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BILL OF COMPLAINT.

(Filed Feb. 17, 1943.)

IN CHANCERY OF NEW JERSEY.
TO THE HONORABLE LUTHER A. CAMP-
BELL, CHANCELLOR OF THE STATE OF 10
NEW JERSEY:

The complainant, BONDED CERTIFICATE CORPORATION, a corporation of the State of New York, licensed to do business in New Jersey, having its principal office located in the City of Elizabeth, County of Union and State of New Jersey, respectfully shows:

1. By a deed of conveyance dated April 15, 1936, 20
and recorded on December 31, 1936, in the Office of
the Register of the County of Camden in Book 848
of Deeds for said County, on page 227, Henry
Ulrich and Julia A. Ulrich, his wife, conveyed to
Annie B. Wildey, Widow, in fee simple, certain
premises in the Borough of Somerdale, in the
County of Camden and State of New Jersey, known
and designated as lots Nos. 12 and 13, Section 1,
on a certain plan of lots entitled Somerdale Park by
Remington & Vosbury, Civil Engineers of Camden, 30
New Jersey, and dated February 5th, 1919, a copy
of which said plan is duly filed in the Office of the
Register of Deeds of Camden County at Camden,
New Jersey, on October 4th, 1920, and more partic-
ularly described as follows:

BEGINNING at a point in the Northeasterly side
line of White Horse Pike distance one hundred (100)
feet Northwestwardly from the Northwesterly side
line of Hartner Avenue and extending thence (1)
Northwestwardly along the said Northeasterly side 40

Bill of Complaint

of White Horse Pike one hundred (100) feet in width or breadth; thence (2) Northeastwardly between parallel lines of that width or breadth at right angles to said White Horse Pike two hundred (200) feet in length or depth.

10 Being and intended to describe the premises designated as Lots 12 and 13, Section 1, Somerdale Park, on the tax duplicate of the Borough of Somerdale.

2. Taxes were assessed against said premises in the name of Anna Wildey as owner by the Borough of Somerdale and remained unpaid for the year 1939. Said taxes amounting to the sum of \$161.20, not having been paid, on November 30, 1940, a sale of land for delinquent taxes and assessments in the
20 Borough of Somerdale was made by Joseph E. Smith, Collector of Taxes of the said Borough of Somerdale, under and by virtue of the provisions of an act of the Legislature of the State of New Jersey, entitled, "An Act concerning unpaid taxes, assessments, and other municipal charges on real property and providing for the collection thereof by the creation and enforcement of liens thereon (Revision of 1918)," approved March 4th, 1918, and the supplements thereto and amendments thereof, which
30 said sale was conducted in all things according to the provisions of said act.

3. At said sale, the lands and premises hereinbefore described were struck off and sold to the Bonded Certificate Corporation, complainant herein, in fee simple subject to redemption at the rate of no interest, for the sum of \$176.58, being the unpaid taxes, as aforesaid, together with interest thereon to date of sale amounting to the sum of \$12.88, and the
40 costs of sale amounting to the sum of \$2.50.

4. After the said sale for taxes the said Joseph E. Smith, Collector of Taxes of the Borough of Somerdale, as aforesaid, made and delivered to the said Bonded Certificate Corporation a certificate of sale for said premises sold as above set forth, which certificate of sale was in the form prescribed by the said act of March 4, 1918, and the supplements thereto and amendments thereof, and which certificate, having been first duly acknowledged, was recorded in the Office of the Register of the County of Camden on March 1, 1941, in Book 468 of Mortgages for said County, on page 64. 10

5. So far as the records in the Office of the Register of Camden County show, the title to the aforesaid lands and premises is vested in Annie B. Wildey, Widow, by virtue of the deed of conveyance set forth in paragraph one of this bill of complaint. 20

6. Notwithstanding diligent and careful inquiry, complainant has been unable to ascertain whether said Annie B. Wildey is married, and therefore alleges that Mr. Wildey, husband of Annie B. Wildey, has or may claim to have a right of curtesy in said lands and premises.

7. Complainant has been informed that said Annie B. Wildey is deceased, but notwithstanding diligent and careful inquiry has been unable to establish whether she is in fact dead, and if she is dead, the names of her heirs, devisees and personal representatives, and therefore alleges that the unknown heirs, devisees and personal representatives of said Annie B. Wildey have, or may claim to have, an interest in said lands and premises. 30

8. The State of New Jersey has, or may claim to have, an interest in said lands and premises under 40

Bill of Complaint

the Inheritance Tax Laws of the State of New Jersey in the event of the death of said Annie B. Wildey.

9. Complainant alleges that whatever right, title or interest said Annie B. Wildey, Mr. Wildey, husband of Annie B. Wildey, the unknown heirs, devisees and personal representatives of Annie B. Wildey, and State of New Jersey, may have, or may claim to have, in said lands and premises, is subject to the lien of complainant's tax sale certificate.

10. Complainant tenders itself ready and willing to pay all municipal liens assessed on and after the first day of July, 1940, up to and including the date of the filing of this bill of complaint.

20 11. More than two years have elapsed since the sale of said lands and the said lands have not been redeemed from the said sale.

30 12. The sum of \$2.00 was expended for recording said certificate as a mortgage, and also the sum of \$12.00 for an investigation to ascertain the interested owners and mortgagees, an abstract of which, together with an affidavit, was duly made and filed with the Collector of Taxes of the Borough of Somerdale.

13. There is due to complainant on account of said tax sale, the sum of \$176.58, the amount paid at said tax sale, the sum of \$2.00, for recording said certificate of sale, the sum of \$12.00 for the investigation, as aforesaid, no part of which sums has been paid.

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

Bill of Complaint

5

1. That Annie B. Wildey, Mr. Wildey, husband of Annie B. Wildey, the unknown heirs, devisees and personal representatives of Annie B. Wildey, and State of New Jersey, who are the defendants in this suit, may answer this bill of complaint and each statement therein made.

10

2. That the said defendants may discover and set forth whether there is or are any other encumbrances of, upon, or affecting said premises, and if so, in whom the same is or are vested.

3. That an account may be taken by and under the direction of this court of what is due and owing under the said tax sale certificate and that the said defendants may be decreed to pay to complainant what may be found due to it on taking the said account, together with its costs of this suit, at a time and place to be appointed by this court for that purpose, or in default thereof, the defendants or any other person claiming by, from, or under them, or any of them, may be absolutely debarred and foreclosed of and from all right and equity of redemption of, in, and to the said lands and premises and every part thereof, and that they may deliver up to complainant all deeds, papers, or writings in their custody or power relating to or concerning the said premises or any part thereof.

20

30

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

SAUL A. WITTES,
Solicitor for and of Counsel
with Complainant.

40

Bill of Complaint

State of New Jersey }
 County of Union } ss.

SAUL A. WITTES, of full age, being duly sworn upon his oath according to law, deposes and says:

10

1. I am the solicitor of the complainant and the person actually entrusted with the conduct and management of this cause.

20

2. I have, in good faith, made diligent and careful inquiry for the purpose of ascertaining whether the defendant, Annie B. Wildey, is married, and if she is, the full name and post office address and residence of her husband, but notwithstanding such inquiry, I have been unable to ascertain the fact.

30

3. I have also made such inquiry for the purpose of ascertaining whether the said Annie B. Wildey is living or dead, and if dead, the post office addresses and residences of her heirs, devisees and personal representatives, and although I have been informed that she is dead, I have been unable to establish her death as a fact, nor have I been able to ascertain the names of her heirs, devisees and personal representatives, if she is dead.

40

4. My inquiry consisted of the following: On February 3, 1943, I examined the records on file in the Office of the Register of the County of Camden and ascertained that the deed of conveyance more particularly referred to in the bill of complaint referred to said Annie B. Wildey as a widow and as a resident of the City of Philadelphia, in the State of Pennsylvania. I also ascertained that after the deed of conveyance had been recorded by the County

Register, he forwarded it to Frederick G. Webel at 3232 Frankford Avenue, Philadelphia, Pennsylvania.

5. On February 3, 1943, I searched the records in the Office of the Surrogate of the County of Camden for the purpose of ascertaining whether or not letters of administration were granted upon the estate of Annie B. Wildey, or whether the will of the said defendant was probated in said office, and so far as the records of said Surrogate's Office show, no letters of administration were granted upon the estate of the said Annie B. Wildey, and no will of the said Annie B. Wildey was probated in the County of Camden. 10

6. At the time of the purchase of the tax sale certificate more particularly referred to in the bill of complaint, I ascertained from Joseph E. Smith, the tax collector of said Borough of Somerdale, the municipality in which the lands described in the bill of complaint and in the tax sale are situated, that according to his records the post office address of said Annie B. Wildey was 2029 East Willard Avenue, Philadelphia, Pennsylvania. 20

7. On February 5, 1943, I sent a letter to said Annie B. Wildey, at 2029 East Willard Avenue, Philadelphia, Pennsylvania, a copy of which marked Exhibit "A" is annexed hereto. I received a reply from a person who signed the letter, "Mr. Jos. Campbell", a copy of which letter marked Exhibit "B" is annexed hereto. The letter stated that, "I wish to inform you that Mrs. Annie has been dead 4 years," and referred me to two addresses in Philadelphia, to wit: 3009-15 N. 11th St. and 3411 Lee St. 30

Bill of Complaint

8. On February 9, 1943, I sent a letter to Annie B. Wildey, at 3009-15 North 11th Street, Philadelphia, Pennsylvania, a copy of which letter marked Exhibit "C" is annexed hereto. The letter was returned marked, "Not at this address."

10 9. On February 9, 1943, I sent a letter to Annie B. Wildey, at 3411 Lee Street, Philadelphia, Pennsylvania, a copy of which letter marked Exhibit "D" is annexed hereto. I have received no reply to said letter.

20 10. On February 5, 1943, I sent a letter to Frederick G. Webel, at 3232 Frankford Avenue, Philadelphia, Pennsylvania, the person to whom the deed to Annie B. Wildey had been sent by the Register of Camden County, a copy of which letter marked Exhibit "E" is annexed hereto. I received no reply to said letter.

11. On February 5, 1943, I sent a letter to the Register of Wills, Philadelphia, Pennsylvania, a copy of which marked Exhibit "F" is annexed hereto. I received a reply to said letter, a copy of which marked Exhibit "G" is annexed hereto.

30 12. I have made the foregoing inquiry in good faith and in such manner as I believe would probably give me the information desired if the same could be had. In making all of such inquiries, I stated to the person from whom they were made that this suit was about to be commenced against the person inquired for, and that the object of the inquiry was to give her notice of such suit so that she might appear and defend it and redeem the said lands from the said tax sale if she so desired. In all
40 inquiries made by me by letter, such letters were en-

Bill of Complaint

9

closed in post-paid sealed envelopes on which were endorsed my name and address and in each of which I enclosed a self-addressed and stamped envelope for a reply.

13. The said Annie B. Wildey was made a defendant to this suit because she is the owner of record of the lands and premises described in the bill of complaint. 10

14. The said Mr. Wildey, husband of Annie B. Wildey, was made a defendant to this suit because he has, or claims to have, a right of curtesy in said lands and premises.

15. Said unknown heirs, devisees and personal representatives of Annie B. Wildey were made parties defendant to this suit because in the event of the death of said Annie B. Wildey, they have, or may claim to have, an interest in said lands and premises. 20

SAUL A. WITTES.

Sworn to and subscribed before me this 16th day of February, 1943.

MOLLIE FREEMAN,
A Notary Public of New Jersey. 30

EXHIBIT "A".

SAUL A. WITTES
 Counsellor at Law
 1143 East Jersey Street
 Elizabeth, N. J.
 Elizabeth 2-3854

10

February 5, 1943.

Annie B. Wildey,
 2029 East Willard Avenue,
 Philadelphia, Pennsylvania.

Re: Tax Sale to Bonded Certificate Corporation
 Date of Sale November 30, 1940
 Description Lots 12 & 13, Sec. 1, Somerdale
 Park, Somerdale, N. J.

20

Amount of Sale \$176.58
 Taxes up to and including the year 1939
 Assessed to Anna Wildey
 Owned by Annie B. Wildey

Dear Madam:

I am about to institute a suit to foreclose the right to redeem from the above tax sale on the premises described above upon which it appears you have an interest as owner.

I desire to make you a party defendant to said
 30 foreclosure suit in order that you may appear and defend the same and redeem the said land from the said tax sale if you so desire, and for that purpose, I must know your present post office address which please send me at once in the enclosed self-addressed and stamped envelope.

I also desire to know whether you are married, and if you are, the full name and address of your spouse.

In case the above named to whom this letter is ad-
 40 dressed is deceased and this letter shall come into the

possession of the addressee's spouse, or of any of the heirs, devisees or personal representatives of such person, or into the possession of any person who knows the spouse or said heirs, devisees or personal representatives, I request that said person into whose possession this letter may come send me at once, in the enclosed self-addressed and stamped envelope, the names and addresses of the spouse and of the heirs, devisees and personal representatives of the said above named person, so that they may be made parties to the foreclosure suit and appear and defend the same and redeem the said land from the said tax sale if they so desire. 10

I also desire to know whether you are engaged in the military or naval forces of the United States.

Very truly yours,

Saul A. Wittes 20

enc.
mf

EXHIBIT "B".

2-6-43

Mr. Saul
Dear Sir:

I wish to inform you Mrs. Annie has been dead 4 years. I think if you would write to Phila. Gaundy 3009-15 N. 11 St. Phila. as we know nothing concerning the property. 30

Mr. Jos. Campbell
2029 E. Willard
Phila

Her son-in-law lives somewhere on Lee St. Phila. I think the number is 3411.

Mrs. Wildey was housekeeper here. 40

EXHIBIT "C".

SAUL A. WITTES
 Counsellor at Law
 1143 East Jersey Street
 Elizabeth, N. J.
 Elizabeth 2-3854

10

February 9, 1943

Annie B. Wildey,
 3009-15 North 11th Street,
 Philadelphia, Pennsylvania.

Re: Tax Sale to Bonded Certificate Corporation
 Date of Sale November 30, 1940
 Description Lots 12 & 13, Sec. 1, Somerdale
 Park, Somerdale, N. J.

20

Amount of Sale \$176.58
 Taxes up to and including the year 1939
 Assessed to Anna Wildey
 Owned by Annie B. Wildey

Dear Madam:

I am about to institute a suit to foreclose the right to redeem from the above tax sale on the premises described above upon which it appears you have an interest as owner.

30 I desire to make you a party defendant to said foreclosure suit in order that you may appear and defend the same and redeem the said land from the said tax sale if you so desire, and for that purpose, I must know your present post office address which please send me at once in the enclosed self-addressed and stamped envelope.

I also desire to know whether you are married, and if you are, the full name and address of your spouse.

40 In case the above named to whom this letter is addressed is deceased and this letter shall come into

the possession of the addressee’s spouse, or of any of the heirs, devisees or personal representatives of such person, or into the possession of any person who knows the spouse or said heirs, devisees or personal representatives, I request that said person into whose possession this letter may come send me at once, in the enclosed self-addressed and stamped envelope, the names and addresses of the spouse and of the heirs, devisees and personal representatives of the said above named person, so that they may be made parties to the foreclosure suit and appear and defend the same and redeem the said land from the said tax sale if they so desire. 10

I also desire to know whether you are engaged in the military or naval forces of the United States.

Very truly yours,

SAUL A. WITTES 20

RB

EXHIBIT “D”.

SAUL A. WITTES
Counsellor at Law
1143 East Jersey Street
Elizabeth, N. J.
Elizabeth 2-3854

30

February 9, 1943

Annie B. Wildey,
3411 Lee Street,
Philadelphia, Pennsylvania.

Re: Tax Sale to Bonded Certificate Corporation
Date of Sale November 30, 1940
Description Lots 12 & 13, Sec. 1, Somerdale
Park, Somerdale, N. J.

Amount of Sale \$176.58

Taxes up to and including the year 1939 40

Bill of Complaint—Exhibit "D," Letter

Assessed to Anna Wildey

Owned by Annie B. Wildey

Dear Madam:

10 I am about to institute a suit to foreclose the right to redeem from the above tax sale on the premises described above upon which it appears you have an interest as owner.

I desire to make you a party defendant to said foreclosure suit in order that you may appear and defend the same and redeem the said land from the said tax sale if you so desire, and for that purpose, I must know your present post office address which please send me at once in the enclosed self-addressed and stamped envelope.

20 I also desire to know whether you are married, and if you are, the full name and address of your spouse.

30 In case the above named to whom this letter is addressed is deceased and this letter shall come into the possession of the addressee's spouse, or of any of the heirs, devisees or personal representatives of such person, or into the possession of any person who knows the spouse or said heirs, devisees or personal representatives, I request that said person into whose possession this letter may come send me at once, in the enclosed self-addressed and stamped envelope, the names and addresses of the spouse and of the heirs, devisees and personal representatives of the said above named person, so that they may be made parties to the foreclosure suit and appear and defend the same and redeem the said land from the said tax sale if they so desire.

I also desire to know whether you are engaged in the military or naval forces of the United States.

Very truly yours,

SAUL A. WITTES

EXHIBIT “E”.

February 5, 1943.

Frederick G. Webel, Esq.,
3232 Frankford Avenue,
Philadelphia, Pennsylvania.

10

Dear Sir:

I am about to commence a suit to foreclose a tax sale certificate on lands and premises in the Borough of Somerdale, County of Camden and State of New Jersey, known as Lots 12 and 13, Section 1, Somerdale Park, which certificate of sale was issued to the Bonded Certificate Corporation for \$176.58 for the unpaid taxes for the year 1939, at a tax sale held on November 30, 1940.

According to my information, the said Annie B. Wildey acquired title to said lands and premises by virtue of a deed of conveyance dated April 15, 1936 from Henry Ulrich and Julia A., his wife, recorded in the Cape May County Clerk's Office on December 31, 1936 in Book 848 of Deeds for said County, on page 227.

20

I am further informed that after said deed had been recorded, it was forwarded by said Clerk of Cape May County to you as the grantee's agent. In view of that circumstance, I thought you might be able to furnish me with the following information: Will you please furnish me with the post office address and residence of said Annie B. Wildey, and if she is married, the full name and post office address of her husband.

30

In case the above named Annie B. Wildey is deceased, I request that you send me at once in the enclosed self-addressed and stamped envelope the names and addresses of the heirs, devisees and personal representatives, as well as that of her hus-

40

Bill of Complaint—Exhibit “F,” Letter

band, so that they may be made parties to the foreclosure suit and appear and defend the same and redeem the said lands from the said tax sale if they so desire.

Thanking you for your cooperation, I remain
Very truly yours,

10

Saul A. Wittes

enc. saw/mf

 EXHIBIT “F”.

February 5, 1943.

20 Register of Wills,
Philadelphia, Pennsylvania.

Dear Sir:

I am about to commence a suit to foreclose a tax sale certificate on lands and premises in the Borough of Somerdale known as Lots 12 and 13, Section 1, Somerdale Park, which certificate of sale was issued to the Bonded Certificate Corporation for \$176.58 for the unpaid taxes for the year 1939, at a tax sale held on November 30, 1940.

30 The owner of record of said lands and premises is
Annie B. Wildey, who acquired the title to the same by deed of conveyance dated April 15, 1936 and recorded in the Cape May County Clerk's Office on December 31, 1936 in Book 848 of Deeds for said County, on page 227.

40 According to the information I have, the post office address and residence of said Annie B. Wildey is #2029 E. Willard Avenue, Philadelphia, Pennsylvania. However, letters addressed to her at that address have been returned by the postal authorities marked “Deceased”.

Will you be kind enough to advise me whether you have any record on file in your office of an estate for said Annie B. Wildey from April 1, 1936 down to the present time.

My purpose in making this inquiry is to ascertain the names of her heirs, devisees and personal representatives in the event she is dead, so that they may be made parties defendant in the cause and appear and defend the same and redeem the said lands from the tax sale if they so desire. 10

I am enclosing herewith a self-addressed and stamped envelope for your reply.

Thanking you, I am

Very truly yours,

Saul A. Wittes

enc.

saw/mf

20

EXHIBIT "G".

OFFICE OF
REGISTER OF WILLS
180 City Hall Ground Floor
Western Entrance 30
Philadelphia, February 9, 1943

In Re Estate of Annie B. Wildey

We have searched our indexes from the year 1936 to 1943 and are unable to locate record of Will or Administration in name of above captioned decedent.

Yours truly,

JOHN P. BOLAND

Register of Wills.

40

same could be had, for the purpose of ascertaining the residence and post office address of Annie B. Wildey and Mr. Wildey, husband of Annie B. Wildey, absent defendants in the above entitled cause, but notwithstanding such inquiry I have been unable to ascertain the whereabouts of said defendants.

10

3. I have also made inquiry for the purpose of ascertaining whether the said Annie B. Wildey is living or dead, and if dead, the post office addresses and residences of her heirs, devisees and personal representatives, and although I have been informed that she is dead, I have been unable to establish her death as a fact, nor have I been able to ascertain the names of her heirs, devisees and personal representatives, if she is dead.

20

4. The nature and scope of my investigation is more particularly set forth in an affidavit made by me, dated February 16, 1943, and annexed to the bill of complaint filed in this cause on February 17, 1943, which affidavit is incorporated herein by reference in lieu of repetition, and is made a part hereof as if repeated herein at length.

5. The said Annie B. Wildey was made a defendant to this suit because she is the owner of record of the lands and premises described in the bill of complaint.

30

6. The said Mr. Wildey, husband of Annie B. Wildey, was made a defendant to this suit because he has, or may claim to have, a right of curtesy in said lands and premises.

7. The unknown heirs, devisees and personal representatives of Annie B. Wildey were made parties

40

Proof of Inquiry and Mailing

defendant to this suit because in the event of the death of said Annie B. Wildey, they have, or may claim to have, an interest in said lands and premises.

10 8. On April 6, 1943, I placed in the Post Office at Elizabeth, New Jersey, a letter addressed to Annie B. Wildey and her unknown heirs, devisees and personal representatives, East side White Horse Pike 100 feet North of Hartner Avenue, Somerdale, New Jersey, with the postage thereon fully prepaid, containing a copy of the notice hereto annexed, which letter was sent by registered mail with return receipt requested. The return receipt was signed "Anna Stevenson", which return receipt is annexed hereto.

20

9. On April 6, 1943, I placed in the Post Office at Elizabeth, New Jersey, a letter addressed to Annie B. Wildey and her unknown heirs, devisees and personal representatives, 2029 East Willard Avenue, Philadelphia, Pennsylvania, with the postage thereon fully prepaid, containing a copy of the notice hereto annexed, which letter was sent by registered mail with return receipt requested. Said letter was returned to me by the postal authorities marked "Not at".

30

10. On April 6, 1943, I placed in the Post Office at Elizabeth, New Jersey, a letter addressed to Annie B. Wildey and her unknown heirs, devisees and personal representatives, 3009-15 North 11th Street, Philadelphia, Pennsylvania, with the postage thereon fully prepaid, containing a copy of the notice hereto annexed, which letter was sent by registered mail with return receipt requested. Said letter was

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Proof of Inquiry and Mailing

returned to me by the postal authorities marked "Not Known".

11. On April 6, 1943, I placed in the Post Office at Elizabeth, New Jersey, a letter addressed to Annie B. Wildey and her unknown heirs, devisees and personal representatives, 3411 Lee Street, Philadelphia, Pennsylvania, with the postage thereon fully prepaid, containing a copy of the notice hereto annexed, which letter was sent by registered mail with return receipt requested. Said letter was returned to me by the postal authorities marked "Not at". 10

12. On April 6, 1943, I placed in the Post Office at Elizabeth, New Jersey, a letter addressed to Mr. Wildey, husband of Annie B. Wildey, East side White Horse Pike 100 feet North of Hartner Avenue, Somerdale, New Jersey, with the postage thereon fully prepaid, containing a copy of the notice hereto annexed, which letter was sent by registered mail with return receipt requested. Said receipt was signed "Anna Stevenson" and is annexed hereto. 20

13. On April 6, 1943, I placed in the Post Office at Elizabeth, New Jersey, a letter addressed to Mr. Wildey, husband of Annie B. Wildey, 2029 East Willard Avenue, Philadelphia, Pennsylvania, with the postage thereon fully prepaid, containing a copy of the notice hereto annexed, which letter was sent by registered mail with return receipt requested. Said letter was returned to me by the postal authorities marked "Not at". 30

14. On April 6, 1943, I placed in the Post Office at Elizabeth, New Jersey, a letter addressed to Mr. 40

Proof of Inquiry and Mailing

10 Wildey, husband of Annie B. Wildey, 3009-15 North 11th Street, Philadelphia, Pennsylvania, with the postage thereon fully prepaid, containing a copy of the notice hereto annexed, which letter was sent by registered mail with return receipt requested. Said letter was returned to me by the postal authorities marked "Not known".

20 15. On April 6, 1943, I placed in the Post Office at Elizabeth, New Jersey, a letter addressed to Mr. Wildey, husband of Annie B. Wildey, 3411 Lee Street, Philadelphia, Pennsylvania, with the postage thereon fully prepaid, containing a copy of the notice hereto annexed, which letter was sent by registered mail with return receipt requested. Said letter was returned to me by the postal authorities marked "Not at".

SAUL A. WITTES.

Sworn to and subscribed before me this 10th day of June, 1943.

MOLLIE FREEMAN,
A Notary Public of New Jersey.

30 TO: ANNIE B. WILDEY, MR. WILDEY, HUSBAND OF ANNIE B. WILDEY, AND THE UNKNOWN HEIRS, DEVISEES AND PERSONAL REPRESENTATIVES OF ANNIE B. WILDEY.

40 By virtue of an order of the Court of Chancery of New Jersey, made on the 1st day of April, 1943, in a cause wherein Bonded Certificate Corporation, a corporation of the State of New York, is complainant, and Annie B. Wildey, and others, are defen-

Proof of Inquiry and Mailing

dants, you are required to appear and answer the bill of complaint on or before the 2nd day of June, next, or the said bill will be taken as confessed against you.

The said bill is filed to foreclose a certain tax sale certificate issued by Joseph E. Smith, Collector of Taxes of the Borough of Somerdale, New Jersey, at a tax sale held on November 30, 1940, in said Borough, against lands and premises known as Lots 12 and 13, Section 1, Somerdale Park, on the tax duplicate of the Borough of Somerdale. 10

And You, Annie B. Wildey, are made a defendant because you are the owner of record of the lands and premises described in the bill of complaint; and You, Mr. Wildey, husband of Annie B. Wildey, are made a party defendant to this suit because you have, or may claim to have, a right of curtesy in said lands and premises; and You, the Unknown Heirs, Devisees and Personal Representatives of Annie B. Wildey, are made parties defendant to this suit because in the event of the death of said Annie B. Wildey, you have, or may claim to have, an interest in said lands and premises. 20

SAUL A. WITTES,
Solicitor of Complainant,
1143 East Jersey Street,
Elizabeth, New Jersey. 30

Dated April 1, 1943.

Form 3811
Rev. 1-4-40

RETURN RECEIPT

Received from the Postmaster the Registered or Insured Article, the original number of which appears on the face of this Card. 40

Proof of Inquiry and Mailing

- 1 Anna Stevenson
(Signature or name of addressee)
- 2
(Signature of addressee's agent—Agent
should enter addressee's name on line
ONE above)
- 10 Date of delivery 4-12, 1943.
U. S. Government Printing Office 16—12421
-

Form 3811
Rev. 1-4-40

RETURN RECEIPT

- 20 Received from the Postmaster the Registered or
Insured Article, the original number of which ap-
pears on the face of this Card.
- 1 Anna Stevenson
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(Signature of addressee's agent—Agent
should enter addressee's name on line
ONE above)
- Date of delivery 4-12, 1943.
- 30 U. S. Government Printing Office 16—12421

*Decree Pro Confesso and Order of
Reference*

25

DECREE PRO CONFESSO AND ORDER OF
REFERENCE.

(Filed June 15, 1943.)

10

IN CHANCERY OF NEW JERSEY.
141/498.

Between

BONDED CERTIFICATE COR-
PORATION, a corpora-
tion of the State of
New York,

Complainant,
and

ANNIE B. WILDEY, et als.,
Defendants.

On Bill, etc.
Decree pro confesso
and order of refer-
ence.

20

This matter being opened to the Court by Saul A. Wittes, Esq., solicitor of the complainant, and it appearing that process of subpoena calling upon the defendants Annie B. Wildey, Mr. Wildey, husband of Annie B. Wildey, and the unknown heirs, devisees and personal representatives of Annie B. Wildey, to answer the complainant's bill of complaint filed herein has been duly issued and returned non est as to said defendants; and

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It further appearing that the defendants Annie B. Wildey, Mr. Wildey, husband of Annie B. Wildey, and the unknown heirs, devisees and personal repre-

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*Decree Pro Confesso and Order of
Reference*

representatives of Annie B. Wildey, were deemed and taken to be absent defendants, and an Order of Publication was entered in this cause with regard to said defendants; that due notice of the order of this court made on the 1st day of April, 1943, directing
10 the said defendants Annie B. Wildey, Mr. Wildey, husband of Annie B. Wildey, and the unknown heirs, devisees and personal representatives of Annie B. Wildey, to appear and answer the complainant's bill of complaint on or before the 2nd day of June, 1943, has been duly published and mailed in accordance with the rules of this court and the said order; and

It further appearing that notice to answer, together with a true copy of the Bill of Complaint has
20 been duly served upon the State of New Jersey; and

It further appearing that the said defendants have not appeared and answered said bill of complaint or filed any notice with respect thereto within the time limited by law and the orders of this court, but have wholly failed and neglected so to do;

It is thereupon, on this 15th day of June, 1943, ORDERED, ADJUDGED AND DECREED, that the said bill be taken as confessed against the said defendants Annie B. Wildey, Mr. Wildey, husband
30 of Annie B. Wildey, the unknown heirs, devisees and personal representatives of Annie B. Wildey, and State of New Jersey, and that it be referred to Earl Pollack, Esq., one of the Masters of this Court, to compute and ascertain what is due to the complainant upon its tax lien mentioned in the bill in this cause; and

It is further ORDERED AND DECREED, that upon the defendants paying to the complainant the amount which shall be reported due it, together with
40 its taxed costs of suit, within thirty days after the

*Decree Pro Confesso and Order of
Reference*

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said Master's Report shall have been confirmed, at such time and place as he shall appoint, the said complainant to deliver up possession of the said premises mentioned in the bill of complaint, and held by complainant by virtue of its tax lien, to the said defendants, and cancel and discharge the said tax sale thereof of record, or otherwise dispose of the same as the Court may further direct, and that in default of such payment in the manner and within the time aforesaid, the said defendants stand absolutely debarred and foreclosed of and from all right and equity of redemption in and to the said premises. 10

LUTHER A. CAMPBELL,
C.

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*Final Decree for Foreclosure of Tax Sale
Certificate*

FINAL DECREE FOR FORECLOSURE OF TAX
SALE CERTIFICATE.

10

(Filed Sept. 8, 1943.)

IN CHANCERY OF NEW JERSEY.
141/498.

Between

20 BONDED CERTIFICATE COR-
PORATION, a corpora-
tion of the State of
New York,
Complainant,
and
ANNIE B. WILDEY, et als.,
Defendants.

On Bill, etc.
Final decree for
foreclosure of tax
sale certificate.

30 This cause being opened to the court by Saul A.
Wittes, solicitor of the complainant, and it appear-
ing that the complainant is the purchaser of cer-
tain lands and premises sold to it by the Collector
of Taxes of the Borough of Somerdale, in the County
of Camden and State of New Jersey, on November
30th, 1940, that there was due to the complainant on
the 6th day of July, 1943, for principal, interest,
fees and expenses upon its certificate of tax sale,
dated the 7th day of December, 1940, and recorded
40 March 1st, 1941, in Book 468 of Mortgages for said

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*Final Decree for Foreclosure of Tax Sale
Certificate*

County, on pages 64 &c., the sum of One Hundred Ninety Dollars and fifty-eight cents (\$190.58).

And it further appearing that this court by its order made on the 15th day of July, 1943, fixed the 2nd day of August, 1943, at the hour of two o'clock in the afternoon, Eastern War Time, at the office of Earl Pollack, Esq., No. 125 Broad Street, in the City of Elizabeth, County of Union and State of New Jersey, as the time and place when and where the defendants should pay to the complainant the said sum of One Hundred Ninety Dollars and fifty-eight cents (\$190.58), together with the taxed costs of this suit, and when and where the complainant should deliver up possession of the lands and premises described in said certificate of tax sale and endorse said certificate of tax sale for cancellation; 10 20

And it further appearing that this court by its order made on the 9th day of August, 1943, extended the time for making the redemption of complainant's tax sale certificate to August 23rd, 1943, at the hour of three o'clock in the afternoon, Eastern War Time, at the office of said Earl Pollack, Esq., No. 125 Broad Street, in the City of Elizabeth, County of Union and State of New Jersey;

WHEREUPON and upon reading a certain report on file made by the said Earl Pollack, one of the masters of this court, bearing date the 23rd day of August, 1943, whereby it appears that the said master, together with Mollie Freeman, agent of complainant corporation, and Saul A. Wittes, solicitor of the complainant, duly attended at the time and place so fixed by said order, to wit, August 23rd, 1943, at which time and place the said solicitor of the complainant, had in his possession the said certificate of tax sale, duly endorsed for cancellation by the proper officers of the complainant corpora- 30 40

*Final Decree for Foreclosure of Tax Sale
Certificate*

tion so that it might be discharged of record, and the complainant through Saul A. Wittes, solicitor aforesaid, tendered itself ready to deliver up possession of said lands and premises, upon the payment to it of the said sums hereinbefore mentioned, and that none of the said defendants, although duly notified, nor any other person or persons, or corporation, acting in their behalf, appeared at the time and place aforesaid, and that neither the said defendants nor any other person or persons, or corporation, acting in their behalf, has or have paid or tendered or offered to pay to the said complainant, or to its solicitor, the said sums of money hereinbefore set forth, so found to be due to said complainant upon its said certificate of tax sale, either at the time and place aforesaid or at any other time and place, and that neither said money or any part thereof has since been paid to the said complainant, but that the whole thereof and the said costs still remain due and owing to it.

It is thereupon, on this 8th day of September, nineteen hundred and forty-three, ORDERED, ADJUDGED and DECREED that the said defendants, Annie B. Wildey, Mr. Wildey, husband of Annie B. Wildey, the unknown heirs, devisees and personal representatives of Annie B. Wildey, and State of New Jersey, and each of them and any and all persons or corporations claiming by, from or under them, stand absolutely debarred and foreclosed of and from all right and equity of redemption of, in and to the said lands and premises and every part thereof; and that the said defendants deliver up to the complainant all deeds, papers or writings in their custody or power, relating to or concerning the said lands and premises or any part thereof; the

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*Final Decree for Foreclosure of Tax Sale
Certificate*

said lands and premises being more particularly described as follows:

Situate, lying and being in the Borough of Somerdale, in the County of Camden and State of New Jersey, known and designated as lots Nos. 12 and 13, Section 1, on a certain plan of lots entitled Somerdale Park by Remington & Vosbury, Civil Engineers of Camden, New Jersey, and dated February 5th, 1919, a copy of which said plan is duly filed in the Office of the Register of Deeds of Camden County at Camden, New Jersey, on October 4th, 1920, and more particularly described as follows: 10

BEGINNING at a point in the Northeasterly side line of White Horse Pike distant one hundred (100) feet Northwestwardly from the Northwesterly side line of Hartner Avenue and extending thence (1) 20 Northwestwardly along the said Northeasterly side of White Horse Pike one hundred (100) feet in width or breadth; thence (2) Northeastwardly between parallel lines of that width or breadth at right angles to said White Horse Pike two hundred (200) feet in length or depth.

Being and intended to describe the premises designated as Lots 12 and 13, Section 1, Somerdale Park, on the tax duplicate of the Borough of Somerdale. 30

Being the same lands and premises conveyed to Annie B. Wildey, widow, by deed of Henry Ulrich and Julia A. Ulrich, his wife, dated April 15, 1936, and recorded in the Office of the Register of the County of Camden on December 31, 1936, in Book 848 of Deeds for said County, on page 227.

LUTHER A. CAMPBELL,
C.

*Petition to Open Final Decree and for
Redemption*

PETITION TO OPEN FINAL DECREE
AND FOR REDEMPTION.

10

(Filed Sept. 8, 1944.)

IN CHANCERY OF NEW JERSEY.

Between

20 BONDED CERTIFICATE COR-
PORATION, a corpora-
tion of the State of
New York,
Complainant,
and
ANNIE B. WILDEY, et als.,
Defendants.

On bill to foreclose
tax lien.
Petition to open
final decree and
for redemption.

To the Honorable LUTHER A. CAMPBELL,
Chancellor of the State of New Jersey:

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The petition of William J. Moore and Anna A. Stevenson, both of the City of Philadelphia, County of Philadelphia and Commonwealth of Pennsylvania, respectfully shows that:

1. Petitioners are the heirs at law of Elva G. Moore, who died intestate, and a resident of the City of Philadelphia, in the Commonwealth of Pennsylvania aforesaid, on May 3, 1944.

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*Petition to Open Final Decree and for
Redemption*

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2. The said Elva G. Moore was the sole heir at law of Annie B. Wildey, the owner of record of the premises described in paragraph 1 of the bill of complaint herein, as recited in paragraph 5 of said bill of complaint, and who died intestate, likewise a resident of said City of Philadelphia in the Commonwealth of Pennsylvania, on November 4, 1938. 10

3. By reason of the foregoing recited facts, petitioners are now the owners of the premises described in paragraph 1 of the bill of complaint, subject to the effect of the final decree heretofore made in this cause on September 8, 1943, and subject to the agreement hereinafter set forth.

4. Prior to her death, to wit: on April 16, 1938, the said Annie B. Wildey, being then a widow, entered into an agreement with respect to the premises described in paragraph 1 of the bill of complaint, with one Jerry DelPercio, a true copy of which agreement is hereto annexed and made part thereof, marked Schedule "A". Said agreement was negotiated through one Raymond I. Lamoreaux, a real estate broker. 20

5. Although said agreement is in the form of a demise with an option to purchase, it was regarded and interpreted by the parties thereto, and by said Raymond I. Lamoreaux as an executory agreement for the sale of said realty, the agreement having been cast in the form of a demise on the assumption that the vendee could be evicted in the event of a default, through landlord and tenant proceedings. The said Raymond I. Lamoreaux was paid a commission for effecting the transaction as a sale and not as a demise. 30
40

*Petition to Open Final Decree and for
Redemption*

6. Immediately after the making of said agreement, the said Jerry DelPercio went into the open, visible, notorious, exclusive and continuous possession of the premises described in paragraph 1 of the bill of complaint herein. His possession continued until after the making of the final decree herein on September 8, 1943.

7. From and after the making of said agreement, the said Raymond I. Lamoreaux collected the payments accruing thereunder from said Jerry DelPercio, as the agent of the said Annie B. Wildey. The said Lamoreaux continued collecting said accruing payments after the death of said Annie B. Wildey and until August 27, 1943, when the said Jerry DelPercio ceased making payments to said Lamoreaux and ceased making payments under said agreement.

8. The said Lamoreaux knew of the death of Annie B. Wildey on November 4, 1938, and thereafter continued to collect said accruing payments under said agreement, at the request of and as the agent for the said Elva G. Moore.

9. Said Elva G. Moore suffered an injury and thereafter became an incompetent. She was admitted to the Philadelphia General Hospital in the City of Philadelphia, Commonwealth of Pennsylvania on December 14, 1940, as a mental patient. Approximately thirty days thereafter she was transferred to the State Hospital for the Insane, at Byberry, in said Commonwealth of Pennsylvania, where she remained as an insane person, and did not at any time regain her sanity, until her death on May 3, 1944.

*Petition to Open Final Decree and for
Redemption*

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10. No general guardian was ever appointed for the said Elva G. Moore, in the Commonwealth of Pennsylvania, or elsewhere.

11. On or about April 13, 1943, there was delivered to the petitioner, Anna A. Stevenson, two registered letters and return receipts therefor by the postal authorities. The envelopes were on the stationery of Saul A. Wittes, Esq., the solicitor of the complainant, and each contained a copy of a notice which was published in this cause. One letter was addressed to "Annie B. Wildey and her unknown heirs, devisees and personal representatives, East side White Horse Pike 100 feet North of Hartner Avenue, Somerdale, New Jersey." The other letter was addressed to "Mr. Wildey, husband of Annie B. Wildey, East side White Horse Pike, 100 feet North of Hartner Avenue, Somerdale, New Jersey." Both of said letters reached the petitioner, Anna A. Stevenson, by devious routes. So far as she can recollect, the petitioner, Anna A. Stevenson, signed the return registry receipts for said letters in her own name. Because of the insanity of her mother, the said Elva G. Moore, and because of there being no guardian to act for her said mother, the petitioner, Anna A. Stevenson, consulted her brother, the petitioner, William J. Moore, with respect to said letters, and, on or about November 5, 1943, petitioners consulted their solicitor with respect thereto.

12. On November 6, 1943, petitioners' solicitor telephoned to said Wittes to inquire about the status of this cause. The said Wittes told petitioners' solicitor that a final decree had been entered in this cause on September 8, 1943.

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*Petition to Open Final Decree and for
Redemption*

13. Likewise on November 6, 1943, petitioners' solicitor, erroneously comprehending the facts and erroneously implying that Annie B. Wildey was living and was an incompetent, whereas the true facts were as have been stated herein, wrote said Wittes
10 a letter, reading as follows:

"I am interested on behalf of Mrs. Elva Moore, a daughter of Annie B. Wildey, in a tax foreclosure by Bonded Certificate Corporation against Annie B. Wildey, the premises being in Somerdale Park, in the Borough of Somerdale.

I understood from our telephone conversation this morning that this foreclosure has gone to a decree. However, the property is occupied by Jerry Del Percio, a vendee in possession, and
20 the foreclosure proceeded without his being made a party.

I would like to examine the proceedings in this matter and if possible, I would like to take an assignment of them if they can be put in such shape as to clear title. As I told you over the telephone, Mrs. Wildey is an incompetent and from what you told me about the case, I doubt whether we can make such title through the tax foreclosure that it would become market-
30 able.

However, I would like to inspect the proceedings and I would also like to make similar arrangements to redeem through some stage of proceedings in order to perfect title in Mr. Del Percio. Will you please advise me the docket and page so that I may order the file sent to the Camden Chambers."

14. The said Wittes replied to said letter under
40 date of November 12, 1943, by his letter reading as follows:

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"I have your letter of November 6th with reference to the above matter.

In order that I may properly advise my client with regard thereto, will you please advise me the date of the purported contract held by Jerry Del Percio.

10

I also note your reference to the fact that Mrs. Wildey is an incompetent. Will you be kind enough to advise me as to her present post office address and residence, and also whether she is confined in an institution, so that I may pursue the matter further.

I am enclosing herewith a self-addressed and stamped envelope for your reply.

Thanking you, I am."

20

15. Petitioners, having been advised by their solicitor that they, as individuals, had no rights in the premises, and that he, their said solicitor, could not represent the said Elva G. Moore except through her legally appointed guardian, and believing that the death of said Elva G. Moore was imminent, instructed their solicitor to take no further proceedings in this cause until they, as individuals, had a right to act in the premises. Acting upon those instructions, petitioners' solicitor did not reply to the letter of said Wittes dated November 12, 1943, nor to a subsequent letter of inquiry from him dated November 30, 1943.

30

16. On May 15, 1944, petitioners informed their solicitor of the death of their mother, the said Elva G. Moore, on May 3, 1944. On May 23, 1944, petitioners' solicitor wrote said Wittes a letter, part of which reads as follows:

40

*Petition to Open Final Decree and for
Redemption*

10 "I would also like to discuss the case of Bonded Certificate Corporation v. Wildey with a view to redemption; that is, I desire to know whether we can effect redemption through purchasing the title of Bonded Certificate Corporation or whether we must apply to open the final decree."

17. On May 27, 1944, the said Wittes responded to the inquiry of petitioners' solicitor, by writing a reply thereto, reading in part as follows:

20 "In connection with the case of Bonded Certificate Corporation vs. Wildey, if you will forward to me sufficient facts to show that an application might be considered to reopen the final decree of foreclosure, I might be able to save you the time of going to the trouble. If you will let me know the basis for your application I will be in a position to advise my client."

18. On June 8, 1944, petitioners' solicitor wrote said Wittes as follows:

30 "In the above matter Annie B. Wildey, a widow, was the owner of the property. She died November 4, 1938, intestate. Her only heir at law and next of kin was Elva G. Moore. Mrs. Moore suffered an injury and became an incompetent on December 14, 1940, when she was admitted to the Philadelphia General Hospital. Approximately thirty days thereafter she was transferred to the State Hospital for the Insane at Byberry, Pennsylvania. She died on May 3, 1944, intestate. Her only heirs at law and next of kin were her two children, William J. Moore and Anna A. Stevenson.

40 Prior to her death Annie B. Wildey entered

*Petition to Open Final Decree and for
Redemption*

into an executory contract for a sale of the premises in question to Jerry Del Percio, a single man. The latter went into possession on April 16, 1938, and has been in possession ever since.

I have noted from the foreclosure file that the only defendants were Annie B. Wildey, Mr. Wildey, husband of Annie B. Wildey, and the unknown heirs, devisees and personal representatives of Annie B. Wildey and the State of New Jersey. Since Del Percio was in possession under an executory agreement of sale, he was an owner of record. He was not a party to the foreclosure and had an inquiry been directed toward him, the foregoing facts at the various times they occurred could have been ascertained from him. 10 20

The foregoing facts are set forth in accordance with your letter of May 27, 1944, to me. The facts would form the basis of an application to open the final decree of foreclosure should that become necessary. Will you kindly advise me thereon as soon as possible.

It would appear that since August of 1943 your client has been collecting moneys from Del Percio. The moneys thus collected should be taken into account on the redemption." 30

Not having received a reply to that letter, petitioners' solicitor again wrote said Wittes under date of July 31, 1944, as follows:

"Do you have any word for me in the above matter? When I was in your office on June 18, 1944, you advised me you had submitted the matter to your client and were awaiting a reply.

Naturally, I will be guilty of laches unless I 40

*Petition to Open Final Decree and for
Redemption*

proceed promptly. Unless your client is willing to do something at this time, I will have to make arrangements to proceed in the suit."

19. On August 8, 1944, the said Wittes wrote petitioners' solicitor as follows:

"I have your letter of July 31st with reference to the above matter.

In reply thereto, I wish to advise you that my client regards the decree as inviolate.

If I can be of further assistance to you, please do not hesitate to let me know."

20. Notwithstanding the open, visible, notorious, exclusive and continuous possession of the said premises by the said Jerry DelPercio, he was not made a party defendant to this cause of action, and no inquiry was made of him respecting the death of the said Annie B. Wildey, her heirs, devisees or personal representatives, or of his landlord's or vendor's title.

21. By reason of the cessation of payments on said executory agreement of sale by said Jerry DelPercio, petitioners believe and, therefore, aver the fact to be that the said Jerry DelPercio has entered into some agreement with the complainant for the purchase or continued possession of said premises, the terms of which are unknown to petitioners.

22. Petitioners charge that

(a) the decree pro confesso and final decree entered in this cause are violative of the "due process" clause of the Fourteenth Amendment to the Federal Constitution, insofar as those decrees

*Petition to Open Final Decree and for
Redemption*

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sought to conclude the rights of Elva G. Moore, petitioners' ancestor, inasmuch as she, nor anyone legally representing her, received notice of complainant's cause of action.

(b) the decree pro confesso entered in this cause was entered without right, inasmuch as no diligent or careful inquiry was made, as in the case of absent defendants, for the residences of the heirs, devisees or personal representatives of the said Annie B. Wildey; or, in accordance with the requirements of Rule 37 of this Court, for the residence or post office address of said Elva G. Moore, to the end that a guardian ad litem might have been appointed for her.

10

(c) the open, visible, notorious, exclusive and continuous possession of said premises by Jerry DelPercio was constructive notice to the complainant of the right, title and interest of Elva G. Moore, the landlord or vendor of said Jerry DelPercio.

20

(d) it was incumbent on complainant, in conducting a careful and diligent inquiry pursuant to the requirements of Rule 37 of this Court, and the practice and procedure in this Court, to make that inquiry of the said Jerry DelPercio, Raymond I. Lamoreaux, the agent of petitioners' ancestor, Elva G. Moore, and petitioner, Anna A. Stevenson, who signed the registry receipts for the letters hereinabove recited.

30

Petitioners, therefore, pray that the final decree heretofore made in this cause may be set aside and for nothing holden, and that petitioners may be permitted to redeem their lands upon the payment of

40

*Petition to Open Final Decree and for
Redemption*

such sum as justly may be due, and that the complainant, Bonded Certificate Corporation, may be required to account for all moneys received by it.

W. LOUIS BOSSLE,
Solicitor for and of Counsel
with Petitioners.

10

SCHEDULE "A".

THIS AGREEMENT, made this 16th day of Apr. in the year of our Lord one thousand nine hundred and thirty-eight, BETWEEN ANNA B. WILDEY, of the City of Philadelphia, County of Philadelphia, and State of Pennsylvania, party of the first part, and JERRY DEL PERCIO, singleman, of the Borough of Somerdale, County of Camden, and State of New Jersey, party of the second part,

20 WITNESSETH, that the said party of the first part for and in consideration of the sum of Four Hundred Dollars (\$400.00) to her in hand paid by the party of the second part, the receipt whereof is hereby acknowledged, has let and demised unto the party of the second part, property situate in the
30 Borough of Somerdale, County of Camden and State of New Jersey, known and designated as the second house north of Hartner Avenue on the East side of White Horse Pike, consisting of frame house two and one-half stories and lot 100' x 200',

Together with the premises and improvements appurtenant thereto, for the term of Three Years, at the monthly rental of Twenty-five Dollars (\$25.00), payable in advance on the 15th day of each and every month, beginning the 15th day of
40 May, 1938.

*Petition to Open Final Decree and for
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Provided, that if any rents shall be due and unpaid for a period in excess of sixty (60) days or any default shall be made in any of the covenants herein contained, then it shall be lawful for the said party of the first part, after having given sixty (60) days notice in writing for said rent, to re-enter the said premises and remove all persons therefrom, or to proceed by action for the recovery of the possession thereof or otherwise. 10

And the said party of the second part does covenant and agree to and with the said party of the first part to pay the said yearly rent in the proportions and upon the conditions aforesaid, and not permit any person or persons to occupy the same or any part thereof nor use or permit any part thereof to be used for any purpose than a dwelling house, but to make all necessary and desirable repairs, and also at the expiration of said term to yield up and surrender possession thereof with the appurtenance, in as good state and condition as the same is or may be put into by the party of the first part, reasonable wear and tear and accidents happening by fire or other casualties excepted. 20

And the said party of the first part in consideration of the terms, covenants and conditions hereinbefore set forth, hereby agrees that the said party of the second part shall have the privilege during the term of this agreement (within three years from the date hereof) to purchase said property for the sum of Twenty-two Hundred Dollars (\$2200.00). 30

If the said party of the second part elects to purchase said property as aforesaid, all rent paid under this lease, less interest at the rate of six per cent (6%) per annum on the unpaid consideration or selling price, together with all taxes, water rents, insurance premiums paid by the party of the first 40

*Petition to Open Final Decree and for
Redemption*

part on and after the date of these presents, shall be credited on account of the purchase price, and party of the first part will give a good and sufficient conveyance to the parties of the second part, his heirs and assigns, upon the receipt of the balance due in cash.

10 Upon the faithful performance of the terms and conditions herein set forth, said party of the second part, at the end of each year, shall be entitled to a statement of account, showing all debits and credits, charges and costs of every kind and shall make arrangements for an immediate settlement as hereinbefore set forth, and the balance over and above said charges shall be credited on the purchase price.

20 It is further understood and agreed that if all the terms, covenants and conditions of this agreement are fully done, kept and performed for the period of three years, then and in such case, the party of the second part will be entitled and shall receive a deed for said premises upon the payment of the balance of the consideration in the manner aforesaid. The drawing of all papers, recording fee and title fee, with the exception of the deed and Government stamps, are to be borne by the party of the second part.

30 If the party of the second part exercises his option so to purchase said premises, any mortgage or other indebtedness thereon created by the party of the first part shall at settlement be deducted from the balance due on the purchase price.

None of the conditions of this agreement shall be modified in any way, unless the same is evidenced by writing, signed by both parties hereto.

40 This agreement shall be binding upon the heirs, executors, administrators and assigns of the parties hereto.

*Petition to Open Final Decree and for
Redemption*

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IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals, in duplicate original, the day and year first above written.

(Signed)

ANNA B. WILDEY (L. S.)

JERRY DEL PERCIO (L. S.) 10

Signed, sealed and delivered

in the presence of

(Signed) CHAS. R. LAMOREAUX

State of New Jersey }
County of Camden } ss.

WILLIAM J. MOORE and ANNA A. STEVENSON, both being of full age, and being severally sworn according to law, on their respective oaths depose and say: 20

1. We are the petitioners named in the foregoing petition. We are also the heirs at law of Elva G. Moore, who died intestate, a resident of the City of Philadelphia, in the Commonwealth of Pennsylvania, on May 3, 1944. As such heirs at law, we are now the owners of the premises described in paragraph 1 of the bill of complaint herein, subject to whatever may be the effect of the final decree heretofore made in this cause on September 8, 1943. 30

2. The said Elva G. Moore, our mother, was the sole heir at law of Annie B. Wildey, our grandmother, who was the owner of record of the premises described in paragraph 1 of the bill of complaint in accordance with the recitals of paragraph 5 of the bill of complaint. She, likewise, died intestate and 40

*Petition to Open Final Decree and for
Redemption*

a resident of the City of Philadelphia, in the Commonwealth of Pennsylvania, on November 4, 1938.

10 3. On April 16, 1938, the said Annie B. Wildey, being then a widow, entered into an agreement with respect to said premises with one Jerry Del Percio, a true copy whereof is annexed to the bill of complaint, marked Schedule "A". The agreement was negotiated through Raymond I. Lamoreaux, a real estate broker. Our grandmother referred to said agreement in her conversations with us as an agreement of sale. Our mother, the said Elva G. Moore, after our grandmother's death, likewise, referred to said agreement as an agreement of sale.

20 4. Immediately after the making of said agreement, the said Jerry Del Percio went into the open, visible, notorious, exclusive and continuous possession of said premises. He was still in possession thereof after the making of the final decree herein on September 8, 1943.

30 5. Our mother, the said Elva G. Moore, suffered an injury and thereafter became an incompetent. She was admitted to the Philadelphia General Hospital in the City of Philadelphia, Commonwealth of Pennsylvania, on December 14, 1940, as a mental patient. Approximately thirty days thereafter she was transferred to the State Hospital for the Insane, at Byberry, in said Commonwealth of Pennsylvania where she remained as an insane person and did not at any time regain her sanity until her death on May 3, 1944.

40 6. No general guardian was ever appointed for our mother, the said Elva G. Moore, in the Commonwealth of Pennsylvania, or elsewhere.

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Redemption*

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7. On or about April 13, 1943, there were delivered to the deponent, Anna A. Stevenson, two registered letters and return receipts therefor by the postal authorities. The letters were on the stationery of Saul A. Wittes, Esq., the solicitor of the complainant, and each contained a copy of a notice which was published in this cause. One letter was addressed to "Annie B. Wildey and her unknown heirs, devisees and personal representatives, East side White Horse Pike 100 feet North of Hartner Avenue, Somerdale, New Jersey." The other letter was addressed to "Mr. Wildey, husband of Annie B. Wildey, East side White Horse Pike, 100 feet North of Hartner Avenue, Somerdale, New Jersey." Both of said letters reached the deponent, Anna A. Stevenson, by devious routes. Since the preparation of the foregoing petition, deponent, Anna A. Stevenson, inquired of the postal authorities at the Logan Station of the City of Philadelphia, and has procured a copy of the registry receipts which accompanied each of said letters. The copies show that the registry receipts were signed by deponent, Anna A. Stevenson, as "Anna Stevenson".

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8. On November 6, 1943, deponent, William J. Moore, consulted W. Louis Bossle, our solicitor, and as a result of a telephone call made by our solicitor to the solicitor of the respondent, we were informed by our solicitor that a final decree had been entered in this cause on September 8, 1943.

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9. Subsequently deponent, William J. Moore, was advised by deponents' solicitor that because the said Elva G. Moore was still living and no guardian had been appointed for her, that he could not act to protect the possible future interests of deponents in

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said premises. By reason of the information thus given to deponent, William J. Moore, he instructed deponents' solicitor to take no further proceedings in the premises until such time as a guardian might be appointed for the said Elva G. Moore or that de-
10 ponents might have a right to act on their own behalf.

10. On May 15, 1944, deponents informed their solicitor of the death of their mother, the said Elva G. Moore, on May 3, 1944.

WILLIAM J. MOORE,
ANNA A. STEVENSON.

Sworn and subscribed to before me, this 6th day
20 of September, 1944.

LEONA CYBULSKI,
Notary Public of New Jersey.

My Commission Expires Dec. 13, 1946.

State of New Jersey }
County of Camden } ss.

30 W. LOUIS BOSSLE, of full age, being duly sworn according to law, on his oath deposes and says:

1. I am the solicitor of the petitioners named in the foregoing entitled cause. I am the person actually entrusted with the conduct and management of this suit.

40 2. I was employed by the petitioners herein on or about November 6, 1943, to ascertain their rights, as

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well as the rights of their mother, Elva G. Moore, who was then described to me by the petitioners as a lunatic, and who was then confined at the State Hospital for the Insane at Byberry, Pennsylvania. On or about that day I telephoned to Saul A. Wittes, the solicitor of the complainant, inquiring about the status of this suit, and was informed by him that a final decree had been entered in this cause on September 8, 1943. 10

3. On November 6, 1943, I wrote said Wittes a letter, a true copy of which is set forth in paragraph 13 of the petition. At that time I erroneously comprehended the facts, stating in my letter that Annie B. Wildey, the mother of the said Elva G. Moore, was an incompetent, whereas the true facts were that Annie B. Wildey was dead and that Elva G. Moore was living and was a lunatic. 20

4. At my conference with the petitioners on November 6, 1943, I advised them that their mother, Elva G. Moore, was the owner of the premises in question, subject to whatever effect the final decree in this cause might have and that since she was a lunatic, I could not act for her until there was a guardian appointed for her. I suggested to the petitioners that they seek the appointment of a guardian in the Commonwealth of Pennsylvania. Petitioners told me that they thought the death of their mother was imminent and that the appointment of such a guardian might be a waste of money. I further told the petitioners that they had no rights as individuals in the premises, and would have no such rights until the death of their mother. 30

5. As a consequence, I had nothing more to do with this suit except to attend to the correspondence, 40

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of which true copies are set forth in paragraphs 14 and 15 of the petition herein.

6. On May 15, 1944, the petitioners informed me of the death of their mother, Elva G. Moore, on May 3, 1944. From May 23, 1944, to August 8, 1944, I entered upon correspondence with the said Saul A. Wittes, true copies of which are set forth in paragraphs 16, 17, 18 and 19 of the within petition.

7. I have examined the proceedings in this cause, and as a result thereof, I have ascertained that Jerry Del Percio was not made a party defendant to this cause and that no inquiry was made of him respecting the death of Annie B. Wildey, her heirs, devisees or personal representatives, nor of his landlord's or vendor's title. I have also spoken to Raymond I. Lamoreaux and as a result thereof, I believe that no inquiry was ever made of him respecting the whereabouts of Annie B. Wildey, her death and the names and addresses of her heirs, devisees and personal representatives.

W. LOUIS BOSSLE.

Sworn and subscribed to before me, this 8th day of September, 1944.

LEONA CYBULSKI,
Notary Public of N. J.

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State of New Jersey }
County of Camden } ss.

RAYMOND I. LAMOREAUX, of full age, being
duly sworn according to law, on his oath deposes 10
and says:

1. I am a real estate broker. I negotiated the sale
of premises in the Borough of Somerdale, owned by
Annie B. Wildey, to Jerry Del Percio, which are de-
scribed in paragraph 1 of the bill of complaint
herein.

2. From and after the making of said sale, I acted
as agent of Annie B. Wildey for the collection of 20
payments from Jerry Del Percio up until the time
of her death. Thereafter, I continued making said
collections from said Jerry Del Percio until August
27, 1943, when said Del Percio ceased making pay-
ment to me for and on behalf of Elva G. Moore, the
daughter of Annie B. Wildey, whom I understood to
be the sole heir at law of Annie B. Wildey.

RAYMOND I. LAMOREAUX.

Sworn and subscribed to before me, this 8th day 30
of September, 1944.

LEONA CYBULSKI,
Notary Public of New Jersey.

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*Amended and Supplemental Petition to
Open Final Decree and for Redemption*

AMENDED AND SUPPLEMENTAL PETITION
TO OPEN FINAL DECREE AND FOR RE-
DEMPTION.

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(Filed Sept. 25, 1944.)

IN CHANCERY OF NEW JERSEY.
141/498.

Between

20 BONDED CERTIFICATE COR-
PORATION, a corpora-
tion of the State of
New York,
Complainant,
and
ANNIE B. WILDEY, et al.,
Defendants.

On bill to foreclose
tax lien.
Amended and sup-
plemental petition
to open final de-
cree and for re-
demption.

30 To the Honorable LUTHER A. CAMPBELL,
Chancellor of the State of New Jersey:

The amended and supplemental petition of Wil-
liam J. Moore and Anna A. Stevenson, both of the
City of Philadelphia, County of Philadelphia and
Commonwealth of Pennsylvania, respectfully shows
that:

40 1. Petitioners are the heirs at law of Elva G.
Moore, who died intestate, and a resident of the

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City of Philadelphia, in the Commonwealth of Pennsylvania aforesaid, on May 3, 1944.

2. The said Elva G. Moore was the sole heir at law of Annie B. Wildey, the owner of record of the premises described in paragraph 1 of the bill of complaint herein, as recited in paragraph 5 of said bill of complaint, and who died intestate, likewise a resident of said City of Philadelphia in the Commonwealth of Pennsylvania, on November 4, 1938. 10

3. By reason of the foregoing recited facts, petitioners are now the owners of the premises described in paragraph 1 of the bill of complaint, subject to the effect of the final decree heretofore made in this cause on September 8, 1943, and subject to the agreement, deed and mortgage hereinafter set forth. 20

4. Prior to her death, to wit: on April 16, 1938, the said Annie B. Wildey, being then a widow, entered into an agreement with respect to the premises described in paragraph 1 of the bill of complaint, with one Jerry Del Percio, a true copy of which agreement is annexed to petitioners' original petition and made part thereof, marked Schedule "A". Said agreement was negotiated through one Raymond I. Lamoreaux, a real estate broker. 30

5. Although said agreement is in the form of a demise with an option to purchase, it was regarded and interpreted by the parties thereto, and by said Raymond I. Lamoreaux as an executory agreement for the sale of said realty, the agreement having been cast in the form of a demise on the assumption that the vendee could be evicted in the event of a 40

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default, through landlord and tenant proceedings. The said Raymond I. Lamoreaux was paid a commission for effecting the transaction as a sale and not as a demise.

10 6. At the time of the making of said agreement, as well as for approximately two years prior thereto, said premises were in the continuous possession of Frank Del Percio, Mary Del Percio, his wife, and the said Jerry Del Percio, their son. Subsequent to the making of said agreement, the possession of said premises remained as aforesaid until about four years ago, when Jerry Del Percio became married and moved from said premises. Thereafter possession continued in said Frank Del Percio and Mary
20 Del Percio until the present time.

7. The said premises consist of a two and one-half story frame dwelling, situate on a lot of land measuring 100 feet by 200 feet. The possession of said Frank Del Percio, Mary Del Percio, and Jerry Del Percio was, therefore, open, visible, notorious and exclusive.

30 8. From and after the making of said agreement, the said Raymond I. Lamoreaux collected the payments accruing thereon from said Jerry Del Percio, as the agent of said Annie B. Wildey. After the death of said Wildey, the said Lamoreaux continued collecting said accruing payments from said Jerry Del Percio until his marriage and his removal from said premises. Thereafter said Lamoreaux continued collecting said accruing payments from the said Frank Del Percio and Mary Del Percio until
40 August 7, 1943, when they ceased making payments under said agreement.

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9. On September 12, 1944, the said Mary Del Percio told petitioners' solicitor that Jerry Del Percio had entered into said agreement for the use and benefit of the said Frank Del Percio and Mary Del Percio, and that he, the said Jerry Del Percio, never had any real interest under said agreement. The said Mary Del Percio also told petitioners' solicitor that she and her husband originally intended consummating their agreement with said Annie B. Wildey, but that in October, 1943, they had arranged to repurchase said premises from the complainant herein. 10

10. The said Lamoreaux knew of the death of Annie B. Wildey on November 4, 1938, and thereafter continued to collect said accruing payments under said agreement, at the request of and as the agent for the said Elva G. Moore. 20

11. Said Elva G. Moore suffered an injury and thereafter became an incompetent. She was admitted to the Philadelphia General Hospital in the City of Philadelphia, Commonwealth of Pennsylvania on December 14, 1940, as a mental patient. Approximately thirty days thereafter she was transferred to the State Hospital for the Insane, at Byberry, in said Commonwealth of Pennsylvania, where she remained as an insane person, and did not at any time regain her sanity, until her death on May 3, 1944. 30

12. No general guardian was ever appointed for the said Elva G. Moore, in the Commonwealth of Pennsylvania, or elsewhere.

13. From and after the insanity of the said Elva G. Moore, and because of it, the said Lamoreaux 40

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retained all moneys collected by him on said agreement in his possession, until petitioners engaged their solicitor herein, when said Lamoreaux turned over the accumulated fund to petitioners' solicitor.

- 10 14. On or about April 13, 1943, there were delivered to the petitioner, Anna A. Stevenson, two registered letters and return receipts therefor by the postal authorities. The envelopes were on the stationery of Saul A. Wittes, Esq., the solicitor of the complainant, and each contained a copy of a notice which was published in this cause. One letter was addressed to "Annie B. Wildey and her unknown heirs, devisees and personal representatives East side White Horse Pike 100 feet North of Hartner Avenue, Somerdale, New Jersey." The other letter was addressed to "Mr. Wildey, husband of Annie B. Wildey, East side White Horse Pike, 100 feet North of Hartner Avenue, Somerdale, New Jersey." Both of said letters reached the petitioner, Anna A. Stevenson, by devious routes, and were delivered to her at her home in Philadelphia. She signed the return registry receipts for said letters in her own name. Subsequent to the signing and forwarding of said return registry receipts, no inquiry was ever
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30 made of the petitioner, Anna A. Stevenson, concerning the said Annie B. Wildey, her death, or her heirs, devisees or personal representatives. Neither was any inquiry ever made of either of the petitioners concerning the title to said lands or said foreclosure proceedings.

15. Because of the insanity of her mother, the said Elva G. Moore, and because of there being no guardian to act for her said mother, the petitioner, Anna
40 A. Stevenson, consulted her brother, the petitioner,

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William J. Moore, with respect to said letters, and, on or about November 5, 1943, petitioners consulted their solicitor with respect thereto.

16. On November 6, 1943, petitioners' solicitor telephoned to said Wittes to inquire about the status of this cause. The said Wittes told petitioners' solicitor that a final decree had been entered in this cause on September 8, 1943. Petitioners' solicitor told said Wittes of the outstanding agreement with Jerry Del Percio and of Del Percio's possession, and that the said Del Percio had not been made a party to said foreclosure proceedings. The said Wittes, thereupon, requested petitioners' solicitor to write him of the facts. At that time petitioners' solicitor did not know that Jerry Del Percio had become married and had moved from said premises or that the possession thereof was being continued by the said Frank Del Percio and Mary Del Percio, claiming through said Jerry Del Percio.

17. Likewise on November 6, 1943, petitioners' solicitor, erroneously comprehending the facts and erroneously implying that Annie B. Wildey was living and was an incompetent, whereas the true facts were as have been stated herein, wrote said Wittes a letter, reading as follows:

"I am interested on behalf of Mrs. Elva Moore, a daughter of Annie B. Wildey, in a tax foreclosure by Bonded Certificate Corporation against Annie B. Wildey, the premises being in Somerdale Park, in the Borough of Somerdale.

I understood from our telephone conversation this morning that this foreclosure has gone to a decree. However, the property is occupied by Jerry Del Percio, a vendee in possession, and

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the foreclosure proceeded without his being made a party.

10 I would like to examine the proceedings in this matter and if possible, I would like to take an assignment of them if they can be put in such shape as to clear title. As I told you over the telephone, Mrs. Wildey is an incompetent and from what you told me about the case, I doubt whether we can make such title through the tax foreclosure that it would become marketable.

20 However, I would like to inspect the proceedings and I would also like to make similar arrangements to redeem through some stage of proceedings in order to perfect title in Mr. Del Percio. Will you please advise me the docket and page so that I may order the file sent to the Camden Chambers."

18. The said Wittes replied to said letter under date of November 12, 1943, by his letter reading as follows:

"I have your letter of November 6th with reference to the above matter.

30 In order that I may properly advise my client with regard thereto, will you please advise me the date of the purported contract held by Jerry Del Percio.

I also note your reference to the fact that Mrs. Wildey is an incompetent. Will you be kind enough to advise me as to her present post office address and residence, and also whether she is confined in an institution, so that I may pursue the matter further.

I am enclosing herewith a self-addressed and stamped envelope for your reply.

40 Thanking you, I am."

19. Petitioners, having been advised by their solicitor that they, as individuals, had no rights in the premises, and that he, their said solicitor, could not represent the said Elva G. Moore except through her legally appointed guardian, and believing that the death of said Elva G. Moore was imminent, instructed their solicitor to take no further proceedings in this cause until they, as individuals, had a right to act in the premises. Acting upon those instructions, petitioners' solicitor did not reply to the letter of said Wittes dated November 12, 1943, nor to a subsequent letter of inquiry from him dated November 30, 1943. 10

20. On May 15, 1944, petitioners informed their solicitor of the death of their mother, the said Elva G. Moore, on May 3, 1944. On May 23, 1944, petitioners' solicitor wrote said Wittes a letter, part of which reads as follows: 20

"I would also like to discuss the case of Bonded Certificate Corporation v. Wildey with a view to redemption; that is, I desire to know whether we can effect redemption through purchasing the title of Bonded Certificate Corporation or whether we must apply to open the final decree." 30

21. On May 27, 1944, the said Wittes responded to the inquiry of petitioners' solicitor, by writing a reply thereto, reading in part as follows:

"In connection with the case of Bonded Certificate Corporation vs. Wildey, if you will forward to me sufficient facts to show that an application might be considered to reopen the final decree of foreclosure, I might be able to save you the time of going to the trouble. If you will 40

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let me know the basis for your application I will be in a position to advise my client.”

22. On June 8, 1944, petitioners’ solicitor wrote said Wittes as follows:

10 “In the above matter Annie B. Wildey, a widow, was the owner of the property. She died November 4, 1938, intestate. Her only heir at law and next of kin was Elva G. Moore. Mrs. Moore suffered an injury and became an incompetent on December 14, 1940, when she was admitted to the Philadelphia General Hospital. Approximately thirty days thereafter she was transferred to the State Hospital for the Insane at Byberry, Pennsylvania. She died on May 3,
20 1944, intestate. Her only heirs at law and next of kin were her two children, William J. Moore and Anna A. Stevenson.

Prior to her death Annie B. Wildey entered into an executory contract for a sale of the premises in question to Jerry Del Percio, a single man. The latter went into possession on April 16, 1938, and has been in possession ever since.

30 I have noted from the foreclosure file that the only defendants were Annie B. Wildey, Mr. Wildey, husband of Annie B. Wildey, and the unknown heirs, devisees and personal representatives of Annie B. Wildey and the State of New Jersey. Since Del Percio was in possession under an executory agreement of sale, he was an owner of record. He was not a party to the foreclosure and had an inquiry been directed toward him, the foregoing facts at the various times they occurred could have been as-
40 certained from him.

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The foregoing facts are set forth in accordance with your letter of May 27, 1944 to me. The facts would form the basis of an application to open the final decree of foreclosure should that become necessary. Will you kindly advise me thereon as soon as possible.

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It would appear that since August of 1943 your client has been collecting moneys from Del Percio. The moneys thus collected should be taken into account on the redemption."

Not having received a reply to that letter, petitioners' solicitor again wrote said Wittes under date of July 31, 1944, as follows:

"Do you have any word for me in the above matter? When I was in your office on June 18, 1944, you advised me you had submitted the matter to your client and were awaiting a reply.

20

Naturally, I will be guilty of laches unless I proceed promptly. Unless your client is willing to do something at this time, I will have to make arrangements to proceed in the suit."

23. On August 8, 1944, the said Wittes wrote petitioners' solicitor as follows:

"I have your letter of July 31st with reference to the above matter.

30

In reply thereto, I wish to advise you that my client regards the decree as inviolate.

If I can be of further assistance to you, please do not hesitate to let me know."

24. Notwithstanding the open, visible, notorious, exclusive and continuous possession of the said premises by the said Jerry Del Percio and by the said Frank Del Percio and Mary Del Percio, claim-

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ing through the said Jerry Del Percio, none of them were made parties defendant to this cause of action, and no inquiry was made of them respecting the death of the said Annie B. Wildey, her heirs, devisees or personal representatives. No inquiry was
10 ever made of the said Frank Del Percio and Mary Del Percio of their landlord's or vendor's title.

25. By deed dated September 11, 1943, and recorded October 13, 1943, in the office of the Register of Deeds of Camden County in Book 973 of Deeds, page 503, the complainant, Bonded Certificate Corporation, purported to convey the premises described in paragraph 1 of the bill of complaint herein to the
20 said Frank Del Percio and Mary Del Percio, his wife, for a consideration therein recited of \$100.00.

26. By mortgage dated September 11, 1943, and recorded October 13, 1943, in said Office in Book 514 of Mortgages, page 253, the said Frank Del Percio and Mary Del Percio, his wife, purported to mortgage the premises described in paragraph 1 of the bill of complaint herein, to the said Bonded Certificate Corporation, for \$1450.00, with interest at six
30 per cent. per annum, payable \$35.00 on October 11, 1943, and \$35.00 on the eleventh days of each and every month thereafter until September 11, 1946.

27. Petitioners charge that

(a) the decree pro confesso and final decree entered in this cause are violative of the "due process" clause of the Fourteenth Amendment to the Federal Constitution, insofar as those decrees sought to conclude the rights of Elva G. Moore, petitioners' ancestor, inasmuch as she, nor anyone legally represent-
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ing her, received notice of complainant's cause of action.

(b) the decree pro confesso entered in this cause was entered without right, inasmuch as no diligent or careful inquiry was made, as in the case of absent defendants, for the residences of the heirs, devisees or personal representatives of the said Annie B. Wildey; or, in accordance with the requirements of Rule 37 of this Court, for the residence or post office address of said Elva G. Moore, to the end that a guardian ad litem might have been appointed for her. 10

(c) the open, visible, notorious, exclusive and continuous possession of said premises by Jerry Del Percio, and the said Frank Del Percio and Mary Del Percio, claiming through the said Jerry Del Percio, was constructive notice to the complainant of the right, title and interest of Elva G. Moore, the landlord or vendor of said Jerry Del Percio, and the said Frank Del Percio and Mary Del Percio, claiming through the said Jerry Del Percio. 20

(d) it was incumbent on complainant, in conducting a careful and diligent inquiry pursuant to the requirements of Rule 37 of this Court, and the practice and procedure in this Court, to make that inquiry of the said Jerry Del Percio, Frank Del Percio, Mary Del Percio, Raymond I. Lamoreaux, the agent of petitioners' ancestor, Elva G. Moore, and petitioner, Anna A. Stevenson, who signed the registry receipts for the letters hereinabove recited. 30

(e) the said Frank Del Percio, and Mary Del Percio, claiming through said Jerry Del Percio, 40

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were not bona fide purchasers for value under the deed recited in paragraph 25 hereof, and whatever right, title or interest that they acquired by said deed was acquired with notice of the rights of petitioners' ancestor, the said Elva G. Moore.

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Petitioners, therefore, pray that the final decree heretofore made in this cause may be set aside and for nothing holden; and that petitioners may be permitted to redeem their lands upon the payment of such sum as justly may be due; and that the complainant, Bonded Certificate Corporation, may be required to account for all moneys received by it; and that the deed made by Bonded Certificate Corporation to said Frank Del Percio and Mary Del Percio and the mortgage made by Frank Del Percio and Mary Del Percio to said Bonded Certificate Corporation may be set aside, cancelled and for nothing holden.

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W. LOUIS BOSSLE,
Solicitor for and of Counsel
with Petitioners.

30 State of New Jersey }
County of Camden } ss.

WILLIAM J. MOORE and ANNA A. STEVENSON, both being of full age, and being severally sworn according to law, on their respective oaths depose and say:

1. We are the petitioners named in the foregoing amended petition. We are also the heirs at law of Elva G. Moore, who died intestate, a resident of the

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City of Philadelphia, in the Commonwealth of Pennsylvania, on May 3, 1944. As such heirs at law, we are now the owners of the premises described in paragraph 1 of the bill of complaint herein, subject to whatever may be the effect of the final decree heretofore made in this cause on September 8, 1943, and subject to the agreement, deed and mortgage recited in said petition. 10

2. The said Elva G. Moore, our mother, was the sole heir at law of Annie B. Wildey, our grandmother, who was the owner of record of the premises described in paragraph 1 of the bill of complaint in accordance with the recitals of paragraph 5 of the bill of complaint. She, likewise, died intestate and a resident of the City of Philadelphia, in the Commonwealth of Pennsylvania, on November 4, 1938. 20

3. On April 16, 1938, the said Annie B. Wildey, being then a widow, entered into an agreement with respect to said premises with one Jerry Del Percio, a true copy whereof is annexed to our original petition, marked Schedule "A". The agreement was negotiated through Raymond I. Lamoreaux, a real estate broker. Our grandmother referred to said agreement in her conversations with us as an agreement of sale. Our mother, the said Elva G. Moore, after our grandmother's death, likewise, referred to said agreement as an agreement of sale. 30

4. Our mother, the said Elva G. Moore, suffered an injury and thereafter became an incompetent. She was admitted to the Philadelphia General Hospital in the City of Philadelphia, Commonwealth of Pennsylvania, on December 14, 1940, as a mental 40

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Open Final Decree and for Redemption*

10 patient. Approximately thirty days thereafter she was transferred to the State Hospital for the Insane, at Byberry, in said Commonwealth of Pennsylvania where she remained as an insane person and did not at any time regain her sanity until her death on May 3, 1944.

5. No general guardian was ever appointed for our mother, the said Elva G. Moore, in the Commonwealth of Pennsylvania, or elsewhere.

20 6. On or about April 13, 1943, there were delivered to deponent, Anna A. Stevenson, two registered letters and return receipts therefor by the postal authorities. The envelopes were on the stationery of Saul A. Wittes, Esq., the solicitor of the complainant, and each contained a copy of a notice which was published in this cause. One letter was addressed to "Annie D. Wildey and her unknown heirs, devisees and personal representatives, East side White Horse Pike 100 feet North of Hartner Avenue, Somerdale, New Jersey". The other letter was addressed to "Mr. Wildey, husband of Annie B. Wildey, East side White Horse Pike, 100 feet North of Hartner Avenue, Somerdale, New Jersey". Both of said letters reached deponent, Anna A. Stevenson, by devious routes, and were delivered to her at her home in Philadelphia. She signed the return registry receipts for said letters in her own name. Subsequent to the signing and forwarding of said return registry receipts, no inquiry was ever made of deponent, Anna A. Stevenson, concerning the said Annie B. Wildey, her death, or her heirs, devisees or personal representatives. Neither was any inquiry ever made of either of deponents con-

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cerning the title to said lands or said foreclosure proceedings.

7. On November 6, 1943, deponent, William J. Moore, consulted W. Louis Bossle, our solicitor, and as a result of a telephone call made by our solicitor to the solicitor of the respondent, we were informed by our solicitor that a final decree had been entered in this cause on September 8, 1943. 10

8. Subsequently, deponent, William J. Moore, was advised by deponents' solicitor that because the said Elva G. Moore was still living and no guardian had been appointed for her, that he could not act to protect the possible future interests of deponents in said premises. By reason of the information thus given to deponent, William J. Moore, he instructed deponents' solicitor to take no further proceedings in the premises until such time as a guardian might be appointed for the said Elva G. Moore or that deponents might have a right to act on their own behalf. 20

9. On May 15, 1944, deponents informed their solicitor of the death of their mother, the said Elva G. Moore, on May 3, 1944. 30

10. The premises described in paragraph 1 of the bill of complaint consist of a two and one-half story frame dwelling, erected on a plot of ground measuring 100 feet by 200 feet. For some time prior to the making of said agreement between Annie B. Wildey and Jerry Del Percio, the premises were in the possession of the said Jerry Del Percio, Frank Del Percio and Mary Del Percio. Immediately after the making of said agreement, the possession re- 40

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mained as theretofore and, likewise, remained as theretofore until some time subsequent to the death of Annie B. Wildey and the insanity of the said Elva G. Moore.

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WILLIAM J. MOORE,
ANNA A. STEVENSON.

Sworn and subscribed to before me, this 22nd day of September, 1944.

LEONA CYBULSKI,
Notary Public of New Jersey.

My Commission expires Dec. 13, 1946.

20 State of New Jersey }
County of Camden } ss.

W. LOUIS BOSSLE, of full age, being duly sworn according to law, on his oath deposes and says:

1. I am the solicitor of the petitioners named in the foregoing entitled cause. I am the person actually entrusted with the conduct and management of this suit.

30

2. I was employed by the petitioners herein on or about November 6, 1943, to ascertain their rights, as well as the rights of their mother, Elva G. Moore, who was then described to me by the petitioners as a lunatic, and who was then confined at the State Hospital for the Insane at Byberry, Pennsylvania. On or about that day I telephoned to Saul A. Wittes, the solicitor of the complainant, inquiring about the status of this suit, and was informed by him that a final decree had been entered in this cause on

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Open Final Decree and for Redemption*

September 8, 1943. I told said Wittes of the outstanding agreement between Jerry Del Percio and the said Annie B. Wildey, and I also told him that said Del Percio had not been made a party to the foreclosure proceedings. Thereupon, the said Wittes requested me to write him of the facts. At that time I erroneously comprehended the facts and, likewise, did not know that Jerry Del Percio had become married and had moved from said premises, or that the possession thereof was being continued in Frank Del Percio and Mary Del Percio, claiming through the said Jerry Del Percio. 10

3. On November 6, 1943, I wrote said Wittes a letter, a true copy of which is set forth in paragraph 17 of the petitioners' amended petition. At that time I erroneously comprehended the facts, stating in my letter that Annie B. Wildey, the mother of the said Elva G. Moore, was an incompetent, whereas the true facts were that Annie B. Wildey was dead and that Elva G. Moore was living and was a lunatic. 20

4. At my conference with the petitioners on November 6, 1943, I advised them that their mother, Elva G. Moore, was the owner of the premises in question, subject to whatever effect the final decree in this cause might have and that since she was a lunatic, I could not act for her until there was a guardian appointed for her. I suggested to the petitioners that they seek the appointment of a guardian in the Commonwealth of Pennsylvania. Petitioners told me that they thought the death of their mother was imminent and that the appointment of such a guardian might be a waste of money. I further told the petitioners that they had no rights as individuals 30

*Amended and Supplemental Petition to
Open Final Decree and for Redemption*

in the premises, and would have no such rights until the death of their mother.

10 5. As a consequence, I had nothing more to do with this suit except to attend to the correspondence, of which true copies are set forth in paragraphs 18 and 19 of the within petition.

6. On May 15, 1944, the petitioners informed me of the death of their mother, Elva G. Moore, on May 3, 1944. From May 23, 1944, to August 8, 1944, I entered upon correspondence with the said Saul A. Wittes, Esq., true copies of which are set forth in paragraphs 20, 21, 22 and 23 of the within petition.

20 7. On September 12, 1944, I talked with Mary Del Percio on the telephone. She told me that she and her husband, Frank Del Percio, and their son, Jerry Del Percio, had gone into possession of the premises described in paragraph 1 of the bill of complaint in the year 1936; that Jerry Del Percio, their son, had contracted with Annie B. Wildey for the purchase of said premises for the use and benefit of her husband, the said Frank Del Percio, and herself; that
30 Jerry Del Percio had remained in possession until about four years ago when he became married and moved; that she and her husband had remained in possession continuously since 1936; that she had made payments under the contract with Annie B. Wildey until August 27, 1943; that subsequently she paid about \$365.00 to Bonded Certificate Corporation in October, 1943, and thereafter paid Bonded Certificate Corporation \$35.00 per month; that she did not know whether or not she had received a deed to the premises but thought, to the contrary, that she
40 was still buying the property by installments.

*Amended and Supplemental Petition to
Open Final Decree and for Redemption*

8. I have examined the proceedings in this cause, and as a result thereof, I have ascertained that Jerry Del Percio, Frank Del Percio and Mary Del Percio were not made parties defendant to this cause and that no inquiry was made of them or Raymond I. Lamoreaux respecting the death of Annie B. Wildey, her heirs, devisees or personal representatives, nor of their landlord's or vendor's title. I have also spoken to Raymond I. Lamoreaux and as a result thereof, I believe that no inquiry was ever made of him respecting the whereabouts of Annie B. Wildey, her death and the names and addresses of her heirs, devisees and personal representatives. 10

9. On September 15, 1944, I made a search in the Office of the Register of Deeds of Camden County and found of record therein the deed and mortgage recited in paragraphs 25 and 26 of the within petition. 20

W. LOUIS BOSSLE.

Sworn and subscribed to before me, this 25th day of September, 1944.

LEONA CYBULSKI,
Notary Public of New Jersey.

30

40

*Amended and Supplemental Petition to
Open Final Decree and for Redemption*

State of New Jersey }
County of Camden } ss.

10 RAYMOND I. LAMOREAUX, of full age, being
duly sworn according to law, on his oath deposes
and says:

1. I am a real estate broker. I negotiated the sale
of premises in the Borough of Somerdale, owned by
Annie B. Wildey, to Jerry Del Percio, which are
described in paragraph 1 of the bill of complaint
herein.

20 2. From and after the making of said sale, I acted
as agent of Annie B. Wildey for the collection of
payments under said contract until the time of her
death. Thereafter I continued making said collec-
tions as the agent of Elva G. Moore until August 27,
1943, when the last payment was made to me. Dur-
ing that period of time I collected a total of \$1272.18.

30 3. Nearly all of said payments were made by
Mary Del Percio. I had never been advised that
Jerry Del Percio had given up his contract or had
made some arrangements with Frank Del Percio and
Mary Del Percio, his parents, so that they could
claim through him under said contract, but always
assumed that the payments being made by Mary Del
Percio were being made for and on behalf of Jerry
Del Percio.

40 4. It was my understanding that Elva G. Moore
was confined to an institution. For that reason the
payments made under said agreement were accumu-
lated by me and the accumulated fund was turned

Affidavit on Behalf of Complainant

73

over to W. Louis Bossle subsequent to August 27, 1943, when he requested me therefor.

RAYMOND I. LAMOREAUX.

Sworn and subscribed to before me, this 22nd day of September, 1944.

CHARLES C. WILCOX, 10

Notary Public of N. J.

My Commission Expires Aug. 24, 1948.

AFFIDAVIT ON BEHALF OF COMPLAINANT.

(Filed Oct. 16, 1944.)

IN CHANCERY OF NEW JERSEY. 20
141/498.

Between

BONDED CERTIFICATE CORPORATION, a corporation of the State of New York,

Complainant,
and

ANNIE B. WILDEY, et als.,
Defendants.

On Bill, etc.
On petition to open final decree and for redemption.
Affidavit on behalf of complainant. 30

State of New Jersey }
County of Camden } ss.

JERRY DEL PERCIO, of full age, being duly sworn according to law, upon his oath, deposes and says: 40

Affidavit on Behalf of Complainant

1. I am the Jerry Del Percio mentioned in the petition of William J. Moore and Anna A. Stevenson filed in the above entitled cause.

10 2. On April 16, 1938, I executed the lease mentioned in said petition. The lessor, Annie B. Wildey, was not present at the time of the execution of said instrument, the entire transaction having been handled through the Lamoreaux Real Estate Agency and Raymond I. Lamoreaux.

20 3. Although I was informed that said Annie B. Wildey was the owner of the property, I never saw her. Until the time I saw the petition to open the final decree of foreclosure in this suit, I had no information or knowledge that she was dead. Neither did I have any knowledge of her post office address and residence when she was living. All my dealings with regard to the property were with Lamoreaux Real Estate Agency and Raymond I. Lamoreaux, and with no other persons or corporations.

4. Prior to the time said petition was shown to me, I had never heard of Elva G. Moore, William J. Moore and Anna A. Stevenson, all of whom are mentioned therein.

30 5. I have not resided in the property affected by this action for over four years.

JERRY DEL PERCIO.

Sworn to and subscribed before me this 16th day of October, 1944.

LUCY L. CAMILLI,

Notary Public of New Jersey.

My Commission Expires 9/13/48.

AFFIDAVIT ON BEHALF OF COMPLAINANT.

IN CHANCERY OF NEW JERSEY.

141/498.

10

Between

BONDED CERTIFICATE CORPORATION, a corporation of the State of New York,

Complainant,
and

ANNIE B. WILDEY, et als.,
Defendants.

On Bill, etc.
On petition to open
final decree and for
redemption.
Affidavit on behalf
of complainant.

20

State of New Jersey }
County of Camden } ss.

FRANK DEL PERCIO and MARY DEL PERCIO, both of full age, and being severally sworn according to law, on their respective oaths, depose and say: 30

1. We are the persons mentioned in the petition to open the final decree filed in the above entitled cause by William J. Moore and Anna A. Stevenson. Said petition and the affidavits annexed thereto have been read to us and we are familiar with the contents thereof.

2. Although we have been residing in the premises in question for a number of years, and had knowl- 40

Affidavit on Behalf of Complainant

edge of the fact that Annie B. Wildey was the owner thereof, we did not know that she was dead. We had no knowledge of her post office address and residence. We never heard of Elva G. Moore, William J. Moore and Anna A. Stevenson mentioned in said petition until we were served with a copy of the
10 same. All of our dealings in connection with the property were had solely with the Lamoreaux Real Estate Agency and Raymond I. Lamoreaux, to whom we paid the rent stated in said petition. We never even saw Annie B. Wildey. We made our payments to the Lamoreaux Real Estate Agency from whom we accepted receipts.

3. In the month of April, 1943, there were delivered to our home by a United States Post Office employee two registered letters with return receipts annexed. Said letters were enclosed in envelopes on which was endorsed the name and address of Saul A. Wittes, Esq., the solicitor for the Bonded Certificate Corporation. One letter was addressed to "Annie B. Wildey and her unknown heirs, devisees and personal representatives, East side White Horse Pike, 100 feet North of Hartner Avenue, Somerdale, New Jersey." The other letter was addressed to "Mr. Wildey, husband of Annie B. Wildey, East side
20 White Horse Pike, 100 feet North of Hartner Avenue, Somerdale, New Jersey." That address is the address of the property in which we reside and is also the premises mentioned in the above entitled cause.
30

4. When the postman delivered the letters to the deponent, Mary Del Percio, she stated to him that Annie B. Wildey did not reside in the premises; that said Annie B. Wildey was the owner of the property
40 and that she did not know where Annie B. Wildey

Affidavit on Behalf of Complainant

lived; that the Lamoreaux Real Estate Agency of White Horse Pike, Haddon Heights, New Jersey, was the agent for Annie B. Wildey and could probably inform him of her whereabouts. The postman then took the letters with him and, we have been informed by the petition herein, that they were delivered to Anna A. Stevenson, one of the petitioners, who consulted with her brother, William J. Moore, the other petitioner, regarding the contents thereof. 10

5. In the month of August, 1943, the postman again delivered to deponent, Mary Del Percio, two letters sent by registered mail on the stationery of Saul A. Wittes, Esq., which were addressed in the same manner as the other two letters mentioned above. These were also returned to the postman with the advice that Annie B. Wildey was the owner of the property; that she did not reside there and that the Lamoreaux Real Estate Agency was the agent of Annie B. Wildey who could undoubtedly inform the postal authorities as to her whereabouts. 20

6. Our attention has been specifically directed to paragraph 27 (e) of the amended petition wherein it is charged that we "were not bona fide purchasers for value under the deed" and that our "deed was acquired with notice of the rights of petitioner's ancestor, the said Elva G. Moore." This, we vigorously deny, and we reiterate that the first time we learned of the existence of such a person or that Annie B. Wildey was dead, was when we were served with the petition to open the foreclosure decree. 30

7. In addition to executing the bond and mortgage to the Bonded Certificate Corporation mentioned in the amended petition, we have expended considerable sums for the purchase, maintenance 40

Affidavit on Behalf of Complainant

and repair of the property, an itemized statement of which is as follows:

- (1) \$400.00—Down payment made to Samuel Gelfand, Esquire and Mr. Lamoreaux.
- 10 (2) \$1600.00—Paid to Lamoreaux, Real Estate Agency, or Annie B. Wildey, at \$25.00 per month from May 15, 1938 to August 25, 1943.
- (3) \$355.00—Paid to Bonded Certificate Corporation—\$35.00 per month since purchase—as deposit and settlement expenses on September 11, 1943.
- (4) Sewage—installation—\$135.00.
 Papering—\$75.00.
 Linoleum—inlaid—in kitchen—\$50.00.
 Painting—\$50.00.
 20 Relining Pantry and installation of electrical receptacles, etc.—\$50.00.
 Repair to Garage—\$100.00.
 Installation of screens, screen doors, storm doors and sashes—\$105.00.
- (5) \$420.00—Paid to Bonded Certificate Corporation—at \$35.00 per month.

8. Deponents state that they were purchasers without notice for good and valuable consideration
 30 and therefore allege that in the event the decree is set aside that they are entitled to be reimbursed for the above enumerated expenditures and to be placed in *status quo*.

FRANK DEL PERCIO,
 MARY DEL PERCIO.

Sworn to and subscribed before me this 16th day of October, 1944.

40 (Seal) LUCY L. CAMILLI,
 Notary Public of New Jersey.
 My Commission Expires 9/13/48.

AFFIDAVIT ON BEHALF OF COMPLAINANT.

(Filed Oct. 16, 1944.)

IN CHANCERY OF NEW JERSEY. 10
141/498.

Between BONDED CERTIFICATE COR- PORATION, a corpora- tion of the State of New York, Complainant, and ANNIE B. WILDEY, et als., Defendants.	}	On Bill, etc. On petition to open final decree. Affidavit on behalf of complainant.	20
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State of New Jersey } County of Union	}	ss.
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SAUL A. WITTES, of full age, being duly sworn 30
upon his oath, according to law, deposes and says:

1. I am the solicitor of the complainant and the
person who was actually entrusted with the conduct
and management of the above entitled cause.

2. Prior to the time the bill of complaint was filed
therein, I made diligent and careful inquiry for the
purpose of ascertaining whether the defendant,
Annie B. Wildey, was living or dead, and if dead, 40

the names of her heirs, devisees and personal representatives, and although I was informed she was dead, I was unable to establish her death as a fact, nor was I able to ascertain the names of her heirs, devisees and personal representatives, if it were the fact that she was dead. The scope and nature of
10 that investigation is more particularly set forth in an affidavit made by me on February 16, 1943, and annexed to the bill of complaint filed in the cause on February 17, 1943.

3. On April 1, 1943, an Order for Publication was made in the cause as to the absent defendants, Annie B. Wildey, Mr. Wildey, husband of Annie B. Wildey, and the unknown heirs, devisees and personal representatives of Annie B. Wildey. Notice, pursuant to
20 that order, was duly published once in each week for four successive weeks in accordance with the terms of said order in the Camden Courier, a newspaper printed at Camden, as appears by the proof of publication filed in this cause.

4. On April 6, 1943, I mailed to said absent defendants copies of the notice pursuant to the order of publication by registered mail, with return receipts requested, the details of which are more particularly set forth in the affidavit of inquiry and
30 mailing made by me on June 10, 1943 and filed in the cause. The matters and things contained in said affidavit are incorporated herein by reference in lieu of repetition. Said letters were addressed as follows:

(1) ANNIE B. WILDEY AND HER UNKNOWN HEIRS, DEVISEES AND PERSONAL REPRESENTATIVES, East side White Horse Pike 100 feet North of Hartner Avenue, Somerdale, New Jersey.
40

Affidavit on Behalf of Complainant

- (2) ANNIE B. WILDEY AND HER UNKNOWN HEIRS, DEVISEES AND PERSONAL REPRESENTATIVES, 2029 East Willard Avenue, Philadelphia, Pennsylvania.
- (3) ANNIE B. WILDEY AND HER UNKNOWN HEIRS, DEVISEES AND PERSONAL REPRESENTATIVES, 3009-15 North 11th Street, Philadelphia, Pennsylvania. 10
- (4) ANNIE B. WILDEY AND HER UNKNOWN HEIRS, DEVISEES AND PERSONAL REPRESENTATIVES, 3411 Lee Street, Philadelphia, Pennsylvania.
- (5) MR. WILDEY, HUSBAND OF ANNIE B. WILDEY, East side White Horse Pike 100 feet North of Hartner Avenue, Somerdale, New Jersey. 20
- (6) MR. WILDEY, HUSBAND OF ANNIE B. WILDEY, 2029 East Willard Avenue, Philadelphia, Pennsylvania.
- (7) MR. WILDEY, HUSBAND OF ANNIE B. WILDEY, 3009-15 North 11th Street, Philadelphia, Pennsylvania.
- (8) MR. WILDEY, HUSBAND OF ANNIE B. WILDEY, 3411 Lee Street, Philadelphia, Pennsylvania. 30

All of the original letters mailed as above were returned to me by the postal authorities because of their failure to deliver the same, except those under items 1 and 5 above, which letters were sent to Annie B. Wildey and her unknown heirs, devisees and personal representatives and to Mr. Wildey, husband of Annie B. Wildey, at the address of the property under foreclosure as stated above. The return receipts for the latter two items were returned to me signed "Anna Stevenson". These two return re- 40

Affidavit on Behalf of Complainant

ceipts are annexed to the affidavit of inquiry and mailing made by me on June 10, 1943, and filed in this cause. The other letters mentioned above which were returned to me by the postal authorities are annexed hereto.

10 5. I have read the Petition To Open Final Decree and the affidavit annexed thereto made by William J. Moore and Anna A. Stevenson under date of September 6, 1944, and have observed that the receipt of the above notices (Nos. 1 and 5) is acknowledged and admitted by said petitioners (amended petition, par. 14; aff., par. 6).

20 6. A master's hearing was held in the cause on July 6, 1943, pursuant to which said master reported to the Chancellor the amount due to complainant on its tax sale certificate and fixed a time and place when and where the defendants could appear and redeem the complainant's tax sale certificate by paying the amount found due. On July 15, 1943, an Order Confirming Master's Report was entered in the cause.

30 7. On July 21, 1943, I mailed to the absent defendants, by registered mail with return receipt requested, notice of the time and place fixed for redemption by said Order Confirming Master's Report. Eight letters were sent to all of the defendants at the addresses set forth in paragraph 4 of this affidavit. They were all returned to me by the postal authorities for non-delivery and are annexed hereto.

8. On August 9, 1943, an Order Extending Time To Redeem was entered in the cause fixing August

23, 1943, as the time when the defendants might appear to redeem.

9. On August 11, 1943, I again mailed Notices of the time and place fixed for redemption pursuant to said order entered in the cause on August 9, 1943. These notices were sent by registered mail with return receipt requested and were sent and addressed to said absent defendants in the same manner as the letters mentioned in paragraph 4 of this affidavit. I testified with respect to this mailing before the master on August 23, 1943, as appears by his report of the same date on file in this cause. At the time of that hearing, neither the letters nor the return receipts had been delivered to me by the postal authorities. I testified that the receipts had not yet been returned. Subsequently all of the letters mentioned above were returned to me by the postal authorities with the exception of the letter addressed to Annie B. Wildey And Her Unknown Heirs, Devisees And Personal Representatives at East side White Horse Pike, 100 feet North of Hartner Avenue, Somerdale, New Jersey, and the letter addressed to Mr. Wildey, husband of Annie B. Wildey, addressed to the same place. In connection with those two letters, I received from the postal authorities the return receipts signed "Lamoreaux Real Estate" and also by its agent whose signature is illegible. Said return receipts and the letters returned to me by the postal authorities are also annexed hereto.

10. At no time during the course of the above foreclosure proceeding did anyone communicate with me regarding the redemption of the tax sale certificate, nor in regard to the proceedings to foreclose.

Affidavit on Behalf of Complainant

11. Although I made diligent and careful inquiry to establish as fact whether Annie B. Wildey was living or dead, and if she were dead, the names of her heirs, devisees and personal representatives, and although I was unable to secure the information from other sources, neither of the two petitioners
10 communicated the facts to me although they were in possession of such facts as appears from their affidavit (par. 6). The notice, which they admit receiving (the original of which is annexed to my affidavit of inquiry and mailing made on June 10, 1943, and filed in this cause), not only named the absent defendants to whom the notice was addressed and described the lands under foreclosure, but also stated that such absent defendants were required, by order of this Court, to appear and answer the bill of complaint on or before June 2, 1943, or the bill would be
20 taken as confessed against them.

12. On September 29, 1944, I mailed a letter to the State Hospital for the Insane, at Byberry, Pennsylvania, a copy of which marked Schedule "A" is annexed hereto and made a part hereof as if repeated herein at length. In reply thereto, I received a letter from Chas. A. Zeller, M. D., Superintendent of the Philadelphia State Hospital, under date of October 9, 1944, a copy of which marked Schedule "B" is also annexed hereto and made a part hereof as if repeated herein at length.

SAUL A. WITTES.

Sworn to and subscribed before me this 11th day of October, 1944.

MOLLIE FREEMAN,
A Notary Public of New Jersey.

SCHEDULE "A".

September 29, 1944.

State Hospital for the Insane,
Byberry, Pennsylvania.

Re: Bonded Certificate Corporation 10
vs. Annie B. Wildey, et als.
File #1468—(Elva G. Moore)

Gentlemen:

In 1943 I completed a foreclosure on lands in New Jersey which were owned, according to the county records, by Annie B. Wildey.

I have recently been informed that said Annie B. Wildey died in 1938 leaving a daughter, Elva G. Moore, who was committed to your institution in January, 1941. 20

Will you be kind enough to advise me whether that is the fact and where she died there on May 3, 1944 as has been represented to me?

In connection therewith, it is important that I ascertain the nature of her illness and whether, if notice of the above foreclosure proceeding had been brought to her attention, it would have been possible for her to understand the nature of the action and that her property would be affected thereby, or whether she was so hopelessly insane as to be unable to comprehend the meaning of a foreclosure proceeding. 30

I shall be grateful to you for any information you may be able to give me.

A selfaddressed envelope on which no postage is required is enclosed for your convenience in replying.

Very truly yours,
Saul A. Wittes.

saw/jp
enc.

40

SCHEDULE "B".

COMMONWEALTH OF PENNSYLVANIA

Department of Welfare

PHILADELPHIA STATE HOSPITAL

10

Philadelphia, Pennsylvania

14

October 9, 1944

Mr. Saul A. Wittes
 1143 East Jersey Street
 Elizabeth 4, New Jersey

Re: Elva G. Moore

Dear Mr. Wittes:

I received your letter of September 29, asking
 about Elva G. Moore. May I inform you that she
 20 was admitted to the Philadelphia State Hospital on
 1-14-41, and died in this institution on 5-3-44, of
 Cerebral Arteriosclerosis.

Although it is impossible for us to state at this
 time whether or not she may have been legally com-
 petent at any time during her stay in this institu-
 tion, her general course was one of confusion and
 impaired judgment and for the most part she could
 be considered as incompetent.

We have had correspondence with Mr. William
 30 Moore of 601 W. Mayfield Street, Philadelphia, and
 Mrs. Anna Stevenson, 1808 W. Albanus Street,
 daughter.

I trust that this information will help you.

Very truly yours,

(signed) Chas. A. Zeller, M. D.

Chas. A. Zeller, M. D.

Superintendent

AFFIDAVIT ON BEHALF OF COMPLAINANT.

IN CHANCERY OF NEW JERSEY.

141/498.

10

Between

BONDED CERTIFICATE CORPORATION, a corporation of the State of New York,

Complainant,
and

ANNIE B. WILDEY, et als.,
Defendants.

On Bill, etc.
On petition to open
final decree.
Affidavit on behalf
of complainant.

20

State of New Jersey }
County of Camden } ss.

JOSEPH E. SMITH, of full age, being duly sworn upon his oath, according to law, deposes and says:

30

1. I am the Tax Collector-Treasurer of the Borough of Somerdale, in the County of Camden and State of New Jersey and have been for a number of years last past.

2. My attention has been called to the lands and premises in the Borough of Somerdale assessed in the name of Annie B. Wildey and known as Lots 12 and 13, Section 1, Somerdale Park, Block 78, Lot 12.

40

Unpaid:—

1943½	96.10
42	192.20
41	202.12

However, the following years taxes have been sold and the situation on these is as follows:

1940 taxes	182.24	10
Int. & Costs	14.00	196.24

Plus 8% interest from date of sale 11/29/41 to date of redemption.

Sold to Tax Investment Corp.,

1939 taxes	176.58
Int. & Costs	14.00

190.58

Bonded Certificate bid on this property with a premium of \$75.00 at sale held 11/30/40. There is no interest on this amount. 20

If you will give me the exact date redemption of the liens will be made as well as the taxes paid, I shall be glad to figure the interest to that time for you.

With best regards,

Very truly yours,

Joseph E. Smith.

30

AFFIDAVIT ON BEHALF OF COMPLAINANT.

IN CHANCERY OF NEW JERSEY.

141/498.

10

Between

BONDED CERTIFICATE CORPORATION, a corporation of the State of New York,
Complainant,
and

20

ANNIE B. WILDEY, et als.,
Defendants.

On Bill, etc.
On petition to open final decree.
Affidavit on behalf of complainant.

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

30

WILLIAM S. McGRATH, of full age, being duly sworn upon his oath, according to law, deposes and says:

1. I am a Vice-President of the Bonded Certificate Corporation, the complainant in the above entitled cause.

40

2. Said corporation purchased the lands and premises described in the bill of complaint at a tax sale held on November 30, 1940, for the unpaid taxes for the year 1939 and by a final decree of foreclosure entered in this cause on September 8, 1943, barred

Affidavit on Behalf of Complainant

the right of redemption of the defendants named therein, to wit: Annie B. Wildey, Mr. Wildey, husband of Annie B. Wildey, the unknown heirs, devisees and personal representatives of Annie B. Wildey, and State of New Jersey.

3. On September 11, 1943, said Bonded Certificate Corporation executed and delivered a deed to said lands and premises to Frank Del Percio and Mary Del Percio, his wife, of the Borough of Somerdale, in the County of Camden and State of New Jersey, after which said deed was duly recorded in the Camden County Register's Office. 10

4. At the time of the execution of said deed, said Frank Del Percio and Mary Del Percio, his wife, executed and delivered to said corporation a bond and mortgage for a part of the purchase price of said lands and premises, which mortgage was duly recorded in said Camden County Register's Office on October 13, 1943, in Book 514 of Mortgages for said County, on page 253. 20

5. Prior to the commencement of the foreclosure proceedings in this cause, I caused to be mailed to Annie B. Wildey, at Hartner Avenue and White Horse Pike, Somerdale, New Jersey, a notice of the intention of the company to institute the action. Said letter was sent by registered mail on April 1, 1941, but was returned by the postal authorities because of their inability to deliver it. Said notice and the envelope in which it was mailed are annexed hereto. 30

6. Shortly after the Bonded Certificate Corporation acquired the tax sale certificate, we made inquiry of Joseph E. Smith, the collector of taxes of the Borough of Somerdale, for the post office ad- 40

Affidavit on Behalf of Complainant

dress and residence of Annie B. Wildey, and was advised by him by means of a postal card that "The address of Annie B. Wildey is 2029 E. Willard Ave., Phila., Pa." Said postal card is annexed hereto and made a part hereof as if repeated herein at length.

10 7. On April 9, 1942, prior to the commencement of this suit, I caused to be mailed by registered mail to said Annie B. Wildey, at 2029 E. Willard Street, Philadelphia, Pa., a notice of the corporation's intention to initiate this proceeding, but said letter was returned to me by the postal authorities because of their inability to deliver it. Said notice and the envelope in which it was mailed are annexed hereto and made a part hereof as if repeated herein at length.

20

8. By an order entered in this cause on July 15, 1943, this Court found that there was due to the Bonded Certificate Corporation on its tax sale certificate, the sum of \$190.58. At the time of the tax sale, said Bonded Certificate Corporation bid for the tax lien and paid to the tax collector of the Borough of Somerdale a premium of \$75.00 over and above the amount of the sale. On July 24, 1943, we paid to said tax collector of Somerdale the sum of
30 \$538.57 for municipal liens that had accrued subsequent to said tax sale up to and including the first half of the year 1943. At the time the property was sold by the corporation to Frank Del Percio and Mary Del Percio, his wife, we paid to the Lit Co., of Camden, New Jersey, the sum of \$87.50 for commissions for securing the purchasers therefor. We were also required to pay counsel for the foreclosure proceedings.

WILLIAM S. McGRATH.

40

Affidavit on Behalf of Complainant

93

Sworn to and subscribed before me this 6 day of
October, 1944.

IRVING I. STEINMAN,
A Foreign Commissioner of Deeds
for New Jersey residing in New
York.

10

BCC—Somerdale 12/30/40

This is to acknowledge receipt by me of proof of
disbursements and memoranda of search, covering
the following:

Block 78 Lot 12

The address of Annie B. Wildey is 2029 E. Wil-
lard St. Phila. Pa.

(signed) Joseph E. Smith 20
Collector of Taxes

In re TAX SALE SMD-
12BCA

Purchaser's Sale No. 2408

Date of Sale 11/30/40

Block 78 Lot 12 Sec 1

Som Park 12 & 13

Tax Duplicate of Somer-
dale

County of Camden, New
Jersey

Amount due on tax lien as
of the date of this notice

\$190.58

Dated: April 1, 1941

Premium \$75.00

Annie B. Wildey, 30
Hartner Ave. &
White Horse Pike,
Somerdale, N. J.

40

Affidavit on Behalf of Complainant

PLEASE TAKE NOTICE that the undersigned holder of the tax sale certificate, more particularly set forth as above and upon which there is due as of this date the amount mentioned above, intends, pursuant to Chapter 237 P. L. 1918 as amended by Chapter 200 P. L. 1933, to file a bill of complaint to foreclose said tax lien in the Court of Chancery of New Jersey at the expiration of ninety days from the date hereof or as soon thereafter as the statute in such case made and provided will permit.

A statement of the sum required for redemption of said tax sale certificate as of date of the payment may be secured from the collector of taxes of said municipality to whom payment should be made.

BONDED CERTIFICATE
CORPORATION

55 Fifth Avenue, N.Y.C.

CORRECTED

In re TAX SALE SMD-
12BCA
Purchaser's Sale No. 2408
Date of Sale 11/30/40
30 Block 78 Lot 12 Sec. 1
Som Park 12 & 13
Tax Duplicate of Somerdale
County of Camden, New
Jersey
Amount due on tax lien as
of the date of this notice
\$190.58 Premium \$75.00
Dated: April 9th, 1942.

NOTICE TO:
Annie B. Wildey
2029 E. Willard
Street
Philadelphia, Pa.

PLEASE TAKE NOTICE that the undersigned holder of the tax sale certificate, more particularly set forth as above and upon which there is due as of this date the amount mentioned above, intends, pursuant to Chapter 237 P. L. 1918 as amended by Chapter 200 P. L. 1933, to file a bill of complaint to foreclose said tax lien in the Court of Chancery of New Jersey at the expiration of ninety days from the date hereof or as soon thereafter as the statute in such case made and provided will permit. 10

A statement of the sum required for redemption of said tax sale certificate as of date of the payment may be secured from the collector of taxes of said municipality to whom payment should be made.

BONDED CERTIFICATE
CORPORATION

55 Fifth Avenue 20
New York, New York

30

40

CONCLUSIONS.

(Filed July 9, 1945.)

10 IN CHANCERY OF NEW JERSEY.
 141/498.

	Between	
	BONDED CERTIFICATE COR-	} On petition, &c. Conclusions.
	PORATION, a corpora-	
	tion of the State of	
	New York,	
20	Complainant,	
	and	
	ANNIE B. WILDEY, et als.,	
	Defendants.	

Mr. W. Louis Bossle, for the Petitioners William J. Moore and Anna A. Stevenson.

30 Mr. Saul A. Wittes, for Bonded Certificate Corporation.

Mr. Frank M. Lario, for Jerry Del Percio, Frank Del Percio, and Mary DelPercio.

WOODRUFF, V. C.

40 On September 8, 1943, complainant obtained a decree of foreclosure of a tax title certificate covering premises known and designated as Lots Nos. 12 and 13, Section 1, on a certain plan of lots entitled "Somerdale Park", made by Remington & Vosbury, Civil Engineers of Camden, New Jersey and dated Feb-

Conclusions

ruary 5, 1919, and more particularly described in a deed made by Henry Ulrich and Julia A., his wife to Annie B. Wildey, widow, dated April 15, 1936, and recorded in the office of the Register of Deeds, Camden County, on December 31, 1936, in Book 848 of Deeds, page 227.

The bill of complaint in that cause was filed on February 17, 1943, and sub. ad resp. was issued on March 26, 1943. The defendants named in the bill are Annie B. Wildey, her unknown heirs, devisees and personal representatives, "Mr. Wildey" husband of Annie B. Wildey, and the State of New Jersey. 10

The premises have been occupied by Frank and Mary Del Percio uninterruptedly since a date some years prior to the institution of the tax title foreclosure. The nature of their occupancy—whether as lessees or as purchasers—need not be passed upon at this time. The Del Percios made monthly payments (either as rent, or as installment payments of purchase price), to one Lamoreau, a real estate agent. Mr. Lamoreau paid over to Mrs. Wildey, as owner, the monthly payments he received from the Del Percios, until Mrs. Wildey's death on November 4, 1938. Thereafter the monthly payments were remitted by Mr. Lamoreau to Elva G. Moore until December of 1940, when she was rendered mentally incompetent by an injury and was confined. Following Mrs. Moore's incapacity, Mr. Lamoreau continued to receive monthly payments from the Del Percios, and retained the moneys so collected until after Mrs. Moore's death. Upon request of the present petitioners, Mr. Lamoreau paid this accumulation of money to them. 20 30

No defense was interposed to the foreclosure, and the cause proceeded ex parte.

By petition to open the final decree and to re- 40

deem, filed herein on September 8, 1944, it is alleged that at the time the foreclosure suit was instituted Annie B. Wildey had been dead for more than four years; that her only heir, Elva G. Moore (a daughter) was mentally incompetent and was confined in the State Hospital for the Insane at Byberry, in the State of Pennsylvania; and that the said Elva G. Moore has since died leaving the present petitioners (her two children) as her only heirs. They challenge the validity of the decree because: (a) their ancestor, Elva G. Moore, owner of the land when the suit was brought, was not joined as a defendant and had no notice of the suit, (b) no guardian ad litem was appointed to protect her rights, (c) the Del Percios, the occupants of the property, were not made defendants, and (d) the inquiry made by complainant for absent defendants does not satisfy the requirement for diligent inquiry necessary for jurisdiction. The complainant resists the application of petitioners urging the finality of the decree foreclosing all equity of redemption.

We are met at the outset with the provisions of R. S. 54:5-87:

“The court of chancery, upon the filing of a bill to foreclose the right of redemption, may give full and complete relief under this chapter, in accordance with other statutory authority and with the practice of the court, to bar the right of redemption and to foreclose all prior or subsequent alienations and descents of the lands and encumbrances thereon, except subsequent municipal liens, and to decree an absolute and indefeasible estate of inheritance in fee simple, to be vested in the purchaser. The decree shall be final upon the defendants, their heirs, devisees and personal representatives, and their or any of their heirs, devisees, exec-

utors, administrators, grantees, assigns or successors in right, title or interest, *and no application shall be entertained to reopen the decree after three months from the date thereof*, and then only upon the grounds of lack of jurisdiction or fraud in the conduct of the suit.” (italics mine)

10

The present application was not made within three months of the date of the final decree.

Assuming, for the moment, that the petitioners who are the heirs of Elva G. Moore, deceased, are entitled to maintain a petition to open the final decree, and assuming further that the application is within time, have they shown lack of jurisdiction or fraud in the conduct of the suit?

By R. S. 54:5-88 a bill of complaint is authorized, under the circumstances there set forth, against an unknown owner, his heirs, devisees, etc., who shall be so designated throughout the cause, “and the suit shall proceed against them by publication of notice under order, *according to the law and practice of the court of chancery*.” (italics mine). The law and practice of the Court of Chancery, specified in R. S. 2:29-28 and R. S. 2:29-29 and in Rule 36 of the Court, require in all cases where the residence and post-office address of an absent defendant not actually served with the notice to appear shall not be known, that “diligent and careful inquiry” shall be made therefor.

20

30

Inquiry was made herein, and the proof thereof duly filed. It does not, however, include any inquiry of the occupants of the premises (to whom, incidentally, complainant made conveyance of the property three days after the date of its final decree, and from whom complainant accepted a mortgage bearing even date with the deed) nor exhibit

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any reason for the omission to pursue so natural and available a source of information.

In circumstances not unlike those before me, the Court of Errors and Appeals, in *Hinners vs. Banville*, 114 N. J. Eq. 348, declared at page 351:

10 “Complainant failed in the performance of the duty imposed upon her to make an *effective* inquiry. But assuming that she entertained a conscientious and apparently well-founded belief that appellants could not be found in the state, there was a singular and wholly unexplained failure to comply with the mandate of rule 37 of the court of chancery, that complainant, or his solicitor, or his agent actually entrusted with the management and conduct of the

20 suit, in all cases where the residence and post office address of an absent defendant not actually served with the notice to appear shall not be known, shall make diligent and careful inquiry therefor.” (italics mine)

In the *Hinners* case some of the defendant mortgagors lived in the mortgaged premises; others lived in adjoining premises; another was in business in the same town, was listed in the telephone directory and his address was therein given as the mortgaged

30 premises. In that case, therefore, the want of care and diligence may be said to be clearer than it is in the case before me. Nevertheless, I am far from satisfied that Elva G. Moore, the incompetent, and only heir of the deceased Annie B. Wildey, was before the court by “due process”. I do not overlook the fact that the Del Percios made affidavit in the present proceeding to the effect that they did not know Mrs. Wildey’s address. Nevertheless, a perfectly natural and probable result of inquiry of them

40 would have been a reference to Mr. Lamoreau who

Conclusions

possessed all of the relevant information. Any inquirer who stated the object of his search (as he was bound to do, in accordance with the law and practice of the court) would have learned of Mr. Lamoreau and from him learned the address of Mrs. Wildey.

Notwithstanding all this, the statute (R. S. 54:5-87) is clear and unequivocal that no application to reopen shall be entertained after three months from the date of final decree. Even supposing that the limitation were held not to bar an application on behalf of an incompetent person whose rights had not been adequately protected, still more than three months expired between the death of Elva G. Moore and the presentation of the petition herein. 10

The bar of the statute in question is specifically limited to applications to reopen; it does no more. 20
 What success, if any, the petitioners would attain in seeking a remedy by other means I do not attempt to speculate; a number of difficult questions are raised by complainant, e. g. Laches; Inequitable Conduct; Estoppel (the petitioners having had actual notice of the pendency of the cause through having received and opened a registered letter addressed to their grandmother, Annie B. Wildey, containing the notice to appear) upon which no opinion is expressed herein. 30

My conclusion is that the legislation above referred to renders untenable, after three months, a petition in the cause to reopen the decree. I shall accordingly advise a dismissal, without prejudice.

SUBMITTED, October 20, 1944.

DETERMINED, June 26, 1945.

PETITION FOR LEAVE TO MOVE
FOR REARGUMENT.

(Filed July 9, 1945.)

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IN CHANCERY OF NEW JERSEY.
141/498.

Between

20 BONDED CERTIFICATE COR-
PORATION, a corpora-
tion of the State of
New York,
Complainant,
and
ANNIE B. WILDEY, et al.,
Defendants.

On bill to foreclose
tax lien.
Petition for leave to
move for reargu-
ment.

To the Honorable LUTHER A. CAMPBELL,
Chancellor of the State of New Jersey:

30

The petition of William J. Moore and Anna A. Stevenson, both of the City of Philadelphia, County of Philadelphia and Commonwealth of Pennsylvania.

The petitioners in the foregoing cause of action respectfully move for leave to reargue this cause and show that:

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1. By their amended and supplemental petition herein, the petitioners sought to reopen the final de-

gree in this cause upon payment to the complainant of its costs, to the end that petitioners might redeem the tax sale certificate of the complainant.

2. Under the opinion of the Court herein, petitioners' said petition was determined to be ineffective by reason of the limitation set forth in R. S. 54:5-87. 10

3. Petitioners believe that the opinion of the Court failed to take into consideration the effect of the statutes R. S. 2:29-33, R. S. 2:29-34, and R. S. 2:29-34.1; and that, by reason of such failure, the opinion of the Court rendered herein is erroneous.

4. Petitioners believe that the statutes R. S. 2:29-33, R. S. 2:29-34 and R. S. 2:29-34.1 must be construed together with the statute R. S. 54:5-87 by reason of the statement contained in R. S. 54:5-87, which refers to the "other statutory authority" and the practice of this Court. 20

Petitioners, therefore, pray that they may be granted leave to reargue the matters submitted herein under their former amended and supplemental petition.

W. LOUIS BOSSLE, 30
Solicitor for and of Counsel
with Petitioners.

State of New Jersey }
County of Camden } ss.

10

W. LOUIS BOSSLE, of full age, being duly sworn according to law, on his oath deposes and says:

I am the solicitor of the petitioners named in the foregoing petition. I have read said petition, and the facts, matters and things therein contained are true, to the best of my knowledge and belief.

W. LOUIS BOSSLE.

Sworn and subscribed to before me, this 6th day of July, 1945.

20

LEONA CYBULSKI,
Notary Public of New Jersey.

30

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CONCLUSIONS.

(Filed July 20, 1945.)

IN CHANCERY OF NEW JERSEY. 10
141/498.

Between BONDED CERTIFICATE COR- PORATION, a corpora- tion of the State of New York, Defendants. and ANNIE B. WILDEY, et al., Complainant,	}	On petition for reargument. Conclusions.	20
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MR. W. LOUIS BOSSLE, for the Petitioners Wil-
 liam J. Moore and Anna A. Stevenson.
 MR. SAUL A. WITTES, for Bonded Certificate
 Corporation. 30
 MR. FRANK M. LARIO, for Jerry Del Percio,
 Frank Del Percio, and Mary Del Percio.
 WOODRUFF, V. C. (Orally).

When I dictated the opinion that has been filed
 in this case, I had read, studied and weighed the
 effect of the two statutes which are recalled to my
 attention by counsel in prosecuting his motion this
 morning. I was persuaded at that time, and I am
 still persuaded, that were I to do otherwise than I

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have done I would be usurping the power and the responsibility of the Legislature.

To control tax foreclosure matters the Legislature saw fit to pass R. S. 54:5-87, a statute of particular application, and I feel it must govern rather than the general statute, 2:29-33.

- 10 Perhaps I should say that not only did I weigh and consider the equitable question involved in the situation, where the grandmother was dead, the mother of the petitioner was made a party at a time when she is alleged to have been insane, and the children, although they had actual notice of this suit, did not, in fact, then have any interest in the property, but in addition, I weighed and considered the equities involved in the situation of the DelPercios, the purchasers of the property from the grandmother whose default in payment of taxes led to the foreclosure suit. The DelPercios have now been made to deal with the purchasers at the tax sale and to again buy from it.
- 20

I must, Mr. Bossle, refuse your motion and stand on my opinion which is already on file.

Heard July 16, 1945.

Determined July 16, 1945.

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ORDER.

(Filed July 16, 1945.)

IN CHANCERY OF NEW JERSEY. 10
141/498.

<p>Between</p> <p>BONDED CERTIFICATE CORPORATION, a corporation of the State of New York,</p> <p style="padding-left: 40px;">Complainant,</p> <p style="padding-left: 40px;">and</p> <p>ANNIE B. WILDEY, et al.,</p> <p style="padding-left: 40px;">Defendants.</p>	}	<p>On Bill, etc.</p> <p>On petition to open final decree.</p> <p style="padding-left: 40px;">Order.</p>	20
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An amended and supplemental petition having been filed herein by William J. Moore and Anna A. Stevenson praying that the final decree heretofore made in the above entitled cause be set aside and for nothing holden, and that petitioners be permitted to redeem their lands from the tax sale to complainant, and that the complainant be required to account for all moneys received by it in connection with the premises affected thereby; and that the deed for said lands made by said complainant to Frank Del Percio and Mary Del Percio and a mortgage made by said Frank Del Percio and Mary Del Percio to said complainant be set aside, cancelled and for nothing holden;

30
40

Order

And the court having read and considered said petition and affidavit submitted on behalf of said petitioners and the counter affidavits of the complainant, and having heard the arguments of counsel, and being satisfied that said petition should be dismissed;

- 10 And a further petition having been filed herein by said petitioners for leave to reargue the matters submitted herein under their said former amended and supplemental petition, and the court having heard the arguments of counsel and being satisfied that said petition for leave to move for reargument should also be dismissed;

- 20 It is, on this 16th day of July, 1945, ORDERED, ADJUDGED and DECREED that said petition and amended and supplemental petition to open the final decree heretofore entered in the above entitled cause and for the redemption of said lands from complainant's tax sale, for an accounting by complainant for all sums received by it in connection with said premises, and that the deed for said lands from complainant to Frank Del Percio and Mary Del Percio and a mortgage thereon from said Frank Del Percio and Mary Del Percio to complainant be set aside and cancelled, be and the same is hereby dismissed without prejudice.

- 30 And it is further Ordered, Adjudged and Decreed that the said petition for leave to reargue the matters submitted under petitioners' former amended and supplemental petition, be and the same is hereby dismissed.

Respectfully Advised,

ALBERT S. WOODRUFF,

V. C.

Petition of Appeal

PETITION OF APPEAL.

(Filed August 13, 1945.)

NEW JERSEY COURT OF ERRORS AND 10
 APPEALS.

Between

BONDED CERTIFICATE COR-
 PORATION, a corpora-
 tion of the State of
 New York,

Complainant-Appellee,
 and

ANNIE B. WILDEY, et al.,
 Defendants,

WILLIAM J. MOORE and

ANNA A. STEVENSON,
 Petitioners-Appellants,

JERRY DEL PERCIO, MARY
 DEL PERCIO and FRANK
 DEL PERCIO,

Respondents-Appellees.

20

On appeal from the
 Court of Chancery.
 Petition of appeal.

30

To the Honorable THE COURT OF ERRORS AND
 APPEALS IN THE LAST RESORT IN ALL
 CAUSES:

The petition of William J. Moore and Anna A.
 Stevenson, the appellants in the above entitled
 cause, respectfully shows that:

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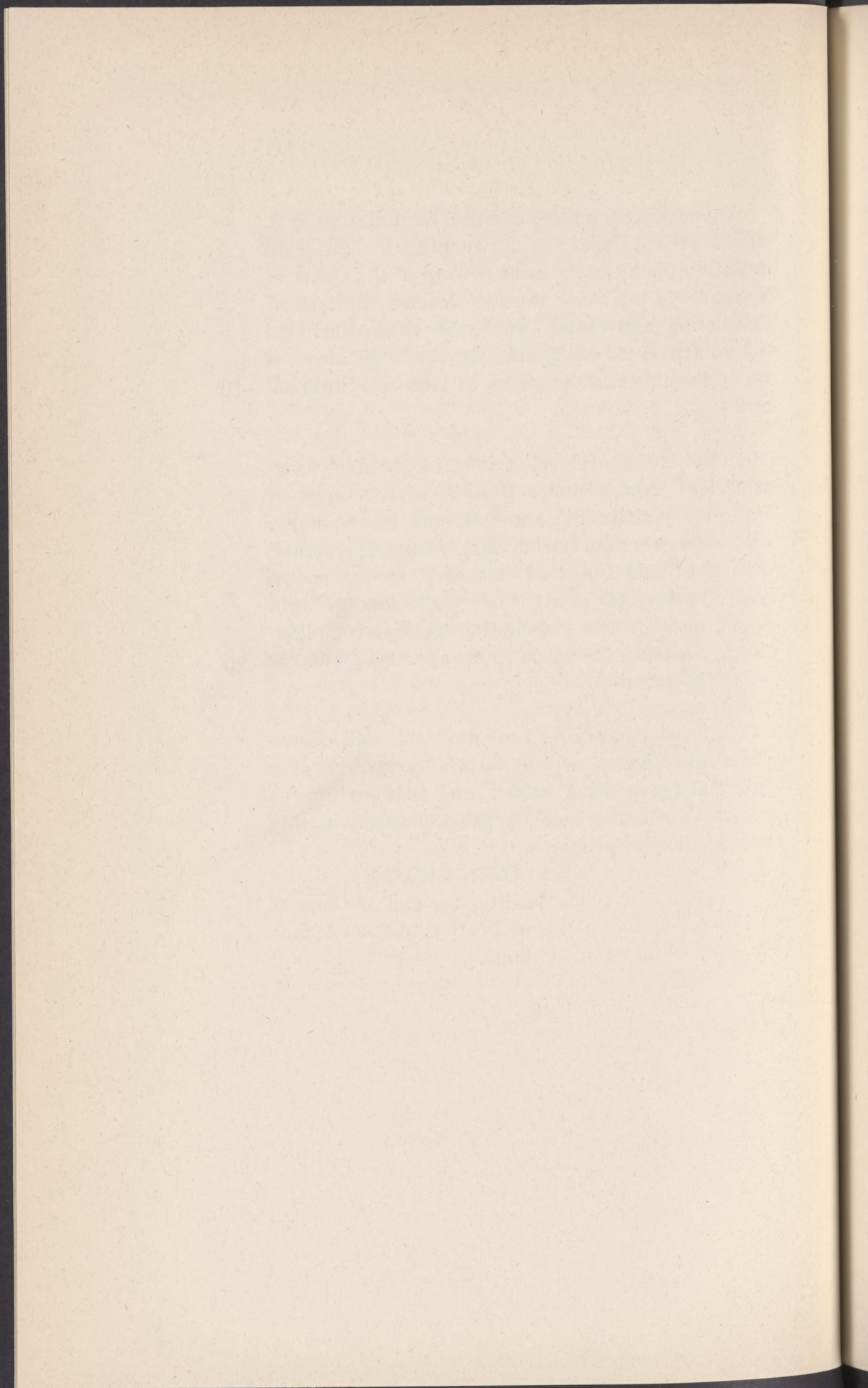
1. Petitioners find themselves aggrieved by an order, in the nature of a final decree, made in the Court of Chancery by his Honor Luther A. Campbell, Chancellor of the State of New Jersey, on the advice of Vice Chancellor Woodruff, bearing date July 16, 1945, in a certain cause in said Court of Chancery wherein the said Bonded Certificate Corporation, a corporation of the State of New York, was complainant, Annie B. Wildey, et al., were defendants, the appellants, William J. Moore and Anna A. Stevenson, were petitioners and Jerry Del Percio, Frank Del Percio and Mary Del Percio were respondents to appellants' petition, in this respect, to wit, that the said order adjudges that appellants' petition to open the final decree heretofore entered in said cause, for the redemption of the lands therein described from the complainant-appellee's tax sale, for an accounting from complainant-appellee for all moneys received by it from and through said premises, and that a deed for said land from complainant-appellee to the respondents-appellees, Frank Del Percio and Mary Del Percio, and a mortgage made by said respondents-appellees, Frank Del Percio and Mary Del Percio, to the complainant-appellee be set aside, cancelled and for nothing holden, be dismissed.
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- And petitioners appeal from the order of the Chancellor which decrees as aforesaid, upon the ground that the same is erroneous in that
- (a) the three months' limitation in R. S. 54:5-87 is inapplicable to petitioners;
- (b) the statutes R. S. 54:5-87 and R. S. 2:29-33 are in *pari materia* and must be construed together in order to give expression to a sound legislative policy;
- 40

(c) assuming the three months' limitation in R. S. 54:5-87 is applicable to appellants, the aforesaid limitation upon the inherent powers of the Court of Chancery to set aside its own decrees for lack of jurisdiction and fraud, would be unconstitutional and an attempted usurpation by the Legislature of one of the inherent functions of that constitutional court; 10

(d) the final decree being defective, because of an insufficient inquiry under Rule 37 of the Court of Chancery, petitioners' ancestor, and consequently, petitioners, were not bound thereby; and, appellants' petition to said Court of Chancery, having shown both surprise and merit, their right to open said decree, and for full redemption against complainant-appellee and the respondents-appellees, was not subject to question. 20

Petitioners, therefore, pray that the said decree of the said Chancellor may be wholly 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.

W. LOUIS BOSSLE,
Solicitor for and of Counsel
with Petitioners - Appel- 30
lants.



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

Between

BONDED CERTIFICATE CORPORATION, a corporation of
the State of New York,
Complainant-Appellee,

and

ANNIE B. WILDEY, et al.,
Defendants,

WILLIAM J. MOORE and ANNA A. STEVENSON,
Petitioners-Appellants,

JERRY DEL PERCIO, MARY DEL PERCIO, and
FRANK DEL PERCIO,
Respondents-Appellees.

ON APPEAL FROM THE COURT OF CHANCERY.

BRIEF FOR PETITIONERS-APPELLANTS.

THE QUESTION FOR DETERMINATION.

This appeal brings up for review an order of the Chancellor denying to appellants the right to redeem under the final decree in a tax sale foreclosure, simply because of the limitation in R. S. 54:5-87, and

Brief for Petitioners-Appellants

notwithstanding a finding by the Chancellor that appellants' ancestor was not before him by "due process", and there was a want of jurisdiction of the person of the defendants before him.

Appellants challenge the applicability of the limitation in R. S. 54:5-87 to them, since the Legislature could have intended that limitation to apply only to valid and legal decrees; not those founded on a want of jurisdiction of the person of the defendants. They also challenge its applicability to them because it is *in pari materia* with R. S. 2:29-33, and the latter controls. Conversely, in the event the limitation of R. S. 54:5-87 is applicable to appellants, they then challenge the constitutionality of that part of R. S. 54:5-87 which encroaches on the inherent right of the Court of Chancery to set aside its own decrees for lack of jurisdiction and fraud, without limitation; and (the Chancellor having found that appellants' ancestor was not before him by "due process") which denies to appellants the saving protection of the "due process" clause of the Federal Constitution.

STATEMENT OF FACTS.

The parenthetical references are to the State of the Case.

Annie B. Wildey, a widow, being the owner of the premises described in the bill of complaint, entered into an agreement with respect thereto on April 16, 1938, with the respondent, Jerry Del Percio. While that agreement (p. 42) is in the form of a demise, with an option to purchase, it was treated between

Brief for Petitioners-Appellants

the parties as an installment agreement of sale (pp. 33, 78). Prior to the making of that agreement, the said Jerry Del Percio and his father and mother, the respondents-appellees, Frank and Mary Del Percio, had been in possession of the premises as tenants (p. 70). Thereafter, they remained continuously in possession until Jerry Del Percio married and moved out in 1940, when, thereafter, only Frank and Mary Del Percio remained continuously in possession (pp. 70, 74). The premises consisted of a two and one-half store frame dwelling, erected on a lot of land measuring 100 feet by 200 feet (p. 42).

In entering into said agreement, Jerry Del Percio was acting on behalf of his parents, Frank and Mary Del Percio, who were the real equitable vendees (p. 70). Jerry had no beneficial interest in that agreement (p. 70). All payments under the agreement were made by Frank and Mary Del Percio, not by Jerry (p. 78). All such payments were made by them to Raymond I. Lamoreaux, a real estate broker chosen by Mrs. Wildey as her agent for that purpose (p. 76).

Mrs. Wildey died on November 4, 1938, intestate, a resident of Philadelphia, in the Commonwealth of Pennsylvania. Her sole heir at law was her daughter, Elva G. Moore, likewise a resident of Philadelphia, Pennsylvania. Mrs. Moore suffered an accidental head injury, and as a result, became mentally incompetent. On December 14, 1940, she was admitted to the Philadelphia General Hospital as a mental patient. Approximately thirty days thereafter she was transferred and admitted to the State Hospital for the Insane, at Byberry, Pennsylvania, where she remained without regaining her reason or her liberty until her death on May 3, 1944 (pp. 65,

66). No guardian of any type was ever appointed for her (p. 66). Appellants are the children and only heirs at law of Mrs. Moore (pp. 64, 65).

Lamoreaux never accounted with Mrs. Wildey during her lifetime, nor with Mrs. Moore thereafter. As a result, he permitted the payments he was receiving from the Del Percios to accumulate (p. 72). Taxes fell into arrears, and the complainant-appellee acquired the certificate of tax sale recited in the bill of complaint (p. 2).

The complainant-appellee filed its bill to foreclose its tax sale certificate on February 17, 1943 (p. 1). On that date Mrs. Wildey had been dead for over four years, Mrs. Moore was then confined in the aforesaid mental institution, and the respondents-appellees, Frank and Mary Del Percio, were in possession of the premises in question.

The only defendants to the complainant-appellee's foreclosure proceedings were "Annie B. Wildey," "the unknown heirs, devisees and personal representatives of Annie B. Wildey," "Mr. Wildey, husband of Annie B. Wildey", and the "State of New Jersey" (p. 5). The final decree binds only those defendants (p. 30). Frank and Mary Del Percio were not made defendants, although they were in the open, visible, notorious, exclusive and continuous possession of the premises covered by the tax sale certificate. Mrs. Moore was not made a defendant, nor was a guardian ad litem appointed for her (p. 30).

The proof of inquiry and mailing made during the course of the foreclosure proceedings, as though in compliance with Rule 37 of the Court of Chancery, discloses that no inquiry was made of Frank and Mary Del Percio, who were in possession of the

premises, nor of Raymond I. Lamoreaux to whom the Del Percios were making their payments under their contract (p. 18). While the Del Percios made affidavits that they knew neither Mrs. Wildey nor her address (pp. 74, 76), Lamoreaux, on the other hand, knew all the facts (p. 72).

On April 13, 1943, during the course of the foreclosure proceedings, the appellant, Anna A. Stevenson, received two registered letters, one addressed to "Annie B. Wildey her unknown heirs, devisees and personal representatives" and the other to "Mr. Wildey, husband of Annie B. Wildey". Each contained a copy of the notice to absent defendants (p. 66). The address on each letter was the address of the premises under tax foreclosure. Both letters had been forwarded to Mrs. Stevenson by the postal authorities. She signed the registry receipts (pp. 23, 24, 66). No inquiry was ever made of her to ascertain who were the heirs, devisees or personal representatives of Annie B. Wildey.

A final decree was entered in the foreclosure proceedings on September 8, 1943 (p. 30). The Del Percios continued making their payments to Lamoreaux until August 27th, 1943, thirteen days previously (pp. 72, 78). On September 11, 1943, three days after the entry of the final decree, the Del Percios disregarding their agreement with Mrs. Wildey, acquired title by deed from the complainant-appellee, giving it a purchase money mortgage for \$1450.00 and \$355.00 cash (pp. 62, 78).

On November 6, 1943, appellants' solicitor telephoned to Saul A. Wittes, Esq., the solicitor of the complainant-appellee, and appellants thereby learned for the first time of the entry of the final decree two months previously (p. 68). While ap-

pellants then might have taken out letters of guardianship in Pennsylvania for their incompetent mother, Elva G. Moore (to the end that an ancillary guardian in New Jersey might take steps to set aside the final decree), they believed her death to be imminent, and refrained from taking any action (p. 69).

Mrs. Moore died on May 3, 1944. On May 23, 1944, appellants' and complainant-appellee's solicitors commenced exchanging letters concerning appellants' desire to effect redemption (pp. 59, 60, 61, 70). When that correspondence terminated by the complainant-appellee's solicitor's letter of August 8, 1944 (p. 61), which, for the first time, refused redemption, appellants filed their petition with the Court of Chancery on September 8, 1944, seeking the right to redeem, and making a direct attack on the foreclosure decree (p. 32).

At the time of the filing of their original petition, appellants did not know of the beneficial interest of Frank and Mary Del Percio, nor of the giving of the deed to them, or their giving of the purchase money mortgage. When those facts were brought to appellants' attention, they filed their amended and supplemental petition (p. 52).

After the learned Vice Chancellor rendered his opinion, adverse to appellants' interests, they immediately applied for leave to reargue the cause (p. 102). A reargument was had without changing the result (p. 105).

ARGUMENT.

1. The decree is a nullity.

Obviously, the failure of the complainant-appellee and its solicitor, to make inquiry respecting Annie B. Wildey, her heirs, devisees and personal representatives, of the occupants of the premises being foreclosed, that is, the respondents-appellees, Frank and Mary Del Percio, and through them, of Lamoreaux, who knew the facts respecting Mrs. Wildey's death and Mrs. Moore's insanity, was not a compliance with Rule 37 of the Court of Chancery. The failure to make any further inquiry of Anna A. Stevenson is in the same category. Those failures are wholly unexplained.

The case *sub judice* is strikingly similar to the case of *Himmers v. Banville*, 114 N. J. Eq. 348, where, the complainant having failed to make inquiry for absent defendants, of the occupants of the mortgaged premises, this Court said:

“ . . . there was a singular and wholly unexplained failure to comply with the mandate of rule 37 of the Court of Chancery, that complainant or his solicitor, or his agent actually intrusted with the management and conduct of the suit, in all cases where the residence and post office address of an absent defendant not actually served with the notice to appear shall not be known, shall make diligent and careful inquiry therefor.”

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The learned Vice Chancellor rightly determined:

“Inquiry was made herein, and the proof thereof duly filed. It does not, however, include any inquiry of the occupants of the premises (to whom, incidentally, complainant made conveyance of the property three days after the date of its final decree, and from whom complainant accepted a mortgage bearing even date with the deed) nor exhibit any reason for the omission to pursue so natural and available a source of information.” (pp. 99, 100)

* * * * *

“Nevertheless, I am far from satisfied that Elva G. Moore, the incompetent, and only heir of the deceased Annie B. Wildey, was before the court by ‘due process’. I do not overlook the fact that the Del Percios made affidavit in the present proceeding to the effect that they did not know Mrs. Wildey’s address. Nevertheless, a perfectly natural and probable result of inquiry of them would have been a reference to Mr. Lamoreaux who possessed all of the relevant information. Any inquirer who stated the object of his search (as he was bound to do, in accordance with the law and practice of the court) would have learned of Mr. Lamoreaux and from him learned the address of Mrs. Wildey.” (pp. 100, 101)

Those singular and wholly unexplained failures to make inquiry of the occupants of the property, Mr. Lamoreaux or Mrs. Stevenson, resulted not only in a failure of due process, but were tantamount to a species of fraud.

Consequently, there was no “due process”, as de-

fined by Mr. Justice Heher, speaking for this Court in *Hinners v. Banville*, supra, and there was a complete want of jurisdiction of the persons of the defendants in the Court below. The result is, that there being a want of "due process", the final decree in the tax foreclosure is a nullity.

2. The limitation of R. S. 54:5-87 is inapplicable to appellants.

(a) *It applies only to valid decrees.*

But the learned Vice Chancellor erroneously determined that the limitation of R. S. 54:5-87 (Appendix) was a bar to appellants' application to open the final decree. The statutory reference is to the "decree". The limitation prevents the reopening of the decree after three months, and then only for fraud or want of jurisdiction. That is, only within the three months' period subsequent to the decree may an application be submitted to reopen it for fraud or want of jurisdiction, *but for no other ground.*

Obviously, the legislative reference to the "decree" can only mean a valid decree, not a decree which in itself is a nullity. So, too, the limitation can only refer to the opening of valid decrees, not nugatory ones.

The identical proposition was laid before the Supreme Court in *Andersen v. Independent Order of Foresters*, 98 N.J.L. 648. There certiorari was taken to review the action of a District Court. In setting aside a judgment theretofore rendered, the District Court had ascertained that there was a want of

jurisdiction because the defendant had not been served with process. The plaintiff, on certiorari, argued that the action of the District Court judge was a nullity by reason of the thirty day limitation of the statute, which may now be found as R. S. 2:32-120 and 2:32-121; arguing also, that the defendant's application to the District Court was, in effect, the granting of a new trial. The Supreme Court, speaking through Mr. Justice Bergen, held otherwise, stating:

“I do not think the judgment dismissing the cause for want of jurisdiction was the granting of a new trial within the meaning of the statute, but assuming that it was, the limitation is 30 days after judgment. This, in my opinion, means a lawful judgment and one of which the defendant has notice either of the institution of the suit on which it was based, or in some other way. Laws must be given a reasonable interpretation, and the legislature could not have intended that a judgment which ought not to have been entered for want of jurisdiction of defendant's person because not summoned actually or constructively became final and beyond the control of the court after 30 days. There was no legal trial and could be no legal judgment for want of jurisdiction. Nor could a new trial be granted; all the court could do was to dismiss the proceedings for want of jurisdiction, and that was the order made.”

Obviously, the same reasonable interpretation should have been given here. The Legislature could not have been speaking of nugatory decrees. In a sense, the decree *sub judice* is no decree at all. It is

simply a nullity. The statute could have no effect thereon whatsoever.

(b) *It is in pari materia with R. S. 2:29-33, and only the latter controls.*

It is to be noted that R. S. 54:5-87 specifically refers to (and is necessarily limited by) the "other statutory authority and with the practice of the Court". It does not specifically refer to "unknown" heirs, devisees or personal representatives, or to absent defendants. On the other hand, R. S. 2:29-33 (Appendix) applies to those types of defendants. Its limitation is three years, not three months. At the risk of repetition, it must be pointed out that both R. S. 54:5-87 and R. S. 2:29-33 apply only to "valid" decrees, not decrees which are nullities.

Obviously, some coordinating construction must be made of these two statutes. Laws must be given a reasonable interpretation. They cannot be chaotic. If both enactments refer to absent defendants, they are diametrically opposed. But R. S. 54:5-87 as aforesaid, does not specifically refer to absent defendants, while R. S. 2:29-33 does. Any reasonable interpretation of the two statutes must necessarily consider that only R. S. 2:29-33 refers to absent defendants, while R. S. 54:5-87 only refers to defendants regularly served with process. Consequently, the learned Vice Chancellor erred in applying the prohibition of R. S. 54:5-87 to appellants. The only applicable statute is R. S. 2:29-33, so that even if the decree herein were not a nullity, appellants' application was timely, and well within the three year limitation.

3. The statute is unconstitutional.**(a) *It encroaches upon the inherent powers of the Court of Chancery.***

On the other hand, if appellants are wrong in their argument that R. S. 54:5-87 and its limitation are inapplicable to them because they are not bound by the nugatory decree, then it clearly appears that the limitation of that statute is unconstitutional. It encroaches upon and limits the inherent right of the Court of Chancery to control its own decrees.

The intendment of the statute is clear. It says, in effect, that a nugatory decree, such as one founded upon no service of process whatsoever, shall be in-violate after three months. Its effect is tantamount to a declaration that a certain type of judgment founded on a complete want of due process, cannot be set aside by the Supreme Court, for instance, after three months. It is a startling innovation. Committed as we are to the constitutional proposition that there are but three distinct branches of Government (Const. Art. III, par. 1—Appendix), the limitation of the statute clearly invades the inherent rights of a constitutional court, such as the Court of Chancery (Const. Art. VI, Sec. 1, par. 1—Appendix).

No constitutional principle is repeated more often than, the Legislature may not encroach upon the inherent powers of our constitutional courts. Mr. Justice Heher, speaking for this Court in *Estate of Gilbert Smith, Inc. v. Cohen*, 123 N. J. Eq. 419, stated the rule as follows:

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“Moreover, it is not within the competency of the Legislature to infringe upon the respective exclusive jurisdictions of law and equity as delimited at the time of the adoption of our present Constitution in 1844.”

To the same effect are:

Ex parte Hague, 104 N. J. Eq. 31; affirmed
104 N. J. Eq. 369;

Smith v. Washington Casualty Insurance Co., 110 N. J. Eq. 122;

Ex parte Thompson, 85 N. J. Eq. 221;

Cohen v. Cohen, 121 N. J. Eq. 299.

There is little room for doubt that this attempt by the Legislature to limit the right of the Court of Chancery to set aside a void decree is unconstitutional.

(b) *It violates the “due process” clause of the Federal Constitution.*

There is another startling effect to the limitation of the statute. The learned Vice Chancellor determined that Mrs. Moore was not before him by “due process”. Yet, he determined that the limitation of the statute prevented him from giving relief. That is, even though the decree was violative of the “due process” clause of the Federal Constitution, the statute prevented him from setting it aside. Obviously, then, the limitation of the statute violates the “due process” clause of the Federal Constitution (U. S. Const. Art. XIV, Sec. I—Appendix), unless, as the learned Vice Chancellor indicated, there

might be some other remedy open to appellants. It will be demonstrated under the next topic of this argument, that no such other adequate remedy exists.

4. No other adequate remedy was available to appellants.

Ordinarily, a suitor seeking to open a decree or judgment, must show both surprise and merit. The rule applies with equal force to applications by absent defendants to open decrees under R. S. 2:29-33, *Cresse v. Security Land-Investment Co.*, 54 N. J. Eq. 447.

However, the rule is inapplicable in the case *sub judice* because that decree is a nullity. On the other hand, if the decree were not a nullity, the principle clearly would be satisfied under the facts. "Surprise" is demonstrated by the Chancellor's holding that appellants' ancestor, Elva G. Moore, was not before him by "due process". "Merit" is also clear because of the desire to redeem—to pay all that is due.

"Merit" is also demonstrated by a rule of policy in the Court of Chancery, of such long standing that it has the attributes of *stare decisis*. The rule is stated by V. C. Lewis in *Harrington v. Horster*, 89 N. J. Eq. 270, as follows:

"The sale of land for nonpayment 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."

In *Welles v. Schaffer*, 98 N. J. Eq. 31, V. C. Backes said:

"The court will seize upon the slightest flaw, of substance, in tax sales, to restore property to the owner."

The Court below neglected to follow this rule of policy.

The learned Vice Chancellor did suggest, however, that appellants might have another remedy by some other means, stating:

"The bar of the statute in question is specifically limited to applications to reopen; it does no more. What success, if any, the petitioners would attain in seeking a remedy by other means I do not attempt to speculate; . . ." (p. 101)

A little reflection will demonstrate that no other remedy would be adequate.

The final decree in the tax foreclosure is regular on its face. An order for publication was regularly taken out. Publication ensued, and an affidavit of inquiry and mailing was regularly filed. The proceedings, on their face, show no irregularity. Had the Del Percios not been in possession of the premises, and had the complainant-appellant not failed to make inquiry of them, the decree unquestionably would have been valid. But those infirmities in the decree appear *dehors* the record, rendering it safe from collateral attack, *McCahill v. Equitable Life Assurance Society*, 26 N. J. Eq. 531.

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A collateral attack on the decree *sub judice* must necessarily admit its validity; whereas, in fact, it is a nullity. Any other remedy, such as a Bill to Redeem, would constitute a collateral attack, and by such a bill, appellants would be obliged to admit the validity of the decree from which they seek to redeem, *McCahill v. Equitable Life Assurance Society*, supra.

Hence, only a direct attack on the decree would give appellants adequate relief. They chose the method of filing a petition in the cause to make that direct attack. The only other available method would be the filing of a Bill for Review. Both methods, however, come within the ban of the statute. Each would be an “. . . application . . . to reopen the decree”. Moreover, the method of filing a petition in the cause is preferred over the remedy by Bill of Review; the latter method being outmoded.

Himmers v. Banville, supra;

In re O'Mara's Estate, 106 N. J. Eq. 311,
reversing 101 N. J. Eq. 713;

Morris v. Glaser, 106 N. J. Eq. 585, affirmed
110 N. J. Eq. 661;

Cottrell v. Tracy, 121 N. J. Eq. 96;

Morris County Building and Loan Association v. Walters, 122 N. J. Eq. 475; re-
versed 123 N. J. Eq. 548;

In re Kuser's Estate, 132 N. J. Eq. 260.

Clearly, no remedy was available to appellants other than the one they pursued.

5. Appellants are not estopped by notice.

The learned Vice Chancellor commented upon several questions raised by the appellees, without expressing any opinion thereon, stating:

“... a number of difficult questions are raised by complainant, e. g. Laches; Inequitable Conduct; Estoppel (the petitioners having had actual notice of the pendency of the cause through having received and opened a registered letter addressed to their grandmother, Annie B. Wildey, containing the notice to appear) upon which no opinion is expressed herein.” (p. 101)

But the letters received by the appellant, Anna A. Stevenson, were ineffective to constitute any sort of notice. One letter was addressed to her grandmother “Annie B. Wildey and her unknown heirs, devisees and personal representatives”; the other to “Mr. Wildey, husband of Annie B. Wildey”. Her grandmother had been dead for over four years. Her grandfather had predeceased her grandmother. Her mother, Elva G. Moore, her grandmother’s only heir, was in an insane asylum and was incompetent to advise her.

Mrs. Stevenson had no status, neither did her co-appellant, William J. Moore. They had no rights in the property. At the most, they were but heirs expectant. Their interest was not even in the realm of contingency—it was a mere possibility. But the possibility also existed that Mrs. Moore might have made a Will prior to her insanity, disinheriting appellants. It was also possible for her to have re-

gained her sanity, making a Will which would disinherit appellants.

Since a decree is *res judicata* only as to parties and their privies, it necessarily follows that the receipt by Mrs. Stevenson of the notices would create no estoppel against her save in the event she was, at that time in privity with her mother, Elva G. Moore. But the rule as to privies is otherwise:

“Thus it has been said that privity implies succession; that privies occupy that relation to others because of derivative rights of property; *that a privy must come after him to whom he is privy, and never precedes*; that ‘privies’ must mean nothing more than *claiming under*; that, except to the extent to which one person has succeeded to an estate or interest formerly held by another, there can be no privity between them, no matter what were or are their relations to each other, or to the same piece of property; *that kinship, whether by affinity or consanguinity, does not create privity, except when it results in the descent of an estate from one to another.*” (italics supplied) 50 *Corpus Juris* 405, Sec. 1.

Obviously, appellants did not become privies of their mother until her death on May 3, 1944. No estoppel by notice could work against them until after that date, and that date was long subsequent to the entry of the final decree herein.

6. There was no laches.

The appellees argued that appellants were guilty of laches. True, Mrs. Stevenson received the notices addressed to her deceased grandmother and grandfather on April 13, 1943. She did nothing until she and her co-appellant contacted their solicitor, and he telephoned to Mr. Wittes on November 6, 1943. But, as it has heretofore been pointed out, the appellants had no interest and no standing. They were not privies. They could not receive the advice of their mother who was incompetent to advise them.

When inquiry was finally made by them through their solicitor on November 6, 1943, they learned that two months previously, that is, on September 8, 1943, the final decree had been entered. They also knew it had been entered in a cause to which neither their mother nor the Del Percios had been made parties; that no inquiry had been made of them, although Mrs. Stevenson had signed her name to the return registry receipt, and her address could have been obtained through the postal authorities.

On the other hand, as soon as their mother died, they contacted their solicitor. They then had an interest to protect. The correspondence between their solicitor and Mr. Wittes shows no delay on their part, because, as soon as there was a refusal of amicable redemption, they filed their petition seeking to set aside the decree (pp. 40, 61). It is to be noted that Mr. Wittes on May 27, 1944, in replying to Mr. Bossle's letter of May 23, 1944, made the following offer:

“... if you will forward to me sufficient facts to show that an application might be considered

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to reopen the final decree of foreclosure, I might be able to save you the time of going to the trouble. If you will let me know the basis for your application I will be in a position to advise my client." (pp. 59, 60)

Hence, the only delay of which the appellees may complain is the period between April 13, 1943, when the notices were received, and September 8, 1943, when the final decree was entered. During that period appellants were not privies and they had no interest. Laches connotes more than mere delay. As this Court said in *Hinners v. Banville*, supra:

"Laches involves something more than mere delay, mere lapse of time. There must be delay for a length of time which, unexplained and unexcused, is unreasonable under the circumstances, and which has been prejudicial to the defendant."

There was nothing which was prejudicial to the appellees. There was no acquiescence on the part of the appellants. The letter written by their solicitor on November 6, 1943 (p. 57), the day of the telephone conversation (p. 57), put the complainant-appellee on notice as to the defective foreclosure. Clearly, there was no laches.

7. Respondents-Appellees are not innocent vendees without notice.

The Del Percios claim they were innocent purchasers without notice. If so, a curious anomaly would be presented. But, without commenting on

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that, it is sufficient to note that their claim is without substance.

Jerry Del Percio was under contract with Mrs. Wildey. Frank and Mary Del Percio impliedly admit that they were the real beneficial vendees (p. 78). They made a payment on that contract as late as August 27th, 1943. Yet, on September 11, 1943, they simply repudiated the Wildey contract, accepting the deed of Bonded Certificate Corporation and giving it their purchase money mortgage. They did that without procuring a cancellation of the Wildey contract.

They claim they knew neither Mrs. Wildey nor her address. But they were put upon notice that Mrs. Wildey might be dead because of the reference in the letters they received to "her unknown heirs, devisees and personal representatives" (p. 76). They knew Mr. Lamoreaux and had been making their payments to him. Hence, in order to ascertain whether the foreclosure cut off the interest of Mrs. Wildey and her heirs, as well as their interest in their contract with her, they were in duty bound to make inquiry of Mr. Lamoreaux. They were on notice as to Lamoreaux's knowledge, and were bound by such knowledge as he had. Lamoreaux knew all the facts.

CONCLUSION.

It is unconscionable that the decree herein should stand or that appellants should be denied the right to redeem the property which is now rightfully theirs.

It is respectfully urged that the order appealed from be reversed, and that the relief sought by appellants be granted.

Respectfully submitted,

W. LOUIS BOSSLE,

*Solicitor for and of Counsel with
Petitioners - Appellants, Wil-
liam J. Moore and Anna A.
Stevenson.*

To be argued orally by Mr. Bossle.

Appellants were unaware that the statute in question had already been considered by this Court in the case of *Wittes v. Repko*, 107 N. J. Eq. 132, until they received the complainant-appellee's brief. There, the facts were that there was a final decree in the tax foreclosure on May 5, 1927, the statute in question became law on April 3, 1928, and the application to reopen the foreclosure decree was not made until April 19, 1928. The appellants argued that the statute barred the right to relief because the application to reopen the decree was not made prior to August 5, 1927. This Court merely considered the question of whether the statute was retrospective or prospective in its operation, holding that it was prospective only. Significantly, however, Mr. Justice Parker, speaking for this Court, said:

“ * * * where, as in this case the decree was signed May 5, 1927, the right of application, if not cut off as of August 5, 1927, was cut off instantaneously when the statute took effect. Such an effect is, to say the least, startling; and we are

APPENDIX.

STATUTORY AND CONSTITUTIONAL
PROVISIONS INVOLVED.

The statutory and constitutional references on which appellants predicate their right to relief are as follows:

R. S. 54:5-87. "The court of chancery, upon the filing of a bill to foreclose the right of redemption, may give full and complete relief under this chapter, in accordance with other statutory authority and with the practice of the court, to bar the right of redemption and to foreclose all prior or subsequent alienations and descents of the lands and encumbrances thereon, except subsequent municipal liens, and to decree an absolute and indefeasible estate of inheritance in fee simple, to be vested in the purchaser. The decree shall be final upon the defendants, 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, *and no application shall be entertained to reopen the decree after three months from the date thereof, and then only upon the grounds of lack of jurisdiction or fraud in the conduct of the suit.*" (Italics supplied)

R. S. 2:29-33. "In case any such absent defendant, against whom any decree shall be made as aforesaid, his heirs, devisees, executors, ad-

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ministrators or assigns, shall, within six months after notice in writing be given to him or them of such decree, *or within three years after such decree in case no notice as aforesaid shall be given*, petition the chancellor touching the matter of such decree, and pay or secure to be paid, such costs as the chancellor shall think reasonable to order and direct, then and in such case the person so petitioning may be permitted to appear and answer the complainant's bill, and thereupon such proceedings shall be had as if such absent defendant had appeared in due season and no decree had been made; or such absent defendant may, within the times aforesaid, file his bill of complaint in the court of chancery, for an account and settlement of the amount which was due to the complainant at the time of the decree, and to compel such complainant to refund and repay what he may have wrongfully recovered and received, together with the interest from the time of the receipt thereof, with costs of suit, the former decree against such absent defendant notwithstanding." (Italics supplied)

Rule 37, Court of Chancery. "The complainant or his solicitor, or his agent actually entrusted with the management and conduct of the suit, in all cases where the residence and post-office address of an absent defendant not actually served with the notice to appear shall not be known, shall make diligent and careful inquiry therefor; such inquiry shall, as to persons made defendants by reason of a judgment, attachment or decree, include inquiry of the plaintiff's attorney or solicitor in such judgment, attachment or decree, if residing within this

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State, and as to persons made defendants by reason of any mortgage or contract stated in the bill, shall include inquiry of the person who made the mortgage or contract, if known and residing in this State; such inquiries may be made in person or by letter, and shall state that suit has been commenced against the person inquired for, and that the object of the inquiry is to give him notice of such suit, that he may appear and defend it; and when made by letter shall enclose a proper postage stamp for return of an answer."

New Jersey Constitution, Article III. "The powers of the government shall be divided into three distinct departments—the legislative, executive and judicial; and no person or persons belonging to, or constituting one of these departments, shall exercise any of the powers properly belonging to either of the others, except as herein expressly provided."

New Jersey Constitution, Article VI, Section I, par. 1. "The judicial power shall be vested in a court of errors and appeals in the last resort in all causes, as heretofore; a court for the trial of impeachments; a court of chancery; a prerogative court; a supreme court; circuit courts, and such inferior courts as now exist, and as may be hereafter ordained and established by law; which inferior courts the legislature may alter or abolish, as the public good shall require."

United States Constitution, Article XIV, Section I: "... Nor shall any State deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

The history of the United States is a story of growth and expansion. From a small collection of colonies on the eastern coast, it grew into a vast nation that stretched across the continent. The early years were marked by struggle and conflict, as the colonies fought for their independence from British rule. The American Revolution was a turning point in the nation's history, leading to the signing of the Declaration of Independence in 1776. The new nation then faced the challenge of building a government that would unite the diverse states and provide for the common good. The Constitution was drafted in 1787 and put into effect in 1789, establishing a system of checks and balances that has endured to this day. The United States continued to expand westward, settling new territories and states. This process was often accompanied by conflict with Native American tribes and the Mexican Empire. The Mexican-American War (1846-1848) resulted in the acquisition of vast territories in the southwestern United States. The Civil War (1861-1865) was a defining moment in the nation's history, fought over the issue of slavery. The war ended with the Union's victory and the preservation of the nation. The Reconstruction period (1865-1877) followed, as the country sought to rebuild and integrate the newly freed African American population. The late 19th and early 20th centuries saw rapid industrialization and the rise of a powerful middle class. The United States emerged as a global superpower, leading the world in many areas of science, technology, and culture. The 20th century was marked by significant events, including World War I, the Great Depression, and World War II. The United States played a central role in the defeat of the Axis powers and the establishment of the United Nations. The Cold War era (1947-1991) saw the United States and the Soviet Union as the two superpowers of the world, engaged in a tense rivalry. The end of the Cold War led to a period of relative peace and global cooperation. The 21st century has brought new challenges, including the September 11 attacks, the global financial crisis, and the rise of the Internet. The United States continues to be a major force in the world, striving for peace, justice, and progress for all its citizens.

New Jersey Court of Errors and Appeals

Between

BONDED CERTIFICATE CORPORATION,
a corporation of the State of
New York,
Complainant-Appellee,

and

ANNIE B. WILDEY, *et als.*,
Defendants,

WILLIAM J. MOORE and ANNA A.
STEVENSON,
Petitioners-Appellants,

JERRY DEL PERCIO, MARY DEL
PERCIO and FRANK DEL PERCIO,
Respondents-Appellees.

On Appeal from
the Court of
Chancery.

BRIEF OF COMPLAINANT-APPELLEE.

(Emphasis ours, unless otherwise stated.)

Preliminary Statement.

This is an appeal from an order of the Chancellor dismissing the petition of petitioners-appellants to open a final decree of foreclosure of a tax sale certificate, for the redemption of the lands described therein, for an accounting, for an order setting aside a deed for said lands from complainant-appellee to respondents-appellees, Frank Del Percio and Mary Del Percio, and a mortgage from them to complainant-appellee.

Complainant-appellee filed its foreclosure bill on February 17, 1943 against Annie B. Wildey and her unknown heirs, devisees and personal representatives in accordance with the provisions of R. S. 54:5-87 and proceeded *ex parte* to a final decree on September 8, 1943.

Exactly one year later, on September 8, 1944 petitioners-appellants filed their petition to reopen the final decree of foreclosure.

It is respectfully submitted that the appeal should be dismissed.

POINT I.

The petition to open the final decree was addressed to the discretion of the Chancellor and is therefore not appealable.

This court has repeatedly held that where an order refusing to open a decree of the Court of Chancery is not shown to be an abuse of discretion or the result of mistake or imposition practiced on that court it is not reviewable in this court, as the question as to whether or not a decree shall be opened rests within the discretion of the court making the decree and this court will not substitute its discretion for the discretion of the Court of Chancery. *Witkorowicz v. Stesko*, 134 N. J. Eq. 383; *Investment B. & L. Assn. v. Athene Holding Co.*, 132 N. J. Eq. 309; *In re Whittier*, 115 N. J. Eq. 563; *Lurie v. J. J. Hockenjos Co.*, 115 N. J. Eq. 304; *Pinckney v. Hudson County Nat. Bank*, 112 N. J. Eq. 376; *Masionis v. Romel*, 101 N. J. Eq. 780; *Williams, Jr. v. Lowe*, 79 N. J. Eq. 173. That the Chancellor exercised his discretion in denying the application to open the decree is implicit in the conclusions of the Vice-Chancellor (S. C., pp. 105-106).

POINT II.

R. S. 54:5-87 renders untenable, after three months, a petition to open the final decree.

Cooley on Taxation, Volume 3, Section 1561, is authority for the statement that:

“Now the purchase at a tax-sale is clearly a contract. It is made under the law as it then exists, and upon the terms prescribed by the law. No subsequent statute can import new terms into the contract, or add to those before expressed. If it could be changed in one particular, it could be in all; if subject to legislative control at all, it is wholly at the legislative mercy.”

and

“The rights of one under a tax certificate are determined by the laws, in force, when the certificate is acquired.” Cooley, Vol. 3, Sec. 1453; *Burgin v. Rutherford*, 56 N. J. Eq. 666, affirmed in *Kaighn v. Burgin*, 56 N. J. Eq. 852.

The complainant-appellee's contract (evidenced by the tax sale certificate) is fixed by the provisions of the Tax Sale Revision. An essential element of that contract is R. S. 54:5-87, which recites as follows:

“The court of chancery, upon the filing of a bill to foreclose the right of redemption, may give full and complete relief under this chapter, in accordance with other statutory authority and with the practice of the court, to bar the right of redemption and to foreclose all prior or subsequent alienations and descents of the lands and encumbrances thereon, except subsequent municipal liens, and to decree an absolute and indefeasible

estate of inheritance in fee simple, to be vested in the purchaser. The decree shall be final upon the defendants, 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, and *no application shall be entertained to reopen the decree after three months from the date thereof, and then only upon the grounds of lack of jurisdiction or fraud in the conduct of the suit.*"

This section of the Tax Sale Revision, it would appear, is dispositive of the entire matter. The purpose of the legislation was to remove the doubt that had been created under the Martin Act about titles acquired through the non-payment of taxes. Incidentally, the decision in this case will be far reaching, as it will undoubtedly affect the titles to hundreds of thousands of properties in this State foreclosed by the various municipalities thereof under this act. The framers of the Tax Sale Revision also stated at R. S. 54:5-85 that:

"The provisions of this article shall be liberally construed as remedial legislation to encourage the barring of the right of redemption by suits in the court of Chancery and for the decreeing of marketable titles therein."

R. S. 54:5-87 is not an act that requires interpretation. "Construction is needed when the meaning of the statute is doubtful." *In re City Affairs Committee of Jersey City*, 129 N. J. L. 589, 593. "Where the legislative design is stated in clear, certain and unambiguous language, there is no room for construction. A judicial modification of the purpose thus signified would constitute the exercise of the legislative function." *Singer*

Sewing Machine Co. v. N. J. Unemployment Com., 128 N. J. L. 611, 616; *Alex Hamilton Hotel Corp. v. Bd. of Review*, 127 N. J. L. 184, 186; *White v. State Bd. of Tax Appeals*, 123 N. J. L. 350, 353; *Ott v. Braddock*, 119 N. J. L. 507; *Rudderow v. West Jersey Ferry Co.*, 31 N. J. L. 512, 515; *Douglass v. Freeholders, &c.*, 38 N. J. L. 214; *State v. Brewster*, 42 N. J. L. 125; *Heston v. Atlantic City*, 93 N. J. L. 317; *In re City of Passaic*, 94 N. J. L. 384, 386; *Fedi v. Ryan*, 118 N. J. L. 516, 517; *Public Service Co-ordinated Transport v. State Bd. of Tax Appeals*, 115 N. J. L. 97; *Herod v. Mutual Chemical Co. of America*, 115 N. J. L. 369, 372.

If any construction is to be given to the act, it should be liberal as stated by the legislature in R. S. 54:5-85 and also because, "This being a remedial statute, it should receive a liberal, rather than a narrow construction." *West Jersey, &c. Co. v. Bd. of Pub. Utility Commrs*, 8 N. J. Misc. R. 899, 901; *Erie Railroad Co. v. Public Utility Comrs*, 89 N. J. L. 57, 67; *Hoguet v. Wallace*, 28 N. J. L. 523; *Snegon v. Consolidated, &c. Ins. Co.*, 117 N. J. Eq. 325, 329; *Realty Co. v. Burghardt*, 91 N. J. Eq. 120; *Holmes v. Chester*, 26 N. J. Eq. 79. In *Conservation Development Board v. Veedler*, 89 N. J. L. 561, this Court in considering remedial legislation said (at p. 563):

"The act under consideration is a remedial one, and in determining the construction to be given to it the court is to consider what the mischief was that the legislature sought to remedy, as well as the remedy intended to be provided by that body to cure the mischief. And, as was said by Sir William Blackstone, in dealing with this subject, 'It is the business of the judges so to construe such statutes as to suppress the mischief, and advance the remedy.'"

See, also, *Harcum v. Greene*, 111 N. J. L. 129, 131, where the court said: "In construing remedial statutes three things must be considered: The old law, the mischief and the remedy."

The Court of Chancery correctly applied R. S. 54:5-87 as a reference to the Vice-Chancellor's conclusions (S. C., pp. 96-101) will disclose.

The first point raised by the petitioners-appellants is that the decree is a nullity. Although the petitioner-appellants stated in the Petition of Appeal (S. C., p. 111, ll. 14-15) that the final decree was "defective" it was not suggested therein that the "decree is a nullity." It is therefore submitted that this point has not been properly presented and need not be considered here.

The contention of petitioners-appellants, however, is neither supported by the facts nor the law. Chancery Rule 37 provides that inquiry as to absent defendants "may be made in person or by letter." The proofs show that diligent and careful inquiry was made to ascertain whether Annie B. Wildey, the owner of record of the lands, was living or dead and if dead, the names of her heirs, devisees and personal representatives. The nature of the inquiry is set forth in an affidavit made by the solicitor of the complainant-appellee on February 16, 1943 (S. C., pp. 6-17) and annexed to the bill of complaint, affidavit of solicitor of complainant-appellee made on October 11, 1944 (S. C., pp. 79-84), and affidavit by William S. McGrath, Vice-President of complainant-appellee on October 6, 1944 (S. C., pp. 90-95).

After such investigation was made, an order of publication was entered in the cause, pursuant to which a notice addressed to Annie B. Wildey and Her Unknown Heirs, Devisees and Personal Representatives, and to Mr. Wildey, husband of Annie

B. Wildey, was published and mailed, *by registered mail*, to them at the various addresses for said Annie B. Wildey then known to the complainant-appellee, *two of which notices it is admitted by the petitioners-appellants were received by the petitioner-appellant, Anna A. Stevenson, and communicated to the other petitioner-appellant, William J. Moore* (S. C., p. 35, S. C., p. 47).

Unknown to complainant-appellee during the course of the foreclosure suit, which proceeded to final decree *ex parte*, but developed on the application to open the final decree by petitioners-appellants, it appears that said Annie B. Wildey, the grandmother of petitioners-appellants, died intestate at Philadelphia on November 4, 1938, leaving her surviving as her only heir at law, Elva G. Moore, the mother of petitioners-appellants (S. C., p. 45); that said Elva G. Moore died intestate at Philadelphia on May 3, 1944, leaving her surviving as her only heirs at law, petitioners-appellants (S. C., p. 45). Although petitioners-appellants assert that their mother, Elva G. Moore, suffered an injury and became an incompetent (S. C., p. 46, ll. 27-37), there is no competent *evidence* in the cause establishing the fact. Petitioners-appellants also state that no general guardian was ever appointed for their mother (S. C., p. 46, ll. 39-41).

There is also proof in the cause that notice of the final time and place fixed by the Chancellor for redemption of the tax sale certificate mailed by registered mail to Annie B. Wildey and Her Unknown Heirs, Devisees and Personal Representatives at the property under foreclosure, was delivered by the postal authorities to Lamoreaux Real Estate Agency on or about August 11, 1943, prior to the entry of the final decree (S. C., p. 83). The Lamoreaux Real Estate Agency was

also advised of the existence of the tax sale by a letter addressed to it on February 16, 1943, the day before the bill of complaint was filed (S. C., pp. 87-89). Mention is made of these facts here because the petitioners-appellants assert under their Point I and Point 7 that inquiry should have been made of the Lamoreaux Real Estate Agency.

It is also stated by the petitioners-appellants that inquiry should have been made of Jerry Del Percio, Frank Del Percio and Mary Del Percio regarding the whereabouts of Annie B. Wildey and the fact of her death. However, the uncontradicted facts are that they never saw Annie B. Wildey; that they had never heard of Elva G. Moore nor of Anna A. Stevenson and William J. Moore, the petitioners-appellants; that all of their dealings with reference to the property had been with the Lamoreaux Real Estate Agency (S. C., pp. 73-78). Nor does the fact that the Del Percios were not made defendants in the cause enlarge the rights of petitioners-appellants. *Kurzius v. The Hillside Land Co.*, 112 N. J. Eq. 466.

The contention of the petitioners-appellants appears to be that the complainant-appellee should have ascertained from the Del Percios that they paid rent to the Lamoreaux Real Estate Agency; that inquiry regarding Annie B. Wildey should then have been made of that agency. This is a specious argument for, in the first place, the Lamoreaux Real Estate Agency had no financial interest in the property, in the second place, it received notice of the suit addressed to Annie B. Wildey and Her Unknown Heirs, Devisees and Personal Representatives in the course thereof (S. C., p. 83), and finally what would naturally have followed would have been a communication to Anna A. Stevenson and/or William J. Moore,

the petitioners-appellants. However, the *admitted* fact is that both petitioners-appellants had *actual knowledge* of the pendency of the foreclosure suit five months prior to the entry of the final decree; that they received notice thereof addressed to Annie B. Wildey and Her Unknown Heirs, Devisees and Personal Representatives from the solicitor of the complainant-appellee, and that they did not communicate with said solicitor to inform him of the fact of the death of Annie B. Wildey, nor did they inform him that Elva G. Moore, their mother, had any interest in the property. On the contrary they sat by silently and suffered the solicitor of complainant-appellee to proceed with the foreclosure suit against "Annie B. Wildey and Her Unknown Heirs, Devisees and Personal Representatives" with knowledge of the fact that Elva G. Moore was the sole heir at law of Annie B. Wildey, and now they seek to take advantage of that concealment by asserting that complainant-appellee had failed to exercise due diligence in connection with its inquiry.

Now, the purpose of such an inquiry is to get home to the defendants or persons closely connected with them, information regarding the fact that the suit is pending in order that steps may be taken to protect the rights, if any, of such defendants. Here the notice was actually received by the petitioners-appellants. In other words, everything was accomplished which the rules of court regarding the making of diligent and careful inquiry intends shall be accomplished * * * notice to the defendants or persons closely connected with them in order to insure or at least minimize the probability of the taking of a decree by surprise.

In *Horner v. Corning*, 28 N. J. Eq. 254, involving a foreclosure action against an absent defendant in which notice was not delivered to her be-

cause of her illness, the Court of Errors and Appeals said (at p. 258) :

“It, however, very satisfactorily appears that the complainant did all that the law required him to do in order to bring in the appellant as an absent defendant. The solicitor of the complainant made inquiries of the proper person as to the residence of the appellant; upon making such inquiries, received correct information, upon which he acted and sent the notice required by the statute to the legal residence of the appellant. That the relatives of appellant who received the notice did not, on account of the impaired health of appellant, communicate the notice to her, cannot affect the complainant.”

It is suggested to the court that the terminology employed in that cause is particularly pertinent to the one at issue.

The case of *Hinners v. Banville*, 114 N. J. Eq. 384, cited by petitioners-appellants is not pertinent. In that case some of the defendants in the mortgage foreclosure suit actually resided in the property at the time the bill was filed. Notwithstanding that fact complainant made an affidavit in the cause that she had been unable to ascertain their whereabouts and proceeded against them as against absent defendants. That is not the case here. Further, in connection with the foreclosure of a mortgage there is no statutory prohibition against opening a final decree after three months except for fraud or lack of jurisdiction as prevails under the statute authorizing tax foreclosures (R. S. 54:5-87).

It is suggested by the petition that Elva G. Moore, the heir at law of Annie B. Wildey, was incompetent at the time of the entry of the final decree and that a guardian *ad litem* should have

been appointed for her in the proceeding. It is submitted that there is no adequate proof before the court that Elva G. Moore was a lunatic in the legal sense. In *Eckman v. Wood*, 108 N. J. L. 105, where the question considered by the Court was whether a witness was competent to testify, this Court said (at p. 107):

“The other medical witness, Dr. Ackerman, testified that from November, 1928, down to the time of the trial, May 9th, 1930, the defendant was not mentally competent to transact financial business and understand the nature of it.

“Now this is far from establishing mental incompetency sufficient to disqualify the defendant as a witness in his own behalf.

“Even an adjudication under a writ *de lunatico inquirendo* is merely prima facie proof of disqualification, open, and subject to rebuttal.”

Assuming *arguendo* that Elva G. Moore was a lunatic, that would still not alter the case because under R. S. 54:5-87, a decree in an action of this kind may only be set aside on the grounds of *fraud and lack of jurisdiction*. In *Watkinson v. Watkinson*, 67 N. J. Eq. 142, 153, Vice-Chancellor Pitney held that a decree made where there is a lack of jurisdiction in this court is invalid and void *ab initio*. A decree or judgment against a lunatic for whom a guardian has not been appointed is *not* void in this State but may be voidable.

32 C. J. p. 790, sec. 653, is authority for the statement that, “where the court has otherwise jurisdiction, the mere insanity of the person against whom a judgment is rendered is no ground for vacating or setting aside such judgment.”

In *Weber v. Weitling*, 18 N. J. Eq. 441, this court held that the estate of a lunatic may be pro-

ceeded against by attachment; and he need not appear and be defended by his next friend.

In *Ammon v. Wiebold*, 61 N. J. Eq. 351, where a complainant filed a bill against a person *known by him to be a lunatic*, the court held that it was his duty to make known the lunacy to the court and ask for the appointment of a guardian *ad litem*. The court stated, however (at p. 357):

“If, in this case, the complainant had merely made an innocent mistake in practice, or had been ignorant of the mental condition of the defendant, and the pendency of the proceedings had actually been brought to the attention of the friends of the defendant in time to enable them to protect the interests of their relative, little harm would have resulted from the irregularity, for the defendant has no defence to the mortgage.”

Although in suits in equity, a lunatic defends by a guardian *ad litem* (*In re Martin*, 86 N. J. Eq. 265, 270), it has been held that, “The failure to make timely appointment of a guardian *ad litem*, is, at most, error in fact merely; *the appointment of such a representative is in no sense jurisdictional.*” *La Bell v. Quasdorf*, 116 N. J. L. 368, 371. And “A judgment against one under a disability is not vacated as a matter of right, unless it is void.” *La Bell v. Quasdorf, supra*.

In *Weining v. Selitto*, 121 N. J. Eq. 60, Vice-Chancellor Bigelow held (at p. 62): “A judgment or decree against an infant who was not represented by a guardian *ad litem*, is not void and subject to collateral attack.” Although the court opened the decree in that case, it said (at p. 63): “The situation would be different if the disability of petitioner did not appear in the record.” Lunatics and infants are, of course, in the same class and the same rules apply.

In *Springgarden B. & L. Ass'n. v. Fusaro*, 124 N. J. Eq. 205, where a master accepted an *ex parte* affidavit as proof against infant defendants instead of the testimony of witnesses upon which a final decree was predicated, this court held (at p. 206):

“While the procedure adopted by the master was erroneous, the judgment was not void. *The decree unalterably binds the parties, including the infants, and cannot be questioned collaterally.* ‘A purchaser of land sold pursuant to the decree of a court of general jurisdiction, assumes no responsibility for the correctness of the legal principles on which the decree is founded. All he need do is to see that the court had jurisdiction of the parties and of the subject-matter of the suit and that the decree pronounced was within the scope of the pleadings. A record showing these facts must be accepted by every domestic tribunal as an undisputable verity.’ ”

Assuming further that Elva G. Moore was a lunatic, her death on May 3, 1944, terminated her disability and even if the limitation set forth in R. S. 54:5-87 did not apply as against her because she was an incompetent (although, having in mind the purpose of this remedial legislation, it undoubtedly excepts no one), upon her death, any exceptional treatment which she or her estate was entitled to, or subject to, as a lunatic ceased. *Burke v. Shreve*, 39 N. J. L. 207, 214. In other words, giving the petitioners-appellants the benefit of their ancestor's alleged disability, the very latest time within which the petition might have been filed would have been August 3, 1944.

The next point argued by petitioners-appellants is that “2. The limitation of R. S. 54:5-87 is Inapplicable to Appellants. (a) It applies only to valid decrees,” and cites in support thereof *An-*

derson v. Independent Order of Foresters, 98 N. J. L. 684. That case is not pertinent for there the defendant was a foreign corporation authorized to do business in this state and in connection therewith appointed the commissioner of banking and insurance as its agent upon whom process might be served. Instead of serving the commissioner of banking and insurance with process the plaintiff served the secretary of a local lodge (who had no right to accept service) and thereby assumed that the court had jurisdiction over the defendant for the purpose of rendering a *personal* judgment. The Supreme Court correctly held that the lower court was without jurisdiction because service of process had not been made. That is not the situation here. This is an action in *rem*, jurisdiction having been acquired by substituted service in accordance with the law of this state. *Cona v. Henry Hudson Co.*, 86 N. J. L. 154, 160; *Stevens v. Associated Mortgage Co.*, 107 N. J. Eq. 297, 299.

The next point (2.b.) argued by petitioners-appellants is that R. S. 54:5-87 is in *pari-materia* with R. S. 2:29-33, and only the latter controls. This is contrary to the position taken by petitioners-appellants in the Court of Chancery and also in the Petition of Appeal where they state as a basis for appeal that "the statutes R. S. 54:5-87 and R. S. 2:29-33 are in *pari-materia* and must be construed together in order to give expression to a sound legislative policy (S. C., p. 110, lls. 37-40).

R. S. 2:29-33 is included in the Chancery Act of 1902 (p. 516, sec. 18, C. S., p. 416, sec. 18). This section provides that decrees against absent defendants may be opened within *three* years. R. S. 54:5-87 was adopted in 1928 (Ch. 211). This amendment to the Tax Sale Revision provides

that "no application shall be entertained to reopen the decree after three months from the date thereof." The original Tax Sale Revision of 1918 (C. S. Suppl. sec. 208-44a (52)) did not contain this provision, and it was obviously included in the amendment of 1928 for the purpose as stated therein, to wit: "This provision shall be liberally construed as remedial legislation to encourage the barring of the right of redemption by suits in the Court of Chancery and for the decreeing of marketable titles therein, and to discourage barring the right of redemption by act of the purchaser in serving notices to redeem and filing and recording the proceedings as otherwise provided." Section 2 of the same act (P. L. 1928, p. 384) provides, "*All acts and parts of acts inconsistent with this act are hereby repealed.*"

It cannot be disputed that the foregoing provision of the general Chancery act of 1902 (R. S. 2:29-33) is *inconsistent* with the Tax Sale Revision of 1918 as amended by P. L. 1928, Chap. 211 (R. S. 54:5-87) for the former provides generally that a decree against absent defendants may be opened within *three years* and the latter specifically provides that in a *tax foreclosure proceeding* no decree may be reopened after *three months*. By the terms of the latter act, then, the former act (Chancery act) is *expressly repealed* as to all tax foreclosure decrees to the extent of the inconsistency.

If the contention of the petitioners-appellants as it appears in the Petition of Appeal is followed, *i. e.*, the reading of both acts (R. S. 2:29-33 and R. S. 54:5-87) together, it leads to absurd results. This is how it would read, "In case any such absent defendant, * * * his heirs, * * * shall * * * within three years after such decree * * * then and in such case the person so petitioning

may be permitted to appear and answer the complainant's bill (R. S. 2:29-33), (but) "no application shall be entertained to reopen the decree after three months from the date thereof." (R. S. 54:5-87)

In view of the plain and unambiguous language employed in R. S. 54:5-87 it is impossible to reconcile it with the earlier statute (Chancery act). In *Trenton Saving Fund Society v. Wythman*, 104, N. J. Eq. 271, Chancellor Walker said (at p. 274):

"All consistent statutes, which can stand together, though enacted at different dates, relating to the same subject, and hence, briefly, called *in pari materia*, are treated prospectively, and construed together, as one act. *Farrell v. State*, 54 N. J. Law 421. But where an act is plain and unambiguous in its terms, the rule is fundamental that there is no room for judicial construction since the language employed is presumed to evince the legislative intent. In *re City of Passaic*, 94 N. J. Law 384."

See, also, *Douglass v. Freeholders*, 38 N. J. L. 214; *State v. Brewster*, 42 N. J. L. 125; and *Heston v. Atlantic City*, 93 N. J. L. 317. In *In re City of Passaic, supra*, the court said (at p. 384):

"In consonance with his principle it has been held that it would be a perversion of the rule to so apply it as to defeat the expressed will of the legislative body, so as to control the language of subsequent statutes by any supposed policy of previous statutes, even if *in pari materia*."

The court continued (at p. 387):

"Thus it has been held that where in a subsequent statute on the same subject as a former one, the legislature uses different lan-

guage in the same connection, the courts must presume that a change of the law was intended."

The petitioners-appellants urged the court to ignore completely the provision of R. S. 54:5-87 which limits the time to open a tax foreclosure decree to three months. Such a course would be contrary to a fundamental principle of statutory construction. *In Steel v. Board*, 89 N. J. L. 609, the court said:

"A statute ought, upon the whole, to be so construed that if, it can be prevented, no clause, sentence or word shall be superfluous, void, or insignificant."

See, also, *Roff v. Passaic*, 10 N. J. Misc. R. 1133, 1136.

The Chancery act of 1902, of which R. S. 2:29-33 is a part, is a *general statute* outlining the procedure and practice of the Court of Chancery. R. S. 54:5-87 is a *special statute* limiting the opening of decrees to *three months in tax foreclosure cases only*. This court held, in *State v. Masnik*, 125 N. J. L. 35 (at p. 36):

"It is an elementary canon of construction that the general regulation yields to the particular and is modified *pro tanto*. The special provision is deemed an exception grafted upon the general rule."

See, also, *Jersey City v. Hall*, 79 N. J. L. 559.

It is respectfully submitted that the contention of petitioners-appellants that R. S. 2:29-33 must be construed with R. S. 54:5-87 is untenable by every rule of statutory construction.

The next point argued by petitioners-appellants under their heading No. 3 is that the statute (R.

S. 54:5-87) is unconstitutional in that it encroaches upon the inherent powers of the Court of Chancery by limiting the time within which its decrees may be opened.

This court considered the statute in *Wittes v. Repko*, 107 N. J. Eq. 132, and although there the court affirmed an order opening the decree because the decree was entered prior to the adoption of the statute, on the theory that all tax statutes are deemed to have a prospective and not retrospective effect, yet it was clear that the act would be enforced as to decrees entered after its enactment.

R. S. 54:5-87 is analagous to 2:29-119 which provides that all appeals from final decrees shall be taken within three months. In *Nash v. Liederman & Nash Bldg. Co.*, 103 N. J. Eq. 287, where the Court of Chancery modified an order made after the time for appeal had expired, this court in reversing the lower court said (at p. 292):

“If this be within the province of the Court of Chancery then there is no finality to any order which the court can make, for if an order can be made modifying an order made two years and three months prior thereto an order of modification could as well be made ten or twenty years subsequent to the making of the original order. If this be the law the right accorded a party by the former order would never be secure.”

In *Fidelity, &c., Co. v. North Jersey Poultry Co.*, 123 N. J. Eq. 259, this court reversed the Court of Chancery which made an order opening an order of confirmation of a foreclosure sale after the time for appeal fixed by statute had expired. This court said (at p. 263):

“This is in accord with the well settled rule that a petition to open or vacate an order or

decree of the Court of Chancery cannot be entertained after the expiration of the statutory period allowed for an appeal from such order or decree."

In *Sparks v. Fortescue*, 75 N. J. Eq. 586, this court reversed an order made by the Court of Chancery opening a final decree in a suit to quiet title entered more than three months prior thereto although the time limited by statute for appeals in such cases was three months. See, also, *Grant Inventions Co. v. Grant Oil Burner Co.*, 104 N. J. Eq. 341; *Oddo v. Saibin*, 106 N. J. Eq. 453; *Smith v. Walton*, 96 N. J. Eq. 421.

Tax sales are made exclusively under a statutory power. Cooley on Taxation, 4th Ed., sec. 1382. In referring to tax foreclosure suits, Cooley states (sec. 1401):

"Concerning jurisdiction of the subject matter, it is only necessary to observe that it must come wholly from the constitution or statutes of the state; the common law giving to the courts no authority in such cases. Moreover, that which is conferred is a special and limited jurisdiction. * * * This principle is applicable to the case of a court of general jurisdiction, which in the particular case is exercising this peculiar special and limited authority, as well as to the case of special courts created for such special limited authority only."

The power to entertain a bill to foreclose a tax sale certificate was conferred upon the Court of Chancery by the legislature and in connection therewith, it is submitted, the legislature may fix limitations.

The limitation for opening the decree stated in R. S. 54:5-87 was obviously intended by the legislature to save the complainant in tax foreclosure

cases from the inconvenience and injustice resulting from a long period of limitation. In effect, the legislature limited the time within which an attack might be made upon the decree to the same period of time from which an appeal might be taken from the Court of Chancery in any other matter where a notice of *lis pendens* has been filed. This court has repeatedly upheld such limitation in connection with other cases. It is respectfully submitted that this statute is indistinguishable from the others mentioned in the cases cited above.

It is submitted that the cases cited by petitioners-appellants under this point are correct in principle but have no application here.

The next point argued by petitioners-appellants under this heading is that the act (R. S. 54:5-87) violates the "due process" clause of the Federal Constitution because it concludes the rights of Elva G. Moore, their ancestor. In connection therewith they have made a misstatement of fact by asserting that "The learned Vice-Chancellor determined that Mrs. Moore was not before him by 'due process.'" The Vice-Chancellor evidently concluded otherwise as he dismissed the petition to open the decree.

By the admission of petitioners-appellants, Elva G. Moore was an heir of Annie B. Wildey (S. C., p. 33), and they are the sole heirs of said Elva G. Moore (S. C., p. 32). She and they therefore came within that class of persons identified in the proceedings as the "unknown heirs, devisees and personal representatives of Annie B. Wildey." In *Silver v. Gattel*, 89 N. J. Eq. 402, the late Vice-Chancellor Lane held (at p. 404):

"Foreclosure is so much a proceeding *in rem* as to render notice to unknown heirs, devisees and personal representatives as a class due process of law. * * *

“Unless this were so wherever a situation developed in which the owners of property were unknown there would be no method of settling title save only under some statute of limitations. There could be no enforcement of liens or partition until the expiration of the time fixed by the statute of limitations.

* * * It is now settled that the legislature may constitutionally, in proceedings to quiet title, provide for notice to a defendant not known to be alive or dead and his unknown heirs, devisees and personal representatives. *American Land Co. v. Zeiss*, 219 U. S. 47; 55 L. Ed. 82.”

In *Cona v. Henry Hudson Co.*, *supra*, this court said (at p. 160):

“Every sovereign state has control over property within its borders. The conditions of the ownership of real estate in a given country, whether the owner be citizen or alien, resident or non-resident, are subject to the laws of the state concerning the holding and transfer thereof, and of establishing title thereto. * * * and notice by publication, &c., to non-resident owners and persons believed, to be dead, their heirs, devisees and personal representatives, under the provision of the Chancery act, clothes our Court of Chancery with power to decree a partition or sale in lieu of partition, and make good title thereto, whether by decree for actual partition, or through a deed of conveyance made by a master in chancery in pursuance of a decree for sale.”

In *Stevens v. Associated Mortgage Co.*, 107 N. J. Eq. 297, this court said (at p. 299):

“Process is the means of compelling a defendant to appear in court; and it need not necessarily be a subpoena or other writ, it may be an order or notice. Every state has the power to prescribe a reasonable notice which shall be given in order to subject a de-

pendant to the jurisdiction of its courts." In re Martin, 86 N. J. Eq. 265, 273; In re Hayden, 101 N. J. Eq. 361, 365; Bourne v. Levine, 100 N. J. Eq. 141. And no particular form of process is necessary to constitute due process of law. Gondas v. Gondas, 99 N. J. Eq. 473; Sheldon v. Sheldon, 100 N. J. Eq. 24, 26."

It is not disputed that the notice to "Annie B. Wildey and her unknown heirs, devisees and personal representatives" was duly published and mailed during the course of the proceeding prior to the entry of the decree *pro confesso*, and also that the copy of the notice was actually received by the petitioners-appellants in good time.

In *McCahill v. Equitable Life Assurance Society*, 26 N. J. Eq. 531, where in a foreclosure action against an absent defendant, the notice had been published in a newspaper other than the one stated in the order of publication, this court in referring to the matter of jurisdiction said (at p. 535):

"In such an instance, the cognizance over the case being vested in the tribunal by reason of the presence of the tangible subject of the controversy, *a formal notification of the judicial action of the parties interested is not absolutely essential to its validity*, and the consequence is that, in cases of this class, a notice of the action to a non-resident is no more necessary than is a notice to a resident. The *res* being within the jurisdiction, the judicial authority arises from that circumstance; and the consequence is, if the resulting judgment can be impeached by a non-resident on the ground that he was not given the notice of the action which the law requires, a similar exception would prevail if urged by a person resident in this state. * * * It seems impracticable to discriminate upon principle, between such instances. It certainly needs no reasoning to demonstrate that such a com-

petency in litigants to challenge the various steps of procedure after the final result, would render such result practically worthless. From the evident necessity of preventing the uncertainty with regard to the stability of legal proceedings in their concluded form, which would otherwise have supervened, the doctrine of estoppel by record came naturally into existence. The petitioner in this case proceeds upon the ground that if he should take the title by virtue of this decree, such title would be liable to be impeached by the absent defendant; but if this doctrine of estoppel exists, it is manifest that this could not be done, as such non-resident defendant being embraced in the decree, would be concluded by the record."

The next point raised by petitioner-appellants under heading No. 4 is that no other adequate remedy was available to them. The purpose of this argument is not plain to complainant-appellee. Whether the application to set aside the decree was made by petition to open or by bill for review, the limitation provided by R. S. 54:5-87 would still preclude an attack on the decree. Complainant-appellee desires to point out to the Court the fact that the petitioners-appellants have again misstated under this point that the Chancellor held that the appellants' ancestor, Elva G. Moore, was not before him by "due process."

It is also respectfully submitted that the rule laid down in *Harrington v. Horster*, 89 N. J. Eq. 270 (1918) and *Welles v. Schaffer*, 98 N. J. Eq. 31 (1925), cited by petitioners-appellants, is now superseded by the public policy laid down in R. S. 54:5-87 which was enacted in 1928. The statute was undoubtedly the direct result of those decisions.

The next point argued by petitioners-appellants under their heading No. 5 is that they are not

estopped by the notice which they received addressed to Annie B. Wildey and Her Unknown Heirs, Devisees and Personal Representatives. This court held otherwise in *Horner v. Corning, supra*.

The next point argued by petitioners-appellants under their heading No. 6 is that they were not in laches in presenting the petition to open the decree. Of course, the three month period fixed by R. S. 54:5-87 is dispositive of that issue. However, notice of the suit pursuant to the order of publication addressed to Annie B. Wildey and Her Unknown Heirs, Devisees and Personal Representatives was actually received by petitioner-appellant, Anna A. Stevenson, and communicated by her to the remaining petitioner-appellant. This notice was received by them on April 12, 1943, as appears by the returned registry receipts (S. C., p. 24). Complainant-appellee fails to comprehend the significance of the statement of petitioners-appellants, on page 20 of their brief, that there was nothing prejudicial to the appellees by their delay and that it was advised by them that its decree was defective. By that time the decree had been entered and the title conveyed. Not until 17 months after they had received actual notice of the suit and a year after the entry of the final decree did they file their petition in this cause. Although they had actual notice of the suit they failed completely to acquaint the solicitor of the complainant-appellee with the fact of the death of Annie B. Wildey and the names of her heirs, devisees and personal representatives; no steps were taken by them for the appointment of a guardian *ad litem* for Elva G. Moore claimed by them to have become incompetent; no steps were taken by them, as her nearest relatives and only heirs at law, to protect her interest, although they must have known that they would some day be the

owners of her entire estate; they made no effort to communicate with the complainant-appellee or its solicitor to inform him of the true situation, so that steps could be taken to acquaint the said Elva G. Moore of the fact that the suit was pending and make application to the Chancellor for the appointment of a guardian *ad litem* if that were necessary.

In the meantime complainant-appellee proceeded to final decree, sold the property to Frank and Mary Del Percio and took back a purchase money mortgage for part of the purchase price. In the meantime, also, the Del Percios made extensive repairs to the property (S. C., p. 78).

It is respectfully submitted that this constituted laches.

In *Avon-By-The-Sea Land & Improvement Co. v. Finn*, 56 N. J. Eq. 805, this court held (at p. 807):

“Laches, although not always fatal to an application to open a chancery decree or to an appeal from a refusal to open such a decree (*Day v. Allaire*, 4 Stew. Eq. 303, 315), is nevertheless, to be considered, and a decree suffered by default without valid excuse should not be opened, even although strictly there may be a defense, if to permit the decree to stand will work no injustice.”

In *Shearer v. Schaffer*, 109 N. J. Eq. 492, this court said (at p. 494):

“Courts of equity are alert to relieve against fraud, and are averse to forfeitures even for unpaid taxes; but they require that a party, even when deceived as to his legal rights, exercise some sort of diligence to ascertain and enforce them. The case at bar exhibits to us gross negligence in both particulars, disentitling complainant to any relief.”

In *Herder v. Garman*, 106 N. J. Eq. 13, the late Vice Chancellor Backes held (at p. 14): "Equity does not aid one whose indifference contributed materially to the injury he complains of."

There is also an equitable estoppel in favor of the complainant-appellee and the Del Percios, the bona fide purchasers for value, underlying which is the equitable maxim, "One who is silent when he ought to speak will not be heard to speak when he ought to be silent."

The final point raised by petitioners-appellants under their heading No. 7 is that the Del Percios are not innocent vendees without notice. This point does not appear to have been set forth in the Petition of Appeal and, it is submitted, should not be considered. The fact is that they were innocent purchasers for value. The Chancellor must have found so for in his conclusions (S. C., p. 106, lls. 17-23) he stated:

"I weighed and considered the equities involved in the situation of the Del Percios, the purchasers of the property from the grandmother whose default in payment of taxes led to the foreclosure suit. The Del Percios have now been made to deal with the purchasers at the tax sale and to again buy from it."

The Court's attention is called particularly to the complete absence of any offer on the part of petitioners-appellants to do equity. All that they desire to do is to open the decree and redeem. The disbursements of the respondents-appellees, the Del Percios, have been substantial. In fact they amount to \$3,340.00 (S. C., p. 78). The disbursements of complainant-appellee amount to \$891.65 (S. C., p. 92), making a total of \$4,231.65 disbursed. No suggestion is made in the moving

papers by the petitioners-appellants that the Del Percios and the complainant-appellee be placed in *status quo*.

The agreement annexed to the petition (S. C., pp. 42-45), under which Annie B. Wildey contracted to convey the property, is that the same would be sold to the Del Percios for \$2,200.00. The affidavits disclose that there was paid by them to Annie B. Wildey, her agent and her heirs, \$2,000.00 on account of the purchase price of \$2,200.00 (S. C., p. 78) although the agent of the owner claims he received only \$1,272.18 (S. C., p. 72). In addition to paying the sum of \$2,000.00 to Annie B. Wildey and her heirs, the Del Percios disbursed \$565.00 for repairs and \$775.00 (S. C., p. 78) to the complainant-appellee in connection with the purchase from them of the property.

If an account were taken and a balance struck it would be apparent that neither Annie B. Wildey nor her heirs had any equity in the property.

What the petitioners-appellants evidently intend is to attempt to make redemption of the tax sale certificate, keep the \$2,000.00 paid by the Del Percios to them, take the benefits of all of the repairs made by the Del Percios, which amount to another \$565.00, and then oust the Del Percios from the premises, or force them to enter into another contract with them for the purchase of the property. In view of the fact that they have already received under their contract substantially more than they agreed to sell the property for, it would be inequitable and unconscionable to allow the relief prayed for.

In *Jersey Acres, Inc. v. Paterson*, 122 N. J. Eq. 423, the court held (at p. 424):

“Since complainant has received the benefit far in excess of its share of the agreed

price to be paid in lieu of assessments, it should not in a court of equity take all the benefits without assuming the burden. The familiar maxim that 'He who seeks equity must do equity' applies."

See, also, *Fidelity Union Trust Co. v. Multiple Realty, &c.*, 131 N. J. Eq. 527, 539, and quotations therein on Pomeroy's Equity Jurisprudence.

An application to open a final decree is an appeal to the discretion of the court. *Harrington Co. v. Frank*, 99 N. J. Eq. 511, 512; *Steinhardt Bros. & Co. v. Cohen*, 86 N. J. Eq. 323; *West Jersey Trust Co. v. Bigham*, 118 N. J. L. 160.

In *Patsourakos v. Kolioutos*, 132 N. J. Eq. 87, Vice-Chancellor Woodruff held (at p. 92) that:

"THE APPLICATION OF THE MAXIM THAT THOSE who seek equity must do equity, is not limited to any particular class of cases; it is applied whenever necessary to promote justice. *Mutual Benefit Life Insurance Co. v. Brown*, 30 N. J. Eq. 193; affirmed, sub. nom. *Brown v. Mutual Benefit Life Insurance Co.*, 32 N. J. Eq. 809. See, also, *Reeves v. Cooper*, 12 N. J. Eq. 223; *General Proprietors of Eastern Division of New Jersey v. Force's Executors*, 72 N. J. Eq. 56; 68 Atl. Rep. 914; *Gillies v. Dyer*, 93 N. J. Eq. 348; 116 Atl. Rep. 704; affirmed, 93 N. J. Eq. 635; 117 Atl. Rep. 611; *Baader v. Mascellino*, 113 N. J. Eq. 189; 166 Atl. Rep. 466; reversed, 116 N. J. Eq. 126; 172 Atl. Rep. 549; *Jersey Acres, Inc. v. City of Paterson*, 122 N. J. Eq. 423; 194 Atl. Rep. 283. Vice-Chancellor Backes, in *Kearny v. New Jersey Suburban Water Co.*, 10 N. J. Mis. R. 1015; 162 Atl. Rep. 126; affirmed, 117 N. J. Eq. 474; 176 Atl. Rep. 556, points out that a complainant seeking equity, 'cannot escape its equities by resorting to legal niceties.'"

It has repeatedly been held that an innocent purchaser for value may rely on and is protected

by a decree of this court, and subsequent proceedings to reverse, modify or annul will not affect his status. *Ostrom v. Ferris*, 99 N. J. Eq. 551, 558, affirmed in 103 N. J. Eq. 22; *Elmora, &c., Asso. v. Dancy*, 107 N. J. Eq. 512; *Schultz v. Sanders*, 38 N. J. Eq. 154, affirmed 38 N. J. Eq. 293; *McArdle Real Estate Co. v. McGowan*, 109 N. J. L. 595; *Nichols v. Dissler*, 31 N. J. L. 461; *Weining v. Selitto*, 121 N. J. Eq. 60, 64, affirmed 121 N. J. Eq. 613; *Spanger v. Kartzmark*, 121 N. J. Eq. 60, 64.

The position of the Del Percios is directly in point with these cases. There is nothing in the record which can in any way tend to establish that the Del Percios are not bona fide purchasers for value, and in the event the decree is set aside, they should be adequately protected. Their very substantial disbursements for repairs and to complainant-appellee amply demonstrate their *bona fides*. The complainant-appellee too should in such an event be protected for its disbursements in addition to the amount due on its various tax claims.

It is respectfully submitted that a major issue is presented here which will affect many hundreds of thousands of titles all over the State which have resulted from the foreclosure of tax sale certificates by municipalities. The amendment to the Tax Sale Revision (R. S. 54:5-87) was intended by the legislature to remove the cloud which had hung over titles derived from the sale of lands for non-payment of taxes which had existed ever since the Martin Act (1886). These titles had been so stigmatized that all standard forms of contracts for the sale of real estate carried a provision that the title was not derived under the tax sale law.

The purpose of the legislation was clearly stated in R. S. 54:5-85, *i. e.*, for "the decreeing of marketable titles."

To upset these titles would be to discredit our statutes upon which they are based and would impair or altogether frustrate the means for the collection of taxes.

It is respectfully submitted that this appeal be dismissed.

SAUL A. WITTES,
Solicitor for and of Counsel
with Complainant-Appellee.

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

Between

BONDED CERTIFICATE CORPORATION, a corporation of
the State of New York,
Complainant-Appellee,

and

ANNIE B. WILDEY, et als.,
Defendants,

WILLIAM J. MOORE and ANNA A. STEVENSON,
Petitioners-Appellants,

JERRY DEL PERCIO, MARY DEL PERCIO and
FRANK DEL PERCIO,
Respondents-Appellees.

ON APPEAL FROM THE COURT OF CHANCERY.

BRIEF OF RESPONDENTS-APPELLEES.

This appeal should be dismissed for two reasons. First, R. S. 54:5-87 precludes an application to open a final decree of the Court of Chancery in a tax foreclosure suit after three months except for fraud or lack of jurisdiction. Secondly, such an application

is addressed to the discretion of the Chancellor and will not be reviewed in this court.

Point I.

R. S. 54:5-87 precludes, after three months, an attack on the final decree except for fraud or lack of jurisdiction.

R. S. 54:5-87 provides as follows:

“The court of chancery, upon the filing of a bill to foreclose the right of redemption, may give full and complete relief under this chapter, in accordance with other statutory authority and with the practice of the court, to bar the right of redemption and to foreclose all prior or subsequent alienations and descents of the lands and encumbrances thereon, except subsequent municipal liens, and to decree an absolute and indefeasible estate of inheritance in fee simple, to be vested in the purchaser. *The decree shall be final upon the defendants, 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, and no application shall be entertained to reopen the decree after three months from the date thereof, and then only upon the grounds of lack of jurisdiction or fraud in the conduct of the suit.*”

The petitioners-appellants have shown neither fraud nor lack of jurisdiction and are therefore barred from prosecuting their petition to open the

decree. The act mentioned above makes the decree "final upon the defendants, 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." The petitioners-appellants come within this classification. Furthermore, they admit that they had *actual notice* of the action long before the final decree was entered (Case, p. 47). How can they then pretend to assert either fraud or lack of jurisdiction?

Point II.

The application to open the final decree was addressed to the discretion of the Chancellor from which there is no appeal.

The application to open the final decree was addressed to the sound discretion of the Chancellor from which there is no appeal. *Wiktorowicz v. Stesko*, 134 N. J. Eq. 383. That discretion was carefully exercised as a reading of the conclusions filed by Vice-Chancellor Woodruff on the petition for re-argument will readily disclose (Case, p. 106, lines 10-23).

The attack on the good faith of the respondents-appellees in purchasing the property from the complainant-appellee is unwarranted by even the most cursory examination of the facts and the application thereto of simple arithmetic.

The petitioners-appellants allude to the fact that the Del Percios' claim of being innocent purchasers without notice, is questionable (Case, p. 77) and that they "simply repudiated The Wildey Contract."

Brief of Respondents-Appellees

They completely ignore the fact that the tax foreclosure was the result of Mrs. Wildey's failure, as well as their own to pay the taxes under the terms of the agreement (Case, p. 42) which was specifically stated therein to be binding upon the heirs, executors, administrators and assigns of the parties thereto.

When proof of ownership and demand for possession was presented to the Del Percios' by complainant-appellee, there was no alternative for them but to deal with it.

It is alleged that the Del Percios' were put on notice of the death of Mrs. Wildey by reason of the letters received, addressed to "her unknown heirs, devisees and personal representatives" (Brief, p. 21). Therefore, it is further alleged, they were duty bound to further inquiry of Mr. Lamoreaux, Mrs. Wildey's agent.

These arguments are untenable and groundless. Petitioners-appellants are arguing inconsistencies because they first allege that the Del Percios' had no notice, then they contend that they were put on notice.

Nevertheless, the letters addressed to Mrs. Wildey were referred to Lamoreaux (Case, p. 77), and Lamoreaux cannot state that the Del Percios' did not inquire of him without result.

The agreement between Annie B. Wildey and respondent-appellee, Jerry Del Percio, provided for a purchase price of \$2200 (Case, pp. 42-45). The respondents-appellees paid on account of that contract the sum of \$2000.00, leaving a balance of only \$200. due thereon (Case, p. 78). The petitioners-appellants claim that they received on account of the contract the sum of \$1272.18. It is obvious that which-

ever is the correct sum that was paid on account of the contract it would have been much cheaper for the respondents-appellees to have completed the purchase of the property from Annie B. Wildey by paying the balance of the contract price (\$200.) claimed by them, \$927.82 claimed by petitioners-appellants). However, the Del Percios' purchased the property from complainant-appellee for \$1750., \$1450. in the form of a purchase money mortgage (Case, p. 62, lines 22-31) and \$300. as initial payment (Case, p. 78). No profound observation is necessary to determine that the Del Percios were satisfied that Annie B. Wildey's interest in the property had been cut off and that they were compelled to deal with the complainant-appellee. It is unbelievable that they would have paid more to complainant-appellee than to Annie B. Wildey for the same property if they had thought that they had any choice.

It is respectfully submitted that the title of the complainant-appellee was beyond attack and that the title of respondents-appellees is likewise impervious to question, and that for that reason the appeal should be dismissed. Should the court for any reason hold otherwise, then the court's attention is directed to the disbursements made by respondents-appellees in connection with the property. These aggregate the sum of \$3340.00. Respondents-appellees respectfully submit that the decree should not be disturbed but in the event it is set aside, respondents-appellees pray that it may be on terms in order that their interest may be protected and saved.

Respectfully submitted,

FRANK M. LARIO,

*Solicitor for and of Counsel with
Respondents-Appellees.*

