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BILL OF COMPLAINT.

In Chancery of New Jersey

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

The complainant 158 Bowery Realty Corporation, a corporation of the State of New York, respectfully shows unto your honor and alleges:

1. At all of the times hereinafter mentioned the complainant was and still is a corporation duly organized and existing under and by virtue of the laws of the State of New York with an office and principal place of business in the City of New York in said State.

2. On or about July 22, 1925, complainant entered into written agreement with one Henry C. Copeland wherein and whereby the latter agreed to sell and convey to complainant certain lands belonging to him and situated in the Borough of Haworth, in the County of Bergen in this State for the sum of Two hundred and twenty-five thousand dollars ($225,000) to be paid in the manner following, that is to say, by the payment of the aggregate sum of Twenty-five hundred dollars ($2,500) upon the execution of said agreement, the payment of an additional sum of Twenty-five hundred dollars ($2,500) upon the consummation thereof and the delivery of deed of conveyance, and by executing and delivering a purchase money mortgage for the sum of Two hundred and twenty thousand dollars ($220,000). In addition thereto complainant agreed to pay a further sum of eleven hundred and fourteen dollars and thirty-two cents

($1,114.32) representing the apportioned half of taxes assessed against the said lands for the first half of the year of 1925.

3. On or about October 22, 1925, the said agreement was consummated to the extent that the complainant, having made the initial payment of Twenty-five hundred dollars ($2,500) aforesaid, made the additional payment of Twenty-five hundred dollars ($2,500) and a further payment of eleven hundred and fourteen dollars and thirty-two cents ($1,114.32) all in pursuance of the terms of said agreement and executed and delivered moreover, the said purchase money mortgage for Two hundred and twenty thousand dollars ($220,000) whereupon said Henry C. Copeland, his wife Marie K. Copeland joining executed and delivered a deed of general warranty transferring and conveying title in fee simple to said premises to the complainant.

4. The deed referred to in the preceding paragraph was thereafter duly recorded in the office of the Clerk of Bergen County aforesaid on October 23, 1925, in book 1365 of deeds for said County, on page 139 and the purchase money mortgage aforesaid was thereafter duly recorded in the same office on October 23, 1925, in book 792 of mortgages for said County, on page 104.

5. The said mortgage contained provision for its re-payment in semi-annual installments of Five thousand dollars ($5,000) each, the first of which was to become due on October 22, 1926, together with interest on unpaid balances from October 22, 1926, at the rate of 6 per cent. per annum, payable semi-annually. The mortgage

contained a further provision that the mortgagor shall have the privilege of paying it off and receiving a satisfactory discharge thereof at any time prior to July 22, 1926, upon the payment of the sum of one hundred and twenty thousand dollars ($120,000) in cash.

6. Upon the discovery later that the date so fixed, to wit, July 22, 1926, was an error, the parties, that is, the said Henry C. Copeland and complainant, by instrument in writing bearing date on or about the fifteenth day of July, 1926, corrected the error and fixed the day as October 22, 1926, one year after the closing aforesaid.

7. At the time of the consummation of the agreement and the delivery of deed as aforesaid on October 22, 1925, complainant informed said Henry C. Copeland that the title to said lands appeared to be involved, that it was seemingly derived from tangled sources and that the title company which complainant had engaged to examine and report upon said Henry C. Copeland's title had shortly theretofore informed complainant that, because of the facts herein stated it would be unable to complete the examination of and passing upon of said title for at least several months thereafter. Said Henry C. Copeland thereupon informed complainant and its attorney that his title to his knowledge was free, unencumbered and flawless adding for further assurance that he stood at all times back of his warranty deed.

8. It was the intention of the parties at the time of the closing aforesaid and the inclusion of the provision in the mortgage relative to cancellation thereof by the payment of one hundred and twenty thousand dollars ($120,000) afore-

said, that the complainant was to have a period of one year from and after the delivery to it by said Henry C. Copeland of a title such as he claimed and represented to be seized of, to wit, free, unencumbered and flawless.

9. Complainant accepted the said deed of conveyance upon said Henry C. Copeland's claim and representation as aforesaid and upon the condition that resort and recourse would be had to the latter in the event of the disclosure upon the completion of the examination and report of defects in or encumbrances upon the said Henry C. Copeland's title.

10. Upon the recent completion of the examination of and report upon the said Henry C. Copeland's title there were disclosed numerous serious defects in and encumbrances upon said title not contemplated in the conveyance, not disclosed by the said Henry C. Copeland, and constituting withal serious and perhaps fatal flaws in the title to the greater part of the lands aforesaid.

11. Complainant thereupon demanded of the said Henry C. Copeland, that, in accordance with his said agreement and in pursuance of the covenants in the said deed contained he proceed forthwith to the clearing of the said title and the removal therefrom of all clouds and, in addition, extend the time for the cancellation of said mortgage by the payment of the said sum of one hundred and twenty thousand dollars ($120,000) until the expiration of one year following the date of final clearing of said title, as originally contemplated by the parties.

12. The said Henry C. Copeland has refused and still refuses to honor the demand set forth

in the preceding paragraph and refuses to perform his said agreement in that behalf.

13. By mutual error of the said parties or by inadvertence on their respective parts coupled with the representations and assurances of said Henry C. Copeland aforesaid, the said provision in the mortgage relative to the cancellation thereof upon the payment of one hundred and twenty thousand dollars ($120,000) in cash at the expiration of one year following the date of consummation of the agreement referred to in paragraph two hereof by the delivery of free, unencumbered and flawless title was not clearly expressed, but instead was erroneously phrased as set forth in paragraph five hereof.

Complainant is without adequate remedy in the courts of law and therefore prays:

1. That Henry C. Copeland who is the defendant to this suit, may answer this bill of complaint and each statement therein made.

2. That a decree may be made reforming said mortgage so as to afford the complainant the privilege of obtaining cancellation and discharge thereof upon the payment of the sum of One hundred and twenty thousand dollars in cash at any time prior to the expiration of one year from and after the delivery of free, unencumbered and flawless title to the lands aforesaid.

3. That a writ of subpoena may issue commanding said defendant to answer this bill of complaint and to abide by such decree as this Court may make in the premises.

J. B. GLUECKFIELD,
Solicitor for and of Counsel with Complainant.

ANSWER AND COUNTER-CLAIM.

IN CHANCERY OF NEW JERSEY.

Between	
158 Bowery Realty Corporation, *Complainant,*	*On Bill, etc.*
and	*Answer and Counter-claim.*
Henry C. Copeland, *Defendant.*	

The answer and counter-claim of the defendant Henry C. Copeland, respectfully shows unto your Honor, and alleges:

This defendant, answering the bill of complaint, says that:

(1) Paragraphs "1" to "5," inclusive, are admitted.

(2) This defendant has no knowledge or information sufficient to form a belief as to the statements in paragraph "6," except that this defendant, at the request of the plaintiff, signed and delivered to the plaintiff, a letter reading as follows:

"July 15, 1926.

158 Bowery Realty Corp.,
1440 Broadway,
New York City.

Gentlemen:

This is to confirm an understanding that we have come to this day at the office of your attorney, Meyer Strunsky, in the presence of Morris Randell, Abraham Randell, Henry Copeland, Jr., Meyer Strunsky and Hon. Abraham Rosenbluth, that it was found on examination that the interest on the mortgage begins on the 22nd day of October, 1926, and it is the concensus of opinion of the attorneys and of myself that the real meaning of that was that the real intent and meaning of the privilege of paying One Hundred and Twenty Thousand Dollars ($120,000) was to be on the 22nd of October, 1926 instead of on the 22nd of July, 1926.

This letter is to confirm such understanding between you and the undersigned instead of an agreement which would alter the present mortgage on record.

This is not intended to change the terms of the mortgage in any particular.

(signed) Henry C. Copeland."

(3) Paragraphs "7," "8" and "9" are denied.

(4) This defendant has no knowledge or information sufficient to form a belief as to the statements in paragraph "10"; and further says that the contract dated July 22, 1925, between complainant and defendant, referred to in paragraph "2" of complainant's bill, contained the following recital:

"It is agreed that the purchaser has inspected the title policy of the North Jersey Title Insurance insuring the seller's title to the major portion of the premises above described, and buys subject to such exceptions as are contained in said title policy."

New Jersey State Library

(5) Paragraphs "11," "12" and "13" are denied.

By way of counter-claim against the complainant, the defendant, Henry C. Copeland, says that:

(1) On October 22, 1925, the complainant being indebted to this defendant in the sum of $220,000, executed a bond of that date to secure that sum, payable in semi-annual installments of $5,000 each, the first installment being payable on the 22d day of October, 1926, with interest at the rate of six per cent. (6%) per annum, payable semi-annually, and to be computed from October 22, 1926.

(2) Said bond, and the mortgage securing the same, provided that should any default be made in the payment of installments on account of principal, and should the said installments remain unpaid for the space of thirty days, then the entire principal sum of $220,000, or such part thereof as remained unpaid, with all arrearage of interest, should, at the option of this defendant, become and be due and payable immediately thereafter.

(3) That default has been made in the payment of the installment of $5,000 on account of the principal of the said bond and mortgage, which was due and payable on the 22d day of October, 1926, and said default has continued for upwards of thirty days; and this defendant has elected to declare the entire principal of said mortgage to be due and payable immediately.

(4) This defendant is still the owner and holder of the said bond and mortgage.

(5) The whole amount of principal, $220,000, with interest thereon from October 22, 1926, is due upon the defendant's bond and mortgage.

(6) The mortgaged premises are described as follows: All those several lots, plots, pieces and parcels of land, situate, lying and being in the Borough of Haworth, County of Bergen, State of New Jersey, shown on Section B on a certain map entitled "Map of Haworth, New Jersey," being land of the Villa Site Company of Haworth, N. J., made by James A. Lee, C. E., and filed in the office of the Clerk of Bergen County, New Jersey, on August 27, 1891, as Map No. 529, hereinafter mentioned and described as follows:

(DESCRIPTION OF PROPERTY.)

Being the same premises this day conveyed by the party of the second part (defendant herein) to the party of the first part (complainant herein) by two certain indentures dated October 22, 1925, and intended to be recorded simultaneously herewith; (the mortgage held by this defendant).

This defendant therefore prays:

(1) That said complainant, 158 Bowery Realty Corporation, may answer this counter-claim and each statement herein made.

(2) That an account may be taken of the amount due on this defendant's mortgage.

(3) That the complainant may be decreed to pay defendant the amount so found due, with interest and costs, by a certain day to be

appointed by this Court, and that in default of such payment, it be debarred and foreclosed of all equity of redemption in said lands.

(4) That a decree may be made for the sale of the mortgaged premises to raise and pay to this defendant, the amount so found due on his mortgage, with interest and costs.

JULIAN G. HARRISON,
Solicitor for and of Counsel with Defendant.

ANSWER TO COUNTER-CLAIM.

IN CHANCERY OF NEW JERSEY.

Between	
158 Bowery Realty Corporation, *Complainant,*	*On Bill, etc.*
and	*Answer to Counter-claim.*
Henry C. Copeland, *Defendant.*	

The complainant by way of answer to the defendant's counter-claim says:

1. He admits the allegations set out in paragraph one of defendant's counter-claim but says that the circumstances therein set forth were predicated upon an erroneous state of facts.

2. He admits the allegations of paragraph two.

3. He denies that he is in default as alleged in paragraph three and denies that the defendant has the right to make the election stated therein.

4. He has no knowledge or information sufficient to form a belief as to the truth of the allegation contained in paragraph four.

5. He denies paragraph five.

6. He admits that the premises are described in the mortgage as set out in paragraph six of defendant's counter-claim but denies that that is a sufficient or satisfactory description in that

the map referred to in said description is an assessment map and not a record within the meaning of the Conveyance Act, since it is not filed and is subject to constant changes. Moreover the lands so described cannot be identified on said map.

FIRST DEFENSE.

1. The term of defendant's mortgage does not and cannot commence until the delivery and conveyance by defendant to complainant of title by deed properly and sufficiently describing the lands and free from all encumbrances and without flaws or defects therein.

2. Defendant has not conveyed free, flawless and unencumbered title.

SECOND DEFENSE.

1. The provisions set out in said mortgage do not correctly state the intention and agreement of the parties thereto.

2. Any and all rights of the holder of said mortgage are subject and subordinate to the reformation thereof so as to truly express said intention and agreement.

THIRD DEFENSE.

1. Complainant cannot be held to be in default of the payment of any sum at any stated time unless and until the amount and time to be paid are definitely fixed in accordance with the true intention and agreement of the parties which was by mutual mistake of the parties not expressed in the mortgage.

I. B. GLUECKFIELD,
Solicitor for and of Counsel with Complainant.

ORDER OF REFERENCE.

Filed December 28, 1926.

IN CHANCERY OF NEW JERSEY.

Between	
158 Bowery Realty Corporation, *Complainant,*	*On Bill, etc.*
and	*Order of Reference to a Vice-Chancellor.*
Henry C. Copeland, *Defendant.*	

It is on this 28th day of December, 1926, on motion of I. B. Glueckfield, solicitor for and of counsel with the complainant, counsel for the defendant consenting thereto, ordered that the above-entitled cause be and it is hereby referred to Hon. M. L. Berry one of the Vice-Chancellors to hear same for the Chancellor and to report thereon to him and advise what order or decree should be made therein.

E. R. WALKER,
C.

We consent to the making and entry of the foregoing order.

I. B. GLUECKFIELD,
Solicitor for and of Counsel with Complainant.

JULIAN C. HARRISON,
Solicitor for and of Counsel for Defendant.

A true copy.
Thomas Barber,
Clerk.

NOTICE OF MOTION FOR SUMMARY JUDGMENT.

IN CHANCERY OF NEW JERSEY.

Between	
158 Bowery Realty Corporation, *Complainant,* and Henry C. Copeland, *Defendant.*	*On Bill, etc.* *Notice of Motion for Summary Judgment.*

To the complainant, 158 Bowery Realty Corporation:

Take Notice, that on January 11, 1927, at ten o'clock in the forenoon, or as soon thereafter as counsel can be heard, at the Chancery Chambers in the City of Newark, N. J., I shall apply to the Chancellor for an order striking out the bill of complaint filed by you in the above-entitled cause, and also striking out the answer to the defendant's counter-claim, and for a decree *pro confesso* on defendant's counter-claim, for the following reasons:

(1) The said bill of complaint discloses no cause of action, for the following reasons:

(a) The reformation sought by complainant cannot be decreed because the alleged oral agreement upon which complainant's demand for reformation is predicated, is within the provisions of the Statute of Frauds, and void.

(b) The alleged defects of title which complainant claims, are not set forth with suffi-

cient certainty, but are vague, uncertain and indefinite.

(c) None of the alleged defects of title claimed by complainant are asserted to make the title unmarketable.

(d) None of the alleged defects of title claimed by complainant are asserted to have resulted in complainant's eviction by title paramount.

(e) None of the alleged defects in title claimed by complainant is asserted to have been made the basis of any suit based upon an adverse title in any third party.

(f) Parol evidence to alter, vary or contradict the terms of the bond given by complainant is inadmissible.

(g) Reformation of a written agreement for the purpose of having the alleged agreement as so reformed, specifically enforced, cannot be decreed.

(2) The answer of the complainant to the defendant's counter-claim praying foreclosure of complainant's mortgage, is insufficient in law for the following reasons:

(a) The denials are evasive and do not comply with the requirements of Chancery Rule 46.

(b) The denials are evasive and argumentative, and do not comply with Chancery Rule 47.

(c) The denials in the answer and the allegations of the original bill taken together, are no defense to the counter-claim praying foreclosure of the defendant's mortgage.

(3) The defense interposed by complainant is sham and frivolous for the reasons stated in

the accompanying affidavits of Henry C. Copeland, the defendant, and Henry F. Copeland.

JULIAN C. HARRISON,
Solicitor of Defendant,
Henry C. Copeland.

IN CHANCERY OF NEW JERSEY.

Between	
158 Bowery Realty Corporation, *Complainant,*	*On Bill, etc.*
and	*Affidavit.*
Henry C. Copeland, *Defendant.*	

State of New York,
City of New York,
County of New York. } *ss.*

Henry C. Copeland, of full age, being duly sworn, on his oath says:

I am defendant in the above cause. Complainant filed its bill in this cause, on or about October 26, 1926, seeking to have reformed a purchase money mortgage given to me as mortgagee, by complainant, as mortgagor, for the sum of $220,000. By its terms the mortgage permitted the mortgagor to discharge and satisfy it by paying to me $120,000 at any time prior to July 22, 1926. The mortgagor did not pay or offer to pay said amount on or prior to July 22, 1926, but ap-

plied to me for an extension, which I granted in writing in the following letter:

"July 15, 1926.

158 Bowery Realty Corp.,
1440 Broadway,
New York City.

Gentlemen:

This is to confirm an understanding that we have come to this day at the office of your attorney, Mayer Strunsky, in the presence of Morris Randell, Abraham Randell, Henry Copeland, Jr., Mayer Strunsky and Hon. Abraham Rosenbluth, that it was found on examination that the interest on the mortgage begins on the 22nd day of October, 1926, and it is concensus of opinion of the attorneys and of myself that the real meaning of that was that the real intent and meaning of the privilege of paying One Hundred and Twenty Thousand Dollars ($120,000) was to be on the 22nd of October, 1926, instead of on the 22nd of July, 1926.

This letter is to confirm such understanding between you and the undersigned instead of an agreement which would alter the present mortgage on record.

This is not to change the terms of the mortgage in any particular.

(Signed) Henry C. Copeland."

Prior to the time said letter was written, complainant did not assert any claim that there was a mistake in the mortgage, and the letter of July 15th which I signed, was dictated, in his office, by the attorney for the mortgagor. My own counsel was not present. At that time, nearly nine months after the deed had been given

and the mortgage made, no claim was made that there were defects in the title, nor was there any claim that the privilege of discharging the mortgage by payment of $120,000, was to be extended, for any reason whatever, beyond October 22, 1926.

I never agreed to any other terms of payment than those stated in the bond and mortgage, and in my letter of July 15, 1926. Neither did I make any representations to complainant regarding my title to the premises in question, in substance or to the effect, that my title, to my knowledge, was free, unencumbered and flawless. On the contrary, the contract of sale which was made and dated July 22, 1925, contained the following recital:

"It is agreed that the purchaser has inspected the title policy of the North Jersey Title Insurance Company, insuring the seller's title to the major portion of the premises above described, and buys subject to such exceptions as are contained in said title policy."

A true copy of the said contract of sale, signed by Abraham Rosenbluth, the Treasurer of 158 Bowery Realty Corporation is hereto attached.

I attach also a photostat copy of the policy of title insurance which was referred to in the recital above set forth.

I am advised by my counsel that none of the matters excepted in the title policy of the North Jersey Title Insurance Company constitute substantial or material defects in the title, nor have I ever been informed by complainant of any other claimed defects in the title which could not be readily cleared up by my affidavit or that of my son. I have been interested in the property since the year 1892, at which time the entire property

was conveyed to me by two corporations under deeds which were subsequently declared to be mortgages, and foreclosed. So far as I know, no adverse claim is being made by any one to any part of the premises.

Part of the premises conveyed to complainant were tax titles, and the deed as to them was only a quit claim deed.

Some weeks before October 22, 1926, I had a conversation with Mr. Strunsky, Secretary of complainant, in which he stated that there were some corrections in the description of the property to be made, and he said that with my son's assistance he expected everything would be straightened out, and he said, "We are getting on swimmingly." I told Mr. Strunsky several times that I was perfectly willing to sign any papers necessary to correct any error in the title or the description of the property. I never was requested by complainant to remove any clouds from the title prior to the filing of the bill of complaint herein, except that I was told that there were a few papers for me or my son to execute at the time the mortgage was to be paid off. The papers required to be signed were, as I am informed, given to my son as stated in his affidavit filed herewith. Until I received a letter from Mr. Glueckfield on October 27, 1926, I had no idea why complainant failed to exercise its option to pay off the mortgage at the reduced amount on October 22, 1926. I expected until the day was practically over, that complainant was going to pay off the mortgage by paying me the sum of $120,000, and prior to that date I did not hear from the complainant in any way that it did not intend to do so. At no time did the complainant tender or offer to pay the sum of $120,000; nor has defendant at any time tendered

or offered to pay the sum of $5,000 which was due under the terms of the bond on October 22, 1926. Defendant has read the statements and denials contained in his answer and counter-claim heretofore filed herein, and makes said statements and denials part hereof with the same force and effect as if here set forth in full.

HENRY C. COPELAND.

Subscribed and sworn to before me
this 5th day of January, 1927.
EMILY STALP,
Commissioner of Deeds for the City of New York.
New York County Clerk's No. 417.
New York County Register's No. 27177.
Kings County Clerk's No. 116.
Kings County Register's No. 7105.
Commission expires October 6, 1927.

AGREEMENT made and dated July 22, 1925, by and between HENRY C. COPELAND, residing at 242 West 101 Street, in the Borough of Manhattan, City of New York, hereinafter described as the seller, and 158 BOWERY REALTY CORPORATION, a domestic corporation, with its principal place of business at No. 233 Broadway in the Borough of Manhattan, City of New York, hereinafter described as the purchaser.

WITNESSETH:

That the seller agrees to sell and convey and the purchaser agrees to purchase ALL those several lots, plots, pieces and parcels of land,

situate, lying and being in the Borough of Haworth, County of Bergen, State of New Jersey, shown on Section B on a certain map entitled "Map of Haworth, New Jersey," being land of the Villa Site Company of Haworth, N. J., made by James A. Lee, C. E., and filed in the office of the Clerk of Bergen County, New Jersey, on August 27, 1891, as Map No. 529, hereinafter mentioned and described as follows:

Parcel No.	Borough Assessment Map Block No.	Lot or Plot Nos.
28	129	3,4,5
29	129	18-22
30	128	23-27
31	128	34-39
32	127	93-109
33	127	146-155
34	126	220-221
35	126	218-219
36	126	212-217
37	126	224-225
38	128	88-92
39	126	210,211,222,223
40	122	W½ (163-167)
41	122	168
42	122	169-175
43	122	188-193
44	122	206-209

45—Beginning at the corner formed by the intersection of the northerly line of Haworth Avenue (now Haworth Drive) with the easterly line of Stevens Street; running thence northerly, along said easterly side of Stevens Street, six hundred and seventy-five (675) feet to the south-

erly line of lot No. 209; thence easterly, along the southerly line of lot No. 209, one hundred (100) feet; thence southerly, parallel with the first mentioned course, six hundred and seventy-five (675) feet to the northerly line of said Haworth Avenue; thence westerly, along the northerly line of Haworth Avenue 100 feet to the point of beginning.

47—Lots 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144 and 145, together with the strip of land to the north of and immediately adjoining said lots 127 and 128, extending to the northerly line of the property formerly owned by the Haworth Improvement Company, and from Valley Road (formerly Owasco Street) to a point opposite the centre line of Owatonna Street.

48 Block No. 124 72-75

49—Lots 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70 and 71, together with the strip of land, approximately ten (10) feet in width, to the north of and immediately adjoining lots 57 and 58, extending to the northerly boundary of the land formerly owned by the Haworth Improvement Company, and from Valley Road (formerly Owasco Street) to a point opposite the centre line of Hill Street.

50—Plots 12, 13, 14, 15, 16 and 17, together with the strip of land to the north of and immediately adjoining lot 12, extending to the northerly boundary line of property formerly of the Haworth Improvement Company from a point

opposite the northeasterly corner of lot 12 to a point opposite the centre line of Hill Street.

51 Block No. 125 6-9

52—All that tract or parcel of land in the Borough of Haworth, County of Bergen and State of New Jersey, shown in Section "b" of a certain map entitled, "Map of Haworth, N. J., being land of the Villa Site Company," made by James A. Lee, C. E., filed August 27, 1891, in the Office of the Clerk of Bergen County, New Jersey, as Map No. 529, and marked on said map "Reserved" and bounded and described as follows:

BEGINNING at the intersection of the northerly line of Haworth Avenue (now Haworth Drive) with the easterly line of land of the West Shore Railroad Company, running thence northerly, along the easterly line of land of said West Shore Railroad Company, nine hundred and ninety (990) feet and six (6) inches more or less, to the division line between the land formerly of Charles H. Mount and land formerly of John Ackerman; running thence easterly along said last mentioned division line, fifty (50) feet; thence southerly parallel with the first mentioned course, nine hundred and ninety (990) feet and six (6) inches, more or less, to the northerly line of Haworth Avenue (now Haworth Drive) and thence westerly, along the same, fifty (50) feet to the point or place of beginning.

ALL those several plots, pieces or parcels of land with the improvements thereon, if any, situate, lying and being in the Borough of Haworth, County of Bergen and State of New Jersey, shown on a certain map entitled, "Map of Haworth, Bergen County, N. J." and filed in the

office of the Clerk of said Bergen County, on July 7, 1888 as Map No. 384, bounded and described as follows, to wit:

53—All of block 1, comprising plots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14 and 15 in said block, together with the strip of land to the north of and opposite said block 1, extending from the northerly line of Woodland Avenue (or street) to the northerly line of the property formerly of the Haworth Improvement Company, and from a point opposite the middle of Field Road (now called Maple Street) to a point opposite the easterly end of said Woodland Avenue (or street).

Parcel No.	Borough Assessment Map Block No.	Lot or Plot Nos.
54	78	8-13
55	78	1,2,15,16
56	78	E 100 ft lots 3 & 4
57	78	W 65 ft lot 6
58	81	1
59	81	3,4
60	81	6
61	81	10,11
62	81	12,13
63	81	16-18
64	85	2-6,18
65	85	11

66—Plots 1, 2, 3, 4 and 5 in block 8, together with the strip of land to the north of and opposite said plots 1, 2, 3, 4 and 5 extending from the northerly side of Woodland Avenue to the northerly line of the property formerly of the Haworth Improvement Company, and from a

point opposite the middle line of Myrtle Avenue (formerly Herrick Road) to a point opposite the middle line of Field Road (now called Maple St.)

67	99	1
68	73	6-8
69	73	10
70	77	1-10,16-20
71	84	1-3
72	84	5-7
73	84	9-10
74	90	4,5
75	90	6,7
77	94	6
78	94	7
79	94	8
80	98	3,4,5
81	98	6
82	98	7

83—All of block 14 comprising plots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11 and 12 in said block, together with the strip of land opposite and to the north of said block 14, extending from the northerly line of Woodland Avenue (or street) to the northerly boundary of the property formerly of the Haworth Improvement Company, and from a point opposite the centre line of Brook Street (formerly McArthur Road) to a point opposite the centre line of Myrtle Avenue (formerly Herrick Road).

84	76	1-12
85	80	1-12
86	83	1-12
87	82	1-6
88	82	13,14
89	82	17-21
89A	82	22,E1/2 23

90	82	124-129
91	82	130-141
92	44	34-48,97-111
93	44	118-120
	82	121,W1/2 122
94	43	49-96
95	41	193-240
96	42	172,173,174
97	42	175-192
98	42	241-264
99	79	151-155
100	79	156-162
101	79	163-168
102	79	265-282
103	79	283-288
104	75	289-312,409-432
105	40	313-336,385-408
106	39	337-384

107—Lots 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, and 456, and 553, 554 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575 and 576, together with the strip of land opposite and to the north of said lots 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575 and 576, extending from the northerly line of Woodland Avenue or street to the northerly boundary of property of the Haworth Improvement Company and from the prolongation of the center line of Mill Street to the prolongation of the centre line of Brook Street.

108	38	457-480,529-552
109	37	481-528

110—All that tract or parcel of land in the Borough of Haworth, County of Bergen and State of New Jersey, bounded and described as follows, to wit:

BEGINNING at the intersection of the centre line of Woodland Avenue (or street) and the centre line of Mill Street, as said streets are shown on a certain map entitled, "Map of Haworth, Bergen County, N. J.," made by James A. Lee, C. E., and filed in the office of the Clerk of Bergen County, New Jersey, January 20th 1892, as Map No. 566; running thence northerly, along a line drawn in continuation of the centre line of Mill Street to the northerly boundary of lands described in the deed from the Haworth Improvement Company to Henry C. Copeland, dated May 7th 1892, recorded in said Clerk's Office in book 338 of Deeds, at page 317, etc., June 2nd 1892; thence following the courses and distances of the description of the tract of 205 acres as described in said deed as follows: North, eighty and one half degrees west to the end of the third course of the description of said tract of two hundred and five (205) acres as contained in said deed; thence north, eight and one half degrees east, one chain and ninety-eight links; thence north eighty-one and one half degrees west, seven chains and fifty-eight links; thence north eight and three-fourths degrees east, six chains and five links; thence north eight and one-half degrees west, six chains and fifty links; thence south, eight and three-fourths degrees west to a point in range with the fifth course of said 205 acres tract as described in said deed; thence north, eighty-one and one-half degrees west, five chains and eighty-five links; thence south, nine and three-fourths degrees west, nine

chains and seventy-seven links; thence in range with the first course of description of said 205 acres tract as contained in said deed, north, eighty and one-half degrees west, eight chains and eighty links; thence south, ten degrees west, three chains and thirty links; thence south, thirty degrees west, two chains and seventy-three links; thence south, seventy and one-half degrees west, four chains and two links; thence south, five degrees west, eight chains and twenty-eight links; thence south, eight and one-half degrees east to a point opposite the centre line of Chestnut Street, as shown on said map; thence northerly, along the centre line of said Chestnut Street to the intersection of the centre line of said Chestnut Street with the centre line of Woodland Street, as shown on said map; thence easterly, along the center line of Woodland Street, as shown on said map, to the point or place of beginning.

111—All that tract or parcel of woodland which begins at a stake at the southeast corner thereof by the woodland now or late of C. H. Zabriskie, and running thence north ten degrees, east five hundred and twenty-eight (528) feet to a stake; thence north, eighty degrees west, three hundred and sixty-seven (367) feet to a corner, eighteen inchest westerly from a small maple tree marked; thence south, eleven degrees and thirty minutes west, four hundred and fifty (450) feet to a stake; thence south, fifty degrees east, one hundred and fifty-five (155) feet to a white oak tree; thence south, eighty degrees east, two hundred and fifty-one (251) feet to the place of beginning. Containing 4.44 of an acre more or less; bounded on the north by land formerly of J. Smith Homans Jr., on the south by lands

formerly of Jacob C. Herring, on the east by land formerly of James J. Demarest, and on the west by lands formerly of James Loramer; the property intended to be conveyed being the property shown on the Assessment Map of the Borough of Haworth as Section 3, plot 22, containing 33-42/100 acres more or less.

112—All that tract or parcel of lands and premises, situate, lying and being in the Borough of Haworth in the County of Bergen and State of New Jersey.

Beginning at a point at the southwest corner thereof, which point is distant 222.3 feet from the center line of Haworth Street in a line parallel with and distant easterly 100 feet from the center line of the right of way of the West Shore Railroad; running thence north 30 degrees east 835 feet to the land of John Ackerman; thence along the lands of said John Ackerman south 78-½ degrees east 180 feet to a proposed street; thence south 12 degrees west 797 feet along the westerly line of said proposed street to a corner of the same (being the northwest corner of a proposed street); thence north 78 degrees west 404.5 feet to the point or place of beginning. Containing 5-413/1000 acres more or less. Said plot being marked George Robinson and shown on Section B of a certain map entitled "Map of Haworth, New Jersey" and filed in the Clerk's office of said Bergen County on August 27, 1891. Subject to lease to Peter Northelfer at $35. a month expiring January 1, 1926.

Also the following property: Block No. 90, lots 3 and 8, Block No. 122, lots 176-187; it being understood that lots 177, 178 and 179 are subject to lease as hereinafter mentioned.

The above by deed of full covenant & warrants.

The seller also agrees to quitclaim all right, title and interest in and to the following:

Blocks	Lots or Plots
42	169-171
81	5
84	8
85	17
90	1
95	3 & 4
95	Westerly 50 ft. 8
95A	32/100 of an acre
97	10
99	11
130	268-271
133	113 & 114
135	10 & 11
140	67
140A	5/100 of an acre

Attached hereto is map showing above property, it being understood that descriptions as taken from title policy are to govern.

The purchase price is TWO HUNDRED AND TWENTY-FIVE THOUSAND ($225,000.00) DOLLARS, payable as follows:

$500.00 in cash, the receipt of which is hereby acknowledged.

$2,000.00 on the signing and delivery of this contract.

$2,500.00 three months thereafter, and the balance of

$220,000.00 by executing a purchase money bond and mortgage, all expense in connection with which is to be paid by the purchaser, for the sum of $220,000., bearing interest at the rate of

six per cent per annum from October 22, 1926; the principal of said mortgage to be payable in semi-annual installments of $5,000.00 each beginning October 22, 1926. Said purchase money bond and mortgage are to provide also for the release of any portion of the mortgaged premises upon payment of the amounts fixed in a certain schedule initialed by the purchaser and the seller, aggregating not more than $250,000. The purchaser is to have the privilege of purchasing the mortgage for all cash for the sum of One Hundred and Twenty-five Thousand ($125,000.-00) Dollars within one year from July 22, 1925; the $5,000. payable by the terms thereof, within one year, to be credited against such amount.

Receipt is also acknowledged of the sum of Eleven Hundred Fourteen and 32/100 ($1,114.32) Dollars, being one-half of the taxes paid by the seller on June 1, 1925, which has been paid by the buyer as an additional consideration for the making of this contract, all taxes after June, 1925, to be paid by the buyer.

It is agreed that the purchaser has inspected the title policy of the North Jersey Title Insurance Company insuring the seller's title to the major portion of the premises above described and buys subject to such exceptions as are contained in said title policy. It is further agreed that block No. 122, lots 177, 178 and 179 are sold subject to a lease to the Borough of Haworth expiring August 1, 1934.

The deed shall be delivered on October 22, 1925, at ten o'clock in the forenoon, at the office of Reilly & Harrison, attorney for the seller, No. 2 Rector St., New York City, time being expressly made of the essence of this contract, but purchaser may have two weeks adjournment

upon payment of interest for said time on $2,500. and thereupon the purchaser shall pay the sum of $2,500.00 and execute the purchase money bond and mortgage and pay all the expenses in connection with the drawing, stamping and recording of the same. In default of such payment by the purchaser at the said time and place, the seller may retain the amounts theretofore paid as liquidated damages.

It is understood that the bond and mortgage are to contain the usual interest, tax, assessment, insurance and installment default clauses and an agreement not to claim credit on the interest payable on the bond and mortgage by reason of any taxes assessed or to be assessed against the premises. All expenses in connection with the drawing and recording of releases from the lien of the mortgage are to be paid by the mortgagor.

It is hereby understood and agreed by and between the parties hereto that Morris Randell and Abraham Randell are the brokers who brought about this sale and are entitled to receive commissions therefor.

WITNESS the signatures and seals of the above parties.

..... (L. S.)

158 BOWERY REALTY CORPORATION
By Abraham Rosenbluth Treas (L. S.)

In the Presence of:
Morris Randell

State of New Jersey
County of } ss.

BE IT REMEMBERED, that on this day of , 1925, before me , personally appeared Henry C. Copeland, who, I am satisfied, is the person named as seller in the foregoing contract, 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.

State of New Jersey
County of } ss.

BE IT REMEMBERED, that on this day of , 1925, the subscriber, , personally appeared , who, being by me duly sworn, doth depose and make proof to my satisfaction, that he well knows the corporate seal of the 158 Bowery Realty Corporation, the corporation named as purchaser in the foregoing contract; that the seal thereto affixed is the proper corporate seal of the said Company, and that the same was so affixed thereto; and that the said contract was signed and delivered by , who was at the date and execution thereof the President of said Company, in the presence of the said deponent, as the voluntary act and deed of the said Company, and that said deponent thereupon signed the same as subscribing witness.

Section
Property of H. C. Copeland
H. C. Copeland tax title and Miscellaneous Parcels
Other owners

HENRY C. COPELAND

—with—

158 BOWERY REALTY CORPORATION

CONTRACT OF SALE

IN CHANCERY OF NEW JERSEY.

Between

158 BOWERY REALTY CORPORATION,

Complainant,

and

HENRY C. COPELAND,

Defendant.

STATE OF NEW YORK,
CITY OF NEW YORK,
COUNTY OF NEW YORK. } *ss.*

HENRY F. COPELAND, of full age, being duly sworn, on his oath says: I am the son of the defendant, Henry C. Copeland. I am familiar with the details of the property at Haworth, New Jersey, and with the history of the title since about 1892; and I have assisted my father for many years in keeping track of the taxes, and the records of sales, leases and mortgages, and other agreements affecting it. I was present at the time of the delivery of the deed and the giving of the purchase money mortgage upon the property at Haworth, New Jersey. I was

also present at the time of the signing of the letter of July 15, 1926.

I have read my father's affidavit, sworn to this day, and have no knowledge of any agreements made by him with complainant, other than those contained in the written contract of sale, dated July 22, 1925, the deed, the bond and mortgage, and the letter of July 15, 1926. I have seen and talked with Mr. Strunsky, Secretary of the complainant, on several occasions, before and after July 15, 1926, and he never made any claim to me that the agreement contained in the mortgage was incorrect, or that the privilege of discharging the mortgage by payment of $120,000 was to be extended beyond October 22, 1926, for any reason whatsoever.

A week or ten days prior to October 22, 1926, I saw Mr. Strunsky, Secretary of the complainant, at his office in New York City, and in anticipation of the payment by complainant, on October 22, of the mortgage, Mr. Strunsky handed me a corrective deed which he said he desired to have executed by my father—the deed being given to me so that I could check up the description. At the same time Mr. Strunsky also gave me a proposed affidavit to be executed by my father, consisting of two pages. He did not then tell me of any other papers which he desired, neither did he inform me of any other alleged defects in the title, nor make any request for an extension of time; nor did he claim that complainant was entitled to any. On October 21, and for a day or two prior thereto, I attempted to reach Mr. Strunsky by telephone, but was unable to do so. I received no word from Mr. Strunsky of any kind after I received from him the proposed deed and affidavit above referred to, as to

where the matter was to close. The proposed deed and affidavit are hereto attached.

HARRY F. COPELAND.

Subscribed and sworn to before me
this 5th day of January, 1927.

EMILY STALP,
Commissioner of Deeds for the City of New York.
New York County Clerk's No. 417.
New York County Register's No. 27177.
Kings County Clerk's No. 116.
Kings County Register's No. 7105.
Commission expires October 6, 1927.
($215 Revenue Stamps Attached.)

THIS INDENTURE made the 22nd day of October, in the year one thousand nine hundred and twenty-five, between HENRY C. COPELAND and MARIE K. COPELAND, his wife, residing at 242 West 101st Street, in the Borough of Manhattan, City and State of New York, parties of the first part, and 158 BOWERY REALTY CORPORATION, a corporation organized and existing under the laws of the State of New York, with its principal place of business at No. 233 Broadway, in the Borough of Manhattan, City and State of New York, party of the second part,

WITNESSETH: That the parties of the first part, for and in consideration of the sum of One Hundred Dollars ($100), lawful money of the United States of America, and other good and valuable considerations to them 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 parties of the first part, therewith fully satisfied, contented and paid, have given, granted, bargained, sold, aliened, remised, released, enfeoffed, conveyed and confirmed, and by these presents do give, grant, bargain, sell, convey and confirm to the said party of the second part, and to its successors and assigns forever, ALL those several lots, plots, pieces and parcels of land, situate, lying and being in the Borough of Haworth, County of Bergen, State of New Jersey, shown on Section B on a certain map entitled "Map of Haworth, New Jersey," being land of the Villa Site Company of Haworth, N. J., made by James A. Lee, C. E., and filed in the office of the Clerk of Bergen County, New Jersey, on August 27th, 1891, as Map No. 529, hereinafter mentioned and described as follows:

Parcel No.	Borough Assessment Map Block No.	Lot or Plot Nos.
28	129	3, 4, 5
29	129	18-22
32	127	93-109
33	127	126-155
34	126	220-221
35	126	218-219
36	126	212-217
37	126	224-225
39	126	210, 211, 222, 223
40	122	W½ (163-167)
41	122	168
42	122	169-175
43	122	188-193
44	122	206-209

45—beginning at the corner formed by the intersection of the northerly line of Haworth Avenue (now Haworth Drive) with the easterly line of Stevens Street; running thence northerly, along said easterly side of Stevens Street, six hundred and seventy-five (675) feet to the southerly line of lot No. 209; thence easterly, along the southerly line of lot No. 209, one hundred (100) feet; thence southerly, parallel with the first mentioned course, six hundred and seventy-five (675) feet to the northerly line of said Haworth Avenue; thence westerly, along the northerly line of Haworth Avenue one hundred (100) feet to the point of beginning.

47—Lots 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144 and 145, together with the strip of land to the north of and immediately adjoining said lots 127 and 128, extending to the northerly line of the property formerly owned by the Haworth Improvement Company, and from Valley Road (formerly Owasco Street) to a point opposite the centre line of Owatonna street.

Block No.

48	124	72-75

New Block No.

49	124	40 to 71

(both inclusive) together with the strip of land, approximately ten (10) feet in width, to the north of and immediately adjoining lots 57 and 58, extending to the northerly boundary of the land formerly owned by the Haworth Improvement Company, and from Valley Road (formerly Owasco Street) to a point opposite the centre line of Hill Street.

New Block No.

50	125	12 to 17

(both inclusive) together with the strip of land to the north of and immediately adjoining lot 12, extending to the northerly boundary line of property formerly of the Haworth Improvement Company from a point opposite the northeasterly corner of lot 12 to a point opposite the centre line of Hill Street.

Block No.

51	125	6-9

52—All that tract or parcel of land in the Borough of Haworth, County of Bergen and State of New Jersey, shown in Section "b" of a certain map entitled, "Map of Haworth, N. J., being land of the Villa Site Company," made by James A. Lee, C. E., filed August 27, 1891, in the Office of the Clerk of Bergen County, New Jersey, as Map No. 529, and marked on said map "Reserved" and bounded and described as follows:

BEGINNING at the intersection of the northerly line of Haworth Avenue (now Haworth Drive) with the easterly line of land of the West Shore Railroad Company, running thence northerly, along the easterly line of land of said West Shore Railroad Company, nine hundred and ninety (990) feet and six (6) inches more or less, to the division line between the land formerly of Charles H. Mount and land formerly of John Ackerman; running thence easterly along said last mentioned division line, fifty (50) feet; thence southerly parallel with the first mentioned course, nine hundred and ninety (990) feet and six (6) inches, more or less, to the northerly line of Haworth Avenue (now Haworth Drive) and thence westerly, along the

same, fifty (50) feet to the point or place of beginning.

ALL those several plots, pieces or parcels of land with the improvements thereon, if any, situate, lying and being in the Borough of Haworth, County of Bergen and State of New Jersey, shown on a certain map entitled, "Map of Haworth, Bergen County, N. J." and filed in the office of the Clerk of said Bergen County, on July 7, 1888 as Map No. 384, bounded and described as follows to wit:

53 All of block 1 Comprising plots 1 to 15 (New Block No. 74) (both inclusive)

in said block, together with the strip of land to the north of and opposite said block 1, extending from the northerly line of Woodland Avenue (or street) to the northerly line of the property formerly of the Haworth Improvement Company, and from a point opposite the middle of Field Road (now called Maple Street) to a point opposite the easterly end of said Woodland Avenue (or street).

Parcel No.	Borough Assessment Map Block No.	Lot or Plot Nos.
54	78	8-13
55	78	1, 2, 15, 16
56	78	E 100 ft lots 3 & 4
57	78	W 65 ft lot 6
58	81	1
59	81	3, 4
60	81	6
61	81	10, 11
62	81	12, 13
63	81	16-18

64	85	2-6, 18
65	85	11
66	8	1, 2, 3, 4, and 5,

(New Block No. 73)

together with the strip of land to the north of and opposite said plots 1, 2, 3, 4 and 5 extending from the northerly side of Woodland Avenue to the northerly line of property formerly of the Haworth Improvement Company, and from a point opposite the middle line of Myrtle Avenue (formerly Herrick Road) to a point opposite the middle line of Field Road (now called Maple St.)

67	99	1
68	73	6-8
69	73	10
70	77	1-10, 16-20
71	84	1-3
72	84	5-7
73	84	9-10
74	90	4, 5
75	90	6, 7
77	94	6
78	94	7
79	94	8
80	98	3, 4, 5
81	98	6
82	98	7
83	14	(New Block No. 72),

Comprising plots 1 to 12 (both inclusive) in said block, together with the strip of land opposite and to the north of said block 14, extending from the northerly line of Woodland Avenue (or street) to the northerly boundary of the property formerly of the Haworth Improvement Company, and from a point opposite the centre line

of Brook Street (formerly McArthur Road), to a point opposite the centre line of Myrtle Avenue (formerly Herrick Road).

84	76	1-12
85	80	1-12
86	83	1-12
87	82	1-6
89	82	19-21
90	82	124-129
91	82	130-141
92	44	34-48, 97-111
93	44	118-120
	82	121, W½ 122
94	43	49-96
95	41	193-240
96	42	172, 173, 174
97	42	175-192
98	42	241-264
99	79	151-155
100	79	156-162
101	79	163-168
102	79	265-282
103	79	283-288
104	75	289-312, 409-432
105	40	313-336, 385-408
106	39	337-384
	New Block No.	
107	71	433 to 456

(both inclusive) and 553 to 576 (both inclusive), together with the strip of land opposite and to the north of said lots 553 to 576 (both inclusive), extending from the northerly line of Woodland Avenue or street to the northerly boundary of property of the Haworth Improvement Company and from the prolongation of the center line of Mill Street to the prolongation of the centre line of Brook Street.

Parcel No.	Borough Assessment Map Block No.	Lot or Plot Nos.
108	38	457-480, 529-552
109	37	481-528

110—All that tract or parcel of land in the Borough of Haworth, County of Bergen and State of New Jersey, bounded and described as follows, to wit:

BEGINNING at the intersection of the centre line of Woodland Avenue (or street) and the centre line of Mill Street, as said streets are shown on a certain map entitled, "Map of Haworth, Bergen County, N. J.," made by James A. Lee, C. E., and filed in the office of the Clerk of Bergen County, New Jersey, January 20th, 1892, as Map No. 566; running thence northerly, along a line drawn in continuation of the centre line of Mill street to the northerly boundary of lands described in the deed from the Haworth Improvement Company to Henry C. Copeland, dated May 7th, 1892, recorded in said Clerk's Office in book 338 of Deeds, at page 317, etc., June 2nd, 1892; thence following the courses and distances of the description of the tract of 205 acres as described in said deed as follows: North, eighty and one half degrees west to the end of the third course of the description of said tract of two hundred and five (205) acres as contained in said deed; thence north, eight and one half degrees east, one chain and ninety-eight links; thence north eighty-one and one half degrees west, seven chains and fifty-eight links; thence north eight and three-fourth degrees east, six chains and five links; thence north eighty and one-half degrees west, six chains and fifty

links; thence south, eight and three-fourths degrees west to a point in range with the fifth course of said 205 acres tract as described in said deed; thence north, eighty-one and one-half degrees west, five chains and eighty-five links; thence south, nine and three-fourth degrees west, nine chains and seventy-seven links; thence in range with the first course of description of said 205 acres tract as contained in said deed, north, eighty and one-half degrees west, eight chains and eighty links; thence south, ten degrees west, three chains and thirty links; thence south, thirty degrees west, two chains and seventy-three links; thence south, seventy and one-half degrees west, four chains and two links; thence south, five degrees west, eight chains and twenty-eight links; thence south, eighty and one-half degrees east to a point opposite the centre line of Chestnut Street, as shown on said map; thence northerly, along the centre line of said Chestnut Street to the intersection of the centre line of said Chestnut Street with the centre line of Woodland Street, as shown on said map; thence easterly, along the center line of Woodland Street, as shown on said map, to the point or place of beginning.

111—All that tract or parcel of woodland which begins at a stake at the southeast corner thereof by the woodland now or late of C. H. Zabriskie, and running thence north ten degrees, east five hundred and twenty-eight (528) feet to a stake; thence north, eighty degrees west, three hundred and sixty-seven (367) feet to a corner, eighteen inches westerly from a small maple tree marked; thence south, eleven degrees and thirty minutes west, four hundred and fifty (450) feet to a stake; thence south, fifty degrees east, one hundred and fifty-five (155) feet to a white oak tree; thence south eighty degrees east, two hundred and fifty-one (251) feet to the place of beginning. Containing 4.44 of an acre more or less; bounded on the north by land formerly of J. Smith Homans Jr., on the south by lands formerly of Jacob C. Herring, on the east by land formerly of James J. Demarest, and on the west by lands formerly of James Loramer; the property intended to be conveyed being the property shown on the Assessment Map of the Borough of Haworth as Section 3, plot 22, containing 3-42/100 acres more or less.

112—All that tract or parcel of lands and premises, situate, lying and being in the Borough of Haworth in the County of Bergen and State of New Jersey.

BEGINNING at a point at the southwest corner thereof, which point is distant 222.3 feet from the center line of Haworth Street in a line parallel with and distant easterly 100 feet from the center line of the right of way of the West Shore Railroad; running thence north 30 degrees east 835 feet to the land of John Ackerman; thence along the lands of said John Ackerman south 78-½ degrees east 180 feet to a proposed street; thence south 12 degrees west 797 feet along the westerly line of said proposed street to a corner of the same (being the northwest corner of a proposed street); thence north 78 degrees west 404.5 feet to the point or place of beginning. Containing 5-413/1000 acres more or less. Said plot being marked George Robinson and shown on Section B of a certain map entitled "Map of Haworth, New Jersey" and filed in the Clerk's office of said Bergen County on August 27, 1891; subject, however, to lease

to Peter Northelfer at $35. a month expiring January 1, 1926.

Also the following property: Block No. 90 lots 3 and 8, Block No. 122, lots 176-187; subject, however, to lease to Borough of Haworth, expiring August 1, 1934, on lots 177, 178 and 179 in Block 122.

Together with all and singular the tenements, hereditaments, and appurtenances to the same belonging or in anywise appertaining and the reversion and reversions, remainder and remainders, rents, issues and profits thereof;

Also all the estate, right, title, interest, property, possession, claim and demand whatsoever as well in law as in equity, of the said parties of the first part, of, in or to the above described premises, and to every part and parcel thereof, with the appurtenances TO HAVE AND TO HOLD all and singular the above described piece or parcel of land and premises, with the appurtenances, unto the said party of the second part, its successors and assigns, to their own proper use, benefit and behoof forever.

And the said Henry C. Copeland and Marie K. Copeland, his wife, and administrators, do covenant and grant to and with the party of the second part, its successors and assigns, that the said parties of the first part are the true, lawful and right owners of all and singular the above described land and premises, and of every part and parcel thereof, with the appurtenances thereunto belonging; and the said land and premises, or any part thereof, at the time of the sealing and delivery of these present are not encumbered by any Mortgage, Judgment or Limitation, or by any encumbrance whatsoever, by which the title of the said party of the second

part, hereby made or intended to be made for the above described land and premises, can or may be changed, charged, altered or defeated in any way whatsoever.

And also, that the said parties of the first part now have good right, full power, and lawful authority, to grant, bargain, sell and convey the said land and premises, in manner aforesaid. And also, that the said Henry C. Copeland and Marie K. Copeland, his wife, will WARRANT, SECURE, AND FOREVER DEFEND THE SAID land and premises, unto the said party of the second part, its successors and assigns forever, against the lawful claims and demands of all and every person and persons freely and clearly freed and discharged of and from all manner of encumbrances whatsoever.

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

HENRY C. COPELAND (L. S.)
MARIE K. COPELAND (L. S.)

Signed, Sealed and Delivered
in the presence of:

Emily Stalp.

State of New York }
County of New York } ss

BE IT REMEMBERED, that on this 22 day of October, in the year one thousand nine hundred and twenty-five, before me, a Commissioner of Deeds, personally appeared Henry C. Copeland and Marie K. Copeland, who, I am satisfied, are the grantors in the within Deed of Convey-

ance named, and I having first made known to them the contents thereof, they did 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 Marie K. Copeland being by me privately examined, separate and apart from her said husband, did further acknowledge that she signed, sealed and delivered the same freely, as her voluntary act and deed, without any fear, threats or compulsion of or from her said husband.

EMILY STALP
Commissioner of Deeds
New York County Clerk's No. 417
New York County Register's No. 27177
My commission expires Oct. 6, 1927

No. 52254 Series B

State of New York,
County of New York, } ss.:
City of New York,

I, JAMES A. DONEGAN, Clerk of the County of New York, and also Clerk of the Supreme Court in and for said county,

DO HEREBY CERTIFY, That said Court is a Court of Record, having by law a seal; that Emily Stalp whose name is subscribed to the certificate or proof of acknowledgment of the annexed instrument, was at the time of taking the same a COMMISSIONER OF DEEDS in and for said city and county, duly commissioned and sworn, and qualified to act as such; that as such Commissioner of Deeds, he was duly authorized by the laws of the State of New York

to administer oaths and affirmations, to take affidavits and certify the acknowledgment and proof of deeds and other written instruments to be read in evidence or recorded in this state; and further that I am well acquainted with the handwriting of such Commissioner of Deeds and verily believe that his signature to such proof or acknowledgment is genuine.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court at the City of New York, in the County of New York, this 22 day of Oct 1925

(SEAL) JAMES A. DONEGAN,
Clerk.

(Stamped)

Abstracted Recording Fee 5.90 Paid
230532

HENRY C. COPELAND and MARIE K. COPELAND, his wife,
—to—
150 BOWERY REALTY CORPORATION
DEED

Record & Return to Abraham Rosenbluth, 233 Broadway (Woolworth Bldg.) New York City

Received in the Office of the Clerk of Bergen County, New Jersey, on the 23rd day of Oct. A. D. 1925 1:53 o'clock P M and Recorded in Book 1365 Page 139 &c of Deeds

WM. P. EAGAN,
County Clerk.

THIS INDENTURE made the day of in the year one thousand nine hundred and twenty-six, between HENRY C. COPELAND and MARIE K. COPELAND, his wife, residing at 242 West 101st Street, in the Borough of Manhattan, City and State of New York, parties of the first part, and 158 BOWERY REALTY CORPORATION, a corporation organized and existing under the laws of the State of New York, with its principal place of business at No. 233 Broadway, in the Borough of Manhattan, City and State of New York, party of the second part,

WITNESSETH:

That the parties of the first part, for and in consideration of the sum of One Hundred Dollars ($100.00) lawful money of the United States of America, and other good and valuable considerations to them 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 parties of the first part, therewith fully satisfied, contented and paid, have given, granted, bargained, sold, aliened, remised, released, enfeoffed, conveyed and confirmed, and by these presents do give, grant, bargain, sell, convey and confirm to the said party of the second part, and to its successors and assigns forever:

ALL those certain tracts and parcels of land situated, lying and being in the Borough of Haworth, in the County of Bergen and State of New Jersey, which are more particularly described as follows, viz.:

The plots numbered 1 to 23, both inclusive, hereinafter described, are shown on Section B of a certain map entitled "Map of Haworth New

Jersey Being Land of The Villa Site Company Haworth New Jersey," which said map was filed in the Office of the Clerk of Bergen County, New Jersey, on August 27, 1891, as Map No. 529.

PARCEL 1. Plots 3, 4 and 5.
PARCEL 2. Plots 18, 19, 20, 21 and 22.
PARCEL 3. Lots 93 to 109 inclusive.
PARCEL 4. Lots 146 to 155 inclusive.
PARCEL 5. Lots 220 and 221.
PARCEL 6. Lots 218 and 219.
PARCEL 7. Lots 212 to 217 inclusive.
PARCEL 8. Lots 224 and 225.
PARCEL 9. Lots 210, 211, 222 and 223.
PARCEL 10. The westerly half part of lots 163 to 167 inclusive.
PARCEL 11. Lot 168.
PARCEL 12. Lots 169 to 175 inclusive.
PARCEL 13. Lots 188 to 193 inclusive.
PARCEL 14. Lots 206 to 209 inclusive.
PARCEL 15. Beginning at the corner formed by the intersection of the northerly line of Haworth Avenue (now Haworth Drive) with the easterly line of Stevens Street; running thence northerly, along said easterly side of Stevens Street, 675 feet to the southerly line of lot 209; thence easterly along the southerly line of lot 209, 100 feet; thence southerly, parallel with the first mentioned course, 675 feet to the northerly line of said Haworth Avenue; thence westerly, along the northerly line of Haworth Avenue, 100 feet to the point of beginning.
PARCEL 16. Lots 110 to 145 inclusive, together with the strip of land to the north of and immediately adjoining said lots 127 and 128, extending to the northerly line of the property formerly owned by the Haworth Improvement Company, and from Valley Road (formerly

Owasco Street) to a point opposite the centre line of Owatonna Street.

PARCEL 17. Lots 72, 73, 74 and 75.

PARCEL 18. Lots 40 to 71, inclusive, together with the strip of land, approximately 10 feet in width, to the north of and immediately adjoining lots 57 and 58, extending to the northerly boundary of the land formerly owned by the Haworth Improvement Company and from Valley Road (formerly Owasco Street) to a point opposite the centre line of Hill Street.

PARCEL 19. Lots 12, 13, 14, 15, 16 and 17, together with the strip of land to the north of and immediately adjoining lot 12, extending to the northerly boundary line of property formerly of the Haworth Improvement Company from a point opposite the northeasterly corner of lot 12 to a point opposite the centre line of Hill Street.

PARCEL 20. Plots 6, 7, 8 and 9.

PARCEL 21. BEGINNING at the intersection of the northerly line of Haworth Avenue (now Haworth Drive) with the easterly line of land of the West Shore Railroad Company, running thence, northerly, along the easterly line of land of said West Shore Railroad Company, 990 feet and 6 inches, more or less, to the division line between the land formerly of Charles H. Mount and land formerly of John Ackerman; running thence easterly along said last mentioned division line, 50 feet; thence southerly, parallel with the first mentioned course 990 feet and 6 inches, more or less, to the northerly line of Haworth Avenue (now Haworth Drive) and thence westerly, along the same, 50 feet to the point or place of BEGINNING.

PARCEL 22. BEGINNING at a point at the southwest corner thereof, which point is distant

222.3 feet from the center line of Haworth Street in a line parallel with and distant easterly 100 feet from the center line of the right of way of the West Shore Railroad; running thence north 30 degrees east 835 feet to the land of John Ackerman; thence along the lands of said John Ackerman, south 78½ degrees east, 180 feet to a proposed street; thence south 12 degrees west 797 feet along the westerly line of said proposed street to a corner of the same (being the northwest corner of a proposed street); thence north 78 degrees west, 404.5 feet to the point or place of BEGINNING. Containing 5-413/1000 acres, more or less. Said plot being marked "George Robinson" and shown on the aforesaid map.

PARCEL 23. Lots 176 to 187, inclusive.

The plots numbered 24 to 57, both inclusive, hereinafter described, are shown on a certain map entitled "Map of Haworth Bergen Co., New Jersey. Showing Property of The Haworth Land Co. 1888," which said map was filed in the Office of the Clerk of Bergen County, New Jersey, on July 7, 1888, as Map No. 384.

PARCEL 24. All of block 1, comprising plots 1 to 15, inclusive, in said block, together with the strip of land to the north of and opposite said block 1, extending from the northerly line of Woodland Avenue (or street) to the northerly line of the property formerly of the Haworth Improvement Company and from a point opposite the middle of Field Road (now called Maple Street) to a point opposite the easterly end of said Woodland Avenue (or street).

PARCEL 25. Plots 8, 9, 10, 11, 12 and 13, in block 2.

PARCEL 26. Plots 1, 2, 15 and 16 in block 2.

PARCEL 27. The easterly 100 feet of plots 3 and 4 in block 2.

PARCEL 28. The westerly 65 feet of plot 6 in block 2.

PARCEL 29. Plot 1 in block 3.

PARCEL 30. Plots 3 and 4 in block 3.

PARCEL 31. Plot 6 in block 3.

PARCEL 32. Plots 10 and 11 in block 3.

PARCEL 33. Plots 12 and 13 in block 3.

PARCEL 34. Plots 16, 17 and 18 in block 3.

PARCEL 35. Plots 2, 3, 4, 5, 6 and 18 in block 4.

PARCEL 36. Plot 11 in block 4.

PARCEL 37. Plots 1, 2, 3, 4 and 5 in block 8, together with the strip of land to the north of and opposite said plots 1, 2, 3, 4 and 5 extending from the northerly side of Woodland Avenue to the northerly line of the property formerly of the Haworth Improvement Company, and from a point opposite the middle line of Myrtle Avenue (formerly Herrick Road) to a point opposite the middle line of Field Road (now called Maple Street).

PARCEL 38. Plot 1 in block 7.

PARCEL 39. Plots 6, 7 and 8 in block 8.

PARCEL 40. Plot 10 in block 8.

PARCEL 41. Plots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 16, 17 18, 19 and 20 in block 9.

PARCEL 42. Plots 1, 2 and 3 in block 10.

PARCEL 43. Plots 5, 6 and 7 in block 10.

PARCEL 44. Plots 9 and 10 in block 10.

PARCEL 45. Plots 4 and 5 in block 11.

PARCEL 46. Plots 6 and 7 in block 11.

PARCEL 47. Plot 6 in block 12.

PARCEL 48. Plot 7 in block 12.

PARCEL 49. Plot 8 in block 12.

PARCEL 50. Plots 3, 4 and 5 in block 13.

PARCEL 51. Plot 6 in block 13.

PARCEL 52. Plot 7 in block 13.

PARCEL 53. All of block 14, comprising plots 1 to 13, inclusive, in said block, together with the strip of land opposite and to the north of said block 14, extending from the northerly line of Woodland Avenue (or Street) to the northerly boundary of the property formerly of the Haworth Improvement Company, and from a point opposite the center line of Brook Street (formerly McArthur Road) to a point opposite the center line of Myrtle Avenue (formerly Herrick Road).

PARCEL 54. All of block 15, comprising plots 1 to 12, inclusive, in said block.

PARCEL 55. All of block 16, comprising plots 1 to 12, inclusive, in said block.

PARCEL 56. All of block 17, comprising plots 1 to 12, inclusive, in said block.

PARCEL 57. Lots 3 and 8 in block 11.

The plots numbered 58 to 79, both inclusive, hereinafter described, are shown on a map entitled "Map of Haworth Bergen Co. New Jersey.", which said map was filed in the Office of the Clerk of Bergen County, New Jersey, on January 20, 1892, as Map No. 566.

PARCEL 58. Lots 1 to 6 inclusive.

PARCEL 59. Lots 19 to 21 inclusive.

PARCEL 60. Lots 124 to 129 inclusive.

PARCEL 61. Lots 130 to 141 inclusive.

PARCEL 62. Lots 34 to 48 inclusive and 97 to 111 inclusive.

PARCEL 63. Lots 118, 119 and 120 and lot 121 and the westerly half of lot 122.

PARCEL 64. Lots 49 to 96 inclusive.

PARCEL 65. Lots 193 to 240 inclusive.

PARCEL 66. Lots 172, 173 and 174.

PARCEL 67. Lots 175 to 192 inclusive.

PARCEL 68. Lots 241 to 264 inclusive.

PARCEL 69. Lots 151 to 155 inclusive.
PARCEL 70. Lots 156 to 162 inclusive.
PARCEL 71. Lots 163 to 168 inclusive.
PARCEL 72. Lots 265 to 282 inclusive.
PARCEL 73. Lots 283 to 288 inclusive.
PARCEL 74. Lots 289 to 312 inclusive and 409 to 432 inclusive.
PARCEL 75. Lots 313 to 336 inclusive and 385 to 406 inclusive.
PARCEL 76. Lots 337 to 384 inclusive.
PARCEL 77. Lots 433 to 456 inclusive and 553 to 576 inclusive, together with the strip of land opposite and to the north of said lots 553 to 576 inclusive, extending from the northerly line of Woodland Avenue or Street to the northerly boundary of property of the Haworth Improvement Company and from the prolongation of the center line of Mill Street to the prolongation of the center line of Brook Street.
PARCEL 78. Lots 457 to 480 inclusive and 529 to 552 inclusive.
PARCEL 79. Lots 481 to 528 inclusive.
The plot numbered 80, hereinafter described, lies north and west of the lands shown on the map last above referred to, and the plot numbered 81, hereinafter described, lies southwest of the lands shown on the map last above referred to.
PARCEL 80. BEGINNING at the intersection of the center line of Woodland Avenue (or Street) and the center line of Mill Street as said streets are shown on the aforesaid map; running thence northerly, along a line drawn in a continuation of the center line of Mill Street to the northerly boundary of the lands described in the deed from the Haworth Improvement Company to Henry C. Copeland, dated May 7, 1892,

recorded in said Clerk's Office in book 338 of Deeds, at page 317, etc., June 2nd, 1892; thence following the courses and distances of the description of the tract of 205 acres as described in said deed as follows: North 80½ degrees west to the end of the third course of the description of said tract of 205 acres as contained in said deed; thence north 8½ degrees east, 1 chain and 98 links; thence north 81½ degrees west, 7 chains and 58 links; thence north 8¾ degrees east, 6 chains and 5 links; thence north 80½ degrees west, 6 chains and 50 links; thence south 8¾ degrees west to a point in range with the fifth course of said 205 acre tract as described in said deed; thence north 81½ degrees west, 5 chains and 85 links; thence south 9¾ degrees west, 9 chains and 77 links; thence in range with the first course of description of said 205 acre tract as contained in said deed, north 80½ degrees west, 8 chains and 80 links; thence south 10 degrees west, 3 chains and 30 links; thence south 30 degrees west, 2 chains and 73 links; thence south 70½ degrees west, 4 chains and 2 links; thence south 5 degrees west, 8 chains and 28 links; thence south 80½ degrees east to a point opposite the centre line of Chestnut Street, as shown on said map; thence northerly, along the center line of said Chestnut Street to the intersection of the center line of said Chestnut Street with the center line of Woodland Street, as shown on said map; thence easterly, along the center line of Woodland Street, as shown on said map, to the point or place of BEGINNING.

PARCEL 81. All that tract or parcel of woodland which begins at a stake at the southeast corner thereof by the woodland now or late of

C. H. Zabriskie, and running thence north 10 degrees east 528 feet to a stake; thence north 80 degrees west, 367 feet to a corner 18 inches westerly from a small maple tree marked; thence south 11 degrees and 30 minutes west, 450 feet to a stake; thence south 50 degrees east, 155 feet to a white oak tree; thence south 80 degrees east, 251 feet to the place of BEGINNING. Containing 4.44 of an acre, more or less, bounded on the north by land formerly of I. Smith Homans, Jr.; on the south by lands formerly of Jacob C. Herring; on the east by land formerly of James J. Demarest; and on the west by land formerly of James Loramer.

Together with all and singular the tenements, hereditaments, and appurtenances to the same belonging or in anywise appertaining and the reversion and reversions, remainder and remainders, rents, issues and profits thereof;

Also all the estate, right, title, interest, property, possession, claim and demand whatsoever as well in law as in equity, of the said parties of the first part, of, in or to the above described premises, and to every part and parcel thereof, with the appurtenances TO HAVE AND TO HOLD all and singular the above described piece or parcel of land and premises, with the appurtenances, unto the said party of the second part, its successors and assigns, to their own proper use, benefit and behoof forever.

And the said Henry C. Copeland and Marie K. Copeland his wife, and administrators, do covenant and grant to and with the party of the second part, its successors and assigns, that the said parties of the first part are the true, lawful and right owners of all and singular the above described land and premises, and of every part

and parcel thereof, with the appurtenances thereunto belonging; and the said land and premises, or any part thereof, at the time of the sealing and delivery of these present are not encumbered by any Mortgage, Judgment or Limitation, or by any encumbrance whatsoever, by which the title of the said party of the second part, hereby made or intended to be made for the above described land and premises, can or may be changed, charged, altered or defeated in any way whatsoever.

And also, that the said parties of the first part now have good right, full power, and lawful authority, to grant, bargain, sell and convey the said land and premises, in manner aforesaid. And also, that the said Henry C. Copeland and Marie K. Copeland, his wife, will WARRANT, SECURE, AND FOREVER DEFEND THE SAID land and premises, unto the said party of the second part, its successors and assigns forever, against the lawful claims and demands of all and every person and persons freely and clearly freed and discharged of and from all manner of encumbrances, whatsoever.

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

BE IT REMEMBERED, that on this day of in the year one thousand nine hundred and twenty-six, before me, personally appeared HENRY C. COPELAND and MARIE K. COPELAND, who, I am satisfied, are the grantors in the within Deed of Conveyance named, and I having first made known to them the contents thereof, they did 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 MARIE K. COPELAND being by me privately examined, separate and apart from her said husband, did further acknowledge that she signed, sealed and delivered the same freely, as her voluntary act and deed, without any fear, threats or compulsion of or from her said husband.

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

HENRY C. COPELAND, being duly sworn, deposes and says:

That on the 22nd day of October, 1925, deponent and MARIE K. COPELAND, his wife, for good and valuable consideration made, executed and delivered to 158 BOWERY REALTY CORPORATION, a corporation organized and existing under the laws of the State of New York, a deed of conveyance in due form, conveying to the said 158 BOWERY REALTY CORPORATION in fee simple the property in said deed of conveyance described free of any encumbrances except those specifically set forth in said deed.

Deponent is informed that an examination of the title to said property made by the UNITED STATES MORTGAGE AND TITLE GUARANTY COMPANY OF NEW JERSEY disclosed a certain mortgage made by FRANCIS W. HOLBROOK to JANE PHYFE, dated August 6th, 1888, and recorded in the office of the Clerk of Bergen County, New Jersey, on August 21st, 1888, in Mortgage Book D-3, Page 668, said mortgage affecting Parcel 57, being part of the property conveyed by the aforesaid deed; and

that by deed dated November 7th, 1888, recorded on June 26th, 1889, in Book T-12, Page 534 of Conveyances, FRANCIS W. HOLBROOK conveyed said property to A. BRYSON, Jr., and that by deed dated February 4th, 1895, recorded in Book 393, Page 653 of Conveyances, deponent succeeded to BRYSON'S title to said property.

For the purpose of clearing the record with respect to this mortgage, deponent specifically states that since acquiring the title to said property by said deed of February 4th, 1895, no payment of any interest or on account of principal with respect to said mortgage was ever made by him to any person, firm or corporation whatsoever and that such mortgage, to deponent's best knowledge and belief, has been fully satisfied or discharged prior to his acquiring title from said BRYSON and that no such mortgage is or has been at any time since deponent acquired title on said February 4th, 1895, a lien on said property.

Deponent also says that at the time of the delivery of the deed herein to wit, the 22nd day of October, 1925 the only existing lease to any portion of the property conveyed was a lease to the Borough of Haworth of lots number 177, 178, 179 in Block #122 of the Borough Assessment Map of Haworth which lots are a part of parcel #23 as conveyed by said deed. Said lease to the Borough of Haworth is dated Aug. 1st, 1924, is for a term of ten years and the consideration of said lease is the payment by the lessee of all taxes and assessments levied against said lots number 177, 178, 179 and the buildings thereon.

Deponent further says that at the time of the delivery of the deed therein, to wit, the 22nd

day of October, 1925, none of the property conveyed therein except as stated above was occupied by any tenant, lessee or occupants nor was any of the property except as stated affected by any lease, license or franchise of any kind other than lease mentioned, and that with the exception of the right given to the Borough of Haworth to occupy lots 177, 178, 179 of Block 122 Borough Assessment Map of Haworth during the term of the lease to wit until Aug. 1st, 1934, no person, firm or corporation has any right as tenant for the possession of any part of said property.

Sworn to before me this
day of October, 1926

NORTH JERSEY TITLE INSURANCE COMPANY.

HACKENSACK, NEW JERSEY.

Number of Policy	Amount of Policy
18167	$35,000.00

THIS POLICY Witnesseth, that the NORTH JERSEY TITLE INSURANCE COMPANY, in consideration of the payment of its charges for the examination of title, does hereby covenant that it will indemnify, keep harmless, and insure HENRY C. COPELAND and all persons lawfully claiming the estate and premises hereinafter mentioned under him by descent, or devise, from all loss or damage not exceeding the sum of THIRTY-FIVE THOUSAND ($35,000.00) dollars, which the said party insured shall sustain, by reason of defects of the title of the Party insured to the estate, mortgage, or interest described in Schedule A, hereto annexed, or because of liens or encumbrances charging

the same at the date of this Policy; saving the defects, objections, liens or encumbrances, excepted in Schedule B, or by the conditions of this Policy hereto annexed and hereby incorporated into this contract, the loss and the amount to be ascertained in the manner provided in the said conditions and to be payable upon compliance by the Party Insured with the stipulations of said conditions, and not otherwise. This Policy is issued upon an application by or in behalf of the Party Insured.

IN WITNESS WHEREOF, The said Company has caused its common seal to be hereunto affixed, and these presents to be signed by two of its officers, this Fifth day of April in year of our Lord one thousand nine hundred and Twenty-three.

WM. H. ZABRISKIE
President.

Attest:

FREDERICK HOELEC
(SEAL) Secretary.

This Policy consists of 14 sheets.

SCHEDULE A.

1. The estate or interest of the Party Insured covered by this Guaranty.

FEE SIMPLE:

2. The deed or other means by which title is vested in the Party Insured.

DEED made by Charles C. Pilgrim, Special Master in Chancery, Charles C. Pilgrim, as Receiver of Villa Site Company of Haworth, N. J. and Warner W. Westervelt, Jr., as Receiver of Haworth Improvement Company, to Henry C.

Copeland, dated June 21, 1922 and recorded April 5th, 1923 in the Bergen County Clerk's Office.

DEED made by Henry Filmore Copeland and Susie M. Copeland, his wife, to Henry C. Copeland, dated February 27, 1923 and recorded April 4, 1923 in the Bergen County Clerk's Office.

DEED made by Henry Filmore Copeland and Susie M. Copeland, his wife, to Henry C. Copeland, dated February 27, 1923 and recorded April 4, 1923 in the Bergen County Clerk's Office.

3. Location of premises covered by this policy.

ALL those several plots, pieces or parcels of land situate, lying and being in the BOROUGH OF HAWORTH, COUNTY OF BERGEN and STATE OF NEW JERSEY, shown on Section "B" of a certain map entitled, "Map of Haworth, N. J.," being land of the Villa Site Company of Haworth, N. J., made by James A. Lee, C. E., and filed in the Office of the Clerk of Bergen County, New Jersey, on August 27, 1891, as map No. 529 hereinafter mentioned and described as follows:

PARCEL 28. Plots 3, 4 and 5.

PARCEL 29. Plots 18, 19, 20, 21 and 22.

PARCEL 30. Lots 23, 24, 25, 26 and 27.

PARCEL 31. Lots 34, 35, 36, 37, 38 and 39.

PARCEL 32. Lots 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108 and 109.

PARCEL 33. Lots 146, 147, 148, 149, 150, 151, 152, 153, 154, and 155.

PARCEL 34. Lots 220 and 221, subject to all rights, if any, of the purchaser under a contract between the Villa Site Company at Haworth,

N. J., as seller, and Gilbert Lloyd as purchaser, for the sale and purchase of said lots at the price of five hundred and ten dollars upon which contract the purchaser paid approximately one hundred and seventy dollars.

PARCEL 35. Lots 218 and 219, subject to all rights, if any, of the purchaser under a contract between the Villa Site Company of Haworth, N. J., as seller and Anthony A. Belser as purchaser for the sale and purchase of said lots at the price of five hundred and ten dollars upon which contract the purchaser paid approximately three hundred and fifteen dollars.

PARCEL 36. Lots 212, 213, 214, 215, 216 and 217.

PARCEL 37. Lots 224 and 225, subject to all rights, if any, of the purchaser under a contract between the Villa Site Company of Haworth, N. J., as seller and John H. Reynolds, as purchaser for the sale and purchase of said lots at the price of five hundred and ten dollars upon which contract the purchaser paid approximately two hundred and ten dollars.

PARCEL 38. Lots 88, 89, 90, 91 and 92.

PARCEL 39. Lots 210, 211, 222 and 223, subject to all rights, if any, of the purchaser under contract between the Villa Site Company of Haworth, N. J., as seller and Herman Beidel as purchaser for the sale and purchase of said lots at the price of eight hundred and twenty dollars upon which contract the purchaser paid approximately five hundred and eight and 10/100 dollars.

PARCEL 40. The westerly half of part of lots 163, 164, 165, 166 and 167.

PARCEL 41. Lot 168, subject to all rights, if any, of the purchaser under a contract between

The Villa Site Company of Haworth, N. J., as seller and Edward S. Kehoe as purchaser for the sale and purchase of said lot at the price of one hundred and fifty-five and 00/100 dollars upon which contract the purchaser paid approximately five and 00/100 dollars.

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PARCEL 42. Lots 169, 170, 171, 172, 173, 174 and 175.

PARCEL 43. Lots 188, 189, 190, 191, 192, and 193.

PARCEL 44. Lots 206, 207, 208 and 209.

PARCEL 45. Beginning at the corner formed by the intersection of the northerly line of Haworth Avenue (now Haworth Drive) with the easterly line of Stevens Street; running thence northerly along said easterly side of Stevens Street, six hundred and seventy-five (675) feet to the southerly line of lot No. 209; thence easterly, along the southerly line of lot No. 209, one hundred (100) feet; thence southerly, parallel with the first mentioned course, six hundred and seventy-five (675) feet to the northerly line of said Haworth Avenue; thence westerly, along the northerly line of Haworth Avenue, one hundred (100) feet to the point of beginning.

PARCEL 47. Lots 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, and 145, together with the strip of land to the north of and immediately adjoining said lots 127 and 128, extending to the northerly line of the property formerly owned by the Haworth Improvement Company, and from Valley Road (formerly Owasco Street) to a point opposite the centre line of Owatonna Street.

PARCEL 48. Lots 72, 73, 74 and 75, subject to all rights, if any, of the purchaser under a contract between the Villa Site Company of Haworth, N. J., as seller and Mary A. Downey as purchaser for the sale and purchase of lots 72, 73, 74 and 75, Section "B," at the price of six hundred and twenty dollars upon which contract the purchaser paid approximately three hundred and sixty-four dollars.

PARCEL 49. Lots 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70 and 71, together with the strip of land, approximately ten (10) feet in width, to the north of and immediately adjoining lots 57 and 58, extending to the northerly boundary of the land formerly owned by the Haworth Improvement Company, and from Valley Road (formerly Owasco Street) to a point opposite the centre line of Hill Street.

PARCEL 50. Plots 12, 13, 14, 15, 16 and 17, together with the strip of land to the north of and immediately adjoining lot 12, extending to the northerly boundary line of property formerly of the Haworth Improvement Company from a point opposite the northeasterly corner of lot 12 to a point opposite the center line of Hill Street.

Page 5 of Policy No. 18167.

PARCEL 51. Plots 6, 7, 8 and 9.

PARCEL 52. All that tract or parcel of land in the Borough of Haworth, County of Bergen and State of New Jersey, shown in Section "B" of a certain map entitled, "Map of Haworth, N. J., being land of the Villa Site Company," made by James A. Lee, C. E., filed August 27, 1891, in the Office of the Clerk of Bergen County, New Jersey, as Map No. 529, and marked on said

New Jersey State Library

map "Reserved" and bounded and described as follows:

BEGINNING at the intersection of the northerly line of Haworth Avenue (now Haworth Drive) with the easterly line of land of the West Shore Railroad Company, running thence northerly, along the easterly line of land of said West Shore Railroad Company, nine hundred and ninety (990) feet and six (6) inches more or less, to the division line between the land formerly of Charles H. Mount and land formerly of John Ackerman; running thence easterly along said last mentioned division line, fifty (50) feet; thence southerly, parallel with the first mentioned course, nine hundred and ninety (990) feet and six (6) inches more or less, to the northerly line of Haworth Avenue (now Haworth Drive) and thence westerly, along the same, fifty (50) feet to the point or place of beginning.

ALL those several plots, pieces or parcels of land with the improvements thereon, if any, situate, lying and being in the Borough of Haworth, County of Bergen and State of New Jersey, shown on a certain map entitled, "Map of Haworth, Bergen County, N. J." and filed in the office of the Clerk of said Bergen County, on July 7, 1888, as Map No. 384, bounded and described as follows, to wit:

PARCEL 53. ALL of block 1, comprising plots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14 and 15 in said block, together with the strip of land to the north of and opposite said block 1, extending from the northerly line of Woodland Avenue (or Street) to the northerly line of the property formerly of the Haworth Improvement Company, and from a point opposite the middle of Field Road (now called Maple Street) to a

point opposite the easterly end of said Woodland Avenue (or street).

PARCEL 54. Plots 8, 9, 10, 11, 12 and 13 in block 2.

PARCEL 55. Plots 1, 2, 15 and 16 in block 2.

PARCEL 56. The easterly one hundred (100) feet of plots 3 and 4 in block 2.

PARCEL 57. The westerly sixty-five (65) feet of plot 6 in block 2.

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PARCEL 58. Plot 1 in block 3.

PARCEL 59. Plot 3 and 4 in block 3.

PARCEL 60. Plot 6 in block 3.

PARCEL 61. Plot 10 and 11 in block 3.

PARCEL 62. Plot 12 and 13 in block 3.

PARCEL 63. Plot 16, 17 and 18 in block 3.

PARCEL 64. Plots 2, 3, 4, 5, 6 and 18 in block 4.

PARCEL 65. Plot 11 in block 4.

PARCEL 66. Plots 1, 2, 3, 4 and 5 in block 8, together with the strip of land to the north of and opposite said plots 1, 2, 3, 4 and 5 extending from the northerly side of Woodland Avenue to the northerly line of the property formerly of the Haworth Improvement Company, and from a point opposite the middle line of Myrtle Avenue (formerly Herrick Road) to a point opposite the middle line of Field Road (now called Maple Street).

PARCEL 67. Plot 1 in block 7.

PARCEL 68. Plots 6, 7 and 8 in block 8.

PARCEL 69. Plot 10 in block 8.

PARCEL 70. Plots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 16, 17, 18, 19 and 20 in block 9.

PARCEL 71. Plots 1 2 and 3 in block 10.

PARCEL 72. Plots 5, 6 and 7 in block 10.

PARCEL 73. Plots 9 and 10 in block 10.

PARCEL 74. Plots 4 and 5 in block 11.

PARCEL 75. Plots 6 and 7 in block 11, subject to all rights, if any, of the purchaser under a contract between the Villa Site Company of Haworth, N. J., as seller and Emelia S. Watt as purchaser, for the sale and purchase of lots at the price of one thousand four hundred and fifty dollars upon which contract the purchaser paid approximately one thousand six hundred and eighty-five and 41/100 dollars, of which last mentioned sum $714.41 was repaid to the purchaser May 2, 1913.

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PARCEL 77. Plot 5 and 6 in block 12.

PARCEL 78. Plot 7 in block 12.

PARCEL 79. Plot 8 in block 12, subject to all rights, if any, of the purchaser under a contract between The Villa Site Company of Haworth, N. J., as seller and Louis S. Hanby as purchaser, for the sale and purchase of said lot at the price of seven hundred dollars upon which contract the purchaser paid approximately five hundred and eighty-one dollars.

PARCEL 80. Plots 3, 4 and 5 in block 13.

PARCEL 81. Plot 6 in block 13, subject to all rights, if any, of the purchaser under a contract between The Villa Site Company of Haworth, N. J., as seller and Charles S. May as purchaser for the sale and purchase of said lot at the price of seven hundred and fifty dollars upon which contract the purchaser paid approximately three hundred and seven and 50/100 dollars.

PARCEL 82. Plot 7 in block 13, subject to all rights, if any, of the purchaser under a contract between The Villa Site Company of Haworth, N. J., as seller and Charles S. May as

purchaser for the sale and purchase of said lot at the price of seven hundred dollars upon which contract the purchaser paid approximately two hundred and seventy-four and 25/100 dollars.

PARCEL 83. All of block 14 comprising plots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11 and 12 in said block, together with the strip of land opposite and to the north of said block 14, extending from the northerly line of Woodland Avenue (or street) to the northerly boundary of the property formerly of the Haworth Improvement Company, and from a point opposite the centre line of Brook Street (formerly McArthur Road) to a point opposite the centre line of Myrtle Avenue (formerly Herrick Road).

PARCEL 84. All of block 15, comprising plots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11 and 12 in said block.

PARCEL 85. All of block 16, comprising plots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11 and 12 in said block.

PARCEL 86. All of block 17, comprising plots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11 and 12 in said block.

ALL those several lots, pieces or parcels of land situate, lying and being in the Borough of Haworth, County of Bergen and State of New Jersey, shown on a certain map entitled, "Map

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of Haworth, Bergen Co., N. J.," made by James A. Lee, C. E., and filed in the office of the Clerk of Bergen County, New Jersey, January 20th, 1892, as Map No. 566, and bounded and described as follows, to wit:

PARCEL 87. Lots 1, 2, 3, 4, 5 and 6.

PARCEL 88. Lots 13 and 14.

PARCEL 89. Lots 17, 18, 19, 20 and 21.

PARCEL 89a. Lot 22 and the easterly half of lot 23.

PARCEL 90. Lots 124, 125, 126, 127, 128 and 129.

PARCEL 91. Lots 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140 and 141.

PARCEL 92. Lots 34, 35, 36, 37, 38, 39, 40, 41, 42 43, 44, 45, 46, 47 and 48, and 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110 and 111.

PARCEL 93. Lots 118, 119 and 120, subject to all rights, if any, of the purchaser under a contract between The Villa Site Company of Haworth, N. J., as seller and Alma Realty Company as purchaser for the sale and purchase of said lots, and lot 121 and the westerly half of lot 122 at the price of five hundred fifty and 00/100 dollars upon which contract the purchaser paid approximately eighty-eight and 00/100 dollars.

PARCEL 94. Lots 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95 and 96.

PARCEL 95. Lots 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239 and 240.

Parcel 96. Lots 172, 173 and 174.

PARCEL 97. Lots 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191 and 192.

PARCEL 98. Plots 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263 and 264.

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PARCEL 99. Lots 151, 152, 153, 154 and 155.

PARCEL 100. Lots 156, 157, 158, 159, 160, 161 and 162.

PARCEL 101. Lots 163, 164, 165, 166, 167 and 168.

PARCEL 102. Lots 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281 and 282.

PARCEL 103. Lots 283, 284, 285, 286, 287 and 288, subject to all rights, if any, of the purchaser under a contract between The Villa Site Company of Haworth, N. J., as seller and Erwin N. Schuyler as purchaser for the sale and purchase of said lots at the price of five hundred dollars upon which contract the purchaser paid approximately one hundred and sixty dollars.

PARCEL 104. Lots 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431 and 432.

PARCEL 105. Lots 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405 and 406.

PARCEL 106. Lots 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383 and 384.

PARCEL 107. Lots 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447,

448, 449, 450, 451, 452, 453, 454, 455 and 456, and 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575 and 576, together with the strip of land opposite and to the north of said lots 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575 and 576, extending from the northerly line of Woodland Avenue or Street to the northerly boundary of property of the Haworth Improvement Company and from the prolongation of the center line of Mill Street to the prolongation of the centre line of Brook Street.

PARCEL 108. Lots 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551 and 552.

PARCEL 109. Lots 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527 and 528.

PARCEL 110. All that tract or parcel of land in the Borough of Haworth, County of Bergen and State of New Jersey, bounded and described as follows, to wit:

BEGINNING at the intersection of the centre line of Woodland Avenue (or Street) and the centre line of Mill Street, as said streets are shown on a certain map entitled, "Map of Haworth, Bergen County, N. J.," made by James A. Lee, C. E., and filed in the office of the Clerk of Bergen County, New Jersey, January 20th,

1892, as Map 566; running thence northerly, along a line drawn in continuation of the centre line of Mill Street to the northerly boundary of the lands described in the deed from the Haworth Improvement Company to Henry C. Copeland, dated May 7th, 1892, recorded in said Clerk's Office in book 338 of Deeds, at page 317, etc., June 2nd, 1892; thence following the courses and distances of the description of the tract of 205 acres as described in said deed as follows: North, eighty and one half degrees west to the end of the third course of the description of said tract of two hundred and five (205) acres as contained in said deed; thence north, eight and one half degrees east, one chain and ninety-eight links; thence north eighty-one and one half degrees west, seven chains and fifty-eight links; thence north, eight and three-fourths degrees east, six chains and five links; thence north eighty and one-half degrees west, six chains and fifty links; thence south, eight and three-fourths degrees west to a point in range with the fifth course of said 205 acre tract as described in said deed; thence north, eighty-one and one-half degrees west, five chains and eighty-five links; thence south, nine and three-fourths degrees west, nine chains and seventy-seven links; thence in range with the first course of description of said 205 acre tract as contained in said deed, north, eighty and one-half degrees west, eight chains and eighty links; thence south, ten degrees west, three chains and thirty links; thence south, thirty degrees west, two chains and seventy-three links; thence south, seventy and one-half degrees west, four chains and two links; thence south, five degrees west, eight chains and twenty-eight links; thence south,

eighty and one-half degrees east to a point opposite the centre line of Chestnut Street, as shown on said map; thence northerly, along the centre line of said Chestnut Street to the intersection of the centre line of said Chestnut Street with the centre line of Woodland Street, as shown on said map; thence easterly, along the centre line of Woodland Street, as shown on said map, to the point or place of beginning.

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PARCEL 111. All that tract or parcel of woodland which begins at a stake at the southeast corner thereof by the woodland now or late of C. H. Zabriskie, and running thence north ten degrees, east, five hundred and twenty-eight (528) feet to a stake; thence north, eighty degrees west, three hundred and sixty-seven (367) feet to a corner, eighteen inches westerly from a small maple tree marked; thence south, eleven degrees and thirty minutes west, four hundred and fifty (450) feet to a stake; thence south, fifty degrees east, one hundred and fifty-five (155) feet to a white oak tree; thence south, eighty degrees east, two hundred and fifty-one (251) feet to the place of beginning. Containing 4.44 of an acre more or less; bounded on the north by land formerly of J. Smith Homans Jr., on the south by lands formerly of Jacob C. Herring, on the east by land formerly of James J. Demarest, and on the west by lands formerly of James Loramer.

SCHEDULE B.

Showing estates, defects, or objections to title, and liens, charges and encumbrances thereon, which do, or may now exist and against which the Company does not agree to guarantee, or indemnity.

1. Losses by reason of encroachment or mislocation of fences, buildings or other structures, rights of existing tenants or occupants, or by reason of any other state of facts which a survey or inspection would disclose, the party guaranteed having waived survey and inspection of the premises.

2. Outstanding title or interest of Haworth Water and Light Company in the most westerly twenty (20) feet of parcels Nos. 40 and 41 and in all of parcels Nos. 42, 43, 44 and 45, except the most easterly one hundred (100) feet of lot No. 188 in Section "B" on the map referred to in the description thereof, under a deed from Henry C. Copeland and others, dated March 25, 1895, recorded in deed book 416, on page 342, etc.

3. Loss by reason of the indefinite description of parcel No. 111, caused by the omission of its boundaries, in a deed from Jane Phyfe and husband to Francis W. Holbrook, recorded in deed book M-12, page 671, and in subsequent deeds in the chain of title.

4. Unpaid taxes for the years 1920, 1921 and 1922 on all of said premises, and for the year 1918 on parcel 75.

5. General scheme of restrictions affecting the property shown on the maps referred to in the description herein contained, as indicated by deeds for numerous lots on said maps made by the Haworth Improvement Company.

6. Restrictions, if any, imposed by municipal ordinances limiting the use of the premises.

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7. Rights of the public and of lot owners in parcel 45 by reason of its designation as "Silver Brook" and "Park Walk" on the map of Haworth, filed August 27, 1891 as map No. 529.

8. Easement of streets and avenues referred to in the description herein contained.

9. Easement of water course crossing said premises.

10. Numerous contracts for the sale of portions of said premises, referred to in the deed to the party insured, and in the description contained herein.

11. Contract for the sale of parcel 72, made by Haworth Improvement Company to Hugh Miller Harmer, dated November 20, 1890, recorded in deed book K-13, page 161.

12. Contract for the sale of lot No. 4 in block No. 11, included in parcel No. 74, made by Haworth Improvement Company to R. Condit Eddy, dated Nov. 20, 1890, recorded in book K-13, page 266.

13. The following contracts for the sale of portions of said premises, referred to in the declaration of trust made by Henry C. Copeland, dated May 7, 1892, and in various pleadings in an action in Chancery between Villa Site Company of Haworth, New Jersey, et als, complainants, and Henry C. Copeland et als, defendants:—

PARCEL 56. Plots 3 and 4, Block 2, under contract of sale to J. P. Morris.

PARCEL 61. Plot 10, Block 3, under contract of sale to H. W. Ibbottson.

PARCEL 62. Plot 13, Block 3, under contract of sale to Neil Wilson.

PARCEL 63. Plot 16, Block 3, under contract of sale to Catherine Mooney.

PARCEL 64. Plot 2, Block 4, under contract of sale to George W. Claflin.

PARCEL 68. Plot 7, Block 8, under contract of sale to E. S. Hallenbeck.

PARCEL 70. Plots 1, 2 and 3, block 9, under contract of sale to M. Horton and A. Stover.

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PARCEL 70. Plot 10, Block 9, under contract of sale to Jennie L. Bedell.

PARCEL 79. Plot 8, Block 12, under contract of sale to John M. Hill.

PARCELS Nos. 92, 94, 95, 96, 97 and 98, under contract of sale to Henry G. Cain.

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CONDITIONS OF THIS POLICY

1. The NORTH JERSEY TITLE INSURANCE COMPANY will, at its own cost and charge, defend the party insured, in all actions of ejectment or other proceedings founded upon a claim of title or encumbrance prior in date to this Policy and not excepted therein. In case any such action or proceeding is begun, it shall be the duty of the party insured, at once, to notify the Company thereof, in writing, and secure it the right to defend the action; and if such notice shall not be given to the Company within five days after the service of the first writ in such action or proceeding, then the policy shall be void.

2. Any untrue statement made by the party insured or his agent, affecting the policy, or any suppression of any material fact, or any un-

true answer to written questions, signed by the party insured or his agent, before the issuing of the Policy, shall void the Policy.

3. All payments under this Policy shall reduce the amount insured pro tanto; and no payment shall be enforced without producing the Policy for endorsement of such payment. If the Policy is lost, indemnity must be furnished to the satisfaction of the Company.

4. Whenever the holder of a Policy of insurance as owner in fee, shall within five years from the date of the Policy, sell the real estate therein described, and shall, within thirty days thereafter, apply for a new Policy of the same title, to be issued to himself or his grantee, then, if the risk is again accepted by the Company, the former Policy shall be surrendered and cancelled, and one-half of the sum paid as premium therefor will be allowed as a deduction from the premium on the new Policy.

5. This Policy does not apply to nor insure against any damage arising out of, or encumbrance created by, any act or fault of the assured; nor any defect or encumbrance arising after the date of this Policy; nor any assessments not confirmed at the date of this Policy.

6. No claim for damages shall arise under this Policy except under Section 1 of these conditions, and except also in the following cases:

(I.) Where there has been a final determination in a court of competent jurisdiction, under which the insured may be dispossessed or evicted from the premises covered by this Policy or from some part or undivided share or interest therein. (II.) Where there has been a final determination adverse to the title, as insured, in such a court, upon a lien or encumbrance not excepted in this Policy. (III.) Where the insured shall have contracted in good faith, in writing, to sell the insured estate or interest, and the title has been rejected because of some defect or encumbrance not excepted in this Policy, and notice in writing, of such rejection shall have been given to this Company within ten days thereafter. For thirty days after receiving such notice, this Company shall have the option of paying the loss, of which the insured must present proper proof, or of maintaining or defending either in its own name or, at its option, in the name of the insured, some proper action or proceeding, begun or to be begun in a court of competent jurisdiction, for the purpose of determining the validity of the objection alleged by the vendee to the title; and only in case a final determination is made in such action or proceeding, sustaining the objection to the title, shall this Company be liable on this policy. (IV.) Where the insurance is upon the interest of a mortgagee, and the mortgage has been adjudged, by a final determination in a court of competent jurisdiction, to be invalid, or ineffectual to charge the premises described in this Policy, or subject to a prior lien or encumbrance not excepted in this Policy. (V.) Where a purchaser at a sale under the judgment or order of a court of competent jurisdiction has been relieved by the court from a purchase of the insured estate or interest by reason of the existence of some lien, encumbrance or defect of title not excepted in this Policy. (VI.) Where the assured shall have transferred the title insured by an instrument containing covenants in regard to title or warranty thereof, and there has been a final judgment rendered in a court of com-

petent jurisdiction against the assured or the heirs, executors, administrators, or successors of the assured, on any such covenants or warranty, and because of some defects of title or encumbrance not excepted in this Policy.

7. In every case where the liability of this Company has been definitely fixed in accordance with these conditions, the loss or damage shall be payable within thirty days thereafter; provided, however, that in every case this Company may demand a valuation of the insured estate or interest of assured, to be made by three arbitrators or any two of them, one to be chosen by the assured and one by this Company, and the two thus chosen selecting an umpire; and then no right of action shall accrue until thirty days after such valuation shall have been served upon this Company and the assured shall have tendered a conveyance or transfer of the insured estate or interest to a purchaser to be named by this Company, at such valuation, less the amount of any encumbrance on said insured estate or interest not hereby insured against, and this Company shall have failed within that time, said tender being during that time kept good, to find a purchaser for the estate or interest upon such terms; and provided, also, that this Company shall always have the right to appeal from any adverse determination; and provided, further, that in every case this Company shall have the option of settling the claim or paying this Policy in full; and the payment or tender of payment to the full amount of this Policy shall determine all liability of this Company under it.

8. Whenever this Company shall have settled a claim under this Policy, it shall be entitled to

all the rights and remedies which the insured would have had against any other person or property in respect to such claim, had this Policy not been made; and the insured will transfer or cause to be transferred to this Company, such rights, and permit it to use the name of the insured for the recovery or defense thereof. If the payment does not cover the loss of the insured, this Company shall be subrogated to such rights, in the proportion which said payment bears to the amount of said loss not covered by said payment; and the insured warrants that such right of subrogation shall vest in this Company unaffected by any act of the insured.

9. In case of any loss to the assured by reason of a failure of title or encumbrance affecting only a part of the insured premises, the measure of damages which the assured may recover under this Policy shall not be a greater fractional part of the maximum amount of insurance mentioned in this Policy than the proportion which the premises affected by such failure of title or encumbrances bears, in value, to the entire premises covered by this Policy.

Policy of Title Insurance.

POLICY OF
TITLE INSURANCE

Issued to
Henry C. Copeland
Covers Premises
Borough of Haworth
County of Bergen
State of New Jersey

NORTH JERSEY
TITLE INSURANCE COMPANY
Hackensack, New Jersey

No. 18167

$35,000.00

This Policy Shall Not Be Binding
Upon the Company Unless the
Premium Has Been Paid
Read the Conditions of This Policy

Affidavit of Meyer Strunsky.

IN CHANCERY OF NEW JERSEY.

Between

158 Bowery Realty Corporation,
Complainant,

and

Henry C. Copeland,
Defendant.

State of New York,
County of New York. } *ss.*

MEYER STRUNSKY, being duly sworn, deposes and says:

I am an attorney and counsellor at law duly admitted to practice in the courts of the State of New York, with offices at No. 1440 Broadway, in the Borough of Manhattan, City, County and State of New York. I am the attorney in New York for the complainant corporation. I first associated myself with the complainant about two or three days prior to the day when the deed was delivered by the defendant to the complainant and the mortgage which is the subject of this action was executed and delivered by the complainant to the defendant. Since the time of the passing of title herein, the matter of the property located at Haworth, Bergen County, N. J., which is the property described in the mortgage involved herein, was in my care as attorney and I am personally familiar with everything that had been done in connection therewith.

The contract of sale which culminated in the delivery of the deed by the defendant to the complainant contained certain provisions, among them the reference to the North Jersey Title Insurance Company policy, a photostate copy of which is attached to the Notice of Motion herein. What occurred between the parties hereto between the time that the contract was made and the time of the delivery of the deed and the execution and delivery of the mortgage, I am not personally familiar with for the reason as already stated, that I had no connection whatsoever with the matter and had no knowledge of the matter, except as to ordering an examination of the title. Upon the closing of title, however, a full covenant warranty deed was delivered by the defendant to the complainant and that said warranty deed contained no exceptions as to any of the matters which are contained or referred to in the contract. On behalf of the complainant, I filed an application for the examination of the title to the property involved with the United States Title & Mortgage Company of Newark, N. J. At the time of the passing of title, no report had been received with respect thereto for the reason that the title to the premises was so involved that it would take the Title Company several months at least to complete its examination. At the time of closing, I informed the defendant of this fact and informed him further that title was being taken without the examination in reliance upon the defendant's warranty deed and explained further, that no adjournment was asked for because it would take a long time before a report could actually be received. As a matter of fact, it was not until June 17th, 1926, or about eight months

after the passing of title that we finally obtained a report. This delay was explained by the United States Title & Mortgage Company as being due to the involved condition of the title; to the fact that title to the greater part of the property came to the defendant through litigation in the Court of Chancery of New Jersey extending over a period of some eleven or twelve years; that the appeal book alone numbered over eight hundred pages and that there were numberless other questions which had to be gone into with the utmost care. Shortly after the report was obtained, I caused to be prepared several copies of the same and delivered one copy thereof to the defendant's son who handled the matter for the defendant with the instructions and request that all of the objections contained in said report be promtly eliminated. The said defendant's son, HENRY F. COPELAND, whose affidavit is attached to the moving papers herein, took up the matter of these corrections and a number of meetings and conferences was had between us for that purpose. I caused to be prepared a Correction Deed, certain Quit Claim Deed which was required of the defendant and other papers and delivered the same to the said HENRY F. COPELAND, and obtained from him a promise to have them executed and returned to me. In the discussions with said HENRY F. COPELAND, it developed that with but a few exceptions, all of the objections raised by the Title Company could be eliminated by documents which it was in the power of this defendant to execute.

At this point, I beg leave to point out the matter of the mortgage which is referred to by the defendant in his affidavit attached to the

Notice of Motion. This mortgage appears as an encumbrance upon the property and is not referred to in the North Jersey Title policy upon which the defendant relies. The defendant in his affidavit gives facts which are sufficient to remove this mortgage as a lien upon the property. These are the very facts, however, that were required of this defendant prior to the commencement of this action but were not furnished by him. It is clear that it was within the defendant's power to remove this lien and it certainly was his duty to do so under the terms of his warranty deed but as stated, he had failed to do so when required. So too was it within the defendant's power to clear that part of the land which is covered by the Haworth Water Works situation inasmuch as it has developed and the defendant and Mr. Harrison, his attorney, have both conceded that this Company was made up of the defendant himself and that it required no more proof than his own to remove this objection. The report discloses a great number of existing contracts for the sale of portions of this property. As to that, it required no more proof than the defendant was able to give as to the non-existence or if existence, their ineffectiveness. There are a number of deeds and conveyances which were improper in form because of the fact that there were improper descriptions and in some of these conveyances, the wife of the grantor failed to join and proof was required as to the marital status of the grantor. These matters are not referred to in the North Jersey policy. There are valuable lots included in the property as conveyed which the defendant had no right to convey because no title was vested in him. This

objection was not referred to in the North Jersey policy. There are certain strips of land abutting upon the streets to which the defendant cannot give title. These strips of land cut off the frontages on the various streets effecting the utility and value of that particular property very considerably. These matters were not referred to in the North Jersey policy.

It will appear from the affidavit of MORRIS RANDELL which affidavit is hereto annexed, that at the time the contract of sale was signed and executed and repeatedly thereafter, the defendant gave assurance that whatever objections existed had been cleared and eliminated. Mr. RANDELL was interested in this matter because he was the broker and wanted his commissions. The payment of his commissions depended upon the complainant's receiving a clear and good title. After these assurances had been given, the complainant, as already stated, took title to the property, without having its own report upon the condition of the title available. The complainant relied upon the defendant's warranty deed. The deed which the defendant gave to the complainant and which complainant begs leave to produce upon the argument of this motion reads in part as follows:

> "And the said Henry C. Copeland and Marie K. Copeland his wife, and administrators, do covenant and grant to and with the party of the second part, its successors and assigns, that the said parties of the first part are the true, lawful and right owners of all and singular the above described land and premises, and of every part and parcel thereof, with the appurtenances thereunto belonging; and the said land and

premises, or any part thereof, at the time of the sealing and delivery of these present are not encumbered by any Mortgage, Judgment or Limitation, or by any encumbrance whatsoever, by which the title of the said party of the second part, hereby made or intended to be made for the above described land and premises, can or may be changed, charged, altered or defeated in any way whatsoever.

And also, that the said parties of the first part now have good right, full power and lawful authority, to grant, bargain, sell and convey the said land and premises, in manner aforesaid. And also, that the said Henry C. Copeland and Marie K. Copeland, his wife, will WARRANT, SECURE, AND FOREVER DEFEND THE SAID land and premises, unto the said party of the second part, its successors and assigns forever, against the lawful claims and demands of all and every person and persons freely and clearly freed and discharged of and from all manner of encumbrances whatsoever."

The complainant relied upon this warranty and upon the defendant's ability to deliver a deed to the property free from encumbrances as stated above, and I respectfully submit confirms the statement made by Mr. RANDELL to the effect that the title to the property would be clear. The purchase money mortgage which is the subject of the suit brought by this complainant and the counterclaim for foreclosure by the defendant is in the principal sum of two hundred and twenty thousand ($220,000.00) dollars. This mortgage contained a provision that the same may be satisfied and discharged prior

to the date fixed for its maturity upon the payment of one hundred and twenty thousand ($120,000.00) dollars in cash. The date for this prepayment as originally fixed in the mortgage was July 22nd, 1926. It was discovered afterwards that that was an error and the paper referred to by the defendant in his affidavit attached to the moving papers, dated July 15, 1926, bears out this contention. It will be seen from a reading of the paper that this is not an extension but a correction of a mutual mistake. The concluding words of said paper being as follows:

"This letter is to confirm such understanding between you and the undersigned instead of an agreement which would alter the present mortgage on record, this is not to change the terms of the mortgage in any particular."

The mortgage then remained as it was originally drawn, except for this one correction. This mortgage was executed and delivered upon the warranty contained in the deed delivered to the complainant to the effect that the property was clear of encumbrances. The intention was as shown by the correction, that the complainant have one year from the time of closing to discharge this mortgage on the payment of one hundred and twenty thousand ($120,000.00) dollars. It was the intention of the parties that the complainant have *one year from the time that it receives a clear title to the premises as warranted in the deed to pay this sum of one hundred and twenty thousand ($120,000.00) dollars in satisfaction and discharge of a mortgage in the principal sum of two hundred and twenty thousand ($220,000.00) dollars* and the action was brought by the complainant and

is now pending in this Court to reform the mortgage so as to make it conform with this intent and understanding. The complainant respectfully urges that upon such reformation, all of the terms of said mortgage be reformed to meet this intent and understanding and if this be done, then the payment of principal which the defendant claims was not paid and which is the basis of the counterclaim for foreclosure would be suspended until such reformation is had and until an order is made by this Court. The complainant was and is acting in good faith and feels that it is entitled to such relief and if such relief is granted, I respectfully maintain that the action in foreclosure must fall.

In any event the complainant raises an issue of fact which affects both its own action for reformation and defendant's counterclaim for foreclosure and there is an issue which ought to be tried out. I submit that these issues are too grave to be brushed aside upon the motion for summary judgment without the hearing of witnesses and without the production of proper proof.

The installment of principal when due was not paid by the complainant upon the advice of myself as attorney as well as the advice of New Jersey counsel consulted in connection with this matter, for fear that the payment thereof would operate as a recognition of the mortgage and because of the further fact that this action for reformation had already been commenced and was then pending in this Court. The complainant was fearful of waiving its right to reformation by such payment.

The complainant did, however, pay the taxes upon the property which became due on the 1st

of December, 1926, and did so for the purpose of preserving its title to the property and keeping the same free from any other encumbrances than those already thereon.

The complainant submits upon the argument of this motion and makes part hereof as if fully embodied herein, the report from the United States Title & Mortgage Company received by it, upon the condition of the title.

Sworn to before me this
18th day of January, 1927.

IN CHANCERY OF NEW JERSEY.

Between

158 BOWERY REALTY CORPORATION,

Complainant,

and

HENRY C. COPELAND,

Defendant.

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

MORRIS RANDELL, being duly sworn, deposes and says:

I am a duly licensed real estate broker and am a member of the firm of RANDELL & RANDELL with offices at No. 1440 Broadway, Borough of Manhattan, City of New York. I was the broker who brought about the sale of the

property located at Haworth, Bergen County, N. J., by the defendant to the complainant. Negotiations with respect to said sale and the terms thereof were had over a long space of time and finally culminated in the agreement made in July, 1925. After the agreement was made, I had a number of conversations with the defendant as well as the defendant's son, HENRY F. COPELAND. The main point of the conversations had between myself and the defendant had to do with the payment of the commissions due me on the sale. Several weeks before the passing of title, I met Mr. COPELAND and told him that I had been informed by Mr. ABRAHAM ROSENBLUTH, the president of the purchaser and the complainant herein, that the complainant was unable to obtain a report upon the condition of the title to the property because of its involved character. At the time of closing I was present. The closing took place at the office of Mr. HARRISON, the attorney for the defendant, at No. 2 Rector Street, Manhattan, New York City. At the time of the closing, the defendant stated to me and to the other persons present, including Mr. ROSENBLUTH, Mr. STRUNSKY, the attorney for the complainant company, Mr. MERLIS, representing the complainant company, Mr. COPELAND and Mr. HARRISON, that the title to the property conveyed was entirely clear; that everything has been cleared and that he was giving his warranty deed without exceptions because the purchaser was taking title without any information with respect thereto from the company then engaged in examining the same.

Sworn to before me this 17th
day of January, 1927.

UNITED STATES MORTGAGE AND TITLE GUARANTY COMPANY OF NEW JERSEY.

REPORT TO APPLICANT.

Newark, N. J., Oct. 24, 1926,

Title N. T-113.

Meyer Strunsky, Esq., 1440 Broadway, New York City.

UNITED STATES MORTGAGE AND TITLE GUARANTY COMPANY OF NEW JERSEY hereby certifies to the applicant for guaranty under above application and under the provisions thereof that it has examined the title to land in Borough of Haworth, Bergen County, New Jersey, described hereinafter for a Deed made by Henry C. Copeland, and Marie K. Copeland, his wife, to 158 Bowery Realty Corporation, a New York Corporation, for $225,000.00 and finds title in said "158 Bowery Realty Corporation" by the said Deed made by Henry C. Copeland, and Marie K. Copeland, his wife, dt. Oct. 22, 1925 and recd. Oct. 23, 1925 in DB 1365 page 139, subject only to the following estates, liens, defects and questions which, together with any others which may be found in continuing the search, are to be excepted in the guaranty which it will issue in the above amount when the title is properly closed and satisfactorily reported, unless documentary evidence of their removal be submitted which shall be satisfactory to this Company:

1. Statutory and Municipal requirements relating to land and buildings.

2. If any building erected on the lands herein described is occupied or intended to be occupied by three or more families, this report is made subject to such facts and conditions as may

exist because of such building or its use or condition or as may be disclosed by a report of the State Board of Tenement House Supervision, if one is subsequently desired.

3. Liability, if any, to Mechanics' Liens for work done or materials supplied, if any, for past four months. Releases or Postponements must be procured if required by facts and conditions shown by affidavit or affidavits to be made before Policy is issued.

4. Rights of tenants and occupants, if any, at date of delivery of deed to be guaranteed.

If the premises are occupied by tenants, lessees or occupants, we shall require an affidavit setting forth the names of each, the terms under which they hold, whether they have a lease in writing, and if so, for what term, and whether the same contains a renewal clause.

5. Such objection to title, if any, as may result from facts which a survey and inspection would disclose, same having been waived by assured, (Continued below).

6. Taxes and other Municipal liens as follows:

Report is made subject to such liens for taxes, assessments, water rents and other municipal liens, and sales therefor, affecting the land herein described, as an examination of the municipal records would disclose, the official search for the same not having been received.

7. Municipal liens as may attach subsequent to the date of tax search.

5. (Continued)

This exception will be amended, if a survey is furnished to us on our requisition, before the Policy is issued, in accordance with such facts and conditions as such certified survey will show.

8. JUDGMENT LIENS:

(a) Search for Judgment Liens in the Courts of Bergen County, up to Oct. 24, 1925, shows none of record.

(b) Report is made subject to all judgments or other liens, which may have been entered in the N. J. Supreme Court, or the U. S. District Court, for the District of N. J., during the past 20 years, against any party who may have held the title to the land herein described, or any interest therein, the official searches not having been received.

For continuation of reports, see attached sheets.

9. MORTGAGES:

(a) Mortgage made by Francis W. Holbrook to Jane Phyfe, dated Aug. 6, 1888, and recorded in the Office of the Clerk of Bergen County, N. J., on Aug. 21, 1888, in MB D 3 page 668, to secure the payment of $8550 in two years from the date thereof, together with interest thereon at the rate of 6% per annum, may still be a lien on Parcel 57. The Foreclosure of this Mortgage resulted in the Sheriff's Deed to Stephen H. Little, Trustee of the Estate of Moses A. Brookfield, deceased, dated January 25, 1890, recorded in Book Z 12, page 596, etc. The Bill in this suit was filed June 28, 1889.

By Deed dated November 7, 1888, recorded on June 26, 1889, two days prior to the filing of the Bill, Book T 12, page 534, Francis W. Holbrook conveyed these two lots to A. Bryson, Jr. Bryson was not made a defendant in the Foreclosure, and his title was therefore not cut off by the decree, but as the sale resulted in a deficiency, his lots, on the record, still appear to be subject to the lien of the unpaid balance of the mortgage.

By a Deed dated Feb. 4, 1895, recorded in Book 393 page 653, Henry C. Copeland succeeded to Mr. Bryson's title.

In view of the age of the above decree—some 36 years—we will insure the title to Parcel 57, against the said Mortgage, upon proof that no payment on account of principal or interest has been made by Mr. Copeland since he acquired title from Bryson.

(b) Mortgage made by 158 Bowery Realty Corporation, a corporation of New York, to Henry C. Copeland, dated Oct. 22, 1925 and recorded in the Office of the Clerk of Bergen County, N. J., on Oct. 23, 1925, in MB 792 page 104, to secure the payment of $220,000 in semi-annual installments of $5,000 each, the first of which shall be due on Oct. 22, 1926, together with interest on unpaid balances from Oct. 22, 1926 at the rate of 6% per annum, and to be paid semi-annually.

This Mortgage contains release clauses, and provides that the mortgagor shall have the privilege of paying off the said Mortgage, and receiving a satisfactory discharge thereof, at any time prior to July 22, 1926, upon the payment of $120,000 in cash.

10. The bulk of the title depends upon a master's deed to Henry C. Copeland, recorded in Book 1204 of Deeds for Bergen County, on page 320, etc., resulting from litigations in the Court of Chancery and Court Errors and Appeals between Villa Sites Company of Haworth, New Jersey, et als, complainants, and Henry C. Copeland, et als, defendants, commenced in 1909 and not terminated until 1921. The records of this suit, which were examined, are very voluminous, the printed book on appeal alone comprising some 800 pages.

11. (a) The descriptions in the Deed from Henry C. Copeland to 158 Bowery Realty Corporation are not satisfactory, in that in many instances the property intended to be conveyed can only be identified by a reference to the assessment map of the Borough of Haworth. The assessment map is not a record within a meaning of the Conveyance Act; it is not filed, but is subject to changes, from year to year; these

11. (Continued)

changes are often made on the original map itself, so that after a number of years it is impossible to determine the lot number of any given parcel on the original map; for this reason, we do not consider titles dependent upon such descriptions marketable.

The description in our case is particularly aggrevated in this respect, because as to Parcels 25 to 56, inclusive, the block numbers on the filed map are omitted, and yet there are duplications of the same lot numbers in each block on said map, and again as to Parcels 58 to 79, inclusive, the filed map on which the lots are shown is in no way referred to.

Under the circumstances, a new deed must be obtained from Mr. Copeland, containing the description furnished with this report, before the title will be insured.

(b) In the description of Parcel 75 there are included lots 407 and 408, probably through an error. These two lots were not conveyed by the master's deed to Mr. Copeland and the abstract shows no other title in him to these lots. Therefore, he cannot convey them.

(c) Parcel 23, together with Parcels 10 to 15, or portions thereof, were conveyed by Henry C. Copeland, et als, to the Haworth Water and

Light Company by deed dated March 25, 1895, and recorded in Book 416 page 342; thereafter, alleging that the said Water Company had never had any actual corporate existence, and that the deed to it was, therefore, a nullity, the said parcels were again conveyed by the same grantors to Henry Fillmore Copeland, by deed dated Jan. 15, 1904, and recorded in 1921, long after the commencement of the Villa Site-Copeland suit, in Book 1102 page 519. Whatever interest Henry Fillmore Copeland may have acquired by the last deed, became vested in Henry C. Copeland under a deed from the said Henry Fillmore Copeland and wife, dated Feb. 27, 1923, and recorded in Book 1204 page 335.

The bona fides of the deed, Book 416 page 342, was questioned in the proceedings of Villa Sites vs. Copeland; although there appears no direct adjudication as to its validity, all the lands conveyed thereby, excepting Parcel 23, were ordered to be sold, and were actually included in the master's deed to Henry C. Copeland.

We find nothing in the pleadings, in the testimony or in any of the several opinions filed, indicating that the status of Parcel 23 was different from the status of the other lands conveyed by the same deed, so that, although under the chain above shown, Henry C. Copeland has some color of title to this parcel, we are forced to the conclusion that Parcel 23 is subject to the same equities as the other lands comprised in deed book 416 page 342, and that its omission from the decree of sale was due to inadvertence. We do not think, therefore, that the title to this parcel is insurable, unless a supplemental deed for it is obtained from the receiver of the Ha-

worth Improvement Company, in addition to the disposition of the possible rights of the Haworth Water and Light Company, herein elsewhere more fully referred to.

(d) The Westerly 20 feet of the lots comprising Parcels 10 and 11, all of Parcels 12 and 13, except the Easterly 100 feet of lot 188 in Section B, all of Parcels 14, 15 (as well as 11. (Continued)
Parcel 23, the title to which has been referred to above) were conveyed by the three deeds, more fully referred to in the paragraph next above.

Presumably on the ground that, as recited in the second of said deeds, the Haworth Water and Light Company had never actually existed, and that, therefore, the deed to it was void,—there is no direct adjudication on this point, these parcels were included in the decree of sale made in Villa Site vs. Copeland and in the consequent master's deed to Mr. Copeland.

It may be that the said recitals were correct; but even if such be the case, the Water Company not being a party to the suit, and all its alleged promoters not having been brought in as defendants, the deed to it is such a cloud upon the title to the parcels above mentioned, as to make it unsafe to insure the same, without any appropriate exception as to the possible rights of the said Haworth Water and Light Company, until the effect of the deed to it shall have been judicially determined, in an action to which the Water Company is a party.

(e) Parcel 12 (Parcel 42 in the master's deed to Copeland), was conveyed subject to the rights of Henry F. Copeland. A quit claim deed should be obtained from him and his wife.

(f) Parcel 81. In the earlier chain of title to this parcel, down to the deed from Jane Phyfe and husband to Francis W. Holbrook, Book M 12 page 671, the particular description attached hereto, supplemented, as it is, by essential and appropriate boundaries, was used; in the subsequent deeds, down to the master's deed to Copeland, the boundaries were omitted, and such omission was not remedied by references to the earlier instruments; in said master's deed the boundaries were re-incorporated. The description, without boundaries, is too uncertain for definite location, and we will, therefore, not insure the title to this parcel, unless a confirmatory deed is obtained from Francis W. Holbrook, containing a proper and complete description.

(g) The record suggests questions as to the marital condition of the grantors in a number of deeds in which their husbands or wives, as the case may be, did not join, and in which such status of the grantor is not stated:

I—Annah Downing, the grantor in a deed to Harriet E. Pickert dated May 25, 1871, Book W 8 page 516.

II—Susan A. King, the grantor in a deed to Samuel G. Acton dated February 1, 1869, recorded in Book C 7 page 586.

III—Charles H. Mount, one of the defendants named in the Sheriff's Deed to the Mutual Life Insurance Company, dated June 3, 1885, recorded in Book Z 11 page 404.

We shall require proof as to the status of these individuals.

12. CONTRACTS:

The following Contracts appear on the record at the Office of the Clerk of Bergen County. We

will insure against these Contracts upon proof being furnished to us of their abandonment, or other satisfactory disposal. These Contracts are as follows,—

(a) Parcel 43. Contract for the sale of plot 7, in block 10, between Haworth Improvement Company and Hugh Miller Himer, dated November 20, 1890, recorded in Book K 13 page 161.

(b) Parcel 45. Contract for the sale of plot 4, in block 11, between Haworth Improvement Company and R. Condit Eddy, dated November 20, 1890, recorded in Book K 13 page 266.

(c) In the master's deed to Copeland, above referred to, Parcels 5, 6, 8, 9, 11, 17, 46, 49, 51, 52, 63 and 73, either in whole or in part, are specifically conveyed subject to outstanding contracts which, unless their satisfactory disposition is shown, will be excepted in our Policy.

(d) In the trust agreement made by Henry C. Copeland on May 7, 1892, appended to the Bill in Villa Sites vs. Copeland, above referred to, and in some of the early pleadings, etc. in said suit, the following parcels or portions of parcels are shown to have been under contracts of sale:

PARCEL 27, Plots 3 and 4, Block 2, under contract of sale to J. P. Morris;

PARCEL 32, Plot 10, Block 3, under contract with H. W. Ibbottson;

PARCEL 33, Plot 13, Block 3, under contract with Neil Wilson;

PARCEL 34, Plot 16, Block 3, under contract with Catherine Mooney;

PARCEL 35, Plot 2, Block 4, under contract with George W. Claflin;

PARCEL 39, Plot 7, Block 8, under contract with E. S. Hallenbeck;

PARCEL 41, Plots 1, 2, 3, Block 9, under contract with M. Horton and A. Stover;

PARCEL 41, Plot 10, Block 9, under contract with Jennie L. Bedell;

PARCELS Nos. 62, 64, 65, 66, 67 and 68 are in the Bill of Complaint in Villa Site vs. Copeland, (in 1909) stated as being under contract of sale to Henry C. Cain.

None of these contracts are of record, nor are they recognized in the master's deed to Copeland, although we find no testimony in Villa Site vs. Copeland showing their disposition.

We will insure against these contracts upon proper proof of abandonment.

13. (a) Outstanding rights of the public and of the owners of lands adjoining thereon in any road, street, avenue or way, shown or laid down on the three Maps referred to in the description of the premises to be guaranteed.

13. (Continued)

(b) Outstanding rights of the public and of the owners of lands adjoining thereon in any road, street, avenue or way, which may have been laid out by the municipal county or state authorities across Parcels 16, 18, 19, 24, 37, 53 and 77.

(c) Rights of the public, if any, and of the owners of lands, to whom the premises of which they are seized were conveyed by the Map of Haworth, made in 1891 (filed as Map No. 529), in Parcel 15, because this parcel is shown as "Silver Brook" with what appear to be streets or walks on each side thereof marked "Park Walk." This designation may have worked a dedication of said parcel to public use, for park purposes, and such easement of the public is hereby excepted.

(d) Rights of the public and of the owners of lands adjoining thereon in any stream, brook, ditch or drain, crossing or bounding the lands herein described.

(e) Access to Park Street from Lots 3 and 4, in block 2, Lots 1, 3 and 4, in block 3 and Lots 2, 3 and 4, in block 4, on Map of Haworth, made in 1888 (filed as Map No. 384), will not be guaranteed, by reason of the fact that the strip of land adjoining the said lots on the East cuts off access to the said Park Street.

14. Parcel 22. In the deed from Copeland to 158 Bowery Realty Corporation, this parcel is stated to be subject to a lease to Peter Northelfer, expiring January 1, 1926. Unless proof is forthcoming that Mr. Northelfer has since vacated, his rights as lessee will be expressly excepted.

15. The title to the following property, to which Henry C. Copeland is said to have had Tax Titles, will not be guaranteed under this Policy:

ALL those certain lots of land in the Borough of Haworth, County of Bergen and State of New Jersey, shown and designated on a certain map entitled "Map of Haworth, Bergen County, N. J." filed in the Office of the Clerk of Bergen County, on July 7, 1888, as Map No. 384.

PARCEL 1, lot 17 in block 4 (Assessment Map block No. 85).

PARCEL 2, lot 5 in block 3 (Assessment Map block No. 81).

PARCEL 3, lots 3 and 4 in block 6 (Assessment Map block No. 95).

PARCEL 4, lot 11 in block 7 (Assessment Map block No. 99).

PARCEL 5, Westerly 50 feet of lots in block 6 (Assessment Map block No. 95).

PARCEL 6, lot 1 in block 11 (Assessment Map block No. 90).

PARCEL 7, lot 8 in block 10 (Assessment Map block No. 84).

PARCEL 8, a strip of land bounded on the south by Ivy Street, on the west by Holbrook Road, on the north by Shephard Street and on the east by the right of way of the West

15. (Continued)

Shore Railroad (Assessment Map block No. 95 a).

PARCEL 9, lot 10 in block 20 (Assessment Map block No. 97).

Also all those lots of land situate in said Borough of Haworth shown on Section "A" of a certain map entitled "Map of Haworth, N. J., being lands of the Villa Sites Company of Haworth, N. J." filed in the Office of the Clerk of Bergen County on August 27, 1891, as Map No. 529.

PARCEL 10, plots 10 and 11 (Assessment Map block No. 135).

PARCEL 11, lot 67 (Assessment Map block No. 140).

PARCEL 12, being a strip of land bounded on the West by the extension southward of Owasco Street, on the North by lots 69 and 14 and the south end of a proposed street running along the easterly line of lots 14 to 23, on the east by the extension southward of the easterly side of said proposed street, and on the South by the southerly boundary line of the entire tract formerly owned by Villa Sites Company of Haworth, N. J., (Assessment Map block No. 140 a).

PARCEL 13, lots 113 and 114 (Assessment Map block No. 133).

PARCEL 14, lots 268, 269, 270 and 271 (Assessment Map block No. 130).

Also all that lot of land in said Borough of Haworth, shown on a certain map entitled "Map of Haworth, Bergen Co. N. J." filed in the Bergen County Clerk's Office January 20, 1892, as Map No. 566.

PARCEL 15, lots 169, 170 and 171 (Assessment Map Block No. 42).

16. Report is subject to clerical error, the same having not been compared before being forwarded to the applicant. To the extent of the correction of such errors, this report is subject to correction.

CORRECT DESCRIPTION OF PREMISES TO BE GUARANTEED.

ALL those certain tracts and parcels of land situated, lying and being in the Borough of Haworth, in the County of Bergen and State of New Jersey, which are more particularly described as follows, viz.:

The plots numbered 1 to 23, both inclusive, hereinafter described, are shown on Section B of a certain map entitled "Map of Haworth New Jersey Being Land of The Villa Site Company Haworth New Jersey," which said map was filed in the Office of the Clerk of Bergen County, New Jersey, on August 27, 1891, as Map No. 529.

PARCEL 1. Plots 3, 4 and 5.
PARCEL 2. Plots 18, 19, 20, 21 and 22.
PARCEL 3. Lots 93 to 109 inclusive.
PARCEL 4. Lots 146 to 155 inclusive.
PARCEL 5. Lots 220 and 221.
PARCEL 6. Lots 218 and 219.
PARCEL 7. Lots 212 to 217 inclusive.
PARCEL 8. Lots 224 and 225.

PARCEL 9. Lots 210, 211, 222 and 223.

PARCEL 10. The westerly half part of lots 163 to 167 inclusive.

PARCEL 11. Lot 168.

PARCEL 12. Lots 169 to 175 inclusive.

PARCEL 13. Lots 188 to 193 inclusive.

PARCEL 14. Lots 206 to 209 inclusive.

PARCEL 15. Beginning at the corner formed by the intersection of the northerly line of Haworth Avenue, (now Haworth Drive) with the easterly line of Stevens Street; running thence northerly, along said easterly side of Stevens Street, 675 feet to the southerly line of lot 209; thence easterly along the southerly line of lot 209, 100 feet; thence southerly, parallel with the first mentioned course, 675 feet to the northerly line of said Haworth Avenue; thence westerly, along the northerly line of Haworth Avenue, 100 feet to the point of beginning.

PARCEL 16. Lots 110 to 145 inclusive, together with the strip of land to the north of and immediately adjoining said lots 127 and 128, extending to the northerly line of the property formerly owned by the Haworth Improvement Company, and from Valley Road (formerly Owasco Street) to a point opposite the centre line of Owatonna Street.

PARCEL 17. Lots 72, 73, 74 and 75.

PARCEL 18. Lots 40 to 71, inclusive, together with the strip of land, approximately 10 feet in width, to the north of and immediately adjoining lots 57 and 58, extending to the northerly boundary of the land formerly owned by the Haworth Improvement Company and from Valley Road (formerly Owasco Street) to a point opposite the centre line of Hill Street.

PARCEL 19. Lots 12, 13, 14, 15, 16 and 17, together with the strip of land to the north of and immediately adjoining lots 12, extending to the northerly boundary line of property formerly of the Haworth Improvement Company from a point opposite the northeasterly corner of lot 12 to a point opposite the centre line of Hill Street.

PARCEL 20. Plots 6, 7, 8 and 9.

PARCEL 21. BEGINNING at the intersection of the northerly line of Haworth Avenue (now Haworth Drive) with the easterly line of land of the West Shore Railroad Company, running thence, northerly, along the easterly line of land of said West Shore Railroad Company, 990 feet and 6 inches, more or less, to the division line between the land formerly of Charles H. Mount and land formerly of John Ackerman; running thence easterly along said last mentioned division line, 50 feet; thence southerly, parallel with the first mentioned course 990 feet and 6 inches, more or less, to the northerly line of Haworth Avenue (now Haworth Drive) and thence westerly, along the same, 50 feet to the point or place of BEGINNING.

PARCEL 22. BEGINNING at a point at the southwest corner thereof, which point is distant 222.3 feet from the center line of Haworth Street in a line parallel with and distant easterly 100 feet from the center line of the right of way of the West Shore Railroad; running thence north 30 degrees east 835 feet to the land of John Ackerman; thence along the lands of said John Ackerman, south 78½ degrees east, 180 feet to a proposed street; thence south 12 degrees west 797 feet along the westerly line of said proposed street to a corner of the same

(being the northwest corner of proposed street); thence north 78 degrees west, 404.5 feet to the point or place of BEGINNING. Containing 5-413/1000 acres, more or less. Said plot being marked "George Robinson" and shown on the aforesaid map.

PARCEL 23. Lots 176 to 187, inclusive.

The plots numbered 24 to 57, both inclusive, hereinafter described, are shown on a certain map entitled "Map of Haworth Bergen Co, New Jersey. Showing Property of The Haworth Land Co. 1888.", which said map was filed in the Office of the Clerk of Bergen County, New Jersey, on July 7, 1888, as Map No. 384.

PARCEL 24. All of block 1, comprising plots 1 to 15, inclusive, in said block, together with the strip of land to the north of and opposite said block 1, extending from the northerly line of Woodland Avenue (or street) to the northerly line of the property formerly of the Haworth Improvement Company and from a point opposite the middle of Field Road (now called Maple Street) to a point opposite the easterly end of said Woodland Avenue (or street).

PARCEL 25. Plots 8, 9, 10, 11, 12 and 13, in block 2.

PARCEL 26. Plots 1, 2, 15 and 16 in block 2.

PARCEL 27. The easterly 100 feet of plots 3 and 4 in block 2.

PARCEL 28. The westerly 65 feet of plot 6 in block 2.

PARCEL 29. Plot 1 in block 3.

PARCEL 30. Plots 3 and 4 in block 3.

PARCEL 31. Plot 6 in block 3.

PARCEL 32. Plots 10 and 11 in block 3.

PARCEL 33. Plots 12 and 13 in block 3.

PARCEL 34. Plots 16, 17 and 18 in block 3.

PARCEL 35. Plots 2, 3, 4, 5, 6 and 18 in block 4.

PARCEL 36. Plot 11 in block 4.

PARCEL 37. Plots 1, 2, 3, 4 and 5 in block 8, together with the strip of land to the north of and opposite said plots 1, 2, 3, 4 and 5 extending from the northerly side of Woodland Avenue to the northerly line of the property formerly of the Haworth Improvement Company, and from a point opposite the middle line of Myrtle Avenue (formerly Herrick Road) to a point opposite the middle line of Field Road (now called Maple Street).

PARCEL 38. Plot 1 in block 7.

PARCEL 39. Plots 6, 7 and 8 in block 8.

PARCEL 40. Plot 10 in block 8.

PARCEL 41. Plots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 16, 17, 18, 19 and 20 in block 9.

PARCEL 42. Plots 1, 2 and 3 in block 10.

PARCEL 43. Plots 5, 6 and 7 in block 10.

PARCEL 44. Plots 9 and 10 in block 10.

PARCEL 45. Plots 4 and 5 in block 11.

PARCEL 46. Plots 6 and 7 in block 11.

PARCEL 47. Plot 6 in block 12.

PARCEL 48. Plot 7 in block 12.

PARCEL 49. Plot 8 in block 12.

PARCEL 50. Plots 3, 4 and 5 in block 13.

PARCEL 51. Plot 6 in block 13.

PARCEL 52. Plot 7 in block 13.

PARCEL 53. All of block 14, comprising plots 1 to 13, inclusive, in said block, together with the strip of land opposite and to the north of said block 14, extending from the northerly line of Woodland Avenue (or Street) to the northerly boundary of the property formerly of the Haworth Improvement Company, and from a point opposite the center line of Brook Street (for-

merly McArthur Road) to a point opposite the center line of Myrtle Avnue (formerly Herrick Road).

PARCEL 54. All of block 15, comprising plots 1 to 12, inclusive, in said block.

PARCEL 55. All of block 16, comprising plots 1 to 12, inclusive, in said block.

PARCEL 56. All of block 17, comprising plots 1 to 12, inclusive, in said block.

PARCEL 57. Lots 3 and 8 in block 11.

The plots numbered 58 to 79, both inclusive, hereinafter described, are shown on a map entitled "Map of Haworth Bergen Co. New Jersey.", which said map was filed in the Office of the Clerk of Bergen County, New Jersey, on January 20, 1892, as Map No. 566.

PARCEL 58. Lots 1 to 6 inclusive.

PARCEL 59. Lots 19 to 21 inclusive.

PARCEL 60. Lots 124 to 129 inclusive.

PARCEL 61. Lots 130 to 141 inclusive.

PARCEL 62. Lots 34 to 48 inclusive and 97 to 111 inclusive.

PARCEL 63. Lots 118, 119 and 120 and lot 121 and the westerly half of lot 122.

PARCEL 64. Lots 49 to 96 inclusive.

PARCEL 65. Lots 193 to 240 inclusive.

PARCEL 66. Lots 172, 173 and 174.

PARCEL 67. Lots 175 to 192 inclusive.

PARCEL 68. Lots 241 to 264 inclusive.

PARCEL 69. Lots 151 to 155 inclusive.

PARCEL 70. Lots 156 to 162 inclusive.

PARCEL 71. Lots 163 to 168 inclusive.

PARCEL 72. Lots 265 to 282 inclusive.

PARCEL 73. Lots 283 to 288 inclusive.

PARCEL 74. Lots 289 to 312 inclusive and 409 to 432 inclusive.

PARCEL 75. Lots 313 to 336 inclusive and 385 to 406 inclusive.

PARCEL 76. Lots 337 to 384 inclusive.

PARCEL 77. Lots 433 to 456 inclusive and 553 to 576 inclusive, together with the strip of land opposite and to the north of said lots 553 to 576 inclusive, extending from the northerly line of Woodland Avenue or Street to the northerly boundary of property of the Haworth Improvement Company and from the prolongation of the center line of Mill Street to the prolongation of the center line of Brook Street.

PARCEL 78. Lots 457 to 480 inclusive and 529 to 552 inclusive.

PARCEL 79. Lots 481 to 528 inclusive.

The plot numbered 80, hereinafter described, lies north and west of the lands shown on the map last above referred to, and the plot numbered 81, hereinafter described, lies southwest of the lands shown on the map last above referred to.

PARCEL 80. BEGINNING at the intersection of the center line of Woodland Avenue (or Street) and the center line of Mill Street as said streets are shown on the aforesaid map; running thence northerly, along a line drawn in a continuation of the center line of Mill Street to the northerly boundary of the lands described in the deed from the Haworth Improvement Company to Henry C. Copeland, dated May 7, 1892, recorded in said Clerk's Office in book 338 of Deeds, at page 317, etc., June 2nd, 1892; thence following the courses and distances of the description of the tract of 205 acres as described in said deed as follows: North 80½ degrees west to the end of the third course of the description of said tract of 205 acres as contained in said deed; thence north 8½ degrees east, 1 chain and 98 links; thence north 81½ degrees west, 7 chains

and 58 links; thence north 8¾ degrees east, 6 chains and 5 links; thence north 80½ degrees west, 6 chains and 50 links; thence south 8¾ degrees west to a point in range with the fifth course of said 205 acre tract as described in said deed; thence north 81½ degrees west, 5 chains and 85 links; thence south 9¾ degrees west, 9 chains and 77 links; thence in range with the first course of description of said 205 acre tract as contained in said deed, north 80½ degrees west, 8 chains and 80 links; thence south 10 degrees west, 3 chains and 30 links; thence south 30 degrees west, 2 chains and 73 links; thence south 70½ degrees west, 4 chains and 2 links; thence south 5 degrees west, 8 chains and 28 links; thence south 80½ degrees east to a point opposite the centre line of Chestnut Street, as shown on said map; thence northerly, along the center line of said Chestnut Street to the intersection of the center line of said Chestnut Street with the center line of Woodland Street, as shown on said map; thence easterly, along the center line of Woodland Street, as shown on said map, to the point or place of BEGINNING.

PARCEL 81. All that tract or parcel of woodland which begins at a stake at the southeast corner thereof by the woodland now or late of C. H. Zabriskie, and running thence north 10 degrees east 528 feet to a stake; thence north 80 degrees west, 367 feet to a corner 18 inches westerly from a small maple tree marked; thence south 11 degrees and 30 minutes west, 450 feet to a stake; thence south 50 degrees east, 155 feet to a white oak tree; thence south 80 degrees east, 251 feet to the place of BEGINNING. Containing 4.44 of an acre, more or less, bounded on the north by land formerly of I. Smith Homans,

Jr.; on the south by lands formerly of Jacob C. Herring; on the east by land formerly of James J. Demarest; and on the west by land formerly of James Loramer.

INSTRUCTIONS FOR CLOSING

If we are required to guaranty existing mortgage, an estoppel declaration should be provided, forms for which will be furnished upon application.

At least two days' notice of proposed closing should be given this company. THE IDENTITY of those executing papers must be established to the satisfaction of this company.

The last receipts for interest, taxes, water rents and insurance, together with insurance policies and certificates thereof, should be produced.

It is important that the NEW JERSEY FORM of acknowledgment and of the certificate to an acknowledgment, where the latter is necessary, be used. This company will gladly furnish the forms upon application.

This Company will not guarantee accuracy of descriptions or such a state of facts as a survey would show, unless a survey conforming to a requisition by this Company has been furnished.

This certificate will not bind this Company, unless the charges referred to in the application are paid when demanded, nor after guaranty has been issued. Any liability hereunder is limited by the conditions of the application for this guaranty.

Respectfully submitted,

Oleo J Sewasser
Asst. Title Officer.

Title No. T-113.

Preliminary Report of Title

UNITED STATES MORTGAGE AND TITLE GUARANTY COMPANY OF NEW JERSEY.
972 BROAD STREET
Newark, N. J.

Issued to Meyer Strunsky, Esq.,
Address 1440 Broadway, New York City.
on the following premises: In the Borough of Haworth, Bergen County, New Jersey, being numerous parcels of land North and South of Haworth Avenue, extending both East and West of the Right of Way of the West Shore Railroad Company.

This Company Guarantees Titles to Real Estate throughout New Jersey
Capital $1,000,000.00
Surplus $100,000.00

CONCLUSIONS OF VICE-CHANCELLOR.

IN CHANCERY OF NEW JERSEY.

Between

158 Bowery Realty Corporation,
Complainant,

and

Henry C. Copeland,
Defendant.

On Bill, &c.
On Motion to Strike Out Bill and Answer to Counter-claim.
Conclusions.

(Not to be printed or published in any report, official or unofficial.)

Julian C. Harrison, Esq., for the motion.
I. Benjamin Glueckfield, *contra.*

Berry, *V.-C.*

This bill was filed to reform a purchase money mortgage given by complainant to defendant, who filed an answer and counter-claim alleging default in the mortgage and praying a foreclosure. The complainant filed an answer to the counter-claim. The defendant now moves to strike out the bill and answer to the counter-claim on the ground that the bill shows no equity and that the answer to the counter-claim is sham and frivolous. The facts as disclosed by the affidavits and answering affidavits are that the defendant, as vendee, and the complainant, as vendor, entered into a written agreement of sale of certain lands in Bergen County for the sum of $225,000. Of this amount $2,500 was paid on execution of the contract, $2,500 on settlement and the balance of $220,000 by a pur-

chase money mortgage in that amount payable in stipulated instalments. The mortgage contained a provision that the mortgagor should have the privilege of purchase or cancellation of the mortgage upon the payment of $120,000 in cash on or before the expiration of one year from July 22, 1925, the date originally fixed for settlement. After the contract was executed the settlement date was changed to October 22, 1925, and settlement was made accordingly on that date by delivery of deed and purchase money mortgage. The provision for purchase or cancellation of the mortgage above referred to was also contained in the written contract of purchase. The agreement also contained a provision that the title was to be taken subject to certain exceptions in a title policy held by the vendor and covering the premises the subject of the sale. Some months after settlement it was discovered that the date named in the mortgage for redemption or cancellation at the reduced amount was one year from July 22, 1925, the date originally fixed in the contract for settlement, instead of one year from October 22, 1925, the final settlement date, and this was corrected by means of a letter from defendant to complainant. Nothing else affecting the rights of the parties transpired until October 22, 1926, when the complainant filed his bill alleging numerous defects in the title, without specifically naming them, and a mistake in the terms of the mortgage; that it was the intention of the parties to provide for cancellation or purchase thereof at the reduced price of $120,000 within one year after complete and perfect title delivered and after all defects and exceptions were removed, and praying a reformation of the mortgage. The

counter-claim alleged default in payment of the instalments and interest on the mortgage and elected that the whole principal sum should become due. No eviction by title paramount is alleged in the complaint. The affidavits and answering affidavits indicate clearly that there are no defects in the title of a serious nature other than those specified in the title policy exceptions hereinabove referred to. Such exceptions or defects as are not mentioned in the title policy referred to in the agreement of sale are admittedly capable of being cleared up by affidavits and quit-claim deeds which the defendant is willing to furnish and which had been actually prepared for execution prior to the filing of this bill of complaint. There is not a single fact alleged in the bill or answer to the counter-claim which is indicative of either mistake or fraud such as would warrant a reformation of the mortgage and the defendant's affidavits and the documentary evidence used on this motion are clear and convincing to the effect that the bill is without equity and the answer to the counter-claim sham and frivolous. The answering affidavits are purely argumentative and of little or no probative force. The motion will, therefore, be granted.

Heard January 18, 1927.
Decided January 28, 1927.

DECREE PRO CONFESSO.

IN CHANCERY OF NEW JERSEY.

Between

158 Bowery Realty Corporation,

Complainant,

and

Henry C. Copeland,

Defendant.

Decree Pro Confesso.

This cause being opened to the Court by Julian C. Harrison, of counsel with the defendant, Henry C. Copeland, and it appearing that on the 22d day of October, 1926, complainant filed its bill praying reformation of a mortgage held by the defendant, and that thereafter the defendant filed his answer and counter-claim praying foreclosure of the said mortgage; and the complainant thereafter replied to the said counter-claim; and the said defendant having thereupon moved upon the said bill, answer and counter-claim, and upon his affidavit duly verified the 5th day of January, 1927; and upon the affidavit of Henry F. Copeland, duly verified the same day, to strike out the bill and the reply to the counter-claim as sham and frivolous; and the complainant having filed the affidavit of Meyer Strunsky, duly verified the 18th day of January, 1927; and the affidavit of Morris Randell, duly verified the 17th day of January, 1927, in opposion to said motion; and the Court having considered the matter; and it appearing to the satisfaction of the Court that the complainant's bill

is without equity and that the answer to the counter-claim is sham and frivolous; it is thereupon, on this 8th day of February, 1927, on motion of Julian C. Harrison, solicitor and of counsel with the defendant, Ordered and Decreed, that the bill of complaint and the answer to the defendant's counter-claim be stricken out as sham and frivolous; and that the counter-claim of the defendant be, and the same is hereby taken as confessed against the complainant, to the end that such decree may be made against it as the Chancellor shall think equitable and just; and it is further

Ordered, that the sum of $1,000 be allowed and paid by the complainant to the solicitor of the defendant, as a counsel fee; and that the same may be included in the taxed bill of costs, and collected with the other items of said bill.

E. R. WALKER,
C.

Respectfully advised,

Maja Leon Berry,
V.-C.

A true copy.

Thomas Barber,
Clerk.

NOTICE OF APPEAL.

IN CHANCERY OF NEW JERSEY.

Between	
158 Bowery Realty Corporation, *Complainant,*	*On Bill, etc.*
and	*On Decree Pro Confesso.*
Henry C. Copeland, *Defendant.*	*Notice of Appeal.*

The complainant hereby appeals from the decree *pro confesso* and from the whole and every part thereof, heretofore made in this Court in the above-stated cause on the 8th day of February, 1927, to the Court of Errors and Appeals in the last resort in all causes.

I. B. GLUECKFIELD,
Solicitor for and of Counsel with Complainant.

Dated: March 2, 1927.

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

I. B. GLUECKFIELD,
Of Counsel with Complainant.

AFFIDAVIT OF SERVICE.

IN CHANCERY OF NEW JERSEY.

Between	
158 Bowery Realty Corporation, *Complainant,*	*On Bill, etc.*
and	*On Decree Pro Confesso.*
Henry C. Copeland, *Defendant.*	*Affidavit of Service.*

State of New Jersey,
County of Essex.

I. B. Glueckfield, being duly sworn according to law, on his oath deposes and says:

1. I am the solicitor for and of counsel with the complainant in the above-entitled matter.

2—On the 8th day of March, 1927, I personally served a copy of the Notice of Appeal annexed hereto upon Julian C. Harrison, solicitor of the above-named defendant, by delivering same to him personally and leaving it with him at his office in the City of New York, State of New York.

I. B. GLUECKFIELD.

Sworn to and subscribed before me
this 22nd day of March, 1927.

Jerome C. Eisenberg,
An Attorney at Law of New Jersey.

PETITION OF APPEAL.

New Jersey Court of Errors and Appeals

Between	*On Bill, etc.*
158 Bowery Realty Corporation, *Complainant-Appellant,*	*On Appeal from a Decree of the Vice-Chancellor.*
and	
Henry C. Copeland, *Defendant-Respondent.*	*Petition of Appeal.*

The petition of 158 Bowery Realty Corporation, the appellant in the above-stated cause, respectfully shows that your petitioner finds itself aggrieved by a decree designated as a decree *pro confesso* but in reality a final decree insofar as it disposes of the petitioner's action, and made in the Court of Chancery by his Honor Edwin Robert Walker, Chancellor of the State of New Jersey, bearing date the 8th day of February, 1927, wherein the said petitioner was complainant and Henry C. Copeland was the defendant, in this respect, to wit: that the said decree adjudges that the petitioner's bill of complaint and its answer to the defendant's counter-claim be stricken out as sham and frivolous; and that the counter-claim of the defendant be taken as confessed against the complainant; and finally that the complainant do pay to the solicitor of the defendant, as a counsel fee, to be included in the taxed bill of costs the sum of One Thousand Dollars ($1,000).

And your petitioner humbly appeals from the said decree of the Vice-Chancellor which decrees as aforesaid, upon the ground that the same is erroneous, for that (1) the petitioner has a good cause of action and filed a bill showing equity and setting up allegations sufficient to warrant intercession of this Court in the premises; (2) the answer of the petitioner to the defendant's counter-claim was sufficient in raising triable issues necessitating their being set down for final hearing; and (3) the allowance of the sum of One thousand dollars ($1,000) is excessive.

Your petitioner therefore prays that the said decree of the said Chancellor be in the particulars aforesaid, reversed, set aside and for nothing holden.

That your petitioner may have such other or further relief in the premises as to this Honorable Court shall seem meet.

I. B. GLUECKFIELD,
Solicitor for and of Counsel with Appellant.

ANSWER TO PETITION OF APPEAL.

NEW JERSEY COURT OF ERRORS AND APPEALS.

Between 158 Bowery Realty Corporation, *Complainant-Appellant,* *and* Henry C. Copeland, *Defendant-Respondent.*	*On Bill, etc.* *Answer to Petition of Appeal.*

The answer of the above-named respondent to the petition of appeal of the above-named appellant.

This respondent, not acknowledging all or any of the matters which in the said petition of appeal are contained, to be true, for answer thereto, nevertheless says and admits, that a decree was on the 8th day of February, 1927, made and entered in the Court of Chancery in the cause, as stated in the petition of appeal; but as to the substance and form thereof, this respondent prays to refer thereto when the same shall be produced. And this respondent is advised and believes that the said decree is agreeable to equity, and he prays that the same may be affirmed, with costs to be adjudged to this respondent.

JULIAN C. HARRISON,
Solicitor and of Counsel with Respondent.

138MAY.T.1927

Arthur W. Cross, Law Printer, 55-57 Lafayette Street, Newark, N. J.

New Jersey Court of Errors and Appeals

Between 158 Bowery Realty Corporation, *Complainant-Appellant,* *and* Henry C. Copeland, *Defendant-Respondent.*	*On Appeal from a Decree of the Chancellor.*

BRIEF FOR APPELLANT.

This is an appeal from a decree of the Chancellor, advised by Vice-Chancellor Berry and bearing date the 8th day of February, 1927. The bill in Chancery was filed for the reformation of a mortgage. The respondent answered and counter-claimed for leave to foreclose that mortgage. Upon motion the decree dismissing the bill and granting the prayer of the counter-claim was advised as aforesaid.

THE FACTS.

1—On or about July 22, 1925, the parties to this suit entered into written agreement wherein and whereby the respondent agreed to sell and the appellant to buy certain lands of the respondent situated at Haworth, in the County of Bergen, for the sum of $225,000. The purchase price was to be paid in the following manner:

2—$2500.00 upon the execution of the agreement; $2500.00 upon its consummation and the delivery of deed, and the balance of $220,000 by the appellant's executing and delivering to the respondent a purchase money mortgage with

New Jersey State Library

certain particular provisions hereinafter referred to. In addition to the purchase price aforesaid, appellant was to pay the sum of $1,114.32, representing the apportioned half of 1925 taxes assessed against the property.

3—On October 22, 1925, the agreement was consummated by appellant's paying to respondent the additional sum of $2,500 aforesaid and delivering the purchase money mortgage aforesaid, while respondent delivered to appellant his duly executed deed of conveyance. The mortgage contained, *inter alia,* provision for the payment of the principal thereof in semi-annual installments of $5,000 each, the first to become due on October 22, 1926, together with interest on unpaid balances from that date at the rate of six per cent. per annum and to be paid semi-annually. The parties agreed, moreover, that the mortgage was to be cancelled and discharged upon the payment by the appellant of the sum of $120,000 in cash at any time before or at the expiration of one year from and after the date of the consummation of the agreement. By inadvertence the executed mortgage contained a provision that it should be so cancellable by the payment of the sum aforesaid at any time prior to July 22, 1926, instead of October 22, 1926. By instrument in writing the respondent thereafter, on July 15, 1926, corrected the error and fixed the time as October 22, 1926, as the date marking the expiration of one year.

4—The agreement of purchase and sale contained a provision to the effect that title was to be conveyed subject to certain exceptions shown upon a title policy theretofore issued to the respondent by the North Jersey Title Insurance Company (S. of C., p. 18., l. 25). The deed which respondent delivered, however, contained no

exceptions of any kind nor did it have any reference to the matter referred to in the foregoing sentence, but it did, as a general warranty deed, contain the usual four warranties, to wit, (1) of seizin, (2) against encumbrances, (3) of absolute right to convey and (4) to defend, etc. (S. of C., p. 36).

5—Following the execution of the agreement appellant retained the U. S. Mortgage and Title Guaranty Co. of Newark to examine and report upon respondent's title. It developed that that title was derived from numerous and complicated sources; that defendant's title with respect to a part of the lands was bad or non-existent; that there were apparent outstanding dower rights; that descriptions generally were intermingled and unreliable; that certain proceedings at whose culmination respondent acquired title had been in the courts for about eleven years and were in some regards defective; that there were some outstanding interests as to other parts of the lands extinguished by the delivery of quit-claim deeds and other flaws and defects, some very serious, some slightly less so, to the number of about fifteen (S. of C., p. 95). The extent of the title company's work can be conceived when it is stated that its charge for that work alone exclusive of insurance, closing, etc., amounted to upwards of $2,000. Appellant did not, however, know of these things at the time of the closing in July, 1925, for the reason that, although that was the time fixed in the agreement for consummation thereof, the title company had not nearly approached the completion of its examination. Upon the defendant's express representation and assurance that his title was in all respects valid and marketable and fortified moreover by his own war-

ranty deed without exceptions, appellant consented to the consummation in the manner aforesaid—expressly indicating, however, to respondent that appellant did so solely in reliance upon these representations and assurances.

6—The title company finished its labors, what with the employment of special readers and local examiners, about five or six months following the consummation of the agreement. Immediately upon receipt of the title company's report appellant communicated the facts and disclosures to the respondent and proceeded forthwith at considerable expense to clear up as far as it was able the various defects turned up by the examination. Since substantially all of these defects affected the marketability of the title, demand was made of the respondent to remove the objections as speedily as possible. Complainant, at its own expense, had prepared and submitted to respondent a new deed together with a quit-claim deed and other papers, all of which when executed and delivered would, in the main, have cleared up the title. Demand was also made upon the respondent to produce affidavits upon which proceedings could be predicated for the removal of certain other objections in the nature of clouds upon the title. None of these papers were, however, forthcoming nor did the respondent ever explain his neglect and failures to deliver them to appellant (S. of C., pp. 85-94).

7—Appellant paid the taxes which it had agreed to pay, but when, under the strict terms of the agreement as executed, an installment of principal became due on October 22, 1926, appellant, acting upon the advice of its counsel, declined to make the payment upon the ground that it would therefore jeopardize its rights and probably be deemed to have waived those rights

for the establishment of which this suit was instituted.

8—Briefly, then, the respective contentions of the parties are, from the standpoint of the appellant, that, since it was the intention of the parties that the appellant should have one year within which to cancel the mortgage by the payment of the sum of $120,000 in cash, the mortgage erroneously was drawn to limit the time to the definite date of October 22, 1926; moreover, that the period of one year as a contractual limitation did not and could not commence to run except from the time of delivery by respondent to appellant of a proper deed in conformity with the provisions of the agreement and that, since the respondent did not deliver such a deed, the limitation has not only not run, but has not even commenced to operate. The respondent's contention is that since the appellant failed to pay an installment on October 22, 1926, the respondent is entitled to exercise his option to declare the whole amount due and to proceed at once to foreclosure.

9—Appellant instituted the action by the filing of a bill of complaint (S. of C., p. 1), praying, *inter alia,* for a decree reforming the mortgage in such manner as to afford appellant the privilege of obtaining cancellation and discharge thereof upon the payment of the sum of $120,000 in cash at any time prior to the expiration of one year from and after the delivery of free, unencumbered and flawless title to the lands aforesaid (S. of C., p. 5, l. 25).

10—The respondent filed an answer denying the essential and material allegations of the bill and counter-claiming for a decree of foreclosure and sale of the mortgaged premises upon the

ground that appellant had failed to pay an installment at the time set forth in the mortgage (S. of C., pp. 6-10).

11—Respondent thereafter served notice of motion for summary judgment on the pleadings (S. of C., p. 14). The matter was thereafter argued before Vice-Chancellor Berry upon affidavits (S. of C., pp. 16-62 and 85-93).

12—There was submitted for the Court's consideration of the motion, various exhibits, to wit, the policy of the North Jersey Title Insurance Company (S. of C., p. 62), and the preliminary report of the U. S. Mortgage and Title Guaranty Company (S. of C., p. 95) and respondent's proposed corrective deed of conveyance (S. of C., p. 36).

13—Prior to the making of the motion the matter had, by order of the Chancellor, been referred to Vice-Chancellor Berry, who designated a date for final hearing (S. of C., p. 13). The motion was made in anticipation of the final hearing.

14—After considering the arguments of counsel, Vice-Chancellor Berry filed his conclusions (S. of C., p. 117) granting the motion and dismissing the bill of complaint. Upon those conclusions a decree *pro confesso* but really dispositive of the whole case, was entered (S. of C., p. 120). From that decree the appellant appeals.

THE LAW.

Respondent contended below that the appellant is not entitled to the relief sought because of the bar of the Statute of Frauds relating to the changing of the terms of a written instrument by oral testimony. It would hardly seem to be necessary to point out that, in seeking reformation the appellant is not attempting to change the terms of a written instrument, but is merely invoking the aid of equity to establish the true intention and agreement of the parties and to correct mutual errors or those resulting from error on the part of one and fraud on the part of the other. If this were not so then equity would have no jurisdiction in any case to allow reformation of written instruments. It would appear naive to the writer to cite authorities on this elementary proposition.

The Court below finds that there was "no eviction by title paramount" alleged in the complaint, and apparently it is that finding which impels the Court's determination. It is respectfully submitted that it is unnecessary to set up in the pleadings the unmarketability of the defendant's title in so many words or an actual or constructive eviction. We contend that the allegations in the bill relative to "serious and perhaps fatal flaws in the title to the greater part of the lands aforesaid" (p. 4, l. 20); "clouds" on title (p. 4, l. 32); "title was not free, unencumbered and flawless" (p. 5, l. 12), are all sufficient to constitute an allegation relative to unmarketability and of potential eviction. Respondent below has not contended in the papers or pleadings submitted that his title is marketable or that appellant is not liable to eviction by title paramount. Appellant is not

obliged to wait until actual eviction to assert his rights.

The Court below finds also (p. 119, l. 12) that

> "Such exceptions or defects as are not mentioned in the title policy referred to in the agreement of sale are admittedly capable of being cleared up by affidavits and quit-claim deeds which the defendant is willing to furnish and which have been actually prepared for execution prior to the filing of this bill of complaint."

The fact is, however, that, as set forth in the affidavit of Meyer Strunsky (pp. 85-93), repeated requests were made for the execution and delivery of a proper quit-claim deed and affidavits so that the title might be cleared as far as possible, but that those instruments were not, up to the time of the filing of the bill, forthcoming. Indeed, the very papers to which the Court below refers were never executed (pp. 50 and 60). Moreover, these proposed instruments were never submitted to or seen by the appellant. We submit, therefore, that at least this important phase of the matter should have been left for final hearing when testimony might have been taken to assist the Court in a proper finding of the fact. Much of the case turns upon this very point—the appellant contending that it sought clarification of the title by quit-claim deeds and affidavits which respondent failed, neglected or refused after due demand therefor to produce, while respondent, after the institution of this action, came into court showing proposed but unexecuted affidavits and deed. We submit, therefore, that it was error for the Court to dispose of so important an issue upon a motion for summary judgment.

The deed of conveyance contained the four usual covenants referred to in paragraph four

hereof (p. 46, l. 30). In view of the fact that the title of the respondent to a part of the lands is questionable, that there appeared to be outstanding encumbrances contrary to the representations and assurances of the respondent; that the right of the respondent to convey certain other parts of the lands is doubtful by virtue of certain seemingly outstanding dower and curtesy rights, the respondent must be deemed to be in breach of his covenants. Our decisions appear to be unanimous in holding that these covenants, if not true, are broken as soon as made.

Stuart v. *Drake,* 9 N. J. L. 139;
Chapman v. *Holmes,* N. J. L. 20;
Garrison v. *Sandford,* 12 N. J. L. 261;
Carter v. *Denman,* 23 N. J. L. 260.

So it has been held (*Stuart* v. *Drake, supra*) that the existence of a mortgage upon property represented to be unencumbered is deemed an immediate breach of the covenant relating to non-encumbrance. We submit, therefore, that, since the respondent is in breach of important covenants he does not come into court with clean hands, seeking, as he does, affirmative relief in the form of leave to foreclose his mortgage. Showing no equity, he is entitled to receive none.

The Court finds further (p. 119) that "affidavits and answering affidavits indicate clearly that there are no defects in the title of a serious nature other than those specified in the title policy, exceptions hereinabove referred to." We submit that the true nature of these defects is not ascertainable except upon proper proof and, moreover, that these defects are of an exceedingly serious nature as set forth in the title report (p. 95), in the bill of complaint and in the affidavit of Meyer Strunsky. We respectfully

submit that it was error for the Court to dispose of these questions upon the simple affidavit of the respondent instead of determining the facts upon final hearing.

The Court granted the prayer of respondent's counter-claim for leave to foreclose by holding that the appellant was in default because of its failure to pay the installment on October 22, 1925. We submit that the failure of the appellant to make the payment is not a default from which the respondent can derive any benefit. Appellant's contention is that, pending the delivery of title as comprehended within the meaning of the agreement and the covenants contained in the deed, the transaction had not been consummated and the time leading to the due dates of installments had not begun to run. Were the Court to hold otherwise, then it would follow that the respondent could not only inflict damage upon the appellant by his own default but could, indeed, himself profit thereby. The omission or failure of performance by the respondent must be construed as a temporary suspension of the contractual obligation of the appellant to pay the installment aforesaid. It lies wholly within the power of the respondent to clarify his title, to vest in appellant a valid, unclouded and sufficient title and thereby commence the flow of time with recurring maturity dates of interest and principal.

We respectfully submit further that the appellant had no alternative but to refuse to make the installment payment on October 22, 1926. Not only would such payment have constituted a waiver of its right to the reformation sought but it would be, from present aspects, jeopardizing its money or, at any rate, "buying a lawsuit" for its recovery in the event of the continued failure of the respondent to validate his title. Since the title which respondent conveyed to appellant is not good, then further payments on account of the purchase price thereof would seem to be not only futile or puerile.

We respectfully submit in conclusion that this proceeding involves important issues of fact not properly determinable upon affidavits offered in support of a motion; that the issues involved in this suit can be properly determined only upon full inquiry and the taking of testimony at final hearing; that there is no clear-cut issue of law alone upon the pleadings to warrant the decision of the Court below, dispositive as it is of the whole case, upon a motion for summary judgment.

It is, therefore, respectfully submitted that the decree of the Court below should be reversed and this cause remitted for further procedure.

Respectfully submitted,

I. B. GLUECKFIELD,
Solicitor for and of Counsel with
Complainant-Appellant.

New Jersey Court of Errors and Appeals

Between

158 Bowery Realty Corporation,
Complainant-Appellant,

and

Henry C. Copeland,
Defendant-Respondent.

Brief of Defendant-Respondent
HENRY C. COPELAND.

Complainant seeks to reform, defendant to foreclose a purchase money mortgage. The decree appealed from gives judgment *pro confesso* upon the counterclaim for foreclosure upon the ground that the answer to the counterclaim is sham and frivolous.

The default by the mortgagor was in the payment of an installment on account of the principal of the mortgage. This installment was due and payable without regard to the controversy respecting reformation, which related only to a single clause in the mortgage, providing for redemption at a discount within a certain period of time.

The salient facts appear from the following conclusions of Vice-Chancellor Berry:

> "The facts as disclosed by the affidavits and answering affidavits are that the defend-

ant, as [vendee], and the complainant, as [vendor], entered into a written agreement of sale of certain lands in Bergen County for the sum of $225,000. Of this amount $2,500 was paid on execution of the contract, $2,500 on settlement and the balance of $220,000 by a purchase money mortgage in that amount payable in stipulated instalments. The mortgage contained a provision that the mortgagor should have the privilege of purchase or cancellation of the mortgage upon the payment of $120,000 in cash on or before the expiration of one year from July 22, 1925, the date originally fixed for settlement. After the contract was executed the settlement date was changed to October 22, 1925, and settlement was made accordingly on that date by delivery of deed and purchase money mortgage. The provision for purchase or cancellation of the mortgage above referred to was also contained in the written contract of purchase. The agreement also contained a provision that the title was to be taken subject to certain exceptions in a title policy held by the vendor and covering the premises the subject of the sale. Some months after settlement it was discovered that the date named in the mortgage for redemption or cancellation at the reduced amount was one year from July 22, 1925, the date originally fixed in the contract for settlement, instead of one year from October 22, 1925, the final settlement date, and this was corrected by means of a letter from defendant to complainant. Nothing else affecting the rights of the parties transpired until October 22, 1926, when the complainant filed his bill alleging numerous defects in the title, without specifically naming them, and a mistake in the terms of the mortgage; that it was the intention of the parties to provide for cancellation or purchase thereof at the

reduced price of $120,000 within one year after complete and perfect title delivered and after all defects and exceptions were removed, and praying a reformation of the mortgage. The counterclaim alleged default in payment of the instalments and interest on the mortgage and elected that the whole principal sum should become due. No eviction by title paramount is alleged in the complaint. The affidavits and answering affidavits indicate clearly that there are no defects in the title of a serious nature other than those specified in the title policy exceptions hereinabove referred to. Such exceptions or defects as are not mentioned in the title policy referred to in the agreement of sale are admittedly capable of being cleared up by affidavits and quitclaim deeds which the defendant is willing to furnish and which had been actually prepared for execution prior to the filing of this bill of complaint. There is not a single fact alleged in the bill or answer to the counterclaim which is indicative of either mistake or fraud such as would warrant a reformation of the mortgage and the defendant's affidavits and the documentary evidence used on this motion are clear and convincing to the effect that the bill is without equity and the answer to the counterclaim sham and frivolous. The answering affidavits are purely argumentative and of little or no probative force.

In the affidavit of Henry F. Copeland, son of defendant, submitted on behalf of the defendant on the motion for summary judgment it is stated:

> "A week or ten days prior to October 22, 1926, I saw Mr. Strunsky, Secretary of the complainant, at his office in New York City, and in anticipation of the payment by complainant, on October 22, of the mortgage,

Mr. Strunsky handed me a corrective deed which he said he desired to have executed by my father—the deed being given to me so that I could check up the description. At the same time Mr. Strunsky also gave me a proposed affidavit to be executed by my father, consisting of two pages. He did not then tell me of any other papers which he desired, neither did he inform me of any other alleged defects in the title, nor make any request for an extension of time; nor did he claim that complainant was entitled to any. On October 21, and for a day or two prior thereto, I attempted to reach Mr. Strunsky by telephone, but was unable to do so. I received no word from Mr. Strunsky of any kind after I received from him the proposed deed and affidavit above referred to, as to where the matter was to close. The proposed deed and affidavit are hereto attached."

The affidavit of Meyer Strunsky, so far as it is responsive to this portion of the affidavit of Henry F. Copeland, admits its truth. Strunsky's affidavit states (page 87, line 21):

> "The said defendant's son, Henry F. Copeland, whose affidavit is attached to the moving papers herein, took up the matter of these corrections and a number of meetings and conferences was had between us for that purpose. I caused to be prepared a correction deed, certain quit claim deed which was required of the defendant and other papers and delivered the same to the said Henry F. Copeland, and obtained from him a promise to have them executed and returned to me."

The affidavit of Henry C. Copeland, the defendant, says (page 19, line 20):

> "I told Mr. Strunsky several times that I was perfectly willing to sign any papers necessary to correct any error in the title or the description of the property. I never was requested by complainant to remove any clouds from the title prior to the filing of the bill of complaint herein, except that I was told that there were a few papers for me or my son to execute at the time the mortgage was to be paid off. The papers required to be signed were, as I am informed, given to my son as stated in his affidavit filed herewith. Until I received a letter from Mr. Glueckfield on October 27, 1926, I had no idea why complainant failed to exercise its option to pay off the mortgage at the reduced amount on October 22, 1926. I expected until the day was practically over, that complainant was going to pay off the mortgage by paying me the sum of $120,000, and prior to that date I did not hear from the complainant in any way that it did not intend to do so."

To this portion of the affidavit of Henry C. Copeland no part of the affidavit of Meyer Strunsky is responsive.

The defendant Copeland in his affidavit further says:

> "I am advised by my counsel that none of the matters excepted in the title policy of the North Jersey Title Insurance Company constitute substantial or material defects in the title nor have I ever been informed by complainant of any other claimed defects in the title which could not be readily cleared up by my affidavit or that of my son. I have been interested in the property since the year 1892, at which time the property was conveyed to me by two corporations under deeds which were subsequently declared to

> be mortgages and foreclosed. So far as I know, no adverse claim is being made by any one to any part of the premises."

Strunsky's affidavit also states (p. 87, line 32):

> "In the discussions with said Henry F. Copeland, it developed that with but few exceptions, all of the objections raised by the Title Company could be eliminated by documents which it was in the power of this defendant to execute."

There is nothing in Strunsky's affidavit to show what the exceptions were or that they were important; and Strunsky's affidavit simmers down in the final analysis to the proposition as stated in the Vice-Chancellor's opinion, that "Such exceptions or defects as are not mentioned in the title policy referred to in the agreement of sale are admittedly capable of being cleared up by affidavits and quit claim deeds which the defendant is willing to furnish and which had been actually prepared for execution prior to the filing of this bill of complaint."

The bill of complaint appears to have been filed for the purpose of tying up the property and forestalling a foreclosure suit.

POINT I.

Even were the title unmarketable, complainant would have no right to the reformation prayed for. Its remedy would be rescission in equity or damages at law. It does not seek rescission and shows no damages.

It is a somewhat novel proposition for a grantee to claim at one and the same time that the title

conveyed to him is unmarketable, but that he desires to keep it, have the grantor cure it, and not pay the grantor any principal or interest upon the purchase money mortgage until it has been cured.

If the title were really bad, a cure might not be possible. Or there might be an outstanding title or incumbrance as to one-tenth of an acre of the entire tract conveyed, which the defendant was powerless to cure or remove. Assuming, but not conceding, that to be the actual situation, the complainant, though his actual damage as a result of the asserted unmarketability did not exceed one hundred dollars, could tie up the entire property indefinitely by a suit for reformation without making any payment on account of the mortgage.

We may safely conclude from the fact that complainant seeks reformation and not rescission that it is fairly well satisfied with its bargain. It even wants a better one—it desires to keep the property without paying for it.

The complaint's bill and brief assume a power in a court of equity which it does not possess, namely, that of requiring grantors to make bad titles good. Courts of Equity have, it is true, the power to offset upon foreclosure of a purchase money mortgage any damages sustained by a grantee as a result of the breach of any covenants in the grantor's deed. But the damage must be actual damage not merely speculative or hypothetical.

The rule in this State is well settled, that it is no defense to the foreclosure of a purchase money mortgage that the conveyance was by deed containing covenants, that the property was clear of incumbrances, and that there is an outstanding title against the land. To constitute a defense, it

must appear that there has been an eviction by title paramount or at least a suit commenced on such adverse title.

Shannon v. *Merselis,* 1. N. J. Eq. 413;
Van Wagoner v. *McEwen,* 2 N. J. Eq. 412;
Glenn v. *Whipple,* 12 N. J. Eq. 50;
Long v. *Long,* 14 N. J. Eq. 462;
Hile v. *Davison,* 20 N. J. Eq. 228;
O'Brien v. *Hulfish,* 20 N. J. Eq. 230;
O'Brien v. *Hulfish,* 22 N. J. Eq. 471;
Price v. *Lawton,* 27 N. J. Eq. 325.

It is difficult to perceive upon what plausible ground it can be claimed that the complainant was relieved of its obligation to pay the semi-annual installments on account of the principal of the mortgage. Even were there defects in the title which Copeland had agreed to clear up, that would not relieve the mortgagor of its absolute obligation to make the semi-annual payments as provided in the bond. This was squarely decided by Chancellor ZABRISKIE, in *Coursen* v. *Canfield,* 21 N. J. Eq. 92. That case was a suit to foreclose a purchase money mortgage, the defense set up was that the mortgagee had failed to keep an independent covenant made at the time of the delivery of the bond and mortgage, to procure certain releases. The mortgagor, by his mortgage had agreed to pay the money at a certain time absolutely and not on condition that the releases were procured. It was held that the failure to procure releases on the part of the mortgagee was no defense to the suit to foreclose the purchase money mortgage.

If there had been the slightest merit in the complainant's case it would have paid or tendered the installment of principal due under the terms of the mortgage at the time it filed its bill of complaint.

POINT II.

The title is marketable.

The affidavit of Strunsky admits (page 87, line 33): "That with but few exceptions all of the objections raised by the title company could be eliminated by documents which it was within the power of this defendant to execute."

The statement is also made in appellant's brief (p. 10) that

> "It lies wholly within the power of the respondent to clarify his title, to vest in appellant a valid unclouded and sufficient title and thereby commence the flow of time with recurring maturity dates of interest and principal."

These statements show the real truth of the matter, which is that the title is not defective at all, in the sense that it is unmarketable. The report of the title company indicates merely an unwillingness to insure without proof of certain facts which might make it liable if it did not except them in its policy of title insurance, but its refusal to guarantee against a mere possibility does not show unmarketability.

The matter comes down to a mere clarification of the title by explaining away the objections raised in the report of the title company, which defendant was at all times willing to do by the execution of affidavits or corrective deeds. They were not necessary to perfect the title but their execution involved defendant in no expense, the papers were prepared at complainant's expense and defendant was perfectly willing to execute them. There is no evidence worthy of the name that there was ever

a demand and a refusal to execute these papers.

The statement at the middle of page 8 of appellant's brief that these proposed instruments were never submitted to or seen by appellant is entirely incorrect. The papers were prepared by appellant and delivered to defendant's son for checking and execution. Respondent agreed to execute them. (Strunsky's affidavit, p. 87). The only difference on the facts is that Strunsky's affidavit says that Copeland agreed to have the documents executed and returned (page 87, line 30), while Copeland says that he was waiting for word from Strunsky as to where the matter was to close (pages 35-36). Far from refusing to execute the desired papers defendant and his son waited in vain for notification from complainant for a time and place of closing at which it was expected the mortgage would be paid off (page 19, pages 35, 36).

POINT III.

The answer to the counterclaim is sham and frivolous and the averments in the bill are no defense to a foreclosure of the mortgage.

The denials in complainant's answer are plainly sham and frivolous.

The denial "that complainant is in default as alleged in paragraph three" is a mere conclusion. It is not responsive to the averment in the counterclaim "that default has been made in the payment of the installment of $5,000 on account of the principal of said bond and mortgage which was due and payable on the 22nd day of October, 1926, and said default has continued for upwards of thirty days."

If the defense was payment, it should have been affirmatively pleaded.

The denial of any knowledge or information sufficient to form a belief as to Copeland's ownership of the bond and mortgage represents a rather astonishing attempt to create a fiictitious issue of fact, since the bill of complaint proceeds upon the hypothesis that Copeland *is* the owner of the bond and mortgage.

Although the statements made in the bill of complaint as a ground for reformation, are not pleaded by the complainant as an answer or defense to the defendant's counterclaim for foreclosure, they will be treated in this brief as if so pleaded. In view of the documentary evidence contradicting the averments of the complainant's bill, upon which the right to reformation depends, and the settled rules of equity as to the *quantum* of proof required in reformation cases, it seems perfectly clear that the complainant is not enttiled to reformation upon the facts and has no real or substantial defense to the foreclosure suit.

In BISPHAM'S *Principles of Equity,* 8th Edition, Section 469, it is stated:

> "To reform a contract and then enforce it in its new shape calls for a much greater exercise of the power of a chancellor than simply to set the transaction aside. Reformation is a much more delicate remedy than rescission. Hence, in order to justify a decree for reformation, in cases of pure mistake, it is necessary that the mistake should have been mutual. Where the mistake has been on one side only, the utmost that the party desiring relief can obtain is rescission, not reformation. The case is of course different if any element of fraud exists, for it has been properly held that where there is a mistake

on one side and fraud on the other, there is a case for reformation."

The cases in this state upon the subject uniformly declare that the evidence necessary to justify the reformation of an agreement on the ground of mistake, must be clear and satisfactory and such as to leave no reasonable doubt of the existence of the mistake.

In *Burch* v. *Baker,* 81 Eq. 264-269, the Court says:

> "The mistake which is equitable ground for reformation of a written contract must be clearly shown to have been a mutual mistake, and the mistake must be established by such force of proof as leaves no rational doubt of the fact of mistake. *Green* v. *Stone,* Court of Errors and Appeals, 1896, 54 N. J. Eq. 387, 399, 400."

In *Durant* v. *Bacot,* 153 N. J. Eq. 411, 413, it was held that a deed ought not to be reformed on verbal testimony alone where the alleged mistake was denied.

In *Henderson* v. *Stokes,* 42 N. J. Eq. 486; *Seitz Brewing Company* v. *Ayers,* 60 N. J. Eq. 190; *Harakvy* v. *Greenland Park Company,* 98 N. J. Eq. 61; *Cross* v. *Yeskel,* 98 N. J. Eq. 66, it is held that in order to reform a written instrument on the ground of mistake, the proof must be so full and clear as to leave no room for controversy.

The documentary evidence in this case not only fails to indicate mutual mistake, but shows that the bond and mortgage, so far as the privilege of cancellation was concerned, are in exact accordance with the terms of the prior contract of sale between the parties. This written contract, executed by the treasurer of the complainant company, Abraham Rosenbluth, provided:

> "The purchaser is to have the privilege of purchasing the mortgage for all cash for the sum of $125,000, within one year from July 22, 1925. The $5,000 payable by the terms hereof within one year to be credited against such amount."

We find this agreement embodied in the following language in the bond and mortgage: "The party of the first part, or its assigns, shall have the privilege of paying off this mortgage, and receiving a satisfaction thereof, at any time prior to the 22nd day of July, 1926, upon payment of the sum of $120,000 in cash."

The deed was delivered and the bond and mortgage were signed and executed on October 22, 1925. Nearly nine months later, namely, on July 15, 1926, the complainant procured from the defendant, the letter of extension already referred to.

Although ample time had then elapsed for the examination of the title by the mortgagor, no mention is made in the letter of any mistake in the terms of the original bond and mortgage, or of any alleged flaws in title; nor is any claim even suggested of the existence of the alleged oral agreement to the effect that the mortgagor was to have until one year after the removal of all flaws upon the title by the mortgagee, in which to discharge the mortgage upon payment of the sum of $120,000.

The mortgagor had had ample time between July 22, 1925, which was the date of the contract, and the date of closing on October 22, 1925, to search the title for itself and determine whether or not it desired to take a conveyance.

But this is not all. The contract of sale dated

July 22, 1925, contained the following recital: "It is agreed that the purchaser has inspected the title policy of the North Jersey Title Insurance Company, insuring the seller's title to the major portion of the premises above described, and buys subject to such exceptions as are contained in said title policy." It thus clearly appears that the mortgagee disclosed to the mortgagor all information he had about the title long before the deed was given and before the contract was signed, so that the claim of the complainant to the contrary is clearly a sham.

Certainly fraud cannot be predicated upon such a state of facts and the bill does not claim fraud.

If the complainant does not rely upon the covenant of warranty in the deed, but upon an alleged oral agreement by Copeland, the mortgagee, made at the time of the conveyance, by which Copeland agreed to procure and convey to his grantee, any encumbrances or outstanding titles in the hands of third parties, clearly such agreement if it rests upon verbalities was within the statute of frauds, and void.

See

Davimos v. *Green,* 83 Eq. 596;
Weitz v. *Guthrie,* 81 Eq. 271;
Vogt v. *Mullin,* 82 Eq. 452;

It will be noted that the proposed affidavit which was to be executed by Henry C. Copeland, and which is attached to the affidavit of Henry F. Copeland, and was given to him by complainant's secretary, bears date in the jurat on the day of October, 1926. The preparation of this corrective deed and affidavit by the complainant and submis-

sion of them to the mortgagee as late as October, 1926, without a request for the execution of any other papers, and without any request for an extension of time or any claim that such extension was demandable by complainant, indicates pretty clearly that the real cause of the complainant's failure to pay off the mortgage was due to the fact that it was disappointed at the last moment in obtaining a loan which it had expected to obtain for that purpose. Had there been any substantial defect in the title complainant would not now be asking for reformation but rescission or would be asking that its damages, if it could show any, as a result of defendant's breach of covenant of warranty be offset against the amount due on the bond.

The decree should be affirmed.

Respectfully submitted,

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Solicitor and of Counsel with Defendant.

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