

NEW JERSEY
Court of Errors and Appeals.

BETWEEN

MICHAEL BRADY,

Appellant,

and

THE CARTERET REALTY COMPANY,

ET AL.,

Respondents.

On Appeal

from

Final Decree.

Brief for Carteret Realty Company.

We submit that the opinion on the affirmance of the order denying a new trial (*64 Atl. Rep.*, 1078) is conclusive on the question of the constitutionality of the Act to Quiet Title in all its provisions.

But if the question now raised by the appellant was still open in this Court the appellant cannot raise it. As complainant he invoked the statute and it was on his motion that a trial by jury was ordered. Whatever may have been his right as to the mode of trial, it was competent for him to waive that right, and his resort to a jury trial was such a waiver. The case is the converse of that where this Court held that moving for and obtaining an

order for an issue out of Chancery was a waiver of the right asserted in this Court of an action at law.

American Dock & Im. Co. v. Trustees of Public Schools, 10 Stev., 266.

Furthermore, in an ordinary feigned issue out of Chancery, the Chancellor is not bound to reject the verdict of the jury and take testimony himself; he is simply allowed to do so. In the case in hand, when the cause came on for final hearing, the appellant offered no testimony, and did not ask that any be taken. The cause was submitted upon the Chancellor's previous adjudication that he was satisfied with the ~~verdict~~ of the jury. Of course there was nothing possible except a decree in accordance therewith.

The decree must be affirmed with costs.

COLLINS & CORBIN,

*Solicitors for and of Counsel
with Carteret Realty Co.*

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by leave of Court.*

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NEW JERSEY

Court of Errors and Appeals

BETWEEN

MICHAEL BRADY, *Appellant*,
and

THE CARTERET REALTY COM-
PANY ET AL., *Respondents*.

} On Appeal from
Final Decree.

Brief for Appellant.

The bill in this cause was filed under the Act to quiet titles 3 *Gen. Stat.*, p. 3486.

Application being made to the Chancellor for an issue at law, an order was made for such an issue. On the trial of the issue a verdict was rendered in favor of the defendant, the Carteret Realty Company.

From an order of the Chancellor denying a new trial, an appeal was taken to this court, and the order of the Chancellor was affirmed.

See *Brady v. Carteret Realty Co.*, 64 *Atl. Rep.* 1078.

The present appeal was taken from the final decree, while the former appeal was pending.

It is not claimed that on the present appeal any questions can be argued which were decided on the first appeal. *Cassidy v. Bigelow*, 12 *C. E. G.* 505.

The question which is now raised is this: The action having been held to be a purely equitable suit, to be conducted according to the practice in the Court of Chancery, should not the cause have been heard in the Court of Chancery upon testimony duly taken in that court in the usual method?

This question has not been argued before this Court.

On the first appeal, this Court, of its own motion, directed that a re-argument should be had upon certain questions, as follows:

"Per Curiam: On a bill filed under the act to quiet titles (*G. S.*, *p.* 3486), the defendant claimed the legal title to the land in dispute by ordinary legal conveyance, and the complainant claimed the legal title by adverse possession, and the Chancellor directed the framing of an issue in the Supreme Court to try the validity of these claims. At the trial of that issue in the Middlesex Circuit the defendant obtained a verdict, and the Chancellor, on the application of the complainant to have the verdict set aside, refused to do so, and the complainant appeals to this Court.

This Court now directs the parties to argue, either orally or by brief, the following questions:

"First. Whether, under said act, 'the result of such issue' in this case is the verdict of the jury, or a judgment of the Supreme Court on the verdict.

"Second. Whether, in view of the constitutional division of judicial powers between the Court of Chancery and the law courts, the Legislature can authorize the Chancellor to set aside or disregard the result of the issue in such a case when there are no equitable considerations involved."

No other constitutional questions, except these, were, therefore, argued.

It now seems to the counsel of the complainant that there is a constitutional objection to that provision of the statute which provides that the Court of Chancery shall be bound by the result of the issue.

In the Court of Chancery, as no constitutional objection at that time had been made to the act (the

Chancellor made a final decree as of course, in accordance with the finding of the jury. (Case, p. 95.) In other words, the method of procedure indicated by the statute was followed and the Chancellor did not attempt to consider the merits of the case upon testimony taken in that court.

To refuse to grant a new trial is not the same as to decide on the merits of the case. Besides, there is no statutory provision requiring all the testimony to be returned with the verdict.

I.

It is claimed on behalf of the appellant that a statute providing that the Chancellor shall be bound by the verdict of a jury in an equity case is in conflict with the established powers of that court.

The result of an issue at law is not binding on the Chancellor, its object being only to aid the Chancellor in forming his judgment or opinion. *Carpenter v. Easton and Amboy R. Co.*, 11 C. E. G. 168.

It was so held in the case of *Montana Ore Co. v. Boston & M. Co.*, 27 Montana 536, 70 Pac. Rep. 1114, which was an action under a statute to quiet title. See *Bacey v. Gallagher*, 87 U. S. 670.

There can be no trial of a case by a jury in the Court of Chancery, and the right of trial by jury refers solely to criminal cases and trials of right in suits at common law. *Scudder v. Trenton, Delaware Falls Co.*, Saxton, 694; *Vreeland v. Vreeland*, 4 Dick. 322; *Thompson v. Engel*, 3 Gr. Chy. 271; *State v. Saunders*, 25 At. 588 (N. H.); *Miles v. Strong*, 36 At. 55 (Conn.); *Coles v. Northrup*, 66 Fed. Rep. 831.

It has been held in this court that questions requiring the intervention of a jury cannot be tried in a Court of Equity. *Palys v. Jewitt*, 5 Stew. 302.

If the act in question interferes in any way with the jurisdiction of the Court of Chancery, that part of the act providing that the Chancellor shall be bound by the verdict would undoubtedly be unconstitutional.

It has been held in several cases that statutes providing for a review of decisions of Circuit Courts on rules to show cause are unconstitutional. *Flanigan v. Guggenheim Smelting Co.*, 63 N. J. Law 647; *Smith v. Levery*, 67 N. J. Law 269; *East Orange v. Hussey*, 70 N. J. Law 244; *Central R. R. Co. v. Tunison*, 23 Vr. 561.

It is therefore claimed that in suits under the act to quiet titles the issue at law being only an ordinary feigned issue, the cause should be proceeded with in the Court of Chancery in the same manner as other causes, and that testimony should have been taken in the case in question before a final decree was made by the Chancellor.

II.

Although the action is a statutory action (*Pomeroy Equity Jurisprudence*, Sections 138, 177, *Third Edition*), it certainly cannot be claimed that the Legislature could change the essential nature of the Court of Chancery in providing for the method of proceeding in that court.

III.

As the question is one which involves the jurisdiction of the Chancellor to make the decree, it may be raised at any time, or the Court may take notice of it, of its own motion, *Gray v. Beck*, 4 N. J. L. J. 177; *Spring v. Domestic Sewing Machine Co.*, 5 N. J. L. J. 330; *Hart v. Leonard*, 15 Stew. 516; *Gifford v. Thorn*, 3 Hal. Chy. 90.

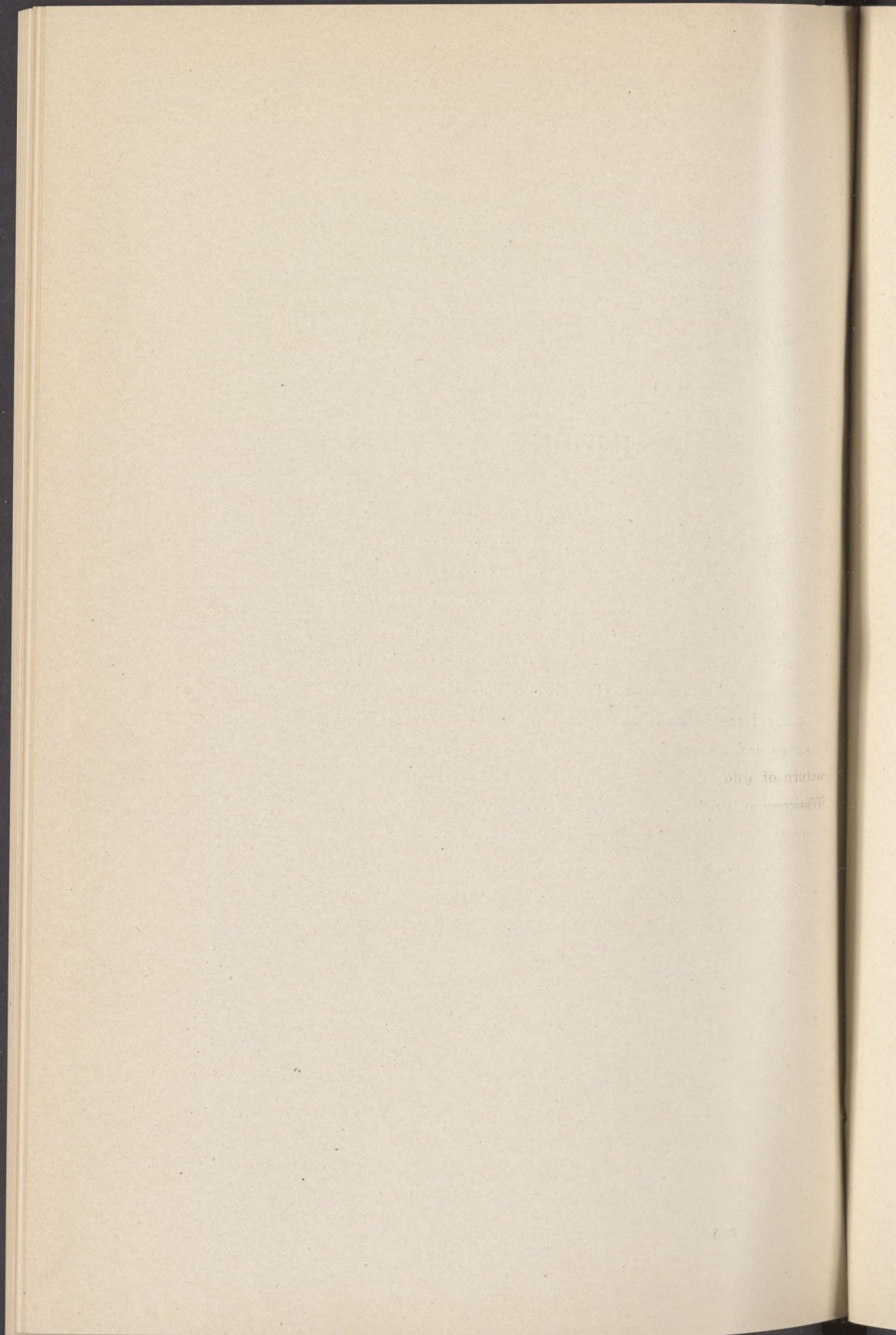
For these reasons it is asked that the final decree appealed from may be reversed.

EPHRAIM CUTTER,
FRANK McDERMOTT,
Of Counsel with Appellant.

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NEW JERSEY
Court of Errors and Appeals.

BETWEEN

MICHAEL BRADY,
Complainant and Appellant,
and

THE CARTERET REALTY COMPANY
ET AL.,
Defendants and Respondents.

} On Appeal.

PETITION OF APPEAL.

To the Honorable, the Court of Errors and Appeals, in 10
the last resort in all causes:

This humble petition of Michael Brady, the appellant in the above stated cause, respectfully shows, that your petitioner finds himself aggrieved by a final decree made in the Court of Chancery, by his Honor William J. Magie, Chancellor of New Jersey, bearing date the sixteenth day of May, nineteen hundred and five, in a certain cause wherein the said Michael Brady was complainant and the said The Carteret Realty Company and William Carman, Sheriff of the county of Middlesex, 20 were defendants, in this respect, to wit.: That the said final decree orders, adjudges and decrees, that the said defendant, The Carteret Realty Company, has an estate, in fee simple absolute, in the lands mentioned and described in the bill of complaint in said cause, and the said final decree of which the said appellant is in possession, and that the said appellant has no estate or interest in the said lands, and that the said appellant should pay

to said The Carteret Realty Company its costs of suit to be taxed.

And your petitioner humbly appeals from the said final decree of the Chancellor, and from the whole thereof, upon the ground that the same is erroneous, for that the said final decree should have adjudged and decreed that your petitioner had a good and perfect title to the said lands, and that the said defendant, the Carteret Realty Company, had no estate, or interest, therein; also
10 because a certain order was made in the said cause on the thirteenth day of March, nineteen hundred and five, denying a motion for a new trial, whereas, the said motion for a new trial should have been granted by the Chancellor, the return of the justice of the Supreme Court, before whom the issue was tried, and the matter therein contained, being examined and considered; also because the Chancellor held, in making said order and said final decree, that there was no error in the refusal of said justice to admit in evidence a certain letter, dated
20 in February, 1881, written to Charles A. Brady by J. R. Parsons and Charles H. Parsons, and that the said letter was immaterial; also because the Chancellor held, in making said order and said final decree, that the said justice did not err in charging the jury as follows: "I say, it is incumbent upon Mr. Brady to prove that his possession was a possession claiming as owner. The evidence he produced to satisfy you of that consists, first, of the fact that he erected some sort of a building or buildings upon the land; and second, the fact that, as he
30 says, he has paid the taxes," and in the subsequent charge under those two heads; also because the Chancellor held, in making said order and said final decree, that that part of the said charge was not erroneous which related to a conversation between the said complainant and one of the Parsons, when certain personal property was turned over to said Parsons, on account of rent that fell due before the year 1881; also because the Chancellor held, in making said order and said final decree, that the said justice did not err in refusing to allow the

said complainant to testify that he carried out his part of a certain parol contract, in trying to sell the farm of the said J. R. Parsons and Charles H. Parsons, and showing it to persons who were sent to look at it; and in refusing to allow one Charles A. Brady to testify that a chattel mortgage was given by him to secure part of the rent; and that there were no other errors in the said charge of said justice, and that the same fairly and properly presented the issue between the parties to the jury; also because the Chancellor held, in making said order and 10 said final decree, that the verdict of the jury, in favor of the defendant, The Carteret Realty Compay, on the trial of said issue, was not against the weight of evidence.

Your petitioner therefore prays that the said final decree of the Chancellor, and the said order denying a new trial, may be reversed, set aside, and for nothing holden, and that your petitioner may have such relief in the premises as to this Honorable Court shall seem meet.

EPHRAIM CUTTER,

20

Solicitor for and of Counsel with Appellant.

Endorsed: "Filed June 13, 1905."

ANSWER OF CARTERET REALTY COMPANY.

(Filed June 8, 1905.)

The Answer of the above-named respondent Carteret Realty Company to the Petition of Appeal of the 30 above-named Appellant.

This respondent not acknowledging all or any of the matters which in the said Petition of Appeal are contained to be true, for answer thereto, nevertheless, says and admits that a Decree was, on the Sixteenth day of May, Nineteen Hundred and Five, made and entered in the Court of Chancery in the cause for that purpose, mentioned in the said Petition, as is therein stated, but as to the substance and form thereof this respondent

4 COURT OF ERRORS AND APPEALS.

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, and it prays that the same may be affirmed, with the costs to be adjudged to this respondent.

COLLINS AND CORBIN
*Solicitors for and of Counsel
with respondent, Carteret
Realty Company.*

10

NOTICE OF APPEAL.

IN CHANCERY OF NEW JERSEY.

The complainant hereby appeals from the final decree made in this court in the above-stated cause on the sixteenth day of May, nineteen hundred and five, and from the whole and every part thereof, to the Court Errors and Appeals in the last resort in all causes.

Dated May 24th, 1905.

20

EPHRAIM CUTTER,
Solicitor of Complainant and of Counsel.

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

EPHRAIM CUTTER,
Of Counsel with Complainant.

Service of the within copy of notice is hereby acknowledged, June 3d, 1905.

COLLINS & CORBIN,
Solicitors of Respondent.

30

BILL OF COMPLAINT.

(Filed December 8th, 1903.)

IN CHANCERY OF NEW JERSEY.

To His Honor William J. Magie, Chancellor of the
State of New Jersey:

Complaining, show unto your Honor, your orator,
Michael Brady, of the township of Woodbridge, in

the county of Middlesex, and State of New Jersey, that on or about the first day of April, eighteen hundred and eighty-one, your orator entered into the possession, as owner, of the following described tract or parcel of land and premises, situate in the township of Woodbridge, in the county of Middlesex, and State of New Jersey, containing eleven acres and seven hundred and twenty-one one-thousandths of an acre, beginning on the easterly side of the Blazing Star Road, at the most northerly corner of land now owned by the 10 Carteret Realty Company; from thence running along the line of land of the said Carteret Realty Company south fifty-nine degrees and thirty-seven minutes east seven hundred and thirty-seven feet and sixty-two one-hundredths of a foot to a point in line of lands now in possession of one Krothie; thence along the line of said Krothie's land and land of William C. Merrill, north thirty-two degrees and forty-eight minutes east four hundred and eighty-nine feet and thirty-four one-hundredths of a foot to the southerly side of Rahway 20 avenue; thence along the southerly line of Rahway avenue north fifty-nine degrees and seveneten minutes west twenty feet and thirty-one hundredths of a foot; thence still along the said southerly line of said Rahway avenue north forty-nine degrees and fifteen minutes west fifty feet; thence still along said southerly side of said avenue north forty-four degrees and thirty-seven minutes west nine hundred and thirty-nine feet and forty-one one-hundredths of a foot to the intersection 30 of said southerly side of said avenue with the easterly side of Blazing Star Road; thence along said easterly side of Blazing Star Road south thirteen degrees and fifty-seven minutes west seven hundred and seventy-two and seventy-four one-hundredths feet to the place of beginning; and that since the said first day of April, eighteen hundred and eighty-one, or about that date, your orator has been in the full, exclusive, open, actual and peaceable possession thereof, and has cultivated the

same and kept it enclosed by fences, and has paid the taxes thereon; that he is still in the peaceable possession thereof, and that since entering into the possession of said lands as aforesaid he has always claimed and does now claim to be the sole owner thereof.

And your orator further shows, that some time in the year eighteen hundred and eighty-one Jabez R. Parsons told your orator that if your orator would show a certain farm belonging to said Jabez R. Parsons
10 and his brother, Charles H. Parsons, to people whom said Jabez R. Parsons sent to look at it, and would do the best he could in trying to sell it, and in praising it up, they, said Jabez R. Parsons and his said brother, would give the tract of land above mentioned and described to your orator, in case of the sale of said farm; that said Jabez R. Parsons also said that he and his brother had no title to the said tract above mentioned and described, and that their title was bad, but that said tract had been used by them in connection with the
20 said farm, and was in their possession, and that in case of the sale of said farm, they would give the said tract to your orator for his trouble, and that if they attempted to sell it, the title being bad, it might injure the sale of the said farm, to which the title was good; that the said farm was located adjoining the said tract, the two being separated by the public road; that in November, 1880, said Jabez R. Parsons and his said brother did make sale of the farm above mentioned, as your orator was informed, and accordingly on or about
30 the first day of April, eighteen hundred and eighty-one, your orator took possession of the said tract of land above mentioned and described, as owner as aforesaid.

And your orator further shows, that he showed the said farm to a number of persons whom said Jabez R. Parsons sent to Carteret to look at it, and did the best he could in trying to sell it and in praising it up, in accordance with the aforesaid offer of said Parsons, to

which your orator assented and agreed, and that it was largely through the efforts of your orator that the said farm was sold, and that at the time he entered into possession of said tract of land as aforesaid he believed and still believes he had a right to do so, and the said Jabez R. Parsons and his said brother were bound in law as well as in equity to carry out the terms of the agreement made with them as aforesaid.

And your orator further shows, that after he entered into possession of said lands as aforesaid neither the 10
said Jabez R. Parsons or Charles H. Parsons, or any other person, made any demand for the possession of the said tract of land, or for the payment of rent therefor, until some time in October, nineteen hundred and two, when one Charles E. Heald met your orator, and said that he had bought the said tract, and wanted your orator to remove his crops therefrom, and that on or about the thirtieth day of December, nineteen hundred and two, the Carteret Realty Company caused a written notice to be served on your orator, demanding posses- 20
sion of said tract on the first day of April then next ensuing.

And your orator further shows, that by reason of his possession of the said tract of land in the manner aforesaid, and during all the time aforesaid, he now claims to have a good, perfect and indefeasible title to the said tract of land.

And your orator further shows, that the Carteret Realty Company, a corporation of this State, and a defendant in this suit, denies and disputes your orator's 30
title to the said tract of land, and claims to own the said tract of land, or some part thereof, or some interest therein; and no suit or action of any kind whatever is pending to enforce or test the validity of such title or claim; and your orator charges that such claims so made by said company are utterly without foundation, unjust and vexatious.

And your orator further shows, that on or about the eleventh day of May, nineteen hundred and three, said Carteret Realty Company began an action of ejectment in the Supreme Court of this State against your orator for the recovery of the possession of the said tract of land, but at the September term following of the Middlesex Circuit Court a non-suit was directed to be entered in said action on the trial thereof, at said Circuit Court, and judgment of non-suit was accordingly entered in said action in the said Supreme Court on the
10 fourth day of November last; that on or about the twenty-third day of September, nineteen hundred and three, said Carteret Realty Company obtained an assignment to itself from Augustus Zabriskie, executor of A. O. Zabriskie, deceased, of a certain judgment obtained against your orator in said Supreme Court, by Lansing Zabriskie and Augustus Zabriskie, executors of A. O. Zabriskie, surviving trustee, &c., of John Tonnelle, deceased, on the fourteenth day of May, eight-
20 teen hundred and eighty-eight, for the sum of fifteen hundred dollars, real debt, and one hundred and eighty-three dollars and twenty-four cents, damages and costs, in an action upon contract, and on the same day caused an execution to be issued to the sheriff of the county of Middlesex, on the said judgment, under which in the same day said sheriff levied upon the said tract of land in the possession of your orator as aforesaid.

And your orator further shows, that the bond on which said judgment was obtained was made by your
30 orator to Catherine Eckerson on the twentieth day of May, eighteen hundred and sixty-seven, in the penal sum of three thousand dollars, and was secured by a mortgage executed by your orator and his wife to said Catherine Eckerson on lands in the city of Bayonne, in the county of Hudson, to secure the payment of fifteen hundred dollars, with interest at seven per cent., which said mortgage is registered in the office of the Register of the County of Hudson, in Book 44 of Mortgages,

on page 394, and that said bond and mortgage were held by the said Abraham C. Zabriskie, executor, at the time of his death, and that after his death, they were delivered, as deponent is informed, by the executor of the said Abraham O. Zabriskie, to one Ida V. Van Nuyse, and are still held by her, having been delivered to her after the recovery of said judgment, but no written assignment thereof was made to her; that the whole of said judgment is due, and unpaid, with interest from the date thereof, but that said Carteret Realty Company paid therefor, as your orator is informed, only about the sum of three hundred dollars, to the said Ida V. Van Nuyse, and that she also executed an assignment of said judgment to said company, although no assignment thereof to her, is on record. 10

And your orator further shows, that by virtue of the said execution and levy, William Carman, Sheriff of the County of Middlesex, advertised the said tract of land to be sold by him at public vendue, at the Sheriff's office in the City of New Brunswick, on Wednesday, the twenty-fifth day of November, nineteen hundred and three, at the hour of two o'clock in the afternoon, and that on that day, on the application of your orator, said sale was adjourned by said Sheriff for two weeks, at the same hour and place. 20

And your orator further shows, that at the time and place at which said sale was advertised, Edward S. Savage, an attorney at law of the State, who is a director of said Carteret Realty Company, and the attorney acting for said company, in selling said lands under said execution, although his name does not appear at attorney of record, stated to the Sheriff and those present, in opposing an adjournment, that your orator had no title to said tract of land, and was not the owner thereof, and that an adjournment should not be granted because his interest in said tract by possession was not worth anything, and that the said Edward S. Savage has stated the same thing to other persons, and has 30

stated it in a letter written to said sheriff, and has also stated to your orator that he intends to give notice of the same thing on the day of sale of said lands under said execution, and that no one will give anything for the said tract of land at such sale; and your orator shows that the object of said Carteret Realty Company in advertising the said tract for sale under said execution, is not to collect the money due thereon, but to obtain possession of said tract for a small amount, instead of bringing an action at law to prove its right, if any, to said tract, and that said company through its attorney and agents is endeavoring to deter all persons from bidding on or buying the same at said sale.

And your orator further shows, that said tract of land is located near the growing village of Carteret, and which was formerly valuable only for farming land, is now valuable for building purposes, and the sale of lots therefrom, and is worth, as your orator is informed and believes, one thousand dollars an acre, and would produce much more than sufficient to satisfy the said execution at a fair sale thereof, but on account of the false statements made by said company through its agents and attorney, it cannot now be sold under said execution without great loss and injury to your orator, and that its sale should not be permitted by this Court, until it shall be determined by this Court whether your orator is not entitled to the ownership and possession thereof, or until it has been established by an action at law whether or not the said company has any right or title thereto.

And your orator further shows, that said Carteret Realty Company claims in some way to have purchased the interest of said Jabez R. Parsons and Charles H. Parsons in said tract of land, but your orator charges that any such purchase, if made, was made with full knowledge and notice of your orator's claim of title to said lands, and that if the said Parsons ever had any title thereto, the same has been lost by the adverse pos-

session thereof by your orator for over twenty years; and your orator further shows that he is informed that said company and its officers well know that your orator's title to said land is good, and that the above mentioned statements are made as aforesaid by its agents maliciously, well knowing the same to be false, and for the purpose of injuring your orator.

And your orator further shows, that by reason of the said claims and statements, your orator's property in said lands is greatly affected, and the same cannot 10 be sold as they otherwise could, and that your orator has been unable to borrow money thereon to pay the said judgment.

And your orator further shows, that he has applied to said company to relieve and relinquish their said claim, or to bring in some Court of law a suit which would test the validity thereof, and the said company refused to do either, and he has also asked said company to cease interfering with the said sale and from making statements calculated to injure the sale of said lands, 20 but it has refused to comply with such request. And your orator hoped that said defendant would have complied with such reasonable request, as in justice and equity it ought to have done.

In tender consideration whereof, and for as much as your orator is relievable only in a Court of Equity, where matters of this sort are properly and according to the statutes of this State in such case made and provided, cognizable and relievable.

To the end, therefore, that the said the Carteret 30 Realty Company, and William Carman, Sheriff of the County of Middlesex, and their confederates when discovered, may, but without oath, to the best of their respective knowledge, information and belief, full, true, direct and perfect answer make, to all and singular the matters aforesaid; and more particularly that they, and every of them, may, in manner aforesaid, answer and set forth specifically what title or claim to said tract

of land above described, or any part thereof, or any interest therein, they, or either of them, make or claim, and to what part or what interest, and further, how and by what instrument such title or claim is derived, or was created; and that by the determination and final decree of this Court, the rights of all the parties to this suit in and to the said tract of land, and every part thereof, may be fixed and settled; and that your orator may be decreed to have a perfect title thereto, and the
10 defendants to have no estate, right or interest in said lands, or any part thereof, and that their claims to the same are unjust, vexatious and void; and that your orator may be permitted to pay and satisfy the said judgment, by paying to said company the amount it paid therefor, with interest and costs, and then only when the said bond and mortgage are cancelled and given up; or that the sale of said lands under said execution may be stayed until by the determination of this Court the rights of all the parties to this suit in and to
20 the said tract of land are fixed and settled; and that the said company and its agents may be forbidden and enjoined from interfering with the said sale by circulating and making the aforesaid statements derogatory to your orator's title to said tract of land, in case your orator is found to have a perfect title thereto, or that it may be permanently enjoined from causing any sale under the said execution and that your orator may have such other or further relief in the premises as the nature of the case may require, and as he shall be entitled to,
30 pursuant to the statutes in such case made and provided;

May it please your Honor, the premises considered, to grant unto your orator, not only the State's writ of injunction, issuing out of and under the seal of this Honorable Court, to be directed to the said Carteret Realty Company, and William Carteret, Sheriff of the County of Middlesex, restraining them, and each of them, from selling or causing to be sold the said tract

of land above described, until the final hearing and determination of this cause, and the further order of this Court, but also the State's writ of subpoena, issuing out of and under the seal of this Honorable Court, to be directed to the said Carteret Realty Company, and William Carman, Sheriff of the County of Middlesex, commanding them and each of them, at a certain day and under a certain penalty therein to be specified, personally to be and appear before your Honor in this Honorable Court, then and there, full, true and perfect answer to make to all and singular the premises, and further to stand to, abide by and perform such order, direction and decree as to your Honor shall seem meet, and as shall be agreeable to equity and good conscience.

And your orator will every pray, &c.

WILLARD P. VOORHEES,
Sol'r and of Counsel with Complainant.

IN CHANCERY OF NEW JERSEY.

BETWEEN	}	
MICHAEL BRADY,		
<i>Complainant,</i>		
<i>and</i>		
THE CARTERET REALTY COM- PANY ET AL.,		
<i>Defendants.</i>		On Bill, &c.

20

ANSWER.

The answer of Carteret Realty Company, defendant, to the bill of complaint of Michael Brady, complainant.

This defendant for answer unto the said bill, or so much and such parts thereof as it is advised it is necessary or material for it to make answer unto, answering, says that: 30

1. It denies that the said complainant on or about the first day of April, eighteen hundred and eighty-one, or at any other time, entered into the possession of the tract or parcel of land and premises in the said bill of complaint particularly described, as owner, or since his entering into the possession thereof has always claimed to be the sole owner thereof; and this defendant says that the original entry into the possession of said lands by the said complainant was as tenant of the owners
10 thereof, and that down to a date much less than twenty years before the filing of said bill of complaint, the said complainant paid rent for the said premises to said owners, but as to the character of his possession thereafter, this defendant has no knowledge except that the same was not under any title or ownership.

2. It denies the alleged representations and promise of Jabez R. Parsons in said bill of complaint set forth, or that any possession of the said complainant of said premises was by virtue of any such promise. It denies
20 that after the taking of possession thereof by said complainant no rent was demanded of him, but on the contrary it says that his possession of said premises was taken as tenant of the said Jabez R. Parsons and Charles H. Parsons, and rent was paid them therefor for a long time. If possession has been retained without payment of rent, it has been simply that of a tenant holding over after default in payment of rent, through the neglect of the landlords to enforce their legal rights; has never been adverse and has never ripened into title.

30 3. It admits that on or about December thirtieth, Nineteen hundred and two, it caused a written notice to be served upon the said complainant demanding possession of said tract of land on the first day of April then next ensuing.

4. It has no knowledge, otherwise than as conveyed by said bill of complaint, what claim the said complainant makes by reason of his possession of said tract of land.

5. It admits that it is a corporation of this State, and denies that the said complainant has any title to the said tract of land; and claims, itself, to own the same, and every part thereof, and every interest therein. It admits that no suit or action of any kind whatsoever is pending to enforce or test the validity of any claim of title to said land.

6. It admits that on or about the eleventh day of May, nineteen hundred and three, it began an action of ejectment in the Supreme Court of this State against 10 the said complainant for the recovery of the possession of the said tract of land, and that at the September term following of the Middlesex Circuit Court a non-suit was directed to be entered in said action on the trial thereof at said Circuit Court, and judgment of non-suit was accordingly entered in said action in the said Supreme Court on the fourth day of November last; and this defendant says that such non-suit was not entered after any inquiry into the merits of the case.

7. It admits that on or about the twenty-third day 20 of September, nineteen hundred and three, it obtained an assignment to itself from Augustus Zabriskie, executor of Abraham O. Zabriskie, deceased, surviving executor and trustee of John Tonnele, of the judgment against said complainant, in said bill set forth, and on the same day caused an execution to be issued to the Sheriff of the County of Middlesex on the said judgment under which, on the same day, said Sheriff levied upon all the right, title and interest, if any, of said complainant, in the said tract of land then in his possession.

8. It admits that said judgment was obtained upon 30 bond secured by the mortgage set forth in the said bill of complaint, and that said bond and mortgage were held by the said Abraham O. Zabriskie, executor, at the time of his death, and that after his death they were delivered by his executor to Ida V. Van Nuyse, and were still held by her at the time of said assignment, having been delivered to her after recovery of said

judgment, but without written assignment thereof. It admits that the whole of said judgment is due and unpaid, with interest from the date thereof, and that this defendant paid therefor not more than the sum of three hundred dollars to the said Ida V. Van Nuyse, and that she also executed an assignment of said judgment to this defendant.

9. It admits that by virtue of the said execution and levy the Sheriff of the County of Middlesex advertised
10 all the right, title and interest, if any, of the said complainant, in the said tract of land, to be sold by him at public vendue at the Sheriff's office, in the City of New Brunswick, on Wednesday, the twenty-fifth day of November, A. D. nineteen hundred and three, at the hour of two o'clock in the afternoon; that on that day, on the application of said complainant, said sale was adjourned by said Sheriff for two weeks at the same hour and place; and this defendant says that since that time such sale has been adjourned from week
20 to week, and now stands under adjournment.

10. It admits that at the place at which such sale was advertised, but before the advertised hour, Edward S. Savage, an attorney-at-law of this State, who is a director of this defendant, and was acting for this defendant in selling said lands under said execution, although not attorney of record, stated to the Sheriff in opposing adjournment, that the said complainant had no title to said tract of land, and was not the owner thereof, and that an adjournment should not be granted
30 because his interest in said tract by possession, was not worth anything. It denies that the said Savage has stated the same thing to any other person, or persons, unless it be the said complainant, and it denies that any one was present at the time of the statement to the Sheriff besides said Savage and the Sheriff, except Ephraim Cutter, Esquire, attorney for the said complainant, who made the application in his behalf for adjournment. It admits that said Savage had previ-

ously written said Sheriff substantially to the effect of the oral statement made in opposing the adjournment. It has no knowledge as to what said Savage may have stated to the said complainant. It admits that it has been its intention to cause notice to be given when the Sheriff shall expose for sale under such execution, the right, title and interest, if any, of the said complainant in said tract of land that it claims to be the true owner thereof. It denies that its object in advertising the right, title and interest of the said complainant in said tract of land was as is claimed in said bill of complaint, and says that its object has been, and is, to sell any right, title and interest the said complainant may have in said tract of land, and that it is advised that it is its duty to give notice at such sale of its claim of ownership. 10

11. It admits that the said tract of land is located near the village of Carteret, and is more valuable than formerly, but not as valuable as in said bill stated.

12. It denies that it has made any false statement through any agent, attorney, or otherwise, and submits 20 that on the complainant's own showing there is no reason why his right, title and interest, if any, in said tract of land should not be sold to satisfy the judgment admittedly owing by him. It submits that it had a right to purchase such judgment, and to advertise under execution issued thereon, any right, title or interest said complainant might have in said tract of land, without thereby waiving its own claim of ownership, and that to assert said claim of ownership at the sale is not 30 only its right, but its duty.

13. It admits that it has purchased the said tract of land from the said Jabez R. Parsons, and the said Charles H. Parsons, and that such purchase was made with full knowledge and notice that the said complainant was in possession of the said land, but it denies that said complainant had, or has, any title thereto, or that the Parsons title had been lost by adverse possession.

14. It denies that by reason of any claim or statement made by or on behalf of this defendant, any property right in said land of the said complainant has been affected, for it says that he has no property right therein beyond mere naked possession. It has no knowledge of any attempt of the said complainant to borrow money on the said land to pay the said judgment, but assumes that if he has made any such claim, he has been unable to borrow any money thereon, for the sufficient
10 reason that he has no title thereto.

And this defendant further answering affirmatively specifies and sets forth that it claims to own the whole of the land and premises in said bill of complaint, particularly described, by an estate in fee simple; that this title was derived by deed of bargain and sale from Francis V. Dobbins (unmarried), dated October twenty-third, nineteen hundred and two, acknowledging in due form of law October twenty-fifth, nineteen hundred and two, recorded October twenty-seventh, nineteen
20 hundred and two, in Book 341 of Deeds for the County of Middlesex, page 443, and that the sources of the title of said Dobbins are as follows:

Deed of bargain and sale from Jabez R. Parsons and Ida C., his wife, to Francis V. Dobbins, of an undivided half of said land and premises, dated October 16th, 1902, acknowledged in due form of law October 22d, 1902, recorded October 27th, 1902, in Book 341 of Deeds for the County of Middlesex, page 441.

Deed of bargain and sale from Charles H. Parsons
30 and Annie F., his wife, to Francis V. Dobbins, of the other undivided half of said land and premises, dated October 13th, 1902, acknowledged in due form of law on the same day, and recorded October 27th, 1902, in Book 341 of Deeds for the County of Middlesex, page 439.

Will of Charles Parsons, dated January 23d, 1876, admitted to probate May 3d, 1876, by the Surrogate of the County of Hudson, recorded in Book 9 of Wills for

that county, page 197, a certified copy of which will has been filed and recorded in the County of Middlesex.

Deed of quit-claim from Joseph Stanley and Henrietta, his wife, to Charles Parsons, dated June 22d, 1863, acknowledged in due form of law the same day and recorded April 8th, 1864, in Book 1894 of Deeds for said County of Middlesex, page 1.

Deed of warranty, with full covenants, from John Boughrum and Rachael, his wife, to Charles Parsons, dated April 11th, 1863, acknowledged in due form of law April, 1864, and recorded April 8th, 1864, in Book 93 of Deeds for said County of Middlesex, page 700, and peaceable adverse possession by said Boughrum, Stanley and Charles Parsons, and his devisees, Jabez R. Parsons and Charles H. Parsons, for more than twenty years prior to March 26th, 1877, when the said Jabez R. Parsons and Charles H. Parsons demised the said premises to the said complainant.

All of which matters and things this defendant is ready to aver, maintain and prove, as this Honorable Court may direct, and humbly prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

COLLINS & CORBIN,

Solicitors for and of Counsel with said Defendant.

CARTERET REALTY COMPANY,

By EDWARD S. SAVAGE,

Vice-President.

Attest:

EDWARD S. SAVAGE, *Secretary.*

30

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

The answer of the defendant, the Carteret Realty Company, was taken this seventeenth day of February, in the year nineteen hundred and four, before me, under

the common seal of the said corporation as by their said seal thereto affixed appears.

FRANCIS V. DOBBINS,
M. C. C. of N. J.

Filed February 17, 1904.

REPLICATION.

The complainant joins issue on the answer of the defendant.

WILLARD P. VOORHEES,
Solicitor of the Complainant.

10

Filed March 9th, 1905.

ORDER FOR ISSUE AT LAW.

This matter having been opened to the Court by Willard P. Voorhees, of counsel with complainant, and it appearing that the cause is at issue upon a replication to the answer of the defendant, the Carteret Realty Company, and is now in readiness to take testimony therein and on reading and filing a notice of motion on the part of the complainant for an issue in this cause to be tried
20 by a jury and proof of the due service of such notice upon the Solicitor of the defendant, the Carteret Realty Company:

It is on this fifteenth day of March, 1904, ordered that an issue at law be framed in the Supreme Court of New Jersey and tried in the ordinary manner by the said Carteret Realty Company, defendant in this cause, as plaintiff, and said Michael Brady, the complainant in this cause, as defendant, by a jury of the County of Middlesex, to inquire, ascertain and determine whether
30 the said Carteret Realty Company is entitled to the

possession of the tract of land and premises mentioned in said complainant's bill as against the said Michael Brady, who is in possession thereof, and either party may notice the cause for trial and a special jury may be had upon application to the Court by either party. And all further directions are reserved until the issue shall be tried and postea returned into this Court.

M. J. MAGIE, C.

Filed March 15, 1905.

FEIGNED ISSUE.

10

NEW JERSEY SUPREME COURT.

Pleas before the Justices of the Supreme Court of Judicature of the State of New Jersey, at Trenton, of the term of February, in the year nineteen hundred and four.

Witness, WILLIAM S. GUMMERE, Chief Justice.

WILLIAM RIKER, JR.,

Clerk.

COLLINS & CORBIN,

Attorneys for the Carteret Realty Co. 20

WILLARD P. VOORHEES,

Attorney for Michael Brady.

MIDDLESEX COUNTY, ss.

Be it remembered that on the fifteenth day of March, in the year nineteen hundred and four before the Justices of the Supreme Court of the State of New Jersey, at Trenton, came the Carteret Realty Company, the plaintiff in this suit, by Collins and Corbin, its attorneys, and brought into this court its declaration against Michael Brady, the defendant in this suit, in a plea in an action upon contract, which said declaration is in these words: 30

MIDDLESEX COUNTY, ss.

The Carteret Realty Company, the plaintiff, complains of Michael Brady, the defendant, for that whereas on the eighth day of December, in the year nineteen hundred and three, at Trenton, to wit, at New Brunswick, in the county of Middlesex, and the State of New Jersey, a certain discourse was moved and had by and between the said Carteret Realty Company and others, and the said Michael Brady, of and concerning a certain suit
10 depending in the Court of Chancery of the State of New Jersey, where in the said Michael Brady is complainant and the said Carteret Realty Company and others are defendants, and upon that discourse a question then and there arose and was debated between the said Carteret Realty Company and the said Michael Brady, whether on the eighth day of December, in the year nineteen hundred and three, the said Carteret Realty Company, the said plaintiff, was entitled to the possession of the following described land and premises, situate in the
20 township of Woodbridge, in the County of Middlesex and State of New Jersey, containing eleven acres and seven hundred and twenty-one one-thousandths of an acre, beginning on the easterly side of the Blazing Star Road, at the most northerly corner of land now owned by the Carteret Realty Company; from thence running along the line of lands of the said Carteret Realty Company south fifty-nine degrees and thirty-seven minutes east, seven hundred and thirty-seven feet and sixty-two one-hundredths of a foot, to a point in line of lands
30 now in possession of one Krothie; thence along the line of said Krothie's land, and land of William C. Merrill, north thirty-two degrees and forty-eight minutes east, four hundred and eighty-nine feet and thirty-four one-hundredths of a foot to the southerly side of Rahway avenue; thence along the southerly side of Rahway avenue, north fifty-nine degrees and seventeen minutes west, twenty feet and thirty-one hundredths of a foot; thence still along the said southerly line of said Rahway

avenue, north forty-nine degrees and fifteen minutes west, fifty feet; thence still along said southerly side of said avenue, north forty-four degrees and thirty-seven minutes west, nine hundred and thirty-nine feet and forty-one one-hundredths of a foot to the intersection of said southerly side of said avenue, with the easterly side of Blazing Star Road; thence along said easterly side of Blazing Star Road, south thirteen degrees and fifty-seven minutes west, seven hundred and seventy-two and seventy-four one-hundredths feet, to the place 10 of beginning, as against the said Michael Brady, the defendant, who was then in the possession thereof, and the said plaintiff then and there asserted and affirmed that it, the said plaintiff, was then and there entitled to the possession of said lands and premises, and the whole thereof, which said assertion the said Michael Brady, the defendant, then and there wholly denied, and asserted to the contrary thereof; and thereupon, afterwards, to wit, on the day and year last aforesaid, at New Brunswick, in the County of Middlesex, aforesaid, 20 in consideration that the said plaintiff at the special instances and request of the said Michael Brady, the defendant, had then and there paid to the said defendant the sum of two hundred dollars, lawful money of the United States, the said defendant then and there undertook and faithfully promised the said plaintiff to pay it the said sum of two hundred dollars, like lawful money as aforesaid, in case the said plaintiff was then entitled to the possession of the said premises as against the said defendant, and the said plaintiff in fact says that it was 30 on the day and year aforesaid, entitled to the possession of the said lands and premises and the whole thereof, and still is entitled to the possession of the same, whereof the said defendant had notice, nevertheless, the said defendant not regarding his said premises and undertakings by him in form aforesaid made, has not as yet paid to the said plaintiff the said sum of two hundred dollars, nor any part thereof, although so to do the said defendant afterwards, to wit, on the day and year afore-

said, and often afterwards, at the County of Middlesex aforesaid, was by the said plaintiff requested, but the same to it to pay he has altogether refused and still does refuse, to the damage of the said plaintiff two hundred dollars, and therefore it brings its suit, &c.

And the said Michael Brady, the defendant, by Willard P. Voorhees, his attorney, comes and defends the wrong and injury, when, &c., and says that the said Carteret Realty Company, the plaintiff, ought not to
 10 have and maintain the aforesaid action thereof against him, because he says that though true it is the said discourse in the said plaintiff's declaration mentioned was had and moved by and between the said Carteret Realty Company and the said Michael Brady, wherein the question did arise as aforesaid and that he did undertake and promise in manner and form as the said plaintiff has above in that behalf alleged, nevertheless, for plea
 20 in this behalf, the said Michael Brady says that the said plaintiff was not on the day and year aforesaid entitled to the possession of the said lands and premises or any part thereof, nor is it now entitled to the possession thereof, or any part thereof, as against the said defendant, and of this, he, the said defendant, puts himself upon the contrary, &c.

And the said plaintiff doth the like, &c.

IN CHANCERY OF NEW JERSEY.

BETWEEN

MICHAEL BRADY,

Complainant,

and

30 CARTERET REALTY COMPANY ET AL.,

Defendants.

} On Bill.

RETURN.

To the Chancellor:

I, Francis J. Swayze, Associate Justice of the Supreme Court, do hereby certify that as such justice I

tried the feigned issue directed in above cause at the September Term of the county of Middlesex, in form of an action of ejectment by Carteret Realty Company as plaintiff against Michael Brady as defendant, under plea of not guilty: record and postea filed herewith.

I further certify that the issue was submitted by me to a jury of the country upon the testimony and under the charge hereto annexed; that the jury found a verdict in favor of the plaintiff, and that, in my opinion, such verdict was warranted by the evidence. 10

FRANCIS J. SWAYZE,
J. S. C.

Dated November 15, 1904.

New Jersey Supreme Court, Middlesex County.

THE CARTERET REALTY COMPANY }
vs.
MICHAEL BRADY. }

Before SWAYZE, J., and a jury.

NEW BRUNSWICK, N. J., October 20, 1904. 20

Appearances—Messrs. Collins & Corbin, for the plaintiffs; Judge Collins and Mr. E. F. Savage, of counsel; Willard P. Voorhees, Esq., for the defendant; Mr. Cutter, of counsel.

The jury was duly impanelled and sworn.

Judge Collins—I offer in evidence deed from John Boughrun and Rachael, his wife, to Charles Parsons, dated April 11, 1863, acknowledged the day of April, 1864, before John Perine, a Master in Chancery, recorded April 8, 1864, in book 93 of deeds for Middle- 30

sex county, page 700; purports to convey the premises in question to the grantee, his heirs or assigns forever, and contains full covenants and warranty.

Admitted and marked *Plaintiff's Exhibit 1*.

Jabez R. Parsons, a witness called on behalf of plaintiff, being duly sworn, testified as follows:

Direct examination by Judge Collins:

Q. Where do you live?

10 A. I have lived in Jersey City and in Brooklyn, and at this time East Rahway, Rahway Neck.

Q. You do now live in Brooklyn?

A. Yes, sir.

Q. What is your age?

A. Sixty-six.

Q. I show you a deed just offered in evidence from John Boughrun and wife to Charles Parsons; who was the Charles Parsons?

A. Charles Parsons was my father.

20 Q. And at that time, at the date of that deed, 1863, you lived in Jersey City?

A. Yes, sir.

Q. And you lived with him?

A. Yes.

Q. You know the property that is described in the deed?

A. Yes, sir, I do.

Q. In the township of Woodbridge, in this State?

A. Yes, sir.

30 Q. Did your father about the same time purchase a farm across the road from this?

A. Yes.

Q. For what purpose?

A. For a farm and a country residence.

Q. And did he or not, and you, as a member of his family, make that a summer residence?

A. Yes.

Q. This tract of about 13 acres, I think it is?

A. Yes.

Q. It is across the road from the home?

A. Yes.

Q. Across the road from the house where he lived?

A. Yes.

Q. Do you know whether or not your father, after receiving that deed, took possession of that property?

A. He did.

Q. And what use did he make of it?

A. He used it for farming.

10

Q. And down to what time did that continue, as far as he is concerned?

A. Down to the time after his death when he died and myself and brother sold the farm opposite these lots.

Q. But not these lots?

A. Not these lots; no, sir.

Q. Did yourself and your brother continue in possession of this tract; that is, under this deed?

A. Yes, sir; we did.

20

Q. Your brother is Charles H. Parsons, is he?

A. Yes, sir.

1

Cross-examination by Mr. Cutter:

Q. When did you cease to occupy the farm?

A. When we sold the farm.

Q. Did you then move away?

A. Yes, sir.

Q. Were you in possession of it at the time it was sold?

A. It was leased, I think.

30

By Judge Collins:

Q. The farm you are talking about?

A. Yes; the farm was leased when we sold it; it was in our possession, except subject to the lease.

By Mr. Cutter:

Q. You were not living there?

A. No, sir.

Q. Where did you live at the time that farm was sold?

A. At the time the farm was sold I lived in Brooklyn.

Q. Where did your brother live at the time the farm was sold?

A. I think he lived in Jersey City.

Q. That deed that you just looked at says that it formerly belonged to Divol, is that so?

10 A. I believe so.

Q. Do you know who Divol was?

A. No; I do not know as I do.

Q. Did you ever hear of the Lottery lots?

A. Yes; I have heard of them.

Q. Is this some of the Lottery lots?

A. I think so.

Q. And did you ever hear of the insufficiency of title of the Lottery lots?

20 Judge Collins—Objected to as not cross-examination.

Objection sustained.

Q. You say you have heard of the Lottery lots?

A. Yes.

Q. And this is part of them?

A. Yes.

30 Judge Collins—I offer in evidence the record of the will of Charles Parsons, which is to be found recorded in Book J of Wills for Middlesex county, at page 641, and the only important part is, that it gives all his estate, except certain bequests to his son, Jabez R. Parsons, and Charles H. Parsons, duly recorded before the surrogate of Hudson, and then certified here and recorded under the statute here.

Said record received and considered as *Plaintiff's Exhibit 2*, but not marked.

Judge Collins—The next thing in order is deed from Charles H. Parsons and Annie F.,

his wife, to Francis V. Dobbins, dated October 13th, 1902, acknowledged the same date, in due form of law; recorded October 27th, 1902, Book 341, page 439; conveying an undivided one-half.

Admitted and marked *Plaintiff's Exhibit 3*.

Judge Collins—I offer in evidence deed from Jabez R. Parsons and Ida C., his wife, to Francis V. Dobbins, dated October 16th, 1902, acknowledged October 22d, 1902, in due form of law, recorded October 27th, 1902, in Book 341 of Deeds, of Middlesex county, page 441; conveys to the grantee and his heirs and assigns the other undivided one-half interest of the same property; it is a bargain and sale deed, covenant against grantors.

Admitted and marked *Plaintiff's Exhibit No. 4*.

Judge Collins—I now offer in evidence deed from Francis V. Dobbins, unmarried, to the Carteret Realty Company, dated October 23d, 1902, acknowledged in due form of law October 25th, 1902, and recorded October 27th, 1902, in Book 341 of Deeds, page 443; conveys the premises in question to the grantee, its successors and assigns, in fee simple, habendum in fee, covenant against grantor.

Admitted and marked *Plaintiff's Exhibit 5*.
Plaintiff rests.

Mr. Cutter—I move to dismiss the complaint on the ground that no possession in Parsons, or any of those claiming under him, has been shown within twenty years.

Motion denied.

Defendant excepts.

Michael Brady, the defendant, being duly sworn in his own behalf, testified as follows:

Direct examination by Mr. Voorhees:

Q. Where do you live?

A. Carteret.

Q. How long have you lived there?

A. About 28 years.

Q. What is your occupation at the present time?

A. Farming.

Q. And where do you live—what part of Carteret?

A. On the 58-acre farm at the corner of the cross-
10 roads.

Q. And this lot of 13 acres that has been spoken of,
how is it located in relation to the farm?

A. Right across the angle of the road, within the
angle of the other two roads.

Q. It is at the corner of two roads?

A. Yes.

Q. What are those roads called?

A. Rahway road and Blazing Star road; they were
under other names 'way back.

20 *Q.* And how far is this 13 acres from the village of
Carteret?

A. About quarter of a mile.

Q. From the built-up part of the town?

A. Yes, it is built up within about fifty feet of the
farm.

Q. Within fifty feet of this 13-acre tract?

A. Yes, sir.

Q. Do you know Mr. J. R. Parsons?

A. Yes.

30 *Q.* And Mr. Charles H. Parsons?

A. Yes.

Q. How long have you known them?

A. I first knew them in 1876.

Q. Since 1876?

A. Yes, sir.

Q. Now, in the year 1880, where were you living
then?

A. The same place.

Q. On the farm?

A. On the farm.

Q. On which farm?

A. The 58-acre farm.

Q. Do you remember having any conversation in that year with Mr. J. R. Parsons?

A. Yes.

Q. At what time of the year?

A. Early in the summer of that year.

Q. Early in the summer?

A. Yes.

10

Q. Where did the conversation take place?

A. He met me at the house, called for me, and he took me over to the centre of the farm at an elevation where he could show me the whole place around.

Q. You mean the 58-acre farm?

A. Yes, sir.

Q. Well, state the conversation, Mr. Brady, that occurred at that time?

Judge Collins—Objected to as irrelevant and incompetent; the title to real estate cannot be passed by parole. 20

The Court—I think it is competent, in view of the opening, and I will permit it.

Plaintiff excepts.

Q. State the conversation, Mr. Brady, that occurred at that time between you and Mr. J. R. Parsons?

A. He told me they wanted to sell that place—

The Court—This was after the death of Charles Parsons?

30

Judge Collins—Yes, sir; of course your Honor has not lost sight of the fact that the plaintiff is an entirely different person.

The Court—Privy in title, though, privy in estate.

Judge Collins—Yes, but that would not permit evidence of a parole agreement to sell land; I do not deny that adverse possession can be shown,

but the circumstances under which he took possession, if it be admitted, as in the opening, that it was a gift by him of these lands, is not competent.

The Court—It seems to me it is relevant on the question whether he went into possession under such circumstances that it would be adverse.

10 Judge Collins—He was in possession as tenant at that time.

Mr. Voorhees—He did not say so; he was in possession of the farm, but not of the field.

The Court—I will allow this testimony, Judge Collins, and you may have your exception.

20 Judge Collins—If it turns upon the character of his possession, if that has anything to do with your Honor's ruling, the best evidence of the character of that possession, the possession which he was then under, of the 58-acre tract farm at that time—the best evidence should be produced. I have the lease if they wish it; it will appear by that lease—I will state, in justice to the Court, it will appear by that that this lease included the 58 acres and this piece across the road.

The Court—That was a lease which antedated this conversation?

Judge Collins—Yes.

The Court—I think I will permit the testimony.

30 Plaintiffs except.

By Mr. Voorhees:

Q. State the conversation, Mr. Brady, that took place at that time?

A. He told me that they had been trying to sell the farm some time back, and that they had sent several parties from New York to examine it, and that after they did examine it they felt well pleased with it until

they heard that a portion of it had a bad title, and as soon as they did they would not touch it at all; that New York people were very particular about the titles of land, and he pointed out the 58 acres and said that they had a good title for that; also, two other parts of salt meadow land had a good title, too, and he said to me if I would show the place that they had the good title for only and all of it to the parties that they would send along, and never point out that defective part of the 13 acres as belonging to the place or to them, that when they would 10 sell the place that they would let me have that other place; that it was not worth much to them, and that they had no good title—no title at all for it, and if I would put a house on it that nobody could take it from me. I accepted the offer, agreeing with them I would do everything possible for me to do.

Judge Collins—Objected to.

The Court—You cannot prove a contract; it can only be used to characterize his subsequent possession. 20

Mr. Voorhees—There was a verbal contract, partly carried out; wouldn't that show the character of the possession? That was my point.

The Court—It don't seem to me that that could help you.

Mr. Voorhees—The circumstances and the way in which Mr. Brady came into possession or took title of this tract are important to show the character of his possession.

The Court—Undoubtedly; but now you are 30 undertaking to show, as I understand it, a parole contract.

Mr. Voorhees—No; I have been trying to get the conversation which took place, and Mr. Brady is still stating it. If he gives part of the conversation it seems to me that he ought to give the whole.

The Court—The other side may elicit the whole, but they object to this.

Judge Collins—It was not so much that I objected to the whole conversation going in, but he has undertaken to give the results—the legal effect of it.

The Court—I will strike out that he accepted the proposition; that must be disregarded.

By Mr. Voorhees:

10 Q. What did you say to Mr. Parsons after he made that statement to you?

Judge Collins—Objected to on the same ground of objection made to the earlier one, which your Honor admitted; I renew it for precaution, and on the additional ground, which was not stated then, that nothing that Mr. J. R. Parsons could say or do could bind his co-owner.

20 The Court—Still, the question I am now to pass on is the relevancy of this evidence, not the effect of it. I think it is relevant. I will permit that.

Plaintiff excepts.

Q. What did you say, Mr. Brady, in reply to what Mr. Parsons said?

A. I told him I would do everything he asked me to and try to sell it.

Q. At this time, in the summer of 1880, who was in possession of the 13-acre field?

A. Charles.

30 Q. Charles who?

A. Charles Brady, my son.

Q. He was your son?

A. Yes.

Q. He was in possession of the 13-acre field?

A. Yes.

Q. In what way?

A. Tenant.

Q. He was a tenant?

A. Yes.

Judge Collins—I object to the answer, and move that it be stricken out; I could not anticipate this was to be the answer; the question was proper as to how he was using it.

The Court—That is only the opinion of the witness. Strike out the answer.

Mr. Voorhees—Your Honor does not exclude the question as to who was in possession? 10

The Court—No; I will let it stand as showing Charles was in possession, but the character of his possession must be proved by the facts.

Q. Now, what did you do, if anything, in relation to trying to sell the 58-acre farm?

Judge Collins—Objected to as irrelevant and incompetent.

The Court—It does not seem to me that that can be competent; you may prove what was done afterwards. 20

Mr. Voorhees—My view has been that this was a verbal conveyance of this tract, which, of course, was not legal in law; the possession was taken under that verbal conveyance and held for twenty years. My view has been that it would give a good title by adverse possession.

The Court—If you can prove an adverse possession for twenty years I suppose you have a defence to this suit, but you are seeking now to prove performance of a contract. I do not think 30 it is important.

Q. Do you know whether or not the 58-acre farm was sold?

A. Yes; it was sold.

Q. How do you know that?

A. They wrote to my son a letter.

Judge Collins—I object to that.

The Court—Yes.

Q. I show you a paper, the lower part of which has become detached, and ask you what paper that is?

Judge Collins—Objected to as irrelevant and incompetent.

The Court—That is going a little fast; I suppose the first thing is to connect it with Mr. Parsons, isn't it?

By the Court:

10 *Q.* Do you know in whose handwriting that is?

A. Yes, sir.

By Mr. Voorhees:

Q. Do you know the handwriting of Mr. Charles H. Parsons?

A. Yes.

Q. And J. R. Parsons?

A. Yes.

Q. How do you know the handwriting of the two
20 Parsons?

A. I have seen them write.

Q. Ever corresponded with them?

A. Yes.

Q. When?

A. At the time that I had the farm they gave me—I seen them sign a lease of the farm and I seen Charles write a license for me to change stables.

By the Court:

30 *Q.* You have seen him write?

A. Yes.

By Mr. Voorhees:

Q. You have seen both of them write?

A. Yes.

By Mr. Cutter:

Q. In whose handwriting is the signature to the paper you have?

A. J. R. and Charles H. Parsons.

Mr. Cutter—I offer this paper in evidence.

Judge Collins—Objected to as entirely irrelevant.

The Court—It does not appear to me that that is the way to prove that, if it is a material fact.

Mr. Cutter—This promise was made to Mr. Brady to give him the field in case of a sale and they afterwards sent a letter to his son stating the place had been sold. It seems to me to be 10 connected.

Judge Collins—I am willing to admit that the farm of 58 acres was sold, if you want that.

The Court—Very well.

Judge Collins—To a man named Brown, eventually; if that is what you want to prove, the deed would show it.

Mr. Voorhees—We have a right to show, it seems to me, that the fact of that sale came to the notice at that time of this defendant, and that this 20 letter was the means by which he was notified at that time that the farm had been sold.

Judge Collins—It is entirely unimportant whether he knew it or did not know it; he had nothing to do with the sale, as your Honor intimated; this alleged parole contract is certainly incompetent and cuts no figure in the case; if he has a title by adverse possession he can establish it. Now, the question of his knowledge of their having sold the main farm is entirely irrelevant 30 to this controversy.

The Court—It does not seem to me it can be relevant; I will exclude it, except so far as Judge Collins has admitted it. He offers to admit that they sold the farm of 58 acres.

Defendant excepts.

By Mr. Cutter :

Q. I ask, Mr. Brady, whether you heard that the farm had been sold?

Judge Collins—Objected to as irrelevant.

Objection sustained. Defendant excepts.

Q. What did you do, if anything, after the year 1880 in relation to the field of 13 acres that has been mentioned?

A. I went onto it on or about the 1st of April, repaired the fences, and farmed it from that day until now.

Q. The 1st of April of what year?

A. 1881.

Q. What did you do?

A. I repaired the fences, and I ploughed and put in potatoes and corn, and farmed it generally from that until now.

Q. In the year 1881 you did that, you say?

A. Yes.

Q. Now, did you not continue to farm it after that time?

A. Yes; I farmed it all the time.

Q. For how long?

A. Up until now.

Q. In the same way?

A. Yes.

Q. Have you kept fences around it?

A. Kept fences around it.

Q. During all that time?

A. Yes.

Q. What kind of land was it?

A. It was poor farming land then.

Q. It was farming land, was it?

A. Yes.

Q. Cleared land?

A. Yes.

Q. No woodland on it?

A. No, sir.

Q. Were there any buildings on it?

A. No, sir.

Q. In 1881?

A. No, sir.

Q. Did you put any buildings on it after 1881?

A. Yes.

Q. When?

A. About six or seven years after I put a stable on it.

Q. A stable on what part of the place?

A. On the corner right adjoining the two roads.

Q. On the corner of the two roads?

A. Yes.

10

Q. Is that there yet?

A. No, sir.

Q. How long was that stable there?

A. About four or five years.

Q. What became of it?

A. It was taken down and taken away.

Q. Did you put any other buildings on the property?

A. Put a hay barrack on it.

Q. When did you do that?

20

A. About ten years ago.

Q. Is that there still?

A. Yes.

Q. And any other buildings?

A. I put a stable on it, used for a tool-house, and is now a blacksmith-shop.

Q. What part of the place is that?

A. On the corner, where the stable was taken away.

Q. Did any one interfere with you in the possession of the property?

30

A. Not anybody, except a man by the name of Carry Koley; he came to look for two lots of his; he said his father bought there two lots two years ago, and he brought engineers to survey, and I drove him off.

Q. He claimed two lots on the place?

A. Yes.

Q. Did he do anything more than to come there and attempt to survey it?

A. He put a fence around it and I took the fence away, and he brought an action against me in court, and he was thrown out.

Q. He did not get possession of the two lots?

A. No, sir.

Q. How about the taxes on those 13 acres?

A. I paid them.

Judge Collins—I move to strike out the answer; if he paid them he must have his receipts.

10 *The Witness*—I have.

The Court—I think I will let that stand.

Plaintiff excepts.

Q. How long did you pay the taxes?

A. Every year since then.

Q. During the time from the 1st of April, 1881, down to the present time has there been any year when you failed to cultivate this 13 acres?

A. No, sir; I cultivated it every year.

Q. Without interruption?

20 *A.* Yes, sir.

Q. Has Carteret grown since then—

Judge Collins—Objected to as irrelevant.

The Court—It seems to me that is irrelevant.

Cross-examination by Judge Collins:

Q. This stable that you have erected, the last one you put up since this controversy with the present plaintiff?

A. Yes, sir.

30 *Q.* After demand was made on you by the Carteret Company?

A. Yes, sir.

Judge Collins—I call on you to produce that demand.

Q. This is the notice that was served upon you on December 29th, 1902, is it not, by the Carteret Realty Company?

A. That is all right.

Q. That is the one?

A. Yes, sir.

Q. It was served then at that time?

A. Yes, sir.

Said paper marked *Plaintiff's Exhibit 6* for identification.

Q. To leave the stable, we will come to the next one; that is the hay barrack; you say that is there yet?

A. Yes, sir.

Q. How much did it cost?

10

A. The hay barrack?

Q. Yes.

A. Well, I don't know exactly how much it cost; it did not cost a great deal to put up a hay barrack.

Q. Just a few dollars?

A. Yes.

Q. It has fallen down?

A. It has not fallen yet.

Q. Pretty near on its last legs?

A. No, sir; it will last two or three years yet.

20

Q. And this barn, it was a shed really?

A. It was a stable.

Q. The first one?

A. Yes.

Q. That was a shed really?

A. That was a stable.

Q. It fell down, didn't it?

A. No, sir; a horse was lost there by spinal meningitis, and they asked me to build a stable two and a half feet off the surface—the floor—and he said he would engage I would not lose any more. I done so, made a good stable, put in five horses, and they died in five days after. The stable was used for two or three years after and it became a nuisance; the floor was so off the ground that every time a horse would move on the stable, on the floor, every horse that would move in the night we would hear him in the house, and I took the stable down. Before I took it down a mule happened to fall through

the floor; the floor rotted out; it was the kind of oak we have up here that does not last more than four or five years, and when the mule fell down I took it down, because it was not any more use.

Q. You took it down?

A. Yes.

Q. And burned it up?

A. I don't know.

Q. Didn't you utilize the material for any other building?

A. It was good material.

Q. It was on stone posts?

A. No, on wooden posts.

Q. And it stood up on those posts?

A. Yes.

Q. About how big was it?

A. It would hold about 12 or 14 horses.

Q. About how big, how long and how wide?

A. It was built double, so the horses would meet in the centre, with an alleyway through it, and each side was about 30 feet long.

Q. How much did it cost?

A. I don't know.

Q. A hundred dollars?

A. Lumber was cheaper then.

Q. Did it cost a hundred dollars?

A. A little more, I guess.

Q. You speak of having been tenant of the 58-acre farm under the Parsons; did not your lease include the property now in question across the road?

Objected to.

Objection overruled. Exception.

By the Court:

Q. Did your lease include the 13 acres?

A. Yes.

By Judge Collins:

Q. How old a man are you, Mr. Brady?

A. Seventy-seven.

Q. What year was your son Charles born in?

A. I think 1858.

Q. How many children have you?

A. I have only seven left; I had thirteen.

Q. What are the ages of them?

A. Sir?

Q. Who is the oldest?

A. Terence.

The Court—It seems to me that you are going **10**
a good way.

Judge Collins—Your Honor overrules my
question?

The Court—Yes.

Plaintiff excepts.

Re-direct examination by Mr. Cutter:

Q. You have said that you once had a lease from Par-
sons?

A. Yes. **20**

Q. Is that the paper, is that the lease that you had
from him?

A. Yes.

Mr. Cutter—I offer a lease dated the 26th day
of March, 1877, made by Jabez R. Parsons and
Charles H. Parsons to Michael Brady for the
term of three years from the 1st day of April,
1877.

Admitted and marked *Defendant's Exhibit 1*.

Q. The property described in this lease includes the
13 acres and the 58 acres? **30**

A. Yes, and the salt meadow.

Q. After this lease expired in April, 1880, who leased
the premises?

Judge Collins—Objected to as not re-direct
testimony, and also as calling for the witness's
conclusion of what can be proved by better evi-
dence.

The Court—It seems to me that is the very question I excluded a while ago.

Mr. Cutter—If he knows that there was a lease made to some one else of his own knowledge.

The Court—He would have to produce the lease then. I think I will exclude this.

Q. Did you ever have any other lease, except this from the Parsons?

10 A. No, sir.

Q. Did you, on behalf of your son, obtain a parole lease in April, 1880?

Judge Collins—Objected to as leading and as incompetent.

The Court—I will exclude it.

Defendant excepts.

Q. Have you any knowledge of your own as to the making of a parole lease to any one after your written lease expired?

20 Judge Collins—Objected to as leading and as irrelevant.

Objection sustained.

Defendant excepts.

Q. Did you go to see Mr. J. R. Parsons after the expiration of the written lease?

A. After the expiration of the three years' lease that I had?

Q. Yes?

A. Yes; I went to see him after that.

30 Q. Whereabouts?

A. In the store in New York.

Q. What conversation did you have with them in regard to the property, or the leasing of the property?

Judge Collins—Objected to as irrelevant.

The Court—You had better find out whether he talked with one or both first.

Q. Which one did you see?

A. I seen both in the store together, and I could not say now which I talked with.

Q. Were they both present?

A. They were both present.

By Judge Collins:

Q. You mean both Parsons during all the time?

A. I presume so; they were in the store and whilst I would be talking with one the other might be doing business around the store, and before I got through I had had talked with both of them.

Q. When was it?

A. It was in March, before the lease had expired.

10

By Mr. Cutter:

Q. What conversation did you have with them at that time, or either of them, in regard to this property?

Judge Collins—Objected to as irrelevant and not binding on the present plaintiff.

The Court—I will permit it.

Plaintiff excepts.

Q. The question is what conversation you had at that time with the two Parsons, or either of them, in relation to this property?

20

A. I wanted to rent it still further, and they would not let me have it, because I was in debt for \$500 for the past, and not being able to pay it, and I proposed that they rent it to my son, and that he had stock and would give them a chattel mortgage for the amount I owed, as well as the (three) years' rent that was to come, and they accepted that proposition.

Judge Collins—I ask that that last statement be stricken out, that they accepted the proposition.

30

The Court—Motion granted as to what was said.

Q. What reply did they make?

A. They said they would take it, and there was a chattel mortgage made out.

The Court—Never mind that.

Q. They said they would take it?

A. Yes.

Q. What did they say about leasing it to your son, if anything?

A. They accepted that.

Judge Collins—I move to strike that out.

Motion granted.

The Court—The question is simply what they said; he said they would take it; we will decide whether that is an acceptance or not.

10

Q. Did you state which son?

A. Charles.

Q. Do you know whether or not Charles had possession of the premises after the expiration of the written lease?

A. Yes, he had.

Mr. Cutter—I show the witness the letter which has been produced before, directed to his son Charles.

20

The Court—I still think that it is irrelevant; I exclude it.

Mr. Cutter—It seemed to me to corroborate the witness as to showing who the tenant was.

Defendant excepts.

Said paper marked *Exhibit D 2* for identification.

Re-cross examination by Judge Collins:

30 Q. This arrangement, whatever it was you said you made in behalf of Charles, extended to the whole property that was in the lease?

A. Yes.

Q. Now, you say Charles took possession of these lots; you mean of the whole property, don't you?

A. Yes.

Q. While it was your homestead?

A. Yes.

Q. You continued to live there?

A. Yes.

Q. And after the sale of that homestead later in the same year you still continued to live there?

A. Yes.

Q. And from that time until the present?

A. Yes.

Q. Lived in the same house?

A. Yes.

Q. You have lived in that house continuously and used that property continuously, just the same as you do now, since 1877, haven't you? 10

A. Well, about two years after; I was not on it for the first two years of that lease; I was living near it.

Q. But from 1879 on to the present time?

A. Yes.

Q. And Charlie was an unmarried youth, wasn't he?

A. Yes.

Q. Lived at home with you?

A. Yes.

Q. How did you get the year of his birth; you think it was about 1858; what makes you think it? 20

A. I worked on a railroad in Pennsylvania at that time, and I remember the circumstances where he was born.

Q. You remember where he was born?

A. He was born in a railroad shanty on the East Pennsylvania railroad in 1858, the year after the great panic.

Q. A year after the panic?

A. Yes, I understand that.

Q. The panic of 1857?

A. Yes.

Q. The year after that?

A. Yes, sir.

Q. You were working and your wife was with you out on this railroad and Charlie was born? 30

A. Yes.

Q. That is the way you place it.

A. Yes.

Q. Have you got any christening certificate?

A. I did have, but I don't know that I have now.

Q. Have you got any entry in the family Bible?

A. Yes.

Q. Where is the Bible?

A. It is at home, but I don't know whether there is any entry in it; we had an entry in another that wasn't a Bible.

10 *Q.* I misunderstand you—

A. I had an entry of it, but not in the family Bible.

Q. What did you enter it in, the almanac?

A. It was a certificate of baptism, a certificate to that effect.

Q. Have you got that?

A. No, sir; I lost it.

Q. What became of it?

A. I could not tell you.

Q. Charlie was not your first son?

20 *A.* No, sir.

Q. Who was your first son?

A. Terence.

Q. What year was he born in?

Objected to.

The Court—I think I can see the drift of it; I think I will permit it.

Q. What year was Terence born in?

A. I think Terence was born in 1857.

Q. And he is your oldest son?

30 *A.* Yes.

Q. And you think your wife had another one in a year?

A. Yes; she had thirteen in twelve years.

Q. You do not believe in race suicide, do you?

A. No, sir.

Q. Terence, you think, was born in 1857, what month?

A. It was in the fall, right after the panic, about the time that Buchanan was elected.

Q. I don't think Buchanan was elected in 1857?

A. He was elected in 1856, wasn't he?

Q. Yes.

A. It was the fall after that Terence was born, in 1857; I was then on the Lebanon Valley Railroad.

Q. How do you connect Buchanan's election with the panic, you think the panic was due to Buchanan's election—when was Terence born, at the time of Buchanan's election or not? ,

A. After it.

Q. You think he was born in 1857?

A. I think so; in the fall.

Q. Was he your oldest child?

A. No, sir.

Q. Who was the oldest child?

A. A daughter.

Q. What is her name?

A. Rose Ann.

20

Q. When was she born?

A. If you tell me when the canal was built I will tell you—it was a year before Terence, just before.

Q. Rose Ann was born a year before Terence?

A. About a year.

Q. And Rose Ann was the first child?

A. Yes.

Q. Then came Terence?

A. Yes.

Q. In the fall, you think, of 1857?

30

A. Something about that.

Q. Where was he born?

A. On the Lebanon Valley Railroad.

Q. And you fix the year by—

A. By where I was working.

Q. And how do you fix the time you were working there?

A. It was while I was working there.

Q. How do you fix it?

A. I commenced there in 1856. and I finished that year, and we had a panic then and I got no money for four months and never got it since, either. We worked four months without any money of the head contractor that built the work for what is now the Reading Railroad Company; it was then the Lebanon Valley Company; the company owed him \$190,000; that is the year, and that is the time.

10 Q. You do not know what month, only in the fall?

A. Yes, sir.

Q. When did Charlie come; was he the next one?

A. Yes.

Q. Charlie was the third one?

A. Yes.

Q. That you are sure of?

A. Yes.

Q. Wasn't there a child between Terry and Charlie?

A. No, sir.

20 Q. No daughter?

A. No, sir.

Q. When did Charlie come?

A. In 1858.

Q. What year and what month?

A. It was in the winter of 1858.

Q. Just about a year, then, after Terry?

A. Yes.

Q. What other children after that?

A. Michael.

30 Q. What year was he born?

A. In 1868.

Q. You skipped all the way from 1858 to 1868?

A. No; I guess not; I must tell you that I had one before Michael, Bridget.

Q. When was Bridget born?

A. In 1860.

Q. Now then, Michael was the next one?

A. Mary.

Q. No; Michael?

A. No; Mary.

Q. Mary came next to Bridget?

A. Yes.

Q. When was she born?

A. She was born the time they were building the branch road into Jersey City from the Central; that was during the war.

Q. And then the next one? ? ?

A. Michael then came, I think, in 1868.

10

Q. And the next one?

A. Thomas.

Q. When?

A. I think Thomas was born in 1869 or 1870.

Q. The next one?

A. I am through now. The rest all dead that I have not mentioned.

Q. Well, I want those that are dead, too; I want to see where they came in?

A. I have not got a list, a record of them, as I have 20 of those that lived; I cannot give it to you exactly as it was.

Q. Who was the last one of all?

A. Thomas.

Q. And he was born in what year?

A. He was born on the Boston, Hartford & New Haven road, in Connecticut; I think that railroad was built in 1858 and 1859.

Q. Where is that family record you have spoken of—the baptismal record?

30

A. I do not think it is in existence any more.

Q. Why did you destroy it?

A. I did not destroy it wilfully; it might be destroyed through neglect; I moved very often, as you can see from my record now.

Q. You and all your living children were living together in the homestead on this 58-acre tract in 1880 and 1881?

A. All except Terence.

Q. Terence had gone away—the oldest child?

A. Yes.

Q. And your wife was living?

A. Yes, sir.

Q. And keeping house there as one of the family?

A. Yes, sir.

By Mr. Cutter :

10 *Q.* At the conversation in New York in regard to leasing the place to your son Charles, did they say how long they would lease it for?

Judge Collins—Objected to; there is a conversation that occurred; we are entitled to have the conversation.

The Court—You may ask him whether anything was said about the time that Charles was to have it for, but you must exhaust the witness this time.

20 *Q.* Was anything said at that conversation in New York as to the time that Charles was to have the place for?

A. For a year.

Q. And where did Charles live during the year from April, 1880, to April, 1881?

A. He lived with me.

Charles A. Brady, a witness called on behalf of defendant, being duly sworn, testified as follows:

30 Direct examination by Mr. Cutter :

Q. Where do you live?

A. In Carteret.

Q. And what is your business?

A. Running an ice route there—serving ice.

Q. Do you live in the same house with your father?

A. No, sir.

Q. You are married and have a house of your own?

A. Yes, sir.

Q. What is your age?

A. Thirty-four—thirty-six.

Q. Now, are you sure about your age?

A. Yes, 36 the 7th of September.

Q. Do you recollect in the year 1880 about the 13 acres and 58 acres that have been spoken of being leased?

A. Yes.

Q. By whom?

A. I leased it.

The Court—You will have to give us the con- 10
versation especially now, Mr. Cutter.

Judge Collins—I think I ought not to be put in the position of having to make these objections.

The Court—I have ruled upon that twice now, and perhaps three times; you may ask him what conversation he had, if any, with the owners.

Mr. Cutter—I will state that I wish to prove not that he had a conversation himself, but that he leased the property through his father.

The Court—His father has told about that. 20

Q. You are acquainted with the 13-acre lot that has been mentioned?

A. Yes.

Q. Who had possession of it from April, 1880, to April, 1881?

A. I had.

Q. And what was done with it, do you know, in April, 1881?

A. In April, 1881, my father took possession of it.

Q. Your father took possession? 30

A. Yes, sir.

Q. What did he do—what do you mean by taking possession of it?

A. Well, he fenced it up and farmed it and raised crops on it.

Q. Do you know who has had possession of it since April, 1881?

A. Yes; my father has always had possession since then.

Q. Have you been residing all the time at Carteret?

A. Not all the time; outside of five or six years, I was always there; may be seven years.

Q. Where did you live during the five or six years?

A. I lived in Bayonne a while; I lived in Montana and in New York State.

Q. How long did you live in Montana?

10 A. One year.

Q. Did you ever visit your father when you lived in New York or Bayonne?

A. Yes; I came home Sundays.

Q. Did you know during the time that has been mentioned of any one else being in possession since April, 1881?

A. No.

Q. (Witness shown paper marked *Exhibit D-2 for Identificaton*) Do you know what paper that is?

20 Judge Collins—Its contents show for themselves; I object to the question.

The Court—Yes; you may ask him if he ever received that letter, or anything of that kind, if you want to get it on the record.

Q. Did you not receive that letter?

A. Yes.

Q. Who from?

A. From Mr. Parsons.

Q. Where did you receive it?

30 A. I got it in Rahway post-office.

By Judge Collins:

Q. You received it by mail, you mean?

A. Yes, sir; I received it by mail.

Mr. Cutter—I wish to offer the letter.

The Court—I adhere to my ruling as to the admissibility of the letter; I exclude it.

Defendant excepts.

Cross-examination by Judge Collins:

Q. You say you run an ice route?

A. Yes.

Q. For whom do you run this ice route?

A. For myself.

Q. Isn't it your father's?

A. No.

Q. You say that you had possession of this thirteen acres of land from April 1st, 1881, to April 1st, 1882; who had possession of the 58 acres?

10

The Court—I do not think he said that—
from April 1st, 1880, to April 1st, 1881.

Judge Collins—It was my unintentional slip.

Q. From April 1st, 1880, to April 1st, 1881, who had possession of the 58 acres during that year?

A. I did.

Q. Now, then, who had possession of the two properties—the 58 acres and this plot across the road—before April 1st, 1881?

A. My father.

20

Q. And who had possession after April 1st, 1881?

A. From April 1st, 1881?

Q. Yes.

A. I leased the 58 acres from Mr. Brown.

Q. Wherein did the possession before April 1st, 1880, differ from the possession after April 1st, 1880?

Objected to.

Objection overruled. Defendant excepts.

Q. Your father worked it before?

A. Yes.

30

Q. You lived home there?

A. Yes.

Q. And worked for him, I suppose, didn't you?

A. No; I did not work for him; I worked for myself.

Q. Before April 1st, 1880?

A. Yes; I worked for him.

Q. Wherein did the use of that farm and the piece

across the street differ after April 1st, 1880, from what it did before April 1st, 1880?

A. Where did it differ?

Q. You say your father had it before and you had it afterwards?

A. Yes.

Q. What difference was there in the way in which it was worked or run?

A. He had it before me and I had it after him.

10 *Q.* So you said. Now, I want to know what difference there was in the way it was worked?

A. Nothing, only that I paid rent for it and I had control of it; before that he had the control; I worked for him.

Q. Your father was the husbandman, wasn't he, that farmed the whole thing before April 1st, 1880?

A. Yes.

Q. And he continued to be such after April 1st, 1880, didn't he?

20 *A.* Yes, he continued so.

Q. And he took the crops, didn't he?

A. Yes, he took in the crops.

Q. And sold it?

A. No, we used the crop there; I had stock and it was more than I could do to raise crop enough to feed the stock; there was very little, if anything, that we ever sold, if you please.

Q. You used it up?

A. Yes.

30 *Q.* The family lived on the place after April 1st, 1880, exactly as they had done before, didn't they?

A. Yes, the family lived on the place.

Q. No difference at all?

A. No.

Q. You had some stock there?

A. Yes.

Q. You had the stock there before April 1st, 1880, didn't you?

A. Yes; I had the stock before that.

Q. And there was no difference in regard to that before April 1st, 1880, and after April 1st, 1880?

A. No, sir.

Q. As to the stock being kept there and reared on the place?

A. No, the stock was on the place.

Q. Isn't it a fact that you had stock—horses or cattle—in your name because your father was in debt and could not hold things in his own name?

A. Those horses I had I bought from my brother.

10

Q. Terence?

A. Yes.

Q. Hadn't Terence held them for his father?

Mr. Voorhees—I object to that; I do not see what that has got to do with this.

The Court—I rather think it is permissible on cross-examination. I will allow it.

Defendants except.

A. Well, I cannot say whether he did or not.

20

Q. Wasn't it really your father's stock in Terence's name?

A. Well, that might be.

Q. You didn't give Terence any money for it?

A. I gave Terence a note for the stock.

Q. You gave Terence a note?

A. Yes.

Q. And never paid the note?

The Court—You are going a good ways now.

Judge Collins—I shall contend this is a pure pretence to bring forward the son instead of the father, to get rid of the father.

30

A. No, sir.

Q. Your father was badly in debt at that time, wasn't he?

A. He was in debt.

Q. He had been a railroad contractor and had become unsuccessful during the panic times and never got over it; isn't that the fact?

A. I guess that is right.

Q. How many were there in the family at that time; Terence had gone out, there was your father and your mother and how many children?

A. Three sisters and two brothers.

Q. Including yourself?

A. Yes.

Q. You are one of the two?

A. Yes; there were six; there were Thomas and
10 Michael—three boys.

Q. And three sisters?

A. Yes, three sisters.

Q. And you all made the household there?

A. Yes, sir.

Re-direct examination by Mr. Cutter:

Q. When were you married?

A. In 1894.

By the Court:

Q. Ten years ago?

20 *A.* Ten years ago.

By Mr. Cutter:

Q. How old were you when you were married?

A. Thirty-six.

By the Court:

Q. When you were married?

A. Yes.

By Mr. Cutter:

Q. Didn't you say that your age at the present time was thirty-six?

30 *A.* Yes.

Q. What do you mean by that?

A. At the present time, thirty-six.

Q. Yes?

A. At the present time, forty-six.

Q. How did you come to say on direct examination that your age at the present time is thirty-six?

A. Well, it is forty-six. I did not say thirty-six, did I?

Q. You did.

Judge Collins—You said first 34, and then 36.

By Judge Collins:

Q. What you mean is 46?

10

A. Yes; I am 46.

Mr. Cutter—We give notice to the other side to produce the chattel mortgage.

Judge Collins—We had no chattel mortgage.

The Court—It was not given to the plaintiff, you see. The chattel mortgage, if it is one, that has been testified to was given to Mr. Parsons. How can you expect the Carteret Realty Company to have it?

By Mr. Cutter:

Q. Do you recollect giving a chattel mortgage?

20

Objected to as not re-direct examination.

Objection sustained.

Re-cross-examination, by Judge Collins:

Q. I understand now that you made a mistake; I can see that it might be a natural one, of ten years in your age?

A. Yes, sir.

Q. You first said that you were 34; you then said 36 and then corrected it; isn't it a fact that you are 44, instead of 46?

30

A. It is a fact I was born September 7th, 1858.

Q. How did you get that year?

A. I have it in a book at home; I have seen it many times; may be it can be found yet; it may not be there yet; it is a long time ago since I seen it.

Q. How did you come to say 34?

A. I made a mistake.

Q. How did you come to give your age as two years younger than it is; how did you come to correct yourself, to add two years?

A. I just made a mistake; I just said it that way, that I did not think right of what I was saying.

Q. How did you come to do it?

A. Well, I just came to do it by saying that.

10 Q. Isn't it 44—haven't you always considered yourself all along in the past an age which now would make you 44; isn't it a fact that somebody has corrected you lately and told you that you were two years older?

A. I considered my age as being born in 1858 as long as I can remember; that is the year I was born.

Q. You cannot explain how you come to give it as 44, supposing you mean to say 44, you cannot explain that?

A. Nothing, only that I just made a mistake.

20 *Thomas F. Zettlemoyer*, a witness called on behalf of the defendant, being duly sworn, testified as follows:

Direct examination, by Mr. Cutter:

Q. Where do you reside?

A. Sewaren, New Jersey.

Q. What is your occupation?

A. Agent for the Central Railroad Company.

Q. Ticket agent?

A. Freight agent.

Q. Are you acquainted with Mr. Michael Brady?

30 A. I am.

Q. How long have you known him?

A. Since 1882.

Q. Where were you living then?

A. Carteret.

Q. Did you board with Mr. Brady?

A. No; adjoining his place there.

Q. Are you acquainted with the property that has been spoken of containing 58 acres?

A. Yes, sir.

Q. And a lot across the street?

A. Yes, sir.

Q. Who was in possession of the lot across the street in 1882 when you lived over there?

A. Mr. Brady, Michael Brady.

Q. How long did you live there?

A. I was there six years.

Q. How far is Sewaren from Carteret?

A. About three miles.

10

Q. Did you ever visit Mr. Brady after you moved to Sewaren?

A. I was down there a number of times and saw Mr. Brady, yes, sir.

Q. And did you notice who was in possession of the field of the 13 acres?

A. I noticed that he was living there yet and was cultivating the lot.

No cross-examination.

Judge Collins—We do not intend to dispute that Mr. Brady has been in possession of these 20 premises farming the lot.

The Court—The only question is whether it is adverse or not.

Mr. Cutter—If your Honor please, I wish to offer in evidence record of a deed from J. R. Parsons and wife to Edward Kenna, dated the 29th day of November, 1880, and recorded in Book 185 of Deeds, Middlesex county, page 409, describing the property the same as it is in the lease.

30

Admitted and marked *Defendant's Exhibit 3*.

Judge Collins—Not all of it. It does not include the 13 acres. It conveys the 58 acres; that is what they want; we will concede that.

Mr. Cutter—Also the deed made by Edward Kenna to George W. Brown, dated the 26th day of April, 1881, and recorded in the same book of

deeds, at page 413, conveying the same property as the other deed.

Admitted and marked *Defendant's Exhibit 4*.

Mr. Voorhees—In the light of those deeds, I would again offer the paper marked *D 2* for identification.

Judge Collins—I object to it as irrelevant.

The Court—I do not see that the situation is altered; I will exclude it.

10

Defendants except.

Mr. Voorhees—I understand that Judge Collins is not going to dispute the sufficiency of the possession and working of this place by Mr. Michael Brady?

The Court—He disputes the sufficiency of it; he says he won't dispute the fact that he cultivated it and was in possession.

Judge Collins—I shall not call any witnesses on that subject.

20

The Court—He narrows the question to whether it was adverse or not—whether it was under claim of title.

The Court—I understand that you admit that it was open and notorious.

Judge Collins—Yes, open and notorious; we shall undertake to prove, when the rebuttal comes, the arrangement under which he was there.

30

Mr. Cutter—I wish to offer a deed made by George W. Brown and wife to Terence J. Brady, dated the 29th of October, 1881, and recorded in Book 187 of Deeds for Middlesex county, page 458, conveying the farm of 58 acres and one or two pieces of salt meadow, but not the 13 acres.

Admitted and marked *Defendant's Exhibit 5*.
Defendant rests.

IN REBUTTAL.

Jabez R. Parsons recalled.

Direct examination by Judge Collins:

Q. Now, Mr. Parsons, you have heard Mr. Michael Brady's testimony here this morning?

A. Yes.

Q. He says that in March, 1880, as his lease was about to expire, that you made an arrangement with him in your store, with your brother, to rent the property, the 58 acres and the other piece, to Charles; is that true? 10

A. No, sir; it is not.

Q. What was the condition of affairs during the year after the lease expired; what was Mr. Michael Brady's position there from 1880 to 1881?

A. He was a tenant by word; he did not have any lease, as far as I can remember.

Q. You made no new lease?

A. Made no new lease; no.

Q. He held over? 20

A. He held over; yes.

Q. Did you ever say to Michael Brady that—he fixes the time as somewhere in the summer of 1880, I think—that if he would show people over the main property where he was living and not point out the tract across the road, or say that you and your brother owned that, that he could have that for his trouble, or anything to that effect?

A. No, sir; never.

Q. Under what arrangement with Michael Brady did he remain on these lots across the road after you sold the main property? 30

A. Mr. Brady agreed for the present, for the time being, to pay the taxes on those 13 acres, and have the use of them until he was notified by us.

Q. Did you ever make any other arrangement than that with him?

A. Never.

Cross-examination, by Mr. Voorhees:

Q. I understood you to say that you never leased the premises to Charles?

A. No, sir.

Q. Have you ever seen that paper which I show you, *Exhibit D-2 for Identification*?

A. Yes.

Q. Did you write it?

A. Yes.

10 Q. Do you know your brother's signature?

A. Yes.

Q. You sent it to Charles Brady?

A. Yes; I presume we did.

Q. Is that your brother's signature?

A. I think it is.

Q. And that is yours?

A. Yes.

By Judge Collins:

Q. And the body of the letter is yours?

20 A. The body of the letter is mine.

By Mr. Voorhees:

Q. Why did you write this letter to Mr. Charles Brady?

A. Because he was a surety on the lease.

Q. Was the lease in writing?

A. No; the continuing of the lease was not in writing, but he was security on one of the leases.

Q. On one of the leases?

A. Yes.

30 Q. Which one?

A. I could not tell you which one.

Q. How many leases were there?

A. I do not know as there were but one; there might have been two; I don't know.

Q. Is that the lease?

A. I think it is.

Q. Is he a surety on that lease?

A. No, sir; he is not.

Q. Then, it was not because he was a surety on the lease marked *Defendant's Exhibit 1*, was it?

A. Probably not.

Q. What lease was he surety on?

A. Perhaps a later lease than that, or a former one; I don't know which.

Q. A former one?

A. Yes.

Q. Was there a former lease?

A. I don't know.

Q. You don't know?

A. I don't think there was; I don't know whether there was a later lease or not.

Q. And you don't know whether there was a later lease?

A. No; I don't remember.

Q. You do not say there was no later lease?

A. No.

Q. And you do not say if there was a later lease whether it was in writing, or whether it was a verbal lease?

A. If there was any later lease it was a verbal lease.

Q. And you think Charles was a surety on a verbal lease?

A. No; I do not—well, perhaps he might have been, too, but I am not sure about that.

Re-direct examination, by Judge Collins:

Q. When you say a surety on a lease, do you mean 30 that, or surety for the rent?

A. Surety for the rent.

Q. Back rent?

A. Yes; the back rent.

Q. What was it that he arranged to give as surety, do you recall?

A. A horse; a stallion.

Q. Did you get possession of it?

A. No; we left it on the farm; we never took possession of it.

Q. It died, didn't it?

A. I think so.

Q. I forgot one thing; did you have a talk with Michael Brady some time after 1881 with regard to taxes?

A. Yes.

10 *Q.* Whether he was keeping them up or not?

A. Yes.

Q. What was it?

A. I think it was about the time I went down there and got the horse and cow; I had a talk with Mr. Michael Brady about the 13 acres, and I agreed to let him have it if he would pay up the taxes for the time being—for the present, until further notice.

20 *Q.* You have told us about that, but I mean later, when you spoke to him; I refer to a later conversation, which you inquired of him as to whether has was keeping them up or not?

A. Yes; that was at the same time; I asked him if he had paid the taxes; he said he had and was paying them.

Q. When was the first arrangement made with him that he could stay on those 13 acres on the payment of taxes?

A. Shortly after we sold the farm.

Q. Now then, when was it that you went down there later?

30 *A.* In 1886 and 1887.

Q. And what then was said between you and him?

A. He was to continue to have the use of the 13 acres for the taxes.

Q. What, if anything, did you say about the taxes since 1881?

A. It included all the taxes.

Q. Yes, but did you ask him anything about whether he paid them or not?

A. I asked him if he had paid the taxes; I did not specify the years, and he said he had and was paying them, meaning he had paid part and was paying the rest; that is the way I took it.

Q. I show you a little memorandum that may refresh your memory—some pencil credits on it; does that refresh your memory as to the dates?

A. Yes.

Q. What happened on the dates named?

A. I went down to see him at his place to collect some 10 of the back rents, and he did not have any money, he said, and he would give me a cow or a horse, and I was living quite near by then and I took the cow and took the horse and took them home, or had them sent to me.

Q. At a certain price?

A. Yes.

Q. What was the date?

A. The date was in 1886; that is all the date there is down here, but I know it was in the spring or early summer.

20

Q. You put it down yourself at the time?

A. No, not exactly at the time, but later, those memorandums in pencil were put down.

Q. In 1886 he gave you a cow at what price?

A. In 1886 a cow at \$50, and in 1886 a horse at \$200, and in 1887 a cow at \$50.

Q. That was on the old rent?

A. That was on the back rent, yes, sir.

Re-cross examination by Mr. Voorhees:

Q. Was there any paper executed between you and 30 Mr. Brady concerning these back rents?

A. No, sir.

Judge Collins—Which Mr. Brady do you mean, Michael?

Q. Any of the Bradys?

A. No, sir.

Q. No paper?

A. Except the chattel mortgage which I have spoken of.

Q. Have you got that chattel mortgage?

A. No.

Q. Has your brother got it?

A. I don't know.

Q. Have you looked for it?

A. No.

Q. Have you given it to your counsel?

10 *A.* I think so.

Q. They have it?

A. Yes.

By Judge Collins :

Q. What was it?

Objected to.

The Court—He may explain the witness's testimony.

A. It was a bill of sale.

Q. (Showing paper) Is that it?

20 *A.* Yes, sir ; that is it.

By Mr. Voorhees :

Q. This, as I understand you, was given to you and your brother ; what is your name?

A. My name is Jabez R.

Q. Given to you and your brother Charles?

A. Yes.

Q. As collateral security?

A. Yes.

30 *Q.* For the payment of the rents which had already been accrued?

A. And to accrue also.

Q. Of the current year?

A. Yes.

Q. And it is given by Charles Brady?

A. Yes.

Q. And under that paper you went and took the horse and cow; did you do that?

A. I did not.

Q. Has anything been paid on that bill of sale?

A. No, sir.

Q. Nothing at all?

A. No, sir.

Q. Never received anything on account of it?

A. I do not think so unless it is on the statement that we had here.

10

Q. Is there any statement on here; have you got a statement of what was on there—you got a cow, didn't you?

A. I got a cow and a horse.

Q. On account of that indebtedness?

A. No.

Q. Not on account of that indebtedness?

A. No, on account of that statement right there.

Q. On account of the same indebtedness that that bill of sale was given for?

20

A. Yes.

By Judge Collins:

Q. And those three papers before you are your statements of the transaction?

A. Yes.

Q. With Mr. Brady?

A. Yes; sure.

Q. And the only statements you had; you kept no books?

A. Well, my brother kept books and those were drawn from it; those statements were on our books?

30

Q. These are in his handwriting?

A. Yes, in my brother's handwriting.

Q. And they show the transaction as it was?

A. Yes.

Q. He can tell us about that?

A. Yes.

Charles H. Parsons, a witness called on behalf of plaintiffs, being duly sworn, testified as follows:

Direct examination by Judge Collins:

Q. Mr. Parsons, you are the Charles H. Parsons referred to?

A. I am.

Q. This bill of sale, dated the 7th of May, 1880, given by Charles Brady to you for the bay stallion known as "Vulcan," foaled in 1874 by Peck's Idol, dam, Kate
10 Abdallah, at present on farm of the parties of the second part, what was that given to you for, for about \$800?

A. It was given as security for a debt.

Q. What debt?

A. A debt that he owed for rent of farm.

Q. That who owed?

A. That we owned.

Q. Who owed it?

A. Mr. Michael Brady.

Q. Have you made out statements of the way the
20 account stood?

A. I have.

Q. You have not got your boooks here?

A. No, sir.

Q. What did that \$800 include?

A. It was rent; whether it included any property or not, I cannot remember.

Q. I want to know whether it was only for back rents or included some future rents; you cannot remember?

A. No, I cannot remember.

30 Q. Refreshing your memory from this that you made yourself, will you show us how the account stood?

Mr. Voorhees—I object to that; he says he can't remember.

The Court—I think perhaps it ought to appear that he made these out about that time; I will permit him to refer to them.

Q. The first one I show you dated June 14th, 1878; when was that made out?

A. That was made out at that time.

Q. What did that show?

A. That showed the state of the account.

Q. It showed the state of the account between you then?

A. It did.

Q. And this one of December 19th, 1879, showed a condition of affairs, then, without the lead pencil?

A. Yes, that was the prior one; yes, that showed it at that time.

Q. That shows it down to December 19th, 1879?

A. Yes.

Q. Without regard to the pencil?

A. Yes; the pencil is not in my writing.

Q. And was there any change after that up to May 7th, 1880?

A. That I could not say without I had some papers before me; I don't know.

Q. And the last one is in 1881, isn't it?

A. The last one here is in 1881.

Q. Now, Mr. Parsons, did you, in March, 1880, or at any other time, make any arrangement with Michael Brady at your store or at any other place, to rent his son, Charles A. Brady, the farm and the tract of land opposite for the year after this lease that Brady was then under should expire?

A. No.

Q. Did you ever make any arrangement directly or indirectly with Charles Brady to be your tenant?

A. Never.

Q. Did you ever hear of any arrangement between your brother, Jabez R. Parsons, and Michael Brady made as he claims in the summer of 1880 or at any other time to let him have the property now in suit in consideration of his showing people who came out there with a view to buy the other property, the 58 acres; did you ever hear of any such thing?

A. Never.

Q. Either from your brother or from Mr. Brady?

A. No.

Q. Did you ever authorize any such arrangement to be made?

A. Never did.

Q. Either from your brother or from Mr. Brady?

A. No.

Q. Did you ever authorize any such arrangement to be made?

10 *A.* Never did.

Q. How did you sell the property?

A. How did we sell it?

Q. Yes, the farm that you sold; I mean to say through whom was it sold?

Objected to. Objection sustained.

Q. Now, Mr. Parsons, tell us how Mr. Michael Brady came to remain in possession of the tract of land now in controversy after you had sold the main farm, and on what terms?

20 *A.* He remained there with the understanding that he was to have the use of it.

Mr. Voorhees—Was this the conversation had between Brady and the witness?

The Court—You had better show how he knows about the arrangement. Strike out the answer; if the objection had been interposed sooner I would have stopped him.

Q. Did you make the arrangement with Michael Brady yourself?

30 *A.* I did not.

Q. Did you know of it from him in any way?

A. Not from Mr. Brady.

Q. Then you cannot tell us anything except what you have heard from your brother Jabez?

A. That is it.

Q. Did you ever know or hear from any one up to the time you sold the property to Mr. Dobbins that Michael Brady claimed to own that property?

A. I never did.

Q. Did you have any talk with Michael yourself after 1881—your brother seems to have gone there and got a cow?

A. I don't think I did.

Q. You had no talk with him, you say?

A. No, sir.

Q. Did your brother report to you any arrangement that he had made with Michael Brady for remaining in the place, and on what terms?

10

Objected to. Objection sustained. Plaintiff excepts.

Cross-examination, by Mr. Voorhees:

Q. You have books, haven't you, Mr. Parsons?

A. Yes.

Q. And they are in existence now?

A. They are not.

Q. They are not in existence now?

A. No, sir; about ten years ago I destroyed or sold all my old books.

20

Q. Those statements were taken from your books?

A. Yes, sir; at that time.

Q. By you?

A. By me.

Q. You say that you never rented the farm to Charles Brady?

A. I never did.

Q. Nor your brother either?

A. To my knowledge, no.

Q. I show you a paper marked *Exhibit D 2* for identification, and ask you whether your signature is appended to it?

30

A. That is my signature, yes, sir.

Q. Do you know your brother's signature?

A. Yes.

Q. Is that it?

A. Yes, that is it.

Q. That was signed by you?

A. Yes, sir.

Q. How did you come to write that letter?

A. I don't know; who is it to?

Q. Mr. Charles Brady?

A. Mr. Charles Brady was surety on the lease at the time.

Q. What lease do you refer to?

A. The continuation of the lease to Michael Brady.

Q. You say the continuation of the lease to Michael Brady?

A. Yes.

Q. And what was it a continuation of?

A. The previous three years.

Q. Was that a written lease?

A. That was a written lease.

Q. You say he was surety?

A. He was surety; not in writing, but as a verbal surety.

Q. A verbal surety?

A. Yes, sir.

Q. On the lease?

A. On the lease.

Re-direct examination by Judge Collins:

Q. And what did he give you in security?

Objected to.

The Court—Better ask him whether he gave anything.

Q. Did he give you anything?

A. He did.

Q. What was it?

A. It was a bill of sale of that stallion.

Q. That is the bill of sale that has been shown here?

A. It is.

Q. I show you your copy of this lease; they have put theirs in; I will put yours in; who were the sureties on that original lease?

A. Terence Brady and Thomas Brady.

Q. Terence and Thomas were the sureties on the original lease?

A. Yes; so it seems.

Judge Collins—I offer our lease in evidence.

Admitted and marked *Plaintiff's Exhibit 7*.

Judge Collins—I offer in evidence the bill of sale and these statements.

Bill of sale marked *Plaintiff's Exhibit 8*.

The three statements referred to, pinned together and marked collectively *Plaintiff's Exhibit 9*. 10

Charles E. Heald, a witness called on behalf of plaintiff, being duly sworn, testified as follows:

Direct examination, by Judge Collins:

Q. Were you until recently the president of the Carteret Realty Company?

A. I was.

Q. Have you any longer any interest in that company? 20

A. None whatever.

Q. When did it cease?

A. July 8th, 1904.

Q. Sold your stock?

A. Yes, sir.

Q. At the time that you were president of it, when the company had purchased this property from Mr. Dobbins, did you go to see Mr. Michael Brady at the purchase? 30

A. Yes, sir.

Q. State what occurred?

A. I met Mr. Brady on the Woodbridge road, told him that I had purchased the Parsons' tract up near his place, and he said, "That land is mine." I said, "How is it yours, Mr. Brady?" "Well," he said, "Parsons gave it to me." I said, "How did he give it to you?" He said, "He told me if I would help to sell the farm

that when he sold it he would give me that land for my trouble." I said, "Did you ever get any deed from Parsons?" He said, "No." I said, "Didn't you ever have any writing of any kind to show that he gave you the land?" He said, "No." I said, "How long have you been on the land, Mr. Brady?" He said, "Ever since I first hired it from Parsons." I said, "You have been there all the time ever since?" He said, "I have; I am going to stay there."

- 10 No cross-examination.
Plaintiff rests.

Michael Brady, the defendant, recalled.

Direct examination, by Mr. Cutter:

Q. Did you hear the testimony of Mr. Jabez Parsons?

A. Yes.

Q. That you agreed to pay the taxes on this 13 acres?

A. Yes.

Q. In consideration of the use of the land until called for?

- 20 A. Yes.

Q. State whether that is so or not?

The Court—The question now is whether you had such an agreement or not.

Q. Did you have such an agreement?

A. We had not; Mr. Parsons never mentioned such a fact to me since the first day he asked me to help him sell the place.

Q. At any time when he came there did he ask you if you had paid the taxes up?

- 30 A. Never mentioned a word about the taxes.

No cross-examination.

Mr. Voorhees—I renew my offer of *Exhibit D 2* for identification.

Judge Collins—I suppose it is competent evidence as tending to contradict the witness.

Said paper admitted in evidence and is as follows: "New York, February 12, 1881. Mr.

Charles Brady, East Rahway, N. J. We have sold the farm which you rent to Mr. George W. Brown, and you will please pay the rent to him from the 1st of December, 1880, and oblige, J. R. Parsons, Charles H. Parsons."

Defendant rests.

Recess.

Afternoon session.

Counsel thereupon summed up.

The Court charged the jury as follows:

Gentlemen of the Jury: The substantial question for
you to decide in this case is whether or not the plaintiff,
The Carteret Realty Company, is entitled to the pos-
session of this tract of 13 acres as against the defendant,
Michael Brady. Ordinarily the party who has a good
paper title to property is entitled to the possession as
against the whole world, and the presumption is that
the claim of the party having a paper title is rightful. 10

In this case you start with the fact, so far as appears
from the evidence, that the Carteret Realty Company 20
has a good paper title by deed to this property going
back to one Charles Parsons, who acquired it in 1863,
and who, together with his devisees, his sons, were
in possession at least until the first day of April,
1881. It makes no difference in this case whether that
title was absolutely good as against somebody else or
not. It is proved in this case that it was good at least
up to the 1st of April, 1881, as against Mr. Brady. It
makes no difference in this case what the Carteret Realty
Company paid for the land, whether it paid \$2,000 or 30
less. It makes no difference in this case whether the
Carteret Realty Company acquired title directly or
through the medium of a man named Dobbins, and it
makes no difference in this case whether the property is
worth more or less than the Carteret Realty Company
paid for it, nor whether it is worth one cent or many

hundreds of dollars. Those questions are entirely outside of the case.

You start then with the fact that up to the first day of April, 1881, at any rate, the Parsons, whose title now belongs to the Carteret Realty Company, had a good title to this property. In order that that title of the Carteret Realty Company may be overcome, it is necessary for Mr. Brady to prove to you by the preponderance of the evidence,—prove to your satisfaction,—that
 10 that title has in some way ceased to be good as against him, and the claim that he sets up is that it has ceased to be good because he has had possession of the land for more than twenty years last past. It is true that a man may acquire title to land by possession for twenty years; that possession must be actual and exclusive; it must be visible or notorious; it must be continued or uninterrupted, and it must be adverse and hostile. Now, there is no question in this case but that Mr. Brady has had the actual and exclusive possession of the land; that he
 20 has had the visible and notorious possession of the land, and that it has been continued and uninterrupted for twenty years. The point in dispute, and the question for you to settle, is whether or not that possession was adverse or hostile; that is, whether Mr. Brady had possession of the land, claiming it as an owner; for if he had possession as tenant, his possession was the possession of his landlord, and a man does not lose his land because he allows a tenant to continue on it, no matter how long the tenant may continue, and no matter whether he pays rent or not; nor does he lose the right
 30 to his land if he merely permits a man to continue in possession. In order that he may lose his right, the man who is in possession must be there claiming a right to be there as the owner of the land. That is what the law means by saying the possession must be adverse or hostile.

The question for you to settle is whether Mr. Brady's claim was of that character or not. If he was there as

tenant, as he was between 1877 and 1880, that is the end of this case, and your verdict must be in favor of the plaintiff. If he was there by mere permission or merely upon the condition that he should pay the taxes, that is the end of this case and your verdict would have to be in favor of the plaintiff.

I say it is incumbent upon Mr. Brady to prove that his possession was a possession claiming as owner. The evidence he produces to satisfy you of that consists first of the fact that he erected some sort of a building or 10 buildings upon the land, and, second, the fact that, as he says, he has paid the taxes. Undoubtedly a man who erects permanent buildings upon land such as only an owner would erect, does evince, to some extent at least, a claim to own the land. The buildings in this case, however, were not of great value. One was a hay barrack, which lasted a few years and was allowed to rot down. One was a stable erected upon posts which rotted, and the stable was taken down. There was a third building erected after this dispute begun, but it is obvious that 20 that might have been erected with the purpose of claiming a title as against The Carteret Realty Company. So I think you will have to confine your consideration to the hay barrack and the first stable. Were they such buildings as would be erected by a man having the precarious title of remaining there as long as he paid the taxes, or were they of such a permanent character that they indicated that Mr. Brady was claiming the land as owner?

So also the payment of taxes is a circumstance to indicate that a man claims to own the land, but it is no 30 more than a circumstance, and it may be explained. In this case the plaintiff insists that it is explained by the fact that an agreement or arrangement was made between these parties along in 1881, or whenever it was, by which Mr. Brady was to be allowed to remain there upon condition that he paid the taxes. If that was the arrangement, then the payment of taxes would be very slight evidence to induce you to believe that he claimed the ownership of the property.

At one time he was there under a lease and the presumption is that he continued as tenant unless he shows that in some way his possession was changed, and if he continued as tenant then his possession was not adverse and hostile, and, as I say, the plaintiff would be entitled to your verdict. He says that the character of his possession did change; he says that that lease came to an end; that then the property was leased for a year to his son, and that after that he went in possession claiming
 10 to own it. Now, has he satisfied your minds on that subject? If not, if your minds are left equally balanced, if you cannot tell where the truth is on this question of adverse possession, then Mr. Brady has failed to establish his claim by adverse possession, and the paper title of the plaintiff must prevail. Now, I say further, that that adverse possession must be continued for at least twenty years, and that becomes of some importance in this case if you believe the testimony of one of the Parsons that in 1886 or 1887 he had some sort of a conver-
 20 sation with Mr. Brady in which he insisted upon his right to the land, and a cow or horse or something of that kind was turned over to him by way of partial payment on account of the back rent. If at that time Mr. Parsons was insisting upon a right as landlord, and if Mr. Brady was recognizing it, then the possession was not adverse.

If you find in favor of the plaintiff, gentlemen, render a verdict generally for the plaintiff; no amount of damages, I think, need be specified in this action. If you
 30 find in favor of the defendant, render a verdict generally in favor of the defendant.

The jury thereupon retired.

Judge Collins—I desire to except to your Honor's submitting to the jury under the condition on which you did submit it, the possibility of the erection of the buildings being an evidence of a claim of hostile ownership; and to allowing them to consider the payment of taxes

under the circumstances under which you said they might consider them as even slight evidence, that was your Honor's expression.

Mr. Voorhees—I would like to have an exception wherein your Honor charged substantially that the only evidence of claim of title was the erection of the hay barrack and certain buildings.

The Court—You may take an exception, taking the charge as a whole. When you get the transcript you will have to pick out definitely what you except to. 10

The jury brought in a verdict in favor of the plaintiff.

IN CHANCERY OF NEW JERSEY.

BETWEEN

MICHAEL BRADY,
Complainant,

and

CARTERET REALTY COMPANY
ET AL.,

Defendants.

} On Bill, &c.

ORDER DENYING MOTION FOR NEW TRIAL. 20

Upon the return of the postea, and of the report of Honorable Francis J. Swayze, one of the Justices of the Supreme Court, on the issue heretofore ordered by this Court, the complainant having moved that a new trial of the issue directed in this cause be granted, and said motion having been duly argued by Williard P. Voorhees, of counsel with the complainant, and by Gilbert Collins, of counsel with the defendant Carteret

Realty Company, and the Chancellor having duly considered the same:

It is on this thirtieth day of March, in the term of February, nineteen hundred and five, ordered that the said motion be denied with costs.

W. J. MAGIE, C.

Filed March 13th, 1905.

OPINION.

IN CHANCERY OF NEW JERSEY.

10 Williard P. Voorhees and Ephraim Cutter, for the motion. Gilbert Collins, opposed.

MAGIE, *Ch.* Whether a motion for a new trial of an issue directed by the court in a cause in which relief is sought under the provisions of the quiet title act is to be dealt with as are motions for new trials of issues directed by the court in causes arising under the general jurisdiction of the court of equity is a question raised by counsel moving for a new trial. Issues directed under the general jurisdiction of the Court of Chancery
 20 are said to be for the information of the conscience of the court. The verdict may be disregarded, and a decree made in opposition to the verdict taken thereon. But by the act under consideration upon the application of any party an issue is required to be directed. If such application is made, the chancellor can make no decree except upon the finding returned upon such issue. The act further declares that the court shall be bound by the result of such issue; but that it may, for sufficient reason, order a new trial thereof. The issue thus re-
 30 quired to be made obviously takes the place of a trial at law upon a contested title. It may be doubted whether the act, if it had failed to afford any party concerned a right to a trial at law, and to accord to the result of that trial a binding force, would have possessed

constitutional validity. It results, in my opinion, that in dealing with applications for new trials of such issues this court should act in accord with the practice in respect to new trials of actions at law upon contested titles. Such has been the apparent trend of all our cases from the leading case of *Powell v. Mayo*, 26 N. J. Eq. 120; s. c., 27 N. J. Eq. 440. See *Holmes v. Chester*, 26 N. J. Eq. 79; *Jersey City v. Lembeck*, 31 N. J. Eq. 255. The issue directed was in respect to the right of possession to some 13 acres of land in Middlesex county. 10 The realty company was the plaintiff and Brady was the defendant in the issue. At the trial the company proved a paper title to the locus in quo, and rested. Brady then produced evidence tending to show that he had acquired title to the locus in quo by adverse possession. This was the real issue tried. By Brady's evidence it was made to appear that he had been in possession of two tracts, viz., one of about 58 acres and the other of about 13 acres (which was that in dispute), under lease from two persons named Parsons, who were 20 predecessors of the company in the chain of title. This lease expired in April, 1880. Brady himself testified that prior to the expiration of the lease he had, at an interview with the two Parsons, then the owners, agreed with them in behalf of his son, Charles Brady, for a lease to the son of both tracts for the year from April, 1880, to April, 1881. Charles' right, if any, depended upon this parol agreement thus testified to. Brady also testified that he remained in possession of both tracts during the year from April, 1880, to April, 30 1881, as before that time. It was apparently deemed important to establish that during that year the son Charles was the tenant, and that Brady's possession was under Charles, and not under the Parsons, whose tenant he had previously been. For this purpose Brady offered in evidence a letter dated in February, 1881, addressed to Charles Brady, and signed by the two Parsons, who were then the owners of the tract in

dispute. It contained these words: "We have sold the farm which you rent to Mr. G. W. Brown, and you will please pay the rent to him from the 1st of December, 1880." This offer was overruled, and exception duly taken. Whether Brady's possession up to April, 1881, was a holding over from the expiration of his previous lease, or was a possession under Charles, who was the Parsonsese' tenant, was immaterial. If Charles was tenant, and Brady his agent or subtenant (which it was
 10 did not appear), Brady's possession could not have been adverse to the Parsonsese until after the tenancy of Charles, to which Brady had testified, had expired. Whether Charles was tenant during that year or not was therefore of no consequence with respect to the question at issue. The adverse possession which was claimed must have assumed that character after April, 1881. The letter was subsequently admitted in evidence. But, as its admission was for the sole purpose of contradicting the Parsonsese, who had both testified that
 20 they had not rented to Charles, this would probably not have cured its previous rejection, if erroneous. But, for the reason given, I think the rejection was proper.

It is further contended that the trial judge erred in his charge restricting the jury, in the consideration of Brady's claim, to a possession adverse to the owners of the title, to the erection of a building or buildings on the land, and the payment of the yearly taxes. Taken in connection with the precedent matter of the charge, this was in no sense erroneous. The judge had just stated
 30 that the proofs were plenary that Brady had been for at least twenty years in actual, exclusive, visible, notorious possession. He had declared that the sole question for them to settle was whether the proved possession was adverse or hostile to the owners. He had added that Brady's possession, if a mere holding over as a tenant, would not be indicative of hostility without some proof of claim to ownership. In that connection it was proper to direct attention to the evidence which might

tend to evince that claim of hostile ownership which was necessary to sustain the issue on Brady's part. I find no substance in the objections to the rulings of the trial judge on the admission or rejection of evidence, nor do I think the verdict was against the weight of evidence.

It results that the application for a new trial must be denied, and a decree must be made for the company pursuant to the statute.

...

DEFENDANT'S EXHIBIT I.

THIS INDENTURE, made the twenty-sixth day of March, One Thousand eight Hundred and Seventy Seven,

Between Jabez R. Parsons and Charles H. Parsons, of the City, County and State of New York, of the first part, and Michael Brady, of the township of Woodbridge, in the county of Middlesex, and State of New Jersey, of the second part,

Witnesseth, That the said party of the first part have 10
 Let and by these presents do grant, demise, and to farm let, unto the said party of the Second Part, all that farm situate, lying and being in the township of Woodbridge, in the county of Middlesex, and State of New Jersey, consisting of several tracts of land. The First Tract contains fifty eight acres, and fourteen one hundredths of an acre, more or less, and is bounded by the road leading to the Blazing Star Ferry, land late of William Edgar, deceased, William Martin, deceased, Beverly Crowell, deceased and others. The second tract contains two acres 20
 and and forty three one hundredths of an acre, and is bounded East by the Blazing Star road, South by land now or late of Cornelius Poland, and West and North by lands late of Thompson Crowell deceased. The Third Tract is salt-meadow land, containing four acres and six tenths of an acre, lying in Woodbridge Neck meadows, adjoining lands formerly of John Clarkson deceased, and lands of John Dobbs, deceased. The Fourth Tract is also salt-meadow, lying in said Woodbridge Neck meadows, adjoining meadow lands formerly belonging 30
 to Moses Jaques, deceased, and binding on Cross creek, and contains three acres, more or less, Being the same lands conveyed to Charles Parsons, by deed from Joseph Stanley and wife, dated April 15th A. D. 1863, and

recorded in Middlesex County Clerk's office in Book 90 of Deeds, page 606. Also the plot opposite the above, known as the Thompson Crowell lots, and containing about thirteen acres, with the appurtenances, for the term of three years from the first day of April, One Thousand eight Hundred and Seventy Seven, at the Yearly Rent or Sum of Three Hundred dollars to be paid in equal half-yearly payments, to be made in advance, on the first day of April, and the first day of October, in each and every year during said term.

And it is agreed that if any rent shall be due and unpaid, or if default shall be made in any of the covenants herein contained, then it shall be lawful for the said party of the first part to re-enter the said premises, and to remove all persons therefrom.

And the said party of the second part doth covenant to pay to the said party of the first part, the said yearly rent as herein specified, at the times appointed as aforesaid. And also that he, the said party of the second part
 20 *will during the said term, at his proper costs and charges, well and sufficiently repair and keep in repair the said premises in a good husbandlike manner, and that he, the said party of the second part, will not at any time or times during the said term, carry off, or suffer to be carried off, from the said demised premises, any dung, soil or compost thereon made, during the said term, and also that he, the said party of the second part, shall not, nor will, at any time or times hereafter, during the said term hereby granted, assign this lease, nor let or under-*
 30 *let, the whole or any part of the said premises, nor make any alteration therein, without the written consent of the said parties of the first part, under the penalty of forfeiture and damages.*

And that at the expiration of the said term, the said party of the second part will quit and surrender the premises hereby demised, in as good state and condition as reasonable use and wear thereof will permit, damages by the elements excepted.

And the said party of the first part do covenant that the said party of the second part on paying the said yearly rent, and performing the covenants aforesaid shall and may peaceably and quietly have, hold and enjoy the said demised premises for the term aforesaid.

Provided always, and it is hereby expressly agreed and declared, that if the said parties of the first part, shall at any time during the said term, sell and convey away said premises, then and in such case the said party of the second part shall and will quit and surrender the said demised premises upon thirty days previous notice in writing of such sale, to him by said parties of the first part, and upon the payment of such damages as shall be sustained by said party of the second part, by reason of such sale, and vacating said demised premises, to be ascertained and determined by two disinterested persons of the neighborhood, to be chosen by said parties hereto, or their lawful representatives, and in case of their inability to agree upon said damages, then they two to select a third person to act with them in said matter, and the award or determination of any two of them to be final and conclusive as to the amount to be paid by the said parties of the first part, to the said party of the second part, in full satisfaction of the damages sustained by him in the premises. 10 20

And it is further understood, and the the said party of the second part hereby agrees to and with said parties of the first part, that all parts of said demised premises by him ploughed or cultivated during the last year of said term, except twenty acres thereof, shall be sown with grass seed, and that of said premises he will leave at least fifty acres of upland in grass or pasture lands, upon the expiration of said term. 30

And it is further understood and agreed, that the covenants and agreements contained in the within lease, are binding on the parties hereto, and their legal representatives.

In witness whereof the parties to these presents have hereunto set their hands and seals the day and year first above written.

JABEZ R. PARSONS [L. S.]

CHAS. H. PARSONS [L. S.]

MICHAEL BRADY. [L. S.]

Sealed and delivered in the presence of

ALBERT APPLETON.

In consideration of the letting of the premises above
 10 described, and for the sum of one dollar, we do hereby
 become sureties for the punctual payment of the rent,
 and the performance of the covenants in the above writ-
 ten lease mentioned, to be paid and performed by Michael
 Brady, as therein specified, and if any default shall at
 any time be made therein, we do hereby jointly and sever-
 ally promise and agree to pay unto the landlords in
 said lease named, or their legal representatives, the said
 rent, or any arrears thereof, that may be due, and fully
 satisfy the conditions of the said lease, and all damages
 20 that may accrue by reason of the non-fulfillment thereof,
 without requiring notice, or proof of demand being
 made.

Given under our hands and seals this 26th day of
 March, A. D. 1877.

TERENCE BRADY [L. S.]

THOMAS BRADY [L. S.]

CARTERET, N. J. Dec. 29, 1902.

To Michael Brady.

30 Please take notice that the premises occupied by you
 as Tenant of Jabez R. and Charles H. Parsons situated
 at the Junction of the Rahway Road and the Blazing
 Star Road in the Township of Woodbridge, Middlesex
 County, New Jersey, have been conveyed and are now
 owned by the Carteret Realty Company and the said

Carteret Realty Company hereby gives you notice to deliver up possession of said premises on April first next on which date your tenancy will terminate.

CARTERET REALTY CO.

By C. E. HEALD

President.

P. Ex. No. 6, Ident.

EXHIBIT P 8.

Know all men by these presents, That I, Charles Brady of the First Part, for and in consideration of the 10
sum of eight hundred dollars lawful money of the United States, to me in hand paid, at or before the en-
sealing and delivery of these presents, by Jabez R. & Charles H. Parsons of the Second Part, the receipt whereof is hereby acknowledged have bargained and sold, and by these presents doth grant and convey, unto the said parties of the second part, their executors, administrators and assigns, The bay stallion known as "Vulcan" foaled 1874 by Pecks Idol dam Kate Abdallah at present on Farm of parties of the second part 20

To have and to hold, the same unto the said parties of the second part, their executors, administrators and assigns forever. *And* I do for my heirs, executors, and administrators, covenant and agree, to and with the said parties of the second part, to warrant and defend the sale of the said Bay Stallion "Vulcan" hereby sold unto the said parties of the second part, their executors, administrators and assigns, against all and every person and persons whomsoever.

In Witness Whereof, I have hereunto set my hand and 30
seal the seventh day of May in the year One Thousand Eight Hundred and eighty

CHARLES BRADY

Sealed and Delivered, in the presence of

MICHAEL BRADY

EXHIBIT P 9.

CHARLES PARSONS & SONS
Fruit and Commission Merchants,
No. 99 Murray Street,

J. R. Parsons
Chas. H. Parsons
P. O. Box 4152
NEW YORK, June 14, 1878

M. BRADY, *Dr.*

	One ton hay,	\$10.00	
10	147 Bus. Corn 55c.....	80.85	
	1 1-2 year rent.....	450.00	
	12 Bus. oats 40.....	4.80	
		545.65	
	To Mower & sundry articles.....	40.	
			\$585.65
	Mch. 30 By cash.....	\$150.	
	Dec. 17 "	40.	
	Jany. 7 "	72.74	
20	By apples.....	12.80	
		275.54	
	By horse keep.....	50.	
			\$325.54
	Balance due.....	\$260.11	
		150.00	
		410.11	
	By note.....	150.	
		260.11	
	1. year rent.....	300.	
30		560.11	

(Same heading)

NEW YORK Dec. 19, 1879

Mr. M. BRADY, *Dr. to* ESTATE CHAS. PARSONS

One ton hay.....	\$10.00
147 Bus. Corn 55c.....	80.85
12 Bus. Oats 40.....	4.80
1 mower & some small articles,...	40.
	\$135.65
To 3 years rent of farm 300.....	900.

1035.65 10

Cr.

1877

Mch. 30	By Cash.....	\$150.00
Dec. 17	"	40.
	By Apples.....	12.50

1878

Jany. 7	" Cash.....	72.74
	" Horse keep.....	50.

1879

Feb. 11	" Note.....	150.
		\$475.54 20

Balance due.....	\$560.11
6 months rent farm.....	100.

\$660.11

1886 Cr by cow..... \$50.00

1886 Cr " horse..... 200.

1887 Cr " cow..... 50.

(in pencil)

(Same heading)

NEW YORK May 2, 1881

MR. BRADY

To Chas. Parsons & Sons, *Dr.*

To Balance due Jany. 1, 1880.....	\$560.11
" rent of farm 1880.....	200.

\$760.11

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IN CHANCERY OF NEW JERSEY.

BETWEEN	}	On Bill, &c.
MICHAEL BRADY,		
<i>Complainant,</i>		
and		
CARTERET REALTY COMPANY ET AL.,	}	
<i>Defendants.</i>		

FINAL DECREE.

10

(Filed May 16, 1905.)

The above-named complainant having brought suit in this court to settle the title of the lands hereinafter described, and to clear up all doubts and disputes concerning the same, and having in his bill of complaint alleged that he was in peaceable possession of said lands claiming to own the same, and that his title thereto 20 was denied and disputed by the defendant, Carteret Realty Company, claiming to own the same, and that no suit was pending to enforce or test the validity of such title and claim, and said bill having described said lands with certainty, and named said company as claiming title in said lands, and having called upon it to set forth and specify its title or claim, and how, and by what instrument the same was derived or created, and proper subpoena and ticket having been issued upon said bill, and said defendant—Carteret Realty Company— 30 having answered, claiming an estate in fee simple in said lands, and in its answer having specified and set forth the estate so claimed, and having set out the manner in which and the sources through which said title was claimed to be derived, and upon application of said complainant an issue of law having been directed to try the validity of such claim, and such issue at law having been tried by jury before a Justice of the Su-

preme Court, with result in favor of said Carteret Realty Company, certified to this Court, and thereupon the said complainant, having moved for a new trial of such issue, and a new trial having been denied, and said cause having been duly set down for final hearing at the present May term, nineteen hundred and five, of this court, and the Chancellor being of opinion that the said defendant, Carteret Realty Company, is entitled to the relief hereinafter adjudged and decreed,

- 10 It is thereupon on this sixteenth day of May, in the year of our Lord One Thousand Nine Hundred and Five, on motion of Collins & Corbin, Solicitors for and of counsel with the said defendant Carteret Realty Company, by his Honor William J. Magie, Chancellor of the State of New Jersey, ordered, adjudged and decreed, and the Chancellor does by virtue of the power and authority of this Court, and in accordance with the Act of the Legislature entitled "An Act to compel the determination of claims to real estate in certain cases, and
20 to quiet the title to the same," approved March 2d, 1870, and the supplements thereto, hereby order, adjudge and decree that the said defendant, Carteret Realty Company, has an estate in fee simple absolute in said lands of which the said complainant is in possession that is to say:

- All the following-described tract or parcel of land and premises situate in the Township of Woodbridge in the County of Middlesex and State of New Jersey, containing eleven acres and seven hundred and twenty-
30 one one thousandths of an acre, beginning on the easterly side of the Blazing Star Road, at the most northerly corner of land now owned by the Carteret Realty Company; from thence running along the line of land of the said Carteret Realty Company south fifty-nine degrees and thirty-seven minutes east seven hundred and thirty-seven feet and sixty-two one hundredths of a foot to a point in line of lands now in possession of one Krothie; thence along the line of said Krothie's land and land of*

William C. Merrill, north thirty-two degrees and forty-eight minutes east four hundred and eighty-nine feet and thirty-four one hundredths of a foot to the southerly side of Rahway Avenue; thence along the southerly line of Rahway Avenue north fifty-nine degrees and seventeen minutes west twenty feet and thirty-one hundredths of a foot; thence still along the said southerly line of said Rahway Avenue north forty-nine degrees and fifteen minutes west fifty feet; thence still along said southerly side of said Avenue north forty-four degrees 10 and thirty-seven minutes west nine hundred and thirty-nine feet and forty-one one hundredths of a foot to the intersection of said southerly side of said Avenue with the easterly side of Blazing Star Road; thence along said easterly side of Blazing Star Road south thirteen degrees and fifty-seven minutes west seven hundred and seventy-two and seventy-four one hundredths feet to the place of *beginning*.

And it is further ordered, adjudged and decreed that the said complainant has no estate or interest in the said 20 lands.

15 And it is further ordered, adjudged and decreed that the said complainant pay to the said defendant, Carteret Realty Company, its costs in this suit to be taxed, and that execution issue therefor according to the practice of this Court.

W. J. MAGIE, C.

Filed May 16th, 1905.

