
N. J. Court of Errors & Appeals

LOUISA H. TURNER,

(Complainant) Respondent,

vs.

LOUIS KUEHNLE,

(Defendant) Appellant.

ON APPEAL.

STATE OF THE CASE.

U. G. STYRON,
Solicitor of Respondent.

JNO. C. REED,
C. L. COLE,
Solicitors of Appellant.

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NEW JERSEY

Court of Errors and Appeals

LOUISA H. TURNER,	}	On Bill, etc.
<i>Complainant,</i>		
<i>Respondent,</i>		
and		
LOUIS KUEHNLE,		
<i>Defendant,</i>		
<i>Appellant.</i>		

Brief for Appellant.

The decree sought to be reversed establishes a dower interest in the respondent in certain lands in Atlantic City, the legal title to which is in the appellant.

It is beyond dispute that respondent's inchoate dower was cut out by a bill to foreclose, filed by William Fitton, in which proceedings the respondent was made a party, and against whom the usual decrees by confession and final were entered. She was personally served with a subpoena, and she admits such service. The bill to foreclose on page 248 has this express averment: "But orator charges that the interest of said Turner in the premises, and of his wife, Louisa, who claims a

dower interest, if any, is subsequent to the interest of your orator in the premises." The appellant is vested with the interest of the purchaser at the foreclosure sale, which sale foreclosed the equity of redemption of the respondent.

In order to support the decree it becomes necessary for the respondent to show an equity in the premises superior to that of the appellant, and this equity is sought to be established, as will appear by the bill, by averments of fraud against the respondent participated in by the appellant. A demurrer was filed to the bill but was overruled, and the opinion of the learned Vice-Chancellor overruling the demurrer will be found in *62 Atlantic Reporter 327*, from which opinion it will clearly appear that he sustained the bill upon the ground that it alleged distinct and affirmative acts of fraud on the part of the appellant. A careful reading of his opinion on final hearing will disclose that he found it necessary to find that the acts of the appellant and his solicitor, Joseph Thompson, in the premises were fraudulent as against the respondent.

It will be our purpose to convince this Court that, giving the most favorable view to the evidence in aid of the charge of fraud, that only a constructive fraud can be found, which cannot in fact or in law be brought to the knowledge of appellant. We shall further undertake to establish that the respondent has been guilty of such laches as will defeat her right, and that it does not appear by anything in the evidence but that a settlement has been made with her for her dower interest in the premises, if any she has.

The opinion of the learned and distinguished Vice-Chancellor fairly discloses the pertinent facts, so that we shall not undertake here to enter upon a lengthy and detailed statement of the various steps in the proceedings, which are disclosed by the evidence and detailed in the Vice-Chancellor's opinion. This Court will doubtless read and analyze the whole of the evidence

for the purpose of determining if the decree can be sustained.

It will be found, upon reading the opinion of the Vice-Chancellor, that wherever he thought it necessary to credit the testimony of the respondent and discredit the testimony of witnesses for appellant in order to conclude in respondent's favor, he did so, and one of our purposes will be to show that in this he erred, and in one or two instances made what may very properly be characterized as rash statements. In his commendable zeal to do equity, he has leaned too far in his efforts to assist the widow, overlooking, as we contend, the equity of the appellant.

The Court will have discovered in reading the opinion that the husband of the respondent, who held the legal title to the premises in question, was under a binding contract to convey to one John Wheeler, to whose rights appellant succeeded. Sometime after appellant became vested of the interest of Wheeler, he called upon the husband of the respondent to perform his covenant and convey the premises, which the husband expressed an inability to do, and in consequence, the appellant placed the matter in the hands of his solicitor, Joseph Thompson, to compel specific performance, and said solicitor filed a bill in the Court of Chancery to that end. Later, William Fitton, the holder of a mortgage against the premises antedating the interest of Turner, lodged with his solicitor, Joseph Thompson, the said mortgage for foreclosure, which mortgage was foreclosed, and at the sale thereunder the solicitor purchased for his client, William Fitton. Subsequently, at the instance of Fitton, Thompson assigned his bid to the appellant, to whom the Sheriff executed and delivered a deed. The bill avers that the proceeding to foreclose the mortgage was conceived and executed in fraud of the respondent, and to defeat her dower in the premises, and the learned Vice-Chancellor convinced himself that the allegations of the bill charging fraud were established by the evidence.

Our first contention is that no such fraud has been established. We start with the salutary rule that fraud is not to be presumed, but must be proved. The vice running through the opinion of the Vice-Chancellor, as we see it, is that he has presumed fraud in violation of a well-settled legal principle. Richard H. Turner was under a binding obligation to convey the premises in question to the appellant, and if he failed he was, of course, liable in damages, and we may safely infer that he recognized the importance of performing his contract, and we may further infer that he did seek out Mr. Fitton, who held a mortgage superior to his interest, for the purpose of having him foreclose the same in order that the dower interest of the respondent (which, of course, was subject to said mortgage, because said mortgage covered the premises at the time of the conveyance to Turner) might be cut out; but these inferences do not warrant the further inference that Turner further intended not to deal justly with his wife concerning her inchoate dower in the premises, or that he did not, in fact, so deal with her. We are not able to discern any inequity as against a wife who refuses to join in a deed with her husband in aid of the performance of a binding contract on his part, in seeking the foreclosure of a mortgage for the purpose of relieving the premises from her inchoate dower, so long as no fraud is committed against her and it is intended to pay her the value of her dower. Just what was intended by the foreclosure of the mortgage in question and who were parties to such intention must, of course, be gathered from the evidence, and upon well settled legal principles, where the acts of parties are susceptible of two interpretations, they must be given that interpretation which looks to bona fides. Of course the Vice-Chancellor had the benefit of the appearance of the witnesses, which may be conceded to be of value, and perhaps this Court ought not and will not lightly reverse his finding of fact, but we shall undertake to show that he has in some instances misinterpreted the

evidence, in some mis-stated it, and in others drawn incorrect and unjustifiable inferences.

In commenting upon the testimony of Mr. Westcott for the respondent and Mr. Thompson for the appellant, the distinguished Vice-Chancellor says:

"It is true that Judge Thompson denies any recollection of having made the statement which Westcott swears he did. But a careful consideration of the manner of Mr. Westcott on the stand and of all the circumstances leads me to the conclusion that his evidence on that subject is reliable. He was quite clear in his recollection, and I cannot bring myself to the conclusion that his evidence was manufactured. It is much easier to believe that Mr. Thompson has forgotten he used the language in question. And here it is proper to name a circumstance not previously referred to, namely: That the original conveyance from Hoffman to the two Allens, and the assignment of the mortgage to Fitton, were all carried through under Judge Thompson's supervision, and he personally negotiated the assignment of the mortgage to Fitton. I therefore conclude that the foreclosure of this mortgage, in order to bar Mrs. Turner's inchoate right of dower, was in the mind of Judge Thompson at the outset."

Mr. Thompson in most emphatic terms distinctly denies that he had in mind Mrs. Turner's dower or any intention to affect the same in the foreclosure of the mortgage. His statement is that the mortgage was brought to him by his client, William Fitton, who instructed him to foreclose it for non-payment of interest. Mr. Fitton did not indicate his purpose, and Mr. Thompson says he did not know his (Fitton's) purpose. Upon this phase Mr. Thompson's testimony has not been denied, contradicted or impeached, and it is therefore necessary to draw, as we think, the unwarrantable inference that at the outset of the foreclosure,

Mr. Thompson had conceived a design against the respondent. If the Vice-Chancellor, by the language above quoted, meant to say that Mr. Thompson had in mind the foreclosure of the mortgage in order to bar the dower of the respondent at the time of the transfer from Hoffman to Allen, and the assignment of the mortgage to Fitton, his conclusion is a rash one, for it will be seen that the mortgage from Hoffman to Allen was made on August 31st, 1893, the assignment from Allen to Fitton on September 12th, 1894, while the interest of Kuehnle in the premises did not vest until January 27th, 1896, under a deed from the Sheriff, *Exhibit C 28*, at page 219. It does appear that Turner was seeking to have his wife execute with him a deed to Kuehnle for the premises, and that he saw Thompson and requested him to prepare a deed and hand to Attorney John S. Westcott, who Turner said represented his wife, for the purpose of having him secure her signature. This Thompson did, but the respondent refused to execute. Mr. Thompson testifies, and there is no contradiction, that at the time he represented the appellant and did not represent Turner, and that upon the failure of Turner to deliver a deed, he filed a bill for specific performance.

The learned Vice-Chancellor thinks it very significant and lays great stress in his opinion upon the fact that nothing was done under the bill to compel performance, after the issuance of subpoena, and we fear that fact had a dominating influence on his mind in reaching the conclusion that a fraud had been intended upon the respondent. In a question asked of witness Thompson by the Vice-Chancellor, it seems that he had in his mind, that, under the bill for specific performance, a decree could be had in favor of the appellant here, with an allowance for inchoate right of dower. (See his question on page 101 as follows: "Well, right there, didn't you know you could get a decree with an allowance of inchoate right of dower?"). If the Vice-Chancellor was of the opinion that such a decree could be

had, we respectfully submit his opinion was erroneous. The cases decide the other way. *Peele v. Levy*, 26 N. J. Eq. 330; *Young v. Paul*, 10 N. J. Eq. 401, and *McCormick v. Stephany*, 57 N. J. Eq., at page 266.

Kuehnle was in possession under a lease that had a number of years yet to run, and, as his bill for specific performance had been filed with a *lis pendens* thereunder, there was really no valid reason why he should proceed with his bill for specific performance, in view of the fact that at the most he could get a decree only as against Turner.

Now, it may well be that Turner did induce Fitton to foreclose the mortgage for the purpose of enabling him to make a sufficient deed to Kuehnle, and I think we must concede that altogether the evidence justifies that inference, but at most it must be an inference, as there is no direct proof. But such action on the part of Turner could not be regarded as a fraud on his wife, provided, as we have before stated, he did not intend to defraud her; but, in any event, his fraud could not be attributed to Thompson or Kuehnle. The bill alleges a series of fraudulent acts on the part of Thompson, Turner and Kuehnle looking to conveying the property sold for less than it was worth, but no evidence whatever was produced to support these allegations; but it affirmatively appears by the evidence of the appellant that the whole proceeding, from the time of the filing of the bill to foreclose to the delivery of the deed, was in conformity with the law, and there is not the slightest suggestion anywhere of a single act from which the inference could be drawn that the sale was not conducted in perfect good faith and the property sold to the highest bidder. The appellant testified that he handed his papers to his solicitor for the purpose of compelling Turner to make him a deed in accordance with the agreement, and that thereafter he gave the matter no further attention. He denies that he had anything to do with the foreclosure, or suspected that its purpose was in fraud of the respondent. His testimony is in no way met, and it would seem to

be unanswerable, in view of the fact that he actually paid full value for the property.

The Vice-Chancellor does not find that Mr. Kuehnle was any party to the alleged fraudulent acts, but regards as highly suspicious, as evidence that Thompson was a participant in a fraudulent scheme, the fact that the property sold for a sum insufficient to afford protection to Kuehnle's interest. It must be remembered the transaction occurred a number of years before the evidence was taken in this cause, and that naturally the recollection of witnesses as to what took place so long ago should be hazy and treacherous. Mr. Thompson may have overlooked, at the time of the foreclosure sale, the fact that Kuehnle had an interest to be protected, or he may have intended to institute a suit against Turner for damages. Kuehnle, himself, may have been indifferent concerning the taking of title, for the testimony discloses that Thompson went to Kuehnle after the sale to know if he cared to take title, and Kuehnle told him he was satisfied to do so upon the terms of the agreement. Kuehnle may have been content to rely upon an action for damages against Turner, and other reasons may suggest themselves.

It will also appear in the evidence that the premises were in an unfinished and dilapidated condition requiring the expenditure of considerable money to make them of value, and this fact may have stood in the way of bidders at the sale and made Mr. Kuehnle indifferent of acquiring title.

According to the opinion of the Vice-Chancellor, the whole transaction of the foreclosure was conceived by Thompson in fraud, for the deliberate purpose of defeating the inchoate right of dower of the respondent, and that the fraud so conceived was fully executed. No direct proof is produced to support the charge. Kuehnle denies it. Fitton and Turner are dead. Thompson denies it. He is a reputable member of the bar of this State, and it ought not to be lightly inferred that he would either conceive, or execute a fraud upon the re-

spondent. If his acts will bear the interpretation of innocence of fraud, that interpretation must be placed upon them. We submit that the explanation which he gives as to how the mortgage came to be foreclosed must be accepted as true. It is not improbable. It has not been denied. There seems to be no sufficient reason why he should have conceived it necessary to perpetrate a fraud upon the respondent. Kuehnle was making no payments to Turner, but was in possession of the premises, reaping whatever benefits could be reaped therefrom, and he had the right to so continue until Turner was prepared to perform his contract. Turner could convey to no one else while Kuehnle was in possession, and the *lis pendens* was of record. Mrs. Turner's interest was purely inchoate. There was no cause for great anxiety on the part of Kuehnle, or Thompson, who represented him. There was a reason for anxiety on the part of Turner, and this may explain why Turner should seek out Fitton and make him a party to his plan to have the sale of the property in order to keep faith with Kuehnle, but not necessarily for the purpose of defeating the inchoate right of dower of his wife; and this reason should also be taken into consideration in determining the veracity of Thompson as to his connection with the foreclosure, and how the matter was first brought to his attention.

Assuming, however, that the learned Vice-Chancellor has not erred in his conclusion that a fraud has been committed against the respondent by the acts of Thompson, the solicitor for Kuehnle, the legal question arises: Is that fraud to be ascribed to Kuehnle? As we have already said, the Vice-Chancellor does not find that Kuehnle was any party to the fraud in fact. Kuehnle has denied that he was, and certainly there is no evidence from which a contrary conclusion could be reached. We think it plain upon principle and authority that Mr. Kuehnle cannot be held for the acts of Thompson. It must not be overlooked that Kuehnle employed

Thompson to file a bill for specific performance of the contract. It nowhere appears that he employed Thompson to commit a fraud on the respondent, or to do any act which would ultimate in a fraud upon her. He did not employ Thompson to foreclose the mortgage, nor did he know that such action was contemplated. Moreover, he did not know that such a step was necessary to secure his rights, and, as the evidence discloses, Thompson did not communicate to Kuehnle the object of the foreclosure. Kuehnle never saw Thompson from the time he put his papers in his hands until after the foreclosure, and Thompson told him that if he wanted title to the premises, he could secure the same, and as a result of that Kuehnle arranged with Thompson to pay the full consideration in the agreement with Turner, without any inquiry, relying upon Thompson's statement that the matter was all right, and that he would secure a perfect title. This is not a case where a principal can be held for the acts of an agent or attorney who has done an act in the discharge of a duty to the principal or in the prosecution of a task imposed. The action of Thompson in foreclosing the mortgage was entirely unrelated to his employment by Kuehnle. There was no real connection in fact or in law between Thompson's employment to file the bill for specific performance and his alleged conception of a fraud to be committed upon the respondent by way of the foreclosure.

In dealing with this intention, the learned Vice-Chancellor, in his opinion, on page 289, says: "And this brings me to what I conceive to be the principal point made by the defendant in his able and ~~ingenious~~ *ingenious* argument. He contends that the defendant is not chargeable with notice of the *constructive* fraud practiced by Judge Thompson upon the complainant, and he refers to the rule laid down by Mr. Pomeroy, Section 688, and to the case of *Saffron v. Rainer*, L. R. 14 Ch. Div. (1880) 406." It will be seen that in this language the Vice-Chancellor seems to have felt that the fraud

practiced by Judge Thompson was constructive, while in another part of his opinion, as we read it, he finds the fraud to have been active; but in either case, we submit the cited case relieves the appellant under the facts viewed most favorably to the respondent. In *Boice* against *Conover*, 65 *Atlantic Reporter* 191, this Court took occasion to remove any question that might have been raised by the opinion of Vice-Chancellor Emery by saying: "We concur in the result reached by the Vice-Chancellor, which is ably sustained by his opinion, and it is, perhaps, unnecessary to add to what he has said. It is thought, however, that some expressions in the opinion may be susceptible of the construction that Speyers is chargeable with notice of what was known to these attorneys. If such a construction of the language of the opinion is ~~presumable~~, we think it goes too far. The rule adopted by this Court in *Sooy* against *the State*, 41 *N. J. Law* 394, is the settled law of this State." In the case of *Sooy* against *the State*, this Court discredited the principle enunciated by the learned Vice-Chancellor in his opinion in this cause. Quoting from that case, at page 400:

"But even conceding the efficacy of the knowledge of the witness under certain circumstances to bind the State, there is, in my judgment, yet another rule which condemns the excluded questions. This is that the notice must come to the agent while he is concerned for the principal and in the course of the same transaction, and if he have notice only by some other transaction foreign to the business in hand, this will not affect the principal."

Again, at page 301, we have:

"But if the attorney or an agent, ignorant at the time of his employment of the fact, with notice of which it is sought to charge the principal, would not have been apprised of that fact, I do not perceive why third parties should acquire any unexpected rights against the principal from

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the mere knowledge of an agent not communicated to him, even supposing the agent's duty to his principal required the disclosure to him of that knowledge."

With this for a test, how can the decree be sustained? Not a word was ever communicated to Kuehnle concerning the foreclosure or its object, and according to the evidence, he did not even know or inquire as to how he was securing title, as provided for in his agreement with Turner. He says he left that matter to his solicitor, and that he did so leave it and did rely upon the transaction being just and proper, is evidenced by the fact that he paid eighteen thousand dollars, which seems quite unlikely if he had thought that there was any ground for attack. The moral of the situation on Fitton's part in foreclosing the mortgage cannot be inquired into. *Mays Landing v. Fadden*, 49 Eq. 176.

We urge the learned Vice-Chancellor that whatever rights the respondent may have had, she lost by her lack of diligence, and in meeting this claim the learned Vice-Chancellor begins at page 286 by saying:

"The more serious question arises from the fact that the complainant had actual notice of the sale and did not employ counsel to look after her interests."

He then proceeds to justify her inaction and concludes that such inaction does not defeat her rights. The property was sold in 1897, and when the appellant took title he paid considerable cash and gave a bond and mortgage in the sum of ten thousand dollars, which was afterwards paid. Had the respondent been active and asserted her right against the appellant, he could have recouped himself against the mortgage, but the respondent did not act and did not make any claim, in consequence of which the appellant later paid the mortgage, and if the decree stands unreversed, he will be an absolute loser to the extent of the interest that the decree says the respondent has in the premises. It will be seen at once that unless Kuehnle was an active participant in

this alleged fraud, or knew of its existence, that it sounds harsh, and that the law will charge him with constructive knowledge of the fraud, and oblige him to bear a burden which he was not instrumental in creating; and when someone, in the light of such facts, asks a court of equity to impose such a burden, that court ought to be slow to do so, if it appear that the party seeking to impose that burden has, by lack of diligence, defeated the right of another to make himself whole.

Now, what are the facts? In her bill the respondent says that she did not know until after the death of her husband that the property had been sold, and she undertakes to support this allegation by her proof given on direct examination, when no one was present to represent the appellant. On page 57 she answers: "I didn't know it was really sold until after Mr. Turner died and we found those papers in his trunk. I thought maybe Mr. Kuehnle held a mortgage or something on it, you know. I didn't really know." *Ques.* "You never knew what the circumstances were, that it was actually sold, until you saw those papers?" *Ans.* "No, sir." The testimony thus given by the respondent will indicate, we think that she is not a truthful witness, and that whenever it becomes necessary to pass between her and Mr. Thompson upon any material question, her testimony cannot be relied upon. On cross-examination, at page 75, she admits that she sent her son to attend the sale and to report to her what had been done, and that the son did report to her that the property had been sold. She also admits, on the same page and page 76, that after the sale—the time she does not undertake to fix accurately—she called at Mr. Thompson's office and saw Mr. Cole, who told her that the property had been sold, and in response to her request that he (Cole) look after her interests, she was told that he could not do so. Mr. Kuehnle testifies, on page 111, that the respondent called on him about a month or two after the sale and asked him if he could do anything for her with reference to this property, and that he replied that he could not, that

it was out of his hands, that he had paid his money in good faith and paid more than the property was worth.

She had been served with a subpoena, she had seen the advertisement of sale, as appears by her testimony, and she says (on page 42) that she asked Lawyer Westcott if they could sell her part of the property, and he said they could sell. She does not deny but that she called on Kuehnle, as he testified. With all this information in her possession, she did nothing until November of 1904, her husband having died in March, at which latter date she found certain papers in his trunk which are marked as exhibits in the case. In November she says she placed the matter in the hands of Judge Westcott, who did nothing, and in March following, she placed the matter in the hands of her present solicitor, Mr. Styron. She seems to have entertained the idea before the property was sold that she had some interest that could not be affected, because she had not joined in the execution of any paper with her husband, and, with this in mind, she deliberately consulted Lawyer Westcott as to whether her interest could be sold, and he told her that it could. She interviewed Mr. Westcott several times, and finally sent her son to attend the sale and to report to her the result. She undertakes to disclaim knowledge that the property was actually sold by imputing to Mr. Thompson and to her deceased husband a statement to her that, notwithstanding the property was advertised to be sold, it would not be sold. It seems quite unlikely that Thompson would have deliberately lied to the respondent upon a subject about which it was so easy to obtain information, and we regard her story as highly improbable. It would seem, however, that she did not credit the statements made by her husband and Mr. Thompson, if they were made, and that she was suspicious, because she sent her son to the sale after being told the property would not be sold; and she pretends to say that, notwithstanding her son reported the property had been sold, she didn't believe him, and yet, not believing that it had been sold, she interviewed Cole,

who said it had been sold, and when she was so advised, she wanted Cole to look after her interest, and thereafter she sought out Kuehnle to ask him if he couldn't do something for her. It is quite evident, therefore, that her statement that it was not until after the death of her husband that she discovered the property was sold is a bald mis-statement. The time that has intervened between her knowledge of the sale of the property and the filing of her bill has witnessed the death of William Fitton and her husband, whose testimony may have been invaluable to the appellant. It has deprived the appellant of undertaking to show what we are justified in inferring, that Fitton agreed to aid Turner to perform his contract with Kuehnle by foreclosing the mortgage. If such be the fact and that agreement was solely within their breasts, certainly it is inequitable to enforce the decree advised by the learned Vice-Chancellor. Had the respondent filed a bill promptly upon notice of the sale of this property, or made inquiry, she could then have discovered what she now knows, that this property was sold for less than it was worth, that her dower was cut out, and if she had called upon Kuehnle or his solicitor, her husband or Fitton to disclose the true situation, it may have appeared that her husband was guilty of a fraud in the transaction without the knowledge of Kuehnle, in which event Kuehnle would have had time to have saved himself from the loss that he must now suffer if the decree is not reversed. Upon plain principles of equity, her laches should defeat her dower right.

It appears by the testimony of Attorney Westcott that Thompson told him that unless Mrs. Turner signed a deed to Kuehnle, that he would cause a foreclosure of the mortgage and bar her dower. While Thompson denies having made such a statement, it appears that Westcott communicated such a statement to the respondent. If he did, then she knew before the foreclosure was begun that a scheme was on foot to bar her dower, and that fact made it all the more important and necessary for her to act diligently as against Kuehnle

when she found that steps were afoot to accomplish the stated purpose.

No testimony was offered to show that the respondent had not realized her inchoate right of dower, or that she had not been compensated to the extent of her interest, or that under the will of her husband he had not provided for the value of her dower. In short, it must be presumed that her dower has not been satisfied, and that raises the question of where the presumption lies in a case of this character. As the effect of the foreclosure was to bar her dower, it will not be presumed that there was a fraudulent purpose on the part of the husband to defeat the value of her dower; rather should the presumption be in favor of good faith on the part of her husband, and that he has in some way satisfied her dower claim.

JOHN C. REED,
Solicitor of,
C. L. COLE,
Of Counsel with Appellant.

New Jersey Court of Errors and Appeals

Between

Louisa H. Turner,

Complt-Respondent

and

Louis Kuehnle,

Def't-Appellant.

On Appeal

from Chancery.

BRIEF FOR RESPONDENT.

GENERAL STATEMENT.

The respondent as widow of Richard H. Turner, deceased, claims dower ~~on~~ certain real estate of which her husband was seized during coverture, and which came to the appellant by conveyance in which she did not join, and who is now in possession thereof.

The appellant claims that her dower is barred by the proceedings of foreclosure and sale under a mortgage that was paramount to her husband's title, to which proceedings she was a party, and insists that by virtue of the deed from the Sheriff he holds the premises discharged of her inchoate right of dower.

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She sets out in her bill and challenges the binding effect upon her of the decree of foreclosure, because she says her rights as doweress were not put in issue in the suit or determined by the decree; that the foreclosure was

voluntary on the part of her husband and the appellant, who colluded in procuring the mortgage to be foreclosed and the premises sold thereunder for barely the amount of the mortgage and the interest and costs, which sum was less than one-sixth of the value of the land and less than one-fourth of the contract price actually paid by the appellant to the husband after the foreclosure sale; and all for the purpose of cutting off her inchoate right of dower and of
10 depriving her of her rights in the actual surplus.

The bill alleges that the appellant was the holder of a contract which entitled him to a conveyance of the land, free of all incumbrance, for the sum of \$18,000, which both he and the husband were willing, but unable to perform by reason of the refusal of respondent to release her inchoate right dower; that the appellant employed Judge Thompson, a solicitor in Chancery, to enforce, as against Turner, his rights under the contract, and who filed in the Court of Chancery in the name of the appellant a bill
20 against the husband Turner, setting out the contract and praying specific performance and afterwards filed a lis pendens and issued a subpoena which was served personally; that later the husband and the appellant arranged with one Fitton, the holder of the mortgage, then outstanding and past due, to allow the same to be foreclosed and for the use of his name as complainant in the foreclosure suit, that a bill was filed to foreclose the mortgage wherein Judge Thompson appeared as the Solicitor and the appellant, and Turner her husband, and
30 the respondent were defendants against, all of whom a decree pro confesso was taken and later a final decree upon which in due course, execution issued and a sale of the land made by the Sheriff to Thompson who bid \$4380, about the amount of the mortgage interest and costs, and who directed the Sheriff to make a deed to the appellant who then paid to the husband the price named in

the contract for a conveyance of the land "free of all incumbrance."

Appellant by his answer admitted the contract and the employment of Thompson to procure a deed under its terms; admitted the filing of the bill for specific performance, the foreclosure of the mortgage, his claim of title from the Sheriff and the payment to Turner of the purchase money. He denied knowledge or notice of the rights of respondent in the land, and denied that any fraud was committed by him personally or by his authority, with his knowledge or in his interest. He averred that he acted upon the advice of his counsel, Thompson, and claimed to be entitled to the character and protection of a bona fide purchaser for value and without notice, and by his answer insisted that the respondent was guilty of gross laches which disentitled her to relief

(See answer. Case pp. 28, 29.)

For full and accurate statement of facts proved on final hearing, see opinion, (Case p. 274.)

Four points were argued and relied on in the Court of Chancery by counsel for appellant.

1. Knowledge of fraud on the part of Thompson, solicitor, not imputable to Kuehnle.

2. No fraud in fact, so far as Thompson was concerned.

3. Defendant a bona fide purchaser for value and without notice.

4. Gross laches on the part of complaint to the distinct and positive injury of defendant.

It seems to us that on correct legal principles the answer, construed as a pleading, raises but one tenable defense-laches. A person who obtains the title or possession of another's property or money through the fraud of his agent cannot retain such possession by setting up that he

was himself innocent of the fraud and did not authorize it. The Vice-Chancellor acted on this principal in the recent case of Johnston vs. Reilly, 59 Atl. Rep. 1049, 1052. Citing 2 Pomeroy Eq. Juris. sec. 909, and refers to the rule as familiar and well settled.

Excepting in two instances referred to in the opinion (Case 279, bottom of page, and page 286, line 30), the evidence on final hearing was not controverted. The complainant testified to an interview with Thompson in
10 the course of which, as she swears, he made a certain statement to her (Case p. 44, line 26), and the witness Westcott related on the stand a conversation which he says he had with Thompson in the course of which Thompson made a certain statement to the witness. (Case pages 54 at top, and 66 at the bottom). Judge Thompson was given an opportunity on the stand to contradict this testimony, but his evidence on the subject extends no further than a mere denial, in the one instance, of any recollection of the interview, (case p. 103, line 27), and
20 in the other of any recollection of having used the language ascribed to him. (Case p. 106 at top.) Those statements were pertinent and if made were important in proving complainants case. It will be seen upon comparing the testimony of Thompson with that of complainant and Westcott that no real contradiction appears, and if the testimony were really conflicting, it having been made the subject of an express finding of fact by the Vice-Chancellor its effect here as undisputed testimony is settled by the findings of fact, under the rule recognized
30 in this court in Riddle vs. Clabby, 59 N. J. Eq., 537, 44 Atl. 859. Re-affirmed on re-argument 46 Atl. 782.

The facts being taken as undisputed, if it shall be found on this review that the Vice-Chancellor in taking the testimony and applying it to the case before him has violated no principle of law, the decree will be affirmed, unless, his deductions from the facts be found to be so

palpably erroneous as to present a very plain case of error or mistake.

The bill proceeds and the decree appealed from is based upon the theory that the Sheriff's deed was in legal effect the deed of Turner in fulfilment of his contract to convey, and was a valid conveyance of all of Turner's estate in the land. It was not the purpose of the bill to attack the Sheriff's sale except so far as it affected the inchoate right of dower of the respondent in the equity of redemption. The facts of this case closely resemble those in *Johns vs. 10 Norris*, 12 C. E. Gr. 485, decided in this court, and bring the case within the principle upon which that decision rests. Which was there declared to be founded upon the simple rule "that one who has fraudulently deprived another of his rights shall be compelled to make restitution." Pom. Eq. Jur. sec. 1053, 1 Perry on Trusts, sec. 1053. *Johnston vs. Reilly* (E. and App.) 57 Atl. 1049.

To the facts of the whole case the Vice-Chancellor applied the principle which finds expression in the maxim,²⁰ "Equity regards the substance and intent, not the form," which he embodied in the following conclusion: "The real transaction was in substance and effect a sale and conveyance by Turner to Kuehnle for \$18,000, of which the amount due on the mortgage was devoted to its payment and the balance paid to Turner. This balance of over \$14,000 constituted the real surplus money on the sale and should have been paid into Court, and the case must be treated accordingly." Numerous instances in which this maxim has been both quoted and applied³⁰ will be found collected in Note 6 on page 84, Am. & Eng. Euc. L. (2d ed.) Vol. 11. The late Chancellor McGill, in the case of *Stockton vs. Central R. R. Co.*, 5 Dick. Ch. Rep. 52, illustrated the doctrine contained in the maxim above quoted, in its application to a transaction consisting of a lease by the Central Railroad Company, of New

Jersey, to the Port Reading Railroad Co., (both New Jersey corporations), and a traffic agreement to which the two corporations just named and the Philadelphia and Reading Railroad Co., (a foreign corporation) were parties. The Chancellor denounced the transaction as being in substance a lease by the Central R. R. Co., of N. J., to the Phila. & Reading R. R. Co., and a device to evade the provisions of the Act of 1885 forbidding any railroad corporation to lease its road as franchises to any foreign corporation. He says (at page 76): "It must not be
10 thought that courts are powerless to strip off disguises that are designed to thwart the purposes of the law * * * Whenever such disguises are made apparent they can readily be disrobed. The difficulty is in showing the disguises, not in penetrating them when they appear."

The transaction with which this court now deals presents the form of an ordinary case of mortgage foreclosure to subject land to the payment of the debt to which it stands pledged as security, and a sale by the
20 Sheriff in aid of that object, such is its form; but when regard is had to the agreement existing between the owner of the land at the time of the Sheriff's sale and the purchaser at the sale, the desire of both the vendor and the vendee to perform the agreement, and nature of the obstacle that stood in the way of performance; the financial interest of the parties in the subject of the contract and their financial ability to redeem the mortgage and relieve the land from its burden, the great ~~and~~ disparity between the value of the land and the mortgage debt, and
30 the character of the relation existing between the vendor vendee, mortgagee and the solicitor employed in the transaction, a status differing from the form is disclosed. In fact the situation may be summed up in the words of Vice-Chancellor Kindersly in *Attorney-General vs. The Great Northern Railway Co.*, 1 Drew and S. 157, 6 Jur. (N. S.) 1006, 29 L. J. 794, as applied to the case before

him: "A more flimsy device when the particulars are once known it is impossible to imagine. It may succeed for a time in baffling persons who may have an interest in preventing its being done and has succeeded but it was a mere crafty contrivance to evade the requisitions of the law.' The evidence led the learned Vice-Chancellor who heard the cause in the Court of Chancery to observe, "the case in this respect is entirely transparent."

See *op. in Court of Chancery*, case p. 285.

A question raised below by counsel for the complainant 10 which the Vice-Chancellor did not deem necessary to refer to in reaching a conclusion on the merits relates to the effect of the decree of foreclosure, (case p. 255) as a bar to the rights of respondent in the equity of redemption. It was there and is here contended that the decree does not operate to conclude the respondent or her estate, because the bill (on its face) seeks the foreclosure of a mortgage in which she did not join, and which the bill alleges was created after her husband became seized. Inspection of the bill on the files of the Court, discloses 20 that her inchoate right of dower was paramount (by the bill. Case p. 245), to the lien of the mortgage set forth therein. The bill alleges that she claimed an inchoate right of dower in the mortgaged premises. Her default and the decree *pro confesso* entered against her operated as a confession that the claim she made and its character were truly set forth. She is neither mentioned in the final decree by name nor included by its terms. The final decree reads "defendant (singular) stand absolutely debarred, &c." We contend that the inchoate right of 30 dower of respondent was not put in issue or presented for determination by the pleading upon which the decree was founded. It cannot be inferred that the Chancellor intended to make a decree that could derive no support from the bill, but be that as it may the record of the suit discloses no decree of foreclosure made against the

respondent. It may, perhaps, be argued that a clerical error intervened in setting out in the foreclosure bill the date of the mortgage, but even so, the mistake, if such it was, was misleading and ought not to be permitted to prejudice the respondent in her substantial rights. *Ontario Bank vs. Schermerhorn*, 10 Paige Ch. 109 (Law Ed. 4, 907.) It is quite as probable as otherwise however in view of the subsequent management of that proceeding that an incorrect date was given to the mortgage in the 10 bill intentionally with a view of misleading respondent, and the decree, upon the facts disclosed upon the face of the record itself, should be adjudged not to bar the respondent nor to operate upon her estate in the land.

POINTS.

I.

The defense of bona fide purchaser for value and without notice is not available to the appellant.

1. He was a purchaser with notice.

He had actual notice of the rights of respondent in the 20 land before he acquired title or paid the purchase money.

(See Thompson's Direct Exam. Case p. 101.) Such notice deprives the purchaser of protection in equity.

Pomeroy Eq. Juris. secs. 745 and 753.

Williamson vs. Jones, (Sup. Ct. of Appeals, W. Va.) 43 W. Va., 532, 27 S. E. 411, 38, L. R. A. 694, 64 Am. St. Rep. 891.

Haughtwout vs. Murphy 22 N. J. Eq. 458.

Brinton vs. Scull, 55, N. J. Eq. 757.

Dean vs. Anderson, 34 N. J., Eq. 507.

30 *Wells vs. Rolason*, 17 N. J. Eq. 13.

2. Having received notice of the prior adverse rights of the respondent in the land the action of appellant in

completing the purchase was unconscientious and in bad faith, and with actual or imputed knowledge of the collusive and fraudulent character and purpose of the foreclosure..

Carey Vs. Houston R. R. Co., 52 Fed. 671.

Baldwin vs. New York, 45 Barb. (N. Y.) 369.

Detroit Savings Bank vs. Burrows, 34 Mich. 162.

Belt vs. Blackburn, 28 Md. 227, 235.

Assuming that the appellant was personally innocent of participation in or knowledge of the fraud perpetrated upon the respondent in his interest, he had notice of such suspicions, unusual and extraordinary circumstances as to make it his duty as an honest and prudent man to inquire and apply for further information concerning her rights in the property.

Tantum vs. Green,⁶ C. E. Gr. 364.

And he is chargeable in equity, with knowledge of all the facts of which inquiry, pursued along the course thus suggested, would have led to the discovery.

Hoy vs. Bramhall, 4 C. E. Gr. 563. 20

Raratan Water Co., vs. Veghte, 6 C. E. Gr. 423.

Moore vs. Kraemer, 5 Dick Ch. Rep. 776, 779 in this court, and ~~Valkenburg vs. Bonnet~~ 4 Stew. (*Vredenburg v. Bur* 229, Dewitt vs. Van Sickle 2 Stew. 209 (Van Fleet, V. C.)

Moore vs. Williamson, 17 Stew. 496, (McGill, C.)

Dougherty vs. Connelly, 16 Dick. Ch. R. 421, Emery V. C.

Schmidt vs. Opie, 6 Stew, 138, 141.

The defendant testified in his own behalf (case page 109³⁰ top) that he did not know at the time of the sale that the object of the sale was to cut off Mrs. Turner's dower.

While the statement seems incredible in itself, yet he admits that he was represented at the sale by counsel and his interest protected. A legitimate inference would be that he refrained from inquiry that he might not know the iniquity of the transaction, and he ought not to be permitted therefore to derive any advantage from his purchase, and he has no right to ask the respondent to bear the consequences of his own folly.

- 10 Williamson vs. Jones, *supra*.
Vredenberg vs. Bornet, *supra*.
Nichols vs. Peak, 1 Beas. 72.

3. In paying over the proceeds of the sale to the husband the appellant not only knowingly and deliberately aided him in perpetrating a fraud upon the rights of the respondent in the surplus money but he also committed a fraud upon the practice of the court regulating the disposition of surplus money arising from foreclosure sales.

- Hartshorne vs. Hartshorne, 2 N. J., Eq. 259.
Vreeland vs. Jacobus, 19 N. J. Eq., 231.
20 Beals vs. Stoim, 11 C. E. Gr. 372.
Wheeler vs. Kurtland, (E. and App.) 12 C. E. Gr. 534.

4. Appellant is chargeable, not only with knowledge of the facts actually communicated to him by his agent and solicitor in the transaction, but is also chargeable with constructive notice of the knowledge obtained by and information communicated to his agent and solicitor in the course of his employment.

- Pomeroy, Eq. Jur. sec. 666.
30 Sooy vs. State, 41 N. J. L. 394.
Willard vs. Denise, 5 Dick. Ch. 482.
Boice vs. Conover, 65 Atl. Rep. 191.

5. The appellant did not upon learning of his agent's fraud repudiate it, but he accepted the benefits of such fraudulent conduct and is conclusively presumed, therefore to have adopted and made the fraud his own and is chargeable with the instrumentalities used to accomplish the purpose.

Pomeroy, Eq. Jur. sec. 909.

Wolf vs. Pugh, 101 Ind. 293.

Burnett vs. Judson, 21 N. Y. 238.

Busch vs. Wilcox, 82 Mich. 336.

Ripley vs. Case, 86 Mich. 261.

10

In this country the doctrine is well settled that a plea of bona fide purchaser for value without notice is no defense, even in a court of equity, against a claim for dower.

2 Scrib Dower, 168.

Hunt vs. Reilly, 23 R. I. 471, 50 Atl. 833.

Mitchell vs. Farrish, 69 Md. 235, 14 Atl. 712.

Law vs. Long, 41 Ind. 586, 17 Am. Dig. (Cent. Ed.) 1046.

II.

20

As to the defense of laches.

The defense of laches, in bar of relief, can only be interposed where parties have slept upon their rights or have been negligent in asserting them. Dringer vs. Jewett, 43 N. J. Eq. 701, 13 Atl. 664. 2 *Penn. Eq. Jur. Decs.* 917, 965.

Respondent had no right of entry and could bring no suit to recover her dower until after the death of her husband. Wade vs. Miller, 3, Vr., 296, 304. Hunt vs. Reilly, supra, and sufficient time not having elapsed since the death of her husband to make the statute of limitations a bar (Conover vs. Wright 6 N. J. Eq. 613,) relief if denied, must be denied upon grounds purely equitable.

The defence of "laches" properly speaking relates to delay after the act is done, "Acquiescence relates to an action while the act is in progress."

The respondent was misled by the misrepresentations and other fraudulent conduct of appellant and his agent, and laches cannot therefore, be imputed to her for failure to assert rights of which she remained ignorant. 16 Cyc. 170 tit. "Equity" and cases cited. See also 19 Cent. Dig. tit. "Equity," sec. 237. She was lulled into
10 a feeling of security by the representation that her rights were not in danger and did not discover that the property had been in fact sold and her inchoate right of dower cut off until after the death of her husband. (Case pp. 44, 45.) when the "money statement" and letters (Exhibits C. 20, C. 21, C. 22, C. 23,) were found among his affects. This suit being based upon fraud the discovery of the fraud is the time from which the delay should be computed.

Estoppel by laches consists of a neglect to do something which one should do or to enforce a right at a
20 proper time; the respondent could enforce no right of dower during the lifetime of her husband; she has acted promptly since his death. *Hunt vs. Reilly, Williamson vs. Jones*, supra. In the case last cited the court said: "The mere silence of married women—their quiescence, for it is not acquiescence—does not bar them."

The controlling consideration in every such case is whether the delay has been without valid excuse. A person cannot be deprived of his remedy in equity on the ground of laches unless it appears that he had knowledge of his
30 rights. As one cannot be said to acquiesce in the performance of an act of which he is ignorant, so one cannot be said to neglect the prosecution of a remedy when he has no knowledge that his rights have been invaded, excepting, of course, his want of knowledge be not the result of culpable negligence.

Of the knowledge necessary to place a party in the position of negligently delaying his action, the Chancellor, in *Van Houten vs. Van Winkle*, 1 Dick. Ch. Rep. 380 says: 'After he has been informed of the facts and circumstances which apprise him of the wrong.'

The Court in *O'Neill vs. Hamill*, Beat. 618: "On her being fully apprised of her rights." In *Lindsey, Pet. Co., vs. Hurd*, L. R. 5 P. C. 221, it is described as "sufficient knowledge of the facts constituting her title to relief."

10

In *re Garrett* 31 Ch. Div. 1. On bill filed in 1883 to set aside releases executed in 1859 where complainants were not aware of their right to impeach the transaction until after 1879. Lord Justice Cotton held that want of knowledge of their rights excused delay in enforcing them. In *Savery vs. King*, 5 H.L. Cas. 666, the Court held (Lord Chancellor Cranworth) fourteen years after execution of a mortgage and eight or nine years after sale thereunder not unreasonable delay, the complainant having considered the transaction binding upon him and being ignorant of his right to question it. In these cases last cited, the excuses for delay were that the complainants were misled by the defendants, though in both cases the complainants participated in the execution of the papers which they sought to have set aside, and must therefore have had knowledge of the facts. See also *Da Buesche vs. Alt*, 8 Ch. Div. 286, 314, to the same effect, and *Hall vs. Otterson*, 7 Dick. Ch. R. 522 where the doctrine is discussed and applied by V. C. Green. Other cases in this state illustrating the principle are *Wheaton vs. Crane*, 12 C. E. Gr. 368, 371; *Buckingham vs. Ludlam*, 10 Stew. Eq. 137, 148; *Hart vs. Kennedy* 2 Dick, Ch. R. 51.

The respondent had no defense to the foreclosure suit even if she had known in time of its progress, the only

right she could assert was to redeem the mortgage which was a lien upon the land paramount to her inchoate interest and this she could do only by paying the mortgage in full. *Merselis vs. Van Riper*, 10 Dick. Ch. R. 621.

Nor was she bound to intervene to prevent confirmation, assuming that she had actual knowledge of the sale. She had the right to presume that her husband would protect his estate for the purposes of his covenant to convey, and she had the further right to presume that in the event
10 of a sale such sale would be honestly conducted and the property would bring its fair value, and that the surplus would be paid into Court and her rights therein protected. She was not called upon to suspect, much less to presume that a fraud was being practiced upon her. (See opinion on Demurrer 62 Atl. 367.) In fact she was without standing to attack confirmation of the sale for the reason that the person who bid the property in at the sale was one whose relations with the husband constituted him the representative and in equity the trustee
20 of the husband, (*Brown vs. Bulkley* 1 McCart. 451, 457) and the only change wrought by the sale was to shift the legal title from the husband to his trustee, and, inasmuch as by force of the statute an estate held to the use of a husband is subject to the wife's dower rights, a
30 sufficient answer to any objection to confirmation from her would have been that she was not injured by it.

It may well be said on this branch of the case of the defense of laches put forward by the appellant, that it is hardly compatible with the principles upon which a
30 Court of Equity administered justice to hunt up some technical rule to protect a party against the consequences of his own fraud. *Baldwin vs. Craupfield* 4 Halst. 894.

III.

As was observed by the Vice-Chancellor in dealing with the demurrer to the bill (62 Atl. at p. 332.) 'A

party who has perpetrated a fraud upon another through the forms of law, or otherwise, cannot be permitted to set up, as a defense to his fraud, that the defrauded party ought to have discovered the fraud and protected himself or herself against it at the time. It does not alter the character or effect of the fraud that it was successful, and that the defrauded party might have protected himself or herself against it, and failed, either through oversight, positive neglect, or otherwise, to do so, and in my judgment no estoppel arises out of such failure."

See Prevost v. Gratz, 6
481, 5 L. Ed. 211, 213.
Widder v. Houston,
330, 337. Equity 7.

10

The agent and solicitor of the appellant actively and designedly misled the respondent to her injury in his interest; he made respondent the promise that put her vigilance to sleep, and an appeal to the equitable denial of the court does not lie in his mouth, for he cannot complain if she remained inactive.

Hall vs. Otterson 7 Dick Ch. 522.

The rule is recognized and accurately defined by Professor Pomeroy (2 Pom. Eq. Jur. sec. 804) as resting upon the principle declared in the leading case of Picard 20 vs. Sears, 6 A. & E. 469, 474, followed by an unbroken line of decisions, as covering all phases and applications of the doctrine. See also Kerr on Fraud and Mistake p. 81 for statement of the rule.

Says Lord Cranworth, in 1 De Gex. M. & G. 660 at p. 710. "No man can complain when another has too implicitly relied on the truth of what he has himself stated."

Lord Justice Knight-Bruce in 2 De Gex. M. & G. 339 at 346: "No man can be heard to say that he is to be assumed not to have spoken the truth."

"Nothing can be plainer, I take it, on the authorities in Equity, than that the effect of false representation is

not got rid of on the ground that the person to whom it was made has been guilty of negligence." Sir George Jessell in *Redgrave vs. Hurd* 20 Ch. Div. 1 at 13, 14.

He has no right to rely upon the intelligent action of the victim of his fraud to discover it, was the principle announced and applied in *Rawlins vs. Wickham*, decided first by Sir John Stewart, Vice-Chancellor, as reported in a note to the case on appeal in 28 Law J. Eq. 188, and affirmed by the Lords Justices of Appeal (3 De Gex. & J. 10 304.)

"What I induce my neighbor to regard as true, is true as between us, if he has been misled by my asseverations," *Kirk vs. Hamilton* 102 U. S. 68, 72 L. Ed. 79. (Quoted in *Elec. Light &c. Co. vs. Bristol Gas, &c. Co.*, 99 Tenn. 371, 42 S. W. 19.)

An estoppel in pais is never allowed to be used as an instrument of fraud, but only to prevent injustice, and it is therefore essential that the party claiming the benefit of the estoppel must have proceeded in good faith. *McCormick vs. Stephany*, 61 N. J. Eq. 208; *Stanford vs. Lyon* 37 N. J. Eq. 94; 16 Cyc. 747, tit "Estoppel" and authorities there cited to sustain the text. The conduct of one which has been induced by the misrepresentation or fraud of another cannot be relied on by the latter as an estoppel.

Dangerfield vs. Atchison &c., R. Co., 62 Kan. 85,, 61 Pac. 405.

The rule that estoppel must possess an element of fraud does not mean that there should be actual fraudulent intent to deceive. (*Kuhl vs. Jersey City* 23 N. J. Eq. 84) but only that the case should be one in which the circumstances and conduct would render it a fraud for a party to deny what he had previously induced another to believe and take action upon. *Anderson vs. Hubble* 93 Ind.

570; Stevens vs. Dennett, 51 N. H. 324; Blair vs. Wait 69 N. Y. 113; Pomeroy Eq. Jur. secs. 803 and 806. If the effort to deny ought not, in good conscience, to be successful, then emerges the moral wrong which the court denominates fraud. Anderson vs. Hubble, supra. Wishard vs. McNutt 85 Iowa 574, 52 N. W. 484.

IV.

The equitable defense of laches is not open to one who with knowledge of his agents fraud has accepted and is claiming the very fruits of that fraud. This rule is too firmly intrenched in our legal system to be open to controversy or doubt. It was said in Westbrook vs. Guderian 3 Tex. Civ. App. 406, 22 S. W. 59: "Equitable estoppel rests upon the fundamental principles of justice and fair dealings; its creed is justice between man and man. Its objects are not punishment; its penalties are not penal. Its mission is to protect the innocent and the blameless."

V.

One of the reasons assigned for reversal is that by the decree leave is given respondent to apply to the court by petition for an order directing the payment to her of a sum in gross in lien of her dower. It is enough to say that ample justification of that feature of the decree will be found in the practice of the Court of Chancery relating to partition and by the express authority of the sixtieth section of the act respecting the Court of Chancery as revised in 1902. (P. L. 1902 p. 531.)

*Loach vs. Loach as to
S.C. in the explanation to
Report 66 at 590.*

Summarizing, we insist that the law as applied to the facts in the record justifies the conclusion: 1. That the foreclosure of the mortgage was by arrangement between Turner and Fitton with the knowledge of the appellant and the active participation of his agent and Solicitor, with the

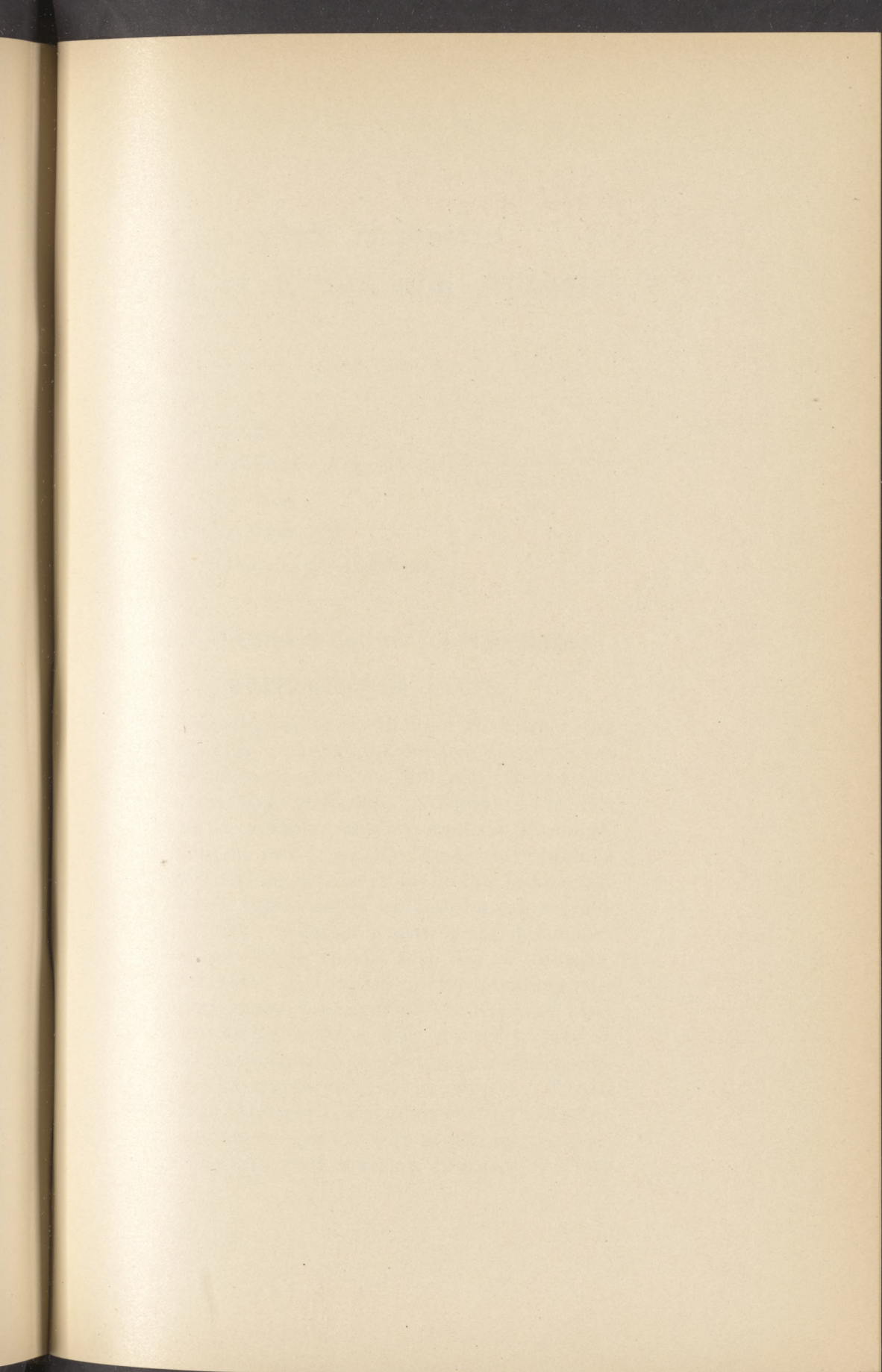
express design of cutting of the inchoate right of dower of the respondent. 2. The appellant with actual knowledge of respondent's rights in the surplus money paid over to the husband the entire proceeds of sale with the express design of enabling the husband to defeat those rights. 3. The respondent promptly asserted and diligently prosecuted her remedy within a reasonable time after the discovery of the fraud and practiced upon her.

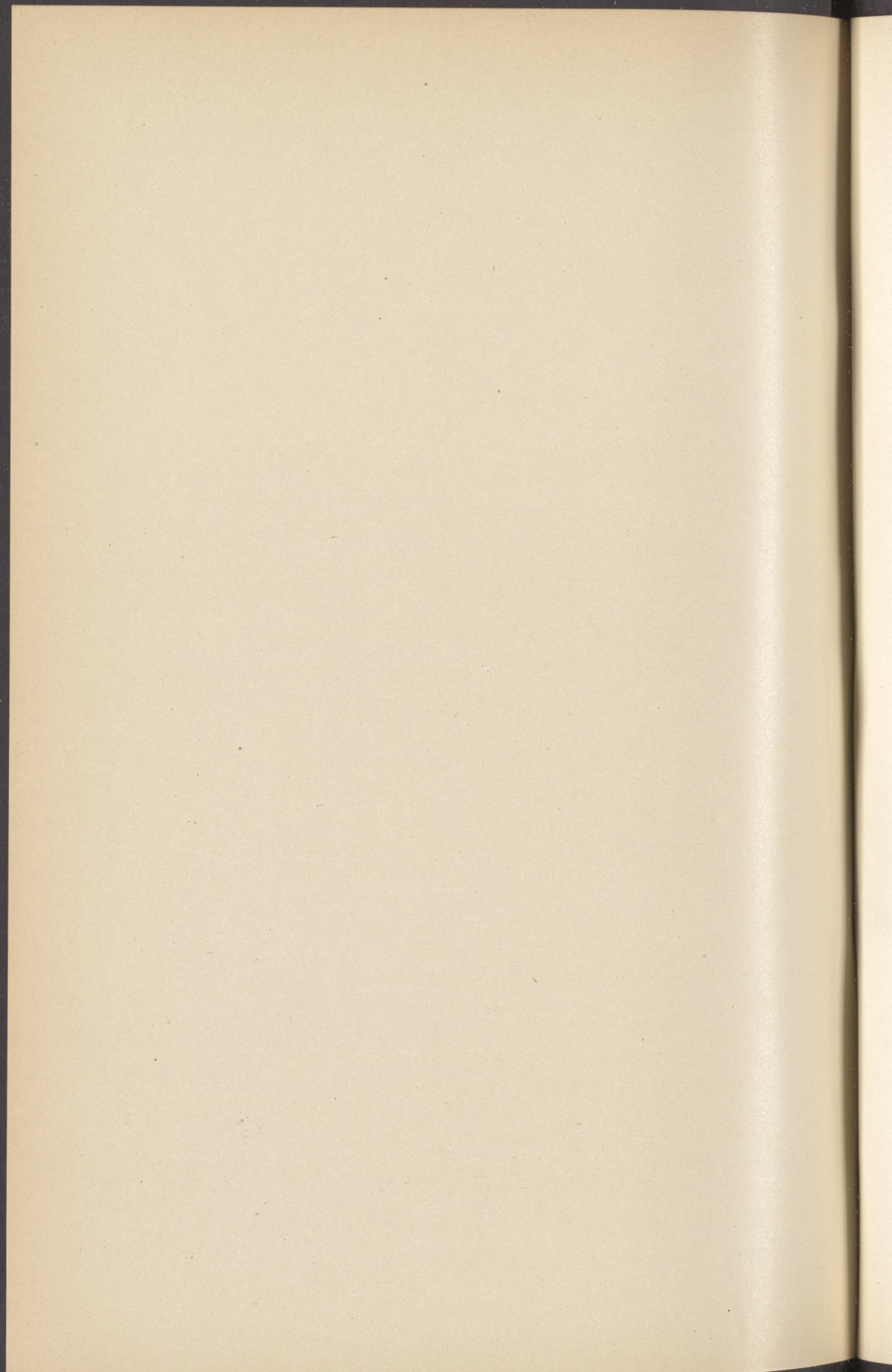
4. That the appellant having knowledge of and participating in the fraud which his agent practiced upon the respondent and still retaining and claiming the avails of such fraud, is not entitled to protection as a purchaser in good faith and without notice and is precluded from setting up and insisting upon any equitable defense.

We insist that the conclusions reached by the Vice-Chancellor both upon the law and the facts are correct and unavoidable and the decree of the Court of Chancery should be affirmed.

U. G. STYRON,

of Counsel with Respondent.





NEW JERSEY
Court of Errors and Appeals.

BETWEEN

LOUISE H. TURNER,

(Complainant) Respondent,

and

LOUIS KUEHNLE,

(Defendant) Appellant.

*On Appeal from
Decree in Chan-
cery.*

Brief of Gilbert Collins for Appellant.

STATEMENT OF FACTS.

On August 31st, 1893, Richard H. Turner, the husband of the complainant, became seized in fee of the lands described in the bill, subject to a pre-existing mortgage of \$4,000. On February 12, 1895, he rented the premises for ten years from March 25, 1895, with an option to the lessee to purchase at \$18,000 within one year from the date last named. The lessee's rights passed by assignment on February 17, 1897, to Louis Kuehnle, the defendant, who had previously on the 26th day of January, 1896, purchased an interest in the premises at a Sheriff's sale under lien claims. Mr. Kuehnle, after he became assignee of the lease, desired to exercise the option to purchase, and consulted Joseph Thompson, a practicing lawyer, on the subject. Turner was willing to convey in accordance with the option, but was unable to get his wife to join in the deed, and on March 10, 1896, a bill in chancery was filed

by Mr. Thompson as solicitor to compel specific performance of the contract. Subpoenas to answer were issued and notice of lis pendens was filed, but the cause was never brought to hearing.

About seven months after the filing of the bill for specific performance, a Mr. Fitton, of Atlantic City, who was the holder of the mortgage upon the premises, came to Mr. Thompson's office and desired him to foreclose it (p. 102, l. 3). Mr. Thompson did so, and on the sixth day of February, 1897, went with Mr. Fitton to the Sheriff's sale and bid in the property in his own name, in behalf of Mr. Fitton, for an amount sufficient to pay the mortgage, interest and costs. A few days afterwards, Messrs. Fitton and Turner called on Mr. Thompson, suggesting that Kuehnle purchase the property on the terms of the contract-option (p. 102, l. 25). Mr. Thompson saw Kuehnle, and an agreement was reached that he should take the property on those terms, he being paid his costs and expenses in the suit for specific performance. The bid in the foreclosure sale was assigned to Kuehnle, who took title from the Sheriff. Kuehnle gave a mortgage on the property to Turner for \$10,000, and paid the balance of the purchase money, as shown by the statement marked Ex. C 20. Kuehnle remained in possession of the property, spent about \$25,000 in improvements, and on June 20th, 1898, paid the mortgage and it was satisfied of record (Ex. C 7, p. 133). Turner died on March 17, 1904.

The bill in this case, filed on March 10, 1905, was to have dower declared out of the premises, on the theory that the mortgage sale was made in fraud of complainant. The learned Vice-Chancellor in his opinion (p. 274) so found, and a decree was advised (p. 268) declaring that the foreclosure sale

was ineffective to bar the complainant's inchoate right of dower; that the value of the land at the time of foreclosure was \$18,000, and that complainant was entitled to dower in that amount, less the mortgage of \$4,000. and ordering that the defendant give an annuity to complainant equal to the interest on \$4,666.66 at 6 per cent. From this decree the defendant appeals.

I.

The evidence did not warrant the finding of the Vice-Chancellor that the sale of the premises under foreclosure was conducted in fraud of Mrs. Turner, the complainant.

In order to sustain the decree it is necessary that this Court should find that the foreclosure was carried through in pursuance of a scheme to deceive the complainant as to her rights and defraud her. The appellant bases his title on the foreclosure sale, and, of course, the presumption with which the Court must start is, that the sale was valid and innocent. It is necessary for the stability of titles and rights in land that this presumption should exist.

The evidence for the complainant was to the effect that Mr. Thompson had another lawyer, John S. Westcott, approach her with a deed to obtain her signature and thus bar her inchoate right of dower. Mr. Westcott testifies (p. 53) that he saw her and advised her not to sign the deed, and that he accordingly reported to Mr. Thompson that she would not sign it. He says (p. 54) that he "thinks" Judge Thompson then said he would give \$200 or \$300, as they could foreclose for about the same amount of money a mortgage that was upon the property. Mr. Westcott again saw Mrs. Turner. He says

(page 70, l 1.) that he "imagines" he then referred to what Judge Thompson had told him. She refused to sign the deed upon those terms.

Mrs. Turner, after these conversations with Mr. Westcott, was served, personally, with subpoena in foreclosure on October 15th, 1906 (p. 42, l. 10). She testifies (p. 42, l. 17), that she does not remember the Sheriff bringing the papers to her, but that all the papers that were brought there by the Sheriff were sent to her husband in accordance with prior instructions. But the strong probability is that Mr. Westcott had already told her of the purpose to foreclose, and this probability is made a certainty when she says (p. 42, l. 43) that she asked Mr. Westcott if they could sell her part of the property, and he said that they could.

She testifies (p. 44, l. 20) that she saw Mr. Thompson, and said, "Mr. Thompson, I understand, or I seen it in the papers, where the Music Hall property is to be sold," and I said, "You know Mr. Turner is doing bad; has left home, is doing bad." And I said, "Don't let him sell it, Mr. Thompson," and he said, "Why, Mrs. Turner, don't you worry anything about it; your property will not be sold by the Sheriff."

It is upon this alleged statement alone that the Complainant rests her case of fraud.

Mr. Thompson, in his testimony (p. 103, l. 28), says that he has no recollection of ever telling Mr. Westcott that if Mrs. Turner did not sign the deed that they would bar her dower by foreclosure. He says (p. 106, l. 1) that he did not tell Mrs. Turner that she need not worry about the property, and that it would not be sold by the Sheriff; that he has no recollection of ever having had any conversation with her in regard to the sale.

The basis of an action dependent upon fraud is that the person prosecuting the action was deceived by the fraud to his injury. If he did not rely upon the fraudulent statement he cannot sustain an action based upon it.

PROF. POMEROY lays down the rule in these words :

“Another element of a fraudulent misrepresentation, without which there can be no remedy, legal or equitable, is, that it must be relied upon by the party to whom it is made, and must be an immediate cause of his conduct which alters his legal relations. Unless an untrue statement is believed and acted upon, it can occasion no legal injury.”

Pomeroy's Equity Jurisprudence, Vol. 2,
Sec. 890.

VAN FLEET, V. C., declares that : “a false representation to be the proper subject of judicial action or cognizance, must be cause of legal wrong or injury, and no such result can follow where the representation is made to a person who knows it to be false, for in such a case he cannot be deceived by it, and if he acts on it, his act will not be the result of deception, but of his own folly.”

Parker v. Hayes, 12. Stew., 469-476.

Apply these tests to the facts in this case:

Mrs. Turner's only claim is upon the alleged statement of Mr. Thompson that the property would not be sold. The strong probability is that Mr. Thompson never misrepresented to her as she testified. But even if he had done so the fact remains that she did not actor refrain from acting independence upon his statement. Her testimony is to the effect that

she saw him prior to the sale, but it is clear that she did not depend upon his statement. She said indeed on being recalled (p. 57, l. 1), that she didn't really know that the property was sold until after Mr. Turner died and she found the papers in his trunk; but the untruth of this statement is shown by the cross-examination (p. 73). She sent her son to the sale (p. 75, l. 15) to see whether the property was to be sold or not. He came back and reported that it had been sold. Subsequently she says she came down to Mr. Thompson's office and saw Mr. Cole there (p. 75, l. 23), and that Mr. Cole told her that the property had been sold, and that her name was in the deed; she says that she asked Mr. Cole to look after her interest in the property and he told her that he could not do so.

Evidently this illiterate woman has had it strongly impressed upon her mind that she must claim not to have known of the sale at the time it occurred; for although she had been served, personally, with a subpoena in the case (p. 42, l. 10) (p. 44, l. 12), had seen the sale advertised in the papers (p. 74, l. 18), had sent her son to the advertised place of sale to find out if the property would be sold (p. 75, l. 18); and he had reported to her that the property was sold, and Mr. Cole had so told her, she still says (p. 76, l. 18), that she did not think it was sold. Such a story is unbelievable.

In order to give her a standing in this cause, it was necessary to show that relying upon Mr. Thompson's statement she remained quiescent and allowed some of her rights to lapse. Her own proof is to the contrary and shows conclusively that she did not depend upon his statements; but consulted Mr. Westcott, and sent her son to the sale, and subsequently went to see Mr. Cole. There is nothing to support a case of fraud.

The Vice-Chancellor has made Mr. Kuehnle a trustee for Mrs. Turner to the amount of her dower interest. In order to create such a resulting trust it is necessary that the trustee should owe some duty to the *cestui que trust*. It is obvious that Mr. Kuehnle owed Mrs. Turner no duty. It is equally clear that Mr. Thompson, who the Vice-Chancellor assumes was Kuehnle's agent, owed her no duty. He was not her attorney; he had no business relationship with her. Her attempt to show that he misled her into believing that there would be no sale, ought not to be taken as any ground for legal action. It would be very dangerous to base a trust on a statement of the complainant that eight years ago a lawyer said so and so to her. To the risk of her misunderstanding at the time, is added the risk of her misremembering since. The complainant has waited until the two most material witnesses to the transaction are dead and the third, a busy lawyer, has had eight years in which to forget the details. It is contrary to public policy that a legal record title should be disturbed upon such slight grounds.

II.

The appellant is an innocent purchaser for value and without notice, and consequently the property in his hands cannot be held for dower.

The evidence in the case clearly shows that Mr. Kuehnle was no party to any scheme of fraud, even if one existed. He paid \$18,000, full value for the property; he was not a purchaser at the foreclosure sale, and only took it after Mr. Thompson had told him that the purchaser was ready to fulfill the option under the lease.

The equitable rule, that where one of two innocent persons must suffer, an innocent purchaser for value and without notice of the fraud cannot be attacked as to his title, applies to this case.

“It is a maxim that where there is equal
 “equity the law must prevail, and it is
 “on this account that a court of equity
 “constantly refuses to interfere, either
 “for relief or discovery, against a bona
 “fide purchaser of the legal estate, for
 “a valuable consideration, without notice
 “of the adverse title.”

*Scudder, J., in Verner v. Betz, 1 Dick.,
 256, 269.*

The only possible theory upon which the asserted fraud on Mrs. Turner could be traced to Kuehnle is that Mr. Thompson was his agent in the perpetration of the fraud, and that Kuehnle was in receipt of the fruits of the fraud. Kuehnle received no benefit from it, for the reason that he paid full consideration for the property. Furthermore, Mr. Thompson was not the agent of Kuehnle in this transaction. He had previously been his solicitor, but it is well settled law that the employment of a lawyer in one case does not make him the agent of his client in other cases—his agency only extends to the extent of his employment in carrying out the necessary details of the case entrusted to him.

In order to give the client constructive notice, it is necessary that the attorney gain the knowledge while engaged in his client's business.

Cyc., Vol. 4, p. 934, and cases cited.

In the case of *Fidelity Trust Co. vs. Baker*, 15 *Dick.*, 170, an attorney fraudulently held back money given him for payment of a mortgage.

Subsequently he fraudulently obtained a certified check and paid the mortgage. It was contended that his client was charged with constructive notice by virtue of the relation of solicitor and client.

Vice Chancellor Emery said (page 177): "Constructive notice to her (the client) through her solicitor can only extend, to information received by Byram in the course of the transaction in which she employed him as her solicitor, which information the law presumes that the solicitor in the course of the business communicated to his client. It would, as it seems to me, be an unauthorized and unjust extension of the rule in question to charge Mrs. Baker, merely by reason of the employment of a solicitor to pay over her money for a special purpose, with constructive knowledge that the solicitor subsequently misappropriated her money and afterwards fraudulently procured money from others to pay his debts to her."

The true rule in regard to notice to the principal has been laid down by this Court:

"The notice must come to the agent while he is concerned for the principal, and in the course of the same transaction, and if he have notice only by some other transaction, foreign to the business in hand, this will not affect the principal." * * *

The rule is "Whenever the principal, if acting in the matter himself, would have received the notice, the knowledge of his agent should be chargeable to him."

Dixon, J., in Sooy v. State, 12 Vr., 394, 400.

In Bond vs. Conover, 65 Atl. Rep., 191, this doctrine was declared to be the correct one by this Court to apply to the relation of attorney and client.

The fact that Mr. Thompson had been employed

by Kuehnle to institute proceedings for specific performance, did not make him Kuehnle's representative in the foreclosure proceedings. In those Kuehnle's interests are adverse to those of Mr. Thompson's clients. Mr. Thompson had to see Kuehnle and obtain his assent to the carrying through of the obsolete contract of sale after the proceedings were over. In this aspect of the case Kuehnle was fully justified in relying on the deserved reputation at the bar of Judge Thompson.

III.

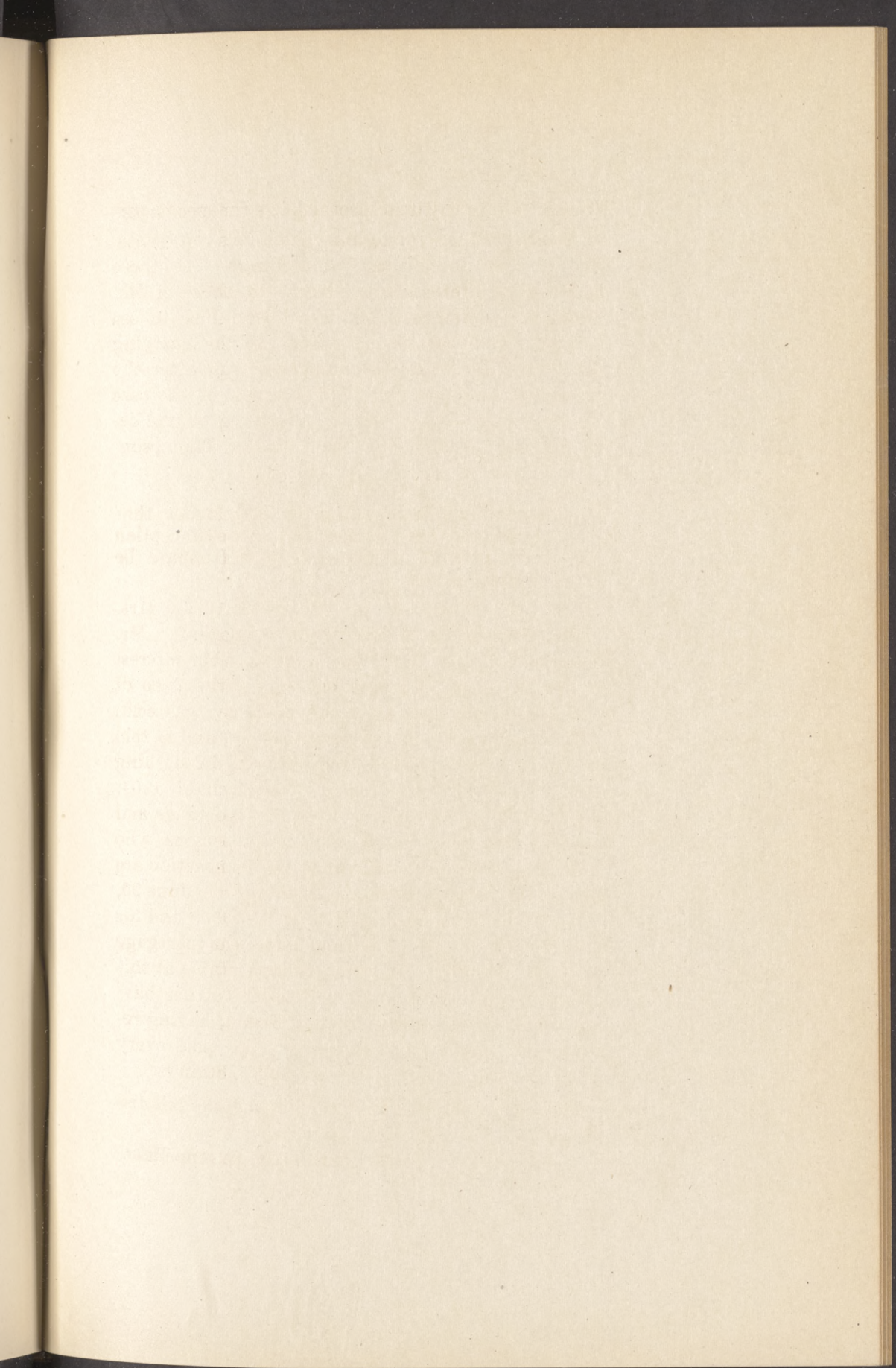
The complainant was guilty of such laches, that even had there been fraud in the conception and making of the sale, relief should be denied to her.

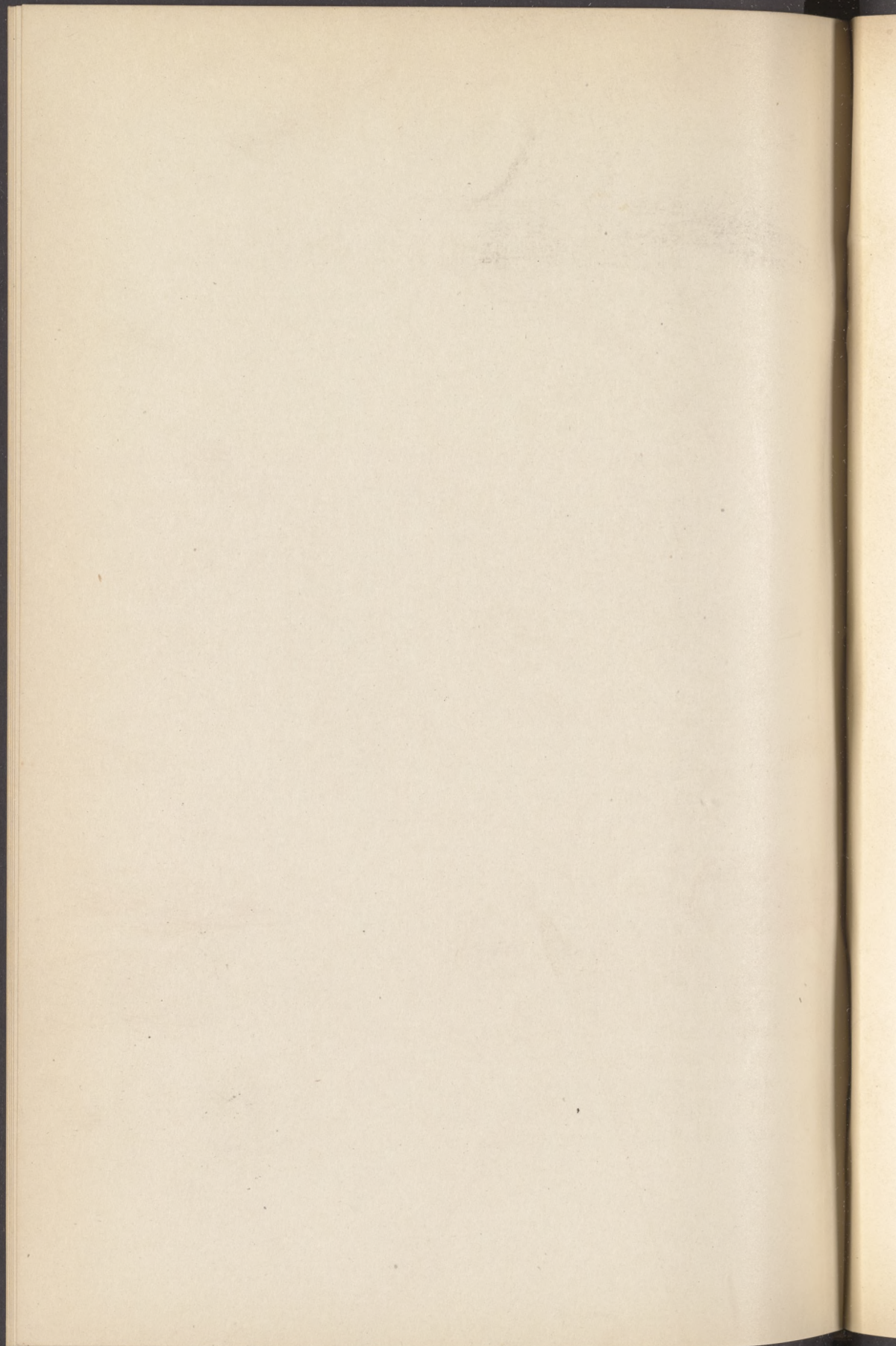
The sale was made in February, 1897. Mrs. Turner saw the notice of sale in the papers. Mr. Westcott told her that they could sell her interest in the property; she sent her son to the place of sale, and he reported that the property was sold; she saw Mr. Cole within a month or so, and he told her that her interest was sold, but she did nothing until after Mr. Turner's death on March 17, 1904. She waited until the holder of the mortgage and her husband were dead. The only persons who could give details in regard to the transaction are gone. In the meantime Mr. Kuehnle on June 20, 1898, satisfied the mortgage for \$10,000, and his relief which he could have had before the mortgage was paid, is gone. It would be inequitable at this late date to interfere with his title, the owner having been no party to the alleged fraud, having received no benefit from it and having paid every penny that the property was worth to obtain it.

The decree should be reversed and the bill dismissed.

GILBERT COLLINS,

Of Counsel with Appellant.





IN CHANCERY OF NEW JERSEY.

Between

LOUISA H. TURNER,

Complainant,

and

LOUIS KUEHNLE,

Defendant.

BILL OF COM-
PLAINT.

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*To his Honor, William J. Magic, Chancellor of the State
of New Jersey:*

The bill of complaint of Louisa H. Turner, of Atlantic City, in the county of Atlantic and State of New Jersey, respectfully shows unto your Honor:

1. That your oratrix is the widow of Richard H. Turner, to whom she was lawfully married on the day of eighteen hundred and seventy-one, at Atlantic City aforesaid, by the Honorable John J. Gardner, then Mayor of said city, and from the date of their marriage your oratrix and her husband lived together as husband and wife, continuously, at Atlantic City aforesaid, until some time in the year eighteen hundred and ninety-four, when the said Richard H. Turner deserted your oratrix and his family and left his home, in Atlantic City, and thereafter made his home in the city

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of Philadelphia, in the State of Pennsylvania; that after his abandonment of your oratrix he visited his family only at infrequent and irregular intervals, and such visits were of short duration; that a few days prior to March seventeenth, nineteen hundred and four, when stricken with a fatal illness, he came home to die, and that his death occurred at his home, in Atlantic City, on the date last aforesaid.

- 10 2. That the said Richard H. Turner was seized in his lifetime, and during the coverture of your oratrix, in fee simple of two certain lots of land, situate in Atlantic City aforesaid, in the county of Atlantic and State of New Jersey, described as follows:

20 Beginning at a corner of a lot of ground occupied by the National Hotel, on the north side of Atlantic avenue, being the southwest corner of said lot whereon said National Hotel is erected, and running thence along the north side of Atlantic avenue, on a course of south sixty-seven degrees west, fifty feet to a peg in the boundary line of lands of William Moore and Daniel Morris; thence along said line or boundary, in a course of north twenty-five degrees ten minutes west, a distance of one hundred and sixty feet; thence on a course of north sixty-seven degrees east, a distance of fifty-six feet to a peg at the southwest corner of the lot of the said National Hotel; thence along the line of said lot, on a course of south twenty-three degrees east, one hundred and sixty feet to the place of beginning, be the same more or less. Also—

- 30 Beginning in the northwest corner of Mears' lot of ground one hundred and sixty feet north from the north side of Atlantic avenue and running thence in continuation of the westerly line of said lot of ground northwardly one hundred feet; thence eastwardly and parallel with Atlantic avenue fifty feet; thence southwardly one hundred feet to the northeast corner of said lot of ground of Lewis T. Mears, and thence westwardly by the north-

wardly line of lot of said Mears, fifty feet more or less to the beginning, by virtue of a deed of conveyance made and executed and duly acknowledged and delivered by Samuel D. Hoffman, which deed bears date on the thirty-first day of August, eighteen hundred and ninety-three, and was duly recorded on the sixth day of September in the year last aforesaid, in the office of the Clerk of the county of Atlantic, at Mays Landing, in Book No. 175 of Deeds of Real Estate, page 480, etc., as in and by the said deed of conveyance, when produced, or the record thereof, or a certified copy of the same now in the hands of your oratrix, and ready to be produced under the authority and direction of this Honorable Court, will more fully and at large appear. 10

3. That at or about the time of the conveyance above set forth, the said Samuel D. Hoffman, as your orator is informed and believes, pretended to convey in mortgage the land above described unto William Allen and Samuel Allen to secure the payment of four (4) thousand dollars within one year from the date thereof, with interest on said amount, payable semi-annually at the rate of six per cent, per annum, which said mortgage was registered in the office of the Clerk of Atlantic County aforesaid on the sixth day of September, eighteen hundred and ninety-three, in Book No. 35 of Mortgages, page 161, etc., and which was afterwards assigned by the said William Allen and Samuel Allen to William Fitton, by deed dated September twelfth, eighteen hundred and ninety-four, and recorded in said Clerk's office in Book No. 8 of Assignments of Mortgage, page 35, etc., as appears by the record of said mortgage and assignment respectively, but your oratrix avers and expressly charges that said mortgage, if at all a lien upon the land above described, such lien was subsequent to the seizin of the said Richard H. Turner, and during the coverture of your oratrix and subject to her inchoate right of dower therein. 20 30

4. That the said Richard H. Turner being so as aforesaid seized of the land and real estate above described, demised the same by lease or agreement, in writing and under seal, unto one John Wheeler for a term of ten years from the twenty-fifth day of March, eighteen hundred and ninety-five, at the annual rent of twelve hundred dollars, payable in monthly instalments of one hundred dollars each, and that by virtue of said lease or agreement the said John Wheeler entered into possession of said land and real estate as the tenant of the said Turner for the term aforesaid, which said lease or agreement bears date on the twelfth day of February, eighteen hundred and ninety-five, and is of record in said County Clerk's office in Book No. 5 of Miscellaneous Records, page 369, etc.

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5. That the said lease or agreement between the said Turner and the said Wheeler contained, amongst other covenants and provisions, a covenant and agreement on the part of said Turner to sell and convey the land and real estate above described unto the said John Wheeler or to his assigns, free from all encumbrances, at any time within one year from the twenty-fifth day of March, eighteen hundred and ninety-five, upon request and upon the payment to said Turner of eighteen thousand dollars in the manner set forth in said agreement, as and for the consideration of said conveyance and the purchase price of the land so agreed to be conveyed; that after the execution and delivery of the said lease or agreement, to wit, on or about the twenty-ninth day of March, eighteen hundred and ninety-five, the said John Wheeler, by assignment in writing and under seal, assigned, transferred and set over unto The Otto Brewing Company, a corporation, its successors or assigns, all his right, title, interest and estate in and to the said lease or agreement and the term thereby granted and the covenants and provisions therein contained, and thereupon let the said The Otto Huber Brewing Company, his assignee, into possession of

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said land and real estate thereunder and the said assignee entered in and upon and took possession of said land by virtue of said lease or agreement and the said assignment thereof as the tenant of Turner for the term thereby granted; and afterwards, to wit, on or about the thirteenth day of June, eighteen hundred and ninety-five, he, the said John Wheeler, by writing under his hand and seal, bargained and sold by way of mortgage unto the said The Otto Huber Brewing Company, its successors and assigns, certain goods and chattels particularly set out in said mortgage, then owned by him and upon the leased premises. 10

6. That afterwards, to wit, in the month of January, eighteen hundred and ninety-six, certain judgments on mechanics' liens were entered in the Atlantic County Circuit Court in favor of John D. Boyd, trading as John Boyd and Company, and others, against Nicholas Loritz, builder, and John Wheeler and The Otto Huber Brewing Company, as owners, for debts contracted and owing for extensive and valuable improvements of a permanent character, erected and made by the said Wheeler and the said The Otto Huber Brewing Company upon the leased lands, and such proceedings were had thereon that executions issued out of said Court on said judgments, directed to the Sheriff of the county of Atlantic, commanding him to make the amount of said judgments out of the land hereinabove described, and that said Sheriff, by virtue of said writs of executions, advertised said premises for sale on the eighteenth day of January, eighteen hundred and ninety-six, on the premises, and Louis Kuehnle being the highest bidder therefor at said sale the same were on said day struck off and sold to him by the said Sheriff, who executed and delivered to the said Louis Kuehnle a bill of sale for the purchase; all of which will appear by the records of said Court, and the bill of sale, when produced, or certified copies of said records and bill of sale. 20 30

7. That after the sale and purchase set forth in the sixth paragraph of this bill, the said Louis Kuehnle took possession of said land and real estate, with the appurtenances, and paid to the said Richard H. Turner the rent due by virtue of said lease and then in arrears, as well as the rent that thereafter accrued, and has continued in possession thereof from that time until the filing of this bill; and afterwards the said The Otto Huber Brewing Company, so being and becoming in manner aforesaid the assignee of said lease or agreement, afterwards, to wit, on or about the eighteenth day of February, eighteen hundred and ninety-six, assigned, transferred and set over, by writing and under seal, all its right, title and interest in and to the said lease or agreement and the term thereby created, and granted with all the covenants, provisions and agreements therein contained, and the rights, privileges, benefits and advantages to be derived therefrom unto the said Louis Kuehnle, who, by virtue of the said lease or agreement and the covenants and provisions therein contained and the assignments thereof, and of his possession of said premises thereunder, claimed and afterwards asserted and sought to enforce by decree of this honorable Court, as is hereinafter set forth, a right or equity to become the purchaser of the estate, title and interest of the said Richard H. Turner in the said land and real estate, free from all encumbrances on said title or estate, but your oratrix avers and expressly charges that she did not join the said Richard H. Turner, her husband, in the execution of said lease or agreement or in any covenant, provision or agreement for the sale or conveyance of said land and real estate to the said John Wheeler or to any other person, and that any estate, equity or interest which the said John Wheeler, The Otto Huber Brewing Company or Louis Kuehnle, or either of them, acquired or had by virtue of said lease or any assignment thereof, if any they acquired thereunder, was subsequent to the seizin of the said Richard H. Turner

during the coverture of your oratrix, with full knowledge and notice of her dower rights in said land and subject to those rights, as in and by the said lease or agreement, when produced out of the custody of the defendant hereinafter named, or the record thereof, or a duly certified copy of the same, now in the hands of your oratrix and ready to be produced under the authority and direction of this honorable Court, will more fully appear.

8. That afterwards, to wit, on or about the eleventh day of March, eighteen hundred and ninety-six, the said Louis Kuehnle, claiming certain equities to have arisen and to exist in his favor growing out of the payment by him of the moneys due on said executions issued on judgments recovered against the said John Wheeler and The Otto Huber Brewing Company for the cost of improvements upon said land and real estate, and also claiming to be entitled, under and by virtue of the covenants contained in the aforesaid lease or agreement and the assignment thereof to him as set forth in the seventh paragraph of this bill, to have a conveyance to him, free from all incumbrance, of the land and real estate hereinbefore described, upon complying with the terms thereof, filed his bill of complaint in this honorable Court against the said Richard H. Turner, alleging, among other things, his pretended rights under said lease or agreement, and his tender under its provisions, and praying that the said Richard H. Turner might be decreed to convey to him the said land and real estate agreeably with his covenant therein contained so to do; and at or about the time of filing said bill of complaint caused a *lis pendens* to be filed and recorded in the office of the Clerk of the county of Atlantic in said suit, and also caused a subpoena to be issued in said cause and served upon the said Richard H. Turner, and duly returned into Court; as by the record of said proceedings, now remaining in this Honorable Court, will more fully appear. And your oratrix avers and shows that she was not made a party to said bill of com-

plaint and is not advised what further or other proceedings, if any, were had thereunder in said cause, but she is informed and believes and therefore charges the truth to be that no further or other proceedings whatever were had in said suit by the said Louis Kuehnle to enforce his pretended equity or claim to said land, or by any other party thereto, and that said suit was at the date of the pretended foreclosure, hereinafter set forth, and still is, pending and undertermined.

10 9. That prior to the filing of the bill of complaint set forth in the eighth paragraph hereof, to wit, on or about the twenty-fifth day of February, eighteen hundred and ninety-six, a deed of conveyance was prepared at the instance of said Turner and said Kuehnle, by or under the direction of Joseph Thompson, Esquire, one of the counsellors at law of this State, which deed describes the land and real estate hereinabove set forth, and purported to operate as a conveyance thereof from the said Richard H. Turner and wife (your oratrix), to the said Louis Kuehnle for the price or consideration of eighteen thousand dollars, as is therein expressed, and as a release of the dower rights of your oratrix therein, and was presented to your oratrix by some person acting for and in behalf of said Kuehnle and said Turner, for her signature, and she was thereupon requested to sign, acknowledge and deliver the same, but your oratrix refused to execute said paper.

20 10. That afterwards, to wit, on or about the thirtieth day of October, eighteen hundred and ninety-six, one William Fitton, alleging himself to be the assignee and
30 holder of a certain mortgage, bearing date on the thirty-first day of October, eighteen hundred and ninety-three, made and executed by the said Samuel D. Hoffman to William Allen and Samuel Allen, upon the land and real estate above described, and by the said mortgagees duly assigned to him, filed his bill of complaint in this Honorable Court against the said Richard H.

Turner as owner of the said lands, your oratrix, as having or claiming some interest or estate therein in the nature of an inchoate right of dower in the same, and the said Louis Kuehnle as having or claiming some estate or interest in said lands or some alleged right thereto or equity therein, by virtue of said assigned lease or agreement and of the proceedings set forth in the eighth paragraph of this bill to enforce the same, alleging the moneys secured by said mortgage to be due and owing by lapse of time and praying the foreclosure of such mortgage and the sale of the land therein described thereunder, and such proceedings were had in said foreclosure suit that a decree pro confesso was entered therein against your oratrix and the other defendants named in said bill of complaint, and thereafter, on the nineteenth day of December, eighteen hundred and ninety-six, a final decree was made in said suit, and it was therein and thereby ordered, adjudged and decreed, among other things, that the said complainant was entitled to have the sum of forty-one hundred and ninety dollars and sixty-six cents, with interest thereon from the sixteenth day of December, eighteen hundred and ninety-six, a final decree was made in said suit, and it was therein and thereby ordered, adjudged and decreed, among other things, that the said complainant was entitled to have the sum of forty-one hundred and ninety dollars and sixty-six cents, with interest thereon from the sixteenth day of December, eighteen hundred and ninety-six, being the date of the Master's report in said cause, with his costs of suit to be taxed, paid out of the land and real estate hereinbefore described; that so much of the said land as would be sufficient to raise and satisfy the said sum, interest and costs, be sold, and a writ of fieri facias issue for that purpose out of this Honorable Court, directed to the Sheriff of the county of Atlantic, commanding him to make sale, according to law, of so much of the land

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and premises as would be sufficient to satisfy said debt, interest and costs, and that in case more money should be raised by said sale than would be sufficient to answer such payment, that such surplus be brought into this Court and deposited with the Clerk, to abide the further order of the Court; and it was thereby further ordered, adjudged and decreed that the defendant stand absolutely debarred and foreclosed of and from all equity of redemption of, in and to so much of the said mortgaged premises as should be sold by virtue of the said decree; that thereafter a writ of fieri facias did issue out of this Honorable Court pursuant to said decree, directed to the Sheriff of the county of Atlantic, who, in obedience to the command thereof, set up and offered said land for sale at public vendue to the highest bidder; that on the sixth day of February, eighteen hundred and ninety-seven, the whole of the lands above described were sold by said Sheriff to Joseph Thompson, solicitor of complainant in said suit, who bid therefor at said sale the sum of forty-three hundred and eighty dollars, being the amount of said mortgage with interest and costs, or thereabouts; and the said lands were by said Sheriff struck off and sold to the said Joseph Thompson for the amount of his said bid; that thereafter and before the delivery by the Sheriff of a deed of conveyance for the land so sold, the said Thompson assigned his bid to the said Louis Kuehnle and directed the Sheriff to make, execute and deliver to said Kuehnle his deed of conveyance for the land so purchased by him, the said Thompson, instead of delivering the same to him as the purchaser thereof, and that the said Sheriff did thereafter, by deed bearing date on the first day of March, eighteen hundred and ninety-seven, deliver to said Kuehnle a deed purporting to convey to him all the right, title and interest and estate of the said Richard H. Turner and of your oratrix, in and to the land and real estate hereinbefore described, for the

purchase price or sum of forty-three hundred and eighty dollars, as is in the said deed recited, and that the said Louis Kuehnle holds and claims title to said land and real estate, and collects and receives the rents, issues and profits and income therefrom, and claims to own and hold the said land and real estate under and by virtue of said mortgage and of the proceedings instituted as aforesaid to foreclose the same, and of the final decree made in said suit, and the deed of the Sheriff to him for said land so as aforesaid made and executed; but 10
 your oratrix avers and expressly charges that the mortgage set forth in the said bill of complaint, upon which the said foreclosure was had, was in said bill alleged to have been made and executed and also registered subsequent to the sezin of the said Richard H. Turner, husband of your oratrix, with full knowledge and notice of the said complainant at the time of exhibiting his bill of complaint, and of the said Kuehnle at the time of taking said deed from the Sheriff, of the dower rights of your oratrix in the said land and real estate; 20
 that your oratrix did not join in the execution of said mortgage and has not in any way or manner relinquished her said rights; that notwithstanding that your oratrix was a party defendant to said foreclosure suit and was named in the bill of complaint as such, the said bill of complaint contained no statement or allegation of fact which in any way or manner presented the right or estate of your oratrix as doweress in said land for adjudication or settlement by final decree in said suit, and that her right and estate in said lands were not adjudged settled or in any way affected by the said final 30
 decree, and that the title, estate or interest of the said Louis Kuehnle in said land and real estate, if any be acquired under said mortgage, the proceedings thereon to foreclose the same, the final decree made in said foreclosure suit or the deed of the Sheriff to him for the land sold under the execution issued in said cause,

was and remains subject to the dower right and estate of your oratrix therein; as by the record of the proceedings in said foreclosure suit, now remaining in this Honorable Court, will more fully and at large appear, and to which your oratrix for greater certainty begs leave to refer.

- 10 II. That your oratrix has learned since the death of the said Richard H. Turner, and now charges to be true, that notwithstanding the recital in the deed of the Sheriff to said Kuehnle, set forth in paragraph ten of this bill, that the land and real estate sold under said foreclosure proceedings realized at the sale thereof only forty-three hundred and eighty dollars, and that such sum was the highest and best price the same would then bring; and although said sum was in fact bid at said sale and no more, the said real estate had greatly increased in value since the execution by the said Turner of his said covenant with Wheeler to sell and convey the same for eighteen thousand dollars, both by reason of the increase in the value of land in that locality and the further increase given to the value of said land by the valuable improvements added thereto by the said John Wheeler and The Otto Huber Brewing Company, and was actually worth on the day of said sale at least thirty thousand dollars, including the improvements thereon, a portion of which improvements were represented by the judgments entered against said Wheeler and said Otto Huber Brewing Company hereinabove set forth; that among others willing to pay more for said property than the same realized at sale was Thompson Irvin, who, shortly before said sale, offered to purchase the same from said Turner, at private sale, for twenty thousand dollars, and the said Kuehnle, who was desirous of paying, in addition to the sum already paid by him as purchaser at the Sheriff's sale under said judgments and the execution thereon, eighteen thousand dollars, and who, after said sale, paid that precise sum for said property upon the
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delivery to him of the Sheriff's deed thereof; and that the sum so paid by said Kuehnle was the exact sum mentioned in the said agreement, for which Turner had previously agreed to convey said lands to Wheeler, the specific performance of which agreement the said Kuehnle, as assignee thereof, was then seeking to enforce by proceedings theretofore instituted and at that time pending in this honorable court.

12. That after the death of the said Richard H. Turner there came to the knowledge of your oratrix facts relating to the sale of said land and real estate under said foreclosure proceedings, from which she now avers the truth to be that fraud was practiced upon her in the transfer of title to said land from Turner to Kuehnle by means of said Sheriff's sale, and that this honorable court and its officers were employed by said Turner and said Kuehnle as the means by which they were enabled to perpetuate and accomplish a fraud upon your oratrix; that upon the refusal of your oratrix to relinquish her dower right in said land by the execution and delivery of the deed of conveyance presented to and requested of her, as set forth in the ninth paragraph of this bill, said Turner and Kuehnle, to avoid the effect of such refusal and to procure the transfer of the title to said land from Turner to Kuehnle, discharged of the encumbrance of the inchoate right of dower of your oratrix therein, and to wholly defeat and destroy her rights in said property, entered into an agreement to procure the outstanding mortgage on said land to be foreclosed and a sale of the premises to be made thereunder, and a deed of conveyance to be made by the Sheriff to said Kuehnle; that under said agreement only such sum was to be bid at the sale of said property as should be sufficient to satisfy the amount alleged to be due on said mortgage, and the costs of foreclosing the same, which costs the said Turner agreed to pay out of the purchase money to be thereafter received by him; and to provide against any surplus aris-

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ing from such sale to be paid into court by the Sheriff by discouraging or preventing competitive bidding at said sale; and, as part of the fraudulent contrivance adopted, it was understood that upon the delivery to Kuehnle of the Sheriff's deed for the land to be sold he should pay to Turner the eighteen thousand dollars of consideration or purchase money provided for in the covenant of sale contained in the lease or agreement existing between them; that the fraudulent scheme so conceived was afterwards executed as planned, and agreeably with the said understanding; that the said Turner and Kuehnle purchased or borrowed said mortgage or otherwise induced the holder thereof to commence proceedings thereon in his own name for the foreclosure thereof as for the collection of the alleged debt thereby secured; that at the sale of said lands by the Sheriff under such proceedings the same were bid in for the benefit of said Kuehnle for the amount of the encumbrance thereon, and that after said sale and upon the delivery to him of the Sheriff's deed for said land the said Kuehnle paid to the said Turner the sum of eighteen thousand dollars.

And your orator further states and avers respecting the said foreclosure proceedings and the sale thereunder, that said mortgage was not foreclosed for the honest purpose of collecting the money alleged to be due thereon but with the fraudulent intent of securing an unfair and unjust advantage of your oratrix by obtaining in such proceedings a decree of this Court, barring the rights and interest of your oratrix in the said land, and to transfer those rights to the said Kuehnle, without the consent and against the will of your oratrix, by means of a sale of the lands by the Sheriff under the authority of such decree, and of a deed of conveyance by the Sheriff for the said lands; that at the date of the commencement of said suit and of the Sheriff's sale, the said lands were worth, over and above the alleged encumbrance thereon, upwards of twenty-five thousand dollars; that in addition to the equity of redemp-

tion in the lands above described the said Turner was the owner of unencumbered, improved real estate in Atlantic City worth at least thirty thousand dollars, and was possessed of money, securities and personal property to a large amount; that both the said Turner and the said Kuehnle suffered a decree to be made against them in said suit, although the said Turner was the owner of said lands and a man of ample means and of financial ability to pay off said mortgage debt and relieve the lands from the encumbrance thereof; and the said Kuehnle had invested a large sum of money to purchase at Sheriff's sale the rights or equities of the said Wheeler and the Otto Huber Brewing Company in the improvements upon said land and was in possession thereof, and was at that time claiming, in a pending judicial proceeding, the right to a conveyance to him for said land; that the place where the said Sheriff's sale was conducted was a hotel, of which the said Kuehnle is proprietor; that he is a man of reputed wealth, of extensive influence in the community and of wide popularity; that both he and the said Turner were present at said sale, and caused it to be made known to those in attendance on said sale and prior thereto, for the purpose of discouraging competition in the bidding for said land to be sold, that the said premises were to be sold only for the purpose of making title thereto, and that the said Turner and said Kuehnle were the only ones interested in said sale of said premises and in the object of such sale; that those in attendance at said sale were largely the friends of said Kuehnle and Turner, who declined for that reason to bid on said property and that in consequence of said effort of Kuehnle and Turner to prevent competitive bidding and to throw said property into the hands of said Kuehnle but one bid was offered at the sale thereof, which bid was offered by the said Joseph Thompson, and whose bid was the sum of forty-three hundred and eighty dollars, as is above set forth, comprising the amount of said mortgage with interest and costs of fore-

closure including said sale; that said Joseph Thompson was the solicitor of record in the foreclosure suit, as well as in the suit for specific performance then pending, besides which he was the personal counsel and legal adviser of both Kuehnle and Turner, and was generally understood to be acting for both in said foreclosure proceedings and at said sale thereunder, and was fully understood by those in attendance on said sale to be so acting in making said bid, and was in fact bidding for the title to said land for said Kuehnle and for his benefit, as well as for the benefit of Turner; that after said sale the said Thompson, without profit or pecuniary advantage of his bargain to himself, assigned his bid to Kuehnle and directed the Sheriff to execute and deliver to him, as the purchaser of said land, a deed of conveyance therefor; that said Sheriff did thereafter, on March first, eighteen hundred and ninety-seven, in accordance with such assignment and direction, execute and deliver to the said Kuehnle a deed of conveyance as Sheriff for the land sold by him under said foreclosure proceedings, which deed expresses a consideration of forty-three hundred and eighty dollars; that on the day of the delivery of said deed, the said Kuehnle made his settlement with Turner for said property through their mutual agent, Thompson, and accounting for said eighteen thousand dollars of consideration as follows: that is to say, said Kuehnle charged himself with said sum of eighteen thousand dollars and interest for eleven months, making eighteen thousand six hundred and sixty dollars, and credited himself with ten thousand dollars, being the amount of mortgage bearing date on that day, made and executed by the said Kuehnle to the said Turner to secure the payment of part of said eighteen thousand dollars of consideration, and describing the land and real estate conveyed by the said Kuehnle, and also credited himself with twenty-five hundred dollars of cash previously advanced by said Kuehnle to Turner on account of said purchase, including the

amount of a promissory note due from Turner to Kuehnle, and paid and delivered sixty-one hundred and sixty dollars, the balance of said purchase money, in cash to said Thompson for the use of Turner; and that the said Thompson on the same day paid said balance to Turner, less forty-two hundred and forty dollars and ninety-four cents, being the amount of the foreclosed mortgage with interest then accrued, and afterwards, on the third day of March, eighteen hundred and ninety-seven, delivered to said Turner the Kuehnle mortgage of ten thousand dollars above mentioned as a credit, and that said Turner paid out of the said balance received by him to Thompson all costs of the Court and the Sheriff in said foreclosure proceedings and in said proceeding for specific performance, and also paid thereout to said Thompson his counsel fees and charges for his professional services in both of said suits, which payments amounted in the aggregate to three hundred and four dollars and twenty-three cents. 10

Your oratrix therefore expressly charges that both the equity suit and the foreclosure suit were friendly and collusive between the said Turner and Kuehnle and were commenced and prosecuted for the sole purpose of procuring the transfer from Turner to Kuehnle of the title to said land, discharged of the dower rights of your orator; that the said Sheriff's sale was fraudulently and collusively conducted and managed by said Kuehnle and Turner so as to prevent a fair and open sale of said property for the best price that the same would bring, by suppressing competition in bidding at said sale, and thus to keep down the price thereof and to enable the said Kuehnle to obtain said lands at a price wholly inadequate and disproportioned to the value and by that means avoid creating a surplus to be paid to the Sheriff, and by him into this Honorable Court, in which the rights of your oratrix would be protected, and in order to deprive your oratrix of her interest both in the land and in the 20 30

surplus that might arise from such sale thereof; and that by means of the fraudulent acts aforesaid the said Kuehnle and Turner were enabled to deceive, trick and defraud your oratrix of her rights in said land and said fund or surplus, with full knowledge and notice of the rights of your oratrix and in disregard of such rights; that said fraudulent conduct was participated in by both the said Kuehnle and said Turner and both shared the fruits thereof, and that by reason of said fraudulent acts and conduct, the said Sheriff's sale and all proceedings there-
 10 after are void and of no force or effect as to your oratrix.

13. That immediately after the discovery of your oratrix of the facts narrated in the twelfth paragraph of this bill, she employed counsel and instructed him to proceed without loss of time to establish and enforce her rights in said land and real estate; that the counsel employed by your oratrix disregarded such instructions, and made little or no progress or effort therein; that your oratrix, after awaiting a reasonable time for said counsel
 20 to proceed in her behalf, and such counsel not proceeding, she engaged other counsel and instructed such other counsel to promptly commence and diligently pursue such action, suit or proceeding as would be most for the advantage of your oratrix in protecting, enforcing or securing her rights and interests under the circumstances detailed above herein, and that your oratrix has been in no way or manner guilty, since discovering said facts, of acquiescence or laches or of failure to claim or assert her rights in said land.

14. That the said Richard H. Turner died insolvent
 30 and that for many years prior to his death he contributed nothing toward the support of your oratrix or his children.

15. That no settlement or provision in lieu of dower was made for your oratrix upon or before her marriage with the said Richard H. Turner, and no payment or satisfaction in lieu of her right of dower in said lands

and real estate has been made to or received by her either before or since the death of her said husband, and that your oratrix is entitled to her right or estate of dower in all the lands whereof her husband was seized during her coverture, to which she has not released her right, and in particular in the lands and real estate hereinbefore described in this bill.

16. That the said Louis Kuehnle refuses to assign and set apart the dower of your oratrix, or to account for the rents, issues and profits of said lands.

17. Your oratrix is advised that she can only have adequate relief in the premises in this Honorable Court;

To the end, therefore, that the said Louis Kuehnle may, but without oath, answer this bill fully and particularly, and that he may set forth and discover what estate, title or interest he has in the land and real estate hereinbefore described, and when, how and in what manner and form, and through whom the same was acquired, upon what consideration, when and to whom, and in what manner the same was paid, the value of said land at the date he acquired the same, the value thereof on the seventeenth day of March, nineteen hundred and four, and the present value thereof, and the rental value of said land, and what encumbrance existed thereon when he acquired the same, and also what rents, issues and profits he has received from said real estate since the death of Richard H. Turner, and that he may account therefor, and that he may be decreed by this Honorable Court to pay to your oratrix as much thereof as she may be entitled to for her dower, and that it may be settled and declared by the decree of this Honorable Court whether your oratrix has dower in said lands paramount to the liens or encumbrances of said mortgage on the said lands, or subject to the said encumbrance, or in the excess of purchase money over said encumbrance for which the said land was sold, and if in the land free of said encumbrance, that her

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dower be assigned to her under the direction of this Honorable Court, and if in the land, subject to said encumbrance, that it be declared what sum shall be set aside and invested for her benefit, or that your oratrix be let in to redeem her estate in said land from the encumbrance of said mortgage upon such terms as to contribution or deduction on account of said encumbrance as shall be equitable; or if your oratrix be declared to be dowerable of the excess over the encumbrance for which said land was sold, then that such excess be
 10 declared to be surplus money arising upon said Sheriff's sale, and ordered to be paid by the said Louis Kuehnle into this Honorable Court and the dower right of your oratrix therein protected and secured to her, and that the final decree made and entered in said foreclosure proceeding in this Court be adjudged and decreed not to operate as a bar to the right or equity of your oratrix to redeem her dower estate in said land, and if it shall be found to be necessary for the purpose
 20 of granting to your oratrix complete relief in the premises as regards her dower estate in said land, that the aforesaid Sheriff's sale be decreed to be fraudulent and wholly void, and that the said sale be set aside. And that your oratrix may have such other or further relief in the premises as the nature of the case may require, and as may be agreeable to equity.

May it please your Honor, the premises considered, to grant unto your oratrix the State's writ of subpoena, issuing out of and under the seal of this Honorable Court, to be directed to the said Louis Kuehnle, commanding him at a certain day and under a certain penalty, personally to appear before your Honor in this
 30 Honorable Court, according to law and the course and practice of this Court, then and there to answer the premises and to stand to, abide by and perform such order and decree therein as to your Honor shall seem meet, and as shall be agreeable to equity.

And your oratrix will ever pray, etc.

U. G. STYRON,
Solicitor for and of Counsel with
Complainant,

A true copy.

VIVIAN M. LEWIS,
Clerk.

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IN CHANCERY OF NEW JERSEY.

Between

LOUISA H. TURNER,

Complainant.

and

LOUIS KUEHNLE,

Defendant.

ON BILL FOR

RELIEF.

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ANSWER OF LOUIS

KUEHNLE.

Louis Kuehnle, the defendant within named, answering the complainant's bill, paragraph by paragraph, says:

1. He admits that complainant is the widow of Richard H. Turner, deceased, to whom she was lawfully married, as stated in her bill, but concerning the alleged desertion and abandonment he is without knowledge, save as alleged in said bill, and he prays proofs thereof, if the same shall be deemed necessary.

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2. He admits that Richard H. Turner was seized in his lifetime and during coverture of complainant, in fee

simple, of certain lots of land, situate in Atlantic City, and more particularly described in the bill of complaint.

3. He is without knowledge or information regarding the alleged mortgage from Samuel D. Hoffman to William Allen and Samuel Allen, to secure the payment of four thousand dollars, as alleged in the bill, and is also without knowledge in respect to the assignment thereof by said Allens to one Fitton, as alleged, save as alleged, and he prays proper proof thereof, if the same is material, and he says he is advised and believes that said mortgage was, in fact, made and recorded before the conveyance from Hoffman to Turner, and that Turner purchased subject to and with knowledge of said mortgage, and he denies that the lien of said mortgage was subsequent to the seisin of the said Richard H. Turner or that it was or is subject to the inchoate right of dower of the complainant.

4. He admits the demise of the land and real estate described in complainant's bill, by the said Richard H. Turner unto John Wheeler, for the term of ten years from the twenty-fifth day of March, eighteen hundred and ninety-five, by virtue of which said Wheeler entered into possession of said land and real estate as alleged.

5. He admits that said lease contained a covenant, among other things, on the part of the said Turner, to sell and convey the said land and real estate to the said John Wheeler, free from all encumbrances, at any time within one year from the twenty-fifth day of March, eighteen hundred and ninety-five, as alleged, and that afterwards the said Wheeler, by writing under seal, assigned, transferred and set over unto the Otto Huber Brewing Company, a corporation, its successors and assigns, all his right, title, interest and estate in and to the said lease, and the term thereby granted, and the covenants and provisions therein contained, and thereupon let the said Brewing Company into possession of the said land and real estate, and that said company thereupon took posses-

sion of the same, by virtue of said lease and assignment, but he is without knowledge with respect to the alleged mortgage from said Wheeler to said Brewing Company, and he prays proper proof thereof.

6. He says he is without personal knowledge regarding the alleged judgments on mechanics' liens in favor of John B. Boyd and others against Loritz, builder, and John Wheeler and the Otto Huber Brewing Company, owners, but admits that he did purchase the interest of said parties, if any they had in said premises, at a sale had by the Sheriff of the county of Atlantic under a supposed execution out of the Circuit Court of said county, and that he received a bill of sale for the purchase thereof as alleged in the bill. 10

7. He admits that after the sale and purchase as aforesaid, he took possession of said land and real estate, with the appurtenances, and thereafter for a while paid to the said Richard H. Turner the rent due by virtue of said lease from Turner to said Wheeler, and he admits that he has been ever since, either constructively or actually in possession of said premises. 20

He further admits that the said Otto Huber Brewing Company did, on or about the time alleged in the bill of complaint, assign, transfer and set over to him, by writing, under seal, all its right, title and interest in and to the said lease and the term thereby granted and created, with all of the covenants, provisions and agreements therein contained and the right, privileges, benefits and advantages to be derived therefrom, and that he did thereafter file a bill in this Honorable Court to compel the said Richard H. Turner to perform the covenant in said lease, wherein and whereby he agreed to convey said premises free from all encumbrances. 30

He says he is not advised as to whether or no the complainant joined in the execution of said lease. He prays proof of this fact and he denies that in anywise he had knowledge or notice of any right of the complainant as doweress or otherwise in said premises.

8. He admits that some time, after going into possession of said premises, by virtue of the purchase, lease and assignment aforesaid, but of the exact date he is not advised; he did file his bill in this Honorable Court against the said Richard H. Turner, alleging a right under said lease to compel the said Richard H. Turner to convey to him the land and real estate therein described, agreeably with his covenant therein contained so to do, and that at or about the time of filing said bill of complaint he caused a *lis pendens* to be filed and recorded in the office of the Clerk of the county of Atlantic, but as to whether or no the complainant was made a party to said bill he is without information save as stated in her said bill, and as to whether or no what, if any, other proceedings were had after the filing of said bill he is without knowledge, save as alleged in said bill; and he says that all of the matters pertaining thereto were placed in the hands of his counsel, Joseph Thompson, who he has always supposed, gave proper attention thereto.
- 10 9. He says he is without knowledge concerning any of the statements set forth in paragraph nine of the bill, save as there stated, and he expressly and explicitly denies that any deed was ever, at any time, prepared by or at his instance, or that it was presented to be signed to the complainant, and he avers that if any such deed was prepared by the said Turner or under his direction, or by the said Joseph Thompson or under his direction, it was not with his, this defendant's, knowledge or consent or in his interest.
- 30 10. He says he is without personal knowledge concerning the alleged bill to foreclose, filed in this Honorable Court by William Fitton, to foreclose the mortgage made by Samuel D. Hoffman to William Allen and Samuel Allen, covering said premises, but he is advised and believes it to be true that such proceedings were had, in which proceedings the complainant was made a party as claiming an interest by way of dower

in said premises, and that under the same a decree *pro confesso* was entered against said complainant among others; that thereafter final decree was entered, as alleged in the bill, upon which a writ of *ieri facias* issued out of this Court, directed to the Sheriff of the county of Atlantic, commanding him to make sale, according to law, of so much of the land and premises as would be sufficient to satisfy the claim of said Fitton, and that the premises were offered for sale at public vendue to the highest bidder, but defendant says he does not recall who bid on the property at said sale, and he is without knowledge concerning the alleged purchase by Joseph Thompson and the assignment of his bid to defendant as alleged, but he admits that the Sheriff of the County of Atlantic did make, execute and deliver to him a deed of conveyance for the land described in the bill of complaint in this cause, and he admits that he holds and claims title to said land and real estate and collects and receives the rents, issues and profits and income therefrom, by virtue of said Sheriff's deed. 10

He is without information save as alleged in the bill in this cause that the bill of complaint upon which the said foreclosure was had, alleged that said mortgage was made and executed and registered subsequent to the seizin of the said Richard H. Turner, and with full knowledge and notice of the said complainant at the time of exhibiting his said bill and of this defendant at the time of taking said deed from the Sheriff, or of the dower rights of the complainant in said land and real estate, and he avers the truth to be that he was without any such knowledge, and he prays that the complainant may be obliged to prove the same in accordance with the practice of this Honorable Court. 20 30

He is without knowledge save as alleged in the bill as to whether or no the complainant joined in the execution of said mortgage or as to any statements or alle-

gations of fact in the bill to foreclose affecting the right or estate of complainant as doweress in said land, and he denies that the interest taken by him in said premises, under and by virtue of said Sheriff's deed to him, was or is subject to the dower right or any other right of complainant in the same.

10 11. In answer to paragraph eleven of complainant's bill, defendant *denies that the land and premises increased in value* between the time of the making of the lease by said Turner to the date of sale by the Sheriff, or that it was worth as much as eighteen thousand dollars on the day of said sale.

20 12. Further in answer to the bill of complaint, defendant says that he is without knowledge concerning the alleged fraud set forth in paragraph twelve of complainant's bill, and he prays that if any such fraud existed complainant may be compelled to prove the same in accordance with the practice of this Honorable Court, and he says that so far as he was or is concerned, directly or indirectly, he had nothing whatever to do
30 with the sale had by the Sheriff, or that he employed or caused to be employed any of the officers of this Court or any other person to perpetrate or accomplish a fraud upon complainant, or that he had anything whatever, directly or indirectly, by himself or any other person, to do with any agreement to procure the mortgage from Hoffman to the Allens, or with its foreclosure, or that he had anything to do, directly or indirectly, by himself or through another, with any agreement concerning the amount which said property should or might bring at such Sheriff's sale, or that he, directly or indirectly, by himself or through another, had anything to do with discouraging or preventing competitive bidding at said sale, or that there was any understanding on his part or anyone for him, with his knowledge or consent, that he should pay Turner the eighteen thousand dollars, consideration named in said

lease, for the purchase of said property, or that he, directly or indirectly, by himself or through another, purchased or prepared said mortgage from Hoffman to Allen, or in anywise induced the holder thereof to commence proceedings thereon for the foreclosure thereof, or so far as he had anything to do, directly or indirectly, was said property bid in for his benefit.

Further in answer he says he is without knowledge of what the purpose was in foreclosing said mortgage, or that there was any fraudulent intent of securing an unfair and unjust advantage of complainant. 10

Further in answer he says that he knew nothing whatever concerning the financial ability of the said Richard H. Turner to pay off the said mortgaged debt, and prays that if the fact be at all material, the complainant may be obliged to prove the same.

He denies that he made known or caused to be made known to those in attendance on said Sheriff's sale, or at any other time prior thereto, that the said premises were to be sold only for the purpose of making title thereto, or that he and said Turner were the only ones interested in the sale of said premises, and he says that he has no recollection of being in attendance upon said sale. 20

He says he is without knowledge concerning the charge that Joseph Thompson was at the same time solicitor and counsel for the said Turner and this defendant, and he denies that the said Thompson was acting for this defendant in said foreclosure proceedings, and as to what was understood by those in attendance on said sale or as to what effect was had upon their conduct at said sale by reason of anything that may have been said to them by said Turner or any other person, this defendant is without knowledge, and he prays that if such be relevant or material complainant may be obliged to prove the same. 30

Defendant, further answering, says that he cannot now recall the method of settlement for said property and he

prays that complainant may be obliged to prove the facts alleged by her concerning the same.

10 He denies that the equity suit and the foreclosure suit alluded to in the bill of complaint were friendly and collusive between himself and Turner, and were commenced and prosecuted for the sole purpose of procuring a transfer from Turner to him of the title to said land discharge of the dower rights of the complainant, or that so far as he was in anywise concerned, the Sheriff's sale was fraudulent-
10 ulently or collusively conducted so as to prevent a fair and open sale of said property for the best price, and that the same would bring by suppressing competition and bidding at said sale or by any other act, and he denies that he in anywise participated in any fraudulent act or conduct for the purpose of in anywise affecting the interest of the complainant, or that he in anywise shared in the fruits of such alleged fraudulent conduct.

20 Further answering, defendant says that when the time arrived in which he wanted to avail himself of his right of performance of the covenant in the lease made by Turner to Wheeler, he consulted his counsel, Joseph Thompson, in good faith and requested that he secure from said Turner a good and sufficient deed for said premises by amicable means if possible or by suit if necessary, and that afterwards he was advised by said Thompson that he had filed a bill in this Honorable Court to compel performance of said covenant; that he thereafter dismissed the matter from his mind, relying upon said counsel to give the matter proper and sufficient consideration; that afterwards his said counsel stated to him that
30 he had a Sheriff's deed for the property, which gave him a good and sufficient title and that he might make settlement with said Turner, and that acting upon the advice of his said counsel, without any notice of the rights of the complainant and without any knowledge of any proceeding on the part of anyone to defeat the dower interest of the complainant and supposing whatever proceedings had

been had to vest a title to said premises in him had been perfectly legal and without the disregard, morally or legally, of the right of anyone, he paid the consideration of eighteen thousand dollars named in said lease.

13. Further answering, he says that he knew nothing whatever regarding the steps taken by the complainant looking to the establishment of her alleged rights and he prays proof thereof.

14. He is not advised as to whether or not said Richard H. Turner died insolvent, or that for many years he contributed nothing toward the support of complainant or her children. 10

15. He has no knowledge concerning the facts alleged in paragraph fifteen of the bill and prays proof thereof.

16. He admits that he refuses to assign or set apart any dower of complainant in said premises or to account for the rents, issues and profits thereof.

17. He says complainant has been guilty of gross laches in the premises; that her bill does not show any cause which can invoke the jurisdiction of this Court or that calls upon him to answer, and he prays the same benefit thereof as though he had demurred thereto. 20

JOHN C. REED,
Solicitor for Defendant.

IN CHANCERY OF NEW JERSEY.

JUNE 6, 1906.

Between

LOUISA H. TURNER,

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Complainant,

and

LOUIS KUEHNLE,

Defendant.

20 Transcript of shorthand notes of testimony taken in
the above entitled cause on Wednesday, June 6th, 1906,
at Chancery Chambers, Newark, N. J., before HON.
HENRY C. PITNEY, Vice Chancellor.

Appearances:

MR. ULYSSES G. STYRON and MR. JOHN S. WEST-
COTT, for the Complainant.

MR. JOHN C. REED, for the Defendant, was not
present.

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The Court: If you move the case I must hear what
you have got to say.

Mr. Styron: Yes, sir; I do move the case on the part
of the complainant.

The Court: Anybody here for the defendant?

Mr. Styron: Seems to be not; no, sir.

The Court: Just note, Mr. Stenographer, having waited from quarter past ten to twenty minutes to eleven, and nobody appearing for the defendant, Mr. Styron moving the case, and it appearing that it was duly set down for this day for hearing, and that due notice of the hearing had been given, the Court sees no reason why the case should not proceed. The Court observes, however, that it received a letter on Monday evening, I think, or Tuesday morning, from Mr. Reed, saying he would be engaged in the Supreme Court for one or two days. The Court wishes it distinctly to be understood that if Mr. Reed had expected to be engaged otherwise on this day he should have made known his expectations and desires in that respect at the time that the cause was set down for hearing, of which setting down he had due notice, and that it is too late, except by consent of counsel, after a cause has been deliberately set down for hearing for a particular day, with the knowledge and without the objection of the counsel for the defendant, it is too late for him to speak of engagements in other courts, either the Supreme Court or the Court of Errors and Appeals, when the case is actually reached. If the objection had been made at the time the cause was set down the Court would gladly take notice of the session of the Supreme Court and Court of Errors and Appeals; but in the absence of any objection at the time, it is now too late to take it, except by consent; and as Mr. Styron has come all the way from Atlantic City to try the cause, with his witnesses, I am very far from criticising his exercise of his right to proceed under his notice. Now, Mr. Styron, proceed with your cause.

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Mr. Styron: If your Honor please, I offer in evidence certified copy of deed, Samuel D. Hoffman to Richard H. Turner, dated the 31st of August, 1893, covering the premises in question, duly certified by the Clerk of the county of Atlantic.

The Court: It is admitted.

(Marked Exhibit C1.)

The Court: Next is the Sheriff's deed, dated first of March, 1897, from Kirby, the Sheriff, to the defendant, Louis Kuehnle, certified to be a true copy. It is admitted.

10 (Marked Exhibit C2.)

Mr. Styron: I give notice for the production of certain original documents in the possession of the defendant, and they, of course, are not here, and I shall, therefore, prove them by sworn copies.

The Court: You want to put this notice in evidence?

Mr. Styron: Yes, sir.

20 The Court: Put it in.

(Marked Exhibit C3.)

ULYSSES G. STYRON, sworn.

30 I hold in my hand a copy of a record of a lease from Richard H. Turner to John Wheeler, which lease is recorded in—

The Court: Give the date.

Ans. 12th of February, 1895, relating to the premises in question, and being the same lease referred to in the bill and in the answer.

Ques. (By the Court.) Where did you get the record?

Ans. It is recorded in Book 5 of Miscellaneous Records, page 369, in the Clerk's office of Atlantic county. I read the original record.

Ques. (By the Court.) You compared it; that is enough.

Ans. Yes, sir; I compared it, and it is a true copy.

The Court: It is admitted.

(Marked Exhibit C4.)

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Ans. I also hold in my hand the assignment.

The Court: These are all admitted, I think, by the answer.

Ans. Yes, sir.

The Court: You might as well prove them.

Ans. I thought the Court might want to refer to them. 20
The assignment of the lease just mentioned, which assignment bears date on the 29th of March, 1895, and is recorded in Book 5 of Miscellaneous Records, 377, Atlantic county, and compared by me.

(Marked Exhibit C5.)

The Court: Admitted.

Ans. I have an assignment of the same lease from Otto Huber Brewery to Louis Kuehnle, which assignment is dated on the 18th of February, 1896, and is recorded in Book No. 8 of Mortgages, page 495, &c., in the Atlantic County Clerk's office, and was compared by me from the record. 30

(Marked Exhibit C6.)

I hold what purports to be the record of an abstract of a mortgage for \$10,000, made by Louis Kuehnle to Richard H. Turner on the premises described in the bill, which mortgage is dated the first of March, 1897, is recorded in Book 45 of Mortgages, 378, &c., in Atlantic county, and was compared by me.

(Marked Exhibit C7.)

10 The Court: You offer in evidence the proceedings, do you, in the foreclosure case of William Fitton against Richard H. Turner and others. The bill was filed on the 13th of October, 1896, by Joseph Thompson, solicitor. There are among the papers here ten papers. These papers are admitted.

20 Next offers in evidence foreclosure proceedings in the case of Ellen Kennedy against Israel G. Adams. The bill was filed on the 7th of December, 1880, by Joseph Thompson, solicitor; and in that case there are eighteen papers. Both the bundles of papers offered in evidence contain bill and ordinary proceedings, Master's report, decree and execution found in an ordinary foreclosure case.

Next bundle of papers offered is a bill for specific performance of contract, filed March 10, 1896, by Mr. Thompson, as solicitor, and is a bill with subpoena, two papers.

Those papers are all admitted, subject to objection as to competency and relevancy.

30 The next bundle is a bundle of papers in the case of Richard H. Turner against Louis Kuehnle, the same parties here, in which the bill was filed on the 10th of March, 1905, by Mr. Styron. There are in that bundle eleven papers,—demurrer and final decree on demurrer.

Mr. Styron: I offer a certified copy of judgment in an attachment suit of Breon against Richard H. Turner.

The Court: It is a single judgment, is it?

Mr. Styron: Yes, sir.

The Court: Certified by the Clerk of Atlantic county.

(Marked Exhibit C8.)

Mr. Styron: I offer eleven mechanic lien judgments against Nicholas Lawrence, builder, and The Otto Huber **10**
Brewing Company, owner and mortgagee.

(Marked Exhibits C9, C10, C11, C12, C13, C14, C15,
C16, C17, C18, C19.)

LOUISA H. TURNER, SWORN.

Direct examination.

20

By Mr. Styron:

Ques. You are the complainant in this suit?

Ans. Yes, sir.

Ques. And the widow of Richard H. Turner?

Ans. I am.

Ques. When did Richard H. Turner die?

The Court: You were married to Richard H. Turner?

Ans. Yes, sir.

30

Mr. Styron: That is all admitted by the answer.

The Court: When did he die is the question?

Ans. He died in 1904, on March 17th.

Ques. In what year were you married?

Ans. We were married in 1871.

Ques. Where?

Ans. In Atlantic City.

Ques. And where did you go to live?

Ans. Why, the first three years of our married life we lived in the country on a farm.

Ques. (By the Court.) In Atlantic county?

Ans. Yes, sir; in Atlantic county.

Ques. And thereafter where did you live?

10 Ans. We come back to Atlantic City.

Ques. And have you lived there ever since?

Ans. Yes, sir.

Ques. How old are you?

Ans. Well, I was born in 1852, on June 7th.

Ques. Did your husband have any property or money at the time of your marriage?

Ans. No; he had nothing at all he could call his own.

Ques. What was his business?

Ans. He worked—he was a carpenter.

20 Ques. And thereafter what business did he follow?

Ans. He went into the lumber business for Henry Disston & Sons.

Ques. What position did he hold with the lumber company?

Ans. He was superintendent for that company.

Ques. And how long did he hold that position?

Ans. He was there for twenty-seven years, Henry Disston & Sons.

Ques. (By the Court.) Whereabouts?

Ans. In Atlantic City.

30 Ques. And he continued with them until about what time; what year?

Ans. Well, I don't know as I remember that, as I could tell what year.

Ques. Did your husband own any property in Atlantic City; any real estate?

Ans. Yes, sir,

Ques. What property did he own?

Ans. He first bought the property on Pennsylvania avenue, below Arctic.

Ques. He didn't own that at the time of his death, did he?

Ans. Owned the property on Pennsylvania avenue? Not at the time of his death.

Ques. Did your husband, in 1896 and 1897, own a property on North Carolina avenue?

Ans. Yes, sir.

10

The Court: Is that the property here in question?

Mr. Styron: No; this comes in only incidentally.

Ques. Where did you live at that time, in 1896 and 1897?

Ans. Why, I lived on North Carolina avenue.

Ques. That was your home?

Ans. That was my home, 125 South North Carolina avenue.

20

Ques. Did your husband own a property known as the Music Hall property?

Ans. Yes, sir.

Ques. Is that the property in question in the bill?

Ans. Yes, sir.

The Court: That is the property in question?

Mr. Styron: Yes, sir.

30

Ques. What became of that property?

Ans. The Music Hall property?

Ques. Yes.

Ans. Well, it was sold by Sheriff's sale, I understand.

Ques. Did you ever sign any deed for it?

Ans. No, sir; never signed no deed,

Ques. Were you ever asked to sign a deed?

Ans. Yes, sir.

Ques. By whom?

Ans. By Mr. Westcott; Mr. Lawyer Westcott.

Ques. (By the Court.) By whom?

Ans. Mr. Lawyer Westcott; this is the gentleman; sits right here. (Indicating Mr. John S. Westcott.)

Ques. When was that, before or after the Sheriff's sale, that you were asked to sign that deed?

10 Ans. It was before.

Ques. How long before?

Ans. Well, I think it was in the spring of the year that the property was sold the next winter, next February.

Ques. In the summer you say—

The Court: You say Mr. Westcott?

Ans. Yes, sir; lawyer John Westcott.

20 Ques. (By the Court.) Of Atlantic City?

Ans. Yes, sir.

Ques. (By the Court.) Asked you to sign a deed?

Ans. Yes, sir.

Ques. (By the Court.) Did you look at the deed?

Ans. No, sir.

Ques. (By the Court.) You knew what it was for; he told you what it was for?

Ans. He told me my husband wanted me to sign a deed for the Music Hall property and he would give me so much to sign it, and I asked how much he would give me, and I don't just remember what it was, what the offer was, but it wasn't much.

30

Ques. (By the Court.) You wouldn't sign it?

Ans. I refused. No.

Ques. (By the Court.) Were you living with your husband then?

Ans. No, sir; my husband was not at home then.

Ques. (By the Court.) Where was he?

Ans. Well, he was away from home.

Ques. (By the Court.) Away from your home?

Ans. Yes, sir; away from my home.

Ques. (By the Court.) You kept your steady home one place?

Ans. Yes, sir.

Ques. (By the Court.) Do you recollect, or did you know at the time, or do you now recollect to whom the deed was to be given that he asked you to sign?

10

Ans. Who the deed?

Ques. (By the Court.) Don't recollect anything about that, eh?

Ans. No, I don't know as I remember who he stated the deed was to be given to, but he wanted me to sign the deed, and I refused to sign it.

Ques. Did you have the deed in your hand?

Ans. No, sir; I never had the deed in my hand.

Ques. You wouldn't know the deed if you were shown it, would you?

20

Ans. No, sir; I wouldn't know it; I never had it in my hands.

Ques. How many times did you see Mr. Westcott in relation to this?

Ans. He sent for me several times to come down to his office, and when I would go he would always tell me that Mr. Turner wanted me to sign the deed, and would give me so much to sign it.

Ques. (By the Court.) You went there several times?

Ans. Went several times; Lawyer Westcott would send for me to come to his office, and whenever I would go there he would always ask me to sign the deed.

30

Ques. (By the Court.) Your husband never asked you to sign the deed?

Ans. No, sir; he never asked me to sign it.

The Court: Direct.

Ques. Did you see your husband about that time?

The Court: Did you see him; speak to him?

Ans. About the time the deed was to be signed?

Ques. (By the Court.) At the time they asked you to sign the deed?

10 Ans. No, he kept away from home; when he wanted me to sign the deed he stayed away from the house; didn't come at all to the house; only he would tell Lawyer Westcott what he would give me.

Ques. (By the Court.) That is, you understood from Lawyer Westcott what he would do?

Ans. All I understood about it was through Lawyer Westcott.

Ques. How long before that time had you seen your husband to talk to?

20 Ans. Well, it had been some time; I don't remember just how long.

Ques. Now, do you remember the time of the sale by the Sheriff of that property?

Ans. Well, I remember—

The Court: You were served with—after you refused to sign the deed you were served with some paper, weren't you, by the Sheriff?

30 Ans. Well, I know the Sheriff brought some papers to our house, but that, I think, was for the North Carolina avenue house; about that time the Sheriff brought some papers to the house, but I don't remember whether it was for that property or the North Carolina avenue house.

Ques. (By the Court.) Did he bring what is called a subpoena, a paper with a seal on it?

Ans. I think he did, but I can't just remember, but I am sure that he did, but I don't—

Ques. (By the Court.) You didn't know at the time what it referred to, perhaps, the subpoena?

Ans. No.

Ques. (By the Court.) Did you have a lawyer?

Ans. Yes, sir; I had a lawyer.

Ques. (By the Court.) Did you take the papers that you got to a lawyer?

Ans. No, sir; I didn't take them to a lawyer; all the papers the Sheriff would bring to the house I would send to Mr. Turner. 10

Ques. (By the Court.) Where did you send them to him; where was he?

Ans. He was in Philadelphia then; I sent them there.

Ques. (By the Court.) Then you recollect that the Sheriff did serve you with some papers? I will show you a paper, perhaps I will show you the very one he served you with, or a copy of it. I have here the original subpoena, with a notice annexed to it, copy of which you should have received. 20

Ans. Well, I don't know whether I—

Ques. (By the Court.) Your papers didn't have that seal on, but the paper he served on you was like that, only it didn't have that seal on.

Ans. Well, maybe it was.

Ques. (By the Court.) One moment. It had two notices annexed to it.

Ans. I remember he brought the papers there, the Sheriff, and I sent them to Mr. Turner.

Ques. (By the Court.) Didn't you read them? 30

Ans. No; I don't know as I read them even.

Ques. (By the Court.) Was that your habit of doing, sending the papers to Mr. Turner?

Ans. He always told me any papers that come there, the Sheriff brought there, to send to him.

Ques. (By the Court.) But the question is, whether that was your habit of doing that?

Ans. Yes, sir; that was my habit, to send all papers that come from the Sheriff.

The Court: Return of the Sheriff; it appears this was served on the 15th of October.

Ans. I think I do remember about that paper being brought there.

- 10 The Court: This is what the paper says: "Duly served subpoena on Louise H. Turner and Louis Kuehnle personally on the 15th of October, and on Robert H. Turner, by leaving a true copy of the same at his residence with a member of the family over the age of fourteen years, to wit, his wife. S. E. Johnson, Sheriff."

Ans. I think I do remember about the Sheriff bringing that paper there.

Ques. (By the Court:) You sent it to your husband?

- 20 Ans. I don't know whether I did or not remember, but all the papers that was brought there by the Sheriff I sent to my husband.

Ques. (By the Court.) If you did get it you sent it to your husband?

Ans. Yes, sir; all the papers that come there I sent to him.

Ques. (By the Court.) Did you go to see any one about that, the sale of the property?

Ans. Why, after I heard the property was sold I went down—

- 30 Ques. (By the Court.) One moment. You paid no other attention to this subpoena paper that the Sheriff served on you, except to send it to your husband?

Ans. I asked Lawyer Westcott if they could sell my part out of the property, and he said they could sell—

The Court: One moment. What did you do, please, after you sent these papers to your husband, supposing

it was October, 1896; did you do anything? Did you go to see anybody?

Ans. Yes, sir; I went to see Judge Thompson, Lawyer Thompson, after I sent the papers.

Ques. (By the Court.) Did they have his name on?

Ans. No; but I knew that he was Mr. Turner's lawyer, Mr. Thompson was.

Ques. (By the Court.) That he was your husband's lawyer?

10

Ans. Yes, sir.

Ques. (By the Court.) You went to see him?

Ans. Yes, sir; I went to see him about it.

Ques. (By the Court.) Did you go to see Mr. Westcott?

Ans. Yes, sir; I went to see Lawyer Westcott.

Ques. (By the Court.) At the same time?

Ans. No; not at the same time.

Ques. (By the Court.) How long?

Ans. Maybe a month, or two or three weeks or so.

20

Ques. (By the Court.) Did you tell Mr. Thompson that you had been served with these papers?

Ans. Well, I told Mr. Thompson that I seen in the papers where the Music Hall property was to be up for Sheriff's sale.

Ques. (By the Court.) Oh, no; it wasn't put up for sale then. You must keep yourself straight; it wasn't put up for sale until a month or two after that.

Ans. I don't know; I know I went two or three times to see Mr. Thompson about it; I can't just remember the dates.

30

Ques. (By the Court.) Have you any recollection of going to see anybody until you saw the property was put up for sale?

Ans. I went to see Lawyer Westcott here, yes; he would send for me to come down to his office.

Ques. (By the Court.) When was it, after you saw the property put up for sale?

Ans. No, before, when they wanted me to sign a deed.

Ques. (By the Court.) I know, but was it after this they wanted you to sign a deed, after the Sheriff served these papers on you?

Ans. Yes, sir; after the Sheriff brought the papers there they wanted me to sign a deed, and before.

Ques. (By the Court.) Before, too?

Ans. Yes, sir; before and after.

10 Ques. When was this interview that you had with Judge Thompson that you speak of?

Ans. Well, it was after I saw the property was put up for Sheriff's sale; it was, I think, some time during the week that the property was to be sold.

Ques. What did you say to Judge Thompson?

20 Ans. I went down to Mr. Thompson's office, and the first time I went there he wasn't in, so the young man that was in the office told me that he was busy and to come down in the evening, I would be more likely to catch him in the evening; so I went down there in the evening, and he was in, and I said, "Mr. Thompson, I understand, or I seen in the paper where the Music Hall property is to be sold," and I said, "You know Mr. Turner is doing bad, has left home, doing bad," and I said, "Don't let him sell it, Mr. Thompson," and he said, "Why, Mrs. Turner, don't you worry anything about it, your property will not be sold by the Sheriff," and when I went to Mr. Thompson I knew he was Mr. Turner's lawyer.

30 Ques. Then do you remember the day of the sale?

Ans. Yes, sir.

Ques. Did you see your husband on that day?

Ans. I saw him that morning before the sale.

Ques. That was about what time that you saw him?

Ans. About eleven o'clock in the morning.

Ques. Did he come to the house?

Ans. He came home over night and stayed all night; the property was to be sold the next day.

Ques. What did you say to him?

Ans. I asked him if the Music Hall property was going to be sold, and he said it wasn't; I said, "Well, you say it isn't going to be sold?" He said, "No. What makes you say that?" I said, "I see it advertised in the paper where it was to be sold Saturday;" that was that day, Saturday, and he says, "That don't mean that it has to be sold."

Ques. Did you see him later in the day?

Ans. Yes, I saw him in the afternoon.

10

Ques. About what time?

Ans. Well, I don't know; some time during the afternoon, maybe between two and three in the afternoon.

Ques. Was anything said about the sale or proposed sale at that time?

Ans. Yes, sir.

Ques. What was said, and who said it?

Ans. I asked him if the property had been sold, and he said, "No, it had not, nor it wasn't going to be;" and I said, "You say then it isn't going to be sold?" and he said, "No, not a damned bit of it." That is the way he answered me.

20

Ques. Did he seem to be annoyed that you kept—

Ans. He seemed to be very angry.

Ques. When did you first actually know that the property had been really sold?

Ans. I didn't know it until after Mr. Turner's death, that it really had been sold, and found the papers in his trunk.

Ques. What did you think all that proceeding meant?

Ans. Well, I thought maybe Mr. Kuehnle was holding between—Mr. Turner and Mr. Kuehnle they had fixed up some kind of a—that Mr. Kuehnle was holding the mortgage on the property.

30

Ques. (By the Court.) Well, you knew that he had been trying to sell it?

Ans. I knew that he had been trying to sell it.

Ques. (By the Court.) And you knew it wasn't in his possession. Had you heard that he had leased it out?

Ans. Oh, yes; I knew that he had leased it.

Ques. (By the Court.) Did you know that he had leased it for ten years?

Ans. Yes, sir.

Ques. (By the Court.) You heard that, eh?

Ans. Oh, yes; he told me that.

10 Ques. (By the Court.) Did you know that they had a contract to purchase it from him?

Ans. Yes, sir.

Ques. (By the Court.) They were trying to get him to make a deed, trying to get him to give the title; you knew that, did you, that Kuehnle or somebody was trying to get your husband to make a deed?

Ans. I knew they was trying to get it away from him in some way or another; I didn't know in what way.

20 Ques. (By the Court.) You knew the deed you were asked to sign was for that purpose, I suppose, did you?

Ans. Yes, that is what I thought.

Ques. (By the Court.) Or suspected it?

Ans. That is what I thought it was.

Ques. I show you four papers and ask you if you ever saw them before?

Ans. Yes; these are the papers we found in Mr. Turner's trunk after he died.

Ques. Who found them?

Ans. My son Harvèy; he was looking through his father's papers and he found these papers.

30 Ques. Were you there when he found them?

Ans. I was right in the next room; yes, sir.

Ques. (By the Court.) Is he alive, the boy?

Ans. This is my son, sits right here. (Indicating.)

Ques. What did he say to you when he found them?

The Court: Now, wait. I guess I will have to object on account of the other side. I don't know but it is competent.

Mr. Styron: I am simply tracing them to the possession of Mrs. Turner, is all.

The Court: Certain papers; are they in your husband's handwriting? In whose handwriting are they?

Ans. No; they were where Mr. Cole and Thompson sold the property.

Ques. (By the Court.) Never mind. Whose writing is it?

10

Ans. I don't know.

Ques. (By the Court.) Don't know the writing?

Ans. No.

Mr. Styron: I shall have them marked for identification.

The Court: Papers marked but not yet admitted.

(Marked Exhibits C20, C21, C22 and C23.)

20

Ques. Did your son hand these papers to you?

Ans. Yes, sir.

Ques. What did you do with them?

Ans. Why, I took care of them, put them away and took care of them.

Ques. (By the Court.) Had them ever since, either you or your lawyer?

Ans. I first gave them to Judge Wescott, of Camden.

Ques. (By the Court.) John W.?

Ans. Yes, sir.

30

Ques. (By the Court.) That is not the Westcott that asked you to sign the deed?

Ans. No; Lawyer Westcott; this is the lawyer sits right here asked me to sign the deed.

Ques. How long did you have them in your possession before you handed them over to Judge Wescott?

Ans. Why, I kept them from in March until the next November; I think it was November.

Ques. How long did Judge Wescott have them in his possession?

Ans. Well, I got them back along the first of January.

Ques. Why did he have them?

The Court: Did you employ him to do something for you; try and get your property?

10

Ans. Yes, sir; I employed Judge Wescott.

Ques. Did he do anything?

Ans. Well, he said—

The Court: Never mind. Did he do anything?

Ans. No, sir; he didn't do anything.

Ques. (By the Court.) How long did he keep them before he told you he couldn't do anything?

20

Ans. Well, he kept them from November until in January.

Ques. And they came back in your possession?

Ans. I sent my son up to his office after them; he didn't send them to me.

Ques. How long did you keep them in your possession after you obtained them from Judge Wescott?

Ans. Well, I kept them until about the first of March, I think it was.

Ques. Then what did you do with them?

Ans. I gave them to Lawyer Styron.

30

Ques. (By the Court.) You employed Mr. Styron then?

Ans. Yes, sir; I employed Lawyer Styron.

Ques. What is the name of the son who found these papers?

Ans. Harvey Turner.

Ques. Do you know the value of the North Carolina avenue property?

Ans. Mr. Turner always told me it was worth twenty-five thousand dollars, and I have heard him say he wouldn't sell it less than thirty.

Ques. Was it encumbered in March, 1897?

Ans. No.

The Court: What does she know about that?

Mr. Styron: She may know.

Ans. I don't think there was.

10

The Court: There was a mortgage on it, mortgage of four thousand.

Mr. Styron: No, sir; that is on another property.

The Court: Oh, the North Carolina avenue property; that belonged to your husband, did it?

Ans. Yes, sir;

20

Ques. (By the Court.) But you lived in it?

Ans. Yes, sir; but he had encumbered it all up before he died.

Mr. Styron: There is an allegation, if your Honor please, that that was unencumbered at the time of this foreclosure.

Ques. (By the Court.) Was it valuable property?

Ans. Yes, sir; valuable property.

30

Ques. (By the Court.) How much was it worth?

Ans. Mr. Turner always valued it at twenty-five thousand dollars.

The Court: Oh, that was the one you were asking about the value?

Mr. Styron: Yes, sir.

Ques. (By the Court.) Is that all the property he owned besides this Music Hall property at that time?

Ans. Yes, sir; he owned a farm on the shore worth a thousand dollars, and he owned some Florida land.

Ques. (By the Court.) You say he met with misfortune after that and lost all his property?

Ans. He didn't meet with any misfortune; he borrowed
10 money on the property himself.

Ques. (By the Court.) And spent it?

Ans. Spent it; stayed away from home until he had spent it.

Ques. Did he own property on Texas avenue?

Ans. That was all mortgaged up; he did own it.

Ques. Do you remember whether or not he owned the property at Illinois and Arctic?

Ans. Yes; we did own a property there.

Ques. And when was that sold; do you know?

Ans. Well, I think it has been about ten years ago since
20 he sold that.

Ques. How long before the sale of the Music Hall property by the Sheriff?

Ans. This Illinois and Arctic avenue property was sold in June, and the Music Hall property was sold the next February.

Ques. Wasn't it next February a year?

Ans. Well, it might have; I can't remember; it has been so long ago that I can't remember.

Ques. Do you know whether your husband got any
30 money from the sale of that property, Illinois avenue property?

Ans. Well, I think he did get some.

Ques. What was it sold for?

Ans. Eleven thousand dollars.

Ques. To whom did he sell it?

Ans. He sold it to the School Board.

Ques. Board of Education?

Ans. Board of Education.

Ques. Was there any provision made for you in lieu of your dower at the time of your marriage?

Ans. No, sir.

The Court: No defense of that kind set up. You can anticipate as much as you are a mind to.

10

HARVEY D. TURNER, sworn.

Direct examination.

By Mr. Styron:

Ques. Where do you live?

Ans. At the present time I live in New York.

20

Ques. Are you a son of the previous witness?

Ans. I am her son; yes, sir.

Ques. I show you four papers marked for identification Exhibits C20, C21, C22 and C23, and ask if you have seen these before?

Ans. Yes, sir; I got those out of my father's trunk that was shipped down from where he died, after he died.

Ques. (By the Court.) Before he died?

Ans. After he died; we didn't get possession of anything until after he died. As soon as I discovered those I handed them over to my mother.

30

Ques. These are the papers?

Ans. Those are the papers; yes, sir.

JOHN S. WESTCOTT, sworn.

Direct examination.

By Mr. Styron:

Ques. You are a practicing lawyer?

Ans. Yes, in Atlantic City.

Ques. And were you such in February, 1896?

Ans. Yes, sir.

10 Ques. Do you know the defendant, Louis Kuehnle?

Ans. I do.

Ques. Did you know Richard Turner in his lifetime?

Ans. Yes, sir.

Ques. Do you know the complainant in this case?

Ans. Yes, sir.

Ques. I show you a paper purporting to be an un-executed deed, and ask if you have seen that paper before?

Ans. I have.

20 Ques. When did you first see it?

Ans. Well, I should say it was some time during the month of February of 1896, by the date of it.

Ques. Won't you relate the circumstances as to how that came into your possession, and what purpose, and from whom?

Ans. My recollection of it is that Judge Thompson telephoned for me at my office and asked me to call and see him, and he said that I was friendly with Mr. and Mrs. Turner, and wanted to know if I would have

30 Mrs. Turner to execute this deed.

Ques. (By the Court.) Procure her to execute it?

Ans. Yes, sir; and he handed me this deed.

Ques. Well, what did you do with it?

The Court: Do you know the handwriting?

Ans. I rather think it is the handwriting of Mr. Haviland, Harry Haviland, that was a clerk in Judge Thomp-

son's office; I should say it was his handwriting, as I recall it. I called on Mrs. Turner and—

Ques. (By the Court.) One moment. Does the deed cover the property here in question?

Ans. It does, sir.

Ques. (By the Court.) You know that?

Ans. Yes, sir. I called upon Mrs. Turner, took the deed with me, and told her that Mr. Thompson had sent for me and wanted me to ask her if she would sign this deed, which is a deed bearing dated the 25th of February, 1896, from Mr. Turner and Mrs. Turner to Louis Kuehnle for the Music Hall property, or what is called the Music Hall property, and she asked me what I thought about it, and I said, "I don't think I should," if she wanted to rely upon what I said, and she declined, and I so reported to Judge Thompson. 10

Ques. (By the Court.) Ever see her more than once about it?

Ans. It is possible; I don't recall; but they made an offer to pay her, I think, as I recall, two or three hundred dollars, and I may have gone back and told her that they wanted to give her three hundred dollars. I might explain this a little further, Vice Chancellor, in this way. The property that has been referred to as the Illinois and Arctic avenue property sold to the School Board, they had come to me and I had been representing Mrs. Turner in that transaction, in which I think, if I am not mistaken, I got for Mrs. Turner some three thousand dollars. 20

The Court: She joined the deed, but she got a good slice out of it? 30

Ans. Yes, sir; in other words, she got a fair share out of it—and I presume that was the reason they sent for me this time on the Music Hall property.

Ques. (By the Court.) Yes; but they didn't offer to pay anything this time?

- Ans. My recollection is that after I had reported to Judge Thompson that she wouldn't sign it—I used the expression “we,” I think; I think he said then he would give us two or three hundred dollars, as they could foreclose for about the same amount of money a mortgage that was upon the property; and this deed I never returned to Judge Thompson; I put it in my safe in my office and delivered it to Mr. Styron, and I find I have marked it here as delivered to Mr. Styron on the 4th of March, 1905; up to that time it had been continuously in my possession.

Ques. The lead pencil memorandum is yours?

Ans. Yes; my handwriting.

(Offered in evidence.)

The Court: It is admitted.

(Marked Exhibit C24.)

- 20 Ques. (By the Court.) You are quite sure that Judge Thompson remarked they wouldn't give her any more than that because they could foreclose it for that?

Ans. There was a remark to that effect, yes, sir, that there was in existence an agreement to sell to Mr. Kuehnle for so much money, and that there was a mortgage of something, as I recall, in the neighborhood of four thousand dollars.

Ques. (By the Court.) Which they could use to foreclose and cut off her dower?

- 30 Ans. Yes, sir; that was the purport of it.

Ques. Did you study law in Judge Thompson's office?

Ans. I did.

Ques. Are you familiar with the signature of Judge Thompson?

Ans. I am.

Ques. Do you know the handwriting of Mr. Cole?

Ans. Yes, sir.

Ques. I show you three papers already marked for identification, and ask you if you can indicate which is the signature of Judge Thompson and which is the handwriting of Mr. Cole?

Ans. These two are the signatures of Judge Thompson; I rather think though they are rubber stamp; I don't think they are original signatures.

Ques. Do you know whether or not he used such a stamp in his office for that purpose, fac simile of his signature? 10

Ans. I rather think so. That is Exhibit 23 and 21. Exhibit 20 is in the handwriting of Mr. Cole.

Ques. Which Mr. Cole? At that time connected with the office of Judge Thompson?

Ans. Yes, sir; he was.

Ques. (By the Court.) Used to be firm of Thompson & Cole?

Ans. That is the firm at this time.

Ques. (By the Court.) He was clerk in his office?

Ans. In 1897; yes, sir. 20

Mr. Styron: I offer them in evidence now.

The Court: Let me see them. The pencil marks on this one, letter of March 1st, 1897, I want to ask the young gentleman, Mr. Turner.

HARVEY D. TURNER, recalled by the Court. 30

Examined by the Court:

Ques. The pencil marks on the letter of March 1st, 1897, from Mr. Thompson to your father, Richard H. Turner, were they there when you got them?

Ans. I don't hardly think they were; I think they were put on afterwards.

Mr. Styron: The complainant, if your Honor please, can explain those pencil marks. I omitted to ask the complainant about it; she can best explain them.

10 JOHN S. WESTCOTT, resumed.

The Court: They are admitted now, these three papers, Exhibits 20, 21, 22 and 23; they are all admitted.

Ques. (By the Court.) You know the handwriting of the Sheriff?

Ans. Yes, sir; that is the signature of Mr. Kirby, the Sheriff.

20 LOUISA H. TURNER, recalled.

Direct examination.

By Mr. Styron:

Ques. Mrs. Turner, I call your attention to some pencil memorandum on Exhibit 23, and ask you if you can explain their presence on the paper?

Ans. This is the paper I give to Judge Wescott, and there were questions he asked me, and he wrote them
30 down there himself.

Ques. (By the Court.) Judge Wescott wrote them?

Ans. Yes sir; Judge Wescott wrote them there.

Ques. (By the Court.) When your son brought you these papers shortly after your husband's death, how long after? Was that the first you knew about these things? Was that the first you knew how this property was conveyed, &c.?

Ans. I didn't know it was really sold until after Mr. Turner died and we found those paper in his trunk. I thought maybe Mr. Kuehnle held a mortgage or something on it, you know; I didn't really know.

Ques. You never knew what the circumstances were, that it was actually sold, until you saw those papers?

Ans. No, sir.

FRANK M. CUNNINGHAM, SWORN.

10

Direct examination.

By Mr. Styron:

Ques. (By the Court.) Where do you live?

Ans. Atlantic City.

Ques. (By the Court.) What is your business?

Ans. Contractor and builder.

Ques. How long have you followed that business? 20

Ans. It will be fifteen years next spring.

Ques. Are you acquainted with the property known as the Huber Theatre?

Ans. I am.

Ques. Or Music Hall?

Ans. Yes, sir.

Ques. Known by various titles?

Ans. Yes.

Ques. Do you know whether there are any improvements on that property now? 30

Ans. Now? Yes, sir.

Ques. Do you know what improvements were on that property in 1893; do you recall it?

Ans. 1893?

Ques. Yes, or prior to that time?

Ans. Why, I think there was an old frame building there at that time.

The Court: Mr. Styron, on behalf of the absent defendant, I think you ought to understand that I doubt the competency and value of that evidence that you appear to be making. I shall receive it, of course, but I want it understood that I suppose the defendant would object to it if he was here. You may go on. You see, my rule is to admit all evidence that has or can have any bearing on the case. I don't know whether it is the same way down your way with Vice Chancellor Gray, but we admit all the evidence, subject to objection, that anybody can possibly think can have any relevancy; but I think I ought to say that to you as the defendants are not here.

10

Mr. Styron: I will explain the purpose of the offer, which is to show the physical condition of the land at the time of the sale, and subsequent improvement, in order to show the disparity between the amount it was sold at at the Sheriff's sale and the real value of the property.

20

The Court: Yes, you think you ought to get a bigger valuation on it, larger basis than the actual sale, \$18,000.

Mr. Styron: That isn't actually the purpose. The purpose is to show acts from which the inference to defraud is irresistible.

30

The Court: I don't say you are not right; I don't say that the evidence may not be competent, but it is on what is called the verge, and I want to enter an objection on behalf of the defendant, who is absent. Go on.

Mr. Styron: My idea was that the value which the parties had placed upon the property is the true value, so far as these proceedings are concerned, but I am

not raising that question just at this time, and the offer was not made for that purpose.

Ques. Did you know the property at the time they began the erection of the Music Hall, in 1896?

Ans. Well, I am not positive whether it was 1896 or 1897, but I knew of the property at that time; yes, sir.

Ques. (By the Court.) The bare property, without any buildings on it, what was it worth, the two lots? The two lots, do they adjoin each other?

10

Mr. Styron: No, they run a hundred or two hundred and sixty feet deep by fifty feet front.

Ques. (By the Court.) Two lots; do they join each other?

Ans. Yes, sir.

Mr. Styron: Yes, they touch one end; it is one continuous lot 260 feet deep.

20

The Court: And fifty feet front?

Mr. Styron: Yes, sir.

The Court: But the second lot is in the rear; one is in the rear of the other, is that it?

Mr. Styron: Yes.

Ques. (By the Court.) What was the land worth, without anything on it?

30

Ans. At that time?

Ques. (By the Court.) Yes.

Ans. I presume in the neighborhood of, in that location, in the neighborhood of sixteen or eighteen thousand dollars.

Ques. Do you know whether or not they removed the frame building which you spoke of?

Ans. Yes, sir; they did.

Ques. (By the Court.) Put another building on?

Ans. Yes, sir.

Ques. What was the character of the improvement that was placed there?

10 The Court: Who did that, the Brewing Company or Mr. Turner?

Ans. I couldn't recall that just now; that I don't exactly remember.

Ques. The lease makes provisions for those things, for improvements?

The Court: Yes; I haven't read it; but they are to have the benefit of it, the lessee is to have the benefit of it.

20 Ans. If I remember correctly, at the time the building was put up by the tenant, and it was to revert to the owner.

Ques. (By the Court.) How was that?

Ans. The building was to revert, go to the owner, I think.

The Court: The lease shows for itself. I won't stop for that now.

30 Ques. What, in your judgment, is the value, or was the value of the improvement placed there by the lessee?

Ans. At that time when they moved the old building off?

Ques. Yes.

Ans. I would say from twelve to thirteen thousand dollars.

Ques. (By the Court.) What was the whole thing, when it was finished, what was it worth?

Ans. Ground and all?

Ques. (By the Court.) Yes.

Ans. Make in the neighborhood of thirty thousand dollars, thirty-one thousand dollars; something like that.

Ques. (By the Court.) What was it used for?

Ans. Amusement place.

Ques. (By the Court.) Wasn't there anything else?

Ans. Sold liquor there.

Ques. (By the Court.) Occupied as an amusement saloon, with a license to sell liquor?

10

Ans. Yes, sir.

Ques. Who run it?

Ans. I think Kuehnle & Donnelly, I think, run it, or had a man run it.

The Court: Where was this sale held?

Mr. Styron: At the hotel of Louis Kuehnle.

The Court: Not this Music Hall?

20

Mr. Westcott: No, sir.

The Court: Mr. Kuehnle kept a hotel at that time?

Mr. Styron: Yes, sir.

JOHN S. WESTCOTT, recalled.

30

Direct examination.

By Mr. Styron:

Ques. Do you know whether or not Mr. Turner was connected with any financial institution at Atlantic City?

Ans. I do.

Ques. In 1897?

Ans. I do.

Ques. Which one?

Ans. Atlantic City National Bank.

Ques. Was he a director of that institution?

Ans. He was a director.

10 Mr. Styron: Now, if your Honor please, I desire the Court to know that I have issued subpoena *duces tecum* for Clarence L. Cole and one for Judge Thompson.

The Court: I got a letter from Mr. Cole that he would be here to-morrow; and I wrote you—I suppose you didn't get any communication from me whatever—I am sorry I didn't bring down copies.

Mr. Styron: No, sir; I received none at all.

20 The Court: Have you any evidence now to show what took place at the sale?

Mr. Styron: No, sir.

The Court: Do you expect to offer any?

Mr. Styron: I expected to prove that Mr. Turner and Mr. Kuehnle were both present at the sale—no specific act; I didn't intend to offer evidence of any specific act particularly.

30 The Court: You are not ready to rest then at this moment, are you? You have a subpoena served on Mr. Cole to be here?

Mr. Styron: Yes, sir.

The Court: You may show that to me. And who else; Cole and Thompson?

Mr. Styron: Yes, sir; also Francis B. Quigley, cashier of the Atlantic City National Bank. I wanted to prove by Mr. Quigley that Turner was director of the Atlantic City National Bank, and stockholder therein at the time of this sale.

The Court: I will hear any motion you want to make—I suppose you want to postpone it—I will postpone it until to-morrow if you want to get these witnesses.

Mr. Styron: I have gone as far as I can to get those witnesses, but they disobeyed the subpoena without any excuse whatever, so far as I can see. 10

The Court: Mr. Cole says he will be here to-morrow.

Mr. Styron: Mr. Thompson is the important witness.

The Court: While you have acted strictly within your rights, it is much better for you to give the other parties an opportunity before closing your case. 20

Mr. Styron: So far as Mr. Cole is concerned, I think that there is no necessity of my asking for any order or anything on Mr. Cole, because he will be here, I think; but so far as Judge Thompson is concerned, I don't feel that I should have to pay another witness fee, so I, therefore, ask the Court for an order as to Judge Thompson and Mr. Quigley.

I have one more deed to offer in evidence. Deed from Samuel Kirby to Francis P. Quigley for the North Carolina avenue property; that shows title in Turner. 30

(Marked Exhibit C25.)

The Court: You won't object to my giving them an opportunity to coming in and making their defence? It would be a good deal better for you.

Mr. Styron: No, oh no; I want the case heard thoroughly.

FRANCIS P. QUIGLEY, sworn.

Direct examination.

By Mr. Styron:

10

Ques. Did you know Mr. Richard H. Turner in his lifetime?

Ans. I did.

Ques. (By the Court.) You live in Atlantic City?

Ans. I live in Atlantic City.

Ques. (By the Court.) How long have you lived there?

Ans. About forty years..

Ques. What is your official position down there?

Ans. Why, I am cashier of the Atlantic City National Bank.

20

Ques. Have you the stock book there of that institution?

Ans. Yes, sir; I have.

Ques. Will you produce it and say whether or not Richard H. Turner was a stockholder in the Atlantic City National Bank?

Ans. I can say from memory, without producing the book, that he has been.

Ques. (By the Court.) Was he?

30

Ans. Yes, sir; he has been; he was one of the original stockholders.

Ques. (By the Court.) When did he become a stockholder?

Ans. In 1881.

Ques. (By the Court.) And continued so until when?

Ans. He continued so up to January 12th, 1897.

Ques. Was he a director of that bank?

Ans. He was a director from 1881 to January 12th, 1897, continuously.

Ques. He ceased to be a director at the time he ceased to be a stockholder?

The Court: Necessarily.

Ans. Well, he might have parted with his stock afterwards. I will just give you the date when the transfer of the stock was made. The stock was—the transfer is dated the 4th day of June, 1900. 10

Ques. (By the Court.) Transfer from him?

Ans. Yes, sir.

Ques. (By the Court.) Continued to be a stockholder up to 1900?

Ans. Up to 1900.

Ques. (By the Court.) How much was the stock?

Ans. Ten shares.

Ques. What was the par value of that?

Ans. Par value was one hundred dollars a share.

Ques. Thousand dollars par value? 20

Ans. Yes, sir.

Ques. What was the real value of that stock in 1897?

Ans. At the time Mr. Turner sold it he got five hundred dollars a share for it.

Ques. It was worth that in 1900?

Ans. Yes, sir.

Ques. (By the Court.) Got five thousand dollars for it?

Ans. Got five thousand dollars for it.

Ques. (By the Court.) Been increasing in value?

Ans. Yes, sir; increasing in value; the surplus of the bank increased and stock increased in proportion. 30

Adjourned to June 28, 1906, at State House, Trenton, New Jersey, at half-past ten o'clock A. M.

IN CHANCERY OF NEW JERSEY.

JUNE 28, 1906.

Between

LOUISA H. TURNER,

10

Complainant,

and

LOUIS KUEHNLE,

Defendant.

20 Transcript of shorthand notes of testimony taken in
the above entitled cause on Thursday, June 28, 1906, at
the State House, Trenton, New Jersey, before Hon.
Henry C. Pitney, Vice Chancellor.

Appearances:

MR. ULYSSES G. STYRON and JOHN S. WESTCOTT,
for the Complainant.

MR. JOHN C. REED and CLARENCE L. COLE, for
the Defendant.

30

JOHN S. WESTCOTT, recalled.

Cross-examination.

By Mr. Cole:

Ques. In your testimony on direct examination you
stated, and I now quote the testimony: "But they made

an offer to pay her I think, as I recall, two or three hundred dollars, and I may have gone back and told her that they wanted to give her three hundred dollars." I ask to whom did you refer when you said "they made an offer to pay her two or three hundred dollars"?

Ans. The conversation was with Judge Thompson; the word "they" may have been a misquotation or statement.

Ques. (By the Court.) You understood he was speaking for somebody else? **10**

Ans. Yes, sir; the word "they" was used figuratively.

Ques. Where was it that Judge Thompson made you, in behalf of Mrs. Turner, an offer of two or three hundred dollars?

Ans. In his office.

Ques. And where was the office at that time?

Ans. In the Law Building.

Ques. Had you any offer on behalf of Mrs. Turner from any person other than Mr. Thompson? **20**

Ans. Not that I recall.

Ques. Had you had any talk with Mr. Turner concerning his wife signing this deed?

Ans. I don't think so; I have no recollection.

Ques. Who was it at first opened the matter of Mrs. Turner signing the deed in question to you?

Ans. Judge Thompson.

Ques. Did you represent Mrs. Turner at that time?

Ans. I can't say that I did.

Ques. Do you know how Mr. Thompson came to open the matter to you? **30**

The Court: He explained that on his examination.

Mr. Cole: Yes. I don't recall the explanation.

The Court: He said he had been employed before by Mrs. Turner to sign deeds.

Ques. Now, in the transaction of the sale of the school property in which you say three thousand dollars were paid, did you represent both Mr. and Mrs. Turner?

Ans. I did not; I represented Mrs. Turner.

Ques. Who got them together in that transaction?

Ans. My recollection of it is, Judge Thompson.

Ques. In the school transaction?"

Ans. That is my recollection; he represented, as I recall, Mr. Turner.

10 Ques. Now you say that Mr. Thompson said to you, and I quote your testimony: "There was a remark"—

The Court: I suppose it is very usual—I don't allow it—I don't allow testimony to be quoted, particularly I don't allow one witness to be told what another witness has sworn to. You may call his attention to what he has sworn to *in haec verbae*.

20 Mr. Cole: I don't propose to do that. I am only trying to give him his exact language so there will be no mistake about it.

Ques. Well, in effect you said that Mr. Thompson told you that if Mrs. Turner didn't sign this deed that there was a mortgage that might be foreclosed and cut off her dower?

Ans. That is correct.

Ques. Where did that conversation take place?

Ans. In Judge Thompson's office.

30 Ques. At the same time that this offer of two or three hundred dollars was made?

Ans. I couldn't say; I think my recollection of it is two interviews with Judge Thompson in regard to it; at which interview I couldn't say.

Ques. Did you know at either of the interviews that a bill had been filed by Mr. Thompson on behalf of Mr. Kuehnle to compel specific performance of an agreement to sell this land?

Ans. There was mentioned, at the first time, I think, that there was in existence an agreement of sale, and that a bill for specific performance had been or could be filed to oblige a conveyance.

Ques. So that you knew from the testimony, or rather from the statement made by Judge Thompson to you, that there was likely to be a foreclosure, the object of which was to cut of Mrs. Turner's dower unless she signed this deed.

Mr. Styron: I object as not cross examination.

10

The Court: I don't see why you object. I think it is the very crux of the thing.

Mr. Styron: The reason why I object is this. It assumes Mr. Westcott was representing Mrs. Turner in that transaction.

The Court: He wasn't representing Mrs. Turner. He was employed as intermediary. I haven't seen any evidence that he represented Mrs. Turner.

20

Mr. Styron: So far as it assumes that I object.

(Question read.)

Ans. I so understood that that was his intention, from what he said.

Ques. Now, did you communicate that to Mrs. Turner?

30

Ans. I possibly, when I went to see her, referred in a general way to the same matters that Judge Thompson had spoken to me in regards to.

Ques. It is your recollection now that you did state to her that Judge Thompson had said unless she signed this deed the mortgage would be foreclosed to cut off her dower?

Ans. I don't exactly recall a conversation with Mrs. Turner; I imagine I referred to it.

Ques. (By the Court.) You have no distinct recollection?

Ans. Not at all, sir; I was not the attorney for Mrs. Turner.

Ques. Now, did you ever see Mrs. Turner or have any talk with her about this matter from the time that she refused to sign the deed and until the sale under
10 the foreclosure?

Ans. Not to my recollection.

Ques. You recall Mr. Thompson stating to you when he talked with you about your seeing Mrs. Turner to have her execute the deed that Mr. Turner had told him that you represented Mrs. Turner?

Ans. I don't know what Mr. Turner told him.

Ques. No, Did Mr. Thompson tell you that Mr. Turner had told him that you represented Mrs. Turner?

Ans. I don't recall that he did, sir; I think not.

Ques. (By the Court.) Did you ever do any business
20 for her you were standing counsel for?

Ans. Excepting the matter of the sale of Illinois avenue property.

Ques. (By the Court.) In those matters where you procured her to sign a deed that her husband—

Ans. In the matter of Illinois avenue and Arctic, my recollection of it is that I then advised her in the matter of the signature of that deed; yes, sir; but outside of that and the afterwards investment of a portion of the funds that was received from that mortgage on the corner of
30 Indiana and Pacific avenue, I never had any other business with Mrs. Turner or represented her.

Ques. The question is, whether in this transaction you represented her?

The Court: That is for the Court. I understand he was employed by—as the case now stands—I read the evidence coming over to-day—he was employed by Mr.

Somebody in behalf of complainant's husband to procure her to sign those deeds and negotiate the amount she would take, as the husband and wife were not in cordial relations; and he acted as such, as a go-between; but whether that established him as her counsel in that matter is a question for the Court to determine.

Mr. Cole: Certainly; I understand that it is a Court question.

The Court: You can get the facts out.

10

Mr. Cole: That is what I am trying to.

The Court: What he thought at the time and what his understanding was is competent evidence, but not his judgment on it. If he was sued for malpractice or misconduct in his office in connection with what he did for her in that connection, it would be for the Court to say whether a relation of counsel and client existed or not.

20

(Question read.)

Ans. In what transactions?

Ques. The ones about which you have just testified. Did you represent her?

The Court: Which one? I want to understand it.

Mr. Cole: He spoke of the Illinois avenue property and he spoke of the investment of some money as the proceeds of the sale of that property.

30

Ans. In the Illinois avenue and Arctic sale by Mr. and Mrs. Turner. My recollection of it is that Mr. Turner first interviewed me in regards to having his wife

to join with him in the execution of the deed, Arctic and Illinois avenue. Mr. Turner was a distant relation of mine, and I knew Mrs. Turner very intimately, and my recollection of it is that it was at his request that I first went and called upon Mrs. Turner in regards to that property, that Illinois and Arctic avenue, and took the matter up with her, talked with her in regards to it and with her set a price as to what she would sign the deed for at Arctic and Illinois. The amount of money received from there, as I recall, was in the neighborhood or the sum of three thousand dollars, which amount of money for Mrs. Turner, and with her I put in the bank, and afterwards, upon the application of a lady by the name of Megarge, I think I invested two thousand of it for Mrs. Turner on a mortgage on the corner of Pacific and Indiana avenue; I don't recall that Mrs. Turner gave me any compensation; I do not recall that I charged her for any of the services that was rendered, but it was rendered, the suggestion at the request of Mr. Turner.

20 Ques. Did anybody pay you for your services?

Ans. I don't recall that they did; sort of a relationship affair.

Ques. Well, now, do you recall that Mrs. Turner called at your office several times with relation to this transaction here in question?

Ans. I don't think that she did, sir. Mrs. Turner, I think, called at my office a number of times about that period of time for the drawing of different amounts of money out of the bank which remained of the three thousand that was received, Mrs. Turner not understanding banking and the drawing of checks; I drew the checks for her and she came to the office to sign them.

30 Ques. Did you represent Mrs. Turner in the collection of the interest on the Megarge mortgage?

Ans. Mrs. Megarge may have paid me one payment; I don't recall any, but Mrs. Megarge may have made one payment.

Ques. Did you represent Mrs. Turner, I say, in the collection of interest on that mortgage?

Ans. I don't think so.

Ques. How came Mrs. Megarge to pay the interest to you?

Ans. Because I presume, the matter was placed by me with Mrs. Megarge; Mrs. Megarge I don't think ever saw Mrs. Turner personally up to the time of the placing of the mortgage. Mrs. Megarge at that time was a client of mine in some affairs.

101

Re-direct examination.

By Mr. Styron:

Ques. Do you know how many lots the property referred to as Arctic and Illinois avenue consisted of?

Ans. Well, my recollection of it is now that it was three houses, and, I presume, divided into three lots.

Ques. Didn't Mrs. Turner have title to one of those lots?

20

Ans. That is my recollection.

Ques. (By the Court.) Mr. Turner?

Ans. Mrs. Turner.

Ques. (By the Court.) Mrs. Turner?

Ans. Yes, sir.

MRS. LOUISA H. TURNER, recalled.

30

Cross-examination.

By Mr. Cole:

Ques. Mrs. Turner, where was it that Judge Thompson told you, after you knew that the Music Hall property in question was advertised to be sold, would not be sold?

The Court: Where was he when he told you that?

Ans. Why, down at his office.

Ques. Where?

Ans. Well, on Atlantic avenue, and it was in—what building is it there?

Ques. You mean the Real Estate and Law Building?

The Court: In his office in Atlantic City?

10

Ans. Yes, sir.

Ques. How came you to go see Mr. Thompson?

Ans. Because I knew he was Mr. Turner's attorney.

Ques. Do you recall when it was you went there?

Ans. It was the same week the Music Hall property was to be sold.

Ques. How did you know it was to be sold?

Ans. I saw the advertisement in the paper for sale.

Ques. Did you attend the sale?

20

Ans. No, sir.

Ques. Did your son attend it?

Ans. Yes, sir.

Ques. Which son?

Ans. Hamilton; my son Hamilton.

Ques. Is he here?

Ans. No; he is not here.

Ques. (By the Court.) Where is he?

Ans. I can't tell you where he is; he is way off from home somewhere; I don't know where he is.

Ques. (By the Court.) A wanderer?

30

Ans. Yes, sir.

Ques. Did you see your son Hamilton after the sale?

Ans. Yes, sir.

Ques. Did he tell you the property had been sold?

Ans. Yes, sir.

Ques. Tell you how much it brought?

Ans. No, sir; he did not.

Ques. Did you ask him?

Ans. No; no, sir; I didn't ask him.

Ques. Did you talk with him or he with you at that time what was likely to become of your interest in the property?

Ans. Well, his father—

Ques. Did you talk with him, I mean your son, at that time as to what was to become of your interest?

Ans. No; I didn't believe it was sold, and I didn't believe what he told me it was sold.

10

Ques. You did not?

Ans. No.

Ques. Why didn't you believe your son?

Ans. Well, because his father had been in a few moments before that and told me it wasn't sold.

Ques. Do you know why your son attended the sale?

Ans. Well, he went there to see whether it was going to be sold or not.

Ques. Did you tell him to go?

Ans. I think I did.

Ques. And after you told him to go and see if it had been sold he came back and reported it had been sold?

20

Ans. Yes, sir.

Ques. After that did you make any investigation to see whether it had been sold or not?

Ans. I came down to Mr. Thompson's office, and you were there.

Ques. After the sale?

Ans. After the sale.

Ques. What was told you?

Ans. You told me the property had been sold, and I said I hadn't signed it, and you said you were sure my name was in the deed, and I said, "Well, Mr. Cole, I didn't sign it," and you said, "Mrs. Turner, I am sure your name is on the deed," and you got up and went to Mr. Thompson's safe to get the deed out, and got it out and looked at it and put it back in the safe again,

30

and I said, "Mr. Cole, won't you look after my interest in the property?" and you said you couldn't do it, you were employed by Mr. Turner and you couldn't look after my interest.

Ques. How long was that after the property had been sold?

Ans. I can't tell how long; I don't remember.

Ques. About?

10 The Court: The same day?

Ans. No, sir.

Ques. Well, about how long was it?

Ans. Maybe a couple of months afterwards.

Ques. After you found out from me I couldn't represent you, to look after your interest, did you consult any other attorney?

Ans. No, I didn't think it was sold; I hadn't signed it.

Ques. (By the Court.) And you hadn't signed a mortgage?

20 Ans. Hadn't signed the mortgage, and I didn't think they could sell it without my signing.

Ques. Did you say you didn't sign the mortgage?

Ans. I didn't sign the mortgage.

Ques. What mortgage?

Ans. Any mortgage that was put on it; Mr. Turner said he put a mortgage on.

Ques. You said something about my telling you you had signed the deed.

Ans. You did say so.

30 Ques. What deed were you talking about?

Ans. You said deed to the property where the property had been sold.

The Court: I suppose you referred to her name being in the Sheriff's deed, and her saying she hadn't signed any deed, you meant she was made a party and her right was cut off?

Mr. Cole: I don't know of course; I don't recall the conversation.

Ans. You got up and went to the safe and got it out and looked at it and put it back again. I remember that well.

Ques. Did you understand that the mortgage that was being foreclosed was the mortgage that had been signed by Mr. Turner?

Ans. I didn't now anything about it; it was all his affairs; I didn't know anything about it. 10

Ques. Now, you called on Mr. Westcott a number of times, I believe?

Ans. Well, that was in regard to selling the Illinois and Arctic avenue property.

The Court: Which Westcott?

Ques. Mr. John S. Westcott. You called at his office a number of times, didn't you?

Ans. Yes, sir; I called. 20

Ques. Didn't you call at his office a number of times about this particular transaction here?

Ans. Well, I don't know that it was so much on that; I don't remember.

Ques. Well, didn't you say in your examination that you had called on Mr. Westcott a number of times about signing the deed here?

The Court: Your evidence the other day at Newark; that you called on him two or three times about signing the deed he asked you to sign? 30

Ans. Yes, sir; I think I did.

Ques. You said, I believe, that Mr. Westcott had sent for you several times to come to his office?

Ans. Yes, sir.

Ques. Is that correct?

Ans. Yes, sir.

Ques. And did you go to his office?

Ans. Yes, sir.

Ques. Now, you also said that he would always tell you that Mr. Turner wanted you to sign the deed and would give you so much money. Is that correct? He told you that, did he?

Ans. Yes, sir; he told me that.

10 Ques. He told you that Mr. Turner wanted you to sign this deed?

Ans. Yes, sir; I think he did.

Ques. Why were you going to Mr. Westcott's office?

Ans. Well, because Mr. Westcott had been doing some business for me in regard to selling Illinois and Arctic avenue property.

Ques. (By the Court.) He came to your office with the deed, didn't he? Did you go to him before he went to you with the deed?

20 Ans. He had been doing some business—

Ques. (By the Court.) On this occasion in regard to the Music Hall property?

Ans. I think he did bring the deed to the house.

Ques. You were about to say why you called at Mr. Westcott's office. Will you tell now why it was?

Ans. Because Mr. Westcott was doing business for me in regard to the Illinois and Arctic avenues property.

Ques. And you were satisfied to have Mr. Westcott look after this for you, I suppose?

Ans. Yes, sir.

30 Ques. And in this matter did you look upon Mr. Westcott as your attorney; was he representing you in this matter?

Ans. He was in that property there, Illinois and Arctic avenue property.

Ques. Was he in this when you were going to see him about Music Hall?

Ans. No; I don't think as he was.

Ques. You didn't have any attorney?

Ans. No.

Ques. Then you were simply going to him without thinking he was going to represent you?

The Court: You are representing her evidence—she said she went because he sent for her; that is what she swore to just now, and I don't think it is necessary to take care of the witness. You are representing it to her as if she went there of her own accord and not at his request. **10**

Mr. Cole: I am only trying to develop what the facts are. It is cross-examination.

The Court: Yes; you have the privilege of cross-examination, but not adroitly misrepresenting the witness a little.

Ques. Now, you also said, I believe, that you went several times, and that whenever you would go there he would always ask you to sign the deed. Is that correct? **20**

Ans. Mr. Westcott would tell me that Mr. Turner wanted me to sign the deed for the property.

The Court: Do you want to cross-examine Mr. Cunningham, the cashier of the bank? You did not require him, I suppose?

Mr. Cole: No.

The Court: Defendants state they do not care to cross-examine any other witnesses. **30**

Mr. Styron: I call on the other side to produce a canceled mortgage made by Louis Kuehnle to Richard H. Turner, dated March 1st, 1897, recorded in Clerk's office of Atlantic county, in Book No. 45 of Mortgages, page 378, &c., and the bond accompanying the same.

I call for the production of a bill of sale, Smith E. Johnson, Sheriff, to Louis Kuehnle, dated January 27, 1896, for property sold under execution mechanics' lien judgment, *Middleton vs. Loritz*.

I call for the production of the lease and agreement between Richard H. Turner and John Wheeler, dated January 12, 1895, recorded March 11, 1895, in the County Clerk's office, Book 5 of Miscellaneous Records, page 369.

- 10 I call for the production of the assignment of the same from John Wheeler to the Otto Huber Brewery, dated March 29, 1895, recorded June 17, 1895, Atlantic County Clerk's office, 5 of Miscellaneous Records, page 377.

I call for the production of the assignment of the same from the Otto Huber Brewery to Louis Kuehnle, dated February 18, 1896, and recorded in Atlantic County Clerk's office, in Book 8 Assignments of Mortgages, page 495, &c.

- 20 The Court: Weren't copies of all these put in?

Mr. Styron: Copies were all in; yes, sir.

The Court: You want the originals, eh?

Mr. Styron: I want the originals.

I call for the production of deed of Samuel D. Haviland to Richard Turner, dated August 31, 1893.

- 30 Mr. Cole: We haven't got that.

Mr. Styron: Deed of Samuel Kirby, Sheriff, to Louis Kuehnle, dated March 1st, 1897, recorded Atlantic County Clerk's office—

Mr. Cole: That we haven't got.

Mr. Styron: I call for deed, Smith E. Johnson, Sheriff, to Samuel D. Haviland(?), dated July 30, 1890, recorded Atlantic County Clerk's office.

Mr. Cole: We haven't that either. We haven't any other papers you call for, except those we have produced.

The Court: You better offer each one, if you put them in.

Mr. Cole: I handed the first five papers demanded to Mr. Styron as they were called for.

10

Mr. Styron: I now offer in evidence a mortgage dated first of March, 1897, made by Louis Kuehnle to Richard H. Turner; the acknowledgement is torn out, but recorded in the County Clerk's office of Atlantic county on March 2, 1897, in Book No. 45 of Mortgages, 378, &c., and the bond accompanying the same, which mortgage covers the property described in the bill.

20

(Marked Exhibit C26 and Exhibit C27.)

I offer in evidence, as produced by the defendant, the original bill of sale of Smith E. Johnson, Sheriff, to Louis Kuehnle, which bears date on the 27th of January, 1896, and acknowledged on the same day before Joseph Thompson, M. C. C., and is unrecorded.

(Marked Exhibit C28.)

I offer in evidence the original assignment of lease produced by the defendant on call, from John Wheeler to the Otto Huber Brewery, which assignment bears date on the 29th of March, 1895, and is recorded in Book No. 5 of Miscellaneous Records, folio 377, &c.

30

(Marked Exhibit C29.)

I offer in evidence the original assignment of mortgage and lease, produced under notice by the defendant, from the Otto Huber Brewery to Louis Kuehnle, which assignment bears date the 18th of February, 1896, and is recorded in Book No. 8 of Assignment of Mortgages, page 495, &c., in Atlantic County Clerk's office.

(Marked Exhibit C30.)

- 10 I offer in evidence the original lease from Richard H. Turner to John Wheeler, produced on notice, which lease bears date on the 12th of February, 1895, and is recorded in the Atlantic County Clerk's office, in Book 5 of Miscellaneous Records, page 369, &c.

The Court: Is that the paper that contains the contract of sale?

Mr. Styron: Yes, sir.

- 20 (Marked Exhibit C31.)

CLARENCE L. COLE, SWORN.

By Mr. Styron:

Ques. Are you a counselor-at-law of this State?

Ans. Yes, sir.

Ques. Practicing where?

- 30 Ans. My office is in Atlantic City; I practice wherever I can get it.

Ques. Do you know the defendant in this suit?

Ans. I do.

Ques. How long have you known him?

Ans. Well, I have been in Atlantic City since 1882, and I think I knew Mr. Kuehnle by sight and reputation within a few years thereof; personally I suppose I have known Mr. Kuehnle for the last fifteen years.

Ques. Did you know Richard H. Turner in his lifetime?

Ans. I did.

Ques. Were you formerly associated with Judge Thompson?

Ans. I was, presently as well; I am a partner with Judge Thompson; before that I was in his employ from 1887, I think November first, until, I think, the first of January, 1898, when we became partners.

Ques. Were you not employed by him on February 6, 1897?

10

Ans. Yes.

Ques. What was the character of your employment?

Ans. I was on a salary.

Ques. What to do?

Ans. Whatever I was told to do.

Ques. Ordinary work of the office?

Ans. Ordinary work of the office.

Ques. I show you a paper marked Exhibit 20, and ask you if you know in whose handwriting that is?

Ans. I think there is no doubt about that being mine; it is a little better than I write now, but I think it is mine. 20

Ques. That was prepared by you?

Ans. It must be; it is all in one handwriting.

Ques. I show you Exhibit 23, and ask you if you know whose signature that is, either genuine or fac simile?

Ans. That is a fac simile of the signature of Joseph Thompson; it is a stamp signature which, I think, was in use in the office at the time this letter purports to bear date.

Ques. (By the Court.) Either placed by him or some of his clerks with his authority, I suppose. What was the practice in regard to that? 30

Ans. I have no recollection of this letter. Let me read the letter and see if I can recall it.

Ques. (By the Court.) What was the course of business with reference to that stamp?

Ans. It was used by Mr. Thompson, if he dictated a letter and it came under his supervision, or I suppose

if I dictated a letter in behalf of Mr. Thompson I might have used the stamp. As to the letter itself, I would like to look at it.

The Court: That is enough.

Ans. The Vice Chancellor says that is enough. I will read the letter and see. I have no recollection of the letter.

10 Ques. I call your attention to a check mark there, and ask you if, in the system of your office, that tells you anything?

Ans. That check mark indicates that the writer wants the letter copied.

Ques. Then you would say that letter was copied, from the fact—

Ans. No; I wouldn't say it was; I would say it was intended to be.

Ques. (By the Court.) In the regular course of business?

20 Ans. Yes, sir.

Ques. I show you Exhibit 21, and I ask you if you say the same with respect to that as the former exhibit?

Ans. Yes.

Ques. Where did you get the information from which you were enabled to make up that statement?

Ans. In answer to that, I would like to say, as a preface, after the service of the subpoena on me in this cause to produce papers, &c., I have made a search for papers, and I have also tried my best to recall all of the circumstances. The docket in use at that time in the office indicates that a statement was made, the handwriting in the docket being mine; I undertook to find a copy of the statement, or a statement, and was unable to find such, and I have been unable, after my best efforts, to recall but little, if anything, about this transaction. This statement is practically fresh to me now.

30

Ques. (By the Court.) Any doubt it was made at the time in the regular course of business in the office?

Ans. I have no doubt it was made at the time it purports to bear date, March 1st, 1897.

Ques. (By the Court.) And in the regular course of business in the office?

Ans. I would say that; but as to where the information, how it got to me, or upon what it was based, I couldn't say.

Ques. Can you recall from inspecting the statement, Exhibit No. 20, whether or not the matter was in your charge, the matter with which that purports to deal? **10**

Ans. No; I couldn't tell that from the statement. As I said, I have been unable to recall very little about the transaction.

Ques. You can't say where you got the information from which the statement was made?

Ans. I could not.

Ques. You would not have made it upon your own responsibility?

Ans. Oh, of course not; I must have had it from somewhere; I must have been told or it must have been furnished me. **20**

The Court: Aren't you wasting your time on a thing of that kind?

Mr. Styron: I think so; yes, sir.

Ques. I show you Exhibit C26. It is the mortgage from Kuehnle to Turner, and I ask you whose endorsement of payment is that on the back; whose handwriting is the endorsement? **30**

Ans. Everything but the signature is in my handwriting.

Ques. And the signature is in whose handwriting?

Ans. I am not prepared to say positively, although I haven't much doubt that is Mr. Turner's handwriting.

Ques. You have seen Mr. Turner write, haven't you?

Ans. Yes, sir.

Ques. You are one of the executors of his will, aren't you?

Ans. Yes, sir.

Ques. Now, can you state when the relation of attorney and client between Thompson & Cole commenced, Thompson, Cole and Turner?

10 The Court: Oh, you mean the partnership.

Ques. Oh, no; Thompson, Cole and Turner; the relation of attorney and client. I will withdraw that question. Mr. Cole, from whom did you receive that mortgage at the time that you made the endorsement upon it?

Ans. I couldn't tell you; I haven't the slightest recollection.

20 Ques. Do you know whether or not Judge Thompson represented Mr. Turner in that transaction relating to this money statement?

Ans. I have nothing before me that enables me to recall. I am not able to recall now, haven't been, after trying my best, as I have indicated, to recall that Mr. Thompson did in this transaction or at that time represent Mr. Turner. I don't say he did not.

Ques. Nothing further than the fact that you yourself made the statement is all you know about it?

30 Ans. That is about the limit of my recollection of the transaction, except what I have testified to as to what I did.

The Court: I believe the record shows that he filed a bill for specific performance against Turner in favor of Kuehnle, doesn't it?

Ans. Yes, sir.

The Court: Put those papers in the other day, and that suit was pending at the time of this foreclosure proceeding?

Mr. Styron: Yes, sir.

Ans. Mr. Styron, I have produced here as a result of my search of about two hours the papers that I can find that have to do with the case.

Ques. (By the Court.) Subpoena duces tecum?

Ans. Yes, sir.

10

The Court: He hasn't asked you to produce them.

Mr. Cole: I only want to have it understood I produce them.

Mr. Styron: Yes.

No cross-examination.

20

JOSEPH THOMPSON, sworn.

Direct examination.

By Mr. Styron:

Ques. You are a counsellor at law of this State?

Ans. I am.

30

Ques. And were such prior to 1890?

Ans. I was.

Ques. And where located?

Ans. Atlantic City.

Ques. Do you know Louis Kuehnle, the defendant in this suit?

Ans. I do.

Ques. How long have you known him?

Ans. Since he was a boy; I have known him a good many years.

Ques. Did you know Richard Turner in his lifetime?

Ans. I did.

Ques. And how long did you know him?

Ans. I probably—well, became acquainted with him after I went to Atlantic City, which was in the fall of 1880.

10 Ques. Do you know the complainant in this suit, Mrs. Turner?

Ans. I do.

Ques. How long have you known her?

Ans. I couldn't tell you how long; some years, slightly.

Ques. Did you know her prior to 1895?

Ans. I did.

Ques. Personally?

20 Ans. Oh, I knew her to speak to her, that was about all, if I met her on the street.

Ques. You knew her to be the wife of Richard Turner, did you?

Ans. I did.

Ques. Did you not for several years prior to the death of Mr. Turner transact his business?

Ans. I did at one time, but several years prior to his death I didn't transact any business for him, I don't think. I had some business against him; collections against him and different matters.

30 Ques. When was the last business in a professional way that you did for Mr. Turner, as you recall?

Ans. I don't know that I could fix the date; I had some old matters that were still in my hands that were closed some time after the transaction to which your bill has reference. I don't recall any new business for Mr. Turner for a number of years before his death.

Ques. You did do business for him after that some time, though?

Ans. Nothing that I recall, except in connection with one or two estates in which he was associated; in one instance, I think, with his sister as an executor under a will, and some matters in connection with the Disston estate that he had been the manager of formerly; and I think there were, I think there was one matter in which I had obtained a judgment for him, which was subsequently paid, and at a time when I had collections against Mr. Turner, and with his consent I settled one matter which I recall belonging to the George Meyers estate out of the funds that came into my hands through the collection of a judgment in favor of Mr. Turner. 10

Ques. That was about when, Judge?

Ans. Well, that was some time perhaps during 1896, possibly it may have gone until 1897; but I don't recall any new business that I had for Mr. Turner; I think he had other lawyers employed. He had considerable litigation, I think, about that time growing out of collections against him. 20

Ques. Then all this work you performed was done prior to March of 1897 so far as you recall?

Ans. No; I think there was some of it, some old business extended over beyond that date. I am speaking of new business. I don't recall any new business. I may be mistaken, but I don't recall any new business after that date.

Ques. Judge, look at Exhibit 23.

The Court: That is the statement? 30

Mr. Styron: No, sir; that is the letter of March 1st, 1897.

The Court: Better tell what it is, because we forget all about it, I do; number of the exhibit.

Ques. And say whether or not you authorized that letter to be sent.

Ans. I have no doubt but what I did.

The Court: That is letter dated what?

Ans. That is letter dated March 1st, 1897, which has a rubber stamp as my signature. I would say probably Mr. Cole dictated the letter from the fact that the stamp was there, but unquestionably done under my direction.

10

Ques. I show you a bond and mortgage, being Exhibits 26 and 27, and I ask you—the bond being Exhibit 27—and I ask you if that is the bond referred to in the letter that you have just identified?

Ans. Let me see the letter again, will you? Yes; I am very sure that it is.

Ques. I show you a letter bearing date March 3, 1897, and marked Exhibit 21, and I show you a mortgage marked Exhibit 26, and I ask you if that is the mortgage referred to in that?

20

Ans. Undoubtedly it is the mortgage that accompanied the bond.

Ques. I show you again Exhibit 23, being the letter of March 1st, 1897, and Exhibit 20, being the money statement, and I ask you if that money statement is the statement referred to in that letter?

Ans. Undoubtedly; in Mr. Cole's handwriting.

Ques. I show you what purports to be a Sheriff's statement, marked Exhibit C22, and I ask you if that is the statement referred to in the letter of March 1st?

30

Ans. Without a doubt it is part of that transaction.

Ques. Judge, take that statement and tell us about the transaction, what it was?

The Court: Don't it show on the face of it? There is no answer, nothing that I recollect in the answer that sets that up. I don't want to interfere with your making

your case, because you seem to have a system in your mind, and following it out in a very lawyerlike manner; but the statement speaks for itself; the property was sold for a certain sum of money.

(Question withdrawn.)

Ques. Are you familiar with the property that is the subject of this litigation?

Ans. I am.

The Court: Has it been proven? It was assumed at the hearing, and I suppose it was admitted by the pleadings, the condition of it at the time of this Sheriff's sale, the new building had been put on it, I believe.

10

Mr. Styron: The exhibits were offered, especially the judgments, for the purpose of showing that.

The Court: I know, but as a matter of fact, perfectly competent to prove it, and I think you asked—I read the evidence over coming down this morning, you see—you asked this real estate man Cunningham as to what the value was, and he assumes that that was the condition of it at the time of the Sheriff's sale, and it was so assumed in the pleading, and I think it is admitted in the pleading, but I don't recollect about it, that is all; I know it is so stated in the bill on the demurrer, and my impression is that the answer admitted it.

20

Mr. Styron: The answer denies it is worth so much.

The Court: The value, that is one thing, but the condition at that time is all that I was calling your attention to. There is no dispute about that, is there, the condition at the time, Mr. Reed? Yes; Mr. Reed says there is no dispute at the time of the sale the new building was uncompleted. Go on, then. Counsel admits the building was incomplete at the time of the Sheriff's sale.

30

Ans. It was not completed at the time of the Sheriff's sale; my recollection is that it was in quite a dilapidated condition at that time, at the time of the sale; I may be wrong.

Ques. Judge, do you remember what was the physical condition of that property at the time of the sale, as to improvements?

10 The Court: Just said—you didn't hear him—I don't know as the stenographer took it—the building was not completed and building was in quite a dilapidated condition.

Ans. That is my recollection at the time. I think the improvements, substantial improvements were made by Mr. Kuehnle after he got possession of it; that is my recollection of it; I may not be entirely right.

Ques. (By the Court.) The date of the lien claims and some of those things will show the progress, but Mr. Thompson says his recollection is it was not—

20 Ans. I don't think it had been completed; it was in process of rebuilding, but the property became involved in litigation and I filed a lien and sold it with the improvements just as they were then; I don't think they had all been completed; that is my recollection.

Ques. Do you know whether or not the building had been occupied as a completed building, improved, during the season of 1895?

Ans. It had been occupied; I don't know whether it had been occupied as a completed building or not.

30 Ques. Do you know the purpose for which it was used during the season of 1895?

Ans. I rather think there was a saloon there, improvements made for the purpose of—man by the name of Wheeler, I think.

Ques. Do you know the purpose for which it was used?

Ans. I am not entirely sure at this time, not sure enough to state.

Ques. Wasn't it used as an amusement house?

Ans. Well, they started an amusement house there about that time; my recollection is that the improvements were not completed at that time.

Ques. Did you not file a mechanic's lien against that property?

Ans. I did, in August, 1895, I think, file a lien for the Sommers Lumber Company, I think, and sold it under that lien.

Ques. Judge, where did you get the information which enabled you to instruct Mr. Cole how to prepare this statement relating to the transfer from Mr. Turner? 10

The Court: Let me see statement you refer to.

Ques. Exhibit 20.

Ans. Well, it was information within my knowledge.

The Court: He had filed a bill for specific performance of a contract to sell that at eighteen thousand from Mr. Turner to Mr. Kuehnle. 20

Ans. That was seven months before I commenced the foreclosure of this mortgage, over seven months.

Ques. (By the Court.) And he had filed that bill, and then while that was pending—this is what appears now before me by the record, as I understand it.

Mr. Styron: Yes, sir; that is what the record says.

The Court: This foreclosure was put through at the instance of an outside mortgagee, or in his name as solicitor. The thing speaks for itself. The property was sold and out of it interest was allowed to Mr. Turner on \$18,000, and he was charged with the amount that was required to pay the mortgage and cost, \$4,544.17; the balance belonged to him, and it was raised in part by a mortgage of ten thousand dollars in cash. 30

Mr. Styron: Your Honor please, the situation of the record shows—

The Court: Never mind. There is money paid by Kuehnle there, and all that sort of thing. Kuehnle paid the difference between \$18,660 and \$4,500, that is all there is about it, didn't he; you knew that, didn't you?

Ans. Yes, sir.

- 10** The Court: And this statement shows the transaction of Mr. Thompson; undoubtedly, Mr. Styron, it shows the transaction; it shows the settlement.

No cross-examination.

Mr. Thompson: I produce the papers that you call for, Mr. Styron. Do you want them?

- 20** The Court: He hasn't asked for them.

Mr. Thompson: They are copies of what you have already got there.

Mr. Styron: Then I don't want them.

Complainant rests.

30

DEFENDANT'S TESTIMONY.

SAMUEL KIRBY, sworn.

Direct examination.

By Mr. Cole:

Ques. You were the Sheriff of the county of Atlantic? **10**

Ans. I was.

Ques. And you were the Sheriff that sold at public sale under foreclosure the property in controversy here, were you not?

Ans. I was.

Ques. And where was the property sold?

Ans. At Kuehnle's hotel, in Atlantic City.

Ques. Will you say if that is the place where the public sales are conducted by the Sheriffs?

The Court: Or were at that time? **20**

Ans. Yes, sir.

Ques. Were at that time?

Ans. Yes, sir.

Ques. How long has Kuehnle's hotel been the place where the Sheriffs of the county have conducted their public sales?

Ans. Oh, a long while.

Ques. Well, how long before 1897?

Ans. Ten or twelve years anyhow. **30**

Ques. Did you personally conduct the sale in question?

Ans. I did.

Ques. Was that sale conducted in the same place in Kuehnle's Hotel where you and other Sheriffs sold property under foreclosure and execution?

Ans. It was.

Ques. Was there anything from your standpoint in the conduct of this sale in question different from the conduct of any other sale?

Ans. No, sir.

Ques. Did you have, either before the sale or at the sale, any statement, intimation or suggestion from anybody that this property was to be sold differently from any other property?

10 Ans. No, sir.

Mr. Styron: There is no such allegation in the bill.

Mr. Cole: We have a right to dispel any notion of fraud in the matter.

Ques. Was this property sold to the highest bidder?

Ans. It was.

20 Ques. Was there any statement made by you or by anyone in the room where this property was sold, before or at the time of the sale, concerning why this property was to be sold?

Ans. I don't remember of any; I made none, and I don't remember anyone else making any.

Ques. Was there anything said by you or by anyone there, or was anything done by you or by anyone to your knowledge or in your hearing or presence, that was calculated to in any way restrict the competition bidding at that sale?

Ans. There was not.

30 Ques. Did you have any intimation or suggestion from Mr. Kuehnle or Mr. Thompson or Mr. Turner or Mr. Fitton or any other person, that the object of this sale was to cut off the dower of Mrs. Turner or in any way affect any interest she may have had or then had in that property?

Ans. I did not.

Ques. Did you, either before the sale or at the time of the sale, have anything come to you which led you to believe that the object of this sale was to defeat or to deprive Mrs. Turner of any interest she may have had in this property?

Ans. No, sir.

No cross-examination by Mr. Styron.

Examined by the Court:

10

Ques. Did you have any knowledge of the value of this property, Sheriff?

Ans. I did not.

Ques. Did you know where it stood in Atlantic City—where did you live?

Ans. I lived in May's Landing while I was Sheriff.

Ques. Well, were you acquainted in Atlantic City?

Ans. Yes, sir.

Ques. Did you know this Music Hall property?

Ans. Yes, sir.

20

Ques. Did you know that you were selling the Music Hall property?

Ans. Yes, sir.

Ques. Did you have any idea of its value?

Ans. Yes, I had an idea of its value.

Ques. What do you think it was worth?

Ans. I imagined—I didn't know—well, I don't know what it was worth in that day.

Ques. What did you think at the time it was worth?

Ans. I should think it was worth six or eight thousand dollars.

30

Ques. You are candid in that now, are you?

Ans. I am.

Ques. Want me to believe it? Did you know there was a new building been put up on it?

Ans. There wasn't a new building on it when I sold it.

Ques. Was not?

Ans. Not a new building; they had made some repairs to that building.

Ques. Spent some money on it?

Ans. Yes, sir.

Ques. You had sold it previous to that under mechanics' lien, hadn't you?

Ans. I had never sold it before, no.

Ques. How long had you been Sheriff?

10 Ans. I wasn't Sheriff since 1896.

Ques. By a previous Sheriff then—it had been sold then and it was—had you ever lived in Atlantic City?

Ans. Lived there a good many years.

Ques. Just before you were elected Sheriff?

Ans. Yes, sir.

Ques. What was your business?

Ans. Hotel business.

Ques. Now, I see by your report that you sold this property on the 6th day of February, 1897, for the sum of \$4,380. Was there more than one bid?

20 Ans. I don't remember that. I think there was.

Ques. Well, \$4,380 was just the amount of the mortgage and cost, wasn't it?

Ans. I don't remember that, sir.

Ques. Then you swore on the 8th, two days later, that the mortgaged premises mentioned and referred to in the foregoing report was duly sold to the highest bidder at the best price the same would bring in cash at the time of the sale. That was honestly made?

Ans. Yes, sir.

30 Ques. You did not think it would bring more than that?

Ans. I didn't know; I hadn't any idea how much it would bring. Well, no, it wouldn't bring more than that; there was some bidders there, and that was the highest bid I could get for it.

Ques. Did you ever file a statement of this sale?

Ans. I did; yes, sir.

Ques. Here is your statement, signed by you, which you make the amount due, with the Sheriff's execution fees, \$4,306.78, and the bid proceeds of the sale, less the execution fees, \$4,298.46, leaving a deficiency of \$8.32. I suppose you got that deficiency, didn't you?

Ans. I don't remember that; most likely I did, though.

JOSEPH THOMPSON, recalled for the defendant.

10

Direct examination.

By Mr. Cole:

Ques. Without my asking you questions specifically, will you state your relation to this transaction from the time you filed the mechanic's lien, of which the record is here, to the time the transaction was closed under the foreclosure of the mortgage?

20

Ans. In August, 1895, I filed a lien claim for the Sommers Lumber Company against the man who was then in possession and who had made improvements under the lease, a long term lease, which provided for the purchase of the property at a price stipulated and agreed. There was a sale of this property under the mechanic's lien the following January, I think.

Ques. (By the Court.) That would be January, 1896?

Ans. Yes, sir; it was about that time; I think it was January.

30

The Court: Is that a part of your—you put that all in, it appears?

Mr. Styron: That is in the case, yes, sir; the bill of sale from the Sheriff is in the case and recites all those matters.

The Court: Just hand those up to me; I want to look at it as I am going along.

10 Ans. Mr. Kuehnle was the purchaser under the Sheriff's sale of all the rights that were then in John Wheeler. After Mr. Kuehnle purchased this property he asked me to represent him; in fact, I had been Mr. Kuehnle's attorney for years before that, and he asked me to get the title of the property for him. I saw Mr. Turner in relation to it, and Mr. Turner intimated that there might be some difficulty for him to deliver the title because of the conditions that existed between him and his wife. The matter went on for a day or two, a very short time at least, and I prepared a deed from Mr. Turner to Mr. Kuehnle. The deed bears date, I think, on the 25th day of February, 1896.

The Court: Deed been produced here by the complainant and marked Exhibit C24.

20 Ans. At the same time I prepared a mortgage and bond from Mr. Kuehnle to Mr. Turner for \$12,000, as was provided for, I think, in the agreement, which Mr. Kuehnle had purchased at the Sheriff's sale. I went to Mr. Kuehnle; I had him sign and acknowledge the mortgage. I went to Mr. Turner with the deed, with the mortgage, and we—this is the mortgage and the bond. (Indicating to the Court.)

30 The Court: Has it been put in?

Mr. Cole: No; we offer that now.

The Court: You produce now bond and mortgage dated February 25, 1896, Kuehnle to Turner, executed by Mr. Kuehnle.

Ans. And acknowledged by me.

The Court: Acknowledgment taken by you?

Ans. Taken by me.

(Marked Exhibits D1 and D2.)

Ans. We went to Mr. Turner and prepared ourselves ready to perform the contract. Mr. Turner said that he could not produce the signature of his wife, and he did nothing in the matter; and a little later on he came to me and said that John Westcott represented his wife and that he would procure her signature to the deed. He asked me if I would give the deed to Mr. Westcott. I saw Mr. Westcott and gave Mr. Westcott the deed, told him that Mr. Turner had said that he would procure Mrs. Turner's signature, that he represented her. Mr. Westcott took the deed and came back very shortly afterwards; that is, a day or two, I think, perhaps the next day, and said that Mrs. Turner declined to sign the deed. I then filed a bill. I told Mr. Kuehnle the situation, and I advised filing a bill. I said that under the circumstances he was in possession under the lease, and we better file this bill and file a *lis pendens*, which I thought was quite necessary under Mr. Turner's conditions for Mr. Kuehnle's protection. I filed the bill. I, at the same time, advised Mr. Kuehnle that it probably was not wise to go on with the matter, and I never took any other steps.

Ques. (By the Court.) You issued subpoenas, didn't you?

Ans. Well, I mean beyond that. It never went to a decree.

Ques. (By the Court.) Well, right there, didn't you know you could get a decree with an allowance for inchoate right of dower?

Ans. Yes, I knew that, but I thought that the matter would probably be embarrassed, and the shape it was in we would simply file the bill and let the matter stand.

Ques. Now, what next happened? .

Ans. The matter went on during the summer. About seven months after I filed this bill Mr. William Fitton, whom I had been attorney for from the time he came to Atlantic City, I presume, until up until the time of his death, he came in my office, brought the bond and mortgage which has been referred to in this matter that was foreclosed, and told me that he wanted it collected; he said that he wanted his money; that Mr. Turner couldn't
 10 pay him, and he wanted me to collect it; and he said that Mr. Turner said he would pay the expenses of the collection.

Ques. (By the Court.) That he, Turner, would pay them?

Ans. That he, Turner, would. I foreclosed the mortgage; the property was sold. On the day of the sale Mr. Fitton came to my office. We went together to the place of sale at Kuehnle's hotel; the property was sold, and, at Mr. Fitton's request, I bought the property in in my name,
 20 and subsequently assigned the bid, after the sale, some few days after the sale.

Ques. (By the Court.) Who paid the money?

Ans. At the time of the sale?

Ques. (By the Court.) Yes. Well, when it was paid. Well, go on.

Ans. A few days after the Sheriff's sale Mr. Fitton and Mr. Turner came to my office and they told me that they wanted to carry out, that Mr. Turner wanted to carry out the contract which Mr. Kuehnle had purchased through a sale made under the mechanic's lien, if Mr.
 30 Kuehnle would perform the contract. I saw Mr. Kuehnle and told him that the way was open for him to acquire the title to the property if he still wanted to. He said that he would carry it out under the original terms; that Mr. Turner would have to pay any expenses that he had incurred or had been incurred by me in the matter of the filing of the bill against him. It resulted in the end

in the bid being assigned to Mr. Kuehnle, Mr. Kuehnle taking the title from the Sheriff, and then the moneys passed through my hands, representing Mr. Kuehnle in the matter, and a settlement was finally made with Mr. Turner.

Ques. Now, did you ever have any talk with Mr. Turner at any time in which there was any talk or statement or suggestion that the object of foreclosing this mortgage was to effect any interest that Mrs. Turner might have in that property?

10

Ans. I have no such recollection of there being any such conversation, and after the bill was filed I don't know that anything further was said to Mr. Turner in regard to the matter in any way, shape or form.

Ques. Did you at any time talk with Mr. Kuehnle and say to him, or suggest to him that the object of foreclosing the mortgage was to cut out the dower and make a title for him under this agreement?

Ans. I don't know that I ever even had a word of conversation with Mr. Kuehnle with respect to the foreclosure of a mortgage against the property. I had advised Mr. Kuehnle to file this bill and the *lis pendens* and told him just let the matter go in that shape.

20

Ques. Now, Mr. Westcott has said—

The Court: Never mind what Mr. Westcott said.

Ques. Well, did you tell Mr. Westcott in any conversation you had with him that if Mrs. Turner did not sign that deed that you could use the mortgage to foreclose and cut out her dower?

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Ans. I have no such recollection; I think if that was said to Mr. Westcott it must have been said by Mr. Turner, not by me.

Ques. Did you offer, either directly to Mrs. Turner, or to Mr. Westcott for her, any sum of money for her dower interest or her signature to that deed?

Ans. I did not; I have no recollection of anything of the sort.

Ques. Did you have any talk with Mr. Turner concerning your securing from his wife her signature to the deed?

Ans. None whatever. Mr. Turner came to me and said Mr. Westcott represented her and he had arranged with him to get the signature, and for me to deliver the deed which I had prepared at the time I had prepared the mortgage, to Mr. Westcott for that purpose, and I did so.

10

Ques. Did you at that time, that is, at the time of this transaction, from the filing of the bill for specific performance to the close of the foreclosure transaction, represent Mr. Turner?

Ans. I did not.

Ques. Did you represent him?

Ans. I represented him in some unfinished matters that had been in the office.

Ques. I am talking about with relation to this transaction?

20

Ans. I did not represent him.

Ques. Did you ever suggest to Mr. Turner or to Mr. Kuehnle that the way to secure for Mr. Kuehnle a deed for this property under that agreement was to foreclose this mortgage and cut out Mrs. Turner's interest?

Ans. I don't know that I knew that mortgage was still against the property at that time. I knew that it had been there, because Mr. Fitton bought the mortgage and I had prepared the papers for him, but that had been a year or two previous.

30

Ques. Have you got there the assignment of the mortgage to Fitton?

Ans. Yes, it is September 18th, 1894.

Mr. Cole: I want to offer the assignment of mortgage that was made Hoffman to Allen & Allen, assignment being from Allen & Allen to Fitton.

The Court: Have you any objection to those papers, Mr. Styron?

Mr. Styron: Let everything go in. Let us hear the whole case.

The Court: In putting the papers in always just state what they are.

Assignment of mortgage from William Allen and Samuel Allen to William Fitton, dated the 12th day of September, 1894, offered in evidence and marked Exhibit D3. 10

Also bond and mortgage from Samuel D. Hoffman to William Allen and Samuel Allen, dated August 31, 1893.

(Marked Exhibit D4.)

Ques. Did you know at the time you bought this property at the Sheriff's sale that it was being bought in the interest of Mr. Kuehnle? 20

Ans. I did not.

Ques. Did you know at that time that after the sale there was to be a conveyance to Mr. Kuehnle in order to have his contract performed?

Ans. I did not.

Mr. Styron: I object to that line of examination on the ground that the defendant in his answer asserts that Judge Thompson was then his counsel and acting for him, and he cannot deny his own acts. 30

Ans. I was acting—

The Court: He was acting for him in this foreclosure, except it was quiescent, that is all.

(Objection withdrawn.)

Ques. Did you say to Mrs. Turner in reply to anything she said to you that she need not worry anything about it, referring to the sale of the property, that the property would not be sold by the Sheriff?

Ans. I did not.

Ques. Did you ever have any conversation with Mrs. Turner about the sale of that property?

Ans. I have no recollection of ever having had any conversation with her in relation to the sale.

10 Ques. Will you state to the Court about the conduct of the Sheriff's sale, if you can recall it, whether it was in the ordinary course?

Ans. It was in the ordinary course of Sheriff's sales; there was no statement made in relation to it. The property was put up in the usual way, and I bid a sum that I supposed just about covered the amount of our claim. Mr. Turner was not present at the sale; Mr. Fitton was there.

Ques. (By the Court.) Mr. Kuehnle there?

20 Ans. It was in his house.

Ques. (By the Court.) What I want to ask of you is this. I don't want to meddle with the case where the parties have prepared themselves. You knew Mr. Kuehnle had the equitable claim for this property over and above the amount of that mortgage, didn't you; you claimed it by a bill?

Ans. Yes, sir.

Ques. (By the Court.) Filed a lis pendens. Do you mean to say Mr. Kuehnle was not aware of this sale?

Ans. No, I haven't said that.

30 Ques. (By the Court.) No, that is what I want to get at.

Ans. I don't know anything—I presume Mr. Kuehnle know it.

Ques. (By the Court.) Didn't you inform him yourself that the property was going to be sold, now?

Ans. I can't recall whether I did or not, but he undoubtedly knew it.

Ques. (By the Court.) Didn't he know this foreclosure was going on?

Ans. Yes, he must have known it because he had been made a party defendant.

Ques. Was there any statement made at the sale?

The Court: There has been no proof of that on the part of the complainant. I asked them distinctly if they had any evidence on that subject; they said they had not, then rested without it. I think that after practicing law fifty or sixty years and attending a great many Sheriff's sales, neither I nor any other judge this is likely to come before are not ignorant as to how that is managed, even the Sheriff making affidavit for property worth at least \$18,600 at that time. It is a disgrace to the administration of justice, but it is done all the time, and the statute is dead against it. The Sheriff didn't seem to be under any obligation to ascertain what the property is worth, and comes here today and swears it is worth six or eight thousand dollars. If that isn't fraud on the administration of justice somewhere by somebody, then I don't know what is; that is all. 10 20

Cross-examination.

By Mr. Styron:

Ques. You knew of Mr. Kuehnle's equity there. Did you inform Mr. Kuehnle that the sale of this property under foreclosure would wipe out that equity and cause him to lose? 30

Ans. I don't know what information I gave him now; I can't recall.

Ques. Don't you think as his counsel it was your duty to do that at that time, give him that information?

Ans. Probably it was.

Ques. (By the Court.) And probably you did?

Ans. Probably I did.

LOUIS KUEHNLE, sworn.

Direct examination.

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By Mr. Cole:

Ques. You are the defendant, Mr. Kuehnle?

Ans. Yes, sir.

Ques. Do you recall the fact of having placed with Mr. Thompson a lease on the property in question with a view of getting a performance on the part of Mr. Turner?

Ans. Yes, sir.

20 Ques. Before that were you in possession of the property?

Ans. It was.

Ques. How long had you been in possession?

Ans. Well, I bought the property put up by Sheriff's sale on lien claims, and I was in possession of the property at that time I suppose about six months, six or eight months.

Ques. Have you, since that time, been continuously in possession of the property?

Ans. I have.

30 Ques. Have you done anything with the property or buildings on it since you went into possession?

Ans. Spent about twenty-five thousand dollars on it.

Ques. What is the character of the improvements you made on the property?

Ans. I finished it up and built new auditorium; I spent a lot of money building a stage; put it in for the purposes

it was designed for; it never would answer for the purpose it was designed for; it was designed first for Music Hall, and I undertook to make a theatre out of it.

Ques. What was the condition of the buildings on the property at the time you bought at the lien sale?

Ans. They were unfinished, new building just erected, but it was unfinished.

Ques. And you went on and completed it?

Ans. Yes, sir.

Ques. Now, before the buildings were sold under the lien claim, did you have any interest in them? 10

Ans. I advanced some money to Mr. Wheeler.

Ques. Mr. Wheeler was the tenant, was he not?

Ans. He was the lessee from Mr. Turner; I advanced some money, and to protect myself I bought in these lien claims.

Ques. That is why you bought the property at the sale?

Ans. Yes, sir.

Ques. About what was the extent of your interest in there at that time?

Ans. I loaned him four thousand dollars. 20

Ques. Now, after you employed Mr. Thompson to file this bill, did you ever have any talk with him concerning that bill at all?

Ans. No.

Ques. Won't you state, without my asking you the question, just what you did after you placed this matter in Mr. Thompson's hands, and what conversation you had with him, or any one else, concerning it?

Ans. I didn't have any conversation. I merely hired Mr. Thompson to represent my interest; as my counselor 30 he advised me and I acquiesced, naturally would.

Ques. Did you ever have any talk with Mr. Thompson or he with you in which there was a suggestion that there should be a foreclosure of a mortgage to cut out Mrs. Turner's dower?

Ans. Never.

Ques. Did you ever know of anything that anybody said to you that any such proceeding was in view?

Ans. No, sir.

Ques. Did you know, at the time of the sale, that the object of the sale was to cut out Mrs. Turner's dower?

Ans. I did not.

Ques. (By the Court.) What did you suppose it was for?

Ans. I couldn't say, sir; I didn't have the mortgage against the property.

10 Ques. (By the Court.) No idea at all?

Ans. No, sir; the sale was advertised in the hotel I was living at and where the sale took place and where every sale has taken place.

Ques. (By the Court.) You didn't have any interest in the sale at all?

Ans. My counsel represented me; whatever he done I had to be satisfied. I hired a lawyer to take care of my interest.

20 Ques. (By the Court.) I know, but if a property was sold and bought away from you under that foreclosure you knew that you would be gone, didn't you?

Ans. I left that to my counsel.

Ques. (By the Court.) You left that to him?

Ans. Exactly, sir.

Ques. When did you first know, with relation to the foreclosure sale, that you could get a title for this property under your lease?

Ans. After the sale took place.

Ques. Who told you?

30 Ans. I think Judge Thompson, my attorney, came to me and says, "Now, you can get this lease if you will fulfill as the lease reads," which means I was to pay the eighteen thousand dollars for the property as the lease read, which was assigned to me.

Ques. Do you recall whether you were present when this sale took place?

Ans. I couldn't say; it happened in the house I lived in.

Ques. Are there frequent sales there?

Ans. Every Saturday, sir; have been for thirty-one years.

Ques. Did Mrs. Turner call on you after this sale?

Ans. About a month of two afterwards she called to see me.

Ques. After you had the deed?

Ans. After I was in possession of the property; yes, sir.

Ques. What took place?

Ans. She wanted to know whether I couldn't do anything for her with reference to this property, that her and her husband were not on good terms, and she called to see me. I didn't know the lady from a bunch of beets; she come to see me and introduced herself and had a conversation with me. I told her it was out of my hands—I paid my money in good faith, paid more than the property was worth at that.

Ques. Did she know or did she say to you anything about knowing that the property had been sold?

Ans. She knew it was sold, because she come to see me about it; she fully must have known it.

Ques. Did Mr. Turner ever talk to you and suggest that he could effect a title in you by a foreclosure to cut out his wife's interest?

Ans. No, sir.

Ques. Now, after you went into possession and after you gave this agreement to Mr. Thompson, did Turner ever come to you at all and make any suggestion as to how he was going to carry out his contract?

Ans. No, sir.

Ques. You were in possession in the meanwhile, were you?

Ans. Yes, sir.

Ques. Were you paying him anything?

Ans. No, sir.

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Ques. Did you know at any time while this transaction was going on of the ownership of the mortgage on this property by Fitton?

Ans. No, sir; I did not.

Ques. Was the expenditure of the money you say you made necessary to complete the buildings that were there?

Ans. No; I rebuilt it.

Ques. I mean, was it necessary in order to carry out the design?

10 Ans. Yes, sir.

Cross-examination.

By Mr. Styron:

Ques. You knew Mr. Turner was married?

Ans. I believe so; I knew his children.

Ques. Mrs. Turner ever pointed out to you on the street?

20 Ans. She came to see me.

Ques. I mean previous to the sale?

Ans. No; I don't think so.

All rest.

EXHIBITS.

EXHIBIT C1.

SAMUEL D. HOFFMAN,

TO

RICHARD H. TURNER.

DEED.

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This indenture, made the thirty-first day of August, in the year of our Lord one thousand eight hundred and ninety-three, between Samuel D. Hoffman, (single man) of the city of Atlantic City, in the county of Atlantic and State of New Jersey, of the first part, and Richard H. Turner, of the city of Atlantic City, in the county of Atlantic and State of New Jersey, of the second part: Witnesseth, that the said party of the first part for and in consideration of sixteen thousand dollars, lawful money of the United States of America, to him in hand well and truly paid by the said party of the second part at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, and the said party of the first part being therewith fully satisfied, contented and paid, hath given, granted, bargained, sold, aliened, released, enfeoffed, conveyed and confirmed, and by these presents do give, grant, bargain, sell, alien, release, enfeoff, convey and confirm unto the said party of the second part and to his heirs and assigns forever, all that tract or parcel 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, beginning at a corner of a lot of ground occupied by the National Hotel, on the north side of Atlantic avenue, being the southwest corner of said lot whereon said National Hotel is erected, and running thence along the north side

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- of Atlantic avenue on a course of south sixty-seven degrees west fifty (50) feet to a peg in the boundary line of land of William Moore and Daniel Morris; thence along said line or boundary on a course of north twenty-five degrees ten seconds west a distance of one hundred and sixty (160) feet; thence in a course of north sixty-seven degrees east a distance of fifty-six (56) feet to a peg at the northwest corner of the lot of the said National Hotel; thence along the line of said lot on a course of
- 10 south twenty-three degrees east one hundred and sixty (160) feet to the place of beginning, be the same more or less. Also beginning in the northwest corner of Mears lot of ground, one hundred and sixty feet north from the north side of Atlantic avenue, and running thence in continuation of the westwardly line of said lot of ground northwardly one hundred feet; thence eastwardly and parallel with Atlantic avenue fifty (50) feet; thence southwardly one hundred (100) feet to the northeast corner of said lot of ground of Lewis T. Mears; and
- 20 thence westwardly by northwardly line of said lot of Mears fifty (50) feet, more or less, to the place of beginning. Being the same premises conveyed to the said Hoffman by Smith E. Johnson, Sheriff, &c., by deed dated the fifth day of July, A. D. eighteen hundred and ninety, of record in the Clerk's office of Atlantic county, in Book No. 175, folio 430, &c. Together with all and singular the houses, buildings, trees, ways, waters, profits, privileges and advantages, with the appurtenances, to the same belonging or in any wise appertaining; also all the
- 30 estate, right, title, interest, property, claim and demand whatsoever of the said party of the first part of, in and to the same and of, in and to every part and parcel thereof. To have and to hold all and singular the above described land and premises, with 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 Samuel D. Hoffman does for himself, his heirs, executors and administrators covenant and agree to and with the said party of the second part, his heirs and assigns, that he, the said Samuel D. Hoffman, is the true, lawful and right owner of all and singular the above described land and premises and of every part and parcel thereof, with the appurtenances thereunto belonging; and that the said land and premises, or any part thereof, at the time of the sealing and delivery of these presents are not incumbered by any mortgage, judgment or limitation, or by any incumbrance whatsoever, by which the title of the said party of the second part hereby made or intended to be made for the above described land and premises, can or may be changed, charged, altered or defeated in any way whatsoever; and also that the said party of the first part now has good right, full power and lawful authority to grant, bargain, sell and convey the said land and premises in manner aforesaid; and also that Samuel D. Hoffman will warrant, secure and forever defend the said land and premises unto the said Richard H. Turner, his heirs and assigns, forever, against the lawful claims and demands of all and every person or persons, freely and clearly, freed and discharged of and from all manner of incumbrance whatsoever, excepting a mortgage for four thousand dollars, bearing even date herewith, made by the said Hoffman to William and George Allen, which said mortgage is assumed by the said Turner as a part of the consideration herein mentioned.

In witness whereof, the said party of the first part has hereunto set his hand and seal the day and year first above written.

SAMUEL D. HOFFMAN. [SEAL.]

Signed, sealed and delivered in the presence of
JOSEPH THOMPSON.

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

Be it remembered, that on this thirty-first day of August, in the year of our Lord one thousand eight hundred and ninety-three, before me, a Master in Chancery, personally appeared Samuel D. Hoffman, who, I am satisfied, is the grantor mentioned in the within indenture, to whom I first made known the contents thereof, and thereupon he acknowledged that he signed, sealed and delivered the same as his voluntary act and deed for the

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JOSEPH THOMPSON,
M. C. C.

Received and recorded Sept. 6th, A. D. 1893.

LEWIS EVANS,
Clerk.

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

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I, Lewis P. Scott, Clerk of the Court of Common Pleas, in and for the county of Atlantic, the same being a Court of record, do hereby certify, that the foregoing is a true, full, and correct copy of a certain deed, as the same is recorded in my said office, in Deed Book No. 175, page 480, &c.

In witness whereof, I have hereunto set my hand and affixed the seal of Atlantic county, at May's Landing, N. J., this first day of June, A. D. one thousand nine hundred and six (1906).

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[SEAL.]

LEWIS P. SCOTT,
Clerk.
By ALBERT C. ABBOTT,
Deputy Clerk.

EXHIBIT C2.

SAMUEL KIRBY,

Sheriff,

TO

LOUIS KUEHNLE.

DEED.

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This Indenture, made the first day of March, in the year of our Lord one thousand eight hundred and ninety-seven, between Samuel Kirby, Sheriff of the county of Atlantic and State of New Jersey, of the first part, and Louis Kuehnle, of Atlantic City, in the county and State aforesaid, of the second part.

Whereas, a certain writ of *fiery facias* issued out of the Court of Chancery of the State of New Jersey, to the said Sheriff of the county of Atlantic, directed and delivered in the following words, to wit: [L s] 20

New Jersey, to wit: The State of New Jersey to the Sheriff of the county of Atlantic, greeting.

Whereas, on the nineteenth day of December, in the year of our Lord one thousand eight hundred and ninety-six, by a certain decree made in our Court of Chancery, before our Chancellor, at Trenton, in a certain cause therein depending, wherein William Fitton is complainant, and Richard H. Turner, Louisa H. Turner and Louis Kuehnle are defendants,

It was ordered, adjudged and decreed that certain 30
mortgaged premises, with the appurtenances, in the bill of complaint in the said cause particularly set forth and described, that is to say: All those tracts of land in Atlantic City, Atlantic County, New Jersey, beginning at a corner of a lot of ground occupied by the National Hotel on the north side of Atlantic avenue,

being the southwest corner of said lot whereon said National Hotel is erected, and running thence along the north side of Atlantic avenue on a course of south sixty-seven degrees west fifty feet to a peg in the boundary line of lands of William Moore and Daniel Morris; thence along said boundary on a course of north twenty-five degrees ten minutes west a distance of one hundred and sixty feet; thence on a course of north sixty-seven degrees east a distance of fifty-six
 10 feet to a peg at the northwest corner of the lot of the said National Hotel; thence along the line of said lot on a course of south twenty-three degrees east one hundred and sixty feet to the place of beginning. Also beginning in the northwest corner of Mears lot of ground one hundred and sixty feet north from the north side of Atlantic avenue, and running thence in a continuation of the westerly line of said lot of ground northwardly one hundred feet; thence eastwardly and parallel with Atlantic avenue fifty feet; thence south-
 20 wardly one hundred feet to the northeast corner of said lot of ground of Lewis T. Mears; and thence westerly by the northwardly line of Mears fifty feet, more or less, to the place of beginning.

Together with all and singular the rights, liberties, privileges, hereditaments and appurtenances thereunto belonging or in any wise appertaining, and the reversions and remainders, rents, issues and profits thereof, and also all the estate, right, title, interest, use and property, claim and demand of the said defendants of,
 30 in, to and out of the same, be sold to pay and satisfy in the first place unto the said complainant the sum of four thousand one hundred and ninety dollars and sixty-six cents, together with lawful interest thereon from the seventeenth day of December, 1896, until the same be paid and satisfied, and also the costs of the said complainant, and that for that purpose a writ of *fiery facias* should issue, directed to the Sheriff of the county of

Atlantic, commanding him to make sale as aforesaid, and that the surplus money arising from such sale, if any there be, should be brought into the said Court, as by the said decree remaining of record in our said Court of Chancery, at Trenton, doth and may more fully appear.

And whereas, the costs of the said complainant have been duly taxed at seventy dollars and eighty-seven cents.

Therefore, you are commanded that you cause to be made of the premises aforesaid, by selling the same for the purpose, and out of the proceeds thereof you do pay unto the said complainant the just sum of four thousand one hundred and ninety dollars and sixty-six cents, together with lawful interest thereon, as aforesaid, and also the sum aforesaid of costs, and that you have those moneys before our said Chancellor aforesaid, at Trenton, on the first Tuesday of February next, to render to the said complainant, and also the surplus money, if any there be, to abide the further order of said Court, according to the decree aforesaid. And you are to make return at the time and place aforesaid, by certificate under your hand, of the manner in which you shall have executed this our writ. 10

Witness, Alexander T. McGill, Esq., our Chancellor, at Trenton aforesaid, the fourth day of January in the year of our Lord one thousand eight hundred and ninety-seven. 20

JOSEPH THOMPSON,

Solicitor.

L. A. THOMPSON,

Clerk. 30

Recorded in the Clerk's office of the Court of Chancery of the State of New Jersey, at Trenton, in Book "M7" of Executions, page 430, etc., and examined by me.

L. A. THOMPSON,

Clerk.

And which writ was duly recorded in the Clerk's office of the Court of Chancery of New Jersey, as will more fully appear.

- And to the end that a sale of said lands and premises should be made, pursuant to the statute in such case made and provided, the said Sheriff as aforesaid, by public advertisements, signed by himself and set up at five or more public places in the said county of Atlantic, to wit, one each at the hotel of G. W. Norcross, at May's Landing; at the hotel of John Price, Absecon; at the hotel of Louis Kuehnle, Atlantic City; at the Sheriff's office, May's Landing, and at the Hotel of Sweeney & Loughy, Atlantic City, in the ward where such lands and real estate are situate, at least four weeks next before the time appointed for selling the same, and also published in the "May's Landing Record" and "Atlantic City Daily Press," two of the newspapers printed and published in the county of Atlantic, in which said lands are situate, of which one was a newspaper printed and published at the county seat of said county, at least four weeks successively, once a week, next preceding the time appointed for said sale, did give public notice that the said lands and premises would be exposed to sale on Saturday the sixth day of February, eighteen hundred and ninety-seven, at two o'clock in the afternoon, at the hotel of Louis Kuehnle, Atlantic City, Atlantic County, New Jersey, and at the time and place so appointed and advertised, did expose the said lands and premises to sale at public vendue to the highest bidder therefor, and Joseph Thompson being the highest bidder therefor the same were then and there, between the hours of twelve and five o'clock in the afternoon of said day, struck off and sold to Joseph Thompson, for the sum of four thousand three hundred and eighty dollars, according to the statute in such case made and provided.

And whereas, the said Sheriff reported the said sale in writing to the Chancellor, stating the name of the

purchaser of said lands and premises and the price obtained therefor, annexing to said report an affidavit that said lands and premises were sold for the highest and best price the same would at the time of the sale bring in cash, and the said Chancellor did, by an order made on the the seventeenth day of February, one thousand eight hundred and ninety-seven, confirm the said sale as valid and effectual in law, and directed said Sheriff to execute a good and sufficient conveyance in law to Joseph Thompson, the purchaser for the said mortgaged lands and premises so sold, reference thereto had will more fully appear. 10

And whereas, the said Joseph Thompson has duly assigned his bid to the said party of the second part hereto, with directions in writing to the said party of the first part to execute the deed to him, the said party of the second part hereto;

Now, this indenture witnesseth, that the said Samuel Kirby, Sheriff as aforesaid, for and in consideration of the sum of four thousand three hundred and eighty dollars, to him paid, the receipt whereof is hereby acknowledged, hath granted, bargained and sold, 20
and by these presents doth grant, bargain, sell and convey unto the said Louis Kuehnle, his heirs and assigns, all of the hereinbefore described tract of land and premises, together with the hereditaments and appurtenances.

To have and to hold the above mentioned and described tract of land and premises with the appurtenances, unto the said Louis Kuehnle, his heirs and assigns forever, as absolutely as the said Samuel Kirby, Sheriff, the said party of the first part, may, can or ought, by virtue of the said execution, and of the statute in such case made and provided, to grant, bargain, 30
sell and convey the same.

In witness whereof, the said Sheriff has hereunto set his hand and seal the day and year first above written.

SAMUEL KIRBY. [L. s.]
Sheriff.

Signed, sealed and delivered in the presence of
ROBT. E. STEPHANY,

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

Be it remembered, that on this first day of March, eighteen hundred and ninety-seven, before me, a Master in Chancery of said State, personally appeared Samuel Kirby, Sheriff of the county of Atlantic, who I am satisfied is the grantor within named, and I having first made known to him the contents of the within deed of conveyance, he acknowledged that he signed, sealed and delivered the same as his voluntary act and deed for the uses and purposes therein expressed.

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ROBT. E. STEPHANY,
M. C. C. of N. J.

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I, Samuel Kirby, Sheriff of the county of Atlantic, do solemnly swear that the land and real estate described in this deed, made by me to Louis Kuehnle, was by me sold by virtue of a good and subsisting execution as is therein recited; that the money ordered to be made has not been to my knowledge paid or satisfied, and that the time and place of said sale of said land and real estate were by me duly advertised as required by law, and that the same was cried off and sold to a bona fide purchaser for the best price that could be obtained.

SAM'L KIRBY,
Sheriff.

Sworn before me, one of the Masters of the Court of Chancery, on the first day of March, eighteen hundred and ninety-seven, and I having examined the deed above mentioned, do approve the same and order it to be recorded as a good and sufficient conveyance of the land and real estate therein described.

ROBT. E. STEPHANY,
M. C. C. of N. J.

Received and recorded March 2d, A. D. 1897.

LEWIS P. SCOTT,
Clerk.

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STATE OF NEW JERSEY, } ss.
ATLANTIC COUNTY,

I, Lewis P. Scott, Clerk of the Court of Common Pleas, in and for the county of Atlantic, the same being a court of record, do hereby certify that the foregoing is a true, full and correct copy of a certain deed, as the same is recorded in my said office, in Deed Book No. 211, page 88, &c. 20

In witness whereof, I have hereunto set my hand and affixed the seal of Atlantic County, at May's Landing, N. J., this first day of June, A. D. one thousand nine hundred and six (1906).

[L. s.]

LEWIS P. SCOTT,
Clerk.

By ALBERT C. ABBOTT,
Deputy Clerk.

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EXHIBIT C4.

RICHARD H. TURNER,

TO

JOHN WHEELER.

LEASE.

- 10 This indenture, made the twelfth day of February, A. D. eighteen hundred and ninety-five, between Richard H. Turner, of Atlantic City, New Jersey, of the first part, and John Wheeler, of New York City, N. Y., of the second part, witnesseth, that the said party of the first part has let and by these presents doth grant, demise and to farm let unto the said party of the second part, that certain piece of land in Atlantic City aforesaid, bounded and described as follows: Beginning at a corner of the lot of ground occupied by the National Hotel, on the north side of Atlantic avenue, being the southwest corner of said lot whereon said National Hotel is erected, and runs thence along the north side of Atlantic avenue a course of south sixty-seven degrees west, fifty (50) feet to peg in the boundary line of lands of William Moore and Daniel Morris; thence along said line or boundary on a course of north twenty-five degrees ten minutes west, a distance of one hundred and sixty (160) feet; thence on a course of north sixty-seven degrees east, a distance of fifty-six feet (56) feet to a peg at the northwest corner of the lot of the said National Hotel; thence along the line of said lot on a course of south twenty-three degrees east, one hundred and sixty (160) feet to the place of beginning, be the same more or less. And also beginning in the northwest corner of Mears' lot of ground one hundred and sixty (160) feet north from the northerly side of Atlantic avenue and running thence in continuation of the westerly line of said lot of ground northerly
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one hundred (100) feet; thence eastwardly and parallel
 with Atlantic avenue fifty (50) feet; thence southwardly
 one hundred feet to the northeast corner of the said lot
 of ground of Lewis T. Mears; and thence westwardly by
 the northerly line of said lot of Mears fifty (50) feet,
 more or less, to the place of beginning, with the ap-
 purtenances, from March twenty-fifth, eighteen hundred
 and ninety-five, A. D., for the full period of ten years,
 at the rent or sum of twelve hundred dollars per an-
 num, to be paid as follows: One hundred dollars month- 10
 ly in advance, beginning on the twenty-fifth day of
 March; provided, that if any rent should be due and un-
 paid or if default shall be made in any of the covenants
 therein contained, then this lease shall cease and become
 void, and it shall be lawful for the said party of the first
 part, without notice and without any demand for said
 rent, to enter the said premises and remove all persons
 therefrom, or to proceed by action for the recovery of
 the possession thereof, or otherwise however. And the
 said party of the second part doth hereby covenant and 20
 agree to and with the said party of the first part to pay
 the said yearly rent in the proportions and upon the con-
 ditions aforesaid, nor use nor permit any part thereof
 to be used for any purpose than a place of amusement, in
 connection with serving liquid refreshments, and also, at
 the expiration of said term, to yield up and surrender
 the possession hereof, with the appurtenances, in as good
 state and condition as the same now are or may be put
 into by the said party of the first part, reasonable wear
 and tear and accidents happening by fire or other casual-
 ties excepted. The said party of the first part, in con- 30
 sideration of the premises, gives unto the said party of
 the second part the right to purchase said premises, with
 the appurtenances, at any time within one year from the
 twenty-fifth day of said March, at the sum of eighteen
 thousand dollars, free from encumbrances: six thousand
 dollars to be paid in cash and the balance to be secured

by first mortgage on the premises, payable at the expiration of ten years from its date. All sewer, water, gas and insurance bills to be paid by party of the second part; also all taxes over and above the assessment on the naked land. Should party of the second part fail to pay rent or to avail himself of the option of purchase or in any way cease to be a tenant, all improvements which may be made on the premises to remain as property of party of the first part. If sale should be made during said year the taxes are to be pro-rated.

10 In witness whereof, the said parties have interchangeably set their hands and seals hereto the day and year first above written.

RICHARD H. TURNER, [SEAL.]
JOHN WHEELER, [SEAL.]

Signed, sealed and delivered in the presence of
C. L. COLE.

20 Received and recorded March 11, A. D. 1895.
LEWIS EVANS,
Clerk.

EXHIBIT C5.

30	JOHN WHEELER,	}	ASSIGNMENT OF
	TO		
	OTTO HUBER BREWERY.		LEASE.

Know all men by these presents, that I, John Wheeler, of the city, county and State of New York, party of the first part, for and in consideration of the sum of eight thousand dollars, lawful money of the United States, to

me in hand paid by Otto Huber Brewery, of the city of Brooklyn, county of King's and State of New York, party of the second part, the receipt whereof is hereby acknowledged, have sold and by these presents doth grant, convey, sell, assign, transfer and set over unto said Otto Huber Brewery a certain indenture of lease bearing date the twelfth day of February, in the year one thousand eight hundred and ninety-five, made by Richard H. Turner, of Atlantic City, New Jersey, to me, and duly recorded in the office of the Clerk of Atlantic county, at Mays Landing, New Jersey, in Book 5 of Miscellaneous Records, folio 369, with all and singular the premises therein mentioned and described and the buildings thereon, together with the appurtenances. To have and to hold the same unto the said Otto Huber Brewery, its successors, legal representatives or assigns, from the day of March, eighteen hundred and ninety-five, for and during all the rest, residue and remainder yet to come of and in the term of years, mentioned in the said indenture of lease, subject, nevertheless, to the rents, covenants, conditions and provisions therein also mentioned. And I do hereby covenant, grant, promise and agree to and with the said Otto Huber Brewery, its successors, legal representatives or assigns, that the said assigned premises now are free and clear of and from all former and other gifts, grants, bargains, sales, leases, judgments, executions, back rents, taxes, assessments and encumbrances whatsoever.

In witness whereof, I have hereunto set my hand and seal this twenty-ninth day of March, one thousand eight hundred and ninety-five.

JOHN WHEELER, [SEAL.]

Sealed and delivered in the presence of

FERD. SCHIEFFER.

STATE OF NEW YORK, }
 CITY OF BROOKLYN, } ss.
 COUNTY OF KING'S, }

On the twenty-ninth day of March, one thousand eight hundred and ninety-five, before me personally came John Wheeler, to me known and known to me to be the individual described in and who executed the foregoing instrument, and he thereupon duly acknowledged to me that he had executed the same.

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FERD. SCHIEFFER,
 Notary Public, King's County.

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

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Be it remembered, that on this fourth day of June, in the year of our Lord one thousand eight hundred and ninety-five, before me, a Master in the Court of Chancery of the State of New Jersey, personally appeared John Wheeler, who, I am satisfied, is the grantor in the within assignment of lease named, I having first made known to him the contents thereof, he did acknowledge that he signed, sealed and delivered the same as his voluntary act and deed for the uses and purposes therein expressed.

SAMUEL E. PERRY,
 Master in Chancery of New Jersey.

Received and recorded June 17th, 1895.

LEWIS EVANS,
 Clerk.

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EXHIBIT C6.

OTTO HUBER BREWERY,

TO

LOUIS KUEHNLE.

ASSIGNMENT OF

MORTGAGE.

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Know all men by these presents, that the Otto Huber Brewery, a body corporate, existing under and by virtue of the laws of the State of New York, located in the city of Brooklyn, State aforesaid, party of the first part, for and in consideration of the sum of one hundred dollars, lawful money of the United States of America, to it in hand paid by Louis Kuehnle, of Atlantic City, county of Atlantic and State of New Jersey, party of the second part, at and before the ensealing and delivery of these presents, receipt whereof is hereby acknowledged, have granted, bargained, sold, assigned, transferred and set over unto the said party of the second part a certain chat-
 over, and by these presents do grant, bargain, sell, assign, transfer and set over unto the said party of the second part a certain chattel mortgage bearing date on the thirteenth day of June, A. D. eighteen hundred and ninety-five, made by John Wheeler, of Atlantic City aforesaid, to secure the payment of the sum of eight thousand dollars and interest thereon at the rate of five per cent. per annum, which
 said chattel mortgage is recorded in the Clerk's office of the county of Atlantic, in Book No. 8 of Chattel Mortgages for said county, on page 527, &c., and whatever right, title and interest may remain vested in the said Otto Huber Brewery in and to the mortgaged property therein described, and also whatever right, title and in-

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terest the said Otto Huber Brewery may have in and to a certain lease executed by Richard H. Turner to the said John Wheeler, dated February 12, 1895, and recorded in the Clerk's office of Atlantic county, in Book No. 5 of Miscellaneous Records, folio 369, &c., which said lease was assigned to the said Otto Huber Brewery by said John Wheeler as additional collateral and security to the mortgage debt of eight thousand dollars heretofore mentioned, which said assignment of lease is recorded in the Clerk's office aforesaid in Book No. 5 of Miscellaneous Records, folio 377, &c. To have and to hold the said chattel mortgage and lease unto the said party of the second part, his heirs, executors, administrators and assigns, to his and their proper and lawful use, benefit and behoof forever, thereby releasing the said Otto Huber Brewery from all claims and demands whatsoever that may have arisen or may hereafter arise, both in law and equity, by reason of the execution and existence of the said chattel mortgage and assignment of release, it being understood and agreed that this indenture of assignment is given by said Otto Huber Brewery to the said Louis Kuehnle in order and to the end that the said Louis Kuehnle may be placed in legal possession of any and all rights, title and interest the Otto Huber Brewery may have in their mortgaged property and lease of land upon which the building known as Myers' Music Hall now stands, but is not intended nor does this indenture of assignment grant, bargain, sell, assign, transfer and set over to the said Louis Kuehnle any right, title and interest the said Otto Huber Brewery may have to collect and obtain from the said John Wheeler, mortgagor, the balance due upon the mortgage indebtedness of eight thousand dollars and the legal costs and charges incurred by reason thereof.

In witness whereof, the said Otto Huber Brewery has caused its official seal to be hereunto affixed, attested by its secretary, and these presents signed by its president

on this eighteenth day of February, eighteen hundred and ninety-six.

OTTO HUBER, [SEAL.]
OTTO HUBER BREWERY.

Attest:

JOSEPH HUBER,
Subscribing witness.

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

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Be it remembered, that on this eighteenth day of February, A. D. eighteen hundred and ninety-six, before the subscriber, a Master in Chancery of New Jersey, personally appeared Joseph Huber, who, being by me duly sworn, doth depose and make proof to my satisfaction that he well knows the corporate seal of the Otto Huber Brewery, the assignor named in the foregoing deed of assignment; that the seal thereto affixed is the proper corporate seal of the said company; that the same was so affixed thereto and the said deed signed and delivered by Otto Huber, who was at the date and execution thereof the president of said company, in the presence of the said deponent, as the voluntary act and deed of the said company; and the said deponent thereupon signed the same as subscribing witness.

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JOSEPH HUBER.

Sworn and subscribed before me, at Trenton, New Jersey, the day aforesaid.

JOHN T. VANCLEEF,
Master in Chancery of N. J.

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Received and recorded February 24, A. D. 1896.

LEWIS P. SCOTT,
Clerk.

EXHIBIT C7.

LOUIS KUEHNLE,	}	MORTGAGE.
TO		
RICHARD H. TURNER.		\$10,000.

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Abstract of a mortgage from Louis Kuehnle, of the city of Atlantic City, county of Atlantic and State of New Jersey, to Richard H. Turner, of the city of Atlantic City, county of Atlantic and State of New Jersey, dated the first day of March, A. D. eighteen hundred and ninety-seven, to secure the payment of the just sum of ten thousand dollars, within ten years from the date hereof, with interest at the rate of six per cent. per annum, payable semi-annually, according to the

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conditions of a certain bond bearing even date herewith. On all that tract or parcel of land and premises hereinafter particularly described, situate, lying and being in the city of Atlantic City, county of Atlantic and State of New Jersey. Beginning in a corner of a lot of ground occupied by the National Hotel on the north side of Atlantic avenue, being the southwest corner of said lot whereon said National Hotel is erected, and running thence along the north side of Atlantic avenue on a course of south sixty-seven degrees west

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fifty feet to a peg in the boundary line of lands of William Moore and Daniel Morris; thence along said line or boundary on a course of north twenty-five degrees ten minutes west a distance of one hundred and sixty feet; thence on a course of north sixty-seven degrees east a distance a fifty-six feet to a peg at the northwest corner of the lot of said National Hotel; thence along the line of said lot on a course of south twenty-three

degrees east one hundred and sixty feet to the place of beginning, be the same more or less. Also beginning in the northwest corner of Mears lot of ground one hundred and sixty feet northerly from the north side of Atlantic avenue and running thence in a continuation of the westerly line of said lot of ground northerly one hundred feet; thence eastwardly and parallel with Atlantic avenue fifty feet; thence southwardly one hundred feet to the northwest corner of said lot of ground of Lewis T. Mears; thence westwardly by the northerly line of said lot of Mears fifty feet, more or less, to the place of beginning. Together, &c. To have, &c. Provided, &c. 10

LOUIS KUEHNLE. [SEAL.]

Signed, sealed and delivered in the presence of
C. L. COLE.

Acknowledged March first, A. D. eighteen hundred and ninety-seven, before me.

C. L. COLE, 20
M. C. C. of N. J.

Received and recorded March 2d, A. D. 1897.
LEWIS P. SCOTT,
Clerk.

(The following memorandum appears in the margin opposite the record of said mortgage.)

June 20, 1898. The mortgagor having this day by Thompson and Cole presented me with this original mortgage with the seals removed, and "Clerk authorized to cancel" endorsed thereon, whereupon I do cancel the same of record. 30

LEWIS P. SCOTT,
Clerk.

EXHIBIT C8.

ATLANTIC COUNTY CIRCUIT COURT.

Of the term of April, in the year of our Lord, one thousand nine hundred and two.

10	GEORGE B. BREON,	}	UPON CONTRACT.
	VS.	}	IN ATTACHMENT
	RICHARD H. TURNER.	}	BY DEFAULT.

E. A. HIGBEE, Attorney.

Be it remembered that heretofore, to wit, on this 30th day of July, A. D. nineteen hundred and one, 20 E. A. Higbee made affidavit before James B. Adams, M. C. C., in words following, to wit: That he is the attorney of George B. Breon, who is not a resident in this State, but who resides at Williamsport, in the State of Pennsylvania; that Richard H. Turner is not to the knowledge or belief of this deponent a resident of this State at this time, and that said Richard H. Turner owes to the said George B. Breon the sum of seven hundred and forty-eight dollars and seventy-one cents, as he, this deponent, verily believes, for and 30 upon three promissory notes, duly protested. Sworn and subscribed before me this 30th day of July, A. D. 1901. James B. Adams, M. C. C. Which said affidavit was, on the 21st day of July, A. D. 1901, delivered to Lewis P. Scott, Clerk of the said Circuit Court of Atlantic County, and by him filed in his said office, and afterwards, to wit, on the 31st day of July, A. D. 1901, a writ of attachment was issued out of the At-

lantic County Circuit Court, at May's Landing, to wit,
 Atlantic County, ss: (Seal). The State of New Jersey
 to our Sheriff of the county of Atlantic, greeting: We
 command you that you attach the rights and credits,
 moneys and effects, goods and chattels, lands and tene-
 ments of Richard H. Turner, wheresoever they may
 be found in your county, so that he be and appear be-
 fore our Circuit Court to be holden at May's Landing,
 in and for said county of Atlantic, on the twenty-ninth
 day of August next, to answer George B. Breon in an
 action upon contract, wherein the said George B. **10**
 Breon demands fourteen hundred and ninety-seven dol-
 lars and forty-two cents, and have you then and there
 this writ. Witness, Charles E. Hendrickson, Esquire,
 judge of our said Circuit Court, at May's Landing
 aforesaid, this thirty-first day of July, in the year of
 our Lord one thousand nine hundred and one. Lewis
 P. Scott, Clerk. E. A. Higbee, Attorney. Which
 said writ was returned by the Sheriff of the county of
 Atlantic, to wit, August 2d, A. D. 1901, duly endorsed
 thereon that in the presence of Louis Kuehnle, a dis- **20**
 creet and impartial freeholder, I declared that I at-
 tached the rights and credits, moneys and effects, goods
 and chattels, lands and tenements of the defendant,
 Richard H. Turner, made by the above stated writ, on
 the first day of August, A. D. 1901, by S. E. Johnson,
 Sheriff, and Louis Kuehnle, a discreet and impartial
 freeholder of said county, to wit: All that certain tract
 or parcel of land, situate, lying and being in the city
 of Atlantic City, County of Atlantic and State of New
 Jersey, and bounded and described as follows: Begin- **30**
 ning at a point in the easterly line of Texas avenue,
 two hundred and sixty-three feet and four inches (263
 ft. 4 in.) north of the northerly line of Pacific avenue, and
 runs thence (1) eastwardly and parallel with Pacific ave-
 nue ninety (90) feet; thence (2) northwardly parallel
 with Texas avenue twenty-six feet and eight inches

- (26 ft. 8 in.); thence westwardly and parallel with Pacific avenue ninety (90) feet to the easterly line of Texas avenue; thence (4) southwardly in said easterly line of Texas avenue (26 ft. 8 in.) twenty-six feet and eight inches, to the place of beginning. Being the same premises which Harry H. Hanies by deed dated January 16th, A. D. 1894, and of record in the office of the Clerk of Atlantic County, at May's Landing, New Jersey, in Book 186 of Deeds, folio 489, &c.,
- 10 conveyed unto Joseph C. Clement; also all the following lands hereinafter particularly described, situate, lying and being in the city of Atlantic City, in the county of Atlantic and State of New Jersey, bounded and described as follows, viz.: Beginning at a stake in the easterly side line of North Carolina avenue, corner to a lot of twenty feet front thereon conveyed or intended so to be to Edward Bettie; thence (1) north sixty-nine degrees and five minutes east one hundred and fifty feet to a stake in the westerly side line of a
- 20 twenty-feet wide alley, corner to the same; thence (2) along said alley south twenty degrees and fifty-five minutes east fifty feet to a stake in the westerly side line of said alley, corner to a lot conveyed or intended so to be to Jessie H. and Eliza Crawford; thence (3) along the said last mentioned lot south sixty-nine degrees and five minutes west one hundred and fifty feet to a stake in the easterly side line of said North Carolina avenue, corner to said last mentioned lot; thence
- (4) along the easterly side line of said avenue north
- 30 twenty degrees and fifty-five minutes west fifty feet to the place of beginning, be the contents what they may.

Appraised value of the above described property is twenty thousand dollars (\$20,000), Louis Kuehnle, Appraiser. S. E. Johnson, Sheriff. And George B. Breon, afterwards, to wit, on the 7th day of September, A. D. 1901, by his attorney E. A. Higbee, comes into

Court and complains against the said defendant, and prays that he may answer his said plaintiff, and the said defendant being thrice solemnly called, according to the form of the statute made and provided, in open Court comes not, but makes default, whereupon it was ordered by the said Court that the first default of the said defendant be recorded; and it is further ordered that S. Cameron Hinkle, Esq., a discreet and fit person, be appointed auditor to audit and adjust the demands of the plaintiff and other creditors as shall apply to the Court for that purpose or to the said Auditor before he makes his report; and it is further ordered that the Clerk of this Court do cause notice of the issuing of said attachment, at whose suit, against whose estate, for what sum and when returned to be published in the "Atlantic Times-Democrat," one of the newspapers of this State, for the space of six weeks, on motion of E. A. Higbee, attorney of plaintiff. Entered Sept. 7th, 1901. Let the above rule be entered in the minutes. Charles E. Hendrickson, Judge. And on the time given for the said Auditor to bring in his report on the premises, comes the said plaintiff by his attorney, E. A. Higbee, and prays that he may answer his said plaintiff, and being thrice solemnly called in open Court, comes not, but makes default, whereupon the Court did order that his second default be recorded, and it was recorded accordingly; and on the time given for the said Auditor to bring in his report on the premises comes the said plaintiff by his attorney, E. A. Higbee, and prays that the said defendant may answer his said plaintiff, and being thrice solemnly called in open Court, comes not, but makes default, whereupon the Court did order that his third default be recorded, and it was recorded accordingly; and it appearing to the Court upon due proof of notice of said attachment had been given by said Clerk of said Court in a public newspaper of said county, published and printed in

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10 this State, agreeably to the Act of the Legislature made and provided, and the said Auditor heretofore appointed by the Court has made his report in writing, bearing date March 6th, A. D. 1902, whereby it appears that there is due the said plaintiff from the said defendant the sum of seven hundred and seventy-five dollars and fifty-two cents besides costs of suit to be taxed, and no other creditors having applied to the said Auditor or to the said Court to be audited under the said writ of attachment, it is on this 8th day of April, A. D. 1902, ordered by the Court that the said report of the said Auditor be confirmed and that judgment thereon be entered by default; therefore, it is ordered that the said report be made absolute and do stand in all things confirmed; and it is further ordered that the said plaintiff, George B. Breon, do recover against the said defendant, Richard H. Turner, the sum of seven hundred and seventy-five dollars and fifty-two cents damages, and the further sum of fifty-two dollars and forty-one cents costs, which said damages, costs and charges in the whole amount to the sum of eight hundred and twenty-seven dollars and ninety-three cents. And the defendant, Richard H. Turner, in mercy, &c. Judgment signed and ordered to be entered this eighth day of April, A. D. nineteen hundred and two.

CHARLES E. HENDRICKSON,
Judge.

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

I, Lewis P. Scott, Clerk of the Court of Common Pleas, in and for the county of Atlantic, the same being a court of record, do hereby certify that the foregoing is a true, full and correct copy of a certain judgment as the same is entered in my said office, in Circuit Judgment Book No. 9, page 235.

In witness whereof, I have hereunto set my hand and affixed the seal of Atlantic County, at May's Landing, N. J., this first day of June, A. D. one thousand nine hundred and six (1906).

[SEAL.]

LEWIS P. SCOTT,

Clerk.

By ALBERT C. ABBOTT,

Deputy Clerk.

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EXHIBIT C9.

ATLANTIC COUNTY CIRCUIT COURT,

Of the term of December, in the year of our Lord one thousand eight hundred and ninety-five.

WILLIAM J. MIDDLETON,

vs.

NICHOLAS LORITZ, ET ALS.

UPON CONTRACT.

ON MECHANIC'S

LIEN.

(BY DEFAULT &

RELICTA.)

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ATLANTIC COUNTY, ss.

Nicholas Loritz and John Wheeler, builders, and John Wheeler and Otto Huber Brewery, owners, Otto Huber Brewery, mortgagee, of a certain building against which a building lien is claimed, were summoned; the process in this case having been returned with the following endorsement thereon, viz.: "Duly served the within summons August 24th, 1895, on John Wheeler, builder, personally. S. E. Johnson, Sheriff.—Duly served the within summons August 26th, 1895, on John Wheeler, owner, and Nicholas Loritz, builder, personally, and on the Otto Huber Brewery by affixing a copy on the within de-

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scribed premises and sending a copy by mail directed to them at the postoffice nearest the office of the company, postage prepaid, viz.: Brooklyn, E. D., New York. S. E. Johnson, Sheriff," that the said Nicholas Loritz and John Wheeler, builders, might answer William J. Middleton, plaintiff in this suit, in an action upon contract; and thereupon the said plaintiff, by Clifton C. Shinn, his attorney, complains for that whereas the said Nicholas Loritz and John Wheeler, builders as aforesaid, heretofore, to wit, on the fifteenth day of August, A. D. eighteen hundred and ninety-five, at Atlantic City, in the county of Atlantic and within the jurisdiction of this Court, were indebted to the plaintiff in the sum of one thousand dollars for divers goods, wares merchandise, chattels and effects, before that time sold and delivered by the said plaintiff to the said Nicholas Loritz and John Wheeler, builders, at their special instance and request; and in the further sum of one thousand dollars for work and labor, care and diligence, of the said plaintiff, by him, the said plaintiff, before that time done, performed and bestowed in, upon and about the business of the said Nicholas Loritz and John Wheeler, builders; and for the said Nicholas Loritz and John Wheeler, builders, at their special instance and request; and also for divers materials and other necessary things by the said plaintiff before that time found, provided, used and applied in and about the work and labor for the said Nicholas Loritz and John Wheeler, builders, at their like special instance and request; and in one thousand dollars for money lent by the said plaintiff to the defendants, Nicholas Loritz and John Wheeler, builders, at their special instance and request; and in one thousand dollars for money paid by the said plaintiff to and for the use of the defendants, Nicholas Loritz and John Wheeler, builders, at their request; and in one thousand dollars for money received by said defendants, Nicholas Loritz and John Wheeler, builders, for the use of the said plaintiff; and in one thousand dollars for in-

terest for the forbearance by the said plaintiff at the said defendants' request of money due and owing from the said defendants, Nicholas Loritz and John Wheeler, builders, to the said plaintiff; and in one thousand dollars, lawful money, found to be due from the said defendants, Nicholas Loritz and John Wheeler, builders, to the said plaintiff on an account then and there stated between them; and the said defendants, Nicholas Loritz and John Wheeler, builders, afterwards, to wit, on the day and year last aforesaid, in the county and within the jurisdiction aforesaid, in consideration of the premises, respectively, then and there promised to pay the said last mentioned several moneys to the said plaintiff on request, yet the said defendants, Nicholas Loritz and John Wheeler, builders, have disregarded their promises and have not paid the said several sums of moneys or any part thereof, to the plaintiff's damage one thousand dollars, and therefore brings his suit, &c. And the said plaintiff further avers that the said debt is, by virtue of the provisions of an act of the Legislature of the State of New Jersey, entitled "An act to secure to mechanics and others payment for their labor and materials in erecting any building," approved March 27, 1874, and the various supplements to said act, a lien on a certain building and on the land whereon it stands, including the lot or curtilage whereon the same is erected, described as follows: The said building is a brick and *and* iron building about fifty feet wide in front by about one hundred and sixty feet deep, known as Myers' Music Hall, and is erected on a certain lot or curtilage of ground, situate in Atlantic City, Atlantic county, New Jersey, described as follows: Beginning at a corner of a lot of ground formerly occupied by the National Hotel, on the north side of Atlantic avenue, being the southwest corner of said lot whereon said National Hotel was erected, and running thence along the north side of Atlantic avenue on a course

- of south sixty-seven degrees west, fifty feet to a peg in the boundary line of lands of William Moore and Daniel Morris; thence along said line or boundary on a course of north twenty-five degrees ten minutes west, a distance of one hundred and sixty feet; thence on a course of north sixty-seven degrees east, a distance of fifty-six feet to a peg in the northwest corner of the lot of said National Hotel; thence along the east line of said lot on a course of south twenty-three degrees east, one hundred and sixty feet to the place of beginning, be the same more or less. Also beginning in the northwest corner of Mears lot of ground one hundred and sixty feet north from the northerly side of Atlantic avenue, and running thence in continuation of the westerly line of said lot of ground northwardly one hundred feet; thence eastwardly and parallel with Atlantic avenue fifty feet; thence southwardly one hundred feet to the northeast corner of said lot of ground of Lewis T. Mears, and thence westwardly, by the northerly line of said lot of Mears fifty feet, more or less to the place of beginning; and the said plaintiff further avers that the said John Wheeler and Otto Huber Brewery are the owners of the said described lands, and that the said defendant, Otto Huber Brewery, holds a chattel mortgage executed to it by the said John Wheeler, bearing date the thirteenth day of June, A. D. 1895, and recorded in the Clerk's office of Atlantic county, in Book No. 8 of Chattel Mortgages, page 527, &c., purporting to mortgage the leasehold interest in said lands and the building thereon to the said defendant, Otto Huber Brewery, to secure the payment of eight thousand dollars, by virtue of which it, the said Otto Huber Brewery, claims to hold a lien on the said lands and the building thereon, and the plaintiff avers the lien of the debt so due to the plaintiff is paramount to the lien of the said mortgage of the defendant, Otto Huber Brewery, on the said land and building. (For bill of particulars, see lien and declaration on file.)

Judgment will be claimed for five hundred and fourteen dollars and interest from June 15th, 1895, to entry of judgment, besides costs of suit to be taxed.

CLIFTON C. SHINN,
Attorney of Plaintiff.

And one of the said defendants, the Otto Huber Brewery, by Samuel E. Perry, comes and defends the wrong and injury, when, &c., and says that it did not undertake, promise, &c., in the manner and form as the said plaintiff hath above thereof complained against it. And of this it puts itself upon the country, &c. 10

SAMUEL E. PERRY,
Attorney of the Otto Huber Brewery.

And now, on this tenth day of December, A. D. 1895, the said Otto Huber Brewery, by his attorney, relinquishes his said plea by him above pleaded, and says that he cannot deny the action of the said William J. Middleton, nor but that he, the said Otto Huber Brewery, did undertake and promise in manner and form as the said William J. Middleton has above thereof complained against him, nor but that the said William J. Middleton has sustained damages on occasion of the not performing the several promises and undertakings in the said declaration mentioned to the sum of five hundred and seventy-eight dollars and fifty-seven cents above demanded, besides costs of suit to be taxed. 20

The summons in the above stated cause having been returned by the Sheriff of the county of Atlantic, duly served on the defendants in the manner and form required by law, as appears by the Sheriff's return thereto, and the plaintiff having filed his declaration within the time limited by law for filing the same; and the said defendant, Otto Huber Brewery, owner and mortgagee, having filed a plea and subsequently relinquished said plea, and judgment having been thereupon entered 30

- against said Otto Huber Brewery, owner and mortgagee; and the said defendants, Nicholas Loritz and John Wheeler, builders, and John Wheeler, owner, not having filed any plea or demurrer or entered any rule for a writ of inquiry or for assessment of damages in open court within the time required by law therefor, nor at any other time; it is, therefore, on this tenth day of December, in the year eighteen hundred and ninety-five, ordered, that judgment interlocutory by default be entered in favor of the said plaintiff and against the said defendants, Nicholas Loritz and John Wheeler, builders, and John Wheeler, owner, for the sum of five hundred and twenty-eight dollars and fifty-seven cents, besides costs to be taxed. It is, therefore, on this tenth day of December, A. D. 1895, further ordered, that judgment final for said sum of five hundred and twenty-eight dollars and fifty-seven cents damages and the further sum of thirty-seven dollars and ninety-one cents costs of suit be entered in favor of the said plaintiff and against the said defendants, Nicholas Loritz and John Wheeler, builders, and John Wheeler, owner, and Otto Huber Brewery, owner, and specially to be made of the lands and buildings in said declaration described; and it is further adjudged that the lien of the said plaintiff is prior to the lien of the said mortgage of the defendant, Otto Huber Brewery. Judgment signed and ordered entered this tenth day of December, A. D. eighteen hundred and ninety-five (1895).

G. C. LUDLOW,
J.

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

I, LEWIS P. SCOTT, Clerk of the Court of Common Pleas in and for the county of Atlantic, the same being a court of record, do hereby certify, that the foregoing is a true, full and correct copy of a certain judgment, as

the same is entered in my said office, in Circuit Judgment Book No. 7, page 457, &c.

In witness whereof, I have hereunto set my hand and affixed the seal of Atlantic county, at Mays Landing, N. J., this first day of June, A. D. one thousand nine hundred and six (1906).

LEWIS P. SCOTT,
Clerk.

[SEAL.]

By ALBERT C. ABBOTT,
Deputy Clerk. 10

EXHIBIT C10.

ATLANTIC COUNTY CIRCUIT COURT

Of the term of December, A. D. eighteen hundred and ninety-five.

DEVLIN & MAXWELL,	}	UPON CONTRACT. 20
vs.		ON MECHANIC'S
		LIEN.
NICHOLAS LORITZ, ET ALS.		(BY DEFAULT AND RELICTA.)

ATLANTIC COUNTY, ss:

Nicholas Loritz and John Wheeler, builders, and John Wheeler and Otto Huber Brewery, owners, and Otto Huber Brewery, mortgagee, of a certain building against which a building lien is claimed were summoned; the process in this case having been returned with the following endorsement thereon, viz., "Duly served the within summons August 26th, 1895, on Nicholas Loritz and John Wheeler, personally, and on the Otto Huber Brewery by affixing a copy on the within described premises and send-

ing a copy by mail directed to them at the post office nearest the office of the company, viz., Brooklyn, E. D., New York, postage prepaid. S. E. Johnson, Sheriff," that the said Nicholas Loritz and John Wheeler, builders, might answer Charles A. Devlin and Charles L. Maxwell, trading, &c., as Devlin & Maxwell, plaintiffs in this suit, in an action upon contract; and thereupon the said plaintiffs, by Clifton C. Shinn, their attorney, complain for that

10 whereas the said Nicholas Loritz and John Wheeler, builders as aforesaid, heretofore, to wit, on the twenty-fourth day of August, A. D. eighteen hundred and ninety-five, at Atlantic City, in the county of Atlantic and within the jurisdiction of this Court, were indebted to the plaintiffs in the sum of twelve hundred dollars for divers goods, wares, merchandise, chattels and effects before that time sold and delivered by the said plaintiffs to the said Nicholas Loritz and John Wheeler, builders, at their special instance and request; and in the further sum of twelve hundred dollars for work and labor, care and diligence of the said plaintiffs by them the said plaintiffs before that time done, performed and bestowed in, upon

20 and about the business of the said Nicholas Loritz and John Wheeler, builders, and for the said Nicholas Loritz and John Wheeler, builders, at their special instance and request, and also for divers materials and other necessary things by the said plaintiffs before that time found, provided, used and applied in and about the work and labor for the said Nicholas Loritz and John Wheeler, builders, at their special instance and request; and in twelve hundred dollars for money lent by the said plaintiffs to the

30 defendants, Nicholas Loritz and John Wheeler, at their special instance and request; and in twelve hundred dollars for money paid by the said plaintiffs to and for the use of the defendants Nicholas Loritz and John Wheelers, builders, at their request and in twelve hundred dollars for money received by said defendants, Nicholas Loritz and John Wheeler, builders, for the use of the said

plaintiffs, and in twelve hundred dollars for interest for
 the forbearance by the said plaintiffs, at the said defend-
 ants' request, of money due and owing from the said de-
 fendants Nicholas Loritz and John Wheeler, builders, to
 the said plaintiffs, and in twelve hundred dollars lawful
 money found to be due from the said defendants Nicholas
 Loritz and John Wheeler, builders, to the said plaintiffs
 on an account then and there stated between them and the
 said defendants Nicholas Loritz and John Wheeler, build-
 ers, afterwards, to wit, on the day and year last aforesaid, 10
 in the county and within the jurisdiction aforesaid, in
 consideration of the premises, respectively, then and
 there, promised to pay the said last mentioned several
 moneys to the said plaintiffs on request, yet the said de-
 fendants Nicholas Loritz and John Wheeler, builders,
 have disregarded their promises and have not paid said
 several sums of money or any part thereof, to the plain-
 tiffs' damage twelve hundred dollars, and therefore bring
 their suit, &c. And the said plaintiffs further aver that
 the said debt is by virtue of the provisions of an Act of 20
 the Legislature of the State of New Jersey, entitled, "An
 Act to secure to mechanics and others payment for their
 labor and materials in erecting any building," approved
 March 27, 1874, and the various supplements to said act,
 a lien on a certain building and on the land whereon it
 stands, including the lot or curtilage whereon the same is
 erected, described as follows: The said building is a brick
 and iron building about fifty feet wide in front by about
 one hundred and sixty feet deep, known as Myers' Music
 Hall, and is erected on a certain lot or curtilage of ground, 30
 situate in Atlantic City, Atlantic county, New Jersey, de-
 scribed as follows: Beginning at a corner of a lot of
 ground formerly occupied by the National Hotel, on the
 north side of Atlantic avenue, being the southwest corner
 of said lot whereon said National Hotel was erected,
 and running thence along the north side of Atlantic ave-
 nue on a course of south sixty-seven degrees west fifty

- feet to a peg in the boundary line of lands of William Moore and Daniel Morris; thence along said line or boundary on a course of north twenty-five degrees ten minutes west, a distance of one hundred and sixty feet; thence on a course of north sixty-seven degrees east, a distance of fifty-six feet to a peg in the northwest corner of the lot of the said National Hotel; thence along the line of said lot on a course of south twenty-three degrees east, one hundred and sixty feet to the place of beginning, be
- 10 the same more or less. Also beginning in the northwest corner of Mears lot of ground one hundred and sixty feet north from the northerly side of Atlantic avenue; and running thence in continuation of the westerly line of said lot of ground northwardly one hundred feet; thence eastwardly and parallel with Atlantic avenue fifty feet; thence southwardly one hundred feet to the northeast corner of said lot of ground of Lewis T. Mears; and thence westwardly by northerly line of said lot of Mears fifty feet, more or less, to the place of beginning; and the said plain-
- 20 tiff further avers that the said John Wheeler and Otto Huber Brewery are the owners of said described land and that the said defendant Otto Huber Brewery holds a chattel mortgage executed to it by the said John Wheeler, bearing date the thirteenth day of June, A. D. 1895, and recorded in the Clerk's office of Atlantic county, in Book No. 8 of Chattel Mortgages, page 527, &c., purporting to mortgage the leasehold interest in said lands and the building thereon to the said defendant Otto Huber Brewery, to secure the payment of eight thousand dollars, by
- 30 virtue of which it, the said Otto Huber Brewery, claims to hold a lien on the said lands and the building thereon, and the plaintiff avers the lien of the debt so due to the plaintiff is paramount to the lien of the said mortgage of the defendant Otto Huber Brewery on the said land and building.

(For bill of particulars see lien and declaration on file.)

Judgment will be claimed for six hundred and thirty-

six dollars and fifty-eight cents and interest from August 2, 1895, to entry of judgment, besides costs of suit to be taxed.

CLIFTON C. SHINN,
Attorney of Plaintiffs.

And one of the said defendants, the Otto Huber Brewery, by Samuel E. Perry, comes and defends the wrong and injury when, &c., and says that it did not undertake, promise, &c., in the manner and form as the said plaintiff hath above thereof complained against it, and of this it puts itself upon the country, &c. 10

SAMUEL E. PERRY,
Attorney of Otto Huber Brewery.

And now on this tenth day of December, A. D. 1895, the said Otto Huber Brewery, by its attorney, relinquishes his said plea by him above pleaded and says that he cannot deny the action of said Devlin & Maxwell, nor but that the said Nicholas Loritz and John Wheeler, owner, did undertake and promise in manner and form as the said Devlin & Maxwell hath above thereof complained against them, nor but that the said Devlin & Maxwell hath sustained damages on the occasion of the not performing the several promises and undertakings in the said declaration mentioned to the sum of six hundred and forty-nine dollars and thirty-one cents above demanded, besides costs of suit to be taxed. The summons in the above stated cause having been returned by the Sheriff of the county of Atlantic duly served on the defendants in the manner and form required by law as appears by the Sheriff's return thereto, and the plaintiff having filed his declaration within the time limited by law for filing the same; and the said defendant Otto Huber Brewery, owner and mortgagee, having filed a plea and subsequently relinquished said plea, and judgment having been thereupon entered against Otto Huber 20 30

Brewery, owner and mortgagee, and the said defendants Nicholas Loritz and John Wheeler, builders, and John Wheeler, owner, not having filed any plea or demurrer or entered any rule for a writ of inquiry or for assessment of damages in open Court within the time required by law therefor, nor at any other time, it is therefore on this tenth day of December, in the year eighteen hundred and ninety-five, ordered that judgment interlocutory by default be entered in favor of the said plaintiffs and against
 10 said defendants Nicholas Loritz and John Wheeler, builders, and John Wheeler, owner, for the sum of six hundred and forty-nine dollars and thirty-one cents damages and the further sum of forty dollars and thirty-nine cents costs of suit be entered in favor of said plaintiffs and against the said defendants, it is thereupon ordered that judgment final be entered against the said defendants Nicholas Loritz and John Wheeler, builders, and John Wheeler, owner, Otto Huber Brewery, owner, for the sum of six hundred and forty-one dollars and thirty-nine
 20 cents and forty dollars and thirty-nine cents costs, and specially to be made of the lands and buildings in said declaration described; and it is further adjudged that the lien of the said plaintiff is prior to the lien of the said mortgage of the defendant Otto Huber Brewery.

Judgment signed and ordered entered this tenth day of December, A. D. eighteen hundred and ninety-five (1895).

G. C. LUDLOW,
 Judge.

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

I, Lewis P. Scott, Clerk of the Court of Common Pleas, in and for the county of Atlantic, the same being a Court of record, do hereby certify that the foregoing is a true, full, and correct copy of a certain judgment as the same is entered in my said office, in Judgment Book No. 7, of Circuit Judgments, page 461, &c.

In witness whereof, I have hereunto set my hand and affixed the seal of Atlantic county, at May's Landing, N. J., this first day of June, A. D., one thousand nine hundred and six (1906).

[SEAL.]

LEWIS P. SCOTT,

Clerk.

By ALBERT C. ABBOTT,

Deputy Clerk.

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EXHIBIT CII.

ATLANTIC COUNTY CIRCUIT COURT.

Of the term of December, A. D. eighteen hundred and ninety-five.

FREDERIC A. CHAPMAN,

vs.

NICHOLAS LORITZ, ET ALS.

UPON CONTRACT
AND MECHANIC'S
LIEN.

(BY DEFAULT AND
RELICTA.)

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ATLANTIC COUNTY, SS.

Nicholas Loritz and John Wheeler, builders, and John Wheeler and Otto Huber Brewery, owners, Otto Huber Brewery, mortgagee, of a certain building against which a building lien is claimed, were summoned; the process in this case having been returned with the following endorsement thereon, viz., "Duly served the within summons August 31st, 1895, on John Wheeler by leaving a copy at his residence with a member of the family above the age of 14 years, and on Nicholas Loritz personally, and on the Otto Huber Brewery by affixing a copy on the

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within described premises and sending a copy by mail addressed to the Otto Huber Brewery, Brooklyn, E. D., New York, postage prepaid, S. E. Johnson, Sheriff;" that the said Nicholas Loritz and John Wheeler, builders, might answer Frederick A. Chapman, plaintiff in this suit, in an action upon contract; and thereupon the said plaintiff, by Clifton C. Shinn, his attorney, complains for that whereas, the said Nicholas Loritz and John Wheeler, builders, as aforesaid, heretofore, to wit, on the

10 Twenty-fourth day of August, A. D. eighteen hundred and ninety-five, at Atlantic City, in the county of Atlantic and within the jurisdiction of this Court, were indebted to the plaintiff in the sum of eight hundred dollars for divers goods, wares, merchandise, chattels and effects before that time sold and delivered by the said plaintiff to the said Nicholas Loritz and John Wheeler, builders, at their special instance and request; and in the further sum of eight hundred dollars for work and labor, care and diligence of the said plaintiff by him, the said plaintiff, before

20 that time done, performed and bestowed in, upon and about the business of the said Nicholas Loritz and John Wheeler, builders, and for the said Nicholas Loritz and John Wheeler, builders, at their special instance and request; and also for divers materials and other necessary things by the said plaintiff before that time found, provided, used and applied in and about the work and labor for the said Nicholas Loritz and John Wheeler, builders, at their like special instance and request; and in eight hundred dollars for money lent by the said plaintiff to the defendants Nicholas Loritz and John Wheeler, builders,

30 at their special instance and request; and in eight hundred dollars for money paid by the said plaintiff to and for the use of the defendants Nicholas Loritz and John Wheeler, builders, at their request; and in eight hundred dollars for money received by said defendants Nicholas Loritz and John Wheeler, builders, for the use of the said plaintiff; and in eight hundred dollars for interest for the for-

bearance by the said plaintiff at the said defendants' request of money due and owing from the said defendants Nicholas Loritz and John Wheeler, builders, to the said plaintiff; and in eight hundred dollars lawful money found to be due from the said defendants Nicholas Loritz and John Wheeler, builders, to the said plaintiff on an account then and there stated between them; and the said defendants Nicholas Loritz and John Wheeler, builders, afterwards, to wit, on the day and year last aforesaid, in the county and within the jurisdiction aforesaid, in consideration of the premises, respectively, then and there promised to pay the said last mentioned several moneys to the said plaintiff on request, yet the said defendants Nicholas Loritz and John Wheeler have disregarded their promises and have not paid the said several sums of moneys or any part thereof, to the plaintiff's damage eight hundred dollars, and therefore brings his suit, &c. And the said plaintiff further avers that the said debt is by virtue of the provisions of an Act of the Legislature of the State of New Jersey, entitled, "An Act to secure to mechanics and others payment for their labor and materials in erecting any building," approved March 27, 1874, and the various supplements to said act, a lien on a certain building and on the land whereon it stands, including the lot or curtilage whereon the same is erected, described as follows: The said building is a brick and iron building about fifty feet wide in front by about one hundred and sixty feet deep, known as Myers' Music Hall, and is erected on a certain lot or curtilage of ground situate in Atlantic City, Atlantic county, New Jersey, described as follows: Beginning at a corner of a lot of ground formerly occupied by the National Hotel, on the north side of Atlantic avenue, being the southwest corner of said lot whereon said National Hotel was erected, and running thence along the north side of Atlantic avenue on a course of south sixty-seven degrees west fifty feet to a peg in the boundary line of lands of William Moore

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- and Daniel Morris; thence along said line or boundary on a course of north twenty-five degrees and ten minutes west a distance of one hundred and sixty feet; thence on a course of north sixty-seven degrees east a distance of fifty-six feet to a peg in the northwest corner of the lot of the said National Hotel; thence along the line of said lot on a course of south twenty-three degrees east one hundred and sixty feet to the place of beginning, be the same more or less. Also beginning in the northwest corner of
- 10 Mears lot of ground one hundred and sixty feet north from the northerly side of Atlantic avenue and running thence in continuation of the westerly line of said lot of ground northwardly one hundred feet; thence eastwardly and parallel with Atlantic avenue fifty feet; thence southwardly one hundred feet to the northeast corner of said lot of ground of Lewis T. Mears; and thence westwardly by northerly line of said lot of Mears fifty feet more or less to the place of beginning; and the said plaintiff further avers that said John Wheeler and Otto Huber Brewery are the owners of the said described lands, and
- 20 that the said defendant Otto Huber Brewery holds a chattel mortgage executed to it by the said John Wheeler, bearing date the thirteenth day of June, A. D. 1895, and recorded in the Clerk's office of Atlantic county, in Book No. 8 of Chattel Mortgages, page 527, &c., purporting to mortgage the leasehold interest in said lands and building thereon to the said defendant Otto Huber Brewery, to secure the payment of eight thousand dollars, by virtue of which it, the said Otto Huber Brewery, claims to hold a lien on the said lands and the buildings thereon;
- 30 and the plaintiff avers the lien of the debt so due to the plaintiff is paramount to the lien of the said mortgage of the defendant Otto Huber Brewery on the said land and building.

(For bill of particulars see lien and declaration on file.)

Judgment will be claimed for four hundred and twenty-two dollars and sixty cents and interest from July 10th, 1895, to entry of judgment, besides costs of suit to be taxed.

CLIFTON C. SHINN,
Attorney of Plaintiff.

And the said defendant Otto Huber Brewery, by Samuel Perry, its attorney, comes and defends the wrong and injury, when, &c., and says that the said John Wheeler and Nicholas Loritz did not undertake nor promise in manner and form as the said Frederick A. Chapman has above thereof complained against them, and of this it puts itself upon the country, &c. 10

SAMUEL E. PERRY,
Attorney for Otto Huber Brewery.

And now on the tenth day of December, A. D. 1895, the Otto Huber Brewery, by its attorney, relinquishes the plea it pleaded, and says it cannot deny the action of the said Frederick A. Chapman, nor but that the said Nicholas Loritz and John Wheeler, builders, and John Wheeler, owner, did undertake and promise and manner and form as the said Frederick A. Chapman hath above thereof complained against them, nor but that the said Fredercik A. Chapman hath sustained damages on occasion of the not performing of the said several promises and undertakings in the said declaration mentioned to the sum of four hundred and thirty-three dollars and sixteen cents above demanded, besides costs of suit to be taxed. 20 30

The summons in the above stated cause having been returned by the Sheriff of the county of Atlantic duly served on the defendants in the manner and form required by law, as appears by the Sheriff's return thereto, and the plaintiff having filed his declaration within the time required by law for filing the same, and the said

- Otto Huber Brewery, owner and mortgagee, having filed a plea and subsequently relinquished said plea and judgment having been thereupon entered against said defendant Otto Huber Brewery, owner and mortgagee, and the said defendants Nicholas Loritz and John Wheeler, builders, and John Wheeler, owner, not having filed any plea or demurrer or entered any rule for a writ of inquiry or for assessment of damages in open court within the time required by law therefor, nor at any other time, it is therefore on this tenth day of December, in the year eighteen hundred and ninety-five, ordered that judgment interlocutory by default be entered in favor of said plaintiff and against said defendants Nicholas Loritz and John Wheeler, owner, for the sum of four hundred and thirty-three dollars and sixteen cents, besides costs of suit to be taxed; it is therefore, on this tenth day of December, A. D. 1895, further ordered that judgment final for said sum of four hundred and thirty-three dollars and sixteen cents damages and the further sum of thirty-eight dollars and eighty-eight cents costs be entered in favor of the said plaintiff and against the said defendants Nicholas Loritz and John Wheeler, builders, and John Wheeler, owner, and specially to be made of the lands and buildings in said declaration described; and it is further adjudged that the lien of the said plaintiff is prior to the lien of the said mortgage of the defendant Otto Huber Brewery.

Judgment signed and ordered entered this tenth day of December, A. D., eighteen hundred and ninety-five (1895).

G. C. LUDLOW,
Judge.

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

I, Lewis P. Scott, Clerk of the Court of Common Pleas, in and for the county of Atlantic, the same being a Court of record, do hereby certify that the foregoing is a true

full and correct copy of a judgment, as the same is entered in my said office, in Circuit Judgment Book, No. 7, page 469, &c.

In witness whereof I have hereunto set my hand and affixed the seal of Atlantic county, at May's Landing, N. J., this fourth day of June, A. D. one thousand nine hundred and six (1906).

[SEAL.]

LEWIS P. SCOTT,
Clerk.

By ALBERT C. ABBOTT, 10
Deputy Clerk.

EXHIBIT C12.

ATLANTIC COUNTY CIRCUIT COURT.

Of the term of December, in the year of our Lord one 20
thousand eight hundred and ninety-five.

THE ATLANTIC ROOFING CO.,	}	UPON CONTRACT
vs.		AND MECHANIC'S
NICHOALS LORITZ, ET AL.		LIEN.
	}	(BY DEFAULT AND
		RELICTA.)

ATLANTIC COUNTY, ss.

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Nicholas Loritz and John Wheeler, builders, and John Wheeler and Otto Huber Brewery, owners, Otto Huber Brewery, mortgagee of a certain building against which a building lien is claimed, were summoned, the process in this case having been returned with the following endorsement thereon, viz: "Duly served the within summons August 31st, 1895, on John Wheeler by leaving a

copy at his residence with a member of the family above the age of fourteen years, and on Nicholas Loritz, personally, and on the Otto Huber Brewery by affixing a copy on the within described premises, and sending a copy by mail to it to the post office nearest the Otto Huber Brewery, postage prepaid, viz.: Brooklyn, E. D., New York. S. E. Johnson, Sheriff."

- That the said Nicholas Loritz and John Wheeler, builders, might answer the Atlantic Roofing Company, plaintiff in this suit, in an action upon contract, and there-
 10 upon the said plaintiff, by Clifton C. Shinn, its attorney, complains for that whereas the said Nicholas Loritz and John Wheeler, builders as aforesaid, heretofore, to wit, on the twentieth day of August, A. D. eighteen hundred and ninety-five, at Atlantic City, in the county of Atlantic, and within the jurisdiction of this Court, were indebted to the plaintiff in the sum of fifteen hundred dollars for divers goods, wares, merchandise, chattels and effects, before that time sold and delivered by the said plaintiff
 20 to the said Nicholas Loritz and John Wheeler, builders, at their special instance and request; and in the further sum of fifteen hundred dollars for work and labor, care and diligence of the said plaintiff, by it, the said plaintiff, before that time done, performed and bestowed in, upon and about the business of the said Nicholas Loritz and John Wheeler, builders, and for the said Nicholas Loritz and John Wheeler, builders, at their special in-
 30 stance and request; and also for divers materials and other necessary things by the said plaintiff before that time found, provided, used and applied in and about the work and labor for the said Nicholas Loritz and John Wheeler, builders, at their like special instance and request; and in fifteen hundred dollars for money lent by the said plaintiff to the defendants, Nicholas Loritz and John Wheeler, builders, at their special instance and requests; and in fifteen hundred dollars for money paid by the said plaintiff to and for the use of the defendants,

Nicholas Loritz and John Wheeler, builders, at their request; and in fifteen hundred dollars for money received by said defendants, Nicholas Loritz and John Wheeler, builders, for the use of the said plaintiff; and in fifteen hundred dollars for interest for the forbearance by the said plaintiff, at the said defendants' request, of money due and owing from the said defendants, Nicholas Loritz and John Wheeler, builders, to the said plaintiff; and in fifteen hundred dollars, lawful money, found to be due from the said defendants, Nicholas Loritz and John Wheeler, builders, to the said plaintiff on an account then and there stated between them. And the said defendants, Nicholas Loritz and John Wheeler, builders, afterwards, to wit, on the day and year last aforesaid, in the county and within the jurisdiction aforesaid, in consideration of the premises, respectively, then and there promised to pay the said last mentioned several sums to the said plaintiff on request, yet the said defendants, Nicholas Loritz and John Wheeler, builders, have disregarded their promises and have not paid the said several sums of moneys or any part thereof, to the plaintiff's damage fifteen hundred dollars, and therefore brings its suit, &c. 10

And the said plaintiff avers that the said debt is, by virtue of the provisions of an act of the Legislature of the State of New Jersey, entitled "An Act to secure to mechanics and others payment for their labor and materials in erecting any building," approved March 27, 1874, and the various supplements to said act, a lien on a certain building and on the land whereon it stands, including the lot or curtilage whereon the same is erected, described as follows: The said building is a brick and iron building, about fifty feet wide in front by about one hundred and sixty feet deep, known as Myer's Music Hall, and is erected on a certain lot or curtilage of ground, situate in Atlantic City, Atlantic county, New Jersey, described as follows: Beginning at the corner of a lot of ground formerly occupied by the National 20

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Hotel, on the north side of Atlantic avenue, being the southwest corner of said lot whereon said National Hotel was erected, and running thence along the north side of Atlantic avenue on a course of south sixty-seven degrees west fifty feet to a peg in the boundary line of lands of William Moore and Daniel Morris; thence along said line or boundary on a course of north twenty-five degrees ten minutes west, a distance of one hundred and sixty feet; thence on a course of north sixty-seven degrees east, a distance of fifty-six feet to a peg in the northwest corner of the lot of the said National Hotel; thence along the line of said lot on a course of south twenty-three degrees east, one hundred and sixty feet to the place of beginning, be the same more or less.

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Also beginning in the northwest corner of Mears' lot of ground one hundred and sixty feet north from the northerly side of Atlantic avenue, and running thence in continuation of the westerly line of said lot of ground northwardly one hundred feet; thence eastwardly and parallel with Atlantic avenue fifty feet; thence southwardly one hundred feet to the northeast corner of said lot of ground of Lewis T. Mears; and thence westwardly by a northerly line of said lot of Mears fifty feet, more or less, to the place of beginning.

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And the said plaintiff further avers that the said John Wheeler and Otto Huber Brewery are the owners of the said described lands, and that the said defendant, Otto Huber Brewery, holds a chattel mortgage executed to it by the said John Wheeler, bearing date the thirteenth day of June, A. D. 1895, and recorded in the Clerk's office of Atlantic county, in Book No. 8 of Chattel Mortgages, page 527, &c., purporting to mortgage the leasehold interest in said lands and building thereon to the said defendant, Otto Huber Brewery, to secure the payment of eight thousand dollars, by virtue of which it, the said Otto Huber Brewery claims to hold a lien on the said lands and building thereon; and the plaintiff avers the

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lien of the debt so due to the plaintiff is paramount to the lien of the said mortgage of the defendant, Otto Huber Brewery, on the said land and building.

(For bill of particulars, see lien and declaration on file.)

Judgment will be claimed for eight hundred and fourteen dollars and seventy-nine cents, and interest from July 9, 1895, to the entry of judgment, besides costs of suit to be taxed.

CLIFTON C. SHINN, 10
Atty. of Plff.

And the said defendant, Otto Huber Brewery, by Samuel E. Perry, its attorney, comes and defends the wrong and injury, when, &c., and says that the said Nicholas Loritz and John Wheeler did not undertake nor promise in manner and form as the said The Atlantic Roofing Company as above thereof complained against them, and of this it puts itself upon the country, &c.

SAMUEL E. PERRY, 20
Atty. of Otto Huber Brewery.

And now, on the tenth day of December, A. D. 1895, the Otto Huber Brewery, by its attorney, relinquishes the plea it pleaded, and says that it cannot deny the action of the said The Atlantic Roofing Company, nor but that the said Nicholas Loritz and John Wheeler, builders, and John Wheeler, owner, did undertake and promise in manner and form as the said The Atlantic Roofing Company hath above thereof complained against them, nor but that the said The Atlantic Roofing Company hath sustained damages on the occasion of the not performing of the said several promises and undertakings in the said declaraiton mentioned, to the sum of eight hundred and thirty-five dollars and fifteen cents above demanded, besides costs of suit to be taxed. 30

The summons in the above stated cause having been returned by the Sheriff of the county of Atlantic, duly

served on the defendants in the manner and form required by law, as appears by the Sheriffs' return thereto, and the plaintiff having filed his declaration within the time limited by law for filing the same, and the said defendant, Otto Huber Brewery, owner and mortgagee, having filed a plea and subsequently relinquished said plea, and judgment having been thereupon entered against said Otto Huber Brewery, owner and mortgagee, and the said defendants, Nicholas Loritz and John Wheeler, builders, and John Wheeler, owner, not having filed any plea or demurrer or entered any rule for a writ of inquiry, or for assessment of damages in open court within the time required by law therefor, nor at any other time, it is, therefore, on this tenth day of December, in the year eighteen hundred and ninety-five, ordered, that judgment interlocutory by default be entered in favor of said plaintiff and against said defendants, Nicholas Loritz and John Wheeler, builders, and John Wheeler, owner, for the sum of eight hundred and thirty-five dollars and fifteen cents, besides costs of suit to be taxed.

It is, therefore, on this tenth day of December, A. D. 1895, further ordered, that judgment final for said sum of eight hundred and thirty-five dollars and fifteen cents damages, and the further sum of thirty-eight dollars and eighty-eight cents costs be entered in favor of the said plaintiff and against the said defendants, Nicholas Loritz and John Wheeler, builders, and John Wheeler, owner, and specially to be made of the lands and buildings in said declaration described; and it is further adjudged that the lien of the said plaintiff is prior to the lien of the said mortgage of the defendant, Otto Huber Brewery.

Judgment signed and ordered to be entered this tenth day of December, A. D. eighteen hundred and ninety-five (1895).

G. C. LUDLOW,
J.

\$835.15
38.88

\$874.03

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

I, LEWIS P. SCOTT, Clerk of the Court of Common Pleas, in and for the county of Atlantic, the same being a court of record, do hereby certify that the foregoing is a true, full and correct copy of a certain judgment, as the same is entered in my said office, in Circuit Judgment Book No. 7, page 473, &c.

In witness whereof, I have hereunto set my hand and affixed the seal of Atlantic county, at Mays Landing, N. J., this second day of June, A. D. one thousand nine hundred and six (1906). 10

LEWIS P. SCOTT,
Clerk.

[SEAL.]

By
Deputy Clerk.

EXHIBIT C13.

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ATLANTIC COUNTY CIRCUIT COURT

Of the Term of December, in the year of our Lord one thousand eight hundred and ninety-five.

FRED. T. MOORE,

vs.

NICHOLAS LORITZ, ET AL.

UPON CONTRACT.

ON MECHANIC'S

LIEN CLAIM.

(BY DEFAULT.) 30

ATLANTIC COUNTY, SS.

John Wheeler and Nicholas Loritz, builders, and John Wheeler and Otto Huber Brewery, owners, and Otto Huber Brewery, mortgagee, of a certain building against which a building lien is claimed, were summoned, the

process in this case having been returned with the following endorsement thereon, viz.: "Duly served the within summons August 28, 1895, on Nicholas Loritz and John Wheeler, personally, and on the Otto Huber Brewery by affixing a copy on the within described premises, and sending a copy by mail, directed to the Otto Huber Brewery at the post office, Brooklyn, New York, it being the post office nearest the Otto Huber Brewery. S. E. Johnson, Sheriff." The said Otto Huber Brewery being made

10 a defendant because it holds a mortgage of record against the property, which would be cut off by a sale under the plaintiff's lien claim; that the said John Wheeler and Nicholas Loritz, builders, John Wheeler and Otto Huber Brewery, owners, and Otto Huber Brewery, mortgagee, might answer unto Fred. T. Moore, plaintiff, in this suit in an action upon contract, and thereupon the said plaintiff, by Millard F. Steelman, his attorney, complains for that whereas the said John Wheeler and Nicholas Loritz,

20 builders as aforesaid, heretofore, to wit, on the first day of June, A. D. eighteen hundred and ninety-five, at Atlantic City, in the county of Atlantic and within the jurisdiction of this Court, were indebted to the plaintiff in the sum of five hundred dollars for divers goods, wares, merchandise, chattels and effects, before that time sold and delivered by the said plaintiff to the said John Wheeler and Nicholas Loritz, builders, at their special instance and request; in the further sum of five hundred dollars for work and labor, care and diligence of the said plaintiff by him, the said plaintiff before that time, done, performed and bestowed in, upon and about the business of

30 the said John Wheeler and Nicholas Loritz, builders, and for the said John Wheeler and Nicholas Loritz, builders, at their special instance and request; and also for divers materials and other necessary things by the said plaintiff, before that time found, provided, used and applied in and about the work and labor for the said John Wheeler and Nicholas Loritz, builders, at their like special instance

and request; and in the further sum of five hundred dollars for money lent by the said plaintiff to the defendants John Wheeler and Nicholas Loritz, builders, at their special instance and request; and in the further sum of five hundred dollars for money paid by the said plaintiff to and for the use of the defendants John Wheeler and Nicholas Loritz, builders, at their request; and in the further sum of five hundred dollars for money received by the said defendants, John Wheeler and Nicholas Loritz, builders, for the use of the said plaintiff; and in the further sum of five hundred dollars for interest for the forbearance by the said plaintiff at the said defendants' request, of money due and owing from the said defendants, John Wheeler and Nicholas Loritz, builders, to the said plaintiff; and in the further sum of five hundred dollars, lawful money, found to be due from the said defendants, John Wheeler and Nicholas Loritz, builders, to the said plaintiff on an account then and there stated between them; and the said defendants, John Wheeler and Nicholas Loritz, builders, afterwards, to wit, on the day and year last aforesaid, in the county and within the jurisdiction aforesaid, in consideration of the premises respectively then and there promise to pay the said last mentioned several moneys to the said plaintiff on request, yet the said defendants, John Wheeler and Nicholas Loritz, builders, have disregarded their promises and have not paid the said several sums of moneys or any part thereof to the plaintiff's damage five hundred dollars and therefore brings his suit, &c.

And the said plaintiff further avers that the said debt is by virtue of the provisions of an act of the Legislature of the State of New Jersey, entitled, "An Act to secure to mechanics and others payment for their labor and materials in erecting any building," approved March 27, 1874, and the various supplements to said act, a lien on a certain building and on the land whereon it stands, including the lot or curtilage whereon the same is erected,

described as follows: The said building is a brick and iron building fifty feet in front and one hundred and sixty feet deep, known as Myers' Music Hall, situate on lands of Richard H. Turner, in Atlantic City, New Jersey, described as follows: Beginning at a corner of ground occupied by the National Hotel on the north side of Atlantic avenue, between Kentucky and New York avenues, being the southwest corner of said lot, and running thence along the north side of Atlantic avenue on a course of south sixty-seven degrees west fifty feet to a peg on the boundary line of lands of William Moore and Daniel Morris; thence along said boundary on a course of north twenty-five degrees ten minutes west a distance of one hundred and sixty feet; thence on a course of north sixty-seven degrees east a distance of fifty-six feet to a peg in the corner of lot of said National Hotel; thence along the line of said lot on a course of south twenty-three degrees east one hundred and sixty feet to the beginning.

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Also beginning on the northwest corner of Mears lot, one hundred and sixty feet from the north side of Atlantic avenue, and runs thence in continuation of the westwardly line of said lot of ground northwardly one hundred feet; thence eastwardly, parallel with Atlantic avenue, fifty feet; thence southwardly one hundred feet to the northeast corner of said lot of ground of Lewis T. Mears; and thence westwardly by northerly line of said lot of Mears fifty feet more or less to the beginning, which said lands were leased to the said John Wheeler and said lease was subsequently assigned by said John Wheeler to the Otto Huber Brewery. And the said Fred. T. Moore further avers that the said John Wheeler is the owner of the said building and that the said Otto Huber Brewery is the owner of said leasehold interest in said lands, and that the said Otto Huber Brewery holds a mortgage executed to it by the said John Wheeler, bearing date June 13, 1895, and recorded in the County Clerk's office in Atlantic county, in Book No. 8 of Chattel

Mortgages, page 527, &c., purporting to mortgage the said building to the said Otto Huber Brewery to secure the payment of eight thousand dollars, by virtue of which mortgage, it, the said Otto Huber Brewery, claims to hold a lien on said building; and the plaintiff avers that the lien of the debt so due to the plaintiff is paramount to the lien of the said mortgage on the said building.

MILLARD F. STEELMAN,
Plaintiff's Attorney.

(For bill of particulars see declaration on file.)

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The summons in the above stated cause having been returned by the Sheriff of the county of Atlantic, duly served on the defendants in the manner and form required by law, as appears by the Sheriff's return thereto, and the plaintiff having filed his declaration within the time limited by law for filing the same, and the said defendants, John Wheeler and Nicholas Loritz, builders, and John Wheeler, owner, not having filed any plea or demurrer or entered any rule for a writ of inquiry or for assessment of damages in open court within the time required by law therefor, nor at any other time and the said defendant, Otto Huber Brewery having filed a plea therein on the 5th day of November, 1895, and said plea having been relinquished on the 13th day of January, 1896, and no rule for a writ of inquiry or for assessment of damages in open Court having been filed by said Otto Huber Brewery within the time required by law therefore, nor at any other time, it is therefore on this 14th day of January, 1896, ordered that judgment interlocutory by default be entered in favor of said plaintiff and against said defendant, and the Clerk of this Court having this day duly assessed the damages of the said plaintiff at the sum of two hundred and nineteen dollars and ninety-six cents, it is therefore, on the day and year aforesaid, further ordered that judgment final for said sum

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of two hundred and nineteen dollars and ninety-six cents damages, and the further sum of thirty-nine dollars and twenty-four cents, costs of suit, be entered in favor of said plaintiff and against Nicholas Loritz, builder, and John Wheeler, builder and owner, and Otto Huber Brewery, owner, and specially to be made of the building and leasehold interest in said declaration described.

10 And it is further adjudged, that the lien of the said plaintiff is paramount and prior to the lien of the said mortgage of the said defendant, Otto Huber Brewery; and the defendants in mercy, &c.

Judgment signed and ordered entered this fourteenth day of January, A. D. 1896.

G. C. LUDLOW,
Judge.

\$219.96

39.24

\$259.20

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

I, Lewis P. Scott, Clerk of the Court of Common Pleas, in and for the county of Atlantic, the same being a Court of record, do hereby certify that the foregoing is a true, full and correct copy of a certain Circuit Judgment, as the same is entered in my said office, in Circuit Judgment Book No. 7, page 543.

30 In witness whereof, I have hereunto set my hand and affixed the seal of Atlantic county, at May's Landing, N. J., this second day of June, one thousand nine hundred and six (1906).

[SEAL.]

LEWIS P. SCOTT,
Clerk.

By

Deputy Clerk.

EXHIBIT C14.

ATLANTIC COUNTY CIRCUIT COURT,

Of the term of December, in the year of our Lord one thousand eight hundred and ninety-six.

EDWARD MOSS,	}	UPON CONTRACT.	
VS.		ON MECHANIC'S	10
		LIEN.	
NICHOLAS LORITZ, ET ALS.		(BY DEFAULT.)	

ATLANTIC COUNTY, SS.

Nicholas Loritz, builder, and John Wheeler, Otto Huber and Otto Huber Brewery, owners of, and Otto Huber Brewery, mortgagee of a certain building against which a building lien is claimed, were summoned, the process in this case having been returned with the following endorsement thereon, viz.: "Served the within writ September 3d, 1895, personally on Nicholas Loritz, and on John Wheeler by leaving a copy at his residence with a member of the family above the age of fourteen years, on the Otto Huber Brewery by mailing a copy to the said Otto Huber Brewery, postage prepaid, addressed to said Otto Huber Brewery, Brooklyn, E. D., N. Y., S. E. Johnson, Sheriff." That the said Nicholas Loritz, builder, might answer Edward Moss, plaintiff in this suit in an action upon contract, and thereupon the said plaintiff, by C. L. Cole, attorney, complains for that, whereas, the said Nicholas Loritz, builder, as aforesaid, heretofore, to wit, on the tenth day of June, A. D. eighteen hundred and ninety-five, at Atlantic City, in the county of Atlantic, and within the jurisdiction of this Court, was indebted to the plaintiff in the sum of two hundred dollars for divers goods, wares, merchandise,

chattels and effects before that time sold and delivered by the said plaintiff to the said Nicholas Loritz, builder, at his special instance and request; and in the further sum of two hundred dollars for work and labor, care and diligence of the said plaintiff by him, the said plaintiff, before that time done, performed and bestowed in, upon and about the business of the said Nicholas Loritz, builder, and for the said Nicholas Loritz, builder, at his special instance and request; and also for diver materials and other necessary things by the said plaintiff before that time found, provided, used and applied in and about the work and labor for the said Nicholas Loritz, builder, at his like special instance and request, and in two hundred dollars for money lent by the said plaintiff to the defendant, Nicholas Loritz, builder, at his special instance and request, and in two hundred dollars for money paid by the said plaintiff, to and for the use of the defendant, Nicholas Loritz, builder, at his request; and in two hundred dollars for money received by said defendant, Nicholas Loritz, builder, for the use of the said plaintiff, and in two hundred dollars for interest for the forbearance by the said plaintiff at the said defendant's request of money due and owing from the said defendant, Nicholas Loritz, builder, to the said plaintiff, and in two hundred dollars, lawful money, found to be due from the said defendant, Nicholas Loritz, builder, to the said plaintiff on an account then and there stated between them.

And the said defendant, Nicholas Loritz, builder, afterwards, to wit, on the day and year last aforesaid, in the county and within the jurisdiction aforesaid, in consideration of the premises, respectively, then and there promised to pay the said last mentioned several moneys to the said plaintiff on request, yet the said defendant, Nicholas Loritz, builder, has disregarded his promises and has not paid the several sums of moneys or any part thereof, to the plaintiff's damages, two hundred dollars,

and therefore brings its suit, &c. And the said plaintiff further avers that the said debt is by virtue of the provisions of an act of the Legislature of the State of New Jersey, entitled "An Act to secure to mechanics and others payment for their labor and materials in erecting any building," approved March 27, 1874, and the various supplements to said act, a lien on a certain building and on the lands whereon it stands, including the lot or curtilage whereon the same is erected, described as follows:

the said building is a brick and iron building about fifty feet wide in front by about one hundred and sixty feet deep, known as Myer's Music Hall, on a lot of land in Atlantic City, N. J., beginning at a corner of lot of ground formerly owned by the National Hotel, on the north side of Atlantic avenue, being the southwest corner of said lot whereon said National Hotel was erected, and running thence along the north side of Atlantic avenue, on a course of south, sixty-seven degrees west, fifty feet to a peg, in the boundary line of lands late of William Moore and Daniel Morris; thence along said line or boundary on a course of north seventy-five degrees and ten minutes west, a distance of one hundred and sixty feet; thence on a course of north sixty-seven degrees east, a distance of fifty-six feet to a peg in the northwest corner of the lot of the said National Hotel; thence along the line of said lot on a course of south twenty-three degrees east, one hundred and sixty feet to the place of beginning. Also beginning in the northwest corner of Mears' lot of ground one hundred and sixty feet north from the northerly side of Atlantic avenue, and running thence in a continuation of the westerly line of said lot of ground northwardly one hundred feet; thence eastwardly and parallel with Atlantic avenue fifty feet; thence southwardly one hundred feet to the northeast corner of said lot of ground of Mears; thence westwardly by the northerly line of said lot of Mears fifty feet to the place of beginning.

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Plaintiff avers that the said Otto Huber Brewery was made a party defendant to this action because it holds a mortgage of eight thousand dollars against the property described herein, when mortgage was made by John Wheeler to said Otto Huber Brewery and which will be cut off by a sale under this lien claim.

Bill of particulars, see declaration on file.

Judgment claimed for one hundred and seven dollars and twenty-five cents, besides costs.

EDWARD MOSS.

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The summons in the above stated cause having been returned by the Sheriff of the county of Atlantic, duly served on the defendants in the manner and form required by law, as appears by Sheriff's return thereto, and the plaintiff having filed his declaration within the time limited by law for filing the same, and the said defendants, Nicholas Loritz, John Wheeler and Otto Huber and Otto Huber Brewery not having filed any plea or demurrer or entered any rule for
 20 a writ of inquiry, or for assessment of damages in open court within the time required by law therefor, nor at any other time, it is, therefore, on this tenth day of December, A. D. 1895, ordered, that judgment interlocutory by default be entered in favor of the said plaintiff and against said defendants, Nicholas Loritz, John Wheeler and Otto Huber, and the Clerk of this court having this day duly assessed the damages of the said plaintiff at the sum of one hundred and ten dollars and forty-six cents damages, with costs of suit to be
 30 taxed, it is, therefore, on the day and year aforesaid further ordered that judgment final be entered in favor of said plaintiff and against the said defendants, both builder and owners for the sum of one hundred and ten dollars and forty-six cents damages, and the further sum of thirty-eight dollars and eighty-eight cents costs of suit, and specially to be made of the lands and buildings in

said declaration described, and the said defendant, Otto Huber Brewery, mortgagee, having relinquished its plea by it pleaded and having given said plaintiff a *relicta*, as appears of record, it is further adjudged that the lien of the said plaintiff is prior to the lien of the said mortgage of the said defendant, Otto Huber Brewery; and the defendant in mercy, etc.

Judgment signed and ordered entered this tenth day of December, A. D. eighteen hundred and ninety-five.

G. C. LUDLOW, 10
J.

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

I, LEWIS P. SCOTT, Clerk of the Court of Common Pleas, in and for the county of Atlantic, the same being a court of record, do hereby certify that the foregoing is a true, full and correct copy of a certain judgment, as the same is entered in my said office, in Circuit Judgment Book, No. 7, page 477, &c. 20

In witness whereof, I have hereunto set my hand and affixed the seal of Atlantic county, at Mays Landing, N. J., this second day of June, A. D. one thousand nine hundred and six (1906).

[SEAL.]

LEWIS P. SCOTT,
Clerk.

By

Deputy Clerk.

EXHIBIT C15.

ATLANTIC COUNTY CIRCUIT COURT,

Of the term of December, in the year of our Lord one thousand eight hundred and ninety-five.

10	JOHN D. BOYD, trading as JOHN D. BOYD & Co., vs. NICHOLAS LORITZ, ET ALS.	}	UPON CONTRACT. ON MECHANIC'S LIEN. (BY DEFAULT.)
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ATLANTIC COUNTY, SS.

20 Nicholas Loritz and John Wheeler, builders, and John Wheeler, owner, two of the defendants in this suit, were summoned to answer unto John D. Boyd, claimant, in an action upon contract, the summons having been served upon the said Nicholas Loritz and John Wheeler, builders, and John Wheeler, owner, by affixing a copy of the summons to the building described therein and publishing the same in the Daily Union, one of the newspapers published and circulated in the county of Atlantic and State of New Jersey, once each week for four weeks successively, the residence of the said defendants being unknown to the plaintiff, whereupon the said John D. Boyd, claimant, by G. A. Bourgeois, his attorney, complains for that
30 whereas, Nicholas Loritz and John Wheeler, builders, heretofore, to wit, on the ninth day of September, in the year eighteen hundred and ninety-five, at Atlantic City, to wit, at Mays Landing, in the said county of Atlantic, was indebted to the said plaintiff in the sum of fifteen hundred dollars for work and labor, care and diligence of the said plaintiff by the said plaintiff, before that time

done, performed and bestowed for the said defendant, and at his special instance and request; and also for divers materials and other necessary things by the said plaintiff, before that time found, provided, used and applied in and about that work and labor for the said defendants and at their special instance and request; and in the further sum of fifteen hundred dollars for goods, wares and merchandise sold and delivered to the said defendants, Nicholas Loritz and John Wheeler, at their request; and in the like sum of money for money lent by the plaintiff to the said defendants, Nicholas Loritz and John Wheeler, at their request; and in the like sum of money for interest due from the defendants, Nicholas Loritz and John Wheeler to the plaintiff, the plaintiff having forborne moneys due from the defendants, Nicholas Loritz and John Wheeler, to the plaintiff at their request for a long time then elapsed; and in the like sum of money for money found to be due from the defendants, Nicholas Loritz and John Wheeler, to the plaintiff, on an account then and there stated between them; and the defendant afterwards, to wit, on the day and year last aforesaid, in the county aforesaid, in consideration of the premises promised to pay the several last mentioned moneys respectively to the plaintiff on request, yet the defendants, Nicholas Loritz and John Wheeler, have disregarded their promises and have not paid any of the said moneys or any part thereof, to the plaintiff's damage fifteen hundred dollars, and therefore plaintiff brings his suit; and the said plaintiff avers that the said debt is, by virtue of the provisions of an act of the Legislature, entitled "An Act to secure to mechanics and others payment for their labor and materials in erecting any building," approved March 27th, 1874, and the several supplements thereto, a lien on a certain building and curtilage thereon. The said building is a brick and iron building, about fifty feet wide in front by about one hundred and sixty feet deep, known as Myer's Music Hall,

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- and is erected on a certain lot or curtilage of ground, situate in Atlantic City, Atlantic county, New Jersey, described as follows: Beginning at a corner of a lot of ground formerly occupied by the National Hotel, on the north side of Atlantic avenue, being the southwest corner of said lot whereon said National Bank was erected, and running thence along the north side of Atlantic avenue on a course of south sixty-seven degrees west, fifty feet to a peg in the boundary lands of William Moore and Daniel Morris; thence along the said line of north twenty-five degrees and ten minutes west, a distance of one hundred and sixty feet to a peg in the northwest corner of the lot of the said National Hotel; thence along the line of said lot on a course of south twenty-three degrees east, one hundred and sixty feet to the place of beginning, be the same more or less. Also beginning in the north and west corner of Mears' lot of ground one hundred and sixty feet north from the northerly side of Atlantic avenue, and running thence in a continuation of the westerly line of said lot of ground northwardly one hundred feet; thence eastwardly and parallel with Atlantic avenue fifty feet; thence southwardly one hundred feet to the northeast corner of said lot of ground of Lewis T. Mears, and thence westwardly by northerly line of said lot of Mears fifty feet, more or less, to the place of beginning.

(For bill of particulars, see declaration on file.)

- The summons in this cause having been returned by the Sheriff of the county of Atlantic, duly served on Otto Huber Brewery, owner and mortgagee, and the defendants, Nicholas Loritz and John Wheeler, builders, and John Wheeler, owner, having been brought into court by advertisement, according to the provisions of the Mechanic's Lien law, as appears by the records of this court, and the plaintiff having filed his declaration with-

in the time required by law, and the defendants having failed to file a plea of demurrer within the time required by law; it is ordered that the plaintiff have interlocutory judgment by default against the said defendants; and no rule for a writ of inquiry nor for assessments of damages in open court having been entered, and the clerk of this court having assessed the damages of the said plaintiff at the sum of eight hundred and four dollars and fifty-three cents, it is thereupon ordered, that judgment final be entered in favor of said plaintiff for the sum of eight hundred and four dollars and fifty-three cents damages and the further sum of forty-nine dollars and seventy cents, costs of suit, and especially to be made of the lands and tenements in declaration aforesaid described, which said damages, costs and charges in the whole amount to the sum of eight hundred and fifty-four dollars and twenty-three cents; and the defendant, in mercy, &c.

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Judgment signed and ordered entered this tenth day of January, A. D. eighteen hundred and ninety-six.

G. C. LUDLOW,
J.

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\$804.53

49.70

\$854.23

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

I, Lewis P. Scott, Clerk of the Court of Common Pleas, in and for the county of Atlantic, the same being a court of record, do hereby certify, that the foregoing is a true, full and correct copy of a certain judgment, as the same is entered in my said office, in Circuit Judgment Book No. 7, page 530.

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In witness whereof, I have hereunto set my hand and affixed the seal of Atlantic county, at May's Landing, N. J., this second day of June, A. D. one thousand nine hundred and six (1906).

[SEAL.]

LEWIS P. SCOTT,
Clerk.

By

Deputy Clerk.

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EXHIBIT C16.

ATLANTIC COUNTY CIRCUIT COURT

Of the Term of December, in the year of our Lord one thousand eight hundred and ninety-five.

20	JOHN F. TURNER,	}	UPON CONTRACT.
	Plaintiff,	}	ON MECHANIC'S
	vs.	}	LIEN CLAIM.
	JOHN WHEELER, ET ALS.	}	(BY DEFAULT.)

ATLANTIC COUNTY, ss.

30 John Wheeler and Nicholas Loritz, builders, and John Wheeler and the Otto Huber Brewery, owners and the Otto Huber Brewery, mortgagee, of a certain building against which a building lien is claimed were summoned, the process in this case having been returned with the following endorsement thereon, viz.: "Served the within summons September 6th, 1895, on the Otto Huber Brewery by affixing a copy on the within described premises, and sending a copy by mail, addressed to the said Otto Huber Brewery, Brooklyn, E. D., New York, postage

prepaid; served on John Wheeler and Nicholas Loritz by affixing a copy of said summons on the within described building, the residence of the said Wheeler and Loritz being unknown to plaintiffs. S. E. Johnson, Sheriff;" and a copy of said summons having been published in the *Daily Union*, a newspaper printed at Atlantic City, New Jersey, and circulated in the said county of Atlantic, where the building therein described is located, for the space of four weeks successively, once in each week, commencing October 25, 1895, the said Otto Huber Brewery having been made a party because it holds a mortgage of record against the building, which would be cut off by a sale under the plaintiff's lien, claim that the said John Wheeler and Nicholas Loritz, builders, might answer unto John F. Turner, plaintiff in this suit, in an action upon contract, and thereupon the said plaintiff, by Millard F. Steelman, his attorney, complains, for that whereas, the said John Wheeler and Nicholas Loritz, builders as aforesaid, heretofore, to wit, on the first day of July, A. D. eighteen hundred and ninety-five, at Atlantic City, in the county of Atlantic, and within the jurisdiction of this Court, were indebted to the plaintiff in the sum of three hundred dollars for divers goods, wares, merchandise, chattels and effects, before that time sold and delivered by the said plaintiff to the said John Wheeler and Nicholas Loritz, builders, at their special instance and request; and in the further sum of three hundred dollars for work and labor, care and diligence of the said plaintiff by him, the said plaintiff, before that time done, performed and bestowed in, upon and about the business of the said John Wheeler and Nicholas Loritz, builders, and for the said John Wheeler and Nicholas Loritz, builders, at their special instance and request; and also for divers materials and other necessary things by the said plaintiff, before that time found, provided, used and applied in and about the work and labor for the said John Wheeler and Nicholas Loritz, builders, at their like special instance and re-

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quest; and in the sum of three hundred dollars for money lent by the said plaintiff to the defendants, John Wheeler and Nicholas Loritz, builders, at their special instance and request; and in the sum of three hundred dollars for money paid by the said plaintiff to and for the use of the defendants, John Wheeler and Nicholas Loritz, builders, at their request; and in the sum of three hundred dollars for money received by said defendants, John Wheeler and Nicholas Loritz, builders, for the use of the said plaintiff; and in the sum of three hundred dollars for interest for the forbearance by the said plaintiff at the said defendants' request of money due and owing from the said defendants, John Wheeler and Nicholas Loritz, builders, to the said plaintiff; and in the sum of three hundred dollars lawful money found to be due from the said defendants, John Wheeler and Nicholas Loritz, builders, to the said plaintiff on an account then and there stated between them; and the said defendants, John Wheeler and Nicholas Loritz, builders, afterwards, to wit, on the day and year last aforesaid, in the county and within the jurisdiction aforesaid, in consideration of the premises respectively then and there promised to pay the said last mentioned several moneys to the said plaintiff on request, yet the said defendants, John Wheeler and Nicholas Loritz, builders, have disregarded their promises and have not paid the said several sums of moneys or any part thereof to the plaintiff's damage three hundred dollars and therefore he brings his suit, &c.

And the said plaintiff further avers that the said debt is, by virtue of the provisions of an act of the Legislature of the State of New Jersey, entitled, "An Act to secure to mechanics and others payment for their labor and materials in erecting any building," approved March 27th, 1874, and the various supplements to said act, a lien on a certain building and on the land whereon it stands, including the lot or curtilage whereon the same is erected, described as follows: The said building is a brick and

iron building, fifty feet in front and one hundred and sixty feet deep, known as Myers' Music Hall, situate on lands of Richard H. Turner, in Atlantic City, New Jersey, described as follows: Beginning at a corner of ground occupied by the National Hotel, on the North side of Atlantic avenue, between Kentucky and New York avenues, being the southwest corner of said lot and running thence along the north side of Atlantic avenue in a course of south sixty-seven degrees west fifty feet to a peg on the boundary line of lands of Wm. Moore and Daniel Morris; thence along said boundary on a course of north twenty-five degrees ten minutes west a distance of one hundred and sixty feet; thence on a course of north sixty-seven degrees east a distance of fifty-six feet to a peg, the corner of lot of said National Hotel; thence along the line of said lot on a course of south twenty-three degrees east one hundred and sixty feet to the beginning. 10

Also beginning on the northwest corner of Mears lot one hundred and sixty feet from the north side of Atlantic avenue and runs thence in continuation of the westwardly line of said lot of ground northwardly one hundred feet; thence eastwardly parallel with Atlantic avenue fifty feet; thence southwardly one hundred feet to the northeast corner of said lot of ground of Lewis T. Mears; and thence westwardly by northerly line of said lot of ground of Mears fifty feet more or less to the beginning, which said lands were leased to the said John Wheeler, and said lease was subsequently assigned by said John Wheeler to the Otto Huber Brewery. And the said plaintiff further avers that the said John Wheeler and Otto Huber Brewery are the owners of said building and leasehold interest in said lands and that the said defendant, Otto Huber Brewery, holds a mortgage executed to it by the said John Wheeler bearing date the 13th day of June, A. D. 1895, and recorded in the Clerk's office of Atlantic county, in Book No. 8 of Chattel Mortgages, page 527, purporting to mortgage said building to the said defend- 20 30

ant, Otto Huber Brewery, to secure the payment of eight thousand dollars, by virtue of which mortgage it, the said Otto Huber Brewery, claims to hold a lien on said building and the said plaintiff avers that the lien of the plaintiff is paramount to the lien of the mortgage of the said defendant, Otto Huber Brewery, on said building.

MILLARD F. STEELMAN,
Plaintiff's Attorney.

10 (For bill of particulars see declaration on file.)

20 The summons in the above stated cause having been returned, duly served on the above named defendant, Otto Huber Brewery, and partially served on the above named defendants, John Wheeler and Nicholas Loritz, by the Sheriff of the county of Atlantic, in the manner and form required by law as appears by the Sheriff's return thereto, and the service on said John Wheeler and Nicholas Loritz having been completed by publication in the manner and form required by law, as appears by the affidavit of the manager of the newspaper in which such publication took place, heretofore filed, and the plaintiff having filed his declaration within the time limited by law for filing the same, and the said defendants not having filed any plea or demurrer or entered any rule for a writ of inquiry, or for assessment of damages in open court within the time limited by law, nor at any other time; it is therefore on this 15th day of January, 1896, ordered that judgment interlocutory by default be entered in favor of said plaintiff and against said defendants, and the clerk of this

30 Court having assessed the damages of the said plaintiff at the sum of one hundred and sixty-six dollars and thirty-eight cents, it is thereupon, on the day and year aforesaid, further ordered that judgment final for the said sum of one hundred and sixty-six dollars and thirty-eight cents damage and the further sum of forty-eight dollars and forty-four cents, costs of suit, be entered in favor of

the said plaintiff and against the said defendants, John Wheeler and Nicholas Loritz, builders, and specially to be made of the building and leasehold interest in said declaration described; and it is further adjudged that the lien of the said plaintiff is paramount and first to the said mortgage of the said defendant, Otto Huber Brewery.

Judgment signed and ordered entered this fourteenth day of January, A. D. eighteen hundred and ninety-six.

G. C. LUDLOW,

J. 10

\$166.38

48.44

\$214.82

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

I, Lewis P. Scott, Clerk of the Court of Common Pleas, in and for the county of Atlantic, the same being a Court of record, do hereby certify that the foregoing is a true, full and correct copy of a certain judgment, as the same is entered in my said office, in Circuit Judgment Book No. 7, page 539. 20

In witness whereof, I have hereunto set my hand and affixed the seal of Atlantic county, at May's Landing, N. J., this second day of June, A. D. one thousand nine hundred and six (1906).

[SEAL.]

LEWIS P. SCOTT,
Clerk.

By

Deputy Clerk. 30

EXHIBIT C17.

ATLANTIC COUNTY CIRCUIT COURT,

Of the term of December, in the year of our Lord one thousand eight hundred and ninety-five.

10	NICHOLAS LORITZ,	}	UPON CONTRACT.
	vs.		ON MECHANIC'S
			LIEN.
	JOHN WHEELER, ET ALS.	}	(BY DEFAULT AND RELICTA.)

20 John Wheeler, builder, and John Wheeler and Otto Huber Brewery, owners, Otto Huber Brewery, mortgagee of a certain building against which a building lien is claimed, were summoned, the process in this case having been returned with the following endorsement thereon, viz.: "Duly served the within summons October 17th, 1895, on the Otto Huber Brewery by affixing a copy on the within described premises and by mailing copies, postage prepaid, addressed to the said Otto Huber Brewery, Brooklyn, E. D., New York; also served the within summons on John Wheeler by affixing a copy on the within described premises and by mailing copies to the said John Wheeler, addressed to No. 16 West Twenty-seventh street, New York City, postage prepaid. S. E. Johnson, Sheriff."

30 That the said John Wheeler, builder, might answer Nicholas Loritz, plaintiff in the suit, in an action upon contract, and thereupon the said plaintiff, by Clifton C. Shinn, his attorney, complains for that whereas, the said John Wheeler, builder as aforesaid, heretofore, to wit, on the tenth day of October, A. D. eighteen hundred and ninety-five, at Atlantic City, in the county of Atlantic, and within the jurisdiction of this court, was indebted to

the plaintiff in the sum of twenty-five hundred dollars for divers good, wares, mechandise, chattels and effects, before that time sold and delivered by the said plaintiff to the said John Wheeler, builder, at his special instance and request; and in the further sum of twenty-five hundred dollars for work and labor, care and diligence of the said plaintiff, by him, the said plaintiff, before that time done, performed and bestowed in, upon and about the business of the said John Wheeler, builder, and for the said John Wheeler, builder, at his special instance and request; and also for divers materials and other necessary things by the said plaintiff, before that time found, provided, used and applied in and about the work and labor for the said John Wheeler, builder, at his like special instance and request; and in twenty-five hundred dollars for money lent by the said plaintiff to the defendant, John Wheeler, builder, at his special instance and request; and in twenty-five hundred dollars for money paid by the said plaintiff to and for the use of the defendant, John Wheeler, builder, at his request; and in twenty-five hundred dollars for money received by said defendant, John Wheeler, builder, for the use of the said plaintiff; and in twenty-five hundred dollars for interest for the forbearance by the said plaintiff at the said defendant's request of money due and owing from the said defendant, John Wheeler, builder, to the said plaintiff; and in twenty-five hundred dollars, lawful money, found to be due from the said defendant, John Wheeler, builder, to the said plaintiff, on an account then and there stated between them; and the said defendant, John Wheeler, builder, afterwards, to wit, on the day and year last aforesaid, in the county and within the jurisdiction aforesaid, in consideration of the premises, respectively, then and there promise to pay the said last mentioned several moneys to the said plaintiff on request, yet the said defendant, John Wheeler, builder, has disregarded his promises and has not paid the said several sums of moneys

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or any part thereof, to the plaintiff's damage twenty-five hundred dollars; and therefore brings his suit, &c.

- And the said plaintiff further avers that the said debt is, by virtue of the provisions of an act of the Legislature of the State of New Jersey, entitled "An Act to secure to mechanics and others payment for their labor and materials in erecting any building," approved March 27, 1874, and the various supplements to said act, a lien on a certain building and on the land whereon it stands, including the lot or curtilage whereon the same is erected, described as follows: The said building is a brick and iron building about fifty feet wide in front by about one hundred and sixty feet deep, known as Myers' Music Hall, and is erected on a certain lot or curtilage of ground situate in Atlantic City, Atlantic county, New Jersey, described as follows: Beginning at a corner of a lot of ground formerly occupied by the National Hotel, on the north side of Atlantic avenue, being the southwest corner of said lot whereon said National Hotel was erected, and running thence along the north side of Atlantic avenue on a course of south sixty-seven degrees west fifty feet to a peg in the boundary line of lands of William Moore and Daniel Morris; thence along said line or boundary on a course of north twenty-five degrees ten minutes west, a distance of one hundred and sixty feet; thence on a course of north sixty-seven degrees east, a distance of fifty-six feet to a peg in the northwest corner of the lot of the said National Hotel; thence along the line of said lot on a course of south twenty-three degrees east, one hundred and sixty feet to the place of beginning, be
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- the same, more or less.

Also beginning in the northwest corner of Mears' lot of ground one hundred and sixty feet north from the northerly side of Atlantic avenue and running thence in continuation of the westerly line of said lot of ground northwardly one hundred feet; thence eastwardly and parallel with Atlantic avenue fifty feet; thence south-

wardly one hundred feet to the northeast corner of said lot of ground of Lewis T. Mears, and thence westwardly by northerly line of said lot of Mears fifty feet, more or less, to the place of beginning.

And the said plaintiff further avers that the said John Wheeler and Otto Huber Brewery are the owners of the said described lands and that the said defendants, Otto Huber Brewery, holds a chattel mortgage executed to it by the said John Wheeler, dated the thirteenth day of June, A. D. 1895, and recorded in the Clerk's office of Atlantic county, in Book No. 8 of Chattel Mortgages, page 527, &c., purporting to mortgage the leasehold interest in said lands and the building there to the said defendant, Otto Huber Brewery, to secure the payment of eight thousand dollars, by virtue of which it, the said Otto Huber Brewery, claims to hold a lien on the said lands and the building thereon; and the plaintiff avers that the lien of the debt so due to the plaintiff is paramount to the lien of the said mortgage of the defendant, Otto Huber Brewery, on the said land and building.

(For bill of particulars, see declaration on file.)

Judgment will be claimed for thirteen hundred dollars with interest thereon from July 14, 1895, to entry of judgment, besides costs of suit to be taxed.

CLIFTON C. SHINN,
Attorney of Plaintiff.

The summons in the above stated cause having been returned by the Sheriff of the county of Atlantic, duly served on the defendants in the manner and form required by law, as appears by the Sheriff's return thereto, and the plaintiff having filed his declaration within the time limited by law for filing the same; and the said defendant, Otto Huber Brewery, owner and mortgagee, having filed a plea and subsequently relinquished said

plea, and judgment having been thereupon entered against said Otto Huber Brewery, owner and mortgagee; and the said defendant John Wheeler, builder, and John Wheeler, owner, not having filed any plea or demurrer or entered any rule for a writ of inquiry or for assessment of damages in open court within the time required by law therefor, or at any other time; it is, therefore, on this sixth day of January, A. D. 1896, ordered, that judgment interlocutory by default be entered in favor of said plaintiff and against said defendant, John Wheeler, builder, and John Wheeler, owner; and the Clerk of this court having this day duly assessed the damages of the said plaintiff at the sum of thirteen hundred and thirty-one dollars and forty-one cents, it is, therefore, on the day and year aforesaid, further ordered, that judgment final for said sum of thirteen hundred and thirty-one dollars and forty-one cents damages, and the further sum of thirty-eight dollars and thirty-seven cents costs of suit, be entered in favor of the said plaintiff and against the said defendant, John Wheeler, builder, and John Wheeler, owner, and specially to be made of the lands and buildings in said declaration described; and the defendants, in mercy, &c.

Judgment signed, ordered entered the sixth day of January, A. D. eighteen hundred and ninety-six.

G. C. LUDLOW,
Judge.

\$1,331.41
38.37

30 \$1,369.78

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

I, LEWIS P. SCOTT, Clerk of the Court of Common Please, in and for the county of Atlantic, the same being a Court of record, do hereby certify that the foregoing is

a true, full and correct copy of a certain judgment, as the same is entered in my said office, in Circuit Judgment Book No. 7, page 523, &c.

In witness whereof, I have hereunto set my hand and affixed the seal of Atlantic county, at Mays Landing, N. J., this second day of June, A. D. one thousand nine hundred and six (1906).

[SEAL.]

LEWIS P. SCOTT,
Clerk.

By

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Deputy Clerk.

EXHIBIT C18. ..

ATLANTIC COUNTY CIRCUIT COURT

Of the Term of December, in the year of our Lord one thousand eight hundred and ninety-five.

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SOMERS LUMBER COMPANY,

VS.

JOHN WHEELER, ET ALS.

UPON CONTRACT.
ON MECHANIC'S
LIEN.
(BY DEFAULT.)

ATLANTIC COUNTY, SS.

John Wheeler, builder, and John Wheeler, Otto Huber and Otto Huber Brewery, owners of, and Otto Huber Brewery, mortgagee, of a certain building against which a building lien is claimed, were summoned, the process in this case having been returned with the following endorsement thereon, viz.: "Served the within writ September 3d, 1895, personally, on Nicholas Loritz and on John Wheeler by leaving a copy at his residence with a member of the family above the age of fourteen years, on the Otto

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Huber Brewery by mailing a copy to the said Otto Huber Brewery, postage prepaid, addressed to said Otto Huber Brewery, Brooklyn, E. D., N. Y. S. E. Johnson, Sheriff;" that the said John Wheeler, builder, might answer Somers Lumber Company, plaintiff, in this suit, in an action upon contract and thereupon the said plaintiff, by Joseph Thompson, its attorney, complains for that, whereas, the said John Wheeler, builder as aforesaid, heretofore, to wit, on the thirtieth day of June, A. D.

10 eighteen hundred and ninety-five, at Atlantic City, in the county of Atlantic, and within the jurisdiction of this Court, was indebted to the plaintiff in the sum of four thousand dollars for divers goods, wares, merchandise, chattels and effects, before that time sold and delivered by the said plaintiff to the said John Wheeler, builder, at his special instance and request; and in the further sum of four thousand dollars for work and labor, care and diligence of the said plaintiff, by it, the said plaintiff, before that time done, performed and bestowed in, upon

20 and about the business of the said John Wheeler, builder, and for the said John Wheeler, builder, at his special instance and request; and also for divers materials and other necessary things, by the said plaintiff, before that time found, provided, used and applied, in and about the work and labor for the said John Wheeler, builder, at his like special instance and request; and in four thousand dollars for money lent by the said plaintiff to the defendant, John Wheeler, builder, at his special instance and request; and in four thousand dollars for money paid by the said plaintiff to and for the use of the defendant, John

30 Wheeler, builder, at his request; and in four thousand dollars for money received by said defendant, John Wheeler, builder, for the use of the said plaintiff; and in four thousand dollars for interest for the forbearance by the said plaintiff at the said defendant's request of money due and owing from the said defendant, John Wheeler, builder, to the said plaintiff; and in four thousand dollars,

lawful money, found to be due from the said defendant, John Wheeler, builder, to the said plaintiff, on an account then and there stated between them; and the said defendant, John Wheeler, builder, afterwards, to wit, on the day and year last aforesaid, in the county and within the jurisdiction aforesaid, in consideration of the premises, respectively then and there promises to pay the said last mentioned several moneys to the said plaintiff on request, yet the said defendant, John Wheeler, builder, has disregarded his promises and has not paid the said several sums of moneys or any part thereof to the plaintiff's 10
 damage four thousand dollars, and therefor it brings its suit, &c.; and the said plaintiff further avers that the said debt is, by virtue of the provisions of an act of the Legislature of the State of New Jersey, entitled, "An Act to secure to mechanics and others payment for their labor and materials in erecting any building," approved March 27, 1874, and the various supplements to said act, a lien on a certain building and on the land whereon it stands, including the lot or curtilage whereon the same is erected, 20
 described as follows: The said building is a brick and iron building about fifty feet wide in front by about one hundred and sixty feet deep, known as Myer's Music Hall, on a lot of land in Atlantic City, beginning at a corner of a lot of ground formerly occupied by the National Hotel, on the north side of Atlantic avenue, being the southwest corner of said lot whereon said National Hotel was erected, and running thence along the north side of Atlantic avenue on a course of south sixty-seven degrees west fifty feet to a peg in the boundary line of lands late of William Moore and Daniel Morris; thence 30
 along said line or boundary on a course of north twenty-five degrees and ten minutes west a distance of one hundred and sixty feet; thence on a course of north sixty-seven degrees east a distance of fifty-six feet to a peg in the northwest corner of the lot of the said National Hotel; thence along the line of said lot on a course of south

twenty-three degrees east, one hundred and sixty feet to the place of beginning. Also beginning in the northwest corner of Mears lot of ground one hundred and sixty feet north from the northerly side of Atlantic avenue and running thence in a continuation of the westerly line of said lot of ground northwardly one hundred feet; thence eastwardly and parallel with Atlantic avenue fifty feet; thence southwardly one hundred feet to the northeast corner of said lot of ground of Mears; thence westwardly by the northerly line of said lot of Mears fifty feet to the place of beginning.

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Plaintiff avers that the said Otto Huber Brewery was made a party defendant to this action because it holds a mortgage of eight thousand dollars against the property described herein, which mortgage was made by John Wheeler to said Otto Huber Brewery and which will be cut off by a sale under this lien claim.

(For bill of particulars see declaration on file.)

Judgment will be claimed for \$1,979 29-100, besides costs.

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SOMERS LUMBER COMPANY.

The summons in the above stated cause having been returned by the Sheriff of the county of Atlantic, duly served on the defendants in the manner and form required by law, as appears by Sheriff's return thereto, and the plaintiff having filed his declaration within the time limited by law for filing the same, and the said defendants, John Wheeler and Otto Huber and Otto Huber Brewery, as builder and owner, not having filed any plea or demurrer, or entered any rule for a writ of inquiry or for assessment of damages in open court within the time required by law therefor, nor at any other time, it is therefore on this tenth day of December, A. D. 1895, ordered that judgment interlocutory by default be entered in favor of said plaintiff and against said defendants, Nicholas Loritz, John Wheeler and Otto Huber.

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It is therefore on the day and year aforesaid further ordered that judgment final for the sum of two thousand thirty-eight dollars and sixty-six cents damages and thirty-eight dollars and eighty-eight cents costs of suit be entered in favor of said plaintiff and against the said defendants, both builders and owners, and specially to be made of the lands and building in said declaration described; and the said defendant, Otto Huber Brewery, mortgagee, having relinquished its plea by it pleaded and having given said plaintiff a *relicta* as appears of record, it is further adjudged that the lien of the said plaintiff is prior to the lien of the said mortgage of the said defendant, Otto Huber Brewery; and the defendants in mercy, &c. 10

Judgment signed and ordered entered this tenth day of February, A. D. 1895.

G. C. LUDLOW,
J.

\$2,038.66
38.88

\$2,077.54

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

I, Lewis P. Scott, Clerk of the Court of Common Pleas, in and for the county of Atlantic, the same being a Court of record, do hereby certify that the foregoing is a true, full and correct copy of a certain judgment, as the same is entered in my said office, in Circuit Judgment Book No. 7, page 480, &c.

In witness whereof, I have hereunto set my hand and affixed the seal of Atlantic county, at May's Landing, N. J., this second day of June, A. D. one thousand nine hundred and six (1906).

[SEAL.]

LOUIS P. SCOTT,
Clerk.

By

Deputy Clerk.

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EXHIBIT C19.

ATLANTIC COUNTY CIRCUIT COURT

Of the term of December, in the year of our Lord one thousand eight hundred and ninety-five.

10	L. E. FREEMAN,	}	UPON CONTRACT AND MECHANIC'S LIEN.
	vs.		
	NICHOLAS LORITZ, ET AL.	}	(BY DEFAULT AND RELICTA.)

ATLANTIC COUNTY, SS.

20 Nicholas Loritz and John Wheeler, builders, and John Wheeler and Otto Huber Brewery, owners, Otto Huber Brewery, mortgagee of a certain building against which a building lien is claimed, were summoned, the process in this case having been returned with the following endorsement thereon, viz: "Duly served the within summons August 26th, 1895, on Nicholas Loritz and John Wheeler, personally, and on the Otto Huber Brewery by affixing a copy on the within described premises and sending a copy by mail directed to them at the post-office nearest the office of the company, postage prepaid, viz., Brooklyn, E. D., New York. S. E. Johnson, Sheriff." That the said Nicholas Loritz and John Wheeler, builders, might answer Benjamin C. Freeman, trading, &c., as L. E. Freeman, plaintiff in this suit, in an action upon contract, and thereupon the said plaintiff, by Clifton C. Shinn, his attorney, complain for that whereas, the said Nicholas Loritz and John Wheeler, builders, as aforesaid, heretofore, to wit, on the fifteenth day of August, eighteen hundred and ninety-five, at Atlantic City, in the county of Atlantic and within the jurisdiction of

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this Court, were indebted to the plaintiff in the sum of five hundred dollars for divers goods, wares, merchandise, chattels and effects before that time sold and delivered by the said plaintiff to the said Nicholas Loritz and John Wheeler, builders, at their special instance and request; and in the further sum of five hundred dollars for work and labor, care and diligence of the said plaintiff by him, the said plaintiff, before that time done, performed and bestowed in, upon and about the business of the said Nicholas Loritz and John Wheeler, builders, and for the said Nicholas Loritz and John Wheeler, builders, at their special instance and request, and also for divers materials and other necessary things by the said plaintiff before that time found, provided, used and applied in and about the work and labor for the said Nicholas Loritz and John Wheeler, builders, at their special instance and request; and in five hundred dollars for money lent by the said plaintiff to the defendants, Nicholas Loritz and John Wheeler, builders, at their special instance and request; and in five hundred dollars for money paid by the said plaintiff to and for the use of the defendants, Nicholas Loritz and John Wheeler, builders, at their request; and in five hundred dollars for money received by said defendants, Nicholas Loritz and John Wheeler, builders, for the use of the said plaintiff; and in five hundred dollars for interest for the forbearance by the said plaintiff at the said defendants' request of money due and owing from the said defendants, Nicholas Loritz and John Wheeler, builders, to the said plaintiff; and in five hundred dollars, lawful money, found to be due from the said defendants, Nicholas Loritz and John Wheeler, builders, to the said plaintiff on an account then and there stated between them; and the said defendants, Nicholas Loritz and John Wheeler, builders, afterwards to wit, on the day and year last aforesaid, in the county and within the jurisdiction aforesaid, in consideration of the premises, respectively, then and there promised to pay

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the said last mentioned several moneys to the said plaintiff upon request; yet the said defendants, Nicholas Loritz and John Wheeler, builders, have disregarded their promises and have not paid the said several sums of money, or any part thereof, to the plaintiff's damage five hundred dollars; and therefore brings his suit, &c.

And the said plaintiff further avers, that the said debt is by virtue of the provisions of an act of the Legislature of the State of New Jersey, entitled "An act to secure
 10 to mechanics and others payment for their labor and materials in erecting any building," approved March 27, 1874, and the various supplements to said act, a lien on a certain building and on the land whereon it stands, including the lot or curtilage whereon the same is erected, described as follows: The said building is a brick and iron building about fifty feet wide in front by about one hundred and sixty feet deep, known as Myers' Music Hall, and is erected on a certain lot or curtilage of ground, situate in Atlantic City, Atlantic county, New Jersey, described as follows: Beginning at a corner of a lot of
 20 ground formerly occupied by the National Hotel, on the north side of Atlantic avenue, being the southwest corner of said lot whereon said National Hotel is erected, and running thence along the north side of Atlantic avenue on a course of south sixty-seven degrees west, fifty feet to a peg in the boundary line of lands of William Moore and Daniel Morris; thence along said line or boundary on a course of north twenty-five degrees ten minutes west, a distance of one hundred and sixty feet; thence on a course of north sixty-seven degrees east, a distance of
 30 fifty-six feet to a peg in the northwest corner of the lot of the said National Hotel; thence along the line of said lot on a course of south twenty-three degrees east, one hundred and sixty feet to the place of beginning, be the same more or less. Also beginning in the northwest corner of Mears' lot of ground one hundred and sixty feet north from the northerly side of Atlantic avenue and

running thence in continuation of the westerly line of said lot of ground northwardly one hundred feet; thence eastwardly and parallel with Atlantic avenue fifty feet; thence southwardly one hundred feet to the northeast corner of said lot of ground of Lewis T. Mears; and thence westwardly by northerly line of said lot of Mears fifty feet, more or less, to the place of beginning; and the said plaintiff further avers that the said John Wheeler and Otto Huber Brewery are the owners of the said described lands, and that the said defendant, Otto Huber Brewery, holds a chattel mortgage executed to it by the said John Wheeler, bearing date the thirteenth day of June, A. D. 1895, and recorded in the Clerk's office of Atlantic county, in Book No. 8 of Chattel Mortgages, page 527, &c., purporting to mortgage the leasehold interest in said lands and the building thereon to the said defendant, Otto Huber Brewery, to secure the payment of eight thousand dollars, by virtue of which it, the said Otto Huber Brewery, claims to hold a lien on the said lands and the building thereon; and the plaintiff avers the lien of the debt so due to the plaintiff is paramount to the lien of said mortgage of the defendant, Otto Huber Brewery, on the said land and building.

(For bill of particulars, see lien and declaration on file.)

Judgment will be claimed for two hundred and seventy-seven dollars and ninety cents, with interest from June eighth, 1895, to the entry of judgment, besides costs of suit to be taxed.

CLIFTON C. SHINN,
Attorney of Plaintiff.

And one of the said defendants, Otto Huber Brewery, by Samuel E. Perry, comes and defends the wrong and injury, when, &c., and says that the said John

Wheeler and Nicholas Loritz did not undertake nor promise in manner and form as the said Benjamin C. Freeman, trading, &c., as L. E. Freeman, has above thereof complained against them, and of this it puts itself upon the country, &c.

SAMUEL E. PERRY,
Attorney of Otto Huber Brewery.

10 And now, on this tenth day of December, A. D. 1895,
the said Otto Huber Brewery, by its attorney, relinquishes
the plea it pleaded, and says that it cannot deny the ac-
tion of the said L. E. Freeman, nor but that the said
Nicholas Loritz and John Wheeler, builders, and John
Wheeler, owner, did undertake and promise in manner
and form as the said L. E. Chapman has above thereof
complained against them, nor but that the said L. E. Free-
man hath sustained damages on the occasion of the not
performing of the said several promises and undertak-
ings in the said declaration mentioned, to the sum of
20 two hundred and eighty-six dollars and twenty-three
cents above demanded, besides costs of suit to be taxed.

The summons in the above stated cause having been
returned by the Sheriff of the county of Atlantic duly
served on the defendants in the manner and form re-
quired by law, as appears by the Sheriff's return thereto,
and the plaintiff having filed his declaration within the
time limited by law for filing the same, and the said de-
fendant, Otto Huber Brewery, owner and mortgagee,
having filed a plea and subsequently relinquished said plea,
and judgment having been thereupon entered against said
30 Otto Huber Brewery, owner and mortgagee, and the
said defendants, Nicholas Loritz and John Wheeler, build-
ers, and John Wheeler, owner, not having filed any plea
or demurrer or entered any rule for a writ of inquiry or
for assessment of damages in open court within the time
required by law therefor, nor at any other time, it is there-
fore on this tenth day of December, in the year eighteen
hundred and ninety-five, ordered that judgment interlocu-

tory by default be entered in favor of said plaintiff and against said defendants, Nicholas Loritz and John Wheeler, builders, and John Wheeler, owner, for the sum of two hundred and eighty-six dollars and twenty-three cents, besides costs to be taxed; it is, therefore, on this tenth day of December, further ordered that judgment final for the said sum of two hundred and eighty-six dollars and twenty-three cents damages, and the further sum of thirty-eight dollars and eighty-three cents, costs of suit, be entered in favor of the said plaintiff and against the said defendants, Nicholas Loritz and John Wheeler, builders, and John Wheeler, owner, and Otto Huber Brewery, owner, and specially to be made of the lands and buildings in said declaration described; and it is further adjudged that the lien of the said plaintiff is prior to the lien of the said mortgage of the defendant, Otto Huber Brewery. 10

Judgment signed and ordered entered this tenth day of December, A. D. eighteen hundred and ninety-five (1895).

G. C. LUDLOW, 20
Judge.

STATE OF NEW JERSEY, } ss.
ATLANTIC COUNTY,

I, LEWIS P. SCOTT, Clerk of the Court of Common Pleas in and for the county of Atlantic, the same being a court of record, do hereby certify, that the foregoing is a true, full and correct copy of a certain judgment, as the same is entered in my said office, in Circuit Judgment Book No. 7, page 465, &c. 30

In witness whereof, I have hereunto set my hand and affixed the seal of Atlantic county, at Mays Landing, N. J., this fourth day of June, A. D. one thousand nine hundred and six (1906).

LEWIS P. SCOTT,
Clerk.

[SEAL.]

By ALBERT C. ABBOTT,
Deputy Clerk.

EXHIBIT C20.

ATLANTIC CITY, N. J., March 1-'97.

In relation to transfer of property, Turner to Riddle,
statement:

	Consideration	\$18,000 00	
	Interest on \$12,000 for 11 months.	660 00	
10			\$18,660 00
	Mortgage from Kuehnle	\$10,000 00	
	Cash advance by Kuehnle and note	2,500 00	
			12,500 00
	Due Turner	\$6,160 00	
	Paid Fitton mtg. & int.	\$4,240 94	
	“ Sheriff’s costs	81 54	
20	“ Court costs	70 84	
	Costs of bill in equity	50 00	
	Recording mortgage	85	
	Services in foreclosure and equity case	100 00	
			4,544 17
	Check to Turner	\$1,615 83	

EXHIBIT C21.

ATLANTIC CITY, N. J., March 3d, 1897.

RICHARD H. TURNER, ESQ.,
303 Bourse Building, Phila.

DEAR SIR:—Enclosed is mortgage from Louis Kuehne
to yourself for \$10,000, the same having been duly re-
corded.

10

Very truly yours,
JOSEPH THOMPSON.

EXHIBIT C22.

IN CHANCERY OF NEW JERSEY.

20

Between

WILLIAM FITTON,

Complainant,

AND

RICHARD H. TURNER, ET ALS.,

Defendants.

30

Sheriff's costs:

Levy and return.....	\$3 50
Posting advertisements.....	3 50
Copy for printer.....	1 00
Statement.....	1 00

Crying sale	\$1 00
Mileage	1 44
Report of sale	1 40
Drawing deed	3 50
Printers' fees	18 30
Centage on \$4,380	46 90

\$81 54

10

Received payment,
 SAMUEL KIRBY,
 Sheriff.

EXHIBIT C23.

20

ATLANTIC CITY, N. J., March 1st, 1897.

R. H. TURNER, ESQ.,
 303 Bourse Bldg., Phila.

30

DEAR SIR:—To-day we closed the matter with Kuehnle. I received his check for \$6,160, which was amount due you after allowing for the \$10,000 mortgage and \$2,500 already advanced. Enclosed is a statement showing the amount received and the amount paid Fitton with interest and costs and my services in both the foreclosure and equity suits. The balance due you is \$1,615.83, for which amount my check is enclosed.

Also enclosed is the bond of Kuehnle to you for \$10,000, Sheriff's receipt and your due bills to Kuehnle. I have sent the deed and mortgage for record and as soon as the mortgage is returned I will forward it to you.

Very truly yours,
 JOSEPH THOMPSON.

EXHIBIT C24.

This indenture, made the twenty-fifth day of February, in the year of our Lord one thousand eight hundred and ninety-six, between Richard H. Turner and his wife, of the city of Atlantic City, in the county of Atlantic and State of New Jersey, of the first part; and Louis Kuehnle, of the city of Atlantic City, in the county of Atlantic and State of New Jersey, of the second part; witnesseth, that the said party of the first part, for and in consideration of eighteen thousand (18,000) dollars lawful money of the United States of America, to them in hand well and truly paid by the said party of the second part, at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, and the said party of the first part being therewith fully satisfied, contented and paid, have given, granted, bargained, sold, aliened, released, 10
 enfeoffed, conveyed and confirmed, and by these presents do give, grant, bargain, sell, alien, release, enfeoff, convey and confirm unto the said party of the second part, and to his heirs and assigns, forever, all those certain 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. 20

Beginning at a corner of a lot of ground occupied by the National Hotel, on the north side of Atlantic avenue, being the southwest corner of the said lot whereon said National Hotel is erected, and running thence along the north side of Atlantic avenue on a course of south sixty-seven degrees west fifty feet to a peg in the boundary line of lands of William Moore and Daniel Morris; thence 30
 along said line or boundary on a course of north twenty-five degrees ten minutes west a distance of one hundred and sixty feet; thence on a course of north sixty-seven degrees east a distance of fifty-six feet to a peg at the northwest corner of a lot of the said National Hotel; thence

along the line of said lot on a course of south twenty-three degrees east one hundred and sixty feet to the place of beginning, be the same more or less.

Also, beginning in the northwest corner of Mears lot of ground, one hundred and sixty feet north from the north side of Atlantic avenue, and running thence in continuation of the westerly line of said lot of ground northwardly one hundred feet; thence eastwardly and parallel with Atlantic avenue fifty feet; thence southwardly one hundred feet to the northeast corner of said lot of ground of Lewis T. Mears; and thence westwardly by northwardly line of said lot of Mears fifty feet, more or less, to the place of beginning.

Together with all and singular the houses, buildings, trees, ways, waters, profits, privileges, and advantages, with the appurtenances to the same belonging or in anywise appertaining; also all the estate, right, title, interest, property, claim and demand whatsoever of the said party of the first part, of, in and to the same, and of, in and to every part and parcel thereof, to have and to hold, all and singular, the above described land and premises, with the appurtenance, 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 parties of the first part do for themselves, heirs, executors and administrators covenant and agree to and with the said party of the second part, his heirs and assigns, that they, the said parties of the first part, are the true, lawful and right owners of all and singular the above described land and premises, and of every part and parcel thereof, with the appurtenances thereunto belonging; and that the said land and premises, or any part thereof, at the time of the sealing and delivery of these presents, are not encumbered by any mortgage, judgment, or limitation, or by any encumbrance whatsoever; by which the title of the said party of the second part, hereby made or intended to be made, for the above

described land and premises, can or may be changed, charged, altered or defeated in any way whatsoever.

And also that the said party of the first part now have good right, full power, and lawful authority, to grant, bargain, sell and convey the said land and premises in manner aforesaid; and also that they will warrant, secure, and forever defend the said land and premises unto the said Louis Kuehnle, his heirs and assigns, forever, against the lawful claims and demands of all and every person or persons, freely and clearly freed and discharged of and from all manner of encumbrance whatsoever. 10

In witness whereof, the said party of the first part have hereunto set their hands and seals the day and year first above written.

[SEAL.]

[SEAL.]

Signed, sealed and delivered in the presence of

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

20

Be it remembered, that on this twenty-fifth day of February, in the year of our Lord one thousand eight hundred and ninety-six, before me, a Master in Chancery of the State of New Jersey, personally appeared Richard H. Turner and

Turner, who, I am satisfied, are the grantors mentioned in the within indenture, to whom I first made known the contents thereof, and thereupon they acknowledged that they signed, sealed and delivered the same as their voluntary act and deed, for the uses and purposes therein expressed; and the said 30

Turner being by me privately examined, separate and apart from her husband, further acknowledged that she signed, sealed and delivered the same as her voluntary act and deed, freely, without any fear, threats or compulsion of her said husband.

EXHIBIT C25.

This indenture, made the twenty-seventh day of August, in the year of our Lord one thousand nine hundred and four, between Samuel Kirby, Sheriff of the county of Atlantic, in the State of New Jersey, of the first part, and Francis P. Quigley, of the city of Atlantic City, in the county of Atlantic and State of New Jersey, of the
 10 second part. Whereas, a certain writ of fieri facias issued out of the Court of Chancery of the State of New Jersey to the Sheriff of the county of Atlantic, directed and delivered in the following words, to wit:

NEW JERSEY, SS..

The State of New Jersey to the Sheriff of
 [L. s.] the county of Atlantic, Greeting:

Whereas, on the eighth day of June, in the year of our Lord one thousand nine hundred and four, by a certain
 20 decree made in our Court of Chancery, before our Chancellor, at Trenton, in a certain cause therein depending, wherein the Security Trust Company is complainant and Richard H. Turner, Louisa H. Turner, Louis Kuehnle, Francis R. Quigley, John L. Baier and John L. Baier, Jr., trading as J. L. Baier & Son, and George Breon are defendants, it was ordered, adjudged and decreed that certain mortgaged premises, with the appurtenances, in the bill of complanit in the said cause particularly set forth and described, that is to say: All that certain tract or
 30 piece of land and premises situate, lying and being in the city of Atlantic City, county of Atlantic and State of New Jersey, and bounded and described as follows: Beginning in the east line of North Carolina avenue, corner to a lot twenty feet front heretofore conveyed to Edward Bettie; thence eastwardly at right angles to North Carolina avenue one hundred and fifty feet to a twenty feet wide alley; thence south along the west line of said alley fifty feet;

thence westwardly at right angles to North Carolina avenue one hundred and fifty feet to the east line thereof; thence north along the same fifty feet to the place of beginning. Being the same premises which Edwin Stokes, et al., by deed dated the eighteenth day of December, 1886, and recorded in the Clerk's office of Atlantic county, in Book 115 of Deeds, page 131, etc., granted and conveyed unto the said Richard H. Turner in fee.

Together with all and singular the right, liberties, privileges, hereditaments and appurtenances thereunto belonging or in any wise appertaining, and the reversions and remainders, rents, issues and profits thereof, and also all the estate, right, title, interest, use, property, claim and demand of the said defendant of, in, to and out of the same, be sold to pay and satisfy unto the said complainant the sum of fifty-four hundred and eighty-eight dollars and seventy-nine cents, the principal and interest secured by a certain mortgage made by Richard H. Turner to the Security Trust Company, bearing date the fifteenth day of June, A. D. 1900, and of record in the office of the Clerk of the county of Atlantic, in Book 57 of Mortgages, page 322, etc., and unto the said defendant Louis Kuehnle the sum of two hundred and five dollars and two cents, the principal and interest secured by a certain judgment recovered by the said Louis Kuehnle against the said Richard H. Turner, in the Supreme Court of Judicature, and entered on the twentieth day of June, A. D. 1901, together with lawful interest thereon from the thirty-first day of May, 1904, until the same be paid and satisfied, and also the costs of the said complainant and defendant, and that for that purpose, a writ of *feri facias* should issue, directed to the Sheriff of the county of Atlantic, commanding him to make sale as aforesaid, and that the surplus money arising from such sale, if any there be, should be brought into the said Court, subject to the further order of the said Court, as by the said decree remaining as of rec-

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30

ord in our said Court of Chancery, at Trenton, doth and may more fully appear.

And whereas, the costs of the said complainant have been duly taxed at one hundred and thirteen dollars and eighty cents;

10 Therefore, you are hereby commanded that you cause to be made of the premises aforesaid, by selling the same or so much thereof as may be necessary for the purpose, and out of the proceeds thereof you do pay unto the said Security Trust Company the sum of fifty-four hundred and eighty-eight dollars and seventy-nine cents, and unto the said Louis Kuehnle the sum of two hundred and five dollars and two cents, together with lawful interest thereon, as aforesaid, and also the sum aforesaid of costs; and that you have those moneys before our said Chancellor, in our Court of Chancery aforesaid, at Trenton, on the third Tuesday of October next, to render to the said complainant and defendant, and also the surplus money, if any there be, to abide the further order of our said Court, according to the decree aforesaid. And you are to make return at the time and place aforesaid, by certificate under your hand, of the manner in which you shall have executed this our writ, together with this writ.

20

Witness, William J. Magie, Esquire, our Chancellor, at Trenton aforesaid, the twenty-first day of June, in the year of our Lord one thousand nine hundred and four.

J. WILLARD MORGAN,
Solicitor.

30 E. C. STOKES,
Clerk.

As by the said writ duly recorded in the Clerk's office of the Court of Chancery, at Trenton, in the State of New Jersey, in Book J8 of Executions, page 70, etc., will more fully appear.

And to the end that a sale of the said land and premises should be made, pursuant to the statute in such case made and provided, the said Samuel Kirby, Sheriff as aforesaid, by public advertisements, signed by himself and set up at five or more public places in the said county of Atlantic, to wit, one each at the hotel of Louis Kuehnle, Atlantic City; at the hotel of G. W. Norcross, May's Landing; at the hotel of E. M. Sweeney, Atlantic City; at the postoffice, Leeds Point; and at the Sheriff's office, May's Landing, one whereof was in the ward of said city where such land and real estate are situate, at least four weeks next before the time appointed for selling the same, and also published in the "May's Landing Record" and "Atlantic Review," two of the newspapers printed and published in the county of Atlantic, in which said land and real estate are situate, of which one, the "May's Landing Record" was a newspaper printed and published at the county seat of said county, at least four weeks successively, once a week, next preceding the time appointed for said sale, did give public notice that the said land and premises would be exposed to sale at public vendue, on Saturday the sixth day of August, nineteen hundred and four, at two o'clock in afternoon of said day, at the hotel of Louis Kuehnle, Atlantic City, Atlantic County, New Jersey, and at the time and place so appointed and advertised, did expose the said land and premises to sale by public vendue and Francis P. Quigley, being the highest bidder for the said land and premises, the same were then and there, between the hours of twelve and five o'clock in the afternoon of the day last aforesaid, to wit, at two o'clock, struck off and sold to the said Francis P. Quigley, for the sum of seven thousand dollars, according to the form of the statute in such case made and provided.

And whereas, the said Samuel Kirby, Sheriff as aforesaid, did report the said sale to the Chancellor, who by an order, entered in the Court of Chancery, on the

seventeenth day of August, nineteen hundred and four, did ratify and confirm said sale and directed said Sheriff to execute a deed to the said purchaser;

Now, this indenture witnesseth, that the said Samuel Kirby, Sheriff as aforesaid, for and in consideration of the sum of seven thousand dollars to him paid, the receipt whereof is hereby acknowledged, hath granted, bargained and sold and by these presents doth grant, bargain, sell and convey unto the said Francis P. Quigley, his heirs and assigns, all of the above described tract of land and premises, together with the hereditaments and appurtenances thereunto belonging or appertaining:

10

To have and to hold the above mentioned and described tract of land and premises, with the appurtenances, unto the said Francis P. Quigley, his heirs and assigns forever, as fully and absolutely as the said Samuel Kirby, Sheriff as aforesaid, can, may or ought, by virtue of the said execution, and of the statute made and provided, to grant, bargain, sell and convey the same.

20

And the said Samuel Kirby does hereby covenant, promise and agree to and with the said Francis P. Quigley, his heirs and assigns, that he has not as said Sheriff aforesaid, done or caused, suffered or procured to be done, any act, matter of thing whereby the said premises or any part thereof, with the appurtenances, can or may be charged in estate, title or otherwise.

In witness whereof, the said Samuel Kirby, as such Sheriff as aforesaid, has hereunto set his hand and seal, the day and year first above written.

30

[SEAL]

SAMUEL KIRBY,
Sheriff.

Signed, sealed and delivered in the presence of
ALBERT C. ABBOTT,

On page 5, line 18, the word "public" interlined before signing.

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

Be it remembered, that on this twenty-ninth day of August, nineteen hundred and four, before me, a Master in Chancery of said State, personally appeared Samuel Kirby, Sheriff of the county of Atlantic, who, I am satisfied, is the grantor within named, and I having first made known to him the contents of the within deed of conveyance, he acknowledged that he signed, sealed and delivered the same as his voluntary act and deed for the uses and purposes therein expressed. 10

ALBERT C. ABBOTT,
M. C. C. of N. J.

I, Samuel Kirby, Sheriff of the county of Atlantic, do solemnly swear that the land and real estate described in this deed, made by me to Francis P. Quigley, was by me sold by virtue of a good and subsisting execution as is therein recited; that the money ordered to be made has not been to my knowledge or belief paid or satisfied; that the time and place of the sale of the said land and real estate were by me duly advertised as required by law, and that the same was cried off and sold to a bona fide purchaser for the best price that could be obtained. 20

SAMUEL KIRBY,
Sheriff.

Sworn before me, one of the Masters in Chancery of the State of New Jersey, on this twenty-seventh day of August, nineteen hundred and four, and I having examined the above mentioned deed, do approve the same and order it to be recorded as a good and sufficient conveyance of the land and real estate therein described. 30

ALBERT C. ABBOTT,
M. C. C. of N. J.

EXHIBIT C26.

This indenture, made the first day of March, in the year of our Lord one thousand eight hundred and ninety-seven, between Louis Kuehnle, of the city of Atlantic City, in the county of Atlantic and State of New Jersey, of the first part, and Richard H. Turner, of the city of Atlantic City, in the county of Atlantic and State of New Jersey, of the second part, witnesseth that the said party of the first part, for and in consideration of ten thousand dollars lawful money of the United States of America, to him in hand well and truly paid by the said party of the second part, at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, and the said party of the first part being therewith fully satisfied, contented and paid, has given, granted, bargained, sold, aliened, enfeoffed, conveyed and confirmed, and by these presents does give, grant, bargain, sell, alien, enfeoff, convey and confirm unto the said party of the second part, and to his heirs and assigns, forever, all that tract or parcel 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.

Beginning in a certain corner of a lot of ground occupied by the National Hotel, on the north side of Atlantic avenue, being the southwest corner of the said lot whereon said National Hotel is erected, and running thence along the north side of Atlantic avenue on a course of south sixty-seven degrees west fifty feet to a peg in the boundary line of lands of William Moore and Daniel Morris; thence along said line or boundary on a course of north twenty-five degrees ten minutes west a distance of one hundred and sixty feet; thence on a course of north sixty-seven degrees east a distance of fifty-six feet to a peg at the northwest corner of the lot of said National

Hotel; thence along the line of said lot on a course of south twenty-three degrees east one hundred and sixty feet to the place of beginning, be the same more or less.

Also beginning in the northwest corner of Mears lot of ground one hundred and sixty feet north from the north side of Atlantic avenue, and running thence in continuation of the westwardly line of said lot of ground northwardly one hundred feet; thence eastwardly and parallel with Atlantic avenue fifty feet; thence southwardly one hundred feet to the northeast corner of the said lot of ground of Lewis T. Mears; and thence westwardly by northwardly line of said lot of Mears fifty feet, more or less, to the place of beginning. 10

Together with all and singular the profits, privileges and advantages, with the appurtenances to the same belonging, or in anywise appertaining. Also all the estate, right, title, interest, property, claim and demand whatsoever, of the said party of the first part, of, in and to the same, and of, in and to every part and parcel thereof, to have and to hold, all and singular, the above described tract or lot of land and premises, with 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— 20

Provided always, and it is agreed by and between the parties to these presents, that if the said Louis Kuehnle, his heirs, executors and administrators, do and shall well and truly pay, or cause to be paid, to the said party of the second part, or to his certain attorney or attorneys, heirs, executors, administrators or assigns, the sum of ten thousand dollars within ten years from the date hereof, with interest at the rate of six per cent. per annum, payable semi-annually according to the conditions of a certain bond, made, executed and given by the said Louis Kuehnle to the said Richard H. Turner, bearing even date herewith, drawn in the penal sum of twenty 30

thousand dollars; then and from thenceforth, these presents and said obligation, and everything herein and therein contained, shall cease and be void; anything herein and therein contained to the contrary in any wise notwithstanding.

And it is hereby expressly agreed, that should any default be made in the payment of the said interest or any part thereof, on any day whereon the same is made payable, as herein before expressed, and should the same remain unpaid and in arrears for the space of thirty days, that then and from thenceforth, that is to say, after the lapse of the said thirty days, the aforesaid principal sum of money, with all arrearages of interest thereon, shall at the option of the said Richard H. Turner, his heirs, executors, administrators or assigns, become and be due and payable immediately thereafter, although the time above limited for the payment thereof may not then have expired, anything therein before contained to the contrary thereof in any wise notwithstanding, as by said bond or obligation and the condition thereof, reference being thereunto had, may more fully appear. And it is also agreed by and between the parties to these presents, that the said party of the first part shall and will keep the buildings erected and to be erected upon the lands above conveyed insured against loss or damage by fire, in some safe and responsible insurance company or companies, to an amount not less than _____ dollars, and assign the policy and certificate thereof to the said party of the second part as collateral security for the payment of the principal and interest aforesaid; and in default thereof, it shall be lawful for the said party of the second part to effect such insurance, and the premium and premiums paid for effecting the same shall be a lien on the said mortgaged premises, added to the amount of the said bond or obligation, and secured by these presents, and payable on demand with legal interest.

And the said party of the first part, for himself, his

heirs, executors and administrators, does covenant, grant and agree to and with the said party of the second part, his heirs, executors, administrators or assigns, that he, the said party of the first part, shall not, nor will apply for, or claim, any deduction, by reason of this mortgage from the taxable value of said lands and premises; and further, that the said party of the first part, or his heirs, executors, or administrators, shall and will promptly and without any delay pay or cause to be paid all taxes, charges or assessments whatsoever upon the lands and premises, herein described. 10

And the said Louis Kuehnle, his heirs, executors and administrators, does covenant and agree to and with the said party of the second part, his heirs and assigns, that the said party of the second part, his heirs and assigns, shall and may, from time to time, and at all times after default shall be made in the performance of the proviso or condition herein 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 Louis Kuehnle, his heirs or assigns, or of any other person or persons whatsoever. 20

In witness whereof, the said party of the first part has hereunto set his hand and seal the day and year first above written.

LOUIS KUHNLE. [SEAL.]

Signed, sealed and delivered in the presence of

C. L. COLE. 20

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

Be it remembered, that on this first day of March, in the year of our Lord one thousand eight hundred and ninety-seven, before me, a Master in Chancery of New Jersey, personally appeared Louis Kuehnle, who, I am

satisfied, is the grantor mentioned in the within indenture, to whom I first made known the contents thereof, and thereupon he acknowledged that he signed, sealed and delivered the same as his voluntary act and deed, for the uses and purposes therein expressed; and the said being by me privately examined, separate and apart from husband, further acknowledged that signed, sealed and delivered the same as voluntary act and deed, freely, without any fear, threats or compulsion of said husband. All of which is hereby certified.

C. L. COLE,

M. C. C.

June 17, 1898.

This mortgage has been paid and the Clerk is authorized and directed to satisfy of record.

R. H. TURNER.

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EXHIBIT C27.

Know all men by these presents, that Louis Kuehnle, of Atlantic City, N. J., (hereinafter called the obligor) is held and firmly bound unto Richard H. Turner, same place (hereinafter called the obligee), in the sum of twenty thousand dollars, lawful money of the United States of America, to be paid to the said obligee, his certain attorney, executors, administrators or assigns, to which payment well and truly to be made, I do bind and oblige myself, my heirs, executors and administrators, firmly by these presents, sealed with my seal. Dated the first day of March in the year of our Lord one thousand eight hundred and ninety-seven.

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The condition of this obligation is such, that if the above bounden obligor, his heirs, executors and administrators, or any of them, shall and do well and truly pay or cause to be paid to the above named obligee, his heirs, certain attorney, executors, administrators or assigns, the sum of ten thousand dollars, lawful money as aforesaid, within ten years from the date hereof, together with interest thereon, payable semi-annually, at the rate of six per cent. per annum, without any fraud or further delay, then the above obligation to be void, or else to be and remain in full force and virtue; provided, however, that should said obligor or his assigns at any time fail to keep the buildings on the lands described in the accompanying mortgage well and sufficiently insured against loss or damage by fire, and the policy or policies of insurance to an amount not less than

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dollars, assigned to or the loss made payable to the said obligee or his assigns, or should the said obligor or his assigns at any time fail to pay any tax assessed upon the lands described in the accompanying mortgage, and the buildings and improvements thereon for the period of sixty days after the same is due and collectible by law, then the whole principal sum aforesaid shall immediately become due and collectible; and provided further, however, and it is hereby expressly agreed, that 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 such case the whole principal debt aforesaid shall, at the option of the said obligee, his heirs, executors, administrators or assigns, become due and payable immediately, and payment of said principal debt, and all interest thereon, should be enforced and recovered at once, anything herein contained to the contrary notwithstanding. And provided further, however, and it was hereby expressly agreed, that if at any

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time hereafter, by reason of any default in payment, either of said principal sum at maturity, or of said interest within the time specified, suit should be brought in any court for the amount of such principal sum and interest, or judgment should be obtained by virtue of the warrant of attorney annexed thereto, or proceedings to foreclose this the accompanying mortgage should be had, an attorney's fee of two per cent. for collection should be payable, by reason of such suit, judgment or proceedings, and should be recovered in addition to all principal, interest and taxes then due, besides costs of suit, as in and by the said recited obligation and condition thereof, relation to the same being had, may more fully and at large appear.

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LOUIS KUEHNLE, [SEAL]

Sealed and delivered in the presence of

C. L. COLE.

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To Joseph Thompson, Esq., or any other attorney of any court of law in New Jersey or elsewhere:

This is to authorize you to appear for me and in my name 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 release of errors; and this shall be your sufficient warrant.

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Witness my hand and seal this first day of March, Anno Domini one thousand eight hundred and ninety-seven.

LOUIS KUEHNLE, [SEAL]

Sealed and delivered in the presence of

C. L. COLE.

EXHIBIT C28.

To all to whom these presents shall come I, Smith E. Johnson, Sheriff of the county of Atlantic, in the State of New Jersey, send greeting :

Whereas, on the third day of January, A. D. 1896, a writ of *fiery facias* issued out of the Atlantic County Circuit Court, directed and delivered to me, the said Smith E. Johnson, Sheriff of the county of Atlantic, in the words and form following, to wit: 10

ATLANTIC COUNTY, SS.

To the Sheriff of the county of Atlantic,
[L. s.] Greeting:

We command you that of the goods and chattels of Nicholas Loritz and John Wheeler, builders, in your county, you cause to be made the sum of five hundred and sixty-six dollars and forty-eight cents, which William J. Middleton, lately in our Circuit Court, held at May's Landing, in and for the said county of Atlantic, recovered against the said Nicholas Loritz and John Wheeler, builders, as well for his damages which he had sustained on occasion of the non-performance of certain promises and undertakings by the said Nicholas Loritz and John Wheeler, builders, then lately made to the said William J. Middleton as for his costs and charges by him about his suit in that behalf expended, whereof the said Nicholas Loritz, builders, as aforesaid are convicted, as appears to us of record; and if sufficient goods and chattels of the said Nicholas Loritz, in your county, you cannot find wherof to make the damages aforesaid, then in that case we command you that you cause the whole or the residue, as the case may require, of the damages aforesaid, be made of the lands, tenements and hereditaments and real estate of the said Nicholas Loritz and John 20 30

Wheeler, in your county, whereof they were seized on the tenth day of December, A. D. 1895, in whosoever hands the same may be; and we especially command you, that, in case that you do not make the damages aforesaid otherwise, you make the whole or residue as the case may require, of the damages aforesaid, of the following described lands, tenements, and real estate of the said John Wheeler and Otto Huber Brewery, owners, namely; that

10 front by about one hundred and sixty feet deep, known as "Miers' Music Hall," and is erected on a certain lot or curtilage of ground situate in the city of Atlantic City, county of Atlantic and State of New Jersey, together with the leasehold interest in the following described land.

Beginning at a corner of a lot of ground formerly occupied by the "National Hotel," on the north side of Atlantic avenue, being the southwest corner of said lot whereon said "National Hotel" was erected, and running thence

20 along the north side of Atlantic avenue on a course of south sixty-seven degrees west fifty feet to a peg in the boundary line of lands of William Moore and Daniel Morris; thence along said boundary line on a course of north twenty-five degrees ten minutes west a distance of one hundred and sixty feet; thence on a course of north sixty-seven degrees east a distance of fifty-six feet to a peg in the northwest corner of the lot of the said "National Hotel;" thence along the line of said lot on a course of south twenty-three degrees east one hundred and sixty feet to the place of beginning, be the same more or less.

30 Also beginning in the northwest corner of Mears lot of ground one hundred and sixty feet north from the northerly side of Atlantic avenue, and running thence in continuation of the westwardly line of said lot of ground northwardly one hundred feet; thence eastwardly and parallel with Atlantic avenue fifty feet; thence southwardly one hundred feet to the northeast corner of said lot of

ground of Lewis T. Mears; and thence westwardly by northerly line of said lot of Mears fifty feet more or less to the place of beginning.

And have you these moneys before our said Court, at May's Landing aforesaid, the second Tuesday of April next, to render unto the said William J. Middleton, for his damages aforesaid; and have you then and there this writ.

Witness, GEORGE C. LUDLOW, Esq., Judge of our said Circuit Court, at May's Landing aforesaid, the third day of January, in the year of our Lord one thousand eight hundred and ninety-six. 10

LEWIS P. SCOTT,
Clerk.

CLIFTON C. SHINN,
Attorney.

As by the record of the said writ of fieri facias in the office of the Clerk of the said county of Atlantic, at May's Landing, in Book No. 2 of Special Executions, folio 65, &c., will more fully appear. 20

I, Smith E. Johnson, Sheriff as aforesaid, did levy upon the goods and chattels therein mentioned and described, and in due form of law gave notice by public advertisements signed by himself and put up at three or more public places in the said county of Atlantic, to wit, one each at the hotel of Louis Kuehnle, Atlantic City, N. J., at the hotel of Sweeney and Doughty, Atlantic City, N. J., at the Sheriff's office, May's Landing, N. J., at "Myers' Music Hall," Atlantic City, N. J.; under and by virtue of the said writ did give public notice that the aforesaid goods and chattels and leasehold interest of the aforesaid described land would be exposed at sale at public vendue on the thirteenth day of January, A. D. 1896, at Myers' Music Hall, Atlantic City, N. J., at two o'clock in the afternoon; and at the time and place so advertised did openly and publicliy, in due form of law, expose the goods 30

and chattels and the leasehold interest in the aforesaid described land to sale by public vendue and Louis Kuehnle bid the sum of three thousand dollars; and no other person bidding as much, I did, then and there, openly and publicly and in due form of law, strike off and sell the goods, chattels and leasehold interest in the aforesaid described land to Lewis Kuehnle, he being the highest bidder for the same. Now, therefore, know ye, that I, Smith E. Johnson, Sheriff as aforesaid, under and by virtue of

- 10 the said writ and in consideration of the sum of three thousand dollars, to me in hand paid, the receipt whereof is hereby acknowledged, have granted, bargained and transferred, conveyed and by these presents do grant, sell, assign and convey unto the said Louis Kuehnle, his heirs and assigns, all the hereinbefore described goods and chattels and leasehold interest in the aforesaid described land to have and to hold the same unto the said Louis Kuehnle, his heirs and assigns. And I, the said Smith E. Johnson, Sheriff as aforesaid, do hereby covenant and agree to and
- 20 with the said Louis Kuehnle, his heirs and assigns, that I have not, as such Sheriff aforesaid, done or caused, suffered or procured to be done any act or thing whereby the said goods and chattels, with the appurtenances, may be charged or encumbered in estate, title or otherwise.

In witness whereof, I, Smith E. Johnson, Sheriff as aforesaid, have hereunto set my hand and seal this 27th day of January, A. D. 1896.

SMITH E. JOHNSON, [SEAL.]
Sheriff.

- 30 Signed, sealed and delivered in the presence of
JOSEPH THOMPSON.

Be it remembered that on this 27th day of January, 1896, before me, a Master in Chancery of New Jersey, personally appeared Smith E. Johnson, Sheriff of the county of Atlantic, in the State of New Jersey, who, I am

satisfied, is the grantor mentioned in the above Bill of Sale; and I 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 for the use and purposes therein expressed.

JOSEPH THOMPSON,
M. C. C.

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EXHIBIT C29.

Know all men by these presents, that I, John Wheeler, of the city, county and State of New York, party of the first part, for and in consideration of the sum of eight thousand dollars, lawful money of the United States, to me in hand paid by Otto Huber Brewery, of the city of Brooklyn, county of Kings and State of New York, party of the second part, the receipt whereof is hereby acknowledged, have sold and by these presents doth 20 grant, convey, sell, assign, transfer and set over unto the said Otto Huber Brewery a certain indenture of lease, bearing date the 12th day of February, in the year one thousand eight hundred and ninety-five, made by Richard H. Turner, of Atlantic City, N. J., to me and duly recorded in the office of the Clerk of Atlantic county, at Mays Landing, N. J., in Book 5, Miscellaneous Record, folio 369, with all and singular the premises therein mentioned and described, and the buildings thereon, together with the appurtenances. To have and to hold 30 the same unto the said Otto Huber Brewery, its successors, legal representatives or assigns, from the day of March, 1895, for and during all the rest, residue and remainder yet to come of and in the term of years mentioned in the said indenture of lease. Subject, nevertheless, to the rents, covenants, conditions and provisions therein also mentioned. And I do here-

by covenant, grant, promise and agree to and with the said Otto Huber Brewery, its successors, legal representatives or assigns, that the said assigned premises now are free and clear of and from all former and other gifts, grants, bargains, sales, leases, judgments, executions, back rents, taxes, assessments and incumbrances whatsoever.

In witness whereof, I have hereunto set my hand and seal this 29th day of March, one thousand eight hundred and ninety-five.

JOHN WHEELER, [SEAL.]

Sealed and delivered in the presence of

FERD. SHIEFFER.

STATE OF NEW YORK, }
CITY OF BROOKLYN, } ss.
COUNTY OF KINGS, }

On the 29th day of March, one thousand eight hundred and ninety-five, before me personally came John Wheeler, to me known to be the individual described in, and who executed the foregoing instrument, and he thereupon duly acknowledged to me that he had executed the same.

FERD. SHIEFFER,
Notary Public, Kings Co.

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

Be it remembered, that on this nineteenth day of June, in the year of our Lord one thousand eight hundred and ninety-five, before me, a Master in Chancery of the State of New Jersey, personally appeared John Wheeler, who I am satisfied is the grantor in the within assignment of lease named, and I having first made known to him the contents thereof, he did acknowledge that he

signed, sealed and delivered the same as his voluntary act and deed for the uses and purposes therein expressed.

LEWIS EVANS,
Master in Chancery of New Jersey.

EXHIBIT C30.

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Know all men by these presents, that the Otto Huber Brewery, a body corporate existing under and by virtue of the laws of the State of New York, located in the city of Brooklyn, State aforesaid, party of the first part, for and in consideration of the sum of one hundred dollars, lawful money of the United States of America, to it in hand paid by Louis Kuehnle, of Atlantic City, county of Atlantic and State of New Jersey, party of the second part, at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, assigned, transferred and set over, and by these presents do grant, bargain, sell, assign, transfer and set over unto the said party of the second part a certain chattel mortgage, bearing date on the thirteenth day of June, in the year of our Lord eighteen hundred and ninety-five, made by John Wheeler, of Atlantic City aforesaid, to secure the payment of the sum of eight thousand dollars and interest thereon at the rate of five per centum per annum, which said chattel mortgage is recorded in the Clerk's office of the county of Atlantic, in Book No. 8 of chattel mortgages for said county on pages 527, &c. And whatever right, title and interest may remain vested in the said Otto Huber Brewery in and to the mortgaged property therein described, and also whatever

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right, title and interest the said Otto Huber Brewery may have in and to a certain lease executed by Richard H. Turner to the said John Wheeler, dated February 12th, 1895, and recorded in the Clerk's office of Atlantic county in Book No. 5 of Miscellaneous Records, folio 369, &c. Which said lease was assigned to the said Otto Huber Brewery by the said John Wheeler as additional and collateral security to the mortgage debt of eight thousand dollars heretofore mentioned; 10 which said assignment of lease is recorded in the Clerk's office aforesaid in Book No. 5 of Miscellaneous Records, folio, 377, &c.

To have and to hold the said chattel mortgage and lease unto the said party of the second part, his heirs, executors, administrators and assigns, to his and their proper and lawful use, benefit and behoof forever. Thereby releasing the said Otto Huber Brewery from all claims and demands whatsoever that may have arisen or may hereafter arise, both in law and in equity, by reason of 20 the execution and existence of the said chattel mortgage and assignment of lease. It being understood and agreed that this indenture of assignment is given by the said Otto Huber Brewery to the said Louis Kuehnle in order and to the end that he, the said Louis Kuehnle, may be placed in legal possession of any and all right, title and interest the Otto Huber Brewery may have in the mortgaged property and lease of land upon which the building known as Meyers' Music Hall now stands, but is not intended, nor does this indenture of assignment grant, bargain, sell, assign, transfer and 30 set over to the said Louis Kuehnle any right, title and interest the said Otto Huber Brewery may have to collect and obtain from the said John Wheeler, mortgagor, the balance due upon the mortgage indebtedness of eight thousand dollars and the legal costs and charges incurred by reason thereof.

In witness whereof, the said Otto Huber Brewery has caused its official seal to be hereunto affixed, attested by its secretary, and these presents signed by its president on this eighteenth day of February, eighteen hundred and ninety-six.

OTTO HUBER,
President Otto Huber Brewery.

[SEAL.]

Attest:

JOSEPH HUBER,
Subscribing witness.

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

Be it remembered, that on this eighteenth day of February, A. D. eighteen hundred and ninety-six, before me, the subscriber, a Master in Chancery of New Jersey, personally appears Joseph Huber, who, by me duly sworn, doth depose and make proof to my satisfaction that he well knows the corporate seal of the Otto Huber Brewery, the assignor named in the foregoing deed of assignment; that the seal thereto affixed is the proper corporate seal of the said company; that the same was so affixed thereto and the said deed signed and delivered by Otto Huber, who was, at the date and execution thereof, the president of said company, in the presence of the said deponent, as the voluntary act and deed of the said company, and the said deponent thereupon signed the same as subscribing witness.

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JOSEPH HUBER.

Sworn and subscribed before me, at Trenton, N. J., the date aforesaid.

JOHN T. VANCLEEF,
Master in Chancery of N. J.

EXHIBIT C₃₁.

- This indenture, made the twelfth day of February, A. D. eighteen hundred and ninety-five, between Richard H. Turner, of Atlantic City, N. J., of the first part, and John Wheeler, of New York City, N. Y., of the second part, witnesseth, that the said party of the first part has let and by these present doth grant, demise and to farm let unto
- 10 the said party of the second part that certain piece of land in Atlantic City aforesaid, bounded and described as follows: Beginning at a corner of a lot of ground occupied by the National Hotel, on the north side of Atlantic avenue, being the southwest corner of the said lot whereon said National Hotel is erected, and running thence along the north side of Atlantic avenue on a course of south sixty-seven degrees west fifty (50) feet to a peg in the boundary line of lands of William Moore and Daniel Morris; thence along said line or boundary on a course
- 20 of north twenty-five degrees ten minutes west a distance of one hundred and sixty (160) feet; thence on a course of north sixty-seven degrees east a distance of fifty-six (56) feet to a peg at the northwest corner of the lot of the said National Hotel; thence along the line of said lot on a course of south twenty-three degrees east one hundred and sixty (160) feet to the place of beginning, be the same more or less. Also beginning in the northwest corner of Mears lot of ground one hundred and sixty (160) feet north from the north side of Atlantic
- 30 avenue and running thence in continuation of the westwardly line of said lot of ground northwardly one hundred (100) feet; thence eastwardly and parallel with Atlantic avenue fifty (50) feet; thence southwardly one hundred (100) feet to the northeast corner of the said lot of ground of Lewis T. Mears; and thence westwardly by northwardly line of said lot of Mears fifty (50) feet, more or less, to the place of beginning, with the appurten-

ances, from March 25th, 1895, A. D., for the full period of ten years, at the rent or sum of twelve hundred dollars per annum to be paid as follows: One hundred dollars monthly in advance, beginning the twenty-fifth day of said March. Provided, that if any rent should be due and unpaid, or if default shall be made in any of the covenants herein contained, then this lease shall cease and become void, and it shall be lawful for the said party of the first part, without notice and without demand for said rent, to enter the said premises and remove all persons therefrom, 10
or to proceed by action for the recovery of the possession thereof, or otherwise however; and the said party of the second part doth hereby covenant and agree, to and with the said party of the first part, to pay the said yearly rent in the proportions and upon the conditions aforesaid; nor use or permit any part thereof to be used for any purpose than a place of amusement, in connection with serving liquid refreshments, and also at the expiration of said term to yield up and surrender the possession thereof, with the appurtenances, in as good state and condition as the same now are, or many be put into by 20
the said party of the first part, reasonable wear and tear and accidents happening by fire or other casualties excepted.

The said party of the first part in consideration of the premises gives unto the said party of the second part the right to purchase said premises with the appurtenances at any time within one year from the twenty-fifth day of said March, at the sum of eighteen thousand dollars free from incumbrance, six thousand dollars to be paid in cash and the balance to be secured by a first mortgage on the premises, payable at the expiration of ten years from its date. All sewer, water, gas and insurance bills to be paid by party of the second part, also all taxes over and above the assessment on the naked land. Should party of the second part fail to pay rent or to avail himself of the option of purchase or in any way 30

cease to be a tenant, all improvements which may be made on premises to remain as property of party of the first part. If sale should be made during said year the taxes are to be pro rated.

In witness whereof, the said parties have interchangeably set their hands and seals hereto the day and year first above written.

RICHARD H. TURNER. [SEAL.]

JOHN WHEELER. [SEAL.]

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Signed, sealed and delivered in the presence of

C. L. COLE.

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EXHIBIT D1.

This indenture, made the twenty-fifth day of February, in the year of our Lord one thousand eight hundred and ninety-six, between Louis Kuehnle, of Atlantic City, N. J., of the first part, and Richard H. Turner, of Atlantic City, N. J., of the second part; whereas, the said Louis Kuehnle, in and by his certain obligation or writing obligatory, under his hand and seal duly executed, and bearing even date herewith, stands bound unto the said party of the second part in the sum of twelve thousand dollars, payable within ten years from the date hereof, with interest at the rate of six per cent. per annum, payable semi-annually, without any fraud or further delay, as in and by said recited obligation and condition thereof, relation to the same being had, may more fully and at large appear. 10

Now this indenture witnesseth, that the said party of the first part, as well for and in consideration of the aforesaid debt or sum of twelve thousand dollars and for the better securing the payment thereof unto the said party of the second part, his heirs, executors, administrators 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, released and confirmed, and by these presents does grant, bargain, sell, release and confirm unto the said party of the second part, his heirs and assigns, all those certain tracts or pieces of land, situate in the city of Atlantic City, county of Atlantic and State of New Jersey, more particularly bounded and described as follows: 20 30

Beginning at a corner of a lot of ground occupied by the National Hotel, on the north side of Atlantic avenue, being the southwest corner of the said lot whereon said National Hotel is erected, and running thence along the north side of Atlantic avenue, on a course of south sixty-seven degrees west, fifty feet to a peg in the boundary line of lands of William Moore and Daniel Morris; thence along said line or boundary on a course of north seventy-five degrees ten minutes west, a distance of one hundred and sixty feet; thence on a course of north sixty-seven degrees east, a distance of fifty-six feet to a peg at the northwest corner of the lot of the said National Hotel; thence along the line of said lot on a course of south twenty-three degrees east, one hundred and sixty feet to the place of beginning, be the same more or less.

Also beginning in the northwest corner of Mears' lot of ground one hundred and sixty feet north from the north side of Atlantic avenue, and running thence, in continuation of the westwardly line of said lot of ground, northwardly, one hundred feet; thence eastwardly and parallel with Atlantic avenue fifty feet; thence soultwardly one hundred feet to the northeast corner of the said lot of ground of Lewis T. Mears, and thence westwardly by northwardly line of said lot of Mears fifty feet, more or less, to the place of beginning.

Being the same premises which Richard T. Turner and wife conveyed to Louis Kuehnle, by deed bearing even date herewith and intended to be forthwith recorded; this mortgage being given to secure a part of the purchase price thereof.

Together with all and singular the buildings, improvements, woods, ways, rights, liberties, privileges, hereditaments and appurtenances to the same belonging or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof; to have and to hold the said heredita-

ments and premises above granted, or intended so to be, with the appurtenances, unto the said party of the second part, his heirs and assigns forever.

Provided always, nevertheless, that if the said Louis Kuehnle, his heirs, executors, administrators or assigns, do and shall well and truly pay, or cause to be paid, unto the said party of the second part, his executors, administrators or assigns, the aforesaid debt or sum of twelve thousand dollars on the day and time herein before mentioned and appointed for the payment thereof, together with lawful interest for the same, in like money in way and manner herein before 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; 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 herein before contained to the contrary thereof in any wise notwithstanding. 10 20

In witness whereof, the said party of the first part has hereunto set his hand and seal the day and year first above written.

LOUIS KUEHNLE, [SEAL]

Signed, sealed and delivered in the presence of
JOSEPH THOMPSON.

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

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Be it remembered, that on this twenty-fifth day of February, in the year of our Lord one thousand eight hundred and ninety-six, before me, a Master in Chancery of New Jersey, personally appeared Louis Kuehnle, who, I am satisfied, is the grantor mentioned

in the above deed or conveyance, and 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.

JOSEPH THOMPSON,
M. C. C.

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EXHIBIT D2.

Know all men by the presents, that Louis Kuehnle, of Atlantic City, N. J., held and firmly bound unto Richard H. Turner, of the same place, in the sum of twenty-four thousand (24,000) dollars, lawful money of the United States of America, to be paid to the said Richard H. Turner, his certain attorney, executors, administrators or assigns; to which payment well and truly to be made, I do hereby bind myself, my heirs, executors and administrators firmly by these presents.

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Sealed with my seal, dated the twenty-fifth day of February, in the year of our Lord one thousand eight hundred and ninety-six.

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The condition of this obligation is such, that if the above bounden Louis Kuehnle, his heirs, executors, administrators, or any of them, shall and do well and truly pay, or cause to be paid, unto the above named Richard H. Turner, his heirs, certain attorney, executors, administrators or assigns, the just sum of twelve thousand dollars within ten years from the date hereof, within interest at the rate of six per cent. per annum, payable semi-annually, without any fraud or further delay, then the above obligation to be void, or else to be and remain in full force and virtue.

LOUIS KUEHNLE, [SEAL]

Sealed and delivered in the presence of

JOSEPH THOMPSON.

To Jos. Thompson, Esq.,

Or any other attorney of any Court of Law in New Jersey or elsewhere:

This is to authorize you to appear for me and in my name 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 cost of suit and release of errors, and this shall be your sufficient warrant.

Witness my hand and seal this twenty-fifth day of February, Anno Domini one thousand eight hundred and ninety-six. **10**

LOUIS KUEHNLE, [SEAL]

Sealed and delivered in the presence of

JOSEPH THOMPSON.

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EXHIBIT D₃.

Know all men by these presents, that we, William Allen and Samuel Allen, of Philadelphia, Pa., for and in consideration of the sum of four thousand dollars, lawful money of the United States of America, to them in hand paid by William Fitton, at or before the ensembling and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, assigned, transferred and set over, and by these presents do grant, bargain, sell, assign, transfer and set over unto the said William Fitton, his heirs, executors, administrators and assigns, that certain indenture of mortgage, bearing date the thirty-first day of August, in the year of our Lord one thousand eight hundred and ninety-three, made and executed by Samuel D. Hoffman to **30**

secure the payment of four thousand dollars, which mortgage is abstracted in the Clerk's office of the county of Atlantic, in Book No. 35 of Mortgages, pages 161, &c., 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 also, together with the bond or obligation in said indenture of mortgage mentioned, and thereby intended to be secured, and all moneys due and
 10 to grow due thereon, and the warrant of attorney to confess judgment thereto annexed, and all our estate, right, title, interest, property, claim and demand in and to the same.

To have and to hold the same unto the said William Fitton, his heirs, executors, administrators and assigns, to his and their proper use, benefit and behoof forever; subject nevertheless to the equity of redemption of said Samuel D. Hoffman, mortgagor, in the said indenture of mortgage named and his heirs and assigns therein.

20 In witness whereof, we have hereunto set our hands and seals the twelfth day of September, in the year of our Lord one thousand eight hundred and ninety-four.

WILLIAM ALLEN, [SEAL]

SAMUEL ALLEN, [SEAL]

Signed, sealed and delivered in the presence of

FRANK A. MULLIKIN,

WARREN H. DAVIS.

30 STATE OF PENNSYLVANIA, }
 COUNTY OF PHILADELPHIA, } ss.

Be it remembered, that on this twelfth day of September, in the year of our Lord one thousand eight hundred and ninety-four, before me, a notary public for the Commonwealth of Pennsylvania, residing in Philadelphia, personally appeared William Allen and Samuel Allen, who I am satisfied are the grantors mentioned in

the above deed or conveyance, and I having first made known to them the contents thereof, they acknowledged that they signed, sealed and delivered the same as their voluntary act and deed. All of which is hereby certified.

FRANK A. MULLIKIN,

[SEAL]

Notary Public.

STATE OF PENNSYLVANIA, }
COUNTY OF PHILADELPHIA, } ss.

I, William B. Mann, Prothonotary of the Courts of 10
Common Pleas of said county, which are courts of record, having a common seal, being the officer authorized by the laws of the State of Pennsylvania to make the following certificate, do certify, that Frank A. Mullikin, Esquire, whose name is subscribed to the certificate of the acknowledgement of the annexed instrument and thereon written, was at the time of such acknowledgement a notary public for the Commonwealth of Pennsylvania, residing in the county aforesaid, duly commissioned and qualified to administer oaths and affirmations and to take acknowledgments and proofs of deeds 20
or conveyances for lands, tenements and hereditaments in said State of Pennsylvania, and to all whose acts, as such, full faith and credit are and ought to be given, as well in Courts of Judicature as elsewhere, and that I am well acquainted with the handwriting of the said notary public and verily believe his signature thereto is genuine, and I further certify that the said instrument is executed and acknowledged in conformity with the laws of the State of Pennsylvania. 30

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court, this 12th day of September, in the year of our Lord one thousand eight hundred and ninety-four.

WILLIAM B. MANN,
Prothonotary.

EXHIBIT D4.

Know all men by these presents, that Samuel D. Hoffman, of Atlantic City, Atlantic county, State of New Jersey, (hereinafter called the obligor) am held and firmly bound unto William Allen and Samuel Allen, of the city of Philadelphia, county of Philadelphia, State of Pennsylvania, (hereinafter called the obligees) in the sum of eight thousand (\$8,000) dollars lawful money of the United States of America, to be paid to the said obligees, their certain attorney, executors, administrators, or assigns, to which payment well and truly to be made, I do hereby bind and oblige myself, my heirs, executors and administrators firmly by these presents, sealed with my seal. Dated the thirty-first day of August, in the year of our Lord one thousand eight hundred and ninety-three.

The condition of this obligation is such, that if the above bounden obligor, his heirs, executors and administrators, or any of them, shall and do well and truly pay, or cause to be paid to the above named obligee their certain attorney, executors, administrators, or assigns, the sum of four thousand (\$4,000) dollars lawful money as aforesaid, within one year from the date hereof, together with interest thereon, payable semi-annually, at the rate of six per cent. per annum, without any fraud or further delay, then the above obligation to be void or else to be and remain in full force and virtue; provided however, that should said obligor or his assigns at any time fail to keep the buildings on the lands described in the accompanying mortgage well and sufficiently insured against loss or damage by fire, and the policy or policies of insurance to an amount not less than four thousand (\$4,000) dollars, assigned to or the loss made payable to the said obligees or their assigns, or should the said obligor or his assigns at any time fail to pay any tax assessed upon the lands described in the accompanying

mortgage, and the buildings and improvements thereon, for the period of sixty days after the same is due and collectible by law, then the whole principal sum aforesaid shall immediately become due and collectible; and provided further, however, and it is hereby expressly agreed, that if at any time default should be made in payment of interest as aforesaid for the space of three days after any semi-annual payment thereof should fall due, then and in such case the whole principal debt aforesaid shall, at the option of the said obligees, their executors, administrators, or assigns, become due and payable immediately, and payment of said principal debt, and all interest thereon should be enforced and recovered at once, anything herein contained to the contrary notwithstanding. And provided further, however, and it was hereby expressly agreed, that if at any time hereafter, by reason of any default in payment, either of said principal sum at maturity, or of said interest within the time specified, suit should be brought in any Court for the amount of such principal sum and interest, or judgment should be obtained by virtue of the warrant of attorney annexed thereto, or proceedings to foreclose this the accompanying mortgage should be had, an attorney's fee of five per cent. for collection should be payable, by reason of such suit, judgment or proceedings, and should be recovered in addition to all principal, interest and taxes then due, besides costs of suit, as in and by the said recited obligation and condition thereof, relation to the same being had, may more fully and at large appear.

SAMUEL D. HOFFMAN. [SEAL.]

Sealed and delivered in presence of

JOSEPH THOMPSON.

To Joseph Thompson, Esq., or any other attorney of any court of law in New Jersey or elsewhere:

This is to authorize you to appear for me and in my name 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 release of errors; and this shall be your sufficient warrant.

Witness my hand and seal this thirty-first day of August, Anno Domini one thousand eight hundred and ninety-three.

SAMUEL D. HOFFMAN. [SEAL.]

10 Sealed and delivered in presence of
JOSEPH THOMPSON.

(The name Samuel written over erasures before execution.)

EXHIBIT D4.

20 This indenture, made the thirty-first day of August, in the year of our Lord one thousand eight hundred and ninety-three, between Samuel D. Hoffman (single man), of the city of Atlantic City, in the county of Atlantic and State of New Jersey, of the first part, and William Allen and Samuel Allen, of the city of Philadelphia, in the county of Philadelphia and State of Pennsylvania, of the second part; witnesseth, that the said party of the first part, for and in consideration of four thousand (\$4,000) dollars, lawful money of the United States of America, to them in hand well and truly paid by the said party of the second part, at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, and the said party of the first part being therewith fully satisfied, contented and paid, has given, granted, bargained, sold, aliened, enfeoffed, conveyed and confirmed, and by these presents does give, grant, bargain, sell, alien, enfeoff,

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convey and confirm unto the said party of the second part, and to their heirs and assigns forever, all these 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:

Beginning at a corner of a lot of ground occupied by the National Hotel, on the north side of Atlantic avenue, being the southwest corner of said lot whereon said National Hotel is erected, and running thence 10 along the north side of Atlantic avenue on a course of south sixty-seven degrees west, fifty (50) feet to a peg in the boundary line of lands of William Moore and Daniel Morris; thence along said line or boundary on a course of north twenty-five degrees ten minutes west, a distance of one hundred and sixty (160) feet; thence on a course of north sixty-seven degrees east, a distance of fifty-six (56) feet to a peg at the northwest corner of the lot of the said National Hotel; thence along the line of said lot on a course of south twenty-three 20 degrees east, one hundred and sixty (160) feet to the place of beginning, be the same more or less.

Also beginning in the northwest corner of Mears' lot of ground one hundred and sixty feet north from the north side of Atlantic avenue and running thence in continuation of the westerly line of said lot of ground northwardly one hundred feet; thence eastwardly and parallel with Atlantic avenue fifty (50) feet; thence southwardly one hundred (100) feet to the northeast corner of said lot of ground of Lewis T. Mears, and thence westerly by northwardly line of said lot of Mears 30 fifty (50) feet, more or less, to the place of beginning.

Being the same premises conveyed to Samuel D. Hoffman by Smith E. Johnson, Sheriff, &c., by deed dated the 5th day of July, A. D. 1890, and recorded in the Clerk's office of Atlantic county, in Book No. 175 of Deeds, folio 430, &c.

- Together with all and singular the profits, privileges and advantages, with the appurtenances to the same belonging, or in any wise appertaining; also all the estate, right, title, interest, property, claim and demand whatsoever of the said party of the first part, of, in and to the same, and of, in and to every part and parcel thereof. To have and to hold all and singular the above described tract or lot of land and premises, with the appurtenances, unto the said
- 10 party of the second part, their heirs and assigns, to the only proper use, benefit and behoof of the said party of the second part, their heirs and assigns forever. Provided always, and it is agreed by and between the parties to these presents, that if the said Samuel D. Hoffman, his heirs, executors and administrators, do and shall well and truly pay, or cause to be paid, to the said party of the second part, or to certain attorney or attorneys, heirs, executors, administrators or assigns, the sum of four thousand (\$4,000) dollars within one
- 20 year from the date thereof, together with interest thereon, payable semi-annually, at the rate of six per centum per annum, according to the conditions of a certain bond made, executed and given by the said Samuel D. Hoffman to the said parties of the second part, bearing even date herewith, drawn n the penal sum of eight thousand (\$8,000) dollars; then and from thenceforth these presents and said obligation, and everything hereing and therein contained shall cease and be void, anything herein and therein contained to the contrary in any wise notwithstanding.
- 30 And it is thereby expressly agreed, that should any default be made in the payment of the said interest or any part thereof, on any day whereon the same is made payable, as herein before expressed, and should the same remain unpaid and in arrear for the space of thirty days, that then and from thenceforth, that is to say, after the lapse of the said thirty days, the aforesaid principal

sum of money, with all arrearages of interest thereon, shall at the option of the said William Allen and Samuel Allen, their heirs, executors, administrators or assigns, become and be due and payable immediately thereafter, although the time above limited for the payment thereof may not then have expired, anything therein before contained to the contrary thereof in any wise notwithstanding, as by said bond or obligation and the condition thereof, reference being thereunto had, may more fully appear.

And it is also agreed by and between the parties to these presents, that the said party of the first part shall and will keep the buildings erected and to be erected upon the lands above conveyed insured against loss or damage by fire in some safe and responsible insurance company or companies, to an amount not less than four thousand (\$4,000) dollars, and to assign the policy and certificate thereof to the said party of the second part as collateral security for the payment of the principal and interest aforesaid; and in default thereof it shall be lawful for the said party of the second part to effect such insurance, and the premium and premiums paid for effecting the same shall be a lien on the said mortgaged premises, added to the amount of the said bond or obligation, and secured by these presents, and payable on demand with legal interest. 10 20

And the said party of the first part, for himself, his heirs, executors and administrators, do covenant, grant and agree to and with the said party of the second part, their heirs, executors, administrators or assigns, that he, the said party of the first part, shall not, nor will apply for, or claim, any deduction by reason of this mortgage from the taxable value of the said lands and premises; and further, that the said party of the first part, or his heirs, executors or administrators, shall and will promptly and without any delay pay or cause to be paid all taxes, charges or assessments whatsoever upon the lands and premises herein described. 30

And the said Samuel D. Hoffman, his heirs, executors and administrators, do covenant and agree to and with the said party of the second part, their heirs and assigns, that the said party of the second part, their heirs and assigns, shall and may, from time to time, and at all times after default shall be made in the performance of the proviso or condition herein 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 Samuel D. Hoffman, his heirs or assigns, or any other person or persons whatsoever.

In witness whereof, the said party of the first part has hereunto set his hand and seal the day and year first above written.

SAMUEL D. HOFFMAN, [SEAL]

Signed, sealed and delivered in the presence of
JOSEPH THOMPSON.

(The name of Samuel written over the erasure before execution.)

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

Be it remembered, that on this thirty-first day of August, in the year of our Lord one thousand eight hundred and ninety-three, before me, a Master in the Court of Chancery, personally appeared Samuel D. Hoffman, who, I am satisfied, is the grantor mentioned in the within indenture, to whom I first made known the contents thereof, and thereupon he acknowledged that he signed, sealed and delivered the same as his voluntary act and deed, for the uses and purposes therein expressed.

JOSEPH THOMPSON,
M. C. C.

IN CHANCERY OF NEW JERSEY.

Between

WILLIAM FITTON,

Complainant,

and

RICHARD H. TURNER, ET UX.,

ET ALS.,

Defendants.

BILL TO FORECLOSE. 10

Filed October 13th, 1896.

JOS. THOMPSON,
Solicitor.*To the Honorable the Chancellor of the State of New
Jersey.*

Humbly complaining, shows unto your Honor, your orator, William Fitton, of Atlantic City, New Jersey, that on or about the thirty-first day of October, in the year one thousand eight hundred and ninety-three, Samuel D. Hoffman, of the city of Atlantic City, in the county of Atlantic and State of New Jersey, became and was justly indebted unto William Allen and Samuel Allen, of Philadelphia, Pennsylvania, in the sum of four thousand (\$4000) dollars, and being so indebted, the said Samuel D. Hoffman, in order to secure the payment of the said sum of money with interest, did make and execute under his hand and seal and deliver unto William Allen and Samuel Allen, a certain bond or obligation, bearing date the same day and year last aforesaid, in the penal sum of eight thousand (\$8000) dollars, lawful

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money of the United States, with a condition thereunder written, that if the said Samuel D. Hoffman, his heirs, executors or administrators, should well and truly pay or cause to be paid unto William Allen and Samuel Allen, their attorney, heirs or assigns, the just and full sum of four thousand (\$4000) dollars, lawful money aforesaid, within one year from the date thereof, together within interest thereon payable semi-annually at the rate of six per cent per annum, without any fraud or further delay, then the said obligation should be void, otherwise

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to remain in full force and virtue.

As in and by the said bond or obligation and the condition thereof, reference being thereunto had will more fully and at large appear. And your orator further shows that the said Samuel D. Hoffman, in order to secure the payment of the said sum of money above mentioned, together with the interest which should accrue or become due thereon, executed and delivered unto William Allen and Samuel Allen a certain indenture of mortgage, bearing date the same day and year last aforesaid, made by said Samuel D. Hoffman of the first part, and William Allen and Samuel Allen of the second part, in and by which said indenture of mortgage the said party of the first part did grant, bargain, sell, alien, release, enfeoff, convey and confirm unto William Allen and Samuel Allen, said party of the second part, their heirs and assigns, all the following described tract or parcel of land and premises situate, lying and being in the city of Atlantic, in the county of Atlantic and State of New Jersey:

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Beginning at a corner of a lot of ground occupied by the National Hotel on the north side of Atlantic avenue, being the southwest corner of said lot whereon said National Hotel is erected, and running along the north side of Atlantic avenue on a course of south sixty-seven degrees west fifty feet to a peg in the boundary line of lands of William Moore and Daniel Morris; thence along

said line or boundary on a course of north twenty-five degrees ten minutes west a distance of one hundred and sixty feet; thence on a course of north sixty-seven degrees east a distance of fifty-six feet to a peg at the northwest corner of the lot of the said National Hotel; thence along the line of said lot on a course of south twenty-three degrees east one hundred and sixty feet to the place of beginning, be the same more or less.

Also, beginning in the northwest corner of Mears lot of ground one hundred and sixty feet north from the north side of Atlantic avenue and running thence in continuation of the westerly line of said lot of ground, northwardly one hundred feet; thence eastwardly and parallel with Atlantic avenue fifty feet; thence southwardly one hundred feet to the northeast corner of said lot of ground of Lewis T. Mears and thence westerly by northwardly line of said lot of Mears fifty feet more or less to the place of beginning. 10

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 profits thereof; to have and to hold the said hereditaments and premises above granted or intended so to be, with the appurtenances, unto William Allen and Samuel Allen, the said party of the second part, their heirs and assigns forever; provided always, nevertheless, and the said indenture of mortgage was therein declared to be upon this express condition, that if the said Samuel D. Hoffman party of the first part to the said indenture of mortgage, his heirs, executors or administrators, should well and truly pay or cause to be paid unto William Allen and Samuel Allen, their certain attorney or attorneys, heirs or assigns, the said sum of money mentioned in the condition of the aforesaid bond or obligation, with the interest thereon, at the time and in the manner men- 20 30

tioned in the said condition, according to the true intent and meaning thereof, then the said indenture of mortgage, and the estate thereby granted, should cease, determine, and from thenceforth be null and void.

And your orator further shows that after the execution of the said indenture of mortgage, the same was in due form of law acknowledged by the said Samuel D. Hoffman before Joseph Thompson, one of the Masters of this Court, and duly recorded in the office of the Clerk
 10 in and for the said county of Atlantic, in Book 35 of Mortgages, page 161, etc., on the sixth day of September, in the year one thousand eight hundred and ninety-three, as by the certificate of the Clerk of the said county, endorsed on the said indenture of mortgage, more fully appears, and to which your orator, for greater certainty, begs leave to refer if it be necessary so to do.

That afterwards said Samuel D. Hoffman, by writing under his hand and seal, granted and conveyed, under date of August 31st, 1893, to Richard H. Turner, the
 20 land and premises herein described, which conveyance was duly acknowledged by said Hoffman and recorded in Clerk's office aforesaid, in Book 175 of Deeds, folio 480, etc., on September 6th, 1893. but orator charges that the interest of said Turner in the premises and of his wife Louisa, who claims a dower interest, if any, is subsequent to the interest of your orator in the premises.

That afterwards said William Allen and Samuel Allen, on the twelfth day of October, 1894, in writing under their hands and seals duly acknowledged, assigned to
 30 your orator, William Fitton, the said indenture of mortgage, together with the bond intended to be secured thereby and all moneys due and to grow due thereon, which assignment was recorded in the office aforesaid, in Book 8 of Assignments of Mortgages, folio 35, etc.

Orator further shows that afterwards, on the twelfth day of February, eighteen hundred and ninety-five, said Richard H. Turner, by writing under his hand and seal,

granted and demised the said premises to John Wheeler for the full period of ten years from the twenty-fifth day of March of said year, with the option therein to the said Wheeler or his assigns to purchase said premises at any time within one year from said date for the sum of eighteen thousand dollars, that afterwards, to wit, on the twenty-ninth day of said March, said Wheeler, by writing under seal, assigned to Otto Huber Company all his right in and to said premises under said lease, which lease together with said assignments were duly recorded in the Clerk's office, as by the records will duly appear. 10

That afterwards, said Otto Huber Brewing Company, by writing under seal on the eighteenth day of February, eighteen hundred and ninety-six, assigned to Louis Kuehnle all its right in and to said premises in virtue of said lease, and immediately thereafter said Kuehnle took actual possession of said premises and still retains it.

That afterwards, about the eleventh day of March, eighteen hundred and ninety-six, said Louis Kuehnle filed his bill in this Honorable Court against said Richard H. Turner, alleging among other things his rights under said assigned lease, his tender under its provisions, and praying that said Turner be required to convey to him the premises in question and at and about the same time said Kuehnle filed a *lis pendens* and caused the same to be recorded in the office of the Clerk of the county of Atlantic, where said lands are situate, but your orator expressly charges that the interest of said Louis Kuehnle in said premises, if any, is an interest subsequent to that of your orator in virtue of said mortgage. 20

And your orator further shows, that the whole principal money shown in the said bond or obligation and secured thereby and by the said deed of mortgage, with large arrears of interest, still remains due and owing to your orator, no part thereof having been paid to said William Allen and Samuel Allen, your orator, so that your orator is greatly delayed and disappointed in the 30

receipt of the said money, by means of which said several promises, the said deed of mortgage, and the estates thereby mortgaged as aforesaid, have become absolute in your orator and his assigns. And your orator further shows, that the said Richard H. Turner and Louis Kuehnle since the execution of your orator said mortgage have possessed and enjoyed, and that said Louis Kuehnle still possesses and enjoys the said mortgaged premises, with the appurtenances, and that he has always
 10 received, and still does receive the rents, issues and profits thereof. And your orator further shows and expressly charges, that the said mortgaged premises are a slender and scanty security for the payment of the said principal and interest moneys so due to your orator as aforesaid, and that he or some other person or persons for him have frequently and in a friendly manner applied to the said Richard H. Turner and requested him to pay and discharge the said principal and interest moneys so due to your orator on the said bond or obligation and deed
 20 of mortgage hereinbefore mentioned and set forth; and your orator well hoped that he would have complied with such reasonable requests of your orator, and would have paid to him the said principal and interest moneys so as aforesaid due to your orator on the said bond or obligation and deed of mortgage, as in equity and good conscience he ought to have done.

In tender consideration whereof, and for as much as your orator has not a complete and safe remedy in the premises of and by the strict rules of the common law, nor can foreclose the equity of redemption of the said
 30 mortgaged premises, or safely sell the same for the payment and satisfaction of the said principal and interest moneys so as aforesaid due to your orator on said bond and obligation and deed of mortgage without the aid and decree of this Honorable Court.

To the end, therefore, that the said Richard H. Turner, Louisa H. Turner and Louis Kuehnle may, without oath,

true, full and perfect answer make to all and singular the premises, as fully and particularly as if the same were here again repeated, and they thereto particularly interrogated, according to the best of their knowledge, information, remembrance and belief; and that the said defendant may be decreed to pay to your orator the said principal sums so due to him on the said bond or obligation and deed of mortgage hereinbefore mentioned and set forth, and all the interest money now due and to grow due thereon, together with all your orator's costs and charges in this behalf sustained, by a short day, to be appointed by this Honorable Court; and in default thereof that the said defendant and all persons claiming or to claim under may be foreclosed of and from all equity of redemption or claim of, in and to the said mortgaged premises, and every part and parcel thereof, with the appurtenances, and may deliver over unto your orator all deeds, demises and writings whatsoever relating to or concerning the same; or that all and singular the said mortgaged premises, with the appurtenances, may, by the order and decree of this Honorable Court, be sold, and out of the moneys arising out of the sale thereof, your orator may be paid the full amount of the said principal sum of money so due to your orator on the said bond or obligation and deed of mortgage as aforesaid, and all the interest now due and to grow due thereon, together with all your orator's costs and charges in this behalf sustained.

And that your orator may have such further and other relief in the premises as to your Honor may seem meet and shall be agreeable to equity and good conscience. May it please your Honor, the premises considered, to grant unto your orator a writ or writs of subpoena, issuing out and under the seal of this Honorable Court, to be directed to the said Richard H. Turner, Louisa H. Turner and Louis Kuehnle therein and thereby commanding them on a certain day and under a certain pen-

alty, therein to be inserted, to be and appear before your Honor and this Honorable Court, then and there to answer all and singular the premises and to stand to, abide by and perform such order and decree therein as to your Honor shall seem meet and shall be agreeable to equity and good conscience.

And your orator as in duty bound, will ever pray, &c.,

JOS. THOMPSON,

Solicitor for and of Counsel with Complainant.

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IN CHANCERY OF NEW JERSEY.

Between

WILLIAM FITTON,

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Complainant.

AND

RICHARD H. TURNER, ET ALS.,

Defendants.

ON BILL, &c.

DECREE PRO CON-

FESSO.

Filed December 2, 1896.

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This cause being opened to the Court by Joseph Thompson, of counsel with the complainant, and it appearing that process of subpoena for the appearance of the defendants hath been duly issued and returned, served upon Richard H. Turner, Louisa H. Turner and Louis Kuehnle, all of the defendants, and that the said defendants or either of them have not filed any plea, demurrer

or answer to said bill, within the time limited by law, but have wholly failed and neglected so to do;

It is thereupon, on this second day of December, in the year of our Lord one thousand eight hundred and ninety-six, ordered, adjudged and decreed, that the said bill be taken as confessed as against Richard H. Turner, Louisa H. Turner and Louis Kuehnle to the end that such decree may be made against them as the Chancellor shall think equitable and just.

ALEX. T. MCGILL, 10
C.

IN CHANCERY OF NEW JERSEY.

Between

WILLIAM FITTON,

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Complainant, ON BILL TO FORECLOSE.

and

MASTER'S REPORT.

RICHARD H. TURNER, ET

FILED DEC. 19TH, 1896.

UX., ET ALS.,

Defendants.

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I, C. L. Cole, one of the Masters in Chancery of the State of New Jersey, do hereby certify and report to his Honor the Chancellor, that I have seen and inspected the bond and mortgage (marked Exhibits A and G), mentioned in the bill of complaint in this cause, and that there is due to the said complainant on this day,

the payment whereof was intended to be secured by the said mortgage, the sum of four thousand one hundred and ninety dollars and sixty-six cents for principal and interest, as by the schedule hereto annexed will more fully appear. I further certify that the solicitor of the complainant produced before me a certified search out of and under the seal of the Circuit Court of the county of Atlantic against the land in complainant's bill, which cost the sum of two dollars and twenty-two cents, and which I certify was necessary in the proper foreclosure of complainant's mortgage, the cost of which should be allowed complainant in his taxed bill; said search has been marked by me Exhibit C.

All of which is respectfully submitted this seventeenth day of December, A. D. 1896.

C. L. COLE,
Master.

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SCHEDULE.

Bond bearing date the 31st day of August,
A. D. 1893, in the penal sum of \$8,000, conditioned for the payment of \$4,000 in one year with lawful interest, secured by the mortgage in the complainant's bill mentioned \$4,000 00
Interest from February 28th, 1896..... 190 66

Amount due complainant this day....\$4,190 66

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C. L. COLE,
Master.

IN CHANCERY OF NEW JERSEY.

Between

WILLIAM FITTON,

Complainant,

and

RICHARD TURNER, ET UX.,

ET ALS.,

Defendants.

ON BILL, &C.

FINAL DECREE.

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FILED DEC. 19TH, 1896.

This cause being opened to the Court by Joseph Thompson, of counsel with complainant, and it appearing that process of subpoena for the appearance of the defendant has been duly issued and returned by the Sheriff of the county of Atlantic, and that the defendants have neglected to file any plea, demurrer or answer to the complainant's bill within the time limited by law; whereupon, and upon reading and filing a report made in this cause by C. L. Cole, Esquire, one of the Masters of this court, bearing date on the seventeenth day of December, in the year of our Lord one thousand eight hundred and ninety-six, it appears that there is due to the complainant for principal and interest on his mortgage the sum of four thousand one hundred and ninety dollars and sixty-six cents, and no cause being shown or appearing to the contrary, it is, on this nineteenth day of December, A. D. eighteen hundred and ninety-six, by his Honor, Alexander T. McGill, Chancellor of the State of New Jersey, ordered, adjudged and decreed, that the said bill of complaint

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be taken as confessed, and that the said Master's report, and all the matters and things therein contained, do stand confirmed, and that the said complainant is entitled to have the said sum of four thousand one hundred and ninety dollars and sixty-six cents, with lawful interest thereon, to be computed from the date of said report, together with his costs of this suit, in which shall be included a counsel fee of ten dollars, raised and paid out of the mortgaged premises.

- 10 And it is further ordered, adjudged and decreed, that so much of the said mortgaged premises as will be sufficient to raise and satisfy the said debt, interest and costs, be sold; and that a writ of *fieri facias* do issue for that purpose out of this court, directed to the Sheriff of the county of Atlantic, commanding him to make sale, according to law, of so much of the said mortgaged premises as will be sufficient to satisfy the said debt, interest and costs, and that he do pay the same to the complainant or to his solicitor; and in case more money
- 20 should be raised by the sale than shall be sufficient to answer such payment, such surplus be brought into this court and deposited with the Clerk, to abide the further order of this Court, unless otherwise previously disposed of by order of the Court, and the said Sheriff is to make return to the Court of his proceedings by virtue of the said writ.

- And it is further ordered, adjudged and decreed, that the defendant stand absolutely debarred and foreclosed of and from all equity or redemption of, in and to so much of the said mortgaged premises as shall be sold
- 30 as aforesaid, by virtue of this decree.

ALEX. T. MCGILL,
C.

I, VIVIAN M. LEWIS, Clerk of the Court of Chancery of the State of New Jersey, the same being a court of record, do hereby certify that the foregoing is a true

transcript of the enrollment as taken from Book K32 of Enrolled Decrees, page 310, &c., in a cause wherein William Fitton is complainant, and Richard H. Turner and wife and others are defendants, now on the files of my office.

In testimony whereof, I have hereto set my hand and affixed the seal of said court, at Trenton, this twenty-ninth day of May, A. D. nineteen hundred and six.

VIVIAN M. LEWIS,
Clerk. 10

IN CHANCERY OF NEW JERSEY.

Between

ELLEN KENNEDY'S EXECUTOR,

Complainant,

and

ISRAEL G. ADAMS, ET ALS.,

Defendants.

REPORT OF SALE OF 20

MORTGAGED

PREMISES, &c.

*To his Honor, Alexander T. McGill, Chancellor of the
State of New Jersey:*

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I, Smith E. Johnson, Sheriff of the county of Atlantic, do hereby respectfully report that I did, on the twenty-fifth day of June, eighteen hundred and ninety, sell at public vendue, at Room No. 22, Real Estate and Law Building, Atlantic City, Atlantic County, New Jersey, (having first duly advertised the same) the lands and

premises described in the writ of execution issued to me in the above stated cause, to Samuel D. Hoffman, of the city of Atlantic, county of Atlantic and State of New Jersey, for the sum of twelve thousand five hundred dollars (\$12,500.00), he being the highest bidder therefor.

Respectfully submitted this twenty-third day of June, A. D. eighteen hundred and ninety.

S. E. JOHNSON,
Sheriff.

10

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

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

20

SMITH E. JOHNSON,
Sheriff.

Sworn and subscribed before me, this twenty-fifth day of June, A. D. 1890.

LEWIS EVANS,
County Clerk.

A true copy.
VIVIAN M. LEWIS,
Clerk.

30

IN CHANCERY OF NEW JERSEY.

Between

ELLEN KENNEDY'S EXECUTOR,

Complainant,

and

ISRAEL G. ADAMS, ET ALS.,

Defendants.

ORDER CONFIRM-

ING SALE OF MORT-

GAGED PREMISES,

&c.

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Upon reading and filing a report made by Smith E. Johnson, Sheriff of the county of Atlantic, bearing date the twenty-third day of June, eighteen hundred and ninety, and the affidavit thereto attached, whereby it appears that on the twenty-first day of June, eighteen hundred and ninety, he sold at public vendue, at room No. 22, Real Estate and Law Building, Atlantic City, N. J., (having first duly advertised the same) the lands and premises described in the writ of execution issued to him in the above stated cause, to Samuel D. Hoffman, of the city of Atlantic, county of Atlantic and State of New Jersey, for the sum of twelve thousand five hundred dollars, he being the highest bidder therefor, and that the said land and premises were so sold at the highest and best price the same would then bring in cash, and no cause being shown or appearing to the contrary,

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It is, on this second day of July, eighteen hundred and ninety, ordered that the said sale be, and the same is hereby confirmed as valid and effectual in law.

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And it is further ordered, that the said Sheriff do execute a good and sufficient conveyance in the law to

the said purchaser for the said mortgaged premises so sold.

W. J. MAGIE,
C.

A true copy.

VIVIAN M. LEWIS,
Clerk.

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IN CHANCERY OF NEW JERSEY.

Between

WILLIAM FITTON,

Complainant,

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and

RICHARD H. TURNER, ET ALS.,

Defendants.

REPORT OF SALE OF
MORTGAGED
PREMISES, &C.

*To his Honor, Alexander T. McGill, Chancellor of the
State of New Jersey:*

30 I, Samuel Kirby, Sheriff of the county of Atlantic,
do hereby respectfully report that I did, on the sixth
day of February, eighteen hundred and ninety-seven,
sell at public vendue, at the Hotel of Louis Kuehnle,
Atlantic City, Atlantic County, New Jersey, (having first
duly advertised the same) the lands and premises de-
scribed in the writ of execution issued to me in the
above stated cause, to Joseph Thompson, of the city of
Atlantic City, county of Atlantic and State of New Jer-

sey, for the sum of four thousand three hundred and eighty dollars, he being the highest bidder therefor.

Respectfully submitted this eighth day of February,
A. D. eighteen hundred and ninety-seven.

SAMUEL KIRBY,
Sheriff.

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

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

SAMUEL KIRBY,
Sheriff.

Sworn and subscribed before me, this eighth day of
February, A. D. 1897.

20

DANIEL E. ISZARD,
Notary Public.

A true copy.

VIVIAN M. LEWIS,
Clerk.

30

IN CHANCERY OF NEW JERSEY.

Between

	WILLIAM FITTON,	} ORDER CONFIRM-	
	Complainant,		ING SALE OF MORT-
10	and		GAGED PREMISES,
	RICHARD H. TURNER, ET ALS.,		&C.
	Defendants.		

Upon reading and filing a report made by Samuel Kirby, Sheriff of the county of Atlantic, bearing date the eighth day of February, eighteen hundred and ninety-seven, and the affidavit thereto attached, whereby it ap-

20 pears that on the sixth day of February, eighteen hundred and ninety-seven, he sold at public vendue, at the hotel of Louis Kuehnle, Atlantic City, N. J., (having first duly advertised the same) the lands and premises described in the writ of execution issued to him in the above stated cause, to Joseph Thompson, of the city of Atlantic City, county of Atlantic and the State of New Jersey, for the sum of four thousand three hundred and eighty dollars, and being the highest bidder therefor, and that the said lands and premises were so sold at the

30 highest and best price the same would then bring in cash, and no cause being shown or appearing to the contrary:

It is, on this seventeenth day of February, eighteen hundred and ninety-seven, ordered that the said sale be, and the same is hereby confirmed as valid and effectual in law. And it is further ordered that the said Sheriff do execute a good and sufficient conveyance in the law

to the said purchaser for the said mortgaged premises so sold.

ALEXANDER T. MCGILL,

C.

A true copy.

VIVIAN M. LEWIS,
Clerk.

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IN CHANCERY OF NEW JERSEY.

To his Honor, Alexander T. McGill, Chancellor of the State of New Jersey:

Humbly complaining shows unto your Honor your orator, Louis Kuehnle, of the city of Atlantic City, county of Atlantic and State of New Jersey.

That on the 12th day of February, eighteen hundred and ninety-five, Richard H. Turner, of said Atlantic City, was the owner in fee of those certain lots of land in Atlantic City aforesaid, and described as follows: 20

Beginning at a corner of a lot of ground occupied by the National Hotel, on the north side of Atlantic avenue, being the southwest corner of the said lot whereon said National Hotel is erected, and running thence along the north side of Atlantic avenue on a course of south sixty-seven degrees west fifty feet to a peg in the boundary line of lands of William Moore and Daniel Morris; thence along the said line or boundary on a course of north twenty-five degrees and ten minutes west a distance of one hundred and sixty feet; thence on a course of north sixty-seven degrees east a distance of fifty-six feet to a peg at the northwest corner of the lot of the said National Hotel; thence along the line of said lot on a course of south twenty-three degrees east one hundred and sixty feet to the place of beginning, be the same more or less. 30

Also, beginning in the northwest corner of Mears lot of ground, one hundred and sixty feet north from the north side of Atlantic avenue and running thence in continuation of the westwardly line of said lot of ground northwardly one hundred feet; thence eastwardly and parallel with Atlantic avenue fifty feet; thence southwardly one hundred feet to the northeast corner of the said lot of ground of Lewis T. Mears; and thence westwardly by northerly line of said lot of Mears fifty feet, more or less, to the

10 place of beginning, and while so being the owner in fee of said lot, he did on the twelfth day of February, by writing under his hand and seal, demise and grant unto John Wheeler, said lot of ground with the appurtenances, from the twenty-fifth day of March, eighteen hundred and ninety-five, for the full period of ten years, at the rent or sum of twelve hundred dollars per annum, to be paid as follows: one hundred dollars monthly in advance, beginning the twenty-fifth day of said March, and in and

20 by said lease it was among other things agreed and provided that the said party of the first part, who was the said Richard H. Turner, in consideration of the premises, gave unto the said party of the second part, who was the said John Wheeler, the right to purchase said premises with the appurtenances at any time within one year from the twenty-fifth of said March, eighteen hundred and ninety-five, at the sum of eighteen thousand dollars, free from incumbrances, six thousand dollars of said sum to be paid in cash and the balance to be secured by a first mortgage on the premises, payable at the expiration of

30 ten years from its date, all of which will appear by said lease, or a copy, in the hands of your orator, ready to be produced.

That after the execution of the said lease, the said John Wheeler entered into possession of said premises, paid the rent provided for in said lease and continued in possession and paid said rent until the time hereinafter set forth. That there was no prohibition in said lease against

the said John Wheeler subletting the premises or assigning said lease and that the provisions of said lease ran to the heirs and assigns of said John Wheeler.

That afterwards, to wit, on the twenty-ninth day of March, eighteen hundred and ninety-five, John Wheeler, writing under his hand and seal, for a valuable consideration, sold, conveyed, transferred and set over unto The Otto Huber Brewery, a corporation, its successors and assigns, said indenture of lease hereinabove referred to, as appears by said writing in the hands of your orator ready to be produced. 10

That afterwards, to wit, on the thirteenth day of June, of said year, said John Wheeler, by writing under his hand and seal, for a valuable consideration, bargained and sold by way of mortgage to said Otto Huber Brewery, its successors and assigns, the goods and chattels on said leased premises, which goods are particularly set out in said mortgage, which is now in the hands of your orator ready to be produced.

That afterwards, to wit, on or about the day of January, eighteen hundred and ninety-six, judgments on mechanics' liens were entered in the Clerk's office of the said county of Atlantic in favor of John D. Boyd, trading as John D. Boyd and Co., and others against Nicholas Loritz, as builder, and John Wheeler and Otto Huber Brewery, as owners, and that such proceedings were had thereon that execution issued out of and under the hand and seal of the Clerk of the said Court, directed to the Sheriff of said county, directing him to make the amount of said judgments out of the lands hereinabove described and that said Sheriff, in virtue of the premises, advertised said premises for sale on the thirteenth day of said January, eighteen hundred and ninety-six, on the premises, and that your orator being the highest bidder therefor, the same were on said day sold to him by said Sheriff, all of which will appear by the records of said Court and the bill of sale by said 20 30

Sheriff to your orator, or a certified copy of said records and bill of sale in the hands of your orator, ready to be produced.

That after said sale and purchase, he took possession of said premises with the appurtenances, paid to said Richard Turner the rent then in arrears and that which has since accrued and has remained in said possession until this time.

10 That on the seventeenth day of February, eighteen hundred and ninety-six, said Otto Huber Brewery, for a valuable consideration, in writing under its corporate seal, signed by its president, Otto Huber, granted, bargained, sold, assigned, transferred and set over unto your orator the said chattel mortgage and the said lease hereinabove referred to, as will appear by said lease and chattel mortgage, now in the hands of your orator.

20 That afterwards, to wit, on the twenty-fifth day of February, eighteen hundred and ninety-six, your orator tendered to said Richard H. Turner the deed for the premises described in said lease and requested that he execute the same; at the same time your orator tendered to said Turner the sum of six thousand dollars in lawful money of the United States of America and a bond and mortgage under his hand and seal, duly acknowledged, for the just sum of twelve thousand dollars, payable within ten years from its date, with interest at the rate of six per cent. per annum, payable semi-annually, as was provided in said lease, which mortgage was on the premises so described, but notwithstanding said tender and said request, the said Richard Turner refused to execute
30 said deed and insisted that your orator should pay him a greater sum than eighteen thousand dollars.

And your orator well hoped that said Richard Turner would have complied with your orator's request to make said deed as in equity and good conscience he ought to have done, all of which actings, doing and pretenses of the said defendant are contrary to equity and good conscience and tend to the manifest wrong, injury and

oppression of your orator in the premises, in consideration whereof and for as much as your orator is without adequate remedy in the premises at and by the strict rules of the common law and can only obtain relief in this Court where matters of this nature are properly cognizable and relievable, to the end, therefore, that the said Richard H. Turner may without oath (answer under oath being waived) to the best and utmost of his knowledge, remembrance, information and belief, full, true and perfect answer make to all and singular the matters aforesaid, and that as fully and particularly as if the same were repeated and more especially that he may be compelled by the decree of this Court to specifically perform his said contract under the terms of said lease and convey to your orator the premises aforesaid, free from all incumbrances, according to the terms of said lease, your orator hereby and at all times tendering himself ready and willing to perform his part of said contract and that your orator may have such further or other relief in the premises as the nature of the case may require and as shall be agreeable to equity and good conscience.

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May it please your Honor, the premises considered, to grant unto your orator the State's writ of subpoena, issuing out of and under the seal of this Honorable Court, to be directed to the said Richard H. Turner, commanding him by a certain day and under a certain penalty therein to be expressed, to be and appear before your Honor in this Honorable Court, then and there to answer all and singular the said premises, and to stand to, abide by and perform such order and decree therein as to your Honor shall seem meet, and shall be agreeable to equity and good conscience.

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And your orator, as in duty bound, will ever pray, etc.

JOS. THOMPSON,

Solicitor for and of Counsel with Complainant.

A true copy.

VIVIAN M. LEWIS,

Clerk.

IN CHANCERY OF NEW JERSEY.

Between

LOUISA H. TURNER,

Complainant,

ON BILL, &c.

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and

FINAL DECREE.

LOUIS KUEHNLE,

Defendant.

This cause coming on to be heard upon bill, answer, replication and proofs before the Honorable Henry C. Pitney, the Vice Chancellor to whom the same had been referred by the Chancellor, in the presence of U. G. Styron, of counsel with the complainant, and John C. Reed, of counsel with the defendant, and the pleadings and proofs having been read and the arguments of counsel heard and considered, and the Court being of the opinion that the complainant is entitled to relief against the defendant; that Richard H. Turner, on the thirty-first day of August, eighteen hundred and ninety-three, subject to a mortgage of four thousand dollars, became seized in fee simple of the title to the following tracts or parcels of land, situate in the city of Atlantic City, in the county of Atlantic and State of New Jersey, bounded and described as follows:

Beginning at a corner of a lot of ground occupied by the National Hotel, on the north side of Atlantic avenue, being the southwest corner of said lot whereon said National Hotel is erected, and running thence along the north side of Atlantic avenue on a course of south sixty-seven degrees west fifty feet to a peg in the

boundary line of lands of William Moore and Daniel Morris; thence along said line or boundary in a course of north twenty-five degrees ten minutes west, a distance of one hundred and sixty feet; thence on a course of north sixty-seven degrees east, a distance of fifty-six feet to a peg at the southwest corner of the lot of the said National Hotel; thence along the line of said lot on a course of south twenty-three degrees east, one hundred and sixty feet to the place of beginning, be the same more or less; and beginning in the northwest corner of Mears' lot of ground one hundred and sixty feet north from the north side of Atlantic avenue, and running thence in continuation of the westerly line of said lot of ground northwardly one hundred feet; thence eastwardly and parallel with Atlantic avenue fifty feet; thence southwardly one hundred feet to the northeast corner of said lot of ground of Lewis T. Mears, and thence westwardly by the northwardly line of lot of said Mears fifty feet, more or less, to the beginning; and thereafter, during his lifetime, entered into the possession thereof; that Louisa H. Turner, the complainant, was then the wife of the said Richard H. Turner and continued so to be until his death, which occurred on the seventeenth day of March, nineteen hundred and four; that the foreclosure proceeding in this court wherein William Fitton was complainant and the said Richard H. Turner, et als., were defendants, was ineffective to bar the complainant's inchoate right of dower or thirds in the premises above described; that the said foreclosure proceeding was used by the said Richard H. Turner, the complainant therein, for the purpose of effecting a transfer of the above described premises to the said defendant herein, freed, cleared and discharged of the inchoate right of dower or thirds of the complainant herein; that the value of the above described land at the time of the sale under the foreclosure proceeding aforesaid was eighteen thousand dollars, with-

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out increase by reason of interest; that therefrom there should be deducted the aforesaid mortgage of four thousand dollars, without increase by reason of interest; and that the said complainant made demand for her dower or thirds in the land above described on the seventeenth day of May, nineteen hundred and five, the date of the filing of the bill in this cause.

10 It is, on this twenty-first day of August, nineteen hundred and six, by his Honor, Willam J. Magie, Chancellor of the State of New Jersey, ordered, adjudged and decreed, that the said complainant is entitled to her dower or thirds in the sum of fourteen thousand dol-
 20 las; that the defendant pay the complainant an annuity equal to interest at the rate of six per centum per annum on four thousand six hundred and sixty-six dollars and sixty-six cents during the term of her natural life; that the defendant pay the complainant for interest thereon half yearly from the date hereof; that the said defendant pay the said complainant six per centum interest
 30 on four thousand six hundred and sixty-six dollars and sixty-six cents from the seventeenth day of May, nineteen hundred and five, to date, as damages for the detention of her dower or thirds aforesaid; that the said damages and the principal sum of four thousand six hundred and sixty-six dollars and sixty-six cents, together with interest thereon, is hereby declared to be a charge upon the real estate above described; that in case the defendant shall not pay the said damages or shall default for thirty days in the payment of any of the half-yearly payments aforesaid which shall hereafter become due, then the complainant shall be at liberty to apply to this Court for a sale of a sufficient part of the said real estate in question to satisfy the same.

It is further ordered, adjudged and decreed, that the said defendant shall be at liberty at any time, upon notice to the defendant, to petition this Court for an order directing the defendant to pay the complainant a gross

sum in lieu of the dower or thirds aforesaid, the then present value to be calculated according to the rules of this court in force at the time of the sale under the foreclosure proceeding aforesaid.

It is further ordered, adjudged and decreed, that the defendant pay to the complainant her costs of suit to be taxed, as well as a counsel fee of five hundred dollars, to be included in the said taxed bill of costs and collected with the other items of the said bill.

Respectfully advised,
 H. C. PITNEY,
 V. C.

W. J. MAGIE,
 C. 10

NEW JERSEY COURT OF ERRORS AND
 APPEALS.

Between

20

LOUISA H. TURNER,

Complainant, Respondent,

and

LOUIS KUEHNLE,

Defendant, Appellant.

ON APPEAL.

PETITION OF

APPEAL.

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

The petition of Louis Kuehnle, appellant in the above stated cause, respectfully shows, that your petitioner finds himself aggrieved by a final decree made in the Court

of Chancery by his Honor, William J. Magie, Chancellor of the State of New Jersey, bearing date the twenty-first day of August, nineteen hundred and six, wherein Louisa H. Turner was complainant, and the petitioner was defendant, in this respect, to wit: That the said decree adjudges that the complainant is entitled to dower in the sum of fourteen thousand dollars, and that the defendant pay to her an annuity equal to interest at the rate of six per centum per annum on four thousand six hundred and sixty-six dollars and sixty-six cents, during the term of her natural life; that the defendant pay to her interest thereon half-yearly from the date thereof; that said interest be made a charge upon the real estate described in the bill in this cause and in said decree; that the complainant be at liberty at any time, upon notice, to petition the Court for an order directing the defendant to pay the complainant the gross sum in lieu of said dower, and that the defendant pay a counsel fee of five hundred dollars, and your petitioner humbly appeals from the whole and every part of said decree, and particularly from so much as decrees as aforesaid, on the ground that the same is erroneous for that, under the evidence and the law of the land, complainant was without a right of dower and any interest whatever in the premises described, and without any right or claim whatever against this appellant or said premises.

Your petitioner, therefore, prays that the said decree of the said Chancellor may be in all things reversed, set aside and for nothing holden, and that your petitioner may have such relief in the premises as to this Honorable Court may seem meet.

JOHN C. REED,
Solicitor of Appellant.
C. L. COLE,
Of Counsel with Appellant.

[Amendment to and immediately following paragraph 12 of bill of complaint.]

And your oratrix further expressly charges, that the covenant to convey contained in said lease or agreement was valid and binding upon Turner and became so upon Kuehnle upon his alleged tender under the provisions thereof and the filing of his bill of complaint in this honorable court to enforce specific performance thereof by Turner; that Turner was willing to convey and desired to receive the purchase money but was unable to convey said land free from the encumbrance of the inchoate right of dower of your oratrix, and the said Kuehnle was willing to pay said purchase money and was desirous of a conveyance of said land discharged of said right; that it was the design of said parties to carry out and perform said agreement and to convey said land from Turner to Kuehnle free from all encumbrance, and to that end they contrived the foreclosure of said outstanding mortgage and the sale of said lands thereunder by the Sheriff, and by pursuing the forms of law in said foreclosure proceedings they made the said Sheriff, in legal effect, the agent of Turner for the purposes of said transfer of title, and he was so regarded by the parties; that in said transaction Turner was in legal effect and was considered by the parties as the vendor of said lands and entitled to the purchase money and received the same, as above set forth, and the said Kuehnle was considered as the purchaser of said land from Turner and not from the Sheriff and as liable to said Turner for the eighteen thousand dollars of purchase money, and that said sum of forty-two hundred and forty dollars and ninety-four cents, being the sum computed on said settlement between said vendor and vendee to be due for principal and interest on said mortgage and included in the cash paid by Kuehnle to Thompson for the use of Turner, as above set forth, was taken and considered by the said parties as a

payment by Kuehnle to Turner on account of the consideration of said conveyance and computed as part of said eighteen thousand dollars of purchase money.

TURNER vs. KUEHNLE.

(Court of Chancery of New Jersey, August 10, 1906.)

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1. *Dower—Foreclosure Sale—Collusion—Rights of Wife.*

Complainant having refused to sign a deed with her husband for the purpose of conveying certain of his real estate which he had acquired during the marriage, the husband, acting in collusion with the vendee and the mortgagee, employed an attorney to foreclose the mortgage which the husband had assumed on purchasing the property. The attorney purchased on foreclosure in his own name for the amount of the mortgage and interest, he having misled complainant to believe that her interest in the property would not be affected, after which he transferred his bid to the husband's vendee, who completed his contract with the husband for the purchase of the property. *Held*, that the land was chargeable in behalf of the wife with an annuity equal to the interest on one-third of the proceeds of the sale after the payment of the mortgage.

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30 2. *Vendor and Purchaser—Innocent Purchaser without Notice—Fraud of Agent.*

A purchaser of land under proceedings for the foreclosure of a mortgage is not entitled to the rights of a bona fide purchaser for value, when he is claiming the fruits of the fraud of his agent in the foreclosure proceedings, though the fraud was practiced by the agent without the purchaser's knowledge or authority.

3. *Dower—Action to Recover—Laches.*

Complainant discovered that certain of her husband's property was advertised for sale under foreclosure, and asked both him and his counsel whether the property was to be sold. The husband denied that there was to be any sale, and his counsel informed her that no property of hers would be sold. The sale was made to bar her dower rights, and was completed February 17, 1904. Complainant first became aware of the real transaction after her husband's death in March, 1904, when she placed the papers in the hands of counsel for action. They were, however, returned without any action being taken thereon, when she immediately employed another solicitor, who filed a bill to enforce her dower rights in the property, on March 10, 1905. This bill was dismissed on demurrer, and on May 17th, following, the present bill was filed. *Held*, that complainant was not barred from relief by laches. 10

(Ed. Note.—For cases in point, see Vol. 17, Cent. Dig. Dower, secs. 260-266.) 20

4. *Same—Valuation—Time—Conveyance by Husband after Marriage.*

Where a husband conveyed his land in his lifetime without the joinder of the wife, her dower should be measured as of the date of the husband's contract to convey, less the amount of a purchase-money mortgage thereon, not including any increase on the balance by reason of interest. 30

Suit by Louisa H. Turner against Louis Kuehnle, to recover dower. On final hearing.

For opinion on demurrer to the bill see 62 Atl., 327. Decree for complainant.

U. G. STYRON, for Complainant.

JOHN C. REED and CLARENCE L. COLE, for Defendant.

PITNEY, V. C.:

- As the facts developed on the final hearing herein vary somewhat from those set out in the bill and dealt with on
- 10 the demurrer, it seems advisable to re-state them. On the 31st day of August, 1893, and before that day, the complainant, Mrs. Turner, was living in a dwelling house in the city of Atlantic City which constituted the home of herself, her husband and their children. In point of fact, however, the husband and wife at that time, or shortly afterwards, were not on good terms with each other, and did not cohabit as man and wife; the husband having apparently a home elsewhere, but coming to the house occasionally. The husband was a man possessed
- 20 of considerable property in and about Atlantic City, both real and personal, and entirely able to pay his debts, and so continued to a period subsequent to the transactions involved in this cause. On the 31st day of August, 1893, he acquired title in fee simple from one Samuel T. Hoffman to a tract of land in Atlantic City (in two parcels, comprising one lot 50 feet front and 260 feet deep) by a conveyance of that date which expresses on its face the consideration of \$16,000 with general covenants of warranty, excepting a mortgage for \$4,000 of the same date,
- 30 given by the grantor, Hoffman, to Messrs. William and George Allen to secure \$4,000, "which said mortgage is hereby assumed by said Turner as a part of the consideration herein mentioned." Turner took possession under that conveyance and on the 12th of February, 1895, he executed to one John Wheeler a lease of the premises for ten years from March 25, 1895, at a rent of \$1,200 per year, containing a clause by which Wheeler, the

lessee, had the right, at any time within one year from March 25, 1895, to purchase the premises free and clear of incumbrances for the sum of \$18,000, of which \$6,000 was to be paid in cash, and the balance by a first mortgage payable at the expiration of ten years from its date. Wheeler took possession under that lease, and on the 29th day of March, 1895, assigned the same to the Otto Huber Brewery in consideration of \$8,000. He also, on the 13th of June, executed a chattel mortgage to that brewing company covering a variety of chattels, being
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bar-room furniture and scenery.

This corroborates what the evidence tends to show, that either Wheeler or the brewing company expended moneys in converting the property into a music hall and drinking saloon. It was afterwards known as the "Music Hall," and it abundantly appears that neither of them were able to pay for the improvements, so that some ten or twelve judgments on lien claims were recovered against the property, and it was advertised thereunder by the Sheriff, and sold to the defendant Kuehnle for \$3,000. In addition to that Kuehnle swears that he had already
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advanced to Wheeler \$4,000 in cash. The Sheriff's deed was dated the 26th of January, 1896, and on the 17th of February, 1896, the brewing company assigned to Kuehnle their chattel mortgage and the leasehold interest under Turner's lease by Wheeler. The year in which Wheeler, by the terms of that lease, had the right to purchase at \$18,000 expired on the 25th of March, 1896. On the 25th of February, one month before the expiration of the time and after Mr. Kuehnle had perfected his rights as assignee of Wheeler, he demanded
30
the title from Turner. This Turner was quite willing, but unable to give without the consent of his wife, the complainant. A deed was thereupon prepared in the ordinary form from Turner and his wife to Kuehnle for the premises. Previous to that, Turner, when making conveyances of real estate from his wife and himself, had been obliged to pay his wife something substantial for

- her inchoate right of dower, and in the negotiations leading up to a bargain a young lawyer, Mr. John S. Westcott, practicing in Atlantic City, had acted as go-between, and resort was had to him in this instance by Mr. Joseph Thompson of the Atlantic Bar, commonly called "Judge Thompson," who was employed by Mr. Kuehnle to secure the title of the premises from Turner. Judge Thompson had also been counsel for Turner in many matters before that time, but it is proper to say that there
- 10** is nothing to show that he had any standing retainer from either Mr. Turner or Mr. Kuehnle, but was at perfect liberty to appear in any litigation for or against either of them. He was, however, distinctly employed by Kuehnle in the then present matter. Being informed that young Mr. Westcott had procured from Mrs. Turner her execution to other conveyances of real estate made by her husband, he thereupon, at Turner's suggestion, handed to him the proposed conveyance unexecuted by her husband, as I recollect, and requested him to procure her execution of it. Mr. Westcott had an interview with
- 20** Mrs. Turner and asked her to join in the deed, which she declined to do unless she was paid. This he reported to Judge Thompson, who, according to his (Westcott's) evidence, replied that they or Mr. Turner would not give more than \$200 or \$300 to Mrs. Turner to join in the deed, because there was a mortgage outstanding against the property which could be foreclosed and her inchoate right of dower cut off for that amount of money. This sum Mrs. Turner refused to accept. There the matter ended, for, as I recollect the evidence, it does not ex-
- 30** pressly appear that Mr. Westcott reported that statement of Judge Thompson's to Mrs. Turner, although the probability is that he did so, as they had some two or three interviews on the subject. Mr. Westcott was not the stated solicitor of Mrs. Turner, but had acted for her in loaning on bond and mortgage a portion of the money which she had received in a previous transaction of a sale of lands by her husband. With regard to the state-

ment by Mr. Westcott of what Judge Thompson said to him as to the foreclosure of the mortgage for the purpose of cutting off Mrs. Turner's dower, it is proper to say that Judge Thompson, on the witness stand, stated that he had no recollection of having used any such language. On the 10th of March, 1896, a few days after the failure of negotiations to procure Mrs. Turner's signature to the conveyance, Mr. Thompson filed a bill in this court against Turner to compel the specific performance of the contract of sale contained in the lease. At the proper time he filed a *lis pendens* in the County Clerk's office in aid of that bill. He issued a subpoena against Turner at the filing of the bill, returnable the 28th of March, which was duly served upon Turner. No further proceedings were taken under that bill and no answer was filed by Turner. 10

To go back to the mortgage given by Hoffman to the Allens—that was, shortly after it was made, assigned to Mr. William Fitton, of Atlantic City, and the interest seems to have been promptly paid upon it up to the 28th of February, 1896, which it is to be observed was at about the time that the effort was being made to procure the signature of Mrs. Turner to the conveyance. The principal of the mortgage had been due since 1894, but six months' interest up to the 28th of February, 1896, seems to have been received by Mr. Fitton from Mr. Turner. I will now give Mr. Thompson's language as to how the mortgage came into his hands. After stating that he had filed a bill against Turner for specific performance, and had let the matter stand, he continues, "About seven months after I filed this bill (which would be October 10th), Mr. William Fitton, whom I had been attorney for from the time he came to Atlantic City, I presume, up and till the time of his death, brought the bond and mortgage which had been referred to in this matter that was foreclosed, and told me that he wanted it collected. He said that he wanted his money. That Mr. Turner could not pay him, and he wanted me to collect it. And 30

he said that Mr. Turner said he would pay the expenses of the collection." Q. (By the Court.) "That he, Turner, would pay them?" A. "That he, Turner, would." He then proceeded to state that he foreclosed the mortgage, making Mr. and Mrs. Turner and Kuehnle defendants, and that at the day of sale he attended with Mr. Fitton; he ascertained the amount required to pay the principal and interest of the mortgage and the Sheriff's execution fees, and bid that amount (which

10 turned out to be a few dollars less than the amount due), and that the property was struck off to him. The Sheriff does, indeed, say that he thinks there were other bidders, but Judge Thompson does not mention any others, and the fact that he swears that he made a single bid, which turned out to be a few dollars short of the amount necessary to pay the whole amount due and the Sheriff's execution fees, is a strong indication that there was but one bid. This sale was confirmed, although the property was well worth \$25,000 to \$30,000. I will continue Judge

20 Thompson's account of what occurred afterwards: "A few days after the Sheriff's sale Mr. Fitton and Mr. Turner came to my office and they told me that they wanted to carry out; that Mr. Turner wanted to carry out the contract which Mr. Kuehnle had purchased through a sale made under the mechanic's lien, if Mr. Kuehnle would perform the contract. I saw Mr. Kuehnle and told him that the way was open for him to acquire the title to the property if he still wanted to. He said that he would carry it out under the original terms, that Mr.

30 Turner would have to pay any expense that he had incurred or had been incurred by me in the matter of the filing of the bill against him. It resulted in the end in the bid being assigned to Mr. Kuehnle, Mr. Kuehnle taking title from the Sheriff, and then the moneys passed through my hands, representing Mr. Kuehnle in the matter, and a settlement was finally made with Mr. Turner." That settlement with Mr. Turner is manifested by certain documents in the handwriting of Mr. Cole, then in

the employ of Mr. Thompson, rendered to Mr. Turner and found by Mrs. Turner's son in her husband's trunk after his death, which occurred March 17, 1904.

The Sheriff's sale took place on the 6th of February, 1897. The deed was dated March 1st, 1897, and a statement made up by Mr. Cole under the direction of Judge Thompson is dated March 1st, 1897, and it credits Turner with \$18,000, the consideration money mentioned in the contract, interest on \$12,000 for eleven months, \$660, making a total of \$18,660. It credits Kuehnle with the mortgage to Turner for \$10,000, being \$2,000 less than the sum that was provided for in the original contract. It credits him with the further sum, cash and note, \$2,500, making \$12,500, which deducted from \$18,660 left due Turner \$6,160. From this is deducted as follows: Paid Fitton mortgage and interest, \$4,240.94; Sheriff's costs, \$81.54; court costs, \$70.84; costs of bill in equity, \$50; recording mortgage, 85 cents; services in foreclosure and equity case, \$100; making a total of \$4,544.17. This amount of \$4,544.17 deducted from \$6,160 left a balance due Turner of \$1,615.83, which was paid to Turner by Judge Thompson's check. This statement was forwarded to Mr. Turner by Judge Thompson, together with the receipted bill for the Sheriff's execution fees and check, with an explanatory letter from Judge Thompson inclosing also the bond for \$10,000, and a few days later another letter with the mortgage securing the same.

Let us now go back to the commencement of the foreclosure proceedings. The subpoena with tickets, which issued on the filing of the bill to foreclose, was duly served on Mrs. Turner at her house, and the Sheriff's return shows that the copy for Mr. Turner was also left at the house for him. Those papers Mrs. Turner immediately forwarded, without examination, to her husband, who then had an office or some sort of a residence in Philadelphia. This was done in pursuance of a standing

request made by Mr. Turner to his wife. Mrs. Turner heard nothing more of the affair until a few days before the sale, when she saw an advertisement of the sale of the premises in a newspaper, and at once obtained an interview with Judge Thompson, which she relates this wise: "Mr. Thompson, I understand or I seen in the paper where the music hall property is to be sold," and I said, "You know Mr. Turner is doing bad, has left home, and is doing bad," and I said, "Don't let him sell it, Mr. Thompson," and he said, "Why, Mrs. Turner, don't worry anything about it; your property will not be sold by the Sheriff." She states that she went to Mr. Thompson because she knew that he was Mr. Turner's lawyer. Then she further says that her husband came to her house the night before the sale and stayed all night, and that the next morning she asked him if the music hall property was going to be sold, and he said "No," and she said, "I see it advertised in the paper where it was to be sold Saturday," and he said, "That don't mean that it has to be sold." Later, and in the afternoon of that day, she saw him again and she asked him if the property had been sold, and he said, "No, it had not, and it was not going to be," and she said, "You say, then, it isn't going to be sold?" and he said, "No, not a damned bit of it." In the meantime, however, she had sent her son to the place of sale, and he told her that it had been sold, but did not mention the price. About two months afterwards she called at Judge Thompson's office and saw Mr. Cole, and asked him about the matter, and he told her the property had been sold, and she told him she had not signed any paper in connection with it, and he went to the safe and got the Sheriff's deed and looked at it and told her that her name was in the deed, and she asked him to look after her interests in the property, and he replied that he could not do it.

Let us now see what the effect of these proceedings were in equity upon the complainant's inchoate right of dower. We have Judge Thompson employed by Kuehnle

in February, 1896, to perfect his title in the premises by enforcing against Turner the Wheeler contract of which he was assignee, and we have a deed of conveyance prepared by Judge Thompson to be executed by Turner and his wife and the bond and mortgage prepared to be given to Turner for a part of the consideration money, in strict accordance with the terms of the contract, and we have Judge Thompson, at Turner's request, asking Mr. Westcott to try and procure Mrs. Turner's signature to the deed, and we have her refusal and the report thereof to Judge Thompson, and we have Judge Thompson's refusal, on behalf of Turner, to pay more than \$200 or \$300, the amount of the costs of the foreclosure of the Fitton mortgage. It is true that Judge Thompson denies any recollection of having made the statement which Westcott swears he did. But a careful consideration of the manner of Mr. Westcott on the stand and of all the circumstances leads me to the conclusion that his evidence on that subject is reliable. He was quite clear in his recollection, and I cannot bring myself to the conclusion that his evidence was manufactured. It is much easier to believe that Mr. Thompson has forgotten that he used the language in question. And here it is proper to mention a circumstance not previously referred to, viz., that the original conveyance from Hoffman to the two Allens and the assignment of the mortgage to Fitton were all carried through under Judge Thompson's supervision, and he personally negotiated the assignment of the mortgage to Fitton. I therefore conclude that the foreclosure of this mortgage, in order to bar Mrs. Turner's inchoate right of dower, was in the mind of Judge Thompson at the outset. Then we have the filing of the bill for specific performance and the issuing of process thereon, with the filing of the *lis pendens*, the failure of Turner to file any answer thereto, and the failure of Judge Thompson to enter a decree *pro confesso* for want of an answer, or to take any proceedings thereon. He said he advised his client to let the matter lie for the

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present. For this deliberate delay he gives no reason whatever. It is to be remembered that his client, Mr. Kuehnle, had a considerable amount at stake. He had advanced \$4,000 in cash to Wheeler, the original contractee, had bought in the premises at Sheriff's sale for \$3,000, and had been in possession, as he swears, at that time for about six months. But I find no difficulty in accounting for that delay in pressing the specific performance suit when I find by the Master's report in the foreclosure case that the interest on the mortgage in question had been paid by somebody, presumably Mr. Turner, up to the 28th of February, 1896; the bond being dated August 31st. It would be suspicious at least to commence suit in foreclosure immediately after having received the semi-annual payment of interest. So a delay occurred until the 13th of October, when the bill was filed.

Then we have the remarkable statement made to Judge Thompson by Mr. Fitton when he handed him the bond and mortgage for foreclosure, which has already been quoted, namely, that Turner told Fitton that he would pay the expenses of a foreclosure. Mr. Thompson then knew that the foreclosure was the result of an arrangement between Turner and Fitton. Turner was notoriously, at that time, able to pay the interest on the mortgage, so that Thompson must have known that the foreclosure was at Turner's request, and it is impossible to avoid the conclusion that he understood that the object of it was to cut off complainant's inchoate right of dower and perfect the title which Turner was willing to make to Kuehnle, and he, Thompson, acted on that arrangement up to the very last when he charged Turner \$100 counsel fee, over and above the taxed costs in the foreclosure case, and over and above a fee of \$50 in the specific performance case. Now, when the property came to a sale Judge Thompson accompanied Fitton to the sale, and bid the property in in his own name for the amount of the decree and costs. The question arises at once, did he

buy that for himself or as trustee and agent of some other person or persons, and if as agent and trustee, then for whom, and where were the interests of his client, Mr. Kuehnle, who had a large sum at stake.

That gentleman swears that he paid no attention whatever to the matter from the time he put it into Mr. Thompson's hands, but trusted to and relied upon that gentleman to look after his interests. Then we have it quite clear that Judge Thompson acted as trustee. First, for Mr. Fitton to the extent of the amount due on his mortgage, and second, for his client, Mr. Kuehnle. He could not stand by and see property worth \$25,000 sold for a little over \$4,000 without protecting that acknowledged client's interest. Was he trustee for anybody else? If not, then his plain duty was to transfer the bid to Mr. Kuehnle upon that gentleman paying the amount of his bid to the Sheriff. But this he did not do, but recognized the rights of Mr. Turner, thereby, as I conceive, acknowledging in the plainest manner that he was also acting as trustee for that gentleman; and before assigning the bid he saw to it that Mr. Turner received the amount of purchase money to which he was entitled under the Wheeler contract. In other words, he acknowledged by his conduct, that he bid off the property for the benefit of the three persons, the mortgagee, the vendor and the vendee as their rights severally appeared under the contract of sale and the mortgage. It is quite impossible to suppose for a moment that Mr. Turner stood by and saw this valuable property, his equity in which was worth at least \$14,000, struck off to Judge Thompson for the comparatively trifling sum due on the mortgage unless he had a previous arrangement with the bidder to protect his interests. In fact, the case in this respect is entirely transparent. And it seems to me idle to argue that in all that transaction, from the unsuccessful effort to procure the signature of Mrs. Turner down to the close of the transaction, as manifested by the statement and letters of March 1st, 1897, Mr. Thompson was not

acting voluntarily and intelligently as the agent of the three persons named severally, and as the solicitor in this court of Fitton and Kuehnle, and with a full knowledge at every step taken of their object to produce the result finally arrived at.

Now, I think that conclusion brings the case within the equitable rule upon which I relied in dealing with the demurrer to the bill. I think that the case is not varied by the circumstance that no active measures are shown to have been taken to prevent intervening bidders. The sacrificing of property at Sheriff's sale under similar circumstances is too common in this State to excite remark or raise doubts. The real transaction was in substance and effect a sale and conveyance by Turner to Kuehnle for \$18,000, of which the amount due on the mortgage was devoted to its payment, and the balance paid to Turner. This balance of over \$14,000 constituted the real surplus money on the sale, and should have been paid into court, and the case must be treated accordingly. The more serious question arises from the fact that the complainant had actual notice of the sale and did not employ counsel to look after her interests. She did, however, go to Judge Thompson, who she was entirely justified in believing was acting as counsel for her husband, and who I find as a fact was acting as such in the very matter in hand, and she asked him about the sale, and begged of him not to let it go on, and she swears that Thompson said, "Why, Mr. Turner, don't worry anything about it. Your property will not be sold by the Sheriff." Now, Judge Thompson does not recollect this interview, but here again I feel constrained to believe Mrs. Turner. Moreover, I have not overlooked the peculiar verbiage which Mrs. Turner puts in Judge Thompson's mouth. She was speaking of the advertised sale of the music hall property, and his answer was sufficiently ingenious, "Your property will not be sold by the Sheriff." She was severely cross-examined, and, on the cross-examination, her previous evidence on direct

was treated by counsel for defendant as being an assertion that Judge Thompson told her that the music hall property would not be sold, and the question was so understood by Mrs. Turner in answering. But I cannot infer that he used words different from those stated by the witness, however she may have understood them. Then we have her asking her husband about it the morning of the sale, and his assurance to her that it was not going to be sold. Then we have her sending her son to the place of sale, and his report to her that it had been sold, without stating the price. Then we have her asking her husband whether it had been sold, and his denying it. Then we have her consciousness that she had not signed any mortgage or paper relating to that property, and this feeling of assurance she still had a right to entertain, for her husband acquired the property in 1893, and she swears that the break between the two occurred in 1894, so that she had a distinct recollection that she had signed no paper in connection with the property, and felt a confidence that no suit could affect her interest in it. The idea that a mortgage could be put upon it before her husband took the title did not occur to her.

However, later on, and after the Sheriff's deed was made and delivered, she did call at Mr. Thompson's office and saw Mr. Cole and asked him about it, and she was informed by him that although she had not signed any paper, her name was in the Sheriff's deed. She also called on Mr. Kuehnle, according to his story, after he had paid for the property, and made some sort of an assertion of right in the premises which Mr. Kuehnle refused to recognize. This is testified to by him, but the complainant's attention was not called to it on the stand. The precise and only present right of Mrs. Turner which she neglected to enforce was to except to the Sheriff's sale on the ground of the insufficiency of the purchase price, and to resort to the proof of the Wheeler contract on record, and the subsequent rights of Kuehnle thereunder and expenditures made on the property in support

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of her exception; and it is to be presumed that if she had taken that course she would have succeeded in having a large surplus sum paid into court to be dealt with precisely as Chancellor Zabriskie dealt with the surplus in *Vreeland vs. Jacobus*, 19 N. J. Eq., 231. If she had understood her rights and comprehended the facts and situation in time to have intervened to prevent the confirmation of the sale much might be said in favor of the position that she had deliberately abandoned her rights. The record of the foreclosure shows that the sale took place on February 6th; that it was reported by the Sheriff on the 8th, and his report filed February 10th, and the sale confirmed on the 17th of February, so that she had very little time in which to think over and learn her rights. But here comes in the consideration mentioned in my opinion on the demurrer. It was a part of the plan of the gentlemen who devised and carried through the scheme in question that Mrs. Turner should not be advised of her rights, and they did all in their power to keep her in ignorance and to assure her that her rights were not in danger, and they cannot now complain that their plan succeeded, and that her anxiety was not sufficiently aroused in time to enable her to thwart and break up their scheme.

One other point put forward by the defendant is that if Mrs. Turner had intervened sooner, Kuehnle might have saved himself out of the \$10,000 mortgage which he subsequently paid. I think the observation which I have just made applies to that point. But Mr. Kuehnle had direct notice, shortly after he got the Sheriff's deed and paid his money, and long before the mortgage became due, that the complainant was dissatisfied, and hoped for at least some compensation which he declined to make. In fact, he is chargeable in equity with knowledge, not only of the facts, all of which were known to his counsel, Mr. Thompson, but also with the knowledge of the law of the land as applied to those facts, and should have fortified himself by a proper guaranty against complain-

ant's claim at the time he took the title. And this brings me to what I conceive to be the principal point made by the defendant in his able and ingenious argument. He contends that the defendant is not chargeable with notice of the constructive fraud practiced by Judge Thompson upon the complainant, and he refers to the rule laid down by Mr. Pomeroy (section 688) and to the case of *Saf-
fron vs. Raynor*, L. R., 14 Ch. Div. (1880), 406. But that case and the section of Pomeroy relied upon apply to an entirely different set of facts. The true rule, as applicable here, is laid down in sections 666 and 667. In section 667 the learned author says: "The general rule also applies where the same agent or attorney in reality acts on behalf of both parties to the transaction, for both the grantor and the grantee, the vendor and the vendee, the mortgagor and the moragagee," citing a long list of authorities, among others *Losey vs. Simpson*, 11 N. J. Eq., 246, at page 251, where the rule is stated by Chancellor Williamson. But another rule intervenes here which is applicable to all such cases. A purchaser situate as is the defendant here cannot take advantage of the doctrine of innocent purchaser without notice when he is claiming the very fruit of the fraud which his agent has practiced without his knowledge or authority. I acted on that principle in *Johnston vs. Reilly* (N. J. Ch.), 59 Atl., 1044, at page 1052, citing 2 Pom. Eq. Juris, sec. 909. The same doctrine is laid down in *Perry on Trusts*, sec. 172. The rule is a familiar one, and requires no citation of authority to sustain it.

We have seen that the complainant first became aware of the real transaction between her husband and the defendant when she came into possession of the papers relating thereto, found in her husband's trunk some time after his death in March, 1904. She then put the papers in the hands of competent counsel in Camden for advice and action, who kept them for a period of time, and returned them to her without taking any action thereon.

She then employed her present solicitor, who filed a bill for her on the 10th of March, 1905, to which a demurrer was interposed, and was held good and the bill dismissed. As no opinion was filed I am not informed as to the grounds on which the demurrer succeeded. That decree was on the 16th of May, 1905, and the present bill was filed on the 17th of May, 1905. I state these facts to show that there has been no unreasonable delay since the complainant became aware of the facts upon which her right is based. But be that as it may, the delay has worked no injury to defendant, but the contrary. It remains to inquire as to the extent of the complainant's relief. She relies upon the seisin of her husband and the estate of that seisin measures her right. The seisin was the title in fee subject to the mortgage of \$4,000. Then the value of the land must be taken as at the time of the sale by the husband, which was in equity, and for present purposes the date of the Wheeler lease. But it is immaterial whether it is taken at that date or the date of the Sheriff's sale, since the husband was not entitled to the increase in value by reason of improvements put on the property by the defendant. I am also of the opinion that the principal sum of the mortgage, \$4,000, is all that can be charged against the complainant on the one side, and that she is not entitled to any increase over and above the \$18,000 by reason of interest on that sum. The result is that she is entitled to interest on one-third of \$14,000 from the date of her demand for her dower. Whether for this purpose the filing of the first bill on March 10th, 1905, is to be deemed a demand or whether the bill herein must be considered as the only demand, has not been discussed, and I have not carefully considered it. If counsel wish to be heard on that question I will hear them.

The logical result is that an annuity equal to the interest on \$4,666.66 in favor of complainant during her lifetime should be decreed to be a charge upon the land. Chancellor Green, in the case of *Chiswell vs. Norris*, 14

N. J. Eq., 101, ascertained the total present value of the widow's dower upon the principle of life annuities to be calculated upon the basis of the table prescribed by the rules of the court. I am not at present aware that the widow can be compelled, against her will, to accept a sum in gross, ascertained on that basis, and the question was not discussed by counsel in their arguments. I will hear counsel on that subject if they desire and will determine the question upon settling the form of the final decree.

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The complainant is entitled to a counsel fee in addition to her costs.

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