

INDEX

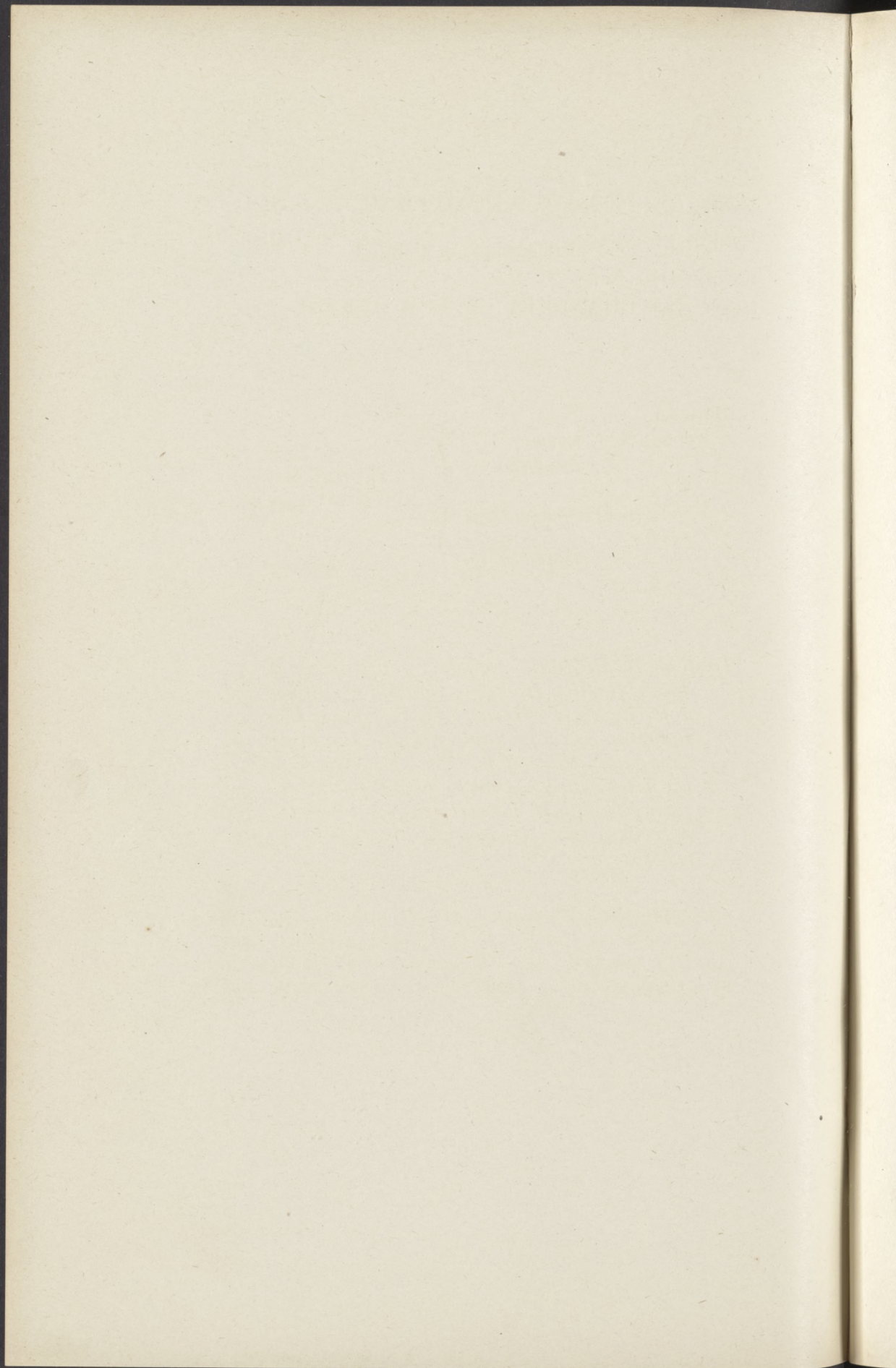
	PAGE
Notice of Appeal.....	1
Petition of Appeal.....	3
Bill of Complaint.....	9
Order to Amend Bill of Complaint.....	19
Order	21, 22
Answer of Max Grossman, Receiver of Ventnor Gardens, Inc.	23
Reply to Answer of Max Grossman, Receiver	29
Answer of Atlantic County Trust Company...	31
Reply to Answer of Atlantic County Trust Company	34
Answer of Pope, Stokes and Slape.....	35
Reply to Answer of Bentley H. Pope, Edward C. Stokes and John C. Slape.....	39
Answer of General Land and Investment Com- pany, Intervening Defendant.....	40
Reply to Answer of General Land and Invest- ment Company.....	47
Decree Pro Confesso.....	49

	PAGE
Conclusions	51
Final Decree	59
Order Amending Answer of the Defendant, General Land and Investment Co. by An- swering the Amendments to the Bill of Complaint	63
Stipulation	64
COMPLAINANT'S TESTIMONY:	
George Swinton—Direct	71
DEFENDANT'S TESTIMONY:	
Warner I. Risley—Direct	77
Cross	79
Mrs. Rosemary Oxenfeld—Direct	94
Leonard F. Pedrick—Direct	98
Exhibit C3, Mortgage, Johnson to Moore	101
Exhibit C4, Deed, Sheriff to Moore	109
Exhibit C5, Agreement, Pedrick, et al., to John- son	118
Exhibit C6, Deed, Pedrick et als., to Ventnor Gardens, Inc.	128
Exhibit D1, Grant, State to Pedrick, et al.	137
Exhibit D7, Certified Check 1/20/26	149

INDEX

III

	PAGE
Exhibit D8, Checks.....	149
Exhibit D9, Check.....	158
Exhibit D10, Check.....	158
Exhibit D11, Check.....	159



NOTICE OF APPEAL.

(Filed Sept. 8, 1930.)

IN CHANCERY OF NEW JERSEY.

Between

FLORENCE J. MOORE,
Complainant,
and
VENTNOR GARDENS, INC.,
et al.,
Defendants.

On Bill, &c.
Notice of Appeal.

10

20

To John D. McMullin, Esquire, Solicitor for defendants, Bentley H. Pope, Edward C. Stokes and John C. Slape; Herbert R. Voorhees, Esquire, Solicitor for defendant, Atlantic County Trust Company; Harvey F. Carr, Esquire, Solicitor for defendant, General Land & Investment Company; Joseph B. Perskie, Esquire, Solicitor for defendant, Max Grossman, Receiver of Ventor Gardens, Inc.:

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Complainant, Florence J. Moore, appeals from the final decree of the Court of Chancery dated July 7th, 1930, made by the Chancellor, on the advice of Vice-Chancellor Ingersoll, and from the whole and

every part thereof, to the Court of Errors and Appeals, in the last resort in all causes.

Dated Sept. 3, 1930.

Respectfully,

THOMPSON & HANSTEIN,
Solicitors for and of Counsel
with Complainant, Florence
J. Moore.

10

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

WALTER HANSTEIN,
Of Counsel with Complainant,
Florence J. Moore.

20

[ENDORSED.]

Due and legal service hereby acknowledged this 6th day of Sept., 1930.

Harvey F. Carr
Solr. of Genl. Land &c.
Herbert R. Voorhees
Solr. of Atl. Co. Trust Co.
John D. McMullin
Solr. of Pope, et al
Jos. B. Perskie,
Solr. of Grossman &c.

30

PETITION OF APPEAL.

(Filed Sept. 10, 1930.)

NEW JERSEY COURT OF ERRORS AND
APPEALS.

10

Between	}	On Appeal. Petition of Appeal.
FLORENCE J. MOORE,		
Complainant-Appellant,		
and		
VENTNOR GARDENS, INC.,		
et al.,		
Defendants-Respondents.		

20

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

The petition of Florence J. Moore, the appellant
in the above-entitled cause, respectfully shows that:

1. Petitioner finds herself aggrieved by the final
decree made in the Court of Chancery, by his Honor
Edwin Robert Walker, Chancellor of the State of
New Jersey, bearing date July 7th, 1930, in a certain
cause in said Court of Chancery, wherein the said
Florence J. Moore was complainant, and Ventnor
Gardens, Inc.; Max Grossman, Receiver for Vent-
nor Gardens, Inc.; the United Dredging Co.; Bent-
ley H. Pope, Edward C. Stokes and John C. Slape;

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Atlantic County Trust Company; Kwass Realty Co.; City of Ventor City, and General Land and Investment Company, were defendants; in this respect, to wit:

That the said decree adjudges:

(1) That the lien of complainant's mortgage extends only to the following described land and premises:

10 ALL those certain lots, tracts or parcels of land and premises situate, lying and being in the City of Ventor City, County of Atlantic and State of New Jersey:

No. 1. BEGINNING at the northerly line of Monmouth Avenue, 52 feet east of the easterly line of Margate Park; thence (1) Eastwardly, along the northerly line of Monmouth Avenue, 25 feet; thence (2) Northwardly, parallel with Margate Park, 100 feet, more or less, to line
20 of Inside Thoroughfare; thence (3) Westwardly along line of Inside Thoroughfare, 25 feet to a point distant 52 feet east from the easterly line of Margate Park, measured at right angles thereto; thence (4) Southwardly, parallel with Margate Park 100 feet, more or less, to northerly line of Monmouth Avenue and place of beginning.

No. 2. BEGINNING at the northeast corner of Wyoming Avenue (formerly Margate Park)
30 and Monmouth (formerly Mediterranean Avenue), and extending thence (1) Eastwardly, along the northerly line of Monmouth Avenue 26 feet; thence (2) Northwardly, parallel with Wyoming Avenue 150 feet to the Commissioners' exterior wharf line in Inside Thoroughfare; thence (3) Westwardly along said exterior

wharf line, parallel with Monmouth Avenue, 26 feet to the easterly line of Wyoming Avenue; thence (4) Southwardly, along said easterly line of Wyoming Avenue, 150 feet to the place of beginning.

No. 3. BEGINNING in the northerly line of Monmouth (formerly Mediterranean) Avenue 26 feet eastwardly from the easterly line of Wyoming Avenue (formerly called Margate Park) and extending thence Eastwardly along said northerly line of Monmouth Avenue, 26 feet in front or width; thence northwardly, between parallel lines of that width, parallel with Wyoming Avenue, 100 feet, more or less, in depth to high water line of Inside Thoroughfare. 10

TOGETHER with all and singular the buildings, improvements, woods, ways, rights, liberties, privileges, hereditaments, and appurtenances, whatsoever to the same belonging, or in anywise appertaining and the reversion and reversions, remainder and remainders, rents, issues and profits thereof. 20

(2) That the lien of complainant's mortgage does not extend to any of the lands and premises described in the bill of complaint, except as hereinabove described, and that land under water acquired from the State of New Jersey, after the date of the said mortgage and not described therein, are not subject to the lien of the complainant's mortgage. 30

(3) That the bill of complaint was dismissed with costs.

Petitioner appeals from the said decree of the Court of Chancery, which decrees as aforesaid, upon

the ground that the same is erroneous, in that it should have been decreed that the complainant's mortgage covers, in addition to the lands described in the mortgage, the following described lands and premises:

ALL that certain lot, tract or parcel of land and premises situate, lying and being in the City of Ventnor City, County of Atlantic and State of New Jersey:

- 10 BEGINNING at a point in the northeast line of Wyoming Avenue (and Wyoming Avenue extended) 150 feet northwestwardly of the northeast corner of Monmouth and Wyoming Avenues; extending thence (1) Northwestwardly in and along said northeast line of Wyoming Avenue and Wyoming Avenue, extended, 227 feet more or less, to a point in the center line of Inside Thoroughfare, located midway between
- 20 the high water lines of the northwest and southeast shores of said Thoroughfare, the location of the high water lines being taken from the actual survey made in December, 1922 and January, 1923, by the New Jersey State Board of Commerce and Navigation; thence (2) Northeastwardly along said center line of Thorofare 77.88 feet, more or less, to a point distant 388.65 feet northwest of the northerly line of Monmouth Avenue measured on a line at right angles thereto; thence (3) southeastwardly,
- 30 parallel with Wyoming Avenue 288.65 feet more or less, to the point 100 feet northwestwardly of the northerly line of Monmouth Avenue; thence (4) Southwestwardly, parallel to the northerly line of Monmouth Avenue 51 feet; thence (5) Northwestwardly parallel with Wyoming Avenue 50 feet; thence (6) Southwestwardly par-

allel with Monmouth Avenue 26 feet to the point and place of beginning;

and in that it should have been decreed that the defendants should pay unto the complainant, the amount found due to her, with interest and costs, and that in default of such payment they should have been debarred and foreclosed of all equity of redemption in the lands described as follows:

ALL that tract or parcel of land and premises situate, lying and being in the City of Ventnor City, County of Atlantic and State of New Jersey. 10

BEGINNING at the northeast corner of Monmouth and Wyoming Avenues and extending thence (1) Northwestwardly in and along the northeast line of Wyoming Avenue and Wyoming Avenue extended 377 feet, more or less, to a point in the center line of Inside Thorofare located midway between the high water lines of the northwest and southeast shores of said Thorofare, the location of the high water lines being taken from the actual survey made in December, 1922 and January, 1923 by the New Jersey State Board of Commerce and Navigation; thence (2) Northeastwardly along said center line of Thorofare 77.88 feet more or less to a point distant 388.65 feet northwest of the northerly line of Monmouth Avenue measured on a line at right angles thereto; 20
thence (3) Southeastwardly parallel with Wyoming Avenue 388.65 feet, more or less to the northerly line of Monmouth Avenue; thence (4) Southwestwardly in and along the northerly line of Monmouth Avenue 77 feet more or less to the point and place of beginning. 30

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

THOMPSON & HANSTEIN,
*Solrs. for and of Counsel
with Appellant.*

10

[ENDORSED.]

Due and legal service hereby acknowledged this
5th day of Sept., 1930.

20

Harvey F. Carr
Solr. of Respondent, Genl.
Land & Invest Co.
Jno. D. McMullin
Solr. of Pope, et al
Herbert R. Voorhees
Solr. of Atl. Co. Trust Co.
Jos. B. Perskie
Solr. of Grossman &c.

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BILL OF COMPLAINT.

(Filed Oct. 25, 1928.)

IN CHANCERY OF NEW JERSEY.

*To the Honorable Edwin Robert Walker, Chancellor
of the State of New Jersey:* 10

The complainant, Florence J. Moore, of the City and County of Philadelphia, State of Pennsylvania, respectfully shows that:

1. On January 23rd, 1926, one Dorothy F. Johnson, single, being indebted to complainant in the sum of \$20,000, executed to her a bond of that date to secure the sum of \$20,000, payable within three years from the date thereof, with interest at the rate of 6% per annum, payable half yearly from the date of the bond. 20

2. To secure payment of the bond, the said Dorothy F. Johnson executed to complainant a mortgage of even date with said bond, and thereby conveyed to her, in fee, the lands hereinafter described, on the express condition that such conveyance should be void if payment should be made according to the terms of the bond, which mortgage having been duly acknowledged, and the certificate of acknowledgment duly endorsed thereon, was recorded in the Atlantic County Clerk's Office in Book 382 of Mortgages, page 273, on January 28th, 1926. 30

3. The said mortgaged premises were described as follows: ALL that certain lot, tract or parcel of land

and premises situate, lying and being in the City of Ventnor City, County of Atlantic and State of New Jersey:

10 BEGINNING at the northerly line of Monmouth Avenue, 52 feet east of the easterly line of Margate Park; thence (1) Eastwardly, along the northerly line of Monmouth Avenue, 25 feet; thence (2) Northwardly, parallel with Margate Park, 100 feet, more or less, to line of Inside Thoroughfare; thence (3) Westwardly, along line of Inside Thoroughfare, 25 feet to a point distant 52 feet east from the easterly line of Margate Park, measured at right angles thereto; thence (4) Southwardly, parallel with Margate Park, 100 feet, more or less, to northerly line of Monmouth Avenue and place of beginning.

20 No. 2. BEGINNING at the northeast corner of Wyoming Avenue (formerly Margate Park) and Monmouth (formerly Mediterranean) Avenue, and extending thence (1) Eastwardly, along the northerly line of Monmouth Avenue 26 feet; thence (2) Northwardly, parallel with Wyoming Avenue 150 feet to the Commissioners' exterior wharf line in Inside Thoroughfare; thence (3) Westwardly, along said exterior wharf line, parallel with Monmouth Avenue, 26 feet to the easterly line of Wyoming Avenue; thence (4) Southwardly, along said easterly line of Wyoming Avenue, 150 feet to the place of beginning.

30 No. 3. BEGINNING in the northerly line of Monmouth (formerly Mediterranean) Avenue 26 feet eastwardly from the easterly line of Wyoming Avenue (formerly called Margate Park), and extending thence Eastwardly, along

said northerly line of Monmouth Avenue, 26 feet in front or width; thence northwardly between parallel lines of that width, parallel with Wyoming Avenue, 100 feet, more or less, in depth to high water line of Inside Thoroughfare.

TOGETHER with all and singular the build-
ings, improvements, woods, ways, rights, liber-
ties, privileges, hereditaments and appur-
tenances, whatsoever to the same belonging, or
in anywise appertaining and the reversion and
reversions, remainder and remainders, rents,
issues and profits thereof. 10

4. On or about April 21st, 1927, the complainant filed her bill to foreclose said mortgage making the said Dorothy F. Johnson a party defendant, and such proceedings were had in said cause that on September 22nd, 1927, the Sheriff of Atlantic County sold said premises, by writ of *feri facias* issued out of this Court and directed to him, and dated August 18th, 1927, to this complainant for the sum of \$500, which sale was duly confirmed by this Court by an order made on October 3rd, 1927; and on October 6th, 1927, the said Sheriff conveyed the said premises, in fee, to this complainant by a deed bearing that date, which deed, after having been duly acknowledged and the certificate of acknowledgment duly endorsed thereon, was on October 11th, 1927, recorded in the Atlantic County Clerk's Office in Book 881 of Deeds, page 132, &c. 20 30

5. On or about October 15th, 1927, this complainant entered into possession of said premises.

6. As appears by the description of said lands, the same bordered on a navigable stream of water,

and among the rights, liberties, privileges, hereditaments and appurtenances belonging or appertaining to the said lands, were riparian rights and the right of the owner, as riparian owner, of pre-emption and reclamation to the lands under water in front of said lands to the middle of the stream.

7. On January 24th, 1926, the said Dorothy F. Johnson executed to Frank J. Pedrick, Leonard F. Pedrick and Frank Curran, trading as Frank J. Pedrick & Son, a consent that the said waterway be filled in, and a waiver of her right to apply for and receive a grant from the State of New Jersey for riparian rights on said Inside Thorofare, and requested the Board of Commerce and Navigation, acting for and on behalf of the State of New Jersey, to make such grant of said lands under water as might be adjoining her said land, to the said Frank J. Pedrick, Leonard F. Pedrick and Frank Curran, trading as Frank J. Pedrick & Son, as she would be entitled to if she personally applied for the same. Said consent, waiver and request were recorded on March 13, 1926, in Book 819, page 42, &c., in the Atlantic County Clerk's Office.

All rights which the said Frank J. Pedrick, Leonard F. Pedrick and Frank Curran, trading as Frank J. Pedrick & Son, took under said consent, waiver and request were taken subject to the lien of complainant's mortgage.

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8. On July 19th, 1926, the State of New Jersey granted to Frank J. Pedrick, Leonard F. Pedrick and Frank Curran, trading as Frank J. Pedrick & Son, riparian rights adjoining the premises described in complainant's mortgage, and to the middle of the stream in front of said premises. Any in-

terest which the said Frank J. Pedrick, Leonard F. Pedrick and Frank Curran, trading as Frank J. Pedrick & Son took under said grant were taken subject to the lien of complainant's mortgage. The lands adjoining the premises described in complainant's mortgage and granted by said grant are bounded and described as follows:

ALL that certain lot, tract or parcel of land and premises situate, lying and being in the City of Ventnor City, County of Atlantic and State of New Jersey: 10

BEGINNING at a point in the northeast line of Wyoming Avenue (and Wyoming Avenue extended) 150 feet northwestwardly of the northeast corner of Monmouth and Wyoming Avenues; extending thence (1) Northwestwardly in and along said northeast line of Wyoming Avenue and Wyoming Avenue extended, 227 feet, more or less, to a point in the center line of Inside Thoroughfare, located midway 20 between the high water lines of the northwest and southeast shores of said Thoroughfare, the location of the high water lines being taken from the actual survey made in December, 1922 and January, 1923, by the New Jersey State Board of Commerce and Navigation; thence (2) Northeastwardly along said center line of Thoroughfare 77.88 feet, more or less, to a point distant 388.65 feet northwest of the northerly line of Monmouth Avenue measured on a line 30 at right angles thereto; thence (3) Southeastwardly, parallel with Wyoming Avenue 288.65 feet more or less, to the point 100 feet northwestwardly of the northerly line of Monmouth Avenue; thence (4) Southwestwardly, parallel to the northerly line of Monmouth Avenue 51

feet; thence (5) Northwestwardly, parallel with Wyoming Avenue; 50 feet; thence (6) Southwestwardly parallel with Monmouth Avenue 26 feet to the point and place of beginning.

9. That on January 31st, 1927, Frank J. Pedrick, Laura C. Pedrick, his wife, Leonard F. Pedrick and Dorothy K. Pedrick, his wife, Frank Curran and Hattie M. Curran, his wife, individuals, and Frank
- 10 J. Pedrick, Leonard F. Pedrick and Frank Curran, trading as Frank J. Pedrick & Son, granted to Ventnor Gardens, Inc., riparian rights adjoining the premises described in paragraph 3 of this complaint, and to the middle of the stream in front of said premises. Any interest which the said Ventnor Gardens, Inc., took under said grant was taken subject to the lien of complainant's mortgage.
- 20 10. On March 27th, 1926, Frank J. Pedrick, Leonard F. Pedrick and Frank Curran, trading as Frank J. Pedrick & Son, executed an agreement with the United Dredging Co., a Delaware corporation, in which said company agreed to fill the lands described in paragraph 8 hereof, together with other lands. Said agreement was recorded in the Clerk's Office of Atlantic County on March 31st, 1926, in Book 000, page 000. On June 17, 1927, Ventnor Gardens, Inc., executed an agreement with said United Dredging Co., in which said dredging company agreed to complete the work described in the contract of March 27th, 1926. Said agreement was recorded in the Atlantic County Clerk's Office on June 22nd, 1927, in Book 869, page 343. On December 21st, 1927, said dredging company filed a lien claim in the Clerk's Office of Atlantic County, recorded on said date in Book 5, page 380, in which
- 30

said dredging company asserts a lien on the lands described in paragraph 8 of this bill, as well as on other lands. Any interest which the said United Dredging Co. may claim by virtue of said agreements or said lien claim are subject to the lien of complainant's mortgage.

11. That on November 10th, 1926, said Ventnor Gardens, Inc., made, executed and delivered a mortgage to Samuel B. Dobbs covering the premises described in paragraph 8 of this bill, which mortgage was recorded on November 16, 1926, in the Atlantic County Clerk's Office in Book 435 of Mortgages, page 486; and on January 31st, 1927, said Ventnor Gardens, Inc., made another mortgage covering said premises to Samuel B. Dobbs, which mortgage was recorded on February 5th, 1927, in the Atlantic County Clerk's Office in Book 446 of Mortgages, page 464. 10

Any interest which the said Samuel B. Dobbs may have in said premises is subject to the lien of complainant's mortgage. 20

12. That on May 27th, 1927, Samuel B. Dobbs made, executed and delivered an assignment of the mortgages referred to in paragraph 11 of this bill of complaint to Bentley H. Pope, Edward C. Stokes and John C. Slape, which assignment was recorded on May 28th, 1927, in the Atlantic County Clerk's Office in Book 91, page 37. 30

Any interest which the said Bentley H. Pope, Edward C. Stokes and John C. Slape may have in said premises is subject to the lien of complainant's mortgage.

13. That on May 2nd, 1927, said Ventnor Gardens, Inc., made, executed and delivered a mortgage cover-

ing *inter alia* the premises described in paragraph 8 of this bill of complaint, to Atlantic County Trust Company, which mortgage was recorded on June 21st, 1927, in the Atlantic County Clerk's Office in Book 465 of Mortgages, page 266.

Any interest which the Atlantic County Trust Company may have in said premises is subject to the lien of complainant's mortgage.

- 10 14. That on August 18th, 1927, the Kwass Realty Co. filed a *lis pendens* in the Atlantic County Clerk's Office against Ventnor Gardens, Inc., and Winchester Development Co., which was recorded on August 18, 1927, in Book 4, page 379.

Any interest which the said Kwass Realty Co. may have in said premises is subject to the lien of complainant's mortgage.

- 20 15. That one Max Grossman was duly appointed, by order of this Court, as Receiver for Ventnor Gardens, Inc. Any interest which he may have in said premises is subject to the lien of complainant's mortgage.

- 30 16. On or about June 2nd, 1927, said Ventnor Gardens, Inc., filed a map in the Clerk's Office of Atlantic County, showing streets laid out through the premises described in paragraph 8 of this bill of complaint, and exhibiting an intention to dedicate said streets to the City of Ventnor City. Said map was approved by the Mayor and Common Council of Ventnor City by a resolution adopted May 16th, 1927.

Any interest in the lands described in paragraph 8 of this bill of complaint which the said City of Ventnor City may claim by virtue of any dedication is subject to the lien of complainant's mortgage.

17. The aforesaid Ventnor Gardens, Inc., Max Grossman, Receiver of Ventnor Gardens, Inc., City of Ventnor City, United Dredging Company, Bentley H. Pope, Edward C. Stokes, John C. Slape, Atlantic County Trust Company and Kwass Realty Co., were not made parties defendant to complainant's said bill to foreclose her mortgage aforesaid, and complainant purchased the said mortgage lands in good faith and without knowledge of the aforesaid interest claimed by the above-named persons.

10

18. That on October 23rd, 1928, this complainant was granted permission by order of this Court, bearing that date, to make said Max Grossman, Receiver for Ventnor Gardens, Inc., a party defendant to this suit.

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

1. That Max Grossman, Receiver for Ventnor Gardens, Inc., Ventnor Gardens, Inc., the United Dredging Co., Bentley H. Pope, Edward C. Stokes, John C. Slape, Atlantic County Trust Company, Kwass Realty Co., and City of Ventnor City, who are the defendants to this suit, may answer this bill of complaint and each statement therein made.

20

2. That an account may be taken of the amount due on the aforesaid mortgage of Florence J. Moore.

30

3. That said defendants may be decreed to pay complainant the amount so found due, with interest and costs, by a short day to be appointed by this Court; and that, in default of such payment they be debarred and foreclosed of all equity of redemp-

tion in the lands described as follows, situate in Ventnor City, County of Atlantic, State of New Jersey:

10 BEGINNING at the northeast corner of Monmouth and Wyoming Avenues and extending thence (1) Northwestwardly in and along the northeast line of Wyoming Avenue and Wyoming Avenue extended 377 feet, more or less, to a point in the center line of Inside Thorofare located midway between the high water lines of the northwest and southeast shores of said Thorofare, the location of the high water lines being taken from the actual survey made in December, 1922 and January, 1923 by the New Jersey State Board of Commerce and Navigation; thence (2) Northeastwardly along said center line of Thorofare 77.88 feet more or less to a point distant 388.65 feet northwest of the northerly line of Monmouth Avenue measured on a line at right angles thereto; thence 20 (3) Southeastwardly parallel with Wyoming Avenue 388.65 feet, more or less to the northerly line of Monmouth Avenue; thence (4) Southwestwardly in and along the northerly line of Monmouth Avenue 77 feet more or less to the point and place of beginning.

4. That a writ of subpoena may issue commanding said defendants to answer the bill of complaint and to abide by such decree as this Court may make 30 in the premises.

THOMPSON & HANSTEIN,
Solrs. for and of Counsel
with Complainant.

ORDER TO AMEND BILL OF COMPLAINT.

(Filed May 22, 1929.)

IN CHANCERY OF NEW JERSEY.

Between

FLORENCE J. MOORE,
Complainant,
and

VENTNOR GARDENS, INC.,
et al.,

Defendants.

On Bill, &c.
Order to Amend.

10

Upon motion of Thompson & Hanstein, solicitors
of complainant;

It is, on this 22nd day of May, 1929, ordered that
the bill of complaint filed in the above-entitled cause
be, and the same is hereby amended by the insertion
of a new paragraph therein between paragraphs 3
and 4, to be known as paragraph 3-a, to read as fol-
lows:

“3-a. Said mortgage aforesaid was a pur-
chase money mortgage; that on January 23rd, 1927,
six months' interest fell due on said mort-
gage; that the entire principal of said mortgage,
to wit, the sum of \$20,000, together with interest
thereon from July 23rd, 1926, thereupon became
due and owing unto this complainant, and was
unpaid.”

20

30

It is further ordered that a new paragraph be inserted in said bill of complaint between paragraphs 6 and 7, to be known as paragraph 6-a, to read as follows:

10 “6-a. That by virtue of the mortgage aforesaid this complainant was, and became entitled to the riparian rights to the land under water adjacent to said land, and entitled to all the rights of the said Dorothy F. Johnson as riparian owner, and to the right to acquire ownership of all the land to the middle of the stream adjoining said land; and also became entitled to the ownership of such land as might be made by filling in the waterway adjacent to her said premises to the middle of the stream; that thereafter, as hereinafter referred to, said stream aforesaid was entirely filled in.”

Respectfully advised,

R. H. INGERSOLL,

ORDER.

(Filed Oct. 23, 1928.)

IN CHANCERY OF NEW JERSEY.

Between

FLORENCE J. MOORE,
Complainant,
andVENTNOR GARDENS, INC.,
*et al.,**Defendants.*On Bill, &c.
Order.

10

This matter being opened to the Court by Thompson & Hanstein, solicitors of complainant, and the Court being of the opinion that the prayer of complainant's petition should be granted;

It is, on this 23rd day of October, 1928, ordered that the complainant be, and she hereby is given leave to file a bill of strict foreclosure in accordance with the prayer of said petition, and to make Max Grossman, Receiver for Ventnor Gardens, Inc., a party defendant to such bill.

Respectfully advised,

R. H. INGERSOLL,
V. C.

20

30

ORDER.

(Filed Nov. 20, 1928.)

IN CHANCERY OF NEW JERSEY.

10	Between FLORENCE J. MOORE, <i>Complainant,</i> and VENTNOR GARDENS, INC., <i>et als.,</i> <i>Defendants.</i>	}	On Bill, Etc. On Petition for Order Permitting General Land and Investment Company to Inter- vene as a Defendant. Order.
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Upon reading the duly verified petition of the General Land and Investment Company;

It is, on this day of November, A. D. 1928,
 20 on motion of Harvey F. Carr, solicitor for the General Land and Investment Company, ordered that the prayer of the said petition be granted and that the General Land and Investment Company have leave to intervene as a defendant in said suit.

It is further ordered that the General Land and Investment Company have thirty days from the date of the entry of this order in which to file an answer or to make such motion addressed to the pleadings as to the General Land and Investment Company
 30 shall seem proper.

Respectfully advised,

R. H. INGERSOLL,
 V. C.

We consent to the entry of the foregoing order.

THOMPSON & HANSTEIN,
Solicitors for Florence J. Moore,
Complainant.

ANSWER OF MAX GROSSMAN, RECEIVER
OF VENTNOR GARDENS, INC.

(Filed Nov. 26, 1928.)

IN CHANCERY OF NEW JERSEY.

10.

Between	
FLORENCE J. MOORE,	} On Bill, &c. Answer of Max Grossman, Receiver of Ventnor Gardens, Inc.
Complainant,	
and	
VENTNOR GARDENS, INC.,	
<i>et als.,</i>	
Defendants.	

20

Max Grossman, Receiver of Ventnor Gardens, Inc., duly appointed by the Court of Chancery of New Jersey in a certain proceeding pending in that Court, wherein John Shuster, *et als*, are complainants, and Ventnor Gardens, Inc., is defendant, answering the bill of complaint, says:

1. As to the allegations contained in paragraph 1, this defendant has no knowledge or information sufficient upon which to found a belief. 30

2. As to the allegations contained in paragraph 2, this defendant has no knowledge or information sufficient upon which to found a belief.

3. As to the allegations contained in paragraph 3, this defendant has no knowledge or information sufficient upon which to found a belief.

4. As to the allegations contained in paragraph 4, this defendant has no knowledge or information sufficient upon which to found a belief.

10 5. As to the allegations contained in paragraph 5, this defendant has no knowledge or information sufficient upon which to found a belief.

6. Paragraph 6 is admitted.

7. This defendant believes the allegations of paragraph 7 to be true, except that this defendant denies that the consent, waiver and request therein referred to were taken subject to the lien of the complainant's
20 mortgage.

8. This defendant admits that the State of New Jersey granted to Frank J. Pedrick, Leonard F. Pedrick, and Frank Curran, trading as Frank J. Pedrick & Son, riparian rights adjoining the premises described in the complainant's mortgage, but denies that said grant was to the middle of the stream in front of the said premises. This defendant denies that the interest taken by Frank J.
30 Pedrick, Leonard F. Pedrick, and Frank Curran, trading as aforesaid, under said grant was taken subject to the lien of the complainant's mortgage, and denies that the description contained in paragraph 8 was of lands adjoining the premises described in the complainant's mortgage, but admits that the lands therein described were a part of a

much larger tract or tracts granted and conveyed by the State of New Jersey to Frank J. Pedrick, Leonard F. Pedrick and Frank Curran, trading as aforesaid.

9. This defendant admits that the parties named therein granted to Ventnor Gardens, Inc., certain riparian rights adjoining the premises described in paragraph 3 of the bill of complaint, but denies that said conveyance was to the middle of the stream in front of said premises, but that said conveyance described three tracts much larger in area, and contained no reference whatever to the middle of the said stream. This defendant denies that the interest which Ventnor Gardens, Inc., took under the said grant was taken subject to the lien of the complainant's mortgage. 01 10

10. As to the allegations contained in paragraph 10, this defendant has no knowledge or information sufficient upon which to found a belief. 02 20

11. This defendant admits the execution and delivery by Ventnor Gardens, Inc., of the mortgage therein referred to, which said mortgage covered other lands in addition to those described in paragraph 8 of the bill. This defendant denies that any interest which the said Samuel B. Dobbs took by virtue of said mortgage is subject to the lien of the complainant's mortgage. 03 30

12. The execution and delivery of an assignment of said mortgage is admitted, but this defendant denies that any interest which the assignees took thereunder is subject to the lien of complainant's mortgage.

13. This defendant has no knowledge or information sufficient upon which to found a belief as to the allegations of paragraph 13.

14. This defendant admits the filing of the *lis pendens* therein referred to, and denies the balance of said paragraph.

10 15. This defendant admits that he was duly appointed Receiver for Ventnor Gardens, Inc., and denies the balance of said paragraph.

16. This defendant admits the filing of the map therein referred to, but denies the balance of the said paragraph.

20 17. This defendant admits that he was not made a defendant in said foreclosure suit. As to the balance of paragraph 17 he has no knowledge or information sufficient upon which to found a belief.

18. Paragraph 18 is admitted.

30 19. This defendant further answering the bill of complaint says that at the date named in the bill as the date of the bond and mortgage therein referred to title to the lands described in paragraph 8, so far as said lands lay below the high-water mark of the said Thoroughfare, was in the State of New Jersey, and that the said lands were duly granted to Frank J. Pedrick, Leonard F. Pedrick and Frank Curran, trading as aforesaid, and that the moneys paid to the State of New Jersey therefor were the actual moneys of Ventnor Gardens, Inc., and that the lands so conveyed vested in the grantees named

in said grant an absolute title superior to that of the complainant, and that the preemptive right of the riparian owner to the grant is not a vested right, but is merely granted by the Legislature as a matter of grace and not as a matter of right, and that this preemptive right does not extend to a mortgagee as such.

20. This defendant further says that Ventnor Gardens, Inc., has expended large sums of money in the acquisition of the said title from the State of New Jersey and payment therefor, and has also expended large sums of money in the filling in of the said Thoroughfare and raising the same to grade, and that if it should be determined that the complainant is entitled to a lien upon said lands described in paragraph 8, or any part thereof, then this defendant charges that all of the expense incurred by Ventnor Gardens, Inc., both in the acquisition of the said title and the raising of said lands to grade, or the making of any other improvements thereon, should be ascertained and fixed as a charge upon the lands acquired from the State of New Jersey prior to any lien or charge of the mortgage described in the bill of complaint. 10 20

21. This defendant further answering says that by an order entered in this Court in a certain cause therein pending, wherein John Shuster is complainant, and Ventnor Gardens, Inc., is defendant, entered on the fifteenth day of June, 1928, this defendant was authorized and directed to sell the lands and premises and choses in action described in a certain petition therein referred to, to the General Land and Investment Co. for the sum of \$100,000, subject to 30

the terms particularly set forth in said order, and that pursuant thereto said General Land and Investment Co. has paid the initial deposit of \$10,000 provided for in said order and that since the entry of the said order, under the terms of a certain other order entered in said cause, the time for settlement and payment by the General Land and Investment Co. has been extended for a period of ninety days
10 from the fifteenth day of October, 1928, and that said General Land and Investment Co. has paid a further sum of \$5000 on account of the purchase price of said lands, and that the lands included in the said order of the Court of Chancery entered on the fifteenth day of June, 1928, included, with other lands, the lands described in the bill of complaint, and that by reason thereof the General Land and Investment Co. is, upon the payment of the balance of the purchase price, and upon compliance with the terms of
20 the said order of June 15, 1928, as amended, entitled to all of the interest of the Receiver in the lands described in the bill of complaint.

22. This defendant further answering says that the bill of complaint discloses no right to any relief whatever as against this defendant, and prays that the said bill may be dismissed.

JOSEPH B. PERSKIE,
Solicitor for Max Grossman,
30 Receiver of Ventnor Gardens, Inc.

REPLY TO ANSWER OF MAX GROSSMAN,
RECEIVER.

(Filed March 8, 1929.)

IN CHANCERY OF NEW JERSEY.

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Between	}	On Bill to Fore-
FLORENCE J. MOORE,		close.
Complainant,		Reply to Answer of
and		Max Grossman, Re-
VENTNOR GARDENS, INC.,		ceiver of Ventnor
<i>et als.,</i>		Gardens, Inc.
Defendants.		

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Complainant joins issue on the answer of defendant, Max Grossman, Receiver of Ventnor Gardens, Inc.

Replying to the new matter set up in paragraphs 19, 20, 21, and 22 of said defendant's answer, complainant says:

1. She has no knowledge of the consideration paid 30
by Ventnor Gardens, Inc., to the State of New Jersey as alleged in paragraph 19 and prays proof thereof. She denies that the conveyance referred to in said paragraph vested in the grantee title superior to that of the complainant. She denies that the preemptive right of the riparian owner referred to

in said paragraph is not a vested right. She denies that said preemptive right does not extend to a mortgagee as such.

10 2. She has no knowledge of the expenditure of moneys by Ventnor Gardens, Inc., as alleged in paragraph 20 and prays proof thereof, but denies that such expenditure, if made, gave any rights to defendant superior to the lien of complainant.

3. She has no knowledge of the allegations of paragraph 21 and prays proof thereof, but denies that the General Land and Investment Co. referred to in said paragraph has any right superior to complainant's.

4. She denies paragraph 22.

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THOMPSON & HANSTEIN,
Solicitors for Complainant.

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ANSWER OF ATLANTIC COUNTY TRUST
COMPANY.

(Filed Dec. 6, 1928.)

IN CHANCERY OF NEW JERSEY.

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Between

FLORENCE J. MOORE,
Complainant,

and

VENTNOR GARDENS, INC.,
et al.,

Defendants.

On Bill to Foreclose.
Answer of Defendant,
Atlantic County
Trust Company.

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Defendant, Atlantic County Trust Company, answering the complaint, in so far as it relates to this defendant, says:

1. It has no knowledge of the matters set out in paragraphs 1, 2, 3, 4 and 5, of the bill of complaint, and requires proof of same by the complainant.

2. Assuming the matters as set forth in the first five paragraphs of the complaint are proved by the complainant, this defendant admits that the owner of the land bordering on the navigable stream would be entitled to certain riparian rights therein, if exercised under regulations provided by the State of New Jersey.

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3. It believes the matters set forth in paragraph 7 to be true, except that it denies that any rights taken thereunder by Frank J. Pedrick & Son are subject to the lien of complainant's mortgage.

4. It denies that the grant taken by Frank J. Pedrick & Son from the State of New Jersey, as set out in paragraph 8, was subject to the lien of complainant's mortgage on the lands described in that
010 paragraph.

5. It denies that any interest the Ventnor Gardens, Inc., took under the grant set out in paragraph 9 was taken subject to the lien of complainant's mortgage.

6. It has no knowledge of the matters set out in paragraphs 10, 11 and 12 of complainant's bill, and leaves complainant to her proof.
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7. It admits the execution of the mortgage to Atlantic County Trust Company, referred to in paragraph 13, but denies that the complainant has any interest in the land covered by said mortgage that is a lien prior to said mortgage.

8. It has no knowledge of the matters set out in paragraph 14, and leaves complainant to her proof.

30 9. It admits the appointment of Max Grossman, as Receiver for Ventnor Gardens, Inc., but denies the balance of paragraph 15.

10. It has no knowledge of the matters set out in paragraphs 16, 17 and 18 of the bill of complaint.

11. Further answering the complainant, this defendant says it holds the mortgage referred to in paragraph 13 of the bill of complaint, as trustee, and that no part of the lands described in said mortgage are subject to the lien of complainant's alleged mortgage, and that complainant has no interest in said lands that are a prior lien to that of this defendant under its mortgage.

HERBERT R. VOORHEES,
Solicitor of Defendant, At- 10
lantic County Trust Com-
pany.

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REPLY TO ANSWER OF ATLANTIC COUNTY
TRUST COMPANY.

(Filed March 8, 1929.)

IN CHANCERY OF NEW JERSEY.

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Between

FLORENCE J. MOORE,
Complainant,

and

VENTNOR GARDENS, INC.,
et als.,

Defendants.

} On Bill to Foreclose.
} Reply to Answer of
} Defendant, Atlantic
} County Trust Com-
} pany.

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Complainant joins issue on the answer of defendant, Atlantic County Trust Company.

Replying to the new matter set up in paragraph 11 of said answer, complainant says:

1. Complainant denies the allegations contained in said paragraph 11 that "no part of the lands described in said mortgage are subject to the lien of complainant's alleged mortgage, and that complainant has no interest in said lands that are a prior lien to that of this defendant's under its mortgage."

THOMPSON & HANSTEIN,

Solicitors for the Complainant.

ANSWER OF POPE, STOKES AND SLAPE.

(Filed Nov. 26, 1928.)

IN CHANCERY OF NEW JERSEY.

Between

FLORENCE J. MOORE,
Complainant,
and
VENTNOR GARDENS, INC.,
et als.,
Defendants.

On Bill to Foreclose.
Answer of Bentley
H. Pope, Edward C.
Stokes and John
C. Slape.

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Bentley H. Pope, Edward C. Stokes and John C.
Slape, answering this bill, say:

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1. These defendants have no knowledge or information sufficient to form a belief as to the charges and statements in paragraph 1 of the bill.

2. These defendants have no knowledge or information sufficient to form a belief as to the charges and statements in paragraph 2 of the bill.

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3. These defendants have no knowledge or information sufficient to form a belief as to the charges and statements in paragraph 3 of the bill.

4. These defendants have no knowledge or infor-

mation sufficient to form a belief as to the charges and statements in paragraph 4 of the bill.

5. These defendants have no knowledge or information sufficient to form a belief as to the charges and statements in paragraph 5 of the bill.

6. They admit paragraph 6.

10 7. They admit paragraph 7, except the averment that the actions taken were subject to complainant's mortgage, which allegation they deny.

8. They admit the grant as set forth in paragraph 8, but deny that it was subject to complainant's mortgage; they further deny that the description set forth in said paragraph is correct.

20 9. They admit that the parties named in paragraph 9 conveyed to Ventnor Gardens, Inc., certain riparian rights. They deny that complainant has any interest in them, and that they were described as complainant alleges.

10. They have no knowledge or information sufficient to form a belief as to the averments of paragraph 10.

30 11. They admit paragraph 11, but deny that the mortgages therein referred to were subject in any way to that of complainant.

12. They admit paragraph 12, but deny that these defendants' interest is subject to that of complainant.

13. They admit paragraph 13, but have no knowledge as to whether said mortgage covers riparian rights.

14. They admit the filing of a *lis pendens*, but have no knowledge as to what, if any, riparian rights it covers.

15. They admit paragraph 15, except that they deny that the Receiver's interest is subject to complainant's mortgage. 10

16. They admit paragraph 16, except that they deny that the filing of said map was subject to complainant's mortgage.

17. They have no knowledge as to paragraph 17, except the averment that they were not made defendants to complainant's foreclosure, which part they admit. 20

18. They admit paragraph 18.

Further answering said bill, these defendants say:

19. When complainant's bond and mortgage were made the lands herein claimed by complainant were in the State of New Jersey, were, with other lands, thereafter duly conveyed by the State for a valuable consideration paid the State by Ventnor Gardens, Inc., which company, by said grant, obtained absolute title to said land which Ventnor Gardens, Inc., subsequently mortgaged to Samuel B. Dobbs, and by him assigned to these defendants, as set forth in this bill. By virtue of which grant, mortgage and assignment, these defendants have a prior lien upon said lands. 30

20. Complainant's mortgagor has no right to a riparian grant of the State's lands which extended to his mortgagee, the complainant.

21. Defendants say that the bill shows no right of relief against these defendants, and pray for its dismissal.

JNO. D. McMULLIN,
Solicitor for and of Counsel
with Bentley H. Pope, Ed-
ward C. Stokes, and John
C. Slape, Defendants.

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REPLY TO ANSWER OF BENTLEY H. POPE,
EDWARD C. STOKES, AND JOHN C.
SLAPE.

(Filed March 8, 1929.)

IN CHANCERY OF NEW JERSEY. 10

Between	
FLORENCE J. MOORE,	} On Bill to Foreclose. Reply to Answer of Bentley H. Pope, Edward C. Stokes, and John C. Slape.
Complainant,	
and	
VENTNOR GARDENS, INC.,	
et als.,	
Defendants.	20

Complainant joins issue on the answer of defendants, Bentley H. Pope, Edward C. Stokes, and John C. Slape.

Replying to the new matter set up in paragraphs 19, 20, and 21 of said answer, complainant says:

1. She admits the making of the grant mortgage and assignment as alleged in paragraph 19 but denies that by virtue of said grant mortgage and assignment said defendants have a prior lien upon said lands. 30

2. Complainant denies paragraph 20.

40 *Answer of General Land and Investment
Company, Intervening Defendant*

3. Complainant denies paragraph 21.

THOMPSON & HANSTEIN,
Solicitors for Complainant.

10 ANSWER OF GENERAL LAND AND INVEST-
MENT COMPANY, INTERVENING DE-
FENDANT.

(Filed Nov. 26, 1928.)

IN CHANCERY OF NEW JERSEY.

Between		On Bill, etc.
20 FLORENCE J. MOORE,	}	Answer of General
<i>Complainant,</i>		Land and Invest-
and		ment Company, In-
VENTNOR GARDENS, INC.,		tervening Defen-
<i>et als.,</i>		dant.
<i>Defendants.</i>		

30 General Land and Investment Company, a corpo-
ration of New Jersey, duly authorized to intervene
in this proceeding under an order entered in this
court on the 20th day of November, A. D. 1928, an-
swering the bill of complaint says:

1. As to the allegations contained in paragraph 1,
this defendant has no knowledge or information suf-
ficient upon which to found a belief.

2. As to the allegations contained in paragraph 2, this defendant has no knowledge or information sufficient upon which to found a belief.

3. As to the allegations contained in paragraph 3, this defendant has no knowledge or information sufficient upon which to found a belief.

4. As to the allegations contained in paragraph 4, 10
this defendant has no knowledge or information sufficient upon which to found a belief.

5. As to the allegations contained in paragraph 5, this defendant has no knowledge or information sufficient upon which to found a belief.

6. This defendant admits that the then owner of the said lands was entitled to a preemptive right to apply to and receive from the State of New Jersey a 20
grant for the lands under water in front of the said lands. The balance of the said paragraph is denied.

7. This defendant believes that Dorothy F. Johnson executed to Frank J. Pedrick, Leonard F. Pedrick and Frank Curran, trading as Frank J. Pedrick & Son, a consent that the said waterway be filled in and a waiver of her right to apply for and receive a grant from the State of New Jersey for riparian rights on inside thoroughfare, and requested the Board of Commerce and Navigation, acting for and on behalf of the State of New Jersey, to make such grant of such lands under water as might be adjoining her land to the said Frank J. Pedrick, Leonard F. Pedrick and Frank Curran, trading as aforesaid, as she would personally be entitled to if 30

she personally applied for the same, but as to the exact contents of said agreement and waiver this defendant is not informed, and demands that the written instrument evidencing the above agreement and waiver be produced at the trial of this cause, but denies that the consent, waiver and request, therein referred to were taken subject to the lien of complainant's mortgage.

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8. This defendant admits that the State of New Jersey granted to Frank J. Pedrick, Leonard F. Pedrick, and Frank Curran, trading as aforesaid, riparian rights adjoining the premises described in the complainant's mortgage, but denies that said grant was to the middle of the stream in front of the premises. This defendant denies that the interest taken by Frank J. Pedrick, Leonard F. Pedrick and Frank Curran, trading as aforesaid, under said grant was taken subject to the lien of the complainant's mortgage, and denies that the description contained in paragraph 8 was of lands adjoining the premises as described in paragraph 3 of the complainant's mortgage, but admits that the lands therein described were a part of a much larger tract or tracts granted and conveyed by the State of New Jersey to Frank J. Pedrick, Leonard F. Pedrick and Frank Curran, trading as aforesaid.

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9. This defendant admits that the parties named therein granted to Ventnor Gardens, Inc., certain riparian rights adjoining the premises described in paragraph 3 of the bill of complaint, but denies that said conveyance was to the middle of the stream in front of said premises, but that said conveyance described three tracts much larger in area, and con-

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tained no reference whatever to the middle of the said stream. This defendant denies that the interest which Ventnor Gardens, Inc., took under the said grant was taken subject to the lien of the complainant's mortgage.

10. As to the allegations contained in paragraph 10, this defendant has no knowledge or information sufficient upon which to found a belief. 10

11. This defendant admits the execution and delivery by Ventnor Gardens, Inc., of the mortgage therein referred to, which said mortgage covered other lands in addition to those described in paragraph 8 of the bill. This defendant denies that any interest which the said Samuel B. Dobbs took by virtue of said mortgage is subject to the lien of the complainant's mortgage. 20

12. The execution and delivery of an assignment of said mortgage is admitted, but this defendant denies that any interest which the assignees took thereunder is subject to the lien of complainant's mortgage.

13. This defendant has no knowledge or information sufficient upon which to found a belief as to the allegations of paragraph 13. 30

14. This defendant admits the filing of the *lis pendens* therein referred to, and denies the balance of said paragraph.

15. This defendant admits the appointment of Max Grossman as receiver for Ventnor Gardens, Inc., and denies the balance of said paragraph.

44 *Answer of General Land and Investment
Company, Intervening Defendant*

16. This defendant admits the filing of the map therein referred to, but denies the balance of said paragraph.

17. This defendant has no knowledge or information sufficient upon which to found a belief as to the allegations of paragraph 17.

10 18. Paragraph 18 is admitted.

19. This defendant further answering says that by an order entered in this court in a certain cause therein pending wherein John Shuster is complainant and Ventnor Gardens, Inc., is defendant, entered on the 15th day of June, 1928, Max Grossman, receiver of Ventnor Gardens, Inc., was authorized and directed to sell to this defendant the lands and premises, and choses in action described in a certain
20 petition therein referred to for the sum of \$100,000.00, subject to the terms particularly set forth in said order, and that pursuant thereto this defendant has paid to the said receiver the initial deposit of \$10,000.00 provided for in said order and that since the entry of the said order under the terms of a certain other order entered in said cause the time for settlement and payment by the General Land and Investment Company has been extended for a period of ninety days from the 15th day of October, 1928,
30 and that this defendant has paid a further sum of \$5,000 on account of the purchase price of said lands, and that the lands included in said order of the Court entered on the 15th day of June, 1928, included, with other lands, the lands described in the bill of complaint, and that by reason thereof this defendant is, upon payment of the balance of the

purchase price, and upon compliance with the terms of the said order of June 15, 1928, as amended, entitled to all of the interest of the receiver in the lands described in the bill of complaint.

20. This defendant further answering the bill of complaint says that at the date named in the bill as the date of the bond and mortgage therein referred to title to the lands described in paragraph 8 so far as said lands lay below the high-water mark of the said thoroughfare, was in the State of New Jersey, and that the said lands were duly granted to Frank J. Pedrick, Leonard F. Pedrick and Frank Curran trading as aforesaid, and that the moneys paid to the State of New Jersey therefor were the actual moneys of Ventnor Gardens, Inc., and that the lands so conveyed vested in the grantees named in said grant an absolute title superior to that of the complainant, and that the preemptive right of the riparian owner to the grant is not a vested right, but is merely granted by the Legislature as a matter of grace and not as a matter of right, and that this preemptive right does not extend to a mortgage as such. 10 20

21. This defendant further says that Ventnor Gardens, Inc., has expended large sums of money in the acquisition of the said title from the State of New Jersey and payment therefor, and has also expended large sums of money in the filling in of the said thoroughfare and raising the same to grade, and in the making of other improvements, and that if it should be determined that the complainant is entitled to a lien upon said lands described in paragraph 8 or to any part of said lands then this de- 30

10 defendant charges that all of the monies expended and
expense incurred by Ventnor Gardens, Inc., both in
the acquisition of the said title and the raising to
grade of lands included in the State's riparian grant,
or the making of any other improvements thereon,
should be ascertained and fixed as a charge upon the
lands acquired from the State of New Jersey prior
to any lien or charge of the mortgage described in
the bill of complaint.

22. This defendant further answering says, that
the bill of complaint discloses no right to any relief
whatever as against this defendant, and prays that
the said bill may be dismissed.

HARVEY F. CARE,
*Solicitor for General Land
and Investment Company,
Intervening Defendant.*

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REPLY TO ANSWER OF GENERAL LAND
AND INVESTMENT COMPANY.

(Filed March 8, 1929.)

IN CHANCERY OF NEW JERSEY.

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Between	}	
FLORENCE J. MOORE,		
Complainant,		On Bill, etc.
and		Reply to Answer of
VENTNOR GARDENS, INC.,		General Land and
et als.,		Investment Co.
Defendants.		

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Complainant joins issue on the answer of defendant, General Land and Investment Company.

Replying to the new matter set up in paragraphs 19, 20, 21 and 22 of said answer complainant says:

1. Complainant has no knowledge of the allegations contained in paragraph 19 of said answer and prays proof thereof.

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2. She has no knowledge of the consideration paid by Ventnor Gardens, Inc., to the State of New Jersey as alleged in paragraph 20 and prays proof thereof. She denies that the conveyance referred to in said paragraph vested in the grantee title superior

48 *Reply to Answer of General Land and
Investment Company*

to that of the complainant. She denies that the pre-emptive right of the riparian owner referred to in said paragraph is not a vested right. She denies that said pre-emptive right does not extend to a mortgagee as such.

10 3. She has no knowledge of the expenditure of moneys by Ventnor Gardens, Inc., as alleged in paragraph 21 and prays proof thereof but denies that such expenditure, if made, gave any rights to defendant superior to the lien of complainant.

4. Complainant denies the allegations contained in paragraph 22.

THOMPSON & HANSTEIN,
Solicitors of Complainant.

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DECREE PRO CONFESSO.

(Filed Dec. 28, 1928.)

IN CHANCERY OF NEW JERSEY.

Between

FLORENCE J. MOORE,
Complainant,
and
VENTNOR GARDENS, INC.,
et. als.,
Defendants.

On Bill, &c.
Decree Pro Confesso.

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This cause being opened to the Court by Thompson & Hanstein of counsel with the complainant, and it appearing that process of subpoena calling upon the defendant to answer the complainant's bill of complaint filed herein has been duly issued and returned served upon the defendants Ventnor Gardens, Inc., Max Grossman, receiver for Ventnor Gardens, Inc., Atlantic County Trust Company, City of Ventnor City, Bentley H. Pope, Edward C. Stokes, John C. Slape, Kwass Realty Co.; General Land and Investment Company having been admitted as a party defendant, and United Dredging Company; and that the said defendants, The United Dredging Co., Kwass Realty Co. and City of Ventnor City; have not nor has any of them, filed any answer to said bill within the time limited by law or by said order, but have wholly failed and neglected so to do.

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It is thereupon, on this 28th day of December in the year of our Lord one thousand nine hundred and twenty-eight, on motion of Thompson & Hanstein, solicitors of complainant ordered, adjudged and decreed, that the complainant's said bill of complaint be and the same is hereby taken as confessed against the said defendants, The United Dredging Co., Kwass Realty Co. and City of Ventnor City, to the end that such decree may be made against them as the Court shall deem equitable and just.

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E. R. WALKER,
C.

A true copy
THOMAS BARBER.

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CONCLUSIONS.

(Filed March 10, 1930.)

IN CHANCERY OF NEW JERSEY.

Between		10
FLORENCE J. MOORE,	}	
Complainant,		
and		On Bill for Strict
VENTNOR GARDENS, INC.,		Foreclosure.
et als.,		Conclusions.
Defendants.		

MESSRS. THOMPSON & HANSTEIN, for complainant.	20
MR. JOHN D. McMULLIN, for defendants, Bentley	
H. Pope, Edward C. Stokes and John C.	
Slape.	
MR. HERBERT R. VOORHEES, for defendant, Atlantic	
County Trust Company.	
MR. HARVEY F. CARR, for defendant, General Land	
& Investment Company.	
MR. JOSEPH B. PERSKIE, for defendant, Max Gross-	
man, receiver of Ventnor Gardens, Inc.	30

INGERSOLL, V. C.:

1. Under the riparian laws of New Jersey, the lands below high-water mark, constituting the shores

and submerged lands of the navigable waters of the State, were the property of the State as sovereign.

2. The title and interest of the State in these shore lands, under the State laws, is a distinct and separate estate, to be dealt with and disposed of in accordance with the terms of the statutes, either by a sale and conveyance to the riparian owner himself or his assignees, or, in case of his or their neglect to take
10 from the State its grants on the terms offered, then to a stranger, who, succeeding to the State's title, would have no relation to the adjacent riparian owner, except that of a common boundary.

3. The title under the New Jersey grants is not only a new estate, but in a new subject divided from the upland or riparian property by a fixed and permanent boundary. Such grants are of the estate in the land and not of a mere franchise or incorporeal
20 hereditament.

4. A proprietor of land bordering upon a navigable stream, having no grant from the State of New Jersey for riparian rights, executes a mortgage upon said lands, describing them by metes and bounds, and extending only to such stream—the mortgagor's assignees obtain from the State a riparian grant upon the lands under water in said stream adjoining said premises, together with a large amount of other
30 lands under water in said stream—said stream being thereafter entirely filled in and made upland; held, that the lien of the mortgage extended no further than the land described therein and that the lands under water acquired from the State were not subject to the lien of the mortgage.

The complainant was the owner of a mortgage upon three tracts of land described as follows:

ALL that certain lot, tract or parcel of land and premises situate, lying and being in the City of Ventnor City, County of Atlantic and State of New Jersey:

BEGINNING at the northerly line of Monmouth Avenue, 52 feet east of the easterly line of Margate Park; thence (1) Eastwardly, along the northerly line of Monmouth Avenue, 25 feet; thence (2) Northwardly, parallel with Margate Park, 100 feet, more or less, to line of inside Thoroughfare; thence (3) Westwardly, along line of Inside Thoroughfare, 25 feet to a point distant 52 feet east from the easterly line of Margate Park, measured at right angles thereto; thence (4) Southwardly, parallel with Margate Park, 100 feet, more or less, to northerly line of Monmouth Avenue and place of beginning. 10

No. 2. BEGINNING at the northeast corner of Wyoming Avenue (formerly Margate Park) and Monmouth (formerly Mediterranean) Avenue, and extending thence (1) Eastwardly, along the northerly line of Monmouth Avenue 26 feet; thence (2) Northwardly, parallel with Wyoming Avenue, 150 feet to the Commissioners' exterior wharf line in Inside Thoroughfare; thence (3) Westwardly, along said exterior wharf line, parallel with Monmouth Avenue, 26 feet to the Easterly line of Wyoming Avenue; thence (4) Southwardly along said easterly line of Wyoming Avenue, 150 feet to the place of beginning. 20 30

No. 3. BEGINNING in the northerly line of Monmouth (formerly Mediterranean) Avenue 26 feet eastwardly from the easterly line of Wyoming Avenue (formerly called Margate Park) and extending thence Eastwardly, along said north-

erly line of Monmouth Avenue, 26 feet in front or width; thence northwardly between parallel lines of that width, parallel with Wyoming Avenue, 100 feet, more or less, in depth to high water line of Inside Thoroughfare.

10 TOGETHER with all and singular the buildings, improvements, woods, ways, rights, liberties, privileges, hereditaments and appurtenances, whatsoever to the same belonging, or in anywise appertaining and the reversion and reversions, remainder and remainders, rents, issues and profits thereof.

This mortgage was foreclosed and at a sale the premises were purchased by the complainant for the sum of \$500.00 and on or about the 15th day of October, 1927, the complainant entered into possession of the premises.

20 Prior to the foreclosure of this mortgage, the State of New Jersey granted to Frank J. Pedrick & Son the riparian rights in the said Inside Thoroughfare adjoining the premises owned by them, the said Frank J. Pedrick & Son, included in which were the riparian rights adjoining the premises described in complainant's mortgage.

The complainant alleges that the lands adjoining the mortgaged premises and included in said grant are bounded and described as follows:

30 ALL that certain lot, tract or parcel of land and premises situate, lying and being in the City of Ventnor City, County of Atlantic and State of New Jersey.

BEGINNING at a point in the northeast line of Wyoming Avenue (and Wyoming Avenue extended) 150 feet northwestwardly of the northeast corner of Monmouth and Wyoming Ave-

nues; extending thence (1) Northwestwardly, in and along said northeast line of Wyoming Avenue and Wyoming Avenue extended, 227 feet, more or less, to a point in the center line of Inside Thoroughfare, located midway between the high water lines of the northwest and southeast shores of said Thoroughfare, the location of the high water lines being taken from the actual survey made in December, 1922 and January, 1923, by the New Jersey State Board of Commerce and Navigation; thence (2) Northeastwardly along said center line of Thoroughfare 77.88 feet, more or less, to a point distant 388.65 feet northwest of the northerly line of Monmouth Avenue, measured on a line at right angles thereto; thence (3) Southeastwardly, parallel with Wyoming Avenue 288.65 feet, more or less, to the point 100 feet northwestwardly of the northerly line of Monmouth Avenue; thence (4) Southwestwardly, parallel to the northerly line of Monmouth Avenue, 51 feet; thence (5) Northwestwardly, parallel with Wyoming Avenue 50 feet; thence (6) Southwestwardly, parallel with Wyoming Avenue, 26 feet to the point and place of beginning.

The said riparian rights, together with a great deal of other property, were sold by Frank J. Pedrick and Son to the Ventnor Gardens, Inc., and the said Inside Thoroughfare was filled in, at a cost and expense of \$250,000.00 or more.

The allegation of the bill is that the mortgage covered not only the lands therein described but included all the right, title and interest which the owner of the ripa, at the date of said mortgage, had in the lands under water, and that when the

State of New Jersey made its grant, the land under water, adjacent to the premises in the mortgage, became, by reason thereof, subject to the lien of the mortgage.

Complainant prays that said defendants may be decreed to pay complainant the amount so found due, with interest and costs, by a short day to be appointed by this Court; and that, in default of such payment they be debarred and foreclosed of all
10 equity of redemption in the lands last above described.

I was, at the time of the hearing, requested to make no disposition of this case, as it was believed the matter could be amicably adjusted between the parties. On the 4th day of March, 1930, I received a communication from counsel stating that they had been unable to agree and requesting me to proceed.

The United States Supreme Court in Mayor and Council of the City of Hoboken v. Pennsylvania Railroad Co., and five similar cases in 124 U. S. Supreme Court Reports, p. 656, adversely disposed of a situation similar to the complainant's contention. In
20 that case, it was held:

"Under the riparian laws of New Jersey, the lands below high water mark, constituting the shore and submerged lands of the navigable waters of the State, were the property of the State as sovereign.

The title and interest of the State in these
30 shore lands, under the State laws, is a distinct and separate estate, to be dealt with and disposed of in accordance with the terms of the statutes, either by a sale and conveyance to the riparian owner himself or his assignees, or, in case of his or their neglect to take from the State its grants on the terms offered, then to

a stranger, who, succeeding to the State's title, would have no relation to the adjacent riparian owner, except that of a common boundary.

The title under the New Jersey grants is not only a new estate, but in a new subject divided from the upland or riparian property by a fixed and permanent boundary. Such grants are of the estate in the land and not of a mere franchise or incorporeal hereditament.

Under these grants the land conveyed is held 10
by the grantees on the same terms on which all other lands are held by private persons under absolute titles; and every previous right of the State of New Jersey therein, whether proprietary or sovereign, is transferred or extinguished, except such sovereign right as the State may lawfully exercise over all other private property."

The opinion of Judge Nixon in the Circuit Court 20
of the United States for the district of New Jersey, which was affirmed by the opinion above cited, states the points decided as follows:

"Where a proprietor of land bordering upon a navigable river dedicated a portion of such lands to a town for the purpose of public highways, and the same was delineated on a map as extending to the high-water mark of the river, as it existed at the time of the grant, held, that no part of the land or water adjoining said 30
lands, and lying below high-water mark, as it then existed, passed to the town or was made subject to any easement by any such dedication or grant, since all such land lying below high-water mark belongs to the State and could only be dedicated or subjected to an easement by the State or its grantees.

Soil acquired and redeemed from the water by filling in is in no sense alluvion or accretion which would become the property of the shore owner, but is the property of the State or its grantees, in whom the title to the land between high and low water mark is; and no right exists in the shore owner, who had dedicated to the public streets to the limit of his ownership, to charge such newly-made land with the burden of an easement over it."

10

Following the reasoning of Judge Nixon and Mr. Justice Matthews, it is apparent that the lien of the mortgage extended no further than the land described therein, and that the lands under water thereafter acquired from the State, in the condition as acquired or as thereafter filled in, were not subject to the lien of the mortgage.

A decree dismissing the bill will be advised.

20

Determined: March 10, 1930.

30

FINAL DECREE.

(Filed July 8, 1930.)

IN CHANCERY OF NEW JERSEY.

10

Between		
FLORENCE J. MOORE,	}	On Bill for Strict Foreclosure. Final Decree.
Complainant,		
and		
VENTNOR GARDENS, INC.,		
et als.,		
Defendants.		

20

This matter coming on to be heard in the presence of Thompson & Hanstein, solicitors of the complainant, and Harvey F. Carr, solicitor of General Land & Investment Co., one of the defendants, and the Court having read the pleadings and heard the proofs, and the arguments of the respective counsel having been heard, and the Court having duly considered the said pleadings, proofs and arguments, and it appearing to the Court that the complainant is not entitled to the relief sought and prayed for by her in her bill of complaint. 30

It is, on this 7th day of July, 1930, by the Chan-

cellor of the State of New Jersey, ordered, adjudged and decreed as follows:

1. That the lien of the complainant's mortgage extends only to the following described lands and premises, viz:

10 ALL those certain lots, tracts or parcels of land and premises situate, lying and being in the City of Ventnor City, County of Atlantic and State of New Jersey:

No. 1. BEGINNING at the northerly line of Monmouth Avenue, 52 feet east of the easterly line of Margate Park; thence (1) Eastwardly, along the northerly line of Monmouth Avenue, 25 feet; thence (2) Northwardly, parallel with Margate Park, 100 feet, more or less, to line of Inside Thoroughfare; thence (3) Westwardly, along line of Inside Thoroughfare, 25 feet to a point distant 52 feet east from the easterly line of Margate Park, measured at right angles thereto; thence (4) Southwardly, parallel with Margate Park, 100 feet, more or less, to northerly line of Monmouth Avenue and place of beginning.

20

No. 2. BEGINNING at the northeast corner of Wyoming Avenue (formerly Margate Park) and Monmouth (formerly Mediterranean) Avenue, and extending thence (1) Eastwardly, along the northerly line of Monmouth Avenue 26 feet; thence (2) Northwardly, parallel with Wyoming Avenue 150 feet to the Commissioners' exterior wharf line in Inside Thoroughfare; thence (3) Westwardly, along said exterior wharf line, parallel with Monmouth Avenue, 26 feet to the easterly line of Wyoming Avenue; thence (4) Southwardly, along said easterly line of Wyoming Avenue, 150 feet to the place of beginning.

30

No. 3. BEGINNING in the northerly line of Monmouth (formerly Mediterranean) Avenue 26 feet eastwardly from the easterly line of Wyoming Avenue (formerly called Margate Park) and extending thence Eastwardly, along said northerly line of Monmouth Avenue, 26 feet in front or width; thence northwardly between parallel lines of that width, parallel with Wyoming Avenue, 100 feet, more or less, in depth to high water line of Inside Thoroughfare. 10

TOGETHER with all and singular the build- ings, improvements, woods, ways, rights, liberties, privileges, hereditaments and appurtenances, whatsoever to the same belonging, or in anywise appertaining and the reversion and reversions, remainder and remainders, rents, issues and profits thereof.

2. That the lien of the said mortgage does not extend to any of the lands and premises described in the bill of complaint, except as hereinabove described, and that lands under water acquired from the State of New Jersey after the date of the said mortgage, and not described therein, are not subject to the lien of the complainant's mortgage. 20

3. That the bill of complaint be and the same hereby is dismissed with costs.

4. Further ordered and decreed that the complainant pay to the defendants the costs of this suit to be taxed, and that execution issue therefor according to the practice of this Court. 30

Respectfully advised.

R. H. INGERSOLL,
V. C.

Approved as to form:

THOMPSON & HANSTEIN,
Solicitors of Complainant.

JOHN D. McMULLIN,
Solicitor for Defendants, Bentley H. Pope, Edward C. Stokes and John C. Slape.

10

HERBERT R. VOORHEES,
Solicitor for Defendant, Atlantic County Trust Company.

HARVEY F. CARR,
Solicitor for Defendant, General Land & Investment Co.

JOSEPH B. PERSKIE,
Solicitor for Defendant, Max Grossman, Receiver of Ventnor Gardens, Inc.

20

30

*Order Amending Answer of Defendant,
General Land and Investment Co. by
Answering Amendments to Bill
of Complaint* 63

ORDER AMENDING ANSWER OF THE DEFENDANT, GENERAL LAND & INVESTMENT CO. BY ANSWERING THE AMENDMENTS TO THE BILL OF COMPLAINT.

10

(Filed Sept. 6, 1930.)

IN CHANCERY OF NEW JERSEY.

Between		On Bill, &c.	
FLORENCE J. MOORE,		Order Amending Answer of the Defendant, General Land & Investment Co. by Answering the Amendments to the Bill of Complaint.	20
Complainant,	}		
and			
VENTNOR GARDENS, INC.,			
et als.,	}		
Defendants.			

Leave having been given therefor in open court upon the final hearing of the above-stated cause, the defendant, General Land & Investment Co., answers the amendments to the bill of complaint as follows: 30

3a. This defendant has no knowledge or information sufficient upon which to form a belief as to the allegations of paragraph 3a.

6a. This defendant denies the allegations of paragraph 6a.

HARVEY F. CARR,
Solicitor for Defendant, General Land & Investment Co.

10

STIPULATION.

(Filed Sept. 15, 1930.)

NEW JERSEY COURT OF ERRORS AND
 APPEALS.

20

Between

FLORENCE J. MOORE,
Complainant-Appellant,

and

VENTNOR GARDENS, INC.,

et als.,

Defendants-Respondents.

On Appeal from
 Chancery.
 Stipulation.

30

It is stipulated by and between Thompson & Hanstein, Esquires, solicitors for and of counsel with complainant-appellant, Florence J. Moore; and Harvey F. Carr, Esquire, solicitor for and of counsel with defendant-respondent, General Land and In-

vestment Co.; John D. McMullin, Esquire, solicitor for and of counsel with defendants, Bentley H. Pope, Edward C. Stokes and John C. Slape; Herbert R. Voorhees, Esquire, solicitor and of counsel with defendant, Atlantic County Trust Company; and Joseph B. Perskie, Esquire, solicitor for and of counsel with defendant, Max Grossman, receiver of Ventnor Gardens, Inc.; that Exhibits D2, D3, D4, D5 and D6, are as follows:

Exhibit D3—Bond of Ventnor Gardens, Inc., to Samuel B. Dobbs, dated November 10, 1926, to secure \$250,000, payable in installments; that Exhibit D2 was secured by 10

Exhibit D2—which is a mortgage from Ventnor Gardens, Inc., to Samuel B. Dobbs, dated November 10, 1926, recorded on November 16th, 1926, in the Atlantic County clerk's office in Book 435 of Mortgages, page 486, and covers the riparian grant, which covers the land adjoining the premises in question in this suit, together with other lands, and contains the following covenant: 20

“It is further covenanted and agreed between the parties that the mortgagor will within 20 days after acquiring legal title to the lands described in Parcel #2, upon written demand made by the mortgagee make, execute and acknowledge such further conveyance and assurances in the law as may be requested by the mortgagee for the better securing and confirming unto the said mortgagee all and singular the 30

property thereby conveyed in order to subject such legal title to the lien of this mortgage, and that if the mortgagor shall default in the execution and delivery thereof for a period of 10 days after such request or the mortgagor then the principal sum thereof, together with interest shall forthwith become due and payable any conditions herein or therein contained to the contrary notwithstanding." (Parcel #2, lands covered by Riparian Grant.)

10

Exhibit D4—Mortgage from Ventnor Gardens, Inc., to Samuel B. Dobbs, dated January 31, 1927, recorded February 5th, 1927, in the Atlantic County clerk's office in Book 446 of Mortgages, page 464, which said mortgage covers the riparian grant, including the premises in question, together with other lands and contains the following provision:

20

"Whereas, Ventnor Gardens, Inc., in and by its certain obligation or writing obligatory under its corporate seal duly executed and bearing date November 10, 1926, stands bound unto the said party of the second part, in the sum of \$500,000 lawful money of the United States of America, conditioned for the payment in lawful money aforesaid in the sum of \$250,000 at the times therein specified. And whereas, to secure the payment of the said obligation or writing obligatory the said Ventnor Gardens, Inc., made, executed and delivered a certain mortgage dated November 10, 1926, conditioned for the payment of the sum of \$250,000 with interest thereon payable at the times and in the

30

manner specified in said mortgage, which mortgage was duly recorded in the clerk's office of Atlantic County on November 16, 1926, in Book 435 of Mortgages, page 486," which mortgage, Exhibit D4, was intended to further secure to the mortgagee the same debt as that secured by mortgage, Exhibit D3, and to cover certain after-to-be-acquired lands referred to in mortgage, Exhibit D3, to wit, all the lands described in the Riparian Grant.

10

Exhibit D5—Assignment of mortgages (Exhibits D2 and D4) from Samuel B. Dobbs to Bentley H. Pope, Edward C. Stokes and John C. Slape, dated May 27, 1927, recorded May 28, 1927, in Book 91 of Assignments of Mortgages, page 37.

Exhibit D6—Deed, dated January 11, 1929, made by 20
Max Grossman, Receiver of Ventnor
Gardens, Incorporated, to General
Land & Investment Co., and recorded
Jan. 14, 1929, in the Atlantic County
clerk's office in Book 911 of Deeds,
page 266, conveying to General Land &
Investment Co., a tract of some 165
acres, being Lot 5, Inside and Sand
Hills Beaches, together with all of the
lands described in the Riparian Grant 30
from the State of New Jersey, "sub-
ject only to the liens and encumbrances
appearing upon * * * Exhibit A" re-
ferred to in said deed. The lien and en-
cumbrance claimed by the complainant
did not appear in said Exhibit A.

And, that this stipulation may be printed to set forth before this Court said exhibits, in lieu of printing said exhibits in full.

THOMPSON & HANSTEIN,
*Solicitors for and of Counsel
with Complainant-Appellant.*

HARVEY F. CARR,
*Solicitor for Defendant-Re-
spondent, General Land & In-
vestment Co.*

10

JOHN D. McMULLIN,
*Solicitor for Defendants-Re-
spondents, Bentley H. Pope,
Edward C. Stokes and John
C. Slape.*

HERBERT R. VOORHEES,
*Solicitor for Defendant-Re-
spondent, Atlantic County
Trust Company.*

20

JOSEPH B. PERSKIE,
*Solicitor for Defendant-Re-
spondent, Max Grossman, Re-
ceiver, &c.*

30

TESTIMONY.

IN CHANCERY OF NEW JERSEY.

Between		
FLORENCE J. MOORE,	}	10
Complainant,		
and		On Bill, etc.
VENTNOR GARDENS, INC.,		Final Hearing.
et als.,		
Defendants.		

Atlantic City, N. J., May 22, 1929. 20

TESTIMONY.

Before HON. ROBERT H. INGERSOLL, Vice-Chancellor.

APPEARANCES: 30

For the complainant, MESSRS. THOMPSON & HANSTEIN.

For the defendants, HARVEY F. CARR, ESQ., and FRANK FARLEY, ESQ.,

Mr. Hanstein: I have consented to the amending of our bill by what amounts to practically a formal thing, I want to amend by inserting a paragraph between 3 and 3a, merely to recite that this was a purchase money mortgage, which has not been recited before, and that the principal of the mortgage, to wit, \$20,000, together with interest from July 23, 1926, was due and unpaid, and by inserting a paragraph to be known as 6a in which I have more clearly set up my legal contention in the following manner, that by virtue of the mortgage aforesaid, the complainant was and became entitled to the riparian rights to the land under water adjacent to the land and particularly to all the rights of the said Dorothy Johnson as riparian owner, and the rights acquired when she built the lands to the middle of the stream adjoining said land, and also became entitled to the ownership of said land as might be made by filling in the water adjacent to said premises to the middle of the stream, that thereafter, as hereinafter referred to, said stream as aforesaid was entirely filled in.

Mr. Carr: If your Honor please, we have no objection to the granting of the amendment, but we do ask the right to file an amendment to our answer formally to these allegations. With that understanding I have no objection whatever.

30

(Mr. Carr then opened the defense for the General Land and Investment Company.)

Mr. Voorhees: I entered an appearance there, if your Honor please, and a formal answer for the Atlantic County Trust Company which holds a mort-

gage as trustee, and there may be some duty in that trustee to protect the interest there, and I am merely entering an appearance for them and we will take no part in the matter, because the same defense they have will, of course, affect us. Whatever conclusion your Honor reaches will be binding on us.

Mr. Farley: If your Honor please, I wish to put my appearance on the record for Mr. McMullin, representing the defendants Bentley H. Pope, 10 Edward C. Stokes and John C. Slape, assignee of mortgage of Dobbs.

GEORGE SWINTON, sworn.

Direct examination.

20

By Mr. Hanstein:

Q. Mr. Swinton, you are a civil engineer, are you not?

A. Yes, sir.

Q. Have been practicing as such for some number of years?

A. Yes, sir.

Q. And practice in Atlantic City?

A. Yes, sir.

30

Q. Did you, at the request of Thompson & Hanstein, for Mrs. Moore in this case, examine the maps of the surveys made by the State Board of Commerce and Navigation down in the vicinity of the property in question?

A. I did.

Q. And do you have a map that was made by the State Board of Commerce and Navigation?

A. I have. This is it.

Q. And you got it from the files of the State Board?

A. Yes, sir.

Q. Suppose you open that up?

Mr. Hanstein: The premises in question, Vice-
10 Chancellor, are three lots at the corner of, the north-east corner of Monmouth and Wyoming. The descriptions as to of them run from Monmouth Avenue, 100 feet more or less to high water line, and description as to the third runs to the wharf line.

Q. That is correct, isn't it, Mr. Swinton?

A. Yes, sir.

Mr. Carr: May I ask whether this interior dotted
20 line is the bulkhead line? I see it is marked there "Bulkhead."

A. Yes, that is the interior bulkhead line.

Mr. Carr: The exterior dotted line is the pier line?

A. That is correct.

Q. That map, which we will have marked Exhibit
30 C1, you found in the files of the State Board of Commerce and Navigation as purporting to show the high water lines of Inside Thorofare in the neighborhood of this property around the year when the survey was made, is that correct?

A. Yes, sir.

Mr. Carr: What year was that?

A. Their data showed that the survey was made in January, 1923, and the preceding month, December, 1922, in other words, took a period December, 1922, during the ensuing two months up to January, 1923.

(Map admitted in evidence and marked Exhibit C1.)

Q. Mr. Swinton, did you, with the aid of that map, Exhibit 1, prepare another map? 10

A. I did.

Q. And it is this map which we will have marked Exhibit C2, is that correct?

A. Yes, sir.

Q. From what data did you compile this map?

A. This map was compiled from the map of the New Jersey State Board of Commerce and Navigation, from the certified copy of the riparian grant of the State of New Jersey to several parties which are recited. 20

Q. Which are involved in this?

A. And the parties involved, and from an actual survey of the land, from data filed, maps dedicating streets adjoining the property.

(Map offered is received in evidence and marked Exhibit C2.)

Q. Did you, Mr. Swinton, calculate the dividing line between the north and south bank of Inside Thorofare as shown on Exhibit C1? 30

A. Yes, sir.

Q. And locate the center line of Inside Thorofare in front of the property in question?

A. I did.

Q. Will you indicate to the Vice-Chancellor which line it is that is the —

Mr. Carr: Your Honor, we have no objection to the use of these maps in a rather informal way, but we would like the right later to check the survey.

Mr. Hanstein: That is perfectly all right.

10 Mr. Carr: With that understanding, we have no objection to the use of the map.

Q. Will you indicate to the Vice-Chancellor which is the dividing line?

A. The short dash line indicated on this map, Exhibit C2, was the result of my computation to be the center line between the northwest shore and the southeast shore as formerly existed of Inside Thorofare.

20 Q. Will you note on that line a center line?

A. I already have it indicated, Mr. Hanstein.

Q. I will ask you if you also prepared a metes and bounds description of this area?

A. It was in your folder, I believe, Mr. Hanstein, the last time I saw it.

Q. I have got it in the bill and I want you to merely verify that is correct, metes and bounds, in paragraph 8 of the bill is set forth a description of what purports to be, on the basis of our contention,
30 the lands in front of the complainant's property which are claimed by us. Will you look at that description, please?

Mr. Carr: Subject to our checking it, we will admit it is correct, if your Honor please. We will have it checked a little later, but subject to that.

A. This description describes a tract of land extending northwardly from the lots in question to this center line as established on Exhibit C2.

The Court: Why is it that the lines are not parallel? Oh, the center line is not parallel, I see.

A. The center line is not parallel.

10

By Mr. Carr:

Q. Mr. Swinton, your data was made up or you used in part the description and the map annexed to or forming a part of the riparian grant, did you not?

A. Yes, sir.

Q. And you observe that in the riparian grant there were three descriptions, that of tract number 1, tract number 2 and tract number 3? 20

A. Yes.

Q. Tract number 1, I take it, represents that portion of land lying between the exterior riparian line and the bulkhead line?

The Court: Bulkhead line and the high water line on the easterly side.

A. That is right.

Q. And I take it that tract number 2 with the general easterly boundary thereof represented the exterior riparian line on the opposite shore, is that right? 30

The Court: That is the westerly bulkhead line, is it not?

A. It is the bulkhead line established for the northwesterly shore.

Q. Now, do you know whether in fact the lands forming a large part of tract number 2 were originally dredged or pumped out?

A. Only from hearsay.

Q. Only from hearsay?

A. I understand, if I may repeat it, that this was sucked out at one time artificially.

10 Q. It was pumped out?

A. Yes.

Q. At any rate, your calculation of the middle line of the Thorofare was based upon physical conditions as they now exist?

A. As they did exist at the time of the State survey.

Q. I mean as they did exist at that time?

A. Yes.

20 Q. And in doing that you did not take into consideration the bulkhead line established by the Riparian Commission?

A. No, sir.

(Original riparian grant offered and received in evidence and marked Exhibit D1.)

By Mr. Hanstein:

30 Q. Mr. Swinton, when you went down there all this land was filled in, was it not, when you went down to examine the property?

A. Yes, sir.

Q. That was about when, do you recall, approximately?

A. At the time this second map was made, September, 1928.

Mr. Carr: My purpose in calling Mr. Risley is to show the area or amount of yardage filled in.

WARNER I. RISLEY, SWORN.

Direct examination.

By Mr. Carr:

10

Q. Mr. Risley, you are a civil engineer and so forth?

Mr. Hanstein: I admit his qualifications.

Q. You are familiar with the Thorofare area or lands described in Exhibit D1, being a riparian grant from the State of New Jersey to Frank J. Pedrick & Sons? You are familiar with this area? 20

A. I am.

Q. Have you at my request checked this area for the purpose of ascertaining the amount of fill deposited on the bed of the old Thorofare?

A. Yes, sir.

Q. Can you tell me the result of your calculations, please?

Mr. Hanstein: I don't want to object to the formality of your proof. All I do have in mind is 30 that unless we are going to work out something so as to indicate the amount on our particular land, before we are through, with how much was deposited on the whole thing, won't be any particular help in the case, I don't think, except it may be a basis of calculation.

The Court: In this informal manner I will receive it subject to your objection.

Mr. Carr: If Mr. Hanstein wants it, I think we can have it calculated on the area he claims, although our legal theory is that we have a blanket lien for all of it. We may not agree at the moment on the legal theory, but that is our theory.

10 A. That is the computation that I made of the fill on the Inside Thorofare as based on the original soundings made by the dredging company and by soundings made during the progress of the work in estimates and the final elevations taken by myself at a later date. This is the basis of the computation upon which I have made these figures. I also believe the work was done under two contracts in which there were a variation of prices.

Q. You have seen those contracts, haven't you?

20 A. Yes, sir. Under the first contract there was 837,350 cubic yards dumped into the Thorofare, at 16 cents per cubic yard. That would be a sum of \$133,976. In addition to that the dredging company paid the Hill Dredging Company for the sand taken from Shelter Island, 6 cents per cubic yard, which would be an additional figure of \$50,241, which, added to the previous figure, makes the total cost of fill under the first contract of \$184,217. Under the second contract was 250,000 cubic yards pumped at
30 an average rate of 20 cents per cubic yard, would be \$50,000. The cost of this sand, 6 cents per cubic yard, would be fifteen thousand, making an additional cost of fill under the second contract \$65,000, making a total cost of the fill under both contracts \$249,217.

Q. I don't know whether you have made a calcu-

lation of the amount of material deposited within the area now claimed to be affected by the Moore mortgage. If you haven't, will you be kind enough to make that calculation?

A. I haven't as yet, no.

Q. How long would it take to make that calculation?

A. I can have it by two o'clock this afternoon.

Mr. Hanstein: He can submit it in the form of 10 a letter.

Cross-examination.

By Mr. Hanstein:

Q. There are some things I wanted to ask you, Mr. Risley. These figures that you gave us related to the filling of Inside Thorofare in so far as it was filled by the Ventnor Gardens, did it not? 20

A. Yes.

Q. With whom was this first contract made to which you refer, with what dredging company, I mean?

A. United Dredging Company.

Q. I beg pardon?

A. United Dredging Company.

Q. With whom was the second one made?

A. The same people.

Q. Was that second contract for filling of a different area of land than the first one related to? 30

A. No, a continuation of the same fill. The first fill, as I understand it, was stopped at a certain date of February the 7th, 1927, and a new contract was made after that date.

Q. In making up your figures, what do they represent, the amount actually deposited?

A. As can be ascertained at the present time, yes.

Q. Not what the contract said was to be deposited?

A. No, that is what is actually done.

Q. Who made the calculations as to what was actually deposited?

A. We made that.

Q. Your organization?

A. Yes.

10 Q. And you made that same calculation as to both contracts, did you?

A. Yes.

Q. These are the figures of your calculation?

A. Yes, sir.

Q. Now, these prices that you have referred to as the cost per cubic yard, they, I presume, you took out of the contract?

20 A. Yes, the first contract reads it was on the basis of 14 cents per cubic yard for a fill up to 3,000 yards from the point of pumping, from the dredging, that is.

Mr. Carr: Three thousand yards or feet?

30 A. Three thousand lineal feet, and for every additional thousand feet they were to get an additional cent per yard, and this was taken from the map for about a zone of 6000 feet, which would be about two cents more per cubic yard which, added to the 14 cents, would make 16. From hearsay I understand that some cases it was 17 due to the pipe line moving which would add another cent to the price, but I have used the lower figure, 16 cents a cubic yard.

Q. Twenty cents was the rate set in the second contract?

A. No, that was a different contract, in a lump sum basis for certain quantities, and I understand

the average rate was 20 cents. That I got from the dredging company.

Q. Do you know if those quantities were deposited as called for by this contract?

A. Which quantities do you refer to?

Q. The second contract, which apparently calls for \$50,000 worth of pumping?

A. No, called for more than that, but that was all that was done under that.

Q. Only \$50,000 worth done under that?

A. Yes.

10

Q. What is the source of your information that the United Dredging Company paid 6 cents a cubic yard for the sand that was pumped?

A. From a man in connection with the dredging company, Mr. Brott.

Q. Isn't it a fact as to one of these contracts, that the Pedrick enterprise, whichever one it was that made the contract with the dredging company, was to supply the sand?

A. I couldn't answer as to that, no.

20

Q. Do you know or don't you, that the Pedricks went out and bought some land from which the filling could be pumped?

A. No, sir, I don't know that.

Q. You don't know that?

Mr. Carr: Mr. Hanstein, I don't want to interrupt you. There is one contract between the Hill Dredging Company and Pedrick and Son, whereby the Hill Dredging Company placed at the disposal of Pedrick & Son forty acres of Shelter Island at a cost of \$120,000, and they took, I believe, as the basis, the number of cubic yards and the price actually paid to Hill, which in this case I think 6 cents a cubic yard, In other words, the dredging contract,

30

the one contract, the original contract, did not call for the cost of the material, but it was the pumping and the depositing of the material on the land, and in addition to that, Pedrick supplied the material which cost an average of 6 cents a yard.

10 Mr. Hanstein: I am just wondering if we can let this question of the dollars and cents amount go, perhaps something we can thrash out ourselves afterwards.

The Court: If you find it necessary to refer it to a Master, you can.

Mr. Hanstein: Yes, sir, I think perhaps Mr. Carr and I can get together on it.

20 Mr. Carr: I think we probably can agree between ourselves, and if we can't we can send it to a Master, and not burden his Honor with it. I don't think there is any doubt, your Honor, that those figures are pretty well established.

Mr. Hanstein: I think they very likely are.

Q. Do you know, Mr. Risley, how much was actually paid for this filling?

A. I do not. I had no connection with the original work, and I could not say, some question about these exact figures as to the total amounts.

30 Q. What I am getting at, I think there may have been due to the United Dredging Company \$133,976 under the first contract, and you don't know if they were ever paid?

A. No.

Q. You don't know anything about that?

A. No.

The Court: Didn't I grant an order the other day for the settling of that?

Mr. Carr: That was another one, your Honor.

Mr. Hanstein: It is the legal question we are concerned with here.

Mr. Carr: Will you kindly furnish Mr. Risley with the description of the portion where you want him to make the calculation? 10

The Court: He can take it right from Mr. Swinton's map. The map shows it right there.

Mr. Hanstein: I want to offer in evidence the mortgage from Dorothy Johnson to Florence Moore.

(Mortgage received in evidence and marked Exhibit C3.) 20

Mr. Hanstein: I want to make reference to the file of the Court of Chancery foreclosing this mortgage. That file is already down, your Honor. Then I would like to offer in evidence the deed from the sheriff to Mrs. Moore on the foreclosure.

(Deed received in evidence and marked Exhibit C4.)

The Court: There is the same description as the mortgage? 30

Mr. Hanstein: Yes, sir.

The Court: Was the foreclosure of this mortgage

prior or since the release or grant by the State and the filling in?

Mr. Hanstein: Subsequent to it. Exhibit C3 is a mortgage from Dorothy F. Johnson to Florence J. Moore, bearing date the 23rd of January, 1926, recorded in book 382 of mortgages, page 273, and so forth, and covering three parcels of land, two to the high water line with the exception of tract two,
10 which extends to the Commissioner's exterior wharf line. Exhibit C4 is a deed from James Cimino, Sheriff, to Florence J. Moore, dated the 6th of October, 1927, and given pursuant to a sale under a fieri facias in the foreclosure suit wherein Florence J. Moore is complainant and Dorothy Johnson is defendant.

The Court: Mr. Hanstein, let me get your view upon this matter. Aren't you precluded from this
20 action entirely? You have a mortgage upon certain lands and premises which, subsequent to the changed conditions, you foreclose, you sell and buy in? Have you not now elected to accept the premises as they then existed, as then described, as your security? Can you now come in and claim a much greater area, which it is to be assumed, at least, had it been sold, included in the sale, a larger amount would have been received from such sale? In other words, can you, with full knowledge, sell a certain
30 tract of land at public sale, buy it in yourself at a much less figure than the mortgage, leaving a deficiency, and then, after obtaining title yourself, then say that the description which I have sold, and the premises which I have caused to be sold is not the true description, and that I am entitled without further sale and further buying, to say that my land is increased approximately double in size?

Mr. Hanstein: Now, your Honor, I have given that very question quite some consideration, and I must say that any knowledge as to this changed condition, or anything in relation to it was never brought to my attention in any way whatever until after the mortgage was foreclosed and the deed sent to the sheriff for record.

The Court: Didn't your search disclose this grant? 10

Mr. Hanstein: I don't recall that it did.

The Court: Certainly should, shouldn't it?

Mr. Hanstein: You see, I presented my mortgage to a title company and I asked for a search on the mortgaged premises.

The Court: Of course, the difficulty is that don't 20
bind the Court.

Mr. Hanstein: Oh, no, but I am talking merely about the rights with regard to a strict foreclosure which are predicated on, sufficient to say, that we through ignorance of a fact omitted something. I think it would be inequitable if we would, assuming your Honor adopts our view as to what flows from the granting of the riparian rights, and so, I think it would be inequitable for your Honor to say here 30
is a mortgage of \$20,000, there has been paid in five hundred, nineteen thousand five hundred due, which is now a lien on the new land contended for, and the defendants have a right to redeem that land by paying \$19,500. I think your Honor would be entirely justified, and I state on behalf of my clients that

we, upon the situation of such a ruling, that if our contention is sound, and your Honor says that the defendants have a right of redemption in this property, that your Honor ought to say that they have a right to redeem all of our land, that is, the fast-land that was covered by the specific description in the mortgage and this new land that we contend for, that they have a right to redeem that for the amount due under our mortgage. In other words, I don't
10 think we have any right to —

The Court: Haven't you already, so far as you are concerned, fixed the value of the described land at \$500? Again I say there must be a lien for the full amount. Can I go any further than to say \$500? You have already fixed that as the true figure.

Mr. Hanstein: I don't think so. I remember last week in a case your Honor expressed yourself on the
20 question of amounts realized from sheriff's sales, but I don't see any reason why equity should not take cognizance of the fact when a man goes to bid on his own mortgage at his own foreclosure sale
—

The Court: He is not going to bid any more than he has to.

Mr. Hanstein: He is not going to bid any more
30 than he has to, it is an impracticable thing and it is never done, and I do not think that bills of strict foreclosure have, for instance, if we had left out a judgment where we had bought the property in for a hundred dollars, I don't think your Honor would say that the fellow who had the judgment could redeem from us by a hundred dollars, although our

mortgage might have been ten thousand, or else be barred. I don't think so. I think it is all a very interesting legal question.

The Court: What have you to say to this question? You advertise a certain described tract of land. The public is not interested in that bid, but if they knew that it was twice as much perhaps the public would be interested? If the defendant company, especially the mortgagor, if they are in bankruptcy, if the mortgagors are not, both the owners are in bankruptcy, aren't they entitled to that protection with a public sale? It may or may not be of any moment in this particular contract, but I can readily see how an additional amount of land in certain places would be decidedly valuable to other tracts if they were combined. 10

Mr. Hanstein: Dorothy Johnson who is the record owner, is not a party to this at all. 20

The Court: No, it is now in the —

Mr. Hanstein: It purely relates to this exterior line.

The Court: I wanted to get your views on it. My questions do not always mean that I have that view, but I want to get your view. 30

Mr. Hanstein: I want to offer the agreement between Frank Pedrick et al, and Dorothy Johnson. This is the agreement of the 24th of January, 1926, which is recoded in deed book 819, page 42, which agreement recites that "Whereas Frank Pedrick, Leonard Pedrick and Frank Curran, trading as

- Frank J. Pedrick & Son, have made application to the State of New Jersey for permission to fill in waters generally known as Inside Thorofare," and further reciting that the—"Whereas the Board of Commerce and Navigation is willing to permit Inside Thorofare to be filled in upon condition that all owners of the ripa will consent to the same, and waive their rights to make application to the Board of Commerce and Navigation for the riparian rights, it is therefore then agreed that in consideration of one dollar paid by the party of the first part to Dorothy Johnson, and each to the other paid, receipt of which is hereby acknowledged, and the mutual advantages to be derived by each party by reason of the reclaiming and filling in of the waters, the said Dorothy Johnson consented and agreed that the waterway should be filled in and waived her right to apply for a grant from the State of New Jersey for riparian rights on said Inside Thorofare, and she requested in this writing that the Board of Commerce and Navigation make such grant to the said persons trading as Frank J. Pedrick & Sons." This agreement describes a number of parcels of land, the parcel relating to the premises in question being described on page 5, as now marked by me as premises in question.

(Agreement admitted in evidence and marked Exhibit C5.)

- 30 Mr. Hanstein: I think it was agreed we should not be required to prove Dorothy Johnson was holding this property in trust for Frank Pedrick. Leonard Pedrick and Frank Curran.

Mr. Carr: I believe that to be the fact.

Mr. Hanstein: The next one is Exhibit D1, the grant from the State of New Jersey to Frank J. Pedrick, Leonard Pedrick and Frank Curran. Then I offer a certified copy of the deed from Frank J. Pedrick & Sons to Ventnor Gardens, bearing date the 31st of January, 1927, made between the Pedricks and Curran to Ventnor Gardens, recorded book 859, page 213, which conveys, for a consideration of \$28,506.55 the lands conveyed by the State of New Jersey to the parties of the first part in this instrument. 10

(Certified copy received in evidence and marked Exhibit C6.)

The Court: Gentlemen, isn't the Receiver entitled to be heard? I was asking if the solicitor of the receiver has been noticed of this hearing?

Mr. Hanstein: Yes, I think notice of hearing has been given. I made particular inquiry at my office last week. 20

Mr. Carr: The Land Company, of course, has succeeded to the rights of the receiver. The receiver filed an answer, the General Land filed the same answer, and they succeeded to the same rights.

The Court: Service is acknowledged, so it is all right. 30

Mr. Hanstein: There are only two other things I have in mind that are necessary to prove my case, Mr. Carr, one is that the complainant's mortgage was in default and that there was due upon it the amount set out in the foreclosure proceedings.

The Court: You have already offered the file which would show that.

Mr. Hanstein: And the other thing, which I am prepared to establish, is that upon the delivery of the sheriff's deed the complainant took possession of the property described in the mortgage.

10 Mr. Carr: Described in the sheriff's deed, but not the property now in dispute.

Mr. Hanstein: No, that is open land.

Mr. Carr: We will admit that. I think the delivery of the Sheriff's deed is equivalent to possession, anyway, in law.

20 The Court: For this purpose, yes.

Mr. Hanstein: I think that, coupled with this item which I may have to show out of my own testimony, and that is, that I, as solicitor for the complainant in the foreclosure suit, had no knowledge whatever of this condition until after the foreclosure suit had been completed.

30 Mr. Carr: May I ask this, Mr. Hanstein? You may answer it or not as you see fit. Is it admitted at the time of the filing of the foreclosure suit the following things had occurred, one, there was a riparian grant given by the State to Pedrick and Son; secondly, conveyance from Pedrick & Son to Ventnor Gardens; and, thirdly, that the physical work of filling the Thorofare had proceeded to its present point when the bill was filed?

Mr. Hanstein: I am not quite sure as to your first two propositions. As to the latter I don't know, but I think we can find it out right in the court room. Is the file here, your Honor, of the original foreclosure suit?

The Court: I have sent for it.

Mr. Hanstein: When I see the date on which I filed my bill, I am quite sure some one in the court room will know when that fill was completed by them. 10

Mr. Carr: Mr. Hanstein, whatever you desire to prove, I think I will be willing to stipulate, rather than to ask you to go on the stand to prove it.

Mr. Hanstein: All I wanted to show is that I never had knowledge of the situation. The foreclosure bill was filed the 21st of April, 1927, and I am just advised by Mr. Pedrick that the fill in front of our property was completed at that time. 20

The Court: The grant, although bearing date July, 1926, was not recorded until February 5th, 1927.

COMPLAINANT RESTS.

30

Mr. Carr: If the Court please, I desire to offer in evidence mortgage Ventnor Gardens, Incorporated, to Samuel B. Dobbs, dated the 10th day of November, 1926, conditioned for the payment of \$250,000 in certain instalments, which mortgage is

recorded November 16, 1926, in book 435 of mortgages, page 486, etc.

(Mortgage admitted in evidence and marked Exhibit D2.)

I also offer in evidence bond Ventnor Gardens, Incorporated, to Samuel B. Dobbs, dated November 10, 1926, being the bond secured by the mortgage
10 D2.

(Said bond admitted in evidence and marked Exhibit D3.)

This mortgage covers two parcels, parcel number 1 being a large tract of 165 acres lying generally westward of Inside Thorofare, and of parcel number 2 the following: "All the right, title and interest of the company, that is, the Ventnor Gardens, Incorporated, in and to all lands adjacent to and
20 lying oceanward of the lands described in parcel number 1 now or lately filled by the waters of Beach and Inside Thorofares, as well as all other after-acquired lands of the company." That is the only description in what I will term mortgage number 1, Exhibit D2.

I also offer mortgage dated the 31st of January, 1927, from Ventnor Gardens, Inc., to Samuel B. Dobbs, conditioned for the payment of \$250,000, and
30 reciting that it is supplemental to mortgage Exhibit D2, and is given to secure the same debt. This mortgage is recorded February 5, 1927, in book 446 of mortgages, page 464, and by metes and bounds describes the lands embraced in the riparian grant from the State of New Jersey to the partnership of Frank J. Pedrick & Son.

(Mortgage admitted in evidence and marked Exhibit D4.)

I also offer in evidence assignment of both of the mortgages last referred to from Samuel B. Dobbs for a consideration named therein as \$1,000 and other valuable considerations, to Bentley H. Pope, Edward C. Stokes and John C. Slape, which assignment is recorded in book 91 of Assignments of Mortgages, page 37.

10

(Assignment admitted in evidence and marked Exhibit D5.)

I want to offer in evidence, if your Honor please, the order authorizing the sale of the real and personal property of Ventnor Gardens in the file of John Schuster, complainant, and Ventnor Gardens, Incorporated, defendant, being Chancery docket 65, page 735, the order in question being filed June 15, 1928.

20

I also offer in evidence deed dated the 11th day of January, 1929, Max Grossman, Receiver of Ventnor Gardens, Inc., to the General Land and Investment Company, recorded January 14, 1929, in book 911 of deeds, page 266, etc., which deed describes two parcels of land, the one being a large tract of 165 acres and the other being the land described in the riparian grant from the State of New Jersey, description being by metes and bounds.

30

(Deed admitted in evidence and marked Exhibit D6.)

MRS. ROSEMARY OXENFELD, SWORN.

Direct examination.

By Mr. Carr:

Q. You were connected with the Pedrick organization for some time, were you not?

10 A. Yes.

Q. And had to do with the books of account?

A. Yes, sir.

Q. I show you a paper marked Certified check, dated January 20, 1926, charge Frank J. Pedrick & Son \$28,506.55, marked certified check to the order of William Reed, State Treasurer, signed, described here for the cashier.

A. Ware.

Q. "Ware for the cashier"?

20 A. Yes.

Q. Can you tell us what that transaction represents?

A. Why, this check was certified for the purpose of sending to the State Treasurer of New Jersey in payment of the grant.

Q. That is it was a certified check of Pedrick & Son was sent?

A. Yes, Frank J. Pedrick & Son.

Q. In that amount, \$28,506.55, is that correct?

30 A. Yes.

Q. And that paid for the riparian grant from the State of New Jersey to Frank J. Pedrick & Son, is that right?

A. Yes, that is right.

(Certified check slip offered, received in evidence and marked Exhibit D7.)

Q. While you are here, may I ask whether you have the books of Pedrick & Son which show payments made to the United Dredging Company?

A. Yes.

Q. Witness refers to an account in a book. What is this, a ledger?

A. Accounts payable.

Q. Accounts payable book, notations "United Dredging Company, Ventnor Gardens," showing a series of payments made beginning May 22nd, 1926, and continuing to June 11th? 10

A. January 11th.

Q. January 11th, is that?

A. Yes.

Q. 1927?

A. Yes.

Q. On the left-hand side does that show?

A. These are the cash payments.

Q. The actual cash payments?

A. These are the bills.

Q. On the right-hand side of the account are the bills rendered by the United Dredging Company? 20

A. Yes.

Q. Can you tell me the total amount of bills rendered by the United Dredging Company as shown there?

A. From May 31st, 1926, to April 30th, 1927, there was a total of \$185,149.42.

Q. Can you say how much was actually paid the United Dredging Company in cash during that same period, is that the total there? 30

A. \$33,500 was paid up until that time.

Q. Pardon me, are you correct in that?

A. Oh, excuse me.

Q. Isn't that the balance due?

A. This is the balance, yes, at that time. \$151,-
649.42.

Q. Was the amount actually paid?

A. Yes.

Q. Leaving a balance due them, according to these books as of what date, April 30th, 19 —

A. You see, the books were closed as of the end of the year, 1927.

Q. Your last entry is posted when?

A. Last cash entry?

Q. On either side. Your last charge entry is before?

A. April 30th, 1927.

Q. And your last cash entry is posted?

A. January 11th, 1927.

Q. So, referring to those books, and speaking as of April 30th, 1927, there was an unpaid balance of how much to the Dredging Company?

A. The unpaid balance as of April 30th, according to these books, is \$151,649.42. You see we had paid

20 Q. I believe you are a little mixed up there. You are mixed up or I am mixed up.

A. You see when the accounts were closed up, you would have to take off a whole new total of all these bills.

Q. Mrs. Oxenfeld, referring to the book entry, is it a fact that from December 31st, 1926, to April 30th, 1927, that bills for a total of \$185,149.42 were rendered by the Dredging Company?

A. Yes, that is true.

30 Q. And that on account of these bills the sum of \$33,500 was paid?

A. Yes.

Q. And that previously to December 31st, the bills rendered by the Dredging Company were paid by check drawn for the exact amount of the respective bills, is that the situation?

A. Yes.

Q. Was it the custom of Pedrick & Son to make all of these payments for dredging out of the account of Frank J. Pedrick & Son?

A. Yes, it was up until this time.

Q. And all moneys coming in first from the Dobbs mortgage were deposited in the account of Frank J. Pedrick & Son?

A. Yes.

Q. And disbursed from that account?

10

A. Yes.

Q. The moneys received from the sale of lots in Ventnor Gardens were likewise deposited in the account of Frank J. Pedrick & Son?

A. Yes, and credited.

Q. And disbursements on account of Ventnor Gardens were made out of the same account, is that right?

A. Yes.

Q. I show you a number of checks drawn to the order of the United Dredging Company and signed by Frank J. Pedrick & Son, by Leonard F. Pedrick, and also memorandum slips for certain checks to the United Dredging Company, and ask you whether these payments were made on account of the fill in Ventnor Gardens?

20

A. Yes, they were. The checks state that on the face of them.

(Checks offered, received in evidence and marked Exhibit D8.)

30

LEONARD F. PEDRICK, SWORN.

Direct examination.

By Mr. Carr:

Q. Mr. Pedrick, you at one time were interested in Ventnor Gardens, were you not?

10 A. I was.

Q. And you were the directing head of the organization, were you not?

A. Yes.

Q. Now, Mr. Pedrick, the moneys that were derived from the Dobbs mortgage, will you tell us whether or not they went into the physical improvements of Ventnor Gardens, the dredging?

20 A. They did, all of them, all the money from the Dobbs mortgage went into the physical development of Ventnor Gardens.

Q. How about the moneys used in payment of the riparian grant, did that come from the Dobbs mortgage?

A. That came from the Dobbs mortgage also.

Q. I show you check of Mr. Dobbs to the order of Ventnor Gardens, Incorporated, December 7, 1926, \$28,500, was that the check which came from Mr. Dobbs for the payment of the riparian grant to the State?

30 A. That is the check.

(Check offered, received in evidence, and marked Exhibit D9.)

Q. Then you drew the check of Frank J. Pedrick & Son directly to the State?

A. I did.

Q. In that way the riparian grant was paid for, is that correct?

A. Yes.

Mr. Carr: If the Court has no objection, we would like to return these Pedrick books to Mrs. Oxenfeld. She is anxious to get over to Ocean City where she is at service to a Commissioner over there, I think. 10

The Court: Certainly.

Q. I show you two checks, each dated January 19, 1927, both to the order of the United Dredging Company, both signed by S. B. Dobbs, one for \$9100 and one for \$27,000, and I ask you whether that is a part of the mortgage money used by Mr. Dobbs with your consent to pay the dredging bills?

A. That is right. 20

(Checks offered, received in evidence and marked Exhibits D10 and D11.)

Mr. Carr: Now, if your Honor please, I am willing to rest. I would like to leave open this, if I may, if it becomes relevant, to prove the amount due upon the original Dobbs mortgage. I expected Mr. McMullan here today and he was called away to the Court of Errors and Appeals. It may be that we 30 can stipulate as to the amount, Mr. Hanstein, I think it is approximately \$216,000 with interest.

Mr. Hanstein: I don't think we will have any trouble about that. It is held by Mr. Slape.

Mr. Carr: Governor Stokes and Mr. Pope.

Mr. Hanstein: We can prove that by affidavit.

Mr. Carr: Subject to that, we rest.

Mr. Hanstein: Without going into the question of cross-examination of Mr. Pedrick, it is conceded that this Dredging Company bill or work included a good deal more than filling the Thorofare?

10 Mr. Carr: Yes.

Mr. Hanstein: And the proceeds of the Dobbs mortgage were expended on the entire development and not necessarily in the filling of the Inside Thorofare?

Mr. Carr: That is true, except the \$28,000 check was used specifically.

20 Mr. Hanstein: For the purpose of the riparian grant?

Mr. Carr: Yes, that is right.

TESTIMONY CLOSED.

EXHIBIT C3.

2/22/29 S.

THIS INDENTURE, MADE THE twenty-third day of January in the year of our Lord one thousand nine hundred and twenty-six (1926)

10

BETWEEN DOROTHY F. JOHNSON, of the City of Atlantic City, County of Atlantic, and State of New Jersey, party of the first part, and FLORENCE J. MOORE, OF the City of Philadelphia, County of Philadelphia and State of Pennsylvania, party of the second part: WHEREAS, the said party of the first part is and by her certain Obligation or writing obligatory, under her hand and seal duly executed, and bearing even date herewith, stand bound unto the said party of the second part, in the sum of FORTY THOUSAND DOLLARS (\$40,000.00) lawful money of the United States of 20
12

America, conditioned for the payment of the just sum of TWENTY THOUSAND DOLLARS (\$20,000.00) like lawful money as aforesaid, at any time within three years, from the date thereof, together with interest thereon at and after the rate of six (6%) per centum per annum, payable semi-annually in like lawful money as aforesaid, without any fraud 30
or further delay; and shall pay the taxes assessed upon the premises hereinafter described for the first half of every year on or before the twentieth day of May therein, and for the second half of every year on or before the twentieth day of November therein, and shall produce receipts for taxes for

- each half of every year on or before the first day of June and the first day of December respectively therein; and shall also pay all other taxes, municipal assessments or charges in the nature thereof which may be laid or assessed upon the said premises immediately upon their assessment; and conditioned further, that said party of the first part should not apply for any deduction, by reason of this Mortgage, from the taxable value of the lands
- 10 therein described and embraced; and should and would keep the buildings erected and to be erected upon the said lands insured against loss or damage by fire or wind storm in such safe and responsible stock (non-mutual) Fire Insurance Company or Companies as should be satisfactory to said party of the second part, and endorse or assign and deliver all policies and certificates thereof to the said party of the second part as collateral security for the payment of the principal and interest aforesaid
- 20 the aggregate amount of which insurance shall not be less than TWENTY THOUSAND DOLLARS (\$20,000.00).

- AND PROVIDED FURTHER, however, and it was thereby expressly agreed, that if default should be made in the production in any year of the tax or any other receipts, as therein provided and covenanted as aforesaid, or in payment of said taxes, assessments and charges
- 30 as therein agreed as aforesaid, or in keeping the buildings erected upon said lands insured and the policies and certificates thereof assigned or endorsed as aforesaid, or if at any time default should be made in payment of interest as aforesaid for the space of thirty days after any semi-annual payment thereof should fall due, then and in every such case,

whether it be the first or any subsequent default, the whole principal debt aforesaid should, at the option of the said party of the second part, her heirs Executors, Administrators or Assigns, become due and payable immediately, and payment of said principal debt, and all interest thereon, might be enforced and recovered at once, anything therein contained to the contrary notwithstanding.

AND PROVIDED FURTHER, that in default of insurance or production of tax or any other receipts and payment of taxes, assessments and charges as aforesaid, the said party of the second part, her heirs, Executors, Administrators or Assigns, should have the option to effect such insurance, and pay such taxes, assessments and charges; and the premium or premiums paid for effecting such insurance and the amount paid for such taxes, assessments and charges as aforesaid, should be added to the principal moneys thereby secured and payable on demand, with legal interest, in like money, as in and by the said recited obligation and condition thereof, relation thereunto being had, may more fully and at large appear. 10 20

NOW THIS INDENTURE WITNESSETH, that the said party of the first part, as well for and in consideration of the aforesaid debt or principal sum of TWENTY THOUSAND (\$20,000.00) dollars, and for the better securing the payment thereof unto the said party of the second part, her heirs, Executors, Administrators or Assigns, in discharge of the said obligation above recited, as for and in consideration of the further sum of one dollar, in specie, well and truly paid to the said party of the 30

first part by the said party of the second part, at and before the ensealing and delivery hereof, the receipt of which one dollar is hereby acknowledged, hath granted, bargained, sold, aliened, enfeoffed, released and confirmed, and by these presents doth grant, bargain, sell, alien, enfeoff, release and confirm, unto the said party of the second part, her Heirs and Assigns, All those lots, tracts or parcels of land and premises hereinafter particularly described, situate, lying and being in the City of Ventnor, in the County of Atlantic and State of New Jersey, bounded and described as follows:

20 BEGINNING at the Northerly line of Monmouth Avenue, fifty-two feet East of the Easterly line of Margate Park; thence (1) Eastwardly along the Northerly line of Monmouth Avenue, twenty-five feet; thence (2) Northwardly parallel with Margate Park one hundred feet, more or less, to line of Inside Thoroughfare thence (3) westwardly, along line of Inside Thoroughfare, twenty-five feet to a point distant fifty-two feet East from the Easterly line of Margate Park, measured at right angles thereto; thence (4) Southwardly, parallel with Margate Park, one hundred feet, more or less, to Northerly line of Monmouth Avenue and place of beginning.

30 No. 2 BEGINNING at the Northeast corner of Wyoming Avenue (formerly Margate Park) and Monmouth (formerly Mediterranean) Avenue, and extending thence (1) Eastwardly, along the Northerly line of Monmouth Avenue twenty-six feet; thence (2) Northwardly parallel with Wyoming Avenue one hundred and fifty feet to the Commissioners' exterior wharf line in Inside Thoroughfare; thence (3) Westwardly along said exterior

wharf line, parallel with Monmouth Avenue, twenty-six feet to the Easterly line of Wyoming Avenue; thence (4) Southwardly along said Easterly line of Wyoming Avenue; one hundred and fifty feet to the place of beginning.

No. 3 BEGINNING in the Northerly line of Monmouth (formerly Mediterranean) Avenue, twenty-six feet Eastwardly from the Easterly line of Wyoming Avenue (formerly called Margate Park), and extending thence Eastwardly along said Northerly line of Monmouth Avenue, twenty-six feet in front or width; thence Northwardly between parallel lines of that width, parallel with Wyoming Avenue, one hundred feet, more or less, in depth to high water line of Inside Thoroughfare.

64

Being the same premises conveyed by the party of the second part to the party of the first part, by deed bearing even date herewith and intended to be forthwith recorded in the office of the Clerk of Atlantic County at Mays Landing, New Jersey, part of the purchase price of which this mortgage is given to secure.

TOGETHER with all and singular, the buildings, improvements, woods, ways, rights, liberties, privileges, hereditaments and appurtenances whatsoever to the same belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof:

TO HAVE AND TO HOLD the said hereditaments and premises above described and granted, or intended so to be, with the appurtenances, unto the said party of the second part, her Heirs and As-

signs, to and for the only proper use, benefit and behoof of the said party of the second part, her Heirs and Assigns forever.

PROVIDED ALWAYS, NEVERTHELESS, that if the said party of the first part, her Heirs, Executors, Administrators and Assigns, do and shall well and truly pay, or cause to be paid, unto the said party of the second part, or to her certain
10 Attorney or Attorneys Executors, Administrators or Assigns, the aforesaid debt or sum of TWENTY THOUSAND DOLLARS (\$20,000.00) on the day and time hereinbefore mentioned and appointed for the payment thereof, together with interest for the same, in like money in way and manner hereinbefore specified therefor, without any fraud or further delay, and without any deduction, defalcation or abatement to be made, for or in respect of any taxes, charges, or assessments whatsoever, together with
20 the taxes, assessments and charges hereinbefore mentioned; and shall produce to the said obligee, her heirs, Executors, Administrators or Assigns, receipts for all taxes, assessments and charges laid or levied upon said premises as hereinbefore provided, and shall have faithfully kept and performed the condition and agreement in said obligation contained and herein recited, as to insuring and keeping insured the said premises; that then and from
30 thenceforth, as well this present Indenture and the estate hereby granted, as the said OBLIGATION above recited, shall cease, determine and become absolutely null and void, to all intents and purposes; anything hereinbefore contained to the contrary thereof in anywise notwithstanding.

AND the said party of the first part, for herself her Heirs, Executors and Administrators, does

covenant and grant to and with the said party of the second part, her heirs, Executors, Administrators and Assigns, that the said party of the first part, her Heirs and Assigns, shall not and will not apply for, or claim any deduction by reason of this Mortgage from the taxable value of said lands and premises; and that the said party of the second part, her heirs, Executors, Administrators and Assigns, shall and may from time to time, and at all times after default shall be made in the performance of 10 the provisos or conditions herein recited or contained, peaceably and quietly enter into, have, hold, use, occupy, possess and enjoy all and singular the above granted and bargained premises, with the appurtenances, without the let, suit, trouble, hindrance or denial of the said party of the first part, her Heirs or Assigns, or of any other person or persons whatsoever.

IN WITNESS WHEREOF, the said party of the 20 first part has hereunto set her hand and seal the day and year first above written.

Dorothy F. Johnson (SEAL)

SIGNED, SEALED AND DELIVERED

IN THE PRESENCE OF

Page 1, line 12, Erasure made
before signing.

Page 2, line 64 erasure written
over before signing.

R. E. Fagan

30

STATE OF NEW JERSEY }
ATLANTIC COUNTY, } ss.

BE IT REMEMBERED, That on this 23rd day of January in the year of our Lord one thousand

nine hundred and twenty-six before me a Notary Public for New Jersey personally appeared DOROTHY F. JOHNSON who, I am satisfied is the grantor mentioned in the within Mortgage, and I having first made known to her the contents thereof, she acknowledged that she signed, sealed and delivered the same as her voluntary act and deed. All of which is hereby certified.

10

Robert E. Fagan
Notary Public for New Jersey.

In Chancery of N J.

Between

F. J. Moore

Complainant,

and

D. P. Johnson,

20

Deft.

Exhibit C-2

Samuel Morris

M. C. C. of N. J.

} On Bill to Foreclose.

[ENDORSED]

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MORTGAGE
DOROTHY F. JOHNSON
TO
FLORENCE J. MOORE

Premises:

Dated 1/23 1926 \$20,000

Received Jan. 28, 1926 at 11 A. M.
and recorded in abstract in the Clerk's

Office of Atlantic County, at Mays
Landing, N. J. in Book of Mortgages
no. 382 page 273 &c.

William A. Blair, Clerk

EXHIBIT C4.

5/22/29 L.

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THIS INDENTURE, MADE THE Sixth day of
October, in the year of our Lord one thousand nine
hundred and twenty-seven.

BETWEEN James Cimino Sheriff of the County
of Atlantic, in the State of New Jersey, of the first
part, and Florence J. Moore, single woman, of the
City of Philadelphia, County of Philadelphia and
State of Pennsylvania, of the second part.

20

WHEREAS, a certain writ of Fieri Facias issued
out of the Court of Chancery, of the State of New
Jersey, to the said Sheriff of the County of Atlan-
tic, directed and delivered in the following words,
to wit:

NEW JERSEY, to wit: The State of New Jer-
sey to the Sheriff of the County of Atlantic
GREETING

WHEREAS, on the tenth day of June
(SEAL) in the year of our Lord one thousand nine
hundred and twenty-seven by a certain
decree made in our Court of Chancery, before our
Chancellor, at Trenton, in a certain cause therein
depending, wherein Florence J. Moore is complain-

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ant and Dorothy F. Johnson is defendant It was ordered, adjudged and decreed, that certain mortgaged premises, with the appurtenances, in the bill of complaint in the said cause particularly set forth and described, that is to say:

10 ALL those certain lots, tracts or parcels of land and premises situate in the City of Ventnor City, County of Atlantic and State of New Jersey, bounded and described as follows:

20 BEGINNING at the northerly line of Monmouth Avenue 52 feet eastwardly from the easterly line of Wyoming Avenue (formerly Margate Park) thence (1) Eastwardly along the northerly line of Monmouth Avenue 25 feet; thence (2) Northwardly parallel with Wyoming Avenue (formerly Margate Park) 100 feet, more or less, to line of Inside Thoroughfare; thence (3) Westwardly along line of
20 Inside Thoroughfare 25 feet to a point distant 52 feet eastwardly from the easterly line of Wyoming Avenue (formerly Margate Park) measured at right angles thereto; thence (4) Southwardly parallel with Wyoming Avenue (formerly Margate Park) 100 feet more or less to north line of Monmouth Avenue and place of beginning.

30 BEGINNING at the northeasterly corner of Wyoming Avenue (formerly Margate Park) and Monmouth Avenue (formerly Mediterranean Avenue) and extending thence (1) Eastwardly along the northerly line of Monmouth Avenue 26 feet; thence (2) Northwardly parallel with Wyoming Avenue 150 feet to the Commissioners exterior wharf line in Inside Thoroughfare; thence (3) Westwardly along said exterior wharf line and parallel with

Monmouth Avenue 26 feet to the easterly line of Wyoming Avenue; thence (4) Southwardly along said easterly line of Wyoming Avenue 150 feet to the place of beginning.

BEGINNING in the northerly line of Monmouth Avenue (formerly Mediterranean Avenue) 26 feet eastwardly from the easterly line of Wyoming Avenue (formerly Margate Park) and extending thence (1) Eastwardly along the northerly line of Monmouth Avenue 26 feet; thence (2) Northwardly parallel with Wyoming Avenue 100 feet, more or less, to line of Inside Thoroughfare; thence (3) Westwardly along line of Inside Thoroughfare 26 feet to a point distant 26 feet eastwardly from the easterly line of Wyoming Avenue measured at right angles thereto; thence (4) Southwardly parallel with Wyoming Avenue 100 feet, more or less, to northerly line of Monmouth Avenue and place of beginning.

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Being lots 4, 5 and 6 in Block 87, 1924 atlas.

TOGETHER with all and singular the rights, liberties, privileges, hereditaments and appurtenances thereto belonging or in any wise appertaining, and the reversions and remainders, rents, issues and profits thereof, and also all the estate, right, title, interest, use, property, claim and demand of said defendant of, in, to and out of the same for the purpose be sold, to pay and satisfy unto the said complainant the sum of \$21043.29 the principal and interest secured by a certain mortgage made by Dorothy F. Johnson to Florence J. Moore, bearing date the 23rd day of January, A. D. 1926 and of record in the office of the Clerk of the county of Atlantic in Book 382 of Mortgages, page

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273 &c., together with lawful interest thereon from the 7th day of June, nineteen hundred and twenty-seven until the same be paid and satisfied, and also the costs of the said complainant, and that for that purpose, a writ of Fieri Facias should issue, directed to the Sheriff of the County of Atlantic commanding him to make sale as aforesaid; and that the surplus money arising from such sale, if any there be, should be brought into said Court, subject to the further order of the said Court, as by the said decree remaining as of record in our said Court of Chancery, at Trenton, doth and may more fully appear.

AND WHEREAS, the costs of the said complainant have been duly taxed at Two hundred and eighty five dollars and eighty eight cents.

20 THEREFORE, you are hereby commanded that you cause to be made of the premises aforesaid by selling the same, or so much thereof as may be necessary for the purpose and out of the proceeds thereof you do pay unto the said complainant or her solicitor said sum of \$21,043.29 together with lawful interest thereon, as aforesaid, and also the sum aforesaid of costs: and that you have these moneys before our said Chancellor, in our Court of Chancery aforesaid, at Trenton, on the Eighteenth day of
30 November next, to render to the said complainant, and also the surplus money, if any there be, to abide the further order of our said Court, according to the decree aforesaid. And you are to make return at the time and place aforesaid, by certificate under your hand, of the manner in which you shall have executed this our writ, together with this writ.

WITNESS, Edwin Robert Walker, Esquire, our Chancellor, at Trenton aforesaid, the Eighteenth day of August in the year of our Lord one thousand nine hundred and twenty-seven. Thompson & Hanstein, Solicitors Thomas Barber Clerk.

AS by the said writ duly recorded in the Clerk's office of the Court of Chancery, at Trenton, in the State of New Jersey, in Book R-11 of executions, page 549 etc., will more fully appear.

10

AND to the end that a sale of the said lands and premises should be made, pursuant to the Statute in such case made and provided, the said James Cimino Sheriff as aforesaid, by public advertisements, signed by himself and set up at five or more public places in the said County of Atlantic, to wit: one each at the Post Office, Mays Landing; at the Guarantee Trust Building, Atlantic City; at the Law Building, Atlantic City; at the Office of H. G. Harris Company, 5310 Atlantic Avenue, Ventnor City; at the office of Wm. H. Carroll & Company, 4 South Portland Avenue Ventnor City, and at the Sheriff's office, May's Landing, one whereof was in the ward of said City where such lands and real estate are situate, at least three weeks next before the time appointed for selling the same, and also published in the "Atlantic County Record" and "Pleasantville Press" two of the newspapers printed and published in the County of Atlantic, in which said lands and real estate are situate, of which one, the "Atlantic County Record," was a newspaper printed and published at the County Seat of said County, at least once a week, during four consecutive calendar weeks, the last publication being not more than seven days prior to the

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time appointed for selling the same; did give public notice that the said lands and premises would be exposed for sale at public vendue, on Thursday the Twenty-second day of September nineteen hundred and twenty-seven, at two o'clock in the afternoon of said day, at the Board of Chosen Freeholder's Assembly Room, Seventh Floor, Guarantee Trust Building, Atlantic City, Atlantic County, New Jersey, and at the time and place so appointed and advertised. did expose the said lands and premises

- 10 to sale by public vendue and Florence J. Moore being the highest bidder for the said lands and premises the same were then and there between the hours of twelve and five o'clock in the afternoon of the day last aforesaid, to wit, at two o'clock struck off and sold to Florence J. Moore, or her assigns for the sum of Five Hundred Dollars according to the form of the Statute in such cases made and provided.

- 20 AND WHEREAS, the said James Cimino, Sheriff as aforesaid, did report the said sale to the Chancellor, who by an order, entered in the Court of Chancery, on the 3rd day of October nineteen hundred and twenty-seven did ratify and confirm said sale and directed said Sheriff to execute a deed to the said Florence J. Moore, or her assigns, for the said mortgaged premises so sold.

- NOW THIS INDENTURE WITNESSETH, that
3C the said James Cimino Sheriff as aforesaid for and in consideration of the sum of Five Hundred Dollars to him paid, the receipt whereof is hereby acknowledged, hath granted, bargained and sold and by these presents doth grant, bargain, sell and convey unto the said Florence J. Moore, her heirs and

assigns, all of the above described tracts of land and premises, together with the hereditaments and appurtenances thereunto belonging or appertaining:

TO HAVE AND TO HOLD the above mentioned and described tracts of land and premises with the appurtenances, unto the said Florence J. Moore, her heirs and assigns forever, as fully and absolutely as the said James Cimino Sheriff as aforesaid, can, 10
may or ought, by virtue of the said execution, and of the statute made and provided to grant, bargain, sell and convey the same.

AND the said James Cimino does hereby covenant, promise and agree to and with the said Florence J. Moore, her heirs and assigns, that he has not as said Sheriff, as aforesaid, done or caused, suffered or procured to be done, any act, matter or thing whereby the said premises, or any part 20
thereof, with the appurtenances can or may be charged in estate, title or otherwise.

IN WITNESS WHEREOF, the said James Cimino as such Sheriff as aforesaid, has hereunto set his hand and seal the day and year first above written.

Signed, Sealed and Delivered

in the presence of

W. H. Smathers

James Cimino
Sheriff

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STATE OF NEW JERSEY, }
ATLANTIC COUNTY, } ss.:

BE IT REMEMBERED, that on this Sixth day of October nineteen hundred and twenty-seven before me, a Master in Chancery of said State, personally appeared James Cimino Sheriff of the County of Atlantic, who I am satisfied is the grantor within named, and I having first made known to
10 him the contents of the within deed of conveyance he acknowledged that he signed, sealed and delivered the same as his voluntary act and deed for the use and purposes therein expressed.

W. H. Smathers

M. C. C. of N. J.

I, James Cimino Sheriff of the County, do solemnly swear that the lands and real estate described in this deed, made by me to Florence J. Moore, were
20 by me sold by the hands of Howard R. Cloud, Under Sheriff by virtue of a good and subsisting execution as is therein recited; that the money ordered to be made has not been to my knowledge or belief paid or satisfied; that the time and place of the sale of the said lands and real estate were by me duly advertised as required by law, and that the same were cried off and sold to a bona fide purchaser for the best price that could be obtained.

James Cimino
Sheriff

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SWORN before me, one of the Masters in Chancery, of the State of New Jersey, on this Sixth day of October nineteen hundred and twenty-seven, and I, having examined the above mentioned deed, do approve the same and order it to be recorded as a

good and sufficient conveyance of the lands and real estate therein described.

W. H. Smathers

M. C. C. of N. J.

[ENDORSED]

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In compliance with the statute I have presented an abstract of the within to the Assessor of the taxing district therein mentioned.

WILLIAM A. BLAIR,
Clerk,

5103

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DEED.

James Cimino

SHERIFF OF ATLANTIC COUNTY
TO

Florence J. Moore

Dated, October 6th, 1927

Received Oct. 11 1927 at 9 A M. and recorded in the Clerk's Office of Atlantic County, at May's Landing, N. J. in Book of Deeds No. 881 Page 132 &c

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William A. Blair

Clerk M L S

EXHIBIT C5.

5/22/29 L.

AGREEMENT—Frank J. Pedrick et al and Dorothy F. Johnson.

- 10 WHEREAS, Frank J. Pedrick, Leonard F. Pedrick and Frank Curran trading as Frank J. Pedrick & Son have made application to the State of New Jersey for permission to reclaim and fill in from a point ninety (90) feet West of Portland Avenue to the Westwardly end thereof, at or about Washington Avenue in Ventnor City, Atlantic County, New Jersey, the waters known and designated as Inside Thoroughfare, in connection with the development of lands in Ventnor City, New
20 Jersey, lying North of Inside Thoroughfare.

AND WHEREAS the Board of Commerce and Navigation have signified their Willingness, upon certain conditions to permit said Inside Thoroughfare to be reclaimed and filled, to wit: That all the owners of the ripa along said waterway shall consent to the same and waive their rights to make application to the Board of Commerce and Navigation for the riparian rights adjoining their property
30 located on said Inside Thoroughfare.

NOW THIS AGREEMENT made between Frank J. Pedrick, Leonard F. Pedrick and Frank J. Pedrick & Son, parties of the first part and Dorothy F. Johnson, a single woman, party of the second part, in consideration of the sum of One Dollar, each to

the other paid, the receipt of which is hereby acknowledged, and the mutual advantages to be derived by each party by reason of the reclaiming and filling in of said waterway, the said party of the second part hereby consents and agrees for herself, her heirs, executors, administrators, and assigns with the said parties of the first part, their heirs, executors, administrators and assigns that said waterway be filled in and hereby waives and all rights to apply for and receive a grant from the State of New Jersey for riparian rights on said Inside Thoroughfare and waives any and all notice that may be required by any Laws of the State of New Jersey to be given to me, my heirs, executors, administrators or assigns in the event that a grant is to be made to any person or corporation other than myself as the owner of the ripa and hereby expressly authorize and request, The Board of Commerce and Navigation, acting for and in behalf of the State of New Jersey, to make such grant of said lands under water as may be adjoining my said land, to the said Frank J. Pedrick, Leonard F. Pedrick and Frank Curran, trading as Frank J. Pedrick & Son, as I would be entitled to if I personally applied for the same. The land owned by me being located in Ventnor City, County of Atlantic and State of New Jersey and described as follows:—

All those certain lots, tracts or parcels of land and premises, situate, lying and being in the City of Ventnor City, County of Atlantic and State of New Jersey, bounded and described as follows:

BEGINNING at a point in the Northeasterly corner of Melbourne Park Avenue and Monmouth Avenue and runs, thence (1) Northwardly, in and along

the Easterly line of Melbourne Park Avenue, one hundred (100) feet more or less to Inside, Thoroughfare, thence (2) Eastwardly, in and along the said line of Inside Thoroughfare, Ninety-one (91) feet more or less to a point Sixty-one (61) feet West of the Westerly line of Lafayette Park Avenue; thence (3) Southwardly, parallel with Melbourne Park Avenue, one hundred (100) feet more or less to the Northerly line of Monmouth Avenue; 10 thence (4) Westwardly in and along said Northerly line of Monmouth Avenue, Ninety-one (91) feet to the point and place of beginning.

BEING known as lots 3, 4 and 5 in Block No. 96, Ventnor City, New Jersey.

ALSO ALL that certain lots, tract or parcel of land and premises, situate, lying and being in the City of Ventnor City, County of Atlantic and State 20 of New Jersey, bounded and described as follows:

BEGINNING at the Northwestern corner of Melbourne Park and Monmouth Avenue, and extending thence (1) Westwardly and in the line of Monmouth Avenue, thirty-one (31) feet to a point; thence (2) Northwardly and parallel with Melbourne Park, one hundred (100) feet more or less to the line of Inside Thoroughfare; thence (3) Eastwardly and in the line of of Inside Thoroughfare, 30 thirty-one (31) feet more or less to the Westerly line of Melbourne Park; thence (4) Southwardly and in the Westerly line of Melbourne Park, one hundred (100) feet to the place of beginning.

BEING known as Lot No. 1 in Block No. 104, Ventnor City, New Jersey.

ALSO ALL that certain lot, tract or parcel of land and premises, situate, lying and being in the City of Ventnor City, County of Atlantic and State of New Jersey, bounded and described as follows:

BEGINNING at a point in the Northerly line of Monmouth Avenue distant thirty-one (31) feet Westwardly of the Westerly line of Melbourne Avenue and extending thence (1) Northwardly, parallel with Melbourne Avenue one hundred three and five tenths (103.5) feet to the line of Inside Thoroughfare; thence (2) Westwardly, along said line of Inside Thoroughfare the several courses thereof, thirty (30) feet more or less to a point sixty one (61) feet Westwardly of the westerly line of Melbourne Ave; thence (3) Southwardly, parallel with Melbourne Avenue, ninety three (93) feet to the Northerly line of Monmouth Avenue; thence (4) Eastwardly, in and along the Northerly line of Monmouth Ave; thirty (30) feet to the place of beginning. 10 20

BEING known as Lot No. 2, Block No. 104, Ventnor City, N. J.

ALSO ALL that certain lot, tract or parcel of land and premises, situate, lying and being in the City of Ventnor City, County of Atlantic and State of New Jersey, bounded and described as follows:

BEGINNING in the North line of Monmouth Avenue (formerly Mediterranean Avenue) fifty (50) feet West of the West line of Troy Avenue and extending thence (1) West along the line of Monmouth Avenue, twenty nine and one half ($29\frac{1}{2}$) feet; thence (2) North, parallel with Troy Avenue 30

one hundred (100) feet more or less to Bulkhead line of Inside Thoroughfare, thence (3) East parallel with Monmouth Avenue, twenty nine and one half ($29\frac{1}{2}$) feet; thence (4) South, parallel with Troy Avenue, one hundred (100) feet more or less to the place of beginning.

10 BEING known as one-half of Lot 5, in Block 76, Ventnor City, New Jersey.

BEING the same land and premises granted and conveyed unto President Apartment Hotel Company by deed from Newton Keim, et ux, dated March 10, 1923 and recorded March 31, 1923, in the office of the Clerk of Atlantic County in Book 705, page 355.

20 ALSO ALL that certain lot, tract or parcel of land and premises, situate, lying and being in the City of Ventnor City, County of Atlantic and State of New Jersey, bounded and described as follows:

30 BEGINNING at a point in the Northerly line of Monmouth Avenue, distant One Hundred Twenty-one (121) feet Westwardly of the Northwest corner of Monmouth Avenue and Melbourne Park and runs; thence (1) Northwardly and parallel with Melbourne Park, one hundred (100) feet more or less to the line of Inside Thoroughfare; thence (2) Westwardly, along the said line of Inside Thoroughfare, thirty-one (31) feet more or less to the Easterly line of Baltimore Avenue if the same was extended; thence (3) Southwardly, along the Easterly line of Baltimore Avenue, if extended, one hundred (100) feet more or less to the Northerly line of Monmouth Avenue; thence (4) Eastwardly,

and in the Northerly line of Monmouth Avenue, thirty-one (31) feet more or less to the point or place of beginning.

BEING lot 5, Block 104 as shown on a plan of lots in Ventnor City.

BEING the same premises conveyed to the present grantor by deed from Nathaniel Knowled and Olive Ellis Knowles his wife, dated June 2, 1911 and of record in Atlantic County Clerk's Office in book 457 page 458, of deeds. 10

ALSO ALL that certain lot, tract or parcel of land and premises, situate, lying and being in the City of Ventnor City, County of Atlantic and State of New Jersey, bounded and described as follows:

BEGINNING at the Northwest Corner of Newark and Monmouth Avenues and extending thence (1) Westwardly, in and along the Northerly line of Monmouth Avenue, thirty-eight (38) feet thence (2) Northwardly, parallel with Newark Avenue, One hundred (100) feet more or less to the high water line of Inside Thoroughfare; thence (3) Eastwardly, in and along said high water line of said Inside Thoroughfare, thirty-eight (38) feet to the Westerly line of Newark Avenue; thence (4) Southwardly, in and along the said Westerly line of Newark Avenue, one hundred (100) feet more or less to the Northerly line of Monmouth Avenue and place of beginning. 20 30

BEING known as premises No. 6901 Monmouth Avenue, Ventnor City, New Jersey;

ALSO ALL that certain lot, tract, or parcel of land and premises, situate, lying and being in the City of Ventnor City, County of Atlantic and State of New Jersey, bounded and described as follows:

BEGINNING at a point in the Northerly line of Monmouth Avenue distant thirty-eight (38) feet Westwardly of the Westerly line of Newark Avenue and extending thence (1) Westwardly, in and
10 along the Northerly line of Monmouth Avenue, thirty-eight (38) feet; thence (2) Northwardly, parallel with Newark Avenue, one hundred (100) feet more or less to the line of the Inside Thoroughfare; thence (3) Eastwardly, along the line of said Inside Thoroughfare, thirty-eight (38) feet; thence (4) Southwardly, parallel with Newark Avenue, one hundred (100) feet more or less to the Northerly line of Monmouth Avenue and place of beginning.

20 AND ALSO that certain lot, tract or parcel of land and premises, situate, lying and being in the City of Ventnor City, County of Atlantic and State of New Jersey, bounded and described as follows:

BEGINNING in the Northerly line of Monmouth Avenue fifty-two (52) feet Eastwardly from the Easterly line of Margate Park and extending thence (1) Eastwardly along the Northerly line of Monmouth Avenue, twenty-five (25) feet thence (2)
30 Northwardly, parallel with Margate Park, One hundred (100) feet more or less to the line of Inside Thoroughfare; thence (3) Westwardly, along said line of Inside Thoroughfare, twenty-five (25) feet to a point distant fifty two (52) feet Eastwardly from the Easterly line of Margate Park, measured at right angles thereto; thence (4) Southwardly,

parallel with Margate Park, One Hundred (100) feet more or less to the Northerly line of Monmouth Avenue and point and place of beginning.

BEING lot No. 4, Block No. 87, Ventnor City, New Jersey.

BEING the same premises which Lawton Roorbach and Hazel his wife by Indenture, dated May 28, 1925 and recorded in the Clerk's Office of Atlantic County in Book 773, page 271, granted and conveyed unto Floyd L. Hand and Ida G. Hand. 10

AND ALSO ALL those certain lots, tracts or parcels of land and premises, situate, lying and being in the City of Ventnor City, County of Atlantic and State of New Jersey, bounded and described as fol-

BEGINNING at the Northeast corner of Wyoming Avenue (formerly Margate Park) and Monmouth Avenue (formerly Mediterranean) and thence (1) Eastwardly, along the Northerly line of Monmouth Avenue, twenty-six (26) feet; thence (2) Northwardly, parallel with Wyoming Avenue, One Hundred Fifty (150) feet to the Commissioners exterior wharf line in Inside Thoroughfare; thence (3) Westwardly, along said exterior wharf line parallel with Monmouth Avenue twenty-six (26) feet to the Easterly line of Wyoming Avenue; thence (4) Southwardly along the said Easterly line of Wyoming Avenue, one hundred fifty (150) feet to the place of beginning. 20

mouth Avenue (formerly Mediterranean) and thence (1) Eastwardly, along the Northerly line of Monmouth Avenue, twenty-six (26) feet; thence (2) Northwardly, parallel with Wyoming Avenue, One Hundred Fifty (150) feet to the Commissioners exterior wharf line in Inside Thoroughfare; thence (3) Westwardly, along said exterior wharf line parallel with Monmouth Avenue twenty-six (26) feet to the Easterly line of Wyoming Avenue; thence (4) Southwardly along the said Easterly line of Wyoming Avenue, one hundred fifty (150) feet to the place of beginning. 30

ALSO BEGINNING At a point in the Northerly line of Monmouth Avenue (formerly Mediter-

ranean) at the distance of twenty six (26) feet Eastwardly from the Northeast corner of Monmouth and Wyoming (formerly called Margate Park) Avenues and extending thence; Eastwardly along the Northerly line of Monmouth Avenue, Twenty-six (26) feet by North between parallel lines parallel with Wyoming Avenue, one hundred (100) feet more or less in length or depth to the high water line of Inside Thoroughfare.

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BEING Lots Nos. 5 and 6 in Block No. 87 Ventnor City, New Jersey.

BEING the same premises conveyed to Charles Edgar Wallace by deed from Joseph Nager et ux dated 1922 and recorded in the Clerk's Office of Atlantic County in Book of Mortgages *pate &c.*

IN WITNESS WHEREOF the parties hereto
20 have hereunto set their hands and seals this 24th day of January A. D. 1926.

Frank J. Pedrick (SEAL)

Leonard F. Pedrick (SEAL)

Frank Curran (SEAL)

Trading as Frank J.
Pedrick & Son.

Dorothy F. Johnson (SEAL)

SIGNED SEALED AND DELIVERED
IN THE PRESENCE OF

30 R. E. Fagan

STATE OF NEW JERSEY, COUNTY OF ATLANTIC SS.

BE IT REMEMBERED, that on this 24th day of January, 1926, before me, a Notary Public for

New Jersey, personally appeared, Dorothy F. Johnson, who, I am satisfied is the grantor mentioned in the above deed or conveyance and I have first made known to her the contents thereof she acknowledged that she signed, sealed and delivered the same as her voluntary act and deed. All of which is hereby certified.

Robert E. Fagan (SEAL)
Notary Public for New Jersey.

Received and Recorded March 13th, 1926 at 10 10
A. M.

William A. Blair, Clerk.
Recorded in Deed Book 819 page 42

STATE OF NEW JERSEY
County of Atlantic

I, WILLIAM A. BLAIR, Clerk of the County of 20
Atlantic, and also Clerk of the Common Pleas Court
holden therein, said court being a court of record,
having a common seal, DO HEREBY CERTIFY,
That the foregoing is a true copy of a certain
Agreement—Frank J. Pedrick et al and Dorothy
F. Johnson as the same is recorded in my said office.

IN TESTIMONY WHEREOF, I have hereunto
set my hand and affixed my Official Seal at May's
Landing, N. J., this 18th day of May A. D. 1929

(Seal)

Wm. A. Blair 30
Clerk.

EXHIBIT C6.

5/22/29 L.

THIS INDENTURE, made the thirty first day of January in the year of our Lord one thousand nine hundred and twenty seven, BETWEEN Frank J. Pedrick and Laura C. Pedrick, his wife, both of the Borough of Linwood, Leonard F. Pedrick and Dorothy K. Pedrick, his wife, both of the city of Margate City, and Frank Curran and Hattie M. Curran, his wife, both of the City of Ventnor City, all of the county of Atlantic and State of New Jersey, individuals and Frank J. Pedrick, Leonard F. Pedrick and Frank Curran, co-partners trading under the name of Frank J. Pedrick & Son, parties of the first part, and Ventnor Gardens, Incorporated a corporation existing under and by virtue of the laws of the State of New Jersey, party of the second part;

WITNESSETH, that the said party of the first part, for and in consideration of the sum of twenty eight thousand five hundred six and 55/100 (28,506.55) dollars lawful money of the United States of America, well and truly paid by the said party of the second part, to the said party of the first part, at and before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, aliened, enfeoffed, released, conveyed and confirmed and by these presents do grant, bargain, sell, alien, enfeoff, release, convey and confirm unto the said party of the second part, its successors and assigns, all those three tracts of land flowed by tide-water, situate

in the City of Ventnor City, in the county of Atlantic and State of New Jersey, bounded and described as follows:

TRACT 1. BEGINNING at a point in the high water line of the southeasterly shore of Inside Thoroughfare, said point being distant south $50^{\circ} 00'$ west ninety (90) feet from the southwesterly line of Portland Avenue, and north $35^{\circ} 00'$ west one hundred seventy eight and sixty nine hundredths (178.69) feet from the northwesterly line of Monmouth Avenue; thence (1) north $35^{\circ} 00'$ west, parallel with Portland Avenue sixty five (65) feet to the Bulkhead Line approved March 19, 1923 by the Board of Commerce and Navigation appointed under the authority of the act entitled "An Act creating a department to be known as the Board of Commerce and Navigation, and vesting therein all the powers and duties now devolved, by law, upon the Board of Riparian Commissioners, the Department of Inland Waterways, the Inspectors of Power Vessels, and the New Jersey Harbor Commission" approved April 8, 1915, and other acts and joint resolutions of the Legislature of said State; thence (2) south $44^{\circ} 12' 47''$ west, following said Bulkhead Line five hundred and seventy and seven hundredths (570.07) feet to a point; thence (3) south $36^{\circ} 28' 45''$ west, still following said Bulkhead Line two hundred and ten and ninety two hundredths (210.92) feet to a point; thence (4) south $55^{\circ} 00'$ west, following said Bulkhead Line five hundred (500) feet to a point; thence (5) south $60^{\circ} 42' 38''$ west, still following said Bulkhead Line four hundred and two (402) feet to a point; thence (6) south $55^{\circ} 00'$ west, still following said Bulkhead Line eight hundred and forty eight (848) feet to a

point; thence (7) south $48^{\circ} 30' 15''$ west, still following said Bulkhead Line two hundred and three and thirty one hundredths (203.31) feet to a point; thence (8) south $18^{\circ} 58'$ east, still following said Bulkhead line ninety and fifty two hundredths (90.52) feet to a point; thence (9) south $35^{\circ} 00'$ east, still following said Bulkhead Line one hundred and thirteen (113) feet to a point; thence (10) south $22^{\circ} 25'$ west, still following said Bulkhead Line one hundred fifty seven and eighty four hundredths (157.84) feet to a point; thence (11) south $60^{\circ} 13' 50''$ west, still following said Bulkhead Line forty two and eighteen hundredths (42.18) feet to a point; thence (12) north $35^{\circ} 00'$ west, following the Bulkhead Line established March 17, 1924, by the Board of Commerce and Navigation appointed under the authority of the act aforesaid, one hundred forty four and sixteen hundredths (144.16) feet to a point; thence (13) north $18^{\circ} 58'$ west, following said Bulkhead Line eighty and seventy three hundredths (80.73) feet to a point; thence (4) south $71^{\circ} 02'$ west, along the northerly line of lands granted by the State of New Jersey March 17, 1924 to B. E. Block Company, twenty two (22) feet to the high water line of Inside Thoroughfare; thence (15) southeastwardly, northeastwardly, northwestwardly, and northeastwardly, following said high water line to the place of beginning.

EXCEPTING out of the above described tract of land the lands under water granted by the State of New Jersey as follows:

1. Grant to B. E. Block Company, March 17, 1924.
2. " " Louisa Jones, May 6, 1907.
3. " " John Henderson Young, February 27, 1908.

4. " " George W. Fiske, October 19, 1925.
5. Grant to Andrew P. Johnson, October 19, 1925.
6. " " Frank A. Potts, January 25, 1926.
7. " " Florence M. Vortigern, September 21, 1925.
8. " " President Apartment Hotel Co., June 18, 1923.
9. " " Martha Z. Souders, July 20, 1925.
10. " " Edward McCafferty, February 19, 1923.

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TRACT 2. BEGINNING at a point in the high water line of the westerly shore of Inside Thoroughfare where the same is intersected by the northerly line of lands granted by the State of New Jersey, March 17, 1924 to B. E. Block Company; thence (1) north $71^{\circ} 02'$ east, along the northerly line of lands granted by the State of New Jersey to B. E. Block Company aforesaid, twenty two (22) feet to the Bulkhead Line adopted July 19, 1926 by the Board of Commerce and Navigation appointed under the authority of the act aforesaid; thence (2) north $18^{\circ} 58'$ west following said Bulkhead Line, two hundred and two and twenty seven hundredths (202.27) feet to a point; thence (3) north $37^{\circ} 41'$ east, still following said Bulkhead Line four hundred and one and fifty seven hundredths (401.57) feet to a point; thence (4) north $55^{\circ} 60'$ east, still following said Bulkhead Line two hundred and eighty eight (288) feet to a point; thence (5) north $38^{\circ} 56' 20''$ east, still following said Bulkhead Line, five hundred seventy two and eighty three hundredths (572.83) feet to a point; thence (6) north $55^{\circ} 00'$ east, still following said Bulkhead Line, one thousand six hundred and six and thirty one hundredths (1606.31) feet to a point; thence (7) north

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35° 00' west seventy eight and fifteen hundredths (78.15) feet to the high water line of the northwesterly shore of Inside Thoroughfare, where the same is intersected by the division line between lands now or formerly of Armenak M. Mahjoubian and lands now or formerly of Frank Sullivan and Sadie F. Sullivan, his wife; thence (7) southwestwardly, southeastwardly, southwestwardly and southwardly, following said high water line to the place of beginning.

TRACT 3. BEGINNING at a point in the Bulkhead Line approved March 19, 1923 by the Board of Commerce and Navigation appointed under the authority of the act aforesaid, along the southeasterly shore of Inside Thoroughfare where the same is intersected by the first course of tract 1 above described; thence (1) south 44° 12' 47" west, following said Bulkhead Line five hundred and seventy and seven hundredths (570.07) feet to a point; thence (2) south 36° 28' 45" west, still following said Bulkhead Line, two hundred ten and ninety two hundredths (210.92) feet to a point; thence (3) south 55° 00' west, still following said Bulkhead Line five hundred (500) feet to a point; thence (4) south 60° 42' 38" west, still following said Bulkhead Line four hundred and two (402) feet to a point; thence (5) south 55° 00' west, still following said Bulkhead Line eight hundred and forty eight (848) feet to a point; thence (6) south 48° 30' 15" west, still following said Bulkhead Line two hundred and three and thirty one hundredths (203.31) feet to a point; thence (7) south 18° 58' east, still following said Bulkhead Line ninety and fifty two hundredths (90.52) feet to a point; thence (8) south 35° 00' east still following said Bulkhead Line one hundred

and thirteen (113) feet to a point; thence (9) south 22° 25' west, still following said Bulkhead Line one hundred fifty seven and eighty four hundredths (157.84) feet to a point; thence (10) South 60° 13' 50" west, still following said Bulkhead Line forty two and eighteen hundredths (42.18) feet to a point; thence (11) north 35° 00' west, following the Bulkhead Line established March 17, 1924 by the Board of Commerce and Navigation appointed under the authority of the act aforesaid, one hundred forty 10 four and sixteen hundredths (144.16) feet to point thence (12) north 18° 58' west, following said Bulkhead Line eighty and seventy three hundredths (80.73) feet to a point; thence (13) north 18° 58' west, following the Bulkhead Line adopted July 19, 1926, by the Board of Commerce and Navigation appointed under the authority of the Act aforesaid, two hundred two and twenty seven hundredths (202.27) feet to a point; thence (14) north 37° 41' east, still following said Bulkhead Line four 20 hundred and one and fifty seven hundredths (401.57) feet to a point; thence (15) north 55° 00' east, still following said Bulkhead line two hundred and eighty eight (288) feet to a point; thence (16) north 38° 56' 20" east, still following said Bulkhead Line, five hundred seventy two and eighty three hundredths (572.83) feet to a point; thence (17) north 55° 00' east, still following said Bulkhead Line one thousand six hundred and six and thirty one hundredths (1606.31) feet to a point; thence (18) 30 south 35° 49' 30" east, crossing Inside Thoroughfare, two hundred fifty six and thirty four hundredths (256.34) feet to the place of beginning.

BEING the same land and premises conveyed by the State of New Jersey to Frank J. Pedrick, Leonard F. Pedrick and Frank Curran co-partners, trad-

ing as Frank J. Pedrick & Son by deed dated July 19, 1926, and recorded in Liber I 1, Folio 93 &c., in the office of the Board of Commerce and Navigation of the State of New Jersey, and intended to be forthwith recorded in the county Clerk's office of Atlantic County, at Mays Landing, New Jersey, With the right and privilege, under the covenants and conditions of said grant, to exclude the tide water from so much of the lands above described as
10 lie under tide-water, by filling in or otherwise improving the same, and to appropriate the lands under water above described to their and their exclusive private uses.

TOGETHER with all and singular the improvements, woods, ways, rights, liberties, privileges, hereditaments and appurtenances to the same belonging or in any wise appertaining and the reversion and reversions, remainder and remainders,
20 rents, issues and profits thereof and of every part and parcel thereof;

AND ALSO all the estate, right, title, interest, property possession, claim and demand whatsoever, both in law and equity of the said party of the first part, of, in and to the said premises, and every part thereof, with the appurtenances;

TO HAVE AND TO HOLD the said premises,
30 above described with all and singular the hereditaments and appurtenances, unto the said party of the second part, its successors and assigns, to the only proper use, benefit and behoof of the said party of the second part, its successors and assigns forever.

AND the said party of the first part, for themselves, their heirs, executors, administrators, and

assigns, do by these presents covenant, grant and agree to and with the said party of the second part, its successors and assigns, that they the said party of the first part, and their heirs and assigns, all and singular the hereditaments and premises above described and granted, or mentioned and intended so to be, with the appurtenances, unto the said party of the second part, its successors and assigns, against them the said party of the first part, and their heirs and assigns and against all and every other person or persons whomsoever lawfully claiming or to claim the same, or any part thereof, shall and will subject as aforesaid, warrant and forever defend. 10

IN WITNESS WHEREOF, the said party of the first part, to these presents hath hereunto set their hands and seals dated the day and year first above written.

FRANK J. PEDRICK (SEAL) 20
LAURA C. PEDRICK (SEAL)
LEONARD F. PEDRICK (SEAL)
DOROTHY K. PEDRICK (SEAL)
FRANK CURRAN (SEAL)
HATTIE M. CURRAN (SEAL)

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF
ROSE M. OCHSENFELD

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STATE OF NEW JERSEY ATLANTIC
COUNTY ss.

BE IT REMEMBERED, that on this first day of February in the year of our Lord one thousand nine

hundred and twenty seven, before me, a Notary Public for New Jersey, personally appeared Frank J. Pedrick and Laura C. Pedrick, his wife, Leonard F. Pedrick, and Dorothy K. Pedrick, his wife, and Frank Curran and Hattie M. Curran, his wife, who, I am satisfied are the grantors mentioned in the above deed or conveyance, and I having first made known to them the contents thereof they acknowledged that signed, sealed and delivered the same as
 10 their voluntary act and deed. All of which is hereby certified.

ROSE M. OCHSENFELD (SEAL)
 NOTARY PUBLIC FOR NEW JERSEY.

COM. EXP. 9/20/28.

Received and Recorded February 5, 1927 at 4
 P. M.

WILLIAM A. BLAIR, Clerk.
 RECORDED IN DEED BOOK 859 page 213.

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STATE OF NEW JERSEY
 County of Atlantic

I, WILLIAM A. BLAIR, Clerk of the County of Atlantic, and also Clerk of the Common Pleas Court holden therein, said court being a court of record, having a common seal, DO HEREBY CERTIFY,
 That the foregoing is a true copy of a certain Deed
 30 —Frank J. Pedrick et al to Ventnor Gardens Inc.
 as the same is recorded in my said office.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my Official Seal at May's Landing, N. J., this 20th day of May A. D. 1929.

Wm. A. Blair,
 Clerk.

ORIGINAL MARKED EXHIBIT D1.
Map D #117

GRANT—THE STATE OF NEW JERSEY TO
FRANK J. PEDRICK ET AL.

THE STATE OF NEW JERSEY: TO ALL TO
WHOM THESE PRESENTS SHALL COME, 10
OR MAY CONCERN, GREETING

WHEREAS, Pursuant to an act of the Legisla-
ture of said State, approved April 8th, 1915, en-
titled "An Act creating a department to be known
as the Board of Commerce and Navigation, and
vesting therein all the powers and duties now de-
volved, by law, upon the Board of Riparian Com-
missioners, the Department of Inland Waterways,
the Inspectors of Power Vessels, and the New Jer- 20
sey Harbor Commission" and other acts and joint
resolutions of the Legislature of said State, Frank
J. Pedrick, Leonard F. Pedrick and Frank Curran,
co-partners trading as Frank J. Pedrick & Son, of
the city of Atlantic City, County of Atlantic and
State of New Jersey, and by virtue of the written
consent of the city of Ventnor City; Leonard F.
Pedrick and Dorothy K. Pedrick, his wife, Dorothy
F. Johnson, (a single woman; Lurania Long and
Stephen A. Long, her husband and Josephine M. 30
Ienni and E. Ralph Ienni, her husband; William H.
Cummings and Julia Cummings, his wife and
George S. Cummings, and Eva Cummings, his wife;
Richard P. Bloom, and Jane Bloom, his wife; Frank
Curran and Hattie M. Curran, his wife; Francis J.
Kirby and Teresa J. Kirby, his wife; Harry H.

Jump and Ella E. Jump, his wife; James S. Lowry and Laura C. Lowry, his wife; Richard H. Robertson and Pauline Robertson, his wife; Malcolm Shermer and Edna E. Shermer, his wife; Seaview Corporation, a corporation of the State of New Jersey; Mulford T. Rose and Roberta C. Rose, his wife; Frank Sullivan and Sadie F. Sullivan, his wife; Frank Licata, Rose Licata, his wife, Peter Licata, Frances Licata Mammarella and Enrice Mammarella, her husband, Vincent Licata, Frances Licata, Mary Mastrangelo and Nicolo Mastrangelo, her husband, the persons purporting to be the owners of uplands fronting on Inside Thoroughfare, in the city of Ventnor City, in the county of Atlantic and State of New Jersey, which lie above high water mark, and in front of which the lands under water hereinafter described are situate, have applied to the Board of Commerce and Navigation of said State of a grant of the said lands under water and to have the said Board of Commerce and Navigation fix the boundaries of the said lands under water and determine the price or compensation to be paid to the State therefor, and the terms and conditions of said grant;

AND WHEREAS, the said Board of Commerce and Navigation, to wit: J. Spencer Smith, Richard C. Jenkinson, W. L. Saunders, W. Park Runyon, William T. Kirk, Henry C. Broking, Augustus Smith and Harrison Cook, having due regard to the interest of navigation and the interests of the State, have agreed to grant the lands under water hereinafter mentioned upon the terms herein set forth, and have determined the sum of twenty eight thousand five hundred and six and 55/100 (\$28,506.55) dollars as the price or reasonable compensation to be paid to the state for the said lands;

NOW THEREFORE, the said State of New Jersey, by the said Board of Commerce and Navigation, the Governor approving, in consideration of the premises, the terms and conditions hereinafter contained, and the said sum of twenty eight thousand five hundred and six and 55/100 (\$28,506.55) dollars duly paid by the said Frank J. Pedrick, Leonard F. Pedrick and Frank Curran, co-partners, trading as Frank J. Pedrick & Son to the said State, the receipt whereof is hereby acknowledged, 10
does hereby grant, bargain, sell and convey, subject to the terms, covenants, conditions and limitations herein contained, unto the said Frank J. Pedrick, Leonard F. Pedrick and Frank Curran, co-partners, trading as Frank J. Pedrick & Son, and to their heirs and assigns, forever.

ALL those three tracts of land flowed by tide-water, situate in the city of Ventnor City, in the county of Atlantic and State of New Jersey, 20
bounded and described as follows:

TRACT 1. BEGINNING at a point in the high water line of the southeasterly shore of Inside Thoroughfare, said point being distant south 50° 00' west ninety (90) feet from the southwesterly line of Portland Avenue, and north 35° 00' west one hundred seventy eight and sixty nine hundredths (178.69) feet from the northwesterly line of Monmouth Avenue; thence (1) north 35° 00' west, 30
parallel with Portland Avenue sixty five (65) feet to the Bulkhead Line approved March 19, 1923 by the Board of Commerce and Navigation appointed under the authority of the act entitled "An Act creating a department to be known as the Board of Commerce and Navigation, and vesting therein all

the powers and duties now devolved, by law, upon the Board of Riparian Commissioners, the Department of Inland Waterways, the Inspector of Power Vessels, and the New Jersey Harbor Commission," approved April 8, 1915, and other acts and joint resolutions of the Legislature of said State; thence (2) south $44^{\circ} 12' 47''$ west, following said Bulkhead Line five hundred and seventy and seven hundredths (570.07) feet to a point; thence (3) south 10 $36^{\circ} 28' 45''$ west, still following said Bulkhead Line two hundred and ten and ninety two hundredths (210.92) feet to a point; thence (4) south $55^{\circ} 00'$ West, still following said Bulkhead Line five hundred (500) feet to a point; thence (5) south $60^{\circ} 42' 38''$ west, still following said Bulkhead Line four hundred and two (402) feet to a point; thence (6) south $55^{\circ} 00'$ west, still following said Bulkhead Line eight hundred and forty eight (848) feet to a point; thence (7) south $48^{\circ} 30' 15''$ west, still fol- 20 lowing said Bulkhead Line two hundred and three and thirty one hundredths (203.31) feet to a point; thence (8) south $18^{\circ} 58'$ east, still following said Bulkhead Line ninety and fifty two hundredths (90.52) feet to a point; thence (9) south $35^{\circ} 00'$ east, still following said Bulkhead Line one hundred and thirteen (113) feet to a point; thence (10) south $22^{\circ} 25'$ west, still following said Bulkhead Line one hundred fifty seven and eighty four hundredths (157.84) feet to a point; thence (11) south 30 $60^{\circ} 13' 50''$ west, still following said Bulkhead Line forty two and eighteen hundredths (42.18) feet to a point; thence (12) north $35^{\circ} 00'$ west, following the Bulkhead Line established March 17, 1924 by the Board of Commerce and Navigation appointed under the authority of the act aforesaid, one hundred forty four and sixteen hundredths (144.16)

feet to a point; thence (13) north 18° 58' west, following said Bulkhead Line eighty and seventy three hundredths (80.73) feet to a point; thence (14) south 71° 02' west, along the northerly line of lands granted by the State of New Jersey, March 17, 1924 to B. E. Block Company, twenty two (22) feet to the high water line of Inside Thoroughfare; thence (15) southeastwardly, northeastwardly, northwestwardly and northeastwardly, following said high water line to the place of beginning. Excepting out of the above described tract of land the lands under water granted by the State of New Jersey as follows: 10

1. Grant to B. E. Block Company, March 17, 1924.
2. " " Louisa Jones, May 6, 1907.
3. " " John Henderson Young, February 27, 1908.
4. " " George W. Fiske, October 19, 1925.
5. " " Andrew P. Johnson, October 19, 1925.
6. " " Frank A. Potts, January 25, 1926.
7. " " Florence M. Vortigern, September 21, 1925. 20
8. " " President Apartment Hotel Co., June 18, 1923.
9. " " Martha Z. Souders, July 20, 1925.
10. " " Edward McCafferty, February 19, 1923.

TRACT 2. BEGINNING at a point in the high water line of the westerly shore of Inside Thoroughfare where the same is intersected by the northerly line of lands granted by the State of New Jersey, March 17, 1924 to B. E. Block Company; thence (1) North 71° 02' east, along the northerly line of lands granted by the State of New Jersey to B. E. Block Company aforesaid, twenty two (22) 30

feet to the bulkhead line adopted July 19, 1926 by the Board of Commerce and Navigation appointed under the authority of the act aforesaid; thence (2) north $18^{\circ} 58'$ west, following said Bulkhead Line, two hundred and two and twenty seven hundredths (202.27) feet to a point; thence (2) north $37^{\circ} 41'$ east, still following said Bulkhead Line four hundred and one and fifty seven hundredths (401.57) feet to a point; thence (4) north $55^{\circ} 00'$ east, still following said Bulkhead Line two hundred and eighty eight (288) feet to a point; thence (5) north $38^{\circ} 56' 20''$ east, still following said Bulkhead Line, five hundred seventy two and eighty three hundredths (572.83) feet to a point; thence (6) north $55^{\circ} 00'$ east, still following said Bulkhead Line, one thousand six hundred and six and thirty one hundredths (1606.31) feet to a point; thence (7) north $35^{\circ} 00'$ west, seventy eight and fifteen hundredths (78.15) feet to the high water line of the north-
10 westerly shore of Inside Thoroughfare where the same is intersected by the division line between lands now or formerly of Armenak M. Mahjoubian and lands now or formerly of Frank Sullivan and Sadie F. Sullivan his wife; thence (8) southwest-
20 wardly, southeastwardly southwestwardly and southwardly, following, said high water line to the place of beginning.

30 TRACT 3. BEGINNING at a point in the Bulkhead Line approved March 19, 1923 by the Board of Commerce and Navigation appointed under the authority of the act aforesaid, along the southeasterly shore of Inside Thoroughfare where the same is intersected by the first course of Tract 1 above described; thence (1) south $44^{\circ} 12' 47''$ west, following said Bulkhead Line five hundred and

seventy and seven hundredths (570.07) feet to a point; thence (2) south $36^{\circ} 28' 45''$ west, still following said Bulkhead Line, two hundred ten and ninety two hundredths (210.92) feet to a point; thence (3) south $55^{\circ} 00'$ west, still following said Bulkhead Line five hundred (500) feet to a point thence (4) south $60^{\circ} 42' 38''$ west, still following said Bulkhead Line four hundred and two (402) feet to a point; thence (5) south $55^{\circ} 00'$ west still following said Bulkhead Line eight hundred and forty eight (848) feet to a point; thence (6) south $48^{\circ} 30' 15''$ west, still following said Bulkhead Line two hundred and three and thirty one hundredths (203.31) feet to a point; thence (7) south $18^{\circ} 58'$ east, still following said Bulkhead Line ninety and fifty two hundredths (90.52) feet to a point; thence (8) south $35^{\circ} 00'$ east, still following said Bulkhead Line one hundred and thirteen (113) feet to a point; thence (9) south $22^{\circ} 25'$ west, still following said Bulkhead Line one hundred fifty seven and eighty four hundredths (157.84) feet to a point; thence (10) south $60^{\circ} 13' 50''$ west, still following said Bulkhead Line forty two and eighteen hundredths (42.18) feet to a point; thence (11) north $35^{\circ} 00'$ west, following the Bulkhead Line established March 17, 1924 by the Board of Commerce and Navigation appointed under the authority of the act aforesaid, one hundred forty four and sixteen hundredths (144.16) feet to a point; thence (12) north $18^{\circ} 58'$ west, following said Bulkhead Line eighty and seventy three hundredths (80.73) feet to a point; thence (13) north $18^{\circ} 58'$ west, following the Bulkhead Line adopted July 19, 1926 by the Board of Commerce and Navigation appointed under the authority of the act aforesaid, two hundred two and twenty seven hundredths (202.27) feet to a point; thence (14) north

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37° 41' east, still following said Bulkhead Line four hundred and one and fifty seven hundredths (401.57) feet to a point thence (15) north 55° 00' east, still following said Bulkhead Line two hundred and eighty eight (288) feet to a point thence (16) north 38° 56' 20" east, still following said Bulkhead Line, five hundred seventy two and eighty three hundredths (572.83) feet to a point; thence (17) north 55° 00' east, still following said Bulkhead Line one thousand six hundred and six and thirty one hundredths (1606.31) feet to a point; thence (18) south 35° 49' 30" east, crossing Inside Thoroughfare, two hundred fifty six and thirty four hundredths (256.34) feet to the place of beginning. With the right and privilege, under the covenants and conditions, of this grant, to exclude the tidewater from so much of the lands above described as lie under tide-water, by filling in or otherwise improving the same, and to appropriate the lands under water above described to their exclusive private uses.

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PROVIDED, that if the said Frank J. Pedrick, Leonard F. Pedrick and Frank Curran co-partners, trading as Frank J. Pedrick & Son, and the city of Ventnor City, Leonard F. Pedrick and Dorothy Pedrick, his wife, Dorothy F. Johnson, a single woman, Lurania Long and Stephen A. Long, her husband and Josephine M. Ienni and E. Ralph Ienni, her husband, William H. Cummings and Julia Cummings his wife and George S. Cummings, and Eva Cummings, his wife, Richard P. Bloom and Jane Bloom, his wife, Frank Curran and Hattie M. Curran, his wife, Francis J. Kirby and Therese J. Kirby, his wife, Harry H. Jump and Ella E. Jump, his wife, James S. Lowry and Laura C. Lowry, his wife, Richard H. Robertson and Pauline Robertson,

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his wife, Malcolm Shermer and Edna E. Shermer,
 his wife, Seaview Corporation, Mulford T. Rose and
 Roberta C. Rose, his wife, Frank Sullivan and Sadie
 F. Sullivan, his wife, Frank Licata, Rose Licata,
 his wife, Peter Licata, Frances Licata Mammarella
 and Enrice Mammarella, her husband, Vincent Li-
 cata, Frances Licata, Mary Mastrangelo and Nicolo
 Mastrangelo, her husband, are not the owners of the
 land adjoining the land under water hereby granted,
 or if any of the above named are not authorized or
 empowered by law or otherwise to waive its or their
 rights therein, or consent to the making of this grant
 therefor then and in that event this instrument and
 conveyance, so far as the same binds the State, and
 all the covenants herein on the part of the State,
 shall be void as affecting any part or parts of said
 land which joins lands not owned by the said Frank
 J. Pedrick, Leonard F. Pedrick and Frank Curran,
 co-partners, trading as Frank J. Pedrick & Son, and
 The City of Ventnor City, Leonard F. Pedrick and
 Dorothy K. Pedrick, his wife; Dorothy F. Johnson,
 a single woman, Lurania Long, and Stephen A.
 Long her husband, and Josephine M. Ienni and E.
 Ralph Ienni, her husband, William H. Cummings
 and Julia Cummings, his wife and George S. Cum-
 mings and Eva Cummings, his wife, Richard P.
 Bloom and Jane Bloom, his wife, Frank Curran and
 Hattie M. Curran, his wife, Francis J. Kirby and
 Therese J. Kirby his wife Harry H. Jump and Ella
 E. Jump, his wife, James S. Lowry and Laura C.
 Lowry, his wife, Richard H. Robertson and Pauline
 Robertson, his wife, Malcolm Shermer and Edna E.
 Shermer, his wife, Seaview Corporation, a corpora-
 tion of the State of New Jersey, Mulford T. Rose
 and Roberta C. Rose his wife, Frank Sullivan and
 Sadie F. Sullivan, his wife, Frank Licata Rose Li-
 cata, his wife, Peter Licata, Frances Licata Mam-

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marella and Enrice Mammarella, her husband, Vincent Licata, Frances Licata, and Mary Mastrangelo and Nicolo Mastrangelo, her husband, as well as to any part or parts thereof to which any of said above named are not authorized or empowered by law or otherwise to waive or grant its or their rights therein or consent to the making of this grant therefor.

- 10 TOGETHER with all and singular the hereditaments and appurtenances, thereunto belonging.

TO HAVE AND TO HOLD all and singular the above granted and described lands under water and premises, subject to the terms, conditions and limitations aforesaid, unto the said Frank J. Pedrick, Leonard F. Pedrick, and Frank Curran, co-partners, trading as Frank J. Pedrick & Son, and to their heirs and assigns forever.

- 20 IN WITNESS WHEREOF, the said Board of Commerce and Navigation have hereunto respectively set their hands, and these presents have been signed by the Governor, and the Great Seal of the said State has been hereunto affixed and attested by the Secretary of State, this nineteenth day of July, in the year nineteen hundred and twenty six.

A. HARRY MOORE, Governor.

(GREAT SEAL)

30

J. SPENCER SMITH
RICHARD C. JENKINSON
W. L. SAUNDERS
WILLIAM T. KIRK
HARRISON COOK

WITNESS:

VICTOR GELINEAU

Joseph F. S. Fitzpatrick, Sec. of State

STATE OF NEW JERSEY COUNTY OF HUD-
SON ss.

BE IT REMEMBERED, that on this twentieth day of July, nineteen hundred and twenty six, before me, the subscriber, a Master in Chancery of New Jersey, personally appeared Victor Gelineau, who being by me duly sworn, on his oath, saith that he saw J. Spencer Smith, Richard C. Jenkinson, W. L. Saunders, William T. Kirk, Harrison Cook, the within named Board of Commerce and Navigation, sign and deliver the within deed as their voluntary act and that he, the said Victor Gelineau, thereupon subscribed his name as an attesting witness thereto. 10

VICTOR GELINEAU.

SWORN AND SUBSCRIBED BEFORE ME, AT JERSEY CITY, THE DAY AND YEAR AFORESAID. 20

HENRY J. GOLDE
MASTER IN CHANCERY
OF NEW JERSEY

Received and Recorded February 5, 1927 at 11:30 A. M.

WILLIAM A. BLAIR, Clerk
RECORDED IN DEED BOOK 859 page 209.

STATE OF NEW JERSEY
COUNTY OF ATLANTIC

30

I, WILLIAM A. BLAIR, Clerk of the County of Atlantic, and also Clerk of the Common Pleas Court holden therein, said court being a court of record,

having a common seal, do hereby Certify, That the foregoing is a true copy of a certain Grant—The State of New Jersey to Frank J. Pedrick et al as the same is recorded in my said office.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my Official Seal at May's Landing, N. J., this 20th day of May A. D. 1929

Wm. A. Blair,
Clerk

(Seal)

10

By
Deputy Clerk

—————
(Endorsed)

CERTIFIED COPY
of
GRANT

20

The State of New Jersey
to
Frank J. Pedrick, et al.
Comp & Cert
Atl. Guar.

30

EXHIBIT D7.

5/22/29 L.

CERTIFIED CHECK

Jan 20 1926

1-20-27

55-139

10

CHARGE

Frank J Pedrick & Son

Twenty-eight Thousand Five Hundred-Six 55/100

Dollars

Certified Check to Order of Wm T Read State Treas

In payment of grant inside Thorofare.

\$28506 55/

M Ware

For Cashier

(Perforated):

PAID

20

1-20-27

55-139

EXHIBIT D8.

5/22/29 L.

(In margin):

FRANK J. PEDRICK & SON

30

"Distinctive Homes"

REAL ESTATE INSURANCE

1415 ATLANTIC AVE.

Branches:

California & Boardwalk and Opposite Steel Pier

10748

No. 10960

Atlantic City, N. J., June 30 26 19..
 Pay to the order of UNITED DREDGING COM-
 PANY \$451*99
 FOUR HUNDRED FIFTY ONE DOLLARS
 NINETY NINE CENTS /100 Dollars
 in payment of Bill 6/16/26 Ventnor Garden Bulk-
 head Work

To the

ATLANTIC SAFE DEPOSIT and TRUST
 COMPANY,

10

ATLANTIC CITY, N. J. 55-140

Frank J. Pedrick & Son

Leonard F. Pedrick

(Perforated):

55-140

7/1/26

(Endorsed)

20

For deposit only

UNITED DREDGING CO., INC.

JUN 30 1926

PAY ANY BANK OR BANKER

OR ORDER

All Prior Endorsements Guaranteed

MARINE TRUST CO.

55-145 Atlantic City N. J. 55-145

Wm. C. Kline, Jr., Sec. & Treas.

30

No. 2879

THE ATLANTIC SAFE DEPOSIT & TRUST CO.

Of Atlantic City, N. J.

Certified Check

CHARGE

Maker Frank J. Pedrick & Son

Number	Date	To the Order of	Amount
11236	7/26/26	United Dredging Co.	27,750.80

E Seiwel

Vice President—Treasurer

(Perforated):

55-140

7-26-26

10

Ck 9588

No. 2377

THE ATLANTIC SAFE DEPOSIT & TRUST CO.

Of Atlantic City, N. J.

Certified Check

CHARGE

Maker Frank J. Pedrick & Son

Number	Date	To the Order of	Amount
9588	5/22/26	United Dredging Com- pany	36,210.56

20

G. Brandon Donahue

Vice President—Treasurer

Teller

(Perforated):

55-140

5-22-26

30

No. 2941

THE ATLANTIC SAFE DEPOSIT & TRUST CO.

Of Atlantic City, N. J.

Certified Check

CHARGE

Maker Frank J. Pedrick & Son

Number	Date	To the Order of	Amount
11602	8/26/26	United Dredge. Co.	27,863.22
		G. Brandon Donahue	
		Vice President—Treasurer	
		Teller	

(Perforated):

55-140

8-26-26

10

(In margin):

FRANK J. PEDRICK & SON

"Distinctive Homes"

REAL ESTATE INSURANCE

1415 ATLANTIC AVE.

Branches:

California & Boardwalk and Opposite Steel Pier

20 No. 12092

Atlantic City, N. J., Sep 24 '26 19..

Pay to the Order of UNITED DREDGING COM-
PANY \$17010*36Frank J. Pedrick & Son Atlantic City, N. J. SEV-
ENTEEN THOUSAND TEN DOLLARS THIRTY
SIX CENTS Frank J. Pedrick & Son Atlantic City,
N. J. /100 Dollars

in payment of Bill Sept. 1st

To the

30 ATLANTIC SAFE DEPOSIT and TRUST
COMPANY,

ATLANTIC CITY, N. J. 55-140

Frank J. Pedrick & Son

Leonard F. Pedrick

(Stamped across face):

CERTIFIED

Payable as Originally Drawn and When Properly
Endorsed

\$17010 and 36 cts.

THE ATLANTIC SAFE DEPOSIT &
TRUST CO.

Atlantic City, N. J.

Sep 25 1926 No. 2976

G. Brandon Donahue

Teller

10

Do Not Destroy This Check
(Perforated):

55-140

9-27-26

(Endorsed)

For deposit

20

United Dredging Co

SEP 25 1926

PAY ANY BANK OR BANKER
OR ORDER

All Prior Endorsements Guaranteed
MARINE TRUST CO.

55-145 Atlantic City, N. J. 55-145

Wm. C. Kline, Jr., Sec. & Treas.

30

(In margin):

FRANK J. PEDRICK & SON

"Distinctive Homes"

REAL ESTATE INSURANCE

1415 ATLANTIC AVE.

Branches:

California & Boardwalk and Opposite Steel Pier
No. 12093

Atlantic City, N. J., Sep 24 '26 19..
Pay to the Order of UNITED DREDGING COM-
PANY \$1222*17
Frank J. Pedrick & Sons Atlantic City, N. J. ONE
THOUSAND TWO HUNDRED TWENTY TWO
DOLLARS SEVENTEEN CENTS Frank J. Ped-
rick & Sons Atlantic City, N. J. /100 Dollars
in payment of Bill Sept. 1st
To the
ATLANTIC SAFE DEPOSIT and TRUST
COMPANY,
ATLANTIC CITY, N. J. 55-140
Frank J. Pedrick & Son
Leonard F. Pedrick

(Stamped across face):

CERTIFIED
Payable as Originally Drawn and When Properly
Endorsed
\$1222 and 17 cts.
THE ATLANTIC SAFE DEPOSIT &
TRUST CO.
Atlantic City, N. J.
Sep 25 1926 No. 2976
G. Brandon Donahue
Teller
Do Not Destroy This Check
(Perforated):
55-140
9-27-26

(Endorsed)

For Deposit

United Dredging Co

SEP 25 1926

PAY ANY BANK OR BANKER
OR ORDER

All Prior Endorsements Guaranteed
MARINE TRUST CO.

55-145 Atlantic City, N. J. 55-145

Wm. C. Kline, Jr., Sec. & Treas.

10

(In margin):

FRANK J. PEDRICK & SON

"Distinctive Homes"

REAL ESTATE INSURANCE
1415 ATLANTIC AVE.

Branches:

California & Boardwalk and Opposite Steel Pier
No. 13130

20

Atlantic City, N. J., November 27 1926

Pay to the order of UNITED DREDGING CO

\$38280*40

Frank J. Pedrick & Son Atlantic City, N. J.

THIRTY EIGHT THOUSAND TWO HUNDRED

EIGHTY DOLLARS FORTY CENTS Frank J.

Pedrick & Son Atlantic City, N. J...../100 Dollars

in payment of Sand Fill to Nov 19 1926 Ventnor
Gardens

30

To the

ATLANTIC SAFE DEPOSIT and TRUST
COMPANY,

ATLANTIC CITY, N. J. 55-140

Frank J. Pedrick & Son

Leonard F. Pedrick

(Perforated):

55-140

11-29-26

(Endorsed)

For Deposit

10

United Dredging Co

NOV 27 1926

PAY ANY BANK OR BANKER
OR ORDERAll Prior Endorsements Guaranteed
MARINE TRUST CO.

55-145 Atlantic City, N. J. 55-145

Wm. C. Kline, Jr., Sec. & Treas.

20

(In margin):

FRANK J. PEDRICK & SON

"Distinctive Homes"

REAL ESTATE INSURANCE

1415 ATLANTIC AVE.

Branches:

California & Boardwalk and Opposite Steel Pier
No. 10670

30

Atlantic City, N. J., Jun 25 1926 19..

Pay to the order of United Dredging Co.

\$33,710 40/xx

The Sum of \$33710 and 40 cts/100 Dollars
in payment of Sand Fill Estimate #2 Ventnor
Gardens

To the

ATLANTIC SAFE DEPOSIT and TRUST
COMPANY,

ATLANTIC CITY, N. J. 55-140

Frank J. Pedrick & Son

Leonard F. Pedrick

(Stamped across face):

CERTIFIED

Good for \$33,910 40/100

10

When Properly Endorsed

JUN 25 1926

THE ATLANTIC SAFE DEPOSIT &
TRUST CO.

Atlantic City, N. J.

G. Brandon Donahue

Teller

Do Not Destroy This Check

(Perforated):

55-140

20

6-28-26

(Endorsed)

For Deposit

to a/c of

United Dredging Co Inc

JUN 25 1926

30

PAY ANY BANK OR BANKER
OR ORDER

All Prior Endorsements Guaranteed

MARINE TRUST CO.

55-145 Atlantic City, N. J. 55-145

Wm. C. Kline, Jr., Sec. & Treas.

EXHIBIT D9.

5/22/29 L.

997

Philadelphia, Pa. Dec. 7, 1926 No. 833

10 THE FIRST NATIONAL STATE BANK
of Camden, New Jersey
Pay to the order of Ventnor Gardens, Incorporated\$28500 00/
The sum of \$28500 and 00 cts Dollars
S. B. Dobbs

(Endorsed)

20 Ventnor Gardens, Inc.
Helen D. Cloetery, Sec.
For Deposit only
to the credit of
Frank J. Pedrick & Son

EXHIBIT D10.

30 5/22/29 L.

No. 5425 Philadelphia, January 19, 1927
CORN EXCHANGE NATIONAL BANK
Pay to the order of United Dredging Company\$9100 00/
The sum of \$9100 and 00 cts Dollars
S. B. Dobbs

(Endorsed)

United Dredging Co.
W. B. Clarke, Supt.

10

EXHIBIT D11.

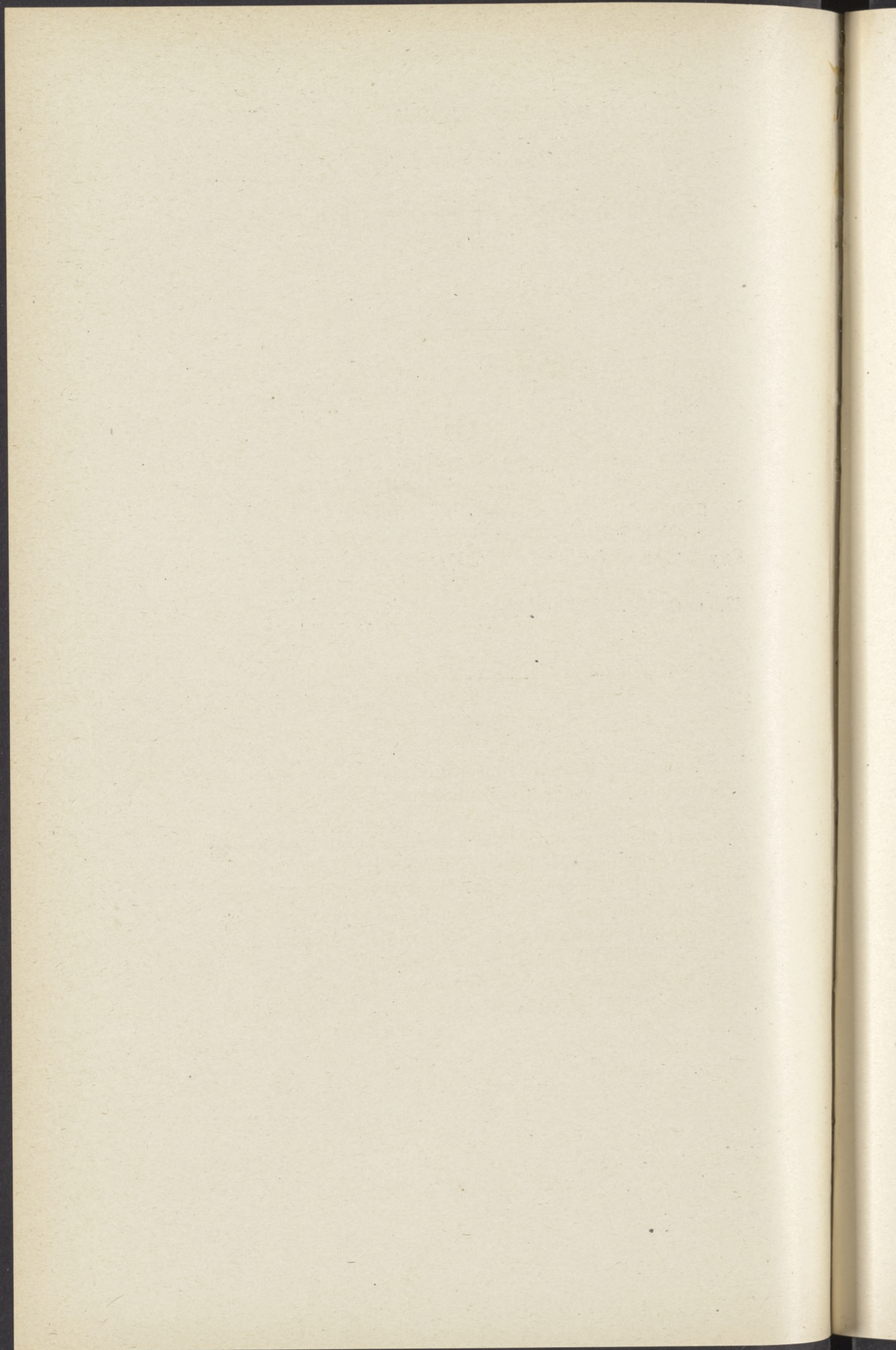
5/22/29 L.

No. 5426 Philadelphia, January 19, 1927
CORN EXCHANGE NATIONAL BANK
Pay to the order of United Dredging Company \$27000.
The sum of \$27000 and 00 cts. Dollars 20
S. B. Dobbs

(Endorsed)

United Dredging Co.
A. B. Clarke, Supt.

30



NEW JERSEY COURT OF ERRORS AND
APPEALS.

Between

FLORENCE J. MOORE,
Complainant-Appellant,

and

VENTNOR GARDENS, INC.,
Defendants-Respondents.

ON APPEAL FROM CHANCERY.

BRIEF OF COMPLAINANT-APPELLANT.

This is an appeal from a final decree in which the complainant's bill of complaint was dismissed.

The complainant, Florence J. Moore, was the owner of three contiguous lots located at Monmouth and Wyoming Avenues, Ventnor City, New Jersey. Two of these lots extended from Monmouth Avenue to the high-water line of Inside Thoroughfare, and the third extended from Monmouth Avenue out to the pier line in Inside Thoroughfare.

On the 23rd day of January, 1926, Florence J. Moore conveyed all three of said lots to Dorothy F.

Johnson, taking back a purchase money mortgage in the sum of \$20,000, bearing that date (Exhibit C3, S. C., page 101), covering the following described premises:

“All those lots, tracts or parcels of land and premises hereinafter particularly described, situate, lying and being in the City of Ventnor, in the County of Atlantic and State of New Jersey, bounded and described as follows:

BEGINNING at the northerly line of Monmouth Avenue 52 feet east of the easterly line of Margate Park; thence (1) Eastwardly along the northerly line of Monmouth Avenue 25 feet; thence (2) Northwardly parallel with Margate Park 100 feet, more or less, to line of Inside Thoroughfare; thence (3) Westwardly along line of Inside Thoroughfare, 25 feet to a point distant 52 feet east from the easterly line of Margate Park, measured at right angles thereto; thence (4) Southwardly parallel with Margate Park 100 feet more or less to northerly line of Monmouth Avenue and place of beginning.

No. 2. BEGINNING at the northeast corner of Wyoming Avenue (formerly Margate Park) and Monmouth (formerly Mediterranean) Avenue, and extending thence (1) Eastwardly along the northerly line of Monmouth Avenue 26 feet; thence (2) Northwardly parallel with Wyoming Avenue 150 feet to the Commissioners exterior wharf line in Inside Thoroughfare; thence (3) Westwardly along said exterior wharf line, parallel with Monmouth Avenue, 26 feet to the Easterly line of Wyoming Avenue; thence (4) Southwardly along said easterly line of Wyoming Avenue, 150 feet to the place of beginning.

No. 3. BEGINNING in the northerly line of Monmouth (formerly Mediterranean) Avenue, 26 feet eastwardly from the easterly line of Wyoming Avenue (formerly called Margate Park), and extending thence Eastwardly along said northerly line of Monmouth Avenue, 26 feet in front or width; thence northwardly between parallel lines of that width, parallel with Wyoming Avenue 100 feet more or less, in depth to high water line of Inside Thoroughfare.

TOGETHER with all and singular, the buildings, improvements, woods, ways, rights, liberties, privileges, hereditaments, and *appurtenances* whatsoever to the same belonging, or in anywise appertaining and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof."

It was admitted that Dorothy F. Johnson held the title for the partnership of Frank J. Pedrick, Leonard F. Pedrick and Frank Curran, trading as Frank J. Pedrick & Son, and it was also admitted that the partnership of Frank J. Pedrick & Son was the dominating influence in the corporation known as "Ventnor Gardens, Inc.," hereinafter referred to, and were the owners of all, or substantially all, of the stock of that company.

By instrument bearing date the 24th day of January, 1926, which, as will be observed, was the day following the date of the deed to the said Dorothy F. Johnson, she executed an agreement with the Pedrick partnership, in which agreement she consented that the waterway in front of her lots (said agreement related to a large number of parcels of land standing in her name), be filled in, and waived

all rights to apply for and receive a grant from the State of New Jersey for riparian rights, and authorized the Board of Commerce and Navigation to make "such grant of said lands under water as may be joining my land to the said Frank J. Pedrick, Leonard F. Pedrick and Frank Curran, trading as Frank J. Pedrick & Son, as I would be entitled to, if I personally applied for the same." (Exhibit C5, p. 118).

Thereafter, by a grant made by the State of New Jersey to Frank J. Pedrick, Leonard F. Pedrick and Frank Curran, trading as Frank J. Pedrick & Son, bearing date July 19th, 1926, the State of New Jersey conveyed three pieces of land below the high-water line of Inside Thoroughfare to the partnership (Exhibit D1, p. 137). It should be explained to the Court that one of the tracts conveyed is the land lying between the southerly bulkhead line and the southerly high-water line, the other is a tract lying between the northerly bulkhead line and the northerly high-water line, and the third tract is an area lying between the northerly and southerly bulkhead lines, which three grants, of course, included, among other lands, the land lying in front of the complainant's property and extending across Inside Thoroughfare to the northerly high-water line.

Thereafter, by deed bearing date January 31, 1927, Frank J. Pedrick, Leonard F. Pedrick and Frank Curran, trading as Frank J. Pedrick & Son, conveyed all the aforesaid land to Ventnor Gardens, Inc. (Exhibit C6, page 128), which company proceeded to fill in and develop all of the land so acquired from the State of New Jersey. That company subsequently went into the hands of a Receiver, and the premises in question were sold by

the Receiver to the General Land and Investment Company, which was, by order of the Court of Chancery, admitted as a party defendant to this suit.

Upon a default occurring in complainant's mortgage, she instituted foreclosure proceedings which she prosecuted in a regular manner to a sale, buying in the property in her own name for \$500. Upon the completion of the proceedings she discovered that the waterway in front of her premises had been filled. She described the premises in said proceedings as they were described in the mortgage.

Complainant then filed her bill for the strict foreclosure of her mortgage insofar as it relates to the land formerly under water, and extending to the middle of Inside Thoroughfare, as it formerly existed in front of her premises, claiming in said bill that by virtue of the purchase money mortgage given to her, any riparian rights acquired by the owner of the mortgaged premises, subsequent to the date of the mortgage, enured to the benefit of the mortgage, and are subject to its lien.

Defendant, Dobbs, is made a party by reason of the fact that he holds a mortgage covering the entire tract, made to him by Ventnor Gardens, Inc., which mortgage complainant alleges is subsequent to the rights of complainant. Dobbs subsequently assigned his mortgage to defendants, Pope, Stokes and Slape, whose rights, of course, rise no higher than those of Dobbs. The Atlantic County Trust Company is made defendant by reason of holding a second mortgage upon the premises in question. United Dredging Company is made defendant by reason of the fact that it claims a lien upon the premises in question for dredging work; and Kwass Realty Company is made a party defendant by reason of the fact that it holds a judgment against Ventnor Gardens, Inc.

The issue raised by the pleadings and tried before Court below was as to whether or not the lien of complainant's mortgage did, in fact, cover the land acquired under the riparian grant.

The learned Vice-Chancellor held that the lien of the mortgage extended no further than the land described therein, and that the lands under water, acquired from the State, by the mortgagor, or her assigns, were not subject to the lien of the mortgage, and accordingly, dismissed the bill. We contend that the decree was erroneous.

I.

A BILL OF STRICT FORECLOSURE IS THE PROPER PROCEDURE.

In *Shepard v. Barrett*, 84 New Jersey Equity. 408, at page 409, it is held that:

"The common law procedure of strict foreclosure has been almost entirely superseded by the more equitable method of foreclosing by sale, as regulated by the statute. It is still, however, an available remedy in this state, as where a mortgagee is in possession under a legal title from the holder of the equity of redemption, for the purpose of cutting off intervening liens or encumbrances. *Eldridge v. Eldridge*, 14 N. J. Eq. 195; *Lockard v. Hendrickson*, 25 Atl. Rep. 512; or, when the mortgage is given for the entire purchase money and the value of the land does not exceed the amount of the mortgage; *Jones Mort*, (6th Ed.), Section 1540; or, in case one has purchased in good faith

at a mortgage foreclosure sale which is not conclusive against some encumbrances not made a party to the suit, and the purchaser has gone into possession. *Jones Mort, supra*; *Parker v. Child*, 25 N. J. Eq. 41.

Where a subsequent mortgagee is intentionally omitted from a bill in a sale-foreclosure, and the prior mortgagee purchased with knowledge of the omission, he is not a purchaser in good faith and ought not to be afforded this harsh remedy to extricate him from a situation which he himself created. In *Parker v. Child, supra*, the Chancellor observed that in that case 'the first mortgagee, in foreclosing his mortgage, omitted, *not from design*, but from the oversight of his solicitor, to make the holder of the second mortgage a party to the suit,' although the second mortgage had been registered; the clear intimation being that if the omission had been intentional, the relief would not have been granted."

The application of this case to our case, we contend, is apparent, for the reason that in our case, the mortgage was a purchase money mortgage, and in addition, the failure to raise the question of whether or not the lien of the mortgage covered the lands formerly under water was not raised in the original foreclosure bill, for the reason that the attorney in charge of the foreclosure omitted to bring the present defendants into Court. *Holmes v. Child*, 25 N. J. Equity 41, is likewise in point.

Normally, in a bill of strict foreclosure, the defendant is called upon to redeem the mortgaged premises from the lien of complainant's mortgage, and in default of so doing, the defendant's encum-

brance is wiped out. It would be inequitable, in this case, to call upon the defendant to redeem only the land involved in this controversy from complainant's \$20,000 mortgage, and in the event of their failure to do so, to have the lien and encumbrances of the defendants wiped out, inasmuch as the mortgage covered the lots described in the mortgage, as well as the land described in this bill. Because of that, in open Court, complainant's counsel stated that if the defendants desired to redeem from the lien of complainant's mortgage, that complainant was willing, that the Court's order should give a right of redemption not only to the land in controversy, but also to the land described in the mortgage, so that the defendants, by the equitable position taken by complainant, were in identically the position that they would have been in if the original bill had described all the land from Monmouth Avenue to the center line of the thoroughfare.

It should also be pointed out that complainant's counsel also suggested to the Court that if the Court felt that the issue could not be adjudicated in a bill of strict foreclosure, counsel would consent to the setting aside of the sale in the original foreclosure suit, so that the original proceeding could be appropriately amended to include the property now in question.

Counsel pointed out to the Court below, and it is again, that this case should not go off on a technicality of procedure, because many other lands are affected by the decision of the same question in this immediate neighborhood, and in addition, there are a great number of titles throughout the State of New Jersey that are affected by the decision of the main question in this case.

We submit that a bill of strict foreclosure, based upon the equitable offer made by the complainant, will lie.

It should be observed that the Court below brushed aside all technicalities that were involved, and decided the basic question.

II.

THE COMPLAINANT'S MORTGAGE BECAME A LIEN UPON THE LAND TO THE CENTER OF INSIDE THOROUGHFARE UPON THE MAKING OF THE RIPARIAN GRANT.

Complainant held a mortgage upon the fast land bordering Inside Thoroughfare.

"By the common law, a mortgage in fee created an immediate estate in fee simple in the mortgagee, subject to be defeated by the payment of the mortgage money on the day named in the condition, and the mortgagee might enter immediately on the mortgaged premises, and hold the estate until the condition was performed. In this state, it was held by this Court that the right to enter was postponed, and the possession was in the mortgagor, until the condition was broken by default in the payment of the mortgage money, *Sanderson v. Dem, ex. dem.*, Price 1 Zab. 646, note. With this modification of the rights of the mortgagee, as to the postponement of ability to obtain the possession of the mortgaged premises, the nature of the mortgage as a conveyance remains as it was at common law." *Shields v. Lozear*, 34 N. J. Law 496, at page 501.

"A mortgage, at common law, is a conveyance absolute in its form, granting an estate defeasible by the performance of a condition subsequent." *Shields v. Lozear*, 34 N. J. Equity, 496, at page 502.

LAW

It is apparent, from the nature of a mortgage, in this State, that the complainant, in fact, is the owner of the fee, subject only to the defeasance. Under the Act with respect to the granting of Riparian Rights, 4 Compiled Statutes, page 4388, Section 15, it is provided:

"No grant, or license, shall be granted to any other than a riparian proprietor, until six months after the riparian proprietor shall have been personally notified in writing," &c.

It would seem that, under the law of this State, the mortgagee would be the appropriate one to apply for a riparian grant; before the performance of the conditions of the mortgage.

However, counsel is acquainted with the fact that the usual practice has been for the mortgagor to apply for and secure the grant. It is our contention that upon the securing of a grant, by a mortgagor, an equity in that grant arises in favor of the mortgagee.

The mortgagor in this case was one, Dorothy F. Johnson, who was the straw for Frank J. Pedrick & Sons. She entered into an agreement, as pointed out above, giving the Pedricks the right to apply for the grant, and the grant came from the State to Pedricks. It is, therefore, apparent that this case stands exactly as though the riparian grant was made by the State to the mortgagor directly—in fact, it was conceded below, by counsel for the de-

fense, that Dorothy F. Johnson stood for Pedrick in the transaction.

There seem to be only two cases in this State that have dealt with that subject in a manner that would be helpful to this Court.

In *Boon v. Kent*, 42 N. J. Equity 131, Subers gave a purchase money mortgage to Thompson, covering land upon Delaware River, Salem Cove and Salem Creek, the description in which mortgage concluded with the following: "With all the land attached and appertaining thereto, known as sand beach and guard, down to low-water mark in the river Delaware and Salem Creek." Subers conveyed by the same description to Daniel Kent, who acquired, by the deed of riparian commissioners, the land between high-water line and the exterior line established by the Commissioners. Daniel Kent conveyed to Henry Kent by the same description contained in the mortgage. Upon a bill to foreclose the complainants insisted that their mortgage covered the land conveyed by the riparian commissioners to Daniel Kent, and the Chancellor held:

"Daniel H. Kent's ownership of the mortgaged premises through the deed from Thompson to Subers, enabled him to obtain the grant from the riparian commissioners, which otherwise he could not have obtained. P. L. of 1871, Rev. p. 95; *Fitzgerald v. Faunce*, 17 Vr. 536, 594. The owners of the property had, up to the time when the deed to Subers was given, exercised the right of fishing, under a claim of several fishery, along the whole front of the property on both the river and creek, from time immemorial. They also claimed the exclusive right to take sand from the bars. It is very important to the owner of the upland that he

Should be inserted
at point indicated
on page 15

should own the shore also. To sell the one without the other would be so prejudicial to the complainant that, according to the evidence, it is doubtful whether, if so sold, it would bring enough to pay the mortgage. The grant of the riparian commissioners, under the circumstances, enured to the benefit of the mortgage."

The Court of Errors and Appeals considered that an order for sale of such an interest was too indefinite, and that the rights to the parties in that land should be determined before sale. By way of determining the rights of the parties, the Court held as follows:

"At the time the mortgage was given the mortgagor was a riparian owner, and, as such, he had the right of preemption and reclamation to the lands under water in front of his lands, bordering thereon. These could not be taken from him by the state, through its agents, the board of riparian commissioners, until after six months' notice in writing he should have neglected to apply for the grant or license, and neglected to pay, or secured to be paid, the price the said commissioners fixed. Rev. Pl. 984, Section 8; Laws of 1869. He could apply to the commissioners for a lease, grant or conveyance, upon such a compensation therefor to be paid to the State of New Jersey, as should be determined by the commissioners. Rev. pl. 985, section 1; laws 1871. These rights he conveyed to the mortgagor (our interpretation is that this is undoubtedly intended to mean mortgagee), as security for his mortgage debt, who thereby became entitled to an equitable estate or interest therein.

The defendant, the Point Breeze Ferry and Improvement Company, took the two feet strip above high-water mark, or the ripa subject to the mortgage, and the right of preemption and reclamation of the land under water, also subject to the equitable interest of the mortgagee. *Boon v. Kent*, 15 Stew. Eq. 131." *Point Breeze Ferry and Imp. Co., v. Bragaw*, 47 N. J. Equity 298, at page 301.

In New York State, in the case of *People's Trust Co., v. Schenck*, 195 N. Y. Reports, 398, the Court of Appeal held (at page 403):

"There is a further consideration, which militates in favor of the plaintiff's contention, and that is that the right to acquire the land under the waters of the bay was appurtenant to the ownership of the upland. The land was not appurtenant to the upland and it would be incorrect to say that it passed with it as belonging to it under the terms used of 'appurtenance' (see *Woodhull v. Rosenthal*, 61 N. Y. 382, 390; *Odgen v. Jennings*, 62 ib. 256, 531); but the right to acquire it was appurtenant to the upland. This has been expressly decided. It was held that 'the power conferred on the commissioners of the land office only authorizes a conveyance of lands under water to be made to the owners of the upland.' (*E. G. Blakslee Mfg. Co. v. The E. G. Blakslee's Sons Iron Works*, 129 N. Y. 155, 159 N. Y. C. & H. R. R. R. Co. v. *Aldridge*, 135 ib. 83, 94). In them, alone, is vested the right, or privilege, to apply for such a conveyance. While the State was the owner of the lands in Jamaica Bay, the railroad company, as the owner to acquire the uplands, ex-

clusively possessed the right to acquire them by a grant and that right would pass as appurtenance to the upland, (see above cases), which was included in the mortgage to the plaintiff; subject, only, perhaps, to its being, in fact, 'convenient, or necessary, for the use, or for the purposes of the railroad.' "

In the case of *New York, Lake Erie and Western Railroad Co. v. Hughes*, 46 N. J. Law, 67, Justice Dixon, speaking for the Supreme Court, held that a pier right must be regarded as appurtenant to the land which actually adjoins the water.

In the case of *Point Breeze Ferry and Improvement Co. v. Bragaw*, 47 N. J. Equity, 298 (Errors and Appeals). Robert Currie made a mortgage to Bragaw on a tract of land described by metes and bounds and "including all land lying under water in the New York Bay in front of the upland embraced within the aforesaid boundaries, together with all and single the tenements, hereditaments and appurtenances," &c. Currie entered into a contract of filling the land under water, and on the same day conveyed to the Point Breeze Ferry and Improvement Co., the front of his land, 2 feet in depth back from high-water mark, and assigned to it the contract for filling. Subsequently the Point Breeze Ferry and Improvement Co. purchased from the riparian commissioners "all the land lying under the water of the New York Bay between high-water mark on the shore of said Bay, and the exterior line for piers, as established by the riparian commissioners," in front of said lands. Upon the foreclosure of the mortgage the complainant claimed that the mortgage covered the filled land in front of Robert Currie's land described in the mortgage.

The Court of Chancery directed a sale in the foreclosure proceedings, in a certain sequence, and provided that "all the right, title and interest which Robert Currie had and held in and to the land lying under water in New York Bay, in front of the upland described in the complainant's mortgage, on December 15th, 1873 (the date of the mortgage)," should be sold.

Begin insert
from page 12
here

It is, therefore, apparent that the right to secure a riparian grant is appurtenant to the upland and passed to the mortgagee upon the mortgage of the appurtenances of the described land. *Blakslee Manufacturing Co. v. Blakslee's Sons Iron Works*, 129 New York Reports, page 155.

It would certainly be inequitable where the complainant conveyed water-front lots and took back, as part of her purchase price, a purchase money mortgage covering what she conveyed, if this Court should say that she should only be entitled to the actual land which she conveyed, without water-frontage, or what has been substituted for water-frontage, the additional land that has been reclaimed from the water.

It seems to us that the only conclusion to be reached from these cases is that a riparian grant is covered by the lien of a mortgage that covers the up-land at the time of the making of the grant.

The learned Vice-Chancellor based his decision, in this case, upon the proposition that land below high-water is the property of the State, and that it can be disposed of by the State in accordance with the statutes relating thereto. We do not quarrel with that, as a statement of law, but contend that it is not dispositive of the issue in this case.

The Court did not pass upon the question of what happened to that land after it got into the hands of

the mortgagor. He merely determined that by reason of the State's superior title to it, the lien of the complainant's mortgage does not cover it while the State owns it, which was not the legal question raised in this case.

The Court was probably led into this error by the argument of defendants' counsel below, which was to the effect that if the complainant's contention in this case was sustained, then it would have to be held that the lien of complainant's mortgage extended out over land owned by the State. This is not the complainant's contention.

The State, concededly, owns the land below high-water mark, and a mortgage of the upland has no title in, or lien upon the State's land. Our contention, however, is that when the State parts with its title, and conveys its title to the mortgagor, that then, and not until then, the lien of the mortgagee's mortgage attaches for the reasons outlined in the authorities above cited.

We contend that the land which should be held subject to the lien of complainant's mortgage should extend out to the center of Inside Thoroughfare. The defendant contended below that, at best, we would only be entitled to a lien out to the northerly line of the southerly grant made by the State to Pedricks. However, we submit that there is no merit in that contention because the State, at one time made a conveyance of all of the land between the high-water mark on the northerly and southerly shores of Inside Thoroughfare, by one grant. Three descriptions were used in the conveyance, as a matter of convenience; the southerly description running along the southerly high-water mark and circling all previous grants as its southerly course, and using an arbitrary line as its northerly course.

The grant on the northerly side of Inside Thoroughfare was described by a description which likewise ran along the northerly high-water line, circling previous grants and using, as a southerly course, an arbitrary line. The third description used was a description of the land lying between the northerly line of the southerly grant, and the southerly line of the northerly grant.

If two owners, on opposite sides of the Thoroughfare, and facing each other, had applied for a grant at the same time, for the purpose of filling, the Board of Commerce and Navigation would have made a grant to each one, beginning at the center of the stream. This seems to be fundamental justice, and if the complainant has a lien upon the land acquired by the mortgagor from the State, that lien should extend to the middle of the Thoroughfare. There is no reason why it should not.

It is, therefore, respectfully submitted, that the decree of the Court below is erroneous; that the proper decree should have been a decree that declared that when the mortgagor acquired a riparian grant from the State, the land so acquired enured to the benefit of the lien of the complainant's mortgage.

Respectfully submitted,

THOMPSON & HANSTEIN,
Solicitors for and of Counsel
with Complainant-Appellant.

NEW JERSEY COURT OF ERRORS AND
APPEALS.

Between

FLORENCE J. MOORE,
Complainant-Appellant,

and

VENTNOR GARDENS, INC., *et al.*,
Defendants-Respondents.

ON APPEAL, &C.

BRIEF FOR DEFENDANT-APPELLEE,
GENERAL LAND & INVESTMENT CO.

The complainant appeals from a decree advised by Vice-Chancellor Ingersoll dismissing a bill of strict foreclosure. The lands described in the mortgage bordered upon the high-water mark of the Inside Thoroughfare in the City of Ventnor City. The bill of complaint in the original foreclosure described only the upland, and under it a final decree was entered, execution issued thereon, and the upland,

by the description specifically set forth in the mortgage, was purchased by the complainant for the sum of \$500.

Long prior to the filing of the foreclosure bill, Dorothy F. Johnson, the mortgagor, and the owner of the fee of the upland to the high-water mark, executed an agreement dated January 24, 1926, with other riparian owners, whereby she waived her rights to apply for a riparian grant, and authorized the Board of Commerce and Navigation to make such grant, etc., to Frank J. Pedrick & Son.

Following this, a grant of a large tract of land under water, being the bed of the Inside Thoroughfare, was conveyed to Frank J. Pedrick & Son, who later conveyed to Ventnor Gardens, Inc., which latter company by its receiver conveyed its title to General Land & Investment Co.

The various grants and conveyances above referred to were all of record prior to the filing of the original foreclosure bill.

The complainant, by her bill of strict foreclosure, sought to impress her lien upon the lands formerly below the high-water mark, and extending to the middle thread of the former Thoroughfare, claiming such a right solely as an appurtenance to her mortgage.

Ventnor Gardens, Inc., had, prior to the filing of the original foreclosure bill, expended in the filling of the Thoroughfare, approximately the sum of \$250,000, and, in addition thereto, there was expended by Frank J. Pedrick & Son the sum of approximately \$28,500 in acquiring the riparian grant from the State of New Jersey.

In dismissing the bill of complaint the learned

Vice-Chancellor held, among other things, as follows:

“The title under the New Jersey grants is not only a new estate, but in a new subject divided from the upland or riparian property by a fixed and permanent boundary. Such grants are of the estate in the land and not of a mere franchise or incorporeal hereditament.”

While the opinion of the learned Vice-Chancellor did not discuss all of the questions raised by the issues, we deem the discussion of all the questions proper and material.

The following questions are presented by the issues and proofs under the facts in this case:

1. DOES A BILL OF STRICT FORECLOSURE LIE?

2. DOES THE RIGHT TO A RIPARIAN GRANT PASS TO A MORTGAGEE OF LANDS ABUTTING THE LANDS BORDERING ON NAVIGABLE WATERS AS AN APPURTENANCE WHERE THERE IS NO ATTEMPT OTHERWISE SPECIFICALLY TO PLEDGE SUCH RIGHT?

3. IF THE RIGHT TO A RIPARIAN GRANT PASSES TO THE MORTGAGEE AS AN APPURTENANCE, WHAT ARE THE RESPECTIVE RIGHTS AND PRIORITIES OF THE STATE'S GRANTEE ON THE ONE PART, AND THAT OF THE COMPLAINANT ON THE OTHER, WHERE THE STATE'S IMMEDIATE AND IN-

INTERMEDIATE GRANTEES HAVE EXPENDED APPROXIMATELY, \$275,000 IN THE ACQUISITION OF THE TITLE, AND IN THE FILLING IN OF THE RIPARIAN LANDS, OF WHICH THE LOCUS IN QUO FORMED A PART?

4. IF THE COMPLAINANT IS ENTITLED TO ANY LIEN UPON ANY PART OF THE RIPARIAN LANDS, WHAT IS THE PHYSICAL EXTENT OR AREA OF THE LANDS AFFECTED BY SUCH LIEN?

1. DOES A BILL OF STRICT FORECLOSURE LIE?

It is now sought, by a strict foreclosure bill, to compel the defendant, General Land & Investment Co., to pay the amount of the original decree with interest and costs, in order to discharge the supposed lien of the complainant's mortgage. A strict foreclosure bill is regarded as harsh and oppressive, depriving, as it does, a mortgagor or owner of the equity of redemption of the benefit of a public sale of the property with a possibility of competitive bidding and the production of a surplus. In fact, the complainant's solicitor recognizes the inequity of the complainant crediting the sum of \$500.00 on the \$20,000 mortgage, retaining the valuable upland, and compelling the defendant to pay a sum which, with interest and costs, is now in excess of the original mortgage, in order to discharge the lien on a portion of the lands, and has, therefore, offered in open court to permit the defendant to redeem all

of the lands in question. This, however, deprives the defendant of its original right to have the entire equity of redemption sold at public sale in one parcel. It is now claiming a right which the complainant did not originally have, *viz.*, a right to a strict foreclosure instead of a public sale of the mortgaged premises, and this would subject the defendant to this harsh and oppressive procedure. The defendant should not, therefore, be compelled to accept this offer, and thus place the complainant in a better position than that which she originally occupied, whether the complainant's failure to proceed in a proper manner was the result of either accident or design.

It is an open and notorious fact that the Ventnor Gardens development was a gigantic enterprise involving sales running into millions of dollars, the filling and developing of a large tract of land, including the closing of the Inside Thoroughfare, the filling in of the Thoroughfare and the raising of the lands to grade above the high-water mark, were a part of a general scheme covering many city blocks of land. Some idea of its magnitude may be gleaned from the fact that, according to the testimony of Warren I. Risley, the engineer who testified in these proceedings, the sum of \$249,217.00 was the estimated cost of the fill as far as it has thus proceeded in the Thoroughfare area (S. of C., p. 78), and that in addition to this the sum of \$28,500 (S. of C., p. 94) was paid to the State of New Jersey to acquire the riparian rights. This was evidenced by the check of Frank J. Pedrick & Son (Exhibit D7, S. of C., p. 94), which payment was made from funds supplied by S. B. Dobbs by his check for \$28,500 to the order

of Ventnor Gardens, Incorporated (Exhibit D9, S. of C., p. 98). Mr. Dobbs paid over these moneys in his character as mortgagee. It cannot be supposed that the complainant-mortgagee was ignorant of these important improvements, nor that they were made by Ventnor Gardens, Inc., under a riparian grant from the State, and in reliance upon the title obtained from the State of New Jersey.

On January 24, 1926, Dorothy Johnson executed a written consent to the filling in of the waterway and a waiver of her preemptive right to receive a riparian grant from the State of New Jersey, which consent and waiver were recorded on March 13, 1926, in the Atlantic County Clerk's office (Exhibit C5, S. of C., p. 118).

On July 19, 1926, the State made its riparian grant of the lands under water in the Thoroughfare area to Frank J. Pedrick, *et als.*, trading as Frank J. Pedrick & Son (Exhibit D1, S. of C., p. 137), and on January 31, 1927, Frank J. Pedrick, *et als.*, conveyed the lands described in the riparian grant to Ventnor Gardens, Inc., a New Jersey corporation (Exhibit C6, S. of C., p. 128), and on January 31, 1927, Ventnor Gardens, Inc., executed a supplemental mortgage of \$250,000 to S. B. Dobbs (Exhibit D4—Stipulation, S. C., p. 66). Later, a receiver was appointed of Ventnor Gardens, Inc., and the receiver so appointed sold all of the lands and premises of Ventnor Gardens, Inc., including the *locus in quo*, to the General Land & Investment Co., which latter company was permitted to intervene and file an answer.

Strict Foreclosure.

In order to support a strict foreclosure the following are essential:

1. That the complainant *be in possession*.
2. That strict foreclosure cannot extend the area of the land originally foreclosed.
3. That in any event the defendant is entitled to a lien for the cost of acquiring the riparian title from the State and for the cost of improvements, which lien is paramount to any lien claimed by the complainant. This, in itself, would defeat the complainant's claim of strict foreclosure, and the bill would have to be dismissed.

As to the first requisite, that of possession, the complainant wholly failed.

Strict foreclosure is looked upon as harsh and inequitable, and not to be encouraged. See 42 *C. J.* 21, Sec. 1510.

The only proof as to possession appears in a colloquy between counsel:

“Mr. Hanstein: And the other thing, which I am prepared to establish, is that upon the delivery of the sheriff's deed the complainant took possession of the property described in the mortgage.

Mr. Carr: Described in the sheriff's deed, but not the property now in dispute.

Mr. Hanstein: No, that is open land.

Mr. Carr: We will admit that. I think the delivery of the sheriff's deed is equivalent to possession, anyway, in law" (S. of C., p. 90, lines 3 to 18).

Hence, it is not a fact that the complainant either claims to be, or was, in possession of the lands below the high-water mark and described in the bill of strict foreclosure in this cause at any time prior to the filing of the bill.

It has been almost wholly superseded in New Jersey by foreclosure by sale as regulated by statute. The only reported cases that we have been able to find dealing with this subject are where a mortgagee *is in possession* under legal title from the holder of the equity of redemption, and then for the purpose of cutting off intervening liens or encumbrances, or where the mortgage is given for the entire purchase money, and the value of the land does not exceed the amount of the mortgage, or where a purchaser in good faith at a mortgage foreclosure sale, which is not conclusive against some encumbrancer not made a party to the suit, has *gone into possession* under such sale.

See

Shepard v. Barrett, 84 N. J. E. 409 (N. J. Ch. 1915);

Eldridge v. Eldridge, 14 N. J. Eq. 195;

Donovan v. Smith, 88 Atl. 167 (N. J. Ch. 1913) (not officially reported).

"A strict foreclosure was the natural remedy upon a mortgage when it was regarded as a

conditional sale of the land rather than as a mere security; for the mortgagor having failed to perform the condition, it was consistent with this doctrine of the condition that the courts should, after having relieved the mortgagor from the forfeiture of his condition, require him to perform it within a reasonable time or be forever barred of his right to redeem. But when the mortgage came to be regarded as a mere security for the payment of the debt, and the breach of the condition was of no effect beyond giving the mortgage creditor the right to resort to his security, the natural remedy for the breach was to sell the property secured and apply the proceeds to the payment of the debt; as in this way the debtor would have the benefit of the estate when this was of greater value than the debt, and the mortgagee would have a claim for the deficiency not paid by the proceeds of sale. The advantages of a sale of the property over a foreclosure were discussed in the earlier cases, before the practice of ordering a sale had become almost universal, as it now is, except in special cases.

Foreclosure is proper in the case of a mortgage given for the entire purchase money, when the value of the premises is not more than the mortgage debt, and the mortgagor does not appear in the suit. It is proper where a mortgagee or purchaser is in possession under a legal title from the mortgagor, for the purpose of cutting off subsequent liens or incumbrances, as in case one has purchased in good faith at a mortgage sale which is not conclusive against

some incumbrancer not made a party to the suit, and the purchaser has gone into possession. It is proper, too, where the mortgage is in the form of an absolute deed without any written defeasance. In these cases the decree of strict foreclosure perfects and confirms the title. It bars the interest of persons who have a mere lien upon the land.

The rights of a junior lien creditor, who has not been made a party to the foreclosure of a senior lien, may be barred by a suit for strict foreclosure requiring him to redeem within a reasonable time or stand foreclosed."

3 *Jones on Mortgages*, 1539, Secs. 1539-1540.

It is quite evident that in any event, if an equitable lien be established upon the lands within the Thoroughfare area, and formerly covered by water, for the cost of the acquisition of the title, together with the cost of improvements, there is lien paramount to the lien claimed by the complainant herein, and mount to the lien claimed by the complainant herein, that this in itself would defeat the right to strict foreclosure. *The defendant would be entitled to have paid to it the entire sums due before the complainant could be entitled to anything.*

In addition to the above, there is an existing mortgage of \$250,000 upon the Thoroughfare area, including the *locus in quo*, on the faith of which mortgage the mortgagee therein named paid the amount required by the State of New Jersey to acquire the said grant, and, in addition, a large sum of money in payment toward the cost of the fill.

2. DOES THE RIGHT TO A RIPARIAN GRANT PASS TO A MORTGAGEE OF LANDS ABUTTING ON LANDS BORDERING ON NAVIGABLE WATER AS AN APPURTENANCE WHERE THERE IS NO ATTEMPT OTHERWISE SPECIFICALLY TO PLEDGE SUCH RIGHT?

Appurtenance.

“An adjunct; an appendage; an addition; that which belongs to something else; that which belongs to another thing, but which has not belonged to it immemorially; something annexed to another thing more worthy; a thing used with, and related to, or dependent on, another thing more worthy, and agreeing in its nature and quality with the thing whereunto it is appendant or appurtenant; that which belongs to something else as an adjunct or appendage of such moment that the thing to which it attaches cannot be enjoyed without its use; a thing belonging to another thing as principal, and which passes as incident to the principal thing; something attached to the realty.

The term is ordinarily confined to incorporeal rights; but it is also employed to designate things of a corporeal nature, as for instance, in such expressions as ‘appurtenances of a railroad’ and ‘appurtenances of a vessel.’ In the absence, however, of anything in the instrument to indicate that the term was used in a different sense, it will be construed according to its technical legal significance.

In a technical sense land can never be an appurtenance to land."

4 *C. J.*, pp. 1466-69.

"An appurtenance is that only which is incidental or indispensable to the proper use of the premises demised. * * * A mere convenience does not create an appurtenance."

Gale v. Heckman, 16 Misc. 376, 378; 38 N. Y. S. 85.

"The true test as to whether a thing is an incident or appurtenance seems to be the property of relation between the principal and adjunct which is to be ascertained by considering whether they agree in nature and quality, so as to be capable of union without incongruity, and is actually and directly necessary to the full enjoyment of the property."

Barret v. Bell, 82 Mo. 110, 114; 52 Am. R. 361 (cit. *Wood Landlord and Ten.*, Sec. 213).

"The term as used in conveyances passes nothing but the land and such things as belong thereto and are part of the realty. *Ottumwa Woolen Mill Co. v. Rawley*, 44 Iowa, 57; 24 Am. Rep. 719. And all that can be claimed as embraced in the word 'appurtenances' in a conveyance of land are the easements and servitudes necessary to the enjoyment of the land conveyed. *Woodhull v. Rosenthal*, 61 N. Y. 382.

See also *Green v. Collins*, 86 N. Y. 246; 40 Am. Rep. 531.

Newport Illuminating Co. v. Tax Assessors of Newport, 36 L. R. A. 266, p. 269.

“An appurtenance is not a portion of the principal thing; it is something belonging to, pertaining to, something else which is its principal. The thing appurtenant must be of an inferior nature to the thing to which it is appurtenant.”

Ballew v. State, 26 Tex. A. 483; 9 S. W. 765.

“The word appurtenances in a deed will not usually pass any corporeal real property, but only incorporeal easements, or rights and privileges; *Co. Litt*, 121; 8 B. & C. 150.

Bouvier's Law Dict. (Rawle's Revision), Vol. 1, p. 159.

“Where improvements are made on tidelands intended to be used separate and distinct from the uplands, such improvements will not pass under a mortgage of lands appurtenant to the uplands. *Book v. West*, 69 Pac. 630, 632; 29 Wash. 70.”

Words & Phrases, Vol. 1, p. 2.

“‘Appurtenance,’ as used in conveyances, passes nothing but the land, and such things as belong thereto and are part of the realty. Therefore, when a conveyance is of a piece of land, defined by boundaries, with ‘appurtenances,’ other land not included in boundaries

will not pass as appurtenant to the grant. (Italics ours.) All that can be claimed as embraced in the word 'appurtenances' are easements and servitudes necessary to the enjoyment of the land conveyed. *Snoddy v. Bolen*, 24 S. W. 142, 144; 122 Mo. 479; 24 L. R. A. 507."

Riparian Grant.

"The title under the New Jersey grants is not only a new estate, but in a new subject divided from the upland or riparian property by a fixed and permanent boundary. Such grants are of the estate in the land and not of a mere franchise or incorporeal hereditament."

Mayor and Council of the City of Hoboken v. Pennsylvania Railroad Co., 124 U. S., p. 656.

"The State is the absolute owner of the land in all navigable water within its territorial limits, and such land can be granted to anyone, either public or private, without making compensation to the owner of the shore.

"By the local custom of this State, the shore owner can reclaim the land between high and low water marks, but such privilege is a mere license, which the Legislature may revoke at any time before execution.

The rights conferred by the Wharf Act are also revocable before execution by the landowner."

Stevens v. Paterson & Newark R. R. Co., 34 N. J. L. 532 (E. & A. 1870).

“By the laws of New Jersey, lands below high water mark on navigable waters are the absolute property of the State, subject only to the power conferred upon Congress to regulate foreign commerce and commerce among the States, and they may be granted by the State, either to the riparian proprietor, or to a stranger, as the State sees fit.

The grant by the State of New Jersey to the United Companies by the Act of March 31, 1869, under which the Pennsylvania Railroad Company claims, and the grants under the general Riparian Act of the same date, under which the other defendants claim, were intended to secure, and do secure, to the respective grantees the whole beneficial interest in their respective properties, for their exclusive use for the purposes expressed in the grants.

An estoppel cannot apply in this case to the State or to its successor in title.

Any easement, which the public may have in New Jersey to pass over lands redeemed by filling in below high water mark in order to reach navigable waters, is subordinate to the right of the State to grant the lands discharged of the supposed easement.

A riparian proprietor in New Jersey has no power to create an easement for the public over lands below high-water mark, as against the State and those claiming under it; and if he attempts to do it, and then conveys to another person all his right to reclaim the land under water fronting his property, his grantee may

acquire from the State the title to such land, discharged of the supposed easement."

Hoboken v. Pennsylvania R. Co., 124 U. S. 656, 657 (U. S. Sup. Ct. 1887).

Hoboken v. Pennsylvania R. Co., *supra*, is approved in *Elizabeth v. Central R. R. Co.*, 53 N. J. L. 491 (N. J. Sup. Ct. 1891), and has been followed by a number of later cases.

"The preemption right given by the eighth section of the Riparian Act of 1860, to the riparian owner, is of grace and not of right.

The thirteenth section of that Act was designed for the benefit of riparian owners who, after notice, neglect to apply for the grant, and the grant has consequently been made to someone else, and the right of the riparian owner to compensation is by the Act made to depend upon whether, in law, he had such a right or interest as would make compensation to him necessary in order to enable the State to make the grant."

American Dock & Improvement Co. v. The Trustees, 39 N. J. E. 409 (Ch. 1885).

See also

Atlantic City v. New Auditorium Pier Co., 63 N. J. E. 644, 663 (reversed on other grounds, 67 N. J. E. 610).

Up to the time of actual conveyance by the State of New Jersey of its title to lands under water, the

same was necessarily clear of the lien of the complainant's mortgage. On the complainant's theory, simultaneously with the delivery of the deed, the lien of the complainant's mortgage attached thereto. *For all practical purposes this is the equivalent of asserting that the complainant's lien is paramount to the State's paramount title. A lien that would attach to the property theretofore owned by the State, immediately upon the delivery of the deed to the State's grantee, would impair the marketability of the State's riparian lands.*

See

Stevens v. Paterson & Newark R. R. Co.,
34 N. J. L. 532, 546 (*supra*);
Hoboken v. Pennsylvania R. R. Co., 124
U. S. 656, 657 (U. S. Sup. Ct. 1887)
(*supra*);
Elizabeth v. Central R. R. Co., 53 N. J. L.
491 (N. J. Sup. Ct. 1891) (*supra*).

The appellant's counsel in his brief cites the case of *Shields v. Lozear*, 34 N. J. L. 496 (erroneously cited in appellant's brief as 34 N. J. E. 496), as authority for the statement that "A mortgage at common law is a conveyance absolute in its form, granting an estate defeasible by the performance of a condition subsequent," and from this statement of the law deduces that "It would seem that, under the law of this State, the mortgagee would be the appropriate one to apply for a riparian grant, before the performance of the conditions of the mortgage."

Unquestionably, this has not been the practice,

and the introduction of such a practice at this late date would unsettle thousands of titles. However, the legal status of the respective rights of the mortgagor and mortgagee are ably discussed by Chief Justice Beasley, speaking for the Court of Errors and Appeals, in which he says in part as follows:

“We have many adjudications on this subject, and they are all manifestly founded on the theory that land conveyed by way of mortgage stands as a mere security for the debt, and subsists as an estate only to the extent that it is subservient to such purpose. This is the fundamental idea infusing all our judicial expressions upon the subject, and all common law institutes relating to the tenure of realty, so far as they have been thought inconsistent with such principle, have been consistently repudiated. It is the oft-repeated declaration to be found in our reports, that the mortgagee is possessed of no estate in the land, except such as is necessary for the realization of the debt due to him, and this definition obviously excludes most of the rights and incidents ordinarily belonging to the proprietorship of the realty. The inefficacies of a title inherent in a mortgage, construed in the light of the doctrine thus stated, is forcibly pointed out by Mr. Justice Southard in the case of *Montgomery v. Bruere*, 1 South. 260. Referring to the construction of these instruments in courts of common law, the opinion thus proceeds, *viz.*: ‘A mortgagee is there considered as a freeholder for no single purpose of office, of benefit, or of burthen. He

can hold no public office; he can exercise no public duty requiring an estate in lands. He cannot gain a settlement; his property is personal assets in settling his estate; if he devises it, it will not pass by the word lands or real estate, nor is it necessary that his will be executed with the legal requisites to pass them. It is not subject to curtesy or dower, the necessary attendants upon legal estate in lands. Even a transfer of a debt, in any way, terminates it. It has not a single characteristic of a legal estate. It is a mere security for the money, and a power to gain possession of the land in order to make it.' "

* * * * *

" 'The mortgage is regarded not as a common law conveyance on condition, but as a security for debt, the legal estate being considered as subsisting only for that purpose.'

But it is not necessary to refer to the cases in greater detail, for it is deemed entirely indisputable that, by the system thus built up by a number of adjudications in this jurisdiction, it has been conclusively established that a mortgagee is vested with no estate in the land conveyed to him, except such as is reasonably requisite to enable him to realize out of the property, if the necessity arises, the moneys due to him."

Devlin v. Collier, 53 N. J. L. 427 (E. & A. 1891).

3. IF THE RIGHT TO A RIPARIAN GRANT PASSES TO THE MORTGAGEE AS AN APPURTENANCE, WHAT ARE THE RESPECTIVE RIGHTS AND PRIORITIES OF THE STATE'S GRANTEE ON THE ONE PART, AND THAT OF THE COMPLAINANT ON THE OTHER, WHERE THE STATE'S IMMEDIATE AND INTERMEDIATE GRANTEES HAVE EXPENDED AP-OF WHICH THE LOCUS IN QUO FORMED A PART?

Under the case of *Point Breeze Ferry & Imp. Co. v. Bragaw*, 47 N. J. Eq. 298 (E. & A. 1890), it was held that:

“The defendant company, which purchased a lease of the land under water from the State and reclaimed it by filling, has the higher title and superior right to be first paid the price of such purchase and the value of the improvement.”

In that case a mortgage made by a riparian owner covering the shore and “including land lying under water in front of the upland” which was afterward leased from the State, and improved by filling below the high-water mark, was foreclosed. *There is no discussion in this case of the theory upon which the mortgage was held to apply to lands which at the time of the delivery of the instrument were not owned by the mortgagor.* However, the mortgage, by its express terms, attempted to create a lien upon lands under water.

The case contains, at page 301, the following:

“These rights (the preemptive rights to apply for a riparian grant) he conveyed to the mortgagor (probably intended to read mortgagee) as security for his mortgage debt, who thereby became entitled to an equitable estate or interest therein.”

(The matters enclosed in parentheses above were inserted by counsel for the appellee.)

It would, therefore, seem that not only were the lands under water specifically described in the mortgage, but that there was a specific pledge of the mortgagor's preemptive right to apply for a riparian grant.

In *Boon v. Kent*, 42 N. J. Eq. 131, the owner of the upland described in his mortgage lands lying on a navigable river and below the high-water mark. After making the mortgage, the mortgagor conveyed the premises, by the same description, to one D, to whom the riparian commissioner shortly afterward conveyed two tracts in front of the premises between high-water line and the commissioners' exterior line. D afterward conveyed the premises to H by the same description. It was held, that the grant to D enured to the benefit of the mortgagee, and that as D could not have set up such grant by way of defense to a bill to foreclose the mortgage, and thus exclude it from the premises to be sold under the foreclosure, neither could the present owner, his grantee, be permitted to avail himself of such defense.

As in the Pt. Breeze Ferry case, the mortgagor likewise included in the description of the mortgaged lands lying under water in front of the upland, and, in addition, the mortgagor had a prescriptive right of several shore fisheries, and a prescriptive right to take sand from the bank.

In the above cases there is no discussion of how the paramount title of the State came to be affected by lien of a mortgage placed upon lands, title to which at the time was in the State.

As these cases are reported, it is difficult, if not impossible, to deduce the legal theory supporting a mortgage lien upon the submerged lands. In fact, these cases contain no discussion of the legal principles by which such a result was reached—it may be that the inclusion of the lands below the high-water mark in the description evidenced an intent to make the lien extend to after-acquired lands.

If, however, the Court should reach the conclusion that the bill for strict foreclosure can be sustained, and that the lands under water, or the preemptive right to obtain the same, pass as appurtenant to the mortgage, then, under the theory of the case of *Pt. Breeze Ferry Co. v. Bragaw*, 47 N. J. Eq. 298, the General Land & Investment Co., as the owner of the equity of redemption, would be entitled to a lien for the moneys actually expended in acquiring title from the State, and the cost of making the improvements within the Thoroughfare area, which sum approximates \$275,000. This would be a blanket lien upon all of the lands within the riparian grant, and would be paramount to the lien claimed by the complainant.

4. IF THE COMPLAINANT IS ENTITLED TO ANY LIEN UPON ANY PART OF THE RIPARIAN LANDS, WHAT IS THE PHYSICAL EXTENT OR AREA OF THE LANDS AFFECTED BY SUCH LIEN?

If it be held that the mortgagee's lien extended below the high-water mark, then the same extended only to the then existing line established by the riparian commission, and was wholly within description, Tract No. 1, in the riparian grant. This would make the extreme limit of the rights of the mortgagee when the mortgage was delivered, subject, of course, to the prior lien of the General Land & Investment Co. for the moneys expended in acquiring the riparian grant and those expended upon the fill.

If Pedrick & Son or Ventnor Gardens, Inc., had never appeared in the picture, and had never proceeded with the work of filling in the Thoroughfare, the complainant would have been entitled to no more than a grant at her expense, to the then existing exterior riparian line. We have been able to find no authority in support of a claim that such a right extended to the middle thread of a navigable stream, nor has the complainant's solicitor cited any authority in his brief in support of such a claim.

Respectfully submitted,

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& Investment Co.*

