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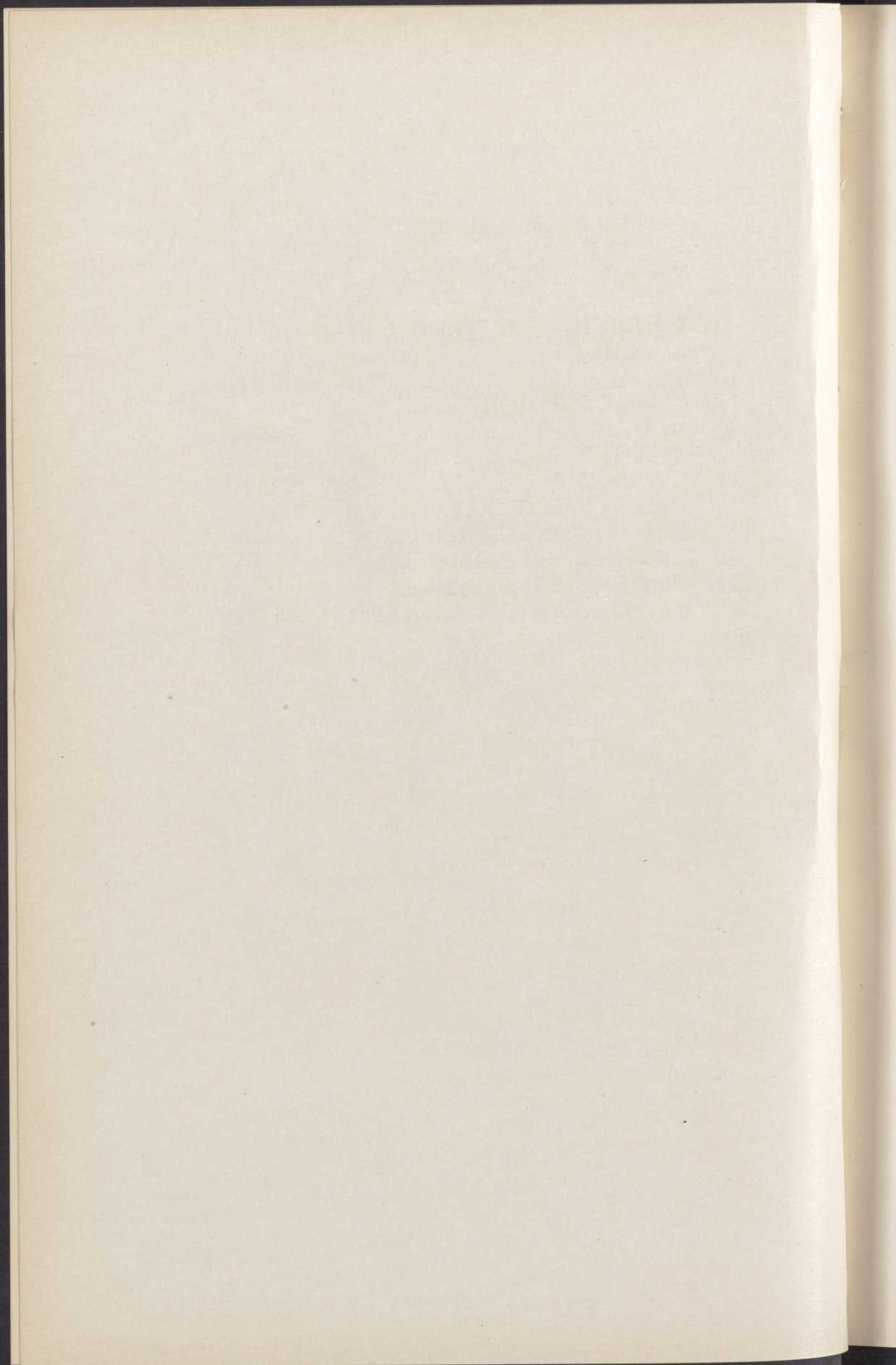
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## BILL OF COMPLAINT.

Filed April 5, 1926.

### In Chancery of New Jersey

To the Honorable Edwin Robert Walker, Chan- 10  
cellor of the State of New Jersey.

The complainant, Laurent S. Mitchell, and  
Charles A. Mitchell, Adelaide Giambalvo and  
Cecelia Stephens, of Jersey City, New Jersey,  
respectfully show that:

1. On March 22, 1901, Robert Davis, City Col-  
lector of the Mayor and Aldermen of Jersey  
City, conveyed to Francis W. Mitchell, for a full  
and valuable consideration, by deed in fee simple 20  
the following-described premises in the City of  
Jersey City, in the County of Hudson and State  
of New Jersey, as follows:

“All those certain lots, tracts or parcels  
of land and premises situate, lying and being  
in Jersey City, Hudson County, New Jersey,  
known and distinguished as lots two hundred  
and seventy-five (275) and two and seventy-  
six (276) in Block seven hundred and eighty-  
one (781) fronting on Central avenue in the 30  
Fourth District of Jersey City, New Jersey,  
as laid down and shown on an Assessment  
Map accompanying a report number 102,  
made by the Commissioners of Adjustment  
and filed with their report in the office of the  
Clerk of the County of Hudson, a certified  
copy of which report and map was transmit-  
ted to and filed by me. The said property  
being also known and described on a map  
entitled ‘Map of Mount Pleasant, Hudson 40

*Bill of Complaint.*

County, N. J.,' made by John Bevan, City Surveyor, and being marked 'Map of Land of Industrial Home Association No. 1 of Hoboken, near West Hoboken, Hudson County, N. J., signed by G. Van Houten, Pres.,' and filed in the Clerk's office of said County of Hudson on the 3rd day of August, 1853, are known and marked as lots numbers two hundred and seventy-five and two hundred and seventy-six (275 and 276); each lot being twenty-five feet wide in front and rear, fronting on Montgomery avenue and running through the block to Franklin street."

The said deed having been first duly acknowledged, and the certificate of acknowledgment duly endorsed thereon, was on April 16, 1901 recorded in the Register's office of Hudson County in Book 775 of Deeds, page 466.

2. The said Francis W. Mitchell had ever since the recording of the said deed been in peaceable possession of the lands therein described, and always claimed to own the same up to the time of his death, May 7, 1903. The said Francis W. Mitchell left a last will and testament duly filed in the Surrogate's office of Hudson County, New Jersey, in which he devised the said property to the complainants. Your complainants have been in peaceable possession of the said lands and they have always claimed and do now claim to own the same.

3. The title of complainants to said lands, or to some part thereof is denied and disputed by Henrietta J. Gaede, wife of Henry Gaede; Delia Pychlau, Henry W. Pychlau, her husband; Annie Pychlau Vietinghoff Scheel, Hamilkar Vietinghoff Scheel, her husband; Hedwig Meyerdorff, Ernest

*Bill of Complaint.*

Meyerdorff, her husband; Antonio Arbusw, L. Arbusw, her husband; Edwin Pychlau, Auguste H. Pychlau, his wife; Justa P. Voest, Jacob Voest, her husband; Harriet D. P. Meyer, Frederick Meyer, her husband; their heirs, devisees or personal representatives, their or any of their heirs, devisees, executors, administrators, grantees, assigns or successors in right, title and interest, are proper parties defendants to this bill of complaint; but complainants after diligent and careful inquiry therefor as in the case of absent defendants, have been unable to ascertain the names and residences of the heirs, devisees or personal representatives of the said Henrietta J. Gaede, wife of Henry J. Gaede; Delia Pychlau, Henry W. Pychlau, her husband; Annie Pychlau Vietinghoff Scheel, Hamilkar Vietinghoff Scheel, her husband; Hedwig Meyerdorff, Ernest Meyerdorff, her husband; Antonio Arbusw, L. Arbusw, her husband; Edwin Pychlau, Auguste H. Pychlau, his wife; Justa P. Voest, Jacob Voest, her husband; Harriet D. P. Meyer, Frederick Meyer, her husband, or they or any of their heirs, devisees, executors, administrators, grantees, assigns or successors in right, title or interest, or such of them as may be proper parties defendant, and they claim to own the same or some part thereof, or some interest therein, or to hold some lien or encumbrance thereon.

4. No suit is pending to enforce or test the validity of the title claim or encumbrance of Henrietta J. Gaede, wife of Henry Gaede; Delia Pychlau, Henry W. Pychlau, her husband; Annie Pychlau Vietinghoff Scheel, Hamilkar Vietinghoff Scheel, her husband; Hedwig Meyerdorff, Ernest Meyerdorff, her husband; Antonio Arbusw, L. Arbusw, her husband; Edwin Pychlau,

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*Bill of Complaint.*

Auguste H. Pychlau, his wife; Justa P. Voest, Jacob Voest, her husband; Harriet D. P. Meyer, Frederick Meyer, her husband; their heirs, devisees or personal representatives, their or any of their heirs, devisees, executors, administrators, grantees, assigns or successors in right, title and  
 10 interest.

Complainants are without proper remedy in the courts of law and, therefore, pray:

1. That Henrietta J. Gaede, wife of Henry J. Gaede; Delia Pychlau, Henry W. Pychlau, her husband; Annie Pychlau Vietinghoff Scheel, Hamilkar Vietinghoff Scheel, her husband; Hedwig Meyerdorff, Ernest Meyerdorff, her husband; Antonio Arbusw, L. Arbusw, her husband; Edwin  
 20 Pychlau, Auguste Pychlau, his wife; Justa P. Voest, Jacob Voest, her husband; Harriet D. P. Meyer, Frederick Meyer, her husband, their heirs, devisees or personal representatives, their or any of their heirs, devisees, executors, administrators, grantees, assigns or successors in right, title or interest, who are defendants to this suit may answer this bill of complaint and each statement therein made.

2. That the said defendants may set forth and  
 30 specify their title, claim or encumbrance to or upon the lands and premises hereinafter described, and now and by what instrument the same is derived or created.

3. That the rights of all the parties to this suit in and to the lands hereinbefore set forth may be fixed and settled by this court, and what complainants may be decreed to have a perfect title thereto, and the said defendants to have

*Bill of Complaint—Affidvt. of L. Edw. Herrmann.*

no estate, interest or right in, or incumbrance upon said lands or any part thereof.

4. That a writ of subpoena may issue, commanding the said defendants to answer this bill of complaint and abide by such decree as this court may make in the premises.

10

L. EDWARD HERRMANN,  
Solicitor for and of Counsel  
with Complainant.

## IN CHANCERY OF NEW JERSEY.

*Between*

LAURENT S. MITCHELL, *et als.*,  
Complainants,

*and*

DELIA PYCHLAU, *et als.*,  
Defendants.

*On Bill, &c.**Affidavit.*

20

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

L. EDWARD HERRMANN, of full age, being duly sworn, on his oath deposes and says, that he is a counsellor-at-law of the State of New Jersey, and has represented the Estate of Francis W. Mitchell for a great many years.

30

1. By deed dated March 22, 1901, and recorded in the Register's Office of Hudson County in Book 775 of Deeds, page 466, Robert Davis, City Collector, of the Mayor and Aldermen of Jersey City, conveyed to Francis W. Mitchell premises described in the bill of complaint.

40

*Bill of Complaint—Affidvt. of L. Edw. Herrmann.*

2. From the time of the receipt of the deed and up to and including the date of his death, the said Francis W. Mitchell always claimed to own the same. The said Francis W. Mitchell left a last will and testament probated in Hudson County, New Jersey, in which he devised the  
 10 property in this deed, and other property, to his four children, the complainants herein, and they have always been in peaceable possession of the land, and they have always claimed and claim to own the same.

3. The title of complainants is derived through a tax sale and in this tax sale all the heirs of Delia Pychlau were not properly served to bar their interest in the land, and for that reason the title of complainants to the said lands or  
 20 some part thereof is denied and disputed by Henrietta J. Gaede, wife of Henry Gaede; Delia Pychlau, Henry W. Pychlau, her husband; Annie Pychlau Vietinghoff Scheel, Hamilkar Vietinghoff Scheel, her husband; Hedwig Meyerdorff, Ernest Meyerdorff, her husband; Antonio Arbusw, L. Arbusw, her husband; Edwin Pychlau, Auguste H. Pychlau, his wife; Justa P. Voest, Jacob Voest, her husband; Harriet D. P. Meyer, Frederick Meyer, her husband, their heirs, devisees  
 30 or personal representatives, their or any of their heirs, devisees, executors, administrators, grantees, assigns or successors in right, title and interest. These are proper parties defendants to the bill of complaint and although diligent search and inquiry has been made, I have not been able to ascertain all of the names and addresses of the heirs, devisees and personal representatives of the above-named people.

*Bill of Complaint—Affidavit of John D. Craven.*

4. No suit or claim is pending to enforce or test the validity of the title claim or encumbrance of the said mentioned defendants.

L. EDWARD HERRMANN.

Sworn to and subscribed before  
me this 1st day of April, 1926. 10

JOHN D. CRAVEN,  
Master in Chancery of  
New Jersey.

IN CHANCERY OF NEW JERSEY.

*Between*

LAURENT S. MITCHELL, *et als.*,  
*Complainants,*

*and*

DELIA PYCHLAU, *et als.*,  
*Defendants.*

20

*On Bill to  
Quiet Title.  
Affidavit.*

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

JOHN D. CRAVEN, of full age, being duly sworn  
according to law, on his oath deposes and says: 30

1. I am the solicitor having actual charge of  
this case for the complainants in the foregoing  
bill of complaint; Henrietta J. Gaede, wife of  
Henry Gaede; Delia Pychlau, Henry W. Pych-  
lau, her husband; Annie Pychlau Vietinghoff  
Scheel, Hamilkar Vietinghoff Scheel, her hus-  
band; Hedwig Meyerdorff, Ernest Meyerdorff,  
her husband; Antonie Arbusw, L. Arbusw, her 40

*Bill of Complaint—Affidavit of John D. Craven.*

husband; Edwin Pychlau, Auguste H. Pychlau, his wife; Justa P. Voest, Jacob Voest, her husband; Harriet D. P. Meyer, Frederick Meyer, her husband; their heirs, devisees or personal representatives, their or any of their heirs, devisees, executors, administrators, grantors, assigns or  
 10 successors in right, title and interest, are proper parties defendant to said bill of complaint.

2. I have in good faith made diligent and careful inquiry, not only in the manner, directed by the rules of this court as in the case of absent defendants but also from other sources from which I thought it possible that I might be able to ascertain the information whether the said Delia Pychlau is still alive, and have been informed in such manner that I believe it to be  
 20 true that she is dead. I have also in like manner, made diligent and careful inquiry for the names and residences of the heirs, devisees and personal representatives of the said Delia Pychlau, and they or any of their heirs, devisees, executors, administrators, grantees, assigns or successors in right, title or interest, and I found that the heirs of the said Delia Pychlau were:

(1) Her husband, Henry Pychlau, who died February 10, 1910, in Rigi, Russia;

30 (2) Her child, Annie Pychlau, who died June 22, 1919, and her husband, Hamilkar Vietinghoff Scheel, who died June 16, 1906, in Russia;

(3) Hedwig Vietinghoff Scheel, child of Annie Pychlau, married to Ernest Schvia Baron Meyerdorff, both of whom are still alive and living at Riga, Lacepesailla 13, D. F. 6, Latvia;

(4) Another child of Annie Pychlau, is Antonie Vietinghoff Scheel, died March 22, 1920,  
 40 in Germany, married to L. Arbusw;

*Bill of Complaint—Affidavit of John D. Craven.*

(5) Edwin W. Pychlau, son of Delia Pychlau, died January 1, 1924, in Germany, married to Auguste Pychlau, who lives at Kiel, Germany;

(6) Harriet D. M. Pychlau, a daughter of Edwin W. Pychlau, married to Frederick Meyer, who live at Weissenburg 2, 5, P. L., Kiel, Germany; 10

(7) Justa M. Pychlau, another daughter of Edwin W. Pychlau, married to Jacob Veost.

But I cannot ascertain all the names of the grandchildren of the said Delia Pychlau or the addresses of any of the said heirs except as noted above, and I have been unable to ascertain any of the devisees, executors, administrators or personal representatives of the said heirs.

The above information has been secured from Mrs. Auguste Pychlau and Hedwig Vietinghoff Scheel, with whom your deponent has been corresponding for a long period of time. 20

The address of the said Henrietta Gaede, wife of Henry Gaede, is known.

JOHN D. CRAVEN.

Sworn to and subscribed before me at Jersey City, N. J., the 10th day of April, 1926. 30

WALTER J. FREUND,  
Master in Chancery of  
New Jersey.



*Order of Publication.*

Auguste H. Pychlau, his wife, Justa P. Voest, Jacob Voest her husband, Harriet D. P. Meyer, Frederick Meyer, her husband, and their heirs, devisees, executors, administrators, grantees, assigns or successors in right, title or interest to appear in this suit as such defendants.

And it having been made to appear by affidavit 10  
to the satisfaction of the Chancellor that the said Delia Pychlau, Henry W. Pychlau, her husband; Annie Pychlau Vietinghoff Scheel, Hamilkar Vietinghoff Scheel, her husband, Hedwig Meyerdorff, Ernest Meyerdorff, her husband; Antonio Arbusw, L. Arbusw, her husband; Edwin Pychlau, Auguste H. Pychlau, his wife; Justa P. Voest, Jacob Voest, her husband; Harriet D. P. Meyer, Frederick Meyer, her husband; and their heirs, devisees, executors, administrators, grantees, assigns or successors in right, title or interest cannot, upon due inquiry, be found in this State, and that process cannot be served upon the said Delia Pychlau, Henry W. Pychlau, her husband; Annie Pychlau Vietinghoff Scheel, Hamilkar Vietinghoff Scheel, her husband; Hedwig Meyerdorff, Ernest Meyerdorff, her husband; Antonio Arbusw, L. Arbusw, her husband; Edwin Pychlau, Auguste H. Pychlau, his wife; Justa P. Voest, Jacob Voest, her husband; Harriet D. P. Meyer, and Frederick Meyer, her husband; or their heirs, devisees, executors, administrators, grantees, assigns or successors in right, title or interest within this State: 20 30

And it appearing by the allegations of said bill of complaint duly verified by affidavit thereto annexed that said Delia Pychlau, Henry W. Pychlau, her husband; Annie Pychlau Vietinghoff Scheel, Hamilkar Vietinghoff Scheel, her husband; Hedwig Meyerdorff, Ernest Meyerdorff, 40

*Order of Publication.*

her husband; Antonio Arbusw, L. Arbusw, her husband; Edwin Pychlau, Auguste H. Pychlau, his wife; Justa P. Voest, Jacob Voest, her husband; Harriet D. P. Meyer, and Frederick Meyer, her husband, some of the persons mentioned in said bill, or their heirs, devisees or personal  
 10 representatives, their or any of their heirs, devisees, executors, administrators, grantees, assigns or successors in right, title or interest are proper parties defendant to said bill of complaint.

And it further appearing that the said complainants, after diligent and careful inquiry therefor, made as in case of absent defendants, has been unable to ascertain whether the said Delia Pychlau, Henry W. Pychlau, her husband; Annie  
 20 Pychlau Vietinghoff Scheel, Hamilkar Vietinghoff Scheel, her husband; Hedwig Meyerdorff, Ernest Meyerdorff, her husband; Antonio Arbusw, L. Arbusw, her husband; Edwin Pychlau, Auguste H. Pychlau, his wife; Justa P. Voest, Jacob Voest, her husband; Harriet D. P. Meyer, Frederick Meyer, her husband, are still alive,

It is thereupon on this 13th day of April, nineteen hundred and twenty-six ORDERED that the said Delia Pychlau, Henry W. Pychlau, her  
 30 husband; Annie Pychlau Vietinghoff Scheel, Hamilkar Vietinghoff Scheel, her husband; Hedwig Meyerdorff, Ernest Meyerdorff, her husband; Antonio Arbusw, L. Arbusw, her husband; Edwin Pychlau, Auguste H. Pychlau, his wife; Justa P. Voest, Jacob Voest, her husband; Harriet D. P. Meyer, Frederick Meyer, her husband; and their heirs, devisees, personal representatives, executors, administrators, grantees, assigns or successors in right, title or interest appear and answer the complainants' bill of complaint on or before  
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*Order of Publication.*

the 14th day of June next, or that in default thereof such decree be made against them as the Chancellor shall deem just and equitable.

It is further Ordered that the notice required by law to be published against absent defendants in default of personal service, which notice shall contain a description of the lands and premises mentioned and described in said bill of complaint sufficient to identify the same and shall be addressed to the said Delia Pychlau, Henry W. Pychlau, her husband; Annie Pychlau Vietinghoff Scheel, Hamilkar Vietinghoff Scheel, her husband; Hedwig Meyerdorff, Ernest Meyerdorff, her husband; Antonio Arbusw, L. Arbusw, her husband; Edwin Pychlau, Auguste Pychlau, his wife; Justa P. Voest, Jacob Voest, her husband; Harriet D. P. Meyer, Frederick Meyer, her husband; and their heirs, devisees and personal representatives, and their or any of their heirs, devisees, executors, administrators, grantees, assigns or successors in right, title and interest shall, within fifteen days after the date hereof, be posted in three conspicuous places upon the said lands and premises, and shall also be published in the Jersey Journal and Jersey Observer, two of the public newspapers printed in this State, for four weeks consecutively, at least once in each week, the first publication to be made within fifteen days after the date hereof; and that a copy of said notice addressed to "Delia Pychlau, Henry W. Pychlau, her husband; Annie Pychlau Vietinghoff Scheel, Hamilkar Vietinghoff Scheel, her husband; Hedwig Meyerdorff, Ernest Meyerdorff, her husband; Antonio Arbusw, L. Arbusw, her husband; Edwin Pychlau, Auguste H. Pychlau, his wife; Justa P. Voest, Jacob Voest, her husband; Harriet D. P. Meyer, and Frederick Meyer,

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*Order of Publication.*

her husband; and their heirs, devisees and personal representatives, and their or any of their heirs, devisees, executors, administrators, grantees, assigns or successors in right, title or interest," be mailed prepaid, within fifteen days after the date hereof, directed to the post office nearest the last known residence of said Delia Pychlau, Henry W. Pychlau, her husband; Annie Pychlau Vietinghoff Scheel, Hamilkar Vietinghoff Scheel, her husband; Hedwig Meyerdorff, Ernest Meyerdorff, her husband; Antonio Arbusw, L. Arbusw, her husband; Edwin Pychlau, Auguste H. Pychlau, his wife; Justa P. Voest, Jacob Voest, her husband; Harriet D. P. Meyer, and Frederick Meyer, her husband; or to the last known post office at which the said Delia Pychlau, Henry W. Pychlau, her husband; Annie Pychlau Vietinghoff Scheel, and Hamilkar Vietinghoff Scheel, her husband; Antonio Arbusw, L. Arbusw, her husband; Edwin Pychlau, Auguste Pychlau, his wife; Justa P. Voest, Jacob Voest, her husband; Harriet D. P. Meyer, and Frederick Meyer, her husband, usually received their letters.

E. R. WALKER,

C.

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40

## AFFIDAVIT OF POSTING NOTICE.

Filed April 24, 1926.

IN CHANCERY OF NEW JERSEY.

*Between*

LAURENT S. MITCHELL,  
CHARLES A. MITCHELL, ADE-  
LAIDE GIAMBALVO and  
CECILIA STEPHENS,

*Complainants,**and*

HENRETTA J. GAEDE, DELIA  
PYCHLAU, *et al.*,

*Defendants.*

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*On Bill, &c.**Affidavit of  
Posting  
Notice.*

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

HERBERT L. SMITH, of full age, being duly sworn according to law, on his oath deposes and says, that on the twenty-first day of April, 1926, he posted notices, a copy of which is annexed hereto, and made part hereof, in three conspicuous places upon the premises known as street numbers 448 and 450 Central avenue, Jersey City, New Jersey, being the same premises as described in said notices.

30

HERBERT L. SMITH.

Sworn to and subscribed before  
me this 22nd day of April,  
1926.

JOHN D. CRAVEN,  
Master in Chancery of  
New Jersey.

40

*Affidavit of Posting Notice.*

## IN CHANCERY OF NEW JERSEY.

TO DELIA PYCHLAU, HENRY W. PYCHLAU, her husband; ANNIE PYCHLAU VIETINHOFF SCHEEL, HAMILKAR VIETINGHOFF SCHEEL, her husband; HEDWIG MEYERDORFF, ERNEST MEYERDORFF, her husband; ANTONIO ARBUSW, L. ARBUSW, her husband; EDWIN PYCHLAU, AUGUSTE H. PYCHLAU, his wife; JUSTA P. VOEST, JACOB VOEST, her husband; HARRIET D. P. MEYER, FREDERICK MEYER, her husband; their heirs, devisees and personal representatives, and their or any of their heirs, devisees, executors, administrators, grantees, assigns or successors in right, title and interest:

By virtue of an order of the Court of Chancery of New Jersey made on the 13th day of April, 1926, in a cause wherein Laurent S. Mitchell, Charles A. Mitchell, Adelaide Giambalvo and Cecelia Stephens, are complainants, and Delia Pychlau and others are defendants, you are required to appear and answer the bill of complaint on or before the 14th day of June next, or the said bill will be taken as confessed against you.

The said bill is filed to quiet the title of the said Laurent S. Mitchell, Charles A. Mitchell, Adelaide Giambalvo and Cecelia Stephens, to certain lands and premises, more particularly described as follows:

“ALL those certain lots, tracts or parcels of land and premises, situate, lying and being in Jersey City, Hudson County, New Jersey, known and distinguished as lots two hundred and seventy-five (275) and two hundred and seventy-six (276) in Block seven hundred and eighty-one (781) fronting on Central avenue in the Fourth District of Jersey City, New

*Affidavit of Posting Notice.*

Jersey, as laid down and shown on an assessment Map accompanying a report number 102, made by the Commissioners of Adjustment and filed with their Report in the office of the Clerk of the County of Hudson, a certified copy of which report and map was transmitted to and filed by me. The said property being also known and described on a map entitled 'Map of Mount Pleasant, Hudson County, N. J.,' made by John Bevan, City Surveyor, and being marked 'Map of Land of Industrial Home Association No. 1 of Hoboken, near West Hoboken, Hudson County, N. J., signed by G. Van Houten, Pres.,' and filed in the Clerk's office of said County of Hudson on the 3rd day of August, 1853, are known and marked as lots numbers two hundred and seventy-five and two hundred and seventy-six (276); each lot being twenty-five feet wide in front and rear fronting on Montgomery avenue and running through the block to Franklin street."

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You are made defendants because you have or may have an interest or estate in said lands and premises; and if you claim any title to, interest in or encumbrance upon the said lands and premises, you are required to answer the said bill, but not otherwise.

30

L. EDWARD HERRMANN,  
Solicitor of Complainants,  
15 Exchange Place,  
Jersey City, N. J.

40

## AFFIDAVIT OF MAILING.

Filed April 24, 1926.

IN CHANCERY OF NEW JERSEY.

10 *Between*

LAURENT S. MITCHELL and  
 CHARLES A. MITCHELL, ex-  
 cutors under the last will  
 and testament of FRANCIS  
 W. MITCHELL, deceased,  
*Complainants,*

*and*

20 HENRIETTA J. GAEDE, DELIA  
 PYCHLAU, *et als.*,  
*Defendants.*

*On Bill to  
 Quiet Title.**Affidavit of  
 Mailing.*

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

30 MARY E. O'BRIEN, of full age, being duly sworn  
 according to law, on her oath deposes and says,  
 that on April 21, 1926, she placed in the post-  
 office at Jersey City, New Jersey, a letter ad-  
 dressed to each of the following-named persons,  
 at the addresses given below, with the postage  
 thereon prepaid, containing a copy of a notice  
 hereto attached:

Mrs. Delia Pychlau, c/o Mrs. Auguste  
 Pychlau, Goosalotta Str. 91, Kiel, Germany.

Henry W. Pychlau, Esq., c/o Mrs. Auguste  
 Pychlau, Goosalotta Str. 91, Kiel, Germany.

40 Annie Pythlau Vietinghoff Scheel, c/o  
 Mrs. Auguste Pychlau, Goosalotta Str. 91,  
 Kiel, Germany.

*Affidavit of Mailing.*

Hamilkar Vietinghoff Scheel, c/o Mrs.  
Auguste Pychlau, Goosalotta Str. 91, Kiel,  
Germany.

Edwin William Pychlau, Esq., c/o Mrs.  
Auguste Pychlau, Goosalotta Str. 91, Kiel,  
Germany.

Mrs. Auguste Pychlau, Goosalotta Str. 91, 10  
Kiel, Germany.

Mrs. Harriet D. P. Meyer, Weissenburg  
Str. 5, P. L., Kiel, Germany.

Frederick Meyer, Esq., Weissenburg Str.  
5, P. L., Kiel, Germany.

Justa Voest, c/o Frederick Meyer, Weis-  
senburg Str. 5, P. L., Kiel, Germany.

Jacob Voest, Esq., c/o Frederick Meyer,  
Weissenburg Str. 5, P. L., Kiel, Germany.

Antonie Arbusw, Esq., c/o Frederick Meyer, 20  
Weissenburg Str. 5, P. L., Kiel, Germany.

L. Arbusw, Esq., c/o Frederick Meyer,  
Weissenburg Str. 5, P. L., Kiel, Germany.

Mrs. Hedwig Baronin Meyerdorff, Lac-  
plessa Illa. 13, D. Z. 6, Riga, Latvia.

Ernest Baronin Meyerdorff, Esq., Lac-  
plessa Illa. 13, D. Z. 6, Riga, Latvia

MARY E. O'BRIEN.

Sworn to and subscribed before 30  
me at Jersey City, N. J., this  
22nd day of April, 1926.

JOHN D. CRAVEN,  
Master in Chancery of  
New Jersey.

## ANSWER AND COUNTER-CLAIM.

Filed June 12, 1926.

IN CHANCERY OF NEW JERSEY.

10	<p><i>Between</i></p> <p style="text-align: center;">LAURENT S. MITCHELL, <i>et als.</i>, Complainants,</p> <p style="text-align: center;"><i>and</i></p> <p style="text-align: center;">DELIA PYCHLAU, <i>et als.</i>, Defendants.</p>	<p><i>On Bill to Quiet Title.</i></p> <p><i>Answer and Counter- claim.</i></p>
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20 The defendants, Hedwig Marie Hermine Delia  
Baroness Meyerdorff, Annie Ida Lieselotte Ar-  
busoff, Brigitte Katharina Hedwig Arbusoff,  
Leonid Hans Nicolai Arbusoff, Harriet D. P.  
Meyer, Jutta Voest and August Pychlau, desig-  
nated in the bill of complaint as Hedwig Meyer-  
dorff, L. Arbusw and Justa P. Voest, answering  
the complaint herein says that:

1. Paragraph 1 is denied.
2. Paragraph 2 is denied.
- 30 3. The deed mentioned in paragraph 1 of the  
complaint is void and of no effect, and not  
executed according to the statute in such case  
made and provided, and does not convey said  
lands and premises to said Francis W. Mitchell  
in fee simple, and said deed does not convey to  
said Francis W. Mitchell any interest or claim  
in said lands and premises whatsoever.
- 40 4. The proceedings through which the deed  
mentioned in paragraph 1 of the complaint was

*Answer and Counter-claim.*

given, are irregular, defective and not according to the statute in such case made and provided.

5. On April 28, 1926, and for a long time prior thereto, and at the present time, the estates, claims and interests of defendants, in and to said lands and premises were and are as follows: Hedwig Marie Hermine Delia Baroness Meyerdorff, six twenty-fourths interest; Annie Ida Lieselotte Arbusoff, three twenty-fourths interest; Brigitte Katharina Hedwig, three twenty-fourths interest; Leonid Hans Nicolai Arbusoff, an estate of curtesy consummate by reason of being the husband of Antonie Hildegard Elizabeth Arbusoff, deceased, designated in the bill of complaint as Antonio Arbusw; Harriet D. P. Meyer, six twenty-fourths interest; Jutta Voest, six twenty-fourths interest, and Augusta Pychlau an estate of dower, by reason of being the wife of Elwyn Pychlau, deceased, designated in the bill of complaint as Edwin Pychlau.

6. Defendants claim that they are seized of and entitled to the undivided interests as set forth in paragraph 5 hereof, in said lands and premises as the heirs at law of Delia Pychlau, deceased, and the manner in which and the source through which their title is claimed is as follows:

On or about May 21, 1862, John N. J. Ruete and Magdalean Ruete, his wife, conveyed said lands and premises to Delia Pychlau, by deed of that date, which deed was recorded in the Hudson County Register's office on June 18, 1862, in Book 93 of Deeds for said County, on page 508.

Said Delia Pychlau died about the year 1863 intestate, and leaving her surviving as her only

*Answer and Counter-claim.*

heirs at law, Annie Elizabeth Sulamith Pychlau, a daughter, who married Hamilcar Theodor Anton Wilhelm Baron Vietinghoff-Sheel, and Elwyn Pychlau, a son, who married Augusta Pychlau. Said Hamilcar Theodor Anton Wilhelm Baron Vietinghoff-Sheel died on November 16, 1921.

10 Said Augusta Pychlau is still living.

Said Annie Elizabeth Sulamith Pychlau Vietinghoff-Sheel died June 22, 1919, intestate, leaving her surviving as her only heirs at law, Hedwig Marie Hermine Delia Baroness Vietinghoff-Sheel, a daughter, who married Ernest Baron Meyendorff; said Ernest Baron Meyendorff having since died; and Antonie Hildegard Elizabeth Claudia Arbusoff, a daughter.

20 Said Antonie Hildegard Elizabeth Claudia Arbusoff died since intestate, and leaving her surviving as her only heirs at law, Annie Ida Lieselotte Arbusoff, a daughter, Brigitte Katharina Hedwig Arbusoff, a daughter, and Leonid Hans Nicolai Arbusoff, her widower.

Said Elwyn Pychlau died intestate leaving him surviving as his only heirs at law, Harriet D. P. Pychlau, a daughter, Jutta Veost, a daughter, and Augusta Pychlau, his widow.

30 7. These defendants did not join in the deed set forth in the bill of complaint, and have never conveyed to complainants, or to any other person, their right, title and interest in said lands and premises or any part thereof.

By way of counter-claim against the complainants, Laurent S. Mitchell, Charles A. Mitchell, Adelaide Giambalvo and Cecelia Stephens, the defendants, Hedwig Marie Hermine Delia Baron-

*Answer and Counter-claim.*

ess Meyendorff, Brigitte Katharina Hedwig Arbusoff, Harriet D. P. Meyer and Jutta Voest, say that:

1. On May 21, 1862, John N. J. Ruete and Magdalean Ruete, his wife, conveyed the lands and premises described in the bill of complaint herein to Delia Pychlau, by deed of that date, for a full and valuable consideration, in fee simple. Said deed, having first been duly acknowledged, and the certificate duly endorsed thereon, was recorded in the Office of the Register of the County of Hudson, on June 18, 1862, in Book 93 of Deeds for said County, on page 508. 10

2. They are the owners in fee simple of the lands and premises described in the bill of complaint herein, by reason of being the only heirs at law of Delia Pychlau. 20

3. The title of these defendants to said lands is denied and disputed by the complainants, Laurent S. Mitchell, Charles A. Mitchell, Adelaide Giambalvo and Cecelia Stephens, who claim to own the same or some part thereof, or some interest therein, or to hold some lien or encumbrance thereon.

These defendants, therefore, pray: 30

1. That said complainants, Laurent S. Mitchell, Charles A. Mitchell, Adelaide Giambalvo and Cecelia Stephens, may answer this counter-claim and each statement therein made.

2. That said complainants may set forth and specify their title, claim in or encumbrance to or upon the lands and premises described in the bill of complaint herein, and how and by what instrument the same is derived or created. 40

*Answer and Counter-claim.*

3. That the rights of all of the parties to this suit in and to the lands described in the bill of complaint may be fixed and settled by this court, and that the defendants may be decreed to have a perfect title thereto, and the said complainants or any of them to have no  
10 estate, interest or right in or encumbrance upon said lands or any part thereof.

TACKELLA & CAMBY,  
Solicitors of Complainants.

HENRY J. CAMBY,  
Of Counsel.

20

30

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**NOTICE OF MOTION.**

Filed September 27, 1926.

IN CHANCERY OF NEW JERSEY.

*Between*

LAURENT S. MITCHELL, <i>et als.</i> , <i>Complainants,</i>  <i>and</i> DELIA PYCHLAU, <i>et als.</i> , <i>Defendants.</i>	}	<i>On Bill to          Quiet Title.</i>  <i>Notice of          Motion.</i>	10
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To Tackella & Camby, attorneys for defendants,  
 95 River Street, Hoboken, N. J.

TAKE NOTICE that I shall apply to the Chan- 20  
 cellor on Monday, June 28, 1926, at the Chan-  
 cery Chambers, No. 1 Exchange Place, Jersey  
 City, New Jersey, at 10 o'clock in the forenoon,  
 or as soon thereafter as I can be heard, for an  
 order to strike out the answer and conter-claim  
 filed by you in the above-entitled matter, for the  
 following reasons:

1. The answer attempts to collaterally attack 30  
 the deed under which the complainants claim  
 title.

2. The defense sought to be interposed by the  
 answer is not a defense in equity.

3. I shall move to strike out the counter-claim  
 filed herein inasmuch as the counter-claim is in  
 the nature of a bill to quiet title and does not set  
 forth jurisdictional facts.

L. EDWARD HERRMANN,  
 Solicitor and of Counsel  
 with Complainants. 40

**ORDER OF CONTINUANCE.**

Filed July 6, 1926.

IN CHANCERY OF NEW JERSEY.

10	<p><i>Between</i></p> <p style="text-align: center;">LAURENT S. MITCHELL, <i>et als.</i>,  <i>Complainants,</i></p> <p style="text-align: center;"><i>and</i></p> <p style="text-align: center;">DELIA PYCHLAU, <i>et als.</i>,  <i>Defendants.</i></p>	} <i>Order of Continuance.</i>
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20 This matter coming on to be heard on a motion to strike out the answer filed by some of the defendants herein, it is on this sixth day of July, 1926, ORDERED, that the hearing on the said motion, and the same is hereby continued until Monday, September 20, 1926, at Chancery Chambers, 1 Exchange Place, Jersey City, New Jersey.

E. R. WALKER,

C.

Respectfully advised,

30 JAMES F. FIELDER,  
V.-C.

## ORDER OF CONTINUANCE.

Filed September 21, 1926.

IN CHANCERY OF NEW JERSEY.

*Between*LAURENT S. MITCHELL, *et als.*,  
*Complainants,**and*DELIA PYCHLAU, *et als.*,  
*Defendants.**Order.*

10

This matter coming on to be heard on a motion to strike out the answer filed by some of the defendants herein, in the presence of the solicitors of complainants and defendants, it is on this twentieth day of September, 1926, ORDERED, that the hearing on the said motion, and the same is hereby continued until Monday, September 27, 1926, at Chancery Chambers, 1 Exchange Place, Jersey City, New Jersey.

20

E. R. WALKER,

C.

Respectfully advised,

30

JAMES F. FIELDER,  
V.-C.

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**ORDER.**

Filed September 30, 1926.

## IN CHANCERY OF NEW JERSEY.

10 *Between*LAURENT S. MITCHELL, *et als.*,  
*Complainants,**and*DELIA PYCHLAU, *et als.*,  
*Defendants.**On Motion to  
Strike Out.  
Order.*

20 A motion having been made by the complainants to strike out the answer and counter-claim of the defendants on the ground that the answer attempts to collaterally attack the deed under which the complainants claim title, and that the answer is not a defense in equity, and that the counter-claim does not set forth jurisdictional facts, and it appearing that due notice of this motion has been given to the said defendants; and the Court having heard the arguments of L. Edward Herrmann, of counsel with the complainants, and of Tackella & Camby, of counsel with the defendants, and being of the opinion that the counter-claim is in the nature of a bill to quiet title and does not set forth jurisdictional facts, and that paragraphs three and four of the answer attempt to attack the deed of the complainants collaterally, the Court being also of the opinion that the defendants should be permitted to amend their answer,

30

40 It is thereupon, on this 30th day of September, nineteen hundred and twenty-six, ORDERED, that

*Order.*

the counter-claim of the defendants be and the same is hereby stricken out, and that paragraphs three and four of the answer be and the same are hereby stricken out, and that the defendants have leave to file an amended answer within ten days from the date of this order, and within the same time to serve by mail on the solicitor of the complainants, a copy of the said amended answer. 10

And it is further ORDERED, that this order shall be served on the defendants, by mailing to the solicitors of the defendants, a copy thereof within one day after the date of the order.

E. R. WALKER,

*C.*

Respectfully advised, 20

JAMES F. FIELDER,  
*V.-C.*

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**AMENDED COMPLAINT.**

Filed October 11, 1926.

IN CHANCERY OF NEW JERSEY.

10	<p style="margin: 0;"><i>Between</i></p> <p style="margin: 0; text-align: center;">LAURENT S. MITCHELL, <i>et als.</i>, Complainants,</p> <p style="margin: 0; text-align: center;"><i>and</i></p> <p style="margin: 0; text-align: center;">DELIA PYCHLAU, <i>et als.</i>, Defendants.</p>	<p style="font-size: 4em; line-height: 1;">}</p> <p style="margin: 0;"><i>On Bill, &amp;c.</i></p> <p style="margin: 0;"><i>Amended</i></p> <p style="margin: 0;"><i>Complaint.</i></p>
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20     The complainants, Laurent S. Mitchell, Charles A. Mitchell, Adelaide Giambalvo and Cecile Stephens, hereby amend their complaint as follows:

The said deed mentioned in paragraph one of the complaint is shown as being recorded in Book 775 of Deeds for Hudson County, page 466. The complaint is hereby amended to read that the said deed was recorded in Book 773 of Deeds for Hudson County, page 466.

L. EDWARD HERRMANN,  
Solicitor of Complainants.

30

Service of a copy of the within amended complaint acknowledged this 4th day of October, 1926.

TACKELLA & CAMBY,  
Solicitors of Defendants.

40

**NOTICE OF MOTION.**

Filed October 11, 1926.

IN CHANCERY OF NEW JERSEY.

<p><i>Between</i></p> <p>LAURENT S. MITCHELL and others, <i>Complainants,</i></p> <p style="text-align: center;"><i>and</i></p> <p>DELIA PYCHLAU and others, <i>Defendants.</i></p>	}	<p><i>On Bill to Quiet Title.</i></p> <p><i>Notice of Motion.</i></p>	10
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SIR:

TAKE NOTICE, that we shall apply to the Chan- 20  
cellor at the Chancery Chambers, No. 1 Exchange  
Place, Jersey City, N. J., on Monday, October 4,  
1926, at 10 o'clock in the forenoon, or as soon  
thereafter as counsel can be heard, for an order  
dismissing the bill of complaint in the above-  
entitled suit, for the reason that the Court of  
Chancery has no jurisdiction upon the facts set  
forth in the bill of complaint and the answer, or,  
in the alternative, that the proceedings be stayed 30  
until the complainants shall institute a suit in  
ejectment, and for other reasons.

Dated, September 29, 1926.

Yours, etc.,

TACKELLA & CAMBY,  
Solicitors of Defendants.

To L. Edward Herrmann, solicitor of complain-  
ant, 15 Exchange Place, Jersey City, N. J.

*Order of Continuance.*

I acknowledge service of a copy of the within notice this 29th day of September, 1926.

L. EDWARD HERRMANN,  
Solicitor of Complainant.

10

**ORDER OF CONTINUANCE.**

IN CHANCERY OF NEW JERSEY.

Between	LAURENT S. MITCHELL, and others,  Complainants,	} <i>On Bill to          Quiet Title.          Order of          Continuance.</i>
and	DELIA PYCHLAU, and others, Defendants.	

20

This matter coming on before me on motion to strike out the bill of complaint, in the presence of Henry J. Camby, of Tackella & Camby, solicitors of the defendants, and John Craven, for L. Edward Herrmann, solicitor of the complainants, It is on this 4th day of October, 1926, ORDERED

30 that the hearing on this motion be and it hereby is continued to October 11, 1926, and that in the meantime the time of the defendants to file an amended answer to the complaint be and it hereby is extended to October 14, 1926.

E. R. WALKER,

C.

Respectfully advised,

VIVIAN M. LEWIS,  
V.-C.

40

**AMENDED ANSWER.**

Filed October 14, 1926.

IN CHANCERY OF NEW JERSEY.

<i>Between</i>  LAURENT S. MITCHELL, <i>et als.</i> , <i>Complainants,</i>  <i>and</i>  DELIA PYCHLAU, <i>et als.</i> , <i>Defendants.</i>	}	On Bill to Quiet Title.  Amended Answer.	10
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The defendants, Hedwig Marie Hermine Delia Baroness Meyendorff, Annie Ida Lieslotte Arbusoff, Brigitte Katharina Hedwig Arbusoff, Leonid Hans Nicolai Arbusoff, Harriet D. P. Meyer, Jutta Voest and August Pychlau, designated in the bill of complaint as Hedwig Meyendorff, L. Arbusw and Justa P. Voest, answering the complaint herein, says that:

1. Paragraph 1 is denied.
2. Paragraph 2 is denied.
3. As to paragraph 3, the defendants deny that the complainants have title to said lands, or to any part thereof, and dispute the same; and they neither deny nor admit that the complainants have made diligent and careful inquiry therefor as in the case of absent defendants, but demand proof thereof.
4. They have no knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 4, and demand proof thereof.

*Amended Answer.*

5. On April 28, 1926, and for a long time prior thereto, and at the present time, the estates, claims and interests of defendants, in and to said lands and premises were and are as follows: Hedwig Marie Hermine Delia Baroness Meyendorff, six twenty-fourths interest; Annie Ida  
 10 Lieselotte Arbusoff, three twenty-fourths interest; Brigitte Katharina Hedwig Arbusoff, three twenty-fourths interest; Leonid Hans Nicolai Arbusoff, an estate of curtesy consummate by reason of being the husband of Antonie Hildegard Elizabeth Arbusoff, deceased, designated in the bill of complaint as Antonio Arbusw; Harriet  
 20 D. P. Meyer, six twenty-fourths interest; Jutta Voest, six twenty-fourths interest, and Augusta Pychlau, an estate of dower, by reason of being the wife of Elwyn Pychlau, deceased, designated in the bill of complaint as Edwin Pychlau.

6. Defendants claim that they are seized of and entitled to the undivided interests as set forth in paragraph 5 hereof, in said lands and premises as the heirs at law of Delia Pychlau, deceased, and the manner in which and the source through which their title is claimed is as follows:

30 On or about May 21, 1862, John N. J. Ruete and Magdalean Ruete, his wife, conveyed said lands and premises to Delia Pychlau, by deed of that date, which deed was recorded in the Hudson County Register's office on June 18, 1862, in Book 93 of Deeds for said County, on page 508.

Said Delia Pychlau died about the year 1863 intestate, and leaving her surviving as her only heirs at law, Annie Elizabeth Sulamith Pychlau, a daughter, who married Hamilear Theodor Anton Wilhelm Baron Vietinghoff-Sheel, and Elwyn Pychlau, a son, who married Augusta Pychlau.  
 40

*Amended Answer.*

Said Hamilear Theodor Anton Wilhelm Baron Vietinghoff-Sheel died on November 16, 1921. Said Augusta Pychlau is still living.

Said Annie Elizabeth Sulamith Pychlau Vietinghoff-Sheel died June 22, 1919, intestate, leaving her surviving as her only heirs at law, Hedwig Marie Hermine Delia Baroness Veitinghoff-Sheel, a daughter, who married Ernest Baron Meyendorff; said Ernst Baron Meyendorff having since died; and Antonie Hildegard Elizabeth Claudia Arbusoff, a daughter. 10

Said Antonie Hildegard Elizabeth Claudia Arbusoff died since intestate, and leaving her surviving as her only heirs at law, Annie Ida Lieselotte Arbusoff, a daughter, Brigitte Katharina Hedwig Arbusoff, a daughter, and Leonid Hans Nicolai Arbusoff, her widower. 20

Said Elwyn Pychlau died intestate leaving him surviving as his only heirs at law, Harriet D. P. Pychlau, a daughter, Jutta Voest, a daughter, and Augusta Uychlau, his widow.

7. These defendants did not join in the deed set forth in the bill of complaint, and have never conveyed to complainants, or to any other person, their right, title and interest in said lands and premises or any part thereof. 30

8. The premises described in paragraph 1 of the complaint are vacant lands, and these defendants are in possession of the same as the heirs at law of Delia Pychlau, deceased.

## FIRST DEFENSE.

The defendants, reserving the right to move, at the trial of the issues herein, for an order staying the proceedings in this suit and opening the 40

*Amended Answer.*

final decree in the suit hereinbelow mentioned, but without admitting that the said alleged final decree is binding upon these defendants, say that:

1. On or about January 22, 1926, the Chancellor of the State of New Jersey, made a final decree in a suit between Laurent S. Mitchell and Charles A. Mitchell, executors under the last will and testament of Francis W. Mitchell, deceased, complainants, and Delia Pychlau, Henry W. Pychlau, her husband; Henrietta J. Gaede, wife of Henry Gaede, Jr.; Annie Pychlau Viteinghoff Scheel, Hamilkar Vietinghoff Scheel, her husband; Hedwig Meyerdorff, Ernest Meyerdorff, her husband; Antonio Arbusw, L. Arbusw, her husband; Edwin Pychlau, Auguste H. Pychlau, his wife, Justa P. Voest, Jacob Voest, her husband; Harriet D. P. Meyer, and Frederick Meyer, her husband, and others, defendants, which was a suit to quiet the alleged title of the said complainants, to the premises mentioned and described in paragraph 1 of the complaint in this suit, in and by which final decree it was ordered, adjudged and decreed, that the defendants therein had no estate or interest in or encumbrances upon said lands and premises, or any part thereof, and that so far as relates to the claim of the defendants in the said suit, the title of the complainants in the said suit, in and to the said lands and premises and every part thereof, was thereby determined, fixed and settled, and declared to be good.

2. The said final decree was recorded in the office of the Register of Hudson County on January 29, 1926, in Book 1597 of Deeds, at page 34, *et seq.*

*Amended Answer.*

3. Some of the defendants in the said suit are the same as some of the defendants in this suit, viz., Hedwig Marie Hermine Delia Baroness Meyendorff, sued herein as Hedwig Meyendorff, Leonid Hans Nicolai Arbusoff, sued herein as L. Arbusw, Harriet D. P. Meyer, Jutta Voest, sued herein as Justa P. Voest, and August Pychlau, sued herein as Augusta Pychlau, all of whom reside in the Republic of Latvia, and neither of the defendants knew of the pendency of the said suit, nor were they served with process of subpoena therein. 10

4. These defendants are advised that this suit should be stayed, and that the final decree in the said suit first mentioned should be opened, to permit them to file an answer thereto, and let in their defense, and hereby give notice that at the trial of the issues herein, they will move accordingly. 20

TACKELLA & CAMBY,  
Solicitors of Defendants.

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**REPLY.**

Filed October 20, 1926.

## IN CHANCERY OF NEW JERSEY.

10	<i>Between</i>  LAURENT S. MITCHELL, <i>et als.</i> , <i>Complainants,</i>  <i>and</i>  DELIA PYCHLAU, <i>et als.</i> , <i>Defendants.</i>	}	<i>On Bill to Quiet Title.  Reply.</i>
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20 1. The complainants join issue on the matters contained in paragraphs 1, 2, 3 and 4 of the amended answer of the defendants.

2. They deny the allegations contained in paragraphs 5 and 6 of the amended answer.

3. They admit the allegations contained in paragraph 7, but defendants were barred of any interest in their land by the proceedings which culminated in the deed set forth in the bill of complaint.

30 4. They admit the allegations contained in paragraph 8, that the premises are vacant land, but they deny that the lands are in possession of the defendants.

5. They admit the allegations contained in paragraphs 1 and 2 of the first defense.

40 6. They admit the allegations contained in paragraph 3 of the first defense, except that they deny that the defendants did not know of the pendency of the said suit and that they were not served with process of subpoena.

*Reply.*

7. They deny the allegations contained in paragraph 4 of the first defense.

8. The complainants hereby reserve the right on the trial of this cause to move to strike out the amended answer of the defendants on the ground that it is sham and frivolous, and that it attempts to collaterally attack the deed under which the complainants claim title. 10

L. EDWARD HERRMANN,  
Solicitor of Complainants.

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**ORDER.**

Filed October 13, 1926.

## IN CHANCERY OF NEW JERSEY.

10	<i>Between</i> LAURENT S. MITCHELL, <i>Complainant,</i> <i>and</i> DELIA PYCHLAU, <i>et als.,</i> <i>Defendants.</i>	}	<i>On Bill to          Quiet Title.          Order.</i>
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20 Motion having been made by the defendants for an order dismissing the bill of complaint in the above-entitled suit, for the reason that the Court of Chancery has no jurisdiction, upon the facts in the complaint and answer, or that the proceeding be stayed until the complainant shall institute a suit in ejectment; and it appearing that due notice of said motion has been given to the said complainants, and the Court having heard the argument of Tackella & Camby, of counsel with defendants, and of L. Edward Herrmann, of counsel with the complainants, and being of the opinion that the motion should be denied, it is on this

30 eleventh day of October, 1926, ORDERED that the motion of the defendants to strike out the complaint or that the proceeding be stayed, be and the same hereby is denied.

E. R. WALKER,

C.

Respectfully advised,

JAMES F. FIELDER,  
 V.-C.

## ORDER OF DESIGNATION.

Filed November 3, 1926.

## IN CHANCERY OF NEW JERSEY.

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*Between*LAURENT S. MITCHELL, *et als.*,  
*Complainants,**and*DELIA PYCHLAU, *et als.*,  
*Defendants.*

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10

*O Bill, &c.**Order of  
Designation.*

It is on this 3rd day of November, 1926, on motion of L. Edward Herrmann, solicitor of complainants, ORDERED, that the above-stated cause be referred to the Honorable John Griffin, one of the Vice-Chancellors, to hear the same for the Chancellor and to report thereon to him and advise what report or decree should be made herein.

20

E. R. WALKER,

C.

We hereby consent to the entry of the above order.

30

L. EDWARD HERRMANN,  
Solicitor of Complainants.TACKELLA & CAMBY,  
Solicitors of Defendants.

40

**ORDER OF DESIGNATION.**

Filed November 15, 1926.

IN CHANCERY OF NEW JERSEY.

10	<i>Between</i>  LAURENT S. MITCHELL, <i>et als.</i> , <i>Complainants,</i>  <i>and</i>  DELIA PYCHLAU, <i>et als.</i> , <i>Defendants.</i>	} <i>On Bill, &amp;c.</i> } <i>Order of</i> } <i>Designation.</i>
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20 This matter being opened to the Court by L. Edward Herrmann, solicitor of complainants, and it appearing that due notice of this application has been given to Tackella & Camby, solicitors of defendants, it is on this 15th day of November 1926, ORDERED, that the 24th day of March, 1927, at the hour of ten o'clock in the forenoon at Chancery Chambers in Jersey City, New Jersey, be designated as the time and place for the hearing of the above-entitled cause.

JOHN GRIFFIN,  
V.-C.

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**NOTICE OF HEARING.**

Filed November 19, 1926.

IN CHANCERY OF NEW JERSEY.

*Between*LAURENT S. MITCHELL, *et als.*,  
Complainants,*and*DELIA PYCHLAU, *et als.*,  
Defendants.*On Bill to  
Quiet Title.**Notice of  
Hearing.*

10

To Tackella & Camby, solicitors of defendants,  
95 River street, Hoboken, N. J.

TAKE NOTICE of the hearing of this cause before  
the Honorable John Griffin, Vice-Chancellor of  
this Court, to whom the said matter has been re-  
ferred, on Thursday, the 24th day of March, 1927,  
at the hour of 10 o'clock in the forenoon at  
Chancery Chambers in Jersey City, New Jersey,  
as the time and place designated by the order of  
the said Vice-Chancellor made on the 15th day of  
November, 1926.

20

L. EDWARD HERRMANN,  
Solicitor of Complainants.

30

Service of a copy of the within notice is hereby  
acknowledged this 20th of November, 1926.

TACKELLA & CAMBY,  
Solicitors of Defendants.

40

## ORDER TO ANSWER.

Filed November 26, 1926.

IN CHANCERY OF NEW JERSEY.

10	<i>Between</i> CHARLES A. MITCHELL, <i>et als.</i> , <i>Complainants,</i> <i>and</i> DELIA PYCHLAU, <i>et als.</i> , <i>Defendants.</i>	} <i>Order to Answer.</i>
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20 A petition having been filed herein by the complainants, whereby it appears that the defendants, Henrietta J Gaede, her heirs, devisees or personal representatives, their or any of their heirs, devisees, executors, administrators, grantees, assigns or successors in right, title and interest, have not answered the bill of complaint herein within the time limited by law, and the rules of this court, but have wholly failed and neglected so to do, and that said complainants have inadvertently omitted to take a decree *pro confesso* against the said defendants Henrietta J. Gaede, her heirs, devisees or personal representatives, their or any of their heirs, devisees, executors, administrators, grantees, assigns or successors in right, title and interest, within four months after the time when he was entitled to said decree,

30 It is, on this 26th day of November, nineteen hundred and twenty-six, on motion of L. Edward Herrmann, solicitor of said complainant, ordered that the said defendant, Henrietta J. Gaede, her  
 40 heirs, devisees or personal representatives, their

*Order to Answer.*

or any of their heirs, devisees, executors, administrators, grantees, assigns or successors in right, title and interest, file their answer or answers within 15 days after service upon each of them of a true but uncertified copy of this order, or that in default of such answer or answers said bill of complaint be taken as confessed against each of said defendants so failing to answer. 10

E. R. WALKER,

C.

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**NOTICE OF MOTION.**

Filed November 16, 1926.

IN CHANCERY OF NEW JERSEY.

10	<p style="margin: 0;"><i>Between</i></p> <p style="margin: 0; text-align: center;">LAURENT S. MITCHELL, <i>et als.</i>, Complainants,</p> <p style="margin: 0; text-align: center;"><i>and</i></p> <p style="margin: 0; text-align: center;">DELIA PYCHLAU, <i>et als.</i>, Defendants.</p>	<p style="margin: 0;">} <i>On Bill, &amp;c.</i></p> <p style="margin: 0;">} <i>Notice of</i></p> <p style="margin: 0;">} <i>Motion.</i></p>
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To Tackella & Camby, 95 River street, Hoboken,  
N. J.

20 TAKE NOTICE that on the 15th day of November, 1926, at the hour of ten o'clock in the forenoon, or as soon thereafter as counsel can be heard, at the Chancery Chambers in Jersey City, New Jersey, I shall apply to the Honorable John Griffin, Vice-Chancellor of this Court, to whom this cause has been referred, for an order fixing a time and place for the hearing of the said cause.

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L. EDWARD HERRMANN.

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**PETITION.**

Filed November 26, 1926.

IN CHANCERY OF NEW JERSEY.

*Between*

CHARLES A. MITCHELL, *et als.*,  
*Complainants,*

*and*

DELIA PYCHLAU, *et als.*,  
*Defendants.*

*Petition.*

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To Honorable Edwin Robert Walker, Chancellor  
of the State of New Jersey:

The petition of John D. Craven, of the City  
of Jersey City, in the County of Hudson and  
State of New Jersey, respectfully shows:

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1. Petitioner is the solicitor actually having  
charge of this matter for the complainants:

2. The defendant Henrietta J. Gaede, her  
heirs, devisees or personal representatives, their  
or any of their heirs, devisees, executors, admin-  
istrators, grantees, assigns or successors in right,  
title and interest, have not, nor has any of them  
answered the said bill of complaint within the  
time limited by law and the rules of this court,  
but have wholly failed and neglected so to do.

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3. Your petitioner has inadvertently omitted  
to take a decree *pro confesso* against the said  
defendants, Henrietta J. Gaede, her heirs, de-  
visees or personal representatives, their or any  
of their heirs, devisees, executors administrators,  
grantees, assigns or successors in right, title

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*Petition.*

and interest, within four months after the time when they were entitled to said decree.

10 Your petitioner therefore prays that this court may, by its order, direct said defendants, Henrietta J. Gaede, her heirs, devisees or personal representatives, their or any of their heirs, devisees, executors, administrators, grantees, assigns or successors in right, title, and interest to file their answers or answer at such short day as this court may appoint.

L. EDWARD HERRMANN,  
Solicitor of Petitioner.

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

JOHN D. CRAVEN, of full age, being duly sworn according to law, upon his oath deposes and says that he is the petitioner in the foregoing petition named, and that the matters and things therein set forth are true.

JOHN D. CRAVEN.

30 Sworn to and subscribed before me this 23rd day of November, 1926.

WALTER J. FREUND,  
Master in Chancery of  
New Jersey.

**DECREE PRO CONFESSO.**

Filed December 28, 1926.

IN CHANCERY OF NEW JERSEY.

<p><i>Between</i></p> <p>CHARLES A. MITCHELL, <i>et als.</i>,  <i>Complainants,</i></p> <p style="text-align: center;"><i>and</i></p> <p>DELIA PYCHLAU, <i>et als.</i>,  <i>Defendants.</i></p>	}	<p><i>On Bill, &amp;c.</i></p> <p><i>Decree Pro</i></p> <p><i>Confesso.</i></p>	10
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This matter being opened to the Court by L. Edward Herrmann, solicitor of the complainant, and it appearing that process of subpoena calling upon the defendants to answer the complainants' bill of complaint has been duly issued and returned served upon the defendants, Henrietta J. Gaede, her heirs, devisees or personal representatives, their or any of their heirs, devisees, executors, administrators, grantees, assigns or successors in right, title and interest; that said defendants, Henrietta J. Gaede, her heirs, devisees or personal representatives, their or any of their heirs, devisees, executors, administrators, grantees, assigns or successors in right, title and interest, have not filed any answer to the said bill of complaint within the time required by law, but have wholly failed and neglected so to do;

And it further appearing that a decree *pro confesso* has not been taken within the time limited by the rules of this court, and that an order to answer has been duly served upon the said defendants, Henrietta J. Gaede, her heirs,

*Decree Pro Confesso.*

devises or personal representatives, their or any of their heirs, devisees, executors, administrators, grantees, assigns or successors in right, title and interest;

10 It is thereupon, on this 28th day of December, nineteen hundred and twenty-six, on motion of L. Edward Herrmann, solicitor of the complainants, ORDERED that said complainants' bill of complaint be and the same is hereby taken as confessed against the said defendants, Henrietta J. Gaede, her heirs, devisees or personal representatives, their or any of their heirs, devisees, executors, administrators, grantees, assigns or successors in right, title and interest.

20 It is further ORDERED, that the complainants proceed to take depositions and other evidence to substantiate and prove the allegations of the bill and to bring on the hearing of the cause *ex parte*.

E. R. WALKER,

C.

Respectfully advised,

BAYARD STOCKTON,

A. M.

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## ORDER OF RE-REFERENCE

IN CHANCERY OF NEW JERSEY.

*Between*LAURENT S. MITCHELL, *et als.*,  
*Complainants,**and*DELIA PYCHLAU, *et als.*,  
*Defendants.**On Bill, &c.*

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*Order of  
Re-reference.*

The above-stated cause having been duly referred to the Honorable John Griffin, deceased, formerly one of the Vice-Chancellors of this Court, and the same remaining unheard:

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It is thereupon, on this fourteenth day of February, A. D. nineteen hundred and twenty-seven, ORDERED that said cause be now referred to the Honorable John J. Fallon, one of the Vice-Chancellors of this Court, to hear the same for the Chancellor and to report thereon to him and advise what order or decree should be made therein; and that such hearing be had at the time and place already designated therefor.

E. R. WALKER,

30

*C.*

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**ORDER ALLOWING AMENDMENT TO  
ANSWER, AND ALLOWING COUNTER-  
CLAIM.**

IN CHANCERY OF NEW JERSEY.

10	<p><i>Between</i></p> <p style="text-align: center;">LAURENT S. MITCHELL, <i>et als.</i>, <i>Complainants,</i></p> <p style="text-align: center;"><i>and</i></p> <p style="text-align: center;">DELIA PYCHLAU, <i>et als.</i>, <i>Defendants.</i></p>	<p><i>On Bill, &amp;c.</i></p> <p><i>Order</i> <i>Allowing</i> <i>Amendment</i> <i>to Answer,</i> <i>and Allowing</i> <i>Counter-</i> <i>claim.</i></p>
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20 This matter coming on to be heard on motion of Mathew J. Tackella, of the firm of Tackella & Camby, solicitors for the defendants, and in the presence of L. Edward Herrmann, solicitor for the complainants, and it appearing to the Court that the defendants should have leave to amend their amended answer;

30 It is on this 24th day of March, 1927, ORDERED, that the amended answer of the defendants be and the same hereby is further amended by adding thereto the following paragraphs:

40 "1. That on or about July 30, 1900, and at divers other times, said Francis W. Mitchell fraudulently and with intent to obtain said premises for his own benefit, represented that Robert Campbell, Mary A. Goodspeed, executrix, William Starr Goodspeed, Arthur Baxter Goodspeed, Shepard Goodspeed and Alene Goodspeed, were the only persons interested in or who had claims against said premises, and were the owners of said premises, whereas, in

*Order Allowing Amendment to Answer, etc.*

fact, said above-mentioned persons had no interest in, or claim to, or were the owners of said premises whatsoever. Said fraudulent representations were made by said Francis W. Mitchell with intent to obtain a deed for said premises from the City Collector of the Mayor and Aldermen of Jersey City, and the deed mentioned in paragraph 1 of the complaint was obtained by means of said fraudulent representations. 10

2. On or about February 27, 1901, said Francis W. Mitchell filed his petition in the Circuit Court of Hudson County, which petition prays for an order directing the City Collector of the Mayor and Aldermen of the City of Jersey City, to deliver a deed for said lands to said Francis W. Mitchell. That in said petition said Francis W. Mitchell fraudulently and with intent to deceive said court, and with intent to obtain said premises for his own benefit, fraudulently represented that William Star Goodspeed, Arthur Baxter Goodspeed, Shepard Goodspeed and Alene Augusta Goodspeed, were the owners of and had some interest in said lands and premises, whereas, in fact, said mentioned persons were not the owners of and had no interest in said lands and premises. The Hudson County Circuit Court, relying upon said representations so fraudulently made, did issue its order to the City Collector of the Mayor and Aldermen of Jersey City, to deliver a deed for said lands to said Francis W. Mitchell. That the deed mentioned in paragraph 1 of the complaint was obtained by said Francis W. Mitchell by means of the representations fraudulently made as aforesaid." 20 30 40

*Order Allowing Amendment to Answer, etc.*

And it further appearing to the Court that the defendants should have leave to file a counter-claim against the complainants.

It is further ordered that the defendants be and hereby are allowed to file their counter-claim against the complainants as follows:

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“By way of counter-claim against the complainants Laurent S. Mitchell, Charles A. Mitchell, Adelaide Giambalvo and Cecelia Stephens, these defendants say that:

1. That on or about July 30, 1900, and at divers other times, said Francis W. Mitchell fraudulently and with intent to obtain said premises for his own benefit, represented that Robert Campbell, Mary A. Goodspeed, executrix,  
 20 William Star Goodspeed, Arthur Baxter Goodspeed, Shepard Goodspeed and Alene Goodspeed, were the only persons interested in or who had claims against said premises, and were the owners of said premises, whereas, in fact, said above-mentioned persons had no interest in, or claim to, or were the owners of said premises whatsoever. Said fraudulent representations were made by said Francis W. Mitchell with intent to obtain a deed for said premises from the  
 30 City Collector of the Mayor and Aldermen of Jersey City, and the deed mentioned in paragraph 1 of the complaint was obtained by means of said fraudulent representations.

2. On or about February 27, 1901 and at divers other times said Francis W. Mitchell filed his petition in the Circuit Court of Hudson County, which petition prays for an order to the City Collector of Jersey City, to deliver a deed for said lands; That in said petition said  
 40 Francis W. Mitchell fraudulently and with intent

*Order Allowing Amendment to Answer, etc.*

to deceive said court, and with intent to obtain said premises for his own benefit, represented that William Star Goodspeed, Arthur Baxter Goodspeed, Shepard Goodspeed and Alene Augusta Goodspeed were the owners of and had some interest in said lands and premises, whereas, in fact, said mentioned persons were not the owners of and had no interest in said lands and premises. The Hudson County Circuit Court, relying upon said representations so fraudulently made, did issue its order to the City Collector of the Mayor and Aldermen of Jersey City, to deliver a deed for said lands to said Francis W. Mitchell. That the deed mentioned in paragraph 1 of the complaint was obtained by said Francis W. Mitchell by means of the representations fraudulently made as aforesaid.

3. The said Francis W. Mitchell at the time he purchased the premises described in the bill of complaint, and at all times thereafter, knew that Delia Pychlau and her descendants were the owners of said lands and premises, and knew that these defendants were the descendants of said Delia Pychlau, and knew that these defendants were the sole owners of said lands and premises, and knew the residences and post office addresses of these defendants.

4. Said Francis W. Mitchell well knew the names, residences and post office addresses of the owners of said lands and premises, did fraudulently and with intent to deceive these defendants, and with fraudulent intent to obtain said lands and premises for himself, did fraudulently conceal said knowledge from the City Clerk of Jersey City, and from the City Collector of the Mayor and Aldermen of the City of Jersey City,

*Order Allowing Amendment to Answer, etc.*

and did fraudulently conceal said knowledge from the Circuit Court of Hudson County, and on July 30, 1900 and at divers other times, did fraudulently, and with intent to obtain said lands and premises for himself, represent to the City Clerk of Jersey City, and to the City Collector of the Mayor and Aldermen of the City of Jersey City, and to the Circuit Court of Hudson County that the owners of record and all owners of said lands and premises were duly notified of said sale, and notified to redeem said lands and premises from said sale, whereas, in fact, said Francis W. Mitchell did not notify said Delia Pychlau, nor her descendants, and did not notify the owners of said lands and premises, and did not notify these defendants of said sale, and did not notify them or either of them to redeem said lands and premises from said sale and taxes, as in equity he should have done.

5. That by means of said fraudulent representations, and said concealment fraudulently made as aforesaid, said Francis W. Mitchell obtained an order from the Circuit Court of Hudson County directing the City Collector of the Mayor and Aldermen of the City of Jersey City, to deliver a deed for said lands and premises to said Francis W. Mitchell, and thereby did obtain a deed for said lands and premises, which deed is set forth in paragraph 1 of the bill of complaint.

These defendants therefore pray:

1. That said defendants may set forth and disclose what inquiry was made by them and said Francis W. Mitchell to ascertain the names, residences and post office addresses of the owners of said lands.

*Order Allowing Amendment to Answer, etc.*

2. That said defendants may set forth and disclose whether they and said Francis W. Mitchell made an examination of the records of deeds in the Register's office to ascertain the names, residences and post office addresses of the owners of said lands, and what said examination disclosed. 10

3. That the defendants may set forth and disclose what interest in or claim against, said lands were had or claimed by said Henry Gaede, trustee, Robert Campbell, Mary A. Goodspeed, executrix, William Star Goodspeed, Arthur Baxter Goodspeed, Shepard Goodspeed and Alene Goodspeed, and in what manner, by what instrument, and through what source said interest or claim was derived. 20

4. That said defendants may set forth and disclose what notices to redeem said lands from said tax sale were served or mailed by said Francis W. Mitchell, and in what manner, upon whom, and upon what dates said notices were served or mailed. 20

5. That the deed for said lands and premises made by Robert Davis, City Collector of the Mayor and Aldermen of the City of Jersey City, to said F. W. Mitchell dated March 22, 1901 and recorded April 16, 1901 in Book 773 of Deeds for Hudson County on page 466, and set out in paragraph 1 of the bill of complaint, may be set aside, and declared void and of no effect. 30

E. R. WALKER,

C.

Respectfully advised,

JNO. J. FALLON,

V.-C.

**NOTICE OF MOTION.**

Filed May 10, 1927.

IN CHANCERY OF NEW JERSEY.

10	<p><i>Between</i></p> <p>LAURENT S. MITCHELL, <i>et als.</i>,  <i>Complainants,</i></p> <p style="text-align: center;"><i>and</i></p> <p>DELIA PYCHLAU, <i>et als.</i>,  <i>Defendants.</i></p>	<p><i>On Bill, &amp;c.</i></p> <p><i>Notice of</i></p> <p><i>Motion.</i></p>
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To L. Edward Herrmann, solicitor for complainants:

20 SIR:

TAKE NOTICE, that on Monday, May 2, 1927, at 10 A. M., or as soon thereafter as counsel can be heard, we will apply to the Chancellor, at the Chancery Chambers, 1 Exchange Place, Jersey City, N. J., for an order allowing the defendants to file an amendment to their amended answer, and to file a counter-claim to the bill of complaint filed in the above-stated cause, a copy of which proposed order is hereto attached.

30 April 23, 1927.

TACKELLA & CAMBY,  
 Solicitors for Defendants.

**ORDER ALLOWING AMENDMENT TO  
ANSWER, AND ALLOWING COUNTER-  
CLAIM.**

Filed May 10, 1927.

IN CHANCERY OF NEW JERSEY.

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*Between*

LAURENT S. MITCHELL, *et als.*,  
Complainants,

*and*

DELIA PYCHLAU, *et als.*,  
Defendants.

*On Bill, &c.*

*Order Allow-  
ing Amend-  
ment to  
Answer and  
Allowing  
Counter-  
claim.*

This matter coming on to be heard on motion of Matthew J. Tackella, of the firm of Tackella & Camby, solicitors for the defendants, and in the presence of L. Edward Herrmann, solicitor for the complainants, and it appearing to the Court that the defendants should have leave to amend their amended answer; 20

It is on this ninth day of May, 1927, ORDERED, that the amended answer of the defendants be and the same hereby is further amended by adding thereto the following paragraphs: 30

"1. That on or about July 30, 1900, and at divers other times, said Francis W. Mitchell fraudulently and with intent to obtain said premises for his own benefit, represented that Robert Campbell, Mary A. Goodspeed, executrix, William Star Goodspeed, Arthur Baxter Goodspeed, Shepard Goodspeed and Alene Goodspeed, were the only persons interested in or who had claims against said premises, and were the own- 40

*Order Allowing Amendment to Answer, etc.*

ers of said premises, whereas, in fact, said above-mentioned persons had no interest in, or claim to, or were the owners of said premises, whatsoever. Said fraudulent representations were made by said Francis W. Mitchell with intent to obtain a deed for said premises from the City  
10 Collector of the Mayor and Aldermen of Jersey City, and the deed mentioned in paragraph 1 of the complaint was obtained by means of said fraudulent representations.

2. On or about February 27, 1901, said Francis W. Mitchell filed his petition in the Circuit Court of Hudson County, which petition prays for an order directing the City Collector of the Mayor and Aldermen of the City of Jersey City, to deliver a deed for said lands to  
20 said Francis W. Mitchell. That in said petition said Francis W. Mitchell fraudulently and with intent to deceive said court, and with intent to obtain said premises for his own benefit, fraudulently represented that William Star Goodspeed, Arthur Baxter Goodspeed, Shepard Goodspeed and Alene Augusta Goodspeed, were the owners of and had some interest in said lands and premises, whereas, in fact, said mentioned persons were not the owners of and had no interest  
30 in said lands and premises. The Hudson County Circuit Court, relying upon said representations so fraudulently made, did (on February 25, 1900), issue its order to the City Collector of the Mayor and Aldermen of Jersey City, to deliver a deed for said lands to said Francis W. Mitchell. That the deed mentioned in paragraph 1 of the complaint was obtained by said Francis W. Mitchell by means of the representations fraudulently made as aforesaid."

*Order Allowing Amendment to Answer, etc.*

And it further appearing to the Court that the defendants should have leave to file a counter-claim against the complainants.

It is further ORDERED, that the defendants be and hereby are allowed to file their counter-claim against the complainants as follows:

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“By way of counter-claim against the complainants, Laurent S. Mitchell, Charles A. Mitchell, Adelaide Giambalvo and Cecelia Stephens, these defendants say that:

1. On October 6, 1896, the City Collector of the Mayor and Aldermen of the City of Jersey City, sold the lands described in the bill of complaint herein, to one F. W. Mitchell, under and by virtue of the provisions of an Act of the Legislature of the State of New Jersey; Chapter 112 of the Laws of 1886, page 149, passed March 30, 1886. (Compiled Statutes, page 5205.)

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2. That subsequent to the purchase of said lands as aforesaid, and on or about July 30, 1900, and at divers other times, said Francis W. Mitchell fraudulently and with intent to obtain said premises for his own benefit, represented that Robert Campbell, Mary A. Goodspeed, executrix, William Star Goodspeed, Arthur Baxter Goodspeed, Shepard Goodspeed and Alene Goodspeed, were the only persons interested in or who had claims against said premises, and were the owners of said premises, whereas, in fact, said above-mentioned persons had no interest in, or claim to, or were the owners of said premises whatsoever. That on January 29, 1900, May 23, 1900 and July 30, 1900, said Francis W. Mitchell filed with the City Clerk, notices to redeem said lands, which notices were directed to Henry A. Gaede, trustee, Robert

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*Order Allowing Amendment to Answer, etc.*

Campbell, Mary A. Goodspeed, executrix, William Star Goodspeed, Arthur Baxter Goodspeed, Shepard Goodspeed, and Alene Augusta Goodspeed, heirs of William Goodspeed, deceased. That attached to said notices are affidavits made by the attorney or agent of said Francis W. Mitchell. That by means of said notices and affidavits, said Francis W. Mitchell fraudulently and with intent to deceive the City Clerk and the City Collector of the Mayor and Aldermen of Jersey City, represented that the owners of said lands, and all persons having an estate or interest in said lands, have been notified to redeem said lands from said tax lien and said sale. Said fraudulent representations were made by said Francis W. Mitchell, with intent to obtain a deed for said premises from the City Collector of the Mayor and Aldermen of Jersey City, and the deed mentioned in paragraph 1 of the complaint was obtained by means of said fraudulent representations.

3. On or about February 27, 1901, said Francis W. Mitchell filed his petition in the Circuit Court of Hudson County, which petition prays for an order directing the City Collector of the Mayor and Aldermen of Jersey City, to deliver a deed for said lands to said Francis W. Mitchell. That in said petition said Francis W. Mitchell fraudulently and with intent to deceive said court, and with intent to obtain said premises for his own benefit, represented that William Star Goodspeed, Arthur Baxter Goodspeed, Shepard Goodspeed and Alene Augusta Goodspeed, were the owners of and had some interest in said lands and premises, whereas, in fact, said mentioned persons were not the owners of and had no interest in said lands and premises. The

*Order Allowing Amendment to Answer, etc.*

Hudson County Circuit Court, relying upon said representations so fraudulently made, did issue its order to the City Collector of the Mayor and Aldermen of Jersey City, to deliver a deed for said lands to said Francis W. Mitchell. That the deed mentioned in paragraph 1 of the complaint was obtained by said Francis W. Mitchell by means of the representations fraudulently made as aforesaid. 10

4. The said Francis W. Mitchell, at the time he purchased the premises described in the bill of complaint, and at all times thereafter, knew that Delia Pychlau and her descendants were the owners of said lands and premises, and knew that these defendants were the descendants of said Delia Pychlau, and knew that these defendants were the sole owners of said lands and premises, and knew the residences and post office addresses of these defendants. 20

5. Said Francis W. Mitchell knowing the names, residences and post office addresses of the owners of said lands and premises, did fraudulently and with intent to deceive these defendants, and with fraudulent intent to obtain said lands and premises for himself, did fraudulently conceal said knowledge from the City Clerk of Jersey City, and from the City Collector of the Mayor and Aldermen of the City of Jersey City, and did fraudulently conceal said knowledge from the Circuit Court of Hudson County, and on July 30, 1900, and at divers other times, did fraudulently, and with intent to obtain said lands and premises for himself, represent to the City Clerk of Jersey City, and to the City Collector of the Mayor and Aldermen of the City of Jersey City, and to the Circuit Court of Hudson County, 30  
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*Order Allowing Amendment to Answer, etc.*

that the owners of record and all owners of said lands and premises were duly notified of said sale, and notified to redeem said lands and premises from said sale, whereas, in fact, said Francis W. Mitchell did not notify said Delia Pychlau, nor her descendants, and did not notify the owners of said lands and premises, and did not notify these defendants of said sale, and did not notify them or either of them to redeem said lands and premises from said sale and tax lien, as in equity he should have done.

6. That said fraudulent representations, and said concealment fraudulently made as aforesaid, were a scheme intentionally and wilfully devised by said Francis W. Mitchell to deceive said Circuit Court, and thereby cheat and defraud the owners of said lands. Said Francis W. Mitchell, by means thereof, obtained an order from the Circuit Court of Hudson County directing the City Collector of the Mayor and Aldermen of the City of Jersey City, to deliver a deed for said lands and premises to said Francis W. Mitchell, and thereby did obtain a deed for said lands and premises, which deed is set forth in paragraph 1 of the bill of complaint.

7. That the City Collector of the Mayor and Aldermen of Jersey City, relying upon the notices to redeem and the affidavits attached thereto, fraudulently made by said Francis W. Mitchell as aforesaid, and relying upon the said order of the Circuit Court of Hudson County, obtained by said Francis W. Mitchell by means of the fraudulent representations as above, did on March 22, 1901, execute a deed conveying said lands to said Francis W. Mitchell, which deed was recorded on April 16, 1901, in the Register's office of Hudson County, in Book 773 on page 466,

*Order Allowing Amendment to Answer, etc.*

and which deed is set out in paragraph 1 of the complaint herein.

8. The deed mentioned in paragraph 1 of the complaint did not convey any title in said lands. None of the owners of said lands were served with notice to redeem as required by said statute, and are not bound by said Circuit Court proceedings, and said deed is so tainted with fraud as aforesaid, as to be null and void. 10

9. That said Francis W. Mitchell and the complainants herein as his devisees, have no interest or title in said lands, except the lien created by said tax sale certificate issued to said Francis W. Mitchell on October 6, 1896, which is redeemable under said act.

10. These defendants hereby offer to redeem said lands from said tax lien, and to pay the amount necessary therefor. 20

These defendants therefore pray:

1. That said defendants may set forth and disclose what inquiry was made by them and said Francis W. Mitchell to ascertain the names, residences and post office addresses of the owners of said lands. 30

2. That said defendants may set forth and disclose whether they and said Francis W. Mitchell made an examination of the records of deeds in the register's office to ascertain the names, residences and post office addresses of the owners of said lands, and what said examination disclosed.

3. That the defendants may set forth and disclose what interest in or claim against, said lands were had or claimed by said Henry Gaede, 40

*Order Allowing Amendment to Answer, etc.*

trustee, Robert Campbell, Mary A. Goodspeed, executrix, William Star Goodspeed, Arthur Baxter Goodspeed, Shepard Goodspeed and Alene Goodspeed, and in what manner, by what instrument, and through what source said interest or claim was derived.

10     4. That said defendants may set forth and disclose what notices to redem said lands from said tax sale were served or mailed by said Francis W. Mitchell, and in what manner, upon whom, and upon what dates said notices were served or mailed.

20     5. That the deed for said lands and premises made by Robert Davis, City Collector of the Mayor and Aldermen of the City of Jersey City, to said F. W. Mitchell, dated March 22, 1901, and recorded April 16, 1901 in Book 773 of Deeds for Hudson County, on page 466, and set out in paragraph 1 of the bill of complaint, may be set aside, and declared void and of no effect.

6. That these defendants may be permitted to redeem said lands from said tax lien."

E. R. WALKER,

C.

30     Respectfully advised,

JNO. J. FALLON,  
V.-C.

## COUNTER-CLAIM.

IN CHANCERY OF NEW JERSEY.

*Between*LAURENT S. MITCHELL, *et als.*,  
*Complainants,**and*DELIA PYCHLAU, *et als.*,  
*Defendants.**On Bill, &c.*

10

*Counter-  
claim.*

By way of counter-claim against the complainants, Laurent S. Mitchell, Charles A. Mitchell, Adelaide Giambalvo and Cecelia Stephens, these defendants say that:

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1. On October 6, 1896, the City Collector of the Mayor and Aldermen of the City of Jersey City, sold the lands described in the bill of complaint herein, to one F. W. Mitchell, under and by virtue of the provisions of an Act of the Legislature of the State of New Jersey, Chapter 112 of the Laws of 1886, page 149, passed March 30, 1886. (Compiled Statutes, page 5205.)

2. That subsequent to the purchase of said lands as aforesaid, and on or about July 30, 1900, and at divers other times, said Francis W. Mitchell fraudulently and with intent to obtain said premises for his own benefit, represented that Robert Campbell, Mary A. Goodspeed, executrix, William Star Goodspeed, Arthur Baxter Goodspeed, Shepard Goodspeed and Alene Goodspeed, were the only persons interested in or who had claims against said premises, and were the owners of said premises, whereas, in fact,

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*Counter-claim.*

said above-mentioned persons had no interest in, or claim to, or were the owners of said premises whatsoever. That on January 29, 1900, May 23, 1900, and July 30, 1900, said Francis W. Mitchell filed with the City Clerk notices to redeem said lands, which notices were directed to **Henry A.**  
10 Gaede, trustee, Robert Campbell, Mary A. Goodspeed, executrix, William Star Goodspeed, Arthur Baxter Goodspeed, Shepard Goodspeed, and Alene Augusta Goodspeed, heirs of William Goodspeed, deceased. That attached to said notices are affidavits made by the attorney or agent of said Francis W. Mitchell. That by means of said notices and affidavits, said Francis W. Mitchell fraudulently and with intent to deceive the City Clerk and the City Collector of the Mayor and Aldermen of Jersey City, represented that  
20 the owners of said lands, and all persons having an estate or interest in said lands, have been notified to redeem said lands from said tax lien and said sale. Said fraudulent representations were made by said Francis W. Mitchell with intent to obtain a deed for said premises from the City Collector of the Mayor and Aldermen of Jersey City, and the deed mentioned in paragraph 1 of the complaint was obtained by means of said fraudulent representations.

30 3. On or about February 27, 1901, said Francis W. Mitchell filed his petition in the Circuit Court of Hudson County, which petition prays for an order directing the City Collector of the Mayor and Aldermen of Jersey City, to deliver a deed for said lands to said Francis W. Mitchell. That in said petition said Francis W. Mitchell fraudulently and with intent to deceive said court, and with intent to obtain said premises for his own benefit, represented that William  
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*Counter-claim.*

Star Goodspeed, Arthur Baxter Goodspeed, Shepard Goodspeed and Alene Augusta Goodspeed, were the owners of and had no interest in said lands and premises. The Hudson County Circuit Court, relying upon said representations so fraudulently made, did issue its order to the City Collector of the Mayor and Aldermen of Jersey City, to deliver a deed for said lands to said Francis W. Mitchell. That the deed mentioned in paragraph 1 of the complaint was obtained by said Francis W. Mitchell by means of the representations fraudulently made as aforesaid. 10

4. The said Francis W. Mitchell, at the time he purchased the premises described in the bill of complaint, and at all times thereafter, knew that Delia Pychlau and her descendants were the owners of said lands and premises, and knew that these defendants were the descendants of said Delia Pychlau, and knew that these defendants were the sole owners of said lands and premises, and knew the residences and post office addresses of these defendants. 20

5. Said Francis W. Mitchell knowing the names, residences and post office addresses of the owners of said lands and premises, did fraudulently and with intent to deceive these defendants, and with fraudulent intent to obtain said lands and premises for himself, did fraudulently conceal said knowledge from the City Clerk of Jersey City and from the City Collector of the Mayor and Aldermen of the City of Jersey City, and did fraudulently conceal said knowledge from the Circuit Court of Hudson County, and on July 30, 1900, and at divers other times, did fraudulently, and with intent to obtain said 30 40

*Counter-claim.*

lands and premises for himself, represent to the City Clerk of Jersey City, and to the City Collector of the Mayor and Aldermen of the City of Jersey City, and to the Circuit Court of Hudson County, that the owners of record and all owners of said lands and premises were duly notified of  
10 said sale, and notified to redeem said lands and premises from said sale, whereas, in fact, said Francis W. Mitchell did not notify said Delia Pychlau, nor her descendants, and did not notify the owners of said lands and premises, and did not notify these defendants of said sale, and did not notify them or either of them to redeem said lands and premises from said sale and tax lien, as in equity he should have done.

6. That said fraudulent representations, and  
20 said concealment fraudulently made as aforesaid, were a scheme intentionally and wilfully devised by said Francis W. Mitchell to deceive said Circuit Court, and thereby cheat and defraud the owners of said lands. Said Francis W. Mitchell, by means thereof, obtained an order from the Circuit Court of Hudson County directing the City Collector of the Mayor and Aldermen of the City of Jersey City, to deliver  
30 a deed for said lands and premises to said Francis W. Mitchell, and thereby did obtain a deed for said lands and premises, which deed is set forth in paragraph 1 of the bill of complaint.

7. That the City Collector of the Mayor and Aldermen of Jersey City, relying upon the notices to redeem and the affidavits attached thereto, fraudulently made by said Francis W. Mitchell as aforesaid, and relying upon the said order of the Circuit Court of Hudson County, obtained by  
40 said Francis W. Mitchell by means of the fraudu-

*Counter-claim.*

lent representations as above, did on March 22, 1901, execute a deed conveying said lands to said Francis W. Mitchell, which deed was recorded on April 16, 1901, in the Register's office of Hudson County, in Book 773 on page 466, and which deed is set out in paragraph 1 of the complaint herein.

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8. The deed mentioned in paragraph 1 of the complaint did not convey any title in said lands. None of the owners of said lands were served with notice to redeem as required by said statute, and are not bound by said Circuit Court proceedings, and said deed is so tainted with fraud as aforesaid, as to be null and void.

9. That said Francis W. Mitchell and the complainants herein as his devisees, have no interest or title in said lands, except the lien created by said tax sale certificate issued to said Francis W. Mitchell on October 6, 1896, which is redeemable under said act.

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10. These defendants hereby offer to redeem said lands from said tax lien, and to pay the amount necessary therefor.

These defendants, therefore, pray:

1. That said defendants may set forth and disclose what inquiry was made by them and said Francis W. Mitchell to ascertain the names, residences and post office addresses of the owners of said lands.

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2. That said defendants may set forth and disclose whether they and said Francis W. Mitchell made an examination of the records of deeds in the Register's office to ascertain the names, resi-

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*Counter-claim.*

dences and post office addresses of the owners of said lands, and what said examination disclosed.

10 3. That the defendants may set forth and disclose what interest in or claim against said lands were had or claimed by said Henry Gaede, trustee; Robert Campbell, Mary A. Goodspeed, executrix; William Star Goodspeed, Arthur Baxter Goodspeed, Shepard Goodspeed and Alene Goodspeed, and in what manner, by what instrument, and through what source said interest or claim was derived.

20 4. That said defendants may set forth and disclose what notices to redeem said lands from said tax sale were served or mailed by said Francis W. Mitchell, and in what manner, upon whom, and upon what dates said notices were served or mailed.

30 5. That the deed for said lands and premises made by Robert Davis, City Collector of the Mayor and Aldermen of the City of Jersey City, to said F. W. Mitchell, dated March 22, 1901, and recorded April 16, 1901, in Book 773 of Deeds for Hudson County on page 466, and set out in paragraph 1 of the bill of complaint, may be set aside, and declared void and of no effect.

6. That these defendants may be permitted to redeem said lands from said tax lien.

TACKELLA & CAMBY,  
Solicitors of Defendants.

Filed 5/13/27.

## ORDER CONTINUING HEARING.

IN CHANCERY OF NEW JERSEY.

*Between*LAURENT S. MITCHELL, *et als.*,  
Complainants,*and*DELIA PYCHLAU, *et als.*,  
Defendants.*O Bill, &c.*

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*Order  
Continuing  
Hearing.*

This matter coming on to be heard on notice of motion dated April 23, 1927, for leave to file an amended answer and counter-claim,

It is on this second day of May, 1927, on motion of Matthew J. Tackella of Tackella & Camby, solicitors of defendants, and in the presence of L. Edward Herrmann, solicitor of complainants, ORDERED, that the hearing on the said notice of motion be and hereby is adjourned to Monday, May 9, 1927, at the same time and place.

E. R. WALKER,

C.

JNO. J. FALLON,

V.-C.

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**ANSWER TO AMENDED ANSWER AND  
COUNTER-CLAIM.**

Filed May 12, 1927.

IN CHANCERY OF NEW JERSEY.

10	<p><i>Between</i></p> <p style="text-align: center;">LAURENT S. MITCHELL, <i>et als.</i>, <i>Complainants,</i></p> <p style="text-align: center;"><i>and</i></p> <p style="text-align: center;">DELIA PYCHLAU, <i>et als.</i>, <i>Defendants.</i></p>	<p><i>On Bill, &amp;c.</i></p> <p><i>Answer to</i> <i>Amended</i> <i>Answer and</i> <i>Counter-</i> <i>claim.</i></p>
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20 In answer to the amended answer complainants  
say that:

1. They deny the allegations contained in  
paragraph one.

2. They admit the allegations contained in  
paragraph two except that they deny any fraud.

In answer to the counter-claim, complainants  
say that:

30 1. They admit the allegations contained in  
paragraph one.

2. They admit the allegations contained in  
paragraphs two and three, except that the per-  
sons therein mentioned had no interest in the  
said premises and they deny any fraud and in-  
tent to deceive.

3. They deny the allegations contained in  
paragraphs four, five and six.

40 4. They admit that a deed was given by the  
City Collector, as set out in paragraph seven,

*Answer to Amended Answer and Counter-claim.*

but deny the rest of the allegations contained therein.

5. They deny the allegations contained in paragraphs eight, nine and ten.

L. EDWARD HERRMANN,  
Solicitor and of Counsel      10  
with Complainants.

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**NOTICE.**

Filed October 31, 1927.

IN CHANCERY OF NEW JERSEY.

10	<i>Between</i> LAURENT S. MITCHELL, <i>et als.</i> , <i>Complainants,</i> <i>and</i> DELIA PYCHLAU, <i>et als.</i> , <i>Defendants.</i>	}	<i>On Bill, &amp;c.</i> <i>Notice.</i>
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To Tackella & Camby, 95 River street, Hoboken,  
 N. J.

20 TAKE NOTICE that on Monday, the 24th day of  
 October, 1927, at the hour of ten o'clock in the  
 forenoon, or as soon thereafter as counsel can be  
 heard, at the Chancery Chambers, in Jersey City,  
 New Jersey, I shall apply to the Honorable John  
 J. Fallon, Vice-Chancellor of this court, for leave  
 to take additional testimony, and for the fixing of  
 a time and place to hear such further testimony.

30 L. EDWARD HERRMANN,  
 Solicitor and of Counsel  
 with Complainants.

Service of a copy of the within notice acknowl-  
 edged this 18th day of October, 1927.

TACKELLA &amp; CAMBY.

**NOTICE.**

Filed January 13, 1929.

IN CHANCERY OF NEW JERSEY.

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*Between*LAURENT S. MITCHELL. *et als.*,  
*Complainants,**and*DELIA PYCHLAU, *et als.*,  
*Defendants.*

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*On Bill, &c.*  
*Notice.*To Tackella & Camby, solicitors of defendants,  
95 River street, Hoboken, N. J.

20

TAKE NOTICE of the hearing of this cause before the Honorable John J. Fallon, Vice-Chancellor of this court, to whom the said matter has been referred, on Monday, the 31st day of October, 1927, at the hour of 10 o'clock in the forenoon, at the Chancery Chambers, in Jersey City, New Jersey, as the time and place designated for the hearing of additional testimony, by the order of the said Vice-Chancellor, made on the 24th day of October, 1927.

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L. EDWARD HERRMANN,  
Solicitor and of Counsel  
with Complainants.

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**ORDER.**

Filed October 31, 1927.

## IN CHANCERY OF NEW JERSEY.

10	<i>Between</i> LAURENT S. MITCHELL, <i>et als.</i> , <i>Complainants,</i> <i>and</i> DELIA PYCHLAU, <i>et als.</i> , <i>Defendants.</i>	} <i>On Bill, &amp;c.</i> <i>Order.</i>
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20 This matter being opened to the Court by L. Edward Herrmann, solicitor of complainants, and it appearing that due notice of this application has been given to Tackella & Camby, solicitors of defendants, and the Court having heard the arguments of counsel,

30 It is, on this 24th day of October, 1927, ORDERED, that the complainants and defendants are given leave to take additional testimony in this cause, and that the 31st day of October, 1927, at the hour of 10 o'clock in the forenoon, at Chancery Chambers, in Jersey City, New Jersey, be designated as the time and place for the taking of such additional testimony.

E. R. WALKER,  
C.

Respectfully advised,

JNO J. FALLON,  
V.-C.

## NOTICE.

Filed January 31, 1928.

## IN CHANCERY OF NEW JERSEY.

<i>Between</i>	}	<i>On Bill, &amp;c.</i> <i>Notice.</i>	10
LAURENT S. MITCHELL, <i>et als.</i> , <i>Complainants,</i>			
<i>and</i>			
HENRIETTA J. GAEDE, <i>et als.</i> , <i>Defendants.</i>			

To Tackella & Camby, 95 River street, Hoboken,  
N. J.

TAKE NOTICE that on Monday, January 23, 1928,  
at 10 A. M., or as soon thereafter as counsel can  
be heard, I shall re-argue this matter before the  
Honorable John J. Fallon, Vice-Chancellor, at  
the Chancery Chambers, Jersey City, on the fol-  
lowing grounds, in that the Court erred in the  
following respects, viz.:

1. The proceedings in the tax sales through  
which the complainants derived their title are in  
compliance with the requirements of law.

2. The exclusive jurisdiction rests in the Su-  
preme Court of this State to inquire into tax  
deeds and the proceedings on which they are  
based, and the attack must be made direct.

3. Tax title deeds must be attacked directly by  
certiorari and cannot be attacked collaterally; the  
fact that the right to attack tax title deeds by  
certiorari has been lost by reason of the statute  
of limitations, equity does not obtain jurisdiction.

*Notice.*

4. The burden of establishing their title is on the defendants, and they must prove their title; they cannot succeed by the weakness of the complainants' case, as the complainants are given the benefit of peaceful possession.

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L. EDWARD HERRMANN,  
Solicitor and of Counsel  
with Complainants.

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## ORDER OF CONTINUANCE.

Filed January 31, 1928.

IN CHANCERY OF NEW JERSEY.

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*Between*CHARLES W. MITCHELL, *et als.*,  
*Complainants,**and*DELIA PYCHLAU, *et als.*,  
*Defendants.*

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*On Bill, &c.**Order of  
Continuance.*

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This matter coming on to be heard, in the presence of L. Edward Herrmann, solicitor for complainants, and Tackella & Camby, solicitors for defendants, on notice for reargument and to settle terms of decree, and the Court being unable to hear both matters at this time, 20

It is, on the 23rd day of January, 1928, ORDERED, that the argument on both notices, be and the same hereby is continued over until the 27th day of January, 1928, at the Chancery Chambers, Hoboken, New Jersey, at 10 A. M.

E. R. WALKER,

*C.*

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Respectfully advised,

JNO. J. FALLON,  
*V.-C.*

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## ORDER OF CONTINUANCE.

Filed December 17, 1928.

IN CHANCERY NEW JERSEY.

10	<i>Between</i> LAURENT S. MITCHELL, <i>et als.</i> , <i>Complainants,</i>  <i>and</i> DELIA PYCHLAU, <i>et als.</i> , <i>Defendants.</i>	} <i>On Bill, &amp;c.</i> } <i>Order of</i> } <i>Continuance.</i>
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20 This matter coming on to be heard on a notice to settle a decree, for the 3rd day of December, 1928, and the respective parties consenting thereto, it is, on this 3rd day of December, 1928, ORDERED, that the hearing on the above-mentioned motion hereby is adjourned until the 10th day of December, 1928, at the same hour and place.

E. R. WALKER,  
C.

Respectfully advised,

30 JNO. J. FALLON,  
V.-C.

We hereby consent to the entry of the above order.

L. EDWARD HERRMANN,  
Solicitor of Complainants.

TACKELLA & CAMBY,  
Solicitors of Defendants.

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**NOTICE OF MOTION TO SETTLE FORM OF  
DECREE.**

IN CHANCERY OF NEW JERSEY.

60/443.

*Between*

LAURENT S. MITCHELL, *et als.*,  
*Complainants,*

*and*

DELIA PYCHLAU, *et als.*,  
*Defendants.*

*On Bill, &c.*  
*Notice of*  
*Motion to*  
*Settle Form*  
*of Decree.*

10

To L. Edward Herrmann, solicitor of complainants:

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TAKE NOTICE, that on the 23rd day of January, 1928, at 10 o'clock in the forenoon, or as soon thereafter as counsel can be heard, we shall apply to the Honorable John J. Fallon, the Vice-Chancellor to whom this cause has been referred, at the Chancery Chambers, in the City of Jersey City, New Jersey, to settle the form of the final decree to be entered in the above-entitled cause, at which time we will submit the annexed form of decree for approval.

30

Dated: January 17, 1928.

TACKELLA & CAMBY,  
Solicitors for Defendants.

40

## FINAL DECREE.

IN CHANCERY OF NEW JERSEY.

60/443.

10

*Between*LAURENT S. MITCHELL, *et als.*,  
*Plaintiffs,**and*DELIA PYCHLAU, *et als.*,  
*Defendants.**On Bill, &c.**Final Decree.*

20 This cause coming on to be heard in the presence of L. Edward Herrmann, solicitor for the complainants, Laurent S. Mitchell, Charles A. Mitchell, Adelaide Giambalvo and Cecelia Stephens; and Matthew J. Tackella, of the firm of Tackella & Camby, solicitors for the defendants, Hedwig Marie Hermine Delia Baroness Meyendorff, Annie Ida Lieselotte Arbusoff, Brigitte Katharina Hedwig Arbusoff, Leonid Hans Nicolai Arbusoff, her husband; Harriet D. Pychlau Meyer, Jutta Voest and Augusta Pychlau,

30 wife of Elwyn Pychlau, and the Court having read the pleadings and proofs submitted, and having heard the arguments of counsel for the respective parties, and it appearing to the Court that the deed made by Robert Davis, City Collector of the Mayor and Aldermen of Jersey City, a corporation of New Jersey, to F. W. Mitchell, dated March 22, 1901, and recorded in the office of the Register of the County of Hudson on April 16, 1901, in Book 773 of Deeds for said

40 County, on page 466, purporting to convey the



*Final Decree.*

Mitchell and said complainants for rent and income from said lands.

It is further ORDERED, ADJUDGED and DECREED, that it be referred to

10 one of the Masters of this Court, to compute and ascertain what is due on said tax sale certificate for moneys expended by said F. W. Mitchell and said complainants in the payment of taxes, and to compute and ascertain what is due to the defendants from the complainants for rents and income collected from said lands by F. W. Mitchell and said complainants, and that said Master make his report with all convenient speed.

20 It is further ORDERED, ADJUDGED and DECREED, that the lands and premises described in the above-stated cause be freed and discharged of said tax sale certificate, and of the lien for taxes paid by said F. W. Mitchell and complainants.

It is further ORDERED, ADJUDGED and DECREED, that the complainants pay to the defendants or their solicitors, Tackella & Camby, their costs to be taxed, together with a counsel fee of dollars.

.....  
C.

30 Respectfully advised,

.....  
V.-C.

NOTICE OF MOTION TO SETTLE FORM OF  
DECREE.

IN CHANCERY OF NEW JERSEY.

60-443.

Between

LAURENT S. MITCHELL, *et als.*,  
Complainants,

and

DELIA PYCHLAU, *et als.*,  
Defendants.

On Bill, &c.  
Notice of  
Motion to  
Settle Form  
of Decree.

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To Messrs. Tackella & Camby, solicitors of de-  
fendants:

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TAKE NOTICE, that on the 3rd day of December,  
1928, at 10 o'clock in the forenoon, or as soon  
thereafter as counsel can be heard, we shall apply  
to the Honorable John J. Fallon, the Vice-Chan-  
cellor to whom this cause has been referred, at  
the Chancery Chambers, in the City of Jersey  
City, New Jersey, to settle the form of the final  
decree to be entered in the above-entitled cause,  
at which time we will submit the annexed form of  
decree for approval.

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Dated, November 28, 1928.

L. EDWARD HERRMANN,  
Solicitor for Defendants.

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*Final Decree—December 3, 1928.*

**FINAL DECREE.**

IN CHANCERY OF NEW JERSEY.

	<p style="text-align: center;"><i>Between</i></p>	<p style="font-size: 4em; vertical-align: middle;">}</p> <p style="vertical-align: middle;"><i>On Bill, &amp;c.</i></p> <p style="vertical-align: middle;"><i>Final Decree.</i></p>
10	<p style="text-align: center;">LAURENT S. MITCHELL, <i>et als.</i>, Complainants,</p>	
	<p style="text-align: center;"><i>and</i></p>	
	<p style="text-align: center;">DELIA PYCHLAU, <i>et als.</i>, Defendants.</p>	

This cause coming on to be heard in the presence of L. Edward Herrmann, solicitor for and of counsel with the complainants, and Matthew Tackella of Tackella & Camby, solicitors for and of counsel with the defendants, and it appearing that the complainants filed a bill of complaint in this court under the provisions of "An Act to compel the determination of claims to real estate in certain cases, and to quiet the title to the same," and that the defendants filed an answer and counter-claim in which they alleged that the title to the premises described in the bill of complaint was obtained through fraud and among other things prayed that the deed for said land and premises made by Robert Davis, City Collector of the Mayor and Aldermen of the City of Jersey City to Francis W. Mitchell, dated March 22, 1901, and recorded April 16, 1901, in Book 773 of Deeds for Hudson County on page 466, be set aside, and declared null and void and of no effect, and that the defendants may be permitted to redeem said lands from said tax lien, and the Court having read the pleadings and proofs submitted and exhibits offered and having

*Final Decree—December 3, 1928.*

heard arguments of counsel of the respective parties hereto:

And it appearing that the solicitor of the complainants in due course during the progress of the proceeding, moved to strike out the answer and counter-claim filed in behalf of the defendants upon the ground that it constituted a collateral attack upon a judgment of a court of law of this State, the disposition of said motion being reserved until final hearing. 10

And it further appearing that the record owner of the premises described in the bill of complaint was Delia Pychlau, who died on January 31, 1863 intestate seized of said premises leaving her surviving as her only heirs at law, Annie Elizabeth Sulsmith Pychlau, a daughter who married Hamilkar Theodor Antone Wilhelm Baron Vietinghoff-Sheel; Elwyn Wilhelm Heinrich Pychlau, a son, who married Augusta Pychlau and Henry Pychlau, her husband, who died June 10, 1910. Hamilkar Theodor Anton Wilhelm Baron Vietinghoff-Sheel died in 1921, Elwyn Wilhelm Heinrich Pychlau died January 1, 1924, intestate leaving him surviving as his only heirs at law Harriet Delia Annie Alice Mary Pychlau, a daughter who married Friederick Meyer; Yutta Maria Elsa Frieda Pychlau, a daughter, who married Jacob Woest, who was killed in the World War, and Augusta Pychlau, his widow, who is still living. Annie Elizabeth Sulsmith Pychlau Vietinghoff-Sheel died June 22, 1919, intestate, leaving her surviving as her only heirs-at-law, Hedwig Marie Hermine Delia Baroness Vietinghoff-Sheel, a daughter, who married Ernest Baron Meyendorff, who has since died, and Antonie Hildegard Elizabeth Claudia Arbusoff, a daughter, who died March 22, 1920, intestate, leaving 20  
30  
40

*Final Decree—December 3, 1928.*

her surviving as her only heirs-at-law, Annie Lieselotte Arbusoff, a daughter, and Leonid Hans Nicolai Arbusoff, her husband.

10 And it further appearing that said lands and premises were sold by the Mayor and Aldermen of the City of Jersey City, under and by virtue of the provisions of an Act entitled "An Act  
concerning the Settlement and Collection of ar-  
rearages of unpaid taxes, assessments and water  
rates or water rents, in cities of this State, and  
imposing and levying a tax, assessment and lien  
in lieu and instead of such arrearage, and to en-  
force the payment thereof, and to provide for  
the sale of lands subjected to future taxation and  
assessment, and the supplements and amendments  
thereto, to one Henry A. Gaede, and a deed pur-  
porting to convey the title to said premises was  
20 made, executed and delivered by Patrick H. O'Neill, City Collector of the Mayor and Aldermen of Jersey City, dated November 24, 1891, and recorded in the office of the Register of Hudson County in Book 552 of Deeds for Hudson County on page 321:

30 And it further appearing that the said Henry A. Gaede did not give, or cause to be given to the heirs at law of Delia Pychlau, proper notices to redeem as provided by said enactment, and that the said Gaede did not acquire good title to said premises in and by said deed, or under said proceeding:

And it further appearing that the Mayor and Aldermen of the City of Jersey City, subsequently on October 6, 1896, again sold said premises under and by virtue of the provisions of said act to one Francis W. Mitchell, and that subsequently the said Francis W. Mitchell filed a petition in the Hudson County Circuit Court

*Final Decree—December 3, 1928.*

and obtained an order directing the City Collector of the Mayor and Aldermen of Jersey City to deliver a deed to him conveying the said lands and premises to him, and that the said Hudson Circuit Court on February 25, 1901, made an order directing the City Collector of the Mayor and Aldermen of Jersey City, to make, execute and deliver to him a deed conveying to him said premises, and subsequently, the said City Collector of the Mayor and Aldermen of Jersey City, made, executed and delivered to said Francis W. Mitchell, a deed dated March 22, 1901, and recorded in Book 773 of Deeds for Hudson County on page 466. 10

And it further appearing that in said proceedings in said Hudson County Circuit Court, the said Francis W. Mitchell fraudulently and with intent to fraudulently obtain said order from said Circuit Court, and the deed from the City Collector of Jersey City, concealed the fact that the heirs at law of Delia Pychlau were the owners of the property, and substituted in the name and place thereof the names of other persons who had no right, title or interest whatever in and to the lands and premises, and obtained said deed fraudulently, omitting to make inquiry for the residence, post office address of the heirs at law of Delia Pychlau, so as to serve them with notice as required by said act to redeem said premises from said sale; that the said deed would not have been given had the Hudson County Circuit Court and the City Collector of Jersey City been advised by the said Francis W. Mitchell of his knowledge of Delia Pychlau and her heirs. 20 30

And it further appearing that no notice to redeem said premises was ever served upon or given to the heirs at law of said Delia Pychlau, 40

*Final Decree—December 3, 1928.*

It is thereupon on this 3rd day of December, 1928, on motion of Matthew J. Tackella, ORDERED, ADJUDGED and DECREED that the deed made by Robert Davis, City Collector of the Mayor and Aldermen of Jersey City, a corporation of the State of New Jersey to Francis W. Mitchell, dated March 22, 1901, and recorded in the Register's office of Hudson County on April 16, 1901, in Book 773 of Deeds for said County on page 466, purporting to convey the premises described in the bill of complaint herein, be and the same is hereby declared null and void and for nothing holden; and that the complainants herein have no estate, title or interest in and to said lands and premises or any part thereof, excepting such lien as the said Francis W. Mitchell may have upon said premises under the tax sale certificate issued to him at the time of the sale thereof by the Mayor and Aldermen of said City of Jersey City.

It is further ORDERED, ADJUDGED and DECREED that the defendants are entitled to redeem the title to the said premises as required by law, and according to the statute in such case made and provided within                    days for and after the date hereof.

30

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*Final Decree—March 18, 1929.*

**FINAL DECREE.**

IN CHANCERY OF NEW JERSEY.

60-443

<p><i>Between</i></p> <p>LAURENT S. MITCHELL, <i>et als.</i>, Complainants,</p> <p style="text-align: center;"><i>and</i></p> <p>DELIA PYCHLAU, <i>et als.</i>, Defendants.</p>	}	<p><i>On Bill,</i></p> <p><i>Answer,</i> <i>Counter-</i> <i>claim, &amp;c.</i></p> <p><i>On Final</i> <i>Hearing.</i></p> <p><i>Final Decree.</i></p>	<p>10</p>
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This cause coming on regularly to be heard in the presence of L. Edward Herrmann, solicitor for the complainants, and Matthew J. Tackella, of the firm of Tackella & Camby, solicitors for the defendants Hedwin Marie Hermine Delia, Baroness Meyendorff, Annie Ida Lieselotte Arbusoff, Brigitte Katharina Hedwin Arbusoff, Leonid Hans Nicolai Arbusoff, her husband; Harriet D. P. Meyer, Jutta Voest and Augusta Pychlau, wife of Elwyn Pychlau, and the Court having read and considered the pleadings and proofs, and heard and considered the arguments of counsel for the respective parties, and it appearing to the Court that the complainants are not entitled to the relief prayed for in their bill of complaint, and it further appearing that the lands and premises described in the bill of complaint were sold by Robert Davis, City Collector of The Mayor and Aldermen of Jersey City, to F. W. Mitchell, for arrearage of taxes, at a tax sale held October 6, 1896, and that as evidence

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*Final Decree—March 18, 1929.*

of such tax sale a certificate was issued and delivered by said City Collector to F. W. Mitchell, and it further appearing to the Court that a deed was subsequently made and delivered by said City Collector to said F. W. Mitchell, dated  
10 March 22, 1901, recorded in the Register's Office of Hudson County, New Jersey, on April 16, 1901, in Book 773 of Deeds for said county, on page 466, purporting to convey to said F. W. Mitchell the lands and premises described in said deed, being the same lands and premises described in the bill of complaint herein, pursuant to the requirement and direction of an order of the Hudson County Circuit Court; and it further appearing to the Court that John N. J. Ruete and Magdalean Ruete, his wife, conveyed  
20 the aforesaid lands and premises to Delia Pychlau, by deed dated May 21, 1862, and recorded June 18, 1862, in the Hudson County Register's Office aforesaid, in Book 93 of Deeds, on page 508, and that said Delia Pychlau died intestate January 31, 1863, seized and possessed of said lands and premises, and the owner of record thereof, leaving her surviving her husband, Henry W. Pychlau, and heirs at law; and it further appearing that notice to redeem the lands  
30 and premises aforesaid from the tax sale aforesaid was not served upon or given to the widower and heirs at law of said Delia Pychlau, as required by Chapter 112 of the Laws of 1886, and the amendments thereof and supplements thereto, under the authority of which the aforesaid tax sale was undertaken, and the aforesaid deed made and delivered to said F. W. Mitchell; and it further appearing that the complainants herein acquired under the last will and testament  
40 of said F. W. Mitchell only such right and inter-

*Final Decree—March 18, 1929.*

est as said F. W. Mitchell had acquired under and by virtue of the tax sale certificate and deed aforesaid, subject to redemption by any person having an interest in said lands and premises, as owner or otherwise, in accordance with the provisions of Chapter 112 of the Laws of 1886, and the amendments thereof and supplements thereto; and it further appearing that the defendants Hedwig Marie Hermine Delia, Baroness Mayendorff, Annie Ida Lieselotte Arbusoff, Brigitte Katharina Hedwig Arbusoff, Leonid Hans Nicolai Arbusoff, her husband; Harriet D. P. Meyer, Jutta Voest, and Augusta Pychlau, wife of Elwyn Pychlau, were entitled to redeem said lands and premises from the tax sale aforesaid, and were entitled to notice to redeem same, pursuant to the provisions of the "Martin Act" statute aforesaid, which makes notice to redeem and default therein indispensable conditions to the divestiture of title by deed, under the tax sale aforesaid, and because of the failure of notice to said defendants to redeem said lands and premises, as aforesaid, said defendants are now entitled to redeem said lands and premises upon complying with the statutory requisites to effect such redemption;

It is on this 18th day of March, 1929, ORDERED, ADJUDGED and DECREED, that the complainants are not entitled to the relief prayed for in the bill of complaint filed herein; that the deed made by Robert Davis, City Collector of The Mayor and Aldermen of Jersey City, to F. W. Mitchell, dated March 22, 1901, and recorded April 16, 1901, in the Register's Office of the County of Hudson, New Jersey, in Book 773 of Deeds for said county, on page 466, is null and void; that the defendants Hedwig Marie Hermine Delia,

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Baroness Meyendorff, Annie Ida Lieselotte Arbusoff, Brigitte Katharina Hedwig Arbusoff, Leonid Hans Nicolai Arbusoff, her husband; Harriet D. P. Meyer, Jutta Voest, and Augusta Pychlau, wife of Elwyn Pychlau, be and they are hereby authorized to redeem the aforesaid lands and premises upon payment to the Director of the Department of Revenue and Finance—acting as Treasurer, City Collector and Comptroller of the City of Jersey City, such sum of money as lawfully required to be paid, under and by virtue of Chapter 112 of the Laws of 1886, and the amendments and supplements thereto, to effectuate the redemption of said lands and premises by the defendants aforesaid; and it is further

ORDERED, ADJUDGED and DECREED, that Pierre F. Cook, a Special Master of this Court, he and he is hereby designated and appointed to ascertain by appropriate investigation the amount lawfully payable by the defendants aforesaid to effectuate redemption of the aforesaid lands and premises, and report thereon to this Court, and to likewise ascertain and report the amount lawfully allowable to said defendants from the complainants for rents, issues and profits derived by said complainants, and by said F. W. Mitchell, and by the executors of the last will and testament of said F. W. Mitchell, from the lands and premises aforesaid, subsequent to the aforesaid tax sale, October 6, 1896, and that said Special Master report thereon to the Court with reasonable dispatch; and it is further—

ORDERED, ADJUDGED and DECREED, that upon an accounting had and stated by the aforesaid complainants and defendants, and report thereof by said Special Master to this Court, and the confirmation of said report by this Court, and com

*Final Decree—March 18, 1929.*

pliance therewith by said parties, respectively, and compliance with such further order and direction as may be made by the Court herein, the lands and premises aforesaid be freed and discharged of the lien of the aforesaid tax sale certificate and of any and all liens for taxes paid by said F. W. Mitchell, and/or the executors of the last will and testament of said F. W. Mitchell, and/or by the complainants, and be freed and discharged also of any and all right, title or interest which the said F. W. Mitchell, and/or the executors of the last will and testament of said F. W. Mitchell, and/or the complainants, have had, now have, or which they or either thereof now claim to have in and to the aforesaid lands and premises, arising out of or relating to the tax sale aforesaid and acts and proceedings thereunder; and be it further—

ORDERED, ADJUDGED and DECREED, that the complainants pay to the aforesaid defendants, their costs and disbursements herein, to be taxed by the clerk of this court, including therein a counsel fee of \$500.00, which is hereby awarded to said defendants, and that said costs, disbursements and counsel fee be a lien upon the moneys due and payable hereunder, if any, by the aforesaid defendants to the complainants, and if the report of the Special Master aforesaid shows no moneys to be due and payable by said defendants to said complainants hereunder, or that a sum of money be due and payable by the aforesaid defendants to the complainants which shall be insufficient to make satisfaction of the costs, disbursements and counsel fee aforesaid, then, and in that event, the complainants shall pay, and they are hereby decreed to pay to the said defendants, the costs, disbursements and counsel

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*Final Decree—March 18, 1929.*

fee aforesaid, and in default of the payment thereof within twenty days from the date of the confirmation of said Special Master's report, said defendants shall have execution therefor against said complainants in accordance with the statute in such case made and provided; and it is further—

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ORDERED, ADJUDGED and DECREED, that the defendant Henrietta Gaede, wife of Henry Gaede, has no right, title or interest in or to the lands and premises aforesaid; and it is further—

ORDERED, ADJUDGED and DECREED, that complainants' application to strike the answer of the aforesaid defendants, the determination of which was reserved until the final hearing herein, be and is hereby denied; and it is further—

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ORDERED, ADJUDGED and DECREED, that the parties hereto or either thereof be at liberty to apply to this Court for further direction if occasion shall require.

E. R. WALKER,  
C.

Respectfully advised,

JOHN J. FALLON,  
V.-C.

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**NOTICE OF APPEAL.**

Filed April 10, 1929.

IN CHANCERY OF NEW JERSEY.

<i>Between</i> LAURENT S. MITCHELL, <i>et als.</i> , <i>Complainants,</i> <i>and</i> DELIA PYCHLAU, <i>et als.</i> , <i>Defendants.</i>	}	<i>On Bill, &amp;c.</i> <i>Notice of</i> <i>Appeal.</i>	10
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The complainants, Laurent S. Mitchell, Charles A. Mitchell, Adelaide Giambalvo and Cecelia Stephens, hereby appeal from the final decree made in the above-entitled cause on March 18, 1929, and from the whole and every part thereof, to the Court of Errors and Appeals in the last resort in all causes. 20

Dated, April 8, 1929.

L. EDWARD HERRMANN,  
Solicitor for and of Counsel with Complainants.

I conceive there is good cause for appeal in the above-entitled cause. 30

L. EDWARD HERRMANN,  
Of Counsel with Complainants.

Service of a copy of the within notice of appeal acknowledged this 9th day of April, 1929.

TACKELLA & CAMBY,  
Solicitors for Defendants.

PETITION OF APPEAL.

Filed April 10, 1929.

NEW JERSEY COURT OF ERRORS  
AND APPEALS.

10	<p>LAURENT S. MITCHELL, <i>et als.</i>, <i>Complainants-Appellants,</i>  <i>vs.</i>  DELIA PYCHLAU, <i>et als.</i>, <i>Defendants-Appellees.</i></p>	<p><i>On Appeal from the Court of Chancery.</i></p> <p><i>Petition of Appeal.</i></p>
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To the Honorable the Court of Errors and Appeals in the last resort in all causes:

20 The petition of Laurent S. Mitchell, Charles A. Mitchell, Adelaide Giambalvo and Cecelia Stephens, the appellants in the above-entitled cause, respectfully shows that:

1. Petitioners find themselves aggrieved by a final decree made in the Court of Chancery by his Honor Edwin Robert Walker, Chancellor of the State of New Jersey, bearing date March 18, 1929, in a certain cause in said Court of Chancery wherein the said Laurent S. Mitchell, Charles A. Mitchell, Adelaide Giambalvo and Cecelia Stephens, were complainants and the said Henrietta J. Gaede, wife of Henry Gaede; Delia Pychlau, Henry W. Pychlau, her husband; Annie Pychlau Vietinghoff Scheel, Hamilkar Vietinghoff Scheel, her husband; Hedwin Meyerdorff, Ernest Meyerdorff, her husband; Antonio Arbusw, L. Arbusw, her husband; Edwin Pychlau, Auguste H. Pychlau, his wife; Justa P. Voest, Jacob Voest, her husband; Harriet D. P.

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*Petition of Appeal.*

Meyer, Frederick Meyer, her husband; their heirs, devisees or personal representatives, their or any of their heirs, devisees, executors, administrators, grantees, assigns or successors in right, title and interest, were defendants, in this respect, to wit, that the said decree adjudges that:

1. That the complainants are not entitled to the relief prayed for in the bill of complaint filed herein; that the deed made by Robert Davis, City Collector of the Mayor and Aldermen of Jersey City, to F. W. Mitchell, dated March 22, 1901, and recorded April 16, 1901, in the Register's Office of the County of Hudson, New Jersey, in Book 773 of Deeds for said county, on page 466, is null and void; that the defendants Hedwig Marie Hermine Delia, Baroness Meyendorff, Annie Ida Lieselotte Arbusoff, Brigitte Katharina Hedwig Arbusoff, Leonid Hans Nicolai Arbusoff, her husband, Harriet D. P. Meyer, Jutta Voest and Augusta Pychlau, wife of Elwyn Pychlau, be and they are hereby authorized to redeem the aforesaid lands and premises upon payment to the Director of the Department of Revenue and Finance—acting as Treasurer, City Collector and Comptroller of the City of Jersey City, such sum of money as lawfully required to be paid, under and by virtue of Chapter 112 of the Laws of 1886, and the amendments and supplements thereto, to effectuate the redemption of said lands and premises by the defendants aforesaid, whereas the said should have decreed that the complainants were entitled to the relief prayed for in the bill of complaint, and that the said deed made by Robert Davis, City Collector etc. to F. W. Mitchell was valid and effectual in law and equity and that the named defendants had no right, title

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*Petition of Appeal.*

and interest in the said premises and should not be authorized to redeem the said lands and premises in the manner prescribed by said decree.

10 2. And that Pierre F. Cook, a Special Master of this court, be and he is hereby designated and appointed to ascertain by appropriate investigation the amount lawfully payable by the defendants aforesaid to effectuate redemption of the aforesaid lands and premises, and report thereon to this Court, and to likewise ascertain and report the amount lawfully allowable to said defendants from the complainants for rents, issues and profits derived by said complainants, and by said F. W. Mitchell, and by the executors of the last will and testament of said F. W. Mitchell, from the lands and premises aforesaid, subsequent to the aforesaid tax sale, October 6, 20 1896, whereas upon the ground that the complainants are not chargeable in law or in equity for the rents, issues and profits derived by them, or by the said F. W. Mitchell or by the executors under the last will and testament of said F. W. Mitchell.

30 3. And that, the said lands and premises be freed and discharged of the lien of the said tax sale certificate and of any and all liens for taxes paid by the said F. W. Mitchell, and/or the executors of the last will and testament of the said F. W. Mitchell, and/or by the complainants, and be freed and discharged also of any and all right, title or interest which the said F. W. Mitchell, and/or the executors of the last will and testament of said F. W. Mitchell, and/or the complainants, have had, now have, or which they or either thereof now claim to have in and to the 40 aforesaid lands and premises, arising out of or

*Petition of Appeal.*

relating to the tax aforesaid and acts and proceedings thereunder, because said decree is erroneous in that the said Court of Chancery exceeded its jurisdiction in making such decree.

4. That the complainants pay to the aforesaid defendants, their costs and disbursements herein, to be taxed by the Clerk of this court, including therein a counsel fee of \$500.00, which is hereby awarded to said defendants, and that said costs, disbursements and counsel fee be a lien upon the moneys due and payable hereunder, if any, by the aforesaid defendants to the complainants, and if the report of the Special Master aforesaid shows no moneys to be due and payable by said defendants to said complainants hereunder, or that a sum of money be due and payable by the aforesaid defendants to the complainants which shall be insufficient to make satisfaction of the costs, disbursements and counsel fee aforesaid, then, and in that event, the complainants shall pay, and they are hereby decreed to pay to the said defendants, the costs, disbursements and counsel fee aforesaid, and in default of the payment thereof within twenty days from the date of the confirmation of said Special Master's report, said defendants shall have execution therefor against said complainants in accordance with the statute in such case made and provided, because the said defendants were not entitled to costs and counsel fees either in law or in equity against the complainants.

5. That the complainants' application to strike the answer of the aforesaid defendants, the termination of which was reserved until the final hearing herein, be and is hereby denied, whereas

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*Petition of Appeal.*

the said Court should have decreed that the said answer should be dismissed.

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

L. EDWARD HERRMANN,  
Solicitor for and of Counsel with Appellants.

Service of a copy of the within petition of appeal acknowledged this 9th day of April, 1929.

TACKELLA & CAMBY,  
Solicitors for Defendants.

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MINUTES OF FINAL HEARING.

IN CHANCERY OF NEW JERSEY.

*Between*

LAURENT S. MITCHELL and  
CHARLES A. MITCHELL,  
*et als.,*

*Complainants,*

*and*

DELIA PYCHLAU, *et als.,*

*Defendants.*

*On Bill, &c.*

*Minutes of  
Final  
Hearing.*

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Transcript of shorthand notes of testimony taken on the 24th day of March, 1927, and the 31st day of October, 1927, before Hon. Jno. J. Fallon, Vice-Chancellor.

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Appearances.

For the Complainants, Mr. L. Edward Herrmann (Mr. John D. Craven of counsel).

For the Defendants, Messrs. Tackella & Camby.

Before Hon. Jno. J. Fallon, Vice-Chancellor.

Chancery Chambers, Jersey City, N. J.,

March 24, 1927.

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Mr. Craven: The situation is this, your Honor: The complainants are people named Mitchell, who are the owners of some property up on Central avenue, and their title is derived through tax deeds, and the owner of the premises, Francis W. Mitchell, died in 1903, leaving the complainants as the owners of the property. This is a bill to quiet the title, under the statute; and, in the answer, as put in by the defendants,

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*Minutes of Final Hearing.*

they make no mention of the deed, but they allege that the title is in them by virtue of the fact that the original owner, in 1863, never signed the deed, which, of course, we do not deny; we do not deny that they never got title from the original owner. We have no idea what  
10 their defense is.

The Vice-Chancellor (To Mr. Tackella):  
Please state what your defense is?

Mr. Tackella: Before I do, I would like to ask permission to file an amendment to the answer. The amendment is this—that, on the proceedings to obtain the deed (which proceedings are now in the possession of the city clerk, and we have subpoenaed him here this morning) they have filed an abstract of title showing who the  
20 owners and who the parties in interest were. Regardless of that, they filed affidavits to the effect, as I understand it, that other persons than those persons which they have set up in the answer were the parties in interest in this property. On the filing of these affidavits they then went into the Circuit Court, on a petition, and represented to the Circuit Court that those persons other than the persons mentioned in the  
30 abstract were the owners of this property and the only persons in interest, and on that petition, requested the Court to make an order directing the said Clerk to deliver a deed to F. W. Mitchell, through whom the complainants now claim title. It is our contention that that was a gross fraud not only upon the City Clerk, and not only not following the procedure laid down in the statute, which they had to do in order to get a deed, but it was a gross fraud on the Circuit Court; and they prevailed upon the Court, by means of these  
40 fraudulent representations, to make an order di-

*Minutes of Final Hearing.*

recting the Clerk to give their predecessor in title a deed; and I think that the Court of Chancery will, at all times, take cognizance of fraud to set aside the deed and allow the true parties to come in and show that fraud.

The Vice-Chancellor: What has the other side to say to that? 10

Mr. Craven: Well, the situation is this: In regard to the title, there was a woman named Delia Pychlau who was the owner of this property back in 1863. In 1891 Henry Gaede of Hoboken had tax proceedings under the Martin Act, whereby, we allege, that the Pychlaus and their heirs were cut off. Henry Gaede did not pay his taxes, and in 1901 there were proceedings taken whereby the property was struck off to Francis W. Mitchell, the complainant, and the complainant's devisees. Now, as regards the fraud which Mr. Tackella alleges, he has no interest in this matter, because his people were cut off by the first deed. Now, in the second place, the Act provides that nobody can question the validity of any tax proceeding by attacking it collaterally, and their only remedy is by certiorari. They have got two years within which to bring certiorari. These deeds have been on record, respectively, thirty-six years and twenty-six years. 20 30

The Vice-Chancellor: I am not so sure about that; of course, my idea is that the Court of Chancery would have jurisdiction of questions of fraud at any time, but I have in mind, while you are talking, some cases that I think our courts have passed upon wherein tax titles were questioned in the Court of Chancery (I am not sure what the names of the cases are), but, anyhow, it occurs to me that, inasmuch as the other 40

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side are suggesting that there is a need for amendment which will enable this court to properly have before it all of the facts which ought to be before the Court in order to pronounce such a judgment as should be pronounced by this court, that the amendment ought to be permitted.

10 However, if you are surprised in any way, whereby further time is required to meet that situation, naturally you are entitled to meet that situation.

Mr. Craven: Let me explain the situation to your Honor: The situation is this—we filed this bill quite a number of months ago; we had, beginning last May, various hearings to strike out the answer; the bill has been filed for at least a year, if my recollection serves; we have given  
20 them notice of hearing for practically six months, and they come in now with this other proceeding; it looks to me as if the whole proceeding is just a matter to delay us in cleaning this thing up. They do not set up any matters which might come before the Court properly. I might explain this to your Honor: Suppose that A is the record owner of the title—here is the situation: Henry Gaede was the record owner of the title in 1897, when it was sold by the city. When the  
30 city went over to serve him Henry Gaede disclaimed that he was the absolute owner of this property, but said he was buying it for some of his clients; that he was not the owner of the property; that it was being held in trust for some other people. Now, not only was Henry Gaede served in the proceeding, but these other people. Now, if in a tax sale, more than the record owners are served, where is the fraud on the Court? Now, this matter, so far as I can see, is a matter of delay.

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*Minutes of Final Hearing.*

The Vice-Chancellor: Who is in possession of the property?

Mr. Craven: We are in possession.

The Vice-Chancellor: And your possession, or right of possession, is apparently being disputed by the other parties?

Mr. Craven: Well, as far as I can understand, they have been delaying us all along.

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The Vice-Chancellor: I mean by that, in these proceedings to quiet title is not one of the essential requisites of the complainant that he not only is in peaceable possession of the property and has been continuously for a period of years, but that his title has not been disputed?

Mr. Herrmann: May I be heard?

The Vice-Chancellor: Yes.

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Mr. Herrmann: This bill is to quiet title, and the cases are numerous that, in bills of this character, there cannot be a collateral attack on a deed. Now, we rely, first, on a deed which we have that cannot be attacked in this proceeding collaterally. If your Honor desires to hear the cases I can give any number of them. Our courts—particularly this court—have been unanimous in sustaining that principle.

The Vice-Chancellor: I would like to have you state the cases so that I can get them on the notes here—just the cases.

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Mr. Herrmann: The cases are *White v. Cadmus*, 84 N. J. Eq., p. 86; *Walter v. American Baptist Publication Society*, 78 N. J. Eq., 263; *Rowe v. Mayor and Aldermen of Jersey City*, 82 N. J. Eq., 641. Now, then, with respect to possession, they are barred at this time. The statute of limitations provides that they must begin their action within twenty years—that after that

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*Minutes of Final Hearing.*

they are forever barred. They could not, at this time, for example, maintain a suit for ejectment because of the twenty-year provision providing that where one has been in absolute possession and there has been no attempt, within twenty years—

10 The Vice-Chancellor: Suppose their title, in that period, has been unsettled, are you still permitted to come into a court of equity and have the title cleared?

Mr. Herrmann: Yes.

The Vice-Chancellor: Well, my recollection is somewhat to the contrary, and I am not certain at all of the matter, but my impression is that, in actions of this kind, the Court cannot undertake to quiet a title on the application of parties  
20 for that purpose unless it be shown that the party who seeks to have the title quieted is not only in possession at the time the bill is filed, but has been in possession of the property for, I will say, the requisite number of years to assure them of title by prescription (or whatever you care to call it) and that, during that time, their title has not been disputed.

Mr. Herrmann: There is a case dealing with that very point, in which Chancellor Magie held  
30 to the contrary; he said that after twenty years that issue cannot be raised.

The Vice-Chancellor: Is this proceeding initiated under the statute?

Mr. Craven: Under the statute; yes, sir.

The Vice-Chancellor: There is a very illuminating decision, as I remember it, of Vice-Chancellor Stevens on this subject of quieting of titles and he touches upon the statute by way of criticism.

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*Minutes of Final Hearing.*

Mr. Craven: In 88 N. J. Eq., page 87.

The Vice-Chancellor: Is that by Vice-Chancellor Stevens?

Mr. Craven: I do not recollect, sir. It says, "In suits to quiet title, the complainant, who must be adjudged to be in peaceable possession before jurisdiction over the issue of title can be assumed, is given the benefit of his peaceable possession, and the defendant then assumes the burden of the affirmative of the issue of title and carries the burden of establishing a title in conformity with the specification of title which the statute requires such defendant to set forth in his answer." The Act also says that when a person is in peaceful possession, and there is no suit pending to enforce or establish the validity of such title, claim or encumbrance, it shall be lawful for such person, or persons, so claiming to be entitled to such estate or interest to bring and maintain a suit in chancery to settle the title to said lands. Now, my understanding is that we could have gone into possession last week and brought a bill to quiet title today. All we have to do is to be in possession at the time the bill is filed. There does not have to be any statutory provision in regard to how long that period must be.

The Vice-Chancellor: Doesn't it require the additional requisite that your title has not been disputed, to your knowledge?

Mr. Craven: Up to the present time, yes.

The Vice-Chancellor: The mere possession, then, is not sufficient?

Mr. Herrmann: No; but it shifts the burden.

The Vice-Chancellor: Well, I feel that I ought to allow the amendment, so I can hear the whole

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*Minutes of Final Hearing.*

case; I cannot tell at this time as to whether this Court ought to take cognizance of the matters suggested by the amendment; but I believe I ought to have the amendment so that I will have the whole matter before me, and then be able to determine whether anything contained in the  
 10 amendment would be sufficient to enable the defendants to effectuate what they contemplate.

Mr. Herrmann: If that does not result in delay, we have no objection.

(Mr. Tackella handed to the stenographer a copy of the proposed amendment, which reads as follows:

“That on or about July 30, 1900, and at divers other times, said Francis W. Mitchell fraudulently and with intent to obtain said premises  
 20 for his own benefit, represented that Robert Campbell, Mary A. Goodspeed, executrix, William Star Goodspeed, Arthur Baxter Goodspeed, Shepard Goodspeed and Alene Goodspeed, were the only persons interested in or who had claims against said premises, and were the owners of said premises, whereas, in fact, said above-mentioned persons had no interest, or claim to, or were the owners of said premises whatsoever. Said fraudulent representations were made by  
 30 said Francis W. Mitchell with intent to obtain a deed for said premises from the City Collector of the Mayor and Aldermen of Jersey City, and the deed mentioned in paragraph 1 of the complaint was obtained by means of said fraudulent representations.

“On or about February 27, 1901, and at divers other times, said Francis W. Mitchell filed his petition in the Circuit Court of Hudson County, which petition prays for an order to the City  
 40 Collector of Jersey City, to deliver a deed for

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said lands. That in said petition said Francis W. Mitchell fraudulently and with intent to deceive said Court, and with intent to obtain said premises for his own benefit, represented that William Star Goodspeed, Arthur Baxter Goodspeed, Shepard Goodspeed and Alene Augusta Goodspeed, were the owners of and had some interest in said lands and premises, whereas, in fact, said mentioned persons were not the owners of and had no interest in said lands and premises. The Hudson County Circuit Court, relying upon said representations so fraudulently made, did issue its order to the City Collector of the Mayor and Aldermen of Jersey City, to deliver a deed for said lands to said Francis W. Mitchell. That the deed mentioned in paragraph 1 of the complaint was obtained by said Francis W. Mitchell by means of the representations fraudulently made as aforesaid.”)

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The Vice-Chancellor: Well, you have heard the suggested amendment?

Mr. Herrmann: That would require a reply.

The Vice-Chancellor: Well, yes.

Mr. Herrmann: That would mean delay.

The Vice-Chancellor: I presume you are familiar with the matters they are setting forth?

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Mr. Craven: I would like to argue upon that point: Even assuming that what they say is true—

The Vice-Chancellor: I know, but I would not want to determine that on a motion (because it is like a motion addressed to the striking out of a pleading), and matters of that kind ought to be determined only after the presentation of the testimony that might apply to it, in the consideration of it.

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Mr. Herrmann: Well, let me dictate a reply now; I do not want delay.

10 Mr. Tackella: I might state now, that they have brought up the question of the alleged title in Henry Gaede, if they are relying upon that I am going to plead surprise, because their bill says nothing about it, and their abstract of title shows that Henry Gaede had no record title other than a paper title.

The Vice-Chancellor: "Henrietta Gaede" is mentioned in this bill—the wife of Henry Gaede.

Mr. Craven: If your Honor please, I believe that the rule is that we set out our title. We set it out in our pleadings. Mr. Tackella is again trying to delay the matter.

20 The Vice-Chancellor: Wait a moment. I understood you to have said that title was, at some time, in Henry Gaede?

Mr. Craven: At one time; yes, sir.

The Vice-Chancellor: Now, this bill which I have been looking at at the present time indicates that the title is disputed by Henrietta J. Gaede, wife of Henry Gaede—now which is the fact—is it Henry or Henrietta J. Gaede?

Mr. Craven: No, sir—Henrietta J. Gaede.

30 The Vice-Chancellor: You said "Henry" before.

Mr. Craven: No, sir; I did not; I said, at one time the title was in Henry Gaede. The situation is this—we rely on the deed under which we claim; when we prove our jurisdictional facts, it is then up to the defendant to go ahead and assume the burden of establishing what he claims.

40 The Vice-Chancellor: Well, you want to have a hearing in this matter, anyway, so that your title

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would be cleared once and for all; so let him suggest his amendment, and you suggest your reply—(to Mr. Tackella) dictate your amendment.

Mr. Tackella: I have it written out.

The Vice-Chancellor: Well, hand a copy to counsel, and see that a copy is filed. I think you ought to prepare an order, asking leave to file this amendment, and that order, while not being consented to by counsel, should, nevertheless state that counsel does not object thereto; and I will sign the order. 10

Mr. Tackella: I will also ask that this amendment be not only considered as an amendment, but considered as a counter-claim.

The Vice-Chancellor: If you are going to ask to have it considered as a counter-claim, there are certain rules to be complied with, and one of the rules expressly requires how you shall set out the counter-claim. I do not want to complicate this matter any more than possible, and I just happened to see that, in the file of papers here, you have heretofore filed an amended answer; now, this is apparently a second amendment; and in glancing through these papers hastily here, I see some other suggested amendment; so there seems to have been numerous amendments. 20 30

Mr. Herrmann: The matter has been delayed from the very beginning.

The Vice-Chancellor: Well, let us get this thing before the Court now in the best way you possibly can.

Mr. Craven: I might inform your Honor that, at one time Mr. Tackella filed a counter-claim in the nature of a bill to quiet title, and that was stricken out because it denies the jurisdictional 40

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fact that no suit is pending at the present time. That has already been stricken out, so I do not see how he could file anything in the nature of a counter-claim.

10 The Vice-Chancellor: Well, I am willing to allow Mr. Tackella to file any pleading that he thinks is proper to present to the Court whatever claims he, in behalf of his clients, may feel that he should present in opposition to the matters set forth in the bill, because this is peculiarly, in my opinion, a case the nature of which requires the fullest information by the Court, because here is involved the question of property rights; and the Court will not, by any technical advantage that might be taken of one party over  
20 as against the interest of his clients, allow such omission or inadvertence to militate against the interest of his clients. I think the issue should be put squarely before the Court as to what the respective claims are, and then let the Court determine it.

Mr. Herrmann: If that can be done, then we are willing to do it. He has attempted to file a counter-claim by denying the jurisdiction; that has been stricken out; he now comes in, at the  
30 last moment, and, to have delayed it until this date is an imposition. I am now going to say to your Honor that we will, at this time permit the amendment and dictate a reply to it, in order not to delay this thing further.

Mr. Tackella: I have handed the amendment to Mr. Black (the court stenographer). If your Honor will permit the counter-claim—

40 The Vice-Chancellor: I have been told that a counter-claim has heretofore been filed, and

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stricken out, and I cannot see why you would do this just before the day of the hearing.

Mr. Tackella: The counter-claim was in the nature of a bill to quiet title; of course, one of the jurisdictional facts in a bill to quiet title is that no suit was then pending. Vice-Chancellor Fielder held that it was a suit pending, and we disagreed with that, and that matter will be taken care of at the proper time. Mr. Garde, of the New York Bar (whom I may present) came in to see me yesterday, and I went over the matter with him. That was the first time I really went into the matter; I had assumed right along that Mr. Camby was going to try this case.

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The Vice-Chancellor: Well, Mr. Tackella, that is not a very sufficient reason to present to this Court as to why these suggested amendments should be made on the very eve of the trial; nevertheless, for the reasons I have stated, I will permit you to suggest your amendment, and I will permit you to suggest your counter-claim; but I am going to afford also to counsel on the other side the right to move to strike out your counter-claim at the conclusion of the testimony in this case, if they deem it feasible to make such a motion, and I will reserve my consideration of this motion until I hear the proofs.

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Mr. Herrmann: Of course, that is not the same counter-claim that has been dismissed by this Court?

The Vice-Chancellor: I hope not.

Mr. Tackella: No—entirely different; it is based upon the amendment, and the counter-claim now is that their deed be struck out on the ground that it was obtained by fraud on the City Clerk and the Circuit Court.

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The Vice-Chancellor: Have you suggested your counter-claim?

Mr. Tackella: No, I have not.

10 The Vice-Chancellor: Well, will you dictate it on the record? You will have to present it right now when you are here to try this case. If you will dictate it on the record I will allow it, but I will not postpone this hearing to allow you to do it.

20 Mr. Craven: The time has been so long going, that I might add to the Court that I want to give a picture of this matter to you: On a motion to strike out the answer, we came up here—it was around in May—and Mr. Camby had an adjustment for two or three weeks in order to get more familiar with the matter. We first gave them additional time to file their answer, and moved immediately to strike out the answer. Mr. Camby wanted additional time, then, to get ready, and we allowed it a couple of times. Another time Mr. Camby was out of town and did not get in on Monday morning early, and of course we could not do anything about it; so that was adjourned; and then we came down in to June, and then the Court, of its own motion, said it was rather warm to take  
30 up such a complicated matter as that, and laid it over until September, and the last time we argued the matter the Court directed us to go outside and see what matters we could adjudge between ourselves should be stricken out; and Mr. Camby then decided that he was going back to his office and consult his client and Mr. Tackella; and the next time the Vice-Chancellor heard the matter in his chambers; and the next time I saw Mr. Camby over here about, I think  
40 it was two weeks ago Monday in the Court of

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Chancery—I was here in another matter, and he was here in another matter—and he informed me at that time that Mr. Tackella was going to try the matter. Now, I cannot understand why there should be all the delay, and why these pleadings were not filed before. It is an imposition on this Court, and on us.

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The Vice-Chancellor: Mr. Tackella, I find, in the papers, that the bill of complaint in this matter was filed on April 5, 1926; I note that there was an amendment made to that bill of complaint on October 11, 1926; the answer and counter-claim of the defendants was filed June 12, 1926. There was an amended answer filed October 14, 1926. Now, surely, you have had ample time within which to make such amendments and file any counter-claim that you thought advisable within that time; and I cannot consider the reason given that your partner was the one that had actual charge of the matter, and that it might have been through his neglect (if I may so term it) that the matter was not put in such shape as you now seem to think it should be in for the hearing today. However, as I say, I ought to try and ascertain, if I can, (and I think it is my duty) the true facts in connection with the matter, so that there will be no injustice done to any party, particularly inasmuch as property rights are involved in this action; therefore, as I have stated, I will allow you to amend the answer as suggested by you, and I will allow you to file the counter-claim, but I will expect you to do that today; and then that will require the other side, unless they claim surprise, to file today their reply to your amended answer and to the counter-claim that you suggest. If you have not the counter-claim actu-

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ally prepared, in proper form for filing, I say now you may dictate it on the record, if you feel so disposed. Otherwise, I will not continue this matter any longer.

10 Mr. Tackella: Will your Honor allow me to put my statement of the counter-claim on record, otherwise I may be doing an injustice to my client?

The Vice-Chancellor: That is the proposition we are confronted with: your adversary is entitled to know just what you are claiming, so he can meet it here today.

Mr. Tackella: It purely pertains to the only deed which they allege in the complaint.

20 The Vice-Chancellor: You know you do not have set out in another pleading matters with particular nicety—if you get the gist or substance of your legal claim on the record, that ought to suffice. You will have to follow the rule of the Court by saying “By way of counter-claim, the defendant says thus and so.”

Mr. Tackella: By way of counter-claim, these defendants say:

30 1. That on or about July 30, 1900, and at divers other times, said Francis W. Mitchell fraudulently and with intent to obtain said premises for his own benefit, represented that Robert Campbell, Mary A. Goodspeed, executrix, William Star Goodspeed, Arthur Baxter Goodspeed, Shepard Goodspeed and Alene Goodspeed, were the only persons interested in or who had claims against said premises, and were the owners of said premises, whereas, in fact, said above-mentioned persons had no interest in, or claim to, or were the owners of said premises whatsoever.

40 Said fraudulent representations were made by

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said Francis W. Mitchell with intent to obtain a deed for said premises from the City Collector of the Mayor and Aldermen of Jersey City, and the deed mentioned in paragraph 1 of the complaint was obtained by means of said fraudulent representations.

On or about February 27, 1901, and at divers other times, said Francis W. Mitchell filed his petition in the Circuit Court of Hudson County, which petition prays for an order to the City Collector of Jersey City, to deliver a deed for said lands. That in said petition said Francis W. Mitchell fraudulently and with intent to deceive said Court, and with intent to obtain said premises for his own benefit, represented that William Star Goodspeed, Arthur Baxter Goodspeed, Shepard Goodspeed and Alene Augusta Goodspeed, were the owners of and had some interest in said lands and premises, whereas, in fact, said mentioned persons were not the owners of and had no interest in said lands and premises. The Hudson County Circuit Court, relying upon said representations so fraudulently made, did issue its order to the City Collector of the Mayor and Aldermen of Jersey City, to deliver a deed for said lands to said Francis W. Mitchell. That the deed mentioned in paragraph 1 of the complaint was obtained by said Francis W. Mitchell by means of the representations fraudulently made as aforesaid.

2. Said Francis W. Mitchell knew that the persons alleged in the petition filed in the Circuit Court, on about February 27, 1901, in an action entitled In the Matter of the Application of Francis W. Mitchell for an order for a deed for Lots 275 and 276 in Block 781 of the City Assessment Map of Jersey City, were not the

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rightful owners, or the persons in interest in the premises in question, and fraudulently, and with intent to deceive said Hudson County Circuit Court, and with intent to obtain a deed of said premises for his own benefit, did fraudulently make said representations.

- 10     3. That on or about July 30, 1920, said Francis W. Mitchell fraudulently, and with intent to deceive the City Clerk of the City of Jersey City, and with intent to deceive the City Collector of the Mayor and Aldermen of Jersey City, did file fraudulent affidavits with the City Clerk, and in and by said affidavits, did fraudulently represent that the persons mentioned there-  
20     in were the only and truthful owners of said premises, and were the only parties in interest in the premises in question; that said affidavits were made by said Francis W. Mitchell and his agents, and were filed with the City Clerk for the purpose of defrauding these defendants out of said premises and to obtain said premises for his own benefit.

These defendants pray that said complainants may answer this counter-claim, and each statement therein made.

- 30     That a decree may be made decreeing that the deed made by Robert Davis, City Collector of the Mayor and Aldermen of Jersey City, to F. W. Mitchell, dated March 22, 1901, and recorded March 27, 1901, in Book 773 of Deeds for Hudson County, on page 466, be set aside, declared null and void and for nothing holden.

- 40     That these complainants may be set forth and disclosed to this Court who the persons are mentioned in the affidavit filed by said Francis W. Mitchell with the City Clerk of Jersey City in said tax proceedings.

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That these complainants may set forth and disclose who the persons are mentioned in the petition filed by Francis W. Mitchell in the Hudson County Circuit Court In the Matter of the Application of Francis W. Mitchell for an order for a deed for lots 275, 276 in Block 781.

Mr. Herrmann: Now, then, so as to get the record straight, I first move that the amended answer and the counter-claim be stricken out, on the following grounds: First, it is an attempt in these proceedings to attack the validity of this deed mentioned in the bill of complaint upon which the complainants rely, collaterally. Second, that the matters set forth are in the nature of a bill to quiet title for the defendants, and cannot be stressed while the suit is pending—that being the ground upon which this Court has already dismissed a similar prayer for cross-relief in the earlier case, and it is not attempted to invoke, in these proceedings what has already been rejected by this Court on motion before Vice-Chancellor Fielder. Third: That it calls upon complainants to make disclosures that they are not required to make. That is the motion. If your Honor does not desire to deal with that motion now, you will reserve it? 10  
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The Vice-Chancellor: I would rather have you reserve it until the conclusion of the hearing, and then you can argue upon it, and I will consider it; because, as I stated before, in view of the latitude that I am allowing the defendant here, I certainly want to afford you an opportunity to move to strike it out, and you may address yourself to that motion at the conclusion of the hearing. 30

Mr. Herrmann: Now, subject to your Honor's ruling on that matter, we are required to file 40

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an answer to the amendment and cross-bill, which I will now dictate: We deny the allegations of the Paragraphs 1 and 2 of the amended answer. With respect to the allegations of the cross-bill, we deny the allegations respecting the fraudulent representations, either on the part  
 10 of Francis W. Mitchell, or his agents; and allege that, even if the allegations were true, they would not operate as a bar to the complainant's relief sought in this case, because the persons named and sought to be attacked by the defendants do not involve the defendants themselves; and the alleged title or claim of the defendants is not disturbed by the proceedings taken in the Hudson County Circuit Court.

(Mr. Herrmann then argued the matter.)

20 The Vice-Chancellor: I notice, in glancing at the papers, that there appears to be a sharp conflict between the parties as to who is in possession of these premises.

Mr. Herrmann: We will prove that.

The Vice-Chancellor: The answer of the defendants, by Paragraph 8, sets out that the premises are vacant lands, and that they are in possession of the premises as heirs-at-law of one Delia Pychlau, deceased. The reply to that  
 30 paragraph of the defendants' amended answer admits that the premises in question are vacant lands, but denies that the lands are in possession of the defendants; so, as to the question of possession, there is a sharp conflict, which must be met by proof.

Mr. Herrmann: Yes, sir.

Mr. Tackella: I have not stated my case to the Court.

40 The Vice-Chancellor: All right; state it.

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Mr. Tackella: It appears that sometime in 1915 these complainants, under the designation of "executors" filed their bill to quiet title in the Court of Chancery. The bill sets out practically everything that the present bill before your Honor sets out. There was advertising in that case against the heirs, devisees and personal representatives of the defendants mentioned therein, who are most of the defendants mentioned in the present suit—practically all of them—there may be one or two exceptions; a hearing was had on the bill, and a decree entered (and your Honor knows that the prayer of a bill to quiet title is that "the interest of the defendants and the complainants be fixed, determined and settled"—the decree must be entered in just those words), declaring that the title of some of these present complainants in this former suit were fixed, determined and settled. My contention now is that they have no right to come into this court on a suit between some of the complainants in the previous suit under a different name; and your Honor well knows that the doctrine of *res adjudicata* binds the parties and their privies, who would be executors. They now come in and ask that the Court make another decree declaring that somebody entirely different than the complainants in that previous suit have a good title, and that their rights be fixed, determined and settled. It is my contention that if the Court should do that it would make a nullity of the previous decree; that they cannot set aside a decree in some other suit by a decree in a subsequent suit, which they are now attempting to do; that the question before the Court now has been adjudicated between the parties in this suit on the previous suit, and the Court should

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not take cognizance of this suit at the present time. I have telegraphed the Clerk to send the papers on in the previous suit. The title is the same. Mr. Wellbrock informs me that they have not come yet.

10 Mr. Craven: This is apparently another move to delay the matter—

The Vice-Chancellor: Pardon me—so that you will address your remarks to it, I am not so certain that it was intended as a move to delay it, because, in reading the papers here, I see there is a reference to some such proceeding in the amended answer.

20 Mr. Craven: The situation is this: If what Mr. Tackella says is true, and the matter has been adjudicated, his clients are out of court; he has no standing in this court, and we are the rightful owners, if what he says is true. Now, then, on the other hand, we have this situation: The first bill was filed by the executors. The executors had no legal title to the land. The act requires, as I understand it, that they have some title to support themselves, or to support the bill. All they had was a naked power of sale. Now, therefore, either the bill was good, as regards the Court of Chancery, or else it was a nullity because the Court did not have juris-

30 diction. Now, if Mr. Tackella wants to stand on that decree previously made, he is out.

The Vice-Chancellor: Do you say that that previous decree was based upon a lack of jurisdiction in the Court?

Mr. Craven: Yes, sir.

The Vice-Chancellor: Of course I am at a disadvantage in not knowing what the previous decision was, because the papers are not here,

*L. Edward Herrmann, direct.*

but I see a reference in the answer to some former proceeding. However, I think we had better take the proofs in this case and see where it leads.

Mr. Craven: If Mr. Tackella wants to re-open the former decree, as far as we are concerned we consent to a decree dismissing the whole proceeding, as far as they are concerned, or anybody else, because, as far as we are concerned, it does not do us any good, and if he wants to have it re-opened it would not mean anything. 10

The Vice-Chancellor: Well, I think I have heard sufficient now to indicate to me that there is quite a complex situation here as between the adversaries, and that can only be settled after I hear the proofs, and then I will listen to counsel as to the law as applicable to the facts as they are adduced. You may proceed. 20

#### THE CASE FOR THE COMPLAINANTS.

Mr. Craven: I offer in evidence Deed made by Robert Davis, City Collector of the Mayor and Aldermen of Jersey City, to Francis W. Mitchell, dated March 22, 1901, and recorded in Book 773 of Deeds for Hudson County, on page 466, conveying the premises mentioned in Paragraph 1 of the complaint. 30

(Admitted without objection, and marked Exhibit C. 1.)

L. EDWARD HERRMANN, Esq., sworn.

*Direct examination by Mr. Craven.*

Q You are a counsellor-at-law of the State of New Jersey? A I am. 40

*L. Edward Herrmann, direct.*

Q And your office is 15 Exchange Place, Jersey City, N. J.? A It is.

Q Did you know Francis W. Mitchell in his lifetime? A I did.

Q Did you represent him? A Yes.

10 Q From what time? A Since I was admitted to the Bar, in 1901; but I was a student in the office of Augustus Zabriskie, who represented him, prior to that time; in 1898 I was a student in the office of Augustus Zabriskie.

Q Do you remember anything about a property known as 448-50 Central avenue? A Yes.

Q Did you ever have any dealings with that property, representing Francis W. Mitchell?

20 The Vice-Chancellor: I was going to suggest that you fix that by lot and block number.

Q Which is further known as Lots 275, 276, Block 781, in Jersey City? A Yes.

Q And what dealings did you have? A My recollection is that just before I came into the office Mr. Mitchell had acquired—

Mr. Tackella: I object to that.

30 The Vice-Chancellor: You are not going to say that he acquired something that an instrument will show, are you?

The Witness: No.

The Court (To Mr. Tackella): I do not know what he is alluding to, and if there is anything that comes out that I think is improper, I will give you the benefit of it.

40 A (Resuming)—acquired some title to the lots mentioned—

*L. Edward Herrmann, direct.*

Mr. Tackella: I ask that that be stricken out.

The Vice-Chancellor: That I will have to strike out, because I do not see how the witness can say that anybody acquired title to lots; that is a matter to be determined by the Court.

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Q Did you represent Mr. Mitchell, in his lifetime, generally? A Yes.

Q Did you ever have any negotiations respecting the leasing of this property? A Yes.

Q And what were those negotiations, and with whom? A The negotiations were first with O'Mealia Bill-board Company, after which they erected bill-boards on the lot.

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*By the Vice-Chancellor.*

Q Were the negotiations concluded, and was there a lease entered into? A Yes, a lease entered into, and sign-boards erected on the lots.

The Vice-Chancellor: I suppose the leases, then, are the best evidence of that transaction; I mean, once the negotiations are reduced to the form of a lease, the question of the prior negotiations can hardly be testified to.

30

The Witness: I know a fence was erected by Mr. Mitchell, and, under the direction of Mr. Mitchell—

Mr. Tackella: I object to that.

The Vice-Chancellor: I think the witness may state that he knows a fence was erected; I will strike that last part out.

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*L. Edward Herrmann, direct.*

*By Mr. Craven.*

10 Q Do you know there was a fence erected, at the present time? A Yes, and has been ever since 1898. Subsequently the property was rented by me, without any writing, to various societies, clubs and churches for the use of outdoor fairs—

Mr. Tackella: I ask to have that stricken out; there is nothing before the Court to show that he had any authority to do that.

The Vice-Chancellor: Well, he said he did it.

20 Mr. Tackella: Well, as bearing on the question of possession, I do not think it has any bearing at all on the possession of these complainants. I might have rented that thing out, and it would not show possession in my client.

The Vice-Chancellor: I will admit it, subject to your objection. You have stated the ground of your objection, have you?

Mr. Tackella: Yes.

30 A (Resuming) For a period of upwards of three years it was used as an open airdrome by Messrs. Herring & Blumenthal, through an oral arrangement which I made with them for the Mitchells.

Mr. Tackella: I will object to that, unless he states which Mr. Mitchell.

The Witness: With Mitchell's devisees. That was after his death.

Q Do you know when Francis W. Mitchell died? A 1902, or '03, I am not sure which.

40 Q And do you know who his heirs-at-law are? A Yes.

*L. Edward Herrmann, direct.*

Q Who are they? A At the time of his death he had two sons, Laurent S. and Charles A., and two daughters, Adelaide Gimbalbo and Cecile T. Stephens. Dr. Laurent S. Mitchell, one of the sons, recently died, unmarried and intestate, so that his heirs-at-law today, and devisees, are Cecile T. Stephens, Adelaide Gimbaldo and Charles A. Mitchell. 10

Q After the death of Francis W. Mitchell, did you represent the heirs-at-law? A Yes.

Q And did you represent them in regard to this particular property up on Central avenue? A Yes.

Q And representing them, you leased the premises to the Jersey City Bill-board Company? A Yes. 20

The Vice-Chancellor: The witness says he leased them to the Bill-board Company—I thought I understood before that there was some lease in writing; if there was the lease had better be produced, rather than his stating what the lease was.

The Witness: My recollection is that there was no lease in writing; it was for a stipulated sum per year. 30

The Vice-Chancellor: I understood somebody to say there was a lease in writing.

The Witness: No; I made that arrangement back in 1907; the property was offered for sale at auction, in the lifetime of Francis W. Mitchell—I have forgotten the year—it was offered at auction, and—

Mr. Tackella: I object to that; he should confine himself to what he did, not what somebody else did. 40

*L. Edward Herrmann, cross.*

The Vice-Chancellor: I will sustain the objection.

Q Do you know whether this property was ever offered for sale? A Yes.

Q About when?

10

Mr. Tackella: I object to that.

The Vice-Chancellor: What is the materiality of that?

Mr. Craven: Why, we can show the acts of possession by offering it for sale.

20

The Vice-Chancellor: A man might offer property for sale and never have possession; you might own property down in Georgia, for instance, and live up here, and it might be vacant lands, you would have a right to offer it for sale. I do not want to foreclose you on anything you think is proper, but I want to see that no immaterial evidence gets in, if I can possibly bring that about.

Q Do you know whether the title of the Mitchells is disputed or denied by anyone? A It is disputed or denied, I understand, by these defendants. No suit has ever been brought since 1897 attempting to assert any title above Mitchell.

30

Q Is any suit pending to test the validity of the claims of these defendants, outside of the present suit? A No.

*Cross examination by Mr. Tackella.*

Q These agreements that were made with the Omealia Bill-board Company, can you tell us the dates on which they were made? A They were made on different dates; as the years went on

40

the terms were changed.

*L. Edward Herrmann, cross.*

Q How many agreements were there? A I should say at least four, that I made personally.

Q You made four personally? A Yes.

Q And about what year did they start—that is, those that were made? A Oh, somewheres before Mitchell's death—1900, 1899, perhaps.

Q Were you admitted to the Bar then? A 10  
I was admitted to the Bar in 1901.

Q Then these agreements started before you were admitted? A Yes.

Q And you did not represent Mr. Mitchell as an attorney? A Not as attorney, but I was in the office of Mr. Zabriskie, who did represent him as attorney, and handled many matters for Mr. Mitchell.

Q But Mr. Zabriskie represented Mr. Mitchell—not you? A Yes. 20

Q And what you did, you did for Mr. Zabriskie? A And for Mr. Mitchell; I handled many matters, not as a lawyer, but as an agent.

Q That was outside of your duty as clerk in the office of Zabriskie? A No, part of my duty in the office.

Q To act as agent for clients of Mr. Zabriskie? A Yes, sir—such details as putting up fences, and making arrangements for bill-boards.

Q And those arrangements were made before Mr. Mitchell died? A Yes. 30

Q And he died when? A My recollection is, 1902 or '03; I am not certain as to that.

Q Well, will you say that these agreements were made before 1901? A Yes.

Q Then they were made before Mr. Mitchell had a deed to this property? A Yes.

Q Mrs. Mitchell, the wife of Francis W. Mitchell—is she still alive? A She is dead.

Q Is Laurent S. Mitchell alive? A He died.

Q When did he die? A About a year ago. 40

*L. Edward Herrmann, cross.*

Q Prior to the institution of this suit? A I do not recall whether it was prior to the institution of this suit. He was one of the complainants in the earlier suit, as executor.

Q He is also one of the complainants in this suit, is he not? A I expect so; I do not recall without seeing the bill.

Q Well, can you tell whether he was dead at the time the suit was started? A If you can tell me the date the suit was started, I can tell you; but I cannot tell you off-hand. (The papers were thereupon handed to the witness). I think Dr. Mitchell was alive at that time.

Q No attempt has been made to change this proceeding regarding Laurent S. Mitchell's death? A No; he died intestate and left no children; he was not married.

*By the Vice-Chancellor.*

Q And his death has not been suggested upon the record—I presume that is what counsel is directing your attention to? A I do not know Mr. Craven can tell you that.

*By Mr. Tackella.*

Q Can you tell who his heirs-at-law are?

The Vice-Chancellor: He has already stated who they were, and he said this party died intestate.

Q They were the other parties complainant in this suit? A Yes.

Q No other persons? A No.

Q Mr. Herrmann, you stated that the title to the property is disputed by these defendants—is the title disputed by anyone else? A No.

*L. Edward Herrmann, cross.*

Q Why was this suit started?

Mr. Craven: I object.

The Vice-Chancellor: I will admit the question; I think it is proper to find out as against whom the title is intended to be quieted; now, I suppose he is searching to find out whether somebody else is disputing this title; I will admit it. 10

A To quiet title.

Q At whose suggestion was this suit started?

A The parties complainant.

Q Did they come to you originally, or did someone send them to you.

Mr. Craven: I object to that. 20

The Vice-Chancellor: It cannot hurt you. I will admit it.

A They have been my clients for years.

Q And did they suggest that suit be started, or did you suggest to them that suit be started?

The Vice-Chancellor: Well, is that material, Mr. Tackella?

Mr. Tackella: I wanted to show the Court that there is a dispute on this title, and he knows; it will come out. 30

Mr. Craven: Well, in the pleadings we say the title is disputed.

The Vice-Chancellor: He is trying to elicit from Herrmann whether or not the title is disputed; I am going to allow it.

A Representing Mr. Mitchell in his lifetime, and his heirs-at-law since his death, and his devisees 40

*L. Edward Herrmann, cross.*

under his will, I have been continually endeavoring to procure from the defendants in this case, or those who claimed any title, or might have any title, deeds for this property. I have been in communication with these defendants in Russia. I have, over a period of at least fifteen, and  
 10 perhaps twenty, years, tried to communicate with them, because of what was alleged to have been a defect in an affidavit that was filed in the tax proceedings, which we discovered when Mr. Mitchell attempted to sell the property at auction to Mr. Van Winkle, or to Mr. Eberhard through Mr. Van Winkle. Now, the date of that must have been before Mr. Mitchell's death, when the Title Company examined the matter and said that the word "all" had been left out of the affidavit, reciting that So-and-so were the heirs-at-law of Delia Pychlau. The Title Company contended that the word "all" was necessary, otherwise the title was all right.  
 20

Q Is it not the fact that someone else disputed that title, and that was the reason you brought this suit? A It is not.

Q And how long have you been endeavoring to get a deed from the heirs-at-law of Delia Pychlau? A Twenty years.

30 Q Then, at the time you made the lease you knew who were, or who was the owner of this property, didn't you? A I did.

Q And you collected the money for that owner? A Yes.

Q Can you tell how much you collected in the twenty years?

Mr. Craven: I object.

40 A I cannot.

*L. Edward Herrmann, cross.*

Q Can you tell about how much? A I cannot.

The Vice-Chancellor: I do not see the materiality of that. I will sustain the objection.

Q To whom did you pay this money? 10

Mr. Craven: I object; I do not see the materiality of that.

A Mr. Mitchell, or his devisees or heirs-at-law.

Q And yet all this while, you knew that Delia Pychlau, or her heirs, were the owners of this property.

Mr. Craven: I object; it calls for a conclusion of law. 20

The Vice-Chancellor: Well, this witness says he knew who the owners were; now, I think it is a proper question, in view of that statement.

A I did not know that the Pychlaus were the owners, or claimed any ownership.

Q How did you find out that they were interested at all in this property? A Why, when the Title Company reported that the word "all" was left out of the affidavit and I wanted to find out who the heirs of Pychlau were that were served. 30

Q Who prepared the affidavit? A Mr. Welsh, in the Collector's office.

Q Did you give him any information? A None.

Q You had nothing to do with informing the Title Company, or anybody else, who drew that affidavit as to the heirs of Delia Pychlau? A No. 40

*L. Edward Herrmann, cross.*

Q Did you ever examine, or have anyone examine for you, the records of the Register's office as to a deed into Delia Pychlau, or out of Delia Pychlau?

10 Mr. Craven: I object. I do not understand what it is all about.

The Vice-Chancellor: Well, if you do not, how can I be expected to know until it comes out? As I understand, he tried to ascertain whether this witness knew whether other people were interested. This witness has said he knew who the owners of the property were; I suppose he is searching him to find out whether he does know, or how he does know. I will admit it.

20 Mr. Craven: But the record is self-evident.

Q Have you got that record here? A Yes. (The witness calls on Mr. Craven for the search.) Do you just want the search I had made?

Q I want the record of the deed into Pychlau. A I have the search that was made; I cannot give you the date. What is it you want?

30 Q The deed into Delia Pychlau. A The record discloses a deed—

Mr. Craven: I object to the admission of any deed, unless a certified copy or a true copy is offered.

Mr. Tackella: I mentioned that before; I wanted the Register's man here.

The Vice-Chancellor: Is the Register's man here?

40 A person in the audience: Yes.

*L. Edward Herrmann, cross.*

Mr. Tackella: Did you bring the record of this deed?

(The person addressed said that he did.)

Mr. Tackella: Then I offer that deed in evidence.

Mr. Craven: But that is not the deed.

10

The Vice-Chancellor: Well, I will let him send the man back for the proper deed.

Mr. Tackella (examining the paper): It is the deed.

The Vice-Chancellor (to Mr. Craven): Do you question seriously whether the record as contained in the search which your own witness has now before us, is not proper?

Mr. Craven: No; Mr. Tackella is putting us to strict proof; we will put him to the same strict proof.

20

The Vice-Chancellor: He did not put you to strict proof when he allowed you to put that certified copy in.

Q Will you tell us what the records disclosed?

A "Deed made by John N. J. Reute and Magdalen, his wife, to Delia Pychlau, dated May 21, 1862; recorded June 18, 1862; Liber 93, page 508."

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Q Now, this memorandum of search you are reading from Mr. Herrmann, was that made by you, or at your direction? A At my direction.

Q Is that a complete search of what the record disclosed in the Register's office, as to this property?

Mr. Craven: I object; I do not see how he can testify to that; that is a conclusion.

The Vice-Chancellor: Objection sustained.

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*L. Edward Herrmann, cross.*

Mr. Tackella: I took up, with the man at the window in the Register's office, the question of getting all the deeds here, and he said it would require a wagon, and I did not want to do that; I thought Mr. Herrmann could tell us that.

10       The Vice-Chancellor: You might have arranged that before the day of hearing, to see whether he would stipulate it.

Q Does that memorandum that you have before you, Mr. Herrmann, disclose any deed out of, or made by, Delia Pychlau? A It does not.

Q Do you know of your own knowledge, whether the records of the Register's office contain a deed out of Delia Pychlau? A Yes.

20       Q Out of Delia Pychlau? A Yes.

Q Just tell us what it was? A I found a deed made by the City Collector—

Mr. Tackella: I object to that—"by the City Collector"; I said "a deed from Pychlau."

30       The Vice-Chancellor: He is asking for a deed out of Delia Pychlau; now you are evidently going to talk about a deed by the Collector for Delia Pychlau. I will sustain the objection.

Q Is there any deed of record, that you know of, out of Delia Pychlau? A Do I understand your question to mean did she make a deed herself, personally?

Q Did she make a deed, personally, which is of record? A No.

Q You do not find any there? A No.

40       Q You were one of the witnesses to the will of Francis W. Mitchell, were you not? A I was.

*L. Edward Herrmann, cross.*

Q Have you got a copy of the will here? A I do not think so; I don't know.

Q Would you recognize it if I read it to you? A I think so.

Q This will of Mitchell has been probated in the Surrogate's office—has it, or has it not? A Yes. 10

Q I will read paragraph 4 of the Will of Francis W. Mitchell—

The Vice-Chancellor: I think you had better show it to the witness, first, before you read it; I do not know what it is leading to, and I do not want to get anything in this record that might be objected to afterwards.

Q I show you what purports to be a copy of the Will of Francis W. Mitchell, and ask you if that is a correct copy. A Do you want my opinion, or do you want me to say that it is? I cannot tell that, for there may be a word or two changed, I don't know. If it is of any importance, my recollection is that it is a copy; that appears to be a copy, though I am not certain of it. 20

Q Let me read this paragraph 4, and see if you recognize that as being paragraph 4 of the will? A You are going too far on my memory, Mr. Tackella. 30

Q "Fourth. I order, authorize and empower and give to my executors hereinafter named full power and authority to sell and convey any and all of my real estate situated in the State of New Jersey, and the purchaser or purchasers shall not be bound to see to the application of the purchase money, and the lands so conveyed shall thereby be discharged from the above annuity to my wife"? A I don't know; I don't know. 40

*James B. Stephens, direct.*

Q You do not? Where is the original will of Francis W. Mitchell? A Probated.

Q In the Surrogate's Office? A Yes.

10 Mr. Tackella: I ask, at this time, that we have an opportunity to produce the will? I imagine your Honor will not decide this today.

The Vice-Chancellor: Well, I want to hear the case today, though, if I can, so, if you do not conclude your case before recess, it is easy enough for you to telephone to the Surrogate's Office and ask them to send that down. I do not want to keep putting this off from day to day to receive evidence.

20 Mr. Tackella: I will have it here before the day is over, your Honor. I think that is all.

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JAMES B. STEPHENS, sworn.

*Direct examination by Mr. Herrmann.*

30 Q You are the husband of Cecile C. Stephens, one of the complainants in this suit? A I am.

Q Have you had anything to do with the affairs of the Estate of Francis W. Mitchell? A I have.

Q Since when? A January 1, 1906.

40 Q Since that time what have you done—what part have you had? A Mr. Mitchell died on May 7, 1903; I was married on June 14, 1905. During that year both Dr. Charlie and Dr. Laurie asked me if I would keep the books of the Estate of Francis W. Mitchell; I did, and I took charge on January 1, 1906.

*James B. Stephens, direct.*

Q Have you paid all of the taxes against the real estate owned by the Estate? A I have, since 1905—at least, not my own check, but I personally know that the taxes have been paid.

Mr. Tackella: I object to that, and ask to have it stricken out. 10

The Vice-Chancellor: Strike out the latter statement about the taxes having been paid.

Q You have charge of the books of the Estate?  
A I have.

Q Have the taxes on Lots 275 and 276 been paid by the complainants in this suit, since 1906?

Mr. Tackella: I object.

The Vice-Chancellor: I will sustain the objection. There is better proof, it seems to me, of the payment of the taxes than this witness' statement of that fact. 20

Q Have you endeavored to locate the tax bills and tax receipts? A If your Honor will allow me to state what I did, I can prove that the taxes were paid, of my own knowledge, as a fact.

Mr. Tackella: I ask to have that stricken out. 30

The Vice-Chancellor (to the Witness): Well, the other side has objected, thus far, to the questions put, and I am obliged to sustain it.

Q What means have you of knowing whether the taxes have been paid, or not, by the Francis Mitchell Estate?

Mr. Tackella: I object to that. 40

*James B. Stephens, direct.*

The Vice-Chancellor: I will have to sustain the objection, Mr. Herrmann; it seems clear to me that there is better evidence than this.

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Mr. Herrmann: Mr. Tackella is willing to admit that the taxes on this property have been paid by the Mitchell heirs, if we will agree to admit the search that he has here. I would be glad to have the search.

Mr. Tackella: That is, an exact copy from the Register's Office, and a copy of the order in the Circuit Court, and a copy of the abstract of search in the City Clerk's Office, filed in the tax proceeding.

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The Vice-Chancellor: Well, let it be marked. You agree that the taxes have been paid on this property by the heirs of Mitchell?

Mr. Craven: And we admit that that is the abstract of title.

Mr. Tackella: You will admit that the original papers will show that, if they are produced?

Mr. Craven: Yes.

30

The Vice-Chancellor: Well, if that is agreed to, it can be marked.

Mr. Herrmann: I now, at this time, offer in evidence tax bills on Lots 275 and 276, for the years 1896, 1897, 1898, 1899 and 1900.

The Vice-Chancellor: Is there any objection?

Mr. Tackella: No objection.

(The papers are admitted, and marked, as one exhibit, Exhibit C. 2.)

40

*Offer of Documentary Evidence.*

The Vice-Chancellor: It is understood between counsel that the abstract referred to is to be marked in evidence when it is presented?

Mr. Tackella: Yes.

No cross examination.

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## THE COMPLAINANTS REST.

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 THE CASE FOR THE DEFENDANTS.

Mr. Tackella: I will offer in evidence abstract of deeds recorded in the Register's Office of Hudson County covering the premises in question, which abstract also contains a statement of the records in the City Clerk's Office, being a statement of the proceedings and abstract of title for the sale of Lots 275 and 276, in Block 781, on the City Map, and known as Sale No. 7070. This abstract also contains an extract of an order made in the Hudson County Circuit Court, dated February 27, 1901, in Case No. 16719, in the Matter of the Application of Francis W. Mitchell for an order for a deed for Lots 275 and 276, in Block 781. This abstract also contains a copy of the Will of Francis W. Mitchell, and the probate proceedings on the sale. It also contains a copy of a final decree of the Court of Chancery made in the case of Laurent S. Mitchell and Charles A. Mitchell, Executors under the last will and testament of Francis W. Mitchell, deceased, complainants, and Delia Pychlau, and others, defendants, dated January 22, 1926, and recorded

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*Offer of Documentary Evidence.*

in the Register's Office, January 29, 1926, in Book 1597 of Deeds, page 34. I ask that that be marked in evidence.

Mr. Herrmann: I consent to the marking of the paper in evidence, as showing and being an abstract of the records.

10 The Vice-Chancellor: As to the instruments mentioned in it?

Mr. Herrmann: Yes. I, of course, object to the relevancy of the instruments mentioned in it.

The Vice-Chancellor: That is the understanding between counsel, is it?

Mr. Tackella: Well, he consented to have it go in.

20 Mr. Herrmann: You asked me if I would let that go in as showing the abstract of the records; I said, "Yes"—instead of having you produce the original record.

The Vice-Chancellor: That is what I understood you to say.

Mr. Herrmann: But I do not, of course, admit the pertinency and relevancy of the instruments indicated.

30 The Vice-Chancellor: All right; it will be marked with that understanding. Of course, you appreciate, Mr. Herrmann, that one of the jurisdictional requisites is that your client be in possession at the time of the filing of the bill; I am wondering whether your testimony has fully covered that. I recall that there was some testimony that you, as representative of the Mitchell parties, rented this property to the O'Mealia people for the placing of a bill-board upon it, and, also, at  
40 various times, you rented it to some air-

*Offer of Documentary Evidence.*

drome; but I do not recall that there was any testimony brought out as to who was in possession of this property on April 5, 1926, when this bill was filed.

Mr. Herrmann: If there is any doubt about that, I think I covered it.

The Vice-Chancellor: I am not sure myself, and I just want to find out, because I do not want this thing to go off on something that was never intended. 10

Mr. Herrmann: In case there is any doubt about it, my recollection is that it is now, and always has been, fenced in; and I would like to supplement that now (if there is any doubt about as to whether I said that, at the time), by saying that, at the filing of this bill, since and before, and for twenty years, it has always been fenced in; and I will add to that, that, each year, under the police regulations, I caused the sidewalks to be cleaned (both the Cambridge avenue end and the other end) of ice and snow, for the complainants in this case and their father, the predecessor. 20

The Vice-Chancellor: Well, I think that, perhaps, covers the idea in my mind as to some omission that there may have been. You might have stated that, but I do not recall it. 30

*James O'Neill, direct.*

JAMES O'NEILL, sworn.

*Direct examination by Mr. Tackella.*

Q Mr. O'Neill, are you employed by the  
County Clerk of the County of Hudson? A I  
10 am.

Q The County Clerk is also the Clerk of the  
Hudson County Circuit Court? A Yes.

Q Have you with you the papers in a case  
entitled "The Matter of the Application of Francis  
W. Mitchell for an order for a Deed for Lots  
275, 276, in Book 781, on City Map of Jersey  
City?" A I have.

Q What papers have you got? A Petition  
and notice, final order and bill of costs.  
20

*By the Vice-Chancellor.*

Q Containing the Registry number what? A  
Containing case in the Circuit Court, No. 16719.

Mr. Tackella: I ask to have these papers  
marked in evidence.

Mr. Herrmann: Objected to, on the ground  
that they are immaterial.

The Vice-Chancellor: They will be re-  
30 ceived, subject to the objection, because they  
come in on the counter-claim. They will be  
received under your objection. You had  
better have an abstract of them, because I do  
not want to have the original papers here.

Mr. Herrmann: I understand, by your  
Honor's ruling, that this depends upon the  
objection we made as to this counter-claim—  
if that falls, it falls with it?

The Vice-Chancellor: That is right.  
40

*Thomas F. Shallis, direct.*

(The papers, being original records, were not marked.)

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THOMAS F. SHALLIS, sworn.

*Direct examination by Mr. Tackella.*

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Q You are employed in the City Clerk's Office of the City of Jersey City? A Yes, sir.

Q In what capacity? A Assistant to the City Clerk.

Q And you have your records with you, of the City Clerk's office, No. 7070? A Sale No. 7070.

Q And they are the proceedings and record of that sale—of the sale of Lots 275, 276, in Block 781? A To the best of my knowledge, they have been filed— 20

Q No, I mean, those are the papers in the proceeding for the sale of the property? A Yes, sir.

Q Just tell us what papers you have?

The Vice-Chancellor: Enumerate the papers.

A Abstract of the title of Henry A. Gaede, Sale No. 7070, to Lots 275, 276, in Block 781, Map of Jersey City. 30

Q It is all attached together, is it not? A Yes, it is all attached together.

Mr. Tackella: I ask to have that marked. (Same objection.)

The Vice-Chancellor: This offer will be received the same as the other.

(The papers were marked Exhibit D. 1.) 40

*Thomas F. Shallis, direct.*

Q What else have you got? A Search Fees, filed on Lots 275, 276, Block 781, Central avenue, Jersey City; with "Francis W. Mitchell" endorsed thereon—evidently filed by Wallis, Edwards & Bumsted.

10 Q The Search Fee also contains a statement of the record of the deeds in the Register's Office, does it not? A I will read the description in the statement—

Q No, I don't want that—does it also contain a record of the deeds filed in the Register's Office? A Yes, sir.

Mr. Tackella: I ask to have that marked.

Mr. Herrmann: I do not want to be making objections to each one of these offers.

20 The Vice-Chancellor: No; your objection is to all of them. They all relate to the records in the City Clerk's Office, and they connect up with that other matter that was mentioned a moment ago.

Q What else have you? A Three notices to redeem, filed in the City Clerk's Office, in the year 1900; their record numbers are 573, 575 and 577.

30 Mr. Tackella: Those are the record folios, not the record itself. I asked to have them marked.

(Admitted, subject to the same objection, and marked, respectively, Exhibits D. 3, D. 4 and D. 5.)

40 Q What else have you? A Final Order in the Matter of the Application of Francis W. Mitchell for order for a deed for Lots 275, 276,

*Minutes of Final Hearing.*

in Block 781, under Chapter 112 of the Laws of 1886, and supplements, out of the Hudson County Circuit Court, by Wallis, Edwards & Bumsted, attorneys; filed in the City Clerk's Office, March 22, 1901; record folio 805.

Mr. Tackella: I offer it in evidence. 10

(Admitted, subject to same objection, and marked Exhibit D. 6.)

Q All of these papers you have just testified to are filed with Case No. 7070 in the City Clerk's Office? A Yes, known as Sale No. 7070.

No cross examination.

The Vice-Chancellor: Are you going to have copies of these papers made? 20

Mr. Tackella: Yes, I will. Of course, there is an extract in the proceedings of all of these.

The Vice-Chancellor: Well, it may be sufficient, but I do not know what they are. If there is any need for certified copies, I will ask for them.

Mr. Tackella: I want to offer in evidence all papers on file in the Office of the Clerk in Chancery in the case of Laurent S. Mitchell and Charles A. Mitchell, Executors under the last Will and Testament of Francis W. Mitchell, complainants, and Delia Pychlau, *et als.*, defendants. Those papers, if your Honor please, are not here; I have sent for them. 30

Mr. Herrmann: I do not want to be captious about this thing, but let me explain what this situation is: The Title Company, in examining the title, were inclined to the 40

*Minutes of Final Hearing.*

10 opinion that the Executors, having a bare power of sale, had no right to acquire this title; now, if this is offered, and they desire to contend that this decree is binding, that decree excluded them, and declared the title to be in these Executors; so there is no controversy.

The Vice-Chancellor: Then it ought to be to your interest to have it admitted.

Mr. Herrmann: I know, but I don't want to be captious.

The Vice-Chancellor: Well, these papers are offered; if there is no objection, I will admit them; if you do object, I will hear your objection.

20 Mr. Herrmann: I don't want to be captious, but your Honor may have to reach a conclusion—

The Vice-Chancellor: I cannot tell until I look at them. They are offered, and I will admit them if there is no objection to them. (The offer is admitted.)

Mr. Tackella: That is our case.

The Vice-Chancellor: Don't you want to offer some record of the Will?

30 Mr. Tackella: There is an exact copy of it in the papers.

The Vice-Chancellor: I know, but they may not permit you to use it; I don't know; I do not want to have any misunderstanding about it.

Mr. Craven: The will is in here.

40 The Vice-Chancellor: But I understood you to object before, when a question was asked of Mr. Herrmann as to that; you see

*Minutes of Final Hearing.*

that Mr. Herrmann stated that he could not say that was a true copy of the paragraph of the Will.

Mr. Herrmann: We will agree that that is a copy.

The Vice-Chancellor: All right; that paper has been marked, has it not? 10

Mr. Tackella: Not yet.

(The defendants rest.)

Mr. Herrmann: My motion now is to move to strike out the counter-claim and amended answer, because there has been no attempt made to prove that there was any indication of fraud upon the part of the complainants or their predecessor in title.

The Vice-Chancellor: Well, Mr. Herrmann, the counter-claim, as I recall the offer of Mr. Tackella, is based, to some extent, upon the record of the proceedings in that other case, plus this record of the Circuit Court, and the record in the City Clerk's Office. Now, what the papers in the Chancery case show I do not know, nor do I know what the Circuit Court records show. I have heard what was said about the City Clerk's Office, and I do not think I can, at this time, pass on that question. You are making the motion, and of course I will reserve the determination of it. If I had all these papers before me I might be able to discuss the matter with you, or consider it, but I do not feel I can do it under the circumstances. 20  
30

Mr. Herrmann: Let me read to your Honor the amendment. (Reading the same.) I do not know of a scintilla of proof here of any fraud. 40

*Minutes of Final Hearing.*

The Vice-Chancellor: Well, there may be some fault found with the pleadings themselves, but I think you folks had better address yourselves to the Court by a memorandum; that would be a better way. When can I have these original papers?

10 Mr. Tackella: I sent a telegram on Tuesday morning.

The Vice-Chancellor: I do not see that I can undertake to determine this matter without having a discussion of the problems by the respective counsel. Now, whether or not I ought to determine it on an oral argument, or whether on a memorandum, I cannot say. I cannot determine it until I see these papers, anyhow. (To Mr. Herrmann): By the way,  
20 you just addressed yourself to the amended pleading, but there is a counter-claim, too.

Mr. Herrmann: I also stated as to the counter-claim.

The Vice-Chancellor: Fraud is alleged, anyhow, and whether that has been proven I suppose I have to determine not only on the testimony adduced, but these various papers, and I cannot see that I can do justice  
30 to these gentlemen by listening to an oral argument, until these papers come in.

Mr. Herrmann: May I make the suggestion that the papers be furnished as soon as possible.

Mr. Craven: Couldn't you go over the papers now, and copies would not have to be made, because they are very voluminous.

The Vice-Chancellor: What papers?

Mr. Craven: The County Clerk's papers.

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*Minutes of Final Hearing.*

The Vice-Chancellor: No, he is talking about the other papers; but I presume, if you people can agree upon the papers that you submit to me I have no objection.

Mr. Craven: I can give him a copy of all the pleadings in the old case.

The Vice-Chancellor: Well, I don't know 10  
but that there may be other things in that record that I may be interested in.

Mr. Herrmann: Could you, after all the papers are gotten together, indicate some time when you can hear our oral argument? Perhaps, when you have finished the examination of the papers, you will notify us that you are ready to hear argument.

The Vice-Chancellor: (After consulting his diary): My calendar has me tied up an awful lot between now and next September on trial days. I know next Monday I have a case set for hearing; I don't know how long it will take. 20

Mr. Herrmann: Will you have had a chance, by that time, to examine these papers?

The Vice-Chancellor: I do not know.

Mr. Herrmann: It would be unfair to come in and attempt to argue it without your Honor first having had an opportunity to examine what is in the papers. 30

The Vice-Chancellor: I certainly would like to have an examination of the papers. Well, I suggested in the beginning some ideas in my mind as to the rule applicable to matters of this kind, and I understood you to say that you have some citations that you want to call the Court's attention to as to the 40

*Minutes of Final Hearing.*

10 admissibility of these proceedings which you say, undertakes to attack collaterally your clients' title; now, if you would submit to me those cases I would be glad to examine them, too, and I call your attention, as I think I told you, to the case of Vice-Chancellor Stevenson on the question of quieting title, which I think is proper for both counsel to read.

(Mr. Craven handed to the Court a partial memorandum.)

The Vice-Chancellor: Does this memorandum cite that case of Vice-Chancellor Stevenson?

Mr. Craven: I do not know which one it is.

20 The Vice-Chancellor: It is a very elaborate opinion, and he criticised very much, as I recall it, the statute itself, in some respects, and indicated, too, as I recall, the necessity for rather strict proof under certain sections of the statute. I only have a general knowledge of the case because I came across it in my practice.

Mr. Herrmann: Your Honor does not recall the name of the case?

30 The Vice-Chancellor: No, I do not.

Mr. Craven: I can, in a very little time, get out a brief giving all of those citations, for your Honor.

40 The Vice-Chancellor: Well, I would like to have a memorandum from you both, because, when you folks started off today you seemed to be very much in opposition to each other as to the status of this matter, and as to possession. Now, you show nothing about that, Mr. Tackella.

*Minutes of Final Hearing.*

Mr. Tackella: Well, I relied upon the weakness of their case; they have to establish possession.

The Vice-Chancellor: Some of the cases, as I remember, are somewhat against you on that, aren't they?

Mr. Tackella: If they make out a *prima facie* case, then it comes back to me, of course. 10

The Vice-Chancellor: Well, you had better both submit to me such memorandum as you have, and see, in the meantime, that these papers get to me from the Court of Chancery, and I will let counsel know if I want to hear them, if I feel that I want to hear them, unless you actually ask for a hearing of an oral argument and feel that it is going to be satisfactory for yourselves and necessary for the Court. I will consider the papers but I will let counsel know, when I have had a chance to consider them, and then ask whether you want to submit an oral argument. I may say that I do not care to hear counsel orally, if it is not necessary, because of the position I am in in regard to other matters. 20

(Case held for briefs.) 30

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Jersey City, N. J., October 24, 1927.

Upon motion of Mr. Herrmann that the case be re-opened for the introduction of further testimony, the motion was granted, and an order made and signed, and Monday, October 31, 1927, was fixed for the taking of the said testimony, at the Chancery Chambers, Jersey City, N. J., at 40

*Thomas F. Shallis, direct.*

ten o'clock in the forenoon, or as soon thereafter as counsel could be heard.

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Chancery Chambers, Jersey City, N. J.,  
October 31, 1927.

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The further hearing of the matter was resumed, pursuant to the order of the Court made for the purpose of taking further proof, in the presence of the counsel of the respective parties.

THOMAS F. SHALLIS, sworn.

*Direct examination by Mr. Craven.*

20 Q What is your occupation? A Assistant to the City Clerk.

Q Of Jersey City? A Of Jersey City.

Q Have you got the record of Tax Sale Proceedings, Nos. 1233 and 1235? A I have (producing papers).

30

Mr. Craven: I would like to offer in evidence Tax Sale No. 1233 from the City Clerk's Office, Jersey City, containing an affidavit of Henry A. Gaede, and an affidavit of publication from the Jersey City News; that is in respect to Lot No. 275, in Block 781, Commissioners Adjustment Map of the County of Hudson—

Mr. Tackella: Before they are accepted in evidence I would like to put an objection on the record.

40

The Vice-Chancellor: Well, let him offer them all first. Before they are admitted I will afford you an opportunity to be heard.

*Thomas F. Shallis, direct.*

Mr. Craven (Continuing): I offer, also, papers in Tax Sale No. 1235, from the City Clerk's Office of Jersey City, containing an affidavit of Henry A. Gaede, with notice attached thereto, under date of February 10, 1891, and publication from the Jersey City News, with notice attached thereto, in respect to Lot No. 276 in Block 781, Commissioners Adjustment Map. (The Court stated that these being original records, they should not be marked, but that the Court wanted certified copies of the same furnished to him.) 10

Mr. Craven: I have plain copies.

The Vice-Chancellor: Well, if both of you parties agree—

Mr. Tackella: I think what he ought to do is what I did; I had copies prepared and the City Clerk examined them and marked them true copies. 20

The Vice-Chancellor: Well, you had better do that.

Mr. Craven: If you want that done, I will do it.

The Vice-Chancellor: Yes, because it may depend on some of these records, and I think you had better do it in that way. 30

Q Do you know whether these same records were down here at the previous hearing? A Yes—

Mr. Tackella: I object to that as immaterial.

The Vice-Chancellor: Oh, yes; he says "Yes"—if they were, I want to know why 40

*Minutes of Final Hearing.*

they were not offered, if they were thought to be material.

Q Do you have any recollection of what transpired at that hearing in reference to this Tax Sale Proceeding? A Yes.

10 Q What was your recollection? A My recollection—

The Vice-Chancellor: I cannot let him say that; how am I concerned with what his recollection was as to what transpired in court?

Mr. Craven: Why, it was part of the record that was omitted, your Honor.

The Vice-Chancellor: I won't permit that.

20 Mr. Tackella: I would like to put our objection on the record: The notices in both Tax Proceedings are addressed to Henry W. Pychlau or Pychlan, Delia Pychlau or Pychlan, Annia Pychlau or Pychlan and Elwin Pychlau or Pychlan; I object to these papers going into evidence, upon the ground that they are incompetent to explain a way or justify the fraud perpetrated by these complainants' father, Francis W. Mitchell,  
30 through whom they obtained title, in obtaining his deed from the County Clerk, based upon the record in the municipal tax proceeding, and based upon the order of the Circuit Court. I do not know whether I have made myself clear: These cannot justify that fraud. And I further object on the ground that these complainants cannot succeed, if they succeed at all, on the weakness of the defendants' case, but they must prove their  
40 case and their title by a preponderance of

*Minutes of Final Hearing.*

evidence. If the Court should permit this record to go in as evidence—this record of the City Clerk—the complainants will have established title in Henry A. Gaede and not themselves; and their title, or their right to the title, in the instant case, cannot be based upon a title in Henry Gaede, but must be based upon a good title in these complainants. I further object to the introduction of this evidence on the ground that it already appears as evidence in the instant case that the Tax Proceedings in the Gaede Tax Sale, which is now offered in evidence, is void, and is not in compliance with the statute. It also appears that these defendants in this case were not served with notice to redeem in the Gaede Tax Proceedings; and I would like to read on the record in this case, the evidence taken in the case of Laurent S. Mitchell, *et als.*, Executors of Francis W. Mitchell, against these same defendants.

Mr. Craven: I object.

The Vice-Chancellor: You cannot read it into the record, but you can call the Court's attention to it.

Mr. Tackella: Well, I call the Court's attention to it. This is a copy of the affidavit which your Honor has referred to, and I had these papers sent down so I might call your Honor's attention to it. Now, I will read from the original, if your Honor thinks it is proper.

The Vice-Chancellor: Well, you can read from the original if there is any part of that that you are relying upon. You have brought

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*Minutes of Final Hearing.*

10 these papers in as defendants, for some reason. The last time this matter was brought up the papers were before me, and I asked then why the papers in the previous suit were brought before me, and it was said the two dovetailed into each other. I cannot recall at this late day just who brought them here, or why; but they are records of this Court, anyhow, and I certainly ought to take judicial notice of them, because on those records a decree was based. You are referring now to the records in what Docket?

20 Mr. Tackella: The record in the case of Laurent S. Mitchell and Charles A. Mitchell, Executors under the last Will and Testament of Francis W. Mitchell *v.* Henry A. Gaede, Docket No. 59, page 173. The testimony of John D. Craven in that case—

The Vice-Chancellor: Mr. Craven, as I understand, is conceded to be associated with L. Edward Herrmann, the solicitor of record in this proceeding—is that right, Mr. Craven—you are an attorney-at-law?

Mr. Craven: Counsellor-at-law.

30 Mr. Tackella: He says (reading from the affidavit of John D. Craven): "I am the solicitor in charge of this matter, appearing for L. Edward Herrmann, Esquire, and I have made an examination of the title to these premises. It appears by deed dated May 21, 1862, and recorded in Book 93 of Deeds on Hudson County, on page 508, the deed was in one Delia Pychlau; that by deed dated November 24, 1891, recorded in Book 553, page 521, it was attempted to convey the interest of Delia Pychlau under a tax sale." I call your Honor's attention, without re-

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*Minutes of Final Hearing.*

ferring to the affidavit, that that deed is the deed from the City Collector of the City of Jersey City to Henry A. Gaede. The testimony of John D. Craven further says: "At that time Delia Pychlau had died, and title would have vested in her heirs, and all of the heirs were not served in this tax proceeding." 10  
 The affidavit further refers to the heirs-at-law of Delia Pychlau, who are the same defendants in the instant case. The testimony further is to this effect: "From this affidavit it appears that they are all the heirs of Delia Pychlau and their addresses are as set forth in said affidavit;" and Mr. Craven, in that—

The Vice-Chancellor: I do not know whether this record is in, to show what you are reciting. 20

Mr. Tackella: I was going to say that the affidavit he refers to was made by one of the heirs-at-law of Delia Pychlau, and is annexed to the affidavit of mailing filed in the former suit.

The Vice-Chancellor: Do you mean the affidavit of mailing in the present suit?

Mr. Tackella: No, in the former suit, Docket 59, page 173. Mr. Craven further says, in that case—"These heirs of Delia Pychlau might claim some interest in this property because they were not properly made parties in the tax proceeding." I further want to call the Court's attention to the affidavit attached to the Gaede notices to redeem, wherein he sets forth the addresses of the Pychlaus, I call the Court's attention to this fact because it substantiates the fraud upon which Mitchell obtained the tax deed. 40

*Minutes of Final Hearing.*

The Vice-Chancellor: That Gaede affidavit is dated when—is that the one of February 10, 1891?

Mr. Tackella: February 10, 1891, and refers to 1891.

10 The Vice-Chancellor: Well, I will receive these papers in evidence, subject to your objection, because this matter is not very fresh in my mind now; there has been so much heretofore, that I want to get it all in.

(Testimony closed.)

(After argument by Mr. Craven, the Court held the matter for further consideration.)

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**EXHIBIT C. 1.**

JERSEY CITY, by COLLECTOR           DEED  
                   TO                                 DATED  
 F. W. MITCHELL                         MARCH 22-1901.  
 Blk. No. 1314

TO ALL TO WHOM THESE PRESENTS     10  
 SHALL COME, I, ROBERT DAVIS, City Col-  
 lector of the Mayor and Aldermen of Jersey  
 City, a Municipal Corporation in the County of  
 Hudson and State of New Jersey send Greeting.

WHEREAS, pursuant to an Act of the Legis-  
 lature of New Jersey passed March 30th, 1886,  
 entitled:

An Act concerning the settlement and collec-  
 tion of arrearages of unpaid taxes, assessments     20  
 and water rates or water rents in cities of this  
 state and imposing and levying a tax assess-  
 ment and lien in lieu and instead of such arrear-  
 ages and to enforce the payment thereof and to  
 provide for the sale of lands subjected to future  
 taxation and assessment and the Supplements  
 and Acts amendatory thereof upon application  
 duly and regularly made after lawful notice by  
 the proper authorities of the said City to the  
 Circuit Court of the County of Hudson and after  
 due hearing as by said act provided said Court     30  
 did appoint Commissioners of Adjustment in and  
 for said City.

AND WHEREAS said Commissioners of Ad-  
 justment after and upon due notice, hearing and  
 examination as in said Act prescribed did fix,  
 adjust and determine as to each parcel of land  
 hereinafter described, how much of the arrear-  
 ages of taxes and assessments together with  
 subsequent taxes and assessments as in said  
 Act defined remaining against said land ought in     40

*Exhibit C. 1.*

10 fairness, equity and justice to be laid, assessed  
 and charged against and actually collected from  
 said land of all which said Commissioners kept  
 a record wherein was entered their determina-  
 tion and the other matters required to be entered  
 therein and did make and file a map and report  
 20 duly certified, which after and upon due notice  
 examination revision and hearing was by said  
 court confirmed upon which confirmation a certi-  
 fied copy of said report and assessment map  
 filed therewith were duly transmitted to and filed  
 by the City Collector of said City whereupon  
 the amount of said tax and assessment so fixed  
 and certified become immediately due and pay-  
 able but after the expiration of six months from  
 the filing of the said certified copy of said report  
 20 and assessment map still remained due and un-  
 paid.

AND WHEREAS after giving notice by ad-  
 vertisement as in said Act required the said  
 City Collector did on the sixth day of October  
 A. D. 1896 make sale at public auction to the  
 highest bidder for the same to wit: to F. W.  
 MITCHELL all of the following described lands  
 and premises to wit:

30 LOTS 275 and 276 in Block 781 fronting on  
 Central Avenue in the Fourth District of Jersey  
 City, New Jersey, as laid down and shown on an  
 Assessment Map accompanying a Report Num-  
 ber 102 made by the Commissioners of Adjust-  
 ment and filed with their report in the office of  
 the Clerk of the County of Hudson a certified  
 copy of which Report and Map was transmitted  
 to and filed by me the said City Collector in my  
 office for the sum of Three hundred and eighty-  
 two and 59/100 Dollars being a sum not less than  
 40 the amount due from the same as appears by said

*Exhibit C. 1.*

report with interest and costs of which sale the said City Collector did execute and deliver to the said purchaser a certificate setting forth the particulars thereof and containing a covenant on the part of said City to refund to said purchaser his heirs, devisees or assigns the said amount paid for said lands and premises according to directions of said Act without interest in case the title to the same should prove invalid. 10

AND WHEREAS, William Star Goodspeed, Shepphard Goodspeed, Alene Augusta Goodspeed, Arthur Baxter Goodspeed, four of the persons having an interest in said lands are infants under the age of twenty one years.

AND WHEREAS, the Circuit Court of the County of Hudson upon petition notice hearing, inquiry and proceedings as in the statute provided did on the twenty fifth day of February nineteen hundred and one make order that this deed be made and delivered to said purchaser his heirs or assigns conveying unto him, his heirs and assigns, all the said lands including all the interest as estate therein or lien thereon belonging to said infants. 20

AND WHEREAS, said certificate of sale, has been surrendered to me and proof has been duly made by affidavit of Edwin F. Smith agent of said purchaser, duly filed in the office of the City Clerk of Jersey City within one month after date of service that notice of said sale in writing, has been given in the manner prescribed by said Acts, by the said purchaser to every persons who has an estate in or mortgage upon said lands and premises whose estate or lien appears of record in the County of Hudson to wit: to Henry A. Gaede, Trustee,—Robert Campbell, Mary A. Goodspeed, Executrix: William Star Goodspeed, 30 40

*Exhibit C. 1.*

Infant, Arthur Baxter Goodspeed, Infant, Shepard Goodspeed, Infant, Alene Augusta Goodspeed, Infant, heirs of William Goodspeed

10 AND WHEREAS, more than six months have expired since such notice was given to said person and no person has redeemed said lands and premises in the manner set forth in said Act nor in any manner.

20 NOW KNOW YE, That I, the said Robert Davis, City Collector of the Mayor and Aldermen of Jersey City under and by virtue of the said Acts of the Legislature and upon proceedings which have been taken under the authority of the same and for and in consideration of the sum of money for which said lands and premises were sold the receipt whereof is hereby acknowledged have granted, bargained, sold, assigned, transferred conveyed and confirmed and by these presents do grant, bargain, sell, assign transfer convey and confirm unto the said F. W. MITCHELL his heirs and assigns forever, the above described land and premises with the appurtenances.

30 TO HAVE AND TO HOLD the same unto the said F. W. MITCHELL, his heirs and assigns, to his and their own proper use benefit and behoof in as full ample and beneficial a manner as by virtue of the said Acts, and the proceedings has and taken in pursuance thereof, I may can or ought to convey the same.

IN WITNESS WHEREOF, I ROBERT DAVIS, the City Collector as aforesaid have hereunto set my hand and I, M. J. O'DONNELL, Clerk of said City, have hereunto affixed the Corporate seal of said City, and attested the



*Exhibit C. 1.*

Sworn and subscribed at Jersey  
City this 27th day of March, A. D.  
1901, before me

JAS H. CLARK

COMMISSIONER OF DEEDS OF N. J.

10 Rec'd in the office and Recorded April 16,  
1901 @ 10:27 A. M.

No. 1768.

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

20 I, CHARLES F. X. O'BRIEN, Register of the  
County of Hudson, do hereby Certify that the  
foregoing is a true and correct copy of a certain  
Deed as the same is on Record in my Office in  
Book 773 of deeds on page 466 &c.

IN TESTIMONY WHEREOF, I have hereunto set  
my hand and seal this 2nd day of October A. D.,  
1926

CHARLES F. X. O'BRIEN,  
Register

By CHARLES M. AUSTIN,  
Deputy Register

(SEAL)

30

REGISTER'S OFFICE  
Hudson County, N. J.  
Certified Copy of Deed  
Jersey City by Collector  
to  
F. W. Mitchell

40

Fees: \$3.50.

*Exh*

EXHIBIT C. 2.

1000

**EXHIBIT C. 2.**

—1900—

BRING THIS BILL WHEN PAYMENT IS MADE.

N. B. All persons paying Taxes or Assessments will examine their Bills and the City Map, to see that they are paying upon the right property, as the City will not be responsible for or return money paid in error on the wrong property.

CITY COLLECTOR'S OFFICE

Room No. 1, CITY HALL.

Book 5—Folio 164—Line

To THE MAYOR AND ALDERMEN OF JERSEY CITY, Dr.

Mr. Francis W. Mitchell

For the Annual Tax December, 1900, to December, 1901, Assessed for State School,  
County and City Purposes.

The City Collector gives notice that the Board of Appeal in cases of Taxation will meet in the Assembly Chamber, City Hall, from 5 to 9 P. M. each Tuesday and Friday evening and Thursday afternoon from 2 to 5 o'clock in December, and each Tuesday and Friday evening from 7 to 9 P. M. in January, and every Friday evening from 7 to 9 P. M. in February by which time all appeals must be presented.

Upon all Taxes paid prior to the 20th day of December, 1900, interest at the rate of 12 per cent. per annum will be deducted from the time of payment to that date. If not paid until after the 31st of December, 10 per cent. interest will be collected from December 20th, 1900, to date of payment.

RATE OF TAXATION: \$20.10 on a thousand for City; \$5.52 per thousand for County; \$2.58 per thousand for State School; Total \$28.20 on a thousand

Payable in Jersey City or New York Funds only.

Office Hours from from 9 a. m. to 4 p. m. 9 a. m. to 12 m. Saturdays.

Draw Check to order of **ROBERT DAVIS**, City Collector.

BLOCK New	LOT No. New	Street No.	Location of Premises	House and Lot	Vacant Lot	Value of Real Estate	State Poll Tax	Total Amount Taxes
781	275	448	Central Ave		1	1600		4512
	276	450	"		1	1600		4512
						3200		9024
							JWL	276
								9300

(Stamp)  
COMPTROLLER'S OFFICE  
\$9300  
Apr 11 1901

R. F. JORDAN Comptroller.

Received Payment,

(Stamp)  
CITY COLLECTOR,  
Paid Apr 11 1901 By Check CK  
Jersey City

ROBERT DAVIS,  
Per Maurer City Collector.

Exhibit C. 2.

—1899—

BRING THIS BILL WHEN PAYMENT IS MADE.

N. B. All persons paying Taxes or Assessments will examine their Bills and the City Map, to see that they are paying upon the right property, as the City will not be responsible for or return money paid in error on the wrong property.

CITY COLLECTOR'S OFFICE

Room No. 1, CITY HALL.

Book 5—Folio 166

TO THE MAYOR AND ALDERMEN OF JERSEY CITY, Dr.

Mr. Francis W. Mitchell

For the Annual Tax December, 1899, to December, 1900, Assessed for State School,  
County and City Purposes.

The City Collector gives notice that the Board of Appeal in cases of Taxation will meet in the Assembly Chamber, City Hall, from 5 to 9 P. M. each Tuesday and Friday evening and Thursday afternoon from 2 to 5 o'clock in December, and each Tuesday and Friday evening from 7 to 9 P. M. in January, and every Friday evening from 7 to 9 P. M. in February, to receive application for correction of Assessment where any error exist, by which time all appeals must be presented.

Upon all taxes paid prior to the 20th day of December, 1899, interest at the rate of 12 per cent. per annum will be deducted from the time of payment to that date. If not paid until after the 31st of December, 10 per cent. interest will be collected from December 20th, 1899, to date of payment. RATE OF TAXATION: \$19.87 on a thousand for City; \$5.87 per thousand for County; \$2.66 per thousand for State School; Total, \$28.40 on a thousand.

Payable in Jersey City or New York Funds only.

Office Hours from 9 a. m. to 4 p. m. 9 a. m. to 12 m. Saturdays.

Draw Check to order of ROBERT DAVIS, City Collector.

BLOCK	LOT No. Old	LOT No. New	Street No.	Location of Premises	House and Lot	Vacant Lot	Value of Real Estate	State Poll Tax	Total Amount Taxes
781		275	448	Central Ave		1	1600		4544
		276	450	"		1	1600		4544
							3200		9088
								JWL	1184
									10272

(Stamp)  
COMPTROLLER'S OFFICE  
\$102 72  
Apr 11 1901  
R. F. JORDAN Comptroller

(Stamp)  
CITY COLLECTOR,  
Paid Apr 11 1901 By Check CK  
Jersey City  
ROBERT DAVIS,  
Per Maurer City Collector.

Received Payment.

Exhibit C. 2.

172

—1898—

BRING THIS BILL WHEN PAYMENT IS MADE.

N. B. All persons paying Taxes or Assessments will examine their Bills and the City Map, to see that they are paying upon the right property, as the City will not be responsible for or return money paid in error on the wrong property.

CITY COLLECTOR'S OFFICE

Room No. 1, CITY HALL.

Book 5—Folio 166

To THE MAYOR AND ALDERMEN OF JERSEY CITY, Dr.

Mr. Francis W. Mitchell

For the Annual Tax December, 1898, to December, 1899, Assessed for State School, County and City Purposes.

The City Collector gives notice that the Board of Appeal in cases of Taxation will meet in the Assembly Chamber, City Hall, from 2 to 5 P. M. each Tuesday and Friday afternoon and Wednesday evening from 7 to 10 o'clock in December and January, and each Wednesday evening from 7 to 10 o'clock in February, to receive application for correction of Assessment where any error exist, by which time all appeals must be presented.

Upon all taxes paid prior to the 20th day of December, 1898, interest at the rate of 12 per cent. per annum will be deducted from the time of payment to that date. If not paid until after the 31st of December, 10 per cent. interest will be collected from December 20th, 1898, to date of payment. RATE OF TAXATION: \$20.42 on a thousand for City; \$5.42 per thousand for County; \$2.76 per thousand for State School; Total, \$28 60 on a thousand. Office Hours from 9 a. m. to 4 p. m., Saturdays 9 a. m. to 12 m.

Draw Check to order of ROBERT DAVIS, City Collector.

BLOCK		LOT No.		Street	House and Vacant	Value of	Value of	State	Total
New	Old	Old	New	No. Location of Premises	Lot Lot	Real Estate	Personal Property	Poll Tax	Amount Taxes
781		275	448	Central Ave	1	1600			4576
		276	450	"	1	1600			4576
						3200			9152
								JWL	2112
									11264

(Stamp)  
COMPTRROLLER'S OFFICE  
\$112 64  
Apr 11 1901  
R. F. JORDAN Comptroller

(Stamp)  
CITY COLLECTOR,  
Paid Apr 11 1901 By Check CK  
Jersey City  
ROBERT DAVIS,  
Per Maurer City Collector.

Received Payment,

Exhibit C. 2.

173

BRING THIS BILL WHEN PAYMENT IS MADE.

N. B. All persons paying Taxes or Assessments will examine their Bills and the City Map, to see that they are paying upon the right property, as the City will not be responsible for or return money paid in error on the wrong property.

COLLECTION DEPARTMENT, CITY HALL.

Book 5—Folio 163

Mr. Francis W. Mitchell

To THE MAYOR AND ALDERMEN OF JERSEY CITY, Dr.

For the Annual Tax December, 1897, to December, 1898, Assessed for State School,  
County and City Purposes.

The City Collector gives notice that the Board of Appeal in cases of Taxation will meet in the Aldermanic Chamber, City Hall, from 2 to 5 P. M. each Tuesday and Friday afternoon and Wednesday evening from 5 to 9 o'clock in December and January, and each Wednesday evening from 7 to 10 o'clock in February, to receive application for correction of Assessment where any error exist, by which time all appeals must be presented.

Upon all taxes paid prior to the 20th day of December, 1897, interest at the rate of 12 per cent. per annum will be deducted from the time of payment to that date. If not paid until after the 20th of December, 10 per cent. interest will be collected to date of payment.

RATE OF TAXATION: \$20.36 on a thousand for City; \$5.84 per thousand for County; \$2.70 per thousand for State School Total \$28.90 on a thousand.

Office Hours from 9 to 4 o'clock except Saturdays.

ROBERT DAVIS, City Collector.

BLOCK		LOT No.		Street	Location of Premises	House and Vacant	Value of Real Estate	Value of Personal Property	State School Tax	State Poll Tax	Total Amount Taxes
New.	Old.	Old.	New.	No.		Lot	Lot				
781		275		448	Central Ave		1	1600		432	4624
		276		450	"		1	1600		432	4624
								3200			9248
										JWL	3054
											12302

(Stamp)  
COMPTROLLER'S OFFICE  
\$123 02  
Apr 11 1901  
R. F. JORDAN Comptroller

(Stamp)  
CITY COLLECTOR,  
Paid Apr 11 1901 By Check CK  
Jersey City  
ROBERT DAVIS,  
Per Maurer City Collector.

Received Payment,

Exhibit C. 2.

174

BRING THIS BILL WHEN PAYMENT IS MADE.

N. B. All persons paying Taxes or Assessments will examine their Bills and the City Map, to see that they are paying upon the right property, as the City will not be responsible for or return money paid in error on the wrong property.

COLLECTION DEPARTMENT, CITY HALL.

Book 5—Folio 166

Mr. Francis W. Mitchell

TO THE MAYOR AND ALDERMEN OF JERSEY CITY, Dr.

For the Annual Tax, December, 1896 to December, 1897, Assessed for State School,  
County and City Purposes.

The City Collector gives notice that the Board of Appeal in Cases of Taxation will meet in Room 6, Aldermanic Chamber, City Hall, from 5 to 9 P. M. each Monday and Friday in December and each Friday in January and February to receive applications for correction of Assessment where any error exist, by which time all appeals must be presented.

Upon all taxes paid prior to the 20th day of December, 1896, the interests at the rate of 12 per cent. per annum will be deducted from the time of payment to that date. If not paid till after the 31st of December, 10 per cent. interest will be collected from the 20th day of December to date of payment.

RATE OF TAXATION. \$19.58 on a thousand for City; \$5.20 per thousand for County; \$2.62 per thousand for State  
Office Hours from 9 to 4 o'clock except Saturdays. ROBERT DAVIS, City Collector.

BLOCK		LOT No.		Street	House and Lot.	Vacant Lot.	Value of Real Estate	Value of Personal Property	State School Tax	State Poll Tax	Total Amount Taxes
New.	Old.	New.	Old.	No. Location of Premises	Lot.	Lot.	Estate	Property			
781		275		448 Central Ave		1	1600		419		4384
		276		450        “		1	1600		419		4384
							3200				8768
										JWL	3770
										Adv	400
											12938

(Stamp)  
COMP TROLLER'S OFFICE  
\$129 38  
Apr 11 1901

R. F. JORDAN Comptroller

Received Payment,

(Stamp)  
CITY COLLECTOR,  
Paid Apr 11 1901 By Check CK  
Jersey City

ROBERT DAVIS,  
Per Maurer City Collector.

Exhibit C. 2.

**EXHIBIT C. 3.**

To Henry W. Pychlau or Pychlan, Delia Pychlau or Pychlan, Annie Pychlau or Pychlan and Elwin Pychlau or Pychlan:—

10 You are hereby notified that I have purchased for the sum of eleven hundred and twelve dollars and forty five cents lot 276 in Block No. 781, on assessment map, annexed to a report made by “Commissioners of Adjustment, appointed by the Circuit Court of the County of Hudson, in pursuance of Chapter CXII of the laws of 1886, a certified copy of which map was filed in the office of the City Collector of the City of Jersey City, N. J. on the tenth day of October, eighteen hundred and ninety, at a sale made by the City  
20 Collector of the said City, under and by virtue of the provisions of said act entitled:—

“An Act concerning the settlement and collection of arrearages of unpaid taxes, assessments and water rates or water rents in cities of this State, and imposing and levying a tax, assessment and lien in lieu and instead of such arrearages, and to enforce the payment thereof, and to provide for the sale of lands subjected to future taxation and assessment.”

30 Passed March 30th, 1886 and the supplements thereto.

And you are hereby further notified that you have, or claim to have an interest therein, and unless the said lot, tract or parcel of land shall be redeemed, as provided in said act, before the expiration of six months from and after the service and publication hereof, a deed for the same will be given, conveying to the purchaser

*Exhibit C. 3.*

the fee simple of said land and real estate according to the provisions of the said act.

Dated Jersey City, N. J. January 26th, 1891.

HENRY A. GAEDE, Purchaser  
No. 372 Central Avenue,  
Jersey City, N. J.

10

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

C. J. MILTON, being duly sworn according to law upon his oath saith that he is Clerk of the Jersey City News, a newspaper printed and published in Jersey City, in the County and State aforesaid, and that a notice, of which the annexed is a true copy, was published in said newspaper for 6 weeks successively, at least once in each week commencing on the 23rd day of January, 1891.

20

C. J. MILTON

Sworn and subscribed before me  
this 1st day of August, A. D. 1891.

J. A. M. REILLY,  
Notary Public N. J.

30

To Henry W. Pychlau or Pychlan, Delia Pychlau or Pychlan, Annie Pychlau or Pychlan and Elwin Pychlau or Pychlan:—

You are hereby notified that I have purchased for the sum of eleven hundred and twelve dollars and forty-five cents lot 276 on Block No. 781, on assesment map, annexed to a report made by "Commissioners of Adjustment, appointed by the Circuit Court of the County of Hudson, in

40

*Exhibit C. 3.*

pursuance of Chapter CXII of the laws of 1886, a certified copy of which map was filed in the office of the City Collector of the City of Jersey City, N. J. on the tenth day of October, eighteen hundred and ninety, at a sale made by the City Collector of the said City, under and by virtue  
 10 of the provisions of said act entitled:—

“An Act concerning the settlement and collection of arrearages of unpaid taxes, assessments and water rates or water rents in cities of this State, and imposing and levying a tax, assessment and lien in lieu and instead of such arrearages, and to enforce the payment thereof, and to provide for the sale of lands subjected to future taxation and assessment.”

Passed March 30th, 1886 and the supplements  
 20 thereto.

And you are hereby further notified that you have, or claim to have an interest therein, and unless the said lot, tract or parcel of land shall be redeemed, as provided in said act, before the expiration of six months from and after the service and publication hereof, a deed for the same will be given, conveying to the purchaser the fee simple of said land and real estate according to the provisions of the said act.

30 Dated Jersey City, N. J. January 26th, 1891.

HENRY A. GAEDE, Purchaser  
 No. 372 Central Avenue,  
 Jersey City, N. J.

Sale #1235 City Clerk's Office.

*Exhibit C. 3.*

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

HENRY A. GAEDE, of full age, being duly sworn on his oath saith that he is the purchaser of the premises described in the annexed notice; that he has in good faith made diligent inquiry for the residence and Post Office address of Henry W. Pychlau or Pychlan, Delia Pychlau or Pychlan, Annie Pychlau or Pychlan and Elwin Pychlau or Pychlan, the owners of the premises described in said notice hereto annexed; that he is creditably informed by Henry W. Pychlau, one of the owners of the said premises, that he the said Henry W. Pychlau, resides in the Town of Mitau, Russia and that the said Delia Pychlau, Annie Pychlau and Elwin Pychlau also reside in the same place, and that their Post Office address is Mitau, Russia; that this deponent did on the Fifth day of February, eighteen hundred and ninety-one place in the Post Office in the City of Jersey City, New Jersey, four letters, one directed to the said Henry W. Pychlau or Pychlan, Delia Pychlau or Pychlan, Annie Pychlau or Pychlan and Elwin Pychlau or Pychlan, at their said Post Office address in Mitau, Russia, with the postage prepaid, each containing a copy of the notice hereto annexed.

HENRY A. GAEDE

Sworn to and subscribed this 10th  
 day of Feb. 1891 before me.

JOHN BLOHM,  
 Notary Public, N. J.

*Exhibit C. 3.*

To Henry W. Pychlau or Pychlan, Delia Pychlau or Pychlan, Annie Pychlau or Pychlan and Elwin Pychlau or Pychlan:—

10 You are hereby notified that I have purchased for the sum of eleven hundred and two dollars and eighty-one cents lot 275 in Block No. 781, on an assessment map, annexed to a report made by “Commissioners of Adjustment, appointed by the Circuit court of the County of Hudson, in pursuance of Chapter CXII of the laws of 1886, a certified copy of which map was filed in the office of the City Collector of the City of Jersey City, N. J. on the tenth day of October, eighteen hundred and ninety, at a sale made by the City Collector of the said City, under and by virtue of the provisions of said act entitled:—

20 “An Act concerning the settlement and collection of arrearages of unpaid taxes, assessments and water rates or water rents in cities of this State, and imposing and levying a tax, assessment and lien in lieu and instead of such arrearages, and to enforce the payment thereof, and to provide for the sale of lands subjected to future taxation and assessment.”

Passed March 30th, 1886 and the supplements thereto.

30 And you are hereby further notified that you have, or claim to have an interest therein, and unless the said lot, tract or parcel of land shall be redeemed, as provided in said act, before the expiration of six months from and after the service and publication hereof, a deed for the same will be given, conveying to the purchaser

*Exhibit C. 3.*

the fee simple of said land and real estate according to the provisions of the said act.

Dated Jersey City, January 26th, 1891.

HENRY A. GAEDE, Purchaser  
No. 372 Central Avenue,  
Jersey City, N. J.

10

Sale #1233 City Clerk's Office.

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

HENRY A. GAEDE, of full age, being duly sworn on his oath saith that he is the purchaser of the premises described in the annexed notice; that he has in good faith made diligent inquiry for the residence and Post Office address of Henry W. Pychlau or Pychlan, Delia Pychlau or Pychlan, Annie Pychlau or Pychlan and Elwin Pychlau or Pychlan, the owners of the premises described in said notice hereto annexed; that he is creditably informed by Henry W. Pychlau, one of the owners of the said premises, that he, the said Henry W. Pychlau, resides in the Town of Mitau, Russia and that the said Delia Pychlau, Annie Pychlau and Elwin Pychlau also reside in the same place, and that their Post Office address is Mitau, Russia; that this deponent did on the Fifth day of February, eighteen hundred and ninety-one place in the Post Office in the City of Jersey City, New Jersey, four letters, one directed to the said Henry W. Pychlau or Pychlan, Delia Pychlau or Pychlan, Annie Pychlau or Pychlan and Elwin Pychlau or Pychlan, at their said Post Office address in Mitau, Russia, with the postage prepaid, each containing a copy of the notice hereto annexed.

20

30

HENRY A. GAEDE.

40

*Exhibit C. 3.*

Sworn to and subscribed this 10th  
day of Feb. 1891 before me.

JOHN BLOHM,  
Notary Public, N. J.

- 10 To Henry W. Pychlau or Pychlan, Delia Pychlau  
or Pychlan, Annie Pychlau or Pychlan and  
Elwin Pychlau or Pychlan:—

You are hereby notified that I have purchased  
for the sum of eleven hundred and two dollars  
and eighty-one cents lot 275 on Block No. 781,  
on an assessment map, annexed to a report made  
by "Commissioners of Adjustment, appointed  
by the Circuit court of the County of Hudson, in  
pursuance of Chapter CXII of the laws of 1886,  
20 a certified copy of which map was filed in the  
office of the City Collector of the City of Jersey  
City, N. J. on the tenth day of October, eighteen  
hundred and ninety, at a sale made by the City  
Collector of the said City, under and by virtue  
of the provisions of said act entitled:—

30 "An Act concerning the settlement and collec-  
tion of arrearages of unpaid taxes, assessments  
and water rates or water rents in cities of this  
State, and imposing and levying a tax, assess-  
ment and lien in lieu and instead of such arrear-  
ages, and to enforce the payment thereof, and to  
provide for the sale of lands subjected to future  
taxation and assessment."

Passed March 30th, 1886 and the supplements  
thereto.

40 And you are hereby further notified that you  
have, or claim to have an interest therein, and  
unless the said lot, tract or parcel of land shall  
be redeemed, as provided in said act, before the  
expiration of six months from and after the

*Exhibit C. 3.*

service and publication hereof, a deed for the same will be given, conveying to the purchaser the fee simple of said land and real estate according to the provisions of the said act.

Dated Jersey City, January 26th, 1891.

HENRY A. GAEDE, Purchaser 10  
No. 372 Central Avenue,  
Jersey City, N. J.

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

C. J. MILTON, being duly sworn according to law upon his oath saith that he is Clerk of the Jersey City News, a newspaper printed and published in Jersey City, in the County and State aforesaid, and that a notice, of which the annexed is a true copy, was published in said newspaper for 6 weeks successively, at least once in each week commencing on the 23rd day of January, 1891. 20

C. J. MILTON.

Sworn and subscribed before me  
this 1st day of August, A. D. 1891.

J. A. M. REILLY, 30  
Notary Public N. J.

*Exhibit C. 3.*

To Charles F. X. O'Brien, Register of Deeds,  
Hudson County, New Jersey, and Edward J.  
Holland, City Clerk of Jersey City  
Before John J. Fallon  
Monday October 31st 1927  
Witnessed October 24th, 1927.

10

Between

Charles A. Mitchell,  
et als,

Complainants,  
and

Henrietta A. Gaede,  
et als,

Defendants.)

Subpoena Duces  
Tecum

20 To Edward J. Holland, City Clerk of Jersey  
City:

You are commanded to bring with you and  
produce at the same time and place mentioned  
herein, all the papers in Sales for taxes, Jersey  
City, sales numbers being 1233, 1235 and 7070, in  
respect to lots 275 and 276 in Block 781, the  
papers including the affidavits of inquiry, affi-  
davits of mailing, affidavit of publication, the  
30 notices and affidavits of service, all other docu-  
ments, books, letters and papers of any nature,  
kind or description whatever that can or may  
afford any information or evidence in the cause  
herein mentioned.

L. Edward Herrmann  
Solicitor

Thomas Barber  
Clerk.

40

*Exhibit C. 3.*

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

PAUL J. KARST JR. of full age, being duly sworn according to law, on his oath deposes and say, that on the 25th day of October, 1927, he served a true copy of the within subpoena duces tecum, together with the sum of one dollar (\$1.00) upon Edward J. Holland, City Clerk, by delivering the same personally to him. 10

Paul J. Karst Jr.

S to and sub. before me this 25th day of October 1927.

John D. Craven  
 M C C of N. J.

20

To Charles F. X. O'Brien, Register of Deeds, Hudson County, New Jersey, and Edward J. Holland, City Clerk of Jersey City:

Between  
 Charles A. Mitchell,  
 et als,  
 Complainants,  
 and  
 Henrietta A. Gaede,  
 et als,  
 Defendants, } Subpoena Duces  
 Tecum 30

To Edward J. Holland, City Clerk of Jersey City:

You are commanded to bring with you and produce at the same time and place mentioned herein, all the papers in Sales for taxes, Jersey City, 40

*Exhibit C. 3.*

sales numbers being 1233, 1235, and 7070, in respect to lots 275 and 276 in Block 781, the papers including the affidavits of inquiry, affidavits of mailing, affidavit of publication, the notices and affidavits of service, all other documents, books, letters and papers of any nature,  
 10 kind or description whatever that can or may afford any information or evidence in the cause herein mentioned.

L. Edward Herrmann  
 Solicitor

Thomas Barber  
 Clerk

Between  
 Charles A. Mitchell,  
 et als,  
 20 Complainants,  
 and  
 Henrietta A. Gaede,  
 et als,  
 Defendants. } Subpoena Duces  
 Tecum

To Charles F. X. O'Brien, Register of Deeds,  
 Hudson County, New Jersey:

30 You are commanded to bring with you and produce at the same time and place mentioned herein, Book 552 of Deeds for Hudson County and Book 773 of Deeds for Hudson county, all other documents, books, letters and papers of any nature, kind or description whatever that can or may afford any information or evidence in the cause herein mentioned.

L. Edward Herrmann  
 Solicitor.

Thomas Barber  
 Clerk.

*Exhibit C. 3.*

Before John J. Fallon Thursday 24th March  
10 am

Witness March 17th, 1927.

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

10

EDWARD O'BYRNE, of full age, being duly sworn according to law on his oath deposes and says, that on the 21st day of March, 1927, he served a true copy of the within subpoena duces tecum upon Edward J. Holland, City Clerk, by delivering the same personally to Harry Mauchet, Deputy City Clerk, City Hall, and on the same date on Charles F. X. O'Brien, Register of Deeds, Hudson County, by delivering a true copy of the within subpoena duces tecum to Chester Austin, Deputy Register, personally.

20

Edward O'Byrne.

S&S to before me this 22nd day of  
March 1927.

John C. Craven

Master in Chancery of New Jersey.

30

40

Records of County Clerk of Hudson County  
 In the matter of the application of Francis W. Mitchell  
 Docket #16719.

## EXHIBIT D. 1.

State of New Jersey }  
 County of Hudson } ss.

10 EDWIN F. SMITH, of full age being duly sworn  
 on his oath says; that on Thursday the four-  
 teenth day of February nineteen hundred and one,  
 at No. 770 West End Avenue, in the City, County  
 and State of New York, he served a true copy  
 of the foregoing petition, affidavit and notice,  
 upon William Star Goodspeed, Arthur Baxter  
 Goodspeed, Shephard Goodspeed and Alene  
 Augusta Goodspeed, the infants therein named,  
 by handing a copy thereof for each of them to  
 their mother, Mary A. Goodspeed, with whom  
 20 said infants reside, and leaving the same with  
 her; such service being in conformity to the  
 standing rule of the Hudson Circuit Court.

Edwin F. Smith

Subscribed and sworn to at Jersey City,  
 N. J. this 25th day of February, 1901,  
 before me:

Howard C. Griffiths,  
 Master in Chancery of New Jersey

30

40

*Exhibit D.*

To William Star Goodspeed, Arthur Baxter Goodspeed, Shephard Goodspeed, Alene Augusta Goodspeed	}	Notice.
--	---	---------

Infants within named: and the guardian, father, mother or person *in loco parentis* of said infant. 10

TAKE NOTICE, that the foregoing petition and affidavit will be presented to the Circuit Court of Hudson County at the Court House in Jersey City, New Jersey, on the twenty fifth day of February, 1901 at ten o'clock, A. M. and application will then and there be made for the relief prayed for in said petition. 20

Wallis, Edwards & Bumsted,  
Attorneys of Purchaser.

#### HUDSON CIRCUIT COURT.

In the matter of the application of Francis W. Mitchell for an order for a deed for lot 275/ 276 block 781 under chapter 112 laws of 1886 and supple- ments.	}	30
---	---	----

To the Circuit Court of the County of Hudson.

The petitioner Francis W. Mitchell, of New York City, New York, respectfully shows that on the sixth day of October, eighteen hundred and ninety six, he purchased at a sale made by the City Collector of Jersey City, for the sum 40

*Exhibit D. A.*

of Three hundred and eighty two and 59/100 dollars certain lands known as lots Nos. 275-276 in block No. 781 fronting on Central Avenue in Jersey City, Hudson County, New Jersey, as laid down and designated upon an assessment map annexed to report No. 102 made by commissioners  
 10 of adjustment, appointed for said city by this court pursuant to chapter 112 of the laws of this State of 1886, and the supplements thereto.

That William Star Goodspeed, Arthur Baxter Goodspeed, Shephard Goodspeed and Alene Augusta Goodspeed, who appear to have an interest as heirs of William B. Goodspeed, deceased, in said lands, are infants under the age of twenty one years.

20 That all of said infants reside with their mother at No. 770 West End Avenue, New York City, New York, and have no other guardian.

That service in this State cannot be made upon either the said infants or their mother.

30 That said infants were duly served with a true copy of the notice to redeem from said tax sale more than six months since, and no one hath appeared and offered to redeem said lands, and your petitioner cannot ascertain that said infants have any estate with which to pay said moneys and redeem from said sale.

Your petitioner therefore prays that this Court will, if necessary, appoint a guardian *ad litem* of said infants, and inquire into the ability of said infants or their estate to redeem said lands and make an order directing the City Collector of Jersey City to deliver a deed to your petitioner conveying to him said lands and the interest and estate therein of the said infants and such other order in relation to such deed as may be equitable and just.

40

*Exhibit D. ■*

And your petitioner will ever pray etc.

Francis W. Mitchell  
Purchaser.

STATE OF NEW JERSEY }  
COUNTY OF HUDSON } ss. 10

EDWIN F. SMITH, of full age, being duly sworn,  
on his oath saith;

That he is the agent of Francis W. Mitchell  
the purchaser within named and charged with  
the duty of serving notices to redeem from tax  
sales and with the perfecting of titles under tax  
sales; that he has made due investigation to  
ascertain the names and residences of the persons  
entitled to notice to redeem the within described  
lands and also in the cases of the infants as to  
their ages, guardians, estate and ability to re-  
deem; and that the facts set forth in said peti-  
tion are true to the best of deponents knowledge,  
information and belief. 20

Edwin F. Smith

Sworn to and subscribed at Jersey City,  
this 13th day of February A. D. 1901

D. J. Edwards 30  
Master in Chancery of New Jersey

Filed Clerk's Office February 25, 1901 Hudson  
County, N. J.

Maurice J. Stack  
Clerk.

*Exhibit D.*

10	In the matter of the application of Francis W. Mitchell for an order for a deed for lots 275- 276 in Block 781 under Chap- ter 112 Laws of 1886, and sup- plements.	}	Final Order.  Sale No.
----	--	---	------------------------------

Francis W. Mitchell, of New York City, New York, having presented to the Circuit Court of the County of Hudson, a duly verified petition whereby it appears that he purchased at a sale made by the City Collector of Jersey City on the sixth day of October, eighteen hundred and ninety six, for the sum of Three hundred and eighty two and 59/100 Dollars, certain lands

20 known as lots 275 and 276 in Block 781, fronting on Central Avenue, in Jersey City, Hudson County, New Jersey, as designated and laid down on an assessment map annexed to report No. 102 made by Commissioners of Adjustment appointed for said City, by this Court, pursuant to Chapter 112 of the laws of 1886, and the supplements thereto, and that William Star Goodspeed, Arthur Baxter Goodspeed, Shepard Goodspeed and Alene

30 heirs of William B. Goodspeed, deceased, in said lands, are known to be infants under the age of twenty one years and that said infants were duly served with a true copy of the notice to redeem from said tax sale more than six months since, and that no one hath appeared and offered to redeem said lands and that the said infants reside with their mother, as aforesaid; and a copy of said verified petition and a proper notice of application for this order having been duly

40 given to said infants; and the Court being satis-

*Exhibit D. #.*

fied of the sufficiency of the said petition and of the truth thereof, and having inquired into the ability of said infants or their estate to redeem said lands, and being satisfied that proper opportunity has been given for such redemption;

It is on this 25th day of February, nineteen hundred and one, by the Circuit Court of the County of Hudson, ordered that the City Collector of Jersey City, do make and deliver unto Francis W. Mitchell of New York City, New York, or his assigns a deed for said lands, conveying unto him, his heirs or assigns, all the said lands, including all the interest or estate therein or lien thereon belonging to said infants. 10

H. M. Nevius,  
J.

Filed Clerk's Office Feb. 25, 1901 Hudson County, N. J. 20

Maurice J. Stack  
Clerk.

## STATE OF NEW JERSEY

(State Seal)

HUDSON COUNTY, ss: 30

I, JOHN J. MCGOVERN, Clerk of the County of Hudson aforesaid and also Clerk of the Circuit Court and Court of Common Pleas, holden therein

Do HEREBY CERTIFY, That the foregoing is a true and correct copy of Petition and Notice, Final Order, In the matter of the application of Francis W. Mitchell, for an order for a deed for lots 275-276 in Block 781 under Chapter 112 Laws of 1886, and supplements, as the same is taken 40

*Exhibit D. 2.*

from and compared with the original as filed and recorded in my office.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Courts and County, at Jersey City this Twenty-fifth day of March 1927

(SEAL)

10

JOHN J. McGOVERN,  
Clerk.

Abstract of title offered by defendants.  
EXHIBIT D. 2.

Lots 275-276, Block 781  
Central Ave.

20 Title of record—Estate of Francis W. Mitchell, subject to the remarks below. Laurent S. and Charles A. Mitchell, executors, have power of sale.

Mortgage—None.

Judgments and other liens—None.

See Tax deed by City Collector, to Henry A. Gaede, of J. C. The City Clerk's Office says there are no papers filed on this tax sale.

30 There was also another tax sale the proceedings on which I set out from the City Clerk's Office. By the first mentioned tax sale title was in Henry Gaede. The second sale gives notice to redeem to Henry A. Gaede, *Trustee*. Does not cut off any wife of Gaede. Robert Campbell and the executrix and infant heirs of William Goodspeed also received notice. I do not know what their interest was.

40 I set out a decree in the Court of Chancery on a bill filed to quiet title, decree dated Jan. 22, 1926. One of the defendants is Henrietta J.

*Exhibit D. 4.*

Gaede, wife of Henry Gaede, Jr. but Henry A. Gaede is not a defendant.

Other Defendants are:—Delia Pychlau, Henry W. Pychlau, her husband, Annie Pychlau Vietinghoff Scheel and Hamilkar Vietinghoff Scheel, her husband, Edwin Pychlau and Auguste H. Pychlau, his wife. These appear to be Delia Pychlau (the owner in 1862) and her husband and two children. I do not know what interest the other defendants had. 10

Dated April 15, 1926.

LAST WILL AND TESTA- MENT	Date Sep. 19, 1814 Prob. Oct. 7, 1818 Book Trans. P. 133	
OF		
CORNELIUS VAN VORST.		20

Gave his son John Van Vorst the one equal half part of a tract at Showhank.

Gave his grandson Cornelius Van Vorst the other equal half of said tract.

## —DEED—

John Van Vorst and Sally his wife	Date Oct. 16, 1821 Cons. \$50. Ack'd 16, 1821	
to		
Cornelius Van Vorst, of Township of Bergen.	Before Peter Sip, Judge. Rec'd May 29, 1822 Book Tr. 6 P. 217	30

Remise, release, quit claim to grantee his heirs and assigns.

Three tracts of land including premises in question.

Habendum in fee. 40

*Exhibit D. 1.*

Said Cornelius Van Vorst died intestate in 1852 leaving eight children:—

Elizabeth,  
 Cornelius,  
 Mary B. Powers,  
 Sarah,  
 10 Julia,  
 Susan,  
 William B.  
 Antoinette.

## DEED

Elizabeth B. Van Vorst, Date May 4, 1853  
 Cornelius Van Vorst, Cons. \$22,500.  
 20 Sophia A. Van Vorst, Rec'd Aug. 22, 1853  
 his wife, William P. Book L 32 Page 575  
 Powers, and Mary B.  
 his wife, and Sarah  
 Van Vorst,

To

Thomas Forster and  
 Charles Clinton and  
 William Hesketh.

Grant and convey in fee.  
 30 Habendum in fee.

COVENANTS:—Seizin, Right to convey, Free  
 of Encumbrances, Warranty.

Duly executed and ack'd.

DESCRIPTION:—All the four undivided  
 eighth parts of all those lots in Township of  
 North Bergen, Hudson Co. N. J. being part of  
 the lands formerly of Cornelius Van Vorst dec'd.  
 at West Hoboken, and which on a Map of the  
 Estate of Cornelius Van Vorst dec'd. at West  
 40 Hoboken, Hudson Co. by John Bevan, City Sur-

*Exhibit D. A.*

veyor, of J. C. Jan. 21, 1853 marked and distinguished as blocks 1-2-3-4-5 and those parts of blocks marked on said map as blocks 6-7-8-9-10 which lie southwest of a line drawn across said blocks parallel to northeast side of Centre St. and at the distance of 275 ft. northeast from the same; and that part of blocks marked on said Map Block 6 which lies southwest of a line drawn parallel across said block parallel to northeast side of Centre St. at the distance of 350 ft. northeast of same which blocks and parts of blocks are in said Map divided into 300 lots and are therein numbered 1 to 300 consecutively.

10

## MORTGAGE

Thomas Forster and	Date Aug. 1, 1853	20
Charles Clinton and	For \$20000.	
William Hesketh,	Ack'd Aug. 22, 1853	
To	Before A. O. Zabris-	
Cornelius Van Vorst,	kie, M. C. C.	
Elizabeth Van Vorst,	Reg's Aug. 22, 1853	
William Powers and	Book 11 P. 531	
Sarah Van Vorst.	Due Aug. 1, 1863	
	Int. 6%	
	Payable quarterly.	

DESCRIPTION:—All those 300 lots, same as deed 32 P. 575.

30

This mortgage to be an equal and ratable lien on said premises with a mortgage of same date given by first party to Cornelius Van Vorst, Guardian etc. for the same sum; each being given to secure one half of the consideration of the conveyance of said lands by two deeds delivered this day.

40

*Exhibit D.*

## ASSIGNMENT OF MORTGAGE.

William P. Powers, Date Feb. 1, 1855  
 To Cons. \$1—and other.  
 Cornelius Van Vorst, Ack'd Nov. 5, 1863  
 Special Guardian of Before Hy. Trap-  
 10 Julia Van Vorst, hagen, M. C. C.  
 Susan Van Vorst, Wil- Rec'd Nov. 6, 1863  
 liam B. Van Vorst and Book 7 P 491  
 Antoinette Van Vorst.

First party assigns all his right, title and inter-  
 est in and to mortgage recorded book 11 P. 531.  
 (See release).

## —DEED—

20 Cornelius Van Vorst, May 4, 1853  
 Special Guardian of Cons. \$22 500.  
 Julia Van Vorst, Rec'd. Aug. 22, 1853.  
 Susan Van Vorst, Wil- Book 32 P. 578.  
 liam B. Van Vorst,  
 and Antoinette Van  
 Vorst, all of J. C. in-  
 fants under age of 21  
 years,

To  
 30 Thomas Forster and  
 Charles Clinton, and  
 William Hesketh.

Grant and convey in fee.  
 Habendum in fee. No Covenants.  
 Duly executed and ack'd.

DESCRIPTION:— All the right, title and  
 estate of said four infants, being four equal un-  
 divided eighth parts thereof, of, in and to; Same  
 as deed 32 P. 575.

*Exhibit D.* ▲

Recites Petition presented to Chancellor of N. J. by Elizabeth Van Vorst, the sister and Cornelius Van Vorst, the brother of said infants Julia Van Vorst, Susan Van Vorst, William B. Van Vorst and Antoinette Van Vorst, as the next friends of said infants representing the interest of said infants, required that their interest in certain lands in said petition should be sold. 10

Whereas, by an order dated Feb. 11, 1853 said Cornelius an Vorst was appointed Special Guardian of said infants.

And by another order dated Apr. 11, 1853 upon an inquiry and report upon the merits of said Application, said Cornelius Van Vorst, Special Guardian, was authorized and directed to sell the interest of said infants.

Recited report of sale Apr. 20, 1853 and order confirming Apr. 28, last and Guardian ordered to execute a deed. 20

## —MORTGAGE—

Thomas Forster and	Date Aug. 1, 1853	
Charles Clinton, and	For \$20 000.	
William Hesketh,	Ack'd Aug. 22, 1853	
To	Before A. O. Zabris-	
Cornelius Van Vorst,	kie, M. C. C.	30
guardian of Julia Van	Reg'd Aug. 22, 1853	
Vorst, Susan Van	Book 11 P. 530	
Vorst, William B. Van	Due Aug. 1, 1863	
Vorst, and Antoinette	Int. 6% payable quar-	
Van Vorst.	terly.	

DESCRIPTION:— All those 300 lots, same as deed 32 P. 578.

This mortgage to be an equal and ratable lien on said premises with a mortgage of same date given by first party to Cornelius Van Vorst et al 40

*Exhibit D.*

for same sum, each being given to secure one half of the consideration money of the conveyance of said lands by two deeds delivered this day.

(See Release).

10

## —DEED—

Thomas Foster and	Date Apr. 3, 1855
Frances, his wife, and	Cons. \$1200.
Charles Clinton, of	Ack'd May 22, 1855
Hoboken, Hudson Co.	Before Samuel W.
N. J. William Hesketh	Carey, M. C. C.
and Julia, A. his wife,	Rec'd July 9, 1855
of N. Y. City,	Book 46 P. 577.

To

20 William R. Tice, of  
Brooklyn, N. Y.

Grant and convey to grantee his heirs and assigns forever.

Habendum to grantee his heirs and assigns forever.

COVENANT:— Against grantors acts.

Duly executed and ack'd.

30 DESCRIPTION:— All those lots in Township of North Bergen, Hudson Co. N. J. being part of a tract known by the name of Mount Pleasant, and which on a map of said tract entitled "Map of Mount Pleasant, Hudson Co. N. J. made by John Bevan, City Surveyor, and marked on Map of land of Industrial Home Association No. 1 of Hoboken near West Hoboken, Hudson Co. N. J. signed G. Van Houten, Pres. and filed in Clerk's Office of Hudson Co. Aug. 3, 1853, are known as lots 93 and 94, each 25 ft. wide in front and rear and 100 ft. deep through-

40 out, fronting on Webster Av.

*Exhibit D.* ■

Also 275-276-283 and 284, each lot 25 ft. wide front and rear fronting on Montgomery Av. and running through the block to Franklin St.

## RELEASE OF MORTGAGE

Cornelius Van Vorst, Date Mar. 3, 1857 10  
 Special Guardian of Cons. \$1—  
 Julia Van Vorst, Ack'd Oct. 9, 1857  
 Susan Van Vorst, Wil- Before E. W. Kings-  
 liam B. Van Vorst and land, M. C. C.  
 Antoinette Van Vorst, Rec'd Nov. 24, 1857  
 Cornelius Van Vorst Book 64 P. 250 of  
 Elizabeth B. Van deeds.  
 Vorst and Sarah Van  
 Vorst,

To

20

Thomas Foster, Charles  
 Clinton and William  
 Hesketh.

Recites mortgage dated Aug. 1, 1853 by second party hereto to Cornelius Van Vorst, Special Guardian as aforesaid recorded book 11 P. 530; and mortgage by said second party dated Aug. 1, 1853 to Cornelius Van Vorst, Elizabeth B. Van Vorst and Sarah Van Vorst and William P. Powers, recorded book 11 P. 531 and release from same; 30

All those *eight* lots in Hudson City, Hudson Co. N. J. which on Map of property belonging to Estate of Cornelius Van Vorst deceased situated at West Hoboken Hudson Co. N. J. made by John Bevan City Surveyor, of J. C. dated Jan. 21, 1853 and filed in Office of Clerk of Hudson Co. are known as lots No. 93-94-275-276-284-285 and 286.

Habendum in fee free of said mortgage. 40  
 Duly executed and ack'd.

*Exhibit D. B.*

## —DEED—

William R. Tice, of Date July 26, 1860  
 Brooklyn, Kings Co. Cons. \$1—  
 N. Y. and Ann Au- Ack'd July 26, 1860  
 gusta, his wife, Before Chas. H.  
 To Thomson, Com. N. J.  
 10 John N. J. Reute, of in N. Y.  
 Hudson City. Rec'd Aug. 4, 1860  
 Book 81 P. 600

Grant and convey to grantee his heirs and assigns forever.

Habendum to grantee his heirs and assigns forever.

Full Covenants.

Duly executed and ack'd.

20 DESCRIPTION:— All those certain lots of  
 land and premises in Township of North Bergen  
 Hudson Co. N. J. being part of a tract of land  
 known by the name of Mount Pleasant, and  
 which on a map of said tract entitled Map of  
 Mount Pleasant Hudson Co. N. J. made by John  
 Bevan, City Surveyor, and being marked map  
 of land of Industrial Home Association, No. 1,  
 of Hoboken near West Hoboken, Hudson Co.  
 N. J. signed by G. Van Houten, President, and  
 30 filed in Clerk's Office of said Hud. Co. on Aug. 3,  
 1853 are known and marked as lots No. 275-276,  
 each lot being 25 ft. wide in front and rear front-  
 ing on Montgomery Ave. and running through  
 the block to Franklin St.

*Exhibit D.* ▲

## —DEED—

John N. J. Ruete and	Date May 21, 1862	
Magdalean Ruete, his	Cons. \$610—	
wife, of Hudson City,	Ack'd May 21, 1862	
To	Before Mitchell Loder,	
Delia Pyehlan, of Hud-	Com. N. J.	10
son City.	Rec'd June 18, 1862	
	Book 93 P. 508	

Grant and convey to grantee her heirs and assigns forever.

Habendum to grantee her heirs and assigns forever.

COVENANTS—Seizin, Right to convey, Peaceable Possession, Free of Encumbrances, Warranty.

Duly executed and ack'd.

20

DESCRIPTION:— Lots 275—and 276, each 25 ft. front and rear fronting on Montgomery Av. and running through the block to Franklin St. on Map of land of Industrial Home Association, No. 1 of Hoboken, &c.

Same as described in deed 81 P. 600.

(No Will or letter of Administration on Estate of Delia Pyehlan).

30

40

*Exhibit D. 2.*

## —DEED—

10	Henry W. Pychlau (wid- ower), of City of Milan, County Cur- ania, Empire of Rus- sia,	Date Nov. 30, 1891 Cons. \$500.— Ack'd Nov. 30, 1891 Before Pet. Bombaldt, Consul of the U. S., City of Riga, Rus- sia (Cons. Seal)
	To	
	Henry A. Gaede, of J. C.	Rec'd May 21, 1892 Book 552 P. 319

Give, grant, bargain, sell, alien, release, en-  
feoff, convey confirm to grantee his heirs and  
assigns forever.

Habendum to grantee his heirs and assigns  
forever.

20 COVENANTS—Seizin, subject to taxes, as-  
sessment, water rents, and sales for same, Right  
to convey, Warranty. Free of Encumbrances ex-  
cept as aforesaid.

Duly executed and ack'd.

30 DESCRIPTION:— All my right title, and in-  
terest in and to all those two certain lots, tracts  
or parcels of land and premises hereinafter par-  
ticularly described, situate, lying and being in  
the City of J. C. in the Co. of Hudson, and State  
of N. J. and which on a map entitled Map of  
Ninth, Tenth, Eleventh and Twelveth Wards, of  
J. C. made by Levi Post, City Surveyor, and  
C. E. are known and designated as lots No. 275  
and 276, block 781 fronting and facing on Ely-  
side or line of Central (late Montgomery) Av. and  
the Wly. side or line of Cambridge Av. said lots  
being also known as lots No. 275 and 276 on Map  
of property of the Industrial Home Association,  
E. Van Houten, President, said lots being of the  
several dimensions as laid down on said map.

40

*Exhibit D.*

## —DEED—

Patrick H. O'Neill, City	Date Nov. 24, 1891	
Collector of the Mayor	Cons. \$2215.26	
and Alderman, of Jer-	Proved Dec. 11, 1891	
sey City, a corp. of	Before Kent K.	
N. J.,	Stearns, M. C. C.	10
To	Rec'd May 21, 1892	
Henry A. Gaede, of J. C.	Book 552 P. 321	

Recites: Act of Legislature of N. J. passed Mar. 30, 1886, (Martin Act) and appointment of Commissioners of Adjustment, who did fix and determine as to each parcel of land hereinafter described, how much of the arrearages of taxes and assessments should be collected from same; and did make and file a map and report duly certified which, was by said Court confirmed, upon which confirmation a certified copy of said report and Assessment, Map was transmitted to and filed by City Collector of said City, whereupon the amount so fixed and certified became immediately due and payable but after the expiration of six months still remained due and unpaid. 20

Recites: After giving notice by advertisement, City Collector did on Oct. 10, 1890 make sale at public auction to highest bidder to wit: 30 to Henry A. Gaede of J. C. of the following described lands to wit:— lots 275 and 276 in block 781 fronting on Central Av. in Fourth District of J. C. N. J. as laid down and shown on an Assessment Map accompanying a Report made by Commissioners of Adjustment and filed with their said Report in Clerk's Office of Hudson Co. a certified copy of which report and Map was transmitted to and filed by said City Collector, for \$2215.26 being not less than the amount due 40

*Exhibit D. 1.*

from same as appears by said report, with interest and costs: of which sale the City Collector did execute to purchaser a certificate containing a covenant on the part of said City to refund said amount paid for said lands without interest in case title to same should prove invalid.

- 10 Recites: Surrender of Certificate of sale and proof by affidavit of Henry A. Gaede and C. J. Milton, the said purchaser and his agents, duly filed in Office of Clerk of J. C. within one month after date of service that notice of sale in writing has been given by said Henry A. Gaede, purchaser, to every person who has an estate in or mortgage on said lands and premises whose estate or lien appears of record in Hudson Co. to wit; to Henry A. Pychlau or Pychlan, Delia  
20 Pyechlau or Pychlan, Annie Pychlau or Pychlan and Elwin Pychlau or Pychlan.

More than six months having expired since such notice was given, and no person having redeemed said lands.

Grant and convey to grantee his heirs and assigns forever.

The above described lands and premises.

Habendum to grantee his heirs and assigns forever.

- 30 No Covenants. Duly executed and ack'd.  
Lot 275-276, block 781  
Sale \$7070

Search dated Sep. 28, 1898 by Wallis, Edwards and Bumstead, filed.

*Exhibit D.*

	Chain			
Book	32	P. 575	Deed	
		578	"	
	11	530	Mortgage	
		531	"	
	7	491	Assignment	
	64	250	Deed	10
	46	577	"	
	81	600	"	
	93	508	"	
	552	319	"	
		321	"	

Notice to redeem dated July 30, 1900 signed by Francis Mitchell, purchaser, directed to Henry A. Gaede, Trustee, Robert Campbell, Mary A. Goodspeed, executrix, William Star Goodspeed, Arthur Baxter Goodspeed, Shepard Goodspeed, and Alene Goodspeed, heirs of William Goodspeed. 20

Affidavit of Edwin F. Smith, agent of Francis W. Mitchell, that on Aug. 2, 1900, at Ridgewood, N. J. he served Robert Campbell, personally. Swore to before Howard C. Griffiths, M. C. C. Filed Aug. 6, 1900.

Notice to redeem dated Jan. 29, 1900, signed by Francis W. Mitchell, purchaser, directed to Henry A. Gaede, Trustee, and Robert Campbell. Affidavit of Edwin F. Smith, agent, of Francis W. Mitchell, that on Apr. 23, 1900 at Hoboken, N. J. he served Henry A. Gaede personally. Sworn to before F. L. Houghtaling, Not. Pub. N. J. Filed May 22, 1900. 30

Notice to redeem dated May 23, 1900, signed by Frank W. Mitchell, purchaser, by James P. Northrop, Atty, directed to Henry A. Gaede, Trustee, Robert Campbell, Mary A. Goodspeed, executrix, William Star Goodspeed, Arthur Bax- 40

*Exhibit D. 2.*

ter Goodspeed, Shepard Goodspeed, and Alene Augusta Goodspeed, heirs &c. of William Goodspeed.

10 Affidavit of Edwin F. Smith, agent of Francis W. Mitchell, that on May 23, 1900 at N. Y. City, he served a copy on Mary A. Goodspeed, executrix, of William Goodspeed, personally and on William Star Goodspeed, Arthur Baxter Goodspeed, Shepard Goodspeed and Alene Augusta Goodspeed, infants, heirs of William Goodspeed dec'd by leaving at their place of abode with a member of the family over 14 years of age.

Sworn to May 24, 1900 before F. L. Houghaling, Not. Pub. N. J. Filed May 24, 1900.

20 Copy of Circuit Court order dated Feb. 25, 1901 for City Collector to deliver deed to Francis W. Mitchell of N. Y. City, or his assigns, conveying to him all said lands, including the interest or estate therein or lien thereon of William Star Goodspeed, Arthur Baxter Goodspeed, Shepard Goodspeed and Alene A. Goodspeed, infants, Filed May 22, 1901.

Wallis, Edwards and Bumsted, Attys.

The City Clerk's Office says there was a prior sale for unpaid taxes, but no papers filed.

30 They say there was a subsequent sale for taxes, which was redeemed.

*Exhibit D. ■.*

## HUDSON CIRCUIT COURT.

In the matter of the Application  
of Francis W. Mitchell for an  
order for a deed for lots 275-  
276, block 781 under chapter  
CXLL Laws of 1886, and sup-  
plements.

Case #16719

10

Petition of Francis W. Mitchell, of N. Y. City,  
shows on Oct. 6, 1896 he purchased at tax sale—

Lots 275 and 276, block 781 on Central Av.  
J. C. as shown on Assessment Map accompany-  
ing report #102 made by Commissioners of Ad-  
justment.

That William Star Goodspeed, Arthur Baxter 20  
Goodspeed, Shephard Goodspeed and Alene Au-  
gusta Goodspeed, who appear to have an in-  
terest as heirs of William Goodspeed, dec'd. are  
infants under age of 21 years. That they all  
reside with their mother at No. 770 West End  
Av. N. Y. City, and have no other guardian.  
That they were served with copy of notice to re-  
deem more than six months since and no one has  
redeemed said lands.

Prays appointment of guardian ad litem if 30  
necessary and inquiry into ability of infants to  
redeem, and order to City Collector to deliver a  
deed for said lands, including the interest of said  
infants.

Francis W. Mitchell.  
Purchaser.

Affidavit of service of notice of application  
on said infants by Edwin F. Smith.

40

*Exhibit D. 2.*

Order Feb. 27, 1901 for City Collector to deliver deed to Francis W. Mitchell or his assigns for all said lands, including all the interest or estate therein or lien thereon of said infants.

H. M. Nevins, J.

10

## —DEED—

Robert Davis, City Col-	Date Mar. 22, 1901
lector of the Mayor	Cons. \$382.59
and Alderman of J. C.,	Proved Mar. 27, 1901
a corp. of N. J.	Before Jas. H. Clark,
To	Com. N. J.
F. W. Mitchell.	Rec'd Apr. 16, 1901
	Book 773 P. 466.

20

Recites: Act of Legislature of N. J. passed Mar. 30, 1886, (Martin Act) and appointment of commissioners of Adjustment by Circuit Court, who did fix and determine as to each parcel of land hereinafter described how much of arrearages of taxes should be collected from same and did make and file a Map and report duly certified, which after and upon due notice and hearing was by said Court confirmed, upon which confirmation a certified copy of said report and map

30 was transmitted to and filed by City Collector of said City, whereupon the amount of said tax and assessment became immediately due and payable, but after the expiration of six months still remained due and unpaid.

30

Recites: After giving notice by advertisement, said City Collector did, on Oct. 6, 1896 make sale at public auction to highest bidder for the same to wit:— to F. W. Mitchell, all of following described land and premises to wit:—

40 Lots 275—and 276 in block 781 fronting on Cen-

40

*Exhibit D.*

tral Av. in the Fourth District of J. C. N. J. as laid down and shown on an Assessment Map accompanying a Report No, 102 made by the Commissioners of Adjustment and filed with their report in Clerk Office of Hudson Co. for \$382.59 being a sum not less than the amount due from same as appears by said report with interest and costs; of which sale the said City Collector did execute and deliver to said purchaser a certificate containing a covenant on the part of said City to refund the said amount paid for said land and premises without interest in case the title to same should prove invalid. 10

Whereas, William Star Goodspeed, Shephard Goodspeed, Alene Augusta Goodspeed, Arthur Baxter Goodspeed, four of the persons having an interest in said lands are infants under the age of 21 years. 20

Whereas, the Circuit Court of Hudson Co. did on Feb. 25, 1900 make order that this deed be made and delivered to said purchaser his heirs or assigns conveying unto him, his heirs or assigns, all the said lands, including all the interest as estate therein or lien thereon belonging to said infants.

Recites: Surrender of Certificate and proof by affidavit of Edwin F. Smith, agent of said purchaser duly filed in Office of City Clerk of J. C. within one month after date of service that notice in writing has been given by said purchaser to every person who has an estate in or mortgage upon said lands and premises whose estate or lien appears of record in Hudson Co. to wit:— to Henry A. Gaede trustee, Robert Campbell, Mary A. Goodspeed executrix, William Star Goodspeed, infant, Arthur Baxter Goodspeed infant, Shephard Goodspeed infant, 30 40

*Exhibit D. .*

Alene Augusta Goodspeed infant, heirs of William Goodspeed.

More than six months having expired since such notice was given, and no person having redeemed said lands.

10 Grant and convey to grantee his heirs and assigns forever.

Said above described premises.

Habendum to grantee his heirs and assigns forever.

No Covenants. Duly executed and ack'd.

LAST WILL AND TESTA- Date Mar. 12, 1903  
MENT Probated May 21, 1903  
OF Book 59 P. 681

20 FRANCIS W. MITCHELL.

30 Laurent S. Mitchell of 149 W. 121st St. New York City, and Charles A. Mitchell of No. 2026 7th Ave., represent that they are the Executors named in the last Will and Testament of Francis W. Mitchell dated March 12, 1903 that said Testator departed this life at New York City, State of New York on the 7th Day of May 1903 being at the time of his death a resident of said County and State and leaving him surviving his heirs at law and next of kin: the following named persons to wit:

Laurent S. Mitchell and ) Your Applicants.  
Charles A. " )  
Adelaide " his widow residing at 149 W.  
121st St. N. Y. City  
Adelaide " daughter residing at 149 W.  
121st St. N. Y. City  
Cecilia " daughter residing at 149 W.  
121st St. N. Y. City

40

*Exhibit D.*

That there is no Will proved or Administration granted in this or any other State.

Sworn to before

John E. Moody, Dpy. Surrogate.

—THE WILL—

10

I, Francis W. Mitchell of New York City, New York, being of sound mind, memory and understanding do hereby make this my last Will and Testament hereby revoking all former wills by me made, in manner following that is to say.

First. I do order and direct all my just debts and funeral expenses to be paid as soon as may be conveniently done after my death.

Second. I hereby give and bequeath to my wife Adelaide an annuity amounting to the sum of \$800. yearly during the remainder of her natural life which annuity I hereby direct my Executors hereinafter named to pay to my said wife in equal quarterly payments. 20

Third. I give, devise and bequeath all the rest, residue and remainder of my property to my four children Laurent S. Charles A., Adelaide and Cecelia or the survivors or survivor of them share and share alike, provided however, that if any of my said children shall be dead leaving child or children such child or children shall take the share its or their parent would take if living. 30

Fourth. I further authorize and empower and give to my Executors hereinafter named full power and authority to sell and convey any or all of my real estate situate in the State of New Jersey, and the purchaser or purchasers shall not be bound to see to the application of the purchase money and the lands so conveyed shall thereby be discharged from the above annuity to my wife. 40

*Exhibit D.*

Lastly. I hereby nominate and appoint my two sons Laurent S. Mitchell and Charles A. Mitchell to be the Executors of this my last Will and do direct that they be not required to give bonds.

In testimony whereof I have hereunto set my hand and affixed my seal this 12th day of March  
10 1903.

Francis W. Mitchell (L. S.)

Witnesses

Augustus Zabriskie, Roslyn, N. Y.

L. Edward Hermann, Jr. Jersey City, N. J.

Will proved by L. Edward Hermann, Jr.

Executors as named qualify.

Will admitted to probate and letters testamentary issued to them.

20

#### RELEASE OF DOWER

Adelaide Mitchell, widow	Date June 16, 1903
of Francis W. Mitchell,	Cons. \$1-
To	Ack'd June 17, 1903
Laurent S. Mitchell and	before A. Zabriskie,
Charles A. Mitchell,	M. C. C.
executors of last will	Rec'd June 23, 1903
and testament of Fran-	Book 239 P 301
30 cis W. Mitchell.	

First party does grant, remise, release and quit claim to Laurent S. Mitchell and Charles A. Mitchell, executors as aforesaid their heirs and assigns forever.

All the dower, thirds, right and title of dower and thirds, and all other right, title, interest, property, claim and demand whatsoever in law and equity which the said *Adeliade* Mitchell have in and to the following lands, tenements and real

40

*Exhibit D.*

estate of which my said husband was seized during my coverture with him, to wit:

All the real estate of which said Francis W. Mitchell died seized situate, lying and being in Jersey City, Hudson Co. N. J. so that I, the said Adelaide Mitchell, my heirs, executors, administrators or assigns, nor any other person or persons for me or them or any of them, shall—  
 10  
 have, claim or demand any dower or thirds or any other right, title claim, or demand whatsoever of, in or to the same or any part thereof in whomsoever seizin or hand or possession the same may or can be, but thereof and therefrom shall be utterly barred and excluded by these presents forever.

Duly executed and ack'd.

20

LAST WILL AND TESTA- Date March 12, 1903  
 MENT Probated Feb. 3, 1922  
 OF Book 120 P. 425  
 FRANCIS W. MITCHELL.

To Surrogate of Hudson Co.

Laurent S. Mitchell and Charles A. Mitchell of 344 W. 122 St. N. Y. City, represent they are the executors named in the will, that testator died at N. Y. City, May 17, 1903, a resident of N. Y. City, leaving heirs at law and next of kin:—  
 30

Applicants, his sons.

Adelaide J. Mitchell, his widow.

Adelaide Mitchell Stevens, daughter.

Cecelia Mitchell Geambalvo, daughter.

That said will has heretofore been admitted to probate viz, on May 21, 1903, by John E. Moody, former Deputy Surrogate of Hudson Co. and that testator at the time of his death was a resident of N. Y. City, and Orphans Court of Hudson Co.  
 40

*Exhibit D.*

by decree dated Feb. 3, 1922 did order said will be re-probated.

Therefore in obedience to said decree ordered that letters testamentary thereon be granted to said affidavits therefor.

10

HUDSON COUNTY ORPHANS  
COURT ORDER.

20

It appearing from the verified petition filed herein by Laurent S. Mitchell, that he is one of the executors and devisees named in will of Francis W. Mitchell who died May 17, 1903, a resident of N. Y. City, seized of real estate in this County leaving a will, dated March 12, 1903, which will is executed in due form and in accordance with the laws of the State of New Jersey, and that said will has not been admitted to probate in N. Y. County, of which decedent was a resident at his death, and that there are not now pending any proceedings for probate of said will, and that more than three months have elapsed since death of decedent.

30

It further appearing that an order was made Dec. 23, 1921, fixing a time and place for hearing said petition notice of which was served on all the parties in interest, they not being found within this state, by publication of a notice once a week for four weeks in Hudson Observer, and mailing copy of said notice at least 20 days before the hearing to each of such parties in interest not found within this State, as directed by said order.

40

It further appearing that the hearing set down for Jan. 27, 1922 was adjourned until Feb. 31, 1922 and that a hearing on petition was held by Orphans Court on that date, and Court having

*Exhibit D.*

inquired into the circumstances and taken proof, and being satisfied of the truth of the matters set forth in petition, and of the genuineness of the will produced, the validity of its executors, and the competency of the testator.

On motion of L. Edward Herrmann, proctor for petitioner, ordered Feb. 3, 1922, that said will be admitted to probate and letters testamentary be issued to the executors therein named. 10

John A. Blair, Judge.

(Here follows the will)

Will proved by L. Edward Herrmann Feb. 3, 1922.

Laurent S. Mitchell and Charles A. Mitchell qualify as executors, will admitted to probate and letters testamentary granted to them. 20

30

40

*Exhibit D. A.*

## IN CHANCERY OF NEW JERSEY.

	Between	On Bill to Quiet Title.
	Laurent S. Mitchell	Final Decree.
	and Charles A. Mitchell, executors	Dated Jan. 22, 1926
10	under the last Will and Testament of Francis W. Mitchell dec'd,	Rec'd Jan. 29, 1926 Book 1597 P. 34 of Deeds
	Complainants,	
	And	
	Delia Pychlau, et als.	
	Defendants.	

20 This matter being opened to the Court by L. Edward Herrmann, Solr of Complainants and it appearing the process of subpoena calling upon the Defendants to answer Complainants bill of

30 of Complainant has been duly issued and returned served upon the Defendants, Henrietta J. Gaede, wife of Henry Gaede, Jr., Delia Pychlau, Henry W. Pychlau, her husband, Annie Pychlau Vietinghoff Scheel, Hamilkar Vietinghoff Scheel, her husband, Hedwig Meyerdorff, Ernest Meyerdorff her husband, Antonio Arbusw, L. Arbusw, her husband, Edwin Pychlau, Auguste H. Pychlaw, his wife, Justa P. Voest, Jacob Voest, her husband, Harriet D. P. Meyer, Frederick Meyer, her husband, their heirs, devisees or personal representatives, their or any of their heirs, devisees executors, administrators, grantees, assigns, or successors in right, title and interest; that said Defendants have not filed any answer to the said bill of Complainant within the time required by law, but have wholly failed and neglected so to do: and

40

*Exhibit D. A*

It appearing that depositions have been taken to substantiate and prove the allegations of the bill:

It is thereupon, on this Jan. 22, 1926, on motion of L. Edward Herrmann Solr. of Complainant, ordered, adjudged and decreed that the said Defendants, Henrietta J. Gaede, wife of Henry Gaede Jr., Delia Pychlau, Henry W. Pychlau, her husband, Annie Pychlau Vietinghoff Scheel, Hamilkar Vietinghoff Scheel, her husband, Hedwig Meyerdorff, Ernest Meyerdorff, her husband, Antonio Arbusw, L. Arbusw, her husband, Edwin Pychlau, Auguste H. Pychlau, his wife, Justa P. Voest, Jacob Voest, her husband, Harriet D. P. Meyer, Frederick Meyer, her husband, their heirs, devisees or personal representatives, their or any of their heirs, devisees, executors, administrators, grantees, assigns, or successors, in right, title and interest have no estate or interest in or encumbrances upon said lands and premises or any part thereof; and

It is further ordered, adjudged and decreed that as to all of the said lands and premises described in said bill of Complaint to wit:—

“All those certain lots, tracts or parcels of land and premises situate, lying and being in Jersey City, Hudson County, New Jersey, known and distinguished as lots two hundred and seventy-five (275) and two hundred and seventy-six (276), in block seven hundred and eighty-one (781) fronting on Central Avenue in the Fourth District of Jersey City, New Jersey, as laid down and shown on an Assessment Map accompanying a report Number 102, made by the Commissioners of Adjustment and filed with their report in the Office of the Clerk of the County of Hudson, a certified copy of which report and map was trans-

10

20

30

40

*Exhibit D. 2.*

mitted to and filed by me. The said property being also known and described on a map entitled "Map of Mount Pleasant, Hudson County, N. J." made by John Bevan, City Surveyor, and being marked "Map of land of Industrial Home Association No. 1 of Hoboken, near West Hoboken, Hudson County, N. J. signed by G. Van Houten, Pres. and filed in the Clerk's Office of said County of Hudson on the 3rd day of August 1853, are known and marked as lots numbers two hundred and seventy-five and two hundred and seventy-six (276) each lot being twenty-five feet wide in front and rear, fronting on Montgomery Avenue and running through the block to Franklin Street."

So far as relates to any claim thereon by or on behalf of the said Defendants, Henrietta J. Gaede, wife of Henry Gaede, Jr., Delia Pychlau, Henry W. Pychlau, her husband, Annie Pychlau Vietinghoff Scheel, Hamilkar Vietinghoff Scheel, her husband, Hedwig Meyerdorff, Ernest Meyerdorff, her husband Antonio Asbusw, L. Arbusw, her husband, Edwin Pychlau, Auguste H. Pychlau, his wife, Justa P. Voest, Jacob Voest, her husband, Harriet D. P. Meyer, Frederick Meyer, her husband, their heirs, devisees, executors, administrators, grantees, assigns or successors in right, title and interest or any of them, the title of the said Complainants, Laurent S. Mitchell and Charles A. Mitchell executors, under the last will and Testament of Francis W. Mitchell dec'd. in and to the same and every part thereof is hereby determined, fixed and settled and declared to be good.

E. R. Walker,  
C.

*Exhibit D. 3.*

Respectfully Advised  
 Bayard Stockton A. M.  
 A True Copy,  
 Thomas Barber, Clerk.

10

**EXHIBIT D. 3.**

TO: HENRY A. GAEDE, Trustee, ROBERT CAMPBELL,  
 MARY A. GOODSPEED, Executrix, WILLIAM STAR  
 GOODSPEED, ARTHUR BAXTER GOODSPEED, SHEPARD  
 GOODSPEED, and ALENE AUGUSTA GOODSPEED,  
 heirs of WILLIAM GOODSPEED.

You are hereby notified that at a public sale  
 made by the City Collector of Jersey City, on the  
 sixth day of October, 1896, I purchased for the  
 sum of Three Hundred and eighty-two Dollars  
 and fifty-nine cents ALL the land and real estate  
 situate in Jersey City, in the County of Hudson  
 and State of New Jersey, fronting on Central  
 Avenue which is laid down and designated as lot  
 275-276 in block number 781 upon an assessment  
 map annexed to a report number 102 made by  
 the "Commissioners of Adjustment" appointed  
 in and for said City by the Circuit Court of the  
 County of Hudson, a certified copy of which re-  
 port and map was filed in the office of the City  
 Collector of Jersey City, on the 25th day of No-  
 vember, 1895, said report and map and said sale  
 being made pursuant to the provisions of an act  
 of the Legislature of New Jersey, passed March  
 30th, 1886, entitled:

20

30

"An Act concerning the settlement and  
 collection of arrearages of unpaid taxes, as-  
 sessments and water rates or water rents in

40

*Exhibit D. 3.*

cities of this State, and imposing and levying a tax, assessment and lien in lieu and instead of such arrearages, and to enforce the payment thereof, and to provide for the sale of lands subjected to future taxation and assessment.”

10           And the several supplements thereto.

And you are further notified that you appear to have an estate or interest in said land and real estate, and unless the said land and real estate shall be redeemed, as provided in said acts, before the expiration of six months from and after the service hereof, a deed for the same will be given conveying to the purchaser the fee simple of said land and real estate according to the provisions of the said acts.

20           Dated Jersey City, N. J., May 23, 1900.

Francis W. Mitchell,  
Purchaser,

G. James P. Northrop,  
Attorney.

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

EDWIN F. SMITH, of full age, being duly sworn according to law, on his oath saith, that he is, for the purpose of serving the within notice, the agent of Francis W. Mitchell, the Purchaser therein named; that on the twenty-third day of May, nineteen hundred, at New York City, N. Y., he served a true duplicate copy of said notice, upon Mary A. Goodspeed, Executrix of William B. Goodspeed, deceased, by giving the same to her personally and leaving the same with her;

40

*Exhibit D. 4.*

upon William Star Goodspeed, Arthur Baxter Goodspeed, Shephard Goodspeed and Aline Augusta Goodspeed, infants, heirs of William B. Goodspeed, deceased, by leaving the same at their place of abode, with a member of the family over the age of fourteen years.

EDWIN F. SMITH.

10

Sworn and subscribed at Jersey City,  
this 24th day of May, A. D., 1900,  
before me.

F. L. Houghtaling,  
Notary Public of N. J.

**EXHIBIT D. 4.**

20

TO: HENRY A. GAEDE, Trustee, ROBERT CAMPBELL,  
MARY A. GOODSPEED, Executrix, WILLIAM STAR  
GOODSPEED, ARTHUR BAXTER GOODSPEED, SHEPARD  
GOODSPEED, and ALENE AUGUSTA GOODSPEED,  
heirs of WILLIAM GOODSPEED.

You are hereby notified that at a public sale  
made by the City Collector of Jersey City, on the  
sixth day of October, 1896, I purchased for the  
sum of Three hundred and eighty-two Dollars  
and fifty-nine cents ALL the land and real estate  
situate in Jersey City, in the County of Hudson  
and State of New Jersey, fronting on Central  
Avenue, which is laid down and designated as  
lot 275-276 in block number 781 upon an assess-  
ment map annexed to a report number 102 made  
by the "Commissioners of Adjustment" ap-  
pointed in and for said City by the Circuit Court  
of the County of Hudson, a certified copy of

30

40



*Exhibit D. 5.*

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

EDWIN F. SMITH, of full age, being duly sworn according to law, on his oath, saith that he is, for the purpose of serving the within notice, the agent of Francis W. Mitchell the purchaser therein named; that on Thursday the second day of August nineteen hundred, at Ridgewood, New Jersey, he served a true duplicate of said notice, upon Robert Campbell, one of the persons to whom the same is directed, by handing the same to him personally and leaving the same with him.

10

EDWIN F. SMITH.

Sworn and subscribed at Jersey City  
 this Fourth day of August, A. D.,  
 1900 before me.

20

Haw J. Griffiths,  
 Master in Chancery of N. J.

**EXHIBIT D. 5.**

TO: HENRY A. GAEDE, Trustee, and ROBERT CAMPBELL.

30

YOU ARE HEREBY NOTIFIED that at a public sale made by the City Collector of Jersey City, on the sixth day of October, 1896, I purchased for the sum of Three Hundred and eighty-two Dollars and fifty-nine cents, ALL the land and real estate situate in Jersey City, in the County of Hudson and State of New Jersey, fronting on Central Avenue which is laid down and designated as lot 275-276 in block number 781 upon an assessment map annexed to a report

40

*Exhibit D. 5.*

number 102 made by the "Commissioners of Adjustment" appointed in and for said City by the Circuit Court of the County of Hudson, a certified copy of which report and map was filed in the office of the City Collector of Jersey City, on the 25th day of November, 1895, said report  
 10 and map and said sale being made pursuant to the provisions of an act of the Legislature of New Jersey, passed March 30th, 1886, entitled:

20 "An Act concerning the settlement and collection of arrearages of unpaid taxes, assessments and water rates or water rents in cities of this State and imposing and levying a tax, assessment and lien in lieu and instead of such arrearages, and to enforce the payment thereof, and to provide for the sale of lands subjected to future taxation and assessment."

And the several supplements thereto.

And you are further notified that you appear to have an estate or interest in said land and real estate, and unless the said land and real estate shall be redeemed, as provided in said acts, before the expiration of six months from and after the service hereof, a deed for the same will be given conveying to the purchaser the fee  
 30 simple of said land and real estate according to the provisions of the said acts.

Dated Jersey City, N. J., January 29th, 1920.

FRANCIS W. MITCHELL,  
 Purchaser.

*Exhibit D. 5.*

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

EDWIN F. SMITH, of full age, being duly sworn, according to law on his oath, saith that he is for the purpose of serving the within notice the agent of Francis W. Mitchell, purchaser, in within the notice named; that on the twenty-third day of April, nineteen hundred, at Hoboken, N. J., he served a true duplicate copy of said notice, signed by said purchaser, upon Henry A. Gaede, by giving the same to him personally and giving the same to him. 10

EDWIN F. SMITH.

Sworn and subscribed at Jersey City  
 this 22nd day of May A. D., 1900, 20  
 before me

F. L. HOUGHTALING,  
 Notary Public of N. J.

THIS IS TO CERTIFY that on behalf of Francis W. Mitchell, the purchaser of the foregoing property (lots 275 and 276 Block 781 fronting on Central Avenue, Jersey City) we have searched the title thereto in the office of the Register, Clerk and Surrogate of Hudson County and find the same to be as set forth in the accompanying abstract. 30

We have searched in the Register's office of Hudson County for Deeds and mortgage as follows:—

Thomas Forster	)	
Charles Clinton	)	May 4th, 1855 to
William Hesketh	)	Apl. 3rd, 1855

40

*Exhibit D. 5.*

	Deeds Liber 32 to L. 46 Mtges Liber 11 to L 12 .....	45
	William R. Tice Apl. 3rd 1855 to July 26th, 1860 Deeds Liber 46 to L. 81 Mtges Liber 12 to L. 22 .....	45
10	John N. J. Ruete July 26th, 1860 to May 21st, 1862 Deeds Liber 81 to L. 93 Mtges. Liber 22 to L. 27 .....	17
	Delia Pychlau May 21st, 1862 to Henry Pychlau May 21st, 1862 Nov. 30th 1891 Deeds Liber 93 to L 540 Mtges Liber 27 to L. 269 .....	1398
	Henry A. Gaede Nov. 24th, 1891 to Sep. 1898 Deeds Liber 540 to L. 710 Mtges. Liber 269 to L. 396 .....	277
		<hr/>
20		1779

And in the office of the County Clerk of Hud-  
son County for judgments, attachments, me-  
chanics liens, recognizances, lis pendens and  
bonds to the sheriff as follows:

	Delia Pychlau ) Sep. 12th, 1878 to Nov.	\$ 2.60
	Henry Pychlau ) 30th, 1891	
	Henry A. Gaede, twenty years,—	3.25
		<hr/>
		\$ 5.85
30	Register's office 1779 bks. at 4c	71.16
	Clerk's office,	5.85
	Sup. Ct. Search,	1.44
		<hr/>
		78.45

We ask an allowance of fifty-one and 44/100  
Dollars

Approved

Hitz October 25/90

Edward Hoos

Mayor

40

Wallis Edwards &  
Bumsted.

*Exhibit—*

Filed October 1, 1925.

IN CHANCERY OF NEW JERSEY.

*To the Honorable Edwin Robert Walker, Chancellor of the State of New Jersey.*

The complainants, Laurent S. Mitchell, and Charles A. Mitchell, executors under the last will and testament of Francis W. Mitchell, of Jersey City, New Jersey, respectfully show that:

10

On March 22, 1901, Robert Davis, City Collector of the Mayor and Aldermen of Jersey City, conveyed to Francis W. Mitchell, for a full and valuable consideration, by deed in fee simple the following described premises in the City of Jersey City, in the County of Hudson and State of New Jersey, as follows:

20

“All those certain lots, tracts, or parcels of land and premises, situate, lying and being in Jersey City, Hudson County, New Jersey, known and distinguished as lots two hundred and seventy-five (275) and two hundred and seventy-six (276) in Block seven hundred and eighty-one (781) fronting on Central Avenue in the Fourth District of Jersey City, New Jersey, as laid down and shown on an Assessment Map accompanying a Report number 102, made by the Commissioners of Adjustment and filed with their report in the office of the Clerk of the County of Hudson, a certified copy of which report and map was transmitted to and filed by me. The said property being also known and described on a map entitled ‘Map of Mount Pleasant, Hudson County, N. J.’ made by John Bevan City Surveyor, and being marked ‘Map of Land of Industrial Home

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*Exhibit—*

Association No. 1, of Hoboken, near West Hoboken, Hudson County, N. J. signed by G. Van Houten, Pres.' and filed in the Clerk's office of said County of Hudson on the 3d day of August, 1853, are known and marked as lots numbers two hundred and  
 10 seventy-five and two hundred and seventy-six (276); each lot being twenty-five feet wide in front and rear fronting on Montgomery Avenue and running through the block to Franklin Street."

1. The said deed having been first duly acknowledged, and the certificate of acknowledgment duly endorsed thereon, was on April 16, 1901 recorded in the Register's office of Hudson County in Book 775 of Deeds page 466.

20 2. The said Francis W. Mitchell had ever since the recording of the said deed been in peaceable possession of the lands therein described, and always claimed to own the same up to the time of his death, May 7, 1903. Your complainants qualified as executors under the last will and testament of their father, and have been in peaceable possession of the said lands and they have always claimed and do now claim to  
 30 own the same.

3. The title of complainants to said lands, or to some part thereof is denied and disputed by Henrietta J. Gaede, wife of Henry Gaede Jr., Delia Pychlau, Henry W. Pychlau, her husband, Annie Pychlau Vietinghoff Scheel, Hamilkar Vietinghoff Scheel, her husband, Hedwig Meyerdorff, Ernest Meyerdorff, her husband, Antonio Arbusw, L. Arbusw, her husband, Edwin Pychlau, Auguste H. Pychlau, his wife, Justa P.  
 40 Voest, Jacob Voest, her husband, Harriet D. P.

*Exhibit—*

Meyer, Frederick Meyer, her husband, their heirs, devisees or personal representatives, their or any of their heirs, devisees, executors, administrators, grantees, assigns or successors in right, title and interest, are proper parties defendants to this bill of complaint; but complainants after diligent and careful inquiry therefor as in the case of absent defendants, has been unable to ascertain the names and residences of the heirs, devisees or personal representatives of the said Henrietta J. Gaede, wife of Henry J. Gaede, Delia Pychlau, Henry W. Pychlau, her husband, Annie Pychlau Vietinghoff-Scheel, Hamilkar Vestinghoff Scheel her husband, Hedwig Meyerdorff, Ernest Meyerdorff her husband, Antonie Arbusw, L. Arbusw her husband, Edwin Pychlau, Auguste H. Pychlau his wife, Justa P. Voest, Jacob Voest her husband, Harriet D. P. Meyer, Frederick Meyer her husband, or they or any of their heirs, devisees, executors, administrators, grantees, assigns or successors in right, title or interest, or such of them as may be proper parties defendant, and they claim to own the same or some part thereof, or some interest therein, or to hold some lien or encumbrance thereon.

4. No suit is pending to enforce or test the validity of the title claim or encumbrance of Henrietta J. Gaede, wife of Henry Gaede, Jr., Delia Pychlau, Henry W. Pychlau, her husband, Annie Pychlau Vietinghoff Scheel, Hamilkar Vietinghoff Scheel, her husband, Hedwig Meyerdorff, Ernest Meyerdorff, her husband, Antonio Arbusw, L. Arbusw, her husband, Edwin Pychlau, Auguste H. Pychlau, his wife, Justa P. Voest, Jacob Voest, her husband, Harriet D. P. Meyer, Frederick Meyer, her husband, their heirs, devisees or personal representatives, their or any

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*Exhibit—*

of their heirs, devisees, executors, administrators, grantees, assigns or successors in right, title and interest.

Complainants are without proper remedy in the courts of law and therefore pray:

10 1. That Henrietta J. Gaede, wife of Henry J. Gaede, Delia Pychlau, Henry W. Pychlau, her husband, Annie Pychlau Vietinghoff Scheel, Hamilkar Vietinghoff Scheel, her husband, Hedwig Meyerdorff, Ernest Meyerdorff, her husband, Antonio Arbusw, L. Arbusw, her husband, Edwin Pychlau, Auguste Pychlau, his wife, Justa P. Voest, Jacob Voest, her husband, Harriet D. P. Meyer, Frederick Meyer, her husband, their  
20 heirs, devisees or personal representatives, their or any of their or any of their heirs, devisees, executors, administrators, grantees, assigns or successors in right, title or interest, who are defendants to this suit may answer this bill of complaint and each statement therein made.

2. That the said defendants may set forth and specify their title, claim or encumbrance to or upon the lands and premises hereinafter described, and how and by what instrument the same is derived or created.

30 3. That the rights of all the parties to this suit in and to the lands hereinbefore set forth may be fixed and settled by this court, and that complainant may be decreed to have a perfect title thereto, and the said defendants to have no estate interest or right in, or incumbrance upon said lands or any part thereof.

4. That a writ of subpoena may issue, commanding the said defendants to answer this bill of complaint and abide by such decree as this court may make in the premises.

40

L. EDWARD HERRMANN,  
Solicitor for and of Counsel with Complainant.

*Exhibit—*

Filed October 17, 1925.

## IN CHANCERY OF NEW JERSEY.

*Between*

LAURENT S. MITCHELL, and  
 CHARLES A. MITCHELL, exec-  
 utors under the last will  
 and testament of Francis  
 W. Mitchell, deceased,  
*Complainants,*

*and*

HENRIETTA J. GAEDE, DELIA  
 PYCHLAU, *et al.,*  
*Defendants.*

10

*On Bill  
 to Quiet  
 Title.  
 Affidavit.*

20

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

JOHN D. CRAVEN, of full age, being duly sworn according to law, on his oath deposes and says:

1. I am the solicitor having actual charge of this case for the complainants in the foregoing bill of complaint; Henrietta J. Gaede, wife of Henry J. Gaede, Delia Pychlau, Henry W. Pychlua, her husband, Annie Pychlau Vietinghoff-Scheel, Hamilkar Vietinghoff Scheel, her husband, Hedwig Meyerdorff, Ernest Meyerdorff, her husband, Antonie Arbusw, L. Arbusw, her husband, Edwin Pychlau, Auguste H. Pychlau, his wife, Justa P. Voest, Jacob Voest, her husband, Harriet D. P. Meyer, Frederick Meyer, her husband, their heirs, devisees or personal representatives, their or any of their heirs, devisees, executors, administrators, grantors, assigns or successors in right, title and interest, are proper parties defendant to said bill of complaint.

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*Exhibit—*

2. I have in good faith made diligent and careful inquiry, not only in the manner, directed by the rules of this court as in the case of absent defendants, but also from other sources from which I thought it possible that I might be able to ascertain the information whether the  
 10 said Delia Pychlau is still alive, and have been informed in such manner that I believe it to be true that she is dead. I have also in like manner, made diligent and careful inquiry for the names and residences of the heirs, devisees and personal representatives of the said Delia Pychlau, and they or any of heirs, devisees, executors, administrators, grantees, assigns or successors in right, title or interest, and I found that the heirs of the said Delia Pychlau were:

20 (1) Her husband, Henry Pychlau, who died February 10, 1910 in Rigi, Russia:

(2) Her child Annie Pychlau, who died June 22, 1919, and her husband Hamilkar Vietinghoff-Scheel, who died June 16, 1906 in Russia;

(3) Hedwig Vietinghoff-Scheel child of Annie Pychlau married to Ernest Schvia Baron Meyerdorff, both of whom are still alive and living at Riga Lacepesailla 13 D G. 6 Latvia;

30 (4) Another child of Annie Pychlau, is Antonie Vietinghoff Scheel died March 22, 1920, in Germany, married to L. Arbusw;

(5) Edwin W. Pychlau son of Delia Pychlau, died January 1, 1924 in Germany, married to Augusta Pychlau, who lives at Keel, Germany;

(6) Harriet D. M. Pychlau, a daughter of Edwin W. Pychlau, married to Frederick Meyer, who lives at Weissenberg x2, 5 P. L. Keel,  
 40 Germany;

*Exhibit—*

(7) Justa M. Pychlau, another daughter of Edwin W. Pychlau, married to Jacob Voest, as appears by an affidavit and a translation is hereto annexed and made a part hereof.

But I cannot ascertain all the names of the grandchildren of the said Delia Pychlau or the addresses of any of the said heirs except as noted above, and I have been unable to ascertain any of the devisees, executors, administrators or personal representatives of the said heirs. 10

The address of the said Henrietta J. Gaede, wife of Henry J. Gaede is known.

JOHN D. CRAVEN,

Sworn to and subscribed before me at Jersey City, N. J. the 16th day of October, 1925. 20

J. HAVILAND TOMPKINS,  
Master in Chancery of New Jersey.

Kiel, Germany,  
May 2, 1925.

Most respected Mr. Attorney: Your communication has been received and I enclose herewith the family tree of Henry (Heinrich) Pychlau from which you will observe that we are the rightful heirs: 30

Parents of my deceased husband: Henry (Heinrich) Wilhelm Pychlau, born April 13, 1834 in Rega, Russia, died February 10, 1910 in Bilderlingshof near Riga.

His wife Delia Pychlau, nee Keelan, born May 29, 1838 in Dublin (Ireland), died January 31, 1863 in Brooklyn (America). 40

*Exhibit—*

Their children, Annie Elizabeth Sulamith, born July 29, 1857 in New York (America), died June 22, 1919 in Baldohn (Kurland). Married to Baron Hamilkar Vietinghoff-Scheel, died June 16— in Sucherm-Kalet (Russia).

10 Elwin William Henry (Elwin Wilh. Heinrich) born April 16, 1859 in Hudson City, N. J. (America) died January 1, 1924 in Kiel, (Germany).

His wife, Augusta Pychlau, nee Homo. Born March 17, 1863 in Riga.

His children and grandchildren. Harriet Delia Annie Alice Mary Pychlau, born April 1, 1885 in Riga, married to Friedrich Meyer in Kiel, (2 sons and 2 daughters).

20 Gutta Maria Elsa Frieda Pychlau, born November 19, 1891 in Stettin, married to Jacob Voest (killed in the World War), (1 son)

Annie Pychlau's children. Hedwig born July 20, 1881 in Laiksaar (hioland) married to Baron Ernest Meyendorff (no children).

Antonie, born August 9, 1886, in Suchum, Kaleh, died March 22, 1920 in Arnstadt, (Guringia) Germany. Was married to Professor Leonid Arbusw in Riga. (Two daughters).

30 The dates followed by a question mark I no longer remembered exactly.

It is hoped these statements will suffice to prove us the rightful heirs of Mrs. Delia Pychlau.

Inasmuch as we have been entirely impoverished as a result of the World War, we would be heartily thankful to you for an early settlement of this matter.

As I do not possess sufficient means to have each statement separately attested for myself and children, I will have the truthfulness of the

*Exhibit—*

foregoing main facts ratified by the Police Department.

(Sig.) MRS. AUGUSTA PYCHLAU,  
nee Homo.

The adjoining signature of Augusta Pychlau,  
is herewith acknowledged. **10**  
Kiel, May 2, 1925.

(L. s.) (Sig.) V. SEIDLITZ,  
Police Captain.

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

CHARLES A. FISCHER, of full age, being duly  
sworn according to law, on his oath deposes **20**  
and says that the foregoing is a true transla-  
tion of the affidavit of Augusta Pychlau annexed  
hereto.

I obtained by knowledge of German by both  
private instruction and attendance at private  
schools.

CHARLES A. FISCHER,

Sworn to and subscribed before  
me at Jersey City, N. J., this **30**  
4th day of August, 1925.

JOHN D. CRAVEN,  
Master in Chancery of New Jersey.

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*Exhibit—*

Filed October 17, 1925.

## IN CHANCERY OF NEW JERSEY.

*Between*

10 LAURENT S. MITCHELL, and  
 CHARLES A. MITCHELL, exec-  
 utors under the last will  
 and testament of Francis  
 W. Mitchell, deceased,  
*Complainants,*

*and*

HENRIETTA J. GAEDE and  
 DELIA PYCHLAU,  
 20 *Defendants.*

*On Bill, &c.*  
*Order of*  
*Publication.*

The complainants, Laurent S. Mitchell and Charles A. Mitchell, executors under the last will and testament of Francis W. Mitchell deceased, having filed their bill of complaint herein, wherein Delia Pychlau, Henry W. Pychlau, her husband, Annie Pychlau Vietinghoff Scheel, Hamilkar Vietinghoff Scheel, her husband, Hedwig Meyerdorff, Ernest Meyerdorff, her husband, Antonio Arbusw, L. Arbusw, her husband, Edwin Pychlau, Auguste H. Pychlau, his wife, Justa P. Voest, Jacob Voest, her husband, Harriet D. P. Meyer, Frederick Meyer, her husband, and their heirs, devisees and personal representatives and their or any of their heirs, devisees, executors, administrators, grantees, assigns or successors in right, title or interest were made defendants and a subpoena having duly issued against the said Delia Pychlau, Henry W. Pychlau, her husband, Annie Pychlau Vietinghoff

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*Exhibit—*

Scheel, Hamilkar Vietinghoff Scheel, her husband, Hedwig Meyerdorff, Ernest Meyerdorff, her husband, Antonio Arbusw, L. Arbusw, her husband, Edwin Pychlau, Auguste H. Pychlau, his wife, Justa P. Voest, Jacob Voest, her husband, Harriet D. P. Meyer, Frederick Meyer, her husband, and their heirs, devisees, executors, administrators, grantees, assigns or successors in right, title or interest to appear in this suit as such defendants. 10

And it having been made to appear by affidavit to the satisfaction of the Chancellor that the said Delia Pychlau, Henry W. Pychlau, her husband, Annie Pychlau Vietinghoff Scheel, Hamilkar Vietinghoff Scheel, her husband, Hedwig Meyerdorff, Ernest Meyerdorff, her husband, Antonio Arbusw, L. Arbusw, her husband, Edwin Pychlau, Auguste H. Pychlau, his wife, Justa P. Voest, Jacob Voest, her husband, Harriet D. P. Meyer, Frederick Meyer, her husband, and their heirs, devisees, executors, administrators, grantees, assigns or successors in right, title or interest cannot, upon due inquiry, be found in this state, and that process cannot be served upon the said Delia Pychlau, Henry W. Pychlau, her husband, Annie Pychlau Vietinghoff Scheel, Hamilkar Vietinghoff Scheel, her husband, Hedwig Meyerdorff, Ernest Meyerdorff, her husband, Antonio Arbusw, L. Arbusw, her husband, Edwin Pychlau, Auguste H. Pychlau, his wife, Justa P. Voest, Jacob Voest, her husband, Harriet D. P. Meyer, and Frederick Meyer her husband, or their heirs, devisees, executors, administrators, grantees, assigns or successors in right title or interest within this state; 20 30

And it appearing by the allegations of said bill of complaint duly verified by affidavit thereto 40

*Exhibit—*

annexed, that said Delia Pychlau, Henry W. Pychlau, her husband, Annie Pychlau Vietinghoff Scheel, Hamilkar Vietinghoff Scheel, her husband, Hedwig Meyerdorff, Ernest Meyerdorff, her husband, Antonio Arbusw, L. Arbusw, her husband, Edwin Pychlau, Auguste H. Pychlau, his wife, Justa P. Voest, Jacob Voest, her husband, Harriet D. P. Meyer, and Frederick Meyer, her husband, some of the persons mentioned in said bill, or their heirs, devisees or personal representatives, their or any of their heirs, devisees, executors, administrators, grantees, assigns or successors in right, title, or interest are proper parties defendant to said bill of complaint.

And it further appearing that the said complainants, after diligent and careful inquiry therefor, made as in case of absent defendants, has been unable to ascertain whether the said Delia Pychlau, Henry W. Pychlau, her husband, Annie Pychlau Vietinghoff Scheel, Hamilkar Veitinghoff Scheel, her husband, Hedwig Meyerdorff, Ernest Meyerdorff, her husband, Antonio Arbusw, L. Arbusw, her husband, Edwin Pychlau, Auguste H. Pychlau, his wife, Justa P. Voest, Jacob Voest, her husband, Harriet D. P. Meyer, Frederick Meyer, her husband, are still alive,

It is thereupon on this 17th day of October, nineteen hundred and twenty-five, ORDERED that the said Delia Pychlau, Henry W. Pychlau, her husband, Annie Pychlau Vietinghoff Scheel, Hamilkar Vietinghoff Scheel, her husband, Hedwig Meyerdorff, Ernest Meyerdorff, her husband, Antonio Arbusw, L. Arbusw, her husband, Edwin Pychlau, Auguste H. Pychlau, his wife, Justa P. Voest, Jacob Voest, her husband, Harriet D. P. Meyer, Frederick Meyer, her husband, and their

*Exhibit—*

heirs, devisees, executors, administrators, grantees, assigns or successors in right, title or interest appear and answer the complainants' bill of complaint on or before the 18th day of December next, or that in default thereof such decree be made against them as the Chancellor shall deem just and equitable.

10

It is further ORDERED that the notice required by law to be published against absent defendants in default of personal service, which notice shall contain a description of the lands and premises mentioned and described in said bill of complaint sufficient to identify the same and shall be addressed to the said Delia Pychlau, Henry W. Pychlau, her husband, Annie Pychlau Vietinghoff Scheel, Hamilkar Vietinghoff Scheel, her husband, Hedwig Meyerdorff, Ernest Meyerdorff, her husband, Antonio Arbusw, L. Arbusw, her husband, Edwin Pychlau, Auguste H. Pychlau, his wife, Justa P. Voest, Jacob Voest, her husband, Harriet D. P. Meyer, Frederick Meyer, her husband, and their heirs, devisees and personal representatives, and their or any of their heirs, devisees, executors, administrators, grantees, assigns, or successors in right, title and interest shall, within fifteen days after the date hereof, be posted in three conspicuous places upon the said lands and premises, and shall also be published in the Jersey Journal and Jersey Observer, two of the public newspapers printed in this state, for four weeks consecutively, at least once in each week, the first publication to be made within fifteen days after the date hereof; and that a copy of said notice addressed to "Delia Pychlau, Henry W. Pychlau, her husband, Annie Pychlau Vietinghoff Scheel, Hamilkar Vietinghoff Scheel, her husband, Hedwig

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*Exhibit—*

- Meyerdorff, Ernest Meyerdorff, her husband, Antonio Arbusw, L. Arbusw, her husband, Edwin Pychlau, Auguste H. Pychlau, his wife, Justa P. Voest, Jacob Voest, her husband, Harriet D. P. Meyer, and Frederick Meyer her husband, and their heirs, devisees and personal representatives, and their or any of their heirs, devisees, executors, administrators, grantees, assigns or successors in right, title or interest," be mailed prepaid, within fifteen days after the date hereof, directed to the post office nearest the last known residence of said Delia Pychlau, Henry W. Pychlau, her husband, Annie Pychlau Vietinghoff Scheel, Hamilkar Veitinghoff Scheel, her husband, Hedwig Meyerdorff, Ernest Meyerdorff, her husband, Antonio Arbusw, L. Arbusw, her husband, Edwin Pychlau, Auguste H. Pychlau, his wife, Justa P. Voest, Jacob Voest, her husband, Harriet D. P. Meyer and Frederick Meyer her husband, or to the last known post office of which the said Delia Pychlau, Henry W. Pychlau, her husband, Annie Pychlau Vietinghoff Scheel, and Hamilkar Vietinghoff Scheel, her husband, Hedwig Meyerdorff, Ernest Meyerdorff, her husband, Antonio Arbusw, L. Arbusw, her husband, Edwin Pychlau, Auguste Pychlau, his wife, Justa P. Voest, Jacob Voest her husband, Harriet D. P. Meyer, and Frederick Meyer her husband, usually received their letters.

E. R. WALKER,

C.

*Exhibit—*

## In Chancery of New Jersey.

Between

Laurent S. Mitchell and  
Charles A. Mitchell, Ex-  
ecutors etc.

Complainants,

—and—

Henrietta J. Gaede, et als,  
Defendants.

On Bill &c. 10  
Proof of  
Publication.

State of New Jersey, }  
Hudson County. } ss.

Edna E. Ward being duly sworn, according to 20  
law, upon her oath saith that she is the Book-  
keeper of The Jersey Journal, a news paper  
printed and published in Jersey City, County and  
State aforesaid, and that a notice, of which the  
annexed is a true copy, was published in the said  
newspaper for five times successively, at least  
once in each week, commencing on the 24th day  
of October 1925 and continued thereafter on Oct.  
31-Nov. 7-14-21, 1925.

Edna E. Ward 30

Sworn and subscribed before me this  
24th day of November A. D. 1925.

Ethel E. Fagan

Notary Public, N. J.

Filed 12/3/25.

*Exhibit—*

In Chancery of New Jersey.

10	Between Laurent S. Mitchell and Charles A. Mitchell, Ex- ecutors etc. Complainants, —and— Henrietta J. Gaede, et als, Defendants.	}	On Bill &c. Proof of Publication.
----	--	---	---

State of New Jersey, }  
 County of Hudson. } ss.

20 Frances M. Wein, being duly sworn according to law, upon her oath saith; that she is book-keeper of the Jersey Observer, a public newspaper printed and published in the City of Hoboken, County of Hudson and State of New Jersey, that a notice of which the annexed is a true copy, was published in said newspaper at least once in each week for five successive weeks, beginning October 24, 1925 to wit; on the 7th, 14th & 21st days of Nov, 1925.

30 Frances M. Wein

Sworn and subscribed before me this  
 21st day of Nov. A. D. 1925.

Fredk A. Kaufmann  
 Notary Public of N. J.  
 Filed 12/3/25

40

*Exhibit—*

New Jersey, Hudson County, ss:

John Kuehns Special Deputy Sheriff of Hudson County, being duly sworn, on his oath saith that he has inquired for Delia Pychlau, Henry W. Pychlau, her husband, Annie Pychlau Vietinghoff Scheel, Hamilkar Vieginghoff Scheel, her husband, Hedwig Meyerdorff, Ernest Meyerdorff, her husband, Antonio Arbusw, L. Arbusw her husband, Edwin Pychlau, Auguste Pychlau his wife, Justa P. Voest, Jacob Voest her husband, Harriet D. P. Meyer, Frederick Meyer her husband, their heirs, devisees or personal representatives, their or any of their or any of their heirs, devisees, executors, administrators, grantees, assigns or successors in right, title or interest. Named in the annexed process for the purpose of serving them therewith, and has not been able to find them in said County, and this deponent is credibly informed and verily believes that they cannot be found in this State,

John Kuehns  
Special Deputy Sheriff.

Subscribed and sworn to this 8th,  
day of October, 1925, at Jersey City,  
before me,

Thomas Enright  
Notary Pyblic N. J.  
Filed 10/17/25  
October 8th, 1925

This writ returned non est as to the defendants,  
: See affidavit annexed.

John M. Hannan, Sheriff.  
By. John Kuehns S. D. Sheriff.

*Exhibit—*

Service of a copy of the within sub ad resp  
acknowledged this 6th day of October A. D.  
1925.

Gaede & Gaede.  
Solrs of Deft.  
Henrietta J. Gaede.

10

Subpoena Witnessed October 1st 1925  
Returnable 20 days after October 15th, 1925.  
L. Edward Herrmann  
15 Ex etc.

IN CHANCERY OF NEW JERSEY.

20

*Between*

LAURENT S. MITCHELL,  
CHARLES A. MITCHELL, ADE-  
LAIDE GIAMBALVO and CE-  
CELIA STEPHENS,

*Complainants,*

*and*

HENRIETTA J. GAEDE, DELIA  
PYCHLAU, *et al.*,

30

*Defendants.*

*On Bill, &c.*  
*Affidavit.*

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

EUGENE F. HILLERY, of full age, being duly  
sworn according to law, on his oath deposes and  
says that on the twenty-third day of October,  
1925, he posted notices, a copy of which is an-  
nexed hereto and made part hereof, in three con-

40

*Exhibit—*

spicuous places upon the premises known as street numbers 448 and 450 Central avenue, Jersey City, New Jersey, being the same premises as described in said notices.

EUGENE F. HILLERY.

Sworn to and subscribed before me  
this 23rd day of October, 1925.

10

JOHN D. CRAVEN,  
Master in Chancery of New Jersey.

Filed October 27, 1925.

IN CHANCERY OF NEW JERSEY.

*Between*

LAURENT S. MITCHELL and  
CHARLES A. MITCHELL, ex-  
ecutors under the last will  
and testament of Francis  
W. Mitchell, deceased,

*Complainants,*

*and*

HENRIETTA J. GAEDE, DELIA  
PYCHLAU, *et als.,*

*Defendants.*

20

*On Bill to  
Quiet Title.  
Affidavit of  
Mailing.*

30

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

MARY E. O'BRIEN, of full age being duly sworn according to law, on her oath deposes and says that on October 24, 1925, she placed in the post-office at Jersey City, New Jersey, a letter ad-

40

*Exhibit—*

dressed to each of the following named persons, at the addresses given below, with the postage thereon prepaid, containing a copy of a notice hereto attached:

10 Mrs. Delia Pychlau, C/O Mrs. Auguste Pychlau, Goosalotta Str. 9 I, Kiel Germany.  
Henry W. Pychlau, Esq., C/O Mrs. Auguste Pychlau, Goosalotta Str. 9 I, Kiel, Germany.

Annie Pychlau Vietinghoff Scheel, C/O Mrs. Auguste Pychlau, Goosalotta Str. 9 I, Kiel, Germany.

Hamilkar Vietinghoff Scheel, C/O Mrs. Auguste Pychlau, Goosalotta Str. 9 I, Kiel, Germany.

20 Edwin William Pychlau, Esq., C/O Mrs. Auguste Pychlau, Goosalotta Str. 9 I, Kiel, Germany.

Mrs. Augusta Pychlau, Goosalotta Str. 9 I, Kiel, Germany.

Mrs. Harriet D. P. Meyer, Weissenburg Str. 5 P. L. Kiel, Germany.

Frederick Meyer, Esq., Weissenburg Str. 5 P. L. Kiel, Germany.

Justa Voest, C/O Frederick Meyer, Weissenburg Str. 5 P. L. Kiel, Germany.

30 Jacob Voest, Esq., C/O Frederick Meyer, Weissenburg Str. 5 P. L. Kiel Germany.

Antonie Arbusw, Esq., C/O Frederick Meyer, Weissenburg Str. 5 P. L. Kiel, Germany.

L. Arbusw, Esq., C/O Frederick Meyer, Weissenburg Str. 5 P. L. Kiel, Germany.

Mrs. Hedwig Baronin Meyerdorff, Lappessa Illa 13, D. Z. 6, Riga Latvia.

*Exhibit—*

Ernest Baronin Meyerdorff, Esq., Lac-  
plessa Illa 13, D. Z. 6, Riga Latvia.

MARY E. O'BRIEN.

Sworn to and subscribed before  
me at Jersey City, N. J. this  
24th day of October, 1925.

10

JOHN D. CRAVEN,  
Master in Chancery of New Jersey.

IN CHANCERY OF NEW JERSEY.

To Delia Pychlau, Henry W. Pychlau, her  
husband, Annie Pychlau Vietinghoff Scheel,  
Hamilkar Vietinghoff Scheel, her husband, Hed-  
wig Meyerdorff, Ernest Meyerdorff, her hus-  
band, Antonio Arbusw, L. Arbusw, her husband,  
Edwin Pychlau, Auguste H. Pychlau, his wife,  
Justa P. Voest, Jacob Voest, her husband, Har-  
riet D. P. Meyer, Frederick Meyer, her husband,  
their heirs, devisees and personal representa-  
tives, and their or any of their heirs, devisees,  
executors, administrators, grantees, assigns or  
successors in right, title and interest:

20

By virtue of an order of the Court of Chan-  
cery of New Jersey made on the 17th day of  
October, 1925, in a cause wherein Laurent S.  
Mitchell and Charles A. Mitchell, executors under  
the last will and testament of Francis W. Mit-  
chell, deceased, are complainants, and Delia  
Pychlau and others are defendants, you are re-  
quired to appear and answer the bill of com-  
plaint on or before the 18th day of December,  
next, or the said bill will be taken as confessed  
against you.

30

40

*Exhibit—*

The said bill is filed to quiet the title of the said Laurent S. Mitchell and Charles A. Mitchell, executors under the last will and testament of Francis W. Mitchell, deceased, to certain lands and premises, more particularly described as follows:

- 10     “ALL those certain lots, tracts, or parcels of land and premises, situate, lying and being in Jersey City, Hudson County, New Jersey, known and distinguished as lots two hundred and seventy-five (275) and two hundred and seventy-six (276) in Block seven hundred and eighty-one (781) fronting on Central Avenue in the Fourth District of Jersey City, New Jersey, as laid down and shown on an Assessment Map accompanying a Report number 102, made by the
- 20     Commissioners of Adjustment and filed with their report in the office of the Clerk of the County of Hudson, a certified copy of which report and map was transmitted to and filed by me. The said property being also known and described on a map entitled ‘Map of Mount Pleasant, Hudson County, N. J.’ made by John Bevan, City Surveyor, and being marked ‘Map of Land of Industrial Home Association No. 1, of Hoboken, near West Hoboken, Hudson County,
- 30     N. J. signed by G. Van Houten, Pres.’ and filed in the Clerk’s office of said County of Hudson on the 3rd day of August 1853, are known and marked as lots numbers two hundred and seventy-five and two hundred and seventy-six (276); each lot being twenty-five feet wide in front and rear fronting on Montgomery Avenue and running through the block to Franklin Street.” You are made defendants because you have or may have an interest or estate in said
- 40     lands and premises; and if you claim any title

*Exhibit—*

to, interest in or encumbrance upon the said lands and premises, you are required to answer the said bill, but not otherwise.

L. EDWARD HERRMANN,  
Solicitor of Complainants,  
15 Exchange Place,  
Jersey City, N. J. 10

Filed October 17, 1925.

**DECREE PRO CONFESSO.**

Filed December 21, 1925.

IN CHANCERY OF NEW JERSEY.

*Between*

LAURENT S. MITCHELL and  
CHARLES A. MITCHELL, exec-  
utors under the last will  
and testament of Francis  
W. Mitchell, deceased,  
*Complainants,*

*and*

HENRIETTA J. GAEDE, DELIA  
PYCHLAU, *et als.,*  
*Defendants.*

20

*On Bill  
to Quiet  
Title.*

*Decree Pro  
Confesso.*

30

This matter being opened to the Court by L. Edward Herrmann, solicitor of the complainants, and it appearing that process of subpoena calling upon the defendants to answer the complainants' bill of complaint, has been duly issued and returned served upon the defendant, Henrietta J. Gaede, and that service was effected upon the other defendants by publication and 40

*Exhibit—*

mailing of notices to them and it appearing that the notices were published in two of the newspapers, and notices were mailed to all the defendants as provided in the order of publication, and that said defendants, Henrietta J. Gaede, wife of Henry Gaede Jr., Delia Pychlau, Henry W. Pychlau, her husband, Annie Pychlau Vietinghoff Scheel, Hamilkar Vietinghoff Scheel, her husband, Hedwig Meyerdorff, Ernest Meyerdorff, her husband, Antonio Arbusw, L. Arbusw, her husband, Edwin Pychlau, Auguste H. Pychlau, his wife, Justa P. Voest, Jacob Voest, her husband, Harriet D. P. Meyer, Frederick Meyer, her husband, their heirs, devisees or personal representatives, their or any of their heirs, devisees, executors, administrators, grantees, assigns or successors in right, title and interest, have not filed any answer to the said bill of complaint within the time required by law, but have wholly failed and neglected so to do,

It is thereupon, on this 21st day of December, nineteen hundred and twenty-five, on motion of L. Edward Herrmann, solicitor of the complainants, ORDERED, that said complainants' bill of complaint be and the same is hereby taken as confessed against the said defendants, Henrietta J. Gaede, wife of Henry Gaede, Jr., Delia Pychlau, Henry W. Pychlau, her husband, Annie Pychlau Vietinghoff Scheel, Hamilkar Vietinghoff Scheel, her husband, Hedwig Meyerdorff, Ernest Meyerdorff, her husband, Antonio Arbusw, L. Arbusw, her husband, Edwin Pychlau, Auguste H. Pychlau, his wife, Justa P. Voest, Jacob Voest, her husband, Harriet D. P. Meyer, Frederick Meyer, her husband, their heirs, devisees or personal representatives, their or any of their heirs, devisees, executors, administrators,

*Exhibit—*

grantees, assigns or successors in right, title and interest.

It is further ORDERED, that the complainants proceed to take depositions and other evidence to substantiate and prove the allegations of the bill, and to bring on the hearing of the cause *ex parte*.

10

E. R. WALKER,

C.

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30

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*Exhibit—***DEPOSITIONS.**

## IN CHANCERY OF NEW JERSEY.

	<i>Between</i>	
10	LAURENT S. MITCHELL, and CHARLES A. MITCHELL, exec- utors under the last will and testament of Francis A. Mitchell, deceased, <i>Complainants,</i>	} <i>On Bill to Quiet Title. Depositions.</i>
	<i>and</i>	
	HENRIETTA J. GAEDE, DELIA PYCHLAU, <i>et als.,</i>	
20	<i>Defendants.</i>	

Depositions taken under order for proofs in the above-entitled cause, dated December 21, 1925, before me, Frank W. Hastings, Jr., Master in Chancery, at my office, No. 15 Exchange Place, Jersey City, N. J., in the presence of John D. Craven, Esq., appearing for L. Edward Herrmann, solicitor of complainants, on January 6th, 1926, at twelve o'clock noon.

30                                   FRANK W. HASTINGS, JR.,  
Master in Chancery of New Jersey.

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

I, HELEN F. McCLELLAN, being duly sworn according to law, upon my oath depose and say: That I will faithfully take down stenographically and reproduce in typewriting the testimony to  
40                                   be given in a cause now pending in the Court of Chancery of New Jersey, wherein Laurent S.

*Exhibit—*

Mitchell and Charles A. Mitchell, executors &c. are complainants, and Henrietta J. Gaede, Delia Pychlau, *et als.*, are defendants, so help me God.

HELEN F. McCLELLAN.

Subscribed and sworn to before me, this 6th day of January, 1926. 10

FRANK W. HASTINGS, JR.,  
Master in Chancery of New Jersey.

Laurent S. Mitchell, of full age, being duly sworn according to law, upon his oath deposes and says:

*By John D. Craven.* 20

Deed recorded Book 773 of Deeds for Hudson County on page 466, made by Robert Davis, City Collector of the Mayor and Aldermen of Jersey City, to F. W. Mitchell, offered in evidence and marked Exhibit C. 1.

Q Doctor, when did your father die? A May 7, 1903.

Q Did you and your brother qualify as executors under the last will and testament of your father? A Yes. 30

Q Has your peaceable possession of the premises No. 442-444 Central avenue, as described in this deed, been disturbed? A No, sir.

Q Anybody object to your title? A No, sir.

Q You claim to own the same? A Yes.

Q Was your father in peaceable possession of the premises? A Yes.

Q Did anybody ever attack your title? A No.

40

*Exhibit—*

Q How far back does your memory go as to the possession by your father? A I remember when he got it.

Q Has it been fenced in? A Yes.

Q Have you leased the property at various times? A I have.

10 Q Have you been paying taxes on it? A I have.

Q How many years? A Ever since the time I acquired the property.

Q Did your father or you since his death pay taxes on the land? A Yes.

Q Have any of these defendants in this suit, ever made any claim to you personally, or to your brother, to your knowledge, making any claim to the property? A No.

20

JOHN D. CRAVEN, of full age, being duly sworn according to law, upon his oath deposes and says:

I am the solicitor in charge of this matter, appearing for L. Edward Herrmann, Esq., and I have made an examination of title to these premises.

30 It appears by deed dated May 21, 1862 and recorded in book 93 of deeds for Hudson County, on page 508, deed was in one Delia Pychlau; that by deed dated November 24, 1891, recorded in book 552, page 321, it was attempted to convey the interest of Delia Pychlau under a tax sale. In that sale Henry Pychlau, Delia Pychlau, Annie Pychlau and Edwin Pychlau were served by order of publication. At that time Delia Pychlau had died and title would have vested in her heirs and all of the heirs were not served in  
40 this tax proceeding. I have made diligent in-

*Exhibit—*

quiry to find out who were the heirs at law of said Delia Pychlau and have been in touch with heirs in Riga and Kiel, Germany and have correspondence with them. I have applied to them to release any interest they might have but they refuse to do so. From Mrs. Augusta Pychlau I received an affidavit, which has been previously filed, in this Court, which affidavit is dated May 2, 1925 and from this affidavit it appears that Delia Pychlau died January 31, 1863 and her husband, Henry Pychlau died February 10, 1910. That she had two children, Annie Elizabeth Sulsmith, died June 22, 1919 and she was married to Baron Hamilkar Vietinghoff-Scheel, who died June 16, 1906. That said Annie Pychlau had a child named Hedwig, who married Ernest Schvia Aaron Meyerdorff, both of whom are now alive and live at Latvia and another child of said Annie Pychlau was Antonie, who died March 22, 1920 in Germany, she was married to L. Arbusw.

Elwin Pychlau died January 1, 1924 in Germany and was married to Augusta Pychlau, who is now living in Kiel, Germany. She had two children, Harriet, who is married to Friedrich Meyer, who are now living in Kiel, Germany and another daughter Justa Marie Pychlau, who is now living and was married to Jacob Voest, who was killed in the World War.

From this affidavit it appears that these are all the heirs of Delia Pychlau and their addresses are as set forth in the said affidavit. These heirs of Delia Pychlau might claim some interest in this property, because they were not properly made parties in the tax proceedings.

None of the heirs of Delia Pychlau are living in the United States nor are there any persons

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*Exhibit—*

who represent them or know anything concerning their family history in the United States, as they have all lived abroad for a great many years. Delia Pychlau, her heirs, devisees, personal representative, executors, grantees, or assigns or successors, in right, title and interest  
10 are proper parties defendant to the bill of complaint. Henrietta J. Gaede was made a party defendant, because she was not served in the tax sale proceeding by which the complainants acquired title. Her husband, Henry J. Gaede asserting at that time they held the property merely in trust.

No suit is pending by any of the heirs of Delia Pychlau to assert any of the alleged claims, which they have in this property nor has any  
20 ever been filed.

I hereby certify that the foregoing depositions of witnesses were taken in my immediate presence and hearing by a stenographer selected by me, she having been first duly sworn by me to faithfully and truly take down stenographically and reproduce in typewriting the testimony given by said witnesses, by entering both question and answer, and I believe that said depositions do accurately state the evidence given by said witnesses.  
30

FRANK W. HASTINGS, JR.,  
Master in Chancery of New Jersey.

*Exhibit—***FINAL DECREE.**

Filed January 25, 1926.

IN CHANCERY OF NEW JERSEY.

*Between*

LAURENT S. MITCHELL, and  
 CHARLES A. MITCHELL, exec-  
 utors under the last will  
 and testament of Francis  
 W. Mitchell, deceased,  
*Complainants,*

*and*

DELIA PYCHLAU, *et als.*,  
*Defendants.*

10

*On Bill  
to Quiet  
Title.**Final  
Decree.*

20

This matter being opened to the Court by L. Edward Herrmann, solicitor of complainants, and it appearing that process of subpoena calling upon the defendants to answer complainants' bill of complaint has been duly issued and returned served upon the defendants, Henrietta J. Gaede, wife of Henry Gaede, Jr., Delia Pychlau, Henry W. Pychlau, her husband, Annie Pychlau Vietinghoff Scheel, Hamilkar Vietinghoff Scheel, her husband, Hedwig Meyerdorff, Ernest Meyerdorff, her husband, Antonio Arbusw, L. Arbusw, her husband, Edwin Pychlau, Auguste H. Pychlau, his wife, Justa P. Voest, Jacob Voest, her husband, Harriet D. P. Meyer, Frederick Meyer, her husband, their heirs, devisees or personal representatives, their or any of their heirs, devisees, executors, administrators, grantees, assigns or successors in right, title and interest; that said defendants have not filed any answer to the said bill of complaint within

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*Exhibit—*

the time required by law, but have wholly failed and neglected so to do; and

It appearing, that depositions have been taken to substantiate and prove the allegations of the bill;

10 It is, thereupon, on this 22nd day of January, 1926, on motion of L. Edward Herrmann, solicitor of complainant, ORDERED, ADJUDGED and DECREED, that the said defendants, Henrietta J. Gaede, wife of Henry Gaede, Jr., Delia Pychlau, Henry W. Pychlau, her husband, Annie Pychlau Vietinghoff Scheel, Hamilkar Vietinghoff Scheel, her husband, Hedwig Meyerdorff, Ernest Meyerdorff, her husband, Antonio Arbusw, L. Arbusw, her husband, Edwin Pychlau, Auguste H. Pychlau, his wife, Justa P. Voest, Jacob Voest, her  
20 husband, Harriet D. P. Meyer, Frederick Meyer, her husband, their heirs, devisees or personal representatives, their or any of their heirs, devisees, executors, administrators, grantees, assigns, or successors in right, title and interest, have no estate or interest in, or encumbrance upon said lands and premises, or any part thereof, and

It is further ORDERED, ADJUDGED and DECREED, that as to all of the said lands and premises described in said bill of complaint, to wit:

30 "All those certain lots, tracts, or parcels of land and premises, situate, lying and being in Jersey City, Hudson County, New Jersey, known and distinguished as lots two hundred and seventy-five (275) and two hundred and seventy-six (276) in Block seven hundred and eighty-one (781) fronting on Central Avenue in the Fourth District of Jersey City, New Jersey, as laid down and shown on an Assessment Map accompanying a Report number 102, made by the  
40 Commissioners of Adjustment and filed with their

*Exhibit—*

report in the office of the Clerk of the County of Hudson, a certified copy of which report and map was transmitted to and filed by me. The said property being also known and described on a map entitled 'Map of Mount Pleasant, Hudson County, N. J.' made by John Bevan, City Surveyor, and being marked 'Map of Land of Industrial Home Association No. 1, of Hoboken, near West Hoboken, Hudson County, N. J. signed by G. Van Houten, Pres.' and filed in the Clerk's office of said County of Hudson on the 3rd day of August, 1853, are known and marked as lots numbers two hundred and seventy-five and two hundred and seventy-six (276); each lot being twenty-five feet wide in front and rear fronting on Montgomery Avenue and running through the block to Franklin Street."

10

20

so far as relates to any claim thereon by or on behalf of the said defendants, Henrietta J. Gaede, wife of Henry Gaede, Jr., Delia Pychlau, Henry W. Pychlau, her husband, Annie Pychlau Vitinghoff Scheel, Hamilkar Vietinghoff Scheel, her husband, Hedwig Meyerdorff, Ernest Meyerdorff, her husband, Antonio Arbusw, L. Arbusw, her husband, Edwin Pychlau, Auguste H. Pychlau, his wife, Justa P. Voest, Jacob Voest, her husband, Harriet D. P. Meyer, Frederick Myer, her husband, their heirs, devisees or personal representatives, their or any of their heirs, devisees, executors, administrators, grantees, assigns or successors in right, title and interest, or any of them, the title of the said complainants, Laurent S. Mitchell and Charles A. Mitchell, executors under the last will and testament of Francis W. Mitchell, deceased, in and to the same

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*Exhibit—*

and every part thereof, is hereby determined  
fixed and settled, and declared to be good.

E. R. WALKER,

C.

10 Respectfully advised,  
BAYARD STOCKTON,  
A. M.

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107

## New Jersey Court of Errors and Appeals

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LAURENT S. MITCHELL, CHARLES  
A. MITCHELL, ADELAIDE GIAM-  
BALVO, AND CECILE T. STEPHENS,  
Compl'ts.-Appellants,

*vs.*

DELIA PYCHLAU, *et als.*,  
Defd'ts.-Respondents.

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FALLON, V. C. Sat below.

### BRIEF FOR APPELLANTS.

#### Statement of Facts.

This is an appeal from a decree of the Court of Chancery, in a proceeding to quiet title under the statute entitled, "An Act to compel the determination of claims to real estate in certain cases to quiet the title to the same."

The complainants, Laurent S. Mitchell, Charles A. Mitchell, Adelaide Giambalvo and Cecile T. Stephens, are all of the heirs at law of Francis W. Mitchell, to whom the premises had been conveyed by Robert Davis, City Collector of the Mayor and Aldermen of the City of Jersey City, by deed dated March 22nd, 1901, and recorded in Book 773 of Deeds for Hudson County on page 466.

The defendants named in the bill of complaint were non-resident, and were served by an order of publication, excepting the defendant Henrietta

J. Gaede, who was served personally, and a decree *pro confesso* was entered against her.

Seven persons who allege they are defendants, but have not identified themselves as such, filed an answer and counterclaim, and after notice, an order was entered striking out certain paragraphs of the answer and all of the counterclaim, with leave to file an amended answer thereafter. Subsequently these defendants filed an amended answer, and at the final hearing, with the consent of the Court, by its order filed a further amended answer and counterclaim (Case, pp. 52 to 57 inc.).

The counterclaim filed seeks to attack the tax proceedings through which the predecessor in title, of the complainants, derived his title, alleging that said proceedings were induced by fraud and concealment, in that representations were made therein that certain persons were the only persons interested in, or who had claims against the title to the said premises, and concealing the fact that the answering defendants had any interest therein.

The relief prayed for by the defendants, among other things, was to set aside, declare void and of no effect the deed through which complainants derived their title. This amended answer and counterclaim was permitted to be filed at the final hearing, after which a motion was made to strike out the amended answer and counterclaim upon the ground that they constituted an attempt to collaterally attack the proceeding through which the complainants' predecessor derived his title, and that the matters set forth in the answer were in the nature of a bill to quiet title for the defendants while another suit was pending. Decision on the motion was reserved until the conclusion of the hearing, at which time it was denied.

The title to two lots of land on Central Avenue, Jersey City, New Jersey, is involved. The title

is derived through two tax sale proceedings; the premises were owned by one Delia Pychlau, she having acquired title thereto by a deed made by John N. J. Reutte and wife, dated May 21, 1862, recorded in Book 93 of Deeds for Hudson County on page 508.

The following is a chronological statement of the record title:

(1) Deed, Patrick H. O'Neill, City Collector of the Mayor and Aldermen of Jersey City to Henry A. Gaede, dated November 24, 1891, recorded in Book 552 of Deeds for Hudson County on page 321.

(2) Deed, Henry W. Pychlau, widower, of City of Milan, to Henry A. Gaede, dated November 30, 1891, and recorded in Book 552 of Deeds for Hudson County on page 319.

(3) Deed, Robert Davis, City Collector of the Mayor and Aldermen of Jersey City, to Francis W. Mitchell, dated March 22nd, 1901, recorded in Book 773 of Deeds for Hudson County on page 466.

(4) Will of Francis W. Mitchell, dated March 12th, 1903, probated May 21, 1903, recorded in Book 59 of Wills for Hudson County on page 681; Re-probated on February 3, 1922 and recorded in Book 120 of Wills for Hudson County on page 425.

(5) Deed Adelaide Mitchell, widow of Francis W. Mitchell, to Laurent S. and Charles A. Mitchell, executors, &c., dated June 16, 1903, recorded in Book 239 of Deeds for Hudson County on page 301.

Prior to the filing of the bill in the instant case, a bill to quiet title to the same premises had been filed by the executors under the last will and testament of Francis W. Mitchell, in which proceeding a decree was entered. The executors having a bare power of sale and no right or title of pos-

session the decree became a nullity (Case, pp. 229 to 262 inc.).

The complainants made a *prima facie* case. They offered in evidence the deed set out above as #3, and supplemented this with testimony showing possession in complainants and Francis W. Mitchell, their predecessor in title, since the year 1901, including the fencing in of the property, removing snow from the sidewalks in front thereof, and renting the same for various purposes at intervals during the entire period. Proof was also offered showing the payment of taxes during the entire period.

The defendants filed in the proceeding an abstract of the record title, as shown by the records in the Hudson County Register's office (Case, pp. 194 to 220). The only other proofs offered by the defendants were the records of the County Clerk's Office of Hudson County, in a proceeding entitled:

“In the matter of the application of Francis W. Mitchell for an order for a deed for lots 275-276 in Block 781, on City Map of Jersey City, Docket # 16719” (Case, pp. 188 to 194).

and the records of the City Clerk's office of the City of Jersey City in Sale #7070 (Case, pp. 221 to 228). (Exhibits D-3, D-4, D-5 and D-6, Exhibits D-1 and D-2 are missing.) They also offered the files of the Court of Chancery in the proceeding instituted by Laurent S. Mitchell and Charles A. Mitchell, as executors under the last will and testament of Francis W. Mitchell, to quiet the title to the same premises, which proceedings, because of the executors under the will of Francis W. Mitchell having a bare power of sale and no right to possession, were a nullity.

In rebuttal complainants offered the tax proceedings which resulted in the sale of the premises

to Henry A. Gaede (Exhibit C-3), which proceeding culminated in the delivery of the deed made by Patrick O'Neill, City Collector of the Mayor and Aldermen of the City of Jersey City to Henry A. Gaede, dated November 24th, 1891, recorded in Book 552 of Deeds for Hudson County on page 321, and which proceeding antedated the proceeding instituted by Francis W. Mitchell through which he obtained deed from Robert Davis, the City Collector of the Mayor and Aldermen of the City of Jersey City.

## THE LAW

### POINT I.

**The Statute provides the method to review tax sale proceedings and limits the time within which the proceeding must be instituted.**

The provisions of the tax sale Act, which were in effect at the time through which the title to the lands in question were sold provided "that no writ of certiorari shall be allowed, and no action shall be brought to contest or set aside any deed hereafter given pursuant to the provisions of the Act to which this is a supplement, or any supplements thereof, or to recover possession of the land conveyed by such deed after the expiration of two years from the date of the execution of such deed."

C. S. 1910—5226, Sec. 347;  
*Goodman v. Mayer etc. Millville*, 75 N. J.  
Eq. 270;  
*Jersey City v. Lembeck*, 31 N. J. Eq. 255;  
*Roe v. Mayer etc. Jersey City*, 79 N. J.  
Eq. 645.

The appropriate remedy to review tax proceedings is by certiorari. The proceedings cannot be collaterally attacked:

“Where a deed is given for the sale of lands under the ‘Martin Act’, the purchaser may file a bill to quiet title under the act of 1870, where his deed is attacked by defendants who refuse to proceed at law; and the defenses of failure to give notice to redeem, failure to obtain an order from the Circuit court for the delivery of the deed, where there are infant defendants, are attempts to attack a deed collaterally, and cannot be considered, the defendant’s proper remedy being by writ of certiorari in the Supreme Court”.

*White v. Cadmus*, 84 N. J. Eq. page 86.

“A tax title deed under the Martin Act being within the provisions of the fifteenth section of the Sales of Land Act (Gen. Stat. p. 2982) is not subject to be questioned collaterally.”

*Walton v. American Baptist Publication Society*, 78 N. J. Eq., p. 263;

*Roe v. Mayor & Aldermen of Jersey City*, 82 N. J. Eq., p. 641.

## POINT II.

**The Court of Chancery can only exercise its jurisdiction when fraud in the proceeding is set up and proved; the loss of the remedy at law by reason of the expiration of the time limited for review at law does not give jurisdiction in equity.**

Bill of complaint to attack Martin Act Proceedings and enjoin City from giving deed.

“The relief sought by the complainant is not one that a court of equity can grant. As-

suming it to be true that the proceedings which she attacks were invalid her sole remedy was to apply for a certiorari to the Supreme Court. This was the decision of this court in *Jersey City v. Lembeck*, 31 N. J. Eq. 255, and the soundness of that decision has never been questioned since its rendition in 1879."

*Roe v. Jersey City*, 79 N. J. Eq. 645.

Complainant filed bill to quiet title alleging that defendants held title by tax deeds and that proceedings were void.

"The act to quiet title to real estate does not warrant a bill in equity to contest the legality of a municipal assessment and tax sale thereon under the Martin Act, that being a question exclusively for the Supreme Court to determine. It is beyond the power of the legislature to vest in the Chancery Court any of the fundamental prerogatives of the Supreme Court. In the absence of an adjudication by a court having jurisdiction over the question whether or not sales for assessments under the Martin Act were invalid, *the presumption is that the claimants under such sale have a good title to the disputed lands.*"

*Mackie v. Gain & Keshin*, 92 N. J. Eq. 631.

"A defective and void or ineffective tax collector's certificate of sale cannot be attacked on a bill to redeem. If voidable the remedy is by certiorari; if void by ejectment, bill to remove the cloud or bill to quiet title."

"The statutory presumption of the truth of the affidavit of statutory service, by mailing the notice to redeem is not overcome by the testimony of the addressee of the notice, that he did not receive it."

*Welles v. Schaefer*, 98 N. J. Eq. 31.

“Where it is alleged in a bill of equity that a defendant’s tax title is worthless because of irregularity in the proceedings under which the Circuit Court made an order directing the making of his deed, and where the remedy by certiorari is lost by reason of the statute of limitations, such loss of remedy at law does not give jurisdiction in equity.

Where a bill in equity alleges no more than that, the proofs offered to the Circuit Court were untrue, that is not enough to invoke equity jurisdiction. To impeach and overthrow legal proceedings, *it must be shown that the proofs were knowingly false and intended to deceive the court.*”

*Nugent v. Hayes*, 94 N. J. Eq. 305.

“On a bill to redeem a tax title in fee conveyed under the Martin Act, irregularities in the proceedings, including the sale, are reviewable only on certiorari.”

*Nugent v. Lindsley et al*, 4 N. J. Adv. Rep. 2028.

### POINT III.

**The Court of Chancery erred in denying the motion to dismiss the counterclaim which it permitted some of the defendants to file.**

The pertinent allegations set up by the amended answer and counterclaim are:

“1. That on or about July 30, 1900, and at divers other times, said Francis W. Mitchell fraudulently and with intent to obtain said premises for his own benefit, represented that Robert Campbell, Mary A. Goodspeed, executrix, William Starr Goodspeed, Arthur Baxter Goodspeed, Shepard Goodspeed and Alene Goodspeed, were the only persons interested in or who had claims against said

premises, and were the owners of said premises, whereas in fact, said above named persons had no interest in, or claim to, or were the owners of said premises whatsoever. Said fraudulent representations were made by said Francis W. Mitchell with intent to obtain a deed for said premises from the City Collector of the Mayor and Aldermen of Jersey City, and the deed mentioned in paragraph 1 of the complaint was obtained by means of said fraudulent representations.

2. On or about February 27, 1901, said Francis W. Mitchell filed his petition in the Circuit Court of Hudson County, which petition prays for an order directing the City Collector of the Mayor and Aldermen of the City of Jersey City, to deliver a deed for said lands to said Francis W. Mitchell. That in said petition said Francis W. Mitchell fraudulently and with intent to deceive said court, and with intent to obtain said premises for his own benefit, fraudulently represented that William Star Goodspeed, Arthur Baxter Goodspeed, Shepard Goodspeed and Alene Augusta Goodspeed, were the owners of and had some interest in said lands and premises, whereas, in fact, said mentioned persons were not the owners of and had no interest in said lands and premises. The Hudson County Circuit Court, relying upon said representations so fraudulently made, did issue its order to the City Collector of the Mayor and Aldermen of Jersey City, to deliver a deed for said lands to said Francis W. Mitchell. That the deed mentioned in paragraph 1 of the complaint was obtained by said Francis W. Mitchell by means of the representations fraudulently made as aforesaid."

"By way of counterclaim against the complainants Laurent S. Mitchell, Charles A. Mitchell, Adelaide Giambalvo and Cecelia Stephens, these defendants say that:

1. That on or about July 30, 1900, and at divers other times, said Francis W. Mitchell fraudulently and with intent to obtain said

premises for his own benefit, represented that Robert Campbell, Mary A. Goodspeed, executrix, William Star Goodspeed, Arthur Baxter Goodspeed, Shepard Goodspeed, and Alene Goodspeed, were the only persons interested in or who had claims against said premises, and were the owners of said premises, whereas, in fact, said above mentioned persons had no interest in, or claim to, or were the owners of said premises whatsoever. Said fraudulent representations were made by said Francis W. Mitchell with intent to obtain a deed for said premises from the City Collector of the Mayor and Aldermen of Jersey City, and the deed mentioned in paragraph 1 of the complaint was obtained by means of said fraudulent representations.

2. On or about February 27, 1901, and at divers other times said Francis W. Mitchell filed his petition in the Circuit Court of Hudson County, which petition prays for an order to the City Collector of Jersey City, to deliver a deed for said lands; That in said petition said Francis W. Mitchell fraudulently and with intent to deceive said court, and with intent to obtain said premises for his own benefit, represented that William Star Goodspeed, Arthur Baxter Goodspeed, Shepard Goodspeed and Alene August Goodspeed were the owners of and had some interest in said lands and premises, whereas, in fact, said mentioned persons were not the owners of and had no interest in said lands and premises. The Hudson County Circuit Court, relying upon said representations so fraudulently made, did issue its order to the City Collector of the Mayor and Aldermen of Jersey City, to deliver a deed for said lands to said Francis W. Mitchell. That the deed mentioned in paragraph 1 of the complaint was obtained by said Francis W. Mitchell by means of the representation fraudulently made as aforesaid.

3. The said Francis W. Mitchell at the time he purchased the premises described in the

bill of complaint, and at all times thereafter, knew that Delia Pychlau and her descendants were the owners of said lands and premises, and knew that these defendants were the descendants of said Delia Pychlau, and knew that these defendants were the sole owners of said lands and premises, and knew the residences and post office addresses of these defendants.

4. Said Francis W. Mitchell well knew the names, residences and post office addresses of the owners of said lands and premises, did fraudulently and with intent to deceive these defendants, and with fraudulent intent to obtain said lands and premises for himself, did fraudulently conceal said knowledge from the City Clerk of Jersey City, and from the City Collector of the Mayor and Aldermen of the City of Jersey City, and did fraudulently conceal said knowledge from the Circuit Court of Hudson County, and on July 30, 1900, and at divers other times, did fraudulently and with intent to obtain said lands and premises for himself, represent to the City Clerk of Jersey City, and to the City Collector of the Mayor and Aldermen of the City of Jersey City, and to the Circuit Court of Hudson County that the owners of record and all owners of said lands and premises were duly notified of said sale, and notified to redeem said lands and premises from said sale, whereas, in fact, said Francis W. Mitchell did not notify said Delia Pychlau, nor her descendants, and did not notify the owners of said lands and premises, and did not notify these defendants of said sale, and did not notify them or either of them to redeem said lands and premises from said sale and taxes, as in equity he should have done.

5. That by means of said fraudulent representations, and said concealment fraudulently made as aforesaid, said Francis W. Mitchell obtained an order from the Circuit Court of Hudson County directing the City

Collector of the Mayor and Aldermen of the City of Jersey City, to deliver a deed for said lands and premises to the said Francis W. Mitchell, and thereby did obtain a deed for said lands and premises, which deed is set forth in paragraph 1 of the bill of complaint” (Case, pp. 52 to 56 inc.)

The order permitting the defendants to file this amended answer and counterclaim was made at the time of the final hearing, at which time the complainants moved to dismiss the amended answer and counterclaim upon the following grounds:

1. That it constituted an attempt to attack the proceeding collaterally, and
2. That it, in effect, constituted a bill to quiet title, and as such, could not be prosecuted while the bill of complaint was pending.

The Court reserved the decision upon the motion until the conclusion of the hearing, and in its decree denied the motion.

The defendants in support of their allegations merely offered the record proceedings in the City Clerk's office and Hudson County Circuit Court, through which the predecessor in title of complainants derived his title.

In rebuttal the complainants' offered in evidence the proceeding in the City Clerk's office through which Henry A. Gaede derived his title in a prior tax proceedings. No other testimony was offered by the defendants to support their allegations of fraud and concealment on the part of the complainants, or the predecessor in title of Francis W. Mitchell, and they rely upon inferences that Francis W. Mitchell concealed from the City Clerk and from the Hudson County Circuit Court facts which he knew to be false with intent to deceive the Court. At the conclusion of the hearing the

Court of Chancery should have dismissed the amended answer and counterclaim upon failure of proof of fraud.

“The burden of proving fraud is on the party alleging it.”

*Guerber v. Stafford*, 96 N. J. L. 280.

“Clear proof is required to establish fraud.”

*Kelso v. Kelso*, 95 N. J. Eq. 544.

“Where a bill in equity alleges no more than that the proofs offered to the Circuit Court were untrue, that is not enough to invoke equity jurisdiction. To impeach and overthrow legal proceedings, *it must be shown that the proofs were knowingly false and intended to deceive the court.*”

*Nugent v. Hayes*, 96 N. J. Eq. 305.

The defendants offered no such proofs; they merely relied upon inferences. It is fundamental that fraud is never presumed and must always be shown by clear and convincing evidence.

At the conclusion of the hearing, the defendants having failed to support the charges of fraud alleged in their amended answer and counterclaim, it was the duty of the Court to grant the motion made by complainants to dismiss the amended answer and counterclaim, the determination of said motion having been reserved by the learned Vice Chancellor until the conclusion of the hearing.

## POINT IV.

The defendants failed to establish a title superior to that of complainants; complainants established a valid, legal title in themselves; the Court of Chancery erred in making its decree that the complainants are not entitled to the relief prayed for in the bill of complaint, and in setting aside as null and void the deed made by Robert Davis, City Collector of the Mayor and Aldermen of Jersey City, to Francis W. Mitchell, the predecessor in title of the complainants; and authorizing the answering defendants and others to redeem said premises.

(a) The defendants failed to establish a title to the said premises superior to that of complainants. The title to the premises prior to May 21, 1862, is not challenged. On that date the premises were conveyed by John N. J. Reutte and wife to one Delia Pychlau.

The following instruments comprise the legal title thereafter:

(1) Deed, Patrick H. O'Neill, City Collector of the Mayor and Aldermen of Jersey City, to Henry A. Gaede, dated November 24, 1891, recorded in Book 552 of Deeds for Hudson County on page 321.

(2) Deed, Henry W. Pychlau, widower, of City of Milan, to Henry A. Gaede, dated November 30, 1891, and recorded in Book 552 of Deeds for Hudson County on page 319.

(3) Deed, Robert Davis, City Collector of the Mayor and Aldermen of Jersey City, to Francis W. Mitchell, dated March 22nd, 1901, recorded in Book 773 of Deeds for Hudson County on page 466.

(4) Will of Francis W. Mitchell, dated March 12th, 1903, probated May 21, 1903, recorded in Book 59 of Wills for Hudson County on page 681; Re-probated on February 3, 1922, and recorded in Book 120 of Wills for Hudson County on page 425.

(5) Deed, Adelaide Mitchell, widow of Francis W. Mitchell, to Laurent S. and Charles A. Mitchell, executors, &c., dated June 16, 1903, recorded in Book 239 of Deeds for Hudson County on page 301.

The antecedent proceeding to obtain deed 1 are shown to have been in strict compliance with the provisions of the "Martin Act". Henry A. Gaede, the purchaser of the premises in the proceeding instituted by the Mayor and Aldermen of the City of Jersey City disclosed that the owners of the premises were non-resident, and that he in good faith made diligent inquiry for the post office address of the owners, and that he was informed by Henry W. Pychlau, one of the owners, that he resided in the Town of Mitau, Russia, and that Delia Pychlau, Annie Pychlau and Elwin Pychlau also resided in the same place, and that their post office address was Mitau, Russia. That he thereafter placed in the post office of the City of Jersey four letters, one directed to Delia Pychlau or Pychlan, one directed to said Henry Pychlau or Pychlan, one directed to Annie Pychlau or Pychlan, and one directed to Elwin Pychlau or Pychlan, at their said post office address in Mitau, Russia, with the postage prepaid, each containing a copy of a notice (State of Case, Exh. C-3).

A copy of the notice which he enclosed is set forth and complies with the requirements of the Act (State of Case, Exh. C-3).

The said Henry A. Gaede, the purchaser, published notices in compliance with the requirements

of the Act, in the Jersey City News, a newspaper printed and published in the City of Jersey City (State of Case, Exh. C-3).

By the deed made by Patrick H. O'Neill, City Collector of the Mayor and Aldermen of Jersey City, to Henry A. Gaede, dated November 24, 1891, recorded in Book 552 of Deeds for Hudson County, page 321, the said Henry A. Gaede acquired legal title to the said premises.

The deed obtained by the said Henry A. Gaede from Henry W. Pychlau, widower, dated November 30, 1891, merely conveyed to the said Henry A. Gaede the inchoate right of courtesy of said Henry W. Pychlau, as the surviving husband of Delia Pychlau, who died seized of the title to the premises.

Subsequently the said premises were again sold by the Mayor and Aldermen of the City of Jersey City for unpaid taxes, and Francis W. Mitchell, the predecessor in title of the complainants, purchased the same, a deed being made by Robert Davis, City Collector of the Mayor and Aldermen of Jersey City, to Francis W. Mitchell, dated March 22, 1901, recorded in Book 773 of Deeds for Hudson County on page 466.

The antecedent proceedings were instituted by Francis W. Mitchell, as purchaser, in the Hudson County Circuit Court to obtain an order directing the City Collector of the Mayor and Aldermen of the City of Jersey City, to make, execute and deliver to the said Francis W. Mitchell a deed to convey to him said premises. These proceedings complied with the requirements of the "Martin Act", and the deed made by the City Collector, pursuant thereto, vested the fee simple in said premises in the said Francis W. Mitchell. Under said deed, said Francis W. Mitchell went into possession and continued in possession until his

death, paid the taxes annually as they accrued and exercised all rights over the premises as owner. The complainants, devisees under his will, as owners of the property, continued in possession after his death, paid the taxes annually as they accrued, and exercised complete ownership over the premises. The premises were fenced in and were used from time to time by tenants, under arrangements made by complainants as owners.

The defendants by their amended answer, and counterclaim contend that in the proceedings instituted by said Francis W. Mitchell, in the Hudson County Circuit Court to secure an order to authorize the City Collector to make, execute and deliver a deed to him for said premises as required by the provisions of the statute, fraudulently concealed from the Court the names and addresses of the true owners of the property. In these proceedings it is true that none of these defendants were named by the said Francis W. Mitchell, as the owner of the record title. In fact, they were not the owners of the record title, because their interests had been eliminated in the earlier proceeding through which the premises were sold by the Mayor and Aldermen of Jersey City to Henry A. Gaede. Service of notice to redeem was made upon them after bona fide inquiry as to their names and addresses by the said Henry A. Gaede, in strict compliance with the statutory requirement. Mitchell was only required to serve such notice as the Act required upon those persons only, who had a present interest in the lands at that time. The defendants had no interest. The fact that notices were served on persons whose interest is not disclosed by the record title does not effect the defendants. It does not appear from the record why the Goodspeeds' were served. What their interest was does not appear.

It may even be conceded that they had no interest, and that service upon them was not required; this, however does not effect the title because Mitchell actually served the record owner of the title, Henry A. Gaede.

No obligation rested upon Mitchell to serve the defendants with notice to redeem. The record owner of the title was Henry A. Gaede, and the proofs show that he was served with the notice as required by law. He was also served as trustee, and it may fairly be conjectured that inquiry disclosed that he purchased the property as trustee, and held the same for the other parties who were served with notice by Mitchell.

The complainants appropriately availed themselves of their remedy which the statute affords, to file a bill in the Court of Chancery to quiet the title, and in such proceeding they were entitled to name as parties defendant any person or persons who might claim an interest in said premises.

The title having been derived through tax proceedings, it is regarded as good practice in a proceeding to quiet title to name as defendants in such proceeding, all of the parties who have been parties to the tax proceedings, so as to cure any irregularities in said proceeding.

In the forum of the Court of Chancery, the only rights that the defendants may avail themselves of is to assert and prove a superior title to that of the complainants, or in the event of the title of complainants having been obtained fraudulently, to assert and prove such fraud.

The Court of Chancery has frequently exercised its assumed jurisdiction where fraud is alleged, and has granted affirmative relief to the defendants where the allegations of fraud have been sustained, where titles have been derived

through tax proceedings. The decree entered in the instant case does not find that the complainants, or their predecessor in title have been guilty of fraud or concealment as charged in the answer and counterclaim, but assumes to take jurisdiction to review the regularity of the proceeding through which Mitchell obtained his deed.

We submit that we know of no doctrine by which the Court of Chancery has such power. The proper forum for the review of the regularity of these proceedings is the Supreme Court. The Act specifically provides for the method of review by certiorari.

The deed under which the complainants hold title to said premises was made on March 22, 1901, and the complainants and their predecessor in title, have enjoyed continued and unmolested possession thereof since. The defendants have never asserted any rights of ownership over the premises, nor paid the taxes as they accrued, and have endeavored, in these proceedings, to set up the claim that they were fraudulently deprived of their title.

The complainants are given the benefit of being in peaceful possession.

“In suits to quiet title the complainant, who must be adjudged to be in peaceable possession before jurisdiction over the issue of title can be assumed, is given the benefit of his peaceable possession and defendant then assumes the burden of the affirmative of the issue of title and carries the burden of establishing a title in conformity with the specifications of title which the statute requires such defendant to set forth in his answer.”

*Lambert v. Vare*, 88 N. J. Eq., pp. 81-87.

Even though this presumption is given to the complainants, nevertheless they established the

fact of their possession by showing that they had always exercised dominion over the said premises, and had paid the taxes since 1897 on said property (State of Case, pages 143-144) and leased the said property to various persons and fenced in the same, cleaned off the snow from the sidewalks (State of Case, pages 129-130) and there is no denial of the fact of their possession, and there is not a scintilla of evidence to show that any of the defendants ever had possession of the said premises. There was no proof offered that the persons served by Gaede with notice to redeem from the tax sale did not reside at the places to which he sent the notices, as shown by his affidavits of service (State of Case, pages 179-181). Gaede made all the necessary inquiries and he inquired at the places where he would be most likely to obtain the correct information. The Court has held what inquiry must be made under similar circumstances.

“However, I think it is clear, upon the proofs the solicitor of the complainant performed his whole duty. His inquiries were directed to every source of information which would have been likely to occur to the most careful person. I should feel I was trifling with important rights, and attempting to establish a very dangerous rule, to hold that a judicial sale must be set aside because the solicitor of the complainant in a foreclosure suit omitted to send notice of the suit to an absent defendant, addressed to him at a place designated as his residence in a deed 15 or 20 years before the institution of the suit, without other information that he still resided there.”

*Leonard v. New York Bay Co.*, 28 N. J. Eq. 193.

## POINT V.

**The Court of Chancery erred in decreeing that the parties named in its decree as defendants are entitled to redeem said lands and premises from the tax sale, through which Mitchell obtained his title.**

No proof was offered by the defendants to show who were the heirs of Delia Pychlau, either at the time of the Gaede tax sale, the Mitchell tax sale or at the hearing. The only proof in the entire case as to who were the proper heirs at any time, is contained in the affidavit of John D. Craven, and the attached affidavit in the previous suit to quiet the title (State of Case, pp. 233-237). If the defendants relied on this affidavit, it is contended that that is not the best evidence available and should not be considered by any court. Oral testimony could have been offered on the part of the defendants, or if it were impossible for them to appear, depositions could have been taken on their behalf, but no testimony of any kind was offered on their behalf to advise the Court of the proper information. The aforementioned affidavit speaks as of its date of May 2nd, 1925, and the hearing was not held until March 24th, 1927, nearly two years thereafter, and the case was not closed until October 31, 1927, six months later. This is not only not the best evidence available, but also does not speak as of the proper time.

It is true that in the testimony of the prior suit to quiet title (State of Case, p. 257, ll. 35 to 40), it is set forth "these heirs of Delia Pychlau *might* claim some interest in the property because they were not properly made parties in the tax proceeding". This does not prove that all the neces-

sary parties were not served in the Gaede tax proceedings, and there was nothing before the Court to show that at the time Gaede served his notices to redeem, that the persons served were not all the owners and parties in interest.

Nowhere was it charged that Gaede obtained the deed from the City of Jersey City by fraud, and it is submitted that it is the Gaede proceedings which barred the defendants and those under whom they claim, from any interest in the said property. As no fraud was alleged in these proceedings, and they had been legally barred and foreclosed of any interest in the property, that no matter what was done thereafter, could not be a fraud on them.

The Court seemed to assume that it was necessary for the complainants to establish a legal right to the lands and contrary to the case of *Lambert v. Vare* cited above, he put the burden of the affirmative on the complainants, when this burden should have shifted to the defendants to make them establish a title in conformity with the specifications of their answer. Complainants should have been given the benefit of their peaceful possession, which was not only presumed but proved by them, and the defendants should have established a title in themselves. They and the Court utterly disregard the fact that their ancestors were served by Gaede with notices to redeem, and nowhere do they show that these were not the proper parties to be served, or that they did not receive the notices, or that the proceedings were irregular.

It is significant that this property was twice sold by the City of Jersey City for non-payment of taxes and F. W. Mitchell and the complainant have paid taxes since the date of acquisition by the said F. W. Mitchell and up to the time the bill

to quiet title was filed. If the defendants had had any interest in the said premises they certainly would have interested themselves, in paying the taxes on the said premises from before 1890 up to the present time. It nowhere appears that any of the defendants ever had possession of the said premises, or even knew where the said premises were located.

The Court made a decree in favor of certain defendants, Hedwig Marie Hermine Delia Baroness Meyendorff, Annie Ida Lieselotte Arbusoff, Brigitte Katharina Hedwig Arbusoff, Leonid Hans Nicolai Arbusoff, her husband; Harriet D. P. Meyer, Jutta Voest, and Augusta Pychlau, wife of Elwin Pychlau (State of Case, p. 95), but these are not the same parties against whom the bill was filed, to wit, Henrietta J. Gaede, wife of Henry A. Gaede; Delia Pychlau, Henry W. Pychlau, her husband; Annie Pychlau Vietinghoff Scheel, Hamilkar Vietinghoff Scheel, her husband; Hedwig Meyendorff, Ernest Meyendorff, her husband; Antonio Arbusw, L. Arbusw, her husband; Elwin Pychlau, Auguste H. Pychlau, his wife; Justa P. Voest, Jacob Voest, her husband; Harriet D. P. Meyer, Frederick Meyer, her husband; and there is no evidence before the Court as to where these names were obtained, or to account for the variance, except that they filed their answer in that name, and no testimony was offered to show who were the heirs of Delia Pychlau at any time. The burden was on the defendants to show how they derived their title and they have not shown that they or their ancestors were not barred by the Gaede tax sale and by laches.

It is submitted that the defendants had two burdens to sustain, one of proving that the complainants or those under whom they claimed, had been guilty of fraud in obtaining their deed, and also

the burden of establishing their title, neither of which burdens were sustained by them. They cannot rely on the weakness of the complainants' case but they must proceed on the affirmative.

**We submit that the decree made by the Court of Chancery for the above reasons should be set aside and the proceedings remanded to the Court of Chancery with instructions to enter a decree in favor of the complainants.**

L. EDWARD HERRMANN,  
Solr. for and of Counsel with  
Complainants-Appellants.

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## New Jersey Court of Errors and Appeals

LAURENT S. MITCHELL, CHARLES  
A. MITCHELL, ADELAIDE GIAM-  
BALVO and CECILE T. STEPHENS,  
Complainants-Appellants,

*vs.*

DELIA PYCHLAU, *et als.*,  
Defendants-Respondents.

### BRIEF FOR RESPONDENTS.

The land in question in this suit was sold for taxes under the Act of 1886, page 149 (Comp. St., p. 5205).

Section 312 (Comp. St., p. 5212) provides that a deed is to be delivered to the purchaser upon

“proof of service of the notice thereof as hereinafter provided, *upon the owners and mortgagees of the said lands and premises*”.

Section 313 of said Act (Comp. St., p. 5214) provides that any person having an estate \* \* \* may redeem

“after notice shall have been given him of such sale by the purchaser, his heirs or assigns” \* \* \*

The act also provides that the notice may be personal or house service or in case of non-resident owners, etc.—then by mailing the notice

“directed to such owner, mortgagee or other person in interest \* \* \* in said land and premises” \* \* \*

and that the purchaser shall make

“inquiry for the residence or post-office address of such owner, mortgagee or other person having an interest in or a lien upon said lands and premises shall be made by the purchaser or his agent upon the lands purchased at the sale, if they are occupied, and wherever else in the City the same may be likely to be ascertained, and also by an examination of the records of the deeds, mortgages or other instruments on account of which such notice is given.”

and that he shall make

“an affidavit \* \* \* setting forth what inquiry was made to ascertain the residence and post-office address *of such owner*, mortgagee or other person having an interest in \* \* \* said lands” \* \* \*

and

“that if any estate in any of the said lands shall be held by any heir or devisee *of a decedent whose estate appears of record in the county*, \* \* \* such heir, devisee, executor or administrator *shall be entitled to redeem and to have notice as aforesaid* before the purchaser shall be entitled to the possession of the lands.”

Sections 325 and 326 provide that in case the owners, etc., are unknown or are infants, the purchaser must petition the Circuit Court for an order directing the delivery of the deed. The petition to set forth the facts, and in case of infant owners, who such infant owners are, etc.

The Act provides that the proceedings cannot be attacked as being irregular. However, the proceedings were not attacked as being irregular, but that the deed was obtained by fraudulently representing; that the persons to whom notices were given were not the rightful owners or persons in interest, and by not disclosing who the real own-

ers were, and by not giving the rightful owners notice, although they were known to the purchaser and his attorney.

L. Edward Herrmann testified that he was admitted an attorney in 1901, and previous to that he was employed in the office of the attorney of Francis W. Mitchell. That he personally handled this matter of the tax sale for Mr. Mitchell from the time of purchase in 1896 up to the time of his admission to the Bar, and after that he became Mitchell's attorney. In short, he represented Mitchell in this matter from 1896 to the present time. He further testified that he had made a search of the records in the Register's office and found the deed made by John N. J. Rueter and wife to Delia Pychlau, dated May 21, 1862, in Book 93, page 508, and that he did not find any deed out of Delia Pychlau, or any deed made by anyone purporting to be her heirs. That he had made investigation as to the heirs of Delia Pychlau, and that he had endeavored to get deeds from them for the premises in question. It is quite apparent that Mr. Herrmann and his client, Francis W. Mitchell, have known at all times since the purchase of the property at the tax sale, that Delia Pychlau, and these defendants as her heirs, were the rightful owners of the land. This knowledge is borne out by the fact that the abstract of title filed with the City Clerk by Mitchell with the other proceedings sets forth the deed into Delia Pychlau, and by the further fact that the statement of fees for searches claimed by Mitchell sets forth searches against Delia Pychlau. Said statement of search fees is on file with the other proceedings in the City Clerk's office. Said search was made by Mitchell or his attorney, L. Edward Herrmann. That Mitchell and his attorney knew the names and post-office addresses of the heirs of Delia Pychlau is further substantiated by two

deeds of record in the Register's office of Hudson County, and which deeds are set out in the abstract of title and statement of search fees filed by Mitchell with the City Clerk. One deed is made by Henry W. Pychlau, widower of said Delia Pychlau; which deed clearly sets out his address as City of Milan, County of Gurania, Empire of Russia. This deed being by the husband did not convey a fee. The other deed is by Patrick H. O'Neill, Collector, and sets forth the names Henry A. Pychlau, Delia Pychlau, Annie Pychlau and Elwin Pychlau. These persons are some of the present defendants, but their names have changed by reason of marriage.

The records in the former case were admitted in evidence in the case *sub judice*, and in that case John D. Craven, a Solicitor of this Court, made affidavit that Delia Pychlau had died, and that title had vested in her heirs, who are the present defendants, and that the said heirs were not served with notice in the tax proceedings. He also testified that said heirs claim some interest in the property because they were not properly made parties in the tax proceedings (Case, p. 256).

The Act of 1896 provides that the purchaser at a tax sale must examine the records of deeds and inquire of other sources for the names and addresses of the owners. There cannot be any doubt that Mitchell and his attorney knew of the rightful owners, and if they did not know, then they fraudulently and purposely omitted making the necessary inquiry so that they would not have to give the right parties notice to redeem. This fraudulent design is borne out by the fact that Section 325 of the Act of 1886 provides a procedure wherein the owners are unknown, and yet Mitchell did not proceed under that section. There can be only one answer to this; Mitchell knew

who were the rightful owners who were entitled to notice to redeem; and despite that, he served notice to redeem upon persons who had no interest or claim to the property whatsoever.

An examination of the City Clerk's records discloses that notices to redeem were served on Henry A. Gaede, *Trustee*, Robert Campbell, Mary A. Goodspeed, executrix, William Star Goodspeed, Arthur Baxter Goodspeed, Shepard Goodspeed and Alene Goodspeed, heirs of William Goodspeed. The petition in the Circuit Court is against William Star Goodspeed, Arthur Baxter Goodspeed, Shepard Goodspeed, and Alene A. Goodspeed. Nowhere in the records in the Register's office, nor in the abstract of title filed with the City Clerk, nor in the proceedings in the Circuit Court, does it appear that any of these persons were the owners or had any interest in the premises in question.

It is quite clear that Mitchell knew who were the decendants of Delia Pychlau, and that he suppressed this information, and substituted other names in their place. The order for the deed would not have been made had Mitchell informed the Court of his knowledge of Delia Pychlau and of her decendants, and they would have been permitted to redeem had the Court been truthfully informed.

These defendants have not had an opportunity to redeem; they had no notice and they have not had their day in court.

In view of the circumstances in this case, for the Court to permit the Mitchell tax deed to stand, would be a controversion of the equitable principle that a court of equity will not lend its aid to enforce an unjust and unconscionable claim.

It was said by the Chief Justice in the case of *Erie R. R. vs. D., L. & W. R. R.*, 21 N. J. Eq. 284:

“A Court of Equity will never lend its active aid to a party who, by a superior knowledge and artful silence, has gained an unfair advantage over another.”

That Gaede did not acquire a good title to the lands in question is evidenced by the depositions of John D. Craven, filed in the former suit, the record of which was admitted in evidence in this case, and is further evidenced by the testimony in the case *sub judice* of L. Edward Herrmann. Mr. Herrmann testified that he personally handled the legal details of the Mitchell tax sale; that he made a search of the records of the Register's Office, and there found the deed to Delia Pychlau; that he caused an investigation to be made by John D. Craven, a solicitor who is associated with him, and Mr. Craven reported to him the result of his investigation, the particulars of which are set out in the affidavit of Craven in the former suit. It appears from said depositions of Craven that he applied to the heirs of Delia Pychlau, who are the defendants in this suit, to release their interest in the lands in question, and they refused to do so. Both Mr. Herrmann and Mr. Craven were undoubtedly aware that said heirs had not been lawfully divested of their title. Are these same solicitors of this Court now to be heard to say that said heirs have no interest in the lands; that the depositions in the former suit are untrue, and that the decree in that action was obtained without proper legal evidence? The most that can be said is that they were mistaken. We do not believe that they knowingly falsified the records in furtherance of the Mitchell claim. They are officers of this Court and their testimony is entitled to the highest degree of credence.

It is a well-settled rule that a court of equity which has obtained jurisdiction of a controversy on any ground or for any purpose will proceed to

determine any other equities existing between the party connected with the main subject of the suit and grant all relief necessary to an entire adjustment of such subject, and that relief of an equitable character may be incidentally obtained.

*Kirkhuff v. Kerr*, 42 Atl. Rep. 734 (57 N. J. Eq. 623).

The bill in this matter was filed to set aside a deed obtained in an attachment action. A decree was entered for the defendant, and complainant appealed. Complainant charged that the deed was obtained by the fraudulent abuse of process. The Court of Errors and Appeals in reversing the decision of the Court of Chancery, held:

“When legal process has been fraudulently abused, and a title to property has been thereby obtained, which the court of law cannot restore, a court of equity will intervene, and afford such relief as may be necessary to undo the wrong and secure a legitimate use of the process.” Citing—*Tompkins v. Tompkins*, 11 N. J. Eq. 512; *Herbert v. Herbert*, 23 Atl. 366.

3 Pom. Eq. Jur. Sec. 1364-5.

There can be no question that these defendants would be entitled to maintain an Action to redeem from the Mitchell tax sale, and therefore should be allowed the same remedy under their counterclaim filed herein.

The bill of complaint in the case of *Nugent vs. Hayes*, 120 Atl. 38, attacks a tax deed on the ground that the Circuit Court was imposed upon in that the proofs to establish that the owners were unknown, were false.

Backes, V. C.:

“If the complainant should succeed in his efforts to set aside the deed, Lindsley would

have but a tax lien, which would be redeemable in this suit. *Culver v. Watson*, 28 N. J. Eq. 548; *Devine v. Franks* (N. J. Ch.) 47 Atl. 228; *Clift v. Frenche*, 83 N. J. Eq. 437, 91 Atl. 817. On the second ground—that the tax title deed under which Lindsley claims ownership was procured by fraud—there can be no question that equity can and will relieve, if it appears that the order of the circuit court to the comptroller to execute the tax deed to the purchaser was obtained by fraudulent representations that the ‘unknown owners’ were unknown to the purchaser, *and, in consequence, that the owners were without notice of the foreclosure proceedings*. It is the peculiar province of equity to relieve against fraud regardless of correctness of legal formality. *Tomkins v. Tomkins*, 11 N. J. Eq. 512; *Herbert v. Herbert*, 47 N. J. Eq. 11, 20 Atl. 290, affirmed 49 N. J. Eq. 565, 25 Atl. 366, and 49 N. J. Eq. 70, 22 Atl. 789; *Kirkhuff v. Kerr*, 57 N. J. Eq. 623, 42 Atl. 734, *Truitt v. Darnell*, 65 N. J. Eq. 221, 55 Atl. 692. The cases cited gave relief to defendants in foreign attachment suits because the judgments were surreptitiously obtained on claims that were false.

The principle upon which equity jurisdiction was sustained there is applicable here.”

The Court further said, at page 39:

“From what was said at the hearing to strike the original bill, it appeared that there was actual fraud imposed upon the circuit court, and I give leave to file an amended bill setting that up. That has not been done. It may have been due to the pleader’s faulty knowledge of pleading, or it may be that the facts do not warrant the allegation. The complainant is given leave to file a further amended bill in 20 days, if he desires.”

The above case was decided on March 1, 1923, and on August 4, 1924, the case again came on

for hearing. We assume that the pleadings were amended as suggested in the prior case.

See

*Nugent vs. Hayes*, 125 Atl. 576.

BACKES, V. C.: "It was contended by the complainants in this case that the order of the Circuit Court directing the Comptroller of Newark to execute and deliver a deed for the premises purchased at the tax sale was procured by fraud imposed upon the court by one John Francis Cahill, attorney for the person who purchased at the tax sale and who subsequently obtained the deed."

The deed was set aside as being obtained by fraud, and the Court cited the following cases:

"Equity will redress wrongs perpetrated by fraudulent proceedings at law. *Boulton v. Scott*, 3 N. J. Eq. 231; *Tomkins v. Tomkins*, 11 N. J. Eq. 512; *Kirkhuff v. Kerr*, 57 N. J. Eq. 623, 42 Atl. 734; *Truitt v. Darnell*, 65 N. J. Eq. 221, 55 Atl. 692."

"In the petition to the Circuit Court the petitioner stated that he was 'unable to acquire any information whatsoever as to the owner or owners of the land'."

The proof shows that he had made a search of the records in the Register's Office, and from said records he was able, if he so desired, to ascertain the name of the owner of the premises.

The Court, in part, said:

"The pressing inquiry before the court, was not who were the unknown owners of the land, but who was this Samuel Whitaker and his heirs, etc., to whom the land was assessed. And now, when it is considered that Cahill knew of the Samuel Whitaker whom he regarded as the reputed owner, and that his descendants were known to him, and that he suppressed this information, easing his con-

science because he was not sure that the reputed owner was the actual owner, the deception perpetrated on the court is palpable.”

The Court, in setting aside the deed, said:

“I am content that the order for the deed would not have been made had Cahill informed the court of his knowledge of Samuel Whitaker of 1818 and of his descendants whose addresses he knew, and that Samuel Whitaker’s descendants would have been permitted to redeem had the court been truthfully informed.”

*Field vs. West Orange*, 39 Eq. 60.

This is an action to declare a tax deed void on the ground of *ultra vires*.

A decree was entered declaring the tax deed conveyed no title or interest in the land and was void.

*Johnson vs. Van Horn*, 16 Vr. 136;  
*Lembeck vs. Jersey City*, 4 Stow. Eq. 255.

The counterclaim of defendants prays that they may be permitted to redeem the lands from the tax lien, and offers to pay the amount necessary for that purpose.

The complainants, in their Reply and in their Answer to the Amended Answer and counterclaim, admit that the persons on whom notice to redeem had been served, and the persons mentioned in the Circuit Court proceedings, had no interest in the said lands. Nowhere in complainants’ pleadings nor in the proofs, do complainants contend that the owners of said land were served with notice to redeem.

*In re Nugent vs. Lindsley*, 135 Atl. 271.

The bill of complaint prays to redeem the property from a tax sale made on December 29, 1907,

upon the ground that the tax deed is invalid because no notice to redeem was served upon the owners. The holder of the tax deed objected to the jurisdiction of the court to decree a redemption, contending that his deed conveying the fee is conclusive in this suit and cannot be challenged for irregularity in the proceedings upon which it is founded, except by certiorari to set it aside.

Vice Chancellor Backes dealing with these questions said:

“That, however, is not a ground for relief in this court. *Nugent v. Hayes*, 94 N. J. Eq. 305, 120 A. 38. The quoted language of the statute is not to be as broadly construed so as to conclude all parties by the deed, except on certiorari. It refers only to municipal action leading up to and including the sale, and not to proceedings by the purchaser, after the sale, to bar the right of redemption. In *Nugent v. Hayes, supra*, the order of the circuit court directing a deed to be executed by the comptroller was set aside for fraud. In *Milmoë v. Zimmerman*, 95 N. J. Eq. 85, 122 A. 688, it was held that the proceedings leading to the sale were reviewable on certiorari only, and that those subsequent to the sale tending to bar the right of redemption may be questioned on a bill to redeem. In that case, the sufficiency of the notice to redeem was examined and decided, and the decree was affirmed by the Court of Appeals (*Milmoë v. Zimmerman*, 97 N. J. Eq. 326, 127 A. 157). In *Welles v. Schaffer*, 98 N. J. Eq. 31, 129 A. 622, the notice to redeem was held by this court to be defective and not to foreclose the right to redeem. In *Mackie v. Cain*, 92 N. J. Eq. 631, 114 A. 549, cited by Lindsley’s counsel, the Court of Appeals criticized this court for passing upon the validity of the proceedings upon which a tax sale under the Martin Act rested, not the subsequent proceedings to bar the right to redeem.

But the complainant does not attack the proceedings on which the deed is founded. His

position is that it is admitted, and the comptroller's deed shows on its face that the complainant's grantor was not served with notice to redeem, and therefore the deed is invalid as a conveyance of her interest. Notice and default are indispensable conditions to the divestiture of title by deed under the tax sale. The comptroller's deed operates as a bar only upon the owners who have been served, in the manner required by the act with notice to redeem, and who have defaulted. As to those not served, the deed is ineffective, and as to them the purchaser at the tax sale has but a tax lien which may be redeemed. The deed may be likened to a decree in foreclosure against defendants who were not served with process. As to them, the decree is invalid and may be attacked anywhere and at all times, which as to these served it is an effectual bar."

The Court followed the same reasoning in *Nugent vs. Meeker*, 135 Atl. 273, and *Nugent vs. Spinning*, 135 Atl. 274.

The case of *Roe v. Mayor and Aldermen of Jersey City*, 91 Atl. page 740, holds that a tax deed cannot be attacked collaterally, "unless it appears that the Court of Equity should acquire a jurisdiction independent of these considerations."

In this case the complainant attempted to show that the proceedings of the tax commissioners were irregular and void, but did not attack the deed as such, nor did he attack it on the ground of fraud. The Court intimated that if the deed had been attacked as such, the Court would permit the complainant to go into the question. The Court in part said: "In view of the fact that no attack has been made upon the deeds as such, but only upon the facts leading up to the making of the deeds, I fail to see any equitable grounds for invoking the aid of this court." In other words, there is no independent, equitable relief sought.

b. SUFFICIENCY—(1) In General. To maintain the action to quiet title, or remove a cloud thereon, plaintiff must have a good and valid title, legal or equitable, or, as held in a few jurisdictions, a legal and equitable title, connected with possession to the lands in controversy.

(11) Paramount Title. The rule is that plaintiff must succeed only on the strength of his own title, and not on the weakness of his adversary.

32 Cyc. 1343.

B. DEFENSES. 1. Particular Defenses.—a. Title in Defendant. Plaintiff's right to recover may be defeated by defendant's showing a paramount title in himself, but not if defendant acquired his title subsequent to the commencement of the action.

b. Want of Title in Plaintiff. The weakness of plaintiff's title is a good defense in an action to quiet title, whether defendant is in or out of possession, unless both parties derive their title from a common source.

32 Cyc. 1333.

(3) At Judicial Sale—(a) In General. A person deducing his title to lands through a judicial sale may maintain an action to quiet title to such lands, except where the proceedings which were the basis of such sale, and on which the validity of complainant's title depends, are, for jurisdictional defects, *or for fraud, shown to be void*; or where the sale was on a judgment, and it is shown that the debt on which the judgment was obtained had been fully paid before the commencement of the action.

It has always been one of the exclusive prerogatives of the Court of Chancery to consider

and adjudicate upon all cases of fraud, and if the "Martin Act" or the "Act to compel the determinations of claims to real estate, etc." (Act to quiet Title), attempted to divest the Court of Chancery of that prerogative, or attempted to vest exclusive jurisdiction in the Supreme Court under writ of certiorari and deprive persons of the plea of fraud; the attempt would be nugatory. It is beyond the power of the Legislature to divest the Chancery Court of its fundamental prerogatives.

The appellants did not include in the printed case the memorandum of the Court below, and it is herein set forth in full.

### Memorandum.

#### IN CHANCERY OF NEW JERSEY.

Between

LAURENT S. MITCHELL, CHARLES  
A. MITCHELL, ADELAIDE GIAM-  
BALVO and CECELIA STEPHENS,  
Complainants,

*and*

HENRIETTA J. GAEDE, DELIA  
PYCHLAU, *et als.*,  
Defendants.

On Bill, etc.  
On Final  
Hearing.

Decided July 18, 1927.

For the Complainants, Mr. L. EDWARD HERR-  
MANN.

For the Defendants, Messrs. TACKELLA &  
CAMBY.

FALLON, Vice-Chancellor:

The complainants, by their bill, seek to quiet their alleged title to vacant lands described therein.

The bill recites that on March 22, 1901, Robert Davis, City Collector of the Mayor and Aldermen of Jersey City, conveyed to Francis W. Mitchell, by deed in fee simple, the lands therein described, known as Lots 275 and 276 in Block 781, fronting on Central Avenue in the Fourth District of Jersey City, N. J., as laid down and shown on an assessment map accompanying a Report No. 102, made by the Commissioners of Adjustment, and filed with their report in the Office of the Clerk of the County of Hudson, a certified copy of which report and map was filed with the said City Collector; and that said deed was, on April 16, 1901, recorded in the Register's Office of Hudson County in Book 775 of Deeds, page 466; that said Francis W. Mitchell, after the recording of said deed, was in peaceable possession of the lands therein described, and always claimed to own the same up to the time of his death, May 7th, 1903; that said Francis W. Mitchell left a last will and testament, duly filed in the Surrogate's Office of Hudson County, N. J., in which he devised the said property to the complainants; that complainants have been in peaceable possession of said lands, and have always claimed, and do now claim to own the same; that the title of complainants to said lands is denied and disputed by the defendants, and that no suit is pending to enforce or contest the validity of the title, claim or encumbrance of said defendants. The complainants pray that the defendants answer said bill, set forth and specify their title, claim or encumbrance to and upon the lands described, and how and by what instrument the same is derived

or created; that the rights of all the parties to the suit in and to the lands in question may be fixed and settled by this court, and that complainants may be decreed to have a perfect title thereto, and defendants to have no estate, interest or title in, or encumbrance upon said lands or any part thereof.

The amended answer of the defendants Annie Ida Lieselotte Arbusoff; Brigitte Katharina Hedwig Arbusoff; Harriet D. P. Meyer; August (should read Augusta) Pychlau; Hedwig Marie Hermine Delia, Baroness Meyendorff; Leonid Hans Nicolai Arbusoff; and Julia Voest, the latter three of whom are designated in the bill of complaint as Hedwig Meyendorff, L. Arbusw and Justa P. Voest, denies Paragraphs 1 and 2 of the complaint, and denies so much of Paragraph 3 thereof as alleges title in complainants to the lands in question. Defendants dispute complainants' title to said lands, and neither deny nor admit that the complainants have made diligent and careful inquiry, as in the case of absent defendants, and demand proof thereof. The defendants say they have no knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 4 of the complaint, and demand proof thereof. Said defendants, in and by their amended answer, allege that on April 28th, 1926, and for a long time prior thereto, and at the present time, the estates, claims and interests of defendants, in and to said lands were and are as follows: Hedwig Marie Hermine Delia, Baroness Meyendorff, six twenty-fourths interest; Annie Ida Lieselotte Arbusoff, three twenty-fourths interest; Brigitte Katharina Hedwig Arbusoff, three twenty-fourths interest; Leonid Hans Nicolai Arbusoff, an estate of curtesy consummate by reason of being the husband of Antonie Hildegard Elizabeth Arbusoff, de-

ceased, designated in the bill of complaint as Antonio Arbusw; Harriet D. P. Meyer, six twenty-fourths interest; Jutta Voest, six twenty-fourths interest; Augusta Pychlau, an estate of dower, by reason of being the wife of Elwyn Pychlau, deceased, designated in the bill of complaint as Edwin Pychlau. The defendant Augusta Pychlau, who claims an estate of dower by reason of being the wife of Elwyn Pychlau, deceased, designated in the bill of complaint as Edwin Pychlau, is misnamed *August* Pychlau in said answer.

The defendants claim that they are seized of and entitled to the undivided interests as above mentioned, in the lands in question, as the heirs-at-law of Delia Pychlau, deceased, and the source through which their title is claimed is stated as follows: On May 21, 1862, John N. J. Ruete and Magdalean Ruete, his wife, conveyed said lands to Delia Pychlau, by deed of that date, which was recorded in the Hudson County Register's Office in Book 93 of Deeds for said county, on page 508. Said Delia Pychlau died about the year 1863, intestate, leaving her surviving as her only heirs-at-law, Annie Elizabeth Sulamith Pychlau, a daughter, who married Hamilkar Theodor Antone Wilhelm, Baron Vietinghoff-Sheel, and Elwyn Pychlau, a son, who married Augusta Pychlau. Said Hamilkar Theodor Antone Wilhelm Baron Vietinghoff-Sheel died on November 16, 1921. Said Augusta Pychlau is still living. Said Annie Elizabeth Sulamith Pychlau Vietinghoff-Sheel died June 22, 1919, intestate, leaving her surviving as her only heirs-at-law, Hedwig Marie Hermine Delia Baroness Vietinghoff-Sheel, a daughter, who married Ernest Baron Meyendorff, who has since died; and Antonie Hildegard Elizabeth Claudia Arbusoff, a daughter, who has since died, intestate, leaving her surviving as her only heirs-at-law, Annie Ida Lieselotte Arbusoff, a daughter;

Brigitte Katharina Hedwig Arbusoff, a daughter, and Leonid Hans Nicolai Arbusoff, her widower. Elwyn Pychlau died intestate, leaving him surviving as his only heirs-at-law, Harriet D. P. Pychlau, a daughter; Jutta Voest, a daughter, and Augusta Pychlau, his widow.

The defendants allege that they did not join in the deed set forth in the bill of complaint, and have never conveyed to complainants, or to any other person, their right, title and interest in said lands, or any part thereof.

The defendants further answering, allege, by way of first separate defense—(reserving the right to move at the trial of the cause for an order staying the proceedings in this suit and opening a final decree made and entered in a former suit, without admitting that the said decree is binding upon them) that on January 22, 1926, a final decree was entered in a suit in this Court between Laurent S. Mitchell and Charles A. Mitchell, Executors under the last will and testament of Francis W. Mitchell, deceased, complainants, and Delia Pychlau, Henry W. Pychlau, her husband, Henrietta J. Gaede, wife of Henry Gaede, Jr., Annie Pychlau Vietinghoff-Sheel, Hamilkar Vietinghoff-Sheel, her husband, Hedwig Meyerdorff, Ernest Meyerdorff, her husband, Antonio Arbusw, L. Arbusw, her husband, Edwin Pychlau, Augusta H. Pychlau, his wife, Justa P. Voest, Jacob Voest, her husband, Harriet D. P. Meyer and Frederick Meyer, her husband, and others, defendants, to quiet the alleged title of said complainants to the lands described in the bill of complaint in said suit, being the same lands described in Paragraph 1 of the complaint in this suit, and that in said suit it was decreed that the defendants therein had no estate or interest in or encumbrance upon said lands, or any part thereof, and that so far as related to the claim of the de-

fendants in said suit, the title of said complainants in and to said lands, and every part thereof, was thereby determined, fixed and settled, and declared to be good; that some of the defendants in said suit are defendants in this suit, viz.: Hedwig Marie Hermine Delia Baroness Meyendorff (named in the bill of complaint in this suit as Hedwig Mayerdorff); Leonid Hans Nicolai Arbusoff (named in the bill of complaint in this suit as L. Arbusw); Harriet D. P. Meyer; Jutta Voest (named in the bill of complaint in this suit as Justa P. Voest); and Augusta Pychlau (named therein and in the bill of complaint in this suit as August Pychlau—but who should be named as Augusta Pychlau—her true name), all of whom reside in the Republic of Latvia, and none of whom knew of the pendency of the aforesaid suit, or were served with process of subpoena therein.

The defendants, by order bearing dated May 9, 1927, obtained leave to further amend their answer, and added thereto further amendments charging that Francis W. Mitchell fraudulently and with intent to deceive the Hudson County Circuit Court, on or about February 27, 1901, obtained from said court, through such fraud and deceit, an order directing the City Collector of The Mayor and Aldermen of the City of Jersey City to deliver to him a deed for the lands in question. The nature of the alleged fraud and deceit is set out in said amendment with considerable particularity.

Said defendant, pursuant to leave obtained therefor by order of the Court bearing dated May 9, 1927, filed a counter-claim against the complainants, in which they charge that said Francis W. Mitchell practiced a fraud and deceit upon the Hudson County Circuit Court in obtaining from said Court the order for deed aforesaid, and also practiced a fraud and deceit upon the City Col-

lector of The Mayor and Aldermen of Jersey City in obtaining from said Collector the deed set out in Paragraph 1 of the complaint. The particulars of the alleged fraud and deceit are set out in the counter-claim. The gist thereof appears to be that said Francis W. Mitchell was fully aware that the defendants, as heirs-at-law of Delia Pychlau, were the owners of the lands in question; that he could readily, by the exercise of reasonable diligence, have ascertained the names and addresses of defendants, whereby he, pursuant to the statute in such case made and provided, could have given them notice of the "Martin Act" tax sale to said Mitchell on October 6, 1896, under and by virtue of which he claims to have received the deed set out in Paragraph 1 of the complaint and thus afforded them an opportunity to redeem said lands; that he concealed the knowledge of defendants' ownership of said lands not only from the Hudson County Circuit Court, but also from the City Collector of The Mayor and Aldermen of Jersey City, and thereby obtained from said Collector the deed set out in Paragraph 1 of the complaint; that said Francis W. Mitchell, in his petition to the Hudson County Circuit Court praying for an order directing the City Collector of The Mayor and Aldermen of the City of Jersey City to deliver a deed to him for the lands in question, fraudulently and with intent to deceive the Hudson County Circuit Court falsely represented that William Star Goodspeed, Arthur Baxter Goodspeed, Shepard Goodspeed and Alene Augusta Goodspeed were the owners of and had some interest in said lands, whereas, in fact, and to his knowledge, said mentioned persons were not the owners of and had no interest in said lands; that he fraudulently and with intent to deceive said Court and the City Collector of The Mayor and Aldermen of Jersey City, falsely represented

that the persons whom he caused to be served with notice to redeem (as set out in the proofs submitted to said Court and filed with the City Clerk of Jersey City, were the only persons who had title or interest in and to said lands; whereas, in fact, and to his knowledge, said persons were not the owners thereof and had no interest therein or thereto; that said Francis W. Mitchell knowingly and falsely made the aforesaid misrepresentations with intent to deceive the Hudson County Circuit Court and the City Collector of The Mayor and Aldermen of Jersey City, and said Court and City Collector were deceived thereby, to the detriment of said defendants.

Defendants, in and by their counter-claim, allege that neither of them were served by or in behalf of Francis W. Mitchell, with notice to redeem the lands in question from the tax sale aforesaid, as required by the statute in such case made and provided; that they are not bound by said Circuit Court proceedings, and that the deed acquired by said Francis W. Mitchell thereunder is null and void.

The defendants by their said counter-claim allege that said Francis W. Mitchell acquired no interest or title in the lands in question, and neither he or complainants had or have any title or interest in or to said lands, except by way of lien created by the tax sale certificate issued to said Francis W. Mitchell by the City Collector of The Mayor and Aldermen of Jersey City on October 6, 1896, which, they allege, is redeemable by defendants under the provisions of said act; and they offer to redeem said lands from said tax lien.

Complainants, by their reply to the defendants' amended answer under the order of May 9, 1927, deny the allegations contained in Paragraph 1 thereof, and admit the allegations contained in

Paragraph 2 thereof, except that they deny any fraud. The complainants, therefore, admit the allegations in Paragraph 2 of the defendants' aforesaid amended answer, which alleges that William Star Goodspeed, Arthur Baxter Goodspeed, Shepard Goodspeed and Alene Augusta Goodspeed were not, in fact, the owners of, and had no interest in, the lands and premises in question, thus tacitly admitting that the service upon said parties by Mitchell of notice to redeem was a sham.

Complainants, in their answer to the defendants' counter-claim, admit the allegations contained in Paragraph 1 thereof, admit the allegations contained in Paragraphs 2 and 3, except that the persons therein mentioned had no interest in the said premises and they deny any fraud and intent to deceive, deny the allegations contained in Paragraphs 4, 5, 6, 8, 9 and 10, and admit that a deed was given by the City Collector of The Mayor and Aldermen of Jersey City, as set out in Paragraph 7 of said counter-claim, but deny the rest of the allegations contained in said Paragraph.

I may say, in passing, that while it is alleged in the bill of complaint, and also in the answer, that the deed bearing date March 22, 1901 (Exhibit C, 1), was made by Robert Davis, City Collector of The Mayor and Aldermen of Jersey City, to Francis W. Mitchell, the name of the grantee in said deed is "F. W. Mitchell," and the recital in the deed as to the sale of the lands described therein, is that—"sale thereof was made to F. W. Mitchell."

From the pleadings and proofs it appears that the *record owner* of the lands in question was Delia Pychlau; that she acquired title thereto by deed from John N. J. Ruete and Magdalean, his wife, dated May 21, 1862, recorded June 18, 1862,

in the Register's Office of the County of Hudson, in Liber 93 of Deeds, page 508; that said Delia Pychlau died in Brooklyn, N. Y., January 31, 1863, intestate, leaving her surviving, as her only heirs-at-law, Annie Elizabeth Sulamith Pychlau, a daughter, who married Hamilkar Theodor Antone Wilhelm Baron Vietinghoff-Sheel; Elwyn Wilhelm Heinrich Pychlau, a son, who married Augusta Pychlau, and Henry W. Pychlau, her husband, who died June 10, 1910. Hamilkar Theodor Antone Wilhelm Baron Vietinghoff-Sheel died in 1921. Elwyn Wilhelm Heinrich Pychlau died January 1, 1924, intestate, leaving him surviving as his only heirs-at-law, Harriet Delia Annie Alice Mary Pychlau, a daughter, who married Friedrich Meyer; Yutta Maria Elsa Freida Pychlau, a daughter, who married Jacob Voest—who was killed in the World War—and Augusta Pychlau, his widow, who is still living. Annie Elizabeth Sulamith Pychlau Vietinghoff-Sheel died June 22, 1919, intestate, leaving her surviving as her only heirs-at-law, Hedwig Marie Hermine Delia Baroness Vietinghoff-Sheel, a daughter, who married Ernst Baron Meyendorff, who has since died, and Antonie Hildegard Elizabeth Claudia Arbusoff, a daughter, who died March 22, 1920, intestate, leaving her surviving as her only heirs-at-law, Annie Lieselotte Arbusoff, a daughter, and Leonid Hans Nicolai Arbusoff, her husband.

It also appears that said lands were sold by the City of Jersey City *October 10th, 1890*, under the "Martin Act" (P. L., 1886, p. 149; Comp. Stat., p. 5205), to Henry A. Gaede, to whom a deed therefor was given by Patrick H. O'Neill, City Collector of The Mayor and Aldermen of Jersey City, dated November 24, 1891, recorded in the Register's Office of the County of Hudson May 21, 1892, in Book 552 of Deeds, page 321, which sets forth the names "Henry A. Pychlau or Pychlan, Delia

Pychlau or Pychlan, Annie Pychlau or Pychlan, and Elwyn Pychlau or Pychlan," two of whom, apparently (Annie Pychlau Vietinghoff-Sheel and Edwin Pychlau), are named parties defendant in the case *sub judice*. It appears also that said Henry A. Gaede did not give, or cause to be given, to the heirs-at-law of said Delia Pychlau, notice to redeem, as provided by the aforesaid act. Said Henry A. Gaede acquired from *Henry W. Pychlau*, widower of said Delia Pychlau, a deed, bearing date November 30, 1891, which was recorded in the Register's Office of the County of Hudson May 21, 1892, in Book 552 of Deeds for said county, page 319, conveying to him all the grantor's right, title and interest in and to the lands in question. By said deed, which mentions the address of the grantor as "City of Milan, County of Gurania, Empire of Russia," Gaede acquired only the curtesy of said grantor. *That Gaede did not acquire a good title to the lands in question is conceded in the briefs submitted on behalf of the complainants, is evidenced by the deposition of John D. Craven, a solicitor of this Court, filed in the former suit respecting the lands in question* (Docket 59, page 173), the record of which was admitted in evidence in this case, and is evidenced also by the testimony of L. Edward Herrmann, solicitor of the complainants. Herrmann testified that he personally handled the legal details of the Mitchell tax sale purchase from and after the year 1896; that he made search of the records of the Register's Office of the County of Hudson and there found the record of the aforesaid deed to Delia Pychlau; that he did not find any deed from said Delia Pychlau, or from any of her heirs; that he caused an investigation to be made by John D. Craven, a solicitor of this Court, who is associated with him, and Craven reported to him the result of his investigation,

the particulars of which are set out in an affidavit made by said Craven in a former suit (Docket 59, page 173), filed on October 17, 1925, and in a deposition made by said Craven, filed in said suit on January 22, 1926. It appears from the aforesaid deposition of Craven that he applied to the heirs of Delia Pychlau to release their interest in and to the lands in question, and they refused to do so. He was undoubtedly aware that said heirs had not been lawfully divested of their title and interest in the lands in question.

That Delia Pychlau was the *owner of record* of the lands in question is not only manifested by the record of deeds in the Register's Office of the County of Hudson, in Liber 93, page 508, but also by an abstract of title filed September, 1898, with the City Clerk of Jersey City by Wallis, Edwards & Bumsted, attorneys, in behalf of Henry A. Gaede (which Mitchell or his agent or attorneys may have readily examined) which contains a record of the deed made by John N. J. Ruete and wife to Delia Pychlau, dated May 21, 1862, recorded June 18, 1862, in Liber 93, page 508. A memorandum is attached to said abstract, reading as follows,—“Note: Delia Pychlau is evidently dead, although there is no record of any will or of the granting of letters of administration upon her estate in the Surrogate's Office of Hudson County.” Said abstract also contains a record of the aforesaid deed made by Henry W. Pychlau, (widower) to Henry A. Gaede, dated November 30th, 1891, recorded May 21st, 1862, in Liber 552 of Deeds, page 319, wherein said grantor is described as of “City of Milan, County of Gurania, Empire of Russia.” That said Delia Pychlau was the owner of said lands is indicated also by a certificate of search fees, filed with the City Clerk of Jersey City by Wallis, Edwards & Bumsted, attorneys, in behalf of Francis W. Mitchell. Said

certificate evidences that a search was made in the Register's Office of the County of Hudson against *Delia Pychlau* and *Henry Pychlau*, from May 21, 1862, to November 30, 1891. The aforesaid records of the City Clerk's Office of Jersey City were offered and admitted in evidence in this cause in behalf of the defendants.

It appears also from the proofs that Mitchell and his agents, for some unexplained and undisclosed reason, served notices to redeem on Henry A. Gaede, trustee; Robert Campbell; Mary A. Goodspeed, Executrix; William Star Goodspeed, Arthur Baxter Goodspeed; Shepard Goodspeed, and Alene Augusta Goodspeed, heirs of William Goodspeed, none of whom appear to have had any right, title or interest in or to the lands in question at any time after Delia Pychlau obtained title thereto.

Francis W. Mitchell purchased the lands in question at a "Martin Act" sale on October 6, 1896, for the sum of \$382.59. In his petition to the Hudson County Circuit Court he represented that William Star Goodspeed, Arthur Baxter Goodspeed, Shepard Goodspeed and Alene Augusta Goodspeed appeared to have an interest in the lands in question, that they were infants under the age of twenty-one years, resided at 770 West End Avenue, New York City, with their mother, had no other guardian, were duly served with a copy of the notice to redeem from said tax sale, and that no one appeared and offered to redeem the lands in question. What interest they or either of them had in said lands is not disclosed in said petition. He prayed for the appointment of a guardian *ad litem* of said infants, and for inquiry into the ability of said infants or their estate to redeem said lands, and for an order directing The City Collector of The Mayor and Aldermen of Jersey City to deliver to him a deed conveying

to him said lands and the interest and estate of said infants. Attached to said petition is the affidavit of one Edwin F. Smith, who, as agent of the petitioner, says he made due investigation to ascertain the names and residences of the persons entitled to redeem the lands described in said petition, and also, in the cases of the infants aforesaid, as to their ages, guardians, estate and ability to redeem. He failed to make known the nature of his investigation, or the results thereof. Why Smith—if, as he says, he made due investigation—did not ascertain the names and addresses of the heirs of Delia Pychlau—the record owner of the lands in question—is unexplained.

On February 25, 1901, an order was obtained by Francis W. Mitchell from the Hudson County Circuit Court, based upon the aforesaid petition, requiring the City Collector of The Mayor and Aldermen of Jersey City to make and deliver to him a deed conveying to him, his heirs and assigns, all the lands in question, including all the interest or estate therein, or lien thereon, belonging to the above-named infants; and a deed bearing date March 22, 1901, was made by said City Collector to "F. W. Mitchell."

The aforesaid Craven deposition in the former suit (Docket 59, p. 173) says, in referring to the alleged Mitchell tax title,—“These heirs of Delia Pychlau might claim some interest in this property, because they were not properly made parties in the tax proceedings \* \* \*. Henrietta J. Gaede was made a party defendant because she was not served in the tax sale proceeding by which the complainants acquired title”—meaning the complainants referred to in such former suit. The brief submitted in behalf of complainants, referring to the Mitchell deed bearing date March 22, 1901 (Book 773 of Deeds, page 456), says—“In these tax proceedings none of the present defend-

ants were served with notice. When the agent of the purchaser went to serve the record owner of the title, Henry A. Gaede, he was advised by the said Henry A. Gaede that he was not the owner of the said premises in his own right, he was acting as trustee \* \* \*," and—"As a result of that information the agent of the purchaser served only those persons who had some interest in the property, as the statute provided. None of those persons were any of the defendants herein." It thus appears that Mitchell *assumed* that *Henry A. Gaede* was the *record owner* of the lands in question, and entirely ignored the record evidencing *Delia Pychlau* to be the owner thereof.

A purchaser of real property is chargeable with notice of such facts affecting the title as may be ascertained by reference to the chain of title of such property as spread upon the public record. *Breitman v. Jaehnal*, 99 N. J. Eq., 243.

In *Kirkuff v. Kerr*, 57 N. J. Eq., 623, the Court of Errors and Appeals, in reversing the Court of Chancery in a case where the bill was filed to set aside a deed obtained in an attachment action, held that—"When legal process has been fraudulently abused and a title to property has been thereby obtained, which the court of law cannot restore, a court of equity will intervene and afford such relief as may be necessary to undo the wrong and secure a legitimate use of the process,"—citing *Tompkins v. Tompkins*, 11 N. J. Eq., 512; *Herbert v. Herbert*, 49 N. J. Eq., 565; 3 Pomeroy Eq., secs. 1364, 1365. The aforesaid cases, by analogy, are applicable to the case *sub judice*.

It appears to me that the defendants' claim that Mitchell knew who were the heirs of *Delia Pychlau*, and that he fraudulently suppressed the information and substituted the names of other persons in their stead, who had no title or interest whatever in or to the lands in question, and that

the tax deed set out in Paragraph 1 of the complaint would not have been given Mitchell had he informed the Hudson County Circuit Court and the City Collector of Jersey City of his knowledge of Delia Pychlau, gleaned from the records of the Register's Office of the County of Hudson, and of the deed made by Henry W. Pychlau, husband of said Delia Pychlau, to Henry A. Gaede, is supported by the proofs in this case.

For this Court to recognize in this case the deed set out in Paragraph 1 of the complaint as a valid instrument would, in my opinion, be contrary to the equitable principle that a Court of equity will not lend its aid to enforce an unjust and unconscionable claim.

In the case of *Erie R. R. Co. v. D. L. & W. R. R. Co.*, 21 N. J. Eq. 284, it is said: "A court of equity will never lend its active aid to a party who by superior knowledge and *artful silence* has gained an unfair advantage over another" (Italics mine).

That a fraud was intended by Mitchell in the procurement of the aforesaid deed, is indicated also by the fact that while *Section 3 of P. L., 1889*, p. 309, which is a supplement to the Martin Act (see also *4 Comp. Stat.*, p. 5218, sec. 325), provides that in case any owner, mortgagee or other person appearing to have an interest in the lands which shall be sold for arrears of taxes or assessments under the provisions of said act, is unknown to, or cannot be ascertained by the purchaser or his legal representatives or assigns, after due inquiry, application shall be made to the circuit court of the county wherein such lands are situate for an order for a deed, by petition duly verified, which shall describe the lands sold, and shall also set out the manner in which the purchaser, or his legal representatives or assigns, have made inquiry for such unknown owner, mort-

gagee or other interested person, he did not proceed thereunder, but served notice to redeem on persons who had no interest whatever in the lands.

The Martin Act, under which complainants' deed was acquired, provides (*4 Comp. Stat.*, p. 5214, sec. 313)—“Inquiry for the residence or post-office address of such owner, mortgagee or other person having an interest in or a lien upon said lands and premises shall be made by the purchaser or his agent upon the lands purchased at the sale if they are occupied, and wherever else in the city the same may be likely to be ascertained, and also by an examination of the record of the deed, mortgage or other instrument on account of which such notice is given,” and “an affidavit shall be made by the purchaser or his agent setting forth the manner and particulars of the service, and, in case the same is made by publication, setting forth what inquiry was made to ascertain the residence and post-office address of such owner, mortgagee or other person having an interest in or lien upon said lands and premises;” and “the purchaser shall be entitled to the possession of said lands immediately upon giving such notice to the owner thereof, in case the same are unoccupied \* \* \* provided, however, that if any estate in any of the said lands shall be held by any heir or devisee of a decedent whose estate appears of record in the county \* \* \* such heir, devisee \* \* \* shall be entitled to redeem and to have notice as aforesaid before the purchaser shall be entitled to the possession of the lands \* \* \*.” Said act also provides (*4 Comp. Stat.*, p. 5212, sec. 312) for delivery of deed to the purchaser upon proof of service of notice to redeem, as in said act provided, upon the owners and mortgagees of said lands and premises.

Complainants urge that the defendants are barred from claiming title to the lands in ques-

tion by the proceedings initiated and prosecuted by Francis W. Mitchell in the procurement of the deed set out in Paragraph 1 of the complaint, and that said deed cannot be attacked collaterally for irregularity in the tax proceedings. Defendants urge, however, that the rule of law which indicates that such deed cannot be attacked collaterally for irregularity in the tax proceedings does not apply where, as in this case, the deed in question was obtained by fraud. I concur with the defendants therein.

As against the contention of defendants that the decree in the former suit is a bar against the complainants in the present suit, complainants urge that said former decree is not a bar to the present suit for the reason (among others) that the complainants in this present suit are not identical with the complainants in the former suit, and that the complainants in the former suit (two in number) sued in a representative capacity, as executors, whereas in this suit the complainants (four in number) all sue in their individual capacity. Complainants also urge that the Court should disregard the decree in the former suit, which they say is a nullity. This Court cannot disregard the decree in the former suit or consider it a nullity. *West New York Improvement Co. v. Town of West New York*, 88 N. J. Eq. 571. The case cited was an action to quiet title. It appears therefrom that a similar action had been decided between the same parties in a previous suit. In the later suit, the Vice-Chancellor hearing the cause set aside the previous decree. The case was then taken to the Court of Errors and Appeals, which declared (p. 574): "We confess to a moderate degree of surprise that a vice-chancellor should undertake to set aside the solemn decree of the court of chancery which had not been appealed from, and still remained in force and

effect, simply because he thought it should never have been made.”

Furthermore, it appears to me the defendants in the case *sub judice* are not identical with the defendants in the former suit, and therefore the plea of *res judicata*, urged by the defendants, should not prevail.

The proofs in this case clearly manifest, in my opinion, that a fraud was perpetrated by Francis W. Mitchell, not only upon the Hudson County Circuit Court and the City Collector of Jersey City, but likewise upon the defendants, in the procurement by him of the deed relied upon by the complainants in this suit. I am convinced that if said Francis W. Mitchell and his agent Edwin F. Smith exercised reasonable diligence by inquiring to ascertain the names and addresses of the defendants, heirs of Delia Pychlau—the owner of record of the lands in question, they could readily have obtained adequate information thereof. The fact that Mr. Craven obtained the names and addresses of the defendants as fully as evidenced by his deposition and affidavit aforesaid, is strongly indicative that such information was obtainable upon due inquiry therefor, and is indicative also that Francis W. Mitchell, and his agent, Edwin F. Smith,—whose affidavit of inquiry was made the basis of application to the Hudson County Circuit Court and the City Collector of Jersey City for the procurement of the deed set out in Paragraph 1 of the complaint—did not make due inquiry for information as to the names and addresses of the heirs of Delia Pychlau—owner of record of the lands in question.

In *Nugent v. Hayes*, 96 N. J. Eq., p. 485, Vice-Chancellor Backes held that equity will redress wrong perpetrated by fraudulent proceedings at law,—citing *Boulton v. Scott*, 3 N. J. Eq. 231; *Tompkins v. Tompkins*, 11 N. J. Eq. 512; *Kirkuff*

v. *Kerr*, 57 N. J. Eq. 623; *Truitt v. Darnell*, 65 N. J. Eq. 221.

I am convinced that the order for the deed in the case *sub judice* would not have been made had Francis W. Mitchell and Edwin F. Smith, his agent, informed the Court of the fact that the record of deeds in the Hudson County Register's office evidenced that Delia Pychlau was the owner of the land in question, and that such record disclosed also a deed made by Henry W. Pychlau, widower of said Delia Pychlau, to Henry A. Gaede, in which said Henry W. Pychlau was described as a resident of "City of Milan, County of Gurania, Empire of Russia"; and that no notice to redeem was given to the heirs-at-law of said Delia Pychlau; and that William Star Goodspeed, Arthur Baxter Goodspeed, Shepard Goodspeed and Alene Augusta Goodspeed, the infants mentioned in the petition filed with said Court on February 25, 1901, whom said petitioner alleged had an interest in the lands in question, as heirs of William B. Goodspeed, deceased, had, in fact, no right, title or interest whatever therein or thereto; at least, without requiring said Mitchell to make due inquiry as to the identity of said Delia Pychlau, with a view of ascertaining her place of residence, if living, and, if dead, the names and addresses of her heirs; and I am convinced also that the descendants of said Delia Pychlau would have been afforded an opportunity to redeem the lands in question had the Court been truthfully informed of and concerning the same.

The tax deed mentioned in Paragraph 1 of the complaint, upon which the complainants rely as vesting in them as devisees of Francis W. Mitchell, deceased, the lands in question, is in my opinion invalid because of the fraud perpetrated by said Francis W. Mitchell upon the Hudson County Circuit Court and upon the City Collector of Jersey

City; and because no notice to redeem, as required by the Martin Act, was served upon or given to the heirs and descendants of Delia Pychlau, the owner of record of said lands and premises. See *Nugent v. Lindsley*, 135 Atl., 271; *Nugent v. Hayes*, 94 N. J. Eq., 305; *Milmoe v. Zimmerman*, 95 N. J. Eq., 85, 122 Atl., 688, aff'd. 97 N. J. Eq., 326.

In *Nugent v. Lindsley*, *supra*, it is said,—“Notice and default are indispensable conditions to the divestiture of title by deed under the tax sale. The Comptroller’s deed operates as a bar only upon owners who have been served, in the manner required by the act, with notice to redeem, and who have defaulted. As to those not served, the deed is ineffective, and as to them the purchaser at the tax sale has but a tax lien which may be redeemed. The deed may be likened to a decree in foreclosure against defendants who were not served with process. As to them, the decree is invalid and may be attacked anywhere and at all times, while as to those served it is an effectual bar.”

I have in mind, in my determination of this matter, that a court of equity will seize upon the slightest flaw of substance in tax sales to restore property to the owner. *Welles v. Schaffer*, 98 N. J. Eq., 31, 35. See also the decision of Vice-Chancellor Lewis in *Harrington Co. v. Hoster*, 89 N. J. Eq., 270, 273—“The sale of land for non-payment of taxes is such an extreme interference with private property that the law guards the rights of the owner with the utmost care. The due performance of every step in the proceedings, even in the most minute particulars, is a condition precedent to the validity of the sale, and the deed to the purchaser must contain all the statutory requirements. *Lyon v. Alley*, 130 U. S. 177; *Brown v. Veazie*, 25 Me., 359; *Wilson v. Doe d. Bell* (Va.), 7 Leigh, 22.

The complainants also urge that the defendants are in laches. Inasmuch as Francis W. Mitchell failed to give notice to the defendants of the tax sale through which he acquired the tax deed set out in Paragraph 1 of the complaint, and it does not appear that defendants had any knowledge whatever of the tax sale proceedings, the claim of laches is untenable.

I conclude that the defendants are entitled to redeem the lands in question. If they and the complainants cannot agree as to the amount of money required to be paid to effect a redemption of the tax lien—which I hereby adjudge to be the only interest which complainants have in and to the lands in question, a reference will be ordered to a Master to determine the amount required to be paid therefor.

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The foregoing memorandum is merely for the guidance of counsel in ascertaining the views of the Court, and is not to be printed nor published.

**Supplemental Memorandum.**

IN CHANCERY OF NEW JERSEY.

Between

LAURENT S. MITCHELL, CHARLES  
A. MITCHELL, ADELAIDE GIAM-  
BALDO and CECILIA STEPHENS,  
Complainants,

*and*

HENRIETTA J. GAEDE, DELIA PSYCH-  
LAU, *et als.*,  
Defendants.

On Bill, etc.  
On Final  
Hearing.

For the Complainants, Mr. L. EDWARD HERR-  
MANN.

For the Defendants, Messrs. TACKELLA &  
CAMBY.

FALLON, V. C.:

I filed a memorandum of my decision in the aforesaid matter July 19, 1927. Subsequent thereto, John D. Craven, Esq., representing L. Edward Herrman, Esq., solicitor of the complainants, appeared in court, with Matthew J. Tackella, Esq., representing the solicitors of the defendants, and stated that he was of the impression that I had not before me for my consideration, prior to the determination of said matter, certain records of the Jersey City Clerk's Office, which it was agreed between counsel should be submitted to me as exhibits in the cause. I afforded counsel the opportunity of submitting to me such records of the City Clerk's Office of Jer-

sey City, having reference to the case *sub judice*, which counsel considered were not previously furnished to me. Mr. Craven, thereafter, on November 1, 1927, submitted to me copies of notices to redeem, relating to Lots 275 and 276 in Block 781, which, from affidavits annexed thereto, appear to have been mailed to "Henry W. Pychlau or Pychlan", "Delia Pychlau or Pychlan", "Annie Pychlau or Pychlan" and "Elwyn Pychlau or Pychlan"—Mitau, Russia, dated "Jersey City, January 26th, 1891", and signed "Henry A. Gaede, Purchaser, No. 372 Central Avenue, Jersey City, N. J."; also copies of notice, directed to the aforesaid parties, as published in the Jersey City News for six weeks successively at least once each week, commencing on the 23rd day of January, 1891, together with affidavit of C. J. Milton relating thereto, bearing date August 1, 1891. Copies of such papers were submitted to me, together with other exhibits prior to my consideration of the matter *sub judice*. I considered they had been offered and admitted in evidence.

In the memorandum heretofore filed it clearly appears that the notices to redeem alleged to have been given to the defendants Henry W. Pychlau, Delia Pychlau, Annie Pychlau and Elwyn Pychlau were mailed to them as "Henry W. Pychlau or Pychlan", "Delia Pychlau or Pychlan", "Annie Pychlau or Pychlan" and "Elwyn Pychlau or Pychlan", at Mitau, Russia, though there is nothing contained in the proofs indicating that either of said parties resided, or had their post-office address, at Mitau, Russia. The proofs clearly evidence that the aforesaid defendants were residents of "City of Milan, County of Gurania, Empire of Russia", and that such was their post-office address. It is manifest, therefore, that the statutory requisites as to notice to parties in interest—who, in this case, were heirs-

at-law of Delia Pychlau, *owner of record* of the lands and premises *sub judice*, were not complied with, and, as stated by me in my original memorandum, upon the authority of *Nugent v. Lindsley*, 135 Atl. Rep. 271, "Notice and default are indispensable conditions to the divestiture of title by deed under the tax sale. The Comptroller's deed operates as a bar only upon owners who have been served, in the manner required by the act, with notice to redeem, and who have defaulted. As to those not served, the deed is ineffective, and as to them the purchaser at the tax sale has but a tax lien which may be redeemed. The deed may be likened to a decree in foreclosure against defendants who were not served with process. As to them, the decree is invalid and may be attacked anywhere and at all times, while as to those served it is an effectual bar."

No intendment will be made in favor of the legality of tax sale proceedings. The burden of showing compliance with the law is on the purchaser. *State, Baxter, pros. v. Mayor and Aldermen of Jersey City*, 36 N. J. L. 188, at p. 192.

I reaffirm the conclusions stated by me in the memorandum heretofore filed, and will advise a decree accordingly, with costs to the defendants.

Dated, Hoboken, N. J., Jan. 13, 1928.

**We respectfully submit that the decree made by the Court of Chancery for the above reasons should be affirmed.**

TACKELLA & CAMBY,  
Solicitors for Defendants-Respondents.

HENRY J. CAMBY,  
Of Counsel.

VICTOR E. GARTZ,  
Of the New York Bar,  
Associated Counsel.

