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New Jersey State Library

Petition.

IN CHANCERY OF NEW JERSEY.

In the Matter

of

The Condemnation of Lands for School Purposes in the Township of Hillside.

To his Honor, Edwin Robert Walker, Chancellor of State of New Jersey.

The petition of Dallas Flannagan of the town of Montclair, County of Essex, State of New Jersey, respectfully shows that on the application of the Board of Education of the Township of Hillside, for the appointment of Commissioners to condemn lands and premises in said township for school purposes, an order was made by the Honorable James J. Bergen, a Justice of the Supreme Court of this State, on the seventh day of February, nineteen hundred and fourteen, appointing Commissioners for the condemnation of lands and premises in said petition described, and that in pursuance thereof, the said Commissioners did afterwards on the fourth day of March, nineteen hundred and fourteen, file their report in the office of the Clerk of the County of Union, wherein and whereby they awarded the sum of seven hundred and fifty ($750) dollars as the compensation to be paid for the lands and premises in said petition described.

That afterwards upon petition filed in this Court, an order was made on the tenth day of March in the said year, directing that the said sum of Seven Hundred and Fifty ($750) Dollars

should be paid into this Court, and there to remain until the further order of the Court. And your petitioner further shows that on the twenty-third day of November, nineteen hundred and four, your petitioner recovered a judgment in the Supreme Court of this State against Dennis D. McKoon, who was at that time owner of record of said property, for the sum of ten thousand seven hundred and seven dollars and thirteen cents ($10,707.13) and that said judgment still remains unpaid and unsatisfied of record, no part thereof having been paid to your petitioner.

Your petitioner therefore prays that an order of this Court be made directing the Clerk of the Court to pay to your petitioner the said sum, on account of your petitioner's said judgment, or such other order as your Honor should deem proper.

DALLAS FLANNAGAN,
VAIL & McLEAN,
Solicitors for and of Counsel with Petitioner.

STATE OF NEW YORK, }
COUNTY OF NEW YORK. } ss.:

Dallas Flannagan, the above named petitioner, being duly sworn, saith:

That the matters and things set forth in the above petition so far as they relate to his own acts are true, and so far as they relate to the acts of others, he believes to be true.

DALLAS FLANNAGAN.

Sworn and subscribed to before me }
this 19th day of March, 1914. }

DONALD H. McLEAN,
Master in Chancery of New Jersey.

Filed April 2, 1914.

Order.

IN CHANCERY OF NEW JERSEY.

In the Matter

of

The Condemnation of Lands for School Purposes in the Township of Hillside.

Upon reading and filing the petition of Dallas Flannagan setting forth that under an order of this Court, made on the tenth day of March, 1914, the sum of seven hundred and fifty dollars awarded by the Commissioners appointed to condemn the lands and real estate in the Township of Hillside, in the County of Union, had been paid to the Clerk of this Court and that the petitioner had recovered a judgment in the Supreme Court of this State against Dennis D. McKoon, who was the owner of record of said property at the time the judgment was obtained, and praying that an order may be made directing the Clerk to pay over the said sum of money to your petitioner on account of said judgment, or such other order as may be proper in the premises. It is therefore on this second day of April, in the year nineteen hundred and fourteen, ordered that it be referred to Raymond T. Parrot, one of the Special Masters of this Court, to ascertain the truth of the allegations of the said petition and whether the said petitioner is entitled to the said money upon his said judgment and that he make report thereon with all convenient speed.

And all further directions are reserved until the coming in of the said Master's report.

Respectfully advised,

E. R. WALKER,
C.

JAMES BUCHANAN,
A. M.

Master's Report.

IN CHANCERY OF NEW JERSEY.

In the Matter

of

The Condemnation of Lands for School Purposes in the Township of Hillside.

In pursuance of an order of this court, made in the above entitled cause, bearing date the second day of April, nineteen hundred and fourteen, whereby it was referred to me the subscriber, one of the special masters, to ascertain the truth of the allegations of the petition filed in said matter and whether the said petitioner is entitled to the money upon his judgment in said petition mentioned.

I do respectfully report that I have been attended by Donald H. McLean, Esquire, solicitor for the petitioner Dallas Flannagan, and William R. Wilson, Esquire, solicitor for Leander Brink,

who claims to be interested in and to be entitled to some part of the surplus money mentioned in the said petition, and that I have taken the depositions of witnesses produced before me.

And I find and report that the matters and things set forth in the petition are true.

I further report that there has been exhibited to me a certified copy of the judgment entered in the New Jersey Supreme Court on attachment wherein Dallas Flannagan is the plaintiff and Dennis D. McKoon is the defendant, for the sum of ten thousand six hundred and sixteen dollars and sixty-three cents ($10,616.63) damages, and ninety dollars and fifty cents ($90.50) costs, which said judgment was entered on the twenty-third day of November nineteen hundred and four (Exhibit P-2).

And I further report that it appears to me by reference to the abstract of Donald H. McLean, Counselor at Law (Exhibit P-3), and by personal examination of the deeds of record in Union County referred to in said abstract that by deed dated April 22nd, 1899, recorded May 11, 1899, in Book 350, page 299, a certain Thomas R. Sully (single), did convey to Dennis D. McKoon, premises in the Township of Union, County of Union, New Jersey, known as lots fifteen (15), sixteen (16) and seventeen (17) on map of Thomas R. Sully at Saybrook and other lands, being the same premises described in the notice of Lis Pendens filed in this cause and set out in said search and the records of said County, and also in the report of the Commissioners referred to in said search and set out in the records of the Union County Clerk's office likewise by me personally examined.

I further report that by said abstract it likewise appears that Dennis D. McKoon (unmarried), did

by deed dated July 3, 1901, recorded September 26th, 1910, in Book 557 of deeds for said County, page 532, convey the said premises to George H. Decker, the record of which deed I have likewise personally examined and find that it conforms with the statement thereof in the abstract, and that the said deed was recorded September 26th, 1910.

I further report that it likewise appears by said abstract and by personal examination of the records that the said premises were assessed against Dennis D. McKoon and sold for taxes for the year nineteen hundred and three and certificate of such sale was delivered to the Inhabitants of the Township of Union, which certificate was recorded in Book 211 of Mortgages for said County, page 187. It likewise and in similar manner appears that the said premises were assessed against Dennis D. McKoon and were again sold for taxes and certificate of such sale was delivered to the Inhabitants of the Township of Union, which certificate is recorded in Book 428 of Deeds for said County, page 266. It further appears by the testimony of David M. Potter, the Collector of the Township of Union, and admitted by all parties to be correct, that the amount due and to be paid to the Inhabitants of the Township of Union for unpaid taxes and assessments covered by the aforesaid sales is forty-six dollars and twenty-nine cents ($46.29), and in addition seven dollars ($7) to be paid to the said Collector for his fees and costs.

I further find and report that the sum of nine hundred dollars ($900) has been paid on account of the said judgment.

And I further find and report that at the time the said judgment was entered, namely, November twenty-third, nineteen hundred and four, it became

and was a lien on the above-mentioned premises at present converted into and represented by the award in said condemnation paid into this Court, and that the conveyance to George H. Decker, dated July 3, 1901, having been recorded subsequent to the entry of said judgment, namely, on September 26th, 1910, and the judgment creditor having received no notice thereof prior to the entry of said judgment the said conveyance was secondary and subsequent to the lien of said judgment.

I am accordingly of the opinion and find that out of the surplus money the sum of forty-six dollars and twenty-nine cents ($46.29) should be first paid to the Collector of Taxes for the Inhabitants of the Township of Union, and seven dollars ($7) should then be paid to said Collector David M. Potter for his fees and costs, and that the balance of the said seven hundred and fifty dollars ($750) in the hands of the Clerk of this Court as aforesaid, together with any interest that may have accrued thereon should be paid to the said Dallas Flannagan as a payment on account of the amount due on his judgment as aforesaid.

All of which is respectfully submitted this twenty-ninth day of September, nineteen hundred and fifteen.

RAYMOND T. PARROT,
Special Master.

On Petition, Etc.—Depositions.

IN CHANCERY OF NEW JERSEY.

In the Matter

of

The Condemnation of Lands for School Purposes in the Township of Hillside.

Depositions taken before me a Special Master in Chancery of New Jersey on this ninth day of June, nineteen hundred and fourteen, at three P. M., in my office, 120 Broad Street, Elizabeth, New Jersey, pursuant to an order of reference in said cause dated the second day of April, nineteen hundred and fourteen, in the presence of Donald H. McLean, Esquire, Solicitor for Mr. Dallas Flannagan, and William R. Wilson, Esquire, Solicitor for Leander Brink.

RAYMOND T. PARROT,
Special Master.

DAVID M. POTTER, Collector for the Township of Union, appearing in his own behalf and being duly sworn, testifies as follows:

That the amount to be paid to the Township of Union for unpaid taxes and assessments due on the property on the sale of which this money was realized, is three-fifths of seventy-seven dollars and seventeen cents or forty-six dollars and twenty-nine cents plus seven dollars for Collector's fees and costs.

DAVID M. POTTER.

Sworn and subscribed to before me this 27th day of Oct., 1915.

RAYMOND T. PARROT,
Master in Chancery of N. J.

The above statement is admitted to be correct by the Solicitor for Mr. Brink and also by Mr. McLean, Solicitor for Mr. Flannagan.

Hearing adjourned to Monday, June twenty-second, nineteen hundred and fourteen, at two P. M., with costs to be charged against Mr. Brink, which costs are by consent of all the parties at this time fixed at seven dollars.

On the last named date the hearing in the above matter was adjourned to Thursday, June twenty-fifth, nineteen hundred and fourteen, at the request of the Special Master.

Continuation of the hearing in the above entitled cause this twenty-fifth day of June, nineteen hundred and fourteen, at the place aforesaid in the presence of the Solicitors for the respective parties as aforesaid.

Mr. Donald H. McLean, Solicitor for Mr. Dallas Flannagan, offers in evidence a certificate signed by William C. Gebhardt, Clerk of the New Jersey Supreme Court, purporting to show a judgment entered in that Court in behalf of Dallas Flannagan against Dennis D. McKoon, for ten thousand seven hundred and seven dollars and thirteen cents damages and costs, to which Mr. William R. Wilson, counsel for Leander Brink, objects, saying: "I object to the introduction of the paper writing introduced by Mr. Donald H. McLean, counsel for Dallas Flannagan, for the reason that the same is not a certified copy of the record of said judgment

in the Supreme Court and is of no binding force in these proceedings. Counsel further objects to the introduction of the said paper writing because the records will show that the proceedings on which this judgment is alleged to have been founded have been discontinued and that the alleged judgment is of no binding force whatever, and further that the only way to prove the judgment is the production of a certified copy of such judgment if there is such a judgment of any binding force."

Special Master: I will admit the certificate in evidence. "Marked Exhibit P-1."

Mr. Wilson, counsel for Mr. Brink: "I pray an exception to this ruling."

Mr. Dallas Flannagan, through his solicitor, admits that there has been paid on account of the judgment of Flannagan against McKoon for ten thousand seven hundred and seven dollars and thirteen cents, referred to in the said certificate, the sum of one thousand dollars as of the date of said judgment.

Mr. Flannagan, through his solicitor, rests.

Mr. Wilson, counsel for Mr. Brink: "I object to any admissions made by Mr. McLean with reference to the reduction of the amount alleged to be due on the judgment; that the only one who can state the amount due on the judgment is Mr. Dallas Flannagan. No admissions can be made by Mr. McLean with reference to any amount alleged to have been paid to Mr. Flannagan by anybody on account of this judgment; that Mr. Flannagan is the only party in interest and he is the only one who can testify to any facts concerning the judgment which he seeks to have imposed on the property in this cause. Admissions sought to be introduced are incompetent and are irrelevant.

Special Master: Do I understand that you object to this particular admission made by Mr. McLean that one thousand dollars has been paid on account of the said judgment?

Mr. Wilson: Yes.

Special Master: I sustain this objection.

Mr. McLean, in behalf of Mr. Flannagan, excepts to this ruling by the Master.

Mr. Wilson, counsel for Mr. Brink, makes the following statement: "I decline as counsel for Mr. Brink to put in any testimony at this time because there is no legal evidence produced before the Master showing that any judgment was recovered by Dallas Flannagan against Dennis McKoon, nor is there any legal evidence that any amount at all is still due on the judgment alleged, desired to be imposed on the property in these proceedings."

RAYMOND T. PARROT,
Special Master.

The above matter was continued from time to time at the request of solicitors for all parties interested, pending motion and other proceedings in the New Jersey Supreme Court, and was by agreement reached between the solicitors of all parties, continued to this date, namely, September 13th, 1915, at my office as aforesaid at 1.30 in the afternoon.

Appearances: Donald H. McLean, Solicitor for Mr. Dallas Flannagan.

RAYMOND T. PARROT,
Special Master in Chancery.

The petitioner, Dallas Flannagan, offers in evidence a certified copy of the judgment in the New

Jersey Supreme Court in an action on contract between Dallas Flannagan, plaintiff, and Dennis D. McKoon, defendant, entered November 23d, 1904, for the sum of Ten thousand six hundred and six teen dollars and sixty-three cents ($10,616.63), damages, and ninety dollars and fifty cents ($90.50) cost. Said judgment as appears by said certificate is recorded in Vol. 1 of Judgments, page 452, records of the New Jersey Supreme Court, marked "Exhibit P-2."

The petitioner also offers in evidence an abstract of title to certain lots in the Township of Hillside, to which is annexed the certificate of Mr. Donald H. McLean, counsellor at law, dated May 30th, 1914, which abstract is marked "Exhibit P-3."

Mr. Dallas Flannagan, a witness produced on his own behalf, being duly sworn and examined by Mr. McLean, testified as follows:

Q. You are the plaintiff in the matter of Dallas Flannagan against Mr. Dennis D. McKoon? A. Yes.

Q. Has any part of that judgment been paid? A. Nothing except nine hundred dollars ($900) paid on account.

Q. And this judgment that you refer to is the judgment set out in Exhibit P-2 for the plaintiff? A. Yes.

Q. Then the statement contained in the petition that no part of the judgment has been paid was an error? A. To that extent, yes, sir.

DALLAS FLANAGAN.

Subscribed and sworn to before me
this 13th day of September, 1915.

RAYMOND T. PARROT,
Master in Chancery of N. J.

Solicitor for the petitioner offers in evidence a certified copy of Deed by George H. Decker and wife to Leander Brink, dated April 18th, 1912. Recorded in book 643 of Deeds, page 330, which is marked "Exhibit P-4."

RAYMOND T. PARROT,
Special Master.

Following the last hearing (September 13th, 1915), Mr. Wilson, representing Leander Brink, came to the office of the master and requested that he be given an opportunity to present further testimony in behalf of his client, notwithstanding the fact that the master had previously closed his hearings on September 13th.

Under the objection of Mr. McLean, representing Mr. Flannagan, to the reopening of the hearings, the master agreed to open the hearing to give Mr. Wilson an opportunity to present further testimony, on Friday morning, September the 17th, at eleven-thirty A. M.

The said hearing was accordingly so reopened before the master in the presence of Donald H. McLean, solicitor for Dallas Flannagan and William R. Wilson, solicitor for Leander Brink, at the office of the master, 120 Broad Street, Elizabeth, N. J., on Friday, the 17th day of September, 1915.

The master stated that Mr. Wilson, in behalf of his client, might present his testimony.

Mr. Wilson requested that he be now given an opportunity at this hearing to cross-examine Dallas Flannagan upon his testimony previously given.

"Mr. Flannagan, through his solicitor, Mr. McLean, objects to this on the ground that this hear-

ing was to permit Mr. Wilson to put in his proof and Mr. Wilson had as a condition agreed to pay the costs of the previous adjournment and of the present hearing, and as he is the moving party at this time he should present his testimony. The counsel for Mr. Flannagan objects to such cross-examination."

(Mr. Wilson:) "The counsel for Mr. Brink is not ready at this time to present his case and not until he has had an opportunity to cross-examine Mr. Flannagan with reference to the judgment that is produced in this cause."

"The master sustains Mr. McLean's objection. At the hearing held on September the 13th, last, Mr. Wilson had due notice and ample opportunity to be present and to examine Mr. Flannagan but failed to do so and the hearings were at that time closed. Subsequently, as above stated, the hearings were reopened with the understanding that Mr. Wilson desired to introduce further evidence in behalf of his own client at that time."

The Master: Mr. Wilson, you can now proceed to put in your evidence.

Mr. Wilson: I do not desire to put in my evidence now and not until I have first had an opportunity to cross-examine Mr. Flannagan with reference to the judgment he has presented to the master. I think I am entitled to that right and I deem it as a right.

The Master: Is that all you have to say.

Mr. Wilson: It is all I have to say now.

RAYMOND T. PARROT,
Special Master.

On Petition—Exceptions to Master's Report.

IN CHANCERY OF NEW JERSEY.

In the Matter

of

The Condemnation of Lands for School Purposes in the Township of Hillside.

The defendant, Leander Brink, hereby excepts to the report of Raymond T. Parrot, the Special Master to whom the same was referred, for the following reasons:

FIRST: That the judgment in attachment wherein Dallas Flannagan is the plaintiff and Dennis D. McKoon is the defendant, for the sum of ten thousand six hundred and sixteen dollars and sixty-three cents damages and ninety dollars and fifty cents costs, is not a judgment affecting the lands set out in the petition filed in this cause.

SECOND: That George H. Decker was the owner of the premises by his deed dated July 3, 1901, recorded September 26, 1910, as set out in said petition, and was not affected by the above mentioned judgment and legally was entitled to the money now in this Court.

THIRD: That in the petition filed by Dallas Flannagan to get the money out of the Court of Chancery, it is recited that the present owner of the premises described in one Leander Brink, who

claims title thereto by a deed from George H. Decker not yet recorded; and that the said Special Master took no notice of the same in making up his report.

FOURTH: That the said judgment is one in attachment and the lands in Union County set out in the petition above mentioned were not attached nor levied upon by the Sheriff of Union County, and therefore the judgment above is of no valid or binding force upon the said premises now owned by the defendant Leander Brink.

FIFTH: That the Special Master should have reported that the said Leander Brink was entitled to the money now in the Court of Chancery.

SIXTH: Because there is no proof that Dallas Flannagan is now the owner of the judgment alleged to be recovered by him, and the said judgment was not properly proved before the Master.

SEVENTH: Because the said petitioner having offered in evidence the deed from George H. Decker and wife to Leander Brink, conveying the lands the subject of the petition filed in this cause, the Master should have reported the payment of the money to the said Leander Brink.

EIGHTH: Because the Solicitor of Leander Brink, the one who is entitled to the money and to whom the premises were conveyed by George H. Decker and wife, was not permitted to examine Dallas Flannagan, the plaintiff in the judgment alleged to be a lien against the lands and now against the money in the hands of this Court.

On Petition—Exceptions to Master's Report

NINTH: Because the judgment is not a valid one and cannot be enforced against the money now in the hands of this Court.

TENTH: Because the Special Master arbitrarily denied the Solicitor of said Leander Brink the right to cross-examine Dallas Flannagan the petitioner above.

ELEVENTH: That the Master did not give the notice required by law for the holding of the examination on September 13, 1915.

TWELFTH: That the said Solicitor of Leander Brink did not have an opportunity to properly present his case.

THIRTEENTH: That the judgment being one in attachment is a judgment *in rem,* and the lands in Union County not being attached and levied upon the judgment is of no binding force.

And the said Leander Brink insists that the Master's report is contrary to both law and equity.

Whereas the said Raymond T. Parrot, Special Master as aforesaid, has not reported properly or in accordance with the terms of the said rule or with the principles of equity.

In which said several matters and respects this exceptant prays the judgment of this Court.

WILLIAM R. WILSON,
Solicitor of and of Counsel with said Leander Brink.

Notice for Hearing.

IN CHANCERY OF NEW JERSEY.

In the Matter

of

The Condemnation of Lands for School Purposes in the Township of Hillside.

Take notice that on Monday, December 20, 1915, before Honorable Vivian M. Lewis, Vice Chancellor, at the Chancery Chambers in the City of Jersey City, County of Hudson, at ten o'clock in the forenoon or as soon thereafter as counsel may be heard, we shall move for a hearing on the exceptions filed by Counsel for Leander Brink to the report of Raymond T. Parrot, Special Master, in the above entitled cause.

To:

WILLIAM R. WILSON,
Solicitor for and of Counsel
with Leander Brink.

DAVID M. POTTER,
Collector of Taxes of the
Township of Union.

VAIL & McLEAN,
Solicitors for and of Counsel
with Petitioner.

Memorandum.

IN CHANCERY OF NEW JERSEY.

In the Matter

of

The Condemnation of Lands for School Purposes in the Township of Hillside.

MESSRS. VAIL and MCLEAN for DALLAS FLANNAGAN, Petitioner.

MR. WILLIAM R. WILSON, for LEANDER BRINK, Respondent.

LEWIS, V. C.:

The application before the Court is for confirmation of the Master's report. Exceptions to it are urged in behalf of the petitioner, Leander Brink. There were thirteen of these filed with the report, but only three were argued at the hearing. The first exception raised by the solicitor for the petitioner as to the misconduct of the Master, after short argument, was entirely abandoned. It was further urged by way of exception that the respondent, Brink, had not been given proper opportunity to cross-examine witnesses, but it was disclosed by the proofs before me that the opportunity was lost by the failure of the respondent and his counsel to appear at the time fixed for hearing, although ample notice had been given of the same. The third exception, and the only one which at the close of the argument before me I understood the

solicitor for Brink to gravely urge, was that the judgment in attachment did not affect the premises in question, there being no lands in Union County attached. The facts are briefly these:

Flannigan, the petitioner, filed a petition in the Court of Chancery to have paid him the sum of $750. This amount had been paid into court by the Board of Education of Hillside Township, Union County, as proceeds of the condemnation of land for school purposes under the Eminent Domain Act. Flannigan, on November 23, 1904, obtained a judgment against Dennis D. McKoon. At the time McKoon was the owner of the premises taken in the condemnation proceedings. On the twenty-sixth of September, 1910, a deed dated July 3, 1901, was recorded. The deed transferred the property to George H. Decker. Decker conveyed to Brink, the petitioner, who now contests Flannigan's right to the money. A certified copy of the deed to Brink shows that it was dated or received after the condemnation proceedings were concluded and a notice of *lis pendens* had been filed. The judgment is a judgment in attachment in the Supreme Court. The Attachment Act of 1901, Section 8, makes a judgment a lien upon all the lands of the defendant throughout the State, whether obtained before or after the judgment was entered. The judgment was entered prior to the recording of the deed from McKoon to Decker. The Act concerning Conveyances makes it a lien on the premises in question.

The Master's Report must be confirmed and a decree may be accordingly entered.

On Petition—Order Confirming Master's Report.

IN CHANCERY OF NEW JERSEY.

In the Matter

of

The Condemnation of Lands for School Purposes in the Township of Hillside.

This cause being opened to the court on motion of Vail & McLean, solicitors for and of counsel with the petitioner, Dallas Flannagan, in the presence of William R. Wilson, solicitor for and of counsel with the respondent, Leander Brink, that the exceptions of the said Leander Brink to the Master's Report be overruled and the report confirmed in all things, and it appearing that a rule *nisi* confirming said report was entered on the 18th day of November, 1915, and that the Township of Union in the County of Union, by its duly authorized Collector of Taxes has consented that the said report be confirmed, and the matter having been argued, it is thereupon, on this 18th day of February, 1916.

Ordered, adjudged and decreed that the exceptions filed on behalf of Leander Brink, as aforesaid, be overruled with costs to be taxed; that the master's report be ratified and confirmed in all things, and that out of the fund of $750 now in the hands of the Clerk of this Court, and any interest that may have accrued thereon, that there be paid to Raymond T. Parrot, Special Master, the sum of $21.84 for his fees in acting as such master, as al-

lowed by the rules of this court; to David M. Potter, Collector of Taxes for the inhabitants of the Township of Union, the sum of $46.29, for unpaid taxes and assessments due to the Township of Union at the time of the condemnation of the land set out in the petition filed, and the sum of $7.00 for his fees and costs, and that the balance of said sum of $750, together with any interest that may have accrued thereon, be paid to Dallas Flannagan or his solicitors, as a payment on account of the amount due on his judgment set out in these proceedings.

E. R. WALKER,
C.

Respectfully advised,
VIVIAN M. LEWIS,
V. C.
Filed Feb. 24, 1916.

On Petition—Notice of Appeal.

IN CHANCERY OF NEW JERSEY.

In the Matter
of
The Condemnation of Lands for School Purposes in the Township of Hillside.

Leander Brink, one of the defendants in the above matter, hereby appeals from an order made February twenty-fourth, A. D., 1916, and from the

whole and every part of the same to the Court of Errors and appeals in the last resort in all causes.

WILLIAM R. WILSON,
Solr. for and of Counsel with
Leander Brink, one of the defendants.

Dated March 4, 1916.

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

WILLIAM R. WILSON,
Of Counsel.

Filed March 4, 1916.

On Petition—Petition.

NEW JERSEY COURT OF ERRORS AND APPEALS.

In the Matter

of

The Condemnation of Lands for School Purposes in the Township of Hillside.

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

The petition of Leander Brink, 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, Edwin Robert Walker, Chancellor of the State of New Jersey, bearing date the eighteenth day of February in the year of our Lord one thousand nine hundred and sixteen, wherein Dallas Flannagan was petitioner and the said Leander Brink was defendant, in this respect to wit: that the said decree adjudged that the exceptions filed on behalf of Leander Brink be overruled with costs to be taxed; that the Master's report be ratified and confirmed in all things, and that out of the fund of $750 now in the hands of the Clerk of this Court and any interest that may have accrued thereon, that there be paid to Raymond T. Parrot, Special Master, the sum of $21.84 for his fees in acting as such Master, as allowed by the rules of this Court; to David M. Potter, Collector of Taxes for the inhabitants of the Township of Union the sum of $46.29 for unpaid taxes and assessments due to the Township of Union at the time of the condemnation of the land set forth in the petition filed, and the sum of $7.00 for his fees and costs, and the balance of said sum of $750, together with any interest that may have accrued thereon, be paid to Dallas Flannagan or his solicitors, as a payment on account of the amount due on his judgment set out in these proceedings.

And your petitioner humbly appeals from that part of the decree of the Chancellor which decrees as aforesaid upon the ground that the same is erroneous, for that the said Court should have allowed the exception filed by the said Leander Brink; and for that the said Master's report should not have been ratified and confirmed in all things; and for that out of the said fund of $750 now in the hands of the Clerk of this Court and any interest that

may have accrued thereon there should not be paid to Raymond T. Parrot, Special Master, the sum of $21.84 for his fees in acting as such Master.

And for that there should not be paid to David M. Potter, Collector of Taxes for the inhabitants of the Township of Union, the sum of $46.29 for unpaid taxes and assessments due to the Township of Union at the time of the condemnation of the land set out in the petition filed, and the sum of $7.00 for his fees and costs. And for that the balance of the said $750 together with any interest that may have accrued thereon should not be paid to Dallas Flannagan or his solicitors, as a payment on account of the amount due on his judgment set out in these proceedings.

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

WILLIAM R. WILSON,
Solicitor of Appellant.
Of Counsel with Appellant.

On Appeal from the Court of Chancery.
Answer.

NEW JERSEY COURT OF ERRORS AND APPEALS.

In the Matter

of

The Condemnation of Lands for School Purposes in the Township of Hillside.

The answer of Dallas Flannagan, respondent to the petition of Appeal of Leander Brink, 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 February 18, 1916, made and entered in the Court of Chancery in the cause for that purpose mentioned in said petition as therein stated, but as to the substance and form thereof, this respondent prays to refer thereto when the same shall be produced.

And this respondent is advised and believes that the decree above mentioned is agreeable to equity and prays that the same may be affirmed with the costs to be adjudged to this respondent.

VAIL & McLEAN,
Solicitors for and of Counsel
with Respondent.

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Exhibit P-2.

NEW JERSEY SUPREME COURT.

DALLAS FLANNAGAN, vs. DENNIS D. McKOON.	On Contract. On attachment. Bedle, Edwards and Thompson, Attorneys.

Judgment entered this twenty third day of November, A. D. nineteen hundred and four for the sum of ten

$10616.63	thousand six hundred and sixteen
90.50	dollars and sixty three cents damages
$10707.13	and ninety dollars and fifty cents costs.

WM. S. GUMMERE, C.J.

I, WILLIAM C. GEBHARDT, Clerk of the Supreme Court of the State of New Jersey, do certify that the foregoing is a true copy of the judgment entered in above stated cause which said judgment is recorded in this office in Vol. 1 of judgments, page 452.

In testimony whereof I have hereunto set my hand and the seal of said
(L. S.) Court at Trenton, this thirty-first day of August, A. D. one thousand nine hundred and fifteen.

WM. C. GEBHARDT,
Clerk.

Exhibit P 3

David M. Potter,
Collector, etc. — Collectors Certificate of Taxes Sale held Oct. 25, 1904

to

Township of Union, Assessed vs. McKoon. — Mortgage Book 211, pg. 187

Taxes assessed vs. McKoon land above.

David M. Potter, Collector of Union Township, — Certificate of tax sale Made Nov. 25, 1902 Book 428, p. 266

to

Inhabitants of Union Township.

Sold for taxes assessed against Dennis McKoon, the land above.

Condemnation proceedings were begun and notice of Lis Pendens (a memo of which follows) was filed January 3, 1914, Commissioners report was filed in office of County Clerk of Union County, March 5, 1914.

Lis Pendens
In the matter of Condemnation of lands, etc.

New Jersey Supreme Court
Union County
On condemnation proceedings
Notice of Lis Pendens
Dated June 3, 1914
Recd. Jan. 3, "
Book 5 Chancery Notes
Page 232

Report of Commissioners in above matter filed March 5, 1914.

Exhibit P 8.

Thomas R. Scully	
Single,	Dated, Apl. 22, 1899
	Ack'd " 26, "
to	Rec'd May 11, "
	Book 350, p. 299.
Dennis D. McKoon	

Conveys premises in Township of Union, County of Union, Lots 15, 16 & 17 on Map of Thomas R. Scully at Saybrook. Habendum in fee.

Dennis McKeon,	Deed—Cons. $125.
Unmarried,	Dated July 3, 1901
	Ack'd " " "
to	Rec'd Sept. 26, 1910
	Book 557, p. 532.
George H. Decker	

Conveys land in Ocean Township, Monmouth Co. Also land above described. Habendum in fee.

George H. Decker	Deed.
	Dated April 18, 1912
to	Ack'd May 3, 1914
	Rec'd " 28, "
Leander Brink.	in Book 643, p. 330.

Conveys premises described above, and lands in Monmouth County, N. J.

Exhibit P-4

One Raymond Dawson was appointed auditor by an order dated November 9, 1903.

Order of publication was made and advertisements appeared in the Essex and Monmouth County papers designated to publish same.

The auditor made his report August 11, 1904, reciting that $10,616.63 was due Dallas Flannagan, and the same was approved by an order filed November 23, 1904.

The order recited as follows: "And it is hereby ordered that final judgment in default be entered in favor of the plaintiff as named in said report for the same therein specified against the said defendant besides the costs of suit to be taxed."

There was an order to sell and the properties levied on were sold and the report of sale filed.

Exhibit P-4.

THIS INDENTURE, made the eighteenth day of April in the year One thousand nine hundred and twelve, between GEORGE H. DECKER and FRANCES H. DECKER, his wife, of the City of Middletown, in the County of Orange and State of New York, parties of the first part, and LEANDER BRINK, of the City of Middletown, in the County of Orange and State of New York, party of the second part,

WITNESSETH, That the said parties of the first part, in consideration of the sum of ONE DOLLAR ($1.00), lawful money of the United States, paid by the said party of the second part, do hereby remise, release and forever Quit-Claim unto the said party of the second part, his heirs and assigns forever,

ALL THAT TRACT, PIECE OR PARCEL OF

Exhibit P-4

LAND, situate in the Township of Ocean, County of Monmouth, and State of New Jersey, and bounded Northerly by the center of a Right of Way which Right of Way runs from Long Branch Avenue to Bay Avenue, thence Easterly by the Westerly line of Lot Number Fifty-four (54) now or formerly owned by M. E. Williams; thence Southerly by Gilbert Avenue; thence Westerly by Lot Number Fifty-five (55).

Said parcel of land hereby conveyed being one hundred and fifty (150) feet long by ten (10) feet wide be the same more or less, it being a strip of land as shown on Map of Mannahasset Park made by E. T. Lansing, Esq., C. E. and filed in Monmouth County Clerk's office May 11th, 1895.

ALSO, that certain other parcel of land designated on the City Atlas of Long Branch as Lot No. 18, Brook 9, Section 6, and situate on Bay Avenue.

ALSO, those certain other lots or parcels of land situate at Saybrook, near Elizabeth in Union County, New Jersey, to wit: Lots 15, 16 and 17 on Map of Property formerly of T. R. Sully.

TOGETHER with the appurtenances; and all the estate and rights of the said parties of the first part in and to said premises.

TO HAVE AND TO HOLD the above granted, bargained and described premises unto the said party of the second part, his heirs and assigns forever.

IN WITNESS WHEREOF, The said parties of the first part have hereunto set their hands and seals the day and year first above written.

In presence of

GEO. H. DECKER. [L. S.]

FRANCIS H. DECKER. [L. S.]

Exhibit P-4

STATE OF NEW YORK, }
COUNTY OF ORANGE. } ss.:

BE IT REMEMBERED, That on this thirteenth day of May, in the year of Our Lord One Thousand Nine Hundred and Fourteen, before me personally appeared George H. Decker and Frances H. Decker, his wife, who, I am satisfied are the grantors mentioned in the within Indenture, and to whom I first made known the contents thereof, and thereupon they acknowledged that they signed, sealed and delivered the same as their voluntary act and deed, for the uses and purposes therein expressed:

And the said Frances H. Decker being by me privately examined, separate and apart from her husband, acknowledged that she signed, sealed and delivered the same as her voluntary act and deed, FREELY, without any fear, threats or compulsion of her said husband.

A. V. N. POWELSON,
[SEAL] Notary Public,
in and for Orange Co., N. Y.

County Clerk's Certificate Attached.

Received in the Register's Office of the County of Union, N. J., on the 28th day of May, A. D. 1914, at 12.41 o'clock in the afternoon and recorded in Book 643 of Deeds for said County at pages 330, etc.

FRANK H. SMITH,
Register.

MONMOUTH COUNTY, ss.:

Recorded on the 29th day of June, 1914, at 4 o'clock P. M. in Book No. 978 of Deeds, at page 55, etc., and examined.

JOSEPH McDERMOTT,
Clerk.

SUPREME COURT OF NEW JERSEY.

DALLAS FLANNAGAN,

against

DENNIS D. McKOON.

STATE OF NEW YORK,
COUNTY OF NEW YORK. } ss.:

DALLAS FLANNAGAN, being duly sworn according to law on his oath, says:

I. That he is a resident of the State of New Jersey. That Dennis D. McKoon is not to his knowledge and belief a resident of the State of New Jersey, but, on the contrary, is a resident of the State of New York, residing in Staten Island, County of Richmond, in said State, as said Dennis D. McKoon has stated to deponent.

II. That said Dennis D. McKoon owes this deponent the sum of Nine thousand nine hundred and ninety-two dollars and fifty-two cents ($9,992.52), with interest thereon from July 28th, 1903, on a certain judgment obtained in the Supreme Court of the State of New York, which is a court of general jurisdiction and a court of record in an action in said court wherein Dennis D. McKoon was personally served in said State of New York and personally appeared in said action, the judgment roll therein having been filed, judgment docketed and entered, in the office of the clerk of said court and in the office of the clerk of the County of Richmond in said State on the 28th day of July, 1903, the said Dennis D. McKoon being the defendant in

said action and one James Orr being the plaintiff therein.

That said judgment was duly assigned by said James Orr by assignment duly made, and filed September 17, 1903, in the office of the clerk of the said County of Richmond, to one D. Gilbert McKoon, and thereafter, by assignment duly made and filed in the office of said clerk of the County of Richmond September 17, 1903, said judgment was duly assigned by said D. Gilbert McKoon to this deponent who is now the lawful owner and holder thereof and deponent verily believes the amount above stated is the amount due to deponent on the said judgment no payments whatever having been made upon said judgment.

DALLAS FLANNAGAN.

Subscribed and sworn to before me this 9th day of October, 1903.

LOUISE C. RASQUIN,
(Seal) Notary Public, Kings Co.,
Certificate filed in N. Y. Co.

STATE OF NEW YORK, }
COUNTY OF NEW YORK. } ss.:

I, THOMAS L. HAMILTON, Clerk of the County of New York, and also Clerk of the Supreme Court for the said County, the same being a Court of Record, DO HEREBY CERTIFY that Louise C. Rasquin, whose name is subscribed to the Certificate of the proof or acknowledgment of the annexed instrument, and thereon written, was, at the time of taking such proof and acknowledgment a Notary Pub-

lic (acting) in and for said County, duly commissioned and sworn, and authorized by the laws of said State to take the acknowledgments and proofs of deeds or conveyances for land, tenements or hereditaments in said State of New York. And further, that I (Seal) am well acquainted with the handwriting of such Notary Public, and verily believes that the signature to said certificate of proof or acknowledgment is genuine.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of the said Court and County, the 9th day of October, 1903.

THOS. L. HAMILTON,
Clerk.

(Endorsed)

NEW JERSEY SUPREME COURT.

Dallas Flannagan,

vs.

Dennis D. McKoon.

ON CONTRACT IN ATTACHMENT

AFFIDAVIT.

Vail & McLean,
Attys. of Plaintiff.

Filed Oct. 12, 1903.

Wm. Riker, Jr.,
Clerk.

WRIT ISSUED TO ESSEX, October 12, 1903.

WRIT ISSUED TO MONMOUTH,

November 23, 1903.

NEW JERSEY SUPREME COURT.

DALLAS FLANNAGAN, Plaintiff, against DENNIS D. McKOON, Defendant.	On Contract. In Attachment. Order to Sell.

Judgment final having been entered in the above entitled cause, on the report of the Auditor, against the said defendant, and application having been made by the plaintiff in the above entitled cause for an order directing the Auditor to sell the lands and tenements of the defendant, on which the attachment remains a lien.

It is on this sixteenth day of December, nineteen hundred and four, ORDERED, that the said Auditor may sell so much of the lands, tenements and hereditaments as above mentioned of the said defendant as shall be necessary to satisfy the debt of the plaintiff, and the costs of this proceeding, agreeable to the directions of an Act entitled "An Act for the relief of creditors against absent and absconding debtors." (Revision of 1901.)

WM. S. GUMMERE,
C. J.

(Endorsed)

NEW JERSEY SUPREME COURT.

Dallas Flannagan,
Plaintiff,
vs.
Dennis D. McKoon.
Defendant.

ON CONTRACT. IN ATTACHMENT.

ORDER TO SELL.

Vail & McLean,
Attys. of Pltff.

Filed Dec. 16, 1904.

Wm. Riker, Jr.,
Clerk.

NEW JERSEY SUPREME COURT.

DALLAS FLANNAGAN, Plaintiff, against DENNIS D. MCKOON, Defendant.	On Contract. In Attachment. Order.

Two writs of attachment in the above entitled cause, one directed to the Sheriff of the County of Essex and one directed to the Sheriff of the County of Monmouth, being issued on the eight*een* day of October, Nineteen Hundred and Three, and both of said writs having been duly returned by the said

sheriffs respectively, duly served by attaching the property of the defendant in their respective Counties, the return of the Sheriff of Essex County being made on the twentieth day of October, 1903, and the return of the Sheriff of the County of Monmouth being made on the twenty-first day of October, 1903; and an application for an order of publication of notice of said attachment having been made by the plaintiff above-named,

It is on this ninth day of November, A. D. 1903, hereby ORDERED that a notice of said attachment be published in the Newark Evening *News*, a newspaper published in the City of Newark, Essex County, New Jersey, and in the Long Branch *Times News*, a newspaper published in Long Branch, Monmouth County, New Jersey, once a week for four successive weeks.

Let this rule be entered in the minutes.

WM. S. GUMMERE,
C. J.

(Endorsed)

NEW JERSEY SUPREME COURT.

Dallas Flannagan,
Plaintiff,

vs.

Dennis D. McKoon,
Defendant.

ON CONTRACT. IN ATTACHMENT.

ORDER PUBLICATION.

Vail & McLean,
Attys. of Pltff.

Filed Nov. 9, 1903.

Wm. Riker, Jr.,
Clerk.

NEW JERSEY SUPREME COURT.

DALLAS FLANNAGAN, Plaintiff, against DENNIS D. McKOON, Defendant.	On Contract. In Attachment. Order Approving Auditor's Report.

The Auditor in the above entitled cause, RAYMOND DAWSON, Esq., having by his report bearing date the twelfth day of August, Nineteen hundred and four, reported that he has audited and adjusted the demands of the plaintiff, and that there were no applying creditors admitted, and that he findeth due from the defendant Dennis D. McKoon to the plaintiff Dallas Flannagan the sum of Ten thousand six hundred and sixteen dollars and sixty-three cents ($10,616.63).

And said report having been on file ten days, and it being made to appear to the satisfaction of the court that notice of said attachment hath been published in the Long Branch *News* and in the Newark Evening *News*, the newspapers designated by an order of this Court agreeable to the statute in such case made and provided, pursuant to the order of this Court.

It is thereupon ORDERED that the said report of the auditor be made absolute, and the same is hereby approved and in all things confirmed.

And it is further ORDERED that final judgment by default be entered in favor of the plaintiff as named in said report for the sum therein specified against the said defendant, besides the costs of suit to be taxed.

And it is further ORDERED that the sum of twenty

dollars be allowed to the auditor for his services, and that the sum of twenty dollars be allowed to the attorneys for the plaintiff as a special fee, said sums to be taxed in the costs and satisfied out of the defendant's estate.

Let this rule be entered in the minutes.

W. S. GUMMERE,
C. J.

(Endorsed)

NEW JERSEY SUPREME COURT.

Dallas Flannagan,
Plaintiff,

vs.

Dennis D. McKoon,
Defendant.

ON CONTRACT. IN ATTACHMENT.

ORDER APPROVING AUDITOR'S REPORT.

Vail & McLean,
Attys. of Pltff.

Filed Nov. 23, 1904.

Wm. Riker, Jr.,
Clk.

NEW JERSEY SUPREME COURT.

DALLAS FLANNAGAN vs. DENNIS D. McKOON,	On Contract. On Attachment.

It appearing by affidavit on file that the said attachment has been duly advertised in the manner and for the time required by law and the order of this Court and the Report of Raymond Dawson,

the auditor heretofore appointed in this cause, having been approved by his Honor Chief Justice Gummere, and said Report having remained on file in the office of the Clerk of said Court for ten days and three months having elapsed since the return of the writ issued *herein, and no appearance having been entered by or on the part of said defendant,* and said auditor having found that there is due from the defendant to the plaintiff the sum of ten thousand six hundred and sixteen dollars and sixty-three cents, and no other claim against said defendant having been audited by him,

It is ordered by his Honor Chief Justice Gummere that judgment final be entered in favor of plaintiff and against defendant for the amount reported due in said report, with interest from August 11/04, besides costs to be taxed.

Entered November 23, 1904.

On motion of

VAIL & McLEAN,
Attorneys.

NEW JERSEY SUPREME COURT.

DALLAS FLANNAGAN,	
	On Contract.
vs.	On Attachment.
	Vail & McLean,
DENNIS D. McKOON.	

Attorneys.

Judgment entered this twenty-third day of November, A. D. nineteen hundred and four, for the sum of ten thousand six hundred and sixteen dollars and sixty-three cents damages, and ninety dollars and fifty cents costs.

$10616.63	
90.50	
$10707.13	

WM. S. GUMMERE, C. J.

I, WILLIAM C. GEBHARDT, Clerk of the Supreme Court of the State of New Jersey, do certify that the foregoing is a true copy of the judgment entered in above stated cause which said judgment is recorded in this office in Vol. 1 of judgments, page 452.

In testimony whereof I have hereunto set my hand and the
(Seal) seal of said Court at Trenton, this second day of November, A. D. nineteen hundred and sixteen.

WM. C. GEBHARDT,
Clerk.

I, WILLIAM C. GEBHARDT, Clerk of the Supreme Court of the State of New Jersey, do certify that the foregoing is a true copy of the affidavit, order to sell, order for publication, order approving auditor's report, rule for judgment and judgment, in the above stated cause as the same remain on file and of record in my office.

In testimony whereof I have hereunto set my hand and the
(Seal) seal of said Court at Trenton, this second day of November, A. D., one thousand nine hundred and sixteen.

WM. C. GEBHARDT,
Clerk.

New Jersey Court of Errors and Appeals

In the Matter of The Condemnation of Lands for School Purposes in the Township of Hillside. Dallas Flannagan, Petitioner-Respondent, and Leander Brink and Others, Defendants-Appellants.	On Appeal. Brief for Respondent.

Statement of Facts.

Dallas Flannagan, the respondent, filed his petition in the Court of Chancery to have paid to him the sum of $750. The amount had been paid into Court by the Board of Education of Hillside Township, Union County, as proceeds of the condemnation of land for school purposes under the Eminent Domain Act. Flannagan on November 23, 1904, obtained a judgment in attachment proceedings in the Supreme Court against Dennis D. McKoon, who was on that date the owner of record of the premises taken in the condemnation proceedings. The appellant, Brink, claims title to the premises and therefore to be entitled to the fund of $750 so paid into Court by virtue of a deed from one George H. Decker, who claimed title to the property by deed from McKoon, the judgment debtor. This deed to Decker, while dated July 3, 1901 (one day before the Attachment Act went into effect), was not recorded until September 26, 1906, six years

after Flannagan's judgment, which by virtue of Sec. 8 of the Attachment Act and Sec. 54 of the Act concerning conveyances was a prior lien and Decker took the property with notice and subject to the same. In fact, McKoon's deed to Decker was void under Sec. 8 of the Attachment Act. Decker's deed to Brink (Exhibit P-4 in State of Case) is a deed of quit claim merely, was dated April 18, 1912, was not acknowledged until May 13, 1914, and was not recorded until May 28, 1914. Both acknowledgment and recording being subsequent to the conclusion of the condemnation proceedings (in which notice of *lis pendens* was duly filed), the money paid into Court, Flannagan had filed his petition in Chancery and reference had been made to a Master.

The Vice Chancellor advised a decree for the payment of the fund to Flannagan and from that decree the appeal is taken.

By consent of all parties concerned a decree was entered permitting the amount due the Township of Union for taxes and the Master's fee to be paid.

Attention is called to the fact that in the addenda to the State of Case as printed, Vail & McLean are given as attorneys in the attachment proceedings. This is error. The attachment proceedings were conducted by Biddle, Edwards & Thompson.

ARGUMENT.

Respondent Flannagan is entitled to the fund by virtue of Sec. 8 of the Attachment Act and Sec. 54 of the Act concerning conveyances.

McKoon, the judgment debtor, was the owner of record of the premises on the 23d day of November, 1904, the date on which Flannagan's judgment

was entered. The judgment, having been entered prior to the recording of the deed from McKoon to Decker, is a lien on the premises in question prior to the deed by virtue of Sec. 54 of the Act concerning conveyances, Vol. 2, C. S., p. 1553.

> "Every deed or instrument of the nature or description set forth in the twenty-first section of this act, shall, until duly recorded or lodged for record in the said clerk's office, be void and of no effect against subsequent judgment creditors without notice, and against all subsequent bona fide purchasers and mortgagees for valuable consideration, not having notice thereof, whose deed or mortgage shall have been first duly recorded; provided, that such deeds or instruments shall be valid and operative, although not recorded, except as against such subsequent judgment creditors, purchasers and mortgagees; and provided further, that nothing in the act contained shall be construed to affect or impair the effect of any mortgage or the registry thereof which has been or shall hereafter be registered as provided in section seventeen of the act entitled 'An act concerning mortgages' (Revision), approved March twenty-seventh, one thousand eight hundred and seventy-four. (P. L. 1898, p. 690, as amended P. L. 1900, p. 32.)"

The premises condemned, the purchase price of which is now in dispute, were not levied upon by the Sheriff, but the judgment being an action in the Supreme Court, became a lien thereon by virtue of Sec. 8, of the Attachment Act, Vol. 1, ~~Re-~~ Comp. ~~vised~~ Statutes, p. 138:

"The writ, from the time of its issue, if issued from the Supreme Court, becomes and remains a lien on the real estate of the defendant throughout the State, and if issued from the Circuit Court or Common Pleas, on his real estate in the county, and he cannot thereafter assign, transfer or convey the same or any interest therein; the lien continues until the debts of the plaintiff and the applying creditors are satisfied, or the attachment is discharged or judgment is given against the plaintiff and applying creditors; all conveyances by the defendant, pending the attachment, are void against the plaintiff and applying creditors; the writ is a lien on all such real estate, even though the officer fails to attach the same or part thereof, and upon all real estate and interest in real estate acquired by defendant in the county after the issue of the writ and before final judgment; and the Court or a Judge may order the clerk to amend the return to the writ by annexing thereto a description of such real estate; and may make rules and orders for the disposal thereof; the judgment is a lien on the defendant's lands acquired either before or after the entry thereof; the word lands in this act includes tenements, hereditaments and real estate and all interest therein; the term applying creditors in the act includes all creditors of the defendant who shall have been admitted under the attachment by rule of Court, or who may have applied to the auditor and proved their claims before he shall have made his report; whenever a bond is, by this act, required to be given with surety or sureties, a surety company authorized to do business

in this State and duly qualified shall be deemed a sufficient surety. (P. L. 1901, p. 160.)"

This section was construed by the Supreme Court in the matter of *Flannagan* v. *McKoon* recently decided. This matter was anciliary to these proceedings, application having been made on behalf of Flannagan for leave to amend the attachment proceedings to bring the premises in question within the purview of the writ. Justice Swayze in denying the motion to amend said:

"The attachment Act of 1901 in Section 8 (C. S. 138), embodies the provisions of Sections 18 and 19 of the Attachment Act of 1874 (G. S. 101), and adds the very significant provision that 'the judgment is a lien on the defendant's lands acquired either before or after the entry thereof. The attachment act, both that of 1874 and 1901, provides that if the officer failed to attach lands of the defendants, or if the defendant became seized or entitled to lands after the return of the writ and before final judgment, the writ should be a lien from the time of issuing the same or from the time when the defendant became seized or entitled thereto as the case might be. Although this provision, adopted in 1901 from the former act does not by express terms limit the right to amend the return to a time anterior to the entry of judgment, it is a fair inference from the collocation of the words that time was in the minds of the Legislature and it was probably for the reason that such an amendment is not permissible after the final judgment that the provision was inserted in the Act of 1901

> making the judgment itself a lien on the defendant's lands acquired either before or after the entry thereof. Such a provision is in harmony with the general practice in cases begun by summons. The design of the Legislature was to give the plaintiff in attachment an efficient remedy against all the lands of the defendant. Prior to final judgment that remedy could be given by amending the return to the attachment. After final judgment the writ had spent its force and the remedy could be given by making the judgment a lien upon lands as other judgments are."

This opinion is not reported. A copy is hereto appended.

This material change in the law of attachments making the writ and judgment a lien on lands without a levy was made by the attachment Act of 1901. The cases cited by the appellant in support of his contention that these lands owned by the judgment debtor at the time the judgment was entered are not subject to the judgment, were decided prior to the enactment of the attachment Act of 1901 and under other acts, and are therefore no authority in the consideration of the Act of 1901, except *Bainbridge* v. *Allen*, 4 Robbins, 355. In this case the matter before the Court was anciliary to the attachment proceedings. There is nothing to indicate that the provisions of the attachment Act were brought to the attention of the Court. The observation of the Vice Chancellor plainly indicates that the particular point availed of by counsel herein was not considered seriously. The opinion of Justice Swayze in *Flannagan* v. *McKoon* herein set out is later and the particular question of the lien of the judgment was before the Court.

Appellant cites Practice Act of 1903, Sec. 91, and contends that inasmuch as the defendant being a non-resident did not appear the judgment is special against the property attached only.

In reply, this property was attached. It was attached by operation of law by virtue of Sec. 8 of the Attachment Act above set out and it became subject to a special judgment under Sec. 91 of the Practice Act. As stated by Justice Swayze in *Flannagan* v. *McKoon*: "The design of the Legislature was to give the plaintiff in attachment an effective remedy against all the lands of the defendant."

Appellant contends that the Practice Act of 1903, Sec. 91, "having been passed subsequent to the attachment Act, is of binding force, and so far supersedes the said Act."

The attachment Act of 1901 was not repealed by the Practice Act of 1903. There were no repealing words in the Act of 1903, and where no repealing words are inserted in the later Act, a strong presumption arises that no repeal was intended, or it would have been expressed, and repeal by implication is not favored. *Plum* v. *Lugar,* 49 Law, 557; *Eldridge* v. *Phila. & Reading Ry. Co.,* 80 Law, at p. 480.

Appellant submits that he should have had an opportunity to examine petitioner Flannagan with regard to his judgment, and contends that the statement filed with the Master with regard to the judgment is not the transcript of the judgment required to be proven in Court. The record will show, as observed by the Vice Chancellor, that this right to cross-examine was lost by the failure of the appellant and his counsel to appear at the time fixed for hearing, although ample notice was given of the same. Since appellant's brief was printed the transcript of the judgment referred to has been printed as a part of the State of the Case.

VAIL & McLEAN,
Counsel for Respondent.

NEW JERSEY SUPREME COURT,

NOVEMBER TERM, 1914.

DALLAS FLANNAGAN,

against

DENNIS D. McKOON.

Submitted November term, 1914; decided April , 1915.

Motion in Attachment.

Before Justices Swayze, Parker and Kalisch.

Donald H. McLean (Vail & McLean on the brief) for the Motion.

William R. Wilson, opposed.

The opinion of the court was delivered by Swayze, J.

This is a motion to add to an attachment lands not included in the levy by the sheriff. The attachment was issued October 12th, 1903, and a final judgment was entered thereon November 23d, 1904. The question is, therefore, whether the return to the attachment may be amended after final judgment. This course was adopted in *Weeks* v. *Weeks*, 76 N. J. Law 280, but it was not suggested in that case that the amendment came too late. We distinctly called attention to the fact that the motion was to have the judgment opened and not to strike out the property added to the levy. We did, it is true, discuss the constitutionality of the Attachment Act and we have no reason to doubt our conclusion in that respect. In the present case, however, the defendant makes the point that such an amendment is not permissible after judgment. The Attachment Act of 1901 in Section 8 (C. S. 138),

embodies the provisions of Sections 18 and 19 of the Attachment Act of 1874 (G. S. 101), and adds the very significant provision that "the judgment is a lien on the defendant's lands acquired either before or after the entry thereof." The Attachment Act, both that of 1874 and 1901, provides that if the officer failed to attach lands of the defendants, or if the defendant became seized or entitled to lands after the return of the writ and before final judgment, the writ should be a lien from the time of issuing the same or from the time when the defendant became seized or entitled thereto as the case might be. Although this provision, adopted in 1901 from the former act does not by express terms limit the right to amend the return to a time anterior to the entry of judgment, it is a fair inference from the collocation of the words that that time was in the minds of the legislature and it was probably for the reason that such an amendment is not permissible after the final judgment that the provision was inserted in the Act of 1901, making the judgment itself a lien on the defendant's lands acquired either before or after the entry thereof. Such a provision is in harmony with the general practice in cases begun by summons. The design of the legislature was to give the plaintiff in attachment an efficient remedy against all the lands of the defendant. Prior to final judgment that remedy could be given by amending the return to the attachment. After final judgment the writ had spent its force and the remedy could be given by making the judgment a lien upon lands as other judgments are. With this provision inserted in the Act of 1901 the other provision, authorizing an amendment of the return, becomes unimportant and it is probably because it is unimportant that it was passed unnoticed both by counsel and the court in *Weeks* v. *Weeks*. In that case the plaintiff would have gained nothing

by setting aside the order amending the sheriff's return, as the already existing judgment final would have been a lien. The decision in that case is, therefore, confined to the really meritorious contention as to the constitutionality of the legislation. We think this motion must be denied.

[9211]

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New Jersey Court of Errors and Appeals

In the matter of the condemnation of lands for School purposes in the Township of Hillside; DALLAS FLANNAGAN, Petitioner and Respondent, and LEANDER BRINK and others, Defendants-Appellants.	On Appeal.

BRIEF ON THE PART OF THE DEFENDANT, LEANDER BRINK.

This is an appeal taken from an order made by the Chancellor on February 18, 1916, on the advisement of Vice-Chancellor Lewis, on exceptions to a Master's report made by Raymond T. Parrot, Special Master.

A brief history of the case shows, that in the filing of an affidavit by Dallas Flannagan, on October 12, 1903, two writs of attachment were issued out of the Supreme Court of this State by Dallas Flannagan against Dennis McKoon a non-resident debtor, one to Monmouth County on November 23, 1903, and lands at Monmouth Beach in said County were levied upon by the Sheriff; the other attachment to Essex County issued October 12, 1903, and two tracts in Franklin Township were levied upon. The defendant was not served with process and did not appear to the said action.

No writ was issued to Union County and therefore no lands in Union County were attached or levied upon.

One Raymond Dawson was appointed Auditor by an order dated November 9, 1903. Order of publication was made and advertisements appeared in the Essex and Monmouth County papers designated to publish the same.

The auditor made his report August 11, 1904 reciting that $10,616.63 was due Dallas Flannagan, and the same was approved by an order filed November 23, 1904. The order recited among other things the following: "And it is hereby ordered that final judgment in default be entered in favor of the plaintiff as named in said report for the sum therein specified against the said defendant besides the costs of suit to be taxed." There was an order to sell and the properties levied on were sold and the report of sale filed.

The lands in Union County not having been attached remained unsold. It appears that Dennis McKoon by his deed dated July 3, 1901, conveyed the premises in question in Union Township, Union County to one George H. Decker who didn't record his deed until September 26, 1910, and the said George H. Decker by his deed dated April 18, 1912 and recorded on May 28, 1914 conveyed the premises in question to Leander Brink, the appellant in this cause.

That on April 2, 1914, Dallas Flannagan filed his petition in the Court of Chancery reciting that proceedings had been taken to condemn the lands in Union County in question and such steps had been taken that the sum of $750 was awarded to be paid as compensation for the lands in question, and that the same was ordered to be paid into the Court of Chancery and there to remain until the further order of the Court, and petitioning the Court to order the money paid to him to satisfy an alleged judgment.

The matter was referred to Raymond T. Parrot,

one of the Special Master's of this Court to report upon the same. He filed his report and the same will be found commencing at page 4 of the printed case.

Exceptions were filed to this Report and later were heard before Vice-Chancellor Lewis and his conclusions are found on page 19 of the printed book.

The contention of the appellant before the Master and before the Vice-Chancellor was, that there was no valid judgment because the defendant McKoon had not been served with process and had not entered an appearance to the attachment suit of Flannagan and therefore the only judgment there could be entered, was one against the lands attached and sold in Monmouth and Essex Counties.

The defendant insists that the judgment of Flannagan is not a judgment affecting the lands set out in the petition filed in this cause; that as it is one in attachment, and as no writ was issued to Union County and the lands were not attached in the said County, therefore the same is of no binding force upon the premises now owned by the defendant Brink. The defendant, Brink, also insists that the judgment being one in attachment is a judgment "in rem" and the lands in Union County not being attached and levied upon, the judgment is of no binding force. McKoon, the defendant in the attachment suit brought by Flannagan was a non-resident was not served and did not appear in the action.

I.

The Defendant Brink is entitled to the money awarded in the condemnation proceedings by reason of the fact that he was the owner of the premises by reason of the conveyance from Decker, who got it from Dennis McKoon.

If the contention of the defendant Brink, is correct, that there is no valid judgment affecting the premises in question then he is entitled to the money. Flannagan obtained a judgment on November 23, 1904, in virtue of his attachment proceedings, which the Vice-Chancellor who heard the argument on the exceptions filed, said, was a valid judgment under the attachment act and affected the Union County property although McKoon, the defendant in the original action was not served and did not appear in the action. The contention of the defendant, Brink, is, that there was no valid judgment entered and therefore there is nothing binding against the lands in question or the money, the proceeds of the lands in question. McKoon was a non-resident and was not served and entered no appearance to the action. Therefore the attachment act had no binding force against the property of Brink. The Act of 1903 called the Practice Act and found in the Compiled Statutes of New Jersey at section 91 states as follows: "If the defendant be a resident, then in case he doesn't appear the judgment and execution shall be special against the property attached only, but in case he does appear the judgment and execution shall be against him generally; if the defendant be a *non-resident* he may appear specially or generally, in case he does not appear or shall enter a special appearance the judgment and execution shall be special against the

property attached only, but in case he enters a general appearance the judgment and execution shall be against him generally."

This act having been passed subsequent to the Attachment Act is of binding force, and so far supercedes the said Act.

II.

That the said judgment is one in attachment and the lands in Union County set out in the petition mentioned were not attached nor levied upon by the Sheriff of Union County, and therefore the judgment above is of no valid or binding force upon the said premises now owned by the defendant, Leander Brink. That the said judgment being one in attachment is a judgment "in rem" and the lands in Union County not being attached and levied upon the judgment is of no binding force.

Under the Attachment Act of 1901, p. 160, sec 8; also in Compiled Statutes at page 138 we find the following: "The writ is a lien on all such real estate, even though the officer fails to attach the same or part thereof and upon all real estate acquired by defendant in the County after the issue of the writ and before final judgment. Since the judgment in attachment the lands in question have passed out of McKoon and the title is now in the defendant, Brink.

It is the contention of defendant, Brink, that the original suit in attachment having proceeded to a final judgment, and the lands, the subject of this application not having been attached and levied up-

on originally cannot now be attached. The cases all hold, that when a writ of attachment is issued and the levy made, and the property attached and levied upon is sold, and final judgment entered, the property only attached, can be affected by the final judgment.

The proper course, where the plaintiff in attachment has failed to attach all the lands, is to issue a new attachment and levy on the lands not theretofore attached, if any balance is due him, and any property of defendant is found to be attached. In the case before this Court, the defendant did not appear in the action and there was no personal judgment against him.

In the case of *Miller* v. *Dungan*, 7 Vroom, p. 21, Chief Justice Beasley, states the law to be as follows: "A judgment obtained in a proceeding by attachment against a non-resident debtor who does not appear to such suit will not form a legal foundation for an action. The proceeding is 'in rem' and has no effect except with respect to the property attached. In my estimation, the force of a judgment in attachment is spent by a sale of the property attached, and consequently such judgment cannot form a basis of an action at law."

See also Chief Justice Depue in *Schenck* v. *Griffen*, in 9 Vroom at page 465 citing *Miller* v. *Dungan*, 7 Vroom 21, says: "But except with respect to the property attached the proceeding has no effect. No action can be brought on the judgment recovered, and in an action on the original demand, a judgment in attachment is not competent as *prima facie* evidence of the indebtedness."

See also in the case of *Bainbridge* v. *Allen* and Richmond, 4 Robbins 355, the Vice-Chancellor stated the rule to be as follows: "A judgment in attachment in which the defendant does not appear in person or by attorney, is enforceable only 'in

rem' upon the property levied on under the attachment." There was no appearance in the case before this Court.

In the case of *Blatchford* v. *Conover,* 13 Stewart 205, the Court stated the rule to be as follows: "The lien of the writ of attachment upon the defendant's lands as of the time the writ was issued, can be enforced only by a sale and conveyance made by the Auditor upon the judgment in the attachment suit, in virtue of a special order of the Court for that purpose." Although the lien given is upon all the lands owned by the defendant at the time of issuing the writ, it is settled that the writ creates no lien on real estate, nor can any title be acquired by virtue of a sale under proceedings in the attachment unless the land is inventoried, appraised and returned by the officer as attached, and thus put under the control of the Court to be disposed of and applied under the provisions of the act.

Tomlinson v. *Stiles,* 4 Dutcher 201;
Same case, 5 Dutcher 426;
Blatchford v. *Conover,* 13 Stewart, 205.

There has been no material change in the attachment act respecting the proceedings in attachment since 1820. The attachment act respecting liens, sales &c., is found re-enacted in the Compiled Statutes of our State, Atachment Act, Vol. 1, page 132 and fol.

And in the case of *Schenck* v. *Griffen,* a court of Errors and Appeal case, 9 Vroom at page 465, Judge Depue, for the Court states as follows: "Except with respect to the property attached the proceeding in attachment has no effect. No action can be brought on the judgment recovered, and in an action on the original demand a judgment in attachment is not competent as *prima facia* evidence of the indebtedness."

Citing *Rubber Co.* v. *Goodyear*, 9 Wall 807-810.

Vice-Chancellor Grey in *Bainbridge* v. *Allen*, 4 Robbins at page 362, a suit in which a bill was filed by the complainant to give an attachment the force of a general judgment in personam, binding generally all the property of the defendant whether levied on under the attachment or not, and where the proceedings in the complainant's attachment had been prosecuted to final judgment and the attachment did not affect all of the defendant's property, yet the complainant sought by his bill to give it the force of a general judgment, and in which case there was no appearance by the defendant Allen, either in person or by his attorney, to the attachment suit, held—"That the judgment was wholly "in rem" against the specific property levied upon in the attachment suit, and not in personam, a general judgment to be made from any property of the defendant wheresoever found.

This whole matter regarding attachments seems to have been settled in the celebrated case of *Pennoyer* v. *Neff*, found in 95 U. S., p. 714, in which Mr. Justice field, speaking for the Court, said: "A personal judgment rendered in a state court in an action upon a money demand against a non-resident of the State without personal service of process upon him, within the State, or his appearance in the action upon service by publication is without any validity, and no title to property passes by a sale under an execution issued upon such a judgment." And the Court further stated: "That the State having within its territory property of non-residents, may hold and appropriate it to satisfy the claims of its citizens against them, and its tribunals may inquire into their obligations to the extent necessary to control the disposition of the property. If non-residents have no property in the State there is nothing upon which the tribunal can adjudicate."

Where a personal judgment has been rendered upon substituted service against a non-resident, who never appeared in the action, and such judgment is made the basis of an action in another State, the Courts of the latter have generally refused to recognize it as of any binding force.

III.

The appellant feels that he should have had an opportunity to examine the petitioner, Flannagan, with regard to his judgment, and contends that the statement filed with the Master with regard to the judgment, is not the transcript of the judgment required to be proven in a Court. Further, appellant feels that the money now in this Court, under the condemnation proceedings should be paid to him, as he is the owner of record of the lands in question.

It is respectfully submitted that the appeal of the appellant should be sustained.

WILLIAM R. WILSON,
Solicitor for and of Counsel
with Defendant, Brink.

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