

129OCT.T.1934

In Chancery of New Jersey

No. 97 - 177

Filed June 6, 1934.

Between

CITY BUILDING AND LOAN
ASSOCIATION, a corporation,
Complainant,

—and—

LOUIS ADLER, et als.,
Defendants.

On Bill to Foreclose
Notice of Appeal.

To WILLIAM N. BECKER, Esquire, Solicitor for
Defendant, LOUIS ADLER and ROSE ADLER,
his wife:

Sir:

TAKE NOTICE that the complainant, City Building and Loan Association, appeals to the Court of Errors and Appeals in the Last Resort in all causes in New Jersey, from that part of the order of May 29th, 1934, wherein it is adjudged as follows:

“ Ordered that there be allowed to Harry E. Newman, special master, the sum of \$150.00 to be paid by complainant.”

on the ground that the court was without jurisdiction or right to order the complainant to pay the said master's fees, and that the same is contrary to the statute in such case made and provided.
Dated: May 31st, 1934.

KRAEMER, SIEGLER & SIEGLER,
Solicitors for Complainant.

JOSEPH KRAEMER,
of Counsel.

Service is hereby acknowledged of a copy of the
within notice of appeal, this 31st day of May, 1934.

WILLIAM N. BECKER,
Solicitor for Defendants,

Louis Adler and Rose Adler, his wife.

IN CHANCERY OF NEW JERSEY
No. 97 - 177

Filed June 16, 1934.

Between

CITY BUILDING AND LOAN
ASSOCIATION, a corporation,
Complainant,

—and—

LOUIS ADLER, et als.,
Defendants.

On Bill to Foreclose
AMENDED
Notice of Appeal.

To WILLIAM N. BECKER, Esquire, Solicitor for
Defendants, Louis Adler and Rose Adler, his
wife:

Sir:

TAKE NOTICE that the complainant, City Building and Loan Association, appeals to the Court of Errors and Appeals in the Last Resort in all causes in New Jersey, from that part of the order of May 29th, 1934, made by the Chancellor on the advice of Vice-Chancellor Alfred A. Stein, wherein it is adjudged as follows:

“ ORDERED that there be allowed to Harry E. Newman, special master, the sum of \$150.00 to be paid by complainant.”

on the ground that the court was without jurisdiction or right to order the complainant to pay the said master's fees, and that the same is contrary to the statute in such case made and provided.

Dated: June 14th, 1934.

KRAEMER, SIEGLER & SIEGLER,
Solicitors for complainant.

JOSEPH KRAEMER,
Of Counsel.

Service is hereby acknowledged of a copy of the within amended notice of appeal, this 15th day of June, 1934.

WILLIAM N. BECKER,
Solicitor for Defendants,
Louis Adler and Rose Alder.

ASSOCIATION & REPRESENTATIVE
COURT
NOTICE OF APPEAL
LOUIS ADLER & ROSE ADLER
DEFENDANTS

TO WILLIAM N. BECKER, Esquire, Solicitor for Defendants, Louis Adler and Rose Adler, his wife:

TAKEN NOTICE that the undersigned, Attorney at Law, has this day filed with the Clerk of the Court in New Jersey, from that part of the case of May Term 1934, made by the Chancellor, Alfred A. Smith, the advice of Vice-Chancellor Alfred A. Smith, which is as follows:

"ORDERED that there be allowed to Harry E. Newman special master, the sum of \$100.00 to be paid by compensation."

on the ground that the said sum was without injustice to the right to order the compensation to pay the said master's fee and that the same is contrary to the rights in such case and awarded.

Witness my hand and seal this 15th day of June, 1934.
FRANKLIN S. BROWN, Esquire, for complainant.
JOSEPH J. BROWN, Esquire, for defendant.

IN CHANCERY OF NEW JERSEY

Filed Feb., 8th, 1934.

Between

CITY BUILDING AND LOAN
ASSOCIATION, a corporation,*Complainant,*

—and—

LOUIS ADLER, et als.,

*Defendants.***Report of Sales of
Mortgaged Premises
&c.**

TO HIS HONOR: LUTHER A. CAMPBELL

Chancellor of the State of New Jersey.

I, JAMES R. HENSLER, Sheriff of the County of Ocean, do hereby respectfully report that I did on the 9th day of January 1934, sell at Public Vendue, at the Sheriff's Office, in the village of Toms River, Ocean County, New Jersey (having first duly advertised same) the lands and premises, stock and personal property described in the writ of Execution issued to me in the above stated caused, to CITY BUILDING AND LOAN ASSOCIATION, a Corporation of the State of New Jersey, having its principal office in the City of Newark, County of Essex, State of New Jersey, for the sum of ONE HUNDRED DOLLARS (\$100.00) for said 200 shares of stock, and ONE HUNDRED DOLLARS (\$100.00) for said real estate and personal property, it being the highest bidder therefor.

Respectfully submitted this 9th day of January
A. D. 1934.

JAMES R. H. HENSLER,
Sheriff.

By J. G. HOLMAN,
Under Sheriff.

STATE OF NEW JERSEY }
COUNTY OF OCEAN } ss:

J. G. HOLMAN of full age, being duly sworn according to law, on his oath says, that the mortgaged premises mentioned and referred to in the foregoing report, were duly sold for the highest and best price the same would bring in cash at the time of sale.

J. G. HOLMAN,
Under Sheriff.

Sworn and Subscribed to
before me this 9th day of
January A. D. 1934.

REUBEN H. REEVE,
Notary Public of New Jersey.

IN CHANCERY OF NEW JERSEY
No. 97 - 177

Filed Feb. 14, 1934.

Between

CITY BUILDING AND LOAN
ASSOCIATION, a corporation,
Complainant,

—and—

LOUIS ADLER, et als.,
Defendants.

On Bill to Foreclose
**Objections to
Confirmation of Sale.**

The defendants, Louis Adler and Rose Adler, his wife, hereby object to the confirmation of the report of sale of the mortgaged premises made in this cause by James R. Hensler, Sheriff of Ocean County, on the following grounds:

1. Said Sheriff acted in an improper, unwarranted and inequitable manner, in failing to adjourn the sale, because no person was present who might make any bid for the mortgaged premises, and of which fact he was to take notice because it was a matter of common knowledge, so well known as to require courts to take judicial notice of the same fact, that present financial conditions preclude any fair sale of real estate.

2. Said Sheriff acted in an improper, unwarranted and inequitable manner, in accepting a bid of the complainant for the sum of Two hundred (\$200.00) Dollars for the mortgaged premises, for the following reasons:

A. The price thus realized for the mortgaged premises was grossly insufficient and unconscionably inadequate, compared to the true value of the mortgaged premises at the time of the sale.

- B. The price thus realized for the mortgaged premises, compared to the value thereof, was so low as to be demonstrative of the fraud practiced upon Louis Adler and Rose Adler, the makers of the bond and the original mortgage, and upon Louis Adler, the owner of the mortgaged premises at the time of sale.
- C. The price thus realized for the mortgaged premises, compared to the amount of the bond and the mortgage securing it, was so low as to be demonstrative of the inequitable purpose of the complainant to institute suit against the aforesaid Louis Adler and Rose Adler for a sum vastly exceeding their true loss, if any.
- D. Confirmation or sanction of the sale should be refused or with-held, because it frustrates the aim of our Foreclosure Act, securing by competitive bidding the highest and best price, not only to satisfy the debt but as well to save to the owner the value of his equity.
- E. Confirmation or sanction of the sale should be refused or with-held, unless the complainant stipulates that no judgment will be taken on the bond, or stipulates that the fair value of the mortgaged premises is more than the value of the decree, with interest and costs.
- F. Confirmation or sanction of the sale should be refused or with-held, because it will subject the defendants to the liability of a deficiency judgment, in excess of the original amount of the mortgage, and would be unjust and unconscionable. Such a sale is no longer any protection to the mortgagors.

- G. Confirmation or sanction of the sale should be refused or with-held, because such a gross inadequacy of price is sufficient to shock the conscience of the court and compels an inference of fraud, and justifies a refusal to confirm.
- H. Confirmation or sanction of the sale should be refused or with-held, unless and until the complainant purchaser credits upon the decree, the fair value of the mortgaged premises so acquired by the complainant, and a deficiency suit, if any, prosecuted only for the balance thereof.
- I. Confirmation or sanction of the sale should be refused or with-held, due to present economic conditions, as a result of which the real estate market is stagnant and mortgage money is not available.

3. Said sale should not be confirmed by the Chancellor unless the complainant, as the bidder at the aforesaid sale, shall prove to the Chancellor that the writ of fieri facias was carried out in an equitable manner (regard being had to the fact of actual competition at said sale, the price realized, the time of sale and all other circumstances which materially affect prices of real estate), in addition to establishing that said mortgaged premises were sold for the best price obtainable.

WILLIAM N. BECKER,
Solicitor for and of counsel with
the defendants, Louis Adler and
Rose Adler.

IN CHANCERY OF NEW JERSEY
No. 97 - 177

Between CITY BUILDING AND LOAN ASSOCIATION, a corporation, <i>Complainant,</i> —and— LOUIS ADLER, et als., <i>Defendants.</i>	}	Filed March 13, 1934. On Bill to Foreclose Notice of Hearing and Affidavits.
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To the complainant and/or Kraemer, Siegler & Siegler, Solicitors for the complainant:

PLEASE TAKE NOTICE that on Tuesday, the 27th day of February, 1934, at ten o'clock in the forenoon, or as soon thereafter as counsel can be heard, before the Chancellor, at Chancery Chambers, 1080 Broad Street, Newark, New Jersey, I shall move the hearing and argument of the objections to confirmation of sale, filed in behalf of the defendants, Louis Adler and Rose Adler, and for a summary disposition of said objections. In support of the objections so filed and in support of the argument then to be made before the Chancellor, I shall read the affidavits hereto annexed.

Please take further notice that at the aforesaid time and place, upon the affidavits hereunto annexed, I shall also move as follows:

- a. For an order setting aside the sale conducted by the Sheriff of Ocean County on the 9th day of January, 1934, selling or purporting to sell the premises described in the Bill of Complaint in this cause on the fieri facias issued in pursuance to the Final Decree herein.
- b. For an Order directing the issuance of an alias writ of Fieri Facias for the satisfaction

of the sums decreed to be paid by the Final Decree in this cause, such Writ to be directed to some officer of this court (other than the Sheriff of Ocean County), competent to exercise discretion in making sale of the mortgaged premises.

- c. For an Order to compel the complainant to stipulate that no judgment will be taken on the bond, or stipulate that the fair value of the mortgaged premises is more than the value of the decree, with interest and costs.
- d. For an Order enjoining the complainant from bringing any action against Louis Adler and Rose Adler for any deficiency resulting after sale of the premises described in the Bill of Complaint in this cause, and from bringing any action on the bond made by Louis Adler and Rose Adler, in the penal sum of \$80,000.00 conditioned for the payment of \$40,000.00 and interest, which bond is the bond referred to in paragraph 1, of the Bill of Complaint in this cause.
- e. For an Order that the confirmation or sanction of sale be refused or with-held, because of a gross inadequacy of price.
- f. For an Order that the confirmation or sanction of sale be refused or with-held until the complainant purchaser credits upon the decree the fair value of the mortgaged premises so acquired by the complainant, and the deficiency suit, if any, prosecuted only for the balance thereof.
- g. For such further and other relief as will be just and equitable.

WLLIAM N. BECKER,
Solicitor for and of counsel with
defendants, Louis Adler and
Rose Adler.

IN CHANCERY OF NEW JERSEY
No. 97 - 177

Between CITY BUILDING AND LOAN ASSOCIATION, a corporation, <i>Complainant,</i> —and— LOUIS ADLER, et als., <i>Defendants</i>	}	On Bill to Foreclose Affidavit.
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STATE OF NEW JERSEY }
 COUNTY OF OCEAN } ss:

Louis Adler, of full age, being duly sworn upon his oath according to law, deposes and says:

I am one of the defendants in the above entitled cause of action.

The premises described in the Bill of Complaint in this cause are situate in the Town of Lakewood, New Jersey, and are known and designated as 512 Forest Avenue.

I purchased the property from the Lakewood Contracting and Building Company, in the winter of 1925-1926, for the sum of Sixty-two thousand (\$62,000.00) Dollars. The consideration was paid as follows: Cash, Twenty-five thousand (\$25,000.00) Dollars; credit for existing first mortgage, Twenty-five thousand (\$25,000.00) Dollars; credit for existing second mortgage, Twelve thousand (\$12,000.00) Dollars. Thereafter I furnished the premises with personal property in the sum of approximately Ninety-five hundred (\$9500.00) Dollars, being a total sum of Seventy-one thousand five hundred (\$71,500.00) Dollars property valuation.

I then considered and still consider that I purchased the real property and made purchases of personal property for a very low price.

The present value of the property described in the Bill of Complaint in this cause is between Forty-five thousand (\$45,000.00) Dollars and Fifty thousand (\$50,000.00) Dollars.

I recognize fully the fact that the real estate market today is at a very low ebb, and that difficulty in procuring mortgage loans makes purchasers very wary about buying real estate. I am quite confident, however, that just as soon as the mortgage loan situation eases up, a ready market will be found for the mortgaged premises, and, in my opinion, even at a sacrifice price the property will be sold for considerably over Fifty thousand (\$50,000.00) Dollars, thus, not only discharging all obligations of the bond, but realizing a surplus for my benefit.

Sworn to and subscribed
before me this 16th day
of February, 1934.

LOUIS ADLER.

CHARLES J. BERKOWITZ,
An Attorney at Law of N. J.

IN CHANCERY OF NEW JERSEY
No. 97 - 177

Between CITY BUILDING AND LOAN ASSOCIATION, a corporation, <i>Complainant,</i> —and— LOUIS ADLER, et als., <i>Defendants.</i>	}	On Bill to Foreclose Affidavit.
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STATE OF NEW JERSEY }
 COUNTY OF OCEAN } ss:

Paul Zurlin, of full age, being duly sworn according to law on his oath, deposes and says:

1. I am a licensed real estate broker of the State of New Jersey, and maintain my business at 259 Second Street, Lakewood, New Jersey. I have been in the real estate brokerage business for over 12 years, and am familiar with hotel building valuations, and my activities as an authorized real estate agent have been in the Town of Lakewood, and in the immediate vicinity thereof, where I have been engaged in considerable real estate transactions.

2. I have personally inspected premises known as 512 Forest Avenue, which is the New Hotel Adler, Lakewood, New Jersey, and find the fair and reasonable market value of the same to be as follows: Value of land, consisting of a parcel having a seventy-five (75') foot front by a hundred and fifty (150') foot depth, is in my opinion worth Five thousand (\$5,000.00) Dollars. The building situate on the said parcel, consisting of a

three story and basement, frame and stucco hotel building with composite roof, containing thirty-two (32) bed rooms, hotel lobby, card rooms, ball room, dining room, pantries and kitchen, steam heat and oil burner system, is worth the sum of Thirty-seven thousand (\$37,000.00) Dollars, making a total valuation as of the date hereof of the sum of Forty-two thousand (\$42,000.00) Dollars.

3. I have taken into consideration the relative value of other properties, and even under present conditions, and with due regard to the depressed condition of the real estate market at the present time, I am of the opinion that the premises in question are well worth at least the sum of Forty-two thousand (\$42,000.00) Dollars, and that in normal times, the property would greatly exceed the present valuation I have placed upon this property, and it is my opinion that the price I have quoted is fair and reasonable. This appraisal does not include the personal property, now in the premises.

Sworn to and subscribed
before me this 14th day
of February, 1934.

PAUL ZURLIN.

JOSEPH ROBBINS,

A Master in Chancery of N. J.

IN CHANCERY OF NEW JERSEY
No. 97 - 177

Between CITY BUILDING AND LOAN ASSOCIATION, a corporation, <i>Complainant,</i> —and— LOUIS ADLER, et als., <i>Defendants.</i>	}	On Bill to Foreclose Affidavit.
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STATE OF NEW JERSEY }
 COUNTY OF OCEAN } ss:

David L. Mayers, of full age, being duly sworn according to law on his oath, deposes and says:

1. I am a licensed real estate broker of the State of New Jersey, and maintain my business office at 115 Clifton Avenue, Lakewood, New Jersey. I have been in the real estate brokerage business for over ten years. Practically all of my activities have been confined to properties located in the Town of Lakewood, New Jersey, where I have been engaged in numerous real estate transactions.

2. I am familiar with the property known as the New Hotel Adler, at 512 Forest Avenue, Lakewood, New Jersey. This property has a frontage of seventy-five feet on Forest Avenue and runs to a depth of one hundred and fifty feet.

3. I am of the opinion that a reasonable and fair market value of the property known as the New Hotel Adler at 512 Forest Avenue, Lakewood, New Jersey, is reasonably worth at least Forty thousand (\$40,000.00) Dollars, as follows: Land,

seventy-five feet by one hundred fifty feet (75x-150), Five thousand (\$5,000.00) Dollars, or approximately sixty-six dollars and sixty-six (\$66.66) cents per front foot, and that the building, consisting of a three story and basement, thirty-two (32) room hotel building, containing the usual hotel lobby, card rooms, ball room, dining room, pantries and kitchen, steam heat and oil burner, is worth Thirty-five thousand (\$35,000.00) Dollars, making a total of Forty thousand (\$40,000.00) Dollars. In making this estimate, I am basing it upon the present conditions, realizing that the market for real estate is in a very bad condition, and my valuation has accordingly been fixed very low. In a normal market (and by that I exclude a "boom" market), that property would be worth approximately Fifty thousand (\$50,000.00) Dollars. This appraisal does not include the personal property, now in the premises.

Sworn to and subscribed
before me this 14th day
of February, 1934.

DAVID L. MAYERS.

JOSEPH ROBBINS,

A Master in Chancery of N. J.

IN CHANCERY OF NEW JERSEY
No. 97 - 177

Between CITY BUILDING AND LOAN ASSOCIATION, a corporation, <i>Complainant,</i> —and— LOUIS ADLER, et als., <i>Defendants.</i>	}	On Bill to Foreclose Affidavit.
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STATE OF NEW JERSEY }
 COUNTY OF OCEAN } ss:

Simon M. Rau, of full age, being duly sworn upon his oath according to law, deposes and says:

1. I am a wholesale dealer in furniture and hotel supplies, and maintain my office at 205 Fourth Street, Lakewood, New Jersey.

2. I have been in the furniture business for the past forty years, and am the person who furnished and supplied all of the furniture and hotel supplies at the New Hotel Adler, 512 Forest Avenue, Lakewood, New Jersey, when it opened, approximately seven years ago.

3. I am familiar with the personal property at the aforesaid hotel, and have made an appraisal of the personal property, of every kind and nature, now in and upon the aforementioned premises, and I find that the present reasonable value for the same amounts to the sum of Forty-five hundred (\$4500.00) Dollars, and the value of the said personal property at the time of its installation in the New Hotel Adler amounted to approximately Ninety-five hundred (\$9500.00) Dollars.

4. The present condition of all of the personal property is in excellent condition, and has not depreciated in value of the use thereof to any great extent, for in the main, use and wear does not affect the furnishings to any extent, except in mattresses and carpetings; otherwise the present furnishings are in practically as good condition as when newly installed.

5. The depreciation as shown, is the difference between the purchase price originally and the present reasonable value price, arising in the depreciation of the prices in re-purchase, and not by wear and tear.

Sworn to and subscribed
before me this 14th day
of February, 1934.

SIMON M. RAU.

JOSEPH ROBBINS,
A Master in Chancery of N. J.

IN CHANCERY OF NEW JERSEY
No. 97 - 177

Between CITY BUILDING AND LOAN ASSOCIATION, a corporation, <i>Complainant,</i> —and— LOUIS ADLER, et als., <i>Defendants.</i>	}	On Bill to Foreclose Affidavit.
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STATE OF NEW JERSEY }
 COUNTY OF OCEAN } ss:

Menashe Rabinowitz, of full age, being duly sworn according to law on his oath, deposes and says:

1. I am a licensed real estate broker of the State of New Jersey, and maintain my office in the Post Office Building of Lakewood, New Jersey. I have been in the real estate brokerage business for the past nine years, and have had considerable experience in real estate business, and my activities have been confined to properties located in Lakewood, and throughout Ocean County, where I have engaged in numerous real estate transactions.

2. I am familiar with the property at 512 Forest Avenue, Lakewood, New Jersey, which is the New Hotel Adler, which has a frontage of seventy-five (75') feet on Forest Avenue, with a depth of one hundred and fifty (150') feet.

3. I have appraised the premises aforesaid, and find in my opinion that a reasonable and fair market value of the land to be Thirty-five hundred (\$3500.00) Dollars, and that the building, which consists of a three story, basement, frame and

stucco hotel building, containing hotel lobby, card rooms, ball room, dining room, pantries and kitchen, steam heat and oil burner and thirty-two (32) bed rooms, is worth Thirty-four thousand five hundred (\$34,500.00) Dollars, making a total of Thirty-eight thousand (\$38,000.00) Dollars, the value of the entire premises.

4. Due to present economic conditions, as a result of which the real estate market is stagnant, and mortgage money is not available. I am quite confident, however, that just as soon as the mortgage loan situation eases up, a ready market will be found for this property, and in my opinion, even at a sacrifice price, the property will be sold for considerably over Fifty thousand (\$50,000.00) Dollars. This appraisal does not include the personal property now in the premises.

5. There is at present no actual demand for property of this type, due to the financial condition existing; yet it is obvious there is a value to every piece of property which still is usable. In making my appraisal, I am basing it upon present condition, well realizing that the market for real estate is in a very bad condition, and my valuation has accordingly been fixed very low.

Sworn to and subscribed
before me this 14th day
of February, 1934.

MENASHE RABINOWITZ.

ARTHUR A. ADLER,
An Attorney at Law of N. J.

IN CHANCERY OF NEW JERSEY
No. 97 - 177

Between CITY BUILDING AND LOAN ASSOCIATION, a corporation, <i>Complainant,</i> —and— LOUIS ADLER, et als., <i>Defendants.</i>	}	On Bill to Foreclose Affidavit. of Bernard Brody.
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STATE OF NEW JERSEY }
 COUNTY OF ESSEX } ss:

BERNARD BRODY, being duly sworn according to law on his oath deposes and says:

1. I am the treasurer of the City Building and Loan Association, the complainant in the above-entitled matter.

2. The Association was obliged to foreclose its mortgage of \$40,000.00, and at the sheriff's sale there were no bidders, and I in behalf of the Association bought in the property for \$100.00 and the shares of stock pledged as collateral security for the payment of the mortgage for \$100.00.

3. Shortly before, the Association had taken possession of the hotel premises and made a lease with the present occupants, the Schulman House, Inc., for the following rental:

August 10th, 1933 to August 10th, 1934, \$2,500.00
 August 10th, 1934 to August 10th, 1935, 2,800.00
 August 10th, 1935 to August 10th, 1936, 3,000.00
 That was the best price obtainable for the rental of said property. In the course of the negotiations for the lease, the tenant wanted an option to pur-

chase the property, and the best price they offered for an option was \$25,000.00. We have endeavored to sell the property and have been unable to obtain any price other than the price offered by the present occupants.

4. For the purpose of determining the value of the property we engaged the Smock Agency, which does the appraising for the Home Owners Loan Corporation in Lakewood and in that vicinity. They made an appraisal for us on February 9th, 1934. Annexed hereto is a copy of the said appraisal showing the value of the property, and the contents as \$25,370.00. The withdrawal value of the 200 shares of stock pledged as collateral security for the loan at the time of the sale was \$8,800.00. The Association is ready to credit the above two items to the amount due on the bond of the defendant, Louis Adler, leaving a deficiency as follows:

Decree	\$46,564.47	
Taxed Costs	563.30	
Sheriff's Fees	425.01	
		\$47,552.87

CREDITS:

Withdrawal value of shares	\$ 8,800.00	
Value of property, as per appraisal	25,370.00	
		34,170.00

DEFICIENCY	\$13,382.87
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5. I am connected with the American Building and Loan Association, the New Empire Building and Loan Association and with the Montefiore Building and Loan Association, and my experience with Building and Loan Associations extends over

a period of twenty years. In each one of the Associations I am an officer. I am familiar with the fair value of property, taking into account the abnormal times. I believe that the \$25,370.00 appraisal made by the Smock Agency is the fair and reasonable value of the property today. I do not believe that it is possible to obtain a cash buyer or even a buyer on cash and credit for more than that amount. It represent the maximum that the property could produce today. Even on a sale to a person desirous of entering the hotel business in Lakewood and buying a hotel of the class which the New Adler Hotel typifies.

Sworn and subscribed to
before me this 26th day
of February, 1934.

BERNARD BRODY.

JENNIE MICHELSTEIN,
A Notary Public of New Jersey.

**SMOCK AGENCY
CERTIFICATE OF APPRAISAL**

Lakewood, N. J.
February 9, 1934.

Hotel property formerly known as "New Adler Hotel", now the "Schulman House", located on the west side of Forest Avenue, between 5th and 6th Streets and known as No. 512 Forest Avenue, Lakewood, N. J.:

Land: Plot 75 ft. frontage on Forest Avenue by 150 feet in depth:.....\$ 3,000.00

Building:

Three story and basement, frame-stucco hotel building, average 54 ft. by 60 ft., 38 ft. high, with composition roof; containing usual hotel lobby, card rooms, ball room, dining room, pantries and kitchen; steam heat and oil burner.

(Depreciation factor 20%)..... 20,570.00

Furniture and equipment, including beds, mattresses, bureaus, chairs and upholstered furniture, seven years old.

(Depreciation factor 60%)..... 1,800.00

\$25,370.00

We hereby certify that we have personally inspected the premises above described and find the fair market value of same to be, as of February, 1934,—\$25,370.00.

J. L. HENDRICKSON (L.S.)
ARTHUR R. SMOCK (L.S.)

STATE OF NEW JERSEY }
COUNTY OF OCEAN } ss:

ARTHUR R. SMOCK and JOEL P. HENDRICKSON, of full age, being duly sworn according to law, upon their oaths, depose and say that:

We are now engaged in the Real Estate business in the Township of Lakewood and have been so engaged for the number of years set forth opposite our names; that we are familiar with real estate in the aforementioned Township and in the past several years have appraised numerous properties in said municipality for various Estates, Banks, the Reconstruction Finance Corporation, the New Jersey State Highway Commission, Jersey Central Power and Light Company, Standard Oil Company, Seaboard Ice Company, Lakewood Hotel and Land Association and many other individuals; that we have personally inspected the property located on the west side of Forest Avenue, between Fifth and Sixth Streets, and known as No. 512 Forest Avenue, in Lakewood, N. J., consisting of a plot of ground 75 ft. fronting on Forest Avenue by 150 ft. in depth, and containing thereon a three story and basement, frame and stucco building, average 54 ft. by 60 ft. by 38 ft. high; including furniture and equipment therein, consisting of beds, mattresses, bureaus, chairs and upholstered furniture seven years old, and find the fair market value of said property and furnishings to be as follows:

LAND	\$ 3,000.
BUILDING	\$20,570.
FURNISHINGS	\$ 1,800.
	<hr/>
TOTAL	\$25,370.00

In our judgment, in today's real estate market the within described property would not sell for over Twenty Thousand (\$20,000.00) Dollars in cash and at a forced sale it is doubtful if said property would realize even the said sum of Twenty Thousand (\$20,000.00) Dollars.

In making this appraisal we have given due consideration to other sales of similar property, similarly located, whenever to our knowledge occurring.

ARTHUR R. SMOCK—(28 yrs.)

JOEL P. HENDRICKSON (14 yrs.)

SWORN AND SUBSCRIBED To before me this 2nd day of March, Nineteen Hundred and Thirty-four.

(SEAL)

HELEN FRAZIER,
Notary Public of New Jersey.

IN CHANCERY OF NEW JERSEY
No. 97 - 177

Between CITY BUILDING AND LOAN ASSOCIATION, a corporation, <i>Complainant,</i> —and— LOUIS ADLER, et als., <i>Defendants.</i>	}	Filed March 13, 1934 On Bill to Foreclose Order of Reference.
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Objections to the confirmation of sale having been filed in the Court of Chancery by the defendants, Louis Adler and Rose Adler, his wife, and it appearing that due notice of hearing and supporting affidavits has been given to said complainants, City Building and Loan Association, and this matter coming on to be heard in the presence of William N. Becker, solicitor of the defendants, Louis Adler and Rose Adler, his wife, and Joseph Kraemer, solicitor of the complainant, City Building and Loan Association, and the court having heard and considered the arguments of counsel, and being of the opinion that this matter may properly be referred to a Master;

It is on this 13th day of March, 1934, on motion of the court, ORDERED, that this matter be referred to Harry E. Newman, one of the Masters of this court, to ascertain the fair and reasonable value of the mortgaged premises, and all rights and credits due to the defendants.

It is further ORDERED that both parties are hereby given leave to adduce testimony in support or contradiction of testimony introduced by either party.

IN CHANCERY OF NEW JERSEY
No. 97 - 177.

Between CITY BUILDING AND LOAN ASSOCIATION, a corporation, <i>Complainant,</i> —and— LOUIS ADLER, et als., <i>Defendants.</i>	}	Filed June 5, 1934. On Bill to Foreclose Master's Report On Reference.
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To the Honorable LUTHER A. CAMPBELL,
Chancellor of the State of New Jersey:

The undersigned, one of the Masters of this Court, respectfully reports that:

Pursuant to an Order of Reference in the above entitled cause, made on the Thirteenth day of March, 1934, to ascertain the fair and reasonable value of the mortgaged premises and all rights and credits due to the defendants, I have been attended by Joseph Kraemer, Solicitor of the Complainant, City Building and Loan Association, a corporation, and William N. Becker, Solicitor of the defendants Louis Adler and Rose Adler, and have taken the testimony of witnesses introduced by both parties and have considered the matters referred to me by said order.

It was stipulated and agreed by the solicitors of the parties hereto that the Master should make his report from the oral testimony of witnesses and from such notes as he might deem advisable to take and use and the taking stenographically or otherwise the testimony of witnesses or any of them was specifically waived by the said solicitors.

It was further stipulated by the parties that

the amount of the decree after allowance of all credits due to the defendant is as follows:

That as of April 27, 1934, there was due to the Complainant, City Building and Loan Association, on its final decree, after allowing all credits due the defendant, the sum of THIRTY NINE THOUSAND TWO HUNDRED NINETY FIVE and FIFTEEN HUNDREDTHS (\$39,295.15) DOLLARS.

I find that the mortgaged premises consists of a plot of ground located on the westerly side of Forest Avenue in the Township of Lakewood, Ocean County, New Jersey, having a front of seventy-five (75) feet by one hundred and fifty (150) feet deep; that there is a hotel building erected thereon containing thirty-two (32) sleeping rooms and fifteen (15) bath rooms, kitchen, dining room, lobby and the usual appurtenances necessary to the operation of a hotel, together with part of the furnishings in said hotel contained; that the building is of frame construction, three stories from the basement and is located on a side hill which permits the south side of the basement to be above ground and certain rooms in the basement therefore useful for bedrooms and sleeping quarters. The building was erected in 1924-1925 at a cost of \$62,000.00, the land costing \$6,000.00 and improvements \$56,000.00. The building was completely furnished in 1925 at a cost of something more than \$9,000.00; the building was sold unfurnished in the year 1925 for the sum of \$52,000.00 and has since been used and operated as a hotel. The complainant held as security for the payment of its bond the land, building and furniture therein contained.

Two hearings were held at the office of the Master on April 15th and April 27th, 1934. At

these hearings the defendants produced Dewitt B. Matthews, G. Clinton Griggs, Clayton R. Shinn, David L. Mayer and Paul Zurlin, and the complainant produced Arthur R. Smock and Joel P. Hendrickson, all of whom testified as to the value of the real estate and improvements thereon. All these men are now or have been for a considerable time last past, engaged in the real estate business in Lakewood and vicinity. I consider them qualified to render an expert opinion as to the value of property similar to the premises in question.

All of these witnesses were examined and cross-examined at length and all had made a recent personal examination of the property for the purpose of aiding them in forming their opinion.

In addition to the testimony of the real estate experts the defendants produced the original builder who was a building contractor and the owner of the premises. He testified that he purchased the land at a cost of \$6,000.00 and spent \$56,000.00 in erecting the building in the years 1924-1925; that he sold the premises and land without furniture in 1925 for \$52,000.00 which according to his testimony was a \$10,000.00 loss above costs but that he was unable to carry the property.

The property is located on Forest Avenue which in the past has been used chiefly for high class residential purposes. It is two blocks from the "Georgian Court College", the former estate of George J. Gould, and is in fact a desirable location for a high class boarding house or hotel. The land with a depth of one hundred and fifty (150) feet on Forest Avenue has for many years sold for at least \$80.00 per front foot.

From all the testimony produced before me on the value of the land I am satisfied that the land as of the date of this my Report (April 27, 1934) is worth the sum of FORTY FIVE HUNDRED (\$4500.00) DOLLARS. This value is based on a valuation of \$60.00 per front foot, and is a substantial amount less than lands heretofore sold on this Avenue, due to the falling-off in the value of real estate.

With reference to the value of the improvements the seven witnesses again varied considerably in their estimate of its present value although four of the seven witnesses placed the value at \$32,000.00; one at \$35,000.00; and the two Complainant's witnesses at \$20,800.00 and \$20,570.00 respectively. Considering the testimony of these witnesses together with the cost of replacement, the age and condition of said building, I am satisfied it has a present valuation of THIRTY TWO THOUSAND (\$32,000.00) DOLLARS.

The furniture in said building, constituting a part of the foreclosure under Complainant's chattle mortgage, consists of a completely furnished hotel with the exception of certain articles placed therein by the Complainant since taking possession and some few articles belonging to a former tenant. Parts of this type of furniture depreciate very rapidly while other portions thereof do not. The witnesses as to the furniture varied more greatly even than the witnesses concerning the real estate. The lowest estimate of its value being \$1,492.25 and the highest \$4,500.00. After considering the testimony of the three experts on the furniture I am satisfied a fair value thereof as of April 27, 1934, is TWENTY TWO HUNDRED AND FIFTY (\$2250.00) DOLLARS, making a total valuation of the foreclosed property land, improvements and furniture of THIRTY EIGHT THOUSAND SEVEN HUNDRED AND FIFTY (\$38,750.00) DOLLARS.

Respectfully submitted this Twenty-seventh day
of April, Nineteen hundred and thirty-four.

HARRY E. NEWMAN,
Master.

IN CHANCERY OF NEW JERSEY
No. 97 - 177.

Between

CITY BUILDING AND LOAN
ASSOCIATION, a corporation.

Complainant,

—and—

LOUIS ADLER, et als.,

Defendants.

Filed May 29, 1934.

On Bill to Foreclose

Order.

James R. H. Hensler, Sheriff of the County of Ocean having made and filed a report herein with affidavit attached thereto, bearing date the 9th day of January, 1934, whereby it appears that on the 9th day of January, 1934 he sold at public vendue, at the Sheriff's Office in the Village of Toms River, Ocean County, New Jersey (having first duly advertised the same) the lands and premises, stock and personal property described in the writ of execution issued to him in the above-stated cause, to City Building and Loan Association, a corporation of New Jersey, with its principal office in the City of Newark, County of Essex and State of New Jersey, for the sum of One hundred (\$100.00) Dollars for the two hundred shares of stock of the City Building and Loan Association, 68th series, and the sum of One hundred (\$100.00) Dollars for the real estate and personal property, it being the highest bidder therefor;

And Louis Adler and Rose Adler, his wife, the defendants herein, having objected to the confirmation of the report of the sale;

And the matter coming on to be heard before the Chancellor at Newark, Essex County, New Jer-

sey on March 13th, 1934 an order of reference was made to Harry E. Newman, one of the masters of this court, to ascertain the fair and reasonable value of the mortgaged premises, and all rights and credits due to the defendants, and that he report with all convenient speed; and the master having heard and considered the testimony adduced in behalf of the complainant and the said defendants, made and submitted his report on April 27th, 1934, wherein he finds a total valuation of the foreclosed property, land, improvements and furniture as of April 27th, 1934 in the amount of \$38,750.00, and that on April 27th, 1934 there was due to the complainant, City Building and Loan Association on its final decree, after the allowing all credits due to the defendants, the sum of \$39,295.15; and no objection being made to the confirmation of the said master's report;

It is thereupon on this twenty-ninth day of May, Nineteen Hundred and Thirty-Four,

ORDERED, that the said report be and the same hereby is in all things confirmed. And it is further

ORDERED that as of April 27th, 1934, there was due to the complainant, City Building and Loan Association on its final decree, after allowing all credits due to the defendants, the sum of \$39,295.15; that as of April 27th, 1934 the fair value of the foreclosed property, land, improvements and furniture was \$38,750.00; that the amount of the deficiency on the bond made by the defendant Louis Adler to the City Building and Loan Association secured by the mortgage foreclosed in the above-entitled cause, as of April 27th, 1934 is \$545.15; and that the sale by James R. H. Hensler, Sheriff of Ocean County of the said lands, improvements, property, furniture and

shares of stock made on the 9th day of January, 1934, be and the same is hereby confirmed for the amount of \$38,750.00 as valid and effectual in law. And it is further

ORDERED that the said sheriff do execute a good and sufficient conveyance in the law to said purchaser or its assigns for the said mortgaged premises so sold. And it is further

ORDERED that there be allowed to Harry E. Newman, special master, the sum of \$150.00 to be paid by complainant.

Respectfully advised,

ALFRED A. STEIN,

V. C.

LUTHER A. CAMPBELL,
C.

IN CHANCERY OF NEW JERSEY
No. 97 - 177.

Between CITY BUILDING AND LOAN ASSOCIATION, a corporation, <i>Complainant,</i> —and— LOUIS ADLER, et als., <i>Defendants.</i>	}	Filed August 3, 1934. CONCLUSIONS (Not for print in any report).
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Appearances:

Messrs. Kraemer, Siegler & Siegler, Solicitors
for Complainant.

Mr. William N. Becker, Solicitor for Defendants.
STEIN, V. C.

This matter is before me on objection to confirmation of sale. The mortgaged premises under foreclosure were sold by the Sheriff to the complainant for the sum of \$200.00. The objection to confirmation is made upon the ground that confirmation should be withheld unless and until the complainant credits upon the decree the fair value of the mortgaged premises. Order of reference was advised on the thirteenth day of March, 1934, to Harry E. Newman, one of the Masters of this Court, to ascertain the fair value of the mortgaged premises. The amount due upon the decree as of April 27, 1934, was the sum of \$39,295.15 and the Master reported on April 27, 1934, that the fair value of the mortgaged premises was the sum of \$38,750.00, which report of the Master was confirmed on May 29, 1934, and in said order confirming, the Master's fees were allowed at the sum of \$150.00 and directed to be paid by the complainant.

Appeal to the Court of Errors and Appeals from that portion of the order dated May 29,

1934, allowing the Master the sum of \$150.00 and directing the same to be paid by complainant was taken, and hence this memorandum.

The reference to the Master was made pursuant to Section 80 of the Chancery Act, Compiled Statutes 1, page 440, which provides:

“Whenever the chancellor shall deem it necessary to call to his assistance one or more of the masters in chancery to advise with, upon the hearing of a cause, or an argument, or upon matters of importance, or when any matter shall be referred to any of said officers, pursuant to the general rules of said court, or to any special order or decree in any cause, matter of proceeding depending therein, the fees for such services shall be proportionate, as nearly as may be to the actual value of such service, and shall be regulated by the chancellor from time to time. (P. L. 1902, p. 537.)”

The Master's report shows that two hearings were conducted by him, one on April 15th and the other on April 27, 1934, at which seven witnesses were examined; and in view of the standing at the Bar of the Master, the time consumed, and the value of the property, it is my judgment that the sum of \$150.00 is fair and reasonable.

The litigation in which the defendants were engaged by way of objection to the confirmation of the Sheriff's sale which necessitated the retention of counsel by the defendant was occasioned by the refusal on the part of the complainant to give credit for the fair value of the mortgaged premises. Defendants were entirely successful. Under all the circumstances and exercising the discretion of the Court, I direct the Master's fees to be paid by the complainant.

NEW JERSEY COURT OF ERRORS
AND APPEALS.

Between CITY BUILDING AND LOAN ASSOCIATION, a corporation, <i>Complainant-Appellant,</i> —and— LOUIS ADLER, et als., <i>Defendants-Respondents.</i>	}	On Bill, &c. On Appeal from the Court of Chancery. Stipulation.
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Pursuant to rule No. 19 of the Court of Errors and Appeals, it is hereby stipulated and agreed by and between Kraemer, Siegler & Siegler, solicitors for complainant-appellant and William N. Becker, solicitor for defendants-respondents, that for the purpose of this appeal the state of the case in the above matter shall be abridged so as to include the following documents only:

Report of sale
 Objections to confirmation of sale
 Notice of hearing and affidavits
 Answering affidavits
 Order of reference
 Master's report
 Vice-Chancellor's order allowing \$150.00
 Opinion of Vice-Chancellor
 Notice of appeal
 Amended notice of appeal.

KRAEMER, SIEGLER & SIEGLER,
Solicitors of Complainant-Appellant.

WILLIAM N. BECKER,
Solicitor of Defendants-Respondents.

129OCT.1.1934

New Jersey Court of Errors and Appeals

Between

CITY BUILDING AND LOAN ASSOCIATION, a corporation,
Complainant-Appellant,

and

LOUIS ADLER, *et als.*,
Defendants-Appellees.

On Appeal
from
Court of
Chancery.

BRIEF OF DEFENDANTS-APPELLEES.

Informative Statement.

The complainant-appellant, City Building and Loan Association, was the holder of a mortgage on a property, consisting of a hotel and its personal furnishings, located in Lakewood, New Jersey, belonging to the defendants-appellees. There were defaults in the payment of the bond and mortgage according to its terms and conditions and the complainant-appellant threatened to foreclose its mortgage. The defendants-appellees, prior to the foreclosure suit being instituted, offered to the complainant-appellant a deed to the real property and a bill of sale to the personal property, in consideration of a surrender and cancellation of the bond and mortgage and without the passing or payment of any monies between the parties. The complainant-appellant refused to accept this offer, insisting that if it accepted

the deed and the bill of sale from the defendants-appellees, the complainant-appellant should receive and be entitled, in addition thereto, to a deficiency judgment against the defendants-appellees of Fifteen Thousand (\$15,000.00) Dollars. To this proposition the defendants-appellees would not agree, with the result that the complainant-appellant foreclosed its mortgage, the defendants-appellees filed no answer thereto, and the complainant-appellant purchased in the property and personal belongings at the Sheriff's sale, at a nominal sum of Two Hundred (\$200.00) Dollars. After the Sheriff's sale, the complainant-appellant was requested by the defendants-appellees to credit to them the fair and reasonable value of the property and the withdrawal of the shares, on the final decree and taxed costs, totalling the sum of Forty-seven Thousand, Five Hundred Fifty-two Dollars and Eighty-seven Cents (\$47,552.87), and the complainant-appellant expressed its willingness to allow to the defendants-appellees a total credit of Thirty-four Thousand One Hundred Seventy (\$34,170.00) Dollars, leaving a deficiency in its favor of Thirteen Thousand, Three Hundred Eighty-two Dollars and Eighty-seven Cents (\$13,382.87) (S. C. p. 23), which the defendants-appellees refused to accept and thereupon the defendants-appellees in sheer self-defense, by the selfish attitude of the complainant-appellant, were driven to file their objections, in the Court of Chancery, to the confirmation of the Sheriff's sale (S. C. p. 7), and the matter was referred by Alfred A. Stein, V. C., by order of reference (S. C. p. 28) to Harry E. Newman, Esq., a special master of the Court of Chancery, to ascertain the fair and reasonable value of the mortgaged premises, and all rights

and credits due to the defendants-appellees. The master held two hearings at his office in Lakewood, New Jersey, and before whom a great number of witnesses appeared and testified for both sides. The time devoted to the hearings consisted of two complete afternoons. The master filed his report (S. C. p. 30), and found that there was due to the complainant-appellant the sum of Thirty-nine Thousand, Two Hundred Ninety-five Dollars and Fifteen Cents (\$39,295.15), which amount included the amount of Nine Hundred Eighty-eight Dollars and Thirty-one Cents (\$988.31) foreclosure costs (S. C. p. 23), and also found that the fair and reasonable value of the lands, buildings and furnishings amounted to the sum of Thirty-eight Thousand, Seven hundred Fifty (\$38,750.00) Dollars, leaving a deficiency of Five Hundred Forty-five Dollars and Fifteen Cents (\$545.15) in favor of the complainant-appellant. Upon the return day of a notice why the sale should not be confirmed, no objections were raised to the confirmation of the sale by either party, the only matters presented to the Court of Chancery at the time were the fixing of the amount of the master's fees for his services rendered, and by whom the same were to be paid. The defendants-appellees in their argument against having the master's fees taxed against them, presented to the court the fact that the defendants-appellees had offered to the complainant-appellant a deed and bill of sale, prior to the institution of the foreclosure suit, and that the complainant-appellant had refused to accept said deed and bill of sale, unless it received a consent deficiency judgment aforesaid, which was not denied by the complainant-appellant, and also the fact that the expenses of the foreclosure suit

amounted to the sum of Nine Hundred Eighty-eight Dollars and Thirty-one Cents (\$988.31), which increased the amount of the final decree accordingly, and also because the complainant-appellant's foreclosure suit was not instituted in good faith, and also because of the selfish attitude of the complainant-appellant in refusing to give the full credit to the defendants-appellees for the fair and reasonable value of the mortgaged premises, personal property and withdrawal value of the shares, and also because the defendants-appellees were successful in their objections to the confirmation of the sale, as the report of the master would indicate, and therefore if the fees of the special master were to be fixed and assessed, they should be directed and taxed against the complainant-appellant, and the court made an order (S. C. p. 37), dated May 29th, 1934, confirming the sale and fixing the fees of the master at the sum of One Hundred Fifty (\$150.00) Dollars, to be paid by the complainant-appellant. No objections were raised at the hearing by the complainant-appellant, that the manner of fixing the fees of the master was improper and unlawful, and contrary to the statute providing fees, as the respective counsel for the litigants, prior to the hearing, had mutually agreed between themselves for their clients that the master had rendered extraordinary services, and that the fee to be allowed was to be left to the sound discretion of the Court of Chancery.

The complainant-appellant refused to submit the question of the fair and reasonable value of the real estate and personal property to be determined by the Vice Chancellor, and for a summary disposition of said objections, as was set

forth in the notice of hearing and affidavits (S. C. p. 10) and insisted that the matter be referred to a special master of the Court of Chancery, so that it would have an opportunity to present witnesses to refute the allegations and statements contained in the affidavits annexed to the objections to the confirmation of sale. The complainant-appellant having sought the order of reference and being unsuccessful in establishing that a deficiency of approximately Fifteen Thousand (\$15,000.00) Dollars was due it, should be compelled to pay, and under the discretion of the Court of Chancery was ordered to pay the counsel fee of the special master.

The complainant-appellant now appeals to this court from that part of the order assessing the fees of the master against them.

Law.

The statutory warrant for the allowance for fees to a master is to be found in Section 80 of the Chancery Act (1 Comp. St. 1910, p. 440).

Whenever the chancellor shall deem it necessary to call to his assistance one or more of the masters in chancery to advise with, upon the hearing of the cause, or an argument, or upon matters of importance, or when any matter shall be referred to any of said officers, pursuant to the general rules of said court, or to any special order or decree in any cause, matter or proceedings depending therein, the fees for such services shall be proportionate, as nearly as may be to the actual value of such service, and shall be regulated by the chancellor from time to time.

See

Eitner v. Eitner, 151 Atl. 740, 107 Eq. 88.

The awarding, of costs, in equity rests in sound discretion.

Section 84, Chancery Act (1 Comp. St. 1910, p. 442).

Except where it is otherwise directed by this act or some other law, it shall be in the discretion of the court of chancery to award costs or not; * * *

See

Miller v. Marshall, 171 Atl. 808, 115 Eq. 545.

In re: Wade, et als., v. Cox, 172 Atl. 215, 115 Eq. 608.

Backes, V. C., held, on motion for counsel fee and costs, that costs in equity are discretionary.

In re: Insurance Company v. Smith, et al., 51 Eq. 635.

The allowance of costs and counsel fees in the court of chancery is in the discretion of the chancellor, to be exercised on equitable principles. * * *

The right of costs against a litigant must be found in the statute.

P. L. 1915, p. 185, Sec. 6. Comp. St. Supp. 1911-1915, p. 25, Sec. 50.

The court, upon making an order or decree, may charge the successful party with costs, or a reasonable counsel fee, or both, in any case in which the court shall deem it just to do so.

In re: McCloskey v. Bowden, 89 Atl. 528, 82 Eq. 410.

Walker, C.:

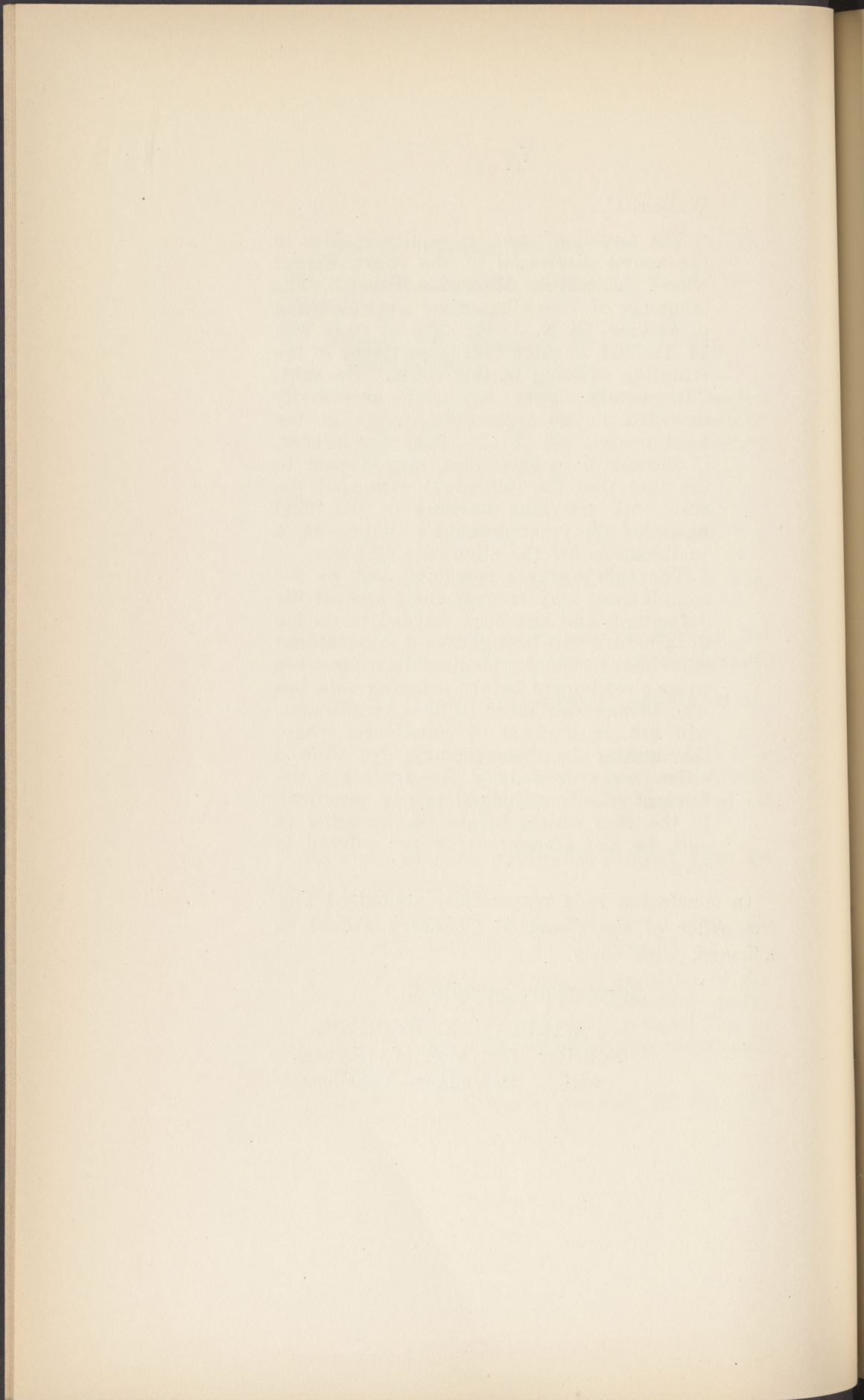
The award of costs in equity resides in the sound discretion of the court, except where the statute otherwise directs. The language of Vice Chancellor Grey in *Riley v. Fithian*, 64 N. J. Eq. 259, at page 262, 54 Atl. 143, at page 144, is pertinent to the situation existing in this cause. He said: "In equity costs are not necessarily awarded to the successful party in the final decree. * * * The complainant, if successful in the cause, may appeal to the fact that the defendant contested the suit, with previous warning of the legal basis of the complainant's claim, as a justification for the allowance of costs."

The rule works *e converso*, and, as the complainant may recover costs against the defendant who has been warned to do his duty before suit brought, so a complainant who has received a bona fide offer of a proper settlement before bringing suit, but who brings suit more or less vexatiously, will not, in a court of conscience, where the matter is discretionary, be allowed either costs or counsel fee against a defendant who is adjudged to pay practically the sum which, before the bringing of suit, he had accounted for and offered to pay.

In conclusion it is respectfully submitted that the order of the Court of Chancery should be affirmed, with costs.

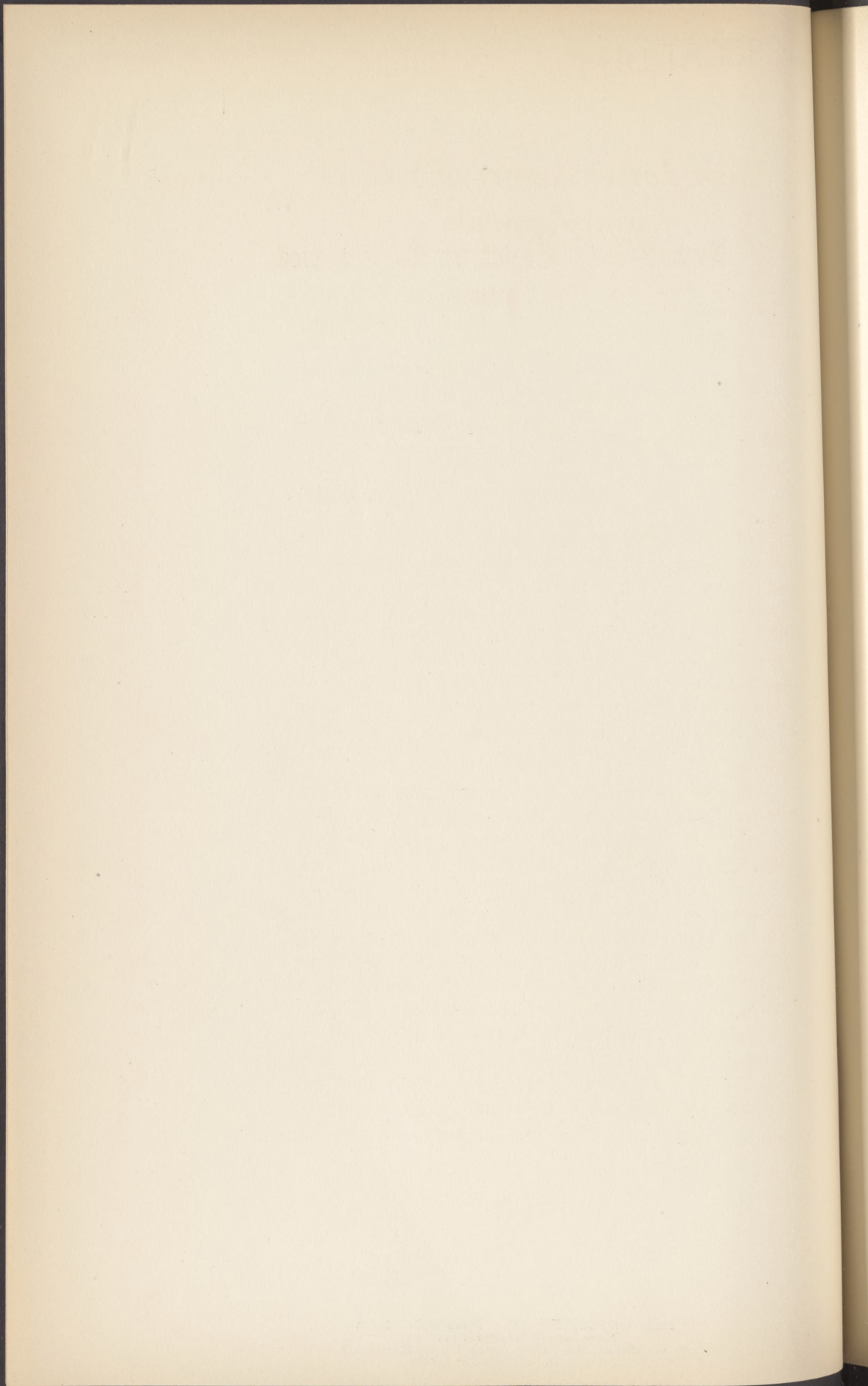
Respectfully submitted,

WILLIAM N. BECKER,
Solicitor for and of Counsel
with Defendants-Appellees.





THE REPORTER CO., WALTON, N. Y.
New Jersey Representative:
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Telephone, MONTclair 2-0751



129OCT.T.1934

New Jersey Court of Errors and Appeals

CITY BUILDING AND LOAN ASSOCIATION, a corporation, <i>Complainant-Appellant,</i>	} On Appeal from the Court of Chancery
—vs—	
LOUIS ADLER and ROSE ADLER, his wife, <i>Defendants-Respondents.</i>	} Memorandum In Behalf of Complainant-Appellant

FACTS.

The City Building and Loan Association, complainant-appellant, loaned Louis Adler, respondent, \$40,000.00 on the security of his hotel property in Lakewood, New Jersey. Louis Adler defaulted in the loan and the City Building and Loan Association foreclosed. The respondents filed no answer, final decree was entered and the mortgaged premises sold to the appellant for \$100.00 for the hotel and \$100.00 for the 200 shares of the Association's stock pledged as security.

The Sheriff filed his report, and thereupon the respondents objected to confirmation and applied to the Court, under the practice established in **FEDERAL TITLE & MORTGAGE GUARANTY CO. v. LOWENSTEIN**, 113 E. 200, 166 A. 538, for a credit on account of the amount of the decree for the "fair value of the mortgaged premises to the end that a deficiency suit, if any, should be only for the balance thereof." On the hearing before the ViceChancellor the appellant submitted the affidavit of Arthur R. Smock and Joel O. Hendrickson (S. C. p. 26), two well known real estate men in Lakewood, New Jersey, who have had extensive experience in appraising property as ap-

pears by their affidavit, and who submitted an appraisal of \$25,370.00 for the land, building and furnishings, and the appellant offered to credit on account of the decree this amount, as well as the sum of \$8,800.00, the withdrawal value of the 200 shares of stock pledged as security for the loan. The respondents submitted the affidavit of Louis Adler, claiming a credit on account of the decree in an amount between \$45,000.00 and \$50,000.00 as representing the fair value of the property, and thereupon the Vice-Chancellor on his own motion referred the matter to Harry E. Newman, a special master, to "ascertain the fair and reasonable value of the mortgaged premises, and all rights and credits due to the defendants."

The special master held two hearings, heard eight witnesses and made his report that the parties had agreed that after allowance of credits on account of the decree the amount due thereon at the time of the hearing was \$39,295.15; that in his opinion the fair value of the land, improvements and furniture was \$38,750.00, leaving a deficiency of \$545.15. On the coming in of this report without objection, it was confirmed and an order entered to that effect, and further,

" that there be allowed to Harry E. Newman, Special Master, the sum of \$150.00 to be paid by complainant."

It is because this provision of the order establishes a precedent for burdening mortgagees with the expense of proceedings instituted by defaulting mortgagors for a reduction of their legal liability on the bond, and in practice results in penalizing mortgagees for the pursuit of their remedies, that in the interest of its shareholders, notwithstanding that the amount involved is small, the City Building and Loan Association, the appellant, prosecutes this appeal.

ARGUMENT

It is an old principle of equity that costs of proceedings will not be visited on litigants not responsible for the proceedings. So in *PEER v. PEER*, 11 E. 433, in the concluding paragraph of Chancellor Williamson's opinion, it is said:

" There is no reason why the defendants should pay costs to the complainant. It was through her negligence, in permitting the title to remain in Tunis Peer, that made this suit necessary. The defendants had the trust thrust upon them without their consent. They were ignorant of the circumstances, and are not to be condemned for defending the suit which was instituted against them."

In *REHBERGER v. ROSENFELD, et al*, 100 E. 18, 135, Atl. 267, in an opinion by Chancellor Walker dealing with the principle that should govern the court in allowing costs as against litigants, the Chancellor makes this significant statement:— "One not responsible for litigation is not responsible for costs". Quoting Vice-Chancellor Backes in *McCULLOUGH v. FOREST*, 84 N. J. E. 101, 92 Atl. 595. This we submit is a guiding principle which should determine the present question.

Respondents do not deny that they defaulted in the terms of the mortgage, and that the amount of the final decree was justly due to the appellant from the respondents. Neither is it contended that any higher bid was offered at the sheriff's sale than that for which the property was sold to the appellant, that is, \$100.00 for the hotel premises and \$100.00 for the shares of stock; nor is it contended that the sale was not legally and fairly conducted. The respondents failed to make any

bid for the property, but immediately after the coming in of the sheriff's report they instituted the present proceedings, under FEDERAL TITLE & MORTGAGE GUARANTY CO. v. LOWENSTEIN, and on the ex-parte affidavit of the respondent, Louis Adler (S. C. 13) applied for credit on account of the decree in the amount of between \$45,000.00 and \$50,000.00 as the present value of the property. It will be noted that this amount was between \$6,500.00 and \$11,500.00 in excess of the amount found and reported by the special master. This demand was made in the face of the appraisal obtained by the appellant from the Smock Agency of Lakewood, New Jersey, which showed a total value for the land, building and furnishings of \$25,370.00 (S. C. p. 25). Thereupon the reference was made to the master.

Can it be that the appellant is responsible for the reference to the master and chargeable with the master's fees because it declined to accept the respondents' appraisal of the property and accede to a credit of \$45,000.00 to \$50,000.00 on account of the decree, or because the appraisal made by its undeniably qualified experts, Arthur S. Smock and Joel O. Hendrickson did not coincide with the determination of the master? Excluding judicial determination, there is no rule or measure, under the present economic conditions, by which the fair market value of property can be arrived at. There is no market for real estate today, particularly for real estate of the character in question. Regardless of the various elements taken into consideration, the result becomes, at best, a mere guess, dependent for its validity on the personal experience and qualifications of the one who determines it. This uncertainty of valuation has been recognized by this court in ROSE v. JEROME HARVEY DEVELOPMENT CO., et al, decided on April 12th, 1934, 115 N. J. E. 574, 171 A. 832.

The responsibility of the appellant association to its stockholders required the prosecution of its remedies against the defaulting mortgagors, the respondents. No culpability can possibly attach to the appellant for its conduct in refusing to accede to the demands of the respondents in advance of the determination by the special master. The proceedings resulted in benefit for the respondent alone. It wiped out approximately \$47,352.87 of the deficiency on the bond. To charge the appellant with the cost of this proceeding is to penalize it for in good faith protecting the interests of its stockholders.

The Legislature of the State of New Jersey by an act of 1926 provided (1 S. to C. S. 1236):

“ 74-35: Masters, special masters and Supreme Court commissioners—taking deposition, etc. 3. Every master in Chancery, special master in Chancery and Supreme Court commissioner shall be entitled to receive, upon taking the affidavits, depositions or examinations of witnesses upon or under any order or decree made in any cause, matter or proceedings by any of the courts of this State, or by any judge thereof, for his attendance at the taking of such affidavit or affidavits, deposition or depositions, or examination or examinations of a witness or witnesses, six dollars for every sitting, not exceeding three under the same order or decree, to be paid by the party or person obtaining such decree or order, and included in his taxable costs. (L. 1892, p. 164, as amended L. 1893, p. 197, (C. S. p. 2294), L. 1921, c. 260, p. 787.)”

It was the respondents who obtained the order of reference, and so under the statute it is they who should pay the master's fees.

We also submit that in the allowance of the amount of the master's fees there was error. By the above act, and by the Act of 1921 which appears under the title "Fees and Costs", (1 S. to C. S. 1236) it is provided:

" 74-33: Masters and special master—making reports. 1. For making every report in pursuance of any order or decree made, taken or entered in any suit, cause, matter or proceeding in the Court of Chancery of this State, after the passage of this act, every master in Chancery and every special master in Chancery shall be entitled to receive the sum of \$10.00 and no more, and that for drawing every such report every such master in Chancery and every special master in Chancery shall be entitled to receive forty cents for every folio of one hundred words. (L. 1892, p. 164, as amended L. 1893, p. 196, (C. S. p. 2294) L. 1921, c. 260, p. 787.)"

Following the provisions of these two sections of the Act, the total of the master's fees should be as follows:

Attendance and examination of witnesses at hearing of April 15th, 1934	\$ 6.00
Attendance and examination of witnesses at hearing on April 27th, 1934	6.00
Making report of April 27th, 1934....	10.00
Administering 8 oaths of witnesses, (in accordance with section 74-58, 1 S. to C. S. p. 1239).....	2.00
Drawing report, 1200 words at 40c per folio	4.80
	<hr/>
	\$28.80

We respectfully submit that for the grounds above set forth the order should be modified to the end that the respondents be directed to pay the master's fees.

Respectfully submitted,

KRAEMER, SIEGLER & SIEGLER,
~~Attorneys for Complainant-Appellant.~~
Solicitors for and of counsel with
complainant-appellant

New Jersey Court of Errors and Appeals

On Appeal from the Court of Chancery

CITY BUILDING AND LOAN ASSOCIATION, INCORPORATED
Plaintiff
vs.
JAMES W. HANCOCK
Defendant

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New Jersey Court of Errors and Appeals

CITY BUILDING AND LOAN
ASSOCIATION, a corporation,
Complainant-Appellant,

—vs—

LOUIS ADLER and
ROSE ADLER, his wife,
Defendants-Respondents.

On Appeal from the
Court of Chancery

**Supplemental
Memorandum
In Behalf of
COMPLAINANT-
APPELLANT.**

Subsequent to the printing of the complainant-appellant's brief, the defendants-respondents served a typewritten copy of their brief, and the same being found to contain several unwarranted allegations of fact not sustained by the record, request was made that the same be stricken out in the final and printed copies, which counsel for defendants-respondents has refused to do.

The following allegations are improperly included in the defendants-respondents' brief:

In the first paragraph of the "informative statement:"

" The defendants-appellees, prior to the foreclosure suit being instituted offered to the complainant-appellant a deed to the real property and a bill of sale to the personal property, in consideration of a surrender and cancellation of the bond and mortgage and without the passing or payment of any moneys between the parties. The com-

plainant-appellant refused to accept this offer, insisting that if it accepted the deed and the bill of sale from the defendants-appellees, the complainant-appellant should receive and be entitled, in addition thereto, to a deficiency judgment against the defendants-appellees of \$15,000.00."

Subsequently in the "informative statement."

"The defendants-appellees in their argument against having the master's fees taxed against them, presented to the court the fact that the defendants-appellees had offered to the complainant-appellant a deed and bill of sale, prior to the institution of the foreclosure suit, and that the complainant-appellant had refused to accept said deed and bill of sale, unless it received a consent deficiency judgment aforesaid, which was not denied by the complainant-appellant."

And in the penultimate paragraph of the "informative statement."

"The complainant-appellant refused to submit the question of the fair and reasonable value of the real estate and personal property to be determined by the Vice-Chancellor, and for a summary disposition of said objections, as was set forth in the notice of hearing and affidavits, and insisted that the matter be referred to a special master of the Court of Chancery, so that it would have an opportunity to present witnesses to refute the allegations and statements contained in the affidavits annexed to the objections to the confirmation of sale."

These allegations of fact are unwarranted and not sustained by the record, and we therefore respectfully request leave to file this supplemental brief, ~~last~~ failure to object to these statements be deemed acquiescence.

Respectfully submitted,

KRAEMER, SIEGLER & SIEGLER,
Solicitors for and of counsel
with complainant-appellant.

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