

New Jersey Court of Errors and Appeals

Between

Complainant-Respondent,

ARTHUR BRISBANE,

and

JAMES A. SULLIVAN, et al.,

Defendants-Appellants.

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APPELLANTS' POINTS.

On July 19th, 1910, James A. Sullivan contracted to convey to Bennett Milnor for \$4800 property known as 11 Wilkes Street, Jersey City. Title was to close on September 1st, 1910, at the office of Robert Boyd, Jr., 203 Broadway, New York City. The deed called for by the contract is a full covenant warranty deed free from all incumbrances, except a mortgage of \$2000. 20

Sullivan purchased the property from one Billington, taking title in the name of Ella J. Sullivan, sister of James A. Sullivan.

At the time of making the contract, Sullivan believed that he had good title; in fact, the title had been searched by an attorney in Jersey City and Sullivan held a certificate that the title was good. 30

Complainant's attorney caused title search to be made, and reported the title defective. A copy of the report is in evidence marked D-24. The time for closing was adjourned to October 1st, and then afterwards to October 15th, 1910. The object of the adjournments was to give the defendant an opportunity to perfect his title. 40

On October 15th the complainant appeared at the place of closing and was ready to take the title called for by the contract. The defendant was unable to perfect his title, and did not put in appearance at the time fixed for closing.

The attitude of the complainant is a matter of great importance in the determination of this cause. He has filed four different bills of complaint. The first, in March, 1911, with a general prayer for specific performance of the contract. This bill could not have been filed with a bona fide expectation of having the Court decree specific performance, because complainant had already rejected the defendant's title as unmarketable. To this bill the defendants filed their answer, setting up that

"Before the time for the delivery of the deed mentioned in the contract, the complainant served or caused to be served upon these defendants a list of the defects in the title, a copy of which is hereto annexed and marked Schedule A, and made part of this answer; complainant notified defendants that their title was not marketable, and refused to accept a deed from the defendants for such title as they had, or for any title whatever unless the defendants first removed all the defects and clouds from their title."

The list of defects, marked Schedule A, is a substantial copy of the report of defects made by the title insurance company to Mr. Cowart, complainant's attorney.

To this bill replication was filed, and the suit was referred to Vice-Chancellor Stevens for trial, and the case set down for December 7th, 1911. On December 13th a notice of an application for an order to file an amended bill was served, and on the 22nd the first amended bill of complaint was served. This bill differs from the first in that it sets out a number of serious defects in defendants' title, and alleges that such title as the defendants

have was based on a fraud of Dora E. Kastenhuber perpetrated on her children by failure to pay taxes on her property, so that the property was sold for taxes and purchased by one Dieffenbach through collusion with the Kastenhubers, and that the purchase by Dieffenbach was made for the benefit of the life tenant, Dora Kastenhuber and her husband. The bill further states that the complainant elected to accept such title as the Sullivans have, and

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“Your orator tenders himself ready and willing to pay the said James A. Sullivan and Ella Sullivan such proportionate part of the price reserved under and by virtue of said agreement hereinbefore cited, as this Court shall determine the estate which the said James A. Sullivan and Ella Sullivan are able to convey unto your orator shall bear to the estate or interest in said lands which the said James A. Sullivan and Ella Sullivan agreed as hereinbefore set forth to convey to your orator.”

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Before the argument of the demurrer to this bill, and in May, 1912, complainant served a second amended bill, the allegations of which are practically the same as the allegations of the first, and the further allegations:

“Your orator shows unto your Honor that doubt has arisen as to the legal effect of the conveyance executed by William P. Kastenhuber and Dora E. Kastenhuber, his wife, to the said James Billington in this—that said deed conveys only such title as the said William P. Kastenhuber had, if any, in the property, and the effect of Dora E. Kastenhuber, his wife, signing said deed was merely to release whatever right or estate in dower she might have, if any, in said premises by virtue of the conveyance made by Charles R. Dieffenbach to William Kastenhuber, and not to convey any estate that she received under the Wilkes will.

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“And your orator further shows unto your

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Honor that the said Dora E. Kastenhuber and her husband, William P. Kastenhuber, have declared themselves to be willing to execute a deed of conveyance to your orator, conveying the life estate which the said Dora E. Kastenhuber acquired under the will of said Thomas H. N. Wilkes above-mentioned, if said James A. Sullivan will consent thereto, and that your orator has been willing at all times since the execution of said agreement to accept the life estate of Dora E. Kastenhuber in said premises, and has frequently requested said James A. Sullivan either to obtain a deed from said Dora E. Kastenhuber and her husband, conveying the life estate of said Dora E. Kastenhuber to the said James A. Sullivan, or to consent that the said Dora E. Kastenhuber and her husband should convey such life estate to your orator upon the payment by your orator of such sum as such life estate might be worth, based upon the consideration set forth in the above agreement of sale.

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"And your orator further shows unto your Honor that the said James A. Sullivan refused to consent to the conveyance of the life estate of Dora E. Kastenhuber to your orator, and has hitherto refused to either obtain said life estate and convey it to your orator, or to permit said Dora E. Kastenhuber to convey such life estate to himself or to your orator; that said Dora E. Kastenhuber and William P. Kastenhuber, her husband, also refused to convey such life estate either to said James A. Sullivan or to your orator, although often requested so to do."

This bill makes the Kastenhubers parties-defendant with the Sullivans, and prays that the Sullivans may be decreed to specifically perform said agreement, and that the Kastenhubers be decreed to convey the life estate of Dora E. Kastenhuber devised to her under the will of Wilkes, and that this Court may decree what sum of money shall be paid to the Sullivans for the conveyance which the Court may decree to be made, and for further relief.

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To this second amended bill (the third bill filed) Sullivan demurred. Demurrers were argued before Vice-Chancellor Stevens in October, 1912, and were sustained.

The complainant then filed his third amended bill of complaint, being the fourth bill filed, against the Sullivans alone. This bill is a straight bill for specific performance. The answer is practically the same answer as filed to the first bill. It sets up the inability of the defendants to perform the contract, and contains a list of the defects of title insisted upon by the complainant, as is shown by Exhibit D-24, and contained in the title insurance company's report to complainant's attorney. **10**

Before entering upon discussion of the law as to specific performance in this case, I think it well to state something about the title of the defendant as shown by the title company's certificate. **20**

The first objection to the title is the judgment of Charles K. Cobb obtained in the Hudson County Circuit Court in 1891, for \$442.72 and costs, against Annabelle Taylor and Samuel Hayes, surviving partners. Just how this judgment affects the property is not explicitly shown in the report, but it is fair to assume that in the opinion of the title company, it was a lien.

The certificate next sets out thirteen recognizances made by different persons, running from 1899 to 1909, amounting in all to \$4100. It is fair to assume that in the opinion of the title company, Sullivan's title was in some way affected by these recognizances. **30**

Then the certificate proceeds to give a "partial memorandum" of possible defects in Sullivan's title. This partial memorandum consists of four type-written pages. It shows conclusively that no title was ever made against the infant remain- **40**

dermen by the tax proceedings; that no notice was ever given to them, and that in fact the whole proceedings were a nullity. The title report further says:

“The (tax title) proceedings seem to indicate that there are about fifteen infants interested in the property besides a large number of adults.”

The certificate further attacks the proceedings
10 leading up to the tax sale, alleging that no original resolution of the Board of Finance for the sale of the property for taxes could be found, and that other papers are missing from the City's records; that no proof of advertisement was on file in the office of the City Collector, and no certificate of sale on file in the same office; and that other papers are missing; that the order of the Orphans' Court was not filed within ten days in accordance with Rule 40 of the Supreme Court,
20 and in fact had never been filed. The certificate further states:

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

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

The certificate sets forth a mortgage executed by Wilkes to Olcott, book 13, page 192; and says
40 that

"This mortgage may still be a lien against the property."

Also a mortgage in book 30, page 374:

"This mortgage may still be a lien against the property."

There is a further objection with reference to an assignment of this mortgage not properly reciting the mortgage:

"This mortgage not being properly cancelled, for this additional reason may still be a lien against the property." **10**

It sets forth also a further mortgage in book 31, page 739 of mortgages, with this comment:

"This mortgage affects the property, and probably is still an outstanding lien."

It further objects that deed recorded in book 1078, page 91, has no seals attached; also that deed recorded in book 47, page 271, was taken subject to a mortgage: **20**

"Mortgage may still be a lien."

From the above recitals taken from the certificate of the title company, it is apparent that the title of the defendant is very uncertain and doubtful. The case was argued by complainant's solicitor on the theory that the Sullivans had an unquestioned title for the life of Dora E. Kastenhuber, whereas such an attitude was never taken by the complainant previous to the filing of the second bill of complaint. The attitude of the complainant at the time when he was demanding the kind of a title Sullivan contracted to convey, was that all of the objections shown in the schedule of the title company were good, and that there were others which could be looked into after those mentioned in the certificate had been cleared up. It is by no means certain that Sullivan has title for the life of Dora Kastenhuber. **30**
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Sullivan got his title from Billington. Billington got such title as he had from William P. Kastenhuber, and Dora E., the wife, undoubtedly joined in the conveyance merely to cut off her right of dower, as is set forth in the second amended bill of complaint. While it may be true that the scrivener caused her to join in the covenants, at the time she was conveying she believed that she had been divested by the tax sale of whatever interest she took under the will of Wilkes, and it is a grave question whether or not she was divested. She was undoubtedly served with notice to redeem from the tax sale, did not redeem, and a deed was delivered purporting to cut off her interest in the property. As suggested by the second amended bill of complaint, it was her duty to pay the taxes, and if she failed to pay them and the City delivered a deed after due notice upon her, in all probability she was divested of title; so that I insist that the Court is not dealing with a clear case of the defendant being seized of an estate per auter vie. By all the evidence of the case, the title of Sullivan is in the utmost confusion.

With the title this situation, what was the attitude of the defendant, Sullivan?

On October 29th, 1910, he wrote Mr. Cowart (Exhibit D-1):

"I am desirous of carrying out my agreement with Bennett Milnor for the conveyance of property in this City. * * * I am therefore addressing you to ask that you give me a memorandum of the objections raised, and if you will give them to me I shall endeavor to clear them up if they are good; or, if on the other hand, you prefer not to take title, I am willing to return your deposit, and cancel the contract."

On December 13th Cowart wrote Sullivan:

"I enclose some of the objections to your title as set forth by Mr. Robert M. Boyd, at

torney for Montclair Trust Company, which was engaged to insure the title. Another objection is that the title to the property which you agreed to convey to Mr. Arthur Brisbane and which you represented as your own property, is in Ella J. Sullivan. * *

* Mr. Brisbane takes the position that you have made a misrepresentation of the title, and he is even threatening criminal prosecution on this account."

After this suggested threat, Mr. Fielder was **10** called in to represent Sullivan, and on December 19th wrote Cowart:

"From your list of objections I judge however, that it will be impossible to satisfy you as to the validity of the title; and on behalf of Mr. Sullivan, and to quickly dispose of the matter, I offer to return your deposit with interest. I also offer (while denying your right to recover it by suit) to pay you a reasonable search fee. Please advise me whether or not this offer is accepted." **20**

On December 27th Fielder wrote Cowart:

"If the title is bad because of defects under the tax sale, would take months to correct it, and probably the owner would have to take entirely new proceedings, and in that event we shall have to settle with you:

On December 30th Cowart wrote Fielder:

"Mr. Brisbane declines to accept your offer of settlement by repayment of the amount paid upon the purchase price, together with a reasonable search fee. He wants the property, and wants the agreement strictly carried out. * * * Mr. Sullivan is certainly obliged to convey a good marketable title to Mr. Brisbane, and will have to pay damages if he fails to do so." **30**

And again, on December 31st Cowart wrote to Fielder:

"If you cannot reach a settlement then I suppose the only course open is for me to file **40**

a bill requiring Mr. Sullivan to carry out his agreement, and if he fails to do this, then it will be up to the Court to determine what is to be done and what damages are to be paid." On December 30th Fielder wrote Cowart:

10 "Reading over again your criticisms of the tax sale proceedings, I am of the opinion that they are well founded, and that the title supposed to pass through these proceedings is bad. It seems from your statement that no resolution of the Board of Finance ordering the tax sale can be discovered, so that there is actually no foundation for the sale. Then, too, it appears that there are old mortgages still open of record, and I do not think we can find the original mortgages, and I believe the mortgagees are dead. This is a condition for which Mr. Sullivan is not to blame. When he contracted to sell, he believed the title good, and as I have before stated, he was in a position to convey. Neither he nor Ella J. Sullivan can give a warranty deed, and I therefore renew the offer of settlement I made in my letter of the 19th inst. to you."

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On January 4th, Fielder wrote Cowart:

"It seems to me that your client is apparently urging you to force Mr. Sullivan to do something he is absolutely unable to do. * * * Suppose I can arrange for a bargain and sale deed from Ella J. Sullivan. Are you willing to take such title as she has, and pay the balance of the purchase price?"

30 To this Mr. Cowart replied on January 5th:

"I am quite sure Mr. Brisbane would not want to accept a deed of bargain and sale from Ella J. Sullivan in place of the warranty deed provided for in the agreement of sale."

40 It is plain, therefore, that before the institution of the present suit, the defendants had offered to do everything that was in their power, and that the complainant rejected such title as the defendants had, and insisted on strict performance of the terms and conditions of the contract—complainant

wanted nothing but his pound of flesh. When offered what Sullivan could give, his attitude was

“It was not so nominated in the bond.”

The complainant cannot have specific performance of the contract. While the bill is filed in the guise of a general bill for specific performance, it is neither the hope nor the expectation of the complainant to have a decree in accordance with the prayer of the bill, requiring the defendants to perform their contract. On the other hand, it is the desire of the complainant that on the present bill for specific performance the Court should make a decree in accordance with the prayer of the third bill, to which Vice-Chancellor Stevens sustained a demurrer. 10

At the time the plaintiff brought his bill, he had full knowledge of the disabilities of the defendants, and the bill was not brought in good faith seeking equitable relief, supposing and having reason to suppose that the Court could grant specific performance. The law in New Jersey is well settled. 20

In the case of *Logan v. Flatteau* 3 Busch., 222, Vice-Chancellor Bergen stated the rule, that where it appeared by the bill that prior to the filing thereof complainant knew that specific performance was impossible, and complainant therefore could not have filed the bill with an honest expectation that specific performance would be awarded, the Court of Chancery was without jurisdiction; but that if when the bill for specific performance was filed, complainant had no knowledge of the infirmity of the vendor's title, equity could give the complainant relief in the form of compensation, provided he had instituted the proceedings with an honest hope and expectation of obtaining a specific performance; citing the case of *Borden v. Curtiss*, 3 Dick., 120. 30

In the case of *Flatteau v. Logan*, decided by Vice-Chancellor Leaming in 1907 (65 Atl., 714), the bill averred the execution of a contract in writing between the parties, further averred that the defendants claim they could not make a deed to the land free from incumbrances and liens because of the existence of a prior agreement made by them, wherein they agreed to convey the same land to another person, and also because of
10 the pendency of certain condemnation proceedings. The Vice-Chancellor said :

“That is the prior recorded agreement for the sale of land in question is a valid and subsisting agreement, and the bill does not suggest to the contrary, the equitable title has passed from defendants and they cannot be regarded as the owners of the land which the bill seeks to compel them to convey to complainant. The pendency of the condemna-
20 tion proceedings in like manner renders it impossible for defendant to convey the land to complainant in the manner agreed.”

and therefore dismissed the bill.

I submit that the complainant cannot experi-
ment with this Court as he has done in his four bills of complaint, and that where he has shown, as he has in this case, by two of his bills of complaint that the defendant's title is so radically defective that it is impossible to tell what title, if any, the defendants have, all of which being
30 known to the complainant before he files his original bill, that the Court will not grant a decree for specific performance.

This case must be distinguished from the cases where the complainant made a contract with knowledge of the defects in his title, such as *Nelthorpe v. Holgate*, 1 Coll., 204, cited by the complainant. In that case the vendor knew at the time of the making of the contract that his mother had a life estate in the property which he agreed
40 to convey in fee simple. This is a case where the

defendant honestly believed that he could convey the title he contracted to convey, and before the filing of a bill offered to convey such title as he had without covenants; where the complainant rejected the title as unmarketable and at no time before the filing of the bill elected to take such title as defendant had with compensation. That the first bill was not filed for unqualified specific performance as it purports to be, is evidenced by the two bills asking for partial performance with compensation, and that this was in the mind of the complainant before he filed his bill, is borne out by the letter written by his attorney on December 30th, in which he says:

“He (Brisbane) wants the property, and *wants the agreement strictly carried out.* Mr. Sullivan is certainly obliged to convey a good marketable title to Mr. Brisbane, *and will have to pay damages if he fails to do so.*”

and in the letter of December 31st, where the complainant's attorney said:

“I suppose the only course open is for me to file a bill requiring Mr. Sullivan to carry out his agreement, and if he fails to do this, then it will be up to the Court to determine what is to be done *and what damages are to be paid.*”

This is not a case like *Borden v. Curtiss*, 3 Dick., 120, where the vendee by parol contract performed the contract on his part, and could not be restored to his former position and had no adequate remedy at law, and where the Court of Chancery gave him relief by way of compensation.

Mr. Brisbane has adequate relief in a Court of Law for damages for breach of contract. In fact, a Court of Law is the only Court that can do justice between the parties in this case.

The case of *Borden v. Curtiss* further holds:

“Where a vendee by contract of real estate,

comes into this Court *in good faith* asking the specific performance of his contract, and with a reasonable expectation that the vendor is able to perform it, *and it afterwards appears that the defendant is unable to perform it* either in whole or in part, then this Court may, when justice requires, give relief by way of compensation in money in lieu of specific performance."

Nor is this a case like *Keaton v. Brown*, 12
 10 Dick., 600, where a tenant-in-common executed a contract for the sale of the property in her own name, and also, but without authority, in the name of the co-tenant, and the co-tenant repudiated the act, performance by the signing tenant was specifically enforced as to her interest on payment of her share of the price.

This case falls within the principle that where the contract is incapable of being enforced against one party, that party is equally incapable of enforcing it against the other.
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Ch. J. Beasley, in pronouncing opinion in the Court of Errors and Appeals in *Richard v. Green*, 8 C. E. Gr., 537, said:

"In every case that I can find where specific performance has been ordered, a mutual remedy existed upon the contract at the time of rendering the decree. It seems to me that the rule is universal to this extent, that equity will not direct the performance of the terms of an agreement by the one party, when at the
 30 time of such order the other party is at liberty to reject the obligations of such agreement."

The reason on which this principle rests was cited by Lord Redesdale in *Lawrenson v. Butler*, 1 Sch. & L., 13, 18, in this wise:

"Were it otherwise it would follow that the Court would decree a specific performance where the party called upon to perform might be in this situation, that if the agreement was disadvantageous to him he would be liable to
 40 the performance, and if advantageous he could

not compel a performance. This is not equity as it seems to me."

See also the case of *Teneyck v. Manning*, where reviewing the above cited cases, and many others, Vice-Chancellor Van Fleet said:

"As is manifest, no Court could compel the complainant on the application of the defendant, to specifically perform the contract. He does not own the lands which he agreed to convey, and cannot therefore convey them. 10
A decree directing him to do so would be mere empty words without the least coercive force. If such a decree should be made at his instance, he could not obey it."

The cases in New Jersey on lack of mutuality are manifold, and it seems to me are applicable to the case in hand. One difficulty in dealing with this case is likely to arise from the fact that now we are dealing with a straightforward bill for specific performance, while the complainant is not arguing for a decree in accordance with his prayer, but for an entirely different kind of a decree. He never had any hope or expectation of receiving a decree from this Court for specific performance of the contract entered into by the defendant. In fact, he admits that it is wholly outside of the ability of the defendant to make a deed in accordance with his contract. 20

The case in hand should be considered in the light of *Milmoe v. Murphy*, 56 Atl. Rep., 292 (the Court of Errors and Appeals in 1903). The opinion of the Vice-Chancellor was adopted by the Court of Errors, in which it is said: 30

"The bill prays not for specific performance cy-pres; not for a conveyance of such title as defendant is able to give; but for absolute performance. It prays that said William Murphy may be decreed to specifically perform the agreement herein set forth with your orator. * * *

“On the trial the complainant did not recede from his position. He did not ask for a conveyance of such title as the defendant had but for the conveyance of a perfect title. As, according to the complainant’s insistence, the defendant did not have such title, a decree to convey would not give complainant either what he himself wants or is willing to pay for. He stands in this dilemma. If defendant’s title is good, then he is himself in default for not complying with the contract, for the evidence shows that defendant Murphy was willing to convey what he had. If the title is bad then complainant is not willing to pay the agreed price on a decree for conveyance. He has never tendered the money and he has always taken the position that he is not obliged to pay any part of the consideration until he gets a perfect title. In this aspect of the case, what he is trying to do is not only to secure specific performance, but as an indispensable preliminary, to obtain a decree directing defendant to perfect his title—a thing which he may or may not be able to do. Of course, the Court can make no such decree.

“Complainant prays, however, for general relief, and under this prayer it may be suggested that he is entitled to a decree for performance with compensation or indemnity on the principle stated by Ch. J. Depew in *Lounsbery v. Locander*, 25 N. J. Eq., 559, who there says:

“‘On a bill by the purchaser, a vendor will be required to allow compensation in case he is able to make title for a part, but not for the whole, if the purchaser consents to accept part performance with such compensation.’ In answer to this suggestion it is enough to say that complainant has never put his admission in this way. So far as appears from the record he did not even at the trial offer to accept part performance. The Court could not by its decree compel him to do so because he had a right to say—I will have all or noth-

ing; but if he should now consent to take part aside from the objection that he should have framed his case in that way, he would be obliged to show that it was such as to admit of a decree for compensation.

“It is said in Frey on Sp. Per., Sec. 302:

‘It is obvious that in this proceeding to give the purchaser an estate different from that which the vendor contracted to sell, the Court is executing the contract cy-pres, or rather perhaps is carrying into effect a new contract — a course in which difficulties will necessarily sometimes arise, and these put restrictions on the jurisdiction under discussion. These seem to be the following: where the difference in value of the interest contracted for and the interest actually to be conveyed, is incapable of computation, &c.’”

That, as the pleadings and evidence now stand, is the situation here. The case is, in this respect, totally unlike *Keaton v. Brown*, 57 N. J. Q., 600, where it was easy to make a decree that was just to both parties. It is impossible to say what proportion of the purchase money shall be deducted. I think, however, that the conclusive answer to give this kind of relief, is that the complainant has not asked for it, or consented to accept it.

It is impossible for the Court to do equity to the parties by a decree for partial specific performance, and compensation for the balance.

A court will not decree specific performance where it would be inequitable under all the circumstances of the case. It is well settled that specific performance is discretionary with Courts of Equity, and a defendant will generally succeed in procuring a dismissal of the bill if he convinces the Court that the exercise of the jurisdiction will be inequitable under the circumstances. (*Stoutenberg v. Tompkin*, 1 Stock., 332.)

As pointed out above, the character of the title

of the defendant is very doubtful. There is no question that it is unmarketable, and there is no question but that it was rejected by the complainant previous to this suit. This case must be distinguished from cases where there is a deficiency in quantity of land, such as *Couse v. Boyles*, 3 Gr., 212. Cases of deficiency in quantity are decided on the presumption.

10 "that in fixing the price regard was held to the quantity."

Nor must it be confused with those cases where the defendants have title in fee simple, to an undivided interest in the land, such as *Ferrell v. Bork*, 79 Atl., 897, where defendant had an indefeasible title to an undivided $\frac{3}{4}$ of the premises in question. In these cases it is a simple matter to determine the amount of compensation that would exactly compensate the complainant and no
 20 injustice to the defendant. How different is the case in hand. By the complainant's contention the defendant has a title of the flimsiest character. He is not seized in fee of anything. There are four or five mortgages which the complainant claims may be liens on the premises. There is a judgment of over \$400 set out in the list of objections as affecting the title. There are thirteen recognizances also set out as affecting the title. The defendants received no title as against the
 30 infant remaindermen through the tax proceedings, and it is a serious question whether they have any title through the tax proceedings at all. Of course it was possible to make title against Dora Kastenhuber and her husband by the tax proceedings, and that was attempting to be done, but whether the collusion between the life tenant and the purchaser at the tax sale, and the subsequent taking of a conveyance by the husband of the life tenant from the purchaser at the tax sale, was such a
 40 fraud as invalidated the whole proceedings as against Dora Kastenhuber is open to some ques-

tion. The very right to sell under the tax proceedings is denied, because there appears to be no resolution of the Board of Finance for the sale of the property in question, and many other papers are missing, so that it is impossible for this Court to determine in these proceedings whether Dieffenbach took title under the City Collector's deed or not. If he took no title he might be entitled to a lien on the premises for the amount of the taxes paid. In any event, William P. Kastenhuber did not receive from Dieffenbach any greater right than Dieffenbach got under the tax sale, and the suggestion that Kastenhuber was a party to the fraud in having his wife, the life tenant neglect to pay the taxes. It might be a question whether William P. Kastenhuber would have a right in case of the invalidity of the tax sale to a lien for the amount of taxes paid. **10**

When Dora Kastenhuber joined with her husband in the conveyance to Billington it was not with an intention of conveying any right or title that she derived in the premises by virtue of the will of Wilkes, but she joined merely as the wife of William P. Kastenhuber, so that if the tax proceedings are invalid, as in all probability they are, and as was contended by complainant and admitted by Mr. Fielder in his letter to Cowart, Billington took no title by his deed from Kastenhuber, and Sullivan got no title from Billington. **20**

The argument of counsel for the complainant is wholly based on the theory that the defendants have unquestionably the life estate of Dora Kastenhuber, and no more. If the defendant got the life estate of Dora Kastenhuber by the deed from Kastenhuber and husband to Billington, then the defendants have a greater right than the life estate, namely a right to be subrogated to an equitable lien for the amount of taxes paid at the tax sale by Dieffenbach. **30**

Assuming for further argument that the title of the defendants is for the life of Dora Kastenhuber. I submit that there is no principle of equity upon which the complainant has a right to demand the conveyance to him of that right, besides compensation for the estate not conveyed.

I have searched diligently and I find no case which seems to me to hold that where the estate of the defendant is not a fee, a decree can be made
 10 for partial performance with compensation. The reason and the justice of the matter are against it.

How will it be determined what should be allowed to the complainant by way of compensation out of the \$4,800 purchase money? The complainant suggests that the value of the life estate of Dora Kastenhuber is easily ascertainable under the rules. By assuming that this were true, by making a decree the Court might do a grave injustice to the defendant.

20 Dora Kastenhuber is now 46 years of age. She was 42 at the time of making the contract, in July, 1910, and 40 at the time of the conveyance by her and her husband to Dieffenbach. At 40 her expectation of life was 27 years and 103 days. At 42 it was 25 years and 307 days. And at 46, 22 years and 355 days. Will the Court make a decree that her expectancy shall be figured as of the date of the contract? If so, it will be in effect a
 30 decree that the life estate would terminate 25 years and 307 days from July 19th, 1910, or May 26th, 1935. If the Court makes a decree that the life estate be conveyed at the present time when Dora Kastenhuber has an expectancy of 22 years and 355 days, it will go on the assumption that the life estate will terminate more than a year later than under the former assumption, the reason being that the longer Dora Kastenhuber lives, the further distant is the expected period of her death.
 40 To put it differently, her age at 42 plus her ex-

pectancy would be 67 years and 307 days; but her age at 46 plus her expectancy would be 68 years and 355 days. So that, to make a decree on the basis of her expectancy at the time of her contract, would be an injustice to the defendants, because it would go on the theory that her life would terminate a year earlier than her expectancy now indicates that it will terminate.

There is another very important feature about the matter. It may be that the life tenant will outlive her expectancy by many years, and during this period that she is outliving her expectancy the complainant would be enjoying the property that really belonged to the defendant. Of course, she may die within the period of her expectancy, and in that case the Court would award less compensation than would be fair to the complainant. **10**

All of which to my mind proves that the Court will not speculate upon the life of Dora Kastenhuber. For instance, suppose the Court should come to the conclusion asked for by the complainant, and was about to make a decree that the defendants convey the life estate to the complainant with compensation and before the actual signing of the decree, but after the Court had rendered an opinion, Dora Kastenhuber died, could the Court in conscience sign the decree and thus compel the complainant to pay a substantial sum of money for nothing? It is not a question whether the complainant will take his chances. It is a question of law and of equity. **20**

There has been some intimation that possibly the complainant would take a conveyance of what the defendant has and pay the full consideration price. But I submit that he is estopped from asking the Court to make a decree of that character. What he flatly refused to take before he instituted his suit, he cannot now after having **30**

experimented with the Court take as the best bargain he can make with the Court.

The last argument above applies to this situation too.

Suppose the complainant frankly said that he would now take whatever title the defendant had, that is, as he assumes, the life estate of Dora Kastenhuber, and before the actual signing of the decree, Dora Kastenhuber should die, would the
10 Court then sign the decree? Or suppose that even after the signing of the decree before the actual payment of the money, the life tenant died, would it be right or equitable to expect the complainant to pay his money and receive nothing?

I respectfully submit that under the circumstances of this case, the Court ought not to exercise its discretion in making a decree for specific performance of any kind. The complainant has an
20 adequate remedy at law for damages, and it seems that in this particular case, the fairest and most practicable determination would require that the defendant be relegated to his action at law for damages.

Respectfully submitted,

RANDOLPH PERKINS,
Of Counsel for Appellant.

30

New Jersey Court of Errors and Appeals

Between

ARTHUR BRISBANE,
Complainant-Respondent,

and

JAMES A. SULLIVAN, *et al.*,
Defendants-Appellants.

*On Appeal
from Court
of Chancery.*

Respondent's Points.

POINTS.

I. A court of equity has undoubted power to direct specific performance of a contract for the sale of real estate, with an abatement of the consideration or purchase price, where the vendor is unable to deliver the title in full performance of the contract.

II. The principle asserted in Point I is the same whether the defect be one of tenure of estate or quantity of land.

III. The court may frame its decree to direct the kind of deed the vendor shall execute to the vendee.

IV. The complainant never in person or through any authorized agent, waived performance of the contract so as to in the slightest degree question his right to come into equity for specific performance.

Argument.

Point I.

A COURT OF EQUITY HAS UNDOUBTED POWER TO DIRECT SPECIFIC PERFORMANCE OF A CONTRACT FOR THE SALE OF REAL ESTATE, WITH AN ABATEMENT OF THE CONSIDERATION OR PURCHASE PRICE, WHERE THE VENDOR IS UNABLE TO DELIVER THE TITLE IN FULL PERFORMANCE OF THE CONTRACT.

The contract provides that the vendor will "well and sufficiently convey" to Milnor "his heirs and assigns by deed of full covenant and warranty, free from all encumbrances except," etc., the fee of the property in question. This means that the vendor is to make a good title.

Loundsbery v. Locander, 10 C. E. Gr. 554.

Skinner v. Christie, 7 Dick. 720.

Meyer v. Madreperle, 39 Vr. 258 (Ct. of E. & A.).

The fact is that the vendor has only a life interest and that there are outstanding interests of two children of Mrs. Kastenhuber, as remaindermen. The deed of the defendant, which the court may direct him to execute, will convey the life interest of Mrs. Kastenhuber, through whom the vendor acquired the title.

The plaintiff is and always has been desirous of securing whatever title the defendant has, with a proper abatement of the consideration money. The amount to be abated is readily determined with fairly strict accuracy under the mortality tables, founded upon the probable life of Mrs. Kastenhuber, the life tenant. The question, however, is raised whether the court may direct an abatement, and if so, whether the rule of abatement applies in

a case where there is a failure to convey the tenure of the estate, as well as in a case where there is a failure to convey the quantity contracted for.

On the general question of abatement, there seems to be no question or doubt respecting the right of a court of equity, under a contract to deliver a warranty deed, to compel the execution of a deed without warranty, and an abatement of the consideration, where the vendor is unable to deliver the property in manner and form as contracted.

In some of the states, including New Jersey, there is one exception, and that is where the wife of the vendor refuses to join in the deed or to release her dower right, for the reason that, in that case it is feared the husband may, by reason of the relationship, compel or coerce the wife against her will to surrender her dower right. Even in such case, when the reason for the rule fails, the rule itself does not prevail, as in the event of the death of the husband before the trial, and a continuance of the suit against the heirs; then, an abatement is ordered.

The rule itself seems to have been criticised by Vice Chancellor Pitney in *Borden v. Curtis*, 21 Atl. Rep. 472, who states the rule to be that:

“The case of an inchoate right of dower is made an exception in this state on the ground that the court will not put any coercion indirectly even upon the wife to join her husband in a deed of land. * * * But this rule does not prevail in all the states, as appears by the citation in *Wat. Spec. Perf.* Sec. 511. In many states the courts direct compensation by way of an abatement in price equal to the value of the inchoate right of dower of the wife, ascertained by the use of the standard life tables (see *Jackson v. Edwards*, 7 Paige, 408) and I cannot but think if the matter was *res nova* in

this state, such practice would now be adopted. I think the reasoning on this subject of Professor Pomeroy, in Section 460 of his treatise on Specific Performance, is unanswerable (p. 475)."

See 6 *Pomeroy Eq. Jur.*, Sec. 834.

In *McCormick v. Stephany*, 48 Atl. Rep., 25, Vice Chancellor Grey, at page 31, referring to the rule, says:

"The force which is to be given to the line of cases referred to applies, however, only when the complainant asks that indemnity be given by a husband against the assertion of the inchoate dower of the wife while both are living. An indemnity thus given while the relation of marriage continues might subject the wife to some danger of compulsion on the part of her husband seeking to relieve himself from the indemnity. But where indemnity is asked after the husband's death, and his compulsion of the widow is impossible, the reasons for refusing indemnity disappear. The widow's dower is unaffected by the decree, and the peculiar relationship of husband and wife having terminated, indemnity may be required of the heirs against the assertion of that right, without subjecting the widow to any undue influence tending to overcome her free will."

The exception to the rule does not, of course, apply to this case. We only mention it to explain the nature of the exception and the reason therefor.

Before taking up the cases which are authority for the proposition we have stated above, we wish to refer for a minute to the contention of the appellant, that the contract may be avoided for want of mutuality. We do not see how this can be seriously considered, as up to the time of respondent's election to take the title in the condition in which

it is in the appellants, with a proper reduction for defects, his liability, as in many contracts, depended upon a condition precedent, namely, the conveyance of the estate agreed upon. After respondent made his election, he was bound to take the estate and pay the reduced compensation.

See also the case of *Wardick v. Mace*, 103 N. Y. Supp. 889, where it was held that where a contract for the sale of land bound the vendor to deliver a proper deed on payment of the sums agreed on and the execution and delivery of a purchase money mortgage, and obligated the vendee to make such payments and accept "a proper deed" or in default to forfeit the \$1,000 paid, it was not void for want of mutuality of obligation, though the vendor had waived her right to enforce specific performance by stipulation while the vendee had not.

Coming now to the authorities on the main question involved under the above point, see *Fry on Specific Performance of Contracts*, pages 583-584-585 and 586, reading as follows:

"Purchaser insisting on the contract, there being no condition for compensation.

Although, as a general rule, where the vendor has not substantially the whole interest he has contracted to sell, he, as we have seen, cannot enforce the contract against the purchaser, yet the purchaser can insist on having all that the vendor can convey, with a compensation for the difference.

'If,' said Lord Eldon, 'a man, having partial interests in an estate, chooses to enter into a contract, representing it, and agreeing to sell it, as his own, it is not competent to him afterwards to say, though he has valuable interests, he has not the entirety; and, therefore, the purchaser shall not have the benefit of his contract. For the purpose of this jurisdiction, the

person contracting under those circumstances is bound by the assertion in his contract; and if the vendee chooses to take as much as he can have, he has a right to that, and to an abatement; and the court will not hear the objection by the vendor, that the purchaser cannot have the whole.' (*Mortlock v. Buller*, 10 Ves. Jr. 315).

The principle was acted on by Lord Nottingham, in the case of *Cleaton v. Gower*, where the defendant Gower was tenant for life of certain estates in Shropshire, and he and his late father agreed with the plaintiff that the plaintiff should open and work certain mines, and should enjoy the minerals raised for ten years, if the defendant or his issue male should so long live, at a yearly rent of £ 25. The plaintiff sought a specific performance of this contract: The defendant objected that he was only tenant for life, and subject to account for waste, and that he could not execute the contract because it was inconsistent with his power; the court decreed the defendant to execute the contract so far as he was capable of doing it, and likewise to satisfy the plaintiff such damages as he had sustained in not enjoying the premises according to the contract.

The principle is also well illustrated by Lord Bolingbroke's case, before Lord Thurlow. The incumbent of a living had contracted with a tenant in remainder for the purchase of the avowson, and on the faith of the contract had built a much better house on the glebe than he would otherwise have done; the tenant for life refusing to concur in the sale, Lord Thurlow compelled the tenant in remainder to convey a base fee for levying a fine, with a covenant to suffer a recovery on the death of the tenant for life.

In *Wheatley v. Slade, Shadwell, V. C.*, held the principle under discussion not to apply where a large part of the property could not be conveyed; and, consequently, the contract in that case being for the sale of a lace manufactory, and it turning out that the vendors were only entitled to nine-sixteenths of the whole, and that those parts were subject to a debt which would exhaust nearly the whole of the purchase money, he refused specific performance. The vice chancellor's decision appears to have been influenced by the circumstance that the vendors entered into the contract under a mistaken impression that they were possessed of the entirety of the property. But the case, even if it can thus or otherwise upon its own particular circumstances be supported, is not, it is submitted, likely now to be followed. For it will be shown that, though the difference between the property contracted to be sold and that which the vendor can actually convey may be great, the court will generally, notwithstanding this circumstance, enforce the contract where it sees that its intention is the sale of whatever interest the vendor has.

Indeed the tendency of the court in recent years has been to apply the principle liberally. Thus where two vendors contracted to sell two-sixths of certain leaseholds 'together with all other their rights and interests therein,' and it turned out that they were only entitled to two twenty-first parts each, the purchaser was held entitled to specific performance of the contract to the extent of the vendors' interests, with a proportionate abatement of the purchase money.

Again, where A, who had only an estate *per autre vie* in property, the remainder in fee belonging to his wife, contracted to sell the fee

simple to B (who was ignorant of the state of the title), and then got his wife to concur with him in conveying it to C (who knew of B's contract), it was held that B was entitled to have a conveyance from C of A's interest, with compensation in respect of his wife's interest, which he was unable to convey or bind without her consent.

So where vendors contracted to sell the entirety of certain freeholds, and it was afterwards discovered that they were entitled to an undivided moiety only, the purchaser obtained a decree for the specific performance of the contract by the vendors to the extent of their moiety, with an abatement from the purchase money of one-half the amount."

See also *Loundsbery v. Laconder*, 25 N. J. Eq. 554.

The bill in that case was filed for the specific performance of a contract to convey lands. The court in its opinion on page 559 says:

"The general doctrine in equity is, that a purchaser on a bill for specific performance, filed by the vendor, will not be compelled to accept compensation or indemnity; and on a bill by the purchaser, a vendor will be required to allow compensation in case he is able to make title for part, but not for the whole, if the purchaser consents to accept part performance with such compensation."

The above case is also cited and followed in *Keator v. Brown*, 57 N. J. Eq. 600, at 601; also in *Campbell v. Hough*, 73 N. J. Eq., 601.

In the case of *Ferrell v. Bork*, 79 Atl. 897 (N. J. Ct. of E. & A.) affirmed 6 Buch. 615, where a vendor having title to only a three-quarters interest in certain real estate, contracted to convey the entire title for a specified sum in cash, and a mortgage

for the balance, and the vendee on ascertaining the vendor's inability to convey the entire estate, elected to accept title to the part the vendor could convey. It was held that the vendee was entitled to a decree for specific performance with a deduction of one-fourth of the cash payment and one-fourth of the amount of the mortgage.

See also *Capstick v. Crane, et al.*, 66 N. J. Eq. 341.

Couse v. Boyles, 3 Gr. Ch. 212.

Van Blarcom v. Hopkins, 18 Dick. Hop. 466.

Also *Kuhn v. Epstein*, 10 Lawyers Reports, N. S. 117.

Also cases collated in the note. Some of the cases in the above mentioned note being the following:

The case of *Morlock v. Buller*, 10 Ves. Jr. 315, (quoted from in Frye on Specific Performance, above) is here cited and quoted from.

Also in *Seegar v. Smith*, 78 Ga. 616, 3 S. E. 613, where it appeared that a tract of land which was purchased as 50 acres was found, upon being surveyed, to contain only 34½ acres. It was held that the vendee might insist upon a specific performance of the contract with compensation for the deficiency.

To the same effect is *Hunt v. Smith*, 139 Ill. 296, 28 N. E. 809, in which it was held that a decree for the specific performance of a contract for the sale of land, which required the vendor to remove an encumbrance upon the land, and, upon his failure so to do, permitted the purchaser to discharge the same out of the purchase money, was not open to the charge of making and enforcing a new and different contract from that entered into by the parties themselves.

So, in *Waters v. Travis*, 9 Johns, 450, in which it appeared that the vendor after his contract with the vendee, conveyed to a bona-fide purchaser a

portion of the land contracted to be sold, it was held that he could be compelled to convey that part of the land not sold, with an abatement to the vendee for the deficiency. The court said that it was against all "notions of justice" to permit the vendor to excuse himself from performing so much of his contract as he could because he had seen fit wrongfully to abridge himself of the power of performing the whole.

And in *Harbers v. Gadsden*, 6 Rich. Eq. 284, 62 Am. Dec. 390, the court made use of the following language:

"Where the vendor is incapable of making a complete title to all the property sold, or in the agreement to sell has misdescribed it in important particulars, the court will not hear from him the objection that, although he has part, he has not the whole estate, as described and sold, but will compel him, if the purchaser so chooses, to execute so much of the contract as he is able, with abatement in the price."

And in *Walling v. Kinnard*, 10 Tex. 508, 60 Am. Dec. 216, it was held to be an established rule that, if a misrepresentation was made as to the quantity of land contracted to be sold, though innocently, the purchaser had the right, if he did not abandon the contract, to have what the vendor could convey, with an abatement out of the purchase price for so much as the quantity of the land fell short of the representation.

There are also some forty or fifty other cases cited in the note in support of the above doctrine.

Point II.**THE PRINCIPLE ASSERTED IN POINT I IS THE SAME WHETHER THE DEFECT BE ONE OF TENURE OF ESTATE OR QUANTITY OF LAND.**

There is no difference in principle, so long as the vendee is willing to take the limited estate that the vendor has power to convey, and if the abatement can be figured with a reasonable decree of accuracy.

In *Nelthorpe v. Holgate*, 1 Collyer, 204 (28 Eng. Ch.), the vendor contracted to sell an estate in fee, but upon examination of title, it appeared that the vendor's mother had a life estate in the premises. She refused to join in the conveyance to the purchaser, and in an action by the purchaser for specific performance, it was held that the contract must be specifically performed, with compensation in respect of the life interest.

In *Barnes v. Wood*, Law Rep. 8 Eq. 424, the husband contracted to convey the fee, having only a life interest: Held, that the purchaser could compel him to convey what title he had, with a proper allowance to him by way of abatement of purchase money. The court said on page 429:

“The husband here represented himself to be the owner of the fee, being in fact only entitled to the limited interest I have mentioned (estate per *auter vie*). The purchaser entered into his contract with the husband in total ignorance of the state of the title, and without any knowledge that the husband could sell only with the concurrence of his wife. The husband therefore is bound to convey all the interest that he has according to the principle of the authorities that have been cited. And the court must endeavor to find out in the best way it can

what compensation is to be made in respect of the interest which he is unable to convey." (Citing *Nelthorpe v. Holgate*, *supra*).

In *Barker v. Cox*, Law. Rep. 4 Ch. D. 464, A had a reversion in fee, and B, his wife, had a life interest in the property. A contracted with C to convey it in fee simple. A died, and B refused to convey her life estate. HELD, that the purchaser could compel specific performance of what A had title to, and should be allowed compensation for B's life interest.

Specific performance decreed upon the bill of the purchaser with compensation for a defective title by reduction of the purchase money. The defect consisted in a representation by the Particular of a church lease for twenty-one years with covenants for renewals for sixty-three years, the lease being actually for lives, and the covenants limited and contingent.

Milligan v. Cooke, 16 Vesey, Jr. 1 (leading case).

In *Mortlock v. Buller*, 10 Vesey, Jr., 315, Lord Eldon said:

"I also agree that if a man having partial interests in an estate chooses to enter into a contract representing it and agreeing to sell it as his own, it is not competent for him afterwards to say though he has valuable interests he has not the entirety, and, therefore, the purchaser shall not have the benefit of his contract. For the purpose of this jurisdiction, the person contracting under those circumstances is bound by the assertion in his contract, and if the vendee chooses to take as much as he can have, he has a right to that, and to an abatement."

Melin v. Wooley, 22 Lawyers Reports Annotated, (New Series) 595, holds that compensation will be

awarded indifferently whether the difference between what was contracted for and what was conveyed is one of tenure or of equantity, citing, *Eaton Equity*, 560, and *Tobin v. Larkin*, 183 Mass., 389, where a vendor having title to only three-quarters interest in certain real estate contracted to convey the entire title for a specified sum in cash, and a mortgage for the balance, and the vendee on ascertaining the vendor's inability to convey the entire estate, elected to accept title to the part the vendor could convey, he was entitled to a decree for specific performance with a reduction of one-fourth of the cash payment and one-fourth of the amount of the mortgage.

Ferrel v. Bork, 79 Atlantic Reporter, 897, *supra*, 76 N. J. Eq. 615, where a co-tenant contracted to convey the whole estate his vendee can compel him to convey his interest and the vendee is entitled to compensation for the portion the vendor is not able to convey.

Keator v. Brown, 57 N. J. E., 600, *supra*.

See also *Kuhn v. Epstein*, 10 Lawyers Reports, Annotated (N. S.) 117, 80 N. E., 80, *supra*.

Point III.

THE COURT MAY FRAME ITS DECREE TO DIRECT THE KIND OF DEED THE VENDOR SHALL EXECUTE TO THE VENDEE.

The mere fact that the contract calls for a warranty deed presents no obstacle, if the vendee is willing to take a deed without warranty. It does not lie with the vendor to say that the deed *must* be a warranty deed, anymore than it lies with him to determine that he must convey the fee when he does not possess title to the fee. In other words, the form of the deed respecting covenants, quantity

of land or tenure of estate, rests entirely with the court, in a case where the vendee is willing to waive provisions found in the contract for the benefit of the vendee. The covenant of warranty is simply for the benefit of the vendee, just as the tenure of the estate would be, or the quantity of land embraced in the conveyance. If, then, the vendee is willing to accept a less tenure of estate, with a proper abatement he may waive the covenant of warranty in the deed, and accept a bargain and sale deed which will convey whatever estate the vendor has.

The fact that a vendor of land who has contracted to give a warranty deed, is unable to do so, ^{is} ~~is~~ no defence to a bill by the vendee to enforce a specific performance. And where the decree requires the Master in Chancery to make a conveyance to the vendee, this will amount only to a quit claim deed by the vendor, and the latter cannot complain of the decree on that account.

Litsey v. Whittemore, 111 Ill. 267.

Although a broker for sale of real estate exceeds his authority in contracting to furnish a warranty deed and abstract of title, the grantee may waive such requirements and enforce the contract as one providing for a bare transfer of title.

Jasper v. Wilson, 23 Lawyers Reports Annotated, (New Series) 982-986; 94 Pac. 951; 14 N. M. 482, where a vendor had contracted to convey certain land unconditionally, but it was found later that he had no title to the mineral rights therein, it was held, in a suit by the vendee for specific performance, that the vendee was entitled to a deed conveying what title the vendor had and reserving the mineral rights to their real owners.

Anderson v. Kennedy, 51 Mich. 468-469.

Point IV.

THE COMPLAINANT NEVER IN PERSON OR THROUGH ANY AUTHORIZED AGENT, WAIVED PERFORMANCE OF THE CONTRACT SO AS TO IN THE SLIGHTEST DEGREE QUESTION HIS RIGHT TO COME INTO EQUITY FOR SPECIFIC PERFORMANCE.

There never was a refusal on the part of the complainant to take title. Indeed, on the day for closing title, he was present in person as well as by representative, (page 119, State of Case) with the money, bond and mortgage, ready to take title, and the only action that was ever commenced or threatened was for specific performance to *compel* the delivery of the property. It is true that the bill has been amended, but the first bill, as well as every amended bill filed in this suit, has been *for a specific performance to get title to the property*. At no time has a ~~complaint~~ been filed for damages only.

The most that is claimed by defendant is that at some time prior to the day finally fixed for closing, Mr. Boyd, representing the Montclair Trust Company (who was examining the title to determine whether his Trust Company would issue a title policy), stated that the title was defective, in that Sullivan could only convey at most a life estate in the property, leaving outstanding the rights of the remaindermen.

Mr. Boyd, of course, could not bind the complainant. He was representing his own client—the Montclair Trust Company—which company very properly caused the title to be examined before it could determine whether or not to issue its policy, insuring the title; but the broadest statement that Mr. Boyd made was that the defendant's title was defective. Even if Brisbane himself had made that

statement, it would not have relieved the vendor from his contract, nor would it have deprived the complainant of his right to specific performance, with proper abatement of the consideration.

When a title is defective, it is the right of the vendee to reject the defective title tendered, and if he does so, it does not deprive him of his right to come into equity for specific performance, with a proper abatement of the consideration; otherwise, a vendee could never secure specific performance of a contract, where the title was not as contracted for. If he accepted the title tendered, then, of course, he would have no remedy, and if he rejected the title, defendant's counsel argues, it is an abandonment of his right to come into equity for specific performance. This is not, and cannot be the law. Had Sullivan tendered a title covering whatever interest he had with a satisfactory and *just abatement of the consideration*, a refusal on the part of the complainant to accept it would present a different question, but when a vendor tenders a defective title, the vendee may reject that improper tender and come into equity for specific performance and a proper abatement because it is only in equity that he can get *that* relief.

In *Saldutti v. Flynn*, 65 Atlantic Reporter, (N. J.) 246, Vice Chancellor Emery said at page 247:

“On the part of all the defendants, *it was claimed at the hearing that the contract with complainant was terminated by his refusal to accept Flynn's offer to receive the \$1,500, and on his receiving it, to execute and deliver a deed for the property, executed by him without Mrs. Flynn joining, but with covenants of warranty. To this claim there are two answers: First, the agreement to convey free of all incumbrance is not satisfied by a mere conveyance containing a covenant against incumbrance,*

but the vendee is entitled under such contract to a conveyance by the husband and his wife before paying the purchase money. *Young v. Paul*, 10 N. J. Eq. 401, 405, 64 Am. Dec. 456 (Williamson, Ch.) affirmed on appeal (Err. & App. 1855). The wife's inchoate right of dower was an incumbrance, and its existence is a breach of a covenant against incumbrances. *Carter v. Denman's Ex'rs*, 23 N. J. Law. 260, 272, 273 (Sup. Ct. 1852). In the second place, a vendor is in equity a trustee for the vendee from the time of the execution of the agreement. *King v. Ruckman*, 21 N. J. Eq. 599, 604 (Err. & App. 1870); *Haughwaut v. Murphy*, 22 N. J. Eq. 531, and opinion of Depue, J., at pages 546, 547 (Err. & App. 1871). The failure of the vendee to perform the contract on his part strictly at the time fixed, if the vendor is ready to perform, *does not in equity discharge the contract*, unless by the contract itself or circumstances proved in the case, time is made or has become of the essence of the contract, or the delay has made specific performance inequitable. This is the radical difference between the equitable and legal rights on failure to perform strictly the terms of such contract. The equitable remedy remains although neither party was ready on the contract day, and no action at law would lie in favor of either party. *King v. Ruckman*, 21 N. J. Eq. 605; *Zimmerman v. Brown*, (N. J. Ch. 36 Atl. 675, 677, Emery, V. Ch. 1897); *Freeson v. Bissell*, 63 N. Y. 168, 170 (1875). *Flynn*, therefore, was not released from the contract by the refusal of the vendee to accept the deed without the wife joining; and, the conveyance of Flynn's rights to the land being made to the Napuranos with actual as well as constructive

notice, these defendants, as far as Flynn himself is concerned, hold the legal title as trustees for complainant and subject to complainant's agreement. *Haughwaut v. Murphy, supra.*"

There are two cases cited in the above opinion to which we would like to draw the court's special attention. In *King v. Ruckman, supra*, the court, in its opinion, said:

"A contract for the sale of land is regarded in equity, for most purposes, as if it had been specifically executed. The purchaser becomes the equitable owner of the land and the seller of the purchase money."

In this case the court decreed specific performance of the contract.

See also case of *Haughwaut v. Murphy, supra*, as indicating the extent to which the vendee is bound by his contract to convey. The court in the course of its opinion on pages 546 and 547, says:

"In equity, upon an agreement for the sale of lands, the contract is regarded, for most purposes, as if specifically executed. The purchaser becomes the equitable owner of the lands, and the vendor of the purchase money. After the contract, the vendor is the trustee of the legal estate for the vendee. *Crawford v. Bertholf*, Saxton 460; *Hoagland v. Latourette*, 1 Green's Ch. 254; *Huffman v. Hummer*, 2 C. E. Green 264; *King v. Ruckman*, 6 C. E. Green, 599. Before the contract is executed by conveyance, the lands are devisable by the vendee, and descendible to his heirs as real estate; and the personal representatives of the vendor are entitled to the purchase money. 1 Story's Eq., Sec. 789; 2 *Ibid.*, Sec. 1213. If the vendor should again sell the estate which, by reason of the first contract, he is only seized in trust,

he will be considered as selling it for the benefit of the person for whom, by the first contract, he became trustee, and therefore liable to account. 2 Spence's Eq. Jur. 310."

Conclusion.

In view of the facts set forth above and the authorities quoted from, we contend that the decree of the Court of Chancery should be affirmed.

Respectfully submitted,

RIKER & RIKER,
Solicitors of Respondent.

EDGAR H. PINNEO,
Of Counsel with Respondent.



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Bill of Complaint.

In Chancery of New Jersey.

TO THE HONORABLE MAHON PITNEY, CHANCELLOR 10
OF THE STATE OF NEW JERSEY.

Humbly complaining, shows unto your Honor, your orator, Arthur Brisbane, of the City of New York, in the county of New York, and State of New York.

That on the Nineteenth day of July, in the year of our Lord One Thousand nine hundred and Ten, Ella J. Sullivan, of the city of Jersey City, in the county of Hudson and State of New Jersey, was seized and possessed of an estate of inheritance in fee simple of a certain tract of land in the city of Jersey City aforesaid, known as lot "F" in City Block 1865 on Fowler's Official Assessment Map of Jersey City, also known as No. 11 Wilks Street, Jersey City, being in dimension twenty-four feet six inches front and rear by one hundred and nine feet in depth on one side and one hundred and seven feet in depth on the other side, being all of the premises conveyed to the said Ella J. Sullivan by James Billington on June twenty-ninth, Nineteen hundred and ten. 20 30

That on said nineteenth day of July, nineteen hundred and ten, the said Ella J. Sullivan, by James A. Sullivan, her agent, by her lawfully authorized so to do, did enter into an agreement in writing with Bennett Milnor, of the Borough of Manhattan in the county of New York and State of New York for the conveyance of the above described premises to the said Bennett Mil- 40

Bill of Complaint.

nor, his heirs or assigns, of which the following is a true copy:

10 "Articles of Agreement, made the 19th day of July, in the year of our Lord One Thousand and Nine Hundred and Ten between—James A. Sullivan, of the City of Jersey City, in the County of Hudson, and State of New Jersey, party of the first part; and—Bennet Milnor, of the Borough of Manhattan in the County of New York, and State of New York, party of the second part;

20 "WITNESSETH: That the said party of the first part, for and in consideration of the sum of Four thousand eight hundred (\$4,800.00) Dollars to be paid and satisfied as hereinafter mentioned, and also in consideration of the covenants and agreements hereinafter mentioned, made and entered into by the said party of the second part, doth agree to and with the said party of the second part, that he the said party of the first part, will well and sufficiently convey to the said party of the second part, his heirs and assigns, by Deed of full covenant and warranty free from all encumbrance, except a mortgage of Two thousand (\$2,000.00) Dollars, held by Jennie Turner, and due July 2, 1911, on or before the first day of September next ensuing the date hereof, all that lot, tract, or parcel of land and premises, hereinafter particularly described, situate, lying and being in the City of Jersey City, in the County of Hudson and State of New Jersey, known as lot 'F' in City Block 1865 on Fowler's Official Assessment Map of Jersey City, also known as No. 11 Wilks Street, Jersey City, being in dimension twenty-four feet six inches front and rear by one hundred and nine feet in depth on one side and one hundred and seven feet in depth on the other side.

30 "Being all of the premises conveyed to grantor by James Billington in the month of June, 1910.

40 "It is mutually understood and agreed by and between the parties hereto that the second

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mortgage hereinafter mentioned shall contain a clause subordinating it to any new mortgage which may be placed on the property during the currency of said second mortgage after the present first mortgage is discharged, providing, however, that said new mortgage shall not exceed the sum of Two thousand (\$2000) Dollars.

"And the said Bennett Milnor, for his heirs, 10
executors, and administrators, doth covenant, promise and agree to and with the said party of the first part, his heirs, executors, administrators and assigns, that, he the said party of the second part, will pay and satisfy or cause to be paid and satisfied, unto the said party of the first part, the said sum of Four thousand eight hundred (\$4,800.00) Dollars, as and for the purchase money of the foregoing described land and premises, in the following manner, that is to say:

"\$200.00 on receipt of this contract, receipt 20
of which is hereby acknowledged.

"\$2,000.00 by taking the property subject to a mortgage for like amount now on said premises as aforementioned.

"\$800.00 by the party of the second part delivering to the party of the first part a purchase money second mortgage for like amount to be secured by his bond, which mortgage is to run for the term of two years and bear interest at the rate of six (6%) per cent. payable semi-annually; privilege, however, to 30
the party of the second part to pay all or any part of the said mortgage at any time before date of maturity, providing he gives the party of the first part a three days notice of his intention so to do.

"\$1,800.00 balance in cash on passing of title and delivery of deed.

"\$4,800.00 total.

"And it is further agreed, by the parties to these presents, that the said party of the second part, his heirs and assigns, may enter into and upon the said land and premises on 40

Bill of Complaint.

or before the first day of September, next ensuing the date hereof, and from thence take the rents, issues and profits to his and their use.

10 "And it is further agreed, by the parties hereto, that the said Deed of Full covenant and warranty shall be delivered and received at the office of Robert M. Boyd, Jr., 203 Broadway, N. Y., between the hours of 11 in the forenoon and two in the afternoon on the said first day of September next ensuing the date hereof.

"This property being sold subject to the monthly rights of the tenants in possession.

"In Witness Whereof, the said parties have hereunto interchangeably set their hands and seal the day and year first above mentioned.

"Signed, sealed and delivered in the presence of;

20 "(Signed) JAMES A. SULLIVAN, (L. S.)
"BENNETT MILNOR, (L. S.)"

That said agreement was on the twenty-fourth day of August, Nineteen hundred and ten, duly acknowledged by the said James A. Sullivan and on the twenty-fifth day of August, Nineteen hundred and ten was recorded in the office of the Register of the County of Hudson in Book 1063 of Deeds for said County on page 605 &c.

30 That thereafter the said Bennett Milnor, by assignment in writing, for a valuable consideration, did set over and assign all of his right title and interest of in and to the above mentioned contract to your orator, Arthur Brisbane, and that thereafter, and on or about the twenty-fourth day of August, Nineteen hundred and ten, your orator and the said James A. Sullivan, acting for the said Ella J. Sullivan, mutually agreed that the time for the closing of the sale under the above mentioned agreement should be extended until
40 Saturday, October first, Nineteen hundred and Ten, at the same hour and place as mentioned in the agreement; and that on the twenty-ninth day

Bill of Complaint.

of September, Nineteen hundred and Ten, your orator and the said James A. Sullivan, acting for the said Ella J. Sullivan, further agreed in writing to extend the time for the closing of the sale under said agreement until Saturday, October fifteenth, Nineteen hundred and ten, at the same hour and place as mentioned in the agreement.

Your orator further shows that on the said **10** fifteenth day of October, Nineteen hundred and ten, at the time and place to which the closing of the sale had been extended by mutual agreement, as aforesaid, your orator, by his duly authorized representative, was present and tendered himself ready and willing to pay the consideration provided for in said agreement on his receiving a deed of conveyance as therein provided, but that neither the said Ella J. Sullivan nor the said James A. Sullivan attended at said time and **20** place, nor did any one attend for them or either of them.

And your orator further shows that at all times since the said fifteenth day of October, Nineteen hundred and ten, he has been ready and willing to pay the consideration provided in said agreement, and has often requested the said Ella J. Sullivan and James A. Sullivan to convey to him the premises mentioned in said agreement, in accordance with the terms thereof, but that the said **30** Ella J. Sullivan and James A. Sullivan have always refused and still refuse to convey to your orator the premises described in said agreement in accordance with the terms thereof;

All of which actings and doing of the said Ella J. Sullivan and James A. Sullivan are contrary to equity and good conscience and tend to the manifest wrong, injury and oppression of your orator in the premises.

In consideration whereof, and for as much as **40**

Bill of Complaint.

your orator is entirely without adequate remedy in the premises, according to the strict rules of the common law, and can only have adequate relief in a court of equity, where matters of this nature are proper cognizable and relievable;

To the end therefore that the said Ella J. Sullivan and James A. Sullivan, as defendants to this
 10 suit, may full, true and perfect answer make, without oath, to all and singular the matters aforesaid, and that the said Ella J. Sullivan, or the said James A. Sullivan, in her behalf may be decreed to specifically perform the said agreement entered into by the said James A. Sullivan, as the person thereunto lawfully authorized so to do in behalf of the said Ella J. Sullivan, with the said Bennett Milnor, which was assigned to
 20 your orator as aforesaid, your orator being ready and willing, and hereby offering to perform the said agreement on his part and that your orator may have such further and other relief in the premises as shall be agreeable to equity and good conscience, and as the circumstances of the case may require.

May it please your Honor, the premises considered, to grant unto your orator the State's writ of subpoena, issuing out of and under the seal of this honorable court, to be directed to Ella J.
 30 Sullivan and James A. Sullivan, commanding them and each of them, by a certain day and under a certain penalty to be and appear before your Honor in this honorable court, then and there to answer all and singular the premises and to stand to, abide by and perform such order and decree therein as to your Honor shall seem meet and shall be agreeable to equity and good conscience.

And your orator, as in duty bound, will ever
 40 pray, etc.

RIKER & RIKER,
 Solicitors for and of Counsel
 with Complainant.

Answer.**IN CHANCERY OF NEW JERSEY.**

Between :

ARTHUR BRISBANE,

*Complainant,**and*

ELLA J. SULLIVAN, et al.,

Defendants.

On Bill &c.

10

The joint and several answer of the defendants Ella J. Sullivan and James A. Sullivan to the bill of complaint of Arthur Brisbane, complainant.

These defendants respectively answering say that they deny that on the nineteenth day of July, Nineteen hundred and ten, or at any other time, either of the defendants was seized and possessed of an estate of inheritance in fee simple in the lands described in the bill of complaint. 20

These defendants admit the making of the agreement in said bill of complaint set forth, by the defendant James A. Sullivan with one Bennett Milnor, but they have no knowledge as to the assignment thereof to the complainant and they therefore leave the complainant to make such proof thereof as he may be advised is necessary. 30

These defendants further answering say that they are brother and sister and that the lands in the bill of complaint described were actually purchased by the defendant James A. Sullivan entirely with his money and that title thereto was taken in the name of the defendant, Ella J. Sullivan, at the request of said James A. Sullivan and that she has not and never had any beneficial in- 40

Answer.

terest therein. That said lands were so purchased by the defendant James A. Sullivan from James Billington and were, at the request of said James A. Sullivan, conveyed by deed of James Billington and wife to the defendant Ella J. Sullivan, dated June 29, 1910, and recorded in the Hudson County Register's office June 30, 1910, in book 1078 of deeds for said county, page 91, and that at the time of the purchase thereof by the defendant James A. Sullivan, he believed he was acquiring an estate of inheritance in fee simple therein and that such an estate was, by said deed, conveyed to the defendant Ella J. Sullivan.

That the defendant James A. Sullivan entered into the agreement with Bennett Milnor, in the bill of complaint set forth, in good faith, believing that the defendant Ella J. Sullivan held a good and marketable title to the lands aforesaid and that she could convey the same to the said Bennett Milnor, at the time and in the manner as in said agreement specified and the defendant Ella J. Sullivan was willing to make such conveyance.

That these defendants were ready and willing to convey the said lands to the said Bennett Milnor, at the time and in the manner provided in said agreement, but before that time arrived the said Bennett Milnor, or the complainant, informed the defendant James A. Sullivan that the title thereto held by the defendant Ella J. Sullivan was defective and was not a good and marketable title and thereafter the complainant, who then pretended to hold an assignment of said agreement, notified the defendant James A. Sullivan of the details of the defects in said title and said complainant informed said defendant that he would not take title to said lands or pay the bal-

Answer.

ance of the purchase price as specified in said agreement, until such defects in title had been removed and said title made marketable.

That thereupon the defendant James A. Sullivan caused such defects in title to be investigated and examined by counsel and he was afterward advised by such counsel that the defendant Ella J. Sullivan was not seized of a good and marketable title to said lands and was not seized thereof in fee simple and that these defendants could not safely convey the same by warranty deed as provided in said agreement and the defendant Jas. A. Sullivan thereupon informed the complainant that because of the defects in title as specified by said complainant, he was unable to perform his said agreement and said defendant thereupon offered to return the money paid upon said agreement, with interest thereon, together with a reasonable sum to reimburse the complainant for his expenses in examining such title, which offer the complainant declined to accept. **10**
20

That these defendants do not own the fee simple of the lands in the bill of complaint described and are unable to acquire good title thereto and they are unable to perform said agreement to convey the same to the said Bennett Milnor or to the complainant as his assignee, according to the terms and conditions thereof and that the complainant well knew, at and before the filing of his bill of complaint, of the infirmity and defects of the defendants' said title and that specific performance of said agreement by the defendants is impossible. **30**

And these defendants humbly pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

BRINKERHOFF & FIELDER,
Solicitors for and of Counsel **40**
with the defendants.

Substitution of Solicitor.
IN CHANCERY OF NEW JERSEY.

Between :

ARTHUR BRISBANE,

Complainant,

and

ELLA J. SULLIVAN, et al.,

Defendants.

On Bill &c.

10

We hereby consent that Randolph Perkins be substituted as solicitor for and of counsel with the defendants in above cause, in our place and stead.

20

BRINKERHOFF & FIELDER,

Dated, May 5, 1911.

30

40

Notice of substitution.
IN CHANCERY OF NEW JERSEY.

Between :

ARTHUR BRISBANE,

Complainant,

and

ELLA J. SULLIVAN, et al.,

Defendants.

On Bill &c.

10

GENTLEMEN :

PLEASE TAKE NOTICE, that I have been substituted on the record as solicitor for and of counsel with the defendants in above entitled cause in the place and stead of Brinkerhoff & Fielder.

Yours respectfully,

20

RANDOLPH PERKINS,

Solicitor for Defendants.

Dated May 15th, 1911.

To:

MESSRS. RIKER & RIKER,

Solicitors for Complainant.

30

40

Notice in re Amending Bill.
IN CHANCERY OF NEW JERSEY.

Between :

ARTHUR BRISBANE,

Complainant,

and

ELLA J. SULLIVAN, et al.,

Defendants.

On Bill &c.

To RANDOLPH PERKINS, Esq.,
Solicitor for the Defendants.

Dear Sir:

20 Please take notice that we shall apply to his Honor, Frederic W. Stevens, at Chancery Chambers in the City of Newark, on Tuesday, the nineteenth day of December instant, at ten o'clock in the forenoon, or as soon thereafter as we can be heard, for an order permitting the complaint to file an amended bill of complaint.

Yours very truly,

RIKER & RIKER,

Solicitors for the Complainant.

30 Dated, December 11, 1911.

Order to amend bill.
IN CHANCERY OF NEW JERSEY.

Between :

ARTHUR BRISBANE,

Complainant,

and

ELLA J. SULLIVAN, et al.,

Defendants.

On Bill & **10**

This matter being opened to the Court by Riker & Riker, solicitors for the complainant, and it appearing that due notice of this application has been served upon the solicitor for the defendants, and no reason appearing to the contrary.

It is, on this nineteenth day of December, A. D. **20** Nineteen hundred and eleven, ordered that the complainant have leave to file an amended bill in this cause within ten days from the date hereof, and that the defendants plead, answer or demur to such amended bill within thirty days after service of a true copy thereof upon them or their solicitor.

Amended Bill of Complaint.

IN CHANCERY OF NEW JERSEY.

30

TO THE HONORABLE MAHON PITNEY, CHANCELLOR
 OF THE STATE OF NEW JERSEY.

Humbly complaining, shows unto your Honor, your orator, Arthur Brisbane, of the City of New York, in the county of New York, and State of New York.

That on the eighth day of July in the year Eighteen and eighty-nine, Thomas H. N. Wilks

40

Amended Bill of Complaint.

died in the City of Jersey City, in the County of Hudson in this State, seized of an estate of inheritance in fee simple of a certain tract of land in the City of Jersey City aforesaid, known as lot "F" in City Block 1865 on Fowler's Official Assessment Map of Jersey City, also known as No. 11 Wilks Street, Jersey City, being in dimensions

10 twenty-four feet, six inches, front and rear, by one hundred and nine feet in depth on one side and one hundred and seven feet in depth on the other side; that the said Thomas H. N. Wilks left a last will and testament bearing date the twenty-eighth day of June, Eighteen hundred and eighty-nine, which said will was admitted to probate by the Surrogate of the County of Hudson in this State on the Nineteenth day of July, Eighteen hundred and eighty-nine, and is re-

20 corded in Book 24 of wills in the office of said Surrogate on pages 413-417, to which said will and the record thereof your orator begs leave to refer if it be necessary so to do. That the testator in and by his said will devised the above described property to his adopted daughter, Dora E. Wilks for her natural life, and at her death to the heirs of her body born in lawful wedlock, and if there be no such issue, then the above described premises are devised to the

30 testator's brother Aquilla Wilks, if living, and if not living at the time of the death of said Dora E. Wilks, to his heirs at law living at the time of the death of Dora.

That subsequent to the death of said Thomas H. N. Wilks, his adopted daughter, Dora E. Wilks, was married to William P. Kastenhuber, and is now the wife of said William P. Kastenhuber; that since her marriage to the said William P. Kastenhuber said Dora E. Kastenhuber

40 has become the mother of two children born in

Amended Bill of Complaint.

lawful wedlock, the oldest of whom is named Ruth, the name of the other child being unknown to your orator; that both of said children of said Dora E. Kastenhuber are infants under the age of twenty-one years;

That after the death of said Thomas H. N. Wilks and after the marriage of the said Dora E. Wilks to William P. Kastenhuber, the premises 10
above described were sold by the City of Jersey City for unpaid taxes and such proceedings were had that an order was made by the Circuit Court of Hudson County directing that a deed be delivered to Charles R. Dieffenbach, who was the purchaser at such tax sale, and that thereafter a deed was made by the proper officer of the City of Jersey City to the said Charles R. Dieffenbach purporting to convey the premises in question to the said Charles R. Dieffenbach in fee simple, 20
which said deed is recorded in Book 1009 of Deeds for Hudson County in the office of the Register of said County at page 407;

That thereafter the said Charles R. Dieffenbach conveyed the premises in question to William P. Kastenhuber, the husband of the said Dora E. Kastenhuber, and that the said William P. Kastenhuber and the said Dora E. Kastenhuber conveyed the premises in question for a valuable consideration to James Billington by 30
deed dated the twenty-ninth day of June, Nineteen hundred and ten, and that the said James Billington and his wife in turn conveyed the premises in question to one Ella J. Sullivan by deed dated the twenty-ninth day of June, Nineteen hundred and ten, and recorded in the Hudson County Register's Office on the thirtieth day of June, Nineteen hundred and ten, in Book 1078 of deeds for said county at page 91;

That the last mentioned conveyance was made 40

Amended Bill of Complaint.

to Ella J. Sullivan at the request of James A. Sullivan, who was the actual purchaser of the premises and who provided the consideration therefor out of his own moneys, and that the said Ella J. Sullivan has not and never had any beneficial interest in the premises; that the said James A. Sullivan paid as the consideration for the conveyance of said premises to the said Ella J. Sullivan the sum of thirty-five hundred dollars or some other sum of money.

That on the nineteenth day of July, Nineteen hundred and ten, the said Ella J. Sullivan, by James A. Sullivan, her agent, by her lawfully authorized so to do, did enter into an agreement in writing with Bennett Milnor, of the Borough of Manhattan, in the County of New York and State of New York, for the conveyance of the above described premises to the said Bennett Milnor, his heirs or assigns, of which the following is a true copy:

“Articles of Agreement, made the 19th day of July, in the year of our Lord One thousand Nine hundred and ten, between—James A. Sullivan, of the City of Jersey City, in the County of Hudson, and State of New Jersey, party of the first part; and—Bennett Milnor, of the Borough of Manhattan in the County of New York, and State of New York, party of the second part;

“Witnesseth: That the said party of the first part, for and in consideration of the sum of Four thousand eight hundred (\$4,800.00) Dollars to be paid and satisfied as hereinafter mentioned, and also in consideration of the covenants and agreements hereinafter mentioned, made and entered into by the said party of the second part, doth agree to and with the said party of the second part, that he, the said party of the first part, will well and sufficiently convey to the said party of the second part, his heirs and assigns, by

Amended Bill of Complaint.

deed of full covenant and warranty free from all encumbrance, except a mortgage of Two thousand (\$2,000.00) Dollars, held by Jennie Turner, and due July 2nd, 1911, on or before the first day of September next ensuing the date hereof, all that lot, tract or parcel of land and premises, hereinafter particularly described, situate, lying and being in the City of Jersey City, in the County of Hudson and State of New Jersey, known as lot 'F' in City Block 1865 on Fowler's Official Assessment Map of Jersey City, also known as No. 11 Wilks Street, Jersey City, being in dimension twenty-four feet, six inches, front and rear, by one hundred and nine feet in depth on one side and one hundred and seven feet in depth on the other side. **10**

"Being all of the premises conveyed to grantor by James Billington in the month of June, 1910.

"It is mutually understood and agreed by and between the parties hereto that the second mortgage hereinafter mentioned shall contain a clause subordinating it to any new mortgage which may be placed on the property during the currency of said second mortgage after the present first mortgage is discharged, providing, however, that said new mortgage shall not exceed the sum of two thousand (\$2000) Dollars; **20**

"And the said Bennett Milnor, for his heirs, executors, and administrators, doth covenant, promise and agree to and with the said party of the first part, his heirs, executors, administrators and assigns, that he, the said party of the second part, will pay and satisfy or cause to be paid and satisfied, unto the said party of the first part, the said sum of four thousand eight hundred (\$4,800.00) Dollars, as and for the purchase money of the foregoing described land and premises, in the following manner, that is to say: **30**

"\$200.00 on receipt of this contract, receipt of which is hereby acknowledged.

"\$2,000.00 by taking the property subject **40**

Amended Bill of Complaint.

to a mortgage for like amount now on said premises as aforementioned.

10 “\$800.00 by the party of the second part delivering to the party of the first part a purchase money second mortgage for like amount to be secured by his bond, which mortgage is to run for the term of two years and bear interest at the rate of six (6%) per cent. payable semi-annually; privilege, however, to the party of the second part to pay all or any part of the said mortgage at any time before date of maturity, providing he gives the party of the first part a three days notice of his intention so to do.

“\$1,800 balance in cash on passing of title and delivery of deed.

“\$4,800.00 total.

20 “And it is further agreed, by the parties to these presents, that the said party of the second part, his heirs and assigns, may enter into and upon the said lands and premises on or before the first day of September, next ensuing the date hereof, and from thence take the rents, issues and profits to his and their use.

30 “And it is further agreed, by the parties hereto, that the said Deed of Full Covenant and Warranty shall be delivered and received at the office of Robert M. Boyd, Jr., 203 Broadway, N. Y., between the hours of 11 in the forenoon and two in the afternoon on the said first day of September next ensuing the date hereof.

“This property being sold subject to the monthly rights of the tenants in possession.

“In Witness Whereof, the said parties have hereunto interchangeably set their hands and seals the day and year first above mentioned.

“Signed, sealed and delivered in the presence of;

“(Signed) JAMES A. SULLIVAN, (L. S.)

“BENNETT MILNOR, (L. S.)”

40 That said agreement was on the twenty-fourth day of August, Nineteen hundred and ten, duly

Amended Bill of Complaint.

acknowledged by the said James A. Sullivan and on the twenty-fifth day of August, Nineteen hundred and ten, was recorded in the office of the Register of the County of Hudson in Book 1063 of Deeds for said County on page 605, etc.

That thereafter the said Bennett Milnor, by assignment in writing, for a valuable consideration, did set over and assign all of his right, title and interest of, in and to the above mentioned contract to your orator, Arthur Brisbane, and that thereafter, and on or about the twenty-fourth day of August, Nineteen hundred and ten, your orator and the said James A. Sullivan, acting for the said Ella J. Sullivan, mutually agreed that the time for the closing of the sale under the above mentioned agreement should be extended until Saturday, October first, Nineteen hundred and ten, at the same hour and place as mentioned in the agreement; and that on the twenty-ninth day of September, Nineteen hundred and ten, your orator and the said James A. Sullivan, acting for the said Ella J. Sullivan, further agreed in writing to extend the time for the closing of the sale under said agreement until Saturday, October fifteenth, Nineteen hundred and ten, at the same hour and place as mentioned in the agreement.

Your orator further shows that on the said fifteenth day of October, Nineteen hundred and ten, at the time and place to which the closing of the sale had been extended by mutual agreement, as aforesaid, your orator, by his duly authorized representative, was present and tendered himself ready and willing to pay the consideration provided for in said agreement on his receiving a deed of conveyance as therein provided, but that neither the said Ella J. Sullivan nor the said James A. Sullivan attended at said time and

Amended Bill of Complaint.

place, nor did any one attend for them or either of them.

And your orator further shows that at all times since the said fifteenth day of October, Nineteen hundred and ten, he has been ready and willing to pay the consideration provided in said agreement, and has often requested the said Ella
10 J. Sullivan and James A. Sullivan to convey to him the premises mentioned in said agreement, in accordance with the terms thereof, but that the said Ella J. Sullivan and James A. Sullivan have always refused and still refuse to convey to your orator the premises described in said agreement in accordance with the terms thereof;

And your orator further shows that doubt has arisen as to the validity of the above mentioned tax sale by the City of Jersey City to Charles R.
20 Dieffenbach upon which the title of said Ella J. Sullivan and James A. Sullivan rests.

Your orator further shows that it was the duty of the life tenant, Dora E. Kastenhuber, to have paid the taxes, for the non-payment of which the property was sold as aforesaid by the City of Jersey City to Charles R. Dieffenbach; and that the said Dora E. Kastenhuber purposely neglected and refused to pay the taxes aforesaid and permitted the tax sale to be made and the order of
30 the Hudson County Circuit Court to be made and entered for the purpose and with the intent of transforming the estate for life, in her, with the remainder over to the issue of her body, born in lawful wedlock, into an estate in fee simple in her husband, William P. Kastenhuber; that the said Charles R. Dieffenbach purchased the premises in question at the tax sale at the request of said Dora E. Kastenhuber, and her husband, William P. Kastenhuber; that the conveyance to the
40 said William P. Kastenhuber by the said Charles

Amended Bill of Complaint.

R. Dieffenbach was in pursuance of an agreement theretofore made and entered into by and between the said Dora E. Kastenhuber and her husband, William P. Kastenhuber, and Charles R. Dieffenbach, that the premises should be allowed to be sold for the non-payment of the taxes aforesaid, and that the said Charles R. Dieffenbach should become the purchaser thereof for the benefit of said William P. Kastenhuber and Dora E. Kastenhuber, his wife; **10**

And your orator further shows that the said William P. Kastenhuber and his wife, Dora E. Kastenhuber, received the sum of thirty-five hundred dollars, or some other sum of money, being the full and fair value of an estate in fee simple in the premises in question, from their grantee when they executed the deed of conveyance to the said James Billington; and your orator charges and insists that the said William P. Kastenhuber and Dora E. Kastenhuber by said deed of conveyance intended to convey all the estate, right, title and interest which the said Dora E. Kastenhuber and her husband, William P. Kastenhuber, had in the premises in question, either under the Wilks will, or by virtue of said tax sale, and in fact believed that they were thereby conveying an estate in fee simple; and that the said James Billington by his deed also intended to convey to the said Ella J. Sullivan all such estate, right, title and interest which the said Dora E. Kastenhuber and her husband, William P. Kastenhuber, had conveyed to him in the premises in question, and that the said Ella J. Sullivan and James A. Sullivan, by their agreement of sale, hereinbefore set out, also intended to agree to convey all such estate, right title and interest of the said Dora E. Kastenhuber and William P. Kastenhuber, conveyed to them as aforesaid. **20**
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Amended Bill of Complaint.

And your orator further shows unto your honor that after the execution of the agreement of sale aforesaid by the said James A. Sullivan, acting for the said Ella J. Sullivan, above set out, your orator caused an investigation of the title to the premises in question to be made, with the result that the doubt arose as to the validity of the tax sale aforesaid; that he thereupon requested the said James A. Sullivan to remedy such defects as their might be in the title;

And your orator charges that the said James A. Sullivan after the making of the agreement of sale above set out entered into negotiations with some person or persons other than your orator for the sale of the premises in question for the sum of fourteen thousand dollars, and thereupon refused and still refuses to execute and deliver to your orator a deed of conveyance in accordance with the agreement aforesaid;

And your orator shows unto your honor that doubt has arisen as to the legal effect of the conveyance executed by William P. Kastenhuber and Dora E. Kastenhuber, his wife, to the said James Billington, in this—that said deed conveys only such title as the said William P. Kastenhuber had, if any, in the property, and the effect of Dora E. Kastenhuber, his wife, signing said deed was merely to release whatever right or estate in dower she might have, if any, in said premises by virtue of the conveyance made by Charles R. Dieffenbach to William P. Kastenhuber, and not to convey any estate as she received under the Wilk's will.

And your orator further shows unto your Honor that the said Dora E. Kastenhuber and her husband, William P. Kastenhuber, have declared themselves to be willing to execute a deed of con-

Amended Bill of Complaint.

veyance to your orator conveying the life estate which the said Dora E. Kastenhuber acquired under the will of said Thomas H. N. Wilks, above mentioned, if said James A. Sullivan will consent thereto, and that your orator has been willing at all times since the execution of said agreement to accept the life estate of Dora E. Kastenhuber in said premises, and has frequently requested said James A. Sullivan either to obtain a deed from the said Dora E. Kastenhuber and her husband conveying the life estate of the said Dora E. Kastenhuber to the said James A. Sullivan or to consent that the said Dora E. Kastenhuber and her husband should convey such life estate to your orator upon the payment by your orator of such sum as such life estate might be worth based upon the consideration set forth in the above agreement of sale; and your orator further shows unto your Honor that the said James A. Sullivan refused to consent to the conveyance of the life estate of said Dora E. Kastenhuber to your orator and has hitherto refused to either obtain said life estate and convey it to your orator or to permit said Dora E. Kastenhuber to convey such life estate to himself or to your orator, and that the said Dora E. Kastenhuber and William P. Kastenhuber, her husband, also refuse to convey such life estate either to the said James A. Sullivan or to your orator, although often requested so to do;

And your orator charges that the said James A. Sullivan refuses to carry out the agreement of sale entered into as above set forth with intent to deprive your orator of the benefit of such agreement, and that the said James A. Sullivan has since the making of the agreement above mentioned, which was assigned to your orator, entered into an agreement with some other person or

Amended Bill of Complaint.

persons to convey the premises in question or the life estate of Dora E. Kastenhuber therein, for a sum of money largely in excess of that mentioned in your orator's said agreement;

All of which actings and doings of the said Ella J. Sullivan, James A. Sullivan, William P. Kastenhuber and Dora E. Kastenhuber are contrary
 10 to equity and good conscience, and tend to the manifest wrong, injury and oppression of your orator in the premises.

In consideration whereof, and forasmuch as your orator is entirely without adequate remedy in the premises according to the strict rules of the common law and can only have adequate relief in a court of equity where matters of this nature are properly cognizable and relievable;

To the end therefor that the said Ella J. Sullivan, James A. Sullivan, Dora E. Kastenhuber
 20 and William P. Kastenhuber, her husband, as defendants to this suit, may full, true and perfect answer make (without oath) to all and singular the matters aforesaid, and that the said Ella J. Sullivan, James A. Sullivan, or said James A. Sullivan in her behalf, may be decreed to specifically perform the said agreement entered into by the said James A. Sullivan as the person
 30 thereunto lawfully authorized so to do in behalf of the said Ella J. Sullivan with the said Bennett Milnor which was assigned to your orator as aforesaid, your orator being ready and willing and hereby offering to perform the said agreement on his part, and that the said Dora E. Kastenhuber and her husband, William P. Kastenhuber, may be decreed to convey to your orator the life estate of the said Dora E. Kastenhuber devised to her in and by the last will and testament of the said Thomas H. N. Wilks in the prem-
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Amended Bill of Complaint.

ises in question, and that this court may decree what sum of money shall be paid by your orator to the said Ella J. Sullivan and James A. Sullivan for the conveyance which this court may decree to be made, and that your orator may have such further and other relief in the premises as shall be agreeable to equity and good conscience and as the circumstances of the case may require. **10**

May it please your Honor, the premises considered, to grant unto your orator the state's writ of subpoena, issuing out of and under the seal of this honorable court, to be directed to the said Ella J. Sullivan, James A. Sullivan William P. Kastenhuber and Dora E. Kastenhuber his wife, commanding them and each of them by a certain day and under a certain penalty to be and appear before your Honor in this honorable court, then and there to answer all and singular **20** the premises, and to stand to, abide by and perform such order and decree therein as to your Honor shall seem meet and shall be agreeable to equity and good conscience.

And your orator, as in duty bound, will ever pray, etc.

RIKER & RIKER,
Solicitors for and of Counsel
with Complainant. **30**

Notice for Order to Strike out.
IN CHANCERY OF NEW JERSEY.

Between :

ARTHUR BRISBANE,

Complainant,

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and

ELLA J. SULLIVAN, et al.,

Defendants.

On Bill &c.

To MESSRS. RIKER & RIKER,
 Solicitors of Complainant.

Gentlemen :

20 TAKE NOTICE THAT ON Monday, the fifth day of February, One thousand nine hundred and twelve, at ten o'clock in the forenoon, or as soon thereafter as I can be heard, at the Chancery Chambers in Jersey City, I shall move before the Chancellor for an order striking out the bill of complaint in the above entitled cause, so far as the same affects the defendants William P. Kastenhuber and Dora E. Kastenhuber, for the following reasons:

30 1. So far as the relief prayed against the said defendants is concerned, the said bill is filed to quiet title to the premises described therein, of which premises the complainant is not in possession, and to which he has acquired no title or interest.

2. The said bill concedes that the said defendants are willing to grant the relief prayed by said bill against them, of their own motion, without the intervention of the Court of Chancery.

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Notice for Order to Strike out.

3. The said bill shows no equities in the said complainant as against the said defendants.

4. The said bill is multifarious in that it prays specific performance of a contract to which the said defendant were not parties and in which they had no interest, and at the same time prays a decree to quiet title as against the said defendants. 10

5. So far as the said defendants are concerned, the complainant has an adequate remedy at law for any cause of action which he may have against them.

6. The allegations of the said bill as to these defendants show that the complainant has suffered no injury from the said defendants which a court of equity can remedy.

7. The said defendants have of their own motion, as appears by the allegations of the said bill, performed the relief therein prayed as against them. 20

8. The said defendants are not proper parties to the said bill, having no relations of any kind with the complainant.

9. If the said defendants are proper parties to said bill, then there is lack of other proper parties, in that the children of the defendant Dora are not made parties thereto, nor are the heirs at law of Aquila Wilks, nor are the grantor and grantee of these defendants Charles R. Dieffenbach and James Billington, made parties thereto. 30

Dated, January 25th, 1912.

Yours truly,

JOHN J. MULVANEY,
Solicitor of Defendants Kastenhuber.

**Order Allowing further Amendment of
Bill.**

IN CHANCERY OF NEW JERSEY.

Between :

ARTHUR BRISBANE,

10

Complainant,

and

ELLA J. SULLIVAN, et al.,

Defendants.

Order
On Bill &c.

The defendants Dora F. Kastenhuber and William P. Kastenhuber having moved, on motion to the solicitors of the complainant, that the bill of complaint be stricken out as to said defendants, and such motion coming on to be heard on the Nineteenth day of March, One thousand nine hundred and twelve, in the presence of counsel for both parties, and the court being of opinion that the complainant should have leave to amend his amended bill of complaint, if he should be so advised;

It is, on this day of March, One thousand nine hundred and twelve, that further consideration of the motion of the said defendants to strike out said amended bill be deferred to a time to be fixed hereafter.

And it is further ordered that in the meantime the complainant be permitted to amend said amended bill in such manner as he shall be advised; if the complainant shall make such amendment, copy of the amended bill and amendments shall be served on said defendants or their solicitor and the said defendants shall, within ten days after such service, answer or demur thereto, or

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Second Amended Bill.

renew the application to strike out the said amended bill as further amended.

And until complainants shall make such amendment, or give notice that such amendment will not be made, all further proceedings as to the defendants Kastenhuber shall be stayed.

Nothing in this order contained shall prevent the said defendants Kastenhuber from filing a disclaimer of title to the premises described in the bill, should they be so advised. Nor shall they be precluded from making application upon due notice, for leave to file an answer or demurrer to the said amended bill in its present shape. 10

We consent to the foregoing order. *Randolph Perkins,*
Solicitors of ~~complainant~~ *Defendants*

Second Amended Bill.

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IN CHANCERY OF NEW JERSEY.

TO THE HONORABLE MAHLON PITNEY, CHANCELLOR
OF THE STATE OF NEW JERSEY.

Humbly complaining, shows unto your Honor, your orator, Arthur Brisbane, of the City of New York, in the County of New York, and State of New York.

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

Second Amended Bill.

H. N. Wilks left a last will and testament bearing date the twenty-eighth day of June, Eighteen hundred and eighty-nine, which said will was admitted to probate by the Surrogate of the County of Hudson in this State on the Nineteenth day of July, Eighteen hundred and eighty-nine, and is recorded in Book 24 of wills in the office of said

10 Surrogate on pages 413-417, to which said will and the record thereof your orator begs leave to refer if it be necessary so to do. That the testator in and by his said will devised the above described property to his adopted daughter, Dora E. Wilks for her natural life, and at ~~the~~^{her} death to the heirs of her body born in lawful wedlock, and if there be no such issue, then the above described premises are devised to the testator's

20 brother Aquilla Wilks, if living, and if not living at the time of the death of said Dora E. Wilks, to his heirs at law living at the time of the death of Dora.

That subsequent to the death of said Thomas H. N. Wilks, his adopted daughter, Dora E. Wilks, was married to William P. Kastenhuber, and is now the wife of said William P. Kastenhuber; that since her marriage to the said William P. Kastenhuber said Dora E. Kastenhuber has become the mother of two children born in lawful

30 wedlock, the oldest of whom is named Ruth, the name of the other child being unknown to your orator; that both of said children of said Dora E. Kastenhuber are infants under the age of twenty-one years;

That after the death of said Thomas H. N. Wilks and after the marriage of the said Dora E. Wilks to William P. Kastenhuber the premises above described were sold by the City of Jersey City for unpaid taxes and such proceedings were

40 had that an order was made by the Circuit Court

Second Amended Bill.

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

That thereafter the said Charles R. Dieffenbach conveyed the premises in question to William P. Kastenhuber, the husband of the said Dora E. Kastenhuber, and that the said William P. Kastenhuber and the said Dora E. Kastenhuber conveyed the premises in question for a valuable consideration to James Billington by deed of warranty dated the twenty-ninth day of June, Nineteen hundred and ten, and that the said James Billington and his wife in turn conveyed the premises in question to one Ella J. Sullivan by deed of warranty dated the twenty-ninth day of June, Nineteen hundred and ten, and recorded in the Hudson County Register's office on the Thirteenth day of June, Nineteen hundred and ten in Book 1078 of deeds for said County at page 91; **20**

That the last mentioned conveyance was made to Ella J. Sullivan, at the request of James A. Sullivan, who was the actual purchaser of the premises and who provided the consideration therefor out of his own moneys, and that the said Ella J. Sullivan has not and never had any beneficial interest in the premises; that the said James A. Sullivan paid as the consideration for the conveyance of said premises to the said Ella J. Sullivan the sum of thirty-five hundred dollars or some other sum of money; **30**
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Second Amended Bill.

That on the Nineteenth day of July, Nineteen hundred and ten, the said Ella J. Sullivan, by James A. Sullivan, her agent, by her lawfully authorized so to do, did enter into an agreement in writing with Bennett Milnor, of the Borough of Manhattan, in the County of New York and State of New York, for the conveyance of the
10 above described premises to the said Bennett Milnor, his heirs or assigns, of which the following is a true copy:

“Articles of Agreement, made the 19th day of July, in the year of our Lord One thousand nine hundred and ten, between—James A. Sullivan, of the City of Jersey City, in the County of Hudson, and State of New Jersey, party of the first part; and Bennett Milnor, of the Borough of Manhattan in the County of New York, and State of New
20 York, party of the second part;

“Witnesseth: That the said party of the first part, for and in consideration of the sum of Four thousand eight hundred (\$4,800.00) Dollars to be paid and satisfied as herein-after mentioned, and also in consideration of the covenants and agreements hereinafter mentioned, made and entered into by the said party of the second part, doth agree to and with the said party of the second part, that he, the said party of the first part, will well and sufficiently convey to the said party of
30 the second part, his heirs and assigns, by deed of full covenant and warranty free from all encumbrance, except a mortgage of Two thousand (\$2,000.00) Dollars held by Jennie Turner, and due July 2, 1911, on or before the first day of September next ensuing the date hereof, all that lot, tract, or parcel of land and premises, hereinafter particularly described, situate, lying and being in the City of Jersey City, in the County of Hudson and State of New Jersey; known as lot ‘F’ in
40 City Block 1865 on Fowler’s Official Assess-

Second Amended Bill.

ment Map of Jersey City, also known as No. 11 Wilks Street, Jersey City, being in dimension twenty-four feet, six inches, front and rear, by one hundred and nine feet in depth on one side and one hundred and seven feet in depth on the other side.

"Being all of the premises conveyed to grantor by James Billington in the month of June, 1910.

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"It is mutually understood and agreed by and between the parties hereto that the second mortgage hereinafter mentioned shall contain a clause subordinating it to any new mortgage which may be placed on the property during the currency of said second mortgage after the present first mortgage is discharged, providing, however, that said new mortgages shall not exceed the sum of two thousand (\$2000) Dollars;

"And the said Bennett Milnor, for his heirs, executors, and administrators, doth covenant, promise and agree to and with the said party of the first part, his heirs, executors, administrators and assigns, that he, the said party of the second part, will pay and satisfy or cause to be paid and satisfied, unto the said party of the first part, the said sum of Four thousand eight hundred (\$4,800.00) Dollars, as and for the purchase money of the foregoing described land and premises, in the following manner, that is to say:

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"\$200.00 on receipt of this contract, receipt of which is hereby acknowledged.

30

"\$2,000.00 by taking the property subject to a mortgage for like amount now on said premises as aforementioned.

"\$800.00 by the party of the second part delivering to the party of the first part a purchase money second mortgage for like amount to be secured by his bond, which mortgage is to run for the term of two years, and bear interest at the rate of six (6%) per cent. payable semi-annually; privilege, however, to the party of the second part to pay all or

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Second Amended Bill.

any part of the said mortgage at any time before date of maturity, providing he gives the party of the first part a three days notice of his intention so to do.

"\$1,800.00 balance in cash on passing of title and delivery of deed.

"\$4,800.00 total.

10 "And it is further agreed by the parties to these presents, that the said party of the second part, his heirs and assigns, may enter into and upon the said land and premises on or before the first day of September, next ensuing the date hereof, and from thence take the rents, issues and profits to his and their use.

20 "And it is further agreed by the parties hereto that the said Deed of Full Covenant and Warranty shall be delivered and received at the office of Robert M. Boyd, Jr., 203 Broadway, N. Y., between the hours of 11 in the forenoon and two in the afternoon on the said first day of September next ensuing the date hereof.

"This property being sold subject to the monthly rights of the tenants in possession.

"In Witness Whereof, the said parties have hereunto interchangeably set their hands and seals the day and year first above mentioned.

"Signed, sealed and delivered in the presence of

"(Signed) JAMES A. SULLIVAN, (L. S.)

"BENNETT MILNOR, (L. S.)"

30 That said agreement was on the twenty-fourth day of August, Nineteen hundred and ten, duly acknowledged by the said James A. Sullivan and on the twenty-fifth day of August, Nineteen hundred and ten, was recorded in the office of the Register of the County of Hudson in Book 1063 of Deeds for said County on page 605, etc.

40 That thereafter the said Bennett Milnor, by assignment in writing, for a valuable consideration, did set over and assign all of his right, title

Second Amended Bill.

and interest of, in and to the above mentioned contract to your orator, Arthur Brisbane, and that thereafter, and on or about the twenty-fourth day of August, Nineteen hundred and ten, your orator and the said James A. Sullivan, acting for the said Ella J. Sullivan, mutually agreed that the time for the closing of the sale under the above mentioned agreement should be extended **10** until Saturday, October first, Nineteen hundred and ten, at the same hour and place as mentioned in the agreement; and that on the twenty-ninth day of September, Nineteen hundred and ten, your orator and the said James A. Sullivan, acting for the said Ella J. Sullivan, further agreed in writing to extend the time for the closing of the sale under said agreement until Saturday, October fifteenth, Nineteen hundred and ten, at the same hour and place as mentioned in the **20** agreement.

Your orator further shows that on the said fifteenth day of October, Nineteen hundred and ten, at the time and place to which the closing of the sale had been extended by mutual agreement, as aforesaid, your orator, by his duly authorized representative, was present and tendered himself ready and willing to pay the consideration provided for in said agreement on his receiving a deed of conveyance as therein provided, **30** but that neither the said Ella J. Sullivan nor the said James A. Sullivan attended at said time and place, nor did any one attend for them or either of them.

And your orator further shows that at all times since the said fifteenth day of October, Nineteen hundred and ten, he has been ready and willing to pay the consideration provided in said agreement, and has often requested the said Ella J. Sullivan and James A. Sullivan to convey to him **40**

Second Amended Bill.

the premises mentioned in said agreement in accordance with the terms thereof, but that the said Ella J. Sullivan and James A. Sullivan have always refused and still refuse to convey to your orator the premises described in said agreement in accordance with the term thereof;

And your orator further shows that doubt has
10 arisen as to the validity of the above mentioned tax sale by the City of Jersey City to Charles R. Dieffenbach upon which the title of said Ella J. Sullivan and James A. Sullivan rests.

Your orator further shows that it was the duty of the life tenant, Dora E. Kastenhuber, to have paid the taxes, for the non-payment of which the property was sold as aforesaid by the City of Jersey City to Charles R. Dieffenbach; and that
20 the said Dora E. Kastenhuber purposely neglected and refused to pay the taxes aforesaid and permitted the tax sale to be made and the order of the Hudson County Circuit Court to be made and entered for the purpose and with the intent of transforming the estate for life, in her, with the remainder over to the issue of her body, born in lawful wedlock, into an estate in fee simple in her husband, William P. Kastenhuber; that the said Charles R. Dieffenbach purchased the premises in question at the tax sale at the request of
30 said Dora E. Kastenhuber, and her husband, William P. Kastenhuber; that the conveyance to the said William P. Kastenhuber by the said Charles R. Dieffenbach was in pursuance of an agreement theretofore made and entered into by and between the said Dora E. Kastenhuber and her husband, William P. Kastenhuber, and Chas. R. Dieffenbach, that the premises should be allowed to be sold for the non-payment of the taxes aforesaid, and that the said Charles R. Dieffenbach should become the purchaser thereof for the
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Second Amended Bill.

benefit of said William P. Kastenhuber and Dora E. Kastenhuber, his wife.

And your orator further shows that the said William P. Kastenhuber and his wife, Dora E. Kastenhuber, received the sum of thirty-five hundred dollars, or some other sum of money, being the full and fair value of an estate in fee simple in the premises in question, from their grantee when they executed the deed of conveyance to the said James Billington; and your orator charges and insists that the said William P. Kastenhuber and Dora E. Kastenhuber by said deed of conveyance intended to convey and did convey all the estate, right, title and interest which the said Dora E. Kastenhuber and her husband, William P. Kastenhuber, had in the premises in question, either under the Wilks will, or by virtue of said tax sale, and in fact believed that they were there-
by conveying an estate in fee simple; and that the said James Billington by his deed also intended to convey and did convey to the said Ella J. Sullivan all such estate, right, title and interest which the said Dora E. Kastenhuber and her husband, William P. Kastenhuber, had conveyed to him in the premises in question, and that the said Ella J. Sullivan and James A. Sullivan, by their agreement of sale, hereinbefore set out, also intended to agree and did agree to convey all such estate, right, title and interest of the said Dora E. Kastenhuber and William P. Kastenhuber, conveyed to them as aforesaid.

And your orator further shows unto your Honor that after the execution of the agreement of sale aforesaid by the said James A. Sullivan, acting for the said Ella J. Sullivan, above set out, your orator caused an investigation of the title to the premises in question to be made, with the result that the doubt arose as to the validity of the tax

Second Amended Bill.

sale aforesaid; that he thereupon requested the said James A. Sullivan to remedy such defects as there might be in the title;

And your orator charges that the said James A. Sullivan after the making of the agreement of sale above set out entered into negotiations with some person or persons other than your orator for
10 the sale of the premises in question for the sum of Fourteen thousand dollars, and thereupon refused and still refuses to execute and deliver to your orator a deed of conveyance in accordance with the agreement aforesaid;

And your orator charges that the said James A. Sullivan refuses to carry out the agreement of sale entered into as above set forth with intent to deprive your orator of the benefit of such agreement, but that your orator has elected to accept from the said James A. Sullivan and Ella
20 Sullivan such title to said premises as the said James A. Sullivan and Ella Sullivan are able to convey unto your orator, and that your orator tenders himself ready and willing to pay the said James A. Sullivan and Ella Sullivan such proportionate part of the purchase price reserved under and by virtue of said agreement hereinbefore recited as this Court shall determine the estate which the said James A. Sullivan and Ella
30 Sullivan are able to convey unto your orator shall bear to the estate or interest in said lands which the said James A. Sullivan and Ella Sullivan agreed as hereinbefore set forth to convey unto your orator.

All of which actings and doings of the said Ella J. Sullivan and James A. Sullivan are contrary to equity and good conscience and tend to the manifest wrong, injury and oppression of your orator in the premises.

40 In consideration whereof, and forasmuch as

Second Amended Bill.

your orator is entirely without adequate remedy in the premises according to the strict rules of the common law and can only have adequate relief in a court of equity where matters of this nature are properly cognizable and relievable;

To the end therefore that the said Ella J. Sullivan and James A. Sullivan, as defendants to this suit, may full, true and perfect answer make **10** (without oath) to all and singular the matters aforesaid, and that the said Ella J. Sullivan, Jas. A. Sullivan, or said James A. Sullivan in her behalf, may be decreed specifically to perform the said agreement entered into by the said James A. Sullivan as the person thereunto lawfully authorized so to do in behalf of the said Ella J. Sullivan with the said Bennett Milnor which was assigned to your orator as aforesaid, by conveying **20** unto your orator all the right, title and interest of the said James A. Sullivan and Ella Sullivan in and to said premises, your orator being ready and willing and hereby offering to perform the said agreement on his part; and that this court may decree what sum of money shall be paid by your orator to the said Ella J. Sullivan and James A. Sullivan for the conveyance which this court may decree to be made, and that your orator may have **30** such further and other relief in the premises as shall be agreeable to equity and good conscience and as the circumstances of the case may require.

May it please your Honor, the premises considered, to grant unto your orator the State's writ of subpoena, issuing out of and under the seal of this honorable court, to be directed to the said Ella J. Sullivan, James A. Sullivan, commanding them and each of them by a certain day and under a certain penalty to be and appear before your honor in this honorable court, then and there to answer all and singular the premises, **40**

Demurrer.

and to stand to, abide by and perform such order and decree therein as to your honor shall seem meet and shall be agreeable to equity and good conscience.

And your orator, as in duty bound, will ever pray, etc.

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RIKER & RIKER,
Solicitors for and of Counsel
with Complainant.

Demurrer.

IN CHANCERY OF NEW JERSEY.

Between

ARTHUR BRISBANE,

20

Complainant,

and

ELLA J. SULLIVAN, et al.,

Defendants.

On Bill, &c.

The demurrer of Ella J. Sullivan to the Second Amended Bill of Complaint of Arthur Brisbane, Complainant.

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This defendant, by protestation, not confessing all or any of the matters and things in the Complainant's Amended Bill of Complaint contained, to be true in such manner and form as the same are therein set forth, and alleged, demurs thereto and for cause of demurrer shows:

1. That it appears by said Amended Bill of Complaint that there is a misjoinder of parties defendant.

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2. That it appears by said Amended Bill of Complaint that there is a misjoinder of causes of action.

Demurrer.

3. That the said Amended Bill of Complaint is altogether multifarious.

4. That this Court has no jurisdiction to grant the relief prayed for.

5. That it appears by said Amended Bill that this defendant cannot specifically perform said contract.

6. That it appears by the Amended Bill that the complainant is not entitled to specific performance from this defendant.

7. That it appears by said Amended Bill that it is not filed in good faith for specific performance of the contract therein set out.

8. That it appears by said Amended Bill that this defendant is not seized of such title as is required to be conveyed to the complainant.

9. That it appears by said Amended Bill that this defendant is not the owner of the land which was agreed to be conveyed.

10. That it appears by the Bill of Complaint that the complainant is not seized of an equitable estate in the lands described in said Bill.

WHEREFORE and for other good and divers causes of demurrer, this defendant DOTH DEMUR thereto and humbly pray that judgment of this Honorable Court, whether she should be compelled to make any further or other answer to the said Amended Bill and PRAYS to be hence dismissed with her cost or charges in this behalf most wrongfully sustained.

RANDOLPH PERKINS,
Solicitor for and of Counsel with
Ella J. Sullivan.

I certify that I have perused the complainant's Amended Bill in the above stated cause and that

Order Sustaining Demurrer.

the above Demurrer is well founded in point of law.

RANDOLPH PERKINS,
Solicitor for and of Counsel with
Ella J. Sullivan.

STATE OF NEW JERSEY, }
10 County of Hudson. } ss.:

ELLA J. SULLIVAN, of full age, being duly sworn according to law, saith: that the foregoing Demurrer is not interposed for delay but in good faith, for the causes therein set forth.

ELLA J. SULLIVAN.

Sworn and subscribed to before }
me this 12th day of June, 1912. }

Edward Claxton,
20 Attorney at Law
of New Jersey.

Order Sustaining Demurrer.

IN CHANCERY OF NEW JERSEY.

Between

ARTHUR BRISBANE,

30

Complainant,

and

ELLA J. SULLIVAN, et al.,

Defendants.

On Bill, &c.

The demurrers filed to the second amended bill of complaint having been brought on for argument, in the presence of Messrs. Riker & Riker, of counsel with the complainant, and of Randolph
40 Perkins, of counsel with the defendants,

It is on this twenty-second day of October, 1912,

Third Amended Bill.

ordered that the demurrers be sustained with costs.

It is further ordered that the complainant have leave to further amend his bill of complaint.

E. R. WALKER,
C.

Respectfully advised,

FREDERIC W. STEVENS,
V. C.

10

A true copy.

SAM. K. ROBBINS,
Clerk.

Third Amended Bill.**IN CHANCERY OF NEW JERSEY.**

TO THE HONORABLE EDWIN ROBERT WALKER,

Chancellor of the State of New Jersey:

20

HUMBLY COMPLAINING, shows unto your Honor your orator, Arthur Brisbane, of the City of New York, in the County of New York and State of New York:

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

30

40

Third Amended Bill.

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

10 That subsequent to the death of said Thomas H. N. Wilks, his adopted daughter, Dora E. Wilks, was married to William P. Kastenhuber, and is now the wife of said William P. Kastenhuber; that since her marriage to the said William E. Kastenhuber said Dora E. Kastenhuber has become the mother of two children born in lawful wedlock, the oldest of whom is named Ruth, the name of the other child being unknown to your orator; that both of said children of said Dora E. Kastenhuber are infants under the age of twenty-

20 one years;

30 That after the death of said Thomas H. N. Wilks and after the marriage of the said Dora E. Wilks to William P. Kastenhuber, the premises above described were sold to the City of Jersey City for unpaid taxes, and such proceedings were had that an order was made by the Circuit Court of Hudson County directing that a deed be delivered to Charles R. Dieffenbach, who was the purchaser at such tax sale, and that thereafter

40 a deed was made by the proper officer of the City

Third Amended Bill.

of Jersey City to the said Charles R. Dieffenbach purporting to convey the premises in question to the said Charles R. Dieffenbach in fee simple, which said deed is recorded in Book 1009 of Deeds for Hudson County in the office of the Register of said County at page 407;

That thereafter the said Charles R. Dieffenbach conveyed the premises in question to William P. Kastenhuber, the husband of the said Dora E. Kastenhuber, and that the said William P. Kastenhuber and the said Dora E. Kastenhuber conveyed the premises in question for a valuable consideration to James Billington by deed of warranty dated the twenty-ninth day of June, nineteen hundred and ten, and that the said James Billington and his wife in turn conveyed the premises in question to one Ella J. Sullivan by deed of warranty dated the twenty-ninth day of June, nineteen hundred and ten, and recorded in the Hudson County Register's Office on the thirtieth day of June, nineteen hundred and ten, in Book 1078 of Deeds for said County at page 91;

That the last mentioned conveyance was made to Ella J. Sullivan at the request of James A. Sullivan, who was the actual purchaser of the premises and who provided the consideration therefor out of his own moneys, and that the said Ella J. Sullivan has not and never had any beneficial interest in the premises; that the said James A. Sullivan paid as the consideration for the conveyance of said premises to the said Ella J. Sullivan the sum of thirty-five hundred dollars or some other sum of money;

That on or about the nineteenth day of July, nineteen hundred and ten, the said James A. Sullivan, on behalf of himself and as agent of said Ella J. Sullivan, having by her been authorized so to do, did enter into an agreement in writing with Bennett Milnor, of the Borough of Manhattan,

Third Amended Bill.

in the County of New York and State of New York, for the conveyance of the above described premises to the said Bennett Milnor, his heirs or assigns, of which the following is a true copy;

10 "ARTICLES OF AGREEMENT, made the 19th day of July, in the year of our Lord one thousand nine hundred and ten, Between James A. Sullivan, of the City of Jersey City, in the County of Hudson and State of New Jersey, party of the first part; And Bennett Milnor, of the Borough of Manhattan, in the County of New York and State of New York, party of the second part; Witnesseth: That the party of the first part, for and in consideration of the sum of four thousand eight hundred (\$4,800.00) Dollars, to be paid and satisfied as hereinafter mentioned, and also in consideration of the covenants and agreements hereinafter mentioned, made and entered into by the said party of the second part, doth agree to and with the said party of the second part, that he, the said party of the first part, will well and sufficiently convey to the said party of the second part, his heirs and assigns, by deed of full covenant and warranty free from all encumbrance, except a mortgage of two thousand (\$2,000.00) Dollars, held by Jennie Turner, and due July 2, 1911, on or before the first day of September, next ensuing the date hereof, all that lot, tract or parcel of land and premises, hereinafter particularly described, situate, lying and being in the City of Jersey City, in the County of Hudson and State of New Jersey, known as lot 'F' in City Block 1865 on Fowler's Official Assessment Map of Jersey City, also known as No. 11 Wilks Street, Jersey City, being in dimensions twenty-four feet, six inches, front and rear, by one hundred and nine feet in depth on one side and one hundred and seven feet in depth on the other side.

20

30 "Being all of the premises conveyed to grantor by James Billington in the month of June, 1910.

40 "It is mutually understood and agreed by

Third Amended Bill.

and between the parties hereto that the second mortgage hereinafter mentioned shall contain a clause subordinating it to any new mortgage which may be placed on the property during the currency of said second mortgage after the present first mortgage is discharged, providing, however, that said new mortgage shall not exceed the sum of two thousand (\$2,000.00) Dollars;

“And the said Bennett Milnor, for his heirs, executors and administrators, doth covenant, promise and agree to and with the said party of the first part, his heirs, executors, administrators and assigns, that he, the said party of the second part, will pay and satisfy or cause to be paid and satisfied, unto the said party of the first part, the said sum of four thousand eight hundred (\$4,800.00) Dollars, as and for the purchase money of the foregoing described land and premises, in the following manner, that is to say:

“\$200.00 on receipt of this contract, receipt of which is hereby acknowledged. 20

“\$2,000.00 by taking the property subject to a mortgage for like amount now on said premises as aforementioned.

“\$800.00 by the party of the second part delivering to the party of the first part a purchase money second mortgage for like amount to be secured by his bond, which mortgage is to run for a term of two years and bear interest at the rate of six (6%) per cent., payable semi-annually; privilege, however, to the party of the second part to pay all or any part of the said mortgage at any time before date of maturity, providing he gives the party of the first part a three days' notice of his intention so to do. 30

“\$1,800 balance in cash on passing of title and delivery of deed.

“\$4,800.00 total.

“And it is further agreed, by the parties to these presents, that the said party of the second part, his heirs and assigns, may enter into and upon the said land and premises on or before the first day of September next 40

Third Amended Bill.

ensuing the date hereof, and from thence take the rents, issues and profits to his and their use.

10 "And it is further agreed, by the parties hereto, that the said Deed of Full Covenant and Warranty shall be delivered and received at the office of Robert M. Boyd, Jr., #203 Broadway, N. Y., between the hours of 11 in the forenoon and two in the afternoon on the said first day of September next ensuing the date hereof.

"The property being sold subject to the monthly rights of the tenants in possession.

"In Witness Whereof, the said parties have hereunto interchangeably set their hands and seals the day and year first above mentioned.

"Signed, sealed and delivered in the presence of

"(Signed) JAMES A. SULLIVAN, (L.S.)

"BENNETT MILNOR. (L.S.)"

20 That said agreement was on the twenty-fourth day of August, nineteen hundred and ten, duly acknowledged by said James A. Sullivan and on the twenty-fifth day of August, nineteen hundred and ten, was recorded in the office of the Register of the County of Hudson in Book 1063 of Deeds for said County on page 605, etc.

30 That thereafter the said Bennett Milnor, by assignment in writing, for a valuable consideration, did set over and assign all of his right, title and interest of, in and to the above mentioned contract to your orator, Arthur Brisbane, and that thereafter, and on or about the twenty-fourth day of August, nineteen hundred and ten, your orator and the said James A. Sullivan, acting for himself and for the said Ella J. Sullivan, mutually agreed that the time for the closing of the sale under the above mentioned agreement should be extended until Saturday, October first, nineteen hundred and ten, at the same hour and place as mentioned in the agreement; and that on the twenty-
40 ninth day of September, nineteen hundred and ten,

Third Amended Bill.

your orator and the said James A. Sullivan, acting for himself and for the said Ella J. Sullivan, further agreed in writing to extend the time for the closing of the sale under said agreement until Saturday, October fifteenth, nineteen hundred and ten, at the same hour and place as mentioned in the agreement.

Your orator further shows that on the said fifteenth day of October, nineteen hundred and ten, at the time and place to which the closing of the sale had been extended by mutual agreement, as aforesaid, your orator, by his duly authorized representative, was present and tendered himself ready and willing to pay the consideration provided for in said agreement on his receiving a deed of conveyance as therein provided, but that neither the said Ella J. Sullivan nor the said James A. Sullivan attended at said time and place, nor did any one attend for them or either of them.

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

And your orator charges that the said Ella J. Sullivan and James A. Sullivan refuse to carry out the agreement of sale entered into as above set forth with intent to deprive your orator of the benefit of such agreement, and that the said James A. Sullivan has since the making of the agreement above mentioned, which was assigned to your

Third Amended Bill.

orator, entered into an agreement with some other person or persons to convey the premises in question for a sum of money largely in excess of that mentioned in your orator's said agreement;

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

And your orator further shows that he is informed and believes that subsequent to said fifteenth day of October, 1910, a fire has occurred upon said premises, and that said Ella J. Sullivan and James A. Sullivan have collected from the
20 fire insurance company which had insured said premises against fire a sum of money which your orator is informed is the sum of five hundred dollars, and have applied said sum of money so collected to their own uses.

All of which actings and doings of the said Ella J. Sullivan and James A. Sullivan are contrary to equity and good conscience and tend to the manifest wrong, injury and oppression of your orator in the premises.

30 In consideration whereof, and forasmuch as your orator is entirely without adequate remedy in the premises according to the strict rules of the common law and can only have adequate relief in a court of equity where matters of this nature are properly cognizable and relievable;

To the end, therefore, that the said Ella J. Sullivan and James A. Sullivan, as defendants to this suit, may full, true and perfect answer make (without oath) to all and singular the matters
40 aforesaid, and that the said Ella J. Sullivan and James

Third Amended Bill.

A. Sullivan may be decreed to perform specifically the said agreement entered into by the said James A. Sullivan as the person thereunto lawfully authorized so to do in behalf of the said Ella J. Sullivan and of himself with the said Bennett Milnor which was assigned to your orator as aforesaid, your orator being ready and willing and hereby offering to perform the said agreement on his part, **10** and may be required by this Honorable Court to account to your orator for the rental value of said premises during the period during which your orator has been deprived of the possession and enjoyment of said premises, and for any moneys received by the said Ella J. Sullivan or by the said James A. Sullivan for fire insurance upon said premises paid by reason of any fire thereon subsequent to said fifteenth day of October, 1910, making all just allowances to the said Ella J. **20** Sullivan and James A. Sullivan to which they may in equity be entitled, and that your orator may have such other and further relief in the premises as shall be agreeable to equity and good conscience and as the circumstances of the case may require.

May it please your Honor, the premises considered, to grant unto your orator the State's writ of subpoena, issuing out of and under the seal of this Honorable Court, to be directed to the said Ella J. Sullivan and James A. Sullivan, commanding them **30** and each of them by a certain day and under a certain penalty to be and appear before your Honor in this Honorable Court, then and there to answer all and singular the premises, and to stand to, abide by and perform such order and decree therein as to your Honor shall seem meet and shall be agreeable to equity and good conscience.

And your orator, as in duty bound, will ever pray, etc.

RIKER & RIKER, **40**
Solicitors for and of Counsel
with Complainant.

Answer.

IN CHANCERY OF NEW JERSEY.

10	Between ARTHUR BRISBANE, <i>Complainant,</i> <i>and</i> ELLA J. SULLIVAN, et al., <i>Defendants.</i>	} On Bill, &c.
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The joint and several answer of the defendants, Ella J. Sullivan and James A. Sullivan, to the bill of complaint of Arthur Brisbane, complainant.

20 These defendants, for answer unto said bill of complaint, or unto so much thereof as they are advised it is necessary or material for them to answer unto, answering, say:

1. They neither admit nor deny the allegations contained on pages 1 and 2 of said bill of complaint, but they deny that on the nineteenth day of July, nineteen hundred and ten, or at any other time, these defendants, or either of them, were seized and possessed of an estate of inheritance in fee simple in the lands described in the bill of complaint.

30 2. These defendants admit that on the nineteenth day of July, nineteen hundred and ten, said James A. Sullivan executed and delivered to one Bennett Milnor a contract for sale of the premises described in the bill of complaint, a copy of which is set out on pages 3, 4 and 5 of said bill; that they have no knowledge as to the assignment of said contract to the complainant, and they

Answer.

therefore leave the said complainant to make such proof thereof as he may be advised is necessary.

3. These defendants further answering say that they are brother and sister and that the lands in the bill of complaint described were purchased by the defendant, James A. Sullivan with his own funds, and that title to said premises was taken in the name of the defendant, Ella J. Sullivan, at the request of said James A. Sullivan, and that a deed purporting to convey the title to said premises was executed by James Billington and wife to the defendant, Ella J. Sullivan, on the twenty-ninth of June, nineteen hundred and ten, and recorded in the Hudson County Register's Office, June thirtieth, nineteen hundred and ten, in Book 1078 of Deeds for said County, on page 91, etc.; and that at the time of the purchase thereof the said defendant, James A. Sullivan, believed that he and his said sister, Ella J. Sullivan, were acquiring an estate of inheritance in fee simple in said lands, and that such estate was by said deed conveyed to the defendant, Ella J. Sullivan. 10 20

4. These defendants further say that the said defendant, James A. Sullivan, entered into the agreement with Bennett Milnor in the bill of complaint set forth in good faith, believing that they, the defendants, held good and marketable title to the lands aforesaid, and that they could convey the same to the said Bennett Milnor at the time and in the manner required by said agreement, and that both of the defendants were willing to make such conveyance. 30

5. These defendants further answering say that they were both ready and willing to convey the said lands to the said Bennett Milnor at the time and in the manner provided in said agreement, but before the time for passing title provided in said 40

Answer.

agreement arrived, the said Bennett Milnor, and the complainant in this cause, informed the defendant, James A. Sullivan, that the title to said premises held by the defendant, Ella J. Sullivan, was defective and was not a good and marketable title, and thereafter the complainant, who then pretended to hold an assignment of said agree-
 10 ment, notified the defendant, James A. Sullivan, of the details of the defects in said title, and said complainant informed said defendant that he would not take title to said lands or pay the balance of the purchase price as specified in said agreement, while said defects in title existed.

6. These defendants further answering, say: that afterwards and before the time for the delivery of the deed mentioned in said contract, the complainant served or caused to be served upon
 20 these defendants a list of the defects of title, a copy of which is annexed hereto and marked "Schedule A," and made a part of this Answer; that said complainant notified the defendants that their title was not marketable and refused to accept a deed from the defendants for such title as they had or for any title whatever unless the defendants first removed all the defects and clouds from their title; that thereafter the said defendant, James A. Sullivan, caused an investi-
 30 gation to be made of the title to said premises and was afterwards advised by his counsel that neither he nor said Ella J. Sullivan was seized of a good and marketable title of said lands, and was not seized in fee simple thereof, and that these defendants could not convey the same to the complainant as provided in said agreement; and the defendant, James A. Sullivan, thereupon informed the complainant that because of the defects in said title as specified by said complaint^{an} he
 40 was unable to perform his said agreement, and

Answer.

the defendants thereupon offered to return the money paid upon the said agreement with interest thereon together with a reasonable sum to reimburse the complainant for his expenses in examining such title, which offer the complainant declined to accept.

7. These defendants further answering, say: that they are not seized in fee simple of the lands **10** in the bill of complaint described, and are unable to acquire good title thereto and are unable to perform said agreement to convey the same to the said Bennett Milnor or to the complainant, as his assignee, according to the terms and conditions of said agreement, and that the complainant well knew at and before the filing of his bill of complaint of the infirmity and defects of the defendants' said title, and refused to accept from the defendants such title as they had, and re- **20** fused to pay over to the defendants the balance of the purchase price of said premises and accept from the defendants a deed for whatever interest in said premises the defendants had.

8. These defendants further answering, say: that before the filing of this bill and after the defects of title in Schedule A set out were known to the complainant, he refused to accept such title as the defendants had, but notified defendants that he would hold them to a strict performance **30** of their contract; that the bill of complaint filed herein was filed after complainant had full and complete knowledge of all of the facts set forth in this answer, and that it was impossible for these defendants to specifically perform said contract; and that the said complainant is guilty of laches.

All of which matters and things these defendants are willing to aver, maintain and prove, and humbly pray to be hence dismissed with their rea- **40**

Answer.

sonable costs and charges in this behalf most wrongfully sustained.

RANDOLPH PERKINS,
Solicitor for and of Counsel
with Defendants.

SCHEDULE A.

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

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

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

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

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

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

Answer.

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

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

The original resolution of the Board of Finance of Jersey City that this property should be sold for taxes could not be found in that office and a copy recites that the taxes and assessments have **20** been adjusted; the deed states that the taxes and assessments have not been adjusted. In such resolution a number of other papers are recited, but they are not on record.

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

No Certificate of Sale on file in the office of the **30** City Collector. When the deed was issued such certificate should have been returned and filed in the office of the City Collector and should remain on file in that office.

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

The order to issue the deed has not been filed in **40** the office of the Clerk of the Court in accordance

Answer.

with Rule 40 of the Supreme Court of New Jersey, and Rule 18 of the Circuit Court, which requires that such order shall be filed within ten days after the granting thereof; this order has never been filed at all and not being filed within the time required by law is void. See *Mayor and Aldermen of Jersey City v. Davis, City Collector*, 67 Atl., 969; handed down by the New Jersey Supreme Court June 30, 1910, which holds in effect that an order directing a deed to issue unless entered in the minutes of the Circuit Court in accordance and within the time required by the rule is void and of no effect.

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

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

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

Mortgage, Wilks to Olcott, recorded in Book 13, page 192. Cancellation clause on the margin of the record states that the original mortgage "was received in full by Lettie Allen, Administratrix of Nicholas Prior, Assignee, &c." No record of any

such assignment could be found, so that this mortgage may still be a lien against the property.

Answer.

Book 30, page 374 of Mortgages. Cancellation clause on the margin of the record was not signed by the Register, so this mortgage may still be a lien against the property.

Book 30, page 374 of Mortgages. Assignment of this mortgage (Book 33, page 117) from Lettie Allen to John Patterson, assigns Book 30, page 375 of Mortgages; probably intended to assign Book 30, page 374 of Mortgages. This mortgage not being properly cancelled, for this additional reason may still be a lien against the property. **10**

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

Book 425, page 276 of Deeds. From where does Ellam M. Dewey derive the interest she purports to convey by this deed? **20**

Book 1078, page 91 of deeds. Have no seals attached.

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

Book 47 of Deeds, page 271. Deed taken subject to mortgage. Mortgage purports to be cancelled on receipt of Robert Gilchrist, Assignee. No record to show assignment to Gilchrist, mortgage may still be a lien. **30**

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

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

Replication.

IN CHANCERY OF NEW JERSEY.

10	ARTHUR BRISBANE, <i>Complainant,</i> <i>vs.</i> JAMES A. SULLIVAN, et al., <i>Defendants.</i>	} On Bill, &c.
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The replication of the complainant to the plea of the defendants:

The complainant joins issue with the defendants upon the answer herein filed.

RIKER & RIKER,
Solicitors of the Complainant.

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Order of Reference.

IN CHANCERY OF NEW JERSEY.

30	Between ARTHUR BRISBANE, <i>Complainant,</i> <i>and</i> JAMES A. SULLIVAN, et als. <i>Defendants.</i>	} On Bill, &c.
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It appearing to the court that the complainant herein is entitled to the relief prayed for in his bill of complaint, and that he is entitled to a conveyance of all the right, title and interest of the said defendants in and to the premises mentioned in said bill of complaint, and that he should pay therefor the value of an estate therein

40

Order of Reference.

for the life of Dora E. Kastenhuber, computed upon the basis of an attained age of said Dora E. Kastenhuber of 43 years on October 15, 1910, the date at which said title should have passed, in accordance with the terms of a contract for its conveyance, and that the value of the fee in said premises upon which said life estate should be calculated, is \$4800, and that the said defend- 10
ants have had the use and occupation of said premises continuously from the 15th day of October, 1910, until the present time;

It is ordered, adjudged and decreed that it be referred to Thomas L. Raymond, one of the special masters of this court, to state the account between the parties hereto, wherein the said complainant shall be charged with the value of said life estate and with all taxes paid by the defendants or either of them since said 15th day of October, 1910, 20
and with interest from said date and with all expenses for necessary or proper upkeep and maintenance of said premises by said defendant during said term, and wherein the said defendants shall be charged with the rental value of said premises during said term, and wherein such special master shall make such other allowances to the respective parties herein as shall be equitable and just, having regard to the agreement to convey said premises on the 15th day of October, 1910, and 30
to the fact that said premises have not been conveyed, nor the purchase price thereof paid, and that said master do make his report touching the matters hereby referred to him with all convenient speed.

Dated, May 19th, 1914.

Respectfully advised,

J. E. HOWELL,

V. C.

J. E. Howell, V. C. 40

E. R. WALKER, C.

A true copy.

ROBERT H. MCADAMS, Clerk.

Master's Report.
IN CHANCERY OF NEW JERSEY.

	Between <div style="text-align: center; padding: 5px 0;"> ARTHUR BRISBANE, <i>Complainant.</i> </div>	}	On Bill, &c.
10	<i>and</i> JAMES A. SULLIVAN, et als, <i>Defendants.</i>		

In pursuance of an order of this court, made in the above entitled cause, bearing date on the 19th day of May, 1914, whereby it was ordered that it be referred to the subscriber, one of the Special Masters of this court, to state the account

20 between the parties hereto, wherein the said complainant shall be charged with the value of the life estate of Dora E. Kastenhuber and with all taxes paid by the defendants or either of them since the 15th day of October, 1910, and with interest from said date and with all expenses for necessary or proper upkeep and maintenance of said premises by said defendants during said term, and wherein the said defendants shall be charged with the rental value of said premises during said

30 term, and wherein such Special Master should make such other allowances to the respective parties herein as should be equitable and just, having regard to the agreement to convey said premises on the 15th day of October, 1910, and to the fact that said premises have not been conveyed, nor the purchase price thereof paid; and that said Master should make his report touching the matters in said order of reference referred to him with all convenient speed.

Master's Report.

I do hereby report to his honor, the Chancellor, that I have been attended by Spaulding Frazer, Esquire, of Counsel with the complainant, and by the defendant James A. Sullivan, who appeared before me, pro se, on the 17th day of June, 1914, and on the 8th day of July, 1914, to which date the further taking of testimony in said cause was adjourned, and that on said days the depositions 10 of the said James A. Sullivan were taken before me.

That I have examined the matters referred to me by said order, and do find and report that the rights and interests of the respective parties are as follows:

1. That the complainant is chargeable with the value of a life estate of Dora E. Kastenhuber, who was of the age of forty-six years, the fee value of which is \$4800, that said life estate is 20 equal to 41.947 per cent of the full value of said property, and is equal to \$2,013.83, with interest upon said sum at the rate of six per cent per annum from the 15th day of October, 1910, to the 12th day of January, 1915, amounting to the further sum of \$513.41; that said complainant is further chargeable with the fair value of repairs made to said premises by the defendant during the pendency of this cause, which sum I find to be the sum of \$249.50, making the total 30 amount for which the said complainant is chargeable, the sum of \$2,776.74. I further find that the complainant should be allowed as a part payment on account of said moneys the sum of \$200, initial payment upon said contract, with interest from October 15, 1910, to January 12, 1915, amounting to the sum of \$15.03, together with the sum of \$2,000 upon a mortgage of like amount, covering the premises described in the bill of complaint, which mortgage, under the terms of the contract 40

Master's Report.

of sale of said premises, the said complainant assumed and agreed to pay; that he should further be allowed the fair rental value of the premises from the date at which the conveyance of said lands should, under the provisions of the contract of sale, have been made, until the date of this report, which rental value I find to be the sum of \$1,080, leaving a balance due the said complainant, as of the date of this report, of the sum of \$518.29. I further report that no interest is allowed upon the mortgage, as it appears from the depositions that the mortgage interest has been paid by the defendant James A. Sullivan.

Annexed hereto and forming part of this report is a statement showing the amounts for which the said complainant is entitled to claim credit and the amounts with which he is justly chargeable.

All which, as further directed in and by the said order, I report on this 12th day of January, 1915.

(Signed) THOMAS L. RAYMOND,
Special Master in Chancery.

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Exceptions to Master's Report.

STATEMENT.

CREDIT.

Value of life interest.....	\$2,013.83	
Interest from October 15, 1910, to Jan. 12, 1915, at 6 per cent.....	513.41	
Repairs	249.50	\$2,776.74 10

DEBIT.

Deposit on contract	\$200.00	
Interest from October 15, 1910, to Jan. 12, 1915, at 6 per cent	15.03	
Mortgage	2,000.00	
Rental value, Oct.—Jan. 12, 27 mos., at \$25 a mo.....	1,080.00	\$3,295.03
Balance		\$518.29

Exceptions to Master's Report.

IN CHANCERY OF NEW JERSEY.

Between	}	On Bill, &c. 30
ARTHUR BRISBANE,		
<i>Complainant,</i>		
<i>and</i>		
JAMES A. SULLIVAN, <i>et als,</i>	}	
<i>Defendants.</i>		

Exceptions taken by the defendants in this cause to the report made therein on the twelfth day of January, nineteen hundred and fifteen, by Thomas L. Raymond, Special Master in Chancery, to whom it was referred to state the account 40

Exceptions to Master's Report.

between the parties hereto by an order bearing date the nineteenth day of May, nineteen hundred and fourteen, touching the matters therein referred to him.

FIRST EXCEPTION. For that the said Special Master has reported as follows:

10 "That the complainant is chargeable with the value of a life estate of Dora E. Kastenhuber, who was of the age of 46 years, the fee value of which is \$4,800.00, that said life estate is equal to 41.947 per cent of the full value of said property, and is equal to \$2,013.83."

And the defendants insist that the value of the life estate of Dora E. Kastenhuber, on a fee value of \$4,800 is erroneously stated by said Master to be \$2,013.83, whereas in fact the value of said life estate is \$3,645.09.

20 SECOND EXCEPTION. For that the said Master has reported as follows: That the interest on the value of a life estate of Dora E. Kastenhuber, on said valuation, is \$513.41.

And the defendants insist that the said interest is erroneously calculated, and in fact is the sum of \$936.12.

30 THIRD EXCEPTION. That the Master's report makes the total amount with which the complainant is chargeable the sum of \$2,676.74, whereas in fact the sum with which the complainant is chargeable is more than the sum of \$2,676.74.

FOURTH EXCEPTION. That said Master in his report did not charge the complainant with interest on the mortgage for sum of \$2,000 from the 15th of October, 1910, to the 12th of January, 1915, which interest was paid by the defendants.

40 FIFTH EXCEPTION. That said Master's report should have charged interest against said complainant on an amount equal to the entire value

Rule Nisi to Confirm Report.

of the life estate of Dora E. Kastenhuber less the sum of \$200, the initial payment of said contract.

SIXTH EXCEPTION. That by said Master's report the defendants are charged with the entire rental value of the premises, amounting to \$1,080, but have not been credited with interest on the entire value of their estate during the period of 10 which they have been charged rental value.

SEVENTH EXCEPTION. That by said Master's report the defendants are not credited with interest on the sum of \$249.50, the amount expended for repairs on said premises.

In which said several matters and respects these exceptants pray the judgment of this Court.

RANDOLPH PERKINS,
Solicitor for and of counsel 20
with Defendants.

Rule Nisi to Confirm Report.**IN CHANCERY OF NEW JERSEY.**

Between

ARTHUR BRISBANE,

Complainant,

and

JAMES A. SULLIVAN, *et als,*

Defendants.

On Bill, &c. 30

Upon reading and filing a report made in this cause by Thomas L. Raymond, one of the Special Masters of this Court, bearing date on the twelfth day of January, nineteen hundred and fifteen, it is ordered that the said report, and all the mat- 40

*Stipulation Sending Back Master's Report for
Revision.*

ters and things therein contained, do stand, in all things, confirmed according to the true tenor and meaning thereof, unless the defendants shall, within eight days after service upon them of a copy of this rule, show good cause to the contrary.

Entered by Riker & Riker, solicitors of the
10 complainant.

By the Court.

Dated Mar. 19, 1915.

ROBERT H. MCADAMS,
Clerk.

A true copy.

ROBERT H. MCADAMS, Clerk.

**Stipulation Sending Back Master's
Report for Revision.**

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IN CHANCERY OF NEW JERSEY.

Between

ARTHUR BRISBANE,

Complainant,

and

JAMES A. SULLIVAN, *et als,*

Defendants.

On Bill, &c.

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It is hereby stipulated and agreed that the master's report filed in the above entitled cause be sent back to said master for revision and correction.

RIKER & RIKER,
Attorneys for Complainant.
RANDOLPH PERKINS,
Attorney for Defendant.

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Second Report of Master.

Second Report of Master.
IN CHANCERY OF NEW JERSEY.

Between

ARTHUR BRISBANE,

Complainant,

and

JAMES A. SULLIVAN, *et als,*

Defendants.

On Bill, &c. **10**

In pursuance of an order of this Court, made in the above entitled cause, bearing date on the 19th day of May, 1914, whereby it was ordered that it be referred to the subscriber, one of the special masters of this Court, to state the account between the parties hereto, and wherein the said complainant shall be charged with the value of the life estate of Dora E. Kasthuber and with all taxes paid by the defendants, or either of them, since the 15th day of October, 1910, and with interest from said date and with all expenses for necessary or proper upkeep and maintenance of said premises by said defendants during said term, and wherein the said defendants shall be charged with the rental value of said premises during said term, and wherein such special master should make such other allowances to the respective parties herein as should be equitable and just, having regard to the agreement to convey said premises on the 15th day of October, 1910, and to the fact that said premises have not been conveyed, nor the purchase price thereof paid; and that said master should make his report touching the matters in said order of reference referred to him with all convenient speed. **20**
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Second Report of Master.

I do hereby report to his Honor, the Chancellor, that I have been attended by Spaulding Frazer, Esquire, of counsel with the complainant, and by the defendant, James A. Sullivan, who appeared before me, pro se, on the 17th day of June, 1914, and on the 8th day of July, 1914, to which date the further taking of testimony in said cause
10 was adjourned, and that on said days the depositions of the said James A. Sullivan was taken before me:

That I have examined the matters referred to me by said order, and do find and report that the rights and interests of the respective parties are as follows:

1. That the complainant is chargeable with the value of a life estate of Dora E. Kastenhuber, who was of the age of forty-three years, the value
20 of which is \$4,800; that said life estate is equal to 58.997 per cent of the full value of said property, and is equal to \$2,831.89, with interest upon said sum at the rate of six per cent per annum from the 15th day of October, 1910, to the 1st day of May, 1915, amounting to the further sum of \$771.71; that said complainant is further chargeable with the fair value of repairs made to said premises by the defendants during the pendency of this cause, which sum I find to be the sum
30 of \$249.50, with interest upon said sum, at the rate of six per cent per annum, from the 15th day of October, 1910, to the 1st day of May, 1915, amounting to the further sum of \$67.99; making the total amount for which the said complainant is chargeable, the sum of \$3,921.09.

2. I further find that the complainant should be allowed as a part payment on account of said moneys the sum of \$200, the initial payment upon said contract, with interest from October 15th,
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Second Report of Master.

1910, to May 1st, 1915, amounting to the sum of \$54.30; together with the sum of \$2,000 upon a mortgage of like amount, covering the premises described in the bill of complaint, which mortgage, under the terms of the contract of sale of said premises, the said complainant assumed and agreed to pay; that he should further be allowed the fair rental value of the premises from the date at which the conveyance of said lands should, under the provisions of the contract for sale, have been made, until the date of this report, which rental value I find to be the sum of \$1,350, together with interest thereon at the rate of six per cent per annum, from the 15th day of October, 1910, to the 1st day of May, 1915, amounting to a further sum of \$174.94, leaving a balance due to said defendants, as of the date of this report, of the sum of \$141.85.

Annexed hereto and forming a part of this report is a statement showing the amounts for which the said complainant is chargeable, and the amounts to which he is entitled to claim credit.

All of which, as further directed in and by the said order, I report on this 1st day of May, 1915.

THOMAS L. RAYMOND,
Special Master in Chancery.

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Second Report of Master.

STATEMENT.

DEBIT.

Value of life interest	\$2,831.89	
Interest on same from Oct. 15th, 1910, to May 1st, 1915, at 6 per cent.....	771.71	
10 Repairs	249.50	
Interest on same from Oct. 15th, 1910, to May 1st, 1915, at 6 per cent.....	67.99	\$3,921.09

CREDIT.

Deposit on contract	\$ 200.00	
Interest on same from Oct. 15th, 1910, to May 1st, 1915, at 6 per cent.....	54.30	
20 Mortgage	2,000.00	
Rental value from Oct. 15th, 1910, to May 1st, 1915, 54 1/2 months, at \$25 a month	1,350.00	
Interest on one-half of the above amount from Oct. 15th, 1910, to May 1st, 1915, at 6 per cent.....	174.94	\$3,779.24
30 Debit Balance		\$141.85

1. We are allowed simple interest on value of life estate.

We have paid equivalent of compound interest on mortgage.

Master's Report.
IN CHANCERY OF NEW JERSEY.

Between :

ARTHUR BRISBANE,

Complainant,

and

JAMES A. SULLIVAN, et als.,

Defendants.

On Bill, &c.
 Master's
 Report. 10

I, Jacob L. Newman, Master in Chancery designated by the Court of Chancery on the seventh day of February, nineteen hundred and sixteen, in the above-entitled matter, to supervise the passing of the title to the premises mentioned in the Final Decree made herein on the above-mentioned date, in accordance with the terms thereof, and the payment of the amount found to be due in the manner therein specified, do hereby certify and report to his Honor, the Chancellor that

I find, by the annexed statement, that there is due to the defendants from the complainant, on the twenty-third day of February, nineteen hundred and sixteen, the date upon which the deed required to be tendered in accordance with the terms of said Decree was duly tendered, the sum of Thirty-one dollars and ninety-eight cents (\$31.98).

All of which is respectfully submitted this twenty-third day of February, nineteen hundred and sixteen.

JACOB L. NEWMAN,
 Master in Chancery of New Jersey.

Master's Report.

STATEMENT.

	Value of life interest on basis of Master's previous report. \$2831.00	
	Interest thereon from February 7, 1916 to February 23, 1916, 16 days	\$7.44
10	Repairs, as fixed in previous Master's Report	\$249.00
	Interest thereon from February 7, 1916 to February 23, 1916, 16 days .....	.66
		<hr/> \$8.10

Credit.

20	Interest on deposit on contract, \$200, from February 7, 1916, to February 23, 1916, 16 days	\$.57
	Intere't on one-half rental value, as fixed in previous Master's Report (\$1350), one-half be- ing \$675.00 from February 7, 1916, to February 23, 1916, 16 days	1.80
30	To which should be added in- terest on the sum of \$112.50, said sum being one-half of the rental value of said prop- erty for the period of nine months from May 1, 1915, interest having been calcu- lated as above set forth to February 7, 1916; interest on said sum of \$112.50 should be added for the period from February 7, 1916, to Februa- ry 23, 1916, being a period of 16 days .....	.30 2.10

Master's Report.

Rental value for 16 days on the basis fixed in previous Master's Report, at the rental value of \$25 per month.....	13.33	
	<u>\$16.00</u>	
	\$7.90	10
Credits	\$16.00	
Debits	8.10	
Balance as per final decree dat- ed February 7, 1916	\$39.88	
Balance as above statement	7.90	
	<u>\$31.98</u>	
	<u>\$16.00</u>	20

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Exceptions to Second Report of Master.
IN CHANCERY OF NEW JERSEY.

Between

ARTHUR BRISBANE,

Complainant,

and

JAMES A. SULLIVAN, et als.,

Defendants.

On Bill, &c. 10

Exceptions taken by the defendants in this cause to the report made herein on the first day of May, Nineteen hundred and fifteen by Thomas L. Raymond, Special Master in Chancery, to whom it was referred to state the account between the parties hereto by an order bearing date the nineteenth day of May, nineteen hundred and fourteen, touching the matters therein referred to him. 20

FIRST EXCEPTION: Said Master's report finds the value of the life estate of Dora E. Kastenhuber to be the sum of Twenty-eight hundred thirty-one dollars and eighty-nine cents, (\$2831.89) whereas in fact the value of said life estate is greater than said sum.

SECOND EXCEPTION: That by said Master's report the interest on the value of said life estate is reported to be Seven hundred seventy-one dollars and seventy-one cents (\$771.71) whereas in fact the interest is a much larger sum. 30

THIRD EXCEPTION: That by said Master's report said defendants are not credited with payments of interest on said mortgage.

FOURTH EXCEPTION: That by said Master's report said defendants are not credited with in- 40

Order Overruling Exception.

terest on the interest payments made on said mortgage.

10 FIFTH EXCEPTION: That by said Master's report the complainant is credited with one hundred seventy-four dollars and nine-four cents (\$174.94) interest on the rental value of said property, whereas no allowance of interest should be made to complainant on that account.

SIXTH EXCEPTION: These defendants except to all the interest allowances made to complainant.

In which said several matters and respects these expectants pray the judgment of this Court.

RANDOLPH PERKINS,
Solicitor for Defendant.

20 *Order Overruling Exception.*

IN CHANCERY OF NEW JERSEY.

Between

ARTHUR BRISBANE,

Complainant,

and

30 JAMES A. SULLIVAN, et als.,

Defendants.

On Bill, &c.

This matter being opened to the court by Riker & Riker, solicitors of complainant and Randolph Perkins, Esquire, solicitor of defendants, appearing in opposition thereto, and it appearing that exceptions have been taken by the defendants in the above entitled cause to report made herein on May 1, 1915, by Thomas L. Raymond, Special **40** Master in Chancery to whom it was referred to state the account between the parties hereto by

Final Decree.

an order bearing date May 19, 1914, touching the matters therein referred to him, and argument of counsel having been heard and due cause appearing therefrom :

It is on this 4th day of January, 1916, ordered that the said exceptions be and the same are hereby overruled, with costs to be paid by the defendants, and that said Special Master's Report be and the same hereby is in all things ratified and confirmed. **10**

E. R. WALKER,
C.

Respectfully advised.

J. E. HOWELL,

V. C.

A TRUE COPY

ROBERT H. McADAMS,
Clerk. **20**

Final Decree.**IN CHANCERY OF NEW JERSEY.**

Between

ARTHUR BRISBANE,

Complainant, } On Bill, &c. **30**

and

JAMES A. SULLIVAN, et als.,

Defendants. }

This cause coming on to be heard before the Chancellor upon bill, answer, replication and proofs in the presence of Adrian Riker, Esquire, of counsel with the complainant, and of Randolph Perkins, Esquire, of counsel with the defendants, **40**
and the pleadings and proofs having been read

Final Decree.

and the argument of counsel heard and considered, and it satisfactorily appearing to the court that by virtue of an agreement in writing duly made and executed by the defendant, James A. Sullivan, and one Bennett Milnor, on the 19th day of July, 1910, whereby the said James A. Sullivan did agree to convey by deed of full covenant and
10 warranty, free from all encumbrances, except a mortgage of two thousand dollars, held by Jennie Turner to the said Bennett Milnor, in consideration of the sum of forty-eight hundred dollars, on or before the 1st day of September next ensuing the date thereof, all that certain tract of land in said bill mentioned and described as follows, to wit:

Lands situate, lying and being in the City of Jersey City, in the County of Hudson and State of
20 New Jersey, known as lot "F", in the City Block 1865 on Fowler's Official Assessment Map of Jersey City, also known as No. 11 Wilks Street. Jersey City, being in dimension twenty-four feet, six inches, front and rear, by one hundred and nine feet in depth on one side and one hundred and seven feet in depth, on the other side; that said contract was thereafter, and prior to the time for the fulfillment thereof, as therein set forth, assigned by the said Bennett Milnor to the
30 complainant herein, of which assignment the said James A. Sullivan received due notice; and it further appearing that the said complainant has always been and still is ready and willing in all things to comply with the stipulations of the said articles of agreement on his part, and on the part of the said Bennett Milnor, and that the said defendant James A. Sullivan has refused to carry out said contract in accordance with its terms and his undertaking, alleging that by reason of
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certain defects in the title to said premises he is unable to carry out the terms of said contract; and it further appearing that the said complainant has prayed the order or decree of this court, directing the said James A. Sullivan to comply with and fulfill his said contract in all things on his part, and has tendered himself ready and willing to accept from the said James A. Sullivan such title as the said James A. Sullivan may be able to convey or cause to be conveyed to him, and has further tendered himself ready and willing to pay therefor the proportionate part of the purchase money agreed upon, to be ascertained by this court; and further appearing to the court that the title to said premises, so far as concerns the interest of the said James A. Sullivan therein, is held by the defendant Ella J. Sullivan in trust for the said James A. Sullivan, and that said interest of the said James A. Sullivan and of the said Ella J. Sullivan, as trustee for the said James A. Sullivan, is an estate during the lifetime of one Dora E. Kastenhuber, from whom, through mesne conveyances, the said premises were conveyed to the said Ella J. Sullivan, as trustee as aforesaid, and that the said Dora E. Kastenhuber was at the time fixed for the carrying out of said contract of the age of 43 years; and that the said defendants are unable to convey to the said complainant a title in fee to said premises, and that the said complainant is entitled to a conveyance of such interest in said premises as the said defendants are able to convey, and to a deduction from the purchase price equal to the difference between the value of the estate which the said defendants are able to convey and the estate which said James A. Sullivan agreed to convey;

And it further appearing that by an order of

Final Decree.

this court made in the above entitled cause, bearing date the 19th day of May, 1914, wherein it was ordered that said cause be referred to Thomas L. Raymond, Esquire, one of the special masters of this Court to state the account between the parties hereto, and wherein the said complainant shall be charged with the value of the life-estate
10 of Dora E. Kastenhuber, and with all taxes paid by the defendants, or either of them, since the 15th day of October, 1910, and with interest from said date, and with all expenses for necessary or proper upkeep and maintenance of said premises by said defendants during said term, and wherein the said defendants shall be charged with the rental value of said premises during said term, and wherein such special master should make such other allowances to the respective parties herein
20 as should be equitable and just, having regard to the agreement to convey said premises on the 15th day of October, 1910, and to the fact that said premises have not been conveyed nor the purchase price thereof paid; and that said master should make his report, touching the matters in said order of reference referred to him, with all convenient speed.

And it further appearing that in pursuance of the aforesaid order said master made his report on or about the 12th day of January, 1915; that subsequently exceptions were filed to said report by the defendants in said cause; and thereafter a stipulation was entered into between the solicitors of the complainant and of the defendants agreeing that said master's report filed in the above entitled cause be sent back to said master for revision and correction; that subsequently in pursuance thereof said master's report
30 was sent back to said master for revision and
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correction and his revised and corrected report, bearing date May 1st, 1915, in which said master reported that complainant was chargeable with a balance of \$141.85, was filed on or about May 7th, 1915, with the Clerk of this Court; that on May 20th, 1915, exceptions were filed to said special master's report by the above named defendants; that subsequently a hearing was had upon said exceptions and arguments of counsel of said defendants and complainant being heard: 10

It was on the 4th day of January, 1916, ordered that the exceptions filed by the defendants to said special master's report in the above stated cause be overruled, with costs to be paid by the defendants, and that said special master's report be in all things ratified and confirmed.

It is, on this seventh day of February, 1916, on motion of Riker & Riker, solicitors for the complainant, ORDERED, ADJUDGED AND DECREED that the said defendants, James A. Sullivan and Ella J. Sullivan, do, within thirty days from the date of the service of a certified copy of this decree upon the solicitor of the said defendants, convey by a good and sufficient deed unto the said complainant all of their respective right, title and interest in and to the premises hereinabove described, and that the said complainant do thereupon pay or tender to said defendants upon the execution and delivery of said deed the sum of \$141.85 (said sum being the balance reported by special master in his said report of May 1st, 1915, with which the complainant was chargeable) less the sum of \$101.97, (said last mentioned sum being the balance due to the complainant for the period from May 1st, 1915, the date of the said master's report to the date of this decree, being in effect an extension of said master's report along 20 30

Final Decree.

the same lines and in the same manner as said master's report was figured, down to the date of this decree), which equals the sum of \$39.88, said sum being the amount which said complainant is chargeable at the date of this decree; and that said complainant do also tender to the said defendants the deed above mentioned to be executed by said defendants as aforesaid; and that in the event of said defendants refusing or failing to execute and deliver a deed to the said premises as aforesaid, that the title to the aforesaid premises shall vest in said Arthur Brisbane, this complainant, in the same manner and to the same extent as though the deed above mentioned had been executed and delivered by said defendants; provided, however, that Jacob L. Newman Esquire, one of the masters of this Court be, and he hereby is designated by this Court to supervise the passing of the title to the above mentioned premises, and the payment of the amount found to be due in the manner herein specified.

And provided further, that said master shall have power and authority to extend and figure said master's report down to the date of the execution and delivery of said deed, or the last day when said deed should be delivered according to the terms of this decree; and that said report shall be figured and brought down to said date along the same lines, and in the same manner as the special master pursued in the making and figuring of his report dated May 1st, 1915. Provided further that the amount so found to be due by said master as aforesaid shall be taken and considered to be the amount due upon the execution and delivery of said deed, or the last date on which said deed should be executed and delivered by the terms of this decree.

Final Decree.

And it is further ORDERED, ADJUDGED AND DECREED that upon the making or tender of said payment and the delivery of said deed, the said contract shall be held and considered to have in all respects been fully performed to the like extent and with the like effect as though the said James A. Sullivan had conveyed said premises in accordance with the terms of said contract. 10

And it is further ORDERED, ADJUDGED AND DECREED that either party shall have the liberty to apply to this Court for further directions or relief in the premises as occasion shall require.

And it is further ORDERED, ADJUDGED AND DECREED that the said defendants do pay to the said complainant his costs of this suit incurred, and to be incurred, to be taxed, and that the said complainant do have execution therefor according to the practice of this Court. 20

And a counsel fee of (\$100.) one hundred dollars is hereby awarded to the solicitors of the said complainant which these defendants are hereby directed to pay.

Respectfully advised,

E. R. WALKER,
C.

J. E. HOWELL,
V. C.

A TRUE COPY
ROBERT H. McADAMS,
Clerk.

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Notice of Appeal.
IN CHANCERY OF NEW JERSEY.

Between

ARTHUR BRISBANE,

Complainant,

and

JAMES A. SULLIVAN, et al.,

Defendants.

On Bill, &c.
Notice
of Appeal.

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The defendants, James A. Sullivan, and Ella J. Sullivan, hereby appeal from the whole and every part of the final decree made in the above entitled cause on the seventh day of February, Nineteen Hundred and Sixteen, to the Court of Errors and Appeals in the last resort in all causes.
Dated February 18, 1916.

Solicitor for and of counsel with defendants.
I conceive there is good cause for appeal in above stated cause.

Of counsel with defendants.

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Petition of Appeal.**NEW JERSEY COURT OF ERRORS AND APPEALS.**

 Between

ARTHUR BRISBANE,

Complainant-Respondent.
and

JAMES A. SULLIVAN, et al.,

Defendants-Appellants.

10

TO THE HONORABLE

 Court of Errors and Appeals, in the Last
 Resort in all Causes:

 The petition of James A. Sullivan, and Ella J. Sullivan, the appellants in the above stated cause respectfully shows: 20

 That your petitioner finds themselves aggrieved by a final decree made in the Court of Chancery by his Honor, Edwin Robert Walker, Chancellor of the State of New Jersey, bearing date, the seventh day of February, nineteen hundred and sixteen, wherein the said Arthur Brisbane was complainant, and the said James A. Sullivan and Ella J. Sullivan, were defendants, in this respect, to wit; that the said decree ordered and adjudges that the said defendants, James A. Sullivan and Ella J. Sullivan, do within thirty days from the date of the service of a certified copy of this decree upon the solicitor of the said defendants, convey by a good and sufficient deed unto the said complainant all of their respective right, title and interest in and to the premises hereinabove described, and that the said com- 30 40

Petition of Appeal.

plainant do thereupon pay or tender to said defendants upon the execution and delivery of said deed the sum of \$141.85 (said sum being the balance reported by special master in his said report of May 1st, 1915, with which the complainant was chargeable) less the sum of \$101.97, (said last mentioned sum being the balance due
10 to the complainant for the period from May 1st, 1915, the date of the said master's report to the date of this decree, being in effect an extension of said master's report along the same lines and in the same manner as said master's report was figured, down to the date of this decree) which equals the sum of \$39.88 said sum being the amount with which said complainant is chargeable at the date of this decree; and that said complainant do also tender to the said defendants
20 the deed above mentioned to be executed by said defendants as aforesaid; and that in the event of said defendants refusing or failing to execute and deliver a deed to the said premises as aforesaid, that the title to the aforesaid premises shall vest in said Arthur Brisbane, this complainant, in the same manner and to the same extent as though the deed above mentioned had been executed and delivered by said defendants; provided, however,
30 that Jacob L. Lewman, Esquire, one of the masters in this Court be, and he hereby is designated by this Court to supervise the passing of the title to the above mentioned premises, and the payment of the amount found to be due in the manner herein specified.

That said master shall have power and authority to extend and figure said master's report down to the date of the execution and delivery of said deed, or the last day when said deed
40 should be delivered according to the terms of this

Petition of Appeal.

decree; and that said report shall be figured and brought down to said date along the same lines, and in the same manner as the special master pursued in making and figuring of his report dated May 1st, 1915. Provided further that the amount so found to be due by said master as aforesaid shall be taken and considered to be the amount due upon the execution and delivery of said deed, or the last date on which said deed should be executed and delivered by the terms of this decree. 10

That upon the making or tender of said payment and the delivery of said deed, the said contract shall be held and considered to have in all respects been fully performed to the like extent and with the like effect as though the said James A. Sullivan had conveyed said premises in accordance with the terms of said contract. 20

That either party shall have the liberty to apply to this Court for further directions or belief in the premises as occasion shall require.

That the said defendants do pay to the said complainant his costs of this suit incurred, and to be incurred, to be taxed, and that the said complainant do have execution therefor according to the practice of this Court.

And a counsel fee of (\$100.) one hundred dollars is hereby awarded to the solicitors of the said complainant which these defendants are hereby directed to pay. 30

And your petitioners humbly appeal, from the said decree of the Chancellor which decree as aforesaid, upon the ground that the same is erroneous, for that the said decree should have adjudged that the said defendants, James A. Sullivan and Ella J. Sullivan, should not make specific performance of any kind. 40

Answer to Petition of Appeal.

And your petitioners further pray that the said decree of the said Chancellor be reversed, set aside and for nothing holden in the particulars aforesaid, and that your petitioners may have such relief in the premises as to this honorable court shall seem meet.

10 Solicitor for and of counsel with Appellants.

Answer to Petition of Appeal.**NEW JERSEY COURT OF ERRORS AND APPEALS.**

Between

ARTHUR BRISBANE,

Complainant-Respondent,

20

and

JAMES A. SULLIVAN and ELLA J.
SULLIVAN,

Defendants-Appellants.

On Bill &c.
On Appeal &c.
Answer
to Petition
of Appeal.

30 The answer of the above named Arthur Brisbane, respondent, to the petition of appeal of the above named James A. Sullivan and Ella J. Sullivan, appellants.

40 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 final decree was made by the Court of Chancery of New Jersey, by his Honor Edwin Robert Walker, Chancellor of the State of New Jersey, bearing date the 7th day of February, 1916, wherein the said Arthur Brisbane was complainant, and the said James A. Sullivan and Ella J. Sullivan were defendants, in the cause for that purpose men-

tioned in said petition as therein stated; but as to the substance and form thereof this respondent prays to refer thereto when the same shall be produced. And this respondent is advised and believes that the said decree is agreeable to equity, and he prays that the same may be affirmed with costs to be adjudged to this respondent.

RIKER & RIKER,
Solicitors of Complainant-Respondent. 10

EDGAR H. PINNEO,
of Counsel.

Testimony.

Between

ARTHUR BRISBANE,

Complainant,

and

ELLA J. SULLIVAN, et al.,

Defendants.

20

Transcript of shorthand notes of testimony taken in the above entitled cause on May 5, 1913, at Chancery Chambers, Newark N. J., before Hon. James E. Howell, Vice-Chancellor.

30

A P P E A R A N C E S :

MESSRS. RIKER & RIKER for Complainant.

MR. RANDOLPH PERKINS for Defendants.

MR. RIKER: I offer first contract dated the 19th day of July, 1910, between James A. Sullivan and Bennett Milnor.,

Marked Exhibit C-1.

40

Bennett Milnor—Direct.

BENNETT MILNOR, SWORN.

DIRECT EXAMINATION BY MR. RIKER:

Q. I hand you exhibit C 1 in this case, pur-
 10 reporting to be a contract between James A.
 Sullivan and Bennett Milnor, and asked you
 whether the signature there, Bennett Milnor, is
 yours? A. Yes, sir.

Q. And are you the person, of course you are
 the person named in the contract? A. I am.

Q. I now draw your attention to an endorse-
 ment in typewriting on the last page of this con-
 tract, signed Bennett Milnor, but without date;
 is that your signature? A. Yes, it is.

Q. And what did you do with that contract? A.
 Gave it to Mr. Brisbane.

20 Q. Can you remember the date? A. It was
 some time in 1910, I believe.

Q. With reference to the date of the contract
 itself, 19th day of July, 1910, can you fix ap-
 proximately or with any definiteness when it was
 delivered? A. I think it was the same day, pos-
 sibly a day later.

MR. RIKER: I offer that assignment now.

30 Q. (BY MR. PERKINS) When you took this
 contract from Mr. Sullivan you were acting
 really as the agent of Mr. Brisbane, were you not?
 A. Yes, I was.

Q. (BY MR. PERKINS) That fact was not known
 to Mr. Sullivan at the time you entered into con-
 tract, was it? A. Yes, it was.

MR. RIKER: That is on the same paper.
 May the same mark stand for both?

THE COURT: Yes, let the whole thing go
 in together.

Bennett Milnor—Cross.

CROSS EXAMINATION BY MR. PERKINS:

Q. Did you know Mr. Sullivan at the time of the execution of this contract? A. I met Mr. Sullivan through his friend Mr. Gannon.

Q. Mr. Gannon was Mr. Sullivan's agent? A. Yes, personal friend of Mr. Sullivan's who told me Mr. Sullivan knew Mr. Brisbane was going to take the property. 10

MR. PERKINS: I move that that be stricken out.

THE COURT: Yes.

Q. That is the only reason you say that Mr. Sullivan knew Mr. Brisbane was your principal, that Mr. Gannon told you. A. I guess that is the only reason.

MR. PERKINS: Then I move that the answer 20 in which this witness said that Mr. Sullivan knew Mr. Brisbane was the principal be stricken out, because it is hearsay.

MR. RIKER: I don't object to its being stricken out; I don't think it is material one way or the other so far as the issue goes.

THE COURT: Then let it be stricken out.

MR. RIKER: I now offer a memorandum dated the 29th day of September, 1910, purporting to be signed James A. Sullivan, 30 Arthur Brisbane, by Robert M. Boyd, Jr. I have asked Mr. Sullivan if that is his signature and he says it is, and I now offer this extension of the time for the performance of the contract.

Marked exhibit C-2.

Emil J. Steinheuser—Direct.

EMIL J. STEINHEUSER, SWORN,

DIRECT EXAMINATION BY MR. RIKER:

Q. What position do you hold? A. Secretary to Mr. Arthur Brisbane.

Q. How long have you been his secretary? A. I have been with Mr. Brisbane about ten years.

10 Q. Had you any connection with the contract which is in evidence as exhibit C 1 in this case between Mr. James A. Sullivan and Bennett Milnor? A. Yes, sir.

Q. What did you do, if anything, in connection was it? A. I believe on the 14th day of October, 1910, Mr. Brisbane signed a check for \$1800.; on the 15th day of October I went to the American Exchange Bank and got eighteen one hundred 20 dollars bills legal currency of the United States, to close the contract as Mr. Brisbane's representative. I went to the office of Mr. Boyd in the Mail & Express Building, was there from 10:45 until 2 o'clock on Saturday October 15th. Mr. Sullivan or his representative did not appear to close that contract; thereupon the man in Mr. Boyd's office said "that it all, you can go back". Mr. Sullivan did not appear, or his representative.

30 Q. Where was this place, do you say? A. In the Evening Mail Building, Mr. Boyd's office.

Q. Do you know what number Broadway that is? A. I do not, but it is on the corner near Fulton Street.

Q. Office of Mr. Boyd. Now what else, if anything, or did you have anything else with you at the time? A. I had bond and mortgage which was the certificate put on that morning at the City Hall.

40 MR. PERKINS: I object to the testimony

Emil J. Steinheuser—Direct.

of a written instrument. If they want to prove this instrument they must produce it.

THE COURT: They are only identifying it now, mere identification this is. They will have to produce the instrument of course if they rely upon it.

Q. I show you a check of the American Exchange National Bank October 14, 1910, for \$1800, 10
purporting to be signed Arthur Brisbane. A. Yes, certified and signed by me as getting the money, on the back.

Q. And do you know Mr. Brisbane's signature?

A. I do.

Q. That is his signature? A. Yes.

Q. And you drew that money, did you? A. Yes.

Check offered in evidence and marked Ex- 20
hibit C-3.

Q. I now show you a paper purporting to be a bond from Arthur Brisbane to James A. Sullivan for \$1600, purporting to be signed Arthur Brisbane. Do know his signature? A. I do.

Q. And that is your signature as witness? A. Yes, sir.

Q. And also a paper purporting to be a mortgage, dated the 14th day of October, 1910, Arthur 30
Brisbane, unmarried, to James A. Sullivan, Jersey City, signature of Arthur Brisbane and seal. Is that Mr. Brisbane's signature, and purporting to be witnessed by you? A. Yes, sir.

Q. That is your signature? A. Yes, sir.

Q. Are these the papers which you have described as a bond and mortgage which you had with you on the 15th day of October? A. Yes, with the \$1800, with the certificate on the back.

Emil J. Steinheuser—Cross.
Arthur Brisbane—Direct.

MR. RIKER: I offer the bond and mortgage.

Bond marked exhibit C-4.

Mortgage marked exhibit C-5.

CROSS EXAMINATION BY MR. PERKINS:

10 Q. Have you had any other connection with this matter than the one just described? A. That is all.

ARTHUR BRISBANE, SWORN.

DIRECT EXAMINATION BY MR. RIKER:

Q. Where do you live? A. New York City.

20 Q. And will you state your business and occupation? A. I am a newspaper employee and President of the New York Evening Journal Publishing Company.

Q. You are the Editor also, are you not? A. I am the Editor, yes.

Q. And you are the complainant in this cause? A. Yes.

30 Q. What personal part did you have in this transaction in reference to this contract, which is C-1, contract with Mr. Sullivan? A. I had employed Mr. Milnor to purchase certain pieces of real estate for me in Jersey City, where I was investing; I asked him to find out what was for sale, and what prices and what terms, and to report to me what was offered to him, for my approval. He bought a number of pieces, some eighteen or twenty pieces of real estate in Jersey City for me, and, among other things, reported that this piece of property was for sale
40 at the price and on the terms stipulated in the contract.

Arthur Brisbane—Direct.

Q. Did you see the contract itself? A. I have seen it, yes. I told him to buy the property for me on those terms.

MR. PERKINS: I object to the conversation between this witness.

THE COURT: How do you prove the authority of an agent unless you can prove it this way. 10

MR. PERKINS: The contract that is set out in the bill does not purport to be the contract of this gentleman's agent.

THE COURT: No, but an agent negotiated the contract, and he is giving now the authority that he gave to his agent. I don't see any other way to prove the authority of an agent; of course it is hearsay, but must be one of the exceptions to the rule against hearsay 20 evidence, because there is no other way to prove it?

A. In addition I gave him the amount of money which he paid in cash on account of the contract, to pay it over for me; that was the preliminary connection with the contract, I contracting through my agent to purchase the property. Subsequently I sent, as the witness my secretary has testified, the necessary amount of money in bills for the fulfillment of the contract, and the bond and mortgage required for the fulfillment of the contract; and I went to the place myself on the 15th, as appointed, to make sure that my secretary had not failed to go there and take the money and fulfill the contract for me, and I saw Mr. Boyd, the gentleman who told me he regretted the man who had undertaken to sell the property had not appeared, and I asked the man at the office at the appointed place to note that my money and 40

Arthur Brisbane—Cross.

my bond and mortgage had been there, and he said that he had noted that.

Q. How long did you stay there on that occasion? A. A very short time, simply to find, I went in to find whether or not the matter had been concluded, but it had not been.

Q. What hour did you go in, do you remember?

10 A. I can't remember, but it was sometime along noon day, I should think; I think perhaps it may have been 2 o'clock, because I think my secretary had left; he had been notified that the time had passed and it was no use to stay longer. I then made inquiries as to the best methods to pursue, and I asked my attorney to take the steps necessary to compel the fulfillment of the contract, as I had done my share in the matter.

Q. That is all, is it, that you had to do with
20 the matter? A. That is all, to my recollection, yes. The only other connection was that the editor and owner of the Jersey City Journal said they were very anxious to get that entire block of property.

MR. PERKINS: I object.

THE COURT: that is hearsay.

CROSS EXAMINATION BY MR. PERKINS:

30 Q. You caused the title of the property to be searched, did you not? A. My attorney attended to that matter; Mr. Cowart of Freehold, attends to all my search matters, and I presume he made the usual investigations for me.

Q. Mr. Cowart is the gentleman you referred to in the previous question when you said you asked your attorney to take the necessary steps.

A. No, I asked my attorneys in New York City to take steps in that case.

40 Q. Mr. Cowart of Freehold did make a search

Arthur Brisbane—Cross.

on this property, didn't he? A. That I couldn't say; he represents me in my New Jersey real estate, which is very extensive, and as I contract to buy a piece of property I notify him to look into the title for me, and occasionally he investigates the title himself, and occasionally I believe he has it done by one of the title guaranty companies. 10

Q. Mr. Cowart made a report to you on this title, did he not? A. I assume that he did.

Q. Have you no definite knowledge about it? A. I could consult my letter files possibly; yes, I can state definitely, he told me that the title had defects which ought to be looked up; I presume that he looked them up.

Q. When did he tell you that the title had defects which ought to be looked up? A. I think when he—previous to the extension of the contract. 20

Q. Wasn't the object of the extensions to enable the defendant to correct the defects in the title?

A. The object was to extend the time of investigation. However, we were willing to take the title, because I appeared with the money to pay for it at the time stated.

Q. You mean you were willing to take a title such as was called for by the contract. A. Such as was called for by the contract, yes. 30

Q. But not such title as Mr. Cowart reported to you Mr. Sullivan had? A. No, I had instructions to my secretary to pay this amount of money in bills and take the title; I gave him no instructions to investigate the title or refuse it; I assumed his contract was valid and he would live up to the contract, which called for good title; I was ready to pay for it.

Q. That was the only kind of title you were 40

Arthur Brisbane—Cross.

ready to pay for that day, wasn't it? A. No; I don't say so; I had reason to believe that there was an effort to buy the property in another direction, in fact absolute knowledge of that fact.

MR. PERKINS: I object, that the answer is not responsive.

10

Q. (Question read)

THE COURT: That can be answered yes or no?

A. Yes.

Q. Do you mean the court to understand from your testimony that you were willing to pay the full consideration price for the defective title which Mr. Sullivan had for this property? A.

20 I was willing to pay that price for Mr. Sullivan's title such as he had at that time, not of course giving up my recourse to damages if that should appear proper, but I was willing to pay that for his title.

MR. RIKER: That is our case.

MR. PERKINS: I have served notice on the solicitor for the complainant to produce certain letters which give the history of the efforts to close this title, and the objections to it,—a letter dated October 26th, 1910, written by Mr. Sullivan to Robert M. Boyd.

30

MR. RIKER: I haven't that, Your Honor; that is a letter to Mr. Boyd.

THE COURT: It cannot be produced. If it is material and relevant you can introduce secondary evidence of its contents so far as this complaint is concerned.

MR. PERKINS: I didn't want to call Mr. Boyd here, take him away from his affairs; he was searching title for Mr. Cowart.

40

James A. Sullivan—Direct.

THE COURT: It may be that Mr. Riker will consent.

MR. RIKER: I have no objection so far as the proof,—that is to say, I assume it is a copy of a letter sent to Mr. Boyd.

JAMES A. SULLIVAN, SWORN.

10

DIRECT EXAMINATION BY MR. PERKINS:

Q. You are one of the defendants in this suit?

A. Yes.

Q. And the person who contracted to sell this property to Mr. Milnor? A. Yes.

Q. Previous to your contract with Mr. Milnor had you caused the title of the property to be searched by some attorney? A. I did.

20

MR. RIKER: I object; I don't think that is material.

MR. PERKINS: I am going to show that when Mr. Sullivan made the contract he made it in good faith, believing that he had the title.

MR. RIKER: I will assume that.

THE COURT: I think that would be presumed. Want of good faith, lack of good faith would be a matter for the other side to prove.

30

Q. At the time that you made this contract did you believe that you had good title to the property? A. I did.

Q. When was your attention first called to the fact that your title was not good? A. About the first of August in the year 1910 Mr. Cowart and a Mr. Petty called at my office and stated some facts which they said were sufficient to render

40

James A. Sullivan—Direct.

me unable to perform my contract according to the written terms.

Q. Who was with Mr. Cowart? A. A Mr. Petty, I believe from the office of Mr. Boyd in New York.

Q. Do you know who were searching the title for Mr. Brisbane? A. Really I think it was being
10 searched by both Mr. Cowart and Mr. Petty, they both seemed to have knowledge concerning the facts which they narrated to me.

Q. What did Mr. Cowart say to you with reference to your defective title?

MR. RIKER: I object.

THE COURT: I think I will take the answer.

(Question read.)

20 A. He said many things incidental to the defects which he stated, but his chief objection he said was that the title was a Martin Act title and that the proceedings were by way of perfecting the title where defective, and in his opinion it could not be remedied.

MR. RIKER: I think perhaps that is going a little further than your honor—

30 THE COURT: How does that effect the question? They say they are willing to take the title anyhow, with an abatement to damages, if there are any damages.

Q. When next after that did you see or communicate with Mr. Cowart with reference to title?

A. Why, I believe the next communication with regard to this matter was by way of Mr. Gannon, my agent in this matter, and he had an interview with—I had an interview with Mr. Boyd at New York.

James A. Sullivan—Direct.

Q. He is the person at whose office the contract required the contract to be closed, is he not? A. Yes.

THE COURT: Robert M. Boyd, of Montclair?

MR. PERKINS: Yes.

Q. Was Mr. Boyd making a search of the title? **10**
A. I believe he did it; yes.

Q. Do you know whether or not Mr. Boyd represented Mr. Brisbane in this purchase? A. He said he did.

THE COURT: That won't do.

Q. Did you have any correspondence with Mr. Boyd with reference to the passing of this title?
A. I believe I did.

Q. Did Mr. Boyd deliver to you at any time a **20**
list of the defects of the title? A. He did.

Q. I show you a letter bearing date New York October 7, 1910, addressed to M. James A. Sullivan, and purporting to be signed by Robert M. Boyd, Jr. What is that paper?

THE COURT: That is a letter written to you by Mr. Boyd?

A. Yes, sir.

30

Marked 1 for identification.

Q. Did you make a reply to that letter? A. I did.

Q. I show you a carbon copy of what purports to be a letter written on October 26 1910, to Robert M. Boyd; is that a copy of your reply?
A. Yes, sir.

Marked 2 for identification.

Q. I show you another letter dated New York **40**

James A. Sullivan—Direct.

October 28 1910, addressed to James A. Sullivan, and signed by Mr. Boyd; did you receive that from Mr. Boyd on or about its date? A. I did.

Marked 3 for identification.

Q. I show you copy of letter dated October 29, 1910; can you tell whether that is a letter written
10 by you to Mr. Cowart, a copy of letter? A. It is.

Offered in evidence and marked Exhibit D-1.

Q. I show you a letter dated November 1, 1910, addressed to you, signed Samuel Cowart; is that reply received to the last letter mentioned? A. It is.

20 Offered in evidence and marked Exhibit D-2.

Q. I show you copy of a letter dated December 6, 1910, addressed to Samuel Craig Cowart; is that not copy of letter sent in response to the last letter? A. It is.

Offered in evidence and marked Exhibit D-3.

Q. I show you a letter dated December 8, 1910,
30 Freehold, addressed to you, signed S. C. Cowart; is that the response you received to your letter? A. It is.

Offered in evidence and marked Exhibit D-4.

Q. I show you a carbon copy of letter dated December 12, 1910, addressed to Samuel C. Cowart; is that your response to Mr. Cowart's letter? A. Yes.

40

James A. Sullivan—Cross.

Offered in evidence and marked Exhibit
D-5.

Q. I show you letter dated December 13, 1910, addressed to you, signed by Mr. Cowart; is that in response to your last communication? A. It is.

Offered in evidence and marked Exhibit 10
D-6.

Q. Mr. Sullivan, I call your attention to this clause in the letter of December, 13, 1910, Exhibit D-6, written by Mr. Cowart, in which he said "Mr. Brisbane takes the position that you have made a misrepresentation of the title and he is even threatening criminal prosecution on this account." After the receipt of that letter did you write any further letters to Mr. Cowart? A. I don't think I did. 20

Q. What did you do then? A. I handed the matter over to my attorney.

Q. Who is he? A. Mr. Fielder.

Q. Did you afterwards mail some letters written by Mr. Fielder to Mr. Cowart? A. I did.

Q. I show you a letter, copy of a letter dated December 19, 1910, addressed Samuel C. Cowart, Esq. Can you tell me whether or not that is a copy of a letter signed by Mr. Fielder and mailed by you to Mr. Cowart? A. It is a copy. 30

MR. RIKER: On this offer I want to ask this witness a question.

CROSS EXAMINATION BY MR. RIKER:

Q. You don't mean to say you signed this letter?
A. No, sir.

Q. Did you read it before it went out? A. Yes, sir. 40

James A. Sullivan—Direct.

Q. Did you read all Mr. Fielder's letters before they went out? A. I did at that time.

Q. All of them? A. Yes.

Q. And you remember that this was sent out, do you? A. Yes, sir.

Q. Did you see this carbon copy? A. Yes.

Q. Did Mr. Fielder sign it himself or did you?
10 A. He did.

Q. And did you mail it? A. Yes.

Q. Sealed it? A. No, sir.

Q. Did you seal the letter? A. No, sir.

Q. Put the stamp on it? A. No, sir.

Q. Where did you mail it? A. Mailed it at the mail box in the Commercial Trust Building, Jersey City, New Jersey.

Q. Are you a stenographer? A. No, sir.

Q. Did you read it before you mailed it? A.
20 Yes.

FURTHER DIRECT EXAMINATION BY MR. PERKINS:

Q. At that time you were a clerk in Mr. Fielder's office, were you? A. I was.

Offered in evidence and marked Exhibit D-7.

Q. Do you know Mr. Cowart's signature? A.
30 I think I do.

Q. You have received many letters from him? A. Yes.

Q. I show you letter bearing date December 22 1910, addressed to Hon. James F. Fielder, and ask if that is Mr. Cowart's signature? A. Yes.

Q. Did that letter come to your possession on or about its date, December 22, 1910? A. Yes.

Letter offered in evidence.

40 MR. RIKER: We object to this letter as

James A. Sullivan—Direct.

being immaterial and irrelevant, and containing unauthorized statements by Mr. Cowart that do not bind this complainant; insofar as it assumes to bind this complainant, under the evidence in the cause, it cannot be admitted.

THE COURT: What do you say it tends to show? Don't read the letter; tell me what you think it tends to prove. 10

MR. PERKINS: This letter is one of a chain of letters, all of which related to the dealings between the complainant and defendant, previous to the institution of this suit. It bears evidence as to the attitude of the parties; it tends to give evidence of the fact that before the institution of the suit the complainant knew of the defects in the title, and therefore his bill is not filed bona fide. 20

MR. RIKER: We have admitted that; we have admitted that we knew of defects in this title; Mr. Sullivan said he knew of that, but was willing to take the title, notwithstanding the defects,—Mr. Brisbane, I mean.

THE COURT: I will take the letter, subject to your objection, and I will pick out of it such things as are relevant, and reject such as are not, I mean such as are competent, and reject such as are not competent. 30

Marked Exhibit D-8.

Q. I show you carbon copy of letter dated December 23 1910, addressed to Robert M. Boyd. Can you tell who signed that letter, and whether it was sent to Mr. Boyd? A. The letter was signed by James F. Fielder, addressed to Robert M. Boyd, New York City.

Q. Do you know who attended to the mailing of it? A. I did. 40

James A. Sullivan—Direct.

Offered for identification and marked 4 for identification.

Q. I show you a letter dated December 24 1910, addressed to Hon. James F. Fielder; whose signature is that attached to it? A. Robert M. Boyd, Jr.

10 Q. Was that a letter received on or about its date with reference to this transaction? A. Yes, sir.

Letter marked 5 for identification.

Q. I show you a copy of a letter bearing date December 27, 1910, addressed to Bennett Milnor; can you tell by whom the original of that letter was signed? A. Signed by James F. Fielder.

Q. And was it mailed to Mr. Milnor? A. Mailed to Mr. Milnor.

20 Q. By whom? A. By me.

Marked 6 for identification.

Q. I show you a carbon copy of a letter dated December 27, 1910, addressed Samuel C. Cowart; do you know by whom the original of that letter was signed? A. James F. Fielder.

Q. Do you know whether or not it was mailed to Mr. Cowart? A. It was mailed.

30 Q. By whom? A. By me.

Marked 7 for identification.

Q. I show you carbon copy of letter dated December 30, 1910, addressed to Samuel C. Cowart; do you know by whom the original of that was signed? A. Signed by James F. Fielder.

Q. And do you know whether or not it was mailed to Mr. Cowart? A. It was mailed to Mr. Cowart by me.

40 Marked 8 for identification.

James A. Sullivan—Direct.

Q. I show you original letter dated December 30, 1910, addressed James F. Fielder; whose signature is that attached to it? A. S. C. Cowart.

Q. Do you know whether that letter was received by Mr. Fielder on or about its date? A. It was.

Offered in evidence.

MR. RIKER: I make the same objection to its competency and relevancy, on the ground that Mr. Cowart was not authorized to represent the complainant, except in so far as making the abstract of title and report thereon; and this letter is dated December 30, after failure to perform the contract, and, therefore, it is irrelevant and immaterial on that ground. **10**

THE COURT: I will take it, subject to your objection. **20**

Marked Exhibit D-9.

Q. I show you an original letter bearing date December 31, 1910, addressed Hon. James F. Fielder; whose signature is attached to that letter? A. S. C. Cowart.

Q. Do you know whether or not that letter was received by Mr. Fielder shortly after its date? A. It was.

MR. PERKINS: I offer that in evidence. **30**

MR. RIKER: The same objection as to the last offer.

THE COURT: I will make the same ruling. Marked Exhibit D-10.

Q. I show you carbon copy of letter dated December 24 1911, addressed to Samuel C. Cowart; do you know who signed the original of that letter? A. James F. Fielder.

Q. Do you know whether or not it was mailed to Mr. Cowart? A. It was. **40**

James A. Sullivan—Direct.

Q. On or about its date? A. Yes.

Marked 9 for identification.

Q. I show you an original letter bearing date January 5 1911, addressed James F. Fielder; whose signature is attached to that letter? A. S. C. Cowart.

10 Q. Do you know whether or not that was received on or about its date by Mr. Fielder? A. It was.

MR. PERKINS: I offer that letter.

MR. RIKER: The same objection as to the last exhibit.

THE COURT: I will take it subject to the same ruling.

Marked Exhibit D-11.

20 Q. I show you copy of letter bearing date January 6 1911, addressed Samuel C. Cowart; who signed the original of that? A. James F. Fielder.

Q. Who mailed it, if any one? A. I did.

Q. To whom? A. To Samuel C. Cowart.

Q. On or about its date? A. Yes.

Marked 10 for identification.

30 Q. I show you original letter bearing date February 28 1911, addressed James F. Fielder; whose signature is attached to that letter? A. S. C. Cowart.

Q. Do you know whether or not it was received about its date by Mr. Fielder? A. It was.

MR. PERKINS: I offer it in evidence.

MR. RIKER: I make the same objection as to the last exhibit.

THE COURT: It is taken subject to the same ruling.

40 Marked Exhibit D-12.

James A. Sullivan—Direct.

MR. RIKER: May I put in one other suggestion on this objection? That is, it is dated on the day of filing the bill of complaint in this case.

MR. PERKINS: These letters constitute the chapter of the correspondence between you, Mr. Boyd, Mr. Cowart and Mr. Fielder, so far as you know, with reference to the passing of this title? A. Yes, sir. 10

THE COURT: Down to the time of the filing of the bill?

MR. PERKINS: Yes, sir.

Q. At any time from the first conversation that you had with Mr. Cowart respecting this title, down to the time of the filing of the bill, did any one deliver to you a copy of the objections to your title? 20

MR. RIKER: One moment.

THE COURT: Yes, or no.

A. No, sir.

Q. Did you receive a written statement of the objections to your title? A. I received them from Mr. Fielder.

MR. RIKER: One moment.

THE COURT: Yes or no. 30

A. I did indirectly.

Q. From whom? A. From Mr. Fielder.

Q. (By the Court.) He was your employer at the time? A. He was my employer and attorney at the time.

BY THE COURT:

Q. He was clerk in Mr. Fielder's office.

MR. PERKINS: Yes, and Mr. Fielder was attorney acting for him; each was employed by the other. 40

James A. Sullivan—Direct.

Q. I show you a paper which says at the top "Title No. 2315." Can you state whether or not that is the paper that you received? A. It is the paper which I received from Mr. Fielder.

MR. PERKINS: I will ask to have this marked for identification.

10 BY THE COURT:

Q. When did you receive it? A. I should think some time in 1910, the ending of 1910 or beginning of 1911; my mind is not clear as to the time.

Q. Do you know whether or not it was before October 15 1910, the date finally set for the closing of the title? A. I don't think it was.

BY THE COURT:

20 Q. When was it then with respect to the extended time?

MR. RIKER: That is the extended time.

A. I am not certain, because my mind is not clear about the time.

Marked No. 11 for identification.

30 Q. After the first conversation you had with Mr. Cowart, in which he pointed out defects in your title, did you make an effort to obtain from him a written statement of the defects of title? A. I did.

Q. Just what did you do? A. Well, I went over to Mr.—

MR. RIKER: I desire to make the objection that it is immaterial and irrelevant.

40 THE COURT: On the issue of the abandonment of the contract on the part of your client it seems to me that it would be material and relevant; they say that you abandoned the contract, that you refused to perform.

James A. Sullivan—Direct.

This evidence, as I understand its trend, is for the support of that issue on the side of the defendant.

Q. (Question Read.) A. I went to Boyd's office in company with Mr. Gannon, and I believe Mr. Milnor was there, and Mr. Petty and Mr. Boyd, and they said—

10

MR. RIKER: One moment.

BY THE COURT:

Q. Who said? A. Mr. Boyd.

MR. RIKER: Well, now.

Q. In Mr. Milnor's presence? A. Yes.

BY THE COURT:

Q. Mr. Milnor was there and was Mr. Cowart there? A. No.

20

THE COURT: Do you object?

MR. RIKER: I do, on the ground that this would appear to be hearsay, so far as the complainant is concerned.

THE COURT: You have not yet made any connection between Mr. Boyd and Mr. Brisbane.

MR. PERKINS: I didn't know the other side would take the attitude that Mr. Boyd was not authorized.

30

THE COURT: I will take the testimony, subject to your objection, and if they don't make the connection it will have to go out.

I think that would be admissible, statements made in the presence of Mr. Milnor, who is your predecessor in this equitable title, which he would have an opportunity to deny, and he is here for that purpose. I think that testimony is admissible; I will let it in.

40

James A. Sullivan—Direct.

^{title} Q. What was the conversation respecting this ~~title~~ that was had by you and Mr. Milnor or Mr. Boyd, or that group who were present together.

MR. RIKER: I want the record to identify the time of this conversation; I think I am entitled to that.

10 THE COURT: Yes; when did the conversation take place?

A. About the first of October.

BY THE COURT:

Q. What year? A. 1910.

BY THE COURT:

Q. And it was in Mr. Boyd's office? A. In Mr. Boyd's office; yes.

20 BY THE COURT:

Q. You have already said who were there; now you may tell what was said in Mr. Minor's presence.

Q. Were you there in accordance with the first extension of this contract which required you to close title first of October, 1910? A. Yes.

Q. Now, answer the court's question.

30 MR. RIKER: I now want to interpose the objection formally, that the conversation is incompetent, as not in the presence of the complainant and because by the very exhibit it appears that to the knowledge of this witness Mr. Milnor had parted with his interest in this contract, that the extension to October 1st having been accepted by Arthur Brisbane and not by Mr. Milnor—

THE COURT: I will take the answer.

40 A. Mr. Boyd told me that my title was in

James A. Sullivan—Direct.

such a condition that I would be unable to make a conveyance according to the terms of my contract; he stated several objections orally, but gave me nothing in writing.

Q. What were the objections which were stated orally?

THE COURT: You object to that also? 10

MR. RIKER: Yes, I object.

THE COURT: I overrule the objection.

A. He said that I only had a life estate in the property which I agreed to convey, and that I could not give a warranty deed; he also said that he had a decision reported in the Atlantic Reporter which made it practically impossible for me to convey by reason of the fact of a defect in the Martin Act proceedings. They were the two principal objections which I recall. 20

Q. Did Mr. Milnor say anything at the time?

A. I don't remember.

Q. Who was Mr. Boyd representing in that conversation?

MR. RIKER: One moment. I object.

THE COURT: How can you prove Mr. Boyd's authority by this witness?

Q. Was Mr. Boyd ever representing you? A. 30
No.

Q. Did Mr. Milnor say anything to you as to Mr. Boyd's representation?

MR. RIKER: I object, for the same reasons.

THE COURT: No; you can't prove the agency that way, Mr. Perkins; agency cannot be proved by the declarations of the agent made to third persons, because that would be importing into the case an unsworn statement. Mr. Boyd, the supposed agent, he 40

James A. Sullivan—Direct.

could tell what authority he had, or Mr. Brisbane, who is the supposed principal, could tell what authority he had; but his statement to this witness that he was agent, although it might go to the extent of declaring all his authority, would not be evidence.

10 Q. With whom did you next have a conversation respecting the defects in your title? A. With a Mr. Petty, from Mr. Boyd's office.

Q. Did you obtain from some source previous to your receipt of Exhibit 11 for identification any statement in writing from any of the searches of the title as to your title? A. No, sir.

Q. Previous to October 15, 1910, did you have any conversation with Mr. Cowart respecting whether or not you would pass the title? A. I did, about August.

20 Q. Are you now referring to the first conversation? A. The first conversation.

Q. Did you have any other conversation with Mr. Cowart about it? A. No, sir.

Q. Why did you not attend at the office of Mr. Boyd on the 15th of October 1910?

MR. RIKER: I object to that question, as that is inquiring for the psychological condition.

30 THE COURT: He did not attend; now if he did not attend because of something Mr. Brisbane's agent said to him, I suppose that will be proper; but if he did not attend because of something he had in his own mind, that would be improper.

Q. With whom did you have a conversation respecting this title just previous to the 15th of October 1910? A. I had a conversation with Mr. Milnor, with Mr. Gannon, with Mr. Boyd, and
40 with Mr. Petty.

James A. Sullivan—Direct.

Q. What did Mr. Milnor say about it?

MR. RIKER: The same objection to that as to the other conversation with Mr. Milnor.

THE COURT: I will take the answer, subject to the duty on the part of Mr. Sullivan to prove that Mr. Boyd was Mr. Brisbane's agent, and to the extent of his authority. 10

Q. (Question Read.) A. Mr. Milnor said that Mr. Brisbane was very angry because I couldn't give him the title which I contracted to convey; incidentally he said I was trying to defraud infants and orphans of their property.

Q. Did Mr. Milnor say anything about whether they would accept or reject the title?

MR. RIKER: I object.

THE COURT: Mr. Riker, Mr. Milnor at this time had transferred his title, hadn't he? 20

MR. RIKER: Yes.

MR. PERKINS: He never had any title; he was the agent of Mr. Brisbane.

THE COURT: How long, a day or two? He wasn't the agent of Mr. Brisbane after the contract had been made.

MR. PERKINS: Mr. Brisbane said Mr. Milnor was his agent, bought a number of properties there, described a large holding; that he was his agent for the purchasing of these properties. 30

THE COURT: I have very grave doubt about it; I will admit it, subject to your objection.

Q. (Question read.)

MR. RIKER: I want to interpose specifically objection to the form of the question; it is rather leading, and this is an attorney at law, 40

James A. Sullivan—Direct.

Mr. Sullivan, and I think it might be framed a little differently, and I object to it on that ground.

THE COURT: I never regard leading questions that relate to the nub of the case as having very much authority, or the answers to them having very much authority.

10 MR. PERKINS: Then strike the question out; if your Honor gives me that warning I will try it again.

Q. What further conversation had you with Mr. Milnor about this title?

MR. RIKER: The same objection.

A. I had no further conversation with Mr. Milnor.

20 Q. With whom did you have a conversation which finally terminated the matter, so far as your effort to convey was concerned? A. Why, that was the last meeting, the first of October, Mr. Boyd told me that my title was in such a condition that I could not convey according to the terms of his contract.

Q. Did you offer to convey what you had? A. Yes.

30 MR. RIKER: That got in before I could state my objection; it was leading, and ought to have been subject to the same objection.

MR. PERKINS: Strike it out.

THE COURT: Strike it out.

Q. State what you said to Mr. Boyd in Mr. Milnor's presence with reference to the title?

MR. RIKER: The same objection as to the other conversations.

40 THE COURT: Yes; all that is taken under the same objection.

James A. Sullivan—Cross.

A. I said that if the title was defective, and I could not convey by a full covenant warranty deed it was not my fault, because I had the title searched by Edward P. Stout, attorney at law, Jersey City, and he informed me at the time that I took title that I had the fee simple; I told Mr. Boyd I would do whatever I possibly could to remedy this matter and give him what I had, 10 what title I had.

Q. What did Mr. Boyd say to that? A. Mr. Boyd said he didn't think Mr. Brisbane would accept anything but a title which I contracted to convey.

CROSS EXAMINATION BY MR. RIKER:

Q. What was the date of this conversation that you have just been narrating? A. About the first 20 of October in the year 1910.

Q. About the first—how near? A. I couldn't exactly say.

Q. Wasn't it on the 29th day of September, 1910? A. It may have been.

Q. At that time you knew that, Mr. Sullivan, Mr. Brisbane had transferred his rights in the contract, or Mr. Milnor had transferred his right in the contract to Mr. Brisbane? A. No statement of that made to me.

Q. No statement was made? A. No statement 30 was made.

Q. When you secured extensions of the time for the performance of the contract, didn't you know that Mr. Brisbane was the holder of the contract? A. I had knowledge to infer that.

Q. And the first extension, which is on Exhibit C-1, and which I show to you, signed in the name of Arthur Brisbane, isn't it? A. It is signed Arthur Brisbane by S. C. Cowart, attorney. 40

James A. Sullivan—Cross.

Q. And that is your proper signature above it?

A. It is.

Q. What is the date of that. A. This was some time the 24th day of August.

Q. 1910? A. 1910.

Q. And you accepted the extension of the time of the performance on that date in the name of
10 Mr. Brisbane, didn't you? A. Believing that Mr. Cowart was representing Mr. Brisbane.

Q. And believing that Mr. Brisbane was the owner of the contract, didn't you? A. Yes.

Q. And I show you now Exhibit C-2 in this cause, which is the paper dated the 29th day of September, 1910; was that the date, or was it not, of the conversation which you detailed in your direct examination? A. It was.

Q. And that is signed by you? A. Yes.

20 Q. And in Mr. Brisbane's name by Robert M. Boyd, Jr.? A. Yes.

Q. Well, you say there was a definite refusal to pass the title at that time, accept the title? A. Yes.

Q. Why was it extended to the 15th of October then, if that is so? A. Mr. Boyd requested an extension, with the inference that I would be able to perfect the title according to the terms of my contract.

30 Q. Then the negotiation for the closing of this title and the acceptance of it by Mr. Brisbane were not ended on the 29th day of September, 1910? A. Not by that extension.

Q. And that is the last communication that you had with reference to this title, was it? A. No, sir.

Q. What? A. No, sir.

Q. The last conversation, didn't you testify in regard to it? A. Yes, conversation.

40 Q. And you were not present personally or in

James A. Sullivan—Cross.

any other way on the extended day, October 15?

A. No, sir.

Q. What occurred between the 29th day of September and the 15th day of October which occasioned your failure to appear on the 15th of October in accordance with the extended agreement? A. Why, Mr. Cowart and Mr. Petty called at the office of Brinckerhoff & Fielder, where I was a student at the time, and narrated objections. **10**

Q. Was this within your own knowledge? Were you there? A. I was present.

Q. Then you did have some subsequent conversation? A. This was the first of August, 1910, I am speaking of now.

Q. I was asking about the 29th day of September, 1910, and 15th day of October, 1910, what happened in that interval which caused you to fail to appear on the 15th day of October at the hour and place named to close this title? A. Why, my own knowledge; Mr. Boyd told me I could not convey according to the terms of my contract, and I thought it useless to go and attend to something which I didn't have, at the time appointed about the extension. **20**

Q. Did you acquire any further knowledge on that subject between the 29th day of September and 15th of October, 1910? A. I inquired to this extent: Could a man convey a fee simple when he didn't have it. **30**

Q. You inquired about that, did you? A. Yes; I was a student at the time in the New York Law School.

Q. You asked whether you could convey something you didn't have, did you? A. Yes.

Q. And you were told you could not? A. Yes.

Q. Isn't it a fact that in that interview you had a higher offer for this property? A. I had an offer; yes. **40**

James A. Sullivan—Re-Direct; Re-Cross.

Q. From whom? A. I don't know.

Q. Do you remember that the offer came from the owners of the Jersey City Journal? A. At that interval; no, sir.

Q. You don't know whether it did or not? A. No, sir, I do not.

10 Q. But you had an offer in that interval, had you? A. Yes, sir.

RE-DIRECT EXAMINATION BY MR. PERKINS:

Q. On the 15th of October, 1910, the time agreed for passing the title, had you knowledge of the contents of these letters which I have offered in evidence, which bear date previous to October 15? A. I believe I had.

20 Q. Had any subsequent offer for the property in question any influence on you in this transaction with Mr. Brisbane? A. No, sir.

Q. I show you carbon copy of letter dated January 16, 1911, addressed Samuel Cowart; do you know by whom the original of that was signed? A. Signed by James F. Fielder.

Q. Do you know whether or not it was mailed to Mr. Cowart about the time of its date? A. It was.

Marked 11 for identification.

30 Q. Did you know on October 15, 1910, whether or not Mr. Brisbane would accept the title that you had? A. I knew he would not.

Q. Did he, or any one for him, at any time offer to accept the title which you had? A. No, sir.

RE-CROSS EXAMINATION BY MR. RIKER:

40 Q. Mr. Sullivan, did you know that Mr. Brisbane and his secretary appeared at the place ap-

James A. Sullivan—Direct.

at the hour appointed
pointed on the 15th day of October prepared to close the transaction and take the deed? A. I did not.

Q. Then how do you know—you say that Mr. Brisbane was not prepared to take the title—how do you know that? A. I know because, he told me that, Mr. Boyd told me—

Q. Well, no. 10

THE COURT: You asked for it.

MR. RIKER: I know I did, and will be glad to get it, too.

A. Mr. Boyd told me at his office when I called upon him that my title was in such a condition that I could not convey according to the terms of the contract which I entered into.

Q. And Mr. Boyd had told you that, and that is your knowledge, is it? A. That is the know- 20
edge which Mr. Boyd gave me.

Q. And that is all your knowledge? A. Well, I started, as I say, while I was a student at the law school to find out if I could.

Q. You say you knew Mr. Brisbane would not take the title; I ask you if that is all the basis which you say is your knowledge that he wouldn't take it? A. Yes.

Q. The statement made by Mr. Boyd? A. Mr. 30
Boyd.

Q. Which you have already detailed in your testimony in this case? A. Yes.

FURTHER DIRECT EXAMINATION BY MR. PERKINS:

Q. In that answer are you having in mind the correspondence that took place in the case? A. Yes.

Q. Well, aside from conversation was any further thing acting on your mind as to whether or not Mr. Brisbane would take this title? A. I re- 40

James F. Cannon, Jr.—Direct.

ceived various letters from Mr. Cowart with reference to this matter.

BY THE COURT:

Q. Those are the letters that have been shown you here this morning? A. Yes; and Mr. Cowart and myself had been making some kind of arrangement to perfect the title.

10

MR. RIKER: I cannot quite understand whether this is conclusion from the letters or whether it is subsequent inquiry; if it is conclusion from the letters I object and ask that it be struck out, because the letters speak for themselves.

THE COURT: I think he is merely saying that in addition to the conversations he had with Mr. Boyd here are these letters.

20

MR. RIKER: So far as that goes they speak for themselves.

JAMES F. GANNON, JR., SWORN.

DIRECT EXAMINATION BY MR. PERKINS:

Q. What is your business? A. I am an attorney and counselor at law.

Q. Were you present in the office of Mr. Boyd in New York City on or about the 29th of September, 1910? A. I think that was the date, but I would like to refresh my memory from the contract.

30

Q. I show you exhibit C-2 and ask if that refreshes your memory with reference to it? A. Yes, it does; it was on the 29th day of September.

Q. Were you present at the time this paper, Exhibit C-2, was signed? A. Yes.

Q. Who were present? A. Mr. Milnor, Mr. Sullivan, Mr. Cowart, I think Mr. Petty, and myself;

40

James F. Cannon, Jr.—Direct.

Mr. Cowart is the attorney, with offices at two hundred and something Broadway.

Q. Mr. Boyd? A. Mr. Boyd, that is the man I mean; I know his office is on Broadway right near Dey street there.

Q. (BY MR. RIKER) Mr. Cowart? A. Mr. Cowart—Mr. Boyd.

Q. Do you know Mr. Cowart? A. I don't think I do. 10

Q. Do you know Mr. Robert M. Boyd, Jr.? A. Yes, I would know him.

Q. Can't you state to the court he was present there; who was it, was it Mr. Boyd or Mr. Cowart?

A. It was in Mr. Boyd's office; it was Mr. Boyd.

Q. What conversation was there there with reference to the passing of this title?

MR. RIKER: The same objection as to this line of testimony from the other witnesses. 20

THE COURT: I will make the same ruling about it.

A. The conversation was to the effect—

Q. (BY THE COURT) State what he said. A. Mr. Boyd stated several objections that I do not exactly recollect, concerning the title, but they had to do with some Martin Act proceedings, and he said that he could not accept the title, that Mr. Sullivan could not convey what he had agreed to convey. 30

Q. What was said by Mr. Sullivan? A. Mr. Sullivan said that he was willing to convey all that he had, and that he had had the title examined, and that if he knew he had a bad title he would not have contracted to convey it.

Q. What, if anything, was said by Mr. Milnor? A. Well, I can't state that I know Mr. Milnor and I were brokers in the transaction and we had conversations between ourselves in regard to commission. 40

James F. Cannon, Jr.—Cross.

CROSS EXAMINATION BY MR. RIKER:

Q. You were broker, real estate broker, do you mean, in this transaction? A. I was real estate broker in this transaction.

Q. Representing whom? A. Mr. Sullivan.

Q. And you knew Mr. Milnor was the broker representing the purchaser, Mr. Brisbane? A. I
10 understood that.

Q. Did you communicate that fact to Mr. Sullivan? A. No, I did not.

Q. Do you know whether he knew it? A. He didn't know it when the contract was signed by Mr. Milnor; I did not communicate it then, because he had placed the property with me at a certain figure, and I thought if he thought Brisbane was buying it he possibly might want more money.

Q. You knew that Brisbane was buying it?
20 A. I knew that from Mr. Milnor.

Q. What? A. I knew that from Mr. Milnor.

Q. You say you did not communicate that to Mr. Sullivan? A. No.

Q. At any time? A. At no time previous to the execution of the original contract.

Q. That is the date fixed in the original contract for its execution, do you mean that? A. No; the date that it was executed.

Q. Oh, the actual execution of this contract, C-1,
30 is that what you mean? A. Yes.

THE COURT: And not the day fixed for its performance.

Q. Not the day fixed for its performance? A. No, not the day fixed for its performance.

Q. Will you look at C-1 and refresh your memory from it if you can, as to the date when it was executed? A. Apparently the 19th of July,
40 1910.

James F. Cannon, Jr.—Cross.

Q. Does that correspond with your recollection?

A. Well, if I didn't have that to refresh my memory I would not be able to state the exact date that the contract was executed.

Q. And how shortly after the execution of the contract did you advise Mr. Sullivan that Mr. Brisbane was the purchaser? A. I can't state that. **10**

Q. Well, approximately, give us any idea? A. I haven't any recollection.

Q. You did advise him, however? A. I don't know whether I did, or whether Mr. Milnor did; I am confused on that point, because I knew Mr. Brisbane was buying the property, and whether I said in so many words to Sullivan subsequent to the execution of the contract that he was buying it I don't quite remember.

Q. I think you have been shown Exhibit C-2, **20** which is the extension agreement. A. Yes.

Q. And fixed the date of your meeting at Mr. Boyd's office by the date on that, did you not? A. Yes, partly by that.

Q. Did you see that instrument executed, C-2, at that time? A. Well, I can't swear that I saw this exact instrument executed; I think I did.

Q. Did you have the time for the performance of the contract and the delivery of the deed so extended to the 15th of October? A. I know there **30** was an extension agreement executed.

Arthur Brisbane, Recalled—Direct, Cross.
ARTHUR BRISBANE, Recalled.

DIRECT EXAMINATION BY MR. RIKER:

Q. Do you know Mr. Robert M. Boyd, Jr.? A. No, sir.

Q. Ever have any transactions with him in connection with this Sullivan contract? A. Except his investigating the title for the title insuring company.

Q. Did you ever see him? A. Not to my knowledge; no.

Q. And I think you testified that you employed Mr. Samuel C. Cowart, of Freehold, as your representative to search this title? A. Why, Mr. Cowart I retain on an annual fee to look after my interests in New Jersey, and I just let him know of everything that happens in the State to look after it; in this case he was instructed to look into the title and see if it was good, and report to me.

Q. Any further instruction to him? A. No.

Q. Did you authorize him to refuse the title? A. No; on the contrary, I rejected his advice constantly on that score.

Q. Did you authorize him as your agent to refuse to accept the deed? A. I did not; on the contrary, I instructed him to get me a deed and appoint a time for me to pay for it.

CROSS EXAMINATION BY MR. PERKINS:

Q. Did Mr. Cowart report to you that the title of Mr. Sullivan was defective? A. He reported to me that there were defects, yes.

Q. Do you remember when you received that report? A. I couldn't give dates; from time to time he said he was looking into the title; I don't think he ever said the title was positively defective, but he told me there were defects, difficulties.

Arthur Brisbane, Recalled—Cross.

Q. Do you know for whom the title company was searching the property? A. The title company was searching, I believe, at his request.

Q. (BY THE COURT) For what? A. The title company was searching with the idea of insuring the title; they insured other titles for me.

Q. Which title company was it? A. I believe it is called the Montclair Trust Company, is my 10 impression.

Q. They were searching the title for the purpose of insuring you? A. To see whether they would put on an insurance policy, yes.

Q. And do you know who represented the title company in the searching of the title? A. I believe Boyd, I believe they were his client.

Q. You say you instructed Mr. Cowart to take a deed, notwithstanding the defects? A. I did not instruct Mr. Cowart to take a deed; I sent 20 my secretary to take a deed, and gave him the cash to pay for it.

Q. I am not speaking of the hour at Mr. Boyd's office on October 15, 1910; I am speaking about the instructions to Cowart? A. The instructions to Mr. Cowart were to investigate and report to me as quick as possible, because he has no authority in declining, as my agent, he could not accept and could not decline.

Q. At the time you filed this bill you knew Mr. 30 Sullivan did not have the fee simple of the property, did you not? A. No, I didn't know the details; I understood the title was defective in some way, but made up my mind to take what he had; I assumed he was not selling what he did not possess, and I sent the money to take it when the day came.

Q. So when your agent went to Mr. Boyd's office on the 15th of October, 1910, with the money and bond and mortgage you expected to get a full 40

Arthur Brisbane, Recalled—Cross.

covenant warranty deed from Mr. Sullivan? A. I expected Mr. Sullivan to fulfill the contract and give me what he could give, of course.

Q. Under his contract? A. Under his contract, yes, sell me that property.

Q. Were you familiar with the various bills of complaint you filed in this cause? A. No, sir; I
10 instructed my attorneys to bring suit to compel fulfillment of this contract, and to take for me at that price whatever title Mr. Sullivan had; those were my instructions.

Q. So you are not familiar with the various bills of complaint you filed? A. No, sir; my attorneys attended to that.

Q. They had authority to file such bills? A. They had authority to exercise their legal knowl-
20 edge to get me my real estate in return for my money.

Q. Your real estate holdings are very large in New Jersey, aren't they? A. Somewhat extensive.

Q. And you do not follow the details of the title in any of these cases? A. At the last moment I do, and I use my judgment as to what I want to buy and what I don't.

Q. Did you give your secretary instructions as to what he should do if Mr. Sullivan should attempt to deliver a deed which did not convey the
30 fee of this property? A. My instructions to my secretary were to deliver this money and bond and mortgage to Mr. Sullivan in return for a deed he would give me. My secretary knows nothing about real estate or deeds and could not examine them.

Q. This title was closed at Mr. Boyd's office, was it not? A. Yes, sir.

Q. Who was present there representing you in a legal capacity? A. There was no one represent-
40 ing me in a legal capacity; the time had come to close the title, and I sent money to pay for it.

Arthur Brisbane, Recalled—Cross.

Q. Wasn't anybody there to examine the deed that Mr. Sullivan might offer, so far as its execution was concerned? A. No; I had no lawyer there; I was to receive the deed that day, and sent money to pay for it.

Q. You were relying on the Trust Company? A. No; I was relying on Mr. Sullivan to fulfill his contract, and knowing if he gave me a deed that was of no value I had my recourse at law for obtaining money under false pretences. 10

Q. Through Mr. Cowart you did employ the title company to make search of this title? A. When I buy real estate I usually—

THE COURT: Answer the question.

A. No, I did not.

Q. It wasn't your intention to take title without any search or examination? A. It was my intention to have the Montclair Trust Company issue a policy guaranteeing the title. 20

Q. And that was the kind of title that you were going to pay your money and give your bond and mortgage for? A. Not necessarily; I had given no such instructions; I determined to take Mr. Sullivan's title in return for my money, because I had convinced myself he would give me good title, and he had reasons for giving it, inasmuch as he had signed this contract. 30

Q. So when you sent your secretary there it was with the full expectation you on your part would perform your agreement and Mr. Sullivan on his part would perform his agreement? A. To tell the truth, I had no very definite idea what Mr. Sullivan would do, but I was there with the money.

Q. But it was with the expectation on your part that he would fulfill his part? A. Yes, I assumed that he would, naturally. 40

Adjourned to June 16, 1913.

Samuel C. Cowart—Direct.

December, 17, 1913.

Between

ARTHUR BRISBANE,

Complainant,

and

^{ELLA}
~~EDNA~~ J. SULLIVAN, *et al,*

Defendants.

Continuation of examination, pursuant to adjournment, on December 17, 1913, at Chancery Chambers, Newark, New Jersey, in the presence of the court and counsel as before.

Letters marked D-1 to D-11 for identification offered in evidence and marked Exhibits D-13, D-14, D-15, D-16, D-17, D-18, D-19, D-20, D-21, D-22, D-23 and D-24.

SAMUEL C. COWART, SWORN.

DIRECT EXAMINATION BY MR. PERKINS:

Q. You are an attorney and counselor at law of the Supreme Court of this State? A. Yes.

Q. And you were engaged by Mr. Brisbane to examine the title of James A. Sullivan to property on Wilkes street, Jersey City? A. Yes. I was not engaged to examine the title; I was engaged to have it passed upon, and I had the Montclair Trust Company to make a search for the purpose of issuing a policy on the property.

Q. You received a report from the Trust Company, did you not? A. Yes, sir.

Q. Stating certain objections to the title? A. Yes. I have that report here.

Q. Will you please produce that report? A. Yes.

Samuel C. Cowart—Direct.

Q. This paper which you have produced is the report of the Montclair Trust Company on the title of Sullivan to the lot on Wilkes street involved in this suit, is that right? A. Yes, sir.

Q. Did you report the condition of that title to Mr. Brisbane?

MR. RIKER: The objection that occurs to me is whether or not we are not getting within the realm of relations of client and attorney. 10

THE COURT: Not yet.

Question withdrawn.

Q. (Question read.)

THE COURT: What do you say to that?

A. I reported in general terms that the title was so defective, as I recollect it, that it could not be immediately closed. I have forgotten now the exact report, but it was a general report. 20

Q. (BY THE COURT) Did not go into the details?

A. I did not go into the details.

Q. You did go into the details with Mr. Sullivan, did you, or with Governor Fielder?

MR. RIKER: Yes or no.

A. I went into the details with Mr. Sullivan, and also with Mr. Boyd, who represented the Montclair Trust Company, Mr. Robert M. Boyd. 30

Q. Didn't you give to Mr. Sullivan a copy of that report of the Montclair Trust Company?

A. I don't know whether I gave him a full copy; I furnished him with the main data that was involved in that report, as I recollect.

Q. (BY THE COURT) Furnished to Mr. Boyd?

A. To Mr. Sullivan, I think.

Q. (BY THE COURT) Oh, to Mr. Sullivan? A. I think I did.

Q. With the view of his clearing up the title? 40

A. I suppose that was the purpose, yes, sir. Mr.

Samuel C. Cowart—Direct.

Boyd had furnished me with this report, and then Mr. Sullivan made inquiry, made further inquiry as to what our objections were, and then I think I gave him a memorandum of these objections, of some of the objections.

Q. I show you a paper which is marked 11 for identification and Exhibit D-24; will you please
10 see if that is not the list of objections which you gave to Mr. Sullivan? A. That seems to be a list that was prepared in my office, yes, sir, which set forth the objections to the Sullivan title.

THE COURT: I suppose the paper shows itself; it is an exhibit in the cause.

A. I am quite sure that that was prepared in my office.

Q. Did the Montclair Trust Company ever give
20 you a certificate on this title?

MR. RIKER: One moment. I don't think that is material.

THE COURT: What difference does it make, Mr. Perkins, whether they did or did not?

MR. PERKINS: It is partially cumulative, on the theory that they knew of the title, of the character, before they filed their bill for specific performance.

THE COURT: Mr. Brisbane knew the character of the defects?
30

MR. PERKINS: Yes.

THE COURT: For that purpose, if that is one of the points in the case, why is not the evidence admissible, Mr. Riker?

MR. RIKER: As a part of the chain of proof that Mr. Brisbane knew it?

THE COURT: Yes. If that is an issue in the cause, whether Mr. Brisbane knew it or not, knew of the defects in the title, if that
40 is one of the issues in the cause, why isn't

Samuel C. Cowart—Direct.

this evidence proper? I cannot say whether it is one of the issues in the case or not because I haven't thought of this since last May, and I don't remember much about the issues; but if that is one of the issues that I have got to decide why isn't the question material and relevant?

MR. RIKER: It does not seem to me that a 10
communication to Mr. Cowart, with refusal to give certificate, is evidential knowledge on the part of Mr. Brisbane. There isn't any question but what the defects were there.

THE COURT: The question is whether the Montclair Trust Company gave a certificate. I suppose that means clean bill of health.

MR. PERKINS: Yes.

THE COURT: To Mr. Cowart. I think I will admit it. 20

A. They did not give me any certificate, and I would like to explain, Vice Chancellor, this further, that when I informed Mr. Brisbane that there were defects in the title I did not give him the particulars that are mentioned in this report of the trust company; I gave him no particulars, I simply said there were defects that prevented my closing.

Q. (BY THE COURT) When you say that the Montclair Trust Company did not give you a certificate what do you have in mind as the meaning of the word certificate? A. Why, a policy of insurance. 30

Q. (BY THE COURT) That is guaranteeing the title? A. Guaranteeing the title.

Q. You communicated with the Montclair Trust Company requesting them to search the title and insure it, did you not? A. I communicated with Mr. Boyd, who was the attorney for the Montclair 40

Samuel C. Cowart—Direct.

Trust Company, and through whom I had all my negotiations.

Q. And requested him to search the title? A. For the purpose of issuing a title policy.

Q. Do you know about the date of the final rejection of the title by the Montclair Trust Company? A. They never finally rejected the title; 10 they simply stated on account of these defects that they did not issue the policy, and the matter was left in that shape, that we wanted a clean title, and wanted Mr. Sullivan to clean up the title so that he could give us a good deed for the property.

Q. You mean the kind of deed that was called for in the contract? A. Yes, sir.

Q. Mr. Cowart, you are the gentleman who executed one of the continuances endorsed on the 20 contract, were you not? A. Yes.

Q. And what was the object of continuing the time of closing? A. For the purpose of giving Mr. Sullivan an opportunity to clear the title and make the conveyance, continuing to October first.

Q. Who were present at the time you signed the continuance which I showed you endorsed on the original contract? A. My impression is that a lawyer by the name of James F. Gannon was present, although I am not sure; Mr. Sullivan 30 gave me his card, I think, at that time, or else Mr. Gannon gave me his card at that time, and I have his card here.

Q. What did you state to Mr. Gannon about the title?

MR. RIKER: I object.

THE COURT: Who is Mr. Gannon?

MR. PERKINS: He was the agent of Mr. Sullivan for the sale of the property; he was a witness in this cause.

Samuel C. Cowart—Direct.

THE COURT: How far did his authority extend, does that appear? If his authority extended to the closing of the title and final payment of the money, so that he may be said to have been a General Agent of the whole transaction from beginning to end, then perhaps you might introduce that; but if Mr. Gannon has a limited agency you cannot go beyond the scope of that limitation. I don't remember what Mr. Gannon said about himself. 10

MR. PERKINS: I don't think it was a general agency, your honor.

THE COURT: Then I think your question would not be admissible.

Q. You were not willing to accept the title that Sullivan had at the time you signed this extension? A. I insisted on his keeping his agreement of giving to Mr. Brisbane a warranty deed under the terms of his agreement, and free of all encumbrances, except whatever encumbrance was provided for in the agreement. 20

MR. PERKINS: I offer the report made to Mr. Cowart by the Montclair Trust Company, setting forth the defects of title to Sullivan of the premises in question.

Marked Exhibit D-25. 30

EXAMINED BY MR. RIKER as his own witness.

Q. Mr. Cowart, did you, on behalf of Mr. Brisbane, ever abandon the contract between Mr. Sullivan and Mr. Brisbane?

MR. PERKINS: I object to that. That is purely a conclusion on the part of the witness.

THE COURT: It is cross examination. 40

Samuel C. Cowart—Cross.

MR. PERKINS: He is asking for the witness' conclusion as to whether he ever abandoned this contract; that is something that occurs in the witness's mind. Whatever this witness did or said is evidence, they are facts.

THE COURT: This is proper cross examination. If the witness don't answer as you think he ought to you can straighten it out afterwards.

A. I never did.

Q. In so comporting yourself with reference to this contract were you or were you not following the instructions given to you by Mr. Brisbane?

A. Yes. Mr. Brisbane kept insisting that he wanted that property, and he wanted the agreement fulfilled, and I therefore kept insisting that the title should be closed and the sale should be closed.

Q. How long did that insistment continue? A. Well, I kept receiving letters from Mr. Brisbane as late as February, I think, 1911.

CROSS EXAMINATION BY MR. PERKINS:

Q. You wanted the title closed on the basis of the contract, did you not? A. I insisted that he should keep his agreement.

Q. That the title that Mr. Sullivan was to deliver was to be a title that was marketable, free from all encumbrances, except those mentioned in the contract?

THE COURT: I think the witness has already said that, hasn't he?

A. I did insist that he should keep his agreement.

Complainant's counsel offers in evidence certified copy of a deed made by William T.

Exhibit C-1.

Kastenhuber and wife to James Billington,
dated April 13, 1910.

Marked Exhibit C-6.

Complainant's counsel also offers in evidence a deed of conveyance from James Billington and wife to Ella J. Sullivan, bearing date June 29, 1910.

Marked Exhibit C-7. 10

Complainant's counsel offers in evidence certified copy of the will of James H. N. Wilks, bearing date June 28, 1889.

Marked Exhibit C-8.

"Exhibit C-1."

ARTICLES OF AGREEMENT, made the 19th day of July in the year of our Lord One Thousand Nine Hundred and Ten.

BETWEEN JAMES A. SULLIVAN, of the City of Jersey City, in the County of Hudson and the State of New Jersey, party of the First Part: 20
And BENNETT MILNOR of the Borough of Manhattan, in the County of New York, and State of New York, party of the Second Part:

WITNESSETH, That the said party of the first part, for and in consideration of the sum of Four Thousand Eight Hundred (4,800.00) Dollars to be paid and satisfied as hereinafter mentioned, and also in consideration of the covenants and agreements hereinafter mentioned, made and entered into by the said party of the second part, doth agree to and with the said party of the second part, that he the said party of the first part will, well and sufficiently convey to the said party of the second part, his heirs and assigns, by deed of full covenant and warranty free from all encumbrance except a mortgage of Two Thousand (\$2,000.00) Dollars held by Jennie Turner, and 30
40

Exhibit C-1.

due July 2, 1911, on or before the First day of September next ensuing the date hereof, all that lot, tract, or parcel, of land and premises, hereinafter particularly described, situate, lying and being in the City of Jersey City, in the County of Hudson and State of New Jersey.

Known as Lot "F" in City Block 1865 on
 10 Fowler's Official Assessment Map of Jersey City, also known as No. 11 Wilks Street, Jersey City, New Jersey, being in dimension twenty-four feet six inches front and rear by One Hundred and nine feet in depth on one side and One Hundred and seven feet in depth on the other side.

Being all of the premises conveyed to grantor by James Billington in the month of June, 1910.

It is mutually understood and agreed by and
 20 between the parties hereto that the second mortgage hereinafter mentioned, shall contain a clause subordinating it to any new mortgage which may be placed on the property during the currency of said second mortgage after the present first mortgage is discharged providing, however, that said new mortgage shall not exceed the sum of Two Thousand (\$2,000) Dollars.

AND the said Bennett Milnor for his heirs, executors and administrators, doth covenant,
 30 promise and agree to and with the said party of the first part, his heirs, executors and administrators and assigns, that he the said party of the second part, will pay and satisfy or cause to be paid and satisfied, unto the said party of the first part the said sum of Four Thousand Eight Hundred (\$4,800.00) Dollars, as for the purchase money of the foregoing described land and premises, in the following manner, that is to say:

40 \$200.00 On receipt of this contract, receipt of which is hereby acknowledged.

Exhibit C-1.

2,000.00 By taking the property subject to a mortgage for like amount now on said premises as aforementioned.

800.00 By the party of the second part delivering to the party of the first part a purchase money second mortgage for like amount to be secured by his bond, which mortgage is to run for the term of two years and bear interest at the rate of six (6%) per cent, payable semi-annually, privilege, however, to the party of the second part to pay all or any part of the said mortgage at any time before date of maturity, providing he gives the party of the first part a three days' notice of his intention so to do. 10

1,800.00 Balance in cash on passing of title and delivery of deed.

4,800.00 Total. 20

AND IT IS FURTHER AGREED, by the parties to these presents, that the said party of the second part, his heirs and assigns, may enter into and upon the said land and premises on or before the First day of September next ensuing the date hereof and from thence take the rents, issues and profits to his and their use.

AND IT IS FURTHER AGREED, by the parties, hereto, that the said Deed of Full covenant and warranty shall be delivered and received at the office of Robert M. Boyd, Jr., 203 Broadway, N. Y. 30

Between the hours of 11 in the fore noon and two o'clock in the afternoon on the said First day of September next ensuing the date thereof.

This property being sold subject to the monthly rights of the tenants in possession.

IN WITNESS WHEREOF, the said parties have hereunto interchangeably set their hands and seals the day and year first above mentioned. 40

Exhibit C-1.

Signed, Sealed and Delivered }
 in the presence of }

JAMES A. SULLIVAN (L. S.)
 BENNETT MILNOR (L. S.)

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

10

BE IT REMEMBERED, That on this twenty-fourth day of August, in the year of our Lord One Thousand Nine Hundred and ten before me, the subscriber, an attorney at Law New Jersey Supreme Court, personally appeared James A. Sullivan, who am satisfied is the Grantor mentioned in the within instrument to whom I first made known the contents thereof, and thereupon he acknowledged he signed, sealed and delivered the same as his voluntary act and deed, for the uses and purposes therein expressed:

20

JAMES F. GANNON, JR.,
 Attorney at Law New Jersey Supreme Court,

In consideration of the sum of two hundred dollars (\$200.) receipt whereof is hereby acknowledged, I hereby set over and assign all of my right, title and interest, of, in and to the within contract ^{to} for Arthur Brisbane. *Bennett Milnor*

30

It is hereby mutually agreed that the time for closing the sale under the within agreement be and the same is hereby extended until Saturday, October 1, 1910, at the same hour and place. Witness our hands and seals this 24th day of August, A. D. 1910.

JAMES A. SULLIVAN (L. S.)
 ARTHUR BRISBANE (L. S.)
 BY S. C. COWART, ATTY.

Exhibit C-2.

STATE OF NEW JERSEY }
 HUDSON COUNTY } ss.:

Be it remembered that on this 24th day of August A. D. 1910, before me the subscriber, personally appeared James A. Sullivan, who I am satisfied is one of the grantors in the above agreement extending time for closing sale under this agreement, and I having first made known to him the contents thereof he thereupon acknowledged that he signed, sealed and delivered above extension as his voluntary act and deed for the uses and purposes therein expressed. 10

JAMES F. GANNON,
 Attorney at Law, New Jersey Supreme Court.

"Exhibit C-2."

IT IS HEREBY MUTUALLY AGREED that the time for the closing of sale under the within agreement be and the same is hereby extended until Saturday, October 15th, 1910, at the same hour and place. 20

WITNESS our hands and seals this 29th day of September, 1910.

JAMES A. SULLIVAN (L. S.)
 ARTHUR BRISBANE (L. S.)
 BY ROBERT M. BOYD, JR. 30

“Exhibit C-3”

No. NEW YORK, October 14, 1910.

AMERICAN EXCHANGE NATIONAL BANK

Pay to the order of Bennett Milnor \$1800.

10 Eighteen hundred00/100 Dollars
ARTHUR BRISBANE.
(CERTIFIED)

Endorsed
BENNETT MILNOR.

Exhibit C-4.

BOND.

20 KNOW ALL MEN BY THESE PRESENTS, That I,
Arthur Brisbane, am held and firmly bound unto
James A. Sullivan in the sum of Sixteen hundred
(\$1600.) Dollars lawful money of the United
States of America to be paid to the said James
A. Sullivan, his executors, administrators or
assigns. To which payment well and truly to
be made, I bind, myself, my heirs, executors and
administrators firmly by these presents. Sealed
with my seal and dated the 14th day of October,
One Thousand Nine Hundred and Ten.

30 The Condition of the above Obligation is such,
That if the above bounden Arthur Brisbane,
his heirs, executors, or administrators, shall well
and truly pay, or cause to be paid unto the above
named James A. Sullivan, his executors, ad-
ministrators or assigns, the just and full sum
of Eight hundred dollars (\$800.) the day
of October which will be in the year One Thou-
sand Nine Hundred and twelve and the interest
thereon, to be computed from

Exhibit C-3.

at the rate of (6%) per cent. per annum, and to be paid semi-annually on the _____ days of April and October in each year while said principal sum remains unpaid and in arrear without any fraud or other delay, then the above obligation to be void, otherwise to remain in full force and virtue.

It shall not be necessary to make the obligor defendant in foreclosure of the mortgage accompanying this bond, unless then owner of the mortgaged premises; and in case of a deficiency on such foreclosure the obligee shall have the right to sue hereon in any jurisdiction and in such suit the laws thereof shall control this contract both as to binding force and manner and time of enforcement. 10

AND IT IS HEREBY EXPRESSLY AGREED, that should any default be made in the payment of the said interest or of any part thereof, on any day whereon the same is payable, as above expressed or should any tax, assessment, water rent, or other municipal or governmental rate, charge, imposition or lien be hereafter imposed or acquired upon the premises described in the mortgage accompanying this bond, and become due and payable, and should the said interest remain unpaid and in arrears for the space of thirty days, or said tax, assessment, water rent, or other municipal or governmental rate, charge, imposition or lien, or any or either of them remain unpaid and in arrear for the space of four months then and from thence forth, that is, to say, after the lapse or expiration of either of said periods as the case may be, the aforesaid principal sum of Eight hundred (\$800.) Dollars with all arrearages of interest thereon, shall at the option of the said James A. Sullivan or his legal representa- 20 30 40

Exhibit C-5.

tives, become and be due and payable immediately thereafter, although the period first above limited for the payment thereof may not then have expired, anything hereinbefore contained to the contrary thereof in anywise notwithstanding.

ARTHUR BRISBANE (L. S.)

10 Signed, Sealed and Delivered }
 in the presence of, }
 EMIL J. STEINHEUSER.

Exhibit C-5.

20 THIS INDENTURE, made the 14th day of October, in the year of our Lord One Thousand Nine Hundred and Ten. Between Arthur Brisbane, unmarried, of the Borough of Manhattan, in the County of New York and State of New York, of the First Part; and James A. Sullivan of the City of Jersey City in the County of Hudson and State of New Jersey, of the Second Part:

30 WITNESSETH: That the said party of the first part, for and in consideration of the sum of Eight hundred (\$800) Dollars money of the United States of America, to him in hand well and truly paid by the said party of the second part, at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, and the said party of the first part, therewith fully
 40 satisfied, contented and paid, has given, granted, bargained, sold, aliened, enfeoffed, conveyed and confirmed, and by these presents does give, grant, bargain, sell, alien, enfeoff, convey and confirm to the said party of the second part, and to his heirs and assigns forever, all that certain tract or parcel of land and premises, hereinafter particularly described, situate, lying and being in the City of Jersey City, in the County of Hudson and State of New Jersey, known as Lot "F" in

Exhibit C-5.

City Block 1865 on Fowler's Official Assessment Map of Jersey City, also known as No. 11 Wilks Street, Jersey City, New Jersey, being in dimension twenty-four feet six inches front and rear by one hundred and nine feet in depth on one side and one hundred and seven feet in depth on the other side.

Being all of the premises conveyed to the party **10**
of the second part herein by James Billington in the month of June, 1910.

The above described premises being subject, however, to a mortgage made by William P. Kastenhuber and wife, to Jennie J. Turner, dated July 2, 1908, and recorded July 14, 1908, in Book 647 of Mortgages for Hudson County, pages 43-45, to secure \$2,000 with interest at six per cent. for three years.

Being the same premises conveyed to the party **20**
of the first part by the party of the second part by deed of even date herewith, this mortgage being given to secure a part of the purchase money forming the consideration for said conveyance. The party of the first part herein shall have the privilege of repaying this mortgage at any time before the date of maturity, provided he shall give the party of the second part a three days' notice of his intention so to do.

It is mutually understood and agreed by and **30**
between the parties hereto that this mortgage shall be subject and subordinate to any new mortgage which may hereafter be placed on the said property during the currency of this mortgage, after the said first mortgage is discharged of record; provided, however, that the amount of said new mortgage shall not exceed the sum of Two thousand (\$2,000) Dollars.

Together with all and singular the profits, **40**

Exhibit C-5.

privileges and advantages, with the appurtenances to the same belonging, or in anywise appertaining, Also, all the estate, right, title, interest, property, claim and demand whatsoever of the said party of the first part, of, in and to the same, and of, in and to every part and parcel thereof: To have and to hold, all and singular the above

10 described tract or lot of land and premises, with the appurtenances, unto the said party of the second part, his heirs and assigns, to the only proper use, benefit, and behoof of the said party of the second part, his heirs and assigns forever, Provided always, and it is agreed by and between the parties to these presents, that if the said party of the first part, his heirs, executors, or administrators, do and shall well and truly pay or cause to be paid, to the said party of the second part,

20 or to his certain attorney or attorneys, heirs, executors, administrators or assigns, the sum of Eight hundred (\$800) Dollars in two years from the date hereof, with lawful interest for the same, at the rate of six per centum per annum, payable semi-annually, according to the condition of a certain bond bearing even date herewith; in the penal sum of Sixteen hundred (\$1,600) Dollars without any deduction or defalcation for taxes, assessments, or any other imposition whatsoever;

30 then and from thenceforth, these presents and said obligation, and everything, herein and therein contained shall cease and be void; anything herein and therein contained, to the contrary in anywise notwithstanding.

And the said party of the first part, for himself, his heirs, executors and administrators, does covenant and grant to and with the said party of the second part, his heirs, and assigns, that the said party of the first part his heirs and assigns,

40 shall not nor will claim or demand or be entitled

Exhibit C-5.

to receive any credit or credits on the interest payable hereon or on the moneys to secure payment of which this mortgage is made, for so much of the taxes assessed against said lands as is equal to the tax rate applied to the amount due on this mortgage or any part thereof; and that the said party of the second part, his heirs and assigns, shall and may, from time to time, and at all times after default shall be made in the performance of the proviso or condition herein contained, peaceably and quietly enter into, have, hold, use, occupy, possess and enjoy all and singular the above granted and bargained premises, with the appurtenances, without the let, suit, trouble, hindrance or denial of the said party of the first part, his heirs or assigns, or of any other person or persons whatsoever. **10**

And it is also agreed by and between the parties to these presents, that the said party of the first part shall and will keep the buildings erected and to be erected upon the lands above conveyed, insured against loss or damage by fire, in some safe and responsible Insurance Company or Companies, to an amount not less than **20**
Dollars, and assign the policy and certificate thereof to the said party of the second part as collateral security for the payment of the principal and interest aforesaid; and in default thereof, it shall be lawful for the said party of the second part, to effect such insurance, and the premium and premiums paid for effecting the same shall be a lien on the said mortgaged premises, added to the amount of the said bond or obligation, and secured by these presents, and payable on demand with legal interest. **30**

IN WITNESS WHEREOF, the said party of the first part has hereunto set his hand and seal the day and year first above written. **40**

ARTHUR BRISBANE, (L. S.)

Exhibit C-5.

Signed, Sealed and Delivered }
 in the presence of }

EMIL J. STEINHEUSER.

STATE OF NEW YORK, }
 COUNTY OF NEW YORK. }^{SS.:}

10 No. 640.

I, WILLIAM F. SCHNEIDER, Clerk of the County of New York, and also Clerk of the Supreme Court for said County, the same being a Court of Record, do hereby certify, that Josephine Oakes whose name is subscribed to the certificate of the proof or acknowledgment of the annexed instrument, and thereon written, was, at the time of taking such proof and acknowledgment a Notary Public in and for said County, duly commissioned and sworn, and authorized by the laws of said State to take acknowledgments and proofs of deeds or conveyances for land, tenements or hereditaments in said State of New York. And further, that I am well acquainted with the handwriting of such Notary Public, and verily believe that the signature to said certificate of proof or acknowledgment is genuine.

20

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of the said Court and County, the 15th day of October, 1910.

30

WM. F. SCHNEIDER,
 Clerk.

STATE OF NEW YORK, }
 COUNTY OF NEW YORK. }^{SS.:}

BE IT REMEMBERED, That on this 14th day of October, in the year of our Lord One Thousand Nine Hundred Ten, before me, a Notary Public in and for the County of New York, personally

40 appeared Arthur Brisbane, unmarried, who, I am

Exhibit C-6.

satisfied is the grantor mentioned in the within Indenture, and to whom I first made known the contents thereof, and thereupon he acknowledged that he signed, sealed and delivered the same as his voluntary act and deed, for the uses and purposes therein expressed.

JOSEPHINE OAKES,
Notary Public No. 1,
N. Y. County, Reg. No. 1015.
(Seal).

10

Exhibit C-6.

WILLIAM P. KASTENHUBER, et ux.,
To
JAMES BILLINGTON.

Deed Dated, April 13th, 1910.

This Indenture, made the thirteenth day of 20
April in the year One thousand nine hundred and
ten.

Between William P. Kastenhuber and Dora Kastenhuber his wife, of Warren County in the State of New Jersey parties of the first part; and James Billington of Jersey City, Hudson County, State of New Jersey, party of the second part.

WITNESSETH: That the said party of the first part for and in consideration of the sum of One 30
Dollar and other lawful money of the United States of America to them in hand paid by the said party of the second part at or before the en- sealing and delivery of these presents, the receipt whereof is hereby acknowledged and the said party of the second part his heirs, executors and administrators forever released and discharged from the same by these presents have granted, bargained, sold, aliened, remised, released, convey- ed and confirmed and by these presents do grant, 40
bargain, sell, alien, remise, release, convey and

Exhibit C-6.

confirm unto the said party of the second part and to his heirs and assigns forever.

All that tract or parcel of land, situated, lying and being in the City of Jersey City, County of Hudson and State of New Jersey, which is known as the whole of lot letter "F" in Block numbered 1865 on Fowler's Official Assessment Map of
10 Jersey City, N. J. 1894 "also as know and laid out as lot lettered 'F' in Block numbered 1865 on the Official Map of Jersey City made by G. M. Hopkins Co. Civil Engineers 1908."

Subject to a mortgage made by William P. Kasthuber to Jennie J. Turner for the sum of Two thousand dollars dated July second, One thousand Nine hundred and Eight and recorded in the Office of the Register of Hudson County in Book 647 of Mortgages page 43 etc; being the
20 same premises conveyed to William P. Kasthuber by J. Rudolph Diefenbach by deed dated June 29th, 1908, and recorded in the office of the Register of Hudson County in Book 1009 of Deeds page 406 etc.

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

30 And also, all the estate, right, title, interest, dower right of dower, property, possession, claim and demand whatsoever as well in law as in equity of the said party of the first part of, in or to the above described premises and every part and parcel thereof with the appurtenances.

To have and to hold all and singular the above mentioned and described premises together with the appurtenances unto the said party of the second part his heirs and assigns to his and their
40 own proper use, benefit and behoof forever.

Exhibit C-6.

And the said William P. Kastenhuber and Dora Kastenhuber for themselves, their heirs, executors and administrators do covenant and agree to and with the said party of the second part his heirs and assigns that the said William P. Kastenhuber and Dora Kastenhuber are at the time of the sealing and delivery of these presents lawfully seized in their own right of a good absolute and indefeasible estate of inheritance in fee simple of and in all and singular the above granted, bargained and described premises with the appurtenances and have good right, full power and lawful authority to grant, bargain, sell and convey the same in manner and form aforesaid. 10

And that the said party of the second part his heirs and assigns shall and may at all times hereafter peaceably and quietly have hold, use, occupy, possess and enjoy the above granted premises and every part and parcel thereof with the appurtenances without any let, suit, trouble, molestation, eviction or disturbance of the said party of the first part their heirs or assigns or of any other person or persons lawfully claiming or to claim the same. And that the same now are free, clear, discharged and unencumbered of and from all former and other grants, titles, charges, estates, judgments, taxes, assessments and encumbrances of what nature or kind soever. 20 30

And also, that the said party of the first part and their heirs and all and every other person or persons whomsoever lawfully or equitably deriving any estate, right, title or interest of, in or to the hereinbefore granted premises by, from, under or in trust for them shall and will at any time or times hereafter upon the reasonable request and at the proper costs and charges in the law of the said party of the second part his heirs and assigns make, do and execute or cause or procure 40

Exhibit C-6.

to be made, done or executed all and every such further and other lawful and reasonable acts, conveyances and assurance in the law for the better and more effectually vesting and confirming the premises hereby intended to be granted in and to the said party of the second part his heirs and assigns forever as by the said party of the second

10 part his heirs or assigns or their counsel learned in the law shall be reasonably devised, advised or required.

And the said William P. Kastenhuber and Dora Kastenhuber their assigns, their heirs the above described and hereby granted and released premises and every part and parcel thereof with the appurtenances unto the said party of the second part heirs and assigns against the said party of the first part and their heirs and against all and

20 every person and persons whomsoever lawfully claiming or to claim the same shall and will warrant and by these presents forever defend.

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

WM. P. KASTENHUBER, (Seal).

DORA E. KASTENHUBER, (Seal).

Signed, Sealed and Delivered }
in the presence of }

30

WILLIAM M. GIBBS.

STATE OF NEW JERSEY, }
WARREN COUNTY. } SS.:

Be it remembered, that on this 13th day of April in the year One thousand Nine hundred and Ten, before me William M. Gibbs a Commissioner of Deeds personally appeared William P. Kastenhuber and Dora his wife, who, I am satisfied

40

Exhibit C-6.

are the grantors in the within Indenture named and I having first made known to them the contents thereof, they did each acknowledge that they signed, sealed and delivered the same as their voluntary act and deed for the uses and purposes therein expressed.

And the said Dora Kastenhuber being by me privately examined separate and apart from her said husband did further acknowledge that she signed, sealed and delivered the same as her voluntary act and deed, freely, and without any fear, threats or compulsion of or from her said husband. **10**

WILLIAM M. GIBBS.

Com. of Deeds of Warren Co., N. J.

Received in the office and recorded April 14th, 1910, at 3:40 P. M. No. 2733.

20

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

I, JOHN J. McMAHON, Register of the County of Hudson, do hereby certify that the foregoing is a true and correct copy of a certain deed as the same is on Record in my office in Book 1059 of Deeds on page 359 &c.

IN TESTIMONY WHEREOF, I have hereunto set my hand and seal this 27th day of April A. D. 1912. **30**

JOHN J. McMAHON,
Register.

By CHARLES M. AUSTIN,
Deputy Register.

(Seal).

Endorsement on back of instrument.

40

Exhibit C-7.

EXHIBIT C-6.

JRS.

REGISTER'S OFFICE,
Hudson County, N. J.

Certified Copy of
Deed

WILLIAM P. KASTENHAUBER, et ux.,

10

to

JAMES BILLINGTON.

Fees—\$

Exhibit C-7.

JAMES BILLINGTON, et ux.,

to

ELLA J. SULLIVAN.

Deed dated, June 29, 1910.

20 This indenture, made the twenty-ninth day of
June, in the year One thousand Nine hundred and
Ten, between James Billington and Rose Anne
Billington, his wife, of Jersey City, Hudson
County, State of New Jersey, parties of the first
part; and Ella J. Sullivan, of the same place,
party of the second part.

30 WITNESSETH: That the said party of the first
part, for and in consideration of the sum of One
Dollar and other lawful money of the United
States of America, to them in hand paid by the
said party of the second part, at or before the en-
sealing and delivery of these presents, the re-
ceipt whereof is hereby acknowledged, and the
said party of the second part, her heirs, executors'
and administrators forever released and dis-
charged from the same by these presents have
granted, bargained, sold, aliened, remised, re-
leased, conveyed and confirmed, and by these pres-
ents do grant, bargain, sell, alien, remise, release,
40 convey and confirm unto the said party of the
second part, and to her heirs and assigns forever.

Exhibit C-7.

All that tract or parcel of land situated, lying and being in the City of Jersey City, County of Hudson and State of New Jersey, which is known as the whole of "Lot lettered F" in Block numbered 1865, on the Official Map of Jersey City, made by G. M. Hopkins Co., Civil Engineers 1908.

Subject to a mortgage now held by Jennie J. Turner for the sum of Two thousand Dollars, **10** dated July second, One thousand Nine hundred and Eight, and recorded in the Office of the Register of Hudson County, in Book 647 of Mortgages, page 43 etc.

Being the same premises conveyed to James Billington by William P. Kastenhuber and Dora Kastenhuber, his wife, by deed dated April 13th, 1910, and recorded in the office of the Register of Hudson County, in Book 1059 of Deeds for said County, page 359. **20**

Also known as the Whole of Lot lettered F, in Block numbered 1865, on Fowler's Official Assessment Map of Jersey City, N. J., 1894.

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

And also, all the estate, right, title, interest, dower right of dower, property, possession, claim **30** and demand whatsoever as well in law as in equity, of the said party of the first part, of, in or to the above described premises and every part and parcel thereof, with the appurtenances.

To Have and To Hold all and singular the above mentioned and described premises, together with the appurtenances, unto the said party of the second part, her heirs and assigns, to her and their own proper use, benefit and behoof forever. **40**

Exhibit C-7.

And the said James Billington and Rose Anne Billington, for themselves, and their heirs, executors and administrators, do covenant, grant and agree, to and with the said party of the second part, her heirs and assigns, that the said James Billington and Rose Billington are, at the time of the sealing and delivery of these presents, law-
10 fully seized in their own right of a good, absolute and indefeasible estate of inheritance in fee simple of, and in all and singular the above granted, bargained and described premises, with the appurtenances, and have good right, full power and lawful authority to grant, bargain, sell and convey the same in manner and form aforesaid.

And that the said party of the second part, her heirs and assigns, shall and may at all times hereafter peaceably and quietly have, hold use,
20 occupy, possess and enjoy the above granted premises, and every part and parcel thereof, with the appurtenances, without any let, suit, trouble, molestation, eviction or disturbance of the said party of the first part, their heirs or assigns, or of any other person or persons lawfully claiming or to claim the same.

And that the same now are free, clear, discharged and unincumbered of and from all former and other grantees, titles, charges, estates, judgments, taxes, assessments and encumbrances of
30 what nature or kind soever.

And also, that the said party of the first part, and their heirs, and all and every other person or persons whomsoever lawfully or equitable deriving any estate, right, title, or interest, of, in or to the hereinbefore granted premises, by, from under or in trust for them, shall and will at any time or times hereafter, upon the reasonable request, and at the proper costs and charges in the
40

Exhibit C-7.

law, of the said party of the second part, her heirs and assigns; make, do, and execute, or cause or procure to be made, done or executed, all and every such further and other lawful and reasonable acts, conveyances and assurances in the law for the better and more effectually vesting and confirming the premises hereby intended to be granted, in and to the said party of the second part, her heirs and assigns forever, as by the said party of the second part, her heirs and assigns, or their counsel learned in the law, shall be reasonably devised, advised or required. 10

And the said James Billington and Rose Anne Billington their assigns, their heirs, the above described and hereby granted and released premises, and every part and parcel thereof, with the appurtenances, unto the said party of the second part, her heirs and assigns, against the said party of the first part, and their heirs, and against all and every person and persons, whomsoever, lawfully claiming or to claim the same, shall and will warrant and by these presents forever defend. 20

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

JAMES BILLINGTON, (No seal).
ROSE ANNE BILLINGTON, (No seal). 30

Signed, Sealed and Delivered }
in the presence of }

WILLIAM D. KELLY.

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

Be it remembered, that on this Twenty-ninth day of June, in the year One thousand Nine hun- 40

Exhibit C-7.

dred and Ten, before me, the subscriber an Attorney-at-law of the Supreme Court of the State of New Jersey, personally appeared James Billington and Rose Anne Billington, his wife, who, I am satisfied, are the grantors in the within Indenture named, and I having first made known to them the contents thereof, they did each ac-
 10 knowledge that they signed, sealed and delivered the same as their voluntary act and deed for the uses and purposes therein expressed. And the said Rose Anne Billington, being by me privately examined separate and apart from her said husband, did further acknowledge that she signed, sealed and delivered the same as her voluntary act and deed, freely, and without any fear, threats or compulsion of or from her said husband.

WILLIAM D. KELLY.

20 Attorney-at-Law of the Supreme Court of the State of New Jersey.

Received in office and recorded June 30, 1910,
 at 9:57 A. M. No. 4999.

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

30 I, JOHN J. McMAHON, Register of the County of Hudson, do hereby certify that the foregoing is a true and correct copy of a certain Deed as the same is on Record in my office in Book 1078 of Deeds on page 91 &c.

IN TESTIMONY WHEREOF, I have hereunto set my hand and seal this Second Day of December, A. D., 1913.

JOHN J. McMAHON,
 Register.

By CHARLES M. AUSTIN,
 Deputy Register.

40 (Seal).

Exhibit C-8.

Endorsed
 Register's Office,
 Hudson County, N. J.
 Certified Copy of
 Deed
 JAMES BILLINGTON, et ux.,
 to
 ELLA J. SULLIVAN.

10

"Exhibit C-8."

IN THE NAME OF GOD, AMEN:

I, THOMAS H. N. WILKS, of Jersey City, New Jersey, being weak in body but of sound and disposing mind, memory and understanding, for which I thank God, do make publish and declare my last will and testament in manner following that is to say:

20

I do give and bequeath to my adopted daughter Dora Elcina Raspiller, now known by the name of Dora Elcina Wilks all my personal estate including the insurance upon my life or beneficial interest in the Masonic Mutual Life Insurance Association of Hudson County, New Jersey, and in the American Legion of Honor of which I am a third degree member of Hudson Council No. 521. To have and to hold to her own use forever, and I direct that she do pay thereout all my just debts & funeral expenses and the mortgage of One thousand dollars outstanding against my homestead No. 11 Wilks Street, in Jersey City, aforesaid.

30

Secondly: I do give and advise to said Dora Elcina Raspiller, now known as Dora Elcina Wilks all my real estate including said homestead and any other real estate of or to which I shall die seized, possessed or in any wise entitled to have and to hold the same to her for and during the term of her natural life and at her death I do give and advise the same to the heirs of her body, born in lawful wedlock.

40

Exhibit C-8.

If she shall leave no lawful issue living at the time of her death then I give and devise the said real estate to my brother Aquila Wilks if he be then living and if not then living, then I give and devise the same to those persons who would be his heirs at law if he had died intestate at the time of the death of said Dora.

10 Lastly: I hereby appoint the said Dora Elcina Raspiller now known as Dora Elcina Wilks sole executrix of this my last will and testament hereby revoking all former wills.

IN WITNESS WHEREOF, I have hereunto set my hand and seal at Jersey City, aforesaid this twenty-eighth day of June, A. D. Eighteen hundred and Eighty Nine.

T. H. N. WILKS, (L. S.)

20 The foregoing instrument was on this 28th day of June, A. D., 1889, at Jersey City, N. J., signed, sealed, published and declared as and for his last will and testament by Thomas H. N. Wilks, the testator therein named in the presence of the subscribers two witnesses both present at the same time and we do now at his request and in his presence and in presence—subscribe our names hereto as such witnesses.

BENJ. L. HALLICK.

AQUILA WILKS.

30 The making of the signature "T. H. N. Wilks" to the within writing purporting to be the last will and testament of Thomas H. N. Wilks was on this day of July, A. D., 1889, in Jersey City, N. J., acknowledged by the said Thomas H. N. Wilks and such writing was by him declared to be his last will and testament in the presence of the subscribers two witnesses both present at the same time and we do now at his request and in his presence and in the presence of
40 each other subscribe our names hereto as such witnesses.

Exhibit C-1.

HUDSON COUNTY SURROGATE'S OFFICE.

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

I. WILLIAM J. FLANAGAN, Deputy Surrogate and Deputy Clerk of the Surrogate's Court of the said County of Hudson, in said State, do hereby certify that the foregoing is a copy of the last will and testament in the matter of the estate of Thomas H. N. Wilks, deceased, that I have compared said copy with the record thereof, now remaining in this office, and have found the same to be a true transcript therefrom. 10

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal this fifth day of December A. D., One thousand Nine hundred and Thirteen.

W. J. FLANAGAN, 20
Deputy Surrogate and Deputy Clerk of
The Surrogate's Court.

(L. S.)
THESE FOUR EXHIBITS OFFERED BY COMPLAINANT,
BEFORE THOMAS L. RAYMOND, SPECIAL MASTER.

Exhibit C-1.

RENTS RECEIVED BY JAMES A. SULLIVAN
from property located at 11 Wilkes Street,
Jersey City, N. J. 30

1910			
Oct.	.....	\$25.00	
Nov.	.....	25.00	
Dec.	.....	25.00	
1911			
Jan.	.....	25.00	
Feb.	.....	25.00	
Mar.	.....	25.00	
Apr.	Vacant		
May	Vacant		
June	Vacant		40

Exhibit C-1.

	July	.....	25.00
	Aug.	.....	25.00
	Sept.	.....	25.00
	Oct.	Vacant	
	Nov.	Vacant	
	Dec.	.....	25.00
	1912		
	Jan.	.....	25.00
10	Feb.	.....	25.00
	Mar.	.....	25.00
	Apr.	.....	25.00
	May	.....	25.00
	June	.....	25.00
	July	.....	25.00
	Aug.	.....	25.00
	Sept.	Vacant	
	Oct.	Vacant	
	Nov.	Vacant	
	Dec.	.....	25.00
	1913		
20	Jan.	.....	25.00
	Feb.	.....	25.00
	Mar.	Vacant	
	Apr.	.....	25.00
	May	.....	25.00
	June	.....	25.00
	July	.....	25.00
	Aug.	.....	25.00
	Sept.	Vacant	
	Oct.	Vacant	
	Nov.	.....	30.00
	Dec.	.....	30.00
30	1914		
	Jan.	.....	30.00
	Feb.	.....	30.00
	Mar.	.....	30.00
	Apr.	.....	30.00
			<hr/>
			\$830.00
	Sundry Expenses	.....	250.00
			<hr/>
	Balance	.....	\$580.00

Exhibit C-2.

BRING THIS BILL WHEN PAYMENT IS MADE.

N. B. All persons paying Taxes or Assessments will examine their Bills and the City Map to see that they are paying upon the right property, as the City will not be responsible for or return money paid in error on the wrong property.

CITY COLLECTOR'S OFFICE, ROOM No. 1, CITY HALL.

1911

Book 10, Folio 155, Clerk C.
Mr. ELLA J. SULLIVAN

To THE MAYOR AND ALDERMEN OF JERSEY CITY, Dr.
For the Annual Tax, December, 1911, to December, 1912, Assessed for State School, County and City Purposes.

Upon all Taxes paid prior to the 20th day of December, 1911, Interest at the rate of 12 per cent per annum will be deducted from the time of payment to that date. If not paid until after the 31st of December, 10 per cent interest will be collected from December 20th, 1911, to date of payment.
Rate of taxation: \$12.43 per thousand for City; \$5.04 per thousand for County; \$2.53 per thousand for State School; Total \$20.00 on a thousand.
Office Hours from 9 A.M. to 4 P.M. Saturdays.
Office Hours from 9 A.M. to 12 M. Saturdays.

RECEIPT NOT VALID UNLESS COUNTERSIGNED BY CITY COMPTROLLER.

Payable in Jersey City or New York City Funds Only.
Draw Check to Order of George F. Bremsinger, City Collector.

Block	Lot No.	Street No.	Location of Premises	House & Lot	Vacant Lot	Value of Land	Value of Improvements	State Poll Tax	Total Value	Total Amt. Taxes
1865	F	11	Wilks St.	1		930	1250		2200	44.00
								Interest		9.61
										<u>53.61</u>

Comptroller's Office, \$53.61, Feb. 26, 1914.
George F. Bremsinger, Finance Commissioner.
City Collector, Jersey City.
Paid Feb. 26, 1914, George F. Bremsinger, Finance Commissioner.

IF YOU WANT YOUR RECEIPTED BILL RETURNED BY MAIL PUT YOUR ADDRESS BELOW.

Received Payment City Collector.
Street
State

10

20

30

40

Exhibit C-3.

BRING THIS BILL WHEN PAYMENT IS MADE.
 N. B. Please examine your Bill and the City Map to see that you are paying on right property.
DEPARTMENT OF REVENUE AND FINANCE, CITY OF JERSEY CITY
 BUREAU OF COLLECTION AND DEPOSIT, ROOM NO. 1, CITY HALL
Mr. ELLA J. SULLIVAN
 Book 10, page 161, Clerk C.

For the Annual Tax December, ¹⁹¹³ to December, 1914. Assessed for State School, County and City Purposes.

Interest at the rate of 7 per cent per annum will be collected from December 20th, 1913, to date of payment.
 Rate of taxation: \$13.51 per thousand for City; \$5.10 per thousand for County; \$2.62 per thousand for State School; Total \$21.23.
 Office Hours from 9 A.M. to 4 P.M.
 9 A.M. to 12 M. Saturdays.

RECEIPT NOT VALID UNLESS COUNTERSIGNED BY CITY COMPTROLLER.

Payable in Jersey City or New York City Funds Only.
 Draw Check to Order of George F. Brensinger, City Collector.

Block	Lot No.	Street No.	Location of Premises	House & Lot	Vacant Lot	Value of Land	Value of Improvement	State Poll Tax	Total Value	Total Amt. Taxes
1865	F	11	Wilks St.	1		4000	1200		5200	110.40
									Interest	

1913

IF YOU WANT YOUR RECEIPTED BILL RETURNED BY MAIL PUT YOUR ADDRESS BELOW.
 Name
 Address
 Address

10

20

30

40

Exhibit C-4.

BRING THIS BILL WHEN PAYMENT IS MADE.

N. B. All persons paying Taxes or Assessments will examine their Bills and the City Map to see that they are paying upon the right property, as the City will not be responsible for or return money paid in error on the wrong property.

CITY COLLECTOR'S OFFICE, ROOM No. 1, CITY HALL.

1913

Book 10, Folio 155, Clerk C.
Mr. ELLA J. SULLIVAN

To THE MAYOR AND ALDERMEN OF JERSEY CITY, Dr.
For the Annual Tax, December, 1912, to December, 1913, Assessed for State School, County and

City Purposes.

Upon all Taxes paid prior to the 20th day of December, 1912, interest at the rate of 12 per cent per annum will be deducted from the time of payment to that date. If not paid until after the 31st of December, 10 per cent interest will be collected from December 20th, 1912, to date of payment.

Rate of Taxation: \$13.86 per thousand for City; \$5.55 per thousand for County; \$2.59 per thousand for State School; Total

\$24.00 ~~21.00~~

Office Hours from 9 A.M. to 4 P.M. Saturdays.
9 A.M. to 12 M. Saturdays.

RECEIPT NOT VALID UNLESS COUNTERSIGNED BY CITY COMPTROLLER.

Payable in Jersey City or New York City Funds Only.
Draw Check to George F. Breusinger, City Collector.

Block	Lot No.	Street No.	Location of Premises	House & Lot	Vacant Lot	Value of Land	Value of Improvement	State Poll Tax	Total Value	Total Amt. Taxes
1865	F	11	Wilks St.	1		4000	1200		5200	114.40
									Interest	

IF YOU WANT YOUR RECEIPTED BILL RETURNED BY MAIL PUT YOUR ADDRESS BELOW.

Name

40

30

20

10

Exhibits of Defendant.

BRISBANE V. SULLIVAN.

	D-1,	Letter dated	October	29,	1910.
	D-2,	"	"	November	1, 1910.
	D-3,	"	"	December	6, 1910.
	D-4,	"	"	December	8, 1910.
	D-5,	"	"	December	12, 1910.
	D-6,	"	"	"	13, 1910.
10	D-7,	"	"	"	19, 1910.
	D-8,	"	"	"	22, 1910.
	D-9,	"	"	"	30, 1910.
	D-10,	"	"	"	31, 1910
	D-11,	"	"	January	5, 1911.
	D-12,	"	"	February	28, 1911.
	D-13,	"	"	October	7, 1910.
	D-14,	"	"	October	26, 1910.
	D-15,	"	"	October	28, 1910.
	D-16,	"	"	December	23, 1910.
20	D-17,	"	"	"	24, 1910.
	D-18,	"	"	"	27, 1910.
	D-19,	"	"	"	27, 1910.
	D-20,	"	"	"	30, 1910.
	D-21,	"	"	January	24, 1911.
	D-22,	"	"	"	6, 1911.
	D-23,	"	"	"	16, 1911.
	D-24,	Memo of Title Exhibits D-13 to			
		D-24 marked for Identification, as D-1 to			
		D-11.) (Copy of D-25.)			
30	D-25,	Report of Montclair Trust Com-			
		pany on title. No. 2315.			

Exhibit D-1.

Jersey City N. J. Oct. 29th./10.

#15 Exchange Place.

Samuel S. Cowart Esq:

Dear sir:

I am desirous of carrying out my contract with Bennet Milnor for the conveyance of property in this City. I have never understood the objections raised to the title and on the 26th. inst., I wrote Mr. Boyd asking him to give me a statement of them and he replies, referring me to you, without stating why; it is claimed the title is not good. I am therefore addressing you to ask that you give me a memorandum of the objections, raised and if you will give them to me, I shall endeavor to clean them up, if they are good, or if on the other hand, if you prefer not to take title I am willing to return your deposit and cancel the contract, and if you will let me know when and where I can meet, you I will call on you for this purpose.

Your's truly

Exhibit D-2.

(Letterhead of Samuel Craig Cowart.)

Nov. 1, 1910.

Mr. James A. Sullivan,
#15 Exchange Place,
Jersey, City, N. J.

Dear Mr. Sullivan:—

Your letter of the 29th ult. received. I will look up the objections of Mr. Boyd as attorney for Montclair Trust company to the title of the property which you agreed to convey to Mr. Arthur Brisbane through contract with Mr. Bennett Milnor. I am at present confined to my

house with a broken knee cap, but will endeavor to get hold of the papers at my office in order to reply to your letter within a few days. Mr. Brisbane I understand, insists on fulfillment of the contract. You made a mistake in not having the actual owner execute the contract as you state in the contract that you were the owner which was a mis-statement.

Very truly yours,

S. C. Cowart.

Per. G. A. F.

10

Dict. C/F.

Exhibit D-3.

Jersey City, N. J. December 6th./10.
#15 Exchange Place,
Samuel Craig Cowart Esq:

Dear Sir:

20 I received your letter dated November 1/10, concerning the matter of my property situated at #11 Wilks St. Jersey City, N. J, in which you stated that you would endeavor to get hold of papers in your office, in order to reply to my letter in a few days. Perhaps you have overlooked, this matter. and for that reason I call to your notice, that I desire to close this matter concerning the title of my property as soon as possible, and would be pleased if you would send

30 me a statement of your objections to the title in question, or I would meet you at any place you appoint, and finally discuss this matter which has been pending for some time.

Your's Truly,

Exhibit D-4.

Freehold N. J.
Dec. 8, 1910.

Mr. James A. Sullivan,

Dear Sir:

If you wish to see me personally about the Brisbane agreement, I can meet you at my office in Freehold at 10 A. M. either Saturday 10th inst, or Monday the 12th inst. 10

Very truly Yours,
S. C. COWART.

Exhibit D-5.

#15 Exchange Place,
Jersey City N. J. December 12th./10.
S. C. Cowart Esq:

Dear Sir:

I received your letter this morning, which is 20 too late a period, to accept an engagement at Freehold N. J., at 10. A. M. I can see of no reason why, you do not send me a written statement, of the objections, to my title to property situated at 11 Wilks Street Jersey City N. J.

Furthermore, it would be more convenient for both of us to meet, at the office of Brinkerhoff and Fielder, in Jersey City, or any other office of said City, or New York City, which you designate. 30

Trusting to receive an immediate reply
Your's truly,

Exhibit D-6.

(Letterhead of Samuel Craig Cowart.)

Dec. 13, 1910.

Mr. James A. Sullivan,
15 Exchange Place, Jersey City, N. J.

Dear Sir:—

10 Your letter of the 12th inst. received. One of the reasons why I cannot meet you in Jersey City, is that I have a broken knee cap which prevents my making excursions away from home at this icy time of the year; another reason is that you have failed to keep your appointments in Jersey City, and, therefore, I do not see why you should not meet me in Freehold as requested.

I enclose some of the objections to your title as set forth by Mr. Robert M. Boyed, Attorney for Montclair Trust company which was engaged 20 to insure the title. Another objection is that the title of the property which you agreed to convey to Mr. Arthur Brisbane, and which you represented as your own property, is in Ella J. Sullivan. I believe you say that she is your sister, but you have hitherto failed to secure her sanction to your agreement of sale, or any separate agreement of sale from her to Mr. Brisbane, and you have also failed to produce her deed and offer to deliver it to 30 Mr. Brisbane. Mr. Brisbane takes the position that you have made a misrepresentation of the title, and he is even threatening criminal prosecution on this account. I would like you at once to make an appointment to meet me at Freehold, and see if there is any possible way of carrying out your agreement and conveying good title to Mr. Brisbane. You understand, however, that I do not in any way waive any rights of Mr. Brisbane to declare your agree-

ment violated, and to proceed against you for false representations as to title, and for failure to complete your agreement.

Very truly yours,
S. C. Cowart.

Exhibit D-7.

J. F. F.

December 19, 1910.

Samuel C. Cowart, Esq.

10

Dear Sir:—

Your letter of the 13th inst. to James A. Sullivan with your objections to his title, has been referred to me and hereafter I shall represent him in this matter.

I understood from Mr. Sullivan that he loaned you an abstract of the title of the property and that you still have it. Will you please send this abstract to me so that, in taking up your objections to the title, I may have it to aid me. I 20
enclose stamps to cover the postage.

From your list of objections, I judge, however, that it will be impossible to satisfy you as to the validity of the title and on behalf of Mr. Sullivan and to quickly dispose of the matter, I offer to return your deposit with interest. I also offer, (while denying your right to recover it by suit), to pay you a reasonable search fee. Please advise me whether or not this offer is accepted.

30

It is idle to speak of "misrepresentation of the title" and "criminal prosecution". Mr. Sullivan made the contract to sell in good faith and when the time arrived for closing title, he was in a position to secure a deed from Ella J. Sullivan conveying the property to the purchaser. You rejected the title for alleged defects and were unwilling to accept a deed from anybody. There is no reason why he should tender you a deed which you would not accept, because you say the title 40
is bad.

Very truly yours,

Exhibit D-8.

(Letterhead of Samuel Craig Cowart.)

Dec. 22, 1910.

Hon. James F. Fielder,
 c/o Brinkerhoff & Fielder,
 15 Exchange Place,
 Jersey City, N. J.

Dear Mr. Fielder:—

10 Your letter of the 19th inst. in regard to James
 A. Sullivan and Arthur Brisbane contract for
 sale of property in Jersey City was duly received.
 Mr. Sullivan did not loan me any abstract
 of title. All the information which I have re-
 ceived in regard to the title has come from
 Mr. Robert M. Boyd, Attorney of Montclair
 Trust Company, which was engaged by me
 to insure the title for Mr. Brisbane. Mr. Sullivan
 has a copy of the objections raised by the Trust
 20 Company in relation to the title. Mr. Sullivan
 appears to be making no effort to clear up these
 objections; on the contrary he, and his former
 Attorney, Mr. Mulvaney, failed to keep two
 appointments with Mr. Robert M. Boyd, and
 Mr. Sullivan himself failed to appear on the date
 fixed for closing the sale at Mr. Boyd's office.
 On that date, Mr. Brisbane's representative was
 present with the cash balance of purchase money,
 and with a duly executed mortgage pursuant to
 30 the agreement, and also with a deed to be executed
 by Mr. Sullivan to him. Of course, we would not
 have accepted his deed unless the title was cleared
 up and made marketable.

Mr. Brisbane is still anxious to acquire this
 title. I would like to know from you what
 effort, if any, is being made by Sullivan to clear
 up the defects shown on the searches of the Mont-

Exhibit D-9.

clair Trust Company. You say Mr. Sullivan made no misrepresentations of the title, etc. He certainly represented in the agreement that he was the owner of the property, and that it was conveyed to him by James Billington in the month of June 1910. If he was not the owner, according to the agreement, he should have signed it as Attorney in Fact for Ella J. Sullivan, the 10 actual owner, or else had her execute the agreement or have her consent to it. I have requested him to secure such consent but he has never complied with my request.

Please let me know speedily what you propose to do in the matter in order to settle it.

Very truly yours,
S. C. Cowart.

Exhibit D-9.

20

(Letterhead of Samuel Craig Cowart.)
Dec. 30. 1910.

Hon. James F. Fielder,
15 Exchange Place, Jersey City, N. J.

My dear Mr. Fielder:—

Your letter of the 27th, inst. received. You state that the title not being in Mr. Sullivan he can do nothing in his own name to clear up any flaws there may be. What relation is Ella J. Sullivan 30 to Mr. James A. Sullivan? A. Is she his wife or is she his sister? I understand the title is in her name? Do you see any reason why she could not execute a consent of the sale, and have it endorsed on the original contract acknowledging it so that it can be recorded. This might then give her and James A. Sullivan a legal standing to file a bill to compel performance by Mr. Brisbane, and is you reach the conclusion that the objections to the title are not valid, then the 40

Exhibit D-9.

Court can pass upon their validity and decide whether or not the title is marketable, or you might be able to clear up the clouds on the title.

Mr. Brisbane declines to accept your offer of settlement by repayment of the amount paid upon the purchase price, together with a reasonable search fee. He wants the property, and
10 wants the agreement strictly carried out. I have no objections, however, to your seeing him personally in order to ascertain whether or not you can effect any compromise. I would like to know whether you have secured the abstract or title from Mr. Milnor, and whether you have gone over our objections, and if so whether you think we are justified in declining to accept a deed until the objections are cleared away. I think there is a provision under the Martin Act by which defects
20 in the proceedings may be corrected. I think Mr. Sullivan could also file a bill Chancery to quiet the title making all of those minor children or heirs parties, and making all persons parties who had any interest in the property. Of course, this might give a right to come in and redeem, but it is not likely that they would-redeem. Mr. Sullivan is certainly obliged to convey a good marketable title to Mr. Brisbane, and will have to pay damages if he fails
30 to do so.

Kindly let me hear from you speedily.

Very truly yours,

S. C. Cowart.

Exhibit D-10.

(Letterhead of Samuel Craig Cowart.)
December 31, 1910.

Hon. James F. Fielder,
15 Exchange Place, Jersey City, N. J.

My dear Senator:—

Your letter of the 30th inst. received stating that you find the Sullivan title defective to lot 10 agreed to be conveyed to Arthur Brisbane, etc. In reference to those old mortgages, don't you think a bill could be filed under the act which provides for cancellation of old mortgages; so that you can secure their discharge by the order of the court. I had just written you yesterday stating that Mr. Brisbane wants the property, but if you wished to see him personally I had no objections if you can reach any compromise with him. If you cannot reach a settlement then 20 I suppose the only course open is for me to file a bill requiring Mr. Sullivan to carry out his agreement, and if he fails to do this, then it will be up to the court to determine what is to be done or what damages are to be paid. I regret that the matter is in its present shape, and was in hopes that with your influence you could secure a reformation of the tax title. Do you know what was actually paid for the tax title by the purchaser.

Kindly inform me as to this. Also as to re- 30 lation of Ella J. Sullivan to J. C. Sullivan.

With kindest regards,

Very truly yours,

S. C. COWART.

Exhibit D-11.

(Letterhead of Samuel Craig Cowart.)

Jan. 5, 1915.

Hon. James F. Fielder,
15 Exchange Place,
Jersey City, N. J.

My dear Senator:—

10 Your letter of the 4th inst. received in regard to Mr. Brisbane—Sullivan matter. I will examine the authorities you mention on the question of damages. Kindly inform me what relation Ella J. Sullivan is to James A. Sullivan. I have written you twice requesting this information, but have received no answer. I am quite sure Mr. Brisbane would not want to accept a deed of bargain and sale from Ella J. Sullivan in place of the warranty deed provided for in the agreement of sale.

20 Very truly yours,
S. Cowart.

Exhibit D-12.

(Letterhead of Samuel Craig Cowart.)

Feb. 28, 1911.

Hon. James F. Fielder,
15 Exchange Place, Jersey City, N. J.

My dear Senator:

30 I received your letters in regard to Sullivan contract with Mr. Brisbane, but have delayed answering in order to see if any compromise could be arranged which might prove satisfactory to both parties.

Mr. Brisbane, however, insists on having the contract performed according to its terms. Owing to my broken knee cap I not been able to give much attention to the details of the matter, and Mr.

Brisbane has referred it to David Gerber, his New York Lawyer, who may see you in reference to the matter.

Very truly yours,
S. C. Cowart.

Exhibit D-13.

(Letterhead of Robert M. Boyd. Jr.)

M. James A. Sullivan,
15 Exchange Place,
Jersey City, N. J.

10

Dear Sir:

In the matter of the title property known as No. 11 Wilks Street, Jersey City, my representative some time ago suggested to you that a new contract of sale should be executed by your sister, Miss Ella J. Sullivan, instead of yourself, she being the real owner of the property. As I understand it your sister is quite willing to do so and I have accordingly prepared and herewith submit to you a new agreement. If this is satisfactory please have her execute it and I will have a duplicate executed by Mr. Brisbane and we can then make the proper exchange. It is desirable that this new agreement, or some such agreement, should be executed by the real owner of the property so that both parties will be in a position to enforce whatever they consider their rights, if necessary.

20

30

Kindly let me hear from you as soon as the agreement is executed. I would suggest that this matter be put through promptly so as to have the record straight before October 15, the date to which the closing of title has been adjourned.

Yours very truly,
Robert M. Boyd, Jr.,
P.

40

Exhibit D-14.

15 Exchange Place, Jersey City,
October 26, 1910.

Robert M. Boyd, Esq.

Dear Sir:—

10 With reference to my contract to convey property, known as 11 Wilks Street, Jersey City, N. J., to Mr. Milnor, and the title of which you claim is defective, I beg to inform you that I have requested of your office a written statement of your objections to the validity of said title, but have as yet received no reply. I think you could expedite matters by sending me a copy of the objections.

Very truly yours,

Exhibit D-15.

20

ROBERT M. BOYD, JR.
ATTORNEY AND COUNSELLOR-AT-LAW
NO. 203 BROADWAY
Room 810 Manhattan
Tel. No. 96 Cortlandt

New York, October 28th, 1910.

MR. JAMES A. SULLIVAN,
15 Exchange Place,
Jersey City, N. J.

Dear Sir:

30 Replying to your letter of October 26th, regarding the title which you agreed to convey to Mr. Arthur Brisbane, my recollection is that we discussed in detail the defects in the title and you took a memorandum of them and said you would lay them before your attorney, Mr. Mulvaney, of Jersey City. You next informed us that you had done so and had discussed the matter with him and desired us to call on him at his office so as to receive his explanation on the various points.

40

Exhibit D-15.

Mr. Petty, of this office, attended at Mr. Mulvaney's office twice by appointment for that purpose and on both occasions Mr. Mulvaney failed to attend. Subsequently, the title was adjourned to close on a specific date at this office and on that day Mr. Brisbane's representative was here with the cash and with the mortgage properly executed and with the deed ready to tender the same and demand its execution so as to show that he was ready to perform the agreement, provided that you were able to give good title. 10

On that day neither you nor your representative appeared, nor did you notify me or Mr. Brisbane that any steps had been taken to correct the defects in the title. You further stated to me that the title was not in your name at all, but in the name of some one else at the time that you made the contract with Mr. Brisbane and that the title up to the point of our last meeting had never been vested in you. 20

I, accordingly, reported to Mr. Brisbane the situation up to that date and his attorney, I understand, is now in charge of the matter. I have no longer any occasion to represent him and am not in communication with him on the subject. I must, accordingly, refer you to Mr. Samuel C. Cowart of Freehold, N. J., who, I understand, represents Mr. Brisbane in the matter at present; merely adding that I cannot see that it is reasonable of you now to request any statement from me as to the defects in this title. 30

Yours,

ROBERT M. BOYD, JR.

Exhibit D-16.

J. F. F.

December 23, 1910.

HON. ROBERT M. BOYD, JR.

My dear Boyd:

10 I have been retained by James A. Sullivan to represent him in connection with his contract which Arthur Brisbane now claims to hold. I have received from Mr. Cowart a statement of "a few" of the objections raised to the title and in examining them it may be necessary for me to have a new title search made. I understand that Mr. Sullivan loaned you or Mr. Cowart an abstract of the title of the property. I have asked Mr. Cowart to send it to me and he replies that it was not loaned to him, which means, I assume, that he hasn't it. Will you kindly send it to me.

20

Very truly yours,

Exhibit D-17.

ROBERT M. BOYD, JR.

ATTORNEY AND COUNSELLOR-AT-LAW

NO. 203 BROADWAY

Room 810

Manhattan

Tel. No. 96 Cortlandt

2315

New York, December 24th, 1910.

HON. JAMES F. FIELDER,

30

15 Exchange Place,

Jersey City, New Jersey.

My dear Senator:

In the matter of the James A. Sullivan—Arthur Brisbane title, I have your letter of December 23rd, requesting that I return to you an abstract of title belonging to Mr. Sullivan.

In reply I would say that Mr. Sullivan never loaned to me any abstract of title relating to the said matter. However, when I searched the title

40

Mr. Bennett Milnor, of 258 Broadway, New York City, loaned me an abstract which purported to have been made by Mr. Sullivan. Probably this is the one you have in mind; in any event, it is the only one I have ever seen.

But this abstract is no longer in my possession. My records show that it was returned to Mr. Milnor on October 11th, 1910.

I accordingly suggest that you communicate with Mr. Milnor, he probably being the person who received the abstract from Mr. Sullivan. 10

I trust that you will thus be able to get it without much further trouble.

Very truly yours,

ROBERT M. BOYD, JR.

Exhibit D-18.

J. F. F.

December 27, 1910. 20

BENNETT MILNOR, Esq.

Dear Sir:

For the purpose of examining certain objections to title raised by Mr. Cowart in connection with property contracted to be sold by James Sullivan to you, I am desirous of obtaining an abstract of title which Mr. Sullivan says he loaned some one interested for the purchaser. I wrote Mr. Cowart for it and he referred me to Mr. Boyd and now the latter refers me to you, saying that he returned it to you, October 11, 1910. I shall be greatly obliged if you will send this abstract to me, so that I may be in a position to look into the matter. I represent Mr. Sullivan. 30

Very truly yours,

Exhibit D-19.

J. F. F.

December 27, 1910.

SAMUEL C. COWART, Esq.

Dear Sir:

On receipt of your letter of the 22nd inst. I wrote Mr. Boyd for the abstract of title and am now advised by him that he sent it to Mr. Milnor and I am writing the latter for it. If I am to examine your objections, I must have a title search before me. The title not being in Mr. Sullivan, he can do nothing in his own name to clear up any flaws there may be. All I can do is to advise him, after examining the title, whether or not you were justified in declining to complete the contract with him. If the title is bad because of defects under the tax sale, it will take months to correct it and probably the owner would have to take entirely new proceedings and in that event we shall have to settle with you.

Will you please reply to the offer of settlement which I made in my letter to you of the 19th inst.

Very truly yours,

Exhibit D-20.

J. F. F.

December 30, 1910.

30 SAMUEL C. COWART, Esq.

Dear Sir:

I have finally received the Sullivan abstract of title, it having been in Mr. Milnor's possession, but I find that it sheds no light on any of the objections you make to the title. Reading over again your criticisms of the tax sale proceedings, I am of the opinion that they are well founded and that the title supposed to be passed through these proceedings, is bad. It seems from your

statement, that no resolution of the Board of Finance ordering the tax sale, can be discovered, so that there is actually no foundation for the sale. Then too, it appears that there are old mortgages still open of record and I do not think we can find the original mortgages and I believe the mortgagees are dead. This is a condition for which Mr. Sullivan is not to blame. When he contracted to sell he believed the title good and, as I have before stated, he was in a position to convey. Neither he, nor Ella J. Sullivan can give a warranty deed and I therefore renew the offer of settlement I made in my letter of the 19th inst. to you. If you will not accept it, please inform me what you expect us to do.

Very truly yours,

Exhibit D-21.

J. F. F.

January 4, 1911.

20

SAMUEL C. COWART, Esq.

Dear Sir:

Your letter of the 31st ult. is at hand.

I have no desire to call on Mr. Brisbane and I shall settle this matter with you if I can, but it seems to me that your client is apparently urging you to force Mr. Sullivan to do something he is absolutely unable to do.

When the contract was made, the title was in his sister Ella J. Sullivan and they both believed she had good title. He was in a position to obtain a deed from her at the time named for its delivery, but your title search developed the fact that her title is bad and you were naturally unwilling to take it. This was Sullivan's legal, but not moral fault and it being now impossible for him to perform his agreement, the question is as to

40

his legal liability. On the question of damages, I refer you to

Holmes vs. Sennickson, 15 N. J. L. 313;
Gerbert vs. Trustees, 59 N. J. L. 160.

Suppose I can arrange for a bargain and sale deed from Ella J. Sullivan, are you willing to take such title as she has and pay the balance of the purchase price?

10 If we cannot settle this matter amicably and you are insistent on suit, I can only say that I shall stand on Mr. Sullivan's strict legal rights. Before you file a bill for specific performance I suggest that you read the following recent cases:

Public Service Co. vs. Hackensack Meadows Co. 72 N. J. Eq. 285;
Logan vs. Flattan, 73 N. J. Eq. 222;
Van Keuren vs. Siedler, 73 N. J. Eq. 239.

20 I do not know what was actually paid for the tax title by the purchaser.

Very truly yours,

Exhibit D-22.

J. F. F.

January 6, 1911.

SAMUEL C. COWART, Esq.

Dear Sir:

30 If you will read my letter of the 4th inst. over again, you will see that I stated the relationship between Ella J. and James A. Sullivan.

Very truly yours,

Exhibit D-23.

J. F. F.

January 16, 1911.

SAMUEL C. COWART, Esq.

Dear Sir:

I learn that Mr. Walter Dear, or some other person for the Jersey City Printing Company, has been negotiating with Mr. Brisbane for his interest in the Sullivan contract. These same persons have approached Mr. Sullivan and me on the subject of purchasing the property and I want you to know that I have told them that Mr. Sullivan is not only legally, but morally bound to convey to Mr. Brisbane if he can and that I have absolutely refused to enter into any negotiations with them, or to entertain any proposition from them.

Very truly yours,

20

Exhibit D-24.

COPY OF TITLE REPORT.

TITLE NO. 2315

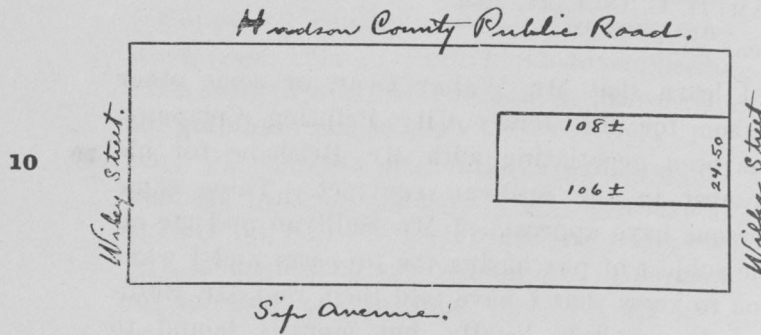
Original Marked D-25.

30

40

Exhibit D-25.

Reissue of _____
 Title in ELLA J. SULLIVAN



County, Hudson. Street No. 11 Wilks Street.
 Lot lettered F. in Block numbered 1865, on
 Fowler's Official Assessment Map of Jersey City,
 N. J., 1894.

20 and filed in the office of the Register of the
 County of Essex as Map No.

1. Returns on Tax Search Annexed. None. (See
 Official Tax Search).

2. Mortgages.

A. Mortgagor, William P. Kastenhuber and

Dora Kastenhuber, his wife.

Mortgagee, Jennie J. Turner.

Amount, \$2,000. Dated July 2, 1908.

30 Recorded, July 14, 1908. Book 647, page 43

Payable in 3 years on July 2, 1911.

Interest 6 percent, payable semi-annually

Assigned to

Assignment dated

Recorded, Book, Page

B. Mortgagor,

Mortgagee,

Amount, \$ Dated,

Exhibit D-24.

Recorded,	Book,	Page
Payable in	on	190
Interest,	per cent payable	
Assigned to		
Assignment dated		
Recorded,		

1. The wall of the building on the premises adjoining on the en- **10**
croaches inches on the premises described in Schedule "A," and no title is insured to any land so encroached upon.
2. The wall of the building on the premises adjoining on the en-
croaches inches on the premises described in Schedule "A," and no title is insured to any land so encroached upon.
3. The insured is not in possession of a strip of land and no title to said **20**
strip is insured.
4. Variations between the location of the fences and the record lines.
No survey.
4. Leases of record and facts as to possession.
Tenants in possession.
5. Report on Streets. Public.
6. Restrictive Covenants and easements,
7. Judgments. See Schedule annexed, No **30**
Trenton searches made.
8. Conditions and other incumbrances or defects. See Schedule annexed.

Exhibit D-24.

JUDGMENTS.

10	<p style="text-align: center;">CHARLES K. COBB,</p> <p style="text-align: center;">v.</p> <p style="text-align: center;">ANNABELLA TAYLOR, and Samuel Hays, surviving partners, etc.</p>	<p>Judgment. Cir. Ct. Hudson County, 1891. 24-408. On Contract, on Default. Judg. entered Dec. 7, 1891. Damages \$442.72 Costs \$31.95</p>
	<p>WILLIS, EDWARDS & BUMSTEAD, Attorneys.</p>	

RECOGNIZANCES.

	Date	Amt.	
Ella Sullivan	July 12, 1899	\$200	G. S. 60 Apl. 1899
George Schmitt	Aug. 10, 1899	\$100	Filed 356
George Schmidt	Nov. 13, 1899	\$500	G. S. 16 Sept. 1899
George Smith	Sept. 22, 1902	\$200	Filed 2458
" "	Oct. 20, 1904	\$500	Filed 3930
" "	Oct. 20, 1904	\$500	Filed 3933
" "	Sept. 27, 1905	\$300	Filed 4646
" "	Oct. 14, 1905	\$500	Filed 4772
Emma Smythe	Aug. 22, 1900	\$100	Filed 1057
Emma Smitzke	Feb. 11, 1901	\$300	G. S. 36 Dec. 1900
George Smith	Sept. 6, 1907	\$300	Filed 6857
George Schmidt	May 9, 1908	\$300	Filed 7646
George Smith	Dec. 17, 1909	\$300	Filed 9652

PARTIAL MEMORANDUM OF POSSIBLE DEFECTS IN
TITLE 2315.

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

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

The verification in the petition is signed by John J. Mulvaney and contains a jurat as follows: "Sworn and subscribed at Jersey City, N. J., this 15th day of May 1908, before me," but does not
40 contain the signature or name of office of any

Exhibit D-24.

official before whom such petition could be sworn to—this having been left blank.

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

On such application no notice thereof was given and there being infants involved there is a question whether the court had jurisdiction. 10

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

In the affidavit of James J. Dowling as to the publication of the notice therein it purports to be verified the 27th day of May, but in the jurat the year is left blank and there is no copy of the notice annexed to said affidavit, and in the said jurat there is no mention of the place where said affidavit was taken. 20

The proceedings seem to indicate that there are about fifteen infants interested in the property besides a large number of adults; but there is nothing on the record to show whether the persons named in the proceedings are proper parties or all the parties interested who should have been joined in the proceeding. 30

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

There appear to be no proofs of advertisement in the office of the City Collector; that is, adver- 40

Exhibit D-24.

tisement of notice of sale, so that it is impossible to say whether such publication was properly made or made at all.

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

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

The order to issue the deed has not been filed in the office of the Clerk of the Court in accordance with Rule 40 of the Supreme Court of New Jersey and Rule 18 of the Circuit Court, which requires that such order shall be filed within ten
20 days after the granting thereof; this order has never been filed at all and not being filed within the time required by law is void. See *Mayor and Aldermen of Jersey City vs. Davis, City Collector*, 76 Atl. 969, handed down by the New Jersey Supreme Court June 30, 1910, which holds in effect that an order directing a deed to issue unless entered in the minutes of the Circuit Court in accordance and within the time required by the rule is void and of no effect.

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

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

Exhibit D-24.

ceeding leading up to the sale of the property in question.

The defects above mentioned being of such a nature as to seem to preclude the possibility of this title being marketable unless they were explained or removed, a number of other matters in connection with the above proceeding were not investigated. If the above defects should be removed these matters can be taken up and looked into further. **10**

Mortgage, Wilks to Olcott, recorded in Book 13, page 192. Cancellation clause on the margin of the record states that the original mortgage "was received in full by Lettie Allen, Administratrix of Nicholas Prior, Assignee, etc." No record of any such assignment could be found, so that this mortgage may still be a lien against the property. **20**

Book 30, page 374 of Mortgages. Cancellation clause on the margin of the record was not signed by the Register so this mortgage may still be a lien against the property.

Book 30, page 374 of Mortgages. Assignment of this mortgage (Book 33, page 117) from Lettie Allen to John Paterson, assigns Book 30, page 375 of Mortgages; probably intended to assign Book 30, page 374 of Mortgages. This mortgage not being properly cancelled for this additional reason may still be a lien against the property. **30**

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

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

Book 1078, page 91 of Deeds. Have no seals attached. **40**

Exhibit D-24.

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

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

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

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

Dated, August 15, 1910. Examiner approved.

STATE OF NEW JERSEY }
COUNTY OF SUSSEX } ss.:

20 being duly sworn
says, the owner of the premises shown
in the diagram at the head of this certificate,
which are free from all incumbrance, except as
therein stated. There are no judgments against
in any Court of this State or of the
United States. I have never filed any petition in
bankruptcy, or been adjudged a bankrupt.

Sworn to before me, }
30 this day 190 }

The first part of the report is devoted to a general
 description of the project and its objectives. It
 is followed by a detailed account of the work
 done during the period covered by the report.
 The results of the work are then presented and
 discussed. Finally, the report concludes with a
 summary of the work done and a list of references.
 The work done during the period covered by the
 report has been of a general nature and has
 been directed towards the achievement of the
 objectives of the project. The results of the
 work are presented in the form of a series of
 tables and graphs. The work done during the
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 presented in the form of a series of tables and
 graphs.

Opinion of Vice Chancellor Howell.
IN CHANCERY OF NEW JERSEY.

Between

ARTHUR BRISBANE,

Complainant,

and

JAMES A. SULLIVAN, et als.,

Defendants.

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On final hearing on bill, answer, replication
 and proofs.

Mr. Adrian Riker for the complainant.

Mr. Randolph Perkins for the defendants.

Memorandum.

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Howell, V. C.

This is a suit for the specific performance of an agreement to convey lands. On July 8, 1889 the lands in question belonged to Thomas H. N. Wilks. On that day he died, leaving a will in and by which he devised the said property to Dora E. Wilks for the term of her natural life, and at her death to the heirs of her body born in lawful wedlock, with a devise over in case of failure of issue. Dora E. Wilks subsequently married William P. Kastenhuber; she has become the mother of two children, born in lawful wedlock, both of whom are infants under the age of twenty-one years. Mr. and Mrs. Kastenhuber and the two children are living. Mrs. Kastenhuber, the life tenant, allowed the taxes assessed by the city of Jersey City against said premises to remain unpaid. Thereupon they sold, and by direction of the circuit court of Hudson County a deed

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Memorandum.

therefor was delivered to Charles R. Diffenbach, the purchaser at the tax sale. He subsequently conveyed the same to William P. Kastenhuber, the husband of the life tenant, and they joined in a conveyance to James Billington, who in turn conveyed the same to the defendant Ella J. Sullivan. Miss Sullivan took title, not for
10 herself, but for her brother, the defendant, James A. Sullivan, who advanced the purchase money. James A. Sullivan thereupon made the contract in question on July 19, 1910. By this contract he agreed that he would convey the premises in question to Bennett Milnor in consideration of the sum of \$4,800 by deed "of full covenant and warranty, free from all encumbrance, except a mortgage of \$2,000 held by Jennie Turner" on or
20 before September 1 next ensuing the date thereof with stipulations concerning the method of the payment of the purchase money. Milnor was acting for the complainant, and he subsequently made an assignment in writing to him of all his interest in the said contract. After the contract had been executed and while it was in the way of performance it was discovered that there were serious defects in the defendant's title. These defects are set out in a report made to the Title Guaranty Company which had undertaken
30 to guarantee the title to the complainant, which report is annexed to the answer and is admitted in evidence under a stipulation filed on the day of the hearing. One of the serious objections is that title was made by virtue of a proceeding taken under what is known in this State as the Martin Act, which proceedings are admitted by the said stipulation to be informal and not binding upon the Kastenhuber children.

The objections to the title made it necessary to
40 postpone the performance of the contract, and it

Memorandum.

was postponed by writing until October 1, 1910, and subsequently to October 15, 1910.

The complainant filed his original bill for the specific performance on February 28, 1911. At that time he had been informed of the exact state of the title and knew that the defendants Sullivan had at most only a right which depended upon the life of Mrs. Kastenhuber, and that this right possibly depended upon informal proceedings under the taxing laws which were not binding upon the Kastenhuber children. He subsequently filed an amended bill in which he states that he has elected to accept from the Sullivans such title as they are liable to convey to him, and he tenders himself ready and willing to pay to them a proportionate part of the purchase money agreed upon to be ascertained by the court, or, in other words, he proposes to take such title as the Sullivans can give him, with a deduction from the purchase price for the value of that portion of the estate which cannot be conveyed. 10 20

Specific performance of this contract is resisted upon the grounds above indicated, and upon the further ground contained in the list of objections that there are a judgment and several criminal recognizances uncancelled of record which may be liens upon the land. Inasmuch as there is no testimony whatever in the case of the facts relating to the judgment and recognizances, I shall assume that they are included rather as a makeweight. As to the estate which the Sullivans now have in the premises, the defendants say that it is very uncertain and doubtful whether they have an unquestionable title for the life of Mrs. Kastenhuber, arguing that when Mr. Kastenhuber made his deed to Billington Mrs. Kastenhuber joined in the conveyance merely to release her right of dower. But this cannot be the case; 30 40

Memorandum.

she either had a life estate in the whole property, or she had not; if she had a life estate in the whole property, and the tax proceedings did not affect it because of their irregularity, she was left at their termination in the same position as if there had been no tax proceedings, and her joint deed with her husband would operate to convey any interest that she might have, either as life tennant, or doweress or otherwise, and because of her execution of the deed to Billington the Sullivans undoubtedly have the right to the possession of the premises during the life of Mrs. Kastenhuber. Therefore the only title which the Sullivans became possessed of was a right to enjoy the rents, issues and profits of the premises during the life time only of Mrs. Kastenhuber; and they therefore cannot comply specifically with the agreement that Mr. Sullivan entered into to convey title to the premises. It is true that the agreement does not contain the phrase "good title", yet it does contain a covenant to "well and sufficiently convey" to Milnor "his heirs and assigns by deed of full covenant and warranty, free from all encumbrance except" &c. This means that the vendor is bound to make a good title. *Loundsbery v. Lacander*, 10 C. E. Gr. 554; *Skinner v. Christie*, 7 Dick., 720; Under no circumstances, therefore, could the vendor succeed on a bill for specific performance; but the position of the vendee is different. The vendor having agreed that he would make a good title, and finding it impossible to do so, must, at the call of the vendee convey what interest he has and receive the purchase money, less an abatement thereof equal to the value of the interest not conveyed. This was held in the recent case of *Ferrell v. Bork*, 79 Atl. 897, aff. 6 Buch. 615. There the vendor had title to only a 3/4 interest in the lands in question.

Memorandum.

He contracted to convey the entire title. The vendee elected to accept such title as the vendor could convey, and it was held that he was entitled to a decree for the specific performance of the contract, less $\frac{1}{4}$ of the title upon payment of three fourths of the purchase money. This was in 1910, but long prior to that it was held by our Appellate Court in *Lounsbery v. Locander* (1874) 10 supra, that a purchaser on a bill for specific performance filed by the vendor would not be compelled to accept compensation or indemnity, but that on a bill by the purchaser the vendor would be required to allow compensation if he should be able to make title for a part but not for the whole and if the purchaser consents to accept part performance with such compensation. A similar ruling was made in this court in *Borden v. Curtis*, 3 Dick. 128, and in *Keator v. Brown*, 20 12 Dick. 600.

The English cases disclose a similarity of judicial thought, as will appear by examination of the cases from those courts cited in the brief on behalf of the complainant. *Nelthorpe v. Holgate*, 1 Coll. 204; *Barnes v. Wood*, L. R. 8 Eq. 424; *Barker v. Cox*, L. R. 4 C. D. 464.

This rule seems to prevail whether the deficiency relates to either the quantity or the quality of the estate, that is to the physical amount or the tenure of the holding. In *Tobin v. Larkin*, 183 Mass., 389, the deficiency was $\frac{1}{12}$ part of the property which the vendor did not own, but the rule was enforced against him; and in *Barnes v. Wood*, supra, the husband, who had only an estate *pur auter vis*, contracted to convey the fee. The purchaser elected to take what title he could give, with a proper allowance by way of compensation for the deficiency. In that case James, V. C. says: 40

Memorandum.

10 "The plaintiff entered into a contract with him in ignorance of any defect in title. The husband therefore would be bound to convey whatever interest he had. The defendant is bound to the same extent, and it is for the court to find out in the best way it can how compensation can be made. There must be a declaration that the plaintiff is entitled to a specific performance of his contract to the extent of Stringer's interest, with a reference to inquire what compensation should be made for the outstanding interest."

20 My conclusion, therefore, is that the complainant is entitled to a decree that the defendants Sullivan and sister convey to the complainant whatever interest they have as life tenants during the life of Mrs. Kastenhuber or otherwise and it only remains to ascertain what deduction should be made from the agreed purchase money to compensate the complainant for the deficiency in the title. This can easily be determined by ascertaining the value of the life estate and deducting the amount from the total purchase money, which will leave the sum to be allowed for compensation.

30 But in this adjustment of the equities between the parties the complainant must give up his claim for a warranty deed, or must submit himself to a perpetual injunction, to be provided for in the decree, against bringing any action, either at law or in equity, for a violation of any express or implied covenants on the part of the vendor touching the land in question. If the vendor intended to pay the whole of the purchase money he might possibly be remitted to his remedy on the covenants, but inasmuch as he is now being compensated for the breach of the covenants, he cannot insist upon their insertion in the deed, or
40 on any right of action in respect thereof.

Affidavit.**IN CHANCERY OF NEW JERSEY.**

Between

ARTHUR BRISBANE,

*Complainant,**and*

JAMES A. SULLIVAN, et als.,

Defendants.

On Bill, etc.

10

I, Thomas L. Raymond, special master in Chancery of the State of New Jersey, to whom the above stated cause was referred for the examination of witnesses by an order of the Court of Chancery dated May 19th, 1914, do hereby certify to his Honor, the Chancellor, that the examination of witnesses in the above entitled cause was taken by Adeline Holloway, a stenographer selected by me, who was first sworn by me faithfully and truly to take stenographically and reproduce in manuscript of typewriting the testimony so given; and I do further testify that the testimony was taken in my immediate presence and hearing by the said stenographer, and that I believe that the said depositions accurately state the evidence so given.

20**30**

THOMAS L. RAYMOND,
Special Master in Chancery of N. J.

40

Certificate.
IN CHANCERY OF NEW JERSEY.

Between

ARTHUR BRISBANE,

Complainant,

and

JAMES A. SULLIVAN, et als.,

Defendants.

On Bill, etc.

10

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

Adeline Holloway, being duly sworn on her
oath according to law, deposes and says that she
will faithfully and truly take stenographically
and reproduce in typewriting or transcript the
testimony to be given in the above stated cause.

20

Sworn and subscribed to before me, at }
Newark N. J., this 17th day of June, 1914. }

ADELINE HOLLOWAY.

THOMAS L. RAYMOND,

Special Master in Chancery of New Jersey.

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IN CHANCERY OF NEW JERSEY.

Between

ARTHUR BRISBANE,

Complainant,

and

JAMES A. SULLIVAN, et als.,

Defendants.

On Bill, etc.

10

APPEARANCE :

Depositions of witnesses taken before me, the undersigned, at my office, 164 Market Street, Newark, N. J., on Wednesday, June 17, 1914, in the presence of Spaulding Frazer, Esq., of counsel for the complainant, and James A. Sullivan, Esq., who appears *pro se*.

20

THOMAS L. RAYMOND,
Special Master in Chancery of New Jersey.

JAMES A. SULLIVAN, having been first duly sworn on his oath, testifies as follows:

EXAMINATION BY MR. FRAZER:

Q. Mr. Sullivan, I have here a paper entitled "Rents received by James A. Sullivan from property located at 11 Wilkes Street, Jersey City, N. J.," which I received from Mr. Randolph Perkins. Please look at this paper and tell me if it is a correct statement of the amounts of rents which you have received. (Hands witness the paper.)
A. I am not actually familiar with the figures as set out in this paper, but I believe them to be correct.

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Deposition of James A. Sullivan.

BY THE MASTER:

Q. Will you admit this as being a statement, not under oath, but by way of reference? A. I do.

Paper above referred to is offered in evidence as a summary of the amount of money received, Exhibit C-1.

10

BY MR. FRAZER:

Q. As a matter of fact, you would receive during the year 1910, while the property was occupied, \$25 a month? A. While it was occupied, I believe that is correct.

Q. It was 1911 and 1912? A. If the paper so reads it is correct.

Q. And up to about August, 1913? A. Yes.

20 Q. Starting with November in 1913, continuously from then to the present time, you have been receiving rents at the rate of \$30 a month? A. I believe it to be so.

Q. Subsequent to 1910 there was a fire in that property? A. Yes.

Q. When did that fire occur? A. It occurred some time in the early summer.

Q. What year? A. I couldn't just say.

30 Q. Can you state the amount of money that you received from the insurance company? A. I couldn't do it without reference to a paper which Mr. Perkins was to give you. I should say it was around \$100.

Q. Do you know what the insurance company was in which you were insured? A. No, I don't know.

Q. During this period from 1910 to the present time, you paid no taxes on the property? A. I think they were paid for one year by me.

40 Q. Do you know what year that was? A. It was the year 1910 or 1911, I am not certain.

Deposition of James A. Sullivan.

Q. Mr. Sullivan, on account of the purchase price you have already received \$200? A. Yes, paid at the time of the execution of the agreement.

BY THE MASTER:

Q. Mr. Sullivan, who had charge of this place?
A. Minch & Plee, real estate men in Jersey City. 10

BY MR. FRAZER:

Q. Did they have charge of collecting rents and paying out necessary amounts for disbursements?
A. Yes.

Q. And they accounted to you for the excess?
A. Yes, at the end of every month. The \$245 was spent for painting, carpenter work and plumber work.

BY THE MASTER: 20

Q. How large is this property? A. 24-6/100 feet wide in the front, running about 110 feet deep and 25 feet wide in the back.

Q. What kind of building is on the lot? A. There is a little frame house on that lot. It is about 22 feet wide by about 35 feet deep.

BY MR. FRAZER:

Q. How many rooms in the house? A. Six rooms, two stories. 30

Q. Is it an old house? A. The house is about forty years old.

Q. Any improvements? A. No improvements of any kind.

Q. Is the house rented to one family? A. Yes, one family.

Q. Is the house in a well-settled neighborhood?
A. Yes, a well-settled business neighborhood.

Q. This house is not used for business purposes? A. No. 40

Q. There is a mortgage on the place? A. A mortgage for \$2,000.

Deposition of James A. Sullivan.

BY THE MASTER:

Q. What interest on that mortgage? A. 6%.
I have an equity of about \$200 in the property.

BY MR. FRAZER:

Q. Has the interest on that mortgage been paid pending this suit? A. Yes, right to date.

10 It is admitted that Exhibit C-2 is the tax bill for the year 1911, on the property in question, which shows the tax amounted to \$44, interest \$9.61, which was paid February 26, 1914. It is admitted that it was paid by the complainant.

It is admitted that Exhibit C-3, is the tax bill for the year 1913, which shows the taxes on the premises in question amounted to \$110.40.

20 It is admitted that Exhibit C-4, is the tax bill for the year 1912, against the premises in question, which shows the taxes for that year amounted to \$114.40.

Hearing adjourned until Wednesday, July 1, 1914, at 10:30 A. M., at which date it was further adjourned one week, July 8th, at the same hour.

30 JAMES A. SULLIVAN, being recalled on behalf of the defendants, testifies as follows:

Regarding the item of sundries, I beg to advise you that upon perusal of my account I find that I have no receipted bill vouchers to show that the moneys were expended or were paid out, but I have, however, check vouchers showing the payments to the following people: Karansky for painting, the sum of \$74.50; to Charles Cullen for mason work, the sum of \$125; to Harry Reed for plumbing work, the sum of \$50. Those ex-

Deposition of James A. Sullivan.

penditures were incurred between the years 1910 and 1912, I am quite certain.

BY MR. FRAZER:

Q. Subsequent to the time of closing of the title as fixed by the contract? A. Yes.

Q. I understand, Mr. Sullivan, that you are to submit to Judge Raymond the paid check vouchers showing the exact figures that have been paid out? A. I will. 10

Q. And that those check vouchers represent payments made on account of repairs and maintenance of this property during that time? A. Yes.

BY THE MASTER:

Q. There was a mortgage of \$2,000 on the premises in question which bears interest at the rate of 6%? A. Yes, payable on the first day of January and July each and every year. 20

Q. The interest is paid up to July first?

Q. You have paid the interest? A. I have paid it from the time of the agreement of sale.

BY MR. FRAZER:

Q. That sum of \$2,000 represented by the mortgage, Mr. Sullivan, was a part of the consideration of \$4,800 mentioned in the contract? A. Yes. 30

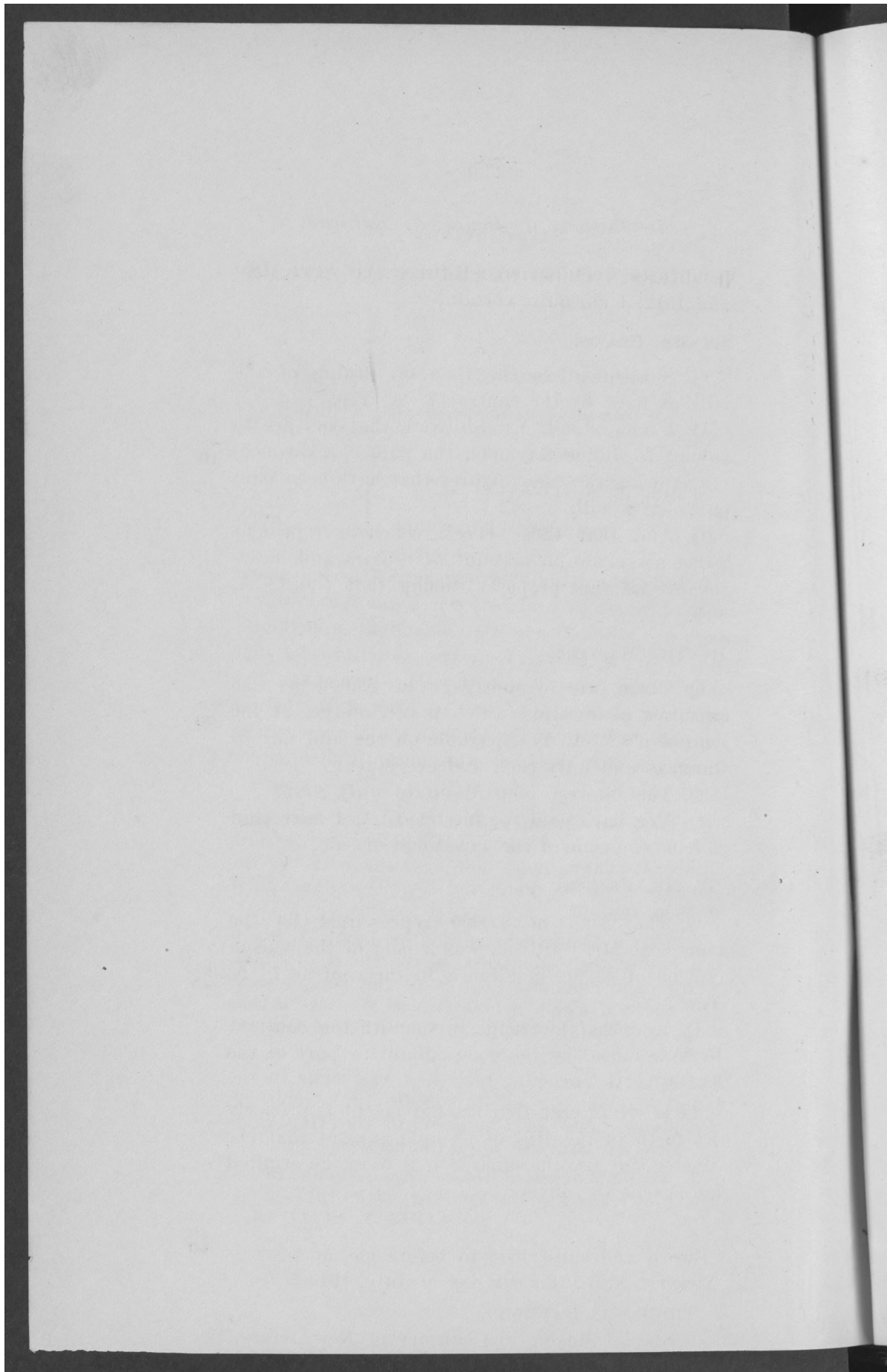
Q. And that mortgage was under the contract to be assumed by the complainant as part of the \$4,800? A. Yes.

IT IS STIPULATED that the agreement is properly set forth in the Bill of Complaint, and that the Master may use the same as if it were the original agreement to convey.

JAMES A. SULLIVAN.

Sworn and subscribed to before me, at)
Newark, N. J., this 8th day of July, 1914.) 40

THOMAS L. RAYMOND,
Special Master in Chancery of New Jersey.



Stipulation.

NEW JERSEY COURT OF ERRORS AND APPEALS.

Between

ARTHUR BRISBANE,

Complainant-Respondent,

and

JAMES A. SULLIVAN, et al.,

Defendants-Appellants.

On Bill, &c.
On Appeal,
&c. 10

It is hereby stipulated and agreed in the above entitled cause by and between Randolph Perkins, Esquire, solicitor for the defendants-appellants, and Riker & Riker, Esquires, solicitors for the complainant-respondent, in said cause, that the following papers need not be printed in full in the printed State of the Case in the above entitled cause, but that the same were actually filed as set forth below: 20

1. That on January 31st, 1912, a replication was filed in the Court of Chancery by Arthur Brisbane, complainant, joining issue with the defendants upon the joint and several answers filed by them therein.

2. That a demurrer was filed by James A. Sullivan, one of the defendants, in the Court of Chancery to the amended answer of the complainant filed therein, which demurrer was similar to that filed by Ella J. Sullivan, the other defendant therein. 30

3. That an order of reference was made in the Court of Chancery on July 25th, 1911, referring the above cause in Chancery to the Honorable Frederic W. Stevens, Vice Chancellor.

4. That an order of reference was made in the Court of Chancery on February 7th, 1913, refer-

Stipulation.

ring the above cause in Chancery to the Honorable James E. Howell, Vice Chancellor.

5. That an order of referenée was made in the Court of Chancery on August 29th, 1912, referring the above cause in Chancery to the Honorable Frederic W. Stevens, Vice Chancellor.

6. The following stipulations were duly entered into by and between the solicitors of the parties
10 to the above entitled cause, and filed in said cause:

a. Stipulation, dated July 9th, 1915, agreeing that the hearing of the argument on the exceptions to the Master's Report in the above cause in Chancery be adjourned to July 20th, 1915.

b. Stipulation agreeing that the application for the settlement of the final decree, and service of a copy of the draft of said final decree being thereby acknowledged, be heard before Vice Chancellor Howell on February 7th, 1916, at 9:15 A. M.

20 c. Stipulation agreeing that the complainant-respondent in the above entitled cause would not take advantage of the defendants-appellants' failure to serve a copy of the petition of appeal to the above entitled cause, upon complainant-respondent or his solicitors within the time limited by rules of Court, provided the said appeal be prosecuted and the matter brought on for argument by said defendants-appellants without any unnecessary delay, and in the event of such unnecessary delay on the part of appellants in prosecuting said appeal or bringing same on for argument,
30 complainant-respondent might at any time move to have said appeal dismissed.

Dated, June 14th, 1916.

RANDOLPH PERKINS,

Solicitor of Defendants-Appellants.

RIKER & RIKER,

Solicitors of Complainant-Respondent.