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NEW JERSEY
Court of Errors and Appeals

THE PENNSYLVANIA COMPANY FOR INSURANCE ON LIVES, ETC., ET AL.,
Plaintiffs-Respondents,
vs.
ANDREW MARCUS,
Defendant-Appellant.

On Appeal from Supreme Court.

Appellant's Points.

FACTS.

After foreclosure of a mortgage which secured the payment of a bond in the just sum of two thousand dollars, dated the third day of April, 1905, a judgment was entered in the Supreme Court by virtue of a warrant of attorney accompanying the bond. There was a rule to show cause why the judgment should not be set aside and this rule was dismissed and from the rule for dismissal this appeal was taken. The notice of intention to enter the judgment as required by the act of 1907, P. L., page 563, Compiled Statutes 3425, was not complied with in this, that the notice did not state in what court it was intended to enter the judgment.

The bond antedated the act.

LAW.

The opinion of the Supreme Court concedes that the notice must state in what court it is intended to enter a judgment, and that failure to do so fatalizes the judgment. This must be so or the act is meaningless. It is just as vital that the notice state the court in which the judgment is to be entered as it is to state the intention to enter judgment.

But the Supreme Court held that in this case the statute was without application, having been enacted after the execution of the bond. The theory of the decision is that it deprived the obligee in the bond of a remedy which he had at the time his bond was given. Our contention is that the statute is procedural only and does not deprive the obligee of a remedy in the sense that any additional burden is imposed upon him. Before the passage of the act the right existed to enter judgment by confession, and of this the act does not deprive him. If the Supreme Court is correct, then the Legislature could not deprive the obligee of the right to have a Supreme Court Commissioner authorize the entry of a judgment by limiting the authority to judges of the court only. Such a change would involve only a change in the procedure and in no sense deprive the party of a remedy. The case is quite unlike *Baldwin* v. *Flagg*, 43 *N. J. L., p.* 495, which compelled the obligee to first foreclose his mortgage before entering upon his bond. That act clearly deprived the obligee of a remedy which he had before the passage of the act, and it was a substantial deprivation. All the cases cited by the Supreme Court in support of its conclusion are cases where there was a substantial right withdrawn. We emphasize that the act of 1907 here involved simply states the procedure to be pursued in entering judgment upon the bond. The following cases support the view, that where the statute merely deals with procedure that it is not violative of the Constitution:

Baldwin v. *Newark*, 38 *Law* 158.
Rade v. *Union*, 36 *Law* 273.

In the case last cited the Court says:

> "It is equally clear that the Legislature may make laws which incidentally affect the pursuit of remedies for enforcing existing contracts."

II.

Touching the subject of the right of appeal. If there was no legal warrant for the entry of the judgment then the action of the Supreme Court in dismissing the rule to show cause was erroneous and final. The Court had no discretion to say that a void judgment should stand against the appellant. The judgment is either valid or invalid. It is not a case of error or mistake as to form, or a case where laches or some equivalent matter might be invoked. Neither is it a case where there are disputed facts which the Supreme Court found against the appellant and by which he would be bound. Suppose a judgment should be entered against a person where no service was made and he applied for a rule to show cause why the judgment should not be set aside and it appeared indisputably that he was not served and that he had a meritorious defense. In such a situation could there be any doubt as to the right of the defendant to appeal to this court from the action of the Supreme Court in refusing to set aside the judgment? The following cases hold that the matter is reviewable on appeal:

Bretthauer v. *Jacobson*, 79 *Law* 223.
Defiance Fruit Co. v. *Fox*, 76 *Law* 482.
Knight v. *Cape May Sand Co.*, 83 *Law* 597.

The case last cited is dispositive.

The judgment of the Supreme Court should be reversed and the judgment under review vacated.

Respectfully submitted,

C. L. COLE,
Atty. for Appellant.

NEW JERSEY COURT OF ERRORS AND APPEALS.

June Term, 1916.

PENNSYLVANIA COMPANY FOR INSURANCE ON LIVES, &c., *et al.*, *Plaintiffs-Respondents*, vs. ANDREW MARCUS, *Defendant-Appellant.*	ON APPEAL TO SUPREME COURT.

BRIEF ON BEHALF OF PLAINTIFFS-RESPONDENTS.

This is an appeal from an order of the Supreme Court dismissing an application on part of defendant to set aside a judgment entered therein upon a bond accompanying a mortgage, after the mortgage had been foreclosed in the Court of Chancery, and the mortgaged premises sold.

The only reason assigned for the vacation and

cancellation of the judgment was that the notice, required by the provisions of P. L. 1907, Chapter 231, page 563, did not state in what court it was intended and proposed to enter judgment. (C. p. 10, l. 17.)

FACTS.

The facts with which the Court should be acquainted, in order to properly determine this question, are as follows:

On April 3, 1905, the defendant, Marcus, gave his bond to Enos R. Artman, with a warrant to confess judgment, which bond was secured by a mortgage on premises on Georgia Avenue, Atlantic City. This is the bond upon which judgment was subsequently entered.

On January 16, 1911, Simon Brod gave to Andrew Marcus another bond for $1,000, which was secured by another mortgage upon the same premises. This latter bond and mortgage were assigned by Marcus to Artman May 6, 1912.

Both of these mortgages were foreclosed in one proceeding by the plaintiffs as executors of said Artman. (C. p. 7, l. 26.)

The mortgaged premises were sold at public sale on July 25, 1914, and the judgment represents the deficiency upon the bond accompanying the mortgage given by the defendant, Marcus, to Artman.

A notice of intention to enter judgment for deficiency was recorded and filed in the Clerk's office of Atlantic County, September 28, 1914, a copy of which notice is attached to the State of the Case (page 8).

The defendant concedes there is no defect what-

ever in the entry of this judgment, except that the notice did not state the court in which it was proposed to enter the same.

RULING OF SUPREME COURT.

Upon these facts, the Supreme Court refused to set aside the judgment, upon the grounds, as stated in the opinion of Mr. Justice Garrison, (C. p. 11), that the provisions of Chapter 231, Laws of 1907, above referred to, as applied to bonds made prior to its enactment, deprives the obligee of a remedy for enforcing his contract, which existed when the contract was made, in contravention of Article 4, Section 7, Paragraph 3, of the New Jersey Constitution.

Consequently, a rule was entered in the Supreme Court, dismissing the rule to show cause for the vacation and setting aside of the judgment, (C. p. 15).

REASONS ASSIGNED FOR REVERSAL.

The only ground assigned for the reversal of the action of the Supreme Court is that the latter should have held that the statute referred to related solely to procedure, and did not substantially affect the plaintiff's remedy, (C. p. 14).

ARGUMENT FOR RESPONDENT.

First.

In the first place, we insist that the Supreme Court properly held that the provisions of Chapter 231 of the Laws of 1907 do not apply to the bond upon which judgment was entered, for the reason that the same was given prior to the enactment of such legislation, and, therefore, cannot be enforced so as to limit, abrogate, or in any way modify the substantial rights of the obligee at the time of the creation of the indebtedness.

Prior to the passage of the supplement of 1907, the only provision with relation to the respective rights and obligations of obligors and obligees in those cases coming within its terms was the original Act of 1880, page 256, and the amendments of 1881, page 184, none of which required the filing of any notice of intention to enter judgment for deficiency upon a bond after the foreclosure of the mortgage accompanying the same.

With reference to the original Act, the Courts of this State have expressly held in several cases, that its terms do not apply to bonds created before the passage of the same, and we insist that the same interpretation should be put upon the supplement of 1907.

Wilkinson vs. Rutherford, 49 Law 241;
Morris vs. Cutler, 46 Law 260;
Baldwin vs. Flagg, 43 Law 495.

This rule has been the established law on the sub-

ject for years, and never criticised or questioned in any manner.

The constitutional provision is that "the Legislature shall not pass any * * * * law impairing the obligation of contracts or depriving a party of any remedy for enforcing a contract which existed when the contract was made."

The Courts of our State have construed the constitutional provision to mean that the Legislature may make laws incidentally affecting the pursuit of remedies for enforcing existing contracts, such as regulating the admission of evidence, the course of practice in the courts, the mode of conducting sales under judgments and execution and altering the forms of action or prescribing periods for the limitation of actions within a reasonable time, but must leave the substance of the remedy unaffected.

The Act of 1907, *Rader vs. Union*, 36 L. 273, goes right to the substance of the matter. It provides that "No judgment shall be entered by confession of any bond, &c. * * * * unless there shall be filed * * * * a written notice, &c." This notice is to be recorded and be a public record.

When the bond and mortgage in the case under consideration were executed, the obligee had certain substantial rights and remedies vested in him, which he could exercise by reason of his contract. The remedies for enforcement of the contract, when it is made, are part of the obligation of the contract. Any repeal, restriction or change of these remedies, which substantially obstructs or retards the enforcement, or lessens the value of the contract, impairs its obligation.

The conclusion reached by Mr. Justice Garrison in the opinion rendered in the court below is largely based upon the reasoning of Mr. Justice Kalisch in

Neu vs. Rogge, 95 Atl. 632. This opinion was filed by the Court of Appeals after the argument on the rule to show cause in this case, and was not reported when the opinion of Mr. Justice Garrison was filed.

We contend that the conclusion reached by Mr. Justice Garrison is correct, and the case of *Neu vs. Rogge* is dispositive of this question.

The matter considered by the Court of Appeals in *Neu vs. Rogge* was whether or not the Supreme Court had the authority to permit the statutory notice, required by the Act of 1907, to be filed *nunc pro tunc.* A suit for deficiency had been commenced upon a bond without the plaintiff filing, prior to the beginning of the action, the statutory notice. Upon application of the defendant, the Supreme Court set the judgment aside, and ordered that the complaint and summons stand, and the plaintiff might, within twenty days, file the statutory notice *nunc pro tunc.* The plaintiff, in compliance with the order, gave and filed the statutory notice, and the defendant failed to file any answer within the time allowed by the Supreme Court for that purpose, and the plaintiff took judgment by default against him. An appeal was taken to the Court of Appeals from the entry of this judgment, and the appellant contended that the action of the lower Court, in permitting the plaintiff to file the statutory notice *nunc pro tunc,* was erroneous, and that judgment against the defendant was null and void, having been entered in direct violation of the Act of 1907.

The following excerpts from the opinion of Mr. Justice Kalisch, in our judgment, support the proposition that the Act of 1907 provided for a substantial and material alteration and change in the remedy which theretofore existed in favor of the holders of a bond accompanied by mortgage, and that

the requirements for the statutory notice to be given is not merely a matter of procedure.

"The clear legislative intent was, by a public "record, to make secure the title to a purchaser "of mortgaged lands which had been fore- "closed and failed to realize, on sale thereof, "the amount secured by the bond and mortgage, "and which were subject to redemption by the "person within six months after the entry of "judgment against him, for the deficiency on "the bond."

"But counsel for the respondent further "urges that, since no prospective purchaser is "affected by the judgment in this case, and the "appellant does not deny the debt, therefore "the appellant suffers no wrong of which he can "complain. We think a defendant not only suf- "fers a wrong, but the public also, when a "judgment is entered against a defendant con- "trary to the express mandate of the Legisla- "ture. The Legislature expressly forbids the "entry of a judgment, in a case like the present, "unless a *lis pendens* was filed prior to the "bringing of the action. The statute is manda- "tory in this respect. As has been pointed out, "it declares a public policy for the conservation "and protection of the public records relating "to the title to lands. It is obvious that any "departure from the requirement of the statute "that a *lis pendens* shall be filed prior to the "beginning of an action will tend to defeat the "very object of the Act.

"If, in a case where judgment is entered by "default, the failure to file such statutory no- "tice prior to the beginning of the action may "be remedied by an judicial order *nunc pro tunc*

"after the action has been begun, then there is "no good reason why it may not be done in "every case where the judgment is by default "under the same circumstances. We are un- "able to find any legal justification for ignor- "ing the statutory declaration that the notice "must be filed prior to the beginning of the ac- "tion in order to enter a valid judgment. An "order *nunc pro tunc* to file such notice after "the beginning of the action and before the en- "try of the judgment, in face of the statute, "must fail of its purpose. The statute being "mandatory, the Supreme Court was without "power to make an order *nunc pro tunc,* after "the plaintiff had begun his action, to remedy "the omission, and thereby to permit the plain- "tiff to file the statutory notice as if in con- "formity with the statutory requirements."

If it were intended to hold that the requirements of the Act of 1907 were mere matters of procedure, it seems to us that the Appellate Court would not have reversed the action of the Supreme Court in allowing the statutory notice to be filed *nunc pro tunc.*

The granting of an application to allow an order or permit any matter to be entered *nunc pro tunc* rests in the Court's sound discretion, and corrections and amendments will be allowed or refused as shall most conduce to the furtherance of justice under the peculiar circumstances of each case.

17 *Enc. Prac. and Pld.* 927.

That the notice required by the Act of 1907 is a matter of substance and not of form, is certainly determined by the case of *Neu vs. Rogge, supra.*

We further contend that the conclusions reached by Mr. Justice Garrison are supported by the authorities cited in his opinion.

In *Bradley vs. Lightcap,* 195 U. S. 1, it was held that a statute adopted subsequently to the creation of a mortgage, which provided that if the mortgagee, being in possession, bids in the mortgaged premises at a sale or foreclosure at less than the amount due on the mortgage, and the mortgagor does not redeem the legal title of the mortgagee, and his rights of possession shall be forfeited by failure to obtain a deed within the time allowed to the mortgagor to redeem, is unconstitutional.

The opinion of Chief Justice Fuller laid down the proposition that it was not necessary for the mortgagee to take a deed before the passage of the Act, although by not doing so, it might let in an equity of redemption. Such statute impaired the obligation of the prior mortgage contract, and operated to deprive the mortgagee of property rights without due process of law.

In *Walker vs. Whitehead,* 83 U. S. 413, it appeared that on Jan. 1st, 1870, suit was brought on a promissory note given in March, 1864, and payable in March, 1865. A law was passed in Oct., 1870, which enacted, *inter alia,* that in all suits pending on any contract made before June 1st, 1865, it should not be lawful for the plaintiff to have a verdict unless he made it appear that all taxes chargeable by law upon the same "had been duly paid for each year since the making of the same;" and also enacted that it should be a condition precedent to such recovery that "the said debt has been regularly given in for taxes and the taxes paid," and also made other retrospective enactments. The defendant moved to dismiss the suit because plaintiff had not filed an affidavit of the payment of the tax.

Held, this law impaired the obligation of a contract and was accordingly unconstitutional. "The laws which exist at the time of the making a contract, and in the place where it was made and to be performed, enter into and make part of it. This embraces those laws alike which affect its validity, construction, discharge and enforcement. The remedy or means of enforcing a contract is a part of that 'obligation' of a contract which the constitution protects against being impaired by any law passed by a State."

In *Baldwin vs. Flagg*, 43 Law 496, it was held that the second section of the Act of 1881, above referred to, providing that in all cases where a bond and mortgage have been given for the same debt, all proceedings to collect the debt shall be first to foreclose the mortgage, and if, upon sale of the mortgaged premises, a deficiency occurs, it may be lawful to proceed on the bond for the deficiency, was unconstitutional as to antecedent obligations. Mr. Justice Depue's opinion contains the following statements:

> "The obligation of a contract is synonymous
> "with the ability to enforce its performance.
> "It consists in the power and efficacy of the law
> "which applies to and enforces performance of
> "it, or an equivalent of non-performance. Thus,
> "if a party contracts to pay a certain sum on a
> "certain day, the contract binds him to perform
> "it on that day, and this is its obligation. 2
> "*Story on Const.*, §1378. It is perfectly clear
> "that any law which enlarges, abridges, or in
> "any manner changes the intention of the par-
> "ties resulting from the stipulations in the
> "contract, necessarily impairs it, and the man-
> "ner or degree in which this change is effected

"can in no respect influence the conclusion. Any "deviation from its terms, by postponing or "accelerating the period of performance which "it prescribes, imposing conditions not ex- "pressed in the contract, or dispensing with the "performance of those which are part of the "contract, however minute or apparently im- "material in their effect upon it, impairs its "obligation. 2 *Story on Const.*, §1385."

In *Morris vs. Carter,* 46 Law 260, it was held that the limitation in the Act of 1881, above referred to, that suits on bonds should be commenced within six months from the date of the sale of the mortgaged premises, was so connected with the other parts of the Act as to be inseparable, and, as to antecedent obligations, was unconstitutional.

In *Wilkinson vs. Rutherford,* 49 Law 241, Chief Justice Beasly cited *Baldwin vs. Flagg* with approval.

Mr. Justice Depue, in the case of *Rader vs. Township,* above cited, held in substance that it was clear that any legislation, the effect of which is to deprive the party of his power to resort to the person or any property which, as the law stood when the contract was made, might have been taken or applied in satisfaction of the demand, is within the constitutional provision.

Mr. Justice Depue, however, did include in those cases where the procedure might be altered, Acts changing a corporate name, increasing corporate limits, and similar Acts altering or modifying in mere matters of form the means of realizing on the benefits of a contract leaving the substance of the remedy unaffected.

We submit for consideration other cases in the Federal Courts, as follows:

In *Harrison vs. Remington Paper Company,* the United States Circuit Court of Appeals, Eighth Circuit, 140 Fed. Rep. 385, held as unconstitutional and void, a statute repealing a former statute giving creditors of a corporation an individual action against a stockholder, or a right to an execution against a stockholder upon the return of an execution unsatisfied upon a judgment against the corporation, and substituting for these remedies a suit in equity, by a Receiver to be appointed after a judgment against the corporation and the distribution, *pro rata* among the creditors, of the proceeds which the Receiver shall collect from the stockholders.

In *Brine vs. Hartford F. Ins. Co.,* 96 U. S. 627, 637, the Circuit Court of the United States decreed the immediate sale of mortgaged property in disregard of the law of a State in existence at the time the mortgage was made, to the effect that the mortgagor should be allowed twelve months after the sale in which to redeem his property therefrom. The Federal Supreme Court reversed the decision, and said:

> "At all events, the decisions of this Court are "numerous that the laws which prescribe the "mode of enforcing a contract, which are in ex- "istence when it is made, are so far a part of "the contract that no changes in these laws "which seriously interfere with that enforce- "ment are valid, because they impair its obli- "gation within the meaning of the Constitu- "tion of the United States."

In *McCracken vs. Hayward,* 2 How. (U. S.) 608, 611, 612, the validity of a law of the State of Illinois, that a sale of property levied upon under an execution should not be made unless it should bring

two-thirds of its valuation according to the opinion of three householders, was challenged. The Court held it unconstitutional and void against creditors whose contracts were made before its passage. It said:

> "The obligation of a contract consists in its "binding force on the party who makes it. This "depends on the laws in existence when it is "made. These are necessarily referred to in "all contracts, and form a part of them as the "measure of the obligation to perform them by "the one party and the right acquired by the "other. There can be no other standard by "which to ascertain the extent of either than "that which the terms of the contract indicate, "according to their settled legal meaning. "When it becomes consummated, the law defines "the duty and the right, compels one party to "perform the thing contracted for, and gives "the other a right to enforce the performance "by the remedies then in force. If any subse- "quent law affect to diminish the duty, or to im- "pair the right, it necessarily bears on the obli- "gation of the contract in favor of one party, to "the injury of the other; hence any law which "in its operation amounts to a denial or ob- "struction of the rights accruing by a contract, "though professing to act only on the remedy, "is directly obnoxious to the prohibition of the "Constitution."

In *Louisiana vs. New Orleans,* 102 U. S. 203, 206, Mr. Justice Field, in delivering the opinion of the Court, said:

> "The obligation of a contract in the consti- "tutional sense is the means provided by law

> "by which it can be enforced, by which the par-
> "ties can be obliged to perform it. Whatever
> "legislation lessens the efficacy of these means
> "impairs the obligation. If it tend to postpone
> "or retard the enforcement of the contract, the
> "obligation of the latter is to that extent weak-
> "ened."

Seibert vs. Lewis, 122 U. S. 284, 294, was a case in which the Supreme Court held that a law of the State of Missouri which repealed a statute in force when certain county bonds were issued, which gave the remedy of a special tax to pay the interest and principal on the bonds, substituted a less effective remedy, and violated the prohibition against the impairment of the obligation of contracts, the Court saying:

> "It is well settled by the decisions of this
> "Court that 'the remedy subsisting in a State,
> " 'when and where the contract is made and is
> " 'to be performed, is a part of its obligation,
> " 'and any subsequent law of the State which
> " 'so affects that remedy as substantially to im-
> " 'pair and lessen the value of the contract is
> " 'forbidden by the Constitution, and is, there-
> " 'fore, void.' "

COMMENT ON CASES CITED IN APPELLANT'S BRIEF.

In *Baldwin vs. Newark,* 38 Law 158, the plaintiff sued on a warrant dated August 4, 1874, issued to represent an assessment of damages awarded to the plaintiff for lands taken in the opening of a street. The defendant set up an assessment against the plaintiff for benefits arising from the opening of the same street, which setoff exceeded the amount of plaintiff's warrant. By the original charter of Newark, the obligation of the city to pay the assessment for damages, and the right of the property owner to recover the assessment of benefits, were enforceable in separate actions. In 1873 the Legislature passed an Act amending the city charter, providing for the collection of both classes of indebtedness in one suit, making one liable to an offset against the other.

The Essex Circuit allowed the assessment of benefits as a satisfaction of the plaintiff's demand on the warrant for damages, and gave judgment generally for the defendant. The Supreme Court held that the indebtedness of the city to the plaintiff, for the damages awarded, was not impaired or affected by the amended legislation. The form of the remedy was altered only. This is perfectly apparent, because it merely provided that the obligations of the two parties could be settled in one suit, avoiding the necessity of resorting to two actions.

The facts in the case of *Rader vs. Union* were as follows:

In 1871, a portion of the Township of Union was

created a separate corporation for the purpose of laying out, opening and improving streets. The work was to be executed under the supervision of Commissioners who were authorized to borrow money and issue bonds of the corporation, and to cause assessments to be made on lands benefited to defray the expenses.

In 1872 the Act of Incorporation was repealed. By the Repealing Act, it was provided that the repeal should not affect or impair any legal contract of the Commissioners or any indebtedness contracted for improvements, and the Township Committee of the township was authorized to compromise or complete such contracts, and to issue township bonds and to provide funds therefor, and to make and collect assessments to pay expenses in the same manner as the Commissioners had been empowered.

It was held that the Repealing Act was constitutional as affecting a creditor who had furnished supplies to the Commissioners before the repeal, although an action for the same was pending when the repealer became a law. The effect of the decision was to prevent any recovery against the Commissioners, because their legal existence had ceased by repeal of the Act, and the right against the township being expressly reserved by the repealer, to creditors in existence at the time of the repeal the plaintiff was afforded the same remedy for the recovery of a claim, and only substituted, instead of the Commissioners, a different defendant, to wit the township.

We, therefore, contend, upon this branch of the argument, that the determination of the Supreme Court was correct in holding that the notice required by the Act of 1907 was not necessary as to the validity of the judgment in favor of the plaintiff.

Second.

We further contended in the Supreme Court and now argue as an additional reason for the affirmance of the decision appealed from, that neither the original Act of 1880 or the supplement of 1907 applied to the situation here disclosed, because two mortgages held by one complainant, upon the same property, were foreclosed in one proceeding, the bonds secured by said mortgages being signed by different obligors. In other words, there were two independent indebtednesses, due from two separate and distinct persons, notwithstanding the fact that both mortgages were, at the time of the institution of the foreclosure proceedings, owned by the same complainant, and foreclosed in one bill.

Both the original statute and the supplement are in derogation of the common law, and must be strictly construed.

Callan vs. Bodine, 81 Law 240-243.

We submit that the original Act, requiring the foreclosure of a mortgage first, and limiting the right to enter judgment to a period of six months after the sale of the mortgaged premises, does not apply to a situation here presented, where two mortgages are being foreclosed, and the obligors are not identical.

Section 2 of the Act, as amended, P. L. 1881, page 184, Comp. Stat., page 3421, Section 48, provides that in all cases where a bond and mortgage has or may hereafter be given for the same debt, all pro-

ceedings to collect shall be first to foreclose the mortgage, and if the mortgage premises should not sell for sufficient to satisfy said debt, interest and costs, then and in such case it shall be lawful to proceed on the bond for deficiency, and all suits on said bond shall be commenced within six months from the date of the sale of the mortgaged premises.

Section 3 provides that if after the foreclosure the person who is entitled to the debt shall recover a judgment in a suit on said bond for any balance, such recovery shall open the foreclosure and sale of the premises, and the person against whom the judgment has been recovered may redeem the property by paying the full amount of money for which the decree was rendered, with interest, &c., providing a suit for redemption be brought within six months after the entry of the judgment for the balance of the debt.

In the first place, the statute, by its very language, refers to a single bond and mortgage, and not to several bonds and mortgages foreclosed in the same proceeding, particularly where bonds having different obligors are involved.

In the next place, it is submitted that the legislative scheme invoked for the purpose of permitting redemption is not appropriate, as a matter of practicable application, to a case where there is a dual personality so far as the obligation to pay the mortgage debt is concerned. Where there is one obligor, and a decree upon one mortgage, and a sale to satisfy that decree, the method prescribed by the statute for redemption is one of no serious difficulty, but where, as in this case, there is a conflict of interest as between different persons obligated to pay the debts due to the complainant, then great confusion arises, and the situation is sufficient, in our

judgment, to lead to the conclusion that the Legislature never intended that the Act should apply to such case.

It appears, by the affidavit attached to the proceedings for the confession of judgment, that the decree on the bond on which the defendant, Marcus, was the obligor, was $2071.50, with interest from May 27, 1914 (C. p. 5, l. 3). This was the first mortgage, and the decree due the complainant upon the second mortgage, while not stated in such affidavit, was, at least, $1,000, the principal of the bond of Simon Brod accompanying the same.

The net proceeds of the sale of the property was $500, and the deficiency on the defendant's bond was $1740.29 (C. p. 5, l. 9, *et seq.*). No sum was realized to be applied on account of the bond of Brod, secured by the second mortgage on the property.

If no other interests were involved, the defendant, Marcus, under the terms of the Act, would be entitled to a redemption of the property upon paying the deficiency upon his bond. In view, however, of the fact that the decree in the foreclosure proceedings in favor of the complainants, included not only the amount due upon the Marcus bond, but that due upon the Brod bond, the defendant, Marcus, could not, by paying the deficiency on his bond, secure a redemption of the property.

If the Act be construed so as to fit this situation, Marcus would be entitled to redemption upon the payment of the amount due by him, and the complainants would have no way to recover the amount due upon the Brod bond, or hold the mortgaged premises until such amount be paid. Certainly, the Court would not so construe the Act as to permit the redemption of the mortgaged premises by Marcus upon merely paying the amount due from him. The

complainants could not be restored to their original status, and it would be taking from them the property sold at foreclosure proceedings, without the payment to them in full of both debts.

If the statute be construed so as to permit either one of the obligors to redeem by the payment of the amounts due upon both bonds, then if the payment was made by Marcus, he would be paying an indebtedness of Brod, and if made by Brod, the latter would be liquidating a debt of Marcus. In either event, there would be no possible way by which one could recover from the other, as the statute does not contemplate any scheme of subrogation.

Therefore, we submit that it was never intended by the Legislature that this Act, limiting the right to enter judgment to a period of six months, or the supplement which prescribes the conditions with relation to the entry of such judgment, at variance with the common law, should apply to a case of this character, where there is a liability upon bonds of separate and distinct obligors, as the case at bar.

In many instances, the Courts have departed from a strict and literal interpretation of this legislation, and have excluded from the operation of the statutes those cases where, as a matter of practical application, it is apparent that the Legislature never intended it should apply.

In *Seigman vs. Streeter,* 64 Law 169, it was held by the Supreme Court that the Act referred to had no application where the existence of the mortgage had been terminated by the institution of the suit on the bond.

This decision is certainly at variance with the express language of the Act, and shows that the Courts have applied the rule of reason with reference to the interpretation thereof.

In *Franklin Association vs. Richman,* 65 Law 529, it appeared that the mortgagor, after giving a bond and warrant to confess judgment, conveyed the mortgaged premises to a third person, with an agreement that the grantee should sell the premises clear of the lien of the mortgage, and apply the proceeds to the payment of the amount due on the bond and warrant, as far as that would extend, and it was held that after such sale by the grantee, and the application of the proceeds of sale, in accordance with the agreement, the mortgagee might lawfully enter judgment on the bond, and that the statute above referred to did not apply.

In *Weatherby vs. Sparks,* 63 Law 445, it was held that under order to limit creditors a verified claim on the bond of the deceased obligor be presented to his legal representatives, and they serve notice disputing the same, a suit may be brought on the bond without first foreclosing an accompanying mortgage, notwithstanding the statutory enactment.

In *Colton vs. Salomon,* 67 Law 73, it was held that the statute requiring a mortgage securing a bond to be foreclosed before suit may be brought on a bond, is not applicable unless the property mortgaged is within this State.

Certainly the language of the Act is sufficiently broad to cover bonds and mortgages generally, irrespective of location of the mortgaged premises, and this is merely another instance to show how the Courts have gradually departed from the literal text of this Act.

In *Pruden vs. Savage,* 70 Law 22, it was held that the said Act was not applicable to cases in which the mortgage given is a nullity for want of title in the mortgagors. Mr. Justice Dixon uses this language, page 23:

> "The statute invoked applies, we think, only "to cases in which a genuine mortgage has "been given. This seems plain from its pro- "visions that the mortgage shall be foreclosed "before suit is brought upon the bond, and that "after judgment upon the bond, the judgment "debtor may redeem the property."

This language is particularly pertinent to the situation presented in the case under consideration. As above suggested, Marcus could not redeem the property without paying the debt of Brod. At least, this could not be accomplished, if the rights of the mortgagee were to be protected. If Marcus be afforded the privilege of paying his own debt, and obtaining a conveyance for the mortgaged premises, then it would not be a compliance with the terms of this Act, which required him to pay the full amount of money for which the decree was entered, with interest and costs.

In *Earl vs. Jenkins,* 71 Law 416, it was held that a judgment entered for the penalty, and in accordance with the Act concerning obligations, and in pursuance of the warrant to confess, is not illegal, although part of the real debt had been collected by a foreclosure given for the same debt, and the case is within the scope of the Act above referred to.

The language of the Act is that the judgment shall be entered for the balance of the debt only. The judgment was entered for the penalty. Mr. Justice Dixon stated:

> "The Act first mentioned does not render "such a judgment illegal. In cases like this "it may be read as if written 'judgment shall "'be rendered according to the established "'practice,' and execution 'issue only for the "'balance of the debt, and costs of suit.'"

This is certainly a radical departure from the language of the Act, and shows to what extent the Court will go to reach a reasonable and practicable construction of the Act, regardless of the words employed.

Vice-Chancellor Pitney, in *Andrews vs. Burk,* 61 Eq. 297, page 302, in referring to the Act under consideration says:

> "I will add that the statute in question is, "in my judgment, one whose application should "not be extended to the cases not clearly within "its terms."

The Court of Appeals, in *Smith vs. Crater,* 43 Eq. 636, held that where a claim against a decedent's estate, alleged to be insolvent, is founded upon a bond secured by a mortgage, the claim upon said bond may be presented to the administrator before the premises are sold.

We submit, therefore, that for the reasons now urged under this head, the statute imposing conditions upon the plaintiff regarding entry of judgment, did not apply, and any imperfection with reference to the notice required by the Act of 1907 is not fatal to the validity of the judgment. Whether this point was considered by the Supreme Court in the argument below we are not advised. No mention is made in the opinion of Mr. Justice Garrison. The case of *Neu vs. Rogge* does not control the particular question because only one bond was involved there.

SUMMARY.

We submit, therefore, that the judgment appealed from be affirmed.

LEWIS STARR,
Atty. of Plaintiffs-Respondents.

MacCrellish & Quigley Co., Printers, Trenton, N. J.

New Jersey Supreme Court.

The Pennsylvania Company, for Insurance on Lives, &c., et al.,
Plaintiffs,
vs.
Andrew Marcus,
Defendant.

RULE TO SHOW CAUSE.

(*Filed March 9, 1915.*)

Upon reading and filing the affidavit of C. L. Cole, and upon reading the certified copy of the notice referred to in his affidavit,

It is on this sixth day of March, 1915, on motion of C. L. Cole, attorney for the defendant, ordered that the plaintiffs show cause before the Supreme Court, at Trenton, on the first Tuesday in June, next, at the hour of ten thirty in the forenoon or as soon thereafter as the cause may be reached, why the judgment entered in the above-entitled cause should not be set aside, cancelled of record, and for nothing holden.

It is further ordered that both sides have leave to take testimony before a Supreme Court Commissioner, on notice as provided by statute, and rules of court, to

be read at the argument of the rule and that a copy of said affidavit and of this rule, both of which may be uncertified, be served upon plaintiffs or their attorney of record within five days of date hereof, and that such service may be made out of the State if it cannot be made within the State.

CHAS. C. BLACK,
J. S. C.

JUDGMENT RECORD.

(Filed October 7, 1914.)

KNOW ALL MEN BY THESE PRESENTS, That I, Andrew Marcus, of the City of Atlantic City, County of Atlantic, and State of New Jersey (hereinafter called the Obligor), am held and firmly bound unto Enos R. Artman, of City and County of Philadelphia, and State of Pennsylvania (hereinafter called the Obligee), in the sum of four 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 hereby bind and oblige myself, my Heirs, Executors and Administrators, and every of them firmly by these presents.

Sealed with my seal. Dated the third day of April in the year of our Lord one thousand nine hundred and five.

The Condition of this Obligation is such, That if the above bounden Obligor, his Heirs, Executors or Administrators, or any of them, shall and do well and truly pay, or cause to be paid, unto the above-named Obligee, his certain Attorney, Executors, Administrators or Assigns, the just sum of two thousand dollars, lawful money aforesaid, at the expiration of one year from the date hereof, together with interest thereon,

payable semi-annually, at the rate of 5½ per cent., per annum, and together with all taxes, or charges in nature thereof, that may be laid or levied on this obligation, or the principal and interest moneys hereby secured, immediately upon their assessment, without any fraud or further delay; and for the production to the said Obligee, his Heirs, Executors, Administrators or Assigns, on or before the thirty-first day of December of each and every year, of receipts for all taxes of the current year assessed upon the premises described in an accompanying indenture of mortgage; then the above obligation to be void, or else to be and remain in full force and virtue; *provided, however,* and it is hereby expressly agreed, that no credit shall be claimed or allowed on the interest above provided because of any taxes paid upon said premises, and that if at any time default shall be made in the payment of interest as aforesaid, for the space of thirty days after any semi-annual payment thereof shall fall due, or in the payment of any tax or charge as aforesaid, for the space of ninety days after the same shall first become payable, or in such production of tax receipts as aforesaid on or before the day aforesaid, then and in either such case the whole principal debt aforesaid shall, at the option of the Obligee therein named, his Executors, Administrators or Assigns, become due and payable immediately, and payment of said principal debt, and all interest thereon, shall be enforced and recovered at once, anything herein contained to the contrary notwithstanding.

Sealed and delivered in the presence of WILLIAM F. LEEK. } ANDREW MARCUS (SEAL).

To any 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 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 third day of April, anno Domini one thousand nine hundred and five.

Sealed and delivered in the presence of WILLIAM F. LEEK. } ANDREW MARCUS (SEAL).

Endorsed: Bond and Warrant. Andrew Marcus to Enos R. Artman. Dated April 3rd, 1905. Mortgage on premises east side Georgia Ave. for $2,000.

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

J. A. Gates, being duly sworn according to law, on his oath deposes and says:

That he is the Vice-President of the Pennsylvania Company for Insurance on Lives and Granting Annuities, and the duly authorized agent of the said Pennsylvania Company for Insurance on Lives and Granting Annuities, and Caleb D. Artman and Daniel G. Endy, Executors of Enos R. Artman, deceased, in this behalf.

That the true consideration of the bond, of which the annexed is a true copy, and on which judgment is about to be confessed, was and is the sum of two thousand dollars for money loaned by the said Enos R. Artman in his lifetime to the said Andrew Marcus.

That at the time of the loaning of said money, the said Andrew Marcus and Susanna P., his wife, gave as security to the said Enos R. Artman a mortgage on property located on Georgia avenue, Atlantic City, New Jersey; that afterwards the said Enos R. Artman departed this life testate, and the persons above named are the executors of his will.

That on the seventh day of April, nineteen hundred and fourteen, proceedings were started to foreclose the

said mortgage, and that on the thirtieth day of May, nineteen hundred and fourteen, a decree was entered in said cause for the sum of two thousand seventy-one dollars and fifty cents, the amount then due on said bond, with interest from May twenty-seventh, nineteen hundred and fourteen, pursuant to which said decree, the sheriff of the county of Atlantic made levy on said property named in said mortgage, and, on the twenty-fifth day of July, nineteen hundred and fourteen, the property was sold by the said sheriff for the sum of five hundred dollars.

The decree, interest on said bond in said proceeding, taxed costs and sheriff's execution fees amounted to the sum of twenty-two hundred forty dollars and twenty-nine cents, leaving a balance due of seventeen hundred forty dollars and twenty-nine cents, after applying the proceeds of said sale.

That the said sum of seventeen hundred forty dollars and twenty-nine cents, together with interest thereon from the eighth day of August, nineteen hundred and fourteen, both amounting to the sum of seventeen hundred and fifty-five dollars and eight cents, on the date hereof, is now justly and honestly due from the said Andrew Marcus to the Pennsylvania Company for Insurance on Lives and Granting Annuities, and Caleb D. Artman and Daniel G. Endy, executors of Enos R. Artman, deceased, and that the debt for which judgment is confessed is justly and honestly due and owing to the Pennsylvania Company for Insurance on Lives and Granting Annuities, and Caleb D. Artman and Daniel G. Endy, executors of Enos R. Artman, deceased, and that the judgment is not confessed to answer any fraudulent intent or purpose, or to protect the property of the defendant from his other creditors.

That a written notice of the purpose to enter judgment upon said bond has already been filed in the office of the Clerk of Atlantic County, in which county the lands described in the mortgage aforesaid are located;

such notice contains the names of the parties to the bond and to the judgment to be entered, and the book and page of record of said mortgage, together with description of the lands and real estate described therein.

J. A. GATES.

Sworn and subscribed before me this twenty-ninth day of September, nineteen hundred and fourteen.

THOS. J. HUNT,

A Foreign Commissioner of Deeds for New Jersey in Pennsylvania at the City and County of Philadelphia, S. W. Cor. 5th and Walnut Sts.

(SEAL)

NEW JERSEY SUPREME COURT of the term of June, in the year of our Lord one thousand nine hundred and fourteen.

Pennsylvania Company for Insurance on Lives and Granting Annuities, and Caleb D. Artman and Daniel G. Endy, Executors of Enos R. Artman, deceased. *vs.* Andrew Marcus.	In Debt, on Bond and Warrant of Attorney.

The defendant's appearance to this action is entered, and judgment confessed to the plaintiff for the sum mentioned in the above obligation, by virtue of a Warrant of Attorney thereunto annexed, and pursuant to the directions of an act entitled "An act directing the mode of entering judgments on bonds with warrants of attorney to confess judgments," whereupon it is considered that the said Pennsylvania Company for Insurance on Lives and Granting Annuities, Caleb D. Artman and Daniel S. Endy, Executors of Enos R. Artman, deceased, do recover against the said Andrew Marcus the sum of seventeen hundred and fifty-five dol-

lars and eight cents debt, and four dollars and fifty cents costs of suit.

Judgment signed, and ordered to be entered according to law, this sixth day of October, in the year of our Lord one thousand nine hundred and fourteen.

EDWIN G. C. BLEAKLY,
Sup. Ct. Comm.

NEW JERSEY SUPREME COURT.

THE PENNSYLVANIA COMPANY FOR INSURANCE ON LIVES, &C., ET AL.,
Plaintiffs,
vs.
ANDREW MARCUS,
Defendant.
} On Rule to Show Cause.

STIPULATION.

(*Filed April 22, 1915.*)

For the purpose of the disposition of the rule to show cause in this cause, the following are admitted as facts without formal proof:

1. That the judgment in this cause was entered on the seventeenth day of October, 1914, by confession on the defendant's bond, dated April third, 1905, made to Enos R. Artman, a warrant of attorney to confess judgment annexed, which bond was secured by a mortgage on premises on Georgia Avenue, Atlantic City, New Jersey.

2. That the said mortgage was foreclosed in the Court of Chancery of New Jersey, together with another mortgage made by Simon Brod to Andrew Marcus, for one thousand dollars, dated January sixteenth, 1911, and assigned by said Marcus to Enos R. Artman May sixth,

1912; both of which mortgages covered the same premises, and were owned by the plaintiffs above named at the time of the foreclosure, and included in one foreclosure bill.

3. That the mortgaged premises were sold at public sale by the sheriff on July twenty-fifth, 1914, and bought in by the plaintiffs, and the amount of the judgment entered in the above cause against the defendant, Andrew Marcus, represents the deficiency upon the bond accompanying the mortgage given by him to the said Artman on foreclosure.

4. That a notice of the intention of entering judgment for such deficiency was received, recorded and filed in the Clerk's office of Atlantic County at nine o'clock in the forenoon, on September twenty-eighth, 1914, and that a copy of said notice is hereto attached and made part hereof, and marked *Exhibit A.*

LEWIS STARR,
Attorney for Complainants.

C. L. COLE,
Attorney for Defendant.

EXHIBIT "A."

To Whom it May Concern:

Take notice that Pennsylvania Company for Insurance on Lives and Granting Annuities, Caleb D. Artman and Daniel G. Endy, Executors of Enos R. Artman, deceased, propose to enter judgment for deficiency upon a bond made by Andrew Marcus to Enos R. Artman, dated the third day of April, nineteen hundred and five, conditioned for the payment of the sum of Two Thousand Dollars with interest at five and a half per cent. within one year from the date thereof, the judgment to be entered in favor of the Executors of Enos R. Artman, plaintiff, against Andrew Marcus, defendant, for the sum of Seventeen Hundred forty Dollars and Twenty-nine Cents, with interest from the

eighth day of August, nineteen hundred and fourteen, being the balance due upon said bond after a credit of the price at which the lands and premises hereinafter described, being covered by a mortgage securing the payment of said bond, were sold by the Sheriff of Atlantic County upon the foreclosure of said mortgage, the said mortgage being dated the third day of April, nineteen hundred and five, made by the said Andrew Marcus, to Enos R. Artman, and recorded April fourteenth, nineteen hundred and five, in the Clerk's Office of Atlantic County in Book 81 of Mortgage, page 173, the premises referred to therein being described as follows:

"All that certain tract or parcel of land and premises hereinafter particularly described, situate in the City of Atlantic City, in the County of Atlantic and State of New Jersey and bounded as follows:

"Beginning in the east edge of Georgia Avenue one hundred and seventy-two feet Northwardly from the Northeast corner of Georgia and Arctic Avenues, thence (1st) Eastwardly parallel with Arctic Avenue one hundred and fifty feet; thence (2nd) Northwardly parallel with Georgia Avenue twenty-eight feet; thence (3rd) Westwardly parallel with Arctic Avenue one hundred and fifty feet to the east edge of Georgia Avenue; thence (4th) Southwardly in the east edge of Georgia Avenue twenty-eight feet to the place of beginning.

"Being the same premises which Edmond H. Camp and Hannah E., his wife conveyed unto the said Andrew Marcus by deed dated the First day of March A. D. 1905, and is intended to be forthwith recorded."

PENNSYLVANIA COMPANY FOR INSURANCE ON LIVES AND GRANTING ANNUITIES, CALEB D. ARTMAN AND DANIEL G. ENDY, EXECUTORS OF ENOS R. ARTMAN, DECEASED,

By LEWIS STARR,

Attorney.

Dated September 26, 1914.

Rec'd and recorded & Filed Sept. 28, 1914, at 9:00 A. M.

EDWIN A. PARKER,
Clerk.

NEW JERSEY SUPREME COURT.

THE PENNSYLVANIA COMPANY FOR INSURANCE OF LIVES, &c., ET AL.,
Plaintiffs,
vs.
ANDREW MARCUS,
Defendant.
} On Rule to Show Cause.

REASONS.

(*Filed June 4, 1915.*)

The defendant assigns the following reasons why the judgment under review was improvidently entered and should be cancelled and set aside:

1. Because the notice required by law to be filed in the office of the Clerk of the Court of Common Pleas did not state in what court it was intended and proposed to enter judgment.

C. L. COLE,
Attorney for Defendant.

NEW JERSEY SUPREME COURT.
June Term, 1915.

PENNSYLVANIA COMPANY FOR INSURANCE ON LIVES, &c.,
v.
ANDREW MARCUS.

Submitted July 2, 1915. Decided Nov. 5, 1915.

1. The supplement of May 28, 1907 (*P. L., p.* 563), to the act concerning proceedings on bonds and mortgages, &c., approved March 12, 1880, as applied to bonds made prior to its enactment, deprives the obligee of a remedy for enforcing his contract which existed when the contract was made in contravention of Art. 4, Sec. 7, P. 3 of the Constitution.

On rule to show cause.
Before Justices Garrison, Trenchard and Black.
For the rule, Clarence L. Cole, Esq.
Contra, Lewis Starr, Esq.

The opinion of the Court was delivered by

GARRISON, J. This is a rule to show cause why a judgment by confession should not be set aside for failure to file the notice required by the Supplement of May 28, 1907 (*P. L., p.* 563, *Comp. Stat.* 3425), to the Act concerning proceedings on bonds and mortgages, &c., approved March 12, 1880. The notice that was filed did not comply with this supplement in that it failed to set forth the court in which it was proposed to enter such judgment. This was fatal to the notice.

The reasoning of Mr. Justice Kalisch's opinion in *New* v. *Roggee,* filed since the argument of this rule and not yet reported, makes this clear. That opinion also makes it clear that the Supplement of 1907 places

an additional burden upon the plaintiff in the enforcement of his bond and to that extent deprives him of the less burdensome remedy that existed for the enforcement of his contract at the time when it was made, which was in 1905, and hence prior to the date of the approval of the said supplement. The Supplement of 1907 therefore did not affect the plaintiff's remedy and hence no notice was necessary.

Constitution of N. J., Art. 4, *Sec.* 7, *P.* 3.
Bradley v. *Lightcap,* 195 *U. S., p.* 1.
Walker v. *Whitehead,* 83 *U. S., p.* 314.
Wilkinson v. *Rutherford,* 49 *N. J. L., p.* 241.
Morris v. *Votter,* 46 *N. J. L.* 260.
Baldwin v. *Flagg,* 43 *N. J. L., p.* 495.
Rader v. *Union,* 36 *N. J. L., p.* 273.

The rule to show cause is discharged.

NEW JERSEY SUPREME COURT.

THE PENNSYLVANIA COMPANY, FOR INSURANCE ON LIVES, &C., ET AL., *Plaintiff,* *vs.* ANDREW MARCUS, *Defendant.* — On Judgment for Confession.

AFFIDAVIT.

(*Filed March 8, 1915.*)

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

C. L. Cole, being first duly sworn according to law, upon his oath says that he is the attorney in this matter for the defendant, Marcus, in the above-entitled cause.

That some days ago, the exact date he is not certain of, he examined some of the judgment records in the Clerk's office of the Supreme Court of this State, and found that on the seventeenth day of October, nineteen hundred and fourteen, a judgment was entered by confession in favor of the plaintiff and against the defendant for the sum of one thousand seven hundred fifty-five dollars and eight cents ($1,755.08), debt, and four dollars and fifty cents ($4.50), costs, with interest from September 29, 1914, and that said judgments were entered by confession on bond given by the defendant to Enos R. Artman, plaintiffs' testator, the payment of which was secured, according to the affidavit on file, by mortgage on premises on Georgia Avenue, Atlantic City, N. J., that as stated in said affidavit, the mortgage had been foreclosed and the judgment entered for deficiency.

Deponent further says that he has examined what purports to be a certified copy of the notice filed on the twenty-eighth day of September, 1914, in the Clerk's office of the County of Atlantic, and State of New Jersey, which notice states among other things, the intention to enter judgment for deficiency upon bond dated April 3, 1905, made by defendant to Enos R. Artman, plaintiffs' testator; that bond referred to therein is, in the opinion of deponent, the same bond upon which judgment was entered by confession, and that there is no statement in said notice as to where it is proposed to enter said judgment.

C. L. Cole.

Sworn and subscribed to before me this 5th day of March, 1915.

Lewis B. Mathias,
Notary Public for N. J.

NEW JERSEY SUPREME COURT.

THE PENNSYLVANIA COMPANY, FOR INSURANCE ON LIVES, &C.,
Plaintiff-Respondent,
vs.
ANDREW MARCUS,
Defendant-Appellant.

NOTICE OF APPEAL.

(*Filed December 11, 1915.*)

To Honorable Lewis Starr, Attorney of Plaintiff:

Take notice that the defendant appeals to the Court of Errors and Appeals from the whole of the rule entered in this cause on the following grounds:

1. That the Supreme Court discharged the rule to show cause when it should have set aside the judgment.

2. The Supreme Court held that the statute requiring notice of the entry of judgment imposed an additional burden upon the plaintiff which did not exist at the time of the giving of the bond by the defendant when it should have held that the statute was purely procedural and did not substantially affect plaintiff's remedy.

C. L. COLE,
Attorney for Defendant.

12–7–15.

Due and legal service acknowledged this 7th day of December, 1915, by

LEWIS STARR,
Atty. of Plaintiff.

NEW JERSEY SUPREME COURT.

THE PENNSYLVANIA COMPANY, FOR INSURANCE ON LIVES, &C., *vs.* ANDREW MARCUS, } On Rule, &c.

RULE.

(*Filed December 15, 1915.*)

The rule to show cause in this matter coming on to be heard in the presence of Clarence L. Cole, for the rule, and Lewis Starr, *contra,* and the Court having read the evidence taken, and considered the same in conjunction with the arguments of counsel thereon, being of opinion that the rule to show cause should be discharged;

It is, thereupon, ordered that the said rule to show cause, why the judgment in the above cause should not be set aside, be and the same is hereby discharged with costs, in favor of the plaintiff and against the defendant.

Rule actually entered this 8th day of November, 1915.

On motion of

LEWIS STARR,
Attorney of Plaintiff.

I, William C. Gebhardt, Clerk of the Supreme Court of the State of New Jersey, do certify that the foregoing is a true copy of the notice of appeal filed and also of a rule entered in the minutes of the court in the above-stated cause.

In testimony whereof I have set my hand and the seal of said court at Trenton, this eleventh day of December, A. D. nineteen hundred and fifteen.

[SEAL.]

WM. C. GEBHARDT,
Clerk.