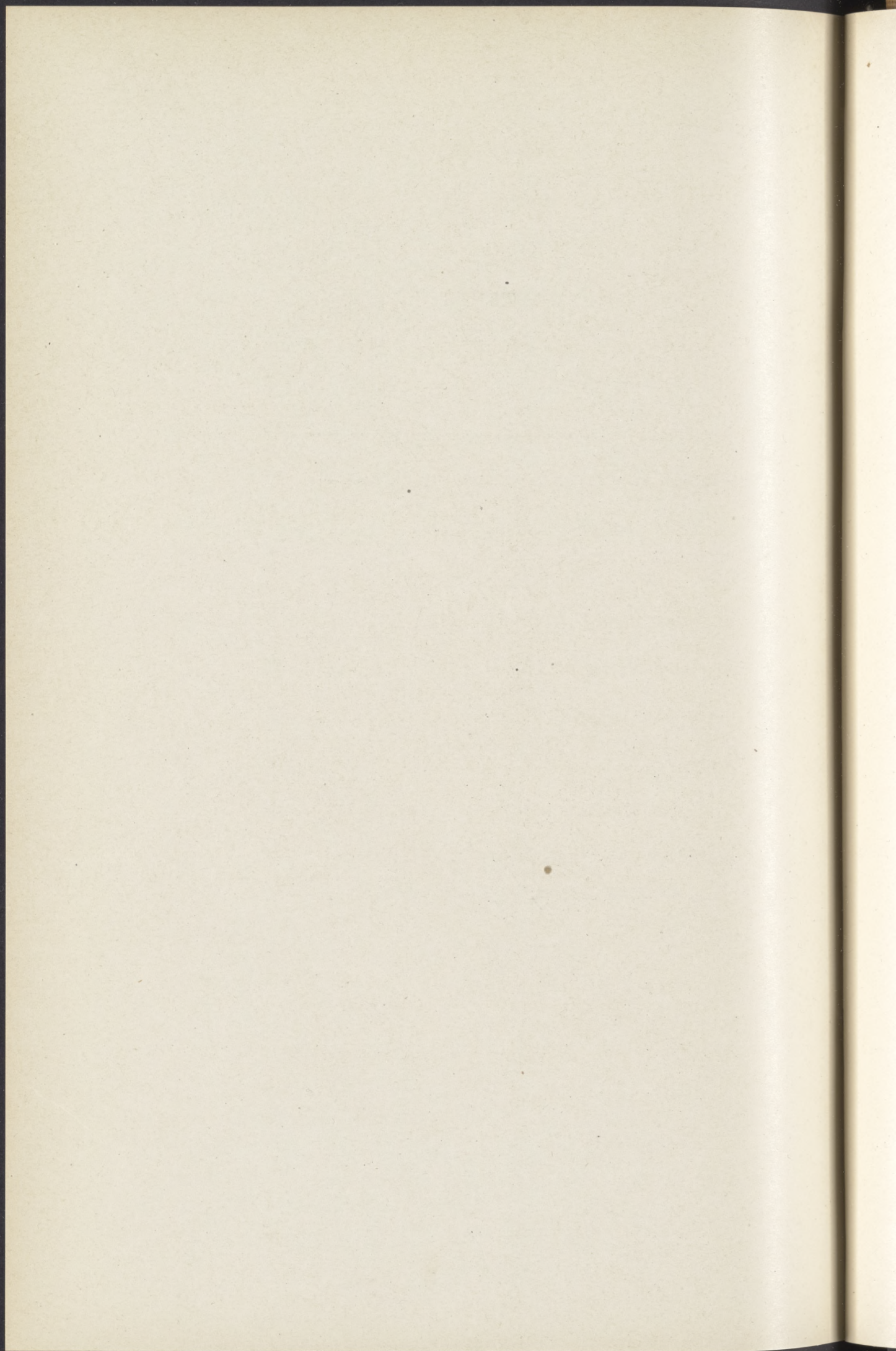


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BILL OF COMPLAINT

IN CHANCERY OF NEW JERSEY

TO THE HONORABLE EDWIN ROBERT WALKER,
Chancellor of the State of New Jersey.

The complainant, Louis Bass, of the City of Linden, County of Union and State of New Jersey, complains:

1. That on and before the 18th day of August, 1926, he was the owner of all of those certain lots, tracts or parcels of land and premises hereinafter particularly described, situate, lying and being in the City of Rahway, in the County of Union and State of New Jersey and described as follows:

First Tract: Known and designated as Lots 250, 251, 252, 270, 275, 276, 277, 278, 279 and 280, in Block No. 9 on a certain Map entitled, "Map of Property of William Johnston, at Rahway, Union County, New Jersey, dated 1869, filed in the Clerk's Office of Union County, November 6, 1869.

Second Tract: Known and designated as Lots 253, 254, 255, 256, 269, 281, 282, 283, 284 in Block No. 9, on a certain Map entitled Map of Property of William Johnston at Rahway, Union County, New Jersey, dated 1869, filed in the Clerk's Office of Union County, November 6, 1869.

2. That being desirous of selling said property and the defendant, Home Securities Company of Woodbridge, N. J., a corporation, being desirous of purchasing the same, the said complainant did on the 18th day of August, 1926, enter into a contract with the said Home Securities Company of Woodbridge, N. J., in and by which said complainant agreed to sell said property to said Company and to deliver to it a Warranty Deed therefor, free

of all encumbrances, on a date which has since been agreed upon by the parties to be August 30, 1926, for the sum of Twelve Thousand (\$12,000.00) Dollars, upon terms as set forth in the said contract, a true copy of which is hereto annexed and made a part hereof as Exhibit "A."

3. That at the time of the making of said contract, said defendant did pay on account of said purchase price, the sum of One Thousand (\$1,000.00) Dollars and there remains to be paid thereunder Eleven Thousand (\$11,000.00) Dollars in manner as set for in said contract.

4. That complainant was ready and willing on August 30, 1926, to execute and deliver to said defendant, Home Securities Company of Woodbridge, N. J., a corporation, a Warranty Deed for the premises hereinbefore described and tendered said deed to the said Company, but it caused to be stated to complainant that it would not accept said deed of conveyance, alleging that the title of the complainant in and to said lands and premises was unmarketable by reason of the fact that title to a portion of said property was acquired under certain Tax Sales and Tax Titles, thus rendering the same unmarketable and that certain persons who had previously had title conveyed to them in and to said property, to-wit: William Johnston, Charlotte A. Johnston, (also known as Clara J. Johnston), Jeremiah Johnston, Jr., Griffith R. Davis, Emma A. Berry, William P. Johnston, Lottie V. Johnston, William J. Berry and Lottie May Berry, Mrs. Jeremiah Johnston, Jr., Mrs. Griffith R. Davis, Mrs. William P. Johnston, Mrs. William J. Berry, Mr. Berry, the husband of Emma A. Berry, Mr. Johnston, the husband of Lottie V. Johnston, and Mr. Berry, the husband of Lottie May Berry, and the State of New Jersey, had never executed deeds of conveyance to anybody for said property.

5. Complainant alleges that the said William Johnston, Charlotte A. Johnston, (also known as Clara J. Johnston), Jeremiah Johnston, Jr., Griffith R. Davis, Emma A. Berry, William P. Johnston, Lottie V. Johnston, William J. Berry and Lottie May Berry, Mrs. Jeremiah Johnston, Jr., Mrs. Griffith R. Davis, Mrs. William P. Johnston, Mrs. William J. Berry, Mr. Berry, the husband of Emma A. Berry, Mr. Johnston, the husband of Lottie V. Johnston, and Mr. Berry, the husband of Lottie May Berry, and the State of New Jersey, or any persons claiming by, from or under them or either of them, cannot have any right, title or interest in and to the said lands and premises described in this Bill of Complaint or any part thereof for the reason that the complainant on April 6, 1926, did file in this Honorable Court his bill of Complaint against William Johnston, his heirs, devisees and personal representatives and their or any of their heirs, devisees, executors, administrators, grantees, assigns or successors in right, title or interest, Charlotte A. Johnston, his wife, (also known as Clara J. Johnston), Jeremiah Johnston, Jr., Griffith R. Davis, Emma A. Berry, William P. Johnston, individually and as executor of the last will and Testament of William Johnston, deceased, Lottie V. Johnston, William J. Berry and Lottie May Berry, their heirs, devisees and personal representatives and their or any of their heirs, devisees, executors, administrators, grantees, assigns or successors in right, title or interest, respectively, Mrs. Jeremiah Johnston, Jr., Mrs. Griffith R. Davis, Mrs. William P. Johnston, Mrs. William J. Berry, Mr. Berry, the husband of Emma A. Berry, Mr. Johnston, the husband of Lottie V. Johnston, and Mr. Berry, the husband of Lottie May Berry, and the State of New Jersey, pursuant to the Statute in such case made and provided, praying

that the title of the complainant in and to said lands and premises might be established and the claims of the said William Johnston, Charlotte A. Johnston, (also known as Clara J. Johnston), Jeremiah Johnston, Jr., Griffith R. Davis, Emma A. Berry, William P. Johnston, Lottie V. Johnston, William J. Berry and Lottie May Berry, Mrs. Jeremiah Johnston, Jr., Mrs. Griffith R. Davis, Mrs. William P. Johnston, Mrs. William J. Berry, Mr. Berry, the husband of Emma A. Berry, Mr. Johnston, the husband of Lottie V. Johnston, and Mr. Berry, the husband of Lottie May Berry, and the State of New Jersey be quieted, and such proceedings were had in said suit that on the Twenty-first day of August, 1926, it was ordered, adjudged and decreed, in language following: "And the said Chancellor, by virtue of the power and authority of this Court, does hereby order, adjudge and decree that the complainant's bill be and the same is hereby taken as confessed against the defendant, the State of New Jersey, and it is further ordered, adjudged and decreed that the said defendants, William Johnston, his heirs, devisees and personal representatives and their or any of their heirs, devisees, executors, administrators, grantees, assigns or successors in right, title or interest, Charlotte A. Johnston, his wife, (also known as Clara J. Johnston), Jeremiah Johnston, Jr., Griffith R. Davis, Emma A. Berry, William P. Johnston, individually and as executor of the last Will and Testament of William Johnston, deceased, Lottie V. Johnston, William J. Berry and Lottie May Berry, their heirs, devisees and personal representatives and their or any of their heirs, devisees, executors, administrators, grantees, assigns or successors in right, title or interest respectively, Mrs. Jeremiah Johnston, Jr., Mrs. Griffith R. Davis, Mrs. William P. Johnston, Mrs. William J. Berry, Mr. Berry,

the husband of Emma A. Berry, Mr. Johnston, the husband of Lottie V. Johnston and Mr. Berry, the husband of Lottie May Berry, and the State of New Jersey have no estate or interest in or encumbrances" in and to the lands and premises hereinbefore described in this Bill of Complaint as the second tract, "and that in respect to all said lands and premises so far as relates to any claim thereon by or on behalf of the said defendants, William Johnston, his heirs, devisees and personal representatives and their or any of their heirs, devisees, executors, administrators, grantees, assigns or successors in right, title or interest, Charlotte A. Johnston, his wife, (also known as Clara J. Johnston), Jeremiah Johnston, Jr., Griffith R. Davis, Emma A. Berry, William P. Johnston, individually and as Executor of the last Will and Testament of William Johnston, deceased, Lottie V. Johnston, William J. Berry and Lottie May Berry, their heirs, devisees and personal representatives and their or any of their heirs, devisees, executors, administrators, grantees, assigns or successors in right, title or interest, respectively, Mrs. Jeremiah Johnston, Jr., Mrs. Griffith R. Davis, Mrs. William P. Johnston, Mrs. William J. Berry, Mr. Berry, the husband of Emma A. Berry, Mr. Johnston, the husband of Lottie V. Johnston, and Mr. Berry, the husband of Lottie May Berry, and the State of New Jersey, the title of the complainant in and to the same, and every part thereof is hereby determined, fixed and settled and declared to be good," which said Decree was duly entered in said Court of Chancery and a certified copy thereof was duly recorded on the 27th day of August, 1926, in the office of the Register of Deeds for Union County, and complainant further alleges that by virtue of said Final Decree no claim can be advanced in and to said lands and premises, or any part thereof, by

the said William Johnston, Charlotte A. Johnston (also known as Clara J. Johnston), Jeremiah Johnston, Jr., Griffith R. Davis, Emma A. Berry, William P. Johnston, Lottie V. Johnston, William J. Berry and Lottie May Berry, Mrs. Jeremiah Johnston, Jr., Mrs. Griffith R. Davis, Mrs. William F. Johnston, Mrs. William J. Berry, Mr. Berry, the husband of Emma A. Berry, Mr. Johnston, the husband of Lottie V. Johnston, and Mr. Berry, the husband of Lottie May Berry, and the State of New Jersey, or any person claiming by, from, or under them or either of them, and that the title of complainant is good and marketable in and to said lands and each and every part and parcel thereof.

6. Complainant further shows that he was ready, willing and able on said 30th day of August, 1926, to carry out said contract and to convey said premises to the defendant, and that he has been ever since that date and now is ready, willing and able so to do, but that the defendant without justifiable cause, refuses to accept said deed and pay the consideration therefor.

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

1. That Home Securities Company of Woodbridge, N. J., a corporation, who is the defendant to this suit, may answer this Bill of Complaint and each and every allegation thereof.

2. That said defendant may be ordered, directed and decreed to specifically perform said contract and accept said deed of conveyance and pay to the complainant the consideration price as mentioned in said contract.

3. That said defendant may be decreed to pay

to complainant his costs incurred in this suit, together with counsel fee.

4. That process of subpoena may issue out of this Court under its seal, directed to the said defendant, commanding it to abide by and perform such order or decree as may be made herein.

STAMLER, STAMLER & KOESTLER,

Solicitors for and of Counsel
with Complainant.

ARTICLES OF AGREEMENT, made the eighteenth day of August, in the year of Our Lord One Thousand and Nine Hundred and twenty-six, between Louis Bass, of the Borough of Roselle, in the County of Union and State of New Jersey, party of the first part, and Home Securities Company, of Woodbridge, N. J., a corporation of the State of New Jersey, with its principal office in Township of Woodbridge, in the County of Middlesex and State of New Jersey, party of the second part;

WITNESSETH, That the said party of the first part, for and in consideration of the sum of Twelve thousand (\$12,000.00) Dollars to be paid and satisfied as hereinafter mentioned, and also in consideration of the covenants and agreements hereinafter mentioned, made and entered into by the said party of the second part, doth agree to and with the said party of the second part, that he, the said party of the first part, will well and sufficiently convey to the said party of the second part, its successors and assigns, by Deed of Warranty free from all encumbrance as hereinafter stated, all those lot, tract, or parcel of land and premises, hereinafter particularly described situate, lying and being in the City of Rahway, in the County of Union and State of New Jersey.

First Tract: Known and designated as Lots 250, 251, 252, 270, 275, 276, 277, 278, 279, and 280, in Block No. 9, on a certain Map entitled "Map of Property of William Johnston at Rahway, Union County, New Jersey, dated 1869, filed in the Clerk's Office of Union County, November 6, 1869."

Being the same premises conveyed to the said party of the first part by deed of the Linden Improvement Company, bearing date the first day of December, 1925, and recorded in Book 1024 of Deeds for Union County, on pages 217, etc.

Second Tract: Known and designated as Lots

253, 254, 255, 256, 269, 281, 282, 283, 284 in Block No. 9, on a certain Map entitled, "Map of Property of William Johnston, at Rahway, Union County, New Jersey, dated 1869, filed in the Clerk's Office of Union County, November 6, 1869."

Being the same premises conveyed to the said party of the first part by deed of the Linden Improvement Company, bearing date the first day of December, 1925, and recorded in Book 1024 of Deeds for Union County, on pages 220, etc.

AND the said Home Securities Company of Woodbridge, N. J., for itself, its successors and assigns, doth covenant, promise and agree to and with the said party of the first part, his heirs, executors, administrators and assigns, that it, the said party of the second part, will pay and satisfy, or cause to be paid and satisfied, unto the said party of the first part, the said sum of Twelve Thousand Dollars as and for the purchase money of the foregoing described land and premises, in the following manner, that is to say:

On Execution of this agreement for which this is also a receipt.....	\$1,000.00
On delivery of deed, cash.....	\$2,000.00
On first purchase money, Bond and Mortgage, same containing usual in- terest, tax, assessment, insurance and default clauses, and an agreement not to claim credit on the interest payable on the bond and mortgage, by reason of any tax assessed, or to be assessed against the premises, with interest at six % payable semi-annually for three years	\$9,000.00

Said mortgage to contain an agree-
ment for releasing portions of the mort-
gaged premises as follows, to-wit:

Lots 250, 251 and 252 as one parcel,

and upon which is located a frame building, upon the payment of Four Thousand Dollars, with accrued interest.

Lots 253, 254, 255 and 256 upon the payment of One Thousand Dollars, with accrued interest, for each lot. It being understood, however, that releases shall commence at the outside of said numbered lots and no interior lot shall be released from those numbered excepting the adjoining outside lots which have been previously released.

The two lots together located on the corner of the two other streets are to be released upon the payment of One Thousand Dollars, with accrued interest, for the two lots.

All other lots upon the payment of Three Hundred Dollars each, with accrued interest, excepting the two detached lots which may be released upon the payment of Two Hundred Dollars, with accrued interest, for each lot.

All releases are to be drawn by and paid for by the mortgagor.

It is expressly agreed and understood that this contract is an entire contract and the passing of the title is to depend upon the entry of a final decree to quiet title in a suit now pending in the Court of Chancery of New Jersey, in which the said Louis Bass is complainant, and the time fixed for passing title is two days after the entry of final decree in the suit in which Louis Bass is complainant and William Johnston and others are defendants.

AND IT IS FURTHER AGREED, by the parties to these presents, that the said party of the second

part, its successors and assigns, may enter into and upon the said land and premises as hereinbefore stated next ensuing the date hereof, and from thence take the rents, issues and profits to its and their use.

AND IT IS FURTHER AGREED, by the parties hereto, that the said Deed of Warranty shall be delivered and received at the office of Messrs. Stamler, Stamler and Koestler, No. 29 Broad Street, Elizabeth, New Jersey, between the hours of 9 o'clock in the forenoon and 4 o'clock in the afternoon two days after entry of final decree in suit in which Louis Bass is complainant and William Johnston and others are defendants.

The rents of said premises, insurance premiums, water rents, taxes, and interest on Mortgage, if any, shall be adjusted, apportioned and allowed as of the day of delivery of said deed.

The risk of loss or damage to said premises by fire or otherwise until the delivery of said deed is assumed by the party of first part.

In case the premises shall suffer injury beyond the ordinary wear and tear, the party of the first part, shall repair the damage before the date set for delivery of said deed or make an appropriate deduction from the purchase price herein stated.

It is understood and agreed that the buildings upon said premises are all within the boundary lines of the property as described in the deed therefor, and that there are no encroachments thereon and that the buildings comply with municipal ordinances and regulations and the provisions of the New Jersey State Tenement House Act as enforced by the State Board of Tenement House Supervision, to be shown by the report of the department or board enforcing the same where such ordinances, regulations and said act apply.

If at the time for the delivery of the deeds, the premises or any part thereof shall be or shall have been affected by an assessment or assessments which are or may become payable in annual installments of which the first installment is then due or has been paid, then for the purposes of this contract all the unpaid installments of any such assessment, including those which are to become due and payable after the delivery of the deed, shall be deemed to be due and payable and to be liens upon the premises affected thereby and shall be paid and discharged by the seller thereof, upon the delivery of the deed.

And for the performance of all and singular the covenants and agreements aforesaid, the said parties to bind themselves and their respective heirs, executors and administrators.

IN WITNESS WHEREOF, the said parties have hereunto interchangeably set their hands and seals the day and year first above mentioned.

Signed, Sealed and Delivered in the presence of
SAMUEL KOESTLER,

Attest:

WM. GIRDWOOD, Secy.

LOUIS BASS,
By Jacob Bass, Agent.
HOME SECURITIES COMPANY
OF WOODBRIDGE, N. J.,
By L. E. McElroy, Pres.

ANSWER

IN CHANCERY OF NEW JERSEY.

 Between

 Louis Bass,
 Complainant,

and

 Home Securities Company
 of Woodbridge, N. J.,
 Defendant.

} On Bill, &c.

The answer of the defendant Home Securities Company of Woodbridge, N. J., to the bill of complaint of the complainant Louis Bass.

Said defendant answering said Bill of Complaint alleges:

1. It admits paragraphs 1, 2, 3 and 4, of said Bill of Complaint, except as hereinafter alleged.

2. It admits that complainant expressed himself as willing to give a deed for the premises set forth in said contract, but that this defendant then refused to accept the title as tendered by said deed for the reason that the title offered was not a marketable title in that the title of the complainant to part of said premises depended solely upon title derived through certain Tax Sales and Tax titles.

3. Defendant admits that such proceedings were had as alleged in paragraph 5 of the complainant's bill of complaint, but alleges that said decree has no binding force or effect as against this defendant,

and that said decree cannot be construed as conveying any title in and to said lands and premises to the complainant, so as to render complainants title good and marketable.

4. Defendant is perfectly ready and willing to accept a deed of conveyance for said lands and premises if the title thereto of the complainant is good and marketable, but alleges this defendant should not be compelled by a decree of this Court to take a title which is any manner questionable and unmarketable.

Defendant prays that the bill of complaint may be dismissed.

LEON E. McELROY,
Solicitor of Defendant.

STIPULATION

IN CHANCERY OF NEW JERSEY.

 Between

 Louis Bass,
 Complainant,

and

 Home Securities Company
 of Woodbridge, N. J.,
 a corporation

Defendant.

 On Bill, etc.

It is hereby stipulated and agreed by and between the respective parties, by their Solicitors, that the above entitled cause shall be heard and determined on the pleadings and this stipulation and the facts herein set forth, without other or further proof, and that the facts as set forth herein shall be considered in evidence.

1. That the Final Decree, records and proceedings in a certain cause pending in the Court of Chancery of New Jersey in which Louis Bass is complainant and William Johnston, et als., are defendants, No. 60-452, are admitted in evidence.

2. That the property mentioned and described in the Final Decree in said cause is a portion of the property mentioned and described in the Bill of Complaint in the above entitled cause, and that the property set forth and described in said Final Decree is the property to which defendant claims the complainant has not a good and marketable title.

3. That the contract for the sale of said property from complainant to defendant is offered in evidence.

4. That complainant's title to the portion of said property which is described in the aforesaid Final Decree was derived through the chain of title and conveyances as set forth in the Bill of Complaint in the case of Bass vs. Johnston, et als.,

5. That the complainant's title to the other property as set forth in the contract, is derived by proper deeds of conveyance from the owners of the property and is good and marketable.

6. That if the title to the property as set forth in the Final Decree is held by the Court to be unmarketable, that then and in that case the defendant should not be decreed to specifically perform the contract, for the reason that the contract is an entire contract to all of the property described therein.

7. That complainant, in accordance with the terms of said contract, tendered a deed of conveyance for all of said property which defendant refused to accept.

STAMLER, STAMLER & KOESTLER,
Solicitors for Complainant.

LEON E. McELROY,
Solicitor for Defendant.

NOTICE OF MOTION

IN CHANCERY OF NEW JERSEY.

Between

Louis Bass,
Complainant,

and

Home Securities Company
of Woodbridge, N. J.,
a corporation

Defendant.

On Bill, etc.

To Mr. Leon E. McElroy,
Solicitor for Defendant.

Dear Sir:

PLEASE TAKE NOTICE that on Tuesday, the Twenty-eighth day of September, 1926, at 10:30 o'clock in the forenoon or as soon thereafter as counsel can be heard, at the Chancery Chambers, State House, Trenton, New Jersey, we shall make application to his Honor, the Chancellor (Vice Chancellor Malcolm G. Buchanan) to hear the argument in the above entitled cause on bill, answer and stipulation for a final decree on specific performance and to advise the form of Decree directing the defendant to specifically perform the contract set forth in complainant's bill.

Dated: September 23, 1926.

Yours Truly

STAMLER, STAMLER & KOESTLER,
Solicitors for Complainant.

FINAL DECREE

IN CHANCERY OF NEW JERSEY.

Between

Louis Bass,
Complainant,

and

Home Securities Company
of Woodbridge, N. J.,
a corporation

Defendant.

On Bill, etc.

This cause coming on to be heard by the Court in the presence of Messrs. Stamler, Stamler & Koestler, of counsel for the complainant, and Mr. Leon E. McElroy, of counsel for the defendant, upon Bill, Answer and Stipulation entered into by and between the respective parties, and it satisfactorily appearing to the Court that by virtue of an agreement in writing duly made and executed between Louis Bass of the first part and Home Securities Company of Woodbridge, N. J., a corporation, of the second part, on the 18th day of August, 1926, said Louis Bass agreed to sell to Home Securities Company of Woodbridge, N. J., by deed of Warranty, free and clear of all encumbrances, certain premises, situate lying and being in the City of Rahway in the County of Union and State of New Jersey, described as follows:

First Tract: Known and designated as Lots 250, 251, 252, 270, 275, 276, 277, 278, 279 and 280, in Block No. 9 on a certain Map entitled "Map of Property of William Johnston, at Rahway, Union County, New Jersey, dated 1869, filed in the Clerk's Office of Union County, November 6, 1869.

Second Tract: Known and designated as Lots 253, 254, 255, 256, 269, 281, 282, 283, 284 in Block No. 9, on a certain Map entitled, Map of Property of William Johnston, at Rahway, Union County, New Jersey, dated 1869, filed in the Clerk's Office of Union County, November 6, 1869; for the consideration of Twelve Thousand (\$12,000.00) Dollars of which One Thousand (\$1,000.00) Dollars was paid on the execution of said agreement and Two Thousand (\$2,000.00) Dollars was to be paid on delivery of deed and the balance of Nine Thousand (\$9,000.00) Dollars, was to be secured by a first purchase money mortgage to be executed by the party of the second part to the party of the first part, and

It further appearing to the Court that the complainant has always been and still is ready and willing in all things to comply with the said agreement and deliver said deed of conveyance, and that the defendant refuses to pay said consideration or to execute said mortgage, by reason of an alleged unmarketability of title to a portion of said premises, and that there is of record in the Office of the Register of Union County a deed to one, William Johnston for said lands and premises and others, made in the year 1869, and recorded November 6, 1869 in Book 41 of Deeds for said County on pages 227 etc. and that the said William Johnston and wife, conveyed three of the lots, numbered 253, 254 and 255 and being a portion of the premises described as the Second Tract in the Bill of Complaint, to one Jeremiah Johnston, Jr., and that there is not of record any conveyance to the complainant, or his predecessors in title, to any of the property set forth as the Second Tract in complainant's bill except however lot number 269 from the said William Johnston or Jeremiah Johnston, Jr., or their heirs at law, and that the

said complainant's predecessors in title did receive from the City Treasurer of the City of Rahway, certain tax deeds for said lands and premises described as the Second Tract in complainant's bill, which deeds are duly recorded in the Office of the Register of Union County in Book 263 of Deeds for said County on pages 56, 71 and 74 respectively, and

It further appearing that by a decree of this Court made on the 20th day of August, 1926, in a cause wherein said Louis Bass was complainant and William Johnston, his heirs, devisees and personal representatives and their or any of their heirs, devisees, executors, administrators, grantees, assigns or successors in right, title or interest, Charlotte A. Johnston, his wife (also known as Clara J. Johnston), Jeremiah Johnston, Jr., Griffith R. Davis, Emma A. Berry, William P. Johnston, individually and as executor of the last Will and Testament of William Johnston, deceased, Lottie V. Johnston, William J. Berry, and Lottie May Berry, their heirs, devisees and personal representatives and their or any of their heirs, devisees, executors, administrators, grantees, assigns or successors in right, title or interest, respectively, Mrs. Jeremiah Johnston, Jr., Mrs. Griffith R. Davis, Mrs. William P. Johnston, Mrs. William J. Berry, Mr. Berry, the husband of Emma A. Berry, Mr. Johnston, the husband of Lottie V. Johnston and Mr. Berry, the husband of Lottie May Berry and the State of New Jersey were defendants, it was decreed that said defendants "have no estate or interest in or encumbrance upon" said land, being a portion of the premises described in complainant's bill, "and that in respect to all said lands and premises so far as relates to any claims thereon by or on behalf of the said defendant,—the title of the complainant in

and to the same, and every part thereof is hereby determined, fixed and settled and declared to be good," and the Chancellor being of the opinion that the title of said complainant to said lands and premises hereinbefore described is good and marketable and that the complainant is entitled to the specific performance of said agreement on the part of the said defendant as prayed in said Bill of Complaint,

It is thereupon, on this 28th day of September, 1926 on motion of Stamler Stamler & Koestler, Solicitors for Complainant, by Edwin Robert Walker, Chancellor of the State of New Jersey, Ordered, Adjudged and Decreed, and the said Chancellor doth by virtue of the power and authority of this Court hereby Order, Adjudge and Decree, that the aforesaid articles of agreement be in all things specifically performed by the said defendant, Home Securities Company of Woodbridge, N. J., and that the said defendant, Home Securities Company of Woodbridge, N. J., do upon a good and sufficient Warranty Deed for said premises being tendered to it by the said complainant, pay unto said complainant the sum of Two Thousand (\$2000.00) Dollars with interest from August 30th, 1926, until paid, together with costs of this suit to be taxed, and also deliver to complainant a first purchase money bond and mortgage covering said lands and premises, dated August 20th, 1926, in the sum of Nine Thousand (\$9000.00) Dollars, payable three years after its date with interest thereon at the rate of 6 per cent, payable semi-annually, containing the release clauses as expressly provided in said contract of sale, and that said deed, bond and mortgage and moneys be delivered within thirty days from the date of this Decree, at the office of Stamler, Stam-

ler & Koestler, 29 Broad Street, Elizabeth, New Jersey, and

It is further Ordered that a copy of this Decree be served upon said defendant, or its Solicitor, within three days from the date hereof, and either party is at liberty to apply to the Court for further directions or relief in the premises if occasion shall require.

EDWIN ROBERT WALKER,
C.

Respectfully advised,

MALCOLM G. BUCHANAN,
Vice Chancellor.

NOTICE OF APPEAL

IN CHANCERY OF NEW JERSEY.

Between

Louis Bass,
Complainant,

and

Home Securities Company
of Woodbridge, N. J.,
Defendant.

On Bill, &c.

To Stamler, Stamler & Koestler, Esqs.,
Attorneys for Louis Bass.

PLEASE TAKE NOTICE that the defendant, Home Securities Company of Woodbridge, N. J., a corporation, hereby appeals from the Final Decree made in the above entitled cause on September 28th, 1926, and from the whole and every part thereof, to the Court of Errors and Appeals, in the Last Resort in All Causes.

Dated, September 28th, 1926.

(Signed) LEON E. McELROY,
Solicitor of Defendant.

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

(Signed) LEO S. LOWENKOPF,

Of Counsel with defendant,
Home Securities Company
of Woodbridge, N. J.

AMENDED NOTICE OF APPEAL

IN CHANCERY OF NEW JERSEY.

Between

Louis Bass,
Complainant,

and

Home Securities Company
of Woodbridge, N. J.,

Defendant.

On Bill, &c.

To Stamler, Stamler & Koestler, Esqs.,
Attorneys for Louis Bass.

PLEASE TAKE NOTICE that the defendant, Home Securities Company of Woodbridge, N. J., a corporation, hereby appeals from the final decree made in the above entitled cause on September 28th, 1926, by Edwin Robert Walker, Chancellor, on the advice of Vice Chancellor Malcolm G. Buchanan, and from the whole and every part thereof, to the Court of Errors and Appeals, in the Last Resort in All Causes.

Dated, September 28th, 1926.

(Signed) LEON E. McELROY,
Solicitor of Defendant.

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

(Signed) LEO S. LOWENKOPF,
Of Counsel with defendant
Home Securities Company
of Woodbridge, N. J.

PETITION OF APPEAL

NEW JERSEY

COURT OF ERRORS AND APPEALS.

<p style="text-align: center;">Louis Bass, Complainant-Respondent, vs. Home Securities Company of Woodbridge, N. J., Defendant-Appellant.</p>	}	<p>On Appeal from the Court of Chancery</p>
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To the Honorable the Court of Errors and Appeals in the Last Resort in All Causes:

The petition of Home Securities Company of Woodbridge, N. J., the appellant in the above entitled cause, respectfully shows that:

1. Petitioner finds itself aggrieved by a final decree made in the Court of Chancery by his Honor Edwin Robert Walker, Chancellor of the State of New Jersey, bearing date September 28th, 1926, in a certain cause in said Court of Chancery wherein the said Louis Bass was complainant and the said Home Securities Company of Woodbridge, N. J., was defendant, in this respect, to wit, that the said decree adjudges that certain articles of agreement duly made and executed between Louis Bass of the first part, and Home Securities Company of Woodbridge, N. J., a corporation of the second part, made on the 18th day of August, 1926, be in all things specifically performed by the said defendant Home Securities Company of Woodbridge, N. J., and that the said defendant, Home

Securities Company of Woodbridge, N. J., do upon a good and sufficient Warranty Deed for said premises mentioned in said agreement being tendered to it by the said complainant, pay unto said complainant, the sum of two thousand (\$2000.00) Dollars with interest from August 30th, 1926, until paid, together with costs of suit to be taxed, and also deliver to complainant a first purchase money bond and mortgage covering said lands and premises, dated August 30th, 1926, in the sum of Nine Thousand (\$9000.00) Dollars, payable three years after its date and interest thereon at the rate of 6 per cent, payable semi-annually, containing the release clauses as expressly provided in said contract of sale, and that said deed, bond and mortgage and moneys be delivered within thirty (30) days from the date of the said decree, at the office of Stamler, Stamler & Koestler, 29 Broad Street, Elizabeth, N. J.

And petitioner appeals from the decree of the Chancellor which decrees as aforesaid, upon the ground that the same is erroneous in that the title to a portion of the said premises described as the second tract in the Bill of Complaint is unmarketable for the reason that there is not of record any conveyance to the complainant Louis Bass, or his predecessors in title, to any of the property set forth as the second tract in complainant's bill except however, Lot No. 269, from said tract and for a further reason that the complainant or his predecessors in title did receive from the City Treasurer of the City of Rahway, N. J., certain Tax Deeds for said lands and premises described as the second tract in complainant's bill, which said Tax Deeds were acquired and delivered under and by virtue of a certain Act of the Legislature of the State of New Jersey, entitled "An Act concerning the settlement and collection of ar-

rearages of unpaid taxes, assessments and water rates or water rents in cities of this State, and imposing and levying a tax, assessment and lien in lieu and instead of such arrearages, and to enforce the payment thereof, and to provide for the sale of lands subjected to future taxation and assessment," as amended and supplemented (P. L. 1886, p. 149) commonly known as the Martin Act.

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

LEON E. McELROY,
Solicitor for Appellant.

LEO S. LOWENKOPF,
Of counsel with Appellant.

ANSWER

NEW JERSEY

COURT OF ERRORS AND APPEALS.

Louis Bass,
Complainant-Respondent,

vs.

Home Securities Company
of Woodbridge, N. J.,
Defendant-Appellant.

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 28th day of September, 1926, made and entered in the Court of Chancery, in the cause for that purpose mentioned in the said petition, as is therein stated; but as to the substance and form thereof, this respondent 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 prays that the same may be affirmed with costs.

STAMLER, STAMLER & KOESTLER,

Solicitors for and of
Counsel with Respondent.

NOTICE OF HEARING

NEW JERSEY

COURT OF ERRORS AND APPEALS.

<p style="text-align: center;">Louis Bass, Complainant-Appellee,</p> <p style="text-align: center;">vs.</p> <p style="text-align: center;">Home Securities Company of Woodbridge, N. J., Defendant-Appellant.</p>	}	<p>On Appeal from the Court of Chancery</p>
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To the Appellee Louis Bass or his Attorneys
Messrs. Stamler, Stamler & Koestler:

TAKE NOTICE that the argument of the appeal in the above entitled cause will be brought on before the next term of the Court of Errors and Appeals, to be held at the State House, at Trenton on October 19th, 1926, at the hour of eleven o'clock in the forenoon or as soon thereafter as counsel can be heard.

LEON E. McELROY,
Solicitor for the Appellant.

LEO S. LOWENKOPF,
Of counsel with Appellant.

Exhibit A

FINAL DECREE

IN CHANCERY OF NEW JERSEY.

Between Louis Bass, Complainant, and William Johnston, et als., Defendant.	}	On Bill to Quiet Title.
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This cause coming on to be heard in the presence of Messrs. Stamler, Stamler & Koestler, Solicitors for and of counsel with the complainant, and it appearing by Order entered in said cause, bearing date June 23rd, 1926, it was ordered, adjudged and decreed, that the said bill be taken as confessed as against William Johnston, his heirs, devisees and personal representatives and their or any of their heirs, devisees, executors, administrators, grantees, assigns or successors in right, title or interest, Charlotte A. Johnston, his wife (also known as Clara J. Johnston), Jeremiah Johnston, Jr., Griffith R. Davis, Emma A. Berry, William P. Johnston, individually and as executor of the last will and testament of William Johnston, deceased, Lottie V. Johnston, William J. Berry and Lottie May Berry, their heirs, devisees and personal representatives, and their or any of their heirs, devisees, executors, administrators, grantees, assigns or successors in right, title or interest, respectively, Mrs. Jeremiah Johnston, Jr., Mrs.

Griffith R. Davis, Mrs. William P. Johnston, Mrs. William J. Berry, Mr. Berry, the husband of Emma A. Berry, Mr. Johnston, the husband of Lottie V. Johnston, and Mr. Berry, the husband of Lottie May Berry, and

It further appearing that the only other defendant, the State of New Jersey, filed its answer in said cause, and that by an Order entered in said cause on July 16th, 1926, the State of New Jersey had leave granted to it to withdraw its answer and that said answer was thereupon stricken from the files, and

It further appearing that the Bill of Complaint of said complainant was duly verified,

It is thereupon, on this 20th day of August, 1926, by EDWIN ROBERT WALKER, Chancellor of the State of New Jersey, Ordered, Adjudged and Decreed, and the said Chancellor, by virtue of the power and authority of this Court, does hereby Order, Adjudge and Decree that the complainant's Bill be and the same is hereby taken as confessed against the defendant, the State of New Jersey, and

It is further Ordered, Adjudged and Decreed that the said defendants, William Johnston, his heirs, devisees and personal representatives and their or any of their heirs, devisees, executors, administrators grantees, assigns or successors in right, title or interest, Charlotte A. Johnston, his wife (also known as Clara J. Johnston), Jeremiah Johnston, Jr., Griffith R. Davis, Emma A. Berry, William P. Johnston, individually and as executor of the last will and testament of William Johnston, deceased, Lottie V. Johnston, William J. Perry and Lottie May Berry, their heirs, devisees and personal representatives and their or any of their heirs, devisees, executors, administrators, grantees, assigns or successors in right, title or interest, respectively, Mrs. Jeremiah Johnston, Jr.,

Mrs. Griffith R. Davis, Mrs. William P. Johnston, Mrs. William J. Berry, Mr. Berry, the husband of Emma A. Berry, Mr. Johnston, the husband of Lottie V. Johnston and Mr. Berry, the husband of Lottie May Berry and the State of New Jersey have no estate or interest in or incumbrances upon all those tracts, or parcels of land and premises hereinafter particularly described, situate, lying and being in the City of Rahway, in the County of Union and State of New Jersey:

Known and designated as Lots 253, 254, 255, 256, 269, 281, 282, 283, 284 in Block No. 9, on a certain Map entitled, Map of Property of William Johnston, at Rahway, New Jersey, dated 1869, filed in the Clerk's Office of Union County, November 6, 1869.

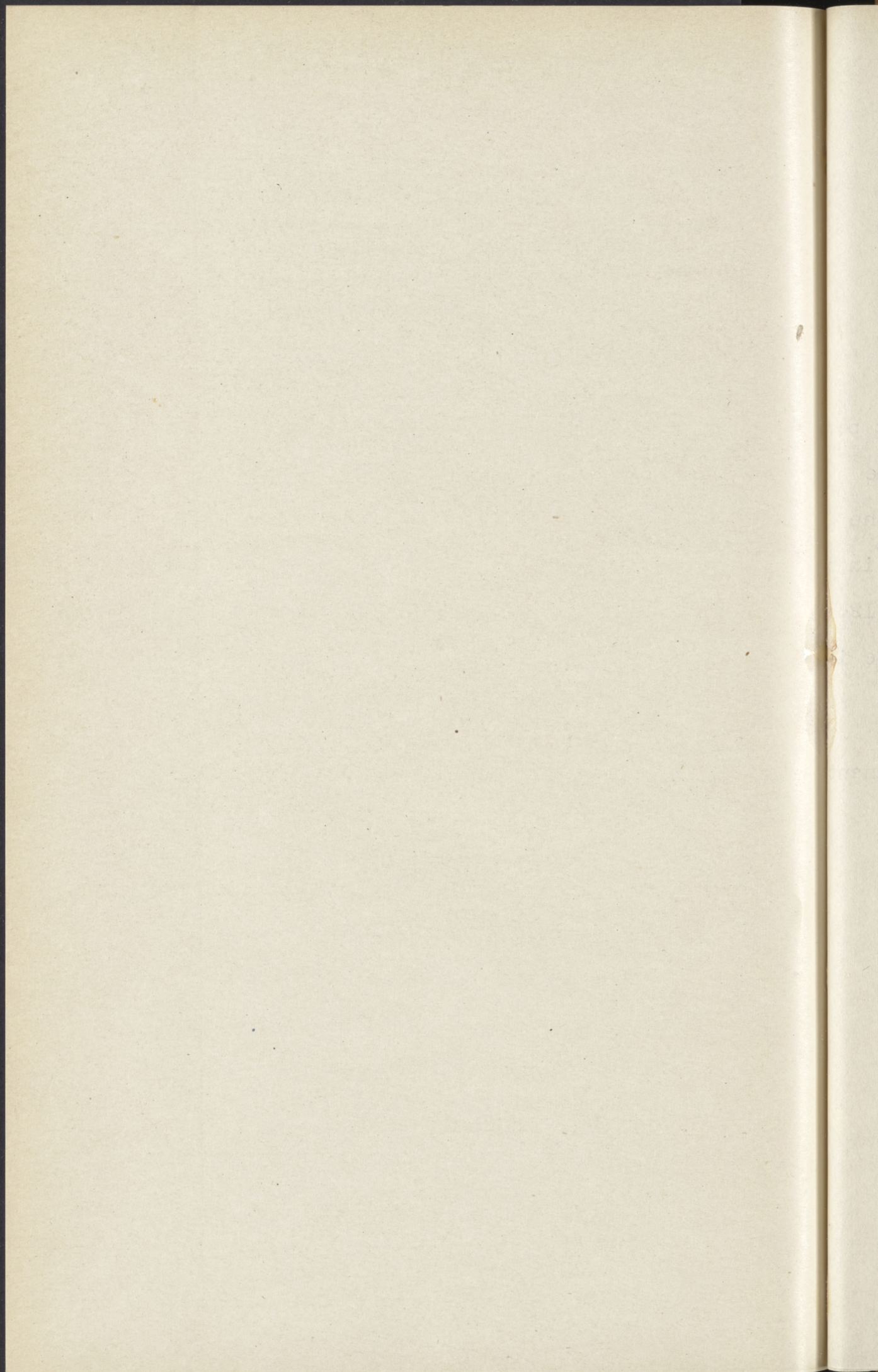
And that in respect to all said lands and premises so far as relates to any claims thereon by or on behalf of the said defendants, William Johnston, his heirs, devisees and personal representatives and their or any of their heirs, devisees, executors, administrators, grantees, assigns or successors in right, title or interest, Charlotte A. Johnston, his wife (also known as Clara J. Johnston), Jeremiah Johnston, Jr., Griffith R. Davis, Emma A. Berry, William P. Johnston, individually and as executor of the last will and testament of William Johnston, deceased, Lottie V. Johnston, William J. Berry and Lottie May Berry, their heirs, devisees and personal representatives and their or any of their heirs, devisees, executors, administrators, grantees, assigns or successors in right, title or interest, respectfully, Mrs. Jeremiah Johnston, Jr., Mrs. Griffith R. Davis, Mrs. William P. Johnston, Mrs. William J. Berry, Mr. Berry, the husband of Emma A. Berry, Mr. Johnston, the

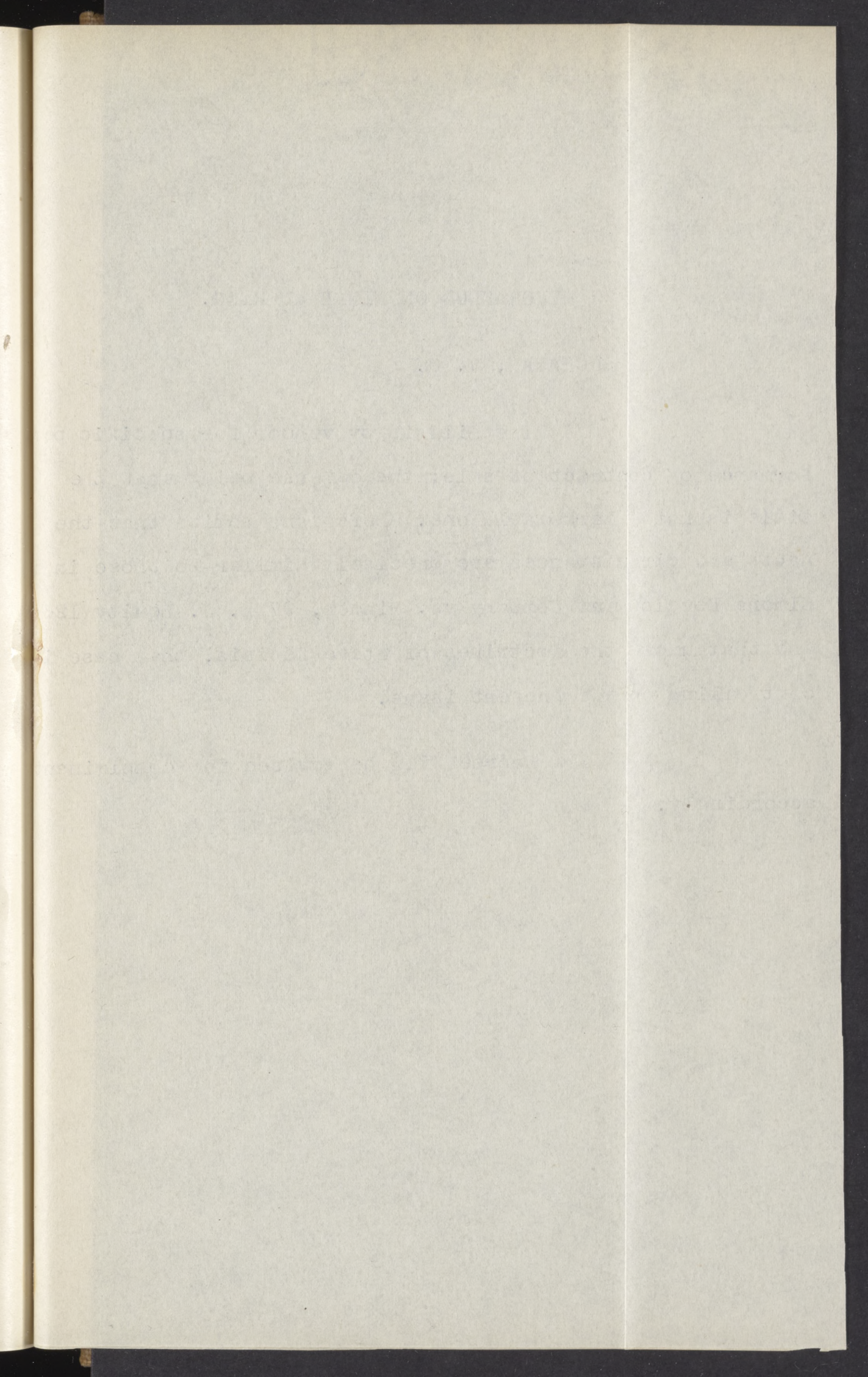
husband of Lottie V. Johnston, and Mr. Berry, the husband of Lottie May Berry and the State of New Jersey, the title of the complainant in and to the same, and every part thereof is hereby determined, fixed and settled and declared to be good.

Respectfully advised,

E. R. WALKER, C.

WM. J. BACKES, A. M.





MEMORANDUM ON FINAL HEARING.

BUCHANAN, V. C.

The Bill is by vendor for specific performance of contract of sale; the defense being that the title is not a marketable one. Defendant admits that the facts and circumstances are precisely similar to those in the Elmora Development Company vs. Binder, 97 N. J. Equity 126; and that under the doctrines of Stare Decisis, that case is controlling on the present issue.

Decree will be advised for complainant accordingly.

128 OCT. T. 1926

**COURT OF ERRORS
AND APPEALS OF NEW JERSEY**

<hr/> <i>Between</i> LOUIS BASS, Complainant-Appellee <i>and</i> HOME SECURITIES COMPANY of Woodbridge, N. J., Defendant-Appellant	}	On Appeal from the Court of Chancery
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BRIEF FOR DEFENDANT-APPELLANT

The facts in this case are undisputed. The complainant agreed to sell and the defendant to purchase real estate in Rahway, New Jersey.

The defendant refused to consummate the purchase, alleging unmarketability of title.

The Decree of the Court of Chancery directs specific performance of the agreement of sale.

The defendant urges that the record title discloses no direct conveyance to complainant, or his predecessors in title as to part of the premises against which the defendant's attack is directed.

The complainant meets this by showing that there was a Martin Act deed, that he filed a bill to quiet title against the so-called fee, or record owners, and secured against them a decree which is worded in the usual form, that as to said persons, their heirs, devisees and personal representatives, etc., (using the language of the amending act to quiet titles, Laws of 1922 page 132,) the title of the complainant is determined, fixed, set-

tled and declared to be good. This decree was recorded among deeds in Union County.

Complainant urges that such record or fee owners are barred from claiming any title to the premises, and this defendant is likewise bound by such decree, and cannot collaterally question it.

It must be conceded that from the bare appearance of facts, there is considerable legal support for complainant's view.

It must also be conceded that defendant should not be directed to accept a doubtful title.

It is possible to visualize a period in history when there was slight conception of ownership, and the relation of men to things about them was casual, creating no further ties than exigencies of occasional use dictated.

With evolution of individuality of possession, there arose need of evidencing sole right of use, recognizable by others. In primitive times, possession alone, coupled with brawn to maintain it, created a continuity gradually ripening into a right, recognized as such, and that could be enhanced by oral declaration of others who knew and confirmed the ownership of the individual claiming it. Advancing civilization and increasing complexity of living have made these crudities inadequate.

In full enjoyment of property, two essentials are requisite, one, right of use; second, right of disposal. Facilitation of the latter is possible only when there is unquestioned recognition of ownership, so that subsequent holders may continue with unimpugned possession.

This quality we designate as title to property, meaning not only measure and quality of ownership, but the accepted indicia of ownership as vouched by law.

Transfer of personal property may be physical.

This is impossible with land. Before advent of writing, transfer of ownership of land was indicated symbolically by similarity to physical transfer, as in investiture of seizin and livery of seizin, where the grantor, in the presence of neighbors called for the purpose, delivered to the grantee a symbolic part of earth or twig of the land, or other appurtenance, making at the same time oral announcement of the grant, it resting then upon recollection of neighbors to corroborate the title.

The art of writing and designation of places for recording written instruments, has superseded this archaic, ineffectual method.

Title has come pre-eminently to be demonstrable by recorded writings. It is recognized, of course, that title also may evolve through possession, and become superior to prior written title, and there are other ways of acquiring ownership.

But the paramount means of evidencing ownership is by written grant. In its absence, the decree of the Court is a substitute for the writing of the grantor. In some cases the holder of the legal title is referred to as the "true owner" *Foulke vs. Bond*, 41 N. J. L. 527.

In the instant case there is no written recorded grant from any of the fee or record owners to complainant. Complainant relies upon the substitute, therefore, in the form of the decree to quiet title, and on its Martin Act deed.

In *White vs. Cadmus*, 84 Equity 86, and admittedly in other cases, Martin Act deeds have been upheld by the Court of Chancery. But I find no decision of the Court of Errors and Appeals on the subject. Until the court of last resort has rendered its opinion, may not defendant consider that there is no ultimate judicial opinion on this, and that the complainant's title in this regard is open to doubt, and hence will not support specific performance?

Complainant conceives that he has gone beyond his Martin Act deed, that he has obviated possibility of attack on it by securing his decree to quiet title.

While the Decree may quiet title against the fee owners, such an action is in the nature of quia timet to protect against a possible or anticipated attack. It does not directly set up an affirmation of title in the complainant, as would be possible, for instance, in an ejectment suit, where the judgment is a specific declaration of right of possession of one side or the other.

The present Decree for quieting title, on which the complainant relies, at its best shuts off suit from the defendants named. It does not, in express words, assert title to be in the complainant, as would be the case if there were a written recorded grant to the complainant, which, in this case, is admittedly absent.

The case hinges on single question: Is complainant's title free from doubt?

Without complainant's decree to quiet title, it would fall in the class of *Fahy vs. Cavanagh*, 59 Equity 280, and its title rest on necessity of corroboration from living witnesses, taking out of account the strength of the Martin Act deed.

The defendant admits it can take no comfort from this case, if the case of *El Mora Development Co. vs. Binder*, 127 Atlantic 693 is to be approved, that case having, in effect, decided that the securing of a decree to quiet title is a form of perpetuation of testimony, and overcomes the weakness in the *Fahy vs. Cavanagh* case. But the decision in *El Mora Development Co. vs. Binder* is to be, in that regard, seriously questioned. Its result is that the attaching of affidavits to a bill of complaint in a suit to quiet title is sufficient proof to render recorded owners bereft of their title.

To revert to the main theme, is the complainant's title doubtful?

There can be no argument on the declaration that a doubtful title is not a proper basis for a decree in specific performance:

Doutney vs. Lambie, 78 Equity 278,
Kohltrepp vs. Ram, 79 Equity 390,
Smith vs. Reidy, 92 Equity 586.

The latter case quoting *Van Riper vs. Wickersham*, 77 Equity 232, a Court of Errors and Appeals case, defines the measure of doubt in a title that will bar specific performance. The language is: "If, however, there arises a reasonable doubt concerning the title, the court, without deciding the question, regards its existence as a sufficient reason for not compelling the purchaser to carry out the agreement." This rule holds: "though rested on grounds merely debatable, but which might visit upon the purchaser litigation in that regard."

"The purchaser should have a title which shall enable him not only to hold his land, but to hold it in peace, and if he wishes to sell it, to be reasonably sure that no flaw or doubt will come up to disturb its marketable value. The court cannot satisfactorily or conclusively settle a title, in the absence of parties who are not before them in the suit to assert their estate or interest in the lands."

The language used by the Court of Errors and Appeals is: "exposed to litigation," instead of "exposed to the hazards of litigation," as in other cases, and *Smith vs. Reidy* limits the meaning of "exposed to litigation," excluding unjustifiable, ignorant and malicious suits.

In *Smith vs. Reidy* the court refused to find that the defendant would not be exposed to litigation if title were taken and refused specific performance.

The question is properly presentable: Does the decree quieting title, on which the complainant depends, protect the defendant? Can it be said that the defendant, should he take title, will be reasonably free from possibility of successful suit against the title?

If that question cannot be answered in the affirmative, the decided cases are to the effect that specific performance should not be decreed.

It is true that our courts have intrenched decrees with firmness, and rendered them immune from collateral attack. It must be conceded that no other course is possible, if decrees of the court are to be invested with efficacy, and to have a meaning; otherwise it must be admitted that no decrees would be dependable and little reliance could be placed on them.

The solemnity of court action is to be preserved, and the force of decrees as to collaterals has received the repeated support of the court.

McCahill vs. Equitable Life Assurance Society, 26 Equity 531,
Schultz vs. Sanders, 38 Equity 154,
Ostrom vs. Ferris, 134 Atlantic page
 305.

If these cases are to be followed, therefore, this defendant cannot now question the efficacy of the decree in complainant's suit to quiet title, as he was not a party.

But does it not leave the possibility that the parties to the suit themselves may question it? And if they could do so, and there was a reasonable possibility of success, there remains doubt as to complainant's title, such doubt as should relieve this defendant from specific performance.

A frank consideration of this matter includes

the concession that there are cases against defendant's viewpoint, as, for instance, *White vs. Cadmus*, *supra*, which, however, has not been considered by the Court of Errors and Appeals.

Also, in *Realty Co. vs. Burghart*, 91 Equity 120, reversing the Court of Chancery in its opinion given in 90 Equity page 347, the groundwork is laid for the thought that the State having jurisdictional control over property in its borders, it may provide procedure for decreeing title to be good against unknown claimants.

I do not think that the trend of thought, in direction of supporting a decree to quiet title against claimant, should be given adherence. To do so would be in conflict with Section 1, Article 14 of the Constitution, prohibiting any State from depriving a person of property without due process of law.

The opinion in *El Mora Development vs. Binder*, however, points out that there may be classes who are not precluded of their rights by a decree to quiet title, and if there were such classes that there might be the possibility of successful attack upon the title from them.

Defendant admits that there does not appear in this case an allegation that there actually are such classes who could question the decree. Perhaps it is not a strong contention to say there might be classes that could object to the decree, without enumerating them. It might equally be said it is just as possible that there are no such classes who could object to the decree. It needs to be admitted that an issue cannot be framed on a hypothesis, and that in those specific performance cases where doubt as to the title has been entertained to bar specific performance, the doubt has been raised by actual facts, and not by suggestion of a hypothesis. One cannot, however, entirely preclude the pos-

sibility in the instant case of an attack on the complainant's title.

For that reason it is respectfully submitted that the Decree of the Court of Chancery should be reversed, and that defendant-appellant should not be directed specifically to accept title of the premises mentioned in the bill of complaint.

Respectfully submitted,

LEON E. McELROY,

Solicitor for Appellant.

LEO S. LOWENKOPF,

Of Counsel with Appellant.

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NEW JERSEY COURT OF ERRORS AND APPEALS

Between

LOUIS BASS,
Complainant-Respondent,

and

HOME SECURITIES COMPANY of
Woodbridge, N. J., a corpora-
tion

Defendant-Appellant.

On Appeal.

BRIEF FOR RESPONDENT

The appeal taken in this cause brings up for review a decree of the Court of Chancery directing said appellant, as vendee, to specifically perform a contract for the sale of land located in the City of Rahway, Union County, New Jersey. The Bill of Complaint in this cause sets forth that the complainant, Bass, was the owner of two parcels of land which are described as the First and Second Tracts, and that he entered into a contract to sell the same to the defendant for \$12,000.00 and has been ready and willing at all times to convey the same.

The Bill of Complaint is somewhat different from the ordinary Bill for Specific Performance in that it alleges that the vendee refused to take title on the ground of an alleged unmarketability of title, owing to the fact that complainant's title to part of the land was derived through certain tax sales and tax titles, and that various persons who had title to the property years ago never made a

deed of conveyance to complainant, or his predecessors in title.

The Bill of Complaint then goes on to allege that the complainant instituted another suit in the Court of Chancery to quiet title to the premises in question against the various persons who had never executed deeds of conveyance, and that by virtue of said quiet title suit such proceedings were had that a Final Decree was entered on the 21st day of August, 1926, quieting title to said lands and premises in favor of the complainant as against said named persons, and alleges that by virtue of said Decree none of said persons can make any valid claim of title and that the title is good and marketable.

To this Bill of Complaint the appellant filed its answer insisting in its claim of unmarketability of title and thereupon, in order to have a speedy adjudication of the question, both parties to the contract entered into a stipulation, a copy of which is printed on case page . . . and upon argument of the matter in the Court of Chancery, a Final Decree in this cause was made, compelling the vendee to specifically perform the contract, and it is from such Decree that the present appeal is taken and the determination herein should once and for all settle many questions which arise relative to title to lands where possession is either founded upon adverse possession, or tax title proceedings, or tax deeds given under our various statutory enactments relating to the collection of arrearages of unpaid taxes, so that we contend that the question herein to be settled, is one not only of great importance to the litigants but is a very important question affecting title to lands throughout the state, and it is the desire of both parties litigant to have a real decision of the pertinent question in the case.

The Bill of Complaint in the quiet title suit is not printed and we do not deem it necessary because all of the facts are admitted but that complainant's title to the disputed tract rests upon tax sales made by the City of Rahway on July 30th, 1891 pursuant to the provisions of the Martin Act under which certificates of sale were given; that thereafter upon the filing of affidavits, the City Treasurer of the City of Rahway, issued several tax deeds, dated February 11th, 1893 which were shortly thereafter recorded and which conveyed the property in question, which is known and described in complainant's bill in this cause as the Second Tract.

Point 1

AN UNWILLING VENDEE IS NOT OBLIGED TO TAKE AN UN- MARKETABLE TITLE

At the outset we concede if the title to the second tract is in any respect unmarketable, that the contract for all of the property is an entire contract and that specific performance should not be decreed in whole or in part.

The cases which are decisive on this point are: *Van Riper vs. Wickersham*, 77 N. J. Eq. 232; *Simpson vs. Klipstein*, 89 N. J. Eq. 543, *Smith vs. Reidy*, 92 N. J. Eq. 589 and *Sharpe vs. Stretch*, 98 N. J. Eq. 225, and many others.

Point 2

SPECIFIC PERFORMANCE SHOULD NOT BE DECREED IF COMPLAINANT'S TITLE DEPENDS UPON THE TESTIMONY OF LIVING WITNESSES

In this point we also concur and it is supported by ample authorities among which are the cases of *Fahy vs. Cavanaugh*, 59 N. J. Eq. 278, *Sulk vs. Tumulty*, 77 N. J. Eq. 97 and *Doutney vs. Lanbie*, 78 N. J. Eq. 277, all of which are cited with approval by Vice Chancellor Buchanan in the leading case of *Elmora Development Company vs. Binder*, 97 N. J. Eq. 126 and 120 Atlantic Repts. 233.

Point 3

TAX TITLE IS GOOD AND MARKETABLE

Complainant's title in the instant case does not rest upon a title founded upon adverse possession alone, although it might do so. His title depends upon a deed given under the Martin Act in 1893. Not being satisfied to rely solely upon this Martin Act title, the complainant, Louis Bass, filed his Bill in the Court of Chancery against all persons of record who might have any interest in the property had they not been properly served with notice under the Martin Act proceeding, and their respective heirs, devisees and personal representatives, and other designations as mentioned in the statute relating to suits to quiet title. See *Quiet Title Statute*, 4 *Comp. Statute*, 5399, amended P. L. 1922 Page 130.

The Bill of Complaint in that cause was duly

verified as required by the statute, proper Order of Publication was made and under date of August 21st, 1926, a Final Decree was entered in the Court of Chancery quieting the title of complaint in and to the lands and premises described in the Bill of Complaint therein, which comprised the second Tract in the instant case, as against all persons who could or might have had any interest therein and their designated representatives, and such decree is *res adjudicata* as against any claim that may be advanced hereafter, in collateral proceeding or otherwise, by any of said persons or any persons claiming by, through, or under them.

The entire record of said quiet title suit was before the Court of Chancery in the specific performance suit, Case page . . . and there is nothing in said records which will serve to benefit the appellant, as the proceedings were in all respects regular in accordance with the usual form and practice.

The whole question narrows itself down to the point, *Is the title of the complainant, by reason of his tax deed and as strengthened by the decree to quiet title, a marketable title?*

As hereinbefore stated, the complainant's title to the land described as the Second Tract is concededly and admittedly founded upon a deed which is commonly called "Martin Act Tax Sale Deed", made pursuant to the provisions known as the *Martin Act* passed in 1886 and which is found in 3 *General Stat.* Page 3370. Under the *supplement* to that act passed in 1891 and found in 3 *General Stat.* page 3384, it is expressly provided that,

"The purchaser shall take a good sufficient title to the property sold in fee simple absolute—and that the deed shall be presumptive evidence in all courts and places and in any proceedings or actions to be by

such purchasers, his heirs, legal representatives or assigns, taken, prosecuted or defended for the recovery of the possession of the property so sold as aforesaid by such deed on the establishment or defense of his or their title."

This section was construed by Vice Chancellor Garrison in the case of *Nichols vs. Older*, 78 N. J. Eq. 102, that the title given by such a Martin Act Deed could not be collaterally attacked but must be attacked by certiorari within the two year period of limitation contained in the Certiorari Act. The Vice Chancellor further held that the section of the *Sales of Land Act*, 3 *General Stat.* 1895 p. 2982, made the deed prima facie as evidence of the truth of recital therein contained.

These tax deed are now generally recognized not only in New Jersey but elsewhere as giving a title which is marketable. See *Rosenblum vs. Eisenberg*, 108 N. Y. Supplement, 350, *Reeves vs. Alter* (Pa.) 12 Atl. 554; *Kramer vs. Ricke*, 70 Iowa 535 and *Gates vs. Parmly*, 93 Wis. 294.

Furthermore, by virtue of the suit instituted in the Court of Chancery to quiet the title, everybody who had or might have had an outstanding interest in the sale of the property under the Martin Act proceedings, was properly before the Court and their rights adjudicated. This relieves the present appellant from the fear of any successful litigation against him and puts him in a class where he is not subject to the benefit of an objection as was present in the case of *Smith vs. Reidy*, *supra*.

It was also held in the Court of Chancery in the case of *Title Guarantee Land Co. vs. City of Paterson*, 74 Atl. 794, in an opinion written by the present Chancellor, then Vice Chancellor, that a

sale of land by the City of Paterson under the provisions of the Martin Act was valid.

Also in the case of *White vs. Cadmus*, 84 N. J. Eq. 86, the Court of Chancery held where a party held title under a Martin Act Tax Deed he had the right to file a bill to quiet title under the statute.

Point 4

THE DECREE TO QUIET TITLE

In the present suit there was offered in evidence the entire record and the decree to quiet title in the former suit instituted by the said complainant against all persons who could have had any possible claim to title to the property as against the Martin Act title which was received by the complainant's predecessors in title.

The decree is the regular statutory decree to quiet title and under the terms of the statute forever settles the title of the complainant and fixes his right in and to the property described in the decree. The matter is now urged to be *stare decisis* under decisions of this Court in the case of *Realty Co. of N. J. vs. Burghardt*, 91 N. J. Eq. 120, in which this Court by a divided vote reversed the determination of Vice Chancellor Stevenson in 90 N. J. Eq. 347, dismissing a vendor's suit of compel specific performance where it appeared that there was a decree of the Court of Chancery under the Quiet Title Act. This Court, on the appeal, held that by reason of the degree in the quiet title suit, the title of the complainant was fixed and settled and declared to be good. This Court construes various statutes and decisions mentioned as being in *pari materia* and held that the Act of 1902 intended to apply to all actions

in the Court of Chancery and was designed to determine the validity of titles to real estate and, therefore, reversed the decree of the Court of Chancery denying specific performance.

The real effect of this decision is to hold that cases where title to land is settled by a decree to quiet title, although the title may depend upon adverse possession, the title is a marketable title for which a vendor is entitled to have a decree of the Court of Chancery compelling an unwilling vendee to specifically perform.

This was the basis of the decision of Vice Chancellor Buchanan in *Elmora Development Co. vs. Binder, supra*. Furthermore, the decree of the Court of Chancery in the quiet title suit of *Bass vs. Johnson, et als.*, is not subject to collateral attack in the specific performance suit. See *Schultz vs. Sanders* 38 N. J. Eq. 154 and *McCahill vs. Equitable Life Assurance Society*, 26 N. J. Eq. 531.

Conclusions

Appellant in its brief does not point to any citation or authorities which are at all at variance from the law heretofore cited and cannot place its finger upon any definite thing which would raise the probability of submitting the appellant to the hazards of litigation in taking the title as decreed to be taken by the Court of Chancery. It merely claims that there is a possibility of something of a mysterious uncertain character which may arise to confront it. And yet, there was no evidence before the Court of Chancery produced by the vendee, from which any court could judicially determine that there was any reasonable idea that something could or would occur to either defeat the title or subject the vendee to litigation. The

mere fact that the unwilling vendee has a fear which may be wholly unfounded, is certainly no ground for denying the right to specific performance for if that were so, anybody who would afterwards become dissatisfied with his bargain could say that he is fearful that the title would not be good, and then on the argument advanced by the complainant, would be relieved from his contract.

This certainly would place the title to land in the State of New Jersey in a very precarious position. The very object of the Quiet Title Act was to settle titles so that persons relying upon a decree properly entered by the Court of Chancery and paying a valuable consideration, would be protected. That seems to be the idea so ably expressed by Vice Chancellor Backes in the case of *Ostrom vs. Ferris*, 134 *Atl. Rept.* page 305.

To accede to the request of the appellant that it be relieved from the decree of specific performance under this appeal, would be to reverse all of the judicial decisions of the Court of Chancery and of this Court that have extended over a period of years and would invalidate title to lands which have been taken by hundreds, if not thousands, of people relying upon Chancery decrees for specific performance and for quieting title to lands.

In this case the vendor has a far better title than is usually questioned. He has a deed given pursuant to the Martin Act which contains all of the recitals which are prima facie evidence and he also has a decree of the Court of Chancery. On the other hand, the appellant in taking this title has not only the title given by the Martin Act deed and confirmed by the decree to quiet title, but it is also fortified by the decree of the Court of Chan-

cery; directing specific performance which in affect says that the title is marketable.

Upon the law cited and the equities of the case, the vendee should not be relieved by this Court but should be compelled to specifically perform its contract and the degree of the Court of Chancery should be affirmed.

Respectfully submitted.

STAMLER, STAMLER & KOESTLER

Solicitors for Respondent.

SAMUEL KOESTLER

of Counsel with Respondent.