

New Jersey Court of Errors and Appeals.

Between :

JOSEPH KLAUSNER,

Complainant-Appellee,

and

PHEBE A. WATSON,

Defendant-Appellant.

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BRIEF FOR APPELLANT.

Facts.

On June 25th, 1913, the appellant, Phebe A. Watson, entered into a contract with John O'Connor, by which she agreed to sell and convey to him the lands and premises described in the bill of complaint, the time fixed for the performance of said contract being July 25th, 1913. (Exhibit C. 2, pp. 82, 84, l. 3).

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The latter part of August, 1913 the parties met in the office of J. W. Rufus Besson, where the title was to be closed, and on that day Mr. Besson tendered to Mr. Goldenhorn, who represented the purchaser, a deed, to O'Connor. Mr. Goldenhorn said that he did not represent Mr. O'Connor, but represented the assignee of the contract, a man named Klausner exhibiting an assignment of the contract in blank (pp. 21, 22).

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Mr. Besson refused to have his client make a deed to Klausner, there being nothing in writing to show that Klausner had any interest in the property (p. 55).

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From that day on the appellant, Mrs. Watson, on three several days attended to deliver the deed, on September 6th, September 9th and September 19th, the matter always being put off from time to time on some excuse advanced by Mr. Goldenhorn (Testimony of J. W. Rufus Besson, p. 56). Mr. Besson was at all times ready to close the title. There were unpaid taxes against the property, together with mortgages and other encumbrances, but all the encumbrances, except the
 10 taxes, had been discharged, and the vendor stood ready to pay the taxes out of the purchase money. (Testimony of J. W. Rufus Besson, p. 54, l. 32 &c.) opinion of the Vice-Chancellor, p. 67, l. 32 &c.)

On the 19th of September, Mr. Goldenhorn not appearing, and never having produced any assignment from O'Connor to Klausner, the vendor in effect rescinded the agreement by agreeing to convey to someone else. The following day the
 20 complainant-respondent put on record the original contract (C. 2), and an assignment from O'Connor to Klausner, dated on the 8th day of September, 1913, over eight weeks after the original time fixed for the passage of the title.

The summary of the facts by the Vice-Chancellor shows that the purchaser had unreasonably delayed taking title, but held that as time was not of the essence of the contract he was
 30 entitled to his conveyance.

On the trial the learned Vice-Chancellor admitted the assignment of September 8th, from O'Connor to Klausner, which is not set up in the bill of complaint, and is not within the pleadings, and we respectfully urge that in this there was error.

POINT I.

The deed called for by the contract (C. 2) having been tendered (testimony of J. W. Rufus Besson, p. 55) there was no obligation on the part of the defendant to give any notice to the complainant.

POINT II.

The bill of complaint set out an assignment in blank attached to the bill, and therefore the admission of C. 3 in evidence was error. 10

POINT III.

No legal assignment to the complainant having been served on the defendant or brought to her notice after the tender of the deed required to be delivered by the contract, the defendant was under no obligation to the complainant and was justified in executing the contract (D. 1). 20

POINT IV.

The assignee is in the same position as the original contractor O'Connor, a tender of the deed to O'Connor having been made, O'Connor would not be entitled to any further notice, and therefore the defendant was under no obligation to notify the complainant, and until satisfied of the assignment was free to enter into the contract D. 1. 30

Argument on the whole case.

It is a well settled principle that specific performance is a matter of discretion depending upon the circumstances of the particular case and not a matter of right *ex debito justitiae*, and that the remedy will not be granted where the party seeking it has been himself guilty of laches or unreasonable delay. 40

In the present case the vendor was ready to complete on the 25th of July 1913; was ready to deliver the deed to the purchaser, and was prepared to have the encumbrances disposed of, except the taxes, which were to be paid out of the purchase money. The deed was actually tendered on August 22nd, 1913. The purchaser, O'Connor, was not there to take title, instead of that an attorney appeared with an assignment of the contract in blank. This conveyed no title to anyone and gave no notice to the grantor of any claim to the contract by anyone else. The mere statement that Klausner was the assignee of the contract was under the Statute of Frauds of no avail, and the grantor would have been subject to litigation had she made any conveyance to Klausner on the strength of an assignment in blank.

She therefore had done all that the contract called upon her to do. What happened after that on her part was clearly without any consideration, and was merely a matter of grace, and conferred no right of any kind upon the vendee. After the tender of the deed the doctrine of the non-essentially of time ceased to have any application.

The defendant did more than the complainant had any right to expect, but what she did conferred no rights upon him.

The complainant never actually brought to the defendant the assignment to Klausner; that assignment was dated on the 8th of September, and was never recorded until September 20, 1913.

Chancellor Zabriskie, in *Bullock v. Adams' Executors*, 20 N. J. Eq. 367, at p. 372, says:

"This equitable doctrine (the non-essentiality of time) often causes great injustice and positive wrong, and ought not to be extended further than established."

This is particularly applicable to the present case. To encourage a suit like the present one

would be to put it into the power of a party contracting to purchase property, under the guise of an assignment in blank, to hold off the completion until he could have peddled around his contract for months, and then when the grantor had been kept out of the use of his property and money (and the mere legal rate of interest is so frequently an inadequate return) to demand a conveyance. It is not enough to say that the party might have protected himself by the insertion of a provision that time is of the essence of the contract. In all cases the law should require diligence on the part of the purchaser and to hold him strictly to the rule that a party who seeks specific performance must have been at all times ready, willing and anxious to perform on his part. 10

Bullock vs. Adams' Executors, supra.

We insist therefore that after the tender of the deed to O'Connor in August 1913, the contract had ceased to have any obligation, 20

Ashmore v. Evans, N. J. Eq. 151 at 154.

and that the bill should have been dismissed.

Respectfully submitted,

BESSON, ALEXANDER & STEVENS,
Of Counsel.

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

10

JOSEPH KLAUSNER,
Complainant-Respondent,

and

PHEBE A. WATSON,
Defendant-Appellant.

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BRIEF FOR RESPONDENT.

Statement of Facts.

In this brief I shall refer to the complainant-respondent as the complainant and to the defendant-appellant as the defendant.

On June 25th, 1913 the defendant entered into a written contract with John O'Connor, for the sale of certain lands and premises mentioned in the Bill of Complaint. The contract provided briefly that the property was to be sold for twenty-eight hundred dollars; the sum of five hundred dollars to be paid at the time of the execution thereof and the balance of twenty-two hundred and fifty dollars to be paid upon the delivery of the deed; that title was to pass on July 25th, 1913 and the deed was to be a deed of warranty free and clear of all encumbrances (Exhibit C 2, pp. 82-83-84). Endorsed on said

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contract, under the acknowledgement which was taken by the attorney for the defendant, is a blank assignment executed by the said O'Connor (p. 85).

10 On July 25th, 1913, Mr. Besson, representing the defendant, showed to Mr. Goldenhorn, representing the complainant, a deed to O'Connor; thereupon Mr. Goldenhorn showed the contract with the assignment to Mr. Besson and told him that the deed should be drawn to complainant; thereupon Mr. Besson stated that he would prepare a deed to complainant and he did actually prepare such a deed. The matter of passing title was adjourned from time to time in order to enable the defendant, or Mr. Besson, her attorney, to remove the encumbrances on said property, which consisted of several judgments obtained against the defendant, a mortgage, unpaid taxes and water rents and a blanket mortgage for seven thousand dollars. The evidence 20 in the case shows that the complainant and Mr. Goldenhorn, his attorney, were at all times ready and willing to pay the balance of the purchase price upon receipt of a free and clear title in accordance with the contract. (See testimony of Isaac F. Goldenhorn, pp. 21-28).

30 On July 25th, 1913, the date mentioned in the contract for the passing of title, none of the aforesaid encumbrances had been released or removed (27-28).

Testimony on both sides shows that the time for the passing of title was adjourned from time to time; the last date to which the passing of title was adjourned was September 19th. From July 25th to September 19th Mr. Goldenhorn and Mr. Besson had continued negotiations in respect to the clearing up of the title; there was no hour fixed for the passing of title on September 19th. On September 19th, at five-fifteen 40 o'clock in the afternoon, Mr. Goldenhorn went

to Mr. Besson's office with the balance of the purchase price and was prepared to pass title. Prior to that time he had been actually engaged at the Court House (p. 25, l. 10-18). Also on September 20th, Mr. Goldenhorn went there and was ready to pay the balance of the purchase price upon getting a title in accordance with the contract (p. 31, l. 25-40).

On September 19, 1913 all of the judgments, as well as the mortgage for seven thousand dollars was still opened of record and were liens against the lands and premises in question (pp. 27-28, l. 8-12).

There is no evidence to show that this seven thousand dollar mortgage was ever cancelled for this property released from it, even up to the time of final hearing; that the lien of the judgment of Max Mettzer for the sum of one hundred and fifty-six dollars and thirty-nine cents (\$156.39) was never cancelled or any release of the same ever tendered to the complainant, or his attorney. At no time during any of the negotiations were there any statement made up showing the amount of moneys to be held out for the payment of taxes and water rents, or for the several judgments and other liens. As a matter of fact, taking all of the judgments and the water rents and taxes, they amounted to more than the purchase price of twenty-eight hundred dollars (\$2800). Of course, the judgments were also liens against other property, but in order to enable the defendant to convey a free and clear title to the complainant, it was necessary for them to be either paid off or released.

There is no question but that the defendant did not make tender of a proper deed and could not convey the title which she agreed to convey either on July 25, 1913 or on September 19, 1913. This is absolutely proven by the evidence produced on her behalf. Everyone of

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the releases which were offered in evidence, were executed subsequent to September 19th, 1913, and on said date the property was subject to all of the liens and encumbrances mentioned above; some of the liens in question not being cancelled until just before the final hearing and some being still open of record and uncanceled at the time of the final hearing.

10 On September 19, 1913 there could not have been any tender of a proper title.

It appears from Exhibit C 5 (p. 87), made by Mr. Besson himself, that the amount of liens against the property, inclusive of the mortgage of seven thousand dollars amounted to more than the consideration price of twenty-eight hundred dollars.

POINT I.

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The defendant never tendered a proper deed in accordance with the contract.

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On July 25th, it is admitted that all of the encumbrances existed on said property and were not released or paid. No final legal tender of a deed can be considered as made at that time for the further reason that Mr. Besson agreed to prepare a new deed to the complainant and subsequently did prepare such a deed, (p. 22 1. 10). Defendant does not base any right on a legal tender on July 25th. The evidence of Mr. Goldenhorn (pp. 25-27) of Mr. Besson (pp. 54-55) shows that negotiations were continued for a long time after. The first thing the complainant knew he was informed that the deposit was forfeited and defendant would refuse to carry out the contract. This without any notice, formal or otherwise. Immediately complainant had contract recorded and instituted suit for specific performance.

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POINT II.

There was no legal default on behalf of the complainant.

A. Time was not of the essence of the contract.

The contract provided for the passing of title on July 25, 1913. There was no default at that time, for the passing of title was adjourned on several occasions subsequent to that time and negotiations in respect to the encumbrances on the property were had continuously right up until September 1913. 10

As stated by the Vice-Chancellor in his memorandum on page 67, l. 20: "The defendant could have performed by delivering a full covenant warranty deed to the complainant and caused the releases to be recorded." This was not done. 20

It is true that there was a day fixed in the contract for the passing of title, but by subsequent arrangements between the parties, this time was extended indefinitely. Therefore even though time was of the essence of the contract, the parties waived this because the parties actually adjourned the passing of title from time to time.

The Vice-Chancellor held that in order to create a forfeiture it was necessary for reasonable notice to be given, limiting the time within which the other party must perform. 30

B. There was no notice given whatsoever, either formal or otherwise.

When time is not of the essence of the contract a party has no right to rescind the contract until he has given notice limiting the time within which the other party must perform, which time must be reasonable. Bullock vs. Adams, Exrs., 20 N. J. Eq., 367; Oakey vs. Cook, 41 N. J. Eq., 350. 40

Counsel for appellant in his brief on page 4 did not quote the whole paragraph from the opinion in *Bullock vs. Adams, Extrx's*. The whole paragraph is as follows:

10 "This equitable doctrine often causes great injustice and positive wrong, and ought not be extended further than established. **But parties aware of this doctrine can always provide that time shall be of the essence of the contract by stipulating that if not performed within the time it shall not bind the party.**"

POINT III.

Defendant had knowledge of assignment.

20 In his memorandum the Vice-Chancellor on page 69 of the record says: "I am inclined to think that, in view of the conversation had as to the defective assignment on the back of the contract, Judge Besson understood that the deed was to be executed to an assignee. But, in view of the conclusion I have reached, it is not necessary to critically examine into this question."

There was uncontradicted evidence to support this finding.

30 The uncontradicted testimony of Mr. Goldenhorn is to the effect that a new deed to the complainant was prepared by Mr. Besson (p. 22, 1. 5-15).

There is no where in the record any evidence that the defendant or her attorney objected to an assignment or to treating complainant, the assignee, as the purchaser. On the other hand there was a complete acquiescence. (See p. 22, 1. 5-15).

40 The grantee had the right to assign the contract to complainant.

The doctrine that interests in real estate may be assigned unless specifically restrained by agreement is so fundamental that it is not necessary to cite cases.

In the case of *Griggs vs. Landis*, 6 C. E. Gr. page 508, Mr. Justice Scudder, writing the opinion of the Court of Errors says, "It is said, however, that Griggs knew when he took the assignment of the contract, that the time for performance had passed, and therefore he took it with the risk of being ousted and losing his improvements. Suppose he did know of the default. He also knew that Mr. Landis had given no intimation or notice of an intention to forfeit the contract, and upon this he had the right to act." 10

Any estate or interest in land may be assigned; and this is so whether the estate be legal or equitable, vested or contingent. 4 Cyc. 14. 20

Furthermore this question cannot be raised by the defendant. She and her attorney acquiesced in the assignment to complainant. Her attorney prepared a new deed to complainant. She is estopped from raising this question.

CONCLUSION.

The reasons for the decree of the court below are clearly set forth in the memorandum of the Vice-Chancellor (pp. 64-67). 30

There is no argument on the four points urged by appellant's counsel in his brief.

It is respectfully submitted that the decree under review should be affirmed.

HARRY LANE,
I. F. GOLDENHORN,
Of Counsel with respondent.

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Bill of Complaint.

In Chancery of New Jersey.

TO HIS HONOR EDWIN R. WALKER,

Chancellor of the State of New Jersey.

Complaining, shows unto your Honor your orator, Joseph Klausner, of the City of Brooklyn, in the County of Kings, and State of New Jersey. 10
That on or about the twenty-fifth day of June, nineteen hundred and thirteen, the defendant, Phebe A. Watson, widow, of the City of Jersey City, in the County of Hudson and State of New Jersey, made and entered into a certain contract and undertaking in writing, bearing date the day and year last aforesaid, with one John O'Conner, wherein and whereby the said defendant agreed to sell and convey to the said John O'Conner, his heirs and assigns, and the said John O'Conner, 20
his heirs and assigns, agreed to buy and purchase of the said defendant, Phebe A. Watson, and whereby said defendant agreed to deliver unto the said John O'Conner, or his heirs and assigns, a good and proper deed conveying the premises hereinafter described, free and clear of all incumbrances, on or before the twenty-fifth day of July, nineteen hundred and thirteen, for the sum of twenty-eight hundred dollars, which was 30
the consideration for said conveyance, and which is more particularly set forth and provided for in the said contract, a copy of which contract is hereto annexed and made a part hereof and incorporated herein as part of this bill of complaint, the following described lands and premises, to wit; All those lots, tracts or parcels 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, which 40

Bill of Complaint.

on a certain map entitled, "Map of property belonging to the Estate of Henry and Nellie Trap-
hagen, dec'd., sold on the thirteenth day of Decem-
ber, A. D. 1886, at two P. M. by Joseph R. Van
Syckle, Joseph Warren and Willian Hanks, Com-
missioners in Partition, under and by virtue of
a Decree of the Court of Chancery, dated Septem-
ber 25, 1886, and filed in the office of the Register
of Deeds of Hudson County, State of New Jersey
April 7th, 1887," are known and designated as
lots one (1), two (2), three (3), four (4) and
five (5), Block one hundred and thirty-four (134),
and lots eight (8), nine (9), and ten (10), block
one hundred and thirty-four (134).

And your orator further shows, that the said
purchase price for said lands and premises was
to be paid as provided for in the said contract,
as follows: The sum of five hundred and fifty
dollars to be paid in cash at the time of the exe-
cution of said contract, the receipt whereof was
duly acknowledged, and the balance of two thous-
and two hundred and fifty dollars to be paid in
cash at the time of the delivery of the deed men-
tioned in said agreement and contract. And it
was further provided in said contract that the
delivery of said deed, which was to contain full
covenants and warranty, was to be made on the
twenty-fifth day of July, nineteen hundred and
thirteen, at the office of Besson, Alexander &
Stevens, No. 1 Newark Street, in the City of
Hoboken, County of Hudson and State of New
Jersey, at which time the title to said lands and
premises was to pass from the defendant to said
John O'Conner, his heirs and assigns, as provided
for in said contract, a copy of which contract is
annexed hereto and made a part hereof as afore-
said.

And your orator further shows that after the

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signing of the said contract by the said defendant and said John O'Conner on the twenty-fifth day of June, nineteen hundred and thirteen to wit, on or about the first day of July, nineteen hundred and thirteen the said John O'Conner by an assignment, in consideration of the sum of one dollar, assigned, transferred, sold and set over unto your orator, all his right, title and interest in and to the said contract made and entered into on the said twenty-fifth day of June, nineteen hundred and thirteen, between said John O'Conner and said defendant, Phebe A. Watson. 16

And your orator further shows that the said contract so entered into as aforesaid between the said Phebe A. Watson, widow, and the said John O'Conner, his heirs and assigns, was duly acknowledged by J. W. Rufus Besson, Esquire, one of the Masters in Chancery of New Jersey, and subsequently was duly recorded in the Register's office of the County of Hudson. 20

And your orator further shows that subsequently, and on the twenty-fifth day of July, nineteen hundred and thirteen, your orator tendered performance on his part of said contract, which was duly and properly assigned to him for the purchase of said lands and premises, and then and there on the same day tendered to the defendant, Phebe A. Watson, at the office of Messrs. Besson, Alexander & Stevens, at No. 1 Newark Street, in the City of Hoboken, New Jersey, the sum of two thousand two hundred and fifty dollars, the amount of payment provided for on the delivery of the deed when title was to pass, and your orator insisted that the said defendant, Phebe A. Watson, deliver to your orator said deed, as provided in said contract, in and by which said agreement said defendant had then and agreed to do, and your orator then and there tendered himself ready and willing 30 40

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to carry out on his part all of the covenants and agreements to be carried out by the said John O'Conner, his heirs and assigns, and by your orator as the assignee of said contract as aforesaid, and as provided to be carried out by said John O'Conner, or your orator as his assignee, in said contract, for the purchase of said lands and premises; but the said defendant then and there refused, neglected and failed to deliver to your orator the full covenant, warranty deed as aforesaid, according to the terms of said contract and agreement, or any other sufficient deed and conveyance therefor, and refused, neglected and failed to accept and receive from your orator the said sum of two thousand two hundred and fifty dollars in cash as provided for in said agreement to be made by the said John O'Conner, and by your orator as the assignee of the said John O'Conner of the contract as aforesaid at the time of the delivery of said deed, and to receive and accept from your orator the said money so tendered in payment of said deed in accordance with the terms of said contract, and in accordance with the conditions and agreement of sale as contained in said contract; and the said defendant then and there refused to close title to said lands and premises with your orator, and has since and does now refuse to deliver said deed and accept said payment of two thousand two hundred and fifty dollars as provided for in said contract, although your orator has repeatedly requested her so to do, and as is provided for in the contract aforesaid.

And your orator further shows that he is now ready and willing to carry out and perform his part of the purchase of said lands and premises and all the covenants and agreements in said contract for the purchase and sale provided for on his part to be kept and performed, and now tend-

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ers and offers full performance on his part of all such matters, and tenders himself ready and willing to pay to said defendants the said sum of money so provided for in said contract in accordance with the terms thereof, and asks of said defendant the delivery of the deed by her as provided for in said contract.

And your orator further shows that the title in and to said lands and premises at the time of the execution of said contract and agreement of sale was in the name of Phebe A. Watson and that said defendant signed and executed said agreement. 10

And your orator further shows that to wit; on the twenty-sixth day of July, nineteen hundred and thirteen, the said lands and premises so to be conveyed by the defendant to your orator as assignee of the said contract herein set forth, were incumbered by the lien of a certain mortgage and by liens for taxes, assessments and judgments, and in order to assist the defendant in passing the said title your orator was ready and willing to pay off for said defendant all of the liens and incumbrances against said lands and premises so that the said defendant could convey said lands and premises to him free from all liens and incumbrances in accordance with the terms of said contract and agreement made between said defendant and said John O'Conner, the assignor of your orator. 20 30

And your orator further shows and well hoped that the defendant, Phebe A. Watson, would have complied with such reasonable request to convey said premises to your orator as in justice and equity she ought to have done, but the said defendant has refused to perform her part of the said agreement although she has been paid the deposit of five hundred and fifty dollars in ac- 40

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cordance with the terms of said contract, and although your orator has in all things complied with the terms of said contract, yet the said defendant has neglected and failed to convey said premises and to deliver a good and sufficient deed therefor, and to receive and accept from your orator the said sum of two thousand two hundred and fifty dollars cash payment provided
 10 for in said agreement, when the same was made and tendered to the said defendant in accordance with the terms and conditions of the said agreement.

All of which actions, doings and pretenses of the said defendants are contrary to equity and good conscience and tend to the manifest wrong, injury and oppression of your orator in the premises; inasmuch therefore as your orator is without
 20 adequate remedy or relief, except with the aid and interposition of this honorable court:

To the end therefore, that the said Phebe A. Watson may without oath, full, true and perfect answer make to all and singular the matters and charges aforesaid, as fully and particularly as if the same were here again repeated and she fully and particularly interrogated, and whether your orator did not tender and offer to the said defendant the payment of the said sum of two
 30 thousand two hundred and fifty dollars as provided for in said contract, and request and demand that the said defendant deliver to your orator the said deed as provided for in the said agreement or contract, or some other good and sufficient deed or conveyance for said lands and premises, conveying the same in fee simple to him to be delivered to your orator upon his complying with the terms of said contract for the purchase and sale
 40 of said premises, and that said defendant may specifically perform said agreement so made and

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entered into by her with your orator as assignee of said contract as aforesaid, that is to say, the said Phebe A. Watson may be directed and required to deliver to your orator a good and sufficient deed either in law or in equity for the aforesaid premises, in consideration of your orator complying with the terms and conditions of said agreement and your orator being ready and willing, and hereby offering specifically to perform such agreement and all such things on his part to be kept and performed, and that the said defendant may be decreed to make compensation to your orator for the damages he has sustained by reason of the defendant's failure to comply with and perform the terms and conditions of said contract, and that said contract and agreement of sale may be carried out in all of its terms and conditions by said defendant with your orator as assignee of said John O'Conner, whereby the said defendant was to convey an estate in fee simple in said lands and premises free and clear of all incumbrances for the consideration mentioned in said contract, and that said defendant may be compelled by the order and decree of this honorable court to convey to your orator by deed of warranty, free and clear of all incumbrance, the lands and premises herein set forth in accordance with the terms and conditions of said contract made and entered into as aforesaid between John O'Conner, his heirs and assigns, and the said defendant, and that your orator may have such other and further relief as the nature and circumstances of the case may require and as shall be agreeable to equity.

May it please your honor, the premises considered, to grant unto your orator the State's writ of subpoena, directed to the said Phebe A. Watson, directing her at a certain day and under a

Bill of Complaint.

certain penalty therein to be expressed, personally to be and appear before your Honor in this Honorable Court, then and there to answer the premises, to stand to, abide by and perform such decree therein as to your Honor shall seem meet.

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

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I. F. GOLDENHORN,

Solicitor and of Counsel with Complainant.

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ARTICLES OF AGREEMENT, made the Twenty-fifth day of June in the year of our Lord one thousand nine hundred and thirteen, between Phebe A. Watson (widow), of the City of Jersey City, in the County of Hudson and State of New Jersey, party of the first part; AND John O'Conner, of the City of New York in the County of New York and State of New York, party of the second part;

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WITNESSETH, That the said party of the first part, for and in consideration of the sum of Two Thousand Eight Hundred Dollars (\$2,800) 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 she 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 warranty free from all encumbrance on or before the twenty-fifth day of July, next ensuing the date hereof, all those lots, tracts, or parcels, of land and premises, hereinafter particularly described situate, lying and being in the City of Jersey City in the County of Hudson and State

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of New Jersey, which on a certain map entitled,

Bill of Complaint.

"Map of property belonging to the Estate of Henry and Nellie Traphagen, deceased, sold on the thirteenth day of December, A. D. 1886, at two P. M. by Joseph R. Van Syckle, Joseph Warren and William Hanks, Commissioners in Partition, under and by virtue of a decree of the Court of Chancery, dated, September 25, 1886, and filed in the office of the Register of Deeds of Hudson County, State of New Jersey, April 7th, 1887," 10
are known and designated as lots one (1), two (2), three (3), four (4) and five (5), Block one hundred and thirty-four (134), and lots eight (8), nine (9) and ten (10) Block one hundred and thirty-four (134).

AND the said John O'Conner, for himself, his heirs, executors and administrators, doth covenant, promise and agree to and with the said party of the first part, her heirs, executors, administrators and assigns, that he the said party 20
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 Two thousand eight hundred dollars (\$2,800) as and for the purchase money of the foregoing described land and premises, in the following manner, that is to say: the sum of five hundred and fifty dollars (\$550) to be paid in cash at the time of the execution of this agreement, the receipt of which is hereby ac- 30
knowledged, and the balance of two thousand two hundred and fifty dollars (\$2,250) to be paid in cash at the time of the delivery of the deed mentioned herein.

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 the twenty-fifth day of July, next ensuing the date hereof, 40

Bill of Complaint.

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 warranty shall be delivered and received at the office of Besson, Alexander & Stevens, No. 1 Newark Street, Hoboken, N. J., between the hours of ten in the forenoon and four o'clock in the afternoon on the said twenty-fifth day of July next ensuing the date hereof,

20 AND for the performance of all and singular the covenants and agreements aforesaid, the said parties do bind themselves and their respective heirs, executors and administrators; and they hereby agree to pay, upon failure to perform the same, the sum of Five hundred and fifty dollars (\$550) which they hereby fix and settle as liquidated damages therefor.

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

PHEBE A. WATSON.

Signed, sealed and delivered in the presence of
J. W. RUFUS BESSON.
(Seal.)

(Seal.)

(Seal.)

30

JOHN O'CONNER,
By James D. Cullimore,
Agent.

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

40 BE IT REMEMBERED, That on this twenty-fifth day of June, in the year of our Lord One thousand nine hundred and thirteen, before me, the subscriber, a Master in Chancery of New Jersey

Bill of Complaint.

personally appeared Phebe A. Watson, who, I am satisfied, is the grantor—mentioned in the within instrument, to whom I first made known the contents thereof, and thereupon she acknowledged that, she signed, sealed and delivered the same as her voluntary act and deed, for the uses and purposes therein expressed.

J. W. RUFUS BESSON,
Master in Chancery of New Jersey. 10

For one dollar (\$1.00/100) to me in hand paid and other valuable consideration the receipt of which is hereby acknowledged, I hereby assign, transfer and set over all my right, title and interest in the within contract to subject to an agreement signed June 27, 1913.

JOHN O'CONNER,
Per James D. Cullimore,
Attorney. 20

30

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Answer
IN CHANCERY OF NEW JERSEY.

Between :

JOSEPH KLAUSNER,
Complainant,

and

10

PHEBE A. WATSON,
Defendant.

This defendant answering says:

20 That she admits that on or about the twenty-fifth day of June, A. D., nineteen hundred and thirteen, she made and entered into a certain contract and undertaking in writing bearing date and year last aforesaid with one John O'Conner, wherein and whereby this defendant agreed to sell and convey to the said John O'Conner, his heirs and assigns by a good and proper deed, conveying the premises described in the bill of complaint, free and clear of all incumbrances on or before the twenty-fifth day of July, nineteen hundred and thirteen, for the sum of two thousand and eight hundred dollars (\$2,800).

30 Defendant further admits that the purchase price was to have been paid as provided for in said contract, viz; The sum of five hundred and fifty dollars (\$550) to be paid in cash at the time of the execution of said contract, and the balance of two thousand two hundred and fifty dollars (\$2,250) to be paid in cash at the time of the delivery of said deed; that said deed was to be full covenant warranty deed, and was to be delivered on the twenty-fifth day of July, nineteen hundred and thirteen, at the office of Besson, Alexander &
 40 Stevens, 1 Newark Street, Hoboken, New Jersey,

Answer.

at which time title was to pass to John O'Conner, his heirs and assigns, as provided in said contract.

Defendant denies that subsequent to the signing of said contract by John O'Conner on the twenty-fifth day of July, nineteen hundred and thirteen, to wit; on or about the first day of July, nineteen hundred and thirteen, or at any other time, the said John O'Conner assigned all his right, title and interest in said contract mentioned in said bill of complaint to the complainant. 10

This defendant admits that the contract mentioned in said bill of complaint was duly acknowledged before J. W. Rufus Besson, Esq., one of the Masters in Chancery of New Jersey, and subsequently was duly recorded in the Register's office of the County of Hudson.

This defendant further denies that subsequently, on the twenty-fifth day of July, nineteen hundred and thirteen, the complainant tendered performance on his part of said contract. This defendant further denies that said contract was duly and properly assigned to the complainant for the purchase of said lands and premises. Defendant further denies that on the same day the complainant tendered to this defendant, Phebe A. Watson, at the office of Messrs. Besson, Alexander & Stevens, No. 1 Newark Street, in the City of Hoboken, New Jersey, the sum of two thousand two hundred and fifty dollars (\$2,250), the amount of payment provided for on the delivery of the deed when title was to pass; this defendant further denies that the complainant insisted that the defendant deliver to him said deed as provided in said contract, in and by which said agreement said defendant had then and there agreed to do, or that the complainant then and there tendered himself as willing to carry out on his part all of the covenants and agreements to 20 30 40

Answer.

be carried out by the said John O'Conner, his heirs and assigns. This defendant further denies the assignment of said contract as aforesaid.

10 This defendant denies that said complainant is now ready and willing to carry out and perform his part of the purchase of said lands and premises and all the covenants and agreements in said contract for the purchase and sale provided for on his part to be kept, and performed, and denies that complainant tendered himself ready and willing to pay to said defendant the said sum of money so provided for in said contract in accordance with the terms thereof.

20 This defendant further admits that the title in and to said lands and premises at the time of the execution of said contract and agreement of sale was in the name of Phebe A. Watson, and that this defendant signed and executed said agreement.

This defendant denies that said lands mentioned in said contract were incumbered by the lien of a certain mortgage, and by liens of taxes, assessments and judgments, and denies that the complainant was ready and willing to pay off all the incumbrances against said lands and premises.

30 This defendant denies that she has refused to perform her part of said agreement. Defendant admits that she has been paid the sum of five hundred and fifty dollars (\$550); said sum being paid to her by John O'Conner and not by the complainant. Defendant denies that the complainant has complied in all things with the terms of said contract, and denies that said defendant has neglected and failed to convey said premises and to deliver a good and sufficient deed therefor, and defendant further denies that the sum of two
40 thousand two hundred and fifty dollars (\$2,250)

Answer.

in cash payment provided for in said agreement was ever tendered in accordance with the terms and conditions of the said agreement.

This defendant further answering says; that on the twenty-fifth day of July, nineteen hundred and thirteen, she tendered a deed executed to the said John O'Conner, at the office of Besson, Alexander & Stevens, at 1 Newark Street, Hoboken, New Jersey, and that she continued to be ready to convey said premises to said John O'Conner, but the said John O'Conner refused to carry out his part of the contract, and further, that this defendant does not know the complainant; has never had any dealings with him, and that there is no privity between them, and never has been.

10

This defendant further says, that having waited for the said John O'Conner to carry out his agreement for a reasonable time this defendant being greatly inconvenienced by reason of the non-payment of the balance of the money, did on the nineteenth day of September, nineteen hundred and thirteen, enter into a contract of sale of the said premises to one George W. Cranwell, which contract this defendant is bound to carry out, and

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This defendant humbly prays to be hence dismissed with her reasonable costs and charges in this behalf most wrongfully sustained.

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BESSON, ALEXANDER & STEVENS,
Solicitors for Complainant.

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Minutes of Final Hearing.
IN CHANCERY OF NEW JERSEY.

Between :

JOSEPH KLAUSNER,

Complainant,

and

PHEBE A. WATSON,

Defendant.

} On Bill &c.

10

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

I. F. Goldenhorn, Esq., for Complainant.

J. W. R. Besson, Esq., (Of Besson, Alexander & Stevens), for defendant.

20

Before

HON. JOHN GRIFFIN, Vice Chancellor:

Chancery Chambers, Jersey City, N. J.,
 May 18th, 1914.

THE CASE FOR THE COMPLAINANT.

30

THE VICE CHANCELLOR: The whole question here is whether or not this assignment is good, is it not?

MR. BESSON: The assignment is in blank. We have no knowledge of it.

THE VICE CHANCELLOR: Is John O'Connor a party defendant?

MR. BESSON: No, he is not.

MR. GOLDENHORN: Now, may it please your Honor, this is an action for specific performance—

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THE VICE CHANCELLOR: I have read the

Minutes of Final Hearing.

bill. You may go right on with the case. It seems to me the only point is whether or not this assignment was properly executed by O'Connor to the complainant here, is not that the only point in the case?

MR. BESSON: Well, I might say this, that the contract was entered into by the defendant, Phebe Watson, with J. O'Connor and subsequently there was an assignment of which we had no notice, and that assignment of the contract is in blank and—

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THE VICE CHANCELLOR: Where is the contract?

The contract was produced by Mr. Goldenhorn.

THE VICE CHANCELLOR: (Examining the contract). The assignment is in blank.

MR. GOLDENHORN: There was a formal assignment subsequent to that. There it is your Honor,—of which the defendant was advised.

20

THE VICE CHANCELLOR: (After inspecting the assignment referred to). You may proceed.

MR. GOLDENHORN: Mr. Besson admits, without my calling on the City Collector to prove these receipts, the taxes which were due at the time that we passed this title, namely, the taxes for the years 1910, 1911 and 1912 on these various lots, and I desire to offer these tax bills to prove the various amounts, and ask that they be marked.

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MR. BESSON: I will object to the tax bills at this time because I think it is proper for them to prove their case in the proper way. These tax bills, of course, would be paid out of the proceeds of the sale.

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Minutes of Final Hearing.

THE VICE CHANCELLOR: You deny that there were any taxes due?

MR. BESSON: Well, this is our position in regard to the taxes, that our warranty deed would have been delivered when these taxes were paid from the proceeds of the sale.

10 THE VICE CHANCELLOR: I understand; that is another proposition, but I understand your answer denies that at the time the contract was made there were any taxes due. In case of a decree for specific performance possibly the Court ought to have a record of any encumbrances against it, so as to make a proper decree.

MR. BESSON: I will admit the offer for that purpose, although it is somewhat out of the order of proof.

20 The tax bills were thereupon admitted and marked as one Exhibit C-1.

MR. GOLDENHORN: I desire to offer the contract made between the defendant, Phebe A. Watson and John O'Connor, dated June 25, 1913, and recorded in the Register's Office on September 20th, 1913, in Book 1167 of Deeds for Hudson County, at page 148 &c.

30 Admitted and marked Exhibit C-2.

Joseph Klausner—Direct.

JOSEPH KLAUSNER, SWORN.

DIRECT EXAMINATION BY MR. GOLDENHORN:

Q. Where do you live? A. 1156 Eastern Parkway, Brooklyn, N. Y.

Q. What is your business? A. Dry goods.

Q. Were you present at the office of Mr. J. W. Rufus Besson when this contract, Exhibit C-2 was made (showing witness same)? A. No, sir. 10

Q. Were you present when the deposit was made? A. Yes, sir.

Q. At whose office was that made? A. I know it is Hoboken, No. 1 Newark Avenue, I couldn't think of the name.

Q. Was it at a law office? A. It was a law office.

Q. Was Judge Besson there? A. No, I believe a younger chap there was there. 20

Q. A young gentleman was there? A. Yes, sir.

Q. Who paid the deposit? A. I did.

Q. How much did you pay? A. \$550.

Q. And to whom did you pay it? A. I paid it to that young gentleman.

THE VICE CHANCELLOR: What is the gentleman's name?

A gentleman in the audience stated that the name was David F. Plahn, that he was a clerk in Judge Besson's office. 30

Q. At the time the \$550 was paid was there any paper delivered to Mr. O'Connor, or to you?

A. Yes, I believe this contract was delivered.

Q. Who delivered that to you? A. That young gentleman.

Q. Whom was it delivered to? A. To Mr. O'Connor.

Q. In your presence? A. Yes, sir. 40

Joseph Klausner—Direct.

Q. Now, after that did you purchase the contract from O'Connor? A. Yes, sir; I did.

Q. And when was that, do you remember? A. I couldn't specify the date, but the date of this was written on.

Q. The day that this was written on the back? A. Yes, sir.

10 Q. And did you see Mr. O'Connor write it? A. Yes, sir.

Q. Is that his signature? A. Yes, sir (referring to the written assignment on the back of the contract).

MR. BESSON: Is he the witness to that contract?

MR. GOLDENHORN: No, he is not the witness.

MR. BESSON: I object to it.

20 MR. GOLDENHORN: There is no witness to it.

THE VICE CHANCELLOR: Well, if there is no witness he can testify whether or not he saw him write it.

Q. Did you see him write it? A. Yes, sir.

Q. What did he do after he wrote it? Did he give it to you? A. Yes, sir.

30 MR. BESSON: I object.

A. Why, I turned it over to Mr. Goldenhorn to be searched.

Q. Now, Mr. Klausner, after you turned it over to Mr. Goldenhorn, did you turn over any money to Mr. Goldenhorn? A. Yes, sir, I turned him over the balance of the money.

MR. BESSON: I object to that as being immaterial.

40 THE VICE CHANCELLOR: It is not material. If you made the tender of the money that is sufficient.

Joseph Klausner—Cross.
Isaac F. Goldenhorn—Direct.

CROSS EXAMINATION BY MR. BESSON:

Q. Did you disclose who you were at the time the \$550 was paid? A. No, sir.

BY THE VICE CHANCELLOR:

Q. What was Mr. O'Connor's business? A. He was in the real estate business.

10

ISAAC F. GOLDENHORN, ESQ., sworn.

THE WITNESS: I am the attorney for Mr. Joseph Klausner. In the month of July, the early part of July, 1913, Mr. Klausner came to my office with the contract, Exhibit C-2, upon the back of which was written what purported to be an assignment from O'Connor to him—

20

THE VICE CHANCELLOR: But which does not contain his name.

THE WITNESS: But it does not contain his name. After receiving the contract I made a search of the property in question, and I then communicated with Judge Besson whom I learned was the attorney for Mrs. Phebe A. Watson, and I arranged to meet at his office sometime about the middle of July; at that time I stated to Mr. Besson that I was making a search of the title, and that I found certain encumbrances against the real estate. We then made another appointment to close the title which was about the 25th day of July. At that time I came to Mr. Besson's office, and he had a deed made out to Mr. O'Connor, and I said "Judge, I don't represent Mr. O'Connor, I represent Mr. Joseph Klausner", and he said, "Well, where is the as-

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Isaac F. Goldenhorn—Direct.

10 signment?" and I showed him the assignment on the back of the contract. "Well", he said, "I will tell you what I will do, you get another assignment and I will have a deed prepared to Joseph Klausner, and we will make another appointment." We made another appointment and at that time Judge Besson had a deed, which he showed me, to Joseph Klausner. I there-
upon, in the meantime and early in the month of September,—the 8th of September,—prepared the assignment which I have in my hand.

BY THE VICE CHANCELLOR:

Q. Was that before you had this last conversation with Judge Besson? A. I prepared the assignment subsequent to the last conversation with
20 Judge Besson. I told him I would get a formal assignment from Mr. O'Connor to Mr. Klausner, and the Judge said, in the meantime he would get another deed from Mrs. Watson to Mr. Klausner. When I appeared there early in the month of September (and, by the way, we had been adjourning this from time to time, and whenever I wasn't ready, he would telephone me) and finally on the 8th day of September I obtained from Mr.
30 O'Connor this paper which I hold in my hand and which I now offer, which is an assignment of this contract and agreement.

MR. BESSON: I object to that.

THE VICE CHANCELLOR: It speaks for itself.

MR. GOLDENHORN: I desire to offer this paper.

THE VICE CHANCELLOR: You are the subscribing witness.
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THE WITNESS: I am; yes, sir. I was the

Isaac F. Goldenhorn—Direct.

subscribing witness and took the acknowledgement. I now offer this paper.

MR. BESSON: I object to it. It is not set out in the bill. This is the first time I have known there was any such paper. I have no notice of it.

THE VICE CHANCELLOR: Do you mean to say it was never shown to you?

MR. BESSON: Oh, no.

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MR. GOLDENHORN: Well, I will prove that in a moment.

THE VICE CHANCELLOR: It may be offered for identification.

THE WITNESS: I will go further; after the 8th of September, and after this assignment was prepared and executed before me, I made an appointment with Judge Besson at his office. I think it was either the 16th or 17th day of September. At that time I appeared at the Judge's office showed him the assignment, the paper that I hold in my hand and he said he had that all ready and was ready to pass the title. I said that the only question now was about getting rid of the numerous encumbrances which I enumerated; I showed the Judge the different judgments, and the Judge made up a statement in my presence in his handwriting, which I have here, of the different encumbrances the real estate. We checked off these judgments on my search and the amount of the mortgage that there was against the property; there was a mortgage of \$7,000. He said, "Yes, that was so", and there was a judgment of Anderson Brothers for \$386.14, one of James W. Greene for \$135.01, one of Max Metker for \$156.39, one of George R. Law-

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Isaac F. Goldenhorn—Direct.

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rence for \$85.92, one of the Third National Bank for \$1863.63, one of Joseph Schmidt and others for \$301.24, and then there were numerous items of taxes which are shown on the tax bills which have been offered. Thereupon we got into a discussion about a commission of \$170, which an agent by the name of Maloney was entitled to from Mr. Watson. I think on that day, which was either the 16th or 17th of September, Mrs. Watson's daughter was present and she said that she wouldn't allow the commission, that we had been delaying the matter and for that reason she thought we ought to pay interest on the taxes and we ought not to be allowed any commission. I said that my client never would stand for that. I said—

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THE VICE CHANCELLOR: You were to be allowed the commission?

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THE WITNESS: Why, we had an assignment of the commission from a man who was the agent, Mr. Maloney, to my client, which we asked for a reduction off for. I had the paper there and showed her the paper, that we were entitled to the \$170 commission, which we were going to deduct off the consideration price. I said I was ready, that I had the money and was ready to pass the title but I wanted all the encumbrances cleaned up. Judge Besson said that he had releases from most of these judgment creditors and that he had them in his hand. He said the releases were not sent to the Court House but they would be sent to the Court House. I said "Judge, I will tell you what I will do. I will get

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Isaac F. Goldenhorn—Direct.

into communication with my client and find out about the interest on the taxes and let us fix Friday the 19th day of September 1913, to pass the title, and you have everything cleaned up by that time. On that Friday, I was engaged in the Circuit Court, and I telephoned Judge Besson, or telephoned his office, I did not get into communication with the Judge's office myself, but when I reached my office after five o'clock in the afternoon I went over to the Judge's office by reason of what I heard in my office—I made post haste to the Judge's office—and got over there, but the Judge had gone home. I desire to offer this assignment of the contract now. 10

THE VICE CHANCELLOR: That is dated the 8th day of September, 1913, and the title was not to pass until the 19th, and it is recorded on the 20th of September. 20

MR. GOLDENHORN: Yes, sir, recorded; but they refused to give us the deed.

MR. BESSON: I object to it.

THE VICE CHANCELLOR: On what ground?

MR. BESSON: I had no notice of it at all. We did not have any notice of it in the bill. There is nothing in the bill to indicate that there was any such assignment. 30

THE VICE CHANCELLOR: He said he showed it to you.

MR. BESSON: Of course, I deny that, as I have already stated.

MR. GOLDENHORN: It is set forth in the bill that there was an assignment to my client.

MR. BESSON: This is the first notice I ever had of any such assignment.

THE VICE CHANCELLOR: You can meet 40

Isaac F. Goldenhorn—Direct.

that. I will admit the paper in evidence. Of course, if it was not shown to you before this thing happened, or you had no evidence that Mr. Klausner was entitled to it, and would probably be justified in refusing to deliver the deed.

The assignment is marked Exhibit C-3.

10 THE WITNESS (Resuming.) I got there around quarter after five—

THE VICE CHANCELLOR: On the 19th of September?

20 THE WITNESS: Yes, sir; and I spoke to one of the clerks in the office, I didn't know the gentleman's name; and the next morning (Saturday) I went over to the Judge's office and had the money with me, had \$2200 with me, to close the title and pay whatever there was coming to Mrs. Watson. The Judge was not there, and I was informed by the clerk in the office that they would not give me a deed of the property. Thereupon, on Monday the 22nd day of September I wrote this letter to Judge Besson,—this is a copy:

30 "Jersey City, September 22, 1913.
Hon. J. Rufus Besson,
Counsellor at Law,
Hoboken, N. J.
My Dear Judge:—"

MR. BESSON: I admit I received that letter.

THE VICE CHANCELLOR: Then you can offer the copy of the letter in evidence. I will read it myself.

The copy of the letter is thereupon offered in evidence as a substitute for the orig-

Isaac F. Goldenhorn—Direct.

inal, admitted without objection and marked Exhibit C-4.

THE WITNESS: (Resuming.) I received no reply to the letter Exhibit C-4. When I was in the Judge's office early in the month of September the Judge produced a deed to my client Joseph Klausner, which I saw, of the property in question. I compared the description.

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MR. BESSON: When was that?

THE WITNESS: Early in September—some time around the 14th or 15th or 16th of September—I cannot recall the dates. At that time, when the Judge made up a statement, which I hold in my hand, of the encumbrances against the property, there was due to the Judge's client, if the contract went through, the \$2800, the amount specified in the contract, less deposit of \$550 in addition to a commission of \$170, as shown by the Judge's statement but the Judge's statement showed that the encumbrances against the property, in addition to the \$7000 mortgage, which he claimed he had a release of and which he showed to me (a mortgage held by Mrs. Alexander I think for \$7000) there was due against the property \$2874, which did not include the taxes; and at that time the Judge stated to me that he thought he could get releases of all the judgments except the judgment of Greene. The judgment of Greene amounted to somewhere around \$100, but he said it has been reduced and he thought that \$25.00 would satisfy that judgment. On Saturday the 28th day of September, 1913, I went to the Court House and looked over the records of these various judg-

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Isaac F. Goldenhorn—Cross.

ments which I have mentioned and I found that they were still uncanceled of record. I also ascertained from the City Collector's office that the taxes had not up to that time been paid. I also ascertained that the mortgage for \$7000 was still uncanceled of record and was open. In 1914—this year—about a month ago. I passed another title of Mrs. Phebe A. Watson, to a client of mine named Gordon—

MR. BESSON: I object.

MR. GOLDENHORN: I will state to your Honor, the object of this: I went to show that these judgments were then cancelled by me at this late date. I want to show that that was long subsequent to the passing of this title in question here, so that they could not have given me a clear title at that time.

THE VICE CHANCELLOR: Well, state when they were cancelled.

THE WITNESS: These judgments were cancelled my me, through the passing of another title, about three weeks ago. There is still open one judgment of Greene for which I am holding a deposit left with me by Judge Besson.

THE VICE CHANCELLOR: Is that all?

THE WITNESS: That is all, sir.

CROSS EXAMINATION BY MR. BESSON:

Q. Now, Mr. Goldenhorn, on the day that that statement was made up did I not show you a deed to John O'Connor? A. I won't say that was the day, Mr. Besson, but I do recall your showing me a deed to O'Connor.

Q. And saying that that was the first that I knew that you represented anyone else but O'Con-

Isaac F. Goldenhorn—Cross.

nor? A. I think it was the day that you showed me the deed to O'Connor that I told you that I appeared for Joseph Klausner.

Q. And I offered you this deed on that day, did I not? A. You offered me that that deed, yes, sir, at that time.

Q. Is that the deed (showing witness a paper)? A. That is the deed; yes, sir.

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The deed is marked for identification J.
W. R. B. 1.

BY THE VICE CHANCELLOR:

Q. Have you identified the date? A. I don't recall the date; it was at one of our numerous meetings.

Q. What is the date of the deed? A. It is dated the 24th day of July, but that was not the date; it was long subsequent to that.

20

MR. BESSON: And that deed was executed and ready for delivery on the day the contract called for.

BY MR. BESSON:

Q. Then, on that day I also showed you releases for the several judgments that appeared on the return of the search? A. Not for all of them, only for some of them, Mr. Besson.

Q. In your testimony you said that the release of the Greene mortgage was not produced? A. The Greene judgment.

30

Q. The Greene judgment, I mean. A. Yes, sir.

Q. Do you remember this release (showing witness a paper)? A. No, I do not recall seeing the Greene one, Mr. Besson. I do not recall that, sir; I saw it afterwards; I saw it subsequently, at your office about a month ago when we were going to pass this other title, and I criticised it on the ground that the—

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Isaac F. Goldenhorn—Cross.

THE VICE CHANCELLOR: Well, that is not necessary.

A. Well, that is when I saw it.

Q. This subsequent title you speak of was a release of property on Eighth Street and an entirely different piece, was it not? A. Yes, sir; but it was released as the effect of these various
10 judgments.

Q. I mean the Greene judgment was simply against the Eighth Street property. A. The Eighth Street property, yes, sir.

Q. This release is against what (referring to the paper just previously shown witness)? A. I do not recall seeing that, but I imagine it covers this property in question now; but I do not recall seeing it. That is my best recollection of it.

20 BY THE VICE CHANCELLOR:

Q. What is the date of it? A. The 20th day of August, 1913, subsequent to the time fixed in the contract.

Q. But before the date of your assignment—it was before the date of the assignment from O'Connor to Klausner? A. That is before the formal assignment, yes, sir; not the assignment mentioned in the contract.

30 BY MR. BESSON:

Q. Now, September 19th was the day fixed for the passing of this title? A. Well, that was one of the days, Judge, yes.

Q. Well, there had been a number previous to that? A. Oh, yes, quite a number.

Q. And on those days you were unable to get there? A. No, I won't say that. I think I was ready as often as your office was. It was adjourned either because of the fact that you were
40 engaged or that I was.

Isaac F. Goldenhorn—Cross.

Q. How often was it adjourned on that ground?
A. Well, I won't say,—possibly two or three times; and as many times on yours; that is my best recollection.

Q. Now, on the 19th day of September you arrived at the office at 5:15, you say? A. I think it was between five and six o'clock, Judge, yes.

Q. Who did you see there? A. I do not recall which of the clerks I saw, but I think it was the gentleman sitting over there on the extreme left; not Mr. Plahn, another gentleman.

10

Q. That was on the 19th? A. I think so; I won't be positive.

Q. Are you sure the office was not closed on that day? A. I am pretty sure it was not. I think it was around five o'clock that I was at your office. I know I hurried right over there.

Q. Now, on September 20th the following morning—A. You weren't there. I called.

20

Q. What did you do that morning? A. That morning I came over and had the money in my pocket \$2250, and said I was ready to take the deed, if I could get a clear deed with all these encumbrances off.

Q. Whom did you say that to, yourself? A. No, I said it to one of the clerks in the office whom I met there, I do not recall who it was; and he said that Mrs. Watson had made a contract with somebody else, that there wasn't going to be any deed delivered.

30

Q. He told you that a contract had already been made by Mrs. Watson to sell to someone else? A. That is what he told me, that that is what happened.

Q. And did you make any formal tender? A. I said I was ready and willing to take the deed. I said that I had the money and that "I am ready and willing to take a warranty deed if you can

40

Isaac F. Goldenhorn—Cross.

give me a clear deed with all these encumbrances off."

Q. That is what you said—you did not produce any money? A. I did not take it out of my pocket. I had it with me ready to take the title.

10 Q. Now, when was it that you say you showed me this assignment (showing the witness the assignment)? A. This was obtained in accordance with your instructions that you wanted a formal assignment. I produced this at your office either the 15th, 16th or 17th of September—two or three days before the 19th of September; and at that time you had already prepared, and showed to me, a deed to Joseph Klausner.

Q. Well, what time of the day was that? A. Why, it was around twelve or one o'clock—somewhere at mid-day. It was around mid-day that I was there.

20 Q. What room was I in when you produced that paper? A. Why, you were in, I should say, the most easterly room of your suite of rooms there—the most easterly room—and you then showed me the deed to Mr. Klausner. You had it already made out and executed.

30 Q. Do you remember the conversation in regard to the O'Connor deed, when I showed you that? A. I don't remember the conversation; all I can recall of it is generally that I said I represented Mr. Klausner, and I showed you the assignment on the back, and you and I read the assignment, and you said "Why, that doesn't refer to anybody" and I said, "Well, I have got Mr. Klausner's money, and I will get you a formal assignment." You said, "That is what you will have to get", and you said "in the meantime, I will have a deed prepared to your client, Joseph Klausner." And I spelled his name out, and I 40 even called him up right on your telephone, to Brooklyn, and spoke to him.

Isaac F. Goldenhorn—Cross.

Q. Now, from that time on until the 20th of September no tender was ever made? A. No, for the reason that you were never prepared to give us a clear deed I was always ready; I had the money, and have got it now.

MR. BESSON: I ask that that statement be stricken out. I haven't asked any question that called for that statement.

10

THE VICE CHANCELLOR: The latter part of that response will be stricken out.

MR. BESSON: I think that is all.

THE WITNESS: I want to add a word: The former mortgage I spoke of was a mortgage given by Phebe A. Watson to Archibald Alexander for \$7,000 dated July 28, 1910, and recorded August 1, 1910, which was still open of record on September 19th, 1913.

20

MR. GOLDENHORN: I offer this statement of the Judge's in evidence.

THE VICE CHANCELLOR: What was that given to you?

MR. GOLDENHORN: That was given to me early in the month of September 1913, at the time when the Judge and I went over the different liens against the property.

MR. BESSON: I have no objection to that, of course it is my memorandum.

30

MR. GOLDENHORN: I also offer a letter addressed to me by J. Franklin Maloney, Agent, which I showed to Judge Besson and Mrs. Watson's daughter at the Judge's office, assigning to us the \$170 commission, due upon this sale, from Mrs. Watson to Mr. Maloney.

MR. BESSON: I object to that as there is no reference to that commission in the bill at all.

40

Isaac F. Goldenhorn—Cross.

MR. GOLDENHORN: This will show how much money we were to pay at that time, for the deed, and the Judge has it in his own figures.

10 MR. BESSON: Well, I object to the letter being in evidence. There is nothing in the bill referring to the letter and there is nothing to show who was entitled to commissions or anything else. There is no claim in the bill for commission.

THE VICE CHANCELLOR: Is there any reference to this in the bill?

MR. GOLDENHORN: No, sir; there is not, but there is a reference in the Judge's statement here to the amount which was owed. The reference in the bill is simply in conformity with the contract, if your Honor please.

20 THE VICE CHANCELLOR: I know, but what right had you to deduct a commission?

MR. GOLDENHORN: Well, you see we would owe to Mrs. Watson \$2200, but Mrs. Watson owed to Mr. Maloney for Commission \$170. Now, we hold an assignment of it.

30 THE VICE CHANCELLOR: What difference does that make? Why didn't you pay the amount you owed and then look to Mrs. Watson under her assignment. You might just as well have undertaken to pay this thing instead of in cash perhaps by a judgment which had been assigned to you.

MR. GOLDENHORN: Well I took this view of it,—it was simply a question of the amount that was due when we came to clear the matter up.

40 THE VICE CHANCELLOR: I will admit it in evidence for what it is worth. (The paper is marked Exhibit C-6.)

Isaac F. Goldenhorn—Cross.

MR. BESSON: This is a letter between people that we have nothing to do with.

THE VICE CHANCELLOR: It purports to be an assignment of a paper shown to you as counsel for Mrs. Watson, showing you the balance due on the contract.

MR. GOLDENHORN: And it is referred to may your Honor, please, in the statement.

10

COMPLAINANT RESTS.

THE CASE OF THE DEFENDANT.

THE BESSON: I will now offer this deed which was marked for identification from Mrs. Watson to Mr. John O'Connor, dated July 24th, 1913, acknowledged the same day.

20

The deed is admitted in evidence and retains its original marking J. W. R. B. 1.

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Phebe A. Watson—Direct.

MRS. PHEBE A. WATSON, sworn.

DIRECT EXAMINATION BY MR. BESSON:

Q. Mrs. Watson, you are the defendant? A. I am.

Q. And you are the one who contracted for the sale of this property, in question to John O'Connor? A. Yes.

Q. Did you ever know a Joseph Klausner? A. Never heard of him.

Q. And did you have any contract or agreement with Joseph Klausner? A. No, I don't know him at all, never saw him.

Q. Now, subsequent to July 24th, when the deed to O'Connor was executed, what became of that deed—what did you do with that deed (showing witness Exhibit J. W. R. B. 1)? A. It is not signed by me, is it?

Q. Yes, that is the one. That is signed by you. A. Yes, it is. That was done in your office, Mr. Besson.

Q. Yes, then what became of the deed? A. I guess we held it; perhaps Mrs. Inglis had it—or wasn't it in your office—wasn't it left in your office. You know he promised to take the property so often and we went there about a dozen times, or fifteen times; I have it all down in my book how many times I went there to settle up this thing.

Q. Well, do you remember what you did with that deed, whether you gave it to me, or what you did with it? A. Yes, I think so. It was left there.

Q. You left it with me? A. I think so; yes, certainly.

Q. Then have you any memorandum of the different dates that you called up my office in re-

Phebe A. Watson—Direct.

gard to this matter, subsequent to that time?

A. Yes, I have, I kept a memorandum.

MR. GOLDENHORN: Just a moment—I object to that.

THE VICE CHANCELLOR: She has not testified to anything you can object to yet.

A. I kept a memorandum of every time I went over there, and I think that I went over there over twenty times and ready to settle.

10

Q. Well, now, have you that memorandum with you? A. Yes, I have. Here it is in a little account book here; every day, I put it down; here is four or five pages of it, Mr. Besson (producing a memorandum book).

Q. Now, referring to the memorandum that you made, can you state the days that you came to my office subsequent to that? A. Here it is. I will give it to you.

20

MR. GOLDENHORN: I object to it as immaterial and irrelevant.

THE WITNESS: Here it is, all down, every day that I went to the office—

THE VICE CHANCELLOR: One moment. If the question of her being ready the title and you (Mr. Goldenhorn) not being ready becomes material I think the witness has got the right to show how many times she visited Mr. Besson's office for the purpose of closing this title. It may be that some times she did not visit him for that purpose, but that is a matter to be disclosed on cross-examination. I will permit the witness to testify as to the number of times she went to Mr. Besson's office in connection with this transaction.

30

Q. Well, now, if you will, just read, Mrs. Watson, that memorandum as you have it?

40

Phebe A. Watson—Direct.

MR. GOLDENHORN: I desire to object further on the ground that it has not been shown that these entries were made at the respective times when she did call.

10 THE VICE CHANCELLOR: I think she did say she wrote them at the time, but she may be cross examined as to that. I will suspend the present examination until it appears when the witness wrote the memorandum.

BY MR. GOLDENHORN:

Q. When did you make these memorandums, Mrs. Watson? A. After returning from the office I always did that; I keep little accounts all the time of what I do from day to day, every day.

20 Q. And enter them at night, do you? A. Oh, yes,—after I get home; sometimes in the afternoon sometimes in the evening, at different times.

Q. Sometimes the next day? A. Well, I don't let it go too far; I don't want it to slip my memory; I want to remember these things, that is the reason why I kept this account, so as to have it correct, and I always expected to meet you there, and I would go over—

30 THE VICE CHANCELLOR: The witness can testify as to the dates she visited at Mr. Besson's office.

THE WITNESS: Now, I want somebody to read this, I haven't got my glasses with me. Perhaps you could read it, (referring to counsel.) I don't care who reads it. Here I have got it down every day, and the dates right straight through. It is written with a lead pencil.

BY MR. BESSON:

40 Q. Well, you will have to read that, Mrs. Watson.

Phebe A. Watson—Direct.

THE VICE CHANCELLOR: Have you any recollection of the dates outside of the dates entered in the memorandum? That is, have you independent recollection of the date?

A. Oh, yes, I have; I remember all about it, and remember the scene that occurred there, too, and this Mr. Goldenhorn, he gave a check and I gave a check to Mrs. Inglis to take down to the bank, and they said "Why, that man has no money here and never has had any, he never has any money—" 10

THE VICE CHANCELLOR: Strike that all out.

Q. Will you refresh your memory from the book, Mrs. Watson, and state the days when you came to pass the title in this matter? A. Well, I sold this lot on June 25th, 1913, at Mr. Besson's office, for \$2850, and Mr. O'Connor brought a check with a man by the name of Collamore to bind the bargain. The check was given to Mrs. Inglis who took it next day to the First National Bank— 20

MR. GOLDENHORN: I ask that that be stricken out as irrelevant.

THE VICE CHANCELLOR: That will be stricken out. 30

MR. BESSON: Never mind. The check fixes the date.

A. Then I went there again June 27th.

Q. What happened on that day?

MR. GOLDENHORN: I object on the ground that she certainly could not have gone there on that to pass the title because the 40

Phebe A. Watson—Direct.

title, under the contract was not to be passed until the 25th of July.

THE WITNESS: Why here it is (reading.) "Mr. Besson—deed was to be passed July 25th, but three days before a letter came to ask Mr. Besson for ten days longer."

10

MR. GOLDENHORN: I object. I ask that that be stricken out.

THE VICE CHANCELLOR: (To the witness) You need not tell that.

20

THE WITNESS: Then (reading) "August 4th Monday, 1913. In Mr. Besson's office to present the deed. Waited five hours. No word from Mr. Goldenhorn. August 8th. In Mr. Besson's office waited three or four hours; and also on Tuesday the 12th for Goldenhorn and word came that he was ill."

Q. What is the next date? A. Then (reading) "Monday, August 18th, at ten o'clock in Mr. Besson's office from ten to five o'clock. No word." "In Mr. Besson's office again August 22d, from ten o'clock." You see I was going there all the time and waiting to have this matter settled up, and I kept the account. Is that all right?

30

THE VICE CHANCELLOR: No, state the dates when you went there.

A. (Reading.) "Friday the 6th of September I remained in Mr. Besson's office three hours for word from Goldenhorn." "Monday the 9th of September Mrs. Inglis waited."

Q. Were you there? A. Mrs. Inglis.

Q. Were you there? A. Oh, yes, we generally were together; we most always went together in this case. We did not see Mr. Goldenhorn then (reading.) "Saturday was in Mr. Besson's office."

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Phebe A. Watson—Direct.

THE VICE CHANCELLOR: What date?

A. I am looking. (Reading): "He sent word that he wished to get the middle of next week which was the 18th of September and then he would try and settle. Waited there five hours." You could not get him to do anything. Well, that is about the different dates; that is about all, I guess. Oh, there is the 20th of September (Reading): "Went there and waited again." He would make all of these appointments and break them, too. 10

MR. GOLDENHORN: I ask that that be stricken out.

THE VICE CHANCELLOR: The latter part can be stricken out. The witness states she went there on the 20th; that is as far as the answer will be allowed to stand. 20

Q. I show you a paper dated the 19th of September, and ask you if you signed your name to that paper? A. Why, yes, that is my handwriting.

MR. BESSON: I will offer this paper in evidence.

MR. GOLDENHORN: Just a moment. I want to see it.

(The paper is handed to Mr. Goldenhorn for his inspection.) 30

MR. BESSON: This was the contract entered into on the 19th of September with another purchaser.

MR. GOLDENHORN: I object to it on the ground that we have no knowledge of it. It is immaterial and irrelevant and has nothing to do with the contract in question.

THE VICE CHANCELLOR: I will admit it. It is set out in the answer, and it may 40

Phebe A. Watson—Cross.

be that this witness has disenabled herself from performing the contract.

(The paper is marked Exhibit D-1.)

Q. Why did you enter into this contract with Mr. Cranwell?

10

MR. GOLDENHORN: I object on the ground that it is immaterial and irrelevant.

THE VICE CHANCELLOR: It makes no difference why she did it. The objection will be sustained.

20

MR. BESSON: What I want to have her testify to is this: She has testified to all of these meetings that she attended to pass the title, and now I want to show that the reason she entered into this contract was by reason of the fact that she did not believe that they intended to carry it out. There was nothing to indicate it.

THE VICE CHANCELLOR: Well, suppose the witness gave a poor reason for making the contract, whereas, the Court might find a good reason? Is not the whole question whether or not on the 19th of September, 1913, you had a right then and there to treat this contract as void?

30

MR. BESSON: Yes, sir; that is our position.

THE VICE CHANCELLOR: What difference, then, does it make what her motive was? If you had the right to do it, you had it.

MR. BESSON: I think that is all.

CROSS EXAMINATION BY MR. GOLDENHORN:

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Q. You knew, on the 19th of September that the mortgage of \$7,000 held by Mr. Alexander

Phebe A. Watson—Cross.

was not cancelled of record? A. There was no mortgage held by Mr. Alexander on those lots.

Q. Archibald Alexander? A. Not any of the Alexanders. I have a great many other lots; that is not the only property I have got. I have a great deal of property, too much. It was on the other lots. Mr. Besson can explain it all to you.

10

Recess until two o'clock P. M.

AFTERNOON SESSION.

Hearing of the cause resumed at two o'clock P. M.

MRS. PHEBE A. WATSON, recalled.

CROSS EXAMINATION BY MR. GOLDENHORN:

20

Q. Mrs. Watson, were you present when the contract was signed, did you say? A. Why, yes.

Q. At Mr. Besson's office? A. At Mr. Besson's office.

Q. Were you there when the \$550 was paid? A. Why, it didn't amount to anything; the check was imperfect; it was not good; you had no money in the bank.

Q. I asked you if you were present when the \$550 was paid? A. I say I was present but I didn't get it; the check wasn't of any use.

30

Q. But you got it afterwards; though, didn't you? A. Well, I don't know about that.

Q. Well, you got it from Mr. Klausner, this gentleman that sits in the Court room here, didn't you? A. I don't know him at all.

Q. Now, did you sign this paper (showing the witness a paper). A. Well, whatever I signed

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Phebe A. Watson—Cross.

was signed in Mr. Besson's office. This is Besson & Stevens' paper. I must have signed it, it says "Besson, Alexander & Stevens."

MR. GOLDENHORN: I desire to offer this paper in evidence, if your Honor please. It is dated June 25th, 1913.

10 THE VICE CHANCELLOR: Does the witness admit that that is her signature?

Q. Is that your signature? A. Well, it is from Mr. Besson's office.

MR. BESSON: (Examining the paper) that is all right.

(It is admitted that the signature to the paper is the witness's.)

MR. GOLDENHORN: It is an agreement to pay \$170 commission.

20 MR. BESSON: I object to that, of course. The objection is that it is irrelevant in this case.

THE VICE CHANCELLOR: I will admit the offer temporarily.

(The paper is marked Exhibit C-7.)

Q. You signed more than one deed for this property at Mr. Besson's office, didn't you? A. To you?

30 Q. No, not to me. A. To whom?

Q. You signed one deed to Mr. O'Conner, didn't you? A. Well that had been offered in evidence. We had that deed this morning.

(Question repeated.)

THE VICE CHANCELLOR: He asks you if you signed that deed to Mr. O'Conner.

(Showing the witness a deed Exhibit J.W.R.B.-1.)

40 A. Is that the one we had this morning?

Phebe A. Watson—Cross.

Q. That is the one you had this morning? A. It looks like my writing.

Q. Then you signed another deed to Mr. Joseph Klausner, didn't you, of Brooklyn, for the same piece of property? A. Mr. Who?

Q. Joseph Klausner, this complainant? A. I don't remember any such name at all. Where did you get that from? 10

THE VICE CHANCELLOR: Well, never mind that, Mrs. Watson.

Q. Well, now, you were present at Mr. Besson's office once when you met me there, were you not? A. Oh, yes, you were acting very badly, knocking over the telephone and everything.

Q. Exactly—I was telephoning to Mr. Klausner in Brooklyn, was I not? A. I don't know who you was telephoning to; you didn't behave like a gentleman; I never saw anybody behave like you. 20

Q. Now, Mrs. Watson, do you remember when we met at Mr. Besson's office, that you were present at Judge Besson's office with that paper, when I was there, one morning around twelve o'clock—is that right? A. Yes, that is so.

Q. And at that time you wanted me to waive the commission of \$170 from the price—is not that so? You thought we ought not to be entitled to that—is not that so? A. Well, I have no recollection that the commission was talked over, because I didn't receive any money; I didn't receive anything from you. 30

BY THE VICE CHANCELLOR:

Q. The question is, did you discuss the question of a commission, and did you ask Mr. Goldenhorn to waive it? A. No, I don't think there 40

Phoebe A. Watson—Cross.

was any question about that at all. We hadn't reached that point yet.

Q. Why, hadn't we discussed the taxes, Mrs. Watson? A. With Mr. Besson you did. Mr. Besson knew more about that than I did.

Q. In your presence, is that right? A. Well, I couldn't say that I was present when that was discussed, because he knew all about it.

10 Q. And didn't we talk about the different judgments? A. That didn't amount to anything. I have a great deal more property.

Q. Which judgments you were to have cancelled, didn't we talk about that? A. Well, you know you behaved so badly I don't know what we talked about. I know you knocked over the telephone and everything.

20 Q. Yes, tell us wherein I behaved "badly"?

THE VICE CHANCELLOR: Oh, no. Just answer the questions, Mrs. Watson and don't make any comments on the conduct of Mr. Goldenhorn. This is a suit in equity to settle the rights of parties and not to pass upon the conduct of Mr. Goldenhorn.

THE WITNESS: Well, I think it ought to be known to the Court.

30 THE VICE CHANCELLOR: Well, it ought not to be known.

Q. You made a contract, you testified to this morning on September 19th, what time in the day was that contract made to sell this property to some one else, to George W. Cranwell (Exhibit D-1)? A. I think it was in the afternoon, I am not positive.

Q. What time was it? A. I couldn't tell the hour exactly, maybe two or three o'clock.

Phebe A. Watson—Cross.

Q. Under this contract you were to pass the title on the 20th day of October, 1913; did you make a deed to Mr. Cranwell? A. Why, yes, of course; we gave a notice of some kind, I think, I am not sure whether it was a deed, it may be Mr. Besson can tell you that.

Q. You say that the title passed under that contract and you sold this property? A. Sold it to whom? 10

Q. To Mr. Cranwell. A. Why, yes.

Q. How much money did you get? A. Why, I got one hundred dollars down.

Q. And that is all you have ever gotten, is that right? A. Well, we wanted to get you fixed first before we could do anything.

Q. So there has been no deed delivered to Mr. Cranwell under the contract at all? A. Oh, yes, I guess he has got a deed and all. 20

Q. Why, there was just a contract delivered wasn't there, this contract I hold? A. Ain't that a deed?

Q. No, this is the contract with them. A. Well, there is a deed, is there not?

Q. I am asking you; don't you know?

MR. BESSON: There is no deed.

MR. GOLDENHORN: Of course there is no deed; it is admitted on the record that there is no deed. 30

By MR. BESSON:

Q. Now, on the 19th of September did you go with Mr. Cranwell to see this property?

MR. GOLDENHORN: I object, on the ground that it is immaterial and irrelevant.

MR. BESSON: Well, the object of it is this, to show what was done so as to refresh 40

Phebe A. Watson—Cross.

her memory of what time this contract was signed.

THE VICE CHANCELLOR: I will admit it for that purpose.

(Question repeated.)

MR. BESSON: The day the contract with Mr. Cranwell was signed.

10 A. Yes, of course, and my daughter went, too.

Q. And what time of the day was it you went to see the property? A. I think in the afternoon about three or four o'clock.

Q. And then, after you saw the property where did you go? A. Came back to your office.

Q. And then after you came back there was the contract then signed? A. Fixed right, yes.

20 Q. Now, do you remember about what time of the day that contract was signed? A. Well, it was in the afternoon, because Mr. Cranwell is a very busy man, you know, and is always busy in the morning. I think it must have been about three o'clock.

Q. But it was after you had been up there to see the property? A. Oh, yes; he wouldn't buy anything without he saw it, he is a smart man.

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Myra W. Inglis—Direct.

MRS. MYRA W. INGLIS, sworn.

DIRECT EXAMINATION BY MR. BESSON:

Q. You are the daughter of Mrs. Watson? A. I am.

Q. And were you with her on the occasions at my office to deliver a deed to Mr. O'Conner? A. I always came with her; two or three times I came alone because she was ill and could not come and I was to telephone her if Mr. Goldenhorn would come with the money. 10

Q. And you were there on one day when Mr. Goldenhorn came, were you not? A. Yes.

Q. And then what was the understanding that day? A. Why, we supposed that day that we were going to settle it, that was the morning of the 19th of September. He had agreed continually, so many times that it was becoming almost ridiculous. You came in the office and my mother was there also, and you said "Everything is fine and clear, now." Goldenhorn— 20

MR. GOLDENHORN: I object

THE VICE CHANCELLOR: Was Mr. Goldenhorn present?

THE WITNESS: Yes. It was eleven o'clock in the morning of that day, September 19th. You (Mr. Besson) said very roughly, "Unless you decide and pay now, we are not going to stand for this any longer". 30

Q. You say it was on the 19th, what makes you think that? A. Why, I believe it was, Judge Besson; I am not positive of the date but it was in September, as we needed the money very much, as my mother wanted to sell the property. 40

Myra W. Inglis—Cross.

Q. Well, September 19th was the day the Cranwell contract was signed. A. It may have been, then, before that. It was the morning when Mr. Goldenhorn came to your office, and we told you then that we had to have the money on account of my boy who was going back to school.

10 Q. Now, after that day that Mr. Goldenhorn met us at my office how often subsequent to that did your mother and yourself come there? A. You mean how often previous to that, or after that?

Q. Previous to September 19th and after the day you just spoke of? A. Oh, I guess fifteen or twenty times, Judge Besson, we would be there from ten o'clock in the morning and go over to the Delaware & Lackawanna and have lunch and come back and wait until six o'clock, 20 sometimes in your office. We were there to the last, hoping to hear from him.

Q. Now on the 19th of September did you go with your mother and Mr. Cranwell? A. My mother went first and then Mr. Cranwell said would I go with him, too—he is a very personal good friend of mine—and I went with him. We came back to your office.

Q. What time of day was that? A. At four 30 o'clock, Judge Besson.

CROSS EXAMINATION BY MR. GOLDENHORN:

Q. Where is the property? A. On the corner of Gray Street and Academy.

Q. It is about a half or three-quarters of an hour's ride from Hoboken, is it not? A. Well, I should say about half an hour the way we went, because I live in Jersey City.

Myra W. Inglis—Cross.

Q. So you looked at the property some time around two o'clock or half past two? A. No, we didn't, we were in Judge Besson's office, I already said. It was nearly four before we left Judge Besson's office, because we had been waiting to hear from you; we were in hopes to be able to sell it to you and were waiting for the money to get my boy to go to school then.

Q. That all happened at four o'clock. A. I left Judge Besson's office about four o'clock.

Q. But you know that Mr. Cranwell was coming before that day at four o'clock? A. Only the day before. We didn't know he was coming until four o'clock that day, and we telephoned from the Delaware & Lackawanna where we waited over there until after two.

Q. You were present at Judge Besson's office when I was there talking to Mr. Klausner of Brooklyn, over the telephone about the taxes and about the commission, were you not? A. No, I heard nothing of the kind, for you understood and so did Mr. Collamore and so did Mr. Maloney, who was a real estate man that I sold the property to—

Q. (Interrupting.) I never came there with Mr. Maloney or Mr. Collamore, did I? A. No, you never did, and we never saw you until around after the time that the money should have been paid in.

Q. That was in July, wasn't it? A. I cannot tell you the date. My mother has the date in her book.

Q. And I was there then and met you, and at that time I told you that I appeared for Mr. Klausner, a dry goods merchant of Brooklyn, did I not? A. I couldn't understand it that way;

Myra W. Inglis—Cross.

I never had heard of Mr. Klausner. You told me you had sold the property to a liquor saloon keeper in Jersey City, that he had plenty of money, but the man that was to get the money hadn't the money, or you couldn't get it, but you had another man who would buy the property, and you gave me the name of a liquor saloon man in Jersey City, and I cannot recall his name.

Q. Didn't I go and telephone to a number "South— A. How would I know?

THE VICE CHANCELLOR: One moment. Answer the question. If you don't know, simply say no.

A. No, I don't know.

Q. You were there when I telephoned to a number "South" in Brooklyn and spoke over the telephone about taxes and about that \$170? A. Why, Mr. Goldenhorn, you telephoned so often in Judge Besson's office that I heard Mr. Plahn say to you one day that you had better have a private telephone put in Judge Besson's office.

BY THE VICE CHANCELLOR:

Q. Well, did you hear him at any time to a Mr. Klausner? A. I never heard it, Judge.

Q. Did you know he was telephoning to Mr. Klausner? A. No, Judge, I did not. I never heard of it in my life.

BY MR. GOLDENHORN:

Q. Didn't you tell me that Mr. Maloney had given you a bad check, and didn't I tell you that the money had been paid by Mr. Klausner, the man who was buying the property? A. No, you did not.

Matthew T. Tachella—Direct—Cross.

MATTHEW T. TACHELLA, sworn.

DIRECT EXAMINATION BY MR. BESSON:

Q. Mr. Tachella, last September you were a clerk in my office, were you not? A. I was.

Q. And do you remember September 19th? A. I do.

Q. Did Mr. Goldenhorn come in on that day? 10
A. He did not.

Q. Do you remember September 20th? A. I do, yes, sir.

Q. Did Mr. Goldenhorn come on that day? A. He came in about quarter to twelve.

Q. And what did he say? A. He asked for you, and I told him you had already left, and he wanted to know what was done with the Watson property, and I told him that "we waited 20
for you yesterday, being Friday, and when you didn't come in to close Friday we drew a contract with Mr. Cranwell and the property is to be conveyed to him".

CROSS EXAMINATION BY MR. GOLDENHORN:

Q. I told you also at that time that the title was not clear, didn't I, that there were judgments? A. Yes, you spoke of the law of the matter and as to whether he could convey a clear title. 30

Q. I told you that if there was a clear title to be conveyed I was prepared to pay the money, did I not? A. You said you had come that day to close the title to the property. That was Saturday morning.

Q. Well, don't you recall my being there Friday after three o'clock? A. I do not.

Q. After the Judge had gone? A. No, I don't. 40

J. W. R. Besson—Direct.

Q. Don't you recall my telephoning to you before I came there and said I would come right over, telephoned you from the Court House? A. No, your brother telephoned me on Friday, not you.

10 Q. Now, just try and think, you recalled my calling you up and saying I had just got through at the Court House and would be down as soon as I could? A. I don't recall that.

J. W. R. BESSON, ESQ., sworn,

20 THE WITNESS: I represent Phebe A. Watson, the defendant in this case, and subsequent to the execution of C-2 I received a telephone communication from Mr. Goldenhorn that he was making a search, and then about the 25th of July, the time the title was to pass in the contract, Mr. Goldenhorn, about that time, called up and asked for an extension, that his searches were not complete and I was about to go away on my vacation of ten days, and I got back on August 4th, so it went over for that time; and on August 4th I again communicated with Mr. Goldenhorn about passing the title and finally, 30 along in the latter part of August Mr. Goldenhorn stated that he was ready to close. I then took up the matter of the different encumbrances and we checked them up as shown on C-5, and I produced at that time the releases for all of the judgments, and also a release from the mortgage executed by Helen Barney Alex-

J. W. R. Besson—Direct.

ander, the mortgage having covered other property besides the property in question, and the releases were for a specific lien and not general releases of the judgment. When I had submitted the releases I then handed Mr. Goldenhorn the deed which is Exhibit J. W. B. 1 and when Mr. Goldenhorn saw the deed, why, he said "I do not represent Mr. O'Connor, I represent a man by the name of Klausner". "Well," I said, "the contract is with O'Connor and I cannot deliver the deed to anyone else, unless I have evidence of his assigning it". He said, "Why the assignment is right here", and he showed me the assignment attached, which, of course recited no assignee. I told him that I couldn't recognize an assignment in blank and was not an assignment to the man he represented or stated that he represented.

BY THE VICE CHANCELLOR:

Q. Now, at that time did you have a release of this land from the lien of all encumbrances excepting taxes? A. Yes, sir. And he said, "Well, I can get that assignment." "Well," I said, "until you get that, of course we cannot do anything more." Then he said "Well, I will get it." So then we fixed a day subsequent to that for the producing of the assignment, with the understanding that if that was done, why, we would carry out the contract with his client. On the day that we fixed Mr. Goldenhorn did not appear. Mrs. Watson and Mrs. Inglis were there, and being anxious to close the matter, did stay all day, notwithstanding the fact that I did not

J. W. R. Besson—Direct.

think it absolutely necessary for them to do it; but they were very anxious to close it. Then that was adjourned in that way. From that time on no adjournment was asked by me at all, it was simply because Mr. Goldenhorn at one time was sick, and his brother telephoned me that he was sick, so it went over to a subsequent day. Finally it became so unreasonable in my mind that I told them that we would fix a day, September 19th, and unless the assignment was produced on that day and the title passed, why, I would advise them that they could dispose of it as best they could; and on September 19th, Mrs. Watson and Mrs. Inglis came to the office and we waited for an hour or so after the appointed time and then Mrs. Inglis either went to see or called up Mr. Cranwell so that he came to the office and they asked him if he wanted to buy the lots—

MR. GOLDENHORN: I object to all of this, of course, I was not present nor anybody for me.

THE VICE CHANCELLOR: Well, what was said out of the presence of Mr. Goldenhorn, of course, is not proper.

THE WITNESS: Well then, he called subsequent to the time we had fixed, and Mrs. Inglis and Mrs. Watson and Mr. Cranwell went out of the office and came back at nearly five o'clock, I guess it was, and then he said that he was willing to buy the property—

MR. GOLDENHORN: I ask that that be stricken out.

THE VICE CHANCELLOR: It will be stricken out.

J. W. R. Besson—Cross.

A. (Resuming.) And upon their return the contract marked Exhibit D-1 was executed; and that day I did not see Mr. Goldenhorn, although I did call up his office and tried to get him. The next day, September 20th, after I had left the office, I was at the house, and Mr. Goldenhorn called me up on the 'phone and said "I am down here at your office ready to put through that contract with Mrs. Watson." I told him that I could not put through any contract because she had already entered into a new agreement with Mr. Cranwell to sell the lots, and that he (Goldenhorn) had failed to come so often and had failed to produce any assignment as he had agreed to produce, that I had advised them that they could sell the lots for the best price they could get. I have never seen this assignment until to-day. Mr. Goldenhorn never produced it in my office or showed it to me (referring to Exhibit C-3); and it was by reason of the fact that I knew of no assignment in existence that I felt that I was justified in advising Mrs. Watson, after this long delay in disposing of the property.

CROSS EXAMINATION BY MR. GOLDENHORN:

Q. You did not cancel these judgments and these liens of record, and they were not cancelled of record until about a month ago, wasn't that so? A. These releases are not of record as yet.

Q. So that they are still liens? A. But these releases are for the specific property.

Q. I understand, but the judgments were not cancelled of record until about a month ago, were they? A. Well, some of them are not cancelled to-day as against this property.

J. W. R. Besson—Cross.

Q. And the tax on this property has not been paid up to to-day, has it? A. No, sir.

Q. And the lien of the mortgage held by the Alexanders has not been cancelled of record up until to-day? A. No.

Q. Do you say no? A. Well. I think the mortgage has been cancelled, yes.

10 Q. When?

THE VICE CHANCELLOR: What difference does it make? If he had the instruments and releases at that time he was enabled to deliver to you the deed in fee simple free and clear of all encumbrances excepting the taxes, which could be satisfied out of the purchase money, why was he not then and there ready to close the title?

20 MR. GOLDENHORN: Well, he was not, under all of the cases. I can show your Honor a number of cases on that subject. He must give us a free and clear deed. It is not up to us to clear the title, it is up to him to do it. I will submit some authorities on that subject.

Q. Now Judge Besson, do you recall my spelling to you the name of Joseph Klausner? A. I do.

30 Q. And do you recall making out a deed to Joseph Klausner? A. I told you that when the assignment was produced—

Q. That is not my question. Do you recall making out a deed and showing to me a deed to Joseph Klausner? A. No, I never showed you the deed.

Q. Are you sure of that? A. No deed was ever executed by Mrs. Watson.

40

J. W. R. Besson—Cross.

Q. Don't you recall your preparing a deed and saying you would have Mrs. Watson execute it, and asking me where he was, and even asking me what his business was. A. Oh, well, we agreed to carry it out if you produced this assignment that you have here (C-3) but you never did that to me.

BY THE VICE CHANCELLOR:

10

Q. Has your client the deposit of \$550? A. Paid to her by O'Connor, yes.

BY MR. GOLDENHORN:

Q. Who paid the money, Judge Besson? I forgot to ask you? A. Why, I don't think I was present when the money was left in my office.

Q. You won't say that Mr. Klausner did not pay it in cash? A. I never saw Mr. Klausner until to-day. The money was paid and the contract delivered in my office.

20

Q. Wasn't first a bad check given, and then didn't Mr. Klausner come over with the cash and give you the money for it? A. That I don't know, because I was not there.

Both sides close.

30

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Colloquy.

THE VICE CHANCELLOR: (At the close of the proofs.) The complainant, as assignee of a contract, sues the defendant for a specific performance. The contract was made on July 24th, 1913, between Phebe A. Watson, widow, as vendor, and John O'Connor, as purchaser. The consideration to be paid for the purchase of the property was \$2800, \$550 of which was to be paid on the execution of the agreement and the balance on the delivery of the deed. The time fixed for the passing of the title was July 25th, 1913, at the office of Besson, Alexander & Stevens in the City of Hoboken. There was a check given for the \$550 deposit which was found to be worthless, and afterwards the \$550 in cash was substituted so that this point has no bearing on the case. On the 25th of July, the day fixed for the passing of the title, Mr. Goldenhorn, who represented the purchaser, desired further time for the passing of the title. It might be noted in passing that there was endorsed on this contract an assignment by "Joseph O'Connor, by James B. Collamore, Atty." transferring by assignment this contract in blank. The name of the assignee was evidently intended to be inserted at the time, because there is no blank left in the assignment for the name. On the 25th of July, 1913, Mr. Goldenhorn asked for an extension of time because he had not finished the searches. The matter was then adjourned over until the early part of August. It was at this meeting when,

Colloquy.

the searches having been completed, a list of the encumbrances against the property was furnished and the same were checked up, was that the time?

MR. BESSON: Well, it was not at the first meeting it was toward the end of the case, before we met the last time.

THE VICE CHANCELLOR: Well, sometime in August, after this had been done it was found that the encumbrances exceeded the purchase price by seventy four dollars. Mr. Besson, representing the vendor, procured from all the encumbrances, mortgagees, and judgment creditors release of this property in question from the lien of the various judgments and in the latter end of August or the early part of September was prepared to close the title, using the funds advanced for the purchase price to discharge the taxes. At this time Mr. Goldenhorn did not have the formal assignment of the contract to the complainant. This assignment he procured on the 8th of September, 1913, the day it bears date. He says he showed it to Mr. Besson. Mr. Besson says he never saw the assignment until it was produced in Court to-day. Frequent appointments were made apparently for the passing of this title, and Mr. Goldenhorn according to Mr. Besson's story didn't attend, and he was finally notified that the title must pass on the 19th of September 1913, or the matter would be at an end. Mr. Goldenhorn was engaged on the trial of a case that day, and telephoned the office of Mr. Besson but did not reach Mr. Besson. He appeared at

Colloquy.

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Mr. Besson's office about quarter past five o'clock to close the title. He had the money in his pocket at that time but did not meet Mr. Besson or anyone authorized to act for him. That same day the defendant made a contract with one Mr. Cranwell to sell this property, and the day following the contract with Mr. O'Connor was placed on record.

20

Two questions arise, apart from the dispute on the facts,—the first is, did the defendant wait a reasonable time to enable the complainant to close the title and the second is, the defendant having made a contract with Mr. Cranwell whereby a decree for specific performance here would result in divesting him (perhaps an innocent contractor) from his rights under his contract, is he not entitled to be heard.

MR. GOLDENHORN: His contract was not recorded, if your Honor please. There is no evidence of it.

THE VICE CHANCELLOR: It is in the answer.

30

MR. GOLDENHORN: It was not recorded. We had no knowledge of it.

THE VICE CHANCELLOR: I know, but you could have amended your bill, perhaps.

MR. GOLDENHORN: Why, no. We could not bring him in if it was not recorded. We had no knowledge of it at the time we filed the bill.

40

THE VICE CHANCELLOR: Didn't you have knowledge of it at the time their answer was filed?

Colloquy.

MR. GOLDENHORN: Why, yes, we had knowledge of it then.

THE VICE CHANCELLOR: Then you could have amended your bill and brought him in. Mr. Goldenhorn says he can submit authorities to show that the defendant was bound to have the title free and clear at the time he delivered the deed but that merely having the releases of these liens ready to be recorded, was not sufficient, and that therefore the inability of the defendant to deliver a deed which instanter would convey the fee simple free from every encumbrance, justified him in waiting until this situation arose. Mr. Goldenhorn may submit his brief of authorities to Mr. Besson on or before Thursday. 10

MR. GOLDENHORN: May I ask your Honor's further indulgence? I am in the Circuit Court tomorrow and Wednesday. Will you give me until next Monday or Tuesday? 20

THE VICE CHANCELLOR: Well, take until next Monday and Mr. Besson will prepare his reply brief within five days after the service upon him of Mr. Goldenhorn's brief and see that I get both briefs. 30

Memorandum of Vice Chancellor.

Jersey City, N. J. June 18th, 1915.

I. F. Goldenhorn, Esq.,
 15 Exchange Place, Jersey City, N. J.
 Hon. J. W. R. Besson,
 Hoboken, N. J.
 Gentlemen:

10 The bill in this cause is filed by Joseph Klausner, the assignee of the purchaser, John O'Connor, against the defendant Phebe A. Watson, the vendor, to compel the specific performance of a contract entered into between Mrs. Watson and Mr. O'Connor on the 25th day of June, 1913. \$550 were paid on the signing of the agreement, and the balance of \$2,250, (making in all \$2,800, the purchase price) were to be paid upon the delivery of a warranty deed, free from all encumbrances. Title was to pass on the 25th day of July, 1913. There is a penalty, which seems to be mutual, of \$550 to be paid on failure to perform the contract. At the foot of the contract was a form of assignment, in which no assignee was named, and signed "John O'Connor, per James J. Cullinan, Atty." This contract was recorded September 20th, 1913.

30 On the day fixed for closing the title Mr. Goldenhorn, who represented the purchaser and his assignee, was not ready, and, by agreement, the time for passing the title was extended. Thereafter several days were set for the passing of the title, by agreement, and the vendor, with her daughter attended, ready to perform her part of the contract; and, in fact, a deed was executed by the vendor to John O'Connor, which was acknowledged on the 24th day of July, 1913. Mr. Goldenhorn did not generally keep his ap-
 40 pointments, but at one time, when he did attend,

Memorandum of Vice Chancellor.

as I recall, he entered into a discussion with Judge Besson as to a payment of \$170 for commissions, which he claimed Mrs. Watson was to pay to some agent who had negotiated the sale, and which he says was assigned to the complainant. This allowance the defendant refused to make. It does not appear distinctly that at this single conference, as I recall it, at which this question was mooted, that a refusal to take the property was based upon the refusal to allow this commission. My notion is that the complainant had no right to insist on these moneys being deducted from the contract price. The complainant agreed to pay in cash, and if he, as assignee, had any claim against Mrs. Watson, that claim might be enforced in a suit at law. 10

There is no defense, that I can see, nor justification for the delays occasioned by Mr. Goldenhorn in the passing of this title. He made appointment after appointment, and utterly ignored them, and put the defendant and her counsel to great inconvenience. The matter dragged until a few days before the 19th of September, 1913, when Mr. Besson told Mr. Goldenhorn that the matter had to be closed on the 19th. He did not however, in anything he said as I recall it, or by any notice given to Mr. Goldenhorn, apprise him of the fact that if the title was not passed at the time fixed the defendant would consider the contract at an end. On the day appointed, September 19th, Mrs. Watson with her daughter attended at her counsel's office at the time fixed; Mr. Goldenhorn did not appear, did not send notice that he could not or would not appear, and a great portion of the day was lost to both the defendant and her counsel. Judge Besson, evidently tiring of the dilatory tactics of Mr. Goldenhorn, thereupon permitted 20 30 40

Memorandum of Vice Chancellor.

- his client to make a contract for the sale of the property to someone else at a much less sum. Mr. Goldenhorn's excuse for not appearing is that he was at the court house engaged in the trial of a case. He said he had the purchase price in his pocket, and that he did not get through at the court house until the close of the court on that day, and when he returned to his office he was informed that Mr. Besson had telephoned his office, and he then sometime around five o'clock, telephoned, and later on went to Mr. Besson's office to close the title. At that time Mr. Besson had left his office for the day. It is perfectly apparent to any ordinary business man that, with telephone service so convenient, if Mr. Goldenhorn had any respect for his engagements he could readily have telephoned Judge Besson's office during the day of his engagement, or could have gone directly from the court house when court closed at four o'clock to Mr. Besson's office and could have arrived there at least at half-past four. But this he did not do. The first evidence of any activity on his part was when he learned that the defendant had agreed to sell the property to someone else; and the next day he promptly placed his contract, with the assignment, on record, and, two days later, wrote a letter to Judge Besson saying that he was ready to close the title. The excuse he offers primarily for not closing the title earlier is that there were taxes against the property and mortgages and other encumbrances; but this is fully met by Judge Besson, who said that he had in hand releases of all the existing liens against the property excepting taxes, and that these taxes he expected to pay out of the purchase money.
- An analysis of the figures shown in Exhibit

Memorandum of Vice Chancellor.

C 5 discloses the fact that the total charge against the property including the \$550 paid, amounts to \$2874. In this sum is the charge for commission, \$170, deducting which, reduces the amount necessary to be received from this property to \$2,704, in order to liquidate everything necessary then to be paid to procure the fee simple to the premises free from encumbrances. On this statement there would be about \$100 left over for Mrs. Watson. 10

At the close of the case Mr. Goldenhorn rather contended that it was not sufficient for the defendant to say that he had the releases of the liens ready to be recorded, and that he had some authorities to support this view, and he desired time to send such authorities to me. I think it is safe to say there are no such authorities, and none have been furnished me. 20

The position of the case, therefore, is this: The defendant could have performed by delivering a full covenant warranty deed to the complainant and causing the releases to be recorded; and as to the taxes, etc., which the defendant could not pay until the purchase price was received, these might be deducted from the purchase price assumed and paid by the complainant. *King vs. Ruckman*, 21 N. J. Eq., 599, 606. And, as above indicated, there was sufficient moneys, under the contract between the parties, to have paid all the liens which were not to be directly released. 30

The difficulty with the case, however, is this: Time was not of the essence of the contract. While there was a day fixed, there was nothing in the nature of the thing to assume that the parties intended that if the title did not pass upon the precise day for any reason, the forfeiture should take place and the contract be 40

Memorandum of Vice Chancellor.

at an end. But this point it is unnecessary to pass upon, because the parties did actually, from time to time, adjourn the passing of the title. Thus, time, if it previously existed as of the essence of the contract, ceased to be such by virtue of the mutual agreements of the parties extending the date of passage. In this situation of affairs the rule of law is that when time is not of the essence of the contract, if unnecessary delay is created by one of the parties, the other had no right to rescind the contract until he has given notice limiting the time within which the other party must perform, which time must be reasonable. *Oakey vs. Cook*, 41 N. J. Eq., 350, 367; *Bullock vs. Adams, Ex'rs.*, 20 N. J. Eq., 367; *Taylor vs. Brown*, 2 Beav., 180, 48 Eng. Repr., 1149; *Benson vs. Lamb*, 9 Beav., 502, 50 Eng. Repr., 438; *King vs. Wilson*, 6 Beav., 124, 49 Eng. Repr., 772; *Wiswall vs. Magowan*, Hoff. Ch. Rep., 126. A great many other cases might be cited to support this principle, but the above are clearly illustrative of this, that where time is not of the essence of the contract, the party seeking to rescind must give the other party notice which will apprise him of the fact that if he fails to perform the contract at a certain day named, giving a reasonable time, the contract will be treated as at an end. This has not been done in this case; and I am therefore constrained to advise a decree for specific performance. But, in view of the conduct of the complainant, through his solicitor, no costs will be allowed.

I wish counsel would submit a decree to me in accordance with these views, on the 28th inst., at the Chancery Chambers in Jersey City; and in the decree there shall be fixed a time when the complainant will accept his deed and pay the purchase price, which time, it seems to me, should

Memorandum of Vice Chancellor.

not exceed ten or fifteen days. This communication will be received by counsel about ten days before the decree is signed, which will give counsel all the time that is necessary to pass a title of this character.

In reaching this conclusion, I am assuming that the objections made by Mr. Goldenhorn in this case against the title are all that may be made and, when removed, that the deed of the defendant will convey to him the fee simple free from encumbrances. 10

I have not dealt particularly with the assignment from O'Connor to the complainant which was subsequently executed. There is some dispute as to whether or not this was called to the attention of Judge Besson. I am inclined to think that, in view of the conversation had as to the defective assignment on the back of the contract, Judge Besson understood that the deed was to be executed to an assignee. But, in view of the conclusion I have reached, it is not necessary to critically examine into this question. 20

The foregoing memorandum is merely for the guidance of counsel in ascertaining the views of the Court, and is not to be published nor filed. If an appeal is taken, and I am notified of that fact, I will prepare and file a formal opinion. 30

Very truly yours,

JOHN GRIFFIN.

Final Decree.
IN CHANCERY OF NEW JERSEY.

Between :

JOSEPH KLAUSNER,

Complainant,

and

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PHEBE A. WATSON,

Defendant.

On Bill
etc.

This matter coming on to be heard in open Court, in the presence of I. Faerber Goldenhorn, Solicitor for the complainant and J. W. Rufus Besson, solicitor for the defendant, and the proofs having been taken and argument of counsel having been heard; and it appearing that the

20 complainant is the assignee of a contract entered into between the assignor, and defendant, on the 25th day of June, A. D. 1913, for the sale of the premises mentioned in the Bill of Complaint and described as follows, to wit: "All those lots, tracts or parcels 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, which on a certain

30 map entitled, 'Map of property belonging to the Estate of Henry and Nellie Traphagen, deceased, sold on the thirteenth day of December, A. D. 1886, at two P. M., by Joseph R. Van Syckle, Joseph Warren and William Hanks, Commissioners in Partition, under and by virtue of a Decree of the Court of Chancery, dated September 25, 1886, and filed in the office of the Register of Hudson County, State of New Jersey, April 7th, 1887,' are known and designated as lots one (1),

40 two (2), three (3), four (4), and five (5), Block one hundred and thirty-four, and lots eight (8),

Final Decree.

nine (9) and ten (10), block one hundred and thirty-four (134);" for the sum of twenty-eight hundred dollars (\$2,800), the sum of five hundred and fifty dollars (\$550) having been paid on the execution of the contract and the balance of twenty-two hundred and fifty dollars (\$2,250) to be paid upon the delivery of a warranty deed free from all encumbrances; and while the defendant was ready to deliver the deed at the day appointed adjournments were obtained by the complainant from time to time on which adjourned dates the complainant did not or was not ready to take title; and it appearing that time was not the essence of the contract, and by reason of the dilatoriness of complainant the defendant made a contract to convey to a third party, without first giving complainant notice that on a certain day if he did not attend and perform his part of the contract, she would consider the same at an end, by means of which failure to give such notice the court is of the opinion that the complainant is entitled to a specific performance of said agreement;

It Is, on this second day of July, A. D. Nineteen hundred and fifteen, on motion of I. Faeber Goldenhorn, Solicitor for the complainant, ORDERED ADJUDGED and DECREED that the said article of agreement and contract of sale be in all things specifically performed by the said complainant and the said defendant respectively, and that the said defendant do, within fifteen days from the date hereof, make, execute and acknowledge in due form of law, and deliver to the complainant, or his solicitor, a good and sufficient warranty deed for the said premises, free and clear of all encumbrances at the time of such delivery, and that thereupon the said complainant to pay or

Final Decree.

cause to be paid to the said defendant the balance of the purchase price mentioned in the said agreement or contract of sale, to wit the sum of twenty-two hundred and fifty dollars (\$2,250).

10 And it is further ordered that the complainant is to serve a copy of this Decree upon the defendant, or her solicitor, within five days from the date hereof, and either party is to be at liberty to apply to this Court for further direction or relief in the premises if occasion shall require.

E. R. WALKER,
C.

Respectfully advised,

JOHN GRIFFIN,
V. C.

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Notice of Appeal.
IN CHANCERY OF NEW JERSEY.

Between :

JOSEPH KLAUSNER,

Complainant,

and

PHEBE A. WATSON,

Defendant.

On Bill
 etc.

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The defendant hereby appeals from the final decree and from the whole and every part thereof, made in this court, in the above-stated cause, to the Court of Errors and Appeals in the last resort in all causes.

Dated, July 17th, 1915.

BESSON, ALEXANDER & STEVENS,
 Solicitors of Defendant.

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

J. W. RUFUS BESSON,
 Of Counsel.

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

Between :

JOSEPH KLAUSNER,

Complainant-Respondent,

and

PHEBE A. WATSON,

Defendant-Appellant.

On Bill
etc.

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

The petition of Phebe A. Watson, the appellant, in the above stated cause respectfully shows that your petitioner finds herself aggrieved by a final decree made in the Court of Chancery by his Honor Edwin Robert Walker, Chancellor, bearing date the second day of July, Nineteen hundred and fifteen wherein Joseph Klausner was complainant and your petitioner was defendant in this respect to wit: that the said decree, decrees that a certain agreement and contract of sale entered into between one JOHN O'CONNOR, and your petitioner dated June 25, 1913, be specifically performed and that your petitioner should within fifteen days from the date of said decree make execute and acknowledge in due form of law and deliver to the complainant or his solicitor a good and sufficient warranty deed, for the lands and premises described in said decree free and clear of all encumbrances at the time of such delivery and that thereupon the complainant should pay or cause to be paid your petitioner the sum of twenty-two hundred and fifty dollars the balance of the purchase price mentioned in said agreement.

Your petitioner humbly appeals from the de-

Petition.

cree aforesaid, which decrees as aforesaid upon the ground that the same is erroneous for that the Chancellor should have adjudged that the complainant was not entitled to any relief and should have decreed that the complainant's bill be dismissed with costs to be paid to your petitioner.

Your petitioner therefore prays that the said decree may be reversed, set aside, and for nothing holden, and that your petitioner may have such further relief in the premises as to this honorable Court shall seem meet. 10

BESSON, ALEXANDER & STEVENS,
Solicitors for and of Counsel with the Appellant

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CITY COLLECTOR'S OFFICE, Room No. 1, CITY HALL.

Book 10. Folio 208. Clerk: H.
Est. B. A. WATSON.

To:

THE MAYOR AND ALDERMEN OF JERSEY CITY, DR.

Block.	Lot No.	Street No.	Location of Premises.	House and Vacant Lot.	Value of Land.	Value of Improvement.	State Poll Tax.	Total Value.	Total Amount Taxes.
1886	8		Academy St.	1	\$350			\$ 350	\$ 7.70
	9		" "	1	350			350	7.70
	10		" "	1	375			375	8.25
								\$1,075	\$23.65
								Interest	1.60

8/21/13

If you want your receipted bill returned by mail put your address below.

Name Address

Exhibit C-1.

CITY COLLECTOR'S OFFICE, Room No. 1, CITY HALL.

Book 10. Folio 207. Clerk: H.
Est. B. A. WATSON.

To:
THE MAYOR AND ALDERMEN OF JERSEY CITY, DR.

Block.	Lot No.	Street No.	Location of Premises.	House and Vacant Lot.	Value of Land.	Value of Improvement.	State Poll Tax.	Total Value.	Total Amount Taxes.
1886	1		Gray St.	1	\$300			\$ 300	\$ 6.60
	2		" "	1	300			300	6.60
	3		" "	1	300			300	6.60
	4		" "	1	300			300	6.60
	5		" "	1	175			175	3.85
								\$1,375	\$30.25
								Interest	2.00

8/21/13

If you want your receipted bill returned by mail put your address below.

Name Address

Exhibit C. 1

77

CITY COLLECTOR'S OFFICE, Room No. 1, CITY HALL.

Book 10. Folio 208. Clerk: Leone.
Est. B. A. WATSON.

To:

THE MAYOR AND ALDERMEN OF JERSEY CITY, DR.

Block.	Lot No.	Street No.	Location of Premises.	House and Vacant Lot.	Value of Land.	Value of Improvement.	State Poll Tax.	Total Value.	Total Amount Taxes.
1886	8		Academy St.	1	\$350			\$ 350	\$ 7.00
	9		" "	1	350			350	7.00
	10		" "	1	375			375	7.50
								\$1,075	\$21.50
								Interest	3.61

8/21/13

If you want your receipted bill returned by mail put your address below.

Received Payment City Collector.

Name Street
City State

Exhibit C. 1

CITY COLLECTOR'S OFFICE, Room No. 1, CITY HALL.

Book 10. Folio 207. Clerk: Leone.
Est. B. A. WATSON.

To:
THE MAYOR AND ALDERMEN OF JERSEY CITY, DR.

Block.	Lot No.	Street No.	Location of Premises.	House and Vacant Lot.	Value of Land.	Value of Improvement.	State Poll Tax.	Total Value.	Total Amount Taxes.
1886	1		Gray St.	1	\$300			\$ 300	\$ 6.00
	2		" "	1	300			300	6.00
	3		" "	1	300			300	6.00
	4		" "	1	350			350	7.00
	5		" "	1	175			175	3.50
								\$1,425	\$28.50
								Interest	4.79

If you want your receipted bill returned by mail put your address below.

Received Payment City Collector.

Name Street

City State

Exhibit C. 1

CITY COLLECTOR'S OFFICE, Room No. 1, CITY HALL.

Book 10. Folio 208. Clerk: H.
Est. B. A. WATSON.

To:

THE MAYOR AND ALDERMEN OF JERSEY CITY, DR.

Block.	Lot No.	Street No.	Location of Premises.	House and Vacant Lot.	Value of Land.	Value of Improvement.	State Poll Tax.	Total Value.	Total Amount Taxes.
1886	8		Academy St.	1	\$350			\$ 350	\$ 6.93
	9		" "	1	350			350	6.93
	10		" "	1	375			375	7.43
								\$1,075	\$21.29
								Interest	5.75

8/21/13

If you want your receipted bill returned by mail put your address below.

Received Payment City Collector.

Name Street
City State

Exhibit C. 1

CITY COLLECTOR'S OFFICE, Room No. 1, CITY HALL.

Book 10. Folio 207. Clerk: H.
Est. B. A. WATSON.

To:
THE MAYOR AND ALDERMEN OF JERSEY CITY, DR.

Block.	Lot No.	Street No.	Location of Premises.	House and Vacant Lot.	Value of Land.	Value of Improvement.	State Poll Tax.	Total Value.	Total Amount Taxes.
1886	1		Gray St.	1	\$300			\$ 300	\$ 5.94
	2		" "	1	300			300	5.94
	3		" "	1	300			300	5.94
	4		" "	1	350			350	6.93
	5		" "		175			175	3.47
								\$1,425	\$28.22
								Interest	7.52

8/21/13

If you want your receipted bill returned by mail put your address below.

Received Payment City Collector.

Name Street

City State

Exhibit C. 1

Exhibit C-2.**Contract for Property.**

Phebe A. Watson to John O'Connor, June 25, 1913. Indexed under County Block No. 800.

ARTICLES OF AGREEMENT, made the Twenty-fifth day of June, in the year of our Lord One Thousand Nine Hundred and Thirteen,

10 BETWEEN PHEBE A. WATSON (widow), of the City of Jersey City, in the County of Hudson and State of New Jersey, party of the first part;

AND JOHN O'CONNER, of the City of New York, 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 Two Thousand eight hundred dollars (\$2,800), to be paid and satisfied as hereinafter mentioned, and also in consideration of the covenants and agreements hereinafter mentioned, made and entered into by
by the said party of the second part, doth agree to and with the said party of the second part, that she, 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 Warranty, free from all encumbrance, on or before the twenty-fifth day of July next ensuing the date hereof, all those lots, tracts, or parcels,
30 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, which on a certain Map entitled, "Map of property belonging to the Estate of Henry and Nellie Traphagen, dec'd., sold on the thirteenth day of December, A. D. 1886, at two P. M., by Joseph R. Van Syckle, Joseph Warren and William Hanks, Commissioners in Partition, under and by virtue of a Decree of the Court of

Exhibit C-2.

Chancery, dated, September 25, 1886, and filed in the office of the Register of Deeds of Hudson County, State of New Jersey, April 7th, 1887," are known and designated as lots one (1), two (2), three (3), four (4) and five (5), Block one hundred and thirty-four (134), and lots eight (8), nine (9) and ten (10), Block one hundred and thirty-four (134).

AND the said John O'Conner, for himself, his heirs, executors and administrators, doth covenant, promise and agree to and with the said party of the first part, her 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 Two thousand eight hundred dollars (\$2,800) as and for the purchase money of the foregoing described land and premises, in the following manner, that is to say: the sum of five hundred and fifty dollars (\$550) to be paid in cash at the time of the execution of this agreement, the receipt of which is hereby acknowledged, and the balance of two thousand two hundred and fifty dollars (\$2,250) to be paid in cash at the time of the delivery of the deed mentioned herein.

AND IT IS FURTHER AGREED, by the parties to these presents, that the said party or the second part, his heirs and assigns, may enter into and upon the said land and premises on the twenty-fifth day of July 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 Warranty shall be delivered and received at the office of Besson, Alexander & Stevens, No. 1 Newark Street, Hoboken,

Exhibit C-2.

N. J., between the hours of ten in the forenoon and four o'clock in the afternoon on the said twenty-fifth day of July next ensuing the date hereof.

10 AND for the performance of all and singular the covenants and agreements aforesaid, the said parties do bind themselves and their respective heirs, executors and administrators; and they hereby agree to pay, upon failure to perform the same, the sum of Five hundred and fifty Dollars (\$550), which they hereby fix and settle as liquidated damages therefor.

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

PHEBE A. WATSON, (Seal.)

JOHN O'CONNER, (Seal.)

20 By James D. Cullimore,
Agent.

Signed, sealed and delivered
in the presence of
J. W. RUFUS BESSON.

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

30 BE IT REMEMBERED, That on this twenty-fifth day of June, in the year of our Lord One Thousand Nine Hundred and Thirteen, before me, the subscriber, a Master in Chancery of New Jersey, personally appeared PHEBE A. WATSON, who, I am satisfied, is the grantor mentioned in the within Instrument, to whom I first made known the contents thereof, and thereupon she acknowledged that she signed, sealed and delivered the same as her voluntary act and deed, for the uses and purposes therein expressed.

40 J. W. RUFUS BESSON,
Master in Chancery of New Jersey.

For One Dollar (\$1.00) to me in hand paid and other valuable considerations, the receipt of which is hereby acknowledged, I hereby assign, transfer and set over all my right, title and interest in the within contract subject to an agreement signed June 27, 1913.

JOHN O'CONNER,
Per Jas. D. Cullimore,
Agent.

Exhibit C-3.

KNOW ALL MEN BY THESE PRESENTS, that I, JOHN O'CONNOR, of the City, County and State of New York, for and in consideration of the sum of One dollar to me in hand paid by JOSEPH KLAUSNER, of the City of Brooklyn and the State of New York, do hereby assign, transfer and set over unto said JOSEPH KLAUSNER, his heirs, administrators and assigns a certain agreement in writing dated Twenty-fifth of June, one thousand nine hundred and thirteen, and made between PHEBE A. WATSON and myself for the purchase by him of certain lands and premises described in said agreement.

AND I HEREBY AUTHORIZE and empower the said PHEBE A. WATSON to deliver the deed called for by said contract to said JOSEPH KLAUSNER, and I hereby ratify and confirm unto said JOSEPH KLAUSNER all and everything that said PHEBE A. WATSON may do in the premises.

IN WITNESS WHEREOF I have hereunto set my hand and seal on this 8th day of September, 1913.

JOHN O'CONNOR.

Signed, sealed and delivered
in presence of
I. A. GOLDENHORN.

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

BE IT REMEMBERED, that on this 8th day of September, in the year of our Lord One Thousand Nine Hundred and Thirteen, before me, a Master in Chancery of New Jersey, personally appeared JOHN O'CONNOR, who, I am satisfied, is the person named in and who executed the within assignment, and I having first made known to him the contents thereof, he did acknowledge that he
 10 signed, sealed and delivered the same as and for his voluntary act and deed, for the use and purposes therein expressed.

I. FAERBER GOLDENHORN,
 Master in Chancery of New Jersey.

Exhibit C-4.

LETTER-HEAD OF I. FAERBER GOLDEN-
 20 HORN.

Jersey City, N. J., Sept. 22, 1913.

HON. J. RUFUS BESSON,
 Counsellor-at-Law,
 Hoboken, N. J

My Dear Judge:—

I am and have been ready to pay over to you for Mrs. Phebe Watson the money due her when
 30 she delivers a warranty deed, in accordance with her contract to Mr. Joseph Klausner. No deed has ever been tendered to me, nor has your client had her title cleared according to my search.

Will you please let me know when I can come and pay you the balance due so as to close this matter finally. I was at your office on Saturday. I called your office three times on Friday and I told you what the situation was. I have the

money, and have had it some time to pay over to you when a proper deed is delivered to Mr. Klausner. If you are now ready to deliver that deed, I am prepared to take the title; if not I shall have to obtain a bill in Chancery to obtain my client's rights under the contract and under the assignment thereof.

Awaiting your reply, I beg to remain,

Yours respectfully,

10

Exhibit C-5.

Cons.	\$2,800
Paid	\$ 550.00
Com.	170.00
Mort.	1,400.00
Tax	150.00
3rd Nat.	400.00
Anderson	100.00
Green	25.00
Metker	35.00
Lawrence	44.00
	\$2,874.00

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Exhibit D-1.

ARTICLES OF AGREEMENT, made the Nineteenth day of September, in the year of our Lord One Thousand Nine Hundred and Thirteen,

30

BETWEEN PHEBE A. WATSON (widow), of the City of Jersey City, in the County of Hudson and State of New Jersey, party of the first part;

AND GEORGE W. CRANWELL, of the Town of West Hoboken, in the County of Hudson and State of New Jersey, party of the second part;

WITNESSETH, That the said party of the first part, for and in consideration of the sum of

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Exhibit D-1.

Twenty-six hundred (\$2600.) 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 she, 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 Warranty, free from all encumbrance, on or before the Twentieth day of October next ensuing the date hereof, all those lots, tracts, or parcels, 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, which on a certain Map entitled, "Map of property belonging to the Estate of Henry and Nellie Traphagen, dec'd., sold on the thirteenth day of December, A. D. 1886, at two P. M., by Joseph R. Van Syckle, Joseph Warren and William Hanks, Commissioners in Partition, under and by virtue of a Decree of the Court of Chancery, dated, September 25, 1886, and filed in the office of the Register of Deeds of Hudson County, State of New Jersey, April 7th, 1887," are known and designated as lots one (1), two (2), three (3), four (4) and five (5), Block one hundred and thirty-four (134), and lots eight (8), nine (9) and ten (10), Block one hundred and thirty-four (134).

AND the said GEORGE W. CRANWELL, for himself, his heirs, executors and administrators, doth covenant, promise and agree to and with the said party of the first part, her 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 Twenty-six hundred

Exhibit D-1.

dollars (\$2600.), as and for the purchase money of the foregoing described land and premises, in the following manner, that is to say: the sum of one hundred dollars (\$100.) to be paid in cash at the time of the execution of this agreement, the receipt of which is hereby acknowledged, the sum of five hundred dollars (\$500.) to be paid in cash on Monday, the twenty-second day of September, 1913, at ten A. M., at the office of Besson, Alexander & Stevens, No. 1 Newark Street, Hoboken, N. J., and the balance of two thousand dollars (\$2,000.) to be paid in cash at the time of the delivery of the deed mentioned herein.

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 the twentieth day of October next ensuing the date hereof, and from thence take the rents, issues and profits to his and their use.

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AND IT IS FURTHER AGREED, by the parties hereto, that the said Deed of Warranty shall be delivered and received at the office of Besson, Alexander & Stevens, No. 1 Newark Street, Hoboken, N. J., between the hours of ten in the forenoon and four o'clock in the afternoon on the said twentieth day of October next ensuing the date hereof.

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AND for the performance of all and singular the covenants and agreements aforesaid, the said parties do bind themselves and their respective heirs, executors and administrators; and they hereby agree to pay, upon failure to perform the same, the sum of , which they hereby fix and settle as liquidated damages therefor.

IN WITNESS WHEREOF, the said parties have

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Exhibit D-1.

hereunto interchangeably set their hands and seals the day and year first above mentioned.

PHEBE A. WATSON, (Seal.)

GEORGE W. CRANWELL. (Seal.)

Signed, sealed and delivered
in the presence of

10 DAVID X. PLAHN.

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

20 BE IT REMEMBERED, That on this nineteenth day of September, in the year of our Lord One Thousand Nine Hundred and Thirteen, before me, the subscriber, a Master in Chancery of New Jersey, personally appeared PHEBE A. WATSON, who, I am satisfied, is the grantor mentioned in the within Instrument, to whom I first made known the contents thereof, and thereupon she acknowledged that she signed, sealed and delivered the same as her voluntary act and deed, for the uses and purposes therein expressed.

DAVID F. PLAHN,
Master in Chancery of New Jersey.

30 THIS INDENTURE, made the twenty-fourth day of July, in the year of our Lord One Thousand Nine Hundred and Thirteen,

BETWEEN PHEBE A. WATSON (widow), of the City of Jersey City, in the County of Hudson and State of New Jersey, party of the first part;

AND JOHN O'CONNOR, of the City of New York, in the County of New York and State of New York, party of the second part:

40 WITNESSETH, That the said party of the first part, for and in consideration of the sum of One

Exhibit D-1.

Dollar and other good and valuable consideration, lawful money of the United States of America, to her 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 being therewith fully satisfied, contented and paid, has given, granted, bargained, sold, aliened, released, enfeoffed, conveyed and confirmed, and by these presents does give, grant, bargain, sell, alien, release, enfeoff, convey and confirm unto the said party of the second part, and to his heirs and assigns, forever, ALL those lots, tracts or parcels of land and premises, hereinafter particularly described, situate, lying and being in the City of New Jersey, in the County of Hudson and State of New Jersey, which on a certain Map entitled, "Map of property belonging to the Estate of Henry and Nellie Traphagen, dec'd., sold on the thirteenth day of December, A. D. 1886, at two P. M., by Joseph R. Van Syckle, Joseph Warren and William Hanks, Commissioners in Partition, under and by virtue of a Decree of the Court of Chancery, dated September 25, 1886, and filed in the office of the Register of Deeds of Hudson County, State of New Jersey, April 7th, 1887," are known and designated as lots One (1), Two (2), Three (3), Four (4) and Five (5), Block One hundred and thirty-four (134), and Lots Eight (8), Nine (9) and Ten (10), Block One hundred and thirty-four (134).

TOGETHER with all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof.

AND ALSO, all the estate, right, title, interest, property, possession, claim and demand what-

Exhibit D-1.

soever, as well in law as in equity, of the said party of the first part, of, in and to the above described premises, and every part and parcel thereof, with the appurtenances, To HAVE AND TO HOLD, all and singular, the above mentioned premises, together with the appurtenances, unto the said party of the second part, his heirs and assigns, to his and their proper use, benefit and behoof forever.

AND the said PHEBE A. WATSON, for herself, her heirs, executors and administrators, does covenant, grant and agree to and with the said party of the second part, his heirs and assigns, that the said PHEBE A. WATSON, at the time of the sealing and delivery of these presents, is lawfully seized in her 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 has 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, 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 party of the first part, her 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 incumbrances of what nature and kind soever.

AND ALSO, that the said party of the first part,

Exhibit D-1.

and her 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 her or them, shall and will at any time or times hereafter, upon the reasonable request, and at the proper costs and charges in the law, of the said party of the second part, his heirs and assigns, make, do, and execute, or cause or procure to be made done or executed, all and every such further and other lawful and reasonable acts, conveyances and assurances in the law for the better and more effectually vesting and confirming the premises hereby intended to be granted, in and to the said party of the second part, his heirs and assigns forever, as by the said party of the second part, his heirs or assigns, or his or their counsel learned in the law, shall be reasonably advised or required.

AND the said PHEBE A. WATSON, her 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, his heirs and assigns, against the said party of the first part, and her heirs, and against all and every person or 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 has hereunto set her hand and seal the day and year first above written.

PHEBE A. WATSON. (Seal.)

Signed, sealed and delivered
in the presence of
J. W. RUFUS BESSON.

Exhibit D-1.

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

10 BE IT REMEMBERED, That on this twenty-fourth day of July, in the year of our Lord One Thousand Nine Hundred and Thirteen, before me, the subscriber, a Master in Chancery of New Jersey, personally appeared PHEBE A. WATSON, who, I am satisfied, is the grantor mentioned in the within Instrument, to whom I first made known the contents thereof, and thereupon she acknowledged that she signed, sealed and delivered the same as her voluntary act and deed, for the uses and purposes therein expressed.

J. W. RUFUS BESSON,
 Master in Chancery of New Jersey.

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