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**Notice of Appeal by Randolph Perkins.**

(Filed June 11, 1930.)

**In Chancery of New Jersey**

(56-410)

IN THE MATTER  <i>of</i>  The Application of the MAYOR AND ALDERMEN OF JERSEY CITY to acquire certain property for the purpose of widening BER- GEN AVENUE, etc.	}	On Petition for Distribution of Award in Con- demnation Pro- ceedings De- posited with the Clerk in Chan- cery.  Notice of Appeal.
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The respondent, Randolph Perkins, one of the parties in interest in the above entitled matter, hereby appeals from the final decree, made by the Chancellor on the advice of Vice-Chancellor John J. Fallon in the above entitled cause on May 5, 1930, and from the whole and every part thereof, to the Court of Errors and Appeals in the Last Resort in All Causes.

Dated, June 10, 1930.

30

PERKINS & DREWEN,  
Solicitors for and of Counsel with  
Respondent Randolph Perkins.

We conceive there is good cause for appeal in the above entitled cause.

PERKINS & DREWEN,  
Of Counsel with Respondent Randolph  
Perkins.

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**Notice of Appeal by James A. Sullivan, et al.**

(Filed June 11, 1930.)

IN CHANCERY OF NEW JERSEY.

(56-410)

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IN THE MATTER

*of*

The Application of the MAYOR  
AND ALDERMEN OF JERSEY CITY  
to acquire certain property for  
the purpose of widening BER-  
GEN AVENUE, etc.

On Petition for  
Distribution of  
Award in Con-  
demnation Pro-  
ceedings De-  
posited with the  
Clerk in Chan-  
cery.

Notice of Appeal.

20

The petitioners, James A. Sullivan and Ella J. Sullivan, hereby appeal from the final decree, made by the Chancellor on the advice of Vice-Chancellor John J. Fallon in the above entitled cause on May 5, 1930, and from the whole and every part thereof, to the Court of Errors and Appeals in the Last Resort in All Causes.

Dated, June 10, 1930.

30

PERKINS & DREWEN,  
Solicitors for and of Counsel with  
Petitioners James A. Sullivan and  
Ella J. Sullivan.

We conceive there is good cause for appeal in the above entitled cause.

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PERKINS & DREWEN,  
Of Counsel with Petitioners James A.  
Sullivan and Ella J. Sullivan.

**Petition of Appeal of James A. Sullivan, et al.**

(Filed June 24, 1930.)

NEW JERSEY COURT OF ERRORS AND  
APPEALS.

IN THE MATTER

of

Application of the MAYOR AND  
ALDERMEN OF JERSEY CITY to  
acquire certain property for  
the purpose of widening Ber-  
gen Avenue, etc.

**On Appeal from  
the Court of  
Chancery.**

(On Petition  
for Distribution  
of Condemnation  
Award Deposited  
with the Clerk  
in Chancery)

Petition of  
Appeal.

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*To the Honorable The Court of Errors and Ap-  
peals in the Last Resort in All Causes:*

The Petition of James A. Sullivan and Ella J. Sullivan, appellants in the above entitled matter, respectfully shows that:

1. Petitioners find themselves aggrieved by a final decree made in the Court of Chancery by his Honor Edwin Robert Walker, Chancellor of the State of New Jersey, on the advice of Vice-Chancellor John J. Fallon, bearing date the 8th day of May, A. D. nineteen hundred and thirty, in a certain cause and matter in said Court of Chancery wherein one Arthur Brisbane was complainant and Dora E. Kastsenhuber, Grace Kastsenhuber, Ruth Youmans and your petitioners and others were defendants (during the pendency of which cause the Mayor and Aldermen of Jersey City did take by condemnation the lands and premises which were the subject thereof, and did deposit

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*Petition of Appeal of James A. Sullivan, et al.*

the moneys awarded in the office of the Clerk in Chancery, pursuant to the statute in such case made and provided, and whereupon your petitioners did petition the Chancellor for payment to them of the said award), in this respect, to wit:

10 that the said decree adjudges that your petitioners have no interest in the fund resulting from the said award; and that said defendants, Ruth Youmans and Grace R. Kastenhuber, have an interest in the said fund equivalent to a vested remainder in fee in the said lands and premises, subject to an estate for the life of their mother, the said defendant Dora E. Kastenhuber; and that the said decree adjudges that the said complainant Arthur Brisbane has an interest in said fund equivalent to a life estate in the premises during the life of

20 the said Dora E. Kastenhuber, subject only to the payment to your petitioners by said Arthur Brisbane of such sum as may be ascertained to be due them under a certain contract dated July 19, 1910, between your petitioner, the said James A. Sullivan and one Bennett Milnor; and that the said decree adjudges and orders that the clerk of the said Court of Chancery forthwith pay to the said Arthur Brisbane out of the said fund the sum of \$850.14, being interest at the rate of 6% per annum on the sum of \$54,145.00, from March 19,

30 1923, the date of said award, to September 13, 1924, the date when the same was deposited with the said clerk, less the amount paid the City of Jersey City for taxes, and in addition thereto any and all accumulations of interest on the principal of said sum of \$54,145.00, or balance thereof in the possession of the said clerk from September 13, 1924, to the date of said decree, deducting, however, from said accumulations income and interest, and paying to your petitioners out of the

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*Petition of Appeal of James A. Sullivan, et al.*

amount so ordered to be paid to the said Arthur Brisbane, such sum as one John F. Gough, a Master of the said Court of Chancery, to whom the matter is by the said decree referred, may find to be due to your petitioners under the said contract of July 19, 1910; and that the said decree adjudges and orders that out of the balance of the said fund remaining in his hands after the payments aforesaid, the said clerk do pay to Mark A. Sullivan, solicitor for the said defendants Ruth Youmans and Grace R. Kastenhuber, their costs to be taxed and a counsel fee of \$5,000.00; and that the said decree adjudges and orders that the sum of \$51,306.81, being the balance of the principal sum of the said award after deductions therefrom pursuant to prior orders of the Court of Chancery (and less the amount by said decree allowed for counsel fees and costs) shall remain in the custody and control of the said clerk and be invested as required by said decree, and that the income arising from said investments be paid semi-annually to the said Arthur Brisbane, his executors, administrators and assigns, for and during the lifetime of said Dora E. Kastenhuber, and that upon her death the principal of said fund as it shall then be on deposit, be paid or transferred to such parties as may then be entitled thereto.

2. And your petitioners appeal from the decree of the Chancellor which decrees as aforesaid, upon the ground that the same is erroneous in that the same should have decreed that your petitioners were at the time of the condemnation of the said lands and premises seized of an estate in fee simple therein, and that the full amount of the fund resulting from the said award in condemnation be paid by the said clerk of the Court of

*Petition of Appeal of James A. Sullivan, et al.*

10 Chancery to your petitioners, less only the sum of \$10,000.00 assigned out of the said fund by your petitioners to one Randolph Perkins; and that said complainant, Arthur Brisbane, and the said defendants, Dora E. Kastenhuber, Ruth Youmans, and Grace R. Kastenhuber have no right, title or interest whatever either in the said lands and premises or in the fund resulting from the condemnation thereof; and that the said Ruth Youmans and Grace R. Kastenhuber were not entitled to either costs or counsel fee, and that the bill for specific performance filed by the said complainant, Arthur Brisbane, in the cause aforesaid be dismissed with costs and counsel fee allowed to your petitioners as defendants therein.

20 Petitioners therefore pray that the said decree of the Chancellor may be wholly reversed, set aside and for nothing holden, and that petitioners may have such other relief in the premises as to this Court shall seem proper.

PERKINS & DREWEN,  
Solicitors for and of counsel with  
James A. Sullivan and Ella J.  
Sullivan, appellants.

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**Petition of Appeal of Randolph Perkins.**

(Filed June 24, 1930.)

NEW JERSEY COURT OF ERRORS AND  
APPEALS.

<p style="text-align: center;">IN THE MATTER</p> <p style="text-align: center;"><i>of</i></p> <p style="text-align: center;">APPLICATION OF THE MAYOR AND ALDERMEN OF JERSEY CITY TO ACQUIRE CERTAIN PROPERTY FOR THE PURPOSE OF WIDENING BERGEN AVENUE, ETC.</p>	}	<p>On Appeal from the Court of Chancery.</p> <p>(On Petition for Distribution of Condemnation Award Deposited with the Clerk in Chancery)</p> <p>Petition of Appeal.</p>	<p>10</p>
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*To the Honorable the Court of Errors and Appeals in the Last Resort in All Causes:*

The petition of Randolph Perkins, appellant in the above entitled matter, respectfully shows that:

1. 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, on the advice of Vice-Chancellor John J. Fallon, bearing date the 8th day of May, A. D. nineteen hundred and thirty, in a certain cause and matter in said Court of Chancery wherein one Arthur Brisbane was complainant and James A. Sullivan, Ella J. Sullivan, Dora E. Kastenhuber, Grace Kastenhuber, Ruth Youmans and others were defendants (during the pendency of which cause the Mayor and Aldermen of Jersey City did take by condemnation the lands and premises which were the subject thereof, and did deposit the moneys awarded in the office of the

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*Petition of Appeal of Randolph Perkins.*

Clerk in Chancery, pursuant to the statute in such case made and provided, and whereupon the said defendants James A. Sullivan and Ella J. Sullivan did petition the Chancellor for payment to them of the said award), in this respect, to wit:

10 that the said decree adjudges that your petitioner and the said James A. Sullivan and Ella J. Sullivan have no interest in the fund resulting from the said award; and that said defendants Ruth Youmans and Grace R. Kastenhuber have an interest in the said fund equivalent to a vested remainder in fee in the said lands and premises, subject to an estate for the life of their mother, the said defendant Dora E. Kastenhuber; and that

20 the said decree adjudges that the said complainant Arthur Brisbane has an interest in said fund equivalent to a life estate in the premises during the life of the said Dora E. Kastenhuber, subject only to the payment to said James A. Sullivan and Ella J. Sullivan by said Arthur Brisbane of such sum as may be ascertained to be due them under a certain contract dated July 19, 1910, between the said James A. Sullivan and one Bennett Milnor; and that the said decree adjudges and orders that the clerk of the said Court of Chancery forthwith

30 pay to the said Arthur Brisbane out of the said fund the sum of \$850.14, being interest at the rate of 6% per annum on the sum of \$54,145.00, from March 19, 1923, the date of said award, to September 13, 1924, the date when the same was deposited with the said clerk, less the amount paid the City of Jersey City for taxes, and in addition thereto any and all accumulations of interest on the principal of said sum of \$54,145.00, or balance thereof in the possession of the said clerk from September 13, 1924, to the date of said decree, de-

40 ducting, however, from said accumulations income

*Petition of Appeal of Randolph Perkins.*

and interest, and paying to said James A. Sullivan and Ella J. Sullivan, out of the amount so ordered to be paid to the said Arthur Brisbane, such sum as one John F. Gough, a Master of the said Court of Chancery, to whom the matter is by the said decree referred, may find to be due to said James A. Sullivan and said Ella J. Sullivan under the said contract of July 19, 1910; and that the said decree adjudges and orders that out of the balance of the said fund remaining in his hands after the payments aforesaid, the said clerk do pay to Mark A. Sullivan, solicitor for the said defendants Ruth Youmans and Grace R. Kastenhuber, their costs to be taxed and a counsel fee of \$5,000.00; and that the said decree adjudges and orders that the sum of \$51,306.81, being the balance of the principal sum of the said award after deductions therefrom pursuant to prior orders of the Court of Chancery (and less the amount by said decree allowed for counsel fees and costs) shall remain in the custody and control of the said clerk and be invested as required by said decree, and that the income arising from said investments be paid semi-annually to the said Arthur Brisbane, his executors, administrators and assigns, for and during the lifetime of said Dora E. Kastenhuber, and that upon her death the principal of said fund as it shall then be on deposit, be paid or transferred to such parties as may then be entitled thereto.

2. And your petitioner appeals from the decree of the Chancellor which decrees as aforesaid, upon the ground that the same is erroneous in that the same should have decreed that the said defendants James A. Sullivan and Ella J. Sullivan were at the time of the condemnation of the said lands and

*Petition of Appeal of Randolph Perkins.*

premises seized of an estate in fee simple therein,  
and that the full amount of the fund resulting  
from the said award in condemnation be paid by  
the said clerk of the Court of Chancery to the said  
James A. Sullivan and Ella J. Sullivan, less only  
the sum of \$10,000.00 assigned out of the said fund  
10 by the said James A. Sullivan and Ella J. Sulli-  
van to your petitioner, and that the said latter  
sum by virtue of the said assignment be paid to  
your petitioner; and that said complainant,  
Arthur Brisbane, and the said defendants, Dora  
E. Kastenhuber, Ruth Youmans, and Grace R.  
Kastenhuber have no right, title or interest what-  
ever either in the said lands and premises or in  
the fund resulting from the condemnation thereof;  
and that the said Ruth Youmans and Grace R.  
20 Kastenhuber were not entitled to either costs or  
counsel fee, and that the bill for specific perform-  
ance filed by the said complainant, Arthur Bris-  
bane, in the cause aforesaid be dismissed with  
costs and counsel fee allowed to the said James A.  
Sullivan and Ella J. Sullivan as defendants  
therein.

Petitioner therefore prays that the said decree  
of the Chancellor may be wholly reversed, set  
aside and for nothing holden, and that petitioner  
30 may have such other relief in the premises as to  
this Court shall seem proper.

PERKINS & DREWEN,  
Solicitors for and of Counsel with  
Randolph Perkins, appellant.

**Answers to Petitions of Appeal.**

(Answers to the Petition of Appeal of James A. Sullivan, *et al.*, and to Petition of Appeal of Randolph Perkins, respectively, filed in common form by all appellees.)

10

**Petition by James A. Sullivan, *et al.*, for  
Payment of Condemnation Award.**

(Filed Nov. 15, 1924.)

IN CHANCERY OF NEW JERSEY.

IN THE MATTER

*of*

The Application of the MAYOR  
AND ALDERMEN OF JERSEY CITY  
to acquire certain property of  
The Evening Journal Association,  
a corporation of the State  
of New Jersey, and others, for  
the purpose of widening Ber-  
gen Avenue and the establish-  
ment of a Plaza to accommo-  
date and relieve congestion of  
traffic in the neighborhood of  
the Summit Avenue Tube Sta-  
tion in the City of Jersey City.

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In Condemnation.  
Petition.

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The petition of James A. Sullivan and Ella J. Sullivan, both of the City of Jersey City, County of Hudson and State of New Jersey, respectfully shows:

(1) The Mayor and Aldermen of Jersey City, a municipal corporation of the State of New Jersey, 40

*Petition by James A. Sullivan, et al., for Payment  
of Condemnation Award.*

10 having power to take land or other property for public use by virtue of an Act of the Legislature of the State of New Jersey, entitled: "An Act to regulate the ascertainment and payment of compensation for property condemned or taken for public use (Revision of One thousand nine hundred)", approved March 20th, 1900, pursuant to said provisions of said Act instituted condemnation proceedings for the purpose of taking land for the widening of Bergen Avenue and the establishment of a Plaza to accommodate and relieve congestion of traffic in the neighborhood of the Summit Avenue Tube Station, in the said City of Jersey City.

20 (2) That said lands so taken by said City of Jersey City for said purpose are known and designated on the Official Assessment Map of Jersey City, made by L. D. Fowler, 1894, as plot lettered and numbered A-2, and Lot lettered "F", in Block 1865.

30 (3) That at the time said lands were taken your petitioners, James A. Sullivan and Ella J. Sullivan, were the owners of the premises known and described as Lot "F" in Block 1865, so taken by the said City of Jersey City.

(4) That the said proceedings were instituted by the said City of Jersey City to condemn said property, under said act by filing petition by the said City of Jersey City in the office of the Clerk of the County of Hudson on December 16th, 1922.

40 (5) That on the 20th day of January, 1923, the honorable Francis J. Swayze, one of the then Justices of the Supreme Court of New Jersey, to whom said application had been made for the appointment of commissioners, appointed James B.

*Petition by James A. Sullivan, et al., for Payment  
of Condemnation Award.*

Throckmorton, Wilbur E. Mallalieu and L. Edward Herrmann, Commissioners, to examine and appraise said property and to assess the damages to the owners and occupants thereof and persons interested therein, in accordance with said act, and ordered said Commissioners to file their report on or before the 16th day of March, 1923, which time for filing report was afterwards extended to March 20th, 1923. 10

(6) Petitioners further show that said Commissioners did, on the 19th day of March, 1923, duly file their report in the office of the Clerk of the County of Hudson, in and by which report they awarded to the owners and occupants of said tract of land known as Lot "F", Block 1865, the sum of \$40,621.00. 20

(7) Your petitioners further show that your petitioners took an appeal from the findings in said report, in accordance with said Act, and that the jury upon the trial of the issue between your petitioners and the said City of Jersey City, which issue was framed by the Honorable Henry E. Ackerson, Judge of the Hudson County Circuit Court, assessed the value of said Lot "F" and the damages sustained by the condemning thereof, as of December 17th, 1922, at the sum of \$54,145.00, and that on the 15th day of May, 1924, judgment was duly entered in said Court in favor of your petitioners, as appellants, for the sum of \$54,145.00 and that no other persons claiming to be interested in said land took an appeal from the award of said Commissioners. 30

(8) Your petitioners further show that on the 27th day of June, 1924, your petitioners assigned, by assignment in writing bearing date on the last 40

*Petition by James A. Sullivan, et al., for Payment  
of Condemnation Award.*

mentioned date, to Randolph Perkins the sum of \$9,000.00 of interest in the said judgment aforesaid, which assignment has been duly recorded in the Clerk's Office of Hudson County, and notice thereof given to the said Mayor and Aldermen of  
10 Jersey City.

(9) That on the first day of July, 1924, by assignment in writing of that date, your petitioners assigned to John T. Treacy and John Milton, partners under the name of Treacy & Milton, an interest in said judgment to the extent of \$2,683.84, which assignment has been recorded in the Hudson County Clerk's Office, and notice thereof given to the said Mayor and Aldermen of  
20 Jersey City.

(10) Your petitioners further show that said Mayor and Aldermen of Jersey City filed its petition in this Honorable Court for leave to pay into Court the amount of the award for said lot lettered "F", in Block 1865, in and by which petition it set forth that your petitioner, James A. Sullivan, claimed to be the owner of said lot "F" by virtue of a deed of record made to Ella J. Sullivan, who holds title to the same in trust for  
30 your petitioner; and further shows that Arthur Brisbane also claimed to have an interest in said lot "F"; and further sets forth that Dora Kastenhuber, William P. Kastenhuber, Grace Kastenhuber, Aquilla Wilks, Randolph Perkins, John J. Treacy and John Milton, partners under the name of Treacy & Milton, may have an interest in said award.

(11) Your petitioners further show that after  
40 the filing of said petition in the above entitled cause by the Mayor and Aldermen of Jersey City

*Petition by James A. Sullivan, et al., for Payment  
of Condemnation Award.*

an order was made in said cause on the 13th day of September, 1924, in and by which the Mayor and Aldermen of Jersey City was ordered to pay to the Clerk of this Honorable Court the sum of \$54,145.00, together with interest thereon from the 19th day of March, 1923, being the amount of the award aforesaid, which amount was expressly made subject to the lien and charge of the said Mayor and Aldermen of Jersey City for unpaid taxes against said lot "F", in Block 1865, and which said order provided that said funds should be distributed according to law on the application of any person interested therein. 10

(12) Your petitioners further show that said sum of \$54,145.00, together with lawful interest thereon, as aforesaid, was deposited by the said Mayor and Aldermen of Jersey City with the Clerk of this Honorable Court. 20

(13) Your petitioners further show that they are entitled to the whole of said sum of money so deposited, subject to the assignment to said Randolph Perkins of the sum of \$9,000.00 and of the assignment to the said John J. Treacy and John Milton, partners under the name of Treacy & Milton, of the sum of \$2,683.84. 30

Your petitioners therefore pray that an order may be made authorizing and directing the Clerk of this Court to pay to the said Randolph Perkins the sum of \$9,000.00, together with interest thereon from the 27th day of June, 1924, and to the said John J. Treacy and John Milton, partners under the name of Treacy & Milton, the said sum of \$2,683.84, together with interest thereon, and that the Clerk of said Court may be directed to pay 40

*Petition by James A. Sullivan, et al., for Payment  
of Condemnation Award.*

the entire balance of said sum, with all accumulations of interest thereon, to your petitioners.

PERKINS & DREWEN,  
Solicitors for Petitioners.

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

JAMES A. SULLIVAN, being duly sworn according to law, on his oath deposes and says:

I am one of the petitioners in the foregoing petition named, and the matters and things therein stated are true, to the best of my knowledge, information and belief.

JAMES A. SULLIVAN.

Subscribed and sworn to before }  
me this 13th day of November, }  
1924, at Jersey City, N. J. }

EDWARD CLAXTON,  
Attorney at Law  
of New Jersey.

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**Answer and Counterclaim of Arthur Brisbane  
to Petition for Payment of Condemnation  
Award.**

IN CHANCERY OF NEW JERSEY.

IN THE MATTER	10
<i>of</i>	
The Application of the MAYOR AND ALDERMEN OF JERSEY CITY to acquire certain property of the Evening Journal Associa- tion, a corporation of the State of New Jersey, and others, for the purpose of widening Ber- gen Avenue and the establish- ment of a Plaza to accommo- date and relieve congestion of traffic in the neighborhood of the Summit Avenue Tube Sta- tion in the City of Jersey City.	<p>In Condemnation. Answer to Peti- tion of James A. Sullivan and Ella J. Sullivan.</p> <p style="text-align: right;">20</p>

The answer of Arthur Brisbane to the petition of James A. Sullivan and Ella J. Sullivan respectfully shows:

- (1) Defendant Arthur Brisbane admits the alle- 30  
gations of Paragraph 1.
- (2) Defendant admits the allegations of Para-  
graph 2.
- (3) Defendant denies the allegations of Para-  
graph 3.
- (4) Defendant admits the allegations of Para-  
graph 4.
- (5) Defendant admits the allegations of Para- 40  
graph 5.

*Answer and Counterclaim of Arthur Brisbane to  
Petition for Payment of Condemnation Award.*

(6) Defendant admits the allegations of Paragraph 6.

(7) Defendant admits the allegations of Paragraph 7.

10 (8) Defendant neither admits nor denies the allegations of Paragraph 8 of the said petition, but leaves the petitioners to such proof thereof as they may be able to adduce at the trial; defendant however avers that any rights of the said Randolph Perkins in and to the said sum of \$9,000.00 referred to in said Paragraph 8 of the petition is subject to the rights of defendant in the said award of \$54,145, and avers also that the said Randolph Perkins had full and complete knowl-  
20 edge of the right, title and interest of this defendant in the premises.

(9) Defendant neither admits nor denies the allegations of Paragraph 9 of the said petition, but leaves the petitioners to such proof thereof as they may be able to adduce at the trial; defendant, however, avers that any rights of the said John G. Treacy and John Milton, partners under the name of Treacy & Milton, in and to the said sum of \$2,683.00 referred to in said Paragraph 9  
30 of the petition is subject to the rights of defendant in the said award of \$54,145, and avers also that the said John G. Treacy and John Milton had full and complete knowledge of the right, title and interest of this defendant in the premises.

(10) Defendant neither admits nor denies the allegations of Paragraph 10, but leaves the petitioners to such proof thereof as they may be able to adduce at the trial, and refers for greater certainty to the proceedings instituted by the Mayor  
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*Answer and Counterclaim of Arthur Brisbane to  
Petition for Payment of Condemnation Award.*

and Aldermen of Jersey City referred to in said Paragraph 10.

(11) Defendant neither admits nor denies the allegations of Paragraph 11, but leaves the petitioners to such proof thereof as they may be able to adduce at the trial, and refers for greater certainty to the proceedings instituted by the Mayor and Aldermen of Jersey City referred to in said Paragraph 11. 10

(12) Defendant admits allegations of Paragraph 12.

(13) Defendant denies each and every allegation of Paragraph 13 of the petition.

20

COUNTERCLAIM.

By way of counterclaim against the said complainants on the petition filed by them, defendant Arthur Brisbane says:

1. That on the eighth day of July, in the year Eighteen Hundred and Eighty-nine, Thomas H. N. Wilks died in the City of Jersey City, in the County of Hudson, in this State, seized of an estate of inheritance in fee simple of a certain tract of land in the City of Jersey City aforesaid, known as Lot F in City Block 1865 on Fowler's official Assessment Map of Jersey City, also known as No. 11 Wilks Street, Jersey City, being in dimensions twenty-four feet, six inches, front and rear, by one hundred and nine feet in depth on one side and one hundred and seven feet in depth on the other side; that the said Thomas H. N. Wilks left a last will and testament bearing date the twenty-eighth day of June, Eighteen 30 40

*Answer and Counterclaim of Arthur Brisbane to  
Petition for Payment of Condemnation Award.*

Hundred and eighty-nine, which said will was admitted to probate by the Surrogate of the County of Hudson in this State on the nineteenth day of July, Eighteen Hundred and Eighty-nine, and is recorded in Book 24 of Wills in the office of said Surrogate on pages 413-417, to which said will and the record thereof this defendant begs leave to refer if it be necessary so to do. That the testator in and by his said will devised the above described property to his adopted daughter, Dora E. Wilks, for her natural life, and at her death to the heirs of her body born in lawful wedlock, and if there be no such issue, then the above described premises are devised to the testator's brother Aquilla Wilks, if living, and if not living at the time of the death of the said Dora E. Wilks, to his heirs at law living at the time of the death of said Dora.

2. That subsequent to the death of the said Thomas H. N. Wilks, his adopted daughter, Dora E. Wilks was married to William P. Kastenhuber, and is now the wife of said William P. Kastenhuber; that since her marriage to the said William P. Kastenhuber, said Dora E. Kastenhuber has become the mother of two children born in lawful wedlock, the oldest of whom is named Ruth G. Youmans and the other being named Grace R. Kastenhuber.

3. That after the death of the said Thomas H. N. Wilks and after the marriage of the said Dora E. Wilks to William P. Kastenhuber, the premises above described were sold to the City of Jersey City for unpaid taxes, and such proceedings were had that an order was made by the Circuit Court of Hudson County directing that a deed be deliv-

*Answer and Counterclaim of Arthur Brisbane to  
Petition for Payment of Condemnation Award.*

ered to Charles R. Dieffenbach, who was the purchaser at such tax sale, and that thereafter a deed was made by the proper officers of the City of Jersey City to the said Charles R. Dieffenbach purporting to convey the premises in question to the said Charles R. Dieffenbach in fee simple, which said deed is recorded in Book 1009 of Deeds for Hudson County in the office of the Register of said County, at page 407. 10

4. This defendant further shows that by several mesne conveyances the title to the said premises was conveyed to one Ella J. Sullivan by warranty deed dated June 29th, 1910, and recorded in the Hudson County Register's office on June 30th, 1910, in Book 1078 of Deeds for said County, at page 91, for James A. Sullivan, who was the actual purchaser of the premises and who provided the consideration therefor out of his own moneys, and that the said Ella J. Sullivan has not and never had any beneficial interest in the premises; that the said James A. Sullivan paid as the consideration for the conveyance of said premises to the said Ella J. Sullivan the sum of Thirty-five Hundred Dollars or some other sum of money. 20 30

5. This defendant further shows, that on or about the nineteenth day of July, 1910, the said James A. Sullivan, on behalf of himself and as agent of said Ella J. Sullivan, having by her been authorized so to do, did enter into an agreement in writing with Bennett Milnor, of the Borough of Manhattan, in the County of New York, and State of New York for the conveyance of the above described premises to the said Bennett Mil- 40

*Answer and Counterclaim of Arthur Brisbane to  
Petition for Payment of Condemnation Award.*

nor, his heirs or assigns, a copy of which agreement is attached hereto and marked Schedule "A" and made a part hereof.

10 6. This defendant further shows, that said agreement was on the twenty-fourth day of August, 1910, duly acknowledged by said James A. Sullivan and on the twenty-fifth day of August, 1910, was recorded in the office of the Register of the County of Hudson in Book 1063 of Deeds for said County, on page 605, etc.

20 7. This defendant further shows that thereafter the said Bennett Milnor, by assignment in writing for a valuable consideration, did set over and assign all of his right, title and interest of, in and to the above mentioned contract to this defendant, Arthur Brisbane, and that thereafter, and on or about the Twenty-fourth day of August, 1910, this defendant and the said James A. Sullivan, acting for himself and the said Ella J. Sullivan, mutually agreed that the time for the closing of the sale under the above mentioned agreement shall be extended until Saturday, October 1st, 1910, at the same hour and place as mentioned in  
30 the agreement, and that on the twenty-ninth day of September, 1910, this defendant and the said James A. Sullivan acting for himself and for the said Ella J. Sullivan, further agreed in writing to extend the time for the closing of the sale under said agreement until Saturday, October fifteenth, 1910, at the same hour and place as mentioned in the agreement.

40 8. This defendant further shows that on the said fifteenth day of October, 1910, at the time and place to which the closing of the sale had been

*Answer and Counterclaim of Arthur Brisbane to  
Petition for Payment of Condemnation Award.*

extended by mutual agreement as aforesaid, this defendant, by his duly authorized representative, was present and tendered himself ready and willing to pay the consideration provided for in said agreement on his receiving a deed of conveyance as therein provided, but that neither the said Ella J. Sullivan nor the said James A. Sullivan attended at said time and place nor did anyone attend for them or either of them. 10

9. This defendant further shows that at all times since the said fifteenth day of October, 1910, he has been ready and willing to pay the consideration provided in said agreement, and has often requested the said Ella J. Sullivan and James A. Sullivan to convey to him the premises mentioned in said agreement, in accordance with the terms thereof, but that the said Ella J. Sullivan and James A. Sullivan, have always refused and still refuse to convey to this defendant the premises described in said agreement in accordance with the terms thereof. 20

10. And this defendant further shows that he is informed and believes that since said fifteenth day of October, 1910, at which time the closing of the sale was under the extension of said original agreement to have taken place, said Ella J. Sullivan and said James A. Sullivan have collected and still continue to collect the rents from said property and have applied them to their own use. 30

11. This defendant further shows that litigation is now pending in this Court for the specific performance of the said contract and that since the filing of the said action, the Mayor and Alder- 40

*Answer and Counterclaim of Arthur Brisbane to  
Petition for Payment of Condemnation Award.*

men of Jersey City have instituted an appropriate proceeding under the laws of New Jersey in such case made and provided, to acquire the land and premises in question and other adjoining lands for the purpose of widening Bergen Avenue in the said City of Jersey City, and the establishment of a plaza to accommodate and relieve congestion of traffic in the neighborhood of the Summit Avenue Tube Station in said City, and that such proceedings were had in the said case that finally an award of \$54,145 was made in the said cause; that thereafter the said Mayor and Aldermen of Jersey City filed its petition in this Honorable Court for leave to pay into Court the amount of the award for said lot lettered "F", in Block 20 1865, in and by which petition it set forth that James A. Sullivan claimed to be the owner of said lot "F" by virtue of a deed of record made to Ella J. Sullivan, who holds title to the same in trust for said James A. Sullivan; and further shows that Arthur Brisbane also claimed to have an interest in said lot "F"; and further sets forth that Dora Kastenhuber, William P. Kastenhuber, Grace Kastenhuber, Aquila Wilks, Randolph Perkins, John J. Treacy and John Milton, partners 30 under the name of Treacy & Milton, may have an interest in said award.

12. The defendant further shows that after the filing of said petition in the above entitled cause by the Mayor and Aldermen of Jersey City an order was made in said cause on the 13th day of September, 1924, in and by which the Mayor and Aldermen of Jersey City was ordered to pay to the Clerk of this Honorable Court the sum of 40 \$54,145.00, together with interest thereon from

*Answer and Counterclaim of Arthur Brisbane to  
Petition for Payment of Condemnation Award.*

the 19th day of March, 1923, being the amount of the award aforesaid, which amount was expressly made subject to the lien and charge of the said Mayor and Aldermen of Jersey City for unpaid taxes against said lot "F", in Block 1865, and which said order provided that said funds should be distributed according to law on the application of any person interested therein. 10

13. This defendant further shows that he has succeeded, by virtue of the said agreement to all of the said rights in the said award or the fund represented thereby, which the said Ella J. Sullivan or James A. Sullivan may have and that he is entitled to such part of the said award as represents the value of the interest of the said James A. Sullivan and Ella J. Sullivan in the said premises based on the quantum of estate which they have in the said premises and is entitled to an abatement on the purchase price above mentioned in proportion to the quantum of estate owned by the said Sullivan. 20

This defendant therefore prays:

1. That the defendants William P. Kastenhuber, Dora E. Kastenhuber, Ruth G. Youman, Grace R. Kastenhuber, Matilda Holmes, Aquilla Wilks, Ella J. Sullivan and James A. Sullivan, the Board of Commissioners of Jersey City or the Mayor and Aldermen of Jersey City, may full, true and perfect answer make, without oath, to all and singular the matters aforesaid; and that the said Ella J. Sullivan and James A. Sullivan may be decreed to perform specifically the said agreement entered into by and between the said James A. Sullivan as the person thereunto 30 40

*Answer and Counterclaim of Arthur Brisbane to  
Petition for Payment of Condemnation Award.*

lawfully authorized so to do in behalf of the said  
Ella J. Sullivan and himself, this defendant being  
ready and willing to perform the said agreement  
on his part, and that this Court may decree that  
the rights of the said Ella J. Sullivan and James  
10 A. Sullivan in the said award have succeeded and  
devolved upon your orator and may further de-  
cree that whatever interest the said Ella J. Sulli-  
van and James A. Sullivan have in the said award  
of right belongs to this defendant, and that this  
Court may ascertain and determine what sum is  
due to the said Ella J. Sullivan and James A. Sul-  
livan on the purchase price of the said premises,  
and may also ascertain and determine what part  
20 of the said award shall be paid to this defendant  
and that the respective rights of the parties to  
the said award may be determined.

McCARTER & ENGLISH,  
Solicitors for and of Counsel with  
Defendant, Arthur Brisbane.

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**Answer of Defendant Grace R. Kastenhuber  
to Petition for Payment of Condemnation  
Award.**

IN CHANCERY OF NEW JERSEY.

IN THE MATTER

*of*

The Application of the MAYOR  
AND ALDERMEN OF JERSEY CITY  
to acquire certain property of  
the Evening Journal Association,  
a Corporation of the State  
of New Jersey, *et al.*, for the  
purpose of widening Bergen  
Avenue and the establishment  
of a Plaza to accommodate and  
relieve congestion of traffic in  
the neighborhood of the Sum-  
mit Avenue Tube Station in the  
City of Jersey City.

In Condemnation.  
On Petition.

Answer of Infant,  
Defendant, Grace  
R. Kastenhuber.

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The answer of GRACE R. KASTENHUBER, an infant under the age of twenty-one years by Dora E. Kastenhuber, her Guardian, to the petition of James A. Sullivan and Ella J. Sullivan.

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This defendant answering by her said Guardian says:

That she is a stranger to all and singular the matters and things in the said petition contained, otherwise than this defendant is informed that she is seized and possessed of a contingent estate in remainder in the tract of land mentioned in the petition and in the money deposited with the Clerk of this Court in respect to said tract of land or that she has some other interest therein and this defendant being an infant of tender years, sub-

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*Answer of Defendant Grace R. Kastenhuber to  
Petition for Payment of Condemnation  
Award.*

mits herself to the judgment of this Honorable Court and prays that her interest may be protected and saved to her.

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MARK A. SULLIVAN,  
Solicitor for Guardian of  
Defendant Grace R.  
Kastenhuber.

**Answer of Defendant Ruth W. Youman to  
Petition for Payment of Condemnation  
Award.**

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IN CHANCERY OF NEW JERSEY.

IN THE MATTER

*of*

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The Application of the MAYOR  
AND ALDERMEN OF JERSEY CITY  
to acquire certain property of  
the Evening Journal Association,  
a Corporation of the State  
of New Jersey, *et al.*, for the  
purpose of widening Bergen  
Avenue and the establishment  
of a Plaza to accommodate and  
relieve congestion of traffic in  
the neighborhood of the Summit  
Avenue Tube Station in the  
City of Jersey City.

In Condemnation.  
On Petition.  
Answer of  
Defendant, Ruth  
W. Youman.

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The answer of Ruth W. Youman to the petition  
of James A. Sullivan and Ella J. Sullivan.

*Answer of Defendant Ruth W. Youman to Petition  
for Payment of Condemnation Award.*

RUTH W. YOUMAN answering the petition of James A. Sullivan and Ella J. Sullivan, says:

1. She has no knowledge or information sufficient to form a belief as to the statements in Paragraph 1. 10

2. She has no knowledge or information sufficient to form a belief as to the statements in Paragraph 2.

3. She denies Paragraph 3.

4. She has no knowledge or information sufficient to form a belief as to the statements in Paragraph 4.

5. She has no knowledge or information sufficient to form a belief as to the statements in Paragraph 5. 20

6. She has no knowledge or information sufficient to form a belief as to the statements in Paragraph 6.

7. She has no knowledge or information sufficient to form a belief as to the statements in Paragraph 7.

8. She has no knowledge or information sufficient to form a belief as to the statements in Paragraph 8. 30

9. She has no knowledge or information sufficient to form a belief as to the statements in Paragraph 9.

10. She has no knowledge or information sufficient to form a belief as to the statements in Paragraph 10.

*Answer of Defendant Ruth W. Youman to Petition  
for Payment of Condemnation Award.*

11. She has no knowledge or information sufficient to form a belief as to the statements in Paragraph 11.

10 12. She has no knowledge or information sufficient to form a belief as to the statements in Paragraph 12.

13. She denies Paragraph 13.

20 Said RUTH W. YOUMAN further says: that she is entitled to a contingent estate in remainder in the premises described in said petition and in any money that may be deposited in the Court of Chancery of New Jersey with respect to such premises, or to some other interest therein and that the said petitioners or Arthur Brisbane either collectively or singly are only entitled to a life estate in said premises described in the petition or in any money deposited in the Court of Chancery with respect thereto and she prays that any award for any payment out of said money to the petitioners herein or Arthur Brisbane or any other person deriving an interest from them, shall be limited collectively to an amount that will justly represent the life estate that may be owned by them or either of them.

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MARK A. SULLIVAN,  
Solicitor of Defendant  
Ruth W. Youman.

**Replication and Answer to Counterclaim of  
Arthur Brisbane.**

IN CHANCERY OF NEW JERSEY.

<p style="text-align: center;">IN THE MATTER <i>of</i> The Application of the MAYOR AND ALDERMEN OF JERSEY CITY to acquire certain property of the Evening Journal Association, a corporation of the State of New Jersey, and others, for the purpose of widening Bergen Avenue and the establishment of a Plaza to accommo- date and relieve congestion of traffic in the neighborhood of the Summit Avenue Tube Station in the City of Jersey City.</p>	}	<p style="text-align: right;">10</p> <p style="text-align: right;">In Condemnation. On Petition for the payment of an Award Deposited in the Court of Chancery by the Mayor and Aldermen of Jersey City.</p> <p style="text-align: right;">20</p> <p style="text-align: right;">Replication and Answer to Counterclaim of Arthur Brisbane.</p>
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The petitioners join issue on the answer of Arthur Brisbane.

The joint and several answer of the petitioners, James A. Sullivan and Ella J. Sullivan, to the counterclaim of Arthur Brisbane, filed to the petition of these petitioners. 30

(1) These petitioners have no knowledge or information sufficient to form a belief as to whether Thomas H. N. Wilkes died seized of an inheritance in fee simple of the tract of land described in paragraph one of the bill of complaint, and say the facts with reference to said title are as hereinafter set out; they admit that Wilkes left a Will, as set forth in paragraph one. 40

*Replication and Answer to Counterclaim of  
Arthur Brisbane.*

- (2) They admit the allegations of paragraph two.
- (3) They admit the allegations of paragraph three.
- 10 (4) They admit the allegations of paragraph four.
- (5) They admit the allegations of paragraph five.
- (6) They admit the allegations of paragraph six.
- (7) They admit the allegations of paragraph seven.
- 20 (8) They deny the allegations of paragraph eight, and say that the facts are as hereinafter set forth.
- (9) They deny each and every of the allegations of paragraph nine, and say that the facts with reference thereto are as hereinafter set forth.
- 30 (10) They admit the allegations of paragraph ten that these petitioners have collected rents from the premises described in the bill, but deny that they still continue to collect rents from the same.
- 40 (11) They deny the allegations of paragraph eleven that the litigation for the specific performance of the contract set forth in said answer is still pending, and say that the facts with reference thereto are as hereinafter set forth. They admit the allegations of said paragraph that the said Mayor & Aldermen of Jersey City have instituted proceedings to acquire the lands and

*Replication and Answer to Counterclaim of  
Arthur Brisbane.*

premises, and say that the facts with reference thereto are as set forth in the petition.

(12) They admit the allegations of paragraph twelve.

(13) They deny each and every of the allegations of paragraph thirteen, and specifically deny that the said Arthur Brisbane has any right, title or interest whatever in any part of the said fund deposited in Court. 10

For the further answer to the said counterclaim of the said Arthur Brisbane, these petitioners say:

(1) That on the 19th day of July, 1910, your petitioner, James A. Sullivan, entered into an agreement with one Bennett Milnor (copy of which is annexed to the bill of complaint), and that at the time of the making of said agreement with the said Bennett Milnor this petitioner, James A. Sullivan, believed that he and his sister, Ella J. Sullivan, had acquired an estate of inheritance in fee simple in said lands and that such estate was by deed conveyed to the said Ella J. Sullivan. 20

(2) That your petitioner, James A. Sullivan, entered into said agreement with Milnor in good faith, believing that he and his sister, Ella J. Sullivan, held good and marketable title to the lands aforesaid, and that they could convey the same to said Milnor at the time and in the manner required by said agreement, and that both of your petitioners were ready and willing to make such conveyance. 30

*Replication and Answer to Counterclaim of  
Arthur Brisbane.*

10 (3) These petitioners were both ready and willing to convey the said lands to the said Bennett Milnor at the time and in the manner provided by said agreement, but before the time provided in said agreement arrived the said Milnor and the said Arthur Brisbane, who claimed to hold said contract by assignment from Milnor, informed petitioner, James A. Sullivan, that the title to said premises held by Ella J. Sullivan, was defective and was not a good and marketable title, and thereafter said Arthur Brisbane notified your petitioner, James A. Sullivan, of the details of the defects in said title, and said Brisbane informed said petitioner that he, Brisbane, would not take title to said lands or pay the balance of the purchase price, as specified in said agreement, while said defects in title existed.

20 (4) That afterwards, and before the time for the delivery of the deed mentioned in said contract, said Brisbane served, or caused to be served, upon these petitioners a list of the defects of title, a copy of which is annexed hereto, marked Schedule "A", and made a part of this answer; that the said Arthur Brisbane notified these petitioners that their title was not marketable and refused to accept a deed from them for such title as they had, or for any title whatsoever, unless your petitioners first removed all the defects and clouds, which said Brisbane claimed existed and encumbered your petitioners' title to said premises; that thereafter the said James A. Sullivan caused an investigation to be made of the title to said premises and was afterwards advised by his counsel that neither he, nor said Ella J. Sullivan, was seized of a good and marketable title to said lands, and was not seized in fee simple thereof, and that

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*Replication and Answer to Counterclaim of  
Arthur Brisbane.*

they could not convey the same to said Brisbane as required by the terms of said agreement; that they thereupon informed Brisbane that because of the defects in said title, as specified by said Brisbane, they were unable to perform said agreement, and they thereupon offered to return the money paid upon said agreement, with interest thereon, together with a reasonable sum to reimburse said Brisbane for his expenses in examining such title, which offer said Brisbane declined to accept, but on the contrary wholly refused; that your petitioners thereupon offered to convey to said Brisbane such title as they had to said premises, which offer was refused. 10

(5) That in the month of February, 1911, said Brisbane filed a bill of complaint in this honorable Court, setting forth a copy of said agreement made by James A. Sullivan, with Bennett Milnor, alleging the assignment thereto to said Arthur Brisbane, and praying for a specific performance of said contract. 20

(6) That the complainant well knew at and before the filing of his bill of complaint of the infirmities and defects of your petitioners' title to said premises and had theretofore refused to accept from your petitioners such title as they had, and had refused to pay over to your petitioners the balance of the purchase price of said premises and accept from them a deed for whatever interest in said premises they had. 30

(7) That said Brisbane, before the filing of said bill, and after the defects of title in Schedule "A" set forth were known to him, had refused to accept such title as your petitioners had, but, on the contrary, notified them that he would hold 40

*Replication and Answer to Counterclaim of  
Arthur Brisbane.*

10 them to a strict performance of their contract,  
and that said bill of complaint was filed after the  
complainant therein, said Brisbane, had full and  
complete knowledge of all of the facts set forth in  
Schedule "A", hereto annexed, and that it was  
impossible for your petitioners to specifically per-  
form said contract.

20 (8) That thereafter, and on the 19th day of De-  
cember, 1911, said Brisbane made an application  
to this honorable Court for an order permitting  
him to file an amended bill of complaint against  
these petitioners, which leave was granted, and  
pursuant to said order said Brisbane filed an  
amended bill of complaint, being his second bill of  
complaint for specific performance, against these  
petitioners, in and by which amended bill of com-  
plaint the said Brisbane, as complainant, offered  
to perform said agreement on his part and prayed  
that the said Dora E. Kastenhuber and her hus-  
band, William P. Kastenhuber, be decreed to con-  
vey to said complainant the life estate of said  
Dora E. Kastenhuber devised to her by the last  
Will and Testament of Thomas H. N. Wilkes in  
the premises and that this Court might decree  
30 what sum of money should be paid by Brisbane  
to these petitioners for the conveyance which  
might be decreed to be made, and for other relief.

40 (9) That in the month of March, 1912, the said  
Brisbane obtained leave from this Honorable  
Court to file a second amended bill of complaint  
against these petitioners, and pursuant thereto  
filed a second amended bill of complaint, being his  
third bill for specific performance against your  
petitioners, and prayed therein that these peti-  
tioners might be decreed to specifically perform

*Replication and Answer to Counterclaim of  
Arthur Brisbane.*

said agreement by conveying unto him all the right, title and interest of the said James A. Sullivan and Ella J. Sullivan in and to said premises, Brisbane offering to perform said agreement on his part, and further praying that this honorable Court might decree what sum of money should be paid by him to these petitioners for the conveyance which this Honorable Court might decree to be made, and for other relief. 10

(10) That thereafter said Arthur Brisbane filed a third amended bill of complaint in this Court (which was said Brisbane's fourth bill of complaint against these petitioners for specific performance of said contract), against these petitioners, praying for a decree upon them, as defendants, to specifically perform said agreement, Brisbane offering to perform the agreement on his part, and praying that these petitioners might be decreed to account to him for the rental value of said premises during the period which he (Brisbane), had been deprived of the possession and enjoyment of said premises and for any money received by the defendants for fire insurance upon said premises. 20

(11) That to the said third amended bill of complaint these petitioners filed an answer setting forth the defects alleged by said Brisbane to exist in the title of petitioners, and shown on Schedule "A", and further, that your petitioners, the defendants therein, had offered to return the money paid upon the said agreement, with interest and counsel fees, and that said Brisbane had declined to accept said offer; and further setting forth the facts that said Brisbane well knew at and before the filing of his bill of complaint of the 40

*Replication and Answer to Counterclaim of  
Arthur Brisbane.*

10 infirmities and defects of your petitioners' title  
and that he had, as aforesaid, refused to accept  
from them such title as they had, but had notified  
them that he, the said Brisbane, would hold them  
to a strict performance of their contract; and  
further setting forth the fact that said bill of  
complaint was filed after the complainant therein  
had full and complete knowledge of all the facts  
set forth in said answer, and that it was impossible  
for your petitioners to specifically perform said  
contract, and that the complainant, Brisbane was  
guilty of laches.

20 (12) That all of the matters in controversy in  
said cause were determined in favor of these peti-  
tioners by the Court of Errors & Appeals of New  
Jersey, and decreed that said Brisbane was not  
entitled to specific performance of said contract.

30 (13) That thereafter, and in the month of De-  
cember, 1918, said Brisbane filed another bill of  
complaint (which was said Brisbane's fifth bill of  
complaint for specific performance against these  
petitioners), in this honorable Court against these  
petitioners, and others, setting forth said agree-  
ment made by this petitioner, James A. Sullivan,  
with Bennett Milnor, and setting forth the final  
decree entered in the cause hereinabove referred  
to in the Court of Errors & Appeals in the month  
of November, 1916, and alleging that the reversal  
by the Court of Errors & Appeals of the Court  
of Chancery was made because of the failure of  
Brisbane to include as party defendants in the  
said bill of complaint previously filed by him, the  
said Charles R. Dieffenbach, William P. Kasten-  
huber and James Billington, and praying that  
40 these petitioners and said Dieffenbach, Billington

*Replication and Answer to Counterclaim of  
Arthur Brisbane.*

and others, answer said bill of complaint, and that these petitioners be decreed to perform specifically said agreement entered into by James A. Sullivan, with said Bennett Milnor, and praying that this Court should decree to be illegal and invalid any title in or claimed by the petitioners based upon the sale of said lands and premises for unpaid taxes, and the proceedings taken thereunder, and that these defendants should be decreed to have an estate in said lands for the life of Dora E. Kastenhuber, and for specific performance of said agreement, and for other relief. 10

(14) That thereafter said Arthur Brisbane filed an amended bill of complaint (being said Brisbane's sixth bill of complaint against petitioners for specific performance of said contract), praying that these petitioners might be decreed, specifically, to perform the said agreement entered into by the said James A. Sullivan, as the person thereunto lawfully authorized so to do in behalf of the said Ella J. Sullivan, with the said Bennett Milnor, which was assigned to Brisbane, and further, what sum of money should be paid by Brisbane to your petitioners for the conveyance which this Court might decree to be made, and for further relief. 20 30

(15) Your petitioners filed their answer to said Brisbane's said amended bill of complaint and after final hearing of the said cause said amended bill of complaint was dismissed by this Honorable Court.

(16) Thereafter, and in or about the month of June, 1922, said complainant filed another bill of complaint for specific performance against your petitioners, being said Brisbane's seventh bill of 40

*Replication and Answer to Counterclaim of  
Arthur Brisbane.*

complaint for specific performance of said contract, and although issue was joined in said bill and answer, said cause has never been brought to trial, and is the litigation pending referred to in the eleventh paragraph of the counterclaim herein.

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(17) Defendants beg leave to refer to all the bills of complaint and amended bills of complaint of the complainant, Arthur Brisbane, and to all and divers answers of these petitioners heretofore made and filed in the several suits heretofore brought in this Court by the complainant, Arthur Brisbane, and against these petitioners, hereinabove set forth, and to make the same a part of this answer.

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(18) These petitioners allege that said Brisbane has no right, title or interest in said award deposited in this Court; that the matters set forth in said counterclaim are *res adjudicata*; that said Brisbane is in laches; and that all of the moneys deposited in this Court belong to your petitioners, subject to the claim of their assignees, Randolph Perkins, and Treacy & Milton.

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PERKINS & DREWEN,  
Solicitors for and of counsel with  
Petitioners, James A. Sullivan  
and Ella J. Sullivan.

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### Schedule "A".

Deed, Davis to Dieffenbach, recorded in Book 1009, page 407. The proceedings for the sale of this property for taxes and authorizing the issuing of the above deed seem to be defective in many particulars in that such proceedings do not conform to the statute in the following respects: 10

The petition to the Court is not signed and verified by C. R. Dieffenbach, purchaser, but by John J. Mulvaney, Attorney. This does not conform to the laws of 1906, page 552, which states that the petition must be verified by the purchaser or his legal representatives or assigns.

The verification in the petition is signed by John J. Mulvaney and contains a jurat as follows: "Sworn and subscribed at Jersey City, N. J., this 15th day of May, 1908, before me", 20 but does not contain the signature or name of office of any official before whom such petition could be sworn to—this having been left blank.

In the body of the petition there is no description of the property by metes and bounds as required by General Statute, page 3380.

On such application no notice thereof was given and there being infants involved there is a question whether the Court had jurisdiction.

The order contains a direction that a deed shall 30 issue unto C. Rudolph Dieffenbach conveying unto him, his executors and assigns, all said lands, etc. This language does not conform to the deed which purports to convey to his heirs.

In the affidavit of James J. Dowling as to the publication of the notice therein it purports to be verified the 27th day of May, but in the jurat the year is left blank and there is no copy of the notice annexed to said affidavit, and in the said jurat there is no mention of the place where said affi- 40 davit was taken.

*Schedule A, Annexed to Replication and Answer  
to Counterclaim of Arthur Brisbane.*

10 The proceedings seem to indicate that there about fifteen infants interested in the property besides a large number of adults; but there is nothing on the record to show whether the persons named in the proceedings are proper parties or all the parties interested who should have been joined in the proceeding.

The original resolution of the Board of Finance of Jersey City that this property should be sold for taxes could not be found in that office and a copy recites that the taxes and assessments have been adjusted; the deed states that the taxes and assessments have not been adjusted. In such resolution a number of other papers are recited, but they are not on record.

20 There appear to be no proofs of advertisement in the office of the City Collector; that is, advertisement of notice of sale, so that it is impossible to say whether such publication was properly made or made at all.

No Certificate of Sale on file in the office of the City Collector. When the deed was issued such certificate should have been returned and filed in the office of the City Collector and should remain on file in that office.

30 In the City Collector's office there is only a copy of the schedules containing this property among others which were to be sold for taxes; the original is not on file.

40 The order to issue the deed has not been filed in the office of the Clerk of the Supreme Court in accordance with Rule 40 of the Supreme Court of New Jersey and Rule 18 of the Circuit Court, which requires that such order shall be filed within ten days after the granting thereof; this order has never been filed at all and not being

*Schedule A, Annexed to Replication and Answer  
to Counterclaim of Arthur Brisbane.*

filed within the time required by law is void. See Mayor and Aldermen of Jersey City *vs.* Davis, City Collector, 76 Atl., 969, handed down by the New Jersey Supreme Court, June 30, 1910, which holds in effect that on order directing a deed to issue unless entered in the minutes of the Circuit Court in accordance and within the time required by the rule is void and of no effect. 10

The moving papers in the proceeding contain a number of typographical errors as to the spelling of various names.

Upon investigating the proceedings leading to the above tax sale in many instances the original records could not be found on file in the proper offices; these original records either having been destroyed or mislaid and thus it could not be ascertained whether or not the statute had been complied with by the public officers in the proceeding leading up to the sale of the property in question. 20

The defects above mentioned being of such a nature as to seem to preclude the possibility of this title being marketable unless they were explained or removed, a number of other matters in connection with the above proceeding were not investigated. If the above defects should be removed these matters can be taken up and looked into further. 30

Mortgage, Wilks to Olcott, recorded in Book 13, page 192. Cancellation clause on the margin of the record states that the original mortgage "was received in full by Lettie Allen, Administratrix of Nicholas Prior, Assignee, etc." No record of any such assignment could be found, so that this mortgage may still be a lien against the property. Cancellation clause on the margin of the record 40

*Schedule A, Annexed to Replication and Answer  
to Counterclaim of Arthur Brisbane.*

was not signed by the Register so this mortgage may still be a lien against the property.

10 Book 30, page 374 of Mortgages. Assignment of this mortgage (Book 33, Page 117) from Lettie Allen to John Paterson, assigns Book 30, page 374 of Mortgages. This mortgage not being properly cancelled for this additional reason may still be a lien against the property.

Book 31, page 739 of mortgages. Cancellation clause not signed by the Register. This mortgage affects the property and probably is still an outstanding lien.

Book 425, page 276 of Deeds. From where does Ella M. Dewey derive the interest she purports to convey by this deed?

20 Book 1078, page 91 of Deeds. Have no seals attached.

Book 43 of Deeds, page 721. Was the grantor, Daniel Van Reypen, unmarried?

Book 47 of Deeds, page 271. Deed taken subject to mortgage. Mortgage purports to be cancelled on receipt of Robert Gilchrist, assignee; no record to show assignment to Gilchrist. Mortgage may still be a lien.

30 Book 80 of Deeds, page 332. Subject to same objection as Book 47 of Deeds, page 271.

Book 1009 of Deeds, page 406. Is C. Rudolph Dieffenbach unmarried?

**Opinion.**

(Filed, April 10, 1929.)

## IN CHANCERY OF NEW JERSEY.

56-410

<p style="text-align: center;">IN THE MATTER</p> <p style="text-align: center;"><i>of</i></p> <p>The Application of the MAYOR AND ALDERMEN OF JERSEY CITY to acquire certain property for the purpose of widening Bergen Avenue, etc.</p>	}	<p>On Petition for Distribution of Award in Con- demnation Pro- ceedings, De- posited with the Clerk of the Court.</p> <p>Memorandum.</p>	<p>10</p> <p>20</p>
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(NOT TO BE PRINTED OR PUBLISHED)

THOMAS J. BROGAN, Solicitor for the Mayor  
and Aldermen of Jersey City.

PERKINS & DREWEN, Solicitors for James A.  
Sullivan and Ella J. Sullivan; and for  
Randolph Perkins.

SAUL and JOSEPH E. COHN, Solicitors for  
Arthur Brisbane (Robert H. McCarter,  
of Counsel). 30

MARK A. SULLIVAN, Solicitor for Ruth You-  
man, and for Dora E. Kastenhuber,  
Guardian *Ad Litem* of Grace R. Kasten-  
huber, a minor.

JEROME J. DUNN, Solicitor for William Mc-  
Cullough, a judgment creditor, of James  
A. Sullivan.

TREACY & MILTON, Solicitors *Pro Se.* 40

*Opinion.*

FALLON, V. C.:

The above entitled matter was heard by the late Vice-Chancellor John Griffin, and re-referred to me for consideration and decision upon the proofs submitted before him.

10 I have considered the pleadings, transcript of testimony, exhibits, and briefs submitted by the solicitors in behalf of James A. Sullivan, and Ella J. Sullivan, by the solicitors for Arthur Brisbane, and by the solicitor for Ruth Youman, and Dora E. Kastenhuber, guardian *ad litem* of Grace R. Kastenhuber, a minor.

20 The City of Jersey City acquired title by eminent domain proceedings to premises situate in said city. An award of \$54,145.00 was made thereafter in the Hudson County Circuit Court. Pursuant to an order bearing date September 13, 1924, the sum of \$58,128.62, representing the amount of said award, together with interest thereon to the date of said order, was deposited with the clerk of this court for distribution to parties entitled thereto. The petition upon which said order was based alleges that the parties interested in the award are James A. Sullivan, Ella J. Sullivan, Arthur Brisbane, and Phoebe Brisbane, his wife, Dora E. Kastenhuber and William P. Kastenhuber, her husband, Ruth Youman, and George Youman, her husband, Grace R. Kastenhuber, Acquila Wilks, Randolph Perkins, John J. Treacy and John Milton, partners under the name of Treacy & Milton, and the City of Jersey City. By order dated September 14, 1925, William McCullough, a judgment creditor of James A. Sullivan, was admitted as a party herein. By petition filed November 14, 1924, James A. Sullivan and Ella J. Sullivan claim they are entitled to the aforesaid sum of \$58,128.62, subject only to assignments in

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*Opinion.*

said petition mentioned, and they pray that an order be made authorizing and directing the clerk of this court to pay to Randolph Perkins, assignee, the sum of \$9,000.00, together with interest thereon from June 27, 1924, and to John J. Treacy and John Milton, partners under the name of Treacy & Milton, assignees, the sum of \$2,683.84, together with interest thereon (it appears from the proofs that the latter assignment bears date July 1, 1924), and to pay the entire balance of the aforesaid sum of \$58,128.62, with all accumulations of interest thereon, to said petitioners. An answer, and counterclaim, to the Sullivan petition, was filed January 10, 1925, in behalf of Arthur Brisbane, the purport whereof is that Brisbane claims to be entitled to whatever moneys the Sullivans may be entitled to by virtue of a conveyance made to Ella J. Sullivan (admittedly as trustee for James A. Sullivan) by James Billington, and Rose Anne Billington, his wife, by deed dated June 29, 1910. Brisbane's claim is based upon a contract entered into by James A. Sullivan on July 19, 1910, for the conveyance of the premises for which the aforesaid award was made, to Bennett Milner, whom it appears was acting as agent for Brisbane in the purchase of said premises. The Sullivan-Milnor contract was duly assigned to Brisbane. Sullivan contracted to convey the premises for a consideration of \$4,800.00, by deed "of full covenant and warranty, free from all encumbrances, except a mortgage of \$2,000.00, held by Jennie Turner." Brisbane employed a title company to examine the title to said premises, and said company reported to him, setting forth numerous alleged defects in the title. A statement of such alleged defects, marked "Schedule A" is annexed to and made part of an answer filed in behalf of the

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*Opinion.*

10       Sullivans to the bill of complaint of Arthur Brisbane (Docket 52, page 89). Brisbane and Sullivan have been litigating their respective rights under the aforesaid contract since February 28, 1911, when Brisbane filed his original bill of complaint against James A. Sullivan and Ella J. Sullivan, praying a specific performance of the aforesaid contract. It is clearly manifest from the pleadings and proofs that Brisbane, at the time he filed his aforesaid bill of complaint, was aware that the Sullivans had at most an interest in the premises described in the contract during the lifetime of Dora E. Kastenhuber, and was also aware that such interest depended upon the formality and legality of the proceedings had under a Martin Act tax sale, which he knew did not divest Ruth

20       (Kastenhuber) Youman, and Grace R. Kastenhuber, children of Dora E. Kastenhuber, and William P. Kastenhuber, her husband, of their respective interest in the premises. The matters in difference between Brisbane and the Sullivans, with respect to Brisbane's suit for the specific performance of the aforesaid contract, were several times considered and adjudicated in this court (Docket 45, page 661; Docket 52, page 89; Docket 56, page 410). See *Brisbane v. Sullivan*, 83 N. J. Eq. 182,

30       and on review by the Court of Errors and Appeals, 86 N. J. Eq. 411. See also *Brisbane v. Sullivan*, 93 N. J. Eq. 578. The proofs in the matter *sub judice* disclose that the premises respecting which the aforesaid award was made were owned by Thomas H. N. Wilks, who died July 8, 1889, leaving a last will and testament which was probated July 19, 1889, under the terms of which said premises were devised to the testator's adopted daughter, Dora Elcina Raspiller, also known as

40       Dora Elcina Wilks, for and during the term of

*Opinion.*

her natural life, and at her death, to the heirs of her body, born in lawful wedlock, with the proviso, that if she should leave no lawful issue her surviving at the time of her death, that the said premises should go to the testator's brother, Aquila Wilks, if he be then living, and if he be not then living, to his heirs at law, as if he had died intestate at the time of the death of said Dora Elcina (Raspiller) Wilks. The aforesaid devisee Dora Elcina (Raspiller) Wilks was married to William P. Kastenhuber, in the year 1901. Two children were the fruit of said marriage, Ruth Kastenhuber, who was born February 18, 1904, and Grace R. Kastenhuber, who was born November 20, 1907. Both of the aforesaid children are living (or were living at the date of hearing). Ruth Kastenhuber and Grace R. Kastenhuber took, by virtue of the aforesaid testamentary provision in the last will and testament of Thomas H. N. Wilks, a vested remainder in fee in the premises aforesaid *Demarest v. Hopper*, 22 N. J. L. 599. Ruth Kastenhuber, it appears, married one George Youman. Several children have been born to said parties, Dora E. Kastenhuber, with her husband William P. Kastenhuber, and their children, occupied the aforesaid premises for a considerable period of time, when, owing to their dilapidated condition, they removed therefrom. The Kastenhubers (husband and wife) subsequently rented the premises for a year or so at approximately \$18.00 per month. Owing to neglect of payment of municipal taxes the premises were advertised for sale and sold under and by virtue of the *Martin Act*, Chapter 112 of the Laws of 1886, and supplements thereto and acts amendatory thereof. By arrangement between Kastenhuber and his wife, and Charles R. Dieffenbach, the latter bid the prem-

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*Opinion.*

ises in at the Martin Act tax sale for the sum of \$194.22. Dieffenbach testified—"Mr. Kastenhuber told me he was interested in a little piece of property down on Wilks Street, a sort of an out-of-the-way place at the time—and that it was encumbered with some number of years of taxes, and he did not have the money, and still he would like to save it for his wife and his children; and he asked me whether I would help him get the title through a Martin Act sale; \* \* \* so I said I would do it for him; and I went down and bought it at a regular Martin Act sale." On being interrogated as to whether any proceedings were subsequently taken by him to perfect the tax title Dieffenbach testified; "To the best of my knowledge, the matter was just held by me until the property was repaired by a certain Mr. Foote—Aleck Foote, and then I think the matter went into Mr. Mulvaney's hands, who was at that time acting for Mrs. Kastenhuber, who was a Miss Wilks." The proofs disclose that such proceedings as were taken with respect to obtaining a tax deed were conducted by Mr. Mulvaney—John J. Mulvaney, a member of the New Jersey Bar. All moneys expended by Dieffenbach in the purchase of said premises at the tax sale, and in the making of alterations and improvements to said premises, approximately \$1,800.00 in all, were realized upon promissory notes made by William P. Kastenhuber and discounted by Dieffenbach at the Highland Trust Company. A small part of said sum of \$1,800.00 was repaid to Dieffenbach from rentals derived by William P. Kastenhuber and wife from the premises aforesaid. The principal part of said sum was repaid to Dieffenbach from moneys obtained through a mortgage made upon the property by William P. Kastenhuber and Dora E. Kasten-

*Opinion.*

huber, his wife, as mortgagors, to Jennie Turner, as mortgagee. When asked whether it cost him anything other than the sum obtained through the discount of Kastenhuber's promissory notes aforesaid, Dieffenbach testified—"No; he paid the discount fees; he paid the interest; he paid everything; he absolutely reimbursed me; I did not have a nickel loss." The Kastenhuber family re-occupied the premises just as soon as alterations and repairs were made thereto. The proofs manifest that William P. Kastenhuber and Dora E. Kastenhuber, his wife, suffered said premises to be sold under the Martin Act tax sale proceedings, ostensibly with a view of divesting their children (Ruth Kastenhuber and Grace R. Kastenhuber) of their vested remainder in fee therein. Such, a court of equity, cannot countenance. Dora E. Kastenhuber, was obliged as life tenant, to pay the taxes upon the premises, and to keep the premises in repair. The *parental* relation existing between Dora E. Kastenhuber, the life tenant, and William P. Kastenhuber, her husband, and their children, Ruth Kastenhuber and Grace R. Kastenhuber, who held a vested remainder in fee in the aforesaid premises, obligated said Dora E. Kastenhuber and her husband, to pay the taxes upon the premises, and to keep said premises in repair. It appears from the proofs that the aforesaid Kastenhuber children were not divested of their estate in said premises by virtue of the Martin Act proceedings aforesaid, which were initiated and prosecuted in the name of Charles R. Dieffenbach (though really for Dora E. Kastenhuber and William P. Kastenhuber, her husband) to obtain a deed from the City Comptroller of Jersey City. The petition filed therefor in the Hudson County Circuit Court did not, as required by the Martin Act (P. L. 1889,

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page 309; 4 Comp. Stat., page 521, Section 325), describe the premises *by metes and bounds*, as well as by lot and block number. It has been held that every requirement of the law, prescribing the procedure which tends to the security of the property owner, or for his benefit, must be strictly conformed to (*Jacobus v. Cahill*, 87 N. J. L. 562; *State, Baxter v. Jersey City*, 36 N. J. L. 188), and that a court of equity will seize upon the slightest flaw of substance in tax sales to restore property to the owner (*Welles v. Schaffer*, 98 N. J. Eq. 31, at p. 35; *McCandless v. Schaffer*, 142 Atl. Rep. 566); and that no intendment will be made in favor of the legality of tax sale proceedings, the burden of showing compliance with the law being on the purchaser (*State, Baxter v. Jersey City, supra*, at page 192), and that the due performance of every step in the proceedings, even in the most minute particulars, is a condition precedent to the validity of the sale (*Harrington Co. v. Horster*, 89 N. J. Eq. 270, 273). Grace R. Kastenhuber was not named in the Circuit Court proceedings aforesaid, nor was the requirement of the statute (Martin Act) with respect to service upon her of a notice to redeem, complied with. Because of non-compliance with the statutory requirements aforesaid the said petition of Charles R. Dieffenbach, and the judge of said court was therefore without authority to order the City Comptroller of Jersey City to make, execute and deliver to Dieffenbach a deed for said premises. Consequently, the deed which was made, executed and delivered by the City Comptroller of Jersey City to said Dieffenbach must be regarded as void, and being void, the only interest which Dieffenbach may be said to have had in the premises was such as derived through the certificate of tax sale issued

*Opinion.*

to him, and such was subject to redemption by parties in interest. It is fundamental that in every proceeding of a judicial nature it is essential that the person whose rights are to be affected should be a party to the proceeding, and have an opportunity of making a defense. *In re Martin*, 86 N. J. Eq. 265. And as was said by Vice-Chancellor Backes, in *Nugent v. Lindsley*, 135 Atl. Rep. 271—

“Notice and default are indispensable conditions to the divestiture of title by deed under the tax sale. The Comptroller’s deed operates as a bar only upon owners who have been served, in the manner required by the act, with notice to redeem, and who have defaulted. As to those not served, the deed is ineffective, and as to them the purchaser at the tax sale has but a tax lien which may be redeemed. The deed may be likened to a decree in foreclosure against defendants who were not served with process. As to them, the decree is invalid and may be attacked anywhere and at all times, while as to those served it is an effectual bar.” Sullivan (and his immediate predecessors in title) claiming title to the aforesaid premises, was chargeable with notice of such facts affecting the title as may have been ascertained by reference to the chain of title of such property as spread forth upon the public records (*Breitman v. Jachnal*, 99 N. J. Eq. 243), and with notice of whatever matters he would have learned by any inquiry which the recitals in such public records made it his duty to pursue (*Roll v. Rea*, 50 N. J. L. 264), and while parties dealing in real estate may ordinarily lawfully assume that the title is completely disclosed upon the records, there may be, as there manifestly was with respect to the premises aforesaid, circumstances of which they are bound to take notice, and which should apprise a

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*Opinion.*

reasonable man not only that the records may be defective, but that they are actually so. The aforesaid rule of law is applicable also to Brisbane and his assignor, claiming equitable title to said premises. In addition to the legal defects with respect to the tax deed aforesaid, as mentioned hereinabove, the pleadings and proofs in the matter *sub judice* disclose numerous other defects in the tax sale proceedings leading up to the sale. A detailed statement of numerous defects is contained in the report of title hereinabove mentioned. It may be that I am not warranted, in the matter *sub judice*, to stress defects in the tax sale proceedings leading up to the sale of the premises to Charles R. Dieffenbach, and the delivery of the certificate of sale to him. Our courts have repeatedly held that relief therefrom may be had only through *certiorari* proceedings in the Supreme Court. The settled law appears to be that proceedings leading up to the sale are reviewable on *certiorari* only in the Supreme Court. Proceedings subsequent to the sale tending to bar the right of redemption, may be questioned in equity. *Milmoe v. Zimmerman*, 95 N. J. Eq. 85, aff'd. 97 N. J. Eq. 326; *Jacobus v. Cahill*, 87 N. J. L. 562; *Nugent v. Lindsley*, 100 N. J. Eq. 87. I have in mind that the Court of Errors and Appeals in *Mackie v. Cain*, 92 N. J. Eq. 631, criticized the Court of Chancery for passing upon the validity of proceeding on which a tax sale under the Martin Act rested, but such criticism, in my judgment, was not intended to relate to proceedings subsequent to the sale, and more particularly relating to proceedings for the obtaining of a tax deed, which proceedings are intended to bar the right to redeem. Brisbane, by his several bills of complaint filed in this Court (Docket 45, page 661;

*Opinion.*

Docket 52, page 89; Docket 56, page 410) has *admitted* therein that Ruth Kastenhuber, and Grace R. Kastenhuber, who had a vested estate in remainder, in the premises aforesaid, were not served with notice to redeem and therefore the tax deed, as to them, was invalid as a conveyance of their respective interests. Charles R. Dieffenbach made a deed of conveyance (such as he could) to William P. Kastenhuber, the husband of Dora E. Kastenhuber, the life tenant. The Kastenhubers (husband and wife) then mortgaged the premises to one Jennie Turner to secure payment of the sum of \$2,000.00. William P. Kastenhuber, and Dora E. Kastenhuber, his wife, then joined in a conveyance to James Billington, subject to the aforesaid Turner mortgage, and James Billington, and Rose Anne Billington, his wife, made a deed of conveyance to Ella J. Sullivan—whom it is acknowledged took and held such title as acquired by such deed, for her brother (James A. Sullivan) who advanced the purchase money. It is quite significant, in my judgment, that Brisbane in the fourth paragraph of his bill of complaint filed December 16, 1918 (Docket 45, page 661), and likewise in the same paragraph of his amended bill of complaint filed November 1, 1920, avers that the conveyance whereby the fee simple title of the aforesaid premises was attempted to be vested in Ella J. Sullivan, did not legally and effectually convey more than a life estate, and that by reason of said conveyance said Ella J. Sullivan “acquired only a right, title and interest in the said premises for the life of the said Dora E. Kastenhuber and vested in the said Ella J. Sullivan only such interest in the premises as was owned by the said Dora E. Kastenhuber under and by virtue of the will of Thomas H. N.

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*Opinion.*

Wilks." Brisbane, by paragraph 18 of his bill of complaint filed June 29, 1922 (Docket 52, page 89) alleges that he tendered to the Sullivans the entire purchase price set forth in the aforesaid contract of sale and agreed to accept from them a conveyance of all such right, title and interest as they may have had in and to the aforesaid premises, and had offered to regard such conveyance as a complete performance by the Sullivans of all their obligations under the aforesaid contract. Although the deed from William P. Kastenhuber and Dora E. Kastenhuber, his wife, to James Billington, did not effect a conveyance of a fee of the premises aforesaid, described therein, such deed nevertheless effected a conveyance of the life tenancy of Dora E. Kastenhuber in and to said premises, and such *life tenancy* only was acquired by the Sullivans, and by virtue of the Sullivan-Milner contract, equitably, by Brisbane. Counsel in the matter *sub judice* have in their presentment of their respective claims seemingly overlooked the fact, as I consider such to be, that there is a possibility that Dora E. Kastenhuber, the life tenant, may yet have other "heirs of her body born in lawful wedlock", in which event the latter would become entitled to a share in the moneys now in Court, representing the award which stands in lieu of the premises devised by the testator hereinabove mentioned, Thomas H. N. Wilks. Furthermore, if the children of Dora E. Kastenhuber, the life tenant aforesaid, have children born unto them, who survive such life tenant, such children, in the event of his or her parent predeceasing such life tenant, will be entitled to such part of the above mentioned fund, as vested in the parent. *Lamprey v. Whitehead*, 64 N. J. Eq. 408; *Dowe's Case*, 68 N. J. Eq. 11; *Richman v.*

*Opinion.*

*Standard Oil Co.*, 123 Atl. Rep. 608; *Descent Act*, 2 Comp. Stat., page 1921, Sections 10 and 11. The aforesaid fund which has been deposited with the clerk of this Court is to be regarded in lieu of the premises for which the award in condemnation proceedings was made, and, in equity, is to be regarded as subject to the claims of all persons interested in said premises. *Bright v. Platt*, 32 N. J. Eq. 362, at page 371; *Wheeler v. Kirtland*, 27 N. J. Eq. 534; *Crane v. Elizabeth*, 36 N. J. Eq. 339, at page 343. The file of papers before me in the matter *sub judice* (Docket 56, page 410) indicates that orders have been made authorizing and directing the Clerk of the Court to make payment from the fund in his possession of divers sums to divers parties. How much thereof has been paid, if any, I cannot now determine.

My conclusion is that the aforesaid comptroller's deed to Charles R. Dieffenbach be decreed void, and that Brisbane by virtue of the aforesaid Sullivan-Milnor contract, is equitably entitled, upon complying with the offer made by him in his bill of complaint, reference to which is hereinabove made, to so much of the aforesaid fund, deposited with the Clerk of this Court, representing the award aforesaid, as Ella J. Sullivan, and James A. Sullivan, her brother, would have been entitled to if the aforesaid Sullivan-Milner contract (which was assigned to Brisbane) had not been made.

The interest in the aforesaid fund, and the priorities of the respective parties, appear to me to be as follows:

- (1) The claim of Jersey City for taxes and water rents, as per orders made relating thereto;

*Opinion.*

(2) the claim of Jennie Turner, as mortgagee, for the life tenancy only of Dora E. Kastenhuber. Said mortgagee should receive payment of interest on her mortgage at the periods provided therein therefor, during the life of Dora E. Kastenhuber; (3) the claim of Brisbane to the Sullivan interests, that is, to the life tenancy of Dora E. Kastenhuber, subject, however, to the interest moneys payable on the aforesaid Turner mortgage, Brisbane, however, as a condition precedent to his participating, as claimant, in the aforesaid fund, shall pay to the Sullivans the moneys payable to them under the Sullivan-Milner contract, assigned to Brisbane, upon such sum being ascertained.

20 The assignees of Sullivan hereinabove mentioned, to wit, Randolph Perkins, and John J. Treacy and John Milton, partners under the name of Treacy & Milton, are not entitled, under their respective assignments, to any part of the aforesaid fund, such assignments being subordinate to the several interests aforesaid.

30 William McCullough, as judgment creditor of James A. Sullivan, is not entitled, under his judgment, to any part of the aforesaid fund, such judgment being subordinate to the several interests aforesaid.

40 Subject to payments being made from the aforesaid fund, as hereinabove indicated, and compliance with the conditions aforesaid, the *interest* on the remainder of the fund as it accrues from time to time, shall be paid by the Clerk of the Court to Arthur Brisbane, during the term of the life of Dora E. Kastenhuber. Upon the death of Dora E. Kastenhuber, the *principal* of the aforesaid fund, as it shall then be on deposit with the Clerk of the Court, or in his custody or

*Opinion.*

control, shall be paid to such parties interested as may then be entitled thereto, such interests to be then ascertained by appropriate investigation.

I will advise an order accordingly. Counsel for the respective parties may agree upon the form of the order to be entered, before its submission to me.

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Dated, Hoboken, N. J., April 10, 1929.

**Final Decree.**

(Entered May 8, 1930.)

## IN CHANCERY OF NEW JERSEY.

IN THE MATTER

*of*

The Application of the MAYOR  
AND ALDERMEN OF JERSEY CITY  
to acquire certain property for  
the widening of Bergen Ave-  
nue, etc.

Final Decree.

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This matter coming on to be heard before the Court in the presence of Thomas J. Brogan, Solicitor for the Mayor and Aldermen of Jersey City, Messrs. Perkins & Drewen, Solicitors for James A. Sullivan and Ella J. Sullivan, and for Randolph Perkins; Saul and Joseph E. Cohn (Robert H. McCarter of Counsel), Solicitors for Arthur Brisbane; Mark A. Sullivan, Solicitor for Ruth Youman and Dora E. Kastenhuber, guardian *ad litem* of Grace R. Kastenhuber, a minor;

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*Final Decree.*

Jerome J. Dunn, Solicitor for William McCullough; and Treacy & Milton, Counsellors-at-law, Solicitors for themselves; and it appearing that the City of Jersey City, the petitioner above named, had acquired title by proceedings in eminent domain to lands and premises within the bounds of Jersey City, which lands and premises are described as follows:

Premises in the City of Jersey City, County of Hudson and State of New Jersey, known and designated on the "Official Assessment Map of Jersey City, N. J. 1894 made by L. D. Fowler, Civil Engineer and Surveyor" as Lot F in Block 1865;

and that upon appeal from an award of Commissioners appointed to ascertain the value of the premises so taken, a judgment and verdict were obtained on March 19, 1923, in the Hudson County Circuit Court, that the said City should pay for said premises the sum of \$54,145.00, and that pursuant to an order in said cause bearing date September 13, 1924, the sum of \$58,753.58, representing the amount of said verdict, together with interest thereon to the date of said order, was by said City deposited with the Clerk of this Court for distribution to the parties entitled thereto; and the said James A. Sullivan and Ella J. Sullivan, having filed their petition in this cause alleging that they were wholly entitled to the said moneys, as owners of said premises; and answers being filed to said last mentioned petition by several of the parties claiming to be entitled to said proceedings, or a part thereof; and the matter having come on to be heard before the Honorable John Griffin, Vice-Chancellor, to whom said proceedings were in due course referred to hear the same for the Chancellor, and to advise what order

*Final Decree.*

or decree should be entered therein; and the proofs having been taken before him; and said Vice-Chancellor having departed this life before the final determination of said cause; and the said cause thereafter being referred to Honorable John J. Fallon, Vice-Chancellor, to hear and determine the same, and to advise the Chancellor what order should be made in said cause; and counsel for the several parties having been heard and their arguments considered, and the Court having reached the conclusion that the fund so deposited by the said City of Jersey City with the Clerk of this Court is to be regarded in lieu of the premises for which the award in condemnation proceedings was made, and in equity is to be regarded as subject to the claims of all persons interested in said premises; and it appearing that by orders duly made in this cause certain parts of said fund have been from time to time paid to the persons named in said orders, namely, that Treacy & Milton have received the sum of \$2,683.84 out of the principal thereof, pursuant to an order dated June 15, 1925; that George W. Black, official stenographer, has received the sum of \$154.35, in accordance with an order dated June 29, 1926; and that the said City of Jersey City has received the sum of \$3,525.56, in accordance with an order of this court dated November 1, 1926, together with \$232.88 interest on said sum of \$3,525.56, in accordance with an order of this Court dated November 29, 1926, or a total of \$3,758.44; and it further appearing that Treacy & Milton, the City of Jersey City and George W. Black, by virtue of said orders and payments no longer have any interest in the said verdict or the balance remaining therefrom; and it being further admitted that Jennie Turner, one of the parties in said suit holding a mortgage upon

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*Final Decree.*

the premises amounting to \$2,000.00 principal, has been paid in full, and therefore no longer has any interest in said fund, which said fund after the deductions and payments aforesaid, exclusive of accumulations of interest, from date of deposit amounts to \$52,156.95, and the Court being of the opinion that Ruth Youman and Grace R. Kastenhuber have an interest in the fund equivalent to a vested remainder in fee in the premises, subject to an estate for the life of their mother Dora E. Kastenhuber and that the said Arthur Brisbane has an interest in said fund, equivalent to a life estate in the premises during the life of Dora E. Kastenhuber, subject, however, to the payment by the said Arthur Brisbane of the balance of the consideration to be paid under a contract for the sale of said lands, dated the 19th day of July, 1910, between James A. Sullivan and one Bennett Milnor, which said contract was by assignment dated the 24th day of August, 1910, duly assigned by the said Bennett Milnor, to the said Arthur Brisbane, less any payments made thereon; and the Court being further of the opinion that Randolph Perkins is not entitled under the assignment to him set out in said proceedings, to any part of said fund, such assignment being subordinate to the interest of the said Arthur Brisbane; and the same thing being true of the claim of William McCullough, a judgment creditor of James A. Sullivan; and the Court being further of the opinion that the petitioners, James A. Sullivan and Ella J. Sullivan, are not entitled to share in said fund; and that the principal thereof should remain on deposit with the Clerk of this Court until the death of the said Dora E. Kastenhuber, at which time it should then be paid to such persons as then, by appropriate investigations shall be determined to be entitled thereto;

*Final Decree.*

IT IS THEREUPON, on this 8th day of May, 1930, on motion of Mark A. Sullivan, Solicitor of Ruth Youman and Dora E. Kastenhuber, guardian as aforesaid, ORDERED, ADJUDGED AND DECREED, and the Chancellor doth by virtue of the power and authority in him vested, ORDER, ADJUDGE AND DECREE, 10  
 that the said James A. Sullivan, Ella J. Sullivan, Randolph Perkins and William McCullough, have no interest in said fund; that Ruth Youman and Grace R. Kastenhuber have an interest in the fund equivalent to a vested remainder in fee in the premises, subject to an estate for the life of their mother Dora E. Kastenhuber; that Arthur Brisbane has an interest in said fund equivalent to a life estate in the premises during the life of Dora E. Kastenhuber, subject to the payment to 20  
 James A. Sullivan and Ella J. Sullivan by the said Arthur Brisbane of such sum as may be ascertained to be due them under the contract dated July 19, 1910, between James A. Sullivan and Bennett Milnor on the reference hereinafter provided for.

AND IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Clerk of this Court forthwith pay to the said Arthur Brisbane out of the fund now in his possession, the sum of \$850.14, being interest at the rate of 6% per annum, on the sum of 30  
 \$54,145.00, from March 19, 1923, the date of said award, to September 13, 1924, the date when said award was deposited with the Clerk of this Court, less the amount paid Jersey City for taxes, and in addition thereto any and all accumulations of interest on the principal of said sum of \$54,145.00 or balance thereof in the possession of said Clerk from September 13, 1924, to the date of this Decree, deducting however, from said accumulations, 40  
 income and interest, and paying to James A.

*Final Decree.*

10 Sullivan and Ella J. Sullivan, out of the amount so due to the said Arthur Brisbane, such sum as John F. Gough, Master in Chancery to whom the matter is hereby referred, may find to be due said James A. Sullivan and Ella J. Sullivan under the contract dated July 19, 1910, aforesaid, on the assumption that said contract will be completely performed on the part of James A. Sullivan and Ella J. Sullivan by compliance with this decree.

20 AND IT IS FURTHER ORDERED, ADJUDGED AND DECREED that out of the balance remaining in his hands, after making the above payments, the said Clerk of this Court do pay to Mark A. Sullivan, Solicitor for Ruth Youman and Grace R. Kastenhuber, their costs to be taxed, including a counsel fee of Five thousand (\$5,000.) Dollars which is hereby allowed to Mark A. Sullivan, as Counsel.

30 AND IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the sum of \$51,306.81, being the balance of the principal sum of the award after deductions for payments previously made to John J. Treacy and John Milton, partners under the name of Treacy & Milton, and George W. Black, pursuant to prior orders of this Court, less the amount herein allowed for counsel fees and costs, shall remain in the custody and control of the Clerk of this Court, and be invested in bonds secured by first mortgages on improved real estate of good and sufficient security, and/or such securities as the savings banks of the State of New Jersey are authorized and empowered to invest funds, and that the income arising from said investments, be paid semi-annually to the said Arthur Brisbane, his executors, administrators and assigns, for and during the lifetime of Dora E. Kastenhuber, and upon her death, the principal of the  
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*Final Decree.*

aforesaid fund, as it shall then be on deposit, shall be paid or transferred to such parties as may then be entitled thereto, said interests to be then ascertained by an appropriate investigation.

AND IT IS FURTHER ORDERED, ADJUDGED AND DECREED that all further equities be reserved, and that any party may have leave to apply to this Court for further order or direction as the occasion may arise. 10

E. R. WALKER,  
Chancellor.

Respectfully advised:

JOHN J. FALLON,  
V. C. 20

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**Testimony.**

## IN CHANCERY OF NEW JERSEY.

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 IN THE MATTER

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*of*

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The Application of the MAYOR AND ALDERMEN OF JERSEY CITY to acquire certain property of the Evening Journal Association, a corporation of the State of New Jersey, and others, for the purpose of widening Bergen Avenue, and the establishment of a plaza to accommodate and relieve congestion of traffic in the neighborhood of the Summit Avenue Tube Station in the City of Jersey City.

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On Bill, etc.  
Petition.  
Minutes of Final  
Hearing.

## Appearances:

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MESSRS COHN & COHN (MR. ROBERT H. McCARTER, of Counsel), for Arthur Brisbane.

MESSRS. PERKINS & DREWEN (MR. J. E. WALSCHIED, of Counsel), for James A. and Ella J. Sullivan.

MR. MARK A. SULLIVAN, for Grace Kastenhuber and Ruth Youmans.

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MR. JEROME DUNN, for Wm. McCullough, a Judgment Creditor.

Before HON. JOHN GRIFFIN, Vice-Chancellor.

*Testimony.*

Chancery Chambers, Jersey City, N. J.,

May 27th, 1926.

Mr. Drewen: If your Honor please, the petition in this matter is—

The Vice-Chancellor: I have read the petition, answer, counter-claim and replication. 10

Mr. Drewen: I have here a transcript of the testimony that was taken at the hearing of the case of Brisbane *vs.* Sullivan, and the exhibits which were admitted by Vice-Chancellor Howell, and I have proposed to Mr. McCarter that, as between Mr. Brisbane and the defendants Sullivan, who are petitioners in this proceeding, that the same be offered as the testimony and exhibits between them; and while Mr. McCarter had some doubt about the materiality and relevancy of it, I suggested that it be offered subject to his right to object to the materiality when this matter is argued. All we can do today is to submit the evidence. 20

Mr. Sullivan: Before the Court goes into the testimony in this matter, I have just seen the pleadings in this case, and I find there is no formal answer filed by these infants whom I was designated to represent in this matter. The claim of these children is that they are the owners of the remainder, and that all that either Mr. Brisbane or Mr. Sullivan has in this property is a life estate of Dora Kastenhuber. Now, I think, if your Honor will allow that to stand to-day as our answer, I will file a formal answer setting up that claim, with the consent of counsel on the other side. 30

Mr. McCarter: We are very anxious, if the Court please, to get ahead in this matter. These 40

*Testimony.*

infants, about whose rights your Honor has been so solicitous, seemed to be more or less slow about coming forward. Your Honor will remember, the last time we were here we had to adjourn until to-day because the infants had not been gotten into court at that time; and, as far as I am concerned (and, I think, Mr. Cohn), representing the Brisbane interests, that we have no objection to the suggestion Judge Sullivan just made, namely, that there being no formal answer on file now for the infants, the statement of Judge Sullivan, who acts as guardian of these children, be taken for the purposes of the day, as the answer, and that we go on with this case and complete it, and that he file an answer *nunc pro tunc*, setting up just what he says. We have no objection to that. But I understand that the case has been somewhat changed in purport and effect by reason of the fact that, during this litigation (which, as your Honor knows, has been very protracted), the land has been transmuted into this fund of money; and that, by independent proceedings—entirely independent of the equity suit that was in progress here—that money has been paid into this Court, to have this Court determine who is entitled to that money; and that, by the papers that are on file in that proceeding, it appears, on one hand, that Mr. Brisbane makes a claim for this money. Of course, Mr. Sullivan says he is the owner; and now comes Judge Sullivan, with his representation of the Kastenhuber children. I do not know who, if anybody, appears for Mrs. Kastenhuber, the life-tenant; but she is here, I understand, but has no counsel. Now, I think the orderly thing to do, your Honor, today, is for Mr. Drewen, who represents the claimant of this fund, to state his position. He is the petitioner here. There is no

*Testimony.*

dispute between us. It all gets down, largely, to a matter of law; and we would like an opportunity to examine Mrs. Kastenhuber. And, as far as Mr. Drewen's offer of that book of evidence is concerned, it seems to us that a large part of that book of evidence, if not all of it, is utterly irrelevant to this controversy as it now exists—we are not standing on the fact that, if something is proven in there that is material to this controversy, it shall not be admitted; but I think, if Mr. Drewen wants anything that is in that book, he should tell your Honor what he wants, and then we will say right away that we do or we do not object to that. We do not object to the mode of proof, but we think it is immaterial; we do not think that a large part of that book, which contains the evidence before Vice Chancellor Howell, has any materiality to this situation as it now exists; and that is our answer to Mr. Drewen's suggestion. Now, our position, as far as Mr. Brisbane is concerned, is this, as I understand it: Whatever interest the Sullivans had in this land, or this money, we claim, by virtue of the agreement between Sullivan and Brisbane. We think he ought to have more than a life interest—we are quite suspicious about that; and we think, therefore, that the question of the extent of Mr. Sullivan's interest in this thing has got to be ascertained, and, whatever it is, we have it. And if the Kastenhuber interest is not the Sullivan interest, then they have got their rights, I suppose; but it seems the whole controversy settles right around that. Now, there is a lot of stuff in that book that has nothing to do with this case.

The Vice-Chancellor: The real question is whether, by the deed from Kastenhuber and wife to Billington, it conveyed a life estate or a fee.

*Testimony.*

Mr. McCarter: Well, it may be that the proper construction of that interest, under the facts, would be that it was only a life interest; but suppose, in the meantime, the Sullivans have amplified that interest? Suppose there is a larger interest than a mere life interest? I think we are  
10 entitled to know that. They say they are entitled to the whole thing. Certainly they cannot get rid of what interests we have got under our Brisbane deed; and we think it is an argument upon what has probably occurred in the meantime, rather than what appeared at the old trial. That is our situation.

Mr. Drewen: Now, with regard to what Mr. McCarter is concerned with, I will state Mr. Sullivan's position here: This matter was today set  
20 down for a hearing, and what I came here prepared to do was to submit to your Honor every available and proper fact in the controversy from which legal conclusions hereafter will be drawn by the Court. Now, of course, I do not come here now prepared to decide whether Mr. Sullivan's claim is a life interest, or the whole of this; but this matter is to be prepared for final argument, and that we are not prepared to do today. This is a hearing, as I understand it. Now, of course,  
30 Mr. McCarter says they want all that Mr. Sullivan has. That puts the onus on our side of saying what we claim Mr. Sullivan has. Of course, we can very easily say we claim it all, but that would not help your Honor any. But, as far as today's proceedings are concerned, we respectfully submit that we are here to get the facts before the Court; and I presume (although I do not mean to anticipate) that your Honor will ask for briefs from both sides, if not for oral argument. Now,  
40 concerning this book: Mr. McCarter refers to

*Testimony.*

some new situation here—the rights of Brisbane and Sullivan grow out of the issues of a specific performance suit on a contract to convey real estate. Now, this testimony, if your Honor please, which was taken on that issue as between Mr. Brisbane and Mr. Sullivan, and the exhibits offered, were evidence and exhibits proved and established and admitted by Vice-Chancellor Howell and taken in that issue. Now, what I offer is this transcript of testimony, together with the exhibits, which were offered as to the very controversy here in issue between Mr. Brisbane and Mr. Sullivan; and I offer it as the evidence between those parties at this stage of the litigation. If it turns out, in your Honor's judgment, to be irrelevant and immaterial, of course, nobody is harmed by it.

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The Vice-Chancellor: How is it good evidence if it is objected to?

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Mr. Drewen: It is not, strictly speaking. I do not understand that it is objected to. Mr. Cohn assured me yesterday that it would be perfectly all right to do just as we did the last time. As I understand Mr. McCarter, he does not object to it, except that he wants to reserve his right of argument as to its relevancy and materiality in the present state of the case.

Mr. McCarter: The last thing I want to be is obstructive, your Honor; and this thing has drifted along here year after year, and is stale with all of us. I think Mr. Drewen has filed this petition claiming this money for Sullivan, and your Honor has said, "Well, here, other people have to come in," and permitted us to come in, and we have filed, under your Honor's order, against their protest, an answer setting up our claim to this money, and they moved to strike that out, and your Honor declined to do that. You said,

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*Testimony.*

“There is a fund in Court, and Mr. Brisbane says he has some rights in the fund.” Now, the complainant here, the actor in this litigation, is Mr. Sullivan. We are defendants, and we are brought in here, and we are claiming it, too. I should think it would be up to Mr. Sullivan, through his  
 10 counsel, Mr. Drewen, frankly to come out here and say exactly what his position is. He files the petition; and yet, when I ask him to assert before your Honor what his claim is, and prove it, he says, “Well, I don’t know what it is; I want to offer fifty-seven pages of evidence taken before Vice-Chancellor Howell in another controversy five years or more ago, when the issue was entirely different.” Now, I think if he thinks any part of  
 20 that book of evidence is germane to the controversy here, he ought to point it out; and, if your Honor thinks it is germane to the suit, that the book should be used rather than re-offer the testimony.

Mr. Drewen: Let the book go in. I think Mr. McCarter will——

The Vice-Chancellor: I know, but if the book is objected to, then it cannot be admitted.

Mr. Drewen: All right; then I appeal to my adversaries on the basis of what has transpired between us: I wrote Mr. McCarter and Mr. Cohn  
 30 a letter, and told them that I proposed to use this book as we did at the last hearing in which I took part; and I said that, unless I heard to the contrary, I would assume that it was satisfactory. I got no response. I tried to get into communication with Mr. McCarter and could not reach him; and yesterday Mr. Cohn finally told me that that would be all right.

Mr. Cohn: I told Mr. Drewen that Mr. McCarter  
 40 was not available; and I told him that I

*Testimony.*

thought we could arrange amicably to introduce the portion of the book which was relevant. That is what I told Mr. Drewen. I said, "We will not put you to the annoyance"—that is the way we played baseball—that is the language I used—I said, "I won't put you to the annoyance of re-proving anything that is relevant to the issue." 10  
 But I did not agree that he should put in a book that contains some two hundred and twenty pages of matter. Now, we are still ready to carry out our thought. I did not ask Mr. McCarter, because he was not available and I could not get him. But I know he wants to be sportsmanlike in any proceeding. Now, we say we do not object to anything in that book which Mr. Drewen will point out that is applicable to the case in hand. But we think that to merely put in two hundred pages of a book into a record which may have to be re-printed would not be good judgment. 20

Mr. Drewen: Now, it is all very well to refer to it as "a book of two hundred pages"; but what I want to offer is very concrete and specific; it is the printed matter in this book from page 113 to page 217 (inclusive), exactly 104 pages, which is the testimony of Mr. Brisbane as to the defects in the title; the statement of those defects by Mr. Brisbane; the letters that passed between Mr. Brisbane's agents and Mr. Sullivan bearing upon the specific performance controversy, and that is all. 30  
 Now, of course I could read it, word for word, to your Honor, but that would not help the situation. When this book was offered a year or so ago, Mr. McCarter and Mr. Cohn knew what the testimony was.

The Vice-Chancellor: Now, show what you want to offer to counsel on the other side, and see if they object to it, or will admit it. 40

*Testimony.*

(Mr. Drewen thereupon exhibits the pages in the book referred to to Mr. McCarter and Mr. Cohn.)

Mr. McCarter: Why cannot Mr. Drewen point out in that such parts as he thinks is material?

10 Mr. Cohn: We are very anxious to dispose of this case. It may be, if your Honor agrees, that this might be a way out of this difficulty: If Mr. Drewen will get up a stipulation as to how much of the testimony he wants to offer, we will go over it, and take the attitude that we will agree by stipulation that that portion of the testimony will be admitted which we think has any relevancy; and I think that will probably apply to the major portion of it. But up to this moment  
20 we have not had any concrete information as to what Mr. Drewen wants to put in. I think we can overcome this difficulty in that way.

The Vice-Chancellor: Well, a lot of that testimony, as I recall it, will also be pertinent to the issue between the Kastenhuber children and both of you gentlemen—the evidence there as to the tax sale, the defects in the notices, and all that, if it is material and relevant as to you, also applies to the Kastenhuber children.

30 Mr. Cohn: Of course, that was merely evidence of what the Title Company deemed an objection to the title. Now, whether your Honor can rest on that, without proof as to the invalidity of this proceeding—

The Vice-Chancellor: Oh, no; I don't know that I have a right to determine the validity of that proceeding.

Mr. Cohn: Well, that is why I say that we are not prepared this morning to let the whole book go in.

40 Mr. McCarter: I want to know what rights Mr.

*Testimony.*

Sullivan pretends to have. Why cannot he tell that? He says in his petition he owns it all.

The Vice-Chancellor: Of course, he cannot get more than he prays for.

Mr. McCarter: No. We deny that he owns it all; and we say that whatever he owns we have; and the issue is marked by the petition, answer and counterclaim. And I think we could go on and let these Kastenhubers show what their position is, and get to the end of this thing. 10

Mr. Drewen: Yes; but we cannot get to the end of it unless things which are obviously part of this situation are admitted without cavil or dispute. If I came here and wanted to prove this all over again by the same witnesses and the same documents, your Honor will ask me, "Well, has not this all been proved in this controversy? Why don't you gentlemen agree on the record?" 20

Mr. Cohn: Well, we can agree on the record, if you will only permit us to go over it with you; we will try our level best to agree on it.

The Vice-Chancellor: Is there testimony to be offered outside of the book?

Mr. Drewen: As far as we are concerned, all the evidence, apart from the book, is documentary.

Judge Sullivan: I have some evidence. 30

The Vice-Chancellor: Well, suppose Judge Sullivan goes on with his part of the case.

Judge Sullivan: I think there will be no objection on either side to admitting the will as printed in the book, and the deed from the City of Jersey City to Mr. Dieffenbach, if that is printed in there.

Mr. Drewen: Yes.

Judge Sullivan: And the deed from Dieffenbach to Kastenhuber, and the deed from Kastenhuber to Billington. 40

*Testimony.*

The Vice-Chancellor: I have rather a recollection that the dates of those deeds do not appear in that record.

Judge Sullivan: I think the deeds themselves are printed in here.

10 Mr. Drewen: The deed from Dieffenbach to Kastenhuber is not there, but all the others are. But that deed from Dieffenbach to Kastenhuber is an admitted deed.

The Vice-Chancellor: My recollection is that that book did not contain the deed from Kastenhuber to Billington, but only contained the deed from the City, and the deed from Dieffenbach to Kastenhuber, showing that he transferred it.

20 Mr. Drewen: All of those things are definitely admitted in detail in the pleadings.

The Vice-Chancellor: There are no dates at all, and I consider the matter of time very important.

Judge Sullivan (examining the printed book): The deed from Kastenhuber to Billington is here, that is Exhibit C-6; and the Will of Thomas H. N. Wilks is here, that is Exhibit C-8.

Mr. Drewen: I did not mean to say that they were admitted in the pleadings in this proceeding, but in the preceding proceeding they are admitted and the dates are given.

30 The Vice-Chancellor: I know, but my recollection is that in the printed record it did not appear when the City sold to Dieffenbach and when Dieffenbach sold to Kastenhuber. But, of course, it would not make much difference there, between Sullivan and Brisbane, but it makes a good deal of difference so far as the infants are concerned.

Judge Sullivan: May I offer the deed in evidence now, and produce a certified copy of both of these deeds?

40 The Vice-Chancellor: Well, if counsel agree.

*Testimony.*

Judge Sullivan: I might say that I was assured that all of these deeds had been printed in this record, and I was unable to get a copy of this record (referring to the printed book), and Mr. Drewen did not have any; and I did not know where to get it until this morning, when both of these books came out.

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The Vice-Chancellor: I think that all that is in that book is the deed from Billington to Sullivan. I suppose what you want to know is the title to this property, starting with the will of Wilks—you want to show the chain of title by deeds down to date.

Judge Sullivan: I find that in this record there is not a copy of the deed from the City to Dieffenbach, or from Dieffenbach to Kastenhuber; have you any objection to my offering certified copies of those deeds?

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Mr. McCarter: I have not the slightest.

Judge Sullivan: I also desire to offer in evidence the bill of complaint filed by Arthur Brisbane in a proceeding in the Court of Chancery in which he is complainant and James A. Sullivan is defendant (according to the endorsement) which was filed on July 29, 1922. That is the last bill of complaint, as I understand it.

Mr. McCarter: We take the attitude that it is irrelevant and immaterial, and has been superseded by the fact that since that bill was filed the proceedings resulting in a transmutation of the land to money have occurred, and the money has been brought into this Court by an independent proceeding, to which independent proceeding, by your Honor's permission, we have filed an answer and counterclaim; and they have answered that counterclaim; and it does not seem to me that that particular bill of complaint has any relevancy to this clause.

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*Testimony.*

10 Judge Sullivan: I might explain that the purpose of offering the bill is this—that in the bill of complaint Brisbane sets out that the only title that Sullivan had, at the time he entered into the contract with Mr. Brisbane to convey, was a life estate. I think that is an admission, as far as Mr. Brisbane is concerned, of what the extent of his right is in this fund. As I take it, this fund that is in the Court simply represents the land. The reason that it was paid into Court was because those who had any interest in the land might come into the Court of Chancery and prove their interest, and thus get a portion of the money that represents the land itself.

20 The Vice-Chancellor: Mr. Sullivan says that is his only interest—that he only had that right.

Judge Sullivan: Mr. Brisbane, you mean.

The Vice-Chancellor: No, I mean Mr. Sullivan.

Judge Sullivan: Well, this is Mr. Brisbane's bill that I am offering.

The Vice-Chancellor: I do not see where it is material; because you have got to prove your title.

30 Judge Sullivan: Well, is not this an admission, if your Honor please? I expect to prove my title, also, but it seems to me that where Mr. Brisbane comes into the Court of Chancery of New Jersey and sets out, in paragraph 4 of this bill, the sale from the City to Mr. Dieffenbach, and from Dieffenbach to William P. Kastenhuber, the husband of Dora Kastenhuber, and says that the said Kastenhuber and the said Dora "conveyed the premises in question for a valuable consideration to James Billington by deed of warranty, dated the 28th day of June, 1910, and that the said James Billington and his  
40 wife in turn conveyed the premises in question to

*Testimony.*

one Ella J. Sullivan by deed of warranty, dated the twenty-ninth day of June, 1910, and recorded in the Hudson County Register's Office on the thirtieth day of June, 1910, in Book 1078 of Deeds for said County, at page 91. Your orator charges that the conveyance set forth in this paragraph whereby the fee simple title of the said premises was attempted to be vested in the said Ella J. Sullivan, did not legally and effectually convey more than a life estate, and that your orator charges that the said Ella J. Sullivan, by reason of the said conveyance, acquired only a right, title and interest in the said premises, for the life of the said Dora E. Kastenhuber, and vested in the said Ella J. Sullivan only such interest in the premises as was owned by the said Dora E. Kastenhuber under and by virtue of the will of Thomas H. N. Wilks", that that is an admission. Now, I say that Mr. Brisbane cannot blow hot and cold on this proposition. He cannot file a bill in Chancery against James A. Sullivan and say: "Your title is only a life estate, and, therefore, you cannot convey to me the thing that you contracted to convey to me" and then when the money comes into Court come in and say: "Well, it is true I said all that thing, but we are not bound by it". I think they are bound by it.

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The Vice-Chancellor: But he is not alleging a fact; he is alleging a conclusion of law.

Judge Sullivan: Based on the facts that he sets out in the bill.

The Vice-Chancellor: That being the fact, it is a question for the Court to determine. I think I will sustain the objection for the present. After your testimony is in you may consider whether you want to offer it.

40

*Charles Rudolph Dieffenbach—Direct.*

Judge Sullivan thereupon proceeded to offer the evidence in behalf of Grace Kastenhuber and Ruth Youman, infants.

10 CHARLES RUDOLPH DIEFFENBACH, SWORN.

*Direct examination by Judge Sullivan:*

Q. Where do you live, Mr. Dieffenbach? A. Just now?

Q. Yes. A. 168 Manhattan Avenue, Jersey City.

Q. And you have lived in Jersey City how long? A. Fifty years.

20 Q. Do you know William P. Kastenhuber? A. Yes, sir.

Q. How long have you known William P. Kastenhuber? A. I think from the early nineties—perhaps thirty-five or thirty-six years.

Q. Did you have any transactions with William P. Kastenhuber with regard to any real estate in Jersey City, around the years 1906, '07 or '08? Yes, sir.

Q. Will you explain what that transaction was?

30 Mr. Drewen: I object to this, on the ground that if it is to the transaction concerning the delivery of a deed by Mr. Dieffenbach to Mr. Kastenhuber, the deed speaks for itself—the instrument of conveyance that passed from this man to Mr. Kastenhuber speaks for itself; and any testimony of the witness varying the transaction is not competent nor material.

40 The Vice-Chancellor: The deed may not speak for this. I presume what Judge Sullivan is trying to show is that this man was

*Charles Rudolph Dieffenbach—Direct.*

the agent for Mr. Kastenhuber, the father of these children, in buying this property. I will overrule the objection.

A. Mr. Kastenhuber told me that he was interested in a little piece of property down on Wilks Street—a sort of an out-of-the-way place at the time—and that it was encumbered with some number of years of taxes, and he did not have the money, and still he would like to save it for his wife and his children; and he asked me whether I would help him get the title through a Martin Act sale, that would be, I think, that Spring of 1906 (I won't insist on the year); so I said I would do it for him; and I went down and bought it at a regular Martin Act sale. I think Mr. Davis was Collector at the time. And that is how I acquired the property. 10 20

Q. Did you personally attend at the sale and purchase the property, Mr. Dieffenbach? A. To the best of my knowledge, I did. I think he was with me, however—I think Mr. Kastenhuber was with me. You see, I am blind, and I always have to have somebody with me.

Q. Subsequently, were any proceedings taken to perfect that tax title, or do you know? A. To the best of my knowledge, the matter was just held by me until the property was repaired by a certain Mr. Foote—Aleck Foote; and then I think the matter went into Mr. Mulvaney's hands, who was acting at that time for Mrs. Kastenhuber, who was a Miss Wilks. 30

Q. Well, do you know whether Mr. Mulvaney did anything with regard to the perfection of this tax title? You can answer "Yes" or "No" to that. A. No; that is twenty-one years ago, and it is pretty difficult to remember. 40

*Charles Rudolph Dieffenbach—Direct.*

Q. Well, did you retain any counsel to perfect the tax proceedings? A. No, sir.

Q. Or did you use any of your own moneys in the perfection of this tax title in any way? A. Only to pay the actual amount, as I remember it, of the tax item—the taxes that had already accrued.

10 Q. And were you subsequently repaid that money? A. Oh, yes.

Q. By whom? A. I think there was a mortgage levied afterwards, about two years later, or something like that, by Mr. Kastenhuber.

Q. I say, who gave you back that money? A. Kastenhuber. He gave me notes, and paid them all up.

20 Q. What notes—you say “he paid notes”? A. Well, he gave me the notes; he made out notes for the amount he owed me, to secure me.

Q. You mean he gave you notes? A. Yes, sir; he gave me promissory notes, that the Highland Trust Company, up in West Hoboken, cashed for me.

Q. Do you recall the gross amount of those notes? A. I think \$1800, the total amount was; I wouldn't be sure of that.

30 Q. And were those notes met at maturity? A. They were paid gradually. He paid something on account for a while, while he lived there; and then afterwards he subletted the place to someone else, and I think then he got the rentals; and when the mortgage was placed on the property he paid more. It took about four years, I think—from 1906 to 1910, as I remember it.

40 Q. Well, actually, was there any money paid by you for this property—I mean, did it cost you anything outside of the money that Mr. Kastenhuber had given you? A. No; he paid the discount fees;

*Charles Rudolph Dieffenbach—Direct.*

he paid the interest; he paid everything; he absolutely reimbursed me; I did not have a nickel loss.

Q. Do you know where Mr. Kastenhuber lived at the time that you purchased this property at the tax sale? A. I think at that time he lived in Webster Avenue, No. 40, between Reservoir and Boream. 10

Q. Did he subsequently move into this property on Wilks Street? A. Yes, sir, just as soon as it was placed in repair. Aleck Foote, the carpenter, up on Oakland Avenue, repaired it for him and put it in shape; and that was part of the \$1,800, as I remember it.

Q. You mean you advanced that money also? A. Yes; I advanced that on notes.

Q. Now, when it was repaired, do you know whether Mr. Kastenhuber went to live there or not? A. Yes, he lived there for a couple of years. 20

Q. Who lived there with him? A. His family. He had his children from his first wife; and then I think there were two children from Mrs. Kastenhuber—Dora Wilks.

Q. Do you know Mr. Kastenhuber's wife? A. Why, sure.

Q. And did you know her at the time you purchased this property? A. Surely.

Q. What was her name? A. Her name was Dora E. Kastenhuber, nee Wilks. 30

Q. Did you know her before she married Mr. Kastenhuber? A. I think I met her before, but I cannot say I knew her. But my dealing in the matter was entirely an accommodation; I would like to have that understood. I was not in it for anything I could get out of it, one way or the other. I did it as an act of friendship for my old friend, Bill Kastenhuber, and every nickel was paid back. I have not a cent of claim from that. 40

*William P. Kastenhuber—Direct.*

I did answer that some years ago in a writing in the Brisbane matter, a couple of times.

By the Vice-Chancellor:

Q. By the way, do I understand that he gave you notes for the moneys you paid for the taxes?  
10 A. Yes.

Q. When did he give you the notes? A. I cannot say how many days after, or how many weeks after. But I paid my own check for the amount of the tax sale.

Q. And shortly after you got back notes from him to pay you? A. Yes. And then I endorsed them, and, as I say, I used them.

Q. You really, then, bought this property for Mr. Kastenhuber, didn't you? A. Surely, yes; I  
20 did not want it.

By Judge Sullivan:

Q. What is your business? A. I am in the coal business.

Q. And what business were you in at the time?  
A. I have been in the coal business for thirty-two years.

Q. You are blind, are you not? A. Yes.

30 No cross-examination.

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WILLIAM P. KASTENHUBER, SWORN.

*Direct examination by Judge Sullivan:*

Q. Where do you live, Mr. Kastenhuber? A. Great Meadows, Warren County, New Jersey.

Q. And your name is what? A. William P.  
40 Kastenhuber.

*William P. Kastenhuber—Direct.*

Q. What is your wife's name? A. Dora E. Kastenhuber.

Q. And before she married you, what was her maiden name? A. Dora E. Wilks—"W-i-l-k-s"—omit the "e", please.

Q. Did you live in Jersey City at any time? A. I have lived in Jersey City the greater part of my life. 10

Q. When did you move from Jersey City? A. In 1908.

Q. Where did you go? A. To the present place of residence—Great Meadows, Warren County, New Jersey.

Q. And have you remained there since that time, up to the present? A. No; at intervals of two years and a half, in between, I lived in Jersey City again. 20

Q. Do you know Mr. Charles Dieffenbach, the man who was just on the stand? A. Yes, sir.

Q. How long have you known him? A. My memory is not perfect on that question, but I would say between thirty and forty years.

Q. Did you know him about 1906, '07 and '08? A. I certainly did; I knew him for quite some time, some years before that; he was an intimate friend at that time.

Q. Do you recall any transaction that you had with him with respect to property on Wilks Street? A. I do. 30

Q. By the way, do you know what the number of that property on Wilks Street was—the street number, or lot number? A. 16, I think.

Q. 11, isn't it? A. 11; that is right.

Q. 11 Wilks Street? A. That is right.

Q. Was there any other property on Wilks Street that you or your wife were interested in? A. No, sir. 40

*William P. Kastenhuber—Direct.*

Q. Just the one lot? A. Just the one lot.

Q. Now, with reference to that one lot, did you have any transactions with Charles R. Dieffenbach? A. I did.

10 Q. Will you explain what they were? A. The property came into disrepair so that it was untenable; and also there was an amount of taxes and water rents due, which, taken all together with the repairs that were necessary, and afterwards made, amounted to something like eighteen hundred dollars. Not having the money myself, and the property being threatened in a tax sale by Jersey City—by the Collector of Jersey City, Robert Davis—I asked my friend Dieffenbach—

20 Q. Charles R.? A. Charles R. Dieffenbach—to back me up in trying to save the property for my family instead of it going into strangers' hands, where it would be lost forever. He assisted me, not only in reclaiming the property, but he bought it in at a tax sale with the object of turning it over to me after title was perfected; and he did so.

Q. And did you pay to him the money that was paid at this tax sale? A. I did.

30 Q. And did you pay any other moneys? A. I paid all the money that was necessary to put the property into condition so it could be lived in and be free from any other encumbrances, except a number of notes which matured three months at a time, which I paid as they came due up to the time of 1908, when I broke down in health and was obliged to leave the City; and then a mortgage was raised upon the property, of \$2000, which paid off all the notes and all the outstanding obligations against the property.

40 Q. Then the proceeds of this mortgage that you raised on the property went to repay all of these notes that you had given Mr. Dieffenbach? A. Yes, sir.

*William P. Kastenhuber—Direct.*

Q. Is that so? A. Yes, sir.

Q. Did you ever live in this property? A. I did.

Q. When did you? A. I lived in it until in 1908, when I moved from there to my present residence.

Q. And how long had you lived in it at that time? A. I think about two years. 10

Q. And who lived there with you in the property? A. My family.

Q. Your wife and children? A. My wife and children.

Q. At the time of the tax sale did you live in the property? A. No, sir.

Q. How soon after the tax sale was it? A. As soon as the house was in repair.

Q. It was not fit to live in at the time of the tax sale? A. That is the idea, exactly. I could not live in it, or get a tenant for it, because it was not fit to live in. 20

By the Vice-Chancellor:

Q. Did you live in the property before the tax sale? A. I did, some years prior to it; yes.

By Judge Sullivan:

Q. Then why did you move out? A. Why did I move out? 30

Q. Yes.

Mr. McCarter: What has that got to do with it?

A. Because my wife asked me to.

Q. Did the condition of the property have anything to do with your moving out?

Mr. McCarter: I object to that. 40

The Vice-Chancellor: What difference

*William P. Kastenhuber—Direct.*

does it make? Well, I will permit it; I will overrule the objection.

10 Mr. Sullivan: My only purpose in asking the question is that I want to show that this man had this property really as a home for his wife and children at the time that all this transaction took place; and the only reason he was not living there was because he said it was untenantable; but I don't know whether that was the reason he moved out before.

The Witness: That was the reason.

20 Q. Do you know the attorney who perfected the tax title proceedings after Mr. Dieffenbach purchased the property? A. I believe it was Mr. James Sullivan.

Q. No, who perfected the tax title proceeding? A. Oh, Mr. John Mulvaney.

30 Q. Did you have any contractual relations with Mr. Mulvaney with regard to the perfection of those proceedings—did Mr. Dieffenbach hire him, or you hire him? A. I hired him. Mr. Mulvaney and Mr. Dieffenbach, at that time, I guess, were unacquainted; they had never met each other; and Mr. Mulvaney was a particular friend of our family, and we entrusted all the transactions to him.

Q. Is your wife still alive? A. My wife is still alive.

Q. She is here in court, is she? A. She is here in court.

Q. How many children have you had by your present wife? A. Two—excuse me, three; but one lived only a few hours.

Q. How many are alive at present? A. Two.

40 Q. And what are their names, and when were they born? A. Grace R. was born November 20,

*William P. Kastenhuber—Direct.*

1907; Ruth Wilks, February— Can I ask my wife for the year?

Q. Well, I will let her correct you afterwards.

A. I think in 1904 or '05.

By the Vice-Chancellor:

Q. She was the oldest child? A. She was the oldest child, yes. 10

By Judge Sullivan:

Q. Are either of them married? A. Ruth is married.

Q. And what is her present name? A. Mrs. George L. Youman.

Q. Is Grace married? A. No, sir.

Q. Where does she live? A. She lives in our home at Great Meadows, Warren County, New Jersey. 20

Q. And where does your married daughter live? A. She lives in Hialeah, Florida.

Q. Has your married daughter any children? A. She has.

Q. How many? A. Three.

Q. What are their names? I will withdraw the question if you don't know. Do you know them?

A. No. My wife will answer that better than I can. 30

The Vice-Chancellor: It is not material, is it?

Judge Sullivan: I don't know. The remainder goes to the children, if there be no issue of Dora Wilks living at the time of her death.

The Vice-Chancellor: A contingent remainder?

Mr. McCarter: Yes; it is a contingent remainder; I think so. 40

Judge Sullivan: That is all.

*William P. Kastenhuber—Cross.**Cross-examination by Mr. McCarter:*

Q. Mr. Kastenhuber, you decided finally to sell this property, didn't you? A. Yes, sir.

Q. And did you negotiate with Mr. Sullivan for that purpose? A. No, sir; Mr. Billington.

10 Q. Well, you did not meet Mr. Sullivan in the transaction, at all, then? A. I don't think I did.

Q. Well, was Mr. Billington buying it for himself, or did he, as you understood it, buy it for Sullivan?

Mr. Drewen: I object to that.

A. He told me he was buying it for a widow—"for a poor widow that needed a home," so he said.

20 Q. Billington told you that? A. Yes.

Q. Did he tell you what the "poor widow's" name was? A. No, sir.

Q. Why do you laugh; what is the joke? A. Because I did not put much faith in his statement when he made it.

Q. Did you, or did you not, know that he bought for Sullivan? A. I did not.

Q. You did not. Have you ever met Mr. Sullivan? A. Not to my recollection.

30 Q. On any occasion? A. No, sir. It is possible, but I do not recall it.

Q. Well, now, when you sold, you got full value for what you believed to be a fee simple title—you supposed you owned the fee, didn't you?

Judge Sullivan: I object, on the ground that that is immaterial. What he supposed he owned, or whether he got full consideration.

40 The Vice-Chancellor: Oh, I think I will let everything in in this case. This is the

*William P. Kastenhuber—Cross.*

final windup of this case, and I do not propose to exclude anything that may have a possible bearing on it.

Judge Sullivan: I don't see how it is going to help the Court, though.

The Vice-Chancellor: I do not, just now; but he wants to show that he got full value, and, in good faith, believed he was selling the fee simple, and was paid for it. 10

A. In answer to that question, I want to say that before I sold to Billington I gave him a history of the condition of the property, and the fact that my ownership was limited to a tax sale ownership.

Q. Well, you gave him a warranty deed, didn't you? A. I don't know. 20

Q. You don't know? A. No, sir; I don't know.

Q. Who was Mr. Gibbs, who took your acknowledgment? A. He was a Commissioner of Deeds, that lived up in Warren County, a neighbor of mine, some half-a-mile away from my residence.

Q. And where did Mr. Billington live? A. Mr. Billington, I believe, at the time—I don't know the name of the street.

Q. In Jersey City? A. In Jersey City.

Q. Well, did he come up to Warren County to see you? A. He wrote me to come down and see him, and I came down and saw him, and we agreed on the price, and he paid me a deposit; and shortly after that I received a communication from his counsel, who had made the search of the property, saying that he had found the property in the condition that I had represented, and for me to come down and complete the transaction; and I went down. 30

Q. Who was the attorney? A. I believe it was Mr. James Sullivan. 40

*William P. Kastenhuber—Cross.*

Q. James Sullivan? A. Yes, sir.

Q Then you met Mr. Sullivan before you had finally closed? A. No, sir; not to my knowledge and believe, I never met Mr. Sullivan. My transactions with Mr. Sullivan were limited to the letter that he wrote me to come down to complete the sale; and when I came down Mr. Billington found that, my wife not being present, the deed could not be delivered; and he then made the journey to my home in Great Meadows, and my wife and I signed the deed there in Great Meadows.

Q. Yes; but when you came down, the deed was all prepared for you to sign? A. I believe it was.

Q. Yes; and who had that deed—Sullivan or Billington? A. Billington, to the best of my knowledge and belief.

20 Q. Had Sullivan prepared the deed? A. That I could not positively say; but Mr. Sullivan was his counsel in the transaction, who had made the search.

Q. That is, Mr. James A. Sullivan? A. I am not positive of that; I couldn't swear to that.

Mr. Drewen: Should I not have this witness's knowledge as to that?

Mr. McCarter: You can cross-examine as to all of this.

30 Mr. Drewen: All right.

Q. Did you get a letter from Sullivan? A. Yes, sir.

Q. Where is that letter? A. I could not locate it today; that is twenty years ago.

Q. You could not find it, but you looked for it? A. I looked for it, and I could not find it in my papers.

40 Q. Well, that Sullivan is the same Sullivan whom Mr. Drewen represents today in this liti-

*William P. Kastenhuber—Cross.*

gation, is it not? A. I say, I cannot positively assert that; I don't know; I might think so.

Q. Well, you do think so, don't you?

Mr. Drewen: I object to what he thinks.

A. I might think so, I could not swear to the fact. I have never met Mr. Sullivan. I understood, at the time, that Mr. Sullivan was transacting the business for Mr. Billington, and that is all I knew about it. 10

Mr. Drewen: May I ask that what this witness understood and thought be stricken out?

The Vice-Chancellor: I will pay no attention to it when I come to the consideration of the evidence. 20

Q. How much did you receive for your sale to Billington? A. Thirty-five hundred dollars, minus the obligations which were on the property to the City.

By the Vice-Chancellor:

Q. Was there any mortgage on it? A. Well, yes, there was a mortgage on it, which was cancelled; there was a mortgage of \$2,000, and of course that was taken off the purchase price that he paid me. 30

By Mr. McCarter:

Q. Well, what was there against the property beside the \$2,000 mortgage? A. The City taxes and water rents.

Q. And they were taken off, too? A. They were taken off. 40

*William P. Kastenhuber—Cross.*

Q. And you got, net, how much? A. Well, if I answer that question I would have to answer it on belief, rather than on positiveness.

Q. Well, to the best of your recollection? A. To the best of my recollection, about twelve hundred dollars.

10 Q. Now, when did you next hear that you were supposed to have some interest in that property, or your children?

Mr. Sullivan: I object to the question, on the ground that it is immaterial.

The Vice-Chancellor: I will overrule the objection.

A. I don't know as I could give an intelligent answer to that, anyway.

20 Q. Well, did you ever hear it? A. I did.

Q. You have been served with several papers by Mr. Sol. Cohn's office, and others, in this matter? A. I have.

Q. And this is the first time you have turned up, is it not? A. No, sir; I was here in this Court, according to that service, and the case was not on the calendar.

Q. That is the only time? A. That is the only time.

30 Q. When was that? A. I don't have a diary.

Q. About when was it? A. I should say, about two years ago.

Q. Previous to Judge Sullivan's appointment to look after your children's interests, who has been looking after your interests in this matter?

Judge Sullivan: I object to it, on the ground that it is immaterial. I do not see that these infants are bound by any such thing.

40

*William P. Kastenhuber—Cross.*

The Vice-Chancellor: Of course they are not, but I will admit it.

The Witness: Must I answer that?

The Vice-Chancellor: Oh, yes.

A. Mr. John Mulvaney.

Q. Have you paid him? 10

Judge Sullivan: I object to that, on the ground that it is immaterial.

The Vice-Chancellor: I overrule the objection.

A. I have paid every bill that Mr. Mulvaney ever rendered me.

Q. Well, has he ever rendered you a bill? A. I have had Mr. Mulvaney as my counsel for a number of years, and I have paid him. 20

Q. Suppose you answer my question—has Mr. Mulvaney ever rendered you a bill for his services in looking after the interests of your children in this property?

Judge Sullivan: I object to it, on the ground that there is not anything on the record yet to show that Mr. Mulvaney has ever looked after the interests of his children in this property. 30

The Vice-Chancellor: I will overrule the objection.

A. No, sir.

Q. Have you ever talked to Mr. James A. Sullivan, or to Congressman Perkins, or to his partner, Mr. Drewen, about this matter since it was brought to your knowledge that, likely enough, your children had some interest in the property? 40

*William P. Kastenhuber—Cross.*

10 Judge Sullivan: I object to that, on the ground that it is immaterial, and irrelevant, and evidently counsel is simply on a fishing expedition. I think, if counsel wants to contradict anything this witness has said, or set up any defense, that it is incumbent upon him to do so; and he cannot first lay the foundation in this way; he cannot go inquiring all over creation as to whom this man had conversations with without showing the relevancy and materiality of the conversations.

20 The Vice-Chancellor: You are not before a jury. I think I will overrule the objection. I do not know where it is going to lead to.

A. To the first part of that question—perhaps we may call them “A” and “B”—in regard to talking to Mr. Sullivan, I have said, and I say again, I do not know Mr. Sullivan; as far as I know, I have never met him; if he was in this court room, sitting alongside of me, I would not know that it was he. In regard to the “B” question, Mr. Drewen and Congressman Perkins were at my house, up in Great Meadows, and we had a little conversation in regard to the matter; and we—

30

Q. (Interrupting:) When was that, Mr. Kastenhuber? A. According to my best recollection of it, perhaps eight or nine months ago, something like that; I couldn't be definite about those things.

Q. They came up to your place in an automobile? A. Yes, sir.

Q. And they saw you and your wife? A. Yes, sir.

40 Q. Well, now, did you reach any understanding with them?

*William P. Kastenhuber—Cross.*

Judge Sullivan: About what? If your Honor please, I object to the question.

The Vice-Chancellor: Well, if the witness cannot answer it, he can say so.

Judge Sullivan: Suppose they reached an understanding about buying a house in Kamschatka, or down at Capetown—what would that have to do with this case? 10

The Vice-Chancellor: I will overrule the objection.

A. I must answer that relatively—we did not make any agreement, or anything of that kind, with Mr. Drewen and Mr. Perkins; we simply stated our position in the matter, that we were not inclined to make any trouble for anybody, ever—not now, or ever afterwards—but if there were any interests that were due to the children, we were very anxious that they should obtain what they had a right to. 20

Q. Was a copy of the bill of complaint prepared by Cohn & Cohn left with you, Mr. Kastenhuber?

A. I am trying to refresh my memory. I couldn't say.

Q. Don't you recall that a paper—quite a lengthy paper—in which all the history of this title was set up, and Mr. Brisbane's claim was set up, was given to you? A. At different times, in the last eighteen or twenty years, we have been the recipients of a number of such documents, and whether I received one from Cohn & Cohn, or not, I could not definitely say. I am on my oath. 30

Q. Well, you have said you remember being subpoenaed? A. I was not subpoenaed. Cohn & Cohn—I don't know whether that is necessary to tell, though—I said before that I was in this Court 40

*William P. Kastenhuber—Cross.*

here by appointment, and Cohn & Cohn requested me to come here at a certain day, at a certain time of day, and when I came here I found I was simply on a fool's errand, and the case was not up at all.

10 Q. About the time you were summoned to come here, don't you know they left you a copy of the bill? A. It may have been.

Q. Did you read it? A. I suppose so, if they did.

Q. Did you file any answer?

Judge Sullivan: I object, on the ground that it is immaterial, as far as these infants are concerned.

20 The Vice-Chancellor: I overrule the objection.

A. Whatever answers were filed to any papers, Mr. Mulvaney, as counsel, represented us, and we did not answer it personally.

Q. Why did you look at Mr. Drewen just then, when you made that remark? A. I looked at my wife, excuse me—which is every married man's privilege.

30 Q. Don't you know that Mr. Mulvaney has filed no answer for you, or for your children? A. In which proceeding?

Q. In this proceeding? A. Oh, in this proceeding? They had so many different proceedings that I couldn't tell.

40 Q. You are a very smart man, but, excuse me, I am asking you if you know whether Mr. Mulvaney has filed any answer for you? A. I believe Mr. Mulvaney has filed an answer to everything that was necessary; when we received notices in the case we turned them over to Mr. Mulvaney,

*William P. Kastenhuber—Cross.*

and only recently, when circumstances prevented Mr. Mulvaney from properly representing us, have we failed to use Mr. Mulvaney's counsel.

Q. What "circumstances" do you refer to as having prevented Mr. Mulvaney from representing your children? A. I did not say "they prevented", I said "that would make it undesirable"; and the reason that it would be undesirable was the fact that Mr. Mulvaney has connections with a law firm at the present time who represents some other side of the case. 10

Q. What firm do you say Mr. Mulvaney is connected with, that represents some other side of the case? A. I think almost anybody in the Court room can answer that better than I.

The Vice-Chancellor: Well, you answer it? 20

A. Well, I am trying to get the name.

Judge Sullivan: I think the Court does not understand what the witness says; he says "anybody in the Court room can answer that better than he can".

The Vice-Chancellor: I understood him.

A. Well, my memory is very poor in some details; I am absent-minded. 30

Q. Oh, you need not worry about your memory. A. I am absent-minded.

Q. Now, if I understand it, you say that Mr. Mulvaney represented, or was connected with some firm that owned an interest in this property? A. "Represented some interests."

Q. Represented some interests that were adverse to your interests? A. Not necessarily adverse; I said they represented some other interest in this case. 40

*William P. Kastenhuber—Cross.*

Q. Well, what interest is that? A. I don't know.

Q. Did you keep pace with these proceedings that you have alluded to?

10 Judge Sullivan: I object to the question, on the ground that it is immaterial and irrelevant.

The Vice-Chancellor: I overrule the objection.

A. I took notice of all the different papers I received, yes.

Q. Were you ever down in Jersey City but that one time, do you think? A. I don't recollect that I was, no.

20 Q. In the meantime, you have been claiming, all this time, that your two children had this ultimate interest in this property? A. I did not say so.

Q. Oh, you don't make that claim today, do you?

Judge Sullivan: I object to it; it is immaterial whether he made that claim today or not.

The Vice-Chancellor: I will overrule the objection.

30 A. My answer to that question is that I stand absolutely on the merits of the case. If those infant children (this is the arrangement that I made with Mr. Drewen and Mr. Perkins), if they are entitled to anything, as their father and their natural guardian, I am very much interested in seeing that they get what comes to them. On the other hand, again, if they have no rights, of course I would not try to overcome it by any action of my own, and try to get them something that they did not own.

40

*William P. Kastenhuber—Cross.*

Q. No, of course not. Now, since Mr. Mulvaney "went over to the enemy"—or, rather, as I express it— A. Yes, that is the fact, you do.

Q. —who have you had looking after the interests of your children—nobody? A. Nobody.

Q. Nobody—you thought you would be satisfied to let those interests be determined without the interests being protected? A. I thought they could safely be left to the action of the Court of Chancery.

10

Q. Up to the time that Mr. Drewen and Mr. Perkins visited you in Warren County, Mr. Mulvaney was your lawyer, wasn't he, in this matter? A. I don't know. The reason that I don't know is that I do not recollect definitely when Mr. Mulvaney wrote us the letter, saying that, under the circumstances, he being connected with this firm that represented other interests, that he thought that he could not continue to represent us with propriety—he did not say he "could not", he said he did not think it was proper for him to represent this side of the case.

20

Q. Well, you agreed with him, didn't you?

Judge Sullivan: I object to it, as immaterial.

The Vice-Chancellor: Objection overruled.

30

A. I did not have anything to do but agree with him.

Q. When was the letter sent to you? A. Oh, I couldn't tell you.

Q. Well, as near as you can recall? A. Oh, I couldn't begin to tell you; it would be all a matter of guesswork.

Q. Well, as near as you can recall, how long ago did you receive that letter? A. I certainly

40

*William P. Kastenhuber—Cross.*

could not tell you; I could not say within a year.

Q. Well, was it before or after Perkins & Drewen visited you in Warren County? A. Oh, I guess it was before then.

Q. Before then? A. Yes.

10 Q. Are you sure about that? A. No; I won't be positive even of that.

Q. Well, wasn't it afterwards, or about that time? A. I don't know.

Q. Have you looked for that Mulvaney letter? A. I don't know as I have that amongst my papers; I may have.

Q. You haven't got it here, anyway? A. No, sir.

20 Q. Now, what did Perkins and Drewen say to you, and what did you say to them, on that visit?

Judge Sullivan: I object to the question, on the ground that it is immaterial what they said.

The Vice-Chancellor: I overrule the objection.

A. Perkins and Drewen came up to see me and my wife—or my wife and I. The questions they asked would indicate——

30 Q. (Interrupting:) No, I am asking you what they said, as near as you can recall; and what you said? A. Well, they asked us how we felt about it, or what we were going to do about it, and so on and so forth.

40 Q. Well, what did you say? A. Just exactly what I have repeated twice before—that we did not propose to try to get anything which did not belong to us; but that we proposed to abide by any agreement that we had made, whether it had any loopholes, or not; but that if the children

*William P. Kastenhuber—Cross.*

were entitled to anything, we certainly wanted to see that they got it.

Q. You told them, didn't you, that you intended to pass a fee, or supposed you had passed a fee, and, as far as you were concerned, you were not going back on that position? A. No, sir.

10

Q. You did not? A. No,—unless I misunderstand your question, we did not say anything of that kind.

Q. Will you look up, and send to Mr. Drewen, or Judge Sullivan, the Mulvaney letter to which I have alluded, Mr. Kastenhuber? A. I could not promise that, because I don't know whether I have kept it, or whether I could find it. If I can find it, I will certainly be agreeable and send it to them.

20

Mr. McCarter: Thank you; that is all.

By the Vice-Chancellor:

Q. Did you say you lived in the premises two years before the tax sale? A. Yes, sir; something like that.

Q. When were you married? A. 1901.

Q. From 1901, until the time you moved out to Warren County, did you only live two years in the property? A. No; it was my testimony that we moved out—

30

Judge Sullivan: Speak out; so we can hear you.

A. We did occupy the house after our marriage until the time that the house got into such a condition that my wife requested me to find other quarters for us, and I did so. Then, after the house was fixed and repaired, we lived in it again for about two years.

40

*William P. Kastenhuber—Re-cross.*

Q. How long was that from the time you were married until the time you moved out? A. Well, we were married in 1901, and we moved to Warren County in 1908.

10 Q. So you lived there about seven years? A. Oh, no; we lived there probably a year and a half or two years the first time that we occupied it; and, afterwards, about two years prior to our moving to the farm.

Q. One-and-a-half to two years, then? A. That would be three years, I think.

Q. One-and-a-half years before the tax sale? A. Yes, sir.

Q. Was the place rented before the tax sale? A. Before the tax sale it was rented, part of the time, at a nominal rent.

20 Q. Who collected the rent? A. I did.

Q. You did? A. I did.

By Judge Sullivan:

Q. With reference to the deed that Mr. Billington brought out to Great Meadows, for you and your wife to sign, conveying the property to Billington, did you have anything to do with the preparation of that deed? A. I did not.

30 Q. Did your counsel prepare it? A. He did not—not to my knowledge.

Q. Did you pay anybody for preparing it? A. I did not.

*Re-cross-examination by Mr. McCarter:*

Q. Well, you knew it was a warranty deed, didn't you? A. I am not posted in the different kinds of deeds; and, perhaps with too much confidence, we signed that deed that Mr. Billington  
40 had prepared.

*William P. Kastenhuber—Re-cross.*

Q. Well, do you say you did or did not know it was a warranty deed? A. I accepted it as Mr. Billington's deed, without knowing the difference between the different kinds of deeds.

Q. You do not know what a warranty deed is? A. I do not.

Q. No. Well, you knew you conveyed, or purported to convey, a fee simple—you knew that? 10

A. I am not acquainted with lawyer's terms; I do not know what a "fee simple" is.

Q. Did you know that you were attempting, by that deed, to convey a complete title to the property? A. The condition of the property, and the title I held to it, was explained to Mr. Billington, and, on the strength of that explanation, I considered that he had prepared the deed; and, consequently, I signed that deed, believing that I had signed a deed of the right that I thought I possessed. 20

Q. Well, now, your attention had been directed, previous to giving that deed, to the fact that probably your children had some interest in the property, hadn't it? A. No, sir.

Q. It had not? A. No, sir.

Q. What was the matter you explained to Mr. Billington, then? A. The fact that the property had been left to my wife—that a life interest had been left to my wife—and that upon her death, if she had issue, it was to permanently belong to whatever issue she had; and in case that she died without issue it reverted to a different branch of the family. 30

Q. Well, that you had explained to Mr. Billington? A. Well, one moment, now; that was only part of it: The next part was that I gave him a history of its being bought at a tax sale by my friend, Mr. Dieffenbach, and afterwards, of the title being turned over to me. 40

*William P. Kastenhuber—Re-cross.*

Q. And you told Mr. Billington, also, that you felt that by getting this tax title you had cut your children out, didn't you? A. No, sir.

Judge Sullivan: I object to that.

10 The Vice-Chancellor: I overrule the objection.

Q. What? A. I didn't tell him anything, one way or the other.

Q. Didn't you tell him you had a good title, under the tax sale? A. I told him I had a tax sale title.

Q. Yes, and you thought that was a good title?

20 Judge Sullivan: I object to what he thought.

Q. And you told him that? A. I thought I was conveying to him what I had, and I did not misrepresent what I had. I left it to him and his lawyer to decide what I had.

Q. Exactly; and you felt that by getting that tax title you cut out your children, didn't you?

Judge Sullivan: I object to that, on the ground that it is immaterial.

30 The Vice-Chancellor: I will overrule the objection.

A. To tell you the truth, I didn't know anything about it.

Q. What? A. I didn't know anything about it.

40 Q. Of course you did not know—but was not that what you explained to Mr. Billington—that, by getting this tax title this ultimate interest of your children did not amount to anything? A. The interest of my children under the will was not discussed any more than what I have stated; that is all.

*William P. Kastenhuber—Re-cross.*

Q. Well, that was pretty well discussed, I think, from the way you stated it—that the property would go to your wife for life, and if she died without issue it went one way, and if she had issue it went another way—you explained that all to him, and you have told us that? A. Yes; which was all taken care of by the deed. It was advertised, and all possible heirs that were then alive were notified, and they responded by giving a quit-claim of their rights.

10

Q. That was all done in the tax proceedings?

A. That was all done in the tax proceedings.

Q. Under your direction? A. No, excuse me; that was under the proceedings for perfecting title.

Q. Exactly; so that you felt, by this proceeding, your title, or your wife's title, had been amplified then, and your children cut out, didn't you?

20

Judge Sullivan: I object to it as immaterial.

The Vice-Chancellor: I overrule the objection.

A. I am trying to get your question in some kind of concrete form.

Q. (Question repeated.) A. No, I did not consider that my children were cut out; if I did I would not have gone ahead and given any such deed.

30

Q. Well, you got \$3,500, less liens, for what you gave? A. Yes.

Q. And you said you thought you cleared up, by notice to everybody, any interest your children might have had? A. No, I did not say that at all.

Q. You did not? A. No; I said "the other possible claimants".

40

Q. Well, we will let the record speak for that.

*William P. Kastenhuber—Re-cross.*

Did you understand at the time that you were conveying simply a life interest for \$3,500? A. No, sir.

Q. You thought you were conveying the fee, didn't you?

10 (Objected to; objection overruled.)

A. I thought I was conveying what I had; and I left it to the lawyers to decide what I had.

Q. Pretty clever; but you thought you had a fee? A. I had certain rights; yes.

Q. Well, what rights were they? A. I left that to be decided by the people that searched the property.

Q. Well, what rights did you think you had?

20 Judge Sullivan: I object to it on the ground that it is immaterial what he thought he had.

The Vice-Chancellor: Objection overruled.

By the Vice-Chancellor:

Q. Did you think you had a good title to the property? A. I did not think I had a perfect title, no.

30 By Mr. McCarter:

Q. That was not the question. The question is whether you thought you had a good title—I mean your wife and you? A. There is a matter of qualification there; what do you call "good"? I don't know how I can answer that question.

Q. Who suggested taking these proceedings under the tax title? A. Which proceedings are you referring to?

40 Q. The proceedings that you have alluded to,

*William P. Kastenhuber—Re-cross.*

when notice was given to everybody to come in, or be cut out? A. That was my counsel that suggested that.

Q. Who was Mr. who? A. Mulvaney.

Q. Didn't he advise you that if these proceedings were correctly taken, you and your wife would have a complete title to the property? 10

Judge Sullivan: I object, on the ground that it is immaterial whether Mr. Mulvaney advised them so, or not.

The Vice-Chancellor: I think I will overrule the objection.

A. He did not.

Q. How old are these children at the present time? A. Twenty-two and eighteen. 20

Q. The one that is twenty-two—her name is what? A. Ruth Wilks Youman.

Q. Who represents her in this action? A. Mr. Sullivan, I guess.

Q. Don't you know who represents her? A. Judge Sullivan.

Q. Well, are you sure about it, or don't you know, or care? A. I know it.

Q. You seemed to have a little doubt about it a moment ago. Where is she—in Florida? A. Florida. 30

Q. Where is your other daughter, of eighteen? A. She lives with me, at home.

Q. Until the Vice-Chancellor directed that Judge Sullivan be appointed to look after the interests of the people that we thought were both infants at that time— A. (Interrupting) Well, they were—excuse me—when these proceedings were quite advanced they were both minors; but, in the interim, one of them has become of age. 40

*Mrs. Dora E. Kastenhuber—Direct.*

Q. Well, I don't think, if she is twenty-three now— A. Twenty-two.

Q. When was she twenty-two? A. In February.

10 Q. So, it was a year ago last February when she was twenty-one? A. Yes.

Q. Have you corresponded with her with reference to this litigation? A. We have.

Q. And she was quite willing to let the situation develop—that whatever the Vice-Chancellor decided was good enough for her?

Judge Sullivan: I object to that, as immaterial.

20 The Vice-Chancellor: I will overrule the objection. I do not see that it has any bearing on the case, however.

A. Yes, sir.

Judge Sullivan: No further questions.

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Mrs. DORA E. KASTENHUBER, SWORN.

*Direct examination by Judge Sullivan:*

30 Q. What is your name, please? A. Will I give my full name?

Q. Yes. A. Dora E. Kastenhuber.

Q. And where do you live? A. Great Meadows, New Jersey.

Q. And you are the wife of the last witness? A. Yes.

Q. And what was your name before marriage? A. Dora E. Wilks.

40 Q. And are you the "Dora Elsenia Wilks" mentioned in the second paragraph of the will of Thomas H. N. Wilks? A. Yes.

*Mrs. Dora E. Kastenhuber—Direct.*

Q. How old are you, Mrs. Kastenhuber? A. I will be fifty-nine the 16th of September.

Q. Have you any children? A. Two.

Q. What are their names, and dates of birth, please? A. Well, Ruth Wilks' birthday is February 18th—she is twenty-two; and Grace R. will be nineteen the 20th of November. 10

Q. When was Ruth twenty-two? A. Last February.

Q. And when will Grace be nineteen? A. Next November—this next November.

Q. The coming November? A. Yes, sir.

Q. Are either of them married? A. Yes—Ruth.

Q. And her name is what? A. Mrs. George L. Youman.

Q. And she lives where? A. Hiolea, Florida. 20

Q. And where does Grace live? A. Great Meadows, N. J.

Q. With you? A. Yes.

Q. Has Ruth any children? A. Three.

Q. What are their names? A. Dora L., Jeanette and Margaret.

Q. Are they all alive? A. Yes.

Q. Where do they live? A. With their parents at Hiolea, Florida.

Q. After your marriage to Mr. Kastenhuber, where did you go to live? A. When we were first married? 30

Q. Yes. A. Well, in Ogden Avenue, Jersey City.

Q. And from there, where did you move to? A. To Wilks Street.

Q. And when was that, if you can tell us? A. Let me see—I was married in 1901, and I think we lived in Ogden Avenue only for about six months, and then we went to Wilks Street, and only lived there a few months, because it was in such a 40

*Mrs. Dora E. Kastenhuber—Direct.*

dilapidated condition I didn't like to live there; and then we went up into the Hudson City section again.

Q. Well, did you subsequently return to Wilks Street? A. Well, that was two years before we went to Great Meadows; I cannot tell you the date.

10 Q. Did you live there for two years prior to going to Great Meadows? A. About two years.

Q. Was that after the tax sale? A. Yes—after it had been repaired.

Q. You knew Mr. Dieffenbach? A. Yes, through my husband. Of course, he has known him a good deal longer than I have.

Q. Did you ever collect any rents from these premises? A. Why, let me see—the first two years, when it was in such a dilapidated condition, after we moved out, we rented it for perhaps a year or so, but we could not rent it any more to get any price because it had gone down so.

20 Q. What rents did you get during that period? A. Well, I think they paid about eighteen dollars then.

Q. A month? A. Yes.

Q. And what was the character of the property? A. Well, it was an old house.

Q. Was it frame, or brick? A. Frame.

30 Q. A one-family house? A. Yes—two stories and attic.

Q. Cellar underneath? A. Yes.

Q. And did the whole house rent to the one family for eighteen dollars? A. Yes.

Q. And you collected the rents for over how long a period? A. Well, perhaps a year or so, because it was idle a great deal of the time. We really had to give it to someone at a lower rent, to take it, so as not to keep it idle.

40 Q. With relation to the tax sale, when was that premises rented? A. I don't know.

*Mrs. Dora E. Kastenhuber—Cross.*

Q. I mean by that, was it before or after the tax sale? A. Oh, at this low rent?

Q. Yes. A. That was before.

Q. And was it rented right up to the time that it was sold for taxes? A. No.

Q. How long prior to the tax sale was it that it had been untenanted? A. Well, I cannot tell you that. 10

Q. Can you give us your best judgment—a month, or six months, or a year? A. Well, for four or five months, perhaps.

*Cross-examination by Mr. McCarter:*

Q. How soon after this sale, under which you claim, Mrs. Kastenhuber, did you move into the property? A. After the will was probated, do you mean? 20

Q. Yes. A. Well, I would say, about thirteen years, I guess.

Q. Fifteen years? A. Thirteen years, I guess.

Q. Thirteen years? A. Yes; probably more.

The Vice-Chancellor: I do not think that answers the question.

Mr. McCarter: No.

Q. Did you move into the property immediately after the will was probated? A. No, because I was not married then; I was working, and I was in an office thirteen years; so then I was not married until I was thirty-three. 30

Q. Well, who collected the rent? A. Why, I did.

Q. Oh, you did? A. Yes.

Q. And did you know, at that time, that you were going to have what was called a "life interest"? A. Well, yes, I did.

Q. You realized that? A. Yes. 40

*Mrs. Dora E. Kastenhuber—Cross.*

Q. How much rent did you get for those thirteen years? A. Well, it varied, because there was not any improvements; it was an old house, and sometimes it would be fifteen dollars, and sometimes eighteen dollars.

10 Q. Well, I mean in the beginning, now? A. Well, about that.

Q. And you did not pay any taxes on it, did you? A. Well, some.

Q. Well, you didn't keep it up, did you? A. No, I did not.

Q. So that the property was permitted to go into disrepair? A. Yes.

Q. And the taxes were left unpaid? A. Yes; but I wish I could explain something there, that my husband doesn't know, perhaps.

20 Q. Well, we will give you a chance to do that. You became married how soon after the will was admitted to probate? A. Let me see—my father died in 1888, and I was married in 1901.

Q. Thirteen years? A. Yes, about that.

Q. And as soon as you were married you moved in? A. No; we went to Ogden Avenue first.

Q. And you still did not pay any taxes? A. Well, I don't know; I presume we did not; I don't know.

30 Q. And did you know that the proceedings were taken to clear up the taxes? A. Do you mean after the sale? Oh, that was advertised for sale.

Q. No, did you know that Mr. Mulvaney undertook to buy in, under the Martin Act, or recommended that, so as to clean up the title—you knew that, didn't you? A. Yes.

40 Q. And you understood from him, and from everybody, at the time, that if those proceedings were done regularly, then you would no longer have a life estate, but would be the absolute owner, didn't you?

*Mrs. Dora E. Kastenhuber—Cross.*

Judge Sullivan: I object to the question, on the ground that it is immaterial.

The Vice-Chancellor: Well, I will overrule the objection; I will pursue the same course.

Q. Didn't you know that? A. Well, I suppose so. 10

The Vice-Chancellor: Well, she didn't know it, because it is not the law, but she supposed so.

Mr. McCarter: Supposed so.

Q. But that was the theory under which you operated? A. But not the purpose—we did not premeditate on doing that; we thought we would just clear the property up. 20

Q. You thought you would like to own the property, out and out, and you didn't want to do it without your children? A. Certainly; it was not done in that spirit at all.

Q. Now, you have known of these proceedings about this case, haven't you? A. Yes, sir.

Q. And you have heard it stated that your children still have some interest in this property? A. Yes, I understand so now.

Q. When did you first comprehend that? A. 30 Well, I don't know when all of these proceedings were taken.

Q. Well, a moment ago when I asked you when you first got that idea re-established in your mind— A. (Interrupting): Well, Mr. Mulvaney advised us in that way; he said that perhaps we would have to take the property back entirely; that was the first.

Q. Well, when was that? A. My goodness, I guess that was about twenty years ago; it seems that long ago. 40

*Mrs. Dora E. Kastenhuber—Cross.*

Q. Twenty years ago. Well, do you recall the visit that Mr. Perkins and Mr. Drewen made to your farm? A. Yes.

10 Q. What was said up there? A. Why, we went over the case, just the same as we had done hundreds of times; it was a pleasant visit; and Mr. Mulvaney wrote us before they came, telling us they were coming, and not to fear to sign any paper. They came and we talked the matter over; it was pleasant business; we did not find anything in it.

Q. Had you talked it over before with Perkins and Drewen? A. No, that was the first visit.

20 Q. Well, you said "we talked it over before a hundred times". Whom had you talked it over with? A. I had better be careful, and not use so many words.

Q. Yes. Well, whom had you talked it over with before? A. Well, now, let us see—who came out there? Well, I don't know; I guess they really were the only visitors.

Q. Well, what paper did you sign that day? A. None.

Q. None? A. Absolutely; we never saw a scrap of paper.

30 Q. Well, Mulvaney had said not to hesitate to sign any paper, hadn't he? A. Yes. We wondered when they had gone what we had to do.

Q. Mulvaney had told you not to hesitate to sign any paper, and that Mr. Drewen and Mr. Perkins were coming up? A. Yes.

Q. How long before they came up did that letter arrive, about? A. Oh, perhaps a couple of weeks.

40 Q. You had never seen either Mr. Perkins or Mr. Drewen before, had you? A. I had seen Mr. Perkins—not on that business; I had seen Mr. Perkins in my life, yes.

*Mrs. Dora E. Kastenhuber—Cross.*

Q. But not on this business? A. No.

Q. This was your introduction to him, as far as that business was concerned? A. Yes.

Q. Well, did they show you any paper? A. No.

Q. Didn't show you anything—are you sure about that? A. Why, I am absolutely sure.

Q. Absolutely sure; so, while they were coming up there, and your own lawyer had said: "Don't hesitate to sign any paper they gave you", they never showed you any paper? A. That was not my fault. 10

Q. No, no; but did you ask them where the paper was? A. No; we thought they knew their own business.

Q. Well, what did they say to you? A. Why, I don't know; we just talked of the case. 20

Q. Oh, now, see if you cannot recall. Just think—these two handsome men up there in a swell automobile— A. Why, I think they enjoyed the farm. 20

Q. Well, they enjoyed the farm. Now, they were strangers to you? A. Yes.

Q. And you were giving them the hospitality of the farm? A. Yes.

Q. What did they say or what did they do, which led you to be so polite and respectful to these perfect strangers? A. We are to everybody that comes. 30

Q. Even if I came along you would give me the same treatment? A. Yes.

Q. Now, what did they say? Surely you can remember? A. Just what we are saying now.

Q. Oh, no; that is not it. A. No, just in a general way, and I couldn't tell you.

*Mrs. Dora E. Kastenhuber—Cross.*

Q. They had driven all the way from Jersey City to Great Meadows—away up in Warren County? A. Yes.

Q. That is half a day's drive, is it not? A. Yes.

10 Q. All right—these perfect strangers came to your farm, and what did those perfect strangers say to you? A. Well, they didn't ask us any questions pertaining to this; they talked generally.

Q. I know, but what did they say?

The Vice-Chancellor: They talked about this case, didn't they?

20 A. Well, yes. I don't know, though. It was just a matter of conversation. I guess they came up—the way I understood it afterwards was that they came up to see whether we were doing it all in good faith. That is what I got out of it afterwards.

30 Q. I am not asking you what you "got out of it afterwards"—I am asking you what they got out of it that day—and I think you got something out of it, too; and what did they say to you—these strange gentlemen who came up to your farm and were there some time that day—what did they talk about, politics, Congress, or what was it about? A. Well, I told you, they started on the case, and Mr. Kastenhuber went over it, telling them why we had left the city, on account of his ill-health, and why we went to Great Meadows; and that was about the whole of it.

Q. Well, when was this visit? A. Well, it was last Fall—I think last Summer or last Fall.

Q. Last Fall? A. Yes.

40 Q. Since your married daughter was married, some time? A. Yes.

Q. And she had, at that time, how many children, one or two? A. Yes.

*Mrs. Dora E. Kastenhuber—Cross.*

Q. And did you ever report to her the visit of these strange gentlemen? A. Oh, yes; we told Ruth that they were coming because Mr. Mulvaney told us to tell her, so that any paper that they brought that she would sign.

Q. She would sign, too? A. Yes, she would sign, too. 10

Judge Sullivan: I ask that that be stricken out, on the ground that it is not at all competent evidence to bind these infants.

The Vice-Chancellor: I won't strike it out.

Q. Was Ruth there at that time? A. No; she lives quite a ways from us—about a mile.

Q. Ruth? A. She did at that time. 20

Q. Ruth did at that time? A. Yes.

Q. And did these gentlemen go to see Ruth? A. No, I understand they did not.

Q. Well, do you know anything about it? A. Well, they did not.

Q. Ruth was not in Florida at that time? A. No—at Great Meadows.

Q. And Mr. Mulvaney's letter said it would be all right for you and your husband and Ruth to sign this paper? A. "Whatever they asked us to sign." I have those letters home; I wish I had brought them. 30

Q. Yes, I wish you had. I think your husband said they would be produced. Now, did Mr. Mulvaney also say to have the other daughter, Grace, sign this paper? A. Well, she could not.

Q. Well, did he say so? A. No.

Q. What was to be done about that? A. Well, I was to act in her place; I was at that time her guardian.

Q. And you were to sign as her guardian? A. Yes. 40

*Mrs. Dora E. Kastenhuber—Cross.*

Q. Is that right? A. Yes.

Q. So that you were to sign in your own right, and you were to sign as her guardian, and Ruth and her husband were to sign—is that right? A. Yes.

10 Q. Now, they did not produce this paper, eh?  
A. No.

Mr. Drewen: "This paper" — which paper?

Mr. McCarter: This paper that Mr. Mulvaney said they were to sign without hesitation.

The Vice-Chancellor: Not quite in that way; she said "any paper they produced".

20 Q. Well, did they produce it? A. No, sir.

Q. Did you ask them anything about the paper?  
A. No.

Q. Did they say anything about it? A. No.

Q. Not a word? A. No.

*Cross-examination by Mr. Drewen:*

Q. Mrs. Kastenhuber, was there any discussion or mention of a paper at the time Mr. Perkins and I were up at the farm? A. No.

30 Q. Was there any suggestion that you sign any paper? A. No.

Q. Was there any suggestion, whatever, of your doing anything, or the children doing anything, or taking any stand or action in this matter? A. No, there was not.

By Mr. McCarter:

40 Q. Well, what was the conversation? A. Just what I have said—talk generally about everything.

*Mrs. Dora E. Kastenhuber—Cross.*

Q. What was said about this property? A. Well, Mr. Kastenhuber went over it, and said the reason he had to give it up, and the reason he came to the sale, and all of that.

Q. Did Messrs. Perkins and Drewen, or either of them, suggest that later on this paper would be signed? A. No. 10

Q. Not a thing of that kind? A. Nothing.

Q. Did they give any statement of what they came there for? A. No, sir.

Q. What? A. Not a word.

Q. Not a word? A. No, sir.

Q. Then, except for the Mulvaney letter, you would not have had the slightest idea of why these two strangers dropped in there? A. Not a bit.

Q. Did they tell you they were lawyers? A. Oh, yes; I knew that. 20

Q. Did they tell you they were Mr. Sullivan's lawyers? A. No.

Q. Not a word of that kind? A. Not a word.

Q. Whose lawyers did you think they were? A. Why, I didn't know.

Q. Well, whose lawyers did Mr. Mulvaney tell you they were? A. He didn't tell me they were anyone's—just that they were coming up with the paper, and I thought that was the next move, that is all; we had so many. 30

Q. Had so many moves, yes. Did Mr. Mulvaney mention the names of these gentlemen who were coming up, Mr. Perkins and Mr. Drewen? A. Yes.

Q. Did they tell you that they were the gentlemen that Mr. Mulvaney had written you about? A. No.

Q. They did not? A. No.

Q. They told you their names, I suppose? A. Yes; and I knew Mr. Perkins; and he introduced Mr. Drewen. 40

*Mrs. Dora E. Kastenhuber—Cross.*

By Judge Sullivan:

Q. Mrs. Kastenhuber, prior to your marriage to Mr. Kastenhuber, you were employed where?

A. In Collins & Corbin's law office.

Q. As stenographer? A. Yes.

10 Q. So is that the way you knew Mr. Perkins?

A. Yes.

Q. And is that the way you knew Mr. Mulvaney? A. Well, he was in the same office.

Q. He was in the same office at the time you were stenographer there? A. Surely; and he knew us, and he said, "I will attend to your affairs," from the very start, and it has been that way right along. Anything that we got we sent to Mr. Mulvaney, and consequently we thought he

20 was a friend and would attend to everything.

Q. Now, do I understand your answers to Mr. McCarter to indicate that, after Mr. Drewen and Mr. Perkins had left your place, you did not know what they had been talking about? A. No, I didn't know what they came for; I knew what they were talking about.

Q. What had they been talking about? A. Just what I have been telling you—just general conversation; well, the property.

30 Q. About the Wilks Street property? A. And then the farm—they went over the farm; and Mr. Perkins said, "We wanted a holiday, and we thought we would run up and see you".

Q. Well, did they talk about the Wilks Street property? A. Well, nothing definite—nothing that we could take anything out of.

By Mr. McCarter:

40 Q. Mrs. Kastenhuber, have you heard from Mulvaney since this famous holiday visit? A.

*Mrs. Dora E. Kastenhuber—Cross.*

No, because I wrote him a letter afterwards and told him that there were no papers, and I did not understand the visit at all.

Q. And you haven't heard from him since? A. No, not a line.

Q. You will send that letter down, will you, to Judge Sullivan, your lawyer? A. Yes, sure.

By Mr. Drewen:

10

Q. You had known Randolph Perkins as a lawyer for many years? A. Well, not personally, but we were brought up in the same town, and Sunday School, and everything.

Q. And you knew that Perkins & Drewen were the attorneys for James and Ella Sullivan in this matter, didn't you? A. I didn't know who they were for.

Q. No, but you had letters, hadn't you, from Mr. Mulvaney, and from Perkins & Drewen, about the guardianship—about your being appointed guardian of the children, hadn't you, before this time—don't you remember that? A. From Mr. Mulvaney, but nothing from Perkins & Drewen. Mr. Perkins wrote and asked the direction, how to get there with an automobile; and I think I have that letter, too.

20

Q. Just before you were appointed guardian of the minor child (for both of them at that time), didn't you get a letter written by me, asking how I could get there so these papers could be sent up? A. Yes.

30

Q. To sign the petition, and have a notary, and take them there? A. Yes.

Q. Well, you knew from that that it was from Perkins & Drewen's office, didn't you? A. Yes.

40

*Mrs. Dora E. Kastenhuber—Cross.*

By Mr. McCarter:

Q. When were those proceedings for guardianship taken? A. Well, perhaps a year or more ago. You know, Mr. Mulvaney wrote and said that I would be appointed.

10 Q. When was that? A. Well, I don't remember dates—about a year, perhaps, or more.

Q. Before the Perkins visit? A. Yes.

Q. And where was this guardianship appointed—in this proceeding, or was it a regular guardian? A. Only in these proceedings.

Q. It was not a regular guardian? A. No.

20 Judge Sullivan: Now, with the exception of offering those deeds that I have before adverted to, if the Court please, that is all the testimony I desire to offer.

Mr. Drewen: If the Court please, I see no reason in the world why this testimony as to the facts in controversy in the specific performance suit between Brisbane and Sullivan, and the exhibits, should not be admitted.

30 The Vice-Chancellor: Of course, I cannot see any reason, either—either for or against—but it cannot be made evidence without the consent of the other side. Have you anything to take up the time until one o'clock?

Mr. McCarter: Well, your Honor, we do not want to delay the matter. We will then consent that the testimony, from pages 113 to 217, both inclusive, can go in, subject to a motion to strike any of it out that counsel, upon examination, specifically conceives to be irrelevant.

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*Colloquy of Counsel.*

Judge Sullivan: Does that include the testimony and exhibits?

Mr. Drewen: Yes.

(The printed book, from page 113 to page 217, both inclusive, was thereupon marked Exhibit A-1 of May 27, 1926.)

10

Mr. Drewen: Now, the statements in our petition are all admitted, either specifically or in the affirmative allegations of their answering papers, so I suppose there is no requirement to prove any of those. Now, I offer in evidence the original files of this Court in the Matter of the application of the Mayor and Aldermen of Jersey City to acquire certain property of the Evening Journal Association, and others, for the purpose of widening Bergen Avenue, and the establishment of a plaza in the neighborhood of the Summit Avenue Tube Station, in the City of Jersey City.

20

Mr. McCarter: They are records in the case; you do not have to offer them.

Mr. Drewen: Well, they are in.

Mr. Cohn: On the offer that Mr. Drewen has just made, it would seem, for the purposes of this present case, that those proceedings would not be relevant, because Mr. James A. Sullivan is filing the petition here for this award under the Eminent Domain Act, which he has a right to do. Now, for the purpose of brevity, in this present record, it seems to me that all the history of this proceeding, up to the time of that proceeding, that petition, would not be relevant. All of it is covered in his petition.

30

Mr. McCarter (To Mr. Drewen): You do

40

*Colloquy of Counsel.*

not offer the Condemnation Proceedings, do you?

Mr. Drewen: Yes.

Mr. McCarter: That is clearly irrelevant.

The Vice-Chancellor: What is that offer for?

10 Mr. Drewen: For this purpose only—perhaps I can agree with you—but it is to have everything in here; and your Honor will determine what is relevant and what irrelevant.

The Vice-Chancellor: Suppose an appeal is taken (and it is likely that it will be), why should the appellant be put to the expense of printing all of that?

20 Mr. McCarter: I think the case starts with the petition in the suit, which alleges condemnation, and asks permission to pay the money into Court because there are several interests. Your Honor's order is based on that; and what has happened since then is the record of this case; and we do not have to obtain the record of this condemnation.

30 The Vice-Chancellor: Oh, no. What may be termed "the record" itself need not be offered in evidence; it is part of the case. Of course, all these side petitions and orders and motions are part of the record, but not necessarily a matter that ought to be printed if it went up; because it has no bearing on the issue.

Mr. Drewen: Now, I offer the original files in the case of *Brisbane vs. Sullivan* (52/89)—the bill, the answer and the other papers.

40 Mr. McCarter: We object to it for the same reason that we urged before.

*Colloquy of Counsel.*

The Vice-Chancellor: Well, of course, they must be offered in evidence, or they would not be in the case; it is not a part of this case.

Mr. McCarter: No, sir: I understand that. Now, we think they are irrelevant. We understand that every decision that has been rendered in the Chancery proceedings has been in regard to the right to recover based on the idea that the bill was a bill for specific performance, and relief, in a case of that kind, was *ex gratia*, and, under the circumstances, the parties must be left to their other remedies, if they had any; and Judge Bergen's decision in the Court of Errors, under the circumstances, that a bill for specific performance must be dismissed and the parties left to their other remedies, and all the law that has been laid down, and every step taken in those proceedings, was based on the hypothesis that it was a bill to enforce the specific performance of a contract. Now a new thing has occurred; those two suits are dead; the money is here, and certain people are claiming it, not under a bill for specific performance, but they have got their claims, and they must step up to the Captain's office and present them, or forever after hold their peace; and it seems to me that these pleadings in those other suits, which are merely specific performance suits, are irrelevant to this matter.

The Vice-Chancellor: Well, there is one feature of the case where I think it may be relevant: Suppose I should hold that Kas-  
tenhuber took a fee simple; then, of course,

*Colloquy of Counsel.*

10 either Mr. Sullivan or Mr. Brisbane would be entitled to the whole sum in Court. Now, as I recall your various bills, down to the period after the decision of the Court of Errors and Appeals, you insisted upon being charged with paying only on the basis of a life estate; and after the decision of the Court of Errors you changed your bill to allege that you bought this property for a special purpose, so as to bring it under the rule laid down by Justice Bergen. Now, I suppose, in the decision of this case, I have got to take cognizance of the attitude of the complainant for all these years toward taking the property if he got a fee simple, and refusing to take it unless he

20 got a fee simple, or taking a life estate subject to an abatement of the purchase price. I think I will permit the papers to go into evidence.

Mr. Drewen: Then I make the same offer of the files of the Clerk in Chancery in the prior case of *Brisbane vs. Sullivan*, Clerk's Docket 45/661, for the purpose which your Honor has just indicated. I will have them marked.

30 The Vice-Chancellor: It is not necessary to mark them.

Mr. Drewen: Well, it is merely for the purpose of identification.

The Vice-Chancellor: You have got them identified by the docket number.

(The offer is admitted, subject to the same objection.)

40 Mr. Drewen: I offer in evidence a copy of an assignment by James A. Sullivan to Randolph Perkins of Mr. Sullivan's inter-

*Colloquy of Counsel.*

est in the fund to the extent of \$9,000. I understand there is no objection to it.

Mr. McCarter; There is no objection, except that I object to the relevance of the paper, and the competency, as well. I do not object to the fact that it is a copy; I take it merely on the statement of Mr. Drewen that it is a copy. 10

(The offer is admitted, and the paper marked Exhibit C A 2.)

Mr. Drewen: We rest.

Mr. Dunn: I represent William McCullough, who was made a party defendant. I would like to put in evidence a transcript of a judgment, in the sum of \$55,686.19, obtained in the New Jersey Supreme Court on May 5th, 1925, in favor of William McCullough against James A. Sullivan. 20

Mr. McCarter: Is your client a party to this proceeding?

Mr. Dunn: A party in this proceeding, yes, sir, on a claim against James A. Sullivan.

(The transcript of judgment is admitted, without objection, and is marked Exhibit McC. 1.) 30

Mr. Dunn: I would like to offer a certified copy of a writ of execution issued in the same matter, showing the amount collected on account of said judgment by the Sheriff of Hudson County, and paid over to McCullough, amounting to \$1,851.42.

(Admitted without objection, and marked Exhibit McC. 2.) 40

*Colloquy of Counsel.*

Mr. Dunn: I would also like to offer in evidence the order on the affirmance of the judgment in the Court of Errors and Appeals, and the taxed costs thereon, \$34.52.

19 (Admitted without objection, and marked Exhibit McC. 3.)

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20 Judge Sullivan: I think I should offer, if the Court please those tax proceedings in the Circuit Court. The only ones to get any benefit by it, it seems to me, are my clients; and while there may be some question, I understand that this Court ruled that it could not go into the validity of any of these proceedings in any of these other suits that were heard, it seems to me that on this proceeding there is an entirely different question presented, and I imagine that it is evidential to show that the tax proceedings, as matter of fact, did not convey any title whatever by the deed that was delivered to culminate the proceedings. I, therefore, offer in evidence the tax proceedings with reference to the direction of the issuance of a deed for this property, as they are on record in the County Clerk's office of Hudson County; and also the tax proceedings as they remain on record in the City Clerk's office of Jersey City or the City Collector's office.

30

Mr. McCarter: May we have a chance to see them?

40

*Colloquy of Counsel.*

Mr. Sullivan: I think we can arrange to have you see them.

(The offer is admitted.)

Mr. McCarter: We have no evidence.

(Case closed; testimony to be written up, and oral argument had on Friday, June 25th, 1926, at the Chancery Chambers, Jersey City, at 10 o'clock A. M.) 10

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CONTINUED HEARING ON OCTOBER 7, 1926.

## Appearances:

MESSRS. PERKINS & DREWEN (Mr. WALSCHIED, of Counsel), for James A. and Ella J. Sullivan. 20

MESSRS. COHN & COHN (Mr. McCARTER, of Counsel), for Arthur Brisbane.

Mr. MARK A. SULLIVAN, for Grace Kasthuber and Ruth Youmans.

Mr. JEROME J. DUNN, for Wm. McCullough, a Judgment Creditor.

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Chancery Chambers,  
Jersey City, N. J., Oct. 7th, 1926.

Hearing of the matter resumed, pursuant to adjournment, at ten o'clock a. m., before His Honor, John Griffin, Vice-Chancellor.

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Mr. Sullivan, I offered in evidence before, in the hearing, these papers, but I did 40

*Hearing on October 7, 1926.*

10 not have the copies of them, and I would like to have them marked now: First, the original deed from the Mayor and Aldermen and City Clerk of Jersey City to C. R. Dieffenbach (Marked Exhibit M. S. 1). I also wish to have marked the original deed from C. Rudolph Dieffenbach to William P. Kastenhuber, for the premises in question (Marked Exhibit M. S. 2). I also have here a certified copy of the proceedings with reference to the tax—the tax proceedings—as they remain on file in the City Clerk's Office of Jersey City.

Mr. Walschied: That we object to.

20 Mr. Sullivan: Well, this has been offered and admitted at the last hearing.

Mr. Walschied: I do not know whether it was done with or without objection.

The Vice-Chancellor: Well, I will take it; I am taking everything.

Mr. Walschied: I understand your Honor is taking everything, reserving the rights of objection?

The Vice-Chancellor: Oh, yes.

30 Mr. Sullivan: I also have here, if the Court please, formal answers, copies of which I have also given to the counsel on the other side. I have formal answers for the infant, Grace Kastenhuber, and for her sister, Ruth Youmans, the children of William T. Kastenhuber. Your Honor will recall that at the hearing I asked permission to make a statement as to what the answers would be, and permission to file them subsequently—to present them formally—and these are the answers (handing the papers to the Court).

40

*Hearing on October 7, 1926.*

Mr. Walschied: Your Honor is receiving these answers subject to all objections?

The Vice-Chancellor: Oh, yes.

(The answers were thereupon marked filed, as of this date, by the Court.)

Mr. Sullivan: At the hearing, if your Honor please, Mr. Kastenhuber and Mrs. Kastenhuber were cross-examined with regard to certain correspondence which they said they had received from Mr. Mulvaney. Within a week or so after the hearing I procured the original letters that they had referred to, and sent copies to Mr. McCarter and Mr. Drewen. Now, I have the originals here, if either counsel desire to use them. 10

Mr. Drewen: They are not in evidence. 20

Mr. Sullivan: No, they are not in evidence. Mr. McCarter asked us to produce them. Now, I might say, to get it on the record, that I also offered in evidence the proceedings in the County Clerk's Office of Hudson County with reference to the tax deed which formed the basis of Mr. Sullivan's title. There are no proceedings—there is nothing on file in the County Clerk's Office. 30

The Vice-Chancellor: Not the order of the Judge?

Mr. Sullivan: Nothing at all. There are no papers, and no order in the minutes. Now, I wrote to counsel, about a week or ten days ago, to ask if we could make a stipulation to that effect; but I have heard from neither counsel on it. Of course that was one of the things that was set up in the objection to the title by the Title Com- 40

*Hearing on October 7, 1926.*

pany that examined it—I think it was Exhibit D-25, or some such thing as that.

Mr. Drewen: 24 or 25.

Mr. Sullivan: Well, it was one of those. They set up that very same fact.

10 Mr. McCarter: Well, speaking for Mr. Brisbane, I have no desire to do anything with reference to the tax proceedings, except to say that I will take Judge Sullivan's word, as if he had sworn on the stand, that he had made a search of the County records and found no proceedings whatever, which, as I understand, is the outside of what his statement amounts to. Whether there are any proceedings, or  
20 what became of them, or what not, I do not know anything about; but we, of course, have certain views of that situation—that being the fact; and we will not require Judge Sullivan to swear to that. I will take his word for it that he made a search up there and could not find any papers in connection with it.

The Vice-Chancellor: There is no recital of any proceedings in the deed.

30 Mr. Sullivan: Yes, there is, your Honor; there is a recital of the order of the Court in the tax deed, I think.

The Vice-Chancellor: Where is it?

Mr. Sullivan: Is there not? I thought there was. (After examining the paper in question:) Here it is: "And whereas, the Circuit Court of Hudson County, on petition," etc.

40 The Vice-Chancellor: Oh, yes. Are you through now with all your offers?

*Hearing on October 7, 1926.*

Mr. Walschied: I think there is one misunderstanding, your Honor: We do not agree to any stipulation in regard to the Hudson County records; we are willing to assume that Judge Sullivan will swear to the statements which he has made—in other words, we are willing to allow the statement which Judge Sullivan has made to be considered as evidence upon the subject, but subject to any objection which we may have as to its competence, materiality and relevancy. That is as far as we can go on that proposition. 10

The Vice-Chancellor: That is, that he would swear there were no proceedings?

Mr. Walschied: That he would swear that he found no proceedings. 20

Mr. Sullivan: Well, I had better qualify that to this extent—that I examined the records of the County Clerk's Office for the years 1907 and 1908, and that during those years there were no entries in the minutes of the Circuit Court with reference to the tax proceedings on this property.

The Vice-Chancellor: In other words, you found no record in the Clerk's Office of this supposed order that is recited in the deed. 30

Mr. Walschied: Well, that is not what he is stating now; he states there is nothing in the minutes.

Mr. Sullivan: There is nothing in the minutes, and there is nothing on file for a period of five years on either side of 1908. The records in the County Clerk's Office do not show any papers whatever in any 40

*Hearing on October 7, 1926.*

proceeding with reference to the lot which is here in controversy.

Mr. Walschied: They show the Martin Act proceeding?

Mr. Sullivan: Not with relation to the lot here in controversy.

10 Mr. Walschied: But they do not show any order with relation to this lot.

Mr. Sullivan: I say they do not show anything; there is no petition on file; there are no proofs of any kind; there is no order of the Court; the minutes contain no order of the Court; there is nothing filed in the Hudson County Clerk's Office.

20 The Vice-Chancellor: Of course there is the original Martin Act proceedings, and report of the adjustment of taxes against this property?

Mr. Sullivan: It is not indexed against this property if there is.

30 Mr. Walschied: I do not think that ought to go in in that shape, because his Honor knows that there is always a sort of omnibus proceeding against a number of lots, and then an assessment against those lots, and then the deeds as they were taken—now, that proceeding is certainly there.

Mr. Sullivan: There is not in this case.

40 Mr. Walschied: I am not talking about this case; this is just a step in a Martin Act proceeding—just one parcel of land in a Martin Act proceeding; and the Martin Act proceeding must be there, or there is not any Martin Act proceeding; and that I certainly would not care to agree to.

*Hearing on October 7, 1926.*

Mr. McCarter: No, I did not understand that Judge Sullivan's statement went to the extent of excluding the original Martin Act proceeding; what I understood him to say was that there was no index tying that up to this particular lot; and that he was unable to find any paper whatever which would include an order directing this property to be sold. 10

Mr. Sullivan: Yes—no petition, no proofs, no proceeding.

Mr. Walschied: There would be no separate petition, as I understand the Martin Act.

Mr. Sullivan: Why, of course there would be. 20

Mr. Walschied: Not for the one lot.

Mr. Sullivan: Yes. If your Honor please, this property was not sold under any adjustment; this property was sold under that provision of the Act which said that where taxes remain in arrear for over two years, the sale may be made. This is not any adjustment under the Martin Act.

Mr. Walschied: How do you know that?

Mr. Sullivan: Because the deed recites that there was no adjustment of taxes. 30

Mr. McCarter: Well, I think probably the best thing to do, as we are losing time talking, would be for Judge Sullivan to take the stand.

The Vice-Chancellor (After further discussion): Well, if counsel cannot stipulate as to it, I will allow you to make proof of it.

Mr. Sullivan: Well, I think I will make proof of it. 40

Hearing on October 7, 1926.

MARK A. SULLIVAN, Esq., sworn.

Mr. Walschied: May we, at this time, reserve an objection to this testimony?

The Vice-Chancellor: What is the nature of your objection?

10 Mr. Walschied: Why, on the ground that the testimony is immaterial, incompetent and irrelevant; and that it constitutes an attack upon this Martin Act, which, by the statute, is beyond attack, and, by the statute, is made a finality, and is a finality in these proceedings.

20 The Vice-Chancellor: Well, I will take the testimony, subject to your objection. That is the real crux of the question, and I am going to decide the case, either on that point, or——

Mr. Walschied: Well, if that is the real crux of the case, may I call your Honor's attention to a recent decision?

30 The Vice-Chancellor: It is not the real crux of the case—I think the most serious part of the case is that this property was bought in by this man for the father of these infants—this purchaser at the sale bought this property in for the father of these infants; and the husband of the life-tenant should have paid the taxes, perhaps. Now, in such a case, my impression is that it is a serious question whether the subsequent purchasers are not charged with notice of that fact. I think that is probably more serious than the question of the taxes. It may be that we cannot go behind the tax deed, in view of the fact that the remedy would be by *certiorari*.

40 Mr. Walschied: That question has just been squarely dealt with in a case in which Mr. McCarter's office was engaged.

*Hearing on October 7, 1926.*

The Vice-Chancellor: So I will take the testimony.

The Witness: Since the last hearing in this matter I have attended at the County Clerk's Office of Hudson County, and searched the records for any order, petition, proofs, or any proceeding whatever with reference to securing an order from the Circuit Court of Hudson County directing the City officials of Jersey City to grant a deed to C. R. Dieffenbach for Lot F in Block 1865-67, fronting on Wilkes Street, being the premises described in this suit. The period that I searched was from the 1st of January, 1907, to the 1st of January, 1909; and during such period there is no record whatever, either in the indices or in the files, of any such proceeding. Further, I searched the minutes of the Circuit Court of Hudson County for the period from January 1st, 1908, to December 31st, 1908, and found no record of any order of said Circuit Court with reference to the property in question.

By the Vice-Chancellor:

Q. 1908? A. Yes. 30

Q. The sale was when? A. The sale was in 1906, but the order of the Court, as recited in the deed, was in June, 1908.

Mr. Walschied: The deed says that the sale was on the 5th day of June, 1906.

*Cross-examination by Mr. McCarter:*

Q. Judge, your experience in this County has been, has it not, that orders have frequently been signed by Judges of the County, but not entered 40

*Hearing on October 7, 1926.*

in the minutes? A. That has not been my experience, Mr. McCarter.

Mr. McCarter: That is all.

By Mr. Walschied:

10 Q. Judge Sullivan, you examined the minutes of the Circuit Court, did you? A. Yes.

Q. And found no record of this order? A. None.

Q. Under what title did you search the minutes? A. Well, the minutes I took page by page; and I also searched——

20 Q. (Interrupting) You know there is an index of the minutes? A. Yes, there is. I also looked at the index first. I searched under the name of “Kastenhuber”; I searched under the name of “Dieffenbach”.

Q. Whereabouts did you search under those names? A. In the index; and when I found no record in the index I took the minute book and went over it, page by page, during that period of time, but found no order or rule.

30 Q. What else did you do? A. I enlisted the services of the young man who has charge of the vault with the records there, and explained to him what I was looking for; and he assisted me for a couple of hours there.

Q. What were you looking for in the vault? A. I was looking for any papers that might be filed in any tax proceeding for the sale of property of William P. Kastenhuber, indexed under that name, or indexed under “Dieffenbach” or “Dora Kastenhuber”.

40 Q. Those are the only names that you were looking for when you searched the papers in the vault? A. That is all.

*Hearing on October 7, 1926.*

Q. And you made search for no other names, did you? A. No.

Q. You made search for no proceeding under the name of "Jersey City", did you? A. I am just trying to think, Mr. Walschied.

Q. Well, I am trying to help you, if you did. A. My recollection is that I went over a large number of cases indexed under the name of "Jersey City" in the index. 10

Q. In the index? A. Yes.

Q. And there were a large number of cases indexed in the index under the name of "Jersey City", which were just such tax proceedings, weren't there? A. I do not think they were just such tax proceedings as this.

Q. Well, they were Martin Act proceedings? A. They were some tax proceedings. 20

Q. And did you examine all of those tax proceedings which you thus found indexed under the name of "Jersey City"? A. I did not, because—

Q. Never mind—you did not, did you? A. No.

Q. Now, did you also examine the actual files of the County Clerk's Office, looking for the actual original order? A. Do you mean did I go into the vaults and take out the actual papers, as filed? 30

Q. Yes. A. No, I did not.

Q. Did you look for any Martin Act files in the vault, covering the year that you were searching? A. Well, I do not understand what you mean by that question.

Q. Well, the original order, if an original order was made, would be filed in the County Clerk's Office, wouldn't it? A. What original order?

Q. This order? A. Do you mean directing the issuance of a deed? 40

Q. Yes. A. Yes.

*Hearing on October 7, 1926.*

Q. Such an order, in the ordinary course of events, would be filed some place in the County Clerk's Office? A. It should be, yes.

Q. Did you look for such an original order up among the files in the County Clerk's Office? A. Well, I looked by examining the indices.

10 Q. That is all you did do? A. That is all; I did not go into the vault and take down every packet of papers and look through those papers for such an order.

Q. And how many of those Jersey City tax proceedings, approximately, did you find, in your examination, for the years 1907 to 1909—I think that is the period you searched? A. A very large number.

20 Q. A very large number? A. A very large number.

Q. And did you find any such orders for deeds among any of these, or in the files of these tax proceedings? A. I did not examine the files of the tax proceedings.

Q. Did you examine the files, at all? A. Not the tax proceedings indexed under the name of "Jersey City".

Q. Well, not of any tax proceeding? A. No.

30 Q. So, I understand what you did was to go to the County Clerk's Office, search the name "Kastenhuber", and the name "Dieffenbach" in the indexes, trying to find through the indexes whether or not such an order had been entered in the minutes? A. Yes.

Q. Because that is all the indices would show, wasn't it? A. No, the indices would also show any petition that had been filed; the Clerk's Register would show that.

40 Q. And whether that was on file? A. Yes.

Q. And you found nothing in those indices? A. Nothing.

*Hearing on October 7, 1926.*

Q. And, outside of that, you, yourself, made no further examination? A. No; except in the page-by-page examination of the minutes of the Circuit Court covering the period that I have testified to.

Q. So that if such a petition had been filed, and if such an order had been made, and the record of it had not reached the indices of the minutes, and had not reached the minutes, and had you would not have found either, would you? A. No. I might say also, with reference to the tax proceedings indexed under the name of "Jersey City", there was always another name attached to those proceedings, which would show either the presumed owner or the person in whose name the land had been assessed; and, of course, not finding anything indexed under "Jersey City", "Diefenbach," or "Kastenhuber", I did not examine any of those proceedings. 10 20

By the Vice-Chancellor:

Q. By the way, is there anything in the statute which provides that these orders should be entered in the minutes? A. Nothing except the ruling of the Court, if your Honor please.

Mr. Walschied: That applies only to the Court proceedings.

Q. Here, I notice in the certificate of the City Clerk you have brought here, the copy of the petition, and copy of the order to make the deed? A. I would not have the original. 30

Q. It is not filed with the City Clerk? A. Yes, that is where the original orders are.

Q. I see—then there was an order made by the Court? A. You mean there was something signed by the Court? I should say, yes; I should say the original papers in this proceeding are in the Clerk's Office, and I have given copies to counsel. 40

*Hearing on October 7, 1926.*

The Vice-Chancellor: The original petition and the original order.

Mr. Walschied: That casts a little different light on it.

Mr. Sullivan: I say, in my opinion, it is so.

10 The Vice-Chancellor: Well, it ought to be verified.

Mr. Walschied: Who was the Judge?

Mr. Sullivan: Judge Spear.

Mr. Walschied: And, of course, you know his signature?

Mr. Sullivan: I should say that it is his original order—that it is his signature attached to the order on file in the City Clerk's Office.

20 The Vice-Chancellor: I think there is one case in this State where a situation somewhat similar arose, and, after a lapse of time, the Court presumed that there was an order signed and it had been mislaid or lost. Here it is apparent that the petition was presented and an order signed, but it does not appear in the minutes, and was not filed with the Clerk of the Circuit Court. I think there is some question as to whether

30 it was necessary to file it with the Clerk.  
Mr. Walschied: Well, the only requirement there is to that effect, that I know of, is the requirement of the rules of court in judicial proceedings.

The Vice-Chancellor: This is not a proceeding at common law, it is a court of statutory tribunal.

40 Mr. Walschied: Yes; and I do not think that Mr. Sullivan knows of any other requirement except that contained in the rules

*Hearing on October 7, 1926.*

of the Supreme Court governing the practice.

Mr. Sullivan: No. There are decisions, of course, to the effect that where the order had not been entered in compliance with the rules, that it is void.

The Vice-Chancellor: Well, I think I have got the facts now. You may argue the matter. 10

(The case was then orally argued by counsel.)

**Exhibit A-1 of May 27, 1926.**

Between

ARTHUR BRISBANE,  
Complainant,

*and*

ELLA J. SULLIVAN, *et al.*,  
Defendants.

20

Transcript of shorthand notes of testimony taken in the above entitled cause on May 5, 1913, at Chancery Chambers, Newark, N. J., before Hon. James E. Howell, Vice-Chancellor. 30

Appearances:

MESSRS. RIKER & RIKER, for Complainant.  
MR. RANDOLPH PERKINS for Defendants.

Mr. Riker: I offer first contract dated the 19th day of July, 1910, between James A. Sullivan and Bennett Milnor. 40

(Marked Exhibit C-1.)

*Exhibit A-1 of May 27, 1926.*

BENNETT MILNOR, SWORN.

*Direct examination by Mr. Riker:*

10 Q. I hand you Exhibit C-1 in this case, purporting to be a contract between James A. Sullivan and Bennett Milnor, and ask you whether the signature there, Bennett Milnor, is yours? A. Yes, sir.

Q. And are you the person; of course, you are the person named in the contract? A. I am.

Q. I now draw your attention to an endorsement in typewriting on the last page of this contract, signed Bennett Milnor, but without date; is that your signature? A. Yes, it is.

20 Q. And what did you do with that contract? A. I gave it to Mr. Brisbane.

Q. Can you remember the date? A. It was sometime in 1910, I believe.

Q. With reference to the date of the contract itself, 19th day of July, 1910, can you fix approximately or with any definiteness when it was delivered? A. I think it was the same day, possibly a day later.

Mr. Riker: I offer that assignment now.

30 By Mr. Perkins:

Q. When you took this contract from Mr. Sullivan you were acting really as the agent of Mr. Brisbane, were you not? A. Yes, I was.

Q. That fact was not known to Mr. Sullivan at the time you entered into contract, was it? A. Yes, it was.

Mr. Riker: That is on the same paper. May the same mark stand for both?

40 The Court: Yes, let the whole thing go in together.

*Exhibit A-1 of May 27, 1926.**Cross-examination by Mr. Perkins:*

Q. Did you know Mr. Sullivan at the time of the execution of this contract? A. I met Mr. Sullivan through his friend, Mr. Gannon.

Q. Mr. Gannon was Mr. Sullivan's agent? A. Yes, personal friend of Mr. Sullivan's, who told me Mr. Sullivan knew Mr. Brisbane was going to take the property. 10

Mr. Perkins: I move that that be stricken out.

The Court: Yes.

Q. That is the only reason you say that Mr. Sullivan knew Mr. Brisbane was your principal, that Mr. Gannon told you? A. I guess that is the only reason. 20

Mr. Perkins: Then I move that the answer in which this witness said that Mr. Sullivan knew Mr. Brisbane was the principal be stricken out, because it is hearsay.

Mr. Riker: I object to its being stricken out; I don't think it is material one way or the other, as far as the issue goes.

The Court: Then let it be stricken out.

Mr. Riker: I now offer a memorandum dated the 29th day of September, 1910, purporting to be signed by James A. Sullivan, Arthur Brisbane, by Robert M. Boyd, Jr. I have asked Mr. Sullivan if that is his signature and he says it is, and I now offer this extension of the time for the performance of the contract. 30

(Marked Exhibit C-2.)

*Exhibit A-1 of May 27, 1926.*

EMIL J. STEINHAUSER, SWORN.

*Direct examination by Mr. Riker:*

Q. What position do you hold? A. Secretary to Mr. Arthur Brisbane.

10 Q. How long have you been his secretary? A. I have been with Mr. Brisbane about ten years.

Q. Had you any connection with the contract which is in evidence as Exhibit C-1 in this case between Mr. James A. Sullivan and Bannett Milnor? A. Yes, sir.

Q. What did you do, if anything, in connection with it? A. I believe on the 14th day of October, 1910, Mr. Brisbane signed a check for \$1800; on the 15th day of October I went to the American Exchange Bank, and got eighteen one hundred dollar bills legal currency of the United States, to close the contract as Mr. Brisbane's representative. I went to the office of Mr. Boyd in the Mail & Express Building, was there from 10:45 until 2 o'clock on Saturday, October 15th. Mr. Sullivan or his representative did not appear to close that contract; thereupon the man in Mr. Boyd's office said, "That is all, you can go back". Mr. Sullivan did not appear, or his representative.

20  
30 Q. Where was this place, do you say? A. In the Evening Mail Building, Mr. Boyd's office.

Q. Do you know what number Broadway that is? A. I do not, but it is on the corner near Fulton Street.

Q. Office of Mr. Boyd. Now, what else, if anything, or did you have anything else with you at the time? A. I had bond and mortgage which was the certificate put on that morning at the City Hall.

*Exhibit A-1 of May 27, 1926.*

Mr. Perkins: I object to the testimony of a written instrument. If they want to prove this instrument they must produce it.

The Court: They are only identifying it now, mere identification this is. They will have to produce the instrument, of course, if they rely upon it. 10

Q. I show you a check of the American Exchange National Bank, October 14, 1910, for \$1800, purporting to be signed Arthur Brisbane. A. Yes, certified and signed by me as getting the money, on the back.

Q. And do you know Mr. Brisbane's signature?

A. I do.

Q. That is his signature? A. Yes.

Q. And you drew that money, did you? A. Yes. 20

(Check offered in evidence and marked Exhibit C-3.)

Q. I now show you a paper purporting to be a bond from Arthur Brisbane to James A. Sullivan for \$1,600, purporting to be signed Arthur Brisbane. Do you know his signature? A. I do.

Q. And that is your signature as witness? A. Yes, sir.

Q. And also a paper purporting to be a mortgage dated the 14th day of October, 1910, Arthur Brisbane, unmarried, to James A. Sullivan, Jersey City, signature of Arthur Brisbane and seal. Is that Mr. Brisbane's signature, and purporting to be witnessed by you? A. Yes, sir. 30

Q. That is your signature? A. Yes, sir.

Q. Are these the papers which you have described as a bond and mortgage which you had with you on the 15th day of October? A. Yes, with the \$1800, with the certificate on the back. 40

*Exhibit A-1 of May 27, 1926.*

Mr. Riker: I offer the bond and mortgage.

(Bond marked Exhibit C-4; mortgage marked Exhibit C-5.)

10 *Cross-examination by Mr. Perkins:*

Q. Have you had any other connection with this matter than the one just described? A. That is all.

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ARTHUR BRISBANE, SWORN.

*Direct examination by Mr. Riker:*

20 Q. Where do you live? A. New York City.

Q. And will you state your business and occupation? A. I am a newspaper employee and president of the New York Evening Journal Publishing Company.

Q. You are the editor also, are you not? A. I am the editor, yes.

Q. And you are the complainant in this cause? A. Yes.

30 Q. What personal part did you have in this transaction in reference to this contract, which is C-1, contract with Mr. Sullivan? A. I had employed Mr. Milnor to purchase certain pieces of real estate for me in Jersey City, where I was investing; I asked him to find out what was for sale, and what prices and what terms, and to report to me what was offered to him, for my approval. He bought a number of pieces, some eighteen or twenty pieces of real estate in Jersey City for me, and, among other things, reported  
40 that this piece of property was for sale at the price and on the terms stipulated in the contract.

*Exhibit A-1 of May 27, 1926.*

Q. Did you see the contract itself? A. I have seen it, yes; I told him to buy the property for me on those terms.

Mr. Perkins: I object to the conversation between this witness.

The Court: How do you prove the authority of an agent unless you can prove it this way. 10

Mr. Perkins: The contract that is set out in the bill does not purport to be the contract of this gentleman's agent.

The Court: No, but an agent negotiated the contract, and he is giving now the authority that he gave to his agent. I don't see any other way to prove the authority of an agent; of course, it is hearsay, but must be one of the exceptions to the rule against hearsay evidence, because there is no other way to prove it. 20

A. In addition, I gave him the amount of money which he paid in cash on account of the contract, to pay it over for me; that was the preliminary connection with the contract, I contracting through my agent to purchase the property. Subsequently, I sent, as the witness, my secretary, has testified, the necessary amount of money in bills for the fulfillment of the contract; and I went to the place myself on the 15th, as appointed, to make sure that my secretary had not failed to go there and take the money and fulfill the contract for me, and I saw Mr. Boyd, the gentleman who told me he regretted the man who had undertaken to sell the property had not appeared, and I asked the man at the office at the appointed place to note that my money and my bond and mortgage had been there, and he said that he had noted that. 30 40

*Exhibit A-1 of May 27, 1926.*

Q. How long did you stay there on that occasion? A. A very short time, simply to find, I went in to find whether or not the matter had been concluded, but it had not been.

Q. What hour did you go in, do you remember?

10 A. I can't remember, but it was sometime along noon day, I should think; I think perhaps it may have been 2 o'clock, because I think my secretary had left; he had been notified that the time had passed and it was no use to stay longer. I then made inquiries as to the best methods to pursue, and I asked my attorney to take the steps necessary to compel the fulfillment of the contract, as I had done my share in the matter.

20 Q. That is all, is it, that you had to do with the matter? A. That is all, to my recollection, yes. The only other connection was that the editor and owner of the Jersey City Journal said they were very anxious to get that entire block of property.

Mr. Perkins: I object.

The Court: That is hearsay.

*Cross-examination by Mr. Perkins:*

30 Q. You caused the title of the property to be searched, did you not? A. My attorney attended to that matter; Mr. Cowart of Freehold, attends to all my search matters, and I presume he made the usual investigations for me.

Q. Mr. Cowart is the gentleman you referred to in the previous question when you said you asked your attorney to take the necessary steps? A. No, I asked my attorneys in New York City to take steps in that case.

40 Q. Mr. Cowart of Freehold did make a search on this property, didn't he? A. That I couldn't say; he represents me in my New Jersey real estate, which is very extensive, and as I contract

*Exhibit A-1 of May 27, 1926.*

to buy a piece of property I notify him to look into the title for me, and occasionally he investigates the title himself, and occasionally, I believe, he has it done by one of the title guaranty companies.

Q. Mr. Cowart made a report to you on this title, did he not? A. I assume that he did.

10

Q. Have you no definite knowledge about it? A. I could consult my letter files possibly; yes, I can state definitely, he told me that the title had defects which ought to be looked up; I presume that he looked them up.

Q. When did he tell you that the title had defects which ought to be looked up? A. I think when he—previous to the extension of the contract.

Q. Wasn't the object of the extensions to enable the defendant to correct the defects in the title? A. The object was to extend the time of investigation. However, we were willing to take the title, because I appeared with the money to pay for it at the time stated.

20

Q. You mean you were willing to take a title such as was called for by the contract? A. Such as was called for by the contract, yes.

Q. But not such title as Mr. Cowart reported to you Mr. Sullivan had? A. No, I had instructions to my secretary to pay this amount of money in bills and take the title; I gave him no instructions to investigate the title or refuse it; I assumed his contract was valid and he would live up to the contract, which called for good title; I was ready to pay for it.

30

Q. That was the only kind of title you were ready to pay for that day, wasn't it? A. No, I don't say so; I had reason to believe that there

40

*Exhibit A-1 of May 27, 1926.*

was an effort to buy the property in another direction, in fact, absolute knowledge of that fact.

Mr. Perkins: I object, that the answer is not responsive.

10 Q. (Question read.)

The Court: That can be answered yes or no?

A. Yes.

20 Q. Do you mean the Court to understand from your testimony that you were willing to pay the full consideration price for the defective title which Mr. Sullivan had for this property? A. I was willing to pay that price for Mr. Sullivan's title, such as he had at that time, not, of course, giving up my recourse to damages if that should appear proper, but I was willing to pay that for his title.

Mr. Riker: That is our case.

30 Mr. Perkins: I have served notice on the solicitor for the complainant to produce certain letters which give the history of the efforts to close this title, and the objections to it—a letter dated October 26th, 1910, written by Mr. Sullivan to Robert M. Boyd.

Mr. Riker: I haven't that, your Honor; that is a letter to Mr. Boyd.

The Court: It cannot be produced. If it is material and relevant you can introduce secondary evidence of its contents so far as this complaint is concerned.

40 Mr. Perkins: I didn't want to call Mr. Boyd here, take him away from his affairs; he was searching title for Mr. Cowart.

*Exhibit A-1 of May 27, 1926.*

The Court: It may be that Mr. Riker will consent.

Mr. Riker: I have no objection so far as the proof—that is to say, I assume it is a copy of a letter sent to Mr. Boyd.

10

JAMES A. SULLIVAN, SWORN.

*Direct examination by Mr. Perkins:*

Q. You are one of the defendants in this suit?

A. Yes.

Q. And the person who contracted to sell this property to Mr. Milnor? A. Yes.

Q. Previous to your contract with Mr. Milnor had you caused the title of the property to be searched by some attorney? A. I did. 20

Mr. Riker: I object; I don't think that is material.

Mr. Perkins: I am going to show that when Mr. Sullivan made the contract he made it in good faith, believing that he had the title.

Mr. Riker: I will assume that.

The Court: I think that would be presumed. Want of good faith, lack of good faith would be a matter for the other side to prove. 30

Q. At the time that you made this contract did you believe that you had good title to the property? A. I did.

Q. When was your attention first called to the fact that your title was not good? A. About the first of August in the year 1910, Mr. Cowart and a Mr. Petty called at my office and stated some 40

*Exhibit A-1 of May 27, 1926.*

facts which they said were sufficient to render me unable to perform my contract according to the written terms.

Q. Who was with Mr. Cowart? A. A Mr. Petty, I believe, from the office of Mr. Boyd in New York.

10 Q. Do you know who were searching the title for Mr. Brisbane? A. Really, I think it was being searched by both Mr. Cowart and Mr. Petty. They both seemed to have knowledge concerning the facts which they narrated to me.

Q. What did Mr. Cowart say to you with reference to your defective title?

Mr. Riker: I object.

The Court: I think I will take the answer.

20 Q. (Question read.) A. He said many things incidental to the defects which he stated, but his chief objection, he said, was that the title was a Martin Act title and that the proceedings were by way of perfecting the title where defective, and in his opinion, it could not be remedied.

Mr. Riker: I think perhaps that is going a little further than your Honor—

30 The Court: How does that affect the question? They say they are willing to take the title anyhow, with an abatement to damages, if there are any damages.

Q. When next after that did you see or communicate with Mr. Cowart with reference to title?

40 A. Why, I believe the next communication with regard to this matter was by way of Mr. Gannon, my agent in this matter, and he had an interview with—I had an interview with Mr. Boyd at New York.

*Exhibit A-1 of May 27, 1926.*

Q. He is the person at whose office the contract required the contract to be closed, is he not? A. Yes.

The Court: Robert M. Boyd, of Montclair?

Mr. Perkins: Yes. 10

Q. Was Mr. Boyd making a search of the title? A. I believe he did it; yes.

Q. Do you know whether or not Mr. Boyd represented Mr. Brisbane in this purchase? A. He said he did.

The Court: That won't do.

Q. Did you have any correspondence with Mr. Boyd with reference to the passing of this title? A. I believe I did. 20

Q. Did Mr. Boyd deliver to you at any time a list of the defects of the title? A. He did.

Q. I show you a letter bearing date New York, October 7, 1910, addressed to Mr. James A. Sullivan, and purporting to be signed by Robert M. Boyd, Jr. What is that paper?

The Court: That is a letter written to you by Mr. Boyd?

The Witness: Yes, sir. 30

(Marked 1 for identification.)

Q. Did you make a reply to that letter? A. I did.

Q. I show you a carbon copy of what purports to be a letter written on October 26, 1910, to Robert M. Boyd; is that a copy of your reply? A. Yes, sir.

(Marked 2 for identification.) 40

*Exhibit A-1 of May 27, 1926.*

Q. I show you another letter dated New York, October 28, 1910, addressed to James A. Sullivan, and signed by Mr. Boyd; did you receive that from Mr. Boyd on or about its date? A. I did.

(Marked 3 for identification.)

10

Q. I show you copy of letter dated October 29, 1910; can you tell whether that is a letter written by you to Mr. Cowart, a copy of letter? A. It is.

(Offered in evidence and marked Exhibit D-1.)

20

Q. I show you a letter dated November 1, 1910, addressed to you, signed Samuel Cowart; is that reply received to the last letter mentioned? A. It is.

(Offered in evidence and marked Exhibit D-2.)

30

Q. I show you copy of a letter dated December 6, 1910, addressed to Samuel Craig Cowart; is that not copy of letter sent in response to the last letter? A. It is.

(Offered in evidence and marked Exhibit D-3.)

Q. I show you a letter dated December 8, 1910, Freehold, addressed to you, signed S. C. Cowart; is that the response you received to your letter? A. It is.

(Offered in evidence and marked Exhibit D-4.)

40 Q. I show you a carbon copy of letter dated December 12, 1910, addressed to Samuel C. Cow-

*Exhibit A-1 of May 27, 1926.*

art; is that your response to Mr. Cowart's letters?

A. Yes.

(Offered in evidence and marked Exhibit D-5.)

Q. I show you letter signed December 13, 1910, addressed to you, signed by Mr. Cowart; is that in response to your last communication? A. It is. 10

(Offered in evidence and marked Exhibit D-6.)

Q. Mr. Sullivan I call your attention to this clause in the letter of December 13, 1910, Exhibit D-6, written by Mr. Cowart, in which he said "Mr. Brisbane takes the position that you have made a misrepresentation of the title and he is even threatening criminal prosecution on this account." After the receipt of that letter did you write any further letters to Mr. Cowart? A. I don't think I did. 20

Q. What did you do then? A. I handed the matter over to my attorney.

Q. Who is he? A. Mr. Fielder.

Q. Did you afterwards mail some letters written by Mr. Fielder to Mr. Cowart? A. I did.

Q. I show you a letter, copy of a letter dated December 19, 1910, addressed Samuel C. Cowart, Esq. Can you tell me whether or not that is a copy of a letter signed by Mr. Fielder and mailed by you to Mr. Cowart? A. It is a copy. 30

Mr. Riker: On this offer I want to ask this witness a question.

*Cross-examination by Mr. Riker:*

Q. You don't mean to say you signed this letter? A. No, sir. 40

*Exhibit A-1 of May 27, 1926.*

Q. Did you read it before it went out? A. Yes, sir.

Q. Did you read all Mr. Fielder's letters before they went out? A. I did at that time.

Q. All of them? A. Yes.

10 Q. And you remember that this was sent out, do you? A. Yes, sir.

Q. Did you see this carbon copy? A. Yes.

Q. Did Mr. Fielder sign it himself or did you? A. He did.

Q. And did you mail it? A. Yes.

Q. Sealed it? A. No, sir.

Q. Did you seal the letter? A. No, sir.

Q. Did you put the stamp on it? A. No, sir.

20 Q. Where did you mail it? A. Mailed it at the mail box in the Commercial Trust Building, Jersey City, New Jersey.

Q. Are you a stenographer? A. No, sir.

Q. Did you read it before you mailed it? A. Yes.

*Further direct examination by Mr. Perkins:*

Q. At that time you were a clerk in Mr. Fielder's office, were you? A. I was.

30 (Offered in evidence and marked Exhibit D-7.)

Q. Do you know Mr. Cowart's signature? A. I think I do.

Q. You have received many letters from him? A. Yes.

Q. I show you a letter bearing date December 22, 1910, addressed to Hon. James F. Fielder, and ask if that is Mr. Cowart's signature? A. Yes.

40 Q. Did that letter come to your possession on or about its date, December 22, 1910? A. Yes.

(Letter offered in evidence.)

*Exhibit A-1 of May 27, 1926.*

Mr. Riker: We object to this letter as being immaterial and irrelevant, and containing unauthorized statements by Mr. Cowart that do not bind this complainant; insofar as it assumes to bind this complainant, under the evidence in this cause, it cannot be admitted. 10

The Court: What do you say it tends to show? Don't read the letter; tell me what you think it tends to prove.

Mr. Perkins: This letter is one of a chain of letters, all of which related to the dealings between the complainant and the defendant, previous to the institution of this suit. It bears evidence as to the attitude of the parties; it tends to give evidence of the fact that before the institution of the suit the complainant knew of the defects in the title, and therefore his bill is not filed bona fide. 20

Mr. Riker: We have admitted that; we have admitted that we knew of defects in this title; Mr. Sullivan said he knew of that, but was willing to take the title, notwithstanding the defects—Mr. Brisbane, I mean.

The Court: I will take the letter, subject to your objection, and I will pick out of it such things as are relevant, and reject such as are not—I mean such as are competent and such as are not competent. 30

(Marked Exhibit D-8.)

Q. I show you a carbon copy of letter dated December 23, 1910, addressed to Robert M. Boyd. Can you tell who signed that letter, and whether it was sent to Mr. Boyd? A. The letter was 40

*Exhibit A-1 of May 27, 1926.*

signed by Mr. James F. Fielder, addressed to Robert M. Boyd, New York City.

Q. Do you know who attended to the mailing of it? A. I did.

10 (Offered for identification and marked 4 for Identification.)

Q. I show you a letter dated December 24, 1910, addressed to Hon. James F. Fielder; whose signature is that attached to it? A. Robert M. Boyd, Jr.

Q. Was that a letter received on or about its date with reference to this transaction? A. Yes, sir.

20 (Letter marked 5 for Identification.)

Q. I show you a copy of letter bearing date December 27, 1910, addressed to Bennett Milnor; can you tell by whom the original of that letter was signed? A. Signed by James F. Fielder.

Q. And was it mailed to Mr. Milnor? A. Mailed to Mr. Milnor.

Q. By whom? A. By me.

(Marked 6 for Identification.)

30 Q. I show you a carbon copy of a letter dated December 27, 1910, addressed Samuel C. Cowart; do you know by whom the original of that letter was signed? A. James F. Fielder.

Q. Do you know whether or not it was mailed to Mr. Cowart? A. It was mailed.

Q. By whom? A. By me.

(Marked 7 for Identification.)

40 Q. I show you carbon copy of letter dated December 30, 1910, addressed to Samuel C. Cowart;

*Exhibit A-1 of May 27, 1926.*

do you know by whom the original of that was signed? A. Signed by James F. Fielder.

Q. And do you know whether or not it was mailed to Mr. Cowart? A. It was mailed to Mr. Cowart by me.

(Marked 8 for Identification.)

10

Q. I show you original letter dated December 30, 1910, addressed James F. Fielder; whose signature is that attached to it? A. S. C. Cowart.

Q. Do you know whether that letter was received by Mr. Fielder on or about its date? A. It was.

(Offered in evidence.)

Mr. Riker: I make the same objection to its competency and relevancy, on the ground that Mr. Cowart was not authorized to represent the complainant; except insofar as making the abstract of title and report thereon; and this letter is dated December 30, after failure to perform the contract, and, therefore, it is irrelevant and immaterial on that ground.

20

The Court: I will take it, subject to your objection.

(Marked Exhibit D-9.)

30

Q. I show you an original letter bearing date December 31, 1910, addressed Hon. James F. Fielder; whose signature is attached to that letter? A. S. C. Cowart.

Q. Do you know whether or not that letter was received by Mr. Fielder shortly after its date? A. It was.

Mr. Perkins: I offer that in evidence.

40

*Exhibit A-1 of May 27, 1926.*

Mr. Riker: The same objection as to the last offer.

The Court: I will make the same ruling.  
(Marked Exhibit D-10.)

10 Q. I show you carbon copy of letter dated December 24, 1911, addressed to Samuel C. Cowart; do you know who signed the original of that letter? A. James F. Fielder.

Q. Do you know whether or not it was mailed to Mr. Cowart? A. It was.

Q. On or about its date? A. Yes.

(Marked 9 for Identification.)

20 Q. I show you an original letter bearing date January 5, 1911, addressed James F. Fielder; whose signature is attached to that letter? A. S. C. Cowart.

Q. Do you know whether or not that was received on or about its date by Mr. Fielder? A. It was.

Mr. Perkins: I offer that letter.

Mr. Riker: The same objection as to the last exhibit.

30 The Court: I will take it subject to the same ruling.

(Marked Exhibit D-11.)

Q. I show you copy of letter bearing date January 6, 1911, addressed Samuel C. Cowart; who signed the original of that? A. James F. Fielder.

(Marked 10 for Identification.)

40 Q. I show you original letter bearing date February 28, 1911, addressed James F. Fielder,

*Exhibit A-1 of May 27, 1926.*

whose signature is attached to that letter? A. S. C. Cowart.

Q. Do you know whether or not it was received about this date from Mr. Cowart? A. It was.

Mr. Perkins: I offer it in evidence.

Mr. Riker: I make the same objection as to the last exhibit. 10

The Court: It is taken subject to the same ruling.

(Marked Exhibit D-12.)

Mr. Riker: May I put in one other suggestion on this objection? That is, it is dated the day of filing the bill of complaint in this case.

Mr. Perkins: These letters constitute the chapter of the correspondence between you, Mr. Boyd, Mr. Cowart and Mr. Fielder, so far as you know, with reference to the passing of this title? A. Yes, sir. 20

The Court: Down to the time of filing of the bill?

Mr. Perkins: Yes, sir.

Q. At any time from the first conversation that you had with Mr. Cowart respecting the title, down to the time of the filing of the bill, did anyone deliver to you a copy of the objections to your title? 30

Mr. Riker: One moment.

The Court: Yes, or no.

A. No, sir.

Q. Did you receive a written statement of the objections to your title? A. I received them from Mr. Fielder. 40

*Exhibit A-1 of May 27, 1926.*

Mr. Riker: One moment.

The Court: Yes or no.

A. I did indirectly.

Q. From whom? A. From Mr. Fielder.

10 By the Court:

Q. He was your employer at the time? A. He was my employer and attorney at the time.

By the Court:

Q. He was clerk in Mr. Fielder's office.

Mr. Perkins: Yes; and Mr. Fielder was attorney acting for him; each was employed by the other.

20

Q. I show you a paper which says at the top "Title No. 2315". Can you state whether or not that is the paper that you received? A. It is the paper which I received from Mr. Fielder.

Mr. Perkins: I will ask to have this marked for identification.

By the Court:

30 Q. When did you receive it? A. I should think some time in 1910, the ending of 1910 or beginning of 1911; my mind is not clear as to the time.

Q. Do you know whether or not it was before October 15, 1910, the date finally set for the closing of the title? A. I don't think it was.

By the Court:

Q. When was it, then, with respect to the extended time?

40

Mr. Riker: That is the extended time.

*Exhibit A-1 of May 27, 1926.*

A. I am not certain, because my mind is not clear about the time.

(Marked No. 11 for identificatoin.)

Q. After the first conversation you had with Mr. Cowart, in which he pointed out defects in your title, did you make an effort to obtain from him a written statement of the defects of the title? 10

A. I did.

Q. Just what did you do? A. Well, I went over to Mr.—

Mr. Riker: I desire to make the objection that it is immaterial and irrelevant.

The Court: On the issue of the abandonment of the contract on the part of your client it seems to me that it would be material and relevant; they say that you abandoned the contract, that you refused to perform. This evidence, as I understand its trend, is for the support of that issue on the side of the defendant. 20

Q. (Question read.) A. I went to Boyd's office in company with Mr. Gannon, and, I believe, Mr. Milnor was there, and Mr. Petty and Mr. Boyd, and they said— 30

Mr. Riker: One moment.

By the Court:

Q. Who said? A. Mr. Boyd.

Mr. Riker: Well, now.

Q. In Mr. Milnor's presence? A. Yes.

*Exhibit A-1 of May 27, 1926.*

By the Court:

Q. Mr. Milnor was there, and was Mr. Cowart there? A. No.

The Court: Do you object?

10 Mr. Riker: I do, on the ground that this would appear to be hearsay so far as the complainant is concerned.

The Court: You have not yet made any connection between Mr. Boyd and Mr. Brisbane.

Mr. Perkins: I didn't know the other side would take the attitude that Mr. Boyd was not authorized.

20 The Court: I will take the testimony, subject to your objection, and if they don't make the connection it will have to go out. I think that would be admissible, statements made in the presence of Mr. Milnor, who is your predecessor in this equitable title, which he would have an opportunity to deny, and he is here for that purpose. I think that testimony is admissible. I will let it in.

30 Q. What was the conversation respecting this title that was had by you and Mr. Milnor or Mr. Boyd, or that group who were present together.

Mr. Riker: I want the record to identify the time of this conversation; I think I am entitled to that.

The Court: Yes; when did the conversation take place?

A. About the first of October.

40

*Exhibit A-1 of May 27, 1926.*

By the Court:

Q. What year? A. 1910.

By the Court:

Q. And it was in Mr. Boyd's office? A. In Mr. Boyd's office, yes. 10

By the Court:

Q. You have already said who were there; now you may tell what was said in Mr. Milnor's presence.

Q. Were you there in accordance with the first extension of this contract which required you to close title first of October, 1910? A. Yes.

Q. Now, answer the court's question. 20

Mr. Riker: I now want to interpose the objection formally, that the conversation is incompetent, as not in the presence of the complainant, and because by the very exhibit it appears that to the knowledge of this witness, Mr. Milnor had parted with his interest in the contract, that the extension to October 1st having been accepted by Arthur Brisbane and not by Mr. Milnor—

30

The Court: I will take the answer.

A. Mr. Boyd told me that my title was in such a condition that I would be unable to make a conveyance according to the terms of my contract; he stated several objections orally but gave me nothing in writing.

Q. What were the objections which were stated orally?

The Court: You object to that also? 40

*Exhibit A-1 of May 27, 1926.*

Mr. Riker: Yes, I object.

The Court: I will overrule the objection.

10 A. He said that I only had a life estate in the property which I agreed to convey, and that I could not give a warranty deed; he also said that he had a decision reported in the Atlantic Reporter which made it practically impossible for me to convey by reason of the fact of a defect in the Martin Act proceedings. They were the two principal objections which I recall.

Q. Did Mr. Milnor say anything at the time?

A. I don't remember.

20 Q. Who was Mr. Boyd representing in that conversation?

Mr. Riker: One moment. I object.

The Court: How can you prove Mr. Boyd's authority by this witness?

Q. Was Mr. Boyd ever representing you? A. No.

Q. Did Mr. Milnor say anything to you as to Mr. Boyd's representation?

30 Mr. Riker: I object, for the same reason.

The Court: No; you can't prove the agency that way Mr. Perkins; agency cannot be proved by the declarations of the agent made to third persons, because that would be importing into the case an unsworn statement. Mr. Boyd, the supposed agent, he could tell what authority he had, or Mr. Brisbane, who is the supposed principal, could tell what authority he had; but his statement to this witness that he

40

*Exhibit A-1 of May 27, 1926.*

was agent, although it might go to the extent of declaring all his authority, would not be evidence.

Q. With whom did you next have a conversation respecting the defects in your title? A. With a Mr. Petty, from Mr. Boyd's office. 10

Q. Did you obtain from some source previous to your receipt of Exhibit 11 for identification any statement in writing from any of the searches of the title as to your title? A. No, sir.

Q. Previous to October 15, 1910, did you have any conversation with Mr. Cowart respecting whether or not you would pass the title? A. I did, about August.

Q. Are you now referring to the first conversation? A. The first conversation. 20

Q. Did you have any other conversation with Mr. Cowart about it? A. No, sir.

Q. Why did you not attend at the office of Mr. Boyd on the 15th of October, 1910?

Mr. Riker: I object to that question, as that is inquiring for the psychological condition.

The Court: He did not attend; now, if he did not attend because of something Mr. Brisbane's agent said to him, I suppose that will be proper; but if he did not attend because of something he had in his own mind, that would be improper. 30

Q. With whom did you have a conversation respecting this title just previous to the 15th of October, 1910? A. I had a conversation with Mr. Milnor, with Mr. Gannon, with Mr. Boyd and with Mr. Petty.

Q. What did Mr. Milnor say about it? 40

*Exhibit A-1 of May 27, 1926.*

Mr. Riker: The same objection to that as to the other conversation with Mr. Milnor.

10 The Court: I will take the answer, subject to the duty on the part of Mr. Sullivan to prove that Mr. Boyd was Mr. Brisbane's agent, and to the extent of his authority.

Q. (Question read.) A. Mr. Milnor said that Mr. Brisbane was very angry because I couldn't give him the title which I contracted to convey; incidentally, he said I was trying to defraud infants and orphans of their property.

20 Q. Did Mr. Milnor say anything about whether they would accept or reject the title?

Mr. Riker: I object.

The Court: Mr. Riker, Mr. Milnor at this time had transferred his title, hadn't he?

Mr. Riker: Yes.

Mr. Perkins: He never had any title; he was the agent of Mr. Brisbane.

The Court: How long, a day or two? He wasn't the agent of Mr. Brisbane after the contract had been made.

30 Mr. Perkins: Mr. Brisbane said Mr. Milnor was his agent, bought a number of properties there, described a large holding; that he was his agent for the purchasing of these properties.

The Court: I have very grave doubt about it; I will admit it, subject to your objection.

40 Q. (Question read.)

*Exhibit A-1 of May 27, 1926.*

Mr. Riker: I want to interpose specifically objection to the form of the question; it is rather leading, and this is an attorney at law, Mr. Sullivan, and I think it might be framed a little differently, and I object to it on that ground.

The Court: I never regard leading questions that relate to the nub of the case as having very much authority. 10

Mr. Perkins: Then, strike the question out; if your Honor gives me that warning I will try it again.

Q. What further conversation had you with Mr. Milnor about this title?

Mr. Riker: The same objection. 20

A. I had no further conversation with Mr. Milnor.

Q. With whom did you have a conversation which finally terminated the matter, so far as your effort to convey was concerned? A. Why, that was the last meeting, the first of October. Mr. Boyd told me that my title was in such a condition that I could not convey according to the terms of his contract.

Q. Did you offer to convey what you had? A. Yes. 30

Mr. Riker: That got in before I could state my objection; it was leading, and ought to have been subject to the same objection.

Mr. Perkins: Strike it out.

The Court: Strike it out.

Q. State what you said to Mr. Boyd in Mr. Milnor's presence with reference to the title. 40

*Exhibit A-1 of May 27, 1926.*

Mr. Riker: The same objection as to the other conversations.

The Court: Yes; all that is taken under the same objection.

10 A. I said that if the title was defective, and I could not convey by a full covenant warranty deed it was not my fault, because I had the title searched by Edward P. Stout, attorney at law, Jersey City, and he informed me at the time that I took title that I had the fee simple. I told Mr. Boyd I would do whatever I possibly could do to remedy this matter and give him what I had, what title I had.

20 Q. What did Mr. Boyd say to that? A. Mr. Boyd said he didn't think Mr. Brisbane would accept anything but a title which I contracted to convey.

*Cross-examination by Mr. Riker:*

Q. What was the date of this conversation that you have just been narrating? A. About the first of October in the year 1910.

Q. About the first—how near? A. I couldn't exactly say.

30 Q. Wasn't it on the 29th day of September, 1910? A. It may have been.

Q. At that time you knew that, Mr. Sullivan, Mr. Brisbane had transferred his rights in the contract, or Mr. Milnor had transferred his right in the contract to Mr. Brisbane? A. No statement of that made to me.

Q. No statement was made? A. No statement was made.

40 Q. When you secured extensions of the time for the performance of the contract, didn't you know that Mr. Brisbane was the holder of the contract?

A. I had knowledge to infer that.

*Exhibit A-1 of May 27, 1926.*

Q. And the first extension, which is on Exhibit C 1, and which I show to you, signed in the name of Arthur Brisbane, isn't it? A. It is signed Arthur Brisbane by S. C. Cowart, attorney.

Q. And that is your proper signature above it? A. It is.

Q. What is the date of that? A. That was some 10  
time the 24th day of August.

Q. 1910? A. 1910.

Q. And you accepted the extension of the time of the performance on that date in the name of Mr. Brisbane, didn't you? A. Believing that Mr. Cowart was representing Mr. Brisbane.

Q. And believing that Mr. Brisbane was the owner of the contract? A. Yes.

Q. And I show you now Exhibit C 2 in this 20  
cause, which is the paper dated the 29th day of September, 1910; was that the date or was it not, of the conversation which you detailed in your direct examination? A. It was.

Q. And that is signed by you? A. Yes.

Q. And in Mr. Brisbane's name by Robert M. Boyd, Jr.? A. Yes.

Q. Well, you say there was a definite refusal to pass the title at that time? A. Yes.

Q. Why was it extended to the 15th of October then, if that is so? A. Mr. Boyd requested an 30  
extension, with the inference that I would be able to perfect the title according to the terms of my contract.

Q. Then the negotiation for the closing of this title and the acceptance of it by Mr. Brisbane were not ended on the 29th day of September, 1910? A. Not by that extension.

Q. And that is the last communication that you had with reference to this title, was it? A. No, 40  
sir.

*Exhibit A-1 of May 27, 1926.*

Q. What? A. No, sir.

Q. The last conversation, didn't you testify in regard to it? A. Yes, conversation .

Q. And you were not present personally or in any other way on the extended day, October 15?

19 A. No, sir.

Q. What occurred between the 29th day of September and the 15th day of October in accordance with the extended agreement? A. Why, Mr. Cowart and Mr. Petty called at the office of Brinkerhoff & Fielder, where I was a student at the time, and narrated objections.

Q. Was this within your own knowledge? Were you there? A. I was present.

20 Q. Then you did have some subsequent conversation? A. This was the first of August, 1910, I am speaking of now.

Q. I was asking about the 29th day of September, and the 15th day of October, 1910, what happened in that interval which caused you to fail to appear on the 15th day of October at the hour and place named to close the title? A. Why, my own knowledge; Mr. Boyd told me I could not convey according to the terms of my contract, and I thought it useless to go and attend to something, which I didn't have, at the time appointed about the extension.

30 Q. Did you acquire any further knowledge on that subject between the 29th day of September and the 15th of October, 1910? A. I inquired to this extent: Could a man convey a fee simple when he didn't have it?

Q. You inquired about that, did you? A. Yes; I was a student at the time in the New York Law School.

40 Q. You asked whether you could convey something you didn't have, did you? A. Yes.

*Exhibit A-1 of May 27, 1926.*

Q. And you were told that you could not? A. Yes.

Q. Isn't it a fact that in that interview you had a higher offer for this property? A. I had an offer; yes.

Q. From whom? A. I don't know.

Q. Do you remember that the offer came from the owners of the Jersey City Journal? A. At that interval; no, sir.

Q. You don't know whether it did or not? A. No, sir, I do not.

Q. But you had an offer in that interval, had you? A. Yes, sir.

*Re-direct examination by Mr. Perkins:*

Q. On the 15th of October, 1910, the time agreed for passing the title, had you knowledge of the contents of these letters which I have offered in evidence, which bear date previous to October 15? A. I believe I had.

Q. Had any subsequent offer for the property in question any influence on you in this transaction with Mr. Brisbane? A. No, sir.

Q. I show you carbon copy of letter dated January 16, 1911, addressed Samuel Cowart; do you know by whom the original of that was signed? A. Signed by James F. Fielder.

Q. Do you know whether or not it was mailed to Mr. Cowart about the time of its date? A. It was.

(Marked 11 for identification.)

Q. Did you know on October 15, 1910, whether or not Mr. Brisbane would accept the title that you had? A. I knew he would not.

Q. Did he, or any one for him, at any time, offer to accept the title which you had? A. No, sir.

*Exhibit A-1 of May 27, 1926.**Re-cross-examination by Mr. Riker:*

10 Q. Mr. Sullivan, did you know that Mr. Brisbane and his secretary appeared at the place appointed on the 15th day of October prepared to close the transaction and take the deed? A. I did not.

Q. Then how do you know—you say that Mr. Brisbane was not prepared to take the title—how do you know that? A. I know because, he told me that, Mr. Boyd told me—

Q. Well, no.

The Court: You asked for it.

Mr. Riker: I know I did, and will be glad to get it, too.

20 A. Mr. Boyd told me at his office when I called upon him that my title was in such a condition that I could not convey according to the terms of the contract which I entered into.

Q. And Mr. Boyd had told you that, and that is your knowledge, is it? A. That is the knowledge which Mr. Boyd gave me.

Q. And that is all your knowledge? A. Well, I started, as I say, while I was a student at the law school to find out, if I could.

30 Q. You say you knew Mr. Brisbane would not take the title. I ask you if that is all the basis which you say is your knowledge that he wouldn't take it? A. Yes.

Q. The statement made by Mr. Boyd? A. Mr. Boyd.

Q. Which you have already detailed in your testimony in this case? A. Yes.

*Exhibit A-1 of May 27, 1926.**Further direct examination by Mr. Perkins:*

Q. In that answer are you having in mind the correspondence which took place in the case? A. Yes.

Q. Well, aside from conversation, was any further thing acting on your mind as to whether or not Mr. Brisbane would take this title? A. I received various letters from Mr. Cowart with reference to this matter. 10

By the Court:

Q. Those are the letters that have been shown you here this morning? A. Yes, and Mr. Cowart and myself had been making some kind of arrangement to perfect the title. 20

Mr. Riker: I cannot quite understand whether this is conclusion from the letters or whether it is subsequent inquiry; if it is conclusion from the letters, I object, and ask that it be struck out, because the letters speak for themselves.

The Court: I think he is merely saying that in addition to the conversations he had with Mr. Boyd, here are these letters.

Mr. Riker: So far as that goes, they speak for themselves. 30

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JAMES F. GANNON, JR., SWORN.

*Direct examination by Mr. Perkins:*

Q. What is your business? A. I am an attorney and counsellor at law.

Q. Were you present in the office of Mr. Boyd in New York City on or about the 29th of Sep- 40

*Exhibit A-1 of May 27, 1926.*

tember, 1910? A. I think that was the date, but I would like to refresh my memory from the contract.

Q. I show you Exhibit C-2, and ask if that refreshes your memory with reference to it? A. Yes, it does; it was on the 29th day of September.

10 Q. Were you present at the time this paper, Exhibit C-2, was signed? A. Yes.

Q. Who were present? A. Mr. Milnor, Mr. Sullivan, Mr. Cowart, I think Mr. Petty and myself. Mr. Cowart is the attorney, with offices at two hundred and something Broadway.

Q. Mr. Boyd? A. Mr. Boyd, that is the man I mean. I know his office is on Broadway, right near Dey Street there.

20 By Mr. Riker:

Q. Mr. Cowart? A. Mr. Cowart—Mr. Boyd.

Q. Do you know Mr. Cowart? A. I don't think I do.

Q. Do you know Mr. Robert M. Boyd, Jr.? A. Yes, I would know him.

Q. Can't you state to the Court that he was present there; who was it, Mr. Boyd or Mr. Cowart? A. It was in Mr. Boyd's office; it was Mr. Boyd.

30 Q. What conversation was there with reference to the passing of this title?

Mr. Riker: The same objection as to this line of testimony from the other witnesses.

The Court: I will make the same ruling about it.

A. The conversation was to the effect—

*Exhibit A-1 of May 27, 1926.*

By the Court:

Q. State what he said. A. Mr. Boyd stated several objections that I do not exactly recollect, concerning the title, but they had to do with some Martin Act proceedings, and he said that he could not accept the title, that Mr. Sullivan could not convey what he had agreed to convey. 10

By Mr. Perkins:

Q. What was said by Mr. Sullivan? A. Mr. Sullivan said that he was willing to convey all that he had, and that he had had the title examined, and that if he knew he had a bad title he would not have contracted to convey it.

Q. What, if anything, was said by Mr. Milnor? A. Well, I can't state that I knew Mr. Milnor and I were brokers in the transaction and we had conversations between ourselves in regard to commission. 20

*Cross-examination by Mr. Riker:*

Q. You were broker, real estate broker, do you mean, in this transaction? A. I was real estate broker in this transaction.

Q. Representing whom? A. Mr. Sullivan.

Q. And you knew Mr. Milnor was the broker representing the purchaser, Mr. Brisbane? A. I understood that. 30

Q. Did you communicate that fact to Mr. Sullivan? A. No, I did not.

Q. Do you know whether he knew it? A. He didn't know it when the contract was signed by Mr. Milnor; I did not communicate it then, because he had placed the property with me at a certain figure, and I thought if he thought Brisbane was buying it he might possibly want more money. 40

*Exhibit A-1 of May 27, 1926.*

Q. You knew that Brisbane was buying it? A. I knew that from Mr. Milnor.

Q. What? A. I knew that from Mr. Milnor.

Q. You say you did not communicate that to Mr. Sullivan? A. No.

10 Q. At any time? A. At no time previous to the execution of the original contract.

Q. That is the date fixed in the original contract for its execution; do you mean that? A. No; the date that it was executed.

Q. Oh, the actual execution of this contract, C-1; is that what you mean? A. Yes.

The Court: And not the day fixed for its performance.

20 Q. Not the day fixed for its performance? A. No, not the day fixed for its performance.

Q. Will you look at C-1 and refresh your memory from it, if you can, as to the date when it was executed? A. Apparently the 19th of July, 1910.

Q. Does that correspond with your recollection? A. Well, if I didn't have that to refresh my memory I would not be able to state the exact date that the contract was executed.

30 Q. And how shortly after the execution of the contract did you advise Mr. Sullivan that Mr. Brisbane was the purchaser? A. I can't state that.

Q. Well, approximately; give us any idea? A. I haven't any recollection.

40 Q. You did advise him, however? A. I don't know whether I did or whether Mr. Milnor did; I am confused on that point, because I knew Mr. Brisbane was buying the property, and whether I said in so many words to Sullivan subsequent to the execution of the contract that he was buying it, I don't quite remember.

Q. I think you have been shown Exhibit C-2, which is the extension agreement? A. Yes.

*Exhibit A-1 of May 27, 1926.*

Q. And fixed the date of your meeting at Mr. Boyd's office by the date on that, did you not? A. Yes, partly by that.

Q. Did you see that instrument executed, C-2, at that time? A. Well, I can't swear that I saw this exact instrument executed; I think I did.

Q. Did you have the time for the performance of the contract and the delivery of the deed so extended to the 15th of October? A. I know there was an extension agreement executed.

10

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ARTHUR BRISBANE recalled.

*Direct examination by Mr. Riker:*

Q. Do you know Mr. Robert M. Boyd, Jr.? A. No, sir.

20

Q. Ever have any transactions with him in connection with this Sullivan contract? A. Except his investigating the title for the title insurance company.

Q. Did you ever see him? A. Not to my knowledge; no.

Q. And I think you testified that you employed Mr. Samuel C. Cowart, of Freehold, as your representative to search this title? A. Why, Mr. Cowart I retain on an annual fee; to look after my interests in New Jersey, and I just left him know of everything that happens in the State to look after it; in this case he was instructed to look into the title, and see if it was good, and report to me.

30

Q. Any further instruction to him? A. No.

Q. Did you authorize him to refuse the title? A. No; on the contrary, I rejected his advice constantly on that score.

40

Q. Did you authorize him as your agent to refuse to accept the deed? A. I did not; on the con-

*Exhibit A-1 of May 27, 1926.*

trary, I instructed him to get me a deed and appoint a time for me to pay for it.

*Cross-examination by Mr. Perkins:*

10 Q. Did Mr. Cowart report to you that the title of Mr. Sullivan was defective? A. He reported to me that there were defects, yes.

Q. Do you remember when you received that report? A. I couldn't give dates; from time to time he said he was looking into the title; I don't think he ever said the title was positively defective, but he told me there were defects, difficulties.

Q. Do you know for whom the title company was searching the property? A. The title company was searching, I believe, at his request.

20 By the Court:

Q. For what? A. The title company was searching with the idea of insuring the title; they insured other titles for me.

By Mr. Perkins:

Q. Which title company was it? A. I believe it is called the Montclair Trust Company, is my impression.

30 Q. They were searching the title for the purpose of insuring you? A. To see whether they would put on an insurance policy, yes.

Q. And do you know who represented the title company in the searching of the title? A. I believe Boyd, I believe they were his client.

Q. You say you instructed Mr. Cowart to take a deed, notwithstanding the defects? A. I did not instruct Mr. Cowart to take a deed; I sent my secretary to take a deed, and gave him the cash to pay for it.

40 Q. I am not speaking of the hour at Mr. Boyd's office on October 15, 1910. I am speaking about the instructions to Cowart. A. The instructions

*Exhibit A-1 of May 27, 1926.*

to Mr. Cowart were to report and investigate and report to me as quickly as possible, because he had no authority in declining, as my agent, he could not accept and could not decline.

Q. At the time you filed this bill you knew Mr. Sullivan did not have the fee simple of the property, did you not? A. No, I didn't know the details; I understood the title was defective in some way, but made up my mind to take what he had; I assumed he was not selling what he did not possess, and I sent the money to take it when the day came. 10

Q. So when your agent went to Mr. Boyd's office on the 15th of October, 1910, with the money and bond and mortgage you expected to get a full covenant warranty deed from Mr. Sullivan? A. I expected Mr. Sullivan to fulfill the contract and give me what he could give, of course. 20

Q. Under his contract? A. Yes, under his contract, yes, sell me that property.

Q. Were you familiar with the various bills of complaint you filed in this cause? A. No, sir; I instructed my attorneys to bring suit to compel fulfillment of this contract, and to take for me at that price whatever title Mr. Sullivan had; those were my instructions.

Q. So you are not familiar with the various bills of complaint you filed? A. No, sir; my attorneys attend to that. 30

Q. They had authority to file such bills? A. They had authority to exercise their legal knowledge to get me my real estate in return for my money.

Q. Your real estate holdings are very large in New Jersey, aren't they? A. Somewhat extensive. 40

*Exhibit A-1 of May 27, 1926.*

Q. And you do not follow the details of the title in any of these cases? A. At the last moment I do, and I use my judgment as to what I want to buy and what I don't.

10 Q. Did you give your secretary instructions as to what he should do if Mr. Sullivan should attempt to deliver a deed which did not convey the fee of this property? A. My instructions to my secretary were to deliver this money and bond and mortgage to Mr. Sullivan in return for a deed he would give me. My secretary knows nothing about real estate or deeds and could not examine them.

Q. This title was closed at Mr. Boyd's office, was it not? A. Yes, sir.

20 Q. Who was present there representing you in a legal capacity? A. There was no one representing me in a legal capacity; the time had come to close the title, and I sent money to pay for it.

Q. Wasn't anybody there to examine the deed that Mr. Sullivan might offer, so far as its execution was concerned? A. No; I had no lawyer there; I was to receive the deed that day, and sent money to pay for it.

30 Q. Were you relying on the Trust Company? A. No, I was relying on Mr. Sullivan to fulfill his contract, and knowing if he gave me a deed that was of no value I had my recourse at law for obtaining money under false pretences.

Q. Through Mr. Cowart you did employ the title company to make a search of this title? A. When I buy real estate I usually——

The Court: Answer the question.

*Exhibit A-1 of May 27, 1926.*

A. No, I did not.

Q. It wasn't your intention to take title without any search or examination? A. It was my intention to have the Montclair Trust Company issue a policy guaranteeing the title.

Q. And that was the kind of title that you were going to pay your money and give your bond and mortgage for? A. Not necessarily; I had given no such instructions; I determined to take Mr. Sullivan's title in return for my money, because I had convinced myself he would give me good title, and he had reasons for giving it, in as much as he had signed this contract. 10

Q. So when you sent your secretary there it was with the full expectation you on your part would perform your agreement and Mr. Sullivan on his part would perform his agreement? A. To tell the truth, I had no very definite idea what Mr. Sullivan would do, but I was there with the money. 20

Q. But it was with the expectation on your part that he would fulfill his part? A. Yes, I assumed that he would, naturally.

(Adjourned to June 16, 1913.)

30

40

*Exhibit A-1 of May 27, 1926.*

December 17, 1913.

10	<p>Between</p> <p style="text-align: center;">ARTHUR BRISBANE, Complainant,</p> <p style="text-align: center;"><i>and</i></p> <p style="text-align: center;">EDNA J. SULLIVAN, <i>et al.</i>, Defendants.</p>
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Continuation of examination, pursuant to adjournment, on December 17, 1913, at Chancery Chambers, Newark, New Jersey, in the presence of the court and counsel as before.

Letters marked D-1 to D-11 for identification offered in evidence and marked Exhibits D-13, D-14, D-15, D-16, D-17, D-18, D-19, D-20, D-21, D-22, D-23 and D-24.

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SAMUEL C. COWART, SWORN.

*Direct examination by Mr. Perkins:*

30 Q. You are an attorney and counselor at law of the Supreme Court of this State? A. Yes.

Q. And you were engaged by Mr. Brisbane to continue the title of James A. Sullivan to property on Wilkes Street, Jersey City? A. Yes. I was not engaged to examine the title; I was engaged to have it passed upon, and I had the Montclair Trust Company make a search for the purpose of issuing a policy on the property.

40 Q. You received a report from the Trust Company, did you not? A. Yes, sir.

*Exhibit A-1 of May 27, 1926.*

Q. Stating certain objections to the title? A. Yes. I have that report here.

Q. Will you please produce that report? A. Yes.

Q. This paper which you have produced is the report of the Montclair Trust Company on the title of Sullivan to the lot on Wilkes Street involved in this suit, is that right? A. Yes, sir. 10

Q. Did you report the condition of that title to Mr. Brisbane?

Mr. Riker: The objection to that occurs to me is whether or not we are not getting within the realm of relations of client and attorney.

The Court: Not yet.

Question withdrawn. 20

Q. (Question read.)

The Court: What do you say to that?

A. I reported in general terms that the title was so defective, as I recollect it, that it could not be immediately closed. I have forgotten now the exact report, but it was a general report.

Q. (By the Court): Did not go into the details?

A. I did not go into the details. 30

Q. You did go into the details with Mr. Sullivan, did you, or with Governor Fielder?

Mr. Riker: Yes or no.

A. I went into the details with Mr. Sullivan, and also with Mr. Boyd, who represented the Montclair Trust Company, Mr. Robert M. Boyd.

Q. Didn't you give to Mr. Sullivan a copy of that report of the Montclair Trust Company? A. I don't know whether I gave him a full copy; I 40

*Exhibit A-1 of May 27, 1926.*

furnished him with the main data that was involved in that report, as I recollect.

Q. (By the Court): Furnished to Mr. Boyd? A. To Mr. Sullivan, I think.

Q. (By the Court): Oh, to Mr. Sullivan? A. I think I did.

1) Q. With the view of his clearing up the title? A. I suppose that was the purpose, yes, sir. Mr. Boyd had furnished me with this report, and then Mr. Sullivan made inquiry, made further inquiry as to what our objections were, and then I think I gave him a memorandum of these objections, of some of the objections.

20 Q. I show you a paper which is marked 11 for identification and Exhibit D-24; will you please see if that is not the list of objections which you gave to Mr. Sullivan? A. That seems to be a list that was prepared in my office, yes, sir, which set forth the objections to the Sullivan title.

The Court: I suppose the paper shows itself; it is an exhibit in the cause.

A. I am quite sure that that was prepared in my office.

30 Q. Did the Montclair Trust Company ever give you a certificate on this title?

Mr. Riker: One moment. I don't think that is material.

The Court: What difference does it make, Mr. Perkins, whether they did or did not?

Mr. Perkins: It is partially cumulative, on the theory that they knew of the title, of the character before they filed their bill for specific performance.

40 The Court: Mr. Brisbane knew the character of the defects?

*Exhibit A-1 of May 27, 1926.*

Mr. Perkins: Yes.

The Court: For that purpose, if that is one of the points in the case, why is not the evidence admissible, Mr. Riker?

Mr. Riker: As a part of the chain of proof that Mr. Brisbane knew it?

The Court: Yes. If that is an issue in this cause, whether Mr. Brisbane knew it or not, knew of the defects in the title, if that is one of the issues in the cause, why isn't this evidence proper? I cannot say whether it is one of the issues in the case or not because I haven't thought of this since last May, and I don't remember much about the issues; but if that is one of the issues that I have got to decide why isn't the question material and relevant? 10  
20

Mr. Riker: It does not seem to me that a communication to Mr. Cowart, with refusal to give certificate, is evidential knowledge on the part of Mr. Brisbane. There isn't any question but what the defects were there.

The Court: The question is whether the Montclair Trust Company gave a certificate. I suppose that means clean bill of health. 30

Mr. Perkins: Yes.

The Court (To Mr. Cowart): I think I will admit it.

A. They did not give me any certificate, and I would like to explain, Vice-Chancellor, this further, that when I informed Mr. Brisbane that there were defects in the title I did not give him the particulars that are mentioned in this report of the trust company; I gave him no particulars; 40

*Exhibit A-1 of May 27, 1926.*

I simply said there were defects that prevented my closing.

By the Court:

10 Q. (By the Court): When you say that the Montclair Trust Company did not give you a certificate what do you have in mind as the meaning of the word certificate? A. Why, a policy of insurance.

Q. (By the Court): That is guaranteeing the title? A. Guaranteeing the title.

20 Q. You communicated with the Montclair Trust Company requesting them to search the title and insure it, did you not? A. I communicated with Mr. Boyd, who was the attorney for the Montclair Trust Company, and through whom I had all my negotiations.

Q. And requested him to search the title? A. For the purpose of issuing a title policy.

30 Q. Do you know about the date of the final rejection of the title by the Montclair Trust Company? A. They never finally rejected the title; they simply stated on account of these defects that they did not issue the policy, and the matter was left in that shape, that we wanted a clean title, and wanted Mr. Sullivan to clean up the title so that he could give us a good deed for the property.

Q. You mean the kind of deed that was called for in the contract? A. Yes, sir.

Q. Mr. Cowart, you are the gentleman who executed one of the continuances endorsed on the contract, were you not? A. Yes.

40 Q. And what was the object of continuing the time of closing? A. For the purpose of giving Mr. Sullivan an opportunity to clear the title and make the conveyance, continuing to October first.

*Exhibit A-1 of May 27, 1926.*

Q. Who were present at the time you signed the original contract? A. My impression is that a lawyer by the name of James F. Gannon was present, although I am not sure; Mr. Sullivan gave me his card, I think, at that time, or else Mr. Gannon gave me his card at that time, and I have his card here. 10

Q. What did you state to Mr. Gannon about the Title?

Mr. Riker: I object.

The Court: Who is Mr. Gannon?

Mr. Perkins: He was the agent of Mr. Sullivan for the sale of the property; he was a witness in this cause.

The Court: How far did his authority extend, does that appear? If his authority extended to the closing of the title and final payment of the money, so that he may be said to have been a General Agent of the whole transaction from beginning to end, then perhaps you might introduce that; but if Mr. Gannon has a limited agency you cannot go beyond the scope of that limitation. I don't remember what Mr. Gannon said about himself. 20

Mr. Perkins: I don't think it was a general agency, your Honor. 30

The Court: Then I think your question would not be admissible.

Q. You were not willing to accept the title that Sullivan had at the time you signed this extension? A. I insisted on his keeping his agreement of giving to Mr. Brisbane a warranty deed under the terms of his agreement, and free of all encumbrances, except whatever encumbrance was provided for in the agreement. 40

*Exhibit A-1 of May 27, 1926.*

Mr. Perkins: I offer the report made to Mr. Cowart by the Montclair Trust Company, setting forth the defects of title to Sullivan of the premises in question.

Marked Exhibit D-25.

10 Examined by Mr. Riker as his own witness:

Q. Mr. Cowart, did you, on behalf of Mr. Brisbane, ever abandon the contract between Mr. Sullivan and Mr. Brisbane?

Mr. Perkins: I object to that. That is purely a conclusion on the part of the witness.

The Court: It is cross-examination.

20 Mr. Perkins: He is asking for the witness' conclusion as to whether he ever abandoned this contract; that is something that occurs in the witness' mind. Whatever this witness did or said in evidence, they are facts.

The Court: This is proper cross-examination. If the witness don't answer as you think he ought to, you can straighten it out afterwards.

A. I never did.

30 Q. In so comporting yourself with reference to this contract, were you or were you not following the instructions given to you by Mr. Brisbane?

A. Yes. Mr. Brisbane kept insisting that he wanted that property, and he wanted the agreement fulfilled, and I therefore kept insisting that the title should be closed and the sale should be closed.

40 Q. How long did that insistment continue? A. Well, I kept receiving letters from Mr. Brisbane as late as February, I think, 1911.

*Exhibit A-1 of May 27, 1926.**Cross-examination by Mr. Perkins:*

Q. You wanted the title closed on the basis of the contract, did not you? A. I insisted that he should keep his agreement.

Q. That the title that Mr. Sullivan was to deliver was to be a title that was marketable free from all encumbrances, except those mentioned in the contract? 10

The Court: I think the witness has already said that, hasn't he?

A. I did insist that he should keep his agreement.

Complainant's counsel offers in evidence certified copy of a deed made by William T. Kastenhuber and wife to James Billington, dated April 13, 1910. 20

Marked Exhibit C-6.

Complainant's counsel also offers in evidence a deed of conveyance from James Billington and wife to Ella J. Sullivan, bearing dated June 29, 1910.

(Marked Exhibit C-7.)

Complainant's counsel offers in evidence certified copy of the will of James H. N. Wilks, bearing date June 28, 1889. 30

(Marked Exhibit C-8.)

**Exhibit C-1.**

ARTICLES OF AGREEMENT, made the 19th day of July in the year of our Lord One Thousand nine hundred and ten.

10 BETWEEN JAMES A. SULLIVAN, of the City of Jersey City, in the County of Hudson and the State of New Jersey, party of the First Part: and BENNETT MILNOR, of the Borough of Manhattan, in the County of New York, and State of New York, party of the second part:

20 WITNESSETH, that the said party of the first part, for and in consideration of the sum of Four Thousand Eight Hundred (\$4,800.00) dollars to be paid and satisfied as hereinafter mentioned, and also in consideration of the covenants and agreements hereinafter mentioned, made and entered into by the said party of the second part, doth agree to and with the said party of the second part, that he the said party of the first part will, well and sufficiently convey to the said party of the second part, his heirs and assigns, by deed of full covenant and warranty free from all encumbrances except a mortgage of Two Thousand (\$2,000.00) Dollars held by Jennie Turner, and due July 2, 1911, on or before the first day of September next ensuing the date hereof, all that lot, tract or parcel, of land and premises, hereinafter particularly described, situate, lying and being in the City of Jersey City, in the County of Hudson and State of New Jersey.

30 Known as Lot "F" in City Block 1865, on Fowler's Assessment Map of Jersey City, also known as No. 11 Wilks Street, Jersey City, New Jersey, being in dimension twenty-four feet six inches front and rear by one hundred and nine

40

*Exhibit C-1.*

feet in depth on one side and one hundred and seven feet in depth on the other side.

Being all of the premises conveyed to grantor by James Billington in the month of June, 1910.

It is mutually understood and agreed by and between the parties hereto that the second mortgage hereinafter mentioned, shall contain a clause subordinating it to any new mortgage which may be placed on the property during the currency of said second mortgage after the present first mortgage is discharged providing, however, that said new mortgage shall not exceed the sum of Two thousand (\$2,000.00) Dollars. 10

And the said Bennett Milnor for his heirs, executors and administrators, doth covenant, promise and agree to and with the said party of the first part, his heirs, executors and administrators and assigns, that he the said party of the second part, will pay and satisfy or cause to be paid and satisfied, until the said party of the first part the said sum of Four thousand eight hundred (\$4,800.00) Dollars, as for the purchase money of the foregoing described land and premises, in the following manner, that is to say: 20

\$200 on Receipt of this contract, receipt of which is hereby acknowledged. 30

\$2,000.00 By taking the property subject to a mortgage for like amount now on said premises as aforementioned.

\$800.00 By the party of the second part delivering to the party of the first part a purchase money second mortgage for like amount to be secured by his bond, which mortgage is to run for the term of two years and bear interest at the rate of six (6%) per cent, payable semi-annually, privilege, however, to the 40

*Exhibit C-1.*

party of the second part to pay all or any part of the said mortgage at any time before date of maturity, providing he gives the party of the first part a three days' notice of his intention so to do.

10         \$1,800.00 Balance in cash on passing of title  
and delivery of deed.  
           \$4,800.00 Total.

And IT IS FURTHER AGREED, by the parties to these presents, that the said party of the second part, his heirs and assigns, may enter into and upon the said land and premises on or before the first day of September next ensuing the date hereof and from thence take the rents, issues and profits to his and their use.

20         AND IT IS FURTHER AGREED, by the parties hereto, that the said deed of full covenant and warranty shall be delivered and received at the office of Robert M. Boyd, Jr., 203 Broadway, N. Y.

Between the hours of 11 in the forenoon and two o'clock in the afternoon on the said first day of September next ensuing the date thereof.

This property being sold subject to the monthly rights of tenants in possession.

30         IN WITNESS WHEREOF, the said parties have hereunto interchangeably set their hands and seals the day and year first above mentioned.  
Signed, sealed and delivered

in the presence of

JAMES A. SULLIVAN (L. S.)  
BENNETT MILNOR (L. S.)

*Exhibit C-1.*

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

BE IT REMEMBERED, that on this twenty-fourth day of August, in the year of our Lord one thousand nine hundred and ten, before me, the subscriber, an attorney at law New Jersey Supreme Court, personally appeared James A. Sullivan, who am satisfied is the Grantor mentioned in the within instrument, to whom I first made known the contents thereof, and thereupon he acknowledged he signed, sealed and delivered the same as his voluntary act and deed, for the uses and purposes therein expressed. 10

JAMES F. GANNON, JR. 20  
 Attorney at Law New Jersey  
 Supreme Court.

In consideration of the sum of two hundred (\$200.00) Dollars, receipt whereof is hereby acknowledged, I hereby set over and assign all of my right, title and interest, of, in and to the within contract for Arthur Brisbane.

It is hereby mutually agreed that the time for closing the sale under the within agreement be and the same is hereby extended until Saturday, October 1, 1910, at the same hour and place. Witness our hands and seals this 24th day of August, A. D. 1910. 30

JAMES A. SULLIVAN (L. S.)  
 ARTHUR BRISBANE (L. S.)  
 By S. C. COWART, Atty.

*Exhibit C-1.*

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

10 BE IT REMEMBERED, that on this 24th day of August, A. D. 1910, before me the subscriber, personally appeared James A. Sullivan, who I am satisfied is one of the grantors in the above agreement extending time for closing sale under this agreement, and I having first made known to him the contents thereof, he thereupon acknowledged that he signed, sealed and delivered above extension as his voluntary act and deed for the uses and purposes therein expressed.

20 JAMES F. GANNON,  
 Attorney at Law,  
 New Jersey Supreme Court.

**Exhibit C-2.**

IT IS HEREBY MUTUALLY AGREED that the time for the closing of sale under the within agreement be and the same is hereby extended until Saturday, October 15th, 1910, at the same hour and place.

30 Witness our hands and seals this 29th day of September, 1910.

JAMES A. SULLIVAN (L. S.)  
 ARTHUR BRISBANE (L. S.)

By Robert M. Boyd, Jr.

**Exhibit C-3.**

New York, October 14, 1910.

No.

AMERICAN EXCHANGE NATIONAL BANK

Pay to the order of Bennett Milnor \$1800.

Eighteen hundred.....00/100 Dollars 10

ARTHUR BRISBANE  
(Certified)

Endorsed

BENNETT MILNOR.

**Exhibit C-4.**

BOND. 20

KNOW ALL MEN BY THESE PRESENTS, that I, Arthur Brisbane, am held and firmly bound unto James A. Sullivan, in the sum of Sixteen hundred (\$1600.) Dollars, lawful money of the United States of America to be paid to the said James A. Sullivan, his executors, administrators or assigns. To which payment well and truly to be made, I bind myself, my heirs, executors and administrators firmly by these presents. Sealed with my seal and dated the 14th day of October, One thousand nine hundred and ten. 30

The condition of the above obligation is such, That if the above bounden Arthur Brisbane, his heirs, executors and administrators, shall well and truly pay, or cause to be paid unto the above named James A. Sullivan, his executors, administrators or assigns, the just and full sum of eight hundred dollars (\$800.), the day of October, which will be in the year One Thousand and nine hundred and twelve, and the interest thereon to 40

*Exhibit C-4.*

be computed from \_\_\_\_\_ at the rate  
of 6% per cent per annum, and to be paid semi-  
annually on the \_\_\_\_\_ days of April and  
October, in each year while said principal sum re-  
mains unpaid and in arrear without any fraud or  
10 other delay, then the above obligation to be void,  
otherwise to remain in full force and virtue.

It shall not be necessary to make the obligor de-  
fendant in foreclosure of the mortgage accom-  
panying this bond, unless then owner of the mort-  
gaged premises; and in case of a deficiency on  
such foreclosure the obligee shall have the right  
to sue thereon in any jurisdiction and in such suit  
the laws hereof shall control this contract both as  
to binding force and manner and time of enforce-  
20 ment.

AND IT IS HEREBY EXPRESSLY AGREED, that should  
any default be made in the payment of the said  
interest or of any part thereof, on any day  
whereon the same is payable, as above expressed  
or should any tax, assessment, water rent, or other  
municipal or governmental rate, charge, imposi-  
tion or lien be hereafter imposed or acquired upon  
the premises described in the mortgage accom-  
panying this bond, and become due and payable,  
30 and should the said interest remain unpaid and in  
arrears for the space of thirty days, or said tax,  
assessment, water rent, or other municipal or gov-  
ernmental rate, charge, imposition or lien, or any  
or either of them remain unpaid and in arrear for  
the space of four months then and from thence  
forth, that is, to say, after the lapse or expira-  
tion of either of said periods, as the case may be,  
the aforesaid principal sum of Eight hundred  
(\$800.00) Dollars with all arrearages of interest  
40 thereon, shall at the option of the said James A.  
Sullivan or his legal representatives, become and

*Exhibit C-4.*

be due and payable immediately thereafter, although the period first above limited for the payment thereof may not then have expired, anything hereinbefore contained to the contrary thereof in anywise notwithstanding.

ARTHUR BRISBANE (L. S.) 10

Signed, sealed and delivered  
in the presence of

EMIL J. STEINHEUSER

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**Exhibit C-5.**

THIS INDENTURE, made the 14th day of 20  
October, in the year of our lord One thousand  
nine hundred and ten. Between ARTHUR BRIS-  
BANE, unmarried, of the Borough of Manhattan,  
in the County of New York and State of New  
York, of the First Part; and JAMES A. SULLIVAN,  
of the City of Jersey City, in the County of Hud-  
son and State of New Jersey, of the Second Part:

WITNESSETH: That the said party of the first 30  
part, for and in consideration of the sum of Eight  
hundred (\$800.) dollars money of the United  
States of America, to him in hand well and truly  
paid by the said party of the second part, at or  
before the sealing and delivery of these presents,  
the receipt whereof is hereby acknowledged, and  
the said party of the first part, therewith fully  
satisfied, contented and paid, has given, granted,  
bargained, sold, aliened, enfeoffed, conveyed and  
confirmed, and by these presents, does give, grant,  
bargain, sell, alien, enfeoff, convey and confirm to 40  
the said party of the second part, and to his heirs

*Exhibit C-5.*

and assigns forever, all that certain tract or parcel of land and premises, hereinafter particularly described, situate, lying and being in the City of Jersey City, in the County of Hudson and State of New Jersey, known as lot "F" in City Block 1865 on Fowler's Official Assessment Map of Jersey City, also known as No. 11 Wilks Street, Jersey City, New Jersey, being in dimension twenty four feet six inches front and rear and one hundred and nine feet in depth on one side and one hundred and seven feet in depth on the other side.

Being all of the premises conveyed to the party of the second part herein by James Billington, in the month of June, 1910.

The above described premises being subject, however, to a mortgage made by William P. Kastenhuber and wife, to Jennie T. Turner, dated July 2, 1908, and recorded July 14, 1908, in Book 647 of Mortgages, for Hudson County, pages 43-45, to secure \$2,000 with interest at six per cent, for three years.

Being the same premises conveyed to the party of the first part by the party of the second part by deed of even date herewith, this mortgage being given to secure a part of the purchase money forming the consideration for said conveyance. The party of the first part herein shall have the privilege of repaying this mortgage at any time before the date of maturity, provided he shall give the party of the second part a three days' notice of his intention so to do.

It is mutually understood and agreed by and between the parties hereto that this mortgage shall be subject and subordinate to any new mortgage which may hereafter be placed on the said property during the currency of this mortgage,

*Exhibit C-5.*

after the said first mortgage is discharged of record; provided, however, that the amount of said new mortgage shall not exceed the sum of Two thousand (\$2,000.00) Dollars.

Together with all and singular the profits, privileges and advantages, with the appurtenances to the same belonging, or in anywise appertaining. 10  
Also, all the estate, right, title and interest, property, claim and whatsoever of the said party of the first part, of, in and to the same, and of, in and to every part and parcel thereof. To have and to hold, all and singular the above described tract or lot of land and premises, with the appurtenances, unto the said party of the second part, his heirs and assigns, to the only proper use, benefit and behoof of the said party of the second part, his heirs and assigns forever. 20  
Provided, always, and it is agreed by and between the parties to these presents, that if the said party of the first part, his heirs, executors or administrators, do and shall well and truly pay or cause to be paid, to the said party of the second part, or to his certain attorney or attorneys, heirs, executors, administrators or assigns, the sum of Eight hundred (\$800.) Dollars, in two years from the date hereof, with lawful interest for the same, at the rate of six per centum per annum, payable 30  
semi-annually, according to the condition of a certain bond bearing even date herewith; in the penal sum of Sixteen hundred (\$1,600.) Dollars without any deduction or defalcation for taxes, assessments, or any other imposition, whatsoever; then and from thenceforth, these presents and said obligation, and everything, herein and therein, contained, shall cease and be void; anything herein and therein contained, to the contrary in any- 40  
wise notwithstanding.

*Exhibit C-5.*

And the said party of the first part, for himself, his heirs, executors and administrators, does covenant and grant to and with the said party of the second part, his heirs, and assigns, that the said party of the first part, his heirs and assigns, shall not nor will claim or demand or be entitled to receive any credit or credits on the interest payable hereon, or on the moneys to secure payment of which this mortgage is made, for so much of the taxes assessed against said lands as is equal to the tax rate applied to the amount due on this mortgage or any part thereof; and that the said party of the second part, his heirs and assigns, shall and may, from time to time, and at all times after default shall be made in the performance of the proviso or condition, herein contained, peaceably and quietly enter into, have, hold, use, occupy, possess and enjoy all and singular the above granted and bargained premises, with the appurtenances, without the let, suit, trouble, hindrance or denial of the said party of the first part, his heirs or assigns, or of any other person or persons whatsoever.

And it is also agreed by and between the parties to these presents, that the said party of the first part shall and will keep the buildings erected and to be erected upon the lands above conveyed, insured against loss or damage by fire, in some safe and responsible Insurance Company or Companies, to an amount not less than

Dollars, and assign the policy and certificate thereof to the said party of the second part as collateral security for the payment of the principal and interest aforesaid; and in default thereof, it shall be lawful for the said party of the second part, to effect such insurance, and the premium and premiums paid for effecting the

*Exhibit C-5.*

same shall be a lien on the said mortgaged premises, added to the amount of the said bond or obligation, and secured by these presents, and payable on demand with legal interest.

IN WITNESS WHEREOF, the said party of the first part has hereunto set his hand and seal the day and year first above written. 10

ARTHUR BRISBANE (L. S.)

Signed, sealed and delivered }  
in the presence of }

EMIL J. STEINHEUSER

STATE OF NEW YORK }  
COUNTY OF NEW YORK } ss. : 20

No. 640

I, WILLIAM F. SCHNEIDER, Clerk of the County of New York, and also Clerk of the Supreme Court for said County, the same being a Court of Record, do hereby certify, that Josephine Oakes, 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 Public in and for said County, duly commissioned and sworn, and authorized by the laws of the said State to take acknowledgments and proofs of deeds or conveyances for land, tenements or hereditaments in said State of New York. And further, that I am well acquainted with the handwriting of such Notary Public, and verily believe 30

*Exhibit C-5.*

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 15th day of October, 1910.

10

WM. F. SCHNEIDER,  
Clerk.

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

20 BE IT REMEMBERED, that on this 14th day of October, in the year of our Lord one thousand nine hundred ten, before me, a Notary Public, in and for the County of New York, personally appeared Arthur Brisbane, unmarried, who, I am satisfied is the grantor mentioned in the within Indenture, and to whom I first made known the contents thereof, and thereupon he acknowledged that he signed, sealed and delivered the same as his voluntary act and deed, for the uses and purpose therein expressed.

30 JOSEPHINE OAKES,  
Notary Public No. 1  
N. Y. County, Reg. No. 1015

(Seal)

40

**Exhibit C-6.**

WILLIAM P. KASTENHUBER, *et ux*

to

JAMES BILLINGTON

Deed dated, April 13th, 1910.

10 .

This Indenture, made the thirteenth day of April in the year one thousand nine hundred and ten.

Between William P. Kastenhuber and Dora Kastenhuber his wife, of Warren County in the State of New Jersey parties of the first part; and James Billington of Jersey City, Hudson County, State of New Jersey, party of the second part.

WITNESSETH, That the said party of the first part for and in consideration of the sum of one Dollar and other lawful money of the United States of America to them in hand paid by the said party of the second part at or before the en-  
sealing and delivery of these presents, the receipt whereof is hereby acknowledged and the said party of the second part his heirs, executors and administrators forever released and discharged from the same by these presents have granted, bargained, sold, aliened, remised, released, conveyed and confirmed and by these presents do grant, bargain, sell, alien, remise, release, convey and confirm unto the said party of the second part, and to his heirs and assigns forever.

20

30

All that tract or parcel of land, situated, lying and being in the City of Jersey City, County of Hudson and State of New Jersey, which is known as the whole of lot letter "F" in block numbered 1865, on Fowler's Official Assessment Map of Jersey City, N. J., 1894, "Also as known and laid

40

*Exhibit C-6.*

out as lot lettered 'F' in Block numbered 1865 on the Official Map of Jersey City made by G. M. Hopkins, Civil Engineers, 1908."

10 Subject to a mortgage made by William P. Kastenhuber to Jennie J. Turner for the sum of two thousand (\$2,000.) Dollars dated July second, One thousand nine hundred and eight and recorded in the office of the Register of Hudson County in Book 647 of Mortgages, page 43, etc.; being the same premises conveyed to William P. Kastenhuber by J. Rudolph Diefenbach by deed dated June 29th, 1908, and recorded in the office of the Register of Hudson County in Book 1009 of Deeds, page 406, etc.

20 Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise pertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof.

And also, all the estate, right, title, interest, dower, right of dower, property, possession, claim, and demand whatsoever as well in law as in equity of the said party of the first part of, in and to the above described premises and every part and parcel thereof with the appurtenances.

30 To have and to hold all and singular the above mentioned and described premises together with the appurtenances unto the said party of the second part his heirs and assigns to his and their own proper use, benefit and behoof forever.

40 And the said William P. Kastenhuber and Dora Kastenhuber for themselves, their heirs, executors and administrators, do covenant and agree to and with the said party of the second part, his heirs and assigns that the said William P. Kastenhuber and Dora Kastenhuber are at the time of the sealing and delivery of these presents law-

*Exhibit C-6.*

fully seized in their own right of a good absolute and indefeasible estate of inheritance in fee simple of and in all and singular the above granted, bargained and described premises with the appurtenances and have good right, full power and lawful authority to grant, bargain, sell and convey the same in manner and form aforesaid. 10

And that the said party of the second part his heirs and assigns shall and may at all times hereafter peaceably and quietly have, hold, use, occupy, possess, and enjoy the above granted premises and every part and parcel thereof with the appurtenances without any let, suit, trouble, molestation, eviction or disturbance of the said party of the first part, their heirs or assigns or of any other person or persons lawfully claiming or to claim the same. And that the same now are free, clear, discharged and unencumbered of and from all former and other grants, titles, charges, estates, judgments, taxes, assessments and encumbrances of what nature or kind soever. 20

And also, that the said party of the first part, and their heirs and all and every other person or persons whomsoever lawfully or equitably deriving any estate, right, title or interest of, in or to the hereinbefore granted premises by, from, under or in trust for them shall and will at any time or times hereafter upon the reasonable request and at the proper costs and charges in the law of the said party of the second part, his heirs and assigns, make, do and execute or cause or procure to be made, done or executed all and every such further and other lawful and reasonable acts, conveyances and assurances in the law for the better and more effectually vesting and confirming the premises hereby intended to be granted in and to the said party of the second part, his heirs and 30 40

*Exhibit C-6.*

assigns forever as by the said party of the second part his heirs or assigns or their counsel learned in the law shall be reasonably devised, advised or required.

10 And the said William P. Kastenhuber and Dora Kastenhuber, their assigns, their heirs the above described and hereby granted and released premises and every part and parcel thereof with the appurtenances unto the said party of the second part heirs and assigns against the said party of the first part and their heirs and against all and every person and persons whomsoever lawfully claiming or to claim the same shall and will warrant and by these presents forever defend.

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

WM. P. KASTENHUBER (Seal)  
DORA E. KASTENHUBER (Seal)

Signed, sealed and delivered  
in the presence of

WILLIAM M. GIBBS

30

40

*Exhibit C-6.*

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

BE IT REMEMBERED, that on this 13th day of April, in the year one thousand nine hundred and ten, before me William J. Gibbs, a Commissioner of Deeds, personally appeared William P. Kastenhuber and Dora, his wife, who, I am satisfied are the grantors in the within Indenture named, and I having first made known to them the contents thereof, they did each acknowledge that they signed, sealed and delivered the same as their voluntary act and deed for the uses and purposes therein expressed. 10

And the said Dora Kastenhuber, being by me, privately examined separate and apart from her said husband, did further acknowledge that she signed, sealed and delivered the same as her voluntary act and deed, freely, and without any fear, threats or compulsion of or from her said husband. 20

WILLIAM M. GIBBS  
 Com. of Deeds of Warren Co. N. J.

Received in the office and recorded April 14th, 1910, at 3:40 P. M. No. 2733. 30

*Exhibit C-6.*

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

10 I, JOHN J. McMAHON, Register of the County of Hudson, do hereby certify that the foregoing is a true and correct copy of a certain deed as the same is on Record in my office in Book 1059 of Deeds, on page 359, etc.

IN TESTIMONY WHEREOF, I have hereunto set my hand and seal this 27th day of April A. D. 1912.

JOHN J. McMAHON  
 Register

By CHARLES M. AUSTIN  
 Deputy Register

20 (Seal).

Endorsement on back of instrument.

Exhibit C-6

JRS.

Register's Office  
 Hudson County, N. J.

Certified copy of  
 Deed

30

WILLIAM P. KASTENHUBER, *et ux*

to

JAMES BILLINGTON

Fees—\$

40

**Exhibit C-7.**JAMES BILLINGTON, *et ux*

to

ELLA J. SULLIVAN

Deed dated, June 29, 1910

10

This Indenture, made the twenty-ninth day of June, in the year of our Lord One thousand nine hundred and ten, between James Billington and Rose Anne Billington, his wife, of Jersey City, Hudson County, State of New Jersey, parties of the first part; and Ella J. Sullivan, of the same place, party of the second part.

WITNESSETH: That the said party of the first part, for and in consideration of the sum of one dollar and other lawful money of the United States of America, to them in hand paid by the said party of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, and the said party of the second part, her heirs, executors and administrators forever released and discharged from the same by these presents have granted, bargained, sold, aliened, remised, released, conveyed, and confirmed, and by these presents, do grant, bargain, sell, alien, remise, release, convey and confirm unto the said party of the second part, and to her heirs and assign forever.

20

30

All that tract or parcel of land situate, lying and being in the City of Jersey City, County of Hudson and State of New Jersey, which is known as the whole of "lot lettered F" in Block numbered 1865, on the Official Map of Jersey City, made by G. M. Hopkins Co., Civil Engineers, 1908.

Subject to a mortgage now held by Jennie J. Turner for the sum of Two thousand dollars dated

40

*Exhibit C-7.*

July second, one thousand nine hundred and eight, and recorded in the office of the Register of Hudson County, in Book 647 of Mortgages, page 43, etc.

10 Being the same premises conveyed to James Billington by William P. Kastenhuber and Dora Kastenhuber, his wife, by deed dated April 13th, 1910, and recorded in the office of the Register of Hudson County in Book 1059 of deeds for said County, page 359.

Also known as the Whole of Lot lettered F in Block numbered 1865, on Fowler's Official Assessment Map of Jersey City, N. J. 1894.

20 Together with all and singular the tenements, hereditaments, appurtenances thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof.

And also, all the estate, right, title, interest, dower, right of dower, property, possession, claim and demand whatsoever as well in law as in equity, of the said party of the first part, of, in or to the above described premises and every part and parcel thereof, with the appurtenances.

30 To have and to hold all and singular the above mentioned and described premises, together with the appurtenances, unto the said party of the second part, her heirs and assigns, to her and their own proper use, benefit and behoof forever.

40 And the said James Billington and Rose Anne Billington, for themselves, and their heirs, executors and administrators, do covenant, grant and agree, to and with the said party of the second part, her heirs and assigns, that the said James Billington and Rose Billington are, at the time of the sealing and delivery of these presents, lawfully seized in their own right of a good, absolute

*Exhibit C-7.*

and indefeasible estate of inheritance in fee simple of, and in all and singular the above granted, bargained and described premises, with the appurtenances, and have good right, full power and lawful authority to grant, bargain, sell and convey the same in manner and form aforesaid.

And that the said party of the second part, her heirs and assigns, shall and may at all times hereafter peaceably and quietly have, hold, use, occupy, possess and enjoy the above granted premises, and every part and parcel thereof, with the appurtenances, without any let, suit, trouble, molestation, eviction or disturbance of the said party of the first part, their heirs or assigns, or any other person or persons lawfully claiming or to claim the same.

And that the same now are free, clear, discharged and unincumbered of and from all former and other grantees, titles, charges, estates, judgments, taxes, assessments and encumbrances of what nature or kind soever.

And also, that the said party of the first part, and their heirs, and all and every other person or persons whomsoever lawfully or equitable deriving any estate, right, title or interest, of, in or to the hereinbefore granted premises, by, from under or in trust for them, shall and will at any time or times hereafter, upon the reasonable request, and at the proper costs and charge in the law, of the said party of the second part, her heirs and assigns; make, do, and execute, or cause or procure to be made, done or executed, all and every such further and other lawful and reasonable acts, conveyances and assurances in the law for the better and more effectually vesting and confirming the premises hereby intended to be conveyed, in and to the said party of the second part, her heirs

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*Exhibit C-7.*

and assigns forever, as by the said party of the second part, her heirs and assigns, or their counsel learned in the law, shall be reasonable devised, advised or required.

10 And the said James Billington and Rose Anne Billington, their assigns, their heirs, the above described and hereby granted and released premises, and every part and parcel thereof, with the appurtenances, unto the said party of the second part, her heirs and assigns, against the said party of the first part, and their heirs, and against all and every person and persons, whomsoever, lawfully claiming or to claim the same, shall and will warrant, and by these presents forever defend.

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

JAMES BILLINGTON (No seal)  
ROSE ANNE BILLINGTON (No seal)

Signed, sealed and delivered }  
in the presence of }

WILLIAM D. KELLY.

30

40

*Exhibit C-7.*

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

BE IT REMEMBERED, that on this twenty-ninth day of June, in the year One thousand nine hundred and ten, before me the subscriber, an attorney at law of the Supreme Court of the State of New Jersey, personally appeared James Billington and Rose Anne Billington, his wife, who, I am satisfied, are the grantors in the within Indenture named, and I having first made known to them the contents thereof, they did each acknowledge that they signed, sealed and delivered the same as their voluntary act and deed for the uses and purposes therein expressed. And the said Rose Anne Billington being by me privately examined separate and apart from her said husband, did further acknowledge that she signed, sealed and delivered the same as her voluntary act and deed, freely, and without any fear, threats or compulsion of or from her said husband.

WILLIAM D. KELLY,  
 Attorney at Law of the Supreme  
 Court of the State of New Jersey.

Received in office and recorded June 30, 1910,  
 at 9:57 A. M. No. 4999.

*Exhibit C-7.*

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

10 I, JOHN J. McMAHON, Register of the County of Hudson, do hereby certify that the foregoing is a true and correct copy of a certain Deed as the same is on Record in my office in Book 1078 of deeds, on page 91, etc.

IN TESTIMONY WHEREOF, I have hereunto set my hand and seal this second day of December, A. D. 1913.

JOHN J. McMAHON,  
 Register.

20 (Seal) by CHARLES M. AUSTIN,  
 Deputy Registree.

Endorsed

Register's Office  
 Hudson County, N. J.  
 Certified copy of  
 Deed

JAMES BILLINGTON, *et ux*

30 to  
 ELLA J. SULLIVAN

**Exhibit C-8.**

IN THE NAME OF GOD, AMEN :

I, THOMAS H. N. WILKS, of Jersey City, New Jersey, being weak in body but of sound and disposing mind, memory, and understanding, for which I thank God, do make, publish and declare my last will and testament in manner following that is to say: 10

I do give and bequeath to my adopted daughter Dora Elcina Raspiller, now known by the name of Dora Elcina Wilks all my personal estate including the insurance upon my life or beneficial interest in the Masonic Mutual Life Insurance Association of Hudson County, New Jersey, and in the American Legion of Honor of which I am a third degree member of Hudson Council No. 521. To have and to hold to her own use forever, and I direct that she do pay thereout all my just debts and funeral expenses and the mortgage of One thousand dollars outstanding against my homestead at No. 11 Wilks Street, in Jersey City, aforesaid. 20

\*Secondly: I do give and advise to said Dora Elcina Raspiller, now known as Dora Elcina Wilks all my real estate including said homestead and any other real estate of and to which I shall die seized, possessed or in any wise entitled to have and to hold the same to her for and during the term of her natural life and at her death I do give and advise the same to the heirs of her body, born in lawful wedlock. 30

If she shall leave no lawful issue living at the time of her death, then I give and devise the said real estate to my brother Aquila Wilks if he be then living, and if not then living, then I give and 40

*Exhibit C-8.*

devise the same to those persons who would be his heirs at law if he had died intestate at the time of the death of said Dora.

10 Lastly: I hereby appoint the said Dora Elcina Raspiller now known as Dora Elcina Wilks sole executrix of this my last will and testament hereby revoking all former wills.

IN WITNESS WHEREOF, I have hereunto set my hand and seal at Jersey City, aforesaid this twenty eighth day of June, A. D. Eighteen hundred and eighty nine.

T. H. N. WILKS (L. S.)

20 The foregoing instrument was on this 28th day of June, A. D. 1889, at Jersey City, N. J. signed, sealed, published and declared as and for his last will and testament by Thomas H. N. Wilks, the testator therein named in the presence of the subscribers two witnesses both present at the same time and we do now at his request and in his presence and in presence—subscribe our names hereto as such witnesses.

BENJ. L. HALLICK  
AQUILA WILKS.

30 The making of the signature "T. H. N. Wilks" to the within writing purporting to be the last will and testament of Thomas H. N. Wilks was on this                    day of July, A. D. 1889, in Jersey City, N. J. acknowledged by the said Thomas H. N. Wilks and such writing was by him declared to be his last will and testament in the presence of the subscribers two witnesses both present at the same time and we do now at his request and in his presence and in the presence of each other  
40 subscribe our names hereto as such witnesses.

*Exhibit C-8.*

## HUDSON COUNTY SURROGATE'S OFFICE

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

I, WILLIAM J. FLANAGAN, Deputy Surrogate and Deputy Clerk of the Surrogate's Court of the said County of Hudson, in said State, do hereby certify that the foregoing is a copy of the last will and testament in the matter of the estate of Thomas H. N. Wilks, deceased, that I have compared said copy with the record thereof, now remaining in this office, and have found the same to be a true transcript therefrom. 10

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal this fifth day of December, A. D. one thousand nine hundred and thirteen. 20

WM. J. FLANAGAN  
 Deputy Surrogate and Deputy Clerk of  
 The Surrogate's Court.

(L. S.)

---

These four exhibits offered by Complainant, before Thomas L. Raymond, Special Master. 30

**Exhibit C-1.**

RENTS RECEIVED BY JAMES A. SULLIVAN  
 from property located at 11 Wilkes Street,  
 Jersey City, N. J.

10	1910		
	Oct. ....		\$25.00
	Nov. ....		25.00
	Dec. ....		25.00
	1911		
	Jan. ....		25.00
	Feb. ....		25.00
	Mar. ....		25.00
	Apr. ....	Vacant	
	May ....	Vacant	
	June ....	Vacant	
20	July ....		25.00
	Aug. ....		25.00
	Sep. ....		25.00
	Oct. ....	Vacant	
	Nov. ....	Vacant	
	Dec. ....		25.00
	1912		
	Jan. ....		25.00
	Feb. ....		25.00
	Mar. ....		25.00
30	Apr. ....		25.00
	May ....		25.00
	June ....		25.00
	July ....		25.00
	Aug. ....		25.00
	Sep. ....	Vacant	
	Oct. ....	Vacant	
	Nov. ....	Vacant	
	Dec. ....		25.00
	1913		
40	Jan. ....		25.00
	Feb. ....		25.00

*Exhibit C-2.*

Mar.	Vacant		
Apr.	.....	25.00	
May	.....	25.00	
June	.....	25.00	
July	.....	25.00	
Aug.	.....	25.00	
Sep.	Vacant		10
Oct.	Vacant		
Nov.	.....	30.00	
Dec.	.....	30.00	
1914			
Jan.	.....	30.00	
Feb.	.....	30.00	
Mar.	.....	30.00	
Apr.	.....	30.00	
		<hr/>	
		\$830.00	20
Sundry Expenses	.....	250.00	
		<hr/>	
Balance	.....	\$580.00	

**Exhibit C-2.**

Bring this Bill When Payment Is Made

N.B. All persons paying Taxes or Assessments will examine their bills and the City Map to see that they are paying upon the right property, as the City will not be responsible for or return money paid in error on the wrong property. 30

CITY COLLECTOR'S OFFICE, ROOM NO. 1, CITY HALL  
Book 10, Folio 155, Clerk C. 1911

Mr. Ella J. Sullivan

To the MAYOR AND ALDERMEN OF JERSEY CITY, Dr.

For the Annual Tax, December, 1911, to December, 1912, Assessed for State School, County and City Purposes. 40



**Exhibit C-3.**

BRING THIS BILL WHEN PAYMENT IS MADE

N. B. Please examine your Bill and the City Map to see that you are paying on right property.

10

DEPARTMENT OF REVENUE AND FINANCE,  
CITY OF JERSEY CITY

Bureau of Collection and Deposit,  
Room No. 1, City Hall

Book 10 page 161 Clerk C  
Mr. Ella J. Sullivan

For the Annual Tax December to December, 1914. Assessed for State, School, County and City Purposes. 20

Interest at the rate of 7 per cent per annum will be collected from December 20th, 1913, to date of payment.

Rate of taxation: \$13.51 per thousand for City, \$5.10 per thousand for County; \$2.62 per thousand for State School; Total \$21.23.

Office hours 9 A. M. to 4 P. M.

9 A. M. to 12 M Saturdays

30

RECEIPT NOT VALID UNLESS COUNTERSIGNED BY  
CITY COMPTROLLER

Payable in Jersey City or New York City  
Funds Only.

Make check to order of George F. Bresinger,  
City Collector

<i>Block</i>	<i>Lot No.</i>	<i>Street No.</i>	<i>Location of premises</i>	<i>House &amp; Lot</i>	
1865	F	11	Wilks Street	1	40



*Exhibit C-4.*

ment to that date. If not paid until after the 31st day of December, 10 per cent interest will be collected from December 20th, 1912, to date of payment.

Rate of taxation: \$13.86 per thousand for City; \$5.55 per thousand for County; \$2.59 per thousand for State School; Total \$20.00. 10

Office hours from 9 A. M. to 4 P. M.  
9 A. M. to 12 M Saturdays

RECEIPT NOT VALID UNLESS COUNTERSIGNED BY  
CITY COMPTROLLER

Payable in Jersey City or New York City  
Funds Only.

Draw Check to George F. Bresinger,  
City Collector 20

<i>Block</i>	<i>Lot No.</i>	<i>Street No.</i>	<i>Location of premises</i>	<i>House &amp; Lot</i>
1865	F	11	Wilks Street	1
<i>Vacant Lot</i>	<i>Value of Land</i>	<i>Value of Improvements</i>	<i>State Poll Tax</i>	
	\$4000	1200		
<i>Total Value</i>	<i>Total Amt. Taxes</i>			
5200	114.40			
Interest				

IF YOU WANT YOUR RECEIPTED BILL RETURNED BY  
MAIL PUT YOUR ADDRESS BELOW 30

Name.....

EXHIBITS OF DEFENDANT.

*Brisbane v. Sullivan*

D- 1,	Letter dated	October	29,	1910	
D- 2,	"	"	November	1,	1910
D- 3,	"	"	December	6,	1910

*Exhibit C-4.*

	D- 4,	“	“	December	8,	1910
	D- 5,	“	“	December	12,	1910
	D- 6,	“	“	December	13,	1910
	D- 7,	“	“	December	19,	1910
	D- 8,	“	“	“	22,	1910
	D- 9,	“	“	“	30,	1910
10	D-10,	“	“	“	31,	1910
	D-11,	“	“	January	5,	1911
	D-12,	“	“	February	28,	1911
	D-13,	“	“	October	7,	1910
	D-14,	“	“	“	26,	1910
	D-15,	“	“	“	28,	1910
	D-16,	“	“	December	23,	1910
	D-17,	“	“	“	24,	1910
	D-18,	“	“	“	27,	1910
	D-19,	“	“	“	27,	1910
20	D-20,	“	“	“	30,	1910
	D-21,	“	“	January	24,	1911
	D-22,	“	“	“	6,	1911
	D-23,	“	“	“	16,	1911
	D-24, Memo of Title Exhibits D-13 to D-24 marked for identification, as D-1 to D-11 (Copy of D-25).					
	D-25, Report of Montclair Trust Company on Title No. 2315.					

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**Exhibit D-1.**

Jersey City, N. J. Oct. 29th, /10

#15 Exchange Place,  
Samuel S. Cowart Esq:

Dear Sir:

10

I am desirous of carrying out my contract with Bennett Milnor for the conveyance of property in this City. I have never understood the objections raised to the title, and on the 26th inst., I wrote Mr. Boyd asking him to give me a statement of them, and he replies, referring me to you, without stating why; it is claimed the title is not good. I am therefore addressing you to ask that you give me a memorandum of the objections, raised and if you will give them to me, I shall endeavor to clean them up, if they are good, or if on the other hand, you prefer not to take title I am willing to return your deposit and cancel the contract, and if you will let me know when and where I can meet, you I will call on you for this purpose.

20

Your's truly

JAMES A. SULLIVAN.

30

40

**Exhibit D-2.**

(Letterhead of Samuel Craig Cowart)

Nov. 1, 1910.

10 Mr. James A. Sullivan,  
#15 Exchange Place,  
Jersey City, N. J.

Dear Mr. Sullivan:

20 Your letter of the 29th ult. received. I will  
look up the objections of Mr. Boyd as attorney  
for Montclair Trust Company to the title of the  
property which you agreed to convey to Mr. Ar-  
thur Brisbane through contract with Mr. Bennet  
Milnor. I am at present confined to my house  
with a broken knee cap, but will endeavor to get  
hold of the papers at my office in order to reply  
to your letter within a few days. Mr. Brisbane,  
I understand, insists on the fulfillment of the con-  
tract. You made a mistake in not having the  
actual owner execute the contract as you state in  
the contract that you were the owner which was a  
mis-statement.

Very truly yours,

30

S. C. COWART,  
Per G. A. F.

Dict. C/F.

**Exhibit D-3.**

Jersey City, N. J. December 6th/10.

#15 Exchange Place,  
Samuel Craig Cowart, Esq.:

Dear Sir:

I received your letter dated November 1/10,  
concerning the matter of my property situated at  
#11 Wilks St., Jersey City, N. J., in which you  
stated that you would endeavor to get hold of  
papers in your office, in order to reply to my let-  
ter in a few days. Perhaps you have overlooked,  
this matter, and for that reason I call to your  
notice, that I desire to close this matter concern-  
ing the title of my property as soon as possible,  
and would be pleased if you would send me a state-  
ment of your objections to the title in question,  
or I would meet you at any place you appoint,  
and finally discuss this matter which has been  
pending for some time.

Your's truly,

JAMES A. SULLIVAN.

**Exhibit D-4.**

Freehold, N. J.  
Dec. 8, 1910.

Mr. James A. Sullivan,

Dear Sir:

If you wish to see me personally about the Bris-  
bane agreement, I can meet you at my office in  
Freehold at 10 A. M. either Saturday 10th inst.,  
or Monday, the 12th inst.

Very truly Yours,

S. C. COWART.

**Exhibit D-5.**

Jersey City N. J. December 12th/10

#15 Exchange Place,  
S. C. Cowart, Esq.

10 Dear Sir:

I received your letter this morning, which is too late a period, to accept an engagement at Freehold, N. J. at 10 A. M. I can see of no reason why, you do not send me a written statement, of the objections to my title to property situated at 11 Wilks Street, Jersey City, N. J.

20 Furthermore, it would be more convenient for both of us to meet, at the office of Brikerhoff and Fielder, in Jersey City, or any other office in said City, or New York City, which you designate.

Trusting to receive an immediate reply

Your's truly,

JAMES A. SULLIVAN.

30

40

**Exhibit D-6.**

(Letterhead of Samuel Craig Cowart.)

Dec. 13, 1910.

Mr. James A. Sullivan,  
15 Exchange Place, Jersey City, N. J.

Dear Sir:

Your letter of the 12th inst. received. One of 10  
the reasons why I cannot meet you in Jersey City,  
is that I have a broken knee cap which prevents  
my making excursions away from home at this  
icy time of the year; another reason is that you  
have failed to keep your appointments in Jersey  
City, and therefore, I do not see why you should  
not meet me in Freehold as requested.

I enclose some of the objections to your title  
as set forth by Mr. Robert M. Boyd, Attorney for 20  
Montclair Trust Company, which was engaged to  
insure the title. Another objection is that the  
title of the property which you agreed to convey  
to Mr. Arthur Brisbane, and which you repre-  
sented as your own property, is in Ella J. Sulli-  
van. I believe you say that she is your sister,  
but you have hitherto failed to secure her sanc-  
tion to your agreement of sale, or any separate  
agreement of sale from her to Mr. Brisbane, and  
you have also failed to produce her deed and offer 30  
to deliver it to Mr. Brisbane. Mr. Brisbane takes  
the position that you have made a misrepresenta-  
tion of the title, and he is even threatening crim-  
inal prosecution on this account. I would like you  
at once to make an appointment to meet me at  
Freehold, and see if there is any possible way of  
carrying out your agreement and conveying good  
title to Mr. Brisbane. You understand, however,  
that I do not in any way waive any rights of Mr.  
Brisbane to declare your agreement violated, and 40  
to proceed against you for false representations  
as to title, and for failure to complete your agree-  
ment.

Very truly yours,  
S. C. COWART

**Exhibit D-7.**

J. F. F.

December 19, 1910.

Samuel C. Cowart, Esq.

10 Dear Sir,

Your letter of the 13th inst. to James A. Sullivan with your objections to his title, has been referred to me and hereafter I shall represent him in this matter.

20 I understood from Mr. Sullivan that he loaned you an abstract of the title of the property and that you still have it. Will you please send this abstract to me so that, in taking up your objections to the title, I may have it to aid me. I enclose stamps to cover the postage.

From your list of objections, I judge, however, that it will be impossible to satisfy you as to the validity of the title and on behalf of Mr. Sullivan and to quickly dispose of the matter, I offer to return your deposit with interest. I also offer, (while denying your right to recover it by suit), to pay you a reasonable search fee. Please advise me whether or not this offer is accepted.

30 It is idle to speak of "misrepresentation of the title" and "criminal prosecution". Mr. Sullivan made the contract to sell in good faith and when the time arrived for closing title, he was in a position to secure a deed from Ella J. Sullivan conveying the property to the purchaser. You rejected the title for alleged defects and were unwilling to accept a deed from anybody. There is no reason why he should not tender you a deed which you would not accept, because you say the title is bad.

40

Very truly yours,

JAMES F. FIELDER.

**Exhibit D-8.**

(Letterhead of Samuel Craig Cowart.)

Dec. 22, 1910.

Hon. James F. Fielder,  
 c/o Brinkerhoff & Fielder, 10  
 15 Exchange Place,  
 Jersey City, N. J.

Dear Mr. Fielder,

Your letter of the 19th inst. in regard to James A. Sullivan and Arthur Brisbane contract for sale of property in Jersey City was duly received. Mr. Sullivan did not loan me any abstract of title. All the information which I have received in regard to the title has come from Mr. Robert M. Boyd, Attorney of Montclair Trust Company, which was engaged by me to insure the title for Mr. Brisbane. Mr. Sullivan has a copy of the objections raised by the Trust Company in relation to the title. Mr. Sullivan appears to be making no effort to clear up these objections; on the contrary he, and his former Attorney, Mr. Mulvaney, failed to keep two appointments with Mr. Robert M. Boyd. and Mr. Sullivan himself failed to appear on the date fixed for closing the sale at Mr. Boyd's office. On that date, Mr. Brisbane's representative was present with the cash balance of purchase money, and with a duly executed mortgage pursuant to the agreement, and also with a deed to be executed by Mr. Sullivan to him. Of course, we would not have accepted his deed unless the title was cleared up and made marketable. 20 30

Mr. Brisbane is still anxious to secure this title. I would like to know from you what effort, 40

*Exhibit D-8.*

10 if any, is being made by Sullivan to clear up the defects shown on the searches of the Montclair Trust Company. You say Mr. Sullivan made no misrepresentations of the title, etc. He certainly represented in the agreement that he was the owner of the property, and that it was conveyed to him by James Billington, in the month of June, 1910. If he was not the owner, according to the agreement, he should have signed it as Attorney in Fact for Ella J. Sullivan, the actual owner, or else had her execute the agreement or have her consent to it. I have requested him to secure such consent but he has never complied with my request.

20 Please let me know speedily what you propose to do in the matter in order to settle it.

Very truly yours,

S. C. COWART.

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**Exhibit D-9.**

(Letterhead of Samuel Craig Cowart.)

Dec. 30, 1910.

30

Hon. James F. Fielder,  
15 Exchange Place, Jersey City, N. J.

My dear Mr. Fielder:—

40 Your letter of the 27th inst. received. You state that the title not being in Mr. Sullivan he can do nothing in his own name to clear up any flaws there may be. What relation is Ella J. Sullivan to Mr. James A. Sullivan? A. Is she his wife or is she his sister? I understand the title

*Exhibit D-9.*

is in her name? Do you see any reason why she could not execute a consent of the sale, and have it endorsed on the original contract acknowledging it so that it can be recorded. This might then give her and James A. Sullivan a legal standing to file a bill to compel performance by Mr. Brisbane, and if you reach the conclusion that the objections to the title are not valid, then the Court can pass upon their validity and decide whether or not the title is marketable, or you might be able to clear up the clouds on your title. 10

Mr. Brisbane declines to accept your offer of settlement by repayment of the amount paid upon the purchase price, together with a reasonable search fee. He wants the property, and wants the agreement strictly carried out. I have no objections, however, to your seeing him personally in order to ascertain whether or not you can effect any compromise. I would like to know whether you have secured the abstract or title from Mr. Milnor, and whether you have gone over our objections, and if so whether you think we are justified in declining to accept a deed until the objections are cleared away. I think there is a provision under the Martin Act by which defects in the proceedings may be corrected. I think Mr. Sullivan could also file a bill Chancery to quiet the title making all of those minor children or heirs parties, and making all persons parties who had any interest in the property. Of course, this might give a right to come in and redeem, but it is not likely that they would redeem. Mr. Sullivan is certainly obliged to convey a marketable title to Mr. Brisbane, and will have to pay damages if he fails to do so. 20 30

Kindly let me hear from your speedily.

Very truly yours,

S. C. COWART.

**Exhibit D-10.**

(Letterhead of Samuel Craig Cowart)

December 31, 1910.

Hon. James F. Fiedler,  
10      15 Exchange Place, Jersey City, N. J.

My dear Senator:

Your letter of the 30th inst. received stating that you find the Sullivan title defective to lot agreed to be conveyed to Arthur Brisbane, etc. In reference to those old mortgages, don't you think a bill could be filed under the act which provides for cancellation of old mortgages; so that you can secure their discharge by the order of the court.

20 I had just written you yesterday stating that Mr. Brisbane wants the property, but if you wished to see him personally I had no objections if you can reach any compromise with him. If you cannot reach a settlement then I suppose the only course open is for me to file a bill requiring Mr. Sullivan to carry out his agreement, and if he fails to do this, then it will be up to the court to determine what is to be done or what damages are to be paid. I regret that the matter is in its present shape, and was in hopes that with your influence you could secure a reformation of the tax title. Do you know what was actually paid for the tax title by the purchaser.

30

Kindly inform me as to this. Also as to relation of Ella J. Sullivan to J. C. Sullivan.

With kindest regards,

Very truly yours,

S. C. COWART

**Exhibit D-11.**

(Letterhead of Samuel Craig Cowart)

Jan. 5, 1915.

Hon. James F. Fielder,  
 15 Exchange Place,  
 Jersey City, N. J. 10

My dear Senator:

Your letter of the 4th inst. received in regard to Mr. Brisbane-Sullivan matter. I will examine the authorities you mention on the question of damages. Kindly inform me what relation Ella J. Sullivan is to James A. Sullivan. I have written you twice requesting this information, but have received no answer. I am quite sure Mr. Brisbane would not want to accept a deed of bargain and sale from Ella J. Sullivan in place of the warranty deed provided for in the agreement of sale. 20

Very truly yours,

S. COWART

30

40

**Exhibit D-12.**

(Letterhead of Samuel Craig Cowart)

Feb. 28, 1911.

10 Hon. James F. Fielder,  
15 Exchange Place, Jersey City, N. J.

I received your letters in regard to Sullivan contract with Mr. Brisbane, but have delayed answering in order to see if any compromise could be arranged which would prove satisfactory to both parties.

20 Mr. Brisbane, however, insists on having the contract performed according to its terms. Owing to my broken knee cap I not been able to give much attention to the details of the matter, and Mr. Brisbane has referred it to David Gerber, his New York lawyer, who may see you in reference to the matter.

Very truly yours,

S. C. COWART

30

40

**Exhibit D-13.**

(Letterhead of Robert M. Boyd, Jr.)

Mr, James A. Sullivan,  
 15 Exchange Place,  
 Jersey City, N. J.

Dear Sir:

10

In the matter of the title property known as No. 11 Wilks Street, Jersey City, my representative some time ago suggested to you that a new contract of sale should be executed by your sister, Miss Ella J. Sullivan, instead of yourself, she being the real owner of the property. As I understand it your sister is quite willing to do so and I have accordingly prepared and herewith submit to you a new agreement. If this is satisfactory please have her execute it and I will have a duplicate executed by Mr. Brisbane and we can then make the proper exchange. It is desirable that this new agreement, or some such agreement, should be executed by the real owner of the property so that both parties will be in a position to enforce whatever they consider their rights, if necessary.

20

Kindly let me hear from you as soon as the agreement is executed. I would suggest that this matter be put through promptly so as to have the record straight before October 15, the date to which the closing of title has been adjourned.

30

Yours very truly,

ROBERT M. BOYD, JR.

P.

40

**Exhibit D-14..**

15 Exchange Place, Jersey City

October 26, 1910.

Robert M. Boyd, Esq.

10

Dear Sir:

With reference to my contract to convey property known as 11 Wilks Street, Jersey City, N. J. to Mr. Milnor, and the title of which you claim is defective, I beg to inform you that I have requested of your office a written statement of your objections to the validity of said title, but have as yet received no reply. I think you could expediate matters by sending me a copy of the objections.

20

Very truly yours,

JAMES A. SULLIVAN.

30

40

**Exhibit D-15.**

ROBERT M. BOYD, JR.

Attorney and Counsellor at Law

No. 203 Broadway

Room 810

Manhattan

10

Tel. No. 96 Cortlandt

New York October 28th, 1910.

Mr. James A. Sullivan,  
 15 Exchange Place,  
 Jersey City, N. J.

Dear Sir;

20

Replying to your letter of October 26th, regarding the title which you agreed to convey to Mr. Arthur Brisbane, my recollection is that we discussed in detail the defects in the title and you took a memorandum of them and said you would lay them before your attorney, Mr. Mulvaney, of Jersey City. You next informed us that you had done so and had discussed the matter with him and desired us to call on him at his office so as to receive his explanations on the various points. Mr. Petty, of this office, attended at Mr. Mulvaney's office twice by appointment for that purpose and on both occasions Mr. Mulvaney failed to attend. Subsequently, the title was adjourned to close on a specific date at this office and on that day Mr. Brisbane's representative was here with the cash and with the mortgage properly executed and with the deed ready to tender the same and demand its execution so as to show that he was ready to perform the agreement, provided that you were able to give good title.

30

40

*Exhibit D-15.*

On that day neither you nor your representative appeared, nor did you notify me or Mr. Brisbane that any steps had been taken to correct the defects in the title. Your further stated to me that the title was not in your name at all, but in the name of someone else at the time that you  
10 made the contract with Mr. Brisbane and that the title up to the point of our last meeting had never been vested in you.

I, accordingly, reported to Mr. Brisbane the situation up to that date, and his attorney, I understand, is now in charge of the matter. I have no longer any occasion to represent him and am not in communication with him on the subject. I must, accordingly, refer you to Mr. Samuel C.  
20 Cowart of Freehold, N. J., who, I understand, represents Mr. Brisbane in the matter at present; merely adding that I cannot see that it is reasonable of you now to request any statement from me as to the defects in this title.

Yours,

ROBERT M. BOYD, JR.

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**Exhibit D-16.**

J. F. F.

December 23, 1910.

Hon. Robert M. Boyd, Jr.

19

My dear Boyd:

I have been retained by James A. Sullivan to represent him in connection with his contract which Arthur Brisbane now claims to hold. I have received from Mr. Cowart a statement of "a few" of the objections raised to the title and on examining them it may be necessary for me to have a new title search made. I understand that Mr. Sullivan loaned you or Mr. Cowart an abstract of the title of the property. I have asked Mr. Cowart to send it to me and he replies that it was not loaned to him, which means, I assume, that he hasn't it. Will you kindly send it to me.

20

Very truly yours,

JAMES F. FIELDER.

30

40

**Exhibit D-17.**

ROBERT M. BOYD, JR.

Attorney and Counsellor at Law

No. 203 Broadway

Room 810

Manhattan

10

Tel. No. 96 Cortlandt

2315

New York, December 24th, 1910.

Hon. James F. Fielder,  
15 Exchange Place,  
Jersey City, New Jersey.

My dear Senator:

20 In the matter of James A. Sullivan-Arthur  
Brisbane title, I have your letter of December  
23rd, requesting that I return to you an abstract  
of title belonging to Mr. Sullivan.

In reply I would say that Mr. Sullivan never  
loaned to me any abstract of title relating to the  
said matter. However when I searched the title  
Mr. Bennet Milnor, of 258 Broadway, New York  
City, loaned me an abstract which purported to  
have been made by Mr. Sullivan. Probably this  
30 is the one you have in mind; in any event, it is the  
only one I have ever seen.

But this abstract is no longer in my possession.  
My records show that it was returned to Mr. Mil-  
nor on October 11th, 1910;

I accordingly suggest that you communicate  
with Mr. Milnor, he probably being the person  
who received the abstract from Mr. Sullivan.

I trust that you will thus be able to get it with-  
out much further trouble.

40

Very truly yours,

ROBERT M. BOYD, JR.

**Exhibit D-18.**

J. F. F.

December 27, 1910.

Bennett Milnor, Esq.,

10

Dear Sir,

For the purpose of examining certain objections to title raised by Mr. Cowart in connection with property contracted to be sold by James Sullivan to you, I am desirous of obtaining an abstract of title which Mr. Sullivan says he loaned some one interested for the purchaser. I wrote Mr. Cowart for it and he referred me to Mr. Boyd and now the letter refers me to you, saying that he returned it to you, October 11, 1910. I shall be greatly obliged if you will send this abstract to me, so that I may be in a position to look into the matter. I represent Mr. Sullivan.

20

Very truly yours,

JAMES F. FIELDER.

30

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**Exhibit D-19.**

J. F. F.

December 27, 1910.

Samuel C. Cowart, Esq.,

10

Dear Sir:

On receipt of your letter of the 22nd inst. I wrote Mr. Boyd for the abstract of title, and am now advised by him that he sent it to Mr. Milnor, and I am writing the latter for it. If I am to examine your objections, I must have a title search before me. The title not being in Mr. Sullivan, he can do nothing in his own name to clear up any flaws there may be. All I can do is to advise him, after examining the title, whether or not you were justified in declining to complete the contract with him. If the title is bad because of defects under the tax sale, it will take months to correct it and probably the owner would have to take entirely new proceedings and in that event we shall have to settle with you.

20

Will you please reply to the offer of settlement which I made in my letter to you of the 19th inst.

30

Very truly yours,

JAMES F. FIELDER.

40

**Exhibit D-20.**

J. F. F.

December 30, 1910.

Samuel C. Cowart, Esq.,

10

Dear Sir,

I have finally received the Sullivan abstract of title, it having been in Mr. Milnor's possession, but I find that it sheds no light on any of the objections you make to the title. Reading over again your criticisms of the tax sale proceedings, I am of the opinion that they are well founded and that the title supposed to be passed through these proceedings, is bad. It seems from your statement, that no resolution of the Board of Finance ordering the tax sale, can be discovered, so that there is actually no foundation for the sale. Then too, it appears that there are old mortgages still open of record, and I do not think we can find the original mortgages and I believe the mortgagees are dead. This is a condition for which Mr. Sullivan is not to blame. When he contracted to sell he believed the title was good, and, as I have before stated, he was in a position to convey. Neither he, nor Ella J. Sullivan can give a warranty deed and I therefore renew the offer of settlement I made in my letter of the 19th inst. to you. If you will not accept it, please inform me what you expect us to do.

20

30

Very truly yours,

JAMES F. FIELDER.

40

**Exhibit D-21.**

J. F. F.

January 4, 1911.

Samuel C. Cowart, Esq.,

Dear Sir,

Your letter of the 31st ult. at hand.

10 I have no desire to call on Mr. Brisbane and I shall settle this matter with you if I can, but it seems to me that your client is apparently urging you to force Mr. Sullivan to do something he is absolutely unable to do.

20 When the contract was made, the title was in his sister Ella J. Sullivan and they both believed she had good title. He was in a position to obtain a deed from her at the time named for its delivery, but your title search developed the fact that her title was bad and you were naturally unwilling to take it. This was Sullivan's legal fault, but not moral fault and it being now impossible for him to perform his agreement, the question is as to his legal liability. On the question of damages, I refer you to

Holmes *vs.* Sennickson, 15 N. J. L. 313.  
Gerbert *vs.* Trustees, 59 N. J. L. 160.

30 Suppose I can arrange for a bargain and sale deed from Ella J. Sullivan, are you willing to take such title as she has and pay the balance of the purchase price?

If we cannot settle this matter amicably and you are insistent on suit, I can only say that I shall stand on Mr. Sullivan's strict legal rights. Before you file a bill for specific performance, I suggest that you read the following recent cases:

40 Public Service Co. *vs.* Hackensack Meadows Co., 72 N. J. Eq. 285.  
Logan *vs.* Flattan, 73 N. J. Eq. 222.  
Van Keuren *vs.* Siedler, 73 N. J. Eq. 239.

I do not know what was actually paid for the tax title by the purchaser.

Very truly yours,

**Exhibit D-22.**

J. F. F.

January 6, 1911.

Samuel C. Cowart, Esq.,

10

Dear Sir,

If you will read my letter of the 4th inst. over again, you will see that I stated the relationship between Ella J. and James A. Sullivan.

Very truly yours,

**Exhibit D-23.**

20

J. F. F.

January 16, 1911.

Samuel C. Cowart, Esq.,

Dear Sir,

I learn that Mr. Walter Dear, or some other person for the Jersey City Printing Company, has been negotiating with Mr. Brisbane for his interest in the Sullivan contract. These same persons have approached Mr. Sullivan and me on the subject of purchasing the property and I want you to know that I have told them that Mr. Sullivan is not only legally, but morally bound to convey to Mr. Brisbane if he can and that I have absolutely refused to enter into any negotiations with them, or to entertain any proposition from them.

30

40

Very truly yours,

**Exhibit D-24.**

COPY OF TITLE REPORT.

Title No. 2315.

Original marked D-25.

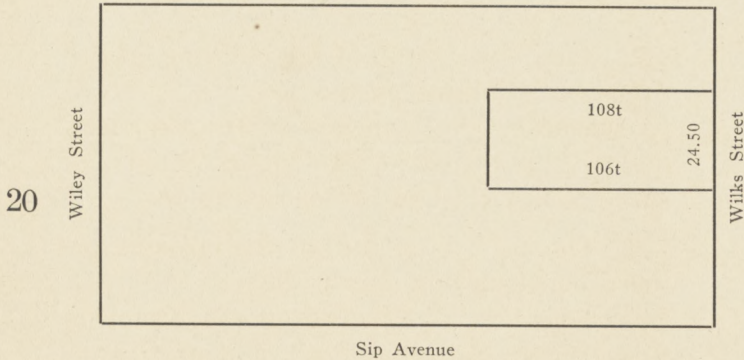
10

**Exhibit D-25.**

Reissue of .....

Title in Ella J. Sullivan

Hudson County Public Road



20

County, Hudson. Street No. 11 Wilks Street. Lot lettered F in Block numbered 1865, on Fowler's Official Assessment Map of Jersey City, N. J. 1894, and filed in the Office of the Register of the County of Essex as Map No.

30

1. Returns on Tax Search Annexed. None. (See Official Tax Search.)

2. Mortgages.

3. Mortgagor, William P. Kastenhuber and Dora Kastenhuber, his wife.

Mortgagee, Jennie J. Turner.

Amount \$2000. Dated July 2, 1908.

Recorded, July 14, 1908. Book 647, page 43.

Payable in 3 years on July 2, 1911.

40

Interest 6 per cent, payable semi-annually.

*Exhibit D-25.*

Assigned to				
Assignment dated				
Recorded	Book	Page		
Mortgagor				
Mortgagee				
Amount, \$	Dated			
Recorded	Book	Page		10
Payable to		on	190	
Interest		per cent payable		
Assignment dated				
Recorded,				
1. The		wall of the building on the		
premises adjoining on the				
encroaches		inches on the premises		
described in Schedule "A" and no title is insured to any land so encroached upon.				20
2. The		wall of the building on		
the premises adjoining on the				
encroaches		inches on the premises		
described in Schedule "A", and no title is insured to any land so encroached upon.				
3. The insured is not in possession of a				
strip of land		and no title to		
said strip is insured.				
4. Variations between the location of the				
fences and the record lines.				30
No survey.				
4. Leases of record and facts as to possession.				
Tenants in possession.				
5. Report on Streets. Public.				
6. Restrictive Covenants and easements.				
7. Judgments. See Schedule annexed. No				
Trenton searches made.				40
8. Conditions and other incumbrances or defects. See Schedule annexed.				

## Judgments.

10	Charles K. Cobb,  <i>vs.</i>  Annabella Taylor and Samuel Hays, surviv- ing partners, etc.	Judgment. Cir. Ct. Hudson County, 1891 24—408 On Contract, on Default Judg. entered Dec. 7, 1891 Damages \$442.72 Costs 31.95
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WILLIS, EDWARDS & BUMSTEAD,  
Attorneys.

## RECOGNIZANCES

	<i>Date</i>	<i>Amt.</i>	
20	Ella Sullivan.....	July 12, 1899	\$200 G. S. 60 Apl. 1899
	George Schmidt.....	Aug. 10, 1899	\$100 Filed 356
	George Schmidt.....	Nov. 13, 1899	\$500 G. S. 16 Sept. 1899
	George Smith.....	Sep. 22, 1902	\$200 Filed 2458
	“ “ .....	Oct. 20, 1904	\$500 Filed 3930
	“ “ .....	Oct. 20, 1904	\$500 Filed 3933
	“ “ .....	Sep. 27, 1905	\$300 Filed 4646
	“ “ .....	Oct. 14, 1905	\$500 Filed 4772
	Emma Smythe.....	Aug. 22, 1900	\$100 Filed 1057
	Emma Smitzke.....	Feb. 11, 1901	\$300 G. S. 36 Dec. 1900
	George Smith.....	Sep. 6, 1907	\$300 Filed 6857
	George Schmidt.....	May 9, 1908	\$300 Filed 7646
	George Smith.....	Dec. 17, 1909	\$300 Filed 9652

PARTIAL MEMORANDUM OF POSSIBLE DEFECTS IN  
TITLE 2315.

Deed, Davis to Dieffenbach, recorded in Book 1009, page 407. The proceeding for the sale of this property for taxes and authorizing the issuing of the above deed seem to be defective in many particulars in that such proceedings do not conform to the statute in the following respects:

The petition to the court is not signed and verified by C. R. Dieffenbach, purchaser, but by John J. Mulvaney, Attorney. This does not conform to

*Judgment.*

the Laws of 1906, page 552, which states that the petition must be verified by the purchaser or his legal representatives or assigns.

The verification in the petition is signed by John J. Mulvaney and contains a jurat as follows: "Sworn and subscribed at Jersey City, N. J., this 15th day of May, 1908, before me", but does not contain the signature or name of office of any official before whom such petition could be sworn to—this having been left blank. 10

In the body of the petition there is no description of the property by metes and bounds, as required by General Statute, page 3380.

On such application no notice thereof was given and there being infants involved there is a question whether the court had jurisdiction. 20

The order contains a direction that a deed shall issue unto C. Randolph Dieffenbach conveying unto him, his executors and assigns, all said lands, etc. This language does not conform to the deed which purports to convey to his heirs. 30

In the affidavit of James J. Dowling as to the publication of the notice therein it purports to be verified on the 27th day of May, but in the jurat the year is left blank and there is no copy of the notice annexed to the affidavit, and in the said jurat there is no mention of the place where said affidavit was taken. 30

The proceedings seem to indicate that there are about fifteen infants interested in the property besides a large number of adults; but there is nothing on the record to show whether the persons named in the proceedings are proper parties or all the parties interested who should have been joined in the proceeding.

The original resolution of the Board of Finance of Jersey City that this property should be sold 40

*Judgment.*

for taxes could not be found in that office and a copy recites that the taxes and assessments have been adjusted; the deed states that the taxes and assessment have not been adjusted. In such resolution a number of other papers are recited, but they are not on record.

10 There appear to be no proofs of advertisement in the office of the City Collector; that is, advertisement of notice of sale, so that it is impossible to say whether such publication was properly made or made at all.

No certificate of sale on file in the office of the City Collector. When the deed was issued such certificate should have been returned and filed in the office of the City Collector and should remain on file in that office.

20 In the City Collector's office there is only a copy of the schedules containing this property among others which were to be sold for taxes; the original is not on file.

The order to issue the deed has not been filed in the office of the Clerk of the Court in accordance with Rule 40 of the Supreme Court of New Jersey, and Rule 18 of the Circuit Court, which requires that such order shall be filed within ten days after granting thereof; this order has never been filed at all and not being filed within the time required by law is void. See *Mayor and Aldermen of Jersey City vs. Davis, City Collector*, 76 Atl. 969, handed down by the New Jersey Supreme Court June 30, 1910, which holds in effect that an order directing a deed to issue unless entered in the minutes of the Circuit Court in accordance and within the time required by the rule is void and of no effect.

30  
40 The moving papers in the proceeding contain a number of typographical errors as to the spelling of various names.

*Judgment.*

Upon investigating the proceedings leading to the above tax sale in many instances the original records could not be found on file in the proper offices; these original records either having been destroyed or mislaid and thus it could not be ascertained whether or not the statute had been complied with by the public officers in the proceeding leading up to the sale of the property in question.

10

The defects above mentioned being of such a nature as to seem to preclude the possibility of this title being marketable unless they were explained or removed, a number of other matters in connection with the above proceeding were not investigated. If the above defects should be removed these matters can be taken up and looked into further.

20

Mortgage, Wilks to Olcott, recorded in Book 13, page 192. Cancellation clause on the margin of the record states that the original mortgage "was received in full by Lettie Allen, Administratrix of Nicholas Prior, Assignee, etc." No record of any such assignment could be found, so that this mortgage may still be a lien against the property.

Book 30, page 374 of Mortgages. Cancellation clause on the margin of the record was not signed by the Register so that this mortgage may still be a lien against the property.

30

Book 30, page 374 of Mortgages. Assignment of this mortgage (Book 33, page 117) from Lettie Allen to John Paterson, assigns Book 30, page 375 of Mortgage; probably intended to assign Book 30, page 374 of Mortgages. This mortgage not being properly cancelled for this additional reason may still be a lien against the property.

Book 31, page 739 of Mortgages. Cancellation

40

*Judgment.*

clause not signed by Register. This mortgage affects the property and probably still is an outstanding lien.

Book 425, page 276 of Deeds. From where does Ella M. Dewey derive interest she purports to convey by this deed?

10 Book 1078, page 91 of Deeds. Have not seals attached.

Book 43 of Deeds, page 721. Was the grantor, Daniel Van Reypen, unmarried?

Book 47 of Deeds, page 271. Deed taken subject to mortgage. Mortgage purports to be cancelled on receipt of Robert Gilchrist, Assignee; no record to show assignment to Gilchrist. Mortgage may still be a lien.

20 Book 80 of Deeds, page 332. Subject to same objections as Book 47 of Deeds, page 271.

Book 1009 of Deeds, page 406. Is C. Randolph Dieffenbach unmarried?

Dated August 15, 1910.

Examiner,

Approved.

30

40

*Judgment.*

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

being duly sworn, says,  
 the owner, of the premises shown in the  
 diagram at the head of this certificate, which are  
 free from all encumbrances, except as therein 10  
 stated. There are no judgments against

in any Court of this State, or of  
 the United States. I have never filed any petition  
 in bankruptcy, or been adjudged a bankrupt.

Sworn to before me this }  
 day of 190 }

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40

**Settlement.**

## CREDIT.

Paid on signing contract,  
 Mortgage held by  
 Int. from           at       per cent.       m.       d.  
 Purchase Money Mortgage  
 10 Rent from                           to  
 Taxes  
 Water Rates  
 Assessments,  
 Recording Fees,

---

Total Credit,

## DEBIT.

Purchase price,  
 Int. from           to           at       per cent  
 20 Drawing Papers  
 Recording fees  
 Insurance  
 Rent from                           to

---

Total Debit  
 Total Credit brought over  
 Balance paid

---

30

**Report of Closing.**

Closed at           by           on           190  
 Present:

The policy is to be sent to  
 at

Fire Insurance amounting to \$           to  
 be transferred by

40 The following instruments were delivered and  
 recorded:

**Exhibit CA2.****Assignment.**

WHEREAS, I, the undersigned, JAMES A. SULLIVAN (unmarried), am a party in interest in a certain parcel of real property situate in the City of Jersey City, County of Hudson and State of New Jersey, and which said real property is the subject of certain condemnation proceedings heretofore instituted, said proceedings being entitled: 10

“In the matter of the application of the Mayor & Aldermen of Jersey City to acquire certain property of the Evening Journal Association, a corporation of the State of New Jersey, and others, for the purpose of widening Bergen Avenue and the establishment of a plaza to accommodate and relieve congestion of traffic in the neighborhood of Summit Avenue Tube Station in the City of Jersey City.” 20

AND WHEREAS, from the award made by the Condemnation Commissioners appointed in the said proceedings for the property of the undersigned, I, the undersigned, did institute an appeal from the said award, which appeal is entitled: “James A. Sullivan and Ella J. Sullivan, appellants, versus The Mayor & Aldermen of Jersey City, respondent”; and which appeal was prosecuted according to the form of the statute in such case made and provided, in the Circuit Court of the County of Hudson, State of New Jersey; 30

AND WHEREAS, in the said appeal it was ordered and adjudged that judgment be entered in favor of the undersigned, as appellant, for the sum of \$54,145.00, besides costs to be taxed, as more fully appears by order for judgment in the said appeal made and entered on May 15th, 1924;

AND WHEREAS, I, the undersigned, am justly indebted to RANDOLPH PERKINS, of the Borough of 40

*Exhibit CA2.*

Woodcliff Lake, in the County of Bergen and State of New Jersey, in the sum of \$9,000.00;

10 THEREFORE, KNOW ALL MEN BY THESE PRESENTS, that I, the said JAMES A. SULLIVAN, of the City of Jersey City, County of Hudson and State of New Jersey, in consideration of One Dollar, lawful  
 20 money of the United States of America, receipt whereof is hereby acknowledged, and for other good and valuable consideration, have sold, assigned, transferred and set over, and by these presents do sell, assign, transfer and set over, unto the said RANDOLPH PERKINS, the sum of \$9,000.00 out of all moneys due, or hereafter to grow due, to me out of the said sum of \$54,145.00, by reason of my right, title and interest in the  
 20 said sum of \$54,145.00, or in the judgment aforesaid of the Hudson County Circuit Court; and for the better securing of such assignment, I do hereby sell, assign, transfer and set over unto the said Randolph Perkins all my right, title and interest to the extent of the said sum of \$9,000.00, in and to the said judgment of the Hudson County Circuit Court, and in and to the fund of \$54,145.00 created as aforesaid.

30 And I do hereby appoint the said Randolph Perkins my true and lawful attorney, in my name or otherwise, to receive and collect from any person, court or corporation having custody of the said fund, the said sum of \$9,000.00 thereof, and to use all lawful ways and means for the recovery thereof as I might have done if these presents had not been made.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the 15 day of June, 1924.

40 JAMES A. SULLIVAN (L.S.)

Signed, sealed and delivered }  
 in the presence of }

EDWARD CLAXTON

**Exhibit—Tax Sale Proceedings.**

**Petition.**

HUDSON COUNTY CIRCUIT COURT.

<p style="text-align: center;">IN THE MATTER</p> <p style="text-align: center;"><i>of</i></p> <p>The application of C. RUDOLPH DIEFFENBACH for an order for a deed for Lot F, Block 1865, Jersey City, under Chapter 112, Laws of 1886, and sup- plements.</p>	}	<p>Petition. Certificate No. 6411.</p>	10
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*To the Circuit Court of the County of Hudson:* 20

The petition of C. R. DIEFFENBACH, of Jersey City, in the County of Hudson and State of New Jersey respectfully shows that on the fifth day of June, One thousand and nine hundred and six, your petitioner purchased at a sale made by the City Collector of Jersey City, for the sum of One hundred and ninety-four dollars and twenty-two cents (\$194.22), certain lands known as Lot F, in Block No. 1865, fronting on Wilks Street, in Jersey City, Hudson County, New Jersey, as shown upon the Official Tax and Assessment Map of Jersey City, made by L. D. Fowler, A. D. 1894, pursuant to Chapter 112 of the Laws of 1886, and the supplements thereto. 30

That Ruth W. Kastenhuber, Anabel Taylor, Marjorie Taylor, Anita Davis, Paul Davis, Helen Coyle, Edith Coyle, Burton Coyle, Clayton Coyle, Isabell Wanmaker, John Francis Wanmaker, Lloyd B. Smith, George E. Smith, Emma B. Smith and Selwyn Smith, now under the age of fourteen 40

*Exhibit—Tax Sale Proceedings.*

years, who appear to have interests as owners of contingent interests in said lands; that the said Ruth Kasthuber resides with her parents at 11 Wilks Street, in Jersey City aforesaid; the said Anabel Taylor and Marjorie Taylor reside with their parents at 5 Van Houten Place, Belleville, N. J.; the said Anita Davis and Paul Davis reside with their parents at 506 Highland Avenue, Malden, Massachusetts; the said Helen Coyle and Edith Coyle reside with their parents at 66 Tonnele Avenue, in Jersey City, aforesaid; the said Burton Coyle and Clayton Coyle reside with their parents at 70 Tonnele Avenue, Jersey City; the said Isabelle Wanmaker and John Francis Wanmaker, reside with their parents at 47 Duncan Avenue, Jersey City; the said Lloyd B. Smith, George E. Smith, Emma B. Smith and Selwyn Smith reside with their parents at Dunellen, N. J.

That service in this State cannot be made upon either the said Anita Davis or Paul Davis, or upon either of their parents.

All the other of said infants have been duly served with a true copy to redeem from said tax sale more than six months since, and no one has appeared and offered to redeem said lands, and your petitioner cannot ascertain that said infants have any estate with which to pay said moneys and redeem from said sale.

Your petitioner therefore prays that this Court will, if necessary, appoint a guardian *ad litem* of said infants and inquire into the ability of said infants, and each of them, or their estates respectively, to redeem said lands and make an order directing the City Collector of Jersey City to deliver a deed to your petitioner, conveying to him the said lands and the interest and estate therein of the said infants, and such other order

*Exhibit—Tax Sale Proceedings.*

in relation to such deed as may be equitable and just.

And your petitioner will ever pray, etc.

CHARLES R. DIEFFENBACH,  
Purchaser Petitioner.

10

By JOHN J. MULVANEY,  
Atty.

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

JOHN J. MULVANEY, of full age, being duly sworn according to law, on his oath deposes and says; that he is the agent of C. R. DIEFFENBACH, the purchaser petitioner above named, charged with the duty of serving notices to redeem from the tax sale mentioned in the foregoing petition, and with the perfecting of the title to the land therein referred to; that he has made due investigation to ascertain the names and residences of the persons entitled to notice to redeem the premises described in said petition, and also in the cases of the infants, as to their ages, guardians, estate and ability to redeem, and that the facts set forth in the foregoing petition are true to the best of deponent's knowledge, information and belief.

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30

JOHN J. MULVANEY.

Sworn to and subscribed at Jersey }  
City, N. J., this 15th day of May, }  
1908, before me. }

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*Exhibit—Tax Sale Proceedings.***Order.**

## HUDSON COUNTY CIRCUIT COURT.

10

IN THE MATTER

*of*

The application of C. RUDOLPH  
DIEFFENBACH for an order for  
a deed for Lot F, Block 1865,  
Jersey City, under Chapter  
112, Laws of 1886, and supple-  
ments.

20

Upon reading and filing the petition of C. RUDOLPH DIEFFENBACH, of Jersey City, in the County of Hudson and State of New Jersey, and the affidavits thereto annexed, whereby it appears that on the fifth day of June, One thousand nine hundred and six, the petitioner purchased at a sale made by the City Collector of Jersey City, for the sum of One hundred and ninety-four dollars and twenty-two cents (\$194.22), certain lands known as Lot F, Block No. 1865, fronting on Wilks Street, in Jersey City, Hudson County, New Jersey, as shown upon the Official Tax & Assessment Map of Jersey City, made by L. D. Fowler, A. D. 1894, pursuant to Chapter 112 of the Laws of 1886, and the supplements thereto, and that Ruth W. Kastenhuber, Anabel Taylor, Marjorie Taylor, Anita Davis, Paul Davis, Helen Coyle, Edith Coyle, Burton Coyle, Clayton Coyle, Isabel Wanmaker, John Francis Wanmaker, Lloyd B. Smith, George E. Smith, Emma B. Smith and Selwyn

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40

Smith, who appear to have an interest as contin-

*Exhibit—Tax Sale Proceedings.*

gent remaindermen in said land, are known to be infants under the age of twenty-one years, and that said infants were duly served with a true copy of the notice to redeem from said tax sale more than six months since; and the Court being satisfied of the sufficiency of the said petition and of the truth thereof, and having inquired into the ability of said infants, or their estate, to redeem said land, and being satisfied that proper opportunity has been given for such redemption, it is, on this twelfth day of June, One thousand nine hundred and eight, by the Circuit Court of the County of Hudson, 10

ORDERED, That the City Collector of Jersey City, do make and deliver unto C. RUDOLPH DIEFFENBACH, of Jersey City aforesaid, or his assigns, a deed for said lands, conveying unto him, his successors and assigns, all the said land, including all the interest or estate therein, or lien thereon, of said infants. 20

WILLIAM H. SPEER,  
Circuit Court Judge.

30

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*Exhibit—Tax Sale Proceedings.***Proof of Mailing.**

## HUDSON COUNTY CIRCUIT COURT.

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IN THE MATTER

*of*

The Application of C. RUDOLPH  
DIEFFENBACH, for an order for  
a deed for Lot F, Block 1865,  
Jersey City, under Chapter 112,  
Laws of 1886, and supplements.

20

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

JOHN J. MULVANEY of full age, being duly sworn according to law, on his oath deposes and says:

I am attorney in fact for C. Rudolph Dieffenbach, purchaser in the above entitled matter. On the seventeenth day of June, one thousand nine hundred and seven, I mailed a true copy of the notice hereto annexed to Effie Davis, Robert B. Davis, Anita Davis and Paul Davis, named in said notice, at their post office address, 506 Highland Avenue, Malden, Massachusetts, with the postage duly prepaid thereon.

JOHN J. MULVANEY.

Sworn to and subscribed at Jersey }  
City, N. J., this 12th day of }  
June, 1908, before me. }

40

MERRITT LANE,  
Master in Chancery of N. J.

*Exhibit—Tax Sale Proceedings.*

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

JAS. J. DOWLING being duly sworn according to law, upon his oath saith, that he is the Business Manager of "THE JERSEY CITY HERALD", a newspaper published in the City of Jersey City, County and State aforesaid, and that the advertisement, of which the annexed is a true copy, was published in his said newspaper six times, namely on June 21-28, July 5-12-19-26-1907. 10

JAS. J. DOWLING.

Sworn to and subscribed before me }  
 this 27th day of May, A. D. 190 }  
 W. S. ROWLAND, 20  
 Notary Public of N. J.

To:

Dora E. Kastenhuber and William P. Kastenhuber, her husband, Ruth W. Kastenhuber, Aquila Wilks (widower), Eva Smith and Walter A. Smith, her husband, Anna Taylor and George Taylor, her husband, Anabel Taylor, Marjorie Taylor, Laura Wilks, Lydia Wilks, Mabel Wilks, Effie Davis and Robert B. Davis, her husband, Anita Davis, Paul Davis, Nellie Wilks, John Coyle and Florence Coyle, his wife, Helen Coyle, Edith Coyle, Thomas Coyle and Nellie Coyle, his wife, Burton Coyle, Clayton Coyle, Jennie Coyle, John Wanmaker, husband of Rebecca Wanmaker, deceased, Aquila W. Wanmaker and Amelia Wanmaker, his wife, Isabell Wanmaker, John Francis Wanmaker, Grace Wanmaker, Jennie Wanmaker, Minnie Smith and George S. Smith, her husband, 30 40

*Exhibit—Tax Sale Proceedings.*

Lloyd B. Smith, George E. Smith, Emma B. Smith, Selwyn Smith, Emma Perine:

10 You are hereby notified that at a public sale made by the City Collector of Jersey City, on the fifth day of June, 1906, I purchased for the sum of one hundred and ninety-four dollars and twenty-two cents (\$194.22); ALL the land and real estate  
 20 situate in Jersey City, in the County of Hudson and State of New Jersey, fronting on Wilks Street, which is laid down and designated as Lot F, in Block number 1865, as shown upon L. D. Fowler's official assessment map of Jersey City (1894), said sale being made pursuant to the provisions of an act of the Legislature of New Jersey, passed March 30th, 1886 entitled "An Act concerning the settlement and collection of arrearages  
 of unpaid taxes, assessments and water rates or water rents in cities of this State, and imposing and levying a tax, assessment and lien in lieu and instead of such arrearages, and to enforce the payment thereof, and to provide for the sale of lands subject to future taxation and assessment," and the several supplements thereto.

30 And you are further notified that you appear to have an estate or interest in said land and real estate, and unless the said land and real estate shall be redeemed, as provided in said acts within one year from the date of sale and before the expiration of six months from and after the service hereof, a deed for the same will be given conveying to the purchaser the fee simple of said land and real estate according to the provisions of the said acts.

Dated Jersey City, N. J., June 15th, 1907.

C. R. DIEFFENBACH,  
 Purchaser.

*Exhibit—Tax Sale Proceedings.***Proof of Service.**

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

AMZI D. TAYLOR, of full age, being duly sworn 10  
 according to law, on his oath deposes and says,  
 that he served the notice of which the annexed is  
 a true copy, upon the parties therein named, as  
 follows:

Upon Dora E. Kastenhuber, William P. Kast-  
 enhuber, and Ruth Kastenhuber, on the eighteenth  
 day of June, One thousand nine hundred and  
 seven, by giving to the said Dora E. Kastenhuber  
 three true copies of such notice and leaving the 20  
 same with her at their residence 11 Wilks Street,  
 Jersey City, New Jersey, the said Dora E. Kast-  
 enhuber being a member of the family above the age  
 of fourteen years.

Upon the said Aquila Wilks, Anna Taylor,  
 George Taylor, Anabel Taylor, Marjorie Taylor,  
 Laura Wilks and Lydia Wilks, upon the eighteenth  
 day of June, One thousand nine hundred and  
 seven, by giving to the said Aquila Wilks seven  
 true copies thereof and leaving the same with him  
 at their residence 5 Van Houten Place, Belleville, 30  
 N. J., the said Aquila Wilks being a member of the  
 family above the age of fourteen years.

Upon the said John Coyle, Florence Coyle,  
 Helen Coyle and Edith Coyle, on the eighteenth  
 day of June, one thousand nine hundred and seven,  
 by giving four true copies thereof to the said  
 Florence Coyle and leaving the same with her at  
 their residence, 60 Tonnele Avenue, Jersey City,  
 N. J., the said Florence Coyle being a member of  
 the family above the age of fourteen years. 40

*Exhibit—Tax Sale Proceedings.*

10 Upon the said Thomas Coyle, Nellie Coyle, Burton Coyle, Clayton Coyle and Jennie Coyle, on the eighteenth day of June, one thousand nine hundred and seven, by giving to the said Nellie Coyle five true copies thereof and leaving the same with her at their residence 70 Tonnele Avenue, Jersey City, N. J., the said Nellie Coyle being a member of the family above the age of fourteen years.

20 Upon the said Aquila Wanmaker, Amelia Wanmaker, Isabel Wanmaker and John Francis Wanmaker, on the eighteenth day of June, one thousand nine hundred and seven, by giving to the said Amelia Wanmaker four true copies thereof and leaving the same with her at their residence 47 Duncan Avenue, Jersey City, N. J., the said Amelia Wanmaker being a member of the family above the age of fourteen years.

Upon the said Grace Wanmaker, Jennie Wanmaker and John Wanmaker, on the eighteenth day of June, one thousand nine hundred and seven, by giving three true copies thereof to the said Grace Wanmaker, and leaving the same with her, at their residence 210 Sip Avenue, Jersey City, N. J., the said Grace Wanmaker being a member of the family above the age of fourteen years.

30 Upon the said Eva Smith, Walter A. Smith and Mabel Wilks, on the nineteenth day of June, one thousand nine hundred and seven, by giving three true copies thereof to the said Eva Smith and leaving the same with her, at their residence 61 Tonnele Avenue, Jersey City, N. J., the said Eva Smith being a member of the family above the age of fourteen years.

40 Upon the said Minnie Smith, George S. Smith, Lloyd B. Smith, George E. Smith, Emma B. Smith, Selwyn Smith and Emma Perrine, on the nine-

*Exhibit—Tax Sale Proceedings.*

teenth day of June, one thousand nine hundred and seven, by giving the said Minnie Smith seven true copies thereof, and leaving the same with her, at their residence in Dunellen, N. J., the said Minnie Smith being a member of the family above the age of fourteen years.

Upon the said Nellie Wilks on the twentieth day of June, one thousand nine hundred and seven, personally, by giving to her a true copy thereof and leaving the same with her at Montclair, N. J. 10

Deponent further says that he is the agent for C. R. Dieffenbach, the purchaser named in said notice, for the purpose of serving said notice.

AMZI D. TAYLOR.

Sworn and subscribed at Jersey City, N. J., }  
this 22nd day of June, 1907, before me. } 20

JOHN J. MULVANEY  
Master in Chancery  
of New Jersey.

To:

Dora E. Kastenhuber and William P. Kastenhuber, her husband, Ruth W. Kastenhuber, Aquila Wilks (Widower), Eva Smith and Walter A. Smith, her husband, Anna Taylor and George Taylor, her husband, Anabel Taylor, Marjorie Taylor, Laura Wilks, Lydia Wilks, Mabel Wilks, Effie Davis and Robert B. Davis, her husband, Anita Davis, Paul Davis, Nellie Wilks, John Coyle and Florence Coyle, his wife, Helen Coyle, Edith Coyle, Thomas Coyle and Nellie Coyle, his wife, Burton Coyle, Clayton Coyle, Jennie Coyle, John Wanmaker, husband of Rebecca Wanmaker, deceased, Aquila W. Wanmaker and Amelia Wanmaker, his wife, Isabell Wanmaker, John Francis Wanmaker, Grace Wanmaker, Jennie Wanmaker, 30  
40

*Exhibit—Tax Sale Proceedings.*

Minnie Smith and George S. Smith, her husband,  
Lloyd B. Smith, George E. Smith, Emma B. Smith,  
Selwyn Smith, Emma Perine:

10 You are hereby notified that at a public sale  
made by the City Collector of Jersey City, on the  
fifth day of June, 1906, I purchased for the sum  
of One hundred and ninety-four dollars and twenty-  
two cents, (\$194.22); ALL the land and real  
estate situate in Jersey City, in the County of  
Hudson and State of New Jersey, fronting on  
Wilks Street, which is laid down and designated  
as Lot F, in Block number 1865, as shown upon  
L. D. Fowler's official assessment map of Jersey  
City, (1894), said sale being made pursuant to the  
20 provisions of an act of the Legislature of New  
Jersey, passed March 30th, 1886 entitled "An Act  
concerning the settlement and collection of arrear-  
ages of unpaid taxes, assessments and water rates  
or water rents in cities of this State, and imposing  
and levying a tax, assessment and lien in lieu and  
instead of such arrearages, and to enforce the  
payment thereof, and to provide for the sale of  
lands subject to future taxation and assessment,"  
and the several supplements thereto.

30 And you are further notified that you appear to  
have an estate or interest in said land and real  
estate, and unless the said land and real estate  
shall be redeemed, as provided in said acts within  
one year from the date of sale and before the ex-  
piration of six months from and after the service  
hereof, a deed for the same will be given convey-  
ing to the purchaser the fee simple of said land  
and real estate according to the provisions of the  
said acts.

Dated, Jersey City, N. J., June 15th, 1907.

40

C. R. DIEFFENBACH,  
Purchaser.

**Exhibit—Records in Brisbane v. Sullivan—  
Docket 33/354.**

**Bill of Complaint.**

IN CHANCERY OF NEW JERSEY.

*To the Honorable Mahon Pitney, Chancellor of  
the State of New Jersey:* 10

Humbly complaining, shows unto your Honor, your orator, Arthur Brisbane, of the City of New York, in the county of New York, and State of New York.

That on the Nineteenth day of July, in the year of our Lord One Thousand nine hundred and Ten, Ella J. Sullivan, of the city of Jersey City, in the county of Hudson and State of New Jersey, was seized and possessed of an estate of inheritance in fee simple of a certain tract of land in the city of Jersey City aforesaid, known as lot "F" in City Block 1865 on Fowler's Official Assessment Map of Jersey City, also known as No. 11 Wilks Street, Jersey City, being in dimension twenty-four feet six inches front and rear by one hundred and nine feet in depth on one side and one hundred and seven feet in depth on the other side, being all of the premises conveyed to the said Ella J. Sullivan by James Billington on June twenty-ninth, Nineteen hundred and ten. 20 30

That on said nineteenth day of July, nineteen hundred and ten, the said Ella J. Sullivan, by James A. Sullivan, her agent, by her lawfully authorized so to do, did enter into an agreement in writing with Bennett Milnor, of the Borough of Manhattan in the county of New York and State of New York for the conveyance of the above described premises to the said Bennett Milnor, his heirs or assigns, of which the following is a true copy: 40

*Exhibit—Records in Brisbane v. Sullivan—  
Docket 33/354.*

10 “Articles of Agreement, made the 19th day of July, in the year of our Lord One Thousand Nine Hundred and Ten between—James A. Sullivan, of the City of Jersey City, in the County of Hudson, and State of New Jersey, party of the first part; and—Bennett Milnor, of the Borough of Manhattan in the County of New York, and State of New York, party of the second part;

20 “WITNESSETH: That the said party of the first part, for and in consideration of the sum of Four thousand eight hundred (\$4,800.00) Dollars to be paid and satisfied as hereinafter mentioned, and also in consideration of the covenants and agreements hereinafter mentioned, made and entered into by the said party of the second part, doth agree to and with the said party of the second part, that he the said party of the first part, will well and sufficiently convey to the said party of the second part, his heirs and assigns, by Deed of full covenant and warranty free from all encumbrances, except a mortgage of Two thousand (\$2,000.00) Dollars, held by Jennie Turner, and due July 2, 1911, on or before the first day of September next ensuing the date hereof, all that lot, tract, or parcel of land and premises, hereinafter particularly described, situate, lying and being in the City of Jersey City, in the County of Hudson and State of New Jersey, known as lot ‘F’ in City Block 1865 on Fowler’s Official Assessment Map of Jersey City, also known as No. 11 Wilks Street, Jersey City, being in dimension twenty-four feet six inches front and rear by one hundred and nine feet in depth on one side and one hundred and seven feet in depth on the other side.

30 “Being all of the premises conveyed to grantor by James Billington in the month of June, 1910.

40 “It is mutually understood and agreed by and between the parties hereto that the sec-

*Exhibit—Records in Brisbane v. Sullivan—  
Docket 33/354.*

ond mortgage hereinafter mentioned shall contain a clause subordinating it to any new mortgage which may be placed on the property during the currency of said second mortgage after the present first mortgage is discharged, providing, however, that said new mortgage shall not exceed the sum of Two thousand (\$2,000) Dollars. 10

“And the said Bennett Milnor, for his heirs, executors, and administrators, doth covenant, promise and agree to and with the said party of the first part, his heirs, executors, administrators and assigns, that, he the said party of the second part, will pay and satisfy or cause to be paid and satisfied, unto the said party of the first part, the said sum of Four thousand eight hundred (\$4,800.00) Dollars, as and for the purchase money of the foregoing described land and premises, in the following manner, that is to say: 20

“\$200.00 on receipt of this contract, receipt of which is hereby acknowledged.

“\$2,000.00 by taking the property subject to a mortgage for like amount now on said premises as aforementioned.

“\$800.00 by the party of the second part delivering to the party of the first part a purchase money second mortgage for like amount to be secured by his bond, which mortgage is to run for the term of two years and bear interest at the rate of six (6%) per cent. payable semi-annually; privilege, however, to the party of the second part to pay all or any part of the said mortgage at any time before date of maturity, providing he gives the party of the first part a three days notice of his intention so to do. 30

“\$1,800.00 balance in cash on passing of title and delivery of deed.

“\$4,800.00 total.

“And it is further agreed, by the parties to these presents, that the said party of the second part, his heirs and assigns, may enter 40

*Exhibit—Records in Brisbane v. Sullivan—  
Docket 33/354.*

into and upon the said land and premises on or before the first day of September, next ensuing the date hereof, and from thence take the rents, issues and profits to his and their use.

10 “And it is further agreed, by the parties hereto, that the said Deed of Full covenant and warranty shall be delivered and received at the office of Robert M. Boyd, Jr., 203 Broadway, N. Y., between the hours of 11 in the forenoon and two in the afternoon on the said first day of September next ensuing the date hereof.

“This property being sold subject to the monthly rights of the tenants in possession.

20 “In Witness Whereof, the said parties have hereunto interchangeably set their hands and seals the day and year first above mentioned.

“Signed, sealed and delivered in the presence of:

“(Signed) JAMES A. SULLIVAN, (L. S.)

“BENNETT MILNOR, (L. S.)”

30 That said agreement was on the twenty-fourth day of August, Nineteen hundred and ten, duly acknowledged by the said James A. Sullivan and on the twenty-fifth day of August, Nineteen hundred and ten was recorded in the office of the Register of the County of Hudson in Book 1063 of Deeds for said County on page 605 &c.

40 That thereafter the said Bennett Milnor, by assignment in writing, for a valuable consideration, did set over and assign all of his right title and interest of in and to the above mentioned contract to your orator, Arthur Brisbane, and that thereafter, and on or about the twenty-fourth day of August, Nineteen hundred and ten, your orator and the said James A. Sullivan, acting for the said Ella J. Sullivan, mutually agreed that the time for the

*Exhibit—Records in Brisbane v. Sullivan—  
Docket 33/354.*

closing of the sale under the above mentioned agreement should be extended until Saturday, October first, Nineteen hundred and Ten, at the same hour and place as mentioned in the agreement; and that on the twenty-ninth day of September, Nineteen hundred and Ten, your orator and the said James A. Sullivan, acting for the said Ella J. Sullivan, further agreed in writing to extend the time for the closing of the sale under said agreement until Saturday, October fifteenth, Nineteen hundred and ten, at the same hour and place as mentioned in the agreement. 10

Your orator further shows that on the said fifteenth day of October, Nineteen hundred and ten, at the time and place to which the closing of the sale had been extended by mutual agreement, as aforesaid, your orator, by his duly authorized representative, was present and tendered himself ready and willing to pay the consideration provided for in said agreement on his receiving a deed of conveyance as therein provided, but that neither the said Ella J. Sullivan nor the said James A. Sullivan attended at said time and place, nor did any one attend for them or either of them. 20

And your orator further shows that at all times since the said fifteenth day of October, Nineteen hundred and ten, he has been ready and willing to pay the consideration provided in said agreement, and has often requested the said Ella J. Sullivan and James A. Sullivan to convey to him the premises mentioned in said agreement, in accordance with the terms thereof, but that the said Ella J. Sullivan and James A. Sullivan have always refused and still refuse to convey to your orator the premises described in said agreement in accordance with the terms thereof; 30 40

*Exhibit—Records in Brisbane v. Sullivan—  
Docket 33/354.*

All of which actings and doing of the said Ella J. Sullivan and James A. Sullivan are contrary to equity and good conscience and tend to the manifest wrong, injury and oppression of your orator in the premises.

- 10 In consideration whereof, and for as much as your orator is entirely without adequate remedy in the premises, according to the strict rules of the common law, and can only have adequate relief in a court of equity, where matters of this nature are proper cognizable and relievable;

- To the end therefore that the said Ella J. Sullivan and James A. Sullivan, as defendants to this suit, may full, true and perfect answer make, without oath, to all and singular the matters
- 20 aforesaid, and that the said Ella J. Sullivan, or the said James A. Sullivan, in her behalf may be decreed to specifically perform the said agreement entered into by the said James A. Sullivan, as the person thereunto lawfully authorized so to do in behalf of the said Ella J. Sullivan, with the said Bennett Milnor, which was assigned to your orator as aforesaid, your orator being ready and willing, and hereby offering to perform the said agreement on his part and that your orator
- 30 may have such further and other relief in the premises as shall be agreeable to equity and good conscience, and as the circumstances of the case may require.

- May it please your Honor, the premises considered, to grant unto your orator the State's writ of subpoena, issuing out of and under the seal of this honorable court, to be directed to Ella J. Sullivan and James A. Sullivan, commanding them and each of them, by a certain day and under
- 40 a certain penalty to be and appear before your

*Exhibit—Records in Brisbane v. Sullivan—  
Docket 33/354.*

Honor in this honorable court, then and there to answer all and singular the premises and to stand to, abide by and perform such order and decree therein as to your Honor shall seem meet and shall be agreeable to equity and good conscience. 10

And your orator, as in duty bound, will ever pray, etc.

RIKER & RIKER,  
Solicitors for and of Counsel  
with Complainant.

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**Answer.**

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IN CHANCERY OF NEW JERSEY.

<p>Between ARTHUR BRISBANE, Complainant, <i>and</i> ELLA J. SULLIVAN, <i>et al.</i>, Defendants.</p>	}	On Bill, &c.
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The joint and several answer of the defendants Ella J. Sullivan and James A. Sullivan to the bill of complaint of Arthur Brisbane, complainant.

These defendants respectively answering say that they deny that on the nineteenth day of July, Nineteen hundred and ten, or at any other time, either of the defendants was seized and possessed of an estate of inheritance in fee simple in the lands described in the bill of complaint. 40

*Exhibit—Records in Brisbane v. Sullivan—  
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10 These defendants admit the making of the agreement in said bill of complaint set forth, by the defendant James A. Sullivan with one Bennett Milnor, but they have no knowledge as to the assignment thereof to the complainant and they therefore leave the complainant to make such proof thereof as he may be advised is necessary.

20 These defendants further answering say that they are brother and sister and that the lands in the bill of complaint described were actually purchased by the defendant James A. Sullivan entirely with his money and that title thereto was taken in the name of the defendant, Ella J. Sullivan, at the request of said James A. Sullivan and that she has not and never had any beneficial interest therein. That said lands were so purchased by the defendant James A. Sullivan from James Billington and were, at the request of said James A. Sullivan, conveyed by deed of James Billington and wife to the defendant Ella J. Sullivan, dated June 29, 1910, and recorded in the Hudson County Register's office June 30, 1910, in book 1078 of deeds for said county, page 91, and that at the time of the purchase thereof by the defendant James A. Sullivan, he believed he was acquiring an estate of inheritance in fee simple therein and that such an estate was, by 30 said deed, conveyed to the defendant Ella J. Sullivan.

40 That the defendant James A. Sullivan entered into the agreement with Bennett Milnor, in the bill of complaint set forth, in good faith, believing that the defendant Ella J. Sullivan held a good and marketable title to the lands aforesaid and that she could convey the same to the said Bennett Milnor, at the time and in the manner as in

*Exhibit—Records in Brisbane v. Sullivan—  
Docket 33/354.*

said agreement specified and the defendant Ella J. Sullivan was willing to make such conveyance.

That these defendants were ready and willing to convey the said lands to the said Bennett Milnor, at the time and in the manner provided in said agreement, but before that time arrived the said Bennett Milnor, or the complainant, informed the defendant James A. Sullivan that the title thereto held by the defendant Ella J. Sullivan was defective and was not a good and marketable title and thereafter the complainant, who then pretended to hold an assignment of said agreement, notified the defendant James A. Sullivan of the details of the defects in said title and said complainant informed said defendant that he would not take title to said lands or pay the balance of the purchase price as specified in said agreement, until such defects in title had been removed and said title made marketable.

That thereupon the defendant James A. Sullivan caused such defects in title to be investigated and examined by counsel and he was afterward advised by such counsel that the defendant Ella J. Sullivan was not seized of a good and marketable title to said lands and was not seized thereof in fee simple and that these defendants could not safely convey the same by warranty deed as provided in said agreement and the defendant Jas. A. Sullivan thereupon informed the complainant that because of the defects in title as specified by said complainant, he was unable to perform his said agreement and said defendant thereupon offered to return the money paid upon said agreement, with interest thereon, together with a reasonable sum to reimburse the complainant for his expenses in examining such title, which offer the complainant declined to accept.

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*Exhibit—Records in Brisbane v. Sullivan—  
Docket 33/354.*

10 That these defendants do not own the fee simple of the lands in the bill of complaint described and are unable to acquire good title thereto and they are unable to perform said agreement to convey the same to the said Bennett Milnor or to the complainant as his assignee, according to the terms and conditions thereof and that the complainant well knew, at and before the filing of his bill of complaint, of the infirmity and defects of the defendants' said title and that specific performance of said agreement by the defendants is impossible.

20 And these defendants humbly pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

BRINKERHOFF & FIELDER,  
Solicitors for and of Counsel  
with the defendant.

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*Exhibit—Records in Brisbane v. Sullivan—  
Docket 33/354.*

**Notice of Substitution.**

IN CHANCERY OF NEW JERSEY.

10	Between  ARTHUR BRISBANE, Complainant,  <i>and</i>  ELLA J. SULLIVAN, <i>et al.</i> , Defendants.	}	On Bill, &c.
20			

GENTLEMEN :

PLEASE TAKE NOTICE, that I have been substituted on the record as solicitor for and of counsel with the defendants in above entitled cause in the place and stead of Brinkerhoff & Fielder.

Yours respectfully,

RANDOLPH PERKINS,  
Solicitor for Defendants.

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Dated May 15th, 1911.

To:

MESSRS. RIKER & RIKER,  
Solicitors for Complainant.

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*Exhibit—Records in Brisbane v. Sullivan—  
Docket 33/354.*

**Order to Amend Bill.**

IN CHANCERY OF NEW JERSEY.

10 \_\_\_\_\_  
Between  
ARTHUR BRISBANE,  
Complainant,  
*and*  
ELLA J. SULLIVAN, *et al.*,  
Defendants. } On Bill, &c.

20 This matter being opened to the Court by Riker  
& Riker, solicitors for the complainant, and it  
appearing that due notice of this application has  
been served upon the solicitor for the defendants,  
and no reason appearing to the contrary,

It is, on this nineteenth day of December, A. D.  
Nineteen hundred and eleven, ordered that the  
complainant have leave to file an amended bill in  
this cause within ten days from the date hereof  
and that the defendants plead, answer or demur  
30 to such amended bill within thirty days after ser-  
vice of a true copy thereof upon them or their  
solicitor.

*Exhibit—Records in Brisbane v. Sullivan—  
Docket 33/354.*

**Amended Bill of Complaint.**

IN CHANCERY OF NEW JERSEY.

*To the Honorable Mahon Pitney, Chancellor of* 10  
*the State of New Jersey.*

Humbly complaining, shows unto your Honor, your orator, Arthur Brisbane, of the City of New York, in the County of New York, and State of New York:

That on the eighth day of July in the year Eighteen and eighty-nine, Thomas H. N. Wilks died in the City of Jersey City, in the County of Hudson in this State, seized of an estate of inheritance in fee simple of a certain tract of land in the City of Jersey City aforesaid, known as lot "F" in City Block 1865 on Fowler's Official Assessment Map of Jersey City, also known as No. 11 Wilks Street, Jersey City, being in dimensions twenty-four feet, six inches, front and rear, by one hundred and nine feet in depth on one side and one hundred and seven feet in depth on the other side; that the said Thomas H. N. Wilks left a last will and testament bearing date the twenty-eighth day of June, Eighteen hundred and eighty-nine, which said will was admitted to probate by the Surrogate of the County of Hudson in this State on the Nineteenth day of July, Eighteen hundred and eighty-nine, and is recorded in Book 24 of wills in the office of said Surrogate on pages 413-417, to which said will and the record thereof your orator begs leave to refer if it be necessary so to do. That the testator in and by this said will devised the above described property to his adopted daughter, Dora 40

*Exhibit—Records in Brisbane v. Sullivan—  
Docket 33/354.*

10 E. Wilks for her natural life, and at her death to the heirs of her body born in lawful wedlock, and if there be no such issue, then the above described premises are devised to the testator's brother Aquilla Wilks, if living, and if not living at the time of the death of said Dora E. Wilks, to his heirs at law living at the time of the death of Dora;

20 That subsequent to the death of said Thomas H. N. Wilks, his adopted daughter, Dora E. Wilks, was married to William P. Kastenhuber, and is now the wife of said William P. Kastenhuber; that since her marriage to the said William P. Kastenhuber said Dora E. Kastenhuber has become the mother of two children born in lawful wedlock, the oldest of whom is named Ruth, the name of the other child being unknown to your orator; that both of said children of said Dora E. Kastenhuber are infants under the age of twenty-one years;

30 That after the death of said Thomas H. N. Wilks and after the marriage of the said Dora E. Wilks to William P. Kastenhuber, the premises above described were sold by the City of Jersey City for unpaid taxes and such proceedings were had that an order was made by the Circuit Court of Hudson County directing that a deed be delivered to Charles R. Dieffenbach, who was the purchaser at such tax sale, and that thereafter a deed was made by the proper officer of the City of Jersey City to the said Charles R. Dieffenbach purporting to convey the premises in question to the said Charles R. Dieffenbach in fee simple, which said deed is recorded in Book 1009 of Deeds for Hudson County in the office of the Register  
40 of said County at page 407;

*Exhibit—Records in Brisbane v. Sullivan—  
Docket 33/354.*

That thereafter the said Charles R. Dieffenbach conveyed the premises in question to William P. Kastenhuber, the husband of the said Dora E. Kastenhuber, and that the said William P. Kastenhuber and the said Dora E. Kastenhuber conveyed the premises in question for a valuable consideration to James Billington by deed dated the twenty-ninth day of June, Nineteen hundred and ten, and that the said James Billington and his wife in turn conveyed the premises in question to one Ella J. Sullivan by deed dated the twenty-ninth day of June, Nineteen hundred and ten, and recorded in the Hudson County Register's Office on the thirtieth day of June, Nineteen hundred and ten, in Book 1078 of deeds for said county at page 91;

That the last mentioned conveyance was made to Ella J. Sullivan at the request of James A. Sullivan, who was the actual purchaser of the premises and who provided the consideration therefor out of his own moneys, and that the said Ella J. Sullivan has not and never had any beneficial interest in the premises; that the said James A. Sullivan paid as the consideration for the conveyance of said premises to the said Ella J. Sullivan the sum of thirty-five hundred dollars or some other sum of money;

That on the nineteenth day of July, Nineteen hundred and ten, the said Ella J. Sullivan, by James A. Sullivan, her agent, by her lawfully authorized so to do, did enter into an agreement in writing with Bennett Milnor, of the Borough of Manhattan, in the County of New York and State of New York, for the conveyance of the above described premises to the said Bennett Milnor, his heirs or assigns, of which the following is a true copy:

*Exhibit—Records in Brisbane v. Sullivan—  
Docket 33/354.*

10       “Articles of Agreement, made the 19th day of July, in the year of our Lord One thousand Nine hundred and ten, between—James A. Sullivan, of the City of Jersey City, in the County of Hudson, and State of New Jersey, party of the first part; and—Bennett Milnor, of the Borough of Manhattan in the County of New York, and State of New York, party of the second part;

20       “Witneseth: That the said party of the first part, for and in consideration of the sum of Four thousand eight hundred (\$4,800.00) Dollars to be paid and satisfied as herein-after mentioned, and also in consideration of the covenants and agreements hereinafter mentioned, made and entered into by the said party of the second part, doth agree to and with the said party of the second part, that he, the said party of the first part, will well and sufficiently convey to the said party of the second part, his heirs and assigns, by deed of full covenant and warranty free from all encumbrance, except a mortgage of Two thousand (\$2,000.00) Dollars, held by Jennie Turner, and due July 2nd, 1911, on or before the first day of September next ensuing the date hereof, all that lot, tract or parcel of land and premises, hereinafter particularly described, situate, lying and being in the  
30       City of Jersey City, in the County of Hudson and State of New Jersey, known as lot ‘F’ in City Block 1865 on Fowler’s Official Assessment Map of Jersey City, also known as No. 11 Wilks Street, Jersey City, being in dimension twenty-four feet, six inches, front and rear, by one hundred and nine feet in depth on one side and one hundred and seven feet in depth on the other side.

“Being all of the premises conveyed to grantor by James Billington in the month of June, 1910.

40       “It is mutually understood and agreed by and between the parties hereto that the sec-

*Exhibit—Records in Brisbane v. Sullivan—  
Docket 33/354.*

ond mortgage hereinafter mentioned shall contain a clause subordinating it to any new mortgage which may be placed on the property during the currency of said second mortgage after the present first mortgage is discharged, providing, however, that said new mortgage shall not exceed the sum of two thousand (\$2,000) Dollars; 10

“And the said Bennett Milnor, for his heirs, executors, and administrators, doth covenant, promise and agree to and with the said party of the first part, his heirs, executors, administrators and assigns, that he, the said party of the second part, will pay and satisfy or cause to be paid and satisfied, unto the said party of the first part, the said sum of four thousand eight hundred (\$4,800.00) Dollars, as and for the purchase money of the foregoing described land and premises, in the following manner, that is to say: 20

“\$200.00 on receipt of this contract, receipt of which is hereby acknowledged.

“\$2,000.00 by taking the property subject to a mortgage for like amount now on said premises as aforementioned.

“\$800.00 by the party of the second part delivering to the party of the first part a purchase money second mortgage for like amount to be secured by his bond, which mortgage is to run for the term of two years and bear interest at the rate of six (6%) per cent. payable semi-annually; privilege, however, to the party of the second part to pay all or any part of the said mortgage at any time before date of maturity, providing he gives the party of the first part a three days’ notice of his intention so to do. 30

“\$1,800 balance in cash on passing of title and delivery of deed.

“\$4,800.00 total.

“And it is further agreed, by the parties to these presents, that the said party of the second part, his heirs and assigns, may enter 40

*Exhibit—Records in Brisbane v. Sullivan—  
Docket 33/354.*

into and upon the said lands and premises on or before the first day of September, next ensuing the date hereof, and from thence take the rents, issues and profits to his and their use.

10 “And it is further agreed, by the parties hereto, that the said Deed of Full Covenant and Warranty shall be delivered and received at the office of Robert M. Boyd, Jr., 203 Broadway, N. Y., between the hours of 11 in the forenoon and two in the afternoon on the said first day of September next ensuing the date hereof.

“This property being sold subject to the monthly rights of the tenants in possession.

20 “In Witness Whereof, the said parties have hereunto interchangeably set their hands and seals the day and year first above mentioned.

“Signed, sealed and delivered in the presence of:

“(Signed) JAMES A. SULLIVAN, (L. S.)  
“BENNETT MILNOR, (L. S).”

30 That said agreement was on the twenty-fourth day of August, Nineteen hundred and ten, duly acknowledged by the said James A. Sullivan and on the twenty-fifth day of August, Nineteen hundred and ten, was recorded in the office of the Register of the County of Hudson in Book 1063 of Deeds for said County on page 605, etc.

40 That thereafter the said Bennett Milnor, by assignment in writing, for a valuable consideration, did set over and assign all of his right, title and interest of, in and to the above mentioned contract to your orator, Arthur Brisbane, and that thereafter, and on or about the twenty-fourth day of August, Nineteen hundred and ten, your orator and the said James A. Sullivan, acting for the said Ella J. Sullivan, mutually agreed that the

*Exhibit—Records in Brisbane v. Sullivan—  
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time for the closing of the sale under the above mentioned agreement should be extended until Saturday, October first, Nineteen hundred and ten, at the same hour and place as mentioned in the agreement; and that on the twenty-ninth day of September, Nineteen hundred and ten, your orator and the said James A. Sullivan, acting for the said Ella J. Sullivan, further agreed in writing to extend the time for the closing of the sale under said agreement until Saturday, October fifteenth, Nineteen hundred and ten, at the same hour and place as mentioned in the agreement. 10

Your orator further shows that on the said fifteenth day of October, Nineteen hundred and ten, at the time and place to which the closing of the sale had been extended by mutual agreement, as aforesaid, your orator, by his duly authorized representative, was present and tendered himself ready and willing to pay the consideration, provided for in said agreement on his receiving a deed of conveyance as therein provided, but that neither the said Ella J. Sullivan nor the said James A. Sullivan attended at said time and place, nor did any one attend for them or either of them. 20

And your orator further shows that at all times since the said fifteenth day of October, Nineteen hundred and ten, he has been ready and willing to pay the consideration provided in said agreement, and has often requested the said Ella J. Sullivan and James A. Sullivan to convey to him the premises mentioned in said agreement, in accordance with the terms thereof, but that the said Ella J. Sullivan and James A. Sullivan have always refused and still refuse to convey to your orator the premises described in said agreement in accordance with the terms thereof; 30 40

*Exhibit—Records in Brisbane v. Sullivan—  
Docket 33/354.*

And your orator further shows that doubt has arisen as to the validity of the above mentioned tax sale by the City of Jersey City to Charles R. Dieffenbach upon which the title of said Ella J. Sullivan and James A. Sullivan rests.

- 10 Your orator further shows that it was the duty of the life tenant, Dora E. Kastenhuber, to have paid the taxes, for the non-payment of which the property was sold as aforesaid by the City of Jersey City to Charles R. Dieffenbach; and that the said Dora E. Kastenhuber purposely neglected and refused to pay the taxes aforesaid and permitted the tax sale to be made and the order of the Hudson County Circuit Court to be made and
- 20 entered for the purpose and with the intent of transforming the estate for life, in her, with the remainder over to the issue of her body, born in lawful wedlock, into an estate in fee simple in her husband, William P. Kastenhuber; that the said Charles R. Dieffenbach purchased the premises in question at the tax sale at the request of said Dora E. Kastenhuber, and her husband, William P. Kastenhuber; that the conveyance to the said William P. Kastenhuber by the said Charles R. Dieffenbach was in pursuance of an agreement
- 30 theretofore made and entered into by and between the said Dora E. Kastenhuber and her husband, William P. Kastenhuber, and Charles R. Dieffenbach, that the premises should be allowed to be sold for the non-payment of the taxes aforesaid, and that the said Charles R. Dieffenbach should become the purchaser thereof for the benefit of said William P. Kastenhuber and Dora E. Kastenhuber, his wife;

- 40 And your orator further shows that the said William P. Kastenhuber and his wife, Dora E.

*Exhibit—Records in Brisbane v. Sullivan—  
Docket 33/354.*

Kastenhuber, received the sum of thirty-five hundred dollars, or some other sum of money, being the full and fair value of an estate in fee simple in the premises in question, from their grantee when they executed the deed of conveyance to the said James Billington; and your orator charges and insists that the said William P. Kastenhuber and Dora E. Kastenhuber by said deed of conveyance intended to convey all the estate, right, title and interest which the said Dora E. Kastenhuber and her husband, William P. Kastenhuber, had in the premises in question, either under the Wilks will, or by virtue of said tax sale, and in fact believed that they were thereby conveying an estate in fee simple; and that the said James Billington by his deed also intended to convey to the said Ella J. Sullivan all such estate, right, title and interest which the said Dora E. Kastenhuber and her husband, William P. Kastenhuber, had conveyed to him in the premises in question, and that the said Ella J. Sullivan and James A. Sullivan, by their agreement of sale, hereinbefore set out, also intended to agree to convey all such estate, right, title and interest of the said Dora E. Kastenhuber and William P. Kastenhuber, conveyed to them as aforesaid.

And your orator further shows unto your honor that after the execution of the agreement of sale aforesaid by the said James A. Sullivan, acting for the said Ella J. Sullivan, above set out, your orator caused an investigation of the title to the premises in question to be made, with the result that the doubt arose as to the validity of the tax sale aforesaid; that he thereupon requested the said James A. Sullivan to remedy such defects as there might be in the title;

*Exhibit—Records in Brisbane v. Sullivan—  
Docket 33/354.*

10 And your orator charges that the said James A. Sullivan after the making of the agreement of sale above set out entered into negotiations with some person or persons other than your orator for the sale of the premises in question for the sum of fourteen thousand dollars, and thereupon refused and still refuses to execute and deliver to your orator a deed of conveyance in accordance with the agreement aforesaid;

20 And your orator shows unto your honor that doubt has arisen as to the legal effect of the conveyance executed by William P. Kastenhuber and Dora E. Kastenhuber, his wife, to the said James Billington, in this—that said deed conveys only such title as the said William P. Kastenhuber had, if any, in the property, and the effect of Dora E. Kastenhuber, his wife, signing said deed was merely to release whatever right or estate in dower she might have, if any, in said premises by virtue of the conveyance made by Charles R. Dieffenbach to William P. Kastenhuber, and not to convey any estate as she received under the Wilks will.

30 And your orator further shows unto your Honor that the said Dora E. Kastenhuber and her husband, William P. Kastenhuber, have declared themselves to be willing to execute a deed of conveyance to your orator conveying the life estate which the said Dora E. Kastenhuber acquired under the will of said Thomas H. N. Wilks, above mentioned, if said James A. Sullivan will consent thereto, and that your orator has been willing at all times since the execution of said agreement to accept the life estate of Dora E. Kastenhuber in said premises, and has frequently requested said  
40 James A. Sullivan either to obtain a deed from

*Exhibit—Records in Brisbane v. Sullivan—  
Docket 33/354.*

the said Dora E. Kastenhuber and her husband conveying the life estate of the said Dora E. Kastenhuber to the said James A. Sullivan or to consent that the said Dora E. Kastenhuber and her husband should convey such life estate to your orator upon the payment by your orator of such sum as such life estate might be worth based upon the consideration set forth in the above agreement of sale; and your orator further shows unto your Honor that the said James A. Sullivan refused to consent to the conveyance of the life estate of said Dora E. Kastenhuber to your orator and has hitherto refused to either obtain said life estate and convey it to your orator or to permit said Dora E. Kastenhuber to convey such life estate to himself or to your orator, and that the said Dora E. Kastenhuber and William P. Kastenhuber, her husband, also refuse to convey such life estate either to the said James A. Sullivan or to your orator, although often requested so to do;

And your orator charges that the said James A. Sullivan refuses to carry out the agreement of sale entered into as above set forth with intent to deprive your orator of the benefit of such agreement, and that the said James A. Sullivan has since the making of the agreement above mentioned, which was assigned to your orator, entered into an agreement with some other person or persons to convey the premises in question or the life estate of Dora E. Kastenhuber therein, for a sum of money largely in excess of that mentioned in your orator's said agreement;

All of which actings and doings of the said Ella J. Sullivan, James A. Sullivan, William P. Kastenhuber and Dora E. Kastenhuber are contrary

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*Exhibit—Records in Brisbane v. Sullivan—  
Docket 33/354.*

to equity and good conscience, and tend to the manifest wrong, injury and oppression of your orator in the premises.

10 In consideration whereof, and forasmuch as your orator is entirely without adequate remedy in the premises according to the strict rules of the common law and can only have adequate relief in a court of equity where matters of this nature are properly cognizable and relievable;

20 To the end therefor that the said Ella J. Sullivan, James A. Sullivan, Dora E. Kastenhuber and William P. Kastenhuber, her husband, as defendants to this suit, may full, true and perfect answer make (without oath) to all and singular the matters aforesaid, and that the said Ella J. Sullivan, James A. Sullivan, or said James A. Sullivan in her behalf, may be decreed to specifically perform the said agreement entered into by the said James A. Sullivan as the person thereunto lawfully authorized so to do in behalf of the said Ella J. Sullivan with the said Bennett Milnor which was assigned to your orator as aforesaid, your orator being ready and willing and hereby offering to perform the said agreement on his part, and that the said Dora E. Kastenhuber and her husband, William P. Kastenhuber, may be  
30 decreed to convey to your orator the life estate of the said Dora E. Kastenhuber devised to her in and by the last will and testament of the said Thomas H. N. Wilks in the premises in question, and that this court may decree what sum of money shall be paid by your orator to the said Ella J. Sullivan and James A. Sullivan for the conveyance which this court may decree to be made, and that your orator may have such further and other  
40 relief in the premises as shall be agreeable to

*Exhibit—Records in Brisbane v. Sullivan—  
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equity and good conscience and as the circumstances of the case may require.

May it please your Honor, the premises considered, to grant unto your orator the state's writ of subpoena, issuing out of and under the seal of this honorable court, to be directed to the said Ella J. Sullivan, James A. Sullivan, William P. Kastenhuber and Dora E. Kastenhuber his wife, commanding them and each of them by a certain day and under a certain penalty to be and appear before your Honor in this honorable court, then and there to answer all and singular the premises, and to stand to, abide by and perform such order and decree therein as to your Honor shall seem meet and shall be agreeable to equity and good conscience.

And your orator, as in duty bound, will ever pray, etc.

RIKER & RIKER,  
Solicitors for and of Counsel  
with Complainant.

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*Exhibit—Records in Brisbane v. Sullivan—  
Docket 33/354.*

**Notice for Order to Strike Out.**

IN CHANCERY OF NEW JERSEY.

10	Between ARTHUR BRISBANE, Complainant, <i>and</i> ELLA J. SULLIVAN, <i>et al.</i> , Defendants.	}	On Bill, &c.
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20 To MESSRS. RIKER & RIKER,  
Solicitors of Complainant.

Gentlemen:

TAKE NOTICE THAT ON Monday, the fifth day of  
 February, One thousand nine hundred and twelve,  
 at ten o'clock in the forenoon, or as soon there-  
 after as I can be heard, at the Chancery Cham-  
 bers in Jersey City, I shall move before the Chan-  
 cellor for an order striking out the bill of com-  
 plaint in the above entitled cause, so far as the  
 30 same affects the defendants William P. Kasten-  
 huber and Dora E. Kasthuber, for the follow-  
 ing reasons:

1. So far as the relief prayed against the said  
 defendants is concerned, the said bill is filed to  
 quiet title to the premises described therein, of  
 which premises the complainant is not in posses-  
 sion, and to which he has acquired no title or in-  
 terest.
- 40 2. The said bill concedes that the said defend-  
 ants are willing to grant the relief prayed by said

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bill against them, of their own motion, without the intervention of the Court of Chancery.

3. The said bill shows no equities in the said complainant as against the said defendants.

4. The said bill is multifarious in that it prays specific performance of a contract to which the said defendants were not parties and in which they had no interest, and at the same time prays a decree to quiet title as against the said defendants. 10

5. So far as the said defendants are concerned, the complainant has an adequate remedy at law for any cause of action which he may have against them.

6. The allegations of the said bill as to these defendants show that the complainant has suffered no injury from the said defendants which a court of equity can remedy. 20

7. The said defendants have of their own motion, as appears by the allegations of the said bill, performed the relief therein prayed as against them.

8. The said defendants are not proper parties to the said bill, having no relations of any kind with the complainant. 30

9. If the said defendants are proper parties to said bill, then there is lack of other proper parties, in that the children of the defendant Dora are not made parties thereto, nor are the heirs at law of Aquila Wilks, nor are the grantor and grantee of these defendants Charles R. Dieffenbach and James Billington, made parties thereto.

Dated, January 25th, 1912.

Yours truly,

40

JOHN J. MULVANEY,  
Solicitor of Defendants Kastenhuber.

*Exhibit—Records in Brisbane v. Sullivan—  
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**Order Allowing Further Amendment of Bill.**

IN CHANCERY OF NEW JERSEY.

10

Between

ARTHUR BRISBANE,  
Complainant,

*and*

ELLA J. SULLIVAN, *et al.*,  
Defendants.

Order.  
On Bill, &c.

20

The defendants Dora F. Kastenhuber and William P. Kastenhuber having moved, on motion to the solicitors of the complainant, that the bill of complaint be stricken out as to said defendants, and such motion coming on to be heard on the Nineteenth day of March, One thousand nine hundred and twelve, in the presence of counsel for both parties, and the court being of opinion that the complainant should have leave to amend his amended bill of complaint, if he should be so advised;

30

IT IS, on this                      day of March, One thousand nine hundred and twelve, that further consideration of the motion of the said defendants to strike out said amended bill be deferred to a time to be fixed hereafter.

And it is further ordered that in the meantime the complainant be permitted to amend said amended bill in such manner as he shall be advised; if the complainant shall make such amendment, copy of the amended bill and amendments

40

*Exhibit—Records in Brisbane v. Sullivan—  
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shall be served on said defendants or their solicitor and the said defendants shall, within ten days after such service, answer or demur thereto, or renew the application to strike out the said amended bill as further amended.

And until complainants shall make such amendment, or give notice that such amendment will not be made, all further proceedings as to the defendants Kastenhuber shall be stayed. 10

Nothing in this order contained shall prevent the said defendants Kastenhuber from filing a disclaimer of title to the premises described in the bill, should they be so advised. Nor shall they be precluded from making application upon due notice, for leave to file an answer or demurrer to the said amended bill in its present shape. 20

We consent to the foregoing order.

Solicitors of complainant.

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**Second Amended Bill.**

IN CHANCERY OF NEW JERSEY.

*To the Honorable Mahlon Pitney, Chancellor of  
the State of New Jersey:* 30

Humbly complaining, shows unto your Honor, your orator, Arthur Brisbane, of the City of New York, in the County of New York, and State of New York.

That on the eighth day of July in the year Eighteen hundred and eighty-nine Thomas H. N. Wilks died in the City of Jersey City in the County of Hudson in this State, seized of an es- 40

*Exhibit—Records in Brisbane v. Sullivan—  
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10 tate of inheritance in fee simple of a certain tract  
of land in the City of Jersey City aforesaid, known  
as lot "F" in City Block 1865 on Fowler's Offi-  
cial Assessment Map of Jersey City, also known  
as No. 11 Wilks Street, Jersey City, being in  
20 dimensions twenty-four feet, six inches, front and  
rear, by one hundred and nine feet in depth on  
one side and one hundred and seven feet in depth  
on the other side; that the said Thomas H. N.  
Wilks left a last will and testament bearing date  
the twenty-eighth day of June, Eighteen hundred  
and eighty-nine, which said will was admitted to  
probate by the Surrogate of the County of Hud-  
son in this State on the Nineteenth day of July,  
Eighteen hundred and eighty-nine, and is recorded  
30 in Book 24 of wills in the office of said Surrogate  
on pages 413-417, to which said will and the rec-  
ord thereof your orator begs leave to refer if it  
be necessary so to do. That the testator in and  
by his said will devised the above described prop-  
erty to his adopted daughter, Dora E. Wilks for  
her natural life, and at the death to the heirs of  
her body born in lawful wedlock, and if there be  
no such issue, then the above described premises  
are devised to the testator's brother Aquilla Wilks,  
if living, and if not living at the time of the death  
of said Dora E. Wilks, to his heirs at law living  
at the time of the death of Dora.

That subsequent to the death of said Thomas  
H. N. Wilks, his adopted daughter, Dora E. Wilks,  
was married to William P. Kastenhuber, and is  
now the wife of said William P. Kastenhuber;  
that since her marriage to the said William P.  
Kastenhuber said Dora E. Kastenhuber has be-  
come the mother of two children born in lawful  
40 wedlock, the oldest of whom is named Ruth, the

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name of the other child being unknown to your orator; that both of said children of said Dora E. Kastenhuber are infants under the age of twenty-one years;

That after the death of said Thomas H. N. Wilks and after the marriage of the said Dora E. Wilks to William P. Kastenhuber the premises above described were sold by the City of Jersey City for unpaid taxes and such proceedings were had that an order was made by the Circuit Court of Hudson County directing that a deed be delivered to Charles R. Dieffenbach, who was the purchaser at such tax sale, and that thereafter a deed was made by the proper officer of the City of Jersey City to the said Charles R. Dieffenbach purporting to convey the premises in question to the said Charles R. Dieffenbach in fee simple, which said deed is recorded in Book 1009 of Deeds for Hudson County in the office of the Register of said County at page 407;

That thereafter the said Charles R. Dieffenbach conveyed the premises in question to William P. Kastenhuber, the husband of the said Dora E. Kastenhuber, and that the said William P. Kastenhuber and the said Dora E. Kastenhuber conveyed the premises in question for a valuable consideration to James Billington by deed of warranty dated the twenty-ninth day of June, Nineteen hundred and ten, and that the said James Billington and his wife in turn conveyed the premises in question to one Ella J. Sullivan by deed of warranty dated the twenty-ninth day of June, Nineteen hundred and ten, and recorded in the Hudson County Register's office on the Thirteenth day of June, Nineteen hundred and ten in Book 1078 of deeds for said County at page 91;

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That the last mentioned conveyance was made to Ella J. Sullivan, at the request of James A. Sullivan, who was the actual purchaser of the premises and who provided the consideration therefor out of his own moneys, and that the said  
10 Ella J. Sullivan has not and never had any beneficial interest in the premises; that the said James A. Sullivan paid as the consideration for the conveyance of said premises to the said Ella J. Sullivan the sum of thirty-five hundred dollars or some other sum of money;

That on the Nineteenth day of July, Nineteen hundred and ten, the said Ella J. Sullivan, by James A. Sullivan, her agent, by her lawfully authorized so to do, did enter into an agreement in  
20 writing with Bennett Milnor, of the Borough of Manhattan, in the County of New York and State of New York, for the conveyance of the above described premises to the said Bennett Milnor, his heirs or assigns, of which the following is a true copy:

“Articles of Agreement, made the 19th day of July, in the year of our Lord One thousand nine hundred and ten, between—James A. Sullivan, of the City of Jersey City, in the  
30 County of Hudson, and State of New Jersey, party of the first part; and Bennett Milnor, of the Borough of Manhattan in the County of New York, and State of New York, party of the second part;

“Witnesseth: That the said party of the first part, for and in consideration of the sum of Four thousand eight hundred (\$4,800.00) Dollars to be paid and satisfied as hereinafter mentioned, and also in consideration of the covenants and agreements hereinafter  
40 mentioned, made and entered into by the said party of the second part, doth agree to and

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with the said party of the second part, that he, the said party of the first part will well and sufficiently convey to the said party of the second part his heirs and assigns, by deed of full covenant and warranty free from all encumbrance, except a mortgage of Two thousand (\$2,000.00) Dollars held by Jennie Turner, and due July 2, 1911, on or before the first day of September next ensuing the date hereof, all that lot, tract, or parcel of land and premises, hereinafter particularly described, situate, lying and being in the City of Jersey City, in the County of Hudson and State of New Jersey; known as lot 'F' in City Block 1865 on Fowler's Official Assessment Map of Jersey City, also known as No. 11 Wilks Street, Jersey City, being in dimension twenty-four feet, six inches, front and rear, by one hundred and nine feet in depth on one side and one hundred and seven feet in depth on the other side.

"Being all of the premises conveyed to grantor by James Billington in the month of June, 1910.

"It is mutually understood and agreed by and between the parties hereto that the second mortgage hereinafter mentioned shall contain a clause subordinating it to any new mortgage which may be placed on the property during the currency of said second mortgage after the present first mortgage is discharged, providing, however, that said new mortgages shall not exceed the sum of two thousand (\$2000) Dollars;

"And the said Bennett Milnor, for his heirs, executors, and administrators, doth covenant, promise and agree to and with the said party of the first part, his heirs, executors, administrators and assigns, that he, the said party of the second part, will pay and satisfy or cause to be paid and satisfied, unto the said party of the first part, the said sum of Four thou-

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sand eight hundred (\$4,800.00) Dollars, as and for the purchase money of the foregoing described land and premises, in the following manner, that is to say:

10 “\$200.00 on receipt of this contract, receipt of which is hereby acknowledged.

“\$2,000.00 by taking the property subject to a mortgage for like amount now on said premises as aforementioned.

20 “\$800.00 by the party of the second part delivering to the party of the first part a purchase money second mortgage for like amount to be secured by his bond, which mortgage is to run for the term of two years, and bear interest at the rate of six (6%) per cent. payable semi-annually; privilege, however, to the party of the second part to pay all or any part of the said mortgage at any time before date of maturity, providing he gives the party of the first part a three days’ notice of his intention so to do.

“\$1,800.00 balance in cash on passing of title and delivery of deed.

“\$4,800.00 total.

30 “And it is further agreed by the parties to these presents, that the said party of the second part, his heirs and assigns, may enter into and upon the said land and premises on or before the first day of September, next ensuing the date hereof, and from thence take the rents, issues and profits to his and their use.

“And it is further agreed by the parties hereto that the said Deed of Full Covenant and Warranty shall be delivered and received at the office of Robert M. Boyd, Jr., 203 Broadway, N. Y., between the hours of 11 in the forenoon and two in the afternoon on the said first day of September next ensuing the date hereof.

40 “This property being sold subject to the monthly rights of the tenants in possession.

“In Witness Whereof, the said parties have hereunto interchangeably set their hands and

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seals the day and year first above mentioned.

“Signed, sealed and delivered in the presence of

“(Signed) JAMES A. SULLIVAN, (L. S.)  
“BENNETT MILNOR, (L. S.)”

That said agreement was on the twenty-fourth day of August, Nineteen hundred and ten, duly acknowledged by the said James A. Sullivan and on the twenty-fifth day of August, Nineteen hundred and ten, was recorded in the office of the Register of the County of Hudson in Book 1063 of Deeds for said County on page 605, etc.

That thereafter the said Bennett Milnor, by assignment in writing, for a valuable consideration, did set over and assign all of his right, title and interest of, in and to the above mentioned contract to your orator, Arthur Brisbane, and that thereafter, and on or about the twenty-fourth day of August, Nineteen hundred and ten, your orator and the said James A. Sullivan, acting for the said Ella J. Sullivan, mutually agreed that the time for the closing of the sale under the above mentioned agreement should be extended until Saturday, October first, Nineteen hundred and ten, at the same hour and place as mentioned in the agreement; and that on the twenty-ninth day of September, Nineteen hundred and ten, your orator and the said James A. Sullivan, acting for the said Ella J. Sullivan, further agreed in writing to extend the time for the closing of the sale under said agreement until Saturday, October fifteenth, Nineteen hundred and ten, at the same hour and place as mentioned in the agreement.

Your orator further shows that on the said fifteenth day of October, Nineteen hundred and

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ten, at the time and place to which the closing of the sale had been extended by mutual agreement, as aforesaid, your orator, by his duly authorized representative, was present and tendered himself ready and willing to pay the consideration provided for in said agreement on his receiving a deed of conveyance as therein provided, but that neither the said Ella J. Sullivan nor the said James A. Sullivan attended at said time and place, nor did any one attend for them or either of them.

10 And your orator further shows that at all times since the said fifteenth day of October, Nineteen hundred and ten, he has been ready and willing to pay the consideration provided in said agreement, and has often requested the said Ella J. Sullivan and James A. Sullivan to convey to him the premises mentioned in said agreement in accordance with the terms thereof, but that the said Ella J. Sullivan and James A. Sullivan have always refused and still refuse to convey to your orator the premises described in said agreement in accordance with the term thereof;

20 And your orator further shows that doubt has arisen as to the validity of the above mentioned tax sale by the City of Jersey City to Charles R. Dieffenbach upon which the title of said Ella J. Sullivan and James A. Sullivan rests.

30 Your orator further shows that it was the duty of the life tenant, Dora E. Kastenhuber, to have paid the taxes, for the non-payment of which the property was sold as aforesaid by the City of Jersey City to Charles R. Dieffenbach; and that the said Dora E. Kastenhuber purposely neglected and refused to pay the taxes aforesaid and permitted the tax sale to be made and the order of the

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Hudson County Circuit Court to be made and entered for the purpose and with the intent of transforming the estate for life, in her, with the remainder over to the issue of her body, born in lawful wedlock, into an estate in fee simple in her husband, William P. Kastenhuber; that the said Charles R. Dieffenbach purchased the premises in question at the tax sale at the request of said Dora E. Kastenhuber, and her husband, William P. Kastenhuber; that the conveyance to the said William P. Kastenhuber by the said Charles R. Dieffenbach was in pursuance of an agreement theretofore made and entered into by and between the said Dora E. Kastenhuber and her husband, William P. Kastenhuber, and Chas. R. Dieffenbach, that the premises should be allowed to be sold for the non-payment of the taxes aforesaid, and that the said Charles R. Dieffenbach should become the purchaser thereof for the benefit of said William P. Kastenhuber and Dora E. Kastenhuber, his wife.

And your orator further shows that the said William P. Kastenhuber and his wife, Dora E. Kastenhuber, received the sum of thirty-five hundred dollars, or some other sum of money, being the full and fair value of an estate in fee simple in the premises in question, from their grantee when they executed the deed of conveyance to the said James Billington; and your orator charges and insists that the said William P. Kastenhuber and Dora E. Kastenhuber by said deed of conveyance intended to convey and did convey all the estate, right, title and interest which the said Dora E. Kastenhuber and her husband, William P. Kastenhuber, had in the premises in question, either under the Wilks will, or by virtue of said

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10 tax sale, and in fact believed that they were there-  
by conveying an estate in fee simple; and that  
the said James Billington by his deed also in-  
tended to convey and did convey to the said Ella  
J. Sullivan all such estate, right, title and interest  
which the said Dora E. Kastenhuber and her hus-  
band, William P. Kastenhuber, had conveyed to  
him in the premises in question, and that the  
said Ella J. Sullivan and James A. Sullivan, by  
their agreement of sale, hereinbefore set out, also  
intended to agree and did agree to convey all such  
estate, right, title and interest of the said Dora E.  
Kastenhuber and William P. Kastenhuber, con-  
veyed to them as aforesaid.

20 And your orator further shows unto your  
Honor that after the execution of the agreement  
of sale aforesaid by the said James A. Sullivan,  
acting for the said Ella J. Sullivan, above set out,  
your orator caused an investigation of the title  
to the premises in question to be made, with the  
result that the doubt arose as to the validity of  
the tax sale aforesaid; that he thereupon re-  
quested the said James A. Sullivan to remedy  
such defects as there might be in the title;

30 And your orator charges that the said James  
A. Sullivan after the making of the agreement of  
sale above set out entered into negotiations with  
some person or persons other than your orator for  
the sale of the premises in question for the sum  
of Fourteen thousand dollars, and thereupon re-  
fused and still refuses to execute and deliver to  
your orator a deed of conveyance in accordance  
with the agreement aforesaid;

40 And your orator charges that the said James A.  
Sullivan refuses to carry out the agreement of  
sale entered into as above set forth with intent

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to deprive your orator of the benefit of such agreement, but that your orator has elected to accept from the said James A. Sullivan and Ella Sullivan such title to said premises as the said James A. Sullivan and Ella Sullivan are able to convey unto your orator, and that your orator tenders himself ready and willing to pay the said James A. Sullivan and Ella Sullivan such proportionate part of the purchase price reserved under and by virtue of said agreement hereinbefore recited as this Court shall determine the estate which the said James A. Sullivan and Ella Sullivan are able to convey unto your orator shall bear to the estate or interest in said lands which the said James A. Sullivan and Ella Sullivan agreed as hereinbefore set forth to convey unto your orator.

All of which actings and doings of the said Ella J. Sullivan and James A. Sullivan are contrary to equity and good conscience and tend to the manifest wrong, injury and oppression of your orator in the premises.

In consideration whereof, and forasmuch as your orator is entirely without adequate remedy in the premises according to the strict rules of the common law and can only have adequate relief in a court of equity where matters of this nature are properly cognizable and relievable;

To the end therefore that the said Ella J. Sullivan and James A. Sullivan, as defendants to this suit, may full, true and perfect answer make (without oath) to all and singular the matters aforesaid, and that the said Ella J. Sullivan, Jas. A. Sullivan, or said James A. Sullivan in her behalf, may be decreed specifically to perform the said agreement entered into by the said James A.

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10 Sullivan as the person thereunto lawfully authorized so to do in behalf of the said Ella J. Sullivan with the said Bennett Milnor which was assigned to your orator as aforesaid, by convey-  
 10 est of the said James A. Sullivan and Ella Sul-  
 15 livan in and to said premises, your orator being ready and willing and hereby offering to perform the said agreement on his part; and that this Court may decree what sum of money shall be paid by your orator to the said Ella J. Sullivan and James A. Sullivan for the conveyance which  
 20 this Court may decree to be made, and that your orator may have such further and other relief in the premises as shall be agreeable to equity and good conscience and as the circumstances of the case may require.

30 May it please your Honor, the premises considered, to grant unto your orator the State's writ of subpoena, issuing out of and under the seal of this honorable Court, to be directed to the said Ella J. Sullivan, James A. Sullivan, commanding them and each of them by a certain day and under a certain penalty to be and appear before your honor in this honorable Court, then and  
 30 there to answer all and singular the premises, and to stand to, abide by and perform such order and decree therein as to your honor shall seem meet and shall be agreeable to equity and good conscience.

And your orator, as in duty bound, will ever pray, etc.

RIKER & RIKER,  
Solicitors for and of Counsel  
with Complainant.

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**Demurrer.**

IN CHANCERY OF NEW JERSEY.

Between ARTHUR BRISBANE, Complainant, <i>and</i> ELLA J. SULLIVAN, <i>et al.</i> , Defendants.	}	On Bill, &c.	10
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The demurrer of Ella J. Sullivan to the Second Amended Bill of Complaint of Arthur Brisbane, complainant. 20

This defendant, by protestation, not confessing all or any of the matters and things in the Complainant's Amended Bill of Complaint contained, to be true in such manner and form as the same are therein set forth, and alleged, demurs thereto and for cause of demurrer shows:

1. That it appears by said Amended Bill of Complaint that there is a misjoinder of parties defendant.
2. That it appears by said Amended Bill of Complaint that there is a misjoinder of causes of action. 30
3. That the said Amended Bill of Complaint is altogether multifarious.
4. That this Court has no jurisdiction to grant the relief prayed for.
5. That it appears by said Amended Bill that this defendant cannot specifically perform said contract. 40

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6. That it appears by the Amended Bill that the complainant is not entitled to specific performance from this defendant.

10 7. That it appears by said Amended Bill that it is not filed in good faith for specific performance of the contract therein set out.

8. That it appears by said Amended Bill that this defendant is not seized of such title as is required to be conveyed to the complainant.

9. That it appears by said Amended Bill that this defendant is not the owner of the land which was agreed to be conveyed.

20 10. That it appears by the Bill of Complaint that the complainant is not seized of an equitable estate in the lands described in said Bill.

WHEREFORE and for other good and divers causes of demurrer, this defendant DOETH DEMUR thereto and humbly pray that judgment of this honorable Court, whether she should be compelled to make any further or other answer to the said Amended Bill and PRAYS to be hence dismissed with her cost or charges in this behalf most wrongfully sustained.

30

RANDOLPH PERKINS,  
Solicitor for and of Counsel  
with Ella J. Sullivan.

I certify that I have perused the complainant's Amended Bill in the above stated cause and that the above Demurrer is well founded in point of law.

40

RANDOLPH PERKINS,  
Solicitor for and of Counsel  
with Ella J. Sullivan.

*Exhibit—Records in Brisbane v. Sullivan—  
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STATE OF NEW JERSEY, }  
COUNTY OF HUDSON, } ss.:

ELLA J. SULLIVAN, of full age, being duly sworn according to law, saith: that the foregoing Demurrer is not interposed for delay but in good faith, for the causes therein set forth. 10

ELLA J. SULLIVAN.

Sworn and subscribed to before }  
me this 12th day of June, 1912. }

EDWARD CLAXTON,  
Attorney-at-Law  
of New Jersey.

20

**Order Sustaining Demurrer.**

IN CHANCERY OF NEW JERSEY.

Between ARTHUR BRISBANE, Complainant, <i>and</i> ELLA J. SULLIVAN, <i>et al.</i> , Defendants.	}	On Bill, &c.	30
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The demurrers filed to the second amended bill of complaint having been brought on for argument, in the presence of Messrs. Riker & Riker, of counsel with the complainant, and of Randolph Perkins, of counsel with the defendants, 40

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It is on this twenty-second day of October, 1912,  
ordered that the demurrers be sustained with  
costs.

It is further ordered that the complainant have  
leave to further amend his bill of complaint.

10

E. R. WALKER,  
C.

Respectfully advised,  
FREDERIC W. STEVENS,  
V. C.

A true copy.

SAM. K. ROBBINS,  
Clerk.

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**Third Amended Bill.**

IN CHANCERY OF NEW JERSEY.

*To the Honorable Edwin Robert Walker, Chan-  
cellor of the State of New Jersey:*

30 HUMBLY COMPLAINING, shows unto your Honor  
your orator, Arthur Brisbane, of the City of New  
York, in the County of New York and State of  
New York:

That on the eighth day of July, in the year  
eighteen hundred and eighty-nine, Thomas H. N.  
Wilks died in the City of Jersey City, in the  
County of Hudson in this State, seized of an  
estate of inheritance in fee simple of a certain  
tract of land in the City of Jersey City aforesaid,  
known as Lot F in City Block 1865 on Fowler's  
40 Official Assessment Map of Jersey City, also

*Exhibit—Records in Brisbane v. Sullivan—  
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known as No. 11 Wilks Street, Jersey City, being in dimensions twenty-four feet, six inches, front and rear, by one hundred and nine feet in depth on one side and one hundred and seven feet in depth on the other side; that the said Thomas H. N. Wilks left a last will and testament bearing date the twenty-eighth day of June, eighteen hundred and eighty-nine, which said will was admitted to probate by the Surrogate of the County of Hudson in this State on the nineteenth day of July, eighteen hundred and eighty-nine, and is recorded in Book 24 of wills in the office of said Surrogate on pages 413-417, to which said will and the record thereof your orator begs leave to refer if it be necessary so to do. That the testator in and by his said will devised the above described property to his adopted daughter, Dora E. Wilks, for her natural life, and at her death to the heirs of her body born in lawful wedlock, and if there be no such issue, then the above described premises are devised to the testator's brother, Aquilla Wilks, if living, and if not living at the time of the death of said Dora E. Wilks, to his heirs at law living at the time of the death of Dora.

That subsequent to the death of said Thomas H. N. Wilks, his adopted daughter, Dora E. Wilks, was married to William P. Kastenhuber, and is now the wife of said William P. Kastenhuber; that since her marriage to the said William E. Kastenhuber said Dora E. Kastenhuber has become the mother of two children born in lawful wedlock, the oldest of whom is named Ruth, the name of the other child being unknown to your orator; that both of said children of said Dora E.

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Kastenhuber are infants under the age of twenty-one years;

10 That after the death of said Thomas H. N. Wilks and after the marriage of the said Dora E. Wilks to William P. Kastenhuber, the premises above described were sold to the City of Jersey City for unpaid taxes, and such proceedings were had that an order was made by the Circuit Court of Hudson County directing that a deed be delivered to Charles R. Dieffenbach, who was the purchaser at such tax sale, and that thereafter a deed was made by the proper officer of the City of Jersey City to the said Charles R. Dieffenbach purporting to convey the premises in question to the said Charles R. Dieffenbach in fee simple,  
20 which said deed is recorded in Book 1009 of Deeds for Hudson County in the office of the Register of said County at page 407;

That thereafter the said Charles R. Dieffenbach conveyed the premises in question to William P. Kastenhuber, the husband of the said Dora E. Kastenhuber, and that the said William P. Kastenhuber and the said Dora E. Kastenhuber conveyed the premises in question for a valuable consideration to James Billington by deed of warranty dated the twenty-ninth day of June, nineteen hundred and ten, and that the said James Billington and his wife in turn conveyed the premises in question to one Ella J. Sullivan by deed of warranty dated the twenty-ninth day of June, nineteen hundred and ten, and recorded in the Hudson County Register's Office on the thirtieth day of June, nineteen hundred and ten, in Book 1078 of Deeds for said County at page 91;

40 That the last mentioned conveyance was made to Ella J. Sullivan at the request of James A. Sulli-

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van, who was the actual purchaser of the premises and who provided the consideration therefor out of his own moneys, and that the said Ella J. Sullivan has not and never had any beneficial interest in the premises; that the said James A. Sullivan paid as the consideration for the conveyance of said premises to the said Ella J. Sullivan the sum of thirty-five hundred dollars or some other sum of money; 10

That on or about the nineteenth day of July, nineteen hundred and ten, the said James A. Sullivan, on behalf of himself and as agent of said Ella J. Sullivan, having by her been authorized so to do, did enter into an agreement in writing with Bennett Milnor, of the Borough of Manhattan, in the County of New York and State of New York, for the conveyance of the above described premises to the said Bennett Milnor, his heirs or assigns, of which the following is a true copy: 20

“ARTICLES OF AGREEMENT, made the 19th day of July, in the year of our Lord one thousand nine hundred and ten, Between James A. Sullivan, of the City of Jersey City, in the County of Hudson and State of New Jersey, party of the first part; And Bennett Milnor, of the Borough of Manhattan, in the County of New York and State of New York, party of the second part; Witnesseth: That the said party of the first part, for and in consideration of the sum of four thousand eight hundred (\$4,800.00) Dollars, to be paid and satisfied as hereinafter mentioned, and also in consideration of the covenants and agreements hereinafter mentioned, made and entered into by the said party of the second part, doth agree to and with the said party of the second part, that he, the said party of the first part, will well and sufficiently convey to the said party of the second part, his heirs and as- 30 40

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10 signs, by deed of full covenant and warranty free from all encumbrance, except a mortgage of two thousand (\$2,000.00) Dollars, held by Jennie Turner, and due July 2, 1911, on or before the first day of September, next ensuing the date hereof, all that lot, tract or parcel of land and premises, hereinafter particularly described, situate, lying and being in the City of Jersey City, in the County of Hudson and State of New Jersey, known as lot 'F' in City Block 1865 on Fowler's Official Assessment Map of Jersey City, also known as No. 11 Wilks Street, Jersey City, being in dimensions twenty-four feet, six inches, front and rear, by one hundred and nine feet in depth on one side and one hundred and seven feet in depth on the other side.

20 "Being all of the premises conveyed to grantor by James Billington in the month of June, 1910.

"It is mutually understood and agreed by and between the parties hereto that the second mortgage hereinafter mentioned shall contain a clause subordinating it to any new mortgage which may be placed on the property during the currency of said second mortgage after the present first mortgage is discharged, providing, however, that said new mortgage shall not exceed the sum of two thousand (\$2,000.00) Dollars;

30 "And the said Bennett Milnor, for his heirs, executors and administrators, doth covenant, promise and agree to and with the said party of the first part, his heirs, executors, administrators and assigns, that he, the said party of the second part, will pay and satisfy or cause to be paid and satisfied, unto the said party of the first part, the said sum of four thousand eight hundred (\$4,800.00) Dollars, as and for the purchase money of the foregoing described land and premises, in the following manner, that is to say:

40 "\$200.00 on receipt of this contract, receipt of which is hereby acknowledged.

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“\$2,000.00 by taking the property subject to a mortgage for like amount now on said premises as aforementioned.

“\$800.00 by the party of the second part delivering to the party of the first part a purchase money second mortgage for like amount to be secured by his bond, which mortgage is to run for a term of two years and bear interest at the rate of six (6%) per cent., payable semi-annually; privilege, however, to the party of the second part to pay all or any part of the said mortgage at any time before date of maturity, providing he gives the party of the first part a three days’ notice of his intention so to do.

10

“\$1,800 balance in cash on passing of title and delivery of deed.

“\$4,800.00 total.

20

“And it is further agreed, by the parties to these presents, that the said party of the second part, his heirs and assigns, may enter into and upon the said land and premises on or before the first day of September next ensuing the date hereof, and from thence take the rents, issues and profits to his and their use.

“And it is further agreed, by the parties hereto, that the said Deed of Full Covenant and Warranty shall be delivered and received at the office of Robert M. Boyd, Jr., #203 Broadway, N. Y., between the hours of 11 in the forenoon and two in the afternoon on the said first day of September next ensuing the date hereof.

30

“The property being sold subject to the monthly rights of the tenants in possession.

“In Witness Whereof, the said parties have hereunto interchangeably set their hands and seals the day and year first above mentioned.

“Signed, sealed and delivered in the presence of

“(Signed) JAMES A. SULLIVAN, (L. S.)  
“BENNETT MILNOR, (L. S.)”

40

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10 That said agreement was on the twenty-fourth day of August, nineteen hundred and ten, duly acknowledged by said James A. Sullivan and on the twenty-fifth day of August, nineteen hundred and ten, was recorded in the office of the Register of the County of Hudson in Book 1063 of Deeds for said County on page 605, etc.

20 That thereafter the said Bennett Milnor, by assignment in writing, for a valuable consideration, did set over and assign all of his right, title and interest of, in and to the above mentioned contract to your orator, Arthur Brisbane, and that thereafter, and on or about the twenty-fourth day of August, nineteen hundred and ten, your orator and the said James A. Sullivan, acting for himself and for the said Ella J. Sullivan, mutually agreed that the time for the closing of the sale under the above mentioned agreement should be extended until Saturday, October first, nineteen hundred and ten, at the same hour and place as mentioned in the agreement; and that on the twenty-ninth day of September, nineteen hundred and ten, your orator and the said James A. Sullivan, acting for himself and for the said Ella J. Sullivan, further  
30 agreed in writing to extend the time for the closing of the sale under said agreement until Saturday, October fifteenth, nineteen hundred and ten, at the same hour and place as mentioned in the agreement.

Your orator further shows that on the said fifteenth day of October, nineteen hundred and ten, at the time and place to which the closing of the sale had been extended by mutual agreement, as aforesaid, your orator, by his duly authorized representative, was present and tendered himself  
40 ready and willing to pay the consideration pro-

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vided for in said agreement on his receiving a deed of conveyance as therein provided, but that neither the said Ella J. Sullivan nor the said James A. Sullivan attended at said time and place, nor did any one attend for them or either of them.

And your orator further shows that at all times since the said fifteenth day of October, nineteen hundred and ten, he has been ready and willing to pay the consideration provided in said agreement, and has often requested the said Ella J. Sullivan and James A. Sullivan to convey to him the premises mentioned in said agreement, in accordance with the terms thereof, but that the said Ella J. Sullivan and James A. Sullivan have always refused and still refuse to convey to your orator the premises described in said agreement in accordance with the terms thereof.

And your orator charges that the said Ella J. Sullivan and James A. Sullivan refuse to carry out the agreement of sale entered into as above set forth with intent to deprive your orator of the benefit of such agreement, and that the said James A. Sullivan has since the making of the agreement above mentioned, which was assigned to your orator, entered into an agreement with some other person or persons to convey the premises in question for a sum of money largely in excess of that mentioned in your orator's said agreement;

And your orator further shows that he is informed and believes that since said fifteenth day of October, 1910, at which time the closing of the sale was under the extension of said original agreement to have taken place, said Ella J. Sullivan and said James A. Sullivan have collected and still continue to collect the rents from said property and have applied them to their own use;

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10 And your orator further shows that he is informed and believes that subsequent to said fifteenth day of October, 1910, a fire has occurred upon said premises, and that said Ella J. Sullivan and James A. Sullivan have collected from the fire insurance company which had insured said premises against fire a sum of money which your orator is informed is the sum of five hundred dollars, and have applied said sum of money so collected to their own uses.

All of which actings and doings of the said Ella J. Sullivan and James A. Sullivan are contrary to equity and good conscience and tend to the manifest wrong, injury and oppression of your orator in the premises.

20 In consideration whereof, and forasmuch as your orator is entirely without adequate remedy in the premises according to the strict rules of the common law and can only have adequate relief in a court of equity where matters of this nature are properly cognizable and relievable;

To the end, therefore, that the said Ella J. Sullivan and James A. Sullivan, as defendants to this suit, may full, true and perfect answer make (without oath) to all and singular the matters aforesaid, and that the said Ella J. Sullivan and James A. Sullivan may be decreed to perform specifically the said agreement entered into by the said James A. Sullivan as the person thereunto lawfully authorized so to do in behalf of the said Ella J. Sullivan and of himself with the said Bennett Milnor which was assigned to your orator as aforesaid, your orator being ready and willing and hereby offering to perform the said agreement on his part, and may be required by this Honorable Court to  
30  
40 account to your orator for the rental value of

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said premises during the period during which your orator has been deprived of the possession and enjoyment of said premises, and for any moneys received by the said Ella J. Sullivan or by the said James A. Sullivan for fire insurance upon said premises paid by reason of any fire thereon subsequent to said fifteenth day of October, 1910, making all just allowances to the said Ella J. Sullivan and James A. Sullivan to which they may in equity be entitled, and that your orator may have such other and further relief in the premises as shall be agreeable to equity and good conscience and as the circumstances of the case may require. 10

May it please your Honor, the premises considered, to grant unto your orator the State's writ of subpoena, issuing out of and under the seal of this Honorable Court, to be directed to the said Ella J. Sullivan and James A. Sullivan, commanding them and each of them by a certain day and under a certain penalty to be and appear before your Honor in this Honorable Court, then and there to answer all and singular the premises, and to stand to, abide by and perform such order and decree therein as to your Honor shall seem meet and shall be agreeable to equity and good conscience. 20

And your orator, as in duty bound, will ever pray, etc. 30

RIKER & RIKER,  
Solicitors for and of Counsel  
with Complainant.

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**Answer.**

IN CHANCERY OF NEW JERSEY.

10	Between ARTHUR BRISBANE, Complainant, <i>and</i> ELLA J. SULLIVAN, <i>et al.</i> , Defendants.	}	On Bill, &c.
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20     The joint and several answer of the defendants, Ella J. Sullivan and James A. Sullivan, to the bill of complaint of Arthur Brisbane, complainant.

These defendants, for answer unto said bill of complaint, or unto so much thereof as they are advised it is necessary or material for them to answer unto, answering, say:

30     1. They neither admit nor deny the allegations contained on pages 1 and 2 of said bill of complaint, but they deny that on the nineteenth day of July, nineteen hundred and ten, or at any other time, these defendants, or either of them, were seized and possessed of an estate of inheritance in fee simple in the lands described in the bill of complaint.

40     2. These defendants admit that on the nineteenth day of July, nineteen hundred and ten, said James A. Sullivan executed and delivered to one Bennett Milnor a contract for sale of the premises described in the bill of complaint, a copy of

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which is set out on pages 3, 4 and 5 of said bill; that they have no knowledge as to the assignment of said contract to the complainant, and they therefore leave the said complainant to make such proof thereof as he may be advised is necessary.

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3. These defendants further answering say that they are brother and sister and that the lands in the bill of complaint described were purchased by the defendant, James A. Sullivan with his own funds, and that title to said premises was taken in the name of the defendant, Ella J. Sullivan, at the request of said James A. Sullivan, and that a deed purporting to convey the title to said premises was executed by James Billington and wife to the defendant, Ella J. Sullivan, on the twenty-ninth of June, nineteen hundred and ten, and recorded in the Hudson County Register's Office, June thirtieth, nineteen hundred and ten, in Book 1078 of Deeds for said County, on page 91, etc.; and that at the time of the purchase thereof the said defendant, James A. Sullivan, believed that he and his said sister, Ella J. Sullivan, were acquiring an estate of inheritance in fee simple in said lands, and that such estate was by said deed conveyed to the defendant, Ella J. Sullivan.

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4. These defendants further say that the said defendant, James A. Sullivan, entered into the agreement with Bennett Milnor in the bill of complaint set forth in good faith, believing that they, the defendants, held good and marketable title to the lands aforesaid, and that they could convey the same to the said Bennett Milnor at the time and in the manner required by said agreement,

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and that both of the defendants were willing to make such conveyance.

10 5. These defendants further answering say that they were both ready and willing to convey the said lands to the said Bennett Milnor at the time and in the manner provided in said agreement, but before the time for passing title provided in said agreement arrived, the said Bennett Milnor, and the complainant in this cause, informed the defendant, James A. Sullivan, that the title to said premises held by the defendant, Ella J. Sullivan, was defective and was not a good and marketable title, and thereafter the complainant, who then pretended to hold an assignment of said agreement, notified the defendant, James A. Sullivan, of the details of the defects in said title, and said complainant informed said defendant that he would not take title to said lands or pay the balance of the purchase price as specified in said agreement, while said defects in title existed.

30 6. These defendants further answering, say: that afterwards and before the time for the delivery of the deed mentioned in said contract, the complainant served or caused to be served upon these defendants a list of the defects of title, a copy of which is annexed hereto and marked "Schedule A," and made a part of this Answer; that said complainant notified the defendants that their title was not marketable and refused to accept a deed from the defendants for such title as they had or for any title whatever unless the defendants first removed all the defects and clouds from their title; that thereafter the said  
40 defendant, James A. Sullivan, caused an investi-

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gation to be made of the title to said premises and was afterwards advised by his counsel that neither he nor said Ella J. Sullivan was seized of a good and marketable title of said lands, and was not seized in fee simple thereof, and that these defendants could not convey the same to the complainant as provided in said agreement; and the defendant, James A. Sullivan, thereupon informed the complainant that because of the defects in said title as specified by said complaint he was unable to perform his said agreement, and the defendants thereupon offered to return the money paid upon the said agreement with interest thereon together with a reasonable sum to reimburse the complainant for his expenses in examining such title, which offer the complainant declined to accept. 10 20

7. These defendants further answering, say: that they are not seized in fee simple of the lands in the bill of complaint described, and are unable to acquire good title thereto and are unable to perform said agreement to convey the same to the said Bennett Milnor or to the complainant, as his assignee, according to the terms and conditions of said agreement, and that the complainant well knew at and before the filing of his bill of complaint of the infirmity and defects of the defendants' said title, and refused to accept from the defendants such title as they had, and refused to pay over to the defendants the balance of the purchase price of said premises and accept from the defendants a deed for whatever interest in said premises the defendants had. 30

8. These defendants further answering, say: that before the filing of this bill and after the 40

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10 defects of title in Schedule A set out were known  
to the complainant, he refused to accept such title  
as the defendants had, but notified defendants  
that he would hold them to a strict performance  
of their contract; that the bill of complaint filed  
herein was filed after complainant had full and  
complete knowledge of all of the facts set forth  
in this answer, and that it was impossible for  
these defendants to specifically perform said con-  
tract; and that the said complainant is guilty of  
laches.

20 All of which matters and things these defend-  
ants are willing to aver, maintain and prove, and  
humbly pray to be hence dismissed with their rea-  
sonable costs and charges in this behalf most  
wrongfully sustained.

RANDOLPH PERKINS,  
Solicitor for and of Counsel  
with Defendants.

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SCHEDULE A.

Deed, Davis to Dieffenbach, recorded in Book 1009, page 407. The proceedings for the sale of this property for taxes and authorizing the issuing of the above deed seem to be defective in many particulars in that such proceedings do not conform to the statute in the following respects: 10

The petition to the Court is not signed and verified by C. R. Dieffenbach, purchaser, but by John J. Mulvaney, attorney. This does not conform to the laws of 1906, page 552, which states that the petition must be verified by the purchaser or his legal representatives or assigns.

The verification in the petition is signed by John J. Mulvaney and contains a jurat as follows: "Sworn and subscribed at Jersey City, N. J., this 15th day of May, 1908, before me," but does not contain the signature or name of office of any official before whom such petition could be sworn to—this having been left blank. 20

In the body of the petition there is no description of the property by metes and bounds as required by General Statute, page 3380.

On such application no notice thereof was given and there being infants involved there is a question whether the court had jurisdiction. 30

The order contains a direction that a deed shall issue unto C. Rudolph Dieffenbach conveying unto him, his *executors* and assigns, all said lands, &c. This language does not conform to the deed which purports to convey to his *heirs*.

In the affidavit of James J. Dowling as to the publication of the notice therein it purports to be verified the 27th day of May, but in the jurat the year is left blank, and there is no copy of the 40

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notice annexed to said affidavit, and in the said jurat there is no mention of the place where said affidavit was taken.

10 The proceedings seem to indicate that there are about fifteen infants interested in the property besides a large number of adults; but there is nothing on the record to show whether the persons named in the proceedings are proper parties or all the parties interested who should have been joined in the proceeding.

20 The original resolution of the Board of Finance of Jersey City that this property should be sold for taxes could not be found in that office and a copy recites that the taxes and assessments have been adjusted; the deed states that the taxes and assessments have not been adjusted. In such resolution a number of other papers are recited, but they are not on record.

There appear to be no proofs of advertisement in the office of the City Collector; that is, advertisement of notice of sale, so that it is impossible to say whether such publication was properly made or made at all.

30 No Certificate of Sale on file in the office of the City Collector. When the deed was issued such certificate should have been returned and filed in the office of the City Collector and should remain on file in that office.

In the City Collector's Office there is only a copy of the schedules containing this property among others which were to be sold for taxes; the original is not on file.

40 The order to issue the deed has not been filed in the office of the Clerk of the Court in accordance with Rule 40 of the Supreme Court of New Jersey, and Rule 18 of the Circuit Court, which

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requires that such order shall be filed within ten days after the granting thereof; this order has never been filed at all and not being filed within the time required by law is void. See *Mayor and Aldermen of Jersey City v. Davis, City Collector*, 67 Atl., 969; handed down by the New Jersey Supreme Court June 30, 1910, which holds in effect that an order directing a deed to issue unless entered in the minutes of the Circuit Court in accordance and within the time required by the rule is void and of no effect. 10

The moving papers in the proceedings contain a number of typographical errors as to the spelling of various names.

Upon investigating the proceedings leading to the above tax sale in many instances the original records could not be found on file in the proper offices; these original records either having been destroyed or mislaid and thus it could not be ascertained whether or not the statute had been complied with by the public officers in the proceeding leading up to the sale of the property in question. 20

The defects above mentioned being of such a nature as to seem to preclude the possibility of this title being marketable unless they were explained or removed, a number of other matters in connection with the above proceeding were not investigated. If the above defects should be removed these matters can be taken up and looked into further. 30

Mortgage, Wilks to Olcott, recorded in Book 13, page 192. Cancellation clause on the margin of the record states that the original mortgage "was received in full by Lettie Allen, Administratrix of Nicholas Prior, Assignee, &c." No record of any 40

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Book 30, page 374 of Mortgages. Cancellation clause on the margin of the record was not signed by the Register, so this mortgage may still be a lien against the property.

- 10 Book 30, page 374 of Mortgages. Assignment of this mortgage (Book 33, page 117) from Lettie Allen to John Patterson, assigns Book 30, page 375 of Mortgages; probably intended to assign Book 30, page 374 of Mortgages. This mortgage not being properly cancelled, for this additional reason may still be a lien against the property.

Book 31, page 739 of Mortgages. Cancellation clause not signed by Register. This mortgage affects the property and probably is still an outstanding lien.

- 20 Book 425, page 276 of Deeds. From where does Ellam M. Dewey derive the interest she purports to convey by this deed?

Book 1078, page 91 of deeds. Have no seals attached.

Book 43 of Deeds, page 721. Was the grantor, Daniel Van Reypen, unmarried?

- 30 Book 47 of Deeds, page 271. Deed taken subject to mortgage. Mortgage purports to be cancelled on receipt of Robert Gilchrist, Assignee. No record to show assignment to Gilchrist. Mortgage may still be a lien.

Book 80 of Deeds, page 332. Subject to same objection as Book 47 of Deeds, page 271.

Book 1009 of Deeds, page 406. Is C. Rudolph Dieffenbach unmarried?

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**Bill of Complaint, Filed December 16, 1918.**

IN CHANCERY OF NEW JERSEY.

*To the Honorable Edwin Robert Walker, Chan- 10*  
*cellor of the State of New Jersey.*

Humbly complaining, shows unto your Honor, your Orator, Arthur Brisbane, of the City of New York, in the County of New York and State of New York:

That on the eighth day of July, in the year eighteen hundred and eighty-nine, Thomas H. N. Wilks died in the City of Jersey City, in the County of Hudson, in this State, seized of an estate of inheritance in fee simple of a certain tract of land in the City of Jersey City aforesaid, known as Lot F in City Block 1865 on Fowler's Official Assessment Map of Jersey City, also known as No. 11 Wilks Street, Jersey City, being in dimensions twenty-four feet six inches front and rear, by one hundred nine feet in depth on one side and one hundred seven feet in depth on the other side; that the said Thomas H. N. Wilks left a last will and testament bearing date the twenty-eighth day of June, eighteen hundred and eighty-nine, which said will was admitted to probate by the Surrogate of the County of Hudson in this State on the nineteenth day of July, eighteen hundred and eighty-nine, and is recorded in Book 24 of Wills in the office of said Surrogate on pages 413-417, to which said will and the record thereof your orator begs leave to refer if it be necessary to do so. That the testator in and by his said will devised the above described property to his adopted daughter, Dora E. Wilks, for 40

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her natural life, and at her death to the heirs of her body born in lawful wedlock, and if there be no such issue, then the above described premises are devised to the testator's brother, Aquilla Wilks, if living, and if not living at the time of the death  
10 of said Dora E. Wilks, to his heirs at law living at the time of the death of the said Dora.

That subsequent to the death of said Thomas H. N. Wilks, his adopted daughter, Dora E. Wilks was married to William P. Kastenhuber, and is now the wife of said William P. Kastenhuber; that since her marriage to the said William P. Kastenhuber said Dora E. Kastenhuber has become the mother of two children born in lawful wedlock, the  
20 oldest of whom is named Ruth, the name of the other child being unknown to your orator; that both of said children of said Dora E. Kastenhuber are infants under the age of twenty-one years.

That after the death of said Thomas H. N. Wilks, and after the marriage of said Dora E. Wilks to William P. Kastenhuber, the premises above described were sold to the City of Jersey City for unpaid taxes, and such proceedings were had that an order was made by the Circuit Court of Hudson County directing that a deed be delivered to Charles R. Dieffenbach, who was the purchaser at said tax sale, and that thereafter a deed  
30 was made by the proper officers of the City of Jersey City to the said Charles R. Dieffenbach purporting to convey the premises in question to the said Charles R. Dieffenbach in fee simple, which said Deed is recorded in Book 1009 of Deeds for Hudson County in the Office of the Register of said County, at page 407. That by reason of the failure to comply with the statutes of the  
40 State of New Jersey in such case made and provided and relating to the acquisition of title

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through tax sale proceedings, the conveyance to the said Charles R. Dieffenbach by the officers of the City of Jersey City was illegal and invalid and conveyed to him no title or interest for and to the said lands and premises.

Your orator further shows, that thereafter the said Charles R. Dieffenbach conveyed the premises in question to William P. Kastenhuber, the husband of the said Dora E. Kastenhuber, and that the said William P. Kastenhuber and the said Dora E. Kastenhuber conveyed the premises in question for a valuable consideration to James Billington by deed of warranty dated the twenty-ninth day of June, nineteen hundred and ten, and that the said James Billington and his wife in turn conveyed the premises in question to one Ella J. Sullivan by deed of warranty dated the twenty-ninth day of June, nineteen hundred and ten and recorded in the Hudson County Register's Office on the thirtieth day of June, nineteen hundred and ten in Book 1078 of Deeds for said County at page 91. Your orator charges that the conveyance set forth in this paragraph whereby the fee simple title of the said premises was attempted to be vested in the said Ella J. Sullivan did not legally and effectually convey more than a life estate and that your orator charges that the said Ella J. Sullivan, by reason of the said conveyance, acquired only a right, title and interest in the said premises for the life of the said Dora E. Wilks and vested in the said Ella J. Sullivan only such interest in the premises as was owned by the said Dora E. Kastenhuber under and by virtue of the will of Thomas H. N. Wilks.

Your orator further shows, that the last mentioned conveyance was made to Ella J. Sullivan

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at the request of James A. Sullivan, who was the actual purchaser of the said premises and who provided the consideration therefor out of his own moneys, and that the said Ella J. Sullivan has not and never had any beneficial interest in the premises; that the said James A. Sullivan paid as the consideration for the conveyance of the said premises to the said Ella J. Sullivan the sum of Thirty-five Hundred Dollars or some other sum of money.

Your orator further shows, that on or about the nineteenth day of July, nineteen hundred and ten, the said James A. Sullivan on behalf of himself and as agent for said Ella J. Sullivan having by her been authorized so to do, did enter into an agreement in writing with Bennett Milnor, of the Borough of Manhattan, in the County of New York and State of New York, for the conveyance of the above described premises to the said Bennett Milnor, his heirs or assigns, a copy of which agreement is attached hereto and marked Schedule A and made a part hereof.

Your orator further shows, that said agreement was on the 24th day of August, nineteen hundred and ten, duly acknowledged by said James A. Sullivan, and on the twenty-fifth day of August, nineteen hundred and ten was recorded in the Office of the Register of the County of Hudson in Book 1063 of Deeds for said County at page 605, etc.

Your orator further shows, that thereafter the said Bennett Milnor, by assignment in writing, for a valuable consideration, did set over and assign all of his right, title and interest of, in and to the above mentioned contract to your orator, Arthur Brisbane, and that thereafter, and on or about the twenty-fourth day of August, nineteen hundred and ten, your orator and the said James A. Sulli-

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van, acting for himself and for the said Ella J. Sullivan, mutually agreed that the time for the closing of the sale under the above mentioned agreement should be extended until Saturday, October first, nineteen hundred and ten, at the same hour and place as mentioned in the agreement; and that on the twenty-ninth day of September, nineteen hundred and ten, your orator and the said James A. Sullivan, acting for himself and for the said Ella J. Sullivan, further agreed in writing to extend the time for closing of the sale under said agreement until Saturday, October fifteenth, nineteen hundred and ten, at the same hour and place as mentioned in the agreement. 10

Your orator further shows, that on the said fifteenth day of October, nineteen hundred and ten, at the time and place to which the closing of the sale had been extended by mutual agreement, as aforesaid, your orator, by his duly authorized representative, was present and duly tendered himself ready and willing to pay the consideration provided for in said agreement on his receiving a deed of conveyance as therein provided, but that neither the said Ella J. Sullivan nor the said James A. Sullivan attended at said time and place, nor did any one attend for them or either of them. 20 30

Your orator further shows, that at all times since the said fifteenth day of October, nineteen hundred and ten, he has been ready and willing to pay the consideration provided in said agreement, and has often requested the said Ella J. Sullivan and James A. Sullivan to convey to him the premises mentioned in said agreement, in accordance with the terms thereof, that the said Ella J. Sullivan and James A. Sullivan have always 40

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refused and still refuse to convey to your orator the premises described in said agreement in accordance with the terms thereof.

10 And your orator charges that the said Ella J. Sullivan and James A. Sullivan refuse to carry out the agreement of sale entered into as above set forth with intent to deprive your orator of the benefit of such agreement, and that the said James A. Sullivan has since the making of the agreement above mentioned, which was assigned to your orator, entered into an agreement with some other person or persons to convey the premises in question for a sum of money largely in excess of that mentioned in your orator's said agreement.

20 And your orator further shows, that he is informed and believes that since said fifteenth day of October, nineteen hundred and ten, at which time the closing of the sale was under the extension of the original agreement to have taken place, said Ella J. Sullivan and James A. Sullivan have collected and still continue to collect the rents from said property and have applied them to their own use.

30 And your orator further shows, that he is informed and believes that subsequent to the said fifteenth day of October, nineteen hundred and ten, a fire has occurred upon said premises, and that said Ella J. Sullivan and James A. Sullivan have collected from the fire insurance company which had insured said premises against fire, a sum of money which your orator is informed is the sum of Five Hundred Dollars, and have applied said sum of money so collected to their own uses.

40 Your orator further shows, that the said William P. Kastenhuber and Dora E. Kastenhuber

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mortgaged the said lands and premises for the sum of \$2,000.00 to Jennie J. Turner, by indenture dated July second, nineteen hundred and eight and recorded in Book 647 of Mortgages for Hudson County at page 43 by virtue of which the said Jennie J. Turner claims to have a lien upon the said lands and premises. 10

Your orator further shows that on February twenty-eight, nineteen hundred and eleven, and shortly after the final time for the performance of the said contract fixed by the parties thereto, your orator filed a bill of complaint in this Court wherein and whereby it was alleged that the contract above mentioned had been made and executed; that your orator had tendered himself ready and willing to perform the said contract; that answer was filed to the said bill of complaint, which among other things, admitted the making of the aforesaid contract, but alleged that the defendants were not possessed of a title in fee simple and that they could not make a conveyance pursuant to the terms of the said contract; that a reference was ordered to ascertain the amount due from your orator to the said James A. Sullivan and Ella J. Sullivan; that such proceedings were finally had; that a final decree was entered in said Court, providing for a conveyance by the said defendants of all of their respective right, title and interest in and to the said premises in consideration of the payment to them of the moneys found to be due and owing to the defendants by the Special Master to whom the accounting aforesaid was referred; that in and by the said decree, it was determined that the interest of the said James A. Sullivan and Ella J. Sullivan in the premises is an estate during the lifetime of the said Dora E. Kastenhuber. 20  
30  
40

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Your orator further shows that after the making of the said final decree the said defendants, James A. Sullivan and Ella J. Sullivan, filed a petition of appeal from the said decree in the Court of Errors and Appeals of New Jersey, and said proceedings were had on such appeal; that a final decree was entered in the said Court of Errors and Appeals in and about November, nineteen hundred and sixteen reversing the decree of the Court of Chancery aforesaid; that the said reversal was made because of the failure of your orator to include as party defendants in the bill of complaint filed by him in this court the aforesaid Charles R. Dieffenbach, William P. Kastenhuber and James Billington, the persons who executed the mesne conveyances through which the title to the said premises was finally acquired by the said Ella J. Sullivan and Jennie Turner, the holder of a mortgage upon the said land and premises, and also because this Court in making this final decree did not have before it all of the parties who were interested in the determination as to whether the estate of the said James A. Sullivan and Ella J. Sullivan in the said lands and premises was a fee simple estate or an estate for the life of the said Dora E. Kastenhuber.

Your orator further shows that he files this bill of complaint for the purpose of bringing into this court all of the parties interested in the determination of the *quantum* of estate held by the said Ella J. Sullivan and James A. Sullivan in the said land and premises.

Your orator further shows that he is engaged in the business of publishing newspapers and that he desires to utilize the land and premises pur-

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chased by him from the defendant Ella J. Sullivan for this purpose; that the said real estate is located in that section of the City of Jersey City which is peculiarly and particularly advantageous for the purpose above mentioned.

All of which actings and doings of the said Charles R. Dieffenbach, James Billington and Rose Anne Billington, his wife; William P. Kastenhuber and Dora E. Kastenhuber, Ella J. Sullivan and James A. Sullivan, Jennie Turner and the Board of Commissioners of Jersey City or the Mayor and Common Council of the said city are contrary to equity and good conscience and tend to the manifest wrong, injury and oppression of your orator in the premises.

IN CONSIDERATION WHEREOF, and forasmuch as your orator is entirely without adequate remedy in the premises according to the strict rules of the Common Law, and can only have adequate relief in a Court of Equity where matters of this nature are properly cognizable and relievable;

To the end, therefore, that the said Charles R. Dieffenbach, James Billington and Rose Anne Billington, his wife, William P. Kastenhuber and Dora E. Kastenhuber, Ella J. Sullivan and James A. Sullivan, Jennie Turner and the Board of Commissioners of Jersey City or the Mayor and Common Council of said City, as defendants to this suit, may full, true and perfect answer make (without oath) to all and singular the matters aforesaid, and that the said Ella J. Sullivan and James A. Sullivan may be decreed to perform specifically the said agreement entered into by and between the said James A. Sullivan as the person thereunto lawfully authorized so to do in behalf of the said Ella J. Sullivan and himself,

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your orator being ready and willing to perform the said agreement on his part; and that the said Ella J. Sullivan and James A. Sullivan may be required by this Honorable Court to account to your orator for the rental value of said premises during the period in which your orator has been deprived of the possession and enjoyment thereof and for any moneys received by the said Ella J. Sullivan and James A. Sullivan by reason of the fire above mentioned; that the said Ella J. Sullivan and James A. Sullivan may have all just allowances to which they may be in equity entitled; that this court shall decree to be illegal and invalid any title created in or claimed by the defendants, Charles R. Dieffenbach, James Billington and Rose Anne Billington, William P. Kastenhuber and Dora E. Kastenhuber, his wife, Ella J. Sullivan and James A. Sullivan and the Board of Commissioners of Jersey City or the Mayor and Common Council of said City, based upon the sale of the said land and premises to the City of Jersey City for unpaid taxes and the proceedings had on such sale for unpaid taxes wherein and whereby an order was made by the Hudson County Circuit Court directing a deed to be delivered to the said Charles R. Dieffenbach, including, also the deed made by the proper officers of the City of Jersey City to the said Charles R. Dieffenbach and recorded in Book 1009 of Deeds for Hudson County at page 47; that the aforesaid conveyances made by the said Dieffenbach to the said Kastenhuber and the said Kastenhuber to the said Billington and the said Billington to the said Ella J. Sullivan, shall be decreed by this court to have conveyed an interest in the said lands and premises only for the life of Dora E. Kastenhuber and that

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the mortgage of the said Jennie Turner upon the said lands and premises to be a lien only for the life of the said Dora E. Kastenhuber; and that your orator may have such other and further relief as shall be agreeable to equity and good conscience and as the circumstances of the said case may require. 10

MAY IT PLEASE YOUR HONOR, the premises considered, to grant unto your orator the State's writ of subpoena, issued out of and under the seal of this Honorable Court, to be directed to the said Charles R. Dieffenbach, James Billington and Rose Anne Billington, William P. Kastenhuber and Dora E. Kastenhuber, his wife, Ella J. Sullivan and James A. Sullivan, Jennie J. Turner and the Board of Commissioners etc. commanding them and each of them by a certain day and under a certain penalty to be and appear before your Honor in this Honorable Court, then and there to answer all and singular the premises and to stand to, abide and perform such order and decree therein as to your Honor shall seem meet and shall be agreeable to equity and good conscience. 20

And your orator, as in duty bound, will ever pray, etc. 30

SAUL COHN,  
Solicitor for and of Counsel with  
Complainant.

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**Amended Bill, Filed November 1, 1920.**

IN CHANCERY OF NEW JERSEY.

10 *To the Honorable Edwin Robert Walker, Chancellor of the State of New Jersey:*

Humbly complaining, shows unto your Honor, your Orator, Arthur Brisbane, of the City of New York, in the County of New York and State of New York:

20 1. That on the eighth day of July, in the year eighteen hundred and eighty-nine, Thomas H. N. Wilks died in the City of Jersey City, in the County of Hudson, in this State, seized of an estate of inheritance in fee simple of a certain tract of land in the City of Jersey City aforesaid, known as Lot F in City Block 1865 on Fowler's Official Assessment Map of Jersey City, also known as No. 11 Wilks Street, Jersey City, being in dimensions twenty-four feet six inches front and rear, by one hundred nine feet in depth on one side and one hundred seven feet in depth on the other side; that the said Thomas H. N. Wilks left a last will and testament bearing date the twenty-  
30 eighth day of June, eighteen hundred and eighty-nine, which said will was admitted to probate by the Surrogate of the County of Hudson in this State on the nineteenth day of July, eighteen hundred and eighty-nine, and is recorded in Book 24 of Wills in the office of said Surrogate on pages 413-417, to which said will and the record thereof your orator begs leave to refer if it be necessary to do so. That the testator in and by his said will devised the above described property to his  
40 adopted daughter, Dora E. Wilks, for her natural

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life, and at her death to the heirs of her body born in lawful wedlock, and if there be no such issue, then the above described premises are devised to the testator's brother, Aquilla Wilks, if living, and if not living at the time of the death of said Dora E. Wilks, to his heirs at law living at the time of the death of the said Dora. 10

2. That subsequent to the death of said Thomas H. N. Wilks, his adopted daughter, Dora E. Wilks was married to William P. Kastenhuber, and is now the wife of said William P. Kastenhuber; that since her marriage to the said William P. Kastenhuber said Dora E. Kastenhuber has become the mother of two children born in lawful wedlock, the oldest of whom is named Ruth, the name of the other child being unknown to your orator; that both of said children of said Dora E. Kastenhuber are infants under the age of twenty-one years. 20

3. That after the death of said Thomas H. N. Wilks, and after the marriage of said Dora E. Wilks to William P. Kastenhuber, the premises above described were sold to the City of Jersey City for unpaid taxes, and such proceedings were had that an order was made by the Circuit Court of Hudson County directing that a deed be delivered to Charles R. Dieffenbach, who was the purchaser at said tax sale, and that thereafter a deed was made by the proper officers of the City of Jersey City to the said Charles R. Dieffenbach purporting to convey the premises in question to the said Charles R. Dieffenbach in fee simple, which said Deed is recorded in Book 1009 of Deeds for Hudson County in the Office of the Register of said County, at page 407. That by 30 40

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reason of the failure to comply with the statutes of the State of New Jersey in such case made and provided and relating to the acquisition of title through tax sale proceedings, the conveyance to the said Charles R. Dieffenbach by the officers of  
10 the City of Jersey City was illegal and invalid and conveyed to him no title or interest for and to the said lands and premises.

4. Your orator further shows, that thereafter the said Charles R. Dieffenbach conveyed the premises in question to William P. Kastenhuber, the husband of the said Dora E. Kastenhuber, and that the said William P. Kastenhuber and the said Dora E. Kastenhuber conveyed the premises in  
20 question for a valuable consideration to James Billington by deed of warranty dated the twenty-ninth day of June, nineteen hundred and ten, and that the said James Billington and his wife in turn conveyed the premises in question to one Ella J. Sullivan by deed of warranty dated the twenty-ninth day of June, nineteen hundred and ten and recorded in the Hudson County Register's Office on the thirtieth day of June, nineteen hundred and  
30 ten in Book 1078 of Deeds for said County at page 91. Your orator charges that the conveyance set forth in this paragraph whereby the fee simple title of the said premises was attempted to be vested in the said Ella J. Sullivan did not legally and effectually convey more than a life estate and that your orator charges that the said Ella J. Sullivan, by reason of the said conveyance, acquired only a right, title and interest in the said premises for the life of the said Dora E. Wilks and vested in the said Ella J. Sullivan only such  
40 interest in the premises as was owned by the said

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Dora E. Kastenhuber under and by virtue of the will of Thomas H. N. Wilks.

5. Your orator further shows that the last mentioned conveyance was made to Ella J. Sullivan at the request of James A. Sullivan, who was the actual purchaser of the said premises and who provided the consideration therefor out of his own moneys, and that the said Ella J. Sullivan has not and never had any beneficial interest in the premises; that the said James A. Sullivan paid as the consideration for the conveyance of the said premises to the said Ella J. Sullivan the sum of Thirty-five Hundred Dollars or some other sum of money. 10

6. Your orator further shows, that on or about the nineteenth day of July, nineteen hundred and ten, the said James A. Sullivan on behalf of himself and as agent for said Ella J. Sullivan having by her been authorized so to do, did enter into an agreement in writing with Bennett Milnor, of the Borough of Manhattan, in the County of New York and State of New York, for the conveyance of the above described premises to the said Bennett Milnor, his heirs or assigns, a copy of which agreement is attached hereto and marked Schedule A and made a part hereof. 20 30

7. Your orator further shows, that said agreement was on the 24th day of August, nineteen hundred and ten, duly acknowledged by said James A. Sullivan, and on the twenty-fifth day of August, nineteen hundred and ten, was recorded in the Office of the Register of the County of Hudson in Book 1063 of Deeds for said County at page 605, etc. 40

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8. Your orator further shows, that thereafter the said Bennett Milnor, by assignment in writing, for a valuable consideration, did set over and assign all of his right, title and interest of, in and to the above mentioned contract to your orator,  
10 Arthur Brisbane, and that thereafter, and on or about the twenty-fourth day of August, nineteen hundred and ten, your orator and the said James A. Sullivan, acting for himself and for the said Ella J. Sullivan, mutually agreed that the time for the closing of the sale under the above mentioned agreement should be extended until Saturday, October first, nineteen hundred and ten, at the same hour and place as mentioned in the agreement; and that on the twenty-ninth day of  
20 September, nineteen hundred and ten, your orator and the said James A. Sullivan, acting for himself and for the said Ella J. Sullivan, further agreed in writing to extend the time for closing of the sale under said agreement until Saturday, October fifteenth, nineteen hundred and ten, at the same hour and place as mentioned in the agreement.

9. Your orator further shows, that on the said  
30 fifteenth day of October, nineteen hundred and ten, at the time and place to which the closing of the sale had been extended by mutual agreement, as aforesaid, your orator, by his duly authorized representative, was present and duly tendered himself ready and willing to pay the consideration provided for in said agreement on his receiving a deed of conveyance as therein provided, but that neither the said Ella J. Sullivan nor the said James A. Sullivan attended at said time and  
40 place, nor did anyone attend for them or either of them.

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10. Your orator further shows, that at all times since the said fifteenth day of October, nineteen hundred and ten, he has been ready and willing to pay the consideration provided in said agreement, and has often requested the said Ella J. Sullivan and James A. Sullivan to convey to him the premises mentioned in said agreement, in accordance with the terms thereof; that the said Ella J. Sullivan and James A. Sullivan have always refused and still refuse to convey to your orator the premises described in said agreement in accordance with the terms thereof. 10

11. And your orator charges that the said Ella J. Sullivan and James A. Sullivan refuse to carry out the agreement of sale entered into as above set forth with intent to deprive your orator of the benefit of such agreement, and that the said James A. Sullivan has since the making of the agreement above mentioned, which was assigned to your orator, entered into an agreement with some other person or persons to convey the premises in question for a sum of money largely in excess of that mentioned in your orator's said agreement. 20

12. And your orator further shows, that he is informed and believes that since said fifteenth day of October, nineteen hundred and ten, at which time the closing of the sale was under the extension of the original agreement to have taken place, said Ella J. Sullivan and James A. Sullivan have collected and still continue to collect the rents from said property and have applied them to their own use. 30

13. And your orator further shows, that he is informed and believes that subsequent to the said 40

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10 fifteenth day of October, nineteen hundred and ten, a fire has occurred upon said premises, and that said Ella J. Sullivan and James A. Sullivan have collected from the fire insurance company which had insured said premises against fire a sum of money which your orator is informed is the sum of Five Hundred Dollars, and have applied said sum of money so collected to their own uses.

20 14. Your orator further shows, that the said William P. Kastenhuber and Dora E. Kastenhuber mortgaged the said lands and premises for the sum of \$2,000.00 to Jennie J. Turner, by indenture dated July second, nineteen hundred and eight, and recorded in Book 647 of Mortgages for Hudson County at page 43, by virtue of which the said Jennie J. Turner claims to have a lien upon the said lands and premises.

30 15. Your orator further shows that on February twenty-eight, nineteen hundred and eleven, and shortly after the final time for the performance of the said contract fixed by the parties thereto, your orator filed a bill of complaint in this court wherein and whereby it was alleged that the contract above mentioned had been made and executed; that your orator had tendered himself ready and willing to perform the said contract; that answer was filed to the said bill of complaint, which, among other things, admitted the making of the aforesaid contract, but alleged that the defendants were not possessed of a title in fee simple and that they could not make a conveyance pursuant to the terms of the said contract; that a reference was ordered to ascertain  
40 the amount due from your orator to the said

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James A. Sullivan and Ella J. Sullivan; that such proceedings were finally had; that a final decree was entered in said court, providing for a conveyance by the said defendants of all of their respective right, title and interest in and to the said premises in consideration of the payment to them of the moneys found to be due and owing to the defendants by the Special Master to whom the accounting aforesaid was referred; that in and by the said decree it was determined that the interest of the said James A. Sullivan and Ella J. Sullivan in the premises is an estate during the lifetime of the said Dora E. Kastenhuber. 10

16. Your orator further shows, that after the making of the said final decree, the said defendants, James A. Sullivan and Ella J. Sullivan, filed a petition of appeal from the said decree in the Court of Errors and Appeals of New Jersey, and said proceedings were had on such appeal—that a final decree was entered in the said Court of Errors and Appeals in and about November, nineteen hundred and sixteen, reversing the decree of the Court of Chancery aforesaid; that the said reversal was made because of the failure of your orator to include as party defendants in the bill of complaint filed by him in this Court, the aforesaid Charles R. Diffenbach, William P. Kastenhuber and James Billington, the persons who executed the mesne conveyances through which the title to the said premises was finally acquired by the said Ella J. Sullivan and Jennie Turner, the holder of a mortgage upon the said land and premises, and also because this Court in making this final decree did not have before it all of the parties who were interested in the determination 20  
30  
40

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as to whether the estate of the said James A. Sullivan and Ella J. Sullivan in the said lands and premises was a fee simple estate or an estate for the life of the said Dora E. Kastenhuber.

10       17. Your orator further shows, that he files this bill of complaint for the purpose of bringing into this Court all of the parties interested in the determination of the quantum of estate held by the said Ella J. Sullivan and James A. Sullivan in the said land and premises, and should it be determined by this Court that the said Ella J. Sullivan and James A. Sullivan hold only a life estate in said lands your orator tenders himself willing to accept such life estate with an abatement of  
20       compensation for the difference in value, if any, between a life estate and a fee simple in said premises.

18. Your orator further shows, that he is engaged in the business of publishing newspapers and that he desires to utilize the land and premises purchased by him from the defendant Ella J. Sullivan for this purpose; that the said real estate is located in that section of the City of Jersey City which is peculiarly and particularly advantageous for the purpose above mentioned.  
30

19. All of which actings and doings of the said Charles B. Dieffenbach, James Billington and Rose Anne Billington, his wife, William P. Kastenhuber and Dora E. Kastenhuber, Ella J. Sullivan and James A. Sullivan, Jennie Turner and the Board of Commissioners of Jersey City or the Mayor and Common Council of the said City, are contrary to equity and good conscience and tend to the manifest wrong, injury and oppression of your orator in the premises.  
40

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IN CONSIDERATION WHEREOF, and forasmuch as your orator is entirely without adequate remedy in the premises according to the strict rules of the Common Law, and can only have adequate relief in a Court of Equity where matters of this nature are properly cognizable and relievable: 10

To the end, therefore, that the said Charles R. Dieffenbach, James Billington and Rose Anne Billington, his wife, William P. Kastenhuber and Dora E. Kastenhuber, Ruth W. Kastenhuber and Grace R. Kastenhuber, children of Dora E. Kastenhuber, Ella J. Sullivan and James A. Sullivan, Jennie Turner and the Board of Commissioners of Jersey City or the Mayor and Common Council of said City, as defendants to this suit, may full, true and perfect answer make (without oath) to 20  
all and singular the matters aforesaid, and that the said Ella J. Sullivan and James A. Sullivan may be decreed to perform specifically the said agreement entered into by and between the said James A. Sullivan as the person thereunto lawfully authorized so to do in behalf of the said Ella J. Sullivan and himself, your orator being ready and willing to perform the said agreement on his part; and that the said Ella J. Sullivan and James A. Sullivan may be required by this Honorable Court to account to your orator for the rental value of said premises during the period in which your orator has been deprived of the possession and enjoyment thereof and for any moneys received by the said Ella J. Sullivan and James A. Sullivan by reason of the fire above mentioned; that the said Ella J. Sullivan and James A. Sullivan may have all just allowances to which they may be in equity entitled; that this Court shall decree to be illegal and invalid any title created in 40

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10 or claimed by the defendants, Charles R. Dieffen-  
bach, James Billington and Rose Anne Billington,  
William P. Kastenhuber and Dora E. Kasten-  
huber, his wife, Ella J. Sullivan and James A.  
Sullivan and the Board of Commissioners of Jer-  
sey City or the Mayor and Common Council of  
said City, based upon the sale of the said land  
and premises to the City of Jersey City for un-  
paid taxes and the proceedings had on such sale  
for unpaid taxes wherein and whereby an order  
was made by the Hudson County Circuit Court di-  
recting a deed to be delivered to the said Charles  
R. Dieffenbach, including also the deed made by  
the proper officers of the City of Jersey City to  
20 the said Charles R. Dieffenbach and recorded in  
Book 1009 of Deeds for Hudson County at page  
47; that the aforesaid conveyances made by the  
said Dieffenbach to the said Kastenhuber and the  
said Kastenhuber to the said Billington and the  
said Billington to the said Ella J. Sullivan, shall  
be decreed by this Court to have conveyed an in-  
terest in the said lands and premises only for the  
life of Dora E. Kastenhuber and that the mort-  
gage of the said Jennie Turner upon the said  
lands and premises to be a lien only for the life  
30 of the said Dora E. Kastenhuber; and that your  
orator may have such other and further relief as  
shall be agreeable to equity and good conscience  
and as the circumstances of the said case may  
require.

MAY IT PLEASE YOUR HONOR, the premises con-  
sidered, to grant unto your orator the State's  
writ of subpoena, issued out of and under the seal  
of this Honorable Court, to be directed to the said  
40 Charles R. Dieffenbach, James Billington and  
Rose Anne Billington, William P. Kastenhuber

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and Dora E. Kastenhuber, his wife, Ella J. Sullivan, and James A. Sullivan, Jennie J. Turner and the Board of Commissioners etc. commanding them and each of them by a certain day and under a certain penalty to be and appear before your Honor in this Honorable Court, then and there to answer all and singular the premises and to stand to, abide and perform such order and decree therein as to your Honor shall seem meet and shall be agreeable to equity and good conscience. 10

And your orator, as in duty bound, will ever pray, etc.

SAUL COHN,  
Solicitor for and of Counsel 20  
with Complainant.

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**Exhibit—(Offered at p. 73, l. 23)—Chancery  
Docket 52/89—Brisbane v. Sullivan.**

**Bill, Filed June 29, 1922.**

52/89

IN CHANCERY OF NEW JERSEY. 30

*To the Honorable Edwin Robert Walker, Chancellor of the State of New Jersey.*

Humbly Complaining, shows unto your Honor, your orator ARTHUR BRISBANE, of the City of New York, in the County of New York and State of New York.

1. That on the eighth day of July, in the year Eighteen Hundred and Eighty Nine, Thomas H. N. Wilks died in the City of Jersey City, in the 40

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County of Hudson, in this State, seized of an estate of inheritance in fee simple of a certain tract of land in the City of Jersey City aforesaid, known as Lot F. in City Block 1865 on Fowler's Official assessment Map of Jersey City, also known  
 10 as No. 11 Wilks Street, Jersey City, being in dimensions twenty-four feet, six inches front and rear by one hundred and nine feet in depth on one side and one hundred and seven feet in depth on the other side; that the said Thomas H. N. Wilks left a last Will and Testament bearing date the twenty eighth day of June, Eighteen Hundred and eighty nine, which said will was admitted probate by the Surrogate of the County of Hudson in this  
 20 State on the nineteenth day of July, eighteen hundred and eighty nine, and is recorded in Book 24 of Wills in the office of said Surrogate on pages 413-417, to which said will and the record thereof your orator begs leave to refer if it be necessary so to do. That the testator in and by his said will devised the above described premises to his adopted daughter, Dora E. Wilks, for her natural life, and at her death to the heirs of her body born in lawful wedlock, and if there be no such issue, then the above described premises are devised to  
 30 the testator's brother, Aquilla Wilks, if living, and if not living at the time of the death of said Dora E. Wilks, to his heirs at law living at the time of the death of said Dora.

2. That subsequent to the death of said Thomas H. N. Wilks, his adopted daughter, Dora E. Wilks, was married to William P. Kastenhuber, and is now the wife of said William P. Kastenhuber; that since her marriage to the said William P. Kastenhuber said Dora E. Kastenhuber has become the  
 40 mother of two children born in lawful wedlock,

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the oldest of whom is named Ruth, the name of the other child being unknown to your orator; that both of said children of said Dora E. Kastenhuber are infants under the age of twenty-one years. That the said Dora Kastenhuber is still alive.

10

3. That after the death of said Thomas H. N. Wilks and after the marriage of the said Dora E. Wilks to William P. Kastenhuber, the premises above described were sold to the City of Jersey City for unpaid taxes, and such proceedings were had that an order was made by the Circuit Court of Hudson County directing that a deed be delivered to Charles R. Diefenbach, who was the purchaser at such tax sale, and that thereafter a deed was made by the proper officers of the City of Jersey City to the said Charles R. Diefenbach purporting to convey the premises in question to the said Charles R. Diefenbach in fee simple, which said deed is recorded in Book 1009 of deeds for Hudson County in the office of the Register of said county, at page 407. That by reason of the failure to comply with the statutes of the State of New Jersey in such case made and provided and relating to the acquisition of title through tax sale proceedings, the conveyance to the said Charles R. Diefenbach, by the officers of the City of Jersey City was illegal and invalid and conveyed to him no title or interest in and to the said lands and premises.

20

30

4. Your orator further shows, that thereafter the said Charles R. Diefenbach conveyed the premises in question to William P. Kastenhuber, the husband of the said Dora E. Kastenhuber, and that the said William P. Kastenhuber and the said

40

*Exhibit—(Offered at p. 73, l. 23)—Chancery  
Docket 52/89—Brisbane v. Sullivan.*

Dora E. Kastenhuber conveyed the premises in question for a valuable consideration to James Billington by deed of warranty dated the twenty-ninth day of June, Nineteen Hundred and ten, and that the said James Billington and his wife  
10 in turn conveyed the premises in question to one Ella J. Sullivan by deed of warranty dated the twenty-ninth day of June, nineteen hundred and ten, and recorded in the Hudson County Register's Office on the thirtieth day of June, Nineteen Hundred and ten, in Book 1078 of deeds for said county, at page 91. Your orator charges that the conveyance set forth in this paragraph whereby the fee simple title of the said premises was attempted to be vested in the said Ella J. Sullivan,  
20 did not legally and effectually convey more than a life estate and that your orator charges that the said Ella J. Sullivan, by reason of the said conveyance, acquired only a right, title and interest in the said premises for the life of the said Dora E. Kastenhuber, and vested in the said Ella J. Sullivan only such interest in the premises as was owned by the said Dora E. Kastenhuber under and by virtue of the will of Thomas H. N. Wilks.

5. Your orator further shows, that the last  
30 mentioned conveyance was made to Ella J. Sullivan at the request of James A. Sullivan, who was the actual purchaser of the premises and who provided the consideration therefor out of his own moneys, and that the said Ella J. Sullivan has not and never had any beneficial interest in the premises; that the said James A. Sullivan paid as the consideration for the conveyance of said premises to the said Ella J. Sullivan the sum of Thirty  
40 five Hundred Dollars or some other sum of money.

*Exhibit—(Offered at p. 73, l. 23)—Chancery  
Docket 52/89—Brisbane v. Sullivan.*

6. Your orator further shows, that on or about the nineteenth day of July, Nineteen Hundred and ten, the said James A. Sullivan, on behalf of himself and as agent of said Ella J. Sullivan, having by her been authorized so to do, did enter into an agreement in writing with Bennett Milnor, of the Borough of Manhattan, in the County of New York and State of New York, for the conveyance of the above described premises to the said Bennett Milnor, his heirs or assigns, a copy of which agreement is attached hereto and marked Schedule "A" and made a part hereof. 10

7. Your orator further shows, that said agreement was on the twenty fourth day of August, nineteen Hundred and ten, duly acknowledged by said James A. Sullivan and on the twenty fifth day of August, Nineteen Hundred and Ten, was recorded in the office of the Register of the County of Hudson in Book 1063 of Deeds for said County, on page 605, etc. 20

8. Your orator further shows, that thereafter the said Bennett Milnor, by assignment in writing, for a valuable consideration, did set over and assign all of his right, title and interest of, in and to the above mentioned contract to your orator, Arthur Brisbane, and that thereafter, and on or about the twenty-fourth day of August, Nineteen Hundred and ten, your orator and the said James A. Sullivan, acting for himself and for the said Ella J. Sullivan, mutually agreed that the time for the closing of the sale under the above mentioned agreement should be extended until Saturday, October first, Nineteen Hundred and ten, at the same hour and place as mentioned in the agreement; and that on the twenty ninth day of Sep- 30 40

*Exhibit—(Offered at p. 73, l. 23)—Chancery  
Docket 52/89—Brisbane v. Sullivan.*

10 tember, Nineteen Hundred and ten your orator and the said James A. Sullivan, acting for himself and for the said Ella J. Sullivan, further agreed in writing to extend the time for the closing of the sale under said agreement until Saturday, October fifteenth, Nineteen Hundred and ten, at the same hour and place as mentioned in the agreement.

20 9. Your orator further shows that on the said fifteenth day of October, Nineteen hundred and ten, at the time and place to which the closing of the sale has been extended by mutual agreement as aforesaid, your orator, by his duly authorized representative, was present and tendered himself ready and willing to pay the consideration provided for in said agreement on his receiving a deed of conveyance as therein provided; but that neither the said Ella J. Sullivan nor the said James A. Sullivan attended at said time and place, nor did any one attend for them or either of them.

30 10. Your orator further shows that at all times since the said fifteenth day of October, nineteen hundred and ten, he has been ready and willing to pay the consideration provided in said agreement, and has often requested the said Ella J. Sullivan and James A. Sullivan to convey to him the premises mentioned in said agreement, in accordance with the terms thereof, but that the said Ella J. Sullivan and James A. Sullivan, have always refused and still refuse to convey to your orator the premises described in said agreement in accordance with the terms thereof.

40 11. And your orator charges that the said Ella J. Sullivan and James A. Sullivan refuse to carry

*Exhibit—(Offered at p. 73, l. 23)—Chancery  
Docket 52/89—Brisbane v. Sullivan.*

out the agreement of sale entered into as above set forth with intent to deprive your orator of the benefit of such agreement, and that the said James A. Sullivan has since the making of the agreement above mentioned, which was assigned to your orator, entered into an agreement with some other person or persons to convey the premises in question for a sum of money largely in excess of that mentioned in your orator's said agreement. 10

12. And your orator further shows that he is informed and believes that since said fifteenth day of October, 1910, at which time the closing of the sale was under the extension of said original agreement to have taken place, said Ella J. Sullivan and said James A. Sullivan have collected and still continue to collect the rents from said property and have applied them to their own use. 20

13. And your orator further shows that he is informed and believes that subsequent to said fifteenth day of October 1910, a fire has occurred upon said premises, and that said Ella J. Sullivan and James A. Sullivan have collected from the fire insurance company which had insured said premises against fire a sum of money which your orator is informed is the sum of Five Hundred Dollars, and have applied said sum of money so collected to their own uses. 30

14. Your orator further shows, that the said William P. Kastenhuber and Dora E. Kastenhuber mortgaged the said lands and premises for the sum of \$2,000.00, to Jennie J. Turner by Indenture dated July 2nd, 1908 and recorded in Book 647 of mortgages for Hudson County at page 43, by virtue of which the said Jennie J. Turner claims to have a line upon the said lands and premises. 40

*Exhibit—(Offered at p. 73, l. 23)—Chancery  
Docket 52/89—Brisbane v. Sullivan.*

15. Your orator further shows that on February 28th, 1911, and shortly after the final time for the performance of the said contract fixed by the parties thereto, your orator filed a bill of complaint in this Court wherein and whereby it was  
10 alleged that the contract above mentioned had been made and executed; that your orator had tendered himself ready and willing to perform the said contract; that answer was filed to the said bill of complaint, which, among other things, admitted the making of the aforesaid contract, but alleged that the defendants were not possessed of  
a title in fee simple and that they could not make a conveyance pursuant to the terms of the said contract; that a reference was ordered to ascertain  
20 the amount due from your orator to the said James A. Sullivan and Ella J. Sullivan; that such proceedings were finally had, that a final decree was entered in said court providing for a conveyance by the said defendants of all their respective right, title and interest in and to the said premises in consideration of the payment to them of the moneys found to be due and owing to the defendants by the Special Master to whom the accounting aforesaid was referred; that in and  
30 by the said decree, it was determined that the interest of the said James A. Sullivan and Ella J. Sullivan in the premises is an estate during the lifetime of the said Dora E. Kastenhuber.

16. Your orator further shows that after the making of the said final decree, the said defendants, James A. Sullivan and Ella J. Sullivan filed a petition of appeal from the said decree in the Court of Errors and Appeals of New Jersey and such proceedings were had on said appeal, that a  
40 final decree was entered in the said Court of

*Exhibit—(Offered at p. 73, l. 23)—Chancery  
Docket 52/89—Brisbane v. Sullivan.*

Errors and Appeals in and about November 1916, reversing the decree of the Court of Chancery aforesaid; that the said reversal was made because of the failure of your orator to include as party defendants in the bill of complaint filed by him in this court, the aforesaid Charles R. Deiffenbach, William P. Kastenhuber and James Billington, the persons who executed the mesne conveyances through which the title to the said premises was finally acquired by the said Ella J. Sullivan and Jennie Turner, the holder of a mortgage upon the said lands and premises, and also because this court in making this final decree did not have before it all of the parties who were interested in the determination as to whether the estate of the said James A. Sullivan and Ella J. Sullivan in the lands and premises was a fee simple estate or an estate for the life of the said Dora E. Kastenhuber.

17. Thereafter your orator instituted a suit in this Court for the purpose of bringing into this Court all of the parties interested in the determination of the quantum of estate held by the said James A. Sullivan and Ella J. Sullivan in the said lands and premises, and such proceedings were had in the said suit that the Court of Chancery of New Jersey on or about March 29th, 1922, dismissed, the said bill on the ground that the parties of the said suit, other than the said James A. Sullivan and Ella J. Sullivan, could not be made parties thereto and for other reasons mentioned and set forth in the determination of the said Court.

17½. Your orator further shows that the time intervening between the making of said contract

*Exhibit—(Offered at p. 73, l. 23)—Chancery  
Docket 52/89—Brisbane v. Sullivan.*

and the present time, has been consumed in the prosecution of remedies which your orator has been advised by counsel to institute for the purpose of procuring a determination of the terms of the said contract.

10

18. Your orator further shows that he has tendered to the said James A. Sullivan and Ella J. Sullivan the entire purchase price set forth in the said contract of sale and has agreed to accept from them a conveyance of all such right, title and interest as they may have in and to the premises in question, and have offered to regard such conveyance as a complete performance by the said James A. Sullivan and contract, and that notwithstanding the repeated requests of the said complainant for such conveyance and for a performance of the terms of the contract in the manner herein mentioned, the said James A. Sullivan and Ella J. Sullivan have refused to comply with the said agreement in the manner herein set forth.

20

19. Your orator further shows that he is engaged in the business of publishing newspapers and that he desires to utilize the lands and premises purchased by him from the defendants Ella J. Sullivan and James A. Sullivan for this purpose; that the said real estate is located in that section of the City of Jersey City which is peculiarly and particularly advantageous for the purposes above mentioned.

30

20. All of which actings and doings of the said Ella J. Sullivan and James A. Sullivan are contrary to equity and good conscience and tend to the manifest wrong, injury and oppression of your orator in the premises.

40

*Exhibit—(Offered at p. 73, l. 23)—Chancery  
Docket 52/89—Brisbane v. Sullivan.*

IN CONSIDERATION WHEREOF, and forasmuch as your orator is entirely without adequate remedy in the premises according to the strict rules of the common law and can only have adequate relief in a court of equity where matters of this nature are properly cognizable and relievable: 10

To the end, therefore, that the said Ella J. Sullivan and James A. Sullivan, as defendants to this suit, may full, true and perfect answer make (without oath) to all and singular the matters aforesaid, and that the said Ella J. Sullivan and James A. Sullivan may be decreed to perform specifically the said agreement entered into by and between the said James A. Sullivan as the person thereunto lawfully authorized so to do in behalf of the said Ella J. Sullivan and himself, your orator being ready and willing to perform the said agreement on his part; and that the said Ella J. Sullivan and James A. Sullivan may be required by this Honorable Court to account to your orator for the rental value of the said premises during the period in which your orator has been deprived of the possession and enjoyment thereof and for any moneys received by the said Ella J. Sullivan and James A. Sullivan by reason of the fire above mentioned; that the said Ella J. Sullivan and James J. Sullivan may have all just allowances to which they may be in equity entitled; and that your orator may have such other and further relief as shall be agreeable to equity and good conscience and as the circumstances of the said case may be required. 20 30

May it please your Honor, the premises considered, to grant unto your orator the State's writ of subpoena, issuing out of and under the seal of this Honorable Court, to be directed to the said 40

*Exhibit—(Offered at p. 73, l. 23)—Chancery  
Docket 52/89—Brisbane v. Sullivan.*

10 Ella J. Sullivan and James A. Sullivan, commanding them and each of them by a certain day under a certain penalty to be and appear before your Honor in this Honorable Court, then and there to answer all and singular the premises and to stand to, abide by and perform such order and decree therein as to your Honor shall seem meet and shall be agreeable to equity and good conscience.

And your orator, as in duty bound, will ever pray, etc.

SAUL COHN,  
Solicitor for and of Counsel  
with Complainant.

20

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Clerk.  
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**Exhibit—(Admitted p. 73, l. 20)—Deed of  
City of Jersey City to C. R. Dieffenbach.**

30 TO ALL TO WHOM THESE PRESENTS SHALL COME, I,  
ROBERT DAVIS, City Collection of the Mayor and  
Aldermen of Jersey City, a Municipal Corpora-  
tion, in the County of Hudson, and State of New  
Jersey, send

GREETING

WHEREAS, pursuant to Section XIII of an Act  
of the Legislature of New Jersey, passed March  
30th, 1886, entitled:

40 "An Act concerning the settlement and col-  
lection of arrearages of unpaid taxes, assessments  
and water-rates, or water rents in cities of this  
state, and imposing and levying a tax, assessment  
and lien in lieu and instead of such arrearages,  
and to enforce the payment thereof, and to pro-

*Exhibit—(Admitted p. 73, l. 20)—Deed of City  
of Jersey City to C. R. Dieffenbach.*

vide for the sale of lands subjected to future taxation and assessment," and the Supplements and Acts amendatory thereof, the said City Collector, by resolution adopted by the Board of Finance of said City, was directed and empowered to forthwith advertise and sell in the manner provided by the said Act and the Supplements and Amendments thereto, all lands and real estate in the Ninth Ward of Jersey City, whereon the taxes and assessments have remained unpaid for the space of two years from the date of confirmation of said taxes and assessments as appear on Schedule number 24-a (Sale number 13774) and which taxes and assessments have not been adjusted by the Commissioners of Adjustment, appointed under and in pursuance of said Act.

AND WHEREAS, more than two years have elapsed from and after the time when the taxes and assessments became due and payable as will appear on said schedule,

AND WHEREAS, after giving notice by advertisement as in said Act required, the said City Collector did on the fifth day of June, A. D. 1906, make sale at public auction to the highest bidder for the same, to wit: to

C. R. DIEFFENBACH

all of the following described lands and premises, to wit:

Lot F

in Block Eighteen hundred and sixty five—sixty seven (1865/67) Fronting on Wilks Street.

In the Ninth Ward of Jersey City, New Jersey, as shown on the "Official Assessment Map of Jersey City, N. J. 1894, made by L. D. Fowler,

*Exhibit—(Admitted p. 73, l. 20)—Deed of City  
of Jersey City to C. R. Dieffenbach.*

Civil Engineer and Surveyor," for the sum of  
One Hundred ninety four and 22/100 (\$194.22)  
Dollars, being a sum not less than the amount  
due from the same as appeared by said Schedule,  
with interest and costs; of which sale, the said  
10 City Collector did execute and deliver to the said  
purchaser a certificate setting forth the particu-  
lars thereof and containing a covenant on the  
part of the said City, to refund to said purchaser,  
or assigns, the said amount paid for said lands  
and premises according to the directions of said  
Act, without interest in case the title to the same  
should prove invalid, and whereas Ruth W. Kas-  
tenhuber, Anabel Taylor, Marjorie Taylor, Anita  
20 Davis, Paul Davis, Helen Coyle, Edith Coyle, Bur-  
ton Coyle, Clayton Coyle, Isabel Wanmaker,  
John Francis Wanmaker, Lloyd B. Smith, George  
E. Smith, Emma B. Smith and Selwyn Smith,  
some of the persons having an interest in said  
lands are infants under the age of twenty one  
years. And whereas the Circuit Court of the  
County of Hudson on petition, notice, hearing,  
inquiry and proceedings as in the statute pro-  
vided did on the twelfth day of June, nineteen  
hundred and eight, make order that this deed be  
30 made and delivered to said purchaser C. R. Dief-  
fenbach, his heirs or assigns, conveying unto him,  
his heirs or assigns all the said lands including  
all the interest or estate therein or lien thereon  
belonging to said infants

AND WHEREAS, said certificate of sale has been  
surrendered to me

AND WHEREAS, more than one year has expired  
since the time of sale and no person has redeemed  
40 said lands and premises in the manner set forth  
in said Act, nor in any manner,

*Exhibit—(Admitted p. 73, l. 20)—Deed of City  
of Jersey City to C. R. Dieffenbach.*

Now KNOW YE, That I, the said ROBERT DAVIS,  
City Collector of the Mayor and Aldermen of Jer-  
sey City, under and by virtue of the said Acts of  
the Legislature, and upon proceedings which have  
been taken under the authority of the same, and  
for and in consideration of the said sum of money, 10  
for which said lands and premises were sold, the  
receipt whereof is hereby acknowledged, have  
granted, bargained, sold, assigned, transferred,  
conveyed and confirmed, and by these presents  
do grant, bargain, sell, assign, transfer, convey  
and confirm unto the said

C. R. DIEFFENBACH, his  
heirs and assigns forever, the above described  
lands and premises with the appurtenances 20

To HAVE AND TO HOLD the same unto the said  
C. R. DIEFFENBACH, his heirs and assigns to his  
and their own proper use, benefit and behoof for-  
ever, in as full, ample and beneficial a manner as  
by virtue of the said Acts, and the proceedings  
had and taken in pursuance thereof, I may, can or  
ought to convey the same, freed and discharged  
of and from all manner of encumbrance whatso-  
ever, except water rents thereon due and unpaid,  
and taxes, assessments levied subsequent to De-  
cember 20th, 1902, and all assessments levied 30  
thereon subsequent to April 13, 1899 and to all  
prospective benefits or main sewers or main  
branch sewers not as yet a lien against said lot.

It is however expressly stipulated that the  
amount of recovery on the foregoing covenant or  
covenants, or any of them, shall not exceed the  
amount of the consideration money herein ex-  
pressed.

IN WITNESS WHEREOF, I, Robert Davis, the City 40  
Collector as aforesaid, have hereunto set my hand,

*Exhibit—(Admitted p. 73, l. 20)—Deed of City  
of Jersey City to C. R. Dieffenbach.*

and I, Michael I. Fagan, Clerk of said City, have  
hereunto affixed the corporate seal of said City  
and attested the same the 27th day of June A. D.  
nineteen hundred and eight.

10

ROBERT DAVIS (L. S.)  
City Collector.

Attest: MICHAEL I. FAGAN  
City Clerk.

Seal

(Corporation of  
Jersey City)

20

30

40

*Exhibit—(Admitted p. 73, l. 20)—Deed of City  
of Jersey City to C. R. Dieffenbach.*

STATE OF NEW JERSEY }  
COUNTY OF HUDSON } ss

BE IT REMEMBERED, that on this 29th day of  
June, in the year of our Lord, One thousand nine 10  
hundred and eight, before me, the subscriber, a  
Com of Deeds, for New Jersey, personally ap-  
peared Michael I. Fagan, who being duly sworn  
according to law on his oath says, that he is (and  
who is known to me to be) the City Clerk of the  
Mayor and Aldermen of Jersey City, and he says  
that Robert Davis is the City Collector of said  
City; that deponent knows the corporate seal of  
said City; that the seal affixed to the foregoing 20  
deed is such corporate seal; that he saw the said  
Robert Davis sign, seal and deliver the said deed,  
and heard him acknowledge that he signed, sealed  
and delivered the same as the voluntary act and  
deed of said City, for the uses and purposes  
therein expressed, and that deponent at the same  
time affixed the corporate seal of said City thereto,  
and attested the same, and subscribed his name  
to said deed as witness.

Sworn and subscribed at Jersey  
City, this 29th day of June 30  
A. D. 1908, before me

E. A. VREELAND  
Commissioner of Deeds for New Jersey.

*Exhibit—(Admitted p. 73, l. 20)—Deed of City  
of Jersey City to C. R. Dieffenbach.*

ENDORSED:

10                                 ROBERT DAVIS, Collector  
  of the  
  City of Jersey City, N. J.  
  to  
  C. R. DIEFFENBACH

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DEED FOR LANDS

20                                 Sold pursuant to Sec. 13, of the Laws of  
  1886, and the Supplements and Amend-  
  ments thereto.

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Recorded in "Records of Sales" Page  
307

And indexed under County Block No. 790.

M. I. FAGAN  
City Clerk

30                                 Received in the office of the Register of  
  the County of Hudson N. J., the 14th  
  day of July, A. D. 1908 at 12.59 o'clock  
  P. M. and recorded in Book 1009 of deeds,  
  on pages 407

JAMES C. CLARKE,  
Register.

40

**Exhibit—(Admitted p. 73 l. 20)—Deed of  
C. R. Dieffenbach to Wm. P. Kastenhuber.**

THIS INDENTURE, made the twenty-ninth day of June, in the year one thousand nine hundred and eight,

BETWEEN C. RUDOLPH DIEFFENBACH, of Jersey City, in the County of Hudson and State of New Jersey, party of the first part; and 10

WILLIAM P. KASTENHUBER, of Jersey City, in the County of Hudson and State of New Jersey, party of the second part, WITNESSETH, that the said party of the first part, for and in consideration of the sum of One dollar and other valuable considerations, lawful money of the United States of America to him in hand paid by the said party of the second part, at or before the 20  
ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, and the said party of the second part, his heirs, executors and administrators, forever released and discharged from the same by these presents has granted, bargained, sold, aliened, remised, released, conveyed and confirmed, and by these presents Does grant, bargain, sell, alien, remise, release, convey and confirm unto the said party of the second part, and to his heirs and assigns, 30  
forever, ALL that certain lot, piece or parcel of land and premises, situate, lying and being in the City of Jersey City, in the County of Hudson aforesaid, known as Lot F, Block number One thousand eight hundred and sixty-five (1865), as shown on the Official Assessment Map of Jersey City, New Jersey, made by L. D. Fowler, Civil Engineer and Surveyor, 1894, fronting on the westerly side of Wilks Street. 40

*Exhibit—(Admitted p. 73, l. 20)—Deed of C. R. Dieffenbach to Wm. P. Kastenhuber.*

10 TOGETHER with all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof. AND also, all the estate, right, title, interest, property, possession, claim and demand whatsoever, as well in law as in equity, of the said party of the first part, of, in or to the above described premises and every part and parcel thereof, with the appurtenances, To have and to hold all and singular the above mentioned and described premises, together with the appurtenances, unto the said party of the second part, his heirs and assigns, to his and their own proper use, benefit and behoof forever.

20

IN WITNESS WHEREOF, The said party of the first part has hereunto set his hand and seal the day and year first above written.

C. RUDOLPH DIEFFENBACH.

Signed, Sealed and Delivered }  
in the presence of }

JOHN J. MULVANEY.

30

40

*Exhibit—(Admitted p. 73, l. 20)—Deed of C. R. Dieffenbach to Wm. P. Kastenhuber.*

STATE OF NEW JERSEY }  
HUDSON COUNTY } ss.:

BE IT REMEMBERED, That on this twenty ninth day of June, in the year one thousand nine hundred and eight, before me the subscriber, a Master in Chancery of New Jersey, personally appeared C. Rudolph Dieffenbach, who, I am satisfied, is the grantor in the within Indenture named; and I having first made known to him the contents thereof, he did acknowledge that he signed, sealed and delivered the same as his voluntary act and deed, for the uses and purposes therein expressed. 10

JOHN J. MULVANEY,  
Master in Chancery  
of New Jersey. 20

30

40

*Exhibit—(Admitted p. 73, l. 20)—Deed of C. R.  
Dieffenbach to Wm. P. Kastenhuber.*

ENDORSED:

DEED

10

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C. RUDOLPH DIEFFENBACH  
TO  
WILLIAM P. KASTENHUBER

---

Dated June 29th, 1908

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20

Received in the Office of the Register of the  
County of Hudson, N. J. on the 14th day of July,  
A. D. 1908, at 12.59 o'clock, P. M. and recorded  
in Book 1009 of Deeds for said County, page  
406 &c.

JAMES C. CLARKE,  
Register.

30

Indexed under County Block No. 790.

40

71  
72

**New Jersey Court of Errors and Appeals**

OCTOBER TERM, A. D. 1930,

ON APPEAL FROM THE COURT OF CHANCERY.

Between:

ARTHUR BRISBANE,  
Complainant-Appellee,

*and*

JAMES A. SULLIVAN and ELLA J.  
SULLIVAN,  
Defendants-Appellants.

On Bill for  
Specific  
Performance.

IN THE MATTER

*of*

The Application of the MAYOR AND  
ALDERMEN OF JERSEY CITY to acquire  
certain property of the Evening  
Journal Association, a corporation  
of the State of New Jersey, and  
others, for the purpose of widening  
Bergen Avenue, and the establish-  
ment of a plaza to accommodate and  
relieve congestion of traffic in the  
neighborhood of the Summit Ave-  
nue Tube Station in the City of  
Jersey City.

On Petition of  
James A. Sullivan  
and  
Ella J. Sullivan  
for Payment of  
Condemnation  
Award.

**BRIEF FOR APPELLANT RANDOLPH  
PERKINS.**

**Facts.**

This appellant is the assignee in the assign-  
ment by James A. Sullivan of the latter's inter-  
est, to the extent of \$9,000.00 in the fund of con-  
demnation moneys paid by the City of Jersey City  
into the Court of Chancery.

The assignment appears in the printed case at p. 245.

The assignment was admitted in evidence at p. 125 as Ex. CA-2.

In the Sullivan petition for the surplus moneys, the petitioners state the making of the assignment (Case, p. 15, l. 24, *et seq.*).

### POINT.

**The Court below erred in decreeing: "that Randolph Perkins is not entitled under the assignment to him, set out in said proceedings, to any part of said fund," etc. (Case, p. 58, l. 27).**

This appellant relies in the main controversy of his assignor as against Arthur Brisbane on the brief submitted in behalf of appellants James A. Sullivan and Ella J. Sullivan.

We point out, however, with reference to the particular question of the assignment that the action of the Court below in rejecting it is not only contrary to law, but to logic as well.

Sullivan to the extent of \$9,000.00 had assigned to the present appellant his interest in the fund. The Court did not find or decree that Sullivan was entirely without an interest in the fund. For it is adjudged that there be paid:

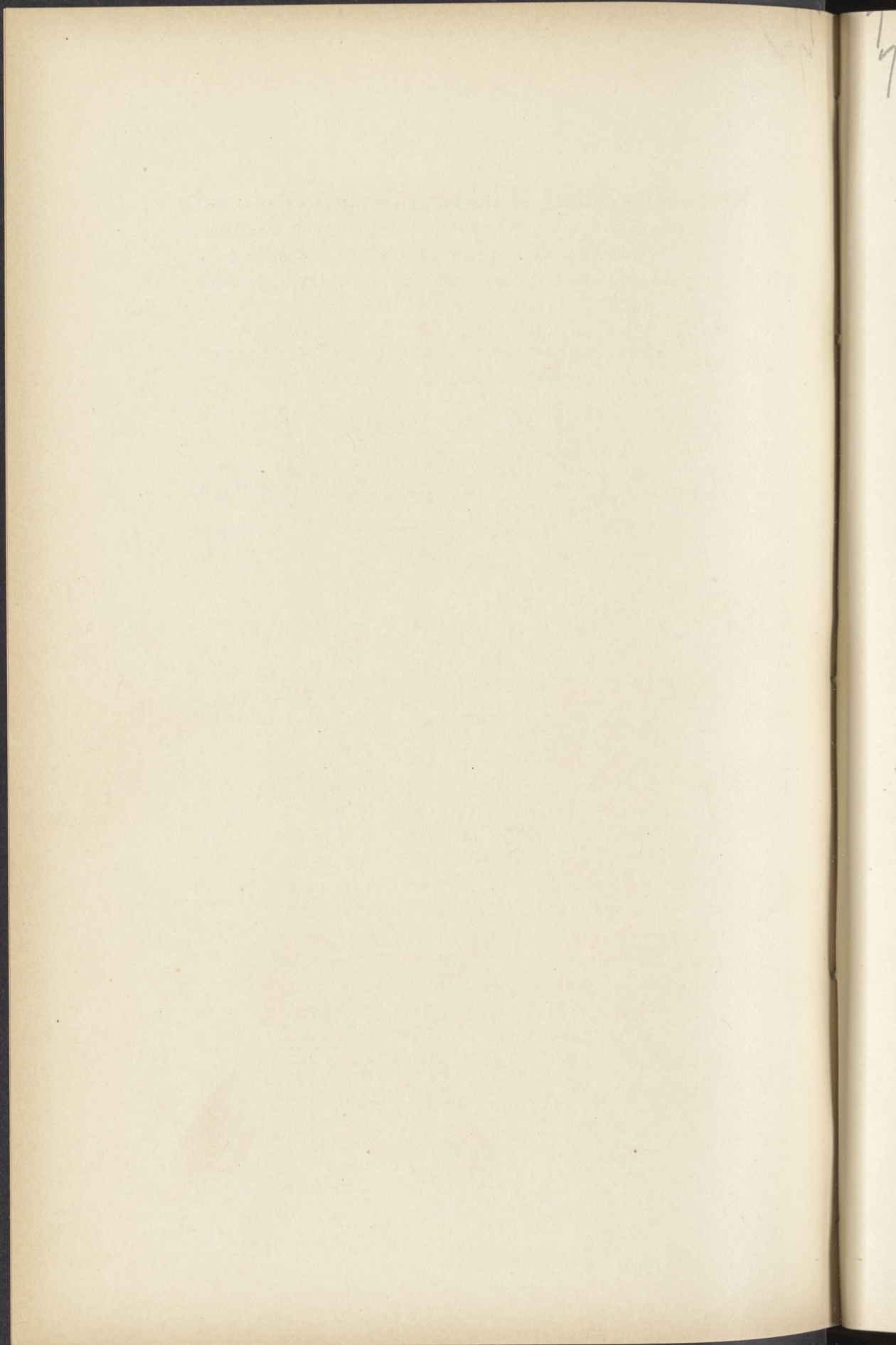
"To James A. Sullivan and Ella J. Sullivan out of the amount (from the fund) so due to the said Arthur Brisbane such sum as John F. Gough, Master in Chancery to whom the matter is hereby referred, may find to be due said James A. Sullivan and Ella J. Sullivan under the contract dated July 19, 1910, aforesaid" (Case, p. 59, l. 38, *et seq.*).

As a matter of simple reasoning the Court had no right to decree that the assignment was ineffective as against the fund, and at the same time adjudge that the assignor had an interest in such fund.

The entire decree of the Court of Chancery should be reversed and set aside.

Respectfully submitted,

PERKINS & DREWEN,  
Counsel for Appellant Randolph Perkins.



## New Jersey Court of Errors and Appeals

JAMES A. SULLIVAN and ELLA J.  
SULLIVAN,

*Appellants,*

*vs.*

ARTHUR BRISBANE,

*Respondent.*

*In the Matter  
of the  
Application  
of the Mayor  
and Alder-  
men of Jersey  
City to Ac-  
quire Certain  
Property for  
the Purpose  
of Widening  
Bergen  
Avenue, etc.*

*On Appeal  
from Decree  
in Chancery.*

### **BRIEF FOR ARTHUR BRISBANE, Respondent.**

This is an appeal from a decree of the Court of Chancery advised by Vice-Chancellor Fallon (p. 55) adjudging among other things that the Clerk in Chancery pay, after certain deductions, to the respondent, Arthur Brisbane, interest at six per cent. on the sum of \$54,145 from March 19, 1923, to September 13, 1924, certain accumulations of interest upon said sum; (and the real issue) the income "arising from the investment by the Clerk of the Court of Chancery of \$51,306.81, be paid semi-annually to the said Arthur Brisbane, his executors, administrators and assigns, for and during the life of Dora E. Kastenhuber," and upon her death the principal of said fund to be at that time dealt with by the Court.

The appellants from this part of the decree are Randolph Perkins, James A. Sullivan and Ella J. Sullivan.

The fund in the Court of Chancery whose disposition is made by the decree herein, was the proceeds of condemnation proceedings commenced by the City of Jersey City on December 16, 1922, by its petition filed with the Clerk of the County of Hudson, alleging the necessity of condemning certain lands in that city for the widening of Bergen avenue. Commissioners in condemnation awarded the sum of \$40,621, from which award an appeal was taken by persons interested, to the Circuit Court, with the result that the value of the property was fixed by the jury at \$54,145.00, and subsequently the City filed its petition in the Court of Chancery alleging these facts, and praying leave to pay the amount of said verdict into court, alleging that James A. Sullivan, Arthur Brisbane, Dora E. Kastenhuber, William P. Kastenhuber, Grace Kastenhuber, Aquila Wilks, and Randolph Perkins and John J. Treacy and John Milton, partners under the name of Treacy & Milton, have, or claim to have an interest therein. By an order dated the 13th of September, 1924, the City of Jersey City was directed to pay to the Clerk in Chancery the said sum of \$54,145, together with interest, pursuant to which the said sum was later paid by the City to the Clerk of the Court of Chancery, pursuant to the provisions of the 8th section of the Eminent Domain Act, and due notice thereof given to all the parties above named. In due course, James A. and Ella J. Sullivan filed their petition in the Court of Chancery (p. 11) in which they averred that they had assigned a \$9,000 interest in the said sum to Randolph Perkins, and to Treacy & Milton an interest amounting to \$2,683.84 therein,

and that with the exception of those two amounts, they were entitled to the whole balance of the moneys paid into court, and praying an order that the Clerk of the Court be directed to pay the moneys as thus claimed. Arthur Brisbane had previously filed his claim to said fund in the cause, and later filed, in response to the claim of the Sullivans, his so-called answer and counter-claim (p. 17) setting up certain facts hereinafter alluded to, and praying that the Court of Chancery would decree that the rights of said Ella J. Sullivan and James A. Sullivan in the award have devolved upon him, and that whatever interest the Sullivans had therein, belonged to him, and asking the Court to ascertain and determine what sum is due to the Sullivans and what part of the said award should be paid to him, and that the respective rights of the parties to the award may be determined. Several hearings were had in this matter before Vice-Chancellor Griffin, in which the proceedings were enlarged by the addition of the infant children of Mr. and Mrs. Kastenhuber and others as parties, and after this had been done, and counsel (Judge Sullivan) assigned by the Court to represent the infants, the matter was ripe and came on for final hearing before Vice-Chancellor Griffin on May 27, 1926 (p. 63). Proofs were offered and oral argument had before Vice-Chancellor Griffin, who died before he had determined the case, and so the matter was, upon briefs submitted on behalf of all concerned, decided by Vice-Chancellor Fallon from the decree in which, advised by him, the appeal here is taken.

From these proofs it indubitably appeared that on July 8, 1889, the lands that had been thus condemned belonged to one Thomas H. N. Wilks. On that day he died leaving a will by which he de-

vised the said land to Dora E. Wilks for the term of her natural life, and at her death to the heirs of her body born of lawful wedlock, with a devise over in case of failure of issue (p. 203). Dora E. Wilks subsequently married William P. Kastenhuber, and she became the mother of the two infant children above referred to, represented in this proceeding by Judge Sullivan.

Mrs. Kastenhuber, the life tenant of the property, allowed the taxes assessed by the City against the premises to remain unpaid, and they were thereupon sold, under the Martin Act, and by direction of the Circuit Court of Hudson County, a deed therefor was delivered to Charles R. Dieffenbach, the purchaser at the tax sale. He subsequently conveyed the property to William P. Kastenhuber, the husband of the life tenant, who, with his wife joined in a conveyance to James Billington (p. 191) who in turn conveyed the same to Ella J. Sullivan (p. 197), who took title concededly not for herself, but for her brother James A. Sullivan, who advanced the purchase money.

Each of the foregoing conveyances were warranty deeds in fee simple, the parties all supposing that the conveyance under the Martin Act had cut off the rights of the infants in the premises, and that the Sullivans owned the fee of the property.

On July 19, 1910, James A. Sullivan (p. 178) entered into an agreement to sell the said property to one Bennett Milnor, for the sum of \$4,800 (p. 178) by deed of warranty, to be delivered on or before the first of September then next ensuing free from all encumbrances except a mortgage of \$2,000 held by one Jennie Turner. Milnor acted for Brisbane in this contract, and subsequently assigned to him his rights thereunder.

After the contract had been executed, an examination of the title disclosed that there were certain defects therein, the most serious of which was that the proceedings taken by virtue of the Martin Act had been irregular and in no way affected the interest in remainder of the Kastenhuber children under the will of Mr. Wilks. The Court below held that by the terms of the Wilks will (p. 45), the infants took a vested remainder in fee in the premises under the doctrine of *Demarest v. Hopper*, 22 N. J. Law 599; that the proceedings taken under the Martin Act, being admittedly irregular, did not bind these infants; that it was the duty of the life tenant to have paid the taxes upon the property, and that, therefore, the Sullivans only acquired, by virtue of the deeds referred to, an interest in the property for the life of Dora E. Kastenhuber (nee Wilks), and hence that their effort to convey to Perkins and Treacy & Milton portions of the corpus were ineffectual, and that Brisbane, by virtue of the contract of the Sullivans to convey to him the property, became entitled to the interest of the Sullivans therein, subject, of course, to the payment of the balance of the consideration money named in the agreement, and other minor adjustments.

This conclusion was evidently and eminently fair and proper.

Now what happens when property is taken by right of eminent domain? The value of the land as such, without regard to the number or character of interests in or claimants to the same, is ascertained, and the condemning party, by virtue of the eighth section of the Act, upon paying the money—the ascertained value of the *res*—into court, and citing all persons interested, takes possession of the property and the several claims of

the different persons are, *ipso facto* transferred to the fund which has now become a substitute for the *res*; and this is so whether the claimants were or were not parties to the condemnation proceeding. *Case v. Mayor of Boonton* (E. & A.) 112 Atlantic Reporter 882; *In re Sleeper*, 62 N. J. Equity 67; *Platt v. Bright*, 4 Stewart Equity 81, 5 *Id.* 362.

The object of the eighth section of the Eminent Domain Act was to afford at once a quick and efficient method by which (a) the condemning party can acquire, upon making full compensation, the land desired, and (b) every possible claimant, or all holders thereof, may be heard by the Court with reference thereto, and their rights in the substituted fund ascertained and declared. None of the peculiarities of remedies otherwise available by such lien holders apply. Thus in the case of *In re Sleeper*, 62 N. J. Equity 67, Vice-Chancellor Pitney held that the fund paid into court under such conditions was subject to depletion for municipal taxes, and that they could be deducted from the fund upon the application of the municipality, and the latter would not be sent to its statutory remedy of selling the land for the payment of the taxes.

In *Manhattan Railway Co. v. Meighan*, 175 N. Y. Supplement, the Appellate Division of the New York Supreme Court held that while a person may not have such a title to property as would under his contract entitle him to a decree of specific performance, yet he would be entitled to compensation for the value of his interest in proceedings for the taking of his property by eminent domain.

The Court in proceedings of that character will protect and listen to the rights of everybody.

*McIntyre v. Easton and Amboy Railroad Co.*, 26 N. J. Equity 425.

Included in the above is a vendee under a contract for sale, or a purchaser under an executory contract of sale. 15 *Cyc.* 797; *Stevenson v. Loehr*, 57 Ill. 507; *Pinkerton v. Boston*, 109 Mass. 57; *Stokes v. Parker*, 83 N. J. Law 183; *Bailey v. Osborn*, 80 N. J. Law 333.

In *Herr v. Board of Education of Newark*, 82 N. J. Law 610, this Court held that a person claiming a right in premises being condemned by reason of restrictive covenants in his favor, may appeal from an award of the commissioners.

There can be no question that under the contract of the Sullivans to convey to Milnor, and assigned to Brisbane, the latter, as between the parties, became the equitable owner of Sullivans' title, and trustee for the Sullivans of the purchase money agreed to be paid. *Crawford v. Bertholf*, 1 N. J. Equity 458; *People's Water Company v. Millville*, 95 N. J. Equity 732.

It is therefore confidently asserted that the decree below awarding that Brisbane is entitled by virtue of his contract to the Sullivans' interest—(*i. e.*, an estate for the life of Dora E. Kastenhuber)—in this fund, who, of course, can only be entitled thereto by paying the balance of the purchase money due under the contract, was entirely correct.

But it is claimed by Perkins and the Sullivans both, in their pleading (p. 29, l. 10; p. 36, l. 20) and in their brief, that Brisbane has no right, title or interest in the award deposited in this Court; that he is barred by his alleged *laches*; that he is shut out by the doctrine of *res adjudicata* and that generally his conduct has been such as to disentitle him to the fund.

There is no claim of *laches* or of *res adjudicata* by, or in any step or failure to act in this particular proceeding. In fact, the record discloses that ever since the payment of the amount of the verdict into the Court of Chancery, Mr. Brisbane has aggressively, energetically and unceasingly asserted his right to the fund the Court below awarded him.

Great stress is laid upon the fact that for a period of over ten years Brisbane has been a complainant in the Court of Chancery in several bills in which he sought to compel the specific performance of his contract with Sullivan.

At the outset it should be noted that the underlying fallacy in the contention of our adversaries is their failure to realize that the present proceeding is not grounded upon a bill for specific performance, but an entirely new proceeding initiated by the City of Jersey City which had condemned the *locus in quo*, and pursuant to the provisions of the statute, had paid the money into Court because of its inability to determine to whom it should be paid, citing everybody interested to present their respective claims to the fund. This proceeding naturally put an end to the then pending suit for specific performance. Indeed, as the record will disclose, a day had been set for the final hearing of the issue raised in that suit, but as soon as these proceedings were brought to the attention of Vice-Chancellor Griffin, initiated as they were by the City, and not by the parties in interest in the specific performance suit, he revoked the assignment of the day for the hearing, stating that there was no longer occasion to pursue that suit.

In a proceeding of this character in which the condemning party practically calls upon all per-

sons claiming an interest to the fund to interplead with reference to it, the several claimants are called upon for the first time to assert their claims, legal or equitable, to the fund or any part thereof. None of them is an *actor* in the case. And each occupies the same position as do defendants in an interpleader suit. None of them in this proceeding sought the Court of Chancery, but each was brought there, and as against the other, in whole or in part, is asserting a claim, either legal or equitable, as the case may be. *Hunter v. Suderski*, 171 Ill. Appeal 529.

We claim, therefore, that the position of Brisbane in this proceeding is not that of complainant in a suit for specific performance, and that the doctrines applicable to such suits, have no relevancy here.

However, let us examine what has transpired in this protracted litigation concerning this property. As already indicated, the Sullivans by agreement (p. 178) made the 19th of July 1910, agreed to sell the premises in fee simple, by warranty deed, to Milnor, who in turn immediately assigned his rights under that agreement to Brisbane (p. 181). An examination of the title to the property disclosed some defects as to which the parties, through their attorneys, had correspondence, and no adjustment being reached, Brisbane filed his original bill (p. 259) on the 28th of February 1911, against the Sullivans, seeking specific performance of the contract. To this bill the Sullivans filed an answer setting up that they, at the time of the making of the contract, were ignorant of the defects in the title which had been discovered, and claiming that under the circumstances specific performance was impossible, and should not be decreed. Ap-

plication was then made by Brisbane for leave to amend his bill, which, by order dated the 19th of December 1911, was granted (p. 272), in which Brisbane expressed a willingness to accept such title as the Sullivans were able to convey, and asked for a conveyance of that title, with an abatement of the purchase price provided for in the contract of such an amount as under the circumstances the interest of the Sullivans should be shown to be worth. A demurrer by the Sullivans to this bill was sustained, on apparently technical grounds, by order dated October 22, 1912, with leave specially given to the complainant further to amend his bill (pp. 303, 304). This amended bill, which was filed on the 22nd of October 1912 (p. 304), still sought specific performance of the contract and enlarged the allegations of its immediate predecessor by reference to fire insurance moneys, etc., and to this bill the Sullivans filed an answer (p. 314) denying that the complainant was, under the circumstances, entitled to the peculiar relief of specific performance, because he filed his bill with full knowledge of the fact that the title was defective, and under such circumstances was not entitled to specific performance, but should be left to any other remedy he had.

The issues thus raised, came on for hearing before Vice-Chancellor Howell, whose opinion is reported in 83 N. J. Equity at 182. He, after stating the facts very much as they have been hereinabove set out, held that Brisbane was entitled to his relief upon the principle that a vendor having agreed that he would make a good title and finding it impossible so to do, must, at the call of the vendee, convey what interest he has, and receive the purchase money, less an abatement thereof equal to the value of the

interest not conveyed. Citing *Farrell v. Bork*, 79 Atlantic Reporter 897, affirmed in this Court 76 N. J. Equity 615.

He reached the conclusion that Brisbane was entitled to a decree; that the Sullivans should convey whatever interest they had as life tenants during the life of Mrs. Kastenhuber, upon the payment, after ascertainment of the value of the Kastenhuber life estate and deducting the same from the total purchase money, which will leave the sum to be allowed for compensation. An appeal was in due course taken from that decision to this Court, resulting in a reversal, this Court, which was divided, speaking through Mr. Justice Bergen, 86 N. J. Equity 411. The opinion says, after reciting the facts:

“The estate is reduced from a fee simple to one for life, subject to a mortgage given to cover the fee simple, without affording the mortgagee a hearing, and the vendor is required to abate the contract price upon the theory that he has only a life estate from his vendor who conveyed to him a fee simple with full covenants subject to the mortgage. If it should be hereafter held, in a direct proceeding by the remaindermen to recover the land after the termination of the life estate, that the tax sale was regular and passed the fee to Dieffenbach, then the complainant would, under this decree, have the entire estate, and the defendants be deprived of their property, without compensation. Nor, in an action at law by defendants against their grantor for a breach of the covenant in his deed, would their grantor be estopped by this decree from showing the regularity of the tax sale and that he had a perfect title when he conveyed.”

The opinion then refers to *Page v. Martin*, 46 N. J. Equity 585, which held that relief in cases of specific performance rests not upon what the

Court must do, but rather in view of all the circumstances what it ought to do, and it then proceeds:

“In the case under review, the defendant Sullivan, supposing in good faith that he had a title in fee simple, subject to a mortgage of \$2,000, agreed, in writing to convey such a title, and the purchaser, claiming that the title was defective because of imperfections alleged to exist in the tax sale proceedings, at first refused to accept the title until the defect was removed, but, this not being done, he filed his bill for the specific performance of a contract which he knew when the bill was filed could not be performed in a material part if his claim concerning the tax sale was correct, and, under a prayer for general relief asked for and obtained a decree that the vendor should convey through his trustee, who is a defendant, all his interest, whatever it may be, with an abatement of the consideration price based upon the inefficacy of the tax sale deed, which is not set aside by the decree, and cannot be for want of proper parties. If this substituted contract be enforced, Sullivan will be deprived of his property for an inadequate price if, when he sues his vendor for breach of his covenants, such vendor demonstrates the legality of the tax sale.

The doubt concerning the defendant's title might be sufficient to refuse him relief if he were seeking performance, for his vendee is not bound to take a doubtful or unmarketable title, nor to buy a law suit and he would only lose the benefit of his bargain by the refusal of performance by the vendee, but in the present case, the court cannot do equity between all the parties, which is the matter with which the court is chiefly concerned in giving relief in cases of this character. It cannot estop the complainant from maintaining the perfection of the tax title if assailed by the remaindermen, nor can it protect the defendant from a like condi-

tion should he proceed against his grantor for damages for breach of his covenant, neither can it restrain the mortgagee from maintaining that the mortgage encumbers the entire estate and that it is not limited to a life estate. The wrong that the defendant suffers is that by this substituted contract he is required to convey his property for a price fixed with reference to an estate which may be hereafter, in a direct proceeding between proper parties, established to be greater than that upon which it is based, thus allowing complainant to acquire an estate for which he has paid no compensation to the injury of the defendants. We are of opinion that under the circumstances present in this case we cannot do equity to all of the parties by decreeing specific performance of the substituted contract with compensation. There is nothing in this case which shows that the complainant requires this property for any special or unusual reason, which would put this case out of the ordinary class in which this special relief is sought, or that his legal remedy is insufficient.

The result which we have reached makes it unnecessary to consider the question, so earnestly argued by the appellant, whether the complainant can have specific performance with compensation when he knows, before he files his bill, of the alleged imperfections in title, and which, if true, prevents vendor from performance, and no opinion is expressed on this question."

This opinion relies on the inequity, without a final determination as to the sufficiency or insufficiency of the tax proceedings, of requiring the Sullivans to convey their title without full compensation in the event that the tax proceedings in some future litigation should be held to have been regular, and thereby confirm the fee simple title in the Sullivans. The opinion is further careful to point out that no unusual reason has been shown why the complainant required

this particular property "or that his legal remedy is insufficient."

Brisbane then filed a new bill of complaint (p. 323) in which he sought to meet the exigencies pointed out in the opinion of Mr. Justice Bergen, showing (p. 330, l. 31)

"That he files this bill of complaint for the purpose of bringing into this Court all the parties interested in the determination of the quantum of estate held by the said Ella J. Sullivan and James A. Sullivan in the said land and premises."

To this bill there were, besides the two Sullivans, named as parties, Dieffenbach, the Billingtons and the Kastenhubers. The bill further showed that Brisbane

"is engaged in the business of publishing newspapers and that he desires to utilize the land and premises purchased by him from the defendant, Ella J. Sullivan for this purpose; that the said real estate is located in that section of the City of Jersey City which is peculiarly and particularly advantageous for the purpose above mentioned."

An amendment to this bill was, by permission, later filed (p. 334) setting up the same facts contained in the bill last referred to, and the further fact that Sullivan had, since the making of his agreement with Milnor, entered into an agreement with some other person to convey the premises in question for a sum largely in excess of that mentioned in the agreement, and adding that if it is decided that Sullivan has only a life estate, that the complainant is willing to accept such life estate, with abatement for the difference in value, if any, between the life estate and the fee simple. This bill was duly answered, and the suit came on for final hearing before VICE-CHANCELLOR GRIFFIN on the 8th of March 1922, whose opinion dismissing the bill is re-

ported in 93 Equity at page 578. After stating the circumstances, the Vice-Chancellor concluded that this bill could not stand because there were parties named in it other than those to the contract sought to be enforced; and that eliminating those parties, the bill was left in the same condition as that in which this Court condemned it. He called further attention to the fact that that part of the prayer of the bill which sought to adjudicate touching the tax sale was improper, as not within equitable relief, and he concluded that as the final determination of the regularity of the tax title was necessary to the determination as to the quantum of the estate owned by the Sullivans, there was a call "for a determination by some court of competent jurisdiction as to the quantum of the estate possessed by the Sullivans; and as above indicated, this court is without jurisdiction to determine this question."

This decision was on the 28th of March 1922, and on the 29th of June thereafter (p. 345) Brisbane filed his final bill still seeking specific performance, in which, after alleging the facts, he showed that by the previous bill of complaint he had brought into court all the parties interested in the title; that the Court had decided such parties to be improper; that the time between the making of the contract and the present had been consumed in the prosecution of remedies which the complainant was advised to seek. He tendered the defendants the entire purchase price and agreed to accept from them all the title they had, and offered to regard such a conveyance as a complete performance of the contract. In other words, Brisbane in this bill for the first time expressly offered to pay the full consideration named in the contract for such title as the Sullivans were able to convey. This

attitude relieved him of the embarrassment shown by the opinion of the Court of Errors on the one hand, and of the criticism made by Vice-Chancellor Griffin of his later bill, and would undoubtedly have required of the Sullivans the performance of their contract, and, of course, would have embarrassed them, if the allegation of the bill that they had in the meantime agreed to convey the property to a third person, should turn out to be true.

At the time this bill was filed, Brisbane was entirely ignorant of the project of the City of Jersey City, manifested six months afterwards, to acquire the property for the purpose of widening Bergen avenue. The position taken by Brisbane in this bill was entirely new. Never before had it been suggested by anyone that he was bound to pay the full consideration for the partial interest. The assertion to the contrary of this in the brief of counsel for the Sullivans is an error. An examination of the several answers filed by them will disclose that they consistently and wholly relied upon the claim that as Brisbane knew of the defects in the title before he started his proceedings for the specific performance of the contract, he was not entitled to any relief, a question that this Court, at the end of the opinion of Mr. Justice Bergen expressly stated it was unnecessary for it to decide. The Sullivans, however, still bent upon defeating Brisbane's rights under the contract, answered this bill as before stated, and a day had been set for the hearing when the City commenced the condemnation proceedings.

## I.

**The Defense of Laches.**

The foregoing history shows, first, that Brisbane during this long period of time has been unceasingly vigilant in the assertion of his rights, and in an endeavor to adopt himself to the views of the courts, as expressed in the several opinions. If this present proceeding were only for specific performance, which it is not, the defense of laches could not properly be interposed, for during the past ten years, Brisbane has been arduously asserting his rights under the contract, and endeavoring to overcome the defenses that the Sullivans were interposing. 21 *Corpus Juris* 242; 16 *Cyc.* 175; *Comins v. Culver*, 35 N. J. Equity 748; *State vs Bayonne*, 3 Atl. Rep. 123; *Henninger v. Heald*, 51 N. J. Equity 74; *Frevert v. Bayonne*, 63 N. J. Law 202; *Russell v. Russell*, 129 Federal Reporter 434.

## II.

**The Defense of Res Adjudicata.**

It is claimed that the decree advised by Vice-Chancellor Griffin, for the reasons stated in 93 N. J. Equity 578, is *res adjudicata* against the assertion by Brisbane of his claim to this fund in this proceeding. This claim is without foundation.

All that was decided, either by this Court in the first case, or by Vice-Chancellor Griffin in the other one, is that a suit for specific performance would not lie under the circumstances and when an abatement of the purchase money was sought. MR. JUSTICE BERGEN, in his opinion, is careful to point out that "there is nothing in this case which shows that the complainant requires this prop-

erty for any special or unusual reason which would put this case out of the ordinary class in which this special relief is sought, *or that his legal remedy is insufficient.*" This Court plainly did not indicate that Brisbane had no rights whatever under his contract, and that he could not assert this right in some other court, or some other proceeding. So when VICE-CHANCELLOR GRIFFIN concluded that the presence of the persons in that suit, who were not parties to the contract, was a fault in suits for specific performance which required their elimination, and that the Court of Chancery in such a proceeding was without power to determine the regularity of tax proceedings, he concluded that these facts indicated that only a bill for specific performance would not lie, and that the case "calls for a determination by some court of competent jurisdiction as to the quantum of the estate possessed by the Sullivans." Surely, should Brisbane have sued the Sullivans for damages in an action at law, none of these decisions would have stood in his way. By the same token, when the City condemned the property, paying the proceeds into court and summoning all parties to assert their right to and interest in the fund, an entirely new aspect was presented, and Brisbane's interest could in that proceeding be measured, the tax title determined, and every interest disposed of without any of the technique which narrows the right of a complainant in the distinctive and peculiar suit in equity for specific performance, which, up to the commencement by the City of these proceedings, has been heretofore his stumbling block. Brisbane certainly obtained some rights by his contract with Sullivan. What has happened to deprive him thereof?

Those portions (pp. 30-31) of the Brief for the Sullivans, that refer to the alleged hardship

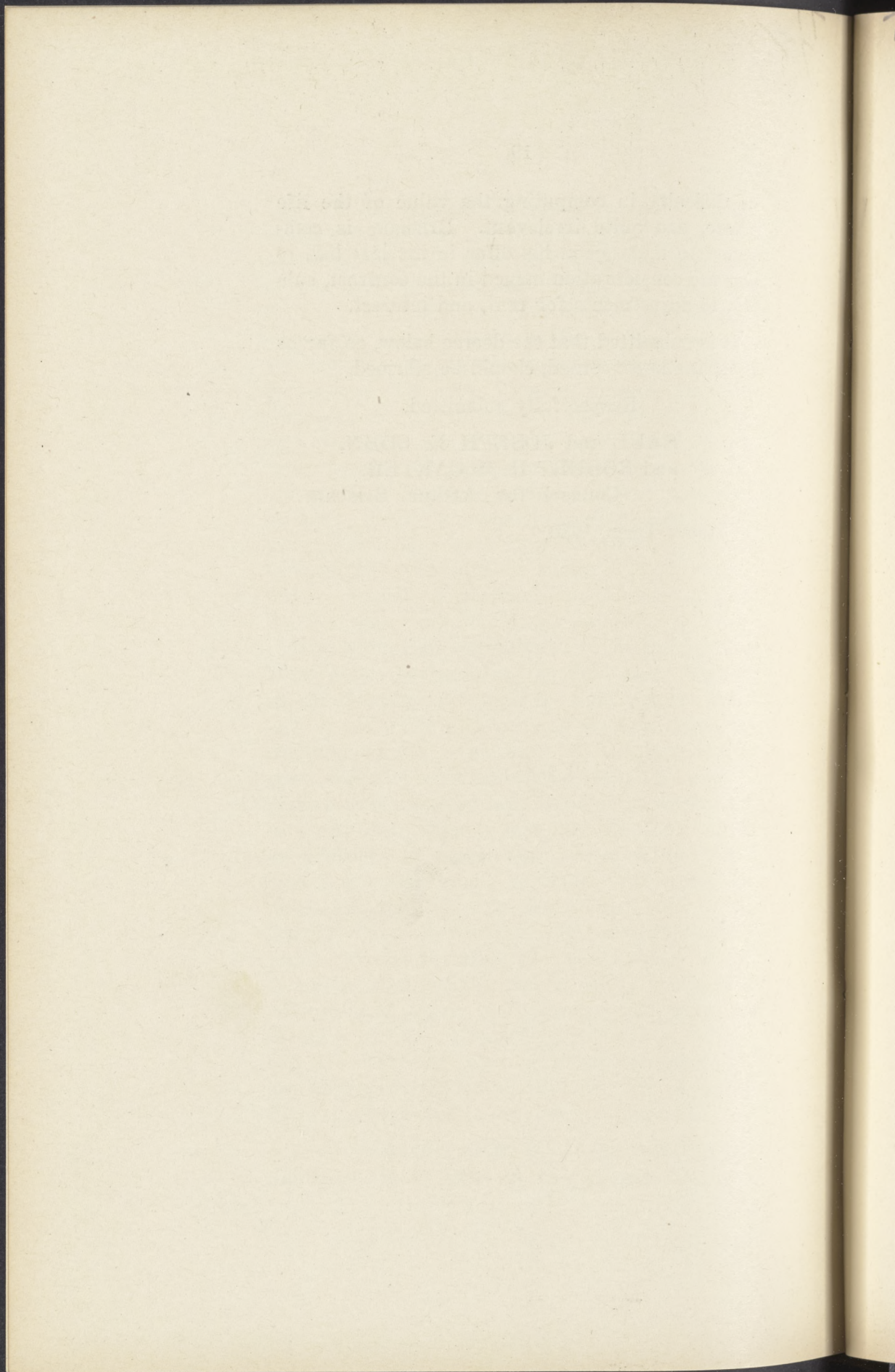
or difficulty in computing the value of the life estate, are quite irrelevant. Brisbane is compelled to make good his offer in his last bill, to pay the consideration named in the contract, subject to adjustments for rent, and interest.

It is submitted that the decree below, so far as Brisbane is concerned, should be affirmed.

Respectfully submitted,

SAUL and JOSEPH E. COHN,  
and ROBERT H. McCARTER,  
Counsel for Arthur Brisbane.

October Term, 1930.



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## New Jersey Court of Errors and Appeals

OCTOBER TERM, A. D. 1930.

ON APPEAL FROM THE COURT OF CHANCERY.

IN THE MATTER

*of*

The Application of the MAYOR  
AND ALDERMEN OF JERSEY CITY,  
to acquire certain property for  
the purpose of widening Bergen  
Avenue, &c.

On Petition of  
James A. Sullivan  
and  
Ella J. Sullivan  
for Payment of  
Condemnation  
Award.

### BRIEF OF RESPONDENTS, GRACE R. KASTEN- HUBER AND RUTH W. YOUMAN.

This is an appeal from the Order of the Chancellor (Fallon, V. C.) made in a proceeding for the distribution of certain moneys paid into the Court of Chancery by the City of Jersey City under the provisions of Section 8 of the Eminent Domain Act (2 C. S. 2185).

These respondents have no interest in the dispute between the Appellants and Arthur Brisbane and consequently make no argument or reply to Part I of Appellants' Brief or the brief of Brisbane. We are only concerned in showing to the Court that whatever their rights, singly or collectively, such rights can amount to no more than an interest in the fund in Court equivalent to a life estate in the premises in question, during the life of Dora E. Kastenhuber.

### The Facts.

In 1889 the premises in question were owned in fee simple by Thomas Wilks, who died testate in that year. Under the terms of his Will (State of Case, p. 203) said premises were devised to the testator's adopted daughter, Dora, for and during the term of her natural life and at her death to the heirs of her body born in lawful wedlock with a devise over in case of failure of such issue.

Dora married one William P. Kastenhuber in the year 1901 and two children were born to them, Ruth Kastenhuber who was born February 18th, 1904, and Grace Kastenhuber who was born November 20th, 1907. Both of the aforesaid children are living and are the Respondents herein on whose behalf this brief is filed.

After her marriage Dora lived with her husband William P. Kastenhuber in the premises in question until the house became out of repair and they then rented it out to tenants at a small rental. They allowed the taxes to remain unpaid until finally the City advertised the same for unpaid taxes. William P. Kastenhuber, the husband of Dora Kastenhuber, the life tenant, and the father of the remaindermen, then requested one Charles R. Dieffenbach to buy the property at the tax sale for Kastenhuber (p. 77, lines 8-20; p. 82, lines 22-30). This was done (p. 79, lines 33-40; p. 80, lines 18-21) and proceedings were taken in the purchaser's name to perfect the tax title under such sale. These proceedings were conducted by John Mulvaney, an Attorney at Law of this State, ostensibly for the purchaser Dieffenbach, but really for the life tenant and her husband (p. 77, lines 32-35; p. 78, lines 1-18; p. 84, lines 22-30; p. 110, lines 33-40; p. 111, lines 1-25). Notices to redeem were apparently served upon, among others, Dora E. Kastenhuber, the life tenant,

William P. Kastenhuber her husband and Ruth Kastenhuber, their infant child, then three years old, by giving to the said Dora E. Kastenhuber three true copies of such notice at their residence 11 Wilks Street, Jersey City, the premises in question (p. 255, lines 15-23). No redemption being made, of course designedly, application was apparently made to the Circuit Court of Hudson County on a petition signed and verified by Mulvaney for an order for a deed as against certain infants named in said petition. The petition is undated but was verified May 15th, 1908 (pp. 247-249) and an order was made thereon directing a deed to issue, which order is dated June 12th, 1908 (pp. 250, 251). Grace Kastenhuber was born November 20th, 1907, so that at the time of the presenting of the petition to the Court she was between six and seven months old, nevertheless, although the real actor in the proceeding was her father or her mother or both, she is not mentioned therein as an infant having rights in the premises in question. She was, of course, with her sister Ruth, then seized of a vested remainder in fee. *Demarest v. Hopper*, 22 N. J. L. 599.

In apparent conformity with the order of the Hudson Circuit Court a deed was executed and delivered by the City of Jersey City to Charles R. Dieffenbach for the premises in question, which deed is dated June 27th, 1908, and was acknowledged June 29th, 1908 (pp. 356-362). This deed shows on its face that it does not convey the interest of Grace Kastenhuber in such lands. Indeed it does not purport to convey such interest. Charles R. Dieffenbach immediately by deed dated and acknowledged June 29th, 1908 conveyed the premises in question to William P. Kastenhuber (pp. 363-366) and both deeds were recorded simultaneously. The premises in question were subsequently conveyed by William P. Kastenhuber and

Dora, his wife, to James Billington by deed dated April 13th, 1910 and by James Billington and wife to Ella J. Sullivan by deed dated June 29th, 1910, both last mentioned deeds being in form full covenant and warranty deeds (pp. 191-202). The Sullivans then contracted to convey the premises in question to Arthur Brisbane and such contract not being carried out, Brisbane instituted a suit for specific performance. The City of Jersey City subsequently condemned the premises in question and paid the award into the Court of Chancery in conformity with Section 8 of the Eminent Domain Act (2 C. S. 2185). The Sullivans then filed a petition asking that the whole fund be paid to them. To this petition an answer and counterclaim was filed by Arthur Brisbane, and the Sullivans then filed a replication and answer to the Brisbane counterclaim. The matter then came on for a hearing and upon the Court learning that no answer had been filed and no appearance made for these respondents, the Court directed counsel herein to represent them. Answers were then filed for these respondents setting up that they were entitled to an interest in remainder in the fund in Court. And so it was, among other things, decreed. The appeal here before the Court is from that decree.

### ARGUMENT.

These respondents maintain:

A. That the life tenant, Dora E. Kastenhuber, and her husband, William P. Kastenhuber, secured no greater estate in the premises in question by reason of the tax proceedings and the deed that culminated them, than they had before such proceedings were taken.

B. That the life tenant Dora E. Kastenhuber and her husband, William P. Kastenhuber, perpetrated either an actual fraud or a legal fraud upon their children, these respondents, in securing from the City of Jersey City a tax deed for the premises in question and that therefore the title of these respondents as remaindermen was not divested by such deed.

C. That irrespective of the fraud the tax deed conveyed no interest or estate of respondent Grace Kastenhuber.

D. That irrespective of the fraud the tax deed conveyed no interest or estate of respondent, Ruth Youman.

E. That any prospective purchaser examining the record would have ascertained the facts or be put on inquiry as to the good faith of the whole tax transaction and that such inquiry would have disclosed the fraud or the nugatory character of the tax proceedings.

#### POINT A.

**The life tenant Dora E. Kastenhuber and her husband William P. Kastenhuber secured no greater estate in the premises in question by reason of the tax proceedings and the deed that culminated them than they had before such proceedings were taken.**

It was the duty of Dora E. Kastenhuber, as life tenant, to pay the taxes and other municipal liens on the premises in question, as they accrued.

*Martin v. Kimball*, 86 N. J. E. 10; *Affd.*  
86 N. J. E. 432;

*Jonas v. Hunt*, 40 N. J. E. 660, at p. 662;

*Pratt v. Douglas*, 38 N. J. E. 516, at p. 542;

*Cadmus v. Combes*, 37 N. J. E. 264, at p. 266.

A tenant for life cannot purchase at a tax sale or acquire an interest adverse to the reversioner or remainderman by obtaining an assignment of the tax title.

37 Cyc. 1348, Section 5.

A tax deed to one permitted by the life tenant to purchase at a tax sale has no greater effect against remaindermen than a tax receipt.

*Newport v. Hatton*, 195 Cal. 132; 231, p. 987.

The principle is universal that a purchase at a tax sale by one whose duty it was to pay the taxes shall operate only as an extinguishment. One man can acquire no rights against another by a neglect of a duty which he owes to the other.

*Cooley on Taxation*, 346;

*Foley v. Kirk*, 33 N. J. E. 170, at p. 178 (top).

It being the duty of the holder of the life estate to pay the taxes, he cannot, as against the remainderman, acquire a title derived from a sale of the lands for the payment of taxes.

17 A. L. R. 1399, Section VII, and cases cited thereunder.

“One whose duty it is to keep the taxes paid cannot as against those who had a right to rely on his performance of such duty, successfully assert a title originating in his dereliction of duty.”

*U. S. vs. Elliott*, 164 U. S. 373.

“A person in possession of land at the time that assessment of taxes is made is precluded from acquiring a tax title where a sale is made for the collection of such tax.”

*Ballance v. Forsyth*, 13 How. 18.

A person who is disqualified from purchasing land at a tax sale, either by reason of his relation to the title, his duty to the owner or his character as a public officer, will not be allowed to acquire a valid title to such land indirectly by procuring another person to figure as the ostensible purchaser at the sale and then taking an assignment of the certificate or deed from such person on refunding him the money expended.

*37 Cyc.* 1354, Section 13, and cases cited.

Where a husband and wife reside upon a tract of land in which the wife has a life estate, the husband enjoying the rents and profits thereof, he acquires no interest in the land by omitting to pay the taxes and thereafter purchasing from the tax title holder; but the transaction results only in a redemption from the tax sale.

*Peck v. Ayres*, 79 Kan. 457;

*37 Cyc.* 1350, note 56;

*Grand v. Burton*, 26 S. D. 52; 127 N. W. 480;

*Fuller v. Edens* (W. Va.), 73 S. E. 821.

It is a general rule that neither husband nor wife can purchase the other's land at a tax sale.

*37 Cyc.* 1350, Section 7, and cases cited.

When, therefore, William P. Kastenhuber, the father of the infant remaindermen and the husband of the life tenant, purchased the premises in question at the tax sale, through Dieffenbach, it amounted to nothing more than a payment of the taxes upon the property.

## POINT B.

**The life tenant Dora E. Kastenhuber and her husband, William P. Kastenhuber, perpetrated either an actual fraud or a legal fraud upon their children, these respondents, in securing from the City of Jersey City a tax deed for the premises in question and that therefore the title to these respondents as remaindermen was not divested by such deed.**

Although the purchaser at the tax sale was Charles R. Dieffenbach and all proceedings subsequent to the sale looking towards the securing of a deed were taken in his name, the proof is plenary that he was acting for William P. Kastenhuber, the husband of the life tenant, with her knowledge and approval (p. 77, lines 9-20; p. 80, lines 18-21; p. 82, lines 18-25; p. 84, lines 20-30; p. 110, lines 30-40). In this posture of affairs notices to redeem were served upon William P. Kastenhuber and Dora Kastenhuber, and Ruth, their child, being then but three years old, the notice addressed to such infant was served upon the mother, all of such services being made at the premises in question (p. 255, lines 15-23). Such service of itself of course perpetrated a fraud upon those entitled to an estate in remainder, whether vested or contingent, for it implied that a stranger to the title was perfecting his tax lien against the life tenant, when in fact it was the life tenant herself who was seeking not to cut off her life interest but to amplify it into a fee simple by misrepresentation. Even more glaring was the fraud committed on Ruth Kastenhuber by such service. Her own parents through a third person were serving notice on themselves as her natural guardians ostensibly to protect her when the

whole purport of the proceedings was to take away her estate in the premises in question for their own benefit.

Subsequently, when under the law it became necessary to secure from the Circuit Court an order for a deed to convey the interest of any infants that might have an estate in said premises, although Grace Kastenhuber was at that time some six or seven months old and as set out above had a vested interest in remainder in the premises, no mention of her was made in the petition to the Court or in the order founded upon such petition. Keeping in mind that such application to the Court, although made in the name of Dieffenbach, was really by the parents of this infant, who thereby attempted to cut off her estate in remainder for their own benefit, it is apparent that such action was a fraudulent one.

Indeed the whole application to the Court in the matter was fraudulent in that the Court was not apprised of the real situation, *i. e.* that Dieffenbach instead of being a bona fide purchaser at the tax sale, was merely the agent of the life tenant and her husband. Had the Court been informed of these facts, undoubtedly no order for the conveyance of the infants' interest would have been made.

### POINT C.

**Irrespective of the fraud the tax deed conveyed no interest or estate of respondent Grace Kastenhuber.**

The deed from Jersey City to Dieffenbach (pp. 356-362) contains a recital (p. 358) of the names of the infants whose estates in the premises in question are to be conveyed and the name of Grace

Kastenhuber does not appear among them. She was at that time some seven months old. The deed was based on the order of the Hudson Circuit Court recited therein dated June 12th, 1908, fifteen days before the date of the deed and the application to the Court, for such order, although not dated was verified May 15th, 1908, at which time Grace Kastenhuber was six months old. She with her sister Ruth at that time had a vested remainder in the premises in question. She is not mentioned anywhere in the proceedings to perfect the tax title. How then has her vested remainder been cut off? The case is quite similar to *Nugent v. Lindsley*, 100 N. J. E. 87 at p. 90 where the Court says:

“But the complainant does not attack the proceedings on which the deed is founded. His position is that it is admitted and the comptroller’s deed shows on its face that the complainant’s grantor was not served with notice to redeem, and, therefore, the deed is invalid as a conveyance of her interest. Notice and default are indispensable conditions to the divestiture of title by deed under the tax sale. The comptroller’s deed operates as a bar only upon owners who have been served in the manner required by the act with notice to redeem, and who have defaulted. As to those not served, the deed is ineffective, and as to them the purchaser at the tax sale has but a tax lien which may be redeemed. The deed may be likened to a decree in foreclosure against defendants who were not served with process. As to them the decree is invalid and may be attacked anywhere and at all times, while as to those served it is an effectual bar”.

In *Nugent v. Lindsley, supra*, the deed showed that no notice to redeem had been served. In the case before the Court the deed shows that the interest of Grace Kastenhuber an infant had not been included therein.

**POINT D.**

**Irrespective of the fraud the tax deed conveyed no interest or estate of respondent, Ruth Youman.**

That this is so becomes apparent from an examination of the proceedings in the Circuit Court to obtain an order for a deed. The purpose of such proceeding was to cut off the rights of infants in such property and the statute authorizing such application (4 C. S. 5219, Sec. 326) provides that it may be made "upon such notice to the said infant, idiot or lunatic, or to his or her guardian as the Court may order". In the instant case no notice was given to any of the infants of such application and apparently no order was made by the Court respecting such notice. The order directing a conveyance of the rights of infants in real estate was made *ex parte*. There was no due process of law. The act of the Court was *coram non judice*.

This argument also applies to the other respondent Grace Kastenhuber.

**POINT E.**

**Any prospective purchaser examining the record would have ascertained the facts or be put on inquiry as to the good faith of the whole tax transaction and such inquiry would have disclosed the fraud or the nugatory character of the tax proceedings.**

The proof of this Point is apparent from the records of the case itself, for when Mr. Brisbane, after entering into a contract to purchase these

premises from the Sullivans, had an examination of the title made, the title examiner without making any inquiry of the parties and merely on the strength of the record, refused the title. Mr. Boyd, the Attorney for the Montclair Trust Co. which was examining the title, told James A. Sullivan that Sullivan only had a life estate in the property (p. 152, lines 8-16). Mr. Milnor told Sullivan that he, Sullivan, was trying to defraud infants and orphans of their property (p. 154, lines 13-18). After inquiry was made, Brisbane in his amended bill of complaint discloses the true state of affairs (p. 280, lines 10-40) and again in his second amended bill of complaint (p. 296, lines 33-40; p. 297, lines 1-25) and again in his Bill of Complaint filed December 16th, 1918 (p. 325, lines 25-38), while the Sullivans in their answer to Brisbane's first bill of complaint admit that they do not own the fee simple of the premises in question (p. 268) also in their answer to his third amended bill (p. 317, lines 1-10).

Whatever defect inhered in the title of the Kastenhubers by reason of the invalid tax proceedings must also inhere in the title of the Sullivans. The Kastenhubers could convey to Billington no greater title than they had and Billington in turn could convey to Sullivan no greater title than he had. Nor could the equitable interest claimed by Brisbane be any greater than the legal interest of the Sullivans. Indeed, that is all that Brisbane claims in these proceedings (p. 25, lines 13-25; p. 26, lines 8-30).

It is quite apparent, therefore, that as between Sullivan and Brisbane they are litigating ownership of the same interest.

That interest as above pointed out is equivalent to a life estate during the life of Dora Kastenhuber and so the Chancellor has decreed in the decree here on appeal.

### Answer to Appellants' Brief.

With Part I of appellants' brief we have no concern. In Part II on pages 36, 37 appellant sets out the pleadings in this cause and then proceeds to conclude that in said pleadings there is no allegation of fraud or wrongdoing against anyone. He impliedly says that because of this no relief can be granted even if fraud or wrongdoing be proven in the case. Let us look at the answers filed by respondents.

The answer of respondent Grace Kastenhuber, an infant (p. 26a) sets out that she is seized and possessed of a contingent estate in remainder in the tract of land mentioned in the petition and in the money deposited with the Clerk of the Court of Chancery in respect to said tract of land.

The answer of respondent Ruth Youman (pp. 26c, 26d) after putting petitioner to the proof of all the allegations of his petition and denying his right to the whole fund deposited in Court sets out:

“That she is entitled to a contingent estate in remainder in the premises described in said petition and in any money that may be deposited in the Court of Chancery of New Jersey with respect to such premises, or to some other interest therein and that the said petitioners or Arthur Brisbane either collectively or singly are only entitled to a life estate in said premises described in the petition or in any money deposited in the Court of Chancery with respect thereto and she prays that any award for any payment out of said money to the petitioners herein or Arthur Brisbane or any other person deriving an interest from them, shall be limited collectively to an amount that will justly represent the life estate that may be owned by them or either of them.”

The answer of respondent Brisbane (pp. 17-19) denies the right of Sullivan to the fund in Court and his counterclaim (pp. 19-26) sets up that he, Brisbane, is entitled to such part of the fund in Court as represents the value of the interest of the Sullivans in said premises, &c.

Such answers apprised appellants and the Court of what the claims of the respective parties were. Nothing more was litigated or decided.

At the hearing of the cause no objection was made by appellants to the testimony adduced by these respondents to substantiate their claims and no surprise alleged at the character and purpose of the testimony offered by them (p. 71, lines 30 *et seq.*). Appellants themselves offered in evidence the testimony and exhibits in the suit for specific performance between Sullivan and Brisbane that had been heard by Vice-Chancellor Howell (pp. 120, 121). In fact the parties tried the issues that were decided by Vice-Chancellor Fallon in his opinion in this case.

And the Vice-Chancellor was right in deciding such issues as it was only in this manner that the rights of the parties in the fund before the Court could be determined.

The Statute (2 C. S., 2185, Sec. 8) provides that the fund shall be distributed "on the application of any person interested therein". No formal procedure is provided. A person having an interest in the fund does not have to set up a claim or be forever barred from participation therein. Indeed the Court on such pleadings and proofs as are before it may come to the conclusion that persons who are not made parties to the proceeding are entitled to the fund and refuse the application of the petitioners. The fund is in the keeping of the Chancellor and all the equitable implications that arise from such a custody obtain.

“But the power to make such distribution is not derived from the statute alone. It arises independently of it, from the necessities of the administration of justice, and is inherent in this Court.”

*Platt v. Bright*, 31 N. J. E. 81 at p. 87  
(Ct. of Chan.).

“Primarily, and in law, the fund belongs to those whom, as owners of the legal estate, the company has, by notice, made parties to the condemnation proceedings. \* \* \* But equity does not stop with a recognition of these bare legal rights. The money has taken the place of the land, and, in conscience, it is regarded as being subjected to the responsibility for the claims of all persons interested in the land. *Wheeler v. Kirtland*, 12 C. E. G. 534.”

*Bright v. Platt*, 32 N. J. E. 362 at p. 371  
(Ct. of E. & A.).

Grace Kastenhuber and Ruth Youman are not seeking affirmative relief in this matter. They have each in their respective answers set up what they are entitled to and it became the duty of the Court to see to it that there should be no present distribution of the fund in Court that would affect the rights of these remaindermen. Such action of the Court does not depend upon the technical correctness of the pleadings before it. Indeed where the issues have been thoroughly tried the Court will give judgment according to the right of the case and permit the pleadings to be amended to conform to the proofs as adduced if such amendment be deemed necessary.

In Point II of Part II of appellants' brief the jurisdiction of the Court of Chancery is challenged:

(a) to inquire into the correctness of the Martin act proceedings resulting in the deed from the City to Dieffenbach;

(b) To inquire into the legality of the conduct of the devisee and her husband concerning the failure to pay taxes and the sale of land for taxes to Dieffenbach.

Appellants discuss subdivision (b) first and we will follow them in their arrangement.

### As to (b).

The case of *Nugent v. Hayes*, 94 N. J. E. 305, cited by appellants in support of this point is against them for it holds at p. 307, beginning about line 10:

“On the second ground, that the tax title deed under which Lindsley claims ownership was procured by fraud, there can be no question that equity can and will relieve if it appears that the order of the Circuit Court to the comptroller to execute the tax deed to the purchaser was obtained by fraudulent representations that the ‘unknown owners’ were unknown to the purchaser, and, in consequence, that the owners were without notice of the foreclosure proceedings. It is the peculiar province of equity to relieve against fraud regardless of correctness of legal formality. *Tomkins v. Tomkins*, 11 N. J. Eq. 512; *Herbert v. Herbert*, 47 N. J. Eq. 11; affirmed, 49 N. J. Eq. 565; S. C., 49 N. J. Eq. 70; *Kirkhuff v. Kerr*, 57 N. J. Eq. 623; *Truitt v. Darnell*, 65 N. J. Eq. 221. The cases cited gave relief to defendants in foreign attachment suits because the judgments were surreptitiously obtained on claims that were false. The principle upon which equity jurisdiction was sustained there is applicable here”;

and then follows the quotation found in appellants’ brief. Evidently appellants misread this case for as shown above it holds that equity has

jurisdiction where the tax title deed was procured by fraud.

See also *Mendenhall v. Hall*, 134 U. S. 559, which holds:

“The principle that a tax title must be held good until it is annulled in a direct action applies only to those titles that are bona fide, and are acquired without fraud, or that are real and not simulated.”

After their misreading the Nugent case appellants proceed to again argue the insufficiency of the pleadings and to point a dire picture of the result of the Court's adjudication that these respondents were not divested of their title by the tax proceedings and tax deed. The Court having found that these respondents were the victims of fraud, of course there was nothing for the Court to do but to restore that which had been fraudulently taken from them. What the result of that restoration might be to those charged with actual or implied notice of the fraud would be of no moment to the Court.

#### As to (a).

The Court's jurisdiction is here challenged as being in contravention of Sections 14 and 15 of the Sale of Land Act (4 C. S. 4679).

Of course such sections do not apply in a case where a fraud has been committed. *Nugent v. Hayes*, 94 N. J. E. 305.

Where no fraud is involved the sections do apply but the effect of them has been considered and determined not only in the cases cited in appellants' brief but also in the following:

*Nugent v. Lindsley*, 100 N. J. E. 87;  
*Milmoe v. Zimmerman*, 95 N. J. E. 85;  
 Affd. 97 N. J. E. 326.

In these cases it is held that the statute (Secs. 14, 15, Sale of Land, 4 C. S. 4679) refers only to municipal action leading up to and including the sale and not to proceedings by the purchaser after the sale to bar the right of redemption. Whether the Court had or had not such jurisdiction to examine into the proceedings by the purchaser after the sale to bar the right of redemption is academic in this case in view of the fact that the proofs disclose a fraud upon these respondents. It is noteworthy of remark however that appellants do not even attempt to show that the defects in the proceedings after the sale pointed out by the Court in its opinion are non-existent. They impliedly admit them not only in this Court but also in the Court below.

Under this point appellants also criticise the findings of the Court that Grace Kasthuber was not made a party to the Circuit Court proceedings and therefore was not bound by them. Such criticism is to the effect that Grace Kasthuber had not been born "when those proceedings were instituted". This is disingenuous. "Those proceedings" as quoted above from appellants' brief mean the proceedings in the Circuit Court as is apparent from reading the whole sentence. But Counsel proceeds to give the words a different meaning and arrives at a conclusion that is not true. When the Circuit Court proceedings were begun in May or June, 1908, Grace Kasthuber was six or seven months old, having been born in November, 1907. The equities of the situation then existing are discussed in the first part of this brief under Point B.

Point III of appellants' brief is also an academic question, as no part of the Court's decision was based upon the lack of records of the tax proceedings in the County Clerk's Office. Such lack of records, however, was properly proven and

is an additional reason for sustaining the decree in this cause. The deed from the City to Dieffenbach (pp. 356-362) showed on its face that Grace Kastenhuber had not been cut off by the Circuit Court proceedings and the testimony of Dieffenbach, William P. Kastenhuber and Dora Kastenhuber established the fraudulent or nugatory character of the whole tax proceeding.

Point IV of appellants' brief does not challenge the power of the Court to award a counsel fee nor the amount awarded in this cause but solely the inequity of paying it out of the fund in court. This is of course a matter that rests in the discretion of the Court. *1 C. S. 445, Sec. 91; Beall v. N. Y. & N. J. Water Co., 87 N. J. E. 390.*

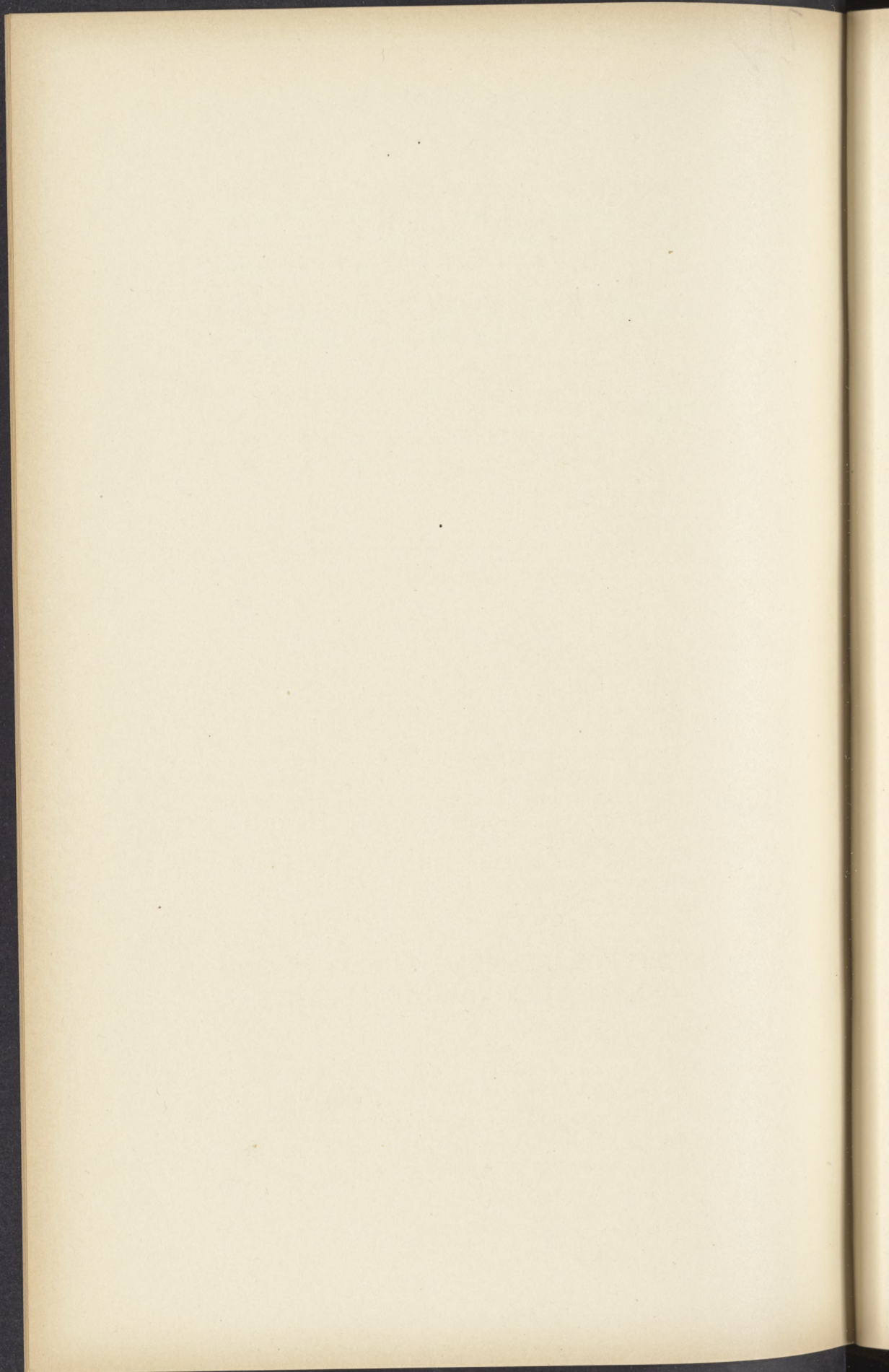
In discussing Point IV of appellants' brief it is well to keep in mind who is making the objection. Brisbane, to whom the life estate was awarded below, makes no objection. The objection comes from the appellants, who filed their petition in the Court of Chancery in this cause alleging that they were entitled to the whole sum in court and praying that such should be the order of the Court. This was done after they had acknowledged in formal pleadings (p. 268; p. 317, lines 1-15) filed in the Court of Chancery that their title to the lands was defective. Counsel for these respondents, the Kastenhuber children, was designated by the Court when it appeared that no answer had been filed by them nor any appearance made for them. It then became necessary to litigate the claim of appellants. These respondents did not come into court setting up a claim to this fund and seeking affirmative relief. They were brought into court by appellants' claim to the whole fund, and successfully defended their right to a vested remainder in the fund. Under such circumstances the Court of Chancery

undoubtedly was right in awarding counsel of these respondents a counsel fee to be paid out of the subject matter of the litigation.

**It is respectfully submitted that the decree of the Chancellor should be affirmed.**

MARK A. SULLIVAN,  
Solicitor and of Counsel to Respondents Ruth Youman and Grace Kasthuber.

unintentionally was omitted from the list of those  
responsible for the failure of the  
subject matter of the report.  
It is respectfully submitted that the names of  
the Controller should be omitted.



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**New Jersey Court of Errors and Appeals**

OCTOBER TERM, A. D. 1930.

ON APPEAL FROM THE COURT OF CHANCERY.

Between

ARTHUR BRISBANE,  
Complainant-Appellee,

*and*

JAMES A. SULLIVAN and ELLA J.  
SULLIVAN,  
Defendants-Appellants.

On Bill for  
Specific  
Performance.

IN THE MATTER

*of*

The Application of the MAYOR AND  
ALDERMEN OF JERSEY CITY to acquire  
certain property of the Evening  
Journal Association, a corporation  
of the State of New Jersey, and  
others, for the purpose of widening  
Bergen Avenue, and the establish-  
ment of a plaza to accommodate  
and relieve congestion of traffic in  
the neighborhood of the Summit  
Avenue Tube Station in the City of  
Jersey City.

On Petition of  
James A. Sullivan  
and  
Ella J. Sullivan  
for Payment of  
Condemnation  
Award.

**BRIEF FOR JAMES A. SULLIVAN AND  
ELLA J. SULLIVAN, APPELLANTS.**

**Foreword.**

In February, 1911, Arthur Brisbane filed a bill in Chancery against James A. Sullivan and Ella J. Sullivan for the specific performance of a contract for the sale by James A. Sullivan to Bris-

bane of a parcel of property in Jersey City. Nearly six years later the cause started by that bill was finally determined against Brisbane in the Court of Errors and Appeals.

Two years after this decision in the Court of Errors and Appeals, and on December 16th, 1918, Brisbane again brought suit in Chancery against the Sullivans for the specific performance of the same contract. More than three years later—in March, 1922—this suit also was decided against Brisbane by a decree of the Chancellor dismissing the bill. From this decree Brisbane took no appeal.

But in June, 1922, he again started suit against the Sullivans for the specific performance of the same contract.

Throughout the three suits mentioned, Brisbane filed some five or six amended bills (in addition to the original bills), presenting every variety and theory of claim for specific performance.

The case started by Brisbane in June, 1922, was never brought on for hearing. And in December, 1922, the Mayor and Aldermen of Jersey City filed a petition to condemn the lands in suit, for the making of the plaza at Journal Square.

In March, 1923, the condemnation commissioners filed their report of award, from which award the appellant, James A. Sullivan (defendant in the above mentioned specific performance suits), took an appeal to the Hudson County Circuit Court. The result of the appeal was an increase, in the award for the lands taken, from \$40,621. to \$54,145. Judgment on the appeal was entered in the Hudson Circuit on May 15th, 1924.

Because of some alleged irregularities in Martin Act proceedings had sixteen years before concerning these lands, and because of the Brisbane contract, as well as by reason of other conditions shown by the record affecting title to the lands

condemned, the City, under date of September 13th, 1924, petitioned for leave to pay the money awarded into the Court of Chancery. This was done.

In November, 1924, James A. Sullivan and Ella J. Sullivan, appellants, filed their petition in the Court of Chancery, alleging title to the lands in them and praying for the payment to them of the condemnation award.

In this petition it is also shown that the petitioners had assigned to Randolph Perkins \$10,000 of the fund on deposit in Court.

Upon the filing of this petition, Brisbane filed in the Court what is called an "Answer" to the Sullivan petition, subjoined to which is a "Counter-Claim". This "Counter-Claim" is nothing other than a bill for the specific performance of the old contract of 1910, for the sale of the lands now condemned. And the prayer of this "Counter-Claim" is in part that the Court decree that by virtue of the contract above mentioned, Brisbane had succeeded to the rights of the Sullivans to the fund. To the "Counter-Claim" of Brisbane the appellants filed an Answer.

In this controversy over the payment of the condemnation moneys the Court of Chancery ordered that there also be brought before it two parties who were children of a prior owner of the lands.

These children had no interest whatever in the controversy as between Brisbane and the Sullivans; and they have no interest in that controversy now. They are the appellants Ruth Youmans and Grace Kastenhuber. They filed pro forma answers to the Sullivan petition, and on the issue as thus presented by all the parties before it the Court proceeded to hearing of the matter of distribution of the award in condemnation.

The result was the making of a decree on the advice of Vice-Chancellor Fallon that James A. Sullivan had had an estate in the lands, for the

life of Dora Kastenhuber, which estate, by the contract with Brisbane, had passed to the latter; that Brisbane was therefore entitled to the income from the fund until the death of the said Dora Kastenhuber; that the children, Ruth Youmans and Grace Kastenhuber, had a vested remainder after the expiration of the life estate above mentioned; and that the assignment by the Sullivans to Randolph Perkins of a \$10,000 interest in the fund was subordinate to the interests of Brisbane and the Kastenhuber children, and that the assignee was entitled to no share in the fund.

In a word, as pointed out later, the Court decreed to Brisbane the specific performance of his 1910 contract with Sullivan, *with abatement of the purchase price* (Case, p. 60, ll. 1-10); and did so *as if pursuant to the claims and prayer of the amended bill that was filed by Brisbane in November, 1920, and dismissed by decree of the Chancellor in April, 1922, and from which decree Brisbane had never taken an appeal.*

There is here presented to this Court an appeal from the above-mentioned decree made on the advice of Vice-Chancellor Fallon, taken by James A. Sullivan and Ella J. Sullivan, his sister; and a separate appeal taken from the decree by the assignee Randolph Perkins. Brisbane has not appealed.

The appellees are Arthur Brisbane, Ruth Youmans and Grace Kastenhuber. It will be seen from the foregoing that this appeal of the Sullivans presents to the Court two independent controversies. One exclusively as against Brisbane; and, since Brisbane has not appealed, the other exclusively as against Ruth Youmans and Grace Kastenhuber.

This brief, therefore, is divided into two parts, one devoted to each of the controversies mentioned. The first considers the case as to Brisbane.

## PART I.

**Facts as between the Sullivans and Brisbane.**

The nineteen-year history of the several litigations of *Arthur Brisbane vs. James A. Sullivan and Ella J. Sullivan*, including Brisbane's part in the proceedings for the payment of the condemnation moneys, is, in all its details, vital to the judgment of the case.

The facts embraced in the history mentioned can best be set forth in a chronology. Under the respective items of this chronology showing the filing of bills and amended bills will be stated the distinctive claims and allegations of the bill or amended bill. Under the statements of the decisions by the Court of Chancery, and the statement of the decision of the Court of Errors and Appeals, will be set forth the respective holdings of the Courts. The dates and case-book pages are given.

**The Chronology Follows:**

<i>Case Page</i>		<i>Date</i>
p. 259	<b>Brisbane files bill for specific performance in first suit.</b>	<b>Feb. 28, 1911</b>
	This is a straight bill for specific performance. It simply alleges contract and the failure of defendants to perform. It prays decree that defendants perform.	
p. 265	<b>Sullivans filed answer to bill.</b>	
	This answer alleges that at the time of the making of the contract by James A. Sullivan, he believed he had an estate of inheritance in fee simple; that he entered into the contract with complainant's assignor in	

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good faith and was willing to make such conveyance; that before the time for performance had arrived, complainant informed defendant that latter's title was defective and was not good and marketable, and gave defendant list of defects in title; that complainant would not take title or pay balance of purchase price until such defects had been removed; that thereupon defendant caused defects to be investigated by counsel, by whom he was advised he was not seized of good and marketable title in fee simple, and that defendant could not safely convey by warranty deed as provided in agreement; that defendant thereupon informed complainant that because of defects as specified by complainant, defendant was unable to perform and offered to return the money paid upon said agreement, with interest, together with reasonable sum to reimburse for expenses; which offer complainant declined; that defendants are unable to perform their contract and are unable to acquire good title to the land; and that complainant well knew before the filing of his bill of the defects in defendants' title, and that specific performance of the contract was impossible.

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|--------|---|----------------------|
| p. 271 | <b>Brisbane gives notice of motion for leave to amend his bill.</b> | <b>Dec. 11, 1911</b> |
| p. 272 | <b>Court gives leave to amend the bill.</b>                         | <b>Dec. 19, 1911</b> |

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**Brisbane files first amended bill.***Date***Dec. 1911**

This amended bill, in addition to the ordinary allegations as to defendants' contract to convey and failure to perform, sets forth the will of one Wilks, giving life estate in the lands to one Dora E. Kastenhuber with remainder over; the failure of said life tenant to pay taxes, the sale of the property by the City of Jersey City for the unpaid taxes and the purchase at the tax sale by one Dieffenbach; the making of deed by the City to Dieffenbach, and the deed of Dieffenbach to William P. Kastenhuber, husband of the life tenant.

This first amended bill then recites the mesne conveyances preceding deed from Billington to Sullivan; and it alleges that doubt has arisen as to the validity of the tax sale to Dieffenbach; that it was the duty of the life tenant to pay the taxes; that life tenant wilfully neglected to do so, and intended by the tax sale to convert the title in her from one for life to one in fee simple; that in the sale by the Kastenhubers to Billington they received a fair price for the fee simple; and that they intended to convey the fee to their grantee; that complainant requested Sullivan to remedy defects in title; that doubt has arisen as to the estate conveyed by the Kastenhubers to Billington (Sullivan's grantor); that complainant offered to accept from defendants the life estate of Dora E. Kastenhuber, but defendants refused.

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The prayer is that the Sullivans specifically perform the agreement; that the Kastenhubers convey their life estate to complainant; and that the court decree what sum should be paid for such title as the Sullivans may be decreed to have.

- p. 286      **Notice given to dismiss first amended bill.**      **Jan. 5, 1912**
- p. 288      **Order for further amendment of first amended bill.**      **Mar. 19, 1912**
- p. 289      **Brisbane files second amended bill for specific performance.**      **Mar. 1912**
- This bill contains the same allegations as the first amended bill. It omits Dora E. Kastenhuber and William P. Kastenhuber as parties defendant; and in it the complainant elects to accept from the Sullivans such title as they are able to convey, for which complainant is willing to pay *such proportionate part of the purchase price as the court shall determine the estate of the Sullivans to be worth.*
- p. 301      **Sullivans give notice of demurrer to second amended bill.**      **June 12, 1912**
- p. 303      **Demurrer sustained.**      **Oct. 22, 1912**
- p. 304      **Brisbane files third amended bill for specific performance.**

This, like the original bill filed in February, 1911, is a straight bill for specific performance. The only difference is that here we have the allegations that defendants have collected rents from the premises, and

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that they have collected insurance moneys for a fire occurring thereon. The prayer is for specific performance, and also that the defendants account for the rents and insurance moneys collected.

p. 314

**Sullivans file answer to third amended bill.**

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**Hearing on issue joined under Brisbane's third amended bill.**

May 5, 1913

**Decision by V. C. Howell, granting specific performance with abatement of purchase price.**

Mar. 2, 1914

The opinion of the Vice-Chancellor is reported in 83 Equity 182. The court finds among other things that after the contract had been executed and was in the way of performance, serious defects in defendants' title were discovered; that these objections to the title made it necessary to postpone the closing; that when complainant filed his bill *he had been informed of the exact state of the title and knew that the defendant had at most only right which depended upon the life of Mrs. Kastenhuber.* The court holds that Sullivan has life estate which must be conveyed to Brisbane with deduction from the purchase price. Reference for purpose of calculating the abatement. (Calculations on the reference result in abatement of the agreed consideration from \$4800 to \$39.88.)

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**Decision of Court of Errors and Appeals, reversing decree as advised by V. C. Howell and dismissing the bill.**

Nov. 20, 1916

This opinion is reported in 86 Eq. 411. The court holds that the contract which the decree requires to be specifically performed is materially variant from the one entered into by the parties; that upon the basis of a life estate only in the contract vendor, *there can, under the circumstances present in the case, be no equitable decree for specific performance of the original contract between the parties with abatement of the purchase price.* The bill is dismissed.

p. 323

**Brisbane files bill of complaint in second suit for specific performance.**

Dec. 16, 1918

In addition to the ordinary allegations of the contract to convey and defendants' failure to perform, this bill alleges that the tax sale by the city to Dieffenbach conveyed no title. The bill recites deed by Dieffenbach to Kastenhuber and the subsequent mesne conveyances preceding the deed of Billington to Sullivan. It alleges that the Billington deed conveyed to Sullivan no more than the life estate of Dora Kastenhuber; that the Sullivans have been in possession and collected rent from the premises, as well as insurance moneys for a fire occurring thereon. The bill then recites the various bills and amended

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bills filed by complainant resulting in the decision of the Court of Errors and Appeals, and alleges that the reversal in the Court of Errors and Appeals was because of the failure of complainant to include certain parties defendant; that complainant is engaged in the business of publishing newspapers; and that he requires the property in question for that purpose, to which it is peculiarly adaptable.

The bill brings in as parties defendant every person who ever had an interest in the property, contingent or otherwise, and however remote. These parties include the City of Jersey City; Jennie Turner, as holder of a mortgage on the property; and the remaindermen under the will of Wilks.

The prayer is that the court declare the tax sale to be entirely invalid; and that the conveyance by the Kastenhubers to Billington and the subsequent conveyances convey only the life estate of Dora E. Kastenhuber; that the mortgage of Jennie E. Turner is only on the life estate of Dora E. Kastenhuber; that the Sullivans may be decreed to perform their agreement; *and that they have all just allowances to which they may be entitled in equity.*

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**Brisbane files amended bill in second suit.**

Nov. 1, 1920

The only difference between this amended bill and the original bill of December, 1918, is that the amended

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bill contains the following as additional matter:

“If it is decided that Sullivan has only a life estate, complainant is willing to accept such life estate *with abatement for the difference in value if any between the life estate and fee simple.*”

**Decision by V. C. Griffin after hearing of issue joined in the second suit under amended bill of November, 1920.**

**Mar. 28, 1922**

The court holds that all the parties defendant, in addition to the Sullivans, are improper parties, and that with these eliminated the case is precisely the same as presented to the Court of Errors and Appeals, *and is res adjudicata*. Bill dismissed.

p. 345

**Brisbane files bill of complaint in third suit for specific performance.**

**June 29, 1922**

This bill is the same as the amended bill in second suit filed November, 1920, with the exception only that the present bill contains the following recital: that complainant brought into court, in his prior suit, all the parties interested in the title; that the court decided such parties to be improper and dismissed the bill; that the time intervening between the making of the contract and “the present time” has been consumed in the prosecution of remedies which complainant was advised by counsel to seek. *Complainant*

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	<i>tenders defendant the entire purchase price and agrees to accept from defendants all the title they have and offers to regard such conveyance as a complete performance of the contract.</i>	
p. 12, l. 31	<b>City files petition to condemn lands for Journal Square Plaza.</b>	<b>Dec. 16, 1922</b>
p. 12, l. 38	<b>Commissioners appointed to condemn.</b>	<b>Jan. 20, 1923</b>
p. 13, l. 15	<b>Commissioners file report of award.</b>	<b>Mar. 19, 1923</b>
p. 13, l. 25	<b>Judgment entered in Hudson Circuit Court on Sullivan's appeal from condemnation award.</b>	<b>May 15, 1924</b>
p. 15, l. 1	<b>Order that city deposit award into Court of Chancery.</b>	<b>Sept. 13, 1924</b>
p. 11	<b>Sullivan's petition for payment of award filed.</b>	<b>Nov. 15, 1924</b>
p. 17	<b>Brisbane files answer and counter-claim to Sullivan's petition for payment of award.</b>	<b>Dec. 1, 1924</b>

This "counter-claim" is in reality another bill for specific performance. Brisbane's claims to equitable relief are *the same as those embraced in the allegations of the bill filed in November, 1920, and dismissed*. It omits, however, reference to the several suits and the decisions therein as against Brisbane, and simply refers to the bill of June, 1922, as "pending litigation" in the court for the specific performance of the contract in question. It claims that by virtue of

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said contract Brisbane has succeeded to all the rights of the Sullivans in "such part of said fund as represents the value of the interest of said Sullivans in the premises *based upon the quantum of the estate which they have in said premises.*" The "counter-claim" brings in again all the improper parties that were ruled out by V. C. Griffin in the former suit and prays that the Sullivans be decreed to perform specifically the contract of 1910.

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**Sullivan files answer to Brisbane "counterclaim".**

Dec. 15, 1924

This answer sets forth a narrative of the several litigations; alleges that though issue was duly joined under the complainant's bill filed in June, 1922, the same has never been brought on for hearing, and that such issue is the "pending litigation" referred to in the counter claim; that all matters set forth in the Brisbane counter-claim are *res judicata*; and that Brisbane is guilty of laches.

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**Hearing of matter of petition for payment of condemnation moneys.**

May 27, 1926

p. 126 A

**Hearing continued to October 27th, 1926.**

p. 41 A

**Opinion of V. C. Fallon.**

Apr. 10, 1929

p. 55

**Final Decree.**

May 8, 1930

Now, important as the foregoing table of events is, covering as it does a period of nineteen years, it is of still greater importance to know what occurred between these parties before the first bill was filed in February, 1911.

Was it necessary that Brisbane subject his contract vendor to these years of costly and burdensome suits? Was it in good faith and for truly equitable purpose that Brisbane kept James A. Sullivan and his sister in court practically from 1911 until the present time? What was it that Brisbane previously demanded of Sullivan, and what had Sullivan offered to do?

It cannot be appreciated how wrongful and how wanting in equity Mr. Brisbane's present standing in this court is unless we know the answers to these questions.

The contract was made by James A. Sullivan with one Bennett Milnor, who assigned to Brisbane. The property was a small plot and cottage in a then out of the way section of Jersey City. The contract price was \$4,800, \$2,000 of which was accounted for by the vendee's taking title subject to a mortgage in that sum then a lien on the property.

At the time of making the contract, Sullivan, in the name of his sister, had owned the property several months; and when he purchased it he caused a search of the title to be made by an attorney at law of this state. After that search was made and favorably reported to him, he accepted his deed from the previous owner. That Sullivan honestly believed that the deed from his grantor conveyed to him a good title in fee simple is a fact established in the case. (Opinion of V. C. Howell, *supra*.)

Mr. Brisbane's attorney for the closing of this contract was the witness Samuel C. Cowart. Brisbane, through Cowart, made application to a title

company for insurance. As the result of its search the company prepared a list of objections to the title. These objections were numerous, and on their face appeared to be serious. They are printed in the list designated Schedule A in the case, at pp. 319-22.

Sullivan had no knowledge or information as to the defects in his title until the contents of this Schedule were made known to him. He wrote to Brisbane's attorney and asked for a copy of the list of objections in order that he might undertake to overcome them. He honestly tried to do so. In his effort he engaged the services of James F. Fielder as his attorney. Mr. Fielder could not overcome the objections, *and in behalf of Mr. Sullivan made every possible offer to Brisbane*. He offered to return the deposit money with interest, together with a search fee. Brisbane declined. He offered to give a bargain and sale deed. Brisbane declined. He offered the conveyance of such title as Sullivan had. Brisbane declined. Brisbane would accept nothing but a full covenant and warranty deed "according to the terms of the contract." That it was obviously impossible for Mr. Sullivan to give such a deed made no difference. And that Mr. Brisbane knew that the contract was impossible of performance by the contract vendor at the time the first bill for its specific performance was filed is also a fact established in the case. (Opinion of V. C. Howell, 93 Eq.)

The pertinent correspondence between James F. Fielder, as attorney for Sullivan, and Samuel C. Cowart, as attorney for Brisbane, is as follows:

On October 20th, 1910, Sullivan wrote to Mr. Cowart (Ex. D-1, p. 213):

"I am desirous of carrying out my agreement with Bennett Milnor for the conveyance of property in this city. \* \* \* I am there-

fore addressing you to ask that you give me a memorandum of the objections raised, and if you will give them to me I shall endeavor to clear them up if they are good; or, if on the other hand, you prefer not to take title, I am willing to return your deposit, and cancel the contract."

On December 13th Cowart wrote Sullivan (Ex. D-6, p. 217) :

"I enclose some of the objections to your title as set forth by Mr. Robert M. Boyd, attorney for Montclair Trust Company, which was engaged to insure the title. Another objection is that the title to the property which you agreed to convey to Mr. Arthur Brisbane and which you represented as your own property, is in Ella J. Sullivan. \* \* \* Mr. Brisbane takes the position that you have made a misrepresentation of the title, and he *is even threatening criminal prosecution on this account.*"

After this suggested threat, James F. Fielder was called in to represent Sullivan, and on December 19th, 1910, wrote Cowart (Ex. D-7, p. 218) :

"From your list of objections I judge however that it will be impossible to satisfy you as to the validity of the title; and on behalf of Mr. Sullivan and to quickly dispose of the matter, *I offer to return your deposit with interest.* I also offer (while denying your right to recover it by suit) to pay you a reasonable search fee. Please advise me whether or not this offer is accepted."

On December 27th, 1910, Fielder wrote Cowart (Ex. D-19, p. 232) :

"If the title is bad because of defects under the tax sale, it would take months to correct it, and probably the owner would have to take entirely new proceedings, and in that event we shall have to settle with you."

On December 30th, 1910, Cowart wrote Fielder (Ex. D-9, p. 221):

“Mr. Brisbane declines to accept your offer of settlement by repayment of the amount paid upon the purchase price, together with a reasonable search fee. *He wants the property, and wants the agreement strictly carried out.* \* \* \* Mr. Sullivan is certainly obliged to convey a good marketable title to Mr. Brisbane, and will have to pay damages if he fails to do so.”

And again on December 31st, 1910, Cowart wrote to Fielder (Ex. D-10, p. 22):

“If you cannot reach a settlement, then I suppose the only course open is for me to file a bill requiring Mr. Sullivan to carry out his agreement, and if he fails to do this, then it will be up to the Court to determine what is to be done and what damages are to be paid.”

On December 30th Fielder wrote Cowart (Ex. D-20, p. 233):

“Reading over again your criticisms of the tax sale proceedings, I am of the opinion that they are well founded, and that the title supposed to pass in these proceedings is bad. It seems from your statement that no resolution of the Board of Finance ordering the tax sale can be discovered, so that there is actually no foundation for the sale. Then, too, it appears that there are old mortgages still open of record, and I do not think we can find the original mortgages, and I believe the mortgages are dead. This is a condition for which Mr. Sullivan is not to blame. When he contracted to sell, he believed the title good, and as I have before stated, he was in a position to convey. Neither he nor Ella J. Sullivan can give a warranty deed, and I therefore renew the offer of settlement I made in my let-

ter of the 19th instant to you. If you will not accept it, please inform me what you expect us to do?"

On January 4th, 1911, Fielder wrote Cowart (Ex. D-21, p. 234):

"It seems to me that your client is apparently urging you to force Mr. Sullivan to do something he is absolutely unable to do. \* \* \* Suppose I can arrange for a bargain and sale deed from Ella J. Sullivan. *Are you willing to take such title as she has, and pay the balance of the purchase price?*"

To this Mr. Cowart replied on January 5th, 1911 (Ex. D-11, p. 233):

"I am quite sure Mr. Brisbane would not want to accept a deed of bargain and sale from Ella J. Sullivan in place of the warranty deed provided for in the agreement of sale."

Thus we see that before the beginning of the first suit Mr. Sullivan made every possible offer to Mr. Brisbane, and that all these offers were promptly declined. Brisbane might well have sued for damages. He did not want that either. He wanted perfect title to the lands, and from 1910 until the city took the lands in condemnation at the end of 1922, he has been insisting that if there is no perfect title to the lands, then one must be made for him either by Mr. Sullivan or by the Court of Chancery.

### POINT I.

**Brisbane's case is without the slightest color of equity to justify the decree giving him the income from the fund for the life of Dora Kastenhuber as representing a life estate in her in the land. He has no right to any interest in the fund.**

The hearing under the petition for the payment of condemnation moneys was had before Vice-Chancellor Griffin. Pending the decision of the case, Vice-Chancellor Griffin died. The matter was then re-referred to Vice-Chancellor Fallon. There was no further hearing, but under the re-reference exhibits and transcripts were submitted to Vice-Chancellor Fallon, by whom the decision was rendered.

It is, nevertheless, impossible to see how the Court below could have given any consideration to the conduct of Arthur Brisbane in the matter of the contract with Sullivan, as shown by the testimony and in the several suits brought by him, and arrive at the conclusion it did. The answer is that apparently the Court never thought of inquiring into the merits of Brisbane's character as a suitor before it. The opinion itself is evidence of this. Brisbane's standing in Court, so far from being questioned, is simply assumed. There are some references to the part played by him, but not because of these, and rather in spite of them, does the Court conclude in his favor against Sullivan.

For instance, the Vice-Chancellor says in his opinion (Case, p. 44, l. 12):

“It is clearly manifest from the pleadings and proofs that Brisbane, at the time he filed his aforesaid bill of complaint, was aware

that the Sullivans had at most an interest in the premises described in the contract during the lifetime of Dora E. Kastenhuber.”

Nevertheless, though the Court in effect thus finds that the Brisbane suits for specific performance had their origin in bad faith, that is in no way permitted to affect the conclusion reached as to him.

Again, from the opinion we read (Case, p. 52, l. 1):

“Brisbane, by paragraph 18 of his bill of complaint filed June 29th, 1922 (Docket 52, p. 89) alleges that he tendered to the Sullivans the entire purchase price set forth in the aforesaid contract of sale and agreed to accept from them a conveyance of all such right, title and interest as they may have had in and to the aforesaid premises, and had offered to regard such conveyance as a complete performance by the Sullivans of all their obligations under the aforesaid contract.”

What the Court entirely fails to observe is that the proposition contained in this offer was *not Brisbane's but Sullivan's, that it had been made, as already shown, by Sullivan's attorney to Brisbane back in 1910, before the litigation began; and that it had been consistently and stubbornly declined or ignored by Brisbane for twelve years until the filing of his bill in the third suit in June, 1922, to which the opinion refers.*

And what the Court below also failed to observe is that the proposition ascribed to Brisbane in the opinion was again repudiated by the prayer of the so-called “counter-claim” to the Sullivan petition for condemnation moneys, that the Court “ascertain and determine what sum is due to the said Ella J. Sullivan and said James A. Sullivan on the purchase price.”

Reference to the synopses of the original and amended bills set forth in the schedule above will show that in the original bill filed in the suit started in 1911, the prayer was for specific performance of the contract, without qualification; that in the first amended bill in the first suit the Court is asked to decree performance, with abatement of the purchase price; that in the second amended bill in the first suit the Court is again asked to decree performance with abatement of the purchase price; that in the third amended bill in the first suit, complainant reverts to his prayer for straight performance as in the bill with which the suit was started; that in the first bill filed in the second suit the Court is asked to decree performance against the Sullivans, and that they have all just allowances to which they may be entitled in equity, meaning undoubtedly an abatement of the purchase price; that in the amended bill filed in the second suit the prayer is, again, for performance with abatement of the purchase price; *and that not until every possible experiment had been tried with the Court does the complainant in the bill with which he starts his third suit in June, 1922, indicate his acceptance of the offer that Sullivan had made to him in 1910.*

We have already shown that in his "counterclaim" in the proceedings for the condemnation money Brisbane again renounced his acceptance of the Sullivan offer and asked for abatement of the purchase. *And the Court so decreed* (Case, p. 60, ll. 1-10).

It is inconceivable that a suitor should be permitted to try conclusions with a court of equity as Mr. Brisbane has done and prevail in the end.

We wish to observe here that but few of the late Vice-Chancellor Griffin's years on the bench were passed without one of Mr. Brisbane's suits against Sullivan before him. Vice-Chancellor

Griffin knew the history of this litigation and knew it well. Mr. Brisbane's attorney in the last proceedings had before Vice-Chancellor Griffin made every effort to keep out of the case the records of the former suits. When these records were offered in evidence for the purpose of proving facts that go to make up Mr. Brisbane's standing as a suitor now for specific performance, counsel objected strenuously. The attitude they took toward "those other suits which were merely specific performance suits" is interesting. But Vice-Chancellor Griffin could not see the point. We submit that the language accompanying his ruling is significant (Case, p. 123, l. 37):

"Well, there is one feature of the case where I think it may be relevant: Suppose I should hold that Kastenhuber took a fee simple, then, of course, either Mr. Sullivan or Mr. Brisbane would be entitled to the whole sum in Court. Now, as I recall your various bills, down to the period after the decision of the Court of Errors and Appeals, you insisted upon being charged with paying only on the basis of a life estate; and after the decision of the Court of Errors you changed your bill to allege that you bought this property for a special purpose, so as to bring it under the rule laid down by Justice Bergen. Now, I suppose, in the decision of this case, I have got to take cognizance of the attitude of the complainant for all these years toward taking the property if he got a fee simple, or taking a life estate subject to an abatement of the purchase price. I think I will permit the papers to go into evidence."

Not only does Mr. Brisbane's refusal of Sullivan's offer in 1910 and his acceptance of that offer after twelve years of litigation upon other grounds chosen by him, brand him with bad faith; it also makes him, beyond question, guilty of laches.

Mr. Brisbane's plan of first endeavoring to get from the Court of Chancery specific performance in the conveyance of a good title, and failing that, to get from the Court specific performance with abatement of the purchase price, required, as he chose to execute that plan, that he have twelve years in which to determine whether or not the Sullivan proposition of 1910 was acceptable to him.

Upon the lapse of these twelve years, how in the meantime had Mr. Brisbane's delay prejudiced Sullivan? It has subjected Sullivan to years of burdensome, costly and vexatious litigation; whereas, if his proposition had been accepted when it was offered, there would have been no litigation at all.

What else had occurred when Mr. Brisbane finally made up his mind in 1922 to pay the purchase price for the title Sullivan had? *The property had increased in value from \$4,800. to more than \$54,000.*

Indeed, so greatly had Brisbane's arbitrary attitude through the years wronged Sullivan that when he accepted—though temporarily—the Sullivan offer in 1922, he was then equitably estopped from doing so.

To the charges of laches and estoppel is properly to be added that of speculation.

Is it not significant that Mr. Brisbane constantly declined to pay the contract price for the Sullivan title until less than six months before the city petitioned for condemnation of the property? Through the intervening twelve years the location of the property had become the center of a promising and important section of the city. Large capital had been invested in developments there. The "boom" was exploited in the press and otherwise. Journal Square Plaza was projected and everyone knew it. And it was after

all this that Mr. Brisbane came into a court of equity with his proposition of acceptance as a means of having the Court get for him all, or as much as possible, of the real estate value that had risen from \$4,800., when his contract was made, to \$54,000., when he offered to accept the best that it was possible to give him under that contract and pay the contract price therefor.

Moreover, the filing of bad bills, original and amended, consume the period from February 28th, 1911, until the end of 1912—two years. After the termination of the first suit by the decision of the Court of Errors and Appeals in November, 1916, Brisbane waited more than two years before instituting his second suit. And it is two years after the institution of the second suit that he files in that suit an amended bill of complaint in November, 1920, Brisbane, during this full period, taking every attitude and pursuing every theory in his experimentation with the Court.

“It is an inherent doctrine of equity jurisprudence that nothing less than conscience, good faith, and reasonable diligence can call courts of equity into activity, and that they will not grant aid to a litigant who has negligently slept on his rights and suffered his demand to become stale, where injustice would be done by granting the relief asked.”

*21 C. J.*, p. 212, Sec. 212.

“A marked appreciation or depreciation, according to the circumstances, in the value of the property involved, where the right might have been asserted before such change, and the granting of relief would, in consequence of the change, work inequity, is ordinarily fatal to plaintiff's case.”

*21 C. J.*, p. 233, Sec. 227. (Cases cited.)

See also

*Kessler v. Sheldon*, 131 Atl. 897.

When, during the past nineteen years, Mr. Brisbane was demanding full specific performance of his contract, he was demanding that which it was impossible to give, and he knew it. This is established by the opinion of V. C. Howell in the first case, and in the 1916 decision in this court.

When, during the past nineteen years, Mr. Brisbane changed his claim and demanded of Sullivan such title as Sullivan had, with modification of the purchase price, he was demanding that which, under the circumstances, it was not in equity to give. This is established by the decision of this Court rendered in 1916.

And when at last Mr. Brisbane demanded such title as Sullivan could give, and offered to pay for it the contract price, *he demanded that which twelve years earlier had been offered to him and which for those twelve years he had continued to decline.* Of this the record in the case admits of no doubt.

By this course of conduct Mr. Brisbane has created a situation for which the law of New Jersey is well settled.

In *Milmoe v. Murphy*, 56 Atlantic 292, this Court held in 1903 that:

“A vendee who has refused to take such title as his vendor could and was willing to give, on the ground that it was not good, and who has refused to pay or tender the consideration on the same ground, cannot sue for specific performance, insisting that the vendor perfect his title.

“On a bill for specific performance of a contract to convey land when the bill demanded performance according to the tenor of the contract, and complainant made no offer to accept part performance, he could not, under the prayer for general relief, obtain performance with compensation or indemnity.

“Compensation or indemnity with specific performance cannot be decreed in a case where the defect in the title, which prevents absolute performance, is such that the resulting difference in value between the interest contracted for and that conveyed is not susceptible of compensation.”

In *Milmoe v. Murphy*, *supra*, this Court adopted the opinion of the Vice-Chancellor, and in that opinion, the Court deals with situations that parallel those presented by the Brisbane-Sullivan litigation. See also *Logan v. Flatteau*, 73 N. J. Eq. 222.

That the present case is clearly unlike those in which the Court will grant partial performance with compensation is shown by decisions like that in *Borden v. Curtis*, 3 Dick. 120, where the Court said:

“Where a vendee by contract of real estate, comes into this Court in good faith asking the specific performance of his contract, and with a reasonable expectation that the vendor is able to perform it, and it afterwards appears that the defendant is unable to perform it either in whole or in part, then this Court may, when justice requires, give relief by way of compensation in money in lieu of specific performance.

“This case falls within the principle that where the contract is incapable of being enforced against one party, that party is equally incapable of enforcing it against the other. Ch. J. Beasley, in pronouncing opinion in the Court of Errors and Appeals in *Richard v. Green*, 8 C. E. Gr., 537, said:

‘In every case that I can find where specific performance has been ordered, a mutual remedy existed upon the contract at the time of rendering the decree. It seems to me that the rule is universal to this extent, that equity will not direct the performance of the terms of an agreement by

the one party, when at the time of such order the other party is at liberty to reject the obligations of such agreement.'

“the reason on which this principle rests was cited by Lord Redesdale in *Lawrenson v. Butler*, 1 Sch. & L., 13, 18, in this wise:

‘Were it otherwise it would follow that the Court would decree a specific performance where the party called upon to perform might be in this situation, that if the agreement was disadvantageous to him he would be liable to the performance, and if advantageous he could not compel a performance. This is not equity as it seems to me.’ ”

In *Milmoe v. Murphy*, *supra*, the Court cites with approval from Frey on Specific Performance, Section 302, the following:

“It is obvious that in this proceeding to give the purchaser an estate different from that which the vendor contracted to sell, the Court is executing the contract *cy-pres*, or rather perhaps is carrying into effect a new contract—a course in which difficulties will necessarily sometimes arise, and these put restrictions on the jurisdiction under discussion. These seem to be the following: where the difference in value of the interest contracted for and the interest actually to be conveyed, is incapable of computation, &c.”

It is in the present case impossible for the Court to do equity to the parties by a decree for partial specific performance and compensation for the balance. It is impossible to say what proportion of the purchase money should be deducted.

The Court will not decree specific performance where it would be inequitable under all the circumstances of the case. This was clearly pointed out by this Court in the opinion of 1916, *supra*.

There is probably no question that the title of Sullivan was unmarketable; and there is certainly

no question that it was rejected by the complainant before the institution of his first suit. This case must be distinguished from those where there is a deficiency in quantity of land, such as *Couse v. Boyles*, 3 Green 212. Cases of deficiency in quantity are decided on the presumption,

“that in fixing the price, regard was had to the quantity.”

Nor must it be confused with those cases where the defendants have title in fee simple, to an undivided interest in the land, such as *Ferrell v. Bork*, 79 Atl. 897, where defendant had an indefeasible title to an undivided  $\frac{3}{4}$  of the premises in question. In these cases it is a simple matter to determine the amount of compensation that would exactly compensate the complainant and do no injustice to the defendant. How different is the case in hand. By the complainant's contention the defendant had a title of the flimsiest character. He was not seized in fee of anything.

The contention and theory of complainant in the later stages of the litigation, was that the defendants had the life estate of Dora Kastenhuber and no more. Well, if they got the life estate of Dora Kastenhuber by the deed from Kastenhuber and husband to Billington, then the Sullivans had a greater right in the life estate, namely a right to be subrogated to the equitable lien for the amount of taxes paid on the tax sale by Dieffenbach.

Assuming for further argument that the title of the Sullivans was for the life of Dora Kastenhuber only, we respectfully submit that there is no principle of equity upon which Mr. Brisbane has the right to demand a conveyance to him of that right besides compensation for the estate not conveyed.

Where the contract is for the conveyance of a fee simple under full warranties, and it is subse-

quently established that the contract vendor is not seized of a fee but has only a life estate, how can a decree be made for partial performance with compensation? Reason and justice would appear to be against the exercise of any such authority—necessarily arbitrary—by a court of equity.

The point for which we are now contending has been more than clearly established by the 1916 decision of this Court in *Brisbane v. Sullivan*. In the opinion, Justice Bergen speaking for the Court shows in many ways why it is that a court of equity cannot in a situation like that presented here decree part performance and endeavor to strike a balance between the parties by hypothetical calculation.

How will it be determined what should be allowed to the complainant by way of compensation out of the \$4,800 purchase money? The complainant suggests that the value of the life estate of Dora Kastenhuber is easily ascertainable under the rules. But assuming that this were true, by making a decree the Court might do a grave injustice to the defendant.

Dora Kastenhuber is now 63 years of age. She was 42 at the time of making the contract, and 40 at the time of the conveyance by her and her husband to Dieffenbach. At 40, her expectancy of life was 27 years and 103 days. At 42, it was 25 years and 307 days. And at 63 it is 12 years and 90 days. Will the Court make a decree that her expectancy shall be figured as of the date of the contract? If so, it will be in effect a decree that the life estate would terminate 25 years and 307 days from July 19th, 1910, or on May 26th, 1935. If the Court makes a decree that the life estate be conveyed at the present time when Dora Kastenhuber has an expectancy of 12 years and 90 days, it will go on the assumption that the life estate will terminate more than 7 years later than

under the former assumption, the reason being that the longer Dora Kastenhuber lives, the further distant is the expected time of her death. To put it differently, her age at 42 plus her expectancy would be 67 years and 307 days; but her age at 63 plus her expectancy would be 75 years and 90 days. So that, to make a decree on the basis of her expectancy at the time of the contract, would be an injustice to the appellants, because such a decree would be based upon the theory that her life would terminate more than 7 years earlier than her expectancy now indicates that it will.

There is another very important feature about the matter. Any abatement of the purchase price made in favor of Mr. Brisbane must be upon some basis of Dora Kastenhuber's expectancy. *His actual enjoyment, however, of a life estate in the fund will be not upon any such hypothesis, but will continue so long as she shall actually live.* Now, it may be that the life tenant will outlive her expectancy by many years, and during this period of survival the complainant would continue to enjoy the property that really belonged to the appellants, but for which they had never been compensated. Of course, she may die within the period of her expectancy, in which case the Court would have awarded less compensation than would be equitable.

How can there be any calculation of the relative values of a life estate and a fee simple? We can only deal with the two things as time quantities. In this sense a life estate, while limited, is uncertain. The time element in a fee is neither limited nor certain. How can their comparative values be justly reduced to dollars and cents?

All of which proves that the Court will not undertake to decree partial performance with compensation in this case.

This Court in its former decision of this case in 1916 (86 Eq. at 413) cites with approval the following from *Page v. Martin*, 46 N. J. Eq. 585:

“That relief rests not upon what the Court must do, but rather what, in view of all the circumstances, it ought to do \* \* \* In every case of this character the Court is chiefly concerned with the equities of the parties before it.”

Specific performance is extraordinary relief. It is afforded not as matter of right, but as matter of grace, and rests entirely in the sound discretion of the Court. In all candor, we say that Mr. Brisbane's history as a suitor in this cause gives him no right to the grace of a Court of conscience. He had a remedy at law for damages. He would not take it. *He was offered twenty years ago the title that he now asks, and would not take that either.*

#### **This Case Is *Res Judicata*.**

In March, 1922, Vice-Chancellor Griffin, in the second Brisbane-Sullivan case, decided that that case was *res judicata* by reason of the decision by this Court of the first Brisbane-Sullivan case in 1916. From this decision by Vice-Chancellor Griffin Brisbane never took an appeal.

The issue presented in the instant case to the court below by the Brisbane counterclaim for specific performance and Sullivan's answer thereto, is identical with that presented by the appeal decided by this Court in 1916.

The decision against Brisbane is *res judicata*.

**The decree of the Chancellor, giving to Arthur Brisbane an interest in the fund, should be reversed and set aside.**

**PART II.****Facts as between the appellants, James A. Sullivan and Ella J. Sullivan, and the appellees, Ruth Youmans and Grace Kastenhuber.**

In 1889 the premises in question were owned in fee simple by Thomas Wilks. On the property there stood at that time a small dwelling house. The land formed a portion of the general area that in 1924 was condemned by the City for the making of the present Journal Square Plaza.

Wilks died testate and his will appears in the case at page 203. The provisions of the will by which the testator devised the lands in question are:

“Secondly: I do give and devise to said Dora Elcina Raspiller, now known as Dora Elcina Wilks, all my real estate including said homestead and any other real estate of and to which I shall die seized, possessed or in any wise entitled to have and to hold the same to her for and during the term of her natural life and at her death I do give and devise the same to the heirs of her body, born in lawful wedlock.

If she shall leave no lawful issue living at the time of her death, then I give and devise the said real estate to my brother Aquila Wilks if he be then living, and if not then living, then I give and devise the same to those persons who would be his heirs at law if he had died intestate at the time of the death of Dora.”

After the death of Wilks and the probate of his will the devisee, Dora, lived with her husband, William P. Kastenhuber, on the demised premises until the house became so dilapidated as to be no longer tenatable. They moved out and for some time were unable to pay the taxes. The result

was that the property was exposed to sale by the City of Jersey City for the unpaid taxes, and a tax certificate was issued to one Charles R. Dieffenbach. Such proceedings were had after the issuance of the tax certificate that a tax deed was made and delivered by the City of Jersey City to Charles R. Dieffenbach under date of June 27, 1908 (Case, p. 356). And under date of June 29, 1908, Dieffenbach executed and delivered bargain and sale deed for the premises to William P. Kastenhuber.

In the tax proceedings notice to redeem was served, mailed and published. The notice is dated June 15, 1907, and appears in the printed case, page 257, line 28 *et seq.*

The proof of the service of this notice on the parties in interest appears in the Case, page 255.

The proof of the mailing and publishing of the notice appears in the printed case, pages 252-253.

The petition of Charles R. Dieffenbach as tax sale purchaser to the Hudson Circuit Court for the appointment of Guardian *ad Litem* for infants and for an order directing the City Collector of Jersey City to deliver a deed to petitioner, etc., appears in the printed case, pages 247-49.

The order of William H. Speer, as Circuit Court Judge of the County of Hudson, that the City Collector deliver deed pursuant to petition appears in the printed case, pages 250-51.

At or about the time of the conveyance of the property to the husband by Dieffenbach, Mr. and Mrs. Kastenhuber returned to live in the premises. They made a mortgage for \$2,000.00 and used all or part of the proceeds for the making of necessary repairs. The property at the time was of very little value. Indeed, as late as 1911, after it had been repaired by the expenditure of the proceeds of the \$2,000.00 mortgage already mentioned, the land was assessed at only \$950.00

and the house at \$1,250.00 (see tax bill 1911, Case, page 208).

It is perfectly plain that there was never any intent or desire on the part of Mr. and Mrs. Kastenhuber to increase any interest for themselves in the property at the expense of their children. The proofs show beyond doubt that so far from planning to increase their interest in the property, they were in great need of keeping a roof over their heads. They remained in the property until it was no longer tenantable. It is idle for anyone to speak of the "duty" of Dora Kastenhuber to pay the taxes. She and her husband were poor people. They were not able of themselves to save from the tax sale the little place that had been "home" for themselves and their children.

William P. Kastenhuber testified in the proceedings below (Case, pages 80-106). When that testimony is read in the light of what are so well known to have been the circumstances surrounding him and his wife at the time of the tax sale, it is proper for any Court or Judge to look sharply into his motives now. Through no effort of his or his wife or the children the old property through the years has come to be of some value. And if after all this time Mr. Kastenhuber sees—as he undoubtedly does—a chance to have the children come in for some of it, he is more than likely to take that chance.

At any rate, after Dieffenbach conveyed the property to William P. Kastenhuber, he and his wife Dora joined in a full covenant and warranty deed conveying the premises to James Billington (Deed, p. 191). And under date of June 29, 1910, Billington and wife conveyed by full covenant and warranty deed to Ella J. Sullivan, by whom title was taken in behalf of her brother, the appellant James A. Sullivan (Deed, p. 187).

Of the marriage of Dora Kastenhuber and William P. Kastenhuber two children were born. These children are the appellees Ruth Youmans and Grace Kastenhuber. Ruth was born February 18, 1904, and at the time of the institution of the Martin Act proceedings was about three years old. Grace was born on November 20, 1907, *five months after the Martin Act Proceedings were instituted and the notices were served* (Case, p. 55, ll. 10-20).

After the conveyance by Billington to Ella J. Sullivan, her brother entered into the contract with Bennett Milnor (assigned to the appellee Brisbane) for the conveyance of the premises by full covenant and warranty deed. This was in July, 1910. What followed through the years until the filing by the Sullivans of their petition to the Chancellor for the payment to them of the condemnation award that had been deposited with the Clerk in Chancery is set forth in full detail in the chronology and in the discussion of points embraced in Part I of this brief.

All that the Court below had before it when it proceeded to the hearing that resulted in the decree from which this appeal is taken was:

The petition for the payment of the award (Case, p. 11).

Answer by Arthur Brisbane to petition and counterclaim against petitioners (Case, p. 17).

Answer of petitioners to the Brisbane counterclaim (Case, p. 27).

Answer of appellee Grace R. Kastenhuber to petition (Case, p. 26a).

Answer of appellee Ruth W. Youmans to petition (Case, p. 26b).

Now it may be well to note again what these papers are in substance and effect. The petition simply alleges title, recites the proceedings re-

sulting in the payment of the award into court and asks that the moneys be paid to petitioners. The counterclaim of Brisbane alleges the making of the old contract in 1910 and its assignment to Brisbane, and claims that by virtue thereof all rights of the Sullivans in the fund have devolved upon Brisbane. It prays that so much of the fund as is represented by the title of the Sullivans be paid to the counterclaimant. The answer of the Sullivans to the Brisbane counterclaim sets up all the former defenses in the specific performance suits. The answers filed by Ruth W. Youmans and Grace Kastenhuber as children of Dora Kastenhuber are *pro forma*.

*There is nothing in the claims or pleadings thus filed that makes any allegation or presents any issue relative to the correctness of the Martin Act proceedings or anything that attacks the title. There is no allegation or issue relative to the conduct of the Kastenhubers touching the sale for taxes and the conveying of the property to William P. Kastenhuber. There is no allegation of fraud or wrongdoing against anyone.*

However, in spite of the absence of such issues or allegations before it, the Court proceeds to find:

“That William P. Kastenhuber and Dora E. Kastenhuber, his wife, suffered said premises to be sold under the Martin Act tax sale proceedings, ostensibly with a view of divesting their children (Ruth Kastenhuber and Grace R. Kastenhuber) of their vested remainder in fee therein” (Case, p. 47, ll. 12-20).

And that—

“The aforesaid Kastenhuber children were not divested of their estate in said premises by virtue of the Martin Act proceedings aforesaid, which were initiated and prosecuted in the name of Charles R. Dieffenbach

(though really for Dora E. Kastenhuber and William P. Kastenhuber, her husband) to obtain a deed from the City Comptroller of Jersey City" (Case, p. 47, ll. 30-40).

And that—

"The deed which was made, executed and delivered by the City Comptroller of Jersey City to said Dieffenbach must be regarded as void, and being void, the only interest which Dieffenbach may be said to have had in the premises was such as derived through the certificate of tax sale issued to him, and such was subject to redemption by parties in interest" (Case, p. 48, l. 35 *et seq.*).

And what is based on these findings is the Court's decree that:

"James A. Sullivan, Ella J. Sullivan \* \* \* have no interest in said fund; that Ruth Youmans and Grace Kastenhuber have an interest in the fund equivalent to a vested remainder in fee in the premises, subject to an estate for the life of their mother Dora E. Kastenhuber; that Arthur Brisbane has an interest in said fund equivalent to a life estate in the premises during the life of Dora E. Kastenhuber, subject to the payment to James A. Sullivan and Ella J. Sullivan by the said Arthur Brisbane of such sum as may be ascertained to be due them under the contract dated July 19, 1910, between James A. Sullivan and Bennett Milnor on the reference hereinafter provided for" (Case, p. 59, ll. 1-25).

And that—

"The Clerk of this Court forthwith pay to the said Arthur Brisbane out of the fund now in his possession, the sum of \$850.14, being interest at the rate of 6% per annum, on the sum of \$54,145.00, from March 19, 1923, the date of said award, to September 13, 1924,

the date when said award was deposited with the Clerk of this Court, less the amount paid Jersey City for taxes, and in addition thereto any and all accumulations of interest on the principal of said sum of \$54,145.00 or balance thereof in the possession of said Clerk from September 13, 1924 to the date of this Decree, deducting however, from said accumulations, income and interest, and paying to James A. Sullivan and Ella J. Sullivan, out of the amount so due to the said Arthur Brisbane, such sum as John F. Gough, Master in Chancery to whom the matter is hereby referred, may find to be due said James A. Sullivan and Ella J. Sullivan under the contract dated July 19, 1910, aforesaid, on the assumption that said contract will be completely performed on the part of James A. Sullivan and Ella J. Sullivan by compliance with this decree" (Case, p. 59, l. 28 *et seq.*).

And that—

"The sum of \$51,306.81, being the balance of the principal sum of the award \* \* \* less the amount herein allowed for counsel fees and costs, shall remain in the custody and control of the Clerk of this Court, and be invested \* \* \*, that the income arising from said investments be paid semi-annually to the said Arthur Brisbane, his executors, administrators or assigns, for and during the lifetime of Dora E. Kastenhuber, and upon her death, the principal of the aforesaid fund, as it shall then be on deposit, shall be paid or transferred to such parties as may then be entitled thereto, said interests to be then ascertained by an appropriate investigation" (Case, p. 60, l. 24 *et seq.*).

## POINT II.

The Court below, in the proceedings for the distribution of the condemnation award, had no jurisdiction or authority to inquire into the correctness of the Martin Act proceedings resulting in the deed from the city to Dieffenbach, nor to inquire into the legality of the conduct of the devisee and her husband concerning the failure to pay taxes and the sale of the lands for taxes to Dieffenbach.

We have already set forth clearly in the statement of the facts preceding this point the full scope of the allegations and issues presented to the Court in the proceedings in which the decree was made. There appears no allegation, specific or otherwise, of defect in title, and no charge of fraud or misconduct affecting the title.

In the case of *Nugent v. Hayes*, 94 N. J. E. 305, it was sought to have the Court of Chancery take jurisdiction on the ground of fraud in a case where the proper remedy was by writ of certiorari. In that case the bill of complaint did make at least a very strong hint of dishonesty. But the Court (Backes, V. C.) said at page 307:

“But the bill alleges no more than that the proofs upon which the circuit court made its order to the comptroller to execute the tax deed were untrue. That is not enough to invoke equity jurisdiction. True or not, the judgment of the truthfulness of the proofs was for the law court. To impeach and overthrow the legal proceedings it must be shown that the proofs were knowingly false and intended to deceive the court; in other words, that the purchaser when he applied to the circuit court for his order for the deed represented that the ‘unknown owners’ were not known to him when in fact he knew who they

were, or could have known who they were if he had made reasonable inquiry. The bill does not show this and the motion to dismiss will prevail."

With no more before it than we have already shown, consider how far the Court below went in disposing of rights in real property. In a proceeding to distribute condemnation money, and with no requisite charge or allegation before it, the Court goes back more than twenty-two years to convict the devisee and her husband of a fraud; and the effect of such fraud, the Court proceeds to adjudge, is to prevent the conveyance by the devisee and her husband under a full covenant and warranty deed in fee simple of any more than a life estate.

Such a judgment could be valid only in a proper cause, plenary in its character, and instituted for the purpose.

Justice administered otherwise than as according to law and the forms prescribed will readily become a serious subversion of rights. The prime function and purpose of a pleading is the reasonable appraisal of the party against whom the pleading is presented of what that party shall be called upon to meet. So that here it is enough to make the simple argument that though nothing is before the Court charging fraud, fraud is nevertheless adjudged. And the effect of this judgment is to destroy a chain of full covenant and warranty deeds stretching over a period of twenty-two years and including a tax deed made by the City of Jersey City on the order of the Hudson County Circuit Court.

But the Court does more than adjudicate fraud, with no more before it than we have indicated. It sets itself directly to the task of inquiring into the validity of the city's tax deed, and pronounces that that deed, though valid on its face, was a

complete nullity, and that the order of the Hudson County Circuit Court, pursuant to which the deed was given, was equally void. The Court order and the deed thus disposed of had, at the time of the decree, been of record since 1908, a period of more than twenty-two years.

The conclusion of the Court below as to the order of the Hudson County Circuit Court and the city's deed under it is this (Opinion, p. 48, l. 30):

“\* \* \* the judge of said court was therefore without authority to order the City Comptroller of Jersey City to make, execute and deliver to Dieffenbach a deed for said premises.

“Consequently, the deed which was made, executed and delivered by the City Comptroller of Jersey City must be regarded as void. \* \* \*”

All of this is in direct violation of the provisions of Sections 14 and 15 of the Sale of Land Act, Vol. 4, Comp. St., 4679. This statute was recognized and adhered to in the case of *Nichols v. Older*, 78 Eq. 101. This is a Chancery case, but there has been no departure from the precedent that it establishes.

The attempt to make a collateral attack upon a tax deed was presented to the Court of Chancery in *White v. Cadmus*, 84 Eq. 86. This case also cites, and adheres to, the statute *supra*.

The Vice-Chancellor himself, in the present case, seems to have doubted his own power to do as he did. We quote from the Opinion (p. 50, l. 16, etc.):

“It may be that I am not warranted, in the matter *sub judice*, to stress defects in the tax sale proceedings leading up to the sale of the premises to Charles R. Dieffenbach, and the delivery of the certificate of sale to him. Our

courts have repeatedly held that relief therefrom may be had only through certiorari proceedings in the Supreme Court. The settled law appears to be that proceedings leading up to the sale are reviewable on certiorari only in the Supreme Court. Proceedings subsequent to the sale tending to bar the right of redemption, may be questioned in equity. *Milmoe v. Zimmerman*, 95 N. J. E. 85, aff'd. 97 N. J. E. 326; *Jacobus v. Cahill*, 87 N. J. L. 563; *Nugent v. Lindsley*, 100 N. J. E. 87. I have in mind that the Court of Errors and Appeals in *Mackie v. Cain*, 92 N. J. E. 631, criticized the Court of Chancery for passing upon the validity of proceedings on which a tax sale under the Martin Act rested, but such criticism, in my judgment, was not intended to relate to proceedings subsequent to the sale, and more particularly relating to proceedings for the obtaining of a tax deed, which proceedings are intended to bar the right to redeem."

That certiorari is the only proper method of questioning the validity of a tax deed and the proceedings resulting in it, is shown by the case of *Nugent v. Lindsley*, 4 Misc. 504, where by such method a tax deed was brought into our Supreme Court.

A leading case on this question in New Jersey is one in which the Court of Errors and Appeals denied the right to the Court of Chancery to make any inquiry into proceedings for a tax deed in a suit to quiet title. We refer to *Mackie v. Cain*, 92 N. J. E. 631. Likewise, in the case of *Roe v. Jersey City*, 75 Eq. 645, where the bill was to enjoin the city from taking possession under a tax title, this Court denied the power to equity.

The case of *Jacobus v. Cahill*, 87 N. J. L. 562, cited in the opinion below, holds contrary to the Vice-Chancellor.

Speaking for this Court, Justice Trenchard says (p. 564):

“At the outset we remark that we think that certiorari is the proper remedy to review an order and proceeding of the Circuit Court against unknown owners and persons in interest had under section 3 of a supplement to the Martin Act (Pamph. L. 1889, p. 309; Comp. Stat. p. 5218, Par. 325), upon which a deed of conveyance to a purchaser at a tax sale is founded. *Baxter v. Jersey City*, 36 N. J. L. 188.”

This Court reached the same conclusion in the case of *Sutton v. Township of Morris River*, 93 Eq. 484, where the Court adopted the opinion of V. C. Leaming. It is evident from a reading of the opinion that what the Court had before it was a bill to enjoin a suit in ejectment brought by the holder of a *tax deed*. In keeping with these decisions of the Court of Errors and Appeals are the following cases in Chancery:

*White v. Cadmus*, 84 N. J. E. 86;  
*Nugent v. Hayes*, 94 N. J. E. 305.

In both of these cases a tax deed had been delivered, but the Court would not inquire into the proceedings resulting in the deed.

We have mentioned above the function of a pleading as informing the opposite party of what he shall be required to meet. Pleadings are also a guide to the Court. They define the scope of the inquiry. And what can happen when a Court undertakes to decide matters that are the subject of no allegation and no issue before it, is well illustrated in the present case.

We refer to the Court's conclusion as to the effect of the Martin Act proceedings on the interest of Grace Kastenhuber. From the opinion (Case, p. 40, l. 25, etc.) we read:

“Grace R. Kastenhuber was not named in the Circuit Court proceedings aforesaid, nor was the requirement of the statute (Martin Act) with respect to service upon her of a notice to redeem, complied with.”

The fact of the matter is that Grace R. Kastenhuber was not named in the Circuit Court proceedings because *when those proceedings were instituted she had not been born*. The date of her birth is November 20th, 1907. The notice to redeem was dated June 15th, 1907. It was published during the months of June and July, 1907. The notices were mailed on June 17th, 1907. Personal service of the notice was made on the mother of the then unborn child and upon the other Kastenhubers on June 18th, 1907. So that all of these proceedings were had and completed more than five months before Grace Kastenhuber came into the world.

### POINT III.

**Also, the finding by the Court below of irregularities in the Martin Act proceedings was based on invalid evidence.**

Whether the Court had jurisdiction or not, there is another reason why the decree upsetting the Martin Act Proceedings and the resulting deed is erroneous. It is because the Court had before it *no legal evidence upon which to base any such decree*. The only witness testifying on the subject was the witness, Mark A. Sullivan, solicitor for the appellees, Grace Kastenhuber and Ruth Youmans. His testimony appears in the printed case on page 126-H, etc. No original records were in Court. The witness testified only as to his effort at finding records by searching the indices. He told of his not being able to find titles in the

index. He examined the indexes for the name "Kastenhuber" and the name "Dieffenbach". He did not examine the tax proceedings indexed under the name of "Jersey City". The testimony of this witness had no greater validity than as indicated by the following (p. 126-M, l. 1, etc.):

"Q. And, outside of that, you, yourself, made no further examination? A. No; except in the page-by-page examination of the minutes of the Circuit Court covering the period that I have testified to.

Q. So that if such a petition had been filed, and if such an order had been made, and the record of it had not reached the indices of the minutes, and had not reached the minutes, and had you would not have found either, would you? A. No. I might say also, with reference to the tax proceedings indexed under the name of 'Jersey City', there was always another name attached to those proceedings, which would show either the presumed owner or the person in whose name the land had been assessed; and, of course, not finding anything indexed under 'Jersey City', 'Dieffenbach', or 'Kastenhuber', I did not examine any of those proceedings."

That any court should upset a title to lands of nearly twenty-five years' standing upon any such testimony as this is unthinkable.

#### POINT IV.

##### **The allowance of counsel fee to the solicitor of the Kastenhuber children is unlawful.**

The Court below allowed a counsel fee of \$5,000, to be paid out of the fund, to the solicitor of the appellees, Ruth Youmans and Grace Kastenhuber.

This fund represents the land. And for the sake of the present argument, either Mr. Brisbane or Mr. Sullivan has at least a life estate in it. These appellees, by their solicitor, argue that the fund represents land, and claim that they have in it a remainder after a life estate.

How can the Court pay for services rendered these so-called remaindermen with a portion of the life estate? The land is represented by the full corpus of the fund, and not by the fund, less \$5,000. If this counsel fee is to stand, then whoever owns the present estate in the fund has suffered the taking from his estate of \$5,000 in order that services rendered to somebody else might be paid for.

**The decree of the Court of Chancery should be reversed and set aside.**

Respectfully submitted,

PERKINS AND DREWEN,  
Counsel for Appellants, James A.  
Sullivan and Ella J. Sullivan.

