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BILL OF COMPLAINT.

(Filed July 27, 1927.)

IN CHANCERY OF NEW JERSEY.

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

10

The complainant, Collins Realty Company, a corporation of the State of New Jersey, doing business in the City of Atlantic City, in the County of Atlantic and State aforesaid, respectfully shows that:

1. That on April 12th, 1926, William F. Basquil, of the City and County of Philadelphia, in the State of Pennsylvania, being indebted to complainant in the sum of \$140,000 executed to it a bond of that date to secure that sum, payable at any time within 20 four years from the date thereof with interest at the rate of six per centum, per annum, payable semi-annually from the date of the bond.

2. That to secure the payment of the bond, the said William F. Basquil executed to the said complainant a mortgage of even date with the bond; and thereby conveyed to it in fee, the land hereinafter described, on the express condition that such conveyance should be void if payment should be made 30 according to the terms of the bond. Which mortgage, having been first duly acknowledged and the certificate of the acknowledgment duly endorsed thereon, was abstracted, in the clerk's office of Atlantic County, on April 13th, 1926, 12 M. in book 397 of Mortgages, page 71.

3. That the mortgaged premises are located in Atlantic City, Atlantic County, New Jersey, and are described as follows:

10 Lot No. 1. BEGINNING at a point in the westerly line of Virginia Avenue distant ten hundred and fifty feet Southwardly from the center line of Pacific Avenue, and extending thence (1) Southwardly, along Virginia Avenue, one hundred feet; thence (2) Westward—parallel with Pacific Avenue, one hundred fifty feet to the Easterly line of a twenty foot wide street; thence (3) Northwardly, parallel with Virginia Avenue and along the Easterly line of said twenty foot wide street, one hundred feet; thence (4) Eastwardly, parallel with Pacific Avenue, one hundred fifty feet to the place of beginning.

20 Lot No. 2. BEGINNING at a point in the Westerly line of Virginia Avenue distance eleven hundred and fifty feet Southwardly from the center of Pacific Avenue and extending thence (1) Southwardly, along the Westerly line of Virginia Avenue, one hundred feet; thence (2) Westwardly, parallel with Pacific Avenue, eighty four feet six inches; thence (3) Northwardly, parallel with Virginia Avenue, fifty feet; thence (4) Westwardly, parallel with Pacific Avenue, sixty-five feet, six inches; thence (5) Northwardly, parallel with Virginia Avenue, fifty feet; thence (6) Eastwardly, parallel with Pacific Avenue, one hundred feet to the place of beginning.

30 TOGETHER also with all the right, title and interest, use and easement of the Collins Realty Company, in, to and over a strip of land four feet in width by fifty feet in depth, adjoining the above described premises:

BEGINNING twelve hundred feet Southwardly of the center line of Pacific Avenue, and eighty-four feet six inches Westwardly of the Westerly line of

Virginia Avenue, said distances being measured on lines respectively drawn at right angles to said Avenues and extending thence (1) Westwardly, parallel with Pacific Avenue, four feet; thence (2) Southwardly, parallel with Virginia Avenue, fifty feet; thence (3) Eastwardly, parallel with Pacific Avenue, four feet; thence (4) Northwardly, parallel with Virginia Avenue fifty feet to the place of beginning.

TOGETHER also with all the rights of way, easements and interest which the Collins Realty Company had in any alleyways or other lands adjoining the secondly above described lot of land on the Southerly and Westerly sides thereof. 10

BEING the same premises conveyed unto William F. Basquil by deed from Collins Realty Company, a corporation, bearing even date herewith and intended to be forthwith recorded; this mortgage being given to secure a part of the consideration in said deed mentioned.

4. That both bond and mortgage contained an agreement that if any installment of interest should remain unpaid for 30 days after the same should fall due, then the whole principal sum, with all unpaid interest, should, at the option of the mortgagee, its representatives or assigns, become immediately due. 20

5. That both bond and mortgage contained an agreement that the mortgagor should at any time fail to keep the buildings on the mortgaged premises insured against loss or damage by fire in a sum not less than 30  
and assign the policies of insurance to the mortgagee, its representatives or assigns, then the whole principal sum secured by the said mortgage, with all

unpaid interest, should at the option of the mortgagee, its representatives or assigns, become immediately due.

6. That both bond and mortgage contained an agreement that if any tax, or other municipal charge, assessed against the land, and the buildings, and improvements thereon, should remain unpaid for 60 days after the same should be due and collectible  
10 by law, then the whole principal sum, with all unpaid interest, should, at the option of the mortgagee, its representatives or assigns, become immediately due.

7. That the mortgage contained an agreement that the mortgagor, his heirs and assigns, should keep the buildings on the mortgaged premises insured against loss or damage by fire in a sum not less than  
20 the policies of insurance to the mortgagee, its representatives or assigns; and in default of so doing that the mortgagee, its representatives or assigns, should be entitled to effect such insurance, and the premiums paid for the same by the mortgagee its representatives or assigns, with interest at six per centum per annum, should be a lien on said land added to the amount of the mortgage debt and secured by the mortgage.

30 8. That both bond and mortgage contain an agreement that the mortgagor should pay the taxes assessed upon the above described premises for the first half of every year on or before the twentieth day of May, therein, and for the second half of every year on or before the twentieth day of November therein, and should produce receipts for taxes for

each half of every year on or before the first day of June and the first day of December, respectively, therein, within thirty days after the same should first become due and payable.

9. That on June 14th, 1926, complainant assigned the said bond and mortgage to the Guarantee Trust Company of Atlantic City, N. J., by assignment dated June 14th, 1926, and duly recorded June 15th, 1926, in Book 82 of Assignment of Mortgages, at page 118. 10

10. That on May 19th, 1927, the Guarantee Trust Company of Atlantic City, N. J., assigned the said bond and mortgage to complainant by assignment dated May 19th, 1927, and duly recorded May 20th, 1927, in Book 90 of Assignment of Mortgages, at page 374.

11. On April 12th, 1926, William F. Basquil conveyed the said premises to George T. Sale, by deed recorded April 15th, 1926, in Deed Book 816, at page 430, but complainant avers that the said George T. Sale took the said property under and subject to the lien of complainant's mortgage and with full notice thereof. 20

12. That complainant is advised the said George T. Sale holds the title to the mortgaged premises in trust for himself, William Freihoffer, Ernest Schwehm, Stacy White, William J. Keims and Isaac D. Hetzel, under some sort of an agreement to convey to a corporation to be known as the James Madison Hotel Company, but as to the details of which complainant is without information. As a matter of precaution and for the purpose to bring in all par- 30

ties in interest, the said parties are made parties to this suit, and, it is alleged that whatever interest the said George T. Sale may have as trustee, or whatever interest the said George T. Sale, Ernest Schwehm, Stacy White, William Freihoffer, William J. Keims and Isaac D. Hetzel may have as individuals or which the James Madison Hotel Company may have as prospective purchaser, the said interests are under and subject and with full notice of  
10 complainant's said mortgage.

13. That the Franz Paving Company is interested in the said project, but in what way complainant is without advice, but avers that whatever interest that it may be it is under and subject and with full notice of complainant's said mortgage.

14. That the said George T. Sale is a married man and that his wife's name is Mrs. George T. Sale;  
20 that Ernest Schwehm is a married man and that his wife's name is Emma Schwehm; that Stacy White is a married man and that his wife's name is Mrs. Stacy White; that William J. Keims is a married man and that his wife's name is Mrs. William J. Keims; that Isaac D. Hetzel is a married man and that his wife's name is Mrs. Isaac D. Hetzel and that William Freihoffer is a married man and that his wife's name is Sarah Freihoffer.

30 15. That on April 12th, 1927, six months' interest fell due on complainant's bond and mortgage, and remained unpaid for more than thirty days thereafter and no part thereof has yet been paid.

16. That on October 1st, 1925, there was assessed \$4666.62 taxes against the mortgaged premises for

the year 1926 in favor of Atlantic City, and which according to law, became due and payable, one-half on June 1st, 1926, and the other half on December 1st, 1926, and which, according to the terms of the bond and mortgage, became due and payable, one-half on May 20th, 1926, and the other half on November 20th, 1926, but complainant avers that the said taxes, as to the first half, were not paid on either May 20th, or June 1st, 1926, and as to the second half, were not paid on November 20th or December 1st, 1926, and that the said defendants neglected and failed to produce receipts for the said taxes for the first half on or before June 1st, 1926, and as to the second half on or before December 1st, 1926, but that the said defaults in the payment of said taxes and in the production of the said receipts continued for more than thirty days thereafter and were not made and done within the said period of thirty days after they became due and collectible by law and the said contract.

10

20

17. That on October 1st, 1926, there was assessed taxes against the mortgaged premises for the year 1927 in favor of Atlantic City, and which according to law, became due and payable, one-half on June 1st, 1927, and which, according to the terms of the bond and mortgage, became due and payable, as to the first half on May 20th, 1927, but complainant avers that the said taxes, as to the first half, were not paid on either May 20th or June 1st, 1927, but that the said defaults in the payment of said taxes and in the production of the said receipt continued for more than thirty days thereafter and were not made and done within the said period of thirty days after they became due and collectible by law and the said contract.

30

4. I have made inquiry for the names of the wives of the defendants, William Freihoffer, George T. Sale, Ernest Schwehm, Stacy White, William J. Keims and Isaac D. Hetzel, and while have been able to ascertain that the name of the wife of William Freihoffer is Sarah Freihoffer, and that the wife of Ernest Schwehm is Emma Schwehm, I am unable to ascertain the names of the wives of George T. Sale, Stacy White, William J. Keims and Isaac D. Hetzel. Accordingly I have been obliged to designate the said wives in the bill of complaint as Mrs. George T. Sale, Mrs. Stacy White, Mrs. William J. Keims and Mrs. Isaac D. Hetzel.

NUR J. COLLINS.

Sworn and subscribed this 26th day of July, 1927,  
before me.

JENNIE D. ALLEN,  
*Notary Public of New Jersey.*

STATEMENT AS TO PART OF PROCEEDINGS.

Subpoena Ad. Resp. issued July 28th, 1927, returnable Sept. 17th, 1927, served on defendants: Sarah Freihofer, William Freihofer, Ernest Schwehm and Mrs. Ernest Schwehm. 10

Order of Publication allowed against defendants: George T. Sale, Mrs. George T. Sale, Stacy White, Mrs. Stacy White, William J. Keims, Mrs. William J. Keims, Isaac D. Hetzel, Mrs. Isaac D. Hetzel, Franz Paving Co., James Madison Hotel Co.

Returnable November 28th, 1927.

Proof of posting and publication filed.

Subpoena Ad. Resp. issued against defendants, Stacy White and Mrs. Stacy White on September 23rd, 1927, and returned, duly served, on October 3rd, 1927. 20

Decree Pro Confesso entered against Franz Paving Co. and James Madison Hotel Co. December 28th, 1927.

Appearance entered for Henry Franz and Mrs. Henry Franz, February 21st, 1928.

Answer filed by the defendants, George T. Sale, et als., directed to stand as the answer for the defendants, Henry Franz and Mrs. Henry Franz. 30

## ANSWER OF SIX DEFENDANTS.

(Filed October 15, 1927.)

## IN CHANCERY OF NEW JERSEY.

10

Between

COLLINS REALTY COM-  
PANY,*Complainant,*

and

GEORGE T. SALE, *et als.,**Defendants.*On Bill to Foreclose.  
Answer of Six  
Defendants.

20

Ernest Schwehm, Emma Schwehm, William Freihoffer, Sarah Freihoffer, Stacy White, Mrs. Stacy White (whose real name is Mary R. White), being six of the defendants to complainant's bill to foreclose, respectfully answer same as follows:

30

1. Paragraph one thereof is admitted.
2. Paragraph two thereof is admitted.
3. Paragraph three thereof is admitted.
4. Without admitting or denying paragraph four thereof, these six defendants pray proof.
5. Answering paragraph five thereof, it is admitted that the bond and mortgage which are the

subject matter of this suit, do not require any fire insurance.

6. Paragraph six is admitted.

7. Answering paragraph seven, it is admitted that the bond and mortgage aforesaid, do not require any fire insurance.

8. Answering paragraph eight of said bill, these six defendants aver that if the allegations thereof are true then they are inoperative and without any effect because the covenants and mortgage terms referred to in paragraph six thereof allow sixty days grace period beyond the tax due dates, and said sixty day proviso operates to void any thirty day grace period otherwise set forth in said bond and mortgage. 10

9. Without admitting or denying paragraph nine thereof, these six defendants leave complainant to such proof as may be relevant. 20

10. Without admitting or denying paragraph ten thereof, these six defendants leave complainant to such proof as may be relevant.

11. Paragraph eleven is admitted.

12. As to paragraph twelve, these six defendants allege: 30

(a) George T. Sale holds title to the mortgaged premises in trust for seven principals.

(b) The interests of the answering defendants above named, are:

Ernest Schwehm owns an undivided one-fifth in-

terest; in which one-fifth interest Emma Schwehm may own an inchoate right of dower.

William Freihoffer owns an undivided one-fifth interest; in which one-fifth interest Sarah Freihoffer may own an inchoate right of dower.

Stacy White owns an undivided one-tenth interest; in which one-tenth interest Mary R. White may own an inchoate right of dower.

(c) Neither Ernest Schwehm, Emma Schwehm,  
10 William Freihoffer, Sarah Freihoffer, Stacy White, nor Mary R. White have any interest in the remaining undivided one-half interest therein.

(d) James Madison Hotel Company has no interest in the shares or interests of these answering defendants in said premises.

13. These six defendants deny that Franz Paving  
20 Company has any interest in the shares or interests of these answering defendants, in the lands and premises covered by complainant's mortgage.

14. Answering paragraph fourteen, these defendants say:

(a) It is denied George T. Sale is a married man. The fact is said Sale is a widower and unmarried.

(b) It is admitted that Ernest Schwehm is married and that his wife's name is Emma Schwehm.

(c) It is admitted that Stacy White is married.  
30 His wife's name is Mary R. White.

(d) These defendants do not know anyone by the name of William J. Keims.

(e) These defendants are not informed as to whether or not Isaac D. Hetzel is married.

(f) It is admitted that William Freihoffer is married and that his wife's name is Sarah Freihoffer.

15. These six defendants admit the allegations of paragraph fifteen of said bill. They say in defense thereof that the six months interest therein referred to was tendered to complainant by being offered to William M. Clevenger, Esquire, its duly authorized attorney, within the period of thirty days next after April 12th, 1927, and was thereupon refused, the circumstances of which are recited in the specific defenses hereto annexed.

10

16. Answering paragraph sixteen, it is denied that any tax is overdue and unpaid upon the mortgaged premises, all tax due thereon to Atlantic City having been paid in full before the commencement of this suit.

Further answering said paragraph, attention is called to the fact that same alleges said taxes to have been in arrears "for more than thirty days" while the grace period is recited in paragraph six of said bill as being sixty days.

20

17. Answering paragraph seventeen, it is denied that any tax is overdue and unpaid upon the mortgaged premises, all tax due thereon to Atlantic City having been paid in full before the commencement of this suit.

Further answering said paragraph, attention is called to the fact that same alleges said taxes to have been in arrears "for more than thirty days" while the grace period is recited in paragraph six of said bill as being sixty days.

30

18. Answering paragraph eighteen, these six defendants respectfully aver that complainant had no right to elect the principal of said bond and mortgage to be due by reason of anything in either paragraphs fifteen, sixteen or seventeen.

suit, with their expenses, as in equity and justice should be done under the facts set forth herein.

CARLTON GODFREY,

*Solicitor for Ernest Schwehm,  
Emma Schwehm, William  
Freihoffer, Sarah Freihoffer,  
Stacy White, Mrs. Stacy  
White (real name: Mary R.  
White), six of the Defendants.*

10

20

30

NOTICE TO STRIKE OUT ANSWER.

(Filed October 19, 1927.)

IN CHANCERY OF NEW JERSEY.

Between

COLLINS REALTY COM-  
PANY,

Complainant,

and

GEORGE T. SALE, *et ux.*,  
*et als.*,

Defendants.

On Bill, &c.  
Notice.

10

20

To Carlton Godfrey, Esq., Solicitor for Ernest  
Schwehm, Emma Schwehm, William Freihoffer,  
Sarah Freihoffer, Stacy White, Mrs. Stacy  
White; real name Mary R. White:

Take notice that I shall move before the Chan-  
cellor of the State of New Jersey, at the Chancery  
Chambers, Real Estate and Law Building, Atlantic  
City, New Jersey, on Wednesday, the ninth day of  
November, 1927, at the hour of ten o'clock in the  
forenoon, or as soon thereafter as counsel can be  
heard, for an order striking the following portions  
of the answer filed by you for Ernest Schwehm,  
Emma Schwehm, William Freihoffer, Sarah Frei-  
hoffer, Stacy White, Mrs. Stacy White; real name  
Mary R. White, and, for the following reasons:

30

1. Paragraph 4 of the answer for the reason it violates Rule 65.

2. Paragraph 8 of the answer for the reason it violates Rule 57.

3. Paragraph 9 of the answer for the reason it violates Rule 65.

10 4. Paragraph 10 of the answer for the reason it violates Rule 65.

5. Paragraphs 15, 18 and 20 of the answer and paragraph 5 of the specific defences, for the reason that the principal of the mortgage having been matured by reason of the defendants' default in paying taxes it is legally and equitably immaterial if a tender of interest was or was not made and consequently is no defense to the bill of complaint.

20

6. Paragraphs 16, 17, 18 and 20 of the answer and paragraphs 3, 4 and 6 of the specific defences for the reason that the payment of a tax after the maturity of the principal by reason of the non-payment thereof, legally and equitably creates no waiver of the default nor does it relieve the owners of the equity of redemption from the result following such default.

30 7. Paragraph 19 of the answer for the reason it is frivolous in this, that under the law the possession of the tenants is the possession of the landlord, who are the answering defendants.

8. Paragraph 2 of the specific defences for the reason that the contract set up therein is without

legal or equitable effect upon the written contract sued upon in this, that it is alleged to be made before or at the time of the contract sued upon and therefore must be in writing and should be also pleaded.

9. Paragraph 7 of the specific defences for the reason it is not denied the defendants failed to pay the 1926 taxes when due; to produce the receipts as required by the mortgage and bond and to pay the said taxes within thirty days after they were legally due by the terms of the said contract, and because there is no denial that the complainant matured the principal debt by reason of such default. 10

Take further notice that at the same time and place I shall move to amend the bill of complaint by striking out "60" in paragraph 6 thereof and inserting "30" in lieu thereof.

Respectfully yours,

W. M. CLEVINGER,

*Solicitor for Complainant.*

20

Dated October 17th, 1927.

---

[ENDORSED]

Service acknowledged Oct. 18, 1927.

Carlton Godfrey,  
Solr. for six Defts.

30

ORDER STRIKING OUT PORTIONS  
OF ANSWER.

(Filed November 12, 1927.)

IN CHANCERY OF NEW JERSEY.

10

Between

COLLINS REALTY COM-  
PANY,

*Complainant,*

and

GEORGE T. SALE, *et ux.*,  
*et als.*,

*Defendants.*

On Bill, &c.  
Order.

20

Due notice of the motion to strike portions of the answer and defenses filed by the defendants, Ernest Schwehm, Emma Schwehm, William Freihoffer, Sarah Freihoffer, Stacy White and Mary R. White, having been given, and, William M. Clevenger, solicitor for the complainant, and Carlton Godfrey, solicitor for the said defendants having been heard:

30     It is on this 12 day of November, 1927, on motion of William M. Clevenger, solicitor for and of counsel with the complainant, ordered as follows:

1. That paragraphs 4, 8, 9, 10 and 19 of the answer of the said defendants be and the same are hereby stricken out.

2. It is further ordered that paragraphs 15, 16, 17, 18 and 20 be not stricken out at this time, but that the complainant may renew the motion to strike the same upon the filing of the answer to the amendment of the bill of complaint to be filed herein pursuant to this order, or in default of such answer upon the expiration of the time set herein for the filing thereof.

3. It is further ordered that defenses 2, 3, 4, 5, 6 and 7 be not stricken out at this time, but that the complainant may renew his motion to strike the same upon the filing of the answer to the amendment of the bill of complaint to be filed herein pursuant to this order, or in default of such answer upon the expiration of the time set herein for the filing thereof. 10

4. It is further ordered that the complainant have leave to amend his bill of complaint by striking out sixty days in paragraph 6 and inserting thirty days in lieu thereof. 20

5. It is further ordered that the said defendants, Ernest Schwehm, Emma Schwehm, William Freihoffer, Sarah Freihoffer, Stacy White and Mary R. White have fifteen days from the date of this order to file their answer to the bill of complaint as amended, and that service of copy of this order and of the amendment to the bill of complaint may be served upon the solicitor of the said defendants. 30

6. It is further ordered that the entire bill need not be engrossed anew, but that paragraph 6 only thereof shall be engrossed and served.

E. R. WALKER,  
C.

Respectfully advised,  
R. H. INGERSOLL,  
V. C.

## AMENDMENT OF BILL.

(Filed November 12, 1927.)

IN CHANCERY OF NEW JERSEY.

10

Between

COLLINS REALTY COM-  
PANY,*Complainant,*

and

GEORGE T. SALE, *et ux.*,  
*et als.*,*Defendants.*On Bill, &c.  
Amendment of Bill of  
Complaint.

20

Paragraph 6 of the complainant's bill is hereby amended to read as follows:

6. That both bond and mortgage contained an agreement that if any tax, or other principal charge, assessed against the land, and the buildings and improvements thereon, should remain unpaid for thirty days after the same should be due and collectible by law, then the whole principal sum with all unpaid interest, should, at the option of the mortgagee, its representatives or assigns, become immediately due.

WM. CLEVINGER,

*Solicitor for Complainant.*

AMENDED ANSWER OF SIX DEFENDANTS.

(Filed November 25, 1927.)

IN CHANCERY OF NEW JERSEY.

---

Between

COLLINS REALTY COM-  
PANY,

*Complainant,*

and

GEORGE T. SALE, *et als.,*

*Defendants.*

On Bill to Foreclose.  
Amended Answer to  
Amended Complaint  
for Six Defendants.

10

---

Ernest Schwehm, Emma Schwehm, William Frei-  
hoffer, Sarah Freihoffer, Stacy White, Mrs. Stacy  
White (whose real name is Mary R. White), being  
six of the defendants to complainant's bill to fore-  
close, respectfully answer same as follows:

20

1. Paragraph one thereof is admitted.
2. Paragraph two thereof is admitted.
3. Paragraph three thereof is admitted.

30

4. Answering paragraph four of the bill, these de-  
fendants say that they have no knowledge or infor-  
mation sufficient to form a belief as to the averments  
thereof and pray proof.

5. Answering paragraph five thereof, it is admitted that the bond and mortgage which are the subject matter of this suit, do not require any fire insurance.

6. Paragraph six is admitted.

7. Answering paragraph seven, it is admitted that the bond and mortgage aforesaid do not require any fire insurance.

8. Answering paragraph eight of the bill, these defendants say that they have no knowledge or information sufficient to form a belief as to the averments thereof and pray proof.

9. Answering paragraph nine of the bill, these defendants say that they have no knowledge or information sufficient to form a belief as to the averments thereof and pray proof.

10. Answering paragraph ten of the bill, these defendants say that they have no knowledge or information sufficient to form a belief as to the averments thereof and pray proof.

11. Paragraph eleven is admitted.

12. As to paragraph twelve, these six defendants allege:

30 (a) George T. Sale holds title to the mortgaged premises in trust for seven principals.

(b) The interests of the answering defendants above named, are:

Ernest Schwehm owns an undivided one-fifth interest; in which one-fifth interest Emma Schwehm may own an inchoate right of dower.

William Freihoffer owns an undivided one-fifth interest; in which one-fifth interest Sarah Freihoffer may own an inchoate right of dower.

Stacy White owns an undivided one-tenth interest; in which one-tenth interest Mary R. White may own an inchoate right of dower.

(c) Neither Ernest Schwehm, Emma Schwehm, William Freihoffer, Sarah Freihoffer, Stacy White, nor Mary R. White have any interest in the remaining undivided one-half interest therein. 10

(d) James Madison Hotel Company has no interest in the shares or interests of these answering defendants in said premises.

13. These six defendants deny that Franz Paving Company has any interest in the shares or interests of these answering defendants, in the lands and premises covered by complainant's mortgage.

14. Answering paragraph fourteen, these defendants say: 20

(a) It is denied George T. Sale is a married man. The fact is said Sale is a widower and unmarried.

(b) It is admitted that Ernest Schwehm is married and that his wife's name is Emma Schwehm.

(c) It is admitted that Stacy White is married. His wife's name is Mary R. White.

(d) These defendants do not know any one by the name of William J. Keims.

(e) These defendants are not informed as to whether or not Isaac D. Hetzel is married. 30

(f) It is admitted that William Freihoffer is married and that his wife's name is Sarah Freihoffer.

15. These six defendants admit the allegations of paragraph fifteen of said bill. They say in defense

thereof that the six months interest therein referred to was tendered to complainant by being offered to William M. Clevenger, Esq., its duly authorized attorney, within the period of thirty days next after April 12th, 1927, and was thereupon refused, the circumstances of which are recited in the specific defenses hereto annexed.

10 16. Answering paragraph sixteen, it is denied that any tax is overdue and unpaid upon the mortgaged premises, all tax due thereon to Atlantic City having been paid in full before the commencement of this suit.

20 17. Answering paragraph seventeen, it is denied that any tax is overdue and unpaid upon the mortgaged premises, all tax due thereon to Atlantic City having been paid in full before the commencement of this suit.

18. Answering paragraph eighteen, these six defendants respectfully aver that complainant had no right to elect the principal of said bond and mortgage to be due by reason of anything in either paragraphs fifteen, sixteen or seventeen.

19. Paragraph nineteen is denied.

30 20. Paragraph twenty is denied. No sum whatever of principal is yet due or collectible on complainant's mortgage. It is admitted that interest is due or at least unpaid from October 12, 1926, but with the reservation that the six months interest for the period of October 12, 1926, to April 12, 1927, was tendered as aforesaid.

SPECIFIC DEFENSES.

1. This suit is brought prematurely and these six defendants pray that it may be dismissed with their costs, including a reasonable counsel fee.

2. These defendants allege that on April 12, 1926, the mortgaged premises were purchased from complainant, and the mortgage mentioned in the bill was a part of the purchase price. That on said April 12, 1926, the taxes due from complainant to Atlantic City on said premises were largely in arrears and complainant requested the purchaser, William F. Basquil, to make settlement nevertheless and to permit said taxes to remain in arrears for complainant's benefit until the determination of a tax appeal or for some other reason not of any interest to said Basquil. Whereupon, said Basquil agreed to do as so requested; and further, in consideration thereof and of the sum of \$100,000.00 paid complainant in cash on account of the purchase price thereof, complainant agreed to reciprocate the said favor and to permit him and his assigns to pay future taxes within a reasonable time after the expiration of the grace period of sixty days in said bond and mortgage mentioned. 10 20

3. The taxes for the entire year of 1926 and for the first half of 1927 have been paid in full on the mortgaged premises. 30

4. No taxes were overdue or unpaid thereon at the time of the filing of complainant's bill.

5. On a day between April 12th, 1927, and May 10th, 1927, and hence within thirty days after April

12th, 1927, G. Arthur Bolte, Esq., then the attorney for all of the aforementioned seven principals in the ownership of said mortgaged premises tendered the six months interest due April 12th, 1927, on said mortgage, said tender being made in Atlantic City, N. J., to complainant corporation or its duly authorized attorney, William M. Clevenger, Esq., and at said time and place complainant, through said Clevenger, said in effect that said interest was there-  
10 upon refused and further stated that neither said instalment nor any future instalment would be received, and that the present and all future interest payments would be refused.

6. No default of either taxes or interest existed at the time of the commencement of this suit.

7. The mortgage sought herein to be foreclosed has not yet become due.

20 8. These six defendants pray to be relieved of this suit, with their expenses, as in equity and justice should be done under the facts set forth herein.

CARLTON GODFREY,

*Solicitor for Ernest Schwehm,  
Emma Schwehm, William  
Freihoffer, Sarah Freihoffer,  
Stacy White, Mrs. Stacy  
White (real name: Mary R.  
White), six of the Defendants.*

REPLICATION TO ANSWER OF SIX  
DEFENDANTS.

(Filed December 28, 1927.)

IN CHANCERY OF NEW JERSEY.

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Between	}	On Bill to Foreclose. Replication.	10
COLLINS REALTY COM- PANY,			
<i>Complainant,</i>			
and			
GEORGE T. SALE, <i>et als.</i> , <i>Defendants.</i>			

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The complainant joins issue on the answer of Ernest Schwehm, Emma Schwehm, William Freihofer, Sarah Freihofer, Stacy White, Mrs. Stacy White, whose real name is Mary R. White.

WM. M. CLEVINGER,  
*Solicitor for Complainant.*

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[ENDORSED]

Service acknowledged of the within paper and consent given to its filing out of time.

Carlton Godfrey,  
Solicitor for Defendants, Ernest Schwehm, Emma Schwehm, William Freihofer, Sarah Freihofer, Stacy White, Mrs. Stacy White, whose real name is Mary R. White.

ANSWER OF FOUR DEFENDANTS.

(Filed November 26, 1927.)

IN CHANCERY OF NEW JERSEY.

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Between	}	On Bill to Foreclose.
COLLINS REALTY COM-		Answer of Defen-
PANY,		dants, George T.
<i>Complainant,</i>		Sale, William J.
and		Kerns, Mrs. Wil-
GEORGE T. SALE, <i>et als.,</i>	liam J. Kerns and	
<i>Defendants.</i>	Isaac D. Hetzel.	

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The defendants, George T. Sale, William J. Kerns, Mrs. William J. Kerns and Isaac D. Hetzel, all of the City of Philadelphia, County of Philadelphia and Commonwealth of Pennsylvania, answering the complainant's bill of complaint, together with the amendment thereto, filed herein, say that:

1. Paragraphs 1, 2 and 3 are admitted.
- 30 2. These defendants have no knowledge or information sufficient to form a belief as to the allegations in paragraph 4 and therefore pray proof of same.
3. Answering paragraph 5 of the bill of complaint, it is admitted that the bond and mortgage, which are

the subject of this proceeding, do not require any fire insurance.

4. Paragraph 6 is admitted.

5. Answering paragraph 7 of the bill of complaint, it is admitted that the bond and mortgage aforesaid do not require any fire insurance.

6. These defendants have no knowledge or information sufficient to form a belief as to the allegations in paragraphs 8, 9 and 10 of the bill of complaint and therefore pray proof of same. 10

7. Paragraph 11 is admitted.

8. As to paragraph 12, these defendants allege:

(a) George T. Sale holds title to the mortgaged premises in trust for seven principals.

(b) The interests of the answering defendants above named are: 20

George T. Sale owns an undivided one-fifth interest in the premises; William J. Kerns owns an undivided one-tenth interest in the premises, in which one-tenth interest Katie Kerns may own an inchoate right of dower and Isaac D. Hetzel owns an undivided one-tenth interest in the premises.

(c) James Madison Hotel Company has no interest in the shares or interests of these answering defendants in said premises. 30

9. These defendants deny that Franz Paving Company has any interest in the shares or interests of these answering defendants in the said premises covered by complainant's mortgage, in answer to paragraph 13 of the bill.

10. Answering paragraph 14, these defendants say:

(a) It is denied that George T. Sale is a married man. The fact is said George T. Sale is a widower and unmarried.

(b) The defendant named William J. Keims should be William J. Kerns, and it is admitted that William J. Kerns is a married man and his wife's name is Katie Kerns.

10 (c) It is denied that Isaac D. Hetzel is a married man. The fact is said Isaac D. Hetzel is a widower and unmarried.

11. These defendants admit the allegations in paragraph 15 of said bill of complaint, but in defense thereto, they allege that the six months' interest thereon referred to was tendered to complainant by being offered to William M. Clevenger, Esq., its duly authorized attorney, within the period of thirty  
20 days next after April 12, 1927, the due date, which was thereupon refused, the circumstances of which are more particularly recited in the defenses hereinafter mentioned.

12. The allegations in paragraph 16 as to the taxes being assessed and becoming due and payable as alleged are admitted, but third defense, allege that said taxes were not paid in accordance with the  
30 terms of the said bond and mortgage for the reason and circumstances as set forth in the third defense, and these defendants further allege that all taxes due and payable had been paid prior to the filing of the complainant's bill of complaint.

13. The allegations in paragraph 17 as to the taxes being assessed and becoming due and payable as

alleged are admitted, but these defendants allege that said taxes were not paid in accordance with the terms of the said bond and mortgage for the reason and circumstances as set forth in the third defense, and these defendants further allege that all taxes due and payable had been paid prior to the filing of the complainant's bill of complaint.

14. Paragraph 18 is denied, and these defendants respectfully aver and allege that the complainant had no legal right to elect and declare the principal of said bond and mortgage to be due by reason of any allegations in paragraphs 15, 16 or 17 of the bill of complaint. 10

15. Paragraph 19 is denied.

16. Paragraph 20 is denied, and these defendants respectfully allege and aver that the total sum of \$140,000.00, the principal of complainant's said bond and mortgage nor any part thereof, is now due and payable, but these defendants admit that interest is unpaid on complainant's bond and mortgage from October 12, 1926, but with the reservation that the six months' interest payment due for the period of October 12, 1926, to April 12, 1927, was tendered to the complainant and refused as aforesaid. 20

FIRST DEFENSE.

30

1. These defendants allege that all of the municipal taxes for the year 1926 and the first half of the year 1927 assessed against the property described in the complainant's bill of complaint have been paid in full and were paid in full prior to the filing of the complainant's bill of complaint and no taxes

whatsoever assessed against the said property were overdue and unpaid and no default existed of taxes assessed at the time of the commencement of this proceeding.

SECOND DEFENSE.

1. On a day between April 12, 1927, and May 10,  
10 1927, which was within thirty days after April 12,  
1927, G. Arthur Bolte, Esq., then the solicitor of all  
the principal defendants in this proceeding tendered  
payment of the six months' interest due April 12,  
1927, under the terms and conditions of said mort-  
gage. This tender of payment was made in Atlan-  
tic City, New Jersey, to the complainant corporation  
or its duly authorized attorney, William M. Clev-  
enger, Esq., upon making said tender of payment,  
the complainant corporation, through its said duly  
20 authorized attorney, William M. Clevenger, Esq., re-  
fused to accept same, the said William M. Clevenger,  
Esq., further stating at the said time and place that  
said instalment of interest nor any future instal-  
ment of interest would not be accepted and received  
by the complainant corporation, and that the present  
and all future interest payments would be refused.

2. These defendants allege that the principal de-  
fendants in this proceeding have been at all times  
30 ready, able and willing to pay the instalments of in-  
terest due and payable and are now ready, able and  
willing to pay any and all instalments of interest  
now due on complainant's bond and mortgage and  
will pay same, providing the said complainant cor-  
poration does not refuse to accept same without  
making reservations.

3. These defendants allege that no default has been made in the payment of interest on complainant's bond and mortgage.

THIRD DEFENSE.

1. These defendants allege that on April 12, 1926, the mortgaged premises were conveyed by the complainant to one William F. Basquil; and that the bond and mortgage upon which the complainant has filed the bill of complaint herein, was executed and delivered by the said William F. Basquil as and for a part of the purchase price for said premises. The said William F. Basquil was represented in the purchase of said premises and the settlement thereof made on the said day by George T. Sale. On April 12, 1926, the day of settlement, the taxes due from complainant to the City of Atlantic City were greatly in arrears, but nevertheless the complainant requested the said William F. Basquil to make settlement and to permit said taxes to remain in arrears for the complainant's benefit, it being represented to the said William F. Basquil that the complainant was appealing the assessed taxes on the said premises, whereupon the said William F. Basquil agreed to do as requested by the complainant and at the said time of settlement, Nur J. Collins, the agent, a director and the president of the complainant corporation and practically the sole stockholder thereof, stated to the said William F. Basquil and the said George T. Sale that he, Nur J. Collins, acting on behalf and speaking for the complainant corporation binding the same did not request and oblige the said William F. Basquil, his grantees or assigns to pay the taxes on the said premises in accordance with the terms of the agree-

ment inserted in the said bond and mortgage, providing the said complainant corporation would not be injured or damaged thereby. All of the municipal taxes assessed on the said mortgaged premises have been paid in full. Relying and trusting upon the said statements of the said Nur J. Collins acting as aforesaid, the taxes were not paid within the period as agreed upon in the said bond and mortgage, but immediately upon the complainant corporation  
10 requesting the payment of the same during the month of February, 1927, all the municipal taxes due and payable at that time were paid in full.

2. These defendants aver that no default has been made in the payment of taxes.

These defendants allege that this proceeding is prematurely instituted and they pray that same may be dismissed with their reasonable costs thus wrong-  
20 fully expended.

BOLTE & TRIPICIAN,  
*Solicitors for and of Counsel with  
George T. Sale, William J.  
Kerns, Mrs. William J. Kerns  
and Isaac D. Hetzel.*

REPLICATION TO ANSWER OF FOUR  
DEFENDANTS.

(Filed December 28, 1927.)

IN CHANCERY OF NEW JERSEY.

Between  
COLLINS REALTY COM-  
PANY,  
Complainant,  
and  
GEORGE T. SALE, *et als.*,  
Defendants. } On Bill to Foreclose.  
Replication.

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10

The complainant joins issue on the answer of the  
defendants, George T. Sale, William J. Kerns, Mrs.  
William J. Kerns and Isaac D. Hetzel.

WM. CLEVINGER,  
*Solicitor for Complainant.*

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20

[ENDORSED]

Service acknowledged of the within  
paper and consent given to its filing out  
of time.

Bolte and Tripician,  
Solicitors for Defendants, George  
T. Sale, William J. Kerns,  
Mrs. William J. Kerns and  
Isaac D. Hetzel.

30

## NOTICE OF MOTION TO REFER.

(Filed January 3, 1928.)

## IN CHANCERY OF NEW JERSEY.

10

Between

COLLINS REALTY COM-  
PANY,*Complainant,*

and

GEORGE T. SALE, *et als.,**Defendants.*On Bill to Foreclose.  
Notice.

20

*To Hon. Carlton Godfrey, Solicitor for Ernest Schwehm, Emma Schwehm, William Freihofer, Sarah Freihofer, Stacy White and Mrs. Stacy White, whose real name is Mary R. White.**To Bolte & Tripician, Esqs., Solicitors for George T. Sale, William J. Kerns, Mrs. William J. Kerns and Isaac D. Hetzel.*

Gentlemen:

30

Take notice that on Tuesday, January 3rd, 1928, at the hour of ten o'clock in the forenoon, or as soon thereafter as counsel can be heard, I shall move before the Chancellor, at the Chancery Chambers in the State House, at Trenton, N. J., for an order referring the above stated cause to a Master for the reason that the answers of the defendants repre-

sented by you, and each of you, do not set up any defense or present any question except such as may be properly referred to a Master.

Take further notice that at the same time and place, in the event of an order of reference to a Master being refused, I shall move for an order referring the said cause to one of the Vice-Chancellors of this Court to hear the same for the Chancellor and to report thereon to him and advise what order or decree should be made therein.

Respectfully yours,

W. M. CLEVINGER,

*Solicitor for Complainant.*

Dated December 27th, 1927.

10

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[ENDORSED]

Service acknowledged this 27th day  
of December.

Bolte & Tripician.

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## ORDER OF REFERENCE.

(Filed January 10, 1928.)

## IN CHANCERY OF NEW JERSEY.

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10 Between  
 COLLINS REALTY COM-  
 PANY,  
     *Complainant,*  
 and  
 GEORGE T. SALE, *et als.,*  
     *Defendants.*

} On Bill to Foreclose.  
 } Order of Reference.

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20 This cause being opened to the Court by William  
 M. Clevenger, of counsel with the complainant, and  
 it appearing that a decree *pro confesso* was hereto-  
 fore entered against all of the defendants except  
 Ernest Schwehm, Emma Schwehm, William Frei-  
 hofer, Sarah Freihofer, Stacy White, Mrs. Stacy  
 White, whose real name is Mary R. White, George  
 T. Sale, William J. Kerns, Mrs. William J. Kerns  
 and Isaac D. Hetzel, who appeared and filed answers  
 30 to the complainant's bill; and it further appearing,  
 that the said answers set up no defense and pre-  
 sent no question but such as, in the opinion of the  
 Chancellor, may be properly referred to a Master;  
 and it further appearing, that due notice of this mo-  
 tion has been given.

It is, on this tenth day of January, 1928, on mo-

tion of William M. Clevenger, of counsel with the complainant, ordered, adjudged and decreed that the above stated cause be referred to Robert E. Steedle, Esq., one of the Masters of this Court, to ascertain and report if complainant's mortgage is due and payable, and if so the amount due the said complainant for principal and interest upon the mortgage held by it upon the premises mentioned and described in its bill of complaint; what interest, if any, the defendants have in the mortgaged premises; whether the principal of the said mortgage is due and payable; on what date the defendants defaulted, if at all, in the payment of the interest and taxes in violation of the terms of the complainant's mortgage, and any valid agreement in respect thereto, and whether the mortgaged premises should be sold as a whole or in parcels, and, if so, in what order. 10

It is further ordered, that the said Master shall make his report with all convenient speed and that all other equity is reserved until the coming in of the said report. 20

E. R. WALKER,  
C.

## MASTER'S REPORT.

(Filed February 8, 1928.)

## IN CHANCERY OF NEW JERSEY.

10

Between

COLLINS REALTY COM-  
PANY,*Complainant,*

and

GEORGE T. SALE, *et als.,**Defendants.*On Bill to Foreclose.  
Master's Report.

20

In pursuance of the order of reference in this cause, made on the 10th day of January, 1928, I fixed Friday, the 20th day of January, 1928, at eleven o'clock A. M., at the Bar Library, fifth floor, Real Estate and Law Building, as the time and place for hearing the matter. I duly issued summonses to the several defendants mentioned in the order of reference, which summonses were delivered to the solicitor for the complainant and by him duly served on all of the parties, as appears by the said summonses hereto annexed.

30

At said time and place so fixed I was attended by William M. Clevenger, Esq., representing complainant, Elwood S. Kirkman of the firm of Bolte & Tripcian, representing the defendants, George T. Sale, Isaac D. Hetzel, William J. Kerns and Mrs. William

J. Kerns, and Carlton Godfrey, Esq., representing the defendants, Ernest Schwehm, Emma Schwehm, Stacy White, Mrs. Stacy White, William Freihofer and Sarah Freihofer.

That Mr. Godfrey at said time and place served me with a notice and protest against my hearing the matter on the ground that he had taken an appeal from the order of reference. While I felt that the protest should not be heeded, in view of the fact that all of the complainants and witnesses were residents of Atlantic City, and no material injury could be done to anyone by a few days' delay, I adjourned the hearing to Monday, January 23rd, at the same hour and place, and immediately thereafter forwarded to the Chancellor the protest and letter accompanying the same, which had been given to me by Mr. Godfrey. 10

At the adjourned hearing I was attended by counsel for the respective parties as hereinbefore recited, and in the presence of said counsel, I proceeded to hear the matter and take the testimony of the witnesses, which testimony is annexed to this, my report, and made a part hereof, and also received in evidence the various exhibits mentioned in the transcript of testimony hereunto annexed. 20

Counsel having requested an opportunity to argue the matter before me, before rendering my report, I fixed Wednesday, February the first, 1928, at eleven o'clock A. M., at my office, 405 Schwem Building, Atlantic City, New Jersey, for said purpose. 30  
At said time I was attended by Mr. Clevenger, representing the complainants, Mr. Elwood S. Kirkman of the firm of Bolte & Tripician, and Mr. Carlton Godfrey, representing the defendants, Mr. Godfrey, however, stating that he was only present in the role of a spectator.

At said time Mr. Clevenger produced and offered in evidence a certified copy of the deed from William F. Basquill to George T. Sale referred to on page 15 of the transcript of testimony. He also asked me to recall Mr. Nur J. Collins, as a witness, to ask him one question. There being no stenographer present, the Master personally reduced to writing the question and answer as follows:

10       “Mr. Clevenger: Mr. Collins, was the receipted tax bills for 1926 and 1927 ever presented to you before November 10th, 1927, when Mr. Tripician made the tender of the interest money?”

          Mr. Kirkman: I object to that.

          Mr. Collins: No.”

20       After due consideration of the testimony of the witnesses produced before me, and examination of the various exhibits, I respectfully submit the following report as to my findings on the various matters referred to me by the order:

          The bill of complaint in this cause, filed July 27, 1927, alleges as grounds for foreclosure, first, default in the payment of the installment of interest due April 12, 1927; second, default in the payment of and production of receipts for taxes for the first half of the year 1927; third, default in the payment of and production of receipts for the taxes for the entire year 1926.

30       With respect to the alleged default in the payment of interest, I have not found any great difficulty in arriving at a conclusion. Mr. Collins, president of the complainant corporation, testified in effect that Mr. Clevenger was the attorney for the corporation, represented it and had full authority to act for and bind the corporation. Mr. Bolte, as

counsel for the defendants, and produced as a witness in their behalf, testified that during the period from April 12, 1927, to May 10, 1927, and prior to the expiration of the thirty-day grace period for the payment of the interest which fell due on April 12, 1927, he had some negotiations with Mr. Clevenger relative to a proposal to allow the mortgage to remain upon payment of some amount on account of the principal thereof, and that during these negotiations Mr. Clevenger had informed him that he could not accept the instalment of interest due in April, 1927, for fear that it would put his clients in a position so that he could not go ahead with his foreclosure. This testimony was uncontradicted by any other witness and, therefore, stands as a fact, and is, I think, sufficient to warrant a finding that the complainant, through its properly accredited representative, had at that time so acted as to render unnecessary any formal tender of this interest for it had given the defendants to understand that said tender would not be accepted. In view of this conduct of the complainant it was not necessary for the defendants to renew their offer to pay this overdue interest. To put the defendants in default with respect to this instalment of interest, it would have been necessary for the complainant to change its position with respect to its willingness to receive such interest and to bring such change of heart to the notice of the defendants. There is no evidence before me that the complainant did at any time, before the filing of the bill on July 27, 1927, notify the defendants or in any manner bring to the attention of the defendants the fact that this interest would be accepted, if tendered. In the absence of such testimony it must be assumed that down to the very time of the filing of the bill, the complainant persisted in its attitude that it could not accept the

interest for fear that such acceptance would jeopardize its right to insist upon foreclosure by reason of default in the payment of taxes. In this status of affairs the complainant cannot in equity and good conscience charge that defendants were in default under the mortgage at the time of the filing of the bill with respect to the installment of interest which fell due April 12, 1927. I therefore find and so report that there was no default in the payment of interest under the terms of the mortgage at the time the bill was filed.

Most of the remaining matters referred to me by the order of reference hinge in a large measure on a decision of one question, viz.: whether or not there was any valid agreement with respect to the payment of taxes and waiver of defaults in such payments. Briefly, the facts as testified before me with respect thereto are as follows:

The mortgaged premises were originally owned by the complainant corporation, Collins Realty Co., which entered into an agreement to sell same to George T. Sale or his nominee. The agreement of sale produced in evidence showed that Mr. Sale had directed that the premises be conveyed to William F. Basquill and the premises were so conveyed by deed dated April 12, 1926, Basquill giving back at the settlement a purchase money mortgage in the sum of \$140,000 payable at any time within four years from the date thereof. This mortgage contained the usual provisions with respect to default in payment of interest and taxes, the pertinent provisions with respect to taxes being as follows: "And shall pay the taxes assessed upon the premises hereinafter described for the first half of every year on or before the 20th day of May therein, and for the second half of every year on or before the 20th day of November therein, and shall produce the receipts

for taxes for each half of every year on or before the first day of June and the first day of December respectively therein; and should pay all other taxes, assessments and charges in nature thereof, that might be laid or levied upon the lands and premises hereinafter described immediately upon their assessment;”—“and provided further, however, and it was thereby expressly agreed, that if default should be made in the production in any year of the tax receipts, as therein provided and covenanted as aforesaid, or in payment of said taxes, assessments and charges as therein agreed as aforesaid, or in keeping the buildings erected upon said lands insured, and the policies and certificates thereof assigned or endorsed as aforesaid, or if at any time default should be made in payment of interest as aforesaid for the space of thirty days after any semi-annual payment thereof should fall due, then and in every such case, whether it be the first or any subsequent default, the whole principal debt aforesaid should, at the option of the said party of the second part, its successors or assigns, become due and payable immediately, and payment of said principal debt and all interest thereon might be enforced and recovered at once, anything therein contained to the contrary notwithstanding.”

At the time of settlement the taxes for the year 1926 were adjusted and an allowance of \$1191.69 made to the purchaser for the seller's portion of the taxes from January 1st to April 12th, the date of settlement. On the same date, April 12, 1926, Basquill conveyed the premises in question to George T. Sale, the original purchaser named in the agreement, and one of the defendants herein, and title to the same still remains of record in said sale. Neither the first nor the second half taxes for the year 1926 were paid by Sale and on February 2nd, 1927, the

complainant corporation wrote Sale notifying him that by reason of the failure to pay the taxes it elected to call the principal of the mortgage. On March 2nd, 1927, the taxes for the entire year of 1926 were paid, the payment being made subsequent to the notification by the complainant that it elected to call the principal of the mortgage, but prior to the filing of the bill of complaint on July 27, 1927.

10 The mere fact that the owner of the premises had paid the taxes before a bill was filed would not excuse the default or reinstate the mortgage, the default having occurred and the complainant's right to foreclose having accrued, the owner could not by paying the taxes forestall the complainant's bill.

20 Defendants, however, contend that the complainant is not entitled to pursue its bill in this cause because it has waived this default. This contention raises what I conceive to be the real point at issue in this cause. In support of this petition, defendants produce as a witness Mr. Sale, who executed the original agreement with Collins Realty Co., and who took title to the property immediately after its conveyance to Basquill. Mr. Sale was present at the settlement and acted there for Basquill. The settlement sheet offered in evidence shows that \$5,000 was deposited with the title company on account of the 1925 taxes, and Mr. Collins, in his testimony, explained that this was left with the title company because his company had taken an appeal from a part of the taxes levied on the property for 1925 on the ground that the assessment was erroneous in that 30 the building thereon had been almost totally destroyed by fire. This appeal was still pending and undetermined at the time of the settlement, and the seller desired to have these taxes remain unpaid until the determination of the appeal and to protect the buyer the sum of \$5,000 was deposited with the

title company. It appears that these taxes were paid about three months later on July 23, 1926. Mr. Sale testified that while this discussion was under way with respect to the 1925 taxes, he, Sale, also discussed with Collins the matter of future taxes to grow due on the property, and that Collins, representing Collins Realty Co., stated at that time that if the taxes became delinquent the owner would not stand to lose anything, that he, Collins, was not so much interested in the terms of the mortgage as he was in getting these taxes off, and that, if the taxes were not paid, nobody would be harmed, as he had sufficient down on the property to secure the sale. Mr. Collins denied that any such conversation as related by Mr. Sale ever took place, so that there is a direct conflict of testimony between the parties on this point. No other witnesses were produced to support the testimony of either, but, in the view which I take of this matter, I do not deem it important to decide this question of veracity as between these two witnesses for the respective parties. Assuming the entire testimony of the witness, Sale, to be true, and assuming that his vague statements as to what was said by Mr. Collins to amount to a promise on the part of Collins to waive defaults that might occur in the future under the terms of the mortgage with respect to non-payment of taxes, I cannot find that there was an agreement valid or binding upon the Collins Realty Co. to waive such future defaults with respect to the payment of taxes. The agreement of sale is silent on the terms and clauses that should be contained in the purchase money mortgage to be given at settlement, so that these terms were a matter of negotiation and agreement between the parties prior to or at settlement, and whatever may have been said between the parties and whatever they may have verbally

agreed to is of no avail in the face of the writings executed that day as the final evidence of the bargaining between the parties. Basquill, the purchaser, executed and acknowledged in due form the bond and mortgage to the Collins Realty Co., which bond and mortgage set forth specifically the agreement of the parties as to the requirement as to when taxes should be paid, and that the holder of the mortgage could foreclose in case such taxes were not  
10 paid and the receipts produced to the holder of the mortgage within the time set forth in the mortgage. And the mortgagor or his successors in title cannot now be heard to contradict that writing or to vary its terms by setting up an alleged agreement that this particular provision of the mortgage was not to be enforced. The very purpose of the so-called parol evidence rule was to prevent just such attempts as are here made to introduce as the real agreement of the parties something entirely differ-  
20 ent from that expressed in the written agreement. Under these circumstances, therefore, it is my conclusion, and I so find and report, that there was not any valid and binding separate agreement between the parties with respect to defaults in the payment of taxes or the waiver of such default.

The testimony shows that the taxes for the first half of the year 1927 were paid on May 27, 1927, which was prior to the date on which the non-payment of such taxes would have constituted a de-  
30 fault in the terms of the mortgage. There was, therefore, no default, with respect to the payment of the 1927 taxes at the time the bill was filed, and I so find and report.

As hereinbefore recited, the taxes for the year 1926 were not paid until March 2nd, 1927, so that the taxes for the first half of the year 1926 were not paid until more than nine months after same became

due and the taxes for the 2nd half year, more than three months after the same became due and payable. In view of my conclusion that there was no binding agreement respecting the defaults in the payment of taxes, it necessarily follows that there had therefore accrued two defaults with respect to the non-payment of taxes under the terms of complainant's bond and mortgage.

I, therefore, find and report that the defendant defaulted in the payment of taxes on the mortgaged premises for the first half of the year 1926, on June 20th, 1926, and for the second half of 1926 on December 20th, 1926, and that, by reason of such defaults, the entire amount of the principal of complainant's said bond and mortgage became due and payable and subject to foreclosure. 10

I further find and report that there is due to the said complainant on this third day of February, 1928, for principal and interest on its said bond and mortgage mentioned in the bill of complaint the sum of \$151,013.33, as will more fully appear from the schedule hereunto annexed and made a part of this, my report. 20

The order of reference directs that I find and report what interest, if any, the respective defendants have in the mortgaged premises. Mr. Sale testified that while he holds title of record, the remaining defendants had an interest in the mortgaged property in the proportion testified to by him. I therefore find and report that the interest of the respective defendants in the mortgaged premises is as follows: 30

Ernest Schwehm, an undivided one-fifth interest.

William Freihofer, an undivided one-fifth interest.

George T. Sale, an undivided one-fifth interest.

William J. Kerns, an undivided one-tenth interest.

Stacy White, an undivided one-tenth interest.

Henry Franz, an undivided one-tenth interest.

Isaac D. Hetzel, an undivided one-tenth interest.

10 I also inquired into the nature and situation of the mortgaged premises. They consist of a tract of land situate on Virginia Avenue, in the City of Atlantic City, with a frontage of 200 feet on Virginia Avenue. For 150 feet of this frontage the property has a depth of 150 feet, and the remaining 50 feet has a depth of 84½ feet. It consists of four lots of 50 feet each. Two of these lots are at the present time vacant ground with the exception of a small one-story office building thereon erected. The remaining two lots have erected thereon a partially destroyed hotel building.

20 Annexed to this report is a rough sketch made by the Master in an attempt to give some idea of the physical situation. It may appear at first glance that the mortgaged premises are readily susceptible of division and should be sold in separate parcels. However, the lands in question are in a section of Atlantic City where the buildings are almost entirely used for hotel purposes. It is within a few feet of the Boardwalk and beach. These lands are so located that if the entire tract remains in the hands of one owner it would make an excellent site for a fairly large hotel, whereas, in the hands of different owners, the separate lots may not be so valuable. I, therefore, believe that the property would bring a better price if sold as a whole and I therefore recommend that the mortgaged premises  
30 should be sold as a whole and not in parcels.

I further certify and report that the solicitor of the complainant produced before me a certificate of search made by the Chelsea Title & Guaranty Company, which was marked Exhibit C5 on the part of the complainant, which search I hereby certify was in my opinion necessary for the proper foreclosure

of said mortgage, and I respectfully recommend that there be allowed to the said complainant as part of its taxed costs, the sum of \$18.42 paid therefor.

All of which is respectfully submitted this third day of February, 1928.

Master.

SCHEDULE.

Amount due complainant, Collins Realty Company, on bond made by William F. Basquill, single, bearing date the 12th day of April, A. D. 1926, which bond is accompanied by mortgage bearing even date therewith, and recorded in the office of the clerk of Atlantic County in Book No. 397 of Mortgages, page 71, etc., principal	\$140,000.00	10
Interest from October 12, 1926, to February 3rd, 1928	11,013.33	
Total amount due complainant this 3rd day of February, 1928	\$151,013.33	20

ROBERT E. STEEDLE,  
Master in Chancery of  
New Jersey.

TESTIMONY BEFORE MASTER.  
IN CHANCERY OF NEW JERSEY.

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10	Between COLLINS REALTY COM- PANY, <i>Complainant,</i> and GEORGE T. SALE, <i>et als.,</i> <i>Defendants.</i>	} On Bill to Foreclose. Testimony before Master.
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20 Deposition taken before me, Robert E. Steedle, one of the Masters in Chancery of New Jersey, on the twentieth day of January, 1928, at 11 o'clock in the forenoon, at the Law Library, Real Estate & Law Building, Atlantic City, New Jersey, in pursuance of an order of reference made in this cause dated the tenth day of January, A. D. 1928.

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PRESENT:

30 WILLIAM M. CLEVINGER, Esq., representing complainant.

CARLTON GODFREY, Esq., representing defendants, Emma Schwehm, Ernest Schwehm, Mrs. Stacy White, Stacy White, William Freihofer, and Sarah Freihofer.

ELWOOD S. KIRKMAN and G. ARTHUR BOLTE, Esq., of Messrs. Bolte & Tripician, representing defendants, George T. Sale, Isaac D. Hetzel, Mrs. William Kerns and William J. Kerns.

I hereby certify that in my judgment the testimony should have been taken stenographically, and the same was so taken, by a stenographer selected by me, being by me first duly sworn, to faithfully and truly take stenographically and reproduce in typewriting the testimony given, which testimony was taken in my immediate presence and hearing, by the stenographer so selected and sworn, and I believe that it accurately states the evidence given.

All of which is hereby certified.

10

*Special Master.*

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

A. K. LITTLEFIELD, of full age, being duly sworn according to law, upon his oath says: I will faithfully and truly take stenographically and reproduce in typewriting the testimony to be given in a certain cause now depending in the Court of Chancery of New Jersey, in which Collins Realty Company is complainant, and George T. Sale, *et als.*, are defendants. So help me God. 20

Subscribed and sworn to before me this twentieth day of January, A. D. 1928.

*M. C. C. of N. J.*

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The Master: Mr. Clevenger, as you know, I have been served with a notice of appeal in this matter.

Now my feeling in this matter is that it should not be unduly delayed, and on the other hand, in view of these notices which I have received, I feel that I ought to take the matter up with the Chancellor before actually proceeding with the hearing. My thought is, if the time is satisfactory to you, Mr. Clevenger, to adjourn this until Monday at eleven o'clock, to give me an opportunity to take the matter up with the Chancellor, and if he advises me to go on at that time, to go on.

10 Mr. Clevenger: I would like to put on the record something. I am here today, if the Master please, with my witnesses prepared to go on with my case. I have presented to you, Master's summons, showing that all of the parties concerned are in court, and I ask for leave to proceed.

20 Mr. Godfrey: I attended at this hour for the purpose of serving a notice upon the Master of the appeal that has been taken in this case to the Court of Errors and Appeals, and I insist that the Master has no jurisdiction to proceed in any matter in taking any testimony or any other steps in this case until that appeal is disposed of. Mr. Clevenger has served notice upon me of an application to the Court of Errors and Appeals to dismiss this appeal, thereby recognizing the appeal, and I am asking that the Master fix the adjourned date for the hearing at least to a date after the date set in the notice for the matter to come before the Court of Errors and Appeals. I am here for no other purpose now.

30 Mr. Clevenger: I call the attention of the Master to the fact that the appeal in question only applies to those clients represented by Mr. Godfrey, to wit, Schwehm, White and Freihofer. There has been no

appeal by the other defendants represented by Bolte and Tripician. Should Mr. Godfrey be correct in his request for a continuance as to his clients, that is no reason why I should not be permitted to proceed as against Bolte and Tripician's clients who have not taken an appeal and whose controversy is ripe for hearing before the Master. On the other hand, it is settled by the Court of Errors and Appeals in this State that an order of reference to a Master is not a subject matter of appeal. I have just shown to your Honor the case of Schnitzius against Bailey, reported in 18 Atlantic Reporter, page 192. On the hearing on the motion for order of reference in this case, the Chancellor directed Mr. Godfrey's attention to the fact that Chief Justice Beasley, who had written this opinion, had held that it was entirely in the discretion of the Chancellor to do whatever he pleased in seeking advice upon his cases, and for an appeal to be prosecuted in the face of this decision and in the face of that statement borders on almost a contemptuous attitude, but that is something that you, I do not think, have anything to do with. I have made a motion to dismiss the appeal and that motion is returnable at the opening of the February Term of the Court of Appeals which will be held February 7th, 1928. Aside from that fact, however, the Court rule, which is binding upon the Master, Rule 159, says, "An appeal from an interlocutory decree or order"—and this is an interlocutory decree or order—"shall not stay proceedings in the case without an order of this Court or the Court of Appeals for that purpose first had, which order shall be granted upon such terms as the Court making it shall impose." And the Long Docks case, and all that line of cases, do not apply for the reason that that concerns an injunction. There is no injunction in this case, none applied for and none

exists. The Court has in the past held repeatedly that these cases are not stayed. To illustrate, an appeal was taken from an order to state an account and the Chancellor distinctly said the accounting should go on pending the appeal. In the case of Gorman against Hinkle, the Court of Errors and Appeals, before it would even hear the appeal, made Mr. Hinkle pay into the Court of Chancery the amount of money that had been found against him, 10 even though he was appealing from it. So, whatever is done in the Court of Chancery in matters of this kind, is at my risk, I may go ahead and it is the duty, as I see it, of the Master to proceed. In one case, all of which are cited in the tail end of Section 23 of Appeals of the Chancery rules, there was an appeal from an interlocutory order where they went on to final decree in a foreclosure case, and sold the property, and after the sale the Court of Errors and Appeals, having reversed the inter- 20 locutory order, the Court still held the sale good and refused to set it aside. It is up to me to take the risk, so far as Mr. Godfrey's clients are concerned, and it is my right, as I see it, to proceed so far as Bolte and Tripician's clients are concerned.

Mr. Godfrey: The Master knows that in cases of this kind, we have the right of appeal. As to what the result of that appeal may be —

30 Mr. Clevenger: The Court of Errors stated the contrary.

Mr. Godfrey: Now, then, we have appealed and it is binding upon the Master.

The Master: Gentlemen, my own feeling is that under the law the appeal taken by Mr. Godfrey does

not operate to prevent our proceeding to hear the matter under the order of reference. I am, therefore, unwilling to continue the matter as requested by Mr. Godfrey until after the hearing of the motion to strike. I further feel that the matter should be heard, if it is heard, as speedily as possible. In view of the notice served upon me, however, I feel that I should at least call that matter to the attention of the Chancellor. Mr. Clevenger's clients are residents of Atlantic City, and the delay of a day or two I feel would not work any material hardship. I am, therefore, going to continue this matter until Monday morning at eleven o'clock, meanwhile calling the notice to the attention of the Chancellor, and if the Chancellor does not direct me to adjourn the matter indefinitely, I will at that hour proceed to hear it. 10

Mr. Clevenger: I think I had better protect myself by serving on Mr. Godfrey and on Mr. Kirkman and get you to acknowledge notice of a motion returnable before the Chancellor January 31st, 1928, for an order to speed the cause and direct the Master to proceed. 20

(Further testimony adjourned until Monday, January 23rd, 1928, at 11 o'clock A. M., at the same place.)

Atlantic City, New Jersey.

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January 23rd, 1928.

(Hearing resumed at 11 o'clock A. M.)

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Appearances as before noted.

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G. ARTHUR BOLTE, SWORN.

Direct examination.

20 By Mr. Clevenger:

Q. Mr. Bolte, you are a member of the bar?

A. I am.

Q. And were you present at the settlement when the properties described in the mortgage in this case was transferred by the Collins Realty Company to William F. Basquill?

A. I was.

30 Q. I show you purchase money bond from William F. Basquill to Collins Realty Company, dated April 12, 1926, given to secure the sum of \$140,000 at any time within four years from the date thereof, with interest at six per cent, and ask you if that is your signature as subscribing witness to the bond and the power of attorney to confess judgment?

A. It is.

Q. Did you see William F. Basquill sign the power and the bond?

A. I did.

Q. After that was done, did you subscribe your name as subscribing witness?

A. I did.

(Bond referred to offered, received in evidence and marked Exhibit C1.)

10

Mr. Clevenger: I offer in evidence original mortgage from William F. Basquill to the Collins Realty Company, bearing same date as the bond, recorded April 13, 1926, at 12 o'clock noon, in the clerk's office of Atlantic County, at Mays Landing, New Jersey, in Mortgage Book 397, page 71.

(Mortgage received in evidence and marked Exhibit C2.)

20

Mr. Clevenger: I offer in evidence assignment of that bond and mortgage from Collins Realty Company to Guarantee Trust Company, dated June 14, 1926, recorded June 15, 1926, 9 A. M., Book 82 of Assignments of Mortgages, page 118.

(Assignment received in evidence and marked Exhibit C3.)

30

Mr. Clevenger: I offer in evidence assignment of that bond and mortgage from the Guarantee Trust Company to the Collins Realty Company, dated May 19, 1927, recorded May 20, 1927, at 9 o'clock A. M., Book 90 of Assignments of Mortgages, page 374.

(Assignment received in evidence and marked Exhibit C4.)

Mr. Clevenger: I offer in evidence search No. 6564 of the Chelsea Title & Guaranty Company against the mortgaged premises.

(Search received in evidence and marked Exhibit C5.)

10

Mr. Clevenger: I call for the production of the taxes for 1925, 1926 and 1927.

(Tax receipts produced by Mr. Kirkman for 1925, 1926 and 1927.)

Mr. Clevenger: I offer in evidence the receipted tax bill for 1926 covering the mortgaged premises showing that the same was paid March the 2nd,  
20 1927.

(Receipted tax bill received in evidence and marked Exhibit C6.)

Mr. Godfrey: I am not appearing today, under the protest which I served a few days ago.

Mr. Clevenger: I offer in evidence 1927 tax bill on the mortgaged premises showing second half to have been paid November 21, 1927.  
30

(Tax receipt received in evidence and marked Exhibit C7.)

Mr. Clevenger: I also offer in evidence 1927 tax bill covering lots 14 and 15 in block 14, which is a portion of the mortgaged premises, and a separate

bill covering lot 40 in block 14, the balance of the mortgaged premises showing the first half of 1927 was paid on May 27, 1927.

(Tax receipts received in evidence and marked Exhibits C8 and C9.)

Mr. Clevenger: I would like you to produce the original letter from the complainant to George T. Sale, dated February 2nd, 1927.

10

(Letter produced.)

Mr. Clevenger: Letter from Collins Realty Company, signed Nur J. Collins, President, dated February 2nd, 1927, addressed to George T. Sale, calling the mortgage by reason of non-payment of the taxes of 1926, offered in evidence.

(Letter received in evidence and marked Exhibit C10.)

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Mr. Clevenger: I would like to have the letter of the company of November 10th, 1927.

(Letter produced by Mr. Kirkman.)

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NUR J. COLLINS, sworn.

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Direct examination.

By Mr. Clevenger:

Q. Mr. Collins, what office, if any, do you hold in the Collins Realty Company?

A. President and treasurer.

Q. Does the company own the bond and mortgage, Exhibits 1 and 2, made by William F. Basquill to the Collins Realty Company on April 12th, 1926, and shown to you?

A. Yes.

Q. How much is due on that mortgage for principal?

A. The whole sum, \$140,000.

10 Q. From what date is interest payable?

A. From October 12, 1926.

Q. Has any part of the principal or interest been paid?

A. No, sir.

Q. I show you Exhibit 10, which is your letter of February 2nd, 1927, and ask you if the company called the mortgage pursuant to the terms of that letter for non-payment of the 1926 tax?

A. It did, yes.

20 Q. Did you receive a reply to that letter?

A. No, sir, I don't think so.

(Showing letter to witness.)

A. Yes, I did.

Q. Have you the letter and original envelope in which it was received?

30 A. No, I have not unless you have got it here. This was turned over to you. The letter and envelope is here.

Q. How did you receive that?

A. Through the mail.

(Letter and envelope offered, received in evidence and marked Exhibits C11 and C12 respectively.)

Q. Was this mortgage a loan or was it a purchase money mortgage, Mr. Collins?

A. This was a purchase money mortgage.

Q. With whom did the company agree to sell the land in the original?

A. I think the agreement called for George T. Sale or his nominee.

Q. Was that agreement in writing?

A. Yes, agreement of sale.

Q. Will you produce that?

10

(Agreement of sale produced.)

Q. Is this the original agreement?

A. Yes, I think it is.

Q. Now, pursuant to the endorsement on that contract, at the request of Mr. Sale did you make the deed to Mr. Basquill?

A. Yes, sir.

(Bill of sale with endorsement offered, received in evidence and marked Exhibit C13.)

20

Mr. Clevenger: Will you produce the deed to Mr. Basquill?

(Deed produced by Mr. Kirkman.)

Mr. Clevenger: I desire to offer in evidence the deed from Collins Realty Company to William F. Basquill.

30

(Deed received in evidence and marked Exhibit C14.)

Mr. Clevenger: Have you the original deed from Basquill to Sale?

Mr. Kirkman: No, I have not.

Mr. Clevenger: I want to offer in evidence a certified copy of the deed from Basquill to Sale, and I will get that.

Mr. Bolte: No objection.

10 Q. Mr. Collins, on November 10, 1927, after the bill to foreclose was filed, was there an attempt to make a tender of the interest money then due?

Mr. Bolte: I object to that because it is a matter that is after the bill was filed, have no evidential force on the present proceedings.

The Master: What is the relevancy, Mr. Clevenger?

20 Mr. Clevenger: Maybe I am in advance. I will withdraw that and let him cross-examine. I am going to insist upon it later on, but I am going to withdraw it now.

Cross-examination.

By Mr. Bolte:

30 Q. Mr. Collins, you say you are the president and treasurer of the Collins Realty Company?

A. Yes, sir.

Q. And you have been the official in those capacities ever since the organization of the company?

A. Yes.

Q. And were you such at the time that the transfer was made to William F. Basquill?

A. Yes.

Q. And when the original agreement was entered into with George T. Sale?

A. Yes.

Q. Were you present at the settlement that took place between the Collins Realty Company and William F. Basquill?

A. Yes.

Q. Who else was present at that time?

A. Mr. Clevenger and my son, Gilbert Collins, Mr. Sale, Mr. Basquill, Mr. Bolte, Mr. Cummings, Miss Mitchell, and the settlement clerk, a representative of the Phoenix Trust Company, I don't remember his name. 10

Q. Where was the settlement held?

A. Atlantic Title & Guaranty Company.

Q. In the Law Building, Atlantic City, New Jersey?

A. Yes.

Q. Do you know what day the settlement was held? 20

A. 12th of April, 1926.

Q. You were there as the representative of Collins Realty Company, were you not?

A. Yes.

Q. And you have throughout this transaction acted as the representative for the Collins Realty Company, have you?

A. Yes, sir.

Q. Have you acted as representative of the Collins Realty Company in reference to the calling of this mortgage on account of the non-payment of taxes? 30

A. Yes, through our attorney.

Q. Who is your attorney?

A. Mr. William M. Clevenger.

Q. And has he the right and authority to speak for the company?

A. Yes.

Q. Any action that he may have taken or he may have done or any act you may have done for the company would be the same as the act of the company?

A. Yes.

Q. At the time that the settlement was made, was there any delay at that time for paying the taxes that were due on your property that was being conveyed?

10 A. Yes.

Q. What taxes did that refer to?

A. That referred to the taxes on the building on this site which was burned and which we had appealed.

Mr. Clevenger: State the year.

A. For the year 1925, I think.

Q. And those taxes were not adjusted or paid at the time of the settlement, were they?

A. The money was left in the Title Company to  
20 pay them.

Q. Were the taxes paid, Mr. Collins?

A. No.

Q. And the payment of them was held up at your request or of the Collins Realty Company, wasn't it?

A. Well, moneys were left in the Title Company for the payment of those taxes at the time they would be adjusted.

Q. The payment of the taxes themselves was held up at your request at the time of settlement, wasn't it, by the Title Company?  
30

A. Yes, I guess that is right.

Q. And that was on account of the appeal that was pending?

A. Yes, Mr. Godfrey represented us in the appeal.

Q. And these—you were trying to accomplish what, by your appeal?

A. Why, to have the State Board refund or take

out the assessment for the buildings for the year 1926—1925, rather.

Q. When were those taxes eventually paid?

A. You mean the final payment of the taxes?

Q. Yes, final payment of the taxes.

A. On July 23, 1926.

Q. July 23, 1926? And they were—have you the tax receipts for them there?

(Tax receipts produced.)

10

Q. They were 1925 taxes, were they not?

A. Yes, sir.

Q. And you were given the opportunity to perfect your appeal, were you not?

A. Yes.

Q. And they were paid then eventually after the appeal had been determined?

A. No, the appeal had not been determined.

Q. Why did you pay them then at that time?

20

A. I met Mr. Godfrey in the Guarantee Trust Company downstairs and went over this matter with him, and he had said then that he had been to Trenton recently and had gone into the office of the State Board of Taxes, and in a conversation that he had with the secretary of the board he did not think that it would be worth while for us to have a hearing before the State Board. That some time previous they had passed on a similar case in Hamonton where the building had been burned down, and he did not think that they would change their status and the stand they took at that time. I said, "Then you feel that it is no benefit for us to go before the State Board?" He said, "I don't think so, but if you want me to go, I will go, but I do not think that they will reverse the stand that they have taken previously." I then said, "Well,

30

we may as well go and pay those taxes and finish the thing," and I think we went right down to the tax office and paid those taxes.

Q. Then, so far as your judgment or your attorney's judgment on the thing was concerned, the appeal was finished?

A. Yes.

Q. Did you know when the bill to foreclose this property was filed?

10 A. I don't exactly know.

Q. You do know, though, that it was filed after the taxes of 1926 were paid, do you not?

A. I think it was. I don't know, but I think it was.

Q. Those taxes were paid in March, 1927, weren't they?

Mr. Clevenger: You mean the 1926 taxes?

20 Mr. Bolte: 1926 taxes, yes.

A. Yes.

Q. And your bill was not filed until July of 1927, was it?

A. I don't remember when it was filed.

Q. With the exception of the 1926 taxes, your other taxes, that is, for 1927 were paid prior to them being overdue, weren't they?

A. I think they were.

30 Q. So that the only taxes that there is any question about, or the one on which you base your foreclosure proceedings, are the 1926 taxes?

A. Yes.

Q. The interest that was due on these properties you would not accept, would you, on account of the non-payment of taxes?

A. Never offered to us.

Q. Do you know whether it was discussed or offered to Mr. Clevenger?

A. I think it was.

Q. Prior to the filing of this foreclosure?

A. No, I don't think so.

Q. Do you know?

A. No, I don't know of my own knowledge.

Q. Mr. Clevenger ever discuss it with you, that Sale was ready to pay the interest on his mortgage and that you would not accept the same on account of wanting a certain amount paid on account of the principal of the mortgage? 10

A. I don't think he ever said that the taxes had been offered.

Q. Not the taxes, the interest.

A. I mean the interest had ever been offered.

Q. Well, you wouldn't accept the interest, would you, on account of the fact that these taxes had not been paid?

A. He was our attorney in the matter. He knew what to do, with reference to it. 20

Q. For the Collins Realty Company?

A. Yes.

Q. They did not want the interest on account of the fact the taxes, claiming that the taxes were in arrears, isn't that correct?

A. Yes.

Q. And the discussion was in regards to a payment being made on account of the principal of the mortgage, wasn't it?

A. Yes, we had discussed that. 30

Q. And you wanted to keep the mortgage alive, and a certain amount paid on account of it?

A. Yes.

Q. How much was that, Mr. Collins?

A. I think he asked for \$75,000 on account.

Q. Was an offer of a smaller amount made to you?

A. No, not that I know of.

Q. Offer of \$25,000?

A. Not that I know of.

Q. That discussion covered some period of time, didn't it, Mr. Collins?

A. Yes.

10 Q. Whatever offer was made by the Collins Realty Company was not accepted by George T. Sale, so far as you know?

A. No. I don't know.

Q. So far as you know, it was not? It was never made?

A. No.

Q. Whatever offer was made from George T. Sale to the Collins Company was never accepted?

A. No, I don't think so.

20 Q. Any action of Mr. Clevenger of accepting or refusing the interest prior to the filing of the mortgage was—any act of his was the act of the Collins Realty Company?

A. Yes, sir.

Q. At the time of the settlement in the Atlantic Title Company, or the transfer settlement from the Collins Realty Company to Basquill, did you have a conversation with Mr. Sale, did you talk to him that day?

A. Well, I presume I talked to him.

30 Q. Was there any discussion in regard to the non-payment of those 1926 taxes and the deposit with the Title Company of funds for the same?

A. Only as the conversation was general that the Title Company had agreed to accept money in lieu of those taxes and pay them when they were finally adjusted.

Q. That matter of the taxes not actually being

paid, but the money left with the Title Company, that was discussed between you and Mr. Sale, was it not?

A. At that time?

Q. Yes.

A. Only in a general conversation with all of them being present.

Q. But it was a conversation between you and Mr. Sale, wasn't it?

A. Well, I don't know whether it was or not. The conversation was general that the Title Company had agreed to give the policy also in lieu of those taxes paid, sufficient money being left that the taxes could be paid out of the settlement. 10

Q. Wasn't the question submitted or the proposition submitted to Mr. Sale at that time whether they would be satisfactory to him?

A. I don't know.

Q. Mr. Sale was acting there for Mr. Basquill, wasn't he? 20

A. They were both there. I don't know.

Q. Well, whatever conversations took place in reference to this settlement, they all took place with Mr. Sale?

A. Oh, yes.

Q. Mr. Basquill did not enter into that?

A. I don't think he had anything to say at all.

By Mr. Clevenger:

Q. Mr. Collins, I show you paper, and ask you if that is the original settlement sheet made at the time of the transfer to the Title Company? 30

A. Yes.

Q. How much money was credited to Mr. Basquill or Mr. Sale, whichever way you choose to take it, to protect against the 1925 taxes?

A. \$5000.

Q. How much was credited to Mr. Sale or Mr. Basquill on the adjustment for the 1926 taxes?

A. \$1191.69.

Q. As I understand your cross-examination, you had paid the taxes assessed by the city for 1925 against the lots, that is, against the land?

A. Against the land, yes.

Q. What was the amount of the payment and when  
10 was it made?

A. This check dated September 25, 1925, was paid for the assessment on the land amounting to \$4111.16.

Q. Now, then, after you had paid that much and was prepared to make settlement, after you talked with Mr. Godfrey you paid how much?

A. \$4748.33.

Q. Now, did that cover the amount assessed against the buildings on the land which were sold  
20 to Mr. Sale or Mr. Basquill?

A. Yes.

Q. And completed the year 1925?

A. Yes.

Q. At the time of the settlement had you taken your appeal from the Atlantic County Tax Board to the State Board?

A. Yes.

Q. And was the decision then in abeyance, so to speak?

30 A. Yes, we never had our hearing before the State Board.

Q. Now, after you had paid the balance of these 1925 taxes, on July 22nd, 1926, did you obtain from the Title Company the \$5,000 which was retained on that settlement sheet?

A. Yes.

Q. And is that the letter transmitting the check to you?

A. Yes.

Q. What did the \$54.44 represent that was added to the check?

A. That represented interest on this amount of money which was put on deposit for that purpose.

Q. Now, do you know, Mr. Collins, why the bill to foreclose was not filed until July of 1927?

A. Yes.

10

Q. What was the reason?

Mr. Bolte: I object to that. I don't know that it is relevant.

The Master: What is the purpose of it, Mr. Clevenger?

Mr. Clevenger: I want to show it was at their request. Of course, I could go on the stand and tell you all about it, but I don't want to do it unless I have to.

20

The Master: I will permit the question.

Mr. Bolte: Allow me an exception?

The Master: I might state at this time that my feeling in regard to the admission of testimony, as I understand this case, the whole point involved is as to the effect of a default in the payment of taxes.

30

Mr. Clevenger: And interest.

The Master: On the payment of the taxes prior to the filing of the bill, as I understand the law, as

I recall the cases I have read some time ago, the law in New Jersey is not settled on that point. I apprehend that counsel are going to settle it in this case. With that idea in mind I think that the widest latitude should be allowed in the admission of testimony so that the Chancellor and the Court of Errors, if the case ultimately reaches that far, may have before them all the testimony, all the facts that counsel desire to produce, and the mere fact  
10 that I may admit testimony now does not necessarily follow that testimony will enter into my findings or my decision, whatever that may be.

A. Mr. Freihofer came first, we went to see him, and then later he came to see us and asked us to have the bill to foreclose put off until they could get together and see if any adjustment could be made.

20 Q. Were there negotiations with Mr. Bolte's office also?

A. I think there was. I understood so. They were with you.

Q. Were there negotiations with Judge Cole's office?

A. Yes, sir.

Q. Did you ever agree to waive default that was caused by the non-payment of these taxes of 1926?

A. No, sir.

30 Mr. Clevenger: I would like to offer in evidence this check of the Seaview Corporation, September 25, 1925, to L. L. Matthis, Tax Collector, for \$4111.16.

(Check received in evidence and marked Exhibit C15.)

Mr. Clevenger: Check of Collins Realty Company to the same order, dated July 22nd, 1926, for \$4748.33.

(Check received in evidence and marked Exhibit C16.)

Mr. Clevenger: Atlantic Guaranty & Title Insurance Company letter of July 26, 1926, to Collins Realty Company, returning the deposit for 1925 taxes. 10

(Letter received in evidence and marked Exhibit C17.)

Mr. Clevenger: And the 1925 receipted tax bill, covering lots 14 and 15, block 14, which were the lots on which the disputed buildings were, marked paid.

(Tax bill received in evidence and marked Exhibit C18.) 20

Mr. Clevenger: I offer in evidence settlement sheet of the Atlantic Guaranty & Title Insurance Company, dated April 12, 1926.

(Settlement sheet admitted in evidence and marked Exhibit C19.)

Q. Now, Mr. Collins, in your cross-examination you stated there had been a tender of the interest. Where was that tender made to you? 30

A. In your office.

Q. When —

Mr. Bolte: I object to that. The cross-examination went to the first interest, has nothing to do

with any tender that was made after the foreclosure started.

The Master: Did you fix the date? As I recall, the pleadings raised that question as to a tender having been made.

Mr. Clevenger: If your Honor please, there has been no direct evidence as yet as to when the tender  
10 was made, but Mr. Bolte brought out on cross-examination from Mr. Collins that there had been a tender. Now, I want to fix the date and when it was, now whether I could go any further I don't know just yet, but certainly I have a right to fix the place and when.

The Master: You may answer, Mr. Collins.

A. That was in your office, I think it was Novem-  
20 ber 10th.

Q. What year?

A. 1927.

Q. Who was present at that time?

A. Mr. Tripician of Mr. Bolte's office, Mr. Clevenger and myself, and my son Gilbert.

Q. How much money was offered to you?

Mr. Bolte: I object to that because it is a matter  
30 that takes after November 10th, after the bill was signed in this matter, and therefore I do not feel that all that has been testified to is all that they are entitled to show.

The Master: I don't see the relevancy of that, Mr. Clevenger.

Mr. Clevenger: I think it is relevant, if your

Honor please, because the tender was accepted, and I wish to show that.

The Master: It doesn't seem to me it is relevant to any fact raised in the pleadings here.

Mr. Clevenger: I think it is relevant. Otherwise I wouldn't offer it. Of course, if you overrule it, I would like to put a formal tender on the record.

10

Mr. Bolte: I object to it.

The Master: In line with my thought expressed a few moments ago, I think I will permit the testimony.

Mr. Bolte: Allow us an exception.

The Master: Yes.

20

(Question repeated.)

A. \$8400.

Q. Did you accept it or reject it?

A. We accepted it.

Q. Did they leave it with you?

A. No.

Q. Was the acceptance made in writing?

A. Yes.

Q. I show you a letter of November 10, 1927, and I ask you if that is the letter — 30

Mr. Bolte: Of course, our objection goes to all this line of testimony, and exception to it.

The Master: Yes.

A. Yes, this is the receipt of acceptance.

(Letter offered, received in evidence and marked Exhibit C20.)

Q. You say, notwithstanding the fact you accepted it, Mr. Tripician took the money away?

A. Yes.

10 By Mr. Bolte:

Q. A tender was made, wasn't it, Mr. Collins, with the condition that the foreclosure proceedings were to be discontinued, were they not?

A. No.

20 Q. And that this \$8400 was to discontinue it because of the fact that the tax question was the only one and that the money would be paid in the event that the foreclosure proceedings were not to go ahead?

A. No.

Q. Wasn't there any conversation at that time in which that question arose?

A. No, the only question that arose in reference to his taking the money away was that Mr. Tripician said he had no authority to leave that money under the receipt which it was accepted.

30 Q. In other words, wasn't there a discussion there at that time as to the discontinuance of the foreclosure suit, and this was to settle it?

A. No, sir.

Q. Nothing stated in regards to it at all?

A. No, sir.

Q. What conversation did take place?

A. He brought in the money which he said was legal tender, to pay the interest on the mortgage,

and we told him that Mr. Clevenger represented us and the tender could be made to him.

Q. Were the tax receipts shown to you then?

A. Some of them were.

Q. What?

A. Some of them were.

Q. Wasn't the 1926 taxes shown to you, receipt?

A. I don't know what ones were shown to me. They were shown to Mr. Clevenger.

Q. Didn't Mr. Clevenger show them to you? 10

A. I don't know that he did because we told Tripcian that Mr. Clevenger represented us.

Q. Do you know what the purpose was in showing you the tax receipts there at the same time that they were shown to you, at the same time the tender was made, weren't they?

A. Well, yes, he had them at the same time.

Q. And wasn't the purpose of showing them to you there at that time to show you that the right to foreclose the bill under the tax receipts was disputed, and that the interest was tendered to you and willing to be paid upon the discontinuance of the foreclosure suit? 20

A. No, sir.

Q. Didn't you believe it was offered to you under that basis?

A. Why, I presumed it was being offered because the interest was due.

Q. On that basis, wasn't it?

A. No, I don't know anything about what the basis was. 30

Q. You think it was simply offered to you at that time because the interest was due?

A. Yes.

Q. You spoke of your tax receipts for the year 1925, the part that wasn't paid was for the buildings that were on this land, was it not?

A. For the buildings that were on the land and which were burned, yes.

Q. That had been on this particular land?

A. Yes.

Q. And had burned?

A. Yes.

Q. And you received one tax bill covering the entire land and buildings, didn't you?

A. Yes.

10 Q. And you paid that portion of the tax bill that referred to the land and left that unpaid that referred to the buildings?

A. Yes, because that was what we were appealing from, assessment on the buildings.

Mr. Clevenger: And there was practically a total destruction there, wasn't there?

20 A. Yes.

Q. Some portion of the buildings are still there, aren't there?

A. Yes, some portion of it, but the insurance company paid the full amount of the insurance carried, they considered it a total loss.

Q. And you sold some of the property with some of the buildings on it, didn't you?

A. A portion of the buildings, yes.

30 Q. The conversations that you had with Mr. Freihofer and Judge Cole took place after March 2nd, 1927, didn't it?

A. Oh, yes.

Q. Quite some time after those taxes for 1926 had been paid?

A. Yes.

Q. And the only one with whom there were any negotiations between February 2nd, 1927, and March

2nd, 1927, was between Mr. Clevenger and myself, wasn't it, in reference to ———

A. I think so.

Q. ———paying something on account of this mortgage?

A. I think that is right.

Q. And that was the entire question that was hanging in the way, as to whether something and how much should be paid on account of the principal of the mortgage?

10

A. Yes.

Q. And if a sufficient amount was paid you would have been willing to continue the mortgage, paid on account of the principal?

A. I think we would.

By Mr. Clevenger:

Q. But you didn't?

A. No.

20

Q. That is, you didn't waive your default?

A. Oh, no, sure not.

By the Master:

Q. What was the date of the fire, Mr. Collins?

A. The date of the fire was November 17th, 1924.

Q. And it was the 1925 taxes that you were appealing?

A. Yes.

30

GEORGE T. SALE, SWORN.

Direct examination.

By Mr. Clevenger:

Q. Mr. Sale, you hold the legal title to this land, do you not?

10 A. I hold the paper title to this land.

Q. That is the legal title to it? You have the deed in your name?

A. I have the deed for it in my name, but I do not hold it for myself alone.

Q. That is just what I am going to ask you about, and the only thing. There is nothing of record that shows anyone is interested in this property but you, is there?

A. I couldn't answer that question.

20 Q. Now, who is interested in the property besides yourself?

Mr. Bolte: Personally I object to it.

The Master: The order of reference —

A. I wouldn't care to answer that question.

30 The Master: The order of reference specifically directs that I find as to that.

Mr. Bolte: I appreciate that, but at the same time I object to it. I don't think it is relevant. Enter my objection on the record.

Q. Mr. Sale, in my opinion, you are obliged to answer the question, and I ask Mr. Bolte, your coun-

sel, to so instruct you, and I also ask the Master to instruct you.

Mr. Bolte: First is for the Master to pass on my objection.

The Master: I direct him to answer the question.

Mr. Bolte: If the Master directs you to answer it, you answer it.

10

A. Well, the parties interested in there are Mr. Freihofer.

Q. That is William Freihofer?

A. Yes. Mr. Hetzell.

Q. That is Isaac D.?

A. Yes. Mr. Kerns.

Q. That is William J. Kerns?

A. William J. Kerns. Mr. Schwehm.

Q. That is Ernest Schwehm?

A. Yes. Ernest Schwehm. Myself. Mr. Stacy  
White. Mr. Franz.

20

Q. What is his first name?

A. Henry. That is all.

Q. There are no other persons who have any interest in the property excepting those whom you have named?

A. No.

Q. Is Mr. Henry Franz a married man?

A. Well, I couldn't swear to that. A woman walks around with him. I don't know whether she is his wife or not.

30

Q. Where does he live?

A. I couldn't tell you that. I know where his office is.

Q. Where is his office?

A. His office is Second and Fisher's Avenue.

Q. What office does he hold in the Franz Paving Company?

A. I don't know that.

Q. But he is connected with that concern?

A. Yes, sir.

Q. When you say Second and Fisher Avenue, you mean Philadelphai, Pennsylvania?

A. Yes, sir.

Q. Where does Mr. Kerns live, William J. Kerns?

10 A. Well, sometimes he lives in Kensington and sometimes he lives up on Dunn's Ferry Road, I don't know where he votes, I suppose that is where he lives.

Q. What Ferry Road?

A. No, it ain't the Dunn's Ferry Road, Knight's Road.

Q. What is his business?

A. He is prothonotary of the courts in Philadelphia.

20 Q. Is he married?

A. I guess he is. I know he is married.

Q. Know his wife's name?

A. Yes.

Q. What is it?

A. Katie.

Q. Did you see the answer that your lawyer filed in this cause?

A. No, I never bother with that, I have got confidence in the lawyer.

30 Q. Did he read to you the answer after it had been prepared?

A. No.

Q. Did you ever see the answer which had been filed?

A. No, not to my knowledge.

Q. Did you ever talk to your lawyers about the kind of an answer that should be filed for you?

A. If I hire a painter or a lawyer, I never tell them what to do. I tell them the job they got.

Q. Did you see the bill of foreclosure filed in this case?

A. No, sir.

Q. Did your lawyers tell you what the bill to foreclose contained?

A. No, I just sent the papers down there and told them to go to it, and I guess they did the right thing, and anything they give me to sign, I sign it without reading it. 10

Q. Then you never saw the bill of complaint in this cause and you never saw the answer in this cause?

A. Not to my knowledge. I wouldn't say I could remember seeing it. I may have talked about papers there.

Q. I am going to show you a copy of the answer which was filed in this cause for you, Mr. Kerns, Mrs. Kerns, and Mr. Hetzell, and ask you if you ever saw that paper or the original before? 20

A. Well, if my name is signed to it, I may have saw the paper, but I never read it. But I don't know whether my name is to it or not.

Q. Your name isn't signed to it.

A. I know nothing about it, then.

Q. You know nothing about its contents?

A. No, sir.

Q. Gave no instructions to your lawyer?

A. Sure, I told my lawyers to go through that. Why should I instruct my lawyers what to do? 30

Q. Did your lawyers ask you who was interested in the case?

A. I told them who they represented.

Q. Did you tell them that Henry Franz was represented?

A. I assume I did.

Q. Did you tell them to leave Henry Franz's name out of the answer?

A. Why should I tell my lawyers a thing like that?

Q. I am asking you, Mr. Sale.

A. I say no. That would be silly, to tell lawyers anything like that.

Q. But you did tell them Mr. Franz was interested in the case?

10 A. I told them who they represented, they represent Mr. Franz, myself, Mr. Hetzell and Mr. Kerns, Mr. Bolte represents us.

Q. Then you did tell them that they represented Mr. Henry Franz?

A. I told them who they represented, yes.

Q. Did you tell them that they represented Mr. Henry Franz?

A. Yes.

Q. That is all.

20 By the Master:

Q. Mr. Sale, you testified as to the parties actually interested, what is the proportionate interest of those parties?

A. Why, I have a two-tenths interest, and Mr. Schwehm has two-tenths, Mr. Freihofer has two-tenths, and the balance is divided one-tenth each.

Q. One-tenth each to Mr. Kerns and Mr. Franz?

30 A. Franz, and Mr. Hetzell and Mr. White, one-tenth, you see we are divided into two groups.

Q. Those four gentlemen have each a one-tenth interest?

A. Mr. Godfrey represents a half interest and Mr. Bolte represents my friends and myself.

Cross-examination.

By Mr. Bolte:

Q. Whom do we represent in the matter, Mr. Sale?

A. Represent Henry Franz, Mr. Hetzel, Mr. Kerns and myself.

Q. The Franz Paving Company hasn't any interest in it, then?

10

A. No, sir.

Q. Henry Franz has the interest in it?

A. Yes, sir. Franz Paving Company is a corporation.

Q. The facts that were set forth in the answer were gone over with you, were they not, Mr. Sale?

A. Why, you showed me the papers, and if you remember I told you I didn't want to read them, I left them up to you. You asked me some specific questions which I answered.

20

Q. In reference to things that were set forth in the complaint?

A. Yes, sir.

Q. I went over those with you?

A. Yes, if you remember, Mr. Bolte, I told you at that time you got the case in charge, I didn't want to bother with it.

Q. The question in regard to the conversation that took place or is supposed to have taken place between you and Mr. Collins, was that discussed with you?

30

A. Yes.

Q. It was taken up with you specifically, wasn't it?

A. Yes, sir.

Q. And you were told in a general way what the complaint was, were you not?

A. Yes, sir.

Q. That it was for the non-payment of taxes?

A. Yes, sir.

Q. And you were discussed with in a general way what was to go into the answer?

A. Yes, sir.

Mr. Clevenger: I rest, and want this on the record. Mr. Bolte, do you want to, or will you enter  
10 an appearance for Henry Franz and his wife?

Mr. Bolte: I have no objection to it at all, if you want to amend or make them parties, anything you want to do, I have no objection to it at all, the slightest, don't want to hold up your foreclosure on that score. I enter the appearance on what Mr. Sale tells me, I represent him because my transactions were entirely with Mr. Sale, and I assume I represent those for whom the answers are filed.

20

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DEFENDANTS' TESTIMONY.

GEORGE T. SALE, recalled.

Direct examination.

By Mr. Bolte:

30

Q. You were present at the settlement?

A. Yes, sir.

Q. Made in the Atlantic County Company?

A. Yes, sir.

Q. Was there any discussion between you and Mr. Collins of the Collins Realty Company in ref-

erence to the payment of the taxes that were on appeal?

Mr. Clevenger: I object to that.

The Master: Mr. Clevenger, this matter has already been testified to, and Mr. Collins himself testified that Mr. Sale at that settlement represented Mr. Basquill, took the title for him.

10

Mr. Clevenger: But I know what is coming, and I want to get the objection in.

The Master: I will permit the testimony.

A. Yes, sir.

Q. Do you remember—at that time were you acting for Mr. Basquill?

A. I was.

Q. Do you remember what that conversation was? 20

A. Yes, sir.

Q. As to the taxes that were up on appeal?

A. Yes, sir.

Q. What was the conversation?

Mr. Clevenger: I object to it.

The Master: I will permit the testimony.

A. I said to Mr. Collins that, "What if these taxes go over the term of the mortgage?" He said, "Well, you won't lose any money." He said, "If these taxes are taken off, you would have to pay just that much more money for the current year, if the assessment remained on." 30

Q. Was there any discussion then between you and Mr. Collins as to any subsequent taxes?

Mr. Clevenger: I object.

The Master: I will permit the question.

A. Yes, sir, Mr. Collins said that he had paid the taxes on the buildings and expected to get it back.

Q. Anything said at that time in reference to any taxes that might come due on the property thereafter while you were owner of it or anyone connected  
10 with you?

Mr. Clevenger: I object.

The Master: Permitted.

A. Yes, sir. He said if the taxes went delinquent, that he wasn't, that we wouldn't stand to lose anything, and that he wasn't so much interested in the terms of the mortgage as he was in getting that tax off, the very words he said.  
20

Mr. Clevenger: I move to strike out the answer as not being relevant, and being no legal reason as to why they should be excused from defaulting in the 1926 taxes.

The Master: As I explained a few moments ago, Mr. Clevenger, my idea is to permit counsel to get practically almost all the testimony they want on the record, not that I will consider it in my decision.  
30

Q. What conversation was there that led up to the conversation that you have just testified to?

Mr. Clevenger: I object.

The Master: Admitted.

A. I had quite a discussion over the question of title, there was a question of several feet that we had a defective title on, and which we made allowance on, and when it came up to the tax, Mr. Collins said he would leave sufficient money in the Trust Company, and they would send us a note of the money that was necessary to pay these 1926 taxes, and I think I have got a check from you later on.

Mr. Clevenger: I move to strike that as not being relevant to the issue. 10

The Master: Note the motion.

Q. Mr. Sale, won't you repeat exactly the conversation that you had with Mr. Collins that relates to the taxes that might come due in 1926 or after your settlement while you were the owner of the property?

Mr. Clevenger: I object on the ground he has already stated what the conversation was. 20

A. He said that nobody would be hurt in the matter, if the taxes were not paid, he had sufficient money down on the property to secure the sale.

Mr. Clevenger: I move to strike the testimony as not being relevant. 30

Q. Is that all that was said? Was there anything said in regard to the taxes particularly?

Mr. Clevenger: I object as leading.

A. Nothing except those particular taxes that

was to be adjusted, and we could not pay out of settlement.

Q. Were you ready and willing to pay the interest on this property?

A. At all times, yes, sir.

Q. If they would have accepted it?

A. Yes, sir, sent you a check.

Q. And not continued with their foreclosure?

A. Yes, sir.

10 Q. Did you send a check to me?

A. I did, sir.

Q. For the interest?

A. I did, sir.

Q. Do you know when that check was sent?

A. You have it there, Mr. Bolte, check came through and we tore the signature off and filed it away, April 28th, 1927—April 25th, 1927.

20 Q. Was there any discussion with you, through your attorneys, in reference to making a payment on account of the principal of this mortgage?

A. Yes, my attorney asked me what I would pay, I said, "Well, see what they want."

Q. Do you know when those conversations took place?

A. They took place some time between the, I should say in the spring, my first conversation, when I got Mr. Collins' letter I turned it over to you, you see, and that you advised me then to pay the taxes after you had seen Mr. Clevenger.

30 Q. Was there anything ever submitted to you as to the account with him?

A. Yes, you told me that it could be adjusted if a substantial amount had been paid, I don't remember just the amount.

Q. Did you ever authorize me to make an offer to pay on account a certain amount?

A. I authorized you to see what you could do.

Q. Was there ever an authorization made by you that \$25,000 should be paid on account?

A. Yes, I thought if it would take \$25,000, we would give it to him.

Q. Was ever the statement conveyed to you from Mr. Clevenger representing Collins Realty Company that they desired \$70,000 on account?

A. Yes, sir.

Q. And did you accept that offer?

A. No, sir.

10

(No cross-examination.)

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G. ARTHUR BOLTE, recalled.

Direct examination.

By Mr. Kirkman:

20

Q. Mr. Bolte, you are a member of the bar?

A. I am.

Q. Member of the firm of Bolte and Tripician?

A. Yes.

Q. During the time between February 2nd, 1926, and May 10th, 1926, you represented Mr. George T. Sale and the defendants in interest in this particular property?

A. At that time I knew I represented George T. Sale. My dealings were entirely with George T. Sale.

30

Q. Did you have some dealings with Mr. Clevenger about the payment of the interest that was due in the sum of \$4200 on the purchase money mortgage?

A. I had dealings with Mr. Clevenger as to the

payment on account of the principal and the taxes and the matter of the interest was I understand in connection with it.

Q. Did you offer to pay this interest, Mr. Bolte?

A. If you will allow me I will give it, the best of my recollection, our conversation. I had a number of conversations with Mr. Clevenger in regards to paying on account of the principal of the mortgage and the amount that we offered and the amount that  
10 Mr. Clevenger said his client would accept were quite some difference between them. I spoke to him in reference to the paying of the interest on account of the mortgage, and he told me that he was not, that the interest that was due in April, 1927, he told me that he could not accept that for fear that it would put his clients, possibly put his clients in a position so that he could not go ahead with his foreclosure. He wanted to be absolutely free and clear in proceeding with this foreclosure for the non-  
20 payment of taxes, and didn't want anything to interfere with that.

Q. Mr. Clevenger didn't say to you that he was not acting and could act on behalf of the Collins Realty Company?

A. No, I always understood he represented them.

Cross-examination.

By Mr. Clevenger:

30 Q. Did you ever make a tender of \$4200 in cash either to me or to the Collins Realty Company?

A. No, I did not.

Q. And there never was a cash tender until November 10th, 1927?

A. There was not.

Q. Did you see the letter of November 10th, 1927?

A. I did.

Q. Do you understand that the Court of Appeals has held that the acceptance of interest is not a waiver of default by reason of non-payment of taxes?

Mr. Kirkman: I object to that, if the Master please.

The Master: I don't see the relevancy of that, putting Mr. Bolte on as an expert. You will have to make him your own witness. 10

Q. Why didn't you return the \$8400 of interest money when you noticed that I had accepted it?

Mr. Kirkman: If the Master please, I object, immaterial and irrelevant, not competent testimony, not proper cross-examination, if nothing else.

The Master: I think you would have to make him your own witness, Mr. Clevenger, if you wanted to go into that feature of it. 20

By Mr. Kirkman:

Q. Mr. Bolte, why wasn't a cash tender made of this interest?

A. Because my dealing with Mr. Clevenger, understanding Mr. Clevenger would not accept it at that time. 30

Q. That is the reason no cash tender was made, because he refused to accept it?

A. Because it would entirely depend on the principal being paid, sufficient, if there had been, we had gotten an understanding in regards to paying

on account of the principal, then it would have been different.

Q. All those conversations took place prior to May 10th, the expiration of thirty days after the due date?

A. Yes, I talked to Mr. Clevenger practically from February 2nd on, in regards to various phases of it.

By the Master:

10

Q. Mr. Bolte, I think Mr. Kirkman in his opening question fixed these conversations in 1926, as a matter of fact it was 1927?

A. 1927, yes.

DEFENDANTS REST.

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20

COMPLAINANT'S REBUTTAL

NUR J. COLLINS, recalled.

Direct examination.

By Mr. Clevenger:

Q. Mr. Collins, this property is located where?

A. South Virginia Avenue, near the beach.

30

Q. How many feet front is there?

A. Well, there is two hundred feet on Virginia Avenue.

Q. Is it composed of one or two lots?

A. Well, it is composed of four lots, lots on the map are 50 by 150 feet depth, three of them.

Q. Won't you make a little sketch of it on that paper?

(Witness complies.)

Q. What is the depth of the small lot?

A. Small lot, 84.5 feet.

Q. Depth or width?

A. Depth.

Q. How much front?

A. Fifty feet.

Q. The other three lots are how much?

A. The other three lots are 50 feet by 150 feet in 10  
depth.

Q. Before the fire how many buildings were on  
those four lots?

A. Two.

Q. What were the names of them?

A. The Hotel Bothwell was on 100 by 150 feet,  
and the Hotel Senator, formerly the Hotel Jackson,  
was on the other 100 by 150 feet, that is part of it  
was on the 150 feet depth and the other part was  
84.5 feet depth.

Q. Of what construction was the Bothwell?

A. Frame.

Q. That was entirely destroyed, wasn't it?

A. Yes.

Q. What construction was the Jackson?

A. Brick.

Q. And that was not entirely destroyed?

A. No, the two-story building was left intact,  
wasn't very much damage to that.

Q. Now, how much of that Jackson building is  
now on the 100 feet nearest the ocean?

A. I think about one-half of it, possibly a little  
more than half.

Q. Does the present building cover those two lots,  
the small lot and the big one, 100 feet in front?

A. I think it does. I think it covers the 100 feet,  
it may not cover up to this line entirely.

Q. But the building is on both lots?

A. Yes.

Q. Now, then, is there anything on the other hundred feet, the other two 50-foot lots?

A. No, only a little garage office there.

Q. Now, is that little garage office on both lots or only on one?

A. It is only on one, I think.

Q. But which one?

10 A. I think it is on the first one.

Q. That is the one nearest Pacific Avenue?

A. Yes, I think so.

Q. So that leaves the center 50 feet by 150, the only piece of ground on which there is no building?

A. I think so.

Q. Now, are there any mortgages on the property besides your mortgage?

A. Yes, sir.

Q. How many?

20 A. Two other mortgages.

Q. What are they?

A. There is a first mortgage of \$37,500 on this 100 foot frontage on Virginia Avenue nearest the beach.

Q. That is the piece on which the buildings now are?

A. Yes.

The Master: That is the only mortgage you have  
30 on this property?

A. No, that is the first mortgage on this.

Q. What is the other mortgage?

A. The other mortgage is held by Mr. Bothwell, of \$122,500, covering the whole 200 feet front on Virginia Avenue, that being a first mortgage on the

100 by 150 feet, and it would be a second mortgage above the \$37,500 on the other hundred feet.

Q. Then your mortgage covers the whole 200 feet, is that right?

A. Yes.

Q. And is the third mortgage?

A. Is the third mortgage on the hundred feet on Virginia Avenue nearest the ocean, and second mortgage on the other hundred feet towards Pacific Avenue.

10

Q. So it would be impossible to sell that land in any other way than a whole to protect everybody concerned?

A. I don't see how they could.

Q. Mr. Collins, was there any conversation between you and any one at the office of the Atlantic Guaranty & Title Insurance Company on April 12th, 1926, the day the settlement was made, concerning any taxes excepting those for 1925 which were under appeal?

20

A. No.

Q. Mr. Collins, the conversation concerning the 1925 taxes took place when with regard to the delivery of the deed?

A. Well, at the time of the settlement and before the delivery of the deed, during the settlement.

Q. Were there any conversations at all after the settlement and delivery of the deed?

A. No.

30

TESTIMONY CLOSED.

## EXHIBIT C1.

1/23/28. L.

KNOW ALL MEN BY THESE PRESENTS,  
That I, William F. Basquil, of the City and County  
of Philadelphia, and State of Pennsylvania, (here-  
inafter called the Obligor) am held and firmly bound  
10 unto Collins Realty Company, a corporation of the  
State of New Jersey, (hereinafter called the  
Obligee), in the sum of Two Hundred, Eighty Thou-  
sand Dollars, lawful money of the United States of  
America, to be paid to the said Obligee, its certain  
Attorney, successors or Assigns; to which payment  
well and truly to be made, I do hereby bind and  
oblige myself, my heirs, executors, administrators,  
assigns, and every of them firmly by these Presents.  
Sealed with my Seal Dated the twelfth day of April  
20 in the year of our Lord one thousand nine hundred  
and twenty-six (1926).

THE CONDITION OF THIS OBLIGATION IS  
SUCH, That if the above bounden Obligor, his  
heirs, executors, administrators, assigns, or any of  
them, shall and do well and truly pay or cause to  
be paid, unto the above named Obligee, its certain  
Attorney, successors, or Assigns, the just sum of  
One Hundred, Forty Thousand Dollars, like lawful  
money as aforesaid, at any time within four years  
30 from the date hereof, together with interest thereon  
at the rate of six per centum per annum, payable  
semi-annually in like lawful money as aforesaid, and  
shall pay the taxes assessed upon the premises de-  
scribed in an accompanying indenture of mortgage  
for the first half of every year on or before the twen-  
tieth day of May therein, and for the second half of

every year on or before the twentieth day of November therein, and shall produce receipts for the taxes for each half of every year on or before the first day of June and the first day of December respectively therein; shall pay all other taxes, assessments and charges in nature thereof that may be laid or levied upon the lands and premises described in the accompanying mortgage, immediately upon their assessment; that said Obligor shall not apply for any deduction by reason of the accompanying Mortgage from the taxable value of the lands therein described and embraced; and produce to the said Obligee, or its successors or Assigns, receipts for all taxes, assessments and charges in nature thereof laid or levied upon the said mortgaged premises within thirty days after the same shall first become due and payable, and shall and will keep the buildings erected and to be erected upon the said lands insured against loss or damage by fire in such safe and responsible stock (non-mutual) Fire Insurance Company or Companies as shall be satisfactory to said Obligee and endorse or assign and deliver all policies and certificates thereof to the said Obligee as collateral security for the payment of the principal and interest aforesaid, the aggregate amount of which insurance shall not be less than  
dollars, without any fraud or further delay; then the above obligation to be void, or else to be and remain in full force and virtue.

AND PROVIDED FURTHER, however, that if default shall be made in the production in any year of the tax receipts, as herein provided and conditioned as aforesaid, or in payment of said taxes, assessments and charges as herein provided as aforesaid, or in keeping the buildings erected upon said lands insured, and the policies and certificates

thereof assigned or endorsed as aforesaid, or if at any time default shall be made in payment of interest as aforesaid for the space of thirty days after any semi-annual payment thereof shall fall due, then and in every such case, whether it be the first or any subsequent default, the whole principal debt aforesaid shall, at the option of the said Obligee, its successors or Assigns, become due and payable immediately, and payment of said principal debt, and all interest thereon, may be enforced and recovered at once, anything herein contained to the contrary notwithstanding.

AND PROVIDED FURTHER, that in default of insurance or production of tax receipts and payment of taxes, assessments and charges as aforesaid, the said Obligee, its successors, or Assigns, shall have the option to effect such insurance, and pay such taxes, assessments and charges; and the premium or premiums paid for effecting such insurance and the amount paid for such taxes, assessments and charges as aforesaid, shall be added to the principal moneys hereby secured, and payable on demand, with legal interest, in like money and at the place aforesaid.

William F. Basquil

(SEAL)

Sealed and Delivered

in the presence of

G. Arthur Bolte

TO Wm. M. Clevenger, Esq., Or any other Attorney of any Court of law in New Jersey or elsewhere:

This is to authorize you to appear for me in any Court of competent jurisdiction, in case of the breach of the condition of the above Bond and confess judgment for the penalty therein contained, as of the last or any subsequent term, with costs of suit and re-

lease of errors; and this shall be your sufficient warrant.

WITNESS my hand and seal this twelfth day of April, Anno Domini one thousand nine hundred and twenty-six.

William F. Basquil  
(SEAL)

Sealed and Delivered  
in the presence of  
G. Arthur Bolte

10

No.....

Bond and Warrant.

William F. Basquil,

—to—

Collins Realty Company.

For \$140,000.00

Dated April 12th 1926.

Premises So. Virginia Ave.,  
Atlantic City, N. J.

20

EXHIBIT C2.

1/23/28. L.

THIS INDENTURE, Made the Twelfth day of April in the year of our Lord one thousand nine hundred and twenty-six (1926),

BETWEEN William F. Basquil, single, of the City and County of Philadelphia, and State of Pennsylvania, party of the first part, and Collins Realty Company, a corporation of the State of New Jersey, party of the second part: WHEREAS, the said William F. Basquil in and by his certain Obligation or writing obligatory, under his hand and

30

seal duly executed, and bearing even date herewith, stands bound unto the said party of the second part, in the sum of Two Hundred, Eighty Thousand Dollars, lawful money of the United States of America, conditioned for the payment of the just sum of One Hundred, Forty Thousand Dollars, like lawful money as aforesaid, at any time within four years from the date thereof, together with interest thereon at the rate of six per centum per annum, payable  
10 semi-annually in like lawful money as aforesaid, without any fraud or further delay; and shall pay the taxes assessed upon the premises hereinafter described for the first half of every year on or before the twentieth day of May therein, and for the second half of every year on or before the twentieth day of November therein, and shall produce receipts for taxes for each half of every year on or before the first day of June and the first day of December respectively therein; and shall pay all other taxes,  
20 assessments and charges in nature thereof, that might be laid or levied upon the lands and premises hereinafter described immediately upon their assessment; and conditioned further, that said party of the first part should not apply for any deduction, by reason of this Mortgage, from the taxable value of the lands therein described and embraced; and should produce to the said party of the second part, or its successors or Assigns, receipts for all taxes, assessments and charges in nature thereof laid or  
30 levied upon the said mortgaged premises, within thirty days after the same should first become due and payable, and should and would keep the buildings erected and to be erected upon the said lands, insured against loss or damage by fire and tornado, in such safe and responsible stock (non-mutual) Fire Insurance Company or Companies as should be sat-

isfactory to said party of the second part and endorse or assign and deliver all policies and certificates thereof to the said party of the second part as collateral security for the payment of the principal and interest aforesaid, the aggregate amount of which insurance shall not be less than

to be divided as to fire and tornado as the party of the second part may designate.

AND PROVIDED FURTHER, however, and it was thereby expressly agreed, that if default should be made in the production in any year of the tax receipts, as therein provided and covenanted as aforesaid, or in payment of said taxes, assessments and charges as therein agreed as aforesaid, or in keeping the buildings erected upon said lands insured, and the policies and certificates thereof assigned or endorsed as aforesaid, or if at any time default should be made in payment of interest as aforesaid for the space of thirty days after any semi-annual payment thereof should fall due, then and in every such case, whether it be the first or any subsequent default, the whole principal debt aforesaid should, at the option of the said party of the second part, its successors or Assigns, become due and payable immediately, and payment of said principal debt and all interest thereon might be enforced and recovered at once, anything therein contained to the contrary notwithstanding.

AND PROVIDED FURTHER, that in default of insurance or production of tax receipts and payment of taxes, assessments and charges as aforesaid, the said party of the second part, its successors or Assigns, should have the option to effect such insurance and pay such taxes, assessments and charges; and the premium or premiums paid for effecting such insurance and the amount paid for such taxes, as-

sessments and charges as aforesaid, should be added to the principal moneys thereby secured and payable on demand, with legal interest, in like money and at the place aforesaid.

NOW THIS INDENTURE WITNESSETH, that the said party of the first part, as well for and in consideration of the aforesaid debt or principal sum of One Hundred, Forty Thousand Dollars, and for the better securing the payment thereof unto the  
10 said party of the second part, its successors and Assigns, in discharge of the said obligation above recited as for and in consideration of the further sum of one dollar, in specie, well and truly paid to the said party of the first part by the said party of the second part, at and before the ensealing and delivery hereof, the receipt of which one dollar is hereby acknowledged, has granted, bargained, sold, aliened, enfeoffed, released and confirmed, and by these presents does grant, bargain, sell, alien, enfeoff, release  
20 and confirm, unto the said party of the second part, its successors and Assigns, all those lots, tracts or parcels of land and premises situate, lying and being in the City of Atlantic City, County of Atlantic, and State of New Jersey, bounded and described as follows:

Lot No. 1. BEGINNING at a point in the Westerly line of Virginia Avenue distant ten hundred and fifty feet Southwardly from the center line of Pacific Avenue, and extending thence (1) Southwardly,  
30 along Virginia Avenue, one hundred feet; thence (2) Westwardly, parallel with Pacific Avenue, one hundred fifty feet to the Easterly line of a twenty foot wide street; thence (3) Northwardly, parallel with Virginia Avenue and along the Easterly line of said twenty foot wide street, one hundred feet; thence (4) Eastwardly, parallel with Pacific Ave-

nue, one hundred fifty feet to the place of beginning.

Lot No. 2. BEGINNING at a point in the Westerly line of Virginia Avenue distant eleven hundred and fifty feet Southwardly from the center of Pacific Avenue and extending thence (1) Southwardly, along the Westerly line of Virginia Avenue, one hundred feet; thence (2) Westwardly, parallel with Pacific Avenue, eighty-four feet, six inches; thence (3) Northwardly, parallel with Virginia Avenue, fifty feet; thence (4) Westwardly, parallel with Pacific Avenue, sixty-five feet, six inches; thence (5) Northwardly, parallel with Virginia Avenue, fifty feet; thence (6) Eastwardly, parallel with Pacific Avenue, one hundred fifty feet to the place of beginning. 10

TOGETHER also with all the right, title and interest, use and easement of the Collins Realty Company, in, to and over a strip of land four feet in width by fifty feet in depth, adjoining the above described premises: BEGINNING twelve hundred feet Southwardly of the center line of Pacific Avenue, and eighty-four feet six inches Westwardly of the Westerly line of Virginia Avenue, said distances being measured on lines respectively drawn at right angles to said Avenues and extending thence (1) Westwardly, parallel with Pacific Avenue, four feet; thence (2) Southwardly, parallel with Virginia Avenue, fifty feet; thence (3) Eastwardly, parallel with Pacific Avenue, four feet; thence (4) Northwardly, parallel with Virginia Avenue, fifty feet to the place of beginning. 20 30

TOGETHER also with all the rights of way, easements and interest which the Collins Realty Company had in any alleyways or other lands adjoining the secondly above described lot of land on the Southerly and Westerly sides thereof.

BEING the same premises conveyed unto William F. Basquil by deed from Collins Realty Company, a corporation, bearing even date herewith and intended to be forthwith recorded; this mortgage being given to secure a part of the consideration in said deed mentioned.

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

TO HAVE AND TO HOLD the said hereditaments and premises above described and granted, or intended so to be, with the appurtenances, unto the said party of the second part, its successors and Assigns, to and for the only proper use, benefit and behoof of the said party of the second part, its successors and assigns, forever.

20 PROVIDED ALWAYS, NEVERTHELESS, that if the said William F. Basquil, his heirs, executors, administrators and Assigns do and shall well and truly pay, or cause to be paid, unto the said party of the second part, or to its certain Attorney or Attorneys, successors or Assigns, the aforesaid debt or sum of One Hundred, Forty Thousand Dollars, on the day and time and at the place hereinbefore mentioned and appointed for the payment thereof, together with interest for the same, in like money, in  
30 way and manner hereinbefore specified therefor, without any fraud or further delay, and without any deduction, defalcation or abatement to be made, for or in respect of any taxes, charges or assessments whatsoever; together with the taxes, assessments and charges hereinabove mentioned; and shall produce to the said Obligee, its successors or Assigns, receipts for all taxes, assessments and charges laid

or levied upon said premises within thirty days after the same shall first become due and payable, and shall have faithfully kept and performed the conditions and agreement, in said obligation contained and herein recited, as to insuring and keeping insured the said premises; that then and from thenceforth, as well this present Indenture and the estate hereby granted, as the said OBLIGATION above recited, shall cease, determine, and become absolutely null and void, to all intents and purposes, anything hereinbefore contained to the contrary thereof in anywise notwithstanding. 10

AND the said William F. Basquil, for himself, his heirs, executors, administrators and assigns, does covenant and grant to and with the said party of the second part, its successors and Assigns, that the said party of the first part, his heirs and Assigns, shall not and will not apply for, or claim any deduction by reason of this Mortgage from the taxable value of said lands and premises; and that the said party of the second part its successors and Assigns, shall and may from time to time and at all times after default shall be made in the performance of the provisos or conditions herein recited or contained, peaceably and quietly enter into, have, hold, use, occupy, possess and enjoy, all and singular the above granted and bargained premises, with the appurtenances, without the let, suit, trouble, hindrance or denial of the said party of the first part, his heirs, executors, administrators, or Assigns, or of any other person or persons whomsoever. 20 30

AND IT IS FURTHER UNDERSTOOD AND AGREED between the parties hereto that any act to be done or agreement to be performed by the party of the first part hereto shall be construed as a covenant running with the land, and as binding upon the heirs and assigns of said party as fully

and completely as if they had personally executed this instrument.

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

William F. Basquil (SEAL)

Signed, Sealed and Delivered  
in the presence of  
G. Arthur Bolte

10

(Written in ink above affidavit)

Received

Jun 8, 1926

By Wm. C.

Returned

May 5, 1926

Wm. A. Blair, Clerk

20 STATE OF New Jersey }  
Atlantic COUNTY, } ss.

BE IT REMEMBERED, That on this Twelfth day of April in the year of our Lord one thousand nine hundred and twenty-six, before me a Master in Chancery of N. J., personally appeared William F. Basquil, who, I am satisfied is the grantor mentioned in the within Mortgage, and I having first made known to him the contents thereof, he acknowledged that he signed, sealed and delivered the same as his

30 fied.

G. Arthur Bolte,  
M. C. C. of N. J.

App. 8529

(In Ink)

4/13/26

No.....

MORTGAGE

William F. Basquil,

—to—

Collins Realty Company.

Premises:

Dated 192 \$.....

Received April 13, 1926, at 12 M. and recorded in the abstract in the Clerk's office of Atlantic County, at May's Landing, N. J., in Book of Mortgage No. 397, page 71 etc.

10

William A. Blair, Clerk, E. M.

(In Ink)

Atlantic Guaranty and Title Insurance Co.

EXHIBIT C3.

KNOW ALL MEN BY THESE PRESENTS, 20

That Collins Realty Company, a corporation of the State of New Jersey for and in consideration of the sum of Fifty Thousand Dollars (\$50,000.00) lawful money of the United States of America, to it in hand paid by Guarantee Trust Company, a banking corporation of the State of New Jersey, doing business in the City of Atlantic City, County of Atlantic and State of New Jersey at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, 30 assigned, transferred and set over, and by these presents do grant, bargain, sell, assign, transfer and set over unto the said Guarantee Trust Company, its successors and assigns a certain INDENTURE OF MORTGAGE, bearing date the twelfth day of April in the year of our Lord one thousand nine hundred

and twenty-six made and executed by William F. Basquil, single, to Collins Realty Company, for and in the consideration of the just sum of \$140,000.00 and which mortgage was recorded in the Clerk's Office of Atlantic County, at May's Landing, N. J. in Book of Mortgages No. 397, page 71 &c., together with the

10 TOGETHER with the Hereditaments and Premises in and by the said Indenture of Mortgage particularly described and granted, or mentioned and intended so to be, with the appurtenances, and the Bond or Obligation in said Indenture of Mortgage mentioned, and thereby intended to be secured, and all moneys due and to grow due thereon, and the Warrant of Attorney to confess judgment thereto annexed; and all its estate, right, title, interest, property, claim and demand in and to the same.

20 TO HAVE AND TO HOLD, the same unto the said Guarantee Trust Company, its successors and assigns, to its and their proper use, benefit and behoof forever, subject nevertheless to the equity of redemption of said William F. Basquil, the Mortgagor in the said Indenture of Mortgage named and his heirs, executors, administrators and assigns therein. IN WITNESS WHEREOF, the said Collins Realty Company has caused these presents to be sealed with its seal and to be signed by its President and attested by its Secretary this 14th day of June in the year of our Lord one thousand nine hundred and  
30 twenty-six. (SEAL)

Collins Realty Company,  
Nur J. Collins, President.

Signed, Sealed and Delivered }  
in the presence of }

Attest:

Gilbert L. Collins,  
Sec.

STATE OF New Jersey }  
 Atlantic COUNTY, } ss.

BE IT REMEMBERED, that on this 14th day of June in the year of our Lord one thousand nine hundred and twenty-six before me a Notary Public of New Jersey personally appeared Gilbert Collins who being by me duly sworn on his oath saith, that he is the Secretary of Collins Realty Company the grantor within named, and that Nur J. Collins is the President; that deponent knows the common or corporate seal of said grantor and that the seal annexed to the within Deed or Conveyance is such common or corporate seal; that the said Deed or Conveyance was signed by the said President and the seal of said grantor affixed thereto in the presence of deponent; that said Deed or Conveyance was signed, sealed and delivered as and for the voluntary act and deed of said grantor for the uses and purposes therein expressed, pursuant to a resolution of the Board of Directors of said grantor; and at the execution thereof this deponent subscribed his name thereto as witness.

Gilbert L. Collins

Sworn and Subscribed the  
 day and year aforesaid.

Edgar R. Somers  
 Notary Public of  
 N. J.

(Written in Ink on cover of Instrument.) 30  
 2898 6/15/26 9 2.00 Chg.

Assignment of Mortgage  
 Collins Realty Company  
 TO

Guarantee Trust Company  
 Received in the CLERKS office of the

County of ATLANTIC on the 15 day of JUNE A. D. 1926 at 9 o'clock in the forenoon, and recorded in Book #82 Assignment of Mortgages for said County, on pages 118 etc.

WILLIAM A. BLAIR, CLERK AO.

10

## EXHIBIT C4.

ERROR PROOF NEW JERSEY ASSIGNMENT OF MORTGAGE BY AND TO INDIVIDUALS AND CORPORATIONS OR BOTH TO BE FILLED IN UNDER LIKE NUMERALS ON THE MARGIN HEREOF, AS FOLLOWS:

1. Names and addresses of assignors or sellers of the mortgages.
2. Consideration money being paid for the mortgages assigned, or the full amount due thereon.
- 20 3. Names and addresses of assignees or purchasers of mortgage.
4. Describe here the mortgages sold and to be assigned giving names of parties who made and who took the mortgages, dates of same, date when recorded, and give Book and Page where recorded; also give short reference to the mortgaged property showing at least the side of street on which it is and distance from the corner or on which corner if a corner lot.
- 30

KNOW ALL MEN BY THESE PRESENTS,

- (1) That GUARANTEE TRUST COMPANY, a banking corporation of the State of New Jersey, hereinafter called the Assignor for and in
- (2) consideration of the sum of FIFTY THOUSAND (\$50,000) DOLLARS - - - lawful money

- (3) of the United States of America, to said Assignor in had paid by COLLINS REALTY COMPANY, a corporation of the State of New Jersey, hereinafter called the Assignee at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, hath or have granted, bargained, sold, assigned, transferred and set over, and by these presents do or doth grant, bargain, sell, assign, transfer and set over unto the said Assignee his, her, their, its heirs, executors, administrators, successors and assigns ALL THAT OR THOSE INDENTURE OR INDENTURES OF MORTGAGE, described as follows, to wit: William F. Basquil to Collins Realty Company, dated April 12, 1926, in the sum of One Hundred and Forty Thousand Dollars (\$140,000) and recorded in the Atlantic County Clerk's office in Book 397 of Mortgages, page 71 &c., and covering premises situate in the City of Atlantic City, County of Atlantic and State of New Jersey, as more fully described in said mortgage, which mortgage was subsequently assigned to Guarantee Trust Company by assignment recorded in Book 82 of Assignments, Pages 118 &c.

TOGETHER with the Hereditaments and Premises in and by the said Indenture or Indentures of Mortgage particularly described and granted, or mentioned and intended so to be, with appurtenances. AND TOGETHER with the Bond, or Bonds or Obligations in said Indenture or Indentures of Mortgage mentioned, and thereby intended to be secured, and all moneys due and to grow due thereon, and the Warrant or Warrants of Attorney to confess judgment thereto annexed; and all said Assignor's

estate, right, title, interest, property, claim and demand in and to the same.

TO HAVE AND TO HOLD the same unto the said Assignee, his, her, their, its heirs, executors, administrators, successors and assigns, to and for their proper use, benefit and behoof forever, subject nevertheless to the equity of redemption of said Mortgagor or Mortgagors in the said Indenture or Indentures or Mortgage named his, her, their, its  
10 heirs, successors and assigns therein.

IN WITNESS WHEREOF the individual Assignors to these presents has or have hereunto set his, her or their hands and seals, and the corporate Assignors have caused its or their common or corporate seal or seals to be affixed and set hereto duly attested by their proper and authorized officers thereof affixing their signatures hereto, in attestation of their due execution and delivery, this nineteenth day of May, A. D. 1927.

20

GUARANTEE TRUST COMPANY

By Herman M. Sypherd (Seal)  
Vice President.

ATTEST:

Harry T. Sickler (Seal)  
Secretary

Signed, sealed and delivered }  
in the presence of }

INSTRUCTIONS FOR ACKNOWLEDGMENTS

30 Acknowledgments may be taken without the necessity of having Court certificate attached before the following:

A Notary Public, Master in Chancery, Attorney-at-Law for the State of New Jersey or before any Judge of any New Jersey Court of Record, Chancellor or Vice-Chancellor of the Court of Chancery, without seal, or before an American Diplomatic Rep-



(Written in ink, following affidavit, on reverse side of Instrument.)

Returned

Jun 9, 1927

W. A. Blair, Clerk.

2075      5/20/27      9      2.00 Chg.  
Application No. ....

Assignment of Mortgage

GUARANTEE TRUST COMPANY

10

to

COLLINS REALTY COMPANY

Dated ....., 19....

Received in the CLERKS office of the County of ATLANTIC on the 20 day of May A. D. 1927 at 9 o'clock in the forenoon, and recorded in Book #90 of Assignment of Mortgages for said County, on pages 374 etc.

William A. Blair

20

Clerk AO

GUARANTEE TRUST COMPANY

Atlantic City, N. J.

EXHIBIT C5.

SEARCH No. 6564

May 23, 1927

30

Against Premises situate in the City of Atlantic City, County of Atlantic and State of New Jersey, described as follows:

(SEE SCHEDULE HEREINAFTER WRITTEN)

The CHELSEA TITLE AND GUARANTY COMPANY, in consideration of the charges on the within Search, hereby certifies and guarantees that

no Unsatisfied Mortgages, and no Conveyances, Leases, Certificates of Sale for Taxes, Lis Pendens, Releases or Assignments of Mortgages, or Judgments, or Unsatisfied or Unexpired Mechanics' Lien Claims, Judgments, Attachments, Sheriff's Bonds, Recognizances, Decrees from Chancery Filed in the New Jersey Supreme Court, or Decrees or Adjudications of Bankruptcy, appear of record or on file, made by or against any of the persons named below, in the respective Offices, and within the respective periods hereinafter particularly enumerated, to wit: 10

IN THE CLERK'S OFFICE OF ATLANTIC COUNTY there do not appear of record or on file any Unsatisfied Mortgages, or any Conveyances, Leases, or Certificates of Sale for Taxes, or Lis Pendens affecting the above described premises,

Recorded or filed between the following dates, incl.

Given by or Filed Against	From	To	
William F. Bosquill	Apr. 11, 1926	Apr. 16, 1926	20
George T. Sale	Apr. 11, 1926	May 23, 1927	

In the Office of the Clerk of Atlantic County, or of the several Courts of said County; of the New Jersey Supreme Court, and also of the United States District Court for the District of New Jersey, there do not appear of record or on file any unsatisfied or unexpired Mechanics' Lien Claims affecting said premises, nor any unsatisfied or unexpired Judgments, Attachments, Sheriff's Bonds, Recognizances, Decrees from Chancery filed in the New Jersey Supreme Court, or Decrees or Adjudications of Bankruptcy, or other Liens. 30

Recorded or filed between the following dates, incl.

Against	From	To
William F. Bosquill	May 23, 1907	Apr. 16, 1926
George T. Sale	May 23, 1907	May 23, 1927

AND IT IS FURTHER CERTIFIED, that there do not appear of record any ASSIGNMENTS OR RELEASES of the Mortgage hereinafter mentioned as No. 2, recorded in Book \_\_\_\_\_ of Mortgages for Atlantic County at pages \_\_\_\_\_ &c., or recorded or docketed in Book \_\_\_\_\_ of Judgments for Atlantic County at pages \_\_\_\_\_ &c.

Nor any delinquent taxes, municipal water rents, or other municipal liens affecting said premises

10 EXCEPT THE FOLLOWING:

Item #1:—Deed

Dated Apr. 12, 1926

Rec'd Apr. 13, 1926

Cons. \$397,000.

Collins Realty Company  
Corp. of N. J.

to

William F. Basquill.

Conveys premises in question.

20 Recites . . . . Jacob Bothwell, et ux to the party of the first part . . . . Book 721, page 198.

Under and subject to existing restrictions, if any. Under and subject to existing lease on the drug store located on the above described premises which lease expires May 1, 1926. Under and subject to an existing mortgage for \$122,500., which the party of the second part assumes (other data not stated)

30 Under and subject to the restrictions, covenants and easement set forth in the contract between Atlantic City Steel Pier Co. and Sarah J. Brogan, dated Aug. 2, 1915, recorded in book 544, page 38. (Mortgage, Collings Realty Company to Jacob Bothwell, \$212,500., dated Oct. 29, 1923, recorded Oct. 31, 1923.)

(Mortgage, Collings Realty Co. to Guarantee

Trust Co., \$35,000., dated Oct. 26, 1925, recorded Oct. 28, 1925.)

## Item #2:—Mortgage

Dated Apr. 12, 1926  
 Rec'd Apr. 13, 1926  
 Book 397, page 71  
 Cons. \$140,000.  
 Payable anytime within  
 4 yrs.  
 Int. 6%

10

William F. Basquil,  
 single,

to

Collins Realty Company,  
 a Corp. of N. J.

Covers premises in question.

Recites . . . . party of the second part to the party  
 of the first part . . . . even date . . . . purchase  
 money mortgage.

## Item #3:—Assignment of Mortgage

20

Dated June 14, 1926  
 Rec'd June 15, 1926  
 Cons. \$50,000.

Collings Realty Company,  
 Corp. of N. J.

to

Guarantee Trust Company,  
 Corp. of N. J.

Assigns above mortgage, recorded in book 397,  
 page 71.

30

## Item #4:—Assignment of Mortgage

Dated May 19, 1927  
 Rec'd May 20, 1927  
 Cons. \$50,000.

Guarantee Trust Company  
 Corp. of N. J.

to

Collins Realty Company.

Assigns mortgage recorded in book 397, page 71.

Assigned to the party of the first part . . . . book  
82, page 118.

Item #5:—Deed

Dated Apr. 12, 1926

Rec'd Apr. 15, 1926

Cons. \$1.

Book 816, page 430

10 William F. Basquil,  
single,

to

George T. Sale.

Conveys premises in question.

Recites . . . . Collings Realty Co. to William F.  
Basquil.

Item #6:—Taxes ordered, will be delivered when  
received.

Item #7:—Tax Collector for the City of Atlantic  
20 City makes the following report:

Taxes for 1926, Lot 14, \$2460., Lot 15, \$1230.

Taxes for 1926, Lot 39, second half \$17,144.97.

Right of Way.

#### SCHEDULE

Situate in the City of Atlantic City, County of  
Atlantic, and State of New Jersey, bounded and  
described as follows:

—1—

30 BEGINNING west line of Virginia Ave. 1050 ft.  
south from the center line of Pacific Ave., and  
extending thence

(1) Southwardly along Virginia Ave. 100 ft., thence

(2) Westwardly parallel with Pacific Ave. 150 ft. to  
east line of a 20 ft. wide street; thence

(3) Northwardly parallel with Virginia Ave. and  
along the east line of said 20 ft. wide street 100  
ft., thence

- (4) Eastwardly parallel with Pacific Ave. 150 ft. to beginning.

—2—

BEGINNING in the west line of Virginia Ave. 1150 ft. south from the center of Pacific Ave., and extending thence

- (1) Southwardly along the west line of Virginia Ave. 100 ft., thence
- (2) Westwardly parallel with Pacific Ave. 84 ft. 6 in., thence 10
- (3) Northwardly parallel with Virginia Ave. 50 ft., thence
- (4) Westwardly parallel with Pacific Ave. 65 ft. 6 in., thence
- (5) Northwardly parallel with Virginia Ave. 50 ft., thence
- (6) Eastwardly parallel with Pacific Ave. 150 ft. to beginning.

Together also with use and easement, in, to and over a strip of land 4 ft. in width by 50 ft. in depth adjoining above described premises. 20

BEGINNING 1200 ft. south of the center line of Pacific Ave. and 84 ft. 6 in. west of Virginia Ave., said distance being measured on lines respectively drawn at right angles to said avenues, and extending thence

- (1) Westwardly parallel with Pacific Ave. 4 ft., thence
- (2) Southwardly parallel with Virginia Ave. 50 ft., thence 30
- (3) Eastwardly parallel with Pacific Ave. 4 ft., thence
- (4) Northwardly parallel with Virginia Ave. 50 ft. to beginning.

Together also with all the rights of way, easements and interest which the Collins Realty Company had in any alleyways or other lands adjoining the sec-

only above described lot of land on the south and west sides thereof.

IN VERIFICATION of this Certificate of Search No. 6564 the CHELSEA TITLE AND GUARANTY COMPANY hath caused these presents to be signed by its Search Clerk, countersigned by its Title Officer, sealed with its seal, and attested by its Secretary, this twenty-third day of May, Anno Domini nineteen hundred and twenty-seven.

10

Helen F. McCool  
Search Clerk

Attest:

William G. Lambert  
Secretary

.....  
Title Officer

Charges, \$18.42.

(RUBBER STAMP.. Signature in typewriting)

20

The charges on this search are not more than the fees provided by statute.

CHELSEA TITLE & GUARANTY CO.  
By WM. G. LAMBERT

Secretary

Chelsea Title and Guaranty Company  
COMPLETE TITLE

PLANT OF ALANTIC COUNTY  
Search No. 6564

AGAINST

George T. Sale

30

PREMISES:

Atlantic City

.....  
Attorney

Dated May 23, 1927

Under Search Order No. 6564

(RUBBER STAMP.)

The only responsibility assumed by

this Company is that the foregoing is a true copy of the original.

CHELSEA TITLE & GUARANTY  
CO.

By Wm. G. Lambert,  
Secretary.

Chelsea Title and Guaranty Company  
Chelsea Title Building  
Atlantic City, N. J.

Charges, \$18.42

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EXHIBIT C6. 1/23/28. L.

130

ATLANTIC CITY OFFICE CITY HALL ANNEX OFFICE HOURS: 9 A. M. TO 4 P. M. Saturday, 9 to 12 A. M.

1926 ATLANTIC CITY TAX NOTICE Rate of Assessment on One Hundred Dollars Valuation, \$2.46

TAX RATE, 1926. Table with 2 columns: Tax Item, Amount. Includes State Highway Tax, State School Tax, Soldiers' Bonus Tax, County Tax, Bridge & Tunnel Tax, State Institutional, City School Tax, Contingent & Reserve, Municipal Tax, and Total.

M Collins Realty Co.

.....Avenue or Street LOCAL

Table with 7 columns: No. or Description of Block and Lot, Location of Property in 1 District Folio 26, Size of Lot, Value of Lot, Value of Building, Value of Personal, Total Amount of Tax Due. Includes rows for lots 14, 15, and 40.

FIRST HALF OF TAX Delinquent after June 1, 1926. Table with 3 columns: Block, Lot, Amount. Amount: 1230 00.

SECOND HALF OF TAX Delinquent after December 1, 1926. Table with 3 columns: Block, Lot, Amount. Amount: 1230 00.

Complainant's Exhibits

.....	.....	615 00	.....	.....	615 00
.....	.....	488 31	.....	.....	488 31
.....	.....	.....	.....	.....	.....
.....	.....	.....	.....	.....	Discount .....
.....	.....	Interest .....	.....	.....	Interest .....
.....	.....	Net Amount .....	.....	.....	Net Amount.....

If you want your receipted bill returned by mail, enclose stamped envelope, addressed.

Checks in payment of Taxes must be made payable to LEWIS L. MATHIS, Tax Collector.

You are required to preserve this bill and bring it to the Tax Office for both the First and Second Payments; if lost, a new bill will not be furnished.

Chapter 236 of the Laws of 1918 provides for the payment of Taxes in two installments. A person who so desires, however, may pay both installments at the same time.

Kindly supply your mailing address.....

For additional information see back of bill.

Notice of Arrears, Year.....

(IN INK)

(RUBBER STAMP)

6/22/27

OFFICE OF TAX COLLECTOR

G. T. Cc.

PAID

by M. McC.

Mar-2 1927

Mayn

ATLANTIC CITY, N. J.

EXHIBIT C7.

1/23/28.

ATLANTIC CITY  
 OFFICE  
 CITY HALL ANNEX  
 OFFICE HOURS:  
 9 A. M. TO 4 P. M.  
 Saturday, 9 to 12 A. M.

1927  
 ATLANTIC CITY  
 TAX NOTICE  
 Rate of Assessment on  
 One Hundred Dollars  
 Valuation, \$2.90

TAX RATE, 1927.

State Highway Tax...	.10000
State School Tax.....	.26174
Soldiers' Bonus Tax..	.01569
County Tax .....	.46083
Bridge & Tunnel Tax..	.02584
State Institutional ...	.05000
City School Tax.....	.47139
Contingent & Reserve..	.04711
<b>Municipal Tax .....</b>	<b>1.46740</b>
Total .....	<b>\$2.90000</b>

M Geo. T. Sale

.....Avenue or Street

.....LOCAL

No. or Description of Block and Lot	Location of Property in District....Folio	Size of Lot	Value of Lot	Value of Building	Value of Personal	Total Amount of Tax Due
14 14	S. Va.	100x150	100000			2900 00
15	"	50x150	50000			1450 00
40	192 S. Va.	50x84.5	45500	5000	Dist. Int.	1464 50

FIRST HALF OF TAX  
 Delinquent after June 1, 1927

SECOND HALF OF TAX  
 Delinquent after December 1, 1927

Block	Lot	Amount	Block	Lot	Amount
.....	.....	1450 00	.....	.....	1450 00
.....	.....	725 00	.....	.....	725 00
.....	.....	732 25	.....	.....	732 25
.....	.....	.....	.....	.....	.....
.....	.....	.....	.....	.....	.....
				Discount .....	.....

..... Interest .....  
 ..... Net Amount .....

(IN INK)

Paid

May 27, '27.

Lewis L. Mathis

Tax Coll.

..... Interest .....  
 ..... Net Amount.....

(IN INK)

Paid

Nov. 21, '27.

Lewis L. Mathis

Tax Coll.

If you want your receipted bill returned by mail, enclose stamped envelope, addressed.

Checks in payment of Taxes must be made payable to LEWIS L. MATHIS, Tax Collector.

You are required to preserve this bill and bring it to the Tax Office for both the First and Second Payments; if lost, a new bill will not be furnished.

Chapter 236 of the Laws of 1918 provides for the payment of Taxes in two installments. A person who so desires, however, may pay both installments at the same time.

Kindly supply your mailing address.....

For additional information see back of bill.

Notice of Arrears, Year.....



..... Interest .....  
..... Net Amount .....

(RUBBER STAMP)  
EXHIBITED  
12/29 1927  
GUARANTEE TRUST CO.  
By E. R. Somers

..... Interest .....  
..... Net Amount.....

(RUBBER STAMP)  
OFFICE OF TAX COLLECTOR  
PAID  
May 27, 1927  
Mayn  
ATLANTIC CITY, N. J.

If you want your receipted bill returned by mail, enclose stamped envelope, addressed.

Checks in payment of Taxes must be made payable to LEWIS L. MATHIS, Tax Collector.

You are required to preserve this bill and bring it to the Tax Office for both the First and Second Payments; if lost, a new bill will not be furnished.

Chapter 236 of the Laws of 1918 provides for the payment of Taxes in two installments. A person who so desires, however, may pay both installments at the same time.

Kindly supply your mailing address.....  
For additional information see back of bill. Notice of Arrears, Year.....

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*Complainant's Exhibits*

135

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EXHIBIT C9. 1/23/28. L.

ATLANTIC CITY  
OFFICE  
CITY HALL ANNEX  
OFFICE HOURS:  
9 A. M. TO 4 P. M.  
Saturday, 9 to 12 A. M.

1927  
ATLANTIC CITY  
TAX NOTICE  
Rate of Assessment on  
One Hundred Dollars  
Valuation, \$2.90

TAX RATE, 1927.

State Highway Tax...	.10000
State School Tax.....	.26174
Soldiers' Bonus Tax..	.01569
County Tax .....	.46083
Bridge & Tunnel Tax..	.02584
State Institutional ...	.05000
City School Tax.....	.47139
Contingent & Reserve..	.04711
Municipal Tax .....	1.46740
<hr/>	
Total .....	\$2.90000

M Geo. T. Sale  
Liberty Building  
Phila Pa.

Avenue or Street  
LOCAL

No. or Description of Block and Lot	Location of Property in 1 District Folio 26	Size of Lot	Value of Lot	Value of Building	Value of Personal	Total Amount of Tax Due
14 40	192 S. Va.	50x84.5	45500	50000		1464 50

FIRST HALF OF TAX  
Delinquent after June 1, 1927

Block	Lot	Amount
.....	.....	732 25
.....	.....	.....
.....	.....	.....
.....	.....	.....

SECOND HALF OF TAX  
Delinquent after December 1, 1927

Block	Lot	Amount
.....	.....	732 25
.....	.....	.....
.....	.....	.....
.....	.....	.....

.....  
 ..... Interest .....  
 ..... Net Amount .....

(RUBBER STAMP)

EXHIBITED

12/29 1927

GUARANTEE TRUST CO.

By E. R. Somers

..... Discount .....  
 ..... Interest .....  
 ..... Net Amount.....

(RUBBER STAMP)

OFFICE OF TAX COLLECTOR

PAID

May 27, 1927

Mayn

ATLANTIC CITY, N. J.

If you want your receipted bill returned by mail, enclose stamped envelope, addressed.

Checks in payment of Taxes must be made payable to LEWIS L. MATHIS, Tax Collector.

You are required to preserve this bill and bring it to the Tax Office for both the First and Second Payments; if lost, a new bill will not be furnished.

Chapter 236 of the Laws of 1918 provides for the payment of Taxes in two installments. A person who so desires, however, may pay both installments at the same time.

Kindly supply your mailing address.....

For additional information see back of bill. Notice of Arrears, Year.....

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20

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Complainant's Exhibits

137

EXHIBIT C10.  
1/23/28. L.

SEAVIEW CORPORATION  
AND  
COLLINS REALTY COMPANY  
5 South Brighton Avenue  
Atlantic City, N. J.

10

Feb. 2, 1927.

Mr. George T. Sale,  
1001 Liberty Bldg.,  
Phila., Pa.

My Dear Mr. Sale:—

At the settlement April 12th, 1926 on the Bothwell Hotel property in the Atlantic Guaranty & Title Insurance Co. adjustment of taxes was made from Jan 1st 1926 to April 12th 1926 and the money for same was deducted from our settlement at that time.

20 I find no part of the taxes for 1926 have been paid on the above property. By the terms of our mortgage of \$140,000.00 taken back at time of settlement the full amount of principal and interest becomes due and payable for non-payment of taxes. In as much as you have failed to use this allowance to pay these taxes, we feel justified in calling on you for the payment of the principal and interest. We will deposit the Bond and mortgage with the Guarantee Trust Co. at any time suitable to you.

30

Very truly yours,

Collins Realty Company

Nur J. Collins, Pres.

(IN LEAD PENCIL)

Rittenhouse

0238

Perry

EXHIBIT C11.  
1/23/28. L.

Conveyancing	Rents Collected	Insurance	
	GEORGE T. SALE		
	REAL ESTATE		
	1003 Liberty Building		
	Frankford Office: Frankford & Oxford Aves.		
	Philadelphia		10
Wissinoming Terrace		Wistar Park	
Choice Building Sites			
Special Inducements to Builders			

February 5, 1927.

Seaview Corporation  
Collins Realty Company  
5 South Brighton Avenue  
Atlantic City, N. J.

Dear Sirs:

I am in receipt of your letter regarding the taxes 20  
on lot at Atlantic City.

I have turned this matter over to Mr. Bolte and  
when the proper bills have been presented the mat-  
ter will be taken care of.

Very truly yours,  
George T. Sale  
L. A. W.

GTS:LAW

30

EXHIBIT C13.

ARTICLES OF AGREEMENT, Made This twelfth  
day of December in the year of our Lord one thou-  
sand nine hundred and twenty-five.

BETWEEN COLLINS REALTY COMPANY, a Corporation existing under and by virtue of the laws of the State of New Jersey, party of the first part, and GEORGE T. SALE, of the City and County of Philadelphia, and State of Pennsylvania, party of the second part;

WITNESSETH, that the said party of the first part, for and in consideration of the sum of FOUR HUNDRED THOUSAND (\$400,000.00) DOLLARS  
10 to be paid and satisfied as hereinafter mentioned and also in consideration of the covenants and agreements hereinafter mentioned, made and entered into by the said party of the second part, doth agree to and with the said party of the second part, that it the said party of the first part, will well and sufficiently convey to the said party of the second part, his heirs and assigns, by Deed of General Warranty free from all incumbrance except as hereinafter provided on or before the final day of settle-  
20 ment all those lots, tracts or parcels of land and premises hereinafter particularly described, situate, lying and being in the City of Atlantic City in the county of Atlantic and State of New Jersey,

Lot No. 1. BEGINNING at a point in the Westerly line of Virginia Avenue distant ten hundred and fifty feet Southwardly from the center line of Pacific Avenue, and extending thence (1) Southwardly, along Virginia Avenue, one hundred feet; thence (2) Westwardly, parallel with Pacific Avenue, one hundred fifty feet to the Easterly line of a  
30 twenty foot wide street; thence (3) Northwardly, parallel with Virginia Avenue and along the Easterly line of said twenty foot wide street, one hundred feet; thence (4) Eastwardly, parallel with Pacific Avenue, one hundred fifty feet to the place of beginning.

Lot No. 2. BEGINNING at a point in the Westerly line of Virginia Avenue distant eleven hundred and fifty feet Southwardly from the center of Pacific Avenue and extending thence (1) Southwardly, along the Westerly line of Virginia Avenue, one hundred feet thence (2) Westwardly, parallel with Pacific Avenue, eighty-four feet, six inches; thence (3) Northwardly, parallel with Virginia Avenue, fifty feet; thence (4) Westwardly, parallel with Pacific Avenue, sixty-five feet, six inches; thence (5) Northwardly, parallel with Virginia Avenue, Fifty feet; thence (6) Eastwardly, parallel with Pacific Avenue, one hundred fifty feet to the place of beginning. 10

TOGETHER also with all the right, title and interest, use and easement of the parties of the first part in, to and over a strip of land four feet in width by fifty feet in depth, adjoining the above described premises: BEGINNING twelve hundred feet Southwardly of the center line of Pacific Avenue, and eighty-four feet six inches Westwardly of the Westerly line of Virginia Avenue, said distances being measured on lines respectively drawn at right angles to said Avenues and extending thence (1) Westwardly, parallel with Pacific Avenue, four feet; thence (2) Southwardly, parallel with Virginia Avenue, fifty feet; thence (3) Eastwardly, parallel with Pacific Avenue, four feet; thence (4) Northwardly, parallel with Virginia Avenue, fifty feet to the place of beginning. 20

TOGETHER also with all the rights of way, easements and interest which the parties of the first part have in any alleyways or other lands adjoining the secondly above described lot of land on the Southerly and Westerly sides thereof. 30  
UNDER and SUBJECT to existing restrictions, if any.

UNDER and SUBJECT to an existing lease on a Drug Store located on the above described premises, which lease expires April 1, 1926.

The party of the first part agrees to pay to Frank J. Pedrick and Son a commission of 3% of the Above purchase price, being \$12,000. for services rendered in consummating the sale contained in this Agreement; which commission is to be paid on the final day of settlement, hereinafter specified, out of the  
10 proceeds of the settlement.

The party of the first part agrees to convey to the party of the second part a good and marketable title such as will be insured by any reputable Title Company in Atlantic City.

AND the said party of the second part, for himself, his heirs, executors and administrators, doth covenant, promise and agree to and with the said party of the first part, its successors or assigns, that he the said party of the second part, will pay and satisfy or cause to be paid and satisfied unto the said  
20 party of the first part, the said sum of FOUR HUNDRED THOUSAND (\$400000.00) DOLLARS as and for the purchase money of the foregoing described land and premises, in the following manner, that is to say:

\$ 10,000.00—TEN THOUSAND DOLLARS, in cash, upon the signing of this Agreement, receipt of which is hereby acknowledged.

30 \$ 15,000.00—FIFTEEN THOUSAND DOLLARS, in cash, on or before January 11th, 1926.

\$122,500.00—ONE HUNDRED TWENTY-TWO THOUSAND, FIVE HUNDRED DOLLARS, by the party of the second part assuming the payment of a first mortgage in like amount now existing

on the above described premises, which mortgage is payable within eight (8) years, without installments.

\$ 37,500.00—THIRTY-SEVEN THOUSAND, FIVE HUNDRED DOLLARS, by the party of the second part assuming the payment of a mortgage in like amount now existing on the above described premises, which mortgage is concurrent with the above first mortgage and is payable within two years, without installments, the party of the first part hereto hereby agreeing to have said mortgage extended for an additional term of six years from the date of expiration. 10

\$140,000.00—ONE HUNDRED FORTY THOUSAND DOLLARS, by the party of the second part making back to the party of the first part a purchase money mortgage in like amount, covering the above described premises, together with his or his assignee's bond, which mortgage is to be payable at any time within four (4) years from the date of final settlement herein specified. 20

\$ 75,000.00—SEVENTY-FIVE THOUSAND DOLLARS, in cash on the final day of settlement herein specified. 30

---

\$400,000.00—TOTAL

Final settlement to be made on or before March 15th, 1926, at the Atlantic Guaranty & Title Insurance Co., Real Estate & Law Building, Atlantic City, N. J., or any other title company that may be selected by the party of the second part.

Time is to be considered as the essence of this Agreement.

All adjustment of taxes, interest, etc., to be made as of the day of final settlement.

AND IT IS FURTHER AGREED, by the parties to these presents, that the said party of the second part, his heirs and assigns, may enter into and upon the said land and premises on the final day of settlement and from thence take the rents, issues and  
10 profits to him and their use

AND for the performance of all and singular the covenants and agreements aforesaid, the said parties do bind themselves and their respective heirs, executors and administrators, and they hereby agree to pay, upon failure to perform the same, the sum of

which they hereby fix and settle as liquidated damages thereof.

IN WITNESS WHEREOF, the said parties have  
20 hereunto interchangeably set their hands and seals the day and year first above mentioned.

(Seal)

COLLINS REALTY COMPANY

By: Nur J. Collins

PRESIDENT

George T. Sale

(Seal)

SIGNED, SEALED AND DELIVERED

in the presence of

ATTEST:

30

Gilbert L. Collins

SECRETARY

The time for settlement under this contract is extended from March 15th, 1926 to April 1st, 1926 at eleven A. M. at the same place; time still the essence of this contract.

Collins Realty Company

Nur J. Collins, Pres.

George T. Sale

ATTEST:

Gilbert L. Collins,  
Sec.

WITNESS:

Robert E. Steedle,  
as to Geo. T. Sale

The time for settlement under this contract is extended from April 1st, 1926 to April 12, 1926 at eleven A. M. at the same place; time still the essence of this contract.

March 30th, 1926. 10

Collins Realty Company,  
Nur J. Collins, Pres.  
George T. Sale,  
by G. A. Bolte, Atty.

Gilbert L. Cillins, Sec.

WITNESS:

Robert E. Steedle  
With G. T. S.

4/12/26. 20

In consideration of one dollar, I hereby assign all my title and interest in the enclosed agreement to William F. Basquis.

George T. Sale.

AGREEMENT

For Sale of Land

COLLINS REALTY COMPANY

TO

GEORGE T. SALE

30

Dated.....192  
Received .....19...., and  
Recorded in the.....  
Office of .....County  
at .....

in Book..... of .....

Folio .....

FRANK J. PEDRICK & SON

1415 Atlantic Avenue

Atlantic City, New Jersey

10

## EXHIBIT C14.

DEED—William F. Basquil to George T. Sale  
 THIS INDENTURE, made the twelfth day of April  
 in the year of our Lord one thousand nine hundred  
 and twenty six.

BETWEEN William F. Basquil, single, of the city  
 and County of Philadelphia and State of Pennsyl-  
 vania, party of the first part, and George T. Sale, of  
 the same place, party of the second part:

- 20 WITNESSETH that the said party of the first part,  
 for and in consideration of the sum of One Dollar  
 and other good and valuable consideration, lawful  
 money of the United States of America, well and  
 truly paid by the said party of the second part to  
 the said party of the first part, at and before the  
 ensealing and delivering of these presents the re-  
 ceipt whereof is hereby acknowledged has granted,  
 bargained, sold, aliened, enfeoffed, released, con-  
 veyed and confirmed and by these presents does  
 30 grant, bargain, sell, alien, enfeoff, release, convey  
 and confirm unto the said party of the second part,  
 his heirs and assigns. All those lots, tracts or par-  
 cels of land and premises situate, lying and being in  
 the city of Atlantic City, County of Atlantic and  
 State of New Jersey, bounded and described as  
 follows:

Lot No. 1. BEGINNING at a point in the westerly line of Virginia Avenue distant ten hundred and fifty feet southwardly from the center line of Pacific Avenue and extending thence (1) southwardly, along Virginia Avenue one hundred feet; thence (2) westwardly, parallel with Pacific Avenue one hundred fifty feet to the easterly line of a twenty foot wide street; thence (3) Northwardly, parallel with Virginia Avenue and along the easterly line of said twenty foot wide street, one hundred feet; thence (4) eastwardly, parallel with Pacific Avenue one hundred fifty feet to the place of beginning. 10

Lot No. 2. BEGINNING at a point in the westerly line of Virginia Avenue distant eleven hundred and fifty feet southwardly from the center of Pacific Avenue and extending thence (1) southwardly along the westerly line of Virginia Avenue one hundred feet; thence (2) westwardly, parallel with Pacific Avenue eighty-four feet six inches; thence (3) northwardly, parallel with Virginia Avenue fifty feet; thence (4) westwardly, parallel with Pacific Avenue sixty five feet six inches; thence (5) northwardly, parallel with Virginia Avenue fifty feet; thence (6) eastwardly, parallel with Pacific Avenue one hundred fifty feet to the place of beginning. 20

Together also with all the right, title and interest, use and easement of the party of the first part, in, to and over a strip of land four feet in width by fifty feet in depth, adjoining the above described premises. 30

BEGINNING twelve hundred feet southwardly of the center line of Pacific Avenue and eighty four feet six inches westwardly of the westerly line of Virginia Avenue, said distance being measured on lines respectively drawn at right angles to said Avenues and extending thence (1) westwardly, parallel with Pacific Avenue four feet; thence (2) south-

wardly, parallel with Virginia Avenue fifty feet; thence (3) eastwardly, parallel with Pacific Avenue four feet; thence (4) northwardly parallel with Virginia Avenue fifty feet to the place of beginning.

Together also with all the rights of way, easements and interest which the party of the first part has in any alleyways or other lands adjoining the secondly above described lot of land on the southerly and westerly sides thereof.

- 10 Being the same premises conveyed unto William F. Basquil, single by deed from Collins Realty Company, a corporation, dated .

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

- 20 And also all the estate, right, title, interest, property, possession, claim and demand whatsoever both in law and equity of the said party of the first part of, in and to the said premises with the appurtenances:

- 30 TO HAVE AND TO HOLD the said premises with all and singular the appurtenances unto the said party of the second part, his heirs and assigns to the only proper use, benefit and behoof of the said party of the second part, his heirs and assigns forever. And the said party of the first part for himself, his heirs, executors and administrators do by these presents covenant, grant and agree to and with the said party of the second part, his heirs and assigns, that he the said party of the first part, his heirs, all and singular the hereditaments and premises herein above described and granted or mentioned and intended to be so, with the appurtenances

unto the said party of the second part his heirs and assigns, against him the said party of the first part, his heirs and against all and every other person or persons whomsoever lawfully claiming or to claim the same or any part thereof, shall and will warrant and forever defend.

IN WITNESS WHEREOF, the said party of the first part to these presents has hereunto set his hand and seal dated the day and year first above written.

William F. Basquil (seal) 10

Signed, sealed and delivered )  
in the presence of )  
G. Arthur Bolte )

State of New Jersey, Atlantic County, ss.

BE IT REMEMBERED, that on this twelfth day of April in the year of our Lord one thousand nine hundred and twenty six, before me a Master in Chancery of New Jersey personally appeared William F. Basquil, who, I am satisfied is the grantor mentioned in the above deed or conveyance and I 20  
having first made known to him the contents thereof, he acknowledged that he signed, sealed and delivered the same as his voluntary act and deed. All of which is hereby certified.

G. Arthur Bolte

M. C. C. of New Jersey

Received and recorded Apr. 15, 1926 at 1 P. M.

William A. Blair, Clerk.

Deed Book No. 816 page 430.

30

STATE OF NEW JERSEY

County of Atlantic

I, WILLIAM A. BLAIR, Clerk of the County of Atlantic, and also Clerk of the Common Pleas Court holden therein, said court being a court of record, having a common seal, DO HEREBY CERTIFY, That the foregoing is a true copy of a certain Deed

—William F. Basquil to George T. Sale, as the same is recorded in my said office.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my Official Seal at May's Landing, N. J., this 25th day of January A. D. 1928.

Wm. A. Blair,

Clerk.

(Seal)

2.50 Chg.

10

CERTIFIED COPY  
OF  
DEED

William F. Basquil  
to

George T. Sale  
(IN LEAD PENCIL)  
816-430

Mr. Clevenger  
(RUBBER STAMP)

20

RECEIVED  
JAN 26 1928  
By W. M. C.

EXHIBIT C15.  
1/23/28. L.

Number 153

30

SEAVIEW CORPORATION

Atlantic City, N. J. Sept. 25th 1925

Pay to the Order of Lewis L. Mathis, Tax Collector

16

\$4111.—

xx

Forty-one Hundred, eleven and 16/100, . DOLLARS

In payment of a/c Taxes Block 14—Lots #14—#15  
and #40 for 1925

SEAVIEW CORPORATION

Nur J. Collins

President

To the  
GUARANTEE TRUST COMPANY  
Atlantic City, N. J.  
55-143

(Running vertically on left-hand side of check): 10

Countersigned

Gilbert L. Collins

Treasurer

(BACK)

(Rubber Stamp)

Pay to the Order of

ANY BANK OR TRUST CO.

All Prior Endorsements Guaranteed

OCT 1 1925

Atlantic City National Bank  
55-139 Atlantic City, N. J. 55-139

20

L. E. Conover, Jr., Cashier

(Rubber Stamp)

For Deposit to the Credit of

CITY OF ATLANTIC CITY.

General Fund

LEWIS L. MATHIS, Tax Collector

(Perforation)

PAID

10 - 1 - 25

30

## EXHIBIT C16.

1/23/28. L.

55-143

No. 208 Atlantic City, N. J. July 23rd 1926  
 GUARANTEE TRUST COMPANY  
 Pay to the Order of Lewis L. Mathis, Tax Collector  
 33

10

\$4748.—

Four thousand, Seven Hundred forty eight and  
 33/100 .....DOLLARS

COLLINS REALTY COMPANY

Nur J. Collins

Treasurer

(Running vertically on left-hand side of check):

COLLINS REALTY COMPANY

(BACK)

(Rubber Stamp)

20

Pay to the Order of  
 ANY BANK OR TRUST CO.  
 All Prior Endorsements Guaranteed  
 JUL 31 1926

Atlantic City National Bank  
 55-139 Atlantic City, N. J. 55-139  
 J. Wm. Alcorn, Cashier.

(Rubber Stamp)

For Deposit to the Credit of  
 CITY OF ATLANTIC CITY.

30

General Fund  
 LEWIS L. MATHIS, Tax Collector  
 (Perforation)

PAID

7 - 31 - 26

EXHIBIT C17.

1/23/28. L.

Joseph Thompson, President  
Harry Bacharach, 1st Vice President  
John B. Slack, 2nd Vice President  
Isidor Schmeidler, Treasurer  
E. B. Mitchell, Secretary  
Charles J. McNabb  
Title Officer and General Manager 10

ATLANTIC GUARANTY AND TITLE  
INSURANCE COMPANY

Real Estate and Law Building  
Atlantic City, N. J.

July 26th, 1926

Appl. 8529  
Collins Realty Co.  
#5 S. Brighton Avenue,  
Atlantic City, N. J.

Gentlemen:

20

We beg to enclose herewith check drawn to your order in the sum of \$5054.44, same being the amount as withheld by this Company for the purpose of paying certain taxes relative to premises 178-188 South Virginia Avenue.

Kindly be good enough to acknowledge receipt of the enclosed, and oblige,

Yours very truly,

W. A. Broderick

William A. Broderick—Settlement Officer 30

B/GS  
Encl.

30

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EXHIBIT C18. 1/23/28. L.

ATLANTIC CITY  
OFFICE  
CITY HALL ANNEX  
OFFICE HOURS:  
9 A. M. TO 4 P. M.  
Saturday, 9 to 12 A. M.

1925  
ATLANTIC CITY  
TAX NOTICE  
Rate of Assessment on  
One Hundred Dollars  
Valuation, \$3.16  
(IN PENCIL)

TAX RATE, 1925.

State Highway Tax.. .100000  
State School Tax..... .256652  
Soldiers' Bonus Tax.. .019665  
County Tax ..... .450830  
Bridge & Tunnel Tax .041783  
State Institutional .. .050000  
City School Tax..... .639856  
Contingent & Reserve .046104  
Municipal Tax ..... 1.555110

Total .....3.160000

8529

M Collins Realty Co.

Avenue

No. or Description of Block and Lot	Location of Property in 1 District 25 Folio	Size of Lot	Value of Lot	Value of Building	Value of Personal	Total Amount of Tax Due
14 14	178-80 S. Va.	100x150	67900	43000	8000	3757 24
15	188 "	50x150	34400	83000	1000	4025 84
					Dist	7783 08
			6/1/26		Pd. on acct	3232 68
					Bal. due	4550 40

FIRST HALF OF TAX  
Delinquent after June 1, 1925

SECOND HALF OF TAX  
Delinquent after December 1, 1925

Block	Lot	Amount	Block	Lot	Amount
.....	.....	1878 62	.....	.....	1878 62

154

Complainant's Exhibits

.....	.....	2012 92	.....	.....	2012 92
.....	.....	<hr/>	.....	.....	<hr/>
1925	.....	3891 54	.....	.....	3891 54
June 1st	Pd on a/c	3232 68	.....	.....	Discount .....
.....	.....	<hr/>	.....	.....	Interest .....
.....	.....	658 86	.....	.....	Net Amount ...
.....	.....	Interest .....	.....	.....	4055 06
.....	.....	34 41	.....	.....	<hr/>
.....	.....	<hr/>	.....	.....	4748 33
.....	.....	Net Amount ....	.....	.....	
.....	.....	693 27	.....	.....	

(IN PENCIL)

#208

(IN PENCIL AND RUBBER STAMP)

Int. \$54.44

ATLANTIC GUARANTY & TITLE  
INSURANCE CO.

(IN PENCIL)

(Duplicate)

If you want your receipted bill returned by mail, enclose stamped envelope, addressed.

Checks in payment of Taxes must be made payable to LEWIS L. MATHIS, Tax Collector.

You are required to preserve this bill and bring it to the Tax Office for both the First and Second Payments; if lost, a new bill will not be furnished.

Chapter 236 of the Laws of 1918 provides for the payment of Taxes in two installments. A person who so desires, however, may pay both installments at the same time.

30

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Complainant's Exhibits

155

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Kindly supply your mailing address.....  
For additional information see back of bill.

(RUBBER STAMP)  
OFFICE OF TAX COLLECTOR  
PAID  
JUL 23 1926  
L. M.  
ATLANTIC CITY, N. J.  
(RUBBER STAMP)  
OFFICE OF TAX COLLECTOR  
PAID  
JUL 23 1926  
L. M.  
ATLANTIC CITY, N. J.

20

Notice of Arrears, Year.....

(RUBBER STAMP)  
OFFICE OF TAX COLLECTOR  
PAID  
JUL 23 1926  
L. M.  
ATLANTIC CITY, N. J.

10

156

*Complainant's Exhibits*

EXHIBIT C19.  
1/23/28. L.

ATLANTIC GUARANTY AND TITLE  
INSURANCE COMPANY  
Atlantic City, New Jersey

STATEMENT OF SETTLEMENT

Between .....	and	10
.....		
as of.....4/12.....19..26		
Under application No. 8529 affecting premises		
situate .....		
.....		
.....		
Consideration	\$397,000	00
Water at \$	Paid to	
Sewer at \$	Paid to	
Insurance		20
Paid on a/c	25,000	00
Mortgage	122,500	00
Interest from 10/29	3,327	91
Subject Mortgage	37,500	00
Interest from 12/22	687	50
P. M. Mortgage	140,000	00
F. J. Pedrick	5,955	00
Credit a/c 1926 taxes	1,191	69
1925 Taxes	5,000	00
George T. Sale	5,955	00
Guarantee Trust Co.	35,000	00
Canc. Mortgage		75
Credit a/c Rent	60	00
Rec. Agreement extension	3	50
Rec. " "	3	50
Rec. Ass't. Mortgage	2	50
" "	2	50
		30

Revenue Stamps	61 25
"          "	18 75
Preparing Declaration	2 50
Balance due seller	14,727 65
	<hr/>
	397,000 00

The Above Statement is Hereby Approved and  
 Settlement Thereunder Authorized  
 (The following items appear in pencil on face of  
 10 Statement, marked at various places):

397	1191.69
25	26.87
<hr/>	<hr/>
372	1164.82
38187.50	375
	3
	<hr/>
	1125
20	
1191	37500 00
2	687 50
	Left X
14727 65	
26 87	
<hr/>	
14754 52	
30 3187 50	
<hr/>	
11567 02	

38,187.50  
 35,000.—  


---

\$3,187.50

26.87  
11,540.15  

---

11,567.02

15525

10

EXHIBIT C20.  
1/23/28L.

WILLIAM M. CLEVINGER,  
Counsellor-at-Law,  
615 Guarantee Trust Building.  
Atlantic City, N. J. November 10, 1927.

Bolte & Tripician, Esqs.,  
Law Bldg.,  
Atlantic City, N. J.  
Gentlemen:

20

In the case of Collins Realty Company vs. Sale, and others, you have this day tendered us the 1926 and 1927 receipted tax bills and \$8400.00 in cash for interest.

In February of 1927, we discovered you had failed to pay the 1926 taxes on the property we sold to you, and for which, on the day of settlement, April 12th, 1926, we had allowed you a cash credit of \$1191.69, or thereabouts, and, accordingly, on February 2, 1927, called the entire principal sum of our \$140,000 mortgage, as permitted by the terms thereof. As a matter of fact, you even then neglected to make good your failure until March 2, 1927, but we then refused and now refuse to relieve you of your obligation to pay the principal sum and the ac-

30

crued interest. We waited for you to raise the principal and accrued interest until July, 1927, before filing the bill to foreclose, and we again waited until September, 1927, before issuing subpoenas thereon. From the time of the discovery of the default until the date of this letter we have insisted and do now insist upon the payment of the principal and interest due on this mortgage and matured by its terms by your neglect in failing to use our money for the  
10 discharge of your obligation.

While we refuse your presentation of receipted tax bills at this late date as a compliance with the terms of your mortgage and decline to relieve you from the payment of the matured principal, as you owe the principal and the interest and are legally obliged to pay it, whatever may be the outcome of the foreclosure. The interest from October 12th, 1926, to October 12th, 1927, amounting to \$8400.00 and which you also tendered, on this date, is ac-  
20 cepted, but by so doing we do not waive our right to foreclose for non-payment of the taxes, and, assume you do not make such waiver as a condition to its acceptance.

Yours truly,  
COLLINS REALTY COMPANY,  
by Nur J. Collins  
President.

EXCEPTIONS OF FIVE DEFENDANTS TO  
MASTER'S REPORT.

(Filed February 11, 1928.)

IN CHANCERY OF NEW JERSEY.

10

Between

COLLINS REALTY COM-  
PANY,

*Complainant,*

and

GEORGE T. SALE, *et als.,*

*Defendants.*

On Bill to Foreclose,  
&c.

Exceptions to Mas-  
ter's Report.

20

Exceptions taken by the defendant, George T. Sale, Isaac D. Hetzel, William J. Kerns, and Mrs. William J. Kerns in this cause to the report made therein on the third day of February, A. D. 1928, by Robert E. Steedle, Esq., one of the Masters of this Court to whom was referred the above entitled matter by the order made in said cause, bearing date of the tenth day of January, A. D. 1928, touching the matters therein referred to him. 30

First exception. For that the said master erred when he reported that the full amount of the complainant's mortgage, in the sum of one hundred and

162 *Exceptions of Five Defendants to Master's Report*

forty thousand (\$140,000) dollars, and interest in the sum of eleven thousand thirteen dollars and thirty-three cents (\$11,013.33) was due and payable by reason of certain alleged defaults in the non-payment of taxes assessed by the City of Atlantic City on the property on which said mortgage was a lien for the reason that all taxes and assessments were paid in full prior to the filing of the bill of complaint  
10 filed herein by the complainant, thereby making the finding of the Master unjust and inequitable.

Second exception. For that the said Master erred when he reported that the full amount of the complainant's mortgage, in the sum of one hundred and forty thousand (\$140,000) dollars, and interest in the sum of eleven thousand thirteen dollars and thirty-three cents (\$11,013.33) was due and payable for the reason that alleged default had been made  
20 by the defendants in the non-payment of taxes, for the reason that the testimony as produced before the Master showed that the default was the result of an honest mistake or misapprehension into which the defendants were led by the acts, conduct and declarations of the complainant under which circumstances a court of equity will not hold such failure to pay a forfeiture of the credit. The Master further erred in that in his said report he refused to pass upon said testimony but based his finding en-  
30 tirely upon the fact that there was not an expressed agreement as to the payment of taxes by the defendants.

The defendants, George T. Sale, Isaac D. Hetzel, William J. Kerns and Mrs. William J. Kerns insist that the Master's report is contrary both to law and

*Exceptions of Six Defendants to Master's Report* 163

equity, for the reasons as above stated, and in which said several matters and respects these exceptants pray the judgment of this Court.

BOLTE AND TRIPICIAN,  
*Solicitors for Defendants, George T. Sale, Isaac D. Hetzel, William J. Kerns and Mrs. William J. Kerns.*

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EXCEPTIONS OF SIX DEFENDANTS TO  
MASTER'S REPORT.

(Filed February 11, 1928.)

IN CHANCERY OF NEW JERSEY.

20

Between

COLLINS REALTY COM-  
PANY,

*Complainant,*

and

GEORGE T. SALE, *et als.,*

*Defendants.*

On Bill to Foreclose  
Exceptions to Mas-  
ter's Report.

30

---

Defendants, Ernest Schwehm, Emma Schwehm, William Freihofer, Sarah Freihofer, Stacy White, Mrs. Stacy White (real name: Mary R. White) hereby respectfully take the following exceptions to the

164 *Exceptions of Six Defendants to Master's Report*

Master's report made in the above entitled cause by Robert R. Steedle, Esquire, one of the Masters of this Court pursuant to order of reference made by the Chancellor herein, that is to say:

1. It was error for the Master to find and report that \$151,013.33 is due on complainant's bond and mortgage because no amount whatever is yet collectible on said bond and mortgage and therefore this suit was brought prematurely since the mortgage will not be due by its terms until 1930, and no taxes were in arrears and all taxes were paid in full and the interest had been tendered and refused and no other default under the terms of said mortgage was charged in the bill nor proved before the Master.

2. Having found and reported "that there was no default in the payment of interest under the terms of the mortgage at the time the bill was filed" and that "on March 2nd, 1927, the taxes for the entire year of 1926 were paid prior to the filing of the bill of complaint on July 27, 1927," it was error for the Master to declare the mortgage matured since the only defaults claimed were in interest and taxes.

3. It was error for the Master to refuse to find and report that the failure of the defendants to pay the taxes within the grace period of thirty days fixed by the mortgage as written was due to an honest mistake or misapprehension into which the defendants had been led by the acts, conduct and declarations of the complainant's president since the evidence showed that Collins, the president of complainant corporation, had told one of the defendants

*Exceptions of Six Defendants to Master's* 165  
*Report*

that he was not interested in the terms of the mortgage as to taxes, and since the evidence further showed that on February 2, 1927, complainant wrote one of the defendants about the taxes and that immediately thereafter on March 2, 1927, the taxes were paid in full and no taxes were due nor in arrears at the time of the filing of the bill.

4. The Master erred when he found as a matter 10  
of law that "the mortgagor or his successors in title cannot now be heard to contradict that writing or to vary its terms" since it is the settled law in this State that in equity and good conscience a default will be excused if the mortgagee led the defaulting party into the situation by acts, conduct and declarations and especially if the mortgagee—as in the case at bar—told the defendant he was not interested in the terms of the mortgage and that if the taxes were not paid on time no one would stand to 20  
lose anything.

5. The mortgage is drawn for four years and is dated April 12, 1926; it is not due until April 12, 1930, unless by a default in the payment of taxes or interest. The taxes were paid in full before the bill was filed; and the interest had been tendered. The mortgage was not due when the bill was filed. The suit was brought prematurely. The Master erred in not finding that no amount whatever is yet 30  
due thereon.

CARLTON GODFREY,  
*Solicitor for Defendants*  
*Above Named.*

## CONCLUSIONS.

(Filed Mar. 6, 1928.)

## IN CHANCERY OF NEW JERSEY.

10

Between

COLLINS REALTY COM-  
PANY,*Complainant,*

and

GEORGE T. SALE, *et als.,*  
*Defendants.*On Bill to Foreclose.  
On Exceptions to  
Master's Report.  
Conclusions.

20

These conclusions are not to be published in the  
official or unofficial reports.

Mr. William Clevenger for the complainants.

Mr. Carlton Godfrey and Messrs. Bolte & Tri-  
pician for the defendant.

30

INGERSOLL, V. C.:

Having examined the report of the Master and  
the testimony upon which it is based, I will advise  
the dismissal of the exceptions.

Determined: March 1st, 1928.

AFFIDAVIT OF DEATH OF ONE OF THE  
PARTIES.

(Filed April 10, 1928.)

IN CHANCERY OF NEW JERSEY.

Between

C O L L I N S REALTY COM-  
PANY,

*Complainant,*

and

G E O R G E T. SALE, *et ux.*,  
*et als.*,

*Defendants.*

On Bill to Foreclose,  
&c.  
Affidavit.

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20

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

WILLIAM M. CLEVINGER, of full age, being duly  
sworn according to law upon his oath says:

1. I am the solicitor of the complainant in the  
above stated cause.

30

2. Stacy White is one of the defendants in this  
cause and he was made a party because of an equit-  
able interest in the mortgaged premises and with  
him was joined his wife, Mrs. Stacy White.

3. The said Stacy White and Mrs. Stacy White, by

168 *Affidavit of Death of One of the Parties*

the name of Mary R. White, filed an answer to the complainant's bill.

4. The reason for making the said Mary R. White a party defendant was to bar her inchoate right of dower in an undivided interest in the mortgaged premises.

5. On January 9, 1928, the said Mary R. White  
10 departed this life at 153 St. Charles Place, Atlantic City, New Jersey, whereupon her said inchoate right of dower ceased and determined.

WM. M. CLEVINGER.

Sworn and subscribed this                      day of Feb.,  
1928, before me

A true copy.

THOMAS BARBER.

20

30

FINAL DECREE.

(Filed April 21, 1928.)

IN CHANCERY OF NEW JERSEY.

10

Between

COLLINS REALTY COM-  
PANY,

Complainant,

and

GEORGE T. SALE, *et als.*,

Defendants.

On Bill to Foreclose.  
Final Decree.

20

This cause being opened to the Court by William M. Clevenger, of counsel with the complainant, and it appearing that process of subpoena for the defendants to appear and answer the complainant's bill has been duly issued and returned served upon the defendants, William Freihofer, Sarah Freihofer, Ernest Schwehm, Emma Schwehm, Stacy White, Mary R. White (Mrs. Stacy White), and that due notice of an order of this Court made on September 26th, 1927, directing the defendants, George T. Sale, Mrs. George T. Sale, Stacy White, Mrs. Stacy White, William J. Keims, Mrs. William J. Keims, Isaac D. Hetzel, Mrs. Isaac D. Hetzel, Franz Paving Company and James Madison Hotel Company, to appear, or answer, or object to the complainant's

bill on motion on or before November 28th, 1927, has been duly published and mailed to the said defendants, with the exception of William J. Keims, Mrs. William J. Keims, and James Madison Hotel Company, unsuccessful inquiry having been made for the residences of the said William J. Keims, Mrs. William J. Keims and James Madison Hotel Company in the manner and as in the said order directed and prescribed, and, that the said defendants, Franz Paving Company and James Madison Hotel Company have not nor have any or either of them appeared, answered or objected to the complainant's bill on motion within the time limited by law and the said order, or any other time, but that they have wholly failed and neglected so to do.

And it further appearing that the said William Frehofer, Sarah Frehofer, Ernest Schwehm, Emma Schwehm, Stacy White and Mary R. White (Mrs. Stacy White) by Carlton Godfrey, Esq., their solicitor, filed an answer to the complainant's bill; that George T. Sale, William J. Kerns (William J. Keims), Mrs. William J. Kerns (Mrs. William J. Keims), Isaac D. Hetzel, Mrs. Isaac D. Hetzel, Henry Franz and Mrs. Henry Franz, by Bolte & Tripician, Esqs., filed their answer and entered the appearance of the said Henry Franz and Mrs. Henry Franz, to the complainant's bill, and, upon due motion the cause having been referred to Robert E. Steedle, Esq., one of the Masters of this Court, and the said Master, on February 3rd, 1928, having filed his report there was due to the complainant upon its bond and mortgage set forth and described in its bill of complaint, the sum of \$150,990, and that it was necessary and advisable that the whole of the mortgaged premises should be sold to raise and pay the money due aforesaid, and the said answering defendants having filed exceptions thereto and the said

exceptions having been brought on for hearing before Hon. Robert H. Ingersoll, one of the Vice-Chancellors of this court, pursuant to the rules of this court, and the same having been considered and the Court being of the opinion that the same should be overruled and that no cause being shown or appearing against confirming the said report:

It is thereupon, on this 21st day of April, 1928, by Edwin Robert Walker, Chancellor of the State of New Jersey, ordered, adjudged and decreed and the said Chancellor does by virtue of the power and authority of this Court hereby order, adjudge and decree as follows: 10

1. That the said exceptions filed by the said defendants be and the same are hereby dismissed and overruled.

2. That the said report and all the matters and things therein contained do stand ratified and confirmed. 20

3. That the said mortgaged premises be sold to raise and satisfy the money due to the complainant, that is to say, the sum of \$150,990 with interest thereon to be computed from February 3rd, 1928, being the date of the Master's report, with costs to be taxed.

4. That a writ of *feri facias* do issue for that purpose out of this court directed to the sheriff of the County of Atlantic, directing him to make sale, according to law, of the said mortgaged premises. 30

5. That out of the moneys arising from such sale, he pay to the complainant, or its solicitor, said debt, interest and costs.

6. That in case more money should be raised by the said sale than shall be sufficient to answer such payments, that such surplus moneys be brought into this court to abide the further order of the Court, unless otherwise previously disposed of by order of this Court.

7. That the said sheriff make return, without delay, of his proceedings by virtue of the said writ.

10

8. That the said defendants, George T. Sale, Ernest Schwehm, Emma Schwehm, Stacy White, William J. Kerns (William J. Keims), Mrs. William J. Kerns (Mrs. William J. Keims), Isaac D. Hetzel, William Freihofer, Sarah Freihofer, Franz Paving Company, James Madison Hotel Company, Henry Franz and Mrs. Henry Franz, stand absolutely debarred and foreclosed of and from all equity of redemption of, in and to the said mortgaged premises, when sold as directed by virtue of this decree.

20

9. That the sum of \$2500.00/100 be allowed and paid to the solicitor of the complainant, and, that the same be included in the taxed bill of costs and collected with the other items of the said bill.

It having appeared in the cause that George T. Sale and Isaac D. Hetzel are not married men, and it appearing from the affidavit placed upon file that the said Mrs. Stacy White (Mary R. White) departed this life on January 9th, 1928, no decree is directed against Mrs. George T. Sale, Mrs. Stacy White (Mary R. White) and Mrs. Isaac D. Hetzel.

30

And it is further ordered that in the bill of complaint and the other papers, the name of William J. Keims and Mrs. William J. Keims be amended

so as to read William J. Kerns and Mrs. William J. Kerns.

E. R. WALKER,  
C.

Respectfully advised.

R. H. INGERSOLL,  
V. C.

10

NOTICE OF APPEAL FROM FINAL DECREE.

(Filed Apr. 24, 1928.)

IN CHANCERY OF NEW JERSEY.

Between

COLLINS REALTY COM-  
PANY,

Complainant,  
and

GEORGE T. SALE, *et als.*,  
Defendants.

20

On Bill to Foreclose.  
Notice of Appeal.

The defendants, Ernest Schwehm, Emma 30  
Schwehm, William Freihoffer, Sarah Freihoffer,  
Stacy White and Mary R. White, hereby appeal  
from the final decree made on the twenty-first day  
of April, 1928, on the advice of Vice-Chancellor Rob-  
ert H. Ingersoll in the above entitled cause, and from  
the whole and every part thereof, to the Court of

174      *Notice of Appeal from Final Decree*

Errors and Appeals in the last resort in all causes.  
Dated: April 23, 1928.

CARLTON GODFREY,  
*Solicitor for Defendants, Ernest  
Schwehm, Emma Schwehm,  
William Freihoffer, Sarah  
Freihoffer, Stacy White and  
Mary R. White.*

10

W.M. I. GARRISON,  
*Of Counsel.*

---

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

W.M. I. GARRISON,  
*Of Counsel with Defendants,  
Ernest Schwehm, Emma  
Schwehm, William Freihoffer,  
Sarah Freihoffer, Stacy White  
and Mary R. White.*

20

30

PETITION OF APPEAL.

(Filed May 12, 1928.)

NEW JERSEY COURT OF ERRORS  
AND APPEALS.

10

Between

C O L L I N S REALTY COM-  
PANY,

*Complainant-Appellee,*

and

G E O R G E T. SALE, *et als.,*

*Defendants-Appellants.*

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

20

*To the Honorable, the Court of Errors and Appeals  
in the Last Resort in all Causes:*

The petition of Ernest Schwehm, Emma Schwehm,  
William Freihoffer, Sarah Freihoffer, Stacy White,  
Mrs. Stacy White (whose real name is Mary R.  
White), being six of the appellants in the above en-  
titled cause, respectfully shows that:

30

1. Petitioners find themselves aggrieved by a final  
decree made in the Court of Chancery by his Honor  
Edwin Robert Walker, Chancellor of the State of  
New Jersey, on the advice of Honorable Robert H.  
Ingersoll, one of the Vice-Chancellors, bearing date  
the twenty-first day of April, nineteen hundred and

twenty-eight, in a certain cause in said Court of Chancery wherein the said Collins Realty Co. was complainant and the said George T. Sale, Ernest Schwehm, Emma Schwehm, William Freihoffer, Sarah Freihoffer, Stacy White, Mrs. Stacy White (whose real name is Mary R. White), and others, were defendants, in this respect, to wit, that the said final decree adjudges that the exceptions theretofore filed by these appellants to the report of Robert E. 10 Steedle, Esquire, one of the Masters of the said Court of Chancery to whom the cause had been referred by the said Chancellor (said report bearing date the third day of February, nineteen hundred and twenty-eight) be and said exceptions were by said final decree overruled and dismissed, and the said report of the said Master was ratified and confirmed; and in the further respect that the said final decree ratifies and confirms the finding of the said Master that \$151,013.33 is due on complainant's bond 20 and mortgage; and in the further respect that the said final decree ratifies and confirms the finding of the Master declaring the said mortgage matured; and in the further respect that the said Master's report shows that the Master refused to find or consider whether the failure of the defendants to pay the taxes within the grace period of thirty days fixed by the mortgage as written was due to an honest mistake or misapprehension into which the defendants had been led by the acts, conduct, and declaration of complainant's president; and in the further 30 respect that the said Master's report shows that the Master found as a matter of law that "The mortgagor or his successors in title cannot now be heard to contradict that writing or to vary its terms;" and in the further respect that the said Master, in his said report, refused to find that no amount whatsoever is yet due upon said bond and mortgage.

2. And petitioners appeal from the said final decree which decrees as aforesaid, upon the ground that the same is erroneous in that:

a. It was error for the Master to find and report that \$151,013.33 is due on complainant's bond and mortgage because no amount whatsoever is yet collectible on said bond and mortgage and therefore this suit was brought prematurely since the mortgage will not be due by its terms until 1930, and no taxes were in arrears and all taxes were paid in full 10 and the interest had been tendered and refused and no other default under the terms of said mortgage was charged in the bill nor proved before the Master.

b. Having found and reported "that there was no default in the payment of interest under the terms of the mortgage at the time the bill was filed" and that "on March 2nd, 1927, the taxes for the entire year of 1926 were paid prior to the filing of the bill of complaint on July 27, 1927," it was error for the Master to declare the mortgage matured since the 20 only defaults claimed were in interest and taxes.

c. It was error for the Master to refuse to find and report that the failure of the defendants to pay the taxes within the grace period of thirty days fixed by the mortgage as written was due to an honest mistake or misapprehension into which the defendants had been led by the acts, conduct and declarations of the complainant's president since the evidence showed that Collins, the president of complainant corporation, had told one of the defendants 30 that he was not interested in the terms of the mortgage as to taxes, and since the evidence further showed that on February 2, 1927, complainant wrote one of the defendants about the taxes and that immediately thereafter on March 2, 1927, the taxes

were paid in full and no taxes were due nor in arrears at the time of the filing of the bill.

10 d. The Master erred when he found as a matter of law that "the mortgagor or his successors in title cannot now be heard to contradict that writing or to vary its terms" since it is the settled law in this State that in equity and good conscience a default will be excused if the mortgagee led the defaulting party into the situation by acts, conduct and declar-

20 ations and especially if the mortgagee—as in the case at bar—told the defendant he was not interested in the terms of the mortgage and that if the taxes were not paid on time no one would stand to lose anything.

e. The mortgage is drawn for four years and is dated April 12, 1926; it is not due until April 12, 1930, unless by a default in the payment of taxes or interest. The taxes were paid in full before the bill was filed; and the interest had been tendered. The mortgage was not due when the bill was filed. The suit was brought prematurely. The Master erred in refusing to find that no amount whatsoever is yet due thereon.

30 3. Petitioners therefore pray that the said final decree of the said Chancellor, advised by the Vice-Chancellor aforesaid, may be, in the particulars aforesaid, and wholly, reversed, set aside, and for nothing holden, and that petitioners may have such other relief in the premises as to this Court shall seem proper.

WM. I. GARRISON,  
*Solicitor for and of Counsel  
with Appellant.*

ANSWER TO PETITION OF APPEAL OF SIX  
DEFENDANTS.

(Filed June 1, 1928.)

NEW JERSEY COURT OF ERRORS  
AND APPEALS. 10

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Between  
COLLINS REALTY COM-  
PANY,  
*Complainant-Appellee,*  
and  
GEORGE T. SALE, *et als.,*  
*Defendants-Appellants.* } On Appeal from the  
Court of Chancery.  
Answer. 20

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The answer of Collins Realty Company, the above named appellee, to Ernest Schwehm, Emma Schwehm, William Freihoffer, Sarah Freihoffer, Stacy White and Mary R. White.

This appellee not admitting the truth of all or any of the matters of the said petition of appeal con- 30  
tained, for answer thereto, nevertheless admits that a final decree was on April 21st, 1928, made and entered in the Court of Chancery of New Jersey, in the above entitled cause, for the purposes in said petition mentioned and as therein set forth, but as to the substance and form of the said final decree

this appellee begs leave to refer thereto when the same shall be produced.

This appellee is advised and believes that the said final decree is agreeable to equity and it prays that the same may be affirmed, with costs to be taxed, in favor of this appellee.

WM. M. CLEVINGER,  
*Solicitor for and of Counsel  
with Appellee.*

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NOTICE OF APPEAL OF FIVE  
DEFENDANTS.

(Filed Apr. 24, 1928.)

IN CHANCERY OF NEW JERSEY.

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Between

COLLINS REALTY COM-  
PANY, a corporation,  
*Complainant,*

and

GEORGE T. SALE, *et als.,*  
*Defendants.*

} On Bill to Foreclose,  
&c.  
Notice of Appeal.

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The defendants, George T. Sale, William J. Kerns, Mrs. William J. Kerns, Isaac D. Hetzel, Henry Franz and Mrs. Henry Franz, hereby appeal from the final decree made by the Chancellor on the ad-

vice of Vice-Chancellor Robert H. Ingersoll, in the above entitled cause on the 21st day of April, nineteen hundred and twenty-eight, and from the whole and every part thereof, to the Court of Errors and Appeals in the last resort in all causes.

Dated: April 23rd, 1928.

BOLTE AND TRIPICIAN,

*Solicitors for and of Counsel with  
the Defendants, George T. Sale,  
William J. Kerns, Mrs. William  
J. Kerns, Isaac D. Hetzel,  
Henry Franz and Mrs. Henry  
Franz.* 10

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

LOUIS N. TRIPICIAN,

*Of Counsel with the Defendants,  
George T. Sale, William J.  
Kerns, Mrs. William J. Kerns,  
Isaac D. Hetzel, Henry Franz  
and Mrs. Henry Franz.* 20

PETITION OF APPEAL ON BEHALF OF FIVE DEFENDANTS.

(Filed May 11, 1928.)

10 NEW JERSEY COURT OF ERRORS AND APPEALS.

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Between  
COLLINS REALTY COMPANY, a corporation,  
*Complainant-Appellee,*  
and  
20 GEORGE T. SALE, *et als.,*  
*Defendants-Appellants.*

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

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*To the Honorable, the Court of Errors and Appeals in the Last Resort in all Causes:*

30 The petition of George T. Sale, William J. Kerns, Mrs. William J. Kerns, Isaac D. Hetzel, Henry Franz and Mrs. Henry Franz, the appellants in the above-entitled cause, respectfully shows that:

1. Petitioners find themselves aggrieved by a final decree made in the Court of Chancery by His Honor, Edwin Robert Walker, Chancellor of the State of New Jersey, on the advice of Vice-Chancellor Robert

H. Ingersoll, bearing date April 21st, 1928, in a certain cause in said Court of Chancery, wherein the said Collins Realty Co., a corporation, was complainant, and the said George T. Sale, *et als.*, were defendants, in this respect, to wit, that the said decree adjudges that the exceptions filed by the appellants herein to the report of the Master, Robert E. Steedle, Esq., filed herein, dated February 3rd, 1928, were overruled and dismissed, and the report of the said Master was ratified and confirmed, and upon overruling the said exceptions, the said decree adjudged that the mortgage for which the bill of complaint herein was filed to foreclose, had been matured by reason of certain alleged defaults in the payment of taxes, and that said decree directed that a writ of *feri facias* issue for the purpose of directing the sheriff of Atlantic County to sell the premises to satisfy the mortgage of the complainant. 10

And petitioners appeal from the decree of the Chancellor, as advised by Vice-Chancellor Robert H. Ingersoll which decrees as aforesaid upon the grounds that the same is erroneous in that: (1) the said Master erred when he reported that the full amount of the complainant's mortgage, in the sum of \$140,000.00 and interest in the sum of \$11,013.33 were due and payable by reason of certain alleged defaults in the non-payment of taxes assessed by the City of Atlantic City on the property on which the complainant's mortgage was a lien, for the reason that all taxes and assessments were paid in full prior to the filing of the bill of complaint filed herein by the complainant, thereby making the finding of the Master and the sustaining of the same by the aforesaid decree unjust and inequitable; (2) and in that the said Master erred when he reported the full amount of the complainant's mortgage to- 20 30

gether with interest in the aforesaid sums, were due and payable for the reason that certain alleged defaults had been made by the defendants in the non-payment of taxes, for the reason that the testimony as produced before the Master, Robert E. Steedle, Esq., clearly showed that the alleged defaults were the result of an honest mistake or misapprehension into which the defendants were led by the acts, conduct and declarations of the complainant under which circumstances a Court of Equity will not hold such failure to pay a forfeiture of the credit; (3) and the Master further erred in that in his said report he refused to pass upon such testimony as was produced before him in reference to the acts, conduct and declarations of the complainant, but based his findings entirely upon the fact that there was no testimony produced before him as to an express agreement varying the terms of the mortgage as to the payment of taxes by the defendants.

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

BOLTE AND TRIPICIAN,

*Solicitors for and of Counsel with appellants, George T. Sale, William J. Kerns, Mrs. William J. Kerns, Isaac D. Hetzel, Henry Franz and Mrs. Henry Franz.*

ANSWER TO PETITION OF APPEAL OF  
FIVE DEFENDANTS.

(Filed June 1, 1928.)

NEW JERSEY COURT OF ERRORS  
AND APPEALS.

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Between

COLLINS REALTY COM-  
PANY,

*Complainant-Appellee,*

and

GEORGE T. SALE, *et als.,*

*Defendants-Appellants.*

} On Appeal from the  
Court of Chancery.  
Answer.

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The answer of Collins Realty Company, the above named appellee, to the petition of appeal of George T. Sale, William J. Kerns, Mrs. William J. Kerns, Isaac D. Hetzel, Henry Franz and Mrs. Henry Franz, the above named appellants.

This appellee not admitting the truth of all or any 30  
of the matters of the said petition of appeal con-  
tained, for answer thereto nevertheless admits that  
a final decree was on April 21st, 1928, made and en-  
tered in the Court of Chancery of New Jersey, in the  
above entitled cause, for the purposes in said peti-  
tion mentioned and as therein set forth, but as to the

substance and form of the said final decree this appellee begs leave to refer thereto when the same shall be produced.

This appellee is advised and believes that the said final decree is agreeable to equity and it prays that the same may be affirmed, with costs to be taxed, in favor of this appellee.

WM. M. CLEVINGER,  
*Solicitor for and of Counsel  
with Appellee.*

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NEW JERSEY COURT OF ERRORS AND  
APPEALS.

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Between  
COLLINS REALTY COMPANY,  
*Complainant-Appellee,*  
and  
GEORGE T. SALE, *et als.,*  
*Defendants-Appellants.*

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BRIEF OF FIVE DEFENDANTS-  
APPELLANTS.

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GENERAL STATEMENT.

The bill of complaint in this cause was filed by the complainant herein, on July 27th, 1927, to foreclose a purchase money mortgage, dated April 12th, 1926, in the sum of \$140,000.00, given to secure a bond of the same date (Case, 104 and 107). This bond and mortgage was executed and delivered in accordance with the terms and conditions of a certain agreement of sale of lands and premises located in the City of Atlantic City, County of Atlantic, and State of New Jersey, dated December 12th, 1925 (Case, 139). This agreement provided that the said bond was to be executed and delivered by George T. Sale, or his assignee (Case, 143, line 20), and this bond was therefore not the so-called "straw" bond, as alleged in the brief of complainant.

The defendant, George T. Sale, acquired title to the premises on which said mortgage is a lien and holds this title in trust for the defendants in this cause. Most of these defendants reside in Pennsylvania and were, in due course, deemed absent defendants and served by publication; the others were brought into court by personal service. These defendants were divided into two sets, one of which is represented by Carlton Godfrey, Esq., and the other set by Bolte & Tripician, Esqs., the set of defendants represented by Carlton Godfrey, Esq., were personally served and an answer was filed by them. On motion, before Vice-Chancellor Ingersoll, portions of this answer were stricken, and leave was given the complainant to amend its bill of complaint, and the said set of defendants to file an amended answer to said amended bill of complaint (Case, 22). An amended answer was filed by the set of defendants represented by Carlton Godfrey, Esq., and an answer was filed by the set of defendants represented by Bolte & Tripician, Esqs. After issue was joined, an order was allowed by the Chancellor, referring the cause to a Master (Case, 42). The cause was presented to the Master and he reported favorably to the complainant, on one phase, that is, that the complainant's mortgage had matured by reason of a default in the payment of taxes (Case, 44). Upon filing said report of the Master, exceptions were taken to the same, by each set of defendants, and after argument by respective counsel, said report was confirmed by Vice-Chancellor Ingersoll and a decree advised and entered for the full amount of the complainant's mortgage and interest (Case, 169). Each set of defendants has taken an appeal from the decree advised by Vice-Chancellor Ingersoll, overruling the exceptions to the Master's report (Case, 173 and 180).

ARGUMENT.

The petition of appeal by this set of defendants alleges that the Vice-Chancellor erred by advising the said decree, in three respects, which are treated in the following manner (Case, 182).

The fundamental theory of the answer filed by this set of defendants, is that there was a waiver of payment of liens by the complainant, not yet in default at the time of said waiver, and that the defaults made were the result of honest mistakes, or misapprehensions, into which the defendants were led by the acts, declarations and general conduct of the complainant (Case, 32). An alleged error made by the Master which was confirmed by Vice-Chancellor Ingersoll, is based upon this theory.

It is well settled by this Court of Last Resort, in the decision of *Freund v. Weisman*, Volume 5 N. J. Adv. Rep. #28, page 1029, that a waiver of default in the payment of interest or taxes, in accordance with the terms of the bond and mortgage, is not binding upon the mortgagee unless supported by some legal consideration, when such waiver is made subsequent to the default, but, on the other hand, the rule is different when the waiver is made prior to the default and it was held that if a default, which normally would entitle the mortgagee to call the principal, was the result of an honest mistake or misapprehension, into which the defendant was led by the acts or declarations of the complainant, a Court of Equity will not, under such circumstances, hold the failure to pay a forfeiture of the credit. There are other cases on this legal principle:

*De Grott v. McCarter*, 19 N. J. E. 531, 533;  
*Wilson v. Bird*, 29 N. J. E. 352;

*Security Trust Co. v. Paper Board Co.*, 57  
N. J. E. 603, 607;

*Bell v. Romaine*, 30 N. J. E. 24;

*Derechinsky v. Epstein*, 98 N. J. E. 79;

*Bergman v. Fortescue*, 74 N. J. E. 266;

*Weiner v. Cullens*, 97 N. J. E. 523;

*Rowland v. Sutton*, 79 N. J. E. 171.

In an opinion made by Vice-Chancellor Backes, in the cause of *Newark Trunk Company v. Ada R. Clark, et al.*, reported 94 N. J. E. 79, the Vice-Chancellor gave a very elaborate opinion in reference to defaults under the terms of mortgages made by the non-payment of taxes and in that decision at page 80, Vice-Chancellor Backes stated the general equitable rule to be that equity would not relieve against the forfeiture of the credit by non-payment of taxes in accordance with the stipulations of the mortgage. However, he called attention to the fact that in a number of other jurisdictions it has been held that a stipulation in the mortgage maturing the credit for non-payment of taxes, was to preserve the security, and if paid before and even after suit, thereby restoring the security, and the failure was not wilful, equity would relieve against the forfeiture, but, in citing some New Jersey decisions on this point, Vice-Chancellor Backes stated that Vice-Chancellor Pitney had ruled otherwise, in the case of *Arkenburgh v. Lakeside Residence Association*, reported in 56 N. J. E. 102, and Vice-Chancellor Leaming followed in the case of *Bergman v. Fortescue*, reported in 74 N. J. E. 266. In both of these cases the Vice-Chancellors found that a default in the payment of taxes, when stipulated in the mortgage as maturing the principal, was no different than the non-payment of interest, but Vice-Chancellor Backes further stated that although the rule was

different in our State, and our Equity Court would not relieve against such a forfeiture of the credit for non-payment of taxes, he did state, however, that a failure to meet the terms of the stipulations in the mortgage was not fatal when it was shown that the lapse was attributable in some manner to the conduct of the complainant. This same rule of equity was approved in a decision by Vice-Chancellor Griffin, in the case of *Derechinsky v. Epstein*, reported in 98 N. J. E. 79.

Now, it is contended by this set of defendants, that the default in the payment of taxes in accordance with the stipulations of the mortgage was waived prior to the default, and therefore required no legal consideration to make it binding, and that this default was the result of an honest mistake or misapprehension, into which the defendants were led by the acts and declarations of the complainant. To support this contention, and prove this theory, Mr. George T. Sale, a defendant herein, was called to testify before the Master, and his testimony in reference to this may be found at Case, 92 to 97, the most important of which is as follows:

“Q. Anything said at that time in reference to any taxes that might come due on the property thereafter, while you were the owner of it, or any one connected with you?

A. Yes, sir, he said, if the taxes went delinquent he wasn't, that he wouldn't stand to lose anything, and that he wasn't so much interested in the terms of the mortgage as he was in getting that tax off, the very words he said.

Q. Mr. Sale, won't you repeat exactly the conversation you had with Mr. Collins that relates to the taxes that might come due in 1926, or after your settlement, while you were the owner of the property?

*A. He said that nobody would be hurt in the matter, if the taxes were not paid, he had sufficient money down on the property to secure the sale."*

Further, since our Equity Court has not deemed it advisable to follow other jurisdictions in holding that a stipulation maturing the mortgage for non-payment of taxes is intended to preserve the security, and if paid before, and even after the suit, thereby restoring the security, and failure was not wilful, a relief would be given against forfeiture; therefore our Courts should be and are more liberal in adjudging causes wherein a mortgagor has made an honest mistake, relying on the acts, statements or conduct of the mortgagee.

The complainant company received from the sale of this property, upon which this mortgage is a lien, approximately \$400,000.00, and received approximately \$100,000.00 in cash besides this \$140,000.00 purchase money mortgage, which is the subject of this foreclosure suit (Case, 139-144). This further corroborates the fact that the complainant was sufficiently secured, having received one-fourth of the sale price of this property in cash, and apparently led Mr. Sale to believe that Mr. Collins meant what he said when he said that he was not interested in the terms of the mortgage, as to the payment of taxes, as he was amply secured. The first alleged default in the payment of taxes occurred on June 20, 1926, the second alleged default occurred on December 20th, 1926, but not until February 2nd, 1927, when the complainant apparently had a change of heart did he call this mortgage for alleged defaults in the payment of taxes (Case, 138). For seven months, from June 20, 1926, the time of the first alleged default, the complainant sat idly by

without making one statement as to this default, or the default on December 20, 1926, all of which further corroborates the fact that the complainant had waived prior to the default any default in the payment of taxes, as contended by this set of defendants, consequently the mortgage did not mature upon said alleged defaults. It would be hard to believe that a holder of a mortgage in the sum of \$140,000.00 did not know whether or not the taxes on the property upon which it was a lien were paid.

At the time of the settlement at which the property was conveyed, for which the mortgage under foreclosure was executed and delivered in part consideration, it was conceded that Mr. Collins, who was the president of the Collins Realty Company, the complainant herein, and the largest stockholder in said company, was acting for the complainant company, and had absolute authority to bind it, while Mr. Sale was acting for Mr. Basquil, the vendee, and had absolute authority to bind him. We call attention to the fact that this conversation as to the waiver of the payment of the taxes as stipulated in the mortgage, was had between Mr. Collins of the complainant company and Mr. Sale of the defendants, privately, and of course no other person present at the settlement could testify as to this conversation but them, and it would have been of no use to call other witnesses to testify as to this conversation as suggested by the brief of the complainant.

Now, it is not the contention of this set of defendants that there was any valid binding parole agreement as to the payment of taxes, separate and apart from the stipulations and terms of the mortgage, and it is not the theory upon which the answer was filed; but on the contrary, it is the theory of these

defendants that there was not any such agreement and that these defaults in payment of taxes were defaults made by the defendants as a result of an honest mistake or misapprehension into which the defendants were led by the acts and declarations of the complainant, *the consequence of which was the waiver of payment of liens by the complainant, not yet in default at the time of such waiver.* The testimony of Mr. Sale, who had this matter actually in charge as herein stated, shows that such action on his part in not paying the taxes was an honest mistake, and he relied upon, and was innocently misled by his conversation with Mr. Collins in reference to the payment of taxes, which was made at the time of settlement. Therefore this set of defendants does not argue the rule of law, laid down in *Naumberg v. Young*, 44 N. J. L. 331, which is so well established, that is, that parol testimony is inadmissible to contravene the stipulations of a written agreement, when such statements are made at or before the execution of the written contract. These defendants, however, say that this rule of law is not applicable to this cause, *sub judice*, but, on the contrary, this cause comes clearly within the herein stated legal rule, as stated by our Courts in the case of *Freund v. Weisman*, and *Newark Trunk Co. v. Clark*, and other cases cited.

Complainant, in its bill of complaint, alleges four different alleged defaults, which, according to the stipulations of the mortgage, matured the mortgage (Case, 6 and 7); which are, the non-payment of six months' interest due on April 12, 1927, the non-payment of taxes due and payable on June 1, 1926, the non-payment of taxes due on December 1, 1926, and the non-payment of taxes due on June 1, 1927. The Master reported that default had been

made by the defendants only in the non-payment of taxes due and payable June 1, 1926, and the taxes due and payable December 1, 1926; the taxes due and payable on June 1, 1927, having been paid within thirty days after the same were due and payable, in accordance with the stipulation of the mortgage, and the six months' interest due on April 12, 1927, would have been tendered by Mr. Bolte, but upon Mr. Clevenger's statement that the same would not be accepted, the tender was not made (Case, 97 to 100). In the third argument of the brief of the complainant, a contention is made that there was in fact no tender and refusal made of interest which was due April 12, 1927, and payable within thirty days thereafter. The Master found from the testimony, and reported that there had been no default in the payment of the interest (Case, 46 and 47). The Master correctly stated the law, that where a tender would not be accepted, if made, no tender was necessary where it would amount to a mere vain and idle ceremony (38 Cyc. P. 134, Sec C). Further, no exceptions were filed to the Master's report by the complainant, alleging that the Master erred when he reported that there had been no default in the payment of interest, consequently this matter is not before the Court on this appeal.

The brief of the complainant in the third argument also makes some statements as to a tender made on November 10, 1927, which was subsequent to the filing of the bill of complaint. A further payment of six months' interest had become due and payable after the filing of the bill, to wit, on October 12, 1927. Testimony before the Master as to this was admitted over the objections of this set of defendants and it is still the contention of these defendants that testimony or any reference to these

circumstances or tender is entirely irrelevant and inadmissible in these proceedings, having taken place subsequent to the filing of the bill of complaint. The complainant must rest on the defaults alleged in its bill of complaint.

In all the cases cited by these defendants, upon a close examination of the same, it will be found that in each case the taxes were unpaid at the time of the filing of the bill of complaint, the non-payment of taxes being the default upon which the mortgage was alleged to have been matured. Now, in this cause, under appeal, the taxes which were unpaid on June 1, 1926, and December 1, 1926, the non-payment of which alone the Master found that the mortgage was matured, were paid in full on March 2nd, 1927 (Case, 130-131), or less than thirty days after the receipt of the notification by the complainant that it called its mortgage, and five months prior to the filing of the bill of complaint. It is the contention of this set of defendants that this not only further corroborates the fact that the complainant waived any default in the payment of taxes, and misled the defendants into an honest mistake by its actions, but it also segregates this cause into a class of cases that has not been passed upon by this Court, that is, in every case adjudicated upon by the Courts of our State in reference to such waiver of defaults prior to the default, payment had not been made prior to the filing of the bill, but in this case *sub judice* payment had been made. It is the contention of this set of defendants, that where the payments have been made prior to the filing of the bill of complaint, and especially in cases where the bill is not filed for such a long time after payment, that in equity and good conscience, the principal of the mortgage should not be matured and declared due, and the credit forfeited.

As a third ground for appeal this set of defendants contends that the Master erred when he refused to pass upon the testimony as produced before him in reference to the acts, conduct, and declarations of the complainant upon which this set of defendants contends that they were led into an honest mistake by misapprehension, but based his findings solely upon the fact that there was not testimony produced before him as to an express parol agreement contrary to the terms of the mortgage as to the payment of taxes (Case, 50 to 52). He confined himself entirely to find whether or not a binding parol agreement had been made, rather than a waiver of the terms of the mortgage by the acts and conduct of the complainant, and whether or not the defendants had been honestly misled. The latter is the theory of the answer filed by this set of defendants and this very point was raised before Vice-Chancellor on exceptions to the Master's report.

Therefore, in view of the above-stated rules of law, as laid down by the decisions of our State Courts, cited, this set of defendants strenuously contends, that the Master erred when he refused to consider the testimony as to whether or not the defaults, as found by him in the non-payment of taxes had been waived by the complainant, prior to the time of the default and confined himself solely to find whether or not a binding parol agreement had been made; that he erred when he failed to find that the testimony produced before him showed that the waiver was one made prior to the defaults, and need not be supported by a legal consideration, and that these defaults, although they would normally entitle the complainant to call the principal, were the result of an honest mistake or misapprehension into which the defendants were led by the

acts, declarations and conduct of the complainant, and consequently such circumstances did not forfeit the credit; and that the Master further erred when he found that the case at bar was not distinguished from the decisions of the Courts of our State for the reason that the taxes were paid prior to the filing of the bill of complaint. This set of defendants further contends that the Vice-Chancellor erred when he advised the decree, overruling the exceptions of these defendants to the Master's report.

These defendants therefore pray that the said decree of the Chancellor as advised by the said Vice-Chancellor, Robert H. Ingersoll, may be wholly reversed, set aside and for nothing holden.

BOLTE & TRIPICIAN,

*Solicitors for Defendants,  
George T. Sale, William  
J. Kerns, Mrs. William  
J. Kerns, Isaac D. Hetzel,  
Henry Franz and  
Mrs. Henry Franz.*

LOUIS N. TRIPICIAN,

*Of Counsel.*

NEW JERSEY COURT OF ERRORS  
AND APPEALS.

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Between  
COLLINS REALTY COMPANY,  
*Complainant-Appellee,*  
GEORGE T. SALE, *et als.,*  
*Defendants-Appellants.*

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ON APPEAL FROM CHANCERY.

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ON BILL TO FORECLOSE.

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BRIEF FOR DEFENDANTS-APPELLANTS:  
Ernest Schwehm, Emma Schwehm, Wm. Frei-  
hoffer, Sarah Freihoffer, Stacy White and  
Mary R. White.

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*Anent Appellee's Citations of Authorities:*

Complainant-appellee cites a number of cases in support, apparently, of his proposition that, irrespective of the justice or equity of the situation, this Court enforces the very letter of the bond and permits foreclosures on the most technical defaults.

## 2 *Brief for Six of the Defendants-Appellants*

The leading cases among those are:

1. *Naumberg v. Young*, 44 N. J. L. 331;
2. *Arkenburgh v. Lakeside Residence Association*, 56 E. 102;
3. *Bergman v. Fortescue*, 74 N. J. Eq. 266;
4. *Freund v. Weisman*, 137 Atl. 885.

Number 1—the Naumberg case—was not an equity suit, it concerned a strict matter of contract in a Court of law; but even so, the learned Justice Depue said:

“Parol evidence of an agreement not expressed in the writing, is competent where the writing contains only a part of the contract or to establish a parol contemporaneous agreement between the parties which both parties have acted upon and given the force of an accord executed.”

And that is the exact situation here. There was an agreement outside of the terms and confines of the bond and mortgage relating to the time for the payment of taxes. Collins, by his acts in not paying the 1925 taxes until July 26, 1926—although he parted with the land on April 12, 1926, must admit that there was an agreement relating to the time for payment of taxes. We say that the Master erred in finding that “whatever they may have verbally agreed to is of no avail in the face of the writings executed \* \* \* \*” Our point is that the agreement concerning the payment of the taxes out of time was outside of the wording of the writings executed, and that both parties relied upon the said contemporaneous agreement—Collins by not paying the taxes which he owed on the land, and our clients by not paying the taxes which they owed on the land,

Cases 37 and 40.

To be placed in the complainant's brief  
in support of point III.

Generally speaking we think a judgment should not be reversed for **errors committed** at the trial, if any, where the decision below may be supported upon any theory, and that the whole record in a Chancery case being before the Court may be examined for the purpose of reaching a conclusion.

We are referring the Court to the following cases:

Holmes v. Holmes,  
18 N. J. Eq., 141  
Chy., 1866

Crane v. Decamp,  
22 N. J. Eq., 614  
E. & A., 1872

Morris v. Taylor,  
23 N. J. Eq., 131 & 136  
Chy., 1872

Woodward v. Bullock,  
27 N. J. Eq., 507-09  
E. & A., 1875

Decker v. Ruckman,  
28 N. J. Eq., 614  
E. & A., 1877

Pennington v. Todd,  
47 N. J. Eq., 569  
E. & A., 1890

The leading cases are as follows:

1. *Archer v. Lakeland*, 10 Q.B. 181.
2. *Archer v. Lakeland*, 10 Q.B. 181.
3. *Archer v. Lakeland*, 10 Q.B. 181.
4. *Archer v. Lakeland*, 10 Q.B. 181.

Number 1—the *Archer* case—was not an equity case, it concerned a contract, and the Court of Law, not the Court of Equity, was the proper tribunal.

Generally speaking, we think a judgment should not be reversed for errors committed at the trial, if any, where the decision below may be supported upon any theory, and that the whole record in a Chancery case being before the Court may be examined for the purpose of reaching a conclusion.

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*Archer v. Lakeland*, 10 Q.B. 181, 1888.

within the exact time specified in the papers. Both finally paid; and both paid before the bill to foreclose was filed. Alike, they acted upon it and gave it the effect of an accord executed. Parol evidence is competent to sustain such an agreement under complainant's own case aforementioned; and the error of the Master ought to be corrected by a new reference, which can only be done at this time by reversing the Court below and by granting the prayer of appellants' petition to this Court of appellate jurisdiction.

Number 2—in the Arkenburgh case the Vice-Chancellor took pains to remark (in permitting the principal of a mortgage to be matured for non-payment of taxes):

“the tax bills were sent by the complainant to the president of defendant corporation. So that complainant is in no wise responsible for their non-payment, and it stands wholly without excuse. There is no room for mistake or misapprehension.”

By inverse reasoning, if the tax bills had not been sent by the complainant to the defendant, or if the complainant in some way or other had been responsible for the non-payment of taxes, or if there had been some excuse, or some mistake or misapprehension—at least, it would have been a different case. So that the Arkenburgh case is not in point. Here Collins took time to pay taxes due from himself. Under the strict words of the mortgage, this would have matured it at once. But there was an agreement in relation thereto—else the title company could not have made settlement. There is a difference of opinion as to what the agreement about the

#### 4 *Brief for Six of the Defendants-Appellants*

taxes was. A misapprehension, room for mistake! When Collins found out the taxes had not been paid on the very second, did he—as did Arkenburgh—send the tax bills to the complainant with a request for payment to prevent a default? No, sir! Bang off, he calls the full principal sum of the mortgage of \$140,000 on virtually a vacant lot. Before the default period, had Collins obtained a tax bill and mailed it to the new owner he could not have been accused of having been responsible for the default. As the matters stand, with himself taking advantage of a granted favor of time within which to pay the taxes he owed on the same land, Collins must be held responsible that the taxes were not paid on time. The Arkenburgh case is not adverse to this theory of law.

Number 3—*Bergman v. Fortescue* is one of the leading cases cited in a number of opinions; and the important part of Vice-Chancellor Leaming's finds in that case is:

“Had defendant continued in default by reason of an understanding reasonably attributable to the mortgagee's conduct, equity could properly relieve.”

Which is precisely the point in the case at bar—the mortgagee's conduct, more his conduct than his words, more what he did than what he told Sale he would do. What was said back and forth at that meeting of settlement described by our good friend, Mr. Clevenger, who was there, as “no pink tea”—is in dispute. Mr. Sale says so and so; Mr. Collins denies it. Neither calls other witnesses. But the better proof at any rate is the mortgagee's subsequent conduct: he did not pay the taxes he owed on

the same land until months after that. He admits that this was by agreement but says that it only related to the 1925 taxes and not to 1926. The new owner believed it related to both years and had no way of telling whether or not Collins' tax appeal had been decided. The fact is, Mr. Collins did not await a decision, but, when he made up his mind to do so, abandoned the tax appeal business and paid his taxes. There is nowhere any proof that he notified the new owners that he had decided to abandon the tax appeal and that the taxes could now be paid without interfering with the same. The agreement to pay the taxes out of time was made for Collins' benefit: to permit him to perfect an appeal of the 1925 taxes. Under these circumstances and the authority of the Bergman case, above quoted from, could it not be said that the defendant continued in default by reason of an understanding attributable to the mortgagee's conduct?

Number 4—*Freund v. Weisman*, 137 Atl. 885, is very much to the same effect as number 3. In the Freund case, Justice Parker, speaking for our Court of Errors and Appeals, said:

“If a default which normally would entitle the mortgagee to call the principal was the result of honest mistake or misapprehension into which the defendant was led by the acts of the complainants, a court of equity will not under such circumstances hold the failure to pay a forfeiture of the credit.”

Here Collins, the former owner, misled the buyers by his conduct in not paying his own taxes on time under the mortgage, and created a misapprehension in which situation the Chancery Court ought not to

## 6 *Brief for Six of the Defendants-Appellants*

permit a forfeiture of credit. It means a great deal to the purchasers to have the mortgage for its term, several years of which are yet to run. Strictly accepting appellee's theory, the mortgage was due by its terms the very day it was created by reason of Collins' non-payment of taxes. He wants this Court of equity to help him collect his \$140,000. He should do equity likewise. The taxes are now paid up to date; in fact, there were no taxes in arrears when the bill to foreclose was filed. And the interest had been tendered.

### THE WEIGHT OF AUTHORITIES AS WE VIEW THEM:

But we do not solely rely upon the cases cited by our opponents. We refer this Honorable Court to the following cases as clearly upholding our points:

*DeGroot v. McCotter*, 19 N. J. Eq. 531;  
*Wilson v. Bird*, 28 N. J. Eq. 352;  
*Security Trust v. N. J. Paper*, 57 E: 603;  
*Tompkins v. Tompkins*, 21 N. J. Eq. 338;  
*Oliver v. Phelps*, 21 N. J. Eq. 597;  
*Van Syckel v. O'Hearn*, 50 N. J. Eq. 173;  
*Lettieri v. Mistretta*, Adv. Rep., Vol. V, p.  
1825.

And we now respectfully but pointedly explain how each fits into our position admirably.

Point I. Whether nor not a parol agreement can change the solemn writing under seal, is not the point here, nor in question. If inequitable, a forfeiture will not be enforced. In the DeGroot case, above cited, the Court of Errors and Appeals said:

“It is not necessary to determine whether the agreement by parol can be admitted to change the legal effect and operation of the writing under seal.

The question here is, whether the default has happened, if the omission to pay was caused by the defendant's reliance in good faith on the parol agreement.

I cannot see how the complainant can conscientiously insist on a forfeiture, when all the defendant did, or rather omitted to do, was in pursuance of a previous agreement between him and the complainant.

The Court will not enforce a forfeiture of credit if the complainant is himself in fault, or has misled the defendant.”

“If the complainant has *in any way* waived the payment according to the letter of the bond, the default contemplated and provided against has *not happened*.”

Here we say Collins waived the payment of taxes according to the letter of the mortgage, by his arrangement not to pay his own portion because of his tax appeal.

Point II. Collins being the cause of the difficulty over the extension of time for payment of taxes, in that he wanted time to perfect his appeal, prevents him from taking advantage of the present forfeiture. On this point, the Court, in *Wilson v. Bird*, above cited, said:

“One who comes into a court of conscience to take advantage of a forfeiture, must come with skirts free from blame.”

Point III. After being granted the desired time

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to appeal his taxes for 1925 on the same property, Collins must act equitably in his dealings with his mortgagor. See *Security Trust v. N. J. Paper*, 57 N. J. Eq. 603, where Chief Justice Magie had this to say:

“When the default has been brought about by inequitable conduct on the part of him who seeks to take advantage of it, the Court will not enforce the agreement.”

Point IV. While an agreement under seal cannot usually be changed by parol, the time for payment of a mortgage may be extended by word of mouth. This Court so held in *Tompkins v. Tompkins*, 21 N. J. Eq. 338, as follows:

“The agreement was by parol only, but it was beneficial to the complainant (as here Collins obtained the time he needed to appeal his taxes), and therefore on good consideration. The time specified for the payment of a mortgage may be extended by parol.”

Point V. If acted on by both sides (as here) an oral contract made even prior to the writing under seal, may be enforced. So held the Court of Errors and Appeals in *Oliver v. Phelps*, 21 N. J. L. 597, in these words: “A parol promise or agreement by the landlord, prior to the execution of the lease, the lease being under seal, may be given in evidence. The promise did not bind the landlord, but when carried into effect, it became an accord executed, and amounted to payment.” So here, Collins did not pay his taxes by reason of the extension arrangement permitting his tax appeal; and our clients did not pay theirs, either, on time. But all the taxes have since—and before the filing of the

bill—been cleaned up. The agreement to extend the time for paying taxes was best evidenced by being carried into effect by both sides.

Point VI. Collins waived strict performance of the mortgage contract by himself taking longer than provided in the mortgage within which to pay his taxes, by arrangement with the owner. He is estopped from now withdrawing his waiver. See *Van Syckel v. O'Hearn*, 50 N. J. Eq. 173, where this Court said:

“The complainants say that the obligation being in writing and under seal the time for performance thereof cannot be enlarged by a parol agreement. I think all the authorities, in this State at least, hold the time for performance of every such contract may be extended by parol.

If a party asking the aid of the Court waive strict performance of his contract and makes premises to the defendant, and it should appear to the Court to work a hardship to the defendant to allow the complainant to withdraw his waiver, a Court of equity always applies the doctrine of estoppel.

He is the author or promoter of the very condition of affairs which stands in his way. It is equitable that the Court should say that they shall so stand.”

Point VII. In the case at bar, Collins not only acquiesced in, but actually himself paid his taxes out of time, in the payment of taxes beyond the 30 day default clause; he must now give the owners notice that they will be required to pay the taxes on time. To such effect is *Lettieri v. Mis-*

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*tretta*, Adv. Rep., Vol. V, at p. 1825, where the learned Vice-Chancellor says:

“In view of the fact that the mortgagee at least acquiesced in the payment of the mortgage interest at times other than as provided by the bond and mortgage, the burden is on the complainants to prove that they gave the defendants reasonable notice that they would be required to pay such interest as called for in the bond and mortgage.

It would be inequitable and unconscionable for complainants to take advantage of the defendants' alleged default in the payment of interest which was said to have been due and payable December 1st, 1926, or upon allowance of the thirty days' grace as provided in the default clause of the mortgage, on January 1st, 1927.

In the case *sub judice* it is manifest that the time specified for payment of interest on the mortgage was extended by parol. Such is permissible in law; and payment accordingly will prevent a default.”

Point VIII. That part of Mr. Clevenger's brief relating to the tender of interest, it is respectfully submitted, has no part in the present controversy for the reason that the matter of the tender of the interest money was settled by the Master to which finding no one has filed any exception. Rule 192 provides that in such a case as this is, a decree may be made upon the Master's report unless exceptions shall be filed within four days. If no exceptions are filed a decree follows. Hence, exceptions are necessary to raise any points desired to be argued.

Accordingly, it is respectfully urged that the Court below be reversed and that the matter be referred back to the Master with instructions to inquire into the alleged parol arrangement and to make a new report taking cognizance thereof.

CARLTON GODFREY,  
*Solicitor for the Six Defendants-  
Appellants Above Named.*  
WM. I. GARRISON,  
*Of Counsel.*

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ACKNOWLEDGMENT OF SERVICE  
OF BRIEF.

NEW JERSEY COURT OF ERRORS  
AND APPEALS.

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Between

COLLINS REALTY COM-  
PANY,  
*Complainant-Appellee,*

and

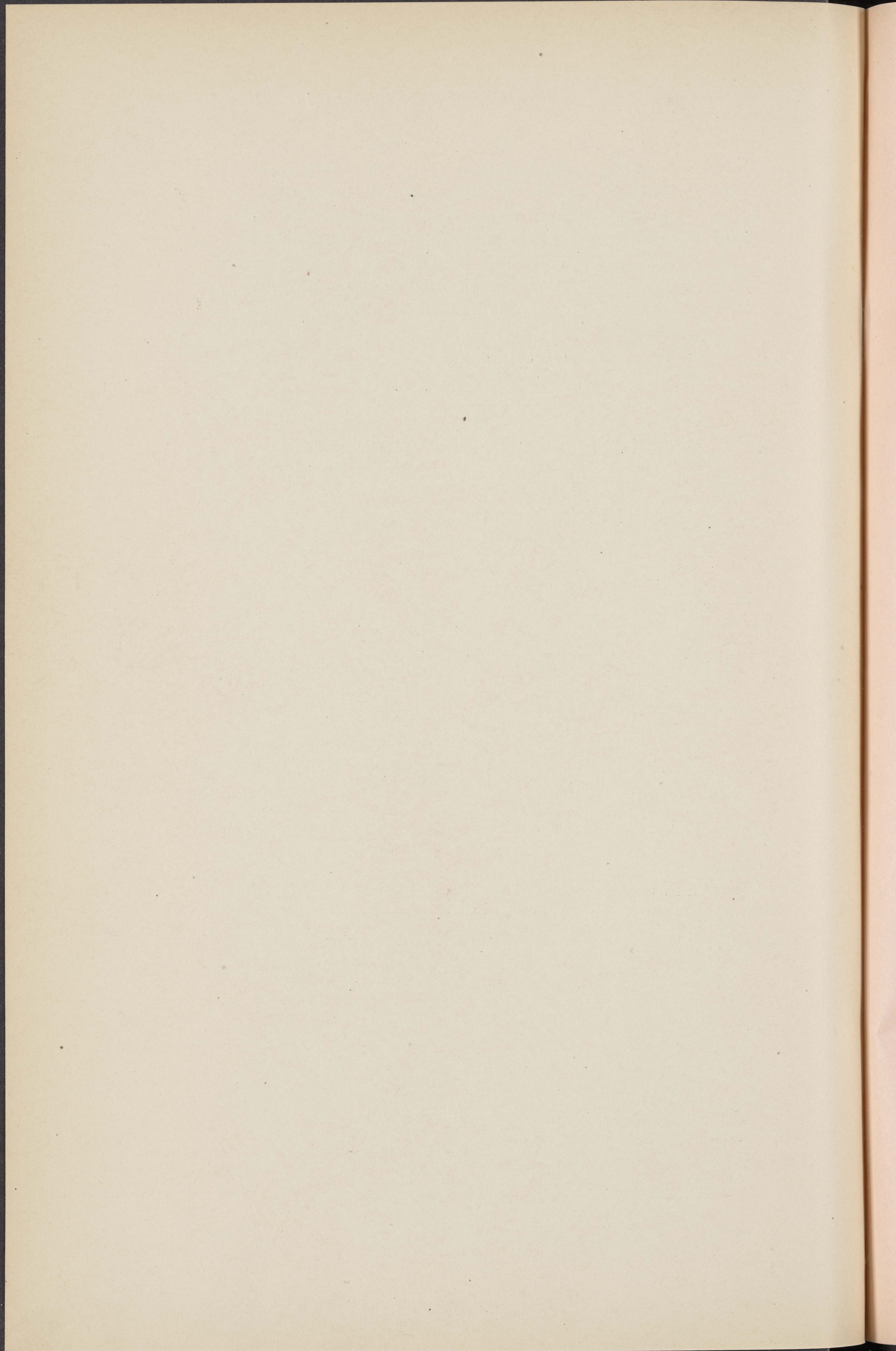
GEORGE T. SALE, *et als.,*  
*Defendants-Appellants.*

On Appeal from  
Court of  
Chancery.  
Acknowledgment of  
Service of Brief.

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Due and legal service of brief of Ernest Schwehm,  
*et als.*, acknowledged as though within time.

WILLIAM M. CLEVINGER,  
*Solicitor for Complainant-  
Appellee.*



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