

Summons. Filed August 6th, 1918.

NEW JERSEY SUPREME COURT.

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The State of New Jersey, to The Beaver Mortgage Company, a corporation.

[SEAL] You are summoned to answer the annexed complaint of William Plagge, in an action at law in the Supreme Court, and take notice that unless you file your answer to said complaint with the Clerk of the Supreme Court at Trenton, New Jersey, within twenty days after service upon you of this writ and the annexed complaint, the plaintiff may proceed in the suit and judgment may be entered against you. (And see notice endorsed thereon.) 20

Witness, WILLIAM S. GUMMERE, Chief Justice of the Supreme Court, at Trenton, this day of July, nineteen hundred and eighteen.

ENOCH L. JOHNSON, Clerk. 30

RICHARD STOCKTON, 3rd, Attorney.

Complaint. Filed August 6th, 1918.

NEW JERSEY SUPREME COURT.

ATLANTIC COUNTY.

	WILLIAM PLAGGE,	}	ACTION AT LAW.
	Plaintiff,		
	vs.		
10	THE BEAVER MORTGAGE COM- PANY,		
	Defendant.		COMPLAINT.

Plaintiff, residing at Chicago, Illinois, says that The Beaver Mortgage Company, defendant herein, being a corporation organized and existing under the laws of New Jersey, was summoned to answer unto William
20 Plagge, the plaintiff herein, being a resident of the county of Cook, in the State of Illinois, in an action upon contract; and thereupon said plaintiff, by Richard Stockton, 3rd, his attorney, complains and alleges as follows:

1. On or about April 10th, 1913, said defendant executed and delivered to one Thomas B. McPherson its four several promissory notes of that date, all bearing interest from date at six (6) per cent. per annum, payable semi-annually, and all maturing in three (3) years from date,
30 and payable, for value received, to the order of said Thomas B. McPherson, and being for the several principal sums following, to wit: Three (3) thereof for the principal sum of seven thousand dollars (\$7,000) each, and one (1) thereof for the principal sum of five thousand five hundred dollars (\$5,500), being altogether for a total principal sum of twenty-six thousand five hundred dollars (\$26,500). To each of said notes were attached

six (6) interest coupons for the semi-annual interest, said coupons maturing respectively on April 10th and October 10th in each year after the date thereof until the maturity of said notes.

2. Thereafter and before the maturity of said notes or any of them, the said Thomas B. McPherson indorsed same in blank, and plaintiff acquired and held and owned, and now holds and owns same.

3. Each and all of said notes and coupons are due, but none of them has been paid in whole or in part, though plaintiff has heretofore demanded payment. 10

4. There are herewith filed, as a part hereof, full and true copies of each of said notes and of the several interest coupons attached thereto, with the indorsements thereon.

5. By reason thereof, there is now due to plaintiff, and plaintiff claims from defendant the sum of twenty-six thousand five hundred dollars (\$26,500) of principal, with interest thereon from April 10th, 1913, at the rate of six (6) per cent. per annum. 20

A copy of said notes is attached hereto.

Plaintiff demands as damages twenty-six thousand five hundred dollars (\$26,500), with lawful interest thereon from April 10th, 1913.

RICHARD STOCKTON, 3rd,
Attorney for Plaintiff.

\$7000.00. FIRST MORTGAGE BOND No. 45 30
Negotiable by THOMAS B. MCPHERSON,
Omaha, Nebraska.
REAL ESTATE SECURITY.

On the 10th day of April, 1916, for value Received, We promise to pay to the order of Thomas B. McPherson of Omaha, Neb., the principal sum of Seven Thousand and

00/100 Dollars, together with all interest thereon at the rate of six per cent. per annum from April 10, 1913, payable semi-annually according to the tenor of six annexed interest coupons of even date herewith, both principal and interest payable at National City Bank, New York City.

10 If default be made in the payment of any interest coupon, or any part thereof, for the space of twenty days after the same becomes due and payable, or in case of failure to perform any of the covenants or agreements contained in the indenture securing this Bond, then said principal sum with accrued interest, shall at the option of the legal holder hereof, become at once due and collectible without further notice.

20 This Bond shall bear interest after maturity at the rate of six per cent per annum until paid, whether same becomes due by the exercise of the option herein provided for or by the lapse of time according to its terms. Should suit be commenced to collect this Bond or to foreclose the indenture securing same, a reasonable Attorney's fee shall be allowed and shall become a part of the judgment or decree rendered.

It is especially agreed that this Bond and the annexed interest coupons are made and executed under, and are in all respects to be construed by the laws of the State of New Jersey and are given for an actual loan of \$7000.00 which loan is secured by First Mortgage on Real Estate duly recorded.

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\$210.00 Atlantic City, New Jersey, April 10, 1913.

On the 10th day of April, 1916 for value received, We promise to pay to the order of Thomas B. McPherson the sum of \$310.00 Dollars, at National City Bank, New York City, for interest due on that day according to the tenor of a principal Bond of \$7000.00 of even date here-

with. This coupon to bear 6 per cent interest after maturity.

BEAVER MORTGAGE COMPANY,

Attest: H. CUTHBERT, Sec. A. T. MURPHY, Pres.

No. 45.

\$210.00 Atlantic City, New Jersey, April 10, 1913.

On the 10th day of October, 1915, for value received,
We promise to pay to the order of Thomas B.
McPherson the sum of 210.00 dollars, at National City 10
Bank, New York City, for interest due on that day
according to the tenor of a principal Bond of \$7000.00
of even date herewith. This coupon to bear 6 per cent
interest after maturity.

BEAVER MORTGAGE COMPANY,

Attest: H. CUTHBERT, Sec. A. T. MURPHY, Pres.

No. 45.

\$210.00 Atlantic City, New Jersey, April 10, 1913. 20

On the 10th day of April, 1915, for value received,
We promise to pay to the order of Thomas B.
McPherson the sum of 210.00 dollars, at National City
Bank, New York City, for interest due on that day
according to the tenor of a principal Bond of \$7000.00
of even date herewith. This coupon to bear 6 per cent
interest after maturity.

BEAVER MORTGAGE COMPANY,

Attest: H. CUTHBERT, Sec. A. T. MURPHY, Pres.

No. 45.

30

\$210.00 Atlantic City, New Jersey, April 10, 1913.

On the 10th day of October, 1914, for value received,
We promise to pay to the order of Thomas B.
McPherson the sum of 210.00 dollars, at National City

Bank, New York City, for interest due on that day according to the tenor of a principal Bond of \$7000.00 of even date herewith. This coupon to bear 6 per cent interest after maturity.

BEAVER MORTGAGE COMPANY,

Attest: H. CUTHBERT, Sec. A. T. MURPHY, Pres.

No. 45.

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\$210.00 Atlantic City, New Jersey, April 10, 1913.

On the 10th day of April, 1914, for value received, We promise to pay to the order of Thomas B. McPherson the sum of 210.00 dollars, at National City Bank, New York City, for interest due on that day according to the tenor of a principal Bond of \$7000.00 of even date herewith. This coupon to bear 6 per cent interest after maturity.

BEAVER MORTGAGE COMPANY,

20 Attest: H. CUTHBERT, Sec. A. T. MURPHY, Pres.

No. 45.

\$210.00 Atlantic City, New Jersey, April 10, 1913.

30 On the 10th day of October, 1913, for value received, We promise to pay to the order of Thomas B. McPherson the sum of 210.00 dollars, at National City Bank, New York City, for interest due on that day according to the tenor of a principal Bond of \$7000.00 of even date herewith. This coupon to bear 6 per cent interest after maturity.

BEAVER MORTGAGE COMPANY,

Attest: H. CUTHBERT, Sec. A. T. MURPHY, Pres.

No. 45.

\$5500.00 FIRST MORTGAGE BOND. No. 46

Negotiated by THOMAS B. MCPHERSON,
Omaha Neb.

REAL ESTATE SECURITY.

On the 10th day of April, 1916, for value received, We promise to pay to the order of Thomas B. McPher-
son the principal sum of Fifty-five Hundred and 00/100
Dollars, together with all interest thereon at the rate 10
of six per cent per annum, from April 10, 1913, pay-
able semi-annually according to the tenor of six annexed
interest coupons of even date herewith, both principal
and interest payable at National City Bank, New York
City.

If default be made in the payment of any interest cou-
pon, or any part thereof, for the space of twenty days after
the same becomes due and payable, or in case of failure to
perform any of the covenants or agreements contained in
the indenture securing this Bond, then said principal sum 20
with accrued interest, shall at the option of the legal holder
hereof, become at once due and collectible without further
notice.

This Bond shall bear interest after maturity at the rate
of six per cent per annum until paid, whether same be-
comes due by the exercise of the option herein provided
for or by the lapse of time according to its terms. Should
suit be commenced to collect this Bond or to foreclose the
indenture securing same, a reasonable Attorney's fee shall
be allowed and shall become a part of the judgment or 30
decree rendered.

It is especially agreed that this Bond and the annexed
interest coupons are made and executed under, and are
in all respects to be construed by the laws of the State
of New Jersey and are given for an actual loan of
\$5500.00, which loan is secured by First Mortgage Real
Estate duly recorded.

Dated at Atlantic City, New Jersey, this 10th day of April, 1913.

BEAVER MORTGAGE COMPANY,

Attest: H. CUTHBERT, Sec. A. T. MURPHY, Pres.

\$165.00 Atlantic City, New Jersey, April 10, 1913.

10 On the 10th day of April, 1916, for value received, We promise to pay to the order of Thomas B. McPherson the sum of 165.00 Dollars, at National City Bank, New York City, for interest due on that day according to the tenor of a principal Bond of \$5500.00 of even date herewith. This coupon to bear 6 per cent interest after maturity.

BEAVER MORTGAGE COMPANY,

Attest: H. CUTHBERT, Sec. A. T. MURPHY, Pres.
No. 46.

20 \$165.00 Atlantic City, New Jersey, April 10, 1913.

On the 10th day of October 1915, for value received We promise to pay to the order of Thomas B. McPherson the sum of 165.00 Dollars, at National City Bank, New York City, for interest due on that day according to the tenor of a principal Bond of \$5500.00 of even date herewith. This coupon to bear 6 per cent interest after maturity.

BEAVER MORTGAGE COMPANY,

30 Attest: H. CUTHBERT, Sec. A. T. MURPHY, Pres.
No. 46.

\$165.00 Atlantic City, New Jersey, April 10, 1913.

On the 10th day of April, 1915, for value received, We promise to pay to the order of Thomas B.

McPherson the sum of \$165.00 Dollars, at National City Bank, New York City, for interest due on that day according to the tenor of a principal Bond of \$5500.00 of even date herewith. This coupon to bear 6 per cent interest after maturity.

BEAVER MORTGAGE COMPANY,

Attest: H. CUTHBERT, Sec. A. T. MURPHY, Pres.
No. 46.

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\$165.00 Atlantic City, New Jersey, April 10, 1913.

On the 10th day of October, 1914, for value received, We promise to pay to the order of Thomas B. McPherson the sum of \$165.00 Dollars, at National City Bank, New York City, for interest due on that day according to the tenor of a prinripal Bond of \$5500.00 of even date herewith. This coupon to bear 6 per cent interest after maturity.

BEAVER MORTGAGE COMPANY,

Attest: H. CUTHBERT, Sec. A. T. MURPHY, Pres.
No. 46.

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On the 10th day of April 1914, for value received, We promise to pay to the order of Thomas B. McPherson the sum of \$165.00 Dollars, at National City Bank, New York City, for interest due on that day according to the tenor of a principal Bond of \$5500.00 of even date herewith. This coupon to bear 6 per cent interest after maturity.

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BEAVER MORTGAGE COMPANY,

10 Attest: H. CUTHBERT, Sec. A. T. MURPHY, Pres.
No. 46.

\$7000.00 FIRST MORTGAGE BOND No. 48

Negotiated by THOMAS B. McPHERSON,
Omaha, Neb.

REAL ESTATE SECURITY.

20 On the 10th day of April, 1916, for value Received, we promise to pay to the order of Thomas B. McPherson, the principal sum of \$7000.00 Dollars, together with all interest thereon at the rate of six per cent per annum from April 10, 1913, payable semi-annually according to the tenor of six annexed interest coupons, of even date herewith, both principal and interest payable at National City Bank, New York City.

30 If default be made in the payment of any interest coupon, or any part thereof, for the space of twenty days after the same becomes due and payable, or in case of failure to perform any of the covenants or agreements contained in the indenture securing this Bond, then said principal sum with accrued interest, shall at the option of the legal holder hereof, become at once due and collectible without further notice.

This Bond shall bear interest after maturity at the rate of six per cent per annum until paid, whether same be-

comes due by the exercise of the option herein provided for or by the lapse of time according to its terms. Should suit be commenced to collect this Bond or to foreclose the indenture securing same, a reasonable Attorney's fee shall be allowed and shall become a part of the judgment or decree rendered.

It is especially agreed that this Bond and the annexed interest coupons are made and executed under, and are in all respects to be construed by the laws of the State of New Jersey and are given for an actual loan of \$7000.00 which loan is secured by First Mortgage on Real Estate 10
duly recorded.

Dated at Atlantic City, New Jersey, this 10th day of April, 1913.

BEAVER MORTGAGE COMPANY,

Attest: H. CUTHBERT, Sec. A. T. MURPHY, Pres.

\$210.00 Atlantic City, New Jersey, April 10, 1913. 20

On the 10th day of April, for value received, we promise to pay to the order of Thomas B. McPherson the sum of 210.00 dollars, at National City Bank, New York City, for interest due on that day according to the tenor of a principal Bond of \$7000.00 of even date herewith. This Coupon to bear six per cent interest after maturity.

BEAVER MORTGAGE COMPANY,

Attest: H. CUTHBERT, Sec. A. T. MURPHY, Pres. 30
No. 48.

\$210.00 Atlantic City, New Jersey, April 10, 1913.

On the 10th day of October, 1915, for value received, we promise to pay to the order of Thomas B. McPherson the sum of \$210.00 dollars, at National City Bank, New

York City, for interest due on that day according to the tenor of a principal Bond of \$7000.00 of even date herewith. This Coupon to bear six per cent interest after maturity.

BEAVER MORTGAGE COMPANY,

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BEAVER MORTGAGE COMPANY,

Attest: H. CUTHBERT, Sec. A. T. MURPHY, Pres.
No. 48.

\$7000.00 FIRST MORTGAGE BOND

Negotiated by THOMAS B. MCPHERSON, 30
Omaha, Nebraska.

REAL ESTATE SECURITY.

On the 10th day of April, 1916, for value received, we promise to pay to the order of Thomas B. McPherson the principal sum of \$7000.00, together with all interest thereon at the rate of six per cent per

annum, from April 10, 1913, payable semi-annually according to the tenor of six annexed interest coupons of even date herewith, both principal and interest payable at National City Bank, New York City.

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It is especially agreed that this Bond and the annexed interest coupons are made and executed under, and are in all respects to be construed by the laws of the State of New Jersey and are given for an actual loan of \$7000.00 which loan is secured by First Mortgage on Real Estate duly recorded.

Dated at Atlantic City, New Jersey, this 10th day of April, 1913.

BEAVER MORTGAGE COMPANY,

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Bank, New York City, for interest due on that day according to the tenor of principal Bond of \$7000.00 of even date herewith. This coupon to bear 6 per cent interest after maturity.

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BEAVER MORTGAGE COMPANY,

Attest: H. CUTHBERT, Sec. A. T. MURPHY, Pres.
No. 49.

Notice to the within named defendant:

In case the within summons and complaint are served upon you personally, then take notice that if you intend to make a defense to this action you must file an affidavit of merits within ten days from the date of service hereof upon you, and must file your answer within twenty days from the date of such service, and in default of the filing of such affidavit and answer, judgment will be entered against you. Lawful service upon a corporation is deemed personal service for the purpose of this notice. (P. L. 1912, p. 394, Rule 56.) 10

RICHARD STOCKTON, 3rd,
Plaintiff's Attorney.

Duly served within summons and complaint August 1, 1918, on The Beaver Mortgage Company, by delivering a copy personally to H. J. Cuthbert, agent in charge of said company, at the Mays Landing Railroad Station, Mays Landing, Atlantic county, N. J.

ALFRED J. PERKINS, 20
Sheriff.

By MELVIN A. ABBOTT,
Under Sheriff.

Sheriff's fees, \$3.41.

NEW JERSEY SUPREME COURT.

WILLIAM PLAGGE,

vs.

THE BEAVER MORTGAGE CO.

} ACTION AT LAW. 30

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

MELVIN A. ABBOTT, Under Sheriff of the county of Atlantic, being duly sworn according to law, on his oath

saith, that on the first day of August, nineteen hundred and eighteen, he served on the defendant, The Beaver Mortgage Co., by delivering to H. J. Cuthbert, agent in charge of said company, personally, a full, true and correct copy of the annexed complaint in the above stated cause, with the summons to which complaint is annexed, and that there was endorsed on the said complaint a notice that if the defendant intends to make a defense to the said action it shall within ten days after the date of personal service of said copy of the complaint file with the Clerk of the above mentioned Court an affidavit of merits, and unless in case such affidavit shall be so filed the said defendant shall file an answer to the said action within twenty days after the date of service of said copy of the complaint, judgment by default would be entered against it.

MELVIN A. ABBOTT,
Under Sheriff.

Sworn and subscribed to before me this second day of
20 August, A. D. 1918.

DOLORES A. LOYER,
Notary Public of N. J.

A true copy.

ENOCH L. JOHNSON,
Clerk.

Rule for Judgment. Filed September 18, 1918.

NEW JERSEY SUPREME COURT.

WILLIAM PLAGGE,	}	ACTION AT LAW.
vs.		SUMS. & COM.
BEAVER MORTGAGE COMPANY.		ATLANTIC.

Served August 1, 1918.

The defendant having failed to appear and defend this action within the time allowed by law, 10

Judgment by default is entered against it for the sum of thirty-five thousand one hundred and thirty dollars and thirty-five cents, besides costs to be taxed.

Entered September 18, 1918 on motion of
 RICHARD STOCKTON, 3rd,
 Attorney.

Judgment. Filed September 18, 1918.

20

NEW JERSEY SUPREME COURT.

WILLIAM PLAGGE,	}	ACTION AT LAW.
vs.		BY DEFAULT.
BEAVER MORTGAGE COMPANY.		

RICHARD STOCKTON, 3rd,
 Attorney.

Judgment entered this eighteenth day of	}	30	
September, A. D. nineteen hundred and			
\$35,130 35			eighteen, for the sum of thirty-five thou-
37 41			sand one hundred and thirty dollars and
thirty-five cents damages and thirty-seven			
dollars and forty-one cents costs.			
\$35,167 76			

WM. S. GUMMERE,

C. J.

A true copy.

ENOCH L. JOHNSON,
 Clerk.

Petition to Vacate Final Judgment.

Filed March 17, 1919, by Justice.

Filed March 27, 1919, by Clerk.

NEW JERSEY SUPREME COURT.

ATLANTIC COUNTY.

10	WILLIAM PLAGGE,	}	Plaintiff,	ACTION AT LAW.
	vs.			PETITION TO
	THE BEAVER MORTGAGE COM-	}	PANY,	VACATE FINAL
			Defendant.	JUDGMENT.

To the Honorable *Justice of the*
Supreme Court of the State of New Jersey:

20 The petition of The Beaver Mortgage Company, the defendant in the above entitled cause, respectfully shows:

1. That the plaintiff, William Plagge, instituted suit in this court against the defendant, The Beaver Mortgage Company, in the month of August, 1918, and entered judgment by confession in this suit on September 18, 1918, for the sum of \$35,130.35, besides costs.

30 2. That the defendant was organized under the laws of the State of New Jersey, but on August 22, 1916, was served with an injunction issued by the Attorney General of the State of New Jersey, restraining and rejoining it, its officers and agents, and each and every of them, from exercising any of the franchises of said corporation for the transaction of any business until the payment of taxes due by said company to the State of New Jersey for the year 1915 were paid, and that a final order was entered in said proceedings dissolving the defendant,

The Beaver Mortgage Company, as a corporation of the State of New Jersey, which order was entered January 28th, 1918, and prior to the institution of the suit and the recovery of the judgment referred to in the preceding paragraph.

3. That the said judgment was founded upon certain notes or bonds of the defendant, The Beaver Mortgage Company, payable to Thomas B. McPherson, and endorsed by him "without recourse," which notes or bonds plaintiff alleges that he owned at the time of the institution of said suit and entry of the aforesaid judgment. 10
The notes or bonds are respectively, Nos. 45, 46, 48 and 49, of the Beaver Mortgage Company, and were accompanied by real estate mortgages made and executed to the said Thomas B. McPherson by The Beaver Mortgage Company. The said notes, on their face, state that they are accompanied by mortgages upon real estate duly recorded.

4. That at the time of the institution of said suit and the entry of said judgment the directors of this company were Herbert J. Cuthbert, Marie Higgins. 20
The stockholders were Edwin H. Cuthbert, Herbert J. Cuthbert, A. T. Murphy and Marie Higgins. Thomas B. McPherson may also have been a stockholder at that time.

5. The record of this suit indicated that the Summons and Complaint were served upon Herbert J. Cuthbert, and that no service was made upon Marie Higgins, and, as far as the petitioner is able to learn, no papers were ever served upon her.

6. The mortgages accompanied said bonds were cancelled of record by the holder thereof on March , 1915. 30
The Summons and Complaint were placed in the hands of Robert H. Ingersoll, Esquire, but no answer was ever filed or other steps taken to prevent the entry of said judgment, but petitioner alleges that the said judgment was improvidently entered and should be vacated.

Petitioner has three defenses which he desires to urge to the plaintiff's claim, after the opening of the aforesaid judgment, to wit:

1. That the plaintiff has no legal title to the bonds upon which the said suit is founded.
2. That the debts evidenced by said bonds has been paid by this company and the mortgages given as security satisfied and cancelled of record.
- 10 3. That the Summons and Complaint were not properly served, in accordance with the statute, no service having been made upon Marie Higgins, one of the surviving trustees of defendant, The Beaver Mortgage Company.

Your petitioner therefore prays that the judgment aforesaid may be vacated and an order permitting petitioner to file an answer setting forth its defense to this suit.

Your petitioner will ever pray, &c.

20

THE BEAVER MORTGAGE COMPANY,
HERBERT J. CUTHBERT,
One of the Surviving Trustees.

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

30 HERBERT J. CUTHBERT, of full age, being duly sworn according to law, upon his oath deposes and says that he is one of the surviving trustees of The Beaver Mortgage Company; that he has read the foregoing petition, and that the contents are true to the best of his knowledge, information and belief.

HERBERT J. CUTHBERT.

Sworn and subscribed to before me this 12th day of March, A. D. 1919.

B. LOUIS BLUMBERG,
Attorney-at-Law of New Jersey.

A true copy.

ENOCH L. JOHNSON,
Clerk.

Rule to Show Cause. Filed

NEW JERSEY SUPREME COURT.

WILLIAM PLAGGE,	}	ACTION AT LAW.	
Plaintiff,		ON PETITION	
vs.		TO VACATE FINAL	
THE BEAVER MORTGAGE COM-	}	JUDGMENT.	10
PANY,		ORDER.	
Defendant.			

Upon reading and considering the duly verified petition of the defendant, Beaver Mortgage Company, filed this day with the Court; it is, on this seventeenth day of March, 1919, ordered that William Plagge, the above-named plaintiff, show cause before the Supreme Court, on Tuesday, the third day of June next, at ten-thirty o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard, in the State House, in the city of Trenton, why the judgment entered in the above action on the 18th day of September, 1918, for the sum of \$35,130.35, besides costs, should not be opened and the levy made under the execution issued thereon be set aside and the defendant permitted to file an affidavit of merits and answer to the said action. 20

And it is further ordered, that in the meantime all proceedings in this cause be stayed until the further order of the Court. 30

And it is further ordered, that a copy of the defendant's duly verified petition and of this rule be served upon the attorneys for the plaintiff within six days from the date hereof; and it is further ordered, that either party upon notice have leave to take affidavits to be used on

the hearing of this rule, according to the practice of the Court.

Let the above rule be entered in the minutes.

CHAS. C. BLACK,
J. Sup. Ct.

Entered March 27, 1919. On motion of

NORMAN GREY,
Attorney of Defendant.

A true copy.

10

ENOCH L. JOHNSON,
Clerk.

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30

Notice of Taking Depositions.

Filed May 28, 1919.

NEW JERSEY SUPREME COURT.

WILLIAM FLAGGE, Plaintiff, vs. THE BEAVER MOTRGAGE COM- PANY, Defendant.	}	ACTION AT LAW. ON PETITION TO VACATE FINAL 10 JUDGMENT. NOTICE.
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To John Solan, Esq., Attorney for Plaintiff:

Take notice, that on Tuesday, the 13th day of May, at two o'clock in the afternoon, at my office, No. 104 Market street, Camden, N. J., before Edward I. Berry, one of the Supreme Court Commissioners of the State of New Jersey, I will take the depositions of H. J. Cuthbert and Thomas B. McPherson, to be read upon the return of the rule to show cause allowed on the 17th day of March, 1919, in the above entitled cause, returnable on June 3rd, 1919. 20

NORMAN GREY,
Attorney for Defendant.

[ENDORSED.]

30

Service of the within notice hereby acknowledged this 7th day of May, A. D. 1919.

RICHARD STOCKTON, 3rd,
JOHN SOLAN,
Attorneys for Plaintiff.

Testimony of Thos. B. McPherson, direct.

Filed May 28, 1919.

NEW JERSEY SUPREME COURT.

10	WILLIAM PLAGGE, Plaintiff, vs. BEAVER MORTGAGE COMPANY, Defendant.	}	ACTION AT LAW. ON PETITION TO VACATE FINAL JUDGMENT.
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Depositions taken in the above stated matter, pursuant to notice annexed, before Edward I. Berry, Supreme Court Commissioner, at the office of Norman Grey, Esq., 104 Market Street, Camden, N. J., on Tuesday, May 13, 1919, at two o'clock P. M., in the presence of William Ritchie, Esq., appearing for John Solan, for the plaintiff, and Edward T. Curry, Esq., appearing for Norman Grey, for the defendant.

20 It is agreed that the depositions shall be taken stenographically and the signatures of the witnesses waived.

It is stipulated by counsel hereto that the files in the United States District Court for the District of New Jersey, in the suit in Equity of William Plagge, complainant, vs. Beaver Mortgage Company, The Ventnor Lots Company, and between Park Development Company and The West Jersey Trust Company and Thomas B. McPherson, will be received in evidence on the return of this rule and considered a part of these proceedings, and that
30 certified copies of any papers in that suit may be used in these proceedings.

THOMAS B. MCPHERSON, sworn.

By Mr. Curry:

1. Q. Mr. McPherson, in the year 1913 were some notes issued by the Beaver Mortgage Company to you?

A. There were.

2. Q. On April 10, 1913, were there issued to you among others four notes secured by mortgages on real estate, three for the sum of \$7,000.00, and one for the sum of \$5,500.00, aggregating \$26,500.00?

A. There were.

3. Q. What were the numbers of those loans or bonds that you had for the purpose of designation?

A. Nos. 45, 46, 48 and 49, as I remember.

4. Q. After you received those, did you ever turn them over to Mason & Company? 10

A. I did.

5. Q. How?

A. On a trust receipt. I gave Mason & Company the notes and retained the mortgages.

6. Q. For what purpose did you give Mason & Company the notes?

A. That they might be submitted to the Girard Trust Company, whom they represented to me to be buyers for the issue.

7. Q. Was that the purpose for which they took the notes? 20

A. Yes, sir.

8. Q. Why did you retain the mortgages?

A. Because I thought it was not possible for them to transfer the notes under the circumstances without the mortgages.

Mr. Ritchie: Just a moment; I want to register an objection to the testimony as to his particular purposes in this transfer of these negotiable instruments, if they are negotiable—they appear to be such—as not affecting the rights of my client as a purchaser of those securities. 30

9. Q. Did the notes themselves refer to any mortgage?

Mr. Ritchie: I object to that as the notes will speak for themselves.

(Question withdrawn).

10. Q. Have you ever given Mason & Company authority to complete any sale or make a sale of these particular notes in question?

A. No.

10 Mr. Ritchie: Just a moment; I object to that question and answer as an attempt to impair the negotiability of these instruments by a private understanding between Mason & Company and the witness.

11. Q. Has the debt evidenced by these bonds been paid by the Beaver Mortgage Company?

A. It has.

12. Q. State shortly in what manner?

A. It was paid by the issuance or rather by the delivery to me through the Beaver Mortgage Company of \$70,000.00 stock of the Ventnor Lots Company.

20

Cross-examination.

By Mr. Ritchie.

1. Q. Mr. McPherson, did you ever hear that Mr. William Plagge had possession of these four notes or bonds?

A. I did.

2. Q. When was the first time you ever heard it?

30 A. I think in December, 1914.

3. Q. How came you to hear of it, in what way?

A. I was told of it by E. L. Collins of Mason & Company.

4. Q. Who composed the firm of Mason & Company of whom you speak?

A. Huntingdon Mason, E. L. Collins, and C. D. Kern.

5. Q. That was a Chicago firm of stock brokers, were they?

A. Note brokers, I undertood that they were note brokers; they were handling securities of various kinds, according to my understanding.

6. Q. When did you first make their acquaintance?

A. I think in the fall of 1913.

7. Q. You gave your deposition, did you not, in October, 1917, in the case of Plagge vs. Beaver Company, still pending in the United States District Court for the District of New Jersey?

10

A. I did.

8. Q. Did you testify at that time in substance that you had known Mason & Company or some of its members as early as August, 1913, and were engaged with them at that time in some project connected with the Girard Company of Philadelphia?

Mr. Curry: I object to this question on the ground that it is not cross-examination.

20

9. Q. Did you have those notes, those four notes here in suit in your possession at the time that \$70,000.00 of stock of the Beaver Mortgage Company was issued to you?

A. I did not.

10. Q. Where were they?

A. I don't know.

11. Q. Had you no information prior to that as to the whereabouts of these four notes?

30

A. I was informed by Collins that they were held by the First National Bank of Harvey, William Plagge, Cashier, and was afterward in receipt of a letter from Plagge asking about them at the same time that that letter was writtn in the fall of 1914; I am not positive about the date.

12. Q. What did you do when you heard that Mr. Plagge held those notes?

Mr. Curry: I object to that as not cross-examination; this witness is called as a witness and can only be cross-examined on the specific things on which he has been examined on direct examination.

13. (Question repeated).

A. I wrote him a letter.

14. Q. Did you make any attempt to get those notes from his possession?

10 A. Only through Mason & Company.

15. Q. Did you tell him that those notes were paid?

A. I never saw him.

16. Q. Did you write to him that those notes were paid?

A. I did not.

17. Q. But if they were paid and you were informed that he held them, can you give me any reason why you did not inform him that they were paid?

20 Mr. Curry: I object also to that as not cross-examination.

A. Before those notes were paid, I notified Mr. Plagge by letter that they were stolen from me and that he must look to the parties from whom he procured them for his money, or words to that effect. That is the only communication I had with Plagge on the subject.

30 18. Q. Did you ever receive any subsequent inquiries from Plagge or his attorney in regard to these bonds or notes?

A. I had two or more interviews with his attorney in Chicago, at which time the question of the condition and situation with reference to the notes was discussed.

19. Q. Can you tell me when that was?

A. At the time I gave my deposition in Chicago.

20. Q. I will ask you whether or not you ever received a letter of which the following is a copy, or any letter of this purport, to wit:

“Chicago, Ill., May 4, 1915.

“Mr. T. B. McPherson,
Elks Building,
Omaha, Nebraska.

Dear Sir:

April 14th I wrote to Mr. E. H. Cuthbert in Atlantic City, New Jersey, in regard to the Beaver Mortgage Company's bonds Nos. 45, 48 and 49 of \$7,000.00 each, and bond No. 46 for \$5500.00, dated April 10, 1913, and due April 10, 1916, negotiated by you. The coupon interest of these bonds have not been paid. Mr. Cuthbert advised me to take the matter up with you, and I have written you concerning this matter once before, but received no reply. Mr. William Plagge of Harvey, is the holder of these bonds and he is very anxious to have the matter straightened out.

Hoping to hear from you within the next few days, I am

Yours very truly,
Louis H. Geiman.”

Mr. Curry: I object to the question as not cross-examination.

A. I don't remember having received such a letter.

21. Q. Did you receive any letter of which the following is a copy:

“Chicago, Ill., May 26, 1915.

Mr. T. B. McPherson,
Elks Building,
Omaha, Nebraska.

Dear Sir:

I have at Mr. Plagge's request written to you on two prior”——

Mr. Curry: Just a moment, pardon me just a minute. I think if you will show the witness that letter rather than read it in the testimony, because even if he has not received it, you will have the letter in the transcript.

Mr. Ritchie: I don't want to part with the copies; these are my office copies, and that is the reason I am reading it in there. I want to retain it. You see, I will have to notify the witness of the purport of what he is to answer before I can impeach him.

10

Mr. Curry: Just note my objection and go ahead.

22. (Question repeated).

Q. (Continuing)—“on two prior occasions, but have received no reply. The matter in question is set up in previous letters, which you no doubt have on file. Kindly favor me with an early reply concerning the payment of interest on the bonds ^{held} by Mr. Plagge, and oblige. Yours very truly, Louis H. Geiman.”?

20

A. I don't remember receiving that letter.

23. Q. Do you know Mr. E. M. Reynolds?

A. I do.

24. Q. At Omaha?

A. Yes, sir.

25. Q. Who is he?

A. Secretary of the Elks Building Company.

26. Q. In May, 1914, was Mr. E. M. Reynolds connected in any way with you or with the firm of McPherson & Hysham in the Elks Building, Omaha, Nebraska?

30

Mr. Curry: I make the same objection to that, as not cross-examination.

A. The firm of McPherson & Hysham was out of business at that time, and he had no connection with them. He was secretary of the Omaha Elks Building Company of which I was president.

27. Q. Located in Elks Building, Omaha, Nebraska?

A. Yes.

28. Q. I hand you this letter, dated May 28, 1914, addressed to William Plagge, Esq., First National Bank, Harvey, Ill., and signed, "E. M. Reynolds, Secretary," and ask you whether that is Mr. Reynolds' signature?

Mr. Curry: I object to this being used from the fact that Mr. Reynolds is the one to verify that signature, it being the best evidence, and no reason being shown why his depositions are not taken. 10

A. That is Mr. Reynolds' signature, to the best of my knowledge and belief.

Mr. Ritchie: I will get the Commissioner, please, to identify that with his initials.

(Said paper is marked Exhibit D 1 for identification 5-13-'19). 20

29. Q. In order to refresh your recollection I shall read this letter to you and ask you whether or not Reynolds ever communicated to you any letter from William Plagge with reference to which this letter was, or appears to have been written. The letter reads as follows, on the letterhead of McPherson & Hysham, Cattle-Growers and Dealers, Elks Building, Omaha, Nebraska:

"May 28, 1914. 30

William Plagge, Esq., First National Bank, Harvey, Ill.

Dear Sir:—In re yours 26th inst. will say that Mr. McPherson is out of the city and has been for about two weeks. I am expecting him home in a week or ten days when he will no doubt give your letter prompt attention.

Yours truly,
E. M. REYNOLDS, Secretary."

30. Q. What is the date of that letter, Mr. Ritchie?
A. May 28, 1914.

Mr. Curry: Before he answers the question, I will note an objection for the same reason as given before. This is an application to open a judgment, and if the judgment is not opened, that closes the question; if the judgment is opened, the matters that are being examined upon now, the questions that are being asked of Mr. McPherson now, are questions that are proper upon the
10 trial of the issue, but not proper under the rule. The cross-examination is not on the subject of the direct examination just given by Mr. McPherson.

31. (Question repeated.)

A. Not to my recollection.

32. Q. Then, if I understood you aright, the only communication you made to Mr. Plagge concerning these bonds or notes was a letter which you wrote to him stating
20 in effect that they had been stolen from you; is that true?

A. That is my recollection.

33. Q. I now read from your deposition taken in the case of Plagge, complainant, vs. Beaver Mortgage Company, in the United States District Court, filed in the Clerk's office there, the following letter or copy of a letter and portion of your deposition: "Having discovered that Plagge held these notes aggregating \$26,500.00, I wrote him from Chicago on December 16, 1913, in substance as follows": By the way, that date 1913 is correct, is it?
30

A. I think it is.

34. Q. The letter reads as follows:

"CHICAGO, ILLINOIS, December 16, 1913.

William Plagge, First National Bank, Harvey, Illinois.

DEAR SIR: Replying to your inquiry in re Beaver

Mortgage Company bonds, would say that those you hold, namely:

No. 45	\$7,000
No. 46	5,500
No. 48	7,000
No. 49	7,000

were stolen from me, and are therefore worthless. I still hold the mortgages securing this paper, and beg to advise you that any attempt on your part to dispose of these notes will certainly put and your bank in a very awkward position, since I know how you came into possession of them and you now know the facts about them. You best get after the thieves from whom you acquired these notes or else you will never collect a white quarter on them from me or of the Beaver Mortgage Company. 10

Very respectfully yours,
THOMAS B. MCPHERSON."

Is that the letter to which you referred in the previous part of your cross-examination as having written to Mr. Plagge? 20

A. It is.

35. Q. Did you ever make any attempt to get those notes back from Mr. Plagge after you learned that he had them?

A. Only through Mason & Company.

36. Q. Well, how through Mason & Company?

A. By demanding the return of the notes which they agreed to deliver repeatedly, extending over a period of months. 30

37. Q. Mr. McPherson, you were in the banking business for some years prior to 1913, were you not?

A. Yes, sir.

38. Q. You know what a negotiable instrument is, don't you?

A. Yes, sir.

39. Q. Were not these notes—did you not understand that they were negotiable?

A. Not as they were endorsed, without putting the buyer on inquiry absolutely as to the condition of them.

40. Q. Please explain that last answer; I don't understand its purport.

10 A. Each of these notes was secured by an individual mortgage which ran to me as payee. The notes themselves ran to me as payee and were endorsed by me without recourse, without the accompanying collateral which secured them, consequently they were scarcely negotiable from my standpoint.

41. Q. Do you mean that because Collins & Company transferred them to Plagge or delivered them to Plagge without at the same time delivering the mortgages that secured them, that therefore Plagge was not a bona fide purchaser?

20 A. I mean the language of the paper was such that it naturally should have put him upon inquiry as to the character of the security behind those bonds. They were not a trustee issue, they were individual notes, each one secured by an individual mortgage. In the absence of those mortgages, all the buyer would receive was a note endorsed by the payee without recourse, which in itself would have put a bona fide buyer upon inquiry as to the character of the securities or paper he was buying.

30 42. Q. Did you rely upon that fact to protect you or the Beaver Mortgage Company against any claim on those notes on the part of Mr. Plagge?

Mr. Curry: I object to that as not cross-examination.

A. I relied upon the retention of the mortgages which I held and continued to hold, believing that the notes could not be negotiated without them.

43. Q. You have referred to some paper which you speak of as a trust receipt—I think that is the way you designated it—which Mason & Company gave you when you delivered over to them those bonds. I quote now from pages 8 and 9 of your deposition in the United States District Court for the District of New Jersey, in the Plagge suit, and ask you whether that is the receipt to which you refer in your testimony:

“Omaha, October 6, 1913.

“Received of Thomas B. McPherson as trustee, the following bonds of the Beaver Mortgage Company, to wit:” (Here follows a description of the bonds aggregating \$160,500, face value, including the notes here in controversy, and specifically states) “said bonds and coupons are received by us in trust to be sold or pledged for the sole benefit of said Thomas B. McPherson, and the proceeds to be remitted to him in either case as soon as any transaction is closed.” 10

“This instrument is signed ‘Mason & Company by E. L. Collins.’” Was that the trust receipt of which you spoke? 20

A. Yes.

44. Q. In that receipt it is said that those bonds and coupons are received by us, that is to say, Mason & Company, in trust to be sold or pledged. How did you understand them to be sold or pledged by Mason & Company if the retention of the mortgage by you deprived the notes of their negotiability? 30

A. They were delivered to Mason & Company on that trust receipt upon their representation that they had a buyer for them in Philadelphia, and that they wanted the notes in order to submit them to that buyer. In case they consummated a deal, either by the outright sale of the notes or by borrowing money on them as collateral, it was understood that I was to be notified to bring on the mortgages and close the deal.

45. Q. Understood between you and the Mason Company, you mean?

A. Yes, sir.

46. Q. With what member of the Mason Company did you have such an understanding?

A. E. L. Collins.

47. Q. Did you hear at any time prior to your receiving your \$70,000 of stock that you have spoken of that Mason & Company had received any money or anything of value from Plagge for those notes?

10 A. I heard they had received nothing whatever from him.

48. Q. Who told you that?

A. E. L. Collins.

49. Q. Can you give any reason why you did not make mention of that fact when you wrote to Mr. Plagge?

A. That information was given me after the date of my letter to Mr. Plagge.

50. Q. Then, if Mr. Plagge gave nothing for the notes, did you not consider that they belonged to you?

20 A. I did.

51. Q. May I ask why you did not claim them from Mr. Plagge?

A. I claimed them from his partner, Mr. Collins. I never had any business relations with Mr. Plagge of any kind.

52. Q. You say Mr. Collins is a partner of Mr. Plagge's?

A. In this transaction, yes.

30 53. Q. What makes you say that?

A. So Mr. Collins told me.

54. Q. Did you ever communicate to Mr. Plagge your information that he was a partner of Mr. Collins?

Mr. Curry: I object to that as not cross-examination and entirely outside of the question.

A. No.

55. Q. Did you ever go to Mason & Company after you had delivered to them these bonds along with others secured on the Ventnor City lands and endeavor to get those bonds back from Mason & Company?

A. I did.

56. Q. You didn't get these four particular bonds from them, though?

A. No, all I got was a promise to deliver them.

57. Q. In your letter which I read to you of December, 1913, addressed to William Plagge, you in substance advised him to recover those notes or their value from Mason & Company, isn't that the purport of your letter? 10

(Objected to).

58. Q. Isn't that what you meant by it?

A. The letter speaks for itself.

59. Q. Well, is that what your intention was at the time—do I correctly interpret it? 20

A. The language of the letter is very plain; it speaks for itself.

60. Q. Do you decline to give me any further answer on that point?

A. I cannot answer it any further than that.

Mr. Curry: I object to any further questions; the witness has answered the question.

61. Q. Why did you recommend Mr. Plagge to make his recovery from Mason & Company if you considered Mason & Company and Plagge partners? 30

A. Because he procured the bonds from Mason & Company, and it was from my standpoint up to him to recover any amount he might have paid for them from these people.

62. Q. But, Mr. McPherson, if he paid nothing for them, what was he to recover?

A. At the time I wrote him on December 13th, I did not know under what conditions he held the bonds, except he got them from Mason & Company. I found out that he had paid nothing for them afterward.

63. Q. I read the following from your deposition heretofore referred to, in the United States District Court, in the Plagge suit, at page 5: "From October 20 to December 15, of 1913, I expected the missing notes to be returned to me according to agreement, but, as they were not so returned, I again came to Chicago and found that
10 a number of these notes had been pledged to three different creditors of Mason & Company, including the \$26,500 involved in this suit, this being the amount of the notes delivered to William Plagge to secure a pre-existing debt of Mason & Company, which was evidenced by "kited" checks aggregating about \$18,000. Both Collins and Kern of Maason & Company stated that there had been no consideration for the delivery of these notes to Plagge and that they had simply been lodged with him to prevent his taking some action by reason of the landing of the "kited"
20 checks above referred to." The information which you received, referred to in this deposition, at which time did you receive that?

A. Sometime in December, as I remember it.

64. Q. Of what year?

A. 1913.

65. Q. The deposition says, "From October 20th to December 15, of 1913," is that correct?

A. Yes, sir; the October 15th date refers to some of the information and December 15th to other of the
30 information, but the fact that Plagge had paid nothing whatever for these notes was not known to me when I wrote him in December.

66. Q. You have yourself personally no information except what you derived from Mason & Company upon the subject of Plagge's paying nothing for the notes, is that true?

A. That is true.

67. Q. Didn't you take any steps to inform yourself by inquiry from Plagge himself?

A. I did not.

68. Q. In that deposition, Mr. McPherson, at another point you referred to the members of the firm of Mason & Company in substance as persons whose words were unworthy of belief; isn't that so?

A. In my deposition?

69. Q. Yes.

A. I may have done so.

70. Q. You spoke of them in that letter as thieves and dishonest persons? 10

A. I did.

Mr. Curry: I object to this as not cross-examination.

(It is stipulated between counsel that an objection shall be considered to be made to each question as asked on the ground that it is not cross-examination).

71. Q. In that deposition I read the following question and answer on pages 22 and 23: "Q. What consideration did they say the Girard Trust Company proposed to pay? A. They said they had sold the notes, the price being left open, to be determined between Mr. Collins, who was going to Philadelphia with these notes to make delivery, and themselves; and the minimum price at which I authorized a sale of the securities was 90 cents, and anything he obtained over that was his commission." That refers, does it, to Mason & Company, or E. L. Collins of Mason & Company? 20
30

A. It refers to E. L. Collins of Mason & Company.

72. Q. (Reading) "Q. That is to say, he didn't make this dicker in Philadelphia with the Girard Company without having first spoken with you about what the terms should be?"

“A. I don’t think he ever made any dicker with the Girard Company in Philadelphia. I think that was all moonshine—a lie made up of whole cloth. I had authorized him prior to that time to sell these bonds; he offered me on these representations to sell these bonds to net me 90 cents. Q. What time was it you did that? A. Along in the summer of 1913, about August, as well as I can remember.” Was that an authority to sell to Mason & Company or E. L. Collins alone?

10 A. It was an authority given to E. L. Collins representing Mason & Company to sell as a broker at a price to net me ninety cents.

73. Q. Didn’t you deposit that whole list of securities including the four bonds here in suit with Mason & Company, under the understanding that they were to sell those bonds or pledge them, to get money for them and pay you ninety cents on the dollar of the proceeds?

A. I did not.

20 74. Q. At what time prior to this had you authorized him, as you say in this deposition, to sell these bonds?

A. Sometimes in the early fall, may have been late in August, may have been in September of 1913; the exact date is not known to me.

75. Q. To what person individually did you deliver these bonds, along with the rest of the \$160,500, when you turned them over to Mason & Company?

A. They were delivered to Frank C. Patton, representing Mason & Company.

76. Q. At Omaha?

30 A. Yes, sir.

77. Q. Now, did he turn over any check in payment for them to you?

A. He turned over checks in part payment to the amount of \$25,000, all of which—no, the first of which for \$5,000 went to protest, and none of the others were used.

78. Q. What did you do with them?

A. Returned them to Mason & Company.

79. Q. When?

A. Along in the fall of 1913; the exact date is not known to me. It was sometime in October or November, I think.

80. Q. When did you make your first effort—when did you first make your effort to get back these bonds from Mason & Company?

A. After the first check went to protest.

81. Q. About what time was that?

A. I should say it was the latter part of October, 1913.

82. Q. Did they tell you prior to that that they had disposed of any of that issue? 10

A. Prior to that time?

83. Q. Yes.

A. No, sir.

84. Q. What did they pay you that money for?

A. Part of the purchase price of the bonds.

85. Q. Did they purport to pay that themselves or from customers that they had for the bonds?

A. They were underwriting the bond at ninety cents, and the balance of the money was to be paid to me when the delivery was made in Philadelphia. 20

86. Q. Explain a little more fully what you mean by "underwriting"?

A. I mean that they were putting up their own money for an initial payment of \$25,000, on an alleged sale of these bonds to the Girard Trust Company, the balance to come to me when the deal was closed.

87. Q. Did they ever inform you that they owed Plagge at least \$18,000, and that he held these bonds in payment therefor, or in some way in connection with such a deal? 30

A. They told me that something like \$18,000, \$18,000 plus of "kited" checks had lit on Plagge's bank, and in order to keep him quiet they had lodged with him \$26,500 of my bonds which they would recover and return to me promptly.

88. Q. When was it that you received this \$70,000 of stock of the Beaver Mortgage Company?

A. I never received \$70,000 stock of the Beaver Mortgage Company.

89. Q. Of the Ventnor Lots Company, I mean.

A. That was in the spring of 1914, March, 1914, I think.

90. Q. I quote again from that deposition in the United States Court, on page 24: "Q. When did you first learn Plagge had these papers? A. In December,

10 1913. Q. He wrote about them, didn't he? A. He wrote to know the value of them; he wrote me in November, late in November, to know what these Beaver Mortgage Company notes were worth." Is that true?

A. It must have been.

91. Q. I quote again from the deposition on page 26: "Q. Now, didn't Mason & Company tell you that they had Plagge's money on account of protested drafts held by him. A. Yes. Q. In your statement you mentioned some amount of about \$18,000. Do you think

20 that is the amount they mentioned to you? A. That is the amount of the protested checks as mentioned to me by Mason & Company." Is that the information you received from Mason & Company as to whether or not Plagge had paid anything for these checks?

A. No.

92. Q. Or notes, paid anything for those notes--you say it is not?

30 A. That is only a part of it. The amount is the same. Their statement to me was that the kited checks which had lit on that bank were \$18,000 plus, and that they had used my bonds to the extent of \$26,500 to keep Plagge quiet until such time as they could make a turn and take up these protested checks and deliver to me my bonds.

93. Q. Well, Mr. McPherson, if that is the information they gave you, is that the information upon which

you base your statement that Plagge and Mason & Company or its members were partners in that deal?

A. They were partners in the kiting of the checks, that is what I mean by partners; they were partners in the kiting of these checks.

94. Q. When you say the checks had landed or lighted—

A. Lit is the term.

95. Q. Lit—won't you explain to innocent ears what that means?

A. That means the bank had cashed checks of Mason & Company or some other fellow to the extent of \$18,000 plus, those checks being drawn on some other bank, and they went to protest, the paying bank having no funds with which to meet them. They were, therefore, returned through the clearings and taken up by the bank at Harvey, the bank at Harvey being the receiving bank. 10

96. Q. You received one letter from Mr. Plagge at least, didn't you?

A. Yes, sir, asking the value of the bonds. 20

97. Q. Then you know his handwriting, don't you?

A. No, I think not.

98. Q. Don't you know his signature even?

A. I couldn't say that I do.

99. Q. I want to ask you just to look at the signatures of these checks and state whether you can tell whether those are his signatures?

Mr. Curry: I object to that; the witness has said he doesn't know whether he could identify the signature, having seen one or two signatures on letters; he has answered the question by saying that he doesn't know whether he can identify it, and I object to those being offered for his identification. 30

A. Well, I am not sufficiently familiar with Mr. Plagge's signature to say that those checks were signed

by him or not signed by him, but I have my doubts about it.

100. Q. After you had received this \$70,000 of stock of the Ventnor Lots Company, in payment, as you considered it, of these four notes or bonds, did you make any communication to Mr. Plagge of the fact that they had been paid?

10 A. I did not receive the \$70,000 in payment of these four notes; I received it in payment of notes aggregating \$72,500, Plagge's notes being only a part of those purloined from me through the Collins outfit.

101. Q. Do you mean that \$72,500 of these notes secured by mortgage on the Ventnor City lands had been in some way disposed of by Mason & Company and were never recovered by you?

A. I do.

102. Q. So far as you know—

20 Mr. Curry: I object to that; they have nothing to do with this suit.

103. Q. Well, among those were the \$26,500 which are here in suit?

A. Yes, sir.

30 104. Q. When you heard that those notes were outstanding in the hands of some third parties, including Plagge, did you come on to Atlantic City to see E. H. Cuthbert and Mr. H. J. Cuthbert and arrange for the cancellation of the mortgages that secured those still outstanding notes?

A. I came ^{on} to Atlantic City—no, I came on to Philadelphia, not to Atlantic City—I came on to Philadelphia and saw Mr. E. H. Cuthbert, the representative of the Beaver Mortgage Company with whom I had always done business connected with that company, told him the situation and asked for the payment on the part of the company of the unpaid interest and

taxes that I had paid, and as a result of that conference, Mr. Cuthbert suggested that the Beaver Mortgage Company would organize a new company, give me \$70,000 of the stock in the new company in exchange for the mortgages which I held aggregating that amount.

105. Q. What amount?

A. \$70,000. I accepted the proposition and delivered the mortgages to Mr. Cuthbert and afterward received the \$70,000 stock of the Ventnor Lots Company, about which you have inquired. 10

106. Q. When you say, therefore, that these notes of \$26,500 were paid, that is the only method, only time, only occasion that you know of in which and by which they were paid?

A. That is the manner in which they were paid; yes, sir.

107. Q. Then you had these mortgages, you and Mr. E. H. Cuthbert caused these mortgages for \$70,000 or \$72,500—which was it?

A. It has been a long time ago; I don't know whether there were 280 lots or 281 lots; I think it was \$70,000. 20

108. Q. \$70,000—the mortgages to be cancelled, when neither of you had in your possession or under your control any of the notes or bonds that were secured by these mortgages; is that so?

A. All we had was the mortgages.

109. Q. Do you know who held those notes except Plagge?

A. I knew at that time from Mason & Company that a part of the \$72,500 was placed with Plagge, and the terms under which the notes were placed with him; a part with the Lyon Ratcliff Company, a note brokerage house that afterward failed, and with Emil Studlei, assistant cashier of the Colonial Trust & Savings Bank of Chicago, those three parties having been interested in the 30
with Mason & Company

kiting of these checks, part of which lit on Plagge, part on the Colonial and part on the Lyon & Ratcliff Company, and those bonds were placed in each case without consideration coming to Mason & Company or to anyone else with these various parties who had lost in this check kiting game.

110. Q. Did you have anything to do personally with that check kiting game?

A. No, nothing whatever.

111. Q. Your information on the subject then, on
10 which you undertook to make the statement, was derived from Mason & Company, E. L. Collins or C. D. Kern?

A. Yes.

112. Q. When did you first hear that this judgment for \$26,500 and interest that is involved in this present action had been obtained against the Beaver Mortgage Company?

A. A copy of the decree was served upon me by the Deputy Sheriff in Omaha after the judgment was rendered; the exact date I do not recall.

20 113. Q. Did nobody tell you that a suit had been begun, that this action had been begun in August previous to that?

A. I never knew it; no.

114. Q. Did Mr. H. J. Cuthbert inform you?

A. He did not.

115. Q. May I ask you how you are now interested in this action against the Beaver Mortgage Company?

A. Because it interferes and seeks to interfere with the defence in the suit pending in the other court.

30 116. Q. Have you any interest at all in the Beaver Mortgage Company?

A. None now.

117. Q. When did you cease to have?

A. After I settled with them, surrendered my notes and claims against them and accepted other securities.

118. Q. Weren't you interested in the Beaver Mortgage Company at the time that you held these four bonds before you transferred them to Mason & Company?

A. I don't remember whether I became a stockholder before or afterward; my impression is that I became a stockholder in June, 1914, and these bonds were transferred in 1913; I think my interest in the Beaver Mortgage Company was that of a creditor only up to June, 1914.

119. Q. From whom did you get your stock in the Beaver Mortgage Company? 10

A. It came from H. J. Cuthbert, the August Murphy estate, or some such Murphy.

120. Q. Augustus T. Murphy?

A. Augustus T. Murphy and Mary Higgins, through E. H. Cuthbert.

121. Q. How much of that stock did you obtain at that time?

A. I think \$90,000 of it.

122. Q. What was the total capital stock of the company at that time? 20

A. \$100,000.

123. Q. Who held the other \$10,000 shares in it?

A. It was held by H. J. Cuthbert, Mary E. Higgins and T. V. Rose.

124. Q. Did you pay nothing for that \$90,000 of stock?

Mr. Curry: I object to that as immaterial, beside the other objection that goes to it. The witness has testified he bought it from a person, not from the company, and I maintain it is immaterial whether he paid anything for it or whether it was given to him. 30

A. I did not.

125. Q. What did you pay?

A. Nothing.

126. Q. How long did you continue to hold that stock?

A. Until the final settlement between the Beaver Mortgage Company and myself, which occurred in March, 1915.

127. Q. You haven't made a mistake in the dates, have you, of the year? It was March, 1914, wasn't it, that these mortgages were cancelled upon the record against the Beaver Mortgage Company?

10 Mr. Curry: I object to that; that appears to be a matter of record and can be proved by the record.

Mr. Ritchie: I know, but I want to refresh his recollection.

20 A. That is only a part of them. The mortgages you are interested in that were involved in this suit were cancelled in 1914. There were still \$446,000 of mortgages outside of that batch which were finally turned over to the Beaver Mortgage Company in March, 1915, at which time I made a settlement with the Beaver Mortgage Company as a creditor, and the reason I paid nothing for the stock of the Beaver Mortgage Company was that they were largely indebted to me for interest which was in default and for taxes which I had paid, and they proposed to turn over to me practically all the stock of the Company so as to protect me in those matters; and when we finally made a settlement of those matters by which I waived all this and gave up all my claim of that kind, surrendered my mortgages, why, of course, that ended my connection with the Beaver Mortgage Company. Those are the facts.

30 128. Q. What amount of taxes were due by the Beaver Mortgage Company which you paid and which payment formed a part of the consideration for the transfer of the Beaver Mortgage Company stock?

A. Oh, something like \$5,000.

HERBERT J. CUTHBERT, SWORN.

Direct examination.

By Mr. Curry:

1. Q. Mr. Cuthbert, at the last meeting of stockholders at which directors were elected, who were the directors elected of the Beaver Mortgage Company?
A. Myself, M. E. Higgins and T. V. Rose.
2. Q. Who were the directors of the company at the 10
time the company ceased doing business?
A. The same.
3. Q. Were they directors in January, 1918?
A. Yes.
4. Q. Any other directors ever elected after those?
A. No.

Cross-examination.

By Mr. Ritchie:

20

1. Q. Mr. Cuthbert, have you got the record books of the Beaver Mortgage Company?
A. No, sir; not with me.
2. Q. No, I mean in your possession.
A. They were in my possession.
3. Q. Did you keep a minute of this meeting at which these directors were elected?
A. There were minutes kept; yes, sir.
4. Q. Well, those books then will show the election 30
of these directors, will they?
A. I think they will; yes, sir.
5. Q. Just when did you make the last election of directors?
A. Well, I couldn't say without the books.
6. Q. Well, about how long ago—I don't mean to be so particular?

A. I would say in 1914 or 1915.

7. Q. Then, as a matter of fact, the affairs of that company ran along without any annual meeting for the last three or four years anyhow, is that so?

A. Yes, sir.

8. Q. You really treated the Company as sort of defunct, did you?

A. That is the way we looked upon it.

9. Q. Where does Mary Higgins live?

A. Atlantic City.

10

10. Q. Can you give her address, please?

A. I can't give you the number, but somewhere on Arctic Avenue, 2600, I think it is, 2600 and something Arctic Avenue.

11. Q. Miss Higgin, was she a stenographer?

A. No, she was one of the clerks in the office.

12. Q. Clerks in the office of Mr. E. H. Cuthbert?

A. Yes.

13. Q. Is she employed there now?

A. No.

20

14. Q. Where is she employed now?

A. I couldn't say.

15. Q. In Atlantic City?

A. I think so, but I am not positive of it.

16. Q. Mrs. Talitha V. Rose—was she engaged in Mr. E. H. Cuthbert's office, too?

A. Yes.

17. Q. Where does she live now?

A. Why, I think in the same place, in Linwood,

30 New Jersey.

18. Q. Did she live there four or five years ago?

A. Yes.

19. Q. In fact, they were made directors for purpose of convenience and not because they had an active or substantial interest in the affairs of the Company—isn't that so?

A. Well, they were interested in a way.

20. Q. Well, they had a small amount of the stock?
A. Yes, that is it.
21. Q. Have you the stock book as well?
A. Yes.
22. Q. There was an injunction issued at the suit of the Attorney-General of the State of New Jersey against the Beaver Mortgage Company to prevent it, enjoin it from transacting business, was there not?
A. I think there was, yes.
23. Q. Who after that time acted as director or agent?
A. I didn't think it was necessary.

10

[ENDORSED.]

COMMISSIONER'S FEES.

For the rule.....	\$4 00	
To 1 sitting	20	20
To swearing 2 witnesses.....	
To taking 11 fol., evidence, at \$0.20.....	2 20	
To copy deposition, 102 fol., at \$0.10.....	10 20	
	<hr/>	
	\$16 60	
Contra.		
To making 1 Exhibit.....	\$0 10	
To taking 90 fol. evidence, at \$0.20.....	18 00	
	<hr/>	
	\$18 10	30

Notice of taking Depositions.

Filed May 28, 1919.

NEW JERSEY SUPREME COURT.

WILLIAM FLAGGE, Plaintiff, vs. 10 THE BEAVER MORTGAGE COM- PANY, Defendant.	}	ACTION AT LAW. ON PETITION TO VACATE FINAL JUDGMENT. NOTICE.
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To John Solan, Esquire, Attorney for Plaintiff:

Take notice, that on Monday, the 26th day of May, 1919, at four o'clock in the afternoon, at my office, No. 104 Market street, Camden, New Jersey, before Edward I. Berry, Esquire, one of the Supreme Court Commissioners of the State of New Jersey, I will take the depositions of H. J. Cuthbert, to be read upon the return of the rule to show cause allowed on the 17th day of March, 1919, in the above entitled cause, returnable on June 3rd, 1919.

NORMAN GREY,
 Attorney for Defendant.

30

[ENDORSED.]

Service of the within notice is hereby acknowledged this 21st day of May, 1919.

RICHARD STOCKTON, 3rd,
 JOHN SOLAN,
 Attorneys for Plaintiff.

NEW JERSEY SUPREME COURT.

WILLIAM PLAGGE,	}	ACTION AT LAW.
Plaintiff,		ON PETITION TO
vs.		VACATE FINAL
BEAVER MORTGAGE COMPANY,	}	JUDGMENT.
Defendant.		

Depositions taken in the above stated matter, pursuant to notice annexed, before Edward I. Berry, Supreme Court Commissioner, at the office of Norman Grey, Esq., 104 Market street, Camden, N. J., on Monday, May twenty-sixth, 1919, at four o'clock P. M., in the presence of John Solan, Esq., for the plaintiff, and Edward T. Curry, Esq., appearing for Norman Grey, for the defendant. 10

It is agreed that the depositions shall be taken stenographically, and the signatures of the witnesses waived. 20

H. J. CUTHBERT, SWORN.

By Mr. Curry:

Q. Mr. Cuthbert, were you served with process at the suit of William Plagge, on an action at law, in the New Jersey Supreme Court, against the Beaver Mortgage Company? 30

A. Yes.

Q. Do you remember about when that was?

A. No, I do not.

Q. What year it was in?

A. No; do you mean the most recent one or the first one?

Q. I mean the suit that was started in the New Jersey Supreme Court upon which judgment was finally obtained?

A. Yes.

Q. Was it about August or September of 1918?

A. About that, yes.

Q. What did you do when you were served with process?

A. Sent it to Mr. McPherson.

10 Q. I mean, with the notice or the summons and complaint that was served on you?

A. Sent it to Mr. McPherson.

Q. Did you ever confer with anyone to make a defense to it?

A. Robert H. Ingersoll.

Q. What did he do?

A. Told me to take it up with Mr. McPherson.

Q. Did you understand that the matter was being taken care of?

20 A. That Mr. Ingersoll, Judge Ingersoll, was taking care of it, yes.

Q. Did you understand that he was taking care of it, filing any necessary defence or taking care of the Beaver Mortgage Company in the matter?

A. Yes, I thought he had full charge of it.

Cross-examination.

By Mr. Solan:

30 Q. Mr. Robert McPherson was counsel for the Beaver Mortgage Company at that time?

A. I don't know.

Q. Or Judge Ingersoll was counsel for the Beaver Mortgage Company at that time?

A. Yes.

Q. You were the registered agent for service of process at that time, weren't you?

A. Yes.

Q. Were you the secretary of the Beaver Mortgage Company at that time?

A. President.

Q. President?

A. I believe, yes.

Q. How did you transmit it to Mr. McPherson?

A. By mail.

Q. To what address?

A. Omaha, Nebraska; Elks' Building, Omaha, Nebraska. 10

Q. Had you sent other communications to Mr. McPherson at that place?

A. I had, numerous ones.

Q. Did you receive a reply from this process, from your letter enclosing this process?

A. I think I did.

[ENDORSEMENT.]

20

COMMISSIONER'S FEES.

For the rule:

To 1 sitting	4.00	
To swearing 1 witness10	
To taking 6 fol. evidence, at 20	1.20	
To copy depositions, 9 fol., at 1090	
Continued: <i>Contra</i>		
To taking 3 fol. evidence, at 2060	30

Stipulation on behalf of Defendant. Filed May 28, 1919.

NEW JERSEY SUPREME COURT.

	WILLIAM PLAGGE,	}	ACTION AT LAW.
	Complainant,		ON PETITION TO
	AND		VACATE FINAL
10	THE BEAVER MORTGAGE COM- PANY,		JUDGMENT.
	Defendant.		STIPULATION.

It is hereby stipulated by and between counsel hereto that on the return of the rule to show cause in the above matter on June 3rd, the following admissions are made by complainant:

20 I. That the complainant has brought a bill in equity in the United States District Court against the Beaver Mortgage Company, Ventnor Lots Company, Ventnor Park Development Company, West Jersey Trust Company and Thomas B. McPherson, defendants, in which complainant sets forth that the mortgages securing the bonds involved in the suit in this court have been fraudulently cancelled and in said equity suit complainant seeks to set aside the cancellation of said mortgages and prays for a reinstatement of lien on the property described in said mortgages and prays further for sale of said premises and the payment to complainant of the proceeds and a further

30 prayer requests that in case the proceeds in said foreclosure shall be insufficient to satisfy the said indebtedness, a decree for the amount of the deficiency be made in favor of complainant.

NORMAN GREY,
Attorney for Defendant.
JOHN SOLAN,
Attorney for Complainant.

May 26, 1919.

Stipulation on behalf of Complainant. Filed

NEW JERSEY SUPREME COURT.

WILLIAM PLAGGE,	}			
Complainant,				
AND			ACTION AT LAW.	
THE BEAVER MORTGAGE COM-			STIPULATION.	10
PANY,				
Defendant.				

It is hereby stipulated and agreed between the attorneys for the respective parties hereto that in order to save expense in printing and to avoid burdening the Court with copies of paper and testimony that will have no bearing on the questions involved on this rule, there be printed for the use of the Court and counsel on the hearing of the rule in the state of the case, the following excerpts from the record in the United States District Court for the District of New Jersey in the suit of William Plagge against The Beaver Mortgage Company, et al. 20

NORMAN GREY,
Attorney for Defendant.

JOHN SOLAN,
Attorney for Complainant.

May 26, 1919.

30

Excerpt from Interrogatories to Herbert J. Cuthbert and Marie Higgins. Filed February 13, 1917.

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY.

10	WILLIAM PLAGGE,	}		
	Complainant,			
	vs.			
	THE BEAVER MORTGAGE COM-		}	IN EQUITY.
	PANY, THE VENTNOR LOTS			
	COMPANY, THE WEST JERSEY			
	TRUST COMPANY, and THOMAS			
	B. MCPHERSON,			
	Defendants.			

20

INTERROGATORIES.

To be propounded on complainant's behalf, under Equity Rule 58, for the examination of Herbert J. Cuthbert, Director and Trustee of the said Beaver Mortgage Company, defendant, and to Herbert J. Cuthbert and Marie Higgins, Directors and Trustees of said Ventnor Lots Company, defendant.

30 1: Where do you reside and what is your business?

2: Do you know the defendant, Thomas B. McPherson, and if so, how long have you known him?

3: Were you a director or an officer of the Beaver Mortgage Company on and before April 10th, 1913; if so, what was your office in said company and how long had you been at that time such director?

7: Is the Beaver Mortgage Company now doing business; if not, for how long a time past has it ceased to transact business and for what reason?

8: State who last had possession or custody of the minutes of the Beaver Mortgage Company, and where those minutes are now, and in whose custody?

10: Who has custody of the stock books containing record of the issue of stock certificates of the Beaver Mortgage Company and where are those stock bonds now? Will you produce them, if you can? 10

12: Who was the secretary of said company when it ceased to do business, if it did so cease, and where does such person now reside?

16: When said company ceased to do business, if it so ceased, what property did it possess, and where located? Give details.

20: Did you know on or before March 5, 1914, that the several mortgages referred to in the Bill of Complaint as Numbers 45, 46, 48 and 49 were to be presented to the Clerk of the Court of Common Pleas of Atlantic county, New Jersey, for the purpose of having an entry of cancellation made upon the records of said mortgages in said Clerk's office? If so, how did you learn of that fact and from whom? 20

21: State, if you know, how said entries of cancellation with regard to said mortgages came to be made?

22: At whose request were said cancellation entries made? 30

23: State where the several notes or bonds secured by said several mortgages, or any of them, were on March 5, 1914, and at the time when such cancellations were entered by the Clerk of Court?

24: Were said bonds or notes in the possession of the said Beaver Mortgage Company on March 5, 1914, and

is so, what officer or employee or director of said company had the actual possession or custody of same or any of them at that time?

25: Had those notes or bonds, or any of them, been actually paid to the Beaver Mortgage Company, or to any one for its benefit, on or prior to March 5, 1917?

26: If to interrogatory last above you reply that same or any of same had been paid, then state how they had been paid—in cash or with property, and to whom were
10 such payments, or any of them, made?

27: If the same were paid, or any of them, did the Beaver Mortgage Company get any receipts for such payment, or any of them; if so, from whom, and where are such receipts?

28: If to interrogatories 25 and 26 you reply that you do not know, state what officer or employee of said Mortgage Company, in the ordinary usage or course of
20 business of said company, would have such information?

29: Who kept the accounts or books or financial records of said company at that time?

32: Unless said Mortgage Company had paid or satisfied said mortgages before that, how did it come to send same for cancellation?

33: If you reply that the said several bonds or notes were in fact paid or satisfied before said mortgages were so cancelled, did the Beaver Mortgage Company obtain
30 possession of the said several bonds or notes secured by said mortgage?

34: If it did not obtain possession of said bonds or notes, why did it not do so, and cancel same, or mark them paid?

35: At the time when said several mortgages were so entered upon the records as cancelled, in March, 1914,

were the said mortgages in the possession of the said Thomas B. McPherson?

36: On March 5th, 1914, by whom was the capital stock of the Ventnor Lots Company held, and in what proportion?

38: Who now has possession of the stock books of the Ventnor Lots Company, and where does such person reside?

40: Do you know of the execution and delivery by the Beaver Mortgage Company, of a deed dated on or about March 4th, 1914, and recorded March 5th, 1914, and purporting to convey all of the several parcels of land covered by the above mentioned mortgages, numbered 45, 46, 48 and 49, together with other lands, to the Ventnor Lots Company? If so please state how and under what circumstances and for what purpose said conveyance was made. 10

41: After the said Beaver Mortgage Company had made the conveyance last above referred to, what property or assets did it retain in its possession or ownership? Give particulars. 20

42: What consideration was paid to the Beaver Mortgage Company for said conveyance, if any?

43: Was it in money, or in property? Give particulars as to amount, if paid in cash or money, and description of the property, if paid in property, and whether real property or personal property? 30

44: If you reply that for such conveyance the Beaver Mortgage Company was paid a consideration in money or property, state what has become of such money or property?

48: What are the assets, real and personal, of the said Ventnor Lots Company, and what is its indebtedness?

49: What are the assets, real and personal, of the Beaver Mortgage Company, and what is its indebtedness?

50: If to either of the last two interrogatories you reply that you are not informed, state who has, or in the usual and ordinary course of business of said companies respectively would have such information, and what is the residence of such person or persons?

10

Excerpts from Answers of Herbert J. Cuthbert to Interrogatories. Filed.

1: 104 S. Austin avenue, Ventnor City, Post Office, Atlantic City, New Jersey, Real Estate.

2: Yes, about seven years.

3: Yes. Secretary and treasurer since the date of incorporation.

20 4: Am unable to give details at this time, but they were for good and valuable consideration.

7: No. Has been restrained by the Courts of New Jersey from doing business because of the non-payment of taxes.

8: Said minutes are in my possession.

10: I have the custody of said books and will produce them if desired.

30 12: I was.

16: None.

20: I sent the said mortgages to the County Clerk of Atlantic County, New Jersey, for cancellation on the 4th day of March, A. D. 1914.

21: At the request of Thomas B. McPherson, the mortgagee, I sent said mortgages to the County Clerk of Atlantic County for cancellation.

22: At the request of Thomas B. McPherson, made through me.

23: I do not know.

24: No.

25: No.

26: No.

27: No.

28: Miss Marie Higgins.

32: I sent the same at the request of the mortgagee. 10

33: No.

34: The mortgage having been cancelled, the debt was extinguished.

35: Said mortgages were immediately before the cancellation in the possession of the said Thomas B. McPherson, and that after the endorsement of said cancellation returned to him.

36: Marie Higgins, 3 shares; T. B. Rose, 3 shares; 20
Herbert J. Cuthbert, 4 shares; Edwin H. Cuthbert, 290
shares.

37: I do not know.

38: I have.

40: The mortgages were by reason of default in payment of taxes and interest about to be foreclosed and the land was conveyed to the Ventnor Lots Company.

41: No. 30

42: I do not know.

43: I do not know.

44: I do not know.

48: I do not know.

49: I do not know.

50: I believe that Marie Higgins may have the information referred to in interrogatories 48 and 49.

Excerpt from Answers of Marie Higgins. Filed

1: 2823 Arctic avenue, Atlantic City, New Jersey, bookkeeper.

2: Yes, about six or seven years.

3: Yes, treasurer.

10 7: I do not know.

8: I do not know.

10: I do not know.

12: I do not know.

16: I do not know.

20: No.

21: I do not know.

22: I do not know.

23: I do not know.

20 24: I do not know.

25: I do not know.

26:

27: I do not know.

28: I do not know.

32: I do not know.

35: I do not know.

36: I do not remember.

30 38: I do not know.

40: I do not remember.

41: I do not know.

42: I do not know.

43: I do not know.

48: I do not know.

49: I do not know.

50: I do not know.

*Excerpt from Answer Beaver Mortgage Company.
Filed February 5, 1917*

IN THE DISTRICT COURT OF THE UNITED STATES.

DISTRICT OF NEW JERSEY.

WILLIAM PLAGGE,	}	IN EQUITY:	10
Complainant,			
vs.			
THE BEAVER MORTGAGE COM-	}	ANSWER.	20
PANY, THE VENTNOR LOTS			
COMPANY, THE WEST JERSEY			
TRUST COMPANY, and THOMAS			
B. MCPHERSON,			
Defendants.			

The answer of the Beaver Mortgage Company, one of the defendants to the Bill of Complaint of the said William Plagge, says:

That the said defendant, the Beaver Mortgage Company, was duly incorporated by and under the laws of the State of New Jersey and that by proceedings issued by the Attorney General of the State of New Jersey, an order was made in the Court of Chancery of the State of New Jersey on the 22nd day of August, A. D. 1916, wherein it was ordered in consideration of the premises, and of the particular matter set forth in the said petition, do strictly enjoin and command the said corporation, its officers and agents, and each and every of them, under the penalty that may fall thereon, that they and every of them do absolutely desist and refrain from the exercise

of any franchise of said corporation or the transaction of any business, until the payment of said tax and interest due thereon and the costs of said application, and until said injunction be dissolved or our said court shall make other order to the contrary; and that upon the said 22nd day of August, A. D. 1916, Herbert J. Cuthbert was the only director of said corporation and that by reason thereof the said Herbert J. Cuthbert has become Trustee of said corporation, and this defendant answering to the Bill of Complaint of said William Plagge saith:

10

*Excerpt from Deposition of Thomas B. McPherson.
Filed*

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY.

WILLIAM PLAGGE,
Complainant,

vs.

20

THE BEAVER MORTGAGE COM-
PANY, THE VENTNOR LOTS
COMPANY, THE WEST JERSEY
TRUST COMPANY, and THOMAS
B. MCPHERSON,
Defendants.

IN EQUITY.

30

The deposition of Thomas B. McPherson, taken on behalf of the defendants, before Sidney B. Meyer, a Notary Public of Cook County, Illinois, at the law office of William Ritchie, 1511 City Hall Square Building, Chicago, Illinois, pursuant to notice hereto annexed, on Monday, October 15, 1917, at three o'clock P. M.

Present: Thomas B. McPherson, claiming to represent himself and the other defendants.

William Ritchie, representing the complainant.

THOMAS B. MCPHERSON, being sworn as aforesaid, testifies as follows:

(Narrative). In the fall of 1913 I owned a number of real estate notes executed by the Beaver Mortgage Company, a corporation organized under the laws of the State of New Jersey, which said notes were secured by individual mortgages covering, in each case, a block of lots located in the City of Ventnor, State of New Jersey. I acquired these notes and mortgages by purchase on April 10, 1913. The notes were made payable to my individual order and the mortgages securing the same ran to me, individually. Early in October of 1913, the firm of Mason & Company, a partnership composed of Huntingdon Mason, E. L. Collins and C. D. Kern, doing business as brokers in Chicago, Illinois, sent one Frank C. Patton, another broker doing business in the City of Chicago, Illinois, to me at Omaha, Nebraska, representing that they, Mason & Company, had sold mortgage notes secured by mortgages as hereinbefore stated, on lots in Ventnor, New Jersey, to the Girard Trust Company of Philadelphia, to the amount of \$160,000; and that he, Patton, was sent to me by E. L. Collins of Mason & Company to get the notes for the purpose of making a delivery in accordance with this sale.

At this time I delivered to Frank C. Patton, as agent for Mason & Company, notes aggregating \$160,500, but I did not deliver the mortgage securing these notes for the reason that I figured that the character of the securities was such that the notes could not be sold without the mortgages, and for the further reason that the mortgages not only secured the notes involved in this transaction but they also secured any liens in the shape of taxes and any defaulted interest then due and unpaid.

At the time this delivery was made there was due me for taxes and unpaid interest about \$2,500. Among the notes delivered as above stated were Nos. 45, 46, 48, and 49, aggregating \$26,500, which are the notes or so-called bonds involved in the present suit pending at Trenton,

New Jersey. About two weeks after having made the delivery of these notes to Mason & Company, through their agent, Patton, I came to Chicago, and found that the statements made to me as to the sale of these securities were false, and that Mason & Company had hypothecated \$70,500 of these notes to secure indebtedness of their own, and that the rest of the notes were in their safe in Chicago.

10 I secured from them the unpledged notes and they, then and there, agreed to deliver to me the balance of \$70,500, but did not at that time inform me where these notes were lodged.

From
20 About October 20 to December 15, of 1913, I expected the missing notes to be returned to me according to agreement, but, as they were not so returned, I again came to Chicago and found that a number of these notes had been pledged to three different creditors of Mason & Company, including the \$26,500 involved in this suit, this being the amount of the notes delivered to William Plagge to secure a pre-existing debt of Mason & Company which was evidenced by "kited" checks aggregating about \$18,000. Both Collins and Kern of Mason & Company stated that there had been no consideration for the delivery of these notes to Plagge and that they had simply been lodged with him to prevent his taking some action by reason of the landing of the "kited" checks above referred to.

Having discovered that Plagge held these notes aggregating \$26,500, I wrote him from Chicago on December 16, 1913, in substance as follows:

30

"Chicago, Illinois, December 16, 1913.

WILLIAM PLAGGE,
First National Bank,
Harvey, Illinois.

DEAR SIR: Replying to your inquiry in re Beaver Mortgage Company bonds, would say that those you hold, namely No. 45—\$7,000; No. 46—\$5,500; No.

48—\$7,000; No. 49—\$7,000, were stolen from me, and are therefore worthless. I still hold the mortgages securing this paper and beg to advise you that any attempt on your part to dispose of these notes will certainly put you and your bank in a very awkward position, since I know how you came into possession of them and you now know the facts about them. You best get after the thieves from whom you acquired these notes or else you will never collect a white quarter on them from me or of the Beaver 10 Mortgage Company.

Very respectfully yours,
THOMAS B. MCPHERSON."

This letter I sealed, addressed and mailed myself to William Plagge, Harvey, Illinois, on the date named, and having received no answer from Mr. Plagge I went to Atlantic City about March 1, 1914, with a view to making some disposition of the matter which would protect myself in the premises. After consulting counsel, I 20 delivered the specific mortgages, covering the bonds aggregating \$70,500, which Mason & Company had previously hypothecated, including the mortgages in controversy in the Trenton suit, to E. H. Cuthbert, president of the Beaver Mortgage Company.

Under the arrangement made with him, he or his company were to receive in consideration for the equity in the lots covered by these specific mortgages, aggregating \$70,500, \$30,000 of the capital stock of the Ventnor Lots 30 Company and I was to receive \$70,000 of the capital stock of that same company in exchange for my mortgages. The Ventnor Lots Company was organized almost immediately thereafter and this delivery and stock issued in accordance with the above agreement, the Beaver Mortgage Company having deeded all the lots covered by the \$70,500 of mortgage to the Ventnor Lots Company.

* * * * *

When I delivered to Mason & Company, on their representation as to the sale of these securities, the \$160,500 of real estate notes hereinbefore mentioned, I took from them a trust receipt from which I quote as follows:

“OMAHA, October 6, 1913.

10 Received of Thomas B. McPherson, as trustee, the following bonds of the Beaver Mortgage Company, to wit: (Here follows a description of the bonds aggregating \$160,500, face value, including the notes here in controversy, and specifically states) “said bonds and coupons are received by us in trust to be sold or pledged for the sole benefit of said Thomas B. McPherson, and the proceeds to be remitted to him in either case as soon as any transaction is closed.”

• This instrument is signed “Mason & Company by E. L. Collins.”

* * * * *

20 Cross-examination.

By Mr. Ritchie:

Q. When did you first meet Mr. E. L. Collins, of Mason & Company?

A. Along in the summer of 1913, I think, in August.

Q. And how did you know Patton represented Mason & Company when he came to Omaha?

30 A. He came there with a letter from Mason & Company and a number of checks aggregating \$25,000, signed by Mason & Company, which he delivered to me, dated ten days apart, in advance. He delivered these checks to me as part payment for those bonds which he had sold in Philadelphia, according to his statement to me. Those checks went to protest; none of them were ever paid.

* * * * *

Q. What do you mean when Patton came to Omaha, he told you he had sold these securities belonging to you?

A. He told me Collins had sold these securities.

Q. What?

A. \$165,000 of my real estate notes to the Girard Trust Company, of Philadelphia.

Q. Well?

A. He gave me these checks for \$25,000 in part payment, as I have explained, of the purchase price of these notes.

Q. How did he represent to you that the Girard Trust Company had purchased these securities when he didn't have them in hand or any authority to deliver them? 10

A. He had authority to sell them.

Q. Not before he came to Omaha?

A. Yes. I had had a number of transactions with Mason & Company prior to October, 1913, between August and October.

* * * * *

Q. There were letters addressed to you by various real estate men of Atlantic City purporting to give values of this Ventnor property; is that the case? 20

A. Yes, sir.

* * * * *

Q. Did you hand them to Mr. Patton at the time he came to Omaha to see you?

A. I think not.

Q. Can you recall when, if at all, you did hand them to him or to Mason & Company?

A. My recollection is I gave these ^{to} gave the originals to Sidney P. Allen, who was at that time connected with Frank C. Patton, some time in the spring, some time the latter part of May, 1913. 30

Q. For what purpose did you give them to him?

A. To enable him to sell all or part of these notes which I wished to negotiate.

* * * * *

Q. When did you first engage with Mason & Company that they should have these \$160,500 of bonds or notes for selling or pledging or utilizing?

A. October 6, 1913.

Q. That is the first time?

A. That is the specific \$160,500; I talked with Mason & Company about selling or trading my entire holdings of those notes and mortgages during the summer of 1913; had numerous conferences with, and they sent their partner, E. D. Kern, down to Atlantic City to investigate the
10 property.

Q. What time was that?

A. Along in August, 1913, and to report upon its value.

* * * * *

Q. When these mortgages securing the notes here in controversy were cancelled of record, in March, 1914, who acted for the Beaver Mortgage Company at that time?

A. E. H. Cuthbert, president.
20

* * * * *

Q. Explain again the consideration which passed upon that occasion to the Beaver Mortgage Company?

A. Thirty thousand dollars of the capital stock of the Ventnor Lots Company, the total capital being \$100,000, and the cancellation of the Beaver Mortgage Company notes, of \$250 per lot, on 280 lots, and also the release of the Beaver Mortgage Company from any liability by reason of its failure to pay taxes and interest on those
30 notes.

Q. How much interest was due at that time?

A. Something over \$2,100.

Q. Is that one year's interest?

A. No; it is six months' interest; a year's interest would be \$4,200.

Q. Now, when you and E. H. Cuthbert agreed between you for the organization of the Ventnor Lots Company,

you, taking \$70,000 of the stock, and he \$30,000; is that correct?

A. It is. The trade was made with E. H. Cuthbert, president of the Beaver Mortgage Company.

Q. Did the Beaver Mortgage Company, as a corporation, ever own that \$30,000 of stock of the Ventnor Lots Company?

A. I cannot answer that question because I don't know what disposition Cuthbert made of the \$30,000 stock; it was issued in his name.

10

* * * * *

Q. You spoke of having come to Chicago about October 20, 1913, and found by inquiry that the statements which Mason & Company had made to you, with reference to the sale of these securities, were false. What statements were those?

A. That they had sold \$160,000 of these notes to the Girard Trust Company in Philadelphia.

Q. There had been two weeks intervene between the delivery of those \$160,500 of bonds and the time you came to Chicago and made those inquiries, had not they sold some of those bonds to the Girard Trust Company or disposed of them in some way to the Trust Company?

20

A. None whatever.

Q. How had they represented to you they expected to do so?

A. They represented to me they had done so, to secure from me the delivery of the notes.

Q. What consideration did they say the Girard Trust Company proposed to pay?

30

A. They said they had sold the notes, the price being left open, to be determined between Mr. Collins, who was going to Philadelphia with these notes to make delivery, and themselves; and the minimum price at which I authorized a sale of the securities was 90 cents, and anything he obtained over that was his commission.

Q. That is to say, he didn't make this dicker in Philadelphia with the Girard Company without having first spoken with you about what the terms should be?

A. I don't think he ever made any dicker with the Girard Company in Philadelphia. I think that was all moonshine—a lie made up of whole cloth. I had authorized him prior to that time to sell these bonds; he offered me on these representations to sell these bonds to net me 90 cents.

Q. What time was it you did that?

10 A. Along in the summer of 1913, about August, as well as I can remember.

Q. When you found out, October 20, 1913, that Mason & Company had misrepresented matters to you, didn't you take steps forthwith to find out what had become of these \$26,500 of bonds which Plagge holds?

20 A. I did not at that time know that Plagge held the bonds. I was informed by Mason & Company that they were held by friends of theirs, and that they would secure and return them to me right away, and on that statement I rested until the following December.

Q. What consideration did they say, if any, had been received by them for delivery of those bonds?

A. Nothing; none whatever.

Q. You spoke of the consideration being that these friends, or whoever they were, should keep quiet on some past indebtedness of Mason & Company. What do you mean?

30 A. That statement applied to the Plagge notes. Mason & Company stated to me that the bonds in controversy in this suit were lodged with Plagge to keep him quiet because of the non-payment of kited checks aggregating about \$18,000, which had lit, as they expressed it, on Plagge. These bonds, and the delivery of these bonds to Plagge was made for the purpose of keeping him quiet until such time as they could make a deal in some way.

Q. Did your experience with Mason & Company qualify you to understand such technical language as "the lighting of a kited check?"

A. My experience as a banker of many years made me familiar with kited checks.

Q. When were you engaged in the banking business?

A. From 1884 to 1906, in Nebraska.

Q. When did you first learn Plagge had these papers?

A. In December, 1913.

Q. He wrote about them, didn't he?

10

A. He wrote to know the value of them; he wrote me in November, late in November, to know what these Beaver Mortgage Company notes were worth.

Q. How did you first learn that Plagge had them?

A. I received an inquiry from him as to the value of Beaver Mortgage Company notes sometime in November, 1913, and shortly thereafter was told by Mason & Company that Plagge held \$26,500 of these notes, and gave me the numbers, they being the same as are now in controversy in this suit at Trenton.

20

Q. I will ask you to look at this paper, written in ink, dated Harvey, Illinois, November 15-13, addressed Mr. Thomas B. McPherson, Omaha, Nebraska, Dear Sir: And without signature to it. I ask you if you recollect whether that is what purports to be the letter you received from Plagge?

A. I think that is a copy of the letter which I answered sometime in December.

Q. Have you got the original of that or is it lost?

30

A. If I have it, it is in my Omaha files.

Q. Will you produce it if it is necessary at the hearing of this case?

A. I will if I have it.

(Offered in evidence as Complainant's Exhibit 2).

COMPLAINANT'S EXHIBIT No. 2.

"Harvey, Ill., Nov. 15/13.

Mr. Thomas B. McPherson,
Omaha, Nebr.

10 Dear Sir:—Will you please answer me a few questions. I hold Bonds No. 45-46-48 and 49, First Mortgage Real Est. Securities, Beaver Mortgage Co., dated Apr. 19/13, due Apr. 10/16. Mr. P. D. Kern, of whom I got these bonds, claims security is at least \$40,000. Is this the truth? If not please give me your candid opinion how much the security is worth and if I should want to keep these bonds will the interest be paid when due, Apr. and Oct., and when these bonds mature will they be taken up at par or at what price, would you take these bonds back.

20 Thanking you very much in advance for an early reply and hope I may favor you sometime, I remain
Yours very truly."

Q. All these bonds were endorsed by you only without recourse and you held back the mortgages. How did you expect they would negotiate those notes without your personal security to support them, nor possession of the mortgages?

30 A. I didn't expect they could sell them without the mortgages. And I had a personal interest in the mortgage outside of the note secured thereby which was represented by unpaid interest and taxes due me and covered by the mortgage according to its terms.

Q. That is to say, there was interest and taxes overdue to you at the time you delivered those notes to Patton, and your only security for that matter so overdue was the mortgages?

A. That is exactly the case.

Q. Now, didn't Mason & Company tell you that they had Plagge's money on account of protested drafts held by him?

A. Yes.

Q. In your statement you mentioned some amount of about \$18,000. Do you think that is the amount they mentioned to you?

A. That is the amount of the protested checks as mentioned to me by Mason & Company.

Q. And when you say Mason & Company you mean E. L. Collins and E. D. Kern? 10

A. Yes; Mason died.

Q. What prospects of recovery from E. L. Collins or C. D. Kern or Huntingdon Mason was there about that time—were they responsible—suppose you had sued them—for that amount of money, would you consider it a good investment, the litigation fees?

A. I think they were absolutely worthless.

Q. Mason & Company even at that time, you would say, were practically insolvent?

A. Yes, sir. 20

Q. Have they, so far as your information and experience goes, been so ever since?

A. To the best of my knowledge and belief, yes. Although I am informed that E. L. Collins is now in a better financial situation than he was at that time.

Q. Has Mr. Kern anything that you know of, any property?

A. Nothing.

Q. Do you know whether Mr. Huntingdon Mason died leaving any property? 30

A. He died penniless.

Q. Did the financial condition of Mason & Company at that time have any effect in restraining your effort to collect from them, for deceit or fraud in any of these matters?

A. I knew a civil action would be fruitless.

Q. You practically felt then, that a recourse to Mason & Company at that time would have been of no avail and that there was a necessity to protect yourself in some other way from these outstanding notes?

A. I had no protection from them, but I wanted to save my property from being taken from me on account of these notes they stole from me and turned over to Plagge.

Q. How would releasing these mortgages on property that belonged to the Beaver Mortgage Company
10 help to protect you?

A. The Beaver Mortgage Company were makers of the notes which had been purloined from me by Mason & Company. I held the mortgage security which was the only security behind those notes. In order to protect my interest in that property, I delivered the mortgages to the Beaver Mortgage Company under the agreement hereinbefore testified to. It left the notes without collateral. I was protected and the holder of those notes had no recourse save recovery from Mason
20 & Company or from the Beaver Mortgage Company, and could not attack the lots which were mortgaged originally to me.

Q. When you came here in October, 1913, to see Mason & Company, why didn't you trace up those \$26,500 to find out in whose hands they were?

A. I didn't know at that time where they were. Mason & Company didn't tell me.

Q. To whom do you refer in your letter to Mr. Plagge of December 15th as thieves?

30 A. Frank C. Patton, E. L. Collins and C. D. Kern.

Excerpts from Interrogatories to Thomas B. McPherson. Filed May 8, 1919.

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY.

WILLIAM FLAGGE,	}	
Complainant,		
vs.		IN EQUITY. 10
THE BEAVER MORTGAGE COM-	}	
PANY, ET AL.,		Defendants.

INTERROGATORIES

To be propounded on complainant' behalf, under Equity Rue 58, for the examination of Thomas B. McPherson, one of the defendants herein :

20

INT. 1: The amended and supplemental bill of complaint (paragraph 20) alleged that before maturity you endorsed in blank the several bonds or notes of the Beaver Mortgage Company, described in said bill, and the coupons attached thereto. Your answer (paragraph 9) denies this. Said bill (paragraph 9) alleges that said notes or bonds and coupons, were issued by said company, and delivered to you. Your answer (paragraph 3) admits this averment to be true. Do you still hold the said several notes or bonds? If not, what has become of same? State whether or not you ever transferred or delivered the same to Mason & Company, or Mason & Collins, brokers, of Chicago, or to anyone representing them? If so, have you ever, since, recovered possession thereof.

30

INT. 2: Did you ever endorse the said notes or bonds in blank? If so, when?

INT. 3: Did you ever endorse in blank the several coupons attached to said notes or bonds? If so, when?

INT. 4: Paragraph 10 of your answer admits that you retained possession of the several mortgages mentioned in said bill of complaint securing said several notes or bonds. Did you not, sometime in October, 1913, deliver the said several notes or bonds without the said mortgages, to one Frank C. Patton, representing Mason & Collins, Stock Brokers, of Chicago? If so, did he or
10 they ever return the same to your possession?

INT. 5: Have you ever recovered possession of said notes or bonds, or any of them?

INT. 6: In your deposition in this cause, taken in October, 1917, and heretofore filed in this court, you state (page 4) that among the notes or bonds delivered in October, 1913, by you to said Patton, were those involved in this suit, aggregating \$26,500. Did you ever recover possession of any of said notes or bonds?

20 INT. 7: In your said deposition you further state that (page 4) about two weeks after you delivered said notes to Mason & Collins, through said Patton, you went to Chicago and got back from them the "unpledged notes," and that said Mason & Collins then agreed to deliver back to you the balance of the notes that you had previously sent to them, but that in fact they did not at that time inform you "where those notes were lost;" but that later on you again went to Chicago and found that a number
30 of said notes, including the \$26,500 involved in this suit, had been delivered by them to William Plagge to secure some pre-existing debt. You further state in said deposition that after learning this you wrote to Plagge on December 16, 1913, to the effect that said notes had been "stolen" from you. What did you mean by "stolen" in this instance?

INT. 8: Did you ever demand those notes, or any of them, back from Plagge? If so, did you make that de-

mand in writing, or by word of law? If in writing, what was the substance thereof? If you have a copy of such writing, please produce and attach same to your answers. If your demand was oral, was anyone else present at the time, and if so, who was it? And when were such demands, if any, made?

INT. 9: Did you ever bring suit against Plagge for the return of those notes or bonds, or any of them? If so, when, and in what court? Give particulars.

INT. 10: If you never brought suit against Plagge, or otherwise endeavored to recover possession of those notes or bonds from him, and if the same had been stolen from you, why did you not endeavor to recover same from Plagge? 10

INT. 11: On page 6 of your said deposition, you state, in substance, that about March 1, 1914, you went to Atlantic City "with a view to making some disposition of the matter which would protect myself (yourself) in the premises." What did you mean by this statement? 20
Did you mean protect yourself against Plagge?

INT. 12: If those notes were endorsed by you "without recourse," what further protection did you need against Plagge?

Excerpts from Answers of Thos. B. McPherson.

Filed May 27, 1919.

UNITED STATES DISTRICT COURT.

DISTRICT OF NEW JERSEY.

10	WILLIAM FLAGGE, Complainant, vs. THE BEAVER MORTGAGE COM- PANY, ET AL., Defendants.	}	IN EQUITY. ANSWERS BY THOMAS B. MC- PHERSON TO INTER- ROGATORIES FILED ON BEHALF OF COMPLAINANT IN THE ABOVE MATTER.
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ANSWER TO INT. 1: I do not hold said several bonds.
20 I did deliver them to Mason & Co., brokers, Chicago, for
the purpose of sale, and have not recovered possession
thereof; I do not know what has become of same.

ANSWER TO INT. 2: Yes; on date of delivery to
Mason & Co.

ANSWER TO INT. 3: Yes; on same date as answer to
2.

ANSWER TO INT. 4: I did deliver said bonds without
30 the mortgages to Frank C. Patton, representing Mason
& Company. They did not return same to me.

ANSWER TO INT. 5: None that is the subject to this
litigation.

ANSWER TO INT. 6: Answered by 5.

ANSWER TO INT. 7: I meant that Mason & Company
had not done as they agreed with the bonds, but had at-
tempted to pledge them for their own debt.

ANSWER TO INT. 8: I wrote the following letter:

“CHICAGO, ILL., Dec. 16, 1913.

William Plagge, First National Bank, Harvey, Ill.

Dear Sir: Replying to your inquiry in re Beaver Mortgage Company bonds, would say that those you hold, namely, No. 45, \$7,000; No. 46, \$5,500; No. 48, \$7,000; No. 49, \$7,000, were stolen from me, and are therefore worthless.

I still hold the mortgages securing this property and beg to advise you that any attempt on your part to dispose of those notes will certainly put you and your bank in a very awkward position, since I know how you came into possession of them and you now know the facts about them. You best get after the thieves from whom you acquired those notes or else you will never collect a white quarter on them from me or of the Beaver Mortgage Company. 10

Very respectfully yours,
THOMAS B. MCPHERSON.” 20

ANSWER TO INT. 9: No.

ANSWER TO INT. 10: Because Collins had agreed to recover possession of the bonds and return them to me.

ANSWER TO INT. 11: I meant to protect myself against anyone.

ANSWER TO INT. 12: The bonds at that time had not been paid and I wanted to notify the company and collect the debt. 30

Notice. Filed June 10th, 1919.

SUPREME COURT OF NEW JERSEY.

WILLIAM PLAGGE,	}	
Plaintiff,		
vs.		
THE BEAVER MORTGAGE COM- PANY,		10
Defendant.)	

Please take notice, that on Tuesday, the third day of June, nineteen hundred and nineteen, at the Supreme Court, State House, Trenton, I will move, on behalf of Alfred J. Perkins, Sheriff of Atlantic County, for leave to amend *nunc pro tunc*, as of August 6, 1919, the said Sheriff's return of service of summons and complaint in the above cause, filed in the office of the Clerk of the Supreme Court on August 6, 1918, by substituting for such original return and affidavit the return and affidavit a copy of which is hereto attached. 20
May 29, 1919.

ALFRED J. PERKINS,
Sheriff.

By JOHN SOLAN,
his Attorney. 30

IN THE SUPREME COURT OF NEW JERSEY.

ATLANTIC COUNTY.

	WILLIAM PLAGGE,	}	
	Plaintiff,		
10	vs.		ACTION AT LAW.
	THE BEAVER MORTGAGE COM-		MOTION.
	PANY,		
	Defendant.		

20 Alfred J. Perkins, Sheriff of Atlantic County afore-
 said, moves the Court for leave to amend *nunc pro tunc*,
 as of August 6, 1918, his return and affidavit of return
 of service of summons and complaint in the above cause
 filed herein on August 6, 1918, by substituting for such
 original return and affidavit, the following, viz:

30 Duly served the within summons and complaint
 on August 1, 1918, on the Beaver Mortgage Co. by
 delivering a copy thereof personally at the May's
 Landing Railroad Station, May's Landing, Atlantic
 County, New Jersey, to Herbert J. Cuthbert, per-
 sonally, the same being then and there a Director of
 said Beaver Mortgage Co., the President of said
 Beaver Mortgage Co., and the person designated
 by said Company as the agent upon whom process
 against said Company may be served.

(Signed) ALFRER J. PERKINS,
 Sheriff.

AFFIDAVIT OF SERVICE.

NEW JERSEY SUPREME COURT.

WILLIAM FLAGGE,	}	ACTION AT LAW.
VS.		
THE BEAVER MORTGAGE CO.		

STATE OF NEW JERSEY,	}	ss.
ATLANTIC COUNTY.		

Melvin A. Abbott, Under Sheriff of the County 10
of Atlantic, being duly sworn according to law, on
his oath saith, that on the first day of August, nine-
teen hundred and eighteen, he served on the defend-
ant, The Beaver Mortgage Co., by delivering to
Herbert J. Cuthbert personally (he being then and
there a Director of said Company, the President of
said Company, and the person designated by said
Company as the agent upon whom process against
said Company may be served) a full, true and cor- 20
rect copy of the annexed complaint in the above
stated cause, with the summons to which said com-
plaint is annexed, and that there was endorsed on
the said complaint a notice that if the defendant in-
tends to make a defense to the said action, it shall,
within ten days after the date of personal service of
said copy of the complaint, file with the Clerk of
the above mentioned Court an Affidavit of Merits,
and unless in case such affidavit shall be so filed the
said defendant shall file an answer to the said action 30
within twenty days after the date of service of said
copy of the complaint, judgment by default will be
entered against it.

(Signed) MELVIN A. ABBOTT,
Under Sheriff.

Sworn and subscribed to before me this twenty-
ninth day of May, A. D. 1919.

(Signed) DOLORES A. LOYER,
Notary Public of N. J.

Execution. Filed October 20, 1918.

NEW JERSEY, SS.

The State of New Jersey to our Sheriff of
[L. S.] our County of Atlantic, Greeting:

- 10 We command you that of the goods and chattels, rights and credits of Beaver Mortgage Company, defendant, in your county, you cause to be made the sum of thirty-five thousand one hundred and sixty-seven dollars and seventy-six cents which to William Plagge, plaintiff, lately in our Supreme Court, at Trenton, before the Justice of our same Court, for his damages which he has sustained and which were adjudged to him in an action at law, and also for his costs and charges by him about his suit in this behalf expended, whereof the said defendant is convicted, as appears of record; and if sufficient goods and chattels, rights and credits of the said defendant cannot be found in your county, whereof the damages aforesaid may be made, then we further command
- 20 you that you cause the whole, or the residue, as the case may require, of the said damages, to be made of the lands, tenements, hereditaments and real estate whereof the said defendant was seized on the eighteenth day of September, nineteen hundred and eighteen, or at any time afterwards, in whose hands soever the same may be; and that you have that money before our Justices aforesaid, at Trenton aforesaid, on the first Tuesday in November next, to render unto the said plaintiff for his damages aforesaid, and have you then and there this writ.
- 30 Witness, WILLIAM S. GUMMERE, Esquire, Chief Justice, at Trenton, the first day of October, A. D. nineteen hundred and eighteen.

ENOCH L. JOHNSON,
Clerk.

RICHARD STOCKTON, 3rd,
Attorney.

A true copy.

ENOCH L. JOHNSON,
Clerk.

[ENDORSED.]

517 D 31

NEW JERSEY SUPREME COURT.

ATLANTIC COUNTY.

WILLIAM PLAGGE,

vs.

BEAVER MORTGAGE COMPANY.

ACTION AT LAW. FL. FA. DE BONIS ET TERRIS.

10

Ret'ble November Term, A. D. 1918.

RICHARD STOCKTON, 3rd,
Attorney.

Lévy Damages \$35,130 35

Cost 37 41

\$35,167 76

Interest thereon from September 18, 1918.

Besides Sheriff's exe'n fees.

20

Delivered to me 10/4, 1918, at 9 o'clock A. M.

ALFRED J. PERKINS,
Sheriff.by MELVIN A. ABBOTT,
Under Sheriff.

Filed Oct. 20, 1918.

ENOCH L. JOHNSON,
Clerk.Recorded in the office of the Clerk of the Supreme 30
Court, in A 41 of Process, page 304.ENOCH L. JOHNSON,
Clerk.

This execution returned into Court unsatisfied.

ALFRED J. PERKINS,
Sheriff.

WILLIAM PLAGGE,

vs.

BEAVER MORTGAGE COMPANY.

Not being able to find any goods or chattels, rights or credits, lands, tenements or hereditaments of the within defendant in Atlantic County to make the amount of the within writ, or any part thereof, I return said writ wholly unsatisfied.

10 Dated Oct. 18, 1918.

ALFRED J. PERKINS,
Sheriff.by HOWARD R. CLOUD,
Under Sheriff.

A true copy.

ENOCH L. JOHNSON
Clerk.

ALFRED J. PERKINS,
Sheriff of Atlantic County,
Mays Landing, N. J.

20

November 1, 1918.

*Enoch L. Johnson, Esq., Supreme Court Clerk, Trenton,
N. J.*

DEAR SIR:—

Referring to my letter of the 29th ult., re Wm. Plagge vs. Beaver Mortgage Company, returning execution in connection therewith, I would be glad to have you amend same by crossing out phrase "By order of attorney of Record," in compliance with the request of John Solan, Esq., for Richard Stockton, 3rd.

30

ALFRED J. PERKINS,
Sheriff.

Received Nov. 2, 1918.

ENOCH L. JOHNSON,

A true copy.

Clerk.

ENOCH L. JOHNSON
Clerk.

Opinion. Filed July 9th, 1919.

NEW JERSEY SUPREME COURT.

JUNE TERM, 1919.

WILLIAM FLAGGE,	}	
VS.		
THE BEAVER MORTGAGE COM-		
PANY,		10

Argued June 4, 1919. Decided July , 1919.

On rule to show cause.

Before JUSTICES SWAYZE and PARKER.

For the plaintiff, JOHN SOLAN.

For the defendant, EDWARD T. CURRY (NORMAN GREY on the brief). 20

Per Curiam :

This is defendant's rule to show cause why a default judgment based on certain instruments in writing for the payment of money, concededly executed by defendant and held by plaintiff, and concededly unpaid to plaintiff, should not be opened and defendant let in to plead in the suit. The verified petition of defendant, on which this rule was based, set up three separate defences desired to be made: (1) that plaintiff has no title to the documents; (2) that the debts evidenced thereby have been paid (and mortgages given as security for such payment cancelled); (3) that process was not lawfully served, inasmuch as service was not made upon Marie Higgins, "one of the surviving trustees of defendant." 30

I. Some semblance of a claim was made at the argument that plaintiff had not lawfully obtained the docu-

ments for a legal consideration, but this broke down and we think there is nothing in it. The documents in question, to be particularly discussed in a moment, are plainly negotiable paper and there is nothing to show that plaintiff did not acquire them in due course.

2. The papers in question are promises to pay certain principal sums of money and interest coupons thereto attached. They recite that they are secured by a "first mortgage on real estate duly recorded." It is not clear
10 whether the mortgage or mortgages was or were trust mortgages to a trustee, but the scheme was plainly that of a general corporate "bond issue" commonly so called, secured by mortgage lien. The mortgages appear to have been cancelled. We are not informed of their terms. A suit is pending in the Federal Court to reinstate and foreclose them. One thing is clear, viz: The claim that they are paid is not made out even prima facie, so far as plaintiff is concerned; in other words, he has never received the money called for by his papers; and this
20 disposes of the gravamen of the second ground.

3. The third assigned ground is similarly unsubstantial. Defendant corporation had been dissolved by executive proclamation. By the return, which we ordered amended, it appears that service of process was duly made on the registered agent. This is sufficient. *Hould vs. Squire & Co.*, 82 N. J. L., 103; 79 Atl., 282.

4. The ground seriously urged at the argument was not stated in the petition. It is that the documents being
30 secured by mortgage, the Act of 1887 (C. S. 3421) applies, and the mortgages must first be foreclosed. To this there are several answers. The first is that defendant in the same breath claims that the mortgages were lawfully cancelled of record. If so, plaintiff has lost his security but not his debt, and can sue at law. *Seigman vs. Streeter*, 64 N. J. L., 169. *Pruden vs. Savage*, 70 N. J. L., 122.

The second is that it does not appear that plaintiff ever had, or that the holder of the documents ever had, a power to foreclose. The mortgages are not in evidence; we have no knowledge of their terms; and for all we know they may have been made to a trustee and subject to foreclosure only on demand of a percentage of the "bondholders" as usual in such cases.

The third is that it is at least most doubtful whether the statute is applicable to an issue of corporate negotiable coupon bonds secured by trust mortgage. It seems to have been so held in *Holmes vs. Steamship Co.*, 57 N. J. L., 16, by this Court, but otherwise in the Court of Chancery at a later date, *Reinhardt vs. Tel Co.*, 71 N. J. Eq., 72, 73. We need not decide the point because all the evidence lawfully before us shows that the instruments in question are not under seal. They were not put in evidence on this rule; and the complaint shows an instrument reciting that it is a "bond" but not sealed and not reciting that it is sealed. They are called "notes" and "bonds" indiscriminately throughout the testimony. Nothing unsealed can be a bond at common law; and there is no statute applicable. The instruments appear to be merely notes, subject to the six-year limitation, and not within the statute. *Updike vs. Van Orden*, 95 Atl., 547. 10 20

We may add that defendant, was in laches on this application. The summons was duly served, and came to the knowledge of the proper officials. Notwithstanding this a default was suffered; and it was six months after judgment before application was made for the rule. In that period an entire term of this Court, and part of another, had intervened. An application under such circumstances is not regarded with favor. *Cooper vs. Galbraith*, 24 N. J. L., 219. 30

The rule will be discharged.

*Rule to Show Cause Discharging Rule. Filed August
5, 1919.*

NEW JERSEY SUPREME COURT.

JUNE TERM, 1919.

10	WILLIAM PLAGGE,	}	
	Plaintiff,		
	vs.		ACTION AT LAW.
	THE BEAVER MORTGAGE COM- PANY,		RULE.
	Defendant.		

20 Motion having been made for a rule to show cause why the judgment entered in the above-entitled action on the eighteenth day of September, 1918, for the sum of \$35.-130.35, besides costs, should not be opened and the levy made under the execution issued thereon be set aside and the defendant permitted to file an affidavit of merits and answer to the said action, and said rule to show cause having been allowed and the matter coming on to be heard and the Court having considered the matter:

It is, on this fifth day of August, nineteen hundred and nineteen, ordered that said rule to show cause be discharged.

30

Entered on motion of

RICHARD STOCKTON, 3rd,
JOHN SOLAN,
Attorneys for Plaintiff.

Notice and Grounds of Appeal. Filed August 27, 1919

NEW JERSEY SUPREME COURT.

WILLIAM FLAGGE, Plaintiff-Respondent,	}	APPEAL TO NEW JERSEY COURT OF ERRORS AND AP- PEALS.	
vs.		NOTICE AND GROUNDS OF APPEAL.	10
BEAVER MORTGAGE COMPANY, Defendant-Appellant.	}		

*To Richard Stockton, 3rd, Esq., and John Solan, Esq.,
Attorneys for Plaintiff-Respondent.*

Take notice, that the defendant appeals from the whole of the judgment in this cause, and from the whole of the order of this Court, filed August 5th, 1919, discharging the rule to show cause why the judgment should not be opened, on the following grounds: 20

1. Because judgment was entered against defendant-appellant upon four bonds held by the plaintiff-respondent, each of which bonds was secured by an individual mortgage running to obligee named in the bonds, each of which mortgages covered different real estate in New Jersey, and was given to secure the same debt as the bond. The Act of March 23, 1881, Compiled Statutes, Volume 3, page 3421, paragraph 48, provides that

“In all cases where a bond and mortgage has or may hereafter be given for the same debt, all proceedings to collect said debt shall be *first* to foreclose the mortgage,” etc. 30

Proceedings to foreclose the four mortgages accompanying the four bonds were instituted in the United States District Court prior to the commencing of proceedings and entry of judgment upon the four bonds, but

no decree has yet been made in said United States District Court suit.

The Court erred, therefore, in refusing to vacate said judgment as being prematurely, improvidently and unlawfully entered.

10 2. Because said judgment was entered in the Court below upon four bonds, without first foreclosing the mortgages, when the plaintiff had previously instituted and still is proceeding to foreclose the four mortgages, each securing one of the bonds in this suit, but has not yet obtained a final decree. Each of said mortgages are upon real estate situate in New Jersey to secure the payment of the same debt, as evidenced by each of said bonds, respectively.

3. Because the Court below found that the four bonds were part of a corporate bond issue, and that it did not appear whether or not the mortgages were trust mortgages made to a trustee.

20 4. Because the Court below ruled that the four bonds, which are the subject of this suit, were not under seal.

5. Because the Court below held that the four bonds, which are the subject of this suit, were notes, and so not within the statute requiring foreclosure of the mortgage first when the bond and mortgage are given for the same debt.

6. Because the Court below decided that the defendant-appellant was in laches on its application to open the judgment.

30 7. Because the Court below decided that the four bonds in question were negotiable paper.

8. Because the Court below decided that there was no evidence to show that the defendant-appellant did not acquire the four bonds, which are the subject of this suit, in due course.

9. Because the Court below found that the plaintiff had lawfully obtained the four bonds which are the subject of this suit.

10. Because the Court refused to vacate said judgment as being prematurely, improvidently and unlawfully entered.

11. Because the Court below dismissed the said rule to show cause why the said judgment should not be vacated as being prematurely, improvidently and unlawfully entered.

12. Because the Court below gave judgment on said rule to show cause in favor of the plaintiff and not the defendant.

13. Because the judgment of the Court below was erroneous, illegal and contrary to law. 10

NORMAN GREY,
Attorney for Defendant-Appellant.

[ENDORSED.]

NEW JERSEY SUPREME COURT.

WILLIAM PLAGGE, Plaintiff-Respondent, 20

vs.

BEAVER MORTGAGE COMPANY, Defendant-Appellant.

APPEAL TO N. J. COURT OF ERRORS AND APPEALS.

NOTICE AND GROUNDS OF APPEAL.

NORMAN GREY,
Atty. for Defendant-Appellant,
104 Market St., Camden, N. J.

Service of the within notice and grounds of appeal 30
hereby acknowledged this 20th day of August, A. D.
1919.

RICHARD STOCKTON, 3rd,
JOHN SOLAN,
Attys. for Plaintiff-Respondent.

Filed Aug. 27, 1919.

ENOCH L. JOHNSON, Clerk.

Notice. Filed September 15, 1919.

NEW JERSEY COURT OF ERRORS AND
APPEALS.

10	WILLIAM PLAGGE, Plaintiff-Respondent, vs. BEAVER MORTGAGE COMPANY, Defendant-Appellant.	}	ON APPEAL FROM NEW JERSEY SU- PREME COURT. NOTICE.
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*To Richard Stockton, 3rd, Esq., and John Solan, Esq.,
Attorneys for Plaintiff-Respondent:*

Take notice, that on Thursday, September 11th, at
11.30 A. M., I will apply to the Court of Errors and Ap-
peals, at their Conference Chamber, in the State House,
20 Trenton, New Jersey, to have the following papers ad-
mitted as part of the record in this appeal:

1. Amended and supplemental bill of complaint filed
in the District Court of the United States for the
District of New Jersey, in equity, in the suit of
William Plagge, complainant, vs. Beaver Mortgage
Company, Ventnor Lots Company, Ventnor Park
Development Company, West Jersey Trust Com-
pany and Thomas B. McPherson, defendants.
- 30 2. Four original bonds which are the subject of this
suit, which bonds are in the possession of plaintiff-
respondent.
3. Four original mortgages (now cancelled), made by
Beaver Mortgage Company to Thomas B. McPher-
son, individually, each mortgage originally securing
one of the four bonds, the subject of this suit, which
four mortgages cover four separate tracts of real
estate in New Jersey.

4. Certified copy of the search showing a notice filed in the office of the Clerk of the Court of Common Pleas of Atlantic county, by Richard Stockton, 3rd, attorney for complainant, in the matter of William Plagge, complainant, vs. Beaver Mortgage Company, Ventnor Lots Company, West Jersey Trust Company and Thomas B. McPherson, entitled in the District Court of the United States for the District of New Jersey, which notice was filed December 7, 1916, and recorded in Chancery Notice Book No. 3, page 51. 10

NORMAN GREY,
Attorney for Defendant-Appellant.

[ENDORSED.]

Service of the within notice hereby acknowledged this 6th day of September, 1919.

RICHARD STOCKTON, 3rd, 20
JOHN SOLAN,
Attys. for Plaintiff-Respondent.

Item I of Notice. Filed Jan. 13, 1919

IN THE DISTRICT COURT OF THE UNITED STATES.

DISTRICT OF NEW JERSEY.

	WILLIAM PLAGGE,	}	
	Complainant,		
10	vs.		
	THE BEAVER MORTGAGE COM-		
	PANY, THE VENTNOR LOTS		
	COMPANY, THE VENTNOR PARK		IN EQUITY.
	DEVELOPMENT COMPANY, THE		
	WEST JERSEY TRUST COMPANY,		
	and THOMAS B. MCPHERSON,		
20	Defendants.		

AMENDED AND SUPPLEMENTAL BILL OF COMPLAINT.

To the Honorable, the Judges of said District Court in Chancery sitting:

William Plagge, complainant, suing on his own behalf and on behalf of all other creditors (in their respective orders of priority) of the Beaver Mortgage Company, who shall become parties hereto and shall contribute to the costs of this suit, brings this, his amended and supplemental bill of complaint, against said Beaver Mortgage Company and the Ventnor Lots Company, the West Jersey Trust Company, the Ventnor Park Development Company and Thomas B. McPherson, defendants, and for cause of complaint shows unto your Honor as follows:

First. The complainant is, and at and before the beginning of this suit was, a citizen of the State of Illinois, and a resident in the County of Cook in said State.

Second. The said Beaver Mortgage Company is a corporation organized and existing under the laws of the State of New Jersey, and having its principal office and place of business in the office of one Edwin H. Cuthbert, at Atlantic City, in the County of Atlantic, in said State of New Jersey.

Third. The said Ventnor Lots Company is a corporation organized and existing under the laws of the State of New Jersey, and having its principal office and place of business in said office of the said Edwin H. Cuthbert, at Atlantic City, in the said County of Atlantic and State of New Jersey. 10

Fourth. The said West Jersey Trust Company is a corporation organized and existing under the laws of the State of New Jersey, and having its principal office and place of business in the City of Camden, in said State.

Fifth. The said Ventnor Park Development Company is a corporation organized and existing under the laws of the State of New Jersey and having its principal office and place of business in Atlantic City, in the County of Atlantic, in said State of New Jersey. 20

Sixth. The said Thomas B. McPherson is a citizen of the State of Nebraska and a resident of the City of Omaha in said State.

Seventh. The amount in controversy herein (as will more fully appear from the facts hereinafter set forth) exceeds, exclusive of interest and costs, the sum or value of three thousand (\$3,000) dollars. 30

Eighth. This suit is commenced (as will more fully appear from the facts hereinafter set forth) for the purpose, among other things, of establishing and enforcing a claim or lien, in complainant's behalf and in behalf of all other creditors of said Beaver Mortgage Company,

upon certain parcels of real property situate within the County of Atlantic, in the State of New Jersey, and to cancel or remove certain incumbrances, liens and clouds upon the title and interest of complainant and other creditors in and to said real property.

Ninth. On or about April 10, 1913, the said Beaver Mortgage Company executed and delivered to the said Thomas B. McPherson its four (4) several promissory notes (hereinafter referred to as "bonds") of that date, all bearing interest from date, of six (6%) per cent. per annum, payable semi-annually, and all maturing on April 10, 1916, and payable to the order of said Thomas B. McPherson, for the several principal sums following, viz: The bonds herein designated respectively as numbers forty-five (45), forty-eight (48) and forty-nine (49), each for the principal sum of seven thousand (\$7,000) dollars, and the one hereinafter designated as number Forty-six (46) for the principal sum of five thousand five hundred (\$5,500) dollars, the said four (4) bonds being for a total principal sum of twenty-six thousand five hundred (\$26,500) dollars; to each of said bonds, when originally executed and issued, were attached six (6) interest coupons, for the semi-annual interest on the said respective principal sums, all said coupons maturing respectively on the tenth day of April and the tenth day of October in each year after the date thereof, until the maturity of the bond to which same were so respectively attached. All of which will more fully appear by reference to copies of said bonds, marked, respectively, Complainant's Exhibits "Bond No. 45," "Bond No. 46," "Bond No. 48" and "Bond No. 49," all of which are filed herewith as parts hereof.

Tenth. In and by each of said bonds it was provided and stipulated that the same should bear interest after maturity at the rate of six (6%) per cent. per annum, until paid, and further, that should suit be commenced to collect the same or to foreclose the indenture securing

the same, then a reasonable attorney's fee should be allowed, and should become a part of the judgment or decree rendered therefor; and, further, on the face of each of said bonds it was recited and stipulated that the same was given for an actual loan of money and that said loan was secured by first mortgage on real estate duly recorded.

Eleventh. To secure to the said Thomas B. McPherson and his assigns the payment of said several bonds, with interest, the said Beaver Mortgage Company, at the time of the execution thereof, to wit, on or about April 10, 1913, also executed and delivered to said McPherson, and caused to be recorded on April 18, 1913, in the office of the Clerk of the Court of Common Pleas of Atlantic County, New Jersey, four (4) several indentures of mortgage (hereinafter designated respectively as "Mortgage No. 45," "Mortgage No. 46," "Mortgage No. 48" and "Mortgage No. 49", each thereof conveying to said McPherson, his heirs and assigns, a certain parcel of land lying in Ventnor City, in the County of Atlantic, in the State of New Jersey, which said several parcels so mortgaged are described as follows, to wit:

Twelfth. Said *Mortgage No. 45*, securing said bond No. 45, covered and conveyed the parcel beginning in the northwest corner of Avenue E and Fourth avenue (both avenues 50 feet wide), and running thence (1) northwardly along the west line of Fourth avenue, four hundred and twenty-five (425) feet to Park avenue; thence (2) westwardly along the said line of Park avenue, one hundred and sixty (160) feet to Third avenue; thence (3) southwardly along the east line of Third avenue, four hundred and twenty-five (425) feet to Avenue E; thence (4) eastwardly along the north line of Avenue E, one hundred and sixty (160) feet, to the place of beginning. Said parcel being also described as lots numbered one (1) to twenty-eight (28) inclusive, in *Block Numbered forty-four (44)* on plan of lots in Ventnor City

entitled "Map of Building Lots in Ventnor City, N. J., owned by Wheelock Company. E. D. Rightmire, City Engineer, Ventnor City, N. J. Scale, one hundred and fifty (150) feet to the inch," on file in the Clerk's Office of Atlantic County, at May's Landing, New Jersey. And said Mortgage No. 45 was duly recorded in Mortgage Book No. 137, at page 387, etc., in said Clerk's Office of Atlantic County, New Jersey. All of which will more fully appear by reference to a copy of said mortgage marked "Complainant's Exhibit Mortgage No. 45,"

10 which is filed herewith as a part hereof.

Thirteenth. Said *Mortgage No. 46*, securing said Bond No. 46, covered and conveyed the parcel of land beginning in the northwest corner of Grand avenue (80 feet wide) and Avenue E (50 feet wide), and running thence (1) westwardly along the northerly line of Avenue E, a distance of one hundred and sixty (160) feet to the easterly line of Fifth avenue, and (2) northwardly along the easterly line of Fifth avenue, four hundred and twenty-five (425) feet, to the southerly line of Park avenue; thence (3) eastwardly along the southerly line of Park avenue, one hundred and thirty-five (135) feet; thence (4) on the curve (the radius of which is 25 feet) a distance of thirty-nine and twenty-seven hundredths (39.27) feet, to a point in the westerly line of Grand avenue, four hundred (400) feet, to the place of beginning; said parcel being also described as Lots Numbered One (1) to Twenty-two (22) inclusive, in *Block Number Forty-six (46)* on plan of lots in Ventnor City, entitled

20 "Map of Building Lots in Ventnor City, N. J., owned by Wheelock Co., E. D. Rightmire, City Engineer, Ventnor City, N. J. Scale 150 feet to the inch," on file in the Clerk's Office of Atlantic County, in May's Landing, New Jersey. All of which will more fully appear by reference to a copy of said mortgage marked "Complainant's Exhibit, Mortgage No. 46," which is filed here-

30 with and made a part hereof.

Fourteenth. Said *Mortgage No. 48*, securing said bond No. 48, covered and conveyed a parcel of land beginning in the northwest corner of Avenue E and Fifth avenue (both avenues 50 feet wide), and running thence (1) northwardly along the west line of Fifth avenue, four hundred and twenty-five (425) feet to Park avenue; thence (2) westwardly along the south line of Park avenue, one hundred and sixty (160) feet to Fourth avenue; thence (3) southwardly along the east line of Fourth avenue, four hundred and twenty-five (425) feet to Avenue E; thence (4) eastwardly along the north line of Avenue E, one hundred and sixty (160) feet to the place of beginning; said parcel being also described as Lots Numbered One (1) to Twenty-eight (28) in *Block Number Forty-five (45)* on plan of Lots in Ventnor City, entitled "Map of Building Lots in Ventnor City, N. J., owned by Wheelock Company; E. D. Rightmire, City Engineer, Ventnor City, New Jersey; scale 150 feet to the inch," on file in the Clerk's Office of Atlantic County, at May's Landing, New Jersey. Said Mortgage No. 48 was duly recorded in Mortgage Book No. 137, at page 392, etc., in said Clerk's Office of Atlantic County, New Jersey. All of which will more fully appear by reference to a copy of said mortgage marked "Complainant's Exhibit, Mortgage No. 48," which is filed herewith and made a part hereof.

Fifteenth. Said *Mortgage No. 49*, securing said Bond No. 49, covered and conveyed a parcel beginning in the northwest corner of Avenue E and Eighth avenue (both avenues 50 feet wide), and running thence (1) northwardly along the west line of Eighth avenue, four hundred and twenty-five (425) feet to Park avenue; thence (2) westwardly along the south line of Park avenue, one hundred and sixty (160) feet to Seventh avenue; thence (3) southwardly along the east line of Seventh avenue, four hundred and twenty-five (425) feet to Avenue E; thence eastwardly along the north line of Avenue E, one

hundred and sixty (160) feet to the place of beginning, said parcel being also described as Lots Numbered One (1) to Twenty-eight (28) inclusive in *Block Numbered Forty-nine (49)*, on plan of lots in Ventnor City, entitled "Map of Building Lots in Ventnor City, N. J., owned by Wheelock Company, E. D. Rightmire, City Engineer, Ventnor City, New Jersey; scale 150 feet to the inch," on file in the Clerk's Office of Atlantic County, at May's Landing, New Jersey; said Mortgage No. 49 was duly recorded in Mortgage Book No. 139, at page 46, etc.,
10 in said Clerk's Office of Atlantic County, New Jersey. All of which will more fully appear by reference to copies of said mortgage marked "Complainant's Exhibit, Mortgage No. 49," which is filed herewith and made a part hereof.

Sixteenth. In and by each of said several mortgages it was expressly covenanted by said Beaver Mortgage Company, mortgagor, for itself and its assigns, to and with said Thomas B. McPherson, and his assigns, that it,
20 the said mortgagor, was then and there the owner in fee of said real estate, and that same was free from any lien or incumbrance, and that it would warrant and defend the title thereto against the lawful claims of all persons.

Seventeenth. In and by each of said mortgages said mortgagor further expressly agreed to pay its said bonds and interest coupons on the respective dates when the same should severally become due, and to pay all taxes and assessments on said mortgaged real estate before delinquency, until said bonds should be fully paid; and further that, in case of failure to pay any of said taxes before
30 such delinquency, then the legal holder of the said bonds respectively might pay same, and that thereupon the sum so advanced, with interest at six (6%) per cent. per annum, should be repaid by the mortgagor, and should be secured by said mortgages respectively.

Eighteenth. In and by said mortgages it was further stipulated that, if default should be made in the payment

of the said bond or bonds so respectively secured thereby, or in the payment of any part thereof, when due, then the mortgagee or his assigns should have authority to take immediate possession of the mortgaged premises and to claim the rents therefrom, and to apply the proceeds to the payment of the debt secured thereby.

Nineteenth. And it was further stipulated and provided in said mortgages that, in case of foreclosure suit thereon, a receiver might be appointed upon application to the Court wherein such foreclosure proceeding might be brought, or to any judge of said Court, either in term time or vacation, without notice to the mortgagor of such application; and in said mortgages respectively it was also recited and stipulated that the said mortgagor thereby consented to such appointment without other evidence than the production in Court of said mortgages respectively; and that such receiver might take immediate possession of the mortgaged premises and claim any rents therefrom, and do all other things that might be required of him by order of Court. 10

Twentieth. Thereafter and before the maturity of any of said bonds the said Thomas B. McPherson endorsed the same, and the several coupons then attached to them respectively (being all of said coupons originally executed, except those maturing on October 10, 1913), in blank, and thereupon complainant lawfully acquired and held and owned, and he now holds and owns, all of said bonds and coupons so endorsed, together with the several assignments of said mortgages endorsed, as aforesaid, on each of said bonds. 20

Twenty-first. But notwithstanding such transfer of said bonds and mortgages to this complainant the said McPherson retained actual manual possession of the originals of said several mortgage instruments, and on or about March 5, 1914, for the purpose of thereby fraudulently hindering and delaying this complainant in the collection of his mortgage claims as aforesaid against 30

said Beaver Mortgage Company and clouding his lien interest in said several parcels of land so mortgaged, the said McPherson, with the knowledge, consent and co-operation of the then president, directors and stockholders of said Beaver Mortgage Company, destroyed or mutilated the seals on said several mortgage instruments, so as to make them each appear to have been duly cancelled.

10 Twenty-second. At the time of the such pretended cancellation of said mortgages as aforesaid the total outstanding capital stock of said Beaver Mortgage Company consisted of three hundred (300) shares only, of which one Edwin H. Cuthbert held two hundred and ninety (290), Herbert J. Cuthbert held four (4), Marie Higgins held three (3) and Talitha V. Rose held three (3), and at that time said Herbert J. Cuthbert was President, and said Talitha V. Rose was Secretary, of said Company, and the Board of Directors consisted of said Edwin H. Cuthbert, Herbert J. Cuthbert, Marie Higgins and Talitha V. Rose, and no others.

20 Twenty-third. And thereupon, with the like consent and co-operation of the then officers, directors, and stockholders of said Mortgage Company, the said Herbert J. Cuthbert, acting therein at the request of said McPherson, mailed said several mortgage instruments, *so mutilated*, to the Clerk of the Court of Common Pleas of Atlantic County, New Jersey, together with a certain writing known as a "warrant of cancellation," which had theretofore been executed and acknowledged by said McPherson, he pretending and purporting therein to be the law-
30 ful owner of such mortgages. In and by such "warrant of cancellation" the said Clerk was requested to cancel said several mortgage instruments (together with certain other mortgages) upon the records of said mortgages in the said Clerk's office.

Twenty-fourth. Said "warrant of cancellation" was so acknowledged by said McPherson on March 2, 1914, before said Edwin H. Cuthbert, acting therein as Commissioner of Deeds for New Jersey.

Twenty-fifth. In and by said so-called "warrant of cancellation" it was falsely recited and stated by said McPherson that said several mortgages had been theretofore paid off and satisfied. But complainant shows that, in fact, no part of the debt secured by said Mortgages No. 45, No. 46, No. 48 and No. 49, or by any of them, had been theretofore, or ever yet has been, paid off or satisfied in whole or in part, but all of such indebtedness, as well as all of said bonds evidencing same, were, and still are, wholly unpaid, and are and then were *held and owned* by this complainant, all of which was then and theretofore well known to said McPherson and to the said Beaver Mortgage Company, and to its then officers, directors and stockholders, as aforesaid. 10

Twenty-sixth. Upon the receipt of said "warrant of cancellation" the said Clerk of the Court of Common Pleas of Atlantic County, New Jersey, on March 5, 1914, made entries of cancellation accordingly upon the records of each of said Mortgages No. 45, No. 46, No. 48 and No. 49, in his office. 20

Twenty-seventh. And complainant shows that, by the said fraudulent acts of said Thomas B. McPherson, Edwin H. Cuthbert, Herbert J. Cuthbert, Marie Higgins, Talitha V. Rose and the Beaver Mortgage Company, it has been falsely and fraudulently made to appear upon said records that the said several parcels of land described in said Mortgages No. 45, No. 46, No. 48 and No. 49, were and are no longer incumbered thereby, and that the said indebtedness of said Beaver Mortgage Company to complainant is no longer secured by any lien on said lands. 30

Twenty-eighth. At and before the time when said entries of cancellation were so made this complainant had in his possession all of the said mortgage bonds, and none of them was produced before, or presented to, said clerk of said Common Pleas Court, as evidence of the right of said McPherson, or of said Beaver Mortgage Company, to cause said mortgages to be so cancelled.

Twenty-ninth. The said entries of cancellation upon the land records of Atlantic County, New Jersey, were made without the knowledge or consent of this complainant. Complainant first learned thereof more than a year afterwards. Until then complainant had no reason to believe, and did not suppose, that said mortgages or any of them had been mutilated or cancelled, or that any entry of the cancellation thereof had been made on the records, but believed that said mortgage instruments were still intact and un mutilated and that said mortgage
10 liens were still in appearance of record as well as in law, for the security of said bonds so then and now held by him.

Thirtieth. This complainant is advised and insists that such pretended cancellation of said Mortgages No. 45, No. 46, No. 48 and No. 49, was and is null and void as against complainant, and that all of said mortgage liens are, notwithstanding, in full force and effect as against said Beaver Mortgage Company and all of the
20 other defendants herein.

Thirty-first. The said principal sum of twenty-six thousand five hundred (\$26,500) dollars, with interest thereon at six (6%) per cent. per annum from October 10, 1913, so secured by said mortgages, and all of the said several promissory notes or bonds evidencing such indebtedness, with all the coupons aforesaid (save those maturing on October 10, 1913,) have matured and become due to complainant, and are nevertheless unpaid, although complainant has heretofore duly requested pay-
30 ment; and by reason thereof the said several mortgaged premises have become forfeited, subject only to the right of redemption, and said several mortgages may now lawfully be foreclosed.

Thirty-second. In preparation for, and in execution of, said scheme to defraud complainant and destroy or becloud his mortgage lien upon said lands, and to hinder and delay him and the other creditors of said Beaver

Mortgage Company, the said Thomas B. McPherson, with said Herbert J. Cuthbert, Edwin H. Cuthbert, Marie Higgins and Talitha V. Rose (who were then and there, as aforesaid, the only stockholders and directors of the said Beaver Mortgage Company) procured to be organized under the laws of New Jersey the defendant corporation, The Ventnor Lots Company, with a total capital stock of one hundred thousand (\$100,000) dollars.

Thirty-third. The Certificate of Incorporation of said Ventnor Lots Company was acknowledged on February 10 21, 1914, and the said persons last above named (except said McPherson) were therein designated as constituting all the directors and officers of said Ventnor Lots Company, with said H. J. Cuthbert as President thereof. Said certificate was duly recorded on February 24, 1914, in Book No. 9, at page 51 of Records in the office of the Clerk of said Atlantic County, New Jersey, in which county, in and by the said certificate of incorporation, the principal office of said Company was located, all of which will more fully appear by reference to said records. 20

Thirty-fourth. And thereupon on March 4, 1914, in further pursuance of their said fraudulent scheme, the said directors and officers of said Beaver Mortgage Company, at the instance of the defendant, Thomas B. McPherson, caused to be executed the deed of said Mortgage Company, dated March 4, 1914, conveying to said Ventnor Lots Company each and all of the said several parcels of land so as aforesaid described in said several Mortgages No. 45, No. 46, No. 48 and No. 49, together with certain other lands then belonging to said Beaver Mortgage Company and hereinafter described, all situated in Ventnor City, Atlantic County, New Jersey. 30

Thirty-fifth. Said deed was recorded on March 5, 1914, in the office of the Clerk of the Court of Common Pleas of said County, in Book No. 522, at page 351, of said records. All of which will more fully appear by reference to said records, and to a copy of said deed,

ready to be here produced in Court, and to which complainant refers as a part of this bill of complaint.

Thirty-sixth. The said last named conveyance was made without any consideration of value moving therefor to said Beaver Mortgage Company, so that the property and assets of said Company were, to that extent, thereby diminished without any compensation or other thing of value to take the place of the property so conveyed away, or to maintain the resources of said Company in the interest of this complainant and other creditors thereof.

10

Thirty-seventh. But, in order to induce the said Edwin H. Cuthbert and the said other officers and directors of said Beaver Mortgage Company to make, or cause to be made, such conveyance in the name of said Company, the said McPherson and the said officers and directors then and there agreed that out of the said total capital stock of one hundred thousand (\$100,000) dollars of said Ventnor Lots Company, the said Edwin H. Cuthbert, Herbert J. Cuthbert, Marie Higgins and Talitha V.

20

Rose should altogether, without the payment of money or any other consideration therefor to said Beaver Mortgage Company, receive a total of thirty thousand (\$30,000) dollars par value of said shares of stock of said Ventnor Lots Company, the said McPherson himself to appropriate the remaining seventy thousand (\$70,000) dollars thereof.

30

Thirty-eighth. Accordingly, said arrangement was duly carried out after the said incorporation of the Ventnor Lots Company, the total capital stock thereof being, forthwith after the incorporation, and without consideration therefor, divided between and appropriated by said Edwin H. Cuthbert, who received twenty-nine thousand (\$29,000) dollars thereof, Herbert J. Cuthbert, who received four hundred (\$400) dollars thereof, Marie Higgins, who received three hundred (\$300) dollars thereof, Talitha V. Rose, who received three hundred (\$300) dollars thereof, and said Thomas B. McPherson, who re-

ceived seventy thousand (\$70,000) dollars, being the remainder thereof.

Thirty-ninth. The said Marie Higgins was then and there a bookkeeper, and the said Talitha V. Rose, a stenographer, both of them in the employ of said Edwin H. Cuthbert in Atlantic City, New Jersey, where said Cuthbert then and there conducted the business of a real estate agent; and said Herbert J. Cuthbert was the brother of said Edwin, and then had desk room in the latter's said office, where also was the designated principal office of said Beaver Mortgage Company, said Ventnor Lots Company and said Ventnor Park Development Company, and where the records of said several companies were kept. 10

Fortieth. In addition to the parcels so as aforesaid described in and covered by said Mortgages No. 45, No. 46, No. 48 and No. 49, the said Beaver Mortgage Company, in and by its said deed of March 14, 1914, included and fraudulently and without consideration conveyed to said Ventnor Lots Company the following parcels, all situate in Ventnor City, Atlantic County, New Jersey, viz: 20

Lots 1 to 28, inclusive, in Block 37, on a plan of lots in Ventnor City, entitled: "Map of Building Lots in Ventnor City, New Jersey, owned by Wheelock Company, E. D. Rightmire, City Engineer, Ventnor City, N. J., scale 150 feet to the inch;" on file in the Clerk's Office of Atlantic County, at May's Landing, New Jersey.

Lots 1 to 34, inclusive, and lot 36, all in Block 39 on said plan of lots.

Lots 1 to 28, inclusive, Block 42, on said plan of lots. 30

Lots 1 to 28, inclusive, Block, 43, on said plan of lots.

Lots 1 to 28, inclusive, Block 48, on said plan of lots.

Lots 1 to 28, inclusive, Block 50, on said plan of lots.

Forty-first. Thereafter and at some time prior to March 6, 1915, the complainant began to demand of said Beaver Mortgage Company payment of the interest then

overdue on said several bonds so held by him. Thereupon, on or about March 6, 1915, the said Thomas B. McPherson, Herbert J. Cuthbert, Marie Higgins and Talitha V. Rose, who together then owned all the capital stock of said Beaver Mortgage Company, caused to be held a meeting of the Board of Directors of said Company.

10 Forty-second. At that time said Higgins, Rose and H. J. Cuthbert constituted all the directors of said Company, and said McPherson owned all, or substantially all, of the entire capital stock of said Company, except a very few shares held by said directors to qualify them to act as such.

20 Forty-third. At said directors' meeting a resolution was unanimously passed authorizing the execution and issue by said Beaver Mortgage Company of three hundred and fifty (350) of its negotiable bonds, each for the principal sum of five hundred (\$500) dollars, being to the aggregate amount of one hundred and seventy-five thousand (\$175,000) dollars, the same being dated March 1, 1915, bearing interest at six per cent. (6%) per annum, and maturing in five (5) years from said date, all to be secured by a trust deed to the defendant, the West Jersey Trust Company, conveying to said Trust Company, in trust for such purpose, a total of one thousand seven hundred and eighty-four (1,784) lots, all situate in said City of Ventnor City, Atlantic County, New Jersey. Said resolution further directed that the
30 said entire issue of one hundred and seventy-five thousand (\$175,000) dollars of bonds should be delivered to said Thomas B. McPherson.

Forty-fourth. All of which will more fully appear by reference to a copy of the minutes of said directors' meeting, marked "Complainant's Exhibit A," and filed herewith as a part hereof. Said exhibit is a full and true copy of the minutes of said directors' meeting.

Forty-fifth. The lots or parcels so conveyed to said West Jersey Trust Company are all situate in Ventnor City, Atlantic County, New Jersey, and are designated and laid out on a plan of lots on file in the Clerk's office of Atlantic County, New Jersey, and entitled:

"Map of Building Lots in Ventnor City, N. J., owned "by Wheelock Company. E. D. Rightmire, C. E., Ventnor City, N. J. Scale, 150 feet—1 inch", the parcels so conveyed in trust being the Lots and Blocks following, viz.:

- 10
- Lots 1 to 73, inclusive, and Lot 79, all in *Block 1*.
 Lots 129, 130, 132 and 134, all in *Block 1-B*.
 Lots 1 to 124, inclusive, all in *Block 1-B*.
 Lots 1 to 28, inclusive, and Lots 30 and 31, all in *Block 19*.
 Lots 33 to 36, inclusive, and Lots 38 to 48, inclusive, all in *Block 19*.
 Lots 50 to 54, inclusive, and 56 to 60, inclusive, all in *Block 19*.
- 20
- Lots 1 to 36, inclusive, in *Block 29*.
 Lots 1 to 36, inclusive, in *Block 32*.
 Lots 1 to 36, inclusive, in *Block 33*.
 Lots 1 to 30, inclusive, and 32 to 36, inclusive, all in *Block 34*.
 Lots 1, 2, 3, 5 to 27, inclusive, 29, 31, 33 and 35, all in *Block 35*.
 Lots 1 to 30, inclusive, 32, 33, 34 and 36, all in *Block 38*.
 Lots 1 to 34, inclusive, and Lot 36, all in *Block 40*.
 Lots 1 to 24, inclusive, 26, 28, and 29 to 34, inclusive, 30 and Lot 36, all in *Block 41*.
 Lots 1 to 6, inclusive, and 9 to 22, inclusive, all in *Block 47*.
 Lots 1 to 28, inclusive, in *Block 51*.
 Lots 1 to 28, inclusive, in *Block 55*.
 Lots 1 to 28, inclusive, in *Block 56*.
 Lots 1 to 28, inclusive, in *Block 57*.

- Lots 7 to 28, inclusive, and Lot 4, all in *Block 58*.
 Lots 1 to 22, inclusive, in *Block 60*.
 Lots 1 to 28, inclusive, in *Block 61*.
 Lots 1 to 28, inclusive, in *Block 62*.
 Lots 1 to 28, inclusive, in *Block 63*.
 Lots 1 to 28, inclusive, in *Block 64*.
 Lots 1 to 60, inclusive, in *Block 65*.
 Lots 1 to 36, inclusive, in *Block 66*.
 Lots 1 to 36, inclusive, in *Block 67*.
 10 Lots 1 to 36, inclusive, in *Block 68*.
 Lots 1 to 28, inclusive, in *Block 70*.
 Lots 1 to 28, inclusive, in *Block 71*.
 Lots 1 to 36, inclusive, in *Block 72*.
 Lots 1 to 36, inclusive, in *Block 73*.
 Lots 1 to 36, inclusive, in *Block 74*.
 Lots 1 to 36, inclusive, in *Block 75*.
 Lots 1 to 82, inclusive, in *Block 76-A*.
 Lots 1 to 57, inclusive, and 60, 61 and 62, all in *Block*
 76.
 20 Lots 1 to 36, inclusive, in *Block 78*.
 Lots 1 to 36, inclusive, in *Block 79*.
 Lots 1 to 36, inclusive, in *Block 80*.
 Lots 1 to 36, inclusive, in *Block 81*.
 Lots 1 to 28, inclusive, in *Block 82*.
 Lots 1 to 28, inclusive, in *Block 83*.
 Lots 1 to 36, inclusive, in *Block 84*.
 Lots 1 to 36, inclusive, in *Block 85*.
 Lots 1 to 36, inclusive, in *Block 86*.
 Lots 1 to 36, inclusive, in *Block 87*.
 30 Lots 1 to 42, inclusive, in *Block 88*.
 Lots 1 to 42, inclusive, in *Block 89*.

Forty-sixth. And thereupon on the same day, March 6, 1915, the said Thomas B. McPherson, Herbert J. Cuthbert, Marie Higgins and Talitha V. Rose, who at that time together held and owned all the capital stock of said Beaver Mortgage Company, held a stockholders' meeting of said company and ratified the aforementioned action and resolution of said directors' meeting.

Forty-seventh. All of which will more fully appear by reference to a copy of the minutes of said stockholders' meeting, marked "Complainant's Exhibit B", and filed herewith as a part hereof. Said Exhibit is a full and true copy of the minutes of said stockholders' meeting.

Forty-eighth. Thereupon, on or about March 10, 1915, the said Beaver Mortgage Company, pursuant to the aforementioned resolutions, executed and delivered to said West Jersey Trust Company its trust deed conveying to said Trust Company, for the purposes and upon the trust aforesaid, the said seventeen hundred and eighty-four (1,784) lots in Ventnor City. 10

Forty-ninth. And thereupon there were executed by said Beaver Mortgage Company and delivered to said Thomas B. McPherson three hundred and fifty (350) negotiable bonds of said Beaver Mortgage Company, each for the principal sum of five hundred (\$500) dollars (being an aggregate of \$175,000), and all secured by said trust deed to said West Jersey Trust Company. Said trust deed was recorded on March 11, 1915, in the office of the Clerk of Atlantic County, New Jersey, in Mortgage Book No. 149, pages 61 and ff. All of which will more fully appear by reference to said record and to a certified copy of said trust deed, ready to be here produced in Court, and which complainant prays may be taken as part of this bill of complaint. 20

Fiftieth. For the like fraudulent purpose of further hindering and delaying this complainant and other creditors of said Beaver Mortgage Company, the said McPherson and the said Herbert J. Cuthbert, on or about March 9, 1915, caused to be incorporated under the laws of New Jersey the defendant, The Ventnor Park Development Company, with said Herbert J. Cuthbert for president, and with a total outstanding capital stock of fifty-three thousand (\$53,000) dollars, par value. 30

Fifty-first. Of said capital stock at least fifty thousand (\$50,000) dollars was forthwith delivered to and

held by (and is still held and owned by) said Thomas B. McPherson, who thereby practically controls said Ventnor Park Development Company and its directors and its affairs and property; and the remainder of said stock was at the same time issued to and held by the said Edwin H. Cuthbert and Herbert J. Cuthbert.

10 Fifty-second. And thereupon, in execution of such fraudulent purpose, the said Beaver Mortgage Company (being then controlled, as hereinbefore set forth, by said McPherson and Cuthbert), by deed dated March 26, 1915, conveyed to said Ventnor Park Development Company all of the said seventeen hundred and eighty-four (1,784) lots in Ventnor City, subject to said trust deed for one hundred and seventy-five thousand (\$175,000) dollars.

20 Fifty-third. And thereby the said McPherson, holding as aforesaid all of the said \$175,000 of bonds and also the great majority of the stock of said Ventnor Park Development Company, has come into the practical ownership and control of all of said one thousand seven hundred and eighty-four (1,784) lots so standing in the name of said Ventnor Park Development Company, with the record title thereto apparently free and clear of all liens or claims of, or in favor of, complainant and other creditors of said Beaver Mortgage Company except said debt of \$175,000.

30 Fifty-fourth. The said conveyance from the Beaver Mortgage Company to the Ventnor Park Development Company was without valuable consideration moving therefor to said Mortgage Company, and was made with full knowledge on the part of said Ventnor Park Development Company and its officers and directors of complainant's right and interest aforesaid and of the rights and interest of the other creditors of said Beaver Mortgage Company.

Fifty-fifth. The said various parcels of land, so as aforesaid conveyed by said Beaver Mortgage Company

to said Ventnor Lots Company and to said Ventnor Park Development Company, respectively, comprised and constituted all the assets and property of said Mortgage Company, so that by said several conveyances said Mortgage Company became, and it is now, insolvent, and is left wholly without credit and without means to pay its indebtedness to this complainant and its other creditors.

Fifty-sixth. And this complainant shows that by means of the foregoing fraudulent acts and doings of said Thomas B. McPherson, Edwin H. Cuthbert, Herbert J. Cuthbert, Marie Higgins and Talitha V. Rose and the defendants herein, this complainant, as the endorsee of said bonds "without recourse" from said McPherson, is left without recourse upon said bonds for his claim against said McPherson personally, and at the same time his mortgage security is apparently released of record and destroyed, and the said Beaver Mortgage Company is left wholly without assets or resources of any kind wherewith to respond to complainant's claim as owner of its said bonds, or to the claims of any other of its creditors.

Fifty-seventh. And complainant further shows that the foregoing acts and doings of said Thomas B. McPherson, Herbert J. Cuthbert, Edwin H. Cuthbert, Marie Higgins and Talitha V. Rose, and the other defendants herein, in so dealing with the affairs of the said Beaver Mortgage Company, the said Ventnor Lots Company and the said Ventnor Park Development Company, in causing, or aiding in, the pretended cancellation, as aforesaid, of the said mortgages securing the said indebtedness of said Beaver Company to complainant, and in causing or participating in the execution of said several fraudulent conveyances and incumbrances of said property of said Beaver Mortgage Company, and in organizing the said corporations, the Ventnor Lots Company and the said Ventnor Park Development Company, and causing them as aforesaid to take and hold title to property formerly belonging to said Beaver Mortgage Company, and in

causing said trust deed for \$175,000 to be executed as an apparent first lien upon said 1,784 lots of land, and otherwise, as hereinbefore set forth, were all in pursuance of a fraudulent scheme and conspiracy between said several defendants, contrived and carried out for the purpose of fraudulently beclouding or destroying the complainant's said mortgage lien upon the said company's property, and for hindering, delaying and defrauding him, as well as the other creditors of said Beaver Mortgage Company, in all of which said fraudulent acts and doings, or in
10 some one or more substantial part thereof, all to the general fraudulent purpose aforesaid, all of the defendants herein respectively participated and by their several acts hereinbefore set forth contributed.

Fifty-eighth. In and by said trust deed it is among other things stipulated and provided that all the bonds and coupons secured thereby shall be payable at the home office of said West Jersey Trust Company, in Camden, New Jersey, and that all said bonds, at the request of the
20 holders thereof, at any time, may be registered in books kept by and in the custody of said Trust Company at its said office, in which case same shall be transferable only on said books; that all of said bonds, in order to be valid and binding obligations, must be certified or authenticated by said Trust Company; that, upon the payment of the amount due thereon, any amount of said bonds not less than \$8,000 face value may be redeemed by payment to said Trust Company, and thereupon said company shall release from the lien of said trust deed such parcels
30 of the lands covered thereby as shall equal the amount so paid at the rate of eight dollars (\$8.00) per front foot; that upon default in payment of said bonded debt, or the interest thereon, when due, said Trust Company may, either in its own discretion or at the request of a majority of said bondholders, take possession of said land and sell same to pay said bonded debt; and that said Trust Company shall have the right to inspect all bonds in order

to satisfy itself as to the authenticity or ownership thereof before recognizing any holder thereof as such.

Fifty-ninth. And complainant further shows that said West Jersey Trust Company was selected to act as grantee and trustee under said trust deed at the instance and with the knowledge of said McPherson and the other persons who were to receive and hold, and who thereafter did receive and hold, said bonds secured thereby, and said Trust Company was and is the agent or representative in the premises of all said bondholders; that said Trust Company, at and before the execution of said trust deed was well aware that said Beaver Mortgage Company was then heavily in debt, and that the lands and lots so conveyed in and by said trust deed constituted all the remaining assets or property of said Beaver Mortgage Company, and that the then officers, directors and stockholders of said Beaver Mortgage Company, including said McPherson and said Edwin H. Cuthbert and Herbert J. Cuthbert, were then conspiring, by means of such trust deed and of a proposed subsequent conveyance of the lands covered thereby to said Ventnor Park Development Company, to hinder, delay and defraud complainant and other creditors of said Mortgage Company; and said Trust Company was then well aware that by such proposed conveyances said Mortgage Company would be stripped of all its property and become insolvent, as was in fact the case as hereinbefore set forth.

Sixtieth. In the preparation for said conveyance to said Ventnor Park Development Company and for the making of said trust deed for \$175,000, the said West Jersey Trust Company, with full knowledge as aforesaid of the said facts and of the fraudulent purposes of said Beaver Mortgage Company and of its officers, directors and stockholders, aided and abetted them with its advice and co-operation, and lent itself as a willing instrument for, and participant in, such fraudulent scheme, and, as complainant is advised and herewith charges, it has

thereby made itself jointly liable to complainant and the other creditors of said Beaver Mortgage Company for any and all damage and loss that, by reason of such fraudulent acts, may have accrued or shall accrue to the complainant or to such other creditors of said Mortgage Company.

Sixty-first. Said Beaver Mortgage Company has heretofore defaulted in the payment of the annual license fee or franchise tax due by it to the State of New Jersey under the laws of said State for the year ending June, 1915.

10

Sixty-second. Accordingly, on August 7, 1916, in the Court of Chancery of said State, the Attorney General of said State brought suit, and by an order of said Court in said suit, entered on August 22, 1916, said Mortgage Company was enjoined from exercising any corporate franchise or transacting any business or collecting any debt due to it until the further order of said Court, which said injunction still stands in full force and effect.

Sixty-third. Since the entry of said injunction decree
20 said Beaver Mortgage Company has ceased to do business and is without funds or credit necessary to carry on business, and is not about to resume business in a short time hereafter with safety to the public or advantage to its stockholders.

Sixty-fourth. Since so receiving said issue of one hundred and seventy-five thousand (\$175,000) dollars of bonds of said Beaver Mortgage Company, the defendant, Thomas B. McPherson, has continued to hold and own the same, but is threatening to sell, pledge or otherwise dispose of same, or some part thereof, to innocent
30 third persons for value, in order that the purchasers thereof may acquire thereby, if possible, an equitable or other lien interest in the said lands covered by said trust deed which will appear to be superior to the equities therein of this complainant and of other creditors of said Beaver Mortgage Company.

Sixty-fifth. The reasonable market value of the lands covered by said mortgages No. 45, No. 46, No. 48 and No. 49, dated April 10, 1913, does not exceed the sum or value of ten thousand (\$10,000) dollars, and if sold under foreclosure the same will bring not over eight thousand (\$8,000) dollars. Complainant therefore shows that the security afforded by the premises covered by said mortgages for such indebtedness to complainant is utterly insufficient to pay more than a small portion thereof, but there will necessarily be a deficiency of many thousands of dollars upon the foreclosure of said mortgage. 10

Sixty-sixth. On September 18, 1918, in the Supreme Court of New Jersey, in a certain action against said Beaver Mortgage Company, this complainant, as plaintiff in said action, recovered judgment against said company for the sum of thirty-five thousand one hundred and thirty dollars and thirty-five cents (\$35,130.35) and costs; and thereupon, to obtain satisfaction of said judgment, complainant sued out of said Supreme Court of New Jersey a writ of *ieri facias* directed to the Sheriff of Atlantic County, New Jersey (the same being the county wherein said Beaver Mortgage Company then had its principal office and place of business), in and by which said writ said Sheriff was commanded that of the goods, chattels, lands and tenements of said Beaver Mortgage Company he should cause to be made the said sum of money so recovered in and by said judgment, with costs. But complainant shows that on or about October 18, 1918, said Sheriff made return of said writ as follows: 20

“Not being able to find any goods or chattels, “rights or credits, lands, tenements or hereditaments “of the within defendant in Atlantic County to make “the amount of the within writ, or any part there- “of, I return said writ wholly unsatisfied. 30

(Signed) “ALFRED J. PERKINS, Sheriff.

“By HOWARD R. CLOUD, Under Sheriff.

“Dated Oct. 18, 1918.”

Which said writ, endorsed with said return, was heretofore duly filed in the Clerk's office of said Supreme Court of New Jersey.

Sixty-seventh. Said judgment still remains in full force and effect and in no part satisfied, but the full amount of said judgment and indebtedness, with interest, is still unpaid and is due to complainant over and above all claims or set-offs.

10 Sixty-eighth. The complainant shows that, in the interest of complainant, as well as of all other creditors of said Beaver Mortgage Company, it is necessary that a receiver should be appointed to administer the affairs of said company under the direction of this Court; and that such receiver should bring suit against the officers and directors (or former officers and directors) of said company, and against said Thomas B. McPherson, and against all persons who shall be found to have received the stock or bonds of said company without consideration; and for a disposition of the property of said Beaver
20 Mortgage Company, and for the purpose of an equitable distribution of its corporate assets among its creditors in accord with their respective equities and priorities.

Sixty-ninth. And complainant shows, upon information and belief, that the defendants falsely give out and pretend that complainant is not the lawful owner of said several Bonds No. 45, No. 46, No. 48 and No. 49, nor of the indebtedness thereby evidenced, or that he is owner of only a portion of such indebtedness, and that, by reason thereof and for other pretended causes, he is not
30 entitled to recover from said Beaver Mortgage Company the full amount of said bonds and said indebtedness or any part thereof. But in this regard complainant shows that the action aforesaid in the Supreme Court of New Jersey was brought for the recovery of the same identical indebtedness and upon the same promises as are evidenced in and by the said Bonds No. 45, No. 46, No. 48 and No. 49, and that in said action there was put in issue between

complainant, as plaintiff therein, and the said Beaver Mortgage Company, as defendant, the entire matter of the liability of said Company to complainant upon said bonds, and the amount of the indebtedness, by reason thereof, of said Company to complainant; and in and by the judgment rendered, as hereinbefore set forth, in said action it was adjudged and determined that said Beaver Mortgage Company was indebted to complainant for the full amount of all of said bonds, with interest from their date, as well as for costs of said action, as will appear by reference to the record of said action and judgment in said Supreme Court of New Jersey. Wherefore complainant charges and hereby insists that the said Beaver Mortgage Company and the other defendants herein are now forever barred and estopped to contest or dispute such indebtedness of said Company to complainant, or the amount thereof. 10

COMPLAINANT THEREFORE PRAYS:

1. That an accounting may be had in this behalf, as between the complainant and said Beaver Mortgage Company, and that the amount due to your orator on his said several bonds and on his said judgment against said Company may be ascertained and adjudged. 20

2. That the defendant, the Beaver Mortgage Company, may be decreed to pay to your orator whatever sum shall be so found to be due, together with costs, by a short day to be fixed by the Court.

3. That in default of such payment, the said mortgaged premises described in said mortgages of April 10, 1913, to said Thomas B. McPherson and assigns, may be sold to satisfy the sums so found to be due to your orator, with costs, attorney's fees and other lawful expenses and allowances. 30

4. That in case of such sale, and in case of the failure of the parties interested to redeem from said sale, the

defendants and all persons claiming under them subsequent to the beginning of this suit may be forever barred of the right of redemption in said premises.

5. That in case the proceeds of such foreclosure shall be insufficient to satisfy said indebtedness with cost, a decree may be herein entered for the amount of the deficiency.

10 6. That the said warrants of cancellation of the said Mortgages No. 45, No. 46, No. 48 and No. 49, be set aside and annulled as to complainant.

7. That the said several deeds from the Beaver Mortgage Company to the Ventnor Lots Company and to the Ventnor Park Development Company, respectively, may be set aside and annulled as to the complainant and all other bona fide creditors of said Beaver Mortgage Company.

20 8. That the said trust deed for one hundred and seventy-five thousand (\$175,000) dollars, from said Beaver Mortgage Company to said West Jersey Trust Company may be set aside and annulled as to your orator and all other bona fide creditors of said Beaver Mortgage Company.

30 9. That it may be herein adjudged and decreed that the claims and interests of the several defendants in and to the various parcels of land so conveyed by said Beaver Mortgage Company by said several conveyances and by said trust deed, may be adjudged and decreed to be subject to the superior equities of this complainant and of all other bona fide creditors of said Beaver Mortgage Company in accord with their respective equities and priorities, and that said lands, or so much thereof as may be necessary for the purpose, may be sold or otherwise disposed of, free and clear of the claims of the defendants or any of them, and free of the claims of any person holding bonds issued as aforesaid by the said Beaver Mortgage Company under its said trust deed to said West Jersey Trust Company, and that the proceeds thereof may

be applied to satisfy the said judgment of complainant and the lawful claims of other creditors of said Mortgage Company in the order of their equitable priority.

10. That the defendants may each of them fully set forth and discover, according to their best knowledge, information and belief, the nature, situation, amount and value of any and all the property, interest and effects of said Beaver Mortgage Company, whether real or personal, legal or equitable, including all things in action, and all debts due to said Company, with all particulars relating thereto. 10

11. That for any damages or loss that shall be found and adjudged to have accrued to complainant, or the other creditors of said Beaver Mortgage Company, by reason of the several wrongful and fraudulent acts and doings aforesaid of said defendants, due award may be made by decree of this Court, and the same enforced against said defendants as they may be found respectively liable therefor. 20

12. That pending a final hearing herein a preliminary injunction may be issued prohibiting said Ventnor Lots Company and said Ventnor Park Development Company respectively from selling, encumbering or otherwise disposing of the several parcels of land so as aforesaid to them respectively conveyed by said Beaver Mortgage Company, or any of them.

13. That pending final hearing herein a receiver may be appointed to take charge and possession of all the properties and rights in action of said Beaver Mortgage Company, and to sue for and recover the property of said Company, and in particular, to bring suit against the officers and directors of said Company to recover damages suffered by it and through it by its creditors, by reason of their fraudulent and wasteful misconduct of its affairs and their misuse and misappropriations of its funds and properties, the waste of its assets and destruction of its business. 30

14. That, pending final hearing, a preliminary injunction may be issued against the said Thomas B. McPherson to prohibit him from selling, assigning, pledging or otherwise disposing of any of the negotiable bonds of said Beaver Mortgage Company, mentioned in this bill of complaint as being dated March 10, 1915, each for the principal sum of five hundred (\$500) dollars, and secured by said trust deed of same date from said Beaver Mortgage Company to the said West Jersey Trust Company.

10 15. That complainant may have such other and further relief in the premises as equity may require and as to this Court may seem fit.

WILLIAM FLAGGE.

WM. RITCHIE,
L. H. GEIMAN,
RIC'D STOCKTON, 3rd,
JOHN SOLAN,
Solr's for Complainant.

20

STATE OF ILLINOIS, }
COUNTY OF COOK. } ss.

30 WILLIAM FLAGGE being first duly sworn, on oath says that he is the complainant in the foregoing amended and supplemental bill of complaint; that he has read the same, and knows the contents thereof, and that they are true as therein stated, except that as to those allegations which are therein made upon information and belief, he is informed and believes that the same are true.

WILLIAM FLAGGE.

Subscribed and sworn to before me this twenty-third day of December, A. D. 1918.

[L. s.]

SIDNEY B. MEYER,
Notary Public.

COMPLAINANT'S EXHIBIT BOND No. 45.

\$7,000.00 FIRST MORTGAGE BOND No. 45

Negotiated by Thomas B. McPherson,

Omaha, Nebraska.

REAL ESTATE SECURITY.

On the 10th day of April, 1916, for Value Received, We promise to pay to the order of Thomas B. McPherson, of Omaha, Neb., the principal sum of Seven Thousand and 00/100 Dollars, together with all interest thereon at the rate of six per cent. per annum from April 10, 1913, payable semi-annually according to the tenor of six annexed interest coupons of even date herewith, both principal and interest payable at National City Bank, New York City. 10

If default be made in the payment of any interest coupon, or any part thereof, for the space of twenty days after the same becomes due and payable, or in case of failure to perform any of the covenants or agreements contained in the indenture securing this bond, then said principal sum, with accrued interest, shall, at the option of the legal holder hereof, become at once due and collectible without further notice. 20

This Bond shall bear interest after maturity at the rate of six per cent. per annum until paid, whether same becomes due by the exercise of the option herein provided for or by the lapse of time according to its terms. Should suit be commenced to collect this Bond, or to foreclose the indenture securing same, a reasonable attorney's fee shall be allowed and shall become a part of the judgment or decree rendered. 30

It is especially agreed that this Bond and the annexed interest coupons are made and executed under, and are in all respects to be construed by the laws of the State

of New Jersey and are given for an actual loan of \$7,000.00, which loan is secured by First Mortgage on Real Estate duly recorded.

Dated at Atlantic City, New Jersey,
this 10th day of April, 1913.

BEAVER MORTGAGE COMPANY

Attest: H. CUTHBERT, Sec. A. T. MURPHY, Pres.

\$210.00 ATLANTIC CITY, NEW JERSEY, April 10, 1913

- 10 On the 10th day of April, 1916, for value received, We promise to pay to the order of Thomas B. McPherson the sum of 210.00 Dollars, at National City Bank, New York City, for interest due on that day according to the tenor of a principal Bond of \$7,000.00 of even date herewith. This coupon to bear 6 per cent. interest after maturity.

Attest: BEAVER MORTGAGE COMPANY

No 45 H. CUTHBERT, Sec. A. T. MURPHY, Pres.

- 20 \$210.00 ATLANTIC CITY, NEW JERSEY, April 10, 1913

On the 10th day of October, 1915, for value received, We promise to pay to the order of Thomas B. McPherson the sum of 210.00 Dollars, at National City Bank, New York City, for interest due on that day according to the tenor of a principal Bond of \$7,000.00 of even date herewith. This coupon to bear 6 per cent. interest after maturity.

Attest: BEAVER MORTGAGE COMPANY

- 30 No 45 H. CUTHBERT, Sec. A. T. MURPHY, Pres.
-

\$210.00 ATLANTIC CITY, NEW JERSEY, April 10, 1913

On the 10th day of April, 1915, for value received, We promise to pay to the order of Thomas B. McPherson the sum of 210.00 Dollars, at National City Bank, New York City, for interest due on that day according

to the tenor of a principal Bond of \$7,000.00 of even date herewith. This coupon to bear 6 per cent. interest after maturity.

Attest: BEAVER MORTGAGE COMPANY
No 45 H. CUTHBERT, Sec. A. T. MURPHY, Pres.

\$210.00 ATLANTIC CITY, NEW JERSEY, April 10, 1913

On the 10th day of October, 1914, for value received, We promise to pay to the order of Thomas B. McPherson the sum of 210.00 Dollars, at National City Bank, New York City, for interest due on that day according to the tenor of a principal Bond of \$7,000.00 of even date herewith. This coupon to bear 6 per cent. interest after maturity. 10

Attest: BEAVER MORTGAGE COMPANY
No 45 H. CUTHBERT, Sec. A. T. MURPHY, Pres.

\$210.00 ATLANTIC CITY, NEW JERSEY, April 10, 1913

On the 10th day of April, 1914, for value received, We promise to pay to the order of Thomas B. McPherson the sum of 210.00 Dollars, at National City Bank for interest due on that day according to the tenor of a principal Bond of \$7,000.00 of even date herewith. This coupon to bear 6 per cent. interest after maturity. 20

Attest: BEAVER MORTGAGE COMPANY
No 45 H. CUTHBERT, Sec. A. T. MURPHY, Pres.

EXHIBIT MORTGAGE No. 45.

BEAVER MORTGAGE CO. }

OF ATL. CY., }

TO }

THOMAS B. MCPHERSON. }

MORTGAGE \$7,000.00.

10

Know all men by these presents, that Whereas, Beaver Mortgage Company of Atlantic City, New Jersey, a corporation duly organized under the laws of New Jersey, is justly indebted to Thomas B. McPherson, of Omaha, Nebraska, in the sum of seven thousand and no/100 Dollars evidenced by one certain bond of even date herewith executed by Beaver Mortgage Company, a corporation as aforesaid, payable to the order of

20 Thomas B. McPherson as follows: One bond for (\$7,000.00) Seven Thousand and no/100 Dollars dated April 10th, 1913, due on or before three years from and after the date thereof, with interest from April 10th, 1913, at the rate of six per cent. per annum, payable semi-annually, according to the tenor of Six Interest Coupon Notes attached to said bonds, both principal and interest being payaable at the National City Bank, New York City, New York. Now, therefore, in consideration of

30 of the bond and coupons aforesaid with interest thereon according to their tenor and effect, and the faithful performance of all the covenants hereinafter contained the said Beaver Mortgage Company, a corporation organized under the laws of the State of New Jersey, hereinafter referred to as first party, does hereby grant, sell and convey unto said Thomas B. McPherson, hereinafter referred to as second party, and his heirs, executors, ad-

ministrators and assigns, the following described real estate, situated in Ventnor City, Atlantic County, New Jersey, bounded and described as follows: Beginning in the northwest corner of Avenue E, and Fourth avenue (both avenues 50 feet wide), and runs thence (1) northwardly along the west line of Fourth avenue, 425 feet to Park avenue; thence (2) westwardly along the south line of Park avenue 160 feet to Third avenue; thence (3) southwardly along the east line of Third avenue 425 feet to Avenue E, 160 feet to the place of beginning. Being lots No. 1 to 28, inclusive, in *Block No. 44* on plan of lots of Ventnor City entitled "Map of Building Lots in Ventnor City, N. J., owned by Wheelock Co., E. D. Rightmire, City Engineer, Ventnor City, N. J. Scale 150 feet 1 inch," on file in the Clerk's Office of Atlantic County at May's Landing, New Jersey, together with all appurtenances thereon and all rights and interest thereunto appertaining, both in possession and in expectancy. And the said first party for itself, its successors and assigns, covenants to and with the said second party, his heirs, executors, administrators and assigns, that it is the owner in fee simple and has good right to sell and convey the said real estate; that the same is free from any lien or encumbrance and it hereby covenants to warrant and defend the title to the same against the lawful claims of all persons whomsoever. And the first party hereby expressly agrees (1) To pay said bond and coupons in full on the days the same shall severally become due. (2) Neither to commit nor permit waste on the above described premises and to put and keep said real estate, building and all other improvements now thereon or hereafter placed thereon in good repair. (3) To pay all taxes and assessments on said real estate before delinquency until said bond and coupons are fully paid, also to pay any taxes or assessments which may be levied under the laws of the State of New Jersey or the United States of America, against this mortgage or

said bond or against the said second parties or the legal holder of said bond on account of this indebtedness. (4) That in case of failure to pay any of said taxes before delinquency then said second party, or the legal holder of the bond hereby secured, may pay such taxes and any sum so advanced with interest at the rate of six per cent. per annum shall be repaid by the first party and shall be secured by this indenture. (5) That the said second party, his heirs, executors, administrators or assigns, at any time during the existence of this indenture until the same is fully paid, shall have full power and are hereby authorized as attorney in fact of the said first party to pay all statutory liens of any kind, either prior or subsequent, that may in any manner affect the title to the land herein conveyed, and for the repayment of all money so paid, with interest thereon from the date of such payment at the rate of six per centum per annum, payable annually, this indenture shall be security in like manner and with like effect as for the payment of said bond and coupons. And the said first party hereby further agrees that if default shall be made in the payment of said bond or coupons or any part thereof, or in the payment of any taxes or assessments or statutory liens of any kind or any part thereof, or in keeping or performing any covenants and agreements of this indenture, that then after such default has continued thirty days, the legal holder of said bond may at his option and without notice treat the said bond, coupons and mortgage and moneys advanced as due and collectible and the whole of said indebtedness shall bear interest at the rate of six per cent. per annum from the date thereof, and this indenture may be foreclosed to pay and satisfy the amount of the debt secured by it, including advances, interest, attorney's fees, costs, and expenses of extended abstract. And it is hereby fully understood and agreed that on the payment of any part of the debt secured hereby, the said second party, his heirs, executors, administrators, or assigns may release any portion of the security herein described from

the effect of this indenture, and all the part of the security not so released shall be and remain as security for the full payment of the balance of the indebtedness hereby secured. Should the mortgage at any time or times pay to the mortgagee the sum of Two Thousand Five Hundred Dollars (\$2,500) and all accrued interest thereon to apply on this mortgage, the mortgagee shall release from the lien of this mortgage any ten (10) contiguous lots covered by it and selected by the mortgagor. And in case of a default or failure to pay the bond or coupons, or any part thereof, as they shall mature, or in case of failure to keep or perform any of the covenants or agreements contained in this indenture then the second party, his heirs, executors, administrators or assigns, shall be and he is hereby authorized, directed and empowered to take immediate possession of the premises hereby conveyed and to collect the rents therefrom, and to apply the proceeds thereof to the payment of the debt hereby secured. And in case any suit be brought to foreclose this indenture then the said first party hereby agrees and consents to the appointment of a receiver upon application to the Court in which such action may be brought, or any judge thereof, either in term time or vacation, and hereby waives any notice of such application and consents that such receiver be appointed upon the production of this indenture without other evidence, and that said receiver be authorized, directed and empowered to take immediate possession of the premises hereby conveyed and to collect the rents therefrom, and to do and perform such other acts as may be required by order of the Court or judge making such appointment. Upon full payment of the indebtedness aforesaid, and in the performance of all the covenants and agreements made herein by the said first party at the time and in the manner herein provided, this indenture shall be void. Otherwise it shall remain in full force and effect. In witness whereof the said Beaver Mortgage Company hath caused its corporate seal to

be hereto affixed and these presents signed by the president and attested by its secretary.

Signed, sealed and delivered in the presence of
Attest: H. J. CUTHBERT,
Secretary.

BEAVER MORTGAGE
COMPANY,
By A. T. MURPHY,
President.
[Corporate Seal]

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

- 10 Be it remembered that on this 10th day of April, in the year of our Lord one thousand nine hundred and thirteen, before me, a Master in Chancery of New Jersey, personally appeared H. J. Cuthbert, who being by me duly sworn according to law, on his oath doth depose and make proof to my satisfaction, that he is Secretary of the said corporation the grantor in the foregoing mortgage named; that he well knows the seal of said corporation; that the seal affixed to the said mortgage is the corporate seal of said corporation; that it was so
- 20 affixed in pursuance of a resolution of the Board of Directors of said corporation; that A. T. Murphy is the President of said corporation; that he saw said A. T. Murphy as such president affix said seal thereto, sign and deliver said mortgage and heard him declare that he signed, sealed and delivered the same as the voluntary act and deed of said corporation in pursuance of said resolution, and that this deponent signed his name thereto at the same time as a subscribing witness.

30 Sworn and subscribed before me at Atlantic City, New Jersey, the day and year aforesaid.

H. STARR GIDDINGS,
M. C. C. of N. J.

H. J. CUTHBERT,
Secretary.

Received and recorded April 18, 1913, at 8 A. M.

WILSON SENSEMAN,
Clerk.

COMPLAINANT'S EXHIBIT BOND No. 46.

\$5,500.00 FIRST MORTGAGE BOND No. 46.

Negotiated by Thomas B. McPherson,
Omaha, Nebraska.

REAL ESTATE SECURITY.

On the 10th day of April, 1916, for Value Received, 10
We promise to pay to the order of Thomas B. McPherson
the principal sum of fifty-five hundred and 00/100
Dollars, together with all interest thereon at the rate of
six per cent. per annum from April 10, 1913, payable
semi-annually according to the tenor of six annexed in-
terest coupons of even date herewith, both principal and
interest payable at National City Bank, New York City.

If default be made in the payment of any interest cou-
pon, or any part thereof, for the space of twenty days 20
after the same becomes due and payable, or in case of
failure to perform any of the covenants or agreements
contained in the indenture securing this Bond, then said
principal sum, with accrued interest, shall, at the option
of the legal holder hereof, become at once due and col-
lectible without further notice.

This Bond shall bear interest after maturity at the rate
of six per cent. per annum until paid, whether same be-
comes due by the exercise of the option herein provided
for or by the lapse of time according to its terms. Should 30
suit be commenced to collect this Bond or to foreclose
the indenture securing same, a reasonable Attorney's fee
shall be allowed and shall become a part of the judgment
or decree rendered.

It is especially agreed that this Bond and the annexed
interest coupons are made and executed under, and are in
all respects to be construed by the laws of the State of

New Jersey and are given for an actual loan of \$5,500.00, which loan is secured by First Mortgage Real Estate duly recorded.

Dated at Atlantic City, New Jersey,
this 10th day of April, 1913.

BEAVER MORTGAGE COMPANY.

Attest: H. CUTHBERT, Sec. A. T. MURPHY, Pres.

\$165.00 ATLANTIC CITY, NEW JERSEY, April 10, 1913.

- 10 On the 10th day of April, 1916, for value received, We promise to pay to the order of Thomas B. McPherson the sum of 165.00 Dollars, at National City Bank, New York City, for interest due on that day according to the tenor of a principal Bond of \$5,500.00 of even date herewith. This coupon to bear 6 per cent. interest after maturity.

Attest: BEAVER MORTGAGE COMPANY,
No. 46. H. CUTHBERT, Sec. A. T. MURPHY, Pres.

- 20 \$165.00 ATLANTIC CITY, NEW JERSEY, April 10, 1913.

On the 10th day of October, 1915, for value received, We promise to pay to the order of Thomas B. McPherson the sum of 165.00 Dollars, at National City Bank, New York City, for interest due on that day according to the tenor of a principal Bond of \$5,500.00 of even date herewith. This coupon to bear 6 per cent. interest after maturity.

Attest: BEAVER MORTGAGE COMPANY,
30 No. 46. H. CUTHBERT, Sec. A. T. MURPHY, Pres.

\$165.00 ATLANTIC CITY, NEW JERSEY, April 10, 1913.

On the 10th day of April, 1915, for value received, We promise to pay to the order of Thomas B. McPherson the sum of 165.00 Dollars, at National City Bank, New York City, for interest due on that day according

to the tenor of a principal Bond of \$5,500.00 of even date herewith. This coupon to bear 6 per cent. interest after maturity.

Attest: BEAVER MORTGAGE COMPANY,
No. 46. H. CUTHBERT, Sec. A. T. MURPHY, Pres.

\$165.00 ATLANTIC CITY, NEW JERSEY, April 10, 1913.

On the 10th day of October, 1914, for value received, We promise to pay to the order of Thomas B. McPherson the sum of 165.00 Dollars, at National City Bank, 10 New York City, for interest due on that day according to the tenor of a principal Bond of \$5,500.00 of even date herewith. This coupon to bear 6 per cent. interest after maturity.

Attest: BEAVER MORTGAGE COMPANY,
No. 46. H. CUTHBERT, Sec. A. T. MURPHY, Pres.

\$165.00 ATLANTIC CITY, NEW JERSEY, April 10, 1913.

On the 10th day of April, 1914, for value received, 20 We promise to pay to the order of Thomas B. McPherson the sum of 165.00 Dollars, at National City Bank, New York City, for interest due on that day according to the tenor of a principal Bond of \$5,500.00 of even date herewith. This coupon to bear 6 per cent. interest after maturity.

Attest: BEAVER MORTGAGE COMPANY,
No. 46. H. CUTHBERT, Sec. A. T. MURPHY, Pres.

EXHIBIT MORTGAGE 46.

BEAVER MORTGAGE Co.,	}	MORTGAGE \$5,500.00.
OF ATL. CITY,		
TO		
THOMAS B. McPHERSON.		

10 Know all men by these presents: That Whereas, Beaver Mortgage Company of Atlantic City, New Jersey, a corporation duly organized under the laws of New Jersey, is justly indebted to Thomas B. McPherson, of Omaha, Nebraska, in the sum of Fifty-five Hundred and no/100 Dollars, evidenced by one certain bond of even date herewith executed by Beaver Mortgage Company, a corporation as aforesaid, payable to the order of Thomas B. McPherson, as follows: One bond for (\$5,500.00) Fifty-five Hundred and no/100 Dollars, dated April 10th, 1913, due on or before three years from and after the date thereof, with interest from April 10th, 20 1913, at the rate of six per centum per annum, payable semi-annually, according to the tenor of six interest coupon notes attached to said bonds, both principal and interest being payable at the National City Bank, New York City, New York. Now therefore, in consideration of the premises and for the purpose of securing the payment of the bond and coupons, aforesaid, with interest thereon according to their tenor and effect, and the faithful performance of all the covenants hereinafter contained, 30 the said Beaver Mortgage Company, a corporation organized under the laws of the State of New Jersey, hereinafter referred to as first party, does hereby grant, sell and convey unto said Thomas B. McPherson, hereinafter referred to as second party, and his heirs, executors, administrators and assigns, the following described real estate situated in Ventnor City, Atlantic County, New Jersey, bounded and described as follows:

Beginning at the northwest corner of Grand avenue (80 feet wide) and Avenue E (50 feet wide) and runs thence (1) Westwardly along the northerly line of Avenue E, a distance of 160 feet to the easterly line of Fifth avenue; thence (2) northwardly along the easterly line of Fifth avenue 425 feet to the southerly line of Park avenue; thence (3) eastwardly along the southerly line of Park avenue 135 feet; thence (4) on a curve the radius of which is 25 feet, a distance of 39.27 feet to a point in the westerly line of Grand avenue; thence (5) southwardly in the westerly line of Grand avenue, 400 feet 10 to the place of beginning. Being Lots No. 1 to 22, inclusive, in *Block No. 46* on plan of lots in Ventnor City entitled "Map of Building Lots in Ventnor City, N. J., owned by Wheelock Co. E. D. Rightmire, City Engineer, Ventnor City, N. J. Scale 150 feet = 1 inch," on file in the Clerk's Office of Atlantic County, at May's Landing, New Jersey, together with all appurtenances thereon and all rights and interest thereunto appertaining, both in possession and in expectance. And the said 20 first party for itself, its successors and assigns, covenants to and with the said second party, his heirs, executors, administrators and assigns, that it is the owner in fee simple and had good right to sell and convey the said real estate; that the same is free from any lien or encumbrance and it hereby covenants to warrant and defend the title to the said second party against the lawful claims of all persons whomsoever. And the first party hereby expressly agrees (1) To pay said bond and coupons in full on the days the same shall severally be- 30 come due. (2) Neither to commit nor permit waste on the above described premises and to put and keep said real estate, building and all other improvements now thereon, or hereafter placed thereon, in good repair. (3) To pay all taxes and assessments on said real estate before delinquency until said bond and coupons are fully paid, also to pay any taxes or assessments which may be levied under the laws of the State of New Jersey or

the United States of America, against this mortgage or said bond or against the said second parties or the legal holder of said bond on account of this indebtedness.

- (4) That in case of failure to pay any of said taxes before delinquency, then said second party, or the legal holder of the said bond hereby secured, may pay such taxes and any sum so advanced, with interest at the rate of six per centum per annum, shall be repaid by the first party and shall be secured by this indenture. (5) That
- 10 the said second party, his heirs, executors, administrators or assigns, at any time during the existence of this indenture until the same is fully paid, shall have full power and are hereby authorized, as attorney in fact of the said first party, to pay all statutory liens of any kind, either prior or subsequent, that may in any manner affect the title to the land herein conveyed, and for the repayment of all moneys so paid, with interest thereon, from the date of such payment at the rate of six per centum per annum, payable annually, this indenture shall be security
- 20 said bond and coupons. And the said first party hereby further agrees that if default shall be made in the payment of said bond or coupons, or any part thereof, or in payment of any taxes, or assessments or statutory liens of any kind or any part thereof, or in keeping or performing any covenants and agreements of this indenture, that then, after such default has continued thirty days the legal holder of said bond may at his option and without notice treat the said bond, coupons and mortgage and moneys advanced as due and collectible and the whole of
- 30 said indebtedness shall bear interest at the rate of six per centum per annum from the date thereof and this indenture may be foreclosed to pay and satisfy the amount of the debt secured by it, including advances, interest, attorney's fees, costs and expenses of extending abstract. And it is hereby fully understood and agreed that on the payment of any part of the debt secured hereby, the said second party, his heirs, executors, administrators or as-

signs, may release any portion of the security herein described from the effect of this indenture, and all that part of the security not so released shall be and remain as security for the full payment of the balance of the indebtedness hereby secured. Should the mortgage at any time or times pay to the mortgagee the sum of Two Thousand Five Hundred Dollars (\$2,500) and all accrued interests thereon, to apply on this mortgage, the mortgagee shall release from the lien of this mortgage any ten (10) contiguous lots covered by it and selected by the mortgagor. And in case of a default or failure to pay the bond or coupons, or any part thereof, as they shall mature, or in case of failure to keep or perform any of the covenants or agreements contained in this indenture, then the second party, his heirs, executors, administrators or assigns, shall be and he is hereby authorized, directed and empowered to take immediate possession of the premises hereby conveyed and to collect the rents therefrom, and to apply the proceeds thereof to the payment of the debt hereby secured. And in case any suit be brought to foreclose this indenture, then the said first party hereby agrees and consents to the appointment of a receiver upon application to the Court in which such action may be brought, or any judge thereof, either in term time or vacation, and hereby waives any notice of such application and consents that such receiver be appointed upon the production of this indenture, without other evidence, and that said receiver be authorized, directed and empowered to take immediate possession of the premises hereby conveyed and to collect the rents therefrom, and to do and perform such other acts as may be required by order of the Court or judge making such appointment. Upon full payment of the indebtedness aforesaid, and the performance of all the covenants and agreements made herein by the said first party, at the time and in the manner herein provided, this indenture shall be void. Otherwise it shall remain in full force and effect. In witness whereof, the said Beaver Mortgage

Company hath caused its corporate seal to be hereto affixed and these presents signed by the President and attested by its Secretary the

Signed, sealed and delivered in presence of
Attest: H. J. CUTHBERT,
Secretary.

BEAVER MORTGAGE
COMPANY,
By A. T. MURPHY,
President.
[Corporate Seal]

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

Be it remembered that on this 10th day of April, in the year of our Lord one thousand nine hundred and thirteen, before me, a Master in Chancery of New Jersey, personally appeared H. J. Cuthbert, who being by me duly sworn according to law, on his oath doth depose and make proof to my satisfaction, that he is Secretary of the said corporation the grantor in the foregoing mortgage named, and that he well knows the seal of said corporation; that the seal affixed to the said mortgage is the corporate seal of said corporation; that it was so affixed in pursuance of a resolution of the Board of Directors of said corporation; that A. T. Murphy is the President of said corporation; that he saw A. T. Murphy as such President affix said seal thereto, sign and deliver said mortgage and heard him declare that he signed, sealed and delivered the same as the voluntary act and deed of said corporation in pursuance of said resolution, and that this deponent signed his name thereto at the same time as a subscribing witness.

30

H. J. CUTHBERT, Sec.

Sworn and subscribed before me at Atlantic City, New Jersey, the day and year aforesaid.

H. STARR GIDDINGS,
M. C. C. of N. J.

Received and recorded April 18, 1913, at 8.00 A. M.

WILSON SENSEMAN,
Clerk.

COMPLAINANT'S EXHIBIT No. 48.

\$7,000.00 FIRST MORTGAGE BOND No. 48.

Negotiated by Thomas B. McPherson,
Omaha, Nebraska.

REAL ESTATE SECURITY.

On the 10th day of April, 1916, for Value Received, 10
We promise to pay to the order of Thomas B. McPherson
the principal sum of 7,000.00 Dollars, together with
all interest thereon at the rate of six per cent. per annum
from April 10, 1913, payable semi-annually according to
the tenor of six annexed coupons, of even date herewith,
both principal and interest payable at National City Bank,
New York City.

If default be made in the payment of any interest coupon, or any part thereof, for the space of twenty days 20
after the same becomes due and payable, or in case of
failure to perform any of the covenants or agreements
contained in the indenture securing this Bond, then said
principal sum, with accrued interest, shall, at the option
of the legal holder hereof, become at once due and collectible
without further notice.

This Bond shall bear interest after maturity at the rate
of six per cent. per annum until paid, whether same becomes
due by the exercise of the option herein provided for or by the
lapse of time according to its terms. Should 30
suit be commenced to collect this Bond or to foreclose
the indenture securing same, a reasonable Attorney's fee
shall be allowed and shall become a part of the judgment
or decree rendered.

It is especially agreed that this Bond and the annexed
interest coupons are made and executed under, and are in
all respects to be construed by the laws of the State of

New Jersey and are given for an actual loan of \$7,000.00, which loan is secured by First Mortgage on Real Estate duly recorded.

Dated at Atlantic City, New Jersey,
this 10th day of April, 1913.

BEAVER MORTGAGE COMPANY.

Attest: H. CUTHBERT, Sec. A. T. MURPHY, Pres.

\$210.00 ATLANTIC CITY, NEW JERSEY, April 10, 1913.

- 10 On the 10th day of April, 1916, for value received, We promise to pay to the order of Thomas B. McPherson the sum of 210.00 Dollars, at National City Bank, New York City, for interest due on that day according to the tenor of a principal Bond of \$7,000.00 of even date herewith. This Coupon to bear 6 per cent. interest after maturity.

Attest: BEAVER MORTGAGE COMPANY,
No. 48 H. CUTHBERT, Sec. A. T. MURPHY, Pres.

- 20 \$210.00 ATLANTIC CITY, NEW JERSEY, April 10, 1913.

On the 10th day of October, 1915, for value received, We promise to pay to the order of Thomas B. McPherson the sum of 210.00 Dollars, at National City Bank, New York City, for interest due on that day according to the tenor of a principal Bond of \$7,000.00 of even date herewith. This Coupon to bear 6 per cent. interest after maturity.

- Attest: BEAVER MORTGAGE COMPANY,
30 No. 48 H. CUTHBERT, Sec. A. T. MURPHY, Pres.

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Attest: BEAVER MORTGAGE COMPANY,
No. 48 H. CUTHBERT, Sec. A. T. MURPHY, Pres.

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Attest: BEAVER MORTGAGE COMPANY,
No. 48 H. CUTHBERT, Sec. A. T. MURPHY, Pres.

\$210.00 ATLANTIC CITY, NEW JERSEY, April 10, 1913. 20

On the 10th day of April, 1914, for value received, We promise to pay to the order of Thomas B. McPherson the sum of 210.00 Dollars, at National City Bank, New York City, for interest due on that day according to the tenor of a principal Bond of \$7,000.00 of even date herewith. This Coupon to bear 6 per cent. interest after maturity.

Attest: BEAVER MORTGAGE COMPANY,
No. 48 H. CUTHBERT, Sec. A. T. MURPHY, Pres. 30

EXHIBIT MORTGAGE No. 48.

BEAVER MORTGAGE CO.	}	MORTGAGE \$7,000.00
OF ATL. CITY, N. J.,		
to		
THOMAS B. MCPHERSON.		

- 10 Know all men by these presents, that Whereas, Beaver Mortgage Company, of Atlantic City, New Jersey, a corporation duly organized under the laws of New Jersey, is justly indebted to Thomas B. McPherson, of Omaha, Nebraska, in the sum of Seven Thousand and no/100 Dollars, evidenced by one certain Bond of even date herewith executed by Beaver Mortgage Company, a corporation as aforesaid, payable to the order of Thomas B. McPherson, as follows: One bond for (\$7,-
- 20 000.00) Seven Thousand and no/100 Dollars, dated April 10, 1913, due on or before three years from and after the date thereof, with interest from April 10th, 1913, at the rate of six per centum per annum, payable semi-annually, according to the tenor of Six Interest Coupon Notes attached to said bonds, both principal and interest being being payable at the National City Bank, New York City, New York. Now, therefore, in consideration of the premises and for the purpose of securing the payment of the bond and coupons aforesaid with interest
- 30 thereon according to their tenor and effect, and the faithful performance of all the covenants hereinafter contained, the said Beaver Mortgage Company, a corporation organized under the laws of the State of New Jersey, hereinafter referred to as first party, does hereby grant, sell and convey unto said Thomas B. McPherson, hereinafter referred to as second party, and his heirs, executors, administrators and assigns, the following described real

estate, situated in Ventnor City, Atlantic County, New Jersey, bounded and described as follows: Beginning in the northwest corner of Avenue E, and Fifth avenue (both avenues 50 feet wide) and runs thence (1) northwardly along the west line of Fifth avenue 425 feet to Park avenue; thence (2) westwardly along the south line of Park avenue 160 feet to Fourth avenue; thence (3) southwardly along the east line of Fourth avenue 425 feet to Avenue E; thence (4) eastwardly along the north line of Avenue E, 160 feet to the place of beginning. Being lots Nos. 1 to 28 in *Block No. 45* 10
on plan of lots in Ventnor City entitled "Map of Building Lots in Ventnor City, N. J., owned by Wheelock Co. E. D. Rightmire, City Engineer, Ventnor City, N. J. Scale 150 feet=1 inch", on file in the Clerk's office of Atlantic County, at Mays Landing, New Jersey, together with all appurtenances thereon and all rights and interest thereunto appertaining, both in possession and in expectancy. And the said first party, for itself, its successors and assigns, covenants to and with the said second party, his heirs, executors, administrators and assigns, 20
that it is the owner in fee simple and has good right to sell and convey the said real estate; that the same is free from any lien or encumbrance and it hereby covenants to warrant and defend the title to the same against the lawful claims of all persons whomsoever. And the first party hereby expressly agrees: (1) To pay said Bond and Coupons in full on the days the same shall severally become due. (2) Neither to commit nor permit waste on the above described premises and to put and keep said real estate, building and all other improvements now 30
thereon or hereafter placed thereon in good repair. (3) To pay all taxes and assessments on said real estate before delinquency until said Bond and Coupons are fully paid, also to pay any taxes or assessments which may be levied under the laws of the State of New Jersey, or the United States of America, against this mortgage or said

bond or against the said second parties or the legal holder of said Bond on account of this indebtedness. (4) That in case of failure to pay any of said taxes before delinquency, then said second party or the legal holder of the Bond hereby secured may pay such taxes and any sum so advanced, with interest at the rate of six per cent. per annum, shall be repaid by the first party, and shall be secured by this indenture. (5) That the said second party, his heirs, executors, administrators or assigns, at any time during the existence of this indenture, until the same is fully paid, shall have full power and are hereby authorized as attorney in fact of the said first party to pay all statutory liens of any kind, either prior or subsequent, that may in any manner affect the title to the land herein conveyed, and for the repayment of all money so paid, with interest thereon, from the date of such payment at the rate of six per centum per annum, payable annually, this indenture shall be security in like manner and with like effect, as for the payment of said bond and coupons. And the said first party hereby further agrees that if default shall be made in the payment of said Bond or Coupon or any part thereof, or in the payment of any taxes, or assessments or statutory liens of any kind or any part thereof, or in keeping or performing any covenants and agreements of this indenture, that then after such default has continued thirty days the legal holder of said bond may at his option and without notice treat the said bond, coupons and mortgage and money advanced as due and collectible, and the whole of said indebtedness shall bear interest at the rate of six per cent. per annum from the date thereof, and this indenture may be foreclosed to pay and satisfy the amount of the debt secured by it, including advance, interest, attorney's fees, costs and expenses of extending abstract. And it is hereby fully understood and agreed that on the payment of any part of the debt secured hereby the said second party, his heirs, executors, administrators or assigns, may re-

lease any portion of the security herein described from the effect of this indenture and all that part of the security not so released shall be and remain as security for the full payment of the balance of the indebtedness hereby secured. Should the mortgagor at any time or times pay to the mortgagee the sum of Two Thousand Five Hundred Dollars (\$2,500) and all accrued interest thereon to apply on this mortgage, the mortgagee shall release from the lien of this mortgage any ten (10) contiguous lots covered by it and selected by the mortgagor. And in case of a default or failure to pay the Bond or Coupons, or any part thereof, as they shall mature, or in case of failure to keep or perform any of the covenants or agreements contained in this indenture, then the second party, his heirs, executors, administrators or assigns, shall be and he is hereby authorized, directed and empowered to take immediate possession of the premises hereby conveyed and to collect the rents therefrom and to apply the proceeds thereof to the payment of the debt hereby secured. And in case any suit be brought to foreclose this indenture, then the said party hereby agrees and consents to the appointment of a receiver, upon application to the Court in which such action may be brought, or any Judge thereof, either in term time or vacation, and hereby waives any notice of such application and consents that such receiver be appointed upon the production of this indenture, without other evidence, and that said receiver be authorized and directed and empowered to take immediate possession of the premises hereby conveyed and to collect the rents therefrom and to do and perform such other acts as may be required by order of the Court or Judge making such appointment. Upon full payment of the indebtedness aforesaid, and the performance of all the covenants and agreements made herein by the said first party, at the time and in the manner herein provided, this indenture shall be void. Otherwise it shall remain in full force and effect. In Witness

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Whereof, the said Beaver Mortgage Company hath caused its corporate seal to be hereto affixed and these presents signed by the President and attested by its Secretary the

Signed, sealed and delivered
in the presence of
Attest: H. J. CUTHBERT,
Secretary.

BEAVER MORTGAGE
COMPANY,
By A. T. MURPHY,
President.
[Corporate Seal]

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

Be it remembered, that on this tenth day of April, in the year of our Lord one thousand nine hundred and thirteen, before me, a Master of Chancery of New Jersey, personally appeared H. J. Cuthbert, who being by me duly sworn, according to law, on his oath doth depose and make proof to my satisfaction that he is Secretary of the said corporation; that the seal affixed to the said mortgage is the corporation seal of said corporation; that it was so affixed in pursuance of a resolution of the Board of Directors of said corporation; that A. T. Murphy is the President of said corporation; that he saw said A. T. Murphy, as such President, affix said seal thereto, sign and deliver said mortgage and heard him declare that he signed, sealed and delivered the same as the voluntary act and deed of said corporation in pursuance of said resolution, and that this deponent signed his name thereto at the same time as a subscribing witness.

30 H. J. CUTHBERT, Sec.

Sworn and subscribed before me at Atlantic City, New Jersey, the day and year aforesaid.

R. H. INGERSOLL,
M. C. C. of N. J.

Rec'd & recorded April 18, 1913, at 8 A. M.

WILSON SENSEMAN,
Clerk.

COMPLAINANT'S EXHIBIT BOND No. 49.

\$7,000.00 FIRST MORTGAGE BOND No. 49.

Negotiated by Thomas B. McPherson,
Omaha, Nebraska.

REAL ESTATE SECURITY.

On the 10th day of April, 1916, for Value Received, 10
We promise to pay to the order of Thomas B. McPherson the principal sum of 7,000.00 Dollars, together with all interest thereon at the rate of six per cent. per annum from April 10, 1913, payable semi-annually according to the tenor of six annexed coupons, of even date herewith, both principal and interest payable at National City Bank, New York City.

If default be made in the payment of any interest coupon, or any part thereof, for the space of twenty days 20
after the same becomes due and payable, or in case of failure to perform any of the covenants or agreements contained in the indenture securing this Bond, then said principal sum, with accrued interest, shall, at the option of the legal holder hereof, become at once due and collectible without further notice.

This Bond shall bear interest after maturity at the rate of six per cent. per annum until paid, whether same becomes due by the exercise of the option herein provided for or by the lapse of time according to its terms. Should 30
suit be commenced to collect this Bond or to foreclose the indenture securing same, a reasonable Attorney's fee shall be allowed and shall become a part of the judgment or decree rendered.

It is especially agreed that this Bond and the annexed interest coupons are made and executed under, and are in all respects to be construed by the laws of the State of

New Jersey and are given for an actual loan of \$7,000.00, which loan is secured by First Mortgage on Real Estate duly recorded.

Dated at Atlantic City, New Jersey,
this 10th day of April, 1913.

BEAVER MORTGAGE COMPANY.

Attest: H. CUTHBERT, Sec. A. T. MURPHY, Pres.

\$210.00 ATLANTIC CITY, NEW JERSEY, April 10, 1913.

- 10 On the 10th day of April, 1916, for value received, We promise to pay to the order of Thomas B. McPherson the sum of 210.00 Dollars, at National City Bank, New York City, for interest due on that day according to the tenor of a principal Bond of \$7,000.00 of even date herewith. This Coupon to bear 6 per cent. interest after maturity.

Attest: BEAVER MORTGAGE COMPANY,
No. 49 H. CUTHBERT, Sec. A. T. MURPHY, Pres.

- 20 \$210.00 ATLANTIC CITY, NEW JERSEY, April 10, 1913.

On the 10th day of October, 1915, for value received, We promise to pay to the order of Thomas B. McPherson the sum of 210.00 Dollars, at National City Bank, New York City, for interest due on that day according to the tenor of a principal Bond of \$7,000.00 of even date herewith. This Coupon to bear 6 per cent. interest after maturity.

- Attest: BEAVER MORTGAGE COMPANY,
30 No. 49 H. CUTHBERT, Sec. A. T. MURPHY, Pres.
-

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No. 49 H. CUTHBERT, Sec. A. T. MURPHY, Pres.

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On the 10th day of October, 1914, for value received, We promise to pay to the order of Thomas B. McPher-
son the sum of 210.00 Dollars, at National City Bank, 10
New York City, for interest due on that day according to the tenor of a principal Bond of \$7,000.00 of even date herewith. This Coupon to bear 6 per cent. interest after maturity.

Attest: BEAVER MORTGAGE COMPANY,
No. 49 H. CUTHBERT, Sec. A. T. MURPHY, Pres.

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son the sum of 210.00 Dollars, at National City Bank, New York City, for interest due on that day according to the tenor of a principal Bond of \$7,000.00 of even date herewith. This Coupon to bear 6 per cent. interest after maturity.

Attest: BEAVER MORTGAGE COMPANY,
No. 49 H. CUTHBERT, Sec. A. T. MURPHY, Pres. 30

EXHIBIT MORTGAGE No. 49.

BEAVER MORTGAGE Co.,	}	MORTGAGE \$7,000.00.
OF ATL. CITY, N. J.,		
TO		
THOMAS B. MCPHERSON.		

- 10 Know all men by these presents: That, whereas, Beaver Mortgage Company, of Atlantic City, New Jersey, a corporation duly organized under the laws of New Jersey, is justly indebted to Thomas B. McPherson, of Omaha, Nebraska, in the sum of Seven Thousand and no/100 Dollars, evidenced by one certain bond of even date herewith executed by Beaver Mortgage Company, a corporation as aforesaid, payable to the order of Thomas B. McPherson as follows: One bond for (\$7,000.00)
- 20 Seven Thousand and no/100 Dollars, dated April 10th, 1913, due on or before three years from and after the date thereof, with interest from April 10th, 1913, at the rate of six per centum per annum, payable semi-annually, according to the tenor of six interest coupon notes attached to said bonds, both principal and interest being payable at the National City Bank, New York City, New York. Now, therefore, in consideration of the premises and for the purpose of securing the payment of the bond and coupon, aforesaid, with interest thereon according
- 30 to their tenor and effect, and the faithful performance of all the covenants hereinafter contained, the said Beaver Mortgage Company, a corporation organized under the laws of the State of New Jersey, hereinafter referred to as first party, does hereby grant, sell and convey unto said Thomas B. McPherson, hereinafter referred to as second party, and his heirs, executors, administrators and assigns, the following described real estate situate in

Ventnor City, Atlantic County, New Jersey, bounded and described as follows: Beginning in the northwest corner of Avenue E and Eighth avenue (both avenues 50 feet wide), and runs thence (1) northwardly along the west line of Eighth avenue 425 feet to Park avenue; thence (2) westwardly along the south line of Park avenue 160 feet to Seventh avenue; thence (3) southwardly along the east line of Seventh avenue 425 feet to Avenue E; thence (4) eastwardly along the north line of Avenue E 160 feet to the place of beginning. Being Lots No. 1 to 28, inclusive, in *Block No. 49* on plan of lots in Ventnor City entitled "Map of Building Lots in Ventnor City, N. J., owned by Wheelock Co. E. D. Rightmire, City Engineer, Ventnor City, N. J. Scale, 150 feet = 1 inch," on file in the Clerk's Office of Atlantic County, at May's Landing, New Jersey, together with all appurtenances thereon and all rights and interest thereunto appertaining, both in possession and in expectancy. And the said first party for itself, its successors and assigns, covenants to and with the said second party, his heirs, executors, administrators and assigns, that it is the owner in fee simple and has good right to sell and convey the said real estate; that the same is free from any lien or encumbrance and it hereby covenants to warrant and defend the title to the same against the lawful claims of all persons whomsoever. And the first party hereby expressly agrees (1) To pay said bond and coupons in full on the days the same shall severally become due. (2) Neither to commit nor permit waste on the above described premises and to put and keep said real estate, building and all other improvements now thereon or hereafter placed thereon in good repair. (3) To pay all taxes and assessments on said real estate before delinquency until said bond and coupons are fully paid, also to pay any taxes or assessments which may be levied under the laws of the State of New Jersey or the United States of America, against this mortgage, or said bond or against the said second parties or the legal holder of

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said Bond on account of this indebtedness. (4) That in case of failure to pay any of said taxes before delinquency, then said second party or the legal holder of the bond hereby secured, may pay such taxes and any sum so advanced, with interest at the rate of six per centum per annum, shall be repaid by the first party and shall be secured by this indenture. (5) That the said second party, his heirs, executors, administrators or assigns, at any time during the existence of this indenture, until the same is fully paid shall have full power and are hereby

10 authorized, as attorney in fact of the said first party to pay all statutory liens of any kind, either prior or subsequent, that may in any manner affect the title to the land herein conveyed, and for the repayment of all money so paid, with interest thereon from the date of such payment at the rate of six per centum per annum, payable annually, this indenture shall be security in like manner and with like effect as for the payment of said bond and coupons. And the said first party hereby further agrees

20 that if default shall be made in the payment of said bond or coupons or any part thereof, or in the payment of any taxes or assessments or statutory liens of any kind or any part thereof, or in keeping or performing any covenants and agreements of this indenture, that then, after such default has continued thirty days, the legal holder of said bond may at his option and without notice treat the said bond, coupons and mortgage and moneys advanced as due and collectible and the whole of said indebtedness shall bear interest at the rate of six per cent.

30 per annum from the date thereof, and this indenture may be foreclosed to pay and satisfy the amount of the debt secured by it, including advanced interest, attorney's fees, costs and expenses of extending abstract. And it is hereby fully understood and agreed that on the payment of any part of the debt secured hereby, the said second party, his heirs, executors, administrators or assigns, may release any portion of the security herein described from

the effect of this indenture and all that part of the security not so released shall be and remain as security for the full payment of the balance of the indebtedness hereby secured. Should the mortgagor at any time or times pay to the mortgagee the sum of Two Thousand Five Hundred Dollars (\$2,500) and all accrued interest thereon to apply on this mortgage, the mortgagee shall release from the lien of this mortgage any ten (10) contiguous lots covered by it and selected by the mortgagor. And in case of a default or failure to pay the bond or coupons, 10 or any part thereof, as they shall mature, or in case of failure to keep or perform any of the covenants or agreements contained in this indenture then the second party, his heirs, executors, administrators or assigns, shall be and he is hereby authorized, directed and empowered to take immediate possession of the premises hereby conveyed and to collect the rents therefrom, and to apply the proceeds thereof to the payment of the debt hereby secured. And in case any suit be brought to foreclose 20 this indenture then the said first party hereby agrees and consents to the appointment of a receiver upon application to the Court in which such action may be brought, or any judge thereof, either in term time or vacation, and hereby waives any notice of such application and consents that such receiver be appointed upon the production of this indenture, without other evidence, and that said receiver be authorized, directed and empowered to take immediate possession of the premises hereby conveyed and to collect the rents therefrom and to do and perform such other acts as may be required by order of 30 the Court or judge making such appointment. Upon full payment of the indebtedness aforesaid, and the performance of all the covenants and agreements made herein by the said first party, at the time and in the manner herein provided, this indenture shall be void. Otherwise it shall remain in full force and effect. In witness whereof, the said Beaver Mortgage Company hath caused its cor-

porate seal to be hereto affixed and these presents signed by the President and attested by its Secretary the

Signed, sealed and delivered in presence of
Attest: H. J. CUTHBERT,
Secretary.

BEAVER MORTGAGE
COMPANY,
By A. T. MURPHY,
President.
[Corporate Seal].

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

Be it remembered, that on this 10th day of April, in the year of our Lord one thousand nine hundred and thirteen, before me, a Master in Chancery of New Jersey, personally appeared H. J. Cuthbert, who being by me duly sworn according to law, on his oath doth depose and make proof to my satisfaction that he is Secretary of the said corporation, the grantor in the foregoing mortgage named; that he well knows the seal of said corporation; that the seal affixed to the said mortgage is the corporate seal of said corporation; that it was so affixed in pursuance of a resolution of the Board of Directors of said corporation; that A. T. Murphy is the President of said corporation; that he saw said A. T. Murphy, as such President, affix said seal thereto, sign and deliver said mortgage and heard him declare that he signed, sealed and delivered the same as the voluntary act and deed of said corporation in pursuance of said resolution, and that this deponent signed his name thereto at the same time as a subscribing witness.

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H. J. CUTHBERT, Sec.

Sworn and subscribed before me at Atlantic City, New Jersey, the day and year aforesaid.

R. H. INGERSOLL,
M. C. C. of N. J.

Received and recorded April 16, 1913, at 8.00 A. M.
WILSON SENSEMAN, Clerk.

COMPLAINANT'S EXHIBIT A.

A special meeting of the Directors of the Beaver Mortgage Company was held at the office of the Company, Pennsylvania avenue and Boardwalk, Atlantic City, N. J., on the 6th day of March, 1915, at 10.45 o'clock A. M.

There were present :

T. V. Rose

M. E. Higgins

H. J. Cuthbert

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being all of the directors of the Company.

The Secretary presented a waiver of notice of the time, place and purpose of the meeting, signed by all of the directors, and on motion it was ordered filed.

The Secretary stated that Mr. Thomas B. McPherson, having acquired substantially all of the stock of the Company, had requested that in the place of the mortgages still owned by him on the Ventnor lots, there should be created a trust mortgage securing an issue of \$175,000.00 of bonds, the effect being to materially reduce the indebtedness of the Company upon the bonds outstanding to Mr. McPherson.

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A form of the proposed bonds and trust mortgage to the West Jersey Trust Company of Camden, as trustee, were presented for the consideration of the directors in connection with the transaction. The bonds and mortgage being dated the first day of March, 1915, payable at the end of five years with six per cent. interest, payable semi-annually. The property described in the mortgage covering in all 1,784 lots.

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On motion duly made and seconded it was unanimously *Resolved*, that upon the surrender and cancellation of the mortgages upon said lots now held by Mr. Thomas B. McPherson, the proper officers of the Company be, and they are hereby authorized to execute said bonds and

mortgage and to do all things necessary in connection therewith, and that the West Jersey Trust Company trustee named in said mortgage, be authorized and requested to certify and issue all of said bonds, being 350 in number and aggregating in all \$175,000.00 and deliver the same so certified to the Treasurer of this Company. That said Treasurer be authorized to thereupon deliver said bonds to Mr. Thomas B. McPherson.

H. J. CUTHBERT, Pres.

T. V. ROSE, Sec.

M. E. HIGGINS, Treas.

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Correct Attest: T. V. ROSE, Sec.

(SEAL.)

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COMPLAINANT'S EXHIBIT B.

A special meeting of the stockholders of Beaver Mortgage Company was held at the office of the Company at Pennsylvania avenue and Boardwalk, Atlantic City, N. J., March 6th, 1915, at 10.45 o'clock A. M.

There were present:

T. V. Rose 10
M. E. Higgins
T. B. McPherson
H. J. Cuthbert

being all the stockholders of the Company.

A waiver of notice of the time, place and purpose of the meeting, signed by all the stockholders, was presented by the Secretary and on motion was ordered filed.

The minutes of the directors' meeting, held this day, were read and the form of the proposed bonds and mortgage securing them, referred to in said minutes, was submitted to the meeting. 20

On motion, duly seconded, it was unanimously *Resolved*, that the action of the Board of Directors, looking to the cancellation of the mortgages now held by Mr. Thomas B. McPherson, on 1,784 of the Ventnor lots, and to the creation of a trust mortgage to secure an issue of bonds aggregating \$175,000.00 to be delivered to Mr. Thomas B. McPherson in place of the existing mortgages be, and the same is hereby ratified and in all respects confirmed. And the directors and proper officers be, and they are hereby authorized to do all things necessary in order to have cancelled the mortgages upon said lots now held by Mr. Thomas B. McPherson and to have delivered to Mr. McPherson bonds of the Company in the form here submitted aggregating \$175,000.00 secured 30

by mortgage of the form here submitted, to the West Jersey Trust Company, trustee.

H. J. CUTHBERT, Pres.

T. V. ROSE,
M. E. HIGGINS,
THOS. B. MCPHERSON.

Correct Attest: T. V. ROSE, Sec.
(SEAL.)

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[ENDORSED.]

UNITED STATES DISTRICT COURT,

DISTRICT OF NEW JERSEY.

IN EQUITY.

WM. PLAGGE

VS.

THE BEAVER MTG. CO, ET ALS.

20

Amended and Supplemental Bill of Complaint.

WM. RITCHIE,
L. H. GERMAN,
RICH'D STOCKTON, III,
JOHN SOLAN,
Solrs. for Complt.

Filed January 13, 1919.

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ITEM 2, OF NOTICE.

Four original bonds, mentioned in this notice, are printed between pages 131 to 162 of this book and the bonds as so printed are here referred to with like effect as though reprinted here, with the exception that at the end of each bond and before the list of coupons show

as attached thereto the word "SEAL" should be written, as that is omitted on the copies on pages above referred to. Seals being affixed to each original bond.

Further endorsement on each bond, with the exception of numbers, which are 45, 46, 48, 49, respectively, is as follows:

FIRST MORTGAGE BOND

Real Estate Security
\$7,000.00

BEAVER MORTGAGE COMPANY

10

to

THOMAS B. MCPHERSON.

Dated April 10th, 1913.

Due April 10th, 1916.

Interest 6 per cent., payable on first days of April and October.

Principal and interest payable at National City Bank, New York City.

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Negotiated by

THOMAS B. MCPHERSON,
Omaha, Neb.

For value received, I hereby assign and transfer the within bond, together with all my interest in and all rights under the mortgage securing same to without recourse.

Dated,

THOMAS B. MCPHERSON.

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ITEM 3, OF NOTICE.

Four original mortgages mentioned in this notice are printed between pages 131 to 162 of this book, and the mortgages as so printed are here referred to with like effect as though reprinted here.

ITEM 4, OF NOTICE.

STATE OF NEW JERSEY,

OFFICE OF THE CLERK OF THE COUNTY OF ATLANTIC.

Search No. 7667.

10 I, EDWIN A. PARKER, Clerk of the Court of Common Pleas in and for the County of Atlantic, the same being a Court of Record, do hereby certify that having searched the records of Lis Pendens in my said office, I do not find thereon of record and unsatisfied any Lis Pendens.

Recorded between the following dates, inc.,
 AGAINST FROM To
 Beaver Mortgage Co. . . . Mar. 12, 1913 . . . May 31, 1919.

EXCEPT THE FOLLOWING:

IN THE DISTRICT COURT OF THE UNITED STATES,
 DISTRICT OF NEW JERSEY.

20

30	WILLIAM PLAGGE, Complainant, vs. THE BEAVER MORTGAGE COM- PANY, THE VENTNOR LOTS COMPANY, THE WEST JERSEY TRUST COMPANY, AND THOMAS B. MCPHERSON, Defendants.	}	ON BILL, ETC. LIS PENDENS. REC. & FILED DEC. 7, 1916. CHAN- CERY NOTICE BOOK No. 3, PAGE 51.
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To Whom it May Concern:

Take notice, that a suit entitled as above set forth has been commenced and is still pending in the District Court of the United States, District of New Jersey, and

that the general object of said suit is to take an account from the defendants, and that they may be decreed to pay what is due thereon, and that the mortgaged premises herein described may be sold to satisfy the said amount so due, and that the defendant may be foreclosed of all right of redemption therein, and that in case the proceeds of such sale are insufficient, a decree may be entered for the deficiency, the said decree to be a prior lien upon the premises herein described, and that the entries of cancellation and satisfaction of the mortgages on the lands herein described be decreed illegal and void and the mortgages be decreed in full force; that a receiver may be appointed and an injunction issued to prevent the defendants from disposing of any part of the lands herein described, and that the lands and real estate to be affected thereby are described in said bill as follows: Being in the County of Atlantic.....

10

Dated Dec. 4th, 1916.

RICHARD STOCKTON, 3rd,
Attorney for Complainant.

20

In Witness Whereof, I have hereunto set my hand and affixed the seal of said Court and County, at Mays Landing, N. J., this second day of June, A. D. one thousand nine hundred and nineteen (1919).

EDWIN A. PARKER,
Clerk.

[SEAL.]

Per LAURA BARRETT,
Search Clerk.

Fee, \$1.00.

30

Order. Filed Sept. 30th, 1919.

NEW JERSEY SUPREME COURT.

<p>WILLIAM PLAGGE, Plaintiff-Respondent, vs. 10 BEAVER MORTGAGE COMPANY, Defendant-Appellant.</p>	}	<p>ON APPEAL TO NEW JERSEY COURT OF ERRORS AND APPEALS. ORDER AMENDING NOTICE AND GROUNDS OF APPEAL.</p>
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This matter being opened to the Court, and it appearing that the consent of plaintiff-respondent hereto attached:

It is, on this *30th* day of September, nineteen hundred and nineteen, ordered, that the notice and grounds of appeal, filed in this cause, be amended by inserting in the first paragraph of said notice, after the words "filed August 5, 1919," the following:

"Dated August 5, 1919."

I consent to the within order.

RICHARD STOCKTON, 3rd,
Atty. for Plaintiff-Respondent.

N. J. Court of Errors & Appeals

Between

WILLIAM FLAGGE,

Complainant-Respondent,

and

THE BEAVER MORTGAGE COMPANY,

Defendant-Appellant.

ON APPEAL FROM THE NEW JERSEY SUPREME COURT.

SUPPLEMENT TO STATE OF CASE.

NORMAN GREY,

Solicitor for Appellant.

RICHARD STOCKTON, 3rd,

JOHN SOLAN,

Solicitors for Respondent.

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One of the Four Bonds under Item 2 of the Notice,
on page 166 of the Case.

\$7,000.00 FIRST MORTGAGE BOND No. 45.

Negotiated by Thomas B. McPherson,

Omaha, Nebraska.

REAL ESTATE SECURITY.

10

On the 10th day of April, 1916, for Value Received,
We promise to pay to the order of Thomas B. McPherson,
of Omaha, Neb., the principal sum of Seven Thousand
and 00/100 Dollars, together with all interest thereon
at the rate of six per cent. per annum from April 10,
1913, payable semi-annually according to the tenor of
six annexed interest coupons of even date herewith, both
principal and interest payable at National City Bank,
New York City.

20

If default be made in the payment of any interest coupon,
or any part thereof, for the space of twenty days
after the same becomes due and payable, or in case of
failure to perform any of the covenants or agreements
contained in the indenture securing this Bond, then said
principal sum, with accrued interest, shall, at the option
of the legal holder hereof, become at once due and collectible
without further notice.

This Bond shall bear interest after maturity at the rate
of six per cent. per annum until paid, whether same becomes
due by the exercise of the option herein provided for or by
the lapse of time according to its terms. Should suit be
commenced to collect this Bond or to foreclose the indenture
securing same, a reasonable Attorney's fee shall be allowed
and shall become a part of the judgment or decree rendered.

30

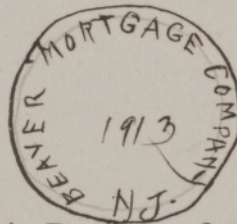
It is especially agreed that this Bond and the annexed interest coupons are made and executed under, and are in all respects to be construed by the laws of the State of New Jersey and are given for an actual loan of \$7,000.00, which loan is secured by First Mortgage on Real Estate duly recorded.

Dated at Atlantic City, New Jersey,
this 10th day of April, 1913.

BEAVER MORTGAGE COMPANY.

Attest: H. CUTHBERT, Sec. A. T. MURPHY, Pres.

10



(Attached to this Bond are five coupons for \$210.00 each, as appears on pages 132 and 133 of the Case.)

20

One of the Four Bonds under Item 2 of the Notice, on page 166 of the Case.

\$5,500.00 FIRST MORTGAGE BOND No. 46.

Negotiated by Thomas B. McPherson,

Omaha, Nebraska.

30

REAL ESTATE SECURITY.

On the 10th day of April, 1916, for Value Received, We promise to pay to the order of Thomas B. McPherson the principal sum of fifty-five hundred and 00/100 Dollars, together with all interest thereon at the rate of

six per cent. per annum from April 10, 1913, payable semi-annually according to the tenor of six annexed interest coupons of even date herewith, both principal and interest payable at National City Bank, New York City.

If default be made in the payment of any interest coupon, or any part thereof, for the space of twenty days after the same becomes due and payable, or in case of failure to perform any of the covenants or agreements contained in the indenture securing this Bond, then said principal sum, with accrued interest, shall, at the option of the legal holder hereof, become at once due and collectible without further notice.

This Bond shall bear interest after maturity at the rate of six per cent. per annum until paid, whether same becomes due by the exercise of the option herein provided for or by the lapse of time according to its terms. Should suit be commenced to collect this Bond or to foreclose the indenture securing same, a reasonable Attorney's fee shall be allowed and shall become a part of the judgment or decree rendered. 10

It is especially agreed that this Bond and the annexed interest coupons are made and executed under, and are in all respects to be construed by the laws of the State of New Jersey and are given for an actual loan of \$5,500.00, which loan is secured by First Mortgage on Real Estate duly recorded. 20

Dated at Atlantic City, New Jersey,
this 10th day of April, 1913.

BEAVER MORTGAGE COMPANY.

Attest: H. CUTHBERT, Sec. A. T. MURPHY, Pres.



30

(Attached to this Bond are five coupons for \$210.00 each, as appears on pages 140 and 141 of the Case.)

One of the Four Bonds under Item 2 of the Notice,
on page 166 of the Case.

\$7,000.00 FIRST MORTGAGE BOND No. 48.

Negotiated by Thomas B. McPherson,

Omaha, Nebraska.

REAL ESTATE SECURITY.

10 On the 10th day of April, 1916, for Value Received,
We promise to pay to the order of Thomas B. McPherson
son the principal sum of 7,000.00 Dollars, together with
all interest thereon at the rate of six per cent. per annum
from April 10, 1913, payable semi-annually according to
the tenor of six annexed coupons, of even date herewith,
both principal and interest payable at National City Bank,
New York City.

20 If default be made in the payment of any interest cou-
pon, or any part thereof, for the space of twenty days
after the same becomes due and payable, or in case of
failure to perform any of the covenants or agreements
contained in the indenture securing this Bond, then said
principal sum, with accrued interest, shall, at the option
of the legal holder hereof, become at once due and col-
lectible without further notice.

30 This Bond shall bear interest after maturity at the rate
of six per cent. per annum until paid, whether same be-
comes due by the exercise of the option herein provided
for or by the lapse of time according to its terms. Should
suit be commenced to collect this Bond or to foreclose
the indenture securing same, a reasonable Attorney's fee
shall be allowed and shall become a part of the judgment
or decree rendered.

It is especially agreed that this Bond and the annexed
interest coupons are made and executed under, and are

in all respects to be construed by the laws of the State of New Jersey and are given for an actual loan of \$7,000.00, which loan is secured by First Mortgage on Real Estate duly recorded.

Dated at Atlantic City, New Jersey,
this 10th day of April, 1913.

BEAVER MORTGAGE COMPANY.

Attest: H. CUTHBERT, Sec. A. T. MURPHY, Pres.



10

(Attached to this Bond are five coupons for \$210.00 each, as appears on pages 148 and 149 of the Case.)

One of the Four Bonds under Item 2 of the Notice,
on page 166 of the Case. 20

\$7,000.00 FIRST MORTGAGE BOND No. 49.

Negotiated by Thomas B. McPherson,

Omaha, Nebraska.

REAL ESTATE SECURITY.

30

On the 10th day of April, 1916, for Value Received,
We promise to pay to the order of Thomas B. McPherson the principal sum of 7,000.00 Dollars, together with all interest thereon at the rate of six per cent. per annum from April 10, 1913, payable semi-annually according to

the tenor of six annexed coupons, of even date herewith, both principal and interest payable at National City Bank, New York City.

10 If default be made in the payment of any interest coupon, or any part thereof, for the space of twenty days after the same becomes due and payable, or in case of failure to perform any of the covenants or agreements contained in the indenture securing this Bond, then said principal sum, with accrued interest, shall, at the option of the legal holder hereof, become at once due and collectible without further notice.

This Bond shall bear interest after maturity at the rate of six per cent. per annum until paid, whether same becomes due by the exercise of the option herein provided for or by the lapse of time according to its terms. Should suit be commenced to collect this Bond or to foreclose the indenture securing same, a reasonable Attorney's fee shall be allowed and shall become a part of the judgment or decree rendered.

20 It is especially agreed that this Bond and the annexed interest coupons are made and executed under, and are in all respects to be construed by the laws of the State of New Jersey and are given for an actual loan of \$7,000.00, which loan is secured by First Mortgage on Real Estate duly recorded.

Dated at Atlantic City, New Jersey,
this 10th day of April, 1913.

BEAVER MORTGAGE COMPANY.

Attest: H. CUTHBERT, Sec. A. T. MURPHY, Pres.

30



(Attached to this Bond are five coupons for \$210.00 each, as appears on pages 156 and 157 of the Case.)

One of the Four Mortgages under Item 3 of Notice, on page 167 of the Case.

BEAVER MORTGAGE CO.	}	
OF ATL. CY.,		
TO		MORTGAGE \$7,000.00.
THOMAS B. MCPHERSON.)	

10

Know all men by these presents, that Whereas, Beaver Mortgage Company of Atlantic City, New Jersey, a corporation duly organized under the laws of New Jersey, is justly indebted to Thomas B. McPherson, of Omaha, Nebraska, in the sum of seven thousand and no/100 Dollars evidenced by one certain bond of even date herewith executed by Beaver Mortgage Company, a corporation as aforesaid, payable to the order of Thomas B. McPherson as follows: One bond for (\$7,000.00) Seven Thousand and no/100 Dollars dated April 10th, 1913, due on or before three years from and after the date thereof, with interest from April 10th, 1913, at the rate of six per cent. per annum, payable semi-annually, according to the tenor of Six Interest Coupon Notes attached to said bonds, both principal and interest being payable at the National City Bank, New York City, New York. Now, therefore, in consideration of the premises and for the purpose of securing the payment of the bond and coupons aforesaid with interest thereon according to their tenor and effect, and the faithful performance of all the covenants hereinafter contained, the said Beaver Mortgage Company, a corporation organized under the laws of the State of New Jersey, hereinafter referred to as first party, does hereby grant, sell and convey unto said Thomas B. McPherson, hereinafter re-

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30

ferred to as second party, and his heirs, executors, administrators and assigns, the following described real estate, situated in Ventnor City, Atlantic County, New Jersey, bounded and described as follows: Beginning in the northwest corner of Avenue E, and Fourth avenue (both avenues 50 feet wide), and runs thence (1) northwardly along the west line of Fourth avenue, 425 feet to Park avenue; thence (2) westwardly along the south line of Park avenue 160 feet to Third avenue; thence (3) southwardly along the east line of Third avenue 425 feet to Avenue E, 160 feet to the place of beginning. Being lots No. 1 to 28, inclusive, in *Block No. 44* on plan of lots of Ventnor City, entitled "Map of Building Lots in Ventnor City, N. J., owned by Wheelock Co., E. D. Rightmire, City Engineer, Ventnor City, N. J. Scale 150 feet 1 inch," on file in the Clerk's Office of Atlantic County at May's Landing, New Jersey, together with all appurtenances thereon and all rights and interest thereunto appertaining, both in possession and in expectancy. And the said first party for itself, its successors and assigns, covenants to and with the said second party, his heirs, executors, administrators and assigns, that it is the owner in fee simple and has good right to sell and convey the said real estate; that the same is free from any lien or encumbrance and it hereby covenants to warrant and defend the title to the same against the lawful claims of all persons whomsoever. And the first party hereby expressly agrees (1) To pay said bond and coupons in full on the days the same shall severally become due. (2) Neither to commit nor permit waste on the above described premises and to put and keep said real estate, building and all other improvements now thereon or hereafter placed thereon in good repair. (3) To pay all taxes and assessments on said real estate before delinquency until said bond and coupons are fully paid, also to pay any taxes or assessments which may be levied under the laws of the State of New Jersey or

the United States of America, against this mortgage or said bond or against the said second parties or the legal holder of said bond on account of this indebtedness. (4) That in case of failure to pay any of said taxes before delinquency then said second party, or the legal holder of the bond hereby secured, may pay such taxes and any sum so advanced with interest at the rate of six per cent. per annum shall be repaid by the first party and shall be secured by this indenture. (5) That the said second party, his heirs, executors, administrators or assigns, at 10 any time during the existence of this indenture until the same is fully paid, shall have full power and are hereby authorized as attorney in fact of the said first party to pay all statutory liens of any kind, either prior or subsequent, that may in any manner affect the title to the land herein conveyed, and for the repayment of all money so paid, with interest thereon from the date of such payment at the rate of six per centum per annum, payable annually, this indenture shall be security in like manner and with like effect as for the payment of said bond and 20 coupons. And the said first party hereby further agrees that if default shall be made in the payment of said bond or coupons or any part thereof, or in the payment of any taxes or assessments or statutory liens of any kind or any part thereof, or in keeping or performing any covenants and agreements of this indenture, and then, after such default has continued thirty days, the legal holder of said bond may at his option and without notice treat the said bond, coupons and mortgage and moneys advanced as due and collectible and the whole of said indebtedness shall bear interest at the rate of six per cent. 30 per annum from the date thereof, and this indenture may be foreclosed to pay and satisfy the amount of the debt secured by it, including advances, interest, attorney's fees, costs, and expenses of extended abstract. And it is hereby fully understood and agreed that on the payment of any part of the debt secured hereby, the said second party,

his heirs, executors, administrators or assigns, may release any portion of the security herein described from the effect of this indenture, and all the part of the security not so released shall be and remain as security for the full payment of the balance of the indebtedness hereby secured. Should the mortgage at any time or times pay to the mortgagee the sum of Two Thousand Five Hundred Dollars (\$2,500) and all accrued interest thereon to apply on this mortgage, the mortgagee shall release from the lien of this mortgage any ten (10) contiguous
10 lots covered by it and selected by the mortgagor. And in case of a default or failure to pay the bond or coupons, or any part thereof, as they shall mature, or in case of failure to keep or perform any of the covenants or agreements contained in this indenture, then the second party, his heirs, executors, administrators or assigns, shall be and he is hereby authorized, directed and empowered to take immediate possession of the premises hereby conveyed and to collect the rents therefrom, and to apply
20 the proceeds thereof to the payment of the debt hereby secured. And in case any suit be brought to foreclose this indenture then the said first party hereby agrees and consents to the appointment of a receiver upon application to the Court in which such action may be brought, or any judge thereof, either in term time or vacation, and hereby waives any notice of such application and consents that such receiver be appointed upon the production of this indenture without other evidence, and that said receiver be authorized, directed and empowered to take immediate
30 possession of the premises hereby conveyed and to collect the rents therefrom, and to do and perform such other acts as may be required by order of the Court or judge making such appointment. Upon full payment of the indebtedness aforesaid, and in the performance of all the covenants and agreements made herein by the said first party at the time and in the manner herein provided, this indenture shall be void. Otherwise it shall remain in full

force and effect. In witness whereof, the said Beaver Mortgage Company hath caused its corporate seal to be hereto affixed and these presents signed by the president and attested by its secretary.

Signed, sealed and delivered in the presence of
Attest: H. J. CUTHBERT,
Secretary.

BEAVER MORTGAGE
COMPANY,
By A. T. MURPHY,
President.



10

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

Be it remembered that on this 10th day of April, in 20 the year of our Lord one thousand nine hundred and thirteen, before me, a Master in Chancery of New Jersey, personally appeared H. J. Cuthbert, who being by me duly sworn according to law, on his oath doth depose and make proof to my satisfaction, that he is Secretary of the said corporation, the grantor in the foregoing mortgage named; that he well knows the seal of said corporation; that the seal affixed to the said mortgage is the corporate seal of said corporation; that it was so affixed in pursuance of a resolution of the Board of Directors of said corporation; that A. T. Murphy is the President of said corporation; that he saw said A. T. Murphy, as such president, affix said seal thereto, sign and deliver said mortgage and heard him declare that he signed, sealed and delivered the same as the voluntary act and deed of said corporation in pursuance of said

30

resolution, and that this deponent signed his name thereto at the same time as a subscribing witness.

Sworn and subscribed before me at Atlantic City, New Jersey, the day and year aforesaid.

H. STARR GIDDINGS,
M. C. C. of N. J.

H. J. CUTHBERT,
Secretary.

10 Received and recorded April 18, 1913, at 8 A. M.
WILSON SENSEMAN,
Clerk.

(The other three mortgages are in the same form and differ only in number and amount, which is shown on pages 131 to 162 of the Case.)

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N. J. Court of Errors & Appeals

Between

WILLIAM PLAGGE,
Complainant-Respondent,
and

THE BEAVER MORTGAGE COMPANY,
Defendant-Appellant.

ON APPEAL FROM THE NEW JERSEY SUPREME COURT.

CASE.

NORMAN GREY,
Solicitor for Appellant.

RICHARD STOCKTON, 3rd
JOHN SOLAN,
Solicitors for R

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IN THE
COURT OF ERRORS AND APPEALS OF NEW JERSEY

WILLIAM PLAGGE,
Complainant-Appellee,
vs.
THE BEAVER MORTGAGE COMPANY,
Defendant-Appellant.

} Appeal from
Supreme Court, of
New Jersey.

**Points and Authorities in Support of Motion
to Dismiss Appeal.**

August 1, 1918: Summons and complaint served.
(Printed case, pages 17 and 88.) This was of the
June term, 1918.

August 6, 1918: Complaint filed. (Page 2.)

August 11, 1918: Last day for filing affidavit of
merits by defendant.

August 21, 1918: Last day for filing plea.

September 18, 1918: Judgment *by default*. (Page
19.)

October 1, 1918: Execution issued. (Page 90.)

October 18, 1918: Execution returned *nulla bona*.
(Page 92.)

November 5, 1918: November term opens.

January 13, 1919: Bill of complaint of *William
Plagge v. The Beaver Mortgage Co., et al.*, filed in

U. S. District Court at Trenton (page 102), setting up this judgment, execution, return, etc. (Pages 125-126.)

February 18, 1919: February term opens.

March 17, 1919: Petition to vacate judgment filed. (Page 20.)

No mention in said petition of the point (practically the sole point) now raised by appellant as to the Act of 1881 relating to bonds and mortgages securing the same debt.

Thus it appears:

- (a) Personal service of process.
- (b) Lapse of full period thereafter for making defense.
- (c) Lapse of full term after judgment before application to vacate.
- (d) No pretense of fraud, concealment or surprise in obtaining judgment.
- (e) Jurisdiction over subject-matter undisputed.
- (f) Complaint good in law upon its face and fully supports judgment.
- (g) Defense now proposed to be set up purely technical, not going to the merits.
- (h) Such defense purely matter of personal privilege; required to be specially pleaded in order to be availed of; could be *waived*, and was waived by failure to plead.
- (i) "One thing is clear, viz: The claim that [these bonds] are paid is not even *prima facie* made out, so far as plaintiff is concerned; in other words, plaintiff has never received the money called for by his papers." (Page 94, lines 16-19.)

- (j) The mortgages securing this debt (and which defendant now insists must be foreclosed before this action could be brought) are declared by defendant (under oath) in its very petition to vacate to have been canceled and destroyed long before this action was brought. (Page 21, line 30.)
- (k) Such cancellation was effected by this defendant itself, in co-operation with McPherson (who sold these bonds to plaintiff) for the purpose of defrauding plaintiff out of his security. See (verified) statements of bill of complaint introduced into this record by defendant itself. (Pages 109-111, paragraphs *twenty-fifth, et seq.*)

I.

AS TO THE APPEAL FROM THE ORIGINAL JUDGMENT.

“A writ of error will not lie at common law to review a judgment *by default.*”

6 Enc. Pldg. & Pr., 223.

3 Corp. Jur. 604.

Elliott on App. Proc., sec. 334.

Nor will appeals from default decrees be heard by this court.

Townsend v. Smith, 12 N. J. Eq. 350.

Barber v. W. Jersey Co., 52 *id.* 287 (Ct. E. & App.).

Jewett v. Fresch (Ct. E. & App.), 4 N. J. L. Jour. 145.

The remedy of a defendant who has been defaulted through “improvidence or fraud,” when he had a

“*just* and legal defense,” is by *timely* application to the court which entered the judgment.

Barber v. W. Jersey Co., supra.

3 Comp. Stat. 1910, p. 4095, sec. 135.

II.

AS TO THE APPEAL FROM THE ACTION OF THE SUPREME COURT IN REFUSING TO VACATE THIS JUDGMENT.

Such application is to the *discretionary* power of that court. In a case like the present the action of that court cannot be reviewed by this court without overruling repeated precedents.

Smith v. Livesey, 67 N. J. L. 269 (Ct. of E. & App.).

Bank v. Jones, 44 *id.* 60.

State Mut. Ins. Co. v. Williams, 78 *id.* 720, 723 (Ct. of E. & App.).

Here the defendant, after full opportunity to plead, neglected to do so. And now it asks such privilege, though from the record it is clear that plaintiff's claim is just and has not been paid. (Pages 93-94.)

The defense it proposes to set up is a purely *technical* one and *does not go to the merits*.

That plaintiff omitted to foreclose mortgage before bringing this action involves a mere matter of defendant's *personal privilege*, not any question of public policy. To be noticed by the trial court, such

a defense *must be pleaded*. If not pleaded, it is waived. It is waived by default.

Hellyer v. Baldwin, 53 N. J. L. 141.

Callen v. Bodine, 81 *id.* 240.

Crosby v. Washburn, 66 *id.* 494.

In other jurisdictions where there is similar statutory provision the same rule prevails.

Martin v. Becker, 169 Calif. 305.

Defendant has been guilty of gross *laches* in offering any defense. This constitutes one (sufficient) ground for the refusal of the court below to vacate this judgment. (Page 95, line 25.)

The defense offered is not that it does not owe this money, but that defendant, by proper plea at the proper time, could have compelled plaintiff to exhaust his security before bringing this form of action. The very petition wherein defendant prays the court to vacate this judgment declares (under oath) that "the mortgages accompanying said bonds were canceled of record by the holder thereof" long before this action was begun. (Page 21, line 30.) This forms one (and an all-sufficient) ground upon which the court below bases its refusal to vacate this judgment. (Page 94, lines 30 *et seq.*) How foreclose a mortgage which has been canceled?

And such cancellation was effected by *the active co-operation of this defendant itself for the purpose of defrauding this plaintiff* out of his security.

See the (verified) statements of the bill of complaint introduced into this record by defendant itself.

Printed case, pp. 109-111, *Twenty-first et seq.*

See deposition of *McPherson* (pp. 71: 46-47); also Interrogatories and Answers of *H. J. Cuthbert*, Nos. 20 to 35, inclusive (pages 61-65); also Interrogatories and Answers of *McPherson*, Nos. 4 and 11 (pages 82-85).

Under these circumstances, this was a *plain case for the exercise of the discretionary power* of the court below to refuse to this defendant leave to plead the *technical* defense which it now offers.

No power exists in this court to review such action.

Cases in which judgment has been *confessed* upon a *warrant of attorney* can form no precedent here. In such cases defendant has had no opportunity to offer any defense until after judgment entered.

And yet, even in such cases, if defendant could be shown to have had prompt notice, first, of the creditor's purpose to enter judgment, and then of the entry thereof; and if he should delay his application for redress, as here, for months after the lapse of a term of court, and after the plaintiff had obtained execution and return of *nulla bona*, and had filed a creditor's bill founded thereon, we submit that this court would hear no appeal to review a refusal of the Supreme Court to open up such a judgment.

After the lapse of a term the court is without power to annul a judgment except for fraud or want of jurisdiction, unless the application therefor is made during the term and continued over.

1 Black on Judgts., p. 467.

This is the rule in New Jersey as elsewhere.

State v. Tolla, 73 N. J. L. 250.

Bronson v. Shulton, 104 U. S. 417.

Tryon v. Penna. Co., 213 Fed., 51 (U. S.
Dist. Ct., N. J.).

Respectfully submitted,

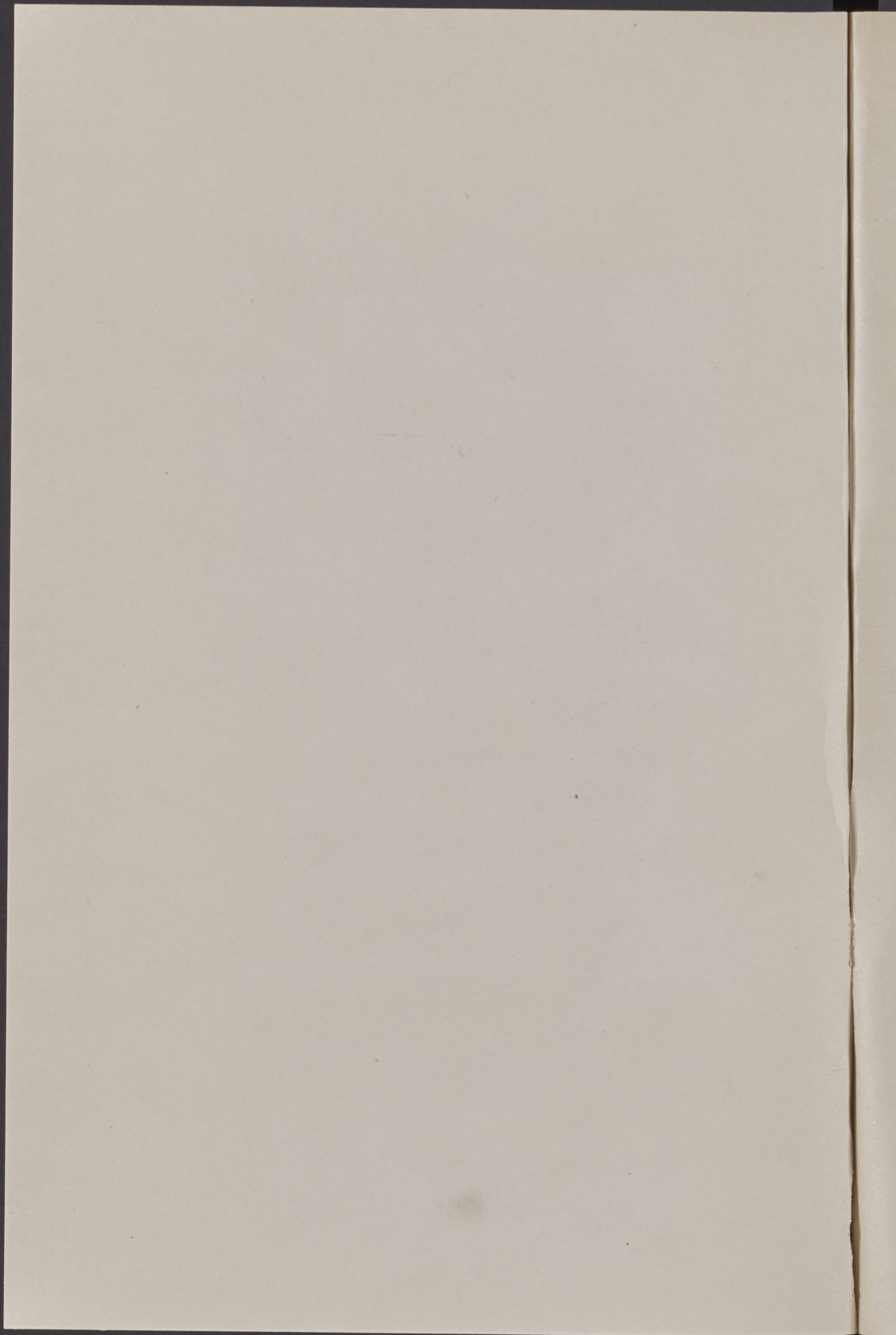
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ANSWERING PARAGRAPH TWO OF
APPELLEE'S BRIEF.

The appellee has cited the cases of *Smith vs. Livesey*, 67 N. J. Law, 269; *Bank vs. Jones*, 44 N. J. Law, 60, and *State Mutual Life Insurance Company vs. Williams*, 78 N. J. Law, 720, in support of his contention that this Court cannot review an order as in the present action.

The case of *Smith vs. Livesey* is an application to have judgment opened on the ground that the defendant's attorney has failed to file proper pleadings. The application is only upon the grounds that the proper defense has not been put in.

In the case of *Bank vs. Jones* the same situation as *Smith vs. Livesey*. In neither of the above two cases is the judgment itself contrary to a statute and a request to open is not based upon its being a judgment void by legislation.

In the case of *State Mutual Life Insurance Company vs. Williams* an appeal was taken from the rule to show cause why a judgment should not be opened, which judgment had been entered after the plea had been stricken out as frivolous or sham. That case would not apply to the case now before this Court for the very reason that one of the acts under which the Beaver Mortgage Company asked judgment to be opened, to wit, paragraphs 133 and 135 of 3 Compiled Statutes, pages 4094-4095, has reference only to those cases where judgment has been by default. In the *State Mutual* case pleas had been filed which were stricken out and judgment entered by order of the Court.

In the case of *Eames vs. Stiles*, 31 Law, 490, an appeal was taken upon the Circuit Court refusing to set aside an

award where the proceedings had been entered of record in pursuance of a statute. In discussing whether or not an appeal could be taken from that award, the Court said, page 495:

“Neither can it be said that the decision was discretionary. The Court, by the express terms of the statute, was compelled to entertain and decide the motion. The award could not be either ratified or disallowed, except on legal grounds. The decision, if correct, must be the result of the application of the law to the premises before the Court.”

In the case before this Court, the Court below heard the application to open judgment by reason of a statute. 3 Comp. Stat., page 4094, provides:

“133. Default judgment entered in term or vacation as of course.— If either party shall fail to file any necessary pleading, within the time limited or granted, the adverse party may enter, as of course, either in term time or vacation in the minutes such rule for judgment by default, either interlocutory or final, as he would have been entitled to if such rule were applied for in open court, expressing in such rule the true date of the actual entry thereof; and such rule when lawfully entered shall have the same force and effect as if entered by order of the Court, and if unlawfully entered shall be utterly void. (*P. L. 1903, p. 573*).”

It will be seen by this that a judgment entered improperly is void. Section 135, 3 Comp. Stat., 4095, provides:

“135. Opening or setting aside default judgment; terms.—If a judgment by default is entered for want of a plea, the Court or a Judge, on four days’ notice,

upon proof that such judgment was improvidently or fraudulently entered, or that the defendant has a just and legal defense to the action, may order that such judgment be set aside or opened to let the defendant in to plead; provided, if such judgment shall have been regularly obtained and without fraud, the order shall be that the defendant be permitted to plead on such terms as may be equitable, and the lien acquired by such judgment and by the execution thereon shall remain as security for the satisfaction of any judgment the plaintiff may recover in the action. (P. L. 1903, p. 574)."

As it is unlawful to enter judgment on a bond secured by a mortgage without first foreclosing the mortgage, it is not even a matter of discretion for the Court if the judgment sought to be opened is upon a bond secured by a mortgage.

The case of *Knight vs. Cape May Sand Company*, 83 L., 597 (83 Atl., 965), was an appeal from a rule entered in the Supreme Court discharging rule to show cause why judgment entered upon two bonds accompanied by mortgages, without first foreclosing the mortgages, should not be opened, it being shown that the bonds were accompanied by mortgages and that the mortgages had not been first foreclosed. The Court there held that (83 Atl., p. 965):

"While the general legal rule is that a writ of error will not lie to review the granting or discharging of a rule to show cause, it has always been confined to cases where the action of the Court was founded solely upon the exercise of its discretionary power, but not to a case where the effect of the granting or discharging of the rule is dispositive of the entire case, in that its action is tantamount to the

rendering of a final judgment. The mere fact that the proceeding was by a rule to show cause does not and cannot affect the real function of the writ of error; that is, to bring the judgment record under review. The rule to show cause was simply an orderly procedure by which to bring to the knowledge of the Court circumstances and facts under which the judgment was entered. The same object could have been attained by an application to the Court to vacate the judgment, without an intervening rule to show cause. It is clear that, if there was a defect on the face of the judgment record and an application had been made to vacate it and the Court had in the first instance granted a rule to show cause and subsequently either discharged or made the rule absolute, the action of the Court could not have operated to prevent the party prejudiced by such ruling to have the validity of such judgment brought under review by writ of error. And where the invalidity of the judgment can only be made to appear by matters *dehors* the record, as in the case *sub judice*, no different rule is logically applicable."

The appeal in this case of Plagge vs. Beaver Mortgage Company from the order of the Supreme Court, discharging rule to show cause, is exactly the same situation as the appeal in the Knight case, and one of the grounds of the appeal in this Plagge case is the ground upon which the Court of Errors in the Knight case not only decided that the appellants had a right to appeal from the rule of the Supreme Court discharging rule to show cause, but the judgment under review was set aside.

In the case of *Hanford vs. Duchaster*, 87 L., 205; 93 Atl., 586, an appeal from the order quashing a writ of attachment, the Court said:

“At the outset we remarked that it is quite clear that the order quashing the writ of attachment is in effect in the nature of a final judgment and may be reviewed in this court.”

In the case of *Sweeney vs. Miner*, 88 L., 361; 95 Atl., 1014 (Court of Errors and Appeals), an appeal was taken from an order overruling a motion to set aside the service of summons, the Court said:

“From these authorities it can be stated as a general rule that an order overruling a motion to set aside the service of summons is a mere interlocutory order from which an appeal will not lie; but an order setting aside the service of summons is appealable since it is in the nature of a final judgment and determines the action.”

In the case of *Pennsylvania Company for Insurances on Lives, etc., vs. Marcus*, 89 L., 633; 99 Atl., 405 (Court of Errors and Appeals), an appeal was taken from a rule of the Supreme Court discharging a rule to show cause why judgment should not be opened for the reason that no notice had been filed stating the court in which judgment would be asked for in compliance with P. L. 1907, p. 563. The Court of Errors said:

“The Supreme Court discharged the rule, and the defendant appeals as he is entitled to in a proceeding of this character.”

In *Gaffney vs. Illingsworth*, 90 L., 490; 101 Atl., 243 (Court of Errors and Appeals), on an appeal from an allowance of a rule to show cause why a new trial should not be granted, the Court said:

“An appeal which was substituted by the Practice Act of 1912 for a writ of error lies only when the decision sought to be reviewed is not proceeded from a matter resting in discretion but as settling definitely in a suit or proceedings the rights of the parties.”

From the above cases it is plain that the allowance or disallowance of a rule to show cause why a judgment entered upon a bond should not be vacated, when it appears that that bond is accompanied and secured by a mortgage, is not a matter of discretion, and further that any judgment of the Supreme Court which definitely settles the rights of the parties to the action is reviewable by an appeal, an appeal being substituted by the Practice Act of 1912 for writ of error. Therefore, following the decision in *Sweeney vs. Miner supra*, while a rule opening a judgment is not appealable for the reason that it is ~~not~~ in the nature of a final judgment, yet a rule refusing to open a judgment is appealable because that does finally settle the rights of the parties.

On the question that the right to have a mortgage first foreclosed before a judgment is entered upon a bond being a defense which, if not pleaded, is waived as alleged by appellee, he cites the case of *Hellyer vs. Baldwin*, 53 *New Jersey Law*, 141. On a rule to show cause why judgment entered upon a bond and warrant to confess judgment should not be vacated, it being shown that the bond was accompanied by a real estate mortgage, it was attempted to be shown that the signing of the warrant was a waiver of the right to have the mortgage first foreclosed, before a judgment could be taken on the bond. The Court said, “The statute is one, the protection of which can probably be waived.” In our case,

there is no question of our ever having waived the right to demand that judgment cannot be entered upon the bond, and what we are seeking is an opportunity to show that we are so entitled.

The case of *Callen vs. Bodine*, 81 Law, page 240, cited by appellees, only goes to the extent of showing that in the first instance the declaration or complaint, in a suit upon a bond accompanied by a mortgage, need not set out the foreclosure of the mortgage.

In the case of *Crossby vs. Washburn*, 66 Law, page 494, on a rule to open judgment entered by virtue of a warrant of attorney, the Court said, "The right to have a suit commence by process is a personal privilege that may be waived by the debtor." That case does not sustain appellee's statement for which he cited it.

Aside from the legal questions above discussed, in considering the question as to the right of appeal, the Court must take into consideration the fact that the notice and grounds of appeal were served on August 20th and filed August 27th. Further, on September 11th, pursuant to a notice, appellees contested the right of appellants to ^{include} certain papers in the state of the case, and later when the state of the case had been prepared and served on the appellees, they served a notice, dated October 28th, 1919, objecting to a certain portion of the state of the case.

The present notice was served November 7, 1919. Our Rule 24 in the Supreme Court provides that all objections to pleadings must be made at the one time. Inasmuch as the appellees have acted under our appeal, they should now be refused this application as they stood by and allowed the appeal to proceed until the four days before the opening of this Court.

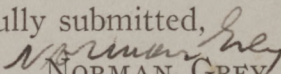
The case of *State vs. Tolla*, 73 N. J. Law, 250, cited by appellee, is not in point for the reason that it is a criminal matter and it was a motion for a new trial which is provided for by our Practice Act.

In the case of *Bronson vs. Shulton*, 104 U. S., 417 (it is not a New Jersey case), the application was made seventeen years after judgment and receipt by defendant of the judgment money and the error alleged could have been ascertained by comparing their own bill of particulars with the referee's report. The Court said, however, that the Federal Courts were not bound by State Statutes upon the question of opening judgments. The reference to State Courts power is merely *dicta*.

The case of *Tryson vs. Penna. Co.*, 213 Fed., 51, is practically the same as the preceding case, referring to the power of the Federal Courts to open judgments by reason of State Statutes—

“This authority can neither be conveyed upon nor withheld from the Courts of the United States by the Statutes of a State, or the practice of its Courts.”

In none of the three cases just referred to was the judgment void by reason of a statute, but judgment was sought to be opened for meritorious reasons.

Respectfully submitted,

NORMAN GREY.

