office, in Book No. 2 of Agreements, folio 372, &c.

In witness whereof, I have hereunto set my hand and affixed the seal of Atlantic county, this seventh day of May, A. D. eighteen hundred and ninety-two (1892), at Mays' Landing, N. J.

[L. S.]

LEWIS EVANS,
Clerk.

EXHIBIT C63.

AGREEMENT. Catharine C. O'Reilly, Extr., &c., with James A. Griffith, &c.

CATHARINE C. O'REILLY, Extr., &c. TO JAMES A. GRIFFITH. } AGREEMENT.

Agreement made twenty-first day of April, A. D. eighteen hundred and ninety-two, between Catharine C. O'Reilly, executix (with power of sale) of the last

will and testament of Patrick O'Reilly, deceased, of the first part, and James A. Griffith of the second part. Witnesseth, that the said party of the first part, for the consideration of sixty-five thousand dollars to be paid as herein mentioned, doth promise and agree to and with the said party of the second part, that she will well and sufficiently convey to the said party of the second part, his heirs and assigns, on or before the twenty-first day of May next, clear of all encumbrance, all that tract or piece of land situate in Atlantic City, New Jersey, being all the land lying south of the south line of lots Nos. 33 and 34 in Patrick O'Reilly's plots of lots, and extending to the Atlantic Ocean, including the Riparian title. And the said party of the second part, for himself and his heirs, executors and administrators, doth covenant, promise and agree to and with the said party of the first part, that he shall and will on executing the said conveyance, pay to the said party of the first part, her successors or assigns, the sum of sixty-five thousand dollars as and for the purchase money of the said tract or piece of land above mentioned, less the sum of one thousand dollars which the party of the second part hereby pays on the execution of this agreement, and for the due performance of all and singular the covenants and agreements aforesaid, the said parties to these presents do bind themselves, their heirs, executors and administrators, each to the other, his executors, administrators and assigns, in the sum of one thousand dollars firmly by these presents, the said sum to be considered as liquidated damages. In witness whereof, the said parties have hereunto set their hands and seals the day and year first above written.

CATHARINE C. O'REILLY, [SEAL.]
Executrix.
JAS. A. GRIFFITH, [SEAL.]

Signed, sealed and delivered in the presence of
JAMES A. O'REILLY.

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

I, JAMES A. O'REILLY, a Commissioner for the State of New Jersey, residing in the county of Berks, in the State of Pennsylvania, do certify that on the twenty-first day of April, in the year one thousand eight hundred and ninety-two, personally appeared before me, Catharine C. O'Reilly and James A. Griffifth, and I having first made known to them the contents thereof, they acknowledged to me that they signed, sealed and delivered the foregoing agreement as their voluntary act and deed. In witness whereof, I have hereunto set my hand and official seal at Reading, in the county and State aforesaid, this twenty-first day of April, one thousand eight hundred and ninety-two.

JAMES A. O'REILLY, [SEAL.]
A Commissioner for the State of New Jersey.

Received and recorded May 6th, A. D. 1892.

LEWIS EVANS,
Clerk.

I, LEWIS EVANS, Clerk of the County of Atlantic, do hereby certify, that the foregoing is a full, true and correct copy of an agreement as recorded in my said office, in Book No. 2 of Agreements, folio 373, &c.

In witness whereof, I have hereunto set my hand and affixed the seal of Atlantic [SEAL] county, this sixth day of May, A. D. eighteen hundred and ninety-two (1892), at Mays Landing, N. J.

LEWIS EVANS,
Clerk.

IN CHANCERY OF NEW JERSEY.

KEIM
vs.
O'REILLY.

REMARKS OF MR. S. H. GREY ON ARGUMENT BEFORE V. C. PITNEY.

Now, in reference to another feature of this case, and that is the question as to the basis upon which a decree in favor of complainants should be made, your Honor has made several suggestions. So far as my clients are concerned, we are perfectly willing to leave the adjustment of the equity, if your Honor discovers any, in this case, to the discretion of the Court, because always, ultimately, there it must go. As in the case of Penrose vs. Leeds, which is one of the latest upon the subject, in 1 Dickinson, and which was argued by Mr. Pancoast, I think, there there was a bargain between the vendor and vendee by which a sale had been made of a tract of land. The vendor had agreed to re-convey a portion of it at a later period. The vendee did convey one acre instead of nine. The vendor claimed he was entitled to nine, the vendee saying he was entitled to one. There the matter rested until the vendee had spent some $40,000 in making improvements, when the vendor, this having been done, seemed to wake up to a realizing sense of the necessity of asserting his rights and went at it. Mr. Bird refused to give him any relief, but the Court of Errors, in considering the matter, decided he was entitled to something, and they resorted to the system of valuation and apportionment, dealing with the property at the time the right was asserted with reference to the value of the property before the improvement was made.

Now, in reference to this case, this money has been

the money of Mr. O'Reilly *in posse* for some twelve years past.

The Court: But your client has had the use of it.

Mr. Grey: Yes, sir; he has had the use of it because Mr. O'Reilly did not perform the condition which he himself prescribed, which would have entitled him to it. I am afraid to say—I don't know exactly what would be the right thing to do in reference to that matter. The question of interest and the question of possession come up in opposition to each other. All the cases are referred to in this brief I propose to hand you, and it is a matter for the Court to determine. But this I have to say: If your Honor should be of opinion that there ought to be some equitable basis upon which performance of this contract shall be asserted as against the O'Reillys, this, I think, is clear, that the O'Reillys are not entitled to claim what they have said they had spent as against Mr. Keim. They are not entitled to be paid out of Mr. Keim's money or to charge against Mr. Keim, as increased value in this property, the expenses of the litigation as it was prolonged. They are not entitled to be paid compensation which Mr. James O'Reilly may have obtained from his brothers and sisters or mother for his professional services. He was one of the parties who was responsible in part for the delay, and he certainly is not entitled to charge us with the expenses which he himself created.

The Court: I don't know anything about that. I will tell you what was in my mind, because my mind has had a great many things in it here. My idea about it was, supposing the contract was enforcible. I say this, because I want to hear from either side on this. I believe I put the question before, but perhaps not so distinctly. I want to hear from either side on it here-

after, in writing, if you choose. What was in the contemplation of the parties at the time? Certainly some expense of litigation was in their minds. They knew it would cost something, but they could not have contemplated that it would cost any such money as they say it has. I don't know what it has cost. I am assuming they show it cost a good many thousand dollars more than the value of the property. I don't, myself, see how it could have cost so much, and I do not anticipate that an inquiry by a Master would find that it had cost so much. They did not expect to be paying assessments and taxes and improvements on it all the time, for filling up and grading, and all that sort of thing for all these years, and they did not expect it would cost ten years litigation instead of one. We cannot presume that the O'Reillys would have conveyed this property on the terms they did if they had anticipated that the thing would turn out as it has. Now, if I recollect the authorities right, that is a matter which the Court will take into consideration. What would naturally, and as reasonable men, in the ordinary course of business, be in the contemplation of the parties? If something turns up which, if I define it rightly, was not in the contemplation of the parties, the Court will take that into consideration. Now, suppose the Court should ascertain what was probably within the contemplation of the parties as to the cost of clearing the title of this property, say $500 or $1,000. Suppose the Court should say: "Mr. Keim, you have not had this money lying idle; you have had the benefit of it all the time, and it has earned, you say, five per cent. net (that is about what money has earned, I believe, for the last ten years; not more than that), and you must account for it. You must pay the original money, with five per cent. net. You must pay all assessments and taxes on this property, because it has been your prop-

erty in equity, and all the assessments that have been put on it and all the taxes you must pay, and you must pay all the actual cost of clearing this title, over and above what could have been fairly in the contemplation of the parties at the time." What would be the result of that? Now, I want you to notice this, because if there is any criticism on it I want it. The result of that would be to put the O'Reillys, as near as a court of equity could do it, in the situation that they would have been in if the thing had turned out as they supposed after six months' or a year's litigation, they getting the title clear and then getting their money, and they would have been out of pocket, say $5 0 or $1,000. They would have got their money. A decree of that kind would carry out the actual contract of the parties as near as a court of equity could come at it. That is what has been passing through my mind. In other words, I say a decree of that kind would do it. I mean that that would be the aim of a court of equity, to put the parties as near as possible where they would have been if these unexpected things had not happened. Now, with regard to the value of the money and the increase of the property, I have stated what was in my mind, that there has been no change in the value of money. If there has, it has been in favor of the vendors. According to all the present knowledge of experts on that subject, money has more purchasing value to-day than it had fourteen years ago, when this contract was entered into. Supposing there was a valid contract, fair in all its parts, and one which the Court would have enforced, for I am looking at it in that light entirely, if this controversy with regard to title had been closed in a year and Mr. Keim had then brought suit, a situation would have resulted, and what a court of equity would strive to do would be to put the parties in that situation as near as it can. And that it would

have attempted to do if they get their money with interest. Those are the ideas that floated through my mind, and I wanted to give them in this way, so that if either party has a criticism to make on them they may do it. I do not mean to decide at all whether the contract is enforcible. I do not mean to express any opinion on anything.

Mr. Grey: In disposing of the matter in that way, if that eventually should come to be the plan, there is one other thing which has to be considered, and that is, the expenses of the pending litigation to which Mr. Keim has been driven, by what, under the circumstances stated, and if the Court reach the conclusion suggested, would have been unreasonable opposition from the O'Reillys.

The Court: When a party defends and is beaten, the general rule is the costs go against him.

Mr. Grey: It is not only costs, but you are now dealing with a situation where you want to know what the parties would have done if they were newly contracting, in view of the fact that what they did showed a disposition on the part of one to convey something to the other, and you are going to deal with the matter as you think it ought to be dealt with.

The Court: Yes. I mean to say that there has been very heavy expense put on the complainant here now.

Mr. Grey: There has been very considerable.

New Jersey Court of Errors and Appeals.

JAMES A. O'REILLY AND OTHERS,
Appellants,
and
JACOB KEIM,
Respondent.

ON BILL, &c.
APPEAL, &c.

POINTS BY DAVID J. PANCOAST,
Solicitor and Counsel for the O'Reillys.

(I).

AS TO THE FACTS.

The effort of the complainant is to specifically enforce two unilateral contracts for the purchase of land at Atlantic City, New Jersey; the first, dated the twenty-fifth day of March, A. D. 1880, purporting to have been made with the complainant as purchaser, by "J. J. Gardner, agent," for Patrick O'Reilly; the second, dated the twenty-ninth day of October, A. D. 1881,

purporting to have been made with the complainant, as purchaser, by "John J. Gardner, agent P. O'Reilly estate." The complainant in his bill prays for a decree for the performance of these contracts *strictly, according to their terms*, (pages 6, 10, 11). And he has appealed from the decree below on the ground that he has been and still is unwilling to do other than pay the original price for such a title as the second contract calls for.

At the date of the first contract, Patrick O'Reilly was an old man, residing in the city of Reading, in the State of Pennsylvania, practically out of all business. For years prior to that time, he had been the owner of lands at Atlantic City, in respect to which his son James, who resided at Reading, and John J. Gardner, who resided at Atlantic City, were his agents, in a limited sense; and through them, and especially through Gardner, he had from time to time made sales of parcels of his lands there. The authority which Gardner had and exercised was not in writing, nor specific in its terms, except that he might find purchasers of certain lands at prices fixed, or to be fixed, by O'Reilly—page 345.

Clothed, only, with limited verbal authority, and with no specific or express authority to make any contract in writing for O'Reilly, much less one of his own conception, on the twenty-fifth day of March, A. D. 1880, he signed and delivered to the complainant, Keim, the following paper, viz:

"Atlantic City, N. J., March 25th, 1880.

"$25.00.

"Received of Jacob Keim the sum of twenty-five "dollars on account of the purchase money of the lot "of land fifty feet in width, adjoining on the rear of the "land now owned by the said Jacob Keim, which land "fronts off New York in Atlantic City aforesaid, and "which strip to be conveyed runs the entire length of "the said land of the said Jacob Keim. The purchase

"price to be twenty-five hundred dollars. *Deed to be "made and delivered so soon as practicable, not longer "from the present time than one month.* Said land to "be conveyed belongs to Patrick O'Reilly, for whom "the undersigned is agent.

"J. J. GARDNER,
"Agent."

This contract, it will be observed, calls for the delivery of a deed "*as soon as practicable, not longer than one month;*" so that if the agreement were legal, it should have been fully executed on the part of the vendor by the twenty-sixth day of April, A. D. 1880, more than fifteen years ago.

By the undisputed testimony of Gardner, the complainant, Keim, did not, during the period of one month, within which the contract by its terms was to be wholly performed, tender the balance of the purchase money, or request a deed for the property. Nor did he ever do either of these two essential things from the date of the contract, March 25th, 1880, to the day he commenced his suits, July 26th, 1892, a period of more than twelve years.

As a witness for the complainant, Gardner testified as follows:

"Ques. Did you ever have from Jacob Keim any request to have this matter consummated by delivery of a deed?

"Ans. *No.*—page 327.

"Ques. Between the time of making the first and making the second contract, did Mr. Keim ever offer to pay you, and ask you for a deed under the first contract?

"Ans. Oh, no.—page 347.

"Ques. Now, since this second sale, has Keim ever offered to pay you the money and take a deed for the land?

"Ans. No."—page 349.

The complainant, Keim, testified that he never knew, or saw, or communicated with O'Reilly in the transaction, but his business was altogether with Gardner, as his agent in the matter—page 187. He never met Patrick O'Reilly after 1858, and never saw or communicated with his son James until 1888.—pages 187, 194.

From Gardner's point of view he had authority to make the contract for Patrick O'Reilly "in so far as it declared the receipt of money on account of the purchase of the land mentioned at the price named," page 307; and the other terms he made up and put in to suit himself—pages 308, 309. He did not keep a copy of it, either for himself or O'Reilly, and never reported its terms to the latter—page 345.

The only specific instruction he had from Patrick O'Reilly respecting the contract in question, was the sale price he had put on the land—page 344.

He thought he accounted to James A. O'Reilly, in some way he could not recall, for the twenty-five dollars received on the purchase—page 326. His custom was to account to O'Reilly for moneys received when the deed was delivered, not before—page 302. He testified as follows, page 301:

"Ques. During the time that you had charge, covering the period of Patrick O'Reilly's lifetime, and subsequently to his death, did you ever make agreements for the sale of lands, excepting in the case of Keim?

"Ans. I don't recollect ever—I never made any agreement except on the form of a receipt.

"Ques. Now, did you, in the form of receipts, receiving money on account for land to be conveyed?

"Ans. Yes; I think I almost always required a payment at the time parties engaged to take the lot, and gave them a receipt for the money.

"Ques. *Now, did Patrick O'Reilly in his lifetime*

know of the fact that you gave these receipts—receiving the money and giving these receipts on account of the purchase money?

"Ans. *Of that I don't know.*

"Ques. *Well, what did you do.*

"Ans. *I don't known how I would know that, or how that would come to his knowledge, unless somebody settled with him and had such a receipt and paid that over as so much money.*

"Ques. *Well, do you remember any such transaction as that?*

"Ans. *I don't know of any now.*

"Ques. Well, what did you do with the money that you did receive in Patrick O'Reilly's lifetime on account of the purchase money of lots, and for which you had given receipts agreeing to convey the lots—who did you pay it to?

"Ans. I paid it to Patrick O'Reilly.

"Ques. (By the Court): Did you render him an account?

"Ans. *The rule was that every transaction was settled up when it was closed. Of course, if I sold a lot and sent a deed out there and he executed it, and there was so much cash money and so much mortgage, when the transaction was closed he got what belonged to him and I got the commission, and the transaction was ended.*"

Patrick O'Reilly died testate in the month of January, A. D. 1881, about ten months after Gardner signed this paper, and left him surviving his wife, Catharine C. O'Reilley, his daughter, Mary, and four sons, James, John, Francis and Anthony. By his will he devised his whole estate to his widow for life, and appointed her and his two sons, James and Francis, executors with full power of sale. Exhibit D1, page 635 I.

Subject to his widow's life estate, and the power of

sale in his executors, he divided his estate equally among his five children.

Mary died testate, seized of her undivided one-fifth, in the month of March, A. D. 1890, and devised the same to her mother. On the thirtieth day of April, A. D. 1892, the complainant commenced his present suits, and pending the same, on the ninth day of July, A. D. 1893, before the complainant had concluded the taking of his proofs, and before he had rested his case, Mrs. O'Reilley died, testate, at Reading, Pennsylvania, (page 476,) and the suit since has proceeded against her children and legal representatives.

The proofs leave it very doubtful if Patrick O'Reilly, up to the date of his death, ever knew of the Keim purchase in any form; and it is reasonably certain that he was not aware of the existence of the contract in writing, in the form in which it appears to have been made by Gardner, as his sales agent.

No steps were taken to complete the agreement within the thirty days fixed, or thereafter, to the day of O'Reilly's death, in January, A. D. 1881, ten months and more after it was made. It seems to have been abandoned by Keim. He never offered to pay the balance of the purchase money and take a deed. He never undertook, within the time limited, to pursue the remedy which the statute gives in cases where the vendor dies before completing his contract to sell land (Rev., page 782, sec. 132.) But he attempted in a most awkward fashion to recover the ground that he had seemingly lost in this way, by the second agreement, which is in terms as follows, viz:

"Received, Atlantic City, N. J., October 29th, 1881, "of Jacob Keim, the sum of five hundred dollars on "account of the purchase money of a certain tract of "land situate in said city, as follows: Beginning at a "point in the southeasterly line of Pacific avenue, at "a distance of two hundred feet northeasterly from

"the northeasterly line of New York avenue, and ex-
"tending thence (1) southeasterly on a line parallel
"with New York avenue a distance of one hundred
"and fifty feet; thence (2) southwestwardly parallel
"with Pacific avenue a distance of one hundred feet;
"thence (3) southeastwardly parallel with New York
"avenue, a distance of fifty feet; thence (4) southwest-
"wardly parallel with Pacific avenue, a distance of
"fifty feet; thence (5) southwestwardly parallel with
"New York avenue, a distance of
"to the exterior line (now under water) established in
"18 by the Riparian Commissioners of New Jersey;
"thence (6) northeastwardly along said Riparian line,
"a distance of one hundred and fifty feet; thence (7)
"northwestwardly parallel with New York avenue, a
"distance of to the south-
"easterly line of Pacific avenue, and thence (8) south-
"westwardly, along said last mentioned line, a distance
"of fifty feet to the place of beginning. And also all
"the additions and accretion to said tract of land, if
"any, which may hereafter be made on the sea front;
"it being the purpose of this purchase and sale to
"include all the land above described, and also all the
"right, title and interest of the grantors and of the
"estate of the late Patrick O'Reilly, deceased, in and
"to the secretions of said land which may be made
"upon the sea front. The balance of the purchase
"money, namely, the sum of $9,500, to be paid under
"tender of a good and lawful deed for said premises,
"*free from encumbrance and opposing or contesting*
"*claims of title, with undisputed possession of the same,*
"the grantee to have sixty days notice of such tender.
"Including all the lands and rights of said estate be-
"tween Pacific avenue and Riparian line and beyond,
"and New York and Tennessee avenue."

"JOHN J. GARDNER,
"Agent P. O'Reilly Estate."

The boundaries in this second agreement include the land described in the first. And it was understood by both Keim and Gardner, that this latter contract embraced the land included in the former, as a sort of cumulative or curative agreement, so to speak, although the price of it was left out—pages 229, 230, 348, 694.

A great deal of testimony was taken by the complainant, under objection (page 240) to show things which Gardner did as agent for O'Reilly, antecedent to the contracts in question, *which were unheard of by Keim when he made the purchases*, and of course had no influence with him in respect to them. They were facts lately discovered by him in aid of this suit.

Keim, himself, said he dealt with Gardner altogether, understanding (from what facts he did not state) "that he was Mr. O'Reilly's agent, of course"—page 188.

He said he went to Gardner to buy the land embraced in the second contract, and the latter showed him the prices; that he did not know, from what Gardner said, whether he was acting *through himself or by express orders from O'Reilly*—page 190.

That Gardner showed him a note (not put in evidence) relating to another offer for the land, signed James A. O'Reilly, and he then paid the $500 on account of the second contract—page 191.

That he never saw or spoke to James A. O'Reilly about the sale until the year 1888, *seven years after it was made*—page 194.

It therefore clearly appears, from Keim's own testimony, that he dealt with Gardner, in the way he did, solely from the fact that *Gardner assumed to have the power and authority to make such contracts with him.* He relied on nothing that Patrick O'Reilly or James A., his son, had ever done or said in respect to Gardner's authority in the matter.

In the light of these facts, the effort of the complain-

ant to establish Gardner's right to make the peculiar agreement in question, for O'Reilly's estate, by proving a general course of dealing between O'Reilly and Gardner, must be wholly unavailing; and the complainant's voluminous evidence on this point, extending to transactions as far back as 1871, (page 240,) must be disregarded by this Court as irrelevant and worthless; yet the Court below used it to clothe Gardner with authority to make the second contract in question, unlike any other before that time made or attempted to be made by him.

O'Reilly died in January, A. D. 1881, and on the twenty-ninth day of October, in the same year, Gardner signed this second agreement as "agent P. O'Reilly estate."

At that time the estate of Patrick O'Reilly belonged jointly to his widow and five children, with a power of sale in the three executors, Catharine C., the widow, and James A. and Francis, two of his sons. The will was probated by the widow alone in New Jersey, the other executors refusing to act, leaving to her the sole right to exercise the power of sale here. Exhibit D1, page 635 I, page 474. See Corlin vs. Little, 2 Green, 383; Weirmer vs. Fath, 14 V., 1.

Assuming that a course of dealing was competent to establish authority in Gardner to make *the specific contract in question*, nothing has been proved to have transpired between the time of O'Reilly's death and the making of the second contract, a few months later, by Gardner, as "agent P. O'Reilly estate," which can be construed to establish his authority from the executors or devisees to make the same.

The question in this case is, not what authority Gardner assumed, but what he actually and legally had to make the contracts in question. Keim was bound to know that at his peril. The means of finding it out

were easy. He could have inquired of the principal; but he did not trouble himself, even to inquire of the agent as to the extent of his authority to make a contract in writing to bind his principal. The terms of the second contract were drawn by Keim himself, and when it was signed by Gardner, he, Keim, kept it without leaving a copy—page 346.

If, when he saw Gardner sign the contract "as agent P. O'Reilly estate," he had asked who were interested in that estate, he might have discovered that six persons were; and if he had further asked what power he had from them, he might have discovered that it was a little authority, indefinitely given, only, by word of mouth from one of the six, not including the power to make any binding contract in writing, much less the extraordinary one in question.

But he did not do anything of the sort; he made no inquiry; he simply had blind faith in Gardner; and now he must take the consequences that legally flow from such unquestioning confidence. In Milne vs. Kleb, 17 Stewart, 381, it was said: "That those who deal with agents are chargeable with notice of the extent of their authority. The rule is general, that a purchaser buying of an agent must, at his peril, satisfy himself as to the extent of the agent's authority."

It appears that James A. O'Reilly, lawyer like, being the owner of but a one-fifth share in his father's estate, and one of three executors in the State of Pennsylvania, assumed towards Gardner power to act for the whole number. When as a matter of fact and law, he had no delegated authority, *and no power to do any act as executor in this State, where letters testamentary were taken out by the executrix alone.*

When the terms of the second contract first came to James' knowledge, in the month of December, A. D. 1891, he asked Gardner by what authority he had made it, and he replied, "damn if I know."—page 351.

Gardner testified that he never had any communication of any sort with Mrs. O'Reilly, or Anthony, Francis, John or Mary, her children, respecting the sale of her interest in the land; that all his instructions and authority, under which he made the second contract, were from and through James—page 351.

See Gardner's cross-ex., page 341, &c.

James testified he never knew the terms of this second contract until December, A. D. 1891, through a letter from Mr. Grey to Mr. Voorhees—page 519; that he never had any authority over the estate at Atlantic, excepting such as he had as one of the foreign executors and joint owners; that the others never gave him any additional authority or power; that he never knowingly received anything from Gardner on account of either contract—page 514, &c.

As Catharine C. O'Reilly, the widow, alone, proved the will in New Jersey, the authority to sell was in her solely. The will had to be probated and letters testamentary granted thereon to the executors in this State to qualify them to act here and make sales and conveyances of land. But if the power of sale in this State were in the three executors, they could not, actively or passively, confer the whole power on James, so that he could delegate it to Gardner. Trustees and agents cannot delegate their own delicate and discretionary powers in that way. They can surrender them, but they cannot act through sub-agents or substitutes in making original contracts in the execution of their powers.

Burger vs. Duff, 4 John's Chancery, 368.

There is nothing to show that the widow, either as executrix, or as owner of a life estate in the land, authorized or ratified either of the contracts made by Gardner. James has testified (page 514) that he had no authority to act for her. Francis testified, page 474,

that he first heard of these written contracts in April, 1892, from his brother James, and Gardner testified that he never had any communication of any sort with Mrs. O'Reilly or Francis touching the sales in question—page 351; and that he could not recall what he said to James about the second sale before it was made, except as to the price and the land to be sold—page 346.

Francis, co-executor, never authorized James to act for him in the matter, and he never heard of Gardner's two contracts until April, 1892, when his brother James showed him copies of them—pages 474, 475.

Anthony was, by reason of his wide separation from James and the rest of the family, an utter stranger to the contracts until he appeared in court to testify to his ignorance of what had been done in the premises by James and Gardner—pages 420, 421, &c.

John was almost as ignorant of Gardner's and James' doings with the estate as Anthony was. He never heard of the contracts until April, 1893—pages 441, 442, &c.

And so far as the proofs go, Mary, up to the day of her death, knew nothing about them.

The absence of all authority of every sort in Gardner, from two of the three executors, and from five of the six joint owners, drove the complainant's counsel to make the endeavor to prove the essential authority by previous usage or subsequent ratification. And their effort to this end was successful in the Court below, for the Vice Chancellor's conclusion rests principally, if not wholly, on previous usage and subsequent ratification.

But a careful and impartial study of the proofs will show that Gardner acted through James, and James acted for himself respecting the sales in question, which, until a very recent period, were unknown to all the other parties in interest. The trouble with the learned Vice Chancellor's conclusion is, that it is the result of inference, unsupported by the facts, as we understand them.

He went so far, in search of proofs in favor of the complainant, as to declare, in his opinion (page 666,) *that Gardner's mere belief in his authority to make the contracts, without being able to state how he got it, was evidence of the existence of such power.*

But, passing this feature of the case, we come to another important phase of it. At no period since the two contracts in question were signed, down to the commencement of complainant's suits, could the executors or devisees of O'Reilly give a good title to the lands mentioned, on account of the adverse possession of, and outstanding claims of, title to the same. See charge in bill, page 718.

Gardner, James A. O'Reilly, Harned and Lindley, each testified to the existence of adverse outstanding claims of title to the property in dispute, (pages 349, 350, 351, 516, 595, 552,) which is an undisputed fact in the case, fatal, it would seem, to the complainant's claim for a specific performance of an agreement which calls for an *undisputed title and possession.*

During all these years of litigation to perfect the title, *the lands have increased in value to upwards of a hundred thousand dollars,* (page 343,) *and the taxes and expenses attending the attempt of Mrs. O'Reilly to establish the title have amounted to upwards of fifteen thousand dollars, (518) with Gardner's compensation for services to be added;* and three of the persons interested in the land in suit, namely, Patrick O'Reilly, Catharine C. O'Reilly, his widow, and their daughter Mary, are dead, *whereby important witnesses have been lost to the O'Reilly estate in this matter.*

Keim never, before the commencement of the suits, in 1892, offered to accept such title and possession of the premises as the defendants could give him. See bill, pages 6, 10, 11.

A tender by the defendants of such a performance would not have been in compliance with the terms of the

agreements. Unforeseen circumstances have rendered a strict performance at this time inequitable and impracticable; but the court below "cut the Gordian knot," by practically making a new contract for the parties which both sides insist is unjust and illegal. One of the peculiarities of the decree (page 726) is, that it charges the complainant with the actual necessary expenses, *actually paid out* in the actions of ejectment touching the title to said lands referred to in the proofs, less the sum of $500, which the Court adopts *arbitrarily* as the amount in the minds of the parties, as the costs of the said suits, at the time the said contracts were entered into.

The testimony shows that all the expenses actually incurred, referred to in the decree, have not yet been defrayed, (page 518); those paid out are provided for, the others are not.

(II.)

LEGAL PROPOSITIONS.

Specific performance is never decreed as a matter of strict legal right.

It rests wholly within the sound discretion of the Court and will never be decreed in a case of doubt. Uncertainty is a bar to such relief.

Brown vs. Brown, 6 Stewart, 655, 657.
C. B. & P. R. R. C. vs. Reno, 13 Ill., 69.
44 Hennessy vs. Woodworth, 123 U. S.
438 Minaski vs. Wisconsin R. R. Co., 65.
Wis. 502 Crance vs. DeGamp, 6 C. E. Green, 414, 413, 420.
DeGoller vs. Hanscome, 158 U. S., 222.

In Ludlow vs. Buckingham, 8 Stewart, 83, it was said "that it has became a fixed rule of judicial action never to grant a decree for specific performance, unless it is

strictly equitable under all the circumstances of the case to do so."

A Court of Equity will enforce a unilateral contract with the greatest hesitation and caution. The rule is against their enforcement.

Van Dorn vs. Robinson, 1 C. E. Green, 256, 259, 260.

In Pinner vs. Shark, 8 C. E. Green, 281, it was said: "The contract is unilateral and not mutual. It binds the defendant to convey, but not the complainant to take; such optional contracts are not favored in equity."

In Rennyson vs. Rozell, 102 Pennsylvania State, 407, the Court said: "It is not sufficient to call forth equitable interposition of the Court, that the legal obligation under the contract may be perfect. If injustice would result from a decree for specific relief, the parties must be remitted to their remedies at law. *Even when the agreement is perfectly good, the price adequate, and no blame attaches to his purchase, if the transaction is inequitable and unjust in itself, or rendered so by matters subsequently occurring, specific performance may be denied.*"

39 N. E. Reporter, 707.

3 Pomeroy's Equity Jurisprudence, 2 Ed., 1405, says: "The essentials of a contract for the sale of land, to entitle it to be specifically enforced, are as follows: 'It must be reasonably certain *as to its subject matter and the circumstances under which it was made. It must be mutual in its obligations and in its remedy.*'" In the recent case of Ten Eyck vs. Manning, 7 Dick., 49, Vice Chancellor Van Fleet stated the rule to be: "That mutuality of remedy is essential to the maintenance of a suit for specific performance."

Woodruff vs. Woodruff, 17 St., 355.

It will not be decreed after the lapse of a long time

and a great increase in the value of the land, or a change in the situation of the parties.

Young vs. Rathbone, 1 C. E. G., 224, 228.
Merritt vs. Brown, 4 C. E. G., 286, 293.
Penrose vs. Leeds, 1 Dick., 294, 296.
Meidling vs. Trefz, 3 Dick., 644.
Rogers vs. Saunders, 16 Maine, 99.
Green vs. Covilloid, 70 Amer. Dec., 735.
10 California, 317, 330.

Nor where there has been unexpected, prolonged and expensive litigation respecting the title to the land, subsequent to the agreement to convey.

Fitzpatrick vs. Darrence, 27 Hun., 291, 294.

Unusual delay in applying to the court for specific performance is a bar to such relief.

Haighnut vs. Murphy, 6 C. E. G., 118, 122.
Nixon vs. Volduc, 78 Ill., 215.

Or in prosecuting the suit, 38 Pacific Reporter, 1100.
Especially when the contract is unilateral or optional.

Hoyt vs. Truxbury 70 Ill. 331, 338, 339.

The power of an agent to make a contract in writing for the sale of his principal's land must be clearly established in order to warrant a decree for its specific performance.

Hadfield vs. Shelton, 69 Wis., 460.
38 Pacific Reporter, 1105.

Power in writing to sell, only, is insufficient to authorize the agent to enter into an agreement in writing in the name of his principal.

Morris vs. Ruddy, 5 C. E. Green, 236.
Milne vs. Kleb, 17 Stewart, 378, 380, &c.
Duffy vs. Hobson, 40 Cal. 244, 245.
Grant vs. Edi, 85 Cal., 418, 420, 421.

Ratification by a principal is effective and binding only when he has acted with a full knowledge of all the facts.

Qulick vs. Grover, 4 Vroom, 471.

Parrish vs. Koons, 1 Parsons' Equity Cases, 89.

Catharine O'Reilly, the only executor that proved the will in New Jersey, was, alone, qualified to make a contract for the sale of the New Jersey lands or a conveyance of the same. (Rev. page 397, sec. 10. Rev. page 757, sec. 23. Corliss vs. Little, 2 G. 371, 384. Bennett vs. Kiber, 76 Texas, 385, 390. Crawford vs. Forshaw, 2 Ch., 261.)

One of several executors can do no binding act toward selling land without the assent of all. And all cannot lawfully delegate to an agent their power to make sales.

Wilder v. Ranney, 95 N. Y., 12.

Berger v. Duff, 4 John's Chancery, 368.

An imprudent or unbusiness-like contract, made by executors or trustees without the knowledge, consent or approval of the parties in interest, will not be specifically enforced, to their disadvantage, by a Court of Equity.

Lehigh N. Co. vs. Central R. R. Co., 14 St., 184.

(III.)

CONCLUSIONS.

Our contention upon the law and facts of the case is:

FIRST.

That Gardner had only the authority of a sales agent to find purchasers at prices named, and was wholly without power to make either of the two contracts in question.

SECOND.

That the complainant abandoned all right under the first contract, even if it was duly made.

THIRD.

That James A. O'Reilly, as executor, not having proved the will in New Jersey, had no authority here, and could not act for the whole in making or ratifying the agreement in writing for the sale of land by himself, or through the agency of Gardner.

FOURTH.

That as all the facts and circumstances under which the two contracts were made by Gardner were entirely unknown to Mrs. O'Reilly and Francis, and the rest of the children, excepting James, who was ignorant of their terms and existence in writing, there is no legal basis to found a ratification upon.

FIFTH.

That, as events have proved the second contract to have been ill advised and improvident, the equity of the case is against its enforcement, even if it was originally made with due authority.

SIXTH.

That if the second contract was made by the legal authority of the three executors, duly given to Gardner, it ought not to be enforced, because its enforcement will do injury to the estate for whom they were acting.

SEVENTH.

That the remedy by specific performance, being one

of discretion rather than one of legal right, ought to be withheld in this case on account of the doubts existing in the complainant's case, and the difficulty of doing equity to the complainant without at the same time doing injustice to the defendants.

EIGHTH.

That, in no possible view of the facts, has the complainant made out a case sufficiently clear and equitable to entitle him to have a decree for the specific performance of either of the agreements.

NINTH.

That the inability of the defendants to perform, the unilateral character of the contracts, the want of a mutual remedy, the great delay in invoking the aid of the Court, the unexpected and unsettled dispute over the possession and title, the prolonged and expensive litigation to settle the same, the great rise in the value of the property, and the death of two of the principal parties, who were material witnesses to the transactions in question, are undisputed facts which amount to an equitable and legal bar to the complainant's suits.

D. J. PANCOAST,
Counsel.

New Jersey Court of Errors and Appeals.

O'Reilly, et al.	}	On Appeal from
vs.	}	Decree in
Keim.	}	Chancery.
Lindley, et al.	}	On Appeal from
vs.	}	Decree in
Keim.	}	Chancery.
Keim	}	On Appeal from
vs.	}	Decree in
O'Reilly, & al.	}	Chancery.

POINTS OF GREY & GREY, OF COUNSEL WITH KEIM.

1. The first contract with Keim, dated March 25th, 1880, made by Patrick O'Reilly in his lifetime through Gardner as his agent, was in writing, and was one of many of like character made by O'Reilly through Gardner, signed by him as his agent, none of which

New Jersey State Library

were questioned, and all ratified and carried into effect by O'Reilly. (See Contract, page 189, and testimony of Gardner).

2. Patrick O'Reilly died January 16th, 1881, and the second contract with Keim, dated October 29th, 1881, was also in writing, signed by Gardner, as agent of Patrick O'Reilly estate. (See page 193).

The authorization by a principal to an agent need not be in writing. It is only the contract made for the principal with the intending vendee which must be in writing.

Fry on Spec. Perf., sec. 508, page 259, (3 Am. Ed.) and cases cited.

The agent's authority, not given before contract made, may be supported by a subsequent sanction of the contract by the principal.

McLean vs. Dunn, 4 Bing., page 722.
Lawrence vs. Taylor, 5 Hill, 107.

The Court may conclude in favor of the agency, either from direct proof or inferences from letters, acts or conduct of parties, from their relations to one another, or from any evidence legitimately raising evidence of agency.

Fry on Spec. Perf., sec. 509, and cases cited.

Evans on Prin. & Agt. p. 173*

3. Keim paid to the agent of O'Reilly, on the first

contract, $25, on account of the purchase money, (see page 187) and on the second contract, $500.00, also on account of the purchase money (see Keim, page 187, line 32, also pages 188–189, also page 189, line 37, page 192.)

4. James A. O'Reilly, one of Patrick O'Reilly's sons, was his messenger and "go between" with Gardner, the agent at Atlantic City, during the life of Patrick O'Reilly; after Patrick's death, James continued to act for the family and the executors in arranging with Gardner for the sale of the Atlantic City lots.

5. The second contract of October 29th, 1881, was made by Gardner as agent for the executors and donees of the power of sale, and devisees of Patrick O'Reilly, (see letter May 24, 1881, page 213, line 10, "Executors and heirs of P. O'Reilly," &c.,) with the assent and authority of James, one of the executors, donees and devisees, actively given and declared, and with the assents of the other executors and donees and devisees, by holding and presenting James and Gardner to the world as their agents to make contracts for sale of lots, which they performed without exception, and by ratification of their contract and acceptance of the part payment of the purchase money by Keim to Gardner, accounted for by him to the executors (see pages 302, 303), and their unquestioning acceptance of every act of James and Gardner regarding the Alantic City lots, culminating in their making the $64,000 settlement of the Atlantic City sales, and destroying the vouchers and giving full release—(see page 534; also release Ex. C72, Complt's Exhibits, page 6).

That Patrick O'Reilly in his lifetime, and his family after his death, knew and approved of Gardner's contracts of sale, plainly appears, for Gardner contracted to make sales, reported sales, paid money to them for sales made, and not one sale contracted for or made by Gardner was repudiated. All were affirmed by the making of deeds (page 304, line 1). James A. O'Reilly admits he knew of the Keim contracts (page 539) and acquiesced in them. Patrick O'Reilly himself conveyed to Morse on Gardner's contract for some $2,000 less than the price he (O'Reilly) wanted (pages 365, 366), because Gardner's contract was previously made; it was sustained by O'Reilly.

The widow and executors ratified another of Gardner's contracts made in 1883 by making their deed to Morse in 1886—(page 367).

So with the Flaherty case, Gardner had agreed to sell a lot to Reed at $3,500. James agreed to sell the same lot to Flaherty at $3,600. Gardner's sale was maintained, and James returned to Flaherty $10 paid him by Flaherty (page 410) on account of the intended purchase.

Gardner advertised the O'Reilly lots at Atlantic City for sale—made the bargains for sale—gave written contracts for sale as agent—received the advance money—reported the sales—sent the deeds for execution—received the cash for the down purchase money, and the mortgages for the residue—cared for the property,—paid the taxes, and was in fact the publicly known and accepted agent of O'Reilly in his lifetime, and of his executors and family after his death, for the sale of

these Atlantic City lots. Not a single transaction of Gardner's as agent of the O'Reillys, in contracting for the sale of lots or dealing with the property, was ever disavowed or repudiated by either O'Reilly or the executors (page 352) until they surreptitiously sought to avoid the Keim contracts in April, 1892, (Gardner's testimony, pages 288, 313, 351), by conveying the lots agreed to be sold to Keim, to Lindley, Adams and others.

6. Neither the complainant nor the O'Reillys ever abandoned either the first or the second agreement, nor did the second nullify the first. The second agreement was intended to include the lands described in the first, but did not affect the contractual obligation on the vendee to pay the contract price named in the first agreement, $2,500, for the part described in that agreement.

This is shown by Gardner's testimony (page 314, line 30 et seq., page 349, line 7), by the complainant's and his sons' persistent demands that both contracts be complied with, by a continuous correspondence over a series of years, and the constant assent of the defendants to this demand—(see letter, pages 212 and 223) and by Herring's testimony, (page 369,) as to price asked for part of the land. No question was ever raised as to the intent and the meaning of the two agreement during the long interval from 1881 to 1892.

It was only in 1892, after the O'Reillys sought to avoid their performance by secretly and hastily conveying the property away, as above stated, that they suggested doubts as to the plain meaning of the agree-

ments. We deny that there is either mistake or doubt of the true meaning of the agreements.

But even if there be a patent mistake, it is no ground to refuse relief by correcting the mistake, and directing performance.

Where there was a mistake in the contract, and the vendor in his bill honestly states the true terms, and they were more favorable to the vendee than those stated in the memorandum, performance was decreed.

Smith vs. Jones, 7 Leigh, (Va.) 170.

Newton Lain p. 233

So here the price of $12,500, for both contracts, is conceded, and performance asked on that basis. Of what, then, can the defendant complain? In the case just cited it was expressly held that a party defendant "cannot complain of the mistake, as it is rectified by the complainant in his bill." And where the true terms were stated by the plaintiff, setting forth in his pleadings his willingness to perform, the bargain was enforced.

Martin vs. Pycroft, 2 De. G. Mc. N. & G., 789, Note A; also 794.

Robinson vs. Page, 3 Russ., 120.

Lon. & Birm. R. Co. vs. Winter, 18 Ch. (Eng.) R. 57.; in this last case the parol variation was not set up in the bill nor in answer, but came out in the evidence, on a cross-examination, and plaintiff consenting that this was the true term of the contract, specific performance was decreed.

See also

Kisselback v. Livingston, 4 Johns. Ch., 148.

Gillespie v. Moore, 2 John Ch. 585 (Ch. Kent).

Hendrickson v. Ivins, Saxt., 568.

Story Eq. Jur., sec. 161, Note.

Fry on Spec. Perf., sec. 798, Note 1, (3rd Am. Ed.)

7. Donees of a power may contract for their exercise of the power.

Coventry v. Coventry, 2 Pierre Williams, 222-233.

In this case, a power was given to a life tenant to appoint lands to support a jointure not exceeding $500.00 per year for an intended wife. The Earl of Coventry made a marriage agreement that he would appoint certain lands, and directed a draft of the jointure to be made, but died before he signed it. The jointure as drawn was enforced against the remainderman in favor of the widow.

In Shannon vs. Bradstreet, 1 Sch. & Lef., 61, a contract by the donee of a power was held binding upon the remainderman.

In Sugden on Powers, 118, the doctrine is laid down that when an intent to execute the power appears in writing, equity will enforce the contract, or where, by

letter, a promise is made to grant an estate. which can only be done by the exercise of a power, equity will supply the defects and enforce the contract.

See also Goodwin v. Fielding, 4 Beas. McN. & G. No. 106, as to trustee's obligation to convey on a contract of sale.

8. As to claim of defendants that increase of value of the lots is a ground to refuse performance. Increase of value alone has never been held a ground to refuse performance in New Jersey.

The very object of the purchase on the part of the vendee is the expectation of the benefit of an increase in price. In this case the increase of value was not by reason of any new discovery of a quality in the lands unknown to the parties when they contracted, as a mine, or valuable spring, or other matter not within the contemplation of the parties when they bargained. It is simply a rise in value of town lots, after fourteen years delay by defendants to perform their contract, notwithstanding persistent urging by complainant. That there would, after such a time, be a rise in value, was a natural and reasonable expectation of both parties.

When performance is refused because of a change in value, it is because of some fault on the part of the intending vendee, and so is the general holding of the cases and the text books.

Pomeroy on Spec. Perf., 478; also 9th sec. 407, note.

Waterman on Spec. Perf., secs. 165, 172, 173.

Young's Adm'rs vs. Rathbone, 1 C. E. G.

[redacted]

Penrose vs. Leeds.

Ruckman vs. King, 4 C. E. G., 360.

[redacted] 10

Especially see the language of Chief Justice Beasley in the Court of Errors, in

King vs. Ruckman, 9 C. E. G., page 558.

Goodwin vs. Fielding, 4 De G. Ex. McN. and G., No. 104.

Lee vs. Kirby, 104 Mass., 428. 20

To hold otherwise is to offer a premium for delay in performance and breach of contracts. In the case in hand the complainant continously urged the performance of the contracts again and again, by word and letter, even offering to procure additional counsel to prosecute the actions of ejectment, which delayed performance (see pages 216 to 227). The defendants were always delaying, explaining and excusing, and finally, in fraud of their contracts, and to cheat the complainant of his bargain, hastily conveyed the property away without notice to or knowledge of the complainant, thus forcing him to file the bills in this case for relief. Keim never heard of the purpose of the O'Reillys to convey the lots until after they had made the deeds (page 235, line 8.) 30

9. No imputation of laches can be laid against the complainant. The defendant, O'Reilly, had agreed to convey "free from encumbrance and opposing or "contesting claim of title, with undisputed posses- "sion of the same, the grantee to have sixty days "notice of such tender." (See contract, page 194, line 6.) The O'Reillys understood that they were to see that Keim's title was made clear, made good (page 541, line 12). They undertook the ejectment suits against Rotherham, Lindley and others. It was their delay in prosecuting these suits which postponed performance of the contracts until the prices of the land rose to a high figure. On all questions of merit, the O'Reillys were always successful against the defendants in the ejectment suits, yet they suffered these suits to remain unprosecuted for years of delay, notwithstanding Keim's protests (see page 219, letter Keim to Jas. A. O'Reilly; also letter on page 220, 221 and 223). The O'Reillys recognized that the delays were theirs (page 223 test. of James).

When there was a clear case of acquiescence by the defendants, in the delay in performing the agreement to convey, the defendant is not at liberty to impute laches to the complainant for not proceeding.

Ashmore vs. Evans, 3 Stockt. 154.

10. The defendants Lindley and Adams purchased with actual notice of Keim's outstanding contracts for the purchase from the O'Reillys. As to the defendants, Griffith, Hall and Shelton, decree pro confesso has been taken.

Keim told Lindley that he had bought the lots from O'Reilly, (page 201, line 20; page 202, line 18,) Keim told Lindley this in 1891, (page 273, line 38).

Adams told Keim, in 1890, he wanted him to agree for a continuance of his (Adams) lease of the part he occupied, (page 202); that he hoped he (Keim) would not be hard upon him and would give him the first chance (page 203).

Adams admitted to Albertson (the Postmaster), that he knew of the Keim claim (page 245, line 7.)

Barstow (director of the bank) mentioned Keim's equity in the lots to Adams, before Adams got the money to pay for the Lindley purchase from O'Reillys (page 251). Adams was Lindley's son-in-law, and was then acting for him in getting the money for Lindley to purchase from the O'Reillys,—and Barstow's warning was therefore effectual as notice both to Adams and to Lindley.

They, Adams and Lindley, acted together in securing Lindley's money, and got the money in great haste immediately after the term of Court at which the West-Rotherham verdict was recovered by the O'Reillys (page 529, line 25). These suits were brought by Mr. Keim at once to set aside these conveyances made in fraud of the Keim agreements (page 329, lines 10 to 15).

The price of the Adams lot was at a rate much less than the price of the lot sold to Hall, though the Adams lot fronts on both the Ocean and Pacific avenues. No time was taken even to prepare formal contract. Letters were hastily recorded as contracts.

Lindley got the money through Adams, and ap-

plied it to the purchase from O'Reillys (see Lindley's testimony, page 568, line 5). Adams endorsing his notes (page 564, line 38). Lindley secured the lots he bought at a low price, about half their true value (page 531, line 2).

Adams took his own deed after Keim had sued (page 580) so that he never actually paid anything until after he knew of Keim's claim, by his own admission.

> In Dean vs. Anderson, 7 Stew., 496, it was directly held that a party claiming to be a bona fide purchaser, must deny notice of the outstanding claim of a contract to convey, "not only at the time of his "purchase, but also at the time when his "deed was executed, and consideration "paid."

11. No tender of performance was required of complainant. He was always ready to take title whenever the O'Reillys had complied with their agreement to clear "the opposing and contesting claims." The O'Reillys knew this and their letters show they knew it. (see page 223, line 10.)

Instead of clearing these claims, they denuded themselves of the title, by deeds made in fraud of the Keim contracts, so that they had, without notice to Keim, (page 235, line 7) deprived themselves of power to convey, even if Keim had tendered.

> Where there is a defective title, or no title, any condition precedent on the part of the vendee need not be fulfilled, such

as tendering a conveyance, payment, or security: Lawrence vs. Taylor, 5 Hill 115.

Sugden on V. & P. 300 (Ed. 1836).

Such a tender would be idle: Judson vs. Wass, 11 Johns., 525.

"Where it is through laches of vendor that the title remains incomplete, the Court will refuse an application for payment of purchase money into Court." Fry on Spec. Perf., § 1436.

12. The decree in Chancery has charged upon the complainant, not only the agreed price and interest, the taxes and assessments on the lands and the expense of filling in the lot, but also with the cost and necessary expenses that O'Reillys, in the prosecution of various actions of ejectment to recover possession of the lots they had agreed to convey to Keim, actually paid out.

By the agreement of October 29th, 1881, the O'Reillys contracted to convey, free from "contesting claims of title and with undisputed possession."

These costs and expenses of these actions of ejectment were incurred by the O'Reillys in carrying out their own undertaking with Keim.

The decree compels Mr. Keim (save as to $500) to pay the O'Reillys' expenses in their performance of their own agreement, claimed by them to be $15,325.52 (page 15).

The excuse for this harsh charge is that so great an expense as was incurred was not within the contemplation of the parties.

But the parties had themselves dealt with this question in their contract, and there is no evidence that they limited the amount necessary to be spent by the O'Reillys to clear off contesting claims and get possession to any sum.

James A. O'Reilly himself swears (page 541): "My impression was that Keim was to take the deed, pay the money, and that *we were to see that his title was made clear, made good.*"

While it is plainly apparent that the parties considered the question and definitely dealt with it, the Vice Chancellor has, as he states it, "arbitrarily adopted as the amount in the minds of the parties" as the expenses in the ejectment suits, the sum of $500, and charges the rest of these expenses to Mr. Keim.

The Vice Chancellor also charges the complainant with interest on the purchase money, though the defendants never put themselves in position to make an actual conveyance by clearing off contesting claims, and consequently never could assert that the purchase money was actually due, because until these claims were cleared off the O'Reillys could not perform their contract, and could not ask Keim to perform.

He also charges Keim with the taxes and with the filling in expenses of the lots, &c.

The complainant insists that he is not liable by the rules of equity in cases of this character to these charges of interest, for the reasons above indicated.

The English case law applied to the facts in this case would free complainants from all liability to pay any interest whatever.

See Esdaile vs. Stephenson, 1 Simons & Stuart, 123.

Fry on Spec. Perf., Sec. 1377, (page 637), Sec. 1379, (page 639).

Monk vs. Huskisson, 4 Russ., 121.

Jones vs. Mudd, 4 Russ., 118.

Pincke vs. Curteis, 4 Brown Ch. C., page 330.

Stephenson vs. Maxwell, 2 Sand. Ch. page 278, 280.

In New Jersey the whole question was fully considered and settled by the opinion of Chief Justice Beasley in the Court of Errors, 9 C. E. G., page 558.

The complainant calls attention to this ascertainment of the law on an allowance of interest, and leaves the matter to the determination of the Court.

But the arbitrary charge of the expenses of the ejectment litigations, the complainant insists, cannot be charged against him, for every reason of natural justice and reasonable equity.

1. Because the defendants undertook to clear off the contesting claims, the expense of which is now charged to complainant (see Contract, page 194).

2. Because, irrespective of this contract to clear contesting claims, the law casts this obligation on him.

See Hunt vs. Smith, 28 N. E. Rep., 809.

Fry on Spec. Perf., Note 1, sec. 1,279.

3. Because the contesting claims are not even yet cleared off, Lindley claiming that he holds under his undetermined possession, Williamson suit still pending, and possession as to the whole tract out of the O'Reillys, so that if complainant pays these expenses, he gets no return whatever therefor, except the opportunity for further litigation.

4. Because the complainant has been forced by the fraudulent deeds, made in April, 1892, by the O'Reillys, to avoid complainant's equitable claims, to bring these present suits to save his rights and to ask for an incomplete title, rather than to lose all through the defendant's fraud.

Nov. T., 1895.

GREY & GREY,
Of Counsel with Jacob Keim.

New Jersey Court of Errors and Appeals.

BETWEEN

DANIEL LINDLEY

AND

ALFRED ADAMS, JR.,

Appellants,

AND

JACOB KEIM,

Respondent.

On Bill, &c.,

Appeal.

Brief of Thomas B. Harned, of Counsel for Daniel Lindley and Alfred Adams, Jr.

The bill filed in this cause is an attempt to compel, through the aid of this Court, a specific performance of a certain alleged agreement for the conveyance of land.

Patrick O'Reilly in his lifetime was the owner of certain land in Atlantic City. He died in January, 1881, leaving a will appointing his widow, Catharine C. O'Reilly, and his two sons, James A. O'Reilly and Francis P. O'Reilly, executors,

with power of sale. Letters were taken out in New Jersey by Catharine C. O'Reilly only.

The Bill of Complaint charges that on the 25th day of March, 1880, one John J. Gardner, of Atlantic City, was the duly authorized agent of Patrick O'Reilly for the sale of certain lands of said Patrick O'Reilly situate at Atlantic City, and lying between Pacific, New York and Tennessee avenues, and bounding on the Atlantic Ocean. That complainant made an agreement therefor with said Patrick O'Reilly, acting through John J. Gardner, "as his agent duly authorized for that purpose." The alleged agreement is in the form of a receipt set forth in the Bill of Complaint. The alleged sale was to have been consummated not longer than one month from its date. The purchase price was $2,500, and receipt is signed, "J. J. Gardner, agent."

The land claimed to have been sold is admitted to be other lands than those recently purchased by Lindley and Adams, and for that reason the said alleged agreement cannot in any way affect the interest of Lindley and Adams.

The bill charges that after the death of the said Patrick O'Reilly, to wit: on the 29th day of October, 1881, said John J. Gardner, *then acting as the agent in behalf of the Estate of said Patrick O'Reilly, duly authorized therefor by the executors of the last will of the said Patrick O'Reilly and the devisees therein mentioned*, entered into an agreement in writing with the plaintiff for the purchase of *other lands* whereof said Patrick O'Reilly died seized, and the bill sets forth the contract in writing, of which a specific performance is sought. It is in the form of a receipt and reads as follows:

"Received, Atlantic City, N. J., October 29, 1881, of Jacob Keim the sum of $500 on account of the purchase money of a certain tract of land situate in said city, as follows: Beginning at a point in the southeasterly line of Pacific avenue at a distance of 200 feet northeastwardly from the

northeasterly line of New York avenue, and extending thence (1) southeastwardly on a line parallel with New York avenue a distance of 150 feet, thence (2) southwestwardly parellel with Pacific avenue a distance of 100 feet, thence (3) southeastwardly parallel with New York avenue a distance of 50 feet, thence (4) southwestwardly parallel with Pacific avenue a distance of 50 feet, thence (5) southeastwardly parallel with New York avenue a distance of ( ) to the exterior line (now under water) established in 18 by the Riparian Commissioners of New Jersey, thence (6) northeastwardly along said riparian line a distance of 150 feet, thence (7) northwestwardly parallel with New York avenue a distance of ( ) to the southeasterly line of Pacific avenue, thence (8) southwestwardly along said last mentioned line a distance of 50 feet to place of beginning; and also all the additions and accretions to said tract of land, if any, which may hereafter be made on the sea front. It being the purpose of this purchase and sale to include all the land above described, and also all the right, title and interest of the grantors and of the estate of the late Patrick O'Reilly, deceased, in and to the accretions to said land which may be made on the sea front. The balance of the purchase money, namely, the sum $9,500 to be paid upon the tender of a good and lawful deed to said premises, *free from incumbrance and opposing or contesting claims of title with undisputed possession of same, the grantee to have sixty days' notice of such tender.* Including *all* the land and rights of said estate between Pacific avenue and riparian line and beyond, and New York and Tennessee avenues.

"JNO. J. GARDNER,
"Agent of P. O'Reilly's Estate."

The bill alleges that this agreement *included in its description all lands referred to in the first mentioned agreement with others*

The bill charges an error in the description of the sixth course.

The bill charges that the $500 mentioned as having been paid in the second agreement included the $25 claimed to have been paid in the first agreement, and that the said sum of $500 was the whole amount paid by complainant in both agreements on account of said purchase money, and that he has *at all times been ready to pay the purchase money* mentioned in said agreements upon the delivery of the deeds therein described and made to him by the said Patrick O'Reilly *under the terms* of the first agreement during his lifetime, and by the devisees and executors of the said Patrick O'Reilly since his death, but the bill does not allege any tender of the purchase money.

The bill further charges that since the death of Patrick O'Reilly questions have arisen affecting the title of said Patrick O'Reilly to some of the lands mentioned in said agreements, and suits have been brought "by the executors of said Patrick O'Reilly for the purpose of establishing his title to said lands."

The bill alleges the execution of a deed by Catharine C. O'Reilly, executrix, conveying part of the land in question to Daniel Lindley.

The bill charges that Daniel Lindley, at the time of the execution and delivery of the said deed by the said Catharine C. O'Reilly, executrix, etc., to him as aforesaid, *knew of the existence of the agreement* between your orator and said Patrick O'Reilly and said executors and devisees of Patrick O'Reilly, acting through said John J. Gardner, agent as aforesaid, and *was fully aware* of complainant's equitable rights in said agreement, and that complainant was entitled to have in the execution of said agreement a conveyance from the executors and devisees of Patrick O'Reilly of the lands described in the deed pretended to have been made by the said Catharine C.

O'Reilly to the said Daniel Lindley, and that said deed was taken by said Lindley with *full knowledge and notice* of your orators's rights in the premises.

The bill also alleges that Catharine C. O'Reilly executed an agreement to sell a portion of this land to Alfred Adams, Jr., on the 22d day of April, inst., and caused the same to be recorded in the office of the Clerk of Atlantic County, and charges Adams' knowledge of complainant's rights the same as charged against Lindley. From a careful reading of the Bill of Complaint it will be seen that the complainant treats the second agreement as including the first agreement and the amount of the consideration mentioned in said agreement, to wit: the last agreement, he alleges he has been always ready to pay when he receives a title *free of all encumbrance or from contesting claim.* In other words, *for such a title he is ready to pay $9,500 in addition to $500 already paid, making $10,000 in all for the land in controversy in these suits.*

The questions to be discussed by the appellants in their appeal are:

1. Was there an outstanding contract for the conveyance of this land at the time of the conveyance to Lindley and Adams, upon which specific performance can be decreed?

2. Did Lindley and Adams have notice of such contract?

It is submitted that Lindley and Adams can rely upon the *defence* that *there was no agreement that can be enforced in this Court,* to the same extent as the O'Reilly defendants.

There are two cases, in each of which original and supplemental bills have been filed. By consent both cases are heard together, although Lindley and Adams are only interested in one case. Although the second pretended contract has superseded the first, yet in this discussion it is difficult to avoid the consideration of both.

All the answers deny that any contract was ever entered into by Patrick O'Reilly in his lifetime or by his executors or devisees after his death, or by any person by him in his lifetime, or by them or either of them since his death duly authorized thereto.

When the answer denies the agreement the Statute of Frauds need not be pleaded or set up as a bar.

Fry on Specific Performance, Sec. 256.

Waterman Spec. Per., Sec. 103.

Van Dyne vs. *Vreeland*, 1 Beasley, 142.

The statute of limitations need not be pleaded in a case for specific performance.

Peters vs. *Dalrimple*, 49 N. Y. 362.

The Court will, in cases which will allow allow of the exercise of discretion, use the statute of limitations as a rule to guide that discretion.

Mitford's Ch. Pl., 318.

I.

There is no Contract in this Case within the Statute of Frauds.

The fundamental fact in this case is, that the complainant does not have a contract upon which he can rightfully ask for specific performance, nor has he any valid contract whatever.

The first pretended agreement (for the 50-foot strip) is dated March 25, 1880, and was made nearly ten months before the death of Patrick O'Reilly, who died January 16, 1881. By its terms it was to have been completed within one month of its date, the *consideration* being $2,500, and the receipt

(the pretended agreement being purely unilateral), was signed by J. J. Gardner.

No one but Gardner and Keim knew of the existence of this written receipt for nearly ten years after it was signed, and nobody but James O'Reilly ever heard of this sale or attempted sale until the bringing of this suit.

The second pretended agreement is dated October 29, 1881, and is signed "John J. Gardner, agent P. O'Reilly Estate."

No one but Gardner and Keim knew of the existence of this written paper until nearly ten years after it was signed, and none of the parties interested in this suit, EXCEPT JAMES, *knew of this sale or attempted sale, until the bringing of this suit.*

It must be noted that although the second pretended agreement included the first, that the only consideration to be paid was the sum of $10,000. Gardner says that the price given him by James O'Reilly for the land exclusive of that mentioned in the first receipt was $11,500. See Gardner's testimony, page 319, which was $14,000 for the *whole*. Gardner says that James afterwards *changed* the price to $12,500 for the *whole*, and then the receipt was drawn which intentionally included (see bill page 5) the *whole* of the land and expressed the consideration as $10,000.

The bill of complaint speaks of an error in *description*, but *does* not allege an error in the *price*.

As the proofs stand the complainant contemplated a fraud on the O'Reilly defendants by endeavoring to obtain the *whole* land for $10,000. The bill says that said "last mentioned agreement included in its description of the lands agreed to be sold the lands referred to in the first mentioned agreement, and in addition thereto, described other lands not mentioned or referred to nor included in the first mentioned agreement." See bill, page 5, line 30.

The "error" pointed out by the bill (p. 6) shows that that the second agreement was intended as including and in substitution of the first. In his bill he says he is ready to pay the "amount of the consideration mentioned in said *agreement* therefor, or the balance remaining due thereon after deducting the $500 already paid, manifestly meaning $9,500, as he does not call attention to the error. See bill, page 10, line 30.

This fact alone should be fatal to his case.

It is important to consider the various prices mentioned in the proofs as they have a material bearing on the case. The proof is conclusive that the executors had no part in the fixing of the price (excepting James A. O'Reilly), notwithstanding the effort of the Vice Chancellor to supply that important fact in the case by an assumption. (See opinion, p. 664.)

Gardner says the price of the lots was $11,500, and was reduced by James A. O'Reilly by a letter or personal interview. James was the *only* man I dealt with (Gardner's testimony, p. 340).

It is important to note that there is no averment in the bills that shows that the complainant has ever done anything to comply with the agreements. He *says* he has always been ready. He has never demanded any deed, never tendered any money. Does he stand in a position to demand specific performance? Has he come promptly to the court for relief? Attention is called to

Houghwont vs. *Murphy*, 6 C. E. G., 122.
Merritt vs. *Brown*, 6 C. E. G., 401.
Meidling vs. *Trefy*, 3 Dick. Ch., 644.
Penrose vs. *Leeds*, 1 Dick. Ch., 294.
Crane vs. *DeCamp*, 6 C. E. G., 415.

The first pretended contract was to have been enforced within one month, and there has never been any effort made to enforce that contract. Gardner's evidence, p. 348. It was virtually *surrendered* at the time of the pretended second contract, and any attempt to seek relief under it at this time is absurd.

The delay of the plaintiff will always be a bar to the specific performance when changes have taken place and circumstances have occurred on account of which it would be inequitable to enforce the performance, or where the property has, in the meantime, greatly increased in value. Dunn *vs.* Milner, 113 N. Y., 303, 309; Peters *vs.* Delaplaine, 49 N. Y., 362; Combes *vs.* Scott, 76 Wis., 662; Dignan *vs.* McCullough, 46 N. J. Eq. (1 Dick. Ch.), 11, 16; Penrose *vs.* Leeds, 46 N. J. Eq. (1 Dick.), 294, 296.

So that the Court will not decree a specific performance for the sale of lands where it would be unjust or inequitable to do so. When the performance of the contract has been prevented or delayed for many years by the pendency of litigation commenced before it was made, and during the time the property had increased in value and became heavily encumbered by assessments, taxes and mortgages, and especially where the situation and condition of the parties have been materially changed and altered, without any fault on the part of the vendor, the court will not decree specific performance. Fitzpatrick *vs.* Dorland, 27 Hun., 291.

To the same effect is the case of Peters *vs.* Delaplaine, 49 N. Y., 362, and Cuff *vs.* Dorland, 55 Barb., 481.

If there has been a change in the circumstances affecting the character and justice of the contract the court will not give a specific performance. Pratt *vs.* Law, 9 Cranch, 456, 493.

Although the contract was fair and just when made, the Court will not interfere if subsequent events have made the

performance by the defendant so onerous that its enforcement would impose great hardship on him. Trustees Columbia College *vs.* Thatcher, 87 N. Y., 311, 317.

A decree will not be made for a specific performance by a purchaser after the lands have depreciated in value. Reddish *vs.* Miller, 12 C. E. G., 514.

A material change in the value of the property making a great change in the condition of the parties will prevent equity from giving relief against lapse of time. Rogers *vs.* Saunders, 16 Maine, 92; 33 Am. Dec., 635; Green *vs.* Covillard, 70 Am. Dec., 735; Cathcart *vs.* Robinson, 5 Peters, 234; Perkins *vs.* Wright, 3 Har. & M., 324.

The case therefore must be discussed wholly upon the second pretended contract. The foregoing cases apply equally to it.

When Gardner called himself "Agent P. O'Reilly Estate" who did he mean he was agent for? He *never* saw, knew or corresponded with anybody but James O'Reilly. Under the will Patrick O'Reilly devised his estate to Catharine his wife for life, and after her death one-fifth each to four sons in fee, two of them, Francis P. and James A., being executors with their mother, and one-fifth to James A. O'Reilly in trust for the daughter Mary. Was he agent for the heirs, or for the executors, or all? The bill says he was agent for all

The executors were donees of a *power to sell real estate* as above stated. The agent must have been acting for three or more persons.

When an agreement purports to be signed by an agent it must be alleged and distinctly proved by the plaintiff that the party who signed as agent was authorized to act as agent, not merely for the purpose of negotiating but of concluding a binding contract. Fry Spec. Per., p. 236, sec. 353; Pomeroy on Con., p. 113, sec. 77; Blow *vs.* Sutton, 3 Mer., 236;

Ridgway *vs.* Wharton, 3 DeG. M. & G., 677; 6 House of Lords, 237; Chamberlain *vs.* Manning, 14 Stew., 651; Hadfield *vs.* Skelton, 69 Wis., 460.

Making a contract as agent at a fixed price and the approval of such contract by the defendant does not hold him out to the world as an agent to sell at any other price or to vary the terms of sale. It is every-day practice for an owner of real estate to sell it at a certain price, a given part in cash and the rest on credit. The agent cannot bind the principal on any other terms. The purchaser must ascertain at his own peril the power of the agent. National Iron Co. *vs.* Bruner, 4 C. E. G., 331.

Specific performance of an agreement made with the owner's agent for the sale of land will not be decreed unless the evidence clearly shows the terms of the contract, and the authority of the agent, or a ratification by the owner. Hadfield *vs.* Skelton, 69 Wis., 460.

Specific performance of a parol contract for the sale of land made with an agent who has no authority from the owner to execute a deed will not be enforced as against a bona fide purcheser from the owner. Chamberlain *vs.* Manning, 41 N. J. Eq., 651.

A letter to an agent saying, "As you stated you could get $30,000 for the place you occupy. If you can, we will sell at that price and allow you two and a half per cent. on that price," authorizes such agent to find a purchaser, but not to sell, and a contract by such agent to sell confers no rights on the purchaser which he can enforce against the principal. Grant *vs.* Ede, 85 Cal., 418; 20 Am. St. Rep., 237; Duffy *vs.* Hobson, 40 Cal.

An agent may be authorized by parol to enter into a written contract for his principal to convey land. But a simple parol authority to sell without more will not authorize the agent to sign a written contract for his principal. A

special agent appointed to do a specific act cannot bind his principal unless he pursues his authority strictly, and those who deal with him are chargeable with notice of the extent of his authority. A purchaser buying of an agent must at his peril ascertain the extent of the agent's authority.

Milne *vs.* Kleb, 17 Stew., (44 N. J. Eq.), 378; Lyon *vs.* Pyatt, 26 At. R., 334; 27 Atl. R., 934; Hamer *vs.* Shapr. Law Rep., 19 Eq. Cases, 108; Morris *vs.* Ruddy, 5 C. E. G., 236.

The rule laid down in Higgins *vs.* Senior, 8 M. & W., 834, that a person not a party to a written contract may be shown to be a party by oral evidence has never been adopted in New Jersey.

A written contract which is free from ambiguity and perfect in itself, and not the product of fraud or result of mistake, and which has not been changed by a subsequent contract, cannot be changed, varied, or contradicted by parol evidence. A writing to be entitled to be considered a compliance with that provision of the statute of frauds which requires that a contract for the sale of land shall be in writing, must contain all the essential terms of the bargain, expressed with such certainty that they may be ascertained from the writing itself without the aid of oral evidence. In such case parol evidence is inadmissible to show who the vendor or vendee is, the subject of the contract, the price to be paid, or the terms of credit. Schenck *vs.* Spring Lake Beach Imp. Co., Dick (47 N. J. Eq.), 44.

A broker employed to sell land has no implied authority to sign a contract of sale on behalf of his principal. But if he has such authority if the contract varies from his instructions the principal will not be bound by it. Morris *vs.* Ruddy, 5 C. E. G., (20 N. J. Eq.), 236, 238; Shepherd *vs.* Hedden, 5 Dutch., 334; Coleman *vs.* Garrigues, 18 Barb., 60.

Special attention is called to the case of

Glentworth vs. *Luther*, 21 Barb., 145.
Young vs. *Hughes*, 5 Stewart, 372.
Parish vs. *Coons*, 1 Parsons Eq., 89.

The statute provides that the memorandum shall be signed by the party himself, or by some other person thereunto by him lawfully authorized, wherever reliance is placed on the latter clause, the authority of the person who has assumed to act as agent, not merely to enter into a negotiation or to receive proposals, but to execute, a completed and binding contract for his principal must be established as in any other case of agency; that where the delegation of authority is express and special, the other party dealing with the agent cannot fall back on any implied larger or implied powers the limitations must relate to the manner and form of executing the contract, as well as to the substantial terms which it shall contain, and in such case the agent *must keep within the restricted authority* conferred upon him and strictly pursue the method prescribed by his instructions.

Pomeroy on Contracts, sec. 77, where he cites Freyer *vs.* McPherson, 3 Dessau, 393; Mackay *vs.* Moore, Dudley, 94.

In a note he says: If agent contracts to sell property in a manner *different from that authorized*, the contract will not be enforced, as for example, an agent authorized to sell at auction, sold at private sale, although for a higher price than the limit. The court refused to enforce the contract.

It cites Daniel *vs.* Adams, Amb., 495; Helmshaw *vs.* Langley, 1 Y. & C., C. C., 175; White *vs.* Cudden, 8 Cl. & Fin., 766; Munsen *vs.* Black, 6 Har., 443; Sneesby *vs.* Thorne, 7 DeG. M. & G., 399.

The assent of the parties should be given to exactly the same matters; the acceptance must not vary from the terms

of the offer, either by way of omission, addition, or alteration; if it does vary in either of these modes no contract is concluded thereby; the transaction remains in the state of negotion and neither party is bound. The rule is clear, the practical question is, What amounts to a fatal variation? The most common form consists in the *addition of a new term.* Whenever the acceptance contains a substantive term not found in the offer, and not being in response to anything intentionally left by the offer to be decided in that manner, there is plainly no concensus of minds, and no contract is concluded.

Pomeroy on Contracts, sec. 64, note 1.

An offer must be accepted in the precise form submitted, or there is no valid assent, such as will create a contract. Thus, plaintiff's adoption of the defendant's written offer to sell lands to which the plaintiff attaches conditions which essentially alter and materially vary the effect thereof, is not such an acceptance as will create a contract that will be specifically enforced. Bentz *vs.* Enbanks, 41 Kans., 28.

If any agent employed to sell an estate sells it in a manner unauthorized by the authority given to him, a specific performance will not be decreed against the principal, although the estate sold for a greater price than he required for it.

1 *Sug. on Vend.*, 249; p. 344 in the margin; 6th American from the 10th English edition.

I submit that by these rules the receipt or pretended contract Exhibit C. 2, is void and can have no effect.

I have referred to these rules as applying to persons dealing in their own individual rights; not in any representative capacity.

In this case the power of sale under the will was in the executors of the deceased, of which there were three in Penn-

sylvania, and one in New Jersey. The above rules apply to all persons dealing in their own rights, but further rules, and different, must apply, and do apply in cases where trustees are making contracts. And the rules as I understand it, that apply to them, I will state briefly.

Where a power is given to executors to sell the estate or certain parts of it, it is a personal trust and confidence, and they cannot sell by an attorney. Thus, where A. authorized his executors B. & C. to sell certain lots of land, if under the circumstances of the time they should deem it prudent and C. having gone abroad, sent a power of attorney to B., his co-executor, to sell the lands on such terms as he should deem expedient: *Held*, that an agreement for the sale entered into by B. for himself and C., was not valid, and a bill for specific performance of it was accordingly dismissed.

2 *Williams on Executors*, pp. 944 and 951.

These executors could not deputize to Gardner the authority to fix the price, nor could *any one executor fix the price.*

Sugdon on Powers, 222.

Bergen vs. *Duff*, 4 Johns. Ch., 368.

Lehigh Nav. Co. vs. *Central R. R. Co.*, 14 Stew. 184.

No one executor could enter into an agreement to convey without the others.

Wilder vs. *Ranney*, 95 N. Y., 7.

A trustee, unless expressly authorized by the instrument of trust, cannot delegate, or transfer, or instruct in whole or in part, his powers of discretion and management to any associate or assistant, who takes his place and assumes his responsibility. Hill on Trustees, 738; Bergen *vs.* Duff, 4 Johns. Ch., 368; Pearson *vs.* Jamison, 1 McLean, 197; Vose *vs.* Florida

Fund, 2 Woods, 647; Seely *vs.* Hills, 49 Wis., 473; 2 Pom. Eq., 641; sec. 1068; Wilder *vs.* Raney, 95 N. Y., 7, 12; Hawley *vs.* James, 5 Paige Ch., 318, 487.

There is nothing in this case to show that Gardner had any authority to execute any written agreement whatever for these executors.

He had a certain authority (not, however, to make a *written* contract) from one of the executors, and the evidence conclusively demonstrates that that one executor acted upon his own account, without authority from a consultation with the other executors. *The fact that Gardner made sales and sent deeds to him for execution, and their subsequent execution, did not make him their agent to bind them without their knowledge by written contracts.*

A principal ratifying acts of the agent must know the character of the acts, and unless the circumstances are made known to him, the ratificatlon is void. Gulick *vs.* Grover, 4 Vroom, 463, 471; Owings *vs.* Hall, 9 Pet., 608; Pitts, &c. R. R. Co. *vs.* Gazzam, 32 Pa., 340; Nixon *vs.* Palmer, 8 N. Y., 398.

Ratification must be made with full knowledge of all the faets and circumstances, or it will not be obligatory on the principal, although such facts and circumstances may have been innocently concealed or inadvertently misrepresented. *Story on Contracts*, sec. 160. The same rule is admitted in the Notes to *Story's Agency*, sec. 239.

A principal does not ratify contracts made by his agent simply by receiving and retaining the consideration of such contracts, unless he knew on what account the money was paid to him and the terms of the contract on which it was received.

Penna. Navigation Co. vs. *Dandridge*, 29 Am. Dec., 543; *Bryant* vs. *Moore*, 45 Am. Dec., 96; 26 Maine, 84.

The burden of proving ratification by principal of agent's unauthorized acts devolves upon the party asserting the ratification. Reeve *vs.* Medlock, 84 Am. Dec., 611; 27 Tex., 120.

When the principal on a full knowledge of all the circumstances of the case deliberately ratifies the acts or omissions of his agent, he will be bound. *Story on Agency*, sec. 239.

When the vendor in a contract for the conveyance of real estate died, and a bill was brought against his heirs for a specific performance, the fact of the vendor's executor having obtained a judgment for the purchase money will not be considered such a confirmation as will bind the heirs to a specific performance of a hard and unconscionable bargain, and the contract and judgment should be set aside on reasonable terms. Meanx *vs.* Helno, Sneed's Tenn., 252.

Where a written contract for the sale of land made by one to whom such power could not be delegated, as by one assuming to act for an executor who is by the will donee of a power to sell, it may be validated by ratification, but the ratification must be in writing to satisfy the Statute of Frauds. Newton *vs.* Bronson, 13 N. Y., 587; 67 Am. Dec., 89.

All the power Gardner claimed was that he was authorized to sell the land for prices named or fixed by P. O'Reilly in his lifetime, or by James A. O'Reilly after his father's death. See Gardner's evidence, p. 351.

He never saw or had any business intercourse with any one but James. He says he reported the fact of sale to James, but does not know whether he reported the *terms of the sale*, nor whether he signed any paper attempting to bind the estate, p. 346. Says he did not think that Patrick O'Reilly knew of his giving receipt on making sale of first lot. Gardner's testimony will bear close reading throughout, and upon *his evidence alone the complainant has failed to prove his case.*

He had no authority given to him by Patrick O'Reilly

or any other person fixing the time for the delivery of the deed, and he never showed Mr. Patrick O'Reilly the contracts that he made; pp. 344, 345.

He reported sale No. 2 to James A. O'Reilly, but never made any copy of the contract of sale or receipt that he gave to Keim; pp. 346, etc.

He never had any conversation with Mr. James A. O'Reilly about the condition of that sale.

He made the contract to run around the whole; pp. 318, 345, etc., etc. The contract was written by Keim; he put the terms into the contract. Never sent a copy of the second contract, Exhibit No. 2, to James A. O'Reilly, p. 344; nor of its terms, pp. 345, etc.

It must appear from the statement of the facts that Gardner was only employed by James for the purpose of making the sales for a stipulated price, nothing else; he had no other power. The proof does not show that the other executors gave him even that much power.

As to the second receipt or pretended contract, there is no testimony or pretence that the agent had any authority or direction from any of the owners or executors except James A. O'Reilly. The fact that he made sales at prices fixed by James A. O'Reilly, which were approved by the other executors and deeds executed for the lands sold, did not constitute J. J. Gardner agent for the other executors.

The authorities to which I have called attention already specify and decide that they do not in any way make him the agent of any one who does not join in the appointment. Confirmation of an act after it is consummated, does not prove the agency to have existed before.

The fact that the executors in *special* instances approved what Gardner did *after he had done it*, does not show a general authority from them to him to do such acts. Suppose a mere broker should make fifty sales as a broker, and every

one was confirmed, could you evolve out of that situation a higher authority than the broker possessed?

The testimony in this case shows that Gardner did not act in accordance with his instructions from James. The contract is beyond his instructions, and was prepared by the vendee, the complainant in this case, or his attorney, with full knowledge of all the facts, and cannot be claimed to have been any mistake. As before shown, P. O'Reilly had in his lifetime authorized the sale of lot No. 4, for $2,500, and the agent had given receipt, Exhibit C. 1, of March 25, 1880, for the same. P. O'Reilly died January 16, 1881.

What right had Gardner to make a second contract and include the first? No one, except James, knew of the sale at all, and even he only learned of the *terms* of this second contract years afterwards, and he went to Gardner and demanded by what authority he made it, and Gardner replied, "*Damned if I know.*" See Gardner's evidence, p. 351.

All the authority Gardner had from James was to sell lots 5, 6, 7 and 31, for $10,000, and yet he wrote a contract and put in lot No. 4, and only made the price $10,000.

Newton Keim says (p. 229): *The last contract was proposed to include all the land, to include land in first receipt.*

It will be seen by the correspondence—Exhibits 5–11, and the negotiations testified to by Jacob Keim, Newton Keim and J. J. Gardner, that this was only an authority to sell lots Nos. 5, 6, 7 and 31, at a price named in the receipt C. 2, for $10,000, a price named by James A. O'Reilly. His letter showed that lot No. 4 had been disposed of. See Exhibit No. 5, letter of Newton Keim; Exhibit No. 7; Exhibit No. 8. Newton Keim mentions lots in his letter, Exhibit C. 7, of March 29, 1881. Exhibit C., No. 9, letter of J. J. G., giving extract from J. A. O'Reilly's letter; each one specified by number or description lots 5, 6, 7 and 31.

It was only these lots to be sold, and in this case J. J.

Gardner had no authority to sell any other lots. Mr. Keim and his son, who drew the receipt or pretended contract, and had conducted the correspondence and the negotiations in this matter, knew that J. J. Gardner was only authorized to sell lots 5, 6, 7 and 31, and they knew that he was to sell them at *the price that was fixed, and nothing else*. James A. O'Reilly had no power to sell lot No. 4. In his letter he stated it as having been sold.

The failure to charge error as to contract price in the bill is significant. If this is a binding contract, then there might have been circumstances under which the estate might have been defrauded out of $2,500.

Here was a sale made different from what was authorized to be made. He attempts to include in it another lot; *he has put terms in the contract he had no right to put in.* His authority was to sell at a price, which is simply a sale for cash, and the contract which he produces here, and the receipt which he produces here, and claims to have the effect of a contract, and to take it outside of the Statute of Frauds, is *not a contract in accordance with the authority given to him by James to sell*, and I say that it makes the whole contract void.

Where a contract by fraud or mistake is made to include more than the vendor agreed to sell, it cannot be enforced against him in equity, although the average estimate of witnesses makes the value of property no more than was agreed to be paid for it.

Waterman on Specific Per., sec. 327.
Chambers vs. *Livermore*, 15 Michigan, 381.
Morgan vs. *Scott*, 26 Penna. St., 51.

It was the duty of the vendee, the complainant, to ascertain the power or authority of the agent. In this case the vendee, the complainant, had made the negotiations, and was informed of all the correspondence with the agent and princi-

pal, and knew what lots were offered for sale, and had an agreement for the sale of lot No. 4 made by the testator, and knew the estate refused to include lot No. 4 in the negotiations for the sale, and knew the price of lots 5, 6, 7 and 31, and wrote the receipt, Exhibit C. 2, including in it the lot No. 4, and put in the consideration lots Nos. 5, 6, 7 and 31.

As above stated, J. J. Gardner had only authority to sell at prices fixed—$10,000 for lots Nos. 5, 6, 7 and 31. No price was negotiated for lot No. 4; that had already been sold, and is so stated in the correspondence. With the authority only to sell or find a purchaser at the fixed price the complainant, or his son, with full knowledge of all the facts, wrote the receipt, Exhibit C. 2, not only for the sale at the price fixed for lots 5, 6, 7 and 31, but described in it lot No. 4, and added to it a *number of conditions for which the agent had no authority whatever;* for a broker employed to sell land has no authority to sign a contract for sale.

If the limitations of the agent's authority is public, or is known to the person with whom he deals, the principal will not be bound, if the agent exceeds his authority, but if such limitation be private, the agent may bind his principal, although he exceeds his authority.

Bryant vs. *Moore*, 26 Maine, 84.

Story on Agency, sec. 127, 133, with the notes.

This is not an acceptance of any offer authorized by James A. O'Reilly or defendants. The sale could only be made *upon the terms that were offered.* There is no consensus of minds—no agreement of minds in this matter at all. And this agreement here, signed as it was by Mr. Gardner, prepared in the manner in which it was, with full knowledge of his power and of his rights, and by the party who is now seeking to take advantage of it, I submit it makes the agreement void. It is not enforceable, and a court of equity would not be doing equity to attempt to enforce such a contract.

A writing to be entitled to be considered a compliance with the Statute of Frauds, which requires that a contract for the sale of lands shall be in writing, must contain all the essential terms of the bargain, expressed with such certainty that they may be ascertained from the writing itself without the aid of parol evidence. In such case parol evidence is inadmissible to show who the vendor or vendee is, the subject of the contract, the price to be paid, or the terms of the contract.

If there was any ambiguity about this contract, then it might be admissible to prove what the price or consideration was. In this case the consideration is written so plainly that there can be no ambiguity in reference to it. In Schenck *vs.* Spring Lake Beach Imp. Co., 2 Dick. (47 N. J. Eq.), 44, 49. There Vice Chancellor Van Fleet wrote the opinion. He cites Milne *vs.* Eleb., 17 Stew., 378; Chadwick *vs.* Maden, 9 Hare, 188; Williams *vs.* Christie, 4 Duer, 29; and Providence *vs.* Miller, 11 Rhode Is., 272.

Nothing can be added or supplied by parol proof, for the introduction of evidence of that kind would let in at once all the evils that the statute was designed to suppress. 2 Kent's Com., 511; Stoutenburgh *vs.* Tompkins, 1 Stock. (9 N. J. Eq.), 332, 336.

The law on this subject, says Vice Chancellor Van Fleet, in Schenck *vs.* Spring Lake B. Imp., Co., 2 Dick., 50, is settled in this State. The writing which the statute requires must, according to the rule laid down in Johnson *vs.* Muck, 6 Vroom, 338, 343, contains the full terms of the contract—that is, the names of the buyer and the seller, the subject of the sale, the price and terms of payment, and the conditions of the sale, if any there be. Parol testimony is not admissible to prove any of the essential parts of the contract. The policy of the statute, says Mr. Justice Depue, in the case just cited, is to exclude testimony of that uncertain character with respect

to transactions within its provisions. It therefore requires the substantive parts of the contract to appear in writing. To admit parol evidence of any of the terms of the contract with respect to which the memorandum is silent, would open the door to the very mischief the statute was intended to suppress.

It is not essential that the whole bargain be in one paper. It will be sufficient to satisfy the statute if its terms can be gathered from two or more detached papers, if the signed memorandum contains such reference to the other papers as to make the latter part of the former. Connection between the signed and unsigned papers cannot be made by parol evidence that they were actually intended by the parties to be read together, or of facts and circumstances from which such intention may be inferred. The connection must appear by internal evidence derived from the signed memorandum. Parol testimony will be received only for the purpose of interpretation or explanation where technical terms are employed, or to identify papers, which, by a reference in the signed memorandum, are made part of it.

Johnson & Miller vs. *Buck*, 6 Vroom, 338, 344.

This receipt of October 29, 1881, Exhibit C. 2, cannot in any way be construed to include the receipt of March 25, 1880, Exhibit C. 1. It does not refer to its consideration, and does not regard it in any way. But they have everything clear, so that it does not need any parol testimony to interpret it, nor does it need any parol testimony to vary it, and the Court will not consider any such testimony.

This contract is void because the agent did not conform to his authority; if he had any authority, he was only authorized to sell at a fixed price, and there is an effort to make it apply to lots that the agents at the time had no authority to sell for any principal.

The contract is void by reason of not being within the authority of the agent.

It is unnecessary to discuss the question that specific performance of a contract will be refused where the contract is not signed by all the parties named therein. This doctrine will be found in *Pomeroy on Contracts*, p. 110.

A contract for the sale of land entered into by joint owners of the property and signed by only one of such joint owners, cannot be enforced against them. *Waterman on Specific Performance*, p. 329, sec. 242; 61 Me., p. 153; Johnson *vs.* Brooks, 31 Miss., p. 17.

Where land for which the contract of sale was given was owned by two persons, and the purchaser supposed the one he was dealing with was the sole owner, and nothing on the face of the agreement which could give the purchaser a claim against the owner not named, for his interest in the contract, it was held that as there was a want of mutuality, specific performance could not be decreed. *Waterman on Specific Performance*, 262, sec. 197; Bronson *vs.* Cahill, 4 McLean, p. 19.

These cases are important because they show the necessity of mutuality in a contract. In this case we have a broker with limited powers, derived from one party only, attempting to bind others who had no knowledge of the sale or attempted sale, and whose minds had never met on the question of price and the terms of sale.

A case more in point is the following: A, without authority from B, signed an agreement for the sale of land as the agent of B. and C. *Held:* That C. could not be compelled to perform, since the vendee at the time of entering into the agreement did not assent to a contract binding on one vendor only, and therefore was no mutuality, whether B had any interest in the land or not.

Waterman on Specific Performance, p. 197.
Snyder vs. *Neefus*, 3 Barb., p. 63.

In these cases a man assumed to act as agent for two, he had no authority from one. Our case is much stronger, because Gardner had no authority whatever from any one to make a contract in writing to bind anybody. He did have a limited power from James A. O'Reilly, who acted not as the owner, but as one of three parties who were donees of a power to sell.

It is important to quote Gardner's testimony:

"*Q.* During the time that you had charge, covering the period of Patrick O'Reilly's lifetime and subsequently to his death, did you ever make any agreements for the sale of land excepting in the case of Keim?

"*A.* I don't recollect ever—I never made any agreement except in the form of a receipt.

"*Q.* Now, did you in the form of a receipt receive money on account for land to be conveyed?

"*A.* Yes. I think I almost always required a payment at the time parties engaged to take the lot and gave them a receipt for the money.

"*Q.* Now, did Patrick O'Reilly in his lifetime know of the fact that you gave those receipts, receiving the money and giving receipts on account of the purchase money?

"*A.* Of that I do not know.

"*Q.* Well, what did you do?

"*A. I don't know how he would know that,* or how that would come to his knowledge, unless somebody settled with him and had such a receipt, and paid that over as so much money.

"*Q.* Well, do you remember any such transaction as that?

"*A.* I don't know of any now.

"*Q.* Well, what did you do with the money that you did receive in Patrick O'Reilly's lifetime on account of the pur-

chase money of lots, and for which you had given receipts, agreeing to convey the lots; whom did you pay it to?

"*A.* I paid it to Patrick O'Reilly."

By the Court:

"*Q.* Did you render him an account?

"*A.* The rule was that every transaction was settled up when it was closed. Of course, if I sold a lot and sent a deed out there and he executed it, and there was so much cash money and so much mortgage when the transaction was closed, he got what belonged to him, and I got the commission, and the transaction was ended."

In the Keim cases Gardner undoubtedly followed his usual custom of keeping the money, and did not expect to account for it until the balance was paid.

The same course was pursued after the death of Patrick O'Reilly, and it is useless to contend, in the face of the proof, that Gardner had any general agency or any power to sign contracts, or that Patrick O'Reilly in his lifetime, or any one after his death, knew of his having attempted to bind in writing any sales of land.

To state the defendant's case mildly, the admitted proofs leave the vital questions of this case in such an unsettled condition, it is quite certain that a court of equity ought not to intervene.

What authority did Gardner have to put the sixty days' clause in the second agreement? What authority had he to say that the titles would "be free from all encumbrance and opposing or contesting claims of title with undisputed possession of the same?" What authority had he to include the lot mentioned in the first contract? If the parties to a written contract have knowingly and intentionally drawn it so that it does not express the real agreement that they have made, as for example, where the writing was purposely drawn so that

certain terms of their agreement were omitted, no affirmative relief will be granted on the ground of mistake, for *there can be no mistake in an act knowingly and intentionally done.*

Even if all of the executors had authorized Gardner in writing to sell the last four lots for $10,000, and Gardner, of his own accord, included the other lot in the contract, would the Court make a decree here to compel the parties in this case to execute a contract which they never entered into? And yet the additional fact stands out boldly in this case that Mrs. O'Reilly, the life tenant and one of the executors in Pennsylvania, and the sole executrix in New Jersey, and Francis O'Reilly never entered into any contract, never had any consultation with James on the subject, and were absolutely *ignorant of the whole transaction*, receiving their first information of this pretended sale after the filing of the bill in this cause, and after they had sold the property for *ten times the amount of money* which the complainant now seeks to get it for. It would be difficult to conceive of a more monstrous use to put a court of chancery to than to give the complainant the relief which he asks for. The Vice Chancellor seems to have been utterly blinded to the bold and undisputed facts of the case, and attempts to grant complainant relief in the nature of a new contract which he proposes to make himself, and bridges over the fatal gaps in the evidence by interposing his own assumption against the most positive and undeniable proof. For instance, he assumes that when James changed the price from $11,500 to $10,000 that he must have consulted his co-executors, because he mentioned the latter figure as the price that the executors would be willing to take, and in the face of the fact that James swears positively that he did not consult his fellow-executors, and Francis P. O'Reilly swears that he never heard of the change in price or of the transaction. What right had the Vice Chancellor to assume an important fact in a case where the donees of a power act-

ing in trust for others, would be compelled to impoverish an estate over $90,000 after having expended in taxes, improvements and litigation charges, more than double the amount mentioned in the Keim contract?

I call special attention to the testimony of Francis P. O'Reilly, which is too voluminous to quote in the brief. His manifest honesty must impress the Court with his utter lack of knowledge of this transaction from beginning to end.

A trustee who has only a delegated, discretionary power, cannot give a general authority to another to execute such power, unless he is specially authorized to do so by the deed or will creating the trust. General authority to an agent to sell and convey lands belonging to the estate, or to contract absolutely for the sale of such lands, cannot be legally given by trustees, but they may entrust an agent with the authority to make conditional sales of land lying at a distance from the place of residence of the trustees, subject to the ratification of such trustees, or any of them. The better course in cases of this kind is to entrust the agent with a discretionary power to contract, subject to the ratification of the trustees. Hawley *vs.* James, 5 Paige's Chancery, p. 318.

When Patrick O'Reilly died and the executors came to exercise their authority, a more stringent rule should be, and will be applied under the authorities. The two executors had no power to transmit their discretion to James A. O'Reilly nor to John Gardner nor to any other person, *and they never did so.* It cannot be claimed that there was any ratification of this contract. In point of fact, James O'Reilly, while he knew generally of the sale, did not know of the existence of the written receipt or its terms until 1891. Gardner swore that there was only one copy of the receipt which Mr. Keim's son, a Philadelphia lawyer, took away with him, having drawn it himself and inserted all of the unwarrantable terms. The complainant was acting at the time under legal advice, and no

one more than his son was bound to make inquiry into the scope of Gardner's power and communicate at once to the executors the nature and terms of the contract which he claims to have secured.

The increased value of the land and the enormus expense of the litigation, and the necessity of compromising a doubtful, dangerous litigation, the costs of necessary improvements, the large amount of taxes and the great length of time which has necessarily intervened, could never have been in the contemplation of the minds of either James O'Reilly or Keim, and for these reasons it would be grossly inequitable to enforce a contract for the sale of land, even if the executors had fully agreed to sign the same ; such an enforcement would be a fraud upon the estate and in derogation of the rights of the owners of the property to whom it was devised by the will.

Counting the compromised price of Lindley, the executors have secured for the estate by the sale of this property the sum of $110,000. It appears by the evidence that during this lapse of time they had expended upon unforeseen and unforeseeable contingencies the sum of $25,000 or upwards. It is utterly absurd to assume for a moment that these executors should be carrying on this expensive and dangerous litigation and expending these large sums of money for no other purpose than to perfect a title and turn it over to Keim for $10,000, and yet such an absurdity seems to have utterly escaped the mind of the Vice Chancellor. There would be no fit place outside of an insane asylum for executors who so conducted the estate. The power of specific performance being discretionary in the court, certainly no court will go out of its way to enforce a contract which has become hard and onerous and if made by proper parties would be a breach of their trust. The receipt which Keim held and secreted, not even thinking enough of it to put it in legal shape upon

the records of the county where the land lay, was unilateral, and it would be a fraud upon the estate to permit him to lay off, after having secured a receipt of that character under the circumstances, and to speculate on the outcome of the litigation after years of lavish expenditure, of which he was bound to take notice.

Is not Mr. Keim in the attitude of a speculator, and has he not held back and exercised his pretended option after he found that the contract was beneficial to him?

Where a trustee enters into a binding agreement for a sale under a power, but so disadvantageous as to be a breach of the trust, the Court will not specifically perform the agreement. *Fry on Specific Performance*, 247.

The Court refused performance of a contract for the sale of leasehold lands by one or two executors on the ground that under the circumstances of the case it would be an injury to the *cestui qui* trust and expose the executors to extraordinary risks for them, and that on either of these grounds are sufficient to stay the interference of a court of equity. *Fry on Specific Performance*, 247; *Pomeroy on Contracts*, sec. 180; Sneesby *vs.* Thorn, 7 DeG., McN. & G., 399; Mortlock *vs.* Buller, 10 Vesey, 292; Stainsbury vs. Jones, 2 Beav., 462.

Courts of equity will not proceed to decree a specific performance when the contract is founded in fraud, imposition, mistake, undue advantage, or gross misrepresentations, or where from a change of circumstances or otherwise it would be unconscionable to enforce it. *Story's Equity Jurisprudence*, 750, 769, 770.

If there ever was a case in which specific performance should be refused it is this one. The contract (if one) is one-sided. There is no mutuality, for the defendants knew nothing of the payment of purchase money which Gardner has undoubtedly retained, according to his usual custom not

to pay over or account for until deeds were ready for delivery. In saying this I do not wish to reflect in any way upon the honesty of Mr. Gardner.

The receipt was drawn by a cute lawyer, and it is neither fair nor just under the circumstances which have arisen and which were wholly without the mind of Gardner at the time, as he contemplated that it would take but a short time to settle the disputed ownership.

How can the Court enforce this pretended contract? The Lindley and Williamson possession are still undetermined. The mere fact that the complainant is willing to take one-half of the property which is now clear of the Rotherhan suit and chance it on the balance shows his speculative nature. He does not even offer to do that in his bill. The decree, however, puts him in that position.

In his bill he leaves it entirely uncertain as to who is to bear the burden of future litigation should the Lindley compromise be broken. As it is, the O'Reilly estate have already got the Williamson suit on their hands still undetermined and will be compelled to make some settlement of that in order to complete their contract with Adams. But the Vice Chancellor fully concedes the defence of the defendants, and admits that it would be grossly inequitable to enforce this pretended contract, but instead of dismissing the bill, *as he should have done*, he proceeds to attempt to cure the situation by making a new contract never contemplated by the parties, and which the complainant himself has repudiated by appealing from the decree of the Vice Chancellor in his own behalf. The Vice Chancellor in substance says: "I know that it would not be right to let Keim have this land for $10,000 or $12,500. Now I will make another contract which I will compel all the parties in this case to submit to." Although I have no right to speak for the O'Reilly estate, yet I unhesitatingly say that in my judgment Keim is entitled to

have this land *under the exact terms of the contract*, or else he is not entitled to have it at all. It is a dangerous precedent for courts to attempt to disturb vested rights by making decrees amounting to new contracts. No one will contend more strenuously than the counsel for the complainant that the Court had no right to make this new contract, and yet if the conclusion of the Court is correct that to enforce the contract, as originally made, is inequitable, then where are we?

Was there ever a clearer case for the dismissal of the bill than this?

It is not a matter of any importance whether a legal title passed to Lindley and Adams by the various deeds executed by Catharine C. O'Reilly and deeds of confirmation executed by her two co-executors in Pennsylvania. Under any circumstances these deeds conveyed an equitable title.

Lindley and Adams without notice, would have superior rights to Keim, even if he had a lawful contract. But I contend that Catharine C. O'Reilly, being the sole executrix in New Jersey, had a right to make a conveyance by and with the confirmation of her co-executors in Pennsylvania.

Our courts have held that this could be done under our statute. I refer to the statute Supplemental to Revision, 293, sec. 2. It is an amendment to the 10th Section of the Act concerning executors and administrators in the revision, and I refer you to the following cases: Clarke *vs.* Denton, 9 Stewart (36 N. J. Eq.), 419, affirmed p. 534; Griggs *vs.* Veghte, 2 Dick. Ch. (47 N. J. Eq.), 179; Corliss *vs.* Little, 2 Green (14 N. J. Law), 373; Weimar *vs.* Fath, 14 Vroom (43 N. J. Law), 1.

The general rule is that where a power of sale is given simply *ratione officete*, it may be exercised by any one who succeeds in office. I cite, in addition to the above cases, Drummond *vs.* Jones, 17 Stewart (44 N. J. Eq.), 53; Jerelemon *vs.* Van Riper, 17 Stewart, 299; Giberson *vs.* Giberson, 16 Stewart, 116.

The words "ordered or directed in said will," used in the statute, are held to refer to every power of sale unless the will otherwise plainly imposes a limitation. The word "ordered" is not to be restrained to the signification of peremptory command, but comprehends the wider meaning of the term "authorized." Corliss *vs.* Little, and Weimar *vs.* Fath, rule that.

The case of Weimar *vs.* Fath was decided February Term, 1881. The 10th section of the Act of Executors and Administrators was amended by Act of February 26, 1879, laws of 1879, page 56, and again amended by Act of March 17, 1881, laws of 1881, page 125. See Supplement of Revision, 293, section 2. The scope of the original Act was somewhat broadened and provision was made for cases where an executor neglects or refuses to act.

In this case the facts are that the will was proved in New Jersey by Mrs. O'Reilly, and her two sons refused to take out letters here.

The transcript of the records of the probate of a will devising land, made before the Surrogate, is competent evidence of title in an action of ejectment if the records contain the proofs taken before the Surrogate as required by the statute, and if the proofs contained in the record show that the will was executed with the formalities required by the statute the probate will be *prima facie* evidence, and will of itself be sufficient to establish the title if not overcome by counter-proof.

The Act of April 15, 1846, Nixon's Digest, 1033, Revision 757, sections 23, 24 and 25, puts the record of a foreign will, recorded in this State, under the proceedings of that Act, on the same footing as in instrument of evidence as the record of the will proved in the first instance before of the Surrogates of this State. The attestation clause annexed to a will and signed by the witnesses, is *prima facie* evidence of the facts stated in it, and can only be overcome by affirmative

proof to the contrary, Allaire *vs.* Allaire, 8 Vroom, 313. Same case, 10 Vroom, 113. Graham *vs.* Whitely, 2 Dutcher, 266.

In this case the will of Patrick O'Reilly was proved in Reading and letters issued to the three executors named in the will. It was afterwards proved before the Surrogate of Atlantic County, July 5, 1881, and letters testamentary issued to Mrs. O'Reilly, one of the executors, the other defendant executors neglecting and refusing to act in New Jersey, Catharine C. O'Reilly made the conveyances and agreements to convey sought to be set aside in these cases, as she had full right to do under the statutes of the State of New Jersey.

There is no pretence that in any way or manner she consented to any agreement to be made by John J. Gardner, nor that she is in any way bound by anything that he did under his pretended authority or the action of Mr. James O'Reilly.

The passage of the Act of March 28, 1886, Nixon's Revision, page 757, section 26, providing for the filing of copy of will as a muniment of title, does not change the law or statute above referred to. It simply extends the instruments for the proof of title and cannot change the provisions of sections 23 to 25 of the Orphans' Court Act.

Acting under her authority as executor in New Jersey, Catharine C. O'Reilly conveyed or agreed to convey the lands in these cases before the bill of complaint was filed, and by such deeds a full title was conveyed, which was well known to the complainant, and the defendants had no power at the time of filing this bill by reason of said conveyance to comply with the pretended contracts sought to be enforced in these cases. There is not a scintilla of evidence in this case that Catharine C. O'Reilly appointed John J. Gardner, or any other person, to act as agent for her in the matter, and her act in the premises cannot be in any way called in question or set aside. For the reasons above set forth, I submit that they had no right to file this bill, and it cannot be enforced by the Court.

2.

Lindley and Adams had no Notice of Keim's Pretended Purchase.

Before beginning suit in this matter, Mr. Keim served or caused to be served upon Lindley and Adams, a written notice of his equitable claim in this property. See Exhibits L. D. 1 and 2.

It is important to call the Court's special attention to this notice, and I set one of them out in full in my brief.

Exhibit L. D. 1.

To Daniel Lindley:

You are hereby notified that I hold an agreement dated October 29, 1881, for the sale to me of the title of the late Patrick O'Reilly, deceased, to the large lot of ground situate in Atlantic City, N. J., beginning in south line of Pacific avenue 250 feet east of New York avenue, thence extending southwardly parallel with New York avenue, about 2,000 feet to the Riparian line in the ocean, thence westwardly along said line 200 feet, thence northwardly parallel with New York avenue about 1,800 feet to a point 200 feet from Pacific avenue, thence eastwardly parallel with Pacific avenue 50 feet, thence northwardly parallel with New York avenue 50 feet, thence eastwardly parallel with Pacific avenue 100 feet, thence northwardly parallel with New York avenue 150 feet to Pacific avenue, and thence eastwardly along Pacific avenue 50 feet to place of beginning: And that I claim an equitable title in the land under that agreement, and intend to enforce the same.

JACOB KEIM.

Atlantic City, April 28, 1892.

Attention is specially called to the fact that Keim, at this time, only claimed that he had one contract, to wit: "an agreement dated October 29, 1881? And he changed the frontage from 150 feet in contract, to 200 feet in above notice.

It may well be asked, if Lindley and Adams already had a knowledge of the contents of this notice, what was the use of the service of notice upon them? The contention of Lindley and Adams is that this notice was the first knowledge that they or either of them had of Keim's claim of right in the land, and I insist that the burden of proof entirely supports that contention.

Comment has already been made upon the informal manner in which Keim treated with Gardner, showing clearly that they both anticipated a speedy ending of the matter at the time when the receipt was given. No formal agreement in writing, properly acknowledged, was entered into and recorded. It is quite evident that Keim did not communicate to any one the fact of the pretended purchase. *Gardner did not inform Lindley or Adams.* After his counsel had framed the first bill of complaint in this cause, setting forth specifically that Lindley and Adams had full knowledge of all the particulars of said purchase (see bill, p. 9), it, of course, became necessary for him to bolster up the allegation by some form of proof. According to Keim's evidence he does not claim that Lindley or Adams had any knowledge of his purchase until years after the purchase was made. He says that when the question of filling up the land arose, he told Lindley that he thought that some adjoining land he would not fill up until he knew more about it. To use his own language, he says: "I said to Lindley—I said I bought O'Reilly's title and interest in this land which is being contested, and I don't feel like doing any more until it is decided to whom the land belongs. That was about the sum and substance of the conversation between him and me—between me and Lindley."

He says that in the year 1890 Adams told him that he had leased this land of O'Reilly's agent, and that Adams told him he *was given to understand that it was sold*, and that he replied: "I have bought this land;" and that Adams subsequently said to him, "I hope you will not be too hard on me." Under cross-examination he says that he stated all of the conversation that he had with Lindley or Adams. Newton Keim, his son, swore that he prepared the written notices that were served upon Lindley and Adams. It is not claimed that Gardner told Adams or Lindley of the sale at any time.

I contend that the above pretended conversations are manufactured for the purposes of this suit, and that every fact in the case and the reason of the case will support this contention.

Mr. Barstow was called by the complainant to show that Adams, Jr., made an application for the loan of $10,000 in 1892, and that he wanted to use the money to pay for the purchase of a piece of property which was bought from the P. O'Reilly's estate, and said that he had heard a rumor that Mr. Keim had a contract to buy the O'Reilly property.

After a series of unfair questions, the complainant's counsel got him to swear that he asked Adams if he knew that there was any agreement with Mr. Keim about the purchase of that property, and that Adams made no reply. This statement of Mr. Barstow's was made after he had already stultified himself, as will appear by the following quotation from his evidence:

"*Q.* Did you mention that to Mr. Adams when he talked of borrowing money from your bank to buy this property?

"*A.* I do not know, sir, whether I did or not.

"*Q.* Did you propose to take a mortgage from him to secure the $10,000?

"*A.* No sir. We loaned it on a note supposed to be good, for it has been paid.

"*Q.* (By Mr. Grey.) Was there any reference made by either of you at that time—either you or Adams—to the Keim agreement?

"*A.* I do not know, sir; I can't tell you as to that. I would not say."

I submit that even if such a fragmentary statement was made to Mr. Adams at the time he was negotiating a loan in Mr. Lindley's behalf, that that was not notice to Lindley.

Mr. Jacob Keim was recalled and said that his talk with Lindley was in 1891, and with Adams in 1890. I have endeavored to state fairly and substantially all of the evidence of the complainant which he offered to sustain his allegation, in his bill of complaint, that Lindley and Adams had knowledge of the outstanding contract. It must be observed that the only possible evidence of notice to Lindley was a brief conversation claimed to have taken place in June of '91, and it appears by the complainant's testimony that Lindley had no other notice of the existence of a contract dated nearly ten years before.

I submit that in a case of this nature, where a party thought so little of his contract as to keep it a secret for over ten years, and in fact never disclosed its real nature until the filing of this bill of complaint, is in no position to charge a purchaser with having knowledge except he can prove it conclusively and beyond dispute. The law certainly places upon him a great burden in this particular.

The evidence and the actions of Mr. Lindley entirely disprove the allegation of notice. Let us look at his attitude toward the land, the title of which he subsequently perfected in himself; he was in actual possession of the land and had been in actual personal possession since 1878, and those under whom he claimed, together with himself, have been in actual possession of this portion of the land for a period of over thirty years. Mr. Lindley, year after year, added expen-

sive improvements upon the property which he has always claimed to own by adverse possession; year after year, Mr. Keim with this receipt secreted, has stood by and seen Mr. Lindley expend thousands upon thousands of dollars in improvements without giving him a word of warning and without going to him as any honorable business man would do, and explain to him the nature of his dealings with Gardner, and showing him the receipt or pretended agreement. At the time when Lindley compromised the suit, which he had successfully maintained for for over ten years, by the payment of $10,000, the question of adverse possession was as much unsettled as it ever had been. Mr. James A. O'Reilly knew of and recognized the danger the owners of the paper title were in, and certainly Lindley's claim of title was a proper matter for compromise and settlement, either by the purchase by the O'Reilly's of Lindley's possessory title, or by the purchase by Lindley of O'Reilly's paper title. It is now undisputed that Lindley paid and parted with $10,000 for the purchase of the O'Reilly title after negotiations with all of the executors. It is absurd to suppose that the executors would have sold, or that Lindley would have purchased, this title had he known that the property was already sold, and it is only proper to assume that if he had any knowledge on the subject he would have communicated the same to his counsel, who would have advised him not to make the compromise and settlement.

Mr. Lindley swore that to his personal knowledge, the O'Reillys never occupied or possessed any portion of the land, and his knowledge goes back to the year 1858. Prior to the settlement of the suit and the purchase of the outstanding title he had made further special preparations for trial and procured additional witnesses, he was contesting his claim in good faith and really believed that he was the owner. He says that his counsel, Mr. Harned, conducted the negotiations whereby the compromise was effected, and at the time of the

compromise, in his judgment, the land, exclusive of his improvements, was worth $20,000, and that the parties virtually split the differences between them at the time of the settlement. He proved that he had erected 200 bath houses and two stores on the front and that the improvements were worth from $8,000 to $10,000. He denies the conversation as narrated by Jacob Keim and explains the conversation as follows: "I was filling up the lot. I got orders from the Board of Health to fill up my part of the lot. Mr. Keim came over after he had commenced to fill up and said: "I have got a notice from the Board of Health to fill mine, too." Mr. Keim owned the land along New York avenue 50 feet deep, and he said: "I won't fill any more on mine until Griffeth fills his." That was the next lot, and Griffeth was the man who occupied the connecting land with a scenic railroad, and then Mr. Keim commenced and Griffith commenced to fill in and dump loads right by the side of his own lot next to Griffeth, and that was all the filling he did on that land. He just filled in on the 50 feet he owned and had title to, and he said that he would do no more filling; "let Griffeth fill his." In answer to the direct question Mr. Lindley says that Keim never "mentioned buying the property to me once, never opened his mouth about it to me." He further says that he once had a fuss with Keim as far back as 1877, and that he never had any conversation with him from that time up to the time of the above conversation about filling in. Mr. Lindley says that the first knowledge or notice or information from anybody that Keim claimed to have bought this piece of land was when he was served with the notice, Exhibit "L. D.," which was after he had got the deed and paid the money. Where the proof rests upon Mr. Keim's statement on one side and Mr. Lindley's statement on the other, will the Court say that the preponderance of proof is with the complainant? A fair analysis of this evidence demonstrates

the truthfulness of Mr. Lindley and conclusively shows that Mr. Keim has utilized this conversation by injecting into it a claim of notice of purchase, and thereby hoping to bridge over an important and fatal gap in his case. There was no doubt a strong temptation for the Vice Chancellor to find that Lindley had notice, because, if Lindley had no notice, the whole case would probably have had to end there, as the O'Reillys were then in a position to be unable to carry out the pretended contract.

Mr. Lindley was very rigidly cross-examined with the view of eliciting from him some proof to support the allegation in the complainant's bill that the sale to Lindley and the other parties was simply a conspiracy and not *bona fide*. That element of the complainant's case has completely fallen, and was not even suggested in the argument in the Court below. He admits that Mr. Adams aided him to the extent of $2,000 or $3,000 in the raising of the purchase money. Mr. Adams denies the substantial part of the conversation sworn to by Mr. Keim, and says that it is a tissue of falsehoods, that he never discussed the question of Keim's ownership of this property or claim with Mr. Lindley, or with anybody. Mr. Adams gives his version of the conversation with Mr. Keim in 1890. It is certainly very intelligent, and proves that Mr. Keim has played the same game with Mr. Adams by attempting to inject into the conversation words which, if true, might be construed to be a notice of his equitable rights in the property. It must be remembered that Mr. Adams was formally notified by Keim in writing, shortly before the commencement of this suit, similar to the notice served upon Mr. Lindley, and Mr. Adams swears that that was the first and only knowledge he had of Keim's claim. Mr. Adams says that the conversation had relation to an attempt on his part to lease a piece of property from him, which he already owned, to wit: a por-

tion of the beach front in the 50 feet next to New York avenue; he says his brother had a lease of 32 feet of the land adjoining the Griffeth strip, and he tried to lease the remaining 18 feet, and that the only conversation that he ever had with Jacob Keim had relation solely to his attempt to lease this piece of land. He then says that he authorized Mr. Harned, at the time when the Lindley negotiations were going on, to endeavor to purchase for him 50 feet adjoining, which were subsequently conveyed to him. Adams was in possession of this property some two years before his agreement to purchase and build stores upon it, costing $3,000 or $4,000, Keim laid by and did not give him any warning nor show him the pretended agreement of purchase. Keim now seeks to come in and reap the benefit of his silence. Adams denied that he heard Barstow make any remarks concerniug Keim at the time when he was raising some of the money for Lindley; he also claims that he had no intimation or suggestion from anybody, either at the time that Lindley purchased, nor at the time that he got his agreement, or prior thereto; that when he got an informal offer from Catharine C. O'Reilly, which he accepted, he wanted the matter to be put in more formal shape in order to make it a matter of record, pending the question of the Williamson possession, and at the suggestion of his lawyer, who did not care to go to Reading again (Mrs. O'Reilly being an invalid), the matter was put in the shape that it was.

Mr. Harned explains in detail the circumstances attending both of the negotiations and demonstrates that they were made in good faith, which, however, as I understand, is not now denied. I have already quoted the law as I understand it relative to the making of the deed by one executor.

I submit that the decree entered in this case is a *legal monstrosity*. Neither side is willing to father it. Such a decree would be a fraud upon the O'Reilly heirs and very

unjust to Lindley and Adams, who are innocent parties acting in good faith in the purchases which they made. The only proper decree in this case would be one dismissing the bill as against all defendants.

Respectfully submitted.

THOMAS B. HARNED,
Of Counsel with
DANIEL LINDLEY and
ALFRED ADAMS, JR.

New Jersey Court of Errors and Appeals.

FRANCIS P. O'REILLY and JAMES A. O'REILLY, Executors and Devisees of Patrick O'Reilly, deceased, and JOHN F. O'REILLY and ANTHONY J. O'REILLY, Devisees of said Patrick O'Reilly, Appellants,

vs.

JACOB KEIM, Appellee.

APPEAL FROM THE COURT OF CHANCERY.

BRIEF ON BEHALF OF APPELLANTS.

A HISTORY OF THE CASE.

Patrick O'Reilly, of Reading, Pennsylvania, owned certain lands in Atlantic City, N. J. On March 25, 1880, Mr. J. J. Gardner executed the following receipt to Jacob Keim, appellee:

"$25.00. ATLANTIC CITY, N. J., March 25th, 1880.

"Received of Jacob Keim the sum of twenty-five dollars on account of the purchase-money of the lot of land fifty feet in width [here follows the description]. The purchase price is to be twenty-five hundred dollars. Deed to be made and delivered as soon as practicable, not longer from the present time than one month. Said land to be conveyed belongs to Patrick O'Reilly, for whom the undersigned is agent.

"J. J. GARDNER,
"*Agent.*"

On July 16, 1881, Patrick O'Reilly died, leaving a widow, Catharine C., and four sons, Anthony J., John F., Francis P., and James A., and one daughter, Mary. Of the will he appointed his widow and two sons, Francis P. and James A., executors, with ample powers to sell and convey lands. The will was probated in Pennsylvania and letters testamentary issued to all the executors. In New Jersey, however, it was proved by the widow, Catharine C., alone, and letters testamentary issued to her. On October 29, 1881, Mr. Gardner signed a second receipt, as follows:

"Received, Atlantic City, N. J., October 29, 1881, of Jacob Keim the sum of five hundred dollars on account of the purchase-money of a certain tract of land situate in said city as follows [here follows a description, which embraces tract described in above receipt and some additional land]. And also all the additions and accretions to said tract of land, if any, which may hereafter be made on the sea front; it being the purpose of this purchase and sale to include all the land above described, and also all the right, title and interest of the grantors and of the estate of the late Patrick O'Reilly, deceased, in and to the accretions to said land which may be made upon the sea front.

"The balance of the purchase-money, namely, the sum of $9500, to be paid upon tender of a good and lawful deed for said premises, free from encumbrance and opposing or contesting claims of title, with undisputed possession of the same, the grantee to have sixty days' notice of such tender.

"Including all the land and the rights of said estate between Pacific Avenue and riparian line and beyond, and New York and Tennessee Avenue.

"JOHN J. GARDNER,
"Agent P. O'Reilly Estate."

The bills in equity in question filed by Jacob Keim seek to enforce, by decree, a conveyance of the said lands. The learned Vice-Chancellor has made a decree in favor of the appellee, and the following argument is designed to demonstrate the erroneousness of the said decree. We have constructed our argument, both upon the fact and the law, in propositions, believing that this method will have the advantage of greater perspicuity.

The Facts.

First. There is no testimony showing or tending to show that Patrick O'Reilly authorized Mr. Gardner to sign the written contract or receipt dated March 25th, 1880, or that Mr. O'Reilly was ever informed of its execution.

Mr. Gardner, the complainant's chief witness, testified that he was engaged in the real estate business. That Patrick O'Reilly owned lots in Atlantic City. (Paper-book, p. 288.)

Mr. Gardner also testified as follows:

"Q. During the time that you had charge, covering the period of Patrick O'Reilly's lifetime and subsequently to his death, did you ever make agreements for the sale of lands excepting in the case of Keim?

"A. I don't recollect ever—I never made any agreement except in the form of a receipt.

"Q. Now, did you, in the form of receipts, receiving money on account for land to be conveyed?

"A. Yes; I think I almost always required a payment at the time parties engaged to take the lot and gave them a receipt for the money.

"Q. Now, did Patrick O'Reilly in his lifetime know of the fact that you gave these receipts—receiving the money and giving these receipts on account of the purchase-money?

"A. Of that I don't know.

"Q. Well, what did you do?

"A. I don't know how I would know that, or how that would come to his knowledge unless somebody settled with him and had such a receipt and paid that over as so much money.

"Q. Well, do you remember any such transaction as that?

"A. I don't know of any now." (Paper-book, pp. 301, 302.)

Mr. Gardner also testified:

"A. The rule was that every transaction was settled up when it was closed. Of course if I sold a lot and sent a deed out there and he executed it and there was so much cash money and so

much mortgage, when the transaction was closed he got what belonged to him and I got the commission, and the transaction was ended." (Paper-book, p. 302.)

He also testified:

"Q. In this case, just explain the reason and the authority you had for making such an arrangement as that?

"A. Well, I don't know of any authority except the authority, as I understood it, to sell that lot at that price, and in the receipt I meant to fix some limit of time within which the transaction should be closed." (Paper-book, pp. 308, 309.)

He also testified:

"Q. Had you any express specific instruction or authority from Patrick O'Reilly touching the terms of this first contract as the terms are incorporated in the writing here produced, excepting the mere price at which the property was to be sold?

"A. That first contract? That was all; the lot was marked at a certain price.

"Q. Did you ever show Patrick O'Reilly a copy of the terms of that contract in addition to the price?

"A. Are you speaking now of the first?

"Q. The first contract.

"A. No, I don't think I kept a copy of the receipt; it was a matter to be closed, by its terms, within thirty days or a month, whichever it was. I don't think the receipt was made in duplicate at all.

"Q. Then the receipt and the agreement together was drawn and immediately delivered to Mr. Keim, was it?

"A. True.

"Q. Now, so far as you can recollect, did you ever state by word of mouth the terms of that contract to Patrick O'Reilly after it was entered into?

"A. No. As to stating terms—you are speaking of the time of the first?

"Q. The first.

"A. I don't know that I ever stated them; that is, I can't remember specifically stating it. I have no doubt about the fact that I would have notified Patrick O'Reilly or his son James that the lot was sold. That would, perhaps, be all that I would say—that lot so and so is sold." (Paper-book, pp. 344, 345.)

This testimony evinces an understanding with Patrick O'Reilly under which Mr. Gardner was to find purchasers for lots at prices fixed by Mr. O'Reilly. Mr. Gardner, having found a purchaser, generally required the payment of some money on account and gave a receipt for it, but Mr. O'Reilly had no knowledge that Mr. Gardner was giving receipts for the money and had no reason to think he was giving receipts that were contractual in their nature. Mr. O'Reilly signified his approval of a sale made by the execution of a deed, which was generally accomplished within a short time.

Second. There is no testimony showing or tending to show that Catharine C. O'Reilly, her co-executors and the devisees, or any of them, authorized Mr. Gardner to sign the written contract dated October 29, 1881.

As Catharine C. O'Reilly alone had proved the will in the State of New Jersey and taken letters testamentary upon it, she alone could sell. We will, however, show from the testimony that neither she, nor her co-executors, nor the devisees, nor any of them, authorized the making of such contract. The appellee's bills allege that the contract of October 29, 1881, was made by "John J. Gardner, then acting as the agent, and in behalf of the estate of said Patrick O'Reilly, duly authorized therefor, by the executors of the last will of said Patrick O'Reilly, and the devisees therein mentioned." (Paper-book, p. 4.)

The affidavits of Catharine C. O'Reilly appended to her answers to the supplemental bills are as follows:

"That the said answer, so far as it relates to the acts and deeds of this deponent, is true, and so far as it relates to the acts and deeds of others, she believes it to be true; and especially is

it true that, to the best of the knowledge and belief of this deponent, the said complainant has not, nor ever has had, any contract or agreement in writing for the sale of the lands and premises mentioned in the original and supplemental bills filed in the above cause, or any part thereof, or any memorandum or note in writing or any contract or agreement for the sale of said lands or any part thereof signed by the said Patrick O'Reilly in his lifetime, or by his executors or devisees since the death of the said Patrick O'Reilly, or any or either of them, or by any person or persons thereunto lawfully authorized by the said Patrick O'Reilly in his lifetime, or by his executors or devisees since his decease, or any or either of them; that this deponent has not in any way or at any time made any agreement or contract in writing or any note or memorandum thereof in writing with the complainant, nor has this deponent ever authorized the said John J. Gardner or any other person or persons to sign or make on behalf of this deponent any contract or agreement in writing or any note or memorandum in writing or any contract or agreement for the sale of said land or any part thereof." (Paper-book, p. 115. See also Paper-book, pp. 172 and 173.)

Francis P. O'Reilly and James A. O'Reilly, co-executors in the State of Pennsylvania, and the devisees under the will of Patrick O'Reilly, make a similar denial in their affidavit to the supplemental bills. (Paper-book, pp. 125, 183.)

Mr. Gardner, the appellee's witness, testified:

"Q. Mr. Gardner, since the death of Patrick O'Reilly, the father, who has acted as the representative of the estate in regard to the lots in Atlantic City, to your knowledge?

"A. My dealings have always been with James A. O'Reilly.

"Q. And in your dealings with him have your transactions in regard to the land down there been approved or disapproved?

"A. They have been approved the same as—he has fixed prices and so on the same as his father did.

"Q. And since his father's death, have you made sales of the lots on the prices fixed by him?

"A. By James A. O'Reilly?" (Paper-book, p. 330.)

"Q. During the time that you had charge, covering the period of Patrick O'Reilly's lifetime and subsequently to his death, did you ever make agreements for the sale of lands excepting in the case of Keim?

"A. I don't recollect ever—I never made any agreement except in the form of a receipt." (Paper-book, p. 301.)

"Q. Did not James A. O'Reilly, in December, 1891, ask you at Atlantic City, by what authority you made this contract, and did you not answer, 'I will be damned if I know'?

"A. Well, I don't remember the month or the time. Somewhat lately, or comparatively lately, O'Reilly, probably O'Reilly, asked me something of that sort, about my specific legal authority to make a contract to bind the estate, at the end of a long period of litigation or something else, and, answering the legal aspect of it, I presume, I answered not as you have it and he understood it, I didn't swear that way, but I think I said, 'Damfino,' which would be spelled 'd-a-m-f-i-n-o.'" (Paper-book, p. 351.)

"Q. (*By the Court:*) In your letter to Keim of March 30, 1881, you quote a letter from O'Reilly to you of March 29, 1881, in which he fixes the price of lots, numbered 5, 6, and 7, at $7500, and that of No. 31 at $4000, making in all $11,500. You subsequently contracted, as the complainant alleges, to sell those four lots—5, 6, 7, and 31—to Mr. Keim for $10,000; by what authority did you reduce the price from $11,500 to $10,000?

"A. Well, that must have been as the result of further correspondence with James A. O'Reilly.

"Q. Have you any present recollection about it?

"A. I have not, definite; excuse me a moment; was not that the letter that Mr. Jacob Keim said yesterday I showed him?

"Q. Mr. Jacob Keim or Mr. Newton Keim swore that when you fixed the price at that time at ten thousand dollars you showed them a letter from Mr. O'Reilly, the contents of which the Court did not permit the complainant to show, because they hadn't yet accounted for the loss of it. Have you got any such letter?

"A. I have not.

"Q. Did you hear the evidence of Mr. Keim?

"A. I have looked for such a letter and have not found it.

"Q. Did you hear the evidence of Mr. Keim?

"A. I heard the evidence of Mr. Keim, yes, sir.

"Q. And you don't now recall how that price was reduced from $11,500 to $10,000—whether by letter or by personal interview?

"A. I could not swear to that, no, sir.

"Q. (*By Mr. Grey:*) Was it so changed by the authority of the O'Reillys?

"A. I have no doubt about that; that is Mr. James; he is the gentleman I always dealt with." (Paper-book, pp. 339, 340.)

Anthony J. O'Reilly, a devisee, testified that he never authorized Mr. Gardner to make the contract and never heard of the contract until shortly before his examination as a witness. (See Paper-book, p. 422.)

John F. O'Reilly, another devisee, testified to the same effect. (See Paper-book, p. 442.)

Francis P. O'Reilly, one of the co-executors in Pennsylvania, testified that neither individually nor as executor had he authorized Mr. Gardner to sell the land or make the contract, nor had he given his brother James authority to do so. (See Paper-book, p. 475.)

James A. O'Reilly, who gave Mr. Gardner the prices of the property in question, testified:

"Q. Did you ever have any authority over his estate in Atlantic City, excepting such as you derived as one of the executors and part owner?

"A. None other.

"Q. Had you ever any authority from your mother, or from your brother Francis, as co-executors, to delegate any authority to John J. Gardner to make written contracts for the sale of lands in Atlantic City belonging to the estate?

"A. No, sir.

"Q. When did you first hear of these two Keim contracts in question in this litigation?

"A. December, 1891, or the latter part of November, 1891.

"Q. From or through whom did you first hear of them?

"A. A letter from Mr. Voorhees enclosing one from Mr. Grey —Mr. Samuel H. Grey.

"Q. Had anything up to that time ever passed between you and Gardner in respect to the contract that purports to have been made by him with Keim?

"A. Do you allude to these two written contracts?

"Q. Yes, sir.

"A. No, sir." (Paper-book, pp. 514, 515.)

"Q. Now, Mr. O'Reilly, you had charge of your father's estate in Atlantic City?

"A. I took charge of it.

"Q. And Mr. Gardner acted as the representative of the estate in making bargains for sales of land down there, did he not?

"A. Mr. Gardner really acted as my representative.
"Q. You acted as the representative of the estate?
"A. I assumed to act, yes, sir.
"Q. You do so act. And he acted as your representative in matters of the estate?
"A. Yes, sir.
"Q. And as such he made bargains for the sale of land down there?
"A. He did, subject to my approval.
"Q. And you approved the bargains when he made them?
"A. I generally gave him the price; of course I did.
"Q. And deeds were executed pursuant to his bargains, at the prices which he named?
"A. Prices which I named.
"Q. Which he named to the purchaser and you named to him?
"A. Yes, sir." (Paper-book, pp. 531, 532.)

The effect of the above testimony is that after Patrick O'Reilly's death the sales were conducted about as they had been before. Prices were given to Mr. Gardner and when he had secured a purchaser at those prices he would report the land sold and a deed would be executed and delivered, Catharine C. O'Reilly and her co-executors coming into the transaction only when they executed the deed. There was not a vestige of authority given to Mr. Gardner to execute a written contract by which the O'Reillys could be regarded as bound before the execution of a deed by them. The testimony in the case does not warrant a finding of authority in Mr. Gardner to execute the writing, even if there were no affidavits to the answers to the supplemental bills.

Third. There is no testimony showing or tending to show a ratification of the first writing by Patrick O'Reilly in his lifetime, or of either of the writings by Catharine C. O'Reilly, her co-executors, or the devisees, or any of them after his death.

Mr. Gardner testified that Patrick O'Reilly had no knowledge of the giving of the receipt of March 25, 1880. (Paper-book, p. 302.)

Mr. Gardner also testified as follows:

"Q. (*By the Court:*) Did you report those contracts to your clients?

"A. I reported the sales. I was to report the sales. Whether I reported the facts of the terms of the contract beyond the matter of sale I don't know.

"Q. (*By Mr. Grey:*) You reported the fact of the sale, did you?

"A. Yes, sir.

"Q. (*By the Court:*) I will put the question: Was there any disapprobation expressed by them to you?

"A. No disapprobation of the sale at the time. No.

"Q. (*By Mr. Grey:*) Now, when did you first hear of any disapproval by the O'Reillys of either of these contracts?

"A. Sometime since the last trial at May's Landing; I forget the date.

"Q. The last trial as testified to as having taken place in April, 1892?

"A. And James A. O'Reilly said that he was not aware that any contracts of this kind were ever signed by me.

"Q. James A. O'Reilly said so?

"A. Yes, sir.

"Q. Did you say anything to him about the fact that they had been signed, or what reply did you make to him when he said that?

"A. Well, I told him—just what reply I made?

"Q. Oh, not the language if you can't recall it.

"A. Well, that the lots—that I had sold the lots many years ago, and that he must have been aware of the fact, or was aware of the fact. Something of that sort. That is about the reply I made.

"Q. Now, when you had said that to him, what did he say?

"A. He said that if I had sold the lots the sale ought to have been—I don't know what the word was—consummated, terminated, ended, or something of that sort. That was about all of it.

"Q. That was about all of it?

"A. About all." (Paper-book, pp. 326, 327.)

"Q. Had you any express specific instruction or authority from Patrick O'Reilly touching the terms of this first contract as

the terms are incorporated in the writing here produced, excepting the mere price at which the property was to be sold?

"A. That first contract? That was all; the lot was marked at a certain price.

"Q. Did you ever show Patrick O'Reilly a copy of the terms of that contract in addition to the price?

"A. Are you speaking now of the first?

"Q. The first contract.

"A. No, I don't think I kept a copy of the receipt; it was a matter to be closed, by its terms, within thirty days or a month, whichever it was. I don't think the receipt was made in duplicate at all.

"Q. Then the receipt and the agreement together was drawn and immediately delivered to Mr. Keim, was it?

"A. True.

"Q. Now, so far as you can recollect, did you ever state by word of mouth the terms of that contract to Patrick O'Reilly after it was entered into?

"A. No. As to stating terms—you are speaking of the time of the first.

"Q. The first.

"A. I don't know that I ever stated them; that is, I can't remember specifically stating it. I have no doubt about the fact that I would have notified Patrick O'Reilly or his son James that the lot was sold. That would, perhaps, be all that I would say—that lot so and so is sold." (Paper-book, pp. 344, 345.)

"Q. Now when you made this second contract after the death of Patrick O'Reilly, did you preserve a copy of it or did you immediately deliver the draft over to Mr. Keim?

"A. As I now recollect it there was no copy. There was simply the one draft, which Mr. Keim made at his office or home. He brought it with him when he called, I think.

"Q. And the terms of the contract other than the price were dictated, as I think you have already said, and put in that agreement by Mr. Keim himself?

"A. They were.

"*Mr. Grey:* He has not said that.

"*Witness:* My recollection is that Mr. Keim had prepared the receipt—leaving distances blank as it shows—before calling, and that there was no duplicate copy of it.

"Q. You never sent a duplicate copy of it to James?

"A. I had none.

"Q. As far as your recollection goes, did you ever call and report to James the terms and conditions of this second agreement other than the price and the boundaries of the property?

"A. Well, now, I could not remember the words, that I said about that; I could not remember what I should have said about it, by way of repeating the words.

"Q. Do you remember how or under what circumstances, if at all, you handed over to James the part of the purchase-money you received?

"A. No; I don't remember exactly that.

"Q. Then, before the making of this second agreement, you never had any conversation with James in respect to the terms other than the price and the bounds of the property?

"A. No; probably not." (Paper-book, pp. 345, 346.)

Fourth. James A. O'Reilly's recognition of the appellee as having some interest in the property is in no wise inconsistent with the foregoing propositions of fact.

Mr. James A. O'Reilly had, in 1881, given to Mr. Gardner prices for the said properties and Mr. Gardner had reported the properties sold. Mr. O'Reilly would naturally assume that the matter had been transacted in the accustomed way, that is, that Mr. Gardner had simply said to Mr. Keim, the appellee, that he could have the property at the price named. There is nothing in the testimony which would have warranted Mr. O'Reilly in thinking otherwise. The arrangement then, as it presented itself to Mr. James A. O'Reilly's mind, was one merely verbal and binding upon neither party. Mr. Keim could recede from the arrangement if he chose, and under the doctrine of mutuality, the O'Reillys could do the like. The litigation as to the title of the property had already begun when the second receipt was signed by Mr. Gardner and other litigation was subsequently initiated. The carrying on of this litigation, however, by the O'Reillys furnishes no evidence of a recognition of the existence of a binding contract

with Mr. Keim. Upon Mr. James A. O'Reilly's theory, that neither party was bound, the interest of the O'Reilly estate required that the litigation be carried on and the title vindicated, and the recognition by Mr. O'Reilly, pending the litigation, of an interest in the complainant and appellee—that is to say, the fact that James did not at the very beginning say to Mr. Keim that he had nothing to do with the property—cannot be regarded as a ratification by him of a written contract, of the existence and terms of which he knew nothing; nor can it be regarded as a ratification by Catharine C. O'Reilly and the remaining parties in interest, who were as ignorant of James' recognition of the appellee as they were ignorant of the existence of the receipt or contract. When James ultimately discovered that Mr. Gardner had signed a contract, prepared by the appellee's son, who was a lawyer, agreeing to convey not only Patrick O'Reilly's title to the property but the title of every other person in the world who might contest the same, it was not only natural but it was his right to promptly repudiate such contract, notwithstanding he had in ignorance of its existence previously recognized some interest in the appellee.

The Law.

The following propositions of law applied to the foregoing propositions of fact will clearly demonstrate the erroneousness of the decree made by the learned Vice-Chancellor:

First. In order to make the writing of March 25, 1880, binding upon Patrick O'Reilly, his devisees, heirs, and legal representatives, it is requisite that the appellee show an adequate power in Gardner not only to sell but to execute a written contract for a sale.

The distinction between a mere power to sell at a price fixed and a power to execute a written contract for sale has been clearly indicated by the Courts in New Jersey. A mere power to sell at a fixed price constitutes him in whom such power resides a real-estate broker. In the language of Chancellor Zabriskie, in the case of *Morris vs. Ruddy, 20 New Jersey Equity, 236,* "Brokers are persons employed to effect sales; their general business is only to bring parties together."

In the same case it was decided that "A broker employed to sell lands has no implied authority to sign a contract of sale on behalf of his principal." The learned Chancellor quotes with approval the rule of the New York Courts, "that the authority of a real-estate broker, when authorized to sell lands, only extends to finding a purchaser willing to give the price fixed."

So in the case of *Milne vs. Kleb, 44 New Jersey Equity, 378,* it was decided that "An agent may be authorized by parol to enter into a written contract for his principal to convey land. But a simple parol authority to sell without more will not authorize the agent to sign a written contract for his principal."

It results, therefore, that where an agent having vested in him but a power to sell at a fixed price, undertakes to make a written agreement to sell, such agreement is null and will not content the requirements of the Statute of Frauds and Perjuries.

In the case of *Morris vs. Ruddy, supra,* the learned Chancellor said:

> "I am inclined to adopt this as the correct view, and to hold that this contract is not signed by a person thereunto lawfully authorized, as required by the Statute of Frauds. Giving authority to sell does not, by force of the terms, or by their general acceptation, give authority to sign vendor's name to a contract. And in case of lands, it is not wise to extend this meaning by construction."

It remains under this head to inquire as to whether in the case under consideration, there is any testimony showing or tending to show that Patrick O'Reilly had authorized Gardner to execute a written contract in his behalf. No witness has undertaken to testify that such authority was given. Mr. Gardner himself declares as follows:

"Q. And your authority was to sell any of these lots at those prices?

"A. Yes, sir.

"Q. With a certain schedule or rule as to the amount of mortgage?

"A. Yes, sir." (Paper-book, p. 305.)

"Q. In this case, just explain the reason and the authority you had for making such an arrangement as that.

"A. Well, I don't know of any authority except the authority, as I understood it, to sell that lot at that price, and in the receipt I meant to fix some limit of time within which the transaction should be closed." (Paper-book, pp. 308, 309.)

"Q. (*By Mr. Pancoast:*) Did not Mr. James O'Reilly, in December, 1891, ask you at Atlantic City by what authority you made this contract, and did you not answer, 'I will be damned if I know'?

"A. Well, I don't remember the month or the time. Somewhat lately, or comparatively lately, O'Reilly, probably O'Reilly asked me something of that sort, about my specific legal authority to make a contract to bind the estate, at the end of a long period of litigation or something else, and, answering the legal aspect of it, I presume, I answered not as you have it and he understood it, I didn't swear that way, but I think I said 'Damfino,' which would be spelled 'd-a-m-f-i-n-o.'" (Paper-book, p. 351.)

Mr. Gardner also expressly negatives the theory that Patrick O'Reilly knew of his executing such receipts.

"Q. Now, did Patrick O'Reilly in his lifetime know of the fact that you gave these receipts—receiving the money and giving these receipts on account of the purchase-money?

"A. Of that I don't know.

"Q. Well, what did you do—

"A. I don't know how I would know that, or how that would come to his knowledge unless somebody settled with him and had such a receipt and paid that over as so much money.

"Q. Well, do you remember any such transaction as that?
"A. I don't know of any now." (Paper-book, p. 302.)

This testimony, submitted by the appellee himself, clearly and satisfactorily shows that *Gardner instead of having an authority to execute written agreements, had but a limited power to make sales at prices fixed by his principal.* That the fact of Gardner's having charge of the lands, of his paying the taxes, the cost of grading, etc., with moneys furnished by Mr. O'Reilly, raises no presumption of authority to execute writings for their sale, is too obvious to require any argument, and the conclusion is therefore irresistible that there was and is no written contract binding upon O'Reilly or his estate, and that the sale of the property described in the first receipt, is under the provisions of the Statute of Frauds and Perjuries, and its performance cannot be specifically decreed.

In the case of *Hamer vs. Sharp, 19 Equity Cases, L. R., 108,* the owner of real estate gave to the agent for sale written instructions, as follows:

"I request you to procure a purchaser for the following freehold property, and to insert particulars of the same in your Monthly Estate Circular till further notice, viz., my beer house and shop, No. 4 and No. 6, Manchester road. Tenant, No. 4, William Galloway, gilder; and No. 6, Albert Vaults, Henry Holmes, beer retailer, and work-rooms above. Present net rent, £150; price, £2,800, when I will pay you a commission and expenses of fifty pounds. About six years' lease unexpired.

"(Signed) J. SHARP."

The agent sealed and signed a receipt, as follows:

"Bradford, January 31st, 1874. Received this day of Mr. John Hamer the sum of two hundred and eighty pounds on account of purchase of Mr. Jeremiah Sharp's freehold property, Nos. 4 and 6, Manchester Road, at the price of two thousand eight hundred pounds, on the terms of acknowledgment signed this day. "(Signed) C. LONGBOTTOM,

"For JEREMIAH SHARP."

The purchaser signed an acknowledgment as follows:

"Bradford, Jan. 31, 1874. I hereby acknowledge having this day paid the sum of two hundred and eighty pounds on account of the purchase of Mr. Jeremiah Sharp's freehold property situated at the bottom of Manchester Road, Bradford, in the county of York, and numbered 4 and 6, now in the occupation of Mr. Hammond, brewer, and others, or his or their under-tenants, at the price of two thousand eight hundred pounds, free from all incumbrances, but subject to the present leases granted to the tenants or some of them. The vendor to supply an abstract of the title held by him, and should the same be found defective the vendor shall have the option to cancel the contract on returning the deposit-money without interest or expenses, or to make good the defect; and I agree to pay the balance of purchase-money, two thousand five hundred and twenty pounds, on the 31st day of March next, when the purchase is to be completed.

"(Signed) JOHN HAMER."

The purchaser filed a bill for specific performance, and Sir Charles Hall, Vice-Chancellor, refused to decree specific performance, giving the following reasons therefor:

"The question in this case is one of very considerable importance in reference to the disposal of landed estate generally. The question is whether, when an owner of an estate puts it into the hands of an estate agent for sale, stating a price for and giving particulars of the property to enable him to inform intending purchasers, but giving no instructions as to the absolute disposal, and none as to the title of the property, and mentioning none of those special stipulations which it might be proper to insert in conditions in reference to the title, that is sufficient authority to the agent to sign a contract for the sale of the property for the price stated in the instructions, without making any provision whatsoever as to title. In considering whether the instructions of October, 1872, were a sufficient authority to the agent for that purpose, I cannot help expressing an opinion that such an authority to an agent on the part of a vendor would be highly imprudent, as the purchaser would then be entitled to require, on completion, attested copies of all documents of title, and the expense of them would swallow up, to a great extent, the purchase-money. This estate agent must have known that if this

property had been offered for sale by public auction there would have been conditions to guard the vendor against being subject to certain expenses, and to prevent the contract becoming abortive by reason of a purchaser requiring a strictly marketable title. Could he suppose that he was invested with authority to sign a contract without considering what it should contain as regards title? As an intelligent and well-informed person, he could not suppose that he was properly discharging his duty to his prinpal when he signed the contract which he signed; such a contract was not one within the scope of his authority to sign. If he had a right to enter into any contract at all, it was one of a different description, and on that ground alone—this being a bill for specific performance, and the Court having a discretion—I hold that the alleged contract, if it be a contract, is not one which the Court will decree to be carried into effect.

"Taking that view of the case, it is not necessary for me to decide the question of authority, but I nevertheless state my opinion to be, that when instructions are given to an agent to find a purchaser of landed property, he, not being instructed as to the conditions to be inserted in the contract as to title, is not authorized to sign a contract on the part of the vendor. This contract being based upon the instructions given by the document of October, 1872, I hold that it is not a case for decreeing specific performance, and, consequently, the bill must be dismissed with costs." (pp. 112, 113.)

It will be noted that the above case was an infinitely stronger one for specific performance than that under consideration. There the purchaser became bound by signing the acknowledgment and the contract was at least mutual: here the purchaser signed nothing, was not bound, and there is a consequent lack of mutuality. If the contract in that case was not specifically enforceable, then, for stronger reasons, the contract in this case should not be specifically enforced.

To the same effect is the case of *Grant vs. Ede, 20 American State Report, 237 (85 California, 418)*, in which the Court decided that,

"A letter to an agent, saying, 'As you stated you could get thirty thousand dollars for the place you occupy * * * and if you can, we will sell at that price * * * and allow you two and one-half per cent. on said price,' authorizes such agent

to find a purchaser, but not to sell; and a contract by such agent to sell confers no rights on the purchaser which he can enforce against the principal."

And in the case of *Duffy vs. Hobson, 6 American Reports, 619 (40 California, 240)*, Judge Wallace in delivering the opinion of the Court said:

"We are of opinion that the authority given to Aitkens to sell the property was not sufficient to authorize him to execute a contract of sale to Duffy in the name of Hobson, or to sign the name of the latter to any contract of sale. We think that it was no more than a mere authority from Hobson to find him a purchaser at the price.

"This is the settled construction put upon the employment of professional brokers 'to sell' or 'to close a bargain' concerning real estate, and we know of no reason why the same language employed to express the authority of any other agent 'to sell' should have a more extended meaning. Besides, a sale of real estate involves the adjustment of many matters in addition to fixing the price at which the property is to be sold. The deed of conveyance may be one with full covenants of seizin and warranty, or only those covenants imported by the use of the words 'grant, bargain, and sell' under our statute, or it may be by quitclaim merely. The vendor may be unwilling to deal with a particular proposed purchaser on any terms. He may consider him pecuniarily unable to comply with the contract, even if the title prove satisfactory, and he may decline to bind himself to convey to such a purchaser at the end of the time necessary to examine the title, because he might thereby in the mean time lose an opportunity to sell to some other person who might desire to purchase, and in whose good faith and ability to pay he reposed entire confidence. All these and many other like considerations might, and usually do, arise in the mind of the vendor.

"Now a mere authority 'to sell' can hardly confer power upon the agent to determine all these matters for his principal, so as to bind him by his determination. And yet, unless the agent do have such power, he cannot make a definitive contract or one that could be said to have the certainty requisite to deprive the principal of his option to ultimately decline to make the sale. To give to the mere words '*to sell*' such a broad signification as that would be to invest the agent with powers of that ample and discretionary character usually only conferred with caution and by means of a general letter of attorney, where the terms are dis-

tinctly expressed. While it is true that a power to sign the name of a principal to a contract of sale may be given verbally, we think that the words used for the purpose should be distinct and clear in their meaning and import, and should, with the requisite degree of certainty, manifest the intention of the principal to do something more than merely to employ a broker."

Second. The writing dated March 25, 1880, must, under the circumstances, be adjudged to have been abandoned and merged in that of October 29, 1881, and cannot, therefore, be the basis for a decree of specific performance.

It is admitted that the later contract embraces the land which formed the subject-matter of the former contract. That a contract is waived by a substituted contract having reference to the same subject-matter, is, it is submitted, clear both upon reason and authority. Two contracts for the sale of the same land to be conveyed at different times are irreconcilably incongruous and cannot co-exist.

If a subsequent contract includes and goes beyond the terms of the first contract, the latter is superseded and no action can be maintained thereon: *Munford vs. Wilson, 15 Mo., 540; Reed vs. McGrew, 5 Ohio Report, 370; Mather vs. Butler County, 28 Iowa, 253; Taylor vs. Hilary, 1 Compton, Meeson & Roscoe, 741; Hargrave vs. Conroy, 19 N. J. Equity, 282.*

Even where a prior contract is in writing and the subsequent one by parol, the latter was held to have superseded the former: *Church vs. Florence Iron Works, 45 N. J. Law, 129.*

The earlier writing should therefore be regarded as having no existence.

Third. The power of sale contained in the will of Patrick O'Reilly, deceased, was, under the circumstances of this case, one that could be executed only by Catharine C. O'Reilly.

The will in question was duly probated in the county of Berks, Pennsylvania, the place of the testator's domicile at the time of his decease, and letters testamentary were duly issued to the three executors named therein, after which Catharine C. O'Reilly alone, the other executors refusing to join her, proved the same in Atlantic County, New Jersey, and had letters testamentary issued to her. The legal effect of these facts is easily discoverable by a reference to the New Jersey Statutes.

Rev 757, sec

The act of 1866, *P. L., 826, Revision of N. J., 757, Section 26*, provides that "*When any person shall desire to have the same* [a foreign will] *recorded in this State for the purpose of making a title to lands,*" the recording of an exemplified copy of such foreign will by the surrogate "*shall have the same force and effect in respect to all lands and real estate therein devised as if the same had been admitted to probate in this State.*" The exemplified copy of this will having been recorded on July 5, 1881, the latter is controlled by the said act, and we have then the fact that Catharine C. O'Reilly, one of the executors named in the will, wishing to have the same recorded for the purpose of making title to lands, complied with the statutory requisites, and the effect by the express terms of the act is that the will so recorded shall have the same force as if originally admitted to probate in the State of New Jersey.

It remains simply that we inquire as to the effect of a will admitted to probate at the instance of one of a number of executors in the State of New Jersey. This is indicated by *R. S., 350, Section 19, Revision of N. J., 397, Pl. 10*, which

provides that where lands are directed by will to be sold by the executors and one or more of them shall refuse or neglect to prove the will, "*it shall be lawful for such acting or surviving executor or executors to sell or convey the said lands * * * in the same manner to all intents and purposes as if all had been living and joined in such sale.*" The effect of the former act is to make a foreign will provable by the filing and recording of an exemplified copy, and the effect of the latter act is to vest in the executor who proves the will as contradistinguished from the executor or executors who refuse to prove it, the testamentary power to sell. As Catharine C. O'Reilly herself proved the said will in New Jersey, it results that she alone became invested with the power of sale.

Fourth. The power to sell having been thus vested in Catharine C. O'Reilly, it is requisite in order to enable the appellee to succeed, that he show some authority in Gardner mediately or immediately derived from Mrs O'Reilly to execute the writing of October 29, 1881.

The argument offered in support of the first proposition is equally applicable to the proposition now under consideration. It is not sufficient that the plaintiff show Gardner to have possessed authority to *sell.* He must be shown to have had the power *to execute a writing.* A writing is an imperative prerequisite to the appellee's recovery, as without it the Statute of Frauds and Perjuries is unsatisfied, and it must be a writing of Catharine C. O'Reilly, executed by a competently authorized agent. Now there is not a trace of evidence showing or tending to show an authorization by Mrs. O'Reilly. She never spoke to, saw, communicated with, nor did she know of

Gardner excepting as a real-estate broker, nor did she know that he or any one else excepting her son James was assuming to act in the sale of lands. An agency for the execution of a writing cannot grow out of such conditions. As to her son James there is no testimony showing or tending to show that she authorized him to make written contracts for her, and if the fact of such authorization were to be shown, yet he, James, could not without special authority, delegate his power to Gardner as a sub-agent, and there is an absolute absence of any testimony showing or tending to show such authorization. It is not amiss at this point to reiterate that mere authority to sell at a fixed price constitutes him who has it a broker simply to whose function the power to execute writings is not incident, as he can perform his duties without such power, as has frequently been decided by the Courts in New Jersey. (See cases cited under first proposition.) In fact the testimony evinces a system by which Gardner undertook to sell at prices fixed by James, leaving Mrs. O'Reilly to ratify or refuse to ratify each transaction when the deed was submitted to her for execution. She was thus not brought into contractual relations with a purchaser until she executed a deed to him. This was a safe and a reasonable method, and one which her husband had adopted and acted upon to the time of his death, and one which intending purchasers could easily inform themselves of by inquiry.

Should it be doubtful as to whether the power of sale in this case vested solely in Mrs. O'Reilly, then it is submitted that the said power must have resided either in,

(1) Catharine C. O'Reilly, executrix,
(2) In all the executors, or
(3) In all the devisees.

As to Catharine C. O'Reilly, executrix, it has been shown that there is no testimony from which an authorization of Gardner to sign an agreement could be found.

As to the executors, there is no testimony showing or tending to show that any one of them authorized Gardner to sign the writing. James was the only one of them who came in contact with Gardner, and even should it be shown that he, James, authorized Gardner to sign the paper, yet he, being but one of the three executors, could not bind the rest. One could not have authorized him to do so. What was said by Chancellor Kent in the case of *Berger vs. Duff, 4 Johnson's Chancery, 367*, is precisely applicable:

"The power given to them by will was a personal trust and confidence to be exercised by them jointly according to their best judgment, under the circumstances contemplated by law. One executor, in this case, cannot commit his judgment and discretion to the other, any more than to a stranger."

"At common law," said Mr. Chief-Justice Hornblower, "if one or more executors refused to sell, the others could not."

Corliss vs. Little, 14 New Jersey Law, 383.

Unless, therefore, some statute changing the common law be shown, all the executors must have joined either in executing an agreement to sell or in giving Gardner authority to execute such agreement, and an attempt, if such there had been, by Catharine C. O'Reilly and Francis P. to vest in James a power to fix prices and make written agreements with terms would be ineffectual. The statute cited under the third proposition, which vests the testamentary power in the executor who proves the will, does, it is submitted, change the common law, but under it the power vested in Catharine C. O'Reilly solely, which, as there was no authority given by Mrs. O'Reilly to Gardner to execute written agreements, is, as has been demonstrated, fatal to the appellee's case.

Treating the power of sale as in the five devisees as co-owners, it need not be argued that one tenant in common cannot authorize an agent to execute an agreement to bind all the owners, it being constantly remembered that there is no

testimony showing or tending to show that James, the only one of the devisees who came in contact with Gardner, undertook to authorize the signing of a written agreement.

It is thus manifest that the appellee has failed to show any authority vested in Gardner by the person or persons possessing the power of sale to sign the writing in question, which writing consequently does not fulfill the requirements of the Statute of Frauds.

As there is no testimony showing or tending to show that the executors or any of them knew of Gardner's having undertaken to execute a written contract, the question of ratification does not arise. Manifestly, that which a man knows nothing of he cannot ratify.

Fifth. The receipt by the Estate of Patrick O'Reilly of part of the purchase-money, if such be the case, does not put the matter beyond the operation of the Statute of Frauds and Perjuries.

This principle is clear upon reason and established by authority. The mischief which the Statute of Frauds and Perjuries was intended to remove was the setting up and sustaining by perjury of oral contracts for the sale of lands. A man coveting his neighbor's house might, by suborning a number of witnesses to testify to a fictitious contract of sale, convince a jury and obtain the land. The requirement of the statute that such contracts be in writing was admirably fitted for the removal of the mischief. If, however, the payment of money were to except a case from the operation of the statute, the perjured evidence of an oral contract could readily be extended and made to embrace a payment of part of the purchase-money, and so the Statute would cease to afford protection. It is for this reason that the courts have

adjudged that the part performance which shall toll the Statute must be not only payment of the purchase-money, but the taking of possession under the oral contract and the making of valuable improvements.

In the case of *Humphreys vs. Green, 10 L. R. Queen's Bench Division, 148*, Judge Brett declares as follows:

"It seems to me that according to all the cases in equity, payment of part or even of the whole of the purchase-money, if that be all, is not sufficient to exclude the operation of the Statute of Frauds, and if payment of the purchase-money, even of the whole, be the only act relied on, it seems to me that no evidence can be given to explain that act, which shall make it a sufficient one to take the case out of the 4th section of the Statute of Frauds."

In the case of *Cole vs. Potts, 10 N. J. Eq., 69*, Mr. Chancellor Williamson said: "Payment of the purchase-money or a part of it, is not such part performance as will take the case out of the statute."

In the case of *Miller vs. Zufall, 113 Pa. St., 323*, Mr. Chief-Justice Mercur, in delivering the opinion of the Court, said:

"It is well settled, to take the case of a parol sale of land out of the Statute of Frauds, the vendee must also take actual, open, notorious, exclusive, and continuous possession of the premises in pursuance of the contract, and when the whole purchase-money has not been paid, he must have made such improvements thereon as cannot reasonably be compensated in damages."

It is thus obvious that the payment of part of the purchase-money by the appellee to Gardner, even if it were clear, as it is not, that such money came into the hands of Patrick O'Reilly's estate, would be of no consequence by way of tolling the Statute of Frauds and Perjuries.

The five foregoing propositions are designed to demonstrate that no authority to sign writings was intended or attempted to be given to Gardner. If it should be believed that such

authority was intended or attempted to be given, then we submit, that,

Sixth. The executors could not, either jointly or severally, orally or in writing, have legally authorized the signing of the writing dated October 29, 1881.

By the contract in question the O'Reilly estate is bound to deliver "*a good and lawful deed for said premises free from encumbrances and opposing or contesting claims of title with undisputed possession.*" Such deed, moreover, was not to be tendered to the appellee unexpectedly, but after sixty days' notice. In effect, it is a contract, not for the sale of the estate of which Patrick O'Reilly died seized, but for the sale of all opposing or contesting claims of title or possession. It is an agreement to acquire by purchase or abate by litigation all other claims of title or possession, and to give the appellee sixty days' notice of accomplishment when he may or may not, at his pleasure, take the land.

Now, the power of the executors with respect to the real estate is conferred by the following clause in the will:

"I give to my executors hereinafter named, or the survivor of them, full power and authority to sell and dispose of any or all my property and estate, real and personal, at public or private sale at such times and such prices as they may deem best, and to execute a deed or deeds for such real estate or any part thereof to the purchaser or purchasers, their or any of their heirs or assigns in fee-simple."

The executors are thus authorized to sell all the testator's "property and estate, real and personal." This power vested in the executors such estate and title as the testator had. As a matter of course, it could vest no more, and to the execution of this power to sell a warranty of title was not essential. A

warranty of the title or a covenant to convey free from opposing or contesting titles is, as has been said, in effect an agreement to purchase such opposing titles, and to convey them to the vendee, or by litigation, and at the expense of the estate, to demonstrate their worthlessness.

In sales by executors of the personal property of the deceased, there is no implied warranty of the title: *2 Schouler on Personal Property, 381;* and an express warranty of the deceased's title binds the executors personally, but not the estate: *Ramsey vs. Blalock, 34 Ga., 376; Lynch vs. Baxter, 4 Johnson, 431; Kelso vs. Vance, 88 Tenn., 334.*

In the case of *Nixon vs. Hyserott, 5 Johnson, 58,* the Court said:

"A conveyance or assurance is good and perfect without either warranty or personal covenants; and, therefore, they are not necessarily implied in an authority to convey; an authority is to be strictly pursued, and an act varying in substance from it is void."

The principle was thus stated by the Court of Appeals of the State of New York:

"The rule must be regarded as well settled, that the contracts of executors, although made in the interest and for the benefit of the estate they represent, if made upon a new and independent consideration, as for services rendered, goods or property sold and delivered, or other consideration moving between the promissee and the executors as promissors, are the personal contracts of the executors, and do not bind the estate, notwithstanding the services rendered or goods or property furnished, or other consideration moving from the promissee, are such that the executors could properly have paid for the same from the estate, and been allowed for the expenditure in the settlement of their accounts. The principle is, that executors may disburse and use the funds of the estate for purposes authorized by law, but may not bind the estate by an executory contract, and thus create a liability not founded upon a contract or obligation of the testator": *Austin vs. Munro, 47 N. Y., 366.*

So, in Pennsylvania, Mr. Chief-Justice Gibson said:

"In actions against the personal representative on his own contracts and engagements, though made for the benefit of the estate, the judgment is *de bonis propriis;* and he has, by every principle of legal analogy, to answer it with his person and estate."

Fritz vs. Thomas, 1 Whar., 71.

So, in New Jersey, Mr. Chancellor Zabriskie said of a deed executed under a power to sell and convey:

"The deed to Shipman contained full covenants of warranty, but it was not signed by Van Winkle in person, and the power of attorney under which Gitt executed it only authorized him to sell and convey, and contained no authority to covenant. The covenants, therefore, did not bind Van Winkle: *Nixon vs. Hyserott, 5 Johns, 58; Gibson vs. Colt, 7 ibid., 390.* This deed must, as against Van Winkle, be considered as a deed of bargain and sale, without covenants."

Howe vs. Harrington, 18 N. J. Eq., 496.

The agreement in question, therefore, being for the conveyance, not only of the defendant's title, but all opposing and contesting titles, is one which the executors themselves could not, either jointly or severally, orally or in writing, have made, and which, as a consequence, they had not the power to authorize Gardner to make.

One of two consequences must result, viz.:

1. Either the writing is totally void for the reasons stated in *Morris vs. Ruddy, 20 N. J. Eq., 239,* that "the defendant is bound by the written contract to a different bargain from the one he authorized," or,

2. The peccant part of the agreement must be exscinded and the contract treated as one to convey without warranty within a reasonable time upon the payment of the purchase-money, upon the principle indicated in *Howe vs. Harrington, 18 N. J. Eq., 496.* If the first consequence supervenes, the entire contract is null and there is an end of the appellee's

case. Otherwise, the effect of the second consequence will be considered under the next proposition.

The argument thus far has been addressed to showing that the executors of Patrick O'Reilly did not authorize the making of the said writing, or, if they did so, they acted *ultra vires*, and in either event there is no contract. Should it be adjudged that there was a contract, then we submit:

Seventh. The case is not one which will warrant a Chancellor in decreeing specific performance of the pretended contract.

1. Because the appellee does not come with clean hands.

The appellee, through the agency of his son, having a contract for the sale of one lot with Patrick O'Reilly, which contract contained no clause of warranty, and had, moreover, expired by its own terms, procured the executor's agent to sign a writing for the sale of other lots, which the appellee's son, being a lawyer, had himself drawn up, and which he made to embrace the lot previously purchased, adding covenants for title extreme and unusual in their strictness. He knew or was bound to know, because the law imposed upon him the obligation of inquiring, the extent of the agent's authority, and that he was inducing the agent to exceed the limits of his authority. It is easily seen that Mr. Gardner was guilty of no intentional wrong. He incautiously signed a paper which had been carefully prepared by a Philadelphia lawyer, but yet his signing the same was, in effect, a violation of his trust, and if its procurement by the appellee's son and agent was not fraudulent, surely the appellee's insistence upon its performance is fraudulent or inequitable.

We have thus a case in which the appellee asks for the specific performance of a contract, the procurement of which

involved a breach of trust, and the enforcement of which would be a fraud, an agreement from which a number of important provisions must be eliminated in order to give it even the semblance of respectability.

"To entitle a party to relief (in cases of specific performance) he must come with clean hands, and a case that appeals to equity for relief."

Tamm vs. Lavalle, 92 Ills., 270.

2. *Because the plaintiff has not done equity.*

If Gardner had been clothed with all the authority of the execu

The agreement in question must be cut down to the limits of the ~~such~~ authority. Its offending parts being exscinded, there is left a simple contract for the sale and conveyance, within a reasonable time, of the estate, good or bad, in the lands in question whereof Patrick O'Reilly died seized. The appellee knew that he was dealing with an agent, and is charged with a knowledge of the extent of the agent's authority. "The purchaser must ascertain, at his own peril, the power of the agent": *National Armor Company vs. Bruner, 19 N. J. Eq., 335.*

We have, then, a contract under which the appellee was, within a reasonable time, to pay the purchase-money and receive the title of which Patrick O'Reilly died seized. There is no testimony showing or tending to show an offer or willingness by the appellee to perform his part of the contract. On the contrary, there is an abundance of testimony submitted by the appellee himself making it clear beyond a doubt, that the appellee, during a long period of upwards of ten years, constantly insisted upon having a title freed by litigation, carried on at the O'Reillys' expense, from opposing and contesting claims and undisputed possession. That is, so far was he from being willing to carry out the contract between the parties as to have insisted upon another contract of whose invalidity, and consequent non-existence, he must be presumed

to have known. The appellee has thus been guilty of laches of the worst kind.

"It is incumbent on a party who seeks specific performance of a contract to show that he has performed or been ready and willing to perform all the essential terms of the contract on his part."

Thorp vs. Pettitt, 16 N. J. Eq., 491.

3. Because of laches of the appellee.

The appellee delayed the filing of his bill for upwards of ten years from the time when he might first have insisted upon the performance of the contract. No adequate excuse is offered for this. If it be said that the title of the O'Reillys was in dispute, and that the delay was the consequence of their inability to convey an uncontested title, the answer is simply, that the O'Reillys were not bound to convey an uncontested title; they were simply bound to give such title as Patrick O'Reilly died seized of. The appellee should, therefore, have promptly tendered the purchase-money and demanded such title, and, being refused, should then have filed his bill. Thus the litigation would have been ended ten years ago, and the Court would not now be asked to compel the appellants to convey property which their industry and expenditures have made worth $100,000 for $10,000 to one who has lain idly by and slept upon his rights.

"Specific performance is relief which the Court will not give unless in cases where the party seeking it comes promptly or as soon as the nature of the case will permit."

Young vs. Young, 45 N. J. Eq., 39.

In the case last cited a delay of nine years was held to disentitle the plaintiff to relief. In the case of *Haughwout vs. Murphy, 21 N. J. Eq., 118*, there was a delay of two years and a half. In *Merritt vs. Brown, ibid., 401*, even a less period was held fatal to the plaintiff, while in the case of

Mix vs. Balduc, 78 Ills., 215, a delay of but five months was adjudged too great.

4. Because of a change of circumstances.

In the thirteen years that have elapsed since the making of the contract in question, Mary A. O'Reilly, one of the *cestuis que trust*, has died, and Catharine C. O'Reilly, acting executrix and life-tenant, has died. The property by sundry conveyances and agreements has passed into other hands, and the value of the property has increased tenfold. In addition to this, the O'Reilly estate has expended for taxes, improvements, and litigation, many thousands of dollars.

What was said by the Court of Appeals of New York in the case of *Peters vs. Delaplaine, 49 N. Y., 366*, is precisely applicable here:

"The property has greatly changed in value if not in condition, and the title has, by divers conveyances and devises, passed into other hands, and the estates and interests of the owners are complicated so that specific performance cannot be awarded without great danger of doing injustice. In other words, the situation of the parties and the conditions and value of the property have so greatly changed during the time that elapsed between the making of the contract and the bringing of the action, that it is not a case for a specific performance within the rules governing courts of equity in administering this branch of their jurisdiction."

The case of *Fitzpatrick vs. Dorland, 27 Hun., 291*, is in all essential particulars like the one under consideration. A, who owned certain land, agreed to convey for a fixed sum to B, but there being a claim on the land made by C, it was agreed to await the determination of a suit by him, and if it was in A's favor he was to carry out the contract already fixed. This litigation lasted fifteen years, and it was settled in A's favor. The land in the meantime had largely appre-

ciated in value. It was held that it would be inequitable to decree specific performance.

The difficulty arising from a change of circumstances cannot be overcome by a molding of the decree. The adapting of a decree to the new conditions would be the making of a new contract for the parties.

"No court has power to make a contract for persons *sui juris*, nor compel them to agree with each other."

Domestic Telegraph, &c., Co. vs. Metropolitan Telephone Co., 39 N. J. Eq., 160.

5. Because specific performance would not be strictly equitable.

"In cases of specific performance courts of equity will not interfere to decree performance except where it would be strictly equitable to make such a decree. An agreement to be entitled to be carried into specific performance ought to be certain, fair, and just in all parts. A defendant may resist a decree on evidence when evidence of a like character would be insufficient to establish the case of the plaintiff."

Backus' App., 58 Pa., 195.

It is submitted that in this case it would not be strictly equitable to oblige the executors to convey lands under a written contract which none of them authorized the making of, and which none of them ever saw or heard of until more than ten years after its execution.

It would not be strictly equitable to compel the Estate of Patrick O'Reilly to part with lands worth $100,000 for $10,000 or for $12,500 under a contract which it is alleged bound them, but manifestly did not bind the appellee, and which for more than ten years, owing to the appellee's inaction, remained without mutuality.

It would not be strictly equitable to compel the O'Reilly estate to take $10,000 or $12,500 for lands which have cost them more than that in taxes, grading, and litigation against adverse claimants.

It would not be strictly equitable to give lands to a plaintiff who for ten years has omitted to perform or to tender performance of his duties under the contract.

It would not be strictly equitable to enforce a contract which, in a number of its particulars, is fraudulent, against the Estate of Patrick O'Reilly, and which requires expurgation to make it ordinarily honest or fair.

It would not be strictly equitable to take from John F. and Anthony J. O'Reilly, who were not executors and had no control whatever over the decedent's real estate, their interests in valuable lands at ten per centum of their actual value under a writing not proved to have been seen or heard of by the executors until ten years after its execution.

For these and for many other reasons a specific performance of the contract in question would not be equitable.

It is submitted that upon a balancing of the equities of the appellee and the appellants, those of the latter far outweigh those of the former, if indeed the appellee may be said to have any at all, and that upon the entire case the appellee's bill should be dismissed with costs either unconditionally or upon the restoration to the appellee of the $525 alleged to have been paid by him, adding interest to the same if the Court shall regard it equitable.

CYRUS G. DERR,
Solicitor of Appellants.

D. J. PANCOAST,
Of Counsel.

New Jersey Court of Errors and Appeals.

FRANCIS P. O'REILLY and JAMES A. O'REILLY, Executors and Devisees of Patrick O'Reilly, deceased, and JOHN F. O'REILLY and ANTHONY J. O'REILLY, Devisees of said Patrick O'Reilly, Appellants,

vs.

JACOB KEIM, Appellee.

APPEAL FROM THE COURT OF CHANCERY.

SUPPLEMENTAL BRIEF ON BEHALF OF APPELLANTS.

First. The testimony submitted by the appellee clearly shows, and the appellants admit, that Gardner was, with respect to the O'Reilly land in Atlantic City, primarily a broker with the power to sell in the sense in which brokers are said to sell, that is with the power to find a purchaser.

The method which P. O'Reilly and Gardner adopted with reswect to the sale of lots was as follows:

O'Reilly gave Gardner the prices which he demanded for the various lots: after Gardner had found a purchaser, he would draw the deed and send it to O'Reilly, who would return it ex-

ecuted. Gardner would deliver it, receive the purchase-money, and remit to O'Reilly less his commission and then complete the transaction. (Paper-book, page 302.)

That this method standing alone would indicate a mere brokerage under which Gardner secured purchasers and O'Reilly was bound only when he had signed and delivered the deed, will clearly appear from a perusal of the authorities under the first legal proposition, pages 13 to 20 inclusive, of Appellants' Brief, to which this is a Supplement, notable among which authorities for clearness is the case of *Duffy vs. Hobson, 40 California, 240.*

We thus begin with Gardner as a broker authorized to secure purchasers but not authorized to execute agreements. The question, therefore, is as to whether it can be found from the testimony that Gardner's powers were at any time amplified so as to exalt him from the position of a broker to that of an agent empowered to sign contracts. It is admitted on both sides that

(1.) No written evidence has been produced of such authority in Gardner.

(2.) No direct oral evidence has been produced showing such authority.

The learned Vice-Chancellor conceding the absence of direct testimony written or oral, has inferred Gardner's authority from circumstances.

Second. In order to warrant the finding of Gardner's authority to sign contracts from circumstances, the circumstances must not only be consistent with the existence of the authority but they must be inconsistent with its non-existence.

"It is essential *that the circumstances should, to a moral certainty, actually exclude every hypothesis but the one proposed to be proved.*" Starkie on Evidence, Star page 862.

If oral authority be sufficient under the statute of frauds to empower an agent to execute a writing, such authority should be clearly shown, and if it is to be established by circumstantial evidence, the circumstances must be inconsistent with any other theory. The fact cannot be established by or found from circumstances which are equally consistent with the non-existence and with the existence of the fact.

Third. All the circumstances used by the learned Vice-Chancellor as the basis for his inference that Gardner possessed authority to sign the receipt of March 25, 1880, are equally consistent with his being but a broker and not invested with the power to sign contracts.

Here we should like, once for all, to impress upon the Court the fact that many of the circumstances assumed by the learned Vice-Chancellor as the basis for his finding of authority and ratification are either, upon the face of the testimony, manifestly incorrect, or are without any testimony whatever to support them. As this argument is based upon the ground that if ALL the learned Vice-Chancellor's circumstances be correct, yet they do not warrant the conclusions which he has drawn from them, we will not involve our reasoning by an assailment of such circumstances, but will, for the sake of the argument, admit them to be correct, though some of them, as for instance knowledge in the O'Reillys, excepting James A., of Gardner's sale to the appellee, are absolutely without any testimony to support them.

The circumstances relied upon by the learned Vice-Chancellor as to the earlier receipt are,

(1.) O'Reilly gave the authority to sell to no other broker beside Gardner. (Paper-book, page 656.)

(2.) Gardner had sole care of the lands, collected rents, made repairs, paid taxes, &c. (Paper-book, page 656.)

(3.) Gardner received down-money and gave receipts for it; but the receiving of such money and the giving of such receipts was never brought to O'Reilly's knowledge. In all other cases, excepting the one in question, the business was promptly closed by the delivery of a deed. (Paper-book, p. 656.)

(4.) No sale made by Gardner was ever repudiated by P. O'Reilly; on the contrary, upon one occasion, O'Reilly refused a higher offer after Gardner had closed the sale. (Paper-book, p. 656.)

From these circumstances the learned Vice-Chancellor has found that Patrick O'Reilly authorized the signing of a contract for the sale of the land described in the receipt of March 25, 1880. The insufficiency of the said circumstances as a basis for such finding will appear from the following considerations:

(1.)

The employment of but one broker for sales is of no significance, as manifestly it does not tend to prove the broker more than a broker.

(2.)

Gardner's having charge of the lands does not in the slightest degree conduce to prove power to sign an agreement: such power is not necessary or usually incident to the having charge of lands.

(3.)

Gardner's receiving down-money and giving receipts therefor without O'Reilly's knowledge does not tend to prove authority to sign agreements.

(4.)

The fact that O'Reilly never repudiated a sale by Gardner does not tend to show that he *could not have repudiated had he chosen.*

It is thus manifest that all the circumstances relied upon by the learned Vice-Chancellor are consistent with a brokerage, and taken jointly or separately do not tend to establish an authority to make a binding contract to sell.

Fourth. All the circumstances used by the learned Vice-Chancellor as the basis for his inference that Gardner possessed authority to sign the receipt of October 29, 1881, are equally consistent with his being but a broker and not invested with the power to sign contracts.

After the signing of the earlier receipt and before the signing of the later one, P. O'Reilly died, and after his death, matters were continued as before, James A. O'Reilly furnishing prices at which sales were made by Gardner, and the parties in interest standing as follows:

(1.) Catharine C. O'Reilly, sole executrix in New Jersey.

(2.) Catharine C., Francis P., and James A. O'Reilly, executors in Pennsylvania.

(3.) Catharine C., Francis P., James A., John F., Anthony J., and Mary O'Reilly, devisees under the will of P. O'Reilly, Mary, having died testate, being represented by Catharine C., her devisee.

The question is, Had Gardner authority from these, or any of them, to sign the paper dated October 29, 1881?

All the circumstances relied upon by the learned Vice-Chancellor are consistent with the theory that Gardner was but a broker.

The circumstances are as follows:

(1.) The prices were furnished by James A. O'Reilly, and the Vice-Chancellor infers, without testimony, that it was with the consent of his co-executors. (Paper-book, p. 665, line 27.)

(2.) Gardner believed he had authority. (Paper-book, p. 665, line 40.)

(3.) In conversation between Gardner and James A. O'Reilly, in April, 1892, James did not dispute Gardner's authority to make binding contracts. (Paper-book, p. 666, line 27.)

(The testimony of Gardner shows that James *did* dispute Gardner's authority. James began the conversation by saying that he was not aware that contracts had been signed and that if the lots had been sold the matter should have been terminated, that is, should have been promptly closed, as in other cases.)

(4.) Gardner testified in one of the ejectment suits that he was O'Reilly's agent to sell property. (Paper-book, p. 666, line 40.)

(5.) When Herring had agreed upon price for one lot with James A., the latter referred him to Gardner. (Paper-book, p. 676, line 23.)

From these circumstances the learned Vice-Chancellor has found that Catharine C., Francis P., and James A., executors, authorized Gardner to sign the paper dated October 29, 1881. The insufficiency of the said circumstances as a basis for such finding will appear from the following considerations:

(1.)

The furnishing of prices by James is of no more importance than was the furnishing of prices by his father, Patrick O'Reilly, and such furnishing of prices is an incident to every sale by a broker.

(2.)

Gardner's belief that he had authority is nothing, unless based upon facts which will logically induce such belief by the Court.

(3.)

The conversation in which James A. said he was not aware of the signing of contracts and declared that if the property had been sold the matter should have been closed promptly, by

which, presumably, he meant as in previous cases, instead of tending to establish authority in Gardner, leads to a contrary conclusion.

(4.)

Gardner's testimony in the ejectment case, that he was the O'Reillys' agent to sell property, is nothing in this case, and, besides, it was simply declaring that he was a broker, because a broker is, in common parlance and in contemplation of law, an agent to sell.

(5.)

The sending of Herring to Gardner after the price for a lot had been fixed by James A., indicates no more than a reluctance to deprive Gardner, who had been the O'Reillys' broker for many years, of his commissions.

It is thus manifest that all the circumstances relied upon by the learned Vice-Chancellor for his inference of authority in Gardner to sign the later receipt, are consistent with a brokerage and do not, taken separately or together, tend to establish an authority to make a binding contract to sell.

Fifth. All the circumstances used by the learned Vice-Chancellor as a basis for his inference that the O'Reillys knew of Gardner's having undertaken to bind them by the execution of a written contract and ratified his act, are equally consistent with the O'Reillys supposing that Gardner was acting as a mere broker; that the sale which he had made with the appellee was a sale in the sense only in which a broker has power and is said to sell, and that they would not be bound unless, according to the custom, they had signed and delivered the deed.

The circumstances upon which the learned Vice-Chancellor based his finding of knowledge and ratification are:

(1.) In the natural course of business Gardner must have given Keim a receipt for the $525 down-money. (Paper-book, p. 690, line 26.)

(2.) This receipt would in the same course of business be made to indicate on what account it was, and thus a binding contract would exist. (Paper-book, p. 690, line 29.)

(3.) Gardner testified that in some way or other he accounted to the O'Reillys for the down-money. (Paper-book, p. 679, line 21.)

(4.) The O'Reillys brought suits in ejectment for the vindication of their title to the property. (Paper-book, p. 681, line 4.)

(5.) Keim told Mr. Voorhees, one of the O'Reillys' counsel, that he, Keim, had purchased property, to which Voorhees replied that he had been told so. (Paper-book, p. 681, line 32.)

(6.) When Keim urged that the litigation be speeded, James A. did not tell him he had no interest in the matter, or otherwise repudiate the sale made by Gardner. (Paper-book, p. 681, line 37.)

(7.) On September 24, 1886, James A. wrote to Keim's son, who was acting for his father, that he, James, could find no fault with Keim if he threw up the sale. (Paper-book, p. 685, line 10.)

(8.) On September 27, 1886, Keim's son replied to James A. that they, the Keims, never contemplated throwing up the purchase of the land in question: that "its contiguity to other land belonging to father makes this tract of special importance and value to him." (Paper-book, p. 685, line 26.)

(9.) On November 14, 1890, Keim, through his son, by letter, offered to pay $200 towards the employment of additional counsel by the O'Reillys, declaring, however, *that he was under no obligations to do so.* (Paper-book, p. 687, line 13.)

On April 1, 1892, Keim, through his son, offered himself to employ counsel to assist the O'Reillys' counsel. (Paper-book, p. 688, line 20.)

Neither of these offers was accepted by the O'Reillys.

These circumstances, taken either together or separately, do not warrant the finding of a ratification by the O'Reillys.

(1.) There can be no ratification without full knowledge of the thing to be ratified.

(2.) What the O'Reillys knew was that the lots had been sold, that is, sold in accordance with the custom.

(3.) The practice was, as has already been indicated, that Gardner should find a purchaser at prices given him and the O'Reillys became bound only upon the execution and delivery of deeds. When, under this method, Gardner found a purchaser and told him, in effect, "You can have the property at this price," it was a sale, but only such as a broker has power to make; it was a *quasi* sale, binding upon neither party until consummated by the delivery of a deed.

When James A. O'Reilly, therefore, admitted that a sale had been made to Keim, it was such a *quasi* sale that he had in his mind.

All the circumstances relied upon by the learned Vice-Chancellor are consistent with this theory.

(1.) (2.)

As to the giving of a receipt by Gardner:

If, from the natural course of business, it was to be inferred by the O'Reillys that Gardner had given a receipt, the inference would be of *a receipt in accordance with the practice of the parties and the limitations of Gardner's authority.*

Such receipt would be, in effect: "*Received $525 on account of purchase-money, to be returned if sale is not consummated by the delivery of a deed.*"

The Chancellor's conclusion that such receipt "would at once be a binding contract" is plainly unwarranted.

(3.)

As to the receipt of the down-money by Gardner and the accounting for it to the O'Reillys:

Admitting that the down-money was accounted for to the O'Reillys, which is doubtful under the testimony, the receipt of such money was consistent with a *quasi* sale. The money could be restored, and, as a matter of law, the mere reception of purchase-money does not toll the Statute of Frauds.

(4.)

As to the bringing of suits in ejectment by the O'Reillys:

It was the duty of Mrs. O'Reilly, the plaintiff in the actions of rejectment, to vindicate the title of her testator. Her own interests and the interests of those whom she represented, without reference to any contract of sale, required such vindication, and the fact of her initiating actions of ejectment for that purpose is consistent with a *quasi* sale as aforesaid as such, and does not, therefore, tend to prove knowledge and ratification of a written contract for sale.

(5.) (6.)

As to the recognition of Keim by James A., and his attorney, Mr. Voorhees:

As a purchaser under a *quasi* sale, which might, by the subsequent concurrence of both parties, ripen into an actual sale, Keim was entitled to the recognition which he received.

James A. might at any time have said, "We have determined not to give you the property," or Keim might at any time have said, "I will not take it," but until the bargain was declared off by one party or the other Keim was a *quasi* purchaser, and the recognition of him by O'Reilly signified no more than this.

(7.) (8.)

As to James A.'s writing to Keim's son that he could not find fault with his father if he threw up the sale, and the son's reply that they did not contemplate throwing up the sale:

These circumstances are precisely consistent with the theory of a *quasi* sale. James A.'s letter declared the very right which Keim had under such sale to recede from it and such right was

reciprocal, while the reply that Keim did not contemplate throwing up the sale is not inconsistent with James A. believing that whether Keim threw it up or not, they, the O'Reillys, had the right ultimately to refuse to consummate the matter by the execution and delivery of a deed.

(9.)

As to Keim's offer to contribute to the payment of counsel-fees and to employ counsel to assist in the litigation :

Keim distinctly stated that he was under no obligation to contribute to the expense, which is consistent with a *quasi* sale, and though Keim may have made these offers upon the theory of his having a binding contract, the refusal of the offers by O'Reilly is more than consistent with the theory of a *quasi* sale, which O'Reilly was not willing should become a binding one by the acceptance of a benefit.

Thus it appears that all the circumstances upon which the learned Vice-Chancellor has relied for the finding of a ratification are consistent,

(1.) With the existence of but a *quasi* or brokers' sale :

(2.) With an absence of knowledge in the O'Reillys that Gardner had undertaken to make a binding contract.

Sixth. All the circumstances being consistent with the theory that the O'Reillys were ignorant of the existence of the pretended written contracts and of the extent of Keim's claim under them, and that they supposed the sale which Gardner had made was as a broker and therefore but a *quasi* sale, if Keim honestly believed that he had a binding contract with the O'Reillys, a chronological statement of

the circumstances will show that Keim was solely to blame for the misunderstanding.

(1.) Keim secured the signing of the receipt of March 25, 1880, without having inquired as to the extent of Gardner's authority from P. O'Reilly.

(2.) At the time of the execution of this receipt, other parties were already in possession of the property in question and disputing O'Reillys' title (paper-book, pp. 689, 690).

(3.) After P. O'Reilly's death, Keim's son, who was a Philadelphia lawyer, drew up the receipt of October 29, 1881, inserting in it a stipulation for a conveyance free from "opposing or contesting claims of title, with undisputed possession of the same," and also a stipulation that the grantee was "to have 60 days' notice" before the tender of a deed for such title.

In order to strengthen Keim's position, the description in this second receipt was made to embrace the property designated in the first receipt, thus bringing both properties under the extraordinary stipulation for warranty.

This second receipt Keim's son procured Gardner to sign without any inquiry as to his authority to do so.

Keim then took both papers into his possession, no copy being retained by or furnished to Gardner, and neither Patrick O'Reilly, as to the first paper, nor his executors or devisees, as to both papers, were ever informed of their contents or existence.

(4.) In point of fact, Keim may have believed that he had a binding contract, but in contemplation of law he was charged with a knowledge

(*a.*) of the extent of Gardner's authority and that he had no authority to make a binding contract;

(*b.*) that the executors of P. O'Reilly could sell only their testator's interest in the lands, and were thus without power to stipulate for the conveyance or legal destruction of all opposing titles.

(*c.*) That unless he, Keim, explicitly informed all the parties interested in the O'Reilly estate of the contents of the paper, there would be no basis for a ratification by subsequent acts.

(5.) The O'Reillys, uninformed of the papers and their contents, acted upon the belief that the sale made by Gardner was but a *quasi* sale, such as under their practice he had for years been making.

(6.) Which of these parties should have spoken?

O'Reilly had no occasion to speak, for he was not informed of the extent of Keim's claim.

If O'Reilly *had* spoken, he could not have informed Keim of anything beyond what he already knew, or was bound to know, namely, the extent of Gardner's authority and the legal inability of the O'Reilly executors either to authorize or to ratify the making of such contract.

On the other hand, Keim could have informed O'Reilly of facts unknown to him, namely, the existence and contents of the papers which Gardner had been got to sign and which Keim carefully kept in his custody.

(7.) It was not until November or December, 1891, more than ten years after their execution, that James A. O'Reilly learned of the existence of the writings and of the extent of Keim's claim under them.

He then learned for the first time that under Keim's theory the expensive and prolonged litigation, costing thousands of dollars, was being carried on for Keim's benefit, in order that the property, enhanced in value tenfold, might be turned over to Keim free from all contesting claims with undisputed possession.

It was not only the right of Mr. O'Reilly, but his duty, to have promptly repudiated the writings, *and he did so.*

(8.) Finally, it cannot be believed but that if the paper of October 29, 1881, with its insolent stipulations as to the title and notice of tender of deed, had been submitted to the O'Reillys for signature, they would, one and all, have repudiated it.

It cannot be believed but that with adverse claimants in possession of every parcel of the lands and with a certainty of long and expensive litigation they would have rejected the tender of such contract with scorn.

As Keim kept the papers in his possession, and as the O'Reillys had no notice of their contents, the right to reject continued until the O'Reillys received knowledge, and such right was in this case promptly and properly exercised.

The positions thus established are:

(1.) There was no authority given by Patrick O'Reilly to Gardner to bind him contractually by the signing of the receipt of March 25, 1880.

(2.) There was no authority given by Patrick O'Reilly's representative or representatives to bind his estate contractually by the signing of the receipt of October 29, 1881.

(3.) There was no knowledge in Patrick O'Reilly, or his representatives, of the nature and execution of the said papers which would form the basis for a ratification.

(4.) All the acts of Patrick O'Reilly, or his representatives after his decease, as they appear from the testimony, are consistent with the sales made by Gardner to Keim being but the *quasi* sales of a broker, not binding until consummated by the delivery of a deed.

(5.) Keim was chargeable with a knowledge of the limitation of Gardner's authority and of the legal invalidity of the papers in question, regarded as contracts, and should in the beginning have disclosed the papers and their contents to the O'Reillys, which would have resulted either in the rejection of them and the return of his money or in an intelligent ratification. Not having done so, he has no equity entitling him to a conveyance of the lands in question.

CYRUS G. DERR,
Solicitor of Appellants.

D. J. PANCOAST,
Of Counsel.

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IN CHANCERY OF NEW JERSEY.

To the Honorable Alexander T. McGill, Chancellor of the State of New Jersey:

Humbly complaining, shows unto your Honor, your orator, Jacob Keim, of Atlantic City, New Jersey, that on the 25th day of March, 1880, one John J. Gardner, of Atlantic City, was the duly authorized agent of one Patrick O'Reilly, now deceased, for the sale of certain lands of said Patrick O'Reilly, situate at Atlantic City and lying between Pacific Avenue and New York Avenue and Tennessee Avenue and bounding upon the Atlantic Ocean. That your orator, being desirous of purchasing said lands, made an agreement therefor with said Patrick O'Reilly, acting through said John J. Gardner as his agent duly authorized for that purpose, which agreement was in writing and in the words and figures following:

"Atlantic City, N. J., March 25th, 1880.

"$25.00.

"Received of Jacob Keim the sum of twenty-five dol-
"lars on account of the purchase money of the lot of land
"fifty feet in width, adjoining on the rear of the land now
"owned by the said Jacob Keim, which land fronts off
"New York, in Atlantic City, aforesaid, and which strip
"to be conveyed runs the entire length of the said land of
"the said Jacob Keim. The purchase price is to be twen-
"ty-five hundred dollars. Deed to be made and delivered
"so soon as practicable, not longer from the present time
"than one month. Said land to be conveyed belongs to
"Patrick O'Reilly, for whom the undersigned is agent.

"J. J. GARDNER,

"*Agent.*"

That afterwards the said Patrick O'Reilly departed this life sometime in the month of January, as your orator is

informed, in the year 1881, having first made and published his last will and testament in writing bearing date on the 5th day of December, 1877, with a codicil thereto dated November 1st, 1880, whereof he appointed his wife, Catherine Cecelia O'Reilly, and his sons, Francis P. O'Reilly and James A. O'Reilly, the executors; which said last will was duly proved before the Register of Wills in the County of Berks, in the State of Pennsylvania, in which county the said Patrick O'Reilly resided at the time of his death, and an exemplified copy thereof was afterward proved and recorded in the office of the Surrogate of the County of Atlantic, in the State of New Jersey, in which county the lands so as aforesaid agreed to be purchased by your orator were situate, as also other lands whereof said Patrick O'Reilly was seized at the time of his death. That in and by said last will said Patrick O'Reilly devised all the lands whereof he died seized to his wife, Catherine Cecelia, for life and after her death he directed, in and by said last will, that his estate should be divided into five equal shares, one whereof he gave to his son John F. O'Reilly, another to his son Francis P. O'Reilly, another to his son James A. O'Reilly, to each of said sons absolutely, another to his son Francis P. O'Reilly in trust to pay the income arising therefrom to his son Anthony J. O'Reilly during his life in such manner that the income, interest and profit should be for the sole and separate use of his said son Anthony and in no way liable for any debts, contracts or engagements or any pledge, assignment or transfer thereof, and directed, in and by his said will, that the personal receipt of said Anthony should alone discharge said trustee from the payment of said income, which payments he directed by his will should be made semi-annually, subject, as to the one-fifth held in trust by said Francis P. for said Anthony, to a power of testamentary disposition by said Anthony of the principal, and in default of such testamentary disposition by said Anthony of his share, then said Patrick provided by his said will that the same should descend to and vest in any lawful issue that he might leave, share and share alike, and that the issue of any deceased child

living at his death should take the share of his or her deceased parent, and in default of such testamentary disposition by said Anthony or of such issue by him, or of the issue of a deceased child, then such share should descend and vest in the brothers of Anthony or the issue of any deceased brother living at his death, such issue to take the share of their deceased parents respectively. That another fifth part of said Patrick O'Reilly, by his will, devised to his son James A. in trust for his daughter Mary A. O'Reilly, and directed that the income from said one-fifth part should be paid to his said daughter during her natural life in such manner that said income, interest and profit should be for her sole and separate use and in no way liable for any debts, contracts, engagements or any pledge, assignment or transfer thereof, or for the debts, contracts or engagements of any husband which she might have or take, and that her personal receipt should alone discharge the trustee from the payment of said income and profit, with power given in and by said testamentary disposition to said Mary to dispose of said one-fifth part thereof by will, and in default of such testamentary disposition by said Mary of her share, then said Patrick provided by his said will that the same should descend to and vest in any lawful issue that she might leave, share and share alike, and that the issue of any deceased child living at her death should take the share of his or her deceased parent, and in default of such testamentary disposition by said Mary, or of such issue by her, or of the issue of a deceased child, then such share should descend to and vest in the brothers of Mary, or the issue of any deceased brother living at her death, such issue to take the share of their deceased parents respectively. Said testator also provided by said will that in case of the death of his sons, John F., Francis P. or James A. O'Reilly, or either of them, without lawful issue, then the part or share given to such child so dying should pass to his executors and the survivor of them in trust to hold for the surviving child, or children of the testator, in equal shares, and under the trust and limitations set forth and declared concerning the parts of testator's estate given for

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the use, benefit and behoof of his said children. Said testator also provided in said will that his executors should have full power and authority to sell and dispose of any and all of his property, real and personal, at public or private sale at such times and at such prices as they deem best, and execute a deed for the real estate, or any part thereof, to the purchaser in fee simple. That by the terms of said codicil above referred, said testator, Patrick O'Reilly, revoked the devise of the one-fifth part of his estate to Francis P. O'Reilly, in trust for his son, Anthony J. O'Reilly, and by said codicil gave the said full equal one-fifth part, or share of his estate, to his son Anthony J., and his heirs and assigns forever, as by reference to said will and codicil, or to a copy thereof, recorded as aforesaid in the office of the Clerk of the County of Atlantic, and to which your orator refers, will appear.

And your orator further shows that he has been informed that since the death of said Patrick O'Reilly, the said Mary A. O'Reilly has departed this life, but whether testate or intestate, with or without issue, your orator is not informed.

And your orator further shows, that after the death of the said Patrick O'Reilly, to wit, on the 29th of October, 1881, said John J. Gardner, then acting as the agent, and in behalf of the estate of said Patrick O'Reilly, duly authorized therefor, by the executors of the last will of said Patrick O'Reilly, and the devisees therein mentioned, entered into an agreement in writing with your orator for the purchase of other lands whereof said Patrick O'Reilly had died seized, situate at Atlantic City, within the bounds aforesaid, which last mentioned agreement is in the words and figures following, to wit:

"Received, Atlantic City, N. J., October 29th, 1881, of "Jacob Keim the sum of Five Hundred Dollars on ac- "count of the purchase money of a certain tract of land "situate in said city as follows: Beginning at a point in "the southeasterly line of Pacific Avenue, at a distance of "200 feet northeasterly from the northeasterly line of "New York Avenue and extending thence (1) southeast- "wardly on a line parallel with New York Avenue, a dis-

"tance of 150 feet; thence (2) southwestwardly parallel "with Pacific Avenue, a distance of 100 feet; thence (3) "southeastwardly parallel with New York Avenue, a dis- "tance of 50 feet; thence (4) southwestwardly parallel "with Pacific Avenue, a distance of 50 feet; thence (5) "southeastwardly parallel with New York Avenue, a dis- "tance of to the exterior line (now under water) "established in 18— by the Riparian Commissioners of "New Jersey; thence (6) northeastwardly along said "riparian line, a distance of 150 feet; thence (7) north- "westwardly parallel with New York Avenue, a distance "of to the southeasterly line of Pacific Ave- "nue; and thence (8) southwestwardly along said last "mentioned line, a distance of 50 feet to the place of be- "ginning. And also all the additions and accretions to "said tract of land, if any, which may hereafter be made "on the sea front: it being the purpose of this purchase "and sale to include all the land above described, and also all "the right, title and interest of the grantors and of the estate "of the late Patrick O'Reilly, deceased, in and to the accre- "tions to said land which may be made upon the sea "front. The balance of the purchase money, namely, the "sum of $9,500, to be paid upon tender of a good and "lawful deed for said premises, free from encumbrance "and opposing or contesting claims of title, with undis- "puted possession of the same, the grantee to have sixty "days' notice of such tender.

"Including all the land and rights of said estate be- "tween Pacific Avenue and riparian line and beyond, and "New York and Tennessee Avenue.

"JOHN J. GARDNER,
"*Agent P. O'Reilly estate.*"

That said last mentioned agreement included in its description of the lands agreed to be sold the lands referred to in the first mentioned agreement, and in addition thereto described other lands not mentioned or referred to nor included in the first mentioned agreement. That in said last mentioned agreement there was an erroneous description of a portion of said lands, which error would be man-

ifest upon the application of the description contained in the agreement to the lands purporting to be thereby described, and is to be found in the sixth course of the last mentioned agreement, which, in the agreement, is thus described: "thence (6) northeastwardly along said riparian line, a distance of 150 feet;" the error in said agreement is in the number of feet which should be, instead of "150," "200." Which last mentioned agreement was, by its terms, designed to and did include all the lands and rights of the estate of Patrick O'Reilly between Pacific Avenue, the riparian line and beyond, and New York and Tennessee Avenues.

And your orator further shows that he has at all times been ready to pay the purchase money mentioned in said agreements upon the delivery of the deeds therein described to be made to him by the said Patrick O'Reilly under the terms of the first agreement in his lifetime, and by the executors and devisees of the said Patrick O'Reilly since his death. That at the time of the execution and delivery of the said several agreements your orator paid to the said Gardner as agent for the said Patrick O'Reilly under the first agreement, and as agent for the executors and devisees of said O'Reilly under the second agreement, the sums of money mentioned in said agreements respectively, amounting in the whole to five hundred and twenty-five dollars, on account of the purchase money; the said sum of five hundred and twenty-five dollars being the whole amount paid by your orator on both agreements on account of said purchase money. That your orator, since the death of said Patrick O'Reilly, has applied to his executors, who, under the terms of his will as hereinabove set forth, have a power of sale to execute deeds to your orator in conformity with the terms of said agreement, and that said executors have refused so to do. That since the execution of said agreements, and since the death of said Patrick O'Reilly, questions have arisen affecting the title of said Patrick O'Reilly to some of the lands mentioned in said agreements, and suits have been brought by the executors of said Patrick O'Reilly, as your orator is informed, for the purpose of establishing his title to the lands in-

cluded in said agreements ; that said suits have, in various forms, been pending in the Supreme Court of the State of New Jersey for several years past ; that your orator has repeatedly urged upon the executors of said Patrick O'Reilly that they should press the trial of said suits and establish their title. That one of said suits, brought against one Daniel Lindley, in respect to a title to a part of the lands so as aforesaid agreed to be conveyed by said O'Reilly and his executors and devisees to your orator, your orator has been informed, has been tried in the Circuit Court of Atlantic County, which trial resulted in a verdict in favor of said executors and devisees of O'Reilly. That upon the writs of error, as your orator is informed, the judgment rendered upon said verdict was set aside because of some informalities in the proof of the will of said Patrick O'Reilly, which, as your orator has been informed, have, since the judgment of the reviewing court, been corrected, and said will has been properly proved and exemplified and recorded in the office of the Surrogate of Atlantic County.

Your orator further shows that he has been informed that another suit was brought by the executors and devisees of said O'Reilly against one West in the Supreme Court of the State of New Jersey, who, as your orator is informed, was tenant of a part of the lands agreed to be conveyed to your orator under one Rotherham, which last mentioned suit, as your orator has been informed, has been brought to trial at the last term of the Circuit Court of the County of Atlantic and resulted in a verdict in favor of the said executors and devisees of said O'Reilly. That during the pendency of these suits your orator, on several occasions, urged upon the executors of said O'Reilly a speedy trial of the issues involved in said controversies with a view to the settlement of the title in favor of said O'Reilly, and to that end, and in order to expedite the trials of said causes, your orator tendered to said executors the assistance of counsel to be employed and paid by your orator to aid in the prosecution of said suits ; that your orator's offers in this respect were not accepted.

Your orator further shows that he has been informed

that on the 14th of April instant said Catherine C. O'Reilly, as executor of said Patrick O'Reilly, conveyed, or attempted to convey, by deed dated the day aforesaid, to one Daniel Lindley, a tract of land in Atlantic City, beginning 150 feet south of Pacific Avenue and 150 feet east of New York Avenue and extending thence east 1,800 feet, more or less, to the Atlantic Ocean, having a uniform width of 50 feet. The said land described in said deed was part of the land mentioned in the last mentioned agreement between your orator and said John J. Gardner, as agent as aforesaid, and is a portion of the land thereby agreed to be conveyed to your orator. Your orator charges that said Catherine C. O'Reilly, as executor, acting alone, was without power to sell said land to said Daniel Lindley, the power under the will of said O'Reilly to make sale of said lands having been given, as hereinbefore stated, to the executors named in his will, of whom Catherine C. O'Reilly was one, or the survivor or survivors of them; that all of said executors, as your orator is informed, are living, that none have renounced their said executorship, and that the power of sale contained in said will could only be executed, as your orator is advised, by the concurrent action of the executors therein named, who, by the terms of the will, were the donees of the power. That inasmuch as said Catherine C. O'Reilly in and by said deed appears to act only as executor your orator charges that no estate whatever passed to the said Daniel Lindley under said deed, because of the insufficient execution, or rather of the failure to execute the power of sale given in the will of said O'Reilly to his executors, and because, in and by said deed, the said Catherine O'Reilly did not purport to convey, as your orator is informed, her life estate in the lands whereof Patrick O'Reilly died seized. Your orator therefore charges that said deed is inefficacious as a transmission of the title whereof said Patrick O'Reilly died seized of any kind or character to said Daniel Lindley, and that said lands are therefore still within the seizing and ownership of the devisees of said Patrick O'Reilly and subject to the exercise of the power of sale by the executors named in his will, and may be conveyed by said ex-

ecutors and devisees to your orator in performance of the agreement in writing between your orator and said Patrick O'Reilly and said executors and devisees of said Patrick O'Reilly acting by said John J. Gardner, agent as aforesaid, hereinbefore mentioned.

And your orator further shows that the said Daniel Lindley at the time of the execution and delivery of the said deed by the said Catherine C. O'Reilly to him as aforesaid, knew of the existence of the agreement between your orator and said Patrick O'Reilly and said executors and devisees of Patrick O'Reilly, acting through said John J. Gardner, agent as aforesaid, and was fully aware of your orator's equitable rights under said agreement, and that your orator was entitled to have an execution of said agreement, a conveyance from the executors and devisees of Patrick O'Reilly of the lands described in the deed pretended to have been made by the said Catherine C. O'Reilly to the said Daniel Lindley, and that said deed was taken by said Lindley with full knowledge and notice of your orator's rights in the premises.

And your orator further shows that said Catherine C. O'Reilly, as executor as aforesaid, as your orator is informed, on or about the 22d day of April instant, executed an agreement in writing with one Alfred Adams, jr., and caused the same to be recorded in the office of the Clerk of Atlantic County, in Book No. 2, folio 372, whereby she agreed to convey a lot of land extending from Pacific Avenue to the ocean, lying 100 feet west from Tennessee Avenue and extending westerly along Pacific Avenue 50 feet and southwardly of that width between parallel lines to the Atlantic Ocean. That said tract of land mentioned in said agreement is a part of the land so as aforesaid agreed to be conveyed to your orator. And your orator further charges that the said Alfred Adams, jr., at the time of the making of the said agreement, knew of the existence of the agreement so as aforesaid made with your orator by the Patrick O'Reilly and said executors and devisees of Patrick O'Reilly acting through said John J. Gardner, agent as aforesaid, for the conveyance of said land men-

tioned in said agreement between Catherine C. O'Reilly, executor, and said Alfred Adams, jr., and that said Adams entered into said agreement with full notice and knowledge of the rights of your orator under your orator's agreements aforesaid, and that your orator is entitled, notwithstanding the making of said agreement between said Catherine C. O'Reilly, executor, and the said Alfred Adams, jr., to the performance by the said executors and devisees of Patrick O'Reilly, of the agreement so as aforesaid entered into between your orator and the said Patrick O'Reilly and said executors and devisees of said Patrick O'Reilly acting through said John J. Gardner, agent as aforesaid.

And your orator further shows and charges that under said several agreements your orator became entitled to an equitable estate in the lands therein described and became entitled to have from the said Patrick O'Reilly during his lifetime, and from the executors and devisees of the said Patrick O'Reilly since his death, the transfer of the title whereof he was seized of, in and to the lands described in said agreements, clear of all encumbrance or opposing or contesting claims of title, with undisputed possession. That the attempted conveyance by said Catherine C. O'Reilly, as executor, to said Daniel Lindley, and the making of said agreement by said Catherine C. O'Reilly, executor, with said Alfred Adams, jr., are in fraud of the rights of your orator as the vendee of said lands and the owner of an equitable estate therein; that there still remains, of lands included within the descriptions of your orator's agreements, a considerable body of land not included either within the pretended deed to Lindley or the agreement with Adams. That your orator is now and at all times has been ready to accept from the said Patrick O'Reilly in his lifetime, and from the executors and devisees of said Patrick O'Reilly since his death, a title, free of all encumbrance or from contesting claims, and to pay the amount of the consideration mentioned in said agreement therefor or the balance remaining due thereon after deducting the $500 already paid by your orator on account of said purchase money, and is now ready to accept

such conveyance and tenders himself ready to pay said purchase money upon the performance of said agreements so far forth as the same are to be performed by the said Patrick O'Reilly in his lifetime, or by the executors and devisees of O'Reilly since his death.

In tender consideration whereof, and for as much as your orator is without relief in the premises without the aid of this Honorable Court, your orator prays that said Catherine C. O'Reilly, Francis P. O'Reilly, James A. O'Reilly, executors of the last will and testament of Patrick O'Reilly, John F. O'Reilly, Francis P. O'Reilly, James A. O'Reilly, Anthony J. O'Reilly, James A. O'Reilly, trustee for Mary A. O'Reilly, Catherine C. O'Reilly, devisees under the will of said Patrick O'Reilly, Daniel Lindley and Alfred Adams, jr., may, but without oath—oath being hereby expressly waived—full, true and perfect answer make to all and singular the premises aforesaid, and that as fully as if the same were here again repeated, and they thereto particularly interrogated paragraph by paragraph; and that by the order and decree of this Court, your orator's rights as vendee under said agreements hereinbefore set forth may be established, and that it may be decreed that your orator, under the terms of said agreements, is entitled to an equitable estate in the lands in said agreements described; and that said several persons, executors and devisees as aforesaid may be decreed to specifically perform said agreements by the tender to your orator of a deed conveying a title to the lands in said agreements described free of all encumbrances, and from any opposing or contesting claim, upon payment by your orator to them of the balance of the purchase money in said agreements mentioned, after deducting $500 already paid as aforesaid by your orator on account of said purchase money, which payment your orator again tenders himself ready to make upon the tender of such deed; that the conveyance hereinbefore described as attempted to have been made by the said Catherine C. O'Reilly, executor, may be decreed to be void; that the agreement hereinabove set forth as attempted to have been made between said Catherine C. O'Reilly, as executor, and Alfred

Adams, jr., may also be decreed to be void ; that your orator may be decreed to be entitled to a conveyance, under the terms of your orator's agreements, by the said executors and devisees of said Patrick O'Reilly, to your orator of the lands in your orator's agreements described, including the lands described, or attempted so to be, in said pretended deed and agreement aforesaid ; that said executors and devisees may be restrained from making any conveyance or transfer, or agreeing to make any conveyance or transfer of the said lands mentioned in your orator's said agreements, or of any part or parcel thereof, or of any estate, right, title or interest therein, to any person or persons whatever, save only your orator in execution and performance of the agreements hereinbefore set forth as made by and between said Patrick O'Reilly in his lifetime, and the executors and devisees of said Patrick O'Reilly (since his death) with your orator. And that your orator may have such other and further relief in the premises as your Honor shall deem equitable.

May it please your Honor, the premises considered, to grant to your orator not only the State's writ of injunction issuing out of and under the seal of this Honorable Court, to be directed to said several persons, executors and devisees, as aforesaid, restraining them in the several matters aforesaid, but also the State's writ of subpœna, issuing out of and under the seal of this Honorable Court, to be directed to the said several persons, therein and thereby commanding them and each and every of them at a certain day and under a certain penalty therein to be expressed, personally to be and appear before your Honor, in this Honorable Court, therein to answer the premises and to stand to, abide by and perform such decree in the premises as to your Honor shall seem meet.

And your orator will ever pray, &c.

GREY & GREY,

Sols. for and of Counsel with Compl't.

S. H. GREY,

Of Counsel.

STATE OF NEW JERSEY, } ss:
CAMDEN COUNTY.

Newton Keim, of Philadelphia, Pennsylvania, being duly sworn, on his oath says: That he is the son of Jacob Keim. That he is familiar with the matters referred to in the foregoing bill of complaint touching the agreement for the purchase by Jacob Keim from Patrick O'Reilly in his lifetime and from the executors and devisees of Patrick O'Reilly after his death of the lands in said bill referred to. That the agreements set forth at length in said bill are full, true, and perfect copies of the original agreements now in the possession of Jacob Keim and signed by John J. Gardner as agent of Patrick O'Reilly in his lifetime as to the agreement of March 25th, 1880, and as agent of the executors and devisees of Patrick O'Reilly under the agreement dated October 29th, 1881. That the statements contained in said bill as to the litigations between the executors and devisees of Patrick O'Reilly for an assertion and maintenance of their title to the lands in said bill mentioned are true. That deponent had personal knowledge of the proposition in said bill mentioned made to the representatives of the O'Reilly estate to furnish professional aid at the expense of Jacob Keim in the prosecution of said litigations. That deponent himself made such a proposition to James A. O'Reilly, one of the executors named in the will of Patrick O'Reilly, and that under the instruction of deponent, acting for his father, Jacob Keim, a similar proposition was made by the counsel of Jacob Keim to the counsel acting for the estate of O'Reilly. That neither proposition was accepted. And deponent further says that the statements in said bill contained as to the execution of the deed from Catherine C. O'Reilly, as executor, to Daniel Lindley, and of the agreement by Catherine C. O'Reilly, as executor, with Alfred Adams, jr., are based upon information derived from the records of Atlantic County and contained in a search obtained from the Clerk of said county by deponent and in a letter written to deponent by said Clerk as to the contents of said deed from Catherine C. O'Reilly to Daniel Lindley.

And deponent further says that his father, Jacob Keim, the complainant, to deponent's knowledge, has always been ready and is now ready to pay the balance of the consideration money mentioned in said agreement and by said Jacob Keim agreed to be paid upon the tender of deeds conveying a title to the lands described in said agreement free of all encumbrance and from any opposing or contesting claim.

Sworn and subscribed before me this 29th day of April, A. D. 1892. } NEWTON KEIM.

RICHARD T. MILLER, *M. C. C.*

IN CHANCERY OF NEW JERSEY.

Between Jacob Keim, *Compl't,* and Catherine C. O'Reilly, Daniel Lindley *et al.*, *Def'ts.*	On Bill, &c. Answer of Catherine C. O'Reilly.

The answer of Catherine C. O'Reilly, one of the executors of Patrick O'Reilly, deceased, and in her own right, to the bill of complaint in the above stated cause.

This defendant, for answer to the complainant's said bill or unto so much and such parts thereof as this defendant is advised it is material or necessary for her to make answer unto, answering says:

That she has not been informed and does not believe that John J. Gardner was ever at any time the duly authorized agent of Patrick O'Reilly for the sale of the lands of the said Patrick O'Reilly, in Atlantic City, New Jersey; that this defendant has no knowledge, information or belief concerning a pretended receipt for twenty-five dollars, or agreement dated the 25th day of March, A. D. 1880, signed by "J. J. Gardner, agent," set forth in said bill of complaint, save that shortly before the commencement of this suit, and in the month of April last, she heard that it was claimed by the said complainant that he had such an instrument in writing; that this defendant has never seen the said instrument nor until the commencement of this suit ever heard of the existence of the said receipt or agreement or saw any copy thereof, and that she has not been informed and does not believe that the said Patrick O'Reilly in his lifetime made any agree-

ment with the said complainant or authorized any person or persons in his name or in his behalf to make or sign any receipt or agreement for the sale of the lands to the said complainant first mentioned and set forth in said bill of complaint, nor ever, in any way, approved or confirmed said agreement or any agreement for the sale of land with the said complainant.

And this defendant, further answering, admits that the said Patrick O'Reilly departed this life in the month of January, A. D. eighteen hundred and eighty-one, having first duly made, executed and published his last will and testament in writing and a codicil thereto of the dates mentioned and set forth in the said bill of complaint, and that the said last will and codicil were afterwards duly proved and letters testamentary thereon issued by the Register of Wills of the County of Berks, in the State of Pennsylvania, to this defendant and to Francis P. O'Reilly and James A. O'Reilly, the executors named in said will, and that the said will and codicil contained among other things in effect, the provisions, conditions, directions and devises mentioned and set forth in said bill of complaint.

And this defendant, further answering, shows that afterwards, and on or about the fifth day of July, A. D. eighteen hundred and eighty-one, this defendant proved the said last will and testament and codicil thereto of the said Patrick O'Reilly, deceased, before the Surrogate of the County of Atlantic, in the State of New Jersey, pursuant to the statute in such case made and provided, and that upon the said proof of the said will the Surrogate of the said County of Atlantic issued to this defendant letters of administration and that no letters of administration or testamentary were issued on said will in the State of New Jersey to the said Francis P. O'Reilly or to James A. O'Reilly, or to either of them, as by the said will and codicil when produced may more fully appear, and to which this defendant prays leave to refer as part of this her answer.

And this defendant, further answering, admits that Mary A. O'Reilly, one of the devisees mentioned in the will and codicil of the said Patrick O'Reilly, deceased, departed this life in the month of March, A. D. eighteen hundred

and ninety, having first duly made, executed and published her said last will and testament in writing, bearing date the first day of July, A. D. eighteen hundred and eighty-seven, whereby she did bequeath and devise to this defendant, her heirs and assigns forever, all her estate, real, personal and mixed, whatsoever and wheresoever the same might be, and did appoint this defendant sole executor of her said last will and testament; that afterwards the said last will and testament was duly proved by this defendant before the Register of Wills in and for the County of Berks, in the State of Pennsylvania, and letters testamentary were granted to this defendant, who then and there took upon herself the execution of the said will.

And this defendant, further answering, states and shows that on or about the 29th day of October, A. D. 1889, John F. O'Reilly, one of the devisees under the said will of the said Patrick O'Reilly, deceased, by his deed bearing date the day and year last aforesaid, transferred and conveyed to this defendant all his right, title and interest in the said estate, real, personal and mixed, of the said Patrick O'Reilly, deceased, as by the said deed executed duly under the hand and seal of the said John F. O'Reilly and recorded in the office for the recording of deeds in and for the County of Berks, in the State of Pennsylvania, in Deed Book No. 187, page 378, &c., but subject to certain agreements in the said deed contained in the hands of this defendant and ready to be produced and proven, will more fully and at large appear.

And this defendant, further answering, denies that on the twenty-ninth day of October, A. D. eighteen hundred and eighty-one, or at any other time after the death of the said Patrick O'Reilly, John J. Gardner in any way was duly authorized to act as the agent or in behalf of the estate of the said Patrick O'Reilly, deceased, by the executors or devisees of said deceased, to make sale of the lands belonging to said deceased or to enter into contracts for the sale of the lands belonging to the estate of the said deceased; and that the said John J. Gardner was never authorized by this defendant as one of the executors of the said deceased, nor, as this defendant is informed

and believes, by the other executors or devisees under the will of the said deceased or any or either of them, to make sale or to enter into any agreement of any kind whatsoever for the sale of lands or to make the pretended agreement set out in said bill of complaint bearing date the 29th day of October, A. D. 1881, with the said complainant and that this defendant had no knowledge of the existence of any such agreement until about the time of the commencement of this suit, she was informed that such paper had been made by the said John J. Gardner, and this defendant has never seen nor heard of the said paper, except as aforesaid, and that the same was never in any way authorized by or consented to by this defendant as executor as aforesaid or otherwise.

And this defendant, further answering, denies that to the knowledge or belief of this defendant the said John J. Gardner received as agent of the said Patrick O'Reilly, or of the executors and devisees of the said Patrick O'Reilly, deceased, any sums of money for or on account of the said Patrick O'Reilly or for or on account of the executors and devisees of the said Patrick O'Reilly, deceased, under any agreement mentioned in said bill of complaint or otherwise for the sale or conveyance of any lands of the said Patrick O'Reilly or of the said executors and devisees of the said Patrick O'Reilly, deceased, or that the said sum has ever been paid over to this defendant as executor as aforesaid, or, as this defendant is informed and believes, to the other executors or either of them for or on account of the purchase of said lands or any part thereof; and this defendant denies that the said complainant has at any time since the death of the said Patrick O'Reilly applied to this defendant to make conveyance of the said lands or any lands whereof the said Patrick O'Reilly died seized.

And this defendant, further answering, denies that the executors of the said Patrick O'Reilly, deceased, have at any time since the death of the said Patrick O'Reilly brought, or prosecuted, or caused to be brought or prosecuted, any suit or suits to establish title to the lands of the said Patrick O'Reilly, deceased, in the County of Atlantic, in the State of New Jersey; and this defendant denies that

the said complainant has ever urged upon this defendant, as an executor of the said Patrick O'Reilly, or otherwise, that she should press the trial of any suit brought by the executors of the said Patrick O'Reilly, deceased, to establish their title to lands in the County of Atlantic, in the State of New Jersey, or elsewhere, or that the said executors ever brought or prosecuted any suit against Daniel Lindley or John West, or any other person or persons.

And this defendant, further answering, shows that this defendant, on or about the twenty-first day of January, A. D. 1882, brought suits in ejectment in the New Jersey Supreme Court against Daniel Lindley and against John West for the possession of a part of the lands whereof the said Patrick O'Reilly died seized in said County of Atlantic; that the suit against the said Daniel Lindley was tried and a verdict therein rendered for this defendant, which said verdict was afterwards set aside in the Court of Errors and Appeals of the State of New Jersey; that the said suit against the said Lindley was again tried and a verdict therein rendered for this defendant, which said verdict was afterwards set aside in the Court of Errors and Appeals of the State of New Jersey, upon the ground, as this defendant is informed and believes, of some informality in the will of one Henry F. Felix; and this defendant denies that the said judgments, or either of them, were set aside because of any informality in the proof of the will of the said Patrick O'Reilly, deceased.

And this defendant further shows that, in the suit against the said John West, certain persons by the name of Rotherham and others were admitted to defend as landlords and that the said suit was tried before the Atlantic County Circuit Court at the term of April, 1892, and that a verdict therein was rendered for this defendant; and this defendant denies that the said complainant ever applied to this defendant to expedite the said cause, or either of them, or tendered to this defendant any assistance or counsel to aid in the prosecution of the said suits or either of them.

And this defendant, further answering, admits that on or about the fourteenth day of April last this defendant, as executor of the said Patrick O'Reilly, deceased, conveyed

to one Daniel Lindley the tract of land mentioned and described in said bill of complaint, which land, as this defendant is informed and believes, is included as a part of the land in the pretended receipt and agreement signed by J. J. Gardner, agent P. O'Reilly estate, dated October 29th, 1881, set forth in said bill of complaint; and this defendant submits that under the law this defendant had full power to sell and convey the said land, as the executor of the will of the said Patrick O'Reilly, deceased, duly proved in the State of New Jersey, as aforesaid, the other executors named in said will having neglected and refused to prove said will in the State of New Jersey; and this defendant, as she was then informed and believes, conveyed thereby an absolute title to said land, and also all right and title that she might have as devisee under the will of the said Patrick O'Reilly, deceased, and also any estate that she had by virtue of the devise of the share of said estate to her by the said Mary A. O'Reilly, deceased, as aforesaid, or by the said conveyance made by the said John O'Reilly, as above set forth, and that the said Daniel Lindley, by virtue of the aforesaid deed, has a full, complete and perfect title, and that no interest in said lands or any part thereof remains in, or is now held by the executors and devisees of the said Patrick O'Reilly, or any of them; and this defendant says that she has not been informed and does not know whether the said Daniel Lindley had any notice or knowledge whatsoever of the pretended agreement set forth in the said bill of complaint signed by the said "J. J. Gardner, agent P. O'Reilly estate," as aforesaid; and this defendant denies that at the time of the making of the said conveyance there was any agreement, or that any agreement ever had been made between the said Patrick O'Reilly and the said complainant, or between the executors and devisees of the said Patrick O'Reilly, deceased, and the said complainant, or any of them, for the sale of the said lands mentioned in the said bill of complaint, or for any lands in the State of New Jersey.

And this defendant, further answering, admits that on or about the 22d day of April last this defendant, as execu-

tor, executed an agreement in writing with one Alfred Adams, jr., for the sale of the lands mentioned in the said bill of complaint, but this defendant denies that she caused the same to be recorded, but has been informed and believes that the said Alfred Adams, jr., caused the same to be recorded in the Clerk's Office of the County of Atlantic, as set forth in said bill; and this defendant says that she has not been informed and does not know whether the said Alfred Adams, jr., had any notice or knowledge whatsoever of the pretended agreement set forth in the said bill of complaint signed by the said J. J. Gardner, agent P. O'Reilly estate, as aforesaid.

And this defendant, further answering, denies that the said Patrick O'Reilly in his lifetime ever made any agreement with the said complainant to convey to him the said lands mentioned in the said bill of complaint, or any lands whatsoever in the State of New Jersey, and this defendant denies that the executors and devisees of the said Patrick O'Reilly, deceased, or any of them, at any time agreed with the said complainant to convey to him any lands whereof the said Patrick O'Reilly died seized in the State of New Jersey; and this defendant denies that the said pretended agreements mentioned and set forth in the said bill of complaint were ever executed by or with the knowledge, authority or consent of the said Patrick O'Reilly in his lifetime, or of the executors and devisees of the said Patrick O'Reilly, deceased, since his death; and this defendant denies that the said complainant, by virtue of the said pretended agreements mentioned and set forth in the said bill of complaint, or either of them, or otherwise, ever became entitled to an equitable estate or any estate in any of the lands whereof the said Patrick O'Reilly died seized or to any right to the transfer of the title of any lands whereof the said Patrick O'Reilly was seized during his lifetime, or whereof his executors or devisees became entitled to under the last will or testament of the said Patrick O'Reilly, deceased, after his decease; and this defendant denies that the said conveyance made by this defendant as executor as aforesaid to the said Daniel Lindley, or the agreement made by this defendant as executor, as

aforesaid, with the said Alfred Adams, jr., was in fraud of the rights of the said complainant, as vendee or as owner, of any title or interest therein or thereto or otherwise.

All which matters and things this defendant is ready and willing to aver, maintain and prove as this Honorable Court shall direct, and humbly prays to be hence dismissed with her reasonable costs and charges in this behalf most wrongfully sustained.

DAVID J. PANCOAST,

Sol. for and of Counsel with Def'ts.

P. L. VOORHEES,

of Counsel.

IN CHANCERY OF NEW JERSEY.

Between Jacob Keim, *Compl't,* and Catherine C. O'Reilly, Daniel Lindley *et al.*, *Def'ts.*	On Bill, &c. Answer of Catherine C. O'Reilly *et al.*

The answer of Francis P. O'Reilly and James A. O'Reilly, executors of the last will and testament of Patrick O'Reilly, deceased, in the State of Pennsylvania, and in their own right, James A. O'Reilly, trustee for Mary A. O'Reilly, John F. O'Reilly and Anthony J. O'Reilly, defendants in the above stated cause.

These defendants, for answer unto the complainant's said bill, or unto so much and such parts thereof as these defendants are advised it is material or necessary for them to make answer unto, answering say:

That they have not been informed and do not believe that John J. Gardner was at any time the duly authorized agent of Patrick O'Reilly for the sale of lands of the said Patrick O'Reilly in Atlantic City, New Jersey; that these defendants have not nor has any or either of them any knowledge, information or belief concerning a pretended receipt or agreement for twenty-five dollars dated, the 25th day of March, A. D. 1880, signed "J. J. Gardner, agent," set forth in said bill of complaint, save that shortly before the commencement of this suit they heard that it was claimed by the said complainant that he had such an instrument in writing; that these defendants have not nor has any or either of them seen the said instrument, nor, until about the commencement of this suit, heard of the exis-

tence of the said receipt or agreement or saw any copy thereof; that they have not been informed and do not believe that the said Patrick O'Reilly in his lifetime made any agreement with the said complainant nor authorized the said John J. Gardner or any other person or persons in his name or in his behalf to make or sign any receipt or agreement for the sale of the lands to the said complainant first mentioned and set forth in said bill of complaint nor in any way approved or confirmed the said agreement nor any agreement for the sale of lands with or to the said complainant.

And these defendants, further answering, admit that the said Patrick O'Reilly departed this life in the month of January, A. D. eighteen hundred and eighty-one, having first duly made, executed and published his last will and testament and codicil thereto in writing of the dates mentioned and set forth in the said bill of complaint, and that the said will and codicil were duly proved and letters testamentary thereon issued by the Register of Wills of the County of Berks, in the State of Pennsylvania, to Catherine C. O'Reilly and to these defendants, Francis P. O'Reilly and James A. O'Reilly, the executors named in said will, and that the said will contained, among other things, in effect the provisions, conditions, directions and devises mentioned and set forth in the said bill of complaint.

And these defendants, further answering, show that afterwards, and on or about the twenty-fifth day of July, A. D. eighteen hundred and eighty-one, the said Catherine C. O'Reilly proved the said will and testament and codicil thereto of the said Patrick O'Reilly, deceased, before the Surrogate of the County of Atlantic, in the State of New Jersey, pursuant to the statute in such case made and provided, and that upon the proof of the said will the said Surrogate of the said County of Atlantic issued to the said Catherine C. O'Reilly letters of administration or letters testamentary, and that no letters of administration or letters testamentary were issued on said will in said State of New Jersey to the said Francis P. O'Reilly and James A. O'Reilly, or either of them.

And these defendants, Francis P. O'Reilly and James A. O'Reilly, further answering, say, and these defendants, John F. O'Reilly and Anthony J. O'Reilly, say they believe the same to be true, that these defendants, Francis P. O'Reilly and James A. O'Reilly, refused to prove the said will and codicil and take out letters of administration or letters testamentary thereon in the State of New Jersey.

And these defendants, further answering, admit that Mary A. O'Reilly, one of the devisees mentioned in the said last will and codicil of the said Patrick O'Reilly, deceased, departed this life in the month of March, A. D. 1890, having first duly made, executed and published her last will and testament in writing, bearing date the first day of July, A. D. 1887, whereby she did bequeath and devise to Catherine C. O'Reilly, her heirs and assigns forever, all her estate, real, personal and mixed, whatsoever and wheresoever the same might be, and did appoint the said Catherine C. O'Reilly sole executrix of her said will; that the said last will and testament was afterwards duly proved by the said Catherine C. O'Reilly, before the Register of Wills, in and for the County of Berks, in the State of Pennsylvania, and letters testamentary were granted to the said Catherine C. O'Reilly, who then and there took upon herself the execution of the said will; and this defendant, James A. O'Reilly, further answering for himself, says, and these defendants, Francis P. O'Reilly, John F. O'Reilly, and Anthony J. O'Reilly, say they believe the same to be true, that by virtue of the said will of the said Mary A. O'Reilly, in execution of the power given to her under the will of the said Patrick O'Reilly, deceased, all rights of this defendant as trustee for the said Mary A. O'Reilly, under the will of the said Patrick O'Reilly, deceased, terminated and that this defendant has no interest in the said estate whereof the said Patrick O'Reilly died seized or possessed under the will of said deceased as trustee for or in behalf of the said Mary A. O'Reilly.

And this defendant, John F. O'Reilly, further answering, and these defendants, Francis P. O'Reilly, James A. O'Reilly and Anthony J. O'Reilly, believe the same to be

true, says that on or about the 29th day of October, A. D. 1889, this defendant, John F. O'Reilly, by his deed, bearing date the day and year last aforesaid, transferred and conveyed to the said Catherine C. O'Reilly all his right and title and interest in the said estate, real, personal and mixed, of the said Patrick O'Reilly, deceased, as in and by the said deed, duly executed under the hand and seal of this defendant, John F. O'Reilly, and recorded in the office for recording deeds in the County of Berks, in the State of Pennsylvania, in Deed Book No. 187, page 378, &c., appears, subject to certain agreements in the said deed contained, as by the said deed in the hands of the said Catherine C. O'Reilly or the record thereof when produced and duly proven will more fully and at large appear.

And these defendants, further answering, deny that on the 29th day of October, A. D. 1881, or at any other time after the death of the said Patrick O'Reilly, John J. Gardner was in any way authorized to act as the agent for or in behalf of the estate of the said Patrick O'Reilly, deceased, by the executors and devisees of the said deceased, to make sale of lands belonging to the said deceased or to enter into any contract for the sale of any lands belonging to the estate of the said Patrick O'Reilly, deceased, and that the said John J. Gardner was never authorized or empowered by them, or either or any of them, as executors or devisees of the said Patrick O'Reilly, deceased, nor, as these defendants are informed and believe, by the said Catherine C. O'Reilly, the other executor of the said Patrick O'Reilly, deceased, to make sale or to enter into any contract or agreement of any kind whatsoever for the sale or conveyance of lands or to make the pretended agreement set out in the said bill of complaint bearing date the 29th day of October, A. D. 1881, with the said complainant, or that these defendants had any knowledge of the existence of such pretended agreement or receipt until about the time or shortly before the commencement of this suit, when these defendants were informed that such paper had been made by the said John J. Gardner; and these defendants show and state that they

have not nor has either or any of them seen or heard of the existence of such paper except as aforesaid; and these defendants deny that the said pretended agreement was in any way authorized by or consented to by these defendants or by any or either of them as executors or devisees of the said Patrick O'Reilly, deceased, as aforesaid or otherwise.

And these defendants, Francis P. O'Reilly and James A. O'Reilly, further answering, and these defendants, John F. O'Reilly and Anthony J. O'Reilly, believe the same to be true, say that, as executors of the said Patrick O'Reilly, deceased, in the State of Pennsylvania, or otherwise, these defendants did not at any time or in any way authorize or empower the said John J. Gardner to make or enter into any contract or agreement for or in behalf of them or of the estate of the said Patrick O'Reilly, deceased, for the sale or conveyance of any lands and real estate in the State of New Jersey or elsewhere belonging to the estate of the said deceased, with the said complainant or with any other person or persons whatsoever.

And these defendants, further answering, deny that the said John J. Gardner ever received as the agent of the said Patrick O'Reilly, or as the agent of the executors or devisees of the said Patrick O'Reilly, deceased, any sum or sums of money for or on account of the said Patrick O'Reilly, or for or on account of the executors of the said Patrick O'Reilly, deceased, under any of the agreements mentioned in the said bill of complaint or otherwise for the sale or conveyance of any lands of the said Patrick O'Reilly, or of the executors and devisees of the said Patrick O'Reilly, deceased, or that such sums of money have ever been paid over to these defendants or any or either of them, or, as these defendants are informed and believe, to the said Catherine C. O'Reilly, executor of the will of the said Patrick O'Reilly, deceased, for or on account of the sale or purchase of said lands or any part thereof; and these defendants deny that the said complainant has at any time since the death of the said Patrick O'Reilly applied to them or any or either of them to make conveyance of the said

lands or any lands whereof the said Patrick O'Reilly died seized.

And these defendants, Francis P. O'Reilly and James A. O'Reilly, executors of the will of the said Patrick O'Reilly, deceased, in the State of Pennsylvania, deny, and these defendants, John F. O'Reilly and Anthony J. O'Reilly, believe the same to be true, that the said John J. Gardner received as the agent of the said Patrick O'Reilly, or as the agent of the executors or devisees of the said Patrick O'Reilly, deceased, any sum of money for or on account of the said Patrick O'Reilly or for or on account of the executors or devisees of the said Patrick O'Reilly, deceased, under any agreements for the sale or conveyance of the land mentioned in the bill of complaint or otherwise for the sale or conveyance of any lands of the said Patrick O'Reilly, deceased, or of the said executors or devisees of the said Patrick O'Reilly, deceased, or that such sums of money have ever been paid over to these defendants or any or either of them as executors as aforesaid, or, as these defendants are informed and believe, to the said Catherine C. O'Reilly, the other executor of the said Patrick O'Reilly, deceased, for or on account of the purchase of said lands or any part thereof; and these defendants deny that the said complainant has at any time since the death of the said Patrick O'Reilly applied to these defendants to make conveyance of the said lands or any lands whereof the said Patrick O'Reilly died seized.

And these defendants, further answering, deny that the executors of the said Patrick O'Reilly, deceased, have at any time since the death of the said Patrick O'Reilly brought or prosecuted, or caused to be brought or prosecuted, any suit or suits to establish the title to lands in the County of Atlantic, in the State of New Jersey, whereof the said Patrick O'Reilly died seized; and these defendants deny that the said complainant has ever urged them as executors of the said Patrick O'Reilly, deceased, or otherwise, or any or either of them, to press the trial of any suit brought by the executors of the said Patrick O'Reilly, deceased, to establish their title to lands in the County of Atlantic, in

the State of New Jersey, or elsewhere, or that the said executors, as executors, have ever brought or prosecuted, or caused to be brought or prosecuted, any suit against the said Daniel Lindley or against the said John West or any other person or persons whatsoever.

And these defendants, further answering, state and show that, as they have been informed and believe, on or about the twenty-first day of January, A. D. eighteen hundred and eighty-two, Catherine C. O'Reilly, to whom all the lands whereof the said Patrick O'Reilly died seized were devised for and during the term of her natural life, brought suits in ejectment in the New Jersey Supreme Court against Daniel Lindley and against John West for the possession of a part of the lands whereof the said Patrick O'Reilly died seized in the County of Atlantic, in the State of New Jersey; that the suit against the said Lindley was tried and a verdict therein rendered for the said Catherine C. O'Reilly, which said verdict was afterwards set aside in the Court of Errors and Appeals of the State of New Jersey; that the said suit against the said Lindley was again tried and a verdict therein rendered for the said Catherine C. O'Reilly, which said verdict was afterwards set aside in the Court of Errors and Appeals of the State of New Jersey, upon the ground, as these defendants have been informed and believe, of some informality in the record of the will of one Henry F. Felix, and these defendants deny that the said judgments or either of them were set aside for any informality in the proof of the will of the said Patrick O'Reilly, deceased, and these defendants show that the said suit is still pending and undecided in the said Court.

And these defendants, further answering, show that, as they have been informed and believe, in the suit against the said John West certain persons by the name of Rotherham and others were admitted to defend as landlords, and that the said suit was tried at the Atlantic County Circuit Court at the term of April, A. D. eighteen hundred and ninety-two, and that a verdict therein was rendered for the said Catherine C. O'Reilly.

And these defendants, further answering, say that, as they have been informed and believe it to be true, the said Catherine C. O'Reilly, as executor of the said Patrick O'Reilly, deceased, in the State of New Jersey, conveyed to one Daniel Lindley a tract of land, mentioned and described in the said bill of complaint, which lands, as these defendants are informed and believe, are included as a part of the lands in the pretended agreement or receipt signed by the said "J. J. Gardner, agent P. O'Reilly estate," dated October 29, 1881, set forth in said bill of complaint; and these defendants admit that under the law the said Catherine C. O'Reilly had full power to sell and convey the said land as executor of the last will and testament of the said Patrick O'Reilly, deceased, proved in the State of New Jersey as aforesaid, the other executors named in the said will having neglected or refused to prove the said will in the State of New Jersey, and that the said conveyance by the said Catherine C. O'Reilly conveyed an absolute title to the said land and also all right and title that she might have as devisee under the will of the said Patrick O'Reilly, deceased, and also any estate that she might have by virtue of the share of the said estate devised to her by the said Mary A. O'Reilly, deceased, as aforesaid, and by the said conveyance made by the said John F. O'Reilly, as above set forth, and that the said Daniel Lindley, by virtue of the aforesaid deed, has a full, complete and perfect title to the land thereby conveyed, and that no interest in the said lands, or any part thereof, remains in or is now held by the executors or devisees of the said Patrick O'Reilly, deceased, or any of them.

And these defendants, further answering, say that they have not been informed and do not know whether the said Daniel Lindley had any notice or knowledge whatever of the pretended agreement set forth in the said bill of complaint signed by the said "J. J. Gardner, agent P. O'Reilly estate," as aforesaid, and these defendants deny that, at the time of the making of the said conveyance, there was any agreement, or that any agreement ever had been made between the said Patrick O'Reilly and the said complainant, or between the executors and devisees

of the said Patrick O'Reilly, deceased, and the said complainant, or any or either of them, for the sale of the said lands mentioned in the said bill of complaint, or for any or other lands in the State of New Jersey or elsewhere.

And these defendants, further answering, say that they have been informed, and believe it to be true, that on or about the twenty-second day of April last the said Catherine C. O'Reilly, as executor of the said Patrick O'Reilly, deceased, as aforesaid, executed an agreement in writing with one Alfred Adams, jr., for the sale of the land mentioned in the said bill of complaint, and these defendants have been informed and believe that the said Alfred Adams, jr., caused the said agreement to be recorded in the Clerk's Office of the County of Atlantic, as set forth in the said bill of complaint; and these defendants further say that they have not been informed and do not know whether the said Alfred Adams, jr., at the time of the making the said agreement, had any notice or knowledge whatever of the pretended agreement mentioned and set forth in the said bill of complaint signed by the "J. J. Gardner, agent P. O'Reilly estate."

And these defendants, further answering, deny that the said Patrick O'Reilly in his lifetime ever made any agreement with the said complainant to convey to him the said lands mentioned in the said bill of complaint, or any lands whatsoever in the State of New Jersey, and these defendants deny that the executors and devisees of the said Patrick O'Reilly, deceased, or any of them, at any time made an agreement with the said complainant to convey to him any lands whereof the said Patrick O'Reilly died seized in the State of New Jersey or elsewhere; and these defendants further deny that the said pretended agreements mentioned and set forth in the said bill of complaint were ever executed by or with the knowledge or consent or authority of the said Patrick O'Reilly in his lifetime, or of the executors or the devisees of the said Patrick O'Reilly, deceased, since his death; and these defendants deny that the complainant, by virtue of the said pretended agreements mentioned and set forth in the said bill of complaint, or either of them, or otherwise, ever became entitled to an

equitable estate, or any estate in any of the lands whereof the said Patrick O'Reilly died seized, or to any right to the transfer of any land whereof the said Patrick O'Reilly was seized, or whereof his executors or devisees became entitled to under the last will and testament of the said Patrick O'Reilly, deceased, after his decease; and these defendants deny that the said conveyance made by the said Catherine C. O'Reilly, as executor as aforesaid, to the said Daniel Lindley, or that the said agreement made by the said Catherine C. O'Reilly, as executor as aforesaid, with the said Alfred Adams, jr., were in fraud of the right of the said complainant as vendee, or as owner of any title or interest therein, or thereto, or otherwise.

All which matters and things this defendant is ready to aver, maintain and prove as this Honorable Court shall direct, and humbly prays to be hence dismissed with her reasonable costs and charges in this behalf most wrongfully sustained.

DAVID J. PANCOAST,

Sol. for and of Counsel for Def'ts.

P. L. VOORHEES,

of Counsel.

IN CHANCERY OF NEW JERSEY.

BETWEEN
JACOB KEIM,
Compl't,
AND
CATHERINE C. O'REILLY,
DANIEL LINDLEY *et al.*,
Def'ts.

ON BILL, &c.
ANSWER OF DANIEL LINDLEY AND ALFRED ADAMS, JR.

The joint and several answer of Daniel Lindley and Alfred Adams, jr., in their own right to the bill of complaint in the above stated cause.

These defendants, for answer to the complainant's said bill, or unto so much and such parts thereof as these defendants are advised it is material or necessary for them to make answer unto, answering say:

That they are strangers to all and singular the matters and things in the said complainant's bill contained touching an alleged authorized agency of one John J. Gardner to sell the lands of Patrick O'Reilly in his lifetime, or to sell said lands for his executors after his decease; or touching the two alleged receipts set forth in said bill of complaint, or of any payment or payments of money on account of any pretended agreement, or of any act or acts of the said John J. Gardner, as agent or otherwise, as set forth in complainant's bill of complaint, and that they have no knowledge, information or belief concerning the same, and, therefore, leave the complainant to make such proof thereof as he shall be able to produce.

And these defendants, further answering, admit that the said Patrick O'Reilly, departed this life in the month of January, eighteen hundred and eighty-one, having first duly made, executed, and published his last will and testament in writing and a codicil thereto of the dates mentioned and set forth in the said bill of complaint, and that the said last will and codicil were afterwards duly

proved, and letters testamentary thereon issued by the Register of Wills, of the County of Berks, in the State of Pennsylvania, to Catherine C. O'Reilly, Francis P. O'Reilly and James A. O'Reilly, the executors named in said will, and that the said will and codicil contained, among other things, in effect the provisions, conditions, directions and devises mentioned and set forth in said bill of complaint.

And these defendants, in further answering, admit that afterwards, on or about the fifth day of July, eighteen hundred and eighty-one, the said will and codicil was proved before the Surrogate of the County of Atlantic, in the State of New Jersey, pursuant to the statute in such case made and provided, and that upon the said proof of the said will the Surrogate of the County of Atlantic issued to said Catherine C. O'Reilly letters testamentary on the said will, in the State of New Jersey, and that no letters testamentary were issued on the said will in the State of New Jersey to the said Francis P. O'Reilly, or James A. O'Reilly, or to either of them, as by the said last will and codicil, when produced, may more fully appear, and to which these defendants pray leave to refer as part of this answer.

And these defendants, further answering, admit that they have been informed, and believe it to be true, that Mary A. O'Reilly, one of the devisees mentioned in the will and codicil of the said Patrick O'Reilly, deceased, departed this life in the month of March, eighteen hundred and ninety, having first duly made, executed and published her last will and testament in writing, bearing date the first day of July, eighteen hundred and eighty-seven, whereby she did bequeath and devise to said Catherine C. O'Reilly, her heirs and assigns forever, all her estate, real, personal and mixed, whatsoever the same may be, and did appoint the said Catherine C. O'Reilly sole executor of her said last will and testament, that afterwards the said last will and testament was duly proved by said Catherine C. O'Reilly before the Register of Wills in and for the County of Berks, in the State of Pennsylvania, and letters testamentary were granted to said Catherine C. O'Reilly, who then and there took upon herself the execution of the said will.

And these defendants, further answering, state that they

are informed and believe it to be true, that on or about the twenty-ninth day of October, eighteen hundred and eighty-nine, John F. O'Reilly, one of the devisees under the will of the said Patrick O'Reilly, deceased, by his deed bearing date the day and year last aforesaid, transferred and conveyed to said Catherine C. O'Reilly, all his right, title and interest in the said estate, real, personal and mixed, of the said Patrick O'Reilly, deceased, as by the said deed duly executed under the hand and seal of the said John F. O'Reilly, and recorded in the office for the recording of deeds, in and for the County of Berks, in the State of Pennsylvania, in Deed Book No. 187, page 378, &c., but subject to certain agreements in the said deed contained in the hands of said Catherine C. O'Reilly.

And the said Daniel Lindley, in answering for himself, denies that the executors of the said Patrick O'Reilly, deceased, have at any time since the death of the said Patrick O'Reilly, deceased, brought, or prosecuted, or caused to be brought or prosecuted, against him any suit or suits to establish title to the lands of the said Patrick O'Reilly, deceased, in the County of Atlantic and State of New Jersey; and this answering defendant has no knowledge, information or belief touching the allegation that the complainant has urged upon the executor of said Patrick O'Reilly, deceased, to press the trial of any pretended suit by the executor aforesaid to establish the title to said land.

And this answering defendant, Daniel Lindley, in further answering, shows that the said Catherine C. O'Reilly, as life tenant, on or about the twenty-first day of January, eighteen hundred and eighty-two, brought a suit in ejectment in the New Jersey Supreme Court against this defendant for the possession of a part of the lands whereof the said Patrick O'Reilly died seized in the County of Atlantic; that a verdict was rendered for said plaintiff, which said verdict was afterwards set aside by the Court of Errors and Appeals of New Jersey; that the said suit was again tried and a verdict therein rendered for said plaintiff, which said verdict was afterwards set aside in the said Court of Errors and Appeals of the State of New Jersey; and this defendant denies that the said judgments, or either of them, were set aside because

of any informality in the proof of the will of the said Patrick O'Reilly, deceased; and that said suit is still pending and as much undetermined as it was the day it was first brought.

And this answering defendant, Daniel Lindley, in answering for himself, says, that for more than thirty years last past he has been in possession of all the land mentioned in a certain deed hereinafter mentioned, and he has always claimed ownership of the same by adverse possession, which question is yet undetermined; that to avoid further expensive litigation, and to set aside all question as to his title, he entered into negotiations with Catherine C. O'Reilly, sole executrix in New Jersey of the last will and testament of Patrick O'Reilly, deceased, to purchase from her, as executrix aforesaid, under a power of sale in said will of Patrick O'Reilly contained, all the title, or pretended title, which the said Patrick O'Reilly died seized of; and as a result of said negotiations this defendant admits that on or about the fourth day of April last said Catherine C. O'Reilly, as executor of the said Patrick O'Reilly, deceased, conveyed to him the tract of land mentioned and described in said bill of complaint; and this defendant submits that under the law the said Catherine C. O'Reilly, executrix as aforesaid, had full power to sell and convey the said land as the executrix of the will of the said Patrick O'Reilly, deceased, duly proved in the State of New Jersey as aforesaid; the other executors named in said will having neglected and refused to prove said will in the State of New Jersey; and this defendant, as he was then informed and believes, received thereby an absolute title to said lands and all right and title that the said Catherine C. O'Reilly might have as devisee under the will of the said Patrick O'Reilly, deceased, and also any estate that she had by virtue of the devise of the share of said estate to her by the said Mary A. O'Reilly, deceased, as aforesaid, or by the said conveyance made by the said John O'Reilly as above set forth, and that this defendant, by virtue of the aforesaid deeds, has a full, complete and perfect title, and that no interest in said lands, or any part thereof, remains in or is now held by the executor and devisees of Patrick O'Reilly, deceased, or any of them.

And the said Daniel Lindley, in further answering, denies that at the time of the execution and delivering of the said deed by the said Catherine C. O'Reilly, executor to him as aforesaid, he knew of the existence of the pretended agreement between said complainant and said Patrick O'Reilly, and said executors and devisees of Patrick O'Reilly, acting through said John J. Gardner, pretended agent as in said bill alleged, and denies that he was aware of the complainant's pretended equitable rights under said agreement, and denies that he was aware that complainant was entitled to have in the execution of said agreement a conveyance from the executors and devisees of Patrick O'Reilly of the lands described in the deed, and denies that he took said deed with full knowledge and notice of said complainant's pretended rights.

And the said Alfred Adams, jr., in answering for himself, admits that on or about the twenty-second day of April last the said Catherine C. O'Reilly, as executor, executed an agreement in writing with this defendant for the sale of lands mentioned in the said bill of complaint, and that this defendant caused the same to be recorded in the Clerk's Office of the County of Atlantic, as set forth in said bill.

And said defendant, Alfred Adams, junior, in answering for himself, denies that he knew of the existence of the alleged agreement made by complainant with the said Patrick O'Reilly, and said executors and devisees of Patrick O'Reilly, acting through said John J. Gardner, pretended agent as aforesaid, for the conveyance of said land mentioned in the defendant's agreement with said Catherine C. O'Reilly, executrix; and denies that he entered into said agreement with full notice and knowledge of the alleged rights of said complainant as set forth in said bill of complaint; and defendant denies that said complainant is entitled, notwithstanding the making of said agreement between him and said Catherine C. O'Reilly, executor, to the performance by the said executors and devisees of Patrick O'Reilly of the alleged agreement claimed to have been entered into between complainant and the said Patrick O'Reilly and said executors and devisees of said Patrick O'Reilly, acting through said alleged agent, John J. Gardner, as set forth in said bill.

And these defendants deny that the said conveyance made by said Catherine C. O'Reilly, executrix, to Daniel Lindley, or the agreement made by said Catherine C. O'Reilly, executor, with the said Alfred Adams, jr., was in fraud of the rights of the said complainant as vendee or as owner of any title or interest therein, or thereto, or otherwise.

All which matters and things these defendants are ready and willing to aver, maintain and prove, as this Honorable Court shall direct, and humbly pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

DANIEL LINDLEY,
ALFRED ADAMS, JR., by
THOMAS B. HARNED,
Sol. for and of Counsel with answering def'ts.

IN CHANCERY OF NEW JERSEY.

To the Honorable Alexander T. McGill, Chancellor of the State of New Jersey:

Humbly complaining, shows unto your Honor, your orator, Jacob Keim, of Atlantic City, New Jersey, that on the 25th day of March, 1880, one John J. Gardner, of Atlantic City, was the duly authorized agent of one Patrick O'Reilly, now deceased, for the sale of certain lands of said Patrick O'Reilly, situate at Atlantic City, and lying between Pacific Avenue, New York Avenue and Tennessee Avenue, and bounding upon the Atlantic Ocean. That your orator, being desirous of purchasing said lands, made an agreement therefor with said Patrick O'Reilly, acting through said John J. Gardner as his agent, duly authorized for that purpose, which agreement was in writing and in the words and figures following:

"$25.00. " Atlantic City, N. J., March 25th, 1880.

"Received of Jacob Keim the sum of twenty-five dol-"lars on account of the purchase money of the lot of land "50 feet in width, adjoining on the rear the land now "owned by the said Jacob Keim, which land fronts on "New York Avenue, in Atlantic City aforesaid, and which "strip to be conveyed runs the entire length of the said "land of the said Jacob Keim. The purchase price is to "be twenty-five hundred dollars. Deed to be made and "delivered so soon as practicable; not longer from the "present time than one month. Said land to be con-"veyed belongs to Patrick O'Reilly, for whom the under-"signed is agent.

" J. J. GARDNER,
" *Agent.*"

That afterward the said Patrick O'Reilly departed this life, some time in the month of January, as your orator is

informed, in the year 1881, having first made and published his last will and testament in writing, bearing date on the 5th day of December, 1877, with a codicil thereto dated November 1st, 1880, whereof he appointed his wife, Catherine Cecelia O'Reilly, and his sons, Francis P. O'Reilly and James A. O'Reilly, the executors; which said last will was duly proved before the Register of Wills in the County of Berks, in the State of Pennsylvania, in which county the said Patrick O'Reilly resided at the time of his death, and an exemplified copy thereof was afterward proved and recorded in the office of the Surrogate of the County of Atlantic, in the State of New Jersey, in which county the lands so as aforesaid agreed to be purchased by your orator were situate, as also were other lands whereof said Patrick O'Reilly was seized at the time of his death. That in and by said last will said Patrick O'Reilly devised all the lands whereof he died seized to his wife Catherine Cecelia for life and after her death he directed, in and by said last will, that his estate should be divided into five equal shares, one whereof he gave to his son John F. O'Reilly, another to his son Francis P. O'Reilly, another to his son James A. O'Reilly, to each of said sons absolutely, another to his son Francis P. O'Reilly in trust to pay the income arising therefrom to his son Anthony J. O'Reilly during his life in such manner that the income, interest and profit should be for the sole and separate use of his said son Anthony and in no way liable for any debts, contracts or engagements or any pledge, assignment or transfer thereof, and directed, in and by his said will, that the personal receipt of said Anthony should alone discharge said trustee from the payment of said income, which payments he directed by his will should be made semi-annually, subject, as to the one fifth held in trust by the said Francis P. for said Anthony, to a power of testamentary disposition by said Anthony of the principal, and in default of such testamentary disposition by said Anthony of his share, then said Patrick provided by his said last will that the same should descend to and vest in any lawful issue that he might leave, share and share alike, and that the issue of any deceased child living at his death should take the

share of his or her deceased parent, and in default of such testamentary disposition by said Anthony, or of such issue by him, or of the issue of a deceased child, then such share should descend and vest in the brothers of Anthony or the issue of any deceased brother living at his death, such issue to take the share of their deceased parents respectively. That another fifth part said Patrick O'Reilly by his will devised to his son James A. in trust for his daughter Mary A. O'Reilly, and directed that the income from said one-fifth part should be paid to his said daughter during her natural life in such manner that said income, interest and profit should be for her sole and separate use and in no way liable for any debts, contracts, engagements or any pledge, assignment or transfer thereof, or for the debts, contracts or engagements of any husband which she might have or take, and that her personal receipts should alone discharge the trustee from the payment of said income and profit, with power given in and by said testamentary disposition to said Mary to dispose of said one-fifth part thereof by will, and in default of such testamentary disposition by said Mary of her share then said Patrick provided by his said will that the same should descend to and vest in any lawful issue that she might leave, share and share alike, and that the issue of any deceased child living at her death should take the share of his or her deceased parent, and in default of such testamentary disposition by said Mary, or of such issue by her, or of the issue of a deceased child, then such share should descend to and vest in the brothers of Mary or the issue of any deceased brother living at her death, such issue to take the share of their deceased parents respectively. Said testator also provided by said will that in case of the death of his sons John F., Francis P. or James A. O'Reilly, or either of them, without lawful issue, then the part or share given to such child so dying should pass to his executors, and the survivor of them in trust to hold for the surviving child or children of the testator in equal shares and under the trusts and limitations set forth and declared concerning the parts of testator's estate given for the use, benefit and behoof of his

said children. Said testator also provided in said will that his executors should have full power and authority to sell and dispose of any and all of his property, real and personal, at public or private sale, at such times and at such prices as they deem best, and execute a deed for the real estate or any part thereof to the purchaser in fee simple.

That by the terms of said codicil above referred to said testator, Patrick O'Reilly revoked the devise of the one-fifth part of his estate to Francis P. O'Reilly in trust for his son Anthony J. O'Reilly, and by said codicil gave the said full equal one-fifth part or share of his estate to his son Anthony J. and his heirs and assigns forever, as by reference to said will and codicil or to a copy thereof recorded as aforesaid in the office of the Clerk of the County of Atlantic, and to which your orator refers, will appear.

And your orator further shows that he has been informed that since the death of said Patrick O'Reilly the said Mary A. O'Reilly has departed this life, but whether testate or intestate, with or without issue, your orator is not informed.

And your orator further shows that after the death of the said Patrick O'Reilly, to wit: on the 29th of October, 1881, said John J. Gardner, then acting as the agent and in behalf of the estate of said Patrick O'Reilly, duly authorized therefor by the executors of the last will of said Patrick O'Reilly, and the devisees therein mentioned, entered into an agreement in writing with your orator for the purchase of other lands whereof said Patrick O'Reilly had died seized, situate in Atlantic City within the bounds aforesaid, which last mentioned agreement is in the words and figures following, to wit:

"Received, Atlantic City, N. J., October 29th, 1881, of "Jacob Keim the sum of five hundred dollars on account "of the purchase money of a certain tract of land, situate "in said city, as follows: Beginning at a point in the "southeasterly line of Pacific Avenue at a distance of 200 "feet northeasterly from the northeasterly line of New "York Avenue, and extending thence (1) southeastwardly "on a line parallel with New York Avenue, a distance of "150 feet; thence (2) southwestwardly parallel with Pacific

"Avenue, a distance of 100 feet; thence (3) southeastwardly "parallel with New York Avenue, a distance of 50 feet; "thence (4) southwestwardly parallel with Pacific Avenue, "a distance of 50 feet; thence (5) southeastwardly par- "allel with New York Avenue, a distance of to "the exterior line (now under water), established in 18 , "by the Riparian Commissioners of New Jersey; thence "(6) northeastwardly along said riparian line a distance of "150 feet; thence (7) northwestwardly parallel with New "York Avenue, a distance of to the southeasterly "line of Pacific Avenue; and thence (8) southwestwardly "along said last mentioned line a distance of 50 feet to the "place of beginning. And also all the additions and accre- "tion to said tract of land, if any, which may hereafter be "made on the sea front; it being the purpose of this "purchase and sale to include all the land above described, "and also all the right, title and interest of the grantors, "and of the estate of the late Patrick O'Reilly, deceased, "in and to the accretions to said land which may be made "upon the sea front. The balance of the purchase money, "namely, the sum of $9,500, to be paid upon tender of a "good and lawful deed for said premises, free from encum- "brance, and opposing or contesting claims of title, with "undisputed possession of the same, the grantee to have "sixty days' notice of such tender.

"Including all the land and rights of said estate be- "tween Pacific Avenue and riparian line and beyond and "New York and Tennessee Avenues.

"JOHN J. GARDNER,
"*Agent P. O'Reilly estate.*"

That said last mentioned agreement included in its description of the lands agreed to be sold the lands referred to in the first mentioned agreement, and in addition thereto described other lands not mentioned or referred to nor included in the first mentioned agreement. That in said last mentioned agreement there was an erroneous description of a portion of said lands, which error would be manifest upon the application of the description contained in the agreement to the lands purporting to be thereby de-

scribed, and is to be found in the sixth course of the last mentioned agreement, which in the agreement is thus described: "thence (6) northeastwardly along said riparian line a distance of 150 feet;" the error in said agreement is in the number of feet which should be, instead of "150," "200." Which last mentioned agreement was by its terms designed to and did include all the lands and rights of the estate of Patrick O'Reilly between Pacific Avenue, the riparian line and beyond, and New York and Tennessee Avenues.

And your orator further shows that he has at all times been ready to pay the purchase money mentioned in said agreement, upon the delivery of the deeds therein described, to be made to him by the said Patrick O'Reilly, under the terms of the first agreement in his life time, and by the executors and devisees of the said Patrick O'Reilly since his death. That at the time of the execution and delivery of the said several agreements, your orator paid to the said Gardner, as agent for the said Patrick O'Reilly under the first agreement, and as agent for the executors and devisees of said O'Reilly under the second agreement, the sums of money mentioned in the said agreements respectively, amounting in the whole to five hundred and twenty-five dollars, on account of the purchase money—the said sum of five hundred and twenty-five dollars being the whole amount paid by your orator on both agreements on account of said purchase money. That your orator, since the death of said Patrick O'Reilly, has applied to his executors, who, under the terms of his will, as hereinbefore set forth, have a power of sale to execute deeds to your orator in conformity with the terms of said agreements, and that said executors have refused so to do. That since the execution of said agreements, and since the death of said Patrick O'Reilly, questions have arisen affecting the title of said Patrick O'Reilly to some of the lands mentioned in said agreements, and suits have been brought by the executors of said Patrick O'Reilly, as your orator is informed, for the purpose of establishing his title to the lands included in said agreements; that said suits have, in various forms, been pend-

ing in the Supreme Court of the State of New Jersey for several years past; that your orator has repeatedly urged upon the executors of said Patrick O'Reilly, that they should press the trial of said suits and establish their title. That one of said suits brought against one Daniel Lindley, in respect to a title to a part of the lands so as aforesaid agreed to be conveyed by said O'Reilly and his executors and devisees to your orator, your orator has been informed has been tried in the Circuit Court of Atlantic County, which trial resulted in a verdict in favor of said executors and devisees of O'Reilly. That upon writs of error, as your orator is informed, the judgment rendered upon said verdict was set aside because of some informalities in the proof of the will of said Patrick O'Reilly, which, as your orator has been informed, have, since the judgment of the reviewing Court, been corrected, and said will has been properly proved and exemplified and recorded in the office of the Surrogate of Atlantic County.

Your orator further shows that he has been informed that another suit was brought by the executors and devisees of said O'Reilly against one West in the Supreme Court of the State of New Jersey, who, as your orator is informed, was tenant of a part of the lands agreed to be conveyed to your orator under one Rotherham, which last mentioned suit, as your orator has been informed, has been brought to trial at the last term of Circuit Court of the County of Atlantic, and resulted in a verdict in favor of the said executors and devisees of said O'Reilly. That during the pendency of these suits your orator, on several occasions, urged upon the executors of said O'Reilly a speedy trial of the issues involved in said controversies, with a view to the settlement of the title in favor of said O'Reilly, and to that end, and in order to expedite the trial of said causes, your orator tendered to said executors the assistance of counsel, to be employed and paid by your orator, to aid in the prosecution of said suits; that your orator's offers in this respect were not accepted.

Your orator further shows that he has been informed and believes, and, therefore, charges, that, on the 21st day

of April last, said Catherine C. O'Reilly, describing herself therein as executor of said Patrick O'Reilly, with a power of sale, attempted to agree in writing with one James A. Griffith, for the sale to him, in consideration of $65,000 to be paid, of certain lands described in said writing as all that tract or piece of land situate in Atlantic City, New Jersey, being all the land lying south of the south line of lots Nos. 33 and 34 in Patrick O'Reilly's plot of lots and extending to the Atlantic Ocean, including the riparian title, which writing, purporting to be an agreement between said Catherine C. O'Reilly, executor as aforesaid, with power of sale, and said James A. Griffith, was afterwards recorded in the Clerk's Office of Atlantic County, May 6th, 1892, in book No. 2 of Agreements, folio 373, as by reference thereto or to a certified copy thereof now in your orator's possession, and to which your orator refers, will appear. That said land described in said pretended agreement is part of the land mentioned in the last mentioned agreement between your orator and said John J. Gardner, as agent aforesaid, and is a portion of the land thereby agreed to be conveyed to your orator. Your orator charges that said Catherine C. O'Reilly, as executor, acting alone, was without power to sell or contract for the sale of said land to James A. Griffith, the power under the will of said O'Reilly to make sale of said lands having been given, as hereinbefore stated, not to said Catherine only as executor, but to all the executors named in his will, of whom Catherine C. O'Reilly was one, or to the survivor or survivors of them; that all of said executors, as your orator is informed, are living; that none have renounced their said executorship, and that the power of sale contained in said will could only be executed, and an agreement for the execution thereof could only be made, as your orator is advised, by the concurrent action of the executors therein named, who, by the terms of the will were the donees of the power. That inasmuch as said Catherine C. O'Reilly in and by said agreement appears to act only as executor, your orator charges that no interest whatever in said land passed to the said James A. Griffith under said agreement, because said Catherine C.

O'Reilly as executor, acting alone, had no power, under color of the power of sale given in said will to all the executors of said Patrick O'Reilly acting collectively, to agree for the sale of said lands in said agreement described, and because, in and by said agreement, the said Catherine C. O'Reilly did not purport to convey, as your orator is informed, her life estate in the lands whereof Patrick O'Reilly died seized. Your orator, therefore, charges that said agreement is inefficacious as a contract for the transmission of the title whereof said Patrick O'Reilly died seized in said lands described in said agreement to said James A. Griffith, and that said lands are, therefore, still within the seizing and ownership of the devisees of said Patrick O'Reilly and subject to the exercise of the power of sale by the executors named in his will, and may be conveyed by said executors and devisees to your orator in performance of the agreement in writing between your orator and said Patrick O'Reilly, and said executors and devisees of said Patrick O'Reilly, acting by said John J. Gardner, agent as aforesaid, hereinbefore mentioned. And your orator further shows that the said James A. Griffith, at the time of the execution and delivery of the said agreement by the said Catherine C. O'Reilly to him as aforesaid, knew of the existence of the agreement between your orator and said Patrick O'Reilly, and said executors and devisees of Patrick O'Reilly, acting through said John J. Gardner, agent as aforesaid, and was fully aware of your orator's equitable rights under said agreement, that he had repeatedly attempted to purchase your orator's equitable estate in said lands created by said agreement, and that he well knew that your orator was entitled to have, in the execution of said agreement, a conveyance from the executors and devisees of Patrick O'Reilly of the lands described in the agreement, attempted to have been made between said Catherine C. O'Reilly, executor as aforesaid, and said James A. Griffith, and said pretended agreement was entered into by said Griffith with full knowledge and notice of your orator's rights in the premises.

And your orator further shows and charges that, un-

der said several agreements, your orator became entitled to an equitable estate in the lands therein described, and became entitled to have from the said Patrick O'Reilly, during his lifetime, and from the executors and devisees of the said Patrick O'Reilly since his death, the transfer of the title whereof he was seized of, in and to the lands described in said agreements, clear of all encumbrance or opposing or contesting claims of title with undisputed possession. That the making of said agreement by said Catherine C. O'Reilly, executor, with said James A. Griffith is in fraud of the rights of your orator as the vendee of said lands, and the owner of an equitable estate therein. That your orator is now and at all times has been ready to accept from the said Patrick O'Reilly, in his lifetime, and from the executors and devisees of said Patrick O'Reilly, since his death, a title, free of all encumbrance, or from contesting claims, and to pay the amount of the consideration mentioned in said agreement therefor, or the balance remaining due thereon, after deducting the $525 already paid by your orator on account of said purchase money, and is now ready to accept such conveyance and tenders himself ready to pay said purchase money upon the performance of said agreements so far forth as the same are to be performed by the said Patrick O'Reilly in his lifetime, or by the executors and devisees of O'Reilly since his death.

In tender consideration whereof, and for as much as your orator is without relief in the premises, without the aid of this Honorable Court, your orator prays that said Catherine C. O'Reilly, Francis P. O'Reilly, James A. O'Reilly, executors of the last will and testament of Patrick O'Reilly, John F. O'Reilly, Francis P. O'Reilly, James A. O'Reilly, Anthony J. O'Reilly, James A. O'Reilly, trustee for Mary A. O'Reilly; Catherine C. O'Reilly, devisees under the will of said Patrick O'Reilly, and James A. Griffith may, but without oath (oath being hereby expressly waived), full, true and perfect answer make to all and singular the premises aforesaid, and that as fully as if the same were here again repeated, and they thereto particularly interrogated, paragraph by paragraph;

and that by the order and decree of this Court your orator's rights as vendee under said agreement hereinbefore set forth may be established and that it may be decreed that your orator, under the terms of said agreement, is entitled to an equitable estate in the lands in said agreements described; and that said several persons, executors and devisees, as aforesaid, may be decreed to specifically perform said agreements by the tender to your orator of a deed conveying a title to the lands in said agreements described, free of all encumbrance and from any opposing or contesting claims, upon payment by your orator to them of the balance of the purchase money in said agreements mentioned, after deducting $525 already paid as aforesaid by your orator on account of said purchase money, which payment your orator again tenders himself ready to make upon the tender of such deed; that the agreement hereinabove set forth as attempted to have been made between said Catherine C. O'Reilly as executor and James A. Griffith may also be decreed to be void; that your orator may be decreed to be entitled to a conveyance, under the terms of your orator's agreements, by the said executors and devisees of said Patrick O'Reilly, to your orator of the lands in your orator's agreements described, including the lands described, or attempted so to be, in said pretended agreement with said James A. Griffith aforesaid; or, if your Honor should deem it more equitable than that by the decree of this Court, your orator should be subrogated to the rights of said bargainor, Catherine C. O'Reilly, executor of said Patrick O'Reilly, and of said several persons, devisees of said Patrick O'Reilly, in respect to said consideration money mentioned in said pretended agreement with said James A. Griffith and in respect to any security or securities for the payment thereof or of any part thereof, and that said consideration money and the securities in which the same is invested, or by which payment thereof is or is intended to be secured, less the balance of the consideration money agreed to be paid by your orator, be paid and transferred to your orator as the value and equivalent of your orator's equitable estate under said agreement between your orator and said execu-

tors and devisees of said Patrick O'Reilly; that said executors and devisees may be restrained from making any conveyance or transfer, or agreeing to make any conveyance or transfer, of the said lands mentioned in your orator's said agreements, or of any part or parcel thereof, or of any estate, right, title or interest therein, to said James A. Griffith, or to any person or persons whatever, save only your orator in execution and performance of the agreements hereinbefore set forth as made by and between said Patrick O'Reilly in his lifetime and the executors and devisees of said Patrick O'Reilly since his death with your orator. And that said James A. Griffith may be restrained from transferring or assigning said pretended agreement, or any interest therein, to any person or persons and from transferring or conveying any title to or interest in said lands which he may have received from said Catherine C. O'Reilly, executor as aforesaid, or from any other of the executors or devisees of said Patrick O'Reilly. And that your orator may have such other and further relief in the premises as your Honor shall deem equitable.

May it please your Honor, the premises considered, to grant to your orator not only the State's writ of injunction issuing out of and under the seal of this Honorable Court, to be directed to the said several persons, executors and devisees as aforesaid, and to said James A. Griffith, restraining them and each of them in the several matters aforesaid, but also the State's writ of subpœna issuing out of and under the seal of this Honorable Court, to be directed to the said several persons, therein and thereby commanding them and each and every of them, at a certain day and under a certain penalty therein to be expressed, personally to be and appear before your Honor in this Honorable Court, therein to answer the premises and to stand to, abide and perform such decree in the premises as to your Honor shall seem meet.

And your orator will ever pray, &c.

GRAY & GRAY,

Sols. for and of Counsel with Compl't.

JACOB KEIM,
Compl't,
vs.
CATHERINE C. O'REILLY
AND OTHERS,
Def'ts.

STATE OF PENNSYLVANIA,
CITY OF PHILADELPHIA. } ss:

Newton Keim, being duly sworn, upon his oath, saith, that he is a resident of the City of Philadelphia, in the State of Pennsylvania; that he is a son of Jacob Keim, of Atlantic City, New Jersey, complainant in above entitled bill of complaint named, and is familiar with the facts set forth therein, particularly with the certain contracts or agreements for the sale, by Patrick O'Reilly in his life time and by his executors and devisees since his death, to complainant of certain tracts of land situate in Atlantic City, and with the said described tracts of land, true copies of which contracts are set forth in foregoing bill of complaint; that John J. Gardner was the duly authorized agent of said Patrick O'Reilly in his lifetime and of his executors and devisees since the death of said Patrick O'Reilly.

And further saith, that he, the deponent, is informed by a certificate of search received from the Clerk of Atlantic County, New Jersey, by him—acting for his father in that behalf—that it appears of record in said clerk's office; that the said Catherine C. O'Reilly, one of said respondents as executrix of the estate of the late Patrick O'Reilly, deceased, did execute, upon the 21st day of April, A. D. 1892, an agreement or pretended agreement for the sale to one James A. Griffith of a part of the said lands described in said bill of complaint, and in which deponent's father, the said Jacob Keim, complainant, has an equitable estate, by virtue of the contracts and agreements with him in said bill set forth.

And further saith, that he, the said Newton Keim, is acquainted with the said James A. Griffith, with whom said agreement or pretended agreement of April 21st,

1892, has by said Catherine C. O'Reilly, executrix, been made; and that said James A. Griffith at the time and before the making of the said pretended agreement was thoroughly informed of the said contracts and agreements made long prior thereto for the sale to said Jacob Keim of the said tracts of land, and well knew of the rights and equitable estate of said Jacob Keim in the same.

Deponent further saith, that said James A. Griffith, at various times during the year 1891, particularly in the months of September and November of that year, called upon him, the said Newton Keim, one of said interviews being at Atlantic City at the cottage and in the presence of said Jacob Keim, for the purpose of negotiating a purchase by him, the said James A. Griffith, of the rights and estate in said lands of said Jacob Keim, derived to him by the contracts aforesaid; and said James A. Griffith earnestly solicited of this deponent—acting in that behalf for his father, Jacob Keim—that price and terms be fixed, and an option to purchase all of the said lands given him, the said James A. Griffith, he, the said Griffith, himself submitting definite propositions thereto, which were not accepted. There were a number of interviews and discussions at length of the price, terms, divisions of the ground and especially the ejectment suits pending which he, Griffith, might be able to make with Daniel Lindley and others who were in possession of part of the ground. The interviews were all sought by said James A. Griffith and held at the office of said Newton Keim, in Philadelphia, and at the cottage of said Jacob Keim at Atlantic City, and during the year 1891.

Deponent further saith that said James A. Griffith hath, notwithstanding, unlawfully made or attempted to make an agreement, as before stated, for the purchase from Catherine C. O'Reilly, executrix, of a part of said lands which had previously so been contracted and agreed to be conveyed to said Jacob Keim, with full knowledge, as already averred, by the said James A. Griffith of the previously acquired equitable estate of the said Jacob Keim therein.

Sworn and subscribed before me this twenty-sixth day of May, A. D. 1892. } NEWTON KEIM.

[L. S.] CHARLES W. SPARHAWK,

Commissioner for the State of New Jersey.

Residing in Philadelphia, Pennsylvania.

STATE OF PENNSYLVANIA, } ss:
CITY OF PHILADELPHIA. }

I, Charles W. Sparhawk, a commissioner for the State of New Jersey, residing in the County of Philadelphia, in the State of Pennsylvania, do certify that on the 26th day of May, 1892, the above Newton Keim subscribed the foregoing affidavit in my presence, in the County of Philadelphia, in the State of Pennsylvania, and did depose and swear that the matters therein set forth were true.

In witness whereof, I have hereunto set my hand and affixed my official seal, this 26th day of May, 1892, in the County and State aforesaid.

[L. S.] CHARLES W. SPARHAWK,

Commissioner for the State of New Jersey.

Residing in Philadelphia, Pennsylvania.

IN CHANCERY OF NEW JERSEY.

BETWEEN JACOB KEIM, *Compl't,* AND CATHERINE C. O'REILLY, EXECUTOR, &C., *et al.* AND JAMES A. GRIFFITH, *Def'ts.*	ON BILL, &C. ANSWER OF CATHERINE C. O'REILLY.

The answer of Catherine C. O'Reilly, one of the executors of Patrick O'Reilly, deceased, and in her own right to the bill of complaint in the above stated cause.

This defendant, for answer to the complainant's said bill, or unto so much and such parts thereof as this defendant is advised it is material or necessary for her to make answer unto, answering says:

That she has not been informed and does not believe that John J. Gardner was ever at any time the duly authorized agent of Patrick O'Reilly for the sale of the lands of the said Patrick O'Reilly, in Atlantic City, New Jersey; that this defendant has no knowledge, information or belief concerning a pretended receipt for twenty-five dollars or agreement dated the 25th day of March, A. D. 1880, signed by "J. J. Gardner, agent," set forth in said bill of complaint, save that shortly before the commencement of this suit and in the month of April last she heard that it was claimed by the said complainant that he had such an instrument in writing; that this defendant has never seen the said instrument, nor, until the commencement of this suit, ever

heard of the existence of the said receipt or agreement or saw any copy thereof, and that she has not been informed and does not believe that the said Patrick O'Reilly in his lifetime made any agreement with the said complainant or authorized any person or persons in his name or in his behalf to make or sign any receipt or agreement for the sale of the lands to the said complainant first mentioned and set forth in said bill of complaint, nor ever in any way approved or confirmed said agreement or any agreement made by the said Patrick O'Reilly in his lifetime or by this defendant as executor of the said Patrick O'Reilly, deceased, or by this defendant in her own right, for the sale of the land with the said complainant.

And this defendant, further answering, admits that the said Patrick O'Reilly departed this life in the month of January, A. D. 1881, having first duly made, executed and published his last will and testament in writing and a codicil thereto of the dates mentioned and set forth in the said bill of complaint, and that the said last will and codicil were afterwards duly proved and letters testamentary thereon issued by the Register of Wills, of the County of Berks, in the State of Pennsylvania, to this defendant and to Francis P. O'Reilly and James A. O'Reilly, the executors named in said will, and that the said will and codicil contained, among other things, in effect the provisions, conditions, directions and devises mentioned and set forth in said bill of complaint.

And this defendant, further answering, shows that afterwards, and on or about the 5th day of July, A. D. 1881, this defendant proved the said last will and testament and codicil thereto of the said Patrick O'Reilly, deceased, before the Surrogate of the County of Atlantic, in the State of New Jersey, pursuant to the statute in such case made and provided, and that upon the said proof of the said will the Surrogate of the said County of Atlantic issued to this defendant letters of administration and that no letters of administration or testamentary were issued on said will in the State of New Jersey to the said Francis P. O'Reilly or to James A. O'Reilly or to either of them ; as by the said will and codicil when produced will more fully appear, and to which this defendant prays leave to refer as part of this her answer.

And this defendant, further answering, admits that Mary A. O'Reilly, one of the devisees mentioned in the will and codicil of the said Patrick O'Reilly, deceased, departed this life in the month of March, A. D. 1890, having first duly made, executed and published her last will and testament in writing, bearing date the first day of July, A. D. 1887, whereby she did bequeath and devise to this defendant, her heirs and assigns forever, all her estate, real, personal and mixed, whatsoever and wheresoever the same might be, and did appoint this defendant sole executor of her said last will and testament; and afterwards the said last will and testament was duly proved by this defendant before the Register of Wills, in and for the County of Berks, in the State of Pennsylvania, and letters testamentary were granted to this defendant, who then and there took upon herself the execution of the said will.

And this defendant, further answering, states and shows that on or about the 29th day of October, A. D. 1889, John F. O'Reilly, one of the devisees under the will of the said Patrick O'Reilly, deceased, by his deed bearing date the day and year last aforesaid, transferred and conveyed to this defendant all his right, title and interest in the said estate, real, personal and mixed, of the said Patrick O'Reilly, deceased, as by the said deed duly executed under the hand and seal of the said John F. O'Reilly and recorded in the office for the recording of deeds in and for the County of Berks, in the State of Pennsylvania, in Deed Book No. 187, page 378, &c., but subject to certain agreements in the said deed contained in the hands of this defendant and ready to be produced and proven will more fully and at large appear.

And this defendant, further answering, denies that on or about the 29th day of October, A. D. 1881, or at any other time after the death of the said Patrick O'Reilly, John J. Gardner in any way was duly authorized to act as the agent or in behalf of the estate of the said Patrick O'Reilly, deceased, by the executors or devisees of the said deceased, to make sale of the lands belonging to said deceased or to enter into contracts for the sale of lands belonging to the estate of the said deceased, and that the said John J. Gardner was never authorized by this defendant as one of the executors of

the said deceased, nor, as this defendant is informed and believes, by the other executors and devisees under the will of said deceased, or any or either of them, to make sale or to enter into an agreement of any kind whatsoever for the sale of lands or to make the pretended agreement set out in the said bill of complaint bearing date the 29th day of October, A. D. 1881, with the said complainant, and that this defendant had no knowledge of the existence of any such agreement until about the time of the commencement of this suit she was informed that such paper had been made by the said John J. Gardner, and this defendant has never seen or heard of the said paper, except as aforesaid, and that the same was never in any way authorized by or consented to by this defendant as executor as aforesaid or otherwise.

And this defendant, further answering, denies that, to the knowledge or belief of this defendant, the said John J. Gardner received as agent of the said Patrick O'Reilly, or of the executors and devisees of the said Patrick O'Reilly, deceased, any sums of money, for or on account of the said Patrick O'Reilly, or for or on account of the executors and devisees of the said Patrick O'Reilly, deceased, under any agreements mentioned in said bill of complaint, or otherwise, for the sale and conveyance of any lands of the said Patrick O'Reilly or of the said executors and devisees of the said Patrick O'Reilly, deceased, or that the said sum has ever been paid over to this defendant as executor as aforesaid, or, as this defendant is informed and believes, to the other executors, or either of them, for or on account of the purchase of the said lands, or any part thereof; and this defendant denies that the said complainant has at any time since the death of the said Patrick O'Reilly applied to this defendant to make conveyance of the said lands, or any lands whereof the said Patrick O'Reilly died seized.

And this defendant, further answering, denies that the executors of the said Patrick O'Reilly, deceased, have at any time since the death of the said Patrick O'Reilly brought or prosecuted, or caused to be brought or prosecuted, any suit or suits to establish title to the lands of the said Patrick O'Reilly, deceased, in the County of Atlantic, in the State of New Jersey; and this defendant denies that the said complainant has ever urged

upon this defendant as executor of the said Patrick O'Reilly, or otherwise, that she should press the trial of any suit brought by the executors of the said Patrick O'Reilly, deceased, to establish their title to lands in the County of Atlantic, in the State of New Jersey, or elsewhere, or that the said executors ever brought or prosecuted any suit against Daniel Lindley or against John West or any other person or persons.

And this defendant, further answering, shows that this defendant, on or about the 21st day of January, A. D. 1882, brought suits in ejectment in the New Jersey Supreme Court against Daniel Lindley and against John West for the possession of a part of the lands whereof the said Patrick O'Reilly died seized in said County of Atlantic; that the suit against the said Lindley was tried and a verdict therein rendered for this defendant, which said verdict was afterwards set aside in the Court of Errors and Appeals of the State of New Jersey; that the said suit against the said Lindley was again tried and a verdict therein rendered for this defendant, which said verdict was afterwards set aside in the Court of Errors and Appeals in the State of New Jersey, upon the ground, as this defendant is informed and believes, of some informality in the will of one Henry F. Felix; and this defendant denies that the said judgments, or either of them, were set aside because of any informality in the proof of the will of the said Patrick O'Reilly, deceased.

And this defendant further shows that in the suit against the said John West certain persons by the name of Rotherham and others were admitted to defend as landlords, and that the said suit was tried before the Atlantic County Circuit Court, at the term of April, 1892, and that a verdict therein was rendered for this defendant; and this defendant denies that the said complainant ever applied to this defendant to expedite the said causes, or either of them, or tendered to this defendant any assistance or counsel to aid in the prosecution of the said suits of either of them.

And this defendant, further answering, admits that on or about the 21st day of April last, this defendant, as executor, executed an agreement in writing with one James A. Griffith for the sale and conveyance of the lands mentioned in

the said bill of complaint, but this defendant denies that she caused the same to be recorded, but has been informed and believes that the said James A. Griffith caused the same to be recorded in the Clerk's Office of the County of Atlantic, as set forth in said bill, and this defendant says that she has not been informed and does not know whether the said James A. Griffith had any knowledge or notice whatsoever of the pretended agreement set forth in the said bill of complaint, signed by the said "J. J. Gardner, agent P. O'Reilly estate," as aforesaid, or of the pretended agreement set forth in said bill of complaint, dated the 25th day of March, A. D. 1880, and signed by J. J. Gardner, agent; and this defendant submits that under the law this defendant had full power to and enter into the agreement in writing with the said James A. Griffith for the sale and conveyance of the aforesaid lands and to sell and convey the same in pursuance of said agreement as the executor of the will of the said Patrick O'Reilly, deceased, duly proved in the State of New Jersey as aforesaid, the other executors named in the said will having neglected and refused to prove said will in the State of New Jersey; and that a conveyance by this defendant as executor as aforesaid in pursuance of said agreement would convey an absolute title to the said lands and also all right and title that she might have as devisee under the will of the said Patrick O'Reilly, deceased, and also any estate that she might have by virtue of the share of the said estate devised to her by the said Mary A. O'Reilly, deceased, as aforesaid, and by the said conveyance made by the said John F. O'Reilly as above set forth, and that the said James A. Griffith, by virtue of such a conveyance, would have a full, complete and perfect title to the land thereby conveyed and that no interest in the said lands or any part thereof would remain in or be held by the defendant or by the executor or devisees of the said Patriek O'Reilly, deceased, or any or either of them.

And this defendant, further answering, denies that the said Patrick O'Reilly in his lifetime ever made any agreement with the said complainant to convey to him the said lands mentioned in the said bill of complaint or any lands whatsoever in the State of New Jersey, and this defendant denies

that the said executors or devisees of the said Patrick O'Reilly, deceased, or any of them at any time agreed with said complainant to convey to him any lands whereof the said Patrick O'Reilly died seized in the State of New Jersey, and this defendant denies that the said pretended agreements mentioned and set forth in the said bill of complaint were ever executed by or with the knowledge, authority or consent of the said Patrick O'Reilly in his lifetime, or of the executors or devisees of the said Patrick O'Reilly, deceased, since his death, and this defendant denies that the said complainant, by virture of the said pretended agreements mentioned and set forth in the said bill of complaint, or either of them or otherwise, ever became entitled to an equitable estate or any estate in any of the lands whereof the said Patrick O'Reilly died seized, or to any right to the transfer of the title of any lands whereof the said Patrick O'Reilly was seized during his lifetime or whereof his executors and devisees became entitled to under the last will and testament of the said Patrick O'Reilly, deceased, after his decease, and this defendant denies that the said agreements, or either of them, made by this defendant as executor as aforesaid with the said James A. Griffith, was in fraud of the rights of the said complainant as vendee or as owner of any title therein or thereto or otherwise.

All which matters and things this defendant is ready to aver, maintain and prove as this Honorable Court shall direct, and humbly prays to be hence dismissed with her reasonable costs and charges in this behalf most wrongfully sustained.

DAVID J. PANCOAST,

Sol. for and of Counsel with def't.

P. L. VOORHEES,

Of Counsel.

IN CHANCERY OF NEW JERSEY.

BETWEEN JACOB KEIM, *Compl't*, AND CATHERINE C. O'REILLY, EXECUTOR, &c., *et al.* AND JAMES A. GRIFFITH, *Def'ts.*	ON BILL, &c. ANSWER OF JAMES A. O'REILLY *et al.*

The answer of Francis P. O'Reilly and James A. O'Reilly, executors of the last will and testament of Patrick O'Reilly, deceased, in the State of Pennsylvania, and in their own right, James A. O'Reilly, trustee for Mary A. O'Reilly, John F. O'Reilly and Anthony J. O'Reilly, defendants in the above stated cause.

These defendants, for answer unto the complainant's said bill, or unto so much and such parts thereof as these defendants are advised it is material or necessary for them to make answer unto, answering say:

That they have not been informed and do not believe that John J. Gardner was at any time the duly authorized agent of Patrick O'Reilly for the sale of lands of the said Patrick O'Reilly in Atlantic City, New Jersey; that these defendants have not nor has any or either of them any knowledge, information or belief concerning a pretended receipt or agreement for $25, dated the 25th day of March, 1880, signed "J. J. Gardner, agent," set forth in the said bill of complaint, save that shortly before the commencement of this suit they heard that it was claimed by the said complainant that he

had such an instrument in writing; that these defendants have not nor has any or either of them seen the said instrument, nor, until about the commencement of this suit, heard of the existence of the said receipt or agreement or saw any copy thereof; that they have not been informed and do not believe that the said Patrick O'Reilly in his lifetime made any agreement with the said complainant nor authorized the said John J. Gardner or any other person or persons in his name or in his behalf to make or sign any receipt or agreement for the sale of the lands to the said complainant nor in any way approved or confirmed the said agreement, nor any agreement, for the sale of the land with or to the said complainant.

And these defendants, further answering, admit that the said Patrick O'Reilly departed this life in the month of January, A. D. 1881, having first duly made, executed and published his last will and testament and codicil thereto in writing of the dates mentioned and set forth in the said bill of complaint and that the said will and codicil were duly proved and letters testamentary thereon issued by the Register of Wills, in the County of Berks, in the State of Pennsylvania, to Catherine C. O'Reilly and to these defendants, Francis P. O'Reilly and James A. O'Reilly, the executors named in said will, and that the said will contained, among other things, in effect the provisions, conditions, directions and devises mentioned and set forth in the said bill of complaint.

And these defendants, further answering, show that afterwards, and on or about the 5th day of July, A. D. 1881, the said Catherine C. O'Reilly proved the said will and testament and codicil thereto of the said Patrick O'Reilly, deceased, before the Surrogate of the County of Atlantic, in the State of New Jersey, pursuant to the statute in such case made and provided, and that upon the proof of the said will the said Surrogate of the said County of Atlantic issued to the said Catherine C. O'Reilly letters of administration or letters testamentary, and that no letters of administration or letters testamentary were issued on said will in said State of New Jersey to the said Francis P. O'Reilly and James A. O'Reilly or either of them.

And these defendants, Francis P. O'Reilly and James A. O'Reilly, further answering say, and these defendants, John F. O'Reilly and Anthony J. O'Reilly, say they believe the same to be true; that these defendants, Francis P. O'Reilly and James A. O'Reilly, refused to prove the said will and codicil and take out letters of administration or letters testamentary thereon in the State of New Jersey.

And these defendants, further answering, admit that Mary A. O'Reilly, one of the devisees mentioned in the said last will and codicil of the said Patrick O'Reilly, deceased, departed this life in the month of March, A. D. 1890, having first duly made, executed and published her last will and testament in writing, bearing date the first day of July, A. D. 1887, whereby she did bequeath and devise to Catherine C. O'Reilly, her heirs and assigns forever, all her estate, real, personal and mixed, whatsoever and wheresoever the same might be, and did appoint the said Catherine C. O'Reilly sole executor of her said will; that the said last will and testament was afterwards duly proved by the said Catherine C. O'Reilly before the Register of Wills, in and for the County of Berks, in the State of Pennsylvania, and letters testamentary were granted to the said Catherine C. O'Reilly, who then and there took upon herself the execution of the said will; and this defendant, James A. O'Reilly, further answering for himself says, and these defendants, Francis P. O'Reilly, John F. O'Reilly and Anthony J. O'Reilly, say they believe the same to be true, that by virtue of the said will of the said Mary A. O'Reilly, in execution of the power given to her under the will of the said Patrick O'Reilly, deceased, all rights of this defendant as trustee for the said Mary A. O'Reilly, under the will of the said Patrick O'Reilly, deceased, terminated and that this defendant has no interest in the said estate whereof the said Patrick O'Reilly died seized or possessed under the will of said deceased as trustee for or in behalf of the said Mary A. O'Reilly.

And this defendant, John F. O'Reilly, further answering, and these defendants, Francis P. O'Reilly, James A. O'Reilly and Anthony J. O'Reilly, believe the same to be true, says that on or about the 29th day of October, A. D. 1889, this defendant, John F. O'Reilly, by his deed bearing date the

day and year last aforesaid, transferred and conveyed to the said Catherine C. O'Reilly all his right, title and interest in the said estate, real, personal and mixed, of the said Patrick O'Reilly, deceased, as, in and by the said deed duly executed under the hand and seal of this defendant, John F. O'Reilly, and recorded in the office for recording deeds, in the County of Berks, in the State of Pennsylvania, in Deed Book No. 187, page 378, &c., appears, subject to certain agreements in the said deed contained, as by the said deed in the hands of the said Catherine C. O'Reilly, or the record thereof when produced and duly proven, will more fully and at large appear.

And these defendants, further answering, deny that on the 29th day of October, A. D. 1881, or at any other time after the death of the said Patrick O'Reilly, John J. Gardner was in any way authorized to act as the agent for or in behalf of the estate of the said Patrick O'Reilly, deceased, by the executors and devisees of the said deceased, to make sale of lands belonging to the said deceased or to enter into any contract for the sale of any lands belonging to the estate of the said Patrick O'Reilly, deceased, and that the said John J. Gardner was ever authorized or empowered by them, or either of them, or any of them, as executors or devisees of the said Patrick O'Reilly, deceased, nor, as these defendants are informed and believe, by the said Catherine C. O'Reilly, the other executor of the said Patrick O'Reilly, deceased, to make sale or to enter into any contract or agreement of any kind whatsoever for the sale or conveyance of lands or to make the pretended agreement set out on the said bill of complaint, bearing date the 29th day of October, A. D. 1881, with the said complainant, or that these defendants had any knowledge of the existence of such pretended agreement or receipt until about the time or shortly before the commencement of this suit, when these defendants were informed that such paper had been made by the said John J. Gardner; and these defendants show and state that they have not nor has any or either of them seen or heard of the existence of such paper, except as aforesaid; and these defendants deny that the said pretended agreement was in any way authorized by or consented to by these defendants, or by any or either of them, as executors

and devisees of the said Patrick O'Reilly, deceased, as aforesaid, or otherwise.

And these defendants, Francis P. O'Reilly and James A. O'Reilly, further answering, and these defendants, John F. O'Reilly and Anthony J. O'Reilly, believe the same to be true, say that, as executors of the said Patrick O'Reilly, deceased, in the State of Pennsylvania, or otherwise, these defendants did not at any time or in any way authorize or empower the said John J. Gardner to make or enter into any contract or agreement for or in behalf of them or of the estate of the said Patrick O'Reilly, deceased, for the sale or conveyance of any lands or real estate in the State of New Jersey, or elsewhere, belonging to the estate of the said deceased with the said complainant or with any other person or persons whatsoever.

And these defendants, further answering, deny that the said John J. Gardner ever received as the agent of the said Patrick O'Reilly, or as the agent of the executors or devisees of the said Patrick O'Reilly, deceased, any sum or sums of money, for or on account of the said Patrick O'Reilly, or for or on account of the executors or devisees of the said Patrick O'Reilly, deceased, under any of the agreements mentioned in the said bill of complaint, or otherwise, for the sale or conveyance of any lands of the said Patrick O'Reilly, deceased, or of the executors and devisees of the said Patrick O'Reilly, or that such sums of money have ever been paid over to these defendants, or any or either of them, or, as these defendants are informed and believe, to the said Catherine C. O'Reilly, executor of the will of the said Patrick O'Reilly, deceased, for or on account of the purchase of the said lands or any part thereof; and these defendants deny that the said complainant has at any time since the death of the said Patrick O'Reilly applied to them, or any or either of them, to make conveyance of the said lands, or any lands whereof the said Patrick O'Reilly died seized.

And these defendants, Francis P. O'Reilly and James A. O'Reilly, executors of the will of the said Patrick O'Reilly, deceased, in the State of Pennsylvania, deny, and these defendants, John F. O'Reilly and Anthony J. O'Reilly, believe the same to be true, that the said John J. Gardner ever re-

ceived as agent of the said Patrick O'Reilly, or as agent of the executors or devisees of the said Patrick O'Reilly, deceased, any sum of money for or on account of the said Patrick O'Reilly, or for or on account of the executors or devisees of the said Patrick O'Reilly, deceased, under any agreements for the sale or conveyance of the land mentioned in the bill of complaint, or otherwise, for the sale or conveyance of any lands of the said Patrick O'Reilly, deceased, or of the said executors or devisees of the said Patrick O'Reilly, deceased, or that such sum or sums of money have ever been paid over to these defendants, or any or either of them as executors aforesaid, or, as these defendants are informed and believe, to Catherine C. O'Reilly, the other executor of the said Patrick O'Reilly, deceased, for or on account of the purchase of the said land or any part thereof; and these defendants deny that the said complainant has at any time since the death of the said Patrick O'Reilly applied to these defendants to make conveyance of the said lands, or any lands whereof the said Patrick O'Reilly died seized.

And these defendants, further answering, deny that the executors of the said Patrick O'Reilly, deceased, have at any time since the death of the said Patrick O'Reilly brought or prosecuted or caused to be brought or prosecuted any suit or suits to establish the title to lands in the County of Atlantic, in the State of New Jersey, whereof the said Patrick O'Reilly died seized; and these defendants deny that the said complainant has ever urged them as executors of the said Patrick O'Reilly, deceased, or otherwise or any or either of them, to press the trial of any suit brought by the executors of the said Patrick O'Reilly, deceased, to establish their title to lands in the County of Atlantic, in the State of New Jersey, or elsewhere, or that the said executors, as executors, have ever brought or prosecuted, or caused to be brought or prosecuted, any suit against the said Daniel Lindley or against the said John West or any other person or persons whatsoever.

And these defendants, further answering, state and show that, as they have been informed and believe, on or about the 21st day of January, A. D. 1882, Catherine C. O'Reilly, to whom all the lands whereof the said Patrick O'Reilly died seized, were devised for and during the term of her natural

life, brought suits in ejectment in the New Jersey Supreme Court against Daniel Lindley and against John West for the possession of a part of the lands whereof the said Patrick O'Reilly died seized in the County of Atlantic, in the State of New Jersey; that the suit against the said Lindley was tried and a verdict therein rendered for the said Catherine C. O'Reilly, which said verdict was afterwards set aside in the Court of Errors and Appeals of the State of New Jersey; that the said suit against the said Lindley was again tried and a verdict therein rendered for the said Catherine C. O'Reilly, which said verdict was afterwards set aside in the Court of Errors and Appeals in the State of New Jersey upon the ground, as these defendants have been informed and believe, of some informality in the record of the will of one Henry F. Felix; and these defendants deny that the said judgments, or either of them, were set aside for any informality in the proof of the will of the said Patrick O'Reilly, deceased, and these defendants show that the said suit is still pending and undecided in said Court.

And these defendants, further answering, show that, as they have been informed and believe, in the suit against the said John West certain persons by the name of Rotherham and others were admitted to defend as landlords and that the said suit was tried at the Atlantic County Circuit Court at the term of April, A. D. 1892, and that a verdict therein was rendered for the said Catherine C. O'Reilly.

And these defendants, further answering, say that they have been informed and believe it to be true that on or about the 21st day of April last the said Catherine C. O'Reilly, as executor of the said Patrick O'Reilly, deceased, as aforesaid, executed an agreement in writing with one James A. Griffith for the sale of the land mentioned in the said bill of complaint, and these defendants have been informed and believe that the said James A. Griffith caused the said agreement to be recorded in the Clerk's Office of the County of Atlantic, as set forth in the said bill of complaint; and these defendants further say that they have not been informed and do not know whether the said James A. Griffith, at the time of the making of the said agreement, had any notice or knowledge whatever of the pretended agreement mentioned and set forth

in the said bill of complaint, signed by the said "J. J. Gardner, agent P. O'Reilly estate," as aforesaid, or of the pretended agreement set forth in the said bill of complaint dated the 25th day of March, A. D. 1880, and signed by "J. J. Gardner, agent," and these defendants submit that under the law the said Catherine C. O'Reilly, as executor as aforesaid, had full power to make and enter into the agreement in writing with the said James A. Griffith for the sale and conveyance of the aforesaid lands and to sell and convey the same in pursuance of the said agreement as the executor of the will of the said Patrick O'Reilly, deceased, duly proved in the State of New Jersey, as aforesaid, the other executors named in said will having neglected and refused to prove said will in the State of New Jersey; and that a conveyance by the said Catherine C. O'Reilly, as executor as aforesaid, in pursuance of said agreement, would convey an absolute title to the said lands and also all right and title that she might have as devisee under the will of the said Patrick O'Reilly, deceased, or of these defendants, or any of them thereunder, and also any estate that the said Catherine C. O'Reilly might have by virtue of the share of the estate of the said Patrick O'Reilly, deceased, devised to her by the said Mary O'Reilly, deceased, as aforesaid, or that she might have, by virtue of the said conveyance made to her by the said John F. O'Reilly, as above set forth, and that the said James A. Griffith, by virtue of such a conveyance, would have a full, complete and perfect title to the land thereby conveyed, and that no interest in the said lands or any part thereof would remain in or be held by the said Catherine C. O'Reilly, or by the executors or devisees of the said Patrick O'Reilly, deceased, or any or either of them.

And these defendants, further answering, deny that the said Patrick O'Reilly in his lifetime ever made any agreement with the said complainant to convey to him the said lands mentioned in the said bill of complaint, or any lands whatsoever in the State of New Jersey; and these defendants deny that the executors or devisees of the said Patrick O'Reilly, deceased, or any or either of them, at any time, made any agreement with the said complainant to convey to him any lands whereof the said Patrick O'Reilly died seized

in the State of New Jersey or elsewhere; and these defendants further deny that the said pretended agreements mentioned and set forth in the said bill of complaint were ever executed by or with the knowledge or consent or authority of the said Patrick O'Reilly in his lifetime, or of the executors or devisees of the said Patrick O'Reilly, deceased, since his death; and these defendants deny that the said complainant, by virtue of the said pretended agreements mentioned and set forth in the said bill of complaint, or either of them, or otherwise, ever became entitled to an equitable estate or any estate in any of the lands whereof the said Patrick O'Reilly died seized or to any right to the transfer of any land whereof the said Patrick O'Reilly was seized or whereof his executors or devisees became entitled to under the last will and testament of Patrick O'Reilly, deceased, after his decease, and these defendants deny that the said agreements or either of them made by the said Catherine C. O'Reilly, as executor as aforesaid, with the said James A. Griffith, was in fraud of the rights of the said complainant as vendee or as owner of any title or interest therein or thereto, or otherwise.

All which matters and things these defendants are ready and willing to aver and prove, maintain as this Honorable Court shall direct, and humbly pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

DAVID J. PANCOAST,

Sol. for and of Counsel with Def'ts.

P. L. VOORHEES,

Of Counsel.

IN CHANCERY OF NEW JERSEY.

To the Honorable Alexander T. McGill, Chancellor of the State of New Jersey:

Humbly complaining, shows unto your Honor, your orator, Jacob Keim, of Atlantic City, in the State of New Jersey, that on or about the 30th day of April, 1892, your orator exhibited his original bill of complaint in this Honorable Court against Catherine C. O'Reilly, Francis P. O'Reilly, James A. O'Reilly, executors of the last will and testament of Patrick O'Reilly, deceased; John F. O'Reilly, Francis P. O'Reilly, James A. O'Reilly, Anthony J. O'Reilly; James A. O'Reilly, trustee for Mary A. O'Reilly; Catherine C. O'Reilly, devisees under the last will of said Patrick O'Reilly, deceased, Daniel Lindley and Alfred Adams, jr., the defendants hereinafter named as defendants, thereby stating that your orator had made an agreement in writing to purchase certain lands, situate in Atlantic City, New Jersey, lying between New York Avenue and Tennessee Avenue and Pacific Avenue and the Atlantic Ocean, being a portion of the lands of which the said Patrick O'Reilly was then seized, lying between said avenues, from said Patrick O'Reilly in his lifetime through John J. Gardner as agent, and that said Patrick O'Reilly afterwards departed this life, in the year 1881, having previously made his last will, with a codicil thereto annexed, whereof he appointed his wife, said Catherine C. O'Reilly, and his sons, Francis P. O'Reilly and James A. O'Reilly, executors, and that said will and codicil had been duly proven before the Register of Wills, in the County of Berks, in the State of Pennsylvania, and that an exemplified copy thereof was recorded in the office of the Surrogate of the County of Atlantic, in the State of New Jersey, where the lands so as aforesaid agreed to be purchased by your orator were situate. That by said will said Patrick O'Reilly devised said lands, with other lands whereof he died seized, to his wife, Catherine C. O'Reilly, for

life, and that he thereby directed that after her death his estate should be divided into five equal shares, one whereof he gave to his son John F. O'Reilly, another to his son Francis P. O'Reilly, another to his son James A. O'Reilly, to each of his said sons absolutely, and another to his son, Francis P. O'Reilly, in trust to pay the income thereof to his son, Anthony J. O'Reilly, during his life for the sole and separate use of his said son, Anthony J. O'Reilly, free from his debts, said one-fifth to be also subject to the power of testamentary disposition by said Anthony of the principal of such share, and in default of such disposition then that the same should descend to any lawful issue said Anthony might leave, and in default of such testamentary disposition then that the same should descend to any lawful issue said Anthony might leave, and in default of such testamentary disposition by said Anthony, or of such issue, then that such share should vest in the brothers of said Anthony and the issue of any deceased brothers living at his death. That another one-fifth part said Patrick by his will devised to his son, James A. O'Reilly, in trust for his daughter, Mary A. O'Reilly, in such manner that the income thereof should be for her sole and separate use, not liable for any debts or contracts nor to any pledge, assignment or transfer, nor for the debts nor engagements of any husband she might take; that her personal receipts should alone discharge the trustee from the payment of said income, and with the same power of disposition to said Mary, to dispose of said one-fifth part by will, and in default of such testamentary disposition, with the same limitation of the principal of such share as was by said will, as hereinbefore stated, limited as to the share of said Anthony J. O'Reilly. And said testator also provided by said will that in case of the death of his sons, John F., Francis P. or James A. O'Reilly, or either of them, without lawful issue, then the part or share given to such child so dying should pass to the executors, and the survivor of them in trust to hold for the surviving child or children of the said testator in equal shares under the trust and limitations set forth and declared concerning the parts of the testator's estate given for the benefit of his said children. Said testator provided that said executors should have full power and authority to sell and dispose of

his property, real and personal, at public or private sale, as they should deem best, and make deeds therefor in fee simple. By the terms of the codicil said Patrick O'Reilly revoked the devise of one-fifth part of his estate to Francis P. O'Reilly, in trust for his son, Anthony J. O'Reilly, and by said codicil gave the full enjoyment of the said one-fifth share to his son, Anthony J. O'Reilly, in fee simple forever, as by reference to said bill of complaint on file in this Honorable Court will more fully appear. That since the death of said Patrick O'Reilly the said Mary A. O'Reilly has departed this life, but whether testate or intestate, with or without issue, your orator stated he was not informed. That after the death of said Patrick O'Reilly, in the year 1881, said John J. Gardner was then acting as the agent, and, in behalf of the estate of said Patrick O'Reilly, for the executors of his last will and the devisees therein mentioned, and that said Gardner, acting as such agent, agreed in writing with your orator to sell the residue of the lands whereof said Patrick O'Reilly died seized, lying between the avenues hereinbefore named, in said City of Atlantic, in the County of Atlantic, State of New Jersey. That said last mentioned agreement included in its description the lands referred to in the first mentioned agreement, and, in addition thereto, other lands not included within said first mentioned agreement, and that said last mentioned agreement included all of the lands and rights of the estate of Patrick O'Reilly lying between New York and Tennessee Avenues and Pacific Avenue and the Atlantic Ocean. That your orator has been ready at all times to carry said agreements into effect, and, in part performance thereof, at different times, had paid to said Gardner, as agent for said Patrick O'Reilly, different sums of money, amounting in all to five hundred dred and twenty-five dollars.

That your orator had applied to the executors of said O'Reilly to execute deeds in conformity with said agreement and said executors have refused so to do, and that since the execution of the agreements and the death of said O'Reilly questions affecting the title of O'Reilly to some of the lands mentioned in the agreements arose or had arisen and suits had been brought by the executors of O'Reilly, as your orator stated in said bill he had been informed, for the purpose of establishing his

title to the lands in the agreements, and that in various forms the suits had been pending in the Supreme Court of the State of New Jersey, and that your orator had repeatedly urged upon the executors that they should press the trial of the suits and establish their title. That the said bill further set forth that one of said suits brought against Daniel Lindley, in respect to the title to a part of the lands agreed to be conveyed by O'Reilly, his executors and devisees, to your orator, as your orator stated in said bill he had been informed, had been tried in Atlantic County Circuit Court and resulted in a verdict in favor of the executors and devisees of O'Reilly, and that your orator had been further informed that the verdict had been set aside upon a writ of error, because of some informality in the proof of the will of said O'Reilly, which, since the verdict, had been corrected and the will had been properly proved and exemplified and recorded in the Office of the Surrogate of the County of Atlantic.

That your orator further set forth in said bill that he had been informed that another suit was brought by the executors and devisees of O'Reilly against one West in the Supreme Court of New Jersey, who was tenant of part of the lands agreed to be conveyed to your orator under one Rotherham, which last mentioned suit, as your orator stated in said bill he had been informed, had been brought to trial in the Circuit Court of Atlantic County and resulted in a verdict in favor of the executors and devisees of O'Reilly. That during the pendency of these suits your orator on several occasions had urged upon the executors of O'Reilly a speedy trial of the issues involved in said controversies with a view to the settlement of the title in favor of O'Reilly, and to that end, and in order to expedite the trial of said causes, your orator had tendered to said executors the assistance of counsel to be employed and paid by your orator to aid in the prosecution of said suits, and that your orator's offers in that respect were not accepted.

And your orator further set forth in said bill that he had been informed and believed that on the 14th day of April last, said Catherine C. O'Reilly, describing herself therein as executor of Patrick O'Reilly, with a power of sale, had attempted to convey by deed, dated as aforesaid, to one, Daniel Lindley, a tract of land in Atlantic City, beginning one

hundred and fifty feet south of Pacific Avenue and one hundred and fifty feet east of New York Avenue, and extending thence east eighteen hundred feet, more or less, to the Atlantic Ocean, being an uniform width of fifty feet; that said land described in said deed was part of the lands mentioned in the aforesaid agreements between your orator and said John J. Gardner, as agent as aforesaid, and your orator in said bill thereupon charged that Catherine C. O'Reilly, as executor, acting alone, was without power to sell the land aforesaid to said Daniel Lindley, the power under the will of said O'Reilly to make sale of his lands having been given not to said Catherine only as executor, but to all of the executors named in the will, of whom Catherine was one, or to the survivor or survivors of them, who, as your orator stated in said bill he had been informed, were living; that none had renounced their executorship, and that the power of sale contained in the will could only be executed, as your orator stated in said bill he was advised, by the concurrent action of the executors named therein, who were the donees of the power.

Your orator further set forth in said bill that inasmuch as Catherine C. O'Reilly, by the deed aforesaid, appeared to act only as executor, your orator therefore charged that no estate whatever in the land passed to Daniel Lindley under said deed because of the failure to execute the power of sale given by said Patrick O'Reilly to his said executors and because in said deed said Catherine C. O'Reilly did not purport to convey her life estate in said lands. Your orator thereupon charged in said bill that said deed was inefficacious for the transmission of title whereof Patrick O'Reilly died seized in the lands described in the said deed and that the lands were, therefore, within the seizing and ownership of the devisees of Patrick O'Reilly and subject to the exercise of the power of sale by the executors named in his will and might be conveyed by the executors and devisees of said will to your orator in performance of the agreement in writing between your orator and Patrick O'Reilly acting by said John J. Gardner, their agent, as was charged in said bill.

Your orator further sets forth in said bill and showed that Daniel Lindley, at the time of the execution and delivery of the said deed by Catherine C. O'Reilly to him, knew of the

existence of the agreement between your orator and Patrick O'Reilly and the executors and devisees of Patrick O'Reilly, acting through said Gardner, their agent, as aforesaid, and was fully aware of your orator's equitable rights under the said agreement, and that your orator was entitled to have, in the execution of said agreement, a conveyance from the executors and devisees of Patrick O'Reilly of the lands described in the said deed pretended to have been made between Catherine C. O'Reilly, executor, and Daniel Lindley, and that said deed was taken by said Lindley with full knowledge and notice of your orator's rights in the premises.

And your orator in said bill alleged that said Catherine C. O'Reilly, as executor as aforesaid, on or about April 22d, 1892, executed an agreement in writing with one Alfred Adams, jr., and caused it to be recorded, as set forth in said bill, and by said agreement agreed to convey a lot of land extending from Pacific Avenue to the ocean, lying 100 feet west from Tennessee Avenue and extending westwardly along Pacific Avenue 50 feet and southerly of that width between parallel lines to the Atlantic Ocean. That said tract of land was a part of the land agreed to be conveyed to your orator; and your orator's said bill charged that said Alfred Adams, jr., at the time of the making of said agreement, knew of your orator's agreements in your orator's bill set forth, and entered into said agreement with full knowledge and notice of your orator's said agreements and of your orator's rights thereunder; and your orator further set forth in said bill that he was entitled to the performance of his said agreements by said executors and devisees of said Patrick O'Reilly, notwithstanding said agreement with said Adams.

And your orator, in his said bill, further alleged and charged that under said several agreements your orator became entitled to an equitable estate in the lands therein described, and became entitled to have from the said Patrick O'Reilly during his lifetime, and from the executors and devisees of the said Patrick O'Reilly since his death, the transfer of the title whereof he was seized of, in and to the lands described in said agreements, clear of all encumbrance or opposing or contesting claims of title, with undisputed possession. That the attempted conveyance by said Catherine C. O'Reilly,

as executor, to said Daniel Lindley, and the making of said agreement by said Catherine C. O'Reilly, executor, with said Alfred Adams, jr., were in fraud of the rights of your orator as the vendee of said lands and the owner of an equitable estate therein; that there still remained of lands included within the descriptions of your orator's agreements a considerable body of land not included either within the pretended deed to Lindley or the agreement to Adams. That your orator was and at all times had been ready to accept from the said Patrick O'Reilly in his lifetime, and from the executors and devisees of said Patrick O'Reilly since his death, a title free of all encumbrance or from contesting claims, and to pay the amount of the consideration mentioned in said agreements therefor or the balance remaining due thereon after deducting the five hundred and twenty-five dollar already paid by your orator on account of said purchase money, and was ready to accept such conveyance, and in said bill tendered himself ready to pay said purchase money, upon the performance of such agreements so far forth as the same were to be performed by the said Patrick O'Reilly in his lifetime, or by the executors and devisees of O'Reilly since his death.

And your orator, in said bill, prayed as against said several defendants therein named that they should answer without oath, and that by the order and decree of this Court your orator's rights as vendee under said agreements hereinbefore set forth might be established and that it might be decreed that your orator, under the terms of said agreements, was entitled to an equitable estate in the lands in said agreements described; and that said several persons, executors and devisees as aforesaid, might be decreed to specifically perform said agreements by the tender to your orator of a deed conveying a title to the lands in said agreements described, free of all encumbrance and from any opposing or contesting claim, upon payment by your orator to them of the balance of the purchase money in said agreements mentioned, after deducting $525 already paid as aforesaid by your orator on account of said purchase money, which payment your orator again tendered himself ready to make upon the tender of such deed; that the conveyance in said bill described as attempted to have been made by the said Catherine C. O'Reilly, executor,

might be decreed to be void; that the agreement therein set forth as attempted to have been made between said Catherine C. O'Reilly, the executor, and Alfred Adams, jr., might also be decreed to be void; that your orator might be decreed to be entitled to a conveyance, under the terms of your orator's agreements, by the said executors and devisees of said Patrick O'Reilly, to your orator of the lands of your orator's agreements described, including the lands described, or attempted so to be, in said pretended deed and agreement aforesaid; that said executors and devisees might be restrained from making any conveyance or transfer, or agreeing to make any conveyance or transfer, of the said lands mentioned in your orator's said agreements, or of any part or parcel thereof, or of any estate, right, title or interest therein, to any person or persons whatever, save only your orator in execution and performance of the agreements in said bill, set forth as made by and between said Patrick O'Reilly in his lifetime and the executors and devisees of said Patrick O'Reilly since his death with your orator. And that your orator might have further relief and process against said several defendants.

And your orator further shows that after the filing of said bill of complaint said defendants, Francis P. O'Reilly and James A. O'Reilly, as executors of the last will and testament of Patrick O'Reilly, deceased, in their own right; James A. O'Reilly, trustee for Mary A. O'Reilly; John F. O'Reilly and Anthony J. O'Reilly, filed their answers to said bill, wherein they set forth they had not been informed and did not believe that said John J. Gardner was at any time the duly authorized agent of Patrick O'Reilly for the sale of the lands of Patrick O'Reilly in Atlantic City, and that none of said defendants had any knowledge, information or belief concerning the receipt or agreement for twenty-five dollars set forth in your orator's bill, save that shortly before the filing of said bill they had heard that it was claimed by your orator that he had such an instrument; that they had not, nor had any of them, seen said instrument, nor, until about the commencement of your orator's suit, heard of the existence of said receipt or agreement, nor had they seen any copy

thereof; that they had not been informed and did not believe that Patrick O'Reilly in his lifetime made any agreement with your orator or authorized John J. Gardner, or any other person in his name, or in his behalf, to make or sign any receipt or agreement for the sale of the lands to your orator, nor in any way approved or confirmed said agreement, nor any agreement, for the sale of lands with or to your orator; and in said answer said defendants admitted the death of Patrick O'Reilly at the time stated in your orator's bill, the execution of his will and the proof thereof as set forth in your orator's bill, and the issuing of letters testamentary thereon to Catherine C. O'Reilly, Francis P. O'Reilly, James A. O'Reilly, as executors thereof; and further admitted that said will contained, among other things, in effect the provisions, conditions, directions and devises set forth in your orator's bill.

Further answering said bill, said defendants said that about the 25th of July, 1881, Catherine C. O'Reilly proved the will of Patrick O'Reilly and the codicil thereto before the Surrogate of Atlantic County, pursuant to the statute, and that upon the proof of said will the Surrogate issued to Catherine C. O'Reilly letters of administration, or letters testamentary, and that no letters of administration, or no letters testamentary, as was set forth in said answer, were issued on said will in the State of New Jersey to Francis P. O'Reilly and James A. O'Reilly, or either of them, and that Francis P. O'Reilly and Jas. A. O'Reilly refused to prove said will and codicil and take out letters thereon in the State of New Jersey. Said defendants in said answer admitted that Mary A. O'Reilly, one of the devisees mentioned in the will of Patrick O'Reilly, died in the month of March, 1890, having first made her will in writing, bearing date July 1st, 1887, whereby she bequeathed and devised to Catherine C. O'Reilly, her heirs and assigns, all her estate, real, personal and mixed, whatsoever and wheresoever the same might be, and appointed the said Catherine C. O'Reilly sole executor of her will, and that said will was afterward proved by Catherine C. O'Reilly before the Register of

Wills for Berks County, Pennsylvania, and letters testamentary issued thereon to Catherine C. O'Reilly, who took upon herself the execution of said will.

And in said answer said defendant, James A. O'Reilly, answering for himself (the said other answering defendants averring that they believed his answer to be true), said that by virtue of the will of Mary A. O'Reilly, in execution of the power given her under the will of Patrick O'Reilly, all rights of James A. O'Reilly, as trustee of Mary A. O'Reilly, under the will of Patrick O'Reilly, terminated, and that James A. O'Reilly had no interest in the estate whereof Patrick O'Reilly died seized under the will of said deceased as trustee in behalf of Mary A. O'Reilly.

And said John F. O'Reilly, defendant as aforesaid, answering for himself (said other answering defendants averring that they believed said answer to be true), said in said answer that on the 29th day of October, 1889, said defendant, John F. O'Reilly, by deed or agreement, bearing date that day and year, conveyed to Catherine C. O'Reilly all his right, title and interest in the estate, real, personal and mixed, of Patrick O'Reilly, and referred to the said deed as having been executed and recorded in the County of Berks, in the State of Pennsylvania, in the office for recording deeds, in Book No. 187, subject to certain agreements in said deed contained, to which deed reference was made in said answer.

And said defendants, collectively answering, denied that on the 29th day of October, 1881, or at any other time after the death of Patrick O'Reilly, John J. Gardner was in any way authorized to act as agent in behalf of the estate of Patrick O'Reilly by the executors and devisees of Patrick O'Reilly, to make sale of any of the lands belonging to Patrick O'Reilly, or to enter into any contract for the sale of any lands belonging to the estate of Patrick O'Reilly, and that said Gardner was ever authorized or empowered by either or any of said answering defendants as executors or devisees of said Patrick O'Reilly, nor, as said defendants in said answer averred, that they had been informed and believed by said Catherine C. O'Reilly, the

other executor of Patrick O'Reilly, to make sale or enter into any contract or agreement of any kind whatever for the sale or conveyance of lands, or to make the agreement set forth in your orator's bill, bearing date the 29th of October, 1881, with your orator.

And in said answer said defendants denied that they had any knowledge of the existence of such agreement or receipt until about the time of, or shortly before, the commencement of your orator's suit, when they were informed that such paper had been made by said Gardner, and in said answer stated that they had not, nor had any or either of them, seen or heard of the existence of such paper, except as aforesaid, and denied that the said agreement was in any way authorized by or consented to by said defendants, or either of them, as executors or devisees of Patrick O'Reilly, or otherwise.

And said defendants, Francis P. O'Reilly and James A. O'Reilly, answering for themselves (said answering defendants, John F. O'Reilly and Anthony J. O'Reilly, averring that they believe the said answer to be true), said that as executors of Patrick O'Reilly, in the State of Pennsylvania, or otherwise, they, said Francis P. O'Reilly and James A. O'Reilly, had not at any time or in any way authorized or empowered John J. Gardner to make or enter into any contract or agreement in behalf of them or the estate of Patrick O'Reilly for the sale or conveyance of lands or real estate in New Jersey or elsewhere belonging to the estate of said deceased, either with your orator or with any other person or persons whatsoever.

And said defendants in said answer denied that John J. Gardner ever received, as the agent of Patrick O'Reilly, or as the agent of the executors or devisees of Patrick O'Reilly, any sum or sums of money on account of Patrick O'Reilly, or on account of the executors or devisees of Patrick O'Reilly under any of the agreements mentioned in your orator's bill for the sale or conveyance of any land of Patrick O'Reilly, or of the executors or devisees of Patrick O'Reilly, or that such sums of money had ever been paid over to the answering defendants, or any or either of them, or, as they were informed and be-

lieved, to Catherine C. O'Reilly, the other executor of the will of Patrick O'Reilly, for or on account of the purchase of the lands or any part thereof; and deny that your orator had at any time since the death of Patrick O'Reilly applied to them, or any of them, to make conveyance to them of the lands, or any land whereof Patrick O'Reilly died seized.

And said Francis P. and James A. O'Reilly, executors of the will of Patrick O'Reilly, in the State of Pennsylvania, denied, and said John F. O'Reilly and Anthony J. O'Reilly, the other answering defendants, averred that they believed said denial to be true, that John J. Gardner ever received, as agent of Patrick O'Reilly, or as agent of the executors and devisees of Patrick O'Reilly, any sum of money for or on account of Patrick O'Reilly, or for or on account of the executors or devisees of Patrick O'Reilly under any agreements for the sale or conveyance of lands mentioned in the bill of complaint of your orator or otherwise for the sale or conveyance of any lands of Patrick O'Reilly or of the executors or devisees of Patrick O'Reilly, or that sum or sums of money mentioned in your orator's bill had ever been paid to the answering defendants or any of them as executors, or, as the answering defendants averred that they were informed and believed, to Catherine C. O'Reilly, the other executor of Patrick O'Reilly, for or on account of the purchase of the lands or any part thereof.

And said defendants collectively denied that your orator had at any time since the death of Patrick O'Reilly applied to them to make conveyance of the lands or any lands whereof Patrick O'Reilly died seized.

And said defendants further denied in said answer that the executors of Patrick O'Reilly had at any time since the death of Patrick O'Reilly brought or prosecuted, or caused to be brought or prosecuted, any suit to establish the title to lands in the County of Atlantic, in the State of New Jersey, whereof Patrick O'Reilly died seized, or that your orator had ever urged them, as executors of Patrick O'Reilly or otherwise, or any or either of them, to press the trial of any suit brought by the executors of Patrick

O'Reilly to establish their title to the lands in the County of Atlantic or elsewhere, or that the executors, as executors, had ever brought or prosecuted, or caused to be prosecuted, any suit against Daniel Lindley, erroneously described in said answer as John Lindley, or against John West or any person whatever.

And said defendants further stated in said answer that they had been informed and believed that about the 21st day of January, 1882, Catherine C. O'Reilly, to whom, as was said in said answer, all the lands whereof Patrick O'Reilly died seized were devised for and during the term of her life, brought suits in ejectment in the New Jersey Supreme Court against Daniel Lindley and John West for part of the lands whereof Patrick O'Reilly died seized, in the County of Atlantic, New Jersey; that the suit against Lindley was tried and a verdict rendered for Catherine C. O'Reilly, which verdict was afterwards set aside in the Court of Errors and Appeals of New Jersey; that the suit against Lindley was again tried and a verdict rendered for said Catherine C. O'Reilly, which verdict was afterwards set aside in the Court of Errors and Appeals in the State of New Jersey, upon the ground, as defendants aver in said answer they had been informed and believed, of some informality in the record of the will of Henry F. Felix; and said defendants in said answer denied that the said judgments, or either of them, were set aside for any informality in the proof of the will of said Patrick O'Reilly, and in said answer averred that the suits were still pending and undecided in said court, and further showed, upon information and belief, that in the suit against John West certain persons by the name of Rotherham were admitted to defend as landlords, and that the suit was tried at Atlantic County Circuit Court in April Term, 1892, and a verdict rendered therein for Catherine C. O'Reilly. And upon information and belief further said that it was true that Catherine C. O'Reilly, as executor of Patrick O'Reilly, conveyed to Daniel Lindley the lands described in your orator's bill as part of those included in your orator's agreements. And in said answer the defendants submitted

that under the law Catherine C. O'Reilly, as executor, had full power to sell and convey said lands, as executor of the will of Patrick O'Reilly, duly proved in the State of New Jersey, the other executors named in the will having neglected and refused, as was stated in said answer, to prove said will in the State of New Jersey, and that a conveyance by Catherine C. O'Reilly, as executor, conveyed an absolute title to the lands, and also the right and title that she had as devisee under the will of Patrick O'Reilly, and also any estate that Catherine C. O'Reilly might have by virtue of the share of the estate of Patrick O'Reilly, devised to her by Mary A. O'Reilly, or that she might have by virtue of the conveyance made to her by John F. O'Reilly; and that said Daniel Lindley, by virtue of said conveyance, would have a full, complete and perfect title to the land conveyed, and that no interest in the lands or any part thereof would remain in or be held by Catherine C. O'Reilly, or by the executors or devisees of Patrick O'Reilly, or any of them.

Said defendants by said answer further said that they had not been informed and did not know whether said Daniel Lindley had any notice or knowledge whatever of your orator's agreement as set forth in your orator's bill, and denied that at the time of making said conveyance there was any such agreement, or that any such had ever been made. And further answering said, on information and belief, that on or about April 22, 1892, said Catherine C. O'Reilly, as executor aforesaid of Patrick O'Reilly, executed a deed in writing with said Alfred Adams, jr., as set forth in your orator's bill, and that said Adams, had caused the same to be recorded, and that they had not been informed and did not know whether said Adams had any knoweldge or notice whatever of your orator's agreement.

Said defendants in said answer denied that Patrick O'Reilly in his lifetime ever made any agreement with your orator to convey to him the lands mentioned in your orator's bill, or any lands whatever in New Jersey, and further denied that the executors or devisees of Patrick O'Reilly, or any of them, at any time, made any

agreement with your orator to convey to him any lands whereof Patrick O'Reilly died seized in New Jersey or elsewhere; and also denied that the agreements mentioned and set forth in the said bill of complaint were ever made by or with the knowledge or consent of Patrick O'Reilly in his lifetime, or of the executors or devisees of Patrick O'Reilly since his death, or that your orator, by virtue of said agreements mentioned in his bill of complaint, or either of them, or otherwise, ever became entitled to an equitable estate or any estate in any of the lands whereof Patrick O'Reilly died seized, or to any right to the transfer of any land whereof Patrick O'Reilly was seized, or whereof his executors or devisees became seized under the will of Patrick O'Reilly after his decease; and further denied that the conveyance aforesaid made by Catherine C. O'Reilly as executor to Daniel Lindley, or the said agreement made by her with said Alfred Adams, jr., were in fraud of the rights of your orator as vendee, or as owner of any title or interest therein or thereto or otherwise

And your orator further shows that said Catherine C. O'Reilly, as one of the executors of Patrick O'Reilly, and in her own right, filed a separate answer to your orator's bill, wherein she averred that she had not been informed and did not believe that John J. Gardner was ever at any time the agent of Patrick O'Reilly for the sale of lands in Atlantic City, New Jersey; that she had no knowledge, information or belief concerning the receipts and agreements set forth in your orator's bill of complaint, save that shortly before the commencement of your orator's suit, and in the month of April last, she heard that your orator claimed that he had the instruments in writing set forth in his bill; that she had never seen said instruments, nor, until the filing of your orator's bill, ever heard of the existence of the receipt and agreement therein set forth, or seen any copy thereof; that she had not been informed, nor did not believe, that Patrick O'Reilly, in his lifetime, made any agreement with your orator, authorized any person or persons in his name or behalf to make any agreement or receipt for the sale of lands to your orator, nor

ever, in any way, approved or confirmed said agreement, or any agreement made by Patrick O'Reilly in his lifetime, or by said Catherine C. O'Reilly as executor of Patrick O'Reilly, or by said Catherine C. O'Reilly in her own right, for the sale of lands with your orator. In said answer said Catherine C. O'Reilly admitted that Patrick O'Reilly died in the month of January, 1881, having first made and executed his will and codicil, as set forth in your orator's bill, and that letters testamentary had been issued thereon, as in said bill your orator stated, and that the provisions of said will and codicil set forth in said bill were true. And said Catherine C. O'Reilly in her said answer further said that about the 5th day of July, 1881, she proved said will and codicil before the Surrogate of Atlantic County, New Jersey, pursuant to the statute, and that upon said proof the Surrogate of Atlantic County issued to her letters of administration, and that no letters of administration or letters testamentary were issued on said will in the State of New Jersey to Francis P. or James A. O'Reilly, or either of them, and in her said answer in respect to said averment referred to will.

And Catherine C. O'Reilly in her said answer admitted that Mary A. O'Reilly, one of the devisees mentioned in the will and codicil of Patrick O'Reilly, died in the month of March, 1890, having first made, executed and published her will, dated July 1, 1887, whereby she bequeathed and devised to Catherine C. O'Reilly all her estate, real, personal and mixed, whatsoever and wheresoever, and appointed Catherine C. O'Reilly sole executor of her will; and that said will was afterward proved by Catherine C. O'Reilly before the Register of Wills, in the County of Berks, Pennsylvania, and letters testamentary granted to her and that she had taken upon herself the execution thereof.

And Catherine C. O'Reilly in her said answer stated and showed that about the 29th of October, 1889, John F. O'Reilly, one of the devisees under the will of Patrick O'Reilly, by his deed, bearing date the day and year aforesaid, transferred and conveyed to her all his right, title and interest in the estate, real, personal and mixed,

of Patrick O'Reilly, and referred to said deed as executed under the hand and seal of John F. O'Reilly, and recorded in the office for recording deeds in Berks County, Pennsylvania, in deed book No. 187, page 378, but subject to certain agreements in the deed contained and in said answer referred to said deed as in the hands of said Catherine C. O'Reilly and ready to be produced and proved.

Said Catherine in her said answer denied that on the 29th of October, 1881, or at any other time after the death of Patrick O'Reilly, John J. Gardner in any way was authorized to act as the agent or in behalf of Patrick O'Reilly by the executors or devisees of Patrick O'Reilly to make sale of the lands belonging to him, or to enter into contracts for the sale of the lands belonging to the estate of Patrick O'Reilly, and that John J. Gardner was ever authorized by her as one of the executors of said deceased, nor, as she stated in said answer upon information and belief, by the other executors and devisees under the will of deceased, or any of them, to make sale or enter into any agreement of any kind whatever for the sale of lands, or to make the agreement set out in your orator's bill, bearing date October 29th, 1881, with your orator, and in said answer averred that she had no knowledge of the existence of any such agreement until about the time of the commencement of your orator's suit, when she was informed that said paper had been made by John J. Gardner, and that she had never seen or heard of the paper except as aforesaid, and that the same was never authorized or consented to by her as executor or devisee or otherwise.

She further denied in said answer that to her knowledge or belief Gardner received, as agent of Patrick O'Reilly or of the executors or devisees of Patrick O'Reilly, any sum of money on account of Patrick O'Reilly or on account of the executors or devisees of Patrick O'Reilly, under any agreement mentioned in your orator's bill or otherwise for the sale or conveyance of any lands of Patrick O'Reilly, or of the executors or devisees of Patrick O'Reilly, or that said sum had ever been paid to her as executor, or, as she stated upon information and belief in

said answer, to the other executors, or either of them, for or on account of the purchase of the lands or any part thereof.

And she further denied in her said answer that your orator had at any time since the death of Patrick O'Reilly applied to her to make any conveyance of the lands or any of the lands whereof Patrick O'Reilly died seized, and that the executors of Patrick O'Reilly had at any time since the death of Patrick brought or prosecuted, or caused to be brought or prosecuted, any suit to establish title to the lands of Patrick in Atlantic County, New Jersey, or that your orator had ever urged upon her, as executor of Patrick O'Reilly, or otherwise, that she should press the trial of any suit brought by the executors of Patrick O'Reilly to establish their title to lands in Atlantic County, New Jersey, or elsewhere, or that the executors ever brought or prosecuted any suit against Lindley, or against West, or against any other person or persons; and in said answer stated that she, about January 21, 1882, brought suits in ejectment in the New Jersey Supreme Court against Lindley and West for the possession of a part of the lands whereof Patrick O'Reilly died seized in Atlantic County; that the suit against Lindley was tried and a verdict rendered for her, which was afterwards set aside in the Court of Errors and Appeals in New Jersey; that the suit against Lindley was tried again and a verdict rendered for her, which verdict was afterwards set aside in the Court of Errors and Appeals of New Jersey on the ground, as she averred upon information and belief, of some informality in the will of Henry F. Felix. And she denied that said judgments, or either of them, were set aside because of any informality in the proof of the will of Patrick O'Reilly.

And in said answer said Catherine C. O'Reilly further stated that in the suit against John West certain persons by the name of Rotherham and others were admitted to defend as landlords, and that the suit was tried before the Atlantic County Circuit Court, in the term of April, 1892, and a verdict rendered for her. And she denied in her said answer that your orator ever applied to her to expedite said causes, or either of them, or tendered to her

any assistance or counsel to aid in the prosecution of said causes, or either of them.

And in her said answer said Catherine C. O'Reilly admitted that on the 22d of April last, she, as executor, executed an agreement in writing with one Alfred Adams, jr., for the sale and conveyance of the lands mentioned in the bill of complaint, but denied that she caused the same to be recorded, but averred that she had been informed and believed that Alfred Adams, jr., caused the same to be recorded as set forth in the bill of your orator; and in her said answer said that she had not been informed and did not know whether Adams had any knowledge or notice whatever of the agreement set forth in your orator's bill signed "J. J. Gardner, agent P. O'Reilly estate."

And in her said answer said Catherine C. O'Reilly denied that Patrick O'Reilly in his lifetime ever made any agreement with your orator to convey to him the lands mentioned in your orator's bill, or any lands whatever in the State of New Jersey, and that said executors or devisees of Patrick O'Reilly, or any of them, had at any time agreed with your orator to convey to him any lands whereof Patrick O'Reilly died seized in New Jersey; and further denied that the agreements mentioned in your orator's bill were ever executed by or with the knowledge, authority or consent of Patrick O'Reilly in his lifetime, or of his executors or devisees since his death, or that your orator, by virtue of the said agreements set forth in his bill or otherwise, ever became entitled to an equitable estate or any estate in any of the lands whereof Patrick O'Reilly died seized, or to any right to the transfer of the title of the lands whereof Patrick O'Reilly was seized during his life, or that his executors or devisees became entitled to under the will of the said Patrick O'Reilly after his decease, or that the conveyance made by her as executor to Daniel Lindley, or the agreement made by her as executor with Alfred Adams, jr., were in fraud of the rights of your orator as vendee or as owner of any title therein or thereto or otherwise.

And in her said answer said defendant admitted that she had made and executed as executor the deed to Daniel

Lindley set forth in said bill, which included part of the lands mentioned in your orator's agreement, and submitted that under the law she had full power to sell and convey it as the executor of the will of Patrick O'Reilly, proved in the State of New Jersey, the other executors named in the said will having neglected and refused, as she said in her said answer, to prove said will in the State of New Jersey, and that a conveyance by her as executor in pursuance of said agreement would convey an absolute title to the lands and all right and title that she might have as devisee under the will of Patrick O'Reilly, and any estate that she might have by virtue of the share of the estate devised to her by Mary A. O'Reilly, and by the conveyance made to her by John F. O'Reilly, and that Daniel Lindley, by virtue of such a conveyance, would have a full, complete and perfect title to the land thereby conveyed, and that no interest in the lands or any part thereof would remain in or be held by her, or by the executors or devisees of Patrick O'Reilly, or any of them.

And said defendant in her answer further said that she did not know, and had not been informed, whether said Daniel Lindley had any notice or knowledge whatsoever of your orator's agreements set forth in your orator's bill, and denied that, at the time of said conveyance to said Lindley, there was, or ever had been, any such agreements as those set forth in your orator's bill.

And your orator further shows that Daniel Lindley and Alfred Adams, jr., two of the defendants in your orator's original bill of complaint, on the 23d day of August last, filed their joint and several answer thereto, in which they set out and averred that they were strangers to the matters set forth in your orator's bill touching the agency of John J. Gardner to sell the lands of Patrick O'Reilly in his lifetime, or to sell the lands whereof he died seized, for his executors after his decease, or touching the receipts set forth in your orator's original bill, or the payment of money on account of the agreements set forth in your orator's bill, or of any of the acts of John J. Gardner, as agent or otherwise, as set forth in your orator's bill, and that they had no knowledge, information or belief con-

cerning the same, and, therefore, left your orator to make such proof thereof as he should be able to do.

And, further answering, said defendants admitted that Patrick O'Reilly died at the time stated in your orator's bill, and that he made, executed and published the last will and codicil in your orator's bill set forth, which was admitted to probate and recorded as in your orator's bill stated, and that said Catherine C. O'Reilly, Francis P. O'Reilly and James A. O'Reilly were the executors named in said will and codicil, and that the said will and codicil contained the provisions, conditions, directions and devises mentioned and set forth in your orator's bill.

And in said answer said defendants further admitted that on the 5th of July, 1881, the said will and codicil were proved before the Surrogate of Atlantic County, and that upon such proof the said Surrogate issued to Catherine C. O'Reilly letters testamentary on said will in the State of New Jersey, and averred in said answer that no letters testamentary were issued on said will in the State of New Jersey to Francis P. O'Reilly or James A. O'Reilly, or either of them.

Defendants in their said answer further admitted that they had been informed and believed that Mary A. O'Reilly, one of the devisees mentioned in the will and codicil of Patrick O'Reilly, died at the time mentioned in your orator's bill, in the month of March, 1890, having first made and published her last will and testament on the first of July, 1887, whereby she bequeathed and devised to Catherine C. O'Reilly, her heirs and assigns, all her estate, real, personal and mixed, whatsoever and wheresoever, and appointed said Catherine C. O'Reilly sole executor of her said will; and that said will was duly proved by Catherine C. O'Reilly before the Register of Wills of the County of Berks, in the State of Pennsylvania, and letters testamentary issued thereon to Catherine C. O'Reilly.

And in their said answer said defendants, further answering, stated, on information and belief, that about the 29th of October, 1889, John F. O'Reilly, one of the devisees under the will of Patrick O'Reilly, by deed of that date, conveyed to Catherine C. O'Reilly all his right, title

and interest in the estate of Patrick O'Reilly, and in said answer referred to said deed as recorded in the office for the recording of deeds in Berks County, Pennsylvania, in Deed Book No. 187, page 378, which said deed, as was stated in said answer, was subject to certain agreements in said deed contained in the hands of said Catherine C. O'Reilly.

And said Daniel Lindley, one of said defendants, answering for himself, denied that the executors of Patrick O'Reilly had at any time since the death of said Patrick brought or prosecuted, or caused to be brought or prosecuted, against him, any suit or suits to establish title to the lands of said Patrick in Atlantic County, New Jersey, and averred that he had no knowledge, information or belief touching the allegation in your orator's original bill, that your orator had urged upon the executor of Patrick O'Reilly to press the trial of any suit by the executor to establish the title to said land.

And further answering said Daniel Lindley averred that Catherine C. O'Reilly, as life tenant, on or about the 21st of January, 1882, brought a suit in ejectment in the Supreme Court of New Jersey, against said defendant, for the possession of a part of the land whereof Patrick O'Reilly died seized in Atlantic County; that a verdict was rendered for her, which was afterwards set aside by the Court of Errors and Appeals of New Jersey; that said suit was again tried and a verdict rendered for her, which was afterwards set aside in said Court of Errors and Appeals in the State of New Jersey. And said Daniel Lindley denied that the judgments, or either of them, in said suits were set aside because of any informality in the proof of the will of Patrick O'Reilly, and further denied that said suit was pending and as much undetermined as it was the day it was first brought.

And further answering said Daniel Lindley averred that for more than thirty years he had been in possession of all the land mentioned in the deed in his said answer mentioned, and had always claimed ownership of the same by adverse possession, which question was yet undetermined; that to avoid further expensive litigation and to set

aside all question as to his title he entered into negotiations with Catherine C. O'Reilly, sole executrix in New Jersey of the last will and testament of Patrick O'Reilly, to purchase from her as executrix, under a power of sale in said will of said Patrick contained, all the title or pretended title which the said Patrick died seized of, and that as a result of said negotiations said defendant admitted that, about the 4th of April last, the said Catherine, as executrix of said Patrick, conveyed to him the tract of land mentioned in your orator's bill, and said defendant submitted in his said answer that, under the law, the said Catherine, as executrix, had full power to sell and convey the said land, the other executors named in said will having neglected and refused to prove said will in the State of New Jersey. And said answering defendant in said answer averred that he was informed and believed that he received thereby an absolute title to said land, and all right and title that the said Catherine might have as devisee under the will of the said Patrick, and also any estate that she had by virtue of the devise of the share of said estate to her by the said Mary A. O'Reilly, or by the said conveyance made by the said John F. O'Reilly, as in said answer before set forth, and that said answering defendant, by virtue of said deed, had a full, complete and perfect title, and that no interest in said land or any part thereof remained in or was held by the executor and devisees of said Patrick O'Reilly, or any of them.

And said Daniel Lindley further answering said bill denied that at the time of the execution and delivery of the said deed by the said Catherine C. O'Reilly, executrix as aforesaid, to him, he knew of the existence of the agreement between your orator and said Patrick and said executors and devisees of said Patrick, acting through said John J. Gardner as agent, as averred in your orator's bill; and further denied that he was aware of your orator's equitable rights under said agreement; and further denied that he was aware that your orator was entitled to have, in the execution of said agreement, a conveyance from the executors and devisees of said Patrick of the said lands described in the deed to said defendant; and further

denied that he took said deed with full knowledge and notice of your orator's rights.

And the said Alfred Adams, jr., one of the said defendants in said joint and several answer aforesaid, in answering for himself your orator's original bill, admitted that about the 22d day of April last, said Catherine C. O'Reilly as executor executed an agreement in writing with him for the sale of the land mentioned in your orator's bill, and that he caused said agreement to be recorded in the Clerk's Office of Atlantic County, as stated in your orator's bill.

And further answering, said Alfred Adams, jr., denied that he knew of the existence of your orator's agreements made with said Patrick O'Reilly and with the executors and devisees of Patrick O'Reilly, acting through said John J. Gardner as agent, for the conveyance of the land mentioned in your orator's bill; and further denied that he entered into said agreement between himself and said Catherine C. O'Reilly with full notice and knowledge of your orator's rights as set forth in your orator's bill; and further denied that your orator was entitled, notwithstanding the making of said agreement between said Adams and said Catherine C. O'Reilly as executrix, to the performance by the said executors and devisees of Patrick O'Reilly of the agreements claimed to have been entered into between your orator and said Patrick O'Reilly and said executors and devisees of said Patrick, acting through said John J. Gardner as agent.

And said answering defendants jointly denied in their said answer that said conveyance made by Catherine C. O'Reilly, executrix, to Daniel Lindley, or the agreement made by said Catherine C. O'Reilly, executor, with said Alfred Adams, jr., was a fraud upon the rights of your orator as vendee, or as owner of any title or interest therein or thereto or otherwise.

And your orator, by way of supplement to your orator's original bill of complaint, further shows that your orator's said original bill was filed on the thirtieth day of April, eighteen hundred and ninety-two, and subpœna for the defendants named therein to appear and answer was re-

turnable the twenty-sixth day of May, eighteen hundred and ninety-two; that in your orator's said bill your orator denied the power of the said Catherine C. O'Reilly solely to exercise the power of sale (conferred by the last will of Patrick O'Reilly, deceased, jointly upon said Catherine, together with James A. O'Reilly and Francis P. O'Reilly, as executors of said will) in the making of the deed named in said original bill by Catherine C. O'Reilly, executrix, as aforesaid, to said Daniel Lindley, and dated the fourteenth day of April, eighteen hundred and ninety-two, and recorded on the sixteenth day of April, eighteen hundred and ninety-two, pretending to convey a part of the lands so, as aforesaid stated in your orator's original bill, agreed to be conveyed to your orator. And your orator further shows that since the filing of said original bill and issuing of said subpœna, and the denial of said Catherine's power to make said deed, the said James A. O'Reilly and Francis P. O'Reilly have made to said Daniel Lindley a pretended deed of confirmation, appearing on its face to have been made on the fifteenth day of April, eighteen hundred and ninety-two, and to have been acknowledged on the same day, but the said pretended deed of confirmation was not recorded until the eighteenth day of June, eighteen hundred and ninety-two; and your orator avers that said deed and the acknowledgment thereof were, as your orator is informed and believes, made and acknowledged some time in the month of June, 1892; by which said pretended deed the said James A. O'Reilly and Francis P. O'Reilly recite that the said deed to said Daniel Lindley, dated April fourteenth, eighteen hundred and ninety-two, omits to mention that they had renounced the executorship of said last will of Patrick O'Reilly, deceased, but that notwithstanding they ratify and confirm the acts and doings of said Catherine as executrix as aforesaid, in the same manner and with power and force as if they had been jointly acting with her in the administration of said estate; and more particularly ratifiying and confirming the conveyance so as in your orator's original bill set forth, dated the fourteenth day of April, eighteen hundred and ninety-

two, made by said Catherine C. O'Reilly (acting alone as executrix of said Patrick O'Reilly, deceased) to said Daniel Lindley, as by said pretended deed of confirmation, of record in said Atlantic County Clerk's Office, in Book No. 164 of Deeds, folio 136, &c., more fully and at large appears. And your orator charges that the said pretended deed of confirmation is one of the steps taken by the said defendants whereby, under color of conveyances executed in good faith, they may more effectually fraudulently deprive your orator of the benefit of the said agreements for the sale of said lands set forth in your orator's original bill of complaint. That said deed of confirmation was and is a fraud and was made without any consideration, and was made at the instance and for the benefit of the grantors therein and others interested in the estate of said Patrick O'Reilly, deceased, and with full notice to said James A. O'Reilly, Francis P. O'Reilly and Daniel Lindley, respectively, of the said agreements for sale of said lands to your orator, set forth in your orator's original bill of complaint, and with the purpose of and intent to cheat and defraud your orator of his just rights under said agreements for sale. And your orator further charges that said pretended deed of confirmation is without power or efficiency to ratify or confirm said deed, dated April fourteenth, eighteen hundred and ninety-two, made by said Catherine C. O'Reilly, as executor as aforesaid, to said Daniel Lindley.

And your orator, by way of supplement to his said original bill of complaint, further shows, that after the filing thereof the said Catherine C. O'Reilly, claiming to act as sole executrix of the last will of said Patrick O'Reilly, deceased, on or about the first day of June, eighteen hundred and ninety-two (in pretended performance of the fraudulent agreement for sale set forth in said bill as made with Alfred Adams, jr., by the letters in said bill mentioned), made a deed, dated the first day of June, eighteen hundred and ninety-two, to said Alfred Adams, jr., whereby, for the consideration of twenty-five thousand dollars, she pretended to convey to said Alfred Adams, jr., in fee simple, all that portion of the lands shown by your orator's

original bill to have been agreed to have been conveyed to your orator, situate in Atlantic City aforenamed, which is described in the said pretended agreement between said Catherine and said Alfred Adams, jr., and is in said deed described as follows: Beginning at a point in the southeast line of Pacific Avenue, one hundred feet southwesterly from the southwest line of Tennessee Avenue, and extending thence southerly along the southeast side of Pacific Avenue fifty feet, and southeastwardly, between parallel lines of that width, at right angles to Pacific Avenue, and parallel with Tennessee Avenue, two thousand feet, more or less, to the Atlantic Ocean; which deed purports to have been acknowledged by said Catherine C. O'Reilly on the thirteenth day of June, eighteen hundred and ninety-two, and was recorded in Atlantic County Clerk's Office, in book No. 164 of Deeds, folio 168, &c., as by reference to said record will more fully appear; but your orator charges that said deed was and is void and of no effect by reason that said Catherine C. O'Reilly, under the power created by the said last will of said Patrick O'Reilly, deceased, had no authority solely to exercise said power of sale, and that her said deed, the said other donees of said power, James A. O'Reilly and Francis P. O'Reilly not joining therein, is nugatory and void. And your orator further charges that said deed was made without any consideration, and for the purpose of avoiding the performance of the said agreements to convey said lands to your orator, set forth in your orator's original bill of complaint, and with full notice to said Catherine C. O'Reilly and to said Alfred Adams, jr., of the said agreements for sale of said lands to your orator, set forth in your orator's original bill of complaint; and that said deed was made in bad faith for the benefit of the grantor therein and of other persons interested in the said Patrick O'Reilly estate, and upon an understanding that they were to have and control the title so granted notwithstanding said deed.

And your orator, by way of further supplement to his said original bill, further shows that since the filing thereof the said Francis P. O'Reilly and James A. O'Reilly have made a pretended deed of confirmation to said

Alfred Adams, jr., which they dated the first day of June, eighteen hundred and ninety-two, and the acknowledgment to which is dated the thirteenth day of June, eighteen hundred and ninety-two, and which is of record in said Atlantic County Clerk's Office, in book 163 of Deeds, folio 410, &c., in and by which said deed they set forth the omission in the proceedings for proof of said will of Patrick O'Reilly in New Jersey to show that said Francis and James had renounced their right to letters testamentary jointly with said Catherine, and requested the Surrogate of Atlantic County to issue said letters to her alone; and that said letters were issued by said Surrogate to said Catherine alone, and by said deed they declare that to avoid any disputes concerning the acts of said executrix they ratify and confirm the acts of said Catherine in the same manner and with power and force as if they had been jointly acting with her in the administration of said estate, and particularly they do ratify and confirm the aforenamed conveyance so as aforesaid made by said Catherine C. O'Reilly, executrix, &c., to said Alfred Adams, jr., dated June first, eighteen hundred and ninety-two. And your orator charges that said pretended deed of confirmation is one of the steps taken by said defendants whereby, under color of conveyances appearing to have been executed in good faith, they may more effectually fraudulently deprive your orator of the benefit of the said agreements for the sale of said lands set forth in your orator's original bill of complaint. That said deed of confirmation was and is a fraud and was made without any consideration and for the benefit of the grantors therein and others interested in the said estate of said Patrick O'Reilly, deceased, and with full notice to both the grantors and grantee therein of your orator's said agreements and of his just rights thereunder and for the purpose of defrauding your orator of his rights under said agreements. And your orator further charges that said pretended deed of confirmation is powerless and wholly ineffectual to ratify or confirm the said deed dated the first day of June, eighteen hundred and ninety-two, made by said Catherine C. O'Reilly solely, as executrix, &c., to said Alfred Adams, jr.

And your orator, by way of supplement to his said original bill of complaint, further shows, that the said Alfred Adams, jr., made an indenture of mortgage to said Catherine C. O'Reilly, executrix of said Patrick O'Reilly, deceased, purporting to be dated the first day of June, eighteen hundred and ninety-two, and to be acknowledged the sixteenth day of June, eighteen hundred and ninety-two, and which was recorded in said Atlantic County Clerk's Office on the twenty-first day of June, eighteen hundred and ninety-two, in Book No. 32 of Mortgages, folio 389, &c., as by reference to said record will more fully appear; and the said indenture of the said Alfred Adams, jr., purports to mortgage the lands described in the said deed from Catherine C. O'Reilly, executrix as aforesaid, to him, to said Catherine, as executrix as aforesaid, to secure the payment of twenty-five thousand dollars (the whole of the purchase money named in the deed last above referred to), with interest, on the first day of August, eighteen hundred and ninety-three, and recites in said mortgage that it is intended to secure said purchase money; but your orator charges that the said mortgage, as well as the said deed upon which it is based, was made without any consideration and with full notice to all parties thereto, of the said agreements for sale of said lands to your orator, and of your orator's equitable rights to said lands, set forth in your orator's original bill of complaint; and that said mortgage was made, delivered and accepted in bad faith and for the purpose of cheating and defrauding your orator of his just rights under the said agreements, and with an intent to benefit the said Catherine C. O'Reilly and other persons interested in the estate of Patrick O'Reilly, deceased, by hindering, delaying and embarrassing your orator in compelling the performance of said agreements.

And your orator further shows that the said Catherine C. O'Reilly, executrix as aforesaid (who appears to hold the said mortgage from said Alfred Adams, jr., securing the payment of twenty-five thousand dollars and interest), resides out of the State of New Jersey, and that it is a part of the fraudulent plan of the said Catherine and others,

devisees of said Patrick O'Reilly, who all reside outside of the State of New Jersey, and of said Alfred Adams, jr., and Daniel Lindley, who are acting for them, to transfer the title to said lands affected by said agreements of your orator, and to the securities arising from the sale of the same (such as said mortgage for twenty-five thousand dollars), to other persons, so that your orator may be embarrassed and delayed in protecting and asserting his equitable title to said lands and to said securities, with an intent on their part to procure such transfers, to be recorded in the Clerk's Office of Atlantic County and thus to impede your orator in his suit in this behalf and prevent him from obtaining the benefit of any decree herein.

To the end, therefore, that said defendants, Catherine C. O'Reilly, Francis P. O'Reilly, James A. O'Reilly, executors of the last will and testament of Patrick O'Reilly, deceased, John F. O'Reilly, Francis P. O'Reilly, James A. O'Reilly, Anthony J. O'Reilly; James A. O'Reilly, trustee for Mary A. O'Reilly, Catherine C. O'Reilly, Daniel Lindley, Alfred Adams, jr., and Lewis Evans, clerk of said County of Atlantic, may, if they can, show why your orator should not have the same relief hereby and by his original bill prayed, and may without oath (which is hereby expressly waived) answer the premises as fully as if the same were again repeated, and they thereto particularly interrogated, and that your orator may have the same relief against said several persons aforesaid as if the facts herein stated and charged had been stated and charged in your orator's original bill, and that said several deeds to said Daniel Lindley and Alfred Adams, jr., respectively, and said mortgage purporting to have been made by said Alfred Adams, jr., to said Catherine C. O'Reilly, executrix as aforesaid, may be decreed to be null and void; or in any case, for any reason, said deeds and said mortgage may be held to be forceful and not void, then that your orator may be decreed to be entitled to, and be subrogated to, all the rights of said Catherine C. O'Reilly, executrix as aforesaid, and of any and all the defendants herein named as executors or devisees of said Patrick O'Reilly, to the consideration moneys mentioned in said

deeds to said Daniel Lindley and Alfred Adams, jr., respectively, and to the securities for the payment thereof evidenced by said mortgage aforesaid, less the balance of the consideration money agreed to be paid by your orator by his contracts aforesaid for the purchase of said lands; and that said Catherine C. O'Reilly, executrix as aforesaid, may be restrained from in any way satisfying, cancelling, assigning, transferring, pledging or in any way or manner disposing of said indenture of mortgage purporting to have been made by said Alfred Adams, jr., to her, dated June first, eighteen hundred and ninety-two, to secure the payment of twenty-five thousand dollars and interest thereon; and that said Alfred Adams, jr., may be restrained from paying any of the principal or interest money mentioned in said mortgage, and from conveying, transferring, mortgaging or in any way encumbering or disposing of the lands described in said deed to him, or of any part thereof; and that said Daniel Lindley may be restrained from conveying, transferring, mortgaging or in any way encumbering or disposing of the lands described in said deed to him, or of any portion thereof; and that said Lewis Evans, Esq., clerk of Atlantic County, may be restrained from receiving, marking for record or registry, or registering any assignment, transfer or disposition by said Catherine C. O'Reilly, executrix, &c., of said mortgage made to her by said Alfred Adams, jr., or any conveyance, mortgage or lease by said Alfred Adams, jr., or by said Daniel Lindley of the lands described in said several deeds so as aforesaid purporting to have been made to them respectively. And that your orator may have such further relief in the premises as the circumstances of the case may require and as to your Honor shall seem meet, and as may be agreeable to equity and good conscience.

May it please your Honor, the premises considered, to grant to your orator not only the State's writ of subpœna issuing out of and under the seal of this court, to be directed to said several persons aforesaid, but also the State's writ of injunction also issuing out of and under the seal of this court, to be directed to said Catherine C.

O'Reilly, executrix, &c., Alfred Adams, jr., Daniel Lindley and Lewis Evans, clerk of the County of Atlantic, restraining them and each of them and every of them, their attorneys and agents, in the several matters aforesaid set forth in this your orator's supplemental bill.

And your orator will ever pray, &c.

GREY & GREY,

Sols. for and of Counsel with Compl't.

NEW JERSEY, }
ATLANTIC COUNTY. } ss:

John J. Gardner, of Atlantic City, being duly sworn on his oath says that he knew Patrick O'Reilly in his lifetime and acted for him as agent in the management of his real estate at Atlantic City, New Jersey, and in making sale thereof from time to time, this deponent making the bargains and said Patrick O'Reilly executing deeds in pursuance of such bargains at prices named by said O'Reilly before deponent made said bargains; that after the death of said O'Reilly deponent continued so to act in the same manner as he had done in the lifetime of said Patrick O'Reilly for the executors of said O'Reilly; that after the death of said Patrick O'Reilly deponent received his instructions as to the sales of the O'Reilly lands from James A. O'Reilly, one of the executors of Patrick O'Reilly, who acted apparently and, so far as deponent knows and believes, actually for himself and Catherine C. O'Reilly and Francis P. O'Reilly, then the executors; that the sales of the land for which deponent acted as agent for said executors after the death of said Patrick were affirmed by said executors, who jointly executed deeds therefor; that deponent made a sale March 25th, 1880, to Jacob Keim of a lot of land situate in Atlantic City, being a strip of land fifty feet wide extending from a point two hundred feet southward of Pacific Avenue, parallel with New York Avenue, and fifty feet therefrom to the Atlantic Ocean; that said lot was described in a receipt given by deponent to said Keim for twenty-five dollars, paid by said Keim to deponent as part of the consideration of twenty-five hundred dollars to be

paid to said Patrick O'Reilly by said Keim therefor; that in making said sale deponent acted in pursuance of his authority as the agent of said Patrick O'Reilly; that after the death of said Patrick O'Reilly, deponent continuing to act as aforesaid as agent for his executors, bargained for the sales of the lands then belonging to Patrick O'Reilly estate, and among other lands so agreed to be sold by deponent, as agent as aforesaid, deponent agreed to sell to said Keim all the remaining lands of said estate of O'Reilly lying between New York and Tennessee Avenues, and Pacific Avenue and the Atlantic Ocean, and received from said Keim, as agent for said estate, the sum of five hundred dollars at the time of the agreement, being a part of a consideration of twelve thousand, five hundred dollars to be paid by said Keim to said executors of said Patrick O'Reilly for all the lands of said estate lying between New York and Tennessee Avenues, Pacific Avenue and the Atlantic Ocean; that deponent gave a receipt to said Keim for said sum of five hundred dollars, dated October 29th, 1881, and signed the same as agent "Patrick O'Reilly Estate."

And deponent further says that the moneys received and receipted for by him as aforesaid were accounted for and paid over to said executors by deponent with other moneys received by deponent for the consideration money of other lands of said estate sold by said deponent as agent of said estate and received by him as such agent; that, although deponent never had any written authority under seal from said Patrick O'Reilly in his lifetime, or from his executors since his death, to act as agent for the sale of lands, yet deponent has for many years acted and has never until now, except in respect to said agreements to make sale to said Jacob Keim, had his authority or conduct in any way questioned or challenged.

And deponent further says that the proposed sale to said Jacob Keim of said lands was subject to correspondence at the time between deponent and James A. O'Reilly, who was the only one of said executors through whom deponent received instructions as to whom he accounted for moneys received for said estate.

Sworn and subscribed at Atlantic City this fourteenth day of September, 1892, before me. } JOHN J. GARDNER.

CHARLES A. BAAKE.

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

Newton Keim, of Philadelphia, in the State of Pennsylvania, being duly sworn, on his oath, says that he, this deponent, is the son of Jacob Keim, the complainant named in the foregoing supplemental bill; that he is a member of the bar of the City of Philadelphia, where he has been practicing as a lawyer for about fifteen years; that he has acted for his father in and about the business of the purchase of lots of land in Atlantic City from Patrick O'Reilly's estate and is familiar with the circumstances under which his father, the complainant in said bill, agreed to become the purchaser from Patrick O'Reilly in his lifetime, and from his executors and devisees since his death, of the lands referred to in the original bill above recited and in the supplemental bill of complaint hereto annexed; that the agreements set forth in said original bill and referred to in said supplemental bill were made between his said father, Jacob Keim, and Patrick O'Reilly in his lifetime through John J. Gardner, his agent, and between the executors and devisees of said Patrick O'Reilly since his death, also through Mr. John J. Gardner, their agent; that said agency was never, to the knowledge of this deponent, in any way denied by said Patrick O'Reilly in his lifetime or by his executors or devisees since his death, but, on the contrary, was recognized by said executors and devisees of said O'Reilly since his death, and that as evidence of the recognition of said agency this deponent refers to a letter received by this deponent in reply to one written by this deponent to James A. O'Reilly, son of Catherine C. O'Reilly, one of the executors of the last will of said Patrick O'Reilly, and one of the defendants in the original bill of complaint and in said supplemental bill; that said letter was received by

this deponent on or about the 15th day of September, 1886, and a copy of said letter is annexed to this affidavit, and marked Exhibit A. That said James A. O'Reilly acted for the estate of his deceased father, and deponent wrote to him as the representative of that estate.

And deponent further says that since the filing of the original bill of complaint in this cause, the said James A. O'Reilly and Francis P. O'Reilly, named as defendants in said original bill of complaint, have caused to be recorded in the Clerk's Office of the County of Atlantic, in Book No. 164 of Deeds, folio 136, &c., a deed purporting to be a deed of confirmation made by said Jas. A. and Francis P. O'Reilly to Daniel Lindley, also named in said original bill as a defendant, the substance of which deed is expressed to be a confirmation of the deed set forth in said original bill of complaint, made by Catherine C. O'Reilly, as executrix of said Patrick O'Reilly, deceased, to said Daniel Lindley, dated the fourteenth day of April, eighteen hundred and ninety-two, conveying to said Lindley a part of the land which, by agreements above referred to, the said Patrick O'Reilly in his lifetime, and his executors and devisees since his death, had agreed to convey to said complainant, Jacob Keim, as appears by a certified copy of the record of said deed herewith shown and marked Exhibit B.

And deponent further says that since the filing of said original bill of complaint, the said Catherine C. O'Reilly, claiming to act as sole executrix of the last will of said Patrick O'Reilly, deceased, or said Alfred Adams, jr., both of whom are named as defendants in said original bill of complaint, have caused to be recorded in the Clerk's Office of the County of Atlantic, in Book No. 164 of Deeds, folio 168, &c., a deed made by said Catherine C. O'Reilly, executrix aforesaid, to said Alfred Adams, jr., purporting to be for the consideration of twenty-five thousand dollars, and to convey to said Alfred Adams, jr., the lands specifically described in said supplemental bill, which said lands are portions of the lands agreed to be conveyed to your orator by said agreements set forth and referred to in both said original bills and said supplemental bill, as appears by a

certified copy of the said record herewith shown and marked Exhibit C.

And this deponent further says that since the filing of said original bill the said Francis P. O'Reilly and James A. O'Reilly, or said Alfred Adams, jr., who are defendants as aforesaid, have caused to be recorded in said Clerk's Office, in Book No. 163 of Deeds, folio 410, &c., a deed which purports to be a deed of confirmation made by said James A. and Francis P. O'Reilly to said Alfred Adams, jr., the substance of which deed is expressed to be a confirmation of the deed hereinbefore set forth made by Catherine C. O'Reilly, as executrix of said Patrick O'Reilly, deceased, to said Alfred Adams, dated the 1st day of June, 1892, conveying to said Adams a part of the land which by the agreements above referred to were contracted to be conveyed to said complainant, Jacob Keim, as appears by a certified copy of the record of said deed herewith shown and marked Exhibit D.

And deponent further says that since the filing of said original bill the said Alfred Adams, jr., or said Catherine C. O'Reilly, executrix, &c., defendants as aforesaid, has caused to be recorded in the Clerk's Office of the County of Atlantic, in Book No. 32 of Mortgages, folio 389, &c., an indenture of mortgage purporting to secure the payment of twenty-five thousand dollars, with interest, on the 1st day of August, 1893, upon the lands described in said deeds made to said Alfred Adams, jr., and described in said supplemental bill and which are part of the lands by said agreements contracted to be conveyed to said complainant, Jacob Keim, as by a certified copy of the said record herewith shown more fully appears, which copy is marked Exhibit E.

And this deponent further says that the defendant, Catherine C. O'Reilly, who claims to act as sole executrix of the last will of said Patrick O'Reilly, deceased, and also the said James A. O'Reilly and Francis P. O'Reilly named in said will as co-executors thereof with said Catherine, and all other of the said O'Reilly family, devisees of said lands named in said original and in said supplemental bill, as this deponent has been informed upon careful in-

quiry made therefor, reside out of the State of New Jersey, in the State of Pennsylvania or elsewhere.

Sworn and subscribed before me, a Master in Chancery of New Jersey, this day of September, eighteen hundred and ninety-two.

NEWTON KEIM.

M. C. C.

EXHIBIT A.

READING, PA., 9, 24, 1886.

DEAR SIR:—Your favor of 15th inst. rec'd. The cause of delay in replying to same was that I desired to see Mr. Voorhees. Your father is aware that I have done all in my power to have the cause tried, and Mr. V. promised me that the case will be tried December Term. The delay in the trial of the cause has been very serious to us, as well as to your father, and though I should be loathe to have him throw up the sale, yet I could not find any fault with him for so doing. From the tone of your letter I judged that you held me in a considerable degree accountable for the delay. This is a mistake on your part, and, if intentional, I must resent it. As I have stated above, I have done everything to have the matter adjudicated.

Yours Respy.,

JAMES A. O'REILLY.

NEWTON KEIM, ESQ.,
Chester Co. House, Atlantic City.

IN CHANCERY OF NEW JERSEY.

Between Jacob Keim, *Compl't,* and Catherine C. O'Reilly, Daniel Lindley *et al.*, *Def'ts.*	On Supplemental Bill, &c. Answer of Catherine C. O'Reilly.

The answer of Catherine C. O'Reilly, one of the executors of Patrick O'Reilly, deceased, and in her own right to the amended bill of complaint in the above stated cause.

This defendant, for answer to the complainant's said supplemental bill, or unto so much or such parts thereof as this defendant is advised it is material or necessary for her to make answer unto, answering says:

That this defendant admits that the said complainant, on or about the thirtieth day of April, eighteen hundred and ninety-two, filed his original bill of complaint in this cause against this defendant and Francis P. O'Reilly and James A. O'Reilly, executors, &c., of Patrick O'Reilly, deceased; and John F. O'Reilly, Francis P. O'Reilly, James A. O'Reilly and Anthony J. O'Reilly, James A. O'Reilly, trustee for Mary A. O'Reilly; Catherine C. O'Reilly, Daniel Lindley and Alfred Adams, junior, defendants therein, and that the said original bill of complaint, among other things contained and set forth the said several statements and facts recited and claimed to have been set forth therein by the said supplemental bill, and prayed, in effect, the same relief recited and claimed to have been asked in said original bill by said supplemental bill, as by the said original bill on the files of this

court, or a certified copy thereof, in the hands of this defendant and ready to be produced, reference thereto being had will more fully and at large appear, and to which, for greater certainty, this defendant craves leave to refer.

And this defendant, further answering said supplemental bill of complaint, admits that the said Francis P. O'Reilly and James A. O'Reilly, as executors of the last will and testament of Patrick O'Reilly, deceased, and in their own right; James A. O'Reilly, trustee for Mary A. O'Reilly, John F. O'Reilly and Anthony J. O'Reilly, filed their joint and several answer to the said original bill of complaint of the said complainant, and that the said answer, among other things, contained and set forth the said several statements and facts recited and claimed to have been set forth therein by said supplemental bill, as by the said joint and several answers of the said defendants on the files of this court or a certified copy thereof, in the hands of this defendant and ready to be produced, reference thereto being had will more fully and at large appear and to which, for greater certainty, this defendant craves leave to refer.

And this defendant, further answering said supplemental bill of complaint, admits that this defendant, as executor and in her own right, filed her answer to the said original bill of complaint of the said complainant, and that the said answer, among other things, contained and set forth the said several statements of facts recited and claimed to have been set forth therein by said supplemental bill, as by the said answer of this defendant on the files of this court, or a certified copy thereof in the hands of this defendant and ready to be produced, reference thereto being had will more fully and at large appear, and to which, for greater certainty, this defendant craves leave to refer.

And this defendant, further answering said supplemental bill of complaint, admits that the said Daniel Lindley and Alfred Adams, junior, filed their joint and several answer to the said original bill of complaint of the said complainant, and that the said answer, among other things, contained and set forth therein the said several statements

and facts recited and claimed to have been set forth therein by said supplemental bill, as by the said joint and several answer of the said defendants on the files of this court or a certified copy thereof in the hands of this defendant and ready to be produced, reference thereto being had will more fully and at large appear, and to which this defendant for greater certainty craves leave to refer.

And this defendant, further answering said supplemental bill, admits that the complainant's original bill was filed on or about the thirtieth day of April, eighteen hundred and ninety-two, and that the subpœna issued thereon for the defendants to answer and appear was returnable on the twenty-sixth day of May, eighteen hundred and ninety-two; that the said original bill denied the power of this defendant solely to exercise the power of sale conferred by the last will of said Patrick O'Reilly, deceased, in making the deed mentioned in said original bill made by this defendant as executor to the said Daniel Lindley, dated the fourteenth day of April, eighteen hundred and ninety-two; and this defendant admits that James A. O'Reilly and Francis P. O'Reilly, after the making and executing the said deed by this defendant to said Daniel Lindley, and on or about the fifteenth day of April, eighteen hundred and ninety-two, made, executed, acknowledged and delivered to the said Daniel Lindley a deed of confirmation, or a deed in the nature of a deed of confirmation, for said tract of land, conveyed by this defendant as executor to said Daniel Lindley, and that, as this defendant has been informed and believes, the said Daniel Lindley afterwards recorded said deed of confirmation in the Clerk's Office of Atlantic County, on or about the eighteenth day of June, eighteen hundred and ninety-two, the time mentioned in said supplemental bill, but that as to the date of said record this defendant is not informed and has no knowledge but by the statements of said supplemental bill of complaint, which this defendant believes to be correct, and this defendant says that, as she has been informed and believes, the said deed of confirmation contains, among other things, the statements and recitals mentioned in said supplemental bill, and this defendant denies that the said deed of con-

firmation was made, executed, acknowledged or delivered after the filing of the complainant's said original bill of complaint, and this defendant denies that the said deed of confirmation, or the acknowledgment thereof, or either of them, was made at any time in the month of June, eighteen hundred and ninety-two, or at any time than the day they respectively bear date, and this defendant denies that the said deed of confirmation was a step taken by this defendant or by any of the defendants in said cause to fraudulently deprive the complainant of the benefit of any lawful agreement or any agreement for the sale of land claimed by him in his original bill of complaint, and this defendant denies that the said deed of confirmation was or is a fraud or was made without consideration or was made for the benefit of the grantors therein or others interested in the estate of Patrick O'Reilly, deceased, or any of them, or that the said deed was made with the purpose or intent to cheat or defraud the complainant of any of his just rights or any rights he had or claimed under any lawful agreements or any agreements for the sale of lands claimed by the complainant in his original or supplemental bill, or otherwise, and this defendant denies that said deed of confirmation is without power or efficacy to ratify or confirm said deed made by this defendant to the said Daniel Lindley, conveying said land to said Daniel Lindley for the sum of ten thousand dollars, paid to the deponent as executor, &c., as aforesaid.

And this defendant, further answering said supplemental bill of complaint, admits that on or about the first day of June, eighteen hundred and ninety-two, this defendant, as executor of the said Patrick O'Reilly, deceased (in performance of an agreement made by this defendant with Alfred Adams, jr., on or about the twenty second day of April, A. D. eighteen hundred and ninety-two), conveyed by her deed, bearing date the first day of June, A. D. eighteen hundred and ninety-two, to the said Alfred Adams, jr., for the consideration of twenty-five thousand dollars, the lot of land mentioned in said agreement and described in said supplemental bill of complaint, and that, as this defendant is informed and believes, the said Alfred

Adams caused the said deed to be recorded in the Clerk's Office of Atlantic County on or about the thirteenth day of June, eighteen hundred and ninety-two, in the book of deeds mentioned in said supplemental bill, but this defendant denies that the said agreement made by this defendant to convey said land to said Alfred Adams, junior, was a fraud, or in any way fraudulent, and this defendant denies that the said deed made by her as aforesaid to the said Alfred Adams, junior, was or is void or of no effect for the reasons or causes set forth in said supplemental bill of complaint, or for any other cause. And this defendant denies that this defendant had no authority solely to make and execute said deed or that the said deed is in any way, or for any reason, nugatory or void, and that this defendant states and shows that she is the sole executor named in said last will and testament of said Patrick O'Reilly, deceased, who proved said last will and testament in the State of New Jersey, and to whom letters testamentary or letters of administration, with the will annexed, were issued in the State of New Jersey, and had full power to sell and convey said lands in said estate, and this defendant denies that the said deed was made without any consideration and shows that the said deed was made upon consideration of twenty-five thousand dollars above named and secured to be paid to this defendant, and this defendant denies that the said deed was made for the purpose of avoiding the performance of any agreements to convey said lands to said complainant set forth in his original bill, or any agreement made with the said Patrick O'Reilly, deceased, in his lifetime, or by the executors or devisees of the said Patrick O'Reilly, deceased, since his decease, to convey any lands to said complainant, and this defendant denies that the said deed was made in bad faith, or for the benefit of this defendant, or for the benefit of other persons interested in the estate of said Patrick O'Reilly, deceased, or under any agreement that this defendant and other persons interested in the estate of said Patrick O'Reilly, deceased, or any of them were to have, or should have, the control of, or any control of the title granted by said deed, notwithstanding said deed, or any part thereof.

And this defendant, further answering said supplemental bill, admits that James A. O'Reilly and Francis P. O'Reilly, after the making of said deed by this defendant to the said Alfred Adams, junior, and on the thirteenth day of June, eighteen hundred and ninety-two, made a deed of confirmation, or a deed in the nature of a deed of confirmation, to the said Alfred Adams, junior, and that, as this defendant has been informed and believes, the said Alfred Adams, junior, caused said deed of confirmation to be recorded in the Clerk's Office of Atlantic County at the time and in the book set forth in complainant's said supplemental bill of complaint, and that, as she has been informed and believes, said deed of confirmation contains, among other things, the statements and recitals set forth in said supplemental bill of complaint; and this defendant denies that the said last mentioned deed of confirmation was a step taken by this defendant, or by any of the defendants in said cause, to fraudulently deprive the complainant of the benefit of any lawful agreement or any agreements for the sale of lands claimed by him in his original bill of complaint; and this defendant denies that the said last mentioned deed of confirmation was or is a fraud or was made without any consideration, or that the said last mentioned deed of confirmation was made for the benefit of the said grantors and others interested in the estate of the said Patrick O'Reilly, deceased, or any or either of them, or that the said deed was made with the purpose or intent in any way to cheat or defraud the complainant of any of his just rights or any right he had or claimed under any lawful agreement or any agreement for the sale of lands claimed by the complainant in his original or supplemental bill of complaint, or otherwise; and this defendant denies that the said last mentioned deed of confirmation is without power or efficacy or efficiency to ratify and confirm the said deed made by this defendant to the said Alfred Adams, junior, conveying said land to said Alfred Adams, junior, for the sum of twenty-five thousand dollars and secured to be paid to this defendant as executor as aforesaid.

And this defendant, further answering said supple-

mental bill, admits and shows that said Alfred Adams, jr., made and executed to this defendant, as executor as aforesaid, his bond and mortgage, bearing date on the first day of June, eighteen hundred and ninety-two, for the purpose of securing to this defendant the payment of the sum of fifteen thousand dollars secured on the said lands conveyed by this defendant to him as aforesaid, and said mortgage recited therein that it was given to secure the purchase money of said lot of land, and that the said mortgage was recorded in the Clerk's Office of Atlantic County, at the time and in the book mentioned in said supplemental bill of complaint; and this defendant denies that the said mortgage, or the said deed upon which it was based, or either of them, was made without any consideration; and this defendant denies that the said deed and mortgage, or either of them, were made and executed with full notice of any legal agreement for the sale of said lands to said complainant, or any equitable rights of the said complainant in said lands; this defendant admits that the parties had notice of the original bill of complaint by the complainant in this cause, but this defendant shows that the said original bill does not, nor does the said complainant aver or claim in said original bill or elsewhere that he has, or ever has had, any contract or agreement for the sale of said lands or any part thereof, or any memorandum or note thereof signed by the said Patrick O'Reilly in his lifetime, or by the executors or devisees of the said Patrick O'Reilly since his decease, or by any or either of them, or by any person or persons by the said Patrick O'Reilly in his lifetime, or by the executors or devisees of the said Patrick O'Reilly since his decease, or any or either of them thereunto lawfully authorized; and this defendant denies that the said complainant has or ever has had any contract or agreement in writing for the sale of said lands or any part thereof, or any note or memorandum in writing of any contract or agreement for the sale of said lands or any part thereof signed by the said Patrick O'Reilly in his lifetime, or by his executors or devisees since the death of the said Patrick O'Reilly, or any or either of them, or by any person or persons thereunto lawfully authorized by the said

Patrick O'Reilly in his lifetime, or by his executors or devisees, the defendants to this suit, since his decease, or any or either of them; and this defendant denies that the said mortgage was made, delivered or accepted in bad faith, or for the purpose of in any way cheating or defrauding the complainant of his just right, or any rights of the complainant under any agreement, or otherwise, or with an intent to benefit this defendant or other persons interested in the estate of the said Patrick O'Reilly, deceased, or any of them, or in any way to hinder, embarrass or delay the complainant in compelling the performance of any legal agreements or any agreements he may have for the sale of land to him.

And this defendant, further answering said supplemental bill, says that the mortgage of the said Alfred Adams, jr., as aforesaid, was made to her as executor as aforesaid, and that she resides out of the State of New Jersey, and that all the other devisees of the said Patrick O'Reilly reside out of the State of New Jersey and in the State of Pennsylvania; and this defendant denies that there is any fraudulent plan or agreement or arrangement, or any plan or agreement or arrangement whatsoever of this defendant and the other devisees of the said Patrick O'Reilly, deceased, and Alfred Adams, jr., and Daniel Lindley, or that said Alfred Adams, jr., and Daniel Lindley are acting in any way for this defendant and the other devisees of the said Patrick O'Reilly, deceased, in or under any plan or agreement to transfer the title to any lands affected by any agreement or agreements, or pretended agreement or agreements, of said complainant, or of the securities arising from the sale of said lands to other persons, so that the said complainant may be embarrassed or delayed in protecting or asserting any equitable title he may have to said lands or securities, or with any intent on the part of this defendant and the other devisees of the said Patrick O'Reilly, deceased, and the said Alfred Adams, jr., and Daniel Lindley to procure such transfers of said lands, to be recorded in the Clerk's Office of Atlantic County, to impede the complainant in his suit in that behalf, or to prevent him from obtaining any benefit therein to which he may lawfully be entitled;

STATE OF PENNSYLVANIA, }
COUNTY OF BERKS. } ss:

Catherine C. O'Reilly, of full age, being duly sworn according to law on her oath, says that she is the defendant named in the above answer; that the said answer, so far as it relates to the acts and deeds of this deponent, is true, and so far as it relates to the acts and deeds of others, she believes it to be true; and especially is it true that, to the best of the knowledge and belief of this deponent, the said complainant has not, nor ever has had, any contract or agreement in writing for the sale of the lands and premises mentioned in the original and supplemental bills filed in the above cause, or any part thereof, or any memorandum or note in writing or any contract or agreement for the sale of said lands or any part thereof signed by the said Patrick O'Reilly in his lifetime, or by his executors or devisees since the death of the said Patrick O'Reilly, or any or either of them, or by any person or persons thereunto lawfully authorized by the said Patrick O'Reilly in his lifetime, or by his executors or devisees since his decease, or any or either of them; that this deponent has not in any way or at any time made any agree-

ment or contract in writing or any note or memorandum thereof in writing with the complainant, nor has this deponent ever authorized the said John J. Gardner or any other person or persons to sign or make on behalf of this deponent any contract or agreement in writing or any note or memorandum in writing or any contract or agreement for the sale of said land or any part thereof, and that the said Patrick O'Reilly in his said lifetime and his executors and devisees since his decease have and held legal possession of the said lands and premises until the conveyance of the same by the said Catherine C. O'Reilly, executor, &c., of the said Patrick O'Reilly, deceased, to the said Alfred Adams, jr., and Daniel Lindley, mentioned and referred to in the above answer.

Sworn and subscribed before me this 27th day of December, A. D. 1892. } C. C. O'REILLY.

{ Seal of the Mayor of the City of Reading. } THOS. P. MERRITT,
Mayor.

and this defendant shows that the said deed made by this defendant to the said Alfred Adams, jr., was made for a valuable consideration, being a full and fair price for the said land therein conveyed, and that the said mortgage received by this defendant as executor as aforesaid, from the said Alfred Adams, jr., as security for the price of said land, included not only the said land, but the improvements of the said Alfred Adams, jr., on the said land, and all improvements intended to be put thereon, and was a good and sufficient security for the payment of said purchase money.

All which matters and things this defendant is ready to aver, maintain and prove as this honorable court shall direct, and prays to be hence dismissed with her reasonable cost and charges in this behalf most wrongfully sustained.

DAVID J. PANCOAST,
Sol. for and of Counsel with Def'ts.

P. L. VOORHEES,
of Counsel.

IN CHANCERY OF NEW JERSEY.

BETWEEN JACOB KEIM, *Compl't,* AND CATHERINE C. O'REILLY, DANIEL LINDLEY *et al.*, *Def'ts.*	ON SUPPLEMENTAL BILL, &c. ANSWER OF JAMES A. O'REILLY *et al.*

The answer of Francis P. O'Reilly and James A. O'Reilly, executors of the last will and testament of Patrick O'Reilly, deceased, in the State of Pennsylvania, and in their own right; James A. O'Reilly, trustee for Mary A. O'Reilly, and John F. O'Reilly and Anthony J. O'Reilly, defendants in the above named cause to the supplemental bill of complaint of the said complainant.

These defendants for answer unto the complainant's said supplemental bill of complaint, or unto so much or such parts thereof as these defendants are advised it is material or necessary for them to make answer unto, answering say:

That these defendants admit that the said complainant, on or about the thirteenth day of April, eighteen hundred and ninety-two, filed his original bill of complaint in this cause against Catherine C. O'Reilly, and these defendants, Francis P. O'Reilly and James A. O'Reilly, executors, &c., of Patrick O'Reilly, deceased, and John F. O'Reilly, Francis P. O'Reilly, James A. O'Reilly and Anthony J. O'Reilly; James A. O'Reilly, trustee for Mary A. O'Reilly and Catherine C. O'Reilly, and Daniel Lindley and Alfred Adams, junior, defendants therein, and that the said original bill of complaint, among other things, contained and set forth the said several statements and facts recited and claimed to have been set forth therein by the said supplemental bill, and prayed

in effect the same relief recited and claimed to have been asked in said original bill by said supplemental bill, as by the said original bill on the files of this court or a certified copy thereof in the hands of these defendants and ready to be produced, reference thereto being had, will more fully and at large appear and to which for greater certainty these defendants crave leave to refer.

And these defendants, further answering said supplemental bill of complaint, admit that these defendants, Francis P. O'Reilly and James A. O'Reilly, as executors of the last will and testament of Patrick O'Reilly, deceased, and in their own right, and James A. O'Reilly, trustee for Mary A. O'Reilly, and John F. O'Reilly and Anthony J. O'Reilly, filed their joint and several answer to said original bill of complaint of said complainant, and that the said answer, among other things, contained and set forth the said several statements and facts recited and claimed to have been set forth therein by said supplemental bill, as by the said joint and several answer of these defendants on the files of this court or a certified copy thereof in the hands of these defendants and ready to be produced, reference thereto being had, will more fully and at large appear and to which for greater certainty these defendants crave leave to refer.

And these defendants, further answering said supplemental bill of complaint, admit that the said Catherine C. O'Reilly, as executor of the last will and testament of Patrick O'Reilly, deceased, and in their own right, filed her answer to the said original bill of complaint of said complainant, and that the said answer, among other things, contained and set forth the said several statements of facts recited and claimed to have been set forth therein by said supplemental bill, as by the said answer of the said Catherine C. O'Reilly on the files of this court or a certified copy thereof in the hands of these defendants and ready to be produced, reference thereto being had, will more fully and at large appear and to which for greater certainty these defendants crave leave to refer.

And these defendants, further answering said supplemental bill of complaint, admit that the said Daniel Lind-

ley and Alfred Adams, junior, filed their joint and several answer to the said original bill of complaint, and that the said answer, among other things, contained and set forth the said several statements and facts recited and claimed to have been set forth therein by said supplemental bill, as by the said joint and several answer of the said Daniel Lindley and Alfred Adams, junior, on the files of this court or a certified copy thereof in the hands of these defendants and ready to be produced, reference thereto being had, will more fully and at large appear and to which these defendants for greater certainty crave leave to refer.

And these defendants, further answering said supplemental bill of complaint, admit that the complainant's original bill was filed on or about the thirtieth day of April, eighteen hundred and ninety-two, and that the subpœna issued thereon for the defendants to appear and answer was returnable on the twenty-sixth day of May, eighteen hundred and ninety-two, and that the said original bill denied the power of the said Catherine C. O'Reilly solely to exercise the power of sale conferred by the last will and testament of Patrick O'Reilly, deceased, in making the deed mentioned in said original bill made by the said Catherine C. O'Reilly as executor, &c., to the said Daniel Lindley, dated the fourteenth day of April, eighteen hundred and ninety-two ; and these defendants admit that James A. O'Reilly and Francis P. O'Reilly, after the making and executing of the said deed by the said Catherine C. O'Reilly to the said Daniel Lindley, on or about the fifteenth day of April, eighteen hundred and ninety-two, made, executed, acknowledged and delivered to the said Daniel Lindley a deed of confirmation, or a deed in the nature of a deed of confirmation, for said land conveyed by said Catherine C. O'Reilly as executor to said Daniel Lindley, and that, as these defendants have been informed and believe, the said Daniel Lindley afterwards recorded the said deed of confirmation in the Clerk's Office of Atlantic County ; but these defendants are not informed as to the date of the said record, except by the statements of said supplemental bill, but believe the

date therein specified to be correct; and these defendants admit that the said deed of confirmation contains, among other things, the statements and recitals mentioned in the said supplemental bill; and these defendants deny that the said deed of confirmation was made, executed, acknowledged or delivered after the filing of the complainant's said original bill of complaint; and these defendants deny that the said deed of confirmation, or the acknowledgment thereof, or either of them, was made at any time in the month of June, eighteen hundred and ninety-two, or at any other time than the days they respectively bear date; and these defendants deny that the said deed of confirmation was a step taken by these defendants, or by any of the defendants in said cause, to fraudulently deprive the complainant of the benefit of any lawful agreement or any agreement for the sale of land claimed by him in his original bill of complaint; and these defendants deny that the said deed of confirmation was or is a fraud, or was made without consideration, or was made for the benefit of the grantors therein or for others interested in the estate of Patrick O'Reilly, deceased, or any of them, or that the said deed was made with the purpose or intent to cheat or defraud the complainant of any of his just rights or of any rights he had or claimed to have under any lawful agreement or any agreement for the sale of land claimed by the complainant in his original or supplemental bill of complaint, or otherwise; and these defendants deny that the said deed of confirmation is without power or efficiency to ratify or confirm said deed made by said Catherine C. O'Reilly to the said Daniel Lindley, conveying said land to the said Daniel Lindley for the sum of ten thousand dollars, paid or secured to be paid to the defendant, Catherine C. O'Reilly, as executor of the last will and testament of Patrick O'Reilly, deceased, as aforesaid.

And these defendants, further answering said supplemental bill of complaint, admit that on or about the first day of June, eighteen hundred and ninety-two, the said Catherine C. O'Reilly, deceased, in performance of an agreement made by the said Catherine C. O'Reilly as executor, &c., with Alfred Adams, junior, on or about the twenty-

second day of April, eighteen hundred and ninety-two, conveyed by her deed, bearing date the first day of June, eighteen hundred and ninety two, to the said Alfred Adams, junior, for the consideration of twenty-five thousand dollars, the lot of land mentioned in said agreement and described in said supplemental bill of complaint, and that, as these defendants believe and are informed, the said Alfred Adams, jr., caused the said deed to be recorded in the Clerk's Office of Atlantic County, on or about the thirteenth day of June, eighteen hundred and ninety-two, in the book of deeds mentioned in said supplemental bill, but these defendants deny that the said deed made by the said Catherine C. O'Reilly, executor, &c., as aforesaid, to the said Alfred Adams, jr., was or is void or of no effect for the reasons or causes set forth in said supplemental bill of complaint, or for any other causes or reasons; and these defendants deny that the said Catherine C. O'Reilly, executor of the said Patrick O'Reilly, deceased, had no authority solely to execute said deed to the said Alfred Adams, jr., or that the said deed is in any way or for any reason nugatory, null or void; and these defendants state and show that the said Catherine C. O'Reilly is the only executor named in the said last will and testament of the said Patrick O'Reilly, deceased, who proved said last will and testament in the State of New Jersey, and to whom letters testamentary or letters of administration, with the will annexed, were issued in the State of New Jersey (that the other executors named in said last will and testament neglected and refused to prove said last will and testament in the State of New Jersey), and that the said Catherine C. O'Reilly, executor, &c., as aforesaid, had full power and authority in the law to make the aforesaid agreement for the sale of said land and to make and execute the aforesaid deed conveying the said lands to the said Alfred Adams, jr., and that the said deed conveyed to the said Alfred Adams, jr., the title to said lands in fee and as fully as the said Patrick O'Reilly was seized or possessed thereof in his lifetime and at any time of his decease, or as the executors, heirs and devisees of the said Patrick O'Reilly, deceased, were seized thereof at any time after

his decease; and these defendants deny that the said deed made by the said Catherine C. O'Reilly, executor, &c., as aforesaid, to the said Alfred Adams, jr., was made without any consideration; and these defendants show that the said deed was made for the consideration of twenty-five thousand dollars, above named, paid or secured to be paid to the said Catherine C. O'Reilly, executor of the last will and testament of Patrick O'Reilly, deceased, and is held by her as executor as aforesaid; and these defendants deny that the said deed was made for the purpose of avoiding the performance of any legal agreement or any agreement to convey said lands to said complainant set forth in his original bill of complaint, or of any agreement made by Patrick O'Reilly, deceased, in his lifetime, or by the executors, heirs or devisees of the said Patrick O'Reilly, deceased, or any of them since his decease to convey any lands to the said complainant; and these defendants deny that the said deed was made in bad faith or for the benefit of the defendant, Catherine C. O'Reilly, or of these defendants, or any of them, or for the benefit of any other person or persons interested in the estate of said Patrick O'Reilly, deceased, or under or subject to any agreement, understanding or trust that the said Catherine C. O'Reilly or these defendants (or any or either of them), the executors and devisees under the will of said Patrick O'Reilly, deceased, or persons interested in the estate of said Patrick O'Reilly, deceased, or any of them were to have or could or should have the control of the title to said lands granted by the said Catherine C. O'Reilly, executor, &c., to the said Alfred Adams, jr., or any part thereof, notwithstanding said deed.

And these defendants, further answering said supplemental bill of complaint, admit that these defendants, James A. O'Reilly and Francis P. O'Reilly, after the making of the said deed by the said Catherine C. O'Reilly, executor, &c., of Patrick O'Reilly, deceased, to the said Alfred Adams, jr., and on or about the first day of June, eighteen hundred and ninety-two, made a deed of confirmation, or a deed in the nature of a deed of confirmation, to the said Alfred Adams, jr., and that, as these defend-

ants have been informed and believe, that the said Alfred Adams, jr., caused the said deed of confirmation to be recorded in the Clerk's Office of Atlantic County at or about the time and in the book of deeds set forth in the said supplemental bill of complaint, and that said deed of confirmation contained, among other things, the statements and recitals set forth in said supplemental bill of complaint; and these defendants deny that the said last mentioned deed of confirmation was a step taken by these defendants, or any or either of them, or by any of the defendants in said cause, to fraudulently deprive or in any way deprive the complainant of the benefit of any lawful agreement or any agreement for the sale of any lands claimed by him in his original bill of complaint, or in his said supplemental bill of complaint; and these defendants deny that the said last mentioned deed of confirmation was or is a fraud or in any way fraudulent, or that the said deed was made without any consideration or that the said last mentioned deed of confirmation was made for the benefit of the said grantors therein and others interested in the estate of Patrick O'Reilly, deceased, or any or either of them, or that the said deed was made with the purpose or intent to or in any way cheat or defraud the said complainant of any of his just rights, or of any right he had or claimed to have under any lawful agreement or any agreement for the sale of lands claimed by the complainant in his said original bill of complaint, or in his said supplemental bill of complaint, or otherwise; and these defendants deny that the said last mentioned deed of confirmation is without power or efficiency to ratify and confirm said deed made by the said Catherine C. O'Reilly, executor, &c., as aforesaid, to the said Alfred Adams, jr., conveying said lands to said Alfred Adams, jr., for the sum of twenty-five thousand dollars and paid or secured to be paid to the said Catherine C. O'Reilly, executor of the last will and testament of Patrick O'Reilly, deceased, as aforesaid.

And these defendants, further answering said supplemental bill of complaint, admit and show that the said Alfred Adams, jr., made and executed to the said Catherine C. O'Reilly, executor, &c., as aforesaid, his bond and

mortgage, bearing date the first day of June, eighteen hundred and ninety-two (being the date of the deed made by the said Catherine C. O'Reilly, executor, &c., as aforesaid), to the said Alfred Adams, jr., for the purpose of securing to the said Catherine C. O'Reilly, executor of the last will and testament of the said Patrick O'Reilly, deceased, the sum of twenty-five thousand dollars and interest secured upon the said lands conveyed by the said Catherine C. O'Reilly, executor as aforesaid, to the said Alfred Adams, jr., and said mortgage recited therein that it was given to secure the purchase money of said lot of land, and that the said mortgage was recorded in the Clerk's Office of Atlantic County at or about the time and in the book mentioned in said supplemental bill of complaint; and these defendants deny that the said mortgage or the said deed, or either of them, were made without any consideration; and these defendants deny that the said deed or mortgage, or either of them, were made and executed with full notice of any legal agreement for the sale of said land to said complainant, or of any equitable rights of the said complainant in said lands; these defendants admit that the said parties had notice of the complainant's original bill of complaint in this cause, but these defendants, show that the said original bill does not show nor does the said complainant aver or claim in his said original bill or in his supplemental bill of complaint or elsewhere that he has or ever has had any contract or agreement for the sale of said lands or any part thereof or any memorandum or note thereof in writing signed by the said Patrick O'Reilly in his lifetime, or by the executors or devisees of the said Patrick O'Reilly since his decease, or by any or either of them, or by any person or persons by the said Patrick O'Reilly, or by the executors or devisees of the said Patrick O'Reilly since his decease, or any or either of them thereunto lawfully authorized; and these defendants deny that the said complainant has or ever has had any contract or agreement in writing for the sale of said lands or any part thereof or any memorandum or note in writing of any contract or agreement for the sale of said lands or any part thereof signed by the said Patrick O'Reilly in his lifetime,

or by his executors or devisees since the death of the said Patrick O'Reilly, or any or either of them, or by any person or persons thereunto by the said Patrick O'Reilly in his lifetime, or by his executors or devisees since his decease, or any or either of them lawfully authorized; and these defendants deny that the said mortgage was made, delivered or accepted in bad faith, or for the purpose in any way of cheating, defrauding or depriving of his just rights or any rights of the complainant under any agreement or otherwise, or with any intent to benefit the said Catherine C. O'Reilly or these defendants or other persons interested in the estate of Patrick O'Reilly, deceased, or any or either of them, or in any way to hinder, delay or embarrass the said complainant in compelling the performance of any legal agreement he may have for the sale of lands to him.

And these defendants, further answering said supplemental bill of complaint, admit that the said mortgage of the said Alfred Adams, jr., to secure the payment of twenty-five thousand dollars and interest, was made to the said Catherine C. O'Reilly, executor, &c., of Patrick O'Reilly, deceased, as aforesaid, and that the said Catherine C. O'Reilly and these defendants, the executors and devisees under the will of the said Patrick O'Reilly, deceased, all reside out of the State of New Jersey and in the State of Pennsylvania; and these defendants deny that there is any fraudulent plan or agreement or arrangement or understanding, or any plan, agreement, arrangement or understanding whatsoever of, or by these defendants, or any or either of them, and the other devisees of the said Patrick O'Reilly, deceased, and Alfred Adams, jr., and Daniel Lindley, or that the said Alfred Adams, jr., or Daniel Lindley, or either of them, are acting in any way for these defendants and the other devisees of the said Patrick O'Reilly, deceased, or under any plan or agreement to tranfer the title to any lands affected by any agreement or agreements, or pretended agreement or agreements, of said complainants, or of the securities arising from the sale of said lands to other persons, so that the said complainant may be embarrassed or delayed in protecting or asserting

STATE OF PENNSYLVANIA, } ss:
COUNTY OF BERKS.

Francis P. O'Reilly, James A. O'Reilly and John F. O'Reilly, of full age, being duly sworn according to law on their respective oaths, say, that they are defendants named in the above answer; that the said answer, so far as it relates to the acts and deed of these deponents, is true, and so far as it relates to the acts and deeds of others they believe it to be true; and especially is it true that, to the best of the knowledge and belief of these deponents, the said complainant has not, nor ever has had any contract or agreement in writing for the sale of the lands and premises mentioned in the original and supplemental bills filed in the above cause, or any part thereof, or any memorandum or note in writing or any contract or agreement for the sale of said lands, or any part thereof, signed by the said Patrick O'Reilly in his lifetime, or by his executors or devisees since the death of the said Patrick O'Reilly, or any or either of them, or by any person or persons thereunto by the said Patrick O'Reilly in his lifetime or by his executors or devisees since his decease, or any or either of them lawfully authorized; and these deponents, or any or either of them, have not, in any way or any time, made any agreement or contract in writing, or any note or memorandum thereof in writing with the complainant, nor have these deponents, or any or either of them, ever authorized any person or persons to sign or make on behalf of these deponents, or any or either of them, any contract or agreement in writing or any note or memorandum in writing of any contract or agreement for the

sale of said lands or any part thereof; and that these deponents, or either of them, never authorized the said John J. Gardner, nor any other person or persons, to sign or make on behalf of these deponents, or any or either of them, any contract or agreement in writing or any note or memorandum in writing of any contract or agreement for the sale of said lands or any part thereof; and that the deeds of confirmation mentioned in said answer made by these deponents to the said Daniel Lindley and to the said Alfred Adams, jr., were respectively made, executed and acknowledged on the said days when the said deeds and certificates of acknowledgment thereof bear date; and that the said deed of confirmation to the said Daniel Lindley was made, acknowledged and delivered before the filing of the complainant's original bill of complaint in this cause; and that the said Patrick O'Reilly in his life time and his executors and devisees since his decease have and had legal possession of the said lands and premises until the conveyance of the same by the said Catherine C. O'Reilly, executor, &c., of the said Patrick O'Reilly, deceased, to the said Daniel Lindley and to the said Alfred Adams, jr., mentioned and referred to in the above answer.

Sworn and subscribed before me this 27th day of December, A. D. 1892.

FRANCIS P. O'REILLY,
JAMES A. O'REILLY,
JNO. F. O'REILLY.

Seal of the Mayor of the City of Reading.

THOS. P. MERRITT,
Mayor.

any equitable right or title he may have to said lands or securities, or with any intent on the part of these defendants and the other devisees of the said Patrick O'Reilly, deceased, and the said Alfred Adams, jr., and Daniel Lindley, or any of them, to procure such transfers of said lands, to be recorded in Atlantic County, to impede the complainant in his suit in this behalf, or to prevent him from obtaining any benefit therein to which he may lawfully be entitled; and these defendants show that the said deed made by the said Catherine C. O'Reilly, executor as aforesaid, to the said Alfred Adams, jr., was made for a valuable consideration, being a full and fair price for the said land therein conveyed, and that the said mortgage received by the said Catherine C. O'Reilly, executor, &c., as aforesaid, from the said Alfred Adams, jr., as a security for the price of said lands, included not only the said land, but also the improvements of the said Alfred Adams, jr., then on said lands, and all improvements intended to be put thereon, and was a good and sufficient security for the payment of the said purchase money.

And this defendant, James A. O'Reilly, trustee for Mary A. O'Reilly, answering said supplemental bill of complaint, states and shows that the said Mary A. O'Reilly lately died, having first made and executed her last will and testament in writing, whereby she bequeathed and devised all her estate to said Catherine C. O'Reilly, and by the death of the said Mary A. O'Reilly and the provisions of her will as aforesaid, the trust estate and all rights of this defendant as trustee ceased and determined, and that as trustee this defendant has no interest in said suit, as is more fully shown and set out in the answer of this defendant to the original bill of complaint in this cause, and to which answer this defendant, trustee as aforesaid, craves leave to refer, if it be necessary so to do.

All which matters and things these defendants are ready to aver, maintain and prove as this honorable court shall direct, and humbly pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

DAVID J. PANCOAST,
Sol. for and of Counsel with Def'ts.

P. L. VOORHEES,
of Counsel.

IN CHANCERY OF NEW JERSEY.

BETWEEN JACOB KEIM, *Compl't,* AND CATHERINE C. O'REILLY, DANIEL LINDLEY *et al.*, *Def'ts.*	ON SUPPLEMENTAL BILL. ANSWER OF DANIEL LINDLEY AND ALFRED ADAMS, JR.

The joint and several answer of Daniel Lindley and Alfred Adams, jr., defendants in the above cause, to the supplemental bill of complaint of the said complainant.

These defendants have answered unto the complainant's said supplemental bill of complaint, or unto so much or such parts thereof as these defendants are advised it is important or necessary for them to make answer to, answering saith:

That these defendants admit that the said complainant, on or about the 30th day of April, 1892, filed his original bill of complaint in this cause against Catherine C. O'Reilly, Francis P. O'Reilly, James A. O'Reilly, executors, &c., of Patrick O'Reilly, deceased, and John F. O'Reilly, Francis P. O'Reilly and James A. O'Reilly and Anthony J. O'Reilly; James A. O'Reilly, trustee for Mary A. O'Reilly, and Catherine C. O'Reilly and these defendants, and that the said original bill of complaint, among other things, contained and set forth the said several statements and facts recited and claimed to have been set forth by the said supplemental bill, and pray in effect the same relief recited and claimed to have been asked in said original bill by said supplemental bill, as by the said original bill on the files of this court or a certified copy thereof in the hands of these defendants and ready to be produced, ref-

erence thereto being had, and will more fully and at large appear, and to which for greater certainty these defendants crave leave to refer.

And these defendants, further answering said supplemental bill of complaint, admit that the said Francis P. O'Reilly and James A. O'Reilly, as executors of the last will and testament of Patrick O'Reilly, deceased, and in their own right, and James A. O'Reilly, trustee for Mary A. O'Reilly, and John F. O'Reilly and Anthony J. O'Reilly filed their joint and several answer to said original bill of complaint of said complainant, and that the said answer, among other things, contained and set forth the said several statements and facts recited and claimed to have been set forth therein by said supplemental bill, as by the said joint and several answer of said defendants on the files of this court, or a certified copy thereof, in the hands of said defendants and ready to be produced, reference thereto being had, will more fully and at large appear, and to which for greater certainty these defendants crave leave to refer.

And these defendants, further answering said supplemental bill of complaint, admit that the said Catherine C. O'Reilly, as executor of the last will and testament of Patrick O'Reilly, deceased, and in her own right, filed her answer to the said original bill of complaint of said complainant, and that the said answer, among other things, contained and set forth the said several statements and facts recited and claimed to have been set forth therein by said supplemental bill, as by the said answer of the said Catherine C. O'Reilly on the files of this court, or a certified copy thereof in the hands of said defendants and ready to be produced, reference thereto being had, will more fully and at large appear, and to which for greater certainty these defendants crave leave to refer.

And these defendants, further answering said supplemental bill of complaint, admit that they filed their joint and several answer to the said original bill of complaint, and that the said answer, among other things, contained and set forth the said several statements and facts recited and claimed to have been set forth therein by said supple-

mental bill, as by the said joint and several answer of the said answering defendants on the files of this court, or a certified copy thereof in the hands of these defendants and ready to be produced, reference thereto being had, will more fully and at large appear, and to which these defendants for greater certainty crave leave to refer.

And these defendants, further answering said supplemental bill of complaint, admit that the complainant's original bill was filed on or about the 30th day of April, 1892, and that the subpœna issued thereon for the defendants to appear and answer was returnable on the 26th day of May, 1892, and that the said original bill denied the power of the said Catherine C. O'Reilly solely to exercise the power of sale conferred by the last will and testament of Patrick O'Reilly, deceased, in making the deed mentioned in said original bill made by the said Catherine C. O'Reilly as executor, &c., to this answering defendant, Daniel Lindley, dated the 14th day of April, 1892; and this defendant, Daniel Lindley, answering for himself, admits that James A. O'Reilly and Francis P. O'Reilly, after the making and executing of the said deed by the said Catherine C. O'Reilly to him, the said Daniel Lindley, on or about the 15th day of April, 1892, made, executed, acknowledged and delivered to him, the said Daniel Lindley, a deed of confirmation, or a deed in the nature of a deed of confirmation, for said land conveyed by said Catherine C. O'Reilly as executor to him, the said Daniel Lindley.

And that the said Daniel Lindley afterwards recorded, or caused to be recorded, the said deed of confirmation in the Clerk's Office of Atlantic County at the time stated in said supplemental bill; and this defendant, Daniel Lindley, answering for himself, admits that the said deed of confirmation contained, among other things, the statements and recital mentioned in the said supplemental bill; and this answering defendant, Daniel Lindley, for himself, denies that the said deed of confirmation was made, executed, acknowledged or delivered after the filing of the complainant's said original bill of complaint; and said defendant also denies that the said deed of confirmation, or the acknowledgment thereof, or either of them, was

made at any time in the month of June, 1892, or at any other time within the dates they respectively bear date.

And this defendant, Daniel Lindley, further denies that the said deed of confirmation was a step taken by him or by any of the defendants in said cause to fraudently deprive the complainant of the benefit of any lawful agreement or any agreement for the sale of land claimed by him in his original bill of complaint; and this answering defendant, Daniel Lindley, denies that the said deed of confirmation was or is a fraud, or was made without consideration, or was made for the benefit of the grantor therein, or for others interested in the estate of Patrick O'Reilly, deceased, or any of them, or that the said deed was made with the purpose and intent to cheat or defraud the complainant of any of his just rights or of any rights he had or claimed to have under any lawful agreements or any agreement for the sale of lands claimed by the complainant in his original or supplemental bill of complaint, or otherwise.

And this answering defendant, Daniel Lindley, for himself, denies that the said deed of confirmation is without power or efficiency to ratify or confirm said deed made by said Catherine C. O'Reilly to him to convey said land to him, the said Daniel Lindley, for the sum of ten thousand dollars ($10,000), paid by him in cash to the defendant, and Catherine C. O'Reilly as executor of the last will and testament of Patrick O'Reilly, deceased, as aforesaid.

And this defendant, Alfred Adams, jr., in further answering for himself said supplemental bill of complaint, admits that on or about the first day of June, 1892, the said Catherine C. O'Reilly, in performance of an agreement made by the said Catherine C. O'Reilly, as executor, &c., with him, the said Alfred Adams, jr., on or about the 22d day of April, 1892, conveyed by her deed, bearing date the 1st day of June, 1892, to him, the said Alfred Adams, jr., for the consideration of twenty-five thousand (25,000) dollars, the lot of land mentioned in said agreement and described in said supplemental bill of complaint, and that he, the said answering defendant, caused the said deed to be recorded in the Clerk's Office of Atlantic

County on or about the 13th day of June, 1892, in the book of deeds mentioned in said supplemental bill, but this answering defendant denies that the said agreement made by the said Catherine C. O'Reilly, executor, &c., to convey the said lands to him was a fraud or in any way fraudulent, and this answering defendant, for himself, denies that the said deed made by the said Catherine C. O'Reilly, executor, &c., as aforesaid, to him was or is void or of no effect for the reasons or causes set forth in said supplemental bill of complaint, or for any other causes or reasons.

And this answering defendant, for himself, denies that the said Catherine C. O'Reilly, executor of the said Patrick O'Reilly, deceased, had no authority solely to execute said deed to him, or that the said deed is in any way or for any reason nugatory, null or void ; and this answering defendant, for himself, states and shows that the said Catherine C. O'Reilly is the only executor named in the said last will and testament of the said Patrick O'Reilly, deceased, who proved said last will and testament in the State of New Jersey, and to whom letters testamentary or letters of administration, with the will annexed, were issued in the State of New Jersey (that the other executors named in said last will and testament neglected and refused to prove said last will and testament in the State of New Jersey), and that the said Catherine C. O'Reilly, executor, &c., as aforesaid, had full power and authority under the will to make the aforesaid agreement for the sale of said lands and to make and execute the aforesaid deed conveying the said lands to him, the said Alfred Adams, jr., and that the said deed conveyed to him the title to said lands in fee and as fully as the said Patrick O'Reilly was seized or possessed thereof in his lifetime, and at the time of his decease, or as the executors, heirs and devisees of the said Patrick O'Reilly, deceased, were seized thereof at any time after his decease ; and the said answering defendant, Alfred Adams, jr., for himself, denies that the said deed was made by the said Catherine C. O'Reilly, executor, &c., as aforesaid, to him, without any consideration, and he shows that the said deed was

made for the consideration of twenty-five thousand (25,000) dollars above named paid, or secured to be paid, to the said Catherine C. O'Reilly, executor of the last will and testament of Patrick O'Reilly, deceased, and is held by her as executor as aforesaid.

And said defendant further denies that the said deed was made for the purpose of avoiding the performance of any legal agreement or any agreement to convey said lands to said complainant, set forth in his original bill of complaint or of any agreement made by Patrick O'Reilly, deceased, in his lifetime, or by the executors, heirs or devisees of the said Patrick O'Reilly, deceased, or any of them since his decease, to convey any lands to the said complainant.

And said defendant further denies that the said deed was made in bad faith or for the benefit of the defendant, Catherine C. O'Reilly, or of any of the other defendants, or any of them, or for the benefit of any other person or persons interested in the estate of Patrick O'Reilly, deceased, or under or subject to any agreement, understanding or trust that the said Catherine C. O'Reilly, or any of the said other defendants, or any or either of them, the executors and devisees under the will of the said Patrick O'Reilly, deceased, or persons interested in the estate of said Patrick O'Reilly, deceased, or any of them, were to have, or could or should have, the control of the title to said lands granted by the said Catherine C. O'Reilly, executor, &c., to him, the said Alfred Adams, jr., or any other part thereof, notwithstanding said deed.

And this defendant, Alfred Adams, jr., in further answering for himself said supplemental bill of complaint, admits that said defendants and James A. O'Reilly and Francis P. O'Reilly, after the making of the said deed by the said Catherine C. O'Reilly, executor, &c., of Patrick O'Reilly, deceased, to him, the said Alfred Adams, jr., and on or about the 1st day of June, 1892, made a deed of confirmation, or a deed in the nature of a deed of confirmation, to him, the said Alfred Adams, jr., and that he, the said answering defendant, caused the said deed of confirm-

ation to be recorded in the Clerk's Office of Atlantic County, at or about the time and in the book of deeds set forth in said supplemental bill of complaint, and that the said deed of confirmation contained, among other things, the statements and recitals set forth in said supplemental bill of complaint; and this defendant, in answering for himself, denies that the said last mentioned deed of confirmation was a step taken by the said defendants, or any or either of them, or by any of the defendants in said cause, to fraudulently deprive or in any way deprive the complainant of the benefit of any legal agreement or any agreement for the sale of any lands claimed by him in his original bill of complaint or in his said supplemental bill of complaint.

And this defendant, Alfred Adams, jr., denies that the said last mentioned deed of confirmation was or is a fraud or in any way fraudulent, or that the said deed was made without any consideration, or that the said last mentioned deed of confirmation was made for the benefit of the said grantors therein and others interested in the estate of Patrick O'Reilly, deceased, or any or either of them, or that the said deed was made with the purpose or intent to or in any way cheat or defraud the said complainant of any of his just rights, or of any right he had or claimed to have in any lawful agreement or any agreement for the sale of lands claimed by the complainant in his said original bill of complaint or in his said supplemental bill of complaint or otherwise.

And this answering defendant denies that the said last mentioned deed of confirmation is without power or efficiency to ratify and confirm the said deed made by the said Catherine C. O'Reilly, executor, &c., as aforesaid, to him, the said Alfred Adams, jr., conveying said lands to him for the sum of twenty-five thousand (25,000) dollars, paid or secured to be paid to the said Catherine C. O'Reilly, executor of the last will and testament of Patrick O'Reilly, deceased, as aforesaid.

And this answering defendant, Alfred Adams, jr., further answering for himself said supplemental bill of complaint, admits and shows that he made and executed

to the said Catherine C. O'Reilly, executor, &c., as aforesaid, his bond and mortgage bearing date the 1st day of June, 1892 (being the date of the deed made by the said Catherine C. O'Reilly, executor, &c., as aforesaid to him, the said Alfred Adams, jr.), for the purpose of securing to the said Catherine C. O'Reilly, executor of the last will and testament of the said Patrick O'Reilly, deceased, the sum of twenty-five thousand (25,000) dollars and interest secured upon the said lands conveyed by the said Catherine C. O'Reilly, executor, &c., as aforesaid, to him, the said Alfred Adams, jr., and said mortgage recited therein, that it was given to secure the purchase money of said lot of land and that the said mortgage was recorded in the Clerk's Office of Atlantic County at or about the time and in the book mentioned in said supplemental bill of complaint.

And this defendant, Alfred Adams, jr., denies that the said mortgage, or the said deed, or either of them was made without any consideration, and he further denies that the said deed or mortgage or either of them were made and executed with the full notice of any legal agreement for the sale of said land to the said complainant, or of any equitable rights of the said complainant in said lands.

This answering defendant, Alfred Adams, jr., admits that he had notice of the complainant's original bill of complaint in this cause, but he shows that the said original bill does not show, nor does the said complainant aver or claim in his said original bill or in his supplemental bill of complaint, or elsewhere, that he has or ever has had any contract or agreement for the sale of said lands or any part thereof, or any memorandum or note thereof in writing signed by the said Patrick O'Reilly in his lifetime or by the executors or devisees of the said Patrick O'Reilly since his decease, or by any or either of them, or by any person or persons by the said Patrick O'Reilly or by the executors or devisees of the said Patrick O'Reilly since his decease, or any or either of them thereunto lawfully authorized.

And these answering defendants deny that the said complainant has or ever has had any contract or agreement in writing for the sale of said lands or any part

thereof, or any memorandum or note thereof in writing signed by the said Patrick O'Reilly in his lifetime, or by the executors or devisees of the said Patrick O'Reilly since his decease, or by any or either of them, or by any person or persons by the said Patrick O'Reilly, or by the executors or devisees of the said Patrick O'Reilly since his decease, or any or either of them lawfully authorized.

And this defendant, Alfred Adams, jr., denies that the said mortgage was made, delivered or accepted in bad faith or for the purpose in any way of cheating, defrauding or depriving the said complainant of his just rights or any rights of the complainant or otherwise, or with any intent to benefit the said Catherine C. O'Reilly, or any of the other defendants, or other persons interested in the estate of Patrick O'Reilly, deceased, or any or either of them, or in any way to hinder, delay or embarrass the said complainant in completing the performance of any legal agreement he may have for the sale of lands to him.

And this defendant, Alfred Adams, jr., in further answering said supplemental bill of complaint, admits that the said mortgage of him to said Alfred Adams, jr., to secure the payment of twenty-five thousand (25,000) dollars, was made to the said Catherine C. O'Reilly, executor, &c., of Patrick O'Reilly, deceased, as aforesaid, and that the said Catherine C. O'Reilly and said defendants, excepting him, the said Alfred Adams, jr., and the said Daniel Lindley, they being the executors and devisees in the will of the said Patrick O'Reilly, deceased, all reside out of the State of New Jersey and in the State of Pennsylvania.

And these defendants deny that there is any fraudulent plan or agreement, or any agreements or understanding whatsoever of or by these defendants, or either of them, and the said executors or devisees of the said Patrick O'Reilly, deceased, or that these defendants or either of them, are acting in any way for the said other defendants mentioned, or under any plan or agreement to transfer the title of any lands effected by any agreement or agreements, or pretended agreement or agreements of said complainant, or of the securities arising from the sale

of said lands to other persons, so that the said complainant may be embarrassed or delayed in protesting or asserting any equitable right or title he may have to said lands or security, or with any intent on the part of these defendants and the said executors and devisees of the said Patrick O'Reilly, deceased, or any of them, to procure such transfers of said lands to be recorded in Atlantic County, to impede the complication in his suit in this behalf or to prevent him from obtaining any benefit therein to which he may lawfully be entitled.

And this defendant, Alfred Adams, jr., for himself, shows that the said deed made by the said Catherine C. O'Reilly, executor as aforesaid, to him was made for a valuable consideration, being the full and fair price for the said lands therein conveyed, and that the said mortgage received by the said Catherine C. O'Reilly, executor, &c., as aforesaid, from him as a security for the price of said lands included not only the said lands, but also the improvements of him, the said Alfred Adams, jr., then on said lands, and all improvements intended to be put thereon, and was a good and sufficient security for the payment of the said purchase money.

All of which matters and things these defendants are ready to aver, maintain and prove as this honorable court shall direct, and humbly prays to be hence dismissed with every reasonable costs and charges in this behalf most wrongfully sustained.

THOMAS B. HARNED,

Sol. for and of Counsel with Answering Defendants.

IN CHANCERY OF NEW JERSEY.

To the Honorable Alexander T. McGill, Chancellor of the State of New Jersey:

Humbly complaining, shows unto your Honor, your orator, Jacob Keim, of Atlantic City, in the State of New Jersey, that on or about the twenty-sixth day of May, 1892, your orator exhibited his original bill of complaint in this honorable court against Catherine C. O'Reilly, Francis P. O'Reilly, James A. O'Reilly, executors of the last will and testament of Patrick O'Reilly, deceased; John F. O'Reilly, Francis P. O'Reilly, James A. O'Reilly, Anthony J. O'Reilly; James A. O'Reilly, trustee for Mary A. O'Reilly; Catherine C. O'Reilly, devisees under the last will of said Patrick O'Reilly, deceased, and James A. Griffith, the defendants hereinafter named as defendants, thereby stating that your orator had made an agreement to purchase certain lands situate in Atlantic City, New Jersey, lying between New York Avenue and Tennessee Avenue and Pacific Avenue and the Atlantic Ocean—being a portion of the lands of which the said Patrick O'Reilly was then seized, lying between said avenues—from said Patrick O'Reilly in his lifetime through John J. Gardner as agent, and that said Patrick O'Reilly afterwards departed this life in the year 1881, having previously made his last will, with a codicil thereto annexed, whereof he appointed his wife, said Catherine C. O'Reilly, and his sons, Francis P. O'Reilly and James A. O'Reilly, executors, and that said will had been duly proven before the Register of Wills, in the County of Berks, in the State of Pennsylvania, and that an exemplified copy thereof was recorded in the office of the Surrogate of the County of Atlantic, in the State of New Jersey, where the lands so as aforesaid agreed to be purchased by your orator were situate. That by said will said Patrick O'Reilly devised

said lands, with other lands whereof he died seized, to his wife, Catherine C. O'Reilly, for life, and that he thereby directed that after her death his estate should be divided into five equal shares, one whereof he gave to his son, John F. O'Reilly, another to his son, Francis P. O'Reilly, another to his son, James A. O'Reilly, to each of his said sons absolutely, and another to his son, Francis P. O'Reilly, in trust, to pay the income thereof to his son Anthony J. O'Reilly during his life for the sole and separate use of his said son Anthony J. O'Reilly free from his debts, said one-fifth to be also subject to the power of testamentary disposition by said Anthony of the principal of such share, and, in default of such disposition, then that the same should descend to any lawful issue said Anthony might leave, and in default of such testamentary disposition by said Anthony, or of such issue, then that such share should vest in the brothers of said Anthony and the issue of any deceased brothers living at his death. That another one-fifth part said Patrick by his will devised to his son James A. O'Reilly, in trust for his daughter Mary A. O'Reilly, in such manner that the income thereof should be for her sole and separate use, not liable for any debts or contracts, nor to any pledge, assignment or transfer, nor for the debts nor engagements of any husband she might take; that her personal receipts should alone discharge the trustee from the payment of said income, and with the same power of disposition to said Mary to dispose of said one-fifth part by will, and in default of such testamentary disposition, with the same limitation of the principal of said share as was by said will, as hereinbefore stated, limited as to the share of said Anthony J. O'Reilly. And said testator also provided by said will that in case of the death of his sons, John F., Francis P. or James A. O'Reilly, or either of them, without lawful issue, then the part or share given to such child so dying should pass to his executors and the survivor of them in trust to hold for the surviving child or children of the said testator in equal shares under the trust and limitations set forth and declared concerning the parts of testator's estate given for the benefit of his said children. Said testator further

provided that said executors should have full power and authority to sell and dispose of his property, real and personal, at public or private sale as they should deem best and make deeds therefor in fee simple. By the terms of said codicil said Patrick O'Reilly revoked the devise of one-fifth part of his estate of Francis P. O'Reilly in trust for his said son Anthony J. O'Reilly, and by said codicil gave the full enjoyment of the said one-fifth share to his said son Anthony J. O'Reilly, in fee simple, forever, as by reference to said bill of complaint on file in this honorable court will more fully appear. That since the death of said Patrick O'Reilly the said Mary A. O'Reilly has departed this life, but whether testate or intestate, with or without issue, your orator stated he was not informed. That after the death of said Patrick O'Reilly, in the year 1881, said John J. Gardner was then acting as the agent and in behalf of the estate of said Patrick O'Reilly for the executors of his last will and the devisees therein mentioned, and that said Gardner acting as such agent, agreed with your orator to sell the residue of the lands whereof said Patrick O'Reilly died seized, lying between the avenues hereinbefore named, in said City of Atlantic, in the County of Atlantic, State of New Jersey. That said last mentioned agreement included in its description the lands referred to in the first mentioned agreement, and in addition thereto other lands not included within said first mentioned agreement, and that said last mentioned agreement included all of the lands and rights of the estate of Patrick O'Reilly lying between New York and Tennessee Avenues and Pacific Avenue and the Atlantic Ocean. That your orator has been ready at all times to carry said agreement into effect, and in part performance thereof at different times had paid to said Gardner, as agent for said Patrick O'Reilly, different sums of money, amounting in all to five hundred and twenty-five dollars. That your orator had applied to the executors of said O'Reilly to execute deeds in conformity with said agreement and said executors have refused so to do, and that since the execution of the agreements and the death of said O'Reilly questions effecting the title of O'Reilly

to some of the lands mentioned in the agreements arose or had arisen and suits had been brought by the executors of O'Reilly, as your orator stated in said bill he has been informed, for the purpose of establishing his title to the lands in the agreements, and that, in various forms, the said suits had been pending in the Supreme Court of the State of New Jersey, and that your orator had repeatedly urged upon the executors that they should press the trial of the suits and establish their title. That said bill further set forth that one of said suits brought against Daniel Lindley in respect to the title to a part of the lands agreed to be conveyed by O'Reilly, his executors and devisees, to your orator, as your orator stated in said bill he had been informed, had been tried in the Atlantic County Circuit Court and resulted in a verdict in favor of the executors and devisees of O'Reilly, and that your orator had been further informed that the verdict had been set aside upon a writ of error because of some informality in the proof of the will of said O'Reilly, which, since the verdict, had been corrected and the will had been properly proved and exemplified and recorded in the office of the Surrogate of the County of Atlantic.

That your orator further sets forth in said bill that he had been informed that another suit was brought by the executors and devisees of O'Reilly against one West in the Supreme Court of New Jersey, who was tenant of part of the lands agreed to be conveyed to your orator under one Rotherham, which last mentioned suit, as your orator stated in said bill he had been informed, had been brought to trial in the Circuit Court of Atlantic County, and resulted in a verdict in favor of the executors and devisees of O'Reilly. That during the pendency of these suits, your orator, on several occasions, had urged upon the executors of O'Reilly a speedy trial of the issues involved in said controversies, with a view to the settlement of the title in favor of O'Reilly, and to that end, and in order to expedite the trial of said causes, your orator had tendered to said executors the assistance of counsel to be employed and paid by your orator to aid in the prosecution of said suits, and that your orator's offers in that respect were not accepted.

And your orator further sets forth in said bill that he had been informed and believed that on the twenty-first day of April last, said Catherine C. O'Reilly, describing herself therein as executor of Patrick O'Reilly, with a power of sale, had attempted to agree in writing with James A. Griffith for the sale to him, in consideration of sixty-five thousand dollars to be paid, certain lands described in the said writing as "All that tract or piece of land situate in Atlantic City, New Jersey, being the land lying south of the south line of lots Nos. 33 and 34 in Patrick O'Reilly's plot of lots, and extending to the Atlantic Ocean, including the riparian title," which writing purported to be an agreement between Catherine C. O'Reilly, executor as aforesaid, with power of sale, and said Griffith, and was afterwards recorded in the Clerk's Office of Atlantic County, May 6th, 1892, in book No. 2 of Agreements, folio 373, to which record your orator in said bill referred. That your orator further set forth in said bill that the land described in said pretended agreement was part of the land mentioned in the agreement between your orator and John J. Gardner, as agent, and was part of the land agreed to be conveyed thereby to your orator, and your orator, thereupon, charged that Catherine C. O'Reilly as executor, acting alone, was without power to sell or contract for the sale of the land to James A. Griffith, the power under the will of said O'Reilly to make sale of his lands having been given not to said Catherine only as executor, but to all the executors named in the will, of whom Catherine was one, or to the survivor or survivors of them, who, as your orator stated in said bill he had been informed, were living; that none had renounced their executorship, and that the power of sale contained in the will could only be executed, and an agreement for the execution thereof could only be made as your orator stated in said bill, he was advised by the concurrent action of the executors named therein, who were the donees of the power.

Your orator further set forth in said bill that inasmuch as Catherine C. O'Reilly, by the agreement aforesaid, appeared to act only as executor, your orator, therefore,

charged that no interest whatever in the land passed to James A. Griffith under said agreement, because Catherine C. O'Reilly as executor, acting alone, had no power, under color of the power of sale given in the will to all the executors of Patrick O'Reilly, to agree for the sale of said lands, and because, by said agreement, Catherine C. O'Reilly did not purport to convey her life estate in the lands whereof Patrick O'Reilly died seized. Your orator thereupon charged in said bill that said agreement was inefficacious as a contract for the transmission of title whereof Patrick O'Reilly died seized in the lands described in the agreement with Griffith, and that the lands were, therefore, within the seizin and ownership of the devisees of Patrick O'Reilly, and subject to the exercise of the power of sale by the executors named in his will, and might be conveyed by the executors and devisees of said will to your orator in performance of the agreement in writing between your orator and Patrick O'Reilly and said executors and devisees of Patrick O'Reilly acting by said John J. Gardner, their agent, as was charged in said bill.

Your orator further set forth in said bill and showed that Griffith, at the time of the execution and delivery of the agreement by Catherine C. O'Reilly to him, knew of the existence of the agreement between your orator and Patrick O'Reilly and the executors and devisees of Patrick O'Reilly acting through said Gardner, their agent, as aforesaid, and was fully aware of your orator's equitable rights under the said agreement, and that he had repeatedly attempted to purchase your orator's equitable estate in the lands created by said agreement, and that he well knew that your orator was entitled to have, in the execution of said agreement, a conveyance from the executors and devisees of Patrick O'Reilly of the lands described in the agreement attempted to have been made between Catherine C. O'Reilly, executor, and James A. Griffith, and that said pretended agreement was entered into by Griffith with full knowledge and notice of your orator's rights in the premises.

Your orator in said bill charged that under the said several agreements he had become entitled to have from

Patrick O'Reilly during his lifetime, and from his executors and devisees after his death, a transfer of the title whereof he was seized in the lands described in the agreement, clear of all encumberances or opposing and contesting claims, with undisputed possession, and that the making of the agreement by Catherine C. O'Reilly, executor, with the said Griffith was in fraud of the rights of your orator as vendee of the lands and as owner of an equitable estate therein, and that your orator was, at the time of filing said original bill, and had always been, ready to accept from Patrick O'Reilly in his lifetime, and from his executors and devisees since his death, a title free of all encumberances and contesting claims and to pay therefor the amount of the consideration mentioned in said agreement, or the balance remaining due after deducting five hundred and twenty-five dollars already paid by your orator on account of said purchase money; and that your orator, at the time of filing said bill, was ready to accept such conveyance, and therein tendered himself ready to pay said purchase money upon the performance of said agreement, so far as the same was to be performed by Patrick O'Reilly in his lifetime, or by his executors and devisees since his death. Your orator, therefore, prayed that said Catherine C. O'Reilly, Francis P. O'Reilly, James A. O'Reilly, executors of the last will and testament of Patrick O'Reilly; John F. O'Reilly, Francis P. O'Reilly, James A. O'Reilly, Anthony J. O'Reilly; James A. O'Reilly, trustee for Mary A. O'Reilly; Catherine C. O'Reilly, devisee under the will of said Patrick O'Reilly, and James A. Griffith, might answer without oath—oath being in said bill expressly waived—the said bill; and further prayed in said bill that by the order and decree of this court your orator's rights as vendee, under said agreements set forth in said bill, might be established, and that it might be decreed that your orator, under the terms of said agreement, was entitled to an equitable estate in the lands in said agreements described, and that said several persons, executors and devisees as aforesaid, might be decreed to specifically perform said agreements by the tender to your orator of a deed conveying a title to the lands in

said agreements described, free of all encumberances and from any opposing or contesting claims, upon payment by your orator to them of the balance of the purchase money in said agreements mentioned, after deducting five hundred and twenty-five dollars already paid, as aforesaid, by your orator on account of said purchase money, which payment your orator in said bill again tendered himself ready to make upon the tender of such deed; and your orator in said bill further prayed that the agreement therein set forth as attempted to have been made between Catherine C. O'Reilly as executor and James A. Griffith might be decreed void; that your orator might be decreed to be entitled to a conveyance, under the terms of your orator's agreement, by the executors and devisees of O'Reilly to your orator of the lands in your orator's agreements described, including the lands described, or attempted so to be, in said pretended agreement with said James A. Griffith, aforesaid, or that your orator should be subrogated to the rights of the bargainor, Catherine C. O'Reilly, executor of Patrick O'Reilly, and of the said several persons, devisees of Patrick O'Reilly, in respect to the consideration money in said pretended agreement with James A. Griffith and in respect to any security or securities for the payment thereof, or of any part thereof, and that said consideration money and the securities in which the same was invested, or by which payment thereof was or was intended to be secured, less the balance of the consideration money agreed to be paid by your orator, should be paid and transferred to your orator as the value and equivalent of your orator's equitable estate, under said agreement, between your orator and said executors and devisees of Patrick O'Reilly. And your orator further prayed in said bill that said executors and devisees might be restrained from making any conveyance or transfer, or agreeing to make any conveyance or transfer, of the lands mentioned in your orator's agreement, or of any part or parcel thereof, or of any estate, right, title or interest therein, to said James A. Griffith, or to any person or persons whatever, save only your orator in execution and performance of the agreements in said bill set forth as

made by and between Patrick O'Reilly in his lifetime, and the executors and devisees of Patrick O'Reilly since his death, with your orator. And your orator further prayed that said James A. Griffith might be restrained from transferring or assigning said pretended agreement or any interest therein to any person or persons, and from transferring or conveying any title to or interest in said lands which he might have received from said Catherine C. O'Reilly, executor as aforesaid, or from any other of the executors or devisees of said Patrick O'Reilly; and that your orator might have further relief. And your orator further prayed in said bill that an injunction issue thereon out of this honorable court to be directed to said several persons, executors and devisees of Patrick O'Reilly, and to said James A. Griffith, restraining them, and each of them, in the several matters referred to in said prayer; and also the State's writ of subpœna to be issued out of and under the seal of this court, directed to said several persons, commanding them to appear and answer said bill according to the course and practice of said court.

And your orator further shows that after the filing of said bill of complaint said defendants, Francis P. O'Reilly and James A. O'Reilly, as executors of the last will and testament of Patrick O'Reilly, deceased, in their own right; James A. O'Reilly, trustee for Mary A. O'Reilly; John F. O'Reilly and Anthony J. O'Reilly filed their answer to said bill, wherein they set forth that they had not been informed and did not believe that said John J. Gardner was at any time the duly authorized agent of Patrick O'Reilly for the sale of the lands of Patrick O'Reilly in Atlantic City, and that none of said defendants had any knowledge, information or belief concerning the receipt or agreement for twenty-five dollars set forth in your orator's bill, save that shortly before the filing of said bill they had heard that it was claimed by your orator that he had such an instrument; that they had not, nor had any of them, seen said instrument, nor, until about the commencement of your orator's suit, heard of the existence of said receipt or agreement, nor had they seen any copy thereof; that they had not been informed and did not believe that Pat-

rick O'Reilly in his lifetime made any agreement with your orator or authorized John J. Gardner or any other person in his name or in his behalf to make or sign any receipt or agreement for the sale of the lands to your orator nor in any way approved or confirmed said agreement nor any agreement for the sale of lands with or to your orator; and in said answer said defendants admitted the death of Patrick O'Reilly at the time stated in your orator's bill, the execution of his will and the proof thereof, as set forth in your orator's bill, and the issuing of letters testamentary thereon to Catherine C. O'Reilly, Francis P. O'Reilly, James A. O'Reilly as executors thereof, and further admitted that said will contained, among other things, in effect the provisions, conditions, directions and devises set forth in your orator's bill.

Further answering said bill said defendants said that about the 25th of July, 1881, Catherine C. O'Reilly proved the will of Patrick O'Reilly and the codicil thereto before the Surrogate of Atlantic County, pursuant to the statute, and that upon the proof of said will the Surrogate issued to Catherine C. O'Reilly letters of administration, or letters testamentary, and that no letters of administration or letters testamentary, as was set forth in said answer, were issued on said will in the State of New Jersey to Francis P. O'Reilly and James A. O'Reilly, or either of them, and that Francis P. O'Reilly and James A. O'Reilly refused to prove said will and codicil and take out letters thereon in the State of New Jersey. Said defendants in said answer admitted that Mary A. O'Reilly, one of the devisees mentioned in the will of Patrick O'Reilly, died in the month of March, 1890, having first made her will in writing, bearing date July 1st, 1887, whereby she bequeathed and devised to Catherine C. O'Reilly, her heirs and assigns, all her estate, real, personal and mixed, whatsoever and wheresoever the same might be, and appointed said Catherine C. O'Reilly sole executor of her will, and that said will was afterward proved by Catherine C. O'Reilly before the Register of Wills for Berks County, Pennsylvania, and letters testamentary issued thereon to Catherine C. O'Reilly, who took upon herself the execution of said will.

And in said answer said defendant, James A. O'Reilly, answering for himself, the said other answering defendants averring that they believed his answer to be true, said that by virtue of the will of Mary A. O'Reilly, in execution of the power given her under the will of Patrick O'Reilly, all rights of James A. O'Reilly as trustee of Mary A. O'Reilly under the will of Patrick O'Reilly terminated, and that James A. O'Reilly had no interest in the estate whereof Patrick O'Reilly died seized under the will of said deceased as trustee in behalf of Mary A. O'Reilly.

And said John F. O'Reilly, defendant as aforesaid, answering for himself, said other answering defendants averring that they believed said answer to be true, said in said answer that on the day of , 1889, said defendant, John F. O'Reilly, by his deed, bearing date that day and year, conveyed to Catherine C. O'Reilly all his right, title and interest in the estate, real, personal and mixed, of Patrick O'Reilly and referred the said deed as having been executed and recorded in the County of Berks, in the State of Pennsylvania, in the office for recording deeds, in book No. 187, subject to certain agreements in said deed contained, to which deed reference was made in said answer.

And said defendants, collectively answering, denied that on the 29th of October, 1881, or at any other time after the death of Patrick O'Reilly, John J. Gardner was in any way authorized to act as agent in behalf of the estate of Patrick O'Reilly by the executors and devisees of Patrick O'Reilly to make sale of any of the lands belonging to Patrick O'Reilly, or to enter into any contract for the sale of any lands belonging to the estate of Patrick O'Reilly, and that said Gardner was ever authorized or empowered by either or any of said answering defendants as executors or devisees of Patrick O'Reilly, nor, as said defendants in said answer averred, that they had been informed and believed, by said Catherine C. O'Reilly, the other executor of Patrick O'Reilly, to make sale or enter into any contract or agreement of any kind whatever for the sale or conveyance of lands, or to make the agreement set forth in your orator's bill, bearing date the 29th of October, 1881, with your orator.

And in said answer said defendants denied that they had any knowledge of the existence of such agreement or receipt until about the time of or shortly before the commencement of your orator's suit, when they were informed that such paper had been made by said Gardner, and in said answer stated that they had not nor had any or either of them seen or heard of the existence of such paper except as aforesaid, and denied that the said agreement was in any way authorized by or consented to by said defendants, or either of them, as executors or devisees of Patrick O'Reilly, or otherwise.

And said defendants, Francis P. O'Reilly and James A. O'Reilly, answering for themselves (said answering defendants, John F. O'Reilly and Anthony J. O'Reilly, averring that they believed the said answer to be true), said that, as executors of Patrick O'Reilly, in the State of Pennsylvania, or otherwise, they, said Francis P. and James A. O'Reilly, had not at any time or in any way authorized or empowered John J. Gardner to make or enter into any contract or agreement in behalf of them or of the estate of Patrick O'Reilly for the sale or conveyance of any lands or real estate in New Jersey or elsewhere belonging to the estate of said deceased, either with your orator or with any other person or persons whatever.

And said defendants in said answer denied that John J. Gardner ever received as the agent of Patrick O'Reilly or as the agent of the executors or devisees of Patrick O'Reilly any sum or sums of money on account of Patrick O'Reilly or on account of the executors or devisees of Patrick O'Reilly under any of the agreements mentioned in your orator's bill for the sale or conveyance of any land of Patrick O'Reilly or of the executors or devisees of Patrick O'Reilly, or that such sums of money had ever been paid over to the answering defendants, or any or either of them, or, as they were informed and believed, to Catherine C. O'Reilly, the other executor of the will of Patrick O'Reilly, for or on account of the purchase of the lands or any part thereof; and deny that your orator had, at any time since the death of Patrick O'Reilly, applied to them, or any of them, to make conveyance to them of the lands or any land whereof Patrick O'Reilly died seized.

And said Francis P. and James A. O'Reilly, executors of the will of Patrick O'Reilly, in the State of Pennsylvania, denied (and said John F. and Anthony J. O'Reilly, the other answering defendants, averred that they believed said denial to be true, that John J. Gardner ever received as agent of Patrick O'Reilly, or as agent of the executors and devisees of Patrick O'Reilly, any sum of money for or on account of Patrick O'Reilly, or for or on account of the executors or devisees of Patrick O'Reilly under any agreements for the sale or conveyance of the lands mentioned in the bill of complaint of your orator or otherwise for the sale or conveyance of any lands of Patrick O'Reilly or of the executors or devisees of Patrick O'Reilly, or that said sum or sums of money mentioned in your orator's bill had ever been paid to the answering defendants or any of them as executors, or, as the answering defendants averred that they were informed and believed, to Catherine C. O'Reilly, the other executor of Patrick C. O'Reilly, for or on account of the purchase of the lands or any part thereof.

And said defendants collectively denied that your orator had at any time since the death of Patrick O'Reilly applied to them to make conveyance of the lands or any lands whereof Patrick O'Reilly died seized.

And said defendants further denied in said answer that the executors of Patrick O'Reilly had at any time since the death of Patrick O'Reilly brought or prosecuted, or caused to be brought or prosecuted, any suit to establish the title to lands in the County of Atlantic, in the State of New Jersey, whereof Patrick O'Reilly died seized, or that your orator had ever urged them as executors of Patrick O'Reilly, or otherwise, or any or either of them, to press the trial of any suit brought by the executors of Patrick O'Reilly to establish their title to lands in the county of Atlantic or elsewhere, or that the executors as executors had ever brought or prosecuted, or caused to be prosecuted, any suit against Daniel Lindley or against John West or ony other person whatever.

And said answering defendants further stated in said answer that they had been informed and believed that

about the 21st day of January, 1882, Catherine C. O'Reilly, to whom, as was said in said answer, all the lands whereof Patrick O'Reilly died seized were devised for and during the term of her life, brought suits in ejectment in the New Jersey Supreme Court against Daniel Lindley and John West for part of the lands whereof Patrick O'Reilly died seized, in the County of Atlantic, New Jersey; that the suit against Lindley was tried and a verdict rendered for Catherine C. O'Reilly, which verdict was afterwards set aside in the Court of Errors and Appeals of New Jersey; that the suit against Lindley was again tried and a verdict rendered for said Catherine C. O'Reilly, which verdict was afterward set aside in the Court of Errors and Appeals in the State of New Jersey, upon the ground, as defendants averred in said answer they had been informed and believed, of some informality in the record of the will of Henry F. Felix; and said defendants in said answer denied that the said judgments, or either of them, were set aside for any informality in the proof of the will of said Patrick O'Reilly, and in said answer averred that the suits were still pending and undecided in said court, and further showed, upon information and belief, that in the suit against John West certain persons by the name of Rotherham were admitted to defend as landlords, and that the suit was tried at the Atlantic County Circuit Court in April Term, 1892, and a verdict rendered therein for Catherine C. O'Reilly. And upon information and belief further said that it was true that about the 21st day of April last Catherine C. O'Reilly, as executor of Patrick O'Reilly, executed the agreement in writing with one James A. Griffith for the sale of the land mentioned in the bill of complaint, and in said answer averred that they had been informed and believed that James A. Griffith caused the agreement to be recorded as set forth in said bill; and further, said in answer, that they had not been informed and did not know whether Griffith at the time of the making of the agreement, had any notice or knowledge whatever of the agreement with your orator set forth in your orator's bill, signed "J. J. Gardner, agent P. O'Reilly estate," or of the agreement set

forth in your orator's bill, dated the 25th of March, 1880, and signed "J. J. Gardner, agent." And in said answer the defendants admitted that under the law Catherine C. O'Reilly as executor had full power to make and enter into the agreement in writing with the said Griffith for the sale and conveyance of the aforesaid lands and to sell and convey the same in pursuance of said agreement as executor of the will of Patrick O'Reilly, duly proved in the State of New Jersey, the other executors named in the will having neglected and refused, as was stated in said answer, to prove said will in the State of New Jersey, and that a conveyance by Catherine C. O'Reilly, as executor, in pursuance of such agreement, would convey an absolute title to the lands and also all the right and title that she may have as devisee under the will of Patrick O'Reilly, or of the answering defendants, or any of them thereunder, or also any estate that Catherine C. O'Reilly might have by virtue of the share of the estate of Patrick O'Reilly devised to her by Mary A. O'Reilly, or that she might have by virtue of the conveyance made to her by John F. O'Reilly; and that said Griffith, by virtue of said conveyance, would have a full, complete and perfect title to the land conveyed, and that no interest in the lands, or any part thereof, would remain in or be held by Catherine C. O'Reilly, or by the executors and devisees of Patrick O'Reilly, or any of them.

Said defendants in said answer denied that Patrick O'Reilly in his lifetime ever made any agreement with your orator to convey to him the lands mentioned in your orator's bill or any lands whatever in New Jersey, and further denied that the executor or devisees of Patrick O'Reilly, or any of them at any time, made any agreement with your orator to convey to him any lands whereof Patrick O'Reilly died seized, in New Jersey or elsewhere; and also denied that the agreements mentioned and set forth in the said bill of complaint were ever included by or with the knowledge or consent of Patrick O'Reilly in his lifetime or of the executors or devisees of Patrick O'Reilly since his death, or that your orator, by virtue of said agreements mentioned in his bill of complaint, or either of them, or

otherwise, ever became entitled to an equitable estate or any estate in any of the lands whereof Patrick O'Reilly died seized, or to any right to the transfer of any land whereof Patrick O'Reilly was seized or whereof his executors or devisees became seized under the will of Patrick O'Reilly after his decease; and further denied that the agreements, or either of them, made by Catherine C. O'Reilly, as executor with James A. Griffith, were in fraud of the rights of your orator as vendee or as owner of any title or interest therein or thereto or otherwise.

And your orator further shows that said Catherine C. O'Reilly, as one of the executors of Patrick O'Reilly and in her own right, filed a separate answer to your orator's bill, wherein she averred that she had not been informed and did not believe that John J. Gardner was ever at any time the agent of Patrick O'Reilly for the sale of lands in Atlantic City, New Jersey; that she had no knowledge, information or belief concerning the receipts and agreements set forth in your orator's bill of complaint, save that shortly before the commencement of your orator's suit, and in the month of April last, she heard that your orator claimed that he had the instruments in writing set forth in his said bill; that she had never seen said instruments, nor, until the filing of your orator's bill, ever heard of the existence of the receipt and agreement therein set forth or seen any copy thereof; that she had not been informed nor did not believe that Patrick O'Reilly in his lifetime made any agreement with your orator, or authorized any person or persons in his name or behalf to make any agreement or receipt for the sale of lands to your orator, nor ever, in any way, approved or confirmed said agreement or any agreement made by Patrick O'Reilly in his lifetime, or by said Catherine C. O'Reilly, as executor of Patrick O'Reilly, or by said Catherine C. O'Reilly in her own right, for the sale of lands with your orator. In said answer said Catherine C. O'Reilly admitted that Patrick O'Reilly died in the month of January, 1881, having first made and executed his will and codicil as set forth in your orator's bill, and that letters testamentary had been issued thereon, as in said bill your orator stated, and that

the provisions of said will and codicil as set forth in said bill were true. And said Catherine C. O'Reilly in her said answer further said that about the 5th of July, 1881, she proved said will and codicil before the Surrogate of Atlantic County, New Jersey, pursuant to the statute, and that upon said proof the Surrogate of Atlantic County issued to her letters of administration, and that no letter of administration or letters testamentary were issued on said will in the State of New Jersey to Francis P. or James A. O'Reilly, or either of them, and in her said answer in respect to said averment referred to said will.

And Catherine C. O'Reilly in her said answer admitted that Mary A. O'Reilly, one of the devisees mentioned in the will and codicil of Patrick O'Reilly, died in the month of March, 1890, having first made, executed and published her will, dated July 1, 1887, whereby she bequeathed and devised to Catherine C. O'Reilly all her estate, real, personal and mixed, whatsoever and wheresoever, and appointed Catherine C. O'Reilly sole executor of her will; and that said will was afterwards proved by Catherine C. O'Reilly before the Register of Wills, in the County of Berks, Pennsylvania, and letters testamentary granted to her, and that she had taken upon herself the execution thereof.

And Catherine C. O'Reilly in her said answer stated and showed that about the 29th of October, 1889, John F. O'Reilly, one of the devisees under the will of Patrick O'Reilly, by his deed bearing date the day and year aforesaid, transferred and conveyed to her all his right, title and interest in the estate, real, personal and mixed, of Patrick O'Reilly, and referred to said deed as executed under the hand and seal of John F. O'Reilly and recorded in the office for recording deeds, in Berks County, Pennsylvania, in deed book No. 187, page 378, but subject to certain agreements in the deed contained and in said answer referred to said deed as in the hands of said Catherine C. O'Reilly and ready to be produced and proved.

Said Catherine in her said answer denied that on the 29th of October, 1881, or at any other time after the death of Patrick O'Reilly, John J. Gardner in any way was

authorized to act as the agent or in behalf of Patrick O'Reilly by the executors or devisees of Patrick O'Reilly to make sale of the lands belonging to him, or to enter into contracts for the sale of the lands belonging to the estate of Patrick O'Reilly, and that John J. Gardner was ever authorized by her as one of the executors of said deceased, nor, as she stated in said answer upon information and belief, by the other executors and devisees under the will of deceased, or any of them, to make sale or enter into any agreement of any kind whatever for the sale of lands, or to make the agreement set out in your orator's bill, bearing date October 29th, 1881, with your orator, and in said answer averred that she had no knowledge of the existence of any such agreement until about the time of the commencement of your orator's suit, when she was informed that said paper had been made by John J. Gardner, and that she had never seen or heard of the paper except as aforesaid, and that the same was never authorized or consented to by her as executor or devisee or otherwise.

She further denied in said answer that to her knowledge or belief Gardner received, as agent of Patrick O'Reilly or of the executors or devisees of Patrick O'Reilly, any sum of money on account of Patrick O'Reilly or on account of the executors or devisees of Patrick O'Reilly under any agreements mentioned in your orator's bill or otherwise for the sale and conveyance of any lands of Patrick O'Reilly or of the executors or devisees of Patrick O'Reilly, or that said sum had ever been paid to her as executor, or, as she stated upon information or belief in said answer, to the other executors or either of them for or on account of the purchase of the lands or any part thereof.

And she further denied in her said answer that your orator had at any time since the death of Patrick O'Reilly applied to her to make any conveyance of the lands or any of the lands whereof Patrick O'Reilly died seized, and that the executors of Patrick O'Reilly had at any time, since the death of Patrick, brought or prosecuted, or caused to be brought or prosecuted, any suit to estab-

lish title to the lands of Patrick in Atlantic County, New Jersey, or that your orator had ever urged upon her as executor of Patrick O'Reilly, or otherwise, that she should press the trial of any suit brought by the executors of Patrick O'Reilly to establish their title to lands in Atlantic County, New Jersey, or elsewhere, or that the executors ever brought or prosecuted any suit against Lindley or against West, or any other person or persons; and in said answer stated that she, about January 21, 1882, brought suits in ejectment in the New Jersey Supreme Court against Lindley and West for the possession of a part of the lands whereof Patrick O'Reilly died seized in Atlantic County; that the suit against Lindley was tried and a verdict rendered for her, which was afterwards set aside in the Court of Errors and Appeals of New Jersey; that the suit against Lindley was tried again, and a verdict rendered for her, which verdict was afterwards set aside in the Court of Errors and Appeals of New Jevsey on the ground, as she averred upon information and belief, of some informality in the will of Henry F. Felix. And she denied that said judgment, or either of them, were set aside because of any informality in the proof of the will of Patrick O'Reilly.

And in said answer said Catherine C. O'Reilly further stated that in the suit against John West certain persons by the name of Rotherham and others were admitted to defend as landlords, and that the suit was tried before the Atlantic County Circuit Court, in the Term of April, 1892, and a verdict rendered for her. And she denied in her said answer that your orator ever applied to her to expedite said causes, or either of them, or tendered to her any assistance of counsel to aid in the prosecution of said causes or either of them.

And in her said answer said Catherine C. O'Reilly admitted that on the 21st of April last she, as executor, executed an agreement in writing with one James A. Griffith for the sale and conveyance of the lands mentioned in the bill of complaint, but denied that she caused the same to be recorded, but averred that she had been informed and believed that James A. Griffith caused the same to be re-

corded, as set forth in the bill of your orator; and in her said answer said that she had not been informed and did not know whether Griffith had any knowledge or notice whatever of the agreement set forth in your orator's bill, signed by "J. J. Gardner, agent P. O'Reilly estate," or of the agreement set forth in said bill, dated March 25, 1880, signed "J. J. Gardner, agent."

And in her said answer said defendant submitted that under the law she had full power to sell and enter into an agreement in writing with Griffith for the sale and conveyance of the land and to sell and convey it in pursuance of the said agreement, as executor of the will of Patrick O'Reilly proved in the State of New Jersey, the other executors named in the said will having neglected and refused, as she said in her said answer, to prove said will in the State of New Jersey, and that a conveyance by her as executor, in pursuance of said agreement, would convey an absolute title to the lands, and all right and title that she might have as devisee under the will of Patrick O'Reilly, and any estate that she might have by virtue of the share of the estate devised to her by Mary A. O'Reilly, and by the conveyance made to her by John F. O'Reilly, and that James A. Griffith, by virtue of such conveyance, would have a full, complete and perfect title to the land thereby conveyed, and that no interest in the lands or any part thereof would remain in or be held by her, or by the executors or devisees of Patrick O'Reilly, or any of them.

And in her said answer said Catherine C. O'Reilly denied that Patrick O'Reilly in his lifetime ever made any agreement with your orator to convey to him the lands mentioned in your orator's bill, or any lands whatever in the State of New Jersey, and that said executors or devisees of Patrick O'Reilly, or any of them, had at any time agreed with your orator to convey to him any lands whereof Patrick O'Reilly died seized in New Jersey; and further denied that the agreements mentioned in your orator's bill were ever executed by or with the knowledge, authority and consent of Patrick O'Reilly in his lifetime, or of his executors or devisees since his death, or that your

orator, by virtue of the said agreements set forth in his bill or otherwise, ever became entitled to an equitable estate, or any estate, in any of the lands whereof Patrick O'Reilly died seized, or to any right to the transfer to the title of the lands whereof Patrick O'Reilly was seized during his life, or that his executors or devisees became entitled to under the will of the said Patrick O'Reilly after his decease, or that the agreements, or either of them, made by her as executor, with Griffith, were in fraud of the rights of your orator as vendee or as owner of any title therein or thereto or otherwise.

And your orator further shows, by way of supplement to his bill of complaint in this cause, that your orator has been informed and believed that since the filing of your orator's said bill of complaint the defendant, Catherine C. O'Reilly, claiming to act as executrix of the last will, &c., of Patrick O'Reilly, deceased, on or about the first day of June, 1892, made a deed of that date to one Edward H. Hall, of the city of Philadelphia, in the State of Pennsylvania, for the consideration of sixty-five thousand dollars, which purports to convey to said Hall in fee simple the lands and premises in your orator's bill of complaint in this cause recited to have been by said Catherine as executrix as aforesaid, contracted to be conveyed to the defendant, James A. Griffith. And your orator shows that the said deed purports to have been acknowledged on the thirteenth day of June, 1892, and was recorded in Atlantic County Clerk's Office on the fifteenth day of June, 1892; and by virtue thereof the said Edward H. Hall claims to have some right or interest in said lands and premises.

And your orator further shows, by way of supplement, that on the sixteenth day of June, 1892, in Atlantic County Clerk's Office, in book 32 of Mortgages, folio 263, there was recorded an indenture of mortgage upon the said lands purporting to have been made by said Edward H. Hall to said Catherine C. O'Reilly, executrix, to secure the payment of the sum of fifty thousand dollars as part of the purchase money of the above named conveyance, with interest thereon, by virtue whereof said Catherine C. O'Reilly, executrix as aforesaid, claims to have some lien

upon the lands and premises described in the said indenture of mortgage.

And your orator further, by way of supplement, shows that on the 10th day of August, 1892, the said Edward H. Hall and Adelaide S., his wife, made a certain deed, dated the day and year last aforesaid, to one Joseph Shelton, of the city and State of New York, purporting to be for the consideration of fifteen thousand dollars and to convey all the lands and premises which the said Catherine C. O'Reilly, executrix, had conveyed to said Hall by the said deed dated the first day of June, 1892, and hereinbefore set forth, subject to payment of mortgage of $50,000. Which said deed from said Hall to said Shelton was recorded in said Atlantic County Clerk's Office, on the 11th day of August, 1892, in book No. 164 of Deeds, folio 437, &c., as by reference to said record will more fully appear.

And your orator shows and charges that the said deed by said Catherine C. O'Reilly, as executrix of said Patrick O'Reilly, to said Edward Hall, was and is wholly ineffectual to convey any title to said lands because the said grantor therein, Catherine C. O'Reilly, executrix as aforesaid, had no power, under the will of said Patrick O'Reilly, deceased, acting alone, to make such deed. And your orator further charges that for the last named reason the said mortgage recorded as aforesaid, purporting to have been made by said Edward H. Hall to said Catherine C. O'Reilly, as executrix as aforesaid, to secure part of the purchase money of the said conveyance, is also void and of no effect; and that for the same reason the said deed from the said Edward H. Hall and wife to said Joseph Shelton purporting to convey said lands is wholly without power to pass title thereto, and is void and of no effect.

And your orator further shows that the said supposed deed was made by said Catherine C. O'Reilly and was accepted by said Edward H. Hall, and said supposed indenture of mortgage was made by said Edward H. Hall to said Catherine C. O'Reilly and the said supposed deed made by said Edward H. Hall was made to said Joseph Shelton with notice to both of them that your orator was entitled to a conveyance from said Catherine, as executrix,

as aforesaid, of the said lands so supposed to be conveyed and pledged, and that said deed and mortgage were made and recorded in pursuance of a fraudulent purpose on the part of said Catherine C. O'Reilly and the other defendants, or some of them, or those acting for them and in their behalf, known to the said Edward H. Hall and to said Joseph Shelton, to avoid the performance of the aforesaid contracts whereby your orator is entitled to have conveyance of said lands; and thereby to cheat and defraud your orator of the benefit to be received by him from the performance of said contracts.

And your orator charges that the said Edward H. Hall and Joseph Shelton are, by reason of the promises aforenamed, interested in the subject matter of your orator's original bill of complaint and are necessary parties to this suit, and that your orator is entitled to have the same relief from his said original bill as if they had been made parties thereto, and the several matters hereinbefore set forth had been therein alleged and charged.

And your orator further shows that both said Edward H. Hall and said Joseph Shelton reside out of the State of New Jersey, and your orator charges that they were selected by said Catherine C. O'Reilly and the other defendants in the said original bill, or by those who acted for them, to hold the title to said lands for the benefit of said Catherine and said other defendants or some of them in order that your orator might be embarrassed and delayed in protecting and asserting his equitable title to said land against said original defendants. And your orator charges that one of the methods by which said fraudulent purpose to cheat your orator of his said equitable estate is to make frequent transfers of the legal title to said lands to persons residing without the State of New Jersey, and to cause such transfers to be recorded in the Office of the Clerk of the County of Atlantic.

To the end, therefore, that the said defendants, Catherine C. O'Reilly, Francis P. O'Reilly, James A. O'Reilly, executors of the last will and testament of Patrick O'Reilly, deceased; John F. O'Reilly, Francis P. O'Reilly, James A. O'Reilly, Anthony J. O'Reilly; James A. O'Reilly,

trustee for Mary A. O'Reilly; Catherine C. O'Reilly, James A. Griffith, Edward H. Hall and Joseph Shelton may, if they can, show why your orator should not have the same relief hereby and by his said original bill prayed, and may, but without oath (which is hereby expressly waived) answer the premises as fully as if the same were here again repeated and they thereto particularly interrogated, and that your orator may have the same relief against the said defendants, Catherine C. O'Reilly, Francis P. O'Reilly, James A. O'Reilly, executors of the last will and testament of Patrick O'Reilly, deceased; John F. O'Reilly, Francis P. O'Reilly, James A. O'Reilly, Anthony J. O'Reilly; James A. O'Reilly, trustee for Mary A. O'Reilly; Catherine C. O'Reilly, James A. Griffith, Edward H. Hall and Joseph Shelton as he might have had if the facts hereinbefore stated and charged had been stated in your orator's said original bill, and that the said deed and mortgage may for the reasons aforesaid be decreed to be null and void, and to have conveyed and pledged no title to said lands, or in case for any reason they may be held to be forceful and not void, then that your orator may be decreed to be entitled and to be subrogated to all the rights of said Catherine C. O'Reilly, executrix as aforesaid, and of any of the defendants herein in respect to the consideration money named in said deed to said Edward H. Hall, and to the security of the payment of the same or part thereof, by the said indenture of mortgage, less the balance of the consideration money agreed to be paid by your orator by his aforenamed contracts for the purchase of said lands; and that said Catherine C. O'Reilly, executrix as aforesaid, may be restrained from in any way satisfying or cancelling or assigning, transferring, pledging or in any way disposing of the said indenture of mortgage or of any interest therein, and the said Joseph Shelton from paying any principal or interest moneys upon said indenture of mortgage in whole or in part satisfaction of the same; and from conveying or transferring or mortgaging or in any way encumbering or disposing of the said lands described in said deed to him or of any portion thereof; and that the said Lewis Evans,

clerk of the said County of Atlantic, may be restrained from receiving, marking for record or registry, or registering any assignment, transfer or disposition by said Catherine C. O'Reilly, executrix, &c., of the said mortgage upon said lands so as aforesaid made to her by said Edward H. Hall to secure the payment of said sum of fifty thousand dollars and interest, or any conveyance, mortgage or lease by said Joseph Shelton of the lands described in the said deed from said Edward H. Hall to said Shelton; and that your orator may have such other and further relief in the premises as the circumstances of the case may require, and as to your Honor shall seem meet, &c.

May it please your Honor, the premises considered, to grant unto your orator not only the State's writ of subpœna, issuing out of and under the seal of this honorable court, to be directed to the said Catherine C. O'Reilly, Francis P. O'Reilly, James A. O'Reilly, executors of the last will and testament of Patrick O'Reilly, deceased; John F. O'Reilly, Francis P. O'Reilly, James A. O'Reilly, Anthony J. O'Reilly; James A. O'Reilly, trustee for Mary A. O'Reilly; Catherine C. O'Reilly, devisees under the last will and testament of Patrick O'Reilly, deceased; James A. Griffith and Edward H. Hall, Joseph Shelton and Lewis Evans, clerk of the County of Atlantic, but also the State's writ of injunction, also issuing out and under the seal of this honorable court, to be directed to the said Catherine C. O'Reilly, executrix, &c., and to said Joseph Shelton and Lewis Evans, clerk of said county of Atlantic, restraining them and each of them according to the prayer of this your orator's supplemental bill of complaint.

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

GREY & GREY,

Sols. for and of Counsel with Compl't.

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

Newton Keim, of Philadelphia, Pennsylvania, being duly sworn on his oath says that he is the son of Jacob Keim, the complainant named in the foregoing supplemental bill; that he is a member of the bar of the City

of Philadelphia, where he has been practicing as a lawyer for some fifteen years; that he acted for his father and is familiar with the circumstances under which his father, the complainant, agreed to become the purchaser from Patrick O'Reilly in his lifetime, and from his executors and devisees since his death, of the lands referred to in his original bill and in the supplemental bill of complaint hereto annexed; that the agreements referred to in the original bill and in the supplemental bill were made between his father, Jacob Keim, and John J. Gardner as the agent of Patrick O'Reilly in his lifetime and of the executors and devisees of Patrick O'Reilly since his death; that said agency was never, to the knowledge of the deponent, denied by Patrick O'Reilly in his lifetime or by his executors and devisees since his death, but, on the contrary, was recognized by said executors and devisees of said O'Reilly since his death, and that as evidence of recognition of said agency, this deponent refers to a letter received by deponent in reply to one written by deponent to James A. O'Reilly, son of Catherine C. O'Reilly, and one of said defendants, on or about the fifteenth day of September, 1886, a copy of which letter is annexed to this affidavit, marked Exhibit A. That said James A. O'Reilly acted for the estate of his father, and deponent wrote him as the representative of that estate.

And deponent further says that since the filing of the original bill of complaint in this cause, to wit: on the first day of June, 1892, as appeared from a certified copy thereof, furnished to this deponent at his request by the Clerk of Atlantic County, on the twenty-second day of June last, Catherine C. O'Reilly made to Edward H. Hall a deed dated June 2, 1892, purporting to be executed by her as the executrix of the last will and testament of Patrick O'Reilly, deceased, for the apparent consideration of sixty-five thousand dollars, expressed in said deed as paid to her by the said Edward H. Hall, conveying the lands and premises mentioned in the original bill of complaint filed in this cause, as having been contracted to be conveyed to James A. Griffith; that the date of the acknowledgment of said deed and of the book and place of

record thereof are correctly stated in the supplemental bill. That deponent, about the first day of July last, received from the Clerk of Atlantic County a certified copy of the abstract of the mortgage referred to in the said supplemental bill as having been made by Edward H. Hall to Catherine C. O'Reilly as executrix, to secure the payment of fifty thousand dollars as part of the purchase money named in said deed. That the condition of said mortgage as to the interest and time and circumstances of payment are correctly set forth in said supplemental bill, and are the same as those contained in the certified copy of the mortgage furnished to this deponent by the Clerk of the County of Atlantic, with the certificate thereto annexed, dated July 1, 1892.

And deponent further says that about the 16th day of August last he received from the Clerk of Atlantic County a certified copy of a deed, purporting to be made from Edward H. Hall and Adelaide S., his wife, to Joseph Shelton, dated August 10th, 1892, which is the same deed referred to in the said supplemental bill, and which deed was recorded at the time and in the book of deeds stated in said supplemental bill, as appears from a certified copy thereof under the certificate of the Clerk of said Atlantic County, dated August 16, 1892; which deed purported to have been made for the consideration of fifteen thousand dollars, as set forth in said supplemental bill, and to convey all the lands and premises which Catherine C. O'Reilly had conveyed to the said Hall by her deed to him of June 1, 1892, subject to the payment of said mortgage of fifty thousand dollars, dated June 1, 1892, from Edward H. Hall to Catherine C. O'Reilly, executrix as aforesaid, set forth in said supplemental bill.

Sworn, &c.

NEWTON KEIM.

READING, PA., 9, 24, 1886.

DEAR SIR:—Your favor of the 15th inst. rec'd. The cause of delay in replying to same, was that I desired to see Mr. Voorhees. Your father is aware that I have done all in my power to have the cause tried, and Mr. V.

promised me that the case will be tried December Term. The delay in the trial of the cause has been very serious to us, as well as to your father, and though I should be loath to have him throw up the sale, yet I could not find any fault with him for so doing. From the tone of your letter I judged that you held me in a considerable degree accountable for the delay, this is a mistake on your part, and if intentional I must resent it, as I have stated above, I have done everything to have the matter adjudicated.

Yours Respy., 10

JAMES A. O'REILLY.

NEWTON KEIM, Esq.,
Chester Co. House, Atlantic City.

IN CHANCERY OF NEW JERSEY.

BETWEEN JACOB KEIM, *Compl't,* AND CATHERINE C. O'REILLY, DANIEL LINDLEY *et al.*, *Def'ts.*	ON SUPPLEMENTAL BILL, &c. ANSWER OF CATHERINE C. O'REILLY.

The answer of Catherine C. O'Reilly, one of the executors of Patrick O'Reilly, deceased, and in her own right to the supplemental bill of complaint in the above stated cause.

This defendant, for answer to the complainant's said supplemental bill of complaint, or unto so much or such parts thereof as this defendant is advised it is material or necessary for her to make answer unto, answering says.

That this defendant admits that the said complainant, on or about the twenty-sixth day of May, eighteen hundred and ninety-two, filed his original bill of complaint in this cause against this defendant, Francis P. O'Reilly and James A. O'Reilly, executors of the last will and testament of Patrick O'Reilly, deceased; John F. O'Reilly, Francis P. O'Reilly, James A. O'Reilly, Anthony J. O'Reilly, and James A. O'Reilly, trustee for Mary A. O'Reilly, and Catherine C. O'Reilly, devisees under the last will of said Patrick O'Reilly, deceased, and James A. Griffiths, defendants therein, and that the said original bill of complaint, among other things, contained and set forth the said several statements and facts recited and claimed to have been set forth therein by said supplemental bill, and prayed in effect the same relief recited and claimed to have been asked in said original bill by said supplemental

bill as by the said original bill on the files of this court or a certified copy thereof in the hands of this defendant and ready to be produced, and reference thereto being had, will more fully and at large appear, and to which for greater certainty this defendant craves leave to refer.

And this defendant, further answering said supplemental bill of complaint, admits that the said defendants, Francis P. O'Reilly and James A. O'Reilly, as executors of the last will and testament of Patrick O'Reilly, deceased, and in their own right; James A. O'Reilly, as trustee for Mary A. O'Reilly, and John F. O'Reilly and Anthony J. O'Reilly, filed their joint and several answers to the said original bill of complaint, and that the said answer, among other things, contained and set forth the said several statements and facts recited and claimed to have been set forth therein by the said supplemental bill, as in and by the said joint and several answers aforesaid of the aforesaid defendants on the files of this court or a certified copy thereof in the hands of this defendant, and ready to be produced, reference thereto being had will more fully and at large appear, and to which for greater certainty this defendant craves leave to refer.

And this defendant, further answering said supplemental bill of complaint, admits that this defendant, as one of the executors of Patrick O'Reilly, deceased, and in her own right, filed her answer to the said original bill of complaint of said complainant, and that the said answer, among other things, contained and set forth the said several statements and facts recited and claimed to have been set forth therein by said supplemental bill, as by the said answer of this defendant on the files of this court or a certified copy thereof in the hands of this defendant, and ready to be produced, reference thereto being had more will and fully appear, and to which for greater certainty this defendant craves leave to refer.

And this defendant, further answering said supplemental bill of complaint admits that this defendant, as executor of Patrick O'Reilly, deceased, by her deed, dated on or about the first day of June, eighteen hundred and ninety-two, conveyed to one Edward H. Hall, for the considera-

tion of sixty-five thousand dollars (to this defendant as executor as aforesaid paid and secured to be paid), in fee the land and premises in the said original bill of complaint alleged to have been agreed and contracted by this defendant as executor as aforesaid, to be conveyed to the said James A. Griffiths, and this defendant admits that the said deed was acknowledged and delivered, and, as this defendant is informed and believes, the said Edward H. Hall afterwards procured the said deed to be recorded in the Clerk's Office of Atlantic County at or about the time mentioned in the said supplemental bill of complaint, and this defendant further answering shows that the said James A. Griffiths, after the making of the agreement with this defendant for the purchase of the said lot of land above set forth, as this defendant has been informed and believes, sold, assigned, transferred or set over his right and interest in and under said agreement to the said Edward H. Hall, and the said James A. Griffiths requested this defendant as executor as aforesaid to convey the said lot of land and premises to the said Edward H. Hall in pursuance of the terms of the said agreement or contract upon his paying and securing to be paid to this defendant as executor, as aforesaid, the purchase money thereof, and that in pursuance of said agreement and contract, and said request, this defendant as executor, as aforesaid, conveyed said lot of land to said Edward H. Hall upon his paying to this defendant as executor, as aforesaid, the sum of fifteen thousand dollars and executing to this defendant as executor, as aforesaid, his bond or obligation conditioned for the payment of fifty thousand dollars (the ballance of the said purchase money) with interest secured by a mortgage on the said lot of land and premises conveyed to him, reciting therein that said mortgage was given to secure and secured part of the purchase money of said lot of land ; and this defendant states and says that she has been informed and believes that the said Edward H. Hall afterwards had or procured the aforesaid deed to be recorded in the Clerk's Office of Atlantic County, and that the date of the said record is truly stated and set forth in said supplemental bill of complaint.

And this defendant, further answering said supplemental bill of complaint, admits that on or about the time mentioned in said supplemental bill this defendant, as executor as aforesaid, procured the said above-mentioned indenture of mortgage and executed to her, as executor as aforesaid, by the said Edward H. Hall for fifty thousand dollars, part of the purchase money of said lot of land, to be recorded in the Clerk's Office of Atlantic County on or about the time and in the book of mortgages mentioned in said supplemental bill of complaint, and that this defendant, as executor as aforesaid, holds the said bond and mortgage made by the said Edward H. Hall as security for the payment of the balance of the purchase money of said lot of land conveyed by her as aforesaid to the said Edward H. Hall in fee, under the provisions of the will of the said Patrick O'Reilly, deceased.

And this defendant, further answering said supplemental bill of complaint, says that she has not been informed, save by the complainant's said supplemental bill of complaint, that the said Edward H. Hall and wife, on or about the tenth day of August, eighteen hundred and ninety-two, conveyed, by a deed bearing date the day and year last aforesaid, the said lot of land and premises to said Joseph Shelton for the consideration of fifteen thousand dollars, and that the said deed was recorded in the Clerk's Office of Atlantic County, on the eleventh day of August, eighteen hundred and ninety-two, in book No. 164 of Deeds, page 437, &c., but this defendant believes that it may be true that the said Edward H. Hall and wife conveyed said lot of land to the said Joseph Shelton, for the consideration mentioned in said supplemental bill, and that said deed was recorded as in said supplemental bill mentioned, but this defendant, further answering said supplemental bill of complaint, states and shows that the said conveyance of said lot of land was made by said Edward H. Hall without any knowledge of or notice thereof to this defendant, and that the said conveyance by the said Edward H. Hall and his wife to the said Joseph Shelton was made subject to the incumbrance of this defendant's mortgage debt of fifty thousand dollars and interest thereon, secured to this

defendant by the said indenture of mortgage and with full legal notice thereof.

And this defendant, further answering said supplemental bill of complaint, denies that the said deed made by this defendant, as executor of Patrick O'Reilly, deceased, to the said Edward H. Hall, was or is wholly ineffectual or in any way ineffectual to convey the title to the said lot of land because this defendant (executor as aforesaid) (as alleged in said bill), had no power under the will of said Patrick O'Reilly, deceased, acting alone (or for any other cause), to make or execute any such deed or said deed; and this defendant denies that for reasons of any want of power named in said supplemental bill as above set forth, or for any other cause or reason the said indenture of mortgage above mentioned, made by the said Edward H. Hall to this defendant, as executor as aforesaid, to secure part of the purchase money of the said conveyance and lot of land, is in any way void or of none effect, and this defendant denies that, for any reason mentioned or set forth in said supplemental bill of complaint, the aforesaid deed or conveyance of said lot of land by said Edward H. Hall and wife to the said Joseph H. Shelton, is wholly without power to pass title to said lot of land, or that said deed is in any way void or of no effect, and this defendant states, shows and claims and submits that this defendant had full power and authority to make and execute said deed to convey said lands to the said Edward H. Hall, as executor of the will of the said Patrick O'Reilly, deceased; that this defendant, as executor of the will of the said Patrick O'Reilly, deceased, was the only one named in said last will and testament who proved said will in the State of New Jersey, and to whom letters testamentary or letters of administration with the will annexed were issued by the Surrogate of the County of Atlantic, the other executors named in said will having neglected or refused to prove said will, &c., in the State of New Jersey, and that the said conveyance or deed conveyed a full and absolute title in fee simple to said lot of land and premises, free from any trusts or from any rights of this defendant, or of the other devisees under said will of Patrick O'Reilly, deceased, or any of them of, in or to the same.

And this defendant, further answering said supplemental bill of complaint, denies that the said deed made by this defendant as executor of the said Patrick O'Reilly, deceased, to the said Edward H. Hall, or the said indenture of mortgage made by the said Edward H. Hall to this defendant as executor as aforesaid, or the said deed made by the said Edward H. Hall to the said Joseph Shelton above mentioned and set forth, or any or either of them, were made, executed or delivered with notice of any kind; that the said complainant was entitled to a conveyance from this defendant, as executor as aforesaid, of the lands and premises conveyed and pledged by the aforesaid deeds and mortgage, or any part thereof; and this defendant admits and shows that she had notice of the filing of the original bill of complaint by the complainant in this cause, but this defendant is not informed and has no knowledge of the said Edward H. Hall or Joseph Shelton, or either of them, having had any notice of any claims made by the said complainant to said lands, except the statements of the said supplemental bill of complaint, and can set forth no belief concerning the same; and this defendant shows that the complainant's said original bill of complaint does not, nor does his said supplemental bill of complaint aver or claim, that the said complainant has or ever has had any contract or agreement for the sale of said lands or any part thereof, or any memorandum or note thereof in writing, signed by the said Patrick O'Reilly in his lifetime, or by the executors or devisees of the said Patrick O'Reilly since his decease, or by any or either of them, or by any person or persons, by the said Patrick O'Reilly in his lifetime, or by the executors or devisees of the said Patrick O'Reilly since his decease, or any or either of them thereunto lawfully authorized; and this defendant denies that the said complainant has or ever has had any contract or agreement in writing for the sale of said land or any part thereof, or any memorandum or note in writing of any contract or agreement for the sale of said lands or any part thereof, signed by the said Patrick O'Reilly in his lifetime, or by his executors or devisees since the death of the said Patrick O'Reilly, or any

or either of them, or by any person or persons thereunto lawfully authorized by the said Patrick O'Reilly in his lifetime, or by his executors of devisees, the defendants in this cause, since his decease, or by any or either of them; and this defendant denies that the aforesaid deeds or mortgage, or any or either of them, were made, executed, delivered or recorded in pursuance of any fraudulent intert or purpose on the part of this defendant, or of the other defendants, or any or either of them, or of any person or persons acting for or in behalf of this defendant or of the other defendants, or any or either of them, to avoid the performance of any lawful contract with the said complainant, or any contract whereby the said complainant is entitled to have a conveyance of said lands, or any part thereof, or in any way to cheat or defraud the complainant of any benefit to be received by him from the performance of any legal contract held or claimed by him.

And this defendant, further answering said supplemental bill of complaint, says that she had been informed that the said Edward H. Hall and Joseph Shelton, or one of them, may be necessary parties to the complainant's said suit and leaves the said complainant to prove the same as he may be advised.

And this defendant, further answering said supplemental bill of complaint, says that as she has been informed and believes the said Edward H. Hall and Joseph Shelton both reside out of the State of New Jersey, and this defendant denies that the said Edward H. Hall or Joseph Shelton, or either of them, were selected by this defendant or the other defendants in said complaint's original bill, or any or either of them, or by any person or persons who acted for said defendants, or any or either of them, to hold the title of and to said lands for the benefit of this defendant, or of the other defendants to the said original bill of complaint, or any or either of them, that the said complainant might be embarrassed or delayed in protecting, or asserting any equitable title or any title he may have or claim to have in or to said lands or any part thereof; and this defendant denies that the said Edward H. Hall or Joseph Shelton, or either of them, hold the title to said

lands or any part thereof for the benefit of this defendant or the other defendants to said original bill of complaint, or any or either of them, and this defendant shows that the said deed made by this defendant as executor as aforesaid to the said Edward H. Hall was made *bona fide* for and upon good and valuable consideration, being a full and fair price for the said land and said deed conveyed the said lands to the said Edward H. Hall absolutely and in fee, and in as full and ample a manner as the said Patrick O'Reilly was seized and possessed of the same in his lifetime and at the time of his death, or as the said executors, heirs and devisees of the said Patrick O'Reilly were seized thereof at any time after his decease and without any reservation of any kind whatsoever to this defendant, or to the other defendants to the said original bill of complaint, or to the executors and devisee of the said Patrick O'Reilly, deceased, or any or either of them, and this defendant denies that this defendant, or the other defendants to the said original bill of complaint, the executors and devisees of the said Patrick O'Reilly, deceased, have any interest in or any control or power over or in the title to said lands or any part thereof, or any purpose or intent whatever to make or cause to be made frequent transfers of the title to the said lands or any part thereof to any other persons, and this defendant denies that this defendant and the other defendants to the said original bill of complaint, the executors and devisees of the said Patrick O'Reilly, deceased, (or, as this defendant believes, the other defendants in said supplemental bill of complaint) or any or either of them, have any fraudulent or any purpose or intent in any way to cheat the said complaint out of any estate he may have in said lands by making or causing or procuring to be made and recorded, frequent transfers of the legal title to said lands to persons residing out of the State of New Jersey, and this defendant states and shows that this defendant has not, nor have the other defendants to the said original bill, the executors and devisees of the said Patrick O'Reilly, deceased, any right, title or interest in the title to the said lands or in the said lands, except and save the said mortgage made by the said Edward H. Hall to this defendant

as executor, &c., as aforesaid, to secure the payment of a part of the purchase money thereof.

All which matters and things this defendant is ready to aver and maintain and prove as this honorable court shall direct and prays to be hence dismissed with her reasonable costs and charges in this behalf most wrongfully sustained.

DAVID J. PANCOAST,
Sol. for and of Counsel with Def'ts.
P. L. VOORHEES,
of Counsel.

STATE OF PENNSYLVANIA, } ss:
COUNTY OF BERKS. }

Catherine C. O'Reilly, of full age, being duly sworn according to law on her oath, says that she is the defendant named in the above answer; that the said answer, so far as it relates to the acts and deeds of this deponent, is true, and so far as it relates to the acts and deeds of others, she believes it to be true; and especially is it true that, to the best of the knowledge and belief of this deponent, the said complainant has not, nor ever has had, any contract or agreement in writing for the sale of the lands and premises mentioned in the original and supplemental bills filed in the above cause, or any part thereof, or any memorandum or note in writing or any contract or agreement for the sale of said lands or any part thereof signed by the said Patrick O'Reilly in his lifetime, or by his executors or devisees since the death of the said Patrick O'Reilly, or any or either of them, or by any person or persons thereunto lawfully authorized by the said Patrick O'Reilly in his lifetime, or by his executors or devisees since his decease, or any or either of them; that this deponent has not in any way or at any time made any agreement or contract in writing or any note or memorandum thereof in writing with the complainant, nor has this deponent ever authorized the said John J. Gardner or any other person or persons to sign or make on behalf of this deponent any contract or agreement in writing or any note or memorandum in writing or any contract or agreement for the sale of said land or any part thereof, and that the said Patrick O'Reilly in his said lifetime and his

executors and devisees since his decease have and held legal possession of the said lands and premises until the conveyance of the same by the said Catherine C. O'Reilly, executor, &c., of the said Patrick O'Reilly, deceased, to the said Edward Hall, mentioned and referred to in the above answer.

Sworn and subscribed before me this 29th day of December, A. D. 1892. } C. C. O'REILLY.

{ Seal of the Mayor of the City of Reading. } THOS. P. MERRITT, *Mayor.*

IN CHANCERY OF NEW JERSEY.

BETWEEN JACOB KEIM, *Compl't,* AND CATHERINE C. O'REILLY, JAMES A. GRIFFITH *et al.*, *Def'ts.*	ON SUPPLEMENTAL BILL. ANSWER OF JAMES A. O'REILLY *et al.*

The answer of Francis P. O'Reilly and James A. O'Reilly, executors of the last will and testament of Patrick O'Reilly, deceased, in the State of Pennsylvania, and in their own right; James A. O'Reilly, trustee for Mary A. O'Reilly; John F. O'Reilly, Anthony J. O'Reilly, James A. O'Reilly and Francis P. O'Reilly, defendants in the above stated cause to the supplemental bill of complaint of the said complaint.

These defendants, for answer to the complainant's said supplement bill of complaint, or unto so much and such parts thereof as these defendants are advised it is material or necessary for them to make answer unto, answering say.

These defendants admit that the said complainant, on or about the twenty-sixth day of May, eighteen hundred and ninety-two, filed his original bill of complaint in this cause against Catherine C. O'Reilly, and these defendants, Francis P. O'Reilly and James A. O'Reilly, executors, &c., of Patrick O'Reilly, deceased; and John F. O'Reilly, Francis P. O'Reilly, James A. O'Reilly, Anthony J. O'Reilly; James A. O'Reilly, trustee for Mary A. O'Reilly; Catherine C. O'Reilly, devisee under the last will and testament of Patrick O'Reilly, deceased, and James A. Griffiths, defendants therein, that the said original bill of

complaint, among other things, contained and set forth the said several statements and facts recited and claimed to have been set forth therein by the said supplemental bill, and prayed in effect the same relief recited and claimed to have been asked in said original bill by said supplemental bill as by the said original bill on the files of this court or a certified copy thereof, in the hands of these defendants, and ready to be produced, reference thereto being had, will more fully and at large appear, and to which for greater certainty these defendants crave leave to refer.

And these defendants, further answering said supplemental bill of complaint, admit that these defendants, Francis P. O'Reilly and James A. O'Reilly, as executors of the last will and testament of Patrick O'Reilly, deceased, and in their own right; James A. O'Reilly, as trustee for Mary A. O'Reilly; John F. O'Reilly and Anthony J. O'Reilly, filed their joint and several answer to the said original bill of complaint, and that the said answer, among other things, contained and set forth the several statements and facts recited and claimed to have been set forth therein by said supplemental bill, as in and by the aforesaid answer of the aforesaid defendants on the files of this court, or a certified copy thereof in the hands of these defendants, and ready to be produced, reference thereto being had, will more fully appear, and to which for greater certainty these defendants crave leave to refer.

And these defendants, further answering said supplemental bill of complaint, admit that the defendant, Catherine C. O'Reilly, as one of the executors of Patrick O'Reilly, deceased, and in her own right, filed her answer to the said original bill of complaint of said complainant, and that the said answer, among other things, contained and set forth the said several statements and facts recited and claimed to have been set forth therein by said supplemental bill of complaint, as by the said answer of the defendant, Catherine C. O'Reilly, on the files of this court, or a certified copy thereof in the hands of these defendants, and ready to be produced, reference thereto being had, will more fully and at large appear, and to which for greater certainty these defendants crave leave to refer.

And these defendants, further answering said supplemental bill of complaint, admit that the said Catherine C. O'Reilly, as executor of Patrick O'Reilly, deceased, by her deed, dated on or about the first day of June, eighteen hundred and ninety-two, conveyed to one Edward H. Hall for the consideration of sixty-five thousand dollars (to the said Catherine C. O'Reilly, executor as aforesaid, paid and secured to be paid), in fee the land and premises in said original bill of complaint alleged to have been agreed and contracted by the said Catherine C. O'Reilly, executor, &c., as aforesaid, to be conveyed to the said James A. Griffith, and these defendants admit that the said deed was acknowledged and delivered, and, as these defendants are informed and believe, the said Edward H. Hall afterwards procured the said deed to be recorded in the Clerk's Office of Atlantic County, at or about the time mentioned in said supplemental bill of complaint, and these defendants, further answering, show that, as they have been informed and believe, the said James A. Griffith, after the making of the agreement with the defendant, Catherine C. O'Reilly, as executor, &c., aforesaid, for the purchase of the said lot of land above set forth, sold, assigned, transferred or set over all his right and interest in and under said agreement to the said Edward H. Hall, and the said James A. Griffiths requested the said Catherine C. O'Reilly, as executor, &c., as aforesaid, to convey the said lot of land to the said Edward H. Hall in pursuance of the terms of the said agreement or contract, upon his paying and securing to be paid to the said defendant, Catherine C. O'Reilly, as executor as aforesaid, the purchsse money thereof, and that, in pursuance of said agreement or contract and said request, the defendant, Catherine C. O'Reilly, as executor as aforesaid, conveyed said lot of land to the said Edward H. Hall upon his paying to said defendant, Catherine C. O'Reilly, executor, &c., as aforesaid, the sum of fifteen thousand dollars and executing to the said Catherine C. O'Reilly, as executor, &c., as aforesaid, his bond or obligation conditioned for the payment of fifty thousand dollars (the balance of the said purchase money), with interest secured by his mortgage on the said lot of land and premises conveyed to

him, reciting therein that the said mortgage was given to secure and secured part of the purchase money of said lot of land; and these defendants state and show that, as they had been informed and believe, the said Edward H. Hall had or procured the said deed to be recorded in the Clerk's Office of Atlantic County, and that the date of said recording is truly set forth in said bill of complaint.

And these defendants, further answering said supplemental bill of complaint, state and show that, as these defendants have been informed and believe, that on or about the time mentioned in said supplemental bill of complaint the said defendant, Catherine C. O'Reilly, executor, &c., as aforesaid, procured the said above mentioned indenture of mortgage, made and executed to her as executor as aforesaid, by the said Edward H. Hall, for fifty thousand dollars, part of the purchase money of said lot of land, to be recorded in the Clerk's Office of Atlantic County on or about the time and in the book of mortgages mentioned in said supplemental bill of complaint, and that the defendant, Catherine C. O'Reilly, as executor, &c., as aforesaid, holds the said bond and mortgage made by the said Edward H. Hall, as security for the payment of the balance of the purchase money of said lot of land conveyed by her, as aforesaid, to the said Edward H. Hall, in fee under the provisions of the will of the said Patrick O'Reilly, deceased.

And these defendants, further answering said supplemental bill of complaint, say that they have not been informed save, by the complainant's said supplemental bill of complaint, that the said Edward H. Hall, on or about the tenth day of August, eighteen hundred and ninety-two, conveyed, by a deed bearing date the day and year last aforesaid, the said lot of land and premises to Joseph Shelton for the consideration of fifteen thousand dollars; that the said deed was recorded in the Clerk's Office of Atlantic County on the eleventh day of August, eighteen hundred and ninety-two, in book No. 164 of Deeds, page 437, &c., but these defendants believe that it may be true that the said Edward H. Hall and wife conveyed the said lot of land to the said Joseph Shelton for the consideration mentioned in said supplemental bill and the said deed

was recorded as in said supplemental bill is set forth, but this defendant, further answering said supplemental bill of complaint, states and shows that the said conveyance of the said lot of land was made by the said Edward H. Hall without any notice or knowledge thereof to these defendants or to any or either of them, or, as these defendants are informed and believe, to the defendant, Catherine C. O'Reilly, and that the said conveyance by the said Edward H. Hall and wife to the said Joseph Shelton was and is subject to the incumberance of the said mortgage debt of fifty thousand dollars and interest thereon secured to be paid to the defendant, Catherine C. O'Reilly, executor, as aforesaid, by the said indenture of mortgage above mentioned and with legal notice thereof.

And these defendants, further answering said supplemental bill of complaint, deny that the said deed made by the said Catherine C. O'Reilly, executor of the said Patrick O'Reilly, deceased, to the said Edward H. Hall was or is wholly ineffectual or in any way ineffectual to convey the title to the said lot of land, because the defendant, Catherine C. O'Reilly, executor, &c., as aforesaid (as alleged in said supplemental bill), had no power under the will of Patrick O'Reilly, deceased, acting alone (or for any other cause), to make and execute said deed, or any such deed, and these defendants deny that for any want of power named in said supplemental bill, as above set forth, or for any other cause or reason, the said indenture of mortgage above mentioned, made by the said Edward H. Hall to the defendant, Catherine C. O'Reilly, as executor, &c., of Patrick O'Reilly, deceased, as aforesaid, to secure part of the purchase money of the conveyance and lot of land is in any way void or of none effect; and these defendants deny that for any reason or cause set forth or mentioned in said supplemental bill of complaint or otherwise, the aforesaid deed or conveyance of said lot of land by the said Edward H. Hall and wife to the said Joseph Shelton is wholly or in any way without power to pass title to said lot of land, or that the said deed is in any way void or of no effect, and these defendants state, show, claim and submit that the defendant, Catherine C. O'Reilly,

had full power and authority to execute said deed and to convey said land to the said Edward H. Hall, as executor of the last will and testament of Patrick O'Reilly, deceased; that the said defendant, Catherine C. O'Reilly, as executor of the said will of said Patrick O'Reilly, deceased, was the only one of the executors named in said last will and testament who proved said will in the State of New Jersey, and the only one of said executors to whom letters testamentary or letters of administration with the will annexed were issued by the Surrogate of the County of Atlantic, the other executors named in said will having neglected and refused to prove said will, &c., in the State of New Jersey, and that the said deed or conveyance conveyed a full and absolute title in fee simple to said lot of land and premises free from any trusts, or from any rights of these defendants, or of the other devisees under the will of the said Patrick O'Reilly, deceased, or any or either of them of, in or to the same.

And these defendants, further answering said supplemental bill of complaint, deny that the said deed made by the said defendant, Catherine C. O'Reilly, as executor of said Patrick O'Reilly, deceased, to the said Edward H. Hall, or the said indenture of mortgage, made by the said Edward H. Hall to the defendant, Catherine C. O'Reilly, executor, &c., as aforesaid, or the said deed, made by the said Edward H. Hall to the said Joseph Shelton, above mentioned and set forth, or any or either of them, were made and executed or delivered with notice of any kind that the said complainant was entitled to a conveyance from the defendant, Catherine C. O'Reilly, as executor, &c., or otherwise, of the lands and premises conveyed and pledged by the aforesaid deeds and mortgage or any part thereof, and these defendants admit and show that they had notice of the filing of the original bill of complaint by the complainant in this cause, but these defendants are not informed and have no knowledge of the said Edward H Hall or Joseph Shelton, or either of them, having had any notice of any claim made by the said complainant to said land, except the statements of the said supplemental bill of complaint and can set forth no belief concerning the same,

and these defendants show that the complainant's said original bill of complaint, does not, nor does his said supplemental bill of complaint aver or claim that the said complainant has or ever has had any contract or agreement for the sale of said lands or any part thereof, or any memorandum or note thereof in writing, signed by the said Patrick O'Reilly in his lifetime, or by the executors or the devisees of the said Patrick O'Reilly (the defendants in this cause) since his decease, or any or either of them thereunto lawfully authorized, and these defendants deny that the said complainant has or ever has had any contract or agreement in writing for the sale of said lands or any part thereof, or any memorandum or note in writing of any contract or agreement for the sale of said lands or any part thereof, signed by the said Patrick O'Reilly in his lifetime, or by his executors or devisees since the death of the said Patrick O'Reilly, or any or either of them, or by any person or persons thereunto lawfully authorized by the said Patrick O'Reilly in his lifetime, or by his executors or devisees (the defendants in this cause) since his decease, or any or either of them; and these defendants deny that the aforesaid deeds or mortgage or any or either of them were made, executed, delivered or recorded in pursuance of any fraudulent intent or purpose on the part of these defendants, or any or either of them, or of any person or persons acting for or in behalf of these defendants, or of the other defendants, or any or either of them, to avoid the performance of any lawful contract with the said complainant, or any contract whereby the complainant is entitled to have a conveyance of the said lands or any part thereof, or in any way wise to cheat or defraud the complainant of any benefit to be received by him from the performance of any legal contract held or claimed by him.

And these defendants, further answering said supplemental bill of complaint, admit that it may be that the said Edward H. Hall and Joseph Shelton, or one of them, may be necessary parties to the complainant's said suit, and these defendants leave the said complainant to prove the same as he may be advised.

And these defendants, further answering said supplemental bill of complaint, say that, as they have been informed and believe, the said Edward H. Hall and Joseph Shelton both reside out of the State of New Jersey; and these defendants deny that the said Edward H. Hall or Joseph Shelton, or either of them, were selected by these defendants or the other defendants in said complainant's original bill, or any or either of them, or by any person or persons who acted for or was acting for said defendants, or either of them, to hold the title of and to the said lands for the benefit of these defendants or the other defendants to the said original bill of complaint, or either or any of them, that the said complainant might be embarrassed or delayed in protecting or asserting any equitable title, or any title he may have or claim in or to said lands, or any part thereof and these defendants deny that the said Edward H. Hall or Joseph Shelton, or either of them, hold the title to said lands or any part thereof for the benefit of these defendants or the other defendants to the original bill of complaint, or any or either of them; and these defendants show and state that the said deed, made by the said Catherine C. O'Reilly, executor, &c., as aforesaid, to the said Edward H. Hall, was made *bona fide* for and upon a good and valuable consideration, being a full and fair price for the said lands, and said deed conveyed the said land to the said Edward H. Hall, absolutely and in fee and in as full and ample a manner as the said Patrick O'Reilly was seized and possessed of the same in his lifetime and at the time of his death, or as the said heirs, executors and devisees of the said Patrick O'Reilly were seized thereof at any time after his death, and without any reservation of any kind to these defendants or the other defendants to the said original bill of complaint, the executors and devisees of the said Patrick O'Reilly deceased, or any or either of them, and these defendants deny that these defendants or the other defendants to the said original bill of complaint, executors and devisees of the said Patrick O'Reilly, deceased, have any interest in or control whatsoever over or in the title to said land, or any purpose or intent what-

ever to make or cause to be made frequent transfer or any transfer of the title of said lands, or any part thereof, to any other persons ; and these defendants deny that these defendants and the other defendants to the said original bill of complaint, the executors and devisees of the said Patrick O'Reilly, deceased (or, as these defendants believe, the other defendants in the supplemental bill of complaint), or any or either of them, have any fraudulent purpose or any purpose or intent in any way to cheat or defraud the said complainant out of any estate he may have in said lands by making, or causing or procuring to be made and recorded, frequent transfers of the legal title to said lands to persons residing out of the State of New Jersey ; and these defendants state and show that these defendants have or have not the other defendants to the said original bill, the executors and devisees of the said Patrick O'Reilly, deceased, or any or either of them, any right, title or interest in the title to said lands or in said lands, except and save the said mortgage made by the said Edward H. Hall to the said defendant, Catherine C. O'Reilly, as executor, &c., as aforesaid, to secure the payment of a part of the purchase money thereof.

And this defendant James A. O'Reilly, trustee for Mary A. O'Reilly, answering said supplemental bill of complaint, states and shows that the said Mary A. O'Reilly lately died, having first made and executed her last will and testament in writing, whereby she devised and bequeathed all her estate to Catherine C. O'Reilly, and that by the death of said Mary A. O'Reilly and the provisions of her will as aforesaid, the trust estate and all right of this defendant as trustee ceased and determined, and that as trustee this defendant has no interest in said suit, as is now fully shown and set out in the answer of this defendant to the original bill of complaint in this cause, and to which answer this defendant trustee, as aforesaid, craves leave to refer if necessary so to do.

All which matters and thing these defendants are ready to aver and maintain and prove, as this honorable court shall direct, and pray to be hence dismissed with their

reasonable costs and charges in this behalf most wrongfully sustained.

DAVID J. PANCOAST,
Sol. of Def'ts.

STATE OF PENNSYLVANIA, }
COUNTY OF BERKS. } ss:

Francis P. O'Reilly, James A. O'Reilly and John F. O'Reilly, of full age, being duly sworn according to law on their respective oaths, say, that they are defendants named in the above answer; that the said answer, so far as it relates to the acts and deed of these deponents, is true, and so far as it relates to the acts and deeds of others they believe it to be true; and especially is it true that, to the best of the knowledge and belief of these deponents, the said complainant has not, nor ever has had, any contract or agreement in writing for the sale of the lands and premises mentioned in the original and supplemental bills filed in the above cause, or any part thereof, or any memorandum or note in writing or any contract or agreement for the sale of said lands, or any part thereof, signed by the said Patrick O'Reilly in his lifetime, or by his executors or devisees since the death of the said Patrick O'Reilly, or any or either of them, or by any person or persons thereunto by the said Patrick O'Reilly in his lifetime or by his executors or devisees since his decease, or any or either of them lawfully authorized; and these deponents, or any or either of them, have not, in any way or any time, made any agreement or contract in writing, or any note or memorandum thereof in writing with the complainant, nor have these deponents, or any or either of them, ever authorized any person or persons to sign or make on behalf of these deponents, or any or either of them, any contract or agreement in writing or any note or memorandum in writing of any contract or agreement for the sale of said lands or any part thereof; and that these deponents, or either of them, never authorized the said John J. Gardner, nor any other person or persons, to sign or make on behalf of these deponents, or any or either of them, any contract or agreement in writing or any note or memorandum in writing of any contract or agreement for

the sale of said lands or any part thereof; and that the said Patrick O'Reilly in his lifetime and his executors and devisees since his decease have and had legal possession of the said lands and premises until the conveyance of the same by the said Catherine C. O'Reilly, executor, &c., of the said Patrick O'Reilly, deceased, to the said Edward H. Hall, mentioned and referred to in the above answer.

Sworn and subscribed before me this 29th day of December, A. D. 1892. } FRANCIS P. O'REILLY, JAMES A. O'REILLY, JNO. F. O'REILLY.

{ Seal of the Mayor of the City of Reading. } THOS. P. MERRITT, *Mayor.*

STATE OF } ss :
COUNTY OF }

Anthony J. O'Reilly, of full age, being duly sworn according to law, on his oath says, that he is one of the defendants named in the above answer; that the said answer, so far as it relates to the acts and deeds of this deponent, is true, and so far as it relates to the acts and deeds of others he believes it to be true; and especially is it true that, to the best of the knowledge and belief of this deponent, the said complainant has not, or ever has had, any contract or agreement in writing for the sale of the lands and premises mentioned in the original and supplemental bill filed in the above cause, or any part thereof, or any memorandum or note in writing of any contract or agreement for the sale of said lands, or any part thereof, signed by the said Patrick O'Reilly in his lifetime, or by the executors or devisees since the death of the said Patrick O'Reilly, or any or either of them, or by any person or persons thereunto by the said Patrick O'Reilly in his lifetime, or by his executors or devisees since his decease, or by any or either of them lawfully authorized; and this deponent has not in any way or at any time made any agreement or contract, or any note or memorandum thereof in writing with the complainant, nor has this deponent ever authorized any person or persons to sign or make

on behalf of this deponent any contract or agreement in writing, or any note or memorandum in writing, or any contract for the sale of said lands or any part thereof; and that the said Patrick O'Reilly in his lifetime and his executors and devisees since his decease have and held legal possession of the said lands and premises until the conveyance of the same by the said Catherine C. O'Reilly, executor, &c., of the said Patrick O'Reilly, deceased, to said Edward H. Hall, mentioned and referred to in the above answer.

IN CHANCERY OF NEW JERSEY.

BETWEEN
JACOB KEIM,
Compl't,
AND
CATHERINE C. O'REILLY, EXECUTRIX, AND JAMES A. GRIFFITH *et al.*,
Def'ts.

BETWEEN
JACOB KEIM,
Compl't,
AND
CATHERINE C. O'REILLY, EXECUTRIX, DANIEL LINDLEY AND OTHERS.
Def'ts.

TRANSCRIPT OF SHORTHAND NOTES TAKEN AT CHANCERY CHAMBERS, CAMDEN, NEW JERSEY, MONDAY, MAY 8, 1893, BEFORE HONORABLE HENRY C. PITNEY, VICE CHANCELLOR.

Appearances:

Messrs. Grey & Grey for the complainant.

Hon. David J. Pancoast and P. L. Voorhees, Esqs., for Mrs. Catherine C. O'Reilly, James A. O'Reilly, Francis P. O'Reilly.

T. B. Harned, Esq., for defendants, Lindley and Adams.

It is agreed by counsel that the two causes be heard together, and that all the evidence in each case be put in and be used interchangeably, as it may apply to either case.

JACOB KEIM, the complainant, sworn:

Direct-examination by Mr. S. H. Grey:

Q. Where do you live, Mr. Keim?

A. Atlantic City. You will have to speak pretty loud, so that I can hear.

Q. How long have you lived at Atlantic City?

A. Since 1861; that makes thirty years about, very nearly.

Q. Did you know Patrick O'Reilly in his lifetime?

A. I did.

Q. Do you know John J. Gardner?

A. I do.

Q. Did you ever have any negotiation with John J. Gardner with reference to the purchase of land of Patrick O'Reilly?

A. I have.

Q. What relation did Mr. John J. Gardner stand in towards O'Reilly and his land during O'Reilly's lifetime?

Mr. Pancoast: We object to the form of the question. The agency can be proven at any time.

The Court: I think the exception is well taken. I shall permit the complainant's counsel to prove that this witness supposed that Mr. Gardner was the agent of Mr. O'Reilly.

Q. Mr. Keim did you have any transaction—you say you had transaction with regard to some land down there; now in that transaction did you deal with Mr. Gardner as though he was the agent of Mr. O'Reilly touching the sale of the land?

A. I dealt with Mr. Gardner altogether. I have not known Mr. O'Reilly for a great many years, only in about 1858—(interrupted).

Q. I am speaking of 1881. Mr. Keim, did you have a negotiation with Mr. Gardner for the purchase of some of the O'Reilly lands by you?

A. I did.

Q. Did you pay him any money?

A. I did.

Q. Did you take a receipt for it?

A. I did.

Q. Have you got that receipt?

A. I have; yes, sir.

Q. The first receipt I want? I mean the twenty-five-dollar receipt.

A. (Witness here hands counsel a paper).

Q. (Showing witness the paper). Witness being shown paper, typewritten, dated March 25th, 1880, is asked whether that is a receipt which he received from Mr. Gardner for the sum of twenty-five dollars?

A. Yes, sir.

Q. The signature is that of "J. J. Gardner, agent?"

A. Yes.

Q. Whose agent did you understand Mr. Gardner to be in that transaction at that time?

A. Mr. O'Reilly's, of course.

Q. In whose possession has this paper been since that time?

A. My own.

Q. This is the original paper?

A. Well ——

Q. The receipt I mean?

A. Yes; or rather in my son's possession, I might say; he has had charge of my papers for a good many years.

Q. Then it has been either in your possession or your son's. This is the original receipt you got from Mr. O'Reilly?

A. Yes, sir.

Q. Is that his signature?

A. That is Gardner's signature, I should say.

Q. Now were you present when he signed it?

A. I was.

Mr. Grey: I intend to offer this paper in evidence. It is already set out at length in the bill.

Mr. Pancoast: It is objected to on the ground that there appears no authority in writing or otherwise from Mr. Patrick O'Reilly to John J. Gardner to make this contract in question.

The Court: The contract is admitted at present on the ground that Mr. Grey will hereafter supply the evidence of the authority. Of course the agreement goes for nothing unless there was authority, or unless it was afterwards ratified by Mr. O'Reilly, or somebody else equally responsible; but the objection that the authority, when proven, is not in writing, is a question that would not at present prevail against the admission of the receipt, be-

cause that is a question to be determined in the cause, whether or not an oral authority to an agent to enter into a contract to convey land is sufficient or not. That is a question that I suppose has to be decided beyond all peradventure. It is not necessary for me to decide it now in admitting this receipt in evidence.

(Said receipt reads as follows):

"ATLANTIC CITY, N. J., March 25th, 1880.

$25.00.

Received of Jacob Keim the sum of $25 on account of the purchase money of the lot of land 50 *feet in width*, adjoining on the rear the land now owned by the said Jacob Keim, which land fronts on New York Avenue, in Atlantic City aforesaid, and which strip to be conveyed runs the entire length of the said land of the said Jacob Keim. The purchase price is to be $2,500. Deed to be made and delivered so soon as practicable, not longer from the present time than one month. Said land to be conveyed belongs to Patrick O'Reilly. for whom the undersigned is Agent. J. J. GARDNER, *Agent.*"

(Offered and received in evidence and marked by the stenographer C. 1.)

Q. Mr. Keim, did you ever receive a deed for the property described in that receipt of March 25, 1880, pursuant to the agreement therein contained?

A. No, sir.

Q. Now after this did you ever make another agreement with Mr. Gardner in respect to the sale of lands in Atlantic City to you?

A. I did.

Paper dated October 29, 1881, written, being shown the witness, he is asked whether that is the receipt.

Q. (By the Court): Is that the paper?

A. (After examining the paper). That is the paper.

Q. (By Mr. Grey): Now at the time of the date of that receipt, was the money therein mentioned paid to Mr. Gardner, five hundred dollars?

A. Yes, sir.

Q. Did you take any part in the negotiation with Gard-

ner for the purchase of this property described in the last paper?

A. Yes, sir; I went to Mr. Gardner's office with the view of purchasing and he showed me the prices that he had; I wanted to buy a portion of it; I didn't wish to buy the whole of it; and he said he was advised or had concluded himself (I don't know whether it was through himself or by express orders) that he should not sell a part of it but the whole; sell it altogether. The price of the one lot (he had it in four lots) the one lot the price was four thousand dollars—interrupted.

Mr. Pancoast: Objected to on the ground that if there was any bargain at all it is manifested by this writing.

The Court: But the object is to show that he negotiated in good faith with Mr. Gardner, and that Mr. Gardner appeared to him and was acting intelligently. The evidence may be of very little value, but I will not stop him at present.

Q. (By the Court): What were you saying when the interruption came?

(The stenographer reads to the witness the last part of his answer as follows: "The price of the one lot (he had it in four lots) the one lot the price was four thousand dollars.")

Q. (By the Court): Now go on.

A. (Continuing): Each of the other three lots, $2,500, each of them.

Q. Go on.

A. I wanted to buy those three; I offered him the prices which he asked for them if he would sell just those lots to me without the other, without the fourth.

Q. Well?

A. He would not agree to do it. He said he was to sell it altogether. So I told him before I left, I said: "Now, Gardner, if you will sell, if you will put the other lot down to the same price, I will take them all, and that is the highest penny I am willing to pay for them." Some time after that, not very long, I could not just tell the exact time, I got a note from Mr. Gardner to call at his office. I did so. I bade him good morning, I suppose; got talk-

ing to him, anyhow; I said: "You sent me a note." He said "Yes." He handed me a letter, without saying anything else. This letter was addressed not to me, addressed to Gardner, signed J. A. O'Reilly; stated that Mr. ——

Mr. Pancoast: Object to the witness stating the contents of the letter.

Q. (By Mr. Grey): Well, was the letter in relation to this transaction about the purchase of the land?

Mr. Pancoast: The objection is to proving the contents of the paper without accounting for its absence.

Mr. Grey: I am not going to prove anything except as to the subject, not the contents. That is all I asked for.

Mr. Pancoast: Objected to for that purpose even.

Mr. Grey: It is necessary to identify the letter in some sort of manner in order to make proof respecting it at a later period in the case.

The Court: I think the evidence is competent, that he saw a letter of a certain description in Mr. Gardner's hands, without telling what was in it. He may go that far.

The witness: Shall I state the contents?

Q. (By Mr. Grey): No, sir. What was it about?

Q. (By the Court): You can state what it was about and who it appeared to be signed by if can recollect that? (Objection renewed).

A. The signature—of course, I can tell only by the name.

Q. Who did it purport to be signed by?

A. James A. O'Reilly.

Q. And what was it about?

A. Stated that a Mr. Herring—(interrupted).

Q. Was it about this land?

A. Yes, sir.

Q. That is enough.

Q (By Mr. Grey): Well, did you do anything further at that time; pay any money or do anything more; or what did you do then?

A. I did.

Q. How much did you pay?

A. Well, whether it is of consequence or not I can ex-

plain myself better if I was allowed a little latitude here, that it is stated the offer—(interrupted).

Mr. Pancoast: We object to that.

Q. You can't tell what was in the letter?

The Court (to the witness): Not now. You go on and answer what your counsel asks you.

Witness: Well, I then told him that that was just the same I had offered; "and," says he, "I know that, and of course as you were the first bidder at that why I shall let you have it if you wish so."

Q. (By the Court): Well did you understand Mr. Gardner that another offer had been made for the property?

A. I did not.

Q. Not from Gardner?

A. No, only from the letter, because he didn't talk to me about it; of course I understood.

Q. (By Mr. Grey): Now, Mr. Keim, you say that you said to him "that is the same price I offered you?"

A. Yes, sir.

Q. Then there was something about price, was there, in this letter?

A. Certainly.

Q. Now after you had gotten this far along did you pay any money to Gardner?

A. I asked him how much he wanted on it; he said "Suit yourself, something, if it is not too little." I said "Will five hundred dollars do?" He answered "Yes." I said "We will put it up in a day or two;" and my son went with me up there, and he—in fact the conversation that occurred then with Mr. Gardner was through my son and him.

Q. That was when you and your son went back afterwards?

A. When we gave him the check for the money.

Q. Then you did gave him a check for $500, did you, or for—you say you gave him a check for the money; did you?

A. I did.

Q. Now was that your check or your son Newton's check?

The Court: What difference does it make?

Q. Was that the time the receipt was given you shown you awhile ago?

A. Yes, sir.

Q. (By the Court): This five hundred dollar receipt?

A. Yes, sir.

Mr. Grey: I offer that paper in evidence.

Mr. Pancoast: Objected to on the ground that no sufficient authority appears. The same ground as the objection to the receipt marked C. 1.

The Court: The paper is admitted on the same terms as Exhibit C. 1.

(Said paper, as follows, marked C. 2).

"Received, Atlantic City, N. J., October 29th, 1881, of Jacob Keim, the sum of five hundred dollars on account of the purchase money of a certain tract of land, situate in said city, as follows: Beginning at a point in the southeasterly line of Pacific Avenue, at a distance of two hundred feet northeastwardly from the northeastwardly line of New York Avenue and extending thence (1) southeastwardly on a line parallel with New York Avenue, a distance of one hundred and fifty feet; thence (2) southwestwardly parallel with Pacific Avenue, a distance of one hundred feet; thence (3) southeastwardly parallel with New York Avenue, a distance of fifty feet; thence (4) southwestwardly parallel with Pacific Avenue, a distance of fifty feet; thence (5) southeastwardly parallel with New York Avenue, a distance of to the exterior line (now under water), established in 18— by the Riparian Commissioners of New Jersey; thence (6) northeastwardly along said Riparian line, a distance of one hundred and fifty feet; thence (7) northwestwardly parallel with New York Avenue, a distance of to the southeasterly line of Pacific Avenue, and thence (8) southwestwardly along said last mentioned line, a distance of fifty feet to the place of beginning. And also all the additions and accretion to said tract of land, if any, which may hereafter be made on the sea front; it being the purpose of this purchase and sale to include all the land above described; and also all the right, title and interest

of the grantors and of the estate of the late Patrick O'Reilly, deceased, in and to the accretions to said land which may be made upon the sea front. The balance of the purchase money, namely, the sum of $9,500, to be paid upon tender of a good and lawful deed for said premises, free from encumbrance and opposing or contesting claim of title, with undisputed possession of the same, the grantee to have sixty days' notice of such tender.

Including all the land and rights of said estate between Pacific Avenue, the Riparian line and beyond New York and Tennessee Avenues.

JOHN J. GARDNER,

Agent P. O'Reilly estate."

Q. Now, Mr. Keim, after you had paid this money, which you say you paid, and gotten these two receipts, did you have any conversation with Mr. Gardner in relation to this matter?

A. Very frequently.

Q. Did you know James A. O'Reilly?

A. I have known him since; I didn't previously; I have known him since.

Q. Since what?

A. Well, since the time of the purchase.

Q. Did you ever see Mr. James A. O'Reilly, one of these defendants, with reference to this matter?

A. I did; I met him in 1888; about there; I would not say positively, but very near that; I think that is the year, probably exactly, on Atlantic Avenue, near New York, I came to him; we walked up Atlantic Avenue and we got talking about this matter, and he says—and he says——

Mr. Pancoast: We object to what he said on the ground that it can't go to make a legal contract in this case within the Statute of Frauds.

The Court: Objection overruled; the evidence may be competent for other purposes.

Q. Mr. Keim, you say you met him on Atlantic Avenue near New York Avenue and you had a conversation with him about this purchase?

A. Yes, sir.

Q. Now what did he say at that time with regard to the matter.

(Objected to).

A. His words were: "We regret exceedingly that we have not been able to give you possession of that property;" to use his exact words, "You bought it and we want you to have it." But he added "it is not as bad for you as it is for us; the land is increasing in value while we are not receiving any rental."

Q. This was about 1888?

A. About '88.

Q. Well, now, did you ever see him after that in Reading?

A. I met him several times there to urge on the suit. I met him once—(interrupted).

Q. What suit?

A. Why the Lindley was on hand then. And he said, I met him in the Court House, and he got talking, and he said—well, substantially what he said before. Said he: "We are sorry that we have not been able to make that property over to you, very sorry; and it is for our sake as well as your own, but it will come by and by; there is no doubt about that." "I think," says he, "I think we have got the deadwood on them now." Well I wanted to know what it meant, and he said since the bringing of the suits evidence was elicited which was very important in the trying of the suit in ejectment; and he said it will be all right; and I thought in the Court House, I thought a man ought to mean what he says.

Q. Well, did you ever see him after that interview in Reading in regard to that matter?

A. Several times; only a short time; more urging; but they were doing what they could he said.

Q. On any of these occasions when you spoke to him about this purchase did he ever say to you that Mr. Gardner had no authority?

A. Never.

Q. Did he ever say that they had not received the money that Gardner had received from you?

A. Never.

Q. Did he ever in any way disclaim the fact that there had been an agreement for the purchase binding on the executors of O'Reilly?

A. Never.

Q. (By the Court): Did he ever say to you or hint to you that you had no valid agreement with them?

A. Never.

Q. (By Mr. Grey): When did you first hear that the O'Reillys repudiated this bargain?

A. The time after the last purchase; after the last court, I should say.

Q. (By the Court): The last judgment you mean?

A. The last judgment.

Q. (By Mr. Grey): You mean the last court, when the land trial took place in Atlantic County?

A. Yes, sir.

Q. May's Landing?

A. Yes, sir.

Q. That was the first you ever heard that they disclaimed this bargain, was it?

A. The first.

Q. Yes. How long ago is that?

A. Well, I can't tell exactly; it was last—I know it was after that term of court, last April court, a year ago, of course.

Q. About a year ago?

A. Yes, sir.

Q. Now, before you made these bargains which you have spoken of with Mr. Gardner, had you ever bought any O'Reilly lands?

A. I had; yes.

Q. In the lifetime of Patrick?

A. Yes, sir.

Q. Through whom did you make those negotiations and purchases?

(Objected to).

A. Mr. Gardner.

Mr. Pancoast (to the witness): Wait.

The Court: It would not do for me to rule that evi-

dence out. It may not be competent, but it may be competent in another point of view, and the Court of Errors and Appeals might think so, and my rule is to let in every thing. It can't effect the final determination of the case. The good faith of this witness had something to do with it, whether he acted in good faith or not.

Mr. Pancoast: We insist that a course of dealings can't go to build up a contract.

The Court: I admit the evidence.

Q. Who, if any one, referred you to Mr. Gardner? 10

A. Nobody. I knew him as the agent, of course.

Q. (By the Court): Who signed the deeds after the contract was made?

A. Well, the deed was delivered by Mr. Gardner and I presume Mr. O'Reilly signed those.

Q. (By Mr. Grey): They had O'Reilly's name on them?

A. Certainly.

Q. Well, did you take possession of the property described in those deeds?

A. Certainly. 20

Q. Did any of the O'Reillys ever challenge your right to the ownership of that property?

A. Never.

Q. Well, now, how many pieces of property did you buy in that way through Mr. Gardner in Patrick O'Reilly's lifetime?

A. Only the one—that is, with the exception of these that are in this question.

Q. (By the Court): How many did you get a deed for?

A. Why only one. 30

Q. (By Mr. Grey): The witness being shown a paper purporting to be a deed from Patrick O'Reilly and C. C. O'Reilly, his wife, he is asked whether that deed is the one to which you refer?

Mr. Voorhees: What is the date of it?

Mr. Pancoast: Objected to on the ground that it goes in no wise legally to prove J. J. Gardner's authority or to support these two contracts.

Q. Is that the deed?

A. That is the deed, sir. 40

Q. The deed is dated November 28th, 1873. The witness being shown another paper purporting to be a receipt dated August 27th, 1873, signed "J. J. Gardner, agt of P. O'Reilly," he is asked whether that paper receipt is the receipt which he received when he paid the $100 on account of the purchase of the land described in the deed.

A. Yes.

Mr. Pancoast: Objected to on the ground that it does not in any way legally tend to prove the authority of Gardner in respect to either one of the contracts in question in this case?

The Court: It is a long time before and may be of very slight value, but it shows a course of dealing and may be of some weight. I will admit it—the deed and receipt.

(Said deed marked C. 3; receipt marked C. 4).

Mr. Pancoast: There is another ground on which we object—that this is a transaction with the deceased.

Q. Did you have any knowledge of Mr. Gardner's acting as the agent for O'Reilly in the sale of lands by O'Reilly to other people?

(Objected to).

A. Yes, sir.

Mr. Pancoast: The objection is on the same ground, only more so.

Mr. Grey: Don't you think if you made one comprehensive objection to all the testimony in this line it would save repetition?

(Objection overruled).

Q. (Stenographer reads question to the witness as follows: "Did you have any knowledge of Mr. Gardner's acting as the agent for O'Reilly in the sale of lands by O'Reilly to other people?")

A. I did.

Q. Did you have that knowledge at the time when you were dealing with Gardner in the transactions which you have described?

A. Certainly I did.

Q. Now, did you know of Mr. Gardner acting as the agent of O'Reilly in reference to O'Reilly lands in Atlantic City?

A. I did.

Q. In other matters excepting in the sale of lands?

A. I did.

(Objection).

(Objection overruled).

The Court: The value of the evidence will depend entirely on the foundation of the witness' knowledge; if he appears to answer the question generally it will amount to nothing, but if he gives what he saw, that is another matter.

Q. Mr. Keim, who, so far as you knew in Atlantic City, had general charge of Mr. O'Reilly's property during his life and after his death?

(Objected to).

(Objection overruled).

Q. Who, so far as you knew in Atlantic City, had general charge of Mr. O'Reilly's property there during his life and after his death?

Mr. Pancoast: We object to that question both on account of its form and also on account of its competency of the matter intended to be proven.

(Objection overruled).

Q. Now you can answer the question.

A. Why, I know of him in a great many transactions. I never knew anybody else.

Q. Knew who?

A. Why, Gardner; filling up lots; appearing before the Board of Appeal; and rentals; I know that he collected rents; and, well, in a general way, if you wanted anything of O'Reilly you looked to Gardner; that was the general sense of the community.

Q. Were you present at any time when he appeared before the Tax Board?

A. Yes, sir.

Q. Who did he represent there?

(Objected to).

A. Represented O'Reilly's estate at that time.

Q. Do you remember any filling being done under order of the Board of Health down there?

A. I do.

Q. Was it on any part of the lands of O'Reilly?

A. Yes, sir. I went to see Mr. Gardner about it. It was near my property, and I wanted the filling as bad as anybody else.

(By the Court): You went to see who?

A. Mr. Gardner.

Q. Go on. Proceed.

A. And I asked him about it. "Well," says he—

(Objected to).

Witness (Continuing): "I believe that the property ought to pay for its own filling; it ought to be charged to the property; you can't hold O'Reilly responsible, or hold them in any way for making that property any more valuable than it was when the purchaser bought it." I took it at the time, or understood it at the time, to be O'Reilly's own answer; but I understood it so at the time.

Q. (By the Court): What is that you understood him to say, that he thought you ought to pay the expense of filling?

A. The Board of Health said so—

Q. Said you should?

A. Said I ought to pay for it; that was understood; that I had all the property.

Q. What did Gardner say about that?

A. That is what he said.

Q. Gardner said that the Board of Health said you ought to fill it?

A. No, sir. I understood at the time that it was O'Reilly's answer after he had been applied to, that the property should pay for the expenses incurred to fill that up. "And," says he, "they can't" or "ought not to expect O'Reilly to fill that property up when it is sold," said he, "and they can't be bound to make it any better than when the purchaser bought it."

(By Mr. Grey): That was Gardner's reply?

A. Yes, sir.

Q. And what was your understanding as to that answer at that time?

(Objected to).

The Court: It is palpable on its face.

A. Well, I have no other question that I know of.

Q. (By the Court): He wanted to know what you understood from that, what Gardner said to you?

(Objected to).

A. I understood it in that way, that the property ought to pay for itself; that it ought to belong to the property; that the Board of Health ought to do it and charge it against the property. That was what I understood, and I spoke of that to the Board of Health afterwards. They came after me to fill it and said that I ought to fill it because I had bought it; asked me first if I hadn't bought that property. I said I had, "but I have got no title to it, and I don't want to do any more filling than I have done; I had done partly until I knew—(interrupted)

The Court: I don't think what passed between him and the Board of Health is competent; he was not asked that, but it has not been objected to.

Q. (By Mr. Grey): Do you know Daniel Lindley?

A. Yes, sir.

Q. Did you ever have a conversation with Lindley about your purchase of a lot down there which he afterwards occupied?

A. I went with him just about the time the Board of Health was after us, and I asked him whether the Board of Health had been after him, too, or notified him to fill up. He intimated that they had. "Well," says I, "they have entered suit against me—they say I ought to fill up all that low ground back there of the O'Reilly estate because I had bought it, "but," says I, "I did fill up." I told Mr. Lindley this. I had filled up, and I first told him I did buy that and I did fill some of it, but I won't fill any more until I know more about it.

Q. (By the Court): Did Lindley say this to you?

A. No, sir, I said it to Lindley. I said I bought O'Reilly's title and interest in this land which is being contested, and I didn't feel like doing any more until it was decided to whom the land belongs. That was about the sum and substance of the conversation between him and me, between me and Lindley.

Q. (By Mr. Grey): Did you ever have any conversation with Alfred Adams, jr., about this property?

New Jersey State Library

A. Yes; not in this year when the Board of Health was after us, but in 1890, when the boardwalk was built; I came by there and got talking with him. He told me that he had leased. He said: "I have leased this land of O'Reilly's agent, but I had not to pay much for it and I could get it for a short time only, without any security or assurance of a continuance of the lease; I was given to understand that it was sold."

Q. (By the Court): That is what Adams said to you, he?

A. Yes, sir.

Q. (By Mr. Grey): What land was that?

A. That was the far side, where Mr. Adams' place is—the side next farthest off to the eastward.

Q. (By the Court): Was it all without your contract; was the land within your contract?

A. Yes, sir.

Q. And the land you talked with Lindley about, was that within your contract?

A. Yes, sir. I told him "Yes, I have bought this land? I have bought the property." Then he wanted me—

Q. You told him so?

A. Yes, sir.

Q. (By Mr. Grey): This is Adams.

A. He wanted me to agree with him for a continuance of his lease. He said it would not pay him to make improvements upon this property for the short time that his lease gives him. I don't know what time that was. Well I told him "No; no, I have bought all of the property of the O'Reillys in this square between Pacific avenue and the Ocean and I won't make any contract with anybody for any part thereof until I have possession."

Q. (By the Court): That is what you said to Adams?

A. That is what I said to Adams. A few days afterwards, or some time, probably it might have been a week, I passed along again and he called to me.

Q. Who? Adams?

A. Adams; and still wanted me, asked me to make some agreement. He was very persistent in that.

Q. To make an agreement to continue his lease?

A. Yes, sir. Well, I told him that the parties in possession claimed that they could not be put off, that they could not be dispossessed; but, I says, you know there is a contest; they are fighting O'Reilly's claim. He said, "I know that. Mr. Lindley told me you would get this strip nearest New York avenue, but not the rest." "Well," says I, "I won't do anything with it until I have control of the property; there is no use talking." "Well," says he, "I hope that you will not be too hard on me," words to that effect; I think the very words to the syllable of it, "and give me the first chance." That I promised to do.

Q. Well, you referred to the litigation going on in the other court?

A. Certainly.

Q. Between the O'Reilly estate and these other people?

A. Yes, sir.

Q. The ejectment suits?

A. Yes, sir.

Q. (By Mr. Grey): Now, Mr. Keim, were you present at the interview at your cottage in Atlantic City between your son and James A. Griffith?

A. I was at the interview, yes, sir.

Q. Well, what was it that Griffith wanted?

The Court: When was it?

Q. When was it?

A. About '91, I think.

Q. Well, what did Griffith want?

A. Why he wanted to buy our interest in it; to buy our right which we had by the purchase you know.

Q. (By the Court): Buy these contracts?

A. Yes, sir.

Q. (By Mr. Grey): Who carried on the interview; who did the burden of the talk there, so far as you were concerned?

A. With Lindley?

Q. With Griffith.

A. My son.

Q. Newton Keim?

A. Newton Keim, yes, sir.

Q. Did you ever see any sand-haulers taking sand off the lots you got from O'Reilly?

A. Well, I did; that is, after the purchase for a good while.

Q. After you made your bargain?

A. Yes, sir. After this it became a common concern; we throwed in together; and everybody, owner and occupant, seemed to fight against them for abusing the privilege.

Q. Against the sand-haulers?

A. Yes, sir; so that there was no objecting after that. In fact, I moved away from the beach; I was not close to it; not as close as I had been.

Q. Did you ever put up any sign "No Trespassing?"

A. Yes, sir.

Q. Whereabouts was it? What part of the property was it where you put the sign?

A. Where I bought first; it was after the first purchase I put up the sign.

Q. Do you know a couple of men named Bird and Skinner?

A. Yes, sir.

Q. Were they ever on this property that you contracted with Gardner to buy?

A. Yes, sir.

Q. Did you ever give them any notice?

A. I did.

(Objected to).

Q. That is all.

Mr. Pancoast: No cross-examination on the part of the O'Reillys.

The Court: Any cross-examination on the part of any of the other defendants?

Cross-examination by Mr. Harned on the part of Adams and Lindley.

Q. (Paper shown witness dated April 28, 1892). Who signed that paper? It is a written notification directed to Mr. Lindley of the witness' equitable rights in this property.

A. I did.
Q. And when did you sign it?
A. Well, I could not tell the date; I suppose the date above there.
Q. Well, *that* is the date of the paper?
A. I know it was about—I take *this* date.
Q. (By the Court): What is it?
A. '92.
Q. What date in '92?
A. Why April 28, 1892.
Q. (By Mr. Harned): Did you serve that notice upon Lindley?
A. Certainly I did; or had it served.
Q. On or after that date?
A. That day I presume; I would not swear to that; I expect on the day.
The Court: The presumption is it was served on the day signed there.
Q. You caused it to be served on Lindley after you knew Lindley had got a deed of the property?
A. I don't know anything about that; I expect so, yes; no, I don't know whether I knew Lindley had the property or not; I don't know that I did.
Q. Did you serve a similar paper on Adams?
A. I think so, yes.
Q. At the same time? Dated the same time?
A. I expect so.
Q. And signed by yourself?
A. I know it was dated the same day, or served the same time.
Mr. Harned: I would like to have this paper marked for identification, and would like to reserve the right to bring Mr. Adams' paper here. (Said paper marked L. D. I.)
Q. Have you stated all of the conversation that you had with Lindley or Adams?
A. I think about all.
Q. That is about all?
A. That is all that I remember.
Q. You have nothing else to add?
A. Not that I remember at present.

Q. You owned a property at the foot of New York Avenue, did you not—the corner of the beach and New York Avenue?

A. Yes, sir.

Q. Did Adams want to lease that property of you?

A. No, sir.

Q. He did not?

A. Not that I know of; not that Adams; there is an Adams that has leased it; a brother.

Q. Did not Mr. Adams, the defendant—one of the defendants in one of these suits, want to lease that property of you?

A. Not that I know of.

Q. That is all.

Mr. Harned: I offer L. D. 1 in evidence.

The Court: The paper is admitted in evidence.

(Exhibit L. D. 1 reads as follows:

"To Daniel Lindley:

"You are hereby notified that I hold an agreement dated October 29th, 1881, for the sale to me of the title of the late Patrick O'Reilly, deceased, to the large lot of ground situate in Atlantic City, N. J., beginning in the south line of Pacific Avenue, 250 feet east of New York Avenue, thence extending southwardly, parallel with New York Avenue, about 2,000 feet to the riparian line in the ocean, thence westwardly along said line, 200 feet; thence northwardly, parallel with New York Avenue, about 1,800 feet, to a point 200 feet from Pacific Avenue; thence eastwardly parallel with Pacific Avenue, 50 feet; thence northwardly parallel with New York Avenue, 50 feet; thence eastwardly parallel with Pacific Avenue, 100 feet; thence northwardly parallel with New York Avenue, 150 feet to Pacific Avenue; and thence eastwardly along Pacific Avenue, 50 feet to place of beginning; and that I claim an equitable title in the land under that agreement and intend to enforce the same.

"JACOB KEIM.

"Atlantic City, April 28, 1892.")

NEWTON KEIM, a witness produced on the part of the complainant, sworn:

Direct-examination by Mr. S. H. Grey.

Q. Mr. Keim, you are the son of the preceding witness, Mr. Jacob Keim, who is the complainant?

A. Yes, sir.

Q. What is your profession?

A. I am a member of the bar of Philadelphia.

Q. How long have you been practicing?

A. I have been a member of the bar some fifteen years; I have not been in active practice.

Q. Did you have any knowledge of any negotiations between your father and Mr. Gardner for the purchase by your father of property of O'Reilly?

A. I did, yes, sir.

Q. Do you recollect the first transaction, March 25, 1880, which is referred to in the receipt, Exhibit C. 1, shown you?

A. (Looking at C. 1). I remember that transaction. I was not present when the money was paid.

Q. Did you have any knowledge of subsequent negotiations with reference to the purchase of other lands not mentioned in that agreement?

Mr. Pancoast: We object to this evidence on the same grounds as heretofore.

The Court: The evidence is admitted.

A. I did.

The Court (to the witness): Confine yourself to personal observation.

Q. Did you have any knowledge of subsequent negotiations resulting in the purchase or agreement to purchase other land by your father of O'Reilly?

A. I did.

Q. The paper in your hand marked C. 2, I direct your attention to it. In whose handwriting is that paper?

A. The body of it, almost all of it, is in my own handwriting.

Q. Were you present at the time it was executed or signed?

A. I was.

Q. Did you see Mr. Gardner sign it?

A. I did.

Q. I direct your attention to the words "one hundred and fifty" written in there at one point, I think about the middle of the paper.

Q. (By the Court): In different handwriting?

A. Yes, sir.

Q. (By Mr. Grey): Who wrote that; do you know?

A. That is in Mr. Gardner's handwriting.

Q. The "one hundred and fifty?"

A. Yes, sir.

Q. Did you see him write it?

A. I did.

Q. Are there any other changes in the handwriting, or are there any other handwritings beside your own, excepting the signature and the "one hundred and fifty" in the paper before you?

A. The clause at the end beginning—shall I read it?

Q. Read the clause.

A. (Reading). "Including all the land and rights of said estate between Pacific Avenue, the riparian line and beyond New York and Tennessee Avenues."

Q. Well, in whose handwriting is that?

A. Mr. Gardner's.

Q. Then with these exceptions which you have read, the body of the paper is in your handwriting?

A. Yes, sir.

Q. Now who carried on the negotiations which resulted in the giving of that receipt and the payment of that money mentioned in Exhibit C. 2?

A. I, principally.

Q. And with whom did you carry them on?

A. I corresponded with Mr. Gardner.

Q. And in what character did you deal with him, so far as he was concerned?

A. As the representative of the O'Reilly estate.

Q. And for whom were you acting?

A. I was acting for my father.

Q. Jacob Keim?

A. Jacob Keim.

Q. Have you any letters received by you from Mr Gardner in reference to this matter?

A. I have, yes, sir.

Q. Have you them with you?

A. I have.

Mr. Pancoast: We object to what transpired between Mr. Gardner and this witness on the ground that it does not go to prove the authority of Mr. Gardner.

The Court: I admit it on the ground heretofore stated.

Q. The question was whether you had those letters here?

A. I have.

Q. Will you produce them?

A. (Hands counsel papers). The dates are entered on the back of them.

Q. Mr. Keim, just look at the letter addressed by you to Mr. Gardner, dated March 8, 1881, press copy; is that a letter which you wrote to him at that time or a press copy of it?

A. I should say yes, sir, it is a press copy of a letter written and sent to Mr. Gardner.

Q. Well, did you receive a reply?

The Court: You propose to get Mr. Gardner to produce the original. Ought you not first to prove by Mr. Gardner that the original has been lost?

Mr. Grey: I don't think I need to in the case of a press copy, because there are two originals. It is an exact counterpart; it is a *fac simile*.

The Court: I will admit it. I don't rule on it at present. I will admit it on the ground that Mr. Gardner is hereafter either to produce the original or prove its loss; but if he does not, I will consider the question whether this is a copy or not. I admit it, not on the ground that it is in the nature of an original, but on the ground that Mr. Gardner will hereafter prove the original or its loss.

Q. The question was whether the letter addressed by you to Gardner, whether you have before you the press copy of that letter?

A. I have.

Q. From what was that impression taken?

A. This impression was taken from a letter written to Mr. Gardner and mailed to him.

Q. Was it taken from the original letter?

A. It was, yes, sir.

Q. (By the Court): That is the original press copy?

A. It is.

Q. (By Mr. Grey): Is or is not that letter that you have before you a *fac simile* of the letter sent.

A. It is.

Q. Now did you receive a reply to that letter from Mr. Gardner, and have you that reply there?

A. Yes, sir.

Q. And is this the envelope in which you received the reply? (Showing witness envelope and letter).

A. Yes, sir. The letter with the press copy to which this is a reply, to which the letter is an answer, were both put in the envelope and put in my papers and have been so kept.

Q. (By the Court): The question is, is that the envelope?

A. Yes, sir.

(Press copy of letter dated March 8th, 1881, marked C. 5; letter dated March 10, 1881, from J. J. Gardner to Newton Keim, marked C. 6; envelope, C. 6a.)

(Following is a copy of C. 5):

"March 8th, '81.

DEAR SIR:—Father understood from you that Voorhees advised an ejectment, and was to proceed immediately; has writ been issued, and is it likely to be tried this spring?

This proceeding will, I assume, or it may be made to establish O'Reilly's title to the whole tract; will you make Lindley a party, and title be settled as against his claim also? I suppose, from the nature of ejectment, that the whole will be settled in one suit, but will be pleased to hear from you in regard to it.

What is the lowest price at which the remainder, 150 feet, between us and Berry, and including 50 feet by 150 feet on Pacific, could be purchsed?

Williamson's family and Mrs. Hardwick are, I suppose, tenants of O'Reilly without other claim.

Your attention will oblige,

Yours truly,

NEWTON KEIM.

HON. J. J. GARDNER."

Following is a copy of C. 6:

"SENATE CHAMBER, TRENTON, N. J., Mar. 10, 1881.

NEWTON KEIM, ESQ.,

Att'y, &c., &c.

DEAR SIR:—Yrs. of the 8th inst. rec'd.

Mr. Voorhees, att'y for the O'Reilly estate in N. J., determined upon ejectment against *all* the parties who pretend claim rights in any land belonging to the estate. The case will *not*, I think, be tried this spring. The will had not been probated 10 days ago, and besides there is not time for Mr. V. to get the case on next term. If there is time he will use it effectively. Williamson's family and Mrs. Hardwick are tenants under lease given Mrs. Hardwick. I cannot now fix the price the heirs will want for the land you inquire the price of. Mr. O'R. fixed the price for them at $\$9{,}500^{00}_{100}$.

Yrs. truly,

J. J. GARDNER."

C. 6a, being envelope, addressed as follows:

"STATE OF NEW JEERSY, SENATE CHAMBER.

NEWTON KEIM,

Att'y-at-Law,

404 Arch Street,

Philada., Penna."

Having following postmarks:

(Front) "Trenton, N. J., Mar. 10, 2 P. M."

(Back) "Philada., Pa., Rec'd Mar. 10, 6 P. M."

Q. (By Mr. Grey): I show you a press copy of a letter dated March 29, 1881, signed "Newton Keim" and addressed "J. J. Gardner, Esq." Is that a press copy of the original letter?

A. It is, yes, sir.

Q. Did you have a reply to that letter, and, if so, look at the letter now shown you dated March 30, 1881, signed

"Jno. J. Gardner" and say whether that letter addressed to you is the reply that you received?

A. It is.

(Letter of March 30, 1881—Gardner to Keim—marked C. 8):

(Letter-press copy of letter dated March 29, 1881, Newton Keim to J. J. Gardner, Esq., marked C. 7.)

Following is a copy of C. 7:

"March 29, '81.

DEAR SIR:—Will you please ascertain and inform me what price the O'Reilly heirs ask for the 150 ft. between father and the Berg line.

(1) Including 50x150 lot on Pacific, and

(2) Excluding same, and oblige

Yours truly,
NEWTON KEIM.

J. J. GARDNER, ESQ."

C. 8 as follows:

"OFFICE OF J. J. GARDNER, CONVEYANCING AND REAL ESTATE.

ATLANTIC CITY, N. J., March 30, 1881.

NEWTON KEIM,
Att'y, 404 *Arch St., Phila.*

DR. SIR:—Yours of 29th inst. rec'd. The following extract from a letter from James O'Reilly, executor, to-day rec'd, will probably answer the questions you ask:

'READING, PA., March 29, 1881.

DEAR SIR:—In the matter of the strip of land, back of lots Nos. 4, 5, 6 and 7, No. 4 was sold to Mr. Keim for $2,500. The price for the remainder is $7,500. This does not include lot No. 31, the price for which is $4,000. The price for strip and lot is $11,500$^{00}_{100}$.

Truly yours,
JAMES A. O'REILLY.'

"This extract refers to the land you inquire about & no other.

Very truly yrs.,
JNO. J. GARDNER."

Q. I now show you a letter dated May 24, 1881, addressed "Newton Keim," signed "J. J. Gardner," and ask

you whether that is the original letter sent you by Mr. Gardner of that date?

A. It is.

(Marked C. 9 and reads as follows):

"OFFICE OF J. J. GARDNER, CONVEYANCING AND REAL ESTATE.

ATLANTIC CITY, N. J., May 24, 1881.

NEWTON KEIM,

Att'y-at-Law, Philada.

DR. SIR:—After long delay the executors & heirs of P. O'Reilly, dec'd, have answered me in regard to the acceptance of your offer, for lands of the estate, as follows:

'In regard to the property Mr. Keim desires to purchase, my reply to your query is that we desire to dispose of all the property between Tennessee and New York Avenues, that is to say, 5, 6, 7 and 31, and do not care to sell 5, 6 and 7 without 31.'

No. 31 is the lot fronting Pacific Avenue, next to Berry, 50x150 ft., 5, 6 & 7 are the three 50 feet strips, comprising the land described in your offer.

Of course this communication has no reference to the 50 ft. strip next to the lands of Jacob Keim.

Very respt.,

J. J. GARDNER."

Q. I now show you a letter dated July 18, 1881, signed "J. J. Gardner," addressed "Newton Keim, Esq.," and ask you whether that is the original letter received by you from Mr. Gardner?

A. It is.

(Said letter marked C. 10, and following is a copy):

"OFFICE OF J. J. GARDNER, CONVEYANCING AND REAL ESTATE.

ATLANTIC CITY, N. J., July 18th, 1881.

NEWTON KEIM, ESQ.

DR. SIR:—I wish you would make an offer for the lands of O'Reilly estate desired by you, including therein the lot fronting Pacific Avenue, known as No. 31.

While the executors desire to sell this lot with the other land, I may modify their ideas of its value.

Yr. obt. svt,

J. J. GARDNER."

Q. I now show you a letter, dated July 20th, 1881, addressed "J. J. Gardner, Esq.," and signed "Newton Keim," and I ask you in whose handwriting that letter is?

A. This is my own handwriting.

Q. What is the date?

A. July 20, 1881. That is a copy; not a press copy.

Q. (By the Court): This is a copy written by you, written to Mr. Gardner, not a press copy?

A. Not a press copy.

Q. (By Mr. Grey): Who made that copy?

A. I did.

Q. Is it a true and correct copy of the original letter?

A. It is.

Q. Look at the back of that letter and state in whose handwriting the words written upon the back of the letter are?

A. They are in my handwriting.

Q. Did those words there written form any part of the original letter?

A. They did, as indicated.

Q. And what was the indication apparent upon the paper signifying the place in the letter they appeared?

A. To insert the clause where there is a corresponding mark.

Q. So that is a draft of the letter which you sent?

A. Yes, sir. It was written away from home or it would have been a press copy.

Q. Then this is the original paper from which you copied the letter sent?

A. Yes, sir, this is the original.

(Marked C. 11 and reads as follows):

On the Beach Front, Foot of New York Avenue,
The Chester County House,
J. Keim & Sons, Propr's.
Atlantic City, N. J., July 20, '81.

Dear Sir:—Yours of 18th received. We do not desire to purchase the lot fronting on Pacific Avenue even at a favorable price. It increases the investment somewhat, and for the plan of improvement, which we had contem-

plated, it would not be available. That lot would be the same to us as to a purchaser buying it only. Should the other be sold to us, the owners will be free to sell the Pacific Avenue lot at any time, and need not, as now, perhaps, feel bound to retain it as an outlet.

Yours truly,

NEWTON KEIM.

J. J. GARDNER, Esq.

(On the back). Unless, therefore, the price should be set so as to be especially tempting, we would not wish to make the amount of the investment so large as the total of all the lots would reach."

Q. I now show you two papers, one of which is a press copy of a letter dated November 27, —3; and the other is an original paper addressed "N. Keim, Esq.," signed "P. L. Voorhees," and dated "12—6—1883," and I ask you what those papers are? Take up the press copy first.

A. The press copy is a copy of a letter addressed by me to Mr. Voorhees as counsel, whom, I understood, was counsel for the estate of O'Reilly—Patrick O'Reilly.

Q. Well, what is the other?

A. The letter is the answer which I received to my own.

Q. Now I direct your attention to the date of the press copy; what year was it?

A. November 27, 1883.

Q. '83. The words "188" don't appear there?

A. It was a printed letter head.

Q. Now, the letter of Mr. Voorhees is dated "12—6—1883," the "8" in the date having been written over the figure "7" printed?

A. Yes, sir.

Q. Now, you have stated that Mr. Voorhees was the counsel of the O'Reilly estate?

A. I supposed he was. I had so been informed.

Q. In consequence of that you wrote him, did you?

A. Yes, sir.

Q. The letters will speak for themselves?

A. In one of the letters already in from Mr. Gardner he names Mr. Voorhees as counsel for the estate.

(Letter-press copy of letter Newton Keim to P. L. Voorhees, dated Nov. 27th, 1883, marked C. 12; letter from P. L. Voorhees to Newton Keim, dated 12—6—1883, marked C. 13).

Following is a copy of C. 12:

Nov. 27th, —3.

DEAR SIR:—My father, Mr. Jacob Keim, of Atlantic City, purchased, a year or two since, lands belonging to the estate of Patrick O'Reilly, deceased, the transfer of which has not been completed owing to disputed title as to part, which dispute by several parties was, I understand, to be conclusively determined as to all by the case *vs.* Lindley, in which you obtained a verdict at May's Landing.

I take the liberty of inquiring, and trust you will not consider it intrusive, whether an appeal has been perfected in that case, and if so, when it may probably be heard in the Appellate Court.

My father is desirous of course of acquiring title and possession as soon as circumstances will permit.

Your kind attention will oblige

Very resp'y yours,
NEWTON KEIM.

P. L. VOORHEES, ESQ."

C. 13 is as follows:

"P. L. VOORHEES, *Counsellor-at-Law.*
119 Market Street, Camden, N. J.

CAMDEN, N. J., 12, 6, 1883.

DEAR SIR:—Yours of the 27th ult. was duly rec'd. The case of Lindley *vs.* O'Reilly was not reached at the term of Court of Errors just closed.

I suppose it will be settled at the next March Term of the court.

Resp'f'y,
P. L. VOORHEES.

N. KEIM, ESQ."

Q. Now I direct your attention to an envelope bearing a two-cent stamp, addressed "Newton Keim, Esq., att'y-at-law, 404 Arch St., Philada., Pa., and postmarked Atlantic City, Jan. 2," (I think) "3 P. M., N. J.," containing two papers, one of which is a press copy of a letter dated "Jan. 21, —5, addressed to Hon. J. J. Gardner,"

signed "Newton Keim," and the other, of which purports to be an original letter, dated "Jan'y. 22, 1885," addresssed "Newton Keim, Esq., att'y-at-law, &c.," signed "J. J. Gardner," and I ask what those three papers are?

A. The press copy you wish me to answer about first? The press copy is a copy of a letter addressed by me to Mr. Gardner, dated Jan. 21, 1885; the letter is the answer to the same, dated Jan. 22, 1885, received from Mr. Gardner. The envelope is the envelope which contained the letter from Mr. Gardner.

Q. From Mr. Gardner?

A. Yes, sir.

(Said papers marked as follows:

Letter-press copy of letter Keim to Gardner, dated Jan. 21, 1885, marked C. 14;

Letter, Gardner to Keim, dated Jan. 22, 1885, marked C. 15;

Envelope marked C. 15a.)

(C. 14 reads):

"January 21st, —5.

DEAR SIR:—I have a memorandum of information which you gave me in regard to the Kenyon lease (O'Reilly ground), to the effect that the year begins June first. Three months' notice would require that service to be made prior to March 1st—now but five weeks off. My anxiety that our purchase and possession may be settled and established as speedily as possible leads me to write this to remind you of this matter of notice. Please have Kenyon, Clinton, Catlow and Williamson all duly notified. I am afraid there may be trouble with Williamson, perhaps others, and would give all formal notice.

I would be much obliged if you would write me in regard to the West Jersey inquiry, *which I asked you to make.* I have not had opportunity to see you, and am not likely to soon. Yours truly,

NEWTON KEIM.

HON. J. J. GARDNER."

C. 15 as follows:

"J. J. GARDNER. STEWART H. SHINN.

GARDNER & SHINN,

INSURANCE AND REAL ESTATE AGENTS, CONVEYANCERS.

MONEY SECURED ON MORTGAGE.

Office: Old Post Office Building, 1018 Atlantic Avenue.

ATLANTIC CITY, N. J., Jan'y 22, 1885.

NEWTON KEIM, ESQ.,

Att'y-at-Law, &c.

DR. SIR:—Yours of yesterday rec'd. The O'Reilly tenants will be notified in time.

I had delayed writing of the West Jersey matter in hope of meeting Gen'l Sewell and getting more specific information. The answer to my inquiry was that the company was 'willing to sell without any restriction all the land they could spare and *were* ready to consider an offer at any time.' I suppose they could spare all the Atlantic Avenue front, but can't specifically describe the quantity for sale. Please communicate anything you have to say or suggest in the matter. In the meantime I will try & see more about it. Very resp't.,

Yr. ob't svt.,

J. J. GARDNER."

C. 15a—envelope:

"NEWTON KEIM, ESQ.,"

Att'y-at-Law,

404 Arch Street, Philada., Pa.

(Front postmark indistinct; postmark on back as follows): "Received Jan. 22, 7 P. M., Phila."

Q. Mr. Keim, I now hand you three papers; a paper purporting to be a press copy of a letter addressed by Newton Keim to "James A. O'Reilly, Esq., executor," dated, "March 16th, 5;" the other letter dated "Reading, Pa., Mar. 23d, 1885," addressed, "Newton Keim, Esq.;" signed, "James A. O'Reilly;" and the third an envelope with a two-cent stamp on, postmarked,—well it is indistinct, "——ING" (Reading), Mar. 23, 9.30 P. M., 1885; ("5" indistinct), PA.," and printed in the corner, "James A. O'Reilly, attorney and counsellor-at-law, office, 527 Court Street, Reading, Pa." Take them up in the order in which I stated them.

A. This press copy is a copy of a letter, dated March 16, 1885, addressed by me to James A. O'Reilly, Esq., executor; the letter is a letter received in answer to it, dated March 23d, 1885, from James A. O'Reilly. The envelope is the envelope which contained that letter.

Q. O'Reilly's letter?

A. O'Reilly's letter.

(Papers marked as follows:

Letter-press copy of letter dated March 16, 1885, Keim to O'Reilly, marked C. 16;

Letter dated March 23, 1885, O'Reilly to Keim, marked C. 17;

Envelope C. 17a.)

C. 16 reads: "March 16th.

DEAR SIR:—My father, Mr. Jacob Keim, has been waiting for several years for the completion of title to lands at Atlantic City, purchased by him, and is very desirous that there should be no avoidable delay in the matter. Several terms of the court have passed without the pending Lindley suit having been brought up to second trial, but we were informed that trial would certainly be had at April Term next. On inquiry of Mr. Gardner we learn that he has no advices from Mr. Voorhees as to preparation of the case, and as April Term is now very near it seems as though there would be still further postponement.

We take leave to ask that you will strongly urge counsel to speed the matter, and not on any account to pass this term of court.

There is certainly no reasonable ground why it should not be brought up.

It seems to us desirable for the estate, as well as to ourselves, that there should be a speedy end to the matter, and we trust that you will without delay give your attention, and secure the earliest consummation possible.

Be kind enough to let me hear from you.

Very respectfully yours,

NEWTON KEIM.

JAMES A. O'REILLY, ESQ.,

Executor."

C. 17 is as follows :

"JAMES A. O'REILLY, *Attorney-at-Law*,
No. 527 Court Street, Reading, Pa.

Mar. 23d, 1885.

DEAR SIR:—Yours of the 16th rec'd.

I have just returned from Atlantic City and Camden. The case has been 'notice for trial' to April Term and will certainly be tried. The estate is very anxious to have all these matters closed as early and as quickly as possible.

Yours resp'y,
JAMES A. O'REILLY.

NEWTON KEIM, ESQ.,
404 Arch St., Phila'a, Pa."

C. 17a, envelope, as follows :
(Printed in left-hand corner).

"JAMES A. O'REILLY,
Attorney and Counsellor at Law,
Office, 527 Court Street,
Reading Pa."

(Addressed). "NEWTON KEIM, ESQ.,
Attorney-at-Law,
404 Arch Street,
Philada., Pa."

(Postmarks) : "Reading, March 23, 9.30 P. M., 1885, (5 indistinct), Pa. (On back). "Received, Ma. 24, 6 A. M., Phila."

Q. I call your attention to a letter dated "Reading, Pa., 1, 5, '86," addressed, "Newton Keim, Esq., 404 Arch Street, Phila., Pa.," signed "James A. O'Reilly," and an envelope similarly addressed to Newton Keim, with the name of O'Reilly and his address in the left-hand corner, and bearing a two-cent postage stamp, and postmarked, "Reading, Pa., Jan. 5, 5.30 P. M., 1886." I ask you what those papers are?

A. Only a letter and envelope?

Q. That is all.

A. It is dated "1, 5, '86;" this letter is a letter I received from James A. O'Reilly in response to one ad-

dressed to him. The letter is dated January, or rather, "1, 5, 1886." The envelope is the envelope which contained the letter.

Q. Look at the pencil mark on the back of that envelope; is that your memorandum?

A. Yes, sir.

Q. That is not included in the offer?

A. No, sir; that is a temporary memorandum.

(Said letter, O'Reilly to Keim, dated "1, 5, 1886," marked C. 18; envelope, C. 18a).

C. 18 is as follows:

JAMES A. O'REILLY,
Attorney-at-Law,
No. 227 Court Street,
Reading, Pa.

1, 5, 1886.

DEAR SIR:—Yours of the 3d inst. received. The case against Lindley was continued on account of the engagement of the counsel for the defendant in a murder trial in Camden Co. The matter is to be disposed of at the next term *without fail*. I am getting rather tired of Jersey justice. I trust you will pardon my neglect in not answering your letter, the same escaped my attention.

Yours resp'y,
JAMES A. O'REILLY.

NEWTON KEIM, ESQ.,
404 Arch Street, Philadelphia, Pa.

(C. 18a, envelope, as follows):

JAMES A. O'REILLY,
Attorney and Counsellor-at-Law,
Office, 527 Court Street,
Reading, Pa.

NEWTON KEIM, ESQ.,
Att'y-at-Law,
404 Arch Street,
Philada., Pa.

(Postmarked): "Reading, Pa., Jan. 5, 5.30 P. M. 1886."

(Back of envelope) Seigel's Syrup, Shaker's Ext. of Roots."

Q. I now call your attention to three papers, one of which is a press copy in three separate pieces of paper, dated

September 27—6"—five or six, I can't distinctly make it out—addressed "James A. O'Reilly," signed "Newton Keim": the other a letter dated "Reading, Pa., 9, 24, 1886," signed "James A. O'Reilly", addressed "Newton Keim, Esq., Chester Co. House, Atlantic City;" the third an envelope with a two-cent stamp on, postmarked "Reading, Pa., Sep. 24, 3.30 P. M., 1886,"—and I ask you what those three papers are? What is the press copy?

A. The letter is the earlier date.

Q. What is the press copy?

A. The press copy is a letter addressed by me to James A. O'Reilly in response to a letter of the 24th, received from him.

Q. Very good. The paper that you have in your hand is dated the 24th, is the letter, is it?

A. This is a copy of the letter——

Q. Don't say "this."

Q. (By the Court): The press copy is a copy of the letter you wrote him?

A. Yes, sir.

Q. The other is a letter you received from him?

A. Yes, sir.

Q. (By Mr. Grey): The original paper signed "James A. O'Reilly" purports to be a letter; is it so?

A. It is a letter.

Q. And that is dated when?

A. "9, 24, 1886."

Q. Was there any envelope containing it?

A. Yes, sir.

Q. Is that the envelope you have in your hands?

A. Yes, sir.

Q. Now the press copy is dated when?

A. The press copy is dated September 27th, 1886.

Q. And is that the reply to the letter of the 24th?

A. Yes, sir.

(Said papers marked as follows:

Letter O'Reilly to Keim, dated 9, 24, 1886, marked C. 19;

Envelope postmarked Sep. 24, 1886, marked C. 19a;

Press copy of letter—Newton Keim to James A.

O'Reilly—dated September 27, '6, consisting of three sheets, marked C. 20, C. 20a and C. 20b).

C. 19 reads as follows:

JAMES A. O'REILLY,
Attorney-at-Law,
No. 527 Court Street.

READING, PA., 9, 24, 1886.

DEAR SIR:—Your favor of the 15th inst. rec'd. The cause of delay in replying to same was that I desired to see Mr. Voorhees. Your father is aware that I have done all in my power to have the cause tried, and Mr. Voorhees promised me that the case will be tried December Term. The delay in the trial in the cause has been very serious to us, as well as to your father, and though I should be loath to have him throw up the sale, yet I could not find any fault with him for so doing. From the tone of your letter I judge that you held me in a considerable degree accountable for the delay. This is a mistake on your part and, if intentional, I must resent it; as I have said, I have done everything to have the matter adjudicated.

Yours resp'y,
JAMES A. O'REILLY.

NEWTON KEIM, ESQ.,
Chester Co. House, Atlantic City."

C. 19a as follows:

(Printed in left-hand corner).

"JAMES A. O'REILLY,
Attorney and Counsellor-at-Law,
Office, 527 Court Street,
Reading, Pa."

(Addressed). NEWTON KEIM, ESQ.,
Chester County House,
Atlantic City, N. J."

(Postmarked): "Reading, Pa., Sep. 24, 3.30 P. M., 1886."

C. 20a, C. 20b is as follows:

"September 27, '6.

"DEAR SIR:—Your favor of the 24th inst. received. If my letter to you betokened too great impatience, I trust you will overlook it in view of the very long delay, which

certainly furnished ground for reasonable protest. Moreover, I did not intend that it should be directed toward you personally. Our feeling in the matter being only this, that there might perhaps be greater patience towards Mr. Voorhees in his procrastinating course than he deserved. As to Mr. Voorhees, we can't help feeling that there has been the veriest trifling, so far as bringing the case forward to trial, and afterwards to hearing in the Court of Errors and since.

There was a long delay in bringing suit, and afterwards at Mays Landing and Trenton, and now at Mays Landing again; there have been at each point three to four opportunities allowed to pass unimproved. It was this course which called forth my protest to you. If that went beyond a proper consideration for you, you will please overlook it.

As to throwing up the purchase, that is something we have never contemplated for a moment. Aside altogether from the question whether or not it be in itself an advantageous purchase, its contiguity to other lands belonging to father makes this contract of special importance and value to him.

Permit me to call your attention further to a matter which it seems to me ought to have attention now without waiting for the determination of the Lindley and Rotherham claims. William Williamson is in the possession of the lot fronting on Pacific Avenue next to Berry's line, under claim of right in his wife, whose mother (deceased) obtained possession from your father. There is no deed, but Williamson claims that there was an agreement of sale and that he is holding under it. What he can show in support of his claim I do not know. I do know that he asserts title vigorously and effectively against all persons, preventing them from driving over and otherwise trespassing, &c. It seems to me that this ought to be taken up and cared for without delay. If these parties can be put off summarily all the better; if not, and an action of ejectment be necessary against them also, the sooner it be begun the better. These people are, *I suppose*, with little if any better claim than that of mere squatters, but we do not know what

they have to sustain their position. The Lindley claim was ridiculed by Mr. Voorhees at first, and yet it is taking time and effort to defeat it. So Williamson may have more to sustain him than is supposed. This is, of course, an entirely separate claim from Lindley and from Rotherham's, which two are, I believe, to be settled by the one suit.

Yours very truly,

NEWTON KEIM.

JAMES A. O'REILLY, Esq."

Q. I call your attention now to a letter dated October 11, 1888, typewritten, except signature, addressed to "Hon. Jacob Keim," and signed "J. J. Gardner." Do you know in whose handwriting that signature is?

A. That is Mr. Gardner's signature.

Q. Who received that letter?

A. Received by my father.

Q. Did it come into your possession from him?

A. Well, I can only say that I received it from my father.

(Said letter—J. J. Gardner to Hon. Jacob Keim, dated October 11, 1888, marked C. 21, and reads as follows):

"Atlantic City, N. J.,

October 11, 1888.

Hon. JACOB KEIM, City.

Dr. Sir:—As Mr. James A. O'Reilly understands the status of the Lindley case, from his intercourse with Mr. Voorhees, the case this time, as after previous reversals, is simply sent back for a new trial instead of being dismissed. That the title is sustained in every particular that objection can be raised to it. That the only question that can be opened or rather re-opened is the one on which the reversal was *based*, viz.: The matter of the proper probate of the Felix will; that the will can yet be properly probated and that such action will, practically, leave no defense at the re-trial.

Very resp't'y y'r ob't serv't,

J. J. GARDNER."

Q. I now call your attention to a press copy of a letter dated November 14th, 1890, addressed to James A. O'Reilly, Esq., and signed "Newton Keim." Is that a

press copy of a letter sent by you to Mr. O'Reilly of that date?

A. Yes, sir.

(Said letter, composed of three sheets, marked C 22, and is as follows:

"O'REILLY

vs.

LINDLEY.

November, 14th, '90.

DEAR SIR:—My father (Jacob Keim, of Atlantic City), who called upon you a few days since in reference to above case, has been informed by Mr. Voorhees that it will not probably be tried at the coming term of court, there being a number of criminal cases which will take up considerable time; and, moreover, that he, Mr. Voorhees, did not feel well enough 'to try the case without assistance.' The latter—the ground of ill health—seemed to be the principal reason, and it is, of course, a good and sufficient one. It is besides well known that Mr. Voorhees is not in good health and has not been for some time. In fact his ill health has continued for such a time and is of such a character that his friends fear that he is not likely soon, if ever, to entirely recover.

With this in mind, and urgently desiring the trial of the case now, we have given some thought to the suggestion implied in Mr. Voorhees' remark as to "assistance" in the trial.

If Mr. Voorhees does not improve in health it may indeed be the only way in which his skill and experience, and knowledge of the case may be made available.

I take leave, therefore, respectively to suggest the association of other counsel with him in the case, such, as of course, as would be agreeable to him personally and acceptable on other grounds. This will involve increased fees, but, as I have said, it may be the only way in which Mr. Voorhees' own services can be had, and further, to meet in part this objection, my father will agree, in case this suggestion is acted on *and trial had this next term*, to contribute a reasonable amount toward the payment of fees, say $200. This he volunteers, without, of course,

any obligation on him to do so, solely with the view of aiding, if possible, in obtaining trial at this term of court, which for several reasons is specially desirable to him.

I trust you will receive this suggestion in the spirit in which it is offered, in entire good faith and respect toward all parties—indeed carrying out what was implied, perhaps not intentionally, in Mr. Voorhees' own remark. The various uses, or rather abuses, to which the property has latterly been put, have made it very annoying and aggravating to those residing near. An effort was made to suppress the howling, noisy railway, which passes within a few feet of the rear of our own and other residences, but for some reason injunction was refused. Hoping for your favorable attention,

Very resp'y yours,
NEWTON KEIM.

JAMES A. O'REILLY, Esq."

Q. I now call your attention to another letter, dated April 1st, '92, addresssed to "James A. O'Reilly, Esq.," and signed "Newton Keim," and ask you if that is a letter sent by you to Mr. O'Reilly?

A. Yes, sir, it is.

(Said letter marked C. 23, and reads as follows:

"April 1st, '92.

Dear Sir:—Would it be agreeable to you and Mr. Voorhees to have Mr. S. H. Grey, of Camden, associated with your counsel in the trial of the Lindley and Rotherham ejectment suits?

Mr. Voorhees once suggested to my father that he (Mr. V.) should have assistance in these suits, and in pursuance of this suggestion, and of our own earnest desire for the settlement to be consummmated, this proposition is made, Mr. Grey's services to be paid for by my father.

In view of the nearness of April Court at Mays Landing, please favor with prompt answer, and oblige

Yours truly,
NEWTON KEIM.

JAMES A. O'REILLY, Esq."

Mr. Grey: If there is no objection I will offer these letters as one exhibit.

The Court: No, sir, they should all be separate.

Mr. Grey: Then I offer them in that way.

The Court: You may offer the whole batch in evidence at once but they must be marked separately.

Mr. Pancoast: We object to the whole batch, and we object to each one of those letters severally.

The Court: Do you object to the press copies, those addressed to Mr. O'Reilly, because he has not been called to prove them?

Mr. Pancoast: No, sir.

The Court: Then what is the ground of your objection?

Mr. Pancoast: Because they don't tend legally to prove Gardner's authority, or to prove the contracts made to be within the statute.

The Court: I have not had an opportunity to read them, but I will admit them all on the ground that when I come to look at them they may have some bearing in the case, and if they do not they be well disregarded as irrelevant.

Adjourned to 10 A. M.

KEIM
vs.
O'REILLY.

TUESDAY, May 9, 1893.

Appearance as heretofore.

NEWTON KEIM:

Direct-examination continued as follows:

By Mr. Grey;

Q. Mr. Keim, just turn to a letter there of March 30th, 1881, one of the letters that was offered last night, the letter written by Mr. Gardner to you—or, what does that letter refer to? There is a reference there to a letter received from Mr. O'Reilly?

A. This letter of March 30, 1881, is an answer from Mr. Gardner to a letter of inquiry which I had addressed him.

Q. Which was dated March 29, 1881?

A. Which was dated March 29, 1881.

Q. Read the letter of March 29, 1881.

A. (Reading). "March 29, 1881. Dear Sir:—Will you please ascertain and inform me what price the O'Reilly heirs ask for the 150 feet between father's and Berry's, and (1) including 50 by 150 lot on Pacific, and (2) excluding same and oblige, Truly yours,

NEWTON KEIM.

J. J. GARDNER, Esq."

Q. Now then read the answer, March 30, 1881.

A. (Reading). "Atlantic City, N. J., March 30, 1881. Newton Keim, att'y, 404 Arch Street, Philada., Dr. Sir:—Yours of the 29th inst. rec'd. The following extract from a letter from James O'Reilly, executor, to-day received, will probably answer the question you ask; 'Reading, Pa., March 29th, 1881. Dr. Sir:—In the matter of the strip of land back of lots Nos. 4, 5, 6 and 7, No. 4 was sold to Mr. Keim for $2,500. The price for the remainder is $7,500. This does not include lot No. 31, the price for which is $4,000. The price for strip and lot is $11,500$^{00}_{100}$. Truly yours, James A. O'Reilly.' This extract refers to the land you inquire about & no other. Very truly yours, Jno. J. Gardner."

The Court: Let me stop to inquire for information. Is the $2,500 piece included in the contract signed in O'Reilly's lifetime included in, or is it in addition to the lot included in the contract made after his death?

Mr. Grey: Mr. Keim can answer that question.

The Court: I ask counsel.

Mr. Grey: My understanding is that the last contract of October 29, 1881, included the land referred to in the original.

The Court: Don't the bill state?

Mr. Grey: Oh, the bill states; includes all; that is, the last one.

Q. (By the Court): Mr. Keim, does the last contract made after O'Reilly's death include the lot claimed to be purchased in his lifetime?

A. It was purposed to include all—to include it. There is a mistake in the description, by which "one hundred and fifty" is written in instead of two hundred feet, and there is a discrepancy in the description.

Q. What do you claim it should be, $12,500 or $10,000?

A. $2,500 for the first strip of 50 feet, $10,000 for the second 150 feet, $12,500 for the whole tract of two hundred feet.

The Court: Oh, I see.

Q. (By Mr. Grey): Mr. Keim, I direct your attention to the letter of May 24, 1881, from Gardner to you; please to read that letter?

A. (Witness here reads letter dated May 24, 1881, signed J. J. Gardner and addressed to Newton Keim, marked C. 9).

Q. Now I direct your attention to the letter of July 18, 1881, letter from Mr. Gardner to you.

A. (Witness here reads C. 10).

Q. Did you make any reply to that letter of the 18th of July?

A. I did; yes, sir.

Q. There is a letter of July 20, 1881?

A. I did answer it, yes, sir. (Witness here reads letter dated July 20, 1881, Newton Keim to J. J. Gardner).

Q. Now, were these lots referred to in those letters the same properties which were subsequently referred to in the receipt of October 29, 1881?

A. Yes, sir.

Q. (By the Court); The receipt covered all the lots?

A. Yes, sir.

Q. You didn't confine yourself to the $7,500 lots, but took the whole?

A. Took the whole.

Q. (By Mr. Grey): Just look at the letter of November 27, 1883, and read that, please. Before doing so, did you ever hear of Mr. Voorhees in connection with this transaction as representing anybody, Mr. Peter L. Voorhees?

A. I did.

Q. And in what character did you understand he stood toward any of these people?

(Objected to).

The Court: I think it was proved yesterday either by him or by his father.

Q. Then read the letter without any explanation.

A. (Witness reads letter of November 27, 1883, marked C. 12).

Q. Read the letter of December 6, 1883.

A. (Witness reads C. 13, being letter dated "12—6—1883," P. L. Voorhees to N. Keim).

Q. Now, was the land referred to in your letter of November 27th, which you alluded to as being land, the title to which was in dispute, a part of the land covered by the receipt of October 29, 1881?

Mr. Voorhees: Is that a proper question? Don't the paper speak for itself?

The Court: There can't be any dispute about it; the letter speaks for itself I think.

Q. Read the letter of January 21, 1885.

A. (Witness reads C. 14).

Q. Letter of January 22d.

A. (Witness reads C. 15, letter dated January 22d, 1885).

Q. Were these people who were referred to in the letter of January 21, 1885, on the property which was described in the agreement of October 29, 1881?

A. Yes, sir.

Q. Read the letter of March 16, 1885, addressed by you to James A. O'Reilly, executor.

A. (Witness reads C. 16).

Q. Now, did you receive any reply to that letter, and, if so, read it.

A. (Witness reads C. 17 as follows: "Reading, Pa., Mar. 23d, 1885. Dear Sir:—Yours of the 16th received. I have just returned from Atlantic City and Camden. The case has been noticed for trial to April Term and will certainly be tried. The estate is very anxious to have all these matters closed as early and as quickly as possible. Yours resp'y, James A. O'Reilly. Newton Keim, Esq., 404 Arch Street, Philada., Pa.")

Q. Now the letter of Mr. O'Reilly, dated 5th of January, 1886, to you.

A. (Witness reads C. 18 as follows: "Reading, Pa., 1, 5, 1886. Dear Sir:—Yours of the 3d inst. received.

The case against Lindley was continued on account of the engagement of the counsel for the def't of a murder trial in Camden Co. The matter is to be disposed of at the next term *without fail.* I am getting rather tired of Jersey justice. I trust you will pardon my neglect in not answering your letter, the same escaped my attention. Yours resp'y, James A. O'Reilly. Newton Keim, Esq., 404 Arch Street, Philada., Pa.")

Q. Now the letter of Mr. O'Reilly, dated "9, 24," 1886."

A. (Witness reads C. 19).

Q. (By the Court): That was in reply to a letter you sent him?

A. I have not the copy to which this is a reply.

Q. (By Mr. Grey): Now read the reply to that letter dated September 27, 1886.

A. (Witness reads C. 20, being letter dated September 27, 6, signed Newton Keim, and addressed to James A. O'Reilly, Esq.)

Q. Did you ever receive any reply to that letter?

A. I think not, sir.

Q. Read the letter of October 11, 1888, Mr. Gardner to your father

A. (Witness reads C. 21, letter dated October 11th, 1888, signed J. J. Gardner and addressed to "Hon. Jacob Keim").

Q. Now read the letter of November 14, 1890, addressed by you to Mr. James A. O'Reilly.

A. (Witness reads C. 22).

Q. Now, did you receive any reply to that letter?

A. I did not.

Q. Read the letter of April 1, 1892, addressed by you to Mr. O'Reilly?

A. (Witness reads C. 23 as follows: "April 1st, '92. Dear Sir:—Would it be agreeable to you and Mr. Voorhees to have Mr. S. H. Grey, of Camden, associated with your counsel in the trial of the Lindley and Rotherham ejectment suits? Mr. Voorhees once suggested to my father, that he (Mr. V.) should have assistance in these suits, and in pursuance of this suggestion, and of our own earnest desire for the settlement to be consummated, this

proposition is made, Mr. Grey's services to be paid for by my father. In view of the nearness of April Court at May's Landing, please favor with prompt answer, and oblige, Yours truly, Newton Keim. James A. O'Reilly, Esq.")

Q. Did you receive any reply to that?

A. I did not.

Q. You have already stated in reply to a question put to you some time ago by the Vice Chancellor that the two agreements, or rather the latter agreement, comprehended the land included in the first?

A. Yes, sir.

Q. The total consideration for which was to have been twelve thousand five hundred dollars?

A. Yes, sir.

Q. Now, how was the money which was paid on these two receipts paid; in what form?

The Court: Is there any dispute about it?

Mr. Grey: I don't know, sir. The answer don't admit it.

The Court: Well prove it and submit the checks.

A. The first payment of twenty-five dollars was paid by my father. I was not present. The second payment of the five hundred dollars was made by two checks of my own, one for twenty-five dollars, one for four hundred and seventy-five dollars. The check for $25 was in Mr. Gardner's hands, a credit which I had had of some previous operation and had not taken the check back; I gave him, then, at the time this settlement was made, my check for $475, the two together making $500.

Q. So that was the sum of the payments, the five hundred dollars?

A. Yes, sir; $525 was the total.

Q. $525?

A. Yes, sir.

Q. Now, after these agreements had been made and these receipts given, did you have an interview with Mr. Gardner in relation to this matter; any interview?

The Court: Do you want to put those checks in evidence?

Mr. Grey: Yes, sir.

The Court: Any objection to the checks?

(No objection offered).

The Court: They are admitted in evidence.

(Check dated in Philadelphia April 1, 1881, on Fidelity Insurance Trust and Safe Deposit Company for twenty-five dollars, made by Newton Keim, marked C. 24.

Check dated Philadelphia, October 29, 1881, on the Fidelity Insurance Trust and Safe Deposit Company for $475, made by Newton Keim, marked C. 25).

Q. (Stenographer reads the question: "Now, after these agreements have been made and these receipts given, did you have an interview with Mr. Gardner in relation to this matter; any interview?")

A. I had frequent interviews with him subsequently.

Q. Did you ever have any interviews with James A. O'Reilly, one of the executors of the estate?

A. No, sir.

Q. Then the correspondence which you have exhibited was the only means of communication between you, was it?

A. Yes, sir.

Q. Did you ever have any interview with Mr. Voorhees on this subject?

A. No, sir.

Q. (By the Court): Where did Mrs. O'Reilly live, if you know?

A. I understand she lived at Reading.

Q. Reading, Pennsylvania?

A. Yes. I never met her. The family residence.

Q. There was nobody living at Atlantic City, none of the O'Reilly family living there?

A. No, I think not; not for a great many years.

Q. Where did Patrick O'Reilly die, do you know?

A. I do not, sir. I know his residence was at Reading.

Q. And there were three executors: James A. O'Reilly is one, and the widow, Catherine C. O'Reilly, is another; where did the other executor live—all of them—do you know?

A. Not personally, I do not.

Q. James A. O'Reilly lived at Reading, you understood?

A. Understood so.

Q. (By Mr. Grey): Now, did you ever receive from Mr. O'Reilly any intimation, prior to the filing of this bill, that no such agreement as this had ever been made, or that Mr. Gardner had no authority to make any such agreement?

A. I never received any intimation of that kind or anything to lead me to think so until we had knowledge of a deed made by Catherine O'Reilly to Daniel Lindley in April last; April, a year ago.

Q. April of last year?

A. Yes, sir.

Q. You had no such intimation from any of the O'Reillys? My question was confined to him.

A. No, sir. (Objected to as incompetent).

The Court: Clearly competent.

The Witness: I never had any such intimation.

Q. Now, Mr. Keim, do you know Mr. James A. Griffith?

A. I do?

Q. Did you ever have an interview with Mr. Griffith in relation to this property?

A. I did.

Q. When was it that you saw him?

A. I think the first interview that I had with him concerning this matter was in August, or in the latter part of August, or the first of September, 1891; that was at Atlantic City, at my father's cottage.

Q. And what was the conversation at that time? What was said?

A. He called upon us, or upon father, to obtain—to negotiate concerning our rights in this property; he had purchased, he claimed, the rights of the Rotherham heirs in the premises, and assured me that he considered, and was advised by counsel, that their title was good; nevertheless, he wanted to buy all parties' rights and get possession and get a good title to the ground. These others were rights adverse to the O'Reillys.

Q. Now, did the Rotherham claim include all the land described in the October receipt, or only a portion of it?

A. No, sir, did not include all.

Q. Better specify what it did include, if you can.

A. I don't know whether I am competent to state it. As I understand it, the Rotherham claim was for two strips of ground, fifty feet each, one hundred feet in both, extending parallel with New York Avenue.

Q. All the way through?

A. All the way through?

Q. (By the Court): Two strips of fifty feet each, in all one hundred feet, parallel with New York Avenue?

A. The length I do not know.

Q. (By Mr. Grey): Was that all the conversation?

A. Yes, sir.

Q. Was anything said in reply?

Q. (By the Court): What was said as to the nature of your claim; did he say why he came to you?

A. He came because he wanted to purchase both; that is, to purchase the title of all in order that he might himself have a good title.

Q. Did he say what made him think that your father didn't have any interest?

A. I can't say that he did, how he had learned of it, but he spoke of it and wanted to negotiate for his purchase; I answered that I didn't consider it practicable for him to get a good title at the present time, whether he purchased from us or not; and then I gave him the final answer that he should make a proposition to us in handwriting and we would consider it.

Q. Now, did he make any proposition in writing?

A. He did.

Q. Have you got the writing?

A. I have a letter from him.

Q. Produce it, please.

A. I have the letter and the envelope in which it was received. (Producing same).

Q. Have the papers that you have there, that envelope and that letter, the ones received?

A. Yes, sir; the letter is dated September 14th, without a year.

Q. And is there any date on the envelope, or is there any means by which you fix the year?

A. I will give the three postmarks: "Atlantic City, September 24, 1891—

The Court: That is enough.

Q. Then the letter was received in September, 1891?

A. Yes, sir.

The Court: Who represents Mr. Griffith?

Mr. Grey: Mr. Pancoast and Mr. Voorhees.

Mr. Harned: The land for which he offers $80,000 includes a piece that was afterwards conveyed to Lindley.

The Court: The question is, is there any objection to that letter?

Mr. Voorhees: I think it has nothing to do with this question.

The Court: Except that it may have some little tendency to show that Mr. Griffith had notice of the claim.

(Letter offered and received in evidence and marked C. 26; envelope marked C. 26a).

Q. Read the letter.

A. (Reading C. 26). "Philadelphia, Sept. 14th. Dear Sir:—Will you give me an option for the purchase of all your right, title and interest in and to all the property owned or claimed by you under deed or agreement from the estate of O'Reilly or others, between Pacific Avenue and the ocean and Tennessee and New York Avenue, in Atlantic City, New Jersey, not taking in your fifty feet of clear title property on New York Avenue, for the sum of eighty thousand dollars ($80,000), payable within few days, to be agreed upon from date of option? Resp't, Jas. A. Griffith, 822 Green St., Phila., Pa.")

Q. A reference is made in the letter to "Not taking in your fifty feet of clear title property." What property does that refer to?

A. That I understand to be a fifty-foot strip fronting on New York Avenue which my father has owned for many years and not in this controversy.

Q. Not included in this transaction?

A. Not at all.

Q. (By the Court): Is it the tract that some description speaks of as that which adjoins the property here in dispute?

A. Yes, sir; immediately on the westward.

Q. (By Mr. Grey): Reference is made in several letters which you have read to suits pending down at Atlantic City; do you know what portions of this property those suits affected?

The Court: If you have printed books of those they will show for themselves.

Mr. Grey: I don't suppose there is any dispute about it, that the suit in question, a part of it, is described in this suit.

Mr. Pancoast: You must prove it according to your own view.

Q. Did they or did they not?

A. I am not competent to speak. I understood so.

Q. (By the Court): You understood so at the time?

A. Yes, sir.

Q. (By Mr. Grey): Did you ever cause any notices of your father's rights and claim to be served on anybody?

A. I did.

Q. On whom?

Mr. Voorhees: Is that admissible—what he did for his father?

The Court: Undoubtedly; it don't make any difference whether his father did it personally or whether he did it by his attorney.

Mr. Pancoast: Objected to as incompetent.

A. I prepared, under advice of counsel, a form of notice to be signed and served upon Daniel Lindley, Alfred Adams, jr., and James A. Griffith.

Q. Have you copies of those notices which you prepared and served?

A. I have.

Q. Will you produce them?

A. (Produces a paper).

Q. Is the paper which you have in your hands a copy of the notice which you served upon these people?

A. I did not serve it myself.

Q. Is it a copy of the paper which you prepared for service?

A. It is.

Q. And to whom did you give it for the purpose of having it served?

A. I mailed it to my father.

Mr. Grey: My recollection is, it is the same notice which was referred to yesterday by Jacob Keim. Is it not?

The Witness: I think it is the same.

Mr. Grey: I offer that.

Mr. Harned: Yesterday afternoon I admitted that a copy of that notice was served on Daniel Lindley and Alfred Adams, jr., on the 28th of April, 1892.

Q. Now, as to the service upon Griffith; do you know anything about whether a copy of that paper was served on him, and, if so, by whom and when?

A. The certificate on the back of this is from the constable who served the notice.

The Court: That won't do; you will have to bring him. That paper is not put in evidence, and I don't see that it is competent.

Mr. Harned: I will put *this* in evidence.

Mr. Grey: All right. We will put them in both together.

(Copy of notice, reading as follows, marked C. 27):

"To_____

"You are hereby notified that I hold an agreement, dated October 29th, 1881, for the sale to me of the title of the late Patrick O'Reilly, deceased, to the large lot of ground, situate in Atlantic City, N. J., beginning in south line of Pacific Avenue, two hundred and fifty feet east of New York Avenue, thence extending southwardly parallel with New York Avenue, about two thousand feet to the riparian line in the Ocean; thence westwardly along said line two hundred feet; thence northwardly parallel with New York Avenue about eighteen hundred feet to a point two hundred feet from Pacific Avenue; thence eastwardly parallel with Pacific Avenue, fifty feet; thence northwardly parallel with New York Avenue, fifty feet; thence eastwardly parallel with Pacific Avenue, one hundred feet; thence northwardly parallel with New York Avenue, one hundred and fifty feet to Pacific Avenue, and

thence eastwardly along Pacific Avenue, fifty feet, to place of beginning; and that I claim an equitable title in the land under that agreement, and intend to enforce the same.

JACOB KEIM.

ATLANTIC CITY, April 28, 1892."

(Mr. Harned produces a like notice addressed to Alfred Adams, jr., and dated Atlantic City, April 28th, 1892, signed "Jacob Keim," and stenographer marks it L. D. 2).

Cross-examined.

Mr. Pancoast: No cross-examination on the part of O'Reillys.

Not cross-examined.

LEVI ALBERTSON, a witness produced on the part of the complainant, sworn:

Direct-examination by Mr. S. H. Grey:

Q. Where do you reside?

A. In Atlantic City.

Q. What is your business?

A. Insurance and real estate.

Q. Do you hold any position down there?

A. Postmaster.

Q. Did you ever have occasion to negotiate for or buy any O'Reilly property?

A. Yes, sir.

Q. Where was it situate?

A. In South Carolina Avenue.

Q. When was it that you bought it?

A. I think in 1871.

Q. Through whom did you negotiate for its purchase?

Mr. Voorhees: Objected to. That is 1871.

The Court: It is a long way back, but I will not rule it out at present.

Mr. Grey: I propose to bring it straight down.

Mr. Pancoast: Objected to on the same grounds that we objected to similar testimony yesterday.

Q. Through whom did you negotiate for its purchase?

A. Mr. John J. Gardner.

Q. Why through Mr. Gardner?

Mr. Pancoast: Objected to.

The Court: It is admitted.

A. Because he was the agent for Mr. O'Reilly, or we so considered it.

Q. (By the Court): Were any of the O'Reillys living at Atlantic City?

A. I think none of them were residents there.

Mr. Pancoast: We object to that statement and ask the court to strike it out.

The Court: I decline to strike it out. If, in the purchase of negotiations through Mr. Gardner, he received deeds executed by Patrick O'Reilly and can produce the deeds; that I think is something that the court can count upon a little, and, as I think I ruled yesterday, the evidence goes for a little or nothing unless the deed follows it. In one case I think the deed was produced, signed by Patrick O'Reilly, if I recollect right.

Mr. Grey: Yes, sir.

The Court: I take it for granted that Mr. Grey is pursuing the same course now.

Q. (By Mr. Grey): As the result of that negotiation did you obtain a deed for the property?

A. Yes, sir.

Q. From whom?

Q. (By the Court): Well, have you the deed here?

A. I have not. I think from Patrick O'Reilly.

Q. (By Mr. Grey): And from whom?

A. From Patrick O'Reilly I believe.

The Court: I don't think that is competent.

Q. (By the Court): Oh, you still own the property?

A. Yes, sir; my wife owns it.

Q. Who has been in possession?

A. I have lived on the property ever since 1872, with intervals, except in summer sometimes.

Q. What has become of your deed?

A. I think I have it.

Q. (By Mr. Grey): You will send it over to my office if you please?

A. I will if I have it; I am pretty sure I have it.

The Court: A certified copy will do, but the original is better.

Q Do you know who attended to the lands of O'Reilly during his lifetime in Atlantic City in negotiating for sales of them?

Q. (By the Court): In other instances besides yours?

Q. (By Mr. Grey): In any other case besides yours?

A. I know, sir.

Q. Who was it?

(Objected to).

A. Mr. Gardner.

Q. Who looked after the payment of taxes and collection of rents and various other matters in regard to the care of the property?

A. I believe Mr. Gardner done that.

Q. Do you know whether Mr. Patrick O'Reilly in his lifetime did or did not, when spoken to upon the subject of property in Atlantic City, or the sale of it, make reference to anybody, and, if so, to whom?

The Court (to the witness): Speak of your own personal knowledge.

(Question objected to).

Q. Do you know? (Stenographer reads the question).

A. I know that he referred myself and my brother, when we were considering the purchase of that property, to Mr. Gardner. I don't know personally of any other.

Q. Do you know of your own knowledge during the lifetime of Mr. Patrick O'Reilly whether he did or did not consult with Mr. Gardner in reference to pricing his property for sale?

(Objected to).

A. I do not.

Q. Do you know Mr. Alfred Adams, jr.?

A. Yes, sir.

Q. Do you know, of your own knowledge, whether or no Mr. Alfred Adams has recently applied to Mr. Gardner for a lease of any part of this O'Reilly land now in dispute?

(Objected to).

A. I know that he—(interrupted).

The Court: What time?

Mr. Grey: I will have to ask the witness that.

The Court (to the witness): You may answer the question "Yes" or "No."

Mr. Harned: I object to it on the part of Mr. Adams.

The Court: The question is competent as against Mr. Adams.

Q. (By the Court): First answer the question yes or no, whether you knew anything about it?

A. I don't know that Mr. Adams—(interrupted).

(Stenographer reads Mr. Grey's question).

The Court: Answer yes or no.

Q. (By Mr. Grey): Answer categorically—yes or no, when you hear the question. (Stenographer re-reads the question).

A. No.

Q. Were you present at any interview or conversation between Mr. Adams and Mr. Gardner in reference to the leasing of any part of the O'Reilly land?

A. No.

Q. Do you know anything about a Mrs. Clinton, a colored person, do you know such a person?

A. I do.

Q. Were you present at any interview between Gardner and Adams in regard to getting rid of this colored woman as an occupant of some land?

Mr. Pancoast: Objected to on the part of the O'Reillys.

The Court: The witness may answer.

A. I was in the office when they had a conversation about it.

Q. Now, when was that; how long ago?

A. About March, 1890.

Q. (By the Court): In the post office?

A. No, sir.

Q. In Gardner's office?

A. Gardner, Shinn & Company.

Q. (By Mr. Grey): Now, what was the subject matter of this conversation? In the first place you say "they;" whom did you mean, Adams and Gardner?

A. Adams and Gardner.

Q. What was the subject of the conversation?

(Objected to).

A. I can't say that I heard the conversation with sufficient clearness between those two to give the conversation as it occurred. I know what the subject matter was, and I know more about it from my own conversation with Mr. Adams.

Q. Now I ask you what was the subject matter?

A. It was the obtaining possession of a strip of land on which Mrs. Clinton had her buildings, bath houses, located.

Q. Now, where was this piece of ground?

A. It was on the beach, between Tennessee and New York Avenues.

Q. Do you or do you not know whether it was a part of the property of the O'Reilly estate at that place?

A. I only know it from general repute.

Q. Now you say you heard the conversation on that subject and had a conversation yourself with Adams on that subject?

A. Yes, sir.

Q. Now what was the conversation?

A. Well, the substance of the conversation was that Mr. Adams wanted to obtain possession of that ground upon which to put buildings of his own, and he was willing to pay a certain sum of money to Mrs. Clinton through Mr. Gardner, and a commission to Mr. Gardner for obtaining possession of the ground. In other words, getting clear of Mrs. Clinton; getting her to move her buildings and giving Mr. Adams possession of the ground.

Q. In what capacity did he apply to Mr. Gardner?

A. Well, I suppose because—

(Objected to).

Q. If you know say so, and if you don't know you can say that.

A. I don't know what was in Mr. Adams' mind.

Q. Was anything said at the time as to why he asked Gardner?

Q. (By the Court): Why he should go to Mr. Gardner to help him get Mrs. Clinton off this O'Reilly land?

A. No, sir; nothing said to me about it.

Q. (By Mr. Grey): Now, in the course of that conversation on this subject, did Mr. Adams make any reference to the Keim claim, and, if so, what?

A. Yes, in the conversation I had with Mr. Adams in the office he referred to the amount he was willing to pay to get Mrs. Clinton off, and he didn't want to pay too much for he didn't know how soon he might have to treat with Mr. Keim or the title would be settled—or words to that effect; I don't recall the exact conversation.

Q. Is this the conversation at the date you have already given?

A. About that date; all occurred within probably thirty or sixty days—February and March, 1890.

Q. Now can you state a little more fully, if possible—a little more fully just what Mr. Adams said on that subject?

A. No, I don't think I can; I didn't undertake to give the exact conversation. The matter was talked about on two or three occasions in the office—in Mr. Gardner's office.

Q. What connection have you, if any, with Mr. Gardner?

A. I am a member of the firm of Gardner, Shinn & Company.

Q. Mr. Albertson, you say it was talked about on two or three occasions. Was there any other occasion that Mr. Adams made any reference to Mr. Keim's claim?

A. I don't know whether there was or not; I don't recall.

Q. Do you remember any conversation with Mr. Adams on the subject of Mr. Keim's claim at the time when the Board of Health was taking action to have the lands filled up?

A. No, I didn't know that I do now.

Q. Do you remember Mr. Jacob Keim going to see Mr. Gardner with reference to the Lindley and the other ejectment suits and the trial of them?

A. Oh, yes; I know Mr. Keim visited the office a good many times.

Q. On what errand?

(Objected to).

Q. I mean in relation to this matter; was it in relation to this matter?

A. He frequently talked to Mr. Gardner about this matter, yes.

Q. (By the Court): For how long a time did that continue, that you recall, interviews of that kind between Mr. Keim and Mr. Gardner with regard to the O'Reilly property?

A. Why since I have been a member of the firm; since 1886.

Q. You went in in 1886?

A. Yes, sir, at various times since that.

Q. (By Mr. Grey): That is all.

Mr. Pancoast: No cross examination on the part of the O'Reillys.

Mr. Harned: No questions.

JOSEPH A. BARSTOW, a witness produced on the part of the complainant, sworn.

Direct examination by Mr. S. H. Grey.

Q. Where do you reside, Mr. Barstow?

A. Atlantic City.

Q. How long have you lived there?

A. About thirty-eight years.

Q. Did you ever buy a piece of property, part of the O'Reilly property, in Atlantic City?

A. Yes, sir.

Mr. Pancoast: Now we make the same objection to the testimony of this witness as to other testimony of a like character. It is not necessary to state the ground; and let it stand as a general objection to everything that this witness may testify to in the same line.

The Court: Objection overruled.

Mr. Grey: You may extend the same objection to all the other witnesses if you like.

Q. (Stenographer reads the question: Did you ever buy a piece of property, part of the O'Reilly property, in Atlantic City?)

A. Yes, sir.

Q. Where was it situate?

A. On Pacific Avenue, between South Carolina and Tennessee Avenues.

Q. With whom did you negotiate for the purchase of that property?

A. Mr. Gardner.

Q. Why did you negotiate with Mr. Gardner?

A. Why it was understood, sir, that he was the agent of P. O'Reilly.

Q. (By the Court): Mr. O'Reilly didn't live there?

A. No, sir.

Q. (By Mr. Grey): Mr. Barstow, when was this, in Patrick O'Reilly's lifetime?

A. Yes, sir; or, in other words, I suppose it was in Patrick O'Reilly's lifetime. Patrick O'Reilly and Catherine, his wife, signed the deed. I suppose he was alive; I don't know it in any other ways.

Q. You did get a deed for the land that you negotiated for through Gardner from O'Reilly and his wife?

A. I negotiated for the property through Mr. Gardner; I think Mr. Gardner wrote the deed; I would not swear to that; but I believe the writing will indicate that he wrote the deed. It was sent, I suppose, up to—(interrupted).

Q. (By the Court): Well, now, have you got the deed here?

A. Yes, sir, there it is (producing a deed).

Mr. Grey: We offer this in evidence.

Mr. Pancoast (replying to question of Court): No objection further than already made.

(Said deed bearing date January 12th, 1871, "between Patrick O'Reilly, of the city of Reading, Berks County and State of Pennsylvania, railroad contractor, and Catherine C., his wife, and Joseph A. Barstow, of Atlantic City, County of Atlantic and State of New Jersey," signed "P. O'Reilly, C. C. O'Reilly," and having receipt therein "Received the day of the date of the above indenture, of and from the above named Joseph A. Barstow, the sum of $2,100, the consideration money above named in full, P. O'Reilly," and acknowledged before Jeremiah Hagenman, Judge of the Court of Common Pleas of

Berks Co., Pa. Offered and received in evidence, marked C. 28).

Witness: I would say right here, before I forget it, that that deed only conveys to me three lots; I made the arrangements with Mr. Gardner for seven lots; the other four lots were conveyed to Isaac Ford directly from the same parties.

Q. (By the Court): At the same time?

A. At the same time; paid the money the same time; took our deeds the same time, but I negotiated for the seven lots, as I said before, between South Carolina and Tennessee Avenues; the four were transferred directly by Mr. P. O'Reilly to Mr. Isaac Ford.

Q. (By Mr. Grey): Was that the bargain that you made with Gardner, that you were to have three and Ford to have four lots?

A. I made the bargain for seven; but when I took the deed I had four made to Mr. Isaac Ford.

Q. Now you received these deeds from whom?

A. I can't tell you, sir.

Q. Well, at what place, at whose office?

A. I came to Philadelphia; some man met us at Philadelphia and we paid him. It was not P. O'Reilly, but it was by some authorized agent of Mr. O'Reilly.

Q. Do you know who it was?

A. I can't tell you to-day to save my life, sir.

Q. Now, Mr. Barstow, did you know or do you know Mr. Alfred Adams, jr.?

A. I guess I do; there are two young men; I know them both, but I hardly know one from the other.

Q. (By the Court): Brothers, are they?

A. I think they are; Alfred Adams, jr.—

Q. (By Mr. Grey): Mr. Barstow, are you connected with any banking institution in Atlantic City; are you a director in the Atlantic City National Bank?

A. Yes, sir.

Q. Do you remember Mr. Alfred Adams making an application for a loan of ten thousand dollars in eighteen ninety-two?

A. Yes, sir; Mr. Alfred Adams and some other gentleman, I forget his name; I know where he lives.

Q. Did he tell you at that time or while the matter was pending what he intended to use the money for?

A. Well, I don't know now; probably he did.

Q. Sir?

A. Maybe he did; probably he did; I can't hardly tell; there are a good many such things transacted.

Q. I didn't ask you about other things; I asked you about this.

A. I understand that, Mr. Grey.

Q. Did he tell you what he wanted to use the money for?

A. Yes, sir, I think he did.

Q. Now what was it he told you he wanted to use the money for?

A. He wanted to use the money to pay for the purchase of a piece of property that was bought from the P. O'Reilly estate.

Q. Did he tell you where it was?

A. I think he did, yes, sir.

Q. Where did he tell you it was?

A. Well, I knew where it was.

Q. Oh, you knew where it was?

A. Yes, sir, and he said where it was; it was on the beach front; the front of Mr. Lindley's property.

Q. (By the Court): Whose?

A. Mr. Lindley, yes, sir; at any rate I knew pretty well where the property lay.

Q. (By Mr. Grey): In the course of the conversation you had upon that subject did you or did you not tell him that that piece of property Mr. Keim held an agreement to buy?

Mr. Harned: I desire to object.

The Court: You may; the evidence is clearly competent.

A. Well, I don't know as to that; I can't tell you; I would not say as to that whether I did or not.

Q. Now did you not tell Mr. Adams that Mr. Keim held an agreement to buy the land?

Mr. Harned: That is objectional because it is leading.

The Court: You may ask him first whether he himself

first had information that Mr. Keim had a contract to buy that O'Reilly property.

Q. Did you or did you not, or had you not heard that Mr. Keim had a contract to buy the O'Reilly property which Mr. Adams referred to?

A. I had heard for some time that there was some agreement with Mr. Keim on that property, but I didn't know it except as a rumor. I don't know as Mr. Keim told me so. I don't know.

Q. (By the Court): The question is whether you had heard of it?

A. I had heard of it.

Q. Did you mention that to Mr. Adams when he talked to borrowing money from your bank to buy this property?

A. I don't know, sir, whether I did or not.

Q. Did you propose to take a mortgage from him to secure the $10,000?

A. No, sir; we loaned it on a note supposed to be good. It was good, for it has been paid.

Q. (By Mr. Grey): Was there any reference made by either of you at that time, either you or Adams, to the Keim agreement?

A. I don't know, sir; I can't tell you as to that; I would not say.

Q. Can you say, Mr. Barstow, that that topic was not mentioned at that time by anybody?

A. Mr. Harner: If the Court please, it seems to me that he has already answered that same question.

The Court: You can object to it. The witness is peculiar; he has a peculiar mode of getting along on the stand; I think the peculiar mode of putting questions to this witness is allowable.

Q. (Stenographer reads question).

A. What do you mean? At the time the money was loaned?

Q. (By the Court): At any time before the money was loaned, in different conversations and negotiations which you had with Mr. Adams about that loan, whether or not in any of those at any time before or at the time the money was actually paid the matter of Mr. Keim's being

supposed to have some claim upon that property was mentioned between you and Mr. Adams?

A. There was a time I think that I mentioned that thing to Mr. Adams, but it was before he got the money.

Q. (By Mr. Grey): Now what was it that you mentioned to Mr. Adams before he got the money?

A. I asked him if he knew that there was any agreement with Mr. Keim about the purchase of that property.

Q. And what did he say in reply?

A. Well, he didn't say one thing or the other, whether he knew it or not, that I know of; I can't recollect that he did; but that was before he got the money.

Q. Yes, before he got the money. Now, Mr. Barstow, did he not say at the time you mentioned it to him that he was not paying any attention to that now, that he wanted the money to buy of O'Reilly and pay for the property?

Q. (By the Court): What did Adams say about it?

A. I am not able to tell you now what Adams said about it. He didn't say but very little about it; I don't know that he said anything about it; but I asked him that question because he asked me—he said what he wanted the money for—in other words, he came to see if he could not borrow the money and he told me what he wanted it for; but he didn't enter into much controversy as to what I said to him when I asked him if he knew that Mr. Keim had an agreement—he didn't make much talk about it. I am not able to tell you what he did say.

Q. Didn't say much one way or the other?

A. No, sir.

Q. (By Mr. Grey): That is all.

Mr. Pancoast: No cross-examination on the part of the O'Reillys.

Cross-examination by Mr. Harned:

Q. Do you understand that the $10,000 which was borrowed there was to be used for the purchase of the Lindley lot?

A. That is what it was said it was for, sir.

Q. That is all.

BENJAMIN E. NORRIS, a witness produced on the part of the complainant, sworn.

Direct-examination by Mr. S. H. Grey:

Q. Mr. Norris, where do you reside?

A. Atlantic City.

Mr. Pancoast: We enter the same objection to the testimony of this witness on the grounds heretofore stated.

Q. Did you ever negotiate for the purchase of any land from Patrick O'Reilly—land situate in Atlantic City?

A. No, sir.

Q. Sir?

A. No, sir.

Q. Did you ever buy any land belonging to Patrick O'Reilly?

A. Said to be his.

Q. Did you ever get a deed for any land from Patrick O'Reilly?

A. Yes, sir.

Q. Have you got the deed with you?

A. Yes, sir.

Q. Produce it if you please.

A. (Witness produces a deed).

The Court (after examining the deed): The deed is dated the 26th of May, 1873, and purports to be signed by P. O'Reilly and C. C. O'Reilly in the presence of John F. O'Reilly and acknowledged before John F. O'Reilly, a commissioner of deeds for New Jersey, residing in Berks County, Pennsylvania.

(Said deed offered and received in evidence and marked C. 29).

Q. Now with whom did you negotiate for the purchase of that property?

A. John J. Gardner.

Q. (By the Court): The property lies in Atlantic City?

A. Yes, sir.

Q. (By Mr. Grey): Mr. Norris, why did you negotiate with Mr. Gardner?

A. Well, he was said to be the agent for the Patrick O'Reilly property.

Q. Well, as the result of that negotiation, did you get that deed?

A. Yes, sir.

Q. Do you know who gave you the deed, who delivered it to you?

A. In John J. Gardner's office. I think he gave me the deed himself, or Mr. Shinn, his assistant.

Q. (By the Court): Have you held title under it ever since—possession?

A. Well, either myself or wife has.

Q. (By Mr. Grey): Who did you pay the money to?

A. To John J. Gardner.

Q. That is all.

Mr. Pancoast: No cross-examination on the part of the O'Reillys.

DR. THOMAS K. REED, a witness produced on the part of the complainant, sworn.

Direct-examination by Mr. S. H. Grey.

Q. Where do you reside, Doctor?

A. Atlantic City.

Mr. Pancoast: Enter the same objection, Mr. Stenographer.

Q. Are you a physician there?

A. Yes, sir.

Q. And how long have you lived there?

A. About twenty-eight years.

Q. Did you know Mr. Patrick O'Reilly in his lifetime?

A. Never had any personal acquaintance with him, no, sir.

Q. Did you ever buy any of the O'Reilly land down in Atlantic City?

A. I did.

Q. With whom did you negotiate for the purchase of the land?

A. The Honorable John J. Gardner.

Q. Why did you negotiate with Gardner?

A. I understood him to be the agent of the O'Reillys.

Q. Well, as the result of that negotiation, did you make any purchase of land?

A. I purchased a lot on New York Avenue, between Atlantic and Pacific.

Q. Did you make more than one purchase?

A. Only one.

Q. Did you get more than one deed for the land you bought?

A. Not to the best of my recollection.

Q. Well, who delivered the deed to you?

A. Mr. Gardner.

Q. Was that purchase made before or after the death of Patrick O'Reilly?

A. I don't remember.

Q. How long ago was it?

A. I should think eleven or twelve years since.

Q. Have you got the deed with you?

A. I have not. I purchased that property for Colonel Daniel Morris, as for some reason he wanted me to. I took title in my name and afterwards deeded it to Colonel Daniel Morris.

Q. Then the title papers are in Colonel Morris' hands?

A. Yes, sir, as far as I know.

Q. Did you ever know any of the O'Reillys in connection with the matter while you were negotiating, or at the time that you received the delivery of the deed?

A. I have no recollection of it.

Q. Who did you give the money to?

A. Mr. Gardner.

Q. That is all.

Mr. Pancoast: No cross-examination on the part of the O'Reillys.

WARREN A. UPHAM, a witness produced on the part of the complainant, sworn.

Direct-examination by Mr. S. H. Grey.

Q. Where do you live, Mr. Upham?

A. Atlantic City.

Q. Did you ever buy any land of the O'Reilly estate; any part of the O'Reilly land?

(Same objection taken to the testimony of this witness).

A. I did.

Q. With whom did you negotiate for the purchase of the land?

A. Gardner, Shinn & Company.

Mr. Pancoast: And with the permission of the Court I would like to say that the objections heretofore made stand for all similar evidence.

The Court: Certainly. The Court can't be misled by evidence of this kind.

Q. Did you have any agreement in writing for the purchase of the land before you got your deed? 10

A. I did.

Q. Have you got it with you?

A. I have.

Q. Will you produce it?

A. (Witness produces paper).

Q. Is this the paper?

A. It is.

Q. From whom did you receive it?

A. Gardner, Shinn & Company. 20

Mr. Grey: I offer this paper in evidence. It is a receipt for money, dated February 18, 1888, signed Gardder, Shinn & Co., agents for estate of P. O'Reilly.

The Court: Is this the paper objected to?

Mr. Pancoast: It comes within the general objection.

The Court: It is admitted.

(Said paper marked C. 30, and is as follows:)

"GARDNER, SHINN & CO.,

INSURANCE, REAL ESTATE, CONVEYANCING.

ATLANTIC CITY, N. J.,————188 30

Rec'd Atlantic City, N. J., Feb. 18th, 1888, of Annie B. Upham $25 on acc't of purchase of lot 25x150, on Atlantic Avenue, between New York and Tennessee Avenues, Atlantic City, N. J. Balance of purchase money in cash, $1,225, and mortgage of $5,000 (five thousand dollars), to be paid when papers are ready and deeds signed. The total price for said lot to be six thousand two hundred and fifty dollars, twelve hundred and fifty dollars

cash and a purchase money mortgage for five thousand dollars.

GARDNER, SHINN & CO.,
Agents for Estate of P. O'Reilly."

Q. Who is "Gardner" whose name appears there as "*Gardner*, Shinn & Co.," as part of the firm of Gardner, Shinn & Co.; what Gardner is that?

A. Hon. John J. Gardner.

Q. Do you know in whose handwriting that receipt is?

A. Not positively, but I think Mr. Albertson; but I am not positive even as to that.

Q. As the result of that agreement which you have produced, did you receive the title to the lands described there?

A. I did.

Q. To Annie B. Upham, your wife?—

A. Anna B.—

Q. To Anna B. Upham, your wife, whose name is mentioned in the agreement?

A. Yes, sir.

Q. Have you got the deed?

A. Yes, sir.

Q. Will you produce that?

A. Yes, sir (producing a deed).

Mr. Grey: I offer this deed in evidence; it is dated March 1, 1888, made by Catherine Cecilia O'Reilly, Francis P. O'Reilly and James A. O'Reilly, executors of the last will and testament of Patrick O'Reilly, deceased, and Catherine Cecilia O'Reilly, Francis P. O'Reilly, James A. O'Reilly and Mary A. O'Reilly, his wife, all of the City of Reading, County of Berks, of the first part; and Anna B. Upham, of the City of Atlantic, County of Atlantic, State of New Jersey, wife of Warren A. Upham, of the second part, for a tract of land in Atlantic City, beginning in the southerly line of Atlantic Avenue; acknowledged on the 12th of April, 1888, before J. Hagenman, President Judge of the Court of Common Pleas of Berks County; clerk's certificate annexed; and recorded in Atlantic County Clerk's Office, in book 125, of Deeds, pp. 90, &c.

(Received in evidence and marked C. 31).

Q. By the terms of this receipt, C. 30, which you have produced, the purchase money for the lot is set out as $6,250, of which $5,000 was a mortgage and $1,250 cash?

A. Yes, sir.

Q. Was the mortgage given pursuant to that agreement, it was a $5,000 mortgage?

A. It was.

Q. And the money paid, $1,250 cash?

A. $1,250 cash was paid.

Q. Now to whom did you pay that money?

A. That money was paid in Gardner & Shinn's office in the presence of Mr. James O'Reilly, and I have his receipt for the $1,250.

Q. *This* gentleman sitting at the end of the table?

A. I think so.

Q. Cross-examined.

Cross-examination by MR. PANCOAST:

Q. Who compose the firm of Gardner, Shinn & Co. with whom you dealt in respect to your purchase of this O'Reilly property?

A. The names appended to the head of the receipt are J. J. Gardner, Stewart H. Shinn and L. C. Albertson.

Q. They are the persons that composed that firm as you understood it at the time?

A. Yes, sir.

Q. In this receipt they style themselves as agents for the estate of P. O'Reilly?

A. That is the way the receipt was given.

WILLIAM R. MOORE, a witness produced on the part of the complainant, sworn.

Direct-examination by Mr. S. H. Grey.

Q. Where do you reside?

A. Atlantic City.

Q. Did you ever buy any land belonging to the Patrick O'Reilly estate?

A. I did.

Q. With whom did you make your negotiations for the purchase of that land?

A. John J. Gardner.

Q. And why did you negotiate with Gardner?

A. I supposed him to be the agent; he told me he was.

Q. Did you have any agreement for the purchase before you got the deed?

A. I did not.

Q. Anything in writing I mean?

A. Nothing in writing; that is, nothing in writing.

Q. Well, did you get a deed for the property that you negotiated for?

A. Yes, sir.

Q. Have you got that deed with you?

A. No, sir; I have sold the property.

Q. (By the Court): When? Give the date that you got your deed?

A. In '73, sometime in the fall.

Q. How long did you keep it?

A. I owned the property about eight years, I guess.

Q. Did you improve it?

A. I did.

Q. And was in possession?

A. Yes, sir.

Q. And then you sold to somebody else?

A. Yes, sir.

Q. And they have been in possession ever since?

A. I don't know that it has changed hands; I don't know whether it has or not since I sold it.

Q. (By Mr. Grey): There was a house on it?

A. I put a house on it.

Q. That is the way you improved it?

A. Yes, sir.

Q. Now, who did you pay your money to when you got your deed?

A. John J. Gardner.

Q. And who gave you the deed?

A. John J. Gardner or his assistant in the office paid it. Direct to him.

Q. That is all.

Mr. Pancoast: No cross-examination on the part of the O'Reillys.

JOHN McCULLOUGH, a witness produced on the part of the complainant, sworn.

Direct-examination by Mr. Grey.

Q. Where do you live?

A. Atlantic City.

Q. Did you ever bargain for the purchase of land belonging to O'Reillys?

A. Yes, sir.

Q. Did you ever make more than one bargain for the purchase of land there?

A. Yes, sir; two.

Q. Made two, did you?

A. Yes, sir.

Q. Who did you make your bargain with?

A. Mr. Gardner.

Q. Sir?

A. John J. Gardner.

Q. Why did you make the bargain with him?

A. Because he was the only authorized agent that I knew in the place had charge of it.

Q. Well, when was this?

A. I could not hardly tell you; it is a number of years ago.

Q. During Patrick O'Reilly's lifetime?

A. Yes, sir; he was living at the time.

Q. Did you pay any money to Gardner and take a receipt before you got your deed or anything of that sort?

A. Yes, sir, I did.

Q. Have you got the receipt for the money that you paid him?

A. No, sir; the property has passed out of my hands a long time ago.

Q. (By the Court): Can you tell me how long ago it was?

A. A number of years, and during Patrick O'Reilly's lifetime.

Q. Can you tell how long ago?

A. About twenty-six years ago.

Q. (By Mr. Grey): Who did you receive the deed from?

A. From Mr. Gardner.

Q. And who did you pay the money to?

A. Mr. Gardner; it was $800 cash paid and the balance, $1,000, mortgage on the two lots.

Q. And who did you give the mortgage to; that is, who did you leave it with when it was made?

A. I left it with Mr. Gardner.

Q. Well, you say there were two purchases that you made?

A. Two lots adjoining.

Q. Were they bought at different times?

A. Well, only a few days between them; first, when we got the corner lot, we thought then that it was not large enough, and then we took the next one to it.

Q. Where was it?

A. Corner of Tennessee Avenue.

Q. Tennessee and what?

A. Tennessee and Pacific Avenues.

Q. Which corner?

A. Well, it was the southwest corner.

Q. Now, Mr. McCullough, did you do anything with the property while you had it?

A. Yes, sir, we put a house on it.

Q. How long did you occupy it?

A. About two years.

Q. Did you sell it to somebody else then?

A. Yes, sir.

Q. Well, has it been occupied since you sold it?

A. Yes, sir, has passed through three different persons since that.

Q. Has it been occupied all the time?

A. Yes, sir.

Q. All the time a house on it?

A. All the time a house on it.

Q. That is all.

Cross-examination by MR. VOORHEES:

Q. Who made the deed to you?
A. Well, Mr. Gardner gave me the deed.
Q. Who was it signed by?
A. I don't know who it was signed by.
Q. Was it signed by Henry Felix?
A. I could not say.
Q. Can't say whether it was signed by him or not?
A. No.
Q. That is all.

IRVING LEE, a witness produced on the part of the complainant, sworn.

Direct-examination by Mr. S. H. Grey.
Q. Where do you live?
A. Atlantic City.
Q. Did you hold any official position there?
A. I was Commissioner of Appeals, yes, sir.
Q. Do you know Mr. Gardner?
A. Yes, sir.
Q. During the time that you were Commissioner of Appeals, did anything occur in relation to the land of the O'Reilly estate in Atlantic City?
A. My recollection of the matter is that Mr. Gardner there made an appeal there for a reduction.
Q. Of what?
A. Of taxes.
Q. Who did he appear for and in whose behalf did he appeal?
A. In behalf of Patrick O'Reilly estate.
Q. Did anybody else ever appear for that estate before that Board?
A. Not to my knowledge, no, sir.
Q. How long were you on the Board?
A. Why I should think I was there for four years; I am not positive; I think it was four years though.
Q. Did you ever do any hauling of sand down there on the property between New York and Tennessee Avenues and on the south side of Pacific Avenue?
A. Yes, sir.
Q. Who employed you to do that?

A. Mr. Gardner.

Q. What were you hauling sand there for?

A. To fill up the lots.

Q. Did you ever have anything to do with making sidewalks down there?

A. I think I did.

Q. Who employed you to do that?

A. John J. Gardner.

Q. Were you ever employed in regard to doing anything about any other property of O'Reilly in Atlantic City?

A. None only what lies between New York and Tennessee Avenues. I done it along between Tennessee and New York Avenues, both above Pacific and below.

Q. That is, between Atlantic Avenue and the sea, and between Tennessee and New York Avenues?

A. Yes, sir.

Q. Well, who employed you to do the work on the other property to the north of Pacific Avenue?

A. Mr. Gardner.

Q. Were you ever examined as a witness in May's Landing at any of the suits in regard to the title or possession of the property between New York and Tennessee Avenues south of Pacific?

A. Yes, sir.

Q. Who called you as a witness?

Mr. Pancoast: We make a special objection to this.

The Court: On what ground?

Mr. Pancoast: I can't see for the life of me on what ground it can be competent. It can't in any way go to prove the point in issue in this case.

Mr. Grey: I propose to show in this case that this gentlemen was a witness in these cases that have been referred to, that he was called on the part of the O'Reillys and examined for the purpose of establishing Gardner's agency as their representative. That is what I propose to prove. This is one of the ways to do it.

The Court: It is competent in that point of view. What have you to say against that, Judge?

Mr. Pancoast: Object to it as incompetent.

The Court: The witness may answer the question.

Q. (Read by stenographer: "Who called you as a witness?")

A. Mr. Gardner.

Q. For whom was Mr. Gardner acting as you understood?

A. For Mr. O'Reilly as I understood.

Q. Were you examined—

Q. (By the Court): Were any of the O'Reillys there at the time?

A. Yes, sir, that gentleman there, Mr. James O'Reilly (pointing to gentleman sitting at table).

Q. Mr. Gardner asked you to go?

A. Yes, sir. I understood Mr. Grey to ask me who subpœnæd me.

Q. No, sir, who called you?

A. It was through the request of Mr. Gardner that I was there.

Q. (By Mr. Grey): Mr. James O'Reilly was there?

A. Yes, sir.

Q. Was he there while you were delivering your testimony?

A. I think he was.

Q. (By the Court): Who examined you?

A. Why Mr. Pancoast, I think; I think he was the counsel.

Q. (By Mr. Grey): And did Mr. Voorhees ask you a few questions?

A. No, Mr. Voorhees didn't question me at all.

Q. How often were you at May's Landing giving testimony in these O'Reilly cases?

A. I never was on the stand but once; I have been called there, but not examined.

Q. Now, Mr. Lee, at that trial were you asked by Mr. Voorhees this question: "What is your business?" and did you make this reply: "I take contracts for grading streets and lots and so on?"

A. Yes, sir, that is, as nearly as I can recollect.

Q. And were you also asked this question: "In Atlantic City?" to which you answered "Yes, sir." Also "Q.

How long have you been in that business? A. I have been there since May, 1861."

A. Yes, sir.

Q. (Continuing reading). "Q. Did you ever do any grading on this land of O'Reilly? A. Some, yes. Q. In front of the Lindley cottage, between that and the sea? A. I have never deposited any there, I have taken sand there to deposit it in other places. Q. Under whose direction? A. Under Mr. Gardner's. Q. Do you know who he was acting for? A. Yes; Mr. O'Reilly." Did you deliver that answer in the presence of Mr. James A. O'Reilly?

A. Yes, sir.

Q. (Continuing reading). "Q. You have taken sand from there to deposit in other places? A. Yes. Q. How long ago was that? A. I think that was about 1881." Are those questions and answers, as read to you, the questions and answers put and answered by you?

A. Yes, sir.

Q. That is all.

Cross-examination by MR. VOORHEES:

Q. When was it you were examined there?

A. I don't recollect.

Q. The Court: Does it give the date, Mr. Grey?

A. Mr. Grey: December 14, 1886.

(By the Court): Does that correspond with your recollection?

A. About that time, I think so.

Q. (By Mr. Voorhees): Do you know whose suit it was?

A. Yes, sir.

Q. Who was it?

A. Patrick O'Reilly, Mr. Lindley and Robert Mares and several different parties.

Q. That is all, sir.

JOHN W. DONNELLY, a witness produced on the part of the complainant, sworn.

Direct-examination by Mr. S. H. Grey.

Q. Where do you live?

A. Atlantic City.

Q. Did you ever make any bargain for the purchase of lands on the corner of Tennessee and Pacific Avenues in Atlantic City, fifty feet by two hundred and fifty feet?

A. I did, sir.

Q. With whom did you make your bargain?

A. John J. Gardner.

Q. Whose lands did you understand that they were?

A. Patrick O'Reilly.

Q. Was that in the lifetime of Patrick O'Reilly?

A. 1872.

Q. Why did you make your bargain with Gardner?

A. For the reason—(interrupted).

Mr. Voorhees: Is that a proper question; why did he make his bargain?

The Court: It is a short way to get at it.

Mr. Grey: I think it is the fairest way.

Witness: Here is a paper of the transaction with Mr. Gardner and my wife in 1870, with my concurrence, Judge.

Q. Now, let me have the paper.

Mr. Voorhees: We enter the same objection as Mr. Pancoast did to all the others.

Q. Mr. Donnelly, the transaction you have just spoken about was in 1872?

A. Yes, sir.

Q. Did you have before 1872 another transaction in regard to the purchase of lands, or did your wife have one?

A. My wife had one with regard to renting.

Q. Now, did your wife receive any receipt for anything paid by her by way of rent; look at this paper dated July 25, 1870, and say whether that is the receipt that your wife received?

A. That is the receipt my wife gave me as received from John J. Gardner.

Q. Do you know the handwriting of Mr. Gardner?

A. I do.

Q. Is it or not in his handwriting?

A. It is as far as I am capable of judging.

Mr. Grey: I offer that.

(Objected to on the same ground).

(Said receipt marked C. 32 and reads as follows):

"J. J. GARDNER,
REAL ESTATE AGENT, MAYOR'S OFFICE,
ATLANTIC CITY, N. J., July 25, 1870.

Rec'd of Mrs. Donnelly $150 in full for rent of cottage, foot of Tennessee Avenue, Atlantic City, N. J., for season of 1870. J. J. Gardner, agent."

Q. I direct your attention to the receipt there which you have just shown purporting to be a receipt for rent.

A. Yes, sir.

Q. Now, who owned that cottage as you understood?

A. Patrick O'Reilly.

Q. After this you say, in 1872, you had a transaction with Gardner and bargained with him for the purchase of a lot?

A. Yes, sir.

Q. At the corner of Pacific and Tennessee Avenues?

A. Yes, sir.

Q. Was that lot at that place the same one in respect to the one you had previously paid rent for?

A. Yes, sir.

Q. The same lot?

A. Yes, sir.

Q. Now you are asked why it was you went to Gardner to make that bargain?

A. Yes, sir.

Q. Why did you go to him to make the bargain?

A. (Witness points to receipt marked C. 32).

The Court: Because he had been living there in the cottage and paying rent to Gardner as agent. I can see that he points to that paper.

Q. Then you contracted with him as the agent of O'Reilly?

A. Yes, sir.

(By the Court): How long did you occupy that?

A. One season.

Q. (By Mr. Grey): Well, after you had bargained with Mr. Gardner, did you get a deed for the property?

A. I did. I will give you my idea how I bargained with Mr. Gardner.

Q. (By the Court): Was it by word of mouth or in writing?

A. Word of mouth.
Q. Then you got a deed afterwards?
A. Yes, sir.
Q. (By Mr. Grey): Well, have you got that deed?
A. I have.
Q. Have you got it with you?
A. I have.
Q. Will you please produce it.
A. (Witness produces a deed).
Mr. Grey: I offer this deed in evidence. It is dated June 20, 1872.
(Received in evidence and marked C. 33).
The Court: It reads: "Between Patrick O'Reilly, of the City of Reading, Berks County, and State of Pennsylvania, railroad contractor, and Catherine C., his wife, of the one part, and (it is printed up to that point) John W. Donnely of the City and County of Philadelphia," of the other part; witnessed by John F. O'Reilly and acknowledged before John F. O'Reilly, a Commissioner for the State of New Jersey; recorded 10th of September, 1872, in Atlantic City Clerk's office, May's Landing, New Jersey. It is dated June 20, 1872.
Q. From whom did you receive the deed which you have just exhibited?
A. John J. Gardner.
Q. To whom did you pay the money?
A. I think I paid the cash to him; I know I paid the mortgage to him and disremember about the first payment; but I think I paid it to Gardner; but I know I paid the mortgage, the $1,200. I think it was.
Q. That was a mortgage given at the time of the purchase, was it?
A. Yes, sir.
Q. For part of the purchase money?
A. Yes, sir; and John J.—(interrupted).
Q. Did you have any other negotiation with Gardner for the purchase of other O'Reilly property in Atlantic City?
A. I have any negotiation with him?
Q. Yes, land in front of this property.

A. Through him bringing Mr. James O'Reilly to my place I bought another part.

Q. Since the death of the father?

A. That is since the death of the father.

Q. When?

A. That was in 1882.

Q. Well, what was said at that time in regard to the purchase of property by Mrs. Donnelly in front of the property that you purchased in '72?

A. Mr. Gardner and Mr. O'Reilly called on me and stated that a gentleman was come to buy the front. Mr. Gardner said that my wife had a written agreement from his father.

Q. From whose father?

A. Mr. O'Reilly's father, and also from Mr. Gardner as agent, that when that property was sold, if I would give as much as anybody else I had a prior claim. My wife had that written agreement.

Q. Well, now, what did Mr. James A. O'Reilly say, if anything, in response to that?

A. Mr. James O'Reilly and myself pleasantly closed the bargain the next day.

Q. On the basis of the written agreement?

A. No, sir—(interruption).

The Court: His statement was this: The statement was that his wife, when she bought the other property, got a written agreement from Mr. Gardner that she should have the option to buy this if it was ever offered in the market.

Witness: During the ten years.

Mr. Grey: From Mr. John J. Gardner as agent and Mr. O'Reilly.

Q. (By the Court): What became of that agreement?

A. My wife deceased three years ago, and I was going to New York; my daughter and granddaughter have all those papers, if they are in existence, in New York.

Q. Did you ever see the paper yourself?

A. No, sir.

Q. You never saw the agreement that your wife spoke of?

A. No, sir; Mr. Gardner spoke of it.

Q. You didn't know of its existence until Gardner mentioned it himself?

A. Yes, sir.

Q. And what Gardner said was that he himself had given a written agreement in behalf of old Mr. O'Reilly to your wife?

A. His language was this: that Mr. O'Reilly had come down, and that a gentleman at 11 o'clock was coming to buy the front, and that he told Mr. O'Reilly that he could not sell it until he had an interview with me. I was then an invalid and expected to die; I came up on the beach and my wife came and said there was a couple of gentlemen in the house and wanted to see me. I said I didn't want to see anybody. She said Mr. Gardner is there. I said—

Q. Never mind that, but tell us what passed between Gardner and you?

A. I am coming to the point of Mr. Gardner.

Q. I want you to tell what occurred with Mr. Gardner.

A. I went in the parlor and Mr. Gardner introduced Mr. O'Reilly to me. Is that right?

Q. Yes, sir. Proceed now to what occurred between Mr. O'Reilly and Mr. Gardner.

A. Mr. Gardner says: "Mr. Donnelly, Mr. O'Reilly, the son of Mr. Patrick O'Reilly, is here to sell this front. I told him he could not sell it until he had an interview with you, for your wife had so and so."

Q. Had what? Just repeat it over again, as if you hadn't said it before.

A. I have told it before.

Q. I wish you to repeat it.

A. Mr. Gardner said to Mr. O'Reilly that my wife had a written agreement—in my presence—from Patrick O'Reilly, his father, and John J. Gardner, as agent, that when that property was sold, if I would give as much as anybody else, I had the prior right. That is all.

Q. Can you recollect who Mr. Gardner said had signed the paper—who had actually signed his name to the paper that your wife had?

A. Nothing passed in regard to that beyond that. I said to my wife we don't want it. I asked the price, and I took her aside privately and said I was going to die, and she said no, I was going to get well, and so I said: "You know

I don't transact any business on Sunday." And I said to Mr. Gardner: "At 9 o'clock to-morrow morning I will meet you at your office," and I went to Mr. Gardner's office and closed the bargain.

Q. (By Mr. Grey): The following morning?

A. Yes, sir.

Q. And when you got there did you see Mr. O'Reilly there or did you see Mr. Gardner alone?

A. I won't permit myself to answer that, because my memory has been affected since this.

Q. You closed the bargain?

A. I did. I can't say whether it was with Mr. O'Reilly or Mr. Gardner, or whether they were both there or only one there, but I closed the bargain.

Q. Now, as a consequence of that, did you get a deed for the property?

A. Yes, sir.

Q. Have you got that deed with you?

A. Yes, sir.

Q. Will you please produce it?

A. I will.

(Witness produces a deed dated 10th of August, 1882, between Catherine C. O'Reilly, Francis P. O'Reilly and James A. O'Reilly, executors of the last will and testament of Patrick O'Reilly, deceased, in execution of the power in them vested as such executors, and Catherine C. O'Reilly, of the first part, and Mary Ann Donnelly, wife of John W. Donnelly, of the other part; it then recites the will and is signed by Catherine C. O'Reilly, Francis P. O'Reilly and James A. O'Reilly, executors of Patrick O'Reilly, deceased, and is not signed by Catherine C. O'Reilly in her own right as the deed last produced and marked C. 33 is; is acknowledged before the Judge of Berks County, Pennsylvania, and has a certificate attached, and recorded in Atlantic County Clerk's office, September 1, 1882, in Book 90 of Deeds, pp. 64, &c.)

Mr. Grey: I offer it in evidence.

(Received in evidence and marked C. 34).

Q. That is all.

Mr. Pancoast: No cross-examination on the part of the O'Reillys.

THOMAS C. GARRETT, a witness produced on the part of the complainant, sworn.

Direct-examination by Mr. S. H. Grey.

Q. Where do you live?

A. Atlantic City.

Q. What is your business?

A. Real estate.

Q. Were you ever collector of taxes in Atlantic City?

A. I was.

Q. Between what periods?

A. From 1873 to 1875—'85 I mean.

Q. '85?

A. '85.

Q. Did you ever have occasion to collect any taxes assessed upon the property of O'Reillys?

A. Yes, sir.

Q. Patrick O'Reilly?

A. Yes, sir.

Q. Well, from whom did you collect the taxes?

A. I sent the tax bills always to John J. Gardner.

Q. Why did you send them to him?

A. I understood he was the agent of Patrick O'Reilly estate.

Q. Well, who paid them?

A. Gardner; I received the most of the money from John J. Gardner.

Q. That is all.

Not cross-examined.

JACOB KEIM, the complainant, re-called.

Direct-examination by Mr. S. H. Grey.

Q. Did you ever have any interview with Mr. Peter L. Voorhees in regard to the bargain that you had for the purchase of the O'Reilly property—Patrick O'Reilly property?

A. I can't say that it was exactly a bargain in it—

The Court: No, no, no.

Q. In reference to it?

Q. (By the Court): About it?

A. Yes, sir. I met Mr. Voorhees.

Q. (By Mr. Grey): Wait a minute, Mr. Keim.

Mr. Pancoast: This examination is within the general objection.

Mr. Voorhees: We object to it.

Q. (At request of Mr. Grey stenographer reads the question as follows: "Did you ever have an interview with Mr. Peter L. Voorhees in regard to the bargain that you had for the purchase of the O'Reilly property—Patrick O'Reilly property?")

A. The first time that I ever had any conversation with Peter Voorhees in regard to this matter I met him in his office and I was trying to make the inquiry, probably rudely, I thought so afterwards, into his business, when the suit might come on; this was in 1882.

Q. What suit?

A. This Lindley suit.

Q. Go on.

A. And, of course, I asked him a little about it, but, lawyer-like, he soon turned to me and asked me what I knew about matters in relation to it, which was all right and proper. Then I told him that probably I was rude or impertinent and everything else, but I had an interest in this matter which probably he didn't know; I had bought the property, "Yes," he said, "I was told so."

Q. Well, now, after that, did you see Mr. Voorhees again and have any conversation with him on the same subject?

A. I saw him at May's Landing after the return the second time of the suit from the Supreme Court and it was put off at the court. After dinner we were sitting on the porch and got talking, and I said I was very sorry that it was put off, that I had money lying idle in order to meet the payment of that property. That was about the amount—

Q. Well, did he say anything?

A. He said—Oh, yes, that was not—as much as to say it ain't business-like to do that; that is, there was a call for money and so on, in that sense. I can't say the words exactly.

Q. Now, after that, did you see him and have another conversation with him about it?

A. Yes, sir; that was in 1889. I remember that date

pretty well. After the business was transacted he and I walked on the porch.

Q. Where?

A. Old Chester House used to be.

Q. (By the Court): Where?

A. Atlantic City, and I spoke of it. I said I was very sorry that the suits of that land were postponed so long, put off, I wanted to improve the property, and especially put down that toboggan, or whatever it was called. Well, he said it would be on; that the suit would come on. Said "If some of you don't get sick again." I believe both sides had been sick for several courts. He said: "I hope we won't be sick all the time."

Q. (By Mr. Grey): Well, who said that?

A. Where was it?

Q. Who said "I hope we won't be sick all the time?"

A. Mr. Voorhees.

Q. Did you state the time that you had the first interview with Mr. Voorhees in his office?

A. 1882.

Q. (By the Court): In this last interview you said that after the business was transacted you had a walk on the stoop; what business did you refer to?

A. He paid me a mortgage of $2,000, and that was the business.

Q. The mortgage had nothing to do with this matter?

A. No, sir.

Q. (By Mr. Grey): Mr. Keim, you stated yesterday that you had had some conversations with Lindley, and, I think, Adams?

A. Yes.

Q. When was it that you heard or had those talks?

A. When?

Q. Yes. I don't think you stated the time.

A. About this time of year or a little later in '92-'91.

Q. '91. Now, was it Adams or Lindley that you had the talk with in '91?

A. It was Lindley in '91; Adams in '90?

Q. What time of year in '90 was it you had the talk with Adams?

A. Very nearly the same time of year, a little latter; June, perhaps, likely.

Q. And those were the dates of the conversations which you repeated yesterday in your examination, were they?

A. Sir?

Q. Those were the years of the conversations that you repeated yesterday?

A. Yes, sir.

Q. That is all.

No cross-examination.

JOHN L. YOUNG, a witness produced on the part of the complainant, sworn.

Direct-examination by Mr. S. H. Grey.

Q. Mr. Young, where do you live?

A. Atlantic City.

Q. Do you own any property along the board walk?

A. I do.

Q. Do you know Mr. James Griffith?

A. Griffith?

Q. Griffith?

A. Yes, sir.

Q. Did you have any conversation with Mr. Griffith in relation to purchasing the interest of Jacob Keim in the O'Reilly property—Patrick O'Reilly property?

A. I believe I did.

Q. When was it?

A. I think it was about a year ago; something like that.

Q. Now, what was it that was said?

A. Why, the way that came about he wanted to buy Mr. Keim's interest and Mr. O'Reilly's interest and Mr. Lindley's interest, and the whole business to clear a law suit, the way I understood it, and it all came to so much that there was not anything in it.

Q. This was how long ago?

A. I think it was about a year ago.

Q. What season of the year was it?

A. I think it was about this time of the year if I ain't mistaken.

Q. (By the Court): Did you hear of his having got a deed

at any time—Griffith—or contract; was it before or after his contract?

A. I heard he had a contract or option.

Q. Was it before or after he had this conversation with you?

A. I think it was afterward.

Q. After he had the conversation he got the option or contract?

A. Yes, sir.

Q. (By Mr. Grey): You heard of his having some paper in relation to the property?

A. I heard he had bought the ground afterwards, and then somebody else had bought.

Q. I want to know whether your hearing that Griffith had bought the ground was after you had talked with Griffith about Keim's claim and Keim's interest in the ground?

A. I think it was after that. The way I understood it Mr. Griffith had an interest in that part and wanted to buy out all the rest, and wanted to buy the whole interest there.

Q. (By the Court): He was picking up the different conflicting claims?

A. Yes, sir.

Q. And, among others, he wanted to get the Keim interest?

A. That was it. He was to buy up all the interest so that there would be no question about it, and turn it into a company; that is how I came to have the conversation, and he came to me about it.

Q. (By Mr. Grey): Did Mr. Griffith tell you at that time that he had written any letter or made any proposition to Mr. Keim?

A. I think he did; I think he had been to all of them, the way I understood it.

Q. Did he tell you how long before you had this talk that he had written or seen Keim?

A. No, I don't remember that part of it.

The Court: What is the date of the letter put in evidence?

Mr. Grey: September 14, 1881.

Q. That is all.

Not cross-examined.

Recess for lunch.

AFTERNOON SESSION.

ISRAEL G. ADAMS, a witness produced on the part of the complainant, sworn.

Direct-examination by Mr. S. H. Grey.

Q. Where do you reside?

A. I reside at Linwood, New Jersey, but do business in Atlantic City.

Q. What business are you in?

A. Real estate and insurance business.

Q. Are you one of the firm engaged in that business?

A. Yes, sir.

Q. What is the name of the firm?

A. I. G. Adams & Co. I have a partner.

Q. Did you make any application to Mr. Keim or his son Newton in reference to the purchase of their interest in the Patrick O'Reilly lands in 1890?

A. I had a conversation with Mr. Newton Keim. I don't remember just what was said on the subject.

Q. Yes. Well, was it with relation to that matter?

A. I think it was.

Q. Well, during the time that the matter was pending, did you have any conversation with Mr. James A. Griffith? Do you know him?

A. I know Mr. Griffith.

Q. Well, did you have any conversation with him on that subject?

A. Mr. Keim, in one of the conversations—I don't remember the rest of it—stated that he paid a certain amount on that property, and upon another occasion, in talking with Mr. Griffith, I said: "How about the Keim claim?" and he said he didn't think it amounted to anything. I told him that Mr. Keim contended that it did.

Q. Well, did you tell him what Mr. Keim had said as to the character of his claim?

A. I don't remember the language used, but something about Mr. Keim had made a payment, I think he said $500 on account.

Q. On account of what?

A. On account of the purchase of this land.

Q. Of which land?

A. Of the O'Reilly land on the Ocean front east of New York Avenue.

Q. And what interest had Griffith in the New York Avenue property?

A. Mr. Griffith claimed that he had bought out the Rotherham heirs and would eventually own it.

Q. Was this land that Keim claimed he had an agreement to purchase the same land that Griffith claims that he ought to have; was it the same land?

A. Yes, sir; the same land.

Q. Now, when was this?

A. I don't remember. It has been possibly a couple of years ago.

Q. What, a couple of years ago?

A. Possibly; I don't remember the date of it.

Q. Did you have anything to do with the Chester county house; the sale of it?

A. Yes, sir.

Q. How about that; was it the same year you sold that?

A. Very likely it was.

Q. Well, did Mr. Griffith make any other purchases or attempt to make any other purchase in relation to this land of anybody else's interest?

A. Yes, sir; I don't know whether I knew the reason why or not, but he purchased the Mr. O'Reilly's or Mrs. O'Reilly's interest.

Q. Mrs. O'Reilly's interest?

A. Yes, sir; bargained for it.

Q. When was that?

A. Possibly between one and two years ago, I don't remember.

Q. Was that after this conversation in which you spoke to him about Keim's claim and the $500?

A. I think it was.

Q. Did Mr. Griffith have any lands up there between Tennessee and New York Avenues and Pacific Avenue and the Atlantic Ocean?

A. Not other than this property.

Q. And was that the property which you say he had bargained with the O'Reillys to get?

A. That is what he had said he had bargained for.

Q. I mean that.

Q. (By the Court): The same property that you had been talking about Keim having a claim on?

A. The same property.

Q. That is all.

Mr. Pancoast: No question.

Mr. Harned: No questions.

ISRAEL G. ADAMS, re-called.

By Mr. S. H. Grey:

Q. Mr. Adams, you say that Mr. Griffith agreed to buy the O'Reilly interest. Do you know anything about any agreement in writing between Griffith and O'Reilly?

A. Never saw any.

Q. Did you ever have any conversation with Mr. Griffith with regard to the matter as to the existence of such a paper?

Q. (By the Court): Did you learn from him whether or not there was a written agreement?

A. I imagined there was, but I didn't ask him; but I supposed there was.

Q. (By Mr. Grey): Now, do you know whether he made any transfer of any interest he had in such an agreement to anybody, and, if so, who did he transfer it to?

A. Well, I never saw any transfer.

Q. Well, do you know Mr. Hall?

A. I know Mr. Hall, yes, sir.

Q. Do you know anything about whether he claimed to have a transfer of Griffith's rights?

A. The property was deeded to Mr. Hall.

Q. Now, did you prepare the deed?

A. No, sir.

Q. Was it prepared in your office?

A. No, sir.

Q. Do you know who did prepare it?

A. I have the impression that Mr. Harned did.

Q. (By the Court): Mr. Harned?

A. I think so, still I am not sure of that.

Q. (By Mr. Grey): Do you know about the transfer of the title from Mr. Hall to Mr. Shelton?

A. I know it was transferred, because I saw the deed after it was done.

Q. How did you get the deed, who sent it to you?

A. Mr. Bacharach bought of Mr. Wood, and the deeds were sent to me to put on record.

Q. What did Mr. Bacharach have to do with it?

A. He bought the one hundred feet on which Griffith had occupied.

Q. But the deed was made from Hall to Shelton?

A. And conveyed to Walter Wood by Shelton.

Q. And after Wood got it from Shelton he conveyed to Bacharach?

A. Yes, sir.

Q. Was there a deed made from Wood to Bacharach?

A. Yes, sir.

Q. Did you ever see it?

A. Yes, sir.

Q. What has become of it?

A. I think Mr. Bacharach has it.

Q. Did the deed ever come into your possession?

A. The Bacharach and Wood deeds came into my possession to put on record.

Q. Why didn't you put it on record?

A. Mr. Keim had an injunction filed with the clerk to prevent it.

Q. That was it?

A. Yes, sir.

Q. Now you say you know Mr. Griffith. Where does Mr. Griffith live, James A. Griffith?

A. Mr. Griffith lives at 822 Greene Street.

Q. (By the Court): Where?

A. Philadelphia.

Q. (By Mr. Grey): And where did Mr. Hall live?

A. I don't know his address.

Q. What business was he in?

A. He is in Mr. Wood's office.

Q. What Mr. Wood?

A. R. D. Wood & Sons, 626 Chestnut Street.

Q. Is that the firm of which Mr. Walter Wood is a member?

A. Yes, sir.

Q. (By the Court): And he lives out of the State as far as you know?

A. I think he lives in Pennsylvania, but I don't know.

Q. Out of this State?

A. Yes, sir.

Q. (By Mr. Grey): Now, do you know the nature of Mr. Hall's employment; what does he do? Is he a member of the firm or what is he?

A. I don't think he is. I think he is a clerk there.

Q. How old a man is he?

A. Well, I should judge he was forty years old.

Q. Well, now where does Mr. Shelton live?

A. I understand he lives in New York; I have never met him; I don't know what his business is.

Q. Where does Mr. Walter Wood live?

A. Somewheres in Philadelphia.

Q. Sir?

A. Somewheres in Philadelphia.

Q. He is the gentleman you referred to as a member of the firm of R. D. Wood & Co. Now where does Mr. Bacharach live?

A. His place of business is 429 Market Street, Philadelphia, but I guess I have got his home address here.

Q. What is his name?

A. Simon Bacharach.

Q. What is his residence?

A. I think I have his address either here or at my office; I have not got it with me.

Q. (By the Court): Somewhere in Philadelphia?

A. Yes, I think 722 North Seventh Street, but I am not sure. It is in Philadelphia, at least.

Q. (By Mr. Grey): Mr. Adams, do you know whether or not Mr. Shelton is in the employ of Mr. Wood in his New York office?

A. I think he is; I am not positive; I never met the gentleman.

Q. Now, do you know anything about how these various deeds came to be made, one to Hall and another from Hall to

Shelton, and then from Shelton to Wood, and then from Wood to Bacharach?

A. Mr. Bacharach bought the land because he had advanced money, and finally took the Griffith plant; he wanted the land inasmuch as he had the scenic railroad on the ground.

Q. Then he had been there under Griffith?

A. No, sir; he loaned Griffith money and Griffith didn't pay him.

Q. He was there as a creditor of Griffith, who had been on the property with the scenic railway, or something of that sort, is that the idea?

A. Yes, sir.

Q. So that he took his title from Wood in payment of the debt that Griffith owed him, is that the idea?

A. No, when he had become owner of the Griffith plant then he bought the ground—the land.

Q. And he bought from whom?

A. From Walter Wood.

Q. Well, do you know whether Mr. Bacharach had any evidence of debt from Mr. Griffith, a bill of sale or anything of that sort for personal property?

A. It seems to me that when he made the second loan to him he took a bill of sale, with the agreement, of course, that if he repaid the loan he should have his property back.

Q. Was that real estate or personal property that he was to have back?

A. Personal property.

Q. When this transaction came about between Wood and Bacharach was that debt part of the consideration for the transfer from Wood to Bacharach?

A. I know it was not.

Q. Did you negotiate that operation?

A. Well, I can't say I negotiated it. I guess Bacharach did it himself, but I used to hear him talking about it.

Q. How did you happen to know that this old debt of Griffith to Bacharach was not part of the consideration for the transfer from Wood to Bacharach?

A. Mr. Bacharach said that inasmuch as he owned the plant he thought he ought to own the land.

Q. Do you know that this old debt of Griffith to Bacharach had nothing to do with the transfer from Wood to Bacharach?

A. I know that had nothing to do with it. That had nothing to do with it.

Q. Then you were acting in the matter either for Bacharach or Wood?

A. I don't know that; I was not acting in either capacity.

Q. You were taking some action in the matter while it was still pending?

A. Mr. Bacharach said if he had to take title he would put the whole matter in my hands.

Q. Did he?

A. He has to rent, yes, sir.

Q. Did he put it into your hands to draw the papers or examine the title?

A. No, sir.

Q. Now, in these conversations in reference to this matter between you and Bacharach, you say you had knowledge of the fact that Keim had put up $500 and claimed to own that property; did you say anything to Bacharach about that matter?

A. I don't remember whether I did.

Q. Now, don't you remember that you did?

A. I don't remember, no; but the chances are that I did say something.

Q. (By the Court): Would that be your habit if parties were dealing with you and you knew something about the title to tell him?

A. Yes, sir, I should tell him.

Q. (By Mr. Grey): You would think if you had that knowledge and of what he proposed that you ought to tell him?

A. Certainly.

Q. And your impression is you did tell him?

A. Yes, sir, but I don't remember positively telling him though; the chances are that I did.

Q. Now you didn't put these deeds of record?

A. The two deeds? No, sir.

Q. What did you do with them?

A. I returned them to Mr. Bacharach.
Q. Both deeds?
A. Yes, sir.
Q. This Bacharach deed conveyed all the property that was conveyed to Wood, did it?
A. Yes, sir.
Q. (By the Court): Which deeds were not recorded?
A. From Walter Wood to—(interrupted).
Mr. Grey: The two deeds that were unrecorded are these as I understand it: Shelton to Wood, and Wood to Bacharach.
Q. (By Mr. Grey): Have you seen Mr. Bacharach since the deed was sent back to him?
A. Several times.
Q. Then I suppose he knows the reason why it was not recorded?
A. I told him that.
Q. Did you tell him that when you sent it back to him?
A. Yes, sir.
Q. You had several conversations with Bacharach about this before he made the purchase from Wood?
A. I don't think I had very much to say about it until after the purchase.
Q. You had some talk with him before the purchase?
A. No, I think Griffith attended to that part himself.
Q. That is before the deed from Wood to Bacharach?
A. Yes, sir; he went to Mr. Kremer, I think, Mr. Wood's brother-in-law, about purchasing the property back for Bacharach.
Q. Who went to Mr. Kremer?
A. Griffith did, about purchasing the property for Bacharach.
Q. But the title was in Shelton?
A. But Mr. Kremer seemed to manage the business.
Q. And Mr. Kremer was a brother-in-law of Mr. Walter Wood?
A. Yes, sir.
Q. And Walter Wood has a brother by the name of George?
A. Yes, sir.

Q. Do you know who prepared the deed from Shelton to Mr. Wood?

A. No, sir; I don't know.

Q. Well, do you know who prepared the deed from Mr. Wood to Mr. Bacharach?

A. I think Mr. Kremer had it prepared; I think somebody in his office.

Q. Somebody in Kremer's office?

A. Yes, sir; Kremer is a member of the firm of R. D. Wood & Co., 626 Chestnut Street, Philadelphia; R D. Wood & Sons.

Q. And that is the same firm of which Mr. Walter Wood is a member?

A. Yes, sir.

Q. And of which Mr. George Wood, a brother of Walter, is a member, whose brother-in-law is Mr. Kremer?

A. Yes, sir.

Q. (By the Court): Was Mr. Griffith in any way connected with R. D. Wood & Sons?

A. No, sir.

Q. How came he to get into this?

A. Griffith told him that he could earn a certain amount of money last summer and said if they would loan him so much money that he would earn so much of the plant, and that he would apply the earnings on his debt.

Q. So he gave them this property for security?

A. Yes, sir.

Q. Is that it?

A. Yes, sir. Mr. Griffith said he earned a certain amount of money last summer.

Q. (By Mr. Grey): Who said that?

A. Mr. Griffith said that, and he would take the earnings of the plant toward the debt of Bacharach, providing the Woods would lend him a certain sum of money; but what he did with the earnings I don't know; and Bacharach had the plant and wanted the ground; and Kremer told him to take his traps off. The Woods were to buy from Mr. O'Reilly, from the Messrs. O'Reilly.

Q. (By the Court): You said something about the Woods buying it of O'Reilly; what do you know about that?

A. All I know is the Woods got a deed from the O'Reillys.
Q. (By Mr. Grey): They got a deed from Shelton?
A. No. What is the first man's name?
Q. You have already stated that Mr. Hall got a deed from O'Reilly.
Q. (By the Court): Supposing that Hall and Shelton were representatives of Wood, the deed was made to the Woods from Griffith, wasn't it?
A. No, sir; the deed was made from the O'Reillys to Hall.
Q. (By Mr. Grey): Now, then, Hall conveyed to Shelton?
A. Yes, sir.
Q. And Shelton conveyed to Wood?
A. Yes, sir.
Q. Well, now, Mr. Adams, all of this transaction was during the last summer, wasn't it?
A. Yes, sir, I think it was.
Q. (By the Court): Within a year?
A. Yes, sir.
Q. Less than a year from this time?
A. Yes, sir.
Q. (By Mr. Grey): That is all.
No cross-examination.

CLEMENT J. ADAMS, a witness produced on the part of the complainant, sworn.

Direct-examination by Mr. S. H. Grey.
Q. Where do you live?
A. Atlantic City.
Q. And what was your business down there?
A. Real estate and insurance.
Q. How long have you been in business down there?
A. About eleven years.
Q. In that business?
A. Yes, sir.
Q. Have you ever been a collector of taxes down at Atlantic City?
A. Yes, sir, for the years '86, '87 and '88.
Q. Did you ever, as collector of taxes, receive any taxes assessed upon the property of Patrick O'Reilly and the property of his estate?

A. I did.

Q. Who did you receive it from?

A. John J. Gardner.

Q. Did you ever have any knowledge of any other person acting for that estate other than Mr. Gardner in reference to the payment of taxes?

A. I did not.

Q. Do you know who seemed to represent the estate there in all transactions affecting the lands in Atlantic City during those years, or during the eleven years that you have been in the real estate business; do you know who?

A. I do not. My authority came through a letter from James A. O'Reilly.

Q. No, I am not on the subject of taxes. (Stenographer reads the question as follows): "Do you know who seemed to represent the estate there in all transactions affecting the lands in Atlantic City during those years, or during the eleven years that you have been in the real estate business; do you know who?"

A. I generally understood Mr. Gardner.

Q. Now, in regard to these taxes, they were taxes assessed upon what property, in whose ownership?

A. The O'Reilly estate—P. O'Reilly.

Q. Did you ever receive any letters in regard to the matter of taxes from Mr. James A. O'Reilly, executor of the estate of Patrick O'Reilly?

A. I did.

Q. Will you look at this paper which I now show you, a letter dated January, 12, 1889, signed James A. O'Reilly, executor, &c., addressed Hon. J. J. Gardner, Atlantic City, and see whether you ever had that paper in your hands, and, if you did, where you got it?

A. (Looking at the paper). Yes, sir.

Q. You had it in your hands. Now, where did you get it from?

A. From Mr. O'Reilly.

Q. What Mr. O'Reilly?

A. I hardly know the difference between the parties; I think Mr. O'Reilly.

Q. Was it this gentleman sitting here, who now has it in his hands (pointing to Mr. James A. O'Reilly)?

A. I am under the impression it is the same gentleman; not knowing the gentleman, it is hard for me to distinguish after all these years.

(Said letter offered and received in evidence and marked C. 35, and is as follows):

"PHILADA., Jan'y 12, 1889.

HON. J. J. GARDNER, Atlantic City, N. J.

DEAR SIR:—Unless all the taxes for 1885, 1886, 1887 and 1888 have been paid by you, excepting the 50x150 south side Atlantic Avenue, sold to D. J. Wallings, for which he is liable, you will at once either pay them, saving the above exception, or pay the amount of the same to Israel G. Adams, who will pay them. Yours very truly,

JAMES A. O'REILLY,
Executor, &c."

Q. Mr. Adams, did you have any knowledge of Mr. James A. Griffith?

A. I know Mr. Griffith.

Q. Did you ever do any business for him in relation to lots lying between Pacific Avenue and the Ocean, Tennessee and New York Avenues, in Atlantic City?

A. Very few of those negotiations; I was present at some of them, of course.

Q. Which of them, and there was more than one, I suppose, at which you were present or of which you had knowledge?

A. I simply heard of these transactions that have been mentioned by my partner when on the stand.

Q. (By the Court): Your brother?

A. No, sir, cousin.

Q. The witness just on the stand?

A. Yes, sir.

Q. (By Mr. Grey): You had knowledge of those?

A. Yes, sir, in a general way.

Q. Did you ever have any conversation with Mr. Griffith in regard to the claim of Keim upon the property between the boundaries I have mentioned?

A. I think not.

Q. Did you ever hear Mr. Griffith in conversation with any one else speak of Mr. Keim's claim?

A. Not to my knowledge.

Q. That is all.

Mr. Pancoast: Nothing.

JOHN J. GARDNER, witness produced on the part of the complainant, sworn.

Direct-examination by Mr. S. H. Grey.

Q. Where do you reside?

A. Atlantic City.

Q. What is your business?

A. Real estate dealing and insurance matters.

Q. How long have you been in that business?

A. Been in the real estate business since '68; and then we have done—(interrupted).

Q. In the insurance business since when?

A. Done a general insurance business nine years I think; I am not sure about that.

Q. Do you hold any public office; if so, what? You are a member of Congress of the Second District of New Jersey?

A. I don't know, I have not been sworn in.

Q. Been elected?

A. Yes, sir.

Q. And you are in a state of hope?

A. An encouraging feature is I got a month's salary the other day.

Q. Now, Mr. Gardner, did you know Patrick O'Reilly in his lifetime?

A. I did.

Q. Where did he live?

A. In Reading, Pennsylvania.

Q. Was he the owner of any lots in Atlantic City?

A. He was; of quite a large tract of land.

Q. Did you ever act for Mr. O'Reilly in making sales of any lands in Atlantic City?

A. I did.

Q. Do you remember a sale of lots made by O'Reilly and wife to Barstow January 12, 1871, and a sale about the same time by O'Reilly and wife to Ford?

A. I do.

(Testimony objected to).

The Court: State the objection.

Mr. Pancoast: The same line of objection to this witness' testimony that we have heretofore made.

The Court: The evidence is competent. The scope of the question in the cause is the scope of the authority of this witness. That may be proved by direct evidence or it may be proved by a course of dealings.

Q. Mr. Gardner, did you have anything to do with the negotiation of these sales?

A. Yes, sir.

Q. Well, did you negotiate them?

A. Yes, sir, I had these lots for sale at a given price. I had signs upon them, I think boards on posts, and those gentlemen came and agreed to buy them at the prices, and deeds were made and they paid the money.

Q. You say you had signs on them with boards; what was on the signs?

A. The simple words, I think, "For Sale." "J. J. Gardner."

Q. Were deeds delivered in pursuance of that?

A. They were?

Q. And were they the deeds that you saw this morning that Mr. Barstow produced?

A. I didn't see the deeds; but a deed was delivered to Mr. Barstow; Mr. Barstow produced the deed.

Q. Is this the deed which was made to Barstow in pursuance of your contract; deed Marked Exhibit C. 28. (Showing witness deed dated January 12, 1871, Patrick O'Reilly to Joseph A. Barstow)?

Q. (By the Court): Your handwriting?

A. Yes, sir.

Q. The question is whether that is the deed made to Barstow?

A. That is the deed in my handwriting from Patrick O'Reilly and wife to Joseph A. Barstow, and the description covers the lot which Mr. Barstow purchased.

Q. (By Mr. Grey): Now, in whose handwriting is that deed?

A. Mine.

Q. Now, Mr. Gardner, do you remember a sale of O'Reilly land made by you by a deed of the 1st of March, 1871, executed by Patrick O'Reilly and wife to Frederick Bannister?

A. I didn't make the sale to Bannister. I did not. Is that the corner of New York and Pacific?

Q. I think it is.

A. Corner lot? I didn't sell that corner, as I recollect it.

Q. Now, do you remember a sale from O'Reilly and wife to Silas R. Morse in 1870, November 5th?

A. South Carolina and Pacific corner; '75, that is later; the first was June, 1870.

Q. No, sir; I said '70. This was a property at the northeast corner of Pacific and South Carolina Avenues by deed dated November 5, 1870.

A. Yes, sir, I remember that.

Q. Did you have anything to do with that sale?

A. Yes, sir.

Q. What did you do?

A. I sold it on the ordinary terms; that is, it was for sale at a price; Mr. Morse agreed to take it; I received his money.

Q. Who made the deed?

A. I don't know whether I wrote the deed or not. Patrick O'Reilly and wife executed the deed.

Q. Now, do you remember a sale of property by Patrick O'Reilly and wife to Jethro V. Albertson, June 23, 1871, for property on the easterly side of South Carolina Avenue, two hundred feet southeast or south of the southeast corner of Atlantic and South Carolina Avenues?

A. I don't recollect the date, but a lot 50x100 was sold to him and his brother Levi, and when the deed came to be made they had it divided in the deed, so that each took a deed for a divided half.

Q. Well, did you negotiate that sale?

A. Yes, sir.

Q. Who received the money?

A. I think that I received the money. My impression is that there was a small amount of money paid in the first place and that there was an understanding that they would im-

prove the lot, which they did right away, built two dwellings on it.

Q. Who executed the deed.

A. Patrick O'Reilly and wife.

Q. Do you remember a sale from Patrick O'Reilly and wife, April 15th, 1871, to John McCullough and Harry H. Smith, for a property beginning in the northwesterly line of Pacific Avenue, fifty feet southwesterly of northwesterly line of Pacific and Tennessee Avenues, thence northwesterly 150 feet; a lot 50x150feet?

A. I remember. Were there two deeds in that case?

Q. There were two deeds, one dated the 13th of April, the other was dated on the first of April, 1871.

A. They were fixed in my mind as one purchase. Both deeds then cover a tract 100x150.

Q. The first 50x150, and the second deed, which was really the first, 50x150, making 100x150 feet in the two lots; do you remember that transaction?

A. Yes, sir.

Q. Did you negotiate that sale?

A. I did.

Q. Receive the money?

A. I did, what was paid; I think that was like the other case, a small amount paid; mostly mortgage.

Q. Who executed the deeds?

A. Patrick O'Reilly and wife.

Q. (By the Court): Now, Mr. Gardner, as appears on the face of them all, these deeds were sent away and came back acknowledged either before John F. O'Reilly or the Presiding Judge of Common Pleas of Berks County, whose name was Hagenman, I forget the first name; John F. O'Reilly was a son of Patrick O'Reilly?

A. Yes, sir.

Q. Who had been appointed a commissioner of deeds of New Jersey?

A. Yes, sir.

Q. (By Mr. Grey): Do you remember a deed from Patrick O'Reilly and wife to George M. Elkinton, Elisha Roberts, Charles L. Willits, Richard Wright and Eliza P. Gurney; dated April 12, 1872, for a lot at the southeast corner of

Pacific and South Carolina Avenues, thence southerly along east line of South Carolina Avenue 150 feet, thence easterly 55 feet, thence northerly 152 feet and thence westerly 51 feet to the beginning?

A. Yes, they represented a society of Friends and put a meeting house on.

Q. Who negotiated that sale?

A. I did.

Q. Received the money?

A. I think so.

Q. And who executed the deed?

A. Patrick O'Reilly and wife.

Q. Do you recollect a deed from Patrick O'Reilly and wife to John F. Starr, dated August 2, 1872, for a lot at the southwest corner of Pacific Avenue and South Carolina Avenue, running westerly along south line of Pacific Avenue 150 feet, thence southerly parallel with South Carolina Avenue 1,500 feet, more or less, to high water mark at Ocean, thence easterly 150 feet, and thence northerly 1,500 feet to beginning?

A. I remember John F. Starr bought that lot; I don't remember whether I handled the deed or not. I would sooner think that that deed was made up here.

Q. You remember the transaction?

A. I do.

Q. You remember the transaction, do you?

A. I do.

Q. Now do you remember a sale of property made by Patrick O'Reilly and wife to John W. Donnelly by deed dated June 20, 1872, for a property at the southeast corner of Pacific and Tennessee Avenues?

A. That is 50x250.

Q. Yes, that is 50x250.

A. The O'Connor cottage? Yes, sir.

Q. Did you negotiate that sale?

A. I did.

Q. Is that the transaction of which Mr. Donnelly spoke this morning?

A. Yes, sir, I heard Mr. Donnelly.

Q. You heard his testimony, did you?

A. I think I heard it all.

Q. Do you remember a deed from Patrick O'Reilly and wife to Silas R. Morse, dated July 24, 1872, for a property in the easterly line of South Carolina Avenue, where it intersects the northerly line of Oriental Avenue 400 feet southerly from southerly line of Pacific Avenue; runs northerly 250 feet along said east line of South Carolina Avenue; thence easterly 55 feet; thence southerly 255 feet, more or less, to a point where said line intersects north line of Oriental Avenue; westerly 65 feet to beginning, so that it would make a lot about 250 feet by 55?

A. I remember about that property, yes, sir.

Q. Who negotiated that sale?

A. I did.

Q. Who received the money?

A. I think I did.

Q. And who executed the deed?

A. Patrick O'Reilly and wife.

Q. Do you remember a deed made by Patrick O'Reilly and wife to Benjamin E. Norris, dated May 26, 1873, for a property in the westerly edge of South Carolina Avenue, 270 feet northerly from north line of Pacific Avenue, lot 50x165 feet?

A. I remember Mr. Norris buying that lot.

Q. Who negotiated that sale?

A. I did.

Q. Who received the money?

A. I think I did.

Q. And who executed the deed?

A. Patrick O'Reilly and wife.

Q. Do you remember a deed made by Patrick O'Reilly and wife to David Conover?

A. David F. Conover.

Q. Dated May 27, 1873, for a lot in the westerly line of South Carolina Avenue, 170 feet southerly from southerly line of Atlantic Avenue, being a lot 50x165?

A. I remember David F. Conover buying that lot; I don't recollect the date.

Q. Do you remember whether you negotiated that sale?

A. Yes, sir.

Q. Did you receive that money?

A. Yes, sir.

Q. And who executed the deed?

A. Patrick O'Reilly and wife.

Q. Now, do you remember a deed made in 1873 by Patrick O'Reilly and wife to Jacob Keim—November 28, 1873—for a lot in the southerly line of Pacifie Avenue, beginning 50 feet westwardly from westerly line of New York Avenue?

A. I remember that Jacob Keim bought some land down there; I don't know that I saw that deed; I don't remember; I think I remember that I wrote a deed in that case for some property that they bought down there that they didn't like the description, or something, and got a surveyor to do it afterwards, probably.

Q. Well, did you negotiate the sale?

A. I think I did.

Q. Did you receive the money?

A. I think so.

Q. And who executed the deed?

A. Patrick O'Reilly and wife.

Q. Do you remember a deed from Patrick O'Reilly and wife to William R. Moore, dated September 25, 1873, for a lot at the corner of lot 64, on New York Avenue?

A. Is that on the east side of New York Avenue near Arctic?

Q. I will give you the description: "Begins at a corner of lot 64 on New York Avenue, runs thence along the said New York Avenue 50 feet to a corner of lot 66, thence along No. 66, 90 feet, containing a lot 50x90 feet."

A. William Moore has had two lots; my recollection is I have sold him at different times two lots on New York Avenue.

Q. Here is another one I will call your attention to in this connection; a deed made by Patrick O'Reilly and wife to William R. Moore, dated February 23, 1874, which was the February following the first deed, which was in September, for a lot in the westerly line of New York Avenue, 260 feet southerly from southerly line of Atlantic Avenue, runs southerly along westerly line of New York Avenue 50 feet, being lot 50x90 feet?

A. I remember Moore's purchase of that lot.
Q. Remember those two transactions?
A. Yes, sir.
Q. Who negotiated those sales?
A. I did.
Q. And who received the money?
A. I did.
Q. And who executed the deed?
A. Patrick O'Reilly and wife?
Q. Now, do you remember a deed from Patrick O'Reilly and wife to Silas R. Morse, dated January 31, 1873, for a lot in the westerly line of South Carolina Avenue, 170 feet northwardly from northerly line of Pacific Avenue, a lot 50x165 feet?
A. I thought you had that a bit ago?
Q. The other two were William R. Moore.
A. But before the Norris matter you had that lot.
The Court (to witness): You may say you think you have already answered as to that.
Q. July 24, 1872, there was a deed to Silas R. Morse; this is January 31, 1873.
A. I think I have answered that.
Q. Do you remember those two deeds then?
A. Yes, sir.
Q. I am now speaking of the deed of January 31, 1873, and also of a deed to Silas R. Morse, of June 1, 1875?
A. Yes, sir.
Q. Who negotiated those sales?
A. Two lots in South Carolina Avenue?
Q. One lot on South Carolina Avenue, 170 feet northwardly from northerly line of Pacific Avenue?
A. As to that I answered I made the sale.
Q. The other begins in the easterly line of Tennessee Avenue, 170 feet north from northerly line of Pacific Avenue.
A. I negotiated that sale to Mr. Morse?
Q. And who executed the deeds?
A. Patrick O'Reilly and wife.
Q. Now, do you remember a deed from Patrick O'Reilly and wife to William Maguire, dated May 22, 1875, for a property in southerly line of Atlantic Avenue, 50 feet west-

erly from westerly line of South Carolina Avenue, containing a lot 100 feet by 150 feet?

A. Yes, sir.

Q. Who negotiated that sale?

A. I negotiated that sale with somebody.

Q. Well, when you say you negotiated it for somebody, what do you mean?

The Court: "With somebody."

Q. Well, did you receive the money for the property?

A. Yes, sir; I did.

Q. And who executed the deed; who did?

A. Patrick O'Reilly and wife.

Q. Now, do you remember a deed from Patrick O'Reilly and wife to Albert P. Flint, dated December 20, 1875, for a lot in the easterly side of Tennessee Avenue, 230 feet northwardly from northerly line of Pacific Avenue; lot 50x165 feet?

A. As a matter of fact, that lot adjoins the lot of Morse; he really bought them both, and Morse conveyed one to Flynn, Flynn being a brother-in-law.

Q. Do you remember a deed from Patrick O'Reilly and wife to Barclay Lippincott, dated January 9, 1880, for a lot in the north line of Atlantic Avenue, 100 feet easterly from east line of Tennessee Avenue, being a lot 50x175 feet?

A. I do.

Q. Who negotiated that sale?

A. I thought I did.

Q. Who received that money?

A. I think I did.

Q. And who executed that deed?

A. Patrick O'Reilly and wife.

Q. Well, now, we come to another deed, Morse deed, deed from Patrick O'Reilly and wife, dated March 15th, 1880, for a lot in the easterly line of South Carolina Avenue, 400 feet south of south line of Pacific Avenue; do you remember that transaction?

A. I do.

Q. Who negotiated that sale?

A. Well, I negotiated that sale; that one was a little different from the average of them; it was not sold at the price

at which it had been booked; but Mr. Morse came to me at Trenton and offered a figure somewhat less, and I telegraphed over to Reading and the offer was accepted.

Q. Who received that money?

A. I did.

Q. And who executed that deed?

A. Patrick O'Reilly and wife. What is that date?

Q. That is dated on the 15th of March, 1880.

A. That is the strip down South Carolina Avenue from Morse's other purchase—

Q. I will tell you exactly where it is: "Begins in the easterly line of South Carolina Avenue, 400 feet south of south line of Pacific Avenue—

A. That is the line of the previous—

Q. (Continuing) "runs (1) eastwardly 73 feet, more or less, to corner of lands of Elisha Roberts; thence (2) southeasterly 1,000 feet, more or less, to low water mark Atlantic Ocean; thence (3) southwardly 125 feet, more or less, to a point in easterly line of South Carolina Avenue; thence (4) northwardly 1,000 feet, more or less, to beginning."

A. That is it.

Q. Do you remember a deed made by Catherine C. O'Reilly, Francis P. O'Reilly and James A. O'Reilly, executors, &c., of P. O'Reilly, deceased, to Mary Ann Donnelly, dated August 10, 1882, which was produced here this morning for a property in the east line of Tennessee Avenue, 250 feet from southeast corner of Tennessee and Pacific Avenues?

A. I remember the transaction. I don't remember the date. That was prepared in your office.

Q. Was it?

A. Yes, sir.

Q. You remember the transaction?

A. Yes, sir.

Q. Do you remember whether at that time you met Mr. Donnelly at his house with Mr. James A. O'Reilly?

A. Yes, sir.

Q. Well, what took place there?

A. Well, Mrs. Donnelly, I think, John W. Donnelly's wife, had always requested that that front should not be sold

away from her without she should have an opportunity to buy it; and James A.—they made some offer for it—she did; and James A. O'Reilly I think wrote that somebody wanted to buy it, and that he was going to sell it; now I don't remember whether I wrote to him or telegraphed to him, or how it all happened, but at any rate he came down and we went together to Mrs. Donnelly's house.

Q. Had you any understanding or memorandum with Mrs. Donnelly in reference to her having the property at the price anybody else would pay for it?

A. I don't think so; I heard Mr. Donnelly, what he said on the stand, and I tried to recall it; I can't recollect anything like it, although I may, in a letter, have said to Mrs. Donnelly that I would not sell that lot without letting her know it; she bought and sold lots to some extent outside of that tract, and I of course had a good deal of correspondence with her; but as for any formal contract or agreement in the matter I am very certain there never was one.

Q. Well, now, in reference to the deed from Catherine C. O'Reilly, Francis P. O'Reilly and James A. O'Reilly, executors of Patrick O'Reilly, deceased, and Catherine C. O'Reilly, in her own right, to Thomas K. Reed, dated August 1, 1883, did you have anything to do with that transaction?

A. Yes, sir.

Q. What did you do?

A. Well, I sold that lot the same as the others to Thomas K. Reed; it was for sale at a price.

Q. Did you receive the money?

A. I did.

Q. And who executed the deed?

A. The executors, together with Mrs. O'Reilly in her own right.

Q. Do you remember a deed from Catherine C. O'Reilly, Francis P. O'Reilly and James A. O'Reilly, executors of Patrick O'Reilly, deceased, and C. C. O'Reilly to Thomas K. Reed, dated July 27th, 1886?

A. Where is that land?

Q. That land is in the westerly line of New York Avenue, 150 feet southward of south line of Atlantic Avenue.

A. Then where is the other?

Q. The other is in the west line of New York Avenue, 310 feet southerly from south line of Atlantic Avenue.

A. That is right; my answer as to the other deed was right; yes.

Q. Now as to the second?

A. As to the second deed, beginning 150 feet from Atlantic Avenue and on the west side of New York?

Q. Yes, sir.

A. That was also bought by Dr. Reed; he had forgotten it. He had forgotten; he said this morning there was one transaction; but he bought the two.

Q. Three years apart?

A. Yes, sir.

Q. Did you negotiate that sale?

A. Yes, sir.

Q. Who received the money?

A. I did.

Q. And who executed the deed?

A. The executors and Mrs. O'Reilly.

Q. Do you remember a deed made by C. C. O'Reilly, Francis P. O'Reilly and James A. O'Reilly, executors of P. O'Reilly, deceased, C. C. O'Reilly to Silas R. Morse, June 18th, 1886, for a lot in the easterly line of Tennessee Avenue, 220 feet northward from northerly line of Pacific Avenue?

A. Well, what is that—ten foot lot?

Q. It is a lot ten by one hundred and sixty-five feet.

A. Yes, sir.

Q. Do you remember that?

A. Yes, sir.

Q. Who negotiated that sale?

A. I did.

Q. Do you remember a deed from C. C. O'Reilly, Francis P. O'Reilly and James A. O'Reilly, executors of P. O'Reilly, deceased, and C. C. O'Reilly to George Allen, October 26, 1886, for a lot in the easterly line of Tennessee Avenue, 170 feet southward from southerly line of Atlantic Avenue, being lot 100 by 165 feet?

A. I remember that sale.

Q. Who negotiated that?

A. I think I did. That is a little bit mixed in my mind.

He had the conveyancing done in Philadelphia, so that I didn't make delivery of the deed.

Q. (By the Court): Who do you mean by "he?"

A. George Allen, the purchaser.

Q. (By Mr. Grey): Well, who received the money?

A. Well, that was settled in Philadelphia with James O'Reilly, I think.

Q. (By the Court): Who did you correspond with representing the executors of the estate?

A. James A. O'Reilly, always.

Q. (By Mr. Grey): Do you remember a deed executed by Catherine C. O'Reilly, Francis P. O'Reilly and James A. O'Reilly, executors of Patrick O'Reilly, deceased, and Catherine C. O'Reilly, dated January 6, 1887, to Don J. Wallings for a lot in the southerly line of Atlantic Avenue, 50 feet westward from westerly line of Tennessee Avenue?

A. Yes, sir.

Q. Who negotiated that sale?

A. I did.

Q. Who received the money?

A. I did.

Q. And who executed the deed?

A. The executors of Mr. O'Reilly.

Q. Do you remember a transaction involving the exchange of property between C. C. O'Reilly, Francis P. O'Reilly and James A. O'Reilly, executors of P. O'Reilly, deceased, and C. C. O'Reilly and John Joseph Fedigan, whom I suppose is the Rev. John Joseph?

A. Yes, sir.

Q. Who conducted that transaction?

A. I conducted the transaction with Father Fedigan; that being a matter of exchange I had to correspond with Mr. O'Reilly about it; it was simply a question of relative values of land in the relative localities.

Q. And who executed the deed to Father Fedigan?

A. The executors of O'Reilly.

Q. Do you remember a deed from Catherine C. O'Reilly and others, executors of P. O'Reilly, deceased, and C. C. O'Reilly, Francis P. O'Reilly and James A. O'Reilly and wife to David Nassano, dated September 10, 1887, for a lot

beginning in southerly line of Atlantic Avenue, 175 feet eastwardly from easterly line of New York Avenue and runs thence (1) southward at right angles with Atlantic Avenue 150 feet; thence (2) eastward 30 feet; lot 30 by 150 feet?

A. Yes, sir.

Q. Who negotiated that sale?

A. I did.

Q. Who received the money?

A. I think I did.

Q. And who executed the deed?

A. The executors of Mr. O'Reilly.

Q. Now, do you recollect a deed from Catherine C.O'Reilly, Francis P. O'Reilly and James A. O'Reilly, executors of P. O'Reilly, deceased, and C. C. O'Reilly to Edward S. Lippincott, dated October 27, 1890, for a lot beginning in the westerly line of South Carolina Avenue, 220 feet southward from southerly line of Atlantic Avenue and running westward 165 feet and southward 10 feet, being a lot 10x165 feet?

A. Ten foot strip?

Q. A lot 10x165.

A. Yes, sir.

Q. Who negotiated that sale?

A. Well, I did.

Q. And who received the money?

A. That was paid into our office, I think.

Q. And who executed the deed?

A. The executors of Mr. O'Reilly.

Q. Now, Mr. Gardner, who had charge of the real estate of Patrick O'Reilly in his lifetime and of the estate of Patrick O'Reilly after his death so far forth as Atlantic City was concerned; who had charge of it?

A. Well, I had the charge and supervision of it.

Q. During the time that you had charge, covering the period of Patrick O'Reilly's lifetime and subsequently to his death, did you ever make agreements for the sale of lands excepting in the case of Keim?

A. I don't recollect ever—I never made any agreement except in the form of a receipt.

Q. Now, did you, in the form of receipts, receiving money on account for land to be conveyed?

A. Yes, I think I almost always required a payment at the time parties engaged to take the lot and gave them a receipt for the money.

Q. Now, did Patrick O'Reilly in his lifetime know of the fact that you gave these receipts—receiving the money and giving these receipts on account of the purchase money?

A. Of that I don't know.

Q. Well, what did you do?

A. I don't know how I would know that, or how that would come to his knowledge unless somebody settled with him and had such a receipt and paid that over as so much money.

Q. Well, do you remember any such transaction as that?

A. I don't know of any now.

Q. Well, what did you do with the money that you did receive in Patrick O'Reilly's lifetime on account of the purchase money of lots and for which you had given receipts agreeing to convey the lots; who did you pay it to?

A. I paid it to Patrick O'Reilly.

Q. (By the Court): Did you render him an account?

A. The rule was that every transaction was settled up when it was closed. Of course if I sold a lot and sent a deed out there and he executed it and there was so much cash money and so much mortgage, when the transaction was closed he got what belonged to him and I got the commission, and the transaction was ended.

Q. (By Mr. Grey): Well, when you closed the transaction didn't you state to him the amount of money that you had received and who you got it from?

A. Always, of course.

Q. And what you got it for?

A. Certainly.

Q. (By the Court): Didn't keep a running account with him then?

A. Up to the time our firm was formed, the exact date of which I forget, I did not; until we took the general fire insurance work in connection with the office business there it was mostly real estate, which kept me on the street all the time and my office was with me in the wagon, and it was only—in fact, the formation of the firm, the taking of partners,

was with the idea more than anything else of changing that method of things.

Q. And to keep a regular entry of every transaction?

A. Yes, sir; of course an insurance business made that absolutely necessary.

Q. (By Mr. Grey): You are quite sure that all the money you received for Mr. O'Reilly, which was paid on account of these various purchases in which you had given receipts containing agreements to sell, was paid over to Mr. O'Reilly at the close of each transaction?

A. Yes, sir.

Q. (By the Court): That is, you never pocketed any money; you accounted for what you got?

A. Yes, sir.

Mr. Grey: I didn't mean that, Vice Chancellor.

The Court: No, you didn't mean that.

Mr. Grey: Not at all.

The Witness: Patrick O'Reilly was not a man that would let you pocket any.

Q. (By Mr. Grey): What I desire to know is this: Whether, at the close of each transaction, you sent Mr. O'Reilly the money which you had received for the sale, including that which you had taken on account?

A. Most assuredly.

Q. And for which you had given the receipt agreeing to sell?

A. Mr. O'Reilly gave me a commission on those sales of two per cent., and if a lot was sold for $1,000, when the deed was delivered of course it had to be accounted for, and he either got $980 in money or check, or that much and the mortgage accounted for the balance.

Q. So that each transaction showed where the money came from and who paid it and what it was for?

A. No doubt about that, of course.

Q. Now, were deeds made by Patrick O'Reilly in his lifetime in execution of these various contracts which you say you made at the time you say you received the money on account and for which you gave receipts?

A. Deeds were always made, in so far as I remember, for —I don't remember an instance of a sale—

Q. (By the Court): That was repudiated?

A. No, sir.

Q. (By Mr. Grey): But each sale that you bargained for and took the money on account he affirmed by the deed without repudiation?

A. Always, I think.

Q. (By the Court): I understood you to say that you had a schedule of prices?

A. Yes, sir; I had a map and Mr. O'Reilly would price up all those lots.

Q. Well, he authorized you to sell those lots at prices named?

A. Yes, sir; and terms.

Q. (By Mr. Grey): Now, Mr. Gardner, having the authority from him to sell at the prices and terms named; you had a map, had you not?

A. Yes, sir.

Q. And on that map, what was shown; what did the map show?

A. Well, the map was a copy of an old map.

Q. Have you seen that old map lately, of which the one you had was a copy?

A. I saw it at May's Landing Court.

Q. When?

A. In April.

Q. In April; in the case of Koenly against the Camden and Atlantic Railroad?

A. Yes, sir.

Q. Is that the map which was offered and rejected?

A. That is.

Q. Well, now, you had a copy of that map?

A. I had a copy of that map?

Q. What did you do?

Q. (By the Court): That showed the lots belonging to Mr. O'Reilly?

A. Yes, sir.

Q. Was that cut up into lots?

A. Cut up into lots and numbered.

Q. And the prices put on it?

A. Yes, sir. For instance, if *that* was a block the corners

would probably be one price, or probably *there*. Now I would simply mark, as I remember it, the price on one lot, which would hold good until some other mark was put on.

Q. Those marks were made by the consent of Mr. Patrick O'Reilly, I suppose?

A. They were made by his direction; he fixes the prices.

Q. And your authority was to sell any of those lots at those prices?

A. Yes, sir.

Q. With a certain schedule or rule as to the amount of mortgage?

A. Yes, sir.

Q. (By Mr. Grey): Now, have you got that map?

A. No.

Q. Now what did you do with that copy of the map?

A. I don't remember; I think James A. O'Reilly took it from the office.

Q. How long ago?

A. Sometime during these ejectment suits; I think he got it.

Q. (By the Court): Have you it now?

A. I have not.

Witness: Let me correct that slightly as to that copy of that map; in a general way it is true; it is a copy of about all of that original map there was, with some more territory added, which was accretion, I suppose.

Q. (By Mr. Grey): Who produced the map at the May's Landing Court which you say you saw there and described a moment ago as the old map; in whose possession was it at that time?

A. Either you or Mr. Voorhees; one of you asked me to indentify it.

Mr. Grey: I notify counsel upon the other side representing the O'Reilly executors, and Mrs. Catherine C. O'Reilly, to produce the map described by the witness as the one which was exhibited in the case of the Camden & Atlantic Railroad against Koenley, tried at May's Landing at the last April Term, and also a copy of that map described by the witness as the one upon which the prices of lots were marked and the subdivision of land into lots, and which also exhibited some

additional territory as described by the witness which he supposes to have been accretion, and which the witness has said was, as he believes, taken from his office some time during the ejectment trial by Mr. James A. O'Reilly, one of the executors and defendants in this case.

I give that notice for the purpose of offering these maps when produced in evidence on the part of the complainant.

The Court: Have you any answer to that request, gentlemen?

Mr. Pancoast: Speaking for myself I have no knowledge of it at all.

Mr. Voorhees: I have a couple of maps in my office; one of them was a map produced down at May's Landing. That map we can produce and we have a copy of it. I don't think it is the copy spoken of by the witness at all.

The Court: They ask for it now.

Mr. Voorhees: We have no objection to having it produced at all. (By arrangement with counsel Mr. Voorhees is to produce map to-morrow).

Q. (By Mr. Grey): Papers marked C. 1 and C. 2 being shown witness he is asked as to C. 1, a typewritten paper, whose signature is that?

A. I think that is mine.

Q. In whose behalf did you act in signing that paper and making the statements therein contained; I direct your attention to the last clause?

A. I signed that paper as agent, meaning I was the agent of Patrick O'Reilly as I understood it.

Q. Did you at that time understand that the paper just shown you in so far as it declared the receipt of money on account of the purchase of the land mentioned was made by you in the exercise of authority from Patrick O'Reilly to bargain in respect to the sale of that land?

(Objected to on the ground that counsel for defendant are not in court to inquire as to the understanding of the witness).

The Court: If you add to the question "at the price named."

Q. At the price named in the paper?

A. Yes, sir. May be I don't understand the question.

Mr. Pancoast renews objection.

The Court: I overrule the objection.

Witness: What is the question? May be I—I answered "yes, sir;" that may not be the answer to the question.

Q. (Stenographer reads the question to the witness as follows: "Did you at that time understand that the paper just shown you in so far as it declared the receipt of money on account of the purchase of the land mentioned was made by you in the exercise of authority from Patrick O'Reilly to bargain in respect to the sale of that land at the price named in the paper?")

A. Yes, sir.

The Court (to Judge Pancoast): I added that "at the price named," Judge, because I thought there was a doubt as to the competency of the question.

Mr. Pancoast: If that is not inviting the judgment of the witness on a point of law, I don't know what is.

The Court: The witness has sworn that he had a map of these lots and the prices of them. He has sworn that from time to time for a long period of years he was in the habit of selling and negotiating these lots at the price named, and he made bargains to sell them at prices named. For that he had authority. As I understand him, he disclaims authority to make an independent bargain except at the price named, and had the question not included the words "at the price named," I should have overruled the question as I now think, but adding "at the price named" in connection with what the witness had previously sworn to, I thought the question was competent.

Q. Now, Mr. Gardner—

A. Let me see that receipt again. (Receipt shown witness).

Mr. Voorhees: If the gentleman wants it I have *this* map here.

Q. I direct your attention now to the language of the receipt which you have indentified: "Atlantic City, N. J., March 25th, 1880, received of Jacob Keim the sum of $25, on account of the purchase money of the lot of land 50 feet in width, adjoining on the rear the land now owned by the said Jacob Keim, which land fronts on New York Avenue, in Atlantic City aforesaid, and which strip to be conveyed runs the entire length of the said land of the said Jacob Keim"—who was the owner of that land?

Mr. Pancoast : Objected to.

Q. (By the Court) : Who did you understand to be at that time the owner of that land ?

A. Patrick O'Reilly.

Q. (By Mr. Grey, continuing reading) : "The purchase price is to be $2,500."—From whom did you derive, if you derived from any one, knowledge as to what the purchase price was ?

A. Patrick O'Reilly.

Q. Was that the price named by Patrick O'Reilly, $2,500?

A. There can be no mistake about it, I think.

Q. (Continuing reading of receipt). "Deed to be made and delivered so soon as practicable, not longer from the present time than one month :" What deed was there referred to ?

A. A deed for the land that that receipt referred to.

Q. (Continuing reading of receipt). "Said land to be conveyed belongs to Patrick O'Reilly. J. J. Gardner, Agent."

Q. (By the Court) : How did you fix that thirty days ? by what authority—" Deed to be made and delivered as soon as practicable, not longer from the present time than one month "—What was your practice in that respect in dealing for Mr. O'Reilly ?

A. Mr. O'Reilly was a man, as I understand it, who had interests in various localities, and traveled somewhat, and was not always at home, and I think I said the deed to be delivered as soon as practicable, and yet meant to assure the purchaser it should not be longer than thirty days nor give him longer than thirty days.

Q. Had you been in the habit of doing that for Mr. O'Reilly before in order to enable the purchaser practically to carry the contract out ?

A. Yes, sir ; the habit had been when a lot was sold and something taken on account, as I remember it, the practice really was to draw the deed in most of all of the cases and send it to Mr. O'Reilly, who would execute it and return it, and then have the matter settled as soon as we could.

Q. In this case, just explain the reason and the authority you had for making such an arrangement as that ?

A. Well, I don't know of any authority except the authority, as I understood it, to sell that lot at that price, and in the

receipt I meant to fix some limit of time within which the transaction should be closed.

Q. You would consider as a real estate agent, considering that language, you mean you could tender the deed and demand the money within thirty days, is that what you mean?

(Objected to).

(Objection overruled).

Q. I want his interpretation as a real estate agent on the contract.

A. I don't know that I can remember now just what my interpretation of those words were then; so any interpretation that I might give now would be a supposition of what I then thought under the circumstances.

The Court: That is my interpretation, subject to what counsel may say—give them a right to deliver the deed at any time and demand the money.

Q. (By Mr. Grey): Now the witness' attention is directed to Exhibit C. 2.

Q. (By the Court): Well, I will ask you, did you report that sale to Mr. O'Reilly—do you know why it was not carried out immediately?

Mr. Grey: If your Honor will allow me to get through the question first.

The Court: Yes, sir, have your own way. I was a little curious.

Witness: I am looking at the paper here, yes, sir. Shall I read it?

Q. (By Mr. Grey): You are at liberty to read it if you like.

The Court: You may read it quietly to yourself.

(Witness looks at the paper C. 2).

Q. You have looked over this paper, have you?

A. Yes, sir.

Q. What is that paper?

A. That paper is a receipt that I gave to Newton Keim.

Q. Is that signature, "John J. Gardner, agent for P. O'Reilly estate," in your handwriting?

A. I have no doubt of it.

Q. When, with relation to the death of O'Reilly, was that paper given?

A. It was afterwards.

Q. Afterwards?

A. Yes, sir; I forget how long.

Q. When did he die, if you remember?

(It is admitted that Patrick O'Reilly died on the 16th day of January, 1881).

Q. I direct your attention to the words "one hundred and fifty feet" written into that paper?

A. Yes, sir.

Q. In whose handwriting are they?

A. Mine.

Q. What line in the description of the property does that one hundred and fifty feet refer to? the sea line or the land line?

A. I have not found it yet.

Mr. Voorhees: No. 6.

The Court: The exhibit is No. 2.

Witness: Yes, it says along the line established by the Riparian Commissioners of New Jersey.

Q. Now something has been said in reference to the length of that line having been incorrectly stated as one hundred and fifty feet. What is that fact? It apprears in the pleadings as erroneously stated as one hundred and fifty feet—alleged in the bill?

A. It is erroneously stated in one sense; this receipt was not drawn by me; it is not in my handwriting; the distances were blank, and I seem to have filled in "one hundred and fifty feet" there. Now that is not a matter of recollection; it is a matter of present interpretation, and the error being discovered *these* words have been added rather than to scratch—

The Court: The words at the last part?

Q. What words?

A. There are some words there in my handwriting.

Q. Just read them.

A. "Including all the land and rights of said estate between Pacific Avenue, the riparian line and beyond, New York and Tennessee Avenues." The word "beyond" evidently was meant for *between;* was miswritten.

Q. Now, Mr. Gardner, were these words "one hundred and fifty feet" and the words which you just have read written before you signed the receipt?

A. I suppose they were ; I can't remember.

Q. (By the Court) : I will tell you what I would like ; if the Senator will take these two papers and make a little rough sketch showing how the two pieces lie towards one another. I want your understanding of what the land was that was sold by the two contracts ?

A. I can make it in a moment.

Q. (Mr. Grey shows a paper, a sketch).

A. That is it, Chancellor.

Q. (By the Court) : Which are the ones that are conveyed by those two receipts ?

A. The first receipt had reference to the continuation of this line to the Ocean.

Q. You mark it.

A. (Witness makes mark on the paper.)

Q. The receipt has reference to the strip along the side of what is marked as Keim's other land ?

A. Yes, sir ; that is it.

Q. What is the width of it ?

A. Fifty feet wide.

Q. And running clear into the Ocean ?

A. Yes, sir.

Q. And then the second receipt ?

A. All the rest.

Q. In those double black lines ?

A. Yes, and included a lot running to Pacific Avenue.

Q. All within the double black lines ?

A. Yes, sir, and all the rest between the double black lines.

Q. And the one hundred and fifty feet that was interlined referred to between the edge of the Ocean and the riparian line ?

A. The one hundred and fifty feet ? no, sir. The one hundred and fifty feet is the line that refers to the width from this point to this point (indicating), which should have been two hundred feet across.

The Court : Oh, yes.

Q. The one hundred and fifty feet includes the frontage of the last lot, which is one hundred and fifty feet ; if you include the frontage of the whole it should be two hundred feet ?

A. Yes, sir. The lot is intended to cover two hundred feet.

Q. But he marked one hundred and fifty feet, but the two hundred feet would include both lots?

A. Yes, sir.

Examination of Mr. Gardner suspended in order to allow a member of the bar of Philadelphia to testify.

THOMAS J. HUNT, a witness produced on the part of the complainant, sworn.

Direct-examination by Mr. S. H. Grey.

Q. Mr. Hunt, you are a member of the Philadelphia bar?

A. I am.

Q. Do you know Mr. George Allen?

A. I do, sir.

Q. Did you, in the year 1886, represent Mr. Allen in the purchase of property from Catherine C. O'Reilly and others, executors of Patrick O'Reilly and Catherine C. O'Reilly, to George Allen, beginning at a point in the easterly line of Tennessee Avenue, 170 feet southward from southerly line of Atlantic Avenue, and runs (1) eastward one hundred and sixty-five feet; thence (2) southward one hundred feet, &c., being a lot 100x165 feet?

(Objected to).

A. Yes, sir.

Q. Now, Mr. Hunt, who conducted the negotiations on behalf of Mr. Allen?

A. Senator Gardner, I think they call him.

Q. No, for Mr. Allen?

A. I did myself.

Q. And with whom did you conduct the negotiations?

A. John J. Gardner, commonly spoken of down there as Senator Gardner.

Q. The gentleman just on the stand?

A. (Looking at Mr. Gardner). I believe that is the gentleman. It is a number of years ago.

Q. Who did Mr. Gardner represent in the transaction?

A. The owners.

(Objected to).

Q. Now, in consequence of the negotiations that you had with Mr. Gardner—I notice the consideration in the deed is $5,500—did you pay anything before receiving a deed on account of the purchase money?

A. My recollection is that on the occasion when the bargain was finally consummated, which was late one afternoon, when I went to Atlantic City for that purpose, I paid Mr. Gardner $500 on account of the purchase money, for which I received his receipt.

Q. You didn't say who were the owners Mr. Gardner represented. Who were the owners?

A. I think that receipt I turned over to Mr. Allen after the purchase was consummated; I suppose it is still in his possession.

Q. (By the Court): From whom did the deed come? That is the question now put to you.

Mr. Harned: The question is who were the owners?

The Court: The same thing.

A. The only party that I knew in the transaction was Mr. Gardner himself, I believe; the deed I believe was executed by the O'Reillys, or an executor or administrator of the O'Reilly estate, as near as I can recollect.

Q. (By Mr. Grey): And who gave you the deed?

A. Mr. Gardner.

Q. Mr. Gardner?

A. Yes, sir.

Q. And who did you pay the money to?

A. To Mr. Gardner in a check payable—drawn—to his order; that is my recollection at this time.

Q. Did you ever have any conference with anybody else in regard to this transaction, representing or purporting to represent the owners, other than Mr. Gardner?

A. Never, sir.

Q. That is all.

Mr. Pancoast: Nothing.

Adjourned till 10 A. M.

MAY 10, 1893.

Appearances as heretofore.

JOHN J. GARDNER, direct-examination continued.

Q. (By Mr. Grey): Mr. Gardner, at the time that you signed the paper exhibited to you last evening, marked Exhibit C. 2, which is the contract of October 29, 1881—

A. That is the last one.

Q. That is the last one; as the agent of P. O'Reilly estate, did you understand that you were the agent of Mr. O'Reilly's estate for the purpose of making an agreement to sell land at the prices or at the price named in that receipt?

A. Yes.

Q. Was the price named in that receipt the price fixed by the O'Reillys?

A. The price that was intended to be named in that receipt, and that I supposed was named there, was a price I am sure named to me by James A. O'Reilly.

Q. The amount named in this paper is $500, which is receipted for as paid "on account of the purchase money for a certain tract of land situate," and so forth, described in the agreement; and "the balance of the purchase money," as stated in the paper, viz.: "The sum of $9,500, to be paid upon tender of a good and lawful deed for said premises, free from encumbrance and opposing or contesting claim of title, with undisputed possession of the same, the grantee to have sixty days' notice of such tender. Including all the lands and rights of said estate between Pacific Avenue, the riparian line and beyond New York and Tennessee Avenues?"

I call your attention to the fact that the paper expresses upon the face of it a consideration money, describing a part as paid at the time—$500—and the balance to be paid, of $9,500, making a total of $10,000.

A. That is a fact, as I swore yesterday.

Q. Now what did you mean by the statement that you made in reference to the consideration money a moment ago?

A. I meant that that paper was intended by me to include all the land in question, and I always supposed expressed the consideration for all the land, which was $12,500.

Q. So that the consideration money of $12,500—(interrupted).

Mr. Voorhees: If your Honor please, is that a proper question now? We have got the paper now and there is no ambiguity about it.

The Court: I think there is an ambiguity about it, or, rather, no ambiguity when you read the two together, and I want counsel to know what is in my mind. There was a strip two hundred feet wide running from the Ocean back north and ending in a jagged line—if that is a good expression—reaching Pacific Avenue by steps; one strip of that toward New York Avenue, but not adjoining New York Avenue, but adjoining a strip owned by Mr. Keim on New York Avenue, had been contracted to be sold to him, as is claimed by the complainant, by a contract signed in the lifetime of Mr. Patrick O'Reilly. That left a strip of one hundred and fifty feet yet to be conveyed; the first strip was to be conveyed at the price of $2,500; the other one hundred and fifty feet, the other strip, was intended, as I understand the witness, to be conveyed at the price of $10,000, making $12,500 in all. The contract, dated October 29, 1881, was for the consideration of $10,000, and intended to include all the land they had left, excluding the fifty feet strip which was contained in the previous contract—

Mr. Pancoast: I don't understand that.

The Court: Wait one moment; but in giving the description at the end he described it all. He said: "Including all the land and rights of said estate between Pacific Avenue, the riparian line and beyond New York and Tennessee Avenues." That is accounted for by the supposition of the witness that in inserting that clause that the other fifty feet had already been conveyed by the previous contract at the sum of $2,500.

Now that is my concept of it.

Mr. Pancoast: That is not what the witness said.

The Court: That is what I understand he meant to say exactly, as I interpret it. Otherwise you can't get the $12,500 in without taking into consideration the previous contract.

Witness: This contract was intended by me to describe the whole.

Q. (By the Court): That is the second contract?

A. And that one hundred and fifty feet there appears to have been an error as I understand it, which, being discovered, *this* was put in to make it right.

Q. But did you understand that you were to sell the whole two hundred feet for ten thousand dollars?

A. No, sir; I always supposed that the consideration expressed here was $12,500.

Q. Didn't observe it?

A. Didn't observe it and I didn't write this contract. By following the lines of this contract this agreement starts here and runs to here (indicating) and on a given course arrives at that point (indicating).

The Court: Then I have misread it.

Mr. Harned: Takes in the very land described in the first contract.

The Court: Then I want to be set right. (After reading the description). You are quite right; it does include it all.

Witness: Now we arrive here (indicating) and to arrive at that point and include the land taken in the second contract this should be two hundred feet or it don't get there.

The Court: Your concept is right and mine is wrong, but it amounts to the same thing in the end. I have got it in my mind now; the witness didn't observe that it was only $10,000.

Q. (By Mr. Grey): Now, I have called your attention to the fact that the last agreement, which is dated October 29, 1881, expresses upon the face of it a consideration of $10,000, and acknowledges the receipt of $500, being a part of the $10,000. The preceding agreement of March, 1880, made in the lifetime of Patrick O'Reilly, expresses upon the face of it a consideration of two thousand five hundred dollars for a fifty-foot lot. I want to know from you how it happened that the last agreement, expressing the ten thousand dollar consideration, seemed to describe inclusively the entire property, not only the three lots at

that time bargained for, but the other lot which had been incorporated into the agreement of March, 1880. Now, you can explain it?

A. I don't know that I can recollect all that about the detail; but previously Mr. Keim had taken a receipt and paid twenty-five dollars for the twenty-five foot strip—

Q. (By the Court): Fifty-foot strip?

A. Fifty-foot strip, nearest New York Avenue. That was at a time that there was some litigation with Daniel Lindley, and we had just recovered a favorable verdict in a replevin suit, as I remember it. Now, before the delivery of the deed to Mr. Keim under that first contract or receipt, perhaps immediately after the making of the receipt, I don't remember dates, a new controversy arose in regard to that with somebody else, after we had recovered—gotten a verdict in the Lindley case—somebody else, as I remember it, under the Rotherhams claimed possession and absolutely took possession and began the erection of buildings—

Q. (By Mr. Pancoast): You said "replevin." Did you mean replevin?

A. Will take but a moment to explain. I rented that ground to Mr. Lindley, who, after he was in possession, set up claim under the Rotherhams; I distrained his bath houses and he replevined them. That is the way of it.

Q. (By the Court): Go back to your explanation, Senator.

A. Somebody else took possession of the ground, claiming under the Rotherhams, as Lindley had. Therefore we could not give Mr. Keim possession of the ground, because we hadn't it. Controversies also of the same nature arose as to the other strips of ground involved, or two of them; two of them, and the other somewhat involved in controversy of a different nature. Now Mr. Voorhees, as I understood it, began replevin suits, or was about to begin—I mean ejectment suits, and the impression on my mind was, however I got it, from the attorneys, I suppose, that this claim to title was a mere fighting for a brief possession, and that the matter would be determined at the first

term of court. In the meantime Mr. O'Reilly had died, and for those reasons, I know of no others, it seems to have been thought desirable in drawing a new description to run around all the land. I didn't draw that receipt. I don't know—

Q. The last one?

A. I didn't draw that receipt.

Q. (By Mr. Grey): October 29, 1881?

A. I didn't draw it. I wanted to make it satisfactory; and I don't know now what influenced my own mind; I don't know what influenced the mind of Mr. Keim in drawing the receipt to think that it should run around and include all the strips.

Q. (By the Court): The fact was that from the time the first receipt was given down to the time this second receipt was given, this contest as to possession was going on?

A. I don't know when the contest began. It began later; that is, I mean the legal contest, but the facts are that after that first receipt and before the consummation of the transaction somebody under Rotherham took possession of that ground and began the erection of buildings. Now I remember those facts.

Q. The favorable verdict in the replevin suit against Lindley was recovered before the first contract was signed in O'Reilly's lifetime?

Mr. Grey: Not before it was signed.

The Court: I understand.

A. Well, it was recovered in O'Reilly's lifetime, and it has relation to that receipt in my judgment.

Q. The first receipt or the second?

A. The first, the first.

Q. (By Mr. Grey): Now, Mr. Gardner, what was the entire consideration, taking these two receipts that was intended to be demanded by you and agreed to be paid by Keim?

A. Twelve thousand five hundred dollars.

Q. Was or was not that price one fixed by the O'Reillys, as to the two thousand five hundred dollars by Patrick, and as to the balance of ten thousand dollars by his representatives after his death?

A. The last consideration—

Q. Before you answer this question I will show you some letters; I withdraw the question.

(Showing witness Exhibit C. 8, being letter of March 30, 1881, John J. Gardner to Newton Keim). What is the date of that, Mr. Gardner?

A. March 30, 1881, I have read it.

Q. This letter of March 30, 1881, refers to the very land here in controversy?

A. The very land.

Q. (By the Court): That is to say, the $2,500 mentioned in the letter which you quote from of March 29, 1881, from Reading, Pennsylvania; lots numbered 4, 5, 6 and 7 are the four strips, are they not?

A. No, sir; that letter refers, as I now remember it, to three of the four lots; to get the matter straight, *this* was divided *here*, and *that* was a lot with a number also, making one—two—three—four—five lots in all (counting them on the map).

Q. Oh, I see.

A. This letter refers to four.

Q. Oh, divided, cross-wise?

A. No, sir.

Q. Oh, the front there?

A. That front was counted a lot. That letter refers to *this* strip, and *this* strip, and *this* strip up to *here* and then *that* (indicating).

Q. (By Mr. Grey): I want to locate it so that it will appear on the record. I direct your attention to the letter which I have shown you, dated March 30, 1881; kindly take it in your hand and hold it. In whose handwriting is that letter—your own?

A. This is my handwriting.

Q. I call your attention to an extract in that letter in these words: "Reading, Pa., March 29, 1881. Dr. Sir:—In the matter of the strip of land back of lots Nos. 4, 5, 6 and 7, No. 4 was sold to Mr. Keim for $2,500. The price for the remainder is $7,500. This does not include lot No. 31, the price for which is $4,000. The price for strip and lot is $11,500. Truly yours, James A. O'Reilly." Did

you receive a letter from James A. O'Reilly of which this is a copy?

A. That must be true.

Q. Is there any doubt about it in your mind?

A. None whatever.

Q. Where is the letter?

A. I have not got the letter. It is quoted.

Q. Where is the letter?

A. I don't know.

Q. Did you have it before you at the time you wrote the letter of March 30, 1881?

A. No question about it.

Q. Is that copy there contained a full and accurate copy of that letter from James A. O'Reilly?

A. It seems to be the entire letter.

Q. Yes, sir. Now who was James A. O'Reilly?

A. James A. O'Reilly was a son of Patrick O'Reilly.

(Counsel for defendants produce maps).

Q. Now, Mr. Gardner, I call your attention to the map which was called for yesterday by me upon a statement made you that you did have a map by which you sold, and a copy of it upon which there were prices. Mr. Voorhees has produced a map, which I now show you, and I ask you if that is the map to which you refer, and a copy of it?

A. This is a copy of the original map, but it is not the map I referred to as the map by which I sold.

Q. (By the Court): Not the copy?

A. No, not the copy.

Q. (By Mr. Grey): Did the one which you referred to have the prices marked upon it?

A. It did.

Q. This has none, or has it?

A. I don't know—(witness here looks at the map)—well, I don't see any. This is not the copy on which I had the prices marked.

The Court: This is a good one to use.

Witness: That was a glazed copy so that you could hardly get the prices to stick.

Mr. Grey: Now I desire to offer the map produced—a paper map with a linen back.

The Court: Unless it is objected to it is admitted in evidence.

(Received in evidence and marked C. 36).

Mr. Grey: I also offer another map on oiled muslin, of which the last preceding map purports to be a copy, apparently on a reduced scale, or purports to be a copy of a part. I would like them marked as one exhibit.

(Said map received in evidence and marked C 36a).

Q. I now direct your attention, Mr. Gardner, to a new map on oiled muslin, marked in the upper left hand corner "Map No. 1," and which I ask may be marked as C. 37—

(Stenographer marks it C. 37).

Q. (Continuing). Now, Mr. Gardner, directing your attention to these several maps, I ask you to point out on C. 37, which is the last map and the newest, lots Nos. 4, 5, 6 and 7, which were referred to in that letter of James A. O'Reilly to you of the 29th of March, 1881, a copy of which, as you have stated, was incorporated in your letter of March 31st, addressed to Newton Keim.

A. (Witness points).

Q. (By the Court): Are the numbers shown on the map now all ready?

A. The numbers are shown perfectly correct I believe. Yes, they are correct.

Q. (By Mr. Grey): Then the numbering on the last map, 4, 5, 6, 7 and 31, correctly indicates the lots referred to in that letter, does it?

A. Yes, sir.

Q. Now, "Lot No. 4 was sold to Mr. Keim for $2,500." Is that the lot referred to in the first contract of March, 1880?

A. The lot referred to in the first receipt is the lot shown upon this map as No. 4.

Q. Now I direct your attention to a letter addressed by you to Newton Keim, marked C. 9, dated May 24, 1881, and I ask whether it is wholly in your handwriting?

A. I think it is.

Q. I direct your attention to that portion of the letter which reads as follows, purporting to be an extract from

some other paper: "In regard to the property Mr. Keim desires to purchase my reply to your query is that we desire to dispose of all the property between Tennessee and New York Avenues; that is to say, 5, 6, 7 and 31, and do not care to sell 5, 6, & 7 without 31." From what is that an extract?

A. It was an extract from a letter from James A. O'Reilly.

Q. Sir?

A. That is an extract from a letter by James A. O'Reilly.

Q. Have you that letter from which that is an extract?

A. I have not found that letter.

Q. What has become of that?

A. I have not found that letter.

Q. You have not found it?

A. No, sir.

Q. Is that a true and full extract in so far as the letter referred to this subject?

A. I think it is.

Q. Now, do these lots here referred to appear upon Exhibit C. 37, and are they there numbered as here stated—5, 6, 7 & 31?

A. Yes, they are.

Q. They are?

A. Yes.

Q. I call your attention to a letter dated July 18, 1881, Gardner to Keim, Exhibit C. 10. In whose handwriting is that letter?

A. That is mine.

Q. What are the lots stated in that letter as the lots of O'Reilly estate for which you desired Keim to make an offer? Just state them by numbers.

A. I have read the letter; I am getting the order of the dates.

Q. That is July 18, 1881?

A. This is after that.

Q. Follows the other letter?

A. As a matter of absolute memory I can't say, but

taking the order of them I presume it refers to the same lots as is mentioned in the other letter.

Q. (By the Court): That would be 5, 6, 7 & 31?

A. Yes, sir.

Q. (By Mr. Grey): Have you any doubt about that?

A. No, I have no reason to doubt it.

Q. None whatever?

A. Looks that way from the order of the letters.

Q. Now, did you receive a reply to that letter?

A. I don't remember.

Q. I direct your attention to a paper offered in evidence as a copy of a letter dated July 20, 1881, addressed by Newton Keim to you, the first words of which are: "Dear Sir:—Yours of the 18th received;" and I ask you whether you have the original paper of which that is, as has been testified, a copy?

A. I don't think I have; but as to that I would not swear, because in looking over letters I didn't look for letters which I had received from Mr. Keim, as I remember.

Q. Having read the letter, have you any recollection of receiving such a letter from Mr. Keim of the date mentioned, July 20, 1881?

A. I think I remember asking Mr. Keim to make an offer, and that he declined to make an offer.

Q. How did he decline; verbally or in writing?

A. In writing. I didn't see him.

Q. Now, Mr. Gardner, I show you a letter of January 21, 1885, press copy, Newton Keim to John J. Gardner, and I ask you to say whether you have the original of which that is a press copy, and, if you have not, whether you have any recollection, after having read the letter, of having received the original of which it is a press copy?

A. I have not the original that I know of; I can't remember at this time whether, as a matter of fact, I received that letter or not.

Q. In that connection I direct your attention to a letter dated January 22, 1885, marked Exhibit C. 15, addressed to Newton Keim and signed "J. J. Gardner," and ask whether it is in your handwriting?

A. That is my handwriting, I think, sir.

Q. I direct your attention to the first four words of the letter—"yours of yesterday rec'd"—and ask you to what letter or to what those words refer, if to a letter?

A. Evidently to a letter received from Mr. Keim, and owing to the date--

Q. (By the Court): If you will look at the letters.

A. This requires to serve a notice on certain tenants.

Q. (By Mr. Grey): Read the two letters together.

A. I should say this was an answer to that.

Q. That is, the letter of January 22, 1885, Exhibit C. 15, is an answer to the letter of January 21, 1885, Keim to you, C. 14?

A. This letter is evidently an answer to this.

Q. Very good.

A. C. 14 & C. 15 are answers.

Q. I direct your attention to Exhibit C. 21 letter, dated October 11, 1888, J. J. Gardner to Jacob Keim.

A. That is my signature.

Q. Is that your letter?

A. Yes, I have signed it.

Q. Of course you have. Now I call your attention to your letter, to the introductory part of the letter: "As Mr. James A. O'Reilly understands the status of the Lindley case from his intercourse with Mr. Voorhees, the case this time, as after previous reversals, is simply sent back for a new trial, instead of being dismissed. That the title is sustained," &c., I ask you this question: How did you arrive at the understanding which Mr. O'Reilly had of the status of the Lindley case?

A. It must have been from intercourse with Mr. O'Reilly.

Q. And that was the information which you gave in this letter, or to which you referred in this letter?

A. Mr. Keim had asked me, or written, anyway he had asked, either orally or otherwise, as to the status of that case. The question arose as to whether, when that case came back that time for re-trial, all the facts would have to be canvassed or whether only the probate of the will. It might have been a ridiculous question, but still it was

canvassed, and it seemed I had undertaken to give Mr. Keim Mr. O'Reilly's impression of it after conference with Mr. Voorhees.

Q. That is after Mr. O'Reilly's conference with Mr. Voorhees?

A. Yes, sir; that was the understanding when I wrote that letter.

Q. I show you a letter marked C. 6, dated March 10, 1881, Gardner to Keim; kindly look at it.

A. That seems to have been a letter written to Mr. Keim from me from Trenton.

Q. Wholly in your handwriting?

A. Yes, sir.

Q. I ask you this question: what lots were referred to in that letter when you used this expression: "Y'rs of 8th rec'd. Mr. Voorhees, att'y for the O'Reilly estate in N. J., determined upon ejectment against *all* the parties who pretend claim rights in any lands belonging to the estate?"

A. The question is what lots were meant there?

Q. Yes, sir.

A. That is in 1881?

Q. March 10, 1881, a year after the first contract.

A. Well, I think at that date it would have referred only to 4, 5 & 6.

Q. That is, one of those lots, No. 4, was the subject of the receipt of March, 1880, was it not?

A. Yes, sir.

Q. Now, I direct your attention to this language in the letter: "I cannot now fix the price the heirs will want for the land you inquire the price of. Mr. O'Reilly fixed the price for them at $9,500;" and I ask you to state what lands they were, and in that connection I direct your attention to a letter of March 8, 1881, marked Exhibit C. 5, press copy produced and shown Newton Keim, signed Newton Keim and addressed to Hon. J. J. Gardner.

A. Is one in answer to the other?

Q. Apparently so; says, "Y'rs of 8th inst. rec'd."

(Witness looks at said letters).

Q. Now, having read the letter of March 8th, Exhibit

C. 5, I repeat the question as to what was meant in your letter of March 10 when you said, "I cannot now fix the price the heirs will want for the land you inquire the price of. Mr. O'Reilly fixed the price for them at $9,500?"

A. Well, the lands inquired of are 5, 6, 7 and 31.

Q. Are those the same lots to which you have heretofore referred as indicated on map C. 37, as numbers 4, 5, 6, 7 & 31?

A. Yes, sir.

Q. Now, Mr. Gardner, you have already stated that you received the money expressed in these receipts to which your attention has been called, March, 1880, and October, 1881, what did you do with that money, to whom did you pay it?

A. I either paid the money to James A. O'Reilly or expended it upon grading, and so accounted for it there. I can't remember sure about that. My recollection is that the testimony of Mr. Lee would show just about that time we were carrying on some grading down there.

Q. On the O'Reilly property?

A. Yes, sir.

Q. So that you either gave it directly to them or expended it on their property and so accounted for it with them?

A. It was accounted for to James A. O'Reilly, yes, sir.

Q. Now, Mr. Gardner, did Patrick O'Reilly in his lifetime, or have his executors or any of them since his death, disaffirm either one of these contracts expressed in the two receipts of March, 1880, and October, 1881?

Mr. Voorhees: I object to that question.

A. That is to me?

Q. To you.

Mr. Voorhees: We enter an objection.

The Court: Counsel might have asked if he reported the sales to him.

Q. (By the Court): Did you report those contracts to your clients?

A. I reported the sales. I was to report the sales. Whether I reported the facts of the terms of the contract beyond the matter of sale I don't know.

Q. (By Mr. Grey): You reported the fact of the sale, did you?

A. Yes, sir.

Q. (By the Court): I will put the question: Was there any disapprobation expressed by them to you?

A. No disapprobation of the sale at the time. No.

Q. (By Mr. Grey): Now, when did you first hear of any disapproval by the O'Reillys of either of these contracts?

A. Sometime since the last trial at May's Landing; I forget the date.

Q. The last trial as testified to as having taken place in April, 1892?

A. And James A. O'Reilly said that he was not aware that any contracts of this kind were ever signed by me.

Q. James A. O'Reilly said so?

A. Yes, sir.

Q. Did you say anything to him about the fact that they had been signed, or what reply did you make to him when he said that?

A. Well, I told him—just what reply I made?

Q. Oh, not the language if you can't recall it.

A. Well, that the lots—that I had sold the lots many years ago, and that he must have been aware of the fact, or was aware of the fact. Something of that sort. That is about the reply I made.

Q. Now, when you had said that to him, what did he say?

A. He said that if I had sold the lots the sale ought to have been—I don't know what the word was—consummated, terminated, ended, or something of that sort. That was about all of it.

Q. That was about all of it?

A. About all.

Q. Did you ever have from Mr. Jacob Keim any request to have this matter consummated by delivery of a deed?

A. No.

Q. Did he ever speak to you about the litigations that were pending?

A. Oh, yes.

Q. Now, when he did so speak to you, did he express a desire that the litigations should be continued, or that they should cease, or that he should get the property, or that he should abandon it. What was it he said?

A. He wanted the property after the title should be established in the O'Reillys.

Q. Did he make this expression to you upon more than one occasion?

A. Latterly he frequently spoke about it, and perhaps had for many years; often spoke about it.

Q. Now, during that time the litigations were continuing; that is, they were pending and undetermined?

A. I think there were suits always pending somewhere, either in May's Landing or before the Court of Errors & Appeals.

Q. Now, can you give in a quick and narrative form the character of these litigations from the beginning to the end?

(Objected to on the ground that the record of those suits are the best evidence of their character and continuance).

The Court: The question is admitted upon the condition that the records are hereafter to be put in.

Q. (Read by stenographer).

A. As they now come to my mind the first was the renting to Daniel Lindley of the Ocean end—

Q. Of lot No. what?

A. Lot No. 5. When I called on him for the rent he said that he had paid the rent to Mrs. Rotherham—No. 4 I should say.

Q. No. 4?

A. No. 4 instead of 5.

Q. On C. 37?

A. Yes. When I called for the rent he said he had rented the ground of Mrs. Rotherham, who was the owner of it as accretion, or something that way, and that he was not going to pay rent twice. I distrained his bath-houses for rent and he replevined them, and the matter went to a jury. We got a verdict. Mr. Lindley moved off that ground and moved on, however to another place in the

same tract in the rear of the Florida House, Lot No. 32, as I recollect it. Somebody else, however, came in and took possession of the ground that Lindley had vacated; I don't know whether it was the firm of Bird & Skinner or not, under Colonel West, the tenant of the Rotherhams. Ejectments were brought against John West and also against Daniel Lindley, I guess no others. They were tried at May's Landing—one of the cases, the West case, I think, was tried at May's Landing soon afterwards; verdict rendered for C. C. O'Reilly, the plaintiff. The matter was taken up on a writ of error either to the Supreme Court or the Court of Errors, I don't know which; and the verdict was set aside and the case came back and was tried again, and a verdict for the plaintiff; carried up again and verdict set aside, and came back, and then one of the cases was tried again, and I believe the plaintiff got a verdict, and the other was not tried; and while they were in posture this suit was brought—yes.

Q. Which suit?

A. This.

Q. This one?

(By the Court): Now on trial?

A. Yes, sir.

The Court: Can counsel refer me to that case, Lindley *vs.* O'Reilly?

Witness: Which case was tried last?

Mr. Harned: The case first tried was the Lindley case. The West case was tried last.

Witness: And the last case tried was the West case?

Mr. Harned: The last tried was the West case and the Williamson never.

Q. (By the Court): Was there much delay in bringing the cases to trial after the reversal in the Court of Errors several times?

A. There were some adjournments; I think there was a term or two, my impression is, when the cases didn't go on because of the illness of attorneys on both sides. That is, I mean both sides at different terms.

Q. Sometimes one, and sometimes the other?

A. Yes, sir, I think that was true.

Q. Well.

A. However, it seems that ten years have run away in litigations.

Q. Who represented the defendants, the Lindleys, and West and those people?

A. Mr. Harned.

Mr. Harned: I did. Three suits, two of which are still pending. I was defeated in the Rotherham suit April term, '92.

Witness: Which are the two pending?

Mr. Harned: Williamson suit and the Lindley suit.

Q. (By Mr. Grey): Mr. Gardner, since the death of Patrick O'Reilly, the father, who has acted as the representative of the estate in regard to the lots in Atlantic City, to your knowledge?

A. My dealings have always been with James A. O'Reilly.

Q. And in your dealings with him have your transactions in regard to the land down there been approved or disapproved?

A. They have been approved the same as—he has fixed prices and so on the same as his father did.

Q. And since his father's death, have you made sales of the lots on the prices fixed by him?

A. By James A. O'Reilly?

Q. Yes, sir. Now in addition to the bargaining and agreeing to sell land that you have already described, what else did you do in relation to the land of O'Reilly and the O'Reilly estate in Atlantic City? Have you had anything to do with the rents?

A. They never rented much. Patrick owned originally the O'Connor cottage, which, as was shown yesterday, was very soon sold; and beach front lands are a matter of comparative recent date. They began about the time of these controversies. The first lease made to Lindley of them was only ten or eleven years ago; the controversy was over only a rent of one dollar a front foot, which now sounds very odd in so short a time.

Q. Well, as to the rents, who collected them when there were any to collect?

A. I collected what were collected, I believe.

Q. Who made the bargains, fixing the amount of rent and the terms of tenancy?

Q. Well, as to the amount of rents, I think they were already fixed by Patrick O'Reilly or James A.

Q. Well, now, as to the contracts, those amounts having been fixed, who did that?

A. I did the rest.

Q. Now as to taxes, who paid the taxes?

A. Generally I paid the taxes. I think there were a few cases in which the checks were sent directly to the collector. The taxes were generally paid by checks forwarded. I think once or twice probably they were paid out of moneys derived from sales; but the rule was that checks came from Reading for the taxes.

Q. Who to?

A. They were sent to me.

Q. Now when there was occasion—or was there occasion to attend the Board for the revision of taxes imposed upon these lands?

A. I thought there was always occasion.

Q. Who attended to that?

A. I did. I guess I most always went before the Board. I think James A. O'Reilly went with me once; possibly twice; however, I only remember it once I think.

Q. Was there any grading of streets around the property of O'Reilly in Atlantic City?

A. There was some making of sidewalks. As to streets I think they had generally been made just before. There was the legal controversy pending between Atlantic City and Henry F. Felix, that is, on the O'Reilly property, about the cost of making streets, when I first came into any relations with the thing.

Q. As to sidewalks that you say were made, who attended to that?

A. I did.

Q. Now, was there any filling up of the lots to bring them up to a grade, or abate nuisances under the order of the municipal authorities?

A. Yes, there was a good deal of grading in the earlier

date, perhaps '69 and '70, about all the land in the block bounded by Pacific and Atlantic, New York and Tennessee, or at least two-thirds of it was a deep water hole.

Q. Well, who attended to that?

A. Patrick O'Reilly furnished me the money. I hired, I think, thirty carts, and superintended them, and worked there most of the winter.

Q. The money that was required for these different purposes, excepting the checks for taxes, you say you received from Reading; from whence was it derived; where did you get this money?

A. On two occasions—well, the money—now, I could not remember the occasions. I followed directions as to that. If there was some work to be done, and there had been a lot sold, or lots, and money to be paid, I would be directed to take that money. If there was no money so coming in they would send the checks from Reading.

Q. Did you assist in preparing for the trial of the suits which you say were tried at different times by Mrs. O'Reilly, in the ejectment suits, looking after the attendance of witnesses, and matters of that sort?

A. Well, I saw the witnesses that Mr. Voorhees would request be brought here.

Q. Who was Mr. Voorhees representing?

A. C. C. O'Reilly.

Q. Now, were you a witness yourself in one of these cases?

A. Yes, sir, more than one.

Q. In whose behalf were you a witness?

A. C. C. O'Reilly.

Q. And at the time of the trial of the case when you delivered your testimony, do you remember whether James O'Reilly was there?

A. I think James A. O'Reilly always attended as a witness; I think he did.

Q. Now, do you remember the trial of the Lindley case?

A. Yes, I remember the Lindley case; I attended all the trials; I attended all the cases. However, Mr. Harned had the Lindley case twice tried.

Q. Were you a witness in that case called by the O'Reillys ?

A. Yes, sir.

Q. Now, as a witness in that case, kindly give me your attention and see whether you were asked the question which I am about to read, and answer questions and answers as I shall read them: "Question. About how far can you say was the ordinary high water from the Lindley house? Answer. I should say that it was—"

Judge Pancoast: The ordinary course of examining one's own witness is to ask him to state facts. He has not asked this witness to state any facts.

The Court: He is not trying to prove the facts that the witness swore to there; but, as I understand, he wishes to prove that at the instance and as the witness of the defendants here, who were plaintiffs in that suit, he did answer certain questions and gave certain testimony; the object being, I suppose, to prove their assent to the truth of that evidence at the time.

Mr. Grey: May I just state briefly what I want to show and why I want to show it? I propose to prove as a fact that he was a witness for these gentlemen in a suit, and, as such witness, delivered the testimony which I am about to read to him. I read it to him for the purpose of ascertaining whether that is the testimony that he delivered.

The Court: Not whether it is true or not?

Mr. Grey: Not whether it is true or not, only whether or not he there in that suit so testified.

Judge Pancoast: We object to it on the ground that it is improper and incompetent.

The Court: If the object of the counsel is to prove the facts contained in that evidence I think his proceeding is irregular. If the object is to prove that they were delivered as facts in that case, with the knowledge of the defendants here, then I think it is competent.

Judge Pancoast: Objection renewed.

Q. I will begin again: "Q. About how far can you say was the ordinary high water from the Lindley house. A. I should say that it was, from recollection, 100 feet or more. I think more. Q. Have you ever

acted as agent for any of that property down there? A. Yes; I acted as agent for Mr. O'Reilly and his estate continuously since the year 1868, if I remember rightly; about that time I acted as agent of Mrs. Hardwick for some time. Q. Who was Mrs. Hardwick? A. She was then owner of the Lindley property. Q. In what did your agency consist? A. In renting her property and collecting rents. Q. How long did you have the agency for Mrs. Hardwick? A. I think two years. After that I think she was afraid to rent it and got out of possession, or something of that sort, because of some claims against her. Q. About how long ago was that? A. That was about fourteen years. Q. About 14 years ago? A. Yes. Q. What did you rent for her? A. The house and lot which she owned, or claimed to own. Q. Do you remember the size of it? A. I don't recollect the description of the lot in the deed, but representing the O'Reilly estate I had very definite ideas as to the size of the lot. Q. Did she claim more than 150 feet? A. She never did within my knowledge. On the contrary she said that she did not in fact. Q. Did you ever exercise any acts of ownership over this land of O'Reilly, and, if so, what? A. Always had the care of the property, paid the taxes upon it. Kept it graded, as we had to keep that graded—

Judge Pancoast: Why don't you just offer in evidence what he said?

Mr. Grey: I will proceed in my own way and you may put whatever objection you have on the record.

Judge Pancoast: I do object that the manifest object is simply to put in evidence the statements made on that trial by this witness as evidence.

(Mr. Grey continues the reading as follows): "for sanitary purposes, as the ground would make out it would leave little ponds here and there, it would grow up with the rank grass such as grow on beach fronts and there would be stagnant water and weeds for mosquitos and all that. The city authorities would goad us about it; we would have the grass mowed and holes filled up. Q. Who did you employ to do the filling? A. At one time it was done by Peter D. Patterson—

Q. What is that name? Peterson, it should be.

Q. (Continuing reading): "At one time by Richard Hackett, once more by Irvin Lee, and once more by Samuel R. Schaffer. Q. And all these fillings you speak of were paid for by you as agent of O'Reilly? A. Yes. Q. It was done under you as his agent? A. Yes; paid for with his money. Q. Did you ever rent any of this lot on the front? A. Yes, to Elizabeth, I think the first name is, Clinton. Q. About what time was that? A. That began about as soon as anybody rented the Ocean front at all or charged any rent for it and continued down until within a short time when Mr. Lindley, I believe, took possession of that front. Q. When was the last time that you rented it to her. How long ago was it? A. My recollection is that Mrs. Clinton always paid rent until this last summer. She has not been up to pay any this summer and I don't know whether or not she is there. Q. She paid you rent as agent of O'Reilly for it? A. Yes. Q. For what purpose? A. Bath-houses. Q. When did you first begin to charge rent for bath-houses along there. A. I never heard of anybody charging rent for bath-house purposes on the front anywhere between Connecticut Avenue and the south part of the city, between 1876 or 1877? The first who did that within my knowledge was Pierce Archer; a year or two after that other people began to follow that example. Q. Prior to that time rent was not charged on the front for bath-houses to your knowledge? A. No, sir. Cross-examined by Mr. Pancoast. Q. What was your age in 1855? A. Ten years. Q. It was then, in your observation as a youth, you took notice of the fact that ordinary high water came up within 100 feet of Lindley's house? A. Yes; I had a clearer impression of such things then than now. Q. You had no particular business down there except the business of boyhood? A. Yes; I went there to sell fish daily in the summer time. Q. Was that the particular point to vend fish about where the inlet was located? A. There were not so many boarding houses then in Atlantic City. Q. You went to the Lindley house, to the Spray House and Farrell House when you were about and vending fish? A

Yes. Q. In that way you had an opportunity to observe the situation of the tide there? A. Yes. Q. You went to a great many other places in the course of that employment? A. I went to all the houses there. I can very nearly name each one. Q. Was this particular observation you made in respect to this particular property? A. The facts were there no other houses except a very few in that location at that time located near the beach. Q. Those houses were nearest the beach? A. Yes, sir; the United States Hotel and Mansion House, and so on; were the houses then in existence and they were located on Atlantic Avenue, Bedloe's Hotel and Metropolitan. Q. You might have been mistaken in your youthful judgment of the distance of 100 feet? A. No, sir; I take into consideration that if now, because the Spray House was not until recently moved and the landmarks remain there. Two of the other nearest cottages have been removed. They stood there until very recently at least 200 feet from Pacific Avenue. Q. Is it to your interest to make the distance between the O'Reilly house and the surf in 1855 as long as possible? A. I have not the slightest interest in it. Q. Are you not Mr. O'Reilly's agent? A. I am Mr. O'Reilly's agent to sell property. Q. Have you taken a great deal of interest in hunting up witnesses in this case? A. I can't say I have a great deal. Q. Some? A. No; I have hunted no witnesses. I have secured the attendance of the gentlemen that Mr. Voorhees directed. Q. Can you produce any receipt at all showing this specific property was assessed to the O'Reillys? A. I have not Mr. O'Reilly's tax receipts here. I have the tax bills for 1886. Mr. O'Reilly has the tax bill. Q. These are the bills you paid in respect to all his property down there? A. This particular property has been regularly assessed to him, the taxes paid, because I have gone over the assessment. Q. If that is so, he must have the receipts? A. He should have them. Q. They would be better than your recollection? A. They might to you, but not to me, because I am positive anyway." Q. Now, Mr. Gardner, are the questions and the answers which I have read to you the testimony which you de-

livered in the Lindley case at May's Landing when you were sworn as a witness on the part of the plaintiff and examined by Mr. Voorhees for them, and Mr. Pancoast on the other side?

A. I have no doubt of it.

Q. Were you not re-called as a witness in that case on the 15th of December, 1886, and examined by Mr. Voorhees?

A. Don't remember the dates, but I was examined at each of the trials.

Q. I call your attention to this testimony: "By Mr. Voorhees: Q. Have you been largely employed in the real estate business at Atlantic City? (Objected to as not rebuttal). A. Yes. Q. You have acted for other persons besides O'Reilly? (Objected to). (Objection overruled). A. Yes. Q. Was it customary for the owners of land there, made land, that is, the land extending from where the beach was in 1853 and 1854 out towards the sea, to charge for bath-house privileges? (Objected to the custom). (Objection overruled). A. No, sir; I never heard of anybody making a charge for the privilege to place bath-houses on the front prior to 1876. I remember one, that gentleman was Pierce Archer; he was the first. Q. The custom then was they were not to charge for the placing of the bath-houses on the open land before 1876? A. Yes. Q. From 1876, did they generally charge for it? A. They began doing it then, and by two or three years after that I suppose about everybody was charging. 1877 I am quite certain is the first year that O'Reilly ever ordered any charge for any Ocean front of his. Q. Did you ever make any claim for rent on Daniel Lindley? A. In the spring of 1877 or about that time. I think that is the spring I went to Mr. Lindley or sent for him and told him Mr. O'Reilly was now going to charge for the Ocean front because other people had begun doing so, and if he wanted to maintain bath-houses on any part of O'Reilly's lot he must pay for it. Q. Did he ever pay you any rent for any part of it? A. He agreed to pay one dollar a foot for what he should occupy, and wanted fifty feet, and he afterwards paid it.

Q. Where was his lots at that time? A. He located at that time on the east half on the lot fronting the John Rotherham property; in other words, on the lot on which the Brunswick House is located upon. Q. The lot in front of the Brunswick House? A. Yes. Q. Did you collect the rent? A. Yes. Q. How did you collect it? (Objected to going into details of any other lot). (Objection overruled). (Exception for defendant). Q. How did you collect it? A. When I called upon Mr. Lindley for the rent, he said that he had rented the ground from somebody else, or words to that effect, and gave me to understand he had changed his mind about it and his bath-houses were distrained, he replevined them, I believe; a trial was had in this court and the money was paid to me by the attorney in the case, A. H. Sharp. Q. Who distrained the goods do you remember? A. I did. Q. And the money was collected in that way? A. Yes. Cross-examined by Mr. Pancoast. Q. Then you, as the agent of O'Reilly, seized Lindley's bath-houses that were on the Rotherham lot, for the rent alleged to be due in respect to the Rotherham lot, did you? A. As the agent of O'Reilly I seized Mr. Lindley's bath-houses standing on the land which he rented of me, which is in front of the Rotherham lot. Q. You seized the bath-houses? A. Yes. Q. Through that process you seized the bath-house and compelled him to pay rent for the Rotherham lot? The Court: I think the witness has answered the question. Q. Did you oblige him to pay rent? A. As you ask the question whether there was a seizure of the bath-houses he was compelled to pay rent, the answer is yes. Your previous question was whether he was compelled to pay rent for the Rotherham lot." Are those questions and answers a correct statement of the testimony delivered by you on your recall in the case referred to on the trial in May's Landing when you were examined on behalf of the O'Reillys by Mr. Voorhees and cross-examined in behalf of the other party by Mr. Pancoast?

A. I have no doubt of it.

Q. Who delivered the deeds made in the lifetime of O'Reilly for lands which, as his agent, as you have stated,

you sold and for which you received the consideration money?

A. I think I did, generally.

Q. And from whom did you receive them for delivery?

A. I would receive them by mail from Mr. O'Reilly.

Q. Who delivered the deeds for the lots sold after the death of O'Reilly, the sales for which you negotiated and contracted for and the money for which, as you have testified, you received?

A. I did, generally.

Q. And from whom did you receive those deeds for delivery?

A. James A. O'Reilly.

Q. I direct the witness' attention to a deed dated the 23d of June, 1871, between Patrick O'Reilly and wife and Levi C. Albertson, and I ask him to state if h can tell in whose handwriting that deed is?

A. That is mine.

Q. Is that a deed for the lots therein mentioned conveyed by Patrick O'Reilly to Levi C. Albertson?

A. Yes, sir.

Mr. Grey: I offer this deed in evidence.

The Court: This is the deed referred to by Mr. Albertson as having been received by him and which he didn't have with him; it says it was received August 7, 1871, and recorded in the Clerk's Office of Atlantic County at May's Landing, N. J., in Liber 40 of Deeds, fol. 27, &c., C. W. Rape, Clerk, acknowledged before Jeremiah Hagenman. (Received in evidence and marked C. 38).

Q. (By the Court): In your letter to Keim of March 30, 1881, you quote a letter from O'Reilly to you of March 29th, 1881, in which he fixes the price of lots, numbered 5, 6 & 7, at $7,500, and that of No. 31 at $4,000, making in all $11,500. You subsequently contracted, as the complainant alleges, to sell those four lots—5, 6, 7 and 31—to Mr. Keim for $10,000; by what authority did you reduce the price from $11,500 to $10,000?

A. Well, that must have been as the result of further correspondence with James A. O'Reilly.

Q. Have you any present recollection about it?

A. I have not, definite; excuse me a moment; was not that the letter that Mr. Jacob Keim said yesterday I showed him?

Q. Mr. Jacob Keim or Mr. Newton Keim swore that when you fixed the price at that time at ten thousand dollars you showed them a letter from Mr. O'Reilly, the contents of which the Court did not permit the complainant to show, because they hadn't yet accounted for the loss of it. Have you got any such letter?

A. I have not.

Q. Did you hear the evidence of Mr. Keim?

A. I have looked for such a letter and have not found it.

Q. Did you hear the evidence of Mr. Keim?

A. I heard the evidence of Mr. Keim, yes, sir.

Q. And you don't now recall how that price was reduced from $11,500 to $10,000—whether by letter or by personal interview?

A. I could not swear to that, no, sir.

Q. (By Mr. Grey): Was it so changed by the authority of the O'Reillys.

A. I have no doubt about that; that is Mr. James; he is the gentleman I always dealt with.

Q. Mr. Gardner, your attention has been called to a number of letters. Let me ask you a question with reference to all those that you say you have not got. Did or did not your letters which you had, and other letters besides, disappear from your possession?

A. Two years ago, I think, there did; boxes disappeared from the top of what is now my cottage in Atlantic City, containing I don't know how many bushels of papers.

Q. In those boxes were these letters forming the correspondence of O'Reillys years past?

A. I have no doubt they were among those.

Q. (By the Court): You lost a great lot of papers?

A. Yes, sir.

Q. (By Mr. Grey): Have you searched for the letters in relation to your transactions with the O'Reillys with reference to this controversy, for the purpose of discovering and producing them?

A. Yes, sir.

Q. Have you been able to discover any other letters than those which have testified to in this case?

A. I found some letters that I think have not been in here.

Q. I mean in relation to this matter of Keim's?

A. No, I have not.

Cross-examination by Mr. Pancoast:

Q. Was the land referred to in these two contracts of sale in a state of nature, wholly unimproved, and bordering on the Atlantic Ocean?

A. Wholly unimproved. We had graded it from time to time.

Q. Before these sales?

A. Well, now, I can't remember the date about that. I can't remember the date.

Q. Do you remember whether any filling up on either of these tracts, in these two parcels, had been done prior to the time of making these two contracts of sale?

A. At this moment I can't say from recollection when the first grading was done there, for I have not been thinking about that branch of the matter at all.

Q. Now, does the high water line along the property mentioned in these two contracts vary—has it been subject to material change within a few years?

A. Yes. This map shows that. The map C. 36.

The Court: All the different maps produced this morning show it.

Q. Now can you tell about what was the length of those two tracts down to high water mark at the time they were made?

A. I can't exactly. We estimated them, I think; I don't know just how that estimate was made, one thousand feet. Is not that what the paper says, one thousand feet, more or less?

Q. Now, since that time, has there been any material increase or decrease by the action of the Ocean?

A. Well, now, I think the general result since then has been an increase; that has been my impression about it. That is, I think it goes and comes, it varies, but that the

general result has been an increase. That is what I believe.

Mr. Harned: The agreements leave that distance blank.

Witness: Do they? I thought it said one thousand feet, more or less. Then it is not in the other receipts.

Q. Since the making of these contracts, has this land increased very much in value?

A. Yes, it has.

Q. You have been a real estate dealer in Atlantic City for many years, have you not?

A. Yes, sir.

Q. What, in your judgment, would be the fair value of this land now, provided a perfectly good title could be given for it?

(Objected to).

The Court: State the grounds of your objection, Mr. Grey.

Mr. Grey: I object to the testimony on two grounds. First, that it is not cross-examination; and the second, that it is not relevant to the subject matter of the controversy.

The Court: There are some aspects of a case of this kind in which the change of value is of great importance. If there has been any speculation on the part of either party upon the change in values, that has always, as I recollect, affected the mind of the Court; and it may be that the defendants will prove hereafter that they have frequently urged Mr. Keim to take the title and he has declined, and that he has afterwards speculated on it. I can't at this moment say that the evidence will not be competent in some point of view hereafter, and, therefore, upon the principle I have adopted I shall admit the evidence. As the case now stands I can't see that it has the least bearing. With regard to the other point of counsel that this is not cross-examination, Mr. Gardner is on the witness stand, and I would not stop the examination at this time.

Q. (Read by stenographer as follows): "What, in your judgment, would be the fair value of this land now, provided a perfectly good title could be given for it?"

A. Well, land has gone up and down there in value so that I have hardly been able to keep up with it. It would sell, if I may answer the question in that shape, it would sell for more than one hundred thousand dollars.

Q. Now, who has paid the taxes on this land since the making of these two agreements?

A. Patrick O'Reilly or James A. O'Reilly.

Mr. Grey: The same objection.

Q. Can you tell, or have you any means of telling, how much tax has been paid by the O'Reillys on this property since these two contracts of sale were made by you?

A. No, I have no means of telling exactly. There has been $3,000 I should say; but that is an estimate. I have the figures.

The Court: There are two objections to that: That the proofs are, presumably, in the hands of Mr. O'Reilly. In the second place, the question of paying taxes would affect the terms of the decree and would be a subject of examination particularly for that purpose.

Mr. Grey: By a master.

The Court: If you have a statement made up from the tax receipts or from the collector's books you may produce it.

Q. Now can you tell us, or have you the means of enabling yourself to tell us, how much money has been expended on this land by way of filling it up and improving it in that way since the making of these two contracts of sale?

(Objected to).

The Court: I think that is also a matter of terms of the decree, if it has any bearing on the case at all. This witness may have it in his power, but he is not on the stand as your witness now, and unless he has already prepared it and examined his accounts and has the statement ready, I think the question had better be postponed until you call him, making him your own witness.

Mr. Pancoast: I refuse to postpone the question.

The Court: Unless the witness can say he now recollects about how much it was, I overrule it for the present.

Witness: I could not state the amount.

Q. Can you say whether it has been considerable or little?

Mr. Grey: I object to that.

A. It has been of some moment.

The Court: Counsel will observe that the Court has in mind the general rule that when there is a contract of sale of this kind equity looks upon the vendee as the owner and the vendor as entitled to the purchase money, the vendor having a lien on the land for the amount of the purchase money; and the question of who is to bear the burden of taxes and interests and rents and profits and all that sort of thing, is one which is adjusted between the parties upon equitable considerations of the nicest character.

Q. Now did this filling up to any extent take place by virtue of proceedings on the part of the city?

A. To some extent it did.

Q. And to that extent was compulsory, was it?

A. Yes.

Q. The same as the payment of taxes?

A. Yes.

Q. Had you any express specific instruction or authority from Patrick O'Reilly touching the terms of this first contract as the terms are incorporated in the writing here produced, excepting the mere price at which the property was to be sold?

A. That first contract? That was all; the lot was marked at a certain price.

Q. Did you ever show Patrick O'Reilly a copy of the terms of that contract in addition to the price?

A. Are you speaking now of the first?

Q. The first contract.

A. No, I don't think I kept a copy of the receipt; it was a matter to be closed, by its terms, within thirty days or a month, whichever it was. I don't think the receipt was made in duplicate at all.

Q. Then the receipt and the agreement together was drawn and immediately delivered to Mr. Keim, was it?

A. True.

Q. Now, so far as you can recollect, did you ever state

by word of mouth the terms of that contract to Patrick O'Reilly after it was entered into?

A. No. As to stating terms—you are speaking of the time of the first.

Q. The first?

A. I don't know that I ever stated them; that is, I can't remember specifically stating it. I have no doubt about the fact that I would have notified Patrick O'Reilly or his son James that the lot was sold. That would, perhaps, be all that I would say—that lot so and so is sold.

Q. Now, have you any certain or specific recollection as to the payment over to O'Reilly of the twenty-five dollars received on account of that first transaction?

A. Why, I don't recollect just how that was paid, no.

Q. Had you any authority or instruction in writing or otherwise from Patrick O'Reilly in his lifetime to the effect that you might make contracts in writing for the sale of his land according to his prices upon such terms and conditions as you should see fit to adopt?

A. No; the terms were as I described yesterday: that the lots would be priced, and the terms at which they were to be sold, whether cash or so much cash and so much mortgage, were fixed by him, and upon those terms I sold. Now, when I say "by him"—to make it clearly understood—during the latter years of Mr. O'Reilly's life I rarely received anything in his handwriting. His agent or attorney or amanuensis seemed to be Mr. James A. O'Reilly, and the communications generally would be from him, saying father says so and so.

Q. Now for how long a period before the father's death did the son James act as intermediary?

A. The son generally wrote the letters. Patrick O'Reilly himself came to Atlantic City at intervals; I don't remember just how often, but he would come; but he didn't write the letters, at least, in his own handwriting, but seldom in his latter years.

Q. Now when you made this second contract after the death of Patrick O'Reilly, did you preserve a copy of it or did you immediately deliver the draft over to Mr. Keim?

A. As I now recollect it there was no copy. There was simply the one draft, which Mr. Keim made at his office or home. He brought it with him when he called, I think.

Q. And the terms of the contract other than the price were dictated, as I think you have already said, and put in that agreement by Mr. Keim himself?

A. They were.

Mr. Grey: He has not said that.

Witness: My recollection is that Mr. Keim had prepared the receipt—leaving distances blank as it shows—before calling, and that there was no duplicate copy of it.

Q. You never sent a duplicate copy of it to James?

A. I had none.

Q. As far as your recollection goes did you ever call and report to James the terms and conditions of this second agreement other than the price and the boundaries of the property?

A. Well, now, I could not remember the words that I said about that; I could not remember what I should have said about it, by way of repeating the words.

Q. Do you remember how or under what circumstances, if at all, you handed over to James the part of the purchase money you received?

A. No, I don't remember exactly that.

Q. Then, before the making of this second agreement, you never had any conversation with James in respect to the terms other than the price and the bounds of the property?

A. No, probably not. If you take into consideration the circumstances—the deed for the first lot—(interrupted).

Q. Well, to the best of your recollection?

The Court: Let the witness finish that answer. He said the first lot had something.

Witness: Well, the first had been sold and the matter was to be closed up within thirty days and title had never passed, because there became a controversy about it.

Q. (By the Court): With other people claiming title?

A. Yes, sir. I could not remember so as to swear as to

just the method of how Mr. James A. O'Reilly was informed of this sale; or, if he was informed, in general substance of the terms of the receipt, outside of the fact that there had been a sale of the ground at the prices named by him in his letters, which letters, I believe, have mostly been here this morning—no, not the one—there is no letter here showing the reduction from $11,500 to $10,000 for the last four pieces; that is, I call them "four pieces" because they are numbered in four numbers.

Q. (By Mr. Pancoast): According to Patrick's instruction and authority to you, what was the price of the lot first sold to be?

A. $2,500. I have no doubt about that.

Recess for lunch.

AFTERNOON SESSION.

JOHN J. GARDNER.

Continuation of cross-examination by Mr. Pancoast.

Q. Between the time of making the first and making the second contract, did Mr. Keim ever offer to pay you and ask you for a deed under the first contract?

A. Oh, no.

Q. What, according to your understanding, was the price at which you were authorized to sell the second tract for, for Patrick O'Reilly?

A. $10,000; the understanding, the impression that I have about it.

Q. Was that the price for both parcels united?

A. No.

Q. Only for the second parcel?

A. That is all.

Q. (By the Court): 5, 6, 7 and 31?

A. Yes, sir.

Q. (By Mr. Pancoast): Then the second sale didn't contemplate a real sale of the whole as if there hadn't been a sale of a part.

A. How is that?

Q. In the first contract—

A. How is that?

Q. (Stenographer read the question as follows): "Then the second sale didn't contemplate a real sale of the whole as if there hadn't been a sale of a part?"

A. Well, as I said this morning, I think it did; I can't remember just what were the considerations that led to the including of the first tract, lot No. 4, in the second contract.

Q. Well, according to your understanding, was or was not the first contract of sale superseded by the second?

A. My understanding was that the second contract of sale included all the land, that is, 4, 5, 6, 7 and 31.

Q. Well, why did it include that part that you had contracted to sell before?

A. That is just what I don't specifically remember. I suppose it is because the time mentioned in the first contract had expired.

Q. Was there anything said between you and Keim touching the first contract at the time you made the second, seeing that it embraced the whole ground?

A. I do not remember any conversation about it.

Q. Had you ever any conversation—

A. (Interrupting question): I would state, as I remember it well, as I remember the matter when the second contract was made, or the second receipt signed, Mr. Keim paid me four hundred and seventy-five dollars. The receipt acknowledged $500. Now, the impression on my mind has always been that that was a consolidation of the four hundred and seventy-five dollars paid then and the twenty-five dollars first paid. That has been the impression on my mind.

Q. Then your—

The Court: He has not got through with his answer yet.

Witness: I was only going to say that it transpired yesterday, when the checks were put in evidence, that Mr. Keim, in the April preceding the October of the last contract, had sent me a check for twenty-five dollars with the view to closing a sale for a piece, and not all, providing an offer of his was accepted. Now that is a matter that I had totally forgotten. That is all. And while I

thought that that receipt was a consolidation of the first twenty-five dollars and the four hundred and seventy-five dollars in his mind, it may be, and appears to have been, a consolidation of $475 paid in October and $25 that had been left in my hands for a purchase of a part of the lands some five or six months before.

Q. So that your understanding was that this second sale was in effect a consolidation of the two sales?

A. That was the impression that I have had about it as long as I can remember what I thought about it.

Q. Now, since this second sale, has Keim ever offered to pay you the money and take a deed for the land?

A. No.

Q. Now, at any time since the first sale, has the land in question been free from adverse claim and occupation so that an undisputed title and possession could be given?

A. I think it has not.

Q. Name the adverse claimants that have been in possession during this time to your personal knowledge?

A. After—well, take the cases separately or together?

Q. Take the first, or in your own way.

A. Shall I name them in gross, or those that have been in possession of each piece?

Q. In your own way.

A. Well, the different persons that I remember were West, or Bird and Skinner under West.

Q. On which piece now?

A. That is what I want to get, they were under Rotherham—West was the lessee of Rotherham—four and five—one or both. For instance, I always consider four and five as one piece, because they were claimed as accretions to the Rotherham property, being two lots.

Q. (By Mr. Voorhees): Occupied by West and who else?

A. West and Skinner were a firm; then afterwards Griffith, and perhaps others.

As to No. 7 Daniel Lindley—

Q. (By Mr. Harned): Don't you mean 6?

A. Six, six, of course.

And now as to 7 and 31 the matter has been differ-

ent. If there be ejectment pending with regard to them they are of later institution than those with reference to 4, 5 & 6. The heirs—the daughter I think of Mary Hardwick she is known as in those cases, isn't she?

Q. (By Mr. Harned): Mrs. Williamson.

A. Well.

Mr. Grey: Mrs. Hardwick's name has been mentioned. I didn't know who she was.

Witness: She was Mrs. Morris originally, then Mrs. somebody else, and then Mrs. Hardwick. She has been married three times; that is, after the loss of her first husband she was married twice in rather rapid succession.

Q. (By Mr. Pancoast): Go on.

A. Well, they set up a claim somewhat later—they set up a claim to having bought 31 of Patrick O'Reilly by some kind of a contract away back in the early days. Now they then alleged what Lindley and Rotherham and these other people allege, or these legal gentlemen alleged for them, that 31, 32, 33 & 34 originally went to the tide line, and, therefore, all the accretions belonged to them.

Q. They also claimed by adverse possession, didn't they?

A. The Williamsons?

Q. Lindley and the Rotherhams.

A. Oh, Lindley and Rotherham did. They claimed by adverse possession.

Q. As well?

A. Yes, that was so.

Q. That was one branch of their claim?

A. That was the principal branch perhaps; by adverse possession; and Williamsons claimed that they had been in possession *here;* and I don't know what they claimed about the lower end of 31. Their claims grew I think very rapidly.

Q. With the value of the land?

A. Yes, sir, and unlike other mushrooms, they didn't die in winter.

Q. To your knowledge, since the making of these contracts, has there been, on the part of the O'Reillys, per-

sistent and continued effort, by litigation and otherwise, to free the title to this land from these adverse claimants claiming?

A. There has. I think the litigation has been perpetual.

Q. In whose name was the litigation conducted; or, in other words, by whom were these suits brought?

A. Catherine C. O'Reilly.

Q. The widow of Patrick?

A. The widow of Patrick.

Q. (The Court): They were all actions at law? 10

A. Yes, sir; ejectments.

Q. (By Mr. Pancoast): Did not James O'Reilly, in December, 1891, ask you at Atlantic City, by what authority you made this contract, and did you not answer, "I will be damned if I know."

A. Well, I don't remember the month or the time. Somewhat lately, or comparatively lately, O'Reilly, probably O'Reilly, asked me something of that sort, about my specific legal authority to make a contract to bind the estate, at the end of a long period of litigation or something 20 else, and, answering the legal aspect of it, I presume, I answered not as you have it and he understood it, I didn't swear that way, but I think I said "damfino," which would be spelled "d–a–m–f–i–n–o."

Q. Did you ever have any communication of any kind with Catherine C. O'Reilly, the widow of Patrick, or his children, John O'Reilly, Anthony O'Reilly, Francis O'Reilly and Mary O'Reilly, or either of them, respecting the sale of their interests in this land?

A. No. 30

Q. Did you ever get any authority or instructions of any sort to make this second contract, except through the son, James O'Reilly?

A. I never corresponded with anybody else about the matter after Patrick O'Reilly's death, nor received any instructions or communications from any of the others.

Q. That is all.

Re-direct examination by Mr. S. H. Grey.

Q. From whom did you receive instructions as to the sale of lands of O'Reilly which you sold as you have 40 already stated after the death of Patrick O'Reilly in 1881?

Mr. Voorhees: He has answered that.

A. Always from James A. O'Reilly.

Q. And were those contracts of sale followed by the execution and delivery of deeds by the representatives of O'Reilly after his death?

A. In every case that I remember.

Q. That is all.

NORMAN GREY, a witness produced on the part of the complainant, sworn.

Direct-examination by Mr. S. H. Grey.

Q. You are a member of the bar of New Jersey?

A. I am.

Q. Did you at my request go to Reading about a year ago for the purpose of making service of an injunction upon Mrs. Catherine C. O'Reilly?

A. Yes, sir.

Q. Was that injunction in the pending suits of Keim *vs.* O'Reilly?

A. Yes, sir.

Q. Well, when you got there where did you go?

A. I went to Mrs. Catherine O'Reilly's house, 302 Fifth Street I think it was, 302 East Fifth Street I think it was.

Q. Well, did you see the lady there?

A. I saw her; went upstairs; I was admitted to the house by a servant girl, and after waiting a few moments I was shown upstairs to a room where there was an elderly lady, sixty I suppose, 50 or 60, and who seemed to be somewhat of an invalid, and I asked her if she was Mrs. Catherine C. O'Reilly and she said she was; and I then showed her a subpœna in the case of Jacob Keim *vs.* Mrs. O'Reilly, Hall and Shelton and others, and also an injunction; and she said as soon as I showed her the papers, "Well, now, I can't sign any papers; please go to my son, James O'Reilly." I told her it would not be necessary for her to sign any papers at all, I would merely explain to her what the papers were and she could see her son at any time if she cared to. I then explained to her what the subpœna was, showed her the subpœna and left her a

copy, and also left her an injunction, after explaining what the injunction was.

Q. Did she say anything more in reference to her son?

A. She said—she again asked me if I would not go to her son, that he attended to all her business and she didn't have any charge over her business affairs, hadn't had for a year or two, or some years; and I told her that if her son took care of her business she could get him to explain to her what the papers were.

Q. Was that all that was said by her?

A. That is all that was said; all that I recollect.

Q. Did you, on another occasion, go to Reading, for the purpose of serving any papers in this proceeding?

A. I went about ten days after that—that was last October, about the 12th or 15th. I went again on the 20th or 22d or 23d, somewhere about then, and I went to the same house and rang the bell, and a gentleman came to the door. I asked him if I could see Mrs. Catherine O'Reilly, and he asked me if I had been there about a week before, if I was the same man that had been there about a week before; I said I was the same man, and I said that I had some papers that I wanted to serve on Mrs. O'Reilly, and he said that he had orders not to allow me to see Mrs. O'Reilly; and I then asked him what his name was; he said he would not tell me. I then asked him if he was in charge of the house and he said he was, and I told him he would do just as well, and I left the papers with him; I had a subpœna, an order allowing service, and an injunction in the case of supplemental bill of Keim against Mrs. O'Reilly, Lindley and Adams and others, defendants. I showed those papers to the gentleman who was at the door, asked him to give them to Mrs. O'Reilly and told him what they were; left him copies.

Q. (By the Court, handing witness an affidavit from a bundle of original papers on file): Better look at that affidavit made by you in the case for the purpose of fixing dates.

A. (After looking at affidavit). This is an affidavit of the first service—October 15th.

Q. September 15th?

A. September 15th, yes.

Q. Yes?

A. Yes, sir. Well, I made this affidavit a few days after. Yes, it was September, not in October.

Q. (Another affidavit shown witness).

The Court: Well, we won't spend time on this now. Mr. Grey may look at the original papers. It ought, in justice to the witness, to appear that nobody knew at the time the witness took his seat that the original papers from Trenton had arrived.

A. (After looking at affidavit). The dates are correct, as I made the affidavits at the time. The date of the first service I made on Mrs. O'Reilly herself personally was the 15th day of September and the date of the service at her front door on the gentleman in charge was the 23d of September.

Q. (By Mr. Grey): 1892?

A. 1892, last fall.

Q. Do the affidavits attached to or endorsed upon the original papers, the service of which you have described in this case, correctly state the dates of service?

A. They do.

Mr. Grey: I offer those affidavits as exhibits.

The Court: You don't have to offer them. They are papers in the case and may be used without specially offering them.

Q. That is all.

Not cross-examined.

NEWTON KEIM, recalled on the part of the complainant, further testifies as follows.

Direct examination by Mr. S. H. Grey.

Q. Mr. Keim, in the conversations that you had with James A. Griffith, which you spoke of yesterday, preceding and following the letter of September, 1891, which has been offered in evidence in relation to a proposition of $80,000 made in that letter in consequence of the preceding conversations for the purchase of your father's rights, did or did not Mr. Keim mention the name of any one whom

he described as his backer in that transaction, and, if so, whom?

A. Mr. Griffith you mean?

Q. Mr. Griffith I should say; did he mention the name of any one he described as his backer in that transaction, and, if so, whom?

(Objected to).

The Court: It may be competent as against some of the defendants.

A. He did.

Q. And, if so, whom?

A. He did; he named Simon Bacharach and Marx Bacharach.

Q. That is all.

Cross-examination.

Q. What Marcus?

A. M-a-r-x I think is the name; Marx.

Mr. Grey: Mr. Harned, I understand you represent Mr. Lindley?

Mr. Harned: Yes, sir.

Mr. Grey: I desire to produce for the purpose of being offered in evidence the following promissory notes:

Mrs. M. J. Eckert, April 14, 1892, at four months, for $1,400; endorsed by Daniel Lindley, Richard Bue and Sophie Bue or Sophia Bue.

Note of Daniel Lindley of April 14, 1892, at thirty days, for $5,000; endorsed Daniel Lindley, Richard Bue and Sophie Bue.

Promissory note made by H. B. Sussemeyer, dated April 14, 1892, at four months, for $500—$550 I should say— endorsed by Daniel Lindley, Robert Bue and Sophie or Sophia Bue.

Promissory note of Daniel Lindley of April 14, 1892, at four months, for $3,000; endorsed Daniel Lindley, Alfred Adams, jr., Richard Bue and Sophia or Sophie Bue.

Check to Daniel Lindley or by Daniel Lindley, dated April 15, 1892, for $10,000.

Mr. Grey (addressing Mr. James A. O'Reilly): Mr. James A. O'Reilly, I notify you and request you to produce all the letters in your possession received from New-

ton Keim or Jacob Keim in reference to this transaction involving the contracts of sale which have been testified to here, the one of March, 1880, and the other of October, 1881, for the purpose of being offered in evidence on the part of the complainant in this case.

Mr. Grey (addressing the Court): I have as I have already stated to your Honor, some more testimony which I cannot possibly get here to-day for reasons already given.

Mr. Grey: I desire to give another notice; I desire to notify counsel of the O'Reillys, and the O'Reillys, to produce for the purpose of being offered in evidence on the part of the complainant a mortgage received by them in part payment, or as security for the payment of the purchase money of the lot sold to Hall.

The Court: Have you got the deed? Is it recorded or not?

Mr. Grey: I can tell in a minute by looking at the search.

The Court: Give the date of it?

Mr. Grey: Dated June 1, 1892, to secure $50,000. And I, also, gave a like notice to the same parties to produce a mortgage made by Alfred Adams, jr., to Catherine C. O'Reilly, executrix, to secure the sum of $25,000, dated June 1, 1892.

Mr. Pancoast: I think Mr. Grey should state what his object is.

Mr. Grey: The object which I have is to show by the production of these notes and this check the association of Lindley and Adams in the transaction described by Mr. Barstow, during the pendency of which, by a conversation had between him and Adams, information as to the outstanding equitable estate of Keim was conveyed to or spoken of by Adams—I don't distinctly remember now how it was; but it was in his mind and was testified to by Barstow; I mean Mr. Adams' mind; and it is for the purpose of completing the history of that transaction by the production of these notes—which seem, as indicated by Barstow, to have been an application on the bank for a loan of money in consummation of this transaction, and I desire their production.

At this point adjournment taken.

IN CHANCERY OF NEW JERSEY.

BETWEEN
JACOB KEIM,
Complainant,
AND
CATHERINE C. O'REILLY, EXECUTRIX, AND JAMES A. GRIFFITH *et al.*,
Defendants.
BETWEEN
JACOB KEIM,
Complainant,
AND
CATHERINE C. O'REILLY, EXECUTRIX, DANIEL LINDLEY AND OTHERS,
Defendants.

CONTINUATION OF ABOVE ENTITLED CAUSES AT CHANCERY CHAMBERS, CAMDEN, NEW JERSEY, TUESDAY, SEPTEMBER 5, 1893, BEFORE HON. HENRY C. PITNEY, VICE CHANCELLOR.

Appearances:
Messrs. Grey & Grey for complainant.
Hon. David J. Pancoast for Mrs. Catherine C. O'Reilly, James A. O'Reilly, Francis P. O'Reilly.
T. B. Harned, Esq., for defendants, Lindley and Adams.

SILAS R. MORSE, produced on the part of the complainant, sworn.

Direct-examination by Mr. S. H. Grey.
Q. Mr. Morse, where do you reside? 10
A. At present I am in Chicago, but my home really is in Atlantic City.

Q. What is your business?

A. I am manager of the New Jersey School Education exhibit and the Geological exhibit.

Q. At the Columbian Fair?

A. Yes, sir.

Q. Did you know Patrick O'Reilly in his lifetime?

A. I did.

Q. When did you first make his acquaintance?

A. I think in about '67—1867.

Q. Where were you then engaged in business?

A. I was teaching school in Atlantic City.

Q. Did you ever have any proposition made to you by Mr. O'Reilly in his lifetime in reference to your acting as the agent for him in respect to any matter?

A. Yes, sir.

Q. (Continuing). And, if so, what?

(Objected to on the ground heretofore stated, to wit: that it does not tend to prove the contracts in question in this case).

The Court: I don't see at present that the objection has much force. If I recollect right, the suit is brought on a written contract.

Mr. Grey: It is.

The Court: And the real question was one of delay; and I suppose the object of the evidence is to show under what circumstances the complainant refrained from bringing suit to enforce his claim.

Mr. Pancoast: Your Honor allowed, subject to objection, the complainant to prove a course of dealings by Mr. O'Reilly with other people in respect to his lands. I suppose this is in the same line.

The Court: Oh; to show authority in Senator Gardner.

Mr. Grey: Perhaps if I were to state with great brevity what the object is—it is merely an introductory question.

The Court: I will admit the evidence.

Q. (Read by stenographer: "Did you ever have any proposition made to you by Mr. O'Reilly in his lifetime in reference to your acting as the agent for him in respect to any matter, and, if so, what?")

A. I did.

Q. What was the proposition which he made to you, and when did he make it?

(Objected to).

The Court: Admitted subject to the objection.

A. He came to the school house one night after school, I think it was about '68, I would not be sure of the date, and asked me if I would not like to take charge of his real estate in Atlantic City; and after talking with me about it and making propositions to me, I told him that with my school work it would be impossible for me to attend to it and also my being inexperienced in real estate business, but thought it would be well for him to go to a new man, and I think about that time Senator Gardner was starting.

Q. What was the character of the agency?

A. Mr. O'Reilly proposed that I should take—(interrupted)—

(Objected to).

Q. Sir?

A. He wanted I should take charge of the sale of his land; that he had—as I understood him to say, as well as I can recollect—that he had settled up with Bishop Wood, that is, that he had got a deed; there was some trouble, but it was with reference to the Bishop Wood land.

Q. Now, after this conversation which you have detailed, did you ever have any negotiation with Mr. Gardner in reference to the purchase of land of O'Reilly?

A. I did.

Q. Do you recollect a purchase of lands—of O'Reilly lands—by you in 1870?

(Objected to on the grounds heretofore stated).

The Court: My recollection is that I heard it discussed and admitted it.

Judge Pancoast: Yes, sir.

The Court: And I do so now.

Q. Did you answer the question.

A. I did not, there was an objection.

The Court: I have admitted the question.

Q. Now you may answer the question.

A. I do.

Q. Did you as the result of those negotiations with Gardner. With whom did you negotiate?

A. John J. Gardner.

Q. Well, as whose agent?

A. Patrick O'Reilly's.

Q. Now, as the result of those negotiations, did you become the purchaser of property at the northeast corner of South Carolina and Pacific Avenues?

A. Yes, sir.

Q. Was that property subsequently conveyed to you? Have you a deed for it?

A. Yes, sir.

Q. Have you got it here?

A. Yes, sir.

Q. Will you produce it?

(Witness produces deed and hands it to Mr. Grey).

Q. This is the original deed?

A. I think so; you will see I have several here.

Q. The date is the 5th of November, 1870?

A. That is the one.

Q. And the certificate of record shows that it was recorded in Liber 39 of Deeds, folio 548, of Atlantic County?

A. That is the first lot I bought.

Q. Witness being shown the deed produced, he is asked if he knows in whose handwriting the deed is?

A. I could not tell.

The Court: Whose is it, Mr. Grey?

Mr. Grey: I don't know; I thought possibly he did.

Judge Pancoast: I desire to enter a general objection to this line of examination.

Mr. Grey: You have already done so.

Judge Pancoast: I do it again, and now I am done.

Q. From whom did you receive delivery of this deed?

A. John J. Gardner.

Q. To whom did you pay the seven hundred dollars mentioned in it as the consideration money?

A. John J. Gardner.

Mr. Grey: I offer this deed in evidence:

(Said deed dated November 5, 1870, "Between Patrick O'Reilly, of the city of Reading, Berks County, and State

of Pennsylvania, railroad contractor, and Catherine C., his wife, of the one part, and Silas R. Morse, of the City of Atlantic;" acknowleded before Jeremiah Hagenman, Additional Law Judge of Court of Common Pleas of the County of Berks, marked Exhibit C. 39).

Q. Did you subsequently make a purchase of O'Reilly lands in July, 1872?

A. I did.

Q. With whom did you negotiate for the purchase of that property?

A. Senator Gardner—John J. Gardner.

Q. For whom was he acting in the matter as you understood?

A. Patrick O'Reilly; understood he was agent for him; all these

Q. Did you become the purchaser of the lands?

A. I did.

Q. Which you then were negotiating for?

A. Yes, sir.

Q. Were they conveyed to you.

A. They were.

Q. Have you the deed by which they were so conveyed?

A. What date is that?

Q. July 24, 1872.

A. I don't think I have that deed. I sold the property subsequently to Mr. Roberts.

Q. This deed is for a lot beginning at a point in easterly line of South Carolina Avenue where it intersects northerly line of Oriental Avenue, 400 feet southerly from southerly line of Pacific Avenue, and runs (1) northerly two hundred and fifty feet along said east line of South Carolina Avenue; (2) easterly fifty-five feet; (3) southerly two hundred and fifty-five feet, more or less, to a point where said line intersects north line of Oriental avenue; (4) westerly sixty-five feet to beginning. Now was that lot, the description of which I have read to you, conveyed to you?

A. It was.

Q. Is that the property which you say you conveyed to Mr. Roberts?

A. Yes, sir, to Elisha Roberts.

Q. (By the Court): And handed him over the deed?

A. Yes, sir.

Q. (By Mr. Grey): From whom did you receive the delivery of the deed which was made to you?

A. John J. Gardner.

Q. And to whom did you pay the money?

A. John J. Gardner.

Q. Did you subsequently negotiate for the purchase of a piece of property in January, 1873?

A. Yes, sir.

Q. With whom did you conduct that negotiation?

A. John J. Gardner.

Q. Have you the deed for the land, if so, produce it?

A. (Witness here produces deed dated 31st January, 1873).

Mr. Grey: Deed dated January 31st, 1873, Patrick O'Reilly and wife to Silas R. Morse, recorded in Liber 49 of Deeds, folio 309, &c.: "Beginning at a point in the westerly line of South Carolina Avenue, one hundred and seventy feet northwardly from the northerly line of Pacific Avenue, being in the northerly edge of a twenty-feet wide alley, and runs thence (1) westwardly along said edge of said alley parallel with Pacific Avenue one hundred and sixty-five feet to the easterly line of a twenty-feet wide alley running parallel with South Carolina Avenue; thence (2) northwardly along said alley fifty feet; thence (3) eastwardly parallel with Pacific Avenue one hundred and sixty-five feet to the westerly line of South Carolina Avenue; thence (4) southwardly along South Carolina Avenue fifty feet to the place of beginning;" acknowledgment taken by John F. O'Reilly, of Reading, Pennsylvania, a Commissioner of Deeds for the State of New Jersey, marked Exhibit C. 40.

Q. Witness being shown the paper is asked in whose handwriting is that deed, if you know?

A. I would not want to swear.

Q. From whom did you receive delivery of that deed?

A. John J. Gardner.

Q. And to whom did you pay the consideration?

A. John J. Gardner.

Q. Was the whole of that purchase money, $800, mentioned in that deed paid or partly secured?

A. I think secured by mortgage; I think I cancelled a mortgage.

Q. (By the Court): You afterwards paid it and have the mortgage?

A. Yes, sir (producing the mortgage).

Q. (By Mr. Grey): Is that the mortgage that you have in your hands?

A. Yes, sir.

Q. To whom did you make payment of that mortgage?

A. John J. Gardner.

Mr. Grey: I offer the cancelled mortgage.

(Said mortgage for $400, dated January 31, 1873, acknowledged before "J. J. Gardner, Commissioner of Deeds," and marked "Cancelled Jan. 14th, 1875, C. N. Rape, Clerk," marked by stenographer C. 41).

Q. From whom did you receive that mortgage with the seals torn off at the time that you paid it?

A. John J. Gardner.

Q. Witness being shown bond Silas R. Morse to Patrick O'Reilly, dated January 31, 1873, for $400, in two years, is asked whether that is the bond payment of which was secured by the mortgage just exhibited?

A. It is.

Q. Your attention is called to a memorandum receipt endorsed upon the back of the bond—read it?

A. (Reading) "One y's int. paid Aug., '74, J. J. Gardner;" that is his signature.

Q. To whom did you make the payment of the interest?

A. John J. Gardner, and that is his signature.

Q. Made at the time marked on the bond?

A. Yes, sir.

(Said bond endorsed in red ink "One y's int. paid Aug., '74, J. J. Gardner," marked C. 42).

Q. Did you subsequently, in June, 1875, negotiate for another piece of property of the O'Reillys on the easterly line of Tennessee Avenue, one hundred and seventy feet north from northerly line of Pacific Avenue?

A. For three pieces.

Q. With whom did you conduct that negotiation?

A. John J. Gardner.

Q. Did it result in a sale?

A. In all three cases.

Q. Have you the deeds for the property?

A. I have not; I sold the property; one was not conveyed to me, but to a man named Albert P. Flint; the other two were made to me.

Q. By whose direction was the deed made to Flint?

A. My own direction.

Q. From whom did you receive delivery of those deeds for the property, the title of which was conveyed to you?

A. John J. Gardner.

Q. To whom did you pay the consideration money?

A. John J. Gardner.

(Witness here produces a bond and warrant dated June 1, 1875—Silas R. Morse to Patrick O'Reilly—for $425, and counsel for complainant offers it in evidence; marked C. 42a; following endorsement appears: "Paid in full, J. J. Gardner.")

(Witness also produces mortgage dated June 1, 1875, Silas R. Morse to Patrick O'Reilly, for $425; acknowledged before J. J. Gardner, Commissioner of Deeds, and cancelled September 14, 1876; marked C. 42 b).

Q. Subsequently, in 1880, on the 15th of March, did you negotiate for the purchase of another piece of property of O'Reilly on the easterly line of South Carolina Avenue, four hundred feet south of south line of Pacific Avenue?

A. I did.

Q. Thence "eastwardly seventy three feet, more or less, to corner of lands of Elisha Roberts; (2) southeasterly one thousand feet, more or less, to low water mark Atlantic Ocean; (3) southwesterly 125 feet, more or less, to point in easterly line of South Carolina Avenue; (4) northwardly 1,000 feet, more or less, to beginning." Have you a deed for that property?

A. I have the deed and mortgages.

Q. Please to produce it.

A. (Produces deed and mortgages).

Q. (Looking at deed). Deed dated March 15, 1880, recorded in Atlantic County Clerk's Office, in Book No. 76 of Deeds, folio 381, &c.; that is the deed conveying the title, is it?

A. It is.

Q. I see it is acknowledged before James A. O'Reilly, a Commissioner of Deeds for New Jersey, residing at Reading, Pennsylvania, and attested by his seal; do you know James A. O'Reilly?

A. I do, by sight.

Q. What relation is he to Patrick O'Reilly?

A. I have understood he was his son.

Q. Now, from whom did you receive delivery of that deed?

A. John J. Gardner.

(Said deed endorsed "For record, J. J. Gardner, real estate agent and conveyancer, Atlantic City, N. J.," marked C. 43).

Q. You say a part of the consideration money was secured by mortgages. Mortgages being shown to you, you are asked whether these mortgages and bonds enclosed are the bonds and mortgages purporting to secure the consideration money or part of it?

A. Yes, sir; the mortgages were afterwards sold to William Yewdall and then transferred to me, and all cancelled.

(Mortgage dated 15th March, 1880, for $5,000, between Silas R. Morse, of the first part, and Patrick O'Reilly, of the second part, recorded in Atlantic County Clerk's office in book No. 10 of Mortgages, pp. 229, &c., and endorsed, "This mortgage cancelled of record June 26th, 1883, L. A. Down, Clerk," and stamped, "For record, J. J. Gardner, real estate agent and conveyancer, Atlantic City, N. J.," marked by stenographer C. 44.

Bond of even date for $5,000, S. R. Morse to Patrick O'Reilly, marked C. 45.

Assignment of mortgage, Patrick O'Reilly to William Yewdall, dated 28th of September, 1880, marked C. 46.

"Released part of mortgaged premises," William Yewdall to Silas Morse, dated 5th February, 1881, recorded in Book 82 of Deeds for Atlantic County, pp. 143, &c., marked C. 47.

"Released part of mortgaged premises," William Yewdall to Silas R. Morse, dated the 4th of January, 1883, not recorded, marked C. 48).

Q. In reference to the purchase of the lot, the deed for which you have just exhibited, the consideration being six thousand dollars—C. 43—with whom did you agree upon that price?

A. John J. Gardner.

Q. Now, subsequently, did you have any conversation with Mr. Gardner at Trenton in reference to the price?

A. I went to Trenton and gave him a check for $100 on account of the lot, and he gave me a receipt for that; sent it by mail, sent the receipt to me for $100 on account of the purchase of that; that I have lost.

Q. Well, now, was there anything said by Mr. Gardner in reference to a difference in price, an increase of price?

A. In his letter when he sent the receipt he said, "You were just in time—

Q. Have you got the letter?

A. No, sir.

Q. Then the letter is lost?

A. Yes, sir; I lost the letter; I don't keep those; he said that after I had left he got a telegram saying that the price would be $2,000 more, but he telegraphed back to him that it was too late, that I had paid on account of the purchase money.

Q. (By the Court): Well, was the contract afterwards carried out.

A. Yes, sir; I have got the deed, for $6,000.

Q. In any of the other transactions, you have testified to some six or seven, were any written contracts made in any of them?

A. I have just handed in one, in one of them.

Mr. Grey: I have not come to that.

Q. (By Mr. Grey): In the letter which you have referred to as having been lost, part of the contents of which

you have stated, did Mr. Gardner say who he received the telegram from?

A. To my best recollection, Patrick O'Reilly; I would not say sure; I got a deed for the ground and would like to buy another one like it.

Q. Now, Mr. Morse, did you, in 1883, negotiate for the purchase of a small strip about ten feet wide?

A. I think it was in 1883 I negotiated for one.

Q. (Showing witness paper). I show you paper dated April 6th, 1883.

A. April 6, 1883.

Q. The witness is asked, is that the receipt which you received?

A. It is.

Q. And from whom did you receive it?

A. John J. Gardner.

Q. In whose handwriting is it, if you know?

A. John J. Gardner's.

Mr. Grey: I offer it in evidence.

Marked C. 49 and reads as follows:

"J. J. GARDNER. STEWART H. SHINN.

GARDNER & SHINN,

INSURANCE AND REAL ESTATE AGENTS, CONVEYANCERS.

MONEY SECURED ON MORTGAGE.

OFFICE: OLD POST OFFICE BUILDING, 1018 ATLANTIC AVE.

ATLANTIC CITY, N. J., April 6, 1883.

$100.

Rec of S. R. Morse one hundred dollars, on account of purchase money of lot 10x165 ft, adjoing the northerly side of the prest lot of S. R. Morse, o Tennessee Ave., between Atlantic and Pacific Avenues, this city.

Total amount of purchase money to be THREE HUNDRED DOLLARS. Said lot is owned by the estate of P. O'Reilly, dec'd.

J. J. GARDNER,

Agent."

Q. I understood you to say that you paid this money to Mr. Gardner at the time of the date of that receipt?

A. Yes, sir.

Q. Subsequently to that, did you receive a deed for that property dated June 18th, 1886?

A. Yes, sir, but I sold it to Mrs. Smith.

Q. From whom did you receive delivery of that deed?

A. John J. Gardner.

Q. And to whom did you pay the balance of that purchase money?

A. John J. Gardner.

Q. About how long after the date of the receipt was it that you received the deed?

A. About three years, I think.

Q. The property in question is a property "Beginning in the easterly line of Tennessee Avenue, two hundred and twenty feet northward from northerly line of Pacific Avenue, and runs (1) northward along Tennessee Ave. 10 feet; thence eastward of width of 10 ft., 165 ft. to a 20-ft. wide alley; lot 10x165 feet." Is that the property?

A. That is correct.

Q. I call your attention to a search in which the deed from the executors of P. O'Reilly to Silas R. Morse is exhibited, dated June 18, 1886, acknowledged same day and recorded August 6, 1886, in Book No. 112, folio 147, &c., consideration $300 for the property, the description of which I have just read. Is that deed that you received for the lot on account of the consideration of which you paid the $100?

A. I should say it was.

Q. Have you any knowledge of Mr. Gardner appearing at any time before the Board for the revision of taxes in reference to assessments?

A. Yes, sir, I have.

Q. You were a member of that Board?

A. I was.

Q. In whose behalf did Mr. Gardner appear?

A. Patrick O'Reilly's.

Q. Was that before or after the death of Patrick?

A. I think before and after, both; I would not say to that; I know he did before; I think I was on the Board after, but every year he represented him whenever I have been on the Board.

Q. Did you ever know of any other person that John J. Gardner having authority to act for Patrick O'Reilly in

reference to the negotiating and sale of his land, either during his life or after his death?

A. No, sir.

Q. Did any member of the O'Reilly family live in Atlantic City?

A. Not that I know of.

Q. That is all.

Not cross-examined.

WILLIAM H. HERRING, produced on the part of the complainant, sworn.

Direct-examination by Mr. S. H. Grey.

Q. Where do you reside, sir?

A. Philadelphia.

Q. What is you business?

A. Real estate.

Q. Did you ever have any negotiations for the purchase of land of P. O'Reilly, situate between New York and Tennessee Avenues, in Atlantic City, N. Jersey?

A. I tried to negotiate for some.

Q. With whom did you try to negotiate?

A. Mr. James A. O'Reilly and J. J. Gardner; both.

Q. Now, about what time was this; what year?

A. 1881.

Q. Did you see Mr. James A. O'Reilly personally in regard to the matter?

A. I did.

Q. Did you ever go over the land that you proposed to buy?

A. I did.

Q. With whom did you go?

A. With James A. O'Reilly.

Q. Was any price named to you as the price for the land?

A. Two pieces of land that we were talking about; there was a price named.

Q. What was the price?

A. Ten thousand dollars.

Q. And what was the area of that land, or the width of the land?

A. He showed me one piece one hundred and fifty feet wide; another piece, fifty feet.

Q. And the price of the whole was what you have named?

A. $10,000; each, either.

Q. $10,000. Now, when you got to the point, if you got to the point—did you get to the point of concluding to take it?

A. Yes, sir.

Q. Where was it situate?

A. Between New York and Tennessee Avenues.

Q. Where was the other piece of property; you say one was one hundred and fifty feet wide and the other fifty feet?

A. There was one piece on the east side of Tennessee Avenue.

Q. What width was that?

A. Fifty feet.

Q. And the one hundred and fifty feet was where?

A. Between Tennessee and New York Avenues.

Q. You say you had gotten to the point of deciding to take this property?

A. Yes, sir.

Q. Now, when you reached that point, to whom were you referred for the negotiation and arrangement?

A. As to the one hundred and fifty feet wide piece I was referred to Mr. Gardner.

Q. Well, did you see Mr. Gardner?

A. I did.

Q. (By the Court): Who referred you to Mr. Gardner?

A. James A. O'Reilly.

Q. Why?

A. Mr. O'Reilly was in Reading, Pennsylvania, and I several times made arrangements to meet him in Philadelphia and failed to see him; I wrote to him and was in correspondence with him.

Q. I understood you to say that Mr. O'Reilly went over the ground with you?

A. Yes, sir.

Q. As to the fifty feet, eh?

A. As to both; walked across both.

Q. (By Mr. Grey): Well?

A. Then Mr. O'Reilly referred me to Mr. Gardner, and I went to Mr. Gardner, and he told me that it was sold, one hundred and fifty feet, to Jacob Keim, and he had received a check for part of the purchase money; then I fell back on the other lot, to purchase it?

Q. (By the Court): Did you report to Mr. O'Reilly what Mr. Gardner had told you, that it was sold to Keim?

A. I don't think I did.

Q. Had you determined at one time to take them both?

A. I determined first to take the one hundred and fifty-feet piece.

Q. Had you told that to Mr. O'Reilly that you desired to take the one hundred and fifty-feet piece?

A. After I had concluded to take it I didn't see Mr. O'Reilly.

Q. (By Mr. Grey): Which of these lots was it that Mr. Gardner told you was sold to Keim?

A. The one hundred and fifty-foot piece.

The Court: That is the property here involved.

Mr. Harned: Two hundred feet involved.

Mr. Grey: It is a part of it.

Cross-examination by JUDGE PANCOAST:

Q. What is your address in Philadelphia?

A. 812 North Broad Street.

Q. That is all.

JAMES S. SMITH, produced on the part of the complainant, sworn.

Direct-examination by Mr. S. H. Grey.

Q. Where do you live?

A. Atlantic City.

Q. Paper marked C. 27 being shown witness he is asked: Look at that paper signed Jacob Keim and the endorsements with your own signature?

A. Yes, sir, that is my signature.

Q. You can read those endorsements which you have signed--

New Jersey State Library

Mr. Grey: I might say to the Court that this is a notice which has been served by Mr. Keim and already proved, and I want to prove now that the service upon the different people whom Mr. Keim could not swear to; it is a notice, the service of which has not been perfectly proved.

A. I did serve that; that is my signature.

Q. Did you serve a paper, of which this is a copy, upon Daniel Lindley, personally, upon the twenty-eighth day of April, eighteen hundred and ninety-two, at Atlantic City, in the presence of Daniel Knauer, at nine o'clock A. M.?

A. I did, that is my signature.

Q. Did you serve a paper, of which this is a copy, upon Alfred Adams, junior, on the twenty-eighth day of April, eighteen hundred and ninety-two, personally, at Atlantic City, in the presence of Daniel Knauer, at eight forty-five A. M., as endorsed?

A. I did.

Q. Did you serve a paper, of which this is a copy, upon James A. Griffith, personally, on the twenty-eighth of April, 1892, at Atlantic City, in the presence of Daniel Knauer, at nine o'clock and five minutes A. M.?

A. I did.

Q. Now, did you sign the endorsement of the time and place of service of a copy of this paper on the respective persons named at the time mentioned in the endorsement?

A. Yes, sir.

Q. Are those three signatures your signatures?

A. Yes, sir.

Mr. Grey: I offer these endorsements.

(Marked C. 27 a).

ELIAS WRIGHT, produced on the part of the complainant, sworn.

Direct-examination by Mr. S. H. Grey.

Q. General, where do reside?

A. Atlantic City.

Q. What is your business?

A. I am a surveyor and civil engineer.

Q. Have you taken occasion to inform yourself as to the length of the lines on Tennessee and New York Avenues extending seaward from Pacific Avenue, between Pacific Avenue and the sea, at different dates, from 1883 to 1893?

A. Yes.

Q. Will you state what was the length of the line on Tennessee Avenue, in August, 1883, seaward from Pacific Avenue to the Ocean?

A. 1,450 feet.

Q. What was the length of the line on New York Avenue seaward from Pacific Avenue at the same time?

A. On the south side of Pacific avenue, 1,350 feet.

Q. What was the length of the line seaward from Pacific Avenue on South Carolina Avenue in 1884?

A. 1,613 feet.

Q. What was the length of the line seaward from Pacific Avenue on Tennessee Avenue in August, 1885?

A. 1,320 feet.

Q. What was the length of line on New York Avenue seaward from Pacific Avenue at the same time?

A. 1,294 feet.

Q. What was the length of the line on Tennessee Avenue seaward from Pacific Avenue in October, 1885?

A. 1,280 feet.

Q. What is the length of the line on New York Avenue in October, 1885, seaward from Pacific Avenue?

A. 1,260 feet.

Q. What was the length of the line seaward from Pacific Avenue on South Carolina Avenue in 1891?

A. 1,535 feet.

Q. What was the length of the line on the 1st of June, 1893, on South Carolina Avenue seaward from Pacific Avenue?

A. 1,505 feet.

Q. What was the length of the line seaward from Pacific Avenue at the same time on Tennessee Avenue?

A. 1,385 feet.

Q. What was the length of the line seaward from Pacific Avenue on New York Avenue at the same time?

A. 1,302 feet.

Q. (By the Court): You must keep a record then every year of these things?

A. Not every year; it happens I have these for these particular times.

Q. You happened to have measured those things at those times?

A. Yes, sir; or have data from which I get them.

Q. That is, in the course of your business you have occasion to measure to the sea line from time to time, and find these memoranda in your note book?

A. Yes, sir; in my data; the data that I have.

Judge Pancoast: Pacific Avenue is a kind of a base line?

Q. (By Mr. Grey): General, did you ever call upon Mr. Peter L. Voorhees in reference to the litigations touching the O'Reilly title in Atlantic City?

A. State that again.

Q. (Read by stenographer).

A. Yes, sir.

Q. At whose instance did you go to see him?

A. Jacob Keim's.

Q. And why did you go to see him; in what character did you speak to him?

A. Well, I was a witness in the case of O'Reilly *vs.* Lindley, and Mr. Keim frequently talked with me about it and thought I could speed the case, and asked me wouldn't I see Mr. Voorhees and find out what was the cause of delay and help it along wherever I could.

Q. Now, did you see Mr. Voorhees pursuant to that suggestion?

A. Yes, sir.

Q. And when you saw him did you say anything to him on the subject?

A. Yes, sir.

Q. What did you tell him?

Mr. Pancoast: How is that competent?

Mr. Grey: It has appeared already that Mr. Voorhees was the attorney of record in these cases, and there is no dispute about the fact that he represented the O'Reilly

interest touching this title, and, therefore, it is not necessary to prove it a second time.

The Court: I understand the objection is to the evidence. There is an allegation in the bill or somewhere, as I understand, that the complainant was urging on these suits and doing all he could to have the title settled—

Mr. Grey: Appears by the original bill, and by the supplemental bill.

Judge Pancoast: We have made no objection to that line of proof.

The Court: This is in line of having done that very thing.

Mr. Grey: This is one of the methods by which we did it.

Q. (Stenographer reads the question): "What did you tell him?"

A. Why I told him that Mr. Keim asked me to call on him and find out the cause of delay and see if something could not be done to speed the case, and what was the cause of delay and so on.

Q. Well?

A. And he told me at the time what was the cause of delay; at different times, different causes.

Q. (By the Court): How often did you call on him?

A. I don't remember, more than twice; but it may have been more than that; we were frequently in consultation, inasmuch as I was a witness in the case.

Q. (By Mr. Grey): In whose behalf were you expecting to be a witness—which side?

A. Why, for O'Reilly.

Q. Then Mr. Voorhees was the counsel for O'Reilly?

A. Yes, sir.

Mr. Harned: Referring to the statement of Mr. Grey that Mr. Voorhees represented the O'Reilly estate, I say there is no such thing on the record at all.

Adjourned to 10 A. M.

WEDNESDAY, September 6, 1893.

JACOB KEIM, the complainant, recalled.

Direct-examination by Mr. S. H. Grey.

Q. Mr. Keim, in your examination on the 8th of May, you were speaking of an interview with Mr. Gardner—

Mr. Grey: Shall I read his answer from the record for the purpose of directing his attention to the subject?

The Court: I don't see any objection.

Q. (Continuing). You were asked about buying three pieces of land; I will now read what you said: "He said he was to sell it altogether. So I told him before I left, I said, 'Now, Gardner, if you will sell, if you will put the other lot down to the same price, I will take them all, and that is the highest penny I am willing to pay for them.' Some-
10 time after that—not very long—I could not just tell the exact time—I got a note from Mr. Gardner to call at his office. I did so. I bade him good morning I suppose, got talking to him anyhow; I said 'you sent me a note,' he said 'yes.' He handed me a letter, without saying anything else. This letter was addressed not to me; addressed to Gardner, signed J. A. O'Reilly; stated that Mr.—"

Q. That was the end of it, because you were not permitted to prove the contents of the letter. Now, Mr. Keim, can you recall and state the contents of that letter?
20 (Objected to).

Mr. Grey: One moment; it is proper for me to state that during the examination of Mr. Gardner he was asked with reference to this letter and described it as one which he had lost and could not find, while stating the fact that he had received it.

The Court: I have forgotten; what is your recollection, Judge, as to what Gardner swore to about that?

Judge Pancoast: I would like to hear his testimony on that point read.

30 Mr. Grey (after looking over stenographer's minutes): I shall have to let this witness stand aside if I have to refer specifically to Gardner's testimony.

Judge Pancoast: It is quite an important point.

The Court: Mr. Gardner swore that a large number of his papers were lost; the only question I had about it was whether he recollected specifically the receipt of this particular letter to which Mr. Keim testified. I will hear counsel as to whether or not that is not so, without finding the place, that Mr. Gardner did swear that he lost these
40 papers about that time.

Judge Pancoast: I have no recollection of such testimony.

The Court: He went into detail about a lot of papers that he had put up in his garret, and when he went to hunt for them they were not to be found; and, among others, receipts, showing how he forwarded money to the O'Reillys. The only question in my mind is whether he recollected receiving the letter in question, and the question is whether, if he did not recollect receiving that particular letter, Mr. Keim is prohibited from swearing that he did see it.

Judge Pancoast: It is the duty of this complainant to make every effort to produce that original.

The Court: Mr. Gardner was very thoroughly examined on that subject, and the complainant, I think, did his duty in that respect. I rely a little upon my recollection of the very great thoroughness with which the complainant has produced the case. I will admit the evidence subject to the objection and strike it out afterwards if necessary.

Q. (Stenographer read the question). "Now, Mr. Keim, can you recall and state the contents of that letter?"

A. Well, it stated—

Q. (By the Court): The letter from Mr. O'Reilly to Mr. Gardner.

A. The letter of Mr. O'Reilly to Mr. Gardner; the letter stated that Mr.—what is the name—Mr. Herring has made us an offer of $10,000 for the land we own between New York and Tennessee Avenues, below Pacific, and we have agreed to take that amount for it. Those are the words. I told Mr. Gardner that was just what I had offered him. He said it was. "But," said he, "I had no previous knowledge of their willingness to accept that price for it."

Q. (By Mr. Grey): That is all.

Judge Pancoast: I have no questions.

Mr. Harned: No questions.

ROBERT T. LOGLESS, produced on the part of the complainant and sworn.

Direct-examination by Mr. S. H. Grey.

Q. Where do you live?

A. Atlantic City.

Q. How long have you lived down there?

A. Off and on fifteen years.

Q. Did you ever occupy any part of the ground on the beach at the foot of Tennessee Avenue?

A. Yes, sir.

Q. Who did it belong to when you occupied it?

A. Mr. William Berry.

Q. And about what time was that?

A. '78 that I got there first, 1878.

Q. Did you buy any land down there?

A. I bought from Mr. Berry in 1882.

Mr. Pancoast: We renew the objection heretofore made.

The Court: I don't see the relevancy of the evidence at present, but no doubt I will in a moment.

Mr. Grey: In the next question.

Q. Did you observe whether there were any changes in the beach along there?

A. I did.

Q. Did you ever make any measurement?

A. Yes, sir, frequently.

Q. (By the Court): What were the changes; did the beach go out further or the sea come in more?

A. The sea cut in wonderfully.

Q. Shortened the distance?

A. Yes, sir; I have a memorandum that was taken at the time. What years do you want to know?

Q. (By Mr. Grey): Well, in the years 1879 and '80 and 1881, was it a loss or a gain?

A. In 1879 high water was about 1,569 feet from Pacific Avenue; in 1880 high water was 1,500 feet; in 1881 it had got back to 1,359 feet; in 1882 it was 1,290 feet; in 1883 it was 1,250 feet; that is the memorandum made at that time.

Q. Well, in consequence of the invasion of the sea, did you have to do anything with your buildings there?

A. I had to move from 1878 until 1881—the Spring of 1881; I moved altogether 210 feet back.

Q. (By the Court): You keep bathing houses I suppose?

A. Yes, sir, I also lived there and had a house there on the beach.

Q. (By Mr. Grey): Did you lease any property adjoining that which you occupied on the west?

A. I rented one hundred feet from Tennessee Avenue, the next lot—100 feet.

Q. Who owned that property that you took the lease on?

A. Mr. O'Reilly.

Q. And who did you make the bargain with and get the lease from?

A. Mr. Gardner—J. J. Gardner.

Q. Who did you pay the rent to?

A. I paid it to J. J. Gardner.

Q. How long did you have it; more than one year?

A. I had it in 1878 and 1879.

Q. That is all.

No cross-examination.

SAMUEL KENYON, produced on the part of the complainant, sworn.

Direct-examination by Mr. S. H. Grey.

Q. Where do you reside?

A. 4208 Frankford Avenue, Philadelphia.

Q. Did you ever live in Atlantic City, or have any business in Atlantic City?

A. I have had business in Atlantic City ever since 1877.

Q. What was your business down there?

A. Bath house keeper.

Q. Did you ever occupy any part of the beach west of Tennessee Avenue?

A. Beginning 100 feet southwest of Tennessee Avenue.

Q. What did you use it for?

A. Little cottage.

Q. Who owned the ground that you occupied there, as you understood?

A. The estate of O'Reilly.

Q. Did you pay rent for it to anybody?

A. Yes, sir.

Q. Who to?

A. J. J. Gardner.

Q. Now, while you were on the land there, did you notice whether the sea advanced—came in?

A. Seemed to begin to advance about 1878—bent inward; cut out considerable of the ground and left the cottage on a mound; on a mound some three hundred feet west or southwest—northwest you might call it, of the board walk; one hundred feet further back.

Not cross-examined.

RICHARD HACKETT, produced on the part of the complainant, sworn.

Direct-examination by Mr. S. H. Grey.

Q. You reside in Atlantic City, do you not?

A. Yes, sir.

Q. How long have you lived down there?

A. Oh, I have been there ever since 1839.

Q. Then you got there before Atlantic City, didn't you?

A. Oh, yes, sir, some fourteen years.

Q. Do you know where the property of O'Reilly is up on Tennessee Avenue?

A. I do, yes, sir.

Q. Did you ever do any work around there?

A. Yes, sir.

Q. Between New York and Tennessee Avenues?

A. Yes, sir, I have

Q. Who employed you to do it?

A. Mr. Gardner.

Q. And what was it you did?

A. I put in some plank on Atlantic Avenue; filled up the sidewalk with sand; put gravel on it to make a walk, on Atlantic Avenue, on Tennessee Avenue and on Pacific Avenue, on the property that belonged to Mr. O'Reilly.

Q. For whom was Gardner acting in this matter as you understood?

The Court: He says Mr. Gardner employed and paid him, and the work was done on the O'Reilly property.

The Witness: Mr. O'Reilly was living at that time—the old gentleman; I sold him the land in the first place.

Q. The land was part of the Leeds property—part of the Leeds estate?

A. Yes, sir.

Q. And you married a daughter of old man Leeds?

A. Yes, sir.

Q. Well, now, did you ever do any hauling for grading lots there on the O'Reilly lands?

A. Well, you may call it *lot;* it was all one piece; there was a lot there two hundred and fifty feet from New York to within one hundred feet of Tennessee Avenue, running from, well, one hundred and fifty feet from below Pacific to the beach; I had carted sand in there on that lot and helped put trash on it to keep the sand from blowing away.

Q. Do you know what relation, if any, Mr. Gardner bore towards the estate O'Reilly—O'Reilly in his lifetime?

A. What relation?

Q. Did he in any way represent him?

A. Why, I didn't know anything else but his being an agent.

Q. (By the Court): Did he claim to own the land himself when you dealt with Mr. Gardner? Did Mr. Gardner claim to own the land himself?

A. No, sir, he did not.

Q. He employed you to do all this, and paid you?

A. He employed me.

Q. But didn't say he was the owner?

A. No, sir. We all know that Mr. Gardner was not the owner; everybody in Atlantic City that knew anything about it knew the land.

Q. (By Mr. Grey): Mr. Hackett, were you examined as a witness in the Lindley case at May's Landing?

A. I was.

Q. Who called you in that case; in whose behalf did you appear to testify?

A. Why, Mr. O'Reilly called at my house; I was not in.

Q. (By the Court): This gentleman sitting here?

A. This gentleman, Mr. James O'Reilly (pointing to Mr. James A. O'Reilly), wished to see me, and my wife told me that I must attend court at May's Landing on a certain day. In the meantime I see Mr. Gardner and he says you must come up to May's Landing, our trial is coming up this term; and I went up.

Q. Were you sworn as a witness in that case?

A. I was.

Q. (By Mr. Grey): Did you testify in that case in reference to the land that you have been speaking about now?

A. Yes, sir.

Q. Did you testify in that case in these words in response to questions which were put to you?

(Objected to as incompetent).

The Court: I think it should appear in the question whose examination it was—conducted by what counsel. It is admitted that the questions were put on behalf of Mrs. O'Reilly, the life tenant, by Mr. Peter L. Voorhees.

Q. I will proceed to read the examination: "Q. Do you know this particular lot of land—have you ever done any work on this land since it was made out there in front of Lindley's lot? A. I have. Q. What kind of work? A. Carted sand and filled up low places, cut down some of the lot limbs to put in low places and carted hay to throw over the land to keep the winds from blowing it away. I have cut acres with mowing machines to keep the mosquitos from having such a big harbor. Q. Who did you do the work for on that land? A. At the order of Mr. John J. Gardner, who was the man who paid me for my services. Q. About how long was it that you did that, 1876? A. I don't know. I have no date fixed; I should say seven or eight years ago was the last work I did there; it may be longer than that. Q. How much sand did you throw on there? A. I don't like to say, I don't know. I didn't do the main filling; that was done by other parties, the main filling, I finished it up. I suppose I might have hauled one hundred loads off those knolls to put in shallow places. Q. Who were the other men that did filling beside you? A. A man named Peterson done the filling there. I think Irving Lee carted some sand off this made land for Gardner by Gardner's orders. Q. After you levelled off the land you put that brush there? A. Brush, old hay, or brush, to keep the sand from blowing away. Q. That was put there for the purpose of keeping the sand from blowing away? A. Yes. Q. You put that there at the request of Mr. Gardner? A. I did." Were the questions that I have read to you put to you by Mr. Voorhees in the trial at May's Landing when you were called as a witness for

the O'Reilly's? Q. (By the Court): Were those questions and answers put to and answered by you at that time?

A. Why, yes, sir.

Q. (By Mr. Grey): And the answers as I have read them were as you gave them?

A. They are, sir, true.

Q. (By the Court): Was young Mr. James A. O'Reilly there at the trial at the time Mr. Voorhees was examining you?

A. Mr. O'Reilly was there at May's Landing at the trial two years ago last April.

Q. No, but when those questions were put to you?

A. I don't know, sir.

Q. Don't recollect, eh?

A. No, sir, this case of Mr. Lindley's was settled a year ago last April, wasn't it? It was, to the best of my recollection.

Q. (By Mr. Grey): The testimony that has been read to you was delivered on the 14th of December, or about that time, 1886, in May's Landing, six years ago last December and seven years next December.

A. They had court there two years last April.

Q. (By the Court): Which one was it? Was it two years ago last April or six or seven years ago that you were sworn?

A. Six or seven; I was also sworn in April.

The Court: But you have not been asked about that.

Q. (By Mr. Grey): Now, in 1886, do you remember whether Mr. James A. O'Reilly, whom you say asked you to come there and testify, was present when you were delivering your testimony? Was he in the court room there?

A. He was.

Q. Do you remember being sworn two years ago last April?

A. Yes, sir.

Q. And were you asked on the same subjects that you were asked about before?

Q. (By the Court): Were you questioned about the same things?

A. Why pretty much so, yes, sir; it is to know how I knew

that Mr. O'Reilly came in possession of the land, whether he bought it of me, and so on.

Q. (By Mr. Grey): Any question asked you about Gardner employing you to do things?

A. Doing things?

Q. Yes; were questions asked you about Gardner's employing you to do things on the land of O'Reilly?

A. What, two years ago last April?

Q. Yes, sir, hauling sand and putting down brush.

A. I would not say it was then; it was, I know, at one time; but what was done two years ago last spring with regard to asking me about the filling up I don't know whether I was asked again; if I was I answered about the same as I do now, sir.

Q. Who paid your witness fees in this case six or seven years ago?

A. Mr. Gardner.

No cross-examination.

JOHN F. STARR, produced on the part of the complainant, affirmed.

Direct-examination by Mr. S. H. Grey.

Q. Where do you live, Mr. Starr? You live in Camden?

A. Yes, sir.

Q. You are president of the First National Bank?

A. Yes, sir.

Q. Have you a summer residence in Atlantic City?

A. I have.

Q. How long have you been interested in Atlantic City property?

A. Since 1860; I bought first in '60.

Q. Did you have in contemplation the purchase of a piece of property in Atlantic City belonging to Patrick O'Reilly on South Carolina Avenue?

A. Yes, I bought a piece of property that belonged to Mr. O'Reilly.

Q. (By the Court): The question was whether you had in contemplation at one time to buy; I suppose you contemplated before you did buy?

A. Yes, sir, I think, likely.

Q. (By Mr. Grey): You did buy a piece of property down there?

A. Yes, sir.

Q. Where was that property situated?

A. On South Carolina and Pacific Avenues; ran from Pacific Avenue into the Ocean.

Q. With whom did you negotiate for the purchase of that property?

A. John J. Gardner.

Q. And did you make any preliminary agreement for the purchase in writing?

A. I did.

Q. Who did you make that with?

A. Gardner.

Q. Have you got it?

A. I have not; I did have, but I can't find the paper of agreement; I made the arrangement with him to buy it, and gave him a check for a small payment on account, but I can't find either the agreement or the cancelled check.

Q. For whom was Gardner acting in the matter?

A. Mr. O'Reilly.

Q. (By the Court): Who signed the agreement which you got?

A. Mr. Gardner.

Q. How did he sign it?

A. J. J. Gardner.

Q. Any addition—"agent" or anything of that kind?

A. That I don't remember.

Q. (By Mr. Grey): Did you afterwards get a deed for that property?

A. I did.

Q. Have you got the deed?

A. Yes, sir, I have it.

Q. Have you got it there?

A. I have it (producing deed); I suppose this will be returned to me.

The Court: Yes, you needn't be afraid of that.

Q. (Looking at deed). Deed dated August 2, 1872, Patrick O'Reilly and wife to John F. Starr, consideration $10,000; recorded in Book 43 of Deeds, pp. 358, &c. Is this the deed that you received from Mr. Gardner?

A. That is the deed I received from Mr. Gardner.

Q. (By the Court): To whom did you pay the money?

A. Mr. Gardner.

Q. (By Mr. Grey): You paid the money on the receipt of the deed to Mr. Gardner, did you?

A. Yes, sir; at the same time I gave him a mortgage for $5,000 and a bond accompanying it.

Q. As a part of the consideration money?

A. Yes, sir.

Q. Do you know John F. O'Reilly, Commissioner for New Jersey, residing at Reading, Pennsylvania, is who took the acknowledgment?

A. I don't know him personally, no, sir; the fact is I don't know that I ever saw the O'Reillys; I may have.

Q. The bond is here, too; is that the bond and mortgage that you gave for the part of the consideration—is this the mortgage?

A. The mortgage and bond are both here.

Q. To whom did you make payment of the bond and mortgage?

A. That was paid by my son, and he told me to some one of the O'Reillys; paid by my son for me; he has charge of my matters generally.

Q. I thought you paid it yourself.

A. No, sir.

Q. I offer the bond and mortgage in evidence, and I call the witness' attention to the subscribing witness name, "J. J. Gardner," on the bond and mortgage; just look at the attestation there—"In the presence of J. J. Gardner;" is that the signature of Mr. John Gardner with whom you made the negotiation for the purchase?

A. Yes, sir.

Mr. Grey: I offer these papers.

(Objection renewed).

The Court: Admitted in evidence, subject to the objection.

(Stenographer marks the deed, the bond and mortgage with his initials, "F. E. B.," and the date, "Sept. 6, 1893.")

Witness: I have here also a receipt for one payment of interest from Mr. Gardner (producing receipt).

Q. A payment of interest on the mortgage?

A. Of one year on the mortgage; the first year.

Mr. Grey: I offer that.

(Said receipt marked by stenographer "F. E. B." reads as follows: "Atlantic City, Sept. 16th, 1873, rec'd of John F. Starr, check for $350, being one year's int. on bond held by P. O'Reilly, to whose order check is drawn. J. J. Gardner.")

No cross-examination.

ISRAEL G. ADAMS, re-called.

Direct-examination by Mr. S. H. Grey.

Q. Do you recollect, Mr. Adams, when it was you sold the Chester County House?

A. I think it was about two years ago this last spring.

Q. That would be '91?

A. I think.

The Court: Is there not some memorandum by which he can fix the date?

Mr. Grey: I have none; I supposed he could fix it.

Witness: Perhaps might have been three years ago; I don't just recollect; might have been three years ago.

Q. Who did you sell it to?

A. Young, McShea & Fralinger.

Q. Did you make a deed for the property to these people?

A. Mr. Keim did.

Q. (By the Court): You negotiated it as real estate broker?

A. Yes, sir.

Q. (By Mr. Grey): You testified in your previous examination in reference to a Mr. Bacharach; do you know when it was that Mr. Bacharach took into his possession the personal property on the land which was deeded to Hall in reference to which you have testified before?

A. I don't know that I could fix a date; it appears that there was an agreement made, although I didn't have anything to do with it—a bill of sale made by Mr. Nixon, as attorney for them, and my impression is it is about a year ago.

Q. Mr. Nixon as attorney for whom?

Q. For Bacharach and Griffiths also, but I didn't have the papers, but I learned afterwards that there was a bill of

sale with a promise that he could redeem his property within a certain time, which he didn't do.

Q. Who was in possession of it up to that time?

A. Griffiths.

Q. Do you know anything about the deed from Walter Wood to Bacharach being offered for record at May's Landing?

A. Yes, sir, I sent it up there for record.

Q. Was it in your possession?

A. Yes, sir.

Q. Have you got it now?

A. No, sir.

Q. What was the land described in that deed?

A. A piece of land fifty feet eastwardly from New York Avenue and one hundred and fifty feet front on Pacific Avenue, running to the Atlantic Ocean.

Q. To the Ocean?

A. Yes, sir.

Q. You know where the land is which is the subject matter of this controversy, do you not?

A. Yes, sir.

Q. Did that land there described in that deed form any part of this land?

A. Yes, sir.

Q. From whom did you receive the deed.

A. From Simon Bacharach.

Q. And for what purpose?

A. To have it recorded for him. I received two deeds; the deed to Walter Wood, and the deed from Walter Wood to Bacharach.

Q. Who made the deed of which you have spoken as the Walter Wood deed?

Q. (By the Court): Who conveyed the property to Wood?

A. I don't recall the name; some one that I don't know.

Q. (By Mr. Grey): Was it Shelton?

A. I think it was the name of Shelton.

Q. Then you received a deed to Wood?

A. Yes, sir.

Q. And one from Wood to Bacharach?

A. Yes, sir.

Q. Do you know whether they both described the same property?

A. Yes, sir.

Q. And did you receive them both for the same purpose?

A. Yes, sir.

Q. You know Mr. Griffiths you have already said. Do you know what understanding, if any, existed by which Mr. Griffiths was to have an interest in the lands conveyed to Wood, and by Wood to Bacharach?

Judge Pancoast: How are you going to prove understanding?

The Court: I suppose it is an introductory question?

(Question amended so as to read: "Do you know whether any understanding existed by which Mr. Griffiths was to have an interest in the lands conveyed to Wood, and by Wood to Bacharach?")

Judge Pancoast: Right here I desire to make a correction; the mention of Mr. Griffith's name calls it to my mind; in reading over the testimony in this case I find in the record a statement to the Court that I represent Mr. Griffith in this case. I do not represent Mr. Griffith in this case; never have in any way, manner or shape. I represent simply the O'Reillys. I don't want any misunderstanding. Mr. Grey must have made that representation in my absence.

Mr. Harned: So far as I know Mr. Griffith is unrepresented.

Q. (Stenographer reads the amended question).

A. I understand that Griffith was to have a share of the profits.

The Court: That is not the question. The question is whether you knew of any understanding, not what the understanding was. That answer may be stricken out.

Q. The question was whether you knew of any understanding. The next question may be different.

A. There was an understanding.

Q. Now, what was it?

The Court: I think he must show the source of his knowledge first.

Q. What was the understanding and from whom did you receive your information?

Q. (By the Court): You need not answer that question. How did you learn of the understanding and from whom first?

A. Conversation between Mr. Griffith and Mr. Kremer.

Q. Who is Mr. Kremer?

Mr. Grey: Mr. Kremer was a gentleman whose name has been mentioned once before. He was connected in business, I think—partner—with the firm of R. D. Wood & Company, of which firm Mr. Walter Wood was a member.

Q. Who was Mr. Kremer?

A. One of the members of the firm of R. D. Wood & Sons.

Q. Now, then, you heard a conversation between Mr. Griffith and Mr. Kremer?

A. Yes, sir.

Q. You may state the conversation.

Judge Pancoast: How does that bind us?

The Court: I don't know that it does bind you. My recollection of the case is that there is some allegation in the bill—some issue raised as to whether these different conveyances were made in good faith, and notice is shown, or some attempt is made to show notice to somebody—I forget who it is.

Mr. Harned: Nobody claims under Griffith; no conveyance has ever been made to Griffith.

The Court: But you claim under Wood?

Mr. Harned: Nobody does.

The Court: Don't you claim under Wood?

Mr. Harned: No defendant here.

Judge Pancoast: The O'Reillys can't be bound by this.

The Court: I want to be posted as to the exact status of the case. The O'Reillys claim to have conveyed everything away, or a large portion, as I understand it, and certain persons claim under the O'Reillys. Is not that the situation?

Mr. M. P. Grey: Yes, sir.

The Court: Now, as to those persons, there is some charge of collusion or want of good faith; I forget just what it is.

Mr. Harned: The charge is that the consideration set forth in the deeds were not paid.

Judge Pancoast: What we want to know is how any statement by Griffith can bind us.

The Court: But statement by the firm of R. D. Wood & Sons may.

Mr. S. H. Grey: Mr. Griffith had contracted for the purchase of part of this property by an agreement in writing; subsequently to that time this same property which it had been agreed by O'Reilly that he should have, and which was a part of the property that Keim should have under the contract, that we insist upon, was conveyed to Hall, as I recollect it, and passed from Hall to Shelton, and from Shelton to Wood, and from Wood to Bacharach, and, in that way, the title, as far as we know, now rests in Bacharach.

The Court: And there is evidence that one of these parties —I forget who—has notice of this contract?

Mr. Grey: Yes, there is evidence of the notice to Lindley, and Griffiths and Adams, and all of those who were directly concerned in this matter, excepting—(interrupted).

The Court: Now you want to show that one of the persons who had notice reserved an interest in this land—in the profits?

Mr. Grey: That is it. You will remember that under the terms of that agreement he was apparently an equitable owner—as far as they could make him so by contract.

Judge Pancoast: He has not answered.

Mr. Grey: I don't care whether he has answered or not.

The Court: It is a question of *bona fides*, and may be a question of the interception of the purchase money also; because, suppose these conveyances were not made in good faith, and the complainant's contract is established, then the complainant would be entitled to the purchase money; if there are any *bona fide* purchasers without notice, complainant would be entitled, if he prevailed, to the purchase money that is unpaid, and would be entitled, if the O'Reilly estate is solvent to all the purchase money they received, for they became trustees. The *bona fides* of all the transactions may be involved.

Mr. Grey: I understand the point of the objection to be simply and solely that Judge Pancoast's clients are not affected; but we are trying two causes here, and because Mr. Griffith does not appear by counsel and has not answered, that no proof can be offered affecting him. That I understand to be his point.

The Court: I don't think that is so.

Mr. Harned: All these conveyances were made since the filing of the bill and since the notice of *lis pendens*.

The Court: At the time that the injunction was granted I spent half a day here in reading the bill, and, if I recollect, the question was, whether a *lis pendens* is of any value in New Jersey, unless the subpœna is not only issued, but served; if the defendants are non-residents and can't be caught with the subpoena, the question is whether or not a *lis pendens* is good for anything. I believe that was the question discussed at that time.

Mr. M. P. Grey: That is one of the questions.

The Court: I understand the *lis pendens* is all right, but he was not able to serve the O'Reillys and the grantees from the O'Reillys. Now he is attempting to prove notice to the parties who did buy, outside of the *lis pendens*. That is what he is attempting to do; and also to intercept the purchase money. I can't say that the evidence will not be competent in some aspects of the case.

Q. (Stenographer reads to the witness the last part of the examination).

A. Mr. Griffith was to have a share of the profits, if any, in the purchase of the ground. He paid no money.

Q. (By Mr. Grey): What share of the profits? What proportion of the profits was it understood that he was to have?

A. It is my recollection that Mr. Kremer promised him thirty per cent. of the profits on the sale of the land.

Q. Were these the same lands that were described in the deeds that you have already referred to from Shelton to Wood, and from Wood to Bacharach?

A. Yes, sir.

Q. Do you know where these deeds are? To whom did you deliver them?

A. I returned them to Mr. Bacharach when I found out that the clerk refused to record the Walter Wood deed; I sent that first, intending to send the other afterwards.

Q. (By the Court): The deed to Walter Wood?

A. Yes, sir, that is the first notice I had of any suit pending.

Q. (By Mr. Grey): Do you know the reason why the clerk refused to record?

A. I believe a process had been served on him forbidding him recording that deed; and he returned it to me, and I returned it to Bacharach, too.

Q. Now, was this the same property concerning which you have already testified that Mr. Griffith was in possession?

A. Yes, sir.

Q. Up to the time that Bacharach took possession?

A. Yes, sir; he leased the grounds of Wood that summer.

Q. Griffith did?

A. Yes, sir.

Cross-examination by Judge Pancoast.

Q. You had no conversation with the clerk respecting his refusal to see these papers?

A. I think he wrote a note down; I think he wrote me a note; I think Mr. Evans wrote a note down that a *lis pendens* or something was filed.

Q. (By the Court): Where is that note?

A. I didn't keep it.

Q. (By Judge Pancoast): That is all.

Witness: At least he returned it anyhow; he might have returned it personally; I got the deed back without its being recorded; he used to stop in at my office.

Cross-examination by Mr. Harned.

Q. Griffith owned the scenic railroad on this land, did he not?

A. Yes, sir.

Q. And he sold that to Bacharach?

A. Yes, sir.

Q. That was a very expensive improvement, was it not, on the land.

A. I think it was.

Q. Ran into a great deal of money?

A. Yes, sir.

Q. Thirty or forty thousand dollars?

A. Yes, sir.

CHARLES RITCHIE, produced on the part of the complainant, sworn.

Direct-examination by Mr. S. H. Grey.

Q. Mr. Ritchie, where do you live?

A. I live in Atlantic City at present.

Q. Atlantic City?

A. Yes, sir.

Q. Did you ever rent a space on the boardwalk, between New York and Tennessee Avenues, in Atlantic City, fifty feet east of New York Avenue, for 1892?

A. Yes, sir.

Q. Who did you rent it from?

A. James A. Griffith.

Q. Who did you pay the rent to?

A. James A. Griffith.

Q. Well, did you ever enter into possession of the property?

A. When I went to take possession I found that Mr. Bacharach owned the scenic railroad—(interrupted).

Q. No, in '92, I am talking about now—last summer—last year.

A. Yes, sir. I took possession of the property in 1892.

Q. Well, now, in 1893, in the month of January last, did you make another bargain for this year?

A. Yes, sir; for this year.

Q. Who with?

A. James A. Griffith.

Q. Did you pay anything?

A. Yes, sir; paid him three hundred and twenty-five dollars, for which I have a receipt.

Q. Have you got the receipt with you?

A. Yes, sir.

Q. Bring it out, please.

A. (Producing receipt). There is the receipt and the check (producing check) with which I paid it also; it is in rather a bad condition.

Q. Is this check, No. 83, on the National Security Bank, the check by which you paid the $325?

A. Yes, sir; to James A. Griffith; his signature is on the back of it.

Q. That is the money mentioned in the receipt?

A. Yes, sir.

Mr. Grey: I offer the receipt and the check. (Receipt marked with stenographer's initials, "F. E. B.," and reads

as follows: "Phila., Jan. 6, 1893. Rec'd of Chas. Ritchie, three hundred and twenty-five dollars (325), for rent in full, for stand in front Scenic R. R., Atlantic City, N. J., as used by him in season of 1892 for the summer of 1893. James A. Griffith.") (Check marked by stenographer "F. E. B." and reads: "No. 83, Philadelphia, January 6, 1893. National Security Bank, pay to James A. Griffith or order, three hundred and twenty-five dollars. Chas. Ritchie." Endorsed, "James A. Griffith").

Q. Did you have any written lease for this land? 10

A. No, sir, only what I hold here (holding receipt and check in hand).

Q. Do you know a man named Bacharach?

A. I do, sir.

Q. Were you ever notified by him, or anyone in his behalf, of any claim that he made to the property that you had paid rent for to Griffith?

A. When I came down to open up this year I found that Mr. Bacharach claimed the ownership and would not accept me as the tenant, and I had to pay him the rent the second 20 time.

Q. Ha, Ha! Did you ever receive any explanation from Mr. Griffith in reference to this matter?

A. No, sir, except that he was down there at the time and promised in the first place to send me the money to meet the note which I had to give for the rent, note given to Bacharach, but I have never heard one word from him since he left here; I have also written him between seven and ten letters and never received any answer.

Q. Did he say anything as to who owned the property at 30 the time he leased it to you?

A. He claimed it. The transaction was made in March of 1893.

Q. Transaction with who?

A. With Bacharach.

Q. So that he claimed he did own it in January of '93 when he leased it to you?

A. Yes, sir, and Mr. Bacharach claimed he did not own it.

Cross-examination by Mr. Harned.

Q. How much frontage did you rent? 40

A. From James A. Griffith?
Q. Yes, sir.
A. Between twenty-two and twenty-three feet.
Q. On the front and running back?
A. Runs back only about, I judge, eight or nine feet.
Q. Eight or nine feet?
A. Yes, sir; it is right in front of the scenic railroad.
Q. Griffith has his scenic railroad on the balance?
A. Yes, sir.
Q. The 100 feet left?
A. Yes, sir.
Q. The balance of the one hundred feet?
A. Yes, sir.
Q. And that scenic railroad runs all the way back to Pacific Avenue?
A. Does not run back to Pacific Avenue.
Q. Runs back to the rear of the Pacific Avenue lots?
A. Yes, sir.
Q. Runs back a thousand or twelve hundred feet?
A. I judge so; I know it is quite a good way, but I would not like to say how many feet or anything about it.
Q. Do you know how long Griffith has been there with that scenic railroad?
A. I rented it of James A. Griffith for—I think this is my fourth season.
Q. You have been there about four seasons?
A. Yes, sir; that was at the time the scenic railroad was built—the first year the figure "8" was built.
Q. There is a figure 8 there, too?
A. Yes, sir; but I am not in front of the figure "8," but in front of the scenic railroad.
Q. But the two of them were owned by Griffith?
A. I understood so.
Q. During the last four years that you have been there?
A. I think it was four years.
Q. That is all.
Mr. S. H. Grey: I have got several witnesses, I don't know whether three, or four or five, who were here yesterday, and I am not quite sure how many of them were here yesterday, but I know that two of them were that are not

here this morning. One is Mr. Gardner, who had to go back to Washington. Now I don't see how I can close to-day, although, if there had not been the business of the court yesterday, I could have got through, because the witnesses were here, and I will, therefore, have to ask some indulgence in reference to the examination of witnesses whom I expect yet to call but have not got here for the purpose. I want to inquire about how long, if counsel can tell, the testimony which you propose to offer will likely to occupy?

Judge Pancoast: That depends entirely on your cross-examination. On behalf of the O'Reillys my examination-in-chief will cover a comparatively short period of time.

The Court: You mean to say you are ready to rest and that these are rebutting witnesses?

Mr. Grey: No; it is part of the case; not rebutting witnesses. There is one witness by whom I would have to prove testimony delivered in these cases, to which attention has been called; he is in Michigan.

The Court: If it is the testimony of a dead witness you can prove it by the stenographer.

Mr. Grey: That is the very man I have to prove it by; Mr. A. E. Irwin is the stenographer.

The Court: Can you state the substance of what you expect to prove by these witnesses? The fact is that in the trial of a cause in this court, it makes very little difference; at least there are many cases where it makes very little difference, where the defendant goes on before all the complainant's case is put in or not; because, if something is put in afterwards that surprised him, he can put in his evidence to meet it. Of course the defendant here wants to know the complete aspect of the complainant's case before he commences to examine his witnesses. You want to know the substance of it. The Court sympathizes with counsel in that; but I want to get at whether it is not safe for you to go on if the complainant will state what he expects to prove by witnesses who are not here in order to make the day. It is early in the morning now.

Judge Pancoast: I won't agree to that. It presents disadvantages. We are ready to come here and put in our testimony right straight on, one jump, and just want to know what we have got to answer.

Mr. James A. O'Reilly: We have a witness quite a distance from here and he ought to be here when the testimony goes in.

Mr. Grey (after a few minutes' consultation in another room with his client): After consultation with my brother and my client I am unable to say that I can safely rest this case at this time, in view of the absence of these witnesses, and, therefore, ask a continuance at the risk of your Honor's engagements, which, your Honor has already stated, are numerous and important and necessarily involve a delay of some months.

The Court: Would you rest, reserving the right to call certain witnesses on a future occasion?

Mr. Grey: I have already proposed to do that, but the gentlemen on the other side have refused; that was intended to be my original suggestion.

(Mr. Grey announces that during the discussion a witness, whom he will proceed to call to the stand, has arrived).

FRANCIS P. QUIGLEY, a witness produced on the part of the complainant, sworn.

Direct-examination by Mr. S. H. Grey.

Q. You reside in Atlantic City?

A. Yes, sir.

Q. And are the cashier of one of the banks there?

A. Yes, sir.

Q. What bank?

A. Atlantic City National Bank.

Q. Do you remember an application being made to your bank by Mr. Lindley and Mr. Adams in 1892 for the loan of ten thousand dollars?

A. Yes, sir, I do.

Q. Did they state, either one of them, what the money was to be used for?

A. No, they did not.

Q. What did they say, if anything, in reference to what they wanted the money for and when they were to have the money?

A. My recollection is that they wanted the money the

following day, and what they wanted it for they said they preferred not to state.

Q. Well, did you tell them anything about the matter; give them any information as to whether they would be likely to get it under those circumstances?

A. I believe I said to them I did't think the bank would care to loan it except they knew as to some use it was going to be applied, and referred them to some members of the Board.

Q. Did you mention the name of anybody?

A. I don't think I mentioned the name of any particular man; I knew they knew them all.

Q. Was Mr. Barstow then a member of your Board?

A. Yes, sir.

Q. Was there a loan subsequently to that time made by the bank to these gentlemen for that amount?

A. The loan was made the following day.

Q. Was there any other loan than that one of ten thousand dollars made to these people by your bank?

A. Not just at that time.

Q. Now, when was that? You have stated in 1892; about what time in the year was it?

A. I think I have got a memorandum of it—(looking at piece of paper) April 15th.

Q. April what?

A. April fifteenth, ninety-two; that is the day the loan was made.

Q. Do you know whether there is any relationship or connection between Adams and Lindley?

A. Well, I only know that he is a son-in-law of Mr. Lindley.

Q. (By the Court): Adams is the son-in-law of Lindley?

A. Yes, sir, Adams is the son-in-law of Lindley.

Q. (By Mr. Grey): Adams is the son-in-law of Lindley?

A. Yes, sir.

Q. Who received the money on this loan when it was made by your bank?

A. Why, Mr. Lindley got credit for that.

Q. Credited to his account?

A. Credited to his account, yes, sir.

Q. Then it was subject to his check?
A. Then it was subject to his check.
Q. This was Daniel Lindley, was it?
A. Daniel Lindley, yes, sir.
No cross-examination.

Mr. Grey: We are now just in the same situation as we were before; one witness nearer.

The Court: Is there any possibility of making arrangements to go on with this case? I think the defense ought to go on upon a disclosure of what the complainant's counsel expect to prove by these other witnesses.

Judge Pancoast: We are not willing to go on.

Adjourned.

IN CHANCERY OF NEW JERSEY.

BETWEEN
JACOB KEIM,
Complainant,
AND
CATHERINE C. O'REILLY, EXECUTRIX, AND JAMES A. GRIFFITH *et al.*,
Defendants.
BETWEEN
JACOB KEIM,
Complainant,
AND
CATHERINE C. O'REILLY, EXECUTRIX, DANIEL LINDLEY *et al.*,
Def'ts.

TRANSCRIPT OF SHORTHAND NOTES TAKEN AT CHANCERY CHAMBERS, CAMDEN, NEW JERSEY, ON MONDAY, OCTOBER 30, 1893, BEFORE HON. HENRY C. PITNEY, VICE CHANCELLOR.

Appearances:

Messrs. Grey & Grey for the complainant.

Hon. David J. Pancoast and Peter L. Voorhees, Esq., for Mrs. Catherine C. O'Reilly and others.

T. B. Harned, Esq., for the defendants, Lindley and Adams.

A. E. IRWIN, produced on the part of the complainant, sworn.

Direct-examination by Mr. S. H. Grey.

Q. Are you the official stenographer in the Circuit Court of Atlantic County?

A. Yes, sir.

Q. Were you so in 1889 and 1890?

A. Yes, sir.

Q. Were you present at the trial of the case in which Lewis Kuehnle was plaintiff and the Camden and Atlantic Railroad Company was defendant, tried in that Circuit?

A. Yes, sir.

Q. Did you take notes of the testimony that was delivered in that case?

A. I did.

Q. Do you remember whether James A. O'Reilly was one of the witnesses produced and sworn on behalf of the railroad company in that case?

A. I do. He was sworn.

Q. Have you the notes, or a copy of the notes, which were taken by you at the time—of the testimony of Mr. O'Reilly?

A. Yes, sir.

Q. Was that testimony delivered in your presence?

A. It was.

Q. Did you take down the notes of what he said?

A. I did.

Q. Have you written out those notes?

A. I have.

Q. Got them with you here?

A. I have a copy.

Q. Will you produce it?

A. (Producing notes). This is a copy.

Q. Is that a true copy of what was said by Mr. O'Reilly?

A. It is.

Q. As well as of the questions that were asked him?

A. It is.

Cross-examination by Judge Pancoast.

Q. Have yourself compared these notes that you have produced here with the original notes in shorthand?

A. I have.

Q. To see if the one corresponds with the other exactly?

A. Yes, sir.

Q. You understand my question, do you? Whether you have compared this typewritten work here with your original notes?

A. Yes, sir.

Judge Pancoast (after looking at copy of notes pro-

duced by the witness): We don't deny the substantial accuracy of these notes; but we deny their competency and relevancy in this case as testimony.

(Typewritten copy of notes marked C. 50).

THOMAS J. HUNT, re-called on the part of the complainant.

Direct-examination by Mr. S. H. Grey.

Q. You were sworn as a witness once before?

A. Yes, sir.

Q. Did you have anything to do with the negotiation of the sale of lands to George Allen belonging to the O'Reilly estate in Atlantic City?

A. I did, sir.

Q. Whom did you represent?

A. I represented Mr. George Allen, of Philadelphia.

Q. In the course of that negotiation was there any receipt given?

A. Yes, sir; I have that receipt.

Q. Have you the receipt?

A. I have it.

Q. Will you produce it, please?

A. (Witness produces receipt).

Q. Have you got it there?

A. Yes, sir.

Mr. Grey: I propose to offer it.

The Witness: I would like to say in explanation, that in addition to the signature, there are some notes of my own on it which is no part of the receipt.

Q. Do you know the handwriting of John J. Gardner?

A. I know that that receipt is in his own handwriting, for I saw him write it; I saw Mr. Gardner write that in his office at Atlantic City.

(Judge Pancoast admits that the receipt is in the handwriting of Mr. Gardner, but objects to the admission of the paper on the ground of want of competency).

(Receipt marked C. 51, and reads as follows):

"GARDNER & SHINN.

$500. ATLANTIC CITY, N. J., Oct. 2d, 1886.

Rec'd of Thomas J. Hunt the sum of Five hundred

dollars on account of purchase of lot of ground one hundred feet in front on Tennessee Avenue by one hundred and sixty-five in depth, being bounded on the northwesterly side by a twenty-feet wide street, and on the northeasterly side by another twenty-feet wide street or alley. The side lot is situated on the easterly side of Tennessee Avenue, 175 feet southward from the southerly line of Atlantic City Avenue, in the city of Atlantic City, County of Atlantic, State of New Jersey. The purchase price of said lot of ground is to be fifty-five hundred dollars, the balance of five thousand dollars to be paid upon the delivery of the deed and completion of the conveyance, which is to be clear from encumberance and restriction of every kind. John J. Gardner, agt executors of P. O'Reilly, dec'd.")

Q. That receipt is signed "John J. Gardner, agt executors of P. O'Reilly, dec'd?"

A. That is my recollection, sir. (Receipt in the hands of defendants while witness gave his answer).

Q. Now, Mr. Hunt, did Mr. Allen receive a deed for the property which you say you negotiated the sale of?

A. Yes, sir.

Q. Deed being shown dated October 26, 1886, between Catherine C. O'Reilly and others, of the first part, and George Allen, of the second part, recorded in Clerk's Office of Atlantic County, Book 114 of Deeds, page 181, witness is asked whether that is the deed for the property referred to in the receipt.

A. Yes, sir; that is the deed.

Mr. Grey: I offer this deed.

(Objected to on the ground stated at previous hearings).

Q. Do you know Mary A. O'Reilly, one of the witnesses to this deed?

A. I have no recollection of her, sir.

(Deed marked C. 52).

Mr. Voorhees: This deed is liable to another objection, namely, that it is not properly certified.

The Court: It is not offered in evidence as a paper showing the title to property, but to show a general course of dealings by which Mr. Gardner was recognized as agent. Do the counsel of the defendants deny the signature?

Mr. Voorhees: We have nothing to say in reference to that matter.

The Court: Mr. Hunt said he received that deed in pursuance of that contract; he didn't say from whom he received it. He was not asked that question. He may be re-called to know from whom he received the deed.

JOHN G. SHREVE, a witness produced on the part of the complainant, sworn.

Direct-examination by Mr. S. H. Grey.

Q. Where do you live?

A. Atlantic City.

Q. What is your business?

A. Publisher.

Q. Do you know Mr. James A. Griffith?

A. Yes, sir.

Q. Do you know where the property, which is the subject matter of this controversy between Jacob Keim and the O'Reillys, is in Atlantic City?

A. Yes, sir.

Q. Do you know whether, upon any part of this property, Mr. Griffith has a scenic railroad, or had one?

A. Yes, sir.

Q. Were you in Omaha this summer?

A. In the fall—September.

Q. When you were there did you see Mr. Griffith?

A. Yes, sir.

Q. Did you have any conversation with Mr. Griffith on the subject of this Keim and O'Reilly controversy?

A. It came up in a business way.

Q. Well, now, in the course of that conversation, did Mr. Griffith say anything to you, and, if so, what, in relation to any interest he had in the property?

(Objected to).

The Court: I don't see how I can keep the evidence out.

Mr. Grey: It could not affect anybody except himself and those who claim through him.

The Court: I think I will have to admit it if he is a party to the suit.

Q. (Question read by stenographer as follows): "Well,

now, in the course of that conversation, did Mr. Griffith say anything to you, and, if so, what, in relation to any interest he had in the property?"

A. He told me that he owed some bills in Atlantic City and that he had an equity in the merry-go-round and scenic railroad, and that as soon as he got a settlement with Mr. Bacharach and Wolf he would have sufficient money to settle all his claims in Atlantic City against him.

Q. Did he say anything in regard to any interest that he had in the property itself?

A. He said it didn't appear on the surface that he had any interest, but there was an understanding between him and Bacharach and Wolf that he should have the difference between what the property brought and what the claim was at the settlement.

Q. When was this?

A. It was September 20th.

Q. This last September?

A. This last September.

No cross-examination.

JOHN L. YOUNG, re-called on the part of the complainant.

Direct-examination by Mr. S. H. Grey.

Q. Mr. Young you stated in your previous examination that Mr. Griffith had proposed to you to join in the purchase of land involved in this controversy and to buy in all the rights, including Keim's contracts?

A. Yes, sir.

Q. Now, was there anything said as to Mr. Bacharach being one of the parties to that purchase?

A. I ain't positive about that, but I think there was, but I ain't sure about that; but him and other parties were in the deal; I ain't sure; he didn't say anything to me about him, I think; but there were other parties, and I think Bacharach was one of them.

Q. What leads you to think that?

A. I think Mr. Griffith told me he was one of them.

Q. Did you ever have any talk with Bacharach about it?

A. Not that I remember.

Q. Can you fix the date of this conversation?
A. Not exactly. I think October, '91; somewhere along there.
Q. Are you one of the owners of the Chester House property?
A. Yes, sir.
Q. Have you got the deed for that property?
A. I have not got it with me; I have got the date of it.
Q. What is the date of it?
A. March 29, 1890.
No cross-examination.

JAMES D. SCOTT, produced on the part of the complainant and sworn.

Direct-examination by Mr. S. H. Grey.
Q. What is your business, Mr. Scott?
A. Publisher, map publisher.
Q. Did you ever publish a map of Atlantic City?
A. Yes, sir.
Q. Now, did you solicit subscriptions to that map?
A. Yes, sir, I did.
Q. Did you see Mr. Griffith in reference to any corrections to be made in the new map which you proposed to publish?
A. Yes, sir; I saw—I canvassed him for a subscription, and he pointed out the property and made corrections on it.
Q. Well, now, what property was it he pointed out?
A. It was one hundred feet wide from the board walk, back to within two hundred feet, I think, of Pacific Avenue, or about one hundred and fifty feet, or two hundred feet. It was one hundred feet wide, I think.
Q. Was there anything on this property?
A. Yes, sir.
Q. What?
A. A merry-go-round and scenic railroad.
Q. Do you know where the property is which is the subject matter of controversy in these cases of Keim against O'Reilly.
A. I don't know.

Q. Where was this property that you have described; what avenue?

A. It was just above New York Avenue.

Q. Just above New York Avenue?

A. Yes, sir; I think one hundred feet back from New York Avenue; I think one hundred feet.

Q. Now, did Mr. Griffith say anything to you as to the ownership of the ground on which he had the scenic railroad?

A. He said he had purchased the ground and he subscribed for a copy of the map.

Q. Was anything said about any suits in respect to the property?

A. He said the suits—law suits—had been settled and he had purchased the property.

Q. Well, now, did he point out to you any part of his ground as extending nearer to Pacific Avenue than any other part of it?

A. Yes, sir; that half of it, fifty feet, was further towards Pacific Avenue than the other.

Q. Well, did that involve any correction of the preceding map?

A. It did.

Q. Who made that correction?

A. I did, in red ink, at the time, for the engraver.

Q. Was Mr. Griffith present when you made the correction?

A. Yes, sir.

Q. Well, did you write any name on the property which he claimed was his?

A. I wrote his name over the property, supposing him to be the owner; believed his word.

Q. Did he see you write his name over the property?

A. Yes, sir.

Q. Now, when was this?

A. It was the 4th of July, 1892.

No cross-examination.

JAMES FLAHERTY, produced on the part of the complainant and sworn.

Direct-examination by Mr. S. H. Grey.

Q. Where do you reside?

A. In Atlantic City.

Q. Did you ever have any conversation with Mr. James A. O'Reilly in reference to the purchase of some lots on New York Avenue, in Atlantic City, in 1886?

A. Would you be kind enough to locate the lots and then I will be able to answer your question.

Q. Well, I show you a letter addressed to James Flaherty and dated "7, 19, 1886," and an envelope. Was that letter addressed to you (handing witness letter and envelope)?

A. Yes, sir.

Q. Do you remember its receipt by you—the fact of having received it?

A. I remember the fact of having received it.

Q. Is that the envelope in which it came?

A. Yes, sir.

Q. Now, the lots to which I refer are the lots alluded to in that letter.

A. I beg your pardon, this don't refer to any lots—this letter don't.

Q. Then you have got the wrong letter.

A. (Witness returns letter to counsel).

Q. That is not the right letter. I direct your attention to a letter and envelope, which is in two pieces; the date of the letter is 7th month, 9th, 1886; the letter I showed you a moment ago was not of that date.

A. (Witness looks at letter of 7, 9, '86).

Q. Have you looked at the letter?

A. Yes, sir; I have read it.

Q. Now, what I desire to know is whether the lots referred to in that letter as "N. Y. Ave. Lots" are the lots you conversed with Mr. James A. O'Reilly about?

A. Yes, sir

Q. Did you have any negotiation or proposition with Mr. James A. O'Reilly to become the purchaser, for yourself or any other person, of those lots, or this lot?

A. It is two lots; James and me talked it over, and I was about to buy them.

Q. And at what price?

A. This letter says $3,600.

The Court: What has the price got to do with it?

Mr. Grey: Simply for the purpose of locating the lots and the price. Now I propose to use the letter.

Q. Is that the letter which you received from Mr. James A. O'Reilly?

A. Yes, sir.

Q. And is that what remains of the envelope in which it came, that you have in your hand?

A. Yes, sir; letter and envelope.

Mr. Grey: We offer the letter and envelope in evidence.

Judge Pancoast: This comes within the general objection heretofore made.

(Letter marked C. 53, envelope C. 53a). Letter reads as follows:

"JAMES A. O'REILLY
ATTORNEY-AT-LAW,
No. 527 COURT STREET,
READING, PA.

7-9, 1886.

MY DEAR SIR:—Your favor of the 5th enclosing check for $200 on account of purchase money of lots on Tennessee Avenue received. I have instructed Mr. Gardner to prepare deed and mortgage. I received letter on the 1st from Mr. Gardner informing me that Reed had taken the N. Y. Ave. lots at $3,500. Of course not getting the $3,600 the arrangement we had made fell through. I may be able before long to put you in the way of making something. I am going away on the 12th and will not be home until the 24th. As soon as received the deed and mortg. will come down. Hoping you are having a good season, I am, yours sincerely,

JAMES A. O'REILLY.

JAMES FLAHERTY, ESQ.,
Atlantic City.")

Q. Were these New York Avenue lots, which in that letter referred to as having been sold, or referred to in this way: "I received letter on the 1st from Mr. Gardner informing me that Reed had taken the New York Avenue lots at $3,500," the same lots that you had been talking to Mr. O'Reilly about purchasing at $3,600?

A. James and me were talking about them.

Q. At thirty-six hundred?

A. Yes, sir.

Q. Had you paid anything on account of that bargain?

A. I handed James ten dollars, which he returned me.

Q. Now, for whom were you making the negotiation, for yourself or another person?

A. For myself.

Q. Did you receive a deed dated October 1st, 1886, from the executors of Patrick O'Reilly, deceased, for land in Atlantic City, beginning in the westerly line of Tennessee Avenue, distant 170 feet southward from the southerly line of Atlantic Avenue and 165 feet in depth? I show you the deed.

A. (Looking at deed). What is the question?

Q. My question is whether you received that deed from the executors of O'Reilly?

A. Yes, sir.

Mr. Grey: I offer the deed in evidence.

(Deed marked C. 54).

Mr. Grey: I want to offer in evidence certified copy of the record in the case of C. C. O'Reilly and Daniel Lindley in ejectment. Your Honor will remember that there was some evidence proven here that was given in that case. I have here a certified copy of the record. This contains the writ, the pleadings—New Jersey Supreme Court—the judgment in the Supreme Court, the execution, the endorsement, the writ of error, the record in the Supreme Court, return to writ of error, remittitur, the endorsement; another writ of error with the record, the return and exceptions and remittitur. This record is certified by certificate dated September 28, 1893, under the seal of the clerk.

Judge Pancoast: Assuming it to be what the gentleman says it is, we have no objection to the record.

(Said record marked C. 55).

Mr. Grey: I will read the covenant in C. 54: "And the said parties of the first part, for themselves, their heirs, executors and administrators, do covenant, promise and agree to, and with the party of the second part, that they are lawfully the executors of the last will and testament of said Patrick O'Reilly, deceased, and have full power to convey, as afore-

said, and have, in all respects, acted as aforesaid in making this conveyance in pursuance of the power and authority granted in and by said last will and testament, and that they have not made, done or suffered any act, matter or thing whatsoever since they were executors, as aforesaid, whereby the above granted premises, or any part thereof, are, shall or may be impeached, charged or encumbered in any manner whatsoever."

Recess for lunch.

Mr. Grey : I desire to offer some documentary evidence. I have a copy of the will of Patrick O'Reilly that I desire to offer ; exemplified copy.

(Marked C. 56).

Certified copy of the agreement between Catherine O'Reilly, executrix, and Alfred Adams, dated April 15, 1892.

(C. 57).

Certified copy of deed, Catherine C. O'Reilly, Francis P. O'Reilly and James A. O'Reilly to S. R. Morse, dated June 18, 1886.

(Marked C. 58).

Certified copy of deed, Catherine C. O'Reilly and others, executors, to Edward S. Lippincott, dated 27 October, 1890.

(Marked C. 59).

Certified copy of deed of confirmation, Catherine C. O'Reilly and others, executors, and all the heirs-at-law of P. O'Reilly to John S. Taylor, dated 30th July, 1890.

(Marked C. 60).

Certified copy of deed, Catherine C. O'Reilly and others, executors, to J. J. Fedigan, dated 21st February, 1887.

(Marked C. 61).

And in that connection with it, a deed of Rev. Peter Crane to Catharine C. O'Reilly and others, executors, dated the 17th day of March, 1887.

(Marked C. 62).

Certified copy of agreement between Catherine C. O'Reilly, executrix (with power of sale), of the last will and testament of Patrick O'Reilly, deceased, and James A. Griffith, dated April 21, 1892.

(Marked C. 63).

Certified copy of deed from Catherine O'Reilly, executrix, to Edward H. Hall, dated June 1, 1892.
(Marked C. 64).

Certified copy of abstract of mortgage for $50,000 from Edward H. Hall to Catherine C. O'Reilly, of the same date, the mortgage being recorded in abstract.
(Marked C. 65).

Certified copy of deed from Edward H. Hall to Joseph Shelton, dated August 10, 1892.
(Marked C. 66).

Certified copy of deed from Catherine C. O'Reilly, executrix, to Daniel Lindley, dated April 14, 1892.
(Marked C. 67).

Certified copy of deed of confirmation, Francis P. O'Reilly and James A. O'Reilly to Daniel Lindley, dated April 15, 1892.
(Marked C. 68).

Certified copy of deed, Catherine O'Reilly to Alfred Adams, jr., dated June 1, 1892.
(Marked C. 69).

Certified copy of abstract of mortgage for $25,000, Alfred Adams, jr., to Catherine C. O'Reilly, executrix, dated June 1, 1892.
(Marked C. 70).

Certified copy of deed, Catherine C. O'Reilly, executrix, to Daniel Lindley, dated 14th of April, 1892.
(Marked C. 71).

Copy of release from heirs of Patrick O'Reilly to Catherine C. O'Reilly and others, executors, dated September 9, 1890.
(Marked C. 72).

Certified copy of deed from John F. O'Reilly to Catherine C. O'Reilly, dated 29th October, 1889.
(Marked C. 73).

I also offer search against O'Reilly from the Clerk of Atlantic County, from the 1st of January, 1871, to the last of April, 1892—of mortgages.

Judge Pancoast: Object to the search.

The Court: He is now making the offers and you may make the objection after he has finished making the offers. I have not admitted any of them yet, and the better way would

be to make whatever objections you have after the offer of the papers.

(Marked C. 74).

Mr. S. H. Grey (continuing): Also offer search against O'Reilly for conveyances from Jan. 1, 1871, to May 18, 1892.

(Marked C. 75).

Also search against O'Reilly for conveyances by Catherine C. O'Reilly and others.

(Marked C. 76).

Also search for conveyance to Catherine C. O'Reilly and others, executors.

(Marked C. 77).

Also search from April 1, 1892, for conveyances, agreements, mortgages and *lis pendens*.

Now, these are all the searches that I propose to offer.

Judge Pancoast: I object to the searches on the special ground that the clerk's search is not evidence of what he does not find, or of what he does find; the search is not evidence. And as to the other papers, we interpose the general objection on grounds heretofore stated.

Mr. Grey: In reference to the searches, I suppose that the state of the record may be certified by a clerk, who, having custody of the books in which the records are, states, under his seal, what he finds on that record. Now, it don't prove title, but in this case we have been examining quite a number of witnesses for the purpose of ascertaining what transactions there were affecting the real estate of Mr. O'Reilly down in Atlantic City during his lifetime and after his death, and it is important to show.

The Court: What does the statute say about the certificate of a clerk? I think it says he may certify to copies of papers, and that is all. I don't think I can admit anything under the seal of the clerk except what the statute authorizes. I will allow the question of the search to stand over, and counsel may hereafter call my attention to anything bearing on the question of their admissibility. They are not admitted in evidence.

The Court (To counsel of defendants): Any objection to the certified copy of the will and conveyances and so forth being offered, look at them.

Judge Pancoast: We make no objection to these as certified copies, but object to their relevancy and competency.

The Court: I will rule out for the present the searches, subject to having my attention called by counsel for the complainant to anything in the statute which authorizes them, and if they are unable to find anything, then I will permit them hereafter to offer such competent evidence of the facts contained in the searches as they may be advised. That need not delay the defendant in going on with their case. If counsel for complainants wants to call the clerk to swear that he made the searches, the same as John Smith or Peter Jones might be called, and that is competent, the objection will be done away with.

Mr. Voorhees: We object to all these papers as not admissible.

Mr. Grey: Here is a little map as was used by Mr. Gardner and perhaps another witness; it is a little map showing the property in question. I offer it for the purpose of illustrating the property.

(For purposes of illustration, the map not objected to and stenographer marks it C. 79).

Mr. Grey: With reference to the testimony of Mr. Gardner, whom I intended to call, to recall to-day, for the purpose of asking him some questions, I have been unable to get Mr. Gardner, owing to his public duties at Washington, and I would like to be permitted, as soon as I can get him, to ask some questions on recall.

The Court: If you wish to ask Mr. Gardner questions that are not in rebuttal the defendants have a right, perhaps, to have you state what you propose to prove.

Mr. Grey: I will. I will state the points that I propose to ask the questions about.

I propose to direct Mr. Gardner's attention on recall to these points: That the ejectment suits which were pending in Atlantic County were suits affecting parts of the land in question in this controversy.

The Court: It seems to me that that is already proven.

Judge Pancoast: We will admit that in this case.

Mr. Grey: Then we don't need to prove it.

(Continuing): That Mr. James A. O'Reilly was the repre-

sentative of the O'Reilly estate in all of this controversy, and that Mrs. Catherine O'Reilly was never present in any of them.

Judge Pancoast: The latter part of that proposition we admit, that Mrs. O'Reilly was not present or had anything to do with it.

The Court: He has a right to prove it in his own way.

Mr. Grey (continuing): That he never, in any transactions which he had in relation to the lands of O'Reilly, had any communication directly with Mrs. Catherine C. O'Reilly, or with any of the O'Reilly family after the death of the father, excepting James.

Judge Pancoast: That is proved and that we admit as a fact.

Mr. Grey (continuing): That there was no disapproval of the contract made by Mr. Gardner with Mr. Keim by any of the O'Reilly family; and that the O'Reilly estate does not now own any lands in Atlantic City at all—that there is no land in Atlantic City which apparently is owned by the O'Reilly estate. Is that admitted or denied?

Judge Pancoast: We have nothing to say.

Mr. Grey (continuing): And that all the O'Reillys are non-residents of this State, and that none of them reside, or ever did reside, in Atlantic City during the period covered by this controversy.

Judge Pancoast: That is an admitted fact.

Mr. Grey (continuing): And that Mr. Peter L. Voorhees is the only gentleman of the bar of New Jersey who has acted for the O'Reillys until the beginning of this controversy.

Judge Pancoast: Nothing to say.

Mr. Grey (continuing): That there are no letters of Mr. Newton Keim addressed to Mr. Gardner which he has been able to discover after search.

The Court: That have not been already proven.

Judge Pancoast: Nothing to say.

Mr. Grey (continuing): And that certain deeds made to Dr. Thomas K. Reed, which I have here, and which were referred to by Dr. Reed when on the witness stand, but which were not then in his hands, or in our possession, we have since discovered were deeds from the O'Reillys to Dr. Thomas K.

Reed, and that they are, both of them, in the handwriting of Mr. Gardner, who drew them.

Judge Pancoast (looking at two papers handed to him by Mr. Grey): Both of those two papers the gentleman has handed to me—the body of them—we admit to be in the handwriting of Mr. Gardner.

Mr. Grey: Then I offer them.

Judge Pancoast: But we don't admit their competency.

(Deed dated August 1, 1883, Catharine C. O'Reilly, Francis P. O'Reilly, and James A. O'Reilly and Catherine C. O'Reilly to Thomas K. Reed, marked C. 80).

(Deed dated 27th, 1886, Catharine C. O'Reilly, Francis P. O'Reilly and James A. O'Reilly, executors, and C. C. O'Reilly to Thomas K. Reed, marked C. 81).

The Court (to Mr. Grey): Are you satisfied with the admissions?

Mr. Grey: I want to reserve the right to re-call him on the points that they have not admitted.

The Court (to counsel for defendants): Any objection, gentlemen, to that reservation?

Judge Pancoast: If that is the order of the Court that is the end of it.

The Court: I have not made any order at all.

Judge Pancoast: We will submit to anything the Court says.

The Court: I think it is quite proper for Mr. Gardner to be at his post in Washington, and I think the reservation is a proper one.

The Court: With regard to the two deeds, is there any objection to them, except the general objection? I understand counsel admit that the body of them is in the handwriting of Mr. Gardner.

Judge Pancoast: But we object to them on the general ground already stated.

The Court: Then all the papers except the searches admitted in evidence, subject to the general objection taken by counsel.

Mr. S. H. Grey: Notice was served on Mr. Pancoast as follows: "You are hereby notified to produce at the hearing of this case all letters addressed to James A. O'Reilly, or to

any other of the defendants in this cause, by Jacob Keim or Newton Keim, and especially those letters, copies of which have been read in evidence in this cause, to which the letters of James A. O'Reilly, dated 1, 5, 1886, and 9, 24, 1886, are replies. Also the letters testamentary upon the last will of Patrick O'Reilly, deceased, granted at May's Landing, Atlantic County, New Jersey, also letters testamentary upon said will granted at Reading, Pa. Also the statements, books and accounts of the executors of said will, and of James A. O'Reilly, with the estate of said Patrick O'Reilly, and especially the statement and account and the settlement of said estate, referred to in the release and settlement dated September 9th, 1890, made by Catherine C. O'Reilly and others, legatees, to the executors of said Patrick O'Reilly's will. Also the copy of the map of said Patrick O'Reilly's property at Atlantic City, being the copy of which John J. Gardner had and used to sell said property by, and on which he placed memorandum of said sales. Also the letter dated Nov. 27th, 1883, written by Newton Keim to Peter L. Voorhees, attorney for Catherine C. O'Reilly and others. Also the respective agreements between Daniel Lindley and Catherine C. O'Reilly, executrix, and Alfred Adams, jr., and said Catherine C. O'Reilly for the purchase of lands referred to in the bill of complaint at Atlantic City, and also the deeds for portions of said lands made by Catherine C. O'Reilly and others to said Lindley and to said Adams. Also the lease for part of said lands made by Catherine C. O'Reilly and others to said Alfred Adams, jr., about the year 1890, in order that the said complainant in the above entitled several causes may offer the said papers in evidence on the part of said complainant at the said hearing.

Your obedient servants,

GREY & GREY,

Sol'rs. for Complainant.

Dated October 30th, 1893."

The Court: Any answer?

Judge Pancoast: We got the notice this morning.

The Court: Do you say that you have not got the papers here?

Judge Pancoast: We have not got the papers, and have

had no opportunity to look for them and no opportunity to consider the questions arising under this demand.

The Court: It is not a matter of opportunity to consider. The question is whether you have them here or not.

Judge Pancoast: No, sir, we have not.

(Mr. Harned stated that no notice had been served upon him, but that certain of the documents referred to in notice just read were in his possession, and handed counsel for complainant five papers).

Mr. Grey: These papers now produced by Mr. Harned I offer in evidence. They are as follows:

Agreement of sale, Catherine C. O'Reilly, executrix, with Alfred Adams, jr., dated April 15, 1892.

(Marked C. 82).

Deed of confirmation, Francis P. O'Reilly and James A. O'Reilly to Alfred Adams, jr., dated 1st of June, 1892.

(Marked C. 83).

Deed dated 1st of June, 1892, between Catherine C. O'Reilly, executrix, and Alfred Adams, jr.

(Marked C. 84).

Deed, Catherine C. O'Reilly, executrix, to Daniel Lindley, dated 14th of April, 1892.

(Marked C. 85).

Deed of confirmation, Francis P. O'Reilly and James A. O'Reilly to Daniel Lindley, dated April 15, 1892.

(Marked C. 86).

(Complainant rests, except as to those documents which he gave notice to the defendants to produce, stating that if they are not produced during the production of the defendants' case he wishes to reserve the right to produce them on *duces tecum*).

ANTHONY J. O'REILLY, produced on the part of the defendants, sworn.

Direct-examination by Judge Pancoast.

Q. Are you one of the sons of Patrick and Catherine C. O'Reilly, of Reading?

A. Yes, sir.

Q. Where do you live?

A. At present in Indianapolis, Indiana.

Q. How long has your home been in the West?

A. September, 1874.

Q. Ever since September, 1874?

A. Yes, sir.

Q. Do you still retain your interest in the estate, real estate, at Atlantic City, of which your father died seized?

A. As one of the heirs I do.

Q. Never have conveyed that interest away to any person?

A. No, sir.

Q. Have you any personal knowledge whatever of the two Keim contracts in question in this litigation?

A. No, sir.

Q. When did you for the first time hear of the existence of such contracts?

A. About three or four months ago.

Q. From whom and how did you first hear of these two contracts?

A. There was a letter addressed to me at Reading and redirected to Indianapolis; in that was a clipping from a newspaper.

(Mr. Grey objects to the witness giving the contents of the letter without producing it or accounting for its absence).

The Court: He can produce the letter and clipping.

Judge Pancoast: Not if I don't care to prove the contents.

Q. From whom—

Mr. Grey: I object to any further proof with regard to the letter, from whom it came or what it contained.

Judge Pancoast: I am not trying to prove the contents of a letter or paper; I am trying to prove by him from whom and under what circumstances he first received a notification of the existence of these two contracts.

The Court: The rule, if I recollect it, is this: That where the paper is not in the possession of the party, but he has seen it and merely wants to identify the paper, the party may say, for example, a promissory note for so and so, made by so and so, or he may say, for example, that he saw a deed from John Jones to Peter Smith, but he has not got it in his possession, but if he refers to a paper in his possession and the other party requires it, why I am not so sure that the point is not well taken—that the paper must be produced.

Q. Now, have you that letter?

A. I may not have the envelope, but I think I have the clipping.

Q. Where is the clipping?

A. In my papers at Indianapolis.

Q. (By the Court): Well, that is the first you ever heard of it?

A. Yes, sir, that is the Keim suit.

Q. (By Judge Pancoast): That was of the Keim suit?

A. Yes, sir.

Q. And this letter was from whom, containing this clipping?

A. I don't know who it was from; it was simply this clipping pasted on another piece of paper and addressed to Reading and forwarded to me at Indianapolis, and I think I forwarded it back to brother Frank to know what was the trouble.

Q. And about how long ago?

A. About four months ago to the best of my knowledge and belief.

Q. And that is the first you ever heard of this litigation by Keim to recover this Atlantic City property from the estate of the O'Reillys?

A. And I don't know much about it now.

Q. Well, was that the first?

A. That was the very first time.

Q. Now, when, for the first time, did you hear of the two contracts upon which that suit is based?

A. In your office, Friday.

Q. (By Mr. Grey): Last Friday?

A. Yes, sir, the twenty-eighth.

Q. (By Judge Pancoast): Then the relation of the Keim suit to these two contracts for the recovery of this land in which you are interested came to your knowledge only a few days ago?

A. Yes, sir.

Q. Have you ever at any time in any way or manner assented to these contracts?

A. No, sir.

Q. Do you know what they are in terms?

A. No, sir.
Q. Have you seen either of them?
A. No, sir.
Q. Have you ever seen a copy of either one of them?
A. No, sir.
Q. Have you ever had a copy of them?
A. No, sir.
Q. Heard it read by anybody?
A. No, sir.
Q. Or do you know the substance of either one of the contracts?
A. No, sir.
Q. Have you, since your father's death, received any money on account of this property at Atlantic City?
A. None whatever.
Q. Since your father's death, have you ever known whether John Gardner has been acting as the agent of the estate of the executors?
A. No, sir.
Q. Do you know him?
A. No, sir.
Q. Did you ever speak to him?
A. Never met him.
Q. Ever see him?
A. No, sir.
Q. Did you ever have any correspondence with him?
A. No, sir.
Q. Did you ever delegate him any authority through any other person in respect to your interest in this property at Atlantic City?
A. No, sir.
Q. Since your father's death, have you ever been consulted with by anyone interested in this Atlantic City property?
A. No, sir.
Q. Since your father's death, so far as you know, has there been any family arrangement in which you have participated touching the management of the Atlantic City property?
A. No, sir.

Q. Have you any knowledge at all concerning the litigation that has been going on for years respecting your father's title to the Alantic City property?

A. No, sir.

Q. When did your mother die?

A. June 9th, I think, of this year; July 9th.

Q. What was her age?

A. About seventy-six.

Q. When did your father die?

A. Sixteenth of January, eighteen eighty-one; '81 or '82.

Q. Where?

A. Reading.

Q. Did he have a homestead there?

A. Yes, sir.

Q. Did he die at the homestead?

A. Yes, sir.

Q. Did his widow die at the homestead?

A. Yes, sir.

Q. Did his widow live at the homestead from the time of his death to the time of her death?

A. Yes, sir.

Q. Who lived there?

A. Brother Francis.

Q. Any other child?

A. Mary; my sister Mary, up until her death.

Q. When did Mary die, as near as you can tell?

A. In March, '89 or '90.

Q. Now, as far as you know, from the time of your father's death up to your mother's death, who was her confidential man of business, if she had any?

(Objected to as not a pertinent question in the examination in question).

Mr. Grey: The point here is what was the relation which Mr. Gardner bore as agent to the sale of the Atlantic City property, not the confidential relations existing between Mrs. O'Reilly and some other person.

Judge Pancoast: Now, Gardner has said that he has never come into contact with Mrs. Catherine C. O'Reilly and we are going to show who she did come in contact with.

The Court: Does this witness know? He manifests an intense degree of ignorance as to the management of the estate. How can he tell? She was the life tenant and one of the executors with power of sale, and, if he does not know anything about the business, it would be better to show that by some one else. Better show what he knows first.

Judge Pancoast: There is something in that; he does not know very much about that.

Q. Do you know whether, after your father's death, of your own knowledge, your mother's business relations with James were somewhat strained?

(Objected to).

Judge Pancoast: They are trying to show that Mrs. O'Reilly did all her business through James, and now we propose to prove that she did not confer any authority upon James to act for or in her behalf.

Q. Had you any knowledge of the relations, confidential or otherwise, between your mother and James after your father's death?

A. Yes, sir.

Q. (By the Court): Did you live at home?

A. No, sir; I would go home may be once every six months, or once every year sometimes; I was not away any longer than, at the outside, two years.

Q. And you know you had a fifth interest in your father's estate?

A. Yes, sir.

Q. You knew he had large real estate holdings in Atlantic City?

A. I knew he had some there; I didn't know the amount at all.

Q. And you never took interest enough in it to know anything at all about it?

A. I had asked once or twice and was sort of snubbed on it.

Q. What were the relations between them?

Mr. Grey: I object. My objection is the same as when the question was originally asked.

The Court: Mr. Pancoast, how does that tend to show that he didn't act as her agent in business matters?

Judge Pancoast: How could he act without her knowledge, approval and consent under the law?

The Court: But the fact that they were not on friendly terms, what difference does it make?

Judge Pancoast: Why, we are going to prove by affirmative testimony, and by the circumstances, too, that she did not confer any authority whatever on James, and proving here that her business relations with James were unsatisfactory goes a great way towards supplementing and strengthening that proof, which we will make to a demonstration.

The Court: I think the evidence is of the slightest value—of the very slightest—but as this is a case of very great importance, and I propose to be liberal on each side, I will let it in.

Judge Pancoast: We are going to show as a matter of fact and demonstration that she never did confer any authority on James, and further, we are going to show why, if the Court will let us.

The Court: That is all very proper; the question is whether the fact that they were not very friendly, considering they were mother and son, tends to prove that. I say it tends only in a very slight degree, and I speak of this particular piece of evidence.

Q. (Read by stenographer): "What were the relations between them, business relations?"

A. At that time strained; she hadn't much confidence in him.

Q. Had your mother a private estate of her own?

A. Yes, sir.

Q. Now, do you know who did her business in relation to her own private estate after your father's death?

(Objected to).

Judge Pancoast: We are going to prove that she never had any business intercourse with James and did all her business through Francis.

(Stenographer reads question).

A. Brother Francis.

Mr. Grey: The point of my objection was the relation existing between Mrs. O'Reilly and some one else touching her own private estate. I submit that it is not competent.

The Court: I think it was objectionable on that ground, but it could have been amended.

Q. Did she ever consult you in respect to your interest in the estate?

A. No, sir.

Q. Did Francis or James either?

A. No, sir.

Q. Or John?

A. No, sir.

Cross-examination by Mr. S. H. Grey.

Q. You went to Indianapolis in '74 as I understand?

A. No, sir; I left in September, 1874.

Q. You stated that you lived in Indianapolis since '74, in September?

A. No, sir; I am living there now; I went to Buffalo first.

Q. You have not been home at Reading since 1874, excepting as a visitor?

A. Occasionally, yes, sir.

Q. Excepting as a visitor. Now, since your father's death, you say that you have been home about every six months?

A. It may be longer than that.

Q. And on one occasion there was an interval of two years?

A. Yes, sir.

Q. When was that occasion that there was a two years' interval?

A. When I lived at Denver?

Q. When was that?

A. '79 to '82.

Q. From '79 to 1882?

A. That is when I lived in Denver.

Q. Were you at home in 1892?

A. Yes, sir, I think I was.

Q. What part of the year were you there—I mean in Reading?

A. I can't recall.

Q. Was it in the spring, summer, autumn or winter?

A. I say I can't recall; I can't yet recall.

Q. What season of the year was it—spring, summer, autumn or winter?

A. It may be in either of them.

Q. You certainly can remember about what happened in 1892?

A. That is one year ago.

Q. (By the Court): Can't you recall what time of the year you were here in 1892, or whether you were here more than once?

A. In October.

Q. (By Mr. Grey): Ninety-two?

A. Yes, sir.

Q. Just about a year ago?

A. Yes, sir.

Q. Was that the only occasion of your being home on a visit in 1892?

A. No, sir; I think I was there twice in that year—either the latter part of October or November—or first of November.

Q. Were the two visits in October and November, or were you here at another time—were you home at another time that year?

A. I was at home one day in Reading, in October.

Q. Is that the only recollection you have of being home in 1892?

A. I was in Philadelphia with my daughter and left her to have an operation performed, and while there I went up to Reading with my son, who was with me, to spend the Sunday with his grandmother.

Q. That was either October or November?

A. October.

Q. (By the Court); And that was the only occasion you were home in 1892?

A. I think so.

Q. (By Mr. Grey): You are quite sure about that, are you?

A. I may have been there in the spring, but am not positive.

Q. What time in the spring were you there, if you were there at all?

A. Say April; April, I am not positive of that.

Q. Well, now, how long did you stay in the spring, if you were there?

A. Well, may be a day or so.

Q. Have you any distinct recollection of having been there in the spring of 1892?

A. I have not.

Q. No. Now, in October, '92, you say you stayed over Sunday?

A. Yes, sir.

Q. Did you go there in obedience to any request from your mother to come or from any other person?

A. No, sir; simply to take my son there to see her grandchild.

Q. Now, on the occasion of that visit, did you have any conversation with your mother about the business of the estate in any way?

A. Only in a general way, I suppose I did.

Q. Have you any recollection about it at all?

A. Yes, I have.

Q. Then, if you have, what was the topic of conversation—what part of the business of the estate did you discuss with her?

A. Well the matter of rents.

Q. Rents for property in Reading?

A. No, sir; a matter of rents that brother James had owed the estate.

Q. Where had the rents been collected, where was the property?

A. In Reading. It was a past amount due, collected by James and hadn't gone into the estate now.

Q. Well, had you received any accounts from your mother or any other of the executors of the estate showing what had come in and what had gone out?

A. No, sir.

Q. Have you received any memorandum or statement of what had come in and of what had gone out?

A. No, sir.

Q. Had you at any time before this Sunday in October, 1892, received any memorandum or statement as to what had been received or paid out of the estate?

A. Which? Of father's estate?

Q. Yes, sir.

A. Yes, sir, we had a settlement.

Q. When did you have any settlement?

A. In 1889.

Q. Did you have any statement of the condition of the estate at that time when you settled?

A. Yes, sir.

Q. Where was this settlement made?

A. At Reading.

Q. Were these accounts that were made the basis of the settlement exhibited to you?

A. Yes, sir.

Q. Did you take a copy of them or did you have a copy of them?

A. I think—I don't know whether I had a copy of them—I helped to make them up; I was living then in New York for awhile, and went over and assisted my brother in fixing them up.

Q. Which brother did you assist?

A. Francis.

(By the Court): How long were you living in New York?

A. I was there I suppose about—off and on—a couple of months. I was away from the office at Birmingham, Alabama, and the general office is in New York, and during that period that I was in New York I was helping brother Francis getting up these accounts.

Q. (By Mr. Grey): The question put by the Vice Chancellor is, when was that period—when was it when you were in New York?

A. '89.

Q. And how long did you stay there?

A. About two months.

Q. Now, did you sign any release or discharge at the time of this settlement?

A. I think I did.

Q. Well, you were familiar with the contents of the paper that you signed at the time you signed it?

A. Releasing mother for her portion of father's estate.

Q. And you all signed a paper, didn't you?

A. Yes, sir.

Q. (By the Court): But your mother had the life estate in it?

A. Yes, sir, but she agreed to divide that for certain reasons; let the boys have their father's interest; to divide —the heirs to have their estate.

Q. (By Mr. Grey): Now, Mr. O'Reilly, as I understood from your examination-in-chief, you had no knowledge of what was being done with the estate of your father in Atlantic City at all?

A. No, sir.

Q. You didn't know there were any law suits affecting his title of lands in Atlantic City?

A. No, sir.

Q. You never heard of Mr. Gardner's name and you had never met him?

A. I may have heard of his name, but I had never met him or seen him.

Q. And you didn't know he had any relations to the estate at all of any kind or character?

A. No, sir.

Q. Either as an agent or collector or in any other capacity?

A. No, sir.

Q. (By the Court): As far as you recollect, was the Atlantic City property taken into account in this transaction with your mother?

A. In this way.

Mr. Grey: I was just coming to that.

The Court (to the witness): Never mind, d on't answer.

Q. (By Mr. Grey): Now I direct your attention to the release which you say you signed dated on the 9th day of

September, 1890, and ask you whether that was not the date of the execution of the release? This is a certified copy and your signature there.

A. (Looking at paper shown). Yes, sir, it is.

Q. Where was that release executed by you?

A. In the city of Reading.

Q. I direct your attention to these words: "And whereas, it appears by said several accounts and statements that there remains unsettled and unaccounted for of the said estates, real and personal, the following items: Personal estate, account against J. J. Gardner, $1,595.00; account against Thos. J. Hunt, $81.00, total, $1,676.00. Real estate: Missouri lands. Avondale farm, Maryland. Lots in Atlantic City, New Jersey (in suit); ½ interest in lands in Cumru Township; 23 acres on Neversink Hill; ½ interest in 6¼ acres Ninth and South Streets. Lot in Atlantic City, N. J. (sold and in process of conveyance)." Didn't you know that at the time you executed that paper to what those various recitals referred?

A. No, sir.

Q. Then you mean to say you executed a release discharging, so far as the paper does discharge, the executors of your father without knowledge of what the contents were?

A. Yes, sir.

Q. And you adhere to that statement in view of what you said that you knew the contents of the paper when you signed it?

A. I signed that paper, I simply signed the paper.

Q. (By the Court): But you helped make up the thing with your brother as I understand you?

A. Not in the way it is in that form; made up the account.

Q. (By Mr. Grey): I simply put the question in fairness to you so that you might have before you the two statements which you have made, and I ask permission to have the question re-read to the witness so that there may be no mistake about it.

(Stenographer reads the question as follows: "And you adhere to that statement in view of what you said

that you knew the contents of the paper when you signed it?")

A. That I knew of the contents of that paper, no, sir; I did not.

Q. (By the Court): You did state, however, that you knew the contents of the paper?

A. Not of that particular paper, understand; we made up another statement, understand—my brother Francis and myself—in which it showed these unadjusted accounts; I have a copy of that which reads something like that.

Q. (By Mr. Grey): Have you it with you?

A. No, sir; that reads something like this—

Q. I object to your stating what it contains. Did you ever sign more than one release?

A. No, sir.

Q. Is not this paper, a copy of which I have shown you, the release that you did sign?

A. Yes, sir.

Q. And that was signed by you on the 9th of September at Reading?

A. Yes, sir.

Q. That was predicated on the statement of accounts which you and your brother Francis had prepared, was it not?

A. Yes, sir; not technically in that way.

Q. I am not speaking of technically or generally. I want to have a simple answer to the question—whether it was not based on that?

A. Yes, sir.

Q. And those accounts were in relation to the estate of your father?

A. Yes, sir.

Q. What there had been received and what there had been paid out?

A. Yes, sir.

Q. They included the proceeds of the sale of land of your father, did they not, made by his executors after his death?

A. I don't know whether they did or not.

Q. You do not know?

A. No, sir.

Q. (By the Court): You were interested in the principal of that; the will gave you one-fifth of all the proceeds of sales; do you mean to say you made up an account in which you were interested in the principal to the extent of one-fifth without taking into account these sales?

A. I can't recall any lots being sold at all; it is more of stocks and bonds and accounts, the checking up of the amounts paid out by Francis for vouchers; we had to make it up according to the form demanded by the court.

Q. (By Mr. Grey): Then the account which you have referred to was one for presentation to the court?

A. Under the form. To make it legal or something of the kind.

Q. Now, who advised you it was necessary to state it in the form you have described in order to make it legal; who told you that?

A. You see, Francis was keeping his books—

Q. Please answer the question.

A. I don't remember who it was.

Q. Mr. O'Reilly, do you know that at the time of your father's death he was the owner of a considerable body of land in Atlantic City?

A. I knew he had some land simply from the fact that it was mentioned in this settlement.

Q. You knew he had land in Atlantic City?

A. Yes, sir.

Q. Now, when you came to make up that statement, did you not know that there had been sales made of some of those lands in Atlantic City?

A. No, sir.

Q. Did you not know that the statement contained reference to some sales of land in Atlantic City?

A. No, sir.

Q. Did you not know that there had been a very large number of deeds executed by the executors of your father's estate for lands in Atlantic City by your mother and the other executors as well?

A. No, sir.

Q. Did you ever make any inquiry for the purpose of ascertaining what had become of your father's lands in Atlantic City?

A. No, sir, not especially.

Q. Did you ever ask anybody any questions as to what disposition, if any, had been made of them?

A. Nothing more than at the time when these unsettled accounts of lands in Atlantic City was made up it showed the Neversink Hill and Atlantic City as a balance to be divided.

Q. Now, when these unsettled accounts particularly directed your attention to the fact that there were lots in Atlantic City, did you make any inquiry to ascertain how much land there was, whether there was all that your father left, or whether some of it had been sold?

A. No, sir.

Q. Did you ever make any such inquiry as that?

A. I have here of late.

Q. Now, at the time you received the clipping, about four months ago, did you make any inquiry to ascertain what that clipping signified?

A. I sent the clipping to Francis.

Q. Did you make any inquiry to ascertain what that clipping signified?

A. I was in Reading a short while after that.

Q. How long after that?

A. At mother's funeral.

Q. Now, your mother died in July, 1893, did she not?

A. Yes, sir.

Q. This you received some four months ago. How long before your mother's death did you receive the clipping?

A. The early part of the year; at the time they were sent out.

Q. I am asking you when you received it?

A. The early part of this year.

Q. Now, the question I asked you is whether, at the time you received it, you made any inquiry as to the significance of the clipping—what it meant?

Q. (By the Court): What it meant?

A. Well, I just simply put it in an envelope and sent it to Reading to Francis.

Q. (By Mr. Grey): Then you made no inquiry?

A. No, sir.

Q. You didn't come to Reading from that time until the death of your mother?

A. Yes, sir.

Q. Did you make any inquiry then as to what the clipping meant that you had received in the early part of the year?

A. Yes, sir; I inquired of Francis.

Q. Now, after you made that inquiry, did you pursue the matter any further, to investigate whether there were or were not outstanding contracts with Keim?

A. No, sir.

Q. Did you never ask anybody about it until you saw Mr. Pancoast on the 27th of October, three days ago?

A. No, sir.

Q. You never did?

A. No, sir.

Q. Was he the first person who gave you information as to what was contained in this contract?

A. I don't know them now.

Q. Was he the first?

Q (By the Court): Do you mean to say that your brother Francis, when you came home to your mother's funeral, didn't tell you that there was litigation arising out of some pretended contracts made by your father and Keim?

A. I asked him what this Keim suit meant, and I got mixed up between Keim, Lindley and somebody else.

Q. Your brother Francis did attempt to tell you?

A. Yes, sir; he wrote me once after that that they won the Lindley suit or something.

Mr. Grey: I object to the contents of a letter.

Q. (By the Court): I only want to ask you whether your brother Francis didn't undertake, when you went home to your mother's funeral, to tell you about the situation of affairs; I don't ask what he told you, but whether he didn't undertake to tell you?

A. I think he did.

Q. Had you never heard that there were contracts to sell?

A. No, sir.

Q. (By Mr. Grey): When you got to Judge Pancoast's office last Friday, did you ask him to show you a copy of the agreement that Keim claimed to have made with your father and the one after your father's death?

A. No, sir.

Q. Did he show you a copy of them?

A. He may have had some paper—

Q. Did he show you a copy, is the question?

A. No, sir.

Q. Did he read you the agreement?

A. No, sir.

Q. Did not?

A. No, sir.

Q. Had you ever seen Judge Pancoast in relation to this matter before this time?

A. The first time I ever had the pleasure of his acquaintance was last Friday.

Q. Had you ever communicated with him in any way in relation to it?

A. No, sir.

Q. Had you ever given him any authority to act for you in this case?

A. No, sir.

The Court: Is this gentleman a defendant?

Mr. Grey: He is an answering defendant.

Q. Had you given any authority to any other gentleman of the bar of New Jersey to act for you in this case?

A. No, sir.

Q. Had you ever received, up to that time, any information of the character of this controversy?

A. No, sir.

Q. Had you ever made inquiry to ascertain what the character of the controversy was?

A. Nothing more than the conversation—

Q. Before that time?

A. No, sir.

Q. So that, neither by personal inquiry nor by written communication, did you make an effort to find out what this litigation was about until you saw Judge Pancoast last Friday?

A. Yes, sir.

Q. That is correct then. What is your business?

A. In the railroad business.

Q. A railroad contractor?

A. No, sir; I am commercial agent of the Louisville, New Albany and Chicago R. R.

Q. Then you are a business man?

A. Yes, sir.

Q. And accustomed to the management of large affairs?

A. Yes, sir.

Q. And you have been engaged in that sort of business all your life?

A. Yes, sir.

Q. (By the Court): "Commercial agent," I suppose that means a person looking after getting freight?

A. Yes, sir.

Q. (By Mr. Grey): What is the character of that employment; give us an idea?

A. It varies.

Q. Are you a solicitor for freight?

A. Yes, sir, a solicitor of freight.

Q. And do you arrange the rates of freight.

A. Yes, sir.

Q. And make bargains for the railroad company for freights?

A. Yes, sir.

Q. And you have been in that business for some time?

A. Yes, sir.

Q. And you have become acquainted with ordinary business methods and the transactions of affairs; have you not?

A. Yes, sir.

Q. (By the Court): Has that been your business for the last twenty-five years or thirty years?

A. Yes, sir.

Q. Principally connected with railroads?

A. Yes, sir, with the exception of two years in the iron business.

Q. (By Mr. Grey): Now, you knew when your father died that he left, or you believed that he left, a very considerable estate, did you not?

A. Yes, sir.

Q. And yet you made no effort to ascertain how much there was in it; nor what had become of it other than you have stated?

A. I thought he had some property in Reading, and didn't know the exact amount; he had different, various properties.

Q. Mr. O'Reilly, did you understand at the time you signed the release dated September 9, 1890, in which reference is made to an account against J. J. Gardner of $1,595, what that account was for?

A. No, sir.

Q. Did you make any effort to ascertain?

A. No, sir.

Q. What business is your brother Francis engaged in?

A. Looking after the estate of mother and father's.

Q. Has he any other occupation?

A. No, sir, not that I know of.

Q. What business is your brother James in?

A. I believe in the legal profession.

Q. He is a lawyer?

A. Yes, sir.

A. Been practicing law for some time?

A. Yes, sir.

Q. You knew that James was one of the executors of the estate, did you not?

A. Yes, sir.

Q. Mr. O'Reilly, you say that there was no family arrangement about the management of the Atlantic City property?

A. No, sir, not as far as I am concerned; I don't know what the others did or may have done.

Q. Was not the property which your father died the owner of under the management of the executors of his estate, so far as your knowledge went?

A. Yes, sir, I placed all my confidence in Francis and in mother.

Q. And the estate was managed by the executors, including whatever property was at Atlantic City, as well as what was elsewhere?

A. I suppose so.

Q. Now, Mr. O'Reilly, did you ever sign any deeds for property of your father that your father died seized of?

A. No, sir.

Q. Never did?

A. No, sir.

Q. Are you sure about that?

A. Now, let me get that; put your question again. You say something about my signing deeds.

The Court: For property which your father died seized.

Q. For property of which your father died seized. Perhaps it would be better to read it.

A. I don't understand the question.

Q. Did you ever sign any deed to confirm the title of any person who had received a title—received the title to land of which your father had died seized?

A. No, sir.

Q. You never did?

A. No, sir.

Q. Did you never sign a deed to a man by the name of John S. Taylor, confirming his title?

A. Not to the best of my knowledge and belief; there is nothing signed by me as far as the estate is concerned except that one piece of paper—that release to mother. As for deeds or anything else I don't know.

Q. I direct your attention to a certified copy of a deed dated on the 30th day of July, 1890, and I ask you to look at the signature there and see if it does not appear from that that Anthony J. O'Reilly was one of the persons that signed it?

The Court: Where was it acknowledged?

Mr. Grey: Berks County, Pennsylvania.

A. (After looking at certificate copy of deed). I don't remember that.

Q. Just look at the certificate of acknowledgment.

A. I don't know who John Taylor is.

Q. (By the Court): Let me show you what the certificate of acknowledgment is. I will read you this certificate. (Certificate of acknowledgement read), and here is a list of names (reading names).

A. No, sir, I have no recollection of it whatever; I can't recall anything like that at all.

Q. (By Mr. Grey): You can't recall anything like that at all?

A. No, sir; Mr. Merritt is the mayor.

The Court (to the witness): The deed is from yourself and others to Taylor.

Q. Don't you know Mr. Merritt, Thomas P. Merritt, the mayor of Reading?

A. Yes, sir.

Q. Don't you remember having been before the mayor and acknowledged the deed?

A. No, sir.

Q. In 1890?

A. No, sir.

Q. Well, do you mean to say that if there be a deed recorded with your signature, purporting to be acknowledged on the 18th day of August, before the mayor at Reading by you and your brothers and mother, that your signature was put there without your knowledge or authority; do you mean to say that?

(Objected to).

The Court: I don't think it is necessary to put that question. If Mr. O'Reilly said his name to that deed is forged it is time enough to put that question. At present I assume that his name was there and that the mayor's record is true, just the same as though a Master in Chancery of this State had certified it.

Q. Were you in Reading on the 18th of August, 1890?

A. I can't say positively. I know very well if I was there and signed that before the mayor I would recall the circumstances from the fact of knowing the mayor, but I don't ever remember meeting the mayor in that way.

Q. Have you a personal acquaintance with him?

A. I have; but I have no recollection of ever putting my signature to a document of that kind.

Judge Pancoast: Who is John S. Taylor?

Mr. Grey: He is described here in the deed as of Atlantic City. The deed purports to be a deed made by the various persons interested in the O'Reilly estate to John S. Taylor confirming the title theretofore made to John S. Taylor, by a deed dated on the 11th of June, 1869, acknowledged and recorded on the 23d of June, 1869.

Q. That is all.

JOHN F. O'REILLY, produced on the part of the defendants, sworn.

Direct-examination by Judge Pancoast.

Q. Are you one of the children of Patrick O'Reilly and Catherine C. O'Reilly, of Reading.

A. I am.

Q. Where do you reside?

A. Reading.

Q. How long have you resided there?

A. Forty-six years.

Q. Did you ever convey away your interest in the estate of your father to any person?

A. No.

(Deed shown witness).

A. Not until October, '89.

Q. I didn't ask you when, but whether you ever conveyed your interest in your father's estate?

A. I did.

Q. Is that the deed of conveyance in your hand? Just hold on to it for a moment; look at the signature, will you?

A. (After looking at the paper). Yes.

Q. Is that a deed of your interest in your father's estate to your mother?

A. Yes, sir.

Q. What is the date of it?

A. The twenty-ninth of October, 1889.

Q. Now, up to that time you were still possessed of your share in your father's estate, were you?

Judge Pancoast: I offer this deed in evidence, being agreement and conveyance between John F. O'Reilly and Catherine Cecilia O'Reilly, dated October 29th, 1889.

(Marked D. 1).

(Question read).

A. Yes, sir.

Q. Now, up to that time had you ever heard of these two Keim contracts in question in this litigation?

A. Never.

Q. When did you first hear of the existence of them?

A. Sometime in April of last year.

Q. From whom?

A. Frank—no—wait; he told me that the case was decided—(interrupted).

Mr. Grey: Can't repeat the conversation.

Q. From whom did you first learn it?

A. From my brother.

Q. What brother?

A. Frank.

Q. Is that Francis?

A. Francis.

Q. Had you ever in any way given your assent to that up to the time that you heard of them from Francis?

A. No, sir.

Q. Or afterwards?

A. No, sir.

Q. Did you ever confer any authority of any kind on Gardner in respect to the sale of this land?

A. No.

Q. Part of your father's estate in Atlantic City?

A. No.

Q. Did you ever know Gardner personally?

A. No.

Q. Did you ever talk with him about the affairs of the estate?

A. No.

Q. Did you ever correspond with him about the affairs of the estate?

A. No.

Q. Who has lived with your mother since the death of your father, up to her death?

A. Francis.
Q. Did you?
A. No.
Q. Who attended to her business?
(Objected to).
A. Francis.
Q. Anybody else that you know of?
A. No.
Q. Did you?
A. No.
Q. What were her business relations with her son James, from the time of your father's death to her death, if you know?
(Objected to).
Q. (By the Court): What do you know about; do you know anything about it?
A. Yes, sir, I do; do you want me to state it?
Mr. Grey: What ruling does the Court make?
The Court: I admit it as I did before; I don't see the strength or value of it, however.
Witness: Shall I repeat it?
Q. (By Judge Pancoast): Go on.
A. They were very much strained.
Q. What do you mean by "strained?"
A. Why, in that she reposed no confidence in him.
Q. Now, did Francis live with her from the time of his father's death down to her death?
A. Yes, sir.
Q. Did you ever authorize James to act as your agent in respect to this Atlantic City property?
A. No.
Q. From the time of your father's death down to your mother's death, was there any family arrangement that you know of concerning the disposition or control or management of the Atlantic City property?
A. No.
Q. Have you ever knowingly received any money derived from either one of these Keim contracts?
(Objected to).
A. No.

Cross-examination by Mr. S. H. Grey.

Q. Mr. O'Reilly, what is your business since the death of your father?

A. Manufacturing shoes for seven years.

Q. Is that the business in which you are now engaged?

A. No, sir, I am engaged in no business.

Q. Did you ever hold a commission as a notary public or an officer, authorized to take the acknowledgment or proof of deeds?

A. Yes, sir.

Q. Now, while you were so acting, did you or did you not acknowledge deeds for the Atlantic City property made by the executors of your father?

A. Yes, sir.

Q. Did you know, when you took the acknowledgment of those deeds, the fact that lands had been sold?

A. Yes, sir.

Q. And did you know who had negotiated the bargain?

A. Yes, sir.

Q. Did you know that it was done by Mr. Gardner?

A. No, sir.

Q. Who did do it then, so far as your knowledge went?

A. My father.

Q. I am speaking of the transactions since the death of your father?

A. Oh, excuse me. I think I was no commissioner of deeds; I was commisioner of deeds during father's lifetime.

Q. You were commissioner of deeds during your father's lifetime, eh?

A. Yes, sir.

Q. Now, Mr. O'Reilly, did you know Mr. Gardner?

Judge Pancoast: Are you going to let the record stand as it is, Mr. Grey?

Mr. Grey: He said that the deeds he took the acknowledgment of was during his father's lifetime, for he was only commissioner while his father lived.

The Witness: I think I can give you the years, too.

Q. I am not particular as to the years. It was during the period of your father's life?

A. Yes, sir.

Q. (By the Court): Then you were simply mistaken in saying you took the acknowledgment of deeds made by the executors of your father?

A. Yes, sir.

Q. (By Mr. Grey): Now, Mr. O'Reilly, did you know Mr. Gardner?

A. Yes.

Q. Did you ever see him?

A. See him here.

Q. Here. Had you never seen him excepting when he was here?

A. I can't say that I have.

Q. You knew where he lived?

A. Knew where he lived.

Q. Did you not know that he had made negotiations for the sale of lands belonging to your father's estate in Atlantic City?

A. No, sir.

Q. Didn't know that?

A. No, sir.

Q. Did you know that your brother James had made bargains for the sale of lands in Atlantic City?

A. Yes, sir.

Q. Did you know that your brother James had relations with Mr. Gardner?

A. No, sir.

Q. Through whom bargains were made for the sale of land?

A. No, sir.

Q. Did not know that?

A. No, sir.

Q. Did you know that lots—

A. (Interrupting). Excuse me, can I explain it?

Q. I don't want the explanation, only the answer.

A. Just the "no" then.

Q. I will probably ask you a question later on that will give you a chance to explain. Did you know that money was received from the sale of land in Atlantic City?

A. Yes, sir.

Q. Did you know that it came in the form of checks from John J. Gardner?

A. No, sir.

Q. Who received that money?

A. Can't tell you.

Q. Do you not know in point of fact that your brother James received it?

A. No, sir.

Q. Now, did you not know that your brother James had received money for the sale of land there in Atlantic City?

A. No, sir.

Q. (By the Court): You said a moment ago there were sales of land and monies paid?

A. Yes, sir, but I didn't say from who.

Q. (By Mr. Grey): Did you not know in point of fact that one of the causes of difference in the family in relation to James was touching his laxity in accounting for the receipt of money for sales of land in Atlantic City?

A. Yes, sir.

Q. So that you knew that James had the money, you believed it?

A. Well, all the accounts that I have I got from Francis.

Q. You believed that James did have the money belonging to the estate?

A. Yes, sir.

Q. You believed he got it from the proceeds of the sale of lands at Atlantic City?

A. Yes, sir.

Q. You knew he had made bargains for the sale of those lands?

A. I supposed so.

Q. You knew that the executors had sometimes conveyed title to those lots?

A. Yes, sir.

Q. (By the Court): Before they got the money?

A. Yes, sir.

Q. (By Mr. Grey): And didn't you know that those transactions, or at least some of them, were transactions through Mr. Gardner?

A. No, sir.

Q. You did not know that?

A. No, sir.

Q. Now, did you sign a release dated on the ninth of September, eighteen hundred and ninety, to your mother as the executor of the estate, or one of the executors?

A. I think I did.

Q. Well, now, you had conveyed, by a deed in October, 1889, you say, all your interest in the estate?

A. Yes, sir.

Q. For the consideration mentioned in that deed?

A. Yes, sir.

Q. Now, in the release which you signed, did you know what it contained?

A. Yes, sir; I can tell you what it contained.

Q. I don't ask you because I have had it before me. I have got it before me now.

Q. (By the Court): What he wants to know is whether you knew at the time what it contained—what it was?

A. Yes, sir.

Q. (By Mr. Grey): Then you knew it contained a statement to the effect that there was an account against John J. Gardner for $1,595?

A. No, sir, I did not know that.

Q. And you also knew that it contained a statement to the effect that there were lands in Atlantic City that were in suit?

A. Yes, sir.

Q. Then you knew there was litigation about your father's estate down there?

A. Oh, certainly.

Q. Did you know who the persons were with whom the litigations were pending?

A. Well, that I can't tell you.

Q. Did you ever hear of a man named Daniel Lindley?

A. There have been so many suits.

Q. No, no, no; whether you ever heard of Daniel Lindley as a name—as a mere name; did you ever hear that name before?

A. Not till a short time ago.

Q. So that during all these years, after the death of your

father and when you signed the release in question, you hadn't heard the name of Lindley. Is that correct?

A. Yes.

Q. Well, then, what suits were they that you referred to when you executed that release on the 9th of September, 1890?

Judge Pancoast: Is that a fair question? It says one suit. I don't think you mean to mislead the witness.

Mr. Grey: If it is a mere question of plural or singular I will change it.

Q. What suit? (Stenographer reads amended question: "Well, then, what suit was that it you referred to when you executed that release on the 9th of September, 1890") as affecting land in Atlantic City?

A. I don't understand that question.

Q. (Read by stenographer: "Well, then, what suit was it that you referred to when you executed that release on the 9th of September, 1890, as affecting land in Atlantic City?")

What idea was conveyed to your mind by the language in that agreement that there was land in Atlantic City in suit at the time you signed that agreement?

A. Well, I think there were two or three suits pending at the time.

Q. Well, what were the suits that you had in your mind?

A. I can't recall.

Q. When you said they were in suit?

A. There were two or three suits at the time—at the time I signed that—and that is all; I can't remember the names of them.

Q. What! You can't remember the names of any of the other people?

A. No, sir, I can't.

Q. Now, where was the lot, or where were the lots that were in suit as you declared in this agreement?

A. In Atlantic City.

Q. Where, in Atlantic City? Which part of the city; what street were they on?

A. That I can't tell you.

Q. How big were they—fifty or one hundred feet?

A. I don't know.

Q. Well, in point of fact, didn't you know that there was

a suit pending in Atlantic City, in which Daniel Lindley was the other party, affecting the title to lands on New York and Tennessee Avenues in Atlantic City—or between New York and Tennessee Avenues?

A. Yes, sir.

Q. Was that the suit you had in your mind when you signed the release?

A. There was a lot of, I think, three or four ejectment suits on that property.

Q. Then, were those the suits you had in your mind?

A. Yes, sir.

Q. Now didn't you know that there had been an agreement made with Mr. Keim for the sale by the estate to him of the land down there?

A. Never heard of it.

Q. Never did?

A. No.

Q. What was the account which is referred to in the release which you signed and declared to be $1,595, balance that was due from Gardner, as you understood it?

A. Why, for back rentals.

Q. What?

A. Back rentals.

Q. Had Gardner been collecting rents down there?

A. I think so.

Q. Then you knew he had authority to collect rent, and had collected it?

A. Oh, no, I didn't understand so.

Q. You don't know, then, how he came to be collector of the rents?

A. I do not.

Q. Did you know in point of fact that he had any rent?

A. Not until I seen it there.

Q. Is there anything in there that refers to rent?

A. I can't tell you.

Q. "Account against J. J. Gardner, $1,595.00;" just look at it?

A. (Witness looks at release, being Exhibit C. 72). Yes, sir, I see it here.

Q. Now the question is whether that referred to rents?

A. Rentals, I suppose, and interest, I suppose.

Q. What property was there in Atlantic City from which the estate derived rent, as you understand?

A. That I can't tell you.

Q. Then you didn't have any knowledge of any property that produced rent?

A. I can't tell you; unless this is from back rentals.

Q. What property was there that was improved by the construction of buildings of any sort?

A. That I can't tell you.

Q. Was there any to your knowledge?

A. I can't tell you that.

Q. Were there any vacant lands which had been leased or let in any way to any person who paid rent for the use of it to your own knowledge?

A. I think there was.

Q. Where was it?

A. I can't tell you.

Q. And from whom did you derive the information that there was land of that character, having none of your own?

A. From Francis.

Q. From whom did you derive information of the fact that Mr. Gardner owed $1,595 on any account?

A. From the statement that was made here (witness had release in his hand).

Q. In this release?

A. Yes, sir.

Q. And that was the only source of your information?

A. Yes, sir.

Q. I direct the witness' attention to an interlineation in the typewritten deed, which is the original deed of John F. O'Reilly—Exhibit D. 1—an interlineation in the date—"This indenture made" (indicating to witness), the word "thirtieth" having been printed and "twenty-ninth" is written above. I call your attention to that; you see the interlineation there?

A. Yes, sir.

Q. Do you know who made it?

A. Yes, sir.

Q. Who?

A. I think my brother Frank.

Q. Are you sure that it is not in the handwriting of your brother James?

A. That I can't say.

Q. Now, turn over to the second page; the attention of the witness is directed to an interlineation between the second and third lines, near the top of the third page, to the words "amounting to the sum of thirty-seven thousand two hundred and thirty-eight dollars and thirty cents ($37,238.30)." Who made that interlineation?

A. I think that is my brother Frank.

Q. Are you sure that it is not James.

A. I think that is my brother Francis' handwriting.

Q. The witness' attention is now called to a note under the attesting clause in these words: "The interlineation amounting to $37,238.30, third line of this page, made before execution," and he is asked in whose handwriting that note is?

A. *This here?*

Q. That which I have just read to you there? Those two lines?

A. I think that is Frank's.

Q. Now, are you sure that it is not James?

A. No, I think that is Frank's.

Q. You are familiar with the handwriting of your brother James, are you not?

A. Yes, sir.

Q. Do you happen to have with you any of your brother Frank's handwriting?

A. No, sir, I have not.

Q. (By the Court): Whose handwriting is the endorsement on the back?

A. I can't tell you whose that is.

Q. Isn't it the same as the interlineation?

A. No, sir.

Q. Now, with regard to the suit which you say was pending, or suits, of which you say there was several, they were actions in courts in New Jersey?

A. Yes, sir.

Q. Did you ever attend any of those trials?

A. No, sir.

Q. Who did attend those trials in behalf of the estate to look after the interests of the estate?

A. All I know is that Mr. Voorhees represented the estate.

Q. And Mr. Voorhees was the only lawyer whom you had in relation to the matter in New Jersey, was he not?

A. No, sir, he was not.

Q. Who was the other one?

A. I think James was the other one.

Q. James A. O'Reilly, your brother?

A. Yes, sir.

Q. So that James gave his personal attention to those suits?

A. As attorney.

Q. And he was the only one of the boys who attended at the trials, as far as you know?

A. Yes, sir.

Q. You didn't attend?

A. No, sir.

Q. Francis didn't attend?

A. No, sir.

Q. Your mother didn't attend?

A. No.

Q. Anthony didn't attend?

A. No, sir.

Q. Nor Mary?

A. No, sir.

Q. Nor any member of the family except James?

A. Yes, sir.

Q. So that the information you received as to the condition of affairs in Atlantic City, so far as those suits were concerned, derived entirely from what James told you?

A. No, sir.

Q. You did not?

A. No, sir.

Q. Who told you about it?

A. Francis.

Q. Yet, he was the man who stayed at home?

A. That is all right.

Q. Now, what was Francis' business besides living with his mother?

A. At what time?
Q. Since the death of his father?
A. Not doing anything generally; attending to the estate.
Q. He had no other occupation then?
A. No, sir.
Q. Did you receive, after the death of your father, any money at all from the estate?
A. Yes, sir.
Q. You received a considerable sum altogether, didn't you?
A. Yes, sir.
Q. Something in the neighborhood of $37,000, didn't you?
A. Yes, sir.
Q. Well, now, that money that you received was derived in part from the sale of land?
A. No, sir, not from the sale of land.
Q. What become of the money that was received, that was derived from the sale of land?
A. I can't tell you.
Q. You can't tell?
A. No, sir.
Q. You never shared that in any way?
A. Not that I know of.
Q. Now, when you got money from the estate, didn't you see accounts of what the condition of the estate was?
A. No, sir.
Q. When you signed the release on the ninth of September, eighteen hundred and ninety, didn't you see a statement of the condition of the estate?
A. Yes, sir, I have a statement.
Q. Got that with you?
A. No, sir.
Q. How was it you didn't happen to bring this statement?
A. I didn't think there was any necessity.
Q. Didn't your counsel ask you to bring your statement along?
A. No, sir.
Q. Did you never receive any intimation from counsel that the statement that you had might be of service?
A. No, sir.
Q. Did you never exhibit them to your counsel.

A. No, sir.

Q. And you had them in your possession ever since you received them?

A. My own personal statements.

Q. Of the estate?

A. I am alluding to my own personal statements.

Q. I am referring to the statement alluded to in the release of 9th of September, 1890—that statement?

A. With regard to partial division of the estate?

Q. Yes, sir.

A. Yes, sir.

Q. Did you have a statement?

A. Yes, sir, I have.

Q. Where is that statement?

A. I have it.

Q. You have it with you?

A. No, sir.

Q. Now, as to that statement, did you ever exhibit that to your counsel, any of them?

A. No, sir.

Q. In this case I mean?

A. No, sir.

Q. Were you notified to bring it by any of them?

A. No, sir.

Q. Did they, so far as your knowledge goes, ever examine it?

A. They didn't know I had it.

Q. They didn't know you had it. Then, if they have knowledge as to the contents of that, they derived it from some other source than you, or from a copy of a statement that you possessed?

A. I can't tell you that.

Q. Now, do you know the existence of any counterpart of that statement—any copies—duplicates?

Q. (By the Court): Each one had one?

A. Yes, sir.

Q. (By Mr. Grey): Did each one of you have one?

A. Yes, sir.

Q. Will you produce—send to your counsel for exhibition here—the statement which you have?

A. I can't do it. My counsel has it.
Q. Who is your counsel?
A. In Reading.
Q. Who is your counsel?
A. Garrett B. Stevens.
Q. Has he your papers in relation to this Keim controversy?
A. I don't know anything about the Keim controversy.
Q. I am referring to the statement referred to in the release of September 9th, 1890. Have you that statement?
A. With regard to the division of the property? Yes, sir, I have.
Q. Now, will you send that down to your counsel for the purpose of being offered in evidence here?
A. If I can get it I will.
Q. (By the Court): Is there any difficulty about your getting it from your counsel? You haven't mortgaged it to him, have you? What reason have you to suppose that he won't give it to you?
A. It may be that he will. I think he will.
The Court (to the witness): I want to say to you that the Court thought from your remark, "If I can get it I will," and the tone in which you made it, either that you didn't think you would get it, or you would make an excuse beforehand for not sending it, and if you have any excuse for not sending it, the Court would like to know it now, so that no wrong inference will be drawn.
Q. (By Mr. Grey): I have made the request that you send that.
A. They are only copies.
Q. That is what you said you had.
A. Only copies.
Q. Now, where is the original?
A. I can't tell you that.
Q. In whose handwriting is the copy?
A. I think in the attorney's handwriting that fixed up that portion of the estate.
Q. Who is the attorney?
A. Mr. Zieber—
Q. His full name?

A. H. A. Zieber.

Q. Where does he live?

A. In Reading.

Q. Then the original paper, of which these are copies, was not filed anywhere in any court, but was retained by the counsel who prepared it?

A. That I can't tell you.

Q. Do you know—of course you do know—your sister Mary's handwriting while she lived?

A. Yes, sir.

Q. Just look at the signature, "Mary A. O'Reilly," as a witness attesting a deed—Exhibit C. 52—and tell me whether that is Mary's handwriting?

A. Yes, sir.

Q. (By the Court): It is a deed made to George Allen, of the city of Philadelphia, dated 26th of October, 1886, and it is signed by the three executors, and then by Catherine C. O'Reilly in her own right—I suppose for the purpose of cutting off her life estate; you know the handwriting of all those people that signed that deed?

A. Yes, sir.

Q. Francis P. O'Reilly and James A. O'Reilly and Catherine C. O'Reilly?

A. Yes, sir.

Q. Does your brother Francis always write a backhand?

A. Yes, sir.

Q. What made you think that the interlineations in *that* paper were in your brother Francis' handwriting?

A. He sometimes writes that way; he writes generally this way (indicating), that is generally his handwriting; but, as far as that is concerned, I think *that* is his handwriting, too, in that paper (witness compares the handwriting in the two papers).

Judge Pancoast: We have a copy of that account right here. We don't want to put anybody to any unnecessary trouble. This witness said there were several copies. If we produce here a copy there will be no necessity of hunting through papers of this other lawyer, and we have a copy of this copy that the witness referred to.

Q. (By Mr. Grey): Did you know Mr. Jacob Keim?

A. No, sir.
Q. Had you ever heard of him?
A. No, sir?
Q. Are you quite sure about that?
A. No, sir.
Q. Now, take time to consider; had you never heard of Jacob Keim?
A. Not until the last—since last July.
Q. Don't you know that your father in his lifetime sold a piece of property in Atlantic City to Jacob Keim?
A. That may be.
Q. I asked you if you didn't know it?
A. I can't remember that now.
Q. Don't you remember having taken the acknowledgment of a deed which your father executed?
A. That may be.
Q. Don't you remember? I now show you the deed, which is exhibit C. 3, from Patrick O'Reilly and wife to Jacob Keim, acknowledged before John F. O'Reilly, and I ask you whether the signature, "John F. O'Reilly," is not in your handwriting?
A. Yes, sir.
Q. Well, now, with that before you, do you not recall the circumstances that your father in his lifetime did sell a piece of property to Mr. Keim?
A. Can you remember everything since '73?
Q. Answer the question.
A. No, sir, I do remember it now.
Q. Then you have a distinct recollection of the fact that Jacob Keim did buy from your father?
A. Yes, sir, at that time, because my signature is there.
Q. Well, now, when you heard of Jacob Keim as being litigant in this case, was your recollection refreshed by the fact that he had previously bought a piece of property in your father's time?
A. No, sir.
Q. (By the Court): The question is whether, independent of the fact of seeing your name to that paper, you have any recollection of the execution of the paper before you—not whether you are satisfied that it was executed before you be-

cause you see your handwriting there—that is not the question—but whether you have a recollection of the matter so that you can recollect your father coming before you and signing that paper and your witnessing it?

A. I do not, except what my signature calls for there.

Q. And you have no recollection really?

A. No, sir.

Q. (By Mr. Grey): Now, you say you first heard of the Keim contract in April, 1892?

A. I think that is so.

Q. That is what you stated; now who told you?

A. My brother told me, and your two notices I received from your firm.

Q. Who told you, your brother?

A. My brother told me just about a couple of days before I received notice from your firm.

Q. Which brother was that?

A. Francis.

Q. Did you make any effort to ascertain what these alleged contracts were?

A. Yes, sir.

Q. What did you do?

A. I asked him what they alluded to.

Q. You asked Francis?

A. Yes, sir.

Q. Beyond asking Francis, did you do anything more?

A. I could not do any more; I asked Francis for an explanation of them, and he said he was just as much in the dark—(interrupted).

Q. I don't ask you what Francis said. Did you do anything more than ask Francis for an explanation?

A. I tried to do more, but I could not.

Q. Did you ever consult counsel in regard to this claim of Keim?

A. No, sir.

Q. Did you ever employ any counsel to protect you or your interests against this claim of Keim's?

A. No, sir.

Q. Did you ever see any paper that was filed as an answer purporting to have been made by you and others to the bill in this case of Keim?

A. Yes, sir.
Q. When did you see that?
A. Sometime last year.
Q. Last year?
A. Yes, sir.
Q. See more than one?
A. Yes, sir.
Q. Who did you receive it from?
A. My brother showed it to me; Francis showed it to me.
Q. Now, after you heard of this, did you make any inquiry of James for an explanation?
A. No, sir.
Adjourned to 10 A. M.

CAMDEN, NEW JERSEY, October 31, 1893.

Appearances as heretofore.

JOHN F. O'REILLY takes the witness stand.

Continuation of cross-examination.

Q. You say that you never made any conveyance of your interest in your father's estate until October, 1889?
A. Yes, sir.
Q. Did you know that the estate of your father in Atlantic City had been conveyed by the executors to a very large extent prior to that period—that lots had been sold—did you know that?
A. Yes; yes, sir.
Q. And you knew that money had been received from those sales, I suppose, didn't you?
A. Yes, sir.
Q. Now, so far as the estate was concerned, your brother James acted as representative of the estate in respect to those sales, did he not?
A. Acted as the attorney.
Q. As attorney in respect to the sale of lands in Atlantic City?
A. I think so.
Q. Did you ever hear of a suit of your father against Richard S. Osborne which was pending at the time of your father's death?
A. Yes, sir.

Q. Began when you were quite a small boy?

A. Yes, sir.

Q. And continued until your father died?

A. Yes, sir.

Q. And remained undetermined until two or three years ago?

A. Yes, sir.

Q. So that the suit outlived all the litigants except old man Osborn?

A. I believe so.

Q. Now, who represented the estate in that suit after the death of your father?

A. As an attorney?

Q. Who represented the estate of your father in that suit after the death of your father?

A. Why, Francis.

Q. Francis, did he?

A. Yes, sir.

Q. Didn't James represent the estate?

A. Not that I know of.

Q. Did not, eh? Didn't Mr. Voorhees represent the estate?

A. As the attorney in New Jersey.

Q. Didn't James and Mr. Voorhees—James representing the estate and Mr. Voorhees looking after the estate with James in that suit?

A. As an attorney he did.

Q. Now, did Francis have anything at all to do with it?

A. Yes, sir.

Q. You are quite sure about that, are you?

A. Yes, sir?

Q. Is that account which was handed to me last evening a copy of the one which you have?

A. I can't tell until I see it.

Q. (Hands witness blue paper). Maybe you will recognize it; I don't know; I understood when they were handed up that they were copies.

Judge Pancoast: We said so, but the witness hadn't said it. One of the boys had it. You have had it ever since, and he didn't look at it.

A. (After looking at the blue statement). No, sir.
Q. What say?
A. No, sir.
Q. It is not, eh?
A. No, sir.
Q. (By the Court): Well, did you bring yours with you?
A. No, sir.
Q. (By Mr. Grey): What have you to say of yours?
A. I have not been home; you requested me to stay here.
Mr. Grey: I renew the request that I made last evening that you do bring it. There seems to be some difference.
(By the Court): You say the copy you have is not like this?
A. No, sir.
Q. I mean to say it is not a duplicate of that.
A. No, sir.
Q. (By Mr. Grey): Can you show in what respect they differ?
A. I can tell if you will allow me.
Q. Why certainly.
A. In the division of the estate in '90—
Q. One moment, please.
A. In the division of the estate in '90 the accounts were made of all of us, and the sum total of the amount we drew out, and the amount we were to receive; each account was put on separate paper; then the undivided property was also put on another paper; those are the only two or three papers that I have.
Q. Yes, sir; what is this paper that you have before you?
A. I haven't it.
Q. (By the Court): You are asked to look at it and see whether it is like the one you have?
A. No, simply because mine was not an itemized account; mine was a lump account showing the accounts between each one of the heirs, and the amount we received, and the amount we drew out of the estate, to the settlement of 1890. Do you understand me?

Q. (By Mr. Grey): I understand perfectly what you say.

A. And then there was one paper showing the undivided property that was not divided in the division of 1890.

Q. Well, now, as I understand you, you received, as one of the heirs of your father, one of the legatees of your father, a memorandum, statement, or account of what you had drawn out of the estate yourself?

A. You understand me—(interrupted).

Q. Is that right?

A. There were four papers; each paper gave the amount credited and the amount debtited that we were to receive at the settlement of '90; there were four papers; each account was put in that; my account was in my mother's account, showing her account individually, and the undivided property—that is the hill property, the Atlantic City property, the Maryland farm, and the Missouri farm; that was the undivided property in father's estate at that time; those were the only papers that I have; if you want them I will let you have them; I can get them from my attorney.

Q. I would like to have them. The only thing I don't understand is whether this account that you had represented that you had drawn out only, or represented what all had drawn out from the entire body of the estate?

A. I told you that they gave the debt and credit of each of us on each paper—showing what all of us drew out.

Q. (By the Court): Didn't it show what your mother had received, or the executors had received?

A. No, sir; it showed the whole amount, bulk, of the estate, except those unsold properties, those that I have mentioned.

Q. (By Mr. Grey): Well, did you know that your brother James had received out of the estate as compensation for his services in connection with the management of the Osborn suit for the estate upwards of one thousand dollars?

A. Yes, sir.

Q. Well, then, you must have known he had something to do with the management of the suit?

A. As an attorney.

Q. Didn't you know that Mr. Francis O'Reilly, up to the time of the statement which the Vice Chancellor now has, had only drawn out in all for expenses of every kind and character $72.16?

A. Repeat that question, please.

Q. Didn't you know that Francis O'Reilly, as exhibited in the account which the Vice Chancellor now has in his hand, had only drawn out on account of expenses of every character $72.16—less than $73.

A. No, sir; I did not.

Q. Didn't you know that your brother, James A. O'Reilly, had drawn out, on expense account alone, between $1,700 and $1,800 up to the same time, as shown in the same account?

A. No, sir; I did not.

Q. Did not?

A. Did not.

Q. Now, to be specific, did you not know that your brother James had drawn out for expenses alone $1,713.-42?

A. No, sir; I did not.

Q. At least?

A. No, sir.

Q. Didn't you know that your brother James had received as fees in the Osborn case $1,500, as appears in that account there?

A. No, sir.

Q. Did not?

A. No, sir.

Q. Didn't you know that he had received, in addition to that, $500, for professional services generally?

A. No, sir.

Q. Now, didn't you—

(Line of examination objected to as being utterly irrelevant and not cross-examination).

(Objection overruled).

Q. Mr. O'Reilly, did you know that your mother had

agreed to sell to Mr. Adams a tract of land in Atlantic City?

A. Not until after it was consummated.

Q. Did you know that your mother had sold a piece of land in Atlantic City to Daniel Lindley?

A. Not until after it was consummated.

Q. Were you consulted with reference to the making of the sale beforehand, or got any information about it?

A. After it was sold.

Q. I mean beforehand?

A. No, sir.

Q. Now, after it was done, you received information of the fact that it had been sold?

A. Yes, sir.

Q. Well, didn't you know that your brother James acted in that matter?

A. No, sir.

Q. As the representntive of the estate?

A. No, sir.

Q. I think you stated yesterday that you were not present at the trial of the suits in Atlantic County?

A. Yes, sir.

Q. And that James was, and that he was the only one of the family, as far as you knew, that was there?

A. Yes, sir.

Q. Now, was not that deed made to Lindley made in pursuance of a compromise settlement?

A. I can't tell you anything about it.

Q. Did you never hear of that?

A. No, sir.

Q. Didn't you hear Mr. Harned state it yesterday?

A. That is all I heard.

Q. And, until you heard it yesterday, you didn't know anything about it?

A. Don't know anything about it.

Q. Francis didn't tell you?

A. No, sir.

Q. And James didn't tell you?

A. No, sir.

Q. And your mother didn't tell you?

A. I had no conference with James; all my transactions were with Francis.

Q. Well, Francis didn't tell you that?

A. No, sir.

Q. How did you know that a mortgage of fifty thousand dollars was made by Mr. Hall to your mother on property in Atlantic City, which is the subject matter of litigation here?

A. Not until a couple of days ago.

Q. Who told you then?

A. Brother.

Q. James?

A. No, sir.

Q. Who?

A. Francis.

Q. Francis told you?

A. Yes, sir.

Q. Did Francis tell you the circumstances under which it was taken?

A. No.

Q. Did you know that there was another mortgage; did you know that there was a mortgage given by Adams for twenty-five thousand dollars on another piece of the land which is in controversy in this case?

A. I can't just make the same answer as I did before.

Q. You must answer the question.

A. I didn't know.

Q. You didn't know that at all?

A. No, sir.

Q. Well, did you know it until I mentioned to you just now?

A. Yes, sir.

Q. When did you first discover it?

A. Just a short time ago.

Q. How long ago?

A. About a week or two ago.

Q. And from who?

A. Brother.

Q. Which?

A. Francis.

Q. Did he tell you the circumstances under which the mortgage was given?

A. No, sir.

Q. How was it, when you were speaking about the Adams mortgage of $25,000 two or three weeks ago, there was no reference made to the mortgage of Hall of $50,000 and until two days ago; can you explain that?

A. Well, I can't explain that.

Q. Did Francis, when he spoke to you about the Adams mortgage of $25,000, tell you anything about the Hall mortgage of $50,000?

A. Understand me, when he was alluding to the matter only a couple days ago about it was the two mortgages.

Q. The Hall mortgage of $50,000?

A. Yes, sir.

Q. Then, as I understand you, he mentioned the Adams mortgage of $25,000 two or three weeks ago, and he mentioned the Hall mortgage of $50,000 two or three days ago?

A. Excuse me, he may have mentioned both mortgages at the time.

Q. What is your recollection?

A. I say he may have mentioned it, but the last mortgage he mentioned only about two or three days ago, in fact, going down in the cars some days ago.

Q. Two or three days ago?

A. Yes, sir.

Q. That was the Adams mortgage of $25,000?

A. I think so.

Q. You just stated that the Hall mortgage was only referred to two or three days ago?

A. Both of them may be correct.

Q. Then, until this very recent period of time, you never heard of either mortgage?

A. No, sir.

Q. Did you authorize any one to use your name in answering the bill filed by Keim in this case? Did you employ any lawyer or consult any counsel?

A. I suppose Mr. Voorhees is our attorney and attended to that matter.

Q. Did you ever see the answer that was drawn in your name or in which your name was used as a defendant?

A. No, sir.

Q. You never did?

A. No, sir.

Q. Did you ever know that this proceeding was pending at all until you came here as a witness—this suit of Keim's?

A. The notice that I received from you.

Q. Was that notice the pendency of this suit?

A. Yes, sir.

Q. If you have got it in your pocket let me see it.

A. I have got the two notices.

Mr. Voorhees: There are two suits; we are trying two suits.

(Witness produces notices and hands them to Mr. Grey).

Q. Printed slip of the order of publication, dated July 16, 1892, where is the envelope?

A. I have got one envelope; that was sent July 28th and received July 30th.

Q. Did you not make an affidavit to an answer filed in this case of Keim *vs.* Catherine C. O'Reilly and Lindley, on a supplemental bill?

A. I can't answer that.

Q. Sir?

A. I can't answer that.

Q. (Witness being shown a paper is asked whether his signature, "John F. O'Reilly," the last signature, is genuine). Is that your signature?

A. Yes, sir.

Q. Do you know Mr. Merritt, who seems to have taken that affidavit?

A. Yes, sir.

Q. Didn't you go before Mr. Merritt and swear to a paper and sign your name?

A. I believe I did.

Q. (By the Court): Well, you know your own signature?

A. That is my signature.

Q. (By Mr. Grey): Now, didn't you read that paper over before you swore to it?

A. No, sir.

Q. You did not?

A. No, sir.

Q. Didn't you know what was in it when you signed it and swore to it?

A. No, sir.

Q. Didn't you know what it referred to at the time you swore to it?

A. No, sir.

Q. (By the Court): Do you mean to tell the Court that you deliberately signed your name to a paper and swore to its truth before Mr. Merritt without knowing the contents—without paying any attention to the contents?

A. Understand me—

Q. Just answer that question; do you mean to tell the Court that you signed your name to this paper and swore to its contents without having first ascertained whether those contents were true or not, and reading it over understandingly and intelligently; did you do that or not?

A. The paper was explained to me, what it was intended for at the time, and we were in a hurry to get the paper off, and I signed the paper.

Q. Just answer my question, because it is an important question and affects every intelligent man in the community; do you say that you signed and swore to that paper without first ascertaining intelligently what the contents were by reading it over or having it read to you, besides the explanation?

A. It was the explanation that was read to me.

Q. (By Mr. Grey): This affidavit of yours was taken before Mr. Merritt as mayor of Reading?

A. Yes, sir.

Q. In Reading, wasn't it?

A. Yes, sir.

Q. Now, who was present at the time you made the affidavit besides your brother Francis and your brother James, if they were present?

A. Francis was with me.

Q. Was James there?

A. No, sir.

Q. Had James signed it before you signed it?

A. That I can't tell you.

Q. Witness' attention being directed to the affidavit the question is repeated: Had James signed it before you signed it?

A. That I can't tell you.

Q. Look at his signature—"James A. O'Reilly."

A. That is his signature.

Q. I only want to know whether his signature was there or not before you signed it?

A. I don't know.

Q. Did Francis sign it at the time before you signed it?

A. That I can't tell you.

Q. Did James sign it at the time you signed it?

A. I can't tell you.

Q. Do you know whether there were any signatures there at all at the time you signed it?

A. No, sir.

Q. Were there any other persons present besides Francis and you?

A. Francis and myself were present with Mayor Merritt, and nobody else.

Q. So that none of these gentlemen, Mr. Voorhees, Mr. Harned or Judge Pancoast were present?

A. No, sir.

Q. Didn't you know that in that answer which you swore to there was a statement to this effect: "And these defendants, further answering said supplemental bill of complaint, admit that on or about the first day of June, eighteen hundred and ninety-two, the said Catherine C. O'Reilly, deceased, in performance of an agreement made by the said Catherine C. O'Reilly, as executor, &c., with Alfred Adams, jr., on or about the twenty-second day of April, eighteen hundred and ninety-two, conveyed by her deed bearing date the first day of June, eighteen hundred and ninety-two, to the said Alfred Adams, jr., for the consideration of ($25,000) twenty-five thousand dollars, the lot of land mentioned in said agreement and described in said supplemental bill of complaint, and that, as these defendants believe and are informed, the said Alfred

Adams caused the said deed to be recorded." Didn't you know that?

A. There was a lot of explanation made to me at the time.

Q. I ask you whether, when you made that affidavit, you knew that that paper contained that statement?

A. I might have.

Q. Now, didn't you know that this paper that you swore to contained this statement: "And these defendants, further answering said supplemental bill of complaint, admit and show that the said Alfred Adams, jr., made and executed to the said Catherine C. O'Reilly, executor, &c., as aforesaid, his bond and mortgage bearing date the first day of June, eighteen hundred and ninety-two (being the date of the deed made by the said Catherine C. O'Reilly, executor, &c., as aforesaid, to the said Alfred Adams, jr.), for the purpose of securing to the said Catherine C. O'Reilly, executor of the last will and testament of the said Patrick O'Reilly, deceased, the sum of twenty-five thousand dollars and interest, secured upon the said lands conveyed by the said Catherine C. O'Reilly, executor, as aforesaid, to the said Alfred Adams, jr., and said mortgage recited therein that it was given to secure the purchase money of said lot of land, and that the said mortgage was recorded in the Clerk's Office at Atlantic County at or about the time and in the book mentioned in said supplemental bill of complaint?"

A. I may have.

Q. Now, you knew what this paper was that I have just shown you and which you say you made—you knew it was an affidavit made to the supplemental bill of Keim?

A. Yes, sir.

Q. In the case of Jacob Keim, complainant, and Daniel Lindley and others, defendants?

A. Yes, sir.

Q. Filed December 27, 1892?

Mr. Grey: Original paper produced and shown to the witness and now offered.

Q. Now, Mr. O'Reilly, will you look at the signature there—"John F. O'Reilly," on the paper now shown you

and see whether that is your signature (handing witness another paper)?

A. Yes, sir.

Q. This was also taken before Mr. Thomas P. Merritt, mayor of Reading?

A. Yes, sir.

Q. Who was present at the time when that was taken?

A. Francis.

Q. Any one else?

A. No, sir.

Q. Was it sworn to at the same time as the other paper just shown to you?

A. That I can't say. I think it was.

Q. You think it was?

A. Yes, sir.

Q. Well, now, there was no one else but you and Francis together at that time?

A. No, sir.

Q. Do you know whether James signed before or after you did?

A. That I can't say.

Q. And do you know whether Francis signed before or after you did?

A. That I can't say.

Q. The last paper shown is the answer to the supplemental bill filed by Keim against O'Reilly and Griffith; both papers I have shown you are the original papers.

Now, Mr. O'Reilly, in the answer, the affidavit to which you have just identified, your signature, in the case of Keim *vs.* O'Reilly and Griffith, did you know that that answer contained this statement:

"And these defendants, further answering, show that, as they have been informed and believe, the said James A. Griffith, in the making of the agreement with the defendant, Catherine C. O'Reilly, as executor, &c., as aforesaid, for the purchase of the said lot of land above set forth, sold, assigned, transferred or set over all his right and interest in and under said agreement to the said Edward H. Hall, and the said James A. Griffith requested the said Catherine C. O'Reilly, as executor, &c., as afore-

said, to convey the said lot of land to the said Edward H. Hall in pursuance of the terms of the said agreement or contract upon his paying and securing to be paid to the said defendant, Catherine C. O'Reilly, as executor as aforesaid, the purchase money thereof, and that in pursuance of said agreement, or contract and said request the defendant, Catherine C. O'Reilly, as executor, as aforesaid, conveyed said lot of land to the said Edward H. Hall upon his paying to said defendant, Catherine C. O'Reilly, executor, &c., as aforesaid, the sum of $15,000, and executing to the said Catherine C. O'Reilly, as executor, &c., as aforesaid, his bond or obligation conditioned for the payment of $50,000 (the balance of the said purchase money), with interest secured by his mortgage on the said lot of land and premises conveyed to him, reciting therein that the said mortgage was given to secure and secured part of the purchase money of said lot of land; and these defendants state and show that, as they have been informed and believe, the said Edward H. Hall had or procured the said deed to be recorded in the Clerk's Office of Atlantic County, and that the date of said recording is truly set forth in said bill of complaint."

A. I may have.

Q. Sir?

A. I may have.

Q. Then long before the period of two days, or two or three weeks ago, you knew all about the Adams agreement and sale, and of the Hall agreement and sale, and of the twenty-five thousand dollar mortgage, and of the fifty thousand dollar mortgage?

A. Excuse me, can I explain that?

Q. I want an answer to that question, either you did or did not?

A. I may have.

Q. Now, Mr. O'Reilly, how old a woman was your mother at the time of her death?

A. Seventy-eight.

Q. Was she an invalid?

A. Somewhat so.

Q. During the latter part of her lifetime?

A. Somewhat so.
Q. Did she keep in her house?
A. Not all the time.
Q. How long was she kept indoors by the state of her health?
A. Well, she would go out occasionally, perhaps walk for a square or two.
Q. And what was the character of her disease?
A. I think heart trouble.
Q. Heart trouble. She was 78 when she died?
A. Yes, sir.
Q. And how long had she been suffering from this heart trouble before her death?
A. I think some years.
Q. Ten or twelve?
A. Not that long.
Q. Five or six?
A. Well, she was complaining for about three years, or perhaps five years.
Q. And during that time she only went out as you have described?
A. Sometimes just as far as a square or two at a time. Then she was taken out in a carriage.
Q. Who composed the household during the last five or six years of your mother's life?
A. Francis.
Q. Your mother and Francis?
A. Yes, sir.
Q. Where was Mary, your sister?
A. She died.
Q. I know she died.
A. She was there, too.
Q. And Mary died how long before your mother?
A. I think she died in '90 if I am not mistaken.
Q. Then, until the death of Mary, Mary, Francis and your mother composed the household?
A. Yes, sir.
Q. That is all.

FRANCIS P. O'REILLY, produced on the part of the defendants, sworn.

Direct-examination by Judge Pancoast.

Q. Are you one of the sons of Patrick and Catherine C. O'Reilly, late of the City of Reading, State of Pennsylvania?

A. I am.

Q. Are you one of the executors under your father's will?

A. Yes, sir.

Q. Did you, as executor, ever join in the proof of the will and take out letters in New Jersey?

A. Yes, sir—no, sir.

Q. Why didn't you take out letters of administration? (Objected to).

The Court: What difference does it make?

Judge Pancoast: I don't know that it makes any particular difference.

The Court: The thing is palpable; Mr. Patrick O'Reilly lived and died in Pennsylvania and you proved the will there, and in order to handle real estate in New Jersey it was necessary to put that will on record here.

Mr. Voorhees: It was proved here and letters of administration taken out by Mrs. Catherine C. O'Reilly.

The Court: They were letters testamentary.

Mr. Voorhees: Letters testamentary under the statute; and then the will was afterwards proven as a muniment of title, besides, here in New Jersey; the first proof of it was under the 21st section of the Orphans' Court Act and the last one was under the 26th section of the Orphans' Court Act.

Q. Had you anything whatever to do with the making of the two Keim contracts in litigation here?

A. No, sir.

Q. When, for the first time, did you know of the existence of these two contracts?

A. I think it was the latter part of April, 1892.

Q. What makes you think it was the latter part of April, 1892?

A. I am positive that it was in that period; I will answer that I am positive that it was about April of '92.

Q. Can you state any circumstances?

A. Yes, sir—

Q. (Continuing) relating to your first knowledge of these two contracts?

A. Yes, sir; there was a copy of those agreements shown me by brother James.

Q. At that time?

A. At that time, yes, sir.

Q. Now, had you ever seen or heard of them through your brother James or any other person up to that time?

A. No, sir.

Q. Had you ever, as an individual or as executor, ever given Gardner any authority to sell your land in Atlantic City?

A. No, sir.

Q. Had you ever given James any authority to enter into a written authority for the sale of land in Atlantic City?

A. No, sir.

Q. Did you ever talk with Gardner on this subject of the management or sale of your property in Atlantic City?

A. No, sir.

Q. Did you ever knowingly receive any monies on account of these two contracts in question in this case?

A. No, sir.

Q. After the death of your father, was there ever any family arrangement made respecting the management, sale or disposition of the Atlantic City property?

A. No, sir.

Q. Where did your father live at the time of his death?

A. Father lived in Reading and died in Reading.

Q. At the homestead place there?

A. Yes, sir.

Q. Who composed his immediate family at the time of his death?

A. Mother, my sister and myself.

Q. Anybody else?

A. No, sir.

Q. (By the Court): Your sister Mary?

A. Sister Mary.

Q. (Judge Pancoast): Did you and your mother and your sister Mary continue to live with your mother as one family after your father's death?

A. Yes, sir.

Q. And how long did Mary survive?

A. Mary died in '90—March, 1890.

Q. And your mother died when?

A. Died on the 9th of July.

Q. Had your mother any estate of her own?

A. Yes, sir.

Q. And what was her age at the time of her death?

A. 78.

Q. Was she somewhat enfeebled by old age and poor health?

A. Enfeebled by old age.

Q. Now, who transacted her business from the date of your father's death down to her death, so far as you know?

A. I did.

Q. All of it?

A. All of it, yes, sir, with one exception.

Q. What exception?

A. With one exception.

Q. What exception—what is that?

A. That is her collection of rents of real estate.

Q. Where?

A. In Reading.

Q. Who did that?

A. James.

Q. Now, you were at home with your mother all the time—that is, made your home there?

A. Yes, sir.

Q. And were constantly in intercourse with her.

A. Yes, sir.

Q. Now, do you know what her business relations were with James—were they pleasant or strained?

Mr. Grey: I objected to this line of examination in the case of the other witnesses, and I do so again.

The Court: I don't see the force of it, but I shall admit it.

Q. Go on.

A. My mother was not satisfied with James' business management of her affairs.

Q. (By the Court): Did you hold the Atlantic City property for sale from the time of your father's death?

A. I never had the property.

Q. Eh?

A. I never had the property.

Q. You were executors with power of sale?

A. Yes, but I could not get possession of the property to make any sale; I was not permitted to do so.

Q. James managed it all.

A. Yes, sir.

Q. Well you signed deeds though for his sales?

A. When he presented them.

Q. And you know that he was selling—knew it was for sale, didn't you.

A. I knew that when the deeds were presented at a price satisfactory that I signed it, and advised mother to sign it.

Q. Didn't you know that there was a map made with prices put on the lots?

A. No, sir.

Q. Then you paid no attention to the Atlantic City property?

A. I could not do so; I was not permitted to do so; it was an intrusion on my part when I offered it.

Q. Who prevented you from doing it?

A. I don't know.

Q. Did your mother prevent you?

A. No, sir; my mother was with me.

Q. As there was three executors, and your mother and you were against James, how did you let him override you?

A. Well, Judge, I can answer it in this way, that I have got my method of doing things, and if I can't do it, I can't quarrel.

Q. Let him go?

A. Yes, sir.

Q. Then you silently acquiesced in James' doing that business?

A. I can't say that.
Q. You signed the deeds?
A. I did, when I seen the price was satisfactory.
Q. You were willing to sell if anybody gave your price?
A. Yes, sir.
Q. How did you know that the prices were satisfactory?
A. I had a memorandum from father.
Q. Well, have you got that memorandum now?
A. I have it; I haven't it here.

The Court: I had no business to interrupt the examination, but my curiosity was excited.

Q. (By Judge Pancoast): Do you know that the Atlantic City property in question has greatly increased in value the last few years?

(Objected to).

The Court: Already proven in the case that it has vastly.

Q. Do you know that (stenographer reads question)?
A. Yes, sir.
Q. Now, when was your attention first drawn to the great increase?
A. In 1891.
Q. By what?
A. Tax receipts.
Q. By the tax receipt for that year?
A. Yes, sir.
Q. Have you got that tax receipt?
A. No, sir; I have not, I gave it to James.
Q. What was it assessed at for at that year?
A. In '91 I think it was assessed at $75,000.

Cross examination by Mr. S. H. Grey.

Q. James showed you a copy of the Keim agreements in 1892, did he?
A. I think it was April.
Q. Sir?
A. In April.
Q. In 1892.
A. Yes, sir.
Q. About what time in April was that?
A. The latter part of April, I believe; I can't exactly locate the time.

Q. Was it before any bill was filed by Keim against the O'Reillys?

A. I can't answer that.

Q. Was the fact of the bill being filed, or a bill being filed, the subject of the conversation between you and James at the time?

A. He showed me the agreement before the bill was filed.

Q. Bill was filed April 30, 1892. Now, were these agreements that he showed you in writing?

A. They were copies of the agreements; he showed them to me in writing.

Q. Did he show you the originals?

A. I never have seen the originals.

Q. Well, you saw that one of these agreements was made during the time that your father was alive, didn't you?

A. Yes, sir.

Q. And the one other was made just after his death?

A. Yes, sir.

Q. Was that the first knowledge that you ever had of these matters?

A. That was the first knowledge.

Q. Had you ever heard of them before?

A. Never heard of them.

Q. Ever hear James refer to the fact of there having been agreements?

A. No, sir.

Q. Ever hear your father in his lifetime refer to the matter?

A. Never.

Q. Did you know Mr. Gardner?

A. I did.

Q. You knew that he was acting for your father while he lived in reference to his Atlantic City property, didn't you?

A. No, sir, I did not.

Q. You knew that he was acting for the estate after your father's death?

A. I did not.

The Court: The account produced here shows a lot of commissions paid him.

Q. You knew that there was a considerable amount of money received from the sale of the Atlantic City property, didn't you?

A. Yes, sir.

Q. You signed a number of deeds yourself as one of the executors of your father after your father's death?

A. I did.

Q. And did you not know that a considerable portion of the money mentioned as a consideration was transmitted by Mr. Gardner's checks?

A. No, sir.

Q. Did not know that?

A. No, sir.

Q. Now, did you know that there was a memorandum account, which is now shown you as the one produced yesterday afternoon, written on blue paper but not marked as an exhibit, dated on the back July 19th, 1890?

A. 16th of July.

Q. 16th. Got it in your hand?

A. Yes, sir.

Q. Did you ever see it before?

A. Yes, sir.

Q. Who made it up?

A. A man by the name of Harry A. Zieber.

Q. Did you furnish any material for the making of it?

A. I did, the greater portion of it.

Q. Then you were acquainted with what it contained?

A. With the greater portion of it.

Q. With the greater portion of it?

A. Yes, sir.

Q. Is that your copy of the account?

A. I made no account.

Q. (By the Court): Is it your copy?

A. This account belongs to me.

Q. (By Mr. Grey): You had it in your possession, then, for some time?

A. Yes, sir, ever since it was made up.

Q. In whose handwriting is the endorsement on the back, "16th July?"

A. The same as on the face of the paper.

Q. And in whose handwriting is the face of the paper?

A. In H. A. Zieber's.

Q. Now, Mr. O'Reilly, you knew that Mr. Gardner had been paid commission, didn't you?

A. That is not my account.

Q. I didn't ask you that; I ask you if you didn't know that Mr. Gardner had been paid commissions, to the amount of $225?

A. I didn't know anything more than stated in this account.

Q. I want to know whether you didn't know, in point of fact, that there had been commissions to the amount of $225 paid to Mr. Gardner?

A. I see it from that account.

Q. Now, you knew then of the fact at the time that that account was prepared, in 1890?

A. From the account I knew it.

Q. You also knew that Mr. Gardner had received $1,897?

A. I didn't know whether it was so or not.

Q. In addition to the $225 to him for expenses?

A. I don't remember; it is too long ago.

Q. And you also knew that Mr. Gardner had received upwards of $800 for expenses?

A. I know that I paid that.

Q. What was that $800 paid for?

A. I paid that to James A. O'Reilly.

Q. Then you didn't pay it to Gardner?

A. I never said I paid it to Gardner.

Q. Oh. Now, didn't you know that Mr. Gardner, in 1885, from that account, appeared to have received for expenses in Atlantic City $1,897.78?

A. If it is in the account.

Q. Didn't you know that it appeared from the account that he had received that money?

A. I have not got the account in my hand.

Q. There it is; the Vice Chancellor will return it to you. Under the date of August 20, 1885—look at the tail end of it.

A. You refer to an item here of August 20, 1885, $1,897.78?

Q. (Read by stenographer).

A. I can't say.

Q. Sir?

A. I can't answer.

Q. (By the Court): Mr. O'Reilly, you had a general knowledge that your father owned at his death a considerable amount of property at Atlantic City?

A. Yes, sir.

Q. That it was supposed to be of some considerable value?

A. Yes, sir.

Q. And you knew it was in the outskirts or in the immediate vicinity of a growing city?

A. Yes, sir; I was aware of the fact.

Q. You knew there were taxes paid on it every year?

A. Yes, sir.

Q. You knew that it was liable to assessments for improvements in the city, and so forth?

A. Yes, sir.

Q. You knew, did you not, that there was some man living there that looked after it besides your brother James?

A. I didn't know that.

Q. You say your brother James excluded you practically from any care of this property; didn't you suppose there was some person on the ground looking after it?

A. James went very frequently to Atlantic City, and I presume that he went there himself.

Q. You knew that there were extensive sales from time to time; did you suppose that they were not made through some agent?

A. James made those sales.

Q. You didn't understand that there was an agent who made the sales and got a commission on them?

A. I didn't know what arrangements James made.

Q. Didn't you know at the time that that was so?

A. No, sir.

Q. Never suspected it?

A. I had no idea that James had any agent.

Q. You had no idea then that there was anybody there attending to the sales?

A. I know that Mr. Gardner acted as conveyancer; that his name appeared on the deeds.

Q. You had no idea that he was an agent for the estate?

A. No, sir; I had no idea what arrangement James had made with him.

Q. (By Mr. Grey): Now, when you saw this item of $225 in this account for commissions for Mr. Gardner, did you know what those commissions were for?

A. I did not.

Q. Did you inquire?

A. I did not.

Q. You knew that it was something or other that Gardner had done down at Atlantic City?

A. I did not.

Q. Well, you knew that Mr. Gardner had no connection with the estate outside of Atlantic City, didn't you?

A. I didn't know whether Mr. Gardner had any connection with the estate.

Q. So that, without knowledge that he had any connection with the estate, you suffered this item of $225 commissions paid to him to pass without inquiry and without knowledge of what it was for?

A. These items—

Q. Please to answer that question.

A. In this way—

Q. Because it is susceptible of an answer, "yes" or "no."

A. It is not.

Q. I think it is, and if the Vice Chancellor does not disagree with me you must answer the question.

(Stenographer reads the question).

A. I can't answer the question intelligently the way it is put.

Q. Very good, Mr. O'Reilly, did you furnish any information of the items that went to make an aggregate of $64,125 on the debit side of the account that you have in your hand?

A. I did not; no more than the money that was paid to me.

Q. Do you know how the item, which I have mentioned for amount realized from Atlantic City lots, which you will find on the third line of the second page—

A. I have the item.

Q. Now, the question is, do you know how the amount, $64,125, which is there charged as realized from Atlantic City lots, was made up?

A. Made up from the receipt of sales.

Q. Were those receipts from sales the consideration money paid for conveyances of land in Atlantic City?

A. The receipts that came into my hands through James from sales made in Atlantic City.

Q. Then the money for lots sold in Atlantic City was paid to you by James?

A. Yes, sir.

Q. And you put into that $64,125—that item, as representing the amount that you had received up to that time?

A. No, sir, I did not.

Q. How did that $64,125—

A. (Interrupting). These items were furnished by James; they are his account; not my account at all.

Q. The question I asked you a moment ago was, whether you received the money from James, and you said "yes?"

A. Yes, sir.

Q. Did he not furnish you with a statement of where it came from?

A. I had the records of the deeds—the consideration of the deeds.

Q. (By the Court): Then you had the amount of each deed, the name of each deed, the name of the grantee and its date and the amount of the consideration money, did you?

A. I signed the deed intelligently.

Q. Did you keep a record when you signed the deeds?

A. Yes, sir, I have a record.

Q. (By Mr. Grey): Now, you have all of those amounts?

A. I have those amounts.

Q. Have you got the items from which this amount was made up at home?

A. I don't know that I have them now.

Q. Then you kept an account of the deeds that you signed and the amount of the consideration, which I understand you did, is that right?

A. Yes, sir.

Q. Have you got that account or memorandum?

A. I don't think I have it now.

Q. What did you do with it?

A. After this release we gave to mother the accumulation of papers, covering a period of about forty years, was destroyed.

Q. Was that among those papers?

A. I can't say.

Q. Then you don't know whether you have it or not?

A. I do not. I don't think I have got it.

Q. Now, in this item of $64,125, was there any consideration, or any part of the consideration, for lots which had been sold or agreed to be sold in your father's lifetime?

A. I think there was.

Q. Then, so far as the item contained any account of that, it was money received after the death of your father?

A. I can't speak intelligently on that subject, but my impression is it was.

Q. Now, as I understand it, all the Atlantic City business was in the hands of James?

A. I take it—

Q. (Interrupting). Well, it was in his hands?

A. It was in his hands.

Q. And so far as the estate acted in the relation to the Atlantic City property, James acted for the estate?

A. No, sir; for himself, sir.

Q. For himself; and when he acted for himself in transactions in Atlantic City, and either sold or authorized others to sell lands, the estate, represented by the executors, yourself among the number, conveyed the lands pursuant to his contracts, did you?

A. I answer yes.

Q. And you received the money which he had bargained for, either through himself or another, if he employed another, didn't you?

A. I can't answer that question.

Q. Well, you did receive the consideration money?

A. As stated there in this account.

Q. In every case, did you not?

A. I don't think so.

Q. Didn't you just now say that you kept a record of the deeds and of the consideration, and received what you kept a record of, which went to make up the item of $64,-125?

A. If I said that I made a mistake.

Q. Then what part of the consideration money mentioned in any of those deeds, signed by you as one of the executors, did you not receive?

A. I think as stated in the balance there, the sum of $1,595.

Q. Is that the balance mentioned in the release signed by John and the rest of you to your mother, dated the ninth of September, 1890?

A. That was the balance stated in this difference of account between the receipt of the money and the balance.

Q. And that was charged to John J. Gardner?

A. That was charged to—

Q. Wait a minute; I will show you who it was charged to. (Release C. 72 is here shown witness). Here is your item of $1,595 (indicating).

A. $1,676 is the amount (pointing to items reading: "Personal estate: Account against J. J. Gardner, $1,-595; account against Thomas J. Hunt, $81, total, $1,-676.")

Q. (By the Court): You said $1,595 before you saw the paper, before the release C. 72 was shown you; before C. 72 was shown you, you, of your own motion, mentioned the sum of $1,595, which you say was a balance not paid to you of the sum total of the conveyances of Atlantic City property; now, is that the item—that $1,595 (indicating the item of $1,595 in C. 72).

A. It comprises one of the items; there are two items there.

Q. (By Mr. Grey): Now, the $1,676 is made up by adding two items; by putting an account of Thomas J.

Hunt of $81 to what appears in the same exhibit to be an account against Gardner of $1,595?

A. Yes, sir.

Q. Who is Thomas J. Hunt?

A. I don't know who he is.

Q. You signed this release, a copy of which I now exhibit to you?

A. That is a fac simile copy.

Q. It is certified?

A. Yes, sir, I signed it.

Q. When you signed it you knew what it contained?

A. Yes, sir.

Q. And you knew that it contained that item of $1,595 as an account against Gardner.

A. Yes, sir.

Q. And the $1,595 included the balance of the consideration money received which has not been paid over to you for lots sold in Atlantic City?

A. In James' hands.

Q. How came you to state it against Gardner, if it was in James' hands?

A. If I said so I didn't understand the question.

Q. The release says "Account against J. J. Gardner, $1,595."

A. James furnished those items.

Q. I want to know why that money was not dealt with as in the hands of Gardner?

A. I can't answer the question in that way.

Q. And is not that item of $1,595 the same item which you referred to a moment ago, before the paper was shown to you, as the sum representing the balance of the unpaid consideration—that is, money that didn't come to your hands?

A. Yes, sir, as in the hands of James A. O'Reilly.

Q. Now, kindly show in that release any item of $1,595 in the hand of James A. O'Reilly.

A. Those items were furnished by James.

The Court: Now, I will tell you what I understand to be the substance of the witness' evidence: If I have got it right the witness may assent and if I do not understand it

right he may correct me. The witness said in substance that when he signed all these deeds at the request of James he kept an account of the names of the grantees in the deeds, and the same of the consideration money, that James paid over those consideration monies, or most of it, to the witness, and when he footed up the total of the consideration monies and the total of the payments made to him on account thereof by James he found there was $1,595 short. Then Mr. Grey asked him, or I asked him, whether or not that was the sum, $1,595, mentioned in the release agreement which was charged to Mr. Gardner; when the witness saw the item he then saw there was $81 more which was charged against Mr. Thomas J. Hunt, an attorney, who had conducted a sale to somebody—one of his clients; and the witness said that he made a mistake, that the sum was not $1,595 but $1,676; and he now says that while that was charged in that release to be a charge against Gardner he dealt with it in his own mind as a charge against his brother James, and that his brother James is responsible for its being put in the agreement there as a charge against Gardner. That is the way I understand the substance of the witness' evidence.

The Witness: That is what I want to testify to, Judge.

The Court: You have testified to that, in substance.

Q. (By Mr. Grey): Well, now, Mr. O'Reilly, did you make any inquiry of James as to the items that went to make up the $1,595?

A. I did not.

Q. Did you know, independently of any inquiry, of what went to make up the $1,595?

A. I don't understand the question?

Q. (By the Court): How came just that sum of $1,595 alleged by James to be in Gardner's hands?

A. This account was stated by H. A. Zieber, and then this was shown in the receipts made, and this was the amount wanting to balance the account, and was furnished by James to Mr. Zieber, and is so stated in this account.

Q. (By Mr. Grey): Then this $1,595 represented a general balance on the deficiency—or rather, a balance of indebt-

edness on the general account owing by James to the estate, did it?

A. $1,676.

Q. Now, I am speaking of the $1,595.

The Court: Well, he had $1,595 in his mind, but he subsequently was the $81 and changed it to $1,676.

Q. (By the Court): I don't see where this blue account shows at all any deficiency of $1,676?

A. It does, to prove that balance.

Q. Do you mean to say that balance is not correct?

A. That balance is correct; charge is made against the estate.

Q. You mean to say you didn't have in your hands $249,604.14?

A. No, sir.

Q. It was $1,676 short?

A. Yes, sir.

Q. (By Mr. Grey): Then the release, or the item to which your attention has been called in the release, represents this deficiency; it is apparent from an examination and itemization of the blue account?

The Court: It is not apparent in the blue account; he said it was, but it is not. The difference is this—that this shows a balance in the hands of the executors of $249,604.14, when, in point of fact, there was not such a balance, and the real balance, by their cash, was $1,676 short.

Q. I call your attention to this recital in the release: "And, whereas, it appears by said several accounts and statements that there remains unsettled and unaccounted for of the said estate, real and personal, the following items: Personal estate: Account against J. J. Gardner, $1,595.00; account against Thomas J. Hunt, $81.00, total, $1,676.00. Real estate: Missouri lands, Avondale farm, Maryland, lots in Atlantic City, New Jersey, (in suit), ½ interest in lands in Cumru township, 33 acres on Neversink Hill, ½ interest in 6¼ acres 9th and South streets, lot in Atlantic City, N. J. (sold and in process of conveyance.") Was that recital true at the time it was made?

A. Yes, sir, as far as I know.

Q. Now, I call your attention to the next recital in this release, C. 72:

"And, whereas, it further appears by said several accounts and statements that there remained in the hands of the executors for distribution the following amounts:

"Balance in income account as stated.....$47,132.97
Balance in estate account as stated...$249,604.14
Less uncollected accounts..... 1,676.00

$247,928.14"

Now, is that the same item of $1,676, to which your attention has been before directed?

A. That item is included in this balance.

The Court: Then, in the $249,604.14 was $1,676 too much; but that would make the other statement technically untrue.

Q. The two items are the same that I have called your attention to as recited here?

A. Yes, sir.

Q. Now, is that blue account which you have before you now the one upon which you made your settlement at the time you executed the release?

A. It is.

Q. September 9, 1890.

A. It is.

Q. Did you say that that account in blue was a copy of the account made up by Mr. Zieber?

A. It is not a copy.

Q. Oh, is that the original?

A. There is no original.

Mr. Grey: I offer that in evidence.

(Marked C. 87).

Q. Did you know of the pendency of the suits in Atlantic City with reference to the title of lands in Atlantic City?

A. I did.

Q. Did you ever go down there at any of the trials of those cases?

A. No, sir.

Q. Were you there in 1892—in the spring of 1892?

A. No, sir.

Q. When the last suit was settled by a compromise agreement, as stated by counsel yesterday?

A. No, sir.

Q. Did you know that the agreement was in contemplation?

A. No, sir.

Q. Who made the agreement, so far as the O'Reillys were concerned?

A. I didn't know there was a compromise agreement.

Q. Was there not a settlement arrived at between the litigating parties in April, 1892, or in the spring of 1892?

A. Are you talking about the trial now?

Q. In 1892 was there not an agreement between the O'Reillys and Daniel Lindley in reference to the settlement of a controversy respecting the title to lands claimed by your father and by his executors after his death in Atlantic City?

A. When?

Q. Last spring a year ago.

A. There was no agreement until April—the latter part of April.

Q. That is just what I asked you. There was an agreement then, was there not?

A. It was a proposition made by the counsel for Mr. Lindley to settle the case, and it was accepted.

Q. Lindley's counsel made a proposition?

A. Yes, sir.

Q. And who was that proposition made to?

A. That proposition was made to my brother and myself.

Q. Who did you get it from?

A. From Mr. Harned.

Q. Directly from Mr. Harned?

A. Through Mr. Harned.

Q. Did Mr. Harned see you in Reading?

A. Mr. Harned called at the house.

Q. In Reading?

A. Yes, sir.

Q. Now, was that the time when you signed—or your mother signed the agreement with Adams?

A. There was a deed given at this particular time—there was a deed given to Mr. Lindley; I am not sure whether the

agreement to sell the property to Mr. Adams and Mr. Griffith was made at that time or not; it was a year ago, and I won't tax my memory.

Q. Witness' attention is called to a paper produced by the other side and marked C. 82, typewritten, dated April 15, 1892, signed "Catherine C. O'Reilly, executrix;" he is asked whether that is the signature of his mother?

A. That is.

Q. Was that paper signed by her at the time Mr. Harned came up to Reading?

A. I don't know whether it was signed at that period or the day after.

Q. Well, it was in Reading when he was there?

A. Now, I can't say.

Q. The witness' attention is called to a paper dated Atlantic City, April 15, 1892, purporting to be signed by Alfred Adams, annexed to the above and forming a part of the same exhibit, and is asked whether that paper was produced by Mr. Harned when he came up to Reading?

A. I can't answer that.

Q. Did Mr. Harned take the acknowledgment of your mother while he was in Reading?

A. He did.

Q. Did you see him write it?

A. I am not prepared to say.

Q. Look at the acknowledgment there and see whether that is the paper.

A. I can read it, can I not?

Q. Certainly you can read it.

A. What is your question?

Q. I asked you whether Mr. Harned wrote that in your presence in Reading?

A. I can't say.

Q. You were present when he took your mother's acknowledgment?

A. Yes, sir.

Q. That was in Reading?

A. Yes, sir, that was in Reading.

Q. Now, Mr. O'Reilly, did you not at that time settle the controversy pending between your father's estate and Lindley touching the lands in Atlantic City?

A. It was settled by an offer made by the counsel of Mr. Lindley to my brother.

Q. It was settled at that time?

A. It was settled at that time.

Q. And part of the consideration of the settlement was a conveyance by you to Lindley of some land in Atlantic City, wasn't it?

A. Yes, sir.

Q. And at the same time your mother made a deed, didn't she?

A. Yes, sir.

Q. To Lindley?

A. Yes, sir.

Q. Original deed now shown—C. 85; you are asked whether that is the deed made in pursuance of that settlement?

A. (Looking at paper). Yes, sir.

Q. Did Mr. Harned take the acknowledgment of your mother?

A. I think he did.

Q. In Reading?

A. I think so.

Q. Now, did you make a deed of confirmation, signed by you and James?

A. I did.

Q. Paper marked C. 86 being shown witness, he is asked whether that is his signature to the deed of confirmation?

A. Yes, sir.

Q. Did Mr. Harned take your acknowledgment?

A. He did.

Q. In Reading?

A. I am not prepared to answer.

Q. Where did you go to have the acknowledgment taken then?

A. I think it was in Reading.

Q. Now, it was all done at the same time, that is, the same day?

A. I am not prepared to answer that question, whether it was done on the same day or not.

Q. Was it done on the day these papers were dated, to wit: 15th of April, 1892?

A. The date of the paper?

Q. The date of the paper is 15th of April, 1892.

A. I presume they were executed at the date shown.

Q. So that the Adams papers, which have been shown you, and the Lindley papers, which have been shown you, which are all dated at one time, were all executed by you and your mother, and you and James, so far as the Lindley matter is concerned?

A. Yes, sir.

Q. Was not that a part of the arrangement or agreement under which the suit was to be settled?

A. I didn't know of any other.

Q. Then this was the arrangement?

A. This was a proposition that Mr. Harned made a few days before.

Q. And these papers were executed in pursuance of that agreement.

A. These papers were executed in pursuance of that agreement.

Q. Mr. O'Reilly, I show you a paper marked Exhibit C. 63, certified copy of agreement between Catherine O'Reilly and James A. Griffith, for the conveyance of land in Atlantic City, dated April 21, 1892. Do you remember the fact that your mother made an agreement with Griffith?

A. Yes, sir.

Q. Were you present at the time?

A. I was.

Q. James signed it as a subscribing witness?

A. It is so stated in this paper.

Q. And you don't appear to have signed it as subscribing witness?

A. I was present when it was executed.

Q. And James took your mother's acknowledgment?

A. I don't know whether he did or not.

Q. Look at the end.

A. Yes, sir, James took mother's acknowledgment.

Q. Now, do you remember, as a fact, that he did take her acknowledgment?

A. It is so stated in this paper.

Q. In point of fact, independent of that?

A. I have no knowledge of it.

Q. You knew what that property was, where it was?

A. Yes, sir.

Q. Do you know whether your mother made a deed for that property to anybody afterwards?

A. She made a deed to a man by the name of Hall.

Q. How did she make a deed to Hall when she agreed to convey to Griffith?

A. Mr. Griffith could not carry out his contract.

Q. Did Mr. Griffith in any way by writing assent to the conveyance to Hall?

A. I think it was a privilege.

Q. Did he direct you to convey to Hall?

A. He did.

Q. When did he give you that direction?

A. I think it was the date the deed to Hall was made.

Q. The same date?

A. The date of the deed.

Q. Where was that deed to Hall executed?

A. That was executed in Philadelphia; or in Reading, I believe.

Q. Was it executed in Philadelphia or Reading, now?

A. Executed in Reading, I suppose.

Q. Were you present at the execution of the deed?

A. I was not.

Q. You were not present; was any one present at the time your mother executed that deed, so far as you know?

A. I can't answer; I don't know.

Q. Do you know whether Mr. Harned was present?

A. I can't say.

Mr. Harned: I think I took that acknowledgment, Mr. Grey.

Q. Now, at the time your mother made the deed to Hall, did you know who Hall was?

A. Yes, sir.

Q. Well, who was he?

A. He is a man presented by Mr. Griffith as the purchaser of this property.

Q. Presented by Mr. Griffith as the purchaser of the property?

A. I met him.
Q. Where did you meet him?
A. In Philadelphia.
Q. Where?
A. On Chestnut Street.
Q. Where on Chestnut Street?
A. I think it was near the Girard House.
Q. On the street?
A. No, sir.
Q. Well, in what building; in whose office?
A. In the Commonwealth—I think it was in the entrance —Commonwealth Insurance building, the next entrance below.
Q. Ever meet him before?
A. No, sir.
Q. Anybody else present besides Griffith and Hall?
A. I think the attorney was present at that time.
Q. Whose attorney?
A. Cooper, I think is his name.
Q. Mr. Cooper?
A. Yes, sir.
Q. Camden attorney?
A. Yes, sir.
Q. What is his first name?
A. I think Howard.
Q. Did he come with Mr. Hall or Mr. Griffith?
A. I really can't say.
Q. Was he there as the representative either of Hall or Griffith?
A. I can't answer that question.
Q. How did you recognize him as having anything to do with the transaction?
A. I knew his name was mentioned.
Q. Was he there present?
A. Yes, sir.
Q. Well, in what connection was he there present and who was he said to represent?
A. As representing Mr. Hall.
Q. Was there anybody else there besides Mr. Hall and Mr. Griffith and Mr. Cooper?

A. Brother James and Mr. Harned?
Q. Was there any other person?
A. Not that I know of.
Q. Do you know Mr. Walter Wood?
A. I do not.
Q. Did you hear that Mr. Walter Wood had any interest in this matter at that time?
A. No, sir.
Q. Did you hear it at any time?
A. I heard it by the bill filed in this case.
Q. By the bill filed in this case, did you?
A. No, sir.
Q. Which bill in this case was it to which you refer?
A. The supplementary bill.
Q. The supplemental bill?
A. Yes, sir.
Q. Do you mean the supplemental bill in the case of Keim v. O'Reilly and Griffith?
A. I really don't know how many bills there were.
Q. Two supplemental bills; one was against Adams and Lindley, which affected one property, and the other was against Griffith and Shelton and Hall, representing another property; now, in which of those bills was it that you saw the name of Mr. Wood?
A. I really can't say it was one of them.
Q. You are quite sure that was the first and only time you saw Mr. Wood's name in connection with this matter?
A. That is the first time I remember of hearing it?
Q. Now, did you go to Mr. Wood's office at the time you met Griffith?
A. No, sir, don't know where his office is.
Q. Suppose that Mr. Wood's name was never mentioned in this bill, then what explanation have you to make as to when you first heard his name mentioned in the transaction?
A. I never heard of him before I read it in the bill.
Q. Well, it is not in the bill.
Mr. Voorhees: It is due to the witness to say that there was a supplemental bill for an injunction to prevent the recording of the deed in which the name of Walter Wood was mentioned.

Witness: I would like to make a correction, Mr. Grey, in reference to the name of Walter Wood; his name was mentioned here by one of the witnesses, and I may be confused in recollecting him as being in the transfer of these deeds; I didn't know who was the next party that became possessed of this property after Mr. Hall; Mr. Wood's name in connection with it may have confused me.

Q. Now, in this deed from your mother to Mr. Hall, the consideration mentioned is $65,000; how did you come to make a deed to a man whom you had never seen before at a consideration of $65,000 for property in Atlantic City?

A. Agreement was made with Mr. Griffith to sell this property to him.

Q. At $65,000.

A. At $65,000.

Q. Now, Mr. Griffith produced Mr. Hall?

A. Mr. Griffith produced Mr. Hall.

Q. And Mr. Hall was a man whom you had never seen before?

A. I think I knew that he was in possession of this property.

Q. That Mr. Hall was?

A. That Mr. Griffith was in possession of a portion of this property in dispute.

Q. Well, was that part of the property that was described in the deed?

A. I supposed it was.

Q. Did you know anything about that?

A. About what?

Q. About the fact that he was in possession of part of the property.

A. Only from information.

Q. Now, who gave you that information?

A. That information was given by Mr. Harned.

Q. James didn't give you any information about it?

A. No, sir; I got that information from Mr. Harned.

Q. Was James there when Mr. Harned told you about it?

A. I am not prepared to answer that question.

Q. Now, who paid the money, or was any money paid on this consideration?

A. It was stated fifteen thousand dollars.

Q. Was $15,000 paid?
A. Yes, sir.
Q. Who received it?
A. The amount was deposited to our credit as executors of the estate of P. O'Reilly.
Q. Who made the deposit?
A. I think James made that deposit.
Q. In what form was the deposit made—in cash, or check, or draft, or how?
A. I can't say that; I know we got the money.
Q. And that part of the money was paid to James and dep sited to the credit of the executors?
A. Yes, sir.
Q. Do you know where it was deposited to the credit of the executors?
A. Yes, sir.
Q. Where?
A. In the Philadelphia Trust and Safe Deposit Company.
Q. Do you know when it was so deposited?
A. I can't—I am not prepared to answer that; I suppose the day that the deed was executed.
Q. (By the Court): Have you drawn it out and used it?
A. Yes, sir. It was used to pay debts.
Q. (By Mr. Grey): You haven't with you the bank book showing the deposit, have you?
A. No, sir.
Q. There is such a bank book, is there?
A. Yes, sir.
Q. Will you produce it?
A. I can.
Q. Now, you didn't see the check or draft that was paid to James, did you?
A. I did not.
Q. So you didn't know—don't know—whose check or draft it was?
A. I am not prepared to say.
Q. Did James ever tell you?
A. He did not.
Q. Do you know?
A. I do not.

Q. (By the Court): Have you any information as to whose draft it was, and whose money?

A. No, sir, I only know the money was deposited to our credit.

Q. (By Mr. Grey): You said just now you are not prepared to say, now I want to know whether you have any knowledge?

A. I use a term of that kind, meaning that I have no knowledge.

Q. Then you never saw the draft; you don't know whose it was, nor what its amount?

A. I know the amount was $15,000 that was deposited.

Q. How?

A. Because it was stated in our account; I drew against it.

Q. But how do you know that that particular draft or check was one for $15,000?

A. I can't say; I don't know whether it was money, or check, or draft or what it was.

Q. Now, who does know all about that, whether it was a draft, or a check, or cash or what?

A. I said this was deposited to our credit in Philadelphia by James.

Q. I want to know who does know as to the form in which it was made?

A. The person that made the deposit, James A. O'Reilly.

Q. Why didn't you say that?

A. I was going to say it.

Q. Did James tell you what this was that he put there?

A. No, sir.

Q. Did he tell you whether it was a check or what it was that he deposited?

A. No, sir.

Q. How do you know whether there was anything else paid on account of the consideration money besides the fifteen thousand dollars?

A. There was a thousand dollars paid by Mr. Griffith, and the amount paid at this particular time was $14,000; $14,000 was deposited at the time of the drawing of this deed.

Q. How do you know that if you didn't see the draft and have no knowledge on the subject?

A. Because the amount deposited at this particular time was $14,000; $1,000 had been previously paid on this property by Griffith.

Q. Do you mean to say that you executed a deed, or permitted your mother to execute a deed to Mr. Hall, without knowing before it was executed that you had $15,000 in hand cash or its equivalent; do you mean to say that?

A. James had the deed and the money was paid on the presentation of this deed.

Q. You were there, were you not?

A. I was not there at the delivery of the money.

Q. You were not?

A. I was not present.

Q. Then your mother executed the deed and gave it to James?

A. I don't think so.

Q. How was it done?

A. Mr. Harned had the deed.

Q. Mr. Harned had the deed?

A. I judge so.

Q. And from whom did Mr. Harned receive the deed?

A. I suppose from mother.

Q. And before your mother got the money?

A. I don't know; Mr. Harned took her acknowledgment in Reading.

Q. Was the money paid in Reading?

A. I am not prepared to say; it is because I don't know; I am trying to impress on your mind that I don't know.

Q. I am only taking you at your word when you say "I am not prepared to say." Was this deed delivered to Mr. Harned before you came to Philadelphia and met Mr. Hall?

A. I have no knowledge of the execution of this deed—the delivery of the deed; I only know that the deed was executed from information furnished to me by mother, that the purchase money named in this deed was paid and was deposited to the credit of the executors of our estate in Philadelphia. Now, I think I have given you all the information.

Q. I want to know when this money was paid, whether it was before or after Mr. Harned received that deed?

A. I can answer this question—it was not paid before the execution of the deed.

Q. Was it paid at the time of the execution of the deed?

A. The one thousand dollars was paid before the execution, on the agreement.

Q. The $14,000 was that paid at the time Mr. Harned got the deed?

A. I can't say.

Q. Mr. O'Reilly, didn't you know, at the time of the execution of this deed, that Mr. Hall was a clerk, and was a man absolutely without any pecuniary responsibility?

A. I did not.

Q. Didn't you know that he was a clerk in the employ of R. D. Wood & Company?

A. I never knew that.

Q. You never knew that? You made no inquiry to find out who he was?

A. I did not; I knew he was in possession of this property, from information.

Q. You said Mr. Griffith was in possession of the property as you understood?

A. I misunderstood you; I understood you to talk about Griffith. No, sir, I don't know anything about Hall.

Q. Didn't you know that Mr. Hall was a clerk in R. D. Wood & Company's, and that he was without any pecuniary responsibility?

A. No, sir, I did not.

Q. Now, you know that I do speak of Hall?

A. Yes, sir.

Q. Do you know what became of the mortgage that was given at the time of the delivery of the deed to Hall—I speak now of the fifty thousand dollar mortgage?

A. Yes, sir.

Q. Where is it?

A. I have got it.

Q. You have it. You hold it as part of the estate of your father?

A. As personal property of mother's.

Q. As personal property of mother's?

A. Yes, sir.

Q. Well, the money belongs to the estate?

A. Well, I hold it as being made to her—in her possession is what I mean to say.

Q. Made to her as executrix?
A. Yes, sir.
Q. Still in her ownership?
A. Yes, sir.
Q. And in your custody?
A. Yes, sir.
Q. Will you produce it?
A. I will.
Q. Have you got it with you?
A. (Witness produces mortgage).

Mr. Grey: Bond and mortgage being produced at my request, I offer them in evidence, acknowledgment taken by Howard Cooper; made by Edward Hall to Catherine C. O'Reilly, executrix, dated June 1, 1892, acknowledged June 14, 1892, before Howard M. Cooper, Master in Chancery of New Jersey. The mortgage purports to secure the payment of $50,000, with interest, at the rate of five per cent. per annum, on the first of August, or as soon thereafter as a good marketable title is made to the said Hall by the executor for the land described accompanying mortgage, to secure part of the purchase money for which land said bond and this mortgage are given, the liability of the said Hall on that bond being thereby expressly limited to the land hereby mortgaged, said interest to be paid semi-annually from the date thereof.

(Bond marked C. 88 a; mortgage C. 88 b).

Q. Mr. O'Reilly, do you remember the conveyance of property to Alfred Adams, the deed for which was shown you—a deed of confirmation?
A. I do.
Q. You recollect a mortgage for $25,000?
A. Yes, sir.
Q. Given by Mr. Adams?
A. Yes, sir.
Q. Where is that mortgage?
A. I have it.
Q. Have you got it?
A. Yes, sir.
Q. Will you be kind enough to produce that?
A. (Producing paper). Here it is.
Q. Is this mortgage from Adams to Catherine C. O'Reilly,

executrix, held in the same way in which you hold the other one of $50,000?

A. Exactly.

Mr. Grey: I offer the bond and mortgage in evidence.

Judge Pancoast: No objection.

(Bond marked C. 89 a; mortgage C. 89 b).

Q. Were you present when this paper was executed by Mr. Adams?

A. I can't say.

Q. From whom did you receive it?

A. I received it under the same circumstances and in the same way that I received the other, I think.

Q. From your brother James?

A. I really can't say; I don't know whether it came by mail or how; I don't know how I received it.

The Court: Are they contemporaneous in date?

Mr. Grey: Both the same date; the one acknowledged the 14th of June, and the other acknowledged the 16th of June. The mortgage in question is a mortgage from Alfred Adams, jr., to Catherine C. O'Reilly, executrix, dated June 1st, 1892, acknowledged June 16, 1892, before Thomas B. Harned, M. C. C., purporting to secure the payment of a bond bearing even date with the mortgage for $25,000 on the first day of August, 1892, together with interest thereon, payable semi-annually at the rate of six per cent.

Q. Now, has any interest been collected on either one of those securities—the $50,000 one or the $25,000?

A. I was informed that an injunction had been obtained restraining us from the collection of it.

Q. Then no interest has been collected?

A. No interest has been collected.

Q. Now, the mortgage made by Adams was due on the 1st of August, 1893, by its terms, has any demand for payment been made from Mr. Adams?

A. Yes, sir.

Q. By whom?

A. Myself.

Q. When?

A. I think it was the seventh of this month.

Q. The seventh of this month?

A. Yes, sir.

Q. (By Mr. Harned): Do you mean the principal or interest?

A. The interest I should refer to.

Q. (By Mr. Grey): Did he pay the interest?

A. He did not.

Q. Was any demand for the payment of interest made on Mr. Hall?

A. I don't know; I can't answer that question.

Q. Was any demand for the payment of interest made on anybody who succeeded Mr. Hall in the title?

A. I don't know.

Q. Did you ever hear of a man named Shelton?

A. I did not, except hearing it mentioned here in the trial.

Q. Do you know who holds the title to that property now?

A. A man by the name of Bacharach; you stated that fact.

Q. I am speaking of the property conveyed to Hall. Who holds the title to that property? Mr. Bacharach is what you said?

A. I understand so from hearsay, from hearing it at the trial.

The Court: These papers just marked are in evidence.

Q. Now, Mr. O'Reilly, did you make any demand on Mr. Bacharach for the payment of the interest on the $50,000?

A. Yes, sir.

Q. When?

A. The same time that the demand was made on Mr. Adams, the 7th of this month.

Q. Has he paid any?

A. No, sir.

Q. How was the demand made?

A. By letter, and I have a copy of the form.

Q. Did you do that on your own accord, or were you advised to do it?

A. I was advised to make the demand.

Q. By who?

A. By my brother James.

Q. Then it was in pursuance of James' advice that you did it?

A. It was under his form of receipt to give to these people.

Q. Well, you never did give any receipt, because you never got any money?

A. But the demand was made in the form the receipt would be given.

Q. Do you know whether Mr. Bacharach has ever conveyed that property?

A. I do not.

Q. Didn't you know that Mr. Bacharach had conveyed, transferred his title to Mr. Walter Wood?

A. That is news to me.

Q. You had heard of it?

A. I don't know whether it was stated here at the trial or not.

Q. I didn't ask that.

A. I have no knowledge.

Q. Never heard of it?

A. Never heard of it; never knew of it.

Q. Is this the first intimation of that sort?

A. Yes, sir, your stating it so.

Q. Well, didn't you know that Mr. Shelton had conveyed to Mr. Wood the property?

A. No, sir, never more than it was mentioned at the trial

Q. How did Mr. Bacharach get the title, as you understood it?

A. Just as mentioned here at the trial; the evidence will show that.

Q. I am asking you?

A. I can't tax my memory.

Q. Did you understand that Mr. Bacharach got it from Adams?

A. A gentleman by the name of Adams described how; I have no knowledge except what I heard here at the trial.

Q. Did you or not know that the title passed from Hall to Shelton, and from Shelton to Walter Wood, and from Walter Wood to Bacharach; now, didn't you know that?

A. No more than it was stated at the trial.

The Court: He says he has no knowledge except what was stated by witnesses or counsel here at the trial.

Mr. Grey: I only want to get his information.

Q. Now, did you have anything to do with the arrange-

ment of the payment made by Adams—the $25,000 mortgage?

A. I did.

Q. Where did you make that arrangement?

A. I made that arrangement with his counsel, with Mr. Harned.

Q. And that was part of the arrangement that you have heretofore referred as having been made at Reading?

A. At Reading.

Q. Are there any other bits of property in Atlantic City owned by your father's estate to your knowledge now?

A. I think there is.

Q. Do you know where it is located?

A. I can't exactly give the location of it.

Q. Do you know how much it is?

A. I really can't say.

Q. Don't know what street it is on?

A. I do not.

Q. Nor what front or depth it has?

A. I could not tell you; I don't know.

Q. Well, who does know that?

A. I never had the maps in my possession, and can't describe the property; I am not certain whether there is; my impression is that there is a piece of property in Atlantic City unsold—I won't say whether unsold, but unsettled, besides this property mentioned here.

Q. You never had the maps in your own possession?

A. No, sir.

Q. Who had that?

A. I can't say; I presume that my brother James had them.

Q. Did you never look at those maps at all?

A. I had no access to them.

Q. You had no access to them?

A. No, sir.

Q. As far as you know James did?

A. Well, if he had them in his possession he must have had.

Q. And he was the only member of the family that did have access to them, as far as your knowledge goes?

A. I am certain that if I had access to them—

Q. Answer that question; he was the only member of the family that did have access to them as far as your knowledge goes?

A. I suppose.

Q. (By the Court): Do you mean to say that James, when you asked him to let you look at the maps, refused to let you see them?

A. I don't answer that.

Q. You said access; it is capable of the construction that you were refused permission to see them?

A. No, sir.

Q. You were co-executor, with power of sale; now, do you mean to have the Court understand that your brother James excluded you by physical force, or in any other way, and denied you the privilege of looking at the maps and title deeds?

A. Not by physicial force; he never came to physical force.

Q. Did he refuse; say "I won't let you look at these maps;" did you ever ask him and did he ever refuse?

A. I think he did.

Q. You acquiesced in that. What I want to get at is whether or not your failure to see these papers, maps, deeds, and so forth, was voluntary on your part or involuntary?

A. I will answer that by saying involuntary.

Q. Involuntary? Do you wish the Court to understand that your brother refused, substantially, to let you see these papers?

A. The impression in my mind was that James had this property.

Q. Well, you had the will before you and knew better?

A. Lawyers sometimes own it.

Q. How did you get the idea that James owned the property?

A. The idea was conveyed to me by my brother; he acted as though he owned the property.

Q. You are an intelligent looking gentleman, how could you as an intelligent gentlemau, having read your father's will, and being one of the executors, suppose that James owned this property?

A. He didn't own the property.

Q. How could you suppose it?

A. From his acts only; I only judged from his acts.

Q. Oh, he assumed?

A. He assumed to own it.

Q. Do you mean to say that he acted as though you had nothing to do with it and that he had the whole to do with it?

A. Yes, sir.

Q. Didn't you think that was a pretty serious assumption?

A. I took my method in the handling of another property, and I thought by example that I could show the business way of doing that.

Q. That is to say you didn't interfere with James in his assumption; you let him go on, but you took another piece of property, and you thought you could manage that so much better, and would point to that as an example?

A. I got a power from all my brothers to act in the management of this property, by a power of attorney; it was outside the State, and I wanted James to do the same thing.

Q. What good would a power of attorney do from one lot of executors to the other?

A. The executors and all the heirs; secure me from annoyance of law suits; I had full power in that way.

Q. I can't understand why you would acquiesce in your brother's management of this property? According to your story he substantially excluded you from all management. I can't understand why you, as an executor, knowing your mother was a feeble old woman, should stand by and do nothing.

A. I don't know that it is stated at that time she was feeble; the last three years she was.

Q. Did your mother take any part in the management?

A. She did of her own.

Q. But this Atlantic City property and all of my examination is concerning that entirely. Did your mother take an active part in the management of this Atlantic City property?

A. She had no opportunity.

Q. I am asking you whether she did?

A. She did not.

Q. Then how is it that you and your mother, being a ma-

jority of the executors, could do your duty to your other two brothers and sister by standing by, with all the powers given you by the will and your sworn duty to execute that will—how could you attend to it and let your brother James manage this property against your will and against your protest and without giving you any account of it—that is what I want to know?

A. I can't answer that, Judge.

Q. And how could you conscientiously sign deeds for the conveyance of this property?

A. There is no question of James' personal honesty; he turned everything over except some small items; there is no question about his personal and private honesty.

Q. Any question as to his ability?

A. As to his business management.

Q. You think he had bad business management?

A. As to his business management.

Q. Then how could you acquiesce in the sales of property without yourself investigating all about it and endorsing his business management in that way?

A. I know from the prices fixed by father during his lifetime these prices were satisfactory.

Q. Then you were satisfied, were you, to have James sell this property at prices fixed by your father for the property?

A. I was satisfied with the price that he sold at.

Q. When they were fixed according to the prices fixed by your father?

A. They were generally advancing prices.

Q. (By Mr. Grey): Those advancing prices your father did not fix?

A. It was the minimum prices.

Q. So that the price at which James agreed to sell, and you acquiesced in the sale, was a price beyond that which your father had fixed?

A. Far in advance.

Q. And when was it now that you say James refused you access to these papers and maps; when did he do that?

A. I think it was some time in the beginning of our executorship.

Q. And did you apply to him on more than one occasion for access to them?

A. I suppose so.

Q. Well, pardon me, but you ought to know whether you did or not and not "suppose;" did you or did you not?

A. I have on one or two occasions.

Q. Sir?

A. I have on one or two occasions.

Q. On one or two occasions, and that was the early part of your executorship?

A. Yes, sir.

Q. Now, you say that you thought James owned this property, or you got the idea that he owned this property?

The Court: No, acted as though he owned it. He did say that James owned it, but he took that back, and explained that James acted as though he owned it.

Q. (By the Court): How did you get at the price that your father had fixed on this property? During the course of these years, after your father's death, you say, in selling, you inquired whether or not the prices were such that your father during his lifetime approved of, or were advancing prices; how did you get at those prices, the prices which your father had fixed on them?

A. It was the statement he gave me a short period before his death.

Q. Have you got that?

A. Yes, sir; I think so at least.

Q. (By Mr. Grey): Where is it?

A. If they have not been destroyed they are among the other papers.

Q. If not destroyed it is among the other papers? But those papers were destroyed in 1890, according to your recollection?

A. After the settlement of this release we gave to mother.

Q. 1890 was the period you fixed. Will you be kind enough to look and see if you have not got a list of prices fixed by your father?

A. If I have I will bring it.

Q. In whose handwriting was that memorandum?

A. In my handwriting.

Q. And when did you make it?

A. A short time before his death, in 1880.

Q. Did you make it from your father's instructions?

A. At his dictation.

Q. And what did you do with it after you made it?

A. I kept it in my personal papers.

Q. Had your father in any way endorsed it by his signature or initials?

A. No, sir.

Q. That was the memorandum to which you have referred as containing the price-list made by your father?

A. Yes, sir.

Q. If you kept it in your personal possession, as I understand you did, how did James come to know what the prices were?

A. I don't know that he did.

Q. He did sell, when he sold, at prices above what your father fixed?

A. At prices far in excess.

Q. And you were satisfied with them because they were more than your father fixed?

A. Yes, sir.

Q. None of your family ever lived in Atlantic City?

A. No, sir, not that I know of.

Q. That is all.

The Witness: In reference to a paper that brother John signed and acknowledged before Mr. Merritt, the paper was read over by Mr. Merritt and myself and explained to John as good as I knew how.

Q. (By the Court): That is the release paper?

A. Yes, sir.

Q. What do you refer to?

A. I refer to the paper that my brother was confused as to whether he had a knowledge as to the contents of or not, executed before Mr. Merritt, and which the Judge predicated his remarks upon.

Q. (By Judge Pancoast): The affidavit or the acknowledgment?

A. It is the affidavit I judge.

(By the Court): The remarks were made as to your affidavit.

A. I was present at the time, Judge, and Mr. Merritt, the mayor of the City of Reading, explained it to him.

Q. (By Judge Pancoast): What is your explanation again?

A. I went before Mr. Merritt with my brother John, and on my way I explained the contents of this paper, and Mr. Merritt, in taking his acknowledgment, he turned over the papers and read, giving him a general synopsis of the contents of this paper, and the acknowledgment of Mr. Merritt at the end of it gave a clear idea to my mind that John had an intelligent and thorough knowledge of the contents of the papers —as far as myself was concerned. I am calling attention to the answer sworn to by Mr. John F. O'Reilly, and to which his attention was called this morning.

Q. (By Mr. Grey): The witness' attention is now called to a paper marked D. 1, deed from John F. O'Reilly, of Reading, to Catherine Cecelia O'Reilly, of the same place, and he is asked whether he has ever seen that paper before?

A. Yes, sir, it has been in my possession up to a short time ago.

Q. Did you have it in your possession before it was executed?

A. Yes, sir.

Q. How long before?

A. I think possibly it might have been a week or so.

Q. In whose handwriting is the endorsement, "John F. O'Reilly and Catherine Cecelia O'Reilly?"

A. A young man by the name of Bushon.

Q. In whose employ is he?

A. An office clerk in the employ of Silas D. Derr, in Reading.

Q. Did you ever write upon this deed, or make any changes upon it, or characters?

A. If you will let me see it.

Q. I ask you without having you look at it?

A. I can't remember.

Q. Were you present at the time it was executed?

A. I was.

Q. In whose handwriting, if you know, is the memorandum, "The interlineation amounting to $37,238.30, third line of this page, made before execution?"

A. The same as the endorsement on the back.

Q. Mr. Bushon's?

A. Mr. Bushon's, that is my impression that it is.

Q. In whose handwriting on the third page are the words, "Amounting to $37,238.30?"

A. The same.

Q. And in whose handwriting is the change of date at the top?

A. This is John F. Pierce Hummel.

Q. Then it is not Mr. Bushon?

A. It is Mr. Pierce Hummel in that instance.

Q. Then the correction of the date was by Mr. Hummel?

A. Yes, sir.

Q. And the other changes were by Bushon?

A. Yes, sir.

Re-direct by Judge Pancoast.

Q. (Showing witness paper). Is that a certified copy of your mother's will, and letters testamentary thereon under which you are acting as her executor?

A. Yes, sir.

(No objection being made to the paper, same is marked D. 2).

Q. That is all.

JAMES A. O'REILLY, sworn.

Direct-examination by Judge Pancoast.

Q. Are you one of the children of Patrick O'Reilly and Catherine C. O'Reilly, late of Reading, Pennsylvania?

A. Yes, sir.

Q. What is your business?

A. Attorney-at-law.

Q. At what place?

A. Reading.

Q. Are you one of the executors under your father's will?

A. I am.

Q. Did you ever have any authority over his estate in Atlantic City, excepting such as you derived as one of the executors and part owner?

A. None other.

Q. Had you ever any authority from your mother, or from your brother Francis, as co-executors, to delegate any

authority to John J. Gardner to make written contracts for the sale of lands in Atlantic City belonging to the estate?

A. No, sir.

Q. When did you first hear of these two Keim contracts in question in this litigation?

A. December, 1891, or the latter part of November, 1891.

Q. From or through whom did you first hear of them?

A. A letter from Mr. Voorhees enclosing one from Mr. Grey—Mr. Samuel H. Grey.

Q. Had anything up to that time ever passed between you and Gardner in respect to the contract that purports to have been made by him with Keim?

A. Do you allude to these two written contracts?

Q. Yes, sir.

A. No, sir.

Q. What was the first conversation that ever passed between you in respect to them?

A. In respect to the sale of this land?

Q. In respect to these contracts.

A. In respect to these contracts? The first was after I had learned through these letters that Mr. Keim claimed to have a specific written agreement for their sale. I then went to Camden, and Mr. Voorhees showed me a press copy, or a typewritten copy from Mr. Grey of these two contracts. The same evening, or the following day, I went to Atlantic City and asked Senator Gardner by what authority he attempted to bind the heirs of father in such a contract.

Mr. Grey: I submit that the conversation with Gardner is not competemt.

The Court: Unless his attention was called to it.

Judge Pancoast: Certainly, we can show just what passed between him and Gardner. This is not offered as a contradiction of Gardner, but to show the relations existing between the witness and Gardner on the subject of this agency.

The Court: You can't prove that by what occurred in 1891. If you put it on the ground that it is not intended to contradict Gardner, I don't see how you can get it in at all.

Judge Pancoast: It is to prove that up to that time by the understanding between Gardner and this witness there was no delegation to Gardner of authority.

The Court: Well, he has sworn to that. He has sworn to his surprise, I suppose. I suppose you may ask him if he was surprised that Mr. Gardner had been selling. Gardner's answer is ruled out unless you want to contradict him.

Judge Pancoast: It is not meant as a contradiction; I object to the action of the Court in ruling out this answer.

Q. Did you ever knowingly receive any money from Gardner on account of either one of these contracts in question?

A. No, sir.

Q. Has the title to these lands in question been in dispute?

A. They have.

Q. And in litigation?

A. They have.

Q. For how long a period?

A. Since eighteen eighty-two—I think the writ was issued in 1882.

Q. Who were the parties defendant to this litigation—people in possession, or people claiming under title without possession?

A. People in possession.

Q. Who were the people in possession that claimed title to this land during the course of this litigation?

A. Daniel Lindley was one suit; persons claiming under the Rotherhams, or West, was the other, and the third one was Williamson.

Q. Now, was the Lindley suit ever brought to a final determination and settlement in court?

A. No, sir.

Q. What was done with the Rotherham suit?

A. Tried in April, 1892, and a verdict for the plaintiff.

Q. That is for the estate?

A. For Mrs. O'Reilly.

Q. (By the Court): As I understand, these suits were all brought by the O'Reillys?

A. No, sir; by Catherine C. O'Reilly.

Q. By an O'Reilly?

A. Yes, sir.

Q. Against persons in possession?

A. Yes, sir.

Q. Who were troubling you with claims of title?

A. Yes, sir.

Q. They didn't bring suit against you, but you brought suit against them, and your first suit was in 1882?

A. Yes, sir.

Q. (By Judge Pancoast): The effort in this suit was to establish the title and to turn these people out of possession, was it?

(Objected to on the grounds that the records will show).

A. Yes, sir.

Q. Are the Rotherhams in possession still, or have they yielded possession?

A. I am not able to answer that; I don't think they are in possession.

Q. Who was the third party that is in possession claiming a part of this land?

A. Williamson or Mrs. Hardwick; Mrs. Hardwick and Mrs. Williamson, as Senator Gardner explained. (Witness did not finish the sentence).

Q. Is there suit against her?

A. Yes, sir.

Q. Brought by whom?

A. By Mr. Voorhees, by my mother, Mr. Voorhees, attorney.

Q. Is that suit yet pending?

A. It is pending.

Q. (By the Court): Do you know how long these people have been in possession claiming title against you; you say suit was brought in 1882?

A. For some considerable time, if you will let me explain.

Q. No, sir. They were in possession at the time your father died?

A. Yes, sir.

Q. (By Judge Pancoast): Will you explain the character of their possession and right?

(Objected to on the grounds that the records will show).

Q. Do you know how much tax the estate has paid on this property in question since 1880?

A. Yes, sir.

Q. How much is it? How much tax have you paid on this property since 1880; you can say it in bulk?

A. As near as I can get at it $1,833.

Q. $1,833?

A. Yes, sir.

Q. Have you got the vouchers here?

A. Duplicates of them.

Q. Duplicates signed by the tax collector?

The Court: Hand the statement to the other side; probably they will admit it.

Q. Now can you state what has been the cost of the litigation and the expenses incident to the management of the property down there from 1880 down to the present time?

A. You are referring now to the property claimed by Keim?

Q. Yes, sir; $15,525.52, outside of what Senator Gardner yet may come in.

Q. He has got an unsettled claim?

A. Yes, sir.

Q. For what, generally speaking?

A. Services.

Q. What kind of services?

A. Services incident to the preparation of these cases.

Q. During the whole course of this litigation?

A. From 1882 or '81—before that, from 1879 down to the present time?

Q. (By Mr. Grey): That item you gave includes the period from 1879?

A. I don't know what his services may be.

Q. Except Gardner I mean.

A. Yes, sir.

Q. (By Judge Pancoast): Does this estimate include the cost of grading there?

A. Yes, sir.

Q. That includes that?

A. Yes, sir.

Cross-examination by Mr. S. H. Grey.

Q. Have you the letter which you say you received from Mr. Voorhees enclosing one from me?

A. I have.

Q. Got it with you?

A. Yes, sir.

Q. Let me have it, please.

A. (Producing paper). I will qualify that, Mr. Grey, by saying that it was a copy that Mr. Voorhees sent me of your letter; I was mistaken (witness here hands Mr. Grey letter from Peter L. Voorhees to J. A. O'Reilly, Esq., dated "11, 30, 1891," and copy of a letter S. H. Grey to P. L. Voorhees, Esq., dated Nov. 30, '91).

Q. The date of the letter from Mr. Voorhees is the 30th of November, 1891, and the date of the letter, copy of which he enclosed, from Mr. Grey, is the same date?

A. I can't tell; I have not got them here now.

Q. Both of these are in the handwriting of Mr. Voorhees, are they not?

A. Yes, sir.

Q. This was the first intimation that you had of the existence of any agreement for the sale of any of your father's property to Jacob Keim?

A. That is the first intimation I had of any written agreement.

Q. Written agreement. Now, Mr. O'Reilly, had you ever received any communication from Mr. Newton Keim in reference to the existence of agreements for the sale of that property prior to this time?

A. Yes, sir.

Q. Do you remember how long before the date of Mr. Voorhees' letter you had received this information?

A. I can't tell; his letters are there and I answered them.

Q. Have you got the original letters that you received from Mr. Keim?

A. I have some original letters; in accordance with your request I endeavored to get all I could.

Q. Did you have a letter sent to you by Mr. Voorhees dated November 27th, 1883, written by Newton Keim and addressed to Mr. Voorhees?

A. No, sir.

Q. I will read you the letter now—Exhibit C. 12:

New Jersey State Library

"November 27th, 3.

DEAR SIR:—My father, Mr. Jacob Keim, of Atlantic City, purchased, a year or two since, lands belonging to the estate of Patrick O'Reilly, deceased, the transfer of which has not been completed owing to the disputed title as to part—which dispute by several parties was, I understand, to be conclusively determined as to all by the case *vs.* Lindley, in which you obtained a verdict at May's Landing.

"I take the liberty of inquiring and trust you will not consider it intrusive, whether an appeal has been perfected in that case, and, if so, when it may probably be heard in the Appellate Court.

"My father is desirous, of course, of acquiring title and possession as soon as circumstances will permit.

"Your kind attention will oblige,

Very resp'y yours,
NEWTON KEIM.

P. L. VOORHEES, ESQ."

Q. Now, did you ever see or hear of the existence of that letter.

A. I don't see how I could.

Q. Did you ever know of the existence of this claim made in this letter to the effect that Mr. Jacob Keim had purchased "a year or two since"—that is, before 1883—"lands belonging to the estate of Patrick O'Reilly, deceased?"

A. Excuse me I was thinking of something else.

(Stenographer reads the question).

Witness: I knew that Mr. Keim had bargained for this property in 1881.

Q. Yes. Now in 1881, on the 29th of March, did you not write a letter to Mr. John J. Gardner, which I now read to you: "Reading, Pa., March 29, 1891. Dear Sir:—In the matter in the strip of land back of lots Nos. 4, 5, 6 & 7, No. 4 was sold to Mr. Keim for $2,500. The price for the remainder is $7,500. This does not include lot No. 31, the price for which is $4,000. The price for strip and lot is $11,500. Truly yours, James A. O'Reilly."

A. I have not a particle of doubt that I wrote that letter.

Q. Now you wrote that in reply to a letter of inquiry from Mr. Gardner in relation to this matter?

A. That I could not say, but I presume so.

Q. And it was with regard to the land that Mr. Keim claims to have bargained for the purchase of, and which is the subject matter of the controversy in this suit; was it not?

A. It is.

Q. Now, on the 24th of May, 1881, did you not write to Mr. Gardner this:

"In regard to the property Mr. Keim desires to purchase my reply to your inquiry is that we desire to dispose of all the property between Tennessee and New York Avenues—that is to say, 5, 6, 7 & 31, and do not care to sell 5, 6 & 7 without 31."

A. Most undoubtedly I wrote that letter.

Q. And that was in relation to the same property that is the subject matter of controversy in this case?

A. Yes, sir, if those are true copies of the letters; I am only referring now to memory.

Q. Now, you had all of these facts stated in these letters in your mind in 1883 when the letter was written by Mr. Newton Keim to Mr. Peter Voorhees which I have called your attention to?

A. I don't understand your question.

Q. (By the Court): You had these things in your mind, these facts in your mind, when that letter was written in 1883?

A. By Mr. Keim to Mr. Voorhees?

Q. (By Mr. Grey): I just read you the letter.

A. I had these facts in my mind all the time ever since the commencement.

Q. Who represented you in New Jersey—Mr. Voorhees?

A. Mr. Voorhees.

Q. He represented the estate, didn't he?

A. Yes, sir.

Q. And in all the litigation connected with the Atlan-

tic County property, Mr. Voorhees represented the estate in New Jersey?

A. Yes, sir.

Recess for lunch.

AFTERNOON SESSION.

Q. Now, Mr. O'Reilly, what lands were there involved in these different suits in Atlantic County in which Mr. Voorhees represented the estate?

A. There was fifty feet fronting on Pacific Avenue running all the way through.

Q. Through to the sea?

A. Through to the sea; then back—

Q. Pardon me; who was in possession of that—the fifty feet?

A. I think Mrs. Hardwick, for a certain portion of it; the other squatters were below that.

Q. Now, was that the property in which the Williamsons were concerned as well?

A. Yes, sir.

Q. That you mentioned this morning?

A. Mrs. Williamson and Mrs. Hardwick are one and the same persons in my mind.

Q. Now, are those the same lands which were sold to Alfred Adams?

A. The Williamson? Yes, sir.

Q. Now, that accounts for fifty feet. What other lands were involved in the litigation?

A. Back of the Florida House was fifty feet—I will just tell you the whole matter. There was fifty feet by one hundred and fifty feet sold many years ago by my father to—I can't think of the name now—and from a conveyance Mr. Lindley got possession; got this 50 by 150 feet; back of that, running to the sea, was claimed by Lindley; that 50 by 150—

Q. That was another suit, the Lindley suit?

A. That was the real Lindley suit.

Q. Now, who were those lots sold to?

A. To Mr. Lindley.

Q. And that was sold to Mr. Lindley?

Q. And that was sold to Mr. Lindley in 1892 by deeds exhibited yesteaday and to-day?

A. Whatever the date of the deeds; I don't pretend to recollect.

Q. What other property was there involved in this litigation?

A. Then what is called the New Brunswick or the Brunswick—

Q. Is that the Rotherham?

A. Yes, sir, that ran 100x200 feet; back of that 100 feet to the ocean.

Mr. Voorhees: He has made a little mistake; the easterly portion of the Rotherham ran 150 feet and the westerly 200 feet.

The Witness: That is right; I recollect that now.

Q. The Rotherham suit then involved the title to that land that you have mentioned?

A. Yes, sir.

Q. Now, who did you sell that land to?

A. To Hall.

Q. That was the deed made in June, 1892?

A. Yes, sir.

Q. Now, were not all of these lands that you have mentioned as the subject matter of litigation included within the lands which Mr. Keim claims he agreed to purchase?

A. Yes, sir.

Q. Was there any other property covered by Mr. Keim's agreement than the property which you have mentioned as the subject of these various litigations?

A. None that I know of.

Q. Now, Mr. O'Reilly, did you not receive a letter addressed to you as James A. O'Reilly, Esq., Executor, signed by Newton Keim, dated March 16, 1885, of which this is a copy:

"Dear Sir:—My father, Mr. Jacob Keim, has been waiting for several years for the completion of title to lands at Atlantic City, purchased by him, and is very desirous that there should be no avoidable delay in the matter. Several terms of court have passed without the pending Lindley

suit having been brought up to second trial, but we were informed that trial would certainly be had at April Term next. On inquiry of Mr. Gardner we learn that he has no advices from Mr. Voorhees as to preparation of the case, and as April Term is now very near, it seems as though there would be still further postponement.

"We ask leave to ask you that you will strongly urge counsel to speed the matter and not on any account to pass this term of court. There is certainly no reasonable ground why it should not now be brought up.

"It seems to us desirable for the estate as well as ourselves that there should be a speedy end to the matter, and we trust that you will without delay give your attention and secure the earliest consummation possible.

"Be kind enough to let me hear from you. Very respectfully yours, Newton Keim."

A. I think I did receive that letter.

Q. Now, did you make any reply to that letter?

A. It is pretty hard for me to say.

Q. Didn't you answer the letter as follows—Have you got the original letter that Mr. Newton Keim addressed to you which I have just read to you, March 16, 1885?

A. I could not tell you; if some person will go down to Mr. Pancoast's room and get my bag, in compliance with your letter, I have got all the letters that I can find.

Q. Now, I show you Exhibit C. 17, and I ask you if that is not in your handwriting?

A. Yes, sir; that is in my handwriting.

Q. Now, Mr. O'Reilly, did you not write the letter which I have just shown you, in reply to the letter from Newton Keim, which I have just read to you, to this effect: "Mar. 23d, 1885. Dear Sir:—Yours of the 16th rec'd. I have just returned from Atlantic City and Camden. The case has been noticed for trial to April term, and will certainly be tried. The estate is very anxious to have all these matters closed as early as possible, and as quickly as possible. Yours resp'y, James A. O'Reilly?"

A. What is the question?

Q. The question was, didn't you write that letter which

has just now been shown you in reply to the letter I read you from Newton Keim?

A. Yes, sir.

Q. I show the witness C. 18—

The Court: The witness is looking for letter to him by Keim.

The Witness: I have not the letter to which the letter of March 23 was an answer.

Q. I show you C. 18, being a letter dated "1, 5, 1886," addressed to Newton Keim, and I ask you whether that letter is in your handwriting?

A. That is my handwriting, yes, sir.

Q. (Exhibit C. 18 read). Now, you wrote that letter to Mr. Keim in reply to a letter previously received from him on the 3d of December, 1885, didn't you?

A. Yes, sir.

Q. And you haven't got that letter, either?

A. I have not.

Q. These letters all refer to the pending suits in Atlantic County, affecting title to the land which you have already identified, did they not?

A. Yes, sir.

Q. And they were all with reference to Mr. Keim's claim that he proposed to purchase and had bargained for the purchase of this land?

A. Yes, sir.

Q. Now, have you got a letter of Mr. Keim's addressed to you of the 15th of ninth month—September, 1886?

A. September 27, 1886?

Q. Then you have not got any of the 15th of September?

A. No, sir.

Q. Well, now, C. 19 being shown witness, he is asked if that letter is in his handwriting?

A. Yes, sir, that letter is in my handwriting?

Q. I call your attention to that letter: "Reading, Pa., 9, 24, 1886. Dear Sir:—Your favor of the 15th inst. rec'd." You did receive a letter from Mr. Keim of the 15th?

A. Yes, sir.

Q. (Balance of C. 19 read aloud to witness): Now, Mr. O'Reilly, the cause which you have referred to as one in

which you had done all in power to have tried was this same litigation?

A. Yes, sir.

Q. And when you referred to the delay in the trial as having been serious to us, as well as to your father—meaning Jacob Keim, did you not?

A. Yes, sir.

(Continuing question): You had in your mind the fact that Mr. Keim had made a bargain for the purchase of that property involved in that litigation?

A. I had.

Q. And when you spoke of your being "Loathe to have him throw up the sale" it was the sale of the property by the O'Reillys estate to Keim?

A. It was the sale of this property.

Q. And when you said you had done "everything to have the matter adjudicated" you referred to the consummation of the sale, did you not?

A. No, sir.

Q. You did not?

A. I referred to the trial to have the matter settled.

Q. Well, you knew that the pendency of the suit was one of the obstacles to the consummation of the sale, did you not?

A. Undoubtedly.

Q. Certainly. So that you knew that the terms of the contract between Keim and the estate were that this title should be cleared up?

A. I did not know any of the terms of the contract.

Q. You knew that that was one of them?

A. I did not.

Q. Then how do you explain the fact, Mr. O'Reilly, that in several of the letters, to which your attention has been called, you were explaining to Mr. Keim the delay in the trial of that case and making apologies for the delay in the consummation of that sale?

A. The explanation is very simple; I had authorized, or rather I was away when Mr. Gardner—Senator Gardner—sold this property; when I returned I inquired of him. He answered that he had sold it to Mr. Jacob Keim for ten thousand dollars cash. That is all I know.

Q. That was all that you knew?

A. Yes, sir.

Q. Now, it was in reference to that consummation, then, of the sale, the bargain for which Gardner had made, that all this correspondence to which I have directed your attention was addressed, was it not?

A. No, sir; it was in regard to the settling the cases on trial, that was all. I did not have in my mind anything in regard to Mr. Keim's bargain, because that would have come up afterwards.

Q. How, then, do you explain the statement made in the last letter, which is this: That "the delay in the trial of the cause has been very serious to us, as well as to your father;" how could it affect Mr. Keim in any way if he had no interest in the suit or in the title, which was the subject matter of controversy?

A. I don't know.

Q. You don't know?

A. No, sir.

Q. You state in this letter: "From the tone of your letter I judged that you held me in a considerable degree accountable for the delay;" delay in what?

A. I presume—I have not got the letter; now, it is my presumption and my recollection that it was on account of pressing these cases to a speedy adjudication.

Q. Then you go on to say: "this is a mistake on your part, and, if intentional, I must resent it."

A. Certainly.

Q. Did you refer, then, to the pressing of the trial?

A. I referred to the pending litigation, Mr. Grey.

Q. Now, have you got a letter of the 27th—you said you had—September, 1886—Newton Keim to you?

A. Yes, sir. (Witness produces original letter from Newton Keim to James A. O'Reilly).

Mr. Grey: I would like to have it marked as an exhibit.

(Letter marked "Original C. 20)."

Q. Now, I direct your attention to the letter of September 27, 1886, addressed to you by Mr. Newton Keim: "Dear Sir:—Your favor of the 24th inst. received"—that being the letter to which your attention has just been called—(counsel then read the letter). Now, did you make any reply to that letter?

A. I have no recollection, Mr. Grey.

Q. And the letter which I have just read you referred to this same property in Atlantic City, which you understood Mr. Gardner agreed to sell to Keim?

A. Yes, sir.

Q. Now, have you got a letter of the 14th of November, 1890, addressed to you by Newton Keim?

A. Yes, sir.

Q. Sir?

A. Yes, sir. (Producing letter).

Mr. Grey: Well, I will have that marked.

The Witness: I have a little memorandum on the back.

Mr. Grey: Well, that can be taken off. I don't know what it is.

The Witness: Seems to be an abstract of the letter.

The Court: It does no harm.

(Said letter of November 14th, 1890, Newton Keim to James A. O'Reilly, marked "Original C. 22)."

Q. Now, Mr. O'Reilly, you received that letter of November 14th, 1890, did you not?

A. Yes, sir.

Q. And you understood that that letter referred to the trial of the suit involving the title to the land, which land, Mr. Keim, as you have been told by Mr. Gardner, had agreed to buy?

A. Yes, sir.

Q. Now, have you got another letter of the 1st of April, 1892, from Keim to you?

A. Yes, sir.

Q. Just produce that, and that will be marked.

A. (Witness produces letter dated April 1st, '92).

(Marked by stenographer "Original C. 23)."

Q. Now, that letter of the 1st of April, 1892, I read, because it is short: "Dear Sir—Would it be agreeable to you and Mr. Voorhees to have Mr. S. H. Grey, of Camden, associated with your counsel in the trial of the Lindley and Rotherham ejectment suits? Mr. Voorhees once suggested to my father that he (Mr. V.) should have assistance in these suits, and in pursuance of this suggestion, and of our own earnest desire for the settlement to be consummated, this

proposition is made—Mr. Grey's services to be paid by my father. In view of the nearness of April court at May's Landing, please favor with prompt answer, and oblige, you s truly, Newton Keim." Did you ever make any reply to that?

A. No, sir.

Q. Those suits there referred to were the same suits that you already have alluded to?

A. Yes, sir.

Q. And the land in controversy was the land which Keim, as you understood from Gardner, had agreed to buy?

A. Yes, sir.

Q. Was there any settlement effected in April, 1892, of the last of those suits?

A. There was a settlement made of the Lindley.

Q. Well, of the Lindley suit?

A. That is not the last?

Q. Then the Lindley suit; there was a settlement made?

A. Yes, sir.

Q. And that settlement was made after the case had been noticed for trial?

A. The case against Lindley was not noticed for trial?

Q. Was the settlement made before the case was noticed for trial?

A. No, sir; as I said, the Lindley suit was not noticed for trial at the April Term.

Q. When was it that negotiations for a settlement begun?

A. It was after the Rotherham verdict.

Q. Well, when was the Rotherham verdict?

A. In April, '92?

Q. At April Term?

A. Yes, sir.

Q. Was the Lindley case then on the list for trial?

A. I don't recollect, but I don't think so; I don't know.

Q. Now, who began a negotiation for a settlement of that matter?

A. It would be pretty hard to recollect, it might have been myself.

Q. Well, the result of the negotiation was that you did settle it, didn't you?

A. Yes, sir.

Q. And, as a part of the settlement, you made the sale to Lindley of the property?

A. Yes, sir.

Q. And he paid for it?

A. Yes, sir.

Q. Or agreed to pay?

A. He paid.

Q. And as a part of the same settlement Adams became a purchaser?

A. No, sir, not as part of the settlement; that was a distinct sale.

Q. Well, was that done at the same time?

A. No, sir, very shortly afterwards.

Q. With whom did you have these negotiations?

A. Mr. Harned.

Q. He representing Mr. Lindley?

A. Mr. Lindley, yes, sir.

Q. Who did you negotiate with for the Adams matter?

A. Mr. Harned.

Q. Mr. Harned also?

A. Yes, sir.

Q. Was there any other consideration in the settlement of the Lindley matter than $10,000?

A. None other.

Q. Was there no understanding at all that you were to have some interest in this property notwithstanding the transfer of the title?

A. Mr. Grey, I think I have stated there was no other consideration than the ten thousand dollars; none other.

Q. I ask you whether there was any understanding?

A. There was no understanding; there was nothing but the plain ten thousand dollars.

Q. Now, do you mean to say, Mr. O'Reilly, that you and your father's other children—the executors of his estate—had no interest of any kind or character in that property after that transaction?

A. Mr. Grey, I have said, and I will repeat again, that there was no other consideration; no other understanding; none at all.

Q. None at all?

A. None at all. I agreed to sell to Mr. Lindley at the low price—$10,000, for the reason that I considered that we had a very poor claim against him—against Lindley; it was very doubtful whether we could recover.

Q. Mr. O'Reilly, did you not, in 1888, entertain the opinion with reference to the Lindley case, derived from your intercourse with Mr. Voorhees, that your title was sustained in every particular that objection could be raised to it, and that the only question that could be opened was the one on which reversal of the judgment was obtained, viz.: the matter of the proper probate of the Felix will, and that the will could yet be properly probated—did you not understand that was the ground on which the court reversed the judgment?

A. That might have been my opinion at that time.

Q. Now, when did your opinion undergo a change?

A. Subsequently to that; I can't tell when; I happened to be in Atlantic City, and I found that preparation was being made by Mr. Lindley to prove his title by adverse possession.

Q. Well, how long ago before the settlement was made was that?

A. Well, that might have been in '89 or '90; I don't remember.

Q. That is, it was either three or four years before the settlement?

A. I can't remember; I do not recollect.

Q. Now, Mr. O'Reilly, you had charge of your father's estate in Atlantic City?

A. I took charge of it.

Q. And Mr. Gardner acted as the representative of the estate in making bargains for sales of land down there, did he not?

A. Mr. Gardner really acted as my representative.

Q. You acted as the representative of the estate?

A. I assumed to act, yes, sir.

Q. You do so act. And he acted as your representative in matters of the estate?

A. Yes, sir.

Q. And as such he made bargains for the sale of land down there?

A. He did, subject to my approval.

Q. And you approved the bargains when he made them?

A. I generally gave him the price; of course I did.

Q. And deeds were executed pursuant to his bargains, at the prices which he named?

A. Prices which I named.

Q. Which he named to the purchaser and you named to him?

A. Yes, sir.

Q. Now, in some instances Mr. Gardner named prices and made bargains to sell at prices lower than those that you yourself could have obtained, did he not?

A. Senator Gardner says so, but I have no recollection of that.

Q. Haven't you said so yourself?

A. I have no recollection that I said so. If I have it is all right. You are alluding to Mr. Flaherty's letter. I recollect that.

Q. You wrote the Flaherty letter and in it said: "I received letter on the 1st from Mr. Gardner informing me that Reed had taken the N. Y. Ave. lots at $3,500. Of course not getting the $3,600, the arrangement we had fell through."

A. It seems that I wrote that letter.

Q. That was one instance in which you recognized a bargain made by Mr. Gardner at a price less than yours?

A. Yes, sir.

Q. Were there not other instances in which the same thing occurred?

A. No, sir, I have no recollection of it.

Q. When the money was paid by the person to whom the title was conveyed Mr. Gardner received it, did he not?

A. He generally received it.

Q. And transmitted it to you?

A. Yes, sir.

Q. And so with all the money received by him for property either sold or negotiated for, in Atlantic City, to your knowledge?

A. Mr. Gardner explained the way it was done.

Q. I didn't ask what Mr. Gardner explained, but asked you a question?

A. You have asked me a question which I can't answer "yes" or "no" to.

Q. (Stenographer reads question as follows: "And so with all the money received by him for property either sold or negotiated for in Atlantic City to your knowledge?")

A. For property sold and deeds delivered Mr. Gardner returned to me.

Q. (By the Court): Didn't he render written statements to you of monies received?

A. When the sale was consummated.

Q. Didn't he render you written statements for money received generally?

A. No, sir; the only way that Senator Gardner did was this—when the property was sold and the deed was delivered I sent it down to him, he would return me the amount of cash; so much his percentage was—his commission, and the mortgage when it was recorded.

Q. (By Mr. Grey): Now, Mr. O'Reilly, didn't Mr. Gardner return to you the money which he had received from Mr. Jacob Keim?

A. Not to my knowledge.

Q. You don't mean to say he didn't?

A. I mean to say that if Mr. Gardner did that it would be an exceptional matter.

Q. Did he keep any money that he received on your account?

A. Mr. Gardner kept the down money until the sale was consummated.

Q. I am asking you about keeping money generally; did he keep any money which he still retains; was he in the habit of keeping your money?

A. Mr. Gardner had some money of ours.

Q. How much did he have?

A. It seems to me by the account, $1.500.

Q. $1,595 you mean?

A. Something like that.

Q. I suppose you refer to the account on blue paper; it was shown here last night and exhibited here this morning?

A. Yes, sir.

Q. Now, in that account there is an item there of $64,000 as the proceeds of sale of lands in Atlantic City?

A. Yes, sir.

Q. Did that include money that Mr. Gardner had forwarded?

A. Included all the money that Mr. Gardner had forwarded or that I had received.

Q. Can you state how that item of $64,000 was made up; sixty-four thousand and odd dollars?

A. It was made up of sales of Atlantic City lots.

Q. Have you got any memorandum or statement of the different sums, showing how it was made up?

A. I have not.

Q. (By the Court): Was there ever one?

A. There was one made at the time that we had this settlement.

Q. (By Mr. Grey): What became of it?

A. All these matters at the consummation, at this settlement, were destroyed.

Q. Including all these statements of accounts?

A. Why, certainly, there was no use of keeping them.

Q. How, then, if they were all destroyed, are you able to say that the money received from Mr. Keim was not accounted for by Mr. Gardner in some of the statements that you received from him before that settlement?

A. To the best of my recollection I didn't receive it; it would be contrary to Mr. Gardner's method of doing business if I did receive it.

Q. I didn't ask you about his method.

A. I am trying to answer the question.

The Court: The force of the witness' answer is that Mr. Gardner was not in the habit of forwarding to him down money, but kept it until the deed was delivered and the cash paid and then sent it altogether and deducted his commissions.

Mr. Grey: Mr. Gardner has already stated what he did with the money, with this particular money, and I want to call his attention to that.

The Court: You have a right to do so undoubtedly.

Q. (Stenographer, at the request of Mr. Grey, read the

question as follows: "How, then, if they were all destroyed, are you able to say that the money received from Mr. Keim was not accounted for by Mr. Gardner in some of the statements that you received from him before that settlement?")

A. I am not able to say only in this particular—that it would be contrary to Mr. Gardner's way of doing business.

Q. Mr. O'Reilly, were you in Philadelphia at the time of the transaction between your mother and Hall?

A. Yes, sir.

Q. Do you remember about that?

A. Yes, sir.

Q. Where was your mother at that time?

A. Home.

Q. In Reading?

A. Yes, sir.

Q. Who else was there beside you?

A. I think brother Francis, Mr. Harned, Mr. Griffith, Mr. Hall, and I think Mr. Cooper.

Q. Now, did you know Mr. Hall before that occasion?

A. No, sir.

Q. Who introduced Mr. Hall to you?

A. Very hard for me to say; I do not recollect that.

Q. Did you know where he was employed or what his business was?

A. No, sir.

Q. Did you know that he was a clerk for R. D. Wood & Company?

A. I did not.

Q. Did you make inquiry as to who he was?

A. No, sir.

Q. Where was it in Philadelphia that this matter was conducted?

A. The final consummation of it was, I think, in a place on Chestnut street.

Q. Well, what place?

A. Between Fifth and Sixth Streets; I don't know the number.

Q. Commonwealth Title Company building?

A. No, I don't think it was there.

Q. Your brother said it was there.

A. He was not along when it was finally consummated—when it was finally consummated.

Q. Whose office was it?

A. I could not tell you.

Q. (By the Court): Can't you tell how you went there?

A. I went in company with the gentlemen.

Q. (By Mr. Grey): Who was the conductor?

A. With Mr. Hall and Mr. Wood and Mr. Harned and Mr. Cooper.

Q. You didn't mention Mr. Wood's name just now?

A. Mr. Wood's name? Did I say Mr. Wood? I said Mr. Griffith.

Q. You said Mr. Wood.

A. It was a mistake.

Q. You don't know whose office this was?

A. I do not.

Q. You are familiar with the city of Philadelphia?

A. I could take you to it.

Q. It was between Fifth and Sixth Streets, on Chestnut?

A. Or Sixth or Seventh.

Q. Which side, north or south?

A. It was on the west side.

Q. West side of Chestnut Street?

A. Yes, sir.

Q. West side of Chestnut Street?

A. Well, south side, south side.

Q. Well, now was it nearby the German Democrat office?

A. I can take you there.

Q. Was it next door to Simons' jewelry establishment?

A. I don't know.

Q. Was it between that and the corner of Seventh Street?

A. I can't say.

Q. Was it not in R. D. Wood's office—R. D. Wood & Company's office?

A. If I could I would tell you.

Q. Was it?

A. I don't know.

Q. When you got into this place, wherever it was, who were there beside the gentlemen whom you have mentioned?

A. I don't know of any other persons being present but the gentlemen I have mentioned.
Q. What did you go there for?
A. To get the check.
Q. Who did you get the check from?
A. From Mr. Hall.
Q. Whose check was it?
A. Mr. Hall's check.
Q. Mr. Hall's check?
A. To the best of my recollection.
Q. (By the Court): Was it certified?
A. I don't think it was.
Q. Would you take a check for that amount of money without having it certified—from a stranger?
A. Possibly it was certified.
Q. (By Mr. Grey): What bank was it on?
A. That I could not tell you.
Q. How much was the check?
A. $14,000, payable to Catherine C. O'Reilly.
The Court: And you had to take it home.
Q. And who endorsed it?
A. Catherine C. O'Reilly.
Q. Where did she endorse it?
A. Reading.
Q. So that you carried a check all the way to Reading before depositing it, before it became good by endorsement?
A. Yes, sir.
Q. What became of the check?
A. Deposited to our account in the Philadelphia Trust and Safe Deposit and Insurance Company.
Q. Then you brought it all the way back again to Philadelphia after it was endorsed?
A. Yes, sir.
Q. Now, when did you deliver the deed?
A. The same day the check was made.
Q. Then you delivered the deed on receipt of the check?
A. Yes, sir, and the mortgage.
Q. And the mortgage was received by you at the same time?

A. Yes, sir.

Q. You are quite sure that this was a check signed by Mr. Hall himself, are you?

A. To the best of my recollection I am telling you.

Q. Was not that a check of R. D. Wood & Company?

A. I tell you, Mr. Grey, I don't remember.

Q. You don't remember?

A. I don't see where R. D. Wood & Company would come in.

Q. You said you didn't know that Mr. Hall was a clerk in their employ; did you, or did you not, know that Hall was a clerk in their employ?

A. No, sir, I do not; did not.

Q. Well, have you found it out since?

A. From hearing what was said here during this trial.

Q. Not before?

A. No, sir.

Q. Was there any insurance of title effected at the time of this transaction on the title conveyed to Hall?

A. I think there was.

Q. Sir?

A. I think there was.

Q. Who insured that title?

A. I think the Commonwealth Company, of Philadelphia.

Q. Did you go to the office of the Commonwealth Company for the purpose of giving any information on that subject, or for any other purpose in reference to it?

A. I think I did.

Q. On the same day that you delivered the deed?

A. Yes, sir.

Q. At whose instance did you go?

A. I suppose I went at the instance of the purchaser.

Q. I didn't ask you to "suppose."

A. I don't remember; you are asking me questions that I could not answer.

Q. You don't remember then?

A. No, sir.

Q. Who got the policy?

A. I think Mr. Hall got the policy.

Q. Who gave the indemnity to the company?
A. Mother.
Q. What was the form of the indemnification?
A. An indemnification bond.
Q. Then the insurance was effected upon your mother's indemnification bond?
A. Yes, sir; that is my recollection, now.
Q. Now at whose request did your mother indemnify?
A. At whose request did my mother indemnify?
Q. Yes, sir.
A. Indemnify the purchaser.
Q. The Commonwealth Company.
A. I suppose I must have requested her.
Q. Then you had the bond when you came to Philadelphia that day?
A. No, sir.
Q. Did you obtain it after you had delivered the deed?
A. I don't recollect that; I might have had it.
Q. (By the Court): Why didn't you and your brothers go on this bond? You and your brothers were interested in the principal of this?
A. Certainly; I don't know; we would certainly have gone on if I had thought it was necessary.
Q. (By Mr. Grey): You did bring the bond down to Philadelphia?
A. After mother signed it.
Q. So that the bond was delivered as an indemnification before the deed was delivered, or at the time of the delivery of the deed?
A. May be simultaneous, I don't remember now.
Q. (By the Court): I want to ask you a question: I think you stated that Mr. Gardner told you that he had bargained this property to Mr. Keim about the time that he did so; you said you were absent at the time but said in effect, when you came back, Mr. Gardner informed you that he had bargained the property; did he mention the price he got for it?
A. Ten thousand dollars cash.
Q. Well, did you find fault with that; did you tell him that he ought not to have done that?

A. No, sir, I think not.

Q. You acquiesced in it?

A. I think so.

Q. You didn't notify Mr. Keim that he could not have the property at that price, did you?

A. No, sir, I don't remember that I did.

Q. (By Mr. Grey): That is all, sir.

By the Court:

Q. Where did you get that price, $10,000; was that marked as the price by your father; was that one of your father's prices?

A. No, sir, it was not; I was holding that property much higher than I think Mr. Gardner, and I think Mr. Gardner took it upon himself to name that price.

Q. Did he tell you that by the terms of the bargain the deed was not to be delivered until these squatters' claims were disposed of?

A. No, sir.

Q. You understood why it was that the transaction was not closed on account of the squatter title?

A. Well, no.

Q. Didn't you inquire afterwards why Mr. Keim didn't come forward and pay the money?

A. I did ask Mr. Gardner why Mr. Keim didn't come forward and take the deed, and then Mr. Gardner told me that Mr. Keim would not pay any interest or taxes or do anything.

Q. No, at the time that the bargain was made, didn't you inquire when the deed was to be delivered and the money paid?

A. The understanding was cash.

Q. Did you deliver the deeds to Mr. Keim, demanding the money?

A. Mr. Gardner got the deeds up.

Q. Did you inquire of Mr. Gardner—I don't mean two or three years after, but promptly—within a short time? Say, "Why don't we get this money"—didn't you inquire into that?

A. I have no recollection whether I did or not.

Q. Didn't it strike you as odd if it was a cash transac-

tion and the deed was to be delivered at once, that it was not done?

A. The matter escaped my attention on account of this litigation coming on.

Q. The question is whether you didn't understand that part of the property was in dispute was the reason why the transaction was not carried through—that is what I want to get at?

A. It is possible that I so understood it.

Q. Well, what do you think about it now? 10

A. My impression at the time was that Mr. Keim was to take the deed, pay the money, and that we were to see that his title was made clear, made good.

Q. The same thing, then, in the end; your understanding was that you were to indemnify him—give him a warranty deed and stand up to the title?

A. Yes, sir; that he was to take the property and we were to see that it was good.

Q. Fight it out?

A. Yes, sir. 20

Q. (By Mr. S. H. Grey): When was it that you asked Mr. Gardner why Mr. Keim didn't take his deed; you stated a moment ago that you had done so?

A. I could not recall that, Mr. Grey:

Q. You could not recollect when it was?

A. No, sir.

Q. Do you remember whether it was in a letter or by word of mouth?

A. It was by word of mouth.

Q. Do you remember where you were when you made 30 the inquiry?

A. Atlantic City, most likely.

Q. Atlantic City? That is all.

Re-direct by Judge Pancoast.

Q. Were any of these ejectment suits to recover possession of this land delayed by you on account of or to get rid of Mr. Keim's claims?

A. No, sir.

The Court: There is no insinuation of that kind.

Q. When did you first state to your mother the fact that Gardner had entered into the contract in question in this case?

(Objected to on the ground that this is not a re-examination).

The Court: It does not make any difference. I will allow the question.

Judge Pancoast: I omitted the question.

Mr. Grey: There is another objection, namely, that a conversation between this young gentleman and his mother can't be offered in evidence at all.

The Court: It may be competent; I will allow the question to be asked.

Q. The question is, when did you first state to your mother that Gardner had entered into the contract in question in this case.

A. It was after Mr. Grey had served his printed notice upon mother that I notified her that there was a claim by Mr. Keim for this property.

Q. Is that the first notification you gave to her of Keim's claim?

A. Yes, sir.

Q. I don't think you properly answered my question?

The Court: They are bothering him about letters.

(Witness here produces all the letters from Keim to him that he could find and hands them to Mr. Grey).

The Witness: Those are the only three.

Q. My question to you was when did you first state to your mother the fact that Gardner had entered into the contract in question in this case, and you answered, when you first stated to your mother the fact that Keim had a claim. Now, I want you to answer this question: when did you first state to your mother the fact that Gardner had entered into the contract in question in this case—that is, his contract—the written contract?

A. The written contract, or any contract? Sometime in April, 1892.

Q. Now, what contract did you refer to?

A. The contract claimed by Keim; that is the only contract I ever told mother about.

Q. Are there not two Keim contracts?

A. I only know of one.

Mr. Voorhees: One in your father's lifetime.

The Witness: Oh, one by father; she never knew anything about that.

Q. Then the contract that you have just spoken of is the contract that Gardner as agent entered into with Keim?

A. Yes, sir.

The Court: He entered into both of them as agent, one as agent of the late Patrick O'Reilly and the other as agent for the estate—the executors.

Q. That was when?

A. April, 1892.

Q. Now, before that, so far as you know, had your mother any knowledge that Gardner had sold all this property as agent?

A. She had not.

Q. That is all.

By Mr. Harned.

Q. You spoke of April, 1892; was that after the Lindley sale?

A. Yes, sir.

Q. That is all.

Mr. Grey: I omitted to offer these letters when I asked the other side to produce them.

The Court: That is the Grey letter and the Voorhees letter. They may be marked.

(Letter S. H. Grey to P. L. Voorhees, marked C. 90, and is as follows: "Copy"

"*In Re*
KEIM
vs.
O'REILLY.

Nov. 30, '91.

P. L. VOORHEES, ESQR:

MY DR. SIR:—Mr. Keim has furnished me copies of his agree'ts for the purchase of O'Reilly lands, part of which are in dispute in *Lindley vs. O'Reilly,* now pending. I will furnish you copy of them if you wish. The O'Reillys do

not dispute Mr. Keim's rights as an equitable owner. Will you not kindly urge the trial of the suits, wh. are necessary to vindicate O'Reilly's title as by his agreement of Oct., 1881, Mr. O'Reilly agreed to do. Truly, S. H. Grey.")

(Letter Peter L. Voorhees to J. A. O'Reilly, Esq., dated 11, 30, 1891, marked C. 91, and is as follows:

"CAMDEN, N. J., 11, 30, 1891.

DEAR SIR:—I received the enclosed letter from Mr. Grey to-day. Have you made arrangements for the attendance of the witnesses for trial for next week? I think it is important to do so as soon as practicable. I have no doubt but it would be best to see the witnesses and call their attention to the matters before we go into court. If you can't attend to it next week let me know. I have written to Mr. Grey asking him to furnish me copies of the agreement, or pretended agreement, of Keim. Resp'y,

PETER L. VOORHEES.

J. A. O'REILLY, ESQ.")

By Mr. M. P. Grey.

Q. Have you any other letters received by you from Newton Keim than those produced here to-day and marked as "Originals."

A. Not after searching, I have been unable to find any others.

Q. That is all.

Adjourned.

IN CHANCERY OF NEW JERSEY.

BETWEEN
JACOB KEIM,
Complainant,
AND
CATHERINE C. O'REILLY, EXECUTRIX, AND JAMES A. GRIFFITH *et al.*,
Defendants.
BETWEEN
JACOB KEIM,
Complainant,
AND
CATHERINE C. O'REILLY, EXECUTRIX, DANIEL LINDLEY & OTHERS,
Def'ts.

TRANSCRIPT OF SHORTHAND NOTES TAKEN AT CHANCERY CHAMBERS, CAMDEN, NEW JERSEY, TUESDAY, NOVEMBER 28, 1893, BEFORE HONORABLE HENRY C. PITNEY, VICE CHANCELLOR.

Appearances:
Mr. M. P. Grey, for complainant.
Hon. David J. Pancoast and P. L. Voorhees, for Mrs. Catherine C. O'Reilly, James A. O'Reilly, &c.
Mr. T. B. Harned, for defendants, Lindley and Adams.

LEWIS EVANS, produced by the complainant out of time, with the consent of the defendants and sworn.

Direct-examination by Mr. M. P. Grey.
Q. You are the Clerk of Atlantic County?
A. Yes, sir.
Q. Have you, from the files of your office, the notices of *lis pendens* in the case of Jacob Keim *versus* Catharine C. O'Reilly and others?

A. Yes, sir.

Q. In both the original bills and the supplemental bills?

A. Yes, sir. (Witness produces same).

Q. Are you producing those here?

A. I am.

The Court: Now, the Court will state to the stenographer what the papers are that are produced: The first one is a *lis pendens* in the case of Jacob Keim, complainant, and Catherine C. O'Reilly and others, defendants, dated April 30, 1892, and signed "Grey & Grey, solicitors for and of counsel with Jacob Keim, complainant," and endorsed as filed and received and recorded on the 30th of April, 1892, in Book No. 1 of Chancery Notices, folio 133, &c., by Lewis Evans, Clerk."

The next is dated May 28, 1892; it is entitled in the case of Jacob Keim, complainant, and Catherine C. O'Reilly and others, executors, and James A. Griffith, defendants; it is signed by Grey & Grey, solicitors for complainant, and marked received and recorded and filed May 28, 1892, in Book No. 1 of Chancery Notices, folio 136, &c., by Lewis Evans, Clerk.

The next one is entitled in the same cause—Jacob Keim, complainant, *vs.* C. C. O'Reilly and others, and Lindley and Adams on supplemental bill, defendants; it is dated on the 22d of September, 1892, is signed by Grey & Grey, solicitors of complainant, and received and filed September 23, 1892, and recorded in Clerk's Office of Atlantic County in Book No. 1 of Chancery Notices, folio 143, &c., by Lewis Evans, Clerk.

The next one is dated on the 22d of September, 1892, is entitled in the cause wherein Jacob Keim is complainant and C. C. O'Reilly and others, executors, and James A. Griffith, Shelton and others are defendants, on supplemental bill; it is signed by Grey & Grey, solicitors of complainant, and was received on the 23d of September, 1892, and recorded in Book No. 1 of Chancery Notices, folio 146, &c., by Lewis Evans, Clerk.

Mr. Voorhees: Are all of them signed as you read the last three?

The Court: The first one is signed by Grey & Grey, solici-

tors for and of counsel with Jacob Keim, complainant; the next one is signed Grey & Grey, solicitors for Jacob Keim, complainant—

Mr. Voorhees: We object to the admission in evidence of any of these papers on the ground that they are not within the statute as I recollect it. We object to the admissibility of those papers as proper instruments of testimony.

The Court: On what ground?

Mr. Voorhees: On the ground that the complainant has not put any *lis pendens* on the record. The statute requires the complainant to do it. It is a mere formal objection.

Q. (By Mr. Grey): Those four papers, Mr. Evans, just look at them and see whose signatures are appended to them.

A. (Witness looks at said notices).

Q. Are you familiar with the handwriting of the gentlemen who signed those?

A. Yes, sir.

Q. Is that the signature of Grey & Grey?

A. Yes, sir.

Q. As to each of those papers?

A. Yes, sir.

Q. They remain files in your office?

A. Yes, sir.

Mr. Grey: We offer the papers in evidence—these four notices.

The Court: Your objection is already noted, Mr. Voorhees. Are there any other objections?

(Counsel made no other objection). The papers are admitted in evidence

(Notices read and witness directed to make copies and certify them, also to swear to the truthfulness of transcript).

Q. (Showing witness two searches). Will you look at those two searches? I show the witness two searches that have been previously offered and noted on page 390 of testimony in this cause, one for conveyances from January, 1871 to May 18, 1892 by Patrick O'Reilly, or his heirs; and the other by Patrick O'Reilly or by his heirs for conveyances, agreements, mortgages and *lis pendens*. You hold those in your hands, Mr. Evans?

A. Yes, sir.

Q. Did you make or assist and superintend the making of those two searches?

A. Yes, sir.

Q. (By the Court): Which was it—did you make them yourself?

A. *This* one I wrote myself; the clerk read it off the books to me; *this* one I read off the books and the clerk made it.

Q. It was a joint act?

A. Yes, sir.

Q. (By Mr. Grey): Did you, with the assistance of your deputy clerk, compare those memoranda of searches with the original records in your office?

A. Yes, sir.

The Court: Well, the certificate states, I suppose, what the witness didn't find as well as what he did.

Mr. Grey: I want to limit it to the fact that those are all that are there, leaving it for argument what he didn't find.

Q. Do those searches so made by you, as you have testified, show all the deeds, mortgages and conveyances and agreements and *lis pendens* made by Patrick O'Reilly, or the heirs or devisees of Patrick O'Reilly, which are on file or recorded in the Atlantic County Clerk's office?

A. Between certain dates, yes, sir.

Q. Between the dates mentioned in them?

A. Between the dates mentioned in them.

Q. One from January 1, 1871, to May 18, 1892, and the other from April 1, 1892, down to the date which is—

A. (Finishing question). Certified to, 3d day of December, 1892, yes, sir.

Mr. Grey: We offer the searches in evidence.

Mr. Voorhees: I thought you said they were offered before?

The Court: But not admitted on the ground that a clerk's certificate of what he found, or of what he didn't find, was not evidence; all he can certify is that there is a certain paper and that the paper copied is an accurate copy of the record. Have counsel any objection to these now?

Mr. Harned: I desire to enter an objection, on the ground that they are not proof now.

The Court: Have you any objection, Mr. Voorhees?

Mr. Voorhees: No, sir.

The Court: The inclination of my mind is to hold that they are competent evidence now. They are the compendium of the clerk's work. The ground is not taken that the clerk should go over and swear to each line in these searches as being true; that is not the ground taken, is it? Otherwise the clerk being here can go ahead and swear to each particular item.

Mr. Harned: I understand he made the search in conjunction with some one else—with the aid of some one else and that some one else's aid is in that search and that is not proved.

The Court: Is it necessary in order to prove a compared copy that both the parties who compared it should be present? It may be; I don't say that it is not; but I don't think it has been the practice.

Mr. Harned: I don't regard the searches as of any importance; just a nominal objection.

The Court: I will admit them at the peril of the complainant. The objection is not put on the ground that he is not asked specifically just what he did in each particular instance, but it is put on the ground that he could not swear to it, and has not sufficient knowledge himself to swear to it. That is the ground on which it is put. It is not necessary to go through the details. Counsel don't ask that he go through the details of each line and section in those searches, and let him swear that he did those very things. Their objection in effect is that the clerk who assisted him is not present. I overrule it.

Mr. Grey: In view of the objection I would like to examine the witness a little further.

Q. (By Mr. Grey): Did you write one of these? Which one was it? Look at the search marked on the back, "C. 78;" is that in your handwriting?

A. Yes, sir.

Q. Did you transcribe that from the original records yourself?

A. Yes, sir.

Q. (By the Court): Now let me ask you a question: Here on the first page you say, "I, Lewis Evans, Clerk of the County of Atlantic, do hereby certify that I searched the rec-

ords of mortgages, conveyances and agreements in my said office, and I do not find thereon of record any mortgages, conveyances or agreements affecting the property situate in Atlantic City, south of Pacific Avenue, between Tennessee and New York Avenues, given by or made the following list of persons"— Now, did you hunt in their names yourself, on the index?

A. Yes, sir.

Q. Now, after hunting in their names, you found certain things?

A. Yes, sir.

Q. And those you transcribed here?

A. Yes, sir.

Q. But the question is whether you actually yourself hunted in their names—transcribed what was found, in their names?

A. I did in *that* one.

Q. In the other one did you?

A. No, sir, I did not, but after the clerk wrote it, then he read it and I compared it with the books.

Q. That is, you compared the statement of conveyances with the books?

A. Yes, sir.

Q. But didn't you run down the names on the record yourself?

A. Yes, sir, I did.

Q. You looked in the names of grantors and mortgagors yourself?

A. Yes, sir.

Q. Then you finally did the exact work in that case, as you did in the other?

A. Yes, sir, afterwards, yes; he done one and I done the other, only we reversed the order.

Q. The question is not that; the question is whether you yourself opened the books, the indexes, and ran down yourself in each case to see whether there were any other conveyances except those there stated?

A. I did.

Q. (By Mr. Grey): Then that method of personal examination by you was pursued as to each one of those searches?

A. Yes, sir.

Q. One by original investigation and the other by verification of the work of the other clerk?

A. Yes, sir; it is not usual, but we had an injunction and heard of trouble, and we were very careful about it; don't usually do it.

Mr. Grey: I now offer the searches.

The Court: They are admitted.

(Marked C. 75 and 78).

Cross-examination by Mr. Voorhees.

Q. What injunction did you have in this matter?

A. Well, I don't remember just what it was now—not to record any deeds regarding certain properties belonging to O'Reillys.

Q. That had belonged to O'Reilly?

A. Yes, sir.

Q. Were there deeds deposited in your office for record that you were required to record?

A. Before I got the injunction?

Q. At any time.

A. There was one after I got the injunction; there was one deed came that I sent back to the party sending it to me.

Q. Do you remember who the party was and what the deed was?

(Objection to as incompetent, and that it was not a part of the complainants' case).

The Court: The witness volunteered it; it was not a part of the complainants' examination.

A. I remember who the deed was to.

Q. (Looking at paper pinned to one of the searches). Did you make that endorsement on there? "Had deed come for record from Sheldon to Walter Wood sent me by I. G. Adams, as per injunction. Did not record it, but returned it to Adams. Lew;" is that your handwriting?

A. Yes, sir.

Q. Did you have that deed left in your hands for record?

A. It was sent to me by mail for record

Q. It was sent to you by mail for recording?

A. Yes, sir.

Q. Can you detail about what time it was, Mr. Evans?

A. No, sir, I can tell, it was after December 5th.

Q. December 5, 1892?

A. And before December 29th, but I can't tell what date it was.

Q. Wasn't it before or at the time the injunction was served?

A. Oh, no.

Q. Have you got a copy of that injunction?

A I haven't here; I have at the office.

Q. Will you send me a copy?

A. The only way I can tell here is by the notes.

The Court: There is no evidence before me that there was any deed.

DANIEL LINDLEY, one of the defendants, produced in his own behalf, sworn.

Direct-examination by Mr. Harned.

Q. Mr. Lindley, are you one of the defendants in this suit?

A. I believe so.

Q. Are you in possession of the land described in a deed of Catherine C. O'Reilly, executrix, to yourself, dated April 14th, 1892?

A. Yes, sir.

Q. How long have you been in possession of that land, Mr. Lindley?

A. I have been in possession myself since '78.

The Court: Are you proposing to prove this witness' title to the land?

Mr. Harned: No, sir, just introducing the matter.

Q. How long, to your knowledge, were the parties, from whom you got possession, in possession of this property prior to your getting possession?

(Objected to).

Mr. Grey: I would like the counsel to open what he proposes to prove, so that we may understand intelligently what he is doing; it indicates that he is trying to show an adverse possession.

The Court: It looks as though he had an adverse claim that was compromised. The question is, shall we go into that?

(Objection renewed).

The Court: Well, I would like to understand the views of counsel.

Mr. Harned: The answer of Mr. Lindley sets up that he and those under whom he claimed have occupied this property since 1854, and he claimed to be the owner of it, and that the purchase of this paper title from the O'Reillys was simply a compromise of a litigation that has been going on for ten or twelve years. We have held this possession as against this litigation; and hold it to-day.

(Mr. Harned here reads answer of Lindley).

Mr. Grey: If your Honor please, the relief which is sought by the complainant in this case is of a dual order—first, that we should have the benefit of a specific contract; next, that if there be a failure by reason of conveyances that the conveyances may be decreed to be in fraud of the complainants' rights. Now I submit to your Honor that this testimony, which is offered to show an outstanding, undetermined title in Lindley, ought not to be admitted and that we ought not to be put to the burden of contesting it, because we seek to have the title that Mr. O'Reilly had, and ought not to show what rights Lindley had if any. O'Reilly had enough of a claim, as that Lindley gave $10,000.00 for it, and whatever rights the estate of O'Reilly had we claim that we ought to be entitled to. Now, what he wants to prove is an adverse outstanding title—

The Court: To justify all except the $10,000 he paid. That is the idea of the other side. The defense says, what we bought was composed of two elements; we bought this property from these people for $10,000 in cash or its equivalent, and the balance was the value of this adverse claim. I think the evidence is competent in that aspect—shows that the $10,000 was probably not the full value of the property.

Mr. Harned: That is what I am going to prove. I am here to protect Lindley and Adams. It is not for me to say where this money goes or these mortgages.

The Court: If you charge him with notice, and say we are not bound by your bargain and Mrs. O'Reilly didn't

get enough from you, this land is worth a great deal more and your claim for adverse possession is overvalued, and we want more than $10,000, why then have you got to go into the question of what this adverse claim was worth—try it over again.

That is the situation.

Mr. Harned: If Mr. Grey states to the Court that the Lindley deed can stand as a valid conveyance of this property, then I am out of the fight and don't care what becomes of the $10,000.

Mr. Grey: I don't make any such statement. We stand on our bill as made. We think we should have the property.

The Court: I shall admit the evidence; it would be very unsafe to rule it out, and you must go on at your peril.

(Stenographer reads the question as follows: "How long, to your knowledge, were the parties from whom you got possession in possession of this property prior to your getting possession?")

A. When they bought the property in '54.

The Court: That is not evidence.

Mr. Harned: He is speaking of his own knowledge.

The Court: He is not speaking of what he saw with his own eyes. (Turning to the witness). You can't give your memory of the result of all the evidence that you produced to your counsel or that was produced in court; you must give just what you saw yourself. Now proceed.

Witness: In the first place I was there in '58 on the property, and at that time the house fronted the Ocean—Pacific Avenue was not put there.

Q. Well, are you acquainted personally with that property from 1858 to the present time, and with all the uses it has been put to?

A. I am.

The Court: Of course the fact that a suit was commenced by the O'Reillys, action of ejectment or whatever it was, is evidence.

Mr. Harned: As a recognition that we were in possession.

The Court: But it limits the time of adverse possession up to that time.

Mr. Harned: Suit was commenced in '81 or '82, I think.

Q. Now, from 1858 up to the time that a suit was commenced against you by Catherine C. O'Reilly, the life tenant, what was the possession that this land was put to?

Q. (By the Court): Who were using it, and what year was it?

A. John Morris used it for bath house purposes.

Q. (By Mr. Harned): And who from him? 10

A. And from him the next one was Hardwicks.

Q. Then after that?

A. Then after that, I think a party by the name of Tom Wood, who went into the bath house business, and occupied it with bath houses, the same as the others; the bath houses are still there.

Q. As a matter of your personal knowledge, did the O'Reillys ever occupy any part of this land or possess it?

A. Not to my knowledge.

Q. Well, as I understand you to say you had a knowl- 20 edge of the possession of this property, as to whom it was possessed by, and the uses made of it, from the year '58?

A. From the year '58.

Q. It has been proved in the court here that there have been two trials of this case in Atlantic County and verdicts set aside—

The Court: When?

Mr. Voorhees: They offered the records here the other day—exemplified copies.

The Court: I had forgotten that. 30

Q. Who were your counsel in this case?

A. Mr. Harned and Judge Pancoast.

Q. Before you made this settlement with the O'Reillys, did you consult with counsel and make further special preparations for the third trial?

A. Yes, sir.

Q. And did you procure additional witnesses?

A. Yes, sir.

Q. And make additional preparations to those which you had already made? 40

A. Yes, sir, I did.

Q. Have you always been advised by counsel that in your judgment you were the lawful owner of this property by adverse possession?

Mr. Grey: I object.

Mr. Harned: I think that is important, if the Court please.

The Court: The question is leading; is there an objection on the ground that it is leading?

Mr. Grey: The fact that a client is advised by counsel does not go in any way to make pertinent the opinion of counsel of his title, as an opinion in this cause. The only question is—had he a good title?

Certainly no testimony can be brought in here as a defense to this attack that would not be pertinent in the making of an ejectment defense.

Mr. Harned: Your bill charges bad faith, says that there is a secret conspiracy as to these conveyances. I propose to show the contrary and ask that as an introductory question.

Mr. Grey: I don't see the pertinency of that.

Mr. Harned: I think in view of the subsequent action, whereby he compromised with the O'Reillys, it is important.

The Court: You may ask him whether he contested the matter in good faith, really believing that he was the owner.

Q. Did you really think that you were the owner of these premises and had a complete title to them?

A. I did.

Mr. Grey: I object to that also, on the ground that his opinion is of no significance either.

The Court: I may be wrong in allowing it, but I shall admit the evidence.

Q. Who conducted the negotiations whereby this controversy between you and the O'Reillys was compromised?

A. You, I believe.

Q. At the time of the compromise, what, in your judgment, was the value of the piece of land in controversy?

A. In my judgment it was $20,000.

Q. (By the Court): What do you say it was worth?

A. Twenty thousand dollars.

Mr. Harned: His piece is fifty feet.

Q. (By Mr. Harned): You had the actual paper title of the Pacific Avenue end of this particular lot?

A. Yes, sir.

Q. And on the Atlantic Ocean end, please state the nature of the improvements that you had put there during the course of years?

A. Well, I have got two hundred bath houses, two stores on the front, second story sleeping apartments, two small cottages back.

Q. What was the value of the improvements that you put on this lot?

A. Well, from eight thousand to ten thousand dollars.

Q. And by settling and determining this contest of title forever it gave you all the way from Atlantic Ocean to Pacific Avenue—fifty feet wide?

A. Yes, sir.

(Objected to).

Q. Mr. Lindley, you have said that I conducted the negotiations whereby this matter between you and the O'Reillys, or Catherine C. O'Reilly, was adjusted. You were finally advised, after several sums of money had been discussed between yourself and counsel, that you authorized your counsel to settle on a basis of ten thousand dollars for the paper title, is that so?

(Objected to).

The Court: Very leading.

Q. Well, what was the arrangement between yourself and counsel?

A. The only arrangement was that I was to give ten thousand dollars for the compromise.

Q. Well, did you raise the money?

A. I raised the money.

Q. And who did you give it to, me?

A. To Mr. Harned, my counsel.

Q. In cash or certified check, or what?

A. In cash.

Q. Mr. Keim—Mr. Jacob Keim, the complainant, in answer to the following question, "Did you ever have a

conversation with Lindley about your purchase of a lot down there which he afterwards occupied?" answered, "I went with him just about the time the Board of Health was after us and I asked him whether the Board of Health had been after him, too, or notified him to fill up. He intimated that they had. 'Well,' says I, 'they have entered suit against me; they say I ought to fill up all that low ground back there of the O'Reilly estate, because I had bought it,' but, says I, 'I did fill up.' I told Mr. Lindley this—I had filled up, and I first told him I did buy that and I did fill some of it, but I won't fill any more until know more about it." Is that true, Mr. Lindley?

A. No, sir, Mr. Keim came to me—

Q. Just state to the Court what was the conversation between you.

A. The conversation was this: I was filling up the lot; I got orders from the Board of Health to fill up my part of the lot, and Mr. Keim came over after we commenced to fill up and said—"I have got a notice from the Board of Health to fill mine, too."

Q. Now, just here; Mr. Keim already owned the New York Avenue front?

A. Yes, he owned fifty feet deep; and he says, "I won't fill any more on mine until Griffith fills his"—that was the next lot.

Q. Griffith was the man who occupied the connecting land?

A. Yes, sir.

Q. With this scenic railroad on?

A. Yes, sir. And then Mr. Keim commenced, and Griffith commenced to fill in, and dumped the loads right by the side of his own lot, next to Griffith, and that was all the filling he done on that land.

Q. He just filled in on the fifty feet he owned and had title to?

A. Yes, sir, that was the only fifty feet he filled.

Q. And he said to you that he would do no more filling—let Griffith fill his?

A. Yes, sir, that is what he told me.

Q. And the Griffith land that he referred to was the land where?

A. Was the land where the water lay on.

Q. Which the O'Reillys claimed?

A. Yes, sir.

Mr. Grey: Let the witness tell. I would like to know what the witness knows rather than what counsel can teach him.

Q. He further, in answer to the following question—"Did Lindley say this to you?" answered—"No, sir, I said it to Lindley; I said I bought O'Reilly's title and interest in this land, which is being contested, and I didn't feel like doing any more until it was decided to whom the land belongs. That was about the sum and substance of the conversation between him and me, between Lindley and me." Is that statement true or false?

A. No, sir, he never mentioned buying the property to me once; never opened his mouth about buying it to me.

Q. (By the Court): Who is this?

A. Keim; Jacob Keim.

Q. (By Mr. Harned): When was this conversation that you say you had with him about filling up?

A. I think it was—the first—I think it was '92.

Q. Ninety-two?

A. Yes, sir—about filling up. We filled it up in '92.

Q. A year ago you mean?

A. Yes, sir.

Q. After this suit had begun?

A. No, sir, just before this suit had begun. We filled it up once in '90 or '91; then we got notified to fill it up again.

Q. Then it was renewed?

A. Yes, sir.

Q. Did you ever have a fuss with Keim?

A. We had a little—been sometime ago.

Q. When was that?

A. About '77, I think.

Q. Since '77, up to the time of this conversation about the filling, did you ever have any conversation with him at all?

A. Not much; sometimes we would pass the time of day when we went by each other, but that is about all.

Q. Mr. Lindley, when was the first time that you had any knowledge or notice or information from Jacob Keim or from anybody that he claimed to have bought this piece of land that you occupied and occupy still?

A. When the notice of ejectment—I mean when the notice was sent out about the injunction.

Q. (Paper marked L. D. 1 shown witness). Is that the notice?

A. I could not say without my glasses; I have not got my glasses here.

Q. Haven't you got your glasses?

A. No, sir, I didn't see the notice; they didn't hand it to me; I could not say whether it is the one or not; but they read the notice.

Q. Didn't they serve a copy on you?

A. Yes, sir, and I sent a copy to Mr. Harned.

Mr. Harned: This is dated April 28, 1892.

Q. Was that served on you before or after you had made this settlement with the O'Reillys?

A. I was served afterwards.

Q. How long after?

A. Well, I think it was in April when we made the settlement.

Mr. Harned: The deed is dated the 14th of April.

The Court: When was it delivered and the money paid?

Mr. Harned: 14th of April.

The Court: And when was it recorded?

Mr. Harned: On the 16th of April.

Q. I believe that you have said that when this notice was served on you you sent it to me?

A. Yes, sir.

Q. Mr. Keim says that these conversations—

Mr. Grey: What is the page you are reading from?

Mr. Harned: I have simply extracts; I can't tell.

Q. (Continuing)—occurred in 1891; he doesn't say what time in '91. As near as you can remember, is that the time that the conversations took place that you have stated?

A. That is as near as I can remember; both times about the filling up of the ground. That is all that was said to me.

Cross-examination by Mr. M. P. Grey.

Q. Mr. Lindley, how many trials were there in the ejectment suit in which you were a defendant at the suit of Catherine C. O'Reilly?

The Court: Don't the record show that?

Mr. Grey: I simply want to start.

A. There were two.

Q. Those trials affected the whole of the piece of land which by the deed from the O'Reillys to you has now been conveyed to you, did they not?

A. From one hundred and fifty feet from Pacific Avenue down to the Ocean; I own the upper end of it.

Q. That is, beginning at one hundred and fifty feet southwardly from Pacific Avenue and running thence in a southerly direction fifty feet wide to the Atlantic Ocean?

A. Yes, sir.

Mr. Harned: I admit that the land that he got from the O'Reilly heirs through this paper title is the land in question in this case.

Q. At what time, in relation to the proposed trial, in the spring of 1892, did you first hear of the proposition to settle the controversy you had with the O'Reillys?

A. It was talked of before that.

Q. What say?

A. It was talked of long before that.

Q. Spoken of before that?

A. Yes, sir.

Q. How long before?

A. I think a couple of years or more.

Q. A couple of years?

A. Yes, sir.

Q. Was it spoken of before the happening of the last trial which was conducted to a verdict?

A. Oh, yes.

Q. Who had spoken of it?

A. I had spoken of it to Mr. Harned for a couple of years before that.

Q. Expressing your desire for a settlement?

A. I put it this way—I would like to get through with

this suit as soon as we could; if we could not do it in any other way, to compromise it.

Q. Did you say anything of that kind to the O'Reillys?

A. Only to Mr. Harned.

Q. Did you say anything of that kind to the O'Reillys?

A. I didn't see the O'Reillys at all; never seen them.

Q. Well, those propositions were not accepted in any way until the spring of 1892?

A. I don't know; Mr. Harned can tell you.

Q. You don't know?

A. No, sir.

Q. You didn't hear that they were accepted?

A. Not exactly.

Q. Sir?

A. Not exactly; he said that the case was going on, and if they could not get the case opened they might get it settled, did not know.

Q. In the spring of 1892, at the April Term, it was noticed for trial, was it not?

A. Not that I know of.

Q. Was not?

A. No, sir.

Q. Those negotiations for a compromise might have proceeded before that time, might they not?

A. They might have done; yes, sir.

Q. Then you did not come in the spring of 1892 prepared to try the case?

A. I was prepared to try the case any time when it came up.

Q. You say you were prepared to try the case any time it might come up?

A. And was working right along in getting the evidence for the case; never went back on trying to get the evidence, the witnesses.

Q. Did you subpœna them?

A. No, sir, but had them on my mind to subpœna them.

Q. But you didn't subpœna them?

A. No, sir.

Q. Did you come to Camden before April of 1892?

A. Came to Camden many a time, off and on.

Q. I mean just before that term of court, when this trial was to be had?

A. I don't think I did.

Q. Where does your counsel, Mr. Harned, live?

A. Opposite the prison in Camden—in Federal Street, in Camden.

Mr. Harned: I will not be living there after to-day.

Q. You say you hadn't seen Mr. Harned immediately before the trial?

A. No, sir, I was sick when the trial was—the time before it.

Q. Did you see the O'Reillys?

A. Didn't see any of the O'Reillys; only—

Q. Had the Rotherham case been tried in the spring of 1892, before you compromised with the O'Reillys?

A. I don't know that either.

Q. Didn't you attend at the trial of the Rotherham case?

A. No, sir, I told you I was sick.

Q. You didn't attend?

A. I was sick for a couple of months before that.

Q. So sick that you could not get out of your house?

A. I was.

Q. How long after the April Term of court of 1892 did your sickness continue?

A. Three or four weeks, but I was convalescent about a week afterwards.

Q. Did you go out afterwards, about a week afterwards?

A. I did.

Q. Then you didn't attend at the trial of the Atlantic County court cases in April, 1892, at all?

A. I did not.

Q. Can't you say whether or not this compromise was made after the Rotherham case had been tried?

A. I can't say for certain.

Q. What lots were involved in the suit of the O'Reillys against Rotherham?

A. One hundred feet.

Q. Sir?

A. One hundred feet.

Q. And how far was that from the lands which you claimed to have title to?

A. On one side of it, right close up to it.

Recess here taken for lunch.

Q. You said, in your examination-in-chief, that Messrs. Harned and Judge Pancoast represented *you*. Who represented the *O'Reillys* in the suit against you as their counsel?

A. Against me? James A. O'Reilly and Mr. Voorhees, I believe.

Q. Is Alfred Adams your son-in-law?

A. He is.

Q. Where is the lot which was purchased by Adams from the O'Reillys.

A. It is the next to the Tennessee Avenue, between Tennessee Avenue and my lot.

Q. Then the Adams piece adjourns your piece, does it?

A. Yes, sir.

Q. In the use of those lots, do you and Mr. Adams use each others lots jointly?

A. No, sir.

Q. In any way?

A. No, sir.

Q. Have you ever?

A. No, sir.

Q. Now you said you paid ten thousand dollars.

A. I paid ten thousand dollars cash.

Q. Where did you get the ten thousand dollars?

A. Well, I had some money of my own and I raised the balance out of the bank.

Q. Did you go to the bank to get it yourself?

A. I did; I went and got the money myself, and paid it myself.

Q. Who went with you?

A. To the bank? Nobody; I went alone to get the money.

Q. Upon what securities or security did you raise the ten thousand dollars?

A. Part of it on notes.

Q. Whose notes did you give?

A. I gave my own notes, endorsed by Mrs. Bue, Mr. Bue, Mr. Adams, myself.

Q. By Alfred Adams, your son-in-law, is that?

A. Yes, sir.

Q. The gentleman that owns the lot next to yours?

A. Yes, sir.

Q. How much of money was it you raised by the proceeds of the notes?

A. Well, I had something over $2,000 of my own—notes that I had given to me for rents for different properties down there; I had a small amount in ready cash—ready money, and then the balance I raised on notes.

Q. How much was it you raised on notes?

A. Something about eight hundred.

Q. About eight hundred?

Q. (By the Court): Eight hundred or eight thousand?

A. $800? $8,000.

Q. (By Mr. Grey): Then you made a slip when you said $800?

A. Yes, sir.

Q. You mean $8,000?

A. Yes, sir.

Q. You yourself took the notes to the bank, did you?

A. I believe I did; I know I took some of them; I won't say that I took them all.

Q. How many notes were there that you raised the $8,000 on?

A. I think one note was $800, and the other two, one for $1,500—$1,400—and another one for $400 or $450, and then I had a balance in cash; it was either $7,500, somewhere in that neighborhood, between that and $8,000, which it is I won't be sure; I know we got the $10,000 altogether on one check.

Q. Can you tell me how many notes there were that raised the money that you got from the bank?

A. No, sir, I could not just now.

Q. When you took the notes to the bank from whom did you get the money?

A. From the paying teller.

Q. Did he give you the money in bank notes?

A. In bank notes, cash.

Q. And you carried it away from the bank?

A. I did.

Q. (By the Court): I thought you said you had it all in checks?

A. No, sir; money, cash.

Q. (By Mr. Grey): Where did you take the money to?

A. I took it home.

Q. Where did you put it when you got it home?

A. That is a funny question to ask. I had it at home till I got ready to fetch it up to Mr. Harned.

Q. (By the Court): It is a very proper question where you put it?

A. I could not say exactly, whether in the bureau drawer or trunk, I could not say where it was.

Q. (By Mr. Grey): What bank was it from which you got this money?

A. First National Bank.

Q. Can you tell me the name of the officer who gave it to you?

A. Mr. Francis P. Quigley.

Q. He is the cashier?

A. Yes, sir.

Q. How long did you keep those bank notes, which amounted to ten thousand dollars, at your house?

A. I could not say, not very long, because I had to fetch it up and pay it right over.

Q. What did you do with the bank notes after you took them from your house?

A. Fetched them to Camden and gave them to Mr. Harned.

Q. Where did you see Mr. Harned?

A. At his office.

Q. Now, what time was it that you came up to Camden and saw Mr. Harned with these notes?

A. It was on Saturday, I think on the afternoon train.

Q. And what time—what Saturday was it, in what month and year?

A. In April.

Q. At what time in April?

A. I could not say exactly; the beginning of April somewhere.

Q. It was on the same day—or how soon after was it that you made the notes?

A. Made the notes in thirty days.

Q. The notes were payable in thirty days?

A. Yes, sir.

Q. How soon after you had taken the notes to the bank and obtained the money was it that you brought the money—proceeds of the notes and the other money—to Camden to Mr. Harned?

A. Fetched it on the Saturday.

Q. The following Saturday?

A. Yes, sir.

Q. Well, you were the maker of these notes?

A. Yes, sir.

Q. You have those notes—you have those notes?

A. I have not; I paid them; the notes were destroyed; I have the check.

Q. Who destroyed them?

A. I think I destroyed the whole of them; when they were paid off they were of no more use, and I didn't expect to have any more use for them.

Q. You say you have a check?

A. I have a check for ten thousand dollars, I think, at home; I have not got it with me.

Q. When you got the money, in order to get the money, you gave a ten thousand dollar check to the bank?

A. Yes, sir.

Q. And you gave that check on the day when you got the proceeds of the note?

A. I gave a check for the money the same day.

Q. And that is not the same ten thousand dollar check that you gave when you paid the cash to the O'Reillys.

A. It was my personal check that I gave to the bank, drawn against the notes, and that check I haven't got here.

Q. Will you produce it?

A. Yes, sir, but not to-day.

Q. Will you produce it?

A. Yes, sir.

Q. Send it to your counsel for production in this case?

A. Yes, sir.

Q. Now, was it after the sitting of the Atlantic Court, or before that time, that you came to see Mr. Harned with the money?

A. I think it was after.

Q. Did Mr. Alfred Adams aid you in getting this money?

A. To some extent, he did.

Q. To what extent did he aid you?

A. I could not tell you exactly—for two or three thousand dollars, I think.

Q. Raising money?

A. Yes, sir.

Q. He also went to the bank about it, did he not?

A. Yes, sir.

Q. In your behalf?

A. Certainly.

Q. When you paid the notes did you pay them at the end of the first thirty days when they came due, or did you renew them?

A. I could not exactly say that; I think there was $5,000 paid off.

Q. When they first came due?

A. Yes, sir, and the balance was extended.

Q. In the extension, did you give a new note?

A. I did.

Q. Have you those new notes?

A. No, sir, they are all paid off and destroyed.

Q. How was the money raised to pay the five thousand dollars at the end of the thirty days?

A. I could not tell you exactly; I know I got some money in—$2,000; $2,000 of my money went into that, and I think Mr. Adams raised $3,000 of the money for the note.

Q. Did you give a check for the payment of those notes when they first came due—the payment of the $5,000?

A. We gave for the $5,000, I think we gave checks for the $5,000.

Q. You have those checks at home?

A. I would not be sure about that; I am most sure that I have got the check for $10,000 among the checks.

Q. When did you last see that check?

A. I guess it must be pretty nearly a year ago; we have the checks and the stubs all tied together—all the check books.

Q. You kept the stubs?

A. Kept the stubs and the check book as well.

Q. In your check stub you show what use you made of the check?

A. Yes, sir.

Q. Will you produce the stubs here?

A. I could not say if I could produce the whole; I can produce the check, I think.

Q. Is it your habit on the stub to make a memorandum of the use to which the check is put?

A. No, sir, not exactly—of how much money we have paid and how much there is left.

Q. And the person to whom paid?

A. Yes, sir.

Q. And the date?

A. Yes, sir.

Q. But not the object for which it was paid?

A. No, sir.

Q. Well, now, when you got an extension of time for the payment of the balance of the notes over the $5,000, how was that money, on which the extension was granted, paid?

A. That was paid in cash.

Q. Did you give a check for that payment?

A. I gave a check for $2,000.

Q. Was there any further extension?

A. There was an extension, I think, of $500 for a little while longer; the rest I paid.

Q. Did any one aid you in making that second payment

A. No, sir, out of my own business.

Q. That is true of the second payment, and also of the final $500?

A. Yes, sir.

Q. (By the Court): What business were you in?

A. In the bath house business.

The Court: How far is this Avenue—these New York and Tennessee Avenues from the Brighton Hotel?

Mr. Harned: About three squares north.

Q. (By Mr. Grey): You say it was after the Atlantic Term of April courts that you brought the money up to Mr. Harned?

A. Yes, sir.

Q. What makes you think it was after the term?

A. I am most sure it was after the term; I could not say exactly what makes me think so, but I am most sure it was somewhere in the beginning of April—somewhere in April.

Q. Can you state any fact that leads you to think it was after that time?

A. I can't.

Q. Had the Rotherham suit been tried?

A. I think it had.

Q. You had recovered from your sickness which had prevented your attendance there?

A. I had recovered to a great extent.

Q. Well, when you brought the money to Mr. Harned, did you go with him to make the payment to the O'Reillys?

A. No, sir.

Q. Where did you go?

A. I went home.

Q. Do you know of your own knowledge anything about the use which was made of your money?

A. I know I got a deed for it.

Q. From whom did you get that deed?

A. From Mr. Harned.

Q. How long after the time when you took the money to Mr. Harned was it that you got the deed for it?

A. I could not say exactly; it was pretty soon after I took the money.

Q. You say you took the money there on a Saturday?

A. Either Friday or Saturday I took the money; I could not be sure which.

Q. How long after that Friday or Saturday was it that you received the deed?

A. Well, I may have received it on the Saturday; I don't know.

Q. That is a week afterwards ?

A. Yes, sir.

Q. What did you do with it when you received it ?

A. I gave it to the County Clerk to record.

Q. What day did you take it to the County Clerk for record ?

A. The same day I got it.

Q. (Exhibit C. 85 shown witness—deed from Catherine C. O'Reilly to Daniel Lindley). Look at that deed and say if that is the deed you refer to as having been by you received from Mr. Harned and recorded or left for record by you ?

A. (After looking at C. 85). Yes, sir.

Q. Did you ever have yourself any personal conference with any of the O'Reillys relative to the settlement or the making of this deed to you ?

A. No, sir.

Q. Did you ever receive any other deed from the O'Reillys ?

A. Yes, sir, I think I received another one.

Q. What did you understand that other deed to be ?

A. A confirmation deed.

Q. A confirmation deed ?

A. Yes, sir.

Q. How long after the first deed did you receive the second one ?

A. I could not say.

Q. What, according to your recollection, was the occasion for the making of the second deed ?

A. I could not tell you that.

Q. Were you content with the first deed ?

A. Yes, sir.

Q. Then you raised no question as to the sufficiency of it ?

A. I raised the question this way—I asked my counsel if the deed was all right, and he said they were going to give him a confirmation deed.

Q. That he told you when he delivered you the first deed ?

A. Yes, sir.

Q. Did he tell you that your money had been paid for the first deed?

A. Yes, sir, he told me the money had been paid.

Q. And you understood it to be a part of the agreement that a confirmation deed should also be given?

A. Yes, sir.

Q. Well, about how long, you say you can't tell exactly how long, about how long was it before you received this confirmation deed?

A. I could not say.

Q. Was it a month?

A. I could not say.

Q. You can't give any idea?

A. I don't believe I had it in my possession. I believe Mr. Harned had it.

Q. Then you didn't receive the confirmation deed yourself?

A. I think this suit was commenced before I got it, and the papers I left with him.

Q. When you got it you recorded it?

A. If it was not recorded then I did.

Q. You took it to the office yourself?

A. I think I sent it.

Q. You remember sending it?

A. I won't swear to that either.

Q. How did you send it as you presently recall?

A. I can't say; I can't say whether I sent it, or whether Mr. Harned sent it for recording himself.

Q. How did you receive it?

A. I received it at his office when we came up to fetch some papers in this suit.

Q. When the papers were served—papers in this suit?

A. The notice.

Q. Mr. Harned called your attention to the injunction?

A. No, sir; I got notice from Grey & Grey about the injunction.

Q. And then when you came to the office of Mr. Harned about that notice, Mr. Harned gave you the deed of comfirmation?

A. He had it then, I think, but I won't be certain.

Q. Did he tell you to have it recorded?

A. I can't say; I won't say that it was not recorded when I got it.

Q. The deed as you received it was handed to you personally by Mr. Harned?

A. Yes, sir; I won't say that either; I won't say whether I got it by mail or whether it was handed to me personally.

Q. Didn't you say you received it at the time you came to his office?

A. I said I thought so.

Q. How soon after you received it did you have it recorded?

A. I could not tell you that.

Mr. Voorhees: He said he thought it was recorded when he received it. That is what he said.

Witness: I said I thought it was recorded when I received it.

Q. When you received it from whom?

A. I don't know whether it was through Mr. Harned, I don't know whether he handed it to me or whether it came through the mail, I would not be positive which.

Q. Well, if it came through the mail, did you receive it from anybody else than Mr. Harned?

A. I received it right from the mail, right home then if it came through the mail.

Q. But who sent it, as you understand?

A. If it came through the mail I suppose Mr. Harned sent it.

Q. After you received it did you send it for record? Certainly you can recall that; it is only a year ago.

A. I could not say.

Q. Sir?

A. I could not say; it runs in my mind I did, but I would not swear positively, but it runs in my mind I did.

Q. Well, then, you had to receive it again, didn't you?

A. Yes, sir.

Q. Do you remember receiving it twice?

A. I can't say.

Q. Now, Mr. Lindley, can't you recall that one of those notes which you had discounted was a note for $5,000,

made by you to your own order, and by you endorsed, and also endorsed by Richard Bue and Sophie Bue?

A. It was made to my order I know.

Q. And wasn't it endorsed by Richard Bue and Sophie Bue?

A. I told you before it was.

Q. And that was the note for $5,000 at thirty days?

A. Yes, sir.

Q. And was dated April 14, 1892?

A. I think it was.

Q. And another note was—

Mr. Harned: I don't know what the object of all this examination is, but it seems to me it is going a great length.

Mr. Grey: To show the relation of these parties to this transaction.

Witness: I have told you about the notes a couple of times.

Q. You said you destroyed the notes and I am trying to show what they were. Did you not raise $3,000 on another note made by you, and endorsed by you and also Alfred Adams, junior, Richard Bue and Sophie Bue?

A. $2,000?

Q. No, $3,000, that making $8,000 altogether?

A. Might have done; had more notes than that though.

Q. I am speaking now only of this one, was there not such a note given by you?

A. I think there was.

Q. And dated the same as the other one of thirty days?

A. Yes, sir.

Q. And payable when?

A. Thirty days.

Q. The first one was thirty days; when was the $3,000 payable?

A. I won't be certain whether it was thirty days or sixty days.

Q. Was there not another note dated the same day as the others, for $500, made H. B. Geissinger, and endorsed by Daniel Lindley, Robert Bue and Sophie Bue?

A. Yes, sir.

Q. Now, those were the notes which aided you in raising the $10,000, weren't they?

A. Yes, sir.

Q. When you were talking or thinking of settling with the O'Reillys, was there any agreement made between you antecedent to the making of the deed—did you have any agreement for the conveyance to you—for the conveyance of this property, any written agreement?

A. No, sir.

Q. Was there any oral agreement or understanding antecedently to the making of the deed?

A. Only between my counsel and myself; there was none between anybody else.

Q. You mean none with the O'Reillys, that you know of?

A. No, sir.

Q. That is all.

Re-direct by Mr. Harned.

Q. Mr. Lindley, with regard to the making of that compromise, I think you have already stated that the negotiations were conducted by myself. And with regard to the passing of the title, that was left to me, wasn't it?

A. Yes, sir.

Q. That is all.

ALFRED ADAMS, Jr., one of the defendants, produced on his own behalf and sworn.

Direct-examination by Mr. Harned.

Q. Where do you reside?

A. Atlantic City.

Q. Are you the person who purchased the lot to the northeast of Lindley?

A. Yes, sir.

Q. For twenty-five thousand dollars ($25,000)?

A. Yes, sir.

Q. That extends from Ocean Avenue through to Pacific Avenue?

A. From Ocean Avenue to Pacific Avenue.

Q. Mr. Keim has sworn, Mr. Jacob Keim, in answer to a question by Mr. Grey: "Did you ever have any conversation with Alfred Adams, jr., about this property?" referring to all the O'Reilly property I suppose, made the following answer: "Yes; not in this year when the Board of Health was after us, but in 1890, when the board walk was built, I came by there and got talking with him. He told me that he had leased, he said, I have leased this land of O'Reilly's agent, but I had not to pay much for it, and I could get it for a short time only without any security or any assurance of a continuation of the lease, I was given to understand that it was sold." Is that true or false?

A. That is not so.

Q. Then he further says: "He (meaning you) wanted me to agree with him for a continuance of his lease. He said it would not pay him to make improvements upon this property for the short time that his lease gives him. I don't know what time that was. Well, I told him, no, no, I have bought all the property of the O'Reillys in this square between Pacific Avenue and the Ocean, and I won't make any contract with anybody for any part thereof until I have possession." Is that true?

A. No, sir.

Q. Then I will continue the reading of the evidence. "Q. That is what you said to Adams? A. That is what I said to Adams a few days afterwards, or some time, probably it might have been a week, I passed along again, and he called to me. Q. Who—Adams? A. Adams; and still wanted me—asked me to make some agreement. He was very persistent in that. Q. To make an agreement to continue his lease? A. Yes, sir. Well, I told him that the parties in possession claimed that they could not be put off—that they could not be dispossessed; but I says you know there is a contest; they are fighting O'Reilly's claim. He said, 'I know that. Mr. Lindley told me you would get this strip nearest New York Avenue, but not the rest.' 'Well,' says I, 'I won't do anything with it until I have control of the property; there is no use talking.' 'Well,' says he, 'I hope that you will not be too hard on me'—words to that effect;

I think the very words to the syllable of it—'and give me the first chance.' That I promised to do."

Is that true or false?

A. Not true, not a word of it.

Q. Did Mr. Lindley ever say to you that the O'Reillys would want the strip nearest New York Avenue, but not the rest?

A. No, sir.

Q. Did you ever discuss the question of Keim's ownership of this property, or claim of purchase of this property, with Mr. Lindley?

A. No, sir.

Q. Now, Mr. Adams, in 1890, did Keim own land on the other side of New York Avenue—on the south side?

A. In 1890? He owned some land there several years, and he has since sold it; I don't know what date he sold it.

Q. Has he sold it since he conversed with you on the subject of that land?

A. He sold that land.

Q. Now, you had a conversation with Mr. Keim relative to an attempt on your part to lease a piece of property in Atlantic City from him, did you?

A. Yes, I met him on the avenue.

Q. When was that?

A. Three or four years ago.

Q. Oh, then you did have a conversation with Mr. Keim three or four years ago?

A. Yes, sir.

Q. Is that the only conversation you recollect?

A. That is the only one I ever had with Keim concerning any land or anything else so far as that is concerned.

Q. Please state what that conversation was?

A. Keim owned fifty feet, of course, on New York Avenue, facing the beach fifty feet, and my brother had a lease of thirty-two feet of this land—

Q. Is that the strip that adjoins Griffith's strip?

A. Yes, sir. I tried on two or three occasions to rent this eighteen feet that my brother didn't have any lease on, and I was trying to lease that eighteen feet there to build a couple of stores.

Q. What is your business in Atlantic City?

A. Well, in the bathing business.

Q. That has been your business for some time?

A. Yes, sir, keeping a bathing establishment down there.

Q. Then the only conversation that you ever had with Jacob Keim was the conversation that you have just referred to?

A. I spoke to him two or three times concerning that land, and didn't get any definite answer, and didn't bother with him any more.

Q. And you are quite clear, then, that the land that you were talking about in those conversations had no relation whatever to the land you afterwards bought from the O'Reillys and was entirely other land than the property that you afterwards bought from O'Reillys?

A. Yes, sir. It was the eighteen feet that Keim owned there.

Q. Mr. Adams, when did you first have any knowledge that Jacob Keim claimed to own this piece of land that you afterwards purchased from O'Reillys?

A. Why, when he served a notice on me one day down there; I don't know exactly the date. The notice will tell the date of it.

Q. L. D. 2 shown witness.

A. Yes, sir, that is the one.

Q. Is that the paper?

A. This is the paper he served on me.

Q. What did you do with it?

A. Sent it up to you.

Q. You were conversant with the fact that Judge Pancoast and myself represented Mr. Lindley for many years?

A. Yes, sir.

Q. You are the son-in-law of Mr. Lindley?

A. Yes, sir. I know you.

Q. Do you remember the fact that I was negotiating for a settlement or a compromise of the controversy between Lindley and the O'Reillys?

A. Yes, sir.

The Court: How could he know that you were negotiating with them?

Mr. Harned: From the fact that he has heard.

Witness: I lived there all the time.

Mr. Harned: I want to call his attention simply to the fact, I don't want to go into it.

Witness: Yes, sir, I know.

Q. Did you ask me or authorize me to make any offer to the O'Reillys at a time when those Lindley negotiations were going on, for the purchase of this lot, which you afterwards purchased?

Mr. Grey: I object to that. How can his declaration not against interest be any more admissible because he made them to his counsel than in any other way?

The Court: You may ask him generally whether he authorized you to negotiate to purchase lands.

Q. Go on, Mr. Adams.

The Court: I rule that the witness may state that he authorized Mr. Harned to negotiate for the purchase of this land, but I don't think he can go any farther than that—if it be true.

A. I did.

Q. (By the Court): You did authorize Mr. Harned to negotiate?

A. I did authorize Mr. Harned to negotiate; sent him up to Reading to see the O'Reillys.

Q. (By Mr. Harned): C. 82 shown witness; it is a letter, or rather an agreement in the form of a letter, signed by Catherine C. O'Reilly, executrix, agreeing to sell this piece of land in question for $25,000 cash; when did you get this? Who did you get that from?

A. I got this from you; you handed me this.

Q. What time?

A. Do you mean what date?

Q. Yes, look at its date.

A. April 15th.

Q. Did you get it April 15th or 16th of April—I don't know?

A. Either the 15th or 16th, I can't be positive; I am not positive whether you came in from Reading the same day.

Q. Did you write *this* acceptance?

A. (Looking at the paper). Yes, sir, sent it by registered letter.

Q. Did you record this document?

A. Yes, sir, I had it recorded.

Q. Now, Mr. Adams, before you got a deed for this property you had this notice served on you—did you, L. D. 2?

A. (Looking at L. D. 2). Before I got the deed.

Q. And do you remember whether there was a suit brought and a subpœna served on you before you got the deed?

A. (After thinking). What is that question?

Q. Do you remember whether there was a suit brought and a subpœna served on you before you got a deed?

A. I think I do; I think I do. You mean this suit?

Q. You afterwards did get a deed for this piece of property, did you not?

A. Yes, sir.

Q. Now, just explain to the Court why you gave a purchase money mortgage for the whole amount instead of paying it in cash?

A. Why, I was to pay $25,000 cash for it, and had the money coming, I know, and then this suit was started of Keims—Keim started the suit, and I suggested to you probably that it would be a good thing to get a deed from the O'Reillys, and you thought so yourself, I think, and went up there and got the deed.

Q. (By the Court): Took the deed after you knew the suit was commenced?

Mr. Harned: Gave a purchase money mortgage for the entire amount.

A. I had made arrangements for the $25,000.

Q. (By Mr. Harned): Mr. Adams, have you paid the interest on that mortgage?

A. Yes, sir.

Q. How much?

A. $1,500; got a receipt in my pocket.

Q. Now, Mr. Levi Albertson has said that in a conversation that he had with you in the office he referred to the amount that "he was willing to pay (that is, that you, Mr. Alfred Adams, jr., was willing to pay) to get Mrs. Clinton off, and he didn't want to pay too much, for he didn't know how

soon he might have to treat with Mr. Keim, or the title would be settled—or words to that effect; I don't recall the exact conversation"—did you ever say that to Mr. Albertson?

A. No, sir, I drew a check for Mrs. Clinton, in Gardner & Shinn's office, at one time, for a purchase that I made, for Mrs. Clinton, and there was nothing said concerning the Keim matter.

Q. Mrs. Clinton occupied a piece of this property?

A. A portion of this land; had some old shanties on there, and I bought them of her and tore them down.

Q. (By the Court): After the agreement?

A. No, sir, sometime before.

Mr. Harned: A year or two?

Q. (By Mr. Harned): At the time of this agreement you were in possession of this property?

A. Yes, sir, a portion of it.

Q. How much money did you spend on it?

A. Three or four thousand dollars; $3,000 I suppose.

Q. Mr. Barstow says that at the time that you were at the bank there endeavoring to get some money for Mr. Lindley to enable him to raise the purchase money, that he asked you if you knew that there was any agreement with Mr. Keim about the purchase of that property, and to a question: "What did he say in reply," meaning you—he answered: "Well, he didn't say one thing or the other, whether he knew it, not that I know of, I can't recollect that he did, but that was before he got the money." Do you recall any such circumstances as that?

A. No, I can't say that I understood anything Mr. Barstow said. We were around there and I asked him about raising a loan from the bank, and he hemmed and hawed, and acted in his peculiar way, and I didn't hear him make any such remark; there was nothing said concerning Keim as I understood.

Q. Now, had you any intimation or suggestion from anybody, either at the time that Lindley was purchasing or at the time you purchased, or any time prior to that or since, or before you got this notice, that Jacob Keim claimed to have been the buyer of this whole property, including the lot you bought?

A. No.

The Court: What do you mean by "buyer"? Have a contract with him?

Mr. Harned: That is what he said—bought it; this notice even don't set out his contract—after looking at notice—yes, it does—"I hold an agreement for the sale," &c. That was notice served on April 28th, 1892, after the Lindley matter, and after Mr. Adams had gotten a written agreement out of the O'Reillys.

Q. What is the value of the improvements that Lindley has on the end of his lot?

A. Eight or ten thousand dollars he spent there.

Q. How long, to your knowledge, has he been there?

A. Twelve or fifteen years.

Q. Did you aid him in getting together evidence, under the direction of counsel, for the proof of adverse possession?

A. I was aiding in the suit that was supposed to come up again.

Q. State whether or not, up to the time of the consummation of the Lindley negotiation, you had procured additional testimony?

A. Yes, sir; I had a talk with several people; probably a couple of years I was working on the case.

Q. Did you ever see me down at Atlantic City?

A. Yes, sir.

Q. Were you ever present at any conferences between myself and Mr. Lindley and yourself and others?

A. Yes, sir.

Q. And were we actively engaged—state whether or not were we actively engaged, you and all of us, in the preparation of this defense?

A. We were undoubtedly.

Q. That is all.

Cross-examination by Mr. M. P. Grey.

Q. You are one of the parties defendant in one of these suits?

A. Yes, sir.

Q. Here being tried?

A. Yes, sir.

Q. You are the son-in-law of Mr. Lindley?

A. Yes, sir.

Q. And the purchaser of this easterly lot on this map?

The Court: The map is marked C. 79.

Q. (Question continuing). Here in dispute?

A. Yes. sir.

Q. Now, when did you first open negotiations with the O'Reillys looking to the acquirement of the lot you subsequently received a deed for?

A. It was on or about the time when Mr. Lindley compromised his affair.

Q. Was it before or afterwards?

A. It was about—why, it was before he really transacted the business; I think that I told Mr. Harned to see them and make them an offer of $25,000.

Q. I ask you as to the time only; was it before or afterwards?

A. Before.

Q. Sir?

A. Before.

Q. It was before. How did you open the negotiations?

A. I merely told Mr. Harned—

Q. I didn't ask you what you told him, but how—by letter or by personal application?

The Court: Interview—

A. Why, with Mr. Harned, that is all; I told him to attend to the business.

Q. By directing your counsel then?

A. Yes, sir.

Q. Did you write any letter to Mrs. O'Reilly yourself?

A. After Mr. Harned handed me the agreement from Mrs. O'Reilly I answered it by a letter; wrote it myself, and signed it, and sent it to her by registered letter.

Q. Did you begin the proposition before you received any proposition from the O'Reillys?

A. I think I made them the offer.

Q. You made them the offer?

A. Through my attorneys.

Q. That is, you invited them to the transaction, and they didn't invite you?

A. I think that is the way of it. It was I that told Mr. Harned to speak to them when he went out there.

Q. And it was in response to Mr. Harned's application to the O'Reillys to see whether they would come to an agreement with you?

A. To see whether they would sell me the land at $25,000.

Q. Where were you when you received the letter from Mrs. O'Reilly?

A. Which letter?

Q. The letter that Mrs. O'Reilly wrote you?

A. That is the letter that Mr. Harned brought.

Q. Where were you when you received it?

A. I think Mr. Harned handed me that in Camden.

Q. Then you didn't receive this letter by mail?

A. No.

Mr. Grey: When I say "this" letter I mean the letter marked C. 82 in this case.

The Court: Offer to sell the property at $25,000.

Q. Then this offer was in consequence of your previous action in sending Mr. Harned to obtain an offer, was it?

A. Yes, sir.

Q. And at the time when you sent Mr. Harned Mr. Lindley had already arranged for the purchase of his lot, had he?

A. I believe so.

Q. What say?

A. I believe so. I believe he had made the arrangements, I believe.

Q. He had already made the arrangements?

A. I believe so.

Q. Well, how long was it after you sent Mr. Harned that you received this letter from him which Mrs. O'Reilly had sent?

A. Well, he went out to Reading in the morning; he came back in the afternoon.

Q. How do you know he went to Reading in the morning?

A. I think, if I understand right, he told me he would go out there the next morning when I spoke to him.

Q. You spoke to him in Atlantic City about it?

A. I don't know whether it was in Atlantic City or Camden; I am not positive.

Q. Were you in Camden on the morning he started for Reading?

A. Not that I know of. I didn't see him off at the depot or anything like that.

Q. Were you in Camden?

A. I can't say.

Q. Were you in Camden that afternoon on his return?

A. We were in Camden one day. I was in Camden one day and met him coming home from Reading.

Q. Is that the day he brought you Mrs. O'Reilly's letter?

A. I think it was.

Q. And did you that day write to Mrs. O'Reilly accepting her offer?

A. I think it was that day; it was that day; I know it was at my earliest convenience after; I know I sat down immediately and wrote to Mrs. O'Reilly.

Q. And mailed the letter to Mrs. O'Reilly?

A. Yes, sir, I did.

Q. Yourself?

A. Yes, sir.

Q. And did you keep a copy of it?

A. Yes, sir.

The Court: That is the copy there.

Q. Are you ready to swear, Mr. Adams, that the letter was sent on the 15th of April, the day it was dated?

A. I wrote it; got up from my desk, went down to the Post Office and mailed it, in a period—probably all done in fifteen minutes from the time I started to write the letter to the time I had it mailed.

Q. (By the Court): Where were you—in Camden or Atlantic City?

A. Atlantic City.

Q. (By Mr. Grey): Well, you mailed it the day you wrote it, did you?

A. I certainly did.

Q. Well, did you date it back?

A. Not that I know of, no, sir.

Q. I call your attention to the registry stamp; you say you mailed it the day that you wrote it; the letter is dated on the 15th of April; that is the copy, isn't it?

A. That is the copy, yes, sir.

Q. That is the registry stamp?

A. Yes, sir.

Q. You observe that is dated the 19th of April?

A. Yes, sir.

Q. (By the Court): That is the receipt you got back?

A. That is the receipt I got back from Catherine C. O'Reilly; that is the receipt that came back.

Q. Received on the 19th of April?

A. I suppose the date is there—the day I received it.

Q. (By Mr. Grey): Now, where is the memorandum of the sending; have you any such?

A. No, sir.

Q. Your agreement was to pay twenty-five thousand dollars cash?

A. Yes, sir.

Mr. Harned: The agreement is set out in the letter.

Mr. Grey: Yes, I understand that.

Q. It was at your suggestion that a deed was obtained to be made securing the whole of the purchase money, was it—a mortgage for the whole of the consideration money?

A. I think I suggested to Mr. Harned.

Q. Did you see any of the O'Reillys in relation to that?

A. Not personally, I don't think.

Q. Did you see any of the O'Reillys with relation to any portion of this agreement personally?

A. No; Mr. Harned, my attorney, attended to all that for me.

Q. Did you come with Mr. Lindley to Mr. Harned at the time he was negotiating?

A. Some of the times I was there with him.

Q. Were you there with him when Mr. Lindley concluded his arrangements by which he purchased?

A. I think I was.

Q. You aided Mr. Lindley in carrying his business through, not only in the suit, but in the purchase, did you not?

A. I helped him in getting some money together.

Q. What do you say?

A. I helped him in getting some of the $10,000 that he raised.

Q. And you attended with him at Mr. Harned's office when he was carrying the business on?

A. I only came occasionally at my convenience.

Q. I am not asking you how frequently; but you did, did you not?

A. Yes, sir.

Q. How long was it after he finished his negotiation that you began yours for the purchase of this land?

A. It was about at the same time; while I think Mr. Harned was attending to his business I put the proposition then to him—an offer of $25,000 right at the same time, for this particular lot.

Q. How long after the Rotherham suit had been concluded was that?

A. Well, I can't say when the Rotherham suit was concluded.

Q. Well, there was a trial at the Atlantic Circuit, was there not?

A. I believe so.

Q. Of O'Reilly against West and Rotherham, about it?

A. I believe so, in fact—

Q. Don't you know so?

A. Not positively, only from what I heard here.

Q. Were you not getting ready to attend that suit?

A. No, sir.

Q. You didn't attend at the trial of Mr. Lindley's suits?

A. I was getting ready to aid him in the next trial that was coming up.

Q. Don't you know that the suit of O'Reilly against Rotherham and West involved the same title as the suit of the O'Reilly against Lindley.

A. I know it was.

Q. Didn't you know that the West and Rotherham case had been tried and a verdict rendered in favor of the O'Reilly title?

A. Only as a matter of hearsay; I think I had heard that.

Q. You knew that before you made your arrangements for the purchase of the land?

A. No, sir, I think it was before that, I am not sure; I think it was before that, that I spoke to Mr. Harned;

whether it was before or after I don't know positively. The letter from Catherine C. O'Reilly will give the date when I made the agreement; it was a day or two before that, that I sent Mr. Harned out there.

Q. It don't give the date of your knowledge of the verdict in the Rotherham suit?

A. I don't know anything about the Rotherham suit that I know of.

Q. Did you lease the Ocean end of the lot which you subsequently purchased in 1890?

A. Well, in a sort of a way, yes, sir.

Q. Who did you lease it from?

A. Gardner.

Q. What?

A. Mr. Gardner.

Q. Sir?

A. Mr. Gardner.

Q. Who did Mr. Gardner represent, as you understood it?

A. I knew that he looked after the O'Reilly property in Atlantic City to a certain extent; collected some rent there.

Q. How far back from the Ocean was your occupation?

A. Not a lease—verbal arrangement him and I had.

Q. How far back from the board walk did your use of the land run under that lease?

A. About seventy-five feet I guess—sixty feet; it was all the land that was unoccupied there; there was a portion there unoccupied by anybody.

Q. Sixty feet in depth back from the board walk by what?

A. By fifty feet.

Q. You have paid none of the principal of this mortgage for $25,000, have you, Mr. Adams?

A. No, sir.

Q. Who, so far as you know, is the present holder of it?

A. Of the mortgage?

Q. Of the mortgage.

A. The heirs of the O'Reillys, that is all I know.

Q. Have you paid the interest up to date, as far as it is due?

A. I have paid the first year's interest.

Q. You have not paid any more?

A. No, sir.
Q. That is all.

THOMAS B. HARNED offered himself as a witness on the part of Messrs. Lindley & Adams and was sworn.

Witness: I have represented Daniel Lindley since about the year 1880, prior to the suits brought by Catherine C. O'Reilly, the life tenant, against him for possession, and myself and Judge Pancoast as counsel represented Mr. Lindley all through that litigation.

During the early part of the year 1892—I think—the question of a possible compromise of the Lindley suit was discussed between myself and Mr. Voorhees, and I was referred to Catherine C. O'Reilly, who resided at Reading; and I can't say how the negotiation came about—whether it was suggested on my part, or whether it was suggested on the other side; but we would meet term after term at May's Landing, and it was gradually brought about that Mr. Voorhees and I had a serious talk on the subject, and I was referred to the O'Reillys at Reading; and I went up to Reading on one or two occasions, and various sums of money were discussed as consideration to be paid by my client for the paper title to these premises that we claimed to own, and it culminated in my making an arrangement with Catherine C. O'Reilly whereby she agreed to give a paper title to this property for the sum of ten thousand dollars in cash. I conducted the negotiations entirely myself. Mr. Lindley had nothing to do with it. I conferred with him at various times on the question as to how much money he would authorize me to give; and, as the result of the negotiating, the sum of $10,000 was finally agreed upon. I requested Mr. Lindley to bring me a certified check, or the money, to my office, and to my surprise, late one afternoon, when I was unable to get in the bank with it, he brought $10,000 there in greenbacks, largely in fifty dollar bills, one hundred dollar bills—a large package of it. I paid over the money, at the request of the O'Reillys, to Mr. Peter L. Voorhees, by my check dated April 16, 1892, made to the order of P. L. Voorhees, Esq., and on it are the words "Lindley Lot;" the check is on the Camden Safe Deposit and Trust Company. (Produces the check).

The deeds of conveyance were executed on the 15th of April.

This check has Mr. Voorhees' endorsement, and has gone through my regular bank account, and the $10,000 found its way into Mr. Voorhees' possession.

Mr. Harned: I offer that check in evidence.

(Said check, No. 4900, dated April 16, 1892, on the Camden Safe Deposit Trust Company, to the order of P. L. Voorhees, Esq., for $10,000, received in evidence and marked as exhibited, November 28, 1893).

Witness: The endorsement on the back is that of P. L. Voorhees. I am acquainted with his handwriting. I don't know whether Mr. Voorhees will want to be sworn on the subject.

The transaction is set forth in the deed, following the description—"And being also the same land which has been and now is in the possession of the said Daniel Lindley, and the title to which is the subject matter of a suit now pending in the Supreme Court of New Jersey, and this sale and conveyance is made pursuant to a compromise between the parties, and for the purpose of vesting a full and undisputed title in the said Daniel Lindley."

It was conceded on all sides that the piece of property was worth considerable more than the money paid; and it was also conceded that the position that Mr. Lindley held—that is, the question of adverse possession—was a very strong one.

Now, I had gone up to Reading and settled upon the terms of this matter; the principal person I dealt with was Catherine C. O'Reilly and Francis P. O'Reilly. Mr. Voorhees told me that the—

(Counsel for complainants objects to witness giving the statement of Mr. Voorhees).

Witness: James A. O'Reilly and the others were all present in the room in Mrs. O'Reilly's house at the time when I consummated finally the arrangement—the deal. I then came down and I borrowed from Mr. Voorhees the certified copy of the exemplification of the will, and I raised the question—Mr. Voorhees told me the deed should properly come from Catherine C. O'Reilly, she being the sole executrix in New Jersey, and called my attention to the

statute, and I called his attention to the fact that the proceedings didn't show the strict statutory requirement, that the other two executors had refused or neglected to take out letters in New Jersey, and, after preparing this deed, which is drawn by my office clerk, Mr. Hollinshed, drawn on the 14th and dated on the 14th, I looked over that, and I prepared this.

Q. (By Mr. Grey); What is "this?"

A. The confirmation of the sale—which was dated on the 15th day of April, 1892; that was the day I went up to Reading. Both of those papers were executed in the same room and all at the same time—on the fifteenth day of April, 1892. I took a memorandum from Mr. Voorhees to the effect—I took those both down to Mr. Voorhees, and he told me he thought I was unduly cautious, but he had no objection, and I took a memorandum to the parties up there from him stating—

Mr. Grey: Objected to; let the letter be produced.

Mr. Harned: I have no control of the letter at all.

Mr. Grey: I am not willing that the witness should give the contents.

Q. (By the Court): Do you mean to say that the deed to Lindley and confirmation deed were both executed at the same time?

A. Yes, sir. *This* deed was drawn in my office the day before, and on going over it, I think that afternoon or evening, Mr. Hall, another assistant with me, drew this in my office, and as the deed was not to be executed until the next day, this being the 14th, *this* was dated the 15th. I consulted with Mr. Voorhees, as I have said, and I think got a letter from him the night before about eight o'clock.

I got those deeds executed, and brought them back under the authority that I had got from Mr. Voorhees. They were executed on the 15th and I got back from Reading that night, and I gave Mr. Voorhees the next morning my check, dated April 16th, for $10,000.

Q. (By the Court): Why wasn't the money paid to the O'Reillys right there? Why did you bring the deed back and the money too?

A. Well—

Q. Did you take the money with you up there?

A. I did not. I deposited the money in my bank account. Now, that deed that you hold in your hand—the deed of conveyance—I handed that to Mr. Lindley; according to my best recollection he had it recorded. I didn't regard *this* paper as of any significance, and I placed that in my fire proof; and after this litigation had commenced, in going over the papers, I mailed this deed of confirmation myself to the clerk. You will find written here "Record and return," written above my name. That laid in my fire proof until possibly the 17th of June, and it was recorded by the clerk and sent back to me. I don't think Mr. Lindley ever had that paper in his possession.

Q. This was all done up at Reading, eh?

A. Yes, sir.

Q. But you certified it as being done at Camden?

A. Yes, sir, I noticed that. The other deeds are all right—the acknowledgment.

Q. There was no difficulty about your taking up a certified check there for the $10,000?

A. No difficulty; but it is very frequently done as I did it; done oftener than otherwise; the payment of money to the attorney. I don't recall the circumstances why I paid the check to Mr. Voorhees. I was directed to do it.

Mr. James A. O'Reilly—I was afterwards told that Mr. Voorhees returned the money to them.

Now, with regard to the Adams matter; it was purely an incident that I had anything to do with it at all. While I was conducting this Lindley matter Adams asked me whether I could get these people to agree to sell this property for $25,000; and on the day that I went up to have these deeds executed I submitted the proposition to them and brought home this letter—Exhibit C. 82, which was signed by Mrs. O'Reilly under her seal, and I took her acknowledgment; and I brought it home, and Adams was at my house that afternoon, or met me on my way home—Adams and Lindley both were there; and Mr. Adams was mistaken when he said he wrote this letter from Atlantic City; he probably mailed it from Atlantic City—I know

nothing about that; I wrote the form of that letter myself in my office.

Q. (By the Court): What letter do you refer to?

A. The copy of the letter, the original of which Adams took away with him for the purpose of mailing it. Adams came down and wanted the matter in more formal shape, and I said I didn't want to go to Reading again, and I placed very little stress on the matter, and I drew the form of that letter, and this is a copy of it that he made. He made two copies, I think, right in my office—one he took away, which was to be treated as an original; the other he acknowledged; I told him it could be put in that shape and I wrote the acknowledgment. It was all done on the same day.

Q. Better read your acknowledgement.

A. "On the 15th day of April"—that is correct—"personally appeared before me Catherine C. O'Reilly"—"and also on the 22d of April"—(Witness reads acknowledgment to himself)—Well, I was probably mistaken with regard to the acknowledgment part; but when I came down from Reading that day, Lindley was at my office, along with Adams, and this letter bearing date April 15th was written there; the whole thing was completed there, and he went off with the original in his pocket and said he was going to mail it, and Lindley went off with his deed. He afterwards came back to me with those two papers—with *this*, and then I probably wrote out this acknowledgment and put them together.

Now, this contract with Adams was for $25,000 cash, to be paid within thirty days after the question of Mrs. Williamson's possession shall be legally determined or compromised. Mrs. Williamson is a client of mine—it seems strange that I was—I have represented in turn all of the divers interests in this property, among others Mrs. Williamson on this property—of all the O'Reilly property I mean—of all the property claimed by the O'Reillys—I represented different ones, among others Mrs. Williamson, who was in possession, and has been, for thirty or forty years, of the Pacific Avenue end and of Adams lot, and is yet. That is the subject matter of con-

troversy now pending in the Supreme Court, in which I represent Mrs. Williamson adversely as against Adams, and as against the O'Reillys. Mr. Adams was extremely anxious to get his deed, and you had commenced a suit.

Q. (By Mr. Grey): Don't say "you"—

A. That is, Mr. Keim had commenced these proceedings in the Court of Chancery, and there was that impediment in the way. I was conducting a negotiation with the O'Reillys with the view of purchasing the Williamsons off, whereby they were going to pay Mrs. Williamson several thousand dollars for the Pacific Avenue end of the lot, for I regarded her interest in that as almost inviolable.

(Objected to).

Witness: Mr. Adams was anxious to get a deed from the O'Reillys, and in talking over the matter with the O'Reillys, the O'Reillys were also anxious that this suit should not tie them up and that they should get the benefit of their purchase money. They suggested that they were willing to take a purchase money mortgage of $25,000, the entire amount of the consideration, and Adams was very glad to do it, and that was arranged. I prepared these papers—the deed of Catherine C. O'Reilly to Alfred Adams, jr., which had been marked C. 84; the Deed of Con firmation, which has been marked C. 83; they were both executed simultaneously, and I think I also prepared a mortgage for the $25,000 back.

Now, Adams holds his title subject to whatever right you have under your *lis pendens*, and also subject to the Williamson possession of the Pacific Avenue end. I knew that Adams was perfectly safe in giving a mortgage for the entire amount of the purchase money, because if he ultimately didn't get the Williamson end of the lot that equity would protect him. That is the reason why the Adams transaction was put through, at the mutual desire of both parties and for their benefit.

The Adams transaction and the Lindley transaction are *bona fide* transactions all the way through. That is all.

Cross-examination by Mr. M. P. Grey.

Q. Certified copy out of the Supreme Court in the case of Catherine C. O'Reilly against William Williamson and

others, an action of ejectment, P. L. Voorhees, attorney for plaintiff, Thomas B. Harned appears as attorney for the defendants, shown the witness. Is that the suit you referred to in which you say you are attorney for Mrs. Williamson a defendant?

A. Yes, sir.

Q. Please look at that and tell me about what time that suit was commenced?

A. April 13th.

Q. Of what year?

A. 1892. I didn't represent Mrs. Williamson at the time.

Q. At which time?

A. Not at the time when I got this option for Adams. She came to see me very shortly after the writ was served on her. I say that because it may seem like a clashing of interests; if you understand it as I do there is no clashing of interests; one of the Philadelphia Congressmen sent her to me, Mr. Leonard Meyer sent her to me, and he was my associate counsel in the matter in Philadelphia.

Mr. Grey: I offer this certificate transcript in evidence. (Marked C. 92).

Q. Certified copy or transcript of suit in the Supreme Court of New Jersey, Catherine C. O'Reilly *vs.* John West, John Rotherham and others, in ejectment, P. L. Voorhees, attorney for plaintiff, and Thomas B. Harned, attorney for defendants, shown witness. Is that a transcript of the suit spoken of in these proceedings—spoken of as the Rotherham suit?

A. I assume so; I have not taken time to look; there was such a suit, and I represented the defendants, who were the heirs at-law of Rotherham.

Q. There is only one such suit?

A. Yes, sir.

(Said transcript offered and received in evidence and marked C. 93).

Q. Were the suits of O'Reilly *vs.* Lindley and others all of the litigation touching the title of the O'Reilly lands, lying between New York and Tennessee Avenues, of which you have any knowledge—these three litigations?

A. All that I was interested in.

Q. Are they all of which you have any knowledge, excepting the present suit?

A. Oh, I think so, yes.

Q. And in all those litigations you represented the claims adverse to the O'Reillys?

A. Yes, sir.

Q. How long is it since you were first employed in these matters?

A. Since the suits first begun.

Q. Which one?

A. Since the suits were first begun.

Q. Which one was the first one that was begun?

A. I don't recall; I think the West and the Lindley suit were brought about the same time; they were on the list together, term after term, for years and years I know.

Q. Did you attend the Atlantic Courts in the trial for the Rotherham suit for the defendants?

A. Yes, sir.

Q. Did you conduct the defense?

A. I did.

Q. (By the Court): Was a verdict given in the Rotherham suit before you made this settlement and purchase for Mr. Lindley and for Adams?

A. Yes; the Adams matter I was not spoken to at all about—it didn't arise until a day or two before I got that letter.

Q. (By Mr. Grey): The Lindley matter was in process of arrangement?

A. Lindley was sick during the April Term; we might have forced the trial of the Lindley suit if he hadn't been sick.

Q. The Rotherham suit was tried on the first day?

A. Yes, sir, it was the first on the list.

Q. And it was tried in one day?

A. I don't know whether it was tried in one day or two; that was the only time the Rotherham suit was ever tried.

Mr. Voorhees: Not later than the tenth it couldn't have been.

Witness: My best recollection is that the case was tried in one day; it was the first on the list and we got at it early.

Q. And these negotiations in the Lindley matter began after the Rotherham verdict had been rendered?

A. No, not after the Rotherham verdict had been rendered; they culminated—they consummated after that; they had nothing whatever to do with the Rotherham verdict one way or the other; they were distinct cases.

Q. Didn't they follow the Rotherham verdict?

A. As I told you for sometime prior to that; I had opened up the subject of negotiations.

Q. But had you made a definite proposition before the Rotherham verdict?

A. I was waiting for definite propositions; I didn't make any.

Q. You never made any before the Rotherham verdict?

A. Yes, sir, I think I did.

Q. Was that proposition accepted?

A. I don't think it was.

Q. Didn't you make the proposition that was accepted after the Rotherham verdict?

A. No, sir.

Q. You made it before the Rotherham verdict?

A. Yes, sir.

Q. I am speaking now of the Lindley case?

A. Yes, sir.

Q. When, before the Rotherham verdict, did you propose to compromise?

A. I can't tell when I got it up to ten thousand dollars; I know we were both playing a pretty good game of bluff; I don't think the question of $10,000 was finally settled upon until I went to Reading—I took several trips to Reading.

Q. Then your proposition—

A. I found I had to run people that hadn't—(interrupted)—

Q. You had made propositions naming no definite sums before the Rotherham verdict?

A. Oh, yes, I had mentioned definite sums.

Q. But these definite sums were not accepted?

A. I had been endeavoring to purchase for $5,000.

Q. And those sums were not accepted?

A. No, sir.

Q. Then the highest sum you offered was what?

A. I can't tell you; I can't tell you now.

Q. Did you ever offer any more than the $10,000 that was accepted the Lindley compromise?

A. No, sir; I never offered $10,000.

Q. Never did?

A. No, it was the result of a trip I took to Reading three or four days before the thing was finally consummated; I got them finally to fix the sum of $10,000, and wanted to get Lindley's consent to it.

Q. They fixed it?

A. It was in that shape; we were both backing and filling, trying to make the best bargain we could.

Q. But no sum was fixed before the coming in of the Rotherham verdict which was agreed upon?

A. The minds of the parties hadn't met until after the Rotherham verdict; but the fact of the Rotherham verdict being rendered had nothing whatever to do with it; at that very time I was arranging with my clients in the Rotherham matter to take the case up on a writ of error, and the only reason I didn't do so was they didn't come down with my fee—

Mr. Grey: I object to the last statement and ask to have it stricken out.

The Court: I don't think it very material; he may say that he didn't consider it conclusive.

Q. Has any writ of error been taken in the Rotherham case?

A. No, sir, my clients didn't come up with my fee.

Q. I object to any answer except yes or no.

A. I don't think it is fair to put counsel in that position.

Mr. Grey: What is the Court's ruling?

The Court: I think it will do no harm.

Witness: I concluded all arrangements with my clients to take out a writ of error, they to pay a certain fee.

Q. Did you take a check when you went to Reading to purchase the property?

A. I did not.

Q. At whose suggestion was it that the deeds transferring the property to Mr. Lindley were given to you?

A. Mr. Voorhees'; I got his approval of the deed the night before and I took from him to Reading a memorandum, a short letter, that it was all right.

Q. Mr. Voorhees himself was not at Reading at the time the transaction was consummated?

A. No, sir, Mr. Voorhees practically had nothing to do with the negotiations.

Q. How long a period of time was there between the time when you received the $10,000 from Mr. Lindley and the time when you went to Reading to get the deeds?

A. I can't say; only a day or two; I went up to Reading first and arranged the terms; I came down here, got some papers from Mr. Voorhees and prepared one deed and raised this question and prepared the other. At the same time I either wrote to Lindley—I think I did write —that I had arranged the matter on the basis of $10,000 and must have a certified check or cash. He brought the money to me one afternoon, whether it was Saturday or not I don't know, a large package, *that* big (indicating).

Q. Can you recall how long a period of time incident to the consummation of this matter that you and Mr. Voorhees had been conversing in relation to a compromise; you said you had had previous conversations; how long before?

A. I think three or four months before; I kind of used to joke about it.

Q. Three or four months before it was consummated?

A. Yes, sir.

Q. Was that the first time it was talked of as a question that it might be compromised—three or four months before the conclusion of the arrangement?

A. Well, I ain't certain; it might have been a year before; it might have been a period of a year; I frequently would meet Mr. Voorhees going down to court; he would

speak or I would speak and we were always very pleasant about it.

Q. To the best of your recollection the compromise proceedings or conversations didn't occur until about three months before the time they were concluded, is that it?

A. I have said to Mr. Voorhees probably for a year—(interrupted).

Q. Please answer my question; is that the best of your recollection, that they were opened about three months before they were concluded?

A. When we got right down to business, yes, sir. I threw out several suggestions to Mr. Voorhees at various times, probably covering about two years, that I thought we ought to get together.

Q. This proposition of compromise ran over a period of two years?

A. He said I would have to see the parties in Reading.

Q. Is that or not the fact?

A. No, sir.

The Court: The witness distinguishes between mere tentative remarks and actual negotiations for a compromise.

Q. Is that it—that there were conversations, not resulting in propositions, for two years?

A. Yes, sir; I always believed that Lindley case could be compromised.

Q. Well, when was the first proposition made growing out of these conversations on the subject of compromise—how long before the conclusion—before the matter was consummated in April, 1892?

A. I can't tell you when we began to talk figures, or when we began to talk business; I can't tell you that. The fact is, that up to the April Term of court, I didn't know whether we would ever get a compromise or settlement.

Q. All these conversations touching the proposed or possible compromise were with Mr. Voorhees, were they?

A. I used to joke with Jim O'Reilly about it.

Q. Is that Mr. James A. O'Reilly, one of the executors of Patrick O'Reilly, deceased?

A. Yes, sir.

Q. But no serious propositions were made to him, eh?

A. Well, I tried to reach Jim O'Reilly; first tried to reach Mr. O'Reilly through Mr. Voorhees, and then tried to reach Mr. James O'Reilly—he would be down there at Atlantic County Court.

Q. I don't think that you have just answered my question. Were any serious propositions of compromise made to Mr. James A. O'Reilly? You said you joked with him about it; I want to know whether you made any serious propositions to him?

A. In my judgment, as near as I can recollect, there was no business discussion of the matter until I went to Reading.

Q. That is in April, 1892?

A. Yes, sir.

Q. Previous to that time there had been references to the subject, but no business discussion?

A. Yes, sir, the Lindley case went off at the April Term of Court on account of the sickness of Mr. Lindley.

Q. But the previous discussions you don't term or consider to be business propositions, is that it?

A. No, not in the sense of being business propositions, because I didn't know how close the parties would agree as to terms; we were in the attitude of one being afraid and the other dare to. I got it in my head that they never wanted to try that Lindley case again.

Mr. Grey: I have asked no question, your Honor; I ask, therefore, that the answer be stricken out on the ground that it is a mere voluntary statement.

The Court: He ought not to have answered in that way, perhaps.

Q. That is all.

Judge Pancoast: The other day a very sudden call was made for a lot of papers, that we should produce certain papers. We have the papers here.

The Court: Produce them when they take their case up again.

FRANCIS P. O'REILLY, re-called on the part of the O'Reilly heirs, further testified as follows.

Direct-examination by Judge Pancoast.

Q. Do you know whether the $10,000 which Mr. Lindley

paid for part of this property was actually received by the O'Reilly estate?

A. Yes, sir.

Q. Have you got the bank book there in your hands that was called for the other day?

A. Yes, sir; and the whole $25,000—(interrupted)—

Q. I didn't ask you that—is there an entry there in your bank book of that money, to your credit in your bank?

A. Yes, sir.

Q. What date?

A. Under the date of 23d of April.

Q. What year?

A. '92.

Q. That is all.

Witness: And the $25,000 is there—$1,000 paid by Griffith on the agreement and $14,000 paid by Hunt.

(At the suggestion of counsel for defendants the stenographer copied page of bank book as follows:

" 1890.

11, 18, balance	$ 5.43
1, 26, '92	6,500.00
2, 20, 92	700.00
4, 23	10,000.00
3, 4	628.00
4, 30	1,000.00
3, 22	648.00
3, 29	700.00
4, 22	2,500.00
5, 10	500.00
6, 16	14,000.00 ")

Judge Pancoast: We rest—subject to anything we may have overlooked.

JOHN J. GARDNER, re-called in rebuttal.

Direct-examination by Mr. M. P. Grey.

Q. Exclusive of the lands involved in this suit, does the O'Reilly estate own any lands in Atlantic City?

A. I think not; I think they are closed out.

Q. Do you know about when the last piece was sold, other than that involved in these suits?

A. No—that is, I don't recollect.
Q. Do you remember the deed to Edward S. Lippencott?
A. Yes, sir.
Q. You negotiated that, did you?
A. That is a twenty-foot strip or ten-foot strip on South Carolina Avenue?
Q. Yes, sir, you negotiated that?
A. Yes, sir.
Q. About what time?
A. I can't recollect.
Q. Can you state within what period?
A. Has not been more than three years; less than that, I think.
Q. That is exactly right, almost to a day. Have you paid over to the O'Reillys all the money that you have received for the sale of their land?
(Objected to as repetition of his former evidence).
A. One moment—I want to correct the idea of the O'Reilly lands being closed out. Since answering yes it comes into my mind that there is a little wedge involved down there—Fred Toms, that has never been settled; Fred agreed to buy it once for $25; that is all, I think.
Q. (Last question read as follows: "Have you paid over to the O'Reillys all the money that you have received for the sale of their land?")
(Objected to on the ground that the witness has already been examined on the subject).
The Court: I will amend it—"Paid or accounted to them for all the monies you ever received from the sale of any lands, including any monies that were paid you as down money on contracts"—
A. I have no doubt about it.
Q. (By Mr. Grey): Have you searched for letters of Newton Keim to you?
A. I have.
Q. Have you been able to find any such?
A. I have not.
Q. Copies of those have been read in this case?
A. I noticed them.
Q. Have you been able to find the originals of any of those letters?

A. I have not; I think they are gone with the other papers.

Q. That were burnt?

A. That were lost; my honorable discharge is too.

Q. Original deed, Patrick O'Reilly and wife to James Flaherty, dated 15th of March, 1880, acknowledged before James A. O'Reilly, Commissioner of Deeds for New Jersey, shown witness; he is asked is that deed in your handwriting —look at the inside of it, please—the filling in of that deed, of the blanks, is that in your handwriting?

A. Yes.

Q. Drawn by you at the time you were acting for Mr. O'Reilly as his agent of Atlantic City lands?

A. Yes.

Mr. Grey: I offer the deed in evidence and would like to have it marked.

(Said deed marked C. 94).

Q. Receipt dated October 4, 1889, signed "Jas. A. O'Reilly, one of exrs. of P. O'Reilly, dec'd," shown witness: In whose handwriting is the filling in of that receipt, and whose is the signature?

A. I think that is all the handwriting of James A. O'Reilly.

Q. Who is Anna B. Upham?

A. Anna B. Upham is the wife of Warren A. Upham.

Q. Where does he live?

A. Atlantic City.

Q. Do you know anything about the transaction which resulted in the giving of a mortgage and bond, for which that receipt was given?

A. There was a lot sold to Upham on Atlantic Avenue—part of the church lot, I think; O'Reilly made an exchange of property with the Catholic church, and I think that is part of that.

(Said receipt offered in evidence and marked C. 95. Following is a copy:

"No. 316. READING, PA., Oct. 4, 1889.

Received of A. B. Upham, one hundred fifty and no—100 —dollars int. for 6 months on bond and mtge. $150. Jas. A. O'Reilly, one of exrs. of P. O'Reilly, dec'd.

(Marginal printing) : " Estate of P. O'Reilly, 527 Court St.

The Court : It is admitted in evidence.

Q. Receipt on blank of Gardner, Shinn & Co., Real Estate Agents, dated April 12th, 1888, signed James A. O'Reilly, executor, shown witness : In whose handwriting is the body of that receipt ?

A. Mine.

Q. And in whose handwriting is the signature to that receipt ?

A. I think that is James A. O'Reilly's signature.

The Court : The witness has just stated to me that that receipt was the result of a mortgage being given for too much money, and instead of a new mortgage being drawn, a receipt for the excess was taken.

Witness ; That is my impression about it ; my impression is that the lot was sold for $6,250, and we thought that a mortgage was to be taken for the entire amount, and we found that Mr. Upham want to give a mortgage for $5,000 only, and instead of re-drawing the mortgage, that receipt was given that is the way I think it was ; but that is the consideration of the lot, I am quite sure—$6,250.

(Said receipt offered and received in evidence and marked C. 96) ; following is a copy :

"Lock Box 54. Telephone 24.

J. J. GARDNER, S. H. SHINN, Notary Public and Commissioner of Deeds for New Jersey & Pennsylvania. L. C. ALBERTSON, Notary Public.

Memorandum.

ATLANTIC CITY, N. J.,.....188

To From

GARDNER, SHINN & Co.,
Insurance and Real Estate Agents,
Conveyancers,
1018 Atlantic Avenue.

$1250. Rec'd, April 12th, 1888, of Anna B. Upham, twelve hundred and fifty dollars on acc't of bond and mortgage this day executed for $6,250.

JAMES A. O'REILLY, *Executor*)."

Q. (By Mr. Grey): The deed dated October 1, 1886, Catherine C. O'Reilly and others to James Flaherty, previously offered in this case and marked Exhibit C. 54, shown witness, he is asked: In whose handwriting is that deed wholly drawn?

A. That is my writing.

Q. Was that drawn by you while you were in the course of acting as agent for the O'Reilly estate in Atlantic City?

(Objected to as leading).

A. That deed is drawn by me.

Q. At that period is what I want to know—state what your relations were to the O'Reilly estate at that time?

A. Well, I was acting as agent of the O'Reilly estate, as I understood it. I answered with some hesitation about these deeds to Flaherty, because I think he had his transactions more with Patrick O'Reilly.

Q. I am asking you whether you drew that deed during the period of your agency there?

A. Well, I drew that deed during that period.

Q. That is all.

Cross-examination by Judge Pancoast.

Q. Is there an unsettled account between you and the O'Reilly estate?

A. I don't think there is, there may be a few dollars.

Q. What was your custom in making sales of the O'Reilly lands in respect to the preparation and delivery of the deeds and the payment of the purchase money?

A. The custom? Well, as I have heretofore stated, Mr. O'Reilly always fixed the prices, I believe; if some party agreed to take a lot at that price and they paid the money down to bind the sale, I took it and receipted for it; informed Patrick O'Reilly in his lifetime, and James A. O'Reilly, after his death, of the facts; if the party purchasing asked me to prepare the papers, I did it, or if they wanted them prepared somewhere else, by somebody else, of course they had it done there; when the transaction was closed according to the terms agreed upon the matter was generally settled up.

Q. That is all?

Re-direct by Mr. M. P. Grey.

Q. Was there any disapproval of the contracts made by you (interrupted)—

Judge Pancoast: I object to this as a mere repetition.

Mr. Grey: You can't object to the question until it is put.

Q. Has any disapproval ever been expressed by any of the O'Reillys of the contracts made by you with Mr. Keim?

Judge Pancoast: Objected to. That question has been put in that shape and answered, not once, but a number of times in the course of the case, and I object to it on account of its utter uselessness.

The Court: I don't recall at present what the record shows, but it will do no harm to ask it again.

Q. (Question read by stenographer).

A. Well, I never have spoken to any of them but James, as I said before. Well, I want to say that recently, since the beginning of these suits I have, or sometime about that time—however, lately he has declared that it is the first knowledge he had of written contracts, and has expressed, I can't say disapproval; well, yes, he has expressed disapprobation since then—

Q. (By the Court): That is James A. O'Reilly?

A. That has been recent.

Q. (By Mr. Grey): Other than that did he or anybody else ever express any disapprobation of this contract?

A. Nothing ever said about that that I recall.

Q. That is all.

Re-cross by Judge Pancoast.

Q. You have never had any intercourse with any of the other O'Reilly heirs in any manner, form or shape in respect to the sale of these lands, except James?

A. None.

Q. (By the Court): That is, for all lands that you sold down there?

A. Yes, sir.

Q. Never got any orders from anybody except James?

A. Yes, sir.

Q. (By Judge Pancoast): Don't you recollect heretofore testifying in this case that in the winter of '91 James expressed surprise at these contracts in question, and asked you by what authority you made such contracts? To which you replied, "Damfino?"

A. That was gone over before in this case, and I now say that James O'Reilly has recently expressed disapprobation.

Q. What do you mean by "disapprobation?"

The Court: When he said it was recent he evidently answered having that very same thing in his mind.

Q. Then what you have heretofore said in relation to disapprobation or approbation you don't mean to qualify?

A. It is just what I mean to say now.

Q. That is all.

By Mr. M. P. Grey.

Q. You were asked a moment ago whether the acts you did with relation to the Atlantic City property were not wholly conducted with James A. O'Reilly?

A. Yes, sir.

Q. Did the other members of the family ratify what James did?

(Objected to).

The Court: What you are entitled to is—that for years and years James A. O'Reilly represented the estate with Mr. Gardner, and Mr. Gardner made all these sales and negotiations, and that they were carried out by the deeds which you have produced, and that on no occasion did anybody come and notify Mr. Gardner—"You are transacting business here with Mr. James A. O'Reilly, and he does not represent the estate" and you are entitled to have Mr. Gardner say—"None of the other persons interested ever came and told me that I had no business to negotiate through James A. O'Reilly, and that James A. O'Reilly didn't represent the estate"—you are entitled to show all that, if it is true.

Q. (By Mr. Grey): I would like to ask the question whether he, having negotiated with James as referred to by the counsel of the defense—

The Court: Or rather, received his instructions—(question continuing), and made negotiations with James—what did the other members of the family do with regard to the carrying out of those negotiations?

Judge Pancoast: We shall object to it on the ground that it has already been asked and answered repeatedly.

The Court: You may ask him whether or not he ever had any communication, directly or indirectly, with any of the

other members of the family—except such as he had with James A. O'Reilly.

Witness: Well, my answer to that is that I came in contact with no other member of the family, as members of the family. All deeds which I drew in accordance with instructions from James A. O'Reilly came back to me executed by the executors.

Q. That is all.

(Mr. Grey states that he will have several other witnesses on another occasion).

Adjourned to a day to be fixed.

(Following are copies of notices, &c., sworn to by Lewis Evans, Clerk of the County of Atlantic):

ATLANTIC COUNTY CLERK'S OFFICE OF COURT OF COMMON PLEAS.

To all to whom these presents shall come:

Take notice that a suit is pending in the Court of Chancery of New Jersey.

That the following is the title of said cause:

IN CHANCERY OF NEW JERSEY.

BETWEEN JACOB KEIM, *Compl't,* AND CATHERINE C. O'REILLY, EXTRX., &C., *et al.*, *Def'ts.*	BILL FOR SPECIFIC PERFORMANCE.

That the general object of said suit is to compel the specific performance of an agreement between Jacob Keim and Patrick O'Reilly, and also of an agreement between Jacob Keim and the heirs or devisees of said Patrick O'Reilly, for the conveyance to said Jacob Keim of the lands hereinafter described and all riparian rights therein, clear of encumbrance and in fee simple.

The following is a description of the lands and real estate to be affected by the said suit:

All that certain tract of land and premises, situate in Atlantic City, Atlantic County, New Jersey, bounded as fol-

lows: Beginning at a point in the southeasterly line of Pacific Avenue at a distance of 200 feet northeasterly from the northeasterly line of New York Avenue and extending thence (1) southeastwardly on a line parallel with New York Avenue, a distance of 150 feet; thence (2) southwestwardly parallel with Pacific Avenue, a distance of 100 feet; thence (3) southeastwardly parallel with New York Avenue, a distance of 50 feet; thence (4) southwestwardly parallel with Pacific Avenue, a distance of 50 feet; thence (5) southeastwardly parallel with New York Avenue to the exterior line (now under water), established by the Riparian Commissioners of New Jersey; thence (6) northeastwardly along said riparian line a distance of 200 feet; thence (7) northwestwardly parallel with New York Avenue, to the southeasterly line of Pacific Avenue, and thence (8) southwestwardly along said last mentioned line a distance of 50 feet to the place of beginning. And also all the additions and accretion to said tract of land, if any, which may hereafter be made on the sea front, including all the land and rights of said estate between Pacific Avenue and riparian line, and beyond New York and Tennessee Avenues.

Dated April 30, 1892.

GREY & GREY,

Solicitors for & of Counsel with Jacob Keim, Compl't.

Rec'd April 30, 1892, and recorded and filed in the Clerk's Office of Atlantic County, at May's Landing, N. J., in Book No. 1 of Chancery Notices, folio 133, &c.

LEWIS EVANS,

Clerk.

ATLANTIC COUNTY CLERK'S OFFICE OF COURT OF COMMON PLEAS.

To all to whom these presents shall come:

Take notice that a suit is pending in the Court of Chancery of New Jersey.

That the following is the title of the cause:

IN CHANCERY OF NEW JERSEY.

BETWEEN
JACOB KEIM,
Compl't,
AND
CATHERINE C. O'REILLY *et al.*, EXCTRS., AND JAMES A. GRIFFITH,
Deft's.

BILL FOR SPECIFIC PERFORMANCE.

That the general object of said suit is to compel the specific performance of an engagement between Jacob Keim and Patrick O'Reilly, and also of an engagement between Jacob Keim and the heirs or devisees of said Patrick O'Reilly, for the conveyance to said Jacob Keim of the lands hereinafter described and all riparian rights therein, clear of encumbrance and in fee simple.

The following is a description of the lands and real estate to be affected by the said suit:

All that certain tract of land and premises, situate in Atlantic City, Atlantic County, New Jersey, bounded as follows: Beginning at a point in the southeasterly line of Pacific Avenue at a distance of 200 feet northeasterly from the northeastward line of New York Avenue and extending thence (1) southeastwardly on a line parallel with New York Avenue a distance of 150 feet; thence (2) southwestwardly pa allel with Pacific Avenue a distance of 100 feet; thence (3) southeastwardly parallel with New York Avenue a distance of 50 feet; thence (4) southwestwardly parallel with Pacific Avenue a distance of 50 feet; thence (5) southeastwardly parallel with New York Avenue to the exterior line (now under water) established by the Riparian Commissioners of New Jersey; thence (6) northeastwardly along said riparian line a distance of 200 feet; thence (7) northwestwardly parallel with New York Avenue to the southeasterly line of Pacific Avenue; and thence (8) southwestwardly along said last mentioned line a distance of 50 feet to the place of beginning—and also all the additions and accretions to said tract of land, if any, which may hereafter be made on the sea front. Including all the lands and rights of said

estate between Pacific Avenue and riparian line and beyond, and New York and Tennessee Avenues. And a further object of said bill is to set aside and have decreed to be void a certain paper purporting to be an agreement between Catherine C. O'Reilly, as executor of Patrick O'Reilly, with power of sale for the sale of certain lands in said agreement, described as all that tract or piece of land situate in Atlantic City, New Jersey, being all the land lying south of the south line of lots Nos. 33 and 34, in Patrick O'Reilly's plot of lots and extending to the Atlantic Ocean, including the riparian title (which lands so described are part of the lands above described)—which agreement is dated April 21, 1892, and is recorded in the Clerk's Office of Atlantic County, in Book No. 2 of Agreements, folio 373, &c.

GREY & GREY,
Sol's for Jacob Keim, Compl't.

Rec'd, recorded & filed May 28, A. D. 1892, in the Clerk's Office of Atlantic County, at May's Landing, N. J., in Book No. 1 of Chancery Notices, folio 136, &c.

LEWIS EVANS,
Cl'k.

ATLANTIC COUNTY CLERK'S OFFICE OF COURT OF COMMON PLEAS.

To all to whom these presents shall come:

Take notice that a suit is pending in the Court of Chancery of New Jersey.

That the following is the title of said cause;

IN CHANCERY OF NEW JERSEY.

BETWEEN JACOB KEIM, *Compl't,* AND CATHERINE C. O'REILLY *et al.*, EXCTRS., AND LINDLEY & ADAMS & *al.*, *Def'ts.*	ON SUPPLEMENTAL BILL, FOR SPECIFIC PERFORMANCES, &C.

That the general object of said suit is to compel the specific performance of an agreement between Jacob

Keim and one Patrick O'Reilly, and also an agreement between Jacob Keim and the heirs and the devisees of said Patrick O'Reilly, for the conveyance to said Jacob Keim, of the lands hereinafter described, and all the riparian rights therein, clear of encumbrance and in fee simple.

And also to declare null and void and set aside a certain deed, recorded in Atlantic County, Clerk's Office, in Book No. 163 of Deeds, folio 8, &c., purporting to be made by Catherine C. O'Reilly, executrix, &c., to Daniel Lindley, dated the 14th day of April, 1892, and to convey part of the lands hereinafter described. And also a certain deed made by James A. O'Reilly and Francis P. O'Reilly to said Daniel Lindley, dated the 15th day of April, 1892, purporting to confirm the last named deed, and recorded in said Clerk's Office, in Book No. 164 of Deeds, folio 136, &c. And also a certain agreement in writing, recorded in said Clerk's Office, in Book No. 2 of Agreements, folio 373, &c., dated the 15th day of April, 1892, purporting to be an agreement between said Catherine C. O'Reilly, executrix, &c., and one Alfred Adams, jr., for the sale and conveyance of part of the lands hereinafter described. And also a certain deed, recorded in said Clerk's Office, in Book No. 164 of Deeds, folio 158, &c., dated the 1st day of June, 1892, purporting to have been made by Catherine C. O'Reilly, executrix, &c., to Alfred Adams, jr., and to convey part of the lands hereinafter described. And also a certain deed, recorded in said Clerk's Office, in Book No. 163 of Deeds, folio 410, &c., purporting to have been made by said James A. O'Reilly and Francis P. O'Reilly to said Alfred Adams, jr., to confirm the last named deed, made by said Catherine C. O'Reilly, as executrix, &c., to said Adams. And also a certain mortgage, recorded in said Clerk's Office, in Book No. 32 of Mortgages, folio 389, &c., purporting to have been made by said Alfred Adams, jr., to said Catherine C. O'Reilly, as executrix, as aforesaid, to secure the payment of $25,000, part of the purchase money of said deeds to said Adams upon the lands therein described. And in case said deeds and mortgage should for any reason be held forceful and valid, then that the complainant in said suit might be subrogated to the

rights of the defendants in said bill in respect to the consideration money named in the said deeds to said Lindley and Alfred Adams, jr., and to the security for the payment of the purchase money from said Adams, by said indenture of mortgage of said Adams, less the balance of the consideration money agreed to be paid by said complainant for the purchase of said lands. And also that an injunction should issue restraining payment, transfer, or other disposition of said mortgage, or conveyance or encumbrance of said lands, notation, record or registry thereof.

That the following is a description of the lands and real estate to be effected by said suit: All that certain tract of land and premises, situate in Atlantic City, Atlantic County, New Jersey, bounded as follows: Beginning at a point in the southeasterly line of Pacific Avenue, at the distance of 200 feet; northeasterly from the northeasterly line of New York Avenue and extending thence (1) southeastwardly on a parallel with New York Avenue a distance of 150 feet; thence (2) southwestwardly parallel with Pacific Avenue a distance of 100 feet; thence (3) southeastwardly parallel with New York Avenue a distance of 50 feet; thence (4) southwestwardly parallel with Pacific Avenue a distance of 50 feet; thence (5) southwestwardly parallel with New York Avenue to the exterior line now under water, established by the Riparian Commissioners of New Jersey; thence (6) northeastwardly along said exterior line a distance of 200 feet; thence (7) northwestwardly parallel with New York Avenue to the southerly line of Pacific Avenue; thence (8) southwestwardly along said last mentioned line a distance of fifty feet to the place of beginning; and also the additions and accretions to said tract of lands, if any, which may hereafter be made on the sea front. Including all the lands and rights of said estate between Pacific Avenue and riparian line and beyond and New and Tennessee Avenues.

Dated Sept. 22d, 1892.

GREY & GREY,

Sol. Compl't, Jacob Keim.

COUNTY COMMON PLEAS ATLANTIC CO.

Between Jacob Keim, *Compl't*, and Cath. C. O'Reilly, *et al.*, Ext., & Lindley & Adams, *et al.*, *Def'ts.*	Suppl't Bill Notice of *Lis Pendens.*

Rec'd Sept. 23d, A. D. 1892, & recorded in the Clerk's Office of Atlantic County, at May's Landing, N. J., in Book No. 1 of Chancery Notices, folio 143, &c.

LEWIS EVANS, *Clk.*

Atlantic County Clerk's Office of Court of Common Pleas.

To all whom these presents shall come:

Take notice that a suit is pending in the Court of Chancery of New Jersey.

That the following is the title of said cause:

IN CHANCERY OF NEW JERSEY.

Between Jacob Keim, *Compl't*, and Catharine C. O'Reilly, *et al.*, Exctrs., and James Griffith, Shelton *& al.*, *Def'ts.*	On Suppl'l Bill for Specific Performance, &c.

That the general object of said suit is to compel the specific performance of an agreement between Jacob Keim and one Patrick O'Reilly, and also of an agreement between said Jacob Keim and the heirs or devisees of said Patrick O'Reilly, for the conveyance to said Jacob Keim of the lands hereinafter described, and all riparian rights therein, clear of encumberance and in fee simple.

And to set aside and have decreed to be void a certain paper purporting to be an agreement between Catherine C. O'Reilly, as executrix of said Patrick O'Reilly, deceased, with power of sale, &c., and James A. Gtiffith for the sale of certain lands in said agreement described, situate in Atlantic City, New Jersey, being all the lands lying south of the south line of lots Nos. 33 and 34, in Patrick O'Reilly's plot of lots, and extending to the Atlantic Ocean, including the riparian title (which lands so described are part of the lands hereinafter more particularly described), which agreement is dated April, 1892, and is recorded in the Clerk's Office at Atlantic County, in Book No. 2 of Agreements, folio 373, &c., and also to declare null and void a certain deed recorded in Atlantic County Clerk's Office, in Book 164 of Deeds, folio 123, &c., purporting to have been made by Catherine C. O'Reilly, executrix, &c., of Patrick O'Reilly, deceased, to Edward H. Hall. And also a mortgage recorded in said office, in Book No. 32 of Mortgages, folio 264, &c., purporting to have been made by Edward H. Hall to Catherine C. O'Reilly, executrix, &c., to secure the payment of $50,000, part of the purchase money of the said deed, upon the lands therein described. And also a deed recorded in said office in Book No. 164 of Deeds, folio 437, &c., purporting to have been made by said Edward H. Hall and wife to Joseph Shelton, and to convey the lands described in the aforesaid deed and mortgage, or in case of said deeds and mortgage should for any reason be held forceful and valid, then that the complainant in said suit may be subrogated to the rights of defendants in said bill in respect to the consideration money named in said deed to Edward H. Hall, and to the security for the payment thereof by said indenture of mortgage, less the balance of the consideration money agreed to be paid by said complainant for the purchase of said lands. And also that an injunction should issue restraining payment, transfer, or other disposition of said mortgage, or conveyance or encumbrance of said lands, notation, record or registry thereof.

The following is a description of the lands and real

estate to be affected by said suit: All that certain tract of land and premises, situate in Atlantic County, New Jersey, bounded as follows: Beginning at a point in the southeasterly line of Pacific Avenue, at a distance of 200 feet northeasterly from the northeasterly line of New York Avenue, and extending thence (1) southeastwardly on a line parallel with New York Avenue, a distance of 150 feet, thence (2) southwestwardly parallel with Pacific Avenue a distance of 100 feet; thence (3) southeastwardly parallel with New York Avenue a distance of 50 feet; thence (4) southwestwardly parallel with Pacific Avenue, a distance of 50 feet; thence (5) southeastwardly parallel with New York Avenue to the exterior line (now under water) established by the Riparian Commissioners of New Jersey; thence (6) northeastwardly along said exterior line a distance of 200 feet; thence (7) northwestwardly parallel with New York Avenue to the southeasterly line of Pacific Avenue; and thence (8) southwestwardly along said last mentioned line a distance of fifty feet to the place of beginning. And also the additions and accretions to said tract of land, if any, which may hereafter be made on the sea front. Including all the lands and rights of said estate between Pacific Avenue and riparian line and beyond, and New York and Tennessee Avenues. Dated September 22d, 1892.

GREY & GREY,
Sol's. for Complainant.

OFFICE OF CLERK OF COURT OF COMMON PLEAS OF ATLANTIC COUNTY.

BET.
JACOB KEIM,
Compl't,
AND
CATH. C. O'REILLY *et al.*,
EXT'RS, &C., GRIFFITHS,
SHELTON *& al.*,
Def'ts.

IN CHANCERY, N. J.
ON SUPPLE'T'L BILL, &C.,
NOTICE OF *Lis Pendens.*

Rec'd September 23d, A. D., 1892, & recorded in the Clerk's office of Atlantic County, in Book No. 1 of Chancery Notices, folio 146, &c.

LEWIS EVANS, *Cl'k.*

I, Lewis Evans, Clerk of the County of Atlantic, do hereby certify that the foregoing are four full, true and correct copies of *Lis Pendens*, as filed in my said office, and endorsements thereon, and recorded in Book No. 1 of Chancery Notices on pages 133, 136, 143 and 146 respectively.

In Witness Whereof, I have hereunto set my hand and affixed the seal of Atlantic County this fourth day of December, A. D. Eighteen Hundred and Ninety-three (1893), at May's Landing, N. J.

[seal.] LEWIS EVANS, *Clerk.*

IN CHANCERY OF NEW JERSEY.

BETWEEN JACOB KEIM, *Compl't,* AND CATHERINE C. O'REILLY, LINDLEY AND OTHERS, *Def's.*	ON BILL & SUPPLEMENTAL BILL, AFFIDAVITS, &C.
BETWEEN JACOB KEIM, *Compl't,* AND CATHERINE C. O'REILLY, GRIFFITHS AND OTHERS, *Def's.*	ON BILL & SUPPLEMENTAL BILL AFFIDAVITS.

STATE OF NEW JERSEY, } ss:
ATLANTIC COUNTY.

Lewis Evans, of full age, being duly sworn on his oath, saith, that he, this deponent, is the Clerk of the Court of Common Pleas of the County of Atlantic, in the State of New Jersey; that he has carefully compared the foregoing copies of the four notices of *lis pendens* with the originals thereof, on file in his office, in the above entitled causes, and that the foregoing are correct and true copies of the said notices of *lis pendens*, with the endorsements thereon, as the same remains on file in this deponent's said office.

Sworn and subscribed before me, a Master in Chancery of New Jersey, this 4 day of December, 1893.

LOUIS EVANS,
Clerk.

DANIEL E. ISZARD,
Justice of the Peace.

IN CHANCERY OF NEW JERSEY.

BETWEEN
JACOB KEIM,
Complainant,
AND
CATHERINE C. O'REILLY, EXECUTRIX, AND JAMES A. GRIFFITH *et al.*,
Defendants.
BETWEEN
JACOB KEIM,
Complainant,
AND
CATHERINE C. O'REILLY, EXECUTRIX, DANIEL LINDLEY & OTHERS,
Defendants.

TRANSCRIPT OF SHORTHAND NOTES TAKEN AT CHANCERY CHAMBERS, CAMDEN, NEW JERSEY, MONDAY, FEBRUARY 19, 1894, BEFORE HONORABLE HENRY C. PITNEY, VICE CHANCELLOR.

Appearances:

Mr. S. H. Grey and Mr. M. P. Grey, for complainant.

Hon. David J. Pancoast and P. L. Voorhees, Esq., for Mrs. Catherine C. O'Reilly, James A. O'Reilly, &c.

Mr. T. B. Harned, for defendants, Lindley and Adams.

Complainant offers in evidence original deed, Catherine C. O'Reilly, James A. O'Reilly and Francis P. O'Reilly, executors of the last will and testament of Patrick O'Reilly, deceased, and Catherine C. O'Reilly, widow, James A. O'Reilly and Francis P. O'Reilly, John F. O'Reilly and Anthony J. O'Reilly, heirs-at-law of Patrick O'Reilly, deceased, to John S. Taylor, dated 30th of July, 1890, acknowledged 18th of August, 1890, and recorded August 19, 1890, in Clerk's office of Atlantic County, at May's Landing, N. J., in Book 143 of Deeds, folio 147, &c.

Mr. Grey: I want to substitute the original for the certified copy; the making of the certified copy will be found on page 387.

(Said deed marked C. 60 original).

Complainant also offers in evidence original deed of executors of Patrick O'Reilly, deceased, to David Nassano, dated the 10th of September, 1887, acknowledged September 13, 1887, before Jeremiah Hagenman, President Judge of the Court of Common Pleas of the County of Berks, Pa., and recorded in the Clerk's Office of Atlantic County, New Jersey, in Book No. 121 of Deeds, folio 221, &c.

(Marked Exhibit A. for complainant).

Judge Pancoast: We object to the offer of all these papers on the ground heretofore stated, and on the further ground that this is not rebuttal.

(Objection overruled).

Complainant also offers in evidence bond and mortgage from Anna B. Upham to Catherine C. O'Reilly and others, dated March 1, 1888; mortgage is recorded in Clerk's Office of the County of Atlantic, in Book No. 21 of Mortgages, pages 423, &c., also offers in evidence the receipt endorsed upon the mortgage reading—"One thousand two hundred and fifty dollars paid upon the principal of the debt secured by this mortgage immediately after the execution thereof. James A. O'Reilly, Executor." Also offer the receipt, endorsed upon the bond, as follows: "One thousand two hundred and fifty dollars paid upon the principal of this bond immediately after the execution thereof. James A. O'Reilly, Executor." "Interest on the within bond accompanying this mortgage begins from the date of the execution thereof. James A. O'Reilly, Executor."

(Said mortgage having an endorsement in red ink—"This mortgage cancelled of record Dec. 6th, 1893, Lewis Evans, Clerk," marked Exhibit C. for complainant; bond marked Exhibit B. for complainant).

Also offers in evidence assignment of bond and mortgage last mentioned, from the executors of P. O'Reilly to Anthony J. O'Reilly, dated 25th of August, 1890; also assignment of the same mortgage, from Anthony J. O'Reilly to Catherine C. O'Reilly, dated 16th of January, 1892, endorsed on the back

of the assignment. (Said assignments marked Exhibit D. for complainant).

Also the original deed from Catherine C. O'Reilly and others, executors, to Emma L. Schaffer, dated March 27, 1889, and recorded April 3, 1889, in Clerk's Office of Atlantic County, in Book No. 120 of Deeds, folio 536, &c.

(Marked Exhibit E. for complainant).

Also original deed from Catherine C. O'Reilly and others, executors, to Emma L. Schaffer, dated same day, and recorded in Atlantic County Clerk's Office, in Book No. 129 of Deeds, folio 538, &c.

(Marked Exhibit F. for complainant).

JAMES A. O'REILLY, re-called on the part of the complainant in rebuttal.

Direct-examination by Mr. S. H. Grey.

Q. Paper dated "January 18th, 1889," purporting to be a receipt to Emma Schaffer, signed "James A. O'Reilly, executor of Estate of Patrick O'Reilly, dec'd," being shown witness, he is asked to look at the signature and say whether it is in his handwriting?

A. The signature is mine; that is all that is in my handwriting.

Q. He is asked whether the body of the receipt, and the words "Executor of Estate of Patrick O'Reilly, dec'd," beneath the signature are not in the handwriting of Mr. Gardner?

A. Yes, sir; all the balance is in Mrs. Gardner's handwriting.

Mr. Grey: I offer that receipt.

(Receipt marked "Exhibit G. for complainant," and reads "January 18th, 1889).

"Rec'd of Emma Schaffer the sum of fifty dollars on acc't of purchase money for lot seventy-five feet front on Pacific Avenue by one hundred and fifty feet in depth adjoining the Catholic Church and Verona House property in this city. Price to be nine thousand dollars. A deed for said lot to be made and delivered to said Emma Schaffer within fifteen days from the execution of the estate of Patrick O'Reilly, dec'd

upon the execution by her of a purchase money mortgage on said lot for eight thousand nine hundred and fifty dollars.

JAMES A. O'REILLY,

Executor of Estate of Patrick O'Reilly, dec'd."

Q. Witness being shown bond Anna B. Upham to executors of O'Reilly just offered in evidence and marked as an exhibit, his attention is directed to the endorsement on the back of the bond—the first one—signed "James A. O'Reilly, executor."

A. (Looking at said endorsement). The "Executor" is not in my handwriting.

Q. He is asked whether the receipt upon the back of that bond, beneath which the signature is appended, is in the handwriting of Mr. Gardner?

A. Yes, sir, it is.

Q. And the signature is your own, is it not?

A. Yes, sir.

Q. Your attention is now directed to the receipt immediately below that; in whose handwriting is that signature and receipt?

A. (Looking at words—"Interest on the within bond and accompanying mortgage begins from the date of the execution thereof. James A. O'Reilly, Executor.") It is mine.

(By the Court): The word "Executor" under your signature in the receipt above for $1,250 is in the handwriting of the person who drew the receipt?

A. Yes, sir, Senator Gardner's.

Q. Senator Gardner wrote the receipt for $1,250?

A. Yes, sir.

Q. And wrote the word "Executor?"

A. Yes, sir.

Q. Did you see him write it?

A. I don't remember whether I did or not; I could not say that.

Q. (By Mr. Grey): You received the money?

A. Most undoubtedly; I think I did.

Q. As executor of the estate?

A. I received the money.

Q. As executor of the estate?

A. I received it for mother.

Q. The money, the receipt of which is endorsed on the back of the bond, you received—the $1,000?

A. I received the $1,250.

Q. No, I am speaking about that $1,000?

A. It is $1,250.

Q. That $1,250, which is mentioned in that receipt, you received as executor of the estate?

A. No, sir, because I received it for mother, who was the sole executrix in New Jersey; that is exactly what I understood, that she was the sole executrix of New Jersey.

Q. The second receipt is wholly in your handwriting—body and signature?

A. Yes, sir.

Q. Everything about it?

A. Yes, sir.

Q. Including the word "Executor" beneath your signature?

A. Yes, sir.

Q. Just look at the signature there—"Stewart H. Shinn"—who is subscribing witness, do you know the handwriting of Mr. Shinn?

A. I am not very familiar with it, but I would believe it was his handwriting.

Q. Witness is now shown a paper just offered as an exhibit, being an assignment of a mortgage made by Anna B. Upham to the executors of O'Reilly, which assignment is dated August 25th, 1890, purporting to be an assignment made by C. C. O'Reilly, Francis P. O'Reilly, James A. O'Reilly, executors of Patrick O'Reilly, dec'd, and he is asked to look at the signatures of C. C. O'Reilly, Francis P. O'Reilly and James A. O'Reilly, and say whether they are the signatures of the respective parties already named?

A. They are.

Q. And in whose handwriting are the words "Executors of Patrick O'Reilly, dec'd?"

A. H. A. Zieber's.

Q. That assignment purports to transfer the title to the Upham mortgage to Anthony J. O'Reilly, does it not?

A. Yes, sir.

Q. The bond and mortgage were delivered pursuant to that assignment to Anthony J. O'Reilly?

A. Yes, sir.

Q. Now, look at the back of that and notice an assignment purporting to be signed by Anthony J. O'Reilly, and tell me whose assignment that is? That is, the body of it, is in whose handwriting?

A. Mine.

Q. And whose is the signature?

A. Anthony J. O'Reilly's.

Q. Is there a subscribing witness?

A. Two subscribing witnesses, H. A. Zieber and myself.

Q. And those are the signatures of yourself and Mr. Zieber as subscribing witnesses?

A. Yes, sir.

Q. Witness being shown an exhibit purporting to be a mortgage—cancelled—I omitted to say that before—from Anna B. Upham, and her husband, to Catherine C. O'Reilly, he is asked to look at the receipt endorsed on the mortgage, and to state in whose handwriting the body of the receipt is?

A. Mr. Gardner's.

Q. And in whose handwriting is the signature?

A. Mine.

Q. And in whose handwriting is the word "Executor," below your signature?

A. Senator Gardner's.

Q. Witness being shown a deed, just offered, from Catherine C. O'Reilly, and other executors, and others, to John S. Taylor, he is asked to state in whose handwriting are the signatures, "C. C. O'Reilly, James A. O'Reilly, Francis P. O'Reilly."

A. In the handwriting of the respective parties.

Q. And the words "Executors of P. O. Reilly, dec'd," beneath the signature of Francis P. O'Reilly?

A. It is in my handwriting.

Q. And the signatures following that are the original signatures of the persons whose names purport to be signed there, are they not?

A. Yes, sir.

Q. Witness being shown a deed, already marked as an ex-

hibit, dated September 10th, 1887, from executors of Patrick O'Reilly to David Nassano, he is asked to look at the signatures and to see in whose handwriting they are.

A. In the handwriting of the respective parties.

Q. And in whose handwriting are the words "Executors of P. O'Reilly, dec'd?"

A. In my handwriting.

Q. Now, in whose handwriting is the body of the deed?

A. I am puzzled about that, Mr. Grey.

Q. Is that in the handwriting of Francis?

A. I would only say so by comparison with his signature; that is all I would testify to. He generally don't write that way. He signs his name that way, but don't write that way.

Q. Please look at the acknowledgment of that deed, and see in whose handwriting it is.

A. The acknowledgment is Judge Hagenman, President Judge of the Courts of Common Pleas of the County of Berks—oh, you mean the writing of the body of the acknowledgment? I think that is mine; in fact it is mine.

Q. Witness being shown two deeds, which are already marked exhibits, from the executors of O'Reilly to Schaffer, he is asked to state in whose handwriting the signature of those deeds are; are those the original signatures of the parties?

A. Yes, sir.

Q. And the words "Executors of P. O'Reilly, dec'd," are in both deeds in your handwriting?

A. Yes, sir, in both deeds.

Q. That is all.

No cross-examination.

Mr. S. H. Grey: I offer in evidence certified copies of two deeds; one dated the 6th of January, 1887, from Catherine C. O'Reilly and others, executors, to Don. J. Walling, recorded in the Clerk's office of Atlantic County, in Book No. 115 of Deeds, folio 255, &c.

(Marked Exhibit H. for complainant).

And the other deed—from same to same—dated 16th of April, 1888, acknowledged 16th day of April, 1888, and recorded in Book No. 125 of Deeds, folio 112, &c.

(Marked Exhibit I. for complainant).

JAMES FLAHERTY, re-called in rebuttal on the part of the complainant.

Direct-examination by Mr. S. H. Grey.

Q. Witness being shown typewritten letter, dated May 7th, 1880, addressed to "James Flaherty, Esq'r," with an envelope addressed "Jas. Flaherty," and having on the side of the envelope the printed words, "J. J. Gardner, Real Estate Agent & Conveyancer, Atlantic City, N. J.," he is asked to state in whose handwriting the signature to that letter and the address on the envelope are?

A. The address on the envelope is in Mr. Gardner's handwriting and the signature to the letter is also in Mr. Gardner's handwriting.

Judge Pancoast: We interpose the same objection to the testimony of this witness and to the offer of any exhibits.

The Court: I shall have to overrule the objection.

Mr. Grey: I offer that letter.

(Said letter marked "Exhibit J. for complainant," and envelope "J. a for complainant." Following is a copy of the letter:

"ATLANTIC CITY, N. J., May 7th, 1880.

JAMES FLAHERTY, ESQR.

DEAR SIR:—It will be perfectly safe and proper to pay Mr. O'Reilly the balance of the cash purchase money on the lots.

The reason I have not called on you to close the matter is, that I could save you a good many dollars (as we talked about) by waiting till I could use in your case the searches obtained against Mr. O'R. for the W. J. & A. E. R. Co.

Yrs., &c.,

J. J. GARDNER)."

Q. Witness being shown receipt dated May 7, 1880, he is asked in whose handwriting the signature "P. O'Reilly per James A. O'Reilly" is?

A. James A. O'Reilly.

(Said receipt offered and received in evidence and marked Exhibit K. for complainants, and reads:

MERCHANT HOUSE,
JAMES FLAHERTY, PROP'R.
COR. ATLANTIC AND NEW YORK AVES.
ATLANTIC CITY, N. J., May 7, 1880.

Received of James Flaherty the sum of one thousand dollars on account of purchase money of 210 feet by 165 feet on New York Avenue. Cheque for one hundred (100) dollars being given Feby. 26, 1880, and cheque for nine hundred (900) being given this day, making the said sum of one thousand ($1,000) dollars. P. O. O'Reilly, per James A. O'Reilly)."

Judge Pancoast: If you will show us the papers we may admit the signatures.

Mr. Grey: I next offer receipt, as follows: "Received, Atlantic City, N. J., July 18th, 1882 of James Flaherty, Esq., the sum of Fifty-four dollars, interest in full to date on Bond & Mortgage for $900.

JAMES A. O'REILLY,
$54.00. *One of Exrs. of P. O'Reilly.*

(Signature admitted and receipt marked Exhibit L. for complainant).

Mr. Grey: Next offer a letter, as follows:

"READING, PA., July 8th, 1884.

"MY DEAR SIR:—Your favor of the 2nd, containing check for One hundred dollars, received. I am at present clearing office, and as soon as I get settled again will send you agreement in regard to property.

Yours Resp'y,
JAMES A. O'REILLY.

JAMES FLAHERTY,
Atlantic City, N. J."

(Signature admitted and paper marked Exhibit M. for complainant).

Mr. Grey: Next offer a receipt, reading: "Received, Reading, Pa., July 6th, 1885, of James Flaherty, the sum of Three hundred dollars, it being balance of Four hundred dollars due for one year's rent of lots on Tennessee Ave., Atlantic City, ending July 8th, 1885. The said lots were then to be purchased by the said James Flaherty for the sum of Ten thousand dollars, One thousand dollars cash

and Nine thousand dollars at five per cent., payable yearly. It is now agreed that the above conditions of sale shall be continued for one year, except that the rent for the coming year shall be only One hundred dollars.

JAMES A. O'REILLY,

One of the Executors of P. O'Reilly, dec'd."

(Signature admitted and said paper marked Exhibit N. for complainant).

Mr. Grey: I next offer in evidence a cancelled mortgage from James Flaherty to Catherine C. O'Reilly and others, executors of Patrick O'Reilly, dated October 2, 1886, acknowledged October 2, 1886, recorded October 4, 1886, in Book No. 18 of Mortgages, p. 220.

(Said cancelled mortgage marked Exhibit O. for complainant).

Q. In whose handwriting is the acknowledgment of that cancelled mortgage filled up.

A. Lewis Evans.

Q. The acknowledgment, I say?

A. I am unable to say in whose handwriting it is; S. D. Hoffman is the man who took the acknowledgment.

The Court: Probably in Mr. Hoffman's handwriting, judging from the appearance.

Judge Pancoast: I think it is Mr. Hoffman's.

Mr. Grey: I offer in evidence receipt, "Rec'd, Atlantic City, N. J., Feby. 5, 1887, of James Flaherty, the sum of Twenty-nine & $\frac{33}{100}$ dollars, interest in full on two thousand dollars, from Oct. 2, 1886, to Jany. 15, '87, said two thousand dollars having been paid on account of mortgage of nine thousand dollars.

$29\frac{33}{100}$. JAMES A. O'REILLY,

One of the Exrs. of P. O'Reilly, dec'd."

(Signature admitted and paper marked Exhibit P. for complainant).

Mr. Grey: Also offer letter reading as follows:

"READING, PA., 2, 17, 1887.

"MY DEAR SIR:—Your favor rec'd. The other executors do not desire you to move your fence, and I have

made arrangements with Mr. Gardner to do our fencing. You will, therefore, not interfere with the lot. At the present time they also will not sell.

Yours resp'y,
JAMES A. O'REILLY."

JAMES FLAHERTY, Esq.,
Atlantic City, N. J."

(Signature admitted and letter marked Exhibit Q. for complainant).

Mr. Grey: Also offer receipt as follows:

"ESTATE OF P. O'REILLY, Dec'd,
No. 527 Court Street,
Reading, Pa., 3, 7, 1887.

Mr. JAMES FLAHERTY,
Atlantic City, N. J.

The semi-annual interest on your loan of $7,000 will be due Apr. 2, 1887. Please remit the same to this office by check to our order, on or before that date. $175.

Resp'y,
JAMES A. O'REILLY, *Exr.*"

(Signature admitted and said letter marked Exhibit R. for complainant).

Mr. Grey: I offer receipt.

"Estate of P. O'REILLY,
527 Court Street,
No. 110. Reading, Pa., March 16, 1887.

Received of James Flaherty, Esq., four hundred and twenty dollars int. on mtg. and bond of $7,000, one year, Atlantic City, $420.$^{00}_{100}$ JAMES A. O'REILLY,
One of the Exors. of P. O'Reilly."

(Signature admitted and receipt marked Exhibit S. for complainant).

Mr. Grey: I offer receipt:

"Received, Atlantic City, N. J., June 25, 1887, of James Flaherty, the sum of one hundred and sixty-six—67-100 dollars in full for interest on five thousand dollars, from Oct. 2, 1886, to date, the above five thousand dollars being portion of mortgage of nine thousand dollars.

$166.67. JAMES A. O'REILLY.
One of the Exrs. of P. O'Reilly, dec'd."

(Signature admitted and receipt marked T. for compl't).

Mr. Grey: Another receipt: "Estate of P. O'Reilly, 527 Court Street.
No. 162.

READING, PA., Oct. 15, 1887.

Received of James Flaherty, one hundred & no | 100 dollars Int. for one year on balance of Mtg. of $9,000 at 5 per cent., $100.00; James A. O'Reilly, one of the Exors. of P. O'Reilly, dec'd."

(Signature admitted and receipt marked Exhibit U. for complainant).

Mr. Grey: Offers a letter: "Reading, Pa., 3, 12, 1888. Dear Sir:—Your favor of the 20th ult. enclosing check for $2,041.70 rec'd. I have been away from home for over two weeks and that is the reason you have not heard from me. I enclose Mtg. & bond.

Yours res'py,
JAMES A. O'REILLY.

JAMES FLAHERTY,
Atlantic City, N. J."

(Signature admitted and letter marked V. for complainant).

Mr. Grey: Letter dated Reading, Pa., 3rd, 22, 1888; also the envelope addressed to "Mr. James Flaherty, Atlantic City, N. J.," and having Mr. James A. O'Reilly's business card in upper left hand corner.

(Signature to letter and address on envelope admitted to be in handwriting of Mr. James A. O'Reilly; letter marked Exhibit W. for complainant; envelope W. a. for complainant. Following is a copy of Exhibit W.:

"READING, Pa., 3rd, 22, 1888.

DEAR SIR:—Your favor of Mch. 15th enclosing check for four hundred and twenty dollars ($420), amount of interest for one year on mortgage on seven thousand dollars ($7,000), received. I enclose you receipt for same. You inquired what was the price for the seventy-five (75) foot lot on Pacific Avenue. The executors will sell the same for *cash* at nine thousand dollars ($9,000).

Yours respy,
JAMES A. O'REILLY.

To JAMES FLAHERTY,
Atlantic City, N. J.)"

Mr. Grey: I also offer receipt: "Received, Philad'a, March 12, 1890, of James Flaherty, the sum of Four hundred and twenty dollars, interest for one year on bond and mortgage for one year, Atlantic City property, $7,000.

JAMES O'REILLY,
One of the Exrs. of P. O'Reilly, dec'd."

(Signature admitted and said receipt marked Exhibit X. for complainant).

Mr. Grey: I offer all these papers, the signatures to which I understand are admitted to be in the handwriting of Mr. James A. O'Reilly, and also all the other papers that I have offered.

Judge Pancoast: Objected to on the ground that they are incompetent, and irrelevant and not rebuttal.

The Court: I admit them all.

Q. Cross-examined.

No cross-examination of Mr. Flaherty.

NORMAN GREY, re-called on the part of the complainant.

Direct-examination by Mr. S. H. Grey.

Q. Mr. Grey, when you went over to New York, as you did, as you have already testified I think, where did you find Mr. Shelton?

A. I found him in the employ of R. D. Wood & Company, I don't know the exact location now; it is on a numbered street off 6th Avenue, 13th or 14th or 15th—some such number as that. I don't think that I testified before that I went to New York to see Mr. Shelton in this case.

Q. Did you go to New York?

A. I did go to New York; in October, 1892, I think it was.

Q. Did you see Mr. Shelton?

A. Yes, I saw Mr. Shelton in R. D. Wood & Company's place.

Q. Was he at the office of R. D. Wood & Co. at that time?

A. Yes, sir, at their place.
Q. In their employ?
A. In their employ.
Cross-examination by Judge Pancoast.
Q. How did you know he was in their employ?
A. When I got to the office of R. D. Wood & Company I inquired for Mr. Shelton, and they told me that Mr. Joseph H. Shelton was employed there as a clerk, but that he was not in; and I sat down and waited for him, and presently a gentleman came in; and the clerk of whom I had made the inquiry told me that was Mr. Shelton who was employed there; and I asked him if he were the Mr. Shelton in the employ of R. D. Wood & Company, and if his name was Joseph H. Shelton, and he said he was employed there, and that that was his name, and I served him with the papers in this case—an injunction I believe it was.
Q. That is all you know about it?
A. That is all I know about his being in the employ of R. D. Wood & Company.
Q. Did you know him?
A. No, sir; I never saw him before.
Q. (By the Court): Was there a sign up over the door?
A. There was a sign up over the door and I inquired if that was the office af R. D. Wood & Company.
Q. What do they do there?
A. It is a very large building; the ground floor, the front part of it, was used in storing goods.
Q. What kind of goods?
A. I don't know; they were all covered goods; some of them were covered with burlap and some of them were in boxes; I didn't see the goods themselves.
The Court: Do R. D. Wood & Company deal in dry goods?
Mr. S. H. Grey: Oh, yes.
Witness: I was referred to the New York house by a clerk in the employ of the Philadelphia house and was told their address in New York; that is the reason I happened to go there, otherwise I would not have known about it.

Q. Was the address to which you went in New York the one to which you were referred in Philadelphia?

A. Yes, sir.

Q. And there you found the name of R. D. Wood & Company?

A. Yes, sir.

(Judge Pancoast moves to strike out the evidence of the witness as being the result of hearsay entirely; motion denied).

Case closed.

IN CHANCERY OF NEW JERSEY.

BETWEEN

JACOB KEIM,

Complainant,

AND

CATHARINE C. O'REILLY, Executrix, and JAMES A. GRIFFITH, *et als*,

Defendants.

BETWEEN

JACOB KEIM,

Complainant,

AND

CATHARINE C. O'REILLY, Executrix, DANIEL LINDLEY AND OTHERS,

Defendants.

Transcript of shorthand notes taken at Chancery Chambers, Camden, New Jersey, Tuesday May 1, 1894, before Honorable Henry C. Pitney, Vice Chancellor.

Appearances as heretofore.

Mr. M. P. Grey: I have here a notice to Judge Pancoast, the solicitor for the O'Reillys, which was served upon him:

"To David J. Pancoast, Esquire, Solicitor for O'Reilly, et als., defendants. Sir: Take notice, that you are required to produce before the Honorable Henry C. Pitney, Vice Chancellor, &c., at Chancery Chambers, Camden, New Jersey, on Monday, the 19th day of March instant, at 11 o'clock forenoon, or as soon thereafter as the Court can take cognizance of the same, the following named papers, which you were heretofore requested to produce, but which have not yet been produced and offered in evidence:

1. Letters of Newton Keim to James A. O'Reilly, dated December 3, 1885, and September 15, 1886.

2. Letters testamentary on estate of Patrick O'Reilly, granted at Reading, Pa.

3. Letters testamentary on same estate, granted at Mays Landing, New Jersey.

4. Statements, books, accounts of the executors and of James A. O'Reilly with the estate.

5. Release given by heirs to executors of P. O'Reilly estate.

6. List of prices of Atlantic City lots fixed by Patrick O'Reilly; bank book showing deposit of purchase money received from both Lindley and Hall.

7. Map which Gardner used to sell lots by, which he testified was taken from his office by James O'Reilly.

8. Map used in the Kuehnle trial, December 30th, 1889, on which James O'Reilly then testified there was handwriting of Gardner and others.

9. Letter of Newton Keim addressed to P. L. Voorhees, Esq., dated November 27th, 1883, copy of which was read in evidence.

10. Agreement of purchase of Lindley with Catherine C. O'Reilly, or receipt for "hand" money referred to in the testimony in this case.

Dated March 15th, 1894.

Your obd't servants,

GREY & GREY,

Sols. for Complt."

(Offered in evidence and marked Exhibit C1 on May 1st, 1894.)

Mr. M. P. Grey: I will put the response in evidence and have it marked.

"To Grey & Grey. Dear Sirs: In reply to your demand for the production of papers in this case, dated March 15th, 1894, I have to say:

1. We have not.

2 and 3. We have, and they are at your service.

4. Are not in existence.

5. We have, and it is at your service.

6. List of prices we do not have. We have the bank

book, which you cannot have, as you already have a copy of that part of the same offered by you. You can compare your copy in the notes of testimony with the original.

7. We have no such map.
8. Is at your service.
9. Is at your service.
10. There is no such agreement.

Yours, &c.,

D. J. PANCOAST,
Sol'r of O'Reillys.

Camden, March 26th, 1894."

(Marked C2, for May 1st, 1894.)

Mr. Grey, on the part of the complainant, calls upon Judge Pancoast to produce the papers named in his acknowledgment of service and proffer of willingness to do, and which is marked Exhibit C2 .

Mr. M. P. Grey: There is another matter preliminary here, which may possibly require a slight addition to the proof, in order to present this case before your Honor properly. When the bill was filed the complainant was under the belief, in so far as there was anything on the records in this State, as I understand it, to indicate what the true condition of the title of the O'Reillys was, that Mary A. O'Reilly appeared to be, under the recorded will of Patrick O'Reilly, in Atlantic county, a *cestui que* trust of a portion of the estate of Patrick O'Reilly by a devise to James A. O'Reilly in trust for her, Mary. It seems that precedently to the filing of the bill Mary had died, having previously, under the power created under the will of Patrick O'Reilly, devised her interest in the estate standing in the name of James A. O'Reilly as trustee to her mother, Catharine C. O'Reilly, in fee. That will has not been offered in evidence here, as I understand it, and that will is not recorded in Atlantic county, but it is set up in the answer of Catherine C. O'Reilly in denial of the allegation of title in Mary A., or in James A., as trustee for Mary, and there it is shown that Catharine C. O'Reilly received

by this devise a fee simple interest in that portion which Mary, by the will of Patrick, was enabled to devise. Now, if it be necessary to offer in evidence the will of Mary—we don't want to delay the argument at all—but in order that the argument may be intelligently made to the Court, and that the Court may not be limited by a technical omission, we would like to have the right to offer in evidence the will of Mary O'Reilly, taken from the records by exemplification in Berks county Register of Wills office.

The Court: One moment, right there: what do you say to that, gentlemen?

Mr. Voorhees: I think we have no objections whatever.

Mr. M. P. Grey: Now, still in the line of putting the record straight. C. C. O'Reilly, pending this suit, has departed this life, having first made her last will, which, as I understand it, has been offered in evidence. No change, however, because of her decease and devise, has been made in the record or in the parties, and I can't recall what disposition she made.

Mr. James A. O'Reilly: There is a devise in trust for John, and in trust for Anthony, and two fees to brother Francis and myself.

Mr. Grey: The effect of that is to slightly vary the manner of holding, from that which is charged in the bill; but they are all here, and we therefore suggest to the Court that such amendment as may be necessary, if any amendment is necessary to affect the title of the persons presently holding in the suit (parties defendant), may be made in the proceedings.

The Court: The best disposition to make of both those matters is to leave them until the Court comes to consider the case.

Mr. Grey: I want to make it now, because if any argument is to be addressed to the Court——

The Court: Subject to what the other side may say, I think you are in time in making the suggestion.

Mr. Voorhees: We did produce one of the papers here, and I thought it was marked—the letters testa-

mentary on the will of Patrick O'Reilly, granted to C. C. O'Reilly by the Surrogate of Atlantic county. They demanded it here in the proceedings, and I produced it, and I thought it was marked. It is not marked.

(Said will, with letters testamentary annexed, issued July 5th, 1881, by the Surrogate of Atlantic county, New Jersey, marked D1 for May 1st, 1894.)

Mr. Voorhees: Proved in New Jersey by the filing of an exemplified copy under the statute—23d, 24th and 25th sections of the Orphans' Court Act.

During the course of the argument Mr. M. P. Grey, counsel for complainant, made the following offer:

Mr. Grey: If it be necessary in your Honor's inquiry to amend the original bill in the case—the first bill against Lindley and Adams and O'Reillys—so that it shall appear that the total amount paid upon both contracts shall be five hundred and twenty-five dollars, and not five hundred dollars, we desire leave to make such an amendment to comport with the proofs.

Mr. Grey: If the statements in the bills should be considered or construed an offer to pay any less than twelve thousand five hundred dollars as the total purchase price on both contracts, we desire the bill to be amended.

The Court: Counsel alleging that they recognize the obligation to pay the two sums—ten thousand dollars, and two thousand five hundred dollars—less amount of actual cash paid, five hundred and twenty-five dollars.

Mr. Grey: Yes, sir.

IN CHANCERY OF NEW JERSEY.

BETWEEN
JACOB KEIM,
Complainant,
and
CATHERINE C. O'REILLY, Executrix, &c., and DANIEL LINDLEY, *et al*,
Defendants.

ON BILL, &c., for SPECIFIC PERFORMANCE.

IN CHANCERY OF NEW JERSEY.

BETWEEN
JACOB KEIM,
Complainant,
and
CATHERINE C. O'REILLY, Executrix, &c., and JAMES A. GRIFFITH, *et al*,
Defendants.

ON BILL FOR SPECIFIC PERFORMANCE.

There being the same complainant in both the above entitled causes, and the relief sought therein being upon the same contracts, and the testimony having been taken together, and both causes argued as one suit, by the same counsel; and it appearing to be just and equitable that said two several causes should be consolidated;

It is, on this ninth day of April, eighteen hundred ninety-five, ordered and decreed that from and after the date hereof, the said two several causes be and the same are hereby consolidated, and that all proceedings shall, after this date, be taken and done as in one consolidated suit.

Respectfully advised,
A. T. McGILL, *C.*

H. C. PITNEY, *V. C.*

IN CHANCERY OF NEW JERSEY.

BETWEEN JACOB KEIM, *Complainant*, AND CATHARINE C. O'REILLY, Executrix, &c., and DANIEL LINDLEY, *et al.*	ON BILL, &c. ORDER THAT SUIT STAND REVIVED.

It appearing that the defendant, Catharine C. O'Reilly, who was (with the other defendants, Francis P. O'Reilly, and James A. O'Reilly) an executor of the last will of Patrick O'Reilly, deceased, and was also a defendant in her own right, has departed this life, pending the hearing of this cause, and that said defendants, other executors of said Patrick O'Reilly's will, survive her; and it further appearing that the said Catharine C. O'Reilly, by her last will, &c., devised her own estate in the lands affected by this suit to Francis P. O'Reilly, as trustee, &c., for John F. O'Reilly and Anthony J. O'Reilly, and also in his own right, and to James A. O'Reilly, and appointed said Francis P. O'Reilly executor of said will, with a power to sell lands, &c., and all whom are now parties to this cause in other capacities than as devisees of said Catharine, upon application of the complainant herein, and upon due notice given to the solicitors of all defendants:

It is, on this ninth day of April, eighteen hundred and ninety-five, ordered and decreed, that this suit do stand revived as against said Francis P. O'Reilly, executor of the last will of said Catharine C. O'Reilly, deceased, Francis P. O'Reilly, trustee under the last will of Catharine C. O'Reilly, for John F. O'Reilly, Francis P. O'Reilly, trustee under the last will of Catharine C. O'Reilly, for Anthony J. O'Reilly, Francis P.

O'Reilly, in his own right, and James A. O'Reilly, as defendants herein:

It is further ordered, that a copy of this order be served upon these defendants, either personally or by leaving the same at their places of residence, either within or without this State, or with their solicitors.

And it is further ordered, that unless said defendants do appear and proceed in this cause, as if this suit had been revived by bill against them, within ten days after the date of such service, then the answers of said Catharine C. O'Reilly in this cause filed, shall be deemed and taken as and for the answers of her said executors and devisees, hereinbefore named.

Respectfully advised,
H. C. PITNEY,
Vice Chancellor.

A. T. McGILL,
Chancellor.

IN CHANCERY OF NEW JERSEY.

BETWEEN
JACOB KEIM,
Complainant,
AND
CATHERINE C. O'REILLY
et al.,
Defendants.
} ON BILLS, &c.

BETWEEN
JACOB KEIM,
Complainant,
AND
CATHERINE C. O'REILLY
et al.,
Defendants.
} ON BILLS, &c.

EXHIBITS OF DEFENDANTS.

EXHIBIT D 1.

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

The tition of Catherine C. O'Reilly, of the City of Reading, County of Berks, in the State of Pennsylvania, respectfully showeth, that Patrick O'Reilly, late of said city, on or about the sixteenth day of January, eighteen hundred and eighty-one, departed this life, having first made and published his last will and testament in writing, bearing date the fifth day of December, one thousand eight hundred and seventy-seven, and codicil to said last will and testament in writing, bearing date the first day of November, one thousand eight hundred and eighty, which said last will and testament and codicil hath been duly proved and admitted to probate in said State of Pennsylvania, and letters testamentary thereon issued and granted to Catherine C. O'Reilly, Francis P. O'Reilly and James A. O'Reilly, and it hath become necessary

and desirable for the said executors to have such last will and testament duly proved and recorded in this State, according to the statute in such case made and provided. Your petitioner therefore makes application and prays that upon filing a duly exemplified copy of said last will and testament and codicil (now produced) you will make and order that cause be shown before you at a certain time and place expressed in said order not less than thirty days nor more than six months from the time of making the same, why, a duly certified copy of said last will and testament and codicil should not be filed and recorded in your office and letters testamentary thereupon be issued to the said petitioner, Catherine C. O'Reilly, dated May 19th, 1881. C. C. O'REILLY.

By Solomon R. Devinney, Surrogate of the County of Atlantic:

Catherine C. O'Reilly, one of the executors named in the last will and testament of Patrick O'Reilly, late of the City of Reading, County of Berks and State of Pennsylvania, having filed in my office a copy of said last will and the codicil thereto exemplified and attested as such true copy in the manner required by the laws of the said State of Pennsylvania, so as to be legal evidence in said State, under the hand and official seal of S. S. Kindt, Esquire, Register of Wills, of said County of Berks, whose attestation is verified by the certificate of J. Hagenman, President Judge of said County of Berks, whose verification is attested under the hand and official seal of Amos Weiler, Prothonotary, of said County of Berks, whereby it appears that the said last will and codicil have been admitted to probate by said S. S. Kindt, Esquire, Register, &c., as aforesaid, and the said Catherine C. O'Reilly, having applied to me to have the said will proved and recorded in this State, pursuant to the statute in such case made and provided, I do hereby order that cause be shown before me at my office in the said County of Atlantic, on the fifth day of July, A. D. 1881, at the hour of ten o'clock in the forenoon why said copy of said last will and codicil duly certified under the statute as aforesaid, should not be filed and recorded in my office, and letters testamentary thereon issued to the said Catherine C. O'Reilly, and that this order be published in the May's Landing Record, a newspaper printed and

published in this county, for the space of thirty days next preceding said day.

Given under my hand this first day of June, in the year of our Lord one thousand eight hundred and eighty-one (1881).

S. R. DEVINNEY,
Surrogate.

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

I, William G. Taylor, editor and proprietor of the May's Landing Record, a newspaper printed and published in this county, being sworn according to law, on his oath deposeth and saith that the foregoing order was published in his paper, the May's Landing Record, for at least four weeks successively, once a week, preceding this day.

Sworn and subscribed before me July 5th, A. D. 1881. } WM. G. TAYLOR.
S. R. DEVINNEY, *Sur'g.* }

By Solomon R. Devinney, Surrogate of the County of Atlantic:

WHEREAS, On the first day of June last I did make an order, of which the foregoing is a true copy, and now, at the time and place appointed, the said Catherine C. O'Reilly produced before me a copy of the said will and codicil of the said Patrick O'Reilly, deceased, and proved to my satisfaction that the same was exemplified and attested to be a true copy thereof in the manner in which copies of such instruments are usually attested and exemplified in the State of Pennsylvania, and that such copy would be received in evidence in the courts of such State, and it being proved to my satisfaction that my order aforesaid hath been duly advertised and published in the manner therein directed, and no sufficient cause appearing or being shown to the contrary, I have recorded the said will and codicil and filed the said copy thereof and granted letters testamentary to the said Catherine C. O'Reilly, one of the executors therein named. Bond having been by her given as required by law in such cases.

Given under my hand this fifth day of July, in the year of our Lord one thousand eight hundred and eighty-one (1881).

S. R. DEVINNEY,
Surrogate.

By the tenor of these presents I, S. S. Kindt, Register for the Probate of Wills and granting letters of administration in and for the County of Berks, do make known unto all people that on the twenty-fifty day of January, 1881, before me was proved, approved and insinuated the last will and testament of Patrick O'Reilly, late of the City of Reading, in the County of Berks, deceased, a true copy whereof is to these presents annexed, having, whilst he lived and at the time of his death, divers goods, chattels, rights and credits within the said County, by means whereof the approbation and insinuation of the said Will and Testament and committing the administration and final dismission from the same to me is manifestly known to belong, and administration of all and singular the goods, chattels, rights and credits any wise belonging to the said deceased, and his last Will and Testament was committed to Catherine Cecelia O'Reilly, Francis P. O'Reilly and James A. Reilly, executors in the said Testament named, chiefly of well and truly administering the goods, rights and credits of the said deceased, and making a true and perfect inventory thereof, and exhibiting the same in the Register's office at Reading, in the County of Berks, on or before the twenty-fifty day of February next, and rendering a true and just account, calculation and reckoning of the said administration when thereupon required. The said executors were duly qualified thereunto, died on the 16th day of January A. D. one thousand eight hundred and eighty-one, at 4.30 o'clock A. M.

{ SEAL. }

In testimony whereof, I have hereunto set my hand and seal of office at Reading, the twenty-fifth day of January, Anno Domini one thousand eight hundred and eighty-one.

S. S. KINDT,

Register.

I, Patrick O'Reilly, 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, hereby revoking and making void all former Wills by me at any time heretofore made, and

First, I direct all my debts and funeral expenses to be fully

paid and satisfied by my executors hereinafter named, as soon as conveniently may be after my decease.

Item, To my dear wife, Catherine Cecelia O'Reilly, I give, devise and bequeath during her natural life, the whole of my estate, real, personal or mixed, and after her death then I order and direct that my remaining estate be divided into five equal parts or shares, and disposed of as follows, to wit:

One full equal one-fifth part or share thereof I give, devise and bequeath unto my son, John F. O'Reilly, and his heirs and assigns forever.

One full equal one-fifth part or share thereof I give, devise and bequeath unto my son, Francis P. O'Reilly, and his heirs and assigns forever.

One full equal one-fifth part or share thereof I give, devise and bequeath unto my son, Francis P. O'Reilly, in trust, to be invested in real or other good security, under the direction and approval of the Orphans' Court of Berks County, and only the profits, interest or income arising from and out of said share shall be paid to my son, Anthony J. O'Reilly, during his natural life, and in such manner that said income, interest or profit shall be for his sole and separate use and in no way liable for any debts, contracts or engagements or any pledge, assignment or transfer of the same, and his personal receipt shall alone discharge the said trustee of and from the payment of said profit, interest or increase as the same becomes due, and I direct that the same be paid to my son Anthony J. semi-annually, and I further direct and order that my said son Anthony J. shall have full power to dispose and bequeath the principal of said share by his last will and testament or by any other instrument by him executed in the nature of a testamentary disposition, and in default of such last will and testament, or any other testamentary disposition of said share by him made, then the same shall descend to and vest in any lawful issue he may leave, share and share alike, and the issue of any deceased child living at the time of his death, the issue of such deceased child to take the share of his, her, or their deceased parent, and in default of such last will and testament or testamentary disposition, and in further default of such issue or the issue of any deceased child, then the said share shall descend to and vest in the brothers and sister

of the said Anthony J., or the issue of any deceased brother or sister living at the time of his death, such issue to take the share of their deceased parent respectively.

One full equal one-fifth part or share thereof I give, devise and bequeath unto my son James A. O'Reilly and his heirs and assigns forever.

One full equal one-fifth part or share thereof I give, devise and bequeath unto my son James A. O'Reilly in trust to be invested in real or other good security under the direction and approval of the Orphans' Court of Berks County, and only the profits, interest or income arising from and out of said share shall be paid to my daughter, Mary A. O'Reilly, during her natural life, and in such manner that said income, interest or profit shall be for her sole and separate use and in no way liable for any debts, contracts and engagements, or any pledge, assignment or transfer of the same, or for any debts, contracts or engagements of any husband she may have or take, and her personal receipt shall alone discharge the said trustee of and from the payment of said profit, interest or increase as the same becomes due, and I order and direct that the same be paid to my said daughter, Mary A., semi-annually, and I further order and direct that my said daughter, Mary A., shall have full power to dispose and bequeath the principal of said share by her last Will and Testament, or by any other instrument by her executed in the nature of a testamentary disposition, and in default of such last Will and Testament, or any other testamentary disposition of said share by her made, then the same shall descend to and vest in any lawful issue she may leave, share and share alike, and the issue of any deceased child living at the time of her death, the issue of such deceased child to take the share of his, her, or their deceased parent, and in default of such last Will and Testament, or testamentary disposition, and in further default of such issue or the issue of any deceased child, then the said share shall descend to and vest in the brothers of the said Mary A., or the issue of any deceased brother living at the time of her death, such issue to take the share of their deceased parent respectively.

Item. In case of the decease of my said sons John F. O'Reilly, Francis P. O'Reilly or James A. O'Reilly, or either

of them, without leaving lawful issue, then, and in such case, I give, devise and bequeath the said part or share hereinbefore given, devised and bequeathed to such child so dying unto my said executors hereinafter named, and the survivor of them in trust to hold the same for my surviving child or children in equal shares and under the trust and limitations as are hereinbefore set forth and declared of and concerning the parts or shares of my said residuary estate hereinbefore given, devised and bequeathed for the use, benefit and behoof of my said children respectively.

Item. I give to my executors hereinafter named or the survivor of them, full power and authority to sell and dispose of any and all my property and estate, real and personal, at public or private sale at such times and such prices as they may deem best, and to execute a deed or deeds for said real estate or any part thereof to the purchaser or purchasers their or any of their heirs or assigns in fee simple.

Item. I give, devise and bequeath to my dear wife, Catherine Cecelia, all my personal property that is in my house, No. 302 South Fifth Street, to have and to hold the same to herself, her heirs and assigns forever.

And lastly, I do nominate, constitute and appoint my beloved wife, Catherine Cecelia O'Reilly, and my sons Francis P. O'Reilly and James A. O'Reilly to be the executors of this my last Will and Testament.

In witness whereof, I, Patrick O'Reilly, the testator, have to this my will, written on four sheets of paper, set my hand and seal this fifth day of December, A. D. one thousand eight hundred and seventy-seven.

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.

PATRICK O'REILLY. [SEAL.]

S. M. MEREDITH,
B. FRANK DETTRA.

New Jersey State Library

I, Patrick O'Reilly, the within named testator, do hereby make and publish this codicil to my last will and testament, bearing date the 5th day of December, A. D. 1877, in manner following, to wit:

I do revoke the devise and bequest in my said will contained, of one full equal one-fifth part or share of my estate remaining after the death of my beloved wife Catherine Cecelia O'Reilly, to Francis P. O'Reilly in trust for my son Anthony J. O'Reilly, and do hereby give, devise and bequeath the said full equal one-fifth part or share of my estate unto my said son Anthony J. O'Reilly and his heirs and assigns forever.

In witness whereof, I have hereunto set my hand and seal this First Day of November, A. D. One Thousand Eight Hundred and Eighty.

Signed, sealed, published and declared by the above named Patrick O'Reilly as and for a codicil to his last will and testament in the presence of us who have hereunto subscribed our names at his request as witnesses hereto in the presence of the said Testator and of each other. } P. O'Reilly. [seal.]

Mary E. O'Reilly,
Sophia Nesenson.

Berks County, ss:

I do hereby certify the foregoing to be a true and correct copy of the original last will and testament of Patrick O'Reilly, deceased, as filed in the Register's office, in and for the County of Berks, and that the same is exemplified and attested as such true copy in the manner required by the laws of the State of Pennsylvania, and so as to be legal evidence in said State. Given under my hand and seal of office this twenty-fifth day of January, A. D. one thousand eight hundred and eighty-one. { seal. }

S. S. KINDT,
Register.

STATE OF PENNSYLVANIA, } ss:
COUNTY OF BERKS. }

I, Jeremiah Hagenman, Esquire, President Judge of the Courts of Berks County, do certify that the foregoing copy of will of Patrick O'Reilly, dec'd, and attestation of S. S. Kindt, Esquire, Register of Wills of Berks County, 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 the 9th day of May, eighteen hundred and eighty-one.

J. HAGENMAN,
President Judge.

STATE OF PENNSYLVANIA, } ss:
COUNTY OF BERKS. }

I, Amos Weiler, Esquire, Prothonotary of the Court of Common Pleas of Berks County, do certify that the Honorable Jeremiah Hagenman, Esq., 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 Courts of Berks County, 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 justice as elsewhere.

In testimony whereof, I have hereunto set my hand and affixed the seal of the said Court the 9th day of May, A. D. 1881.

AMOS WEILER,
Prothonotary.

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

I, S. R. Devinney, Surrogate of the County of Atlantic, and Clerk of the Orphans' Court thereof, do hereby certify the annexed to be a true copy of the last Will and Codicil of Patrick O'Reilly, late of the City of Reading, County of Berks, and State of Pennsylvania, deceased, and that Catherine C. O'Reilly, one of the executors therein named, proved the same before me, and is duly authorized to take upon herself the administration of the estate of the testator agreeably to the said Will and Codicil, in the said State of New Jersey.

{ SEAL. }

Witness my hand and seal of office this fifth day of July, in the year of our Lord one thousand eight hundred and eighty-one (1881).

S. R. DEVINNEY,
Surrogate.

EXHIBIT D. 1.

THIS INDENTURE, made the twenty-ninth day of October, A. D. 1889, between John F. O'Reilly, of the City of Reading, of the first part, and Catherine Cecilia O'Reilly, of the same place, of the second part, WITNESSETH:

That the said John F. O'Reilly, for and in consideration of the sum of one dollar to him in hand paid by the said Catherine Cecilia O'Reilly, at and before the ensealing and delivery hereof, the receipt whereof is hereby acknowledged, and for and in consideration of the payments hereinafter mentioned to be made by the said Catherine Cecilia O'Reilly, has granted, bargained, sold, aliened, released, and confirmed unto the said Catherine Cecilia O'Reilly, and to her heirs and assigns, all his, the said John F. O'Reilly's, part and interest of and in the lands and tenements and hereditaments wheresoever situate, of the late Patrick O'Reilly and all and any of the lands, tenements and hereditaments and realty which at any time heretofore formed, now form or which may hereafter form part of the estate of the said Patrick O'Reilly and the said John F. O'Reilly does hereby, for the same consideration, bargain, sell, release, grant and confirm unto the said Catherine Cecilia O'Reilly all his, the said John F. O'Reilly's, interest in the personal property of the late Patrick O'Reilly, deceased, and the personal property which at any time heretofore formed, now forms or hereafter may form part of the estate of Patrick O'Reilly, deceased.

As an additional consideration for the said conveyance, the said Catherine Cecilia O'Reilly covenants as follows:

First. The said Catherine Cecilia O'Reilly will pay to the said John F. O'Reilly the sum of three thousand two hundred and fifty ($3,250.00) dollars immediately upon the execution and delivery of this instrument.

Second. The said Catherine Cecilia O'Reilly will assume

all the indebtednesss of the said John F. O'Reilly to the estate of Patrick O'Reilly, amounting to the sum of thirty-seven thousand two hundred and thirty-eight dollars and thirty cents ($37,238.30), principal, and five thousand one hundred and eighty-six dollars and thirty-three cents ($5,186.33) interest, and she will, furthermore, promptly procure to be cancelled and surrendered all bonds and evidences of indebtedness held by the said estate against him, the said John F. O'Reilly.

Third. She will pay to the said John F. O'Reilly monthly during her, the said Catherine Cecilia O'Reilly's, life the sum of one hundred ($100.00) dollars, the same to be payable only to the said John F. O'Reilly and not to be assigned by him, or parted with by anticipation in anywise, nor to be attachable by any of his creditors, and this to be regarded as one of the fundamental conditions of this covenant.

The above to constitute the full and sole consideration for the absolute conveyance and transfer of the said John F. O'Reilly's interest in the estate of Patrick O'Reilly, as aforesaid.

Upon the decease of the said Catherine Cecilia O'Reilly, when under the terms of the will of the said Patrick O'Reilly, deceased, his estate is to be distributed, if, according to the accounts of the executors, the balance or balanc s therein appearing and any appraisement or sale in partition which may be made of the realty it shall appear that the interest, so as aforesaid transferred and acquired by the said Catherine Cecilia O'Reilly from the said John F. O'Reilly, shall exceed in value the aggregate of the following sums, viz.: the indebtedness, so as aforesaid assumed by the said Catherine Cecilia O'Reilly, amounting to $37,238.30, the interest thereon, amounting as aforesaid to five thousand one hundred and eighty-six dollars and thirty-three cents ($5,186.33), the said sum of three thousand two hundred and fifty ($3,250.00) dollars and the aggregate amount of all the sums, of one hundred dollars per month which shall then have been paid as aforesaid, with interest upon all of the said sums, at legal rate, excepting the item, five thousand one hundred and eighty-

six dollars and thirty-three cents ($5,186.33) as aforesaid, such excess shall be paid to some trustee, to be appointed by the Orphans' Court of Berks County, who shall invest the same in good first mortgage securities, paying the interest to John F. O'Reilly for life, then to his wife, Mary E. O'Reilly, for life, and after the decease of the survivor the principal shall be divided among the children of the said John F. O'Reilly, the children of a deceased child to represent the parent.

IN WITNESS WHEREOF the said parties have hereunto set their hands and seals the day and year first above written.

Signed sealed and delivered in the presence of } JNO. F. O'REILLY. [SEAL.]
C. C. O'REILLY. [SEAL.]

The interlineation "amounting to $37,238.30" 3d line of this page, made before the execution.

MARY A. O'REILLY.
F. PIERCE HUMMEL.

BERKS COUNTY, ss.:

Before me, the subscriber, a notary public of the State of Pennsylvania, residing in the City of Reading, personally appeared the above-named John F. O'Reilly and Catherine Cecelia O'Reilly, who in due form of law acknowledged the above agreement to be their and each of their act and deed, and desired that the same might be recorded as such.

IN TESTIMONY WHEREOF I have hereunto set my hand and seal this twenty-ninth day of October, A. D. 1889.

F. PIERCE HUMMEL, *Notary Public.* [SEAL.]

RECORDED in the office for recording of deeds, &c., in and for Berks County, Pa., in Deed Book No. 187, page 378.

WITNESS my hand and seal of office this 30th day of Oct., A. D. 1889.

JAMES F. DUMN, *Recorder.*

Recorder's Office, Berks County, Pa.

Indorsed.
Agreement
and
Conveyance

D. 1.
JOHN F. O'REILLY
and
CATHERINE CECELIA O'REILLY.
A. L. T., June 22, '74.
Ent. Oct. 30, 1889.
Paid.

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

{Register's Office, Berks County, Penna.}

BY THE TENOR OF THESE PRESENTS I, A. H. Fegley, Register for the probate of wills and granting letters of administration in and for the County of Berks, do make known unto all people that on the 10th day of June, 1890, before me was proved, approved and insinuated, the last will and testament of Mary A. O'Reilly, late of the City of Reading, in the County of Berks, deceased; a true copy whereof is to these presents annexed, having whilst she lived, and at the time of her death, divers goods, chattels, rights and credits within the said County, by means whereof the approbation and insinuation of the said will and testament, and committing the administration and a final dismission from the same to me is manifestly known to belong, and administration of all and singular the goods, chattels, rights and credits anywise belonging to the said deceased, and her last will and testament was committed to Catherine C. O'Reilly in the said testament named, she having first been duly qualified well and truly to administer the goods, rights and credits of the said deceased, and make a true and perfect inventory thereof and exhibit the same in the Register's Office at Reading, in the County of Berks, on or before the 10th day of July next, and rendering a true and just account, calculation and reckoning of the said administration, when thereupon required, and also to diligently and faithfully regard, and well and truly comply with the provisions of the Act relating to Collateral Inheritance.

Testatrix died on the 20th day of March, A. D. 1890.

IN TESTIMONY WHEREOF, I have hereunto set my hand

and seal of office at Reading, the 10th day of June, Anno Domini one thousand eight hundred and ninety

A. H. FEGLEY, *Register*,
Per H. S. STRUNK, *Deputy*.

I, Mary A. O'Reilly, of the City of Reading, in the County of Berks, and State of Pennsylvania, single woman, do make and publish this my last will and testament.

I give, devise and bequeath all my estate, real, personal and mixed, whatsoever and wheresoever, to my mother, Catherine Cecelia O'Reilly, her heirs and assigns forever, and I nominate and appoint my mother, the said Catherine Cecelia O'Reilly, sole executrix of this my last will and testament.

In Witness Whereof, I, the said Mary A. O'Reilly, have hereunto set my hand and seal this first day of July, A. D. 1887.

MARY A. O'REILLY. [seal.]

Signed, sealed, published and declared by the above named Mary A. O'Reilly as and for her last will and testament, in the presence of us, who have hereunto subscribed our names, at her request, as witnesses thereto, in the presence of the testatrix and of each other.

MAGGIE BERLINGER,
LINA GEISBACHER.

COMMONWEALTH OF PENNSYLVANIA, } ss.:
Berks County. }

Register's Office, June 10, 189 .

I, Albert H. Fegley, Register of Wills and ex-officio Clerk of the Orphans' Court for the County of Berks, in the Commonwealth of Pennsylvania, do hereby certify the foregoing to be a true and accurate copy of the last will and testament of Mary A. O'Reilly, deceased, as the same remains on file and of record in this office.

In Testimony Whereof, I have hereunto set my hand and official seal at Reading the date above.

Register's Office, Berks County, Penna.

A. H. FEGLEY,
Register of Wills and ex-officio Clerk of the Orphans' Court.
Per H. S. STRUNK, *D. Reg'r.*

1. Authority to an agent to execute a contract in the name of his principal may be proven by express authorization, or it may be inferred from the course of dealing between the parties.

2. A contract entered into by an agent in the name of his principal without previous authorization may be adopted by the principal, and such adoption may be inferred from the principal's subsequent silence and acquiescence, or by his receipt and retention of the fruits of the contract, and such subsequent adoption has the same effect as if there had been previous authority.

3. Authority given to an agent to make sale of land includes authority to execute a binding contract for such sale in the name of the principal.

4. A mere employment of a real estate broker to find a purchaser of land at a stated price does not include authority to execute a contract binding upon his principal.

5. Trustees with a discretionary power to sell cannot delegate such discretion to another. But having exercised the discretion and determined to sell and fix a price, they may authorize an agent to contract in their names upon those terms.

6. Three trustees with discretionary powers to sell, own land situate at a distance from their residence: One of the trustees is familiar with the land and its value; the others have no information about it except as derived from the one, and from a trustworthy and competent agent residing near the land. The three having determined that it is best to sell if fair prices can be obtained. *Query.* Is it a delegation of discretion for the two ignorant trustees to rely for values upon the judgment of the third assisted by the competent agent?

7. The fairness of a contract requisite to entitle its holder to its specific performance in equity must be judged of by the circumstances existing at its date.

8. In contracts for the conveyance of land, which are silent as to the character of the title to be conveyed, the implication is that the vendor shall convey a good title, and if an agent be authorized generally to execute a contract for the sale of land, it is not in excess of his authority to insert in the contract a provision that the title shall be free and clear, and

also provision for a reasonable time in which to deliver the deed and pay the purchase money.

9. In a suit for specific performance of a contract for the sale of land, brought by *vendee* against *vendor*, it is no objection to relief that the contract provides for the conveyance of more land than the parties actually intended to contract for, provided such extra land was not inserted for any fraudulent purpose and the plaintiff is willing to accept relief as to that part of the land which is included in the contract in accordance with the understanding of the parties.

So as to the contract price. If the price named is not as great as the parties actually agreed upon, the plaintiff may, in the absence of fraud, have conveyance upon paying the larger sum demanded by the defendant.

10. *Semble.* That a written contract for the sale of land may be enforced by this court with a variation proven by parol, provided such enforcement does not infringe the Statute of Frauds by decreeing conveyance against the defendants' objection of land not described in the writing.

11. A defendant vendor cannot set up as a defense to a suit for specific performance the delay of the vendee to bring suit where such delay has been due to the inability of the vendor to make title, and the vendee has been at all times willing and ready to complete and the vendor has not repudiated or attempted to rescind the contract.

12. Where there has been an unexpected delay in the performance of the contract, for which the vendee is not responsible, during which the land under contract has greatly increased in market value, such increase forms no defence to a suit by vendee for specific performance, unless it is due to some cause not in operation at the date of the contract and not within the reasonable contemplation or expectation of the parties. Supposable instances of such expected increase mentioned.

13. Such increase in value may, however, be so great as under certain circumstances to induce the court to impose such equitable terms upon complaint as to the interest, taxes, etc., as to put the defendants in as good a position pecuniarily as he would have been if there had been no delay.

14. When at the date of a contract to convey land the same

is subject to an adverse claim, and the vendor, honestly supposing it to be of trifling force, undertakes to convey a clear title, and litigation for that purpose occupies a much greater length of time and is attended with much greater cost and expense than could have been reasonably contemplated, and in the meantime the land had greatly increased in value, such expense does not furnish a defense to an action by the vendee for specific performance if the vendee is willing to pay proper portion of such cost and expense.

15. On a bill for specific performance by vendee against vendor, if the vendor had aliened the land after the making of the contract, the complainant, if he shows himself entitled to relief, has his option either to have the proceeds of the sale, or to recover, if he can, the land itself in the hands of the alienee.

JACOB KEIM
vs.
DANIEL LINDLEY, ALFRED ADAMS, JR., AND THE EXECUTORS AND DEVISEES OF PATRICK O'REILLY, DECEASED.

ON BILL, SUPPLEMENTAL BILL AND ANSWER.

JACOB KEIM
vs.
JAMES A. GRIFFITH, EDWARD H. HALL, JOSEPH SHELTON, AND THE EXECUTORS AND DEVISEES OF PATRICK O'REILLY, DECEASED.

ON BILL, SUPPLEMENTAL BILL AND ANSWERS.

Messrs. S. H. & M. P. Grey, for complainant.

Messrs. D. J. Pancoast & Peter L. Voorhees, for the ex'rs of O'Reilly.

Mr. T. B. Harned, for Lindley & Adams.

Pitney, V. C.

These are bills for the specific performance of two several contracts to convey lands, brought by vendee against vendor.

The contracts are in writing, signed by an agent of the vendor.

Several defences are set up, of which the principal are the following:

First. That the agent acted without authority

Second. That the complainant has lost whatever right he ever had by long delay in coming to the court.

Third. That circumstances have occurred since the making of the contracts which render it inequitable to enforce them specifically. And,

Fourth. As to some of the defendants, that they are purchasers for value without notice of the contracts.

I will consider these in the order above indicated.

First. As to the authority of the agent.

There are two contracts. The first is as follows:

"ATLANTIC CITY, N. J., March 25th, 1880.

$25.00.

Received of Jacob Keim, the sum of twenty-five dollars on account of the purchase money of lot of land fifty feet in width, adjoining on the rear the land now owned by said Jacob Keim, which land fronts on New York Avenue, in Atlantic City, aforesaid, and which strip to be conveyed runs the entire length of the said land of said Jacob Keim. The purchase price is to be twenty-five hundred dollars. Deed to be made and delivered as soon as practicable—not longer from the present time than one month. Said land to be conveyed belongs to Patrick O'Reilly, for whom the undersigned is agent.

J. J. GARDNER,
Agt."

The second is as follows:

"Received, Atlantic City, N. J., *October 29th*, 1881, of Jacob Keim, the sum of five hundred dollars on account of the purchase money of a certain tract of land situate in said city, as follows: Beginning at a point in the southeasterly line of the Pacific Avenue, at a distance of two hundred feet northeastwardly from the northeasterly line of New York Avenue and extending thence (1) southeastwardly on a line parallel with New York Avenue a distance of one hundred and fifty feet; thence (2) southwestwardly parallel with Pacific Avenue a distance of one hundred feet; thence (3) southeastwardly parallel with New York Avenue a distance of fifty feet; thence (4) southwestwardly parallel with Pacific Avenue a

distance of fifty feet; thence (5) southeastwardly parallel with New York Avenue a distance of to the exterior line (now under water) established in 18 by the Riparian Commissioners of New Jersey; thence (6) northeastwardly along said riparian line a distance of *one hundred and fifty feet;* thence (7) northwestwardly parallel with New York Avenue a distance of to the southeasterly line of Pacific Avenue, and thence (8) southwestwardly along said last mentioned line a distance of fifty feet to the place of beginning. And also all the addition and accretion to said tract of land, if any, which may hereafter be made on the sea front, it being the purpose of this purchase and sale to include all the land above described, and also all the right, title and interest of the grantors and of the estate of the late Patrick O'Reilly, deceased, in and to the accretions to said land which may be made upon the sea front.

"The balance of the purchase money, namely, the sum of ninety-five hundred dollars, to be paid upon tender of a good and lawful deed for said premises, free from encumbrances and opposing or contesting claim of title, with undisputed possession of the same, the grantee to have sixty days notice of such tender. Including *all the land and rights of said estate between Pacific Ave., the riparian line & beyond New York & Tennessee Avenues.*

JOHN J. GARDNER,
Agent P. O'Reilly Estate."

The question is as to the authority of Mr. Gardner to make these contracts.

No express written authority is produced. Complainant relies upon parol authority given before the making of the contracts, and also upon subsequent ratification and adoption.

It is well settled that parol authority to the agent is sufficient to satisfy the requirements of the statute of frauds, and that such authority may be inferred and deduced from circumstances and a course of dealing; and that a contract made by an agent without authority may be ratified and adopted by subsequent conduct, and even by mere silence. Fry on Specific Performance, 3d, Am. Ed., sec 509; Pomeroy on Contracts, secs. 77, 78; Waterman on Specific Performance, sec. 243; Wharton on Agency, secs. 85-89.

As to original authority an instructive case is Pole *vs.* Leask, 28 Beav., 562; 6 Jur. N. S., 1104; 29 L. J. Chy., 888. At p. 892 Lord Romilly says:

"It is necessary to bear in mind the various ways in which agents are appointed, and the general rules which governs their authority when they are appointed. The common division of the modes by which agency may be constituted is three-fold. It is either by writing, or it is by parol, or it is by mere employment.

"It may also be laid down as a general rule that when the authority is general it will be construed liberally; but also that it must be construed according to the usual course of business in such matters. In the present case we have nothing to do with writing. It is an authority given by parol; and where it is ambiguous, it is to be construed according to the course of trade in such matters; and where it is unexpressed, it is to be ascertained by investigating what was the course of dealing which was pursued between the three several parties to these transactions." These views were adopted by the House of Lords on appeal, 33 L. J. Chy., 155 at p. 165; 9 Jur. N. S., 829 at p. 834.

"As to subsequent ratification an equally instructive case is Bigg *vs.* Strong, 3 Sm. & Giff., 592; 4 Jur. N. S., 108; and, on appeal P. 983. At p. 110, 4 Jur., Sir John Stuart says:

"It could not be considered that any express act on his part, such as attaching his signature to the agreement, or any other solemnity by him, after he became privy to the act done by his son on behalf of both, was essentially necessary. Subject to his right to a reasonable opportunity of expressing his dissent, *every additional day and hour of silence after he became privy to the contract operated as tacit acquiescence, and raised the presumption of assent. It could not be said that tacit recognition was insufficient, for if in perfect silence he accepted the price to which he knew he was entitled according to the agreement, it could not be said that the assent and recognition were not sufficiently binding.* On the other hand, had he silently refused to accept the price, it might have raised a presumption of dissent. Two main elements necessary to constitute a contract were, certainty as to the terms and sufficient testimony of assent. It was the established law of the court

that a man might adopt a contract which he had not signed, and might give testimony of his assent by acts and conduct as plainly as by his signature."

And, on appeal, Lord Chelmsford, p. 983, says:

"The evidence was certainly not sufficient to prove any antecedent authority, and the plaintiff must, therefore, rely on the subsequent ratification. Several cases had been cited as to the effect of standing by, but *such questions did not depend on there being prejudice or benefit from the conduct of the party standing by; there must be silence under circumstances which lead to the conclusion of there being assent.*"

With this brief reference to a few of the authorities, I approach the question of the fact whether in this case authority was either given in advance, or the act of the agent was afterwards adopted and ratified.

It is not disputed but that Mr. Gardner was the recognized agent of the owners at the dates of these contracts, having, as such agent, charge and care of the lands, collecting the rents, paying the taxes and so forth; nor is it disputed that he was employed by the owners to find purchasers at a fixed price for the lands in question. To that extent his agency is fully proven and frankly admitted. The precise limit insisted upon by defendants is that he had no authority to conclude a binding contract for the sale of these lands, even at the price and upon the terms fixed by the owner.

Let us look at the proofs.

Patrick O'Reilly was a retired railroad contractor, residing at Reading, Pennsylvania. When Atlantic City was yet in its infancy, he became the owner of a considerable tract of land within its limits. This was laid out in streets conformably to the plan adopted by the municipal authorities, and also in lots shown on a map. Upon each of these lots he himself fixed a price at which he was willing to sell, and wrote it upon the map, and changed it from time to time as the value of the lots advanced. Mr. Gardner was for many years a real estate agent doing business at Atlantic City. Some time prior to the year 1870, Mr. O'Reilly employed him to take charge of his real estate there; he gave him a copy of the map of his lands, with prices, and gave him authority to sell any of the lots at the price named, giving credit

upon mortgage for a portion of the purchase price for an amount also fixed in advance by Mr. O'Reilly. This authority was given to no other person or broker besides Mr. Gardner, and he had, by authority, the sole personal care and charge of all the lands, paid and collected rents, and did all repairs to buildings, and grading and filling, looked after the assessments of taxes and paid the same either out of moneys in his hands derived from the sale of lots or with moneys furnished for that purpose by Mr. O'Reilly. He rendered accounts of these receipts and payments to Mr. O'Reilly.

In making sales of lots his practice was as follows: when a purchaser was found, he demanded and received from him a down payment on account of the purchase price, and gave him a receipt for the same, substantially in the form of the contract first above set out, providing for a mortgage when one was to be taken, and giving a short time to each party to complete the contract. This giving of time to complete was important to Mr. O'Reilly, for he was often absent from home, and it also gave the purchaser an opportunity to provide his cash payment. After the receipt of the down payment Mr. Gardner himself prepared the deed and forwarded it to Mr. O'Reilly for execution, reporting to him the same, and then when the deed came back to him—as it invariably did—duly executed, he received the balance of the cash payment, together with the bond and mortgage, if any, caused the latter to be recorded, and forwarded the bond and all the cash—the down payment and the final payment blended—to Mr. O'Reilly. Mr. Gardner is unable to recollect that he ever had a case, prior to that here in question, where the contract was not speedily performed, and so is unable to recollect of any instance where the fact that a down payment had been taken and a contractual receipt given had been brought distinctly to the notice of Mr. O'Reilly prior to the present case. In this case he is quite positive that both the down payments mentioned in the receipts were reported with the sales and accounted for to the owner.

None of the sales so negotiated by Mr. Gardner were ever repudiated by Mr. O'Reilly. On the contrary, in one instance at least during his lifetime, after Mr. Gardner had negotiated a sale taken a down payment and given a receipt for a part of

the price of a lot at the price fixed by Mr. O'Reilly, the latter refused a higher offer from another party, and carried out Mr. Gardner's contract.

The relations of Mr. Gardner with Mr. O'Reilly, so far as they are to be inferred from the foregoing facts, were well known to the residents of Atlantic City. The complainant himself made a purchase from Mr. O'Reilly of a part of these lands through Mr. Gardner in 1873. He made a down payment and took a receipt from Mr. Gardner, as follows:

ATLANTIC CITY, Aug. 27, 1873.

$100.

Received of Jacob Keim the sum of one hundred dollars on account of purchase money of a lot of land in Atlantic City, New Jersey, owned by Patrick O'Reilly, of Reading, Pennsylvania, said lot being in front of the Chester County House, bounded on the north by Pacific Avenue, on the west by lands of George A. Binder, and on the east by lands of said Jacob Keim, said lot being about forty-three feet front on Pacific Avenue, coming to a point between the lines of said Binder and Keim, at point about 700 feet south of Pacific Avenue, the conveyance to include the entire lot of said O'Reilly between said boundaries. Price to be one thousand dollars ($1,000). Deed to be made as soon as practicable, and balance of money to be paid on delivery of deed.

J. J. GARDNER,
Agent of P. O'Reilly."

This contract was performed by the conveyance of the land.

For the last few years of his life Mr. O'Reilly visited Atlantic City very seldom, and wrote few, if any, letters. This work was done by his son, James A. O'Reilly, a young lawyer, residing and practicing at Reading, Pa. All of Mr. Gardner's correspondance and papers relating to this business during Mr. O'Reilly's lifetime, and for a considerable period since, have been lost, and none of those which would presumably be the possession of the O'Reilly executors have been produced. The evidence of Mr. Gardner is to the effect that replies to his letters during the latter years of Patrick O'Reilly's life came in the handwriting of James, some times signed by the father and some times signed by James, but ap-

parently written at the father's dictation, using the expression "Father says," &c.

The lands described in the two contracts above set forth form, together, one lot, but were shown on the map as five lots, viz.: Nos. 4, 5, 6, 7 & 31. No. 4 was included in the first contract and Nos. 5, 6, 7 & 31 in the second. They may, for present purposes, be described as being of a width or front of 200 feet on Pacific Avenue, which runs parallel to the shore line, and extending about 2,000 feet parallel to the shore line, and extending about 2,000 feet parallel with New York Avenue, which runs at right angle with the shore line to the exterior line established by the Riparian Commissioners. The magnetic course of Pacific Avenue approaches more nearly to an east and west than to a north and south course, and so is generally spoken of as running east and west.

The complainant at and before the date of the first contract was, and still is, the owner of a strip fifty feet in width, running from Pacific avenue along New York Avenue to the Ocean, adjoining the land here in dispute on the west, and was desirous of purchasing a strip of fifty feet from off it. In fact, the O'Reilly land was laid off in fifty feet strips on Mr. O'Reilly's maps. The complainant called on Mr. Gardner, who was known to him and his neighbors as the agent of Mr. O'Reilly, and learned from him Mr. O'Reilly's price, and agreed with Gardner to take it at the price, viz., $2,500, paid $25 as down money, and took the receipt as above set forth. That sale, as before, stated, was reported to Mr. O'Reilly by Mr. Gardner, but Mr. Gardner did not follow his usual practice of at once preparing a deed and sending it to be executed by Mr. O'Reilly for the following reason. For many years in the early history of Atlantic City sea shore, squatters were in the habit of placing bath-houses and booths along the shore just above the high water mark, without regard to the ownership of the soil, and the owners of the legal title had commenced to demand rent therefor only a short time before the period in question. Daniel Lindley, a defendant herein, was in actual possession of the shore front of the fifty-feet strip (Lot No. 4), described

in the first contract. Mr. Gardner claimed to have a contract with Lindley to pay rent to Mr. O'Reilly, which contract Lindley repudiated; Gardner distrained Lindley's bath-houses to pay the rent, and Lindley replevined, and this raised the question whether O'Reilly was Lindley's landlord. The suit was brought to trial and resulted favorably to Mr. O'Reilly. Lindley, however, had moved off, or was about moving off, at about the time the first contract was prepared; but, before the deed could be prepared and executed, another party—one West—moved on and took possession under some sort of claim of right or title under one Rotherham, so that Mr. Gardner could not deliver possession with the paper title. Hence he delayed the preparation of the deed. The complainant was always ready to complete the contract. No deed was ever prepared, nor was any request made of complainant to pay the price and take the title.

Matters remained in this condition until the death of Patrick O'Reilly, which occurred January 16th, 1881. He left him surviving his widow, Catherine C., his four sons, Anthony J., John F., Francis P. and James A., and his daughter Mary, five children. By his will he devised the use of all his estate to his wife for her life, with remainder to his five children equally, the share of his daughter Mary being given in trust to his son James. He appointed his wife, Catherine, and his sons, Francis and James, executors with full power to sell land. This will was duly proven in Berks County, Pa., in January, 1881, and also in the Orphans' Court of Atlantic by proceedings under the 23d,24th & 25th secs. of the Orphans' Court Act, on July 5, 1881, and letters testamentary were issued thereon to Catherine alone, none having issued to the other executors in New Jersey. In the meantime the agency of Mr. Gardner was continued by Mrs. O'Reilly and the other executors precisely as it had been before the testator's death, and he continued to act with the same powers, as he supposed, up to about the time of the commencement of this suit. Legal proceedings were contemplated by the O'Reillys to establish title to the fifty feet strip (lot No. 4) covered by the first contract, which was in possession of and

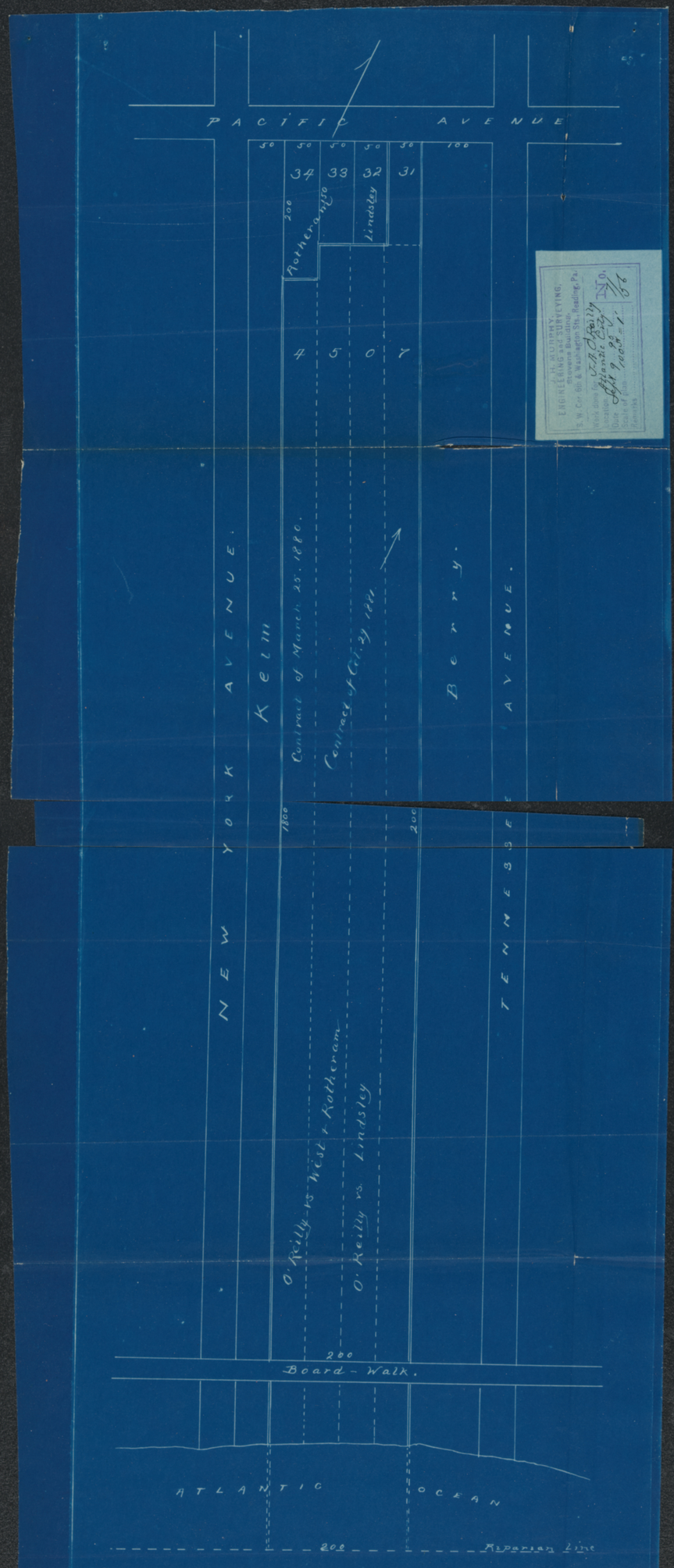
claimed by West as tenant under the heirs of Rotherham. He was also in possession of the fifty foot strip adjoining it on the east. Lindley was in possession of the 50-foot strip next to the east of the Rotherham strip.

The complainant being desirous of purchasing a portion of the balance of the parallelogram above described, owned by the O'Reilly estate, again, shortly after Mr. O'Reilly's death, applied to Mr. Gardner for that purpose. The strip remaining was 150 feet wide, composed on the map of three strips, each fifty feet wide and about 2,000 feet long, numbered on the O'Reilly map as Nos. 5, 6, 7, but out of its original front on Pacific Avenue 100 feet had been sold with a depth of 150 feet, leaving a frontage on Pacific Avenue of fifty feet and on the Ocean of 150 feet. This frontage on Pacific Avenue of 50 feet, with a depth of 100 feet, was put down on the map as a separate lot, No. 31, and this No. 31 the complainant did not care to purchase. He found Mr. Gardner's price for three lots, 50 feet each, Nos. 5, 6, & 7, not including the lot No. 31, fronting on Pacific Avenue, to be $7,500, and for that lot, No. 31, $4,000, or $11,500 for all. Complainant agreed to take the three lots without the one fronting on the street at the price named, $7,500. Mr. Gardner reported this offer to James A. O'Reilly, with whom he corresponded, who declined to sell a portion only. The course of the negotiation will better appear by reading the correspondence which began with a letter from Newton Keim, son of complainant, to Mr. Gardner, as follows:

"March 8th, '81.

DEAR SIR:—Father understood from you that Voorhees advised an ejectment, and was to proceed immediately. Has writ been issued, and is it likely to be tried this spring? (This evidently refers to the adverse possession of the lot, No. 4, covered by the first contract.)

"This proceeding will, I assume, or it may be made to establish O'Reilly title to the whole tract; will you make Lindley a party and title be settled as against his claim also. I suppose, from the nature of ejectment, that the whole will be settled in one suit, but will be pleased to hear from you in regard to it.



- Lot No 4 is covered by the contract of March 25. 1880.
- Lots Nos. 5. 6. 7. & 31 are covered by the contract of October 29. 1881.
- Lots Nos. 4. & 5. are covered by the ejectment of O'Reilly vs. West & Rotheram.
- Lot No 6 is covered by the ejectment of O'Reilly vs. Lindsley
- James. A. Griffith was in possession under the Rotherams at Nos. 4. & 5. at and before April 1892.
- Lindsley was in possession of No. 6.
- Adams was in possession of No 7 under lease from O'Reilly

"What is the lowest price at which the remainder, 150 feet, between us and Berry, and including 50 ft.x150 ft. on Pacific, could be purchased?

"Williamson's family and Mrs. Hardwick are, I supp se, tenants of O'Reilly without other claim.

Your attention will oblige,

Yours truly,

NEWTON KEIM.

HON. J. J. GARDNER."

To this Mr. Gardner replied as follows:

"SENATE CHAMBER, TRENTON, N. J., Mar. 10, '81.

NEWTON KEIM, ESQ.,

DEAR SIR:—Yrs. of 8th inst. rec'd.

Mr. Voorhees, att'y for the O'Reilly estate in N. J., determined upon ejectment against *all* the parties who pretend, claim rights in any lands belonging to the estate. The case will *not*, I think, be tried this spring. The will had not been probated 10 days ago and beside there is not time for Mr. V. to get the case on next term. If there is time he will use it effectively. Williamson's family and Mrs. Hardwick are tenants under lease given Mrs. Hardwick. I cannot now fix the price the heirs will want for the land you inquire the price of. Mr. O'R. fixed the price for them at $9,500.00. Yrs. truly,

J. J. GARDNER."

This was followed by a letter from Keim to Gardner, as follows:

"MARCH 29TH, 1881.

DEAR SIR:—Will you please ascertain and inform me what price the O'Reilly heirs ask for the 150 ft. between father and Berry's line, (1) including 50x150 lot on Pacific, and (2) excluding same, and oblige,

Yours truly,

NEWTON KEIM."

The writer here evidently treats his father as owner of Lot No. 4 under the first contract.

And a reply from Gardner to Keim as follows:

"MARCH 30, 1881.

DEAR SIR:—Yours of the 29th inst. received. The following extract from a letter from James A. O'Reilly, executor, to-day rec'd will probably answer the questions you ask.

'READING, Pa., March, 29, 1881.

DEAR SIR:—In the matter of the strip of land back of lots Nos. 4, 5, 6 & 7, *No.* 4 *was sold to Mr. Keim for* $2,500. The price for the remainder is $7,500. This does not include lot No. 31, the price for which is $4,000. The price for strip and lot is $11,500.00.

Truly yours,

JAMES A. O'REILLY.'

This extract refers to the land you inquire about, no other.

Very truly yours,

JNO. J. GARDNER."

After that, interviews took place between one or both of the Messrs. Keim and Gardner, resulting in a letter from Gardner to Keim, of May 24th, 1881, as follows:

"MAY 24, 1881.

DR. SIR:—After long delay the *executors & heirs of P. O'Reilly, dec'd*, answered me in regard to the acceptance of your offer for lands of the estate, as follows:

'In regard to the property Mr. Keim desires to purchase, my reply to your query is that *we* desire to dispose of all the property between Tennessee and New York Avenues—that is to say, 5, 6, 7 & 31, and do not care to sell 5, 6 & 7 without 31.'

No. 31 is the lot fronting Pacific Ave., next to Berry, 50x150 ft.; 5, 6 & 7 are the three 50 feet strips, comprising the land described in your offer.

Of course this communication has no reference to the 50 ft. strip next to lands of Jacob Keim.

Very respect.,

J. J. GARDNER."

And, again, another one on July 18, 1881:

"NEWTON KEIM, ESQ.

DEAR SIR:—I wish you would make an offer for the lands of O'Reilly estate desired by you, including therein the lot fronting Pacific Avenue, know as No. 31.

While the executors desire to sell this lot with the other land, I may modify their ideas of its value.

Y'r ob't sv't,

J. J. GARDNER."

To which Mr. Keim replied:

JULY 20th, 1881.

DEAR SIR:—Yours of 18th received. We do not desire to purchase the lot fronting on Pacific Avenue even at a favorable price. It increases the investment somewhat, and for the plan of improvement which we had contemplated it would not be available. That lot would be the same to us as to a purchaser buying it only. Should the other be sold to us, the owners will be free to sell the Pacific Ave. lot at any time, and need not, as now, perhaps, feel bound to retain it as an outlet.

Unless, therefore, the price should be set so as to be specially tempting we would not wish to make the amount of the investment so large as the total of all the lots would reach.

Yours truly,

NEWTON KEIM."

J. J. GARDNER, ESQ.

(It was proven that these copies of letters from O'Reilly to Gardner introduced into his letters to Keim were duly taken from the originals received by Gardner and which had been lost). The result was that in the end Mr. Keim offered Mr. Gardner $10,000 for lots Nos. 5, 6, 7 & 31. No. 4, as before remarked, was the subject of the first contract. Subsequently, and sometime prior to October 29, 1881, which is the date of the second contract, Mr. James O'Reilly negotiated a sale of these lots—Nos. 5, 6, 7 & 31—to a Mr. Herring at $10,000, being $1,500 less than he had asked Mr. Keim, and being just the amount Keim had offered, and he, O'Reilly, sent Mr. Herring to Gardner to complete the contract, with a letter from O'Reilly to Mr. Gardner, which had been lost, but which was seen by Mr. Keim. Mr. Gardner refused to complete this contract with Herring on the ground that Mr. Keim had first offered the price named, and he notified Mr. Keim, and thereupon the second contract—that of October 29, 1881—was prepared and signed. Mr. James O'Reilly had immediate notice of this sale and acquiesced in

it. His letter to Gardner of March 29, 1881, copied in Mr. Gardner's letter to Keim of March 30, 1881, shows that he knew of the previous sale of lot No. 4 for $2,500.

Subsequent correspondence, hereafter to be referred to, shows that he, James, from time to time in his letters addressed to Mr. Keim during the whole period which elapsed between 1882 and the commencement of the suit—April, 1892—recognized the existence of this contract of sale to Mr. Keim. Indeed, so far as he, James A. O'Reilly, was concerned, it was frankly admitted by the counsel of the defendants that, so far as authority went, the contract was authorized by James.

But it is alleged that neither Mrs. O'Reilly, who died pending the suit and without being sworn as a witness, nor Francis P. O'Reilly, the other executor, had any notice whatever of, or ever gave any authority for it.

Francis P. O'Reilly was sworn and in the most positive manner denied that he ever gave any authority to Mr. Gardner to make any binding contracts, or ever knew that he made any such. And James swears that he did not know that any contract in writing had been given.

The serious question, then, is whether or not the circumstances are such as to show, affirmatively, that Francis P. O'Reilly and his mother did authorize the second sale, either expressly or impliedly.

Now I think that it is impossible to read the letters written by James to Gardner in 1881 without finding in them what amounts to an assertion that he was speaking for himself and his brother and mother advisedly, and after consultation with them. It will be observed that in Mr. Keim's letter of March 29, 1881, he asks Gardner to ascertain "what price the O'Reilly *heirs* ask for the 150 feet," &c. Now, the letter which Mr. Gardner wrote to the O'Reilly heirs, in pursuance of that request, is presumably in their possession, and is not produced. The answer was written by James, and the fair inference is that in speaking he was speaking advisedly for his mother and brother as well as for himself. And in this connection comes in the evidence of Francis P. O'Reilly that his father in his lifetime furnished him with a copy of his map of lots at Atlantic City with his prices named thereon, and that

those prices were his guide in determining whether or not he would sell any particular lot at a particular price. And it further appears that the price named in this second contract is greater than that fixed by Mr. O'Reilly in his lifetime. Then if we look at the letter of Mr. Gardner to Mr. Keim of May 24, 1881, we find there that Mr. Gardner has been seeking from the *executors and heirs of O'Reilly* an answer to Mr. Keim's offer, which he had, as he swears, made verbally to Mr. Gardner, and there the language used by James in writing to Gardner is this: "In regard to the property Mr. Keim desires to purchase, my reply to your query is that *we* desire to dispose of all the property," &c., speaking in the plural. No doubt that letter was written by James O'Reilly, but did he use the plural without having first consulted with his brother and mother? Then, again, it is not easy to believe that James, after having fixed a price for this land at $11,500, reduced it to $10,000 and offered it to Herring at that price without consultation with his brother Francis and his mother. Francis swears that he did join his mother and brother in divers deeds of lands in Atlantic City made in pursuance of some sort of preliminary contracts, and that in so doing he never went to see the property, but relied in part upon the prices fixed by his father, which he had before him, and in part upon James' judgment, and upon observing that the prices were generally advances upon those fixed by his father.

Now, under these circumstances, I think the strong inference from all the evidence is that this offer of the land included in the second contract to Herring at $10,000 was made by James after a conference with his brother and mother, and that the brother's denial of knowledge at this late day, under the peculiar circumstances which have arisen, and under the temptation of an increase in the value of the property at least ten-fold, is insufficient to overcome it.

Surely Mr. Keim, with his knowledge of Mr. Gardner's apparent authority to make each of these contracts, and, as to the last, with Mr. Gardner's letters before him, was fully justified in believing that he had full authority.

So with Mr. Gardner himself. He acted in perfectly good faith throughout. He fully believed that he was duly

authorized, first, by Patrick O'Reilly to make the first contract and afterwards by his executors to make the second. And I think that the mere fact that a man possessed of the keen intelligence and hard common sense, which distinguishes that gentleman—whom though not an educated lawyer, is yet experienced in such matters—believed that he had authority to make a binding contract is entitled to some weight. He may not be, as indeed he is not, able to state precisely how that authority was given ; but he swears he had authority to sell at fixed prices ; that he acted upon it in numerous instances, both in the lifetime of Patrick O'Reilly and afterwards, that his authority was always recognized, and never, until in this instance, disputed, and then not until April, 1892, shortly before the bill was filed. What passed between Mr. Gardner and Mr. James O'Reilly on that occasion—April, 1892—is somewhat significant as to what Mr. O'Reilly's understanding was at the date of these contracts. Mr. Gardner stated that the first disapproval he ever heard of his conduct in making this sale was in April, 1892, and that was expressed by Mr. James O'Reilly, saying he was not aware that Mr. Gardner had ever signed any contract, to which Mr. Gardner replied that he had sold the lots many years ago, and that he, O'Reilly, must have been aware of the fact. To this Mr. O'Reilly replied, "that if he had sold the lots the sale ought to have been—I don't know what the word was—consummated, terminated, ended, or something of that sort." Now, here was no dispute on the part of Mr. James O'Reilly of the authority of Mr. Gardner to make these sales and to execute binding contracts for them. James A. O'Reilly himself swears, in effect, that Mr. Gardner had authority from him, James, representing the other executors, or, as he expressed it, "*assuming*" to act for the other executors, to make sales at prices fixed by him—precisely as he did from his father in his lifetime, but the defendants distinguish between authority derived from one of the three donees of the power to sell and authority derived from all. I will consider this point farther on.

One other piece of evidence deserves notice. At one of the trials at May's Landing of the suits relating to this property —*O'Reilly vs. Lindley*—Mr. Gardner was called as a witness,

and on his examination, in the presence of the counsel of the O'Reillys, testified, among other things, that he was their agent to sell this property.

Now, what is included in the notion of authority to an agent to make sales of real estate at fixed prices and terms as to credit? What is a sale? It is a contract, and, of course, a binding contract. Binding upon whom? Why, of course, binding upon both parties. Surely no authority is necessary for the proposition that a general authority to an agent to make a valid contract of sale includes authority to bind the vendor.

But it is contended by the defendants that the established rule in New Jersey is otherwise as to real estate, and authorities are cited which are supposed to so hold. The earliest case is *Shepherd v. Hedden*, 5 *Dutch*, 334. That was, in effect, a suit by a broker against his principal to recover specified commissions agreed upon in a special agreement between them to the effect that if Shepherd should find a purchaser for Hedden's farm at $125 an acre or more he should have all he got over that price. Shepherd did procure such a purchaser at $130 an acre, and a written contract between the purchaser and Hedden was prepared and executed by both parties, and the land was conveyed in accordance with it. The question now under discussion was not involved, nor was it alluded to by Ch. J. Whelpley or Mr. Justice Haines in either of their opinions. They did, indeed, speak of Mr. Shepherd as "making the sale;" by this they evidently meant no more than that he was efficient cause of bringing the parties together. He found a purchaser. The contract between Shepherd and Hedden was not in writing, and related to the single transaction. Shepherd was not the general agent of Hedden. The latter lived upon the property sold, and the purchaser was his next door neighbor. Mr. Justice Brown, in his opinion (page 344 bottom), uses this language: "The other question certified is whether in fact Shepherd did make the sale so as to be entitled to the compensation. The contract (between Hedden and Shepherd) did not contemplate that he should make the title or even an agreement for the title in legal form. He had no power to do so. He could only be the efficient cause of the agreement to sell. That is all the contract required of him."

This language was afterwards quoted by Chancellor Zabriskie as a *dictum* in favor of the position, that authority to a broker to sell land did not include authority to make a binding contract. But the learned Judge (Brown) does not appear to have had the general question as stated, in his mind, but simply what was the particular contract there in hand, and clearly what was meant by the parties, witnesses and counsel in that case by "making the sale," was no more than being the efficient cause of, and bringing about the sale.

Morris v. Ruddy, 5 *C. E. G.*, 236, decided by Chancellor Zabriskie, was upon a bill, by vendee against vendor, for specific performance of a contract signed by a real estate broker. The proof was that the defendant "told the brokers, whom he knew to be real estate brokers, that if they could sell his property they should do so, and said he wanted $3,000 for it." The learned Chancellor construed that language as under the circumstances meaning no more than that the broker was employed to find a purchaser and effectuate a sale, and did not include authority to make a binding contract. He says (page 237): "Brokers are persons employed to effect sales; their general business is only to bring together parties; but with regard to merchandise it is held that they have the power to bind the principal by their signature to written memorandums of sales, known as bought and sold notes, in sales within the Statute of Frauds. * * * There is not the same reason, or the same necessity, for holding that the broker is authorized to sign a contract of sale in case of lands as for merchandise." And on p. 238, referring to *Shepherd v. Hedden*, he says: "Justice Brown expressly says that the broker has no authority to sign a contract of sale. I am inclined to adopt this as the correct view and to hold that this contract is not signed by a person thereunto lawfully authorized as required by the Statute of Frauds. Giving authority to sell does not, by force of the terms, or by their general acceptation, give authority to sign the vendor's name to a contract."

This language must be construed in connection with the contract and subject matter, which was the case of a deputation to an ordinary broker in real estate to sell land at a price, which the Chancellor construes as to be no more

than an *employment* to find a purchaser, and not an *authorization* to do anything?

Of the cases cited by the learned Chancellor in support of this doctrine, *Glentworth v. Luther*, 21 *Barb.*, 145, was an action for commissions in which the only question was as to when the commissions were earned. *Roach v. Coe*, 1 *E. D. Smith* (*N. Y. Com. Pl.*), 175, was a suit for specific performance of a contract signed by a broker whose authority was contained in a letter from the defendant to the broker, which, so far from authorizing the broker to conclude a sale in the writer's name, says: "We will enter into an agreement with him (the purchaser) to let him take the lots provided," &c.—setting out certain precise conditions, none of which were observed by the broker in the contract he made (See pp. 187-188). *Coleman v. Garrigues*, 18 *Barb.*, 60, was a suit—as here—for the specific performance of a contract signed by a real estate broker in the name of his principal, the defendant, and the question was as to the extent of his authority. The allegation was that the broker was *employed* to sell, and the testimony of real estate brokers in New York City was admitted to the effect that in that city the mere *employment* to sell did not indicate *authority* to sign the employer's name to contracts of sale, but was confined to finding a purchaser and reporting the same to the employer. The case was decided against the complainant on the ground that the contract signed varied from that authorized, but the Judge also said that—"it is well known that the general agency of brokers in real estate is limited to finding a buyer or borrower who will assent to the terms of the seller or lender, and then bringing the parties together * * * * . In dealing in real estate the authority to sign the contract is never understood to be granted from a mere authority to make a bargain."

Here, again, the language of the Judge must be construed in connection with the facts of that case and the subject matter.

The doctrine of *Coleman v. Garrigues* and *Glentworth v. Luther* was expressly overruled, after full argument and consideration by the four Judges composing the Gen-

eral Term of the N. Y. Supreme Court, Second District—Lott, J. F. Barnard, Gilbert and Tappen. In *Pringle v. Spalding*, 53 *Barb.* (1868), 17. At the trial the Judge, in disregard of those cases, had charged the jury that parol authority given by the owner to an ordinary real estate broker to sell included authority to execute a written contract and bind his principal. In banc, the Court say—"The broad proposition on which the case of *Coleman v. Garrigues* was decided cannot be sustained consistently with these cases (previously cited) or with the principle which is frequently asserted as being elementary in the law on agency, viz., that an authority to do an act includes authority to employ whatever means are necessary to accomplish the due execution of the power." But to return to the New Jersey cases.

In Young v. Hughes, 5 *Stew.*, 372, the question was one of fraud in the contract which was signed by the parties and not by the broker; but the broker was charged with fraud in betraying his client. Mr. Justice Magie, at p. 383, says: "The relation which a real estate agent or broker bears to his principal is somewhat peculiar, and his power as agent to bind his principal is limited (citing the authorities). But there can be no question that he assumes some duties to his employer—such as to find a purchaser for the property; to bring the purchaser into communication with his employer, and to use his efforts to forward the negotiation between them in the interest of his employer. To this extent, at least, he becomes an agent."

The object here, manifestly, was to point out the distinction between a mere broker and an agent, and to show how far the former may be the latter.

The latest case, and one more nearly in point, is *Milne v. Kleb*, 17 *Stew.*, 378, decided by Vice Chancellor Van Fleet. That, as here, was a suit for specific performance of a contract to sell, signed by an agent—an attorney of the Supreme Court—who was employed to sell at a time when the parties were residing in the same city, and the defendant at the same time put the same property in the hands of several other real estate brokers to sell or for sale. He gave the broker who made the sale a writing in

these words: "I agree to pay C. Bried two and a-half per cent. on the price of my house on Broad street if he sell or is instrumental in selling the same for me at a price I accept." This was some two months after the property was put in the broker's hands and a price and terms, as the broker swears, fixed upon it.

Now, this circumstance and the language above used show clearly enough, as I think, that the execution of an agreement by the agent in the principal's name was not in the minds of the parties. They used the word "sell" in the restricted and peculiar sense in which it is used by real estate brokers as meaning to find a satisfactory purchaser at a satisfactory price and upon satisfactory terms. The learned Chancellor so construes it when he says, p. 381: "He was a special agent, constituted to do a specific act—to negotiate a sale, or to find a purchaser who was willing to purchase on the terms specified." With great respect I think the learned Judge might well have substituted the word "broker" for the word "agent." The contract was executed in December, 1887, two years after the employment and seventeen months after the defendant had left the country and while he was in Europe. The learned Vice Chancellor, on p. 382, says:

"In this case no claim is made that express authority had been given to the agent to make or sign a written contract for his principal. *There is nothing in the circumstances of the case from which such authority could be fairly or reasonably implied; on the contrary, it seems quite clear that the implication should be the other way.* The property was in the hands of other real estate agents; the principal and his agent resided near each other and met almost daily, so that if a purchaser was found, he could easily, and without delay, be brought in contact with the principal; so far as appears, at the time the agent was appointed, the principal had no intention of going to Europe and the language of the contract of January 12th, 1886, respecting commissions, would seem to indicate quite clearly that it was understood that no bargain should be concluded by the agent until the principal had had an opportunity to say whether the price offered was

satisfactory or not, its provision in that regard being that the principal would pay commissions on the price obtained, provided the agent sold, or was instrumental in selling, for a price which the principal accepted."

He then proceeds to state the rule as laid down by Chancellor Zabriskie in *Morris v. Ruddy*, *supra*, and in addition cites *Hamer v. Sharp*, *L. R.* 19, *Eq.* 108. In that case the broker's authority was in writing as follows: "I request you to *procure a purchaser* for the following free-hold property, and to insert particulars of the same in your monthly estate circular until further notice, viz.: My beer house and shop, No. 4 and 6 Manchester Road. Tenant, No. 4, William Galloway, gilder, and No. 6, Albert Vaults Henry Holmes, beer retailer, and work rooms above. Present net rent, £150; price, £2,800, when I will pay you a commission and expenses of fifty pounds. About six years lease unexpired. (Signed) J. Sharp." And I venture to suggest that the written authority itself decides the case. However, whatever authority was so given was withdrawn six months later and the property withdrawn from the market. The vendor was the owner of the fee, subject to the lease mentioned in the letter of instructions. This circumstance gave the property a changing value as time ran on. Notwithstanding the withdrawal of the authority the broker nine months later signed a written contract for its sale to the plaintiff, who brought suit. Vice Chancellor Hall, in dismissing the bill, said that authority to find a purchaser was not authority to enter into a written contract, stating as one reason that, according to the English practice in such cases, the terms of the contract as to producing and verifying the muniments of the vendor's title were of the utmost importance, and that the contract actually signed did not properly protect the vendor in that regard. At p. 112 he says:

"In considering whether the instructions of October, 1872, were a sufficient authority to the agent for that purpose, I cannot help expressing an opinion that such authority to an agent on the part of a vendor would be highly imprudent, as the purchaser would then be entitled to require, on completion, attested copies of all documents of title, and the expense of

them would swallow up, to a great extent, the purchase money. This estate agent must have known that if this property had been offered for sale by public auction, there would have been conditions to guard the vendor against being subject to certain expenses, and to prevent the contract becoming abortive by reason of a purchaser requiring a strictly marketable title. Could he suppose that he was invested with authority to sign a contract without considering what it should contain as regards title? As an intelligent and well-informed person, he could not suppose that he was properly discharging his duty to his principal when he signed the contract which he signed. Such a contract was not one within the scope of his authority to sign. If he had a right to enter into any contract at all, it was one of a different description, and on that ground alone—this being a bill for specific performance, and the court having a discretion—I hold that the alleged contract, if it be a contract, is not one which the court will decree to be carried into effect. Taking that view of the case, it is not necessary for me to decide the question of authority, but I nevertheless state my opinion to be, that when instructions are given to an agent to find a purchaser of landed property, he, not being instructed as to the conditions to be inserted in the contract as to title, is not authorized to sign a contract on the part of the vendor."

This matter of being protected against the expense of an indefinite production of title papers arises out of the peculiarity of the English land titles which are not found in any public record, and the result is that when landed property is offered for sale in England it is almost invariably upon condition that the purchaser shall not go farther back than a certain point in what are called his requisitions on the other side for muniments of title. Hence, in England, the terms of the preliminary contract are of the utmost importance. But at sales at auction in England, where the terms of the contract in this and all other respects are always fully set out in the conditions of the sale, it is well settled that the auctioneer, or his clerk, is authorized to sign for the purchasers, and such signature binds the purchaser under the Statute of Frauds.

The only remaining case referred to in New Jersey is *Chamberlain v. Manning*, 14 *Stew.*, 651. That was a case or

mere authority to the broker to find a purchaser, and the attempt on the part of the purchaser was to take possession under a parol bargain with the broker, and to make an equity in favor of himself by erecting a building. There the point was made by the counsel of the defendant—not noticed by the court—that admitting that the parol contract was made, and that the agent had authority to make it, still he had no authority to put the purchaser in possession in advance of a conveyance, and that in the absence of the consent of the owner, or his agent, thereto duly authorized to the purchaser taking possession and making improvements he could gain no equity by so doing.

I have gone into these authorities at this great length in order to ascertain and define the true scope and limit of the rule, whose latest expression in this State is *Milne v. Kleb*. It seems to me to amount to no more than this—that the mere *employment* of an ordinary real estate broker to effect the sale of a parcel of land, even though the price and terms be prescribed, does not amount to giving present *authority* to such broker to conclude a binding contract for the same. Moreover, such authority is not usually to be inferred from the use by the principal and broker in that connection of the terms "for sale," or "to sell," and the like. Those words in that connection usually mean no more than to negotiate a sale by finding a purchaser upon satisfactory terms.

But in my judgment the present case is not within that rule. Mr. Gardner was something more than a mere broker. He was the trusted agent who had the possession, care and control of the property of an absent owner. No other broker or agent had any care or control over it, or was even employed to make a sale of it. In short, there were here present those circumstances indicating authority which were absent in *Milne v. Kleb*, and those circumstances which in that case indicated a want of authority are not found here. There is nothing to indicate that the elder O'Reilly ever made any question as to the character of the purchaser or of the improvements he intended to erect or the use he intended to make of the property. On the contrary, the evidence tends to show that all he required was that his fixed price be paid and secured. Hence there was no occasion for him to know who the purchaser

was. Then we have the significant fact before alluded to, that in one instance where he had received an offer greater than the price given by him to Mr. Gardner, and that gentleman had previously made a sale at the previously fixed price, such sale was recognized as binding upon the principal and was carried out by a conveyance.

Then I think the course of dealing for a period of over ten years prior to his death is entitled to great weight. It is, indeed, as before pointed out, one of the recognized modes of proving an agent's authority; and in this case the effect of such a course of dealing is intensified by the high character and intelligence of the agent.

I conclude, therefore, that the authority from the elder O'Reilly to Senator Gardner in this case was "to sell" in the larger sense of that word, and included the authority to make a binding contract, and that necessarily included the authority to sign a contract in his behalf.

Says Ch. J. Shaw, in *Valentine v. Piper*, 22 *Pick.*, 85, *at p.* 92: "Where the term 'sale' is used in its ordinary sense, and the general tenor and effect of the instrument is to confer on the attorney a power to dispose of real estate, *the authority to execute the proper instruments required by law to carry such sale into effect is necessarily incident.* It is in pursuance of a general maxim, that an authority to accomplish a definite end carries with it an authority, so far as the constituent can confer it, to execute the usual, legal and the appropriate measures proper to accomplish the object proposed. A power of attorney might be so drawn as to authorize the attorney to make sale of an estate where it might be apparent that it was the intention of the constituent to authorize the attorney to negotiate for a sale, leaving it to the constituent afterwards to ratify it and to execute deeds. Should it appear, either from the restricted words used or from the tenor of the whole instrument that such was the intent, it ought to be construed as conferring such a restricted power only. In the present case we think it was the intent of the constituent to confer on the attorney an authority to transfer the estate."

The writing there in question authorized the agent to sell the land either by private sale or by auction, and receive the proceeds, but did not, in express terms, authorize the execution of a deed.

Now, as before shown, after the death of the testator, no change was made in the relation of Senator Gardner to the lands in question. He continued, as before, to act under the immediate direction of James, who appeared to act by the authority of the other executors. Both Francis and James resided in Reading, either with or near to their mother. Francis had a map of these lands with the prices fixed upon each lot by his father. He was content to sell at such prices, not less than those fixed by his father, as James should approve. And I think it fairly inferable from all the circumstances and the proven course of action from the death of the testator onward that Mrs. O'Reilly was of the same mind. There is every presumption that she was cognizant of, and familiar, in a general way, with the management of the estate by her two sons, and was satisfied with it. I think it is a fair presumption that she had a general knowledge of the character and situation of the lands situate at Atlantic City, and of the mode of fixing prices upon sales of it. The fact that she joined in the execution of divers conveyances indicates at least that. She is also chargeable with the knowledge of the fact that Senator Gardner had been the trusted agent of her husband in his lifetime to take care of and sell these lands. Then there is the evidence to which I have before alluded, tending to show that the offer of lots Nos. 5, 6, 7 & 31, composing the three fifty-foot strips, at $10,000, to Herring, was the result of a conference between the three trustees. The proofs show that in the letter from James O'Reilly to Senator Gardner announcing the sale to Herring, James used the words "*we* have decided to sell," &c. Now, why did he send Herring to Gardner if the latter was not to get a payment from Herring, or in some way bind him to the contract? I think this circumstance quite significant. The executors knew that they were not able at present to give a good title—to complete a sale by delivery of possession with the deed. They must have known that the sale of the first lot to Keim was not completed. In fact, they do not deny it. At least James does not. They knew that suits were necessary to recover possession. The immediate closing of the sale with Herring by a conveyance was certainly not contemplated.

Then why send him to Gardner? James himself could have drawn any papers necessary to give the affair proper shape; yet he sent him to Gardner. Now, I am unable to imagine any object in so doing except to have Gardner procure a payment from him on account, and fasten him in the same way that he had so long been in the habit of doing in such cases, and also to avoid the risk of Gardner having in the meantime make a contract to sell the property to some one else. And if he expected Gardner to accept a payment from Herring, he must have expected him to give him a receipt for it, expressing upon what account it was paid, and that would be a contract. Further, he must have expected that some reasonable provision would be made with regard to the time when and the circumstances under which the sale would be closed by a conveyance. But the price being fixed at $10,000, there is no reason to believe that there was any choice in the person of the purchaser.

Now, at this point I am met by the position taken by the defendants, that the deputation by the trustees to the agent of the making of this contract was an unwarranted delegation of a power. Let us see. The rule invoked is that a power involving the exercise of personal discretion and judgment cannot be delegated. Farwell on Powers, p. 358; 1 Sugden on Powers, 3d Am., from the 7th London Ed., 213; Lewin on Trusts, Flint's Ed., 257. An examination of the authorities shows that the prohibition is against the delegation of the personal discretion and judgment. But if the trustee or donee of the power actually exercises the discretion and judgment in a reasonable manner, and arrives at a conclusion, he may delegate to another the mere ministerial duty of carrying out that judgment. Mr. Lewin, p. 253, says; "It must be noticed that the appointment of an attorney or proxy is not in all cases the delegation of the trust. When the trustee has resolved in his own mind in what manner to exercise his discretion he cannot be said to delegate any part of the confidence if he merely executes the deed by attorney, or signify his will by proxy." To the same effect is what is said by Lord St. Leonards at * 214 & * 215 of 1 Sugden on Powers.

In 1 Perry on Trusts, sec. 409, the learned author, speaking of delegation of discretionary trusts, says:

"But it must be observed that the appointment of an attorney, proxy or agent is not necessarily a delegation of the trust. The trustee must act at times through attorneys or agents, and if he determines in his own mind how to exercise the discretion, and appoints agents or instruments to carry out his determination, he cannot be said to delegate the trust, even though deeds or other instruments are signed by attorneys in his name. So, if he gives instructions to his attorneys and agents how to act, it cannot be said to be a delegation of the trust."

To the same effect is Mr. Hill, * 541, where he says: "However, the employment of an agent for carrying out mere ministerial acts—such as the sale of the property, and purposes of that nature—is not within this rule, for such acts are necessary to the discharge of the trust; and it will be sufficient that the trustee retains the supervision and control over the person so employed."

This view is in accordance with reason, and is fully sustained by the decided cases.

A case much relied upon against this restriction of the general rule is *Berger v. Duff*, 4 *John*, *Ch. R.*, 368. That was a bill by two trustees, vendors, against the purchaser. One trustee lived in France and the other in New York, where the land was situate. The foreign trustee gave the New York trustee a power of attorney to sell and convey at such price and upon such terms as he should deem expedient. He contracted to sell to defendant, and tendered a deed executed by himself alone, under the power. It did not appear that the foreign trustee had ever exercised his judgment and discretion as to the sale. Chancellor Kent refused a specific performance, upon the ground that the case was one of an attempt of one trustee to delegate his judgement and discretion to his co-trustees. I can find no well considered case that goes further.

In this connection there is another consideration which is entitled to more or less weight. There is no dispute but that all the executors did agree upon the policy of a sale for the Atlantic City property—that it was for the interests of the estate to sell and in the

parcels designated by the testator in his lifetime. The only room for the exercise of immediate judgment and discretion in the sale of any particular lot was as to the price of that lot. Now, in this matter it might well be held to be a fair exercise of the discretion and judgment vested in the three executors for the two who lived at Reading and had little personal knowledge of the value of lands in Atlantic City to adopt the judgment of the third who was familiar with them, and that of Senator Gardner, the trusted agent of the testator; and to adopt their valuation, especially as they were aided therein by the valuation made by the testator in his lifetime. It is difficult to suggest any better or safer guide which they could have adopted. The employment by trustees, in England, of a class of men called surveyors to value property for purposes of sale is quite common.

But, admitting that the evidence of the original authority from Francis and his mother to Mr. Gardner to make this contract is not established, there still remains the question of adoption of it by subsequent silence and receipt of a part of the purchase price. Now, Mr. Gardner swears most positively that he accounted for the two sums—$25 received upon the first contract and $500 received upon the second, either to Mr. O'Reilly in his lifetime or to his executors after his decease. He, during that period of his transaction with the estate, kept no accounts whatever, but made up statements from time to time and sent them to the O'Reillys at Reading. None of the accounts or letter or statements received from Mr. Gardner have been produced by the defendants. They say that in a settlement that took place among the heirs about the year 1890 all previous papers, accounts and statements relating to the estate were destroyed. This is a most extraordinary and well-nigh incredible statement and I am entirely satisfied that somewhere among the papers which were in the possession of Francis P. and his mother, as well as of James, was at one time a statement showing that these payments had been made upon these lots, and that they were seen and observed by both Francis and his mother, as well as by

James. And there cannot be the least doubt but that they received the benefit of them. Nor can there be the least doubt but that James told his mother and brother that this large sale for $10,000 had been made to Mr. Keim. It is, indeed, difficult to believe he did not. In fact, it is not denied, as I recollect the evidence, that they had notice that such a sale had been made by word of mouth. The point of the denial is that they had any notice that it was made in a binding form by writing properly signed. But I feel constrained to charge them with notice that money had been paid upon it, and, if so, then they are chargeable in law with knowledge of what that meant, which is this: That if money was paid to their agent on account of a lot of land, then their agent, in the natural course of business, must have given some sort of receipt for it. If so, then, in the same natural course of business, the person paying the money would require that the receipt should indicate on what account it was paid. And if it did indicate in proper language on what account it was paid the result would at once be a binding contract. Surely Mr. James A. O'Reilly, who was a lawyer by profession, must have known this. The result is that all three of these executors are justly chargeable upon the evidence, with notice that this land was sold to Mr. Keim at a price which was satisfactory to them; that Mr. Keim had made a down payment upon it, and that he had taken a receipt from their agent, which probably, at least, had taken the form of a contract.

Now, under these circumstances, it was their duty at once, if not satisfied to allow that contract to stand as a binding contract, to give notice to Mr. Keim repudiating it and return the money to him. This they have not done.

The reason for the delay in completing the contracts is quite apparent. The end or front on Pacific Avenue of lots Nos. 4 and 5 (lot No. 4 being covered by the first contract), belonging to the heirs of one Rotherham, and after the decision—about the date of the first contract—of the replevin suit against Lindley, who had been in possession of those two lots, he abandoned possession, but possession was at once taken by one West, as tenant of the Rother-

hams. Lindley retained the possession of lot No. 6, which was one of the three intended to be covered by the second contract, he being the owner of the front of that lot on Pacific Avenue. The correspondence of March, 1881, above set forth, shows that Mr. Voorhees, for many years the counsel of Mr. O'Reilly and his executors, was preparing to bring suit to eject these divers occupants. Such suits were brought in January, 1882—one against West, in possession of lots Nos. 4 & 5, to which Rotherham was made a party defendant, and the other against Lindley, in possession of lot No. 6. Why they were not brought sooner does not appear and to me is unaccountable. The suit against West and Rotherham for lots Nos. 4 & 5 was not brought to trial until April, 1892, a delay of over ten years, and resulted in a verdict and judgment for the plaintiff. The suit against Lindley for No. 6 was brought to trial at September term, 1882, and resulted in a verdict for the plaintiff. At this trial the defence seemed to have relied on adverse possession only. The judgment on this verdict was reversed by the Court of Errors & Appeals at July Term, 1884 (17 Vr., 352). A second trial was had December, 1886, more than two years (why so much delay does not appear) after the reversal, at which the defence of adverse possesssiou does not appear to have been set up, and again a verdict was obtained by the plaintiff. The judgment on this verdict was reversed by the Court of Errors & Appeals at July Term, 1888 (21 Vr., 636). This cause was again noticed for trial April Term, 1892. In the meantime Mr. Keim was at all times willing and anxious to complete his contracts as soon as the title was settled, and was constantly urging on the suits. He had himself personally several interviews with Mr. Voorhees as counsel for the O'Reillys, one as early as 1882, in which he informed Mr. Voorhees that he had purchased the property in dispute, to which Mr. Voorhees replied: "Yes, I was told so." He also frequently saw Mr. Gardner, and also Mr. James O'Reilly, and urged him to bring on the trial of the suits so that the contracts could be concluded, on which occasions James recognized his rights and ex-

pressed regrets at the delay, and promised that those suits should be brought to a speedy trial. General Wright, a civil engineer, of Atlantic City, and a witness for the O'Reillys in the Lindley suit, also spoke to Mr. Voorhees in Mr. Keim's behalf to hurry on the trials. Then we have the following correspondence. On November 27, 1883, Mr. Newton Keim, son of the complainant, wrote Mr. Voorhees as follows:

"NOVEMBER 27th, 1883.

DEAR SIR:—My father, Mr. Jacob Keim, of Atlantic City, purchased a year or two since lands belonging to estate of Patrick O'Reilly, deceased, the transfer of which has not been completed owing to disputed title as to part—which dispute by several parties was, I understand, to be conclusively determined as to all by the case *v.* Lindley, in which you obtained a verdict at May's Landing.

I take the liberty of inquiring, and trust you will not consider it intrusive, whether an appeal had been perfected in that case, and, if so, when it may probably be heard in the Appellate Court.

My father is desirous, of course, of acquiring title and possession as soon as circumstances will permit.

Your kind attention will oblige,

Very res'y yours,

NEWTON KEIM."

To which Mr. Voorhees, under date of December 6, 1883, replied as follows:

"CAMDEN, N. J., 12, 6, 1883.

DEAR SIR:—Yours of 27th ult. was duly rec'd. The case of Lindley *v.* O'Reilly was not reached at the term of the Court of Errors just closed.

I suppose it will be settled at the next March Term of the court.

Respfy.,

P. L. VOORHEES."

Now, this letter, in connection with the previous interview sworn to by the complainant, seems sufficiently conclusive that Mr. Voorhees understood Mr. Keim to be the equitable owner of the land in controversy. On any

other theory his letter of inquiry would have been an impertinence and entitled to be so treated by Mr. Voorhees.

Next in order of dates is a letter from Newton Keim to Senator Gardner, dated January 21, 1885:

"JANUARY 21st, 1885.

DEAR SIR:—I have a memorandum of information which you gave me in regard to the Kenyon lease (O'Reilly ground), to the effect that the year begins June 1st. Three months' notice would require that service be made prior to March 1st —now but five weeks off. *My anxiety that our purchase and possession may be settled and established as speedy as possible leads me to write this to remind you of this matter of notice.* Please have Kenyon, Clinton, Catlow and Williamson all duly notified. I am afraid there may be trouble with Williamson, perhaps others, and would give all formal notice.

I would be much obliged if you would write me in regard to the West Jersey inquiry which I asked you to make. I have not had opportunity to see you, and am not likely to soon.

Yours truly,

NEWTON KEIM."

To which the Senator replied the next day as follows:

"JAN'Y 22d, 1885.

DEAR SIR:—Yours of yesterday received. The O'Reilly tenants will be notified in time.

I had delayed writing of the West Jersey matter in hope of meeting Genl. Sewell and getting more specific information. The answer to my inquiry was that the company was 'willing to sell without any restriction all the land they could spare and were ready to consider an offer at any time.' I suppose they can spare all the Atlantic Avenue front, but cannot specifically describe the quantity for sale. Please communicate anything you have to say or suggest in the matter. In the meantime I will try & see more about it.

Very respt.

Yr. ob't svt.,

J. J. GARDNER."

Next we have a letter from Newton Keim to James O'Reilly, dated March 16, 1885:

"MARCH 16th, 1885.

DEAR SIR:—My father, Mr. Jacob Keim, has been waiting for several years for the completion of title to lands at Atlantic County, purchased by him, and is very desirous that there should be no avoidable delay in the matter. Several terms of court have passed without the pending Lindley suit having been brought up to second trial, but we were informed that trial would certainly be had at April Term next. On inquiry of Mr. Gardner we learn that he has no advices from Mr. Voorhees as to the preparation of the case, and, as April Term is now very near, it seems as though there would be still further postponement.

We take leave to ask that you will strongly urge counsel to speed the matter and not on any account to pass this term of court. There is certainly no reasonable ground why it should not now be brought up.

It seems to me desirable for the estate as well as ourselves that there should be a speedy end to the matter, and we trust that you will without delay give your attention and secure the earliest consummation possible. Be kind enough to let me hear from you.

Very respectfully yours,
NEWTON KEIM."

To which Mr. O'Reilly replied as follows:

"MAR. 23rd, 1885.

DEAR SIR:—Yours of the 16th rec'd. I have just returned from Atlantic City and Camden. The case has been noticed for trial to April Term and will certainly be tried. The estate is very anxious to have all these matters closed as early and as quickly as possible.

Yours respy.,
JAMES A. O'REILLY."

Mr. Keim wrote again to Mr. O'Reilly on December 3, 1885 (copy of this letter not preserved and original not produced), and received the following reply:

"1—5—1886.

DEAR SIR:—Yours of the 3rd ult. received. The case against Lindley was continued on account of the engagement of the counsel for the defendant in a murder trial in Camden Co. The matter is to be disposed of at the next term *without fail.*

I am getting rather tired of Jersey justice. I trust you will pardon my neglect in not answering your letter, the same escaped my attention.

Yours resp'y,
JAMES A. O'REILLY."

Mr. Keim wrote again under date of September 15, 1886, (copy of this letter not preserved and original not produced), and received the following reply from Mr. O'Reilly:

"READING, PA., 9, 24, 1886.

DEAR SIR:—Your favor of the 15th inst. rec'd. The cause of delay in replying to same was that I desired to see Mr. Voorhees. Your father is aware that I have done all in my power to have the cause tried, and Mr. Voorhees promised me that the case will be tried December Term. The delay in the trial of the cause has been very serious to us, as well as to your father, *and though I should be loath to have him throw up the sale*, yet I could not find any fault with him for so doing. From the tone of your letter I judged that you held me in a considerable degree accountable for the delay; this is a mistake on your part, and, if intentional, I must resent it. As I have stated above, I have done everything to have the matter adjudicated.

Yours resp'y,
JAMES A. O'REILLY."

To which Mr. Keim replied as follows:

"SEPTEMBER 27, 1886.

DEAR SIR:—Your favor of 24th inst. received. If my letter to you betokened too great impatience I trust you will overlook it in view of the very long delay which certainly furnished ground for reasonable protest. Moreover, I did not intend that it should be directed toward you personally. Our feeling in the matter being only this, that there might perhaps be greater patience towards Mr. Voorhees in his procrastinating course than he deserved. As to Mr. Voorhees, we can't help feeling that there has been the veriest trifling so far as bringing the case forward to trial and afterwards to hearing in the Court of Errors and since.

There was long delay in bringing suit and afterwards at May's Landing and Trenton, and now at May's Landing again; there have been at each point three to four op-

portunities allowed to pass unimproved. It was this course which called forth my protest to you. If that went beyond a proper consideration for you, you will please overlook it.

As to throwing up the purchase, that is something we have never contemplated for a moment. Aside altogether from the question whether or not it be in itself an advantageous purchase, its contiguity to other lands belonging to father makes this tract of special importance and value to him.

Permit me to call your attention further to a matter which it seems to me ought to have attention now, without waiting for the determination of the Lindley and Rotherham claims. William Williamson is in possession of the lot fronting on Pacific Avenue next to Berry's line, under claim of right in his wife, whose mother (deceased) obtained possession from your father. There is no deed, but Williamson claims that there was an agreement of sale and that he is holding under it. What he can show in support of his claim I do not know. I do know that he asserts title vigorously and effectively against all persons, preventing them from driving over and otherwise trespassing, &c. It seems to me that this ought to be taken up and cared for without delay. If the parties can be put off summarily, all the better, if not, and an action of ejectment be necessary against them also, the sooner it is begun the better. These people are, *I suppose*, with little if any better claim than that of mere squatters, but we do not know what they have to sustain their position. The Lindley claim was ridiculed by Mr. Voorhees at first, and yet it is taking time and effort to defeat it. So Williamson may have more to sustain him than is supposed. This is, of course, an entirely separate claim from Lindley and from Rotherham's—which two are, I believe, to be settled by the one suit.

Yours very truly,

NEWTON KEIM."

Next comes a letter from Senator Gardner to the complainant, dated October 11, 1888:

"OCTOBER 11, 1888.

DR. SIR:—As Mr. James A. O'Reilly understands the status of the Lindley case from his intercourse with Mr. Voor-

hees, the case this time, as after previous reversals, is simply sent back for a new trial instead of being dismissed. That the title is sustained in every particular that objection can be raised to it. That the only question that can be opened, or rather re-opened, is the one on which reversal was based, viz.: The matter of the proper probate of the Felix will; that the will can yet be properly probated and that such action will, practically, leave no defence at the re-trial.

Very respt'y, y'r ob't serv't,
J. J. GARDNER."

Then a letter from Newton Keim to James O'Reilly, dated November 14, 1890:

"NOVEMBER 14, '90.

DEAR SIR: My father (Jacob Keim, of Atlantic City), who called upon you a few days ago in reference to above case, has been informed by Mr. Voorhees that it will not probably be tried at the coming term of court, there being a number of criminal cases which will take up considerable time, and, moreover, that he, Mr. Voorhees, did not feel well enough 'to try the case without assistance.' The latter—the ground of ill health—seems to be the principal reason, and it is, of course, a good and sufficient one. It is, besides, well known that Mr. Voorhees is not in good health and has not been for some time. In fact, his ill health has continued for such a time and is of such a character that his friends fear that he is not likely soon, if ever, to entirely recover.

With this in mind, and urgently desiring the trial of the case now, we have given some thought to the suggestion implied in Mr. Voorhees remark as to 'assistance' in the trial.

If Mr. Voorhees does not improve in health it may indeed be the only way in which his skill and experience and knowledge of the case may be made available.

I take leave, therefore, respectfully to suggest the association of other counsel with him in the case, such of course as would be agreeable to him personally and acceptable on other grounds. This will involve increased fees, but, as I have said, it may be the only way in which Mr. Voorhees' own services can be had; and further, to meet in part this objection my father will agree in case this suggestion is acted on *and trial had this next term* to contribute a reasonable amount toward the pay-

ment of fees, say $200. This he volunteers, without of course any obligation on him to do so, solely with the view of adding, if possible, in obtaining trial at this term of court, which for several reasons is specially desirable to him.

I trust you will receive this suggestion in the spirit in which it is offered, in entire good faith and respect toward all parties—indeed carrying out what was implied, perhaps not intentionally, in Mr. Voorhees' own remark. The various uses, or rather abuses to which the property has latterly been put, have made it very annoying and aggravating to those residing near. An effort was made to suppress the howling noisy railway which passes within a few feet of the rear of our own and other residences, but for some reason injunction was refused. Hoping for your favorable attention,

Very resp'y yours,
NEWTON KEIM."

Next in order is a letter from the same to the same, dated April 1, 1892:

"APRIL 1st, 1892.

DEAR SIR:—Would it be agreeable to you and Mr. Voorhees to have Mr. S. H. Grey, of Camden, associated with your counsel in the trial of the Lindley and Rotherham ejectment suits?

Mr. Voorhees once suggested to my father that he (Mr. V.) should have assistance in these suits, and in pursuance of this suggestion, and of our own earnest desire for the settlement to be consummated, this proposition is made—Mr. Grey's services to be paid for by my father.

In view of the nearness of April Court at May's Landing, please favor with prompt answer and oblige.

Yours truly,
NEWTON KEIM."

Now this correspondence speaks for itself and shows not only a claim of right continually made to the agent, Senator Gardner, to the attorney and counsel, Mr. Voorhees, and to the executor who acted throughout as the spokesman for himself and his co-executor, but also a full recognition of such right by the three persons named. The ground taken by the defendants is that all this was done by these persons without the knowledge and behind the back

of the other executors. Is that creditable? It is certainly as before remarked, highly improbable that this large sale should have been first made by James A. O'Reilly and afterwards recognized by him for all these years and under the peculiar circumstances which existed without one word passing between him and his mother and brother about it, and a heavy burden is cast upon those asserting it to show how much a reticence could have been maintained between residents of the same town, and, so far as appears, under the same roof, upon a subject in which each was so deeply interested.

In the account rendered in 1890 by the executors to their brothers and sister of their dealings with the estate is a charge item of $64,125 from sale of Atlantic City lots, and on the other side of the account a credit is claimed as early as 1883 of a payment to J. J. Gardner for grading in Atlantic City, $800, and in 1885, August 20, to payment to J. J. Gardner for expenses, &c., in Atlantic City, $1,897.78.

Now, the items of which those three entries are made up are not stated, nor are the statements showing them produced, and, as before remarked, the excuse for not producing them is that they were destroyed at the time this account was rendered and a settlement was had by them. The alleged destruction of those papers is to my mind, as before remarked, quite as incredible as the absolute non-communication between the defendants before alluded to, and I am entirely satisfied that in some of them were entries made of the payments to Senator Gardner by Keim made on account of these contracts; and if, as I have before remarked, payments were made, then the presumption is that Senator Gardner gave some receipt for them, and that the receipt indicated on what account the payments were made and would probably amount to a contract by their agent. I do not understand that Francis O'Reilly denies that he looked through all these papers and saw to it that the acc unt that he rendered was correct; but he denies that he has any recollection of seeing any charge by Senator Gardner to himself for any monies received on account of these contracts or otherwise from Mr. Keim. Here again, as I have before observed, I am unable to believe him. In fact, I feel constrained to say that his evidence throughout with

regard to his dealings with the lands in Atlantic City was to me quite unsatisfactory. If, as I believe, he did see a charge made by Mr. Gardner to himself (Gardner) of payments received from Keim on account of lots sold, then I have not the least doubt that he knew upon what lots and the prices at which they were sold, and that he knew that they were part of the lots in controversy in the suit, and that the delay in closing the sale was caused by the litigation then pending. James A. O'Reilly admits frankly that he learned at the time from Mr. Gardner of the $10,000 sale to Mr. Keim, and was satisfied with it. He, too, is chargeable with knowledge that payments had been made on account of these contracts. In his letter of March 29, 1881, he says lot No. 4 was sold to Mr. Keim for $2,500. Now, as before remarked, I cannot believe that he did not by that mean to say that a contract of sale of more or less binding force under the Statute of Frauds had been made with Mr. Keim. And so, when he writes to Mr. Newton Keim in his letter of September 24, 1886, that he should be loath to have Mr. Keim throw up the sale, he must have been speaking of a sale having binding qualities of some sort as applied to land. He swears that he had no idea that any written contract was made. Here, again, I must frankly say I do not believe him. The question now is whether he did not know that money had been paid by Mr. Keim on account of these sales, and if he did know it he is chargeable with knowledge that in the ordinary course of business a receipt had been given which might, and probably would, amount to a contract on the part of the executors to convey.

With regard to the receipt of the money, the same presumption, though of course with not the same force, applies to Mrs. O'Reilly.

Now, the conduct of the executors in receiving and retaining this money was ratification and adoption of the contract. Lord Justice Fry, in his book, sec. 509, already referred to, says: "Ratification may take the place of agency. Here the maxim applies, *omnis ratihabitio retrotrahitur et mandato aequiparatur*, and, therefore, the subsequent ratification of a contract, entered into by a person then unauthorized as agent, takes it out of the statute; and this

ratification need not be by any express act; *it is enough if the party whose authority is required to take the benefit of the contract, or even if, with a full knowledge of it, he passively acquiesce in it for a length of time longer than that reasonably* to be allowed for the expression of dissent."

In the case in hand we have both the receipt of the benefit of the contract and long continued acquiescence in it.

That subsequent adoption by the principal of an unauthorized signing of his name to a contract within the Statute of Frauds has the same effect as if the authority had been given previous to the signing, was directly ruled in *McLean v. Dunn*, 4 *Bing.*, 722, and is settled law. Some language used by Judge Denio, in *Newton v. Bronson*, 13, *N. Y.*, 587, is relied upon to show that his rule does not apply to the case of a delegation of power by a trustee. Whatever was so said was a mere *dictum* and not necessary for the decision of the case in hand; but, as I read the opinion, it goes no further than this—that it must appear that the trustee somewhere, and at some time, exercised his discretion and judgment. I do not see any difficulty in his exercising discretion and judgment *after* an unauthorized sale as well as before.

It is urged that, in order to make the retention by the parties of the benefit of the unauthorized contract a ratification of it, it must appear that the principal knew the terms and character of the contract. Such is the general rule. But it must be applied with caution. A principal is chargeable with such knowledge as is within his easy reach. There was here no concealment on that part of either the agent or the purchaser, and the least inquiry by the principals would have elicited the truth. Mr. Keim had every reason to suppose that the executors knew the particulars of his contract and they had no right in equity to keep his money and plead ignorance of the details of the contract which they had given him for it.

We come now to the text of the contracts as to which objection is made that they contain provisions not within the authority of the agent.

The first contract contains this provision: "Deed to be made and delivered so soon as practicable—not longer from the present time than one month." It is urged that the insertion of the limitation of one month was without authority and rendered the whole contract void. It was evidently inserted for the benefit of the vendor in order to give him time to procure the preparation and execution of the deed and it left him at liberty to prepare and execute it at once and demand the purchase price. It is difficult to perceive how a more simple contract could have been devised.

The established canon governing cases of this kind is, as before shown, that authority to an agent to accomplish a certain matter carries with it, by implication, authority to do everything necessary to that purpose. *Valentine v. Piper*, 22 *Pick.*, 85; *Goodale v. Wheeler*, 11 *N. H.*, 424, where it was held that commissioners authorized by a municipality to sell a piece of real estate at auction upon terms named in the resolution of authority were, by implication, authorized to add such other terms as were reasonably proper for insuring the sale, and that requiring a down payment from the purchaser was such a proper term. See Story on Agency, secs. 58 & 60.

The second contract present more difficulty. Several exceptions are taken to the verbiage of it.

First. It is said that the clause providing for freedom from encumbrances and opposing or controverting claims of title and undisputed possession is unwarranted, as well as the sixty-day clause. Now, as to the provision for good title, it seems clear enough that if that clause had been omitted the contract would—in the absence of evidence that the vendee agreed to be satisfied with such a title as the vendor had—have left the vendee at liberty to refuse to accept the deed and pay the purchase money unless the title was merchantable and accompanied by possession in the sense of being free from adverse possession. *Locander v. Lounsbury*, 10 *C. E. G.*, 554; *Pomeroy on Specific Performance, secs.* 188-203. A vendee will not be compelled to buy a law suit. *Dobbs v. Norcross*, 9 *C. E. G.*, 327. It follows that the clause in question did not

change the effect of the contract to the prejudice of the vendors. It was certainly quite proper to insert it, considering that the premises were then held adversely and a law suit to eject the adverse holder was imminent. Hence its insertion was quite within the province of the agent, who was in this case entrusted with the preparation of the contract by the counsel of the executors, himself one of them. I say this because Mr. James A. O'Reilly, himself an executor, was acting as counsel for the others and himself, verbally agreed to sell the lots in question—Nos. 5, 6, 7 & 31— to Mr. Herring for $10,000, and sent him to Senator Gardner with a letter to that effect. Now, that was authority to Senator Gardner to do *something* with Mr. Herring about that sale. Senator Gardner declined to make a sale to Mr. Herring upon the ground that Mr. Keim had made the first offer at that price and was entitled to the property, and proceeded to give Mr. Keim the contract in question. Mr. James A. O'Reilly was informed of his refusal to sell to Herring and of the sale instead to Mr. Keim and acquiesced in it. Hence I think that the affair must be construed as being done under the direction of Mr. O'Reilly quite as much as it would have been if the contract had been with Herring instead of with Keim. Mr. O'Reilly must have expected that Senator Gardner would enter into some sort of an arrangement as to the title.

With regard to the provision for sixty-days' notice of readiness to complete, I think the same considerations apply. The balance of the purchase money—$9,500, a large sum—was to be paid in cash. Surely it was but reasonable that the purchaser should have proper time, not only to raise that sum, but also to investigate and assure himself that the title was perfected by the contemplated legal proceedings, and I think that all will agree that sixty days was no more than a reasonable time under the circumstances. But in point of fact complainant does not and never has taken any advantage or made any claim under that provision.

The remaining objection to the second contract relates to the description of the premises and the price named— $10,000.

The description of the land found in this contract, properly construed as applied on the ground, includes not only lots 5, 6, 7 & 31, referred to in Mr. James A. O'Reilly's letter of March 29, 1881, and which were attempted to be sold by him to Mr. Herring, but also lot No. 4, covered by the first contract. This is manifest from a reading of the description in connection with a diagram and the last sentence—" including all the lands and right of said estate between Pacific Avenue, the riparian line and beyond (between) New York and Tennessee Avenues." (See diagram). This clause was added in order to correct without erasure a mistake in writing 150 instead of 200 feet in the sixth course. The contract, with the exception of the distances in the fifth, sixth and seventh courses and the clause quoted, was prepared by Mr. Newton Keim. The distances in the sixth course and last clause are in Senator Gardner's handwriting.

There is no dispute as to the fact that the intention of both Mr. Keim and Senator Gardner in this writing was to include lot No. 4, covered by the first contract; and, on the other hand, it can hardly be seriously contended that it was intended by Mr. Keim thereby to obtain a contract for all the land at $10,000. He disavows it and does not, and never has made any such claim. To do so would be absurd in the face of the correspondence between James O'Reilly and Senator Gardner, and between the latter and Mr. Keim in the spring and summer of 1881.

Complainant founds his right upon both contracts and offers to pay the sum of the prices named in the two, viz.: $12,500.

The object of including lot No. 4 in the second contract was not expressly explained by the proofs at the hearing, probably because it was so manifest to the Court as to require no explanation. The block of land in which the premises in dispute is situate is bounded by New York Avenue (running at right angles with the Ocean), on the west, and by Tennessee Avenue, parallel with New York Avenue, on the east, by Pacific Avenue on the north and by the Ocean on the south. Mr. Keim was the owner of a fifty-foot strip, running along the east side of New York Avenue from Paci-

fic Avenue to the Ocean. Mr. O'Reilly was the owner of four strips, each fifty feet wide, to the east or in the rear of Keim's lot, numbered 4, 5, 6 & 7, not fronting on any street, but reaching to the Ocean, and he was also owner of a lot, No. 31, between No. 7 and Pacific Avenue. The subject of the first contract was lot No. 4. There was no dispute as to this, as clearly appears by James O'Reilly's letter of March 29, 1881. Nor is there any difficulty in applying on the ground the rough description found in the first contract as follows: "Lot of land fifty feet in width, adjoining on the rear the land now owned by said Jacob Keim, which land fronts on New York Avenue, in Atlantic City aforesaid, and which strip, to be conveyed, runs the entire length of the said land of the said Jacob Keim." But it was, manifestly, not such a description as a purchaser would desire to have put in a deed. Hence, Mr. Newton Keim, in view of a contract for the other lots, desired, naturally enough, to have a contract with such a description of the five lots combined as would be proper to insert in the deed of conveyance, and attempted, in his second contract, with the aid of Senator Gardner, to frame such an one. He may also have had in mind a ratification by Mr. Gardner for the executors of the first contract; but why, with James O'Reilly's letter just referred to within his reach, he should care for such a ratification, I am unable to see.

Now, the question is, does the insertion of a description of lot No. 4 in this second contract, for the purpose and under the circumstances stated, and without any fraudulent intent, avoid the contract as to the other land, the sale of which, at the price named, was, as we have seen, within the authority of the agent. Upon the hypothesis there can be no dispute but that the defendants did intend to agree to convey lots Nos. 5, 6, 7 & 31, at the price named, and it is quite clear that by the contract they did so agree. On the principle that the greater includes the less, lots Nos. 5, 6, 7 & 31 are clearly described.

In answering the question above put, it is to be observed that there is here no attempt to add to the writing by parol something not there found. The precise complaint is that by the writing the defendants are made to agree to something they did not intend to agree to, namely, convey not only lots

Nos. 5, 6, 7 & 31, but also lot No. 4 at the price named, namely, $10,000.

Now, if the complainant were here asking the enforcement of the contract as it actually reads, for the prices therein named, the defendants' contention would be unanswerable, for it is admitted that such was not the intention of the parties. But the complainant is not asking such relief, and asks only just what the defendants must, *pro hac vice*, admit to be the true contract, viz.: To convey lots Nos. 5, 6, 7 & 31 for $10,000. Hence it is difficult to see how the defendants are injured by the mere insertion of a description of lot No. 4 in the second contract. Nor is the Statute of Frauds infringed, for the lots intended to be conveyed, and the specified conveyance of which is asked, are actually described. It is not a case of introducing parol evidence to add to the thing agreed by the written contract to be conveyed and then asking the court to decree performance of it as so amended as against a vendor who would be injuriously affected by the addition. On the contrary, it is the showing by parol that something is included in the written description of the thing to be conveyed which does not properly belong there, and asking the court to eliminate it, and to perform the contract without the improper addition. Thus stated, I am unable to see any inequity in the complainant's request, or any reason in equity or in the Statute of Frauds why he should not have relief.

The decided weight of authority favors that view. Fry on Specific Performanae, 3rd Am., from the 2nd London Ed., secs. 736, 737, 738 & 739. The learned author in sec. 736 says: "We may now proceed to consider the effect of a parol variation set up by the defendant as a ground for refusing the specific performance of a written contract by the plaintiff. 'It depends on the particular circumstance of each case whether the variation is to defeat a plaintiff's title to have a specific performance or whether the court will perform the contract, taking care that the subject matter of his parol agreement or understanding is also carried into effect, so that all parties may have the benefit of what they contracted for.'" The quotation is from a considered opinion of Lord Cottenham in *London, &c., Railway Co. v. Winters*, Cr. & 7

Phil., 57, *at p.* 62 : and he cites in support of the proposition *Joynes v. Statham*, 3 Atk. 388 ; *Townsend v. Stangroom*, 6 Ves., 328 ; and *Ramsbottom v. Gosden*, 1 Ves. & Bea., 165.

In the case reported in Cr. & Phil., Lord Cottenham decreed against the defendant vendor the specific performance of a contract in writing to which the defendant had proven at the hearing an additional term, adding in the terms of the decree the additional term so proven.

The same thing was done by Lord Hardwicke in *Joynes v. Statham. Ramsbottom v. Gosden*, 1 *Ves. & Bea.*, 165, was a bill for the specific performance of a written contract to convey land by vendee against vendor, and the defendant proved that the written contract was not according to the parol agreement, in that the complainant was to pay certain costs and expenses not therein mentioned, and the Court, being of that opinion, gave the complainant the relief prayed for upon the condition that he would pay the additional costs and expenses proven by parol, but not included in the written contract.

Robinson v. Page, 3 *Russ.*, 114, was a bill by vendee against vendor for the specific performance of a conveyance of land in which the complainant set out one contract and defendant proved another. The Court gave the complainant specific performance, giving the defendant the choice of which of the two he would have performed.

Martin v. Pycroft, 2 *DeG. M. & G.*, 785, was a bill by lessee against lessor for the specific performance of a written contract to give a lease, the terms of which were correctly stated in the contract, but, in addition thereto, the complainant had verbally agreed to pay £200 as a down payment, which agreement was not stated in the written contract. In his bill he set up the agreement to pay the additional sum of £200 down money. The Court granted specific performance upon the conditions of paying the £200.

Smith v. Wheatcroft, *L. R. Ch. Div.*, *Vol.* 9 (1878), p. 223, was an action by vendee against vendor for the specific performance of a written agreement to convey land. Defendant set up that the agreement sued upon it was not the true agreement ; stated wherein it was untrue. The plaintiff assented to the charge, prayed for a decree of the contract as varied by

the defendant's evidence, and Lord Justice (then Judge) Fry, decreed accordingly, after a review of all the cases.

In *Smith v. Allen*, Saxton, p. 43, the bill was filed by the obligor of a bond against the obligees to change the verbiage of the bond, and, as changed, to enforce it; and it was done, accordingly, after consideration of all the cases.

Again the same thing was done in *Hendrickson v. Ivins*, Saxton, p. 569.

Wallace v. Brown, 2 Stock, 308, was, in effect, a suit for specific performance by vendee against vendor. The question turned upon one of price, defendants claiming that the contract was $500 more than the complainant stated. A conveyance was decreed upon the payment of the larger sum.

Ryno v. Darby, 5 C. E. G., 231, was a bill for specific performance brought by vendee against vendor. The contract was by parol. The equity relied upon was part performance. The defendant did not deny the bargain as alleged by the complainant, but set up and proved a subsequent varying of it by parol. Specific performance was decreed of the contract as proven by the defendant.

Professor Pomeroy (sec. 254), in discussing the subject of specific performance with a variation by parol of the written contract, points out the necessity, in considering the decided cases on this topic, of keeping constantly in mind the different relations which may exist between the parties, and says (sec. 255): "As has already been shown, upon the defendant's proof of an error or a parol variation in the contract alleged by the plaintiff, the plaintiff is not necessarily dismissed without any relief; he may often, and perhaps generally, elect whether to take a dismissal of his suit or decree for the specific performance of the contract in its modified form as proved by the defendant. A decree reforming the contract in accordance with the defendant's proof, and enforcing it as thus corrected, may also be granted on the defendant's demand." And he cities some of the cases already above cited. He then shows (secs. 259 & 260) that while the disposition of the English courts is against specific performance with a parol variation, in this country (secs. 261, *et seq*?) the courts allow the complainant to allege the variation and to enforce it so varied, citing a great number of cases, the leading one being

Keisselbrack *v.* Livingstone, 4 Johns Ch., 148. He proceeds to state (sec. 263) that the application of the doctrine should be, and in many of the states is, so confined and applied as not to infringe upon the Statute of Frauds by adding to the subject matter of a written contract to convey realty, land not described in it; but he says that this consideration does not reach the cases of excluding by parol land included in the written description. In other words, that in a suit by vendee against the vendor parol proof may not be resorted to by the complainant for that purpose of enlarging the scope of the writing in the way of conveying more land, but it may be used for the opposite purpose, viz., to narrow the scope and reduce the quantity of land to be conveyed; and in such cases the variation being in favor of the defendant and working him, no injury cannot be set up by him as a defense.

This seems to me to be according to common sense and general principles of equity, and I think that most of the cases can be harmonized by bearing in mind the relations existing between the parties, and whether it be a suit by vendee against vendor, or the contrary, and whether the effect of the evidence is, when the suit is against the vendor, to increase the quantity of land, which he agrees to convey, or whether it be in such case to diminish the land, which he is asked to convey.

Apply that rule here and the objection vanishes.

With regard to the provisions in the second contract for a complete title and sixty days' time after its completion for execution by the complainant, it is further to be observed that complainant has, by his bill, waived both provisions. He has not waited for all the suits to be determined, nor does he ask for compensation by reason of the adverse possession of Lindley or Williamson, the latter being, at the filing of the bill in possession, as I understand, of lot No. 31.

Were these contracts fair in all their parts at the time they were entered into?

The parties were dealing at arms length. There were no relations of trust or confidence between them. Both were entirely competent to take care of themselves. The details of the affair on the part of the defendants were managed by Mr. James A. O'Reilly, an intelligent lawyer, and himself one of

the executors, and also one of the *cestui que trust*, and by Senator Gardner, a thoroughly competent and reliable real estate expert, and both of them were perfectly familiar with the situation and surroundings of the lands, and with the prospects of Atlantic City. The price was fixed by these men, and, as to lots Nos. 5, 6, 7 & 31, was more than that fixed by the elder O'Reilly, which was $9,500, or as I infer from Senator Gardner's evidence, $2,500 each for Nos. 5, 6, and 7 and $2,000 for No. 31. Mr. James O'Reilly demanded $4,000 for No. 31, and preferred not to sell the others without it. He finally came down to $10,000 for the whole, which complainant accepted, though preferring to buy only Nos. 5, 6 & 7.

Now, in fixing this price and making this sale, there is not and cannot be the least pretense that the rights of *cestuis que trust* were not fully protected. There was no neglect of their interests in that behalf by the trustees. There is not a lisp of evidence to show that the price fixed was not a full one at the time.

It is said that the contract is unilateral in that complainant was not bound to pay, and that this quality renders it unfair as against the *cestuis que trust*. I do not think that the circumstances warrant this criticism. In the first place, no contract upon which a substantial payment is made can be properly held to be entirely unilateral. If the purchaser does not take the title he loses his payment. In this particular case the location of the property in the rear of the complainant's strip rendered it highly improbable that he would recede from his bargain. Moreover, the property was not in a situation to depreciate in value by dilapidations or other ordinary causes. So that the fact that the contract was in a measure unilateral, does not, as it seems to me, show any neglect of duty on the part of the trustees toward their *cestuis que trust*.

It is too late at this day to set up the unilateral feature as a defense, even if it existed in all its completeness, which it does not. *Green v. Richards*, 8 C. E. G., 32. As before remarked, the payment on account was small, but substantial.

It is said that making the contract in the shape it was, placed the defendant trustees in a position where they were obliged to bear the expense of heavy and long continued liti-

gation without any obligation on the part of the purchaser to pay even the contract price beyond the trifle already paid. This was, perhaps, a good reason for not making any present sale at all, and in the light of subsequent occurrences perhaps it would have been wiser not to contract to sell until the litigation was closed. But the parties acted deliberately upon the situation as it then appeared, and a mere mistake in judgment will not avail them. In fact, no one then supposed that clearing the adverse possession would prove to be a serious matter, or occupy any great length of time. All acted on the contrary supposition. It is now too late for the defendants to set up their mistake of judgment in a matter of that kind as a defense to a contract fair in all its parts. The contract must be judged by the circumstances as they then existed. Fry on Specific Performance, 3 Am. Ed., sec. 370. Pom. on Contracts, sec. 177.

II.

The next position taken by the defendants is that the complainant has slept upon his rights and has not been ready, desirous, prompt and eager, and has not come to the court as promptly as the circumstances permitted him.

I am unable to see anything in the proofs to sustain this point. By the plain terms of both the contracts the trustees were to make the first move by executing and tendering the deeds, or a deed. I can see no escape from this conclusion. It was so held by Chancellor Zabriskie upon a contract in substantially the same language in *Huffman v. Hummer*, 3 *C. E. G.*, 83 The complainant was not in default until a conveyance was tendered. No demand of a performance was ever made by the executors on the complainant and he never was in the least default. Neither was there any recission or attempted recission on their part to put him on his guard.

But the complainant's equity does not rest on any such narrow ground. The evidence, both parol and written, above referred to, shows that both parties were waiting upon the determination of the litigation involving the title. Complainant was at all times urging on the prosecution of the suits, so that he might get his title, and the

defendants were at all times aware of his attitude in that respect. There is not the least glimpse of proof that they were ever in the least doubt as to it, or that they ever supposed, much less acted upon the supposition, that he had abandoned his contract or intended to do so. They knew complainant's desire to complete the contract, and the fair inference from the evidence is that they did not ask him to complete because they were not themselves able to give a merchantable title. The trustees never intimated to complainant that they considered him in default, but acted towards him up to the last as if they intended to convey.

There is not the least particle of evidence to show that complainant was at any time speculating upon the situation and waiting to see whether the premises might or might not increase in value with a view to complete the contract in the one event and abandon it in the other. The attitude and conduct of the complainant in this respect is always one which attracts the attention of the court.

The rule requiring promptness on the part of the complainant is mutual and requires the defendant to be ready, desirous, prompt and eager if he will take advantage of the complainant's delay. Pomeroy on Contracts, sec. 403.

And the same learned author lays down the just rule (sec. 405) that the defendant can never take advantage, as a defence, of a delay which he himself has caused. Here the cause of complainant's delay was the failure on the executor's part to show a clear title. It does not lie in their mouths to say that the complainant was in laches as long as they, the executors, were not able themselves to perform, and made no tender of performance, and so long as they did not repudiate the contract by intimating to the complainant that they would not perform when they became able to do so.

I have looked at numerous cases cited by defendants' counsel on this point and find none to conflict with the views above expressed. In fact, I deem them so clearly fundamental that but for the earnestness of defendants' argument I should not have taken time to discuss them.

I think it proper here to observe that in my judgment the executors have held themselves open to the charge of laches in prosecuting the suits necessary to clear their title. The actions of ejectment might have been brought in April, 1881, but their commencement was delayed until January, 1882. After the reversal by the Court of Errors & Appeals at July Term, 1884, of the judgment recovered against Lindley on the first trial the cause slept until December, 1886; and after the reversal of the judgment upon the verdict upon that trial, the cause was not noticed until April, 1892, a period of over three years. The suit against West and Rotherham to recover possession of lots Nos. 4 & 5 slept without being noticed for trial, so far as appears, from January, 1882, to April, 1892. The first reversal in the Lindley case was founded upon an unguarded expression of the trial judges in his charge to the jury, for which it does not appear that the defendants herein were responsible, but the second reversal was caused by palpable but easily curable defect in the paper title of the executors, for which they are wholly responsible. Had these suits been properly prepared for trial and promptly tried, the title might have been established as early as 1885.

III.

I come now to the final point taken by the trustees, which in fact constitutes the real defence, if any they have, to the action, and furnishes the real reason for seeking to avoid the performance of these contracts, viz., the great expenses incurred in the perfection of the title and great advance in the market value of the land. It is now worth about ten times the contract price. The evidence tends to show that the increase has taken place principally within two or three years.

This matter of expense and the change in value is put forward as such unanticipated change of circumstances as will render the specific performance of the contract inequitable.

Professor Pomeroy (sec. 408) lays down the rule that this change of value, in order to operate as a defence,

must either grow out of or be accompanied by an inexcusable delay on the part of the complainant; and he adds that neither a raise in value, nor a depreciation, nor a loss, or injury to the property will, in the absence of unreasonable delay in the plaintiff, avail the defendant as a bar to the relief sought by the complainant. This follows from the general and familiar rule that the fairness of a contract must be judged of as matters stood at its date. Lord Justice Fry, in his Treatise (2d Am., from the 2d English, secs. 418 *et seq.*), takes the same view and says (sec. 420) that the question of the inadequacy of consideration—for this is the real defence here—must be decided as of the date of the contract, and not in the light of subsequent events. Professor Pomeroy modifies that doctrine by secs. 175–186, holding that the change in value due to expected causes not reasonably within the contemplation of the parties may amount to an excuse.

In my opinion the mere increase in the market value of the land between the dates of the contract and its execution should not excuse the vendor from its performance unless the vendee has been in some degree responsible for the lapse of time, or the increase has been the result of some extraordinary cause or causes not within the reasonable contemplation of the parties at the date of the contract.

A change in the value is always in the contemplation of the parties, and especially is this so with unimproved land like that here in question lying in the outskirts of a growing town or city. In such cases the present market value depends upon the rapidity and character of the growth of the town in connection with the rate of taxation land the cost of assessments for improvements. These are, in a great measure, a matter of speculative judgment in each particular case. In all such cases an increase in value is expected. In the case in hand the increase was greater than the owners anticipated; but it was the result of causes which were in full operation within the knowledge of the parties at the time of the sale. No new cause of increase has come into play; at least none was proven or suggested. Nor is the increase due to any unexpected development

peculiar to the property itself, such as the finding of a gold mine or a valuable bed of clay upon it not suspected to exist at the time the contract was made. Nor is it due in the least degree to a decrease in the purchasing power of the currency of the country. It is a matter of common knowledge that the price of all matters of bargain and sale, including farm and unimproved land generally, except land in or near towns and cities, rents and wages, have fallen within twenty years, so that the purchasing power of our currency has increased rather than declined. In fact this increase in the purchasing power of the currency has been so great and marked as to furnish a stock argument for those political economists, so called, who are urging the debasement of the currency by the free coinage of silver for the very purpose of raising prices to their former standard.

But while an increase in the market value of the lands here in question was reasonably to be expected, and of itself under the circumstances was no excuse for non-performance, yet I am satisfied that the great length of time required to settle the title, and the considerable expense, as is alleged, attending it, was not and could not reasonably have been anticipated. For while there is some reason to suspect from subsequent occurrences, presently to be mentioned, that the delay in bringing the causes to trial was due, in part, during the latter years, to a desire to tire out the complainant and get rid of these contracts, yet I am unwilling to adopt that view, or charge the defendants with suffering delay for that purpose. But while the defendants stand acquitted of intentional delay, and ought, on account of their innocence, not to suffer any loss on account of the delay, it by no means follows that they ought to be permitted to make a gain out of it as against the complainant, who is entirely innocent in the premises. It would be unjust to complainant not to bear in mind in this connection that if the lands had been conveyed to him according to the contract, he would, in the ordinary course of events, have had the benefit of the rise in value. It was precisely that right that he purchased. This follows from the rule that in equity the purchaser by contract is

the owner and the seller holds the title simply in trust for the purchaser with a lien upon it for the unpaid purchase money. To deprive the purchaser of the benefit of the rise in value is to deprive him of the benefit of his contract. I know of no principal recognized by a court of equity by which it can be done.

I repeat, then, that the defendants in this case cannot be permitted to make a gain out of their delay. At the same time that I acquit them of any intentional delay I think they ought not to suffer any loss not fairly within the reasonable contemplation of the parties.

At the hearing the complainant offered to submit to such terms in this respect as the court might impose, and herein I find the solution of the problems presented by the facts in this case in consonance with the doctrines of equity.

It remains to consider some of the numerous adjudged cases cited by defendants upon this part of the case.

Perkins v. Right, 3 *H. & McH.*, 324, was a bill by vendee against vendor, where the contract was to pay in bills of credit issued by the State of Maryland during the War of the Revolution, which had greatly depreciated in value. Relief was refused on that ground. Proceedings on appeal from this decree was abated by the death of both parties.

Deughdrill v. Edwards, 59 *Ald.*, 424, was a bill by vendee against vendor upon a contract, made during the late war, for the conveyance of land and payment therefor in Confederate currency, which before the contract was completed, became worthless, and performance was refused.

Willard v. Tayloe, 8 *Wall*, 557, was a case of vendee against vendor founded on a lease for ten years, dated in 1854, with an option to purchase at any price named at any time within the ten years. Before the option matured the war of the rebellion broke out, real estate in Washington advanced rapidly in value by reason of the resulting increase of business with the various governmental departments there; greenbacks were issued and became, at a large discount, measured

in gold. Specific performance was refused unless complainant would pay in gold, but it was decreed on those terms. It is expressly declared that the increase in value, though caused by an unexpected event—the breaking out of the War of the Rebellion—ought not to defeat the remedy, the contract having been at the time it was made fair in all its parts. But the depreciation of the currency as the result of the Legal Tender Act was put upon a different basis. The power of the Court to impose terms on the complainant was also affirmed upon a consideration of the authorities. At page 567 the learned Judge says: "It must also appear that the specific enforcement will work no hardship or injustice, for if that result would follow, the Court will leave the parties to their remedies at law, unless the granting of the specific relief can be accompanied with conditions which will obviate that result. If that result can be thus obviated, a specific performance will generally in such cases be decreed conditionally. It is the advantage of a Court of Equity, as observed by Lord Redesdale, in *Davis v. Hone*, 2 Sch. & Lef., 348, that it can modify the demands of parties according to justice, and where, as in that case, it would be inequitable from a change of circumstances to enforce a contract specifically, it may refuse its decree unless the party will consent to a conscientious modification of the contract, or, what would generally amount to the same thing, take a decree upon condition of doing or relinquishing certain things to th other party."

The case is very clear authority for the conclusion at which I have arrived on this part of the case.

Young v. Rathbone, 1 *C. E. G.*, 224, was a suit by vendor against vendee upon purchase by the defendant at a public sale by complainant as administrator. The deed was to be delivered on a day named; defendant was ready at that time, but complainant could not then make a good title. By a subsequent act of the Legislature the defect of title was cured and a deed tendered to and refused by the defendant. Under these circumstances Chancellor Green, though holding to the rule that generally time was not of the essence of the contract, refused

relief, saying (p. 228): "But in this case, between the time fixed for the delivery of the conveyance in December, 1860, and the subsequent tender of the deed after the title had been perfected, circumstances had materially changed. A civil war had broken out, and the value of real estate was repressed. It could not be consistent with the real intention of the parties or the real justice of the case to compel the vendee, under such circumstances acting in good faith, to accept a deed against his will which he was ready and willing to accept at the time fixed for the performance."

It is to be observed that the complainant was in default in not making a good title on that day named and was asking to be relieved from the effect of his own fault. The defendant was not in default, and the change in the value of the property was the result of causes not in active operation at the date of the contract, and which could not have been reasonably within the anticipation of the parties. Moreover, it is quite manifest that had the action been brought by the vendee against the vendor relief would have been granted on the ground that the vendee had not been in default.

Merritt v. Brown, 4 C. E. G., 293, is another example of change in value due to extraordinary and unexpected causes. It was an attempt to enforce a parol contract given by the defendant to the complainant to permit him to redeem lands sold at sheriff's sale and purchased by the defendant. The sale took place March 21, 1868, shortly before Fort Sumter was fired upon. The immediate effect of the war which followed was, as in *Young v. Rathbone*, a great depreciation in value of the property, so that complainant was unable to redeem, and abandoned the property. Afterwards greenbacks were issued, with the effect, as in *Willard v. Taylor*, of inflating values, and then complainant asked to redeem. At p. 293 Chancellor Zabriskie says: "In this case the commencement of the war, by the attack on Fort Sumter, between the sheriff's sale and the time to redeem, had alarmed the community; prices were unsettled, and few were willing to purchase real estate at all. Within the extension of sixty days the dis-

aster at Bull Run had further unsettled values and rendered the purchase of real estate undesirable. In this condition of things the complainant failed to redeem, according to agreement, and left Brown to pay the money, and fixed with what must have appeared a bad purchase. He made no effort, he considered himself under no obligation, to redeem the property. But after two years, when, by the effect of the Legal Tender Act, the country had been flooded with a large amount of paper money controvertible into gold and worth far less, and the relative value of land and this money had changed, the complainant, seeing that something was to be gained by him, and lost to Brown, by his performing, at this late day, his part of the contract, offers to pay, and asks for the property. The mere statement of the transaction show it to be too unconscientious to be entitled to aid in this court. It is a case where time is clearly of the essence of the contract, and to which the rule of equity that a party, to entitle himself to the aid of this court in enforcing a specific performance of a contract, must have himself been ready, willing and eager to perform on his part, clearly applies."

Peters v. Delaplain, 49 N. Y., 362, was an action by vendee against vendor, or rather, by and against the representatives of each, for the specific performance of a contract on the part of the owner on a particular day and hour and place, to convey a satisfactory title free of encumberance, and on the part of the purchaser to pay a fixed price. The vendee tendered performance and the vendor failed to perform, assigning as a reason that his wife would not join in the deed. The vendee refused to accept a deed without the wife joined. The vendor died about two years later, the vendee died six years later, and the widow of the vendor died fourteen years later; suit was commenced seventeen years later. The Court held that the vendee's right of action accrued as soon as the defendant refused to convey upon the excuse made by him, for the reason that his remedy was then complete to have a conveyance with idemnity against the inchoate right of dower in the wife (such as was given in *Young v. Paul*, 2 Stock, 401), and that, although the Statute of Limitations was

not an absolute bar, yet the long delay without any excuse made a defence in analogy to that statute. The Court also relied upon the circumstances, that, in the meantime, upon the death of the vendor, the property had been settled upon trusts so that the title was seriously entangled; it had greatly increased in value and the taking of a satisfactory account of the rents and profits would have been practically impossible.

Combs v. Scott, 76 *Wis.*, 662, was an action for specific performance of a contract to convey, the consideration of which was the settlement of a litigation between the parties. There was an immediate demand of the conveyance, and it was refused. The vendee acquiesced in the refusal for six years, and then brought suit for specific performance. In the meantime the taxes had been paid by the vendor and he received no income. The lands were wild timber lands. A railroad had been built in the neighborhood, and the lands as a result had increased greatly in value. Specific performance was refused, but damages were awarded in lieu thereof. No excuse was offered on the part of the plaintiff for the delay.

In *Fitspatrick v. Dorland*, 27 *Hun.*, 291, the defendant, a helpless female, became entitled to some vacant lots in the upper part of the City of New York, producing no rent, but involving a present outlay of considerable sums for assessments and taxes. She made a contract with a person not a party to the present site in April to convey on a day named, and tendered a deed, but the contractee failed to perform, and, as the court subsequently held, thereby lost his right to specific performance. He, however, brought a suit against her in June for specific performance. The day after that suit was commenced, she entered into a contract with the plaintiff, Fitspatrick, to sell the lots to him at a price named, and to give him a good title. The litigation under the first suit lasted for fifteen years and was very expensive, but finally successful to the defendant. In the meantime she had mortgaged the premises in order to pay the taxes and assessments, which were heavy, and had received little or no income from it. After the determination of the suit of the first

vendee, Fitspatrick, the second vendee, brought this action demanding the letter of his contract—that is, to have a perfect title to the property at the price fixed by the contract without any allowance for loss of interest, taxes or assessments. Specific performance was refused.

In dealing with the case the Court uses this language: "After fifteen years of litigation on defendant's part to protect her title to the property, the plaintiff now asks specific performance of the contract according to its original terms. It is evident that the parties to the contract in question never contemplated so long a delay in its consummation. That the vendor should bear all the burdens (taxes, assessments) without any income of the property for fifteen years and then be compelled to convey it *for contract price*, would seem inequitable, especially when the value has increased three-fold. The amount paid for taxes, assessments and interest on the premises nearly equal, if it does not exceed, the contract price. Equity will not decrease the specific performance in a case where it would work injustice and where the parties never expected or intended the results that have followed their action," referring to *Peters v. Delaplaine*, 49 *N. Y.*, 362, above stated, and *Magraf v. Muir*, 57 *N. Y.*, 155.

The latter case was a suit by vendee against vendor for specific performance, with an alternate prayer for damages. Defendant was the widow of one Muir, and resided in Brooklyn. He died seized of a lot of land in Westchester County. Of his six children three were minors. The defendant had no knowledge of the value of the land. Plaintiff did have knowledge and knew it was worth $2,000. Concealing this knowledge of value, he went to the defendant and obtained a contract from her to purchase it at $800. She contracted in her own name, expecting that those of her children who were of age would unite with her in the conveyance, and that she could get from the Court the right to convey on behalf of her minor children. In the meantime, before the contract was made, the property had been sold for taxes, and it was utterly impossible to make the conveyance. The plaintiff fell back on his alternate relief by way of damages

and the referee found in his favor $1,200, the difference between the real value and the contract price. The Court held that the contract should not be specifically enforced on account of its original unconscienableness; and they also reduced the damages to the down money paid—$25—and interest.

These are the principal cases relied upon by the defendant executors upon the defense of increase of value, and the statement of them shows that they have no application to the present case.

I think the complainant is entitled to relief against the O'Reilly devisees.

IV.

This brings me to the last point in the case, viz.: the claims of purchasers under the O'Reillys.

Each of the four strips composing the whole tract has been conveyed away, and at the hearing complainant expressed his desire to have the land itself rather than the proceeds of the sale received by the vendors. This renders it necessary to examine and determine whether the purchasers had notice of complainant's claim at or before making payments, so far as payments were made.

On November 14th, 1890, Mr. Newton Keim addressed a letter, above set out, to James O'Reilly, in which he speaks of the delay in bringing on the trial of the ejectments, and the feeble health of Mr. Voorhees as a cause for the delay, and offers to contribute towards the expense of additional counsel. No reply was made to his letter. On November 30, 1891, Mr. S. H. Grey, apparently as the result of an interview with Voorhees, addressed Mr. Voorhees a letter as follows:

"My Dear Sir:—Mr. Keim has furnished me copies of his agreements for the purchase of O'Reilly lands, part of which are in dispute in Lindley *v.* O'Reilly, now pending. I will furnish you copy of them if you wish. The O'Reillys do not dispute Mr. Keim's rights as an equitable owner. Will you not kindly urge the trial of the suits which are necessary to vindicate O'Reilly's title, as by his agreement of Oct., 1881, Mr. O'Reilly agreed to do.

Truly,

S. H. GREY."

That letter Mr. Voorhees enclosed at once in a letter to Mr. James O'Reilly, and stated that he had asked Mr. Grey for copies of the agreements. These were shortly afterwards furnished by Mr. Grey to Mr. Voorhees, and by him forwarded to Mr. O'Reilly.

The ejectments were noticed for trial at April Term, 1892, commencing on the 12th of that month. On April 1st Mr. Newton Keim wrote Mr. James O'Reilly offering the assistance of Mr. Grey as counsel at the approaching trial, but received no reply thereto. The suit against West and Rotherham was brought to trial and verdict rendered for the plaintiff on April 12, 1892. Judgment, as already stated, was afterwards entered on this verdict, and by it the title of the O'Reillys was perfected in lots Nos. 4 and 5, composing the Rotherham strip, 100 feet in width, lying eastwardly and next to the strip of 50 feet previously owned by complainant, facing on New York Avenue. The strip of 50 feet (Lot No. 6), next on the east of the Rotherham strip, was involved in the Lindley ejectment, which was not tried. On the 15th of April, 1892, Catherine O'Reilly, as executrix of her husband's will, executed a deed of conveyance, dated April 14th, conveying the Lindley lot to Daniel Lindley in consideration of $10,000, which deed was duly recorded on April 16th, 1892. The consideration for that deed was actually paid on or about April 16th. The proofs show that the lot so conveyed was worth at least $20,000, and probably $25,000. The deed on its face states that it was given in compromise of the ejectment suit, and such is the proof.

The question is whether Mr. Lindley had such notice of Mr. Keim's claim as to prevent his occupying the position of a *bona fide* purchaser for value.

The evidence is as follows:

Mr. Lindley was a resident, for the summer season at least, of Atlantic City, and was well acquainted with complainant. He had the undisputed title to the Pacific Avenue front of the strip (lot No. 6) in question, and was in possession of the whole. The portion of these strips towards the Ocean was low and in many places but little above the level of high water, and required filling. The Board of Health, in the summer of 1891, was requiring the owners to fill it in, and was proceed-

ing against Mr. Keim as such owner—so he swears, and he is not contradicted. He did some filling on the O'Reilly strips, but was unwilling to proceed further until he knew his rights. He swears that on one occasion within a year before April, 1892, he had a conversation with Mr. Lindley about this matter of filling while both were on the ground, and he then stated to Lindley that he had a contract from the O'Reillys for all the land they owned between New York and Tennessee Avenues. If this evidence is reliable, then Lindley did, undoubtedly, have notice. The information was upon a subject in which he was deeply interested, and a remark of that kind would naturally attract his attention. Lindley does not deny that there was such a conversation, but swears that it did not refer to the disputed land, and that Mr. Keim's claim as purchaser was not mentioned.

Mr. Lindley had a son-in-law, Alfred Adams, jr., a defendant herein, who also lived in Atlantic City, was on intimate business terms with his father-in-law, and assisted him in raising the $10,000 which he paid to the O'Reillys. The evidence is overwhelming that Adams had notice of Keim's claim. It is proven, not only by the evidence of the complainant, but also by Mr. Albertson, a partner of Senator Gardner, and finally by Mr. Barstow, a director in the bank from which the money was borrowed with which to pay the O'Reillys. Mr. Adams applied to the cashier for a loan of $10,000 for Mr. Lindley, but declined to tell that officer for what purpose the money was needed. Upon being informed that it would be necessary to disclose such purpose to some officer of the bank, he went to Mr. Barstow, one of the directors. That gentleman was sworn and gave his evidence in a peculiar manner and with great caution. I am entirely satisfied of its truthfulness. He says that Mr. Adams, in reply to his inquiry, stated that the money was to be used by Mr. Lindley to purchase from the O'Reillys the land in dispute between them. Mr. Barstow then asked him if he knew that Mr. Keim claimed to have a contract from the O'Reillys, covering that piece, to which Mr. Adams made no direct reply one way or the other. Adams denies all this and the other evidence referred to. But I am unable to place any confidence in such denial, and am led to the conclusion not

only that he had, in common with many other persons in Atlantic City, previous notice of Mr. Keim's claim, but that his attention was particularly called to it by Mr. Barstow on the very day, April 15, 1892, that the loan was secured. I do not understand him to swear that he concealed from his father-in-law any knowledge which he had on the subject. It is highly improbable that he would do so.

Further, James A. Griffith, a defendant herein in suit No. 2, was in possession under the Rotherhams of the shore ends of lots Nos. 4 & 5, and was anxious to purchase the whole land here in controversy in order to preserve the expense of improvements which he had put upon it, and attempted to buy up all the different claims upon the land. For that purpose, in the year 1891, he opened negotiations with Gardner, representing the O'Reillys, and with the complainant in person, and must also have talked with Lindley, who was in possession of lot No. 6, and with his son-in-law, Adams, who was in possession under lease from the O'Reillys of the shore front of lot No. 7. Griffith failed to purchase, because he found the aggregate sum he would be obliged to pay to all the claimants would be too great. There was ample opportunity for Lindley to learn of Keim's claim. The fact is that the Keim claim was very generally known among business men in Atlantic City, and it is difficult to understand how either Lindley or Adams could be ignorant of it.

The verdict in the West-Rotherham suit was rendered, as already stated, on Tuesday, April 12th. The Lindley case, acccording to his counsel, Mr. Harned, was not moved on account of Lindley's illness. Mr. Harned himself, after conference with Mr. Voorhees, counsel for the O'Reillys, prepared the deed from Mrs. O'Reilly to Mr. Lindley on Thursday, the 14th; submitted it to Mr. Voorhees the same day and got his approval of it, took it, with a note from Mr. Voorhees, to Reading, Pa., on Friday, the 15th, and there procured its execution and acknowledgment by Mrs. O'Reilly (the certificate incorrectly stated its acknowledgment in Camden) and brought it back to Camden. The loan from the bank in Atlantic City was obtained by Mr. Lindley on the same day; he brought the money to Camden on the same day or the next (he says Saturday, the 16th), handed it to Mr. Harned,

who gave his check, dated April 16th, to Mr. Voorhees for the amount, $10,000. Mr. Harned is mistaken in stating that he went to Reading and got the deed executed after Lindley brought him the money.

Now in this one transaction Mr. Harned was brought in contact several times with Mr. Voorhees, who knew of the Keim claim, and also several times with James O'Reilly, who also knew of it. Mr. Voorhees was not called as a witness, and I think there is some force in the argument of counsel for complainant that he is not the sort of man who would be likely to be a party to such a transaction without mentioning the Keim claim. Then the hasty manner in which the affair was carried through is not without significance. There was no preliminary agreement. James O'Reilly and Mr. Voorhees were at May's Landing on April 12th. Up to that time no agreement in the Lindley matter had been arrived at, and the sum to be paid was not agreed upon until after that date, although no negotiations had been on foot for some time. Mr. Harned, however, prepared the deed on the 14th, procured its execution on the 15th, and the O'Reillys trusted him with it without payment of the purchase money, upon his promise to pay it to Mr. Voorhees.

Then we have the fact that, although all three of the executors were present at Reading, the deed was prepared by Mr. Harned, after conference with Mr. Voorhees, to be executed by Mrs. O'Reilly alone, and a deed of ratification to be executed by the other executors, and its execution by them was procured at the same time as that of Mrs. O'Reilly's deed. Now, the proofs show that all the deeds of conveyance —over a dozen in number—made after Patrick O'Reilly's death, up to that date had been made and executed by all the executors as grantors. The question then arises, why was this one to Mr. Lindley executed by Mrs. O'Reilly alone, and a separate deed of confirmation by the other two executors used, which deed of confirmation was not recorded until after the complainant's bill had been filed? It is suggested by complainant's counsel, and I think with much force, that this plan was adopted because it would be much easier for Mr. Keim to prove authority from Francis and James to Gardner to make these contracts than to prove it from Mrs. O'Reilly.

Grant that Mr. Voorhees' opinion that Mrs. O'Reilly, having alone taken out letters testamentary in New Jersey, was authorized to convey without her co-executors joining in the conveyance, what objection was there to their joining in such conveyance, and why resort to the awkward and cumbrous plan of having a separate contemporaneous deed of confirmation executed by them? It was certainly a suspicious circumstance, which I think could not have escaped the attention of Mr. Harned, who was acting as the solicitor and counsel of Lindley in this matter, so that notice to him was notice to Lindley.

Taking all the circumstances—Mr. Lindley's residence at Atlantic City, the notoriety among business men of Mr. Keim's claim, the direct evidence of actual notice of it to him, clear proof of knowledge of it on the part of his son-in-law and assistant, Adams, and the circumstances attending the conveyance, I am convinced that Mr. Lindley had such notice of complainant's claim as to put him on inquiry and charge him with notice.

This renders it unnecessary to consider another point taken by complainant's counsel, viz.: that the deed from Mrs. O'Reilly alone was not sufficient to pass the legal title, and hence that no more than an equitable title resulted, which, being subsequent in point of time to complainant's equitable title, must yield to it. *Martin v. Bowen*, 6 *Dick.*, 452. In answer to this, however, counsel for Lindley produce the deed of confirmation executed by the other two executors, dated and acknowledged April 15, 1892—the day of the execution of Mrs. O'Reilly's deed—by which they ratify and confirm her deed. This deed of ratification and confirmation contains no words of grant, and it is at least doubtful whether it can be held to pass the legal title.

The next complication arises out of a contract for the sale to Alfred Adams, jr., of the 50-foot strip (lot No. 7), adjoining on the east the Lindley strip, and extending from Pacific Avenue to the Ocean. A Mrs. Williamson was in possession of the part of this strip immediately fronting on Pacific Avenue, and Adams was in possession of the end fronting on the Ocean, as tenant of the O'Reillys. The part in possession of Mrs. Williamson is the subject of an action of

ejectment brought by Mrs. O'Reilly against Mrs. Williamson on the 13th of April, 1892. On the 15th of April, 1892, Mrs. O'Reilly, on the application of Mr. Harned, addressed a letter to Adams, offering him his strip at the price of $25,000; and on the 18th day of April Adams mailed at Atlantic City a letter dated April 15th, drafted by Mr. Harned, addressed to her at Reading, accepting her offer. These letters were duly recorded as a contract for sale of land on April 23, 1892, upon the certificate of acknowledgment of Mr. Harned, that the O'Reilly letter was acknowledged before him on the 15th, and the Adams letter on the 22d of April. This agreement was carried out by a conveyance from Mrs. O'Reilly, as executrix, to Adams, dated June 1, 1892, acknowledged June 13th and recorded June 21, 1892. No part of the purchase money was paid. Adams executed to Mrs. O'Reilly a mortgage dated June 1, 1892, to secure $25,000 on August 1, 1893, with interest. The mortgage was accepted instead of cash for the purpose of indemnifying Adams against complainant's claim. Francis P. and James A. O'Reilly, as executors, executed a deed of confirmation of this conveyance in the same form as that which they executed in confirmation of Lindley's conveyance. In the meantime, on April 28th, notices of complainant's claim were served on Lindley and on Adams, and on the 30th of April the first bill herein was filed by complainant, asking for specific performance of both contracts, making Lindley and Adams parties on account of their claim, one by deed and and the other by contract, to a part of the premises, and praying that the deed and contract might be declared void.

Process was duly issued upon this bill and served upon each of these defendants on May 12, 1892. Notice of *lis pendens* under this bill was filed April 30, 1892. The devisees of O'Reilly, including Francis and James, answered this bill jointly August 5, 1892. Mrs. O'Reilly answered separately on the same day. Messrs. Lindley and Adams answered jointly on August, 23, 1892.

On September 19, 1892, complainant filed a supplemental bill setting out the proceedings in the suit to that

date and adding, by way of supplement, the deed which had been executed by Mrs. O'Reilly to Adams, and the mortgage given back by him for the consideration money, and the two deeds of confirmation which had not been put upon record at the time of filing the bill of April 30th.

This supplemental bill was duly answered by all the defendants, and the issues thus raised constitute the first cause under consideration.

It is hardly necessary to say that in no aspect of the case can Adams have any standing as against the complainant.

The second suit arose as follows: On the 21st of April, 1892, Mrs. O'Reilly, as executrix, entered into a written contract with James A. Griffith to convey to him the two strips, each fifty feet in width (lots Nos. 4 & 5), comprised in the West and Rotherham suit in consideration of $65,000, deed to be delivered and money paid, except $1,000 paid down, on May 21, 1892. This agreement was recorded May 6, 1892.

I stop here to say that Griffith was in possession of the shore front of this strip—had a Merry-go-round plant upon it.

Complainant filed his second bill May 26, 1892, setting up the same equities as in his first bill, omitting mention of the Lindley and Adams sale, but setting forth the Griffith contract, charging him with notice, praying that the contract might be declared void and that an injunction might issue against the carrying of it out by conveyance, or the assignment of it by Griffith.

I stop here to say that overwhelming proof was given at the hearing, which has already been alluded to, that Griffith did have full notice of complainant's claim before entering into this contract.

A notice of *lis pendens* founded on this bill, and setting forth the claim against Griffith and his contract, was also filed May 28th, 1892. Injunction in accordance with the prayer of this bill was duly served within the State on Griffith on June 7, 1892; process to answer was duly issued and served on him May 31, 1892. Griffith did not

answer. An answer was filed August 5th by the heirs and devisees of O'Reilly, and a separate answer by Mrs. O'Reilly, which were echoes of the answers filed on the same day to the bill against Lindley and Adams.

On the 13th of June, 1892, Mrs. O'Reilly executed, as executrix of her husband, a deed, dated June 1st, conveying the strip (Lot Nos. 4 & 5) contracted to be sold to Griffith, to one Edward H. Hall of Philadelphia, in consideration of $65,000. On the 14th of June Hall executed to Mrs. O'Reilly his bond and mortgage to secure $50,000.00, a part of the consideration money, with interest, on "August 1st, 1893, or as soon thereafter as a good and marketable title is made to the said Edward H. Hall by the said Catherine O'Reilly, executrix, for the land described in the accompanying mortgage," &c.—"the liability of the said Edward H. Hall on this bond being hereby expressly limited to the land conveyed and mortgaged." The sale clause was inserted in the mortgage. This mortgage was recorded June 16, 1892, and the deed June 15, 1892. The balance of the purchase money was paid in cash, except $1,000 previously paid by Griffith. In fact, this conveyance was made in fulfillment of the Griffith contract. A Title Guarantee Company of Philadelphia is warranted the title to Hall upon being indemnified by Mrs. O'Reilly.

On the 10th of August, 1892, Hall executed and acknowledged a deed conveying these premises to Joseph Shelton, of New York City, in consideration of $15,000, subject to the mortgage for $50,000, given by Hall to Mrs. O'Reilly. This deed was recorded August 11, 1892. Both Hall and Shelton are employees of R. D. Wood & Company, merchants, with offices in New York and Philadelphia. The transfer of title from Mrs. O'Reilly to Hall was made at the request of Mr. Griffith and under the supervision of his counsel, Mr. Harned.

On the 12th of September, 1892, complainant filed a supplement to his bill against Griffith, setting out the conveyance from Mrs. O'Reilly to Hall, and that from Hall to Shelton, and praying that both be declared void and set aside as against him, and praying an injunction restrain-

ing further transfer of the title, and also restraining the Clerk of Atlantic County from receiving further conveyances of these premises. Due notice of this suit and its object was filed in the County Clerk's office, September 23, 1892.

About the time this bill was filed Shelton conveyed the premises to Walter A. Wood, of the firm of R. D. Wood & Company, who at once conveyed them to one Bacharach, all residents of Philadelphia. Bacharach was a large creditor of Griffith, secured by a chattel mortgage upon his Merry-go-round plant upon the premises, which Griffith was running.

No answers were filed by either Griffith, Hall or Shelton to the bill, and decree *pro confesso* went against them. Wood and Bacharach were not brought in.

No attempt was made to sustain these conveyances as against complainant. Griffith paid his $1,000 with full notice of complainant's claim, and before Hall and Wood paid anything the bill of April 30th was filed and notice of it filed in the proper office; also that of May 26 which expressly prayed that Griffith's contract might be declared void, and notice of that was also duly filed May 26, 1892.

The result is that complainant is entitled to relief against all the defendants; and he asks for such title as he can get against the grantees of the O'Reillys without any guaranty by them, and is not content to receive the consideration already received and the securities given for the balance.

It remains to consider the terms upon which he should have this relief; and in view of the great rise in value of the property, and notwithstanding defendants are themselves responsible for at least half in time of the delay which has occurred in perfecting the title, I propose to make them so stringent as against the complainant that the defendants shall be quite as well off as if the contracts had been carried out immediately.

I think an account should be taken between the parties in which the complainant should be charged with the purchase price, $12,500, with interest on $2,500, less $25, from the date of the first contract, and on $10,000, less

$500, from the date of the second contract. He should also be charged with all the taxes and assessments paid upon the property, and the actual cost of any fillings put upon it by the O'Reillys. He should also be charged with the actual and necessary expenses attending the several actions of ejectment, less the sum of $500, which I adopt arbitrarily as the amount which was probably in the minds of the parties as the cost of the suits at the time the contracts were entered into. The complainant must be credited with all rents and income received by the O'Reillys, and they must consent to the use of Mrs. O'Reilly's name, or such substitution of her heirs or devisees in the various actions of ejectment which are still pending, as may be necessary to revive the suits, said actions to be at the control of the complainant and to be carried on and conducted for his benefit; also actions for mesne profits in case of final success therein, the complainant to idemnify the parties against loss or damage by reason of the use of their names as plaintiffs.

I will hear counsel, as to whether or not relief should be given indirectly in favor of Lindley and against the O'Reillys for the $10,000 paid by him. If so, what form it should assume.

IN CHANCERY OF NEW JERSEY.

BETWEEN
JACOB KEIM,
Complainant,
AND
CATHERINE C. O'REILLY, DANIEL LINDLEY *et al.*,
Defendants.

ON BILL, &C., DECREE IN CONSOLIDATED CAUSES, &C.

IN CHANCERY OF NEW JERSEY.

BETWEEN
JACOB KEIM,
Complainant,
AND
CATHERINE C. O'REILLY, JAMES A. GRIFFITH, *et al.*,
Defendants.

ON BILL, &C., DECREE IN CONSOLIDATED CAUSES, &C.

These causes coming on to be heard on the original and supplemental bills of complaint and the answers of the several defendants thereto and the proofs of the several parties, complainant and defendant, in the presence of Grey and Grey, of counsel with said complainants, and of David J. Pancoast and Peter L. Voorhees, of counsel with defendants, Catherine C. O'Reilly, James A. O'Reilly and Francis P. O'Reilly, Executors and Devisees of Patrick O'Reilly, deceased, and John F. O'Reilly and Anthony J. O'Reilly, Devisees of said Patrick O'Reilly, deceased, and of Thomas B. Harned, of counsel with the defendants, Daniel Lindley and Alfred Adams, jr., and the said bills of complaint and the answers thereto having been presented to the court, and the arguments of counsel heard thereon, and the court having considered the same, and being of opinion that the complainant is entitled to the relief

prayed for in his original and supplemental bills of complaint to the extent hereinafter decreed; and the said defendant, Catherine C. O'Reilly, having departed this life pending the hearing of these causes, and Francis P. O'Reilly, as Executor of her last will, &c., and as devisee therein, as Trustee for John F. O'Reilly and Anthony J. O'Reilly, and in his own right, and James A. O'Reilly, also as devisee under said will, having been substituted as defendants in the stead of said Catherine C. O'Reilly, and the said causes ordered to stand revived as against them; and by another order said causes having been consolidated:

IT IS THEREUPON on this twenty-fourth day of April, eighteen hundred and ninety-five, by Honorable Alexander T. McGill, Chancellor, of the State of New Jersey, ordered, adjudged and decreed, and the said Chancellor doth by virtue of the power and authority of this Court, hereby order, adjudge and decree, in said consolidated causes, that under the two several receipts or agreements set forth in the original bills of complaint in said causes, the first dated the twenty-fifth day of March, eighteen hundred and eighty, and the second dated the twenty-ninth day of October, eighteen hundred and eighty-one, the complainant became and is entitled to have conveyed to him a fee simple estate in all the lands in said agreement described, free from encumbrance, and that the following is a true description of all the lands included within the operation of said agreements; that is to say:

All that tract or piece of land, situate in the City of Atlantic, in the County of Atlantic, in the State of New Jersey, and bounded as follows: Beginning at a point in the southeasterly line of Pacific Avenue, at a distance of two hundred (200) feet northeasterly from the northeasterly line of New York Avenue, and extending thence (1) southeasterly on a line parallel with New York Avenue, a distance of one hundred and fifty (150) feet; thence (2) southeastwardly parallel with Pacific Avenue, a distance of one hundred (100) feet; thence (3) southeastwardly parallel with New York Avenue, a distance of fifty (50) feet; thence (4) southwestwardly parallel with Pacific Avenue, a distance of fifty (50) feet; thence (5) southeastwardly parallel with New York Avenue to the exterior line established by the Riparian Com-

missioners of New Jersey; thence (6) northeastwardly along said riparian line, a distance of two hundred (200) feet; thence (7) northwestwardly parallel with New York Avenue to the southeastwardly line of Pacific Avenue; thence (8) southwestwardly along said last line mentioned, a distance of fifty (50) feet to the place of beginning, and also all additions and accretions to said tract of land on the sea front. It being the purpose to include all the lands described above, and all the right, title and interest of the heirs, executors and devisees of Patrick O'Reilly, deceased, in and to the accretion to said land which may have been made upon the sea front, including all the land and rights of said Patrick O'Reilly's estate between Pacific Avenue and riparian line and beyond, and New York and Tennessee Avenues.

And that the said complainant, upon the payment of the moneys in said agreement mentioned, as in said decree directed, is entitled to have said agreements specifically performed as against all the defendants named in said original bills of complaint and against those since made parties to said causes; that is to say, as against the defendants, James A. O'Reilly and Francis P. O'Reilly, surviving executors of the last will and testament of Patrick O'Reilly, deceased, and James A. O'Reilly, Francis P. O'Reilly, Anthony J. O'Reilly, John F. O'Reilly, devisees under said will of Patrick O'Reilly, deceased, Francis P. O'Reilly, executor of the last will of Catherine C. O'Reilly, deceased, Francis P. O'Reilly, trustee under the said last will for John F. O'Reilly, Francis P. O'Reilly, trustee under said will for Anthony J. O'Reilly, Francis P. O'Reilly, devisee under said will in his own right, and James A. O'Reilly, devisee under said will, and also against the defendants, James A. Griffith, Edward Hall and Joseph Shelton, and also against the defendants, Daniel Lindley and Alfred Adams, jr., as to the several portions of the said lands by them respectively claimed to be held as aforesaid.

And it is further ordered, adjudged and decreed, that an account between said complainant and defendants aforenamed, surviving executors and devisees of Patrick O'Reilly, deceased, and executor and devisees of Catherine O'Reilly, deceased, be taken for the purpose of ascertaining what sum of

money the complainant should pay under the terms of said agreements and the circumstances of this case, and that in said account the complainant shall be charged with the purchase price on both of said agreements, twelve thousand five hundred dollars with interest on two thousand five hundred dollars, (less twenty-five dollars) from the date of said first contract, to wit: from the twenty-fifth day of March, eighteen hundred and eighty, and on ten thousand dollars (less five hundred dollars) from the date of the said second contract, to wit: from the twenty-ninth day of October, eighteen hundred and eighty-one, up to the commencement of the first of these consolidated suits by filing the bill therein. And also charging said complainant with all taxes and assessments paid upon the said property, and the actual cost of any filling put upon said property by the defendants, executors or devisees of said Patrick O'Reilly, deceased.

And also charging said complainant with the actual and necessary expenses actually paid out in the actions of ejectment touching the title to said lands referred to in the proofs, less the sum of five hundred dollars, which the Court adopts arbitrarily as the amount in the minds of the parties, as the costs of said suits at the time said contracts were entered into, excluding, however, from such charge any sums paid to James A. O'Reilly and Francis P. O'Reilly, or to either of them, for fees, commissions or services of any character rendered in the prosecution of said suits.

And crediting said complainant with all rents and income received by said defendants, executors and devisee of said Patrick O'Reilly, deceased, or as executor and devisees of Catherine C. O'Reilly, deceased, and also with the fair rental value of said lands described in said agreements, during the period from the time when said defendants, executors of Patrick O'Reilly, deceased, executed and delivered deeds seeking to convey away said lands, up to the date of the masters, or other account to be made in this matter under this decree.

And it is further ordered, adjudged and decreed that within ten days after the service of a copy of this decree upon the defendants, surviving executors and devisees of said Patrick O'Reilly, deceased, and executor and devisees of Catherine C. O'Reilly, deceased, or upon their solicitor, on payment or

tender by said complainant or his solicitors to the said defendants or their solicitor of any balance which may, upon confirmation of said accounting, be found to be due from said complainant to the said defendants, the said Francis P. O'Reilly and James A. Griffith, surviving executors as aforesaid, of Patrick O'Reilly, deceased, Anthony J. O'Reilly and Francis P. O'Reilly, and James A. O'Reilly, devisees as aforesaid and Francis P. O'Reilly, executor as aforesaid of the last will of Catherine C. O'Reilly, deceased, and as devisee trustee thereunder, and in his own right, and said James A. O'Reilly, also as devisee thereunder, shall make, execute, acknowledge and deliver to said complainant a good and valid deed of bargain and sale, conveying to said complainant in fee simple, free from encumberance, all that tract of land hereinabove described, being the lands so as aforesaid agreed to be conveyed to said complainant.

And it is further ordered that the said account be taken and stated before Howard M. Cooper, Esq., one of the Masters of this Court.

And it is hereby further declared and decreed that the following named several writings, purporting to be agreements, deeds and mortgages, made by the defendants in this cause, or by some of them, and the several records of the same, that is to say :

The writing purporting to be a deed, made by Catherine C. O'Reilly, executrix of the last will of Patrick O'Reilly, deceased, to said defendant, Daniel Lindley, dated the fourteenth day of April, eighteen hundred and ninety-two, and the record thereof in Atlantic County Clerk's Office, in Book 163 of Deeds, folio 8, &c.

The writing purporting to be a confirmatory deed made by Francis P. O'Reilly and James A. O'Reilly, other executors as aforesaid, to said Daniel Lindley, dated the fourteenth and acknowledged the fifteenth day of April, eighteen hundred and ninety-two, and the record thereof in said Atlantic County Clerk's Office, in Book 164 of Deeds, folio 136, &c.

The writing purporting to be an agreement made by said Catherine C. O'Reilly, executrix as aforesaid, with said defendant, Alfred Adams, jr., on the fifteenth day of the month of April, eighteen hundred and ninety-two, and the

record thereof in said Clerk's Office, in Book No. 2 of Agreements, page 372, &c.

The writing purporting to be a deed of conveyance, made by said Catherine C. O'Reilly, executrix as aforesaid, to said defendant, Alfred Adams, jr., dated the first day of June, eighteen hundred and ninety-two, and the record thereof in Atlantic County Clerk's Office, in Book 164 of Deeds, folio 158, &c.

The writing purporting to be a confirmatory deed of conveyance, made by James A. O'Reilly and Francis P. O'Reilly, other executors of said Patrick O'Reilly, deceased, to said defendant, Alfred Adams, jr., dated the first day of June, eighteen hundred and ninety-two, and the record thereof in said Atlantic County Clerk's Office, in Book 163 of Deeds, folio 410, &c.

The writing purporting to be an indenture of mortgage, made by said defendant, Alfred Adams, jr., to said Catherine C. O'Reilly, as executrix of said Patrick O'Reilly, deceased, dated the first day of June, eighteen hundred and ninety-two, and the record thereof in said Atlantic County Clerk's Office, in Book No. 32 of Mortgages, folio 389, &c.

The writing purporting to be an agreement in writing, made by Catherine C. O'Reilly, as executrix, with James A. Griffith, &c., dated the first day of June, eighteen hundred and ninety-two, and the record thereof in said Atlantic County Clerk's Office, in Book No. 2 of Agreements, folio 373, &c., on May 6th, 1892, referred to the complainants, original bill against said Griffith.

The writing purporting to be a deed, dated the first day of June, 1892, made by Catherine C. O'Reilly, executrix, &c., to the defendant, Edward Hall, and the record thereof in said Clerk's Office, in Book No. 164 of Deeds, folio 123, &c., on the 15th day of June, 1892.

The writing purporting to be a mortgage, made by said Edward Hall to said Catherine C. O'Reilly, to secure the sum of $50,000 with interest, and the record thereof, on the 16th day of June, 1892, in said Clerk's Office, in Book No. 32 of Mortgages, folio 263, &c.

The writing purporting to be a deed from said Edward

Hall and Adeline, his wife, to the defendant, Joseph Shelton, dated 10th day of August, 1892, and the record thereof in said Atlantic County Clerk's Office, in Book 164 of Deeds, folio 437, &c., were and are each and all of them fraudulent and void, and shall be and hereby are decreed to be cancelled and to be of no force or effect as against the complainant.

And it is hereby ordered, adjudged and decreed, that the defendants, Executors and devisees under the last will of said Patrick O'Reilly, deceased, and executors and devisees under the last will of Catherine C. O'Reilly, deceased, permit said complainant or his legal representatives the use of their names or of the names of such of them as may be necessary, as plaintiffs in the conduct and prosecution by said complainant of any action or actions now pending or the revivor thereof or the institution of new suits touching the title to or possession of said lands agreed to be conveyed by either or both the above named two agreements or any part of said lands which said complainant or his legal representatives may find it necessary to conduct, prosecute, revive or institute for the purpose of establishing title to said lands or recovering the possession thereof, the said complainant or his legal representatives indemnifying said defendants from all further costs and expenses in such suits incurred after said defendants shall have fully complied with the terms of this decree, such indemnity, in case of disagreement, to be settled and approved upon notice by said Howard M. Cooper.

And it is further ordered, adjudged and decreed that the said defendants, surviving executors and devisees of said Patrick O'Reilly, deceased, and executor and devisee under said last will of Catherine C. O'Reilly, deceased, shall within ten days after service of a copy of this decree upon said defendants, or upon their solicitor, deliver to the solicitors of the complainant all deeds and conveyances and other muniments of title, surveys, maps, agreements and other papers affecting the title to said lands and such other papers as may have been offered in evidence by the plaintiff in the ejectment suits brought by said Catherine C. O'Reilly for the recovery of said lands, or in any of said suits.

And it is further ordered, adjudged and decreed that the parties hereto are at liberty to apply to this court, from time to time, as occasion may require, until full compliance with the terms of this decree for such further orders as may be necessary to enforce performance thereof.

And it is further ordered, adjudged and decreed that the defendants, or some of them, shall, within ten days after service upon them, or upon their solicitors, of a copy of this decree and the bill of costs of said complainant to be taxed in this cause, pay to said complainant or to his solicitors the said taxed costs of this suit; and that in default thereof an execution do issue therefore, &c., &c.

Respectfully advised,

H. C. PITNEY,
V. C.

New Jersey Court of Errors and Appeals.

CATHERINE C. O'REILLY *et al.*, *Appellants,* AND JACOB KEIM, *Respondent.*	ON BILL, &C. NOTICE OF APPEAL.

The defendants, James A. O'Reilly and Francis P. O'Reilly, Executors and devisees of Patrick O'Reilly, deceased, and John P. O'Reilly and Anthony J. O'Reilly, devisees of said Patrick O'Reilly, hereby jointly and severally appeal from the whole and every part of the decree made against them, and in favor of the complainant in the above stated cause, which said decree is dated the 24th day of April, and was filed on the 6th day of May, A. D. 1895, upon the ground that the same was and is wholly and in every part erroneous, to the Court of Errors and Appeals in the last resort in all causes.

Dated May 6th, 1895.

DAVID J. PANCOAST,
Solicitor for Appellants.
DAVID J. PANCOAST,
Of Counsel.

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

PETER L. VOORHEES,
Of Counsel with Appellants.

New Jersey Court of Errors and Appeals.

BETWEEN
CATHERINE C. O'REILLY
et al.,
Appellants,
AND
JACOB KEIM,
Respondent.

ON BILL, &C.
PETITION OF APPEAL.

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

The humble petition of James A. O'Reilly and Francis P. O'Reilly, Executors and devisees of Patrick O'Reilly, deceased, and John F. O'Reilly and Anthony J. O'Reilly, devisees of said Patrick O'Reilly, the appellants in the above stated cause, respectfully show that your petitioners find themselves aggrieved by a decree made in the Court of Chancery by his Honor, Alexander T. McGill, Chancellor of New Jersey, bearing date the Twenty-fourth day of April and filed the sixth day of May, eighteen hundred and ninety-five, wherein the said Jacob Keim was complainant and the said Catherine C. O'Reilly and others were defendants in this respect, to wit : that the said decree, among other things, adjudges "that under the two several receipts or agreements set forth in the original bills of complaint in said causes, the first dated the twenty-fifth day of March, eighteen hundred and eighty, and the second dated the Twenty-ninth day of October, eighteen hundred and eighty-one, the complainant became and is entitled to have conveyed to him a fee simple estate in all the lands in said agreement described, free from encumberance," and "that the said complainant, upon the payment of the moneys in said agreement mentioned, as in said decree directed, is entitled to have said agreements specifically performed, as against all of the defendants named in said original bills of complaint and

against those since made parties to said causes; that is to say, as against the defendants, James A. O'Reilly and Francis P. O'Reilly, surviving executors of the last will and testament of Patrick O'Reilly, deceased, and James A. O'Reilly, Francis P. O'Reilly, Anthony J. O'Reilly, John F. O'Reilly, devisees under said will of Patrick O'Reilly, deceased, Francis P. O'Reilly, Executor of the last will of Catherine C. O'Reilly, deceased, Francis P. O'Reilly, trustee under the said last will for Anthony J. O'Reilly, Francis P. O'Reilly, devisees under said last will in his own right, and James A. O'Reilly, devisee under said will." And your petitioners hereby appeal from the whole and every part of the said decree, and especially that part thereof above recited, on the ground that the said decree against the appellants is wholly and in every part erroneous. Your petitioners, therefore, pray that the same may be wholly reversed and set aside and for nothing holden. And that your petitioners may have such relief in the premises as to this honorable court shall seem meet.

DAVID J. PANCOAST,
Sol'r of Appellants.

PETER L. VOORHEES,
Of Counsel with Appellants.

New Jersey State Library

New Jersey Court of Errors and Appeals.

BETWEEN
CATHARINE C. O'REILLY, *et al.*,
Appellants,
AND
JACOB KEIM,
Respondent.

TWO CONSOLIDATED CAUSES.
ANSWER TO PETITION OF APPEAL.

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

This respondent, not acknowledging all or any of the matters which in the said petition of appeal are contained to be true, for answer thereto, nevertheless, says and admits, that a decree was made, bearing date the twenty-fourth day of April, and filed the sixth day of May, eighteen hundred and ninety-five, and entered in the Court of Chancery in the causes, (consolidated) for that purpose mentioned in the said petition, as is therein stated; but as to the substance and form thereof, this respondent prays to refer thereto when the same shall be produced.

And this respondent is advised and believes that the said decree is agreeable to equity, save and except in such portions thereof as adjudge that in taking the account referred to in said decree, this respondent, (referred to in said decree as complainant), should be charged with the purchase price in both the agreements set forth in said decree, twelve thousand five hundred dollars, with interest on two thousand five hundred dollars, (less twenty-five dollars), from the date of the first contract, to wit, from the twenty-fifth day of March, eighteen hundred and eighty, and on ten thousand dollars (less five hundred dollars), from the date of the second con-

tract, to wit, from the twenty-ninth day of October, eighteen hundred and eighty-one, up to the commencement of the first of these consolidated causes, by filing the bill therein. And that said respondent should also be charged with all taxes and assessments paid upon the property referred to in the said decree, and the actual cost of any filling put upon said property by the appellants, executors and devisees of said Patrick O'Reilly, deceased, and also with the actual and necessary expenses actually paid out in the actions of ejectment touching the title to the lands referred to in the proofs, less the sum of five hundred dollars, which the Court adopted arbitrarily as the amount in the minds of the parties as the costs of said suit at the time said contracts were entered into, excluding, however, from such charge any sums paid to James A. O'Reilly and Francis P. O'Reilly, or to either of them, for fees, commissions or services of any character rendered in the prosecution of said suit. And that this respondent should be credited with all rents and incomes received by said appellants, executors and devisees for Patrick O'Reilly, deceased, or as executor and devisee for Catherine C. O'Reilly, deceased, and also with the fair rental value of the said lands described in said agreements, during the period from the time when said appellants, executors of Patrick O'Reilly, deceased, executed and delivered deeds, seeking to convey away said lands, up to the date of the Master's or other account to be made in this matter under said decree; and this respondent prays that the said decree, save and except the portions thereof hereinbefore recited, may be affirmed, with costs to be adjudged to this respondent, and that said excepted portions may, in the particulars aforesaid, be reversed, set aside, and for nothing holden, according to the prayer of this respondent's petition of appeal, in these consolidated causes filed.

GREY & GREY,

Sols. for and of Counsel with Respondents.

IN CHANCERY OF NEW JERSEY.

BETWEEN JACOB KEIM, *Complainant*, AND CATHERINE C. O'REILLY, DANIEL LINDLEY, *et al.*, *Defendants.*	ON BILL, &c. NOTICE OF APPEAL.

IN CHANCERY OF NEW JERSEY.

BETWEEN JACOB KEIM, *Complainant*, AND CATHERINE C. O'REILLY, JAMES G. GRIFFITH, *et al.*, *Defendants.*	ON BILL, &c. NOTICE OF APPEAL.

The complainant hereby appeals from the interlocutory decree made in this Court in the above stated consolidated causes, so far as the said decree in directing an account be stated between the said complainant and the defendants named in said decree declares that in said account the complainant shall be charged with interest on two thousand five hundred dollars (less twenty-five dollars), part of the purchase price in the agreements named in said decree, from March 25th, 1880, and on ten thousand dollars (less five hundred dollars), from the 29th day of October, 1881. And also, so far as the said decree charges the said complainant in stating said account with all taxes and assessments paid on the property named in said decree, and the actual cost of any filling put upon said property by the defendants, executors or devisees of Patrick O'Reilly, deceased. And also so far as the

said decree directs that in stating said account said complainant shall be charged with the actual and necessary expenses actually paid out in the actions of ejectment, touching the title to lands referred to in said decree, less the sum of five hundred dollars, which the Court of Chancery adopted arbitrarily as the amount in the minds of the parties as the cost of said suit at the time the contracts referred to in said decree were entered into. And also from that part of said decree which directs that in said accounting said complainant should be credited with all rents and incomes received by said defendants, executors and devisees of Patrick O'Reilly, deceased, or of Catharine C. O'Reilly, and with the rental value of the lands referred to in said decree, during the period from the time when said defendants executed deeds, conveying away said lands, up to the date of the Master's account, to be made, &c., to the Court of Errors and Appeals in the last resort in all causes.

Dated May 29th, 1895.

GREY & GREY,
Sols. for Complainant.
M. P. GREY,
Of Counsel with Complt.

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

M. P. GREY,
Of Counsel with Complt.

New Jersey Court of Errors and Appeals.

IN THE LAST RESORT IN ALL CAUSES.

BETWEEN
JACOB KEIM,
Appellant,
and
CATHERINE C. O'REILEY, and others,
Respondents.

} CONSOLIDATED CAUSES, &c., ON APPEAL FROM DECREE IN CHANCERY. PETITION OF APPEAL, &c.

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

The petition of Jacob Keim, the appellant in the above stated cause, respectfully shows that your petioner finds himself aggrieved by an interlocutory decree, made in the Court of Chancery by his Honor, Alexander T. McGill, Chancellor of the State of New Jersey, bearing date the twenty-fourth day of April, 1895, and filed on the sixth day of May, in the said year, wherein your petitioner, Jacob Keim, was complainant and Catherine C. O'Reilly, James A. O'Reilly and Francis P. O'Reilly and other persons were defendants, in these respects, to wit: That the said decree adjudges, among other things, that an account between said complainant and the defendants named in said decree be taken for the purpose of ascertaining what sum of money the complainant should pay under the terms of certain agreements referred to in said decree, and the circumstances of this case, and that in said account the said complainant should be charged with the purchase price in both said agreements twelve thousand five hundred dollars, with interest on two thousand five hundred (less twenty-five dollars), from the date of the said first contract, to wit: from the

twenty-fifth day of March, eighteen hundred and eighty, and on ten thousand dollars (less five hundred dollars), from the date of the said second contract, to wit: from the twenty-ninth day of October, eighteen hundred and eighty-one, up to the commencement of the first of these consolidated causes, by filing the bill therein. And that said complainant should also be charged with all taxes and assessments paid upon the property referred to in the said decree, and the actual cost of any filling put upon said property by the defendants, executors or devisees of said Patrick O'Reilly, deceased, and also with the actual and necessary expenses actually paid out in the actions of ejectment, touching the title to the lands referred to in the proofs, less the sum of five hundred dollars, which the Court adopted arbitrarily as the amount in the minds of the parties as the costs of said suit at the time said contracts were entered into; excluding, however, from such charge, any sums paid to James A. O'Reilly and Francis P. O'Reilly, or to either of them, for fees, commissions, or services of any character rendered in the prosecution of said suit.

And that said complainant should be credited with all rents and incomes received by said defendants, executors and devisees for Patrick O'Reilly, deceased, or as executor and devisee for Catharine C. O'Reilly, deceased, and also with the fair rental value of said lands described in said agreements, during the period from the time when said defendants, executors of Patrick O'Reilly, deceased, executed and delivered deeds, seeking to convey away said lands, up to the date of the Master's or other account to be made in this matter under this decree.

And your petitioner humbly appeals from that part of the decree of the Chancellor hereinbefore set forth, upon the ground that the same is erroneous and illegal, unjust and inequitable under the pleadings and proofs in this cause, in that said decree charges your petitioner, (the complainant in said consolidated causes before said Court of Chancery), with interest on the said purchase

price named in said agreements referred to in said decree, and with the taxes and assessments paid on said property, and the cost of filling put upon said property; and especially is it erroneous, illegal and inequitable that your petitioner should be charged, as adjudged in said decree, with the actual and necessary expenses paid out in the actions of ejectment, touching the title of lands referred to in the said decree, either with or without the deduction of the sum of five hundred dollars, which the Court of Chancery arbitrarily adopted as the amount in the minds of the parties as the costs of the said suits at the time the contracts referred to in the said decree were entered into; and that the said account should be so stated that your petitioner, (complainant as aforesaid), should be credited with rents, incomes and rental values as set forth in said decree.

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

GREY & GREY,

Sol's for and of Counsel with Appellant.

ANSWER TO PETITION OF APPEAL.

The answer of Francis P. O'Reilly and James A. O'Reilly, executors, &c., and John F. O'Reilly and Anthony J. O'Reilly, respondents, to a petition of appeal of the above named appellant.

These respondents, not acknowledging all or any of the matters, which in the said petition of appeal are contained, to be true, for answer thereto, nevertheless, say and admit, that a decree was, on the twenty-fourth day of April, 1895, made and entered in the Court of Chancery, in the cause for the purpose mentioned in said petition, as therein stated; but as to the substance and form thereof, these respondents pray to refer thereto when the same shall be produced. And from the whole and every part of the said decree these respondents have heretofore duly appealed to this Honorable Court of last resort, on the ground that the appellant in the said cause was not entitled to any relief against these respondents. And they insist that the said appellant is not entitled to have the said decree set aside, merely in respect to the matter set forth in his said petition, and affirmed with respect to the other matters therein contained; because, as these respondents insist, the same is illegal and bad in all its parts.

DAVID J. PANCOAST,
Solicitor and Counsel of Respondents.