

NEW JERSEY
Court of Errors and Appeals.

SARA REID,
Plaintiff-Appellant,

vs.

SAMUEL DUBLIER and JENNIE
DUBLIER,
Defendants-Appellee.

On Appeal.

BRIEF FOR APPELLANT.

This action was brought to recover the sum of \$200.00 with interest, payable under a bond executed by the defendants to Carmine Imbriglio and Maria Imbriglio. The mortgage accompanying the bond is dated April 15, 1910, recorded April 19, 1910, Liber 701, page 88, Hudson County Register's Office. The principal sum is \$3,500.00; the mortgage is payable in quarterly installments of \$200.00 each on the fifteenth days of July, October, January and April. Under stipulation filed in this cause the defendants waived the benefit of the statute which requires foreclosure of a mortgage before the commencement of an action on the bond.

The facts as developed at the trial are, briefly summarized, as follows:

On July 14, 1910, the mortgagees assigned the said bond and mortgage to the Mercantile Trust Company as collateral security for a loan made to Carmine Imbriglio, which assignment was recorded June 18, 1910, in the Hudson County Register's

office. The assignment contained a covenant by the assignee to reassign upon payment to it of two thousand dollars and interest. Carmine Imbriglio collected the interest and instalments of principal on the said bond and mortgage which became due on April 15, 1910, July 15, 1910, October 15, 1910, and January 15, 1911. On January 13, 1911, the mortgagees made another assignment of the bond and mortgage to the plaintiff herein, which assignment was recorded on the same day, but did not deliver to plaintiff the bond and mortgage which was then in possession of the Mercantile Trust Company and which remained in the possession of the Trust Company until the 20th day of August, 1912. Defendants had no actual notice of the assignment by Imbriglio to the plaintiff on January 13, 1911, until the 15th day of April, 1911, when McBride, the agent of the plaintiff, notified the defendants that the plaintiff had purchased the bond and mortgage and demanded the installment of interest due that day. At this time a controversy arose between plaintiff and defendant over the payment of three dollars interest. In August, 1912, Imbriglio absconded. On August 20, 1912, the plaintiff paid to the Mercantile Trust Company the balance due it from Imbriglio, and on that date the Trust Company assigned the bond and mortgage to the plaintiff, which assignment was recorded on August 23, 1912. On September 11, 1912, the plaintiff notified the defendants that she was the owner of the bond and mortgage. The dispute between the parties as to the amount of interest paid continued until it was taken up by their attorneys, when it was discovered that the defendants claimed credit for the two hundred dollars paid to the assignor Imbriglio after the purchase of the mortgage by the plaintiff. Payment was made on *January 14, 1911*, by check dated a day or two later. The

payment of course was *after* the assignment to the plaintiff had been recorded.

The District Court Judge gave judgment to the plaintiff in the full amount, which judgment was reversed by the Supreme Court upon the ground that Imbriglio in collecting and receiving the installments of principal and interest from the defendants had been acting as the agent of the Trust Company.

The contention of the appellant is:

First—There was no evidence to justify a finding by the Supreme Court that Imbriglio was the agent of the Mercantile Trust Company.

Second—That the District Court found as the fact that Imbriglio was not the agent of the Trust Company in receiving payments on the mortgage and that such finding of fact was binding on the Supreme Court.

The first proposition is of course a negative one. The Supreme Court says:

“It was therefore perfectly proper to pay to Imbriglio the agent of the Trust Company, who it appears had been collecting and receiving quarterly installments and interest falling due upon the mortgage from the time he made the earlier assignment up to and including the last payment made to him and which is the subject of dispute. The fact that Imbriglio was also the original mortgagee is of no consequence.” (See state of case, page 6.)

The collection by Imbriglio of the principal and interest due on the mortgage seems to be the fact upon which the Supreme Court finds that Imbriglio was the agent of the Mercantile Trust Company.

These are the only facts upon which an inference might be drawn that Imbriglio was acting as agent for the Trust Company, and this standing by itself might justify such an inference were it not for the fact that the mortgage which was assigned by Imbriglio to the Trust Company was collateral security for a loan made to Imbriglio by the Trust Company (see state of case, page 4), and being collateral the Trust Company did not look first to Samuel Dublier and Jennie Dublier for payment, but looked to Imbriglio to whom the loan was made.

In 7 Cyc., 278, under the title Collateral Security, we find the following:

“Any property or right of action, as a bill of sale or stock certificate, which is given to secure the performance of a contract or the discharge of an obligation and as additional to the obligation of that contract and which upon the performance of the latter is to be surrendered or discharged; a separate obligation attached to another contract to guarantee its performance; security for the fulfillment of a contract or a pecuniary obligation in addition to the principal security. In bank phraseology, “*collateral security*” means some security additional to the principal obligation of the borrower.”

Thus it would seem that Imbriglio was not acting as agent in collecting the installments of principal and interest; that the District Court found as a fact that Carmine Imbriglio was not the agent of the Mercantile Trust Company in receiving payments on said mortgage is shown by page 19 state of the case that Judge Carrick, under rule on alle-

gation of diminution of the record, certifies as follows:

"I, Charles L. Carrick, Judge of the First District Court of Jersey City, do hereby certify as I am required to do in and by an order made in the above entitled action on the twentieth day of December, 1913, directing that I certify whether I found as a fact upon the trial of the above action in the First District Court of Jersey City that the Mercantile Trust Company authorized Carmine Imbriglio as its agent to collect the installments of principal due under the bond and mortgage introduced in evidence in the case as the installments became due that I did not find such to be the fact."

On page 20 state of case we find Judge Carrick certifying that Charles H. Clark, Treasurer of the Mercantile Trust Company, who was a witness produced on behalf of the defendants, did not testify that the Mercantile Trust Company authorized and permitted Carmine Imbriglio to collect from the defendants the installments of principal on the mortgage in question as they became due. Judge Carrick further certifies that if the witness Clark testified as claimed by the defendants that he should have noted such important evidence upon the trial.

The above would seem to indicate that the District Court Judge who in this case was sitting without a jury and was the judge of the facts, found that Imbriglio was not the agent of the Trust Company. That such finding is binding upon the Supreme Court has been the opinion of our Courts for some time.

O'Neil vs. Pierce, 94 Atl., 312.

"The facts found by the District Court Judge sitting without a jury will be presumed to rest on competent proof when nothing appears to the contrary."

Home Coupon Exchange Co. vs. Goldfarb, 78 N. J. L., 146.

Strawbridge Ancovia, et al. vs. Sigle, 73 N. J. L., 419.

"This Court will not review the District Court on questions of fact. If there be evidence to justify the finding of that Court, judgment will be sustained."

Cosgrove vs. Metropolitan Construction Co., 71 N. J. L., 106.

Weger vs. Delran, 61 N. J. L., 224.

"Upon a writ of error findings of fact of a Judge trying issue without a jury, is as unassailable as the verdict of a jury would be. It cannot be attacked because unsupported by the weight or insufficiency of the evidence, if there was evidence before him on the matter."

Paonessa vs. Ruh, 78 N. J. L., 253.

Section 206 of the District Court Act confines the Supreme Court on appeal to the consideration of questions of law and the determination of legality of admission or rejection of evidence. Questions of fact determined by the District Court Judge or by the verdict of a jury are final and conclusive between the parties

It is respectfully submitted therefore that the Supreme Court erred in reversing the District

Court and that judgment for plaintiff should be entered in this Court.

TREACY & MILTON,
Attorneys of Plaintiff.

JOHN MILTON,
Of Counsel.

THE UNIVERSITY OF CHICAGO

1900

New Jersey
Court of Errors and Appeals

SARA R. REID,
Plaintiff-Appellant,
vs.
SAMUEL DUBLIER and JENNIE
DUBLIER,
Defendants-Appellees.

**BRIEF OF DEFENDANTS-APPEL-
LEES**

On April 15, 1910, the defendants gave their bond for \$3,500 to CARMINE IMBRIGLIO and wife, and a mortgage on Jersey City real estate to secure the bond, both of which provided for the payment of interest and an installment of \$200 on account of the principal quarter-annually on the 15th days of July, October, January and April in each year (case, p. 12).

On June 14, 1910, CARMINE IMBRIGLIO and wife assigned the said bond and mortgage to the MERCANTILE TRUST Co. as collateral security for a loan made to CARMINE IMBRIGLIO and delivered to the MERCANTILE TRUST Co. the said bond and mortgage and the assignment was recorded on June

18, 1910, in the Hudson County Register's office, (case, p. 12).

On January 13, 1911, IMBRIGLIO and wife made another assignment of the same bond and mortgage to the plaintiff herein, which assignment was recorded on that day; but did not deliver to the plaintiff the bond and mortgage which was then in the possession of the MERCANTILE TRUST Co., and which remained in the possession of the MERCANTILE TRUST Co. until the 20th day of August, 1912 (case, p. 13).

The defendants had no actual notice of the assignment of January 13, 1911, by IMBRIGLIO to the plaintiff until April 15, 1911, when the plaintiff notified the defendants of the assignment (case, p. 13).

In August, 1912, IMBRIGLIO, who up to that time had continued to reside in Jersey City, absconded, and on August 20, 1912, the plaintiff purchased the bond and mortgage from the MERCANTILE TRUST Co. and on that day the MERCANTILE TRUST Co. assigned the bond and mortgage to the plaintiff, which assignment was recorded August 23, 1912. The plaintiff never saw the bond and mortgage till August 20, 1912 (case, p. 13).

On May 7, 1912, the MERCANTILE TRUST Co. notified the defendants that it was the owner of the bond and mortgage and all payments were to be made to it (Exhibit 2, case, p. 29).

On September 11, 1912, the plaintiff notified the defendants that she had purchased the bond and mortgage from the MERCANTILE TRUST Co. and that all payments in the future should be made to her (case, p. 13 and Exhibit 3, p. 30).

The plaintiff had the records of the Register's office examined before taking the assignment from IMBRIGLIO on January 13, 1911, and is charged

with actual notice of the previous assignment of the bond and mortgage to the MERCANTILE TRUST Co.

The installments of the principal of the mortgage up to and including the installment of January 15, 1911, were paid to IMBRIGLIO (case, pp. 12 and 13, and Defendant's Exhibit 1, p. 28).

These installments were paid to him unquestionably as the agent of the MERCANTILE TRUST Co. This is substantiated by the letter of the Trust Co. (Exhibit 2, p. 29) where they state:

“As there are no credits marked upon the mortgage kindly produce your receipts that we may know the correct amount of the mortgage remaining unpaid.”

The case therefore resolves itself into the following situation; a mortgagee assigns his bond and mortgage in June, 1910, and delivers possession of the bond and mortgage to the assignee who immediately records the assignment; half a year later the mortgagee attempts to make a second assignment of the same mortgage without delivery of the bond and mortgage to the second assignee; the owner of the premises has no notice of the second assignment except such as he is charged with by the statute and makes a payment of interest and installment of principal to the first assignee.

This suit was brought to recover the installment of January 15, 1911, which was paid to the Trust Co. through IMBRIGLIO, and the Trial Court gave judgment for the plaintiff, which was reversed by the Supreme Court from which plaintiff appeals.

POINT I

The plaintiff did not become the owner of the mortgage by the assignment of January 13, 1911.

The mortgage had previously been assigned to the MERCANTILE TRUST Co.; therefore on January 15, 1911, the date on which the installment in question became due, the MERCANTILE TRUST Co. was the legal owner of the mortgage and the only one entitled to receive payment of the installment. This is confirmed by the fact that in August, 1912, the plaintiff herself purchased the mortgage from the Trust Co.

If the defendants had paid the money into Court and impleaded the MERCANTILE TRUST Co. and the plaintiff as to the ownership of the fund, there can be no question but that the MERCANTILE TRUST Co. would be declared to be the owner thereof.

It is entirely immaterial that the assignment to the MERCANTILE TRUST Co. was made as collateral security. It still remains the fact that the Trust Co. was the legal owner of the bond and mortgage on January 15, 1911. And if it was the legal owner on that day, it alone was entitled to receive the interest and installment then due, and the plaintiff had no right thereto.

POINT II

The plaintiff became the owner of the mortgage only on August 20, 1912.

Up to that time her rights were subject to those of the MERCANTILE TRUST Co., but when she pur-

chased the mortgage on August 20, 1912, she took it subject to all set-offs and other defenses against the assignors (C. S. Vol. 3, Sec. 31, p. 3,418). And if the defendants had paid the MERCANTILE TRUST Co. the entire principal sum due prior to August 20, 1912, then under the statute, the plaintiff would have received nothing by her assignment.

POINT III

The question of notice to the defendant of the plaintiff's assignment of January 13, 1911, was immaterial.

The District Court found as a fact, that the defendants did not have actual notice of the assignment to the plaintiff by IMBRIGLIO, but charged the defendants with constructive notice under Section 32 of the Mortgage Act (C. S., Vol. 3, p. 3,418, Sec. 31), and then applied the doctrine of *Mayer vs. McLaughlin*, 80 N. J. Eq., p. 342.

In *Mayer vs. McLaughlin*, however, the point was entirely different from the one at bar. That case presented no question as to the rights of a prior and subsequent assignee of a mortgage. There the mortgagee assigned the mortgage and the owner of the premises paid the principal to the mortgagee subsequent to the date of assignment without actual knowledge of the assignment. The Court held that Section 32 of the Mortgage Act is in force, and that the obligor was charged with knowledge of the assignment by its recording, and therefore any payments made by him to the mortgagee subsequent to the recording of the assignment were made at his peril.

In the case at bar, however, the question does not arise between the mortgagee and the assignee,

but between a first assignee and a second assignee.

In *Mayer vs. McLaughlin*, if the mortgagee were eliminated the only person entitled to the payment was the assignee, the plaintiff.

In the case at bar, however, when the mortgagee IMBRIGLIO was eliminated from the situation by his assignment, the only one entitled to the payment was not the plaintiff but the MERCANTILE TRUST Co., a prior assignee.

The question of notice of the assignment to the plaintiff was therefore immaterial.

“For even though the mortgagor was apprised, constructively, of the assignment by IMBRIGLIO to the plaintiff, the record admittedly showed an earlier assignment of the same mortgage to the Trust Co. In this posture of affairs it was but a natural act and a proper one for the mortgagor to pay to the earlier assignee of record” (Opinion of Supreme Court case, p. 5, l. 33).

POINT IV

The mortgagee, Imbriglio, was the agent of the Trust Company.

This is the conclusion reached by the Supreme Court (case, p. 6).

It is substantiated by the letter of the Trust Co. of May 7, 1912 (Exhibit 2, p. 29) where they notify the defendants:

“All payments of principal and interest now due or becoming due, shall be payable at this Company. As there are no credits marked upon the mortgage, kindly

produce your receipts that we may know the correct amount of mortgage remaining unpaid.”

IMBRIGLIO having assigned the mortgage at the bank as collateral security, and the bank not having demanded payment of the interest and installment on January 15, 1911 to itself, the natural presumption arises that a payment to IMBRIGLIO was made to him as the agent of the Bank, and his agency was ratified by the Bank's letter of May 7, 1912, and this situation is confirmed by the fact that in September of 1912 the plaintiff notified the defendants, (Exhibit 3, p. 30), that she had purchased the mortgage from the MERCANTILE TRUST Co. and all payments were in the future to be made to her.

The Supreme Court, therefore, drew from the record the only inference of fact that could be drawn. The appellant's first ground of appeal (case, p. 2) therefore falls. As to the second ground, that the District Court found that IMBRIGLIO was not the agent of the Trust Co., this is not borne out by the case. The state of the case as settled by the District Court Judge is silent on the question of agency. It is true that the defendants attempted to have the record corrected by inserting a statement as to the agency, but the District Court Judge replied in answer to the rule that he had no recollection of such testimony (case, p. 21). The petitions and answers to the rules on the District Court Judge were therefore omitted from the printed record before the Supreme Court and are not properly part of ~~this~~ record; but they do not change the situation at all because the facts are clear that the Bank ratified the collection by IMBRIGLIO of the installment in question.

POINT V

The agency of Imbriglio for the bank was not the basis for the Supreme Court Decision.

The Supreme Court reversed the judgment of the District Court wholly on the ground that on January 15, 1911, the MERCANTILE TRUST Co. and not the plaintiff, was the owner of the mortgage, and in this posture of affairs, it was the natural and the proper thing for the defendants to pay the earlier assignee of record.

We cannot conceive how the question of agency enters into consideration. The plaintiff had no rights against the defendants until September, 1912, when she purchased the mortgage from the Trust Co. and then she acquired by her purchase only what was still then due and owing.

POINT VI

The judgment of the Supreme Court is correct and should be affirmed.

Respectfully submitted,

HEYMAN & HEYMAN,
Attorneys for and of Counsel with
the Defendants-Appellees.

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January

1912

New Jersey Supreme Court.

SARA R. REID, Plaintiff-Appellant,	}	Notice.	10
vs.			
SAMUEL DUBLIER AND JENNIE DUB- LIER, Defendants-Appellees.			

To Heyman & Heyman, Attorneys of Defendants-Appellees.

Take notice, that the plaintiff appeals to the Court of Errors and Appeals from the decision in this cause reversing judgment entered in the First District Court of Jersey City and awarding a venire de novo. 20

Dated April 14, 1915.

TREACY & MILTON,
Attorneys of Plaintiff-Appellant.

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

JOHN MILTON,
Of Counsel.

Service of copy of notice acknowledged by Heyman & Heyman, April 14, 1915. 30

GROUNDS OF APPEAL
NEW JERSEY COURT OF ERRORS AND AP-
PEALS.

10	SARA R. REID, Plaintiff-Appellant, vs. SAMUEL DUBLIER AND JENNIE DUB- LIER, Defendants-Appellees.	}	On Contract. On Appeal from New Jersey Su- preme Court.
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GROUNDS OF APPEAL.

The appellant states the following grounds of ap-
peal:

20 (1.) The Supreme Court in reversing the decision
of the First District Court of Jersey City, finds as a
matter of fact that Imbriglio was the agent of
the Mercantile Trust Company in collecting the in-
stallment of two hundred dollars paid by the de-
fendants on January 15, 1911. There was no evi-
dence to justify any such finding.

30 (2.) The District Court found as a fact that Car-
mine Imbriglio was not the agent of the Mercantile
Trust Company in receiving payments on said
mortgage and that such finding of fact was binding
upon the Supreme Court.

TREACY & MILTON,
Attorneys of Appellant.

JOHN MILTON.
Of Counsel.

ON APPEAL
 NEW JERSEY SUPREME COURT.
 JUNE TERM, 1914.

<p>SARA R. REID, Plaintiff-Appellee, vs. SAMUEL DUBLIER AND JENNIE DUBLIER, Defendants-Appellants.</p>	}	<p>On Appeal 10 from First Dis- trict Court of Jersey City.</p>
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Before Justices Swayze, Parker and Kalisch.

For the appellants, Heyman and Heyman. 20

For the appellee, Treacy and Milton.

The opinion of the Court was delivered by Kalisch, J.

The plaintiff brought her action against the defendants to recover the sum of two hundred dollars which she claimed was the amount of an installment due upon a certain bond made by the defendants on the fifteenth day of April, 1910, and payable on the fifteenth day of January, 1911. 30

The cause was tried before the Court sitting with out a jury and resulted in a judgment in favor of the plaintiff for the amount claimed.

The facts found by the Judge are briefly these: On the 15th of April, 1910, the defendants executed and delivered to one, Carmine Imbriglio and his wife, their bond for \$3,500.00, and a mortgage on Jersey City real estate, to secure the bond both of which provided for the payment of interest and an installment of \$200.00, on account of the principal 40

ON APPEAL

quarterly, thus \$200.00 on the 15th days of July, October, January and April in each year.

10 On the 14th day of July, 1910, Imbriglio and wife, the mortgagees, assigned the bond and mortgage to the Mercantile Trust Co., as collateral security for a loan made to Imbriglio, which assignment was re-
10 corded July 18, 1910, in the Hudson County Register's office. The assignment contained a covenant by the trust company, the assignee, to reassign upon payment to it of \$2,000.00 and interest.

Imbriglio collected the interest and installments of principal on the bond and mortgage as they became due on April 15, 1910, July 15, 1910, October 15, 1910, and January 15, 1911.

20 On the 13th day of January, 1911, Imbriglio and wife assigned the bond and mortgage previously assigned to the Mercantile Trust Company, to the plaintiff, which assignment was recorded on the same day, but did not deliver to the plaintiff the bond and mortgage which were then in the possession of the trust company and which remained in its possession until the 20th day of August, 1912.

30 The defendants had no actual notice of the assignment by Imbriglio to the plaintiff of January 13, 1911, until the 15th day of April, 1911, when the plaintiff, by her agent, McBride, notified the defendants that the plaintiff has purchased the bond and mortgage and demanded the installment and interest due that day.

The defendants paid the plaintiff interest and installment amounting to \$243.50.

In August, 1912, Imbriglio absconded.

40 On the 20th day of August, 1912, the plaintiff paid to the trust company the balance of the loan due to it from Imbriglio, and on that same day the

ON APPEAL

trust company assigned the bond and mortgage to the plaintiff, which assignment was recorded on the 23rd day of August, 1912. The plaintiffs never saw the bond and mortgage until the 20th day of August, 1912.

On the 11th day of September, 1912, the plaintiff notified the defendants that she was the owner of the bond and mortgage. The plaintiff had a search made before she purchased the bond and mortgage from Imbriglio.

It appears that the parties stipulated to waive the statute providing for the foreclosure of a mortgage before the commencement of an action upon the bond.

The controversy between the parties is about the installment of two hundred dollars paid by the defendants to Imbriglio on the fifteenth day of January, 1911, two days after the bond and mortgage had been assigned to the plaintiff. The District Court Judge seemed to think that under our statute the recording of the assignment of January 13th, 1911, amounted to notice to the mortgagors, the defendants, who thereafter should have paid to the assignee and accordingly gave judgment for the plaintiff. The Trial Judge relied on *Mayer v. McLoughlin*, 80 N. J. Eq., 342, as applicable to the facts of the case under consideration. In this lies the error. For the facts at hand differed from that case in an essential respect. For even though the mortgagor was apprised, constructively, of the assignment by Imbriglio to the plaintiff, the record admittedly showed an earlier assignment of the same mortgage to the trust company. In this posture of affairs it was but a natural act, and a proper one for the mortgagor to pay to the earlier assignee of record. At the time the defendants

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ON APPEAL

paid Imbriglio the installment there was still something due to the trust company under the earlier assignment. It was therefore perfectly proper to pay to Imbriglio, the agent of the trust company, who, it appears, had been collecting and receiving the quarterly installments and interest, falling due upon the mortgage, from the time he made the earlier assignment up to and including the last payment made to him, and which is the subject of dispute. The fact that Imbriglio was also the original mortgagee is of no consequence.

These views lead to a reversal of the judgment, and a *venire de novo* will be awarded.

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SUMMONS.

STATE OF NEW JERSEY, }
 COUNTY OF HUDSON, } ss.
 CITY OF JERSEY CITY, }

The State of New Jersey, to the Sergeant-at-Arms of the First District Court of the City of Jersey City or to any Constable of said County : 10

SUMMON

Samuel Dublier and Jennie Dublier to appear before the First District Court of Jersey City, to be held at the City Hall, corner Grove and Montgomery streets, in said city, on the twenty-ninth day of April, one thousand nine hundred and thirteen, at ten o'clock in the forenoon, to answer unto Sarah R. Reid in an action upon contract. Demand five hundred dollars. 20

WITNESS, Charles L. Carrick, Esq., Judge of said First District Court at Jersey City aforesaid, the twenty-second day of April, in the year one thousand nine hundred and thirteen.

JAMES N. BRADEN,
 Clerk.

TREACY, MILTON & GRIFFIN,
 Plaintiff's Attorneys. 30

STATE OF DEMAND.
FIRST DISTRICT COURT OF JERSEY CITY.

10	SARA R. REID, <i>Plaintiff,</i>	}	<i>On Contract.</i>
	<i>vs.</i>		
20	SAMUEL DUBLIER and JENNIE DUB- LIER, <i>Defendants.</i>		

20 Plaintiff demands of defendants the sum of two hundred dollars (\$200.00), being the amount of installment due upon a certain bond executed by the defendants on the fifteenth day of April, nineteen hundred and ten, which said installment was due and payable on the fifteenth day of January, nineteen hundred and eleven; said bond was purchased by the plaintiff on the thirteenth day of January, nineteen hundred and eleven, from one Carmine Imbriglio, to whom the defendants had made and executed said bond; that after the purchase and the execution and delivery of an assignment of said bond to the plaintiff, the defendants, the obligors upon said bond, paid the said installment to the said 30 Carmine Imbriglio, whereas in fact and in law said payment should have been made to the plaintiff.

Plaintiff demands judgment for the sum of two hundred dollars (\$200.00) with interest from January fifteenth, nineteen hundred and eleven.

TREACY & MILTON,
 Attorneys for Plaintiff.

STIPULATION.

FIRST DISTRICT COURT OF JERSEY CITY.

<p style="text-align: center;">SARA R. REID, Plaintiff,</p> <p style="text-align: center;">vs.</p> <p style="text-align: center;">SAMUEL DUBLIER, ET AL., Defendants.</p>	}	<p>10</p> <p>On Contract.</p>
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It was stipulated between the parties to this suit that the question of the payment of the Two HUNDRED DOLLARS' installment be decided by the First District Court of Jersey City; that the plaintiff waive her right to foreclose the mortgage because of the failure of the defendants to pay the installment if the Court shall find that they havenot paid it; and that the defendants waive their right of urging the defense that the plaintiff should have foreclosed her mortgage instead of suing in the District Court for the amount of the installment.

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COPY OF COURT DOCKET.

CERTIFICATE OF CLERK.

FIRST DISTRICT COURT OF JERSEY CITY.

BEFORE

10 CHARLES L. CARRICK, Esq., Judge.

STATE OF NEW JERSEY, }
 HUDSON COUNTY, } ss.
 CITY OF JERSEY CITY. }

No. 85642.

SARA R. REID,
 Plaintiff,

vs.

20 SAMUEL DUBLIER,
 Defendant.

<i>Costs</i>	<i>City</i>	<i>At</i>
Summons, Copy	\$1.50	
Service		\$0.60
Trial Fee	1.50	
	<hr/>	<hr/>
	\$3.00	\$0.60

30 Upon Contract, Demand \$500
 Treacy, Milton & Griffin Plaintiff's Atty's.
 Heyman & Heyman Defendant's Atty's.

A summons was issued tested April 22, A. D. 1913, returnable April 29, A. D. 1913, at 10 o'clock in the Court Rooms of said Court in the City of Jersey City. The Constable returned the summons as follows: Service of within summons is hereby acknowledged this 22nd day of April, A. D. 1913. Heyman & Heyman, Attorneys for
 40 Samuel Dublier.

CERTIFICATE OF CLERK

May 13, A. D. 1913, the plaintiff appearing and the defendant appearing the trial of the cause was proceeded with as follows:

Stipulation of parties filed.

On the part of the plaintiff, James F. McBride was sworn and testified. One bond and mortgage was offered and received in evidence. 10

On the part of the defendant, Samuel Dublier and Jennie Dublier were sworn and testified. One check and one assignment and one letter was offered and received in evidence, and trial continued to May 22, 1913, at which last date trial was resumed and Anthony Botti was sworn and testified for plaintiff, and Charles H. Clark was sworn and testified for defendant. One record was offered and received in evidence for defendant. 20

Whereupon it is on this seventh day of October, A. D. 1913, by this Court considered and adjudged that said Sara R. Reid, defendant, recover against said Samuel Dublier, the sum of two hundred dollars debt, and thirteen dollars and sixty cents, cost of suit.

October 21, A. D. 1913, notice of appeal and check for \$250.00 in lieu of bond filed.

I, JAMES N. BRADEN, Clerk of the First District Court of Jersey City, Charles L. Carrick, Esquire, Judge, do hereby certify that the foregoing is a true copy of the summons, stipulation and record of a judgment of said Court. 30

IN WITNESS WHEREOF, I do hereby set my hand as Clerk of said Court and affix the seal of the said Court this second day of December, nineteen hundred and thirteen.

JAMES N. BRADEN,
Clerk. 40

STATE OF CASE.

FIRST DISTRICT COURT OF JERSEY CITY.

10	SARA R. REID, <div style="text-align: right; padding-right: 20px;">Plaintiff,</div> <div style="text-align: center; padding: 5px 0;"><i>v.</i></div> SAMUEL DUBLIER and JENNIE DUB- <div style="text-align: center; padding: 5px 0;">LIER,</div> <div style="text-align: right; padding-right: 20px;">Defendant. </div>	}	Case No. 85642 On Contract— On Appeal.
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20 The attorneys for the respective parties, plaintiff and defendant, being unable to agree upon the state of the case, and having applied to me, Charles L. Carrick, Judge of said Court, within the time limited by law, as extended by order made herein, I do hereby settle the case as follows:

30 On April 15, 1910, the defendants executed and delivered to Carmine Imbriglio and his wife their bond for \$3,500, and a mortgage on Jersey City real estate to secure the bond, both of which provided for the payment of interest and an installment of \$200.00 on account of the principal quarter annually on the 15th days of July, October, January and April of each year.

On July 14, 1910, the mortgagees assigned the said bond and mortgage to the Mercantile Trust Co., as collateral security for a loan made to Carmine Imbriglio, which assignment was recorded June 18, 1910, in the Hudson County Register's office. The assignment contained a covenant by the assignee to re-assign upon payment to it of \$2,000.00 and interest.

40 Carmine Imbriglio collected the interest and in-

STATE OF CASE

stallments of principal on the said bond and mortgage which became due on April 15, 1910, July 15, 1910, October 15, 1910, and January 15, 1911.

On Jan. 13, 1911, the mortgagees made another, assignment of the bond and mortgage to the plaintiff herein, which assignment was recorded on the same day, but did not deliver to the plaintiff the bond and mortgage which was then in the possession of the Mercantile Trust Co., and which remained in the possession of the said Trust Co. until the 20th day August, 1912. 10

The defendants had no actual notice of the assignment by Imbriglio to the plaintiff of January 13, 1911, until the 15th day of April, 1911, when the plaintiff, by her agent, McBride, notified the defendants that the plaintiff had purchased the bond and mortgage and demanded the installment and interest due that day. 20

The defendants paid the plaintiff interest and installment amounting to \$243.50. Plaintiff's agent McBride, claimed that the plaintiff was entitled to an additional \$3.00 interest, but the defendants denied this claim.

In August, 1912, Imbriglio, who up to that time had continued to reside in Jersey City, absconded. 30

On August 20, 1912, the plaintiff paid to the Mercantile Trust Co. the balance of the loan due it from Imbriglio, and on that date the Trust Co. assigned the bond and mortgage to the plaintiff, which assignment was recorded on August 23, 1912. The bond and mortgage were in the possession of the Trust Co. from June 14, 1910, to August 20, 1912, and the plaintiff never saw them nor had possession of them until the 20th day of August, 1912. On September 11, 1912, the plaintiff notified the de- 40

RULE ON ALLEGATION OF DIMINUTION OF RECORD
 fendants that she was the owner of the bond and
 mortgage.

The plaintiff had the records in the office of the
 Register of Hudson County examined by an attorney
 before she purchased the bond and mortgage
 from Imbriglio.

10 The parties stipulated to waive the statute provid-
 ing for the foreclosure of a mortgage before the
 commencement of an action upon the bond, and
 agreed that the question of the payment should be
 tried by the Court.

Case settled and signed by me this 5th day of
 November, A. D. 1913.

CHARLES L. CARRICK,
 Judge.

20 Filed Nov. 6, 1913.

JAMES N. BRADEN,
 Clerk.

**RULE ON ALLEGATION OF DIMINUTION OF
 RECORD.**

NEW JERSEY SUPREME COURT.

30 SARA R. REID,
 Plaintiff-Appellee,

vs.

SAMUEL DUBLIER AND JENNIE
 DUBLIER,
 Defendants-Appellants.

On Appeal.

40 Upon the annexed petition of the defendants duly
 verified and the affidavit of Charles H. Clark there-
 to attached, and it being represented to the Court

PETITION

that the Trial Court has omitted from the state of the case on appeal a statement of a material fact,

It is, on this 20th day of December, 1913, ordered, that Charles L. Carrick, Esq., Judge of the First District Court of Jersey City, certify to this Court whether Charles H. Clark, a witness produced on behalf of the defendants at the trial of this cause in the First District Court of Jersey City, testified that the Mercantile Trust Co. authorized Carmine Imbriglio as its agent to collect the installments of principal due under the bond and mortgage introduced in evidence in the case as the said installments became due.

10

PETITION.

NEW JERSEY SUPREME COURT.

20

SARA R. REID,
Plaintiff-Appellee,

v.

SAMUEL DUBLIER and JENNIE
DUBLIER,
Defendants-Appellants.

On Appeal.

30

To the Honorable Francis J. Swayze, Justice of the Supreme Court of New Jersey:

The petition of Samuel Dublier and Jennie Dublier, the defendants-appellants in this cause, respectfully shows:

This action was brought by the plaintiff to recover from the defendants \$200 as an installment of principal due under a bond and mortgage made by the defendants to one Carmine Imbriglio and

40

PETITION

assigned by the said Imbriglio to the plaintiff; the installment in question became due on the 15th day of January, 1911.

10 The bond and mortgage had been assigned on July 14, 1910, by Imbriglio and his wife, the mortgagees, to the Mercantile Trust Co. of Jersey City, which assignment had been promptly recorded, and the bond and mortgage had been delivered to the Mercantile Trust Co. at the time of the assignment to them.

20 On January 13, 1911, Imbriglio and his wife executed another assignment of the same bond and mortgage to the plaintiffs herein, and on August 20, 1912, the Mercantile Trust Co. assigned and delivered to the plaintiff the bond and mortgage in question.

30 The defendants paid the installment which became due on January 15, 1911, to Carmine Imbriglio. The defendants produced at the trial of this cause as a witness Charles H. Clark, the Secretary of the Mercantile Trust Co., who testified that the bond and mortgage had been assigned by Imbriglio and his wife to the Mercantile Trust Co. in June, 1910, as collateral security for a loan; that the mortgage provided for the payment of installments on principal quarter annually, and that the Mercantile Trust Co. authorized Carmine Imbriglio, as its agent, to collect the installments as they came due, and the affidavit of Charles H. Clark to this effect is hereto annexed.

40 Charles L. Carrick, the Judge before whom this case was tried in the First District Court of Jersey City, in stating the case on appeal, has omitted and refused to insert in the state of the case the fact testified to by the said Charles L. Clark, that the Mercantile Trust Co. authorized Carmine Imbriglio,

AFFIDAVIT OF BENJAMIN HEYMAN

as its agent, to collect the installments of principal as they came due; that this fact is a very important one in the case and absolutely necessary for a proper determination of the appeal.

Wherefore, the petitioners pray for a rule directing the said Charles L. Carrick, Judge of the First District Court of Jersey City, to certify to this Court whether Charles H. Clark, a witness produced on behalf of the defendants, testified that the Mercantile Trust Co., the assignee of the bond and mortgage, authorized Carmine Imbriglio, as its agent, to collect the installments of principal due under the said bond as they became due.

10

SAMUEL DUBLIER & JENNIE DUBLIER,
Petitioners,

By HEYMAN & HEYMAN,
Attorneys.

20

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

BENJAMIN HEYMAN, being duly sworn according to law, on his oath deposes and says:

I am a member of the firm of Heyman & Heyman, attorneys for the petitioners. I have read the foregoing petition and know the contents thereof, and the same is true.

30

BENJAMIN HEYMAN.

Sworn to and subscribed before }
me this 16th day of Decem- }
ber, 1913.

THOMAS F. FARRELL,
Notary Public of New Jersey.

40

AFFIDAVIT OF CHARLES H. CLARK

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

CHARLES H. CLARK, of full age, being duly sworn according to law, on his oath deposes and says:

10 I was a witness called by the defendant in the suit of Sara R. Reid, plaintiff, vs. Samuel Dublier, et al., defendants, in the First District Court of Jersey City, and I testified in said suit that Carmine Imbriglio and his wife had assigned to the Mercantile Trust Co., of which I was the treasurer, a certain bond and mortgage made by the defendants to the said Carmine Imbriglio and wife as collateral security for a loan of \$2,000 made by the Trust Co. to them, and that the said mortgage was an installment mortgage payable quarter annually, and that
 20 the Mercantile Trust Co. authorized Carmine Imbriglio, as its agent, to collect the installments as they came due.

CHARLES H. CLARK.

Sworn to and subscribed before }
 me this 4th day of Decem- }
 ber, 1913.

30 WILLIAM R. BINGHAM,
 Notary Public,
 N. J.

CERTIFICATE ON ALLEGATION OF DIMINUTION OF RECORD.

NEW JERSEY SUPREME COURT.

SARA R. REID,
Plaintiff-Respondent,

10

vs.

On Appeal.

SAMUEL DUBLIER and JENNIE DUBLIER,
Defendants-Appellants.

To the Supreme Court of the State of New Jersey:

I, Charles L. Carrick, Judge of the First District Court of Jersey City, do hereby certify, as I am required to do in and by an order made in the above-entitled action on the 20th day of December, 1913, directing that I certify whether I found as a fact upon the trial of the above action in the First District Court of Jersey City that the Mercantile Trust Company authorized Carmine Imbriglio, as its agent, to collect the installments of principal due under the bond and mortgage introduced in evidence in the case as the installments became due, that I did not find such to be the fact.

20

30

All of which I do respectfully certify this 23d day of December, A. D. 1913.

CHARLES L. CARRICK,
Judge First District Court of Jersey
City.

40

**FURTHER CERTIFICATE ON SECOND ALLE-
GATION OF DIMINUTION OF RECORD.
NEW JERSEY SUPREME COURT.**

10	<p>SARA R. REID, <i>Plaintiff-Respondent,</i></p> <p style="text-align: center;"><i>vs.</i></p> <p>SAMUEL DUBLIER and JENNIE DUB- LIER, <i>Defendants-Appellants.</i></p>	}	<i>On Appeal.</i>
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To the Supreme Court of the State of New Jersey:

20 I, Charles L. Carrick, Judge of the First District
Court of Jersey City, do hereby certify, in compli-
ance with the rule made in the above-entitled action
on the third day of January, nineteen hundred and
fourteen, as follows:

1. Charles H. Clark was a witness produced on
behalf of the defendants at the trial of the above-
entitled action in the District Court.

30 2. Charles H. Clark, as such witness, testified that
he was the treasurer of the Mercantile Trust Com-
pany, to which company Carmine Imbriglio and
wife had assigned a bond and mortgage made by the
defendants.

3. The witness, Clark, did not testify that the
Mercantile Trust Company authorized and permitted
Carmine Imbriglio to collect from the defendants
the installments of principal on the mortgage in
question as they became due.

40 In order to comply with the requirements of the
foregoing rule, I have re-examined my notes taken
at the trial May 13th, May 15th and May 22d, 1913,

MEMORANDUM

and have also re-examined the exhibits which were used upon the trial. At the request of counsel, when the evidence was closed, leave was reserved to submit briefs, which were not handed to me until about October 1st, 1913. I decided the case in a written memorandum filed in the District Court on October 7, 1913. After the lapse of so long a time since hearing the testimony, I have no recollection of the witness Clark's testimony, independent of my notes. Had he testified, however, as claimed by defendants, I have no question that I should have noted such important evidence upon the trial.

10

All of which I do respectfully certify this seventh day of January, A. D. 1914.

CHARLES L. CARRICK,
Judge First District Court of Jersey
City.

20

MEMORANDUM.

FIRST DISTRICT COURT OF JERSEY CITY.

REID,

vs.

DUBLIER.

} Case No. 85642

30

The recent decision by Vice Chancellor Stevens, referred to in the plaintiff's brief (*Mayer v. McLoughlin*, 80 *N. J. Eq.* (10 *Buch.*) 342), determines that the record of the assignment, January 13, 1911, was at once constructive notice to the mortgagor, as well as to the rest of the world.

40

MEMORANDUM

This rule as to notice depends upon the language of our statute. It has not heretofore been so generally understood, and the Vice Chancellor in the Mayer case thought the question so close and important that an appeal should be taken. This was not done, however, and the rule in this jurisdiction is settled, 10 contrary to the previously prevailing opinion, and to the practice in many of the sister States

There might be great force in defendant's argument as to the effect of the earlier assignment to the Mercantile Trust Company, if that assignment were in terms absolute. It shows, however, that it was intended only as collateral to an indebtedness of less amount than the face of the mortgage. Giving to that assignment, also, its full weight 20 under the Mayer case, there remained an assignable interest in the mortgage, and when the assignment of January 13, 1911, was recorded, all payments thereafter made must be held to be in view of both recorded assignments.

In view of the conflicting testimony as to when the installment of principal was paid, and in whose presence I would not be justified in holding that the payment was made earlier than January 14, 1911, which could not effect the right which had been acquired 30 by the plaintiff under an assignment dated and recorded on the prior day.

Plaintiff is entitled to a judgment for \$200.00.

CHARLES L. CARRICK,
Judge.

NOTICE OF APPEAL.

FIRST DISTRICT COURT OF JERSEY CITY.

SARA R. REID, <i>Plaintiff,</i>	} <i>On Contract.</i>	10
<i>vs.</i>		
SAMUEL DUBLIER and JENNIE DUB- LIER, <i>Defendants.</i>	} <i>Notice of Appeal.</i>	

SIRS:

Please take notice that the defendants, Samuel Dublier and Jennie Dublier, hereby appeal to the New Jersey Supreme Court from the judgment of the First District Court of Jersey City rendered in the above-entitled action on the seventh day of October, nineteen hundred and thirteen. 20

HEYMAN & HEYMAN,
Attorneys for Defendants.

To

SARA R. REID,
Plaintiff,

or

TREACY, MILTON & GRIFFIN,
Attorneys. 30

REASONS FOR REVERSAL.
NEW JERSEY SUPREME COURT.

10	<p>SARA R. REID, <i>Plaintiff-Appellee,</i></p> <p style="text-align: center;"><i>vs.</i></p> <p>SAMUEL DUBLIER and JENNIE DUB- LIER, <i>Defendants-Appellants.</i></p>	<p><i>Reasons for Reversal.</i></p>
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20 The following is a specification of the determinations or directions of the First District Court of Jersey City in the above-entitled cause with respect to which the defendant is dissatisfied in point of law. The judgment is erroneous because:

30 1. It was admitted that on January 15, 1911, the date on which the installment of principal amounting to \$200, for which this action was brought, became due and payable, the Mercantile Trust Co. was the legal owner of the bond and mortgage and in possession of them, and therefore the plaintiff was not entitled to the payment of the installment in question.

40 2. Even though the mortgage had been assigned to the Mercantile Trust Co. as collateral security only, nevertheless the Mercantile Trust Co. had absolute title to the said bond and mortgage until its loan had been repaid; and as long as the Mercantile Trust Co. remained the legal owner and continued in possession of the bond and mortgage it was the only person entitled to receive payments due on account of the principal sum duethereon.

REASONS FOR REVERSAL

3. It was proved by uncontradicted testimony, and therefore is an established fact in the case, that Imbriglio was the agent of the Mercantile Trust Co. and was authorized to collect from the owner of the premises the installment which became due on January 15, 1911, and the defendant paid the Mercantile Trust Co. by delivery of the payment to its agent, Imbriglio, the installment in question.

10

4. Because the plaintiff by the attempted assignment of Imbriglio to her on January 13, 1911, got at the most only an equity of redemption, giving her the right to redeem the bond and mortgage from the Mercantile Trust Co. on the payment by her to it of the amount of their loan. This was a right cognizable only in equity and not at law and she had no standing on her equity of redemption in a court of law whatsoever and could not at law be considered the person who was the legal owner of the installment.

20

5. Because on January 15, 1911, the plaintiff did not have possession of the bond and mortgage or either of them; and the Mercantile Trust Co. did have possession of them on that day; the Mercantile Trust Co. was an innocent purchaser for value of the bond and mortgage from Imbriglio; its rights were prior in point of time to the rights of the plaintiff and the Mercantile Trust Co. therefore was the only one who was entitled to receive the payment in question.

30

HEYMAN & HEYMAN,
Attorneys for Defendants-Appellants.

40

EXHIBITS 1 and 2

PLAINTIFF'S EXHIBITS.

EXHIBIT NO. 1.

10	JENNIE DUBLIER and SAMUEL DUBLIER, TO CARMINE IMBRIGLIO and MARIA IMBRIGLIO, his wife.	}	Mortgage for \$3,500 Dated April 15, 1910. Acknowledged April 18, 1910. Before W. H. Bellis, Comm'r of Deeds. Recorded Book 701, Page 88.
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Payable in quarterly installments of not less than \$200 each. First installment to be paid three months after date and interest thereon at 6%, payable quarterly.

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EXHIBIT NO. 2.

30	CARMINE IMBRIGLIO and MARIA IMBRIGLIO, TO MERCANTILE TRUST CO. OF JERSEY CITY.	}	ASSIGNMENT OF MORTGAGE. Dated June 14, 1910. Acknowledged June 14, 1910. Before Benjamin Treacy, Attorney- at-Law. Recorded June 18, 1910. Book 98 of Assign- ments. Page 451. Cons. \$2,000.
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Assigns mortgage made by Jennie Dublier and husband to Carmine Imbriglio and wife, recorded in Book 701 at page 88, and covenants that there is now due thereon the sum of \$3,500 and interest from April 15, 1910.

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EXHIBIT 3

Contains the following clause: Said party of the second part hereby agrees to assign the said mortgage to the said party of the first part upon the payment to it of \$2,000 and interest from the date hereof.

10

EXHIBIT 3.

<p>CARMINE IMBRIGLIO and wife,</p> <p style="text-align: center;">TO</p> <p>SARA R. REID.</p>	}	<p>ASSIGNMENT OF MORTGAGE.</p> <p>Dated January 13, 1911.</p> <p>Acknowledged January 13, 1911.</p> <p>Before Anthony Botti, Master in Chancery of N. J.</p> <p>Recorded January 13, 1911.</p> <p>Book 103. Page 165.</p> <p>Cons. \$1.00.</p>	<p>20</p>
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Assigns mortgage made by Jennie Dublier and husband to Carmine Imbriglio and wife, recorded in Book 701 at page 88. Covenants that there is now due the sum of \$3,100 and interest.

40

EXHIBITS 4 and 1

EXHIBIT 4.

10	<p style="text-align: center;">CARMINE IMBRIGLIO and MARIA IMBRIGLIO, his wife,</p> <p style="text-align: center;">TO</p> <p style="text-align: center;">MERCANTILE TRUST CO. OF JERSEY CITY.</p>	<p>ASSIGNMENT OF MORTGAGE.</p> <p>Dated January 17, 1912.</p> <p>Acknowledged Jan- uary 17, 1912.</p> <p>Before Frank G. Smith, Attorney- at-Law.</p> <p>Recorded January 19, 1912.</p> <p>Book 105. Page 450. Cons. \$1.00.</p>
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20 Assigns mortgage made by Jennie Dublier and husband to Carmine Imbriglio and wife, recorded in Book 701, page 88. Covenants that there is now due the sum of \$3,500.

DEFENDANT'S EXHIBITS.

EXHIBIT 1.

No. 1582. Jersey City, N. J., Jan. 16, 1911.

FIRST NATIONAL BANK

30

OF JERSEY CITY.

Pay to the order of Carmine Imbriglio Two
Hundred Forty-six 50/xx Dollars. \$246.50/xx.

SAMUEL DUBLIER.

Endorsements:

CARMINE IMBRIGLIO.

Pay to First National Bank,
Jersey City, N. J.

or order

40

Jan. 14, 1911

EXHIBIT 2

Mercantile Trust Company
of Jersey City, N. J.
Charles H. Clark, Treasurer.

Perforated stamp: Paid 1-14-1911

10

EXHIBIT 2.

MERCANTILE TRUST COMPANY
OF JERSEY CITY, N. J.

May 7, 1912.

MRS. JENNIE DUBLIER,
Jersey City, N. J.

DEAR MADAME:

Please take notice that a mortgage given by you to Carmine Imbriglio and wife, on property Third and Brunswick Streets, has been assigned to this Company, and all payments of principal and interest now due or becoming due, shall be payable at this Company. As there are no credits marked upon the mortgage, kindly produce your receipts that we may know the correct amount of said mortgage remaining unpaid. 20

Yours very respectfully,
MERCANTILE TRUST COMPANY, 30
C. H. CLARK, *Treasurer.*

40

EXHIBIT 3
EXHIBIT 3.JOHN MILTON.
COUNSELLOR-AT-LAW
15 Exchange Place,
Jersey City, N. J.

September 19, 1912.

10

JACOB SINGER, ESQ.,
76 Montgomery St.,
Jersey City, N. J.

DEAR SIR:

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30

I understand you are attorney for Mrs. Jennie Dublier, owner of property at the southeast corner of Brunswick and Second Streets in Jersey City. I wrote Mrs. Dublier on September 11th that the mortgage on the property formerly held by Carmine and Maria Imbriglio and by them assigned to the Mercantile Trust Company has been transferred by the Mercantile Trust Company to Sara R. Reid. I further notified Mrs. Dublier that all payments of installments and interest should be made to Mrs. Reid or to me as her attorney. My instructions are, in view of the fact that Mrs. Dublier is in arrears in the payment of installments, to foreclose the mortgage. I shall follow my instructions unless the installments and interest are paid before Monday of next week.

Yours very truly,
JOHN MILTON.

40