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Petition (Filed July 1, 1924).

IN CHANCERY OF NEW JERSEY.

Between	} On Bill to Foreclose. On Petition for Surplus Moneys. Petition.	10
MARGARET McMAHON,		
Complainant,		
and		
VINCENT AMOROSO, JR., <i>et al.</i> ,		
Defendants.		

TO THE HONORABLE EDWIN ROBERT WALKER, 20
CHANCELLOR OF THE STATE OF NEW JERSEY.

The petition of John J. McMahon, of the Township of North Bergen, County of Hudson and State of New Jersey, respectfully shows, that:

1. Your petitioner is one of the defendants to the bill of complaint in the above entitled cause, the object of which was the foreclosure of a certain mortgage given by Vincent Amoroso, Jr., to the complainant, Margaret McMahon on lands and premises in said bill of complaint particularly described. 30

2. Such proceedings were had in said cause that on the 6th day of March, 1924, a writ of *feri facias* was issued out of this court directed to the Sheriff of the County of Hudson, commanding him to sell, according to law, the said mortgaged lands and premises and out of the proceeds to pay to said complainant, Margaret McMahon, or to her solicitor, the sum of five 40

Petition (Filed July 1, 1924).

10 thousand two hundred eighty-two dollars and
seventy-three cents (\$5,282.73), with interest
thereon from January 25th, 1924, and two hun-
dred fifty-nine dollars and seventy-five cents
(\$259.75) costs; and to pay to The Woodcliffe
Land Improvement Company, or its solicitors,
the sum of two thousand seven hundred five dol-
lars and twenty-six cents (\$2,705.26) with like
interest and nine dollars and six cents (\$9.06);
and in case more money should be raised by
said sale than would be sufficient to answer said
20 payments, to bring the surplus moneys into this
court and to deposit the same with the Clerk
thereof.

3. The said Sheriff of said County of Hudson,
in pursuance of said writ of *feri facias*, duly
sold said lands and premises to one Peter Bent-
ley, or his assigns and deposited with the Clerk
of this court \$10,039.33, as the surplus moneys re-
30 maining after the aforesaid payments, which he
was commanded by the aforesaid writ of *feri*
facias to make.

4. The aforesaid lands and premises were at
the time of said sale owned in fee simple by peti-
tioner and were sold for the payment and satis-
faction of the aforesaid mortgage given by said
Vincent Amoroso, Jr., to said complainant, Mar-
40 garet McMahan, and the defendant, The Wood-
cliffe Land Improvement Company, and the said
mortgages were discharged by said sale.

5. That on September 1st, 1922, Herman M.
Diamond filed in the Register's Office of Hud-
son County, recorded in Book 13 of Lis Pendens,

Petition (Filed July 1, 1924).

page 545, for said County, a lis pendens against the property hereinbefore described, and gave notice thereon with the general object of a suit which has been commenced and was then pending in the New Jersey Supreme Court to have vacated and set aside and for nothing holden a certain certificate of the Clerk of the District Court of the First Judicial District of the County of Hudson as follows: 10

“Notice that suit above entitled has been commenced and is still pending in the Supreme Court of New Jersey, General object is to have vacated and set aside and nothing holden a certain certificate of the Clerk of the District Court of the First Judicial District of the County of Hudson, dated August 23, 1920, certifying that on Aug. 23, 1920, a suit has been instituted in said District Court by DeRiso Bros., Inc., claimant against Vincent Amoroso, Jr., builder, and Herman Diamond, owner, and that summons in said suit issued out of said court on said date; a certain entry endorsed by said Clerk upon a lien claim filed on Aug. 23, 1920, by DeRiso Bros., Inc., claimant against Vincent Amoroso, Jr., builder and Herman M. Diamond, owner of the lands and premises hereinafter described, to the effect that summons in a suit on said lien claim has been issued on Aug. 23, 1922; a certain statement signed by said Clerk of the District Court of the First Judicial District of the County of Hudson, dated Jan. 6, 1921, wherein it is certified that on Dec. 27, 1920, 20 30 40

Petition (Filed July 1, 1924).

10 a judgment was entered in said District
Court for the sum of \$500, debt and \$30.30
costs of suit in favor of the plaintiff, De-
Riso Bros., Inc., a corporation, and gener-
ally against the defendant, Vincent Amoroso,
Jr., builder and especially to be made of the
building and lands hereinafter described, a
certain record of docketing of the aforesaid
judgment in the Circuit Court of Hudson
County and of all proceedings had thereon,
including a writ of execution issued thereon
20 Jan. 7, 1921, and all proceedings had thereon
and thereunder including the sale thereun-
der and return and the record of the return
of the Sheriff endorsed on said writ of exe-
cution”.

30 6. That the persons named as parties defend-
ant in said lis pendens, are as follows: John J.
McGovern, Clerk of Hudson County and of Hud-
son County Circuit Court, Henry Bender, Clerk,
and Oscar B. Spencer, Acting Clerk of the Dis-
trict Court of the First Judicial District of Hud-
son County, John J. McMahan, Margaret Mc-
Mahon, the complainant herein, James M. DeRiso
and Philomena DeRiso, DeRiso Bros., Inc., a
corporation of N. J., Vincent Amoroso, Jr., and
Anna Bruchoff Amoros and Thomas Madigan,
Sheriff; that any interest they may have in said
40 premises is subject to the lien of complainant's
mortgage.

7. That the said Herman M. Diamond failed
to prove his claim before the Master, who ac-
cordingly did not report thereon.

Petition (Filed July 1, 1924).

8. Petitioner is entitled to receive the balance of the aforesaid surplus moneys.

Petitioner therefore prays that an order may be made by the Clerk of this court to pay petitioner the balance of said surplus moneys. 10

PETER BENTLEY,
Solicitor for Petitioner.

State of New Jersey, }
County of Hudson, } ss.:

JOHN J. McMAHON, being duly sworn on his oath according to law, says: I am the person mentioned in the foregoing petition; I have read the same; the matters and things therein set forth are true excepting as to such matters as are on information and belief, and as to those matters I believe them to be true. 20

JOHN J. McMAHON.

30

Subscribed and sworn to before me this
30 day of June, 1924.

JAMES J. HIGGINS,
Attorney at Law of New Jersey.

40

**Order of Reference (Filed July 8,
1924).**

IN CHANCERY OF NEW JERSEY.

10

Between

MARGARET McMAHON,
Complainant,

and

VINCENT AMOROSO, JR., *et al.*,
Defendants.

On Bill to
Foreclose.
On Petition
for Surplus
Moneys.
Order of
Reference.

20

A petition having been filed herein by the defendant, John J. McMahon, setting forth that the Sheriff of the County of Hudson has deposited with the Clerk of this Court \$10,039.33, surplus moneys arising out of the sale of the mortgaged lands and premises sold in this cause pursuant to a writ of *feri facias* issued out of this Court and directed to said Sheriff; and praying that

30

an order may be made commanding the Clerk of this Court to pay over said surplus moneys to said petitioner,

40

It is on this 7th day of July, 1924, ORDERED, that it be referred to Joseph Anderson Senior, one of the Special Masters of this Court, to ascertain the truth of the allegations of the said petition, and whether the said defendant, Herman M. Diamond, is entitled to be paid any money out of said surplus moneys, and if so, what amount, and whether the said petitioner is entitled to receive all of said surplus moneys without any payment to the said Herman M.

Affidavit (Filed September 8, 1924).

Diamond, and that the said Master report with all convenient speed.

Respectfully advised, 10

E. R. WALKER,
C.

BAYARD STOCKTON,
A. M.

Affidavit (Filed September 8, 1924).

IN CHANCERY OF NEW JERSEY. 20

Between

MARGARET McMAHON,
Complainant,
and

VINCENT AMOROSO, JR., *et al.*,
Defendants.

On Bill to
Foreclose.
On Petition,
&c.
Affidavit. 30

State of New Jersey, }
County of Hudson, } ss.:

PETER BENTLEY, being duly sworn on his oath according to law, says; I am the solicitor for John J. McMahon, who has filed a petition in this cause asking for an order of reference to ascertain who is entitled to the surplus moneys in the hands of the Sheriff of the County of Hudson, as a result of the sale in the above entitled cause; that on the 7th day of July, 1924, an order of reference was made referring the 40

*Order of Re-Reference (Filed September 16,
1924).*

10 matter to Joseph Anderson, Senior, one of the
Special Masters of this Court; that due to de-
ponent's absence from the state for approxi-
mately two months, on his vacation, the order of
reference to the said Joseph Anderson, Senior,
was not brought to his attention and he did noth-
ing thereunder; that the said Joseph Anderson,
Senior, departed this life on the 5th day of Sep-
tember, 1924.

PETER BENTLEY.

20 Sworn and subscribed to before me this
6th day of September, 1924.

JAMES J. HIGGINS,
Attorney at Law of New Jersey.

30 **Order of Re-Reference (Filed
September 16, 1924).**

IN CHANCERY OF NEW JERSEY.

40	Between MARGARET McMAHON, Complainant, and VINCENT AMOROSO, JR., <i>et al.</i> , Defendants.	}	On Bill to Foreclose. On Petition for Surplus Moneys. Order of Re- Reference.
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A petition having been filed herein by the de-
fendant, John J. McMahon, setting forth that

*Order of Re-Reference (Filed September 16,
1924).*

the Sheriff of the County of Hudson has deposited with the Clerk of this Court \$10,039.33, surplus moneys arising out of the sale of the mortgaged lands and premises sold in this cause pursuant to a writ of *feri facias* issued out of this Court and directed to said Sheriff; and praying that an order may be made commanding the Clerk of this Court to pay over said surplus moneys to said petitioner, 10

And it appearing that on the 7th day of July, 1924, an order was made in this cause by this Court referring the same to Joseph Anderson, Senior, one of the Special Masters of this Court, to ascertain the truth of the allegations of the said petition, and whether the said defendant, Herman M. Diamond, is entitled to be paid any money out of said surplus moneys, and if so, what amount, and whether the said petitioner is entitled to receive all of said surplus moneys without any payment to the said Herman M. Diamond, and that the said Master report with all convenient speed, 20 30

And it further appearing that the Special Master, Joseph Anderson, Senior, has departed this life before acting under or by virtue of said order of reference,

It is on this 15th day of September, 1924, ORDERED that the said order of reference in this cause, under date July 7th, 1924, before the said Joseph Anderson, Senior, be and the same is hereby set aside and annulled, 40

Master's Summons.

And it is further Ordered, that it be referred to Hon. Mark A. Sullivan, one of the Special Masters of this Court.

10

Respectfully advised,

E. R. WALKER,
C.

BAYARD STOCKTON,
A. M.

20

Master's Summons.

IN CHANCERY OF NEW JERSEY.

Between

MARGARET McMAHON,
Complainant,
and

30

VINCENT AMOROSO, JR., *et al.*,
Defendants.

On Bill, &c.
On Petition
for Surplus
Money.

TO WARREN, BRITT & STANTON, ESQS.,

Solicitors for Herman Diamond, one of the defendants in the above stated cause; and Herman Diamond:

40

SIRS:

By virtue of an order of reference made in the above cause, you are hereby summoned to be and appear before me, at my office, 15 Exchange Place, Jersey City, New Jersey, on the first day

Master's Report (Filed May 1, 1928).

of October, next, at two-thirty o'clock in the afternoon, at which time I shall proceed to ascertain the truth of the allegations of the petitioner's petition in said cause, and to take an account of what is due to the petitioner for principal and interest from the surplus moneys now held by the Clerk in Chancery upon a mortgage formerly held by Margaret McMahan, and to proceed to report upon the same and the other matters referred to me. 10

Dated: September 22nd, 1924.

MARK A. SULLIVAN,
Master in Chancery. 20

Master's Report (Filed May 1, 1928).

IN CHANCERY OF NEW JERSEY.

Between MARGARET McMAHON, Complainant, and VINCENT AMOROSO, JR., <i>et al.</i> , Defendants.	}	On Bill to Foreclose. On Petition for Surplus Money. Master's Report.	30
			40

TO THE HONORABLE EDWIN ROBERT WALKER,
CHANCELLOR OF THE STATE OF NEW JERSEY:

I, MARK A. SULLIVAN, one of the Special Masters of this Court report that in pursuance of

Master's Report (Filed May 1, 1928).

10 an order of this Court made on the fifteenth day of September, 1924, I have investigated the truth of the allegations of the petition filed in this cause by the defendant John J. McMahon and the other matters and things referred to me by the said Order.

I report that I have been attended by Peter Bentley, Esq., Solicitor of the said defendant John J. McMahon and by John Warren, Esq., Solicitor of the defendant Herman M. Diamond and have heard the proofs of the parties.

20 And I find and report that the Sheriff of the County of Hudson has deposited with the Clerk of this Court, the sum of Ten thousand thirty-nine dollars and thirty-three cents (\$10,039.33) as the surplus money arising from the sale of the mortgaged premises sold in this cause by virtue of an execution issued out of this Court and directed to said Sheriff; that said sale was made to pay and satisfy a mortgage given by said defendant Vincent Amoroso, Jr., to the complainant Margaret McMahon and that said premises
30 at the time of said sale were owned in fee simple by Herman M. Diamond.

And I further report that the said Herman M. Diamond is entitled to receive the said surplus moneys now on deposit with the Clerk of this Court in this cause.

40 All of which is respectfully submitted this twenty-fifth day of April, 1928.

MARK A. SULLIVAN,
Special Master.

Depositions.

Master's Fees:

Making report	\$10.00	
Attendances (5)	18.00	10
Drawing Report (6 fol.)	2.40	
Depositions (210 fol.)	63.00	
Swearing witnesses (13)	3.25	
Exhibits (32)	4.80	
Master's Summons (3)	1.20	
<hr/>		
TOTAL	\$102.65	
		<hr/>
		20

Depositions.

IN CHANCERY OF NEW JERSEY.

Between MARGARET McMAHON, Complainant, and VINCENT AMOROSO, JR., <i>et al.</i> , Defendants.	}	On Petition, &c. Depositions.	30
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Depositions of witnesses taken before me, Mark A. Sullivan, one of the Special Masters of this Court, pursuant to an Order of this Court bearing date, the fifteenth day of September, 1924, in the above entitled cause, in the presence of Peter Bentley, Esq., Solicitor of complainant and John Warren, representing Warren and Stanton, Solicitor for defendant, Herman Diamond. Said depositions were taken at my office, No. 15 Ex-

Depositions.

change Place, Jersey City, New Jersey, on the
seventeenth day of October, 1924, at 3:30 o'clock
in the afternoon and on the twelfth day of No-
10 vember, 1924, at ten o'clock in the forenoon and
on the fourth day of March, 1927, at four o'clock
in the afternoon and on the seventeenth day of
March, 1927, at three o'clock in the afternoon
and on the twenty-fifth day of March, 1927,
at three o'clock in the afternoon, by Anna M.
Healey, a stenographer selected by me and who
was sworn by me faithfully and truly to take
20 stenographically and to reproduce in typewriting,
the testimony given and were taken in my im-
mediate presence and hearing and I believe that
they accurately state the evidence given.

MARK A. SULLIVAN,
Special Master in Chancery
of New Jersey.

30

40

Affidavit.

IN CHANCERY OF NEW JERSEY.

Between MARGARET McMAHON, Complainant, and VINCENT AMOROSO, JR., <i>et al.</i> , Defendants.	}	On Petition, &c. Affidavit.	10
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State of New Jersey, } County of Hudson, }ss.:	20
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ANNA M. HEALEY, being duly sworn, according to law, upon her oath deposes and says:

I hereby swear that I will faithfully and truly take stenographically and reproduce in type-writing the testimony given by the witnesses in the above entitled cause.

ANNA M. HEALEY. 30

Sworn and subscribed to before me this
17th day of October, 1924.

MARK A. SULLIVAN,
Master in Chancery of N. J.

40

John J. McMahon—Direct.

JOHN J. McMAHON, being duly sworn, testified as follows:

10 *Direct Examination by Mr. Bentley:*

Q. Mr. McMahon your full name is what? A. John J. McMahon.

Q. You are the husband of Margaret McMahon? A. I am.

20 Q. I show you a deed from Anna Bruckhoff Amoroso and husband to John J. McMahon dated March 3rd, 1920, and recorded in the Register's Office of Hudson County on September 18th, 1922, in Book 1459 of Deeds, page 68, &c., and ask you if you are the John J. McMahon mentioned in that deed? A. I am.

(Deed offered in evidence, received and marked Exhibit P-1.)

30 Q. I show you what purports to be a certified copy of a deed dated June 21st, 1921, between James M. DeRiso and wife to John J. McMahon recorded in the Register's Office of Hudson County in Book 1447 of Deeds, on page 92, &c., and ask you whether or not you are the person mentioned in that certified copy of deed? A. I am.

40 (Certified copy of deed offered in evidence, received and marked Exhibit P-2.)

40 Q. You were one of the defendants in the foreclosure case of Margaret McMahon, complainant, against Vincent Amoroso, Jr., et al., defendants? A. I was.

John J. McMahon—Cross.

Q. And this is the same property referred to in Exhibit P-1 and 2 as was described in the bill of complaint that foreclosed the mortgage in the case I mention? A. I was. 10

Cross Examination by Mr. Warren:

Q. Your official position is that of Register of Deeds of Hudson County? A. It is.

Q. And you have held that office continuously since what date? A. April, 1910.

Q. How long have you known Mr. Amoroso? A. 9 years. 20

Q. And you had some business dealings with him? A. I did.

Q. And at the time you had those business dealings with him he was cashier for the stock-brokerage house of J. Robinson Duff & Company? A. I don't know. I knew he was with that concern. I don't know what position he had. 30

Q. But at the time you had those business dealings with him he was employed by that firm? A. I could not say that. I don't know when he went with them or when he left—it was during that time.

Q. During the time he was employed there? A. Yes.

Q. And your business relations with him involved the purchase and sale of stock? A. Yes. 40

Q. In order to carry on the business operations of stock purchased, it was necessary at times to borrow money was it not—for McMahon and Amoroso to borrow money? A. Mr. Amoroso borrowed money.

John J. McMahon—Cross.

Q. For the stock operations? A. No, not for any stock operations of mine.

10 Q. Well, for stock operations of his in which you were interested? A. I don't know what he borrowed the money for.

Q. But you do know that he borrowed money from the Steneck Trust Company? A. I do.

Q. And the note was endorsed by you? A. Yes, it was.

Q. And who supplied the collateral that was deposited with the Steneck Trust Company? A. Amoroso.

20 Q. And do you know what collateral that was? A. It was—I don't recall the number of shares of National Tin—but it was National Tin stock.

Q. And there is some litigation pending at the present time with regard to that stock? A. I don't know.

Q. But there was a suit instituted, was it not? A. I don't know.

30 Q. There was also recorded in your office on March 24th, 1920—I mean your business office—March 24th, 1920, in Book 1342 of Deeds, page 507 a deed from Anna Bruckhoff Amoroso and Vincent Amoroso, Jr. to Herman M. Diamond? A. I believe there was.

Q. Referring to P-1 I ask you when that revenue stamp was affixed? (Exhibit P-1 shown to witness). A. I can't tell you.

40 Q. Don't you know that the record of the deed P-1 when examined on August 31st, 1922, showed that no revenue stamp had been affixed to the deed recorded? A. I don't know that.

Q. Do you know what the record shows as to whether or not there was a revenue stamp on that deed when recorded? A. No, I do not.

John Murray—Direct.

Q. Have you got the record of that deed here, other than the deed itself—have you got the official record? A. No, I have not.

Q. Does that \$1.00 stamp correctly represent the consideration for that deed P-1? A. Well, the deed was given as collateral along with stock to secure me against any losses I might have and I would say that it represents the true value of the consideration. 10

Q. In other words at the time of the execution and delivery of that deed there was no money paid by you to Mrs. Amoroso? A. No, it was a collateral deed—the money was paid him by the Steneck Trust Company on the note that was held by it. 20

Q. And you took this deed as collateral then for your endorsement of Vincent Amoroso's note? A. Yes.

Q. Now, who was the maker of that note—Vincent Amoroso was he not? A. Yes.

Q. And were you the only endorser? A. I think so. 30

Q. And he was the only maker? A. Yes.

Q. That is the only purpose for which the deed was given? A. Yes.

JOHN MURRAY, being duly sworn, testified as follows: 40

Direct Examination by Mr. Bentley:

Q. Where do you live? A. 525 Newark Avenue.

John Murray—Direct.

Q. By whom are you employed? A. The Sheriff of Hudson County.

10 Q. And have been for how long? A. Seven years.

Q. In what capacity? A. Execution clerk.

Q. Have you produced from the Sheriff's office of Hudson County any of the records? A. I have produced Chancery Execution Book No. 1.

Q. Will you please turn to page 28? A. I have it.

20 Q. What case do you find entered on that page? A. Foreclosure case of Margaret McMahon, complainant and Anna Bruckhoff Amoroso, *et al.*, defendants.

30 Q. Is there any receipt there from the Clerk in Chancery for surplus money? A. Receipt dated June 26th— "Received from the Sheriff of Hudson County \$10,039.33, surplus of the sale under execution in Chancery sale #28, Margaret McMahon vs. Anna Bruckhoff Amoroso, *et al.*, signed by Thomas Barber, Clerk in Chancery, per A. B. A.

Q. What was the amount of surplus? A. \$10,039.33.

Q. And that is the sum actually paid to the Clerk by the Sheriff? A. It was paid to the Clerk in Chancery and his receipt is in the book for it.

John J. McMahon—Recalled—Direct.

Continuation of the taking of depositions in the above entitled cause on the twelfth day of November, 1924, at ten o'clock in the forenoon. 10

JOHN J. McMAHON (recalled), further testified as follows:

Direct Examination by Mr. Bentley:

I offer deed dated the 15th day of September, 1922, from Anna Bruckhoff Amoroso and husband to John J. McMahon, acknowledged the sixth day of November, 1924, before William H. Drescher, Commissioner of Deeds—unrecorded. 20

Mr. Warren: I object to the offering of an unrecorded deed dated after the decree in the foreclosure suit.

The Court: You mean you object to the manner of proof? 30

Mr. Warren: I object to the manner of proof and also to the relevancy of the instrument so far as these proceedings are concerned.

The Court: Objection sustained as far as proof is concerned.

(Deed received for identification and marked "Identification 1—Nov. 12th, 1924".) 40

I now offer in evidence Assignment from Anna Bruckhoff Amoroso and Vincent, her husband, to John J. McMahon, dated the sixth day of November, 1924, and acknowledged the sixth day of Novem-

John J. McMahon—Recalled—Cross.

10 ber, 1924, before William H. Drescher, un-
recorded. (Received for identification and
marked "Identification 2—Nov. 12th,
1924".)

Q. Mr. McMahon, calling your attention to
these two exhibits for identification 1 and 2—
November 12th, 1924, are you the John J. Mc-
Mahon mentioned in these papers? A. I am.

Cross Examination by Mr. Warren:

20 Q. I ask you for the Exhibit 1 you introduced
as deed—McMahon to Amoroso. Referring to
P-1, Mr. McMahon, is that the only recorded deed
which you obtained from Anna Bruckhoff Amo-
roso and Vincent Amoroso, her husband. A. I
cannot answer that offhand.

30 Q. How many deeds did you obtain from Mr.
and Mrs. Amoroso which were recorded? A. I
could not tell you that without looking at the
record.

Q. Will you do that? A. I will have to have
Mr. Bentley do it.

Q. Have you any other deed in your posses-
sion from Anna Bruckhoff Amoroso and husband
to you which has been recorded? A. I cannot
tell you that without looking at the record. I
will have Mr. Bentley do it.

40 Q. You know that Anna Bruckhoff Amoroso
and Vincent Amoroso, Jr., are husband and
wife? A. No, I don't know that.

Q. Well, you took deeds from them after that
style and in that fashion? A. Yes.

Q. You knew that they lived in this property
on 31st Street? A. Yes.

John J. McMahon—Recalled—Cross.

Q. And how long has your acquaintance of Mr. and Mrs. Amoroso extended? A. About ten years.

Q. And you knew them for that period of time as husband and wife? A. Yes. 10

Q. And what did the records of your office show as to whom the title to this property was in, whether it was Vincent Amoroso, Jr., or Anna Bruckhoff Amoroso? A. I cannot tell what they show.

Q. Where do Mr. and Mrs. Amoroso live at the present time? A. 16-31st Street.

Q. And that is the property upon which the mortgage foreclosed was a lien and which is affected by deed P-1 which you have offered in evidence? A. Yes. 20

Q. And they have lived in that property for how many years continuously? A. Since I have known them.

Q. Where does Mr. Amoroso work? A. Now?

Q. Yes. A. At the Court House in my office. 30

Q. And for how long has he worked there? A. Six months.

Q. Longer than that, isn't it? A. I don't think so—it may be seven or eight, but I say six months offhand.

Q. The note from the Steneck Trust Company which was executed by Mr. Amoroso and endorsed by you for which P-1 was given to you as security is no longer in existence and has been paid, isn't that right? A. The note has been paid? The note is still over there. If it is not the same one, it is a renewal of it. 40

Q. Don't you know that the Steneck Trust Company has no longer a note made by Vincent

John J. McMahon—Recalled—Cross.

Amoroso and endorsed by you? A. That may be right but I made the note.

10 Q. In other words, you took over the 10,000 shares of National Tin and gave your own note for \$10,000? A. That may be right, I cannot tell you offhand, but the Steneck Trust records would show that.

20 Q. Isn't it a fact that the Steneck Trust Company loaned \$50,000. upon the 10,000 shares of National Tin upon the note of Vincent Amoroso endorsed by yourself, that later Amoroso paid off \$40,000. and that then you took over the National Tin stock, released Amoroso and gave your note for \$10,000. secured by the 10,000 shares of National Tin? A. No, that is not so.

30 Q. Isn't it a fact that at the present time you have in the Steneck Trust Company a note for \$10,000. upon which Amoroso's name does not appear which is secured by the identical 10,000 shares of stock which was deposited on Amoroso's own note of \$50,000.

Mr. Bentley: I object on the ground that it is immaterial and not within the scope of this inquiry.

The Court: Objection overruled.

40 A. No, that is not exactly right, I am quite sure there are two notes there. One stands for \$10,000. with National Tin collateral and the other I paid down to something like \$2,500. I am sure there are two notes, about \$12,500. together.

Q. Which was originally \$20,000.? A. Well, the other note I have has nothing at all to do

John J. McMahon—Recalled—Cross.

with the \$50,000. note. The \$50,000. note Amoro-
roso paid himself at that time.

Q. He paid \$40,000. didn't he? A. No, he did
not. He paid \$30,000. and left a balance of 10
\$20,000. and one of them notes I am paying off
\$500. every three months and it is down to about
\$2,500. and the other stands as \$10,000.

Q. Are you sure of those facts, Mr. McMahon?
A. Well, not from memory, but I am sure that
there were two notes of \$20,000. and \$10,000.
each and that one of them I paid to about \$2,500.
and the other stands as \$10,000.

Q. But both the notes of \$10,000. that you 20
spoke of have a security of 10,000 shares of Na-
tional Tin? A. I think they did at one time.

Q. At the time you took over the National Tin
stock? A. I never took over the National Tin
stock.

Q. It is a security for your own note at the
present time, is it not? A. Well, it is Amoroso's
stock to secure that note. It is not mine. 30

Q. It is up to secure your own note at the
present time is it not? A. Yes.

Q. Referring to P-2, being the deed from
Joseph M. De Riso and wife to you, how much
did you pay Mr. De Riso for that conveyance
and to whom did you pay it?

Mr. Bentley: I object on the ground that
it is immaterial and beyond the scope of 40
this inquiry.

The Court: What is this deed?

Mr. Warren: This is a deed for the
property from De Riso to McMahon.

The Court: Objection overruled.

John J. McMahon—Recalled—Cross.

A. I paid it to William Burke. I am quite sure I did, I am quite sure that Burke represented De Riso in that foreclosure.

10 Q. And you paid Burke just what was coming to him for costs and the amount of the judgment?

A. The amount of \$600.

Q. Does it say how much the judgment was?

A. I know the judgment was \$500. I would say that it was the amount that was coming to De Riso on his judgment along with Burke's costs.

Q. How did you know that De Riso had purchased this property?

20

Mr. Bentley: I object upon the ground that it is immaterial and beyond the scope of this inquiry.

The Court: Objection sustained.

30 Q. Don't you know that it was your money that was paid to Burke and that Mr. De Riso never paid any money upon his bid for this property on the Sheriff's sale?

Mr. Bentley: I object to that upon the same ground.

The Court: I will allow that.

40 A. No, I don't think so. I think whatever money paid to the Sheriff was paid by William Burke.

Q. What was the date that you paid this money to William Burke? A. I think it was the date that I got the deed.

Q. June 21st, 1921? A. If that was the date of the deed.

John J. McMahon—Recalled—Cross.

Q. That is the date of the deed and the acknowledgment as shown by the certified copy is of the same date? A. I think that was the date I paid it to him.

10

Q. Did you make the payment to Mr. Burke by check? A. I don't remember.

Q. Do you remember testifying on September 6th, 1922, before Henry W. Runyon, a Supreme Court Commissioner on a rule to take depositions to be used upon the return of the writ of certiorari sued out by Herman M. Diamond? A. No, I don't remember testifying.

Q. Don't you remember being in Mr. Runyon's office with your attorney, Mr. Raymond Dawson and being examined by me? A. No, I don't remember that. If you say I was there, alright.

20

Q. Do you remember this question which I asked you, "Now, have you produced, Mr. McMahon, a check or note made to the order of James M. De Riso and Philomena De Riso for the deed which they gave for the property?"

30

Mr. Bentley: I object to that on the ground that it is immaterial in this inquiry.

The Court: What is the purpose of the question?

Mr. Warren: It is to show that there was a check.

The Court: I will allow the question. 40

Mr. Bentley: I further object, if I may, upon the ground that he has not been confronted with his testimony at that hearing, if there was a hearing, as he is entitled to.

Oscar B. Spencer—Direct.

Q. Do you remember my question? A. Well, what was my answer?

10 Q. "Answer: No. I have not got it but I think I can get it?" A. Well, I think that is the way it stands now. I don't remember whether it was a check or cash but Mr. Bentley will have a record or I will have a record.

Q. Will you look up your record? A. Yes.

Q. Are you receiving any rent from the Amorososo?

20 Mr. Bentley: I object to that on the ground that it is immaterial and beyond the scope of this inquiry.

The Court: Objection sustained.

Q. Did you supply the money to Mr. Burke for the purpose of taking title to this property?

Mr. Bentley: I object to the question on the ground that it is immaterial.

The Court: Objection sustained.

30

OSCAR B. SPENCER, being duly sworn, testified as follows:

Direct Examination by Mr. Warren:

Q. Where do you live? A. 418 Lewis Street.

40 Q. What is your occupation? A. Constable of the District Court of the First Judicial District of the County of Hudson, New Jersey.

Q. Have you produced the record of this Court pertaining to case #14707, being a mechanic's lien suit instituted by the De Riso Bros., Inc., against Vincent Amoroso, Jr. and Herman

Oscar B. Spencer—Direct.

M. Diamond? A. That is the record, yes, sir. That is all I know about it.

Q. They are the records of the Court? A. Yes, sir.

Q. And in what book is the Court's record? A. That is 15.

Q. And upon what page of Book 15 is the record? A. I want to get this right. Are you examining me as the Clerk. I know nothing about the matter. I never see these books. It is here 14707 in one case and 14708 in another, but it is not my entry. We never touch these books.

Q. Now, I show you a paper and ask you whether or not you signed it? A. That is my signature, yes—Oscar B. Spencer, Acting Clerk.

Q. What is the paper that you signed? A. It is a lien claim at that time in that Court.

Q. Well, read it?

Mr. Bentley: I object to the question and the witness reading the paper upon the ground that the paper speaks for itself.

The Court: Objection sustained.

(Paper received for identification and marked "Identification 3—Nov. 12, 1924".)

Q. When you signed Exhibit marked "Identification 3" under this date, had you been appointed by the Judge as Acting Clerk of that Court?

Mr. Bentley: I object to the question upon the ground that that is not the way to prove.

The Court: Objection overruled.

Oscar B. Spencer—Direct.

A. I cannot recall that.

Q. As a matter of fact on August 23rd, 1920, Henry Bender was Clerk of the Court was he not? A. Yes.

Q. And on that day, Henry Bender was out of the State of New Jersey and on his vacation? A. From the 13th to the 28th.

Q. And you happened to be in the office on the 23rd of August, when a clerk of Mr. Burke's office came in and presented this paper to you?

A. Well, I was there because I had charge. When he was out of town I was always Acting Clerk. You see we have no Assistant Clerk.

Q. Isn't it a fact that you really assumed in the absence of that clerk that you had the authority? A. Well, I believe that was the testimony before, but somebody must have given me the authority or I would not be there taking charge.

Q. Now, is it or is it not a fact that the summons in the suit was issued out of the District Court of the First Judicial District of the County of Hudson on August 23rd, 1920? A. I cannot say—I don't know.

Q. Have you produced papers in that suit? A. Those are the papers that were given to me this morning to bring down here in this case. (Witness produces bundle of papers #14707). I am not familiar with these papers at all.

Q. I call your attention to the paper which you testified that you have signed and marked for identification #3 under this date and ask you whether or not the statement therein contained that summons was issued out of the District Court of the First Judicial District of the County

Oscar B. Spencer—Direct.

of Hudson is true? A. Are you referring to this paper?

Q. Yes, is that true? A. This paper I signed only. I don't know anything about the summons. 10

Q. When you signed this did you not sign a certificate that a summons had been issued?

Mr. Bentley: I object to the question on the ground that it is immaterial and irrelevant and beyond the scope of this inquiry.

(Certificate offered in evidence, received and marked Exhibit D-1.) 20

“CERTIFICATE.”

DISTRICT COURT OF THE FIRST JUDICIAL
DISTRICT OF THE COUNTY OF
HUDSON.

DE RISO BROS., INC., a
Corporation of New
Jersey,

Plaintiff,

vs.

VINCENT AMOROSO, JR.,
Builder and HERMAN
M. DIAMOND, Owner,
Defendants.

30

Certificate of
Commence-
ment of suit.

40

This is to certify that suit on the lien claim filed by the plaintiff on August 23rd, 1924, claiming a lien upon the lands of the

Oscar B. Spencer—Direct.

10 above named defendant Owner for a debt due from the above named defendant Builder, entitled as above set forth, has been commenced in the District Court of the First Judicial District of the County of Hudson.

20 That said suit was commenced on August 23, 1920, and the summons in said suit was issued out of said Court on said August 23, 1920, and said summons requires the defendant to answer within twenty days after service thereof upon them and is returnable twenty days after such service.

In Witness Whereof, I have set my hand and affixed the seal of said Court, the twenty-third day of August, 1920.

(Signed) OSCAR B. SPENCER,
Acting Clerk.

30

Official seal of the Court affixed.

Endorsed with a stamp as having been received in the Clerk's office of Hudson County August 23rd, 1920, at 3:44 P. M.

40 Q. Now, I ask you as to whether or not when you signed that certificate, the summons had been issued as you stated in the said certificate?
A. Yes, sure.

Q. Well, will you produce the summons? A. I never had anything to do with that paper. I don't know the first thing about it.

Oscar B. Spencer—Direct.

(Witness produces the summons and complaint in this suit.)

Q. Is it not the summons and complaint in this suit? A. I never saw that. I don't know anything about it. 10

The Court:

Q. But the question is, at the time you signed this paper, was there a summons issued? A. Not that I know of.

Q. Before that did you know of a summons? A. No, sir. 20

Q. Well, how did you come to sign that paper? A. This is the only paper that was brought in to me and I signed it.

Q. Had there been a summons signed at that time? A. I could not tell you.

Q. Had there been a summons issued? A. Not that I know of.

Q. Not that you know of? A. No, this is the only paper I signed. 30

Q. Do you mean to say that you certified to the County Clerk that a summons had been issued without finding out whether it was issued or not? A. I did not certify that. The Clerk certified it after.

Q. Well, you signed it as Acting Clerk? A. Yes. 40

Q. Well, it says that a summons had been issued, is that true? A. I cannot tell you. That was brought in to me and I signed it and returned it.

Oscar B. Spencer—Direct.

Q. Do you mean us to understand that you would sign any paper that was brought in to you? A. No, sir.

10 Q. Well, what did you mean when you signed that paper stating that a summons had been issued? A. I cannot recall.

By Mr. Warren:

Q. Isn't it a fact that someone from Mr. Burke's office that you knew came in to you and said that it was necessary to have this paper
20 signed and you signed it? A. No, sir.

Q. Isn't it a fact that on August 23rd, 1920, there was no clerk present to sign a summons? A. Only that day I was Acting Clerk.

Q. But you did not sign a summons? A. No, sir; I did not sign a summons.

Q. This is the only paper you signed? A. That is all I signed.

30 Q. And on August 23rd, 1920, the Clerk of the Court was outside of the State of New Jersey? A. He was on his vacation.

Q. And as far as you knew no summons has ever been issued by the Court? A. No, sir; I cannot tell you—I forget it.

(Summons marked Identification 4—11/
12/24.)

40 Q. And summons marked Identification 4—11/12/24 does not bear the signature of the Clerk of the Court does it? A. No, not there.

Q. And the only person who signed that summons so far as the fact of it shows was William F. Burke, as attorney? A. I don't know.

Oscar B. Spencer—Cross.

Q. Well, look at it? A. I don't know Mr. Burke's signature.

Q. Do you recollect that in your testimony before Mr. Runyon, Supreme Court Commissioner on September 6th, 1922, that you were asked, "did you have any paper in writing signed by the Judge appointing you as Acting Clerk of the Court at that time". Do you remember that question? A. Well, if it is there I suppose I must have answered it. 10

Q. I asked if you remember it? A. I scarcely remember it.

Q. Do you remember answering, "no, sir". "If I had I must have got it from the Clerk". 20

Q. "Did you have a later appointment?" A. "Not from the Judge". Q. "Or from the Clerk?" A. "I suppose he asked me to act". Q. "Did you merely assume the duties of Acting Clerk because of the absence of Mr. Bender" and your answer, "Well, I guess that is about it". A. I guess I was empowered by him. I would assume nothing there. 30

Cross Examination by Mr. Bentley:

Q. Mr. Spencer, calling your attention to this Certificate dated August 23rd, which is marked D-1, where you certified that a summons has been issued, is there any doubt in your mind that a summons had been issued before you signed that certificate? 40

Mr. Warren: Objected to.

Mr. Bentley: I withdraw the question.

Oscar B. Spencer—Cross.

Q. As a matter of fact, at the time you signed that Certificate on August 23rd, that a summons had been issued, had it been issued? A. I can't recall. I don't know.

10 Q. Well, why did you certify that it had if you did not know that it had? A. Why, I read that over and took it for a lien and signed it and let it go out.

Q. Well, what do you think the statement "a summons had been issued" meant? A. I knew what it meant but that was over two years ago.

20 Q. Have you any way of telling? A. Only by these records. I am not familiar with these records.

Q. Well, why did you sign the statement that a summons had been issued? A. Well, I signed thinking I had a right to sign as Acting Clerk.

Q. Well, you know that a summons had been issued? A. Well, I don't know. I am not positive that there was.

30 Q. You are not positive? Well, does the statement in that certificate help to refresh your memory that it had? A. No, I can't recall.

Q. The fact that you certified it had does not refresh your recollection? A. No, it does not.

40 Q. I show you a paper entitled in the case of De Riso Bros. v. Amoroso dated November 1st, 1920, signed William F. Burke, Attorney of claimant, De Riso Bros., Inc., and Herman M. Diamond, Owner. You produced that from the records, did you? A. I don't know a thing about it.

(Stipulation offered for identification.
Marked Identification 5—11/12/24.)

Oscar B. Spencer—Cross.

(I offer a further Stipulation from the same record. Marked Identification 6—11/12/24.)

STIPULATION.

10

DISTRICT COURT OF THE FIRST JUDICIAL
DISTRICT OF THE COUNTY OF
HUDSON.

DE RISO BROS., INC., a
Corporation of New
Jersey,

Plaintiff,

vs.

VINCENT AMOROSO, JR.,
Builder and HERMAN
M. DIAMOND, Owner,
Defendants.

20

On Mechan-
ic's Lien
Claim.

30

It is hereby stipulated and agreed that the above named Herman M. Diamond, Owner, hereby appears herein and that the time to issue summons and begin suit on the lien claim filed by the said De Riso Bros., Inc., against the said Vincent Amoroso, Jr., as Builder and the said Herman M. Diamond as Owner, be and is extended to November 1, 1920. And it is further agreed that said claimant, De Riso Bros., Inc., will not take any steps or proceedings

40

Oscar B. Spencer—Cross.

to enforce said lien claim before November 1, 1920.

10 Dated—September 21, 1920.

WILLIAM F. BURKE,
Attorney of Claimant, De Riso
Bros., Inc.

HERMAN M. DIAMOND.

20 (Stipulation offered in evidence—received and marked Exhibit C-3.)
Identification 5, reads as follows:

DISTRICT COURT OF THE FIRST JUDICIAL
DISTRICT OF THE COUNTY OF
HUDSON.

30 DE RISO BROS., INC., a
Corporation of New
Jersey,

Plaintiff,

vs.

VINCENT AMOROSO, JR.,
Builder and HERMAN
M. DIAMOND, Owner,
Defendants.

On Mechanic's Lien.
Stipulation.

40

It is hereby stipulated and agreed by and between the above named claimant and the above named defendant Owner, that the time to issue summons and begin

Oscar B. Spencer—Cross.

suit on the lien claim filed by the above named claimant and the above named Builder and Owner, be and the same is hereby extended to November 15, 1920, and entry of the extension of time to said date may be entered on the said lien claim and the record thereof at that time. And it is further agreed that said claimant will not take any steps or proceedings to enforce said lien claim before November 15, 1920. 10

It is also agreed that any order necessary to carry into effect this stipulation may be obtained and entered at any time by either party without notice to the other. 20

Dated—November 1st, 1920.

WILLIAM F. BURKE,
Attorney of Claimant,
De Riso Bros., Inc. 30

HERMAN M. DIAMOND,
Owner.

(Stipulation offered in evidence—received and marked Exhibit C-4.)

I offer in evidence, summons and complaint, being a carbon copy.

Mr. Warren: I object to the introduction of carbon copy—I do not object to original. 40

I offer from the Court jacket, produced by Mr. Spencer, the summons and complaint in the First District Court of the

F. Joseph O'Hare—Direct.

10 County of Hudson, in the case of De Riso Bros., Inc. vs. Herman M. Diamond, on Mechanic's Lien. William F. Burke, Attorney—the summons appearing on page 1, the complaint appearing on pages 2, 3, and 4 and which summons is signed by William F. Burke, Attorney and by Henry Bender, Clerk and contains the seal of the District Court just mentioned.

20 Mr. Warren: I object to the offer on the ground that you have offered the original and the original does not bear the signature of Henry Bender, Clerk.

30 The Court: It appears in the jacket that there is an original summons and complaint and a carbon copy of the same. The original summons is signed only by William F. Burke as attorney and does not bear any signature of the Clerk. The carbon copy which is offered by Mr. Bentley at the present contains the signature of William F. Burke, attorney and also bears a signature, "Henry Bender, Clerk". I will overrule the objection.

40 F. JOSEPH O'HARE, being duly sworn, testified as follows:

Direct Examination by Mr. Warren:

Q. You are employed in the County Clerk's office of Hudson County? A. I am.

Will Leo Filon—Direct.

Q. And you have produced the jacket bearing the number 30152 with the papers therein contained? A. Yes.

Q. You also produced the mechanic's lien claim? A. Yes. 10

(Received in evidence and marked Exhibit D-2.)

Q. Also a statement for docketing? A. Yes.

(Received in evidence and marked Exhibit D-3.) 20

Q. Also an execution with the return? A. Yes.

(Received in evidence and marked Exhibit D-4.)

30

WILL LEO FILON, being duly sworn, testified as follows:

Direct Examination by Mr. Warren:

Q. You are employed in the office of the Register of Hudson County? A. Yes, sir.

Q. You have produced these libers of deeds from the records of Hudson County as a result of the subpoena? A. Yes, sir. 40

Q. And you produced Liber 1342?

(I offer in evidence the record of deed from Anna Bruckhoff Amoroso and Vin-

William H. Drescher—Direct.

10 cent Amoroso, her husband to Herman M. Diamond on record in that book on pages 507-508-509, dated March 16, 1920, and recorded March 24, 1920—received and marked Exhibit D-5.)

(Deed from Sheriff to De Riso, Bros., Inc., in Liber 1408, p. 366, dated May 16th, 1921, and recorded July 15th, 1921—of-fered in evidence, received and marked Exhibit D-6.)

20

Continuation of the taking of deposi-tions in the above entitled cause this fourth day of March, 1927, at four o'clock in the afternoon.

30 WILLIAM H. DRESCHER, being duly sworn, tes-tified as follows:

Direct Examination by Mr. Bentley:

Q. Mr. Drescher, you reside in what city? A. North Bergen.

Q. What is your employment? A. Assistant Deputy Register of Hudson County.

40 Q. During the year 1924, were you a Commis-sioner of Deeds of the State of New Jersey? A. Yes, sir.

Q. I show you a paper marked in this cause No. 1 for identification Nov. 12, 1924, and ask you if you are the subscribing witness? A. I am.

William H. Drescher—Cross.

Q. And I call your attention to the acknowledgment—did you take that acknowledgment? A. I did.

Q. On the date it bears? A. Yes, sir. 10

(I offer in evidence—Deed marked No. 1 for Identification Nov. 12/24.)

Mr. Warren: I object until I have an opportunity to look over the testimony taken in this cause.

The Court: Objection sustained.

Q. Mr. Drescher, I call your attention to an Assignment marked in this cause No. 2 for Identification 11/12/24 and ask you if you were the subscribing witness to that instrument? A. I was. 20

Q. And I call your attention to the acknowledgment, did you take that acknowledgment? A. I did.

Q. On the date it bears date? A. Yes, sir. 30

(I offer in evidence—No. 2 for Identification Nov. 12/24.)

Cross Examination by Mr. Warren:

Q. Mr. Drescher, how do you know you took the acknowledgment upon the date that the instruments bear date? A. Because it is my handwriting. 40

Q. The date of the acknowledgment? A. Yes.

Q. How did you know you took it on the day the acknowledgment was dated? A. My handwriting on the acknowledgment—I put the date in there myself.

William H. Drescher—Cross.

Q. Do you ever date an acknowledgment on the date on which you did not take it? A. No, sir.

10 Q. And where was this acknowledgment taken?
A. At the home of Mrs. Amoroso at 31st Street, North Bergen.

Q. And how did you get them up there? A. I took them with me.

Q. Where did you get them? A. From Mr. McMahon.

Q. Did he give them to you or did you draw them? A. He gave them to me.

20 Q. Where? A. At the Court House.

Q. And he was Register at that time? A. He was.

Q. And your superior in the Register's Office?
A. Yes.

Q. And after you took the acknowledgment, what did you do with the instruments? A. Gave them back to Mr. McMahon.

30 Q. Was there any consideration paid through you? A. Not through me.

Q. To Anna Bruckhoff Amoroso or Vincent Amoroso, Jr. for either the deed which has been offered or the assignment? A. No consideration—I simply took the acknowledgment.

40 Q. And on what date did you give them to Mr. McMahon? A. That I cannot remember—perhaps the next day—perhaps two or three days after.

Q. And was the signature Anna Bruckhoff Amoroso on there twice at the time you took the acknowledgment? A. Not that I know of.

Q. On the assignment? A. Not that I know of—it may have been.

William H. Drescher—Cross.

Q. Well, I ask you to look at the Assignment which is marked 2 for Identification 11/12/24 and ask you if that is your recollection? A. No, this is the signature that she wrote before me because that is my writing—the word “seal” opposite that last signature. 10

Q. And was the other signature stricken off at that time? A. I could not say that—I don’t know.

Q. Well, did you see Vincent Amoroso, Jr. sign? A. Yes.

Q. And where did he sign? A. Vincent Amoroso at the Court House. 20

Q. He signed at the Court House—and where did he acknowledge? A. At the Court House.

Q. And where did Anna Bruckhoff Amoroso sign? A. At her residence—31st Street, North Bergen.

Q. And did you see her sign? A. Positively.

Q. And did you see her sign the first signature which is stricken out? A. I don’t know anything about the first one. 30

Q. Did you see her sign the second one? A. Yes—the one opposite the word “seal” in my handwriting.

Q. Was the same pen used by you and her? A. I don’t know—I can’t recall that.

Q. Did you take the acknowledgment of Mr. Amoroso before you went to the home? A. That I can’t say—I took the acknowledgment the same day—now whether I took it when I came back or not—I don’t know. 40

Q. Well, what hour of the day did you go there? A. I don’t know—how long ago is that?

William H. Drescher—Cross.

Q. November 6th, 1924. A. Pretty near three years ago—I should think it would be between twelve and one.

10 Q. Are you guessing now? A. Just guessing.

Q. Were you guessing when you said you took the acknowledgment the same day it was dated? A. No.

Q. Were you guessing when you said you saw Anna Bruckhoff Amoroso sign? A. No—I am under oath, Counsellor.

20 Q. And when was the seal scroll—the word seal written, do you remember? A. When she signed.

Q. Before or after? A. It could not very well be written before—you could not very well write a seal before the paper was signed. I have drawn a great many papers and I never put a seal on a paper until after the party signed the name.

Q. Was that done in her presence and before the acknowledgment? A. Was what done?

30 Q. The word seal and the scroll? A. There while I was talking to her.

Q. And before the acknowledgment? A. Yes—in her living room.

Mr. Bentley: I now desire to offer in evidence, bill, decree and *feri facias* issued in this cause.

40 I desire to offer in evidence the Master's Summons and Notice of Hearing which I will produce.

I now wish to formally move to strike out all the evidence of the witnesses Spencer and O'Hara heretofore given under this application. The testimony was directed with respect to a certain Mechanic's

William H. Drescher—Cross.

Lien claim that was filed in the District Court of Union City and subsequently upon which a judgment was obtained and docketed in the Court of Common Pleas or Circuit Court, I don't know which, under which execution issued, the land sold and title subsequently vested in petitioner in this cause, McMahan; on the ground that by that evidence they have endeavored to collaterally attack a judgment in another Court, which, of course, they cannot do in the Court of Chancery, which I shall endeavor to show when I hand you my memorandum. 10 20

I offer in evidence, certified copy of a deed from Thomas Madigan, Sheriff of the County of Hudson to James M. DeRiso, recorded in the Register's Office of Hudson County in Book 1408 of Deeds, page 366 and deed from James M. DeRiso and Philomena M. DeRiso, his wife, to John J. McMahan, recorded in the Hudson County Register's Office in Book 1447 of Deeds, page 92. 30

Mr. Warren: I object to these, even if the deeds are produced on the ground that they are based upon a nugatory judgment of which there is no record.

James O'Neill—Direct.

Continuation of taking of depositions in the above entitled matter, on the seventeenth day of March, 1927, at three o'clock in the afternoon.

JAMES O'NEILL, being duly sworn, testified as follows:

Direct Examination by Mr. Warren:

Q. Where are you employed? A. Hudson County Clerk's Office.

Q. And you were subpoenaed to bring the papers in the case of DeRiso Bros. v. Vincent Amoroso, Jr., Builder, and Herman M. Diamond, Owner? A. Yes, sir.

Q. Have you done that? A. I have (witness produces papers).

Q. I call your attention to the execution which is marked D-4 and to the return of the Sheriff certifying to the sale and call your attention to the fact that Thomas Madigan's signature is not affixed, but that the name of the Sheriff is merely typewritten—have you produced all the papers in this case? A. I have.

Q. And you have no signed report of sale by the Sheriff?

Mr. Bentley: I object to the question on the ground of an attempt to collaterally attack the deed from the Sheriff to DeRiso which is in evidence in this case and cannot be thus attacked but has to be attacked by certiorari or in the Court under which the deed was issued.

The Court: Objection sustained.

James O'Neill—Direct.

A. No, the only thing I can say that is the paper we received from the Sheriff as part of the file.

Q. With the typewritten signature? A. Yes. 10

Q. I call your attention to the signature of the Sheriff on the paper which says "By virtue of the annexed writ, I did, on the 5th day of May, 1921, sell at Public Vendue, at Hudson County Court House, Jersey City, N. J., having first duly advertised the same, all the right, title and interest of the defendant, Vincent Amoroso, Jr., Builder and Herman M. Diamond, Owner, in and to the lands and tenements described in the inventory annexed to James M. DeRiso, of Township of North Bergen, N. J., for the sum of Six hundred & Twenty-five (\$625.) Dollars, he being the highest bidder for the same"—there is not annexed to the execution which you produced, an inventory of the lands and tenements sold? 20

Mr. Bentley: Same objection. Will you stipulate that the same objection may apply to all evidence taken on this subject? 30

Mr. Warren: I am content that objection given shall apply.

A. All that I can say, that is the paper received from the Sheriff.

Q. Is there any inventory on file? A. I have not examined the paper. 40

Q. Well, will you? A. (Witness examines paper).

Q. Were there any papers on file in the County Clerk's Office of Hudson County other than the Certificate of Commencement of suit marked

James O'Neill—Cross.

10 D-1-11/12/24, the Mechanic's Lien marked Exhibit D-2, the Statement for Docketing Judgment marked Exhibit D-3 and the Fi Fa with the certificate of Sheriff marked Exhibit D-4 by the Master? A. You mean any other papers outside of those?

Q. Yes. A. No—that is the entire record of ours.

Now I ask to be permitted to offer for the purpose of the record, a certified copy of the record produced in lieu of the original.

20 Mr. Bentley: The only objection I have is that the certified copy is not complete inasmuch as there is no certificate of commencement of suit.

Mr. Warren: I will have that certificate included.

Mr. Bentley: I think we ought to deal with it when it is completed.

30 *Cross Examination by Mr. Bentley:*

Q. As I understand it, you were subpoenaed or the County Clerk was subpoenaed to produce the records from his office of the case of De Riso Bros. vs. Vincent Amoroso, Jr. and Herman M. Diamond? A. Yes.

40 Q. And in obedience to that writ you ascertained the number of the case in your office? A. Yes, sir.

Q. And thereupon you found the jacket containing the papers? A. Yes.

Q. And you have produced the jacket with such papers as you found in it? A. Yes.

Q. That is all? A. Yes, sir.

James O'Neill—Re-cross.

Q. You have not made any search? A. Yes, I looked under the index for that particular case mentioned in the subpoena.

Q. But you did not look anywhere else in your files outside of the jacket? A. I looked against the name. 10

Q. Did you search your files anywhere outside of going to this jacket and producing the papers in that jacket? A. No.

Q. That is all you did—you found the number of this case and went to the file containing the number 5131 and you produced that jacket with such papers as you found it? A. And continued against the register which itemizes these papers. 20

Re-direct Examination by Mr. Warren:

Q. Does the register show the record of any other papers? A. Not than is here.

Q. And will you look at the Certificate and Execution of the Sheriff and state as to whether they are attached to each other? A. They are. 30

Q. Attached by eyelet fasteners? A. Yes, attached by eyelet fasteners. 30

Q. So that the papers are irremovable without tearing? A. That is right.

Q. Will you look at those papers and tell us if you think any other paper has been attached and torn out? A. It does not appear that way to me.

Re-cross Examination by Mr. Bentley:

Q. I call your attention to the fact that on the back of this Special Fi Fa, being numbered D-4 in this case, there appeared to be three eyelets? A. That is correct. 40

Q. That is correct? A. Yes, three eyelets.

Q. And the paper consists of one, two, three, four pages, does it not? A. Yes, sir.

James O'Neill—Re-direct.

10 Q. I call your attention to the space between pages one and two and ask if there is any evidence of a paper having been fastened there and torn out? A. According to that there is—there was a sheet.

20 Q. There was a sheet or something between pages one and two which appears to be torn out and part of page two still appears in this record, is it not? A. That is true according to that. May I state this—I don't know whether it was at the time we received it or whether it was taken out after or whether that was the condition when we received it.

Q. But it plainly appears does it not, that there was another paper attached to those four sheets? A. According to that it does.

Q. I call your attention to the fact that on the first sheet there only appears to be two fasteners? A. Yes.

30 Q. And on the rear sheet of this Exhibit referred to a moment ago, there are six fasteners, are there not? A. Right.

Q. Is there any way of you telling when that page was torn out? A. No, sir.

Q. Or how it was torn out? A. No, sir.

Q. Will you see that this paper—Exhibit D-4—is kept separate until this case is over—a period of two or three weeks? A. Yes, sir.

40 Q. Will you put it in the safe and see that it is not tampered with in the meantime? A. Yes, sir.

Re-direct Examination by Mr. Warren:

Q. I call your attention to the fact that two eyelets are through the three sheets of the fi fa,

John Murray—Direct.

is that so? A. Yes, this one and that one (pointing to fasteners).

Q. And there are only appearing on the face of the fi fa how many eyelets on the fi fa from here down—typewritten matter? A. Just one. 10

Q. Now on the face of the fi fa—on the paper which was torn off, there are how many eyelets appearing? A. Two.

Q. And on the face of the Sheriff's certificate how many eyelets appear? A. Two.

Q. Now the paper that was torn out left a margin at the top of the Exhibit—did it not? A. Yes. 20

Q. And there appears printed thereon "form 94" does it not? A. Yes.

Q. Do you know what "form 94" is? A. I do not.

Q. I call your attention that Certificate of the Sheriff which bears in the same type "form #79" does it not? A. Yes, sir.

Q. Do you know whether "form 94" is a printed Sheriff's form? A. I do not know. 30

JOHN MURRAY, being duly sworn, testified as follows:

Direct Examination by Mr. Warren: 40

Q. You are a Clerk in the Sheriff's office? A. Yes. Execution Clerk.

Q. And you have been subpoenaed to produce the records of the Sheriff's Office pertaining to

John Murray—Direct.

the case of De Riso Bros., Inc. vs. Vincent Amoro-
roso, Jr., Builder and Herman M. Diamond,
Owner? A. Yes, sir.

10 Q. And in answer to the subpoena you pro-
duced Law Execution No. 1 with initials T. M.
meaning Thomas Madigan, Sheriff and turned
to page 39, record No. 78? A. Yes.

Q. Does your record show whether or not any-
body paid to the Sheriff of Hudson County, the
purchase price in the execution sale?

20 Mr. Bentley: I object to the question
on the ground that it is an attempt to col-
laterally attack the record upon which the
deed was given in this case and upon which
the petitioner John McMahon predicates
his title and that it is not a proper pro-
ceeding. There must be a direct attack,
there cannot be a collateral attack.

30 A. The record does not show whether we re-
ceived the money, but it shows that we paid the
money out.

Q. Does that show that you paid it or is it
merely a receipt on the face of the record, an
acquittance of the Sheriff by the Attorney of the
plaintiff for liability? A. No, sir, the money was
paid in our office.

40 Q. And you were subpoenaed to bring the
record? A. I was subpoenaed to bring the execu-
tion record. If I was subpoenaed to bring the
bookkeeper's record I would have to have an
automobile—but that is the record—\$625. re-
ceived and Burke signed for \$535.38, leaving a
balance of \$89.62. It would require a lot of books
to show each transaction.

*John Murray—Cross.**Cross Examination by Mr. Bentley:*

Q. This record shows that the property was sold for \$625. does it not? A. On May 5th, 1921, sold to James M. De Riso for the sum of \$625.00. 10

Q. Now, was that \$625. paid into the Sheriff's Office? A. Yes.

Q. And how was it paid? A. By check or cash do you mean?

Q. In what sum—in what amount? A. I could not just tell you whether they paid a deposit and paid the balance when they got the deed.

Q. But you received \$625.00? A. Yes. 20

Q. And later on Mr. Burke, attorney for De Riso received it? A. On June 10th, 1921, William F. Burke, attorney for plaintiff, per W. Marnell, signed for \$535.38.

Q. That was the amount due on the judgment? A. The amount due plaintiff.

Q. I show you Exhibit D-4 in this case and call your attention on page 2 a part of which has been torn "form 94" do you recognize those words? A. Yes, sir. 30

Q. What does "form 94" mean? A. That is our levy sheet in the Sheriff's Office.

Q. And ordinarily would be annexed to an execution? A. The levy sheet is annexed here—next to the fi fa.

Q. And then what is put on front of that—on the levy sheet? A. Before we have a sale we make the levy and have it signed by the Under-Sheriff and says that we levy on the land and tenements and here is the inventory and mechanic's lien right in there (indicating). 40

Q. And then you put on top of that the report of sale? A. The report of sale and endorse

John Murray—Re-direct.

10 it on the front. While this thing here is not signed by the Sheriff, you will note that this thing here says, "Thomas Madigan, Sheriff, June 13th, 1921—returned to Court levy and statement annexed—Thomas Madigan, Sheriff by James T. Brady, Under-Sheriff." This is the Under-Sheriff's signature.

Q. But you see the levy is not there? A. I notice that.

Q. And it seems to have been in there and disappeared? A. No question about it.

20 Q. And that return which you have just read to us—"June 13th, 1921—returned to Court levy and statement annexed"—was that actually signed by the Under-Sheriff? A. By James T. Brady—that is his signature.

Q. And he was Under-Sheriff at the time? A. Yes.

Re-direct Examination by Mr. Warren:

30 Q. Do you keep any record in the Sheriff's Office of property under which levy is made? A. All property—it is right on the levy sheet.

Q. Do you keep any record in the Sheriff's office of the description of the property? A. Oh, yes, sure. I can find the sales cover or I can find the printed slip of what we advertised.

40 Q. But you keep a record of all Sheriff's advertisements for sale, so that you can produce a week from next Friday, you could produce the advertisement for sale which would show upon what property the levy was made? A. A clipping you mean?

Q. Yes? A. Yes.

James M. De Riso—Direct.

Q. Will you do that? A. Yes. The clipping, Judge, of the advertisement will just be the description. The description is always in mechanic liens—it is different from ordinary executions. 10

Re-cross Examination by Mr. Bentley:

Q. In other words after you received this execution and you advertised it in the newspapers, the newspaper sent you a number of clippings and you file those printed clippings in your record? A. We keep them—I don't suppose we have all, but we have one; the one that De Riso signed when he bought the property is in the cover; it has got to be. 20

Q. And that is the one you will produce? A. Yes.

Re-direct Examination by Mr. Warren:

Q. And will you do that without further subpoena? A. Yes—without further subpoena. 30

Continuation of taking of depositions in the above entitled matter, on the twenty-fifth day of March, 1927, at three o'clock in the afternoon.

JAMES M. DE RISO, being duly sworn, testified as follows: 40

Direct Examination by Mr. Warren:

Q. You are an officer of the De Riso Bros. incorporated in 1921 and 1922? A. Yes.

Q. And you are familiar with the fact that De Riso Bros., Inc., was the plaintiff in a suit

James M. De Riso—Cross.

against Vincent Amoroso, Jr., Builder and Herman M. Diamond, Owner? A. Yes, sir.

10 Q. And in that suit you were represented by William F. Burke? A. Yes.

Q. Did you attend the execution sale?

Mr. Bentley: I object on the ground that it is immaterial and irrelevant.

A. No.

20 Q. The property after was sold to you and you later, together with your wife, signed the deed conveying the property to John J. McMahon? A. Yes.

Q. Did you ever pay to the Sheriff of Hudson County or to William F. Burke, the purchase price for that property? A. No.

Q. Did you ever pay any money to anybody for the purchase of that property? A. No, sir.

30 Q. Do you know where the money came from to pay for the purchase of that property?

Mr. Bentley: I object on the ground that it is immaterial and a collateral attack.

A. I don't know.

Cross Examination by Mr. Bentley:

40 Q. Was this a corporation? A. A corporation.

Q. That filed the lien against this property? A. Yes.

Q. And you bought it at the Sheriff's sale individually? A. I was not there—Mr. Burke was there.

James M. De Riso—Re-direct.

Q. For you? A. Yes.

Q. And you entrusted the matter to Mr. Burke?

A. Yes.

Q. And you told him you wanted him to protect the interest of De Riso Bros.? A. Yes. 10

Q. And if necessary to buy the property? A. Yes.

Q. And whatever he did you were satisfied? A. Yes.

Q. And subsequently did you receive a deed from the Sheriff? A. I don't remember.

Q. I show you a deed from Thomas Madigan, Sheriff of Hudson County to James M. De Riso dated May 16th, 1921, recorded in the Register's Office July 15th, 1921, in Book 1408, on page 1366—are you the James M. De Riso mentioned in that deed? A. Yes, sir. 20

Q. Subsequently you sold the property to Mr. McMahan? A. Yes.

Q. I show you a deed from James M. De Riso and wife to John J. McMahan, dated June 21st, 1921, and recorded June 2nd, 1922, in Book 1447 of Deeds, page 92 and ask you if that is the deed signed by you and your wife to Mr. McMahan? A. Yes, sir. 30

Q. And did Mr. McMahan pay you or settle with Mr. Burke? A. Mr. Burke took care of it.

Q. And the matter was finally settled to your satisfaction and you got your money? A. Yes. 40

Re-direct Examination by Mr. Warren:

Q. Did you get any money from Mr. McMahan?

A. No, sir.

Q. And when you said that Mr. Burke took care of the matter, this was in the interest of the firm of De Riso Bros.? A. Yes.

James M. De Riso—Re-direct.

Q. And you never took possession of the property or accepted any money from Mr. McMahon?
A. No, sir.

10 *Re-cross Examination by Mr. Bentley:*

Q. But Mr. McMahon paid somebody for the property through Mr. Burke? A. I don't know—De Riso Bros. was interested for the amount of the lien.

Q. And Mr. Burke took care of the whole matter? A. Took care of the whole matter and we
20 were paid.

Q. This matter I suppose is hazy, is it not?
A. Yes.

Q. You have all the confidence in the world in Mr. Burke, have you not? A. Oh, yes.

Q. And left the matter entirely to him? A. Yes.

Q. And you are satisfied that he paid the money to De Riso Bros.? A. Yes.
30

Re-direct Examination by Mr. Warren:

Q. Do you remember testifying before Henry W. Runyon in the Concourse Building? A. Yes, sir, I do.

Q. And at that time you produced the books of the Company, did you not? A. Yes, sir.

Q. And those books did not show any payment
40 made by De Riso Bros. to Mr. Burke or the Sheriff for the purpose of taking the title to this property?

Mr. Bentley: This is all subject to the same objection.

John J. McMahon—Recalled—Direct.

A. I don't think so.

Q. But did show the amount paid to De Riso Bros. by William F. Burke? A. Yes, sir.

10

JOHN J. McMAHON (recalled), further testified as follows:

Direct Examination by Mr. Warren:

Q. Mr. McMahon, have you got the check in payment of this property? A. No, the subpoena was mailed at the office—the subpoena was not served on me until last night and this morning she could not find it up to the time I left. 20

Q. Mr. McMahon, you testified with reference to receiving two deeds from Mr. and Mrs. Amoroso for this property in question? A. Yes.

Q. Did you buy that property from them or were those deeds given to you by way of security? 30

Mr. Bentley: I object to that on the ground that it is immaterial and irrelevant and a collateral attach on the deed.

A. It was given me to protect notes that I had endorsed at the Steneck Trust Company.

Q. And they were notes of Mr. Amoroso, were they not? A. Yes. 40

Q. Mrs. Amoroso was not the maker of those notes?

Mr. Bentley: I further object on the ground that it has already been gone into by Judge Warren before.

Alfred J. Brandstaedt—Direct.

A. They were made by Amoroso—by Vincent Amoroso.

10 *Cross Examination by Mr. Bentley:*

Q. Mr. McMahon, whatever you paid to De Riso for this deed to you which has been offered in evidence, was paid to Mr. Burke?

Mr. Warren: I object on the ground that Mr. De Riso testified no money was paid to him by Mr. McMahon.

20 Q. Whatever you paid you paid to Mr. Burke, did you not? A. I did.

30 ALFRED J. BRANDSTAEDT, being duly sworn, testified as follows:

Direct Examination by Mr. Warren:

Q. What is your position in the Steneck Trust Co.? A. I am just a messenger.

Q. And what was your position before? A. General Bookkeeper.

40 Q. And are you familiar with records of the bank? A. Yes.

Q. And have you produced the records of the bank pertaining to Amoroso and McMahon's loan? A. Yes, sir.

Q. At one time Mr. Amoroso had a note discounted in your bank endorsed by John McMahon

Alfred J. Brandstaedt—Direct.

and secured by stock of the National Tin Company is that right?

Mr. Bentley: I object on the ground that it is immaterial. 10

Q. Is that Tin stock still in the bank as collateral?

Mr. Bentley: Same objection to this whole line of testimony if I may make one objection.

A. Well, I don't know whether that stock is there. 20

Q. Well from your records? A. From my records it is there for the security.

Q. Have you got the note of Vincent Amoroso at the present time secured by that Tin stock? A. No.

Q. Is there any such note at the bank? A. No, that is the only one—\$25.00 (witness produces note). 30

Q. Now you have a note, however, of John McMahon which is secured by the identical Tin stock? A. Yes.

Q. And when was that taken out of Amoroso's account and put to McMahon's? A. January 30th, 1924—that is the daily sheet (indicating) taken out of her and put on the ledger \$10,306.30—now this is the time they changed the sheets again—they have here it has been carried forward on McMahon's name. 40

Q. John J. McMahon? A. John J. McMahon.

Q. That note is still \$10,306.30 and is Me-

Henry Bender—Direct.

Mahon's note and is secured by the Tin stock?
A. Yes.

10 Q. And Amoroso's name is not endorsed upon
the note? A. No, this note for \$25.00 is only en-
dorsed by Amoroso.

Cross Examination by Mr. Bentley:

Q. Mr. McMahon is now responsible alone on
that note? A. Yes.

20

HENRY BENDER, being duly sworn, testified as
follows:

Direct Examination by Mr. Warren:

30 Q. Mr. Bender you are the Clerk of the Dis-
trict Court of the First Judicial District of the
County of Hudson? A. Yes, that is right.

Q. And were such clerk on the 23rd day of
August, 1920. A. Yes.

Q. Until the present time? A. Yes.

40 Q. Will you turn to the account—judgment
record book covering that period of time—page
239 showing the case #14707—De Riso Bros. v.
Vincent Amoroso and Herman M. Diamond—
have you done so? A. Yes.

Q. I show you a photograph and ask you if
that is the photograph of that page of the book
as it appears at the present time? A. It is.

(Photographic copy of page 239 of
judgment record book showing case No.

Henry Bender—Direct.

14707 offered in evidence—received and marked Exhibit D-1-3/25/27.)

Mr. Bentley: I object to it upon the ground that it is immaterial, irrelevant, incompetent and not the best proof and further that it is an attempt to collaterally attack the deed which was given to the petitioner in this matter for the surplus money in this cause. 10

Mr. Warren: I want it understood that I am offering the record, but for the convenience of the Court I am offering a photographic copy. 20

Mr. Bentley: I have no objection to the photographic copy in place of the record, but I do object to it on the grounds stated.

Q. Now, will you turn to page 240 of that same record and by the way—what is the number of that book and just what do you call it? A. Court Record No. 15.

Q. Will you turn to page 240 and is there not a record there of case 14708—mechanic's lien case of De Riso Bros., Inc. vs. Vincent Amoroso, Jr. and Herman M. Diamond? A. Yes. 30

Q. I show you a photograph and ask you if that is a photograph of that page as it appears there? A. Yes.

(Photographic copy of page 240 of Court Record No. 15 showing case No. 14708 offered in evidence—reserved and marked Exhibit D-2 3/25/27.) 40

Mr. Bentley: I offer the same objections and ask that I may be allowed to offer the

Henry Bender—Direct.

same objection to all the testimony of this witness. Will you agree to that?

10 Mr. Warren: The one objection runs to everything.

Q. Now, is that the only book of judgment records for that period? A. For that period. There are books before this and after this—there are different records that we have for dispossess, attachments—

Q. I refer particularly to mechanic's liens? A. This is the only one.

20 Q. Was there a judgment in a mechanic's lien case of De Riso Bros. vs. Vincent Amoroso and Herman M. Diamond entered in your Court and shown by your records on December 27th, 1920?

Mr. Bentley: Same objection.

30 A. There is nothing in here but there is a paper in here showing the judgment given, but I don't know whether I can explain it or not. It might have been given in Judge McCauley's office down stairs, he did some of those things because I never got any account of the judgment in my records.

40 Q. As Clerk of the Court you were not present at the rendering of any judgment in this case on December 27, 1920? A. Unless it was given in the Courtroom and I have forgotten it since but it would be in the record.

Q. I mean cases in the Courtroom and you were acting as Clerk of the Court, you took down a record of judgments entered and wrote them in your book? A. Yes.

Henry Bender—Direct.

Q. And that was not done in this case? A. No.

Q. And you were not present at the time it was rendered? A. No.

Q. You also have a jacket for case 14707? A. 10
Yes.

Q. Were there any papers ever filed in case 14708? A. I don't know. Did you subpoena me for that case?

Q. For any case—we did not refer to any particular number. Are there any papers on file in the Court in case 14708? A. To my knowledge there is none.

Q. You produced Jacket 14707, did you not? 20
A. Yes.

Q. You were, however, on duty on December 27th, 1920? A. I was.

Q. You mean that you were on your vacation in August, 1920. A. The last two weeks in August.

Q. I show you the original summons and complaint marked for identification by Judge Sullivan 11/12/24 and ask you as to whether or not that is the original summons and complaint with the pencil notation of service endorsed upon it? 30
A. That is the original summons—yes.

Q. I show you a photographic copy of the summons and ask if that is a true copy? A. Yes.

(Photograph of summons to Vincent Amoroso, Jr. and Herman M. Diamond in re De Riso Bros., Inc. vs. Vincent Amoroso, Jr., Builder and Herman M. Diamond, Owner, offered in evidence—received and marked Exhibit D-3 -3/25/27.) 40

Q. Now, I call your attention to the fact that no signature of the Clerk or Acting Clerk appears upon that summons—is that so? A. Yes.

Henry Bender—Direct.

10 Q. Who serves the summons and complaints in the District Court? A. The Constable where there is no Sergeant-at-arms. We have no Sergeant-at-arms but two Constables, Mr. Spencer and Mr. Conway.

Q. Is there any return of service by either one of the Constables of the service of that summons and complaint upon Vincent Amoroso and Herman M. Diamond? A. No, I have none.

20 Q. There is a pencil notation—"served Amoroso August 26th"? A. That is done by the Constable just to remind him when he makes his return how he served.

Q. And there is no return as to service? A. No.

Q. And as far as you know, you don't know whether it was personal service or not? A. No.

30 Q. I show you produced in that jacket there what purports to be a lien claim—is that one of the official records of the Court in this case? A. It is not. That probably came in when they tried the case.

Q. This is a surplus record and apparently a copy of the lien claim as filed in the County Clerk's office? A. That would not become part of my record at all.

40 Q. These are copies of the Stipulations on file in your Court marked respectively C-3 and C-4 by Judge Sullivan, Special Master—are they copies of those exhibits? A. Yes, they are.

(Photographic copy of Stipulations in the case of De Riso Bros., Inc. vs. Vincent Amoroso and Herman M. Diamond, dated respectively September 21st, 1920,

Henry Bender—Direct.

and November 1st, 1920—offered in evidence, received and marked Exhibit D-4 -3/25/27.)

Q. Mr. Bender, was Mr. Spencer the Constable on the 23rd of August, 1920? A. Yes. 10

Q. And is he appointed as Constable or is he elected? A. Yes.

Q. And then is he designated by the Judge of the Court to serve or do you select any Constable that you desire for service? A. Whenever Judge McCauley was not there I would ask whichever one was there? 20

Q. In other words, there is no special appointment by the Judge? A. There was not at that time.

Q. And who appoints the Clerk of the Court? A. The Judge through Civil Service.

Q. In other words you must pass an examination and then be appointed by the Court? A. Yes.

Q. Is there any special mention in the law for an Acting Clerk? 30

Mr. Bentley: I object to that upon the ground that it is conclusion of the witness.

A. In the absence or disability of the Clerk there is an Acting-Clerk.

Q. Now is there anything on file in the Court showing the appointment of Oscar B. Spencer as Acting Clerk of the Court covering the date of August 23rd, 1920? A. No, there is not. 40

Q. Did you ever have a written designation of the Judge? A. I would not say that we did.

Henry Bender—Direct.

The only time I know that a written designation was given was in 1923 when I was very sick—then the Judge gave a written designation to Spencer as Acting Clerk.

10

Q. The memorandum that you produced in that jacket signed by Judge McCauley on December 27th, is the only memorandum or record that you have that judgment was entered? A. That is the way Judge McCauley used to make up every case. When he would hear it he would make his notes and from that I would take the amount.

20

Q. And that memorandum is as follows: "Dec. 27-20 De Riso Bros. vs. Diamond—Jutd. 500 for plt. F. H. M. C. J."? A. Yes.

Q. That does not disclose as to whether there was a personal judgment against the Builder and a special judgment against the land? A. No.

Q. And it would be impossible for you to enter judgment based upon such a memorandum? A. Yes.

30

Q. And did you ever receive anything in writing from the Judge whether the case was tried in the Court or in his office— A. No.

Q. Which would show whether or not there was a personal judgment against Vincent Amoroso and a special judgment against the land mentioned in the summons and complaint? A. No, I never did get any papers.

40

Q. And there is none on file in your Court? I think you already testified definitely that there was no record as to who was served, if anybody, in this suit? A. No.

Q. Outside of the pencil memorandum of somebody that Amoroso was served? A. That is right.

Henry Bender—Cross.

Q. They have not even got that in so far as Herman M. Diamond is concerned? A. No.

Cross Examination by Mr. Bentley:

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Q. This paper "Commencement of suit" signed Oscar B. Spencer, Acting Clerk, dated the 23rd day of August, 1920, can you tell us whether or not you were actually present acting as Clerk on that day? A. I was not.

Q. Can you tell us whether Oscar B. Spencer was present acting as Acting Clerk at that time? A. He was.

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Q. And he signed the paper reading: "This is to certify that suit on the lien claim filed by the plaintiff on August 23, 1920, claiming a lien upon the lands of the above named defendant Owner for a debt due from the above named defendant Builder entitled as above set forth has been commenced in the District Court of the First Judicial District of the County of Hudson. That said suit was commenced on August 23, 1920, and the summons in said suit was issued out of said court on said August 23, 1920, and said summons requires the defendants to answer within twenty days after service thereof upon them and is returnable twenty days after such service. In Witness Whereof I have set my hand and affixed the seal of said Court the 23rd day of August, 1920.

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Oscar B. Spencer,
Acting Clerk."

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(Words)

(Court seal)

A. I think so.

Henry Bender—Re-direct.

10 Mr. Warren: I would like to have it noted that what Mr. Bentley was reading is a carbon copy of the Certificate, the Certificate being on file in the office of the Clerk of Hudson County.

Re-direct Examination by Mr. Warren:

Q. I call your attention to Exhibit D-4 of this date, being a photographic copy of the two stipulations on file, one dated September 21st, 1920, reading as follows: "It is hereby stipulated and agreed that the above named Herman M. Diamond, owner, hereby appears herein and that the time to issue summons and begin suit on the lien claim filed by said De Riso Bros., Inc. against said Vincent Amoroso, Jr., as Builder and said Herman M. Diamond as owner, be and the same is hereby extended to November 1, 1920" and the other being in the same general form and saying, "It is hereby stipulated and agreed by and between the above named claimant and the above named owner that the time to issue summons and begin suit on the lien claim filed by the above named claimant against the above named Builder and Owner be and the same is hereby extended to November 15, 1920" with this added, "and that entry of the extension of time to said day may be entered on the said lien claim and the record thereof at any time"—now
20
30
40 after the date of the above stipulations was a summons and complaint ever issued out of your Court? A. No.

Q. And at the time that this stipulation of September 24th and also the stipulation of No-

Henry Bender—Re-direct.

vember 1, 1920 were signed and filed, the original summons and complaint had not as yet been signed? A. No.

Q. And consequently had never been issued? 10
A. Not by me.

Q. By your Court? A. It might have been issued by the Acting Clerk—I don't know.

Q. I call your attention to the original of which D-3 of this date is a copy which shows that legally it was not issued—

Mr. Bentley: I object to the word "legally" and ask that it be stricken out. 20

there was never, however, any other summons issued in this case between these parties? A. No.

Q. What was read by Mr. Bentley as the Certificate of the Commencement of the suit signed by Oscar B. Spencer was a carbon copy of the original which is on file in the County Clerk's Office of Hudson County, is it not? A. It is a carbon copy I suppose—I did not sign it. 30

Q. But your office is not the place for the filing of the commencement of the lien claim suit? A. No.

Q. That place is where? A. County Clerk's Office.

The Court: And that document is marked copy?

Witness: Marked copy. 40

John Murray—Recalled—Direct.

JOHN MURRAY (recalled) being duly sworn testified as follows:

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Mr. Warren: I am willing to stipulate that William F. Burke paid the purchase price to the Sheriff for the property sold at the execution sale. The bid for the sale was signed in the name of James De Riso by William F. Burke.

20

Mr. Bentley: And that the purchase price received was \$625.00, \$80.00 paid on the day of sale and the balance of \$545. was paid later by Mr. Burke to the Sheriff, Mr. Murray producing form 94 which has a heading for the case which it is hereby consented shall be offered in evidence.

(Form 94 offered in evidence, received and marked Exhibit D-5 -3/25/27.)

Direct Examination by Mr. Warren:

30

Q. This form speaks of an inventory and description herein contained, is it the usual practice to describe the property upon a real estate levy? A. On this form in a street lot execution we are furnished a real estate description by the attorney for plaintiff which we paste on the sheet and is signed by the Sheriff as a levy. In a mechanic's lien execution the execution is drawn by the attorney for plaintiff—we have no form in the County Clerk's office—and that execution contains in it a description of the premises and we simply write across this levy sheet that we are levying upon lands and premises

40

John C. Boschen—Direct.

described in annexed writ and have it signed by the Sheriff and attach it to the original execution.

Q. That is the practice of your office? A. Yes. 10

JOHN C. BOSCHEN, being duly sworn, testified as follows:

Direct Examination by Mr. Warren: 20

Q. What is your business? A. Title searcher.

Q. And you are at present employed by whom?

A. Warren & Stanton.

Q. And by request did you examine as to who has title to the property conveyed by Sheriff's deed to James M. De Riso and by him to John J. McMahan, being the same property conveyed by Anna Amoroso and husband to Herman M. Diamond and how the title stood at the time of the deed from Amoroso to Diamond? A. Yes, sir, I did. 30

Q. And how did the title stand? A. The title is in Anna Bruckhoff Amoroso herself.

Q. And is this a certified copy of the deed to her? A. Yes sir, it is.

(Certified copy of deed from James Thomson and wife to Anna Bruckhoff Amoroso dated Jan. 12, 1917, recorded in Book 1245 of Deeds, page 381, offered in evidence, received and marked Exhibit D-6 -3/25/27.) 40

John Warren—Direct.

10 (Certified copy of deed from Anna Bruckhoff Amoroso and husband to Herman M. Diamond dated March 16th, 1920, —recorded in Book 1342 of Deeds for Hudson County, page 507—offered in evidence, received and marked Exhibit D-7 -3/25/27.)

20 (Certified copy of proceedings certified by Clerk of Hudson County with reference to the records in his office relative to mechanic's lien claim of De Riso Bros., Inc. vs. Amoroso and Diamond—offered in evidence, received and marked Exhibit D-8 -3/25/27.)

Mr. Bentley: I object to it on the ground that it is irrelevant, immaterial, incompetent and an attempt to collaterally attack the deed to the petitioner in this suit.

30 (Certified copy of the record of the Supreme Court Clerk's office in certiorari suit of Diamond v. McGovern offered in evidence, received and marked Exhibit D-9 -3/25/27.)

Mr. Bentley: I object to it on the ground that it is immaterial, irrelevant, and it is likewise an attempt to collaterally attack the deed of McMahan and his right to the surplus in this case.

40

JOHN WARREN, being duly sworn, testified as follows:

Edwards & Smith made two motions to dismiss the writ of certiorari for lack of prosecution.—

John Warren—Direct.

Mr. Bentley: I reserve the right now in view of the fact that Judge Warren is testifying, to move to strike out all of his testimony when he is finished.

10

—As will be seen from the record in the certiorari suit in the form of affidavits which were filed, I resisted the motion upon the ground that in this proceeding for surplus moneys before you that the question would be raised as to whether or not in this Court there could be a collateral attack upon a judgment of another Court which was the basis of an instrument of title on the ground that in one Court you could not collaterally attack the judgment of another Court. The position taken, my recollection is, by Mr. Dawson, is that it would not be a collateral attack in this Court, but showing merely that there was no judgment—that he has no recollection of it. However, the answer to my defense to the motion at that time by, I think Mr. Dawson, although I believe Mr. Gilson also appeared at one time on one of the motions, was that that evidence could be brought in this Court for the reason that it would not be a collateral attack upon a voidable judgment record in another Court if what I represented to the Supreme Court at that time was so, merely showing that there was no judgment in another Court. Mr. Bentley has informed me that there is some person in my office who knows that there has been another motion to dismiss the writ of certiorari for lack of prosecution; he says that notice was served on my office and nobody responded and that the writ was dismissed—I don't

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John Warren—Direct.

know when. I know nothing of it except that Mr. Bentley states it.

10 Mr. Bentley: And Mr. Bentley said that two years ago, did he not?

 Mr. Warren: When we were here before Judge Sullivan?

 Mr. Bentley: Yes.

20 Mr. Bentley: I move to strike out all the testimony upon the ground that it is immaterial, irrelevant, incompetent and has no binding force or effect upon the issues in this case. I move to strike out the testimony of all witnesses which in any manner or wise pertains or does attempt to collaterally attack the deed issued to De Riso Bros. in this case by the Sheriff of Hudson County and De Riso having subsequently conveyed the deed which he received in this case to John J. McMahon.

30 (Deed from Thomas Madigan, Sheriff of Hudson County to James M. De Riso dated May 16th, 1921, and recorded July 15, 1921, in Book 1468 of Deeds for Hudson County, on page 1366 offered in evidence—received and marked Exhibit C-1 -3/25/27.)

40 (Deed from James M. De Riso and wife to John J. McMahon dated June 21st, 1921, acknowledged June 21st, 1921, and recorded June 2nd, 1922 in Book 1447 of Deeds for Hudson County, on page 93 offered in evidence—received and marked Exhibit C-2 -3/25/27.)

 (Certified copy of deed from Anna Bruckhoff Amoroso and husband to John

Exceptions (Filed May 10, 1928).

J. McMahon dated March 3rd, 1920, acknowledged March 3rd, 1920, and recorded in the Register's Office of Hudson County in Book 1459 of Deeds for Hudson County, on page 68 &c. 10

Mr. Warren: When was it recorded?

Mr. Bentley: Recorded on September 18th, 1922.

Mr. Warren: I object to it on the ground that it is a deed of conveyance dated and recorded after the record of the deed of the same parties to Herman M. Diamond. 20

Exceptions (Filed May 10, 1928).

IN CHANCERY OF NEW JERSEY.

Between,

MARGARET McMAHON,
Complainant,

and

VINCENT AMOROSO, JR., *et als.*,
Defendants.

On Bill to Foreclose. 30
On Petition for Surplus Money.
Exceptions to Master's Report.

The defendant, John J. McMahon, hereby excepts to the report filed in this cause by Mark A. Sullivan, Esq., one of the Special Masters of this Court, bearing date the 25th day of April, 1928 and filed May 2nd, 1928, for the following reasons: 40

1. Because said Master reported that the defendant Herman M. Diamond was the owner in

Exceptions (Filed June 6, 1928).

10 fee simple of the premises described in the bill
of complaint filed in this cause at the time of the
sale thereof. And because the said Master fur-
ther reported that the said Herman M. Diamond
is entitled to receive the surplus moneys now on
deposit with the Clerk of this Court in this cause,
when the said Master should have reported that
the said John J. McMahon was the owner in fee
simple of the premises aforesaid at the time of
said sale and was and is entitled to receive the
surplus moneys now on deposit with the clerk
of this court in this cause.

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PETER BENTLEY,
Solicitor for Defendant,
John J. McMahon.

Exceptions (Filed June 6, 1928).

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IN CHANCERY OF NEW JERSEY.

Between

MARGARET McMAHON,
Complainant,

and

VINCENT AMOROSO, JR., *et als.*,
Defendants.

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On Bill to
Foreclose.
On Petition for
Surplus Money.
Exceptions to
Master's Report.

The defendant, John J. McMahon, hereby ex-
cepts to the report filed in this cause by Mark
A. Sullivan, Esq., one of the Special Masters of
this Court, bearing date the 25th day of April,
1928, for the following reasons:

Opinion.

1. Because said Master reported that the defendant Herman M. Diamond was the owner in fee simple of the premises described in the bill of complaint filed in this cause at the time of the sale thereof by the Sheriff of Hudson County under the fieri facias issued in this cause, and because the said Master further reported that the said Herman M. Diamond is entitled to receive the surplus moneys now on deposit with the Clerk of this Court in this cause, when the said Master should have reported that the said John J. McMahon was the owner in fee simple of the premises aforesaid at the time of said sale and was and is entitled to receive the surplus moneys now on deposit with the clerk of this court in this cause.

PETER BENTLEY,
Solicitor for Defendant,
John J. McMahon.

Opinion.

IN CHANCERY OF NEW JERSEY.

Between
MARGARET McMAHON,
Complainant,
and
VINCENT AMOROSO, JR., *et als.*,
Defendants.

On Bill to
Foreclose.
On Petition for
Surplus Moneys.
On Exceptions to
Master's Report.
Opinion.

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(Syllabus.)

1. Sale of Lands Act, 4 C. S. 4681, Section 15 construed, and held to apply to Sheriff's deed under execution.

Opinion.

2. Under Section 15 the words "public or municipal authority" include a Sheriff.
- 10 3. Under Section 15, held, a deed given by a Sheriff under execution of a law court is not subject to collateral attack, and accordingly irregularities prior to the execution cannot be considered in this court.

20 MESSRS. WARREN AND STANTON, Solicitors for and of counsel with Defendant, Herman M. Diamond;

PETER BENTLEY, Esq., Solicitor for and of counsel with Defendant, John J. McMahon.

LEWIS, V. C.

30 The questions raised by the exceptions to the master's report relate to the validity of a Sheriff's deed under execution of a law court.

In 1921 suit was instituted on a mechanic's lien in the District Court of Union City, New Jersey. The plaintiff was De Riso Bros. The defendants were Amoroso as builder and Herman M. Diamond, owner. A judgment in the case was entered in the District Court in favor of the plaintiff and generally against the defendants, Vincent Amoroso, Jr., as builder and specially against Herman M. Diamond, owner. The judgment was recorded in the District Court on January 6, 1921. The aforesaid judgment was entered in Hudson County Court pursuant to the statute. An execution based on that judgment was issued to the Sheriff of Hudson County.

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Opinion.

Under the execution the Sheriff levied on the premises in question and sold the land and premises at public auction. The purchaser at the sale was James M. De Riso. On May 16, 1921, the Sheriff of Hudson County executed and delivered a deed conveying the land and premises in question to James M. De Riso. The deed was recorded on July 15, 1921, in the office of the Register of County of Hudson, in Book 1408, page 366. James M. De Riso and Philomena De Riso, conveyed the land and premises to John J. McMahon, which deed was dated June 21, 1921, and recorded June 22, 1922 in the office of the Register of Hudson County in Liber 1447 of deeds on page 92.

Foreclosure proceedings were instituted against the land and premises in question. The Sheriff of Hudson County has deposited with the Clerk of this court the sum of Ten thousand thirty-nine dollars and thirty-three cents (\$10,039.33) as surplus monies arising from the sale of the mortgaged premises sold in this cause by virtue of an execution issued out of this court and directed to said Sheriff; that said sale was made to pay and satisfy a mortgage given by the defendant, Vincent Amoroso, Jr., to the complainant, Margaret McMahon.

A reference was had to a special master who reported that Herman Diamond was entitled to receive the aforesaid surplus monies. The contesting defendant in that proceeding was John McMahon who has now filed exceptions to the master's report alleging that the special master should have reported that the surplus monies should be paid to the said John McMahon.

Opinion.

10 The exceptant claims that the deed to De Riso by the Sheriff of Hudson County cannot be collaterally attacked in this proceeding and that McMahon was the owner of the fee at the time of the foreclosure sale and that accordingly the Clerk of this court should be directed to pay the surplus monies to the defendant, John J. McMahon.

20 The defendant, Herman M. Diamond, contends that the District Court never had jurisdiction over the person or property of either Amoroso or Diamond and that no summons was issued, no service of process made, no return of process, no trial in open court, no judgment or a record thereof, and that an illegal certificate of the issuance of summons was issued.

30 The defendant, Diamond, further contends that McMahon has failed in his proof of title in that he has not placed in evidence a valid execution and a valid judgment not at variance with the deed, and that as a result thereof the claim of the exceptant to the surplus monies should be denied and that the exceptions to the master's report should be dismissed and the report confirmed.

40 From the facts submitted it is apparent that what title McMahon had if any to the land and premises in question, were derived under the Sheriff's deed. The Sheriff's deed recites the execution which is set forth in full, his advertisement of sale, the adjournment of sale and the sale. The County Clerk mentions the judgment in the writ of execution which is recited in the deed.

The fourteenth and fifteenth sections of the

Opinion.

act entitled sale of Lands 4 C. S. 4681, provide as follows:

“14. That the conveyance of any land or real estate sold by any sheriff or other officer, or by auditors, in pursuance of a decree, judgment, execution or order of a court, heretofore or hereafter made and duly acknowledged or approved, and the record thereof, or a certified copy of such record, shall be good and sufficient *prima facie* evidence of the truth of the recital, in the said deed or conveyance contained (Rev. 1877, p. 1045).” 10 20

“15. That the provisions of the last preceding section shall apply to all deeds, declarations of sale and conveyances, duly acknowledged or proved heretofore or hereafter made by or by authority of any public or municipal authority, authorized or empowered by any law of the state to make and execute or to direct or procure the making and execution of any deed, declaration of sale or conveyance; and the proceedings upon which such deeds, declarations of sale and conveyances are founded shall not be subject to be questioned collaterally, but may be at any time reviewed by certiorari or other proper proceeding in the supreme or circuits courts (Rev. 1877, p. 1045).” 30 40

From the recitals in the fourteenth and fifteenth sections of the Act entitled “Sale of Lands” 4 C. S. 4681, I am of the opinion that section 14 applies to all deeds affected by section 15. Section 15 relates to “deeds, declarations of

Opinion.

10 sale and conveyances * * * made by or by authority of any public or municipal authority” and the prohibition therein contained against collateral attack relates to a deed given by a Sheriff.

The defendant, Diamond, contends that section 15 of the Sale of Lands Act does not apply to a deed made by a Sheriff on execution and also that the provision of section 15 that deeds specified therein are conclusive and cannot be questioned collaterally does not apply to such a deed as that in question.

20 Such reasoning is necessarily based upon the erroneous contention that the Sheriff is not a public authority. I am of the opinion that the Sheriff is a public authority within the meaning of this section. Section 14 refers specifically to conveyances by “any Sheriff or other officer” in pursuance of a decree, judgment, execution or order of court. The expression in section 15 is “deeds, declarations of sale and conveyances”
30 “by or by authority of any public or municipal authority authorized or empowered by any law of the State to make and execute or to direct or procure the making and execution of any deed, declaration of sale or conveyance.” It is contended by defendant, Diamond, that the use of the expression Sheriff or other officer in section 14 necessarily prevents it from being included
40 within the meaning of the expression public or municipal authority as recited in section 15. But by the express provision of section 15 the provisions of section 14 are made to apply to all deeds made by or by authority of any public or municipal authority. It would seem that the

Opinion.

word authority was used merely to give a broader meaning to the expression Sheriff or other officer referred to in section 14, the more inclusive word being used so as to give a wider scope to the application of the section. The word officer refers to an individual while the word authority includes not only an officer but may include a body or group exercising powers. 10

The courts in interpreting the word authority in connection with this section have used it as being synonymous with the word officer. *Doremus v. Cameron*, 49 Eq. 1, at page 9. The court here says: 20

“But we have a statute, the act of April 2d, 1869, (Rev., p. 1045, sec. 15) which, according to the established construction, not only make the recitals in deeds by municipal officers, acting under authority of law, evidence, but also makes those deeds themselves conclusive, as to the transmission of title, until the proceedings upon which they are found shall have been directly attacked and set aside.” 30

Nicholas v. Older, 78 Eq., 101, at page 108.

The court here says:

“Sections 14 and 15 of the Sale of Land Act (Gen. Stat., p. 2982) provide that the recitals in deeds or declarations of sale made by *Public officers* authorized by law to make such sales, shall be taken *prima facie* as evidence of the truth of what is therein recited, 40

Opinion.

10 and that 'the proceedings upon which such deeds, declarations of sale, and conveyances, are founded shall not be subject to be questioned collaterally but may be at any time reviewed by certiorari or other proper proceeding in the supreme court or circuit court'."

To hold that the Sheriff is not a public authority is tantamount to saying that the Sheriff is not a public officer.

20 It is further contended on behalf of the defendant, Diamond, that section 15 applies only to tax sales and has no application to deeds of a Sheriff acting under execution. The language of the section certainly does not limit it to tax sales but makes it applicable to all deeds executed by any public authority. Secondly the section 15 by express provision is made applicable to the provisions of section 14 which itself expressly deals with deeds executed by Sheriff
30 under execution.

Since the Sheriff's deed is governed by the provisions of section 15 it cannot be attacked collaterally and therefore the defendant, Diamond, cannot set up any defects by way of irregularity in the proceedings prior to the issuance of the execution. *White v. Cadman*, 84 N. J., Eq., 86 at page 88. The remedy given by
40 section 15 for such defects is by way of certiorari. As a matter of fact the record discloses that Diamond had knowledge of the judgment now alleged by him to have been irregular and brought a certiorari proceeding which was never pressed to a conclusion, but was dismissed. He had a remedy of which he failed to avail himself

Order Sustaining Exceptions
(Filed June 16, 1930).

and therefore does not stand before this court in a position as one who for the first time has discovered that an alleged fraud has been perpetrated upon him. 10

The present proceeding is collateral and not the direct attack which is required by the statute since it is an attempt in this court to set aside the process of another court.

I accordingly find that the Sheriff's deed is conclusive and must stand as valid and that the defendant, Diamond, has been barred of all his rights to any of the surplus funds now in the court. 20

I will advise an order sustaining the exceptions to the master's report and directing that the surplus monies be paid to the defendant, John J. McMahon.

Order Sustaining Exceptions (Filed June 16, 1930). 30

IN CHANCERY OF NEW JERSEY.

Between MARGARET McMAHON, Complainant, and VINCENT AMOROSO, JR., <i>et als.</i> , Defendants.	}	On Bill, etc. Order Sustaining Exceptions to Master's Report.	40
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This matter being opened to the court of Peter Bentley, solicitor for the petitioner John J. Mc-

Order Sustaining Exceptions
(Filed June 16, 1930).

10 Mahon, in the presence of John Warren, solicitor for the defendant Herman M. Diamond, and proof being filed of the service upon the said John Warren, and Warren & Stanton of this application to be made, with a copy of this order, and it appearing that there was heretofore deposited by the Sheriff of the County of Hudson with the Clerk of this Court, on or about the 26th day of June, 1924, the sum of \$10,039.33, the said sum being the surplus remaining in the hands of the Sheriff after paying to the complainant in this cause the amount due to her with her costs on the writ of *fieri facies* issued in this cause; and it further appearing that it was referred to Mark A. Sullivan, Esq., one of the Masters of this Court, the question of to whom said surplus moneys should be paid by the clerk of this court; and it further appearing that after the taking of testimony the said master reported that said surplus moneys should be paid to the defendant Herman M. Diamond; and it further appearing that the said defendant John J. McMahon duly excepted to the report of said master upon the ground that the said master should have reported that said surplus moneys should have been paid to the said John J. McMahon instead of to the said Herman M. Diamond, and said exceptions having been duly argued before this court by said Peter Bentley, solicitor for said John J. McMahon, and John Warren, solicitor for said defendant Herman M. Diamond, and the court being of the opinion that said exceptions filed by the said defendant John J. McMahon should be sustained;

Order Sustaining Exceptions
(Filed June 16, 1930).

It is on this 16th day of June, 1930, on motion of Peter Bentley, solicitor for said defendant John J. McMahon, ORDERED that the exceptions heretofore filed by the said defendant John J. McMahon to the report of the said master, Mark A. Sullivan, be and they are hereby sustained; 10

And it is further ORDERED that out of the said surplus moneys remaining in the hands of the clerk of this court that he pay to the said Mark A. Sullivan, the sum of \$300 in lieu of his fees and costs as such special master; 20

And it is further ORDERED that out of the balance then remaining in the hands of said clerk, after the payment of the said sum hereinbefore directed to be paid to the said Mark A. Sullivan, that said clerk of this court do pay to Peter Bentley, the costs of these proceedings to be taxed, together with a counsel fee of \$750.00. 30

And it is further ORDERED that out of the balance then remaining in the hands of said clerk, after the foregoing payments and after deducting his lawful commissions, he shall pay such balance to the said Peter Bentley, as solicitor for the said defendant John J. McMahon.

E. R. WALKER, 40
C.

Respectfully advised:

VIVIAN M. LEWIS,
V. C.

Notice of Appeal (Filed June 26, 1930).

IN CHANCERY OF NEW JERSEY.

10	Between MARGARET McMAHON, Complainant, and VINCENT AMOROSO, JR., <i>et als.</i> , Defendants.	} 54-576 } On Bill, etc. } Notice of } Appeal.
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20 TAKE NOTICE that the defendant Herman M. Diamond hereby appeals from so much of the order of the Chancellor made on the 16th day of June, 1930, on the advice of the Honorable Vivian M. Lewis, Vice-Chancellor, as:

30 1. Sustains the exceptions heretofore filed by the defendant John J. McMahon to the report of Mark A. Sullivan, Esq., one of the Masters of this Court.

2. Orders that out of the balance of surplus monies remaining in the hands of the Clerk of this Court, after the payment of the fees and costs of the said Master, that the said Clerk of his Court do pay to Peter Bentley the cost of these proceedings to be taxed together with a counsel fee of \$750.00.

40 3. Orders that out of the balance then remaining in the hands of the said Clerk, after the foregoing payments and after deducting his lawful commissions, he shall pay such balance to the said Peter Bentley as solicitor for the said de-

Notice of Appeal (Filed June 26, 1930).

fendant John J. McMahon; to the Court of Errors and Appeals in the last resort of all causes.

Dated, June 19th, 1930.

10

JOHN WARREN,
Solicitor for and of counsel
with defendant Herman M. Diamond.

I conceive there is good cause for appeal for the above entitled cause.

20

JOHN WARREN,
Of counsel with defendant,

Herman M. Diamond.

Service of a copy of the within notice of appeal is hereby acknowledged this 18th day of June, 1930.

30

PETER BENTLY,
Solicitor of Defendant,
John J. McMahon.

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**Petition of Appeal (Filed July 8,
1930).**

NEW JERSEY COURT OF ERRORS AND
APPEALS.

10

Between

MARGARET McMAHON,
Complainant,
and

VINCENT AMOROSO, JR., *et al.*,
Defendants,

20

HERMAN M. DIAMOND,
Defendant-Appellant,

JOHN J. McMAHON,
Defendant-Respondent.

On Appeal of
Herman M.
Diamond.

Petition of
Appeal.

TO THE HONORABLE COURT OF ERRORS AND AP-
PEALS, IN THE LAST RESORT IN ALL CAUSES:

30

The petition of Herman M. Diamond, the ap-
pellant in the above entitled cause, respectfully
shows that your petitioner finds himself ag-
grieved by an order made in the Court of Chan-
cery by his Honor Edwin Robert Walker, Chan-
cellor of the State of New Jersey, upon the ad-
vice of the Honorable Vivian M. Lewis, Vice-
Chancellor, bearing date the 16th day of June,
1930, in a certain cause in said Court of Chan-
cery, wherein Margaret McMahon was complain-
ant and the said Herman M. Diamond, John J.
McMahon and others were defendants, in this
respect, to wit: That said order

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Petition of Appeal (Filed July 8, 1930).

1. Sustains the exceptions heretofore filed by the defendant John J. McMahon to the report of Mark A. Sullivan, Esq., one of the Masters of the Court of Chancery;

10

2. Orders that out of the balance of surplus monies remaining in the hands of the Clerk of the Court of Chancery after the payment of the fees and costs of the said Master, that the said Clerk of the Court of Chancery do pay to Peter Bentley the cost of the said proceedings, to be taxed together with a counsel fee of \$750.00.

20

3. Orders that out of the balance then remaining in the hands of the said Clerk in Chancery, after the foregoing payments and after deducting his lawful commissions, he shall pay such balance to the said Peter Bentley, as solicitor for the said defendant John J. McMahon.

The petitioner appeals from so much of the said order of the Chancellor as directs as aforesaid, upon the ground that the same is erroneous in that

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(a) The exceptions to the said Master's report should not have been sustained;

(b) That said order should not have directed any counsel fee to be allowed to counsel of defendant John J. McMahon;

40

(c) That counsel fees be allowed this petitioner as against defendant John J. McMahon;

(d) That said order should have directed that the balance of surplus monies remaining in the

Petition of Appeal (Filed July 8, 1930).

hands of the Clerk in Chancery be paid to defendant Herman M. Diamond.

10 Petitioner therefore prays that the order of the said Chancellor may be reversed, set aside and for nothing holden, in respect to those matters concerning which the petitioner finds himself aggrieved, as hereinabove set forth, and that petitioner may have such other relief in the premises as to this Court may seem proper.

20

JOHN WARREN,
Solicitor for and of
Counsel with Appellant.

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**Notice of Argument (Filed October 1,
1930).**

NEW JERSEY COURT OF ERRORS AND
APPEALS.

10

Between

MARGARET McMAHON,
Complainant,

—and—

VINCENT AMOROSO, JR., *et al.*,
Defendants,

HERMAN M. DIAMOND,
Defendant-Appellant,

JOHN J. McMAHON,
Defendant-Respondent.

On Appeal of
Herman
M. Diamond

Notice of
Hearing. 20

To the Appellee John J. McMahon or Peter
Bentley, Esquire, Solicitor and Counsel:

30

TAKE NOTICE that the argument of the appeal
in the above entitled cause will be brought on at
the next term of the Court of Errors and
Appeals, to be held at the State House, at Tren-
ton, on October 21st, 1930, at the hour of eleven
o'clock in the forenoon, or as soon thereafter as
counsel can be heard.

JOHN WARREN, 40

Solicitor for and of Counsel with Appellant.

Appellant's Exhibit D-1, 3-25-27.

State of New Jersey

HUDSON COUNTY, SS:

District Court of the First Judicial District
of the County of Hudson, N. J.

239

No. 14707

De Riso Bros. Inc.

vs.

Vincent Amoroso Jr. Plaintiff
Herman H. Diamond Defendant
Cost Al.

BEFORE
FRANCIS H. McCAULEY, Esq. Judge.

In *Richardson*
Helen T. Bunker

Demand \$

Pliff's Atty

Deft's Atty

- Summons, and Copy,
- Service, and Return,
- Mileage,
- Taking Affidavit,
- Filing Affidavit,
- Adjournment,
- Filing Olfset,
- Oaths Administered,
- Subpoenas,
- Service of Sapeenas,
- Witness Fees,
- Papers Filed,
- Trial Fee,
- Venire,
- Filing Venire,
- Summoning Jury,
- Swearing Jury,
- Swearing Constable,
- Entering Verdict,
- Jury Fees,
- Entering Costs,
- Attending Jury,
- Attorney's Fee,

A summons was issued tested

A. D. 191

returnable

The Constable or Sergeant-at-Arms returned the summons as follows, viz: I served the within Summons

A. D. 191

at

o'clock in the

noon

191

on h and delivering to h a copy thereof. The Defendant the defendant by reading the same to I served the within summons on h the day of could not be found and a copy thereof at h usual place of abode in presence of a person of h family over the age of fourteen years, who 191 by leaving I informed of the contents thereof.

Constable or Sergeant-at-Arms.

Plaintiff demand was filed

A. D. 191

Defendant offset was filed

A. D. 191

This cause was called for trial at ten o'clock in the forenoon.

The demanded a Jury. A Venire was issued

A. D. 191

returnable

A. D. 191

at

o'clock in the

noon, to

Constable or Sergeant-at-Arms Defendant appear and the trial of the cause was proceeded with as follows:

A. D. 191

the Plaintiff

appeared and the

Said Constable or Sergeant-at-Arms, returned said Venire with the following jurors summoned, viz:

who was severally according to law

On the part of the plaintiff

On the part of the Defendant

The Constable or Sergeant-at-Arms was sworn to attend said jury, who retired and after deliberation, return and say that they find.

Whereupon it is on this

and so say they all

A. D. 191, by this Court considered and adjudged that said

day of

plaintiff recover against said

defendant the sum of

damages and

Dollars,

and costs of suit. Execution was issued to

Dollars and

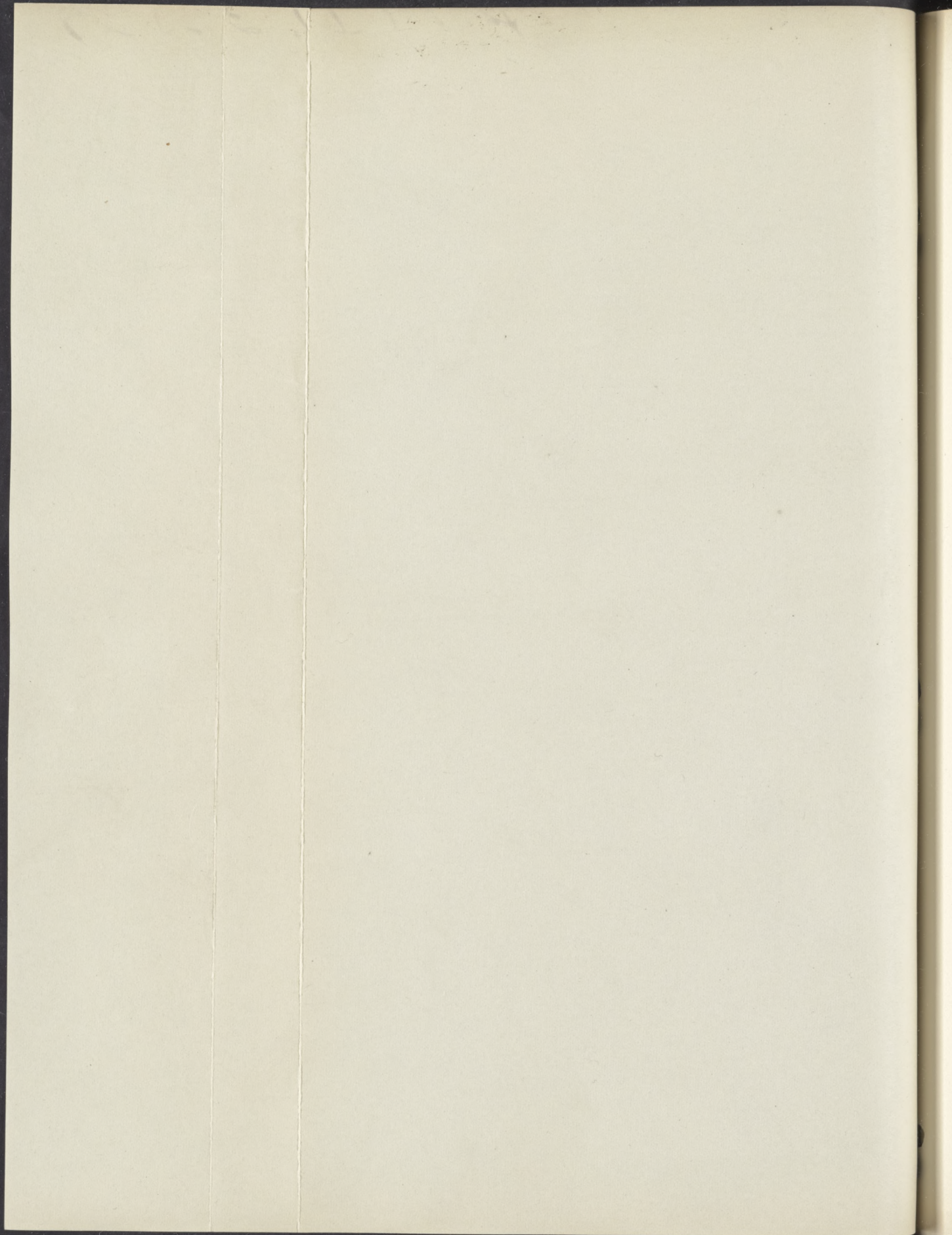
cents.

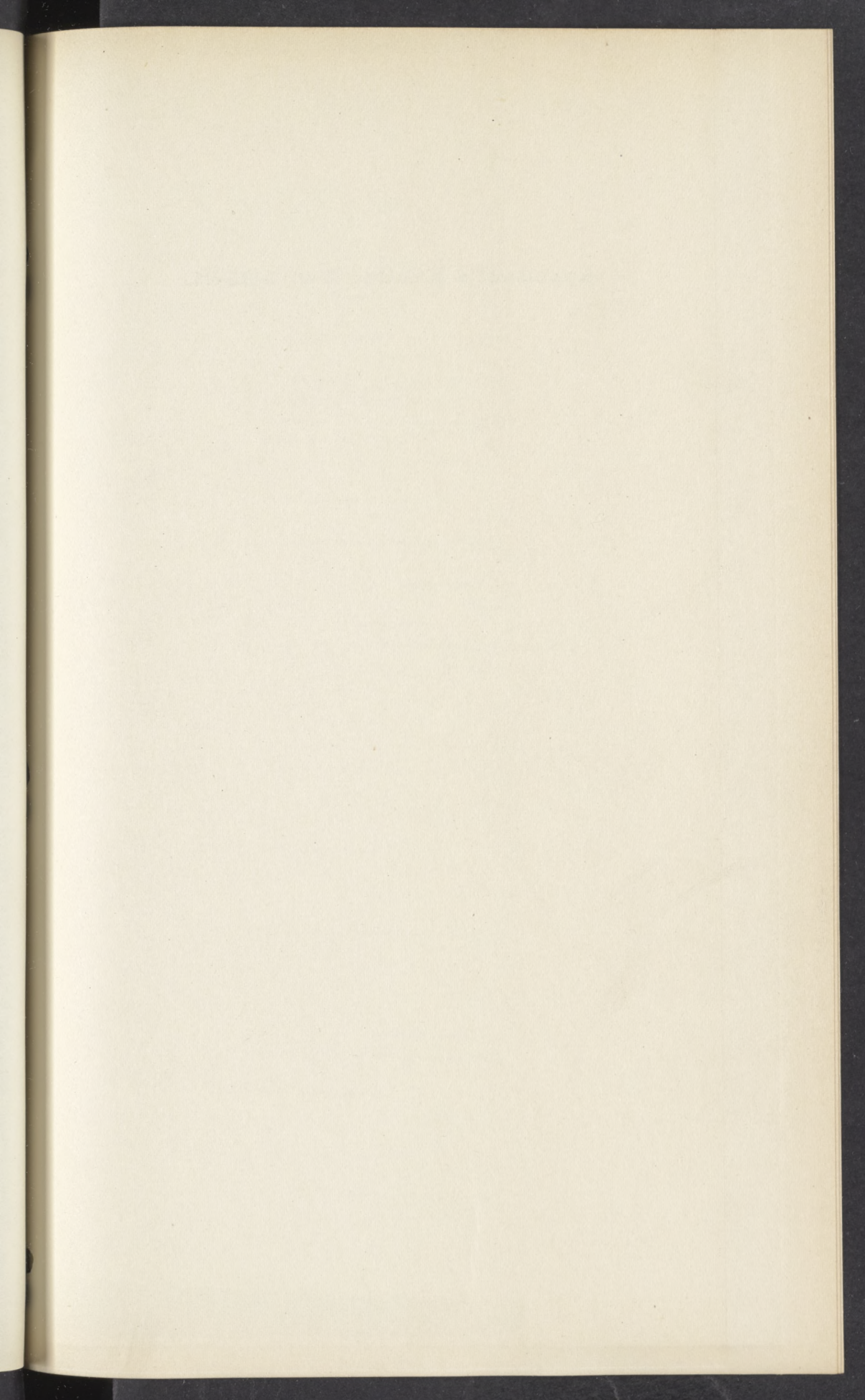
Constable or Sergeant-at-Arms

A. D. 191, who returned the said Execution as follows, viz:

A. D. 191

I return the within writ this





Appellant's Exhibit D-2, 3-25-27.

State of New Jersey

HUDSON COUNTY.

SS:

No. 14708

De Rios Bros Inc.

vs.

Vincent Amoroso Jr & Herman M Diamond

Cost

Al.

District Court of the First Judicial District of the County of Hudson, N. J.

BEFORE

FRANCIS H. McCAULEY, Esq., Judge.

In Mechanic Lien William T Blake

Demand \$

Plff's Att'y

Deft's Att'y

Summons, and Copy,

Service, and Return,

Mileage,

Taking Affidavit,

Filing Affidavit,

Adjournment,

Filing Offset,

Oaths Administered,

Subpoenas,

Service of Subpoenas,

Witness Fees,

Papers Filed,

Trial Fee,

Venire,

Filing Venire,

Summoning Jury,

Swearing Jury,

Swearing Constable,

Entering Verdict,

Jury Fees,

Entering Costs,

Attending Jury,

Attorney's Fee,

A summons was issued tested

A. D., 191

returnable

A. D., 191, at o'clock in the noon,

The Constable or Sergeant-at-Arms returned the summons as follows; viz: I served the within Summons

191, on

the defendant, by reading the same to

h and delivering to h a copy thereof. The Defendant could not be found and

I served the within summons on h the day of 191, by leaving

a copy thereof at h usual place of abode in presence of a person of h family over the age of fourteen years, who

I informed of the contents thereof.

Constable or Sergeant-at-Arms.

Plaintiff demand was filed

A. D., 191 Defendant offset was filed

A. D., 191

This cause was called for trial at ten o'clock in the forenoon.

The defendant demanded a jury. A Venire was issued A. D., 191

returnable A. D., 191, at o'clock in the noon, to

Constable or Sergeant-at-Arms

A. D., 191, the Plaintiff appeared and the

Defendant appear and the trial of the cause was, proceeded with as follows:

Said Constable or Sergeant-at-Arms, returned said Venire with the following jurors summoned, viz:

who was severally according to law

On the part of the plaintiff

On the part of the Defendant

The Constable or Sergeant-at-Arms was sworn to attend said jury, who retired and after deliberation, return and say that they find.

and so say they all

Whereupon it is on this day of

A. D., 191, by this Court considered and adjudged that said

plaintiff recover against said

defendant the sum of

Dollars.

and damages and

Dollars and

cents

costs of suit. Execution was issued to

Constable or Sergeant-at-Arms

A. D., 191, who returned the said Execution as follows, viz:

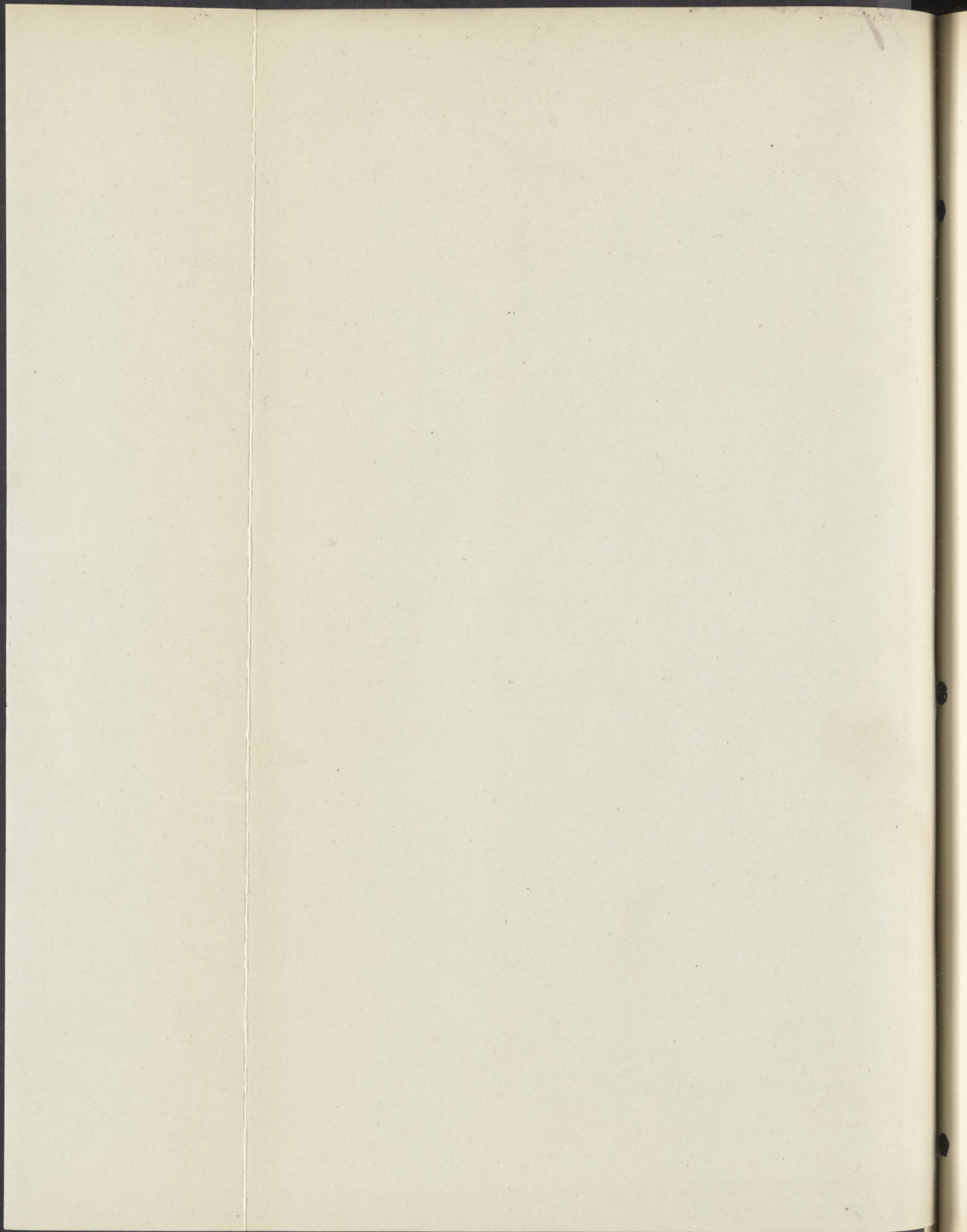
A. D., 191

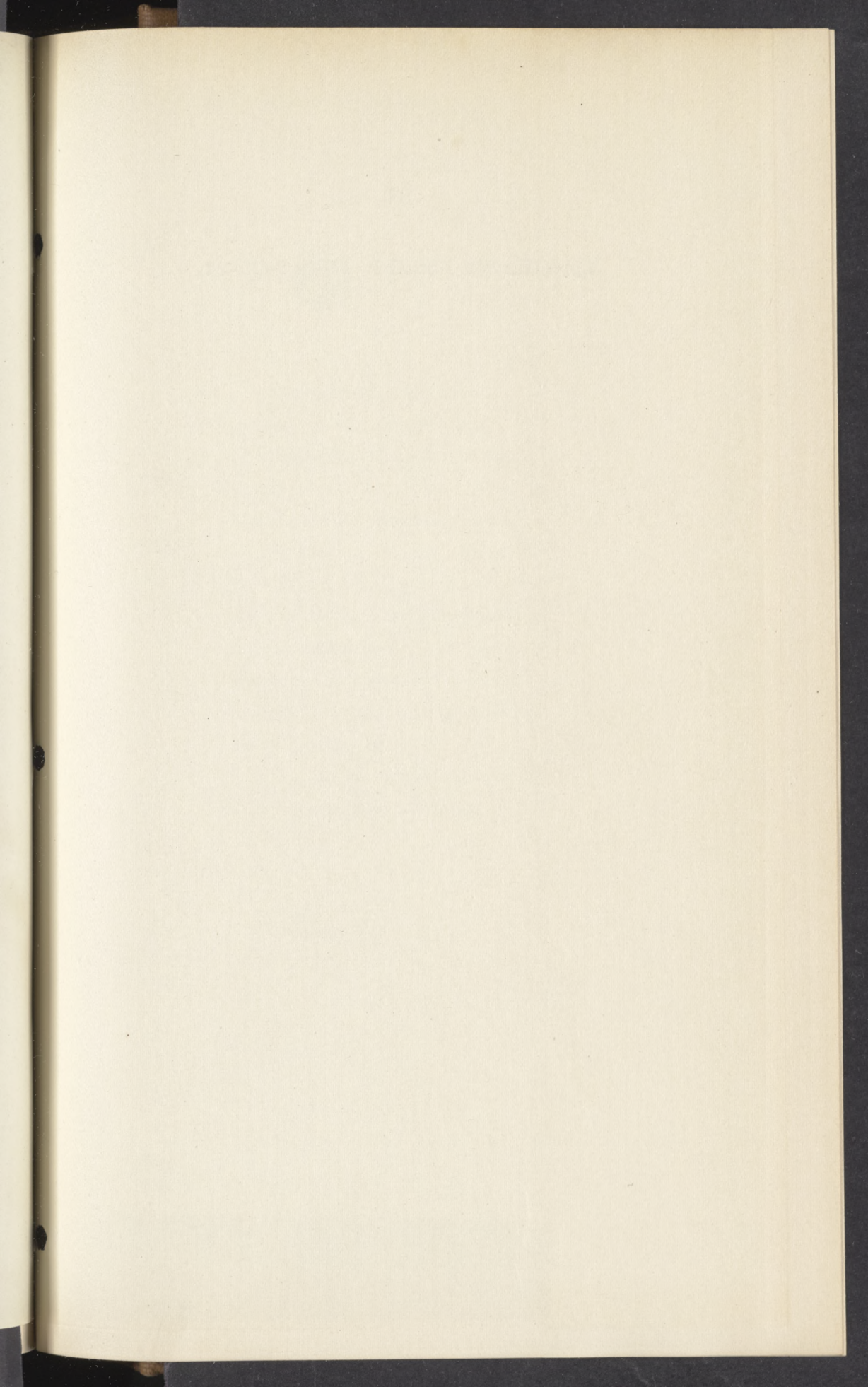
I return the within writ this

Execution,

Service and Return,

State of New Jersey Hudson County No. 14708 De Rios Bros Inc vs Vincent Amoroso Jr & Herman M Diamond





Appellant's Exhibit D-3, 3-25-27.

Sept 4
1920
HBS

The State of New Jersey To
Vincent Amoroso Jr. and Herman M.
Diamond.



You Vincent Amoroso Jr. Builder and
Herman M. Diamond, Owner,

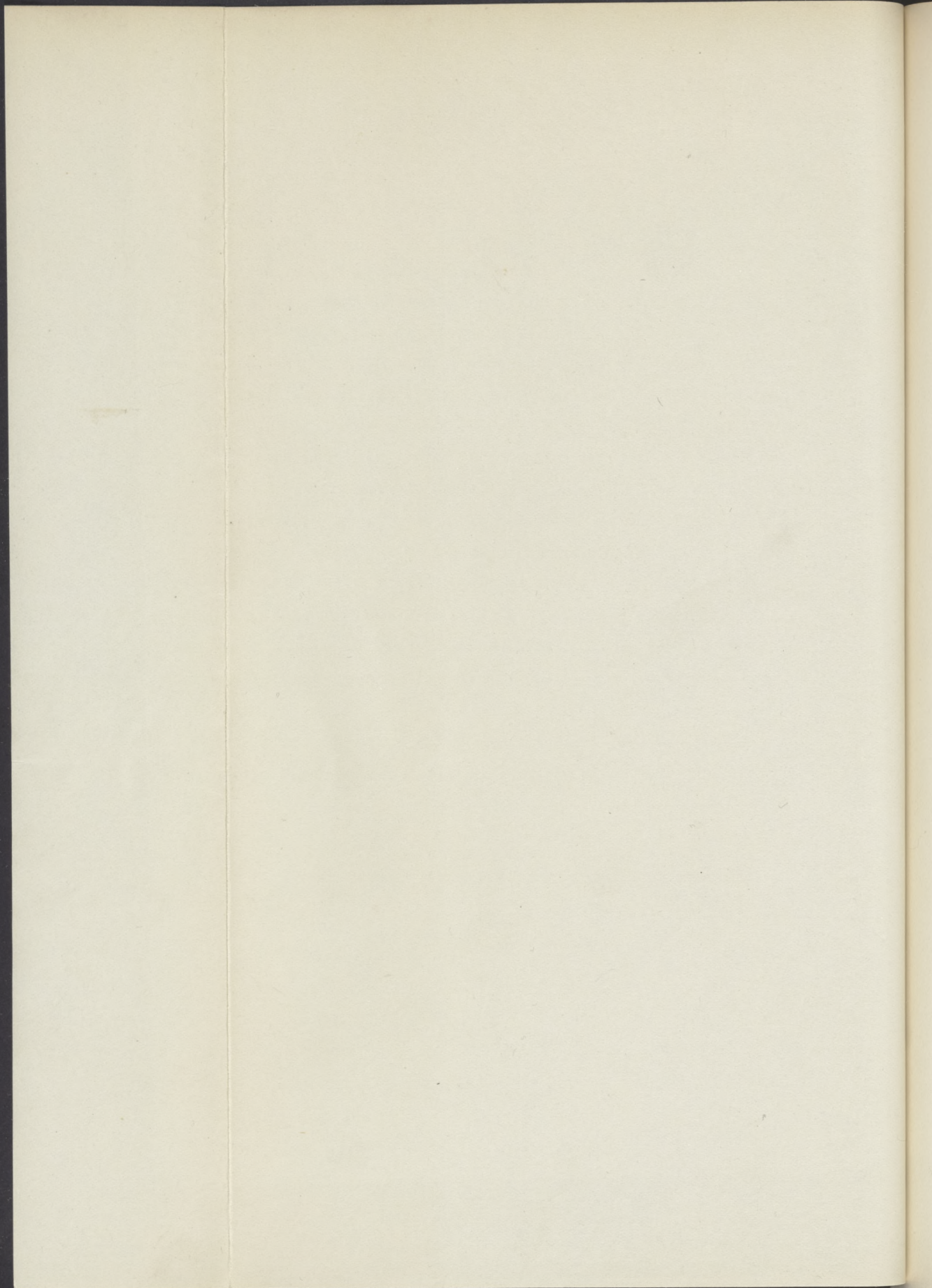
are summoned to answer the annexed
complaint of De Riso Bros. Inc. a corporation in an action
at law, in the District Court of the First Judicial District
of the County of Hudson in which said De Riso Bros. Inc.
claims a building lien on a certain building and lands of
said Herman M. Diamond described in the complaint. And take
notice that unless you file your answer to said complaint
with the Clerk of said Court at the Court Rooms in the Dos-
patch Building, New York Avenue and Lewis Street, Town of
Union, Hudson County, New Jersey, within twenty days after
service upon you of this writ and the annexed complaint the
plaintiff may proceed in the suit and judgment may be en-
tered against you.

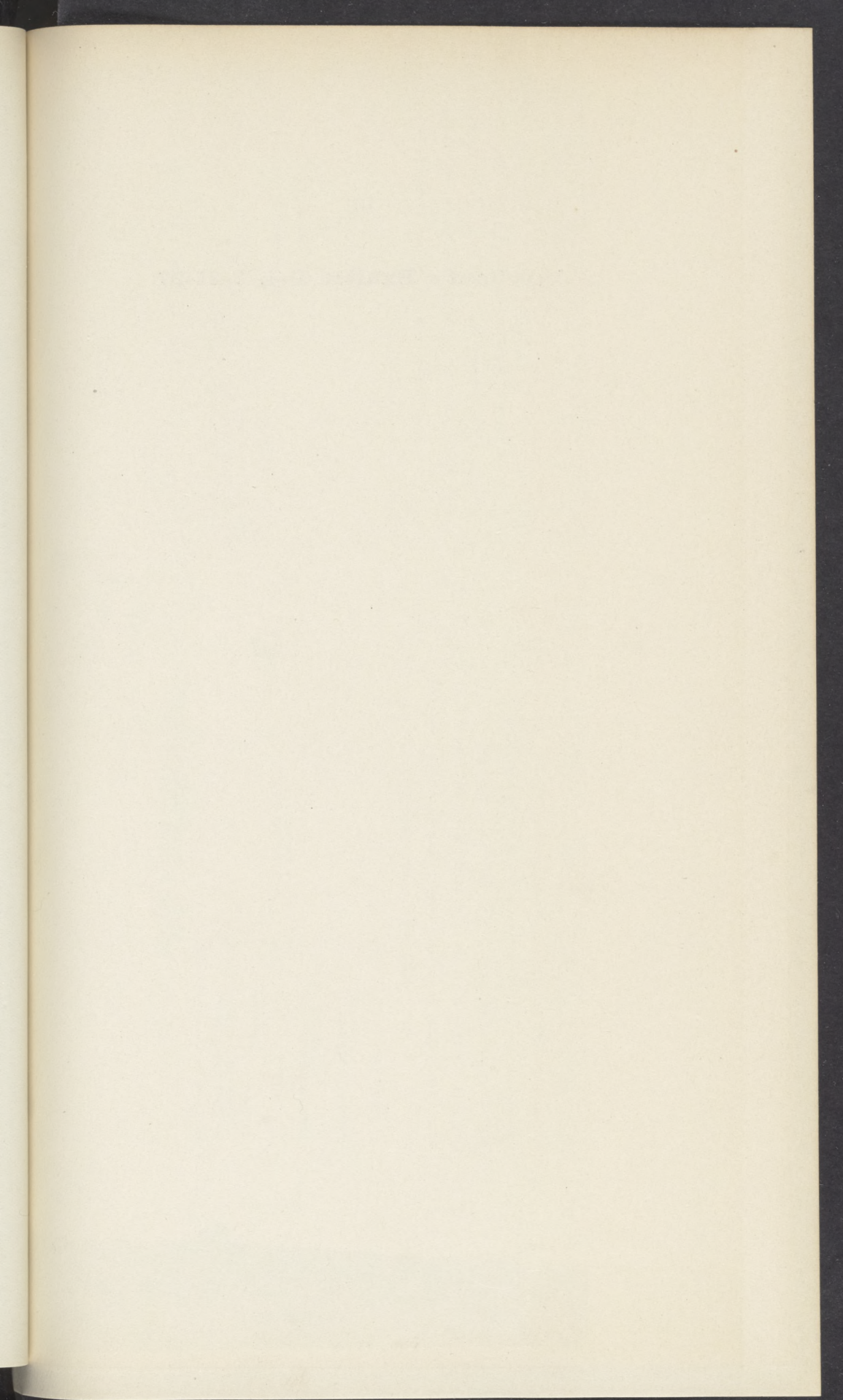
Witness Francis H. Mc Cauley, Esq. Judge of said
Court at the Town of Union, this 23rd, day of August, 1920.

Wm. J. Burke

Attorney

Clerk





Appellant's Exhibit D-4, 3-25-27.

6 Nov 1920
Ex C. 3

DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE COUNTY OF HUDSON.

De Riso Bros, Inc. a corporation of New Jersey, Claimant'
 vs. Vincent Amoroso, Jr. Builder and Herman M. Diamond Owner.
 On Mechanics Lien. Claim.

It is hereby stipulated and agreed that the above named Herman M. Diamond, owner, hereby appears herein and that the time to issue summons and begin suit on the lien claim filed by said De Riso Bros. Inc. against said Vincent Amoroso Jr. as builder and said Herman M. Diamond as owner, be and same is hereby extended to November 1, 1920 and it is further agreed that said claimant, De Riso Bros. Inc. will not take any steps or proceedings to enforce said lien claim before November 1, 1920.
 Dated September 24 1920.

Wm F Burke
 Attorney of Claimant
 De Riso Bros. Inc.

Herman M. Diamond
 Herman M. Diamond.

Indebted
Nov 1920
Ex C. 4

DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE COUNTY OF HUDSON.

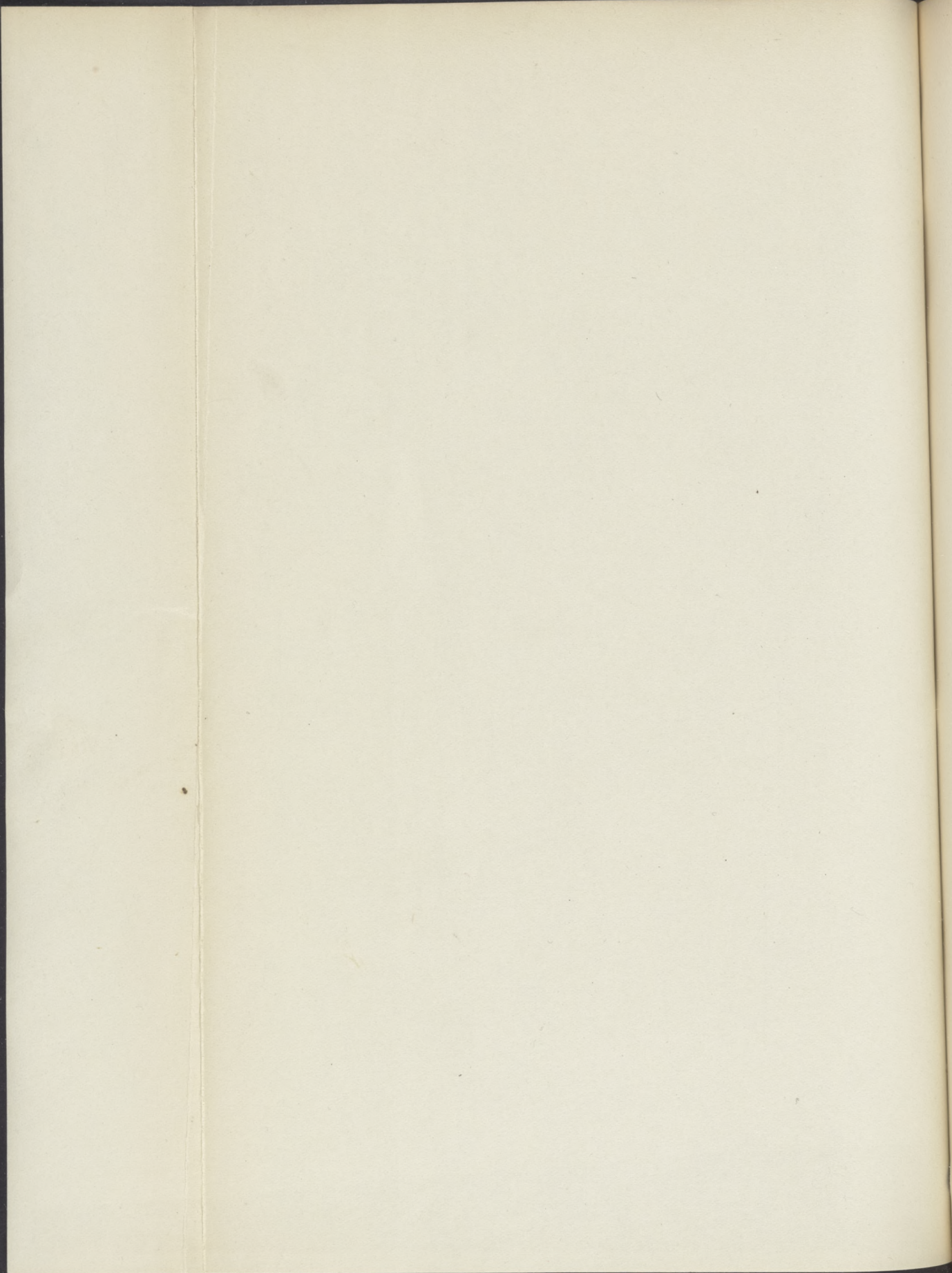
De Riso Bros, Inc. a corporation of New Jersey, Claimant
 vs. Vincent Amoroso Jr. Builder and Herman M. Diamond, Owner.
 On Mechanics Lien Claim. Stipulation.

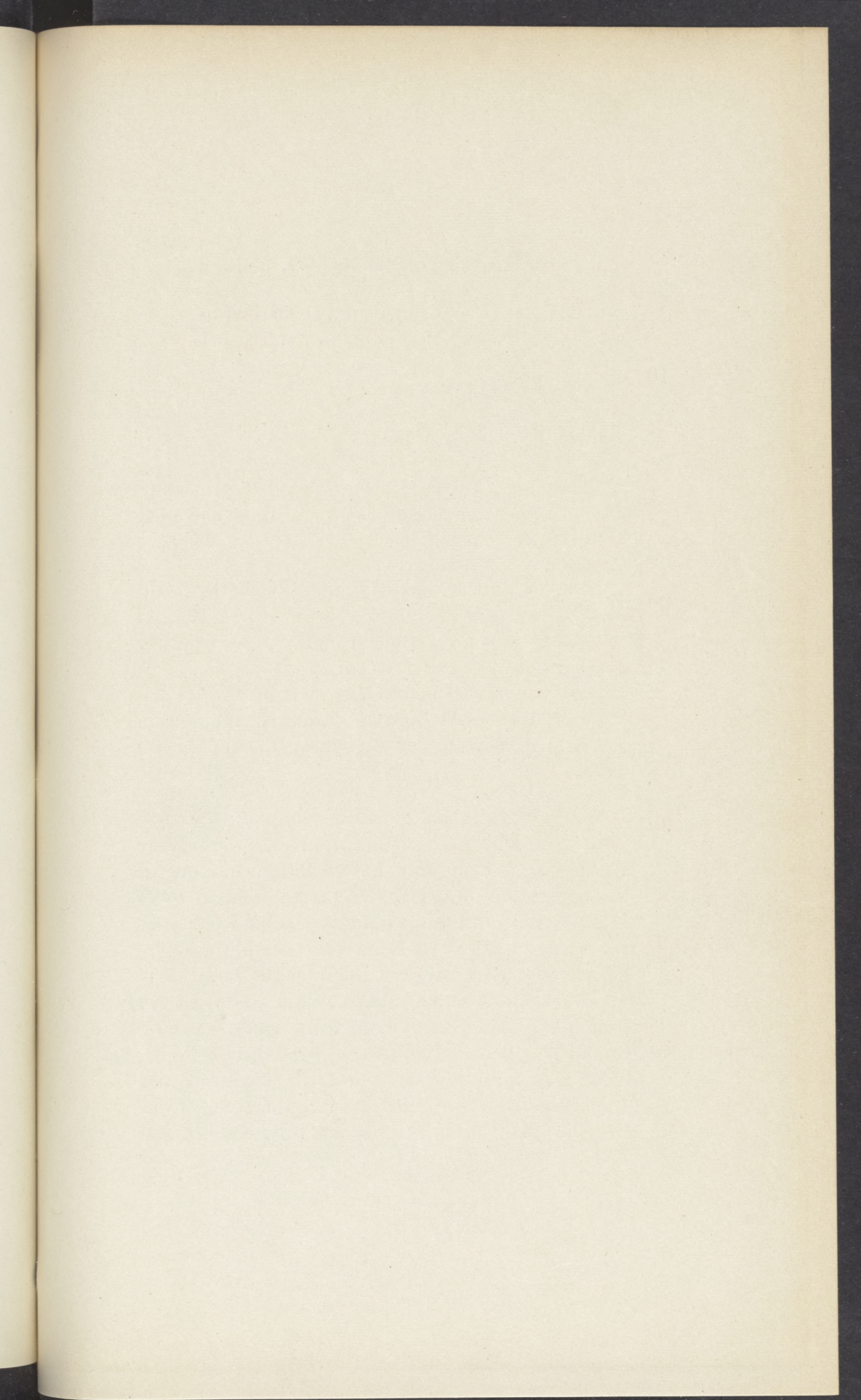
It is hereby stipulated and agreed by and between the above named claimant and the above named owner that the time to issue summons and begin suit on the lien claim filed by the above named claimant against the above named builder and owner be and same is hereby extended to November 15, 1920, and that entry of the extension of time to said day may be entered on the said lien claim and the record thereof at any time and it is further agreed that said claimant will not take any step or proceeding to enforce said lien claim before November 15, 1920.

It is also agreed that any order necessary to carry into effect this stipulation may be obtained and entered at any time by either party without notice to the other.
 Dated November 15 1920.

Wm F Burke
 Attorney of Claimant
 De Riso Bros. Inc.

Herman M. Diamond
 Owner.





Appellant's Exhibit D-6, 3-25-27.

DEED DATED
Jan. 12, 1917

10 JAMES THOMSON, E TUX
TO
ANNA BRUCKHOFF AMOROSO

This Indenture made the twelfth day of January, in the year of our Lord one thousand nine hundred and seventeen.

20 Between James Thomson and Elizabeth Thomson, his wife, of the Township of North Bergen in the County of Hudson and State of New Jersey, party of the first part.

And Anna Bruckhoff Amoroso of the Township of Weehawken, in the County of Hudson and State of New Jersey, party of the second part.

30 WITNESSETH, that the said party of the first part for and in consideration of one dollar (\$1.00) and other valuable consideration lawful money of the United States of America to them in hand well and truly paid by the said party of the second part at or before the sealing and delivery of these presents the receipt whereof is hereby acknowledged and the said party of the first part being therewith fully satisfied, contented and paid, have given, granted, bargained, sold, aliened, released, enfeoffed, conveyed and confirmed and by these presents do give, grant, bargain, sell, alien, release, enfeoff, convey and

40

Appellant's Exhibit D-6, 3-25-27.

confirm unto the said party of the second part and to her heirs and assigns forever.

ALL that certain tract or parcel of land and premises hereinafter particularly described, situate, lying and being in the Township of North Bergen in the County of Hudson and State of New Jersey and which plot may be more particularly described as follows: 10

Beginning at a point in the northerly line of Thirty-first Street produced easterly two hundred and twenty-nine and twenty-six one hundredths (229.26) feet easterly from the intersection of the northerly line of Thirty-first Street, produced easterly and the easterly line of Bulls Ferry Road as said streets are laid down on a certain map entitled "Map A of a portion of the property belonging to The Woodcliff Land Improvement Co., Township of North Bergen, Hudson County, N. J., Sept. 1892", duly filed in the Register's Office of the said County of Hudson on the fifteenth day of September, eighteen hundred and ninety-two; thence (1) northerly and at right angles to the northerly line of Thirty-first Street produced easterly one hundred (100) feet to a point; thence (2) easterly and at right angles to the first course fifty (50) feet to a point; thence (3) southerly and parallel with the first course, one hundred (100) feet to a point in the northerly line of Thirty-first Street, produced easterly; thence (4) westerly and along the northerly line of Thirty-first Street, produced easterly fifty (50) feet to the point or place of beginning. 20 30 40

Appellant's Exhibit D-6, 3-25-27.

Subject to restrictions and covenants in a deed made by the Woodcliff Land Improvement Co., to the above grantors and now of record.

10 Subject to two mortgages aggregating the sum of \$8000.

Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining and the reversion and reversions, remainder and remainders, rents, issues and profits thereof.

20 And also all the estate, right, title, interest, property, possession, claim and demand whatsoever, as well in law as in equity of the said party of the first part of in and to the above described premises and every part and parcel thereof with the appurtenances.

To have and to hold all and singular the above mentioned and described premises, together with the appurtenances unto the said party of the second part, her heirs and assigns, to her own proper use, benefit and behoof forever.

30 And the said party of the first part for themselves, their heirs, executors and administrators do covenant, grant and agree to and with the said party of the second part, her heirs and assigns, that the said James Thomson and Elizabeth Thomson, his wife, at the time of the sealing and delivery of these presents, are lawfully seized in their own right of a good, absolute and
40 indefensible estate of inheritance in fee simple of and in all and singular the above granted, bargained and described premises, with the appurtenances and have good, right, full power and lawful authority to grant, bargain, sell and convey the same in manner and form aforesaid.

Appellant's Exhibit D-6, 3-25-27.

AND that the said party of the second part, her heirs and assigns, shall and may at all times hereafter, peaceably and quietly have, hold, use, occupy, possess and enjoy the above granted premises and every part and parcel thereof with the appurtenances without any let, suit, trouble, molestation, eviction or disturbance of the said party of the first part, their heirs or assigns, or of any other person or persons lawfully claiming or to claim the same. 10

And that the same now are free, clear, discharged and unencumbered of and from all former and other grants, titles, charges, estates, judgments, taxes, assessments and incumbrances of what nature and kind soever except as aforesaid. 20

And also that the said party of the first part, their heirs and all and every other person or persons whomsoever lawfully or equitably deriving an estate, right, title or interest of, in or to the hereinbefore granted premises, by, from, under or in trust for them, shall and will at any time or times hereafter upon the reasonable request and at the proper costs and charges in the law of the said party of the second part, her heirs and assigns, make, do and execute or cause or procure to be made, done or executed, all and every such further and other lawful and reasonable acts, conveyances and assurances in the law for the better and more effectually vesting and confirming the premises hereby intended to be granted in and to the said party of the second part, her heirs and assigns forever, as by the said party of the second part, her heirs 30 40

Appellant's Exhibit D-6, 3-25-27.

or assigns or her counsel learned in the law shall be reasonably advised or required.

10 And the said party of the first part, their heirs, the above described and hereby granted and released premises and every part and parcel thereof with the appurtenances unto the said party of the second part, her heirs and assigns against the said party of the first part and their heirs and against all and every person or persons whomsoever lawfully claiming or to claim the same shall and will warrant and by these presents forever defend.

20 In Witness Whereof, the said party of the first part have hereunto set their hands and seals the day and year first above written.

JAMES THOMSON (L. S.)

ELIZABETH THOMSON (L. S.)

Signed, sealed and delivered
in the presence of
30 WARNE SMYTH.

State of New Jersey, }
County of Hudson, } ss.:

40 Be it remembered, that on this twelfth day of January, in the year of our Lord one thousand nine hundred and seventeen, before me, the subscriber, a Master in Chancery of the State of New Jersey, personally appeared JAMES THOMSON and ELIZABETH THOMSON, his wife, who, I am satisfied are the grantors mentioned in the within instrument to whom I first made known the contents thereof and thereupon they acknowl-

Appellant's Exhibit D-6, 3-25-27.

edged that they signed, sealed and delivered the same as their voluntary act and deed for the uses and purposes therein expressed.

WARNE SMYTH,
Master in Chancery of N. J.

10

Received in the Office and Recorded Jan. 24,
1917 @ 3:41 P.M. No. 583.

State of New Jersey, {
County of Hudson, } ss.:

20

I, CHARLES F. X. O'BRIEN, Register of the County of Hudson, do hereby Certify that the foregoing is a true and correct copy of a certain Deed as the same is on Record in my Office in Book 1245 of deeds on page 381, &c.

IN TESTIMONY WHEREOF, I have hereunto set my hand and seal this 24th day of March, A. D. 1927. 30

CHARLES F. X. O'BRIEN,
Register.
By CHARLES M. AUSTIN,
Deputy Register.

40

Appellant's Exhibit D-7, 3-25-27.

(ALSO EXHIBIT D-5, 11-12-24.)

Deed Dated
March 16th, 1920

10 ANNA BRUCKHOFF AMOROSO and husb.

TO

HERMAN M. DIAMOND

THIS INDENTURE, made the 16th day of March, nineteen hundred and twenty,

20 BETWEEN ANNA BRUCKHOFF AMOROSO and VINCENT AMOROSO, JR., her husband, of the Township of North Bergen, *County*, County of Hudson, State of New Jersey,

AND HERMAN M. DIAMOND, residing at 241 West 113th Street, New York City, County and State of the second part;

30 WITNESSETH: That the said party of the first part, for and in consideration of the sum of other valuable considerations and one dollar, lawful money of the United States of America, to us in hand well and truly paid by the said party of the second part, at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, and the said parties of the first part, therewith fully satisfied, contented and paid, have given, granted, bargained,

40 sold, aliened, remised, released, enfeoffed, conveyed and confirmed, and by these presents do give, grant, bargain, sell, convey and confirm to the said part—of the second part, and to the party of the second part, his heirs and assigns, forever,

Appellant's Exhibit D-7, 3-25-27.

ALL that certain piece or parcel of land and premises hereinafter particularly described, situate, lying and being in the Township of North Bergen, in the County of Hudson and State of New Jersey. 10

BEGINNING at a point in the northerly line of Thirty-first Street, produced easterly two hundred and twenty-nine and twenty-six one-hundredths (229.26) feet easterly from the intersection of the northerly line of Thirty-first Street produced easterly, and the easterly line of Bulls Ferry Road, as said streets are laid down on a certain map entitled "Map 'A' of a portion of the property belonging to the Woodcliff Land Improvement Co., Township of North Bergen, Hudson County, N. J., Sept. 1892" duly filed in the Register's Office of the said County of Hudson, on the fifteenth day of September, Eighteen hundred and ninety-two; thence (1) northerly and at right angles to the northerly line of Thirty-first Street, produced easterly one hundred (100) feet to a point; thence (2) easterly and at right angles to the first course, fifty (50) feet to a point; thence (3) southerly and parallel with the first course, one hundred (100) feet to a point in the northerly line of Thirty-first Street, produced easterly; thence (4) westerly and along the northerly line of Thirty-first Street, produced easterly, fifty (50) feet to the point or place of beginning. 20 30 40

SUBJECT TO restrictions and covenants in a deed made by the Woodcliff Land Improvement Co., to the above grantors and now of record.

Appellant's Exhibit D-7, 3-25-27.

SUBJECT further to two mortgages aggregating the sum of \$7400.

10 TOGETHER with all and singular the tenements, hereditaments and appurtenances to the same belonging, or in anywise appertaining.

Also, all the estate, right, title, interest, property claim and demand whatsoever of the said parties of the first part, of, in or to the above described premises, and to every part and parcel thereof, with the appurtenances.

20 TO HAVE AND TO HOLD, all and singular the above described piece or parcel of land and premises, with the appurtenances, unto the said part— of the second part, his heirs and assigns, to their proper use, benefit and behoof forever.

30 AND the said parties of the first part, and administrators, do covenant and grant to and with the said party of the second part, his heirs and assigns, that the said first parties are the true, lawful and right owner of all and singular the above described land and premises, and of every part and parcel thereof, with the appurtenances thereunto belonging; and that the said land and premises or any part thereof, at the time of the sealing and delivery of these presents, are not encumbered by any mortgage, judgment, or limitation or by any encumbrance whatsoever, by
40 which the title of the said party of the second part, hereby made or intended to be made for the above described land and premises, can or may be changed, charged, altered or defeated in any way whatsoever.

Appellant's Exhibit D-7, 3-25-27.

AND ALSO, that the said parties of the first part now have good right, full power and lawful authority to grant, bargain, sell and convey the said land and premises, in manner aforesaid, 10
excepting the aforesaid mortgage liens.

AND ALSO, that the said parties of the first part will WARRANT, SECURE AND FOREVER DEFEND THE SAID LAND AND PREMISES, unto the said party of the second part, his heirs and assigns, forever, against the lawful claims and demands of all and every person and persons freely and clearly freed and discharged of and from all manner of 20
encumbrance whatsoever.

IN WITNESS WHEREOF, the said parties of the first part have hereunto set their hands and seals the day and year first above written.

ANNA BRUCKHOFF AMOROSO (L. S.)
VINCENT AMOROSO, JR. (L. S.)

30

SEALED AND DELIVERED
IN THE PRESENCE OF
JOHN T. MCGOVERN.

U. S. R. S. \$12.00

State of New York, }
County of New York, } ss.:

40

BE IT REMEMBERED, That on this 16th day of March, nineteen hundred and twenty, before me, a Commissioner of Deeds for New Jersey, personally appeared ANNA BRUCKHOFF AMOROSO &

Appellant's Exhibit D-7, 3-25-27.

VINCENT AMOROSO, JR., her husband, who, I am satisfied, are the grantors in the within Deed of Conveyance named, and I having first made
 10 known to them the contents thereof, they did acknowledge that they signed, sealed and delivered the same as their voluntary act and deed, for the uses and purposes therein expressed.

JOHN T. MCGOVERN (N. P. Seal)
 New York County No. 87
 No. 20829 Series B

20 State of New York, }
 County of New York, } ss.:

I, WILLIAM F. SCHNEIDER, Clerk of the County of New York and also Clerk of the Supreme Court for the said County, the same being a Court of Record, DO HEREBY CERTIFY that JOHN T. MCGOVERN, whose name is subscribed to the
 30 deposition or certificate of the proof or acknowledgment of the annexed instrument and thereon written, was, at the time of taking such deposition or proof and acknowledgment a Notary Public in and for such County duly commissioned and sworn, and authorized by the laws of said State to take depositions and to administer oaths to be used in any Court of said State and for
 40 general purposes; and also to take acknowledgments and proofs of deeds, of conveyances for land, tenements or hereditaments in said State of New York.

AND FURTHER, that I am well acquainted with the handwriting of such Notary Public and verily

Appellant's Exhibit D-7, 3-25-27.

believe that the signature to said deposition, or certificate of proof or acknowledgment is genuine.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court and County, the 19th day of Mar. 1920. 10

WM. F. SCHNEIDER,
Clerk.
(C. and C. Seal)

Received in the Office and recorded Mar. 24th, 1920, at 2:36 P. M. No. 4840.

J. M. 20

State of New Jersey, }
County of Hudson, } ss.:

I, CHARLES F. X. O'BRIEN, Register of the County of Hudson, DO HEREBY CERTIFY that the foregoing is a true and correct copy of a certain deed as the same is on record in my office in Book 1342 of deeds, on page 507, &c. 30

IN TESTIMONY WHEREOF, I have hereunto set my hand and seal this 24th day of March, A. D., 1927.

(Seal) CHARLES F. X. O'BRIEN,
Register. 40
By CHARLES M. AUSTIN,
Deputy Register.

Appellant's Exhibit D-8, 3-25-27.

(ALSO EXHIBIT D-4, 11-12-24.)

HUDSON CIRCUIT COURT.

10

DE RISO BROS., INC., a corporation,

vs.

VINCENT AMBROSE, JR., Builder,
and HERMAN M. DIAMOND,
Owner.On Contract, On
Mechanic's Lien,
On Docketed
Judgment.
Fi Fa De Bonis
et Terris Special
Fi Fa.
Ret'ble April
12th, 1921.

20

Mileage	
Levy and Ret.	3.50
Printing	51.99
Posting	3.50
Publishing	3.00
Crier	1.00
Deed	8.00
Adjnt's	1.00
Com's	15.63
Statement etc.	1.00
Miscellaneous	—

88.62

R. Stamp 1.00

—
89.62

BY VIRTUE of the annexed writ, I did, on the 5th day of May, 1921, sell at Public Vendue, at Hudson County Court House, Jersey City, N. J., having first duly advertised the same, all the right, title and interest of the defendant, Vincent Ambrose, Jr., Builder and Herman M. Diamond, Owner, in and to the lands and tenements described in the inventory annexed to James M. De Riso, of Township of North Bergen, N. J., for the sum of Six hundred and twenty-five (\$625.00) dollars, he being the highest bidder for the same.

40

I hereby certify that the above statement is true and correct.

THOMAS MADIGAN,
Sheriff.

Dated, Jersey City, N. J., June 13th, 1921.

Appellant's Exhibit D-8, 3-25-27.

Hudson County, ss.:

The State of New Jersey to the Sheriff of
 the County of Hudson, Greeting: We 10
 (SEAL) command you that you cause to be made
 the sum of Five hundred and thirty
 dollars and thirty cents which de Riso Bros.,
 Inc., a corporation, plaintiff, lately in the Dis-
 trict Court of the First Judicial District of the
 County of Hudson, recovered against Vincent
 Amoroso, Jr., builder, generally, as well for
 its damages which it had sustained on occa- 20
 sion of the non-performance of certain promises
 and undertakings by the said Vincent Amoroso,
 Jr., builder, then lately made to the said De
 Riso Bros., Inc., as for its costs and charges by
 it about it suit in that behalf expended, whereof
 the said Vincent Amoroso, Jr., builder, is con-
 victed as appears to us of record and specially
 to be made of the buildings and lands of Herman 30
 M. Diamond, owner, in the complaint in said
 action described, which judgment was afterwards
 on January 6th, 1921, docketed in our Circuit
 Court in and for our said County of Hudson,
 pursuant to the statute in such case made and
 provided, as appears to us of record; and also
 the sum of Two Dollars costs of docketing the
 said judgment and of issuing execution thereon;
 of the following described lands, tenements and 40
 real estate of the said Herman M. Diamond,
 owner, viz.:

The building is a two-story and attic hollow
 tile and stucco one family dwelling house and
 same is erected upon a lot of land situated in
 the Township of North Bergen, in the County

Appellant's Exhibit D-8, 3-25-27.

of Hudson and State of New Jersey and which plot may be more particularly described as follows:

- 10 Beginning at a point in the Northerly line of Thirty-first street produced Easterly two hundred and twenty-nine and twenty-six hundredths feet (229.26') Easterly from the intersection of the Northerly line of Thirty-first street, produced Easterly and the Easterly line of Bulls Ferry Road as said streets are laid down on a certain map entitled "Map A of a portion of the property belonging to the Woodcliff Land and Improvement Co., Township of North Bergen, Hudson County, N. J., Sept. 1892", duly filed in the register's office of the said County of Hudson on the fifteenth day of September, 1892; thence (1) Northerly and at right angles to the Northerly line of Thirty-first Street, produced Easterly One hundred (100) feet to a point; thence (2) Easterly and at right angles to the first course fifty (50) feet to a point; thence (3) southerly and parallel with the first course one hundred (100) feet to a point in the northerly line of Thirty-first Street, produced easterly; thence (4) Westerly and along the Northerly line of Thirty-first Street, produced easterly fifty (50) feet to the point or place of beginning.
- 20
- 30

- 40 And have you those moneys before our Circuit Court aforesaid, at Jersey City, the second Tuesday of April next, to render unto the said De Riso Bros., Inc., for its costs and damages aforesaid, and have you then and there this writ.

Witness Luther A. Campbell, Esq., Judge of our said Circuit Court at Jersey City aforesaid,

Appellant's Exhibit D-8, 3-25-27.

the seventh day of January, in the year of our
Lord one thousand nine hundred and twenty-one.

JOHN J. McGOVERN, 10
Clerk.

WM. F. BURKE,
Attorney.

Received in Hudson County Clerk's office this
Jany. 17, A. D. 1921, and recorded in Liber 24
of Executions on Contract, page 70 $\frac{1}{2}$.

JOHN J. McGOVERN, 20
Clerk.

Damages	\$500	
Costs	30.30	
Costs of Docketing	2.00	
Interest thereon		
From Jany. 6-1921		
besides Sheriff's execution		
fees	89.62	30

Delivered to me Jan. 17, 1921
at 2.30 o'clock P. M.

THOMAS MADIGAN, Sheriff.

Filed Clerk's Office
June 13, 1921 Hudson Co. N. J.

JOHN J. McGOVERN, 40
Clerk.

Appellant's Exhibit D-8, 3-25-27.

10 Jersey City, June 10, 1921: Received from the Sheriff of Hudson County Five hundred thirty-five and 38/100 Dollars proceeds of the sale under execution in this cause less Sheriff's fees.

WM. F. BURKE, Atty. for Pltf.
Per W. MARNELL.

(ALSO EXHIBIT D-2, 11-12-24.)

20 IN HUDSON COUNTY CLERK': OFFICE.

DE RISO BROS., INC., a corporation of New Jersey, Claimant, vs. VINCENT AMOROSO, JR., Builder, and HERMAN M. DIAMOND, Owner.	}	LIEN CLAIM.
---	---	-------------

30

40 BE IT KNOWN, that De Riso Bros., Inc., a corporation of the State of New Jersey having its principal place of business in the Town of Union, in the County of Hudson and State of New Jersey, files this its claim for a lien upon the building and lands hereinafter described, under the provisions of "An act to secure to mechanics and others payment for their labor and materials in erecting any building," (Revision of 1898), and the supplements thereto and amendments thereof, for a debt contracted and owing to it for labor performed and materials furnished for the alteration and erection and

Appellant's Exhibit D-8, 3-25-27.

construction of a new addition of said building of which claim the following are the details.

1. THE DESCRIPTION OF THE BUILDING and of the lot or curtilage upon which the lien is claimed, is as follows: 10

The said building is a two story and attic hollow tile and stucco one family dwelling house, and the same is erected upon that lot of land or curtilage, situated in the Township of North Bergen, in the County of Hudson and State of New Jersey, described as follows:

Beginning at a point in the Northerly line of Thirty-first street produced Easterly two hundred and twenty-nine and twenty-six hundredths (229.26) feet Easterly from the intersection of the Northerly line of Thirty-first Street produced Easterly and the Easterly line of Bulls ferry Road as said Streets are laid down on a certain map entitled "Map A of a portion of the property belonging to The Woodcliff Land Improvement Co., Township of North Bergen, Hudson County, N.J., Sept. 1892," duly filed in the Register's Office of the said County of Hudson on the fifteenth day of September, 1892, thence 20
 (1) Northerly and at rightangles to the Northerly line of Thirty-first Street produced Easterly one hundred (100) feet to a point, thence
 (2) Easterly and at right angles to the first course fifty (50) feet to a point; thence (3) 30
 Southerly and parallel with the first course one hundred (100) feet to a point in the Northerly line of Thirty-first street produced Easterly; 40
 thence (4) Westerly and along the Northerly line of 31st Street produced Easterly fifty (50) feet to the point or place of beginning.

Appellant's Exhibit D-8, 3-25-27.

II. THE NAME OF THE OWNER of the land and of the estate therein on which the lien is claimed as follows:

10 HERMAN M. DIAMOND, who has an estate in fee simple therein.

III. THE NAME OF THE PERSON WHO CONTRACTED THE DEBT, and for whom, and at whose request the labor was performed and the materials furnished for which such lien is claimed, who deemed the BUILDER is as follows:

20 VINCENT AMOROSO, JR.

IV. THE FOLLOWING IS A BILL OF PARTICULARS, exhibiting the amount and kind of labor performed and of materials furnished and the prices at which and times when the same were performed and furnished, and giving credit for all the payments made thereupon and deductions that ought to be made therefrom, and exhibiting the balance justly due to such claimant, is as follows:

30 To work performed and materials furnished to erect and finish the alterations and new addition to residence at #16 - 31st Street, Woodcliff, Township of North Bergen, Hudson County, N. J., pursuant to written agreement between claimant and said builder at the agreed price of

\$4000.

40	Credit	
	Paid on account	3500.

	500.
--	------

Leaving a balance due of

500.

Five hundred dollars justly due to claimant.

Appellant's Exhibit D-8, 3-25-27.

All the above labor was performed and materials furnished between the twenty-fourth day of September, 1919, and the twenty-fourth day of April, 1920.

10

DE RISO BROS., INC.,
By JAMES M. DE RISO,
Sec'y and Treas.

State of New Jersey, }
County of Hudson, } ss.:

JAMES M. DE RISO, of full age, being duly sworn on his oath says that he is the treasurer of De Riso Bros., Inc., the claimant mentioned in the foregoing claim, that the bill of particulars and statements therein set forth shown in said claim are true; that the same is for labor performed and materials furnished in the ERECTION of new addition and alteration of the building in such claim described, at the times herein specified; and that the sum of Five hundred (\$500.) dollars being the amount as therein claimed is justly due and owing to said claimant from the said Vincent Amoroso, Jr.

20

30

JAMES DE RISO.

Subscribed and sworn to before me,
this 21st day of August, A. D.
1920, at West Hoboken, N. J.

40

JOHN H. SHERIDAN,
Master in Chancery
of New Jersey.

Appellant's Exhibit D-8, 3-25-27.

10 Summons was issued in the First Judicial Court of Hudson Co. on the within Lien claim this 23rd day of August, A. D. 1920, at the suit of de Riso Bros., Inc., claimant, against Vincent Amoroso, Jr., Builder and Herman M. Diamond, Owner.

JOHN J. McGOVERN,
Clerk.

Received in the Hudson Co., N. J., Clerk's Office Aug. 23, A. D. 1920, and filed and recorded in Lien Docket No. 14, Page 170.

20

JOHN J. McGOVERN,
Clerk.

30

40

Appellant's Exhibit D-8, 3-25-27.

(ALSO EXHIBIT D-3, 11-12-24.)

State of New Jersey, }
 County of Hudson, } ss.:

10

DISTRICT COURT OF THE FIRST
 JUDICIAL DISTRICT,
 OF THE COUNTY OF HUDSON.

Before:

FRANCIS H. McCAULEY,

Judge.

20

DE RISO BROS., INC., a corpo-
 ration,

Plaintiff,

vs.

VINCENT AMOROSO, JR., Builder,
 and HERMAN M. DIAMOND,
 Owner,

Defendants.

On Contract.
 On Mechanic's
 Lien, Statement
 for Docketing
 Judgment.
 William F. Burke,
 Plaintiff's Attor-
 ney.

30

Judgment in the above entitled cause was entered in the District Court of the First Judicial District of the County of Hudson on the 27th day of December, A. D., 1920, for the sum of Five hundred dollars debt and Thirty dollars and thirty cents costs of suit in favor of the plaintiff, De Riso Bros., Inc., a corporation, and generally against the defendant, Vincent Amoroso, Jr., Builder, and specially to be made of the building and the lands in the complaint described, viz.:

40

All that certain tract or parcel of land and premises hereinafter particularly described, sit-

Appellant's Exhibit D-8, 3-25-27.

uate, lying and being in the Township of North Bergen, in the County of Hudson and State of New Jersey and which plot may be more particularly described as follows:

10 Beginning at a point in the Northerly line of Thirty-first street produced Easterly two hundred and twenty-nine and twenty-six hundredths feet (229.26') Easterly from the intersection of the Northerly line of Thirty-first Street produced Easterly and the Easterly line of Bulls Ferry Road as said Streets are laid down on a certain map entitled "Map A of a portion of the prop-

20 erty belonging to The Woodcliff Land Improvement Co., Township of North Bergen, Hudson County, N. J., Sept. 1892", duly filed in the Register's office of the said County of Hudson on the fifteenth day of September, 1892; thence (1) Northerly and at right angles to the Northerly line of Thirty-first Street produced Easterly One hundred (100) feet to a point; thence (2)

30 Easterly and at right angles to the first course fifty (50) feet to a point; thence (3) Southerly and parallel with the first course One hundred (100) feet to a point in the Northerly line of Thirty-first Street produced Easterly; thence (4) Westerly and along the Northerly line of Thirty-first Street produced Easterly fifty (50) feet to the point or place of beginning.

40 I do hereby certify that the foregoing statement is correct and that said judgment stands open and unpaid of record in this Court.

In Witness Whereof, I have hereunto affixed my hand as the Clerk of said Court and the seal of said Court, this fifth day of January, 1921.

(Seal)

HENRY BENDER,
Clerk.

Appellant's Exhibit D-8, 3-25-27.

State of New Jersey, {
 County of Hudson, } ss.:

WILLIAM F. BURKE, being duly sworn on his oath according to law, says, that he is the attorney of the above named plaintiff; that there is due at the present time upon the within judgment as entered in the District Court of the First Judicial District of the County of Hudson, and which is about to be docketed in the Circuit Court of the County of Hudson, the sum of Five hundred thirty and 30/100 dollars (\$530.30), being a sum not less than ten dollars. 10
 20

WM. F. BURKE.

Subscribed and sworn to before me,
 this Sixth day of January, 1921.

JOHN H. SHERIDAN,
 Master n Chancery
 of New Jersey.

Filed in the Clerk's Office, Hudson County, Jan. 6, 1921. 30

Debt	\$500.00
Costs	30.30
	<hr/>
	530.30

WM. F. BURKE,
 Atty. Plaintiff, 40
 440 Bergenline Ave.,
 West Hoboken, N. J.

Filed Jan. 6, 1921.

JOHN J. MCGOVERN,
 Clerk.

Appellant's Exhibit D-8, 3-25-27.

STATE OF NEW JERSEY.

Hudson County, ss.:

10 I, JOHN J. MCGOVERN, Clerk of the County of Hudson aforesaid, and also Clerk of the Circuit Court holden therein,

20 Do HEREBY CERTIFY, That the foregoing is a true and correct copy of Judgment on Mechanic's Lien, Notice of sale by Sheriff, and Sheriff's return in the case of De Riso Bros., Inc., a corporation of New Jersey, Claimant, vs. Vincent Amoroso, Jr., Builder and Herman M. Diamond, owner, as the same is taken from and compared with the original as filed and recorded in my office.

30 IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Courts and County, at Jersey City, this fourteenth day of November, 1924.

(Seal)

JOHN J. MCGOVERN,
Clerk.

Appellant's Exhibit D-8, 3-25-27.

(ALSO EXHIBIT D-1, 11-12-24.)

JUDICIAL COURT OF THE FIRST 10
 JUDICIAL DISTRICT
 OF THE COUNTY OF HUDSON.

DE RISO BROS., INC., a corpo-
 ration of New Jersey,

Claimant,

vs.

VINCENT AMOROSO, JR., Builder,
 and HERMAN M. DIAMOND,
 Owner.

Certificate of
 Commence-
 ment of Suit. 20

This is to certify that suit on the lien claim
 filed by the plaintiff on August 23, 1920, claiming
 a lien upon the lands of the above named de-
 fendant owner for a debt due from the above
 named defendant Builder entitled as above set
 forth has been commenced in the District Court
 of the First Judicial District of the County of
 Hudson. 30

That said suit was commenced on August 23,
 1920, and the summons in said suit was issued
 out of said court on said August 23, 1920, and
 said summons requires the defendants to answer
 within twenty days after service thereof upon
 them and is returnable twenty days after such
 service. 40

Appellant's Exhibit D-8, 3-25-27.

In Witness Whereof I have set my hand and
affixed the seal of said Court the 23rd day of
August, 1920.

10

OSCAR B. SPENCER,
Acting Clerk.

(Seal)

Filed Clerk's Office
August 23, 1920.
Hudson County, N. J.

JOHN J. MCGOVERN,
Clerk.

20

STATE OF NEW JERSEY.

Hudson County, ss.:

I, JOHN J. MCGOVERN, Clerk of the County of
Hudson aforesaid and also Clerk of the Circuit
Court holden therein,

30

DO HEREBY CERTIFY, That the foregoing is a
true and correct copy of Judgment on Mechanic's
Lien, Notice of Sale by Sheriff, Sheriff's return
and Certificate of Commencement of suit in the
case of De Riso Bros., a corporation of New
Jersey, Claimant, vs. Vincent Amoroso, Jr.,
Builder and Herman M. Diamond, Owner, as the
same is taken from and compared with the orig-
inal as filed and recorded in my office.

40

IN TESTIMONY WHEREOF, I have hereunto set
my hand and affixed the seal of said Courts and
County, at Jersey City, this twenty-second day
of March, 1927.

(Seal)

JOHN J. MCGOVERN,
Clerk.

Appellant's Exhibit D-9, 3-25-27.

New Jersey, ss.:

THE STATE OF NEW JERSEY

10

To JOHN J. MCGOVERN, County Clerk of Hudson
County and Clerk of the Hudson County
Circuit Court.

We being willing for certain reasons
to be certified of a certain certificate of
(SEAL) the Clerk of the District Court of the
First Judicial District of the County of
Hudson, dated August 23rd, 1920, cer- 20
tifying that on August 23rd, 1920, a suit had
been instituted in said District Court by DeRiso
Bros., Inc., claimant vs. Vincent Amoroso, Jr.,
builder and Herman Diamond, owner and that
summons in said suit was issued out of said
Court on said date and also being willing, for
certain reasons, to be certified of an entry en-
dorsed by you upon a lien claim filed on August 30
23, 1920, by DeRiso Bros., Inc., claimant, vs.
Vincent Amoroso, Jr., builder and Herman M.
Diamond, owner, of the lands and premises in
said lien claim described to the effect that sum-
mons in a suit on said lien claim had been issued
on August 23rd, 1920, and also being willing, for
certain reasons, to be certified of certain state-
ment signed by the Clerk of the District Court
for the First Judicial District of the County of 40
Hudson, dated January 6th, 1921, wherein it is
certified that on December 27th, 1920, a judgment
was entered in said District Court for the sum
of \$500.00 debt and \$30.30 costs of suit, in favor
of the plaintiff, DeRiso Bros., Inc., a corporation

Appellant's Exhibit D-9, 3-25-27.

and generally against the defendant, Vincent Amoroso, Jr., builder and specially to be made of the building and lands in the complaint described, and being also described in the lien claim aforesaid, and also being willing to be certified of a certain record of docketing of the aforesaid judgment in the Circuit Court of Hudson County and of all proceedings had thereon, including a writ of execution issued thereon on January 7th, 1921, and all proceedings had thereon or thereafter, including the sale held thereunder and the record of the return of the Sheriff endorsed on said writ of execution, we command you that you send under your seal to our New Jersey Supreme Court at Trenton, on the 20th day of September, 1922, the certificate, endorsement, statement, record of docketing, writ of execution and return aforesaid, with all things attached to or concerning the same, as fully and entirely as they remain before you, together with this writ, that we may further cause to be done thereupon what of right should be done.

WITNESS, WILLIAM S. GUMMERE, Chief Justice of the New Jersey Supreme Court at Trenton, the first day of September, 1922.

ENOCH L. JOHNSON,
Clerk.

WARREN, BRITT & STANTON,
Attorneys.

ALLOCATUR.

I allow the within writ. Let it be sealed.

F. J. SWAYZE,
Justice of the Supreme Court.

Appellant's Exhibit D-9, 3-25-27.

(ORDER TO TAKE DEPOSITIONS.)

NEW JERSEY SUPREME COURT.

HERMAN M. DIAMOND, Prosecutor, vs. JOHN J. McGOVERN, Clerk of Hudson County and of Hud- son County Circuit Court, <i>et</i> <i>als.</i> , Defendants.	On Certiorari. Order to Take Depositions.	10 20
--	---	--

A writ of certiorari having been allowed in the above entitled cause and application being made by the prosecutor to take depositions to be used upon the return of said writ:

It is on this 1st day of September, 1922, on motion of WARREN, BRITT & STANTON, attorneys for the prosecutor, ORDERED, that depositions to be used on the return of the writ, be taken before Henry W. Runyon, a Supreme Court Commissioner, by any party to these proceedings, upon two days' notice as to time and place given by one to the others.

F. J. SWAYZE,
 Judge.

State of New Jersey, }
 County of Hudson, } ss.:

RAYMOND COLEMAN, of full age, being duly sworn on his oath, deposes and says that:

Appellant's Exhibit D-9, 3-25-27.

10 I am employed in the office of Warren, Britt & Stanton, Attorneys and counsellors at law of the State of New Jersey, and at their request did on August 25th, 1922, make an inspection of the records of the Clerk of Hudson County, who is also Clerk of the Circuit Court of Hudson County.

20 I ascertained that on August 23rd, 1920, there was filed by DeRiso Bros., Inc., a corporation of New Jersey, a lien claim against Vincent Amoruso, Jr., builder and Herman M. Diamond, as owner of all that certain tract or parcel of land and premises, hereinafter particularly described, situate, lying and being in the Township of North Bergen, in the County of Hudson and State of New Jersey, and which plot may be more particularly described as follows:

30 Beginning at a point in the northerly line of Thirty-first Street, produced easterly 229.26 feet easterly from the intersection of the northerly line of Thirty-first Street, produced easterly and the easterly line of Bull's Ferry Road, as said streets are laid down on a certain map entitled "Map A of a portion of the property belonging to the Woodcliff Land Improvement Co., Township of North Bergen, Hudson County, N. J., September, 1892," duly filed in the Register's office of the said County of Hudson on September 15th, 1892, thence (1) northerly and at right angles to the northerly line of Thirty-first Street, 40 produced easterly, 100 feet to a point; thence (2) easterly and at right angles to first course, fifty feet to a point; thence (3) southerly and parallel with first course, one hundred feet to a point in the northerly line of Thirty-first Street,

Appellant's Exhibit D-9, 3-25-27.

produced easterly; thence (4) westerly and along the northerly line of Thirty-first Street, produced easterly, fifty feet to the point or place of beginning.

10

I also ascertained that the said lien claim stated that one, Vincent Amoroso, Jr., contracted the debt and that the only statement therein with reference to the work performed, is as follows:

“4. Following is a bill of particulars exhibiting amount and kind of labor, etc., and price at which performed, etc. To work performed and materials furnished to erect and finish the alterations and new addition to residence at 16 - 31st Street, Woodcliff, Township of North Bergen, Hudson County, New Jersey, pursuant to written agreement between claimant and said builder, at the agreed price of \$4000.00
Credit—Paid on account 3500.00

20

Leaving a balance due of 500.00
Five hundred dollars justly due to complainant. All the above labor so performed and materials furnished between September 24, 1919, and April 24, 1920.

30

DeRISO BROS., INC.,
By JAMES M. DeRISO,
Secy. and Treas.

40

The said lien claim does not contain any other statement as to the work done under the contract, as to the terms of the contract itself, or as to the date that the labor was performed and materials furnished under the alleged contract.

Appellant's Exhibit D-9, 3-25-27.

10 There is also on file in the office of the aforesaid Clerk of Hudson County, a certificate of commencement of suit in the District Court of the First Judicial District of the County of Hudson, wherein DeRiso Bros., Inc., is styled as claimant against Vincent Amoroso, Jr., builder and Herman Diamond, owner, which said certificate is signed by Oscar B. Spencer, acting Clerk of the aforesaid District Court, and certifies that suit on the lien claim filed by the plaintiff on August 23rd, 1920, which said lien claim is the one aforesaid, had been commenced
20 in the District Court aforesaid on August 23rd, 1920, and that summons in said suit was issued out of said Court on said August 23rd, 1920, which said certificate of the Clerk of the District Court, is marked received by the aforesaid County Clerk on August 23rd, 1920, and the lien claim is endorsed by the aforesaid County Clerk with the statement that "summons issued on within lien claim this twenty-third day of August, 1920, at suit of DeRiso Bros., Inc., vs. Vincent Amoroso, builder and Herman Diamond, owner".
30

I also found that in the said Clerk's office, was filed a statement for docketing judgment, which said certificate was issued by Henry Bender, Clerk of the aforesaid District Court, in a suit by DeRiso Bros., Inc., a corporation, plaintiff,
40 vs. Vincent Amoroso, Jr., builder and Herman M. Diamond, owner, defendants, in which he certifies "judgment in above entitled cause was entered in District Court of First Judicial District of Hudson County, on December 27th, 1920, for sum of \$500.00 debt and \$30.30 costs of suit in

Appellant's Exhibit D-9, 3-25-27.

favor of the plaintiff, DeRiso Bros., Inc., a corporation and generally against the defendant, Vincent Amoroso, Jr., builder and specially to be made of the building and the lands in the complaint described", the said certificate then containing a description of the lands aforesaid. 10

I also ascertained that on said docketed judgment, there was issued out of the Circuit Court of Hudson County, on January 7th, 1921, a writ of execution directed to the Sheriff of Hudson County, commanding him to "cause to be made the sum of \$530.30 which DeRiso Bros., Inc., a corporation, plaintiff, lately in the District Court of First Judicial District of Hudson County recovered against Vincent Amoroso, Jr., builder, generally as well for its damages which it had sustained on occasion of the non-performance of certain promises and undertakings by the said Vincent Amoroso, Jr., builder, then lately made to the said DeRiso Bros., Inc., as for its costs and charges by it about its suit in that behalf expended whereof the said Vincent Amoroso, Jr., builder is convicted as appears to us of record and specially to be made of building and lands of Herman M. Diamond, owner, in the complaint in said action described, which judgment was afterwards, on January 6th, 1921, docketed in our Circuit Court in and for our said County of Hudson, pursuant to the statute in such case made and provided, as appears to us of record and also the sum of \$2.00, costs of docketing the said judgment and the issuing of execution thereon of the following described lands and real estate of the said Herman M. Diamond, owner", the said execution then containing the descrip- 20 30 40

Appellant's Exhibit D-9, 3-25-27.

tion of the lands of the said Herman M. Diamond, as above set forth.

10 I also ascertained that Thomas Madigan, Sheriff of Hudson County, on June 13th, 1921, returned the aforesaid execution, his return being as follows: "By virtue of annexed writ, I did on the 5th day of May, 1921, sell at public vendue, at Hudson County Court House, Jersey City, N. J., having first duly advertised the same, all the right, title and interest of the defendant, Vincent Amoroso, Jr., builder and Herman Diamond, owner, in and to the lands and
20 tenements described in the inventory annexed to James DeRiso of township of North Bergen, N. J., for the sum of \$625.00, he being the highest bidder for same", said return showing Sheriff's costs and execution fees of \$89.62.

30 An investigation in the Sheriff's office disclosed that the sale of the property was bid in in the name of James M. DeRiso, the bid being signed by William F. Burke, Solicitor, the said William F. Burke, being also attorney of DeRiso Bros., Inc., a corporation, in the aforesaid suit in the District Court and as appears from the lien claim, the said James M. DeRiso being the secretary and treasurer of the aforesaid corporation.

40 On August 28th, 1922, in company with John Warren, of the firm of Warren, Britt & Stanton, I did call at the office of the Clerk of the District Court of the First Judicial District of the County of Hudson and in his presence, did inspect the records of said Court pertaining to the suit of DeRiso Bros., Inc., a corporation, plaintiff, vs. Vincent Amoroso, Jr., builder and Herman M. Diamond owner, of the property aforesaid; that

Appellant's Exhibit D-9, 3-25-27.

all records were produced for our inspection by Oscar B. Spencer, Sergeant at arms and acting Clerk of the aforesaid Court. An inspection of the summons and complaint disclosed the fact that there does not appear any certificate of the Clerk as to the date they were filed; that the summons is not signed by the Clerk as required by Section 55 of the District Court act; that there is no return endorsed on the summons by the Sergeant at arms of the Court or Constable of the County of Hudson, showing that the said summons and complaint were served upon either Vincent Amoroso, Jr., or Herman M. Diamond; that there is no paper in the jacket for the aforesaid case, which shows that service of any kind of the summons and complaint was made upon the defendants.

The complaint does not contain a statement as to how the owner and builder were served, as required by Section 24 of an act to secure to mechanics and other payments for labor and materials in erecting any building (Revision of 1898), approved June 14th, 1898; that the complaint in the aforesaid suit alleges that prior to March 16th, 1920, Anna B. Amoroso was the owner of the above described premises and that prior to September 20th, 1919, the defendant, Vincent Amoroso, Jr., contracted with her to erect and furnish certain alterations and new addition to the buildings upon the lands aforesaid; that the contract was not filed in accordance with the provisions of the Mechanic's lien law and that on September 20th, 1919, DeRiso Bros., Inc., the plaintiff in said suit and said Vincent Amoroso, Jr., entered into an agree-

Appellant's Exhibit D-9, 3-25-27.

10 ment in writing, whereby plaintiff agreed to erect and furnish the alterations and new addition to said building agreeable to the drawings made by William Neuman, architect, for the sum of \$4000.00, which said Vincent Amoroso, Jr., agreed to pay to plaintiff therefor and that on April 24th, 1920, plaintiff completed said alterations and new addition to said building and thereupon became due to it from Vincent Amoroso, Jr., the said sum; that the said Vincent Amoroso, Jr., paid to the plaintiff on account of said sum, the sum of \$3500.00, leaving due to the plaintiff the sum of \$500.00, no part thereof having been paid; that on March 16th, 1920, the said Anna B. Amoroso and Vincent Amoroso, Jr., her husband, conveyed said premises to the defendant, Herman M. Diamond, who at the time of the institution of the action, was seized in fee simple of said premises; that prior to the filing of the complaint and on August 23rd, 1920, plaintiff filed its mechanics lien in the office of the Clerk of Hudson County.

30
40 As above stated, the said summons not being signed by the Clerk of the aforesaid District Court, it has never been issued and that in contradiction of the certificate of the Clerk aforesaid filed with the County Clerk to the effect that summons was issued on August 23rd, 1920, are two stipulations on file in the office of the aforesaid Clerk of the District Court, the first dated September 21st, 1920, and reading as follows:

Appellant's Exhibit D-9, 3-25-27.

“DISTRICT COURT OF THE FIRST JUDICIAL
DISTRICT OF HUDSON COUNTY.

DE RISO BROS., INC., a cor-
poration of N. J.,
Claimant,
vs.
VINCENT AMOROSO, JR.,
Builder,
and
HERMAN DIAMOND,
Owner.

10

On Mechanics
Lien Claim.

20

It is hereby stipulated and agreed that the
above named Herman M. Diamond, owner,
hereby appears herein and that the time to
issue summons and begin suit on the lien
claim filed by said DeRiso Bros., Inc., against
said Vincent Amoroso, Jr., as builder and
said Herman M. Diamond, as owner, be and
the same is hereby extended to November 1,
1920, and it is further agreed that said
claimant, DeRiso Bros., Inc., will not take
any steps or proceedings to enforce said lien
claim before November 1, 1920”,

30

the said certificate is signed as follows:

“WM. F. BURKE,
Attorney for Claimant,
DeRiso Bros., Inc.
Herman M. Diamond.”

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Appellant's Exhibit D-9, 3-25-27.

The other stipulation is dated November 1, 1920, and is as follows:

10 "DISTRICT COURT OF THE FIRST JUDICIAL
DISTRICT OF HUDSON COUNTY.

DE RISO BROS., INC., a cor-
poration of N. J.,
Claimant,

vs.

20 VINCENT AMOROSO, JR.,
Builder,

and

HERMAN DIAMOND,
Owner.

On Mechanics
Lien Claim.
Stipulation.

30 It is hereby stipulated and agreed by and
between the above named claimant and the
above named owner that the time to issue
summons and begin suit on the lien claim
filed by the above named claimant against
the above named builder and owner, be and
same is hereby extended to November 15,
1920, and that entry of the extension of time
to said day may be entered on said lien
claim and the record thereof at any time
and it is further agreed that said claimant
40 will not take any step or proceeding to en-
force said lien claim before November 15,
1920.

It is also agreed that any order necessary
to carry into effect this stipulation may be
obtained and entered at any time by either
party without notice to the other,"

Appellant's Exhibit D-9, 3-25-27.

which said stipulation purports to be signed by "William F. Burke, attorney for Claimant, De-Riso Bros., Inc., and Herman Diamond, owner". No order was entered thereon in the said District Court and no extension of time has been entered upon the lien claim as required by Section 18 of the Mechanics Lien Law. Upon the date of the aforesaid stipulation, viz.: September 21, 1920, and November 1, 1920, the lien claim had been discharged because of the fact that the summons had not been issued within four months after the last work done or materials furnished, the time to issue summons expiring on August 24th, 1920. 10

Anna Bruckhoff Amoroso, the owner of the property aforesaid, at the time of the alleged contract of Vincent Amoroso, Jr., was the wife of the said Vincent Amoroso, Jr., and could not legally contract at law with her said husband; that she has not executed and filed with the Register of Hudson County a consent to the erection, repair or addition to any building by any person other than herself, as provided for by Section 7 of the aforesaid Mechanics Lien Law. 20 30

That I inspected the Clerk's record of judgments docketed in the Hudson County Circuit Court from the District Court of the First Judicial District of Hudson County in mechanics lien claim suits and on docket 1, page 100, found what purported to be a docket of the judgment from the District Court of the First Judicial District of the County of Hudson in a suit instituted by DeRiso Bros., Inc., plaintiff, vs. Vincent Amoroso, Jr., as builder and Herman M. 40

Appellant's Exhibit D-9, 3-25-27.

10 Diamond, as owner, defendants, on the lien above mentioned; that the record of the aforesaid Clerk of the Hudson County Circuit Court is merely a copy of the statement of the District Court aforesaid and does not contain any statement of the substance of the return of the Constable or Sergeant at arms.

20 I inspected the book of judgment kept by the Clerk of the District Court aforesaid and found the page for the above stated case; that the said page contained nothing but the title; that it contained no entry of the issuance of summons, of a return of service, of a trial or of the entry of judgment. Outside of the title of the case, the entire page was blank.

RAYMOND COLEMAN.

Sworn and subscribed to before me,
this 31st day of August, 1922.

30 WILLIAM R. GANNON,
Master in Chancery of New Jersey.

State of New Jersey, {
County of Hudson, } ss.:

JOHN WARREN, of full age, being duly sworn on his oath, deposes and says that:

40 I am a member of the firm of Warren, Britt & Stanton, attorneys and counselors at law of the State of New Jersey; that on August 24th, 1922, I received a request from the law firm of Griffiths, Sarfaty and Content, of the City of New York, who informed me that they represented

Appellant's Exhibit D-9, 3-25-27.

the owner of the property set forth in the affidavit of Raymond Coleman, to be filed herewith, and that they had lately heard that John J. McMahon claimed to be the owner of the property and asked me to ascertain whether or not there had been any changes in the title since March 24th, 1920, upon which last mentioned date, a deed from Anna Bruckhoff Amoroso and Vincent Amoroso, Jr., her husband, to Herman M. Diamond, had been recorded in the office of the Register of Hudson County, New Jersey, which said deed was dated March 16th, 1920. I requested my partner Thomas J. Stanton to investigate the title.

10

20

JOHN WARREN.

Sworn and subscribed to before me,
this 31st day of August, 1922.

WILLIAM R. GANNON,
Master in Chancery of New Jersey. 30

State of New Jersey, }
County of Hudson, } ss.:

THOMAS J. STANTON, of full age, being duly sworn upon his oath, deposes and says that:

I am a member of the firm of Warren, Britt & Stanton, attorneys and counsellors at law of the State of New Jersey. At the request of my partner, Mr. Warren, on August 24th, 1922, I investigated the title to the property described in the affidavit of Raymond Coleman hereunto annexed and to be filed herewith, and found that

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Appellant's Exhibit D-9, 3-25-27.

on March 16th, 1920, Anna Bruckhoff Amoroso and Vincent Amoroso, Jr., her husband, conveyed to Herman M. Diamond the property mentioned in the said affidavit of Raymond Coleman, by deed of that date, which was recorded in the office of the Register of Hudson County on March 24th, 1920, in book 1342 of deeds for said County, on page 507, etc.; that the said deed had affixed thereto revenue stamps in the amount of \$12.00; that there also appeared of record a deed from the same grantors to John J. McMahon of the Township of Weehawken, purporting to convey the same premises, which said deed was dated September 24th, 1920, and recorded October 4th, 1920, in book 1370 of deeds for Hudson County, on page 452, the record discloses that the said deed had no revenue stamps affixed thereto; there also appears of record a deed for the same property from Thomas Madigan, Sheriff, to James M. DeRiso, which said deed is dated May 16th, 1921, and was recorded on July 15th, 1921, in the office of the Register of County of Hudson, in Liber 1408 of deeds for said County, on page 366, etc., which contains the stated consideration of \$625.00 and recites that the sale was held under a writ of fi fa issued out of the Hudson County Circuit Court, dated January 7th, 1921, to make \$530.30 which DeRiso Bros., Inc., recovered in the First Judicial District Court against Vincent Amoroso, Jr., builder, generally and for damages for non performance of contract and specially to be made of buildings and lands of Herman M. Diamond, owner, which judgment was docketed in the Circuit Court of Hudson County on January 6th,

Appellant's Exhibit D-9, 3-25-27.

1921; there also appears of record a deed for the same property from James M. DeRiso and Philomena DeRiso to John J. McMahon, which said deed is dated June 21st, 1921, and was recorded on June 2nd, 1922, in the office of the Register of County of Hudson in Liber 1447 of deeds for said County on page 92, that the said deed had affixed thereto revenue stamps in the amount of \$1.00. I am informed that John J. McMahon is married and his wife's name is Margaret McMahon. 10

THOMAS J. STANTON. 20

Sworn and subscribed to before me,
this 31st day of August, 1922.

CHARLES F. DOLAN,
Notary Public,
N. J.

State of New Jersey, }
County of Hudson, } ss.: 30

HERMAN M. DIAMOND, of full age, being duly sworn on his oath, deposes and says:

I reside at #241 West 113th Street, Borough of Manhattan, City of New York, where I have resided since March 16, 1920. That I am the Herman M. Diamond to whom Anna Bruckhoff Amoroso and Vincent Amoroso, Jr., her husband, conveyed by deed recorded in Book 1342 of Deeds for Hudson County on Page 507, the property mentioned and set forth in the affidavit of RAYMOND COLEMAN hereto annexed and made 40

Appellant's Exhibit D-9, 3-25-27.

10 a part hereof. That the property aforesaid consists of a one family house in the township of North Bergen and is worth approximately the sum of \$35,000.00, upon which there are mortgages aggregating \$7400.00.

20 That I have been informed on the day and date of the making of this affidavit that the said property has been sold by the Sheriff of Hudson County, under an execution issued on a purported docketed judgment from the District Court of the First Judicial District of the County of Hudson in a suit wherein De Riso Bros., Inc., a corporation, was plaintiff, and Vincent Amoro-
roso, Jr., as builder, and myself, as owner of the aforesaid premises, were defendants, and that the purported docketed judgment is specially against the lands and premises aforesaid.

30 I was never served with a summons in the said suit in the said District Court, and until to-day I did not know that the said judgment had been entered against the aforesaid property or that said property had been sold by the Sheriff. I was not represented by an attorney in the said suit and I am informed that the said judgment was taken by default as against me. I therefore pray that a writ of certiorari may be issued to review the said certificate, endorsement, lien claim, statement, record of docketing, writ of execution, and all proceedings had there-
40 on or thereunder.

HERMAN M. DIAMOND.

Sworn and subscribed to before me,
this 31st day of August, 1922.

LEO BLUMBERG,
Attorney at Law of N. J.

Appellant's Exhibit D-9, 3-25-27.

(NOTICE OF MOTION.)

NEW JERSEY SUPREME COURT.

<p>HERMAN M. DIAMOND, Prosecutor,</p> <p style="text-align: center;">vs.</p> <p>JOHN J. MCGOVERN, Clerk of Hudson County and of the Hudson County Circuit Court, HENRY BENDER, Clerk, and OSCAR B. SPENCER, acting Clerk of the District Court of the First Judicial District of Hudson County, JOHN J. McMAHON, <i>et als.</i>, Defendants.</p>	<p>10</p> <p>On Certiorari.</p> <p>Notice of Motion.</p> <p>20</p>
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PLEASE TAKE NOTICE that on the first Tuesday of January, 1924, at the State House in Trenton, N. J., at 10 o'clock in the forenoon or as soon thereafter as counsel can be heard, we shall apply to the Supreme Court for an order dismissing the above certiorari for lack of prosecution.

Yours respectfully,

EDWARDS & SMITH,
Attorneys of Defendants,
John J. McMahon and
Margaret McMahon. 40

Dated: December 26, 1924.

To WARREN, BRITT & STANTON, Attorneys of
Prosecutor, or to whom it may concern.

Appellant's Exhibit D-9, 3-25-27.

(AFFIDAVIT.)

NEW JERSEY SUPREME COURT.

10

HERMAN M. DIAMOND,
Prosecutor,

vs.

JOHN J. MCGOVERN, Clerk of
Hudson County and of the
Hudson County Circuit Court,
HENRY BENDER, Clerk, and
OSCAR B. SPENCER, acting
Clerk of the District Court
of the First Judicial District
of Hudson County, JOHN J.
McMAHON, *et als.*,
Defendants.

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On
Certiorari.
Affidavit.

30 State of New Jersey, }
County of Hudson, } ss.:

RAYMOND DAWSON, being duly sworn according to law, on his oath deposes and says, that he is a member of the firm of Edwards & Smith, attorneys of the defendants, John J. McMahon and Margaret McMahon in the above entitled action.

40 Deponent further says that a writ of certiorari allowed herein was issued on the first day of September, 1922; that on the same day, an order was entered permitting the taking of depositions to be used on the return of said writ. On September 2, 1922, notice of taking of depositions was served upon the defendants, and, in accordance with the terms of the notice, deposi-

Appellant's Exhibit D-9, 3-25-27.

tions were taken on the 6th day of September, 1922, and further depositions were taken on September 11, 1922, since which time no further action or steps has been taken in the prosecution of said writ. 10

RAYMOND DAWSON.

Sworn and subscribed to before me,
this 27th day of December, 1924.

EMILE NEBLO,
A Master in Chancery of New Jersey.

20

(AFFIDAVIT.)

NEW JERSEY SUPREME COURT.

HERMAN M. DIAMOND, Prosecutor, vs. JOHN J. MCGOVERN, etc., <i>et al.</i> , Defendants.	}	On Certiorari. Motion to Dismiss. Affidavit.	30
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State of New Jersey, {
County of Hudson, } ss.:

JOHN WARREN, of full age, being duly sworn, according to law, upon his oath, deposes and says: I am one of the members of the firm of Warren, Britt & Stanton, Attorneys for the Prosecutor in the above entitled cause. 40

That John J. McMahan, one of the defendants

Appellant's Exhibit D-9, 3-25-27.

10 herein was subpoenaed to appear before Supreme Court Commissioner Henry W. Runyon, on the eleventh day of September, 1922; which subpoena was a subpoena *Duces Tecum*, which directed the said John J. McMahon to produce certain deeds and other papers therein mentioned, a true copy of said subpoena with the proof of service thereon is hereto annexed and made a part hereof.

20 That at the time and place mentioned in said subpoena the said McMahon appeared to give the testimony but did not produce the papers mentioned in the said subpoena *Duces Tecum* and an adjournment was taken at the request of Raymond Dawson, a member of the firm of Edward & Smith, who represented the said McMahon, in order to enable McMahon to produce the papers mentioned in said subpoena. The testimony was never completed, adjournments being taken from time to time at the request of
30 Mr. Dawson particularly, who at that time was conducting a large part of the trial work of the said Edwards & Smith and who pleaded engagements in Courts of Hudson and other Counties as reasons why adjournments should be granted by me. Mr. Dawson never suggested a date for the continuation of the testimony without breaking the engagement; after a while it was adjourned without date in order to enable Mr.
40 Dawson and myself to agree upon the date in order to serve his convenience and I did upon several occasions speak to him, both on the 'phone and in his office, requesting that a date be set for the conclusion of the testimony.

Appellant's Exhibit D-9, 3-25-27.

After a time, the Commissioner took a trip to South America and was gone several months and after his return I met the said John J. McMahon and discussed this case and other litigation with him, in which my clients and Vincent Amoroso were interested and discussed the possibility of a settlement of the case, he told me that he believed the case could be settled and that he would consult Mr. Dawson about it and see me in the near future. I saw him thereafter and he stated that he did not see Mr. Dawson but would do so. After that, I saw Mr. Dawson and asked him if Mr. McMahon had discussed a settlement of the matter with him and he told me that he did not but that he would get in touch with Mr. McMahon.

Shortly thereafter, Margaret McMahon, to whom a first mortgage upon the property, against which the judgment affected by the writ of certiorari in this case was a lien of record and through which judgment the said McMahon had procured a paper title, instituted a foreclosure upon said mortgage. The said Margaret McMahon is the wife of the said John J. McMahon. The foreclosure suit resulted in the sale and the surplus monies, amounting to over \$10,000.00 has been paid into the Court of Chancery. Proceedings on petition of the said John J. McMahon for surplus monies are pending in the Court of Chancery and on which testimony has been taken on at least three occasions before Mark A. Sullivan, Special Master. The judgment through which title was derived by said John J. McMahon purports to be the judgment of the District Court of the First Judicial District of the County of Hudson and was for the sum of

Appellant's Exhibit D-9, 3-25-27.

10 \$500.00. The purchase price at the Sheriff's sale
being \$535.85. There is no record of the judg-
ment in the said District Court. There was no
service upon the prosecutor, who was one of the
defendants in said suit and no record of the
service of summons and complaint upon anyone
at all. The entire proceedings in said suit lead-
ing up to the issuance of the execution are in my
opinion void. The delay in the prosecution of
the case was up to the institution of the fore-
closure suit at all times because of the endeavor
of the deponent to serve the convenience of said
20 John J. McMahon or his Counsel, Raymond
Dawson.

In said proceedings in the Court of Chancery,
the said McMahon is represented by Peter Bent-
ley, who has caused the adjournment of the hear-
ings without date.

30 The writ was not prosecuted during the fore-
closure proceedings because the mortgage was
prior to the interest of my client's in the prop-
erty and the sale would cut off such interest,
which would attach to the surplus monies, if any.
If the property was not sold for more than the
amount of Mrs. McMahon's mortgage with in-
terest and costs, the interest of my client would
be wiped out and the prosecution of the writ
would be without purpose.

40 I intend to argue in the Chancery case, the
invalidity of the judgment aforesaid and of the
deed based thereon. Objection will be made that
I cannot attack the judgment in a collateral pro-
ceeding. If evidence of the invalidity of said
judgment and deed are admitted in the chancery
proceedings, there will be no need of continuing

Appellant's Exhibit D-9, 3-25-27.

this cause, as the rights of the parties will be settled in Chancery and the decree therein will be *res adjudicata*.

These proceedings should be held in *status quo* until the decision of the Court of Chancery. 10

JOHN WARREN.

Sworn and subscribed to before me,
this 16th day of January, 1925.

CLARENCE R. MILLER,
Notary Public, 20
State of New Jersey.

THE STATE OF NEW JERSEY, SS.:

TO: JOHN J. McMAHON

GREETING:

We command you, that laying aside all and singular businesses and excuses, you be and appear in your proper person, before Henry W. Runyon, a Supreme Court Commissioner, at his office in the Tube Concourse Building, at Summit Avenue Tube Station, Jersey City, Hudson County, on Monday, the eleventh day of September, 1922, at ten o'clock, Day-Light Saving Time, in the forenoon of the same day, to testify all and singular what you know in a certain cause now depending and undermined in our Supreme Court, between Herman M. Diamond, prosecutor and John J. McGovern, *et als.*, defendants, on certiorari, on the part of the prosecutor, and also that you bring with you and produce at the same time and place aforesaid a certain deed 30 40

Appellant's Exhibit D-9, 3-25-27.

10 in which Anna Bruckhoff Amoroso, and Vincent Amoroso, Jr., are the grantors and you are the grantee, dated September 24th, 1920, and recorded in the Register's Office of Hudson County on October 4th, 1920, in book 1370 of Deeds for said Hudson County, on page 452, &c.; also a certain deed in which James M. DeRiso and Philomena DeRiso are the grantors and you are the grantee, dated June 21, 1921, and recorded on June 2, 1922, in the Register's Office of Hudson County, in Book 1447 of Deeds for said Hudson County, on page 92, &c.; also a certain deed

20 in which Thomas Madigan, Sheriff, is the grantor and James M. DeRiso is the grantee, dated May 16, 1921, and recorded in the Register's Office of Hudson County on July 15, 1921, in Book 1408 of Deeds for said Hudson County, on page 366, &c.; also any check and any other evidence of the payment by you of a consideration to James M. DeRiso and Philomena DeRiso for the deed

30 aforesaid given by them to you; also any evidence of an assignment or transfer by DeRiso Brothers, Inc., of any claim they have against Vincent Amoroso, Jr., and the property described in the aforesaid deeds, and any check or other evidence of payment therefore, and this you are in no wise to omit, under the penalty of One Hundred Dollars.

40 WITNESS, WILLIAM S. GUMMERE, Esquire, Chief Justice of our Supreme Court at Trenton, the first day of September One Thousand Nine Hundred and Twenty-two.

ENOCH L. JOHNSON,
Clerk.

WARREN, BRITT and STANTON,
Attorneys.

Appellant's Exhibit D-9, 3-25-27.

State of New Jersey, {
 Hudson County, } ss.:

RAYMOND A. COLEMAN, being duly sworn on his oath says, that on the 8th day of September, Nineteen Hundred and Twenty-two, he served the within Subpoena upon one of the within named Defendants, John J. McMahon, by showing him the original thereof, and delivering to him a Subpoena Ticket, and at the same time paid to said Defendant John J. McMahon the sum of One Dollar (\$1.00) as a witness fee thereon. 10

RAYMOND A. COLEMAN.

Sworn and subscribed to before me,
 this ninth day of September, 1922.

ROSE BELENKOPF,
 Notary Public of N. J.

Filed: Jan. 17, 1925. 30

EDWARD J. KELLEHER,
 Clerk.

Appellant's Exhibit D-9, 3-25-27.

(NOTICE OF MOTION.)

NEW JERSEY SUPREME COURT.

10

HERMAN M. DIAMOND,
Prosecutor,

vs.

JOHN J. MCGOVERN, Clerk of
Hudson County and of the
Hudson County Circuit Court,
HENRY BENDER, Clerk, and
OSCAR B. SPENCER, acting
Clerk of the District Court
of the First Judicial District
of Hudson County, JOHN J.
McMAHON, *et als.*,
Defendants.

On
Certiorari.
Notice of
Motion.

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PLEASE TAKE NOTICE that on first Tuesday of
January, 1924, at the State House in Trenton,
N. J., at 10 o'clock in the forenoon or as soon
thereafter as counsel can be heard, we shall
apply to the Supreme Court for an order dis-
missing the above certiorari for lack of prosecu-
tion.

Yours respectfully,

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EDWARDS & SMITH,
Attorneys for Defendants,
John J. McMahon and
Margaret McMahon.

Dated: December 26, 1924.

To WARREN, BRITT & STANTON, Attorneys of
Prosecutor, or to whom it may concern.

Appellant's Exhibit D-9, 3-25-27.

State of New Jersey, }
County of Hudson, } ss.:

PHILIP SMITH, being duly sworn according to law, on his oath deposes and says that he served a copy of the within Notice of Motion upon Messrs. Warren, Britt & Stanton, at their office in the Trust Company of New Jersey Building, Jersey City, N. J. by leaving the same with the person in charge thereof. 10

PHILIP SMITH.

Sworn and subscribed to before me this 27th day of December, 1924. 20

IRMA MIRROP,
Notary Public of New Jersey.

(Seal)

(NOTICE TO DISMISS WRIT OF CERTIORARI.)

NEW JERSEY SUPREME COURT. 30

HERMAN M. DIAMOND,
Prosecutor,

vs.

JOHN J. McMAHON, *et als.*,
Defendants.

On
Certiorari.

Notice to
Dismiss
Writ of
Certiorari.

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TO MESSRS. WARREN, BRITT & STANTON,
Attorneys for Prosecutor.

TAKE NOTICE, that on Tuesday, the 3rd day of March, 1925, at the State House, in Trenton, New Jersey, at the hour of 10:30 o'clock in the

Appellant's Exhibit D-9, 3-25-27.

forenoon, or as soon thereafter as I shall be heard, I shall apply to the above court to dismiss and vacate the writ of certiorari heretofore filed in the above entitled cause for lack of prosecution. Upon the above application and in support thereof, an affidavit will be read of which the annexed is a copy.

Dated: February 25th, 1925.

EDWARDS & SMITH,
Attorneys for Defendant,
John J. McMahon.

State of New Jersey, }
County of Hudson, } ss.:

RAYMOND DAWSON, being duly sworn on his oath according to law, says: I am one of the members of the firm of Edwards & Smith, attorneys for the defendant, John J. McMahon; that heretofore on the 6th day of January, 1925, I brought on a motion before this court to dismiss the writ of certiorari granted herein; that John Warren, Esq., one of the attorneys for the Prosecutor, filed an affidavit resisting the motion, a copy of which is hereto annexed, marked Schedule "A".

That so far as I am aware no decision has been arrived at by the above court on said motion of January 6th, 1925; that since the giving of the said notice returnable on said January 6th, 1925, no step has been taken by the said Prosecutor, or his attorneys, to complete the tak-

Appellant's Exhibit D-9, 3-25-27.

ing of testimony or the bringing on for argument of said writ of certiorari.

RAYMOND DAWSON. 10

Subscribed and sworn to before me,
this 25th day of February, 1925.

IRMA MIRROP,
Notary Public of New Jersey.

(Seal)

20

(COPY)

SCHEDULE "A".

NEW JERSEY SUPREME COURT.

<p>HERMAN M. DIAMOND, Prosecutor, vs. JOHN J. McMAHON, etc., <i>et al.</i>, Defendants.</p>	}	<p>On Certiorari. Notice to Dismiss. Affidavit.</p>	30
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State of New Jersey, }
County of Hudson, } ss.:

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JOHN WARREN, of full age, being duly sworn according to law, upon his oath, deposes and says: I am one of the members of the firm of Warren, Britt & Stanton, attorneys for the Prosecutor in the above entitled cause.

Appellant's Exhibit D-9, 3-25-27.

10 That John J. McMahon, one of the defendants herein was subpoenaed to appear before Supreme Court Commissioner Henry W. Runyon, on the eleventh day of September, 1922; which subpoena was a subpoena *Duces Tecum*, which directed the said John J. McMahon to produce certain deeds and other papers therein mentioned a true copy of said subpoena with the proof of service thereon is hereto annexed and made a part hereof.

20 That at the time and place mentioned in said subpoena the said McMahon appeared to give the testimony but did not produce the papers mentioned in the said subpoena *Duces Tecum* and an adjournment was taken at the request of Raymond Dawson, a member of the firm of Edwards & Smith, who represented the said McMahon, in order to enable McMahon to produce the papers mentioned in said subpoena. The testimony was never completed, adjournments being taken from time to time at the request of Mr. Dawson particularly, who at that time was conducting a large part of the trial work of the said Edwards & Smith and who pleaded engagements in Courts of Hudson and other Counties as reasons why adjournments should be granted by me. Mr. Dawson never suggested a date for the continuation of the testimony without breaking the engagement; after a while it was adjourned without date in order to enable Mr. Dawson and myself to agree upon the date in order to serve his convenience and I did upon several occasions speak to him, both on the 'phone and in his office, requesting that a date be set for the conclusion of the testimony.

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Appellant's Exhibit D-9, 3-25-27.

After a time, the Commissioner took a trip to South America and was gone several months and after his return I met the said John J. McMahon and discussed this case and other litigation with him, in which my clients and Vincent Amoroso were interested and discussed the possibility of a settlement of the case, he told me that he believed the case could be settled and that he would consult Mr. Dawson about it and see me in the near future. I saw him thereafter and he stated that he did not see Mr. Dawson but would do so. After that, I saw Mr. Dawson and asked him if Mr. McMahon had discussed a settlement of the matter with him and he told me that he did not but that he would get in touch with Mr. McMahon.

Shortly thereafter, Margaret McMahon, to whom a first mortgage upon the property, against which the judgment affected by the writ of certiorari in this case was a lien of record and through which judgment the said McMahon had procured a paper title, instituted a foreclosure upon said mortgage. The said Margaret McMahon is the wife of the said John J. McMahon. The foreclosure suit resulted in the sale and the surplus monies, amounting to over \$10,000.00 has been paid into the Court of Chancery. Proceedings on petition of the said John J. McMahon for surplus monies are pending in the Court of Chancery and on which testimony has been taken on at least three occasions before Mark A. Sullivan, Special Master. The judgment through which title was derived by said John J. McMahon purports to be the judgment of the District Court of the First Judicial District of the County of Hudson and was for the sum of

Appellant's Exhibit D-9, 3-25-27.

10 \$500.00. The purchase price at the Sheriff's sale being \$535.85. There is no record of the judgment in the said District Court. There was no service upon the Prosecutor, who was one of the defendants in said suit and no record of the service of summons and complaint upon anyone at all. The entire proceedings in said suit leading up to the issuance of the execution are in my opinion void. The delay in the prosecution of the case was at all times because of the endeavor of the deponent to serve the convenience of said John J. McMahon or his counsel, Raymond Dawson.

20 In said proceedings in the Court of Chancery the said McMahon is represented by Peter Bentley, who has caused the adjournment of the hearings without date.

30 The writ was not prosecuted during the foreclosure proceedings because the mortgage was prior to the interest of my client's in the property and the sale would cut off such interest, which would attach to the surplus moneys, if any. If the property was not sold for more than the amount of Mrs. McMahon's mortgage with interest and costs, the interest of my client would be wiped out and the prosecution of the writ would be without purpose.

40 I intend to argue in the Chancery case, the invalidity of the judgment aforesaid and of the deed based thereon. Objection will be made that I cannot attack the judgment in a collateral proceeding. If evidence of the invalidity of said judgment and deed are admitted in the Chancery proceedings, there will be no need of continuing this cause, as the rights of the parties will be

Appellant's Exhibit D-9, 3-25-27.

settled in Chancery and the decree therein will be *res adjudicata*.

These proceedings should be held in *status quo* until the decision of the Court of Chancery. 10

Sworn and subscribed to before me,
this day of January, 1925.

(ORDER DISMISSING WRIT.)

NEW JERSEY SUPREME COURT. 20

<p>HERMAN M. DIAMOND, Prosecutor,</p> <p style="text-align: center;">vs.</p> <p>JOHN J. MCGOVERN, Clerk of Hudson County and of the Hudson County Circuit Court, HENRY BENDER, Clerk and OSCAR B. SPENCER, acting Clerk of the District Court of the First Judicial District of Hudson County, JOHN J. McMAHON, <i>et als.</i>, Defendants.</p>	}	<p>On Certiorari.</p> <p>Order Dismissing Writ.</p>	<p>30</p>
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Application being made to the Court by Edwards & Smith, Esqs., attorneys for the defendant John J. McMahon, in the above entitled cause for an order dismissing writ of certiorari heretofore allowed in this cause; and due notice of such application having been given to Warren, Britt & Stanton, attorneys for the Prosecutor in said writ. 40

Appellant's Exhibit D-9, 3-25-27.

10 It is on this 5th day of October, 1926, ORDERED
that the said writ of certiorari be and the same
is hereby dismissed with costs to the defendants
against the plaintiff.

Entered October 6, 1926.

On Motion of
EDWARDS & SMITH,
Attorneys for Defendant,
John J. McMahon.

20 (NOTICE TO DISMISS WRIT OF CERTIORARI.)
NEW JERSEY SUPREME COURT.

30	<p>HERMAN M. DIAMOND, Prosecutor, vs. JOHN J. MCGOVERN, Clerk of Hudson County and of the Hudson County Circuit Court, HENRY BENDER, Clerk and OSCAR B. SPENCER, acting Clerk of the District Court of the First Judicial District of Hudson County, and JOHN J. McMAHON, <i>et als.</i>, Defendants.</p>	<p>On Certiorari. Notice to Dismiss Writ of Certiorari.</p>
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40 To: MESSRS. WARREN, BRITT & STANTON,
Attorneys for Prosecutor.

TAKE NOTICE, that on Tuesday, the 5th day of
October, 1926, at the State House, in Trenton, at
10:30 o'clock in the forenoon, or as soon there-

Appellant's Exhibit D-9, 3-25-27.

after as we may be heard, we shall apply to the above named Court to dismiss and vacate the writ of certiorari heretofore filed in the above entitled cause, for lack of prosecution. Upon the above application and in support thereof, the papers hereto annexed will be read, copies of which are hereto served upon you. 10

Dated: September 24th, 1926.

EDWARDS & SMITH,
Attorneys for Defendant,
John J. McMahon. 20

State of New Jersey, {
County of Hudson, } ss.:

RAYMOND DAWSON, being duly sworn on his oath according to law, says: I am one of the members of the firm of Edwards & Smith, attorneys for the defendant above named, John J. McMahon; that heretofore on the 6th day of January, 1925, I brought on a motion before this Court to dismiss the writ of certiorari granted herein; that the ground for the motion was lack of prosecution; that John Warren, Esq., one of the attorneys for the Prosecutor, filed an affidavit resisting the motion, a copy of which is hereto annexed, marked Schedule "A". 30

That so far as I am aware, no decision has been arrived at by this Court on said motion of January 6th, 1925; that since the giving of said notice, returnable on said January 6th, 1925, no step or steps has or have been taken by the said Prosecutor, or his attorneys, to complete the tak- 40

Appellant's Exhibit D-9, 3-25-27.

ing of testimony, the bringing on for argument
of said writ of certiorari and any other act or
thing in connection therewith with the exception
10 of resisting a subsequent motion to dismiss.

That on or about the 26th day of February,
1925, notice was given to the attorney of the
Prosecutor of an application to be made to this
Court on March 3rd, 1925, to dismiss the said
writ of certiorari. Said motion was brought on
before this Court on March 3rd, 1926. After
hearing argument the Court refused to dismiss
or vacate the writ.

20 Since said March 3rd, 1926, no steps or pro-
ceedings whatsoever have been taken by said
Prosecutor or his attorney in said cause and the
same is in the same condition now as when the
original notice was given to dismiss and brought
on January 6th, 1925, before this Court.

The allocator to the writ in this cause was
dated September first, 1922.

30

RAYMOND DAWSON.

Sworn and subscribed to before me,
this 24th day of September, 1926.

IRMA MIRROP,
Notary Public of N. J.

40

Appellant's Exhibit D-9, 3-25-27.

(COPY)

SCHEDULE "A".

NEW JERSEY SUPREME COURT.

10

<p>HERMAN M. DIAMOND, Prosecutor,</p> <p style="text-align: center;">vs.</p> <p>JOHN J. McMAHON, etc., <i>et al.</i>, Defendants.</p>	}	<p>On Certiorari. Notice to Dismiss. Affidavit.</p>
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State of New Jersey, {
County of Hudson, } ss.:

JOHN WARREN, of full age, being duly sworn according to law, upon his oath, deposes and says: I am one of the members of the firm of Warren, Britt & Stanton, attorneys for the Prosecutor in the above entitled cause.

30

That John J. McMahon, one of the defendants herein was subpoenaed to appear before Supreme Court Commissioner, Henry W. Runyon, on the eleventh day of September, 1922; which subpoena was a subpoena *Duces Tecum*, which directed the said John J. McMahon to produce certain deeds and other papers therein mentioned, a true copy of said subpoena with the proof of service thereon is hereto annexed and made a part hereof.

40

That at the time and place mentioned in said subpoena the said McMahon appeared to give the testimony, but did not produce the papers mentioned in the said subpoena *Duces Tecum*

Appellant's Exhibit D-9, 3-25-27.

10 and an adjournment was taken at the request of
Raymond Dawson, a member of the firm of Ed-
wards & Smith, who represented the said Mc-
Mahon, in order to enable McMahon to produce
the papers mentioned in said subpoena. The tes-
timony was never completed, adjournments being
taken from time to time at the request of Mr.
Dawson particularly, who at that time was con-
ducting a large part of the trial work of the
said Edwards & Smith and who pleaded engage-
ments in Courts of Hudson and other Counties
as reasons why adjournments should be granted
20 by me. Mr. Dawson never suggested a date for
the continuation of the testimony without break-
ing the engagement; after a while it was ad-
journed without date in order to enable Mr.
Dawson and myself to agree upon the date in
order to serve his convenience and I did upon
several occasions speak to him, both on the
'phone and in his office, requesting that a date
be set for the conclusion of the testimony.

30 After a time, the Commissioner took a trip to
South America and was gone several months and
after his return I met the said John J. McMahon
and discussed this case and other litigation with
him, in which my clients and Vincent Amoroso
were interested and discussed the possibility of
a settlement of the case, he told me that he be-
lieved the case could be settled and that he would
40 consult Mr. Dawson about it and see me in the
near future. I saw him thereafter and he stated
that he did not see Mr. Dawson, but would do so.
After that, I saw Mr. Dawson and asked him if
Mr. McMahon had discussed a settlement of the
matter with him and he told me that he did not,

Appellant's Exhibit D-9, 3-25-27.

but that he would get in touch with Mr. McMahon.

Shortly thereafter, Margaret McMahon, to whom a first mortgage upon the property, against which the judgment affected by the writ of certiorari in this case was a lien of record and through which judgment the said McMahon had procured a paper title, instituted a foreclosure upon said mortgage. The said Margaret McMahon is the wife of the said John J. McMahon. The foreclosure suit resulted in the sale and the surplus monies, amounting to over \$10,000.00 has been paid into the Court of Chancery. Proceedings on petition of the said John J. McMahon for surplus monies are pending in the Court of Chancery and on which testimony has been taken on at least three occasions before Mark A. Sullivan, Special Master. The judgment through which title was derived by said John J. McMahon purports to be the judgment of the District Court of the First Judicial District of the County of Hudson and was for the sum of \$500.00. The purchase price at the Sheriff's sale being \$535.85. There is no record of the judgment in the said District Court. There was no service upon the Prosecutor, who was one of the defendants in said suit and no record of the service of summons and complaint upon anyone at all. The entire proceeding in said suit leading up to the issuance of the execution are in my opinion void. The delay in the prosecution of the case was at all times because of the endeavor of the deponent to serve the convenience of said John J. McMahon or his counsel, Raymond Dawson.

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Appellant's Exhibit D-9, 3-25-27.

In said proceedings in the Court of Chancery the said McMahan is represented by Peter Bentley, who has caused the adjournment of the hearings without date.

10

The writ was not prosecuted during the foreclosure proceedings because the mortgage was prior to the interest of my client's in the property and the sale would cut off such interest, which would attach to the surplus moneys, if any. If the property was not sold for more than the amount of Mrs. McMahan's mortgage with interest and costs, the interest of my client would be wiped out and the prosecution of the writ would be without purpose.

20

I intend to argue in the Chancery case, the invalidity of the judgment aforesaid and of the deed based thereon. Objection will be made that I cannot attack the judgment in a collateral proceeding. If evidence of the invalidity of said judgment and deed are admitted in the Chancery proceedings, there will be no need of continuing this cause, as the rights of the parties will be settled in Chancery and the decree therein will be *res adjudicata*.

30

These proceedings should be held in *status quo* until the decision of the Court of Chancery.

Sworn and subscribed to before me,
this day of January, 1925.

40

Appellant's Exhibit D-9, 3-25-27.

State of New Jersey, {
 County of Hudson, } ss.:

WILLIAM A. HIGGINS, JR., being duly sworn, 10
 on his oath according to law, says: I am em-
 ployed by Peter Bentley; that on the 24th day
 of September, 1926, at the hour of 4:40 in the
 P. M., I served true copies of the notice and
 affidavits hereto annexed by leaving the same at
 the offices of Warren and Stanton (the firm of
 Warren, Britt and Stanton having been dis-
 solved) with the person in charge of said office. 20

WILLIAM A. HIGGINS, JR.

Sworn and subscribed to before me,
 this 24th day of September, 1926.

JAMES J. HIGGINS,
 Attorney at Law of New Jersey.

30

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Respondents' Exhibit P-1, 10-17-24.

part being therewith fully satisfied, contented and paid, have given, granted, bargained, sold, aliened, released, enfeoffed, conveyed and confirmed, and by these presents does give, grant, bargain, sell, alien, release, enfeoff, convey and confirm, unto the said party of the second part, and to his heirs and assigns, forever; 10

ALL that tract or parcel of land and premises, hereinafter particularly described situate, lying and being in the Township of North Bergen, in the County of Hudson and State of New Jersey. 20

BEGINNING at a point in the northerly line of Thirty-first Street produced easterly two hundred and twenty-nine and twenty-six one hundredths (229.26) feet easterly from the intersection of the northerly line of Thirty-first Street, produced easterly and the easterly line of Bulls Ferry Road, as said streets are laid down on a certain map entitled "Map A of a portion of the property belonging to the Woodcliff Land Improvement Company, Township of North Bergen, Hudson County, N. J., September, 1892, duly filed in the Register's Office of the said County of Hudson on the fifteenth day of September, eighteen hundred and ninety-two; thence (1) northerly and at right angles to the northerly line of Thirty-first Street, produced easterly one hundred (100) feet to a point; thence (2) easterly and at right angles to the first course fifty (50) feet to a point; thence (3) southerly and parallel with the first course one hundred (100) feet to a point in the northerly line of Thirty-first Street produced, easterly thence (4) westerly and along the northerly line of Thirty-first 30 40

Respondents' Exhibit P-1, 10-17-24.

Street produced easterly fifty (50) feet to the point or place of beginning:

10 SUBJECT to restrictions and covenants in a deed made by the Woodcliff Land and Improvement Company to the above grantors, and now of record in the office of the Register of Deeds of the County of Hudson, N. J.

20 TOGETHER with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof.

30 AND ALSO, all the estate, right, title, interest, property, possession, claim and demand whatsoever, as well in law as in equity, of the said party of the first part, of, in and to the above described premises, and every part and parcel thereof, with the appurtenances.

To HAVE AND TO HOLD, all and singular the above mentioned premises, together with the appurtenances, unto the said party of the second part, his heirs and assigns, to his own proper use, benefit and behoof forever;

40 AND the said Anna Bruckhoff Amoroso and husband, for herself, her heirs, executors and administrators, does covenant grant and agree to and with the said party of the second part, his heirs and assigns, that the said Anna Bruckhoff Amoroso, at the time of the sealing and delivery of these presents, was lawfully seized in her own right of a good, absolute and inde-

Respondents' Exhibit P-1, 10-17-24.

feasible estate of inheritance in fee simple, of and in all and singular the above granted, bargained, and described premises, with the appurtenances and has good right, full power and lawful authority to grant, bargain, sell and convey the same in manner and form aforesaid. 10

AND that the said party of the second part, his heirs and assigns, shall and may at all times hereafter, peaceably and quietly have, hold, use, occupy, possess and enjoy the above granted premises, and every part and parcel thereof, with the appurtenances, without any let, suit, trouble, molestation, eviction or disturbance of the said party of the first part, her heirs or assigns, or of any other person or persons lawfully claiming or to claim the same. 20

AND that the same now are free, clear, discharged and unencumbered of and from all former and other grants, titles, charges, estates, judgments, taxes, assessments and incumbrances of what nature and kind soever. 30

AND ALSO, that the said party of the first part, and her heirs, and all and every other person or persons whomsoever, lawfully or equitably deriving any estate, right, title, or interest, of, in or to the hereinbefore granted premises, by, from, under or in trust for them, shall and will at any time or times hereafter, upon the reasonable request, at the proper costs and charges in the law, of the said party of the second part, his heirs and assigns, make, do and execute, or cause or procure to be made, done or executed, all and every such further and other lawful and 40

Respondents' Exhibit P-1, 10-17-24.

reasonable acts, conveyances and assurances in the law for the better and more effectually vesting and confirming the premises, hereby intended
 10 to be granted in and to the said party of the second part, his heirs and assigns, forever, as by the said party of the second part, his heirs or assigns, or his counsel learned in the law, shall be reasonably advised or required.

AND the said parties of the first part, their heirs, the above described and hereby granted and released premises, and every part and
 20 parcel thereof, with the appurtenances, unto the said party of the second part, his heirs and assigns, against the said party of the first part, and his heirs, and against all and every person or persons whomsoever, lawfully claiming or to claim the same, SHALL AND WILL WARRANT, and by these presents FOREVER DEFEND.

IN WITNESS WHEREOF, the said parties of the
 30 first part have hereunto set their hands and seals the day and year first above written.

SIGNED, SEALED AND DELIVERED,
 IN THE PRESENCES OF
 James McMahan.

Anna Bruckhoff Amoroso (L.S.)
 40 Vincent Amoroso, Jr. (L.S.)

U. S. R. S. \$1.00.

Respondents' Exhibit P-1, 10-17-24.

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

BE IT REMEMBERED, that on this third day of 10
 March, in the year of our Lord, one thousand
 nine hundred and twenty, before me, the sub-
 scriber, a Commissioner of Deeds, of the State
 of New Jersey, personally appeared Anna Bruck-
 hoff Amoroso and Vincent Amoroso, Jr., her
 husband, who, I am satisfied, are the grantors
 mentioned in the within Instrument, to whom
 I first made known the contents thereof, and 20
 thereupon they acknowledged that, they signed,
 sealed and delivered the same as their voluntary
 act and deed, for the uses and purposes there-
 in expressed; and the said Anna Bruckhoff
 Amoroso, being by me privately examined, sepa-
 rate and apart from her said husband, further
 acknowledged that she signed, sealed and de-
 livered the same as her voluntary act and deed, 30
 FREELY, without any fear, threats or compulsion
 of her said husband.

James McMahon, Commissioner of Deeds, N. J.
 Received in the office and Recorded on Septem-
 ber 18th, 1922, at 1:26 P. M. #10,316.

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

40

I, John J. McMahon, Register of the County
 of Hudson, do hereby Certify that the foregoing
 is a true and correct copy of a certain Deed as

Respondents' Exhibit C-2, 3-25-27.

the same is on Record in my Office in Book 1459 of deeds on page 68 &c.

10 IN TESTIMONY WHEREOF, I have hereunto set my hand and seal this 13th day of November, A. D., 1924.

(SEAL)

JOHN J. McMAHON,
Register,
By CHARLES M. AUSTIN,
Deputy Register.

20

Respondents' Exhibit C-2, 3-25-27.
(ALSO P-2, 10-17-24.)

Deed 1447/92,
DeRiso to McMahon,
Compared E. B. E. N. Block #2634.

30 JAMES M. DERISO, ET UX.,
To DEED DATED,
JOHN J. McMAHON. JUNE 21st, 1921.

THIS INDENTURE, Made the twenty-first day of June, in the year of our Lord, one thousand nine hundred and twenty-one.

40 BETWEEN JAMES M. DERISO and PHILOMENA M. DERISO, his wife, of the Township of North Bergen, in the County of Hudson, and State of New Jersey, party of the first part;

AND JOHN J. McMAHON, of the Township of Weehawken, in the County of Hudson, and State of New Jersey, party of the second part;

Respondents' Exhibit C-2, 3-25-27.

WITNESSETH: That the said party of the first part, for and in consideration of one dollar and other valuable consideration lawful money of the United States of America, to them in hand well and truly paid by the said party of the second part, at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, and the said party of the first part, being therewith fully satisfied, contented and paid, have given, granted, bargained, sold, aliened, released, enfeoffed, conveyed and confirmed, and by these presents do give, grant, bargain, sell, alien, release, enfeoff, convey and confirm, unto the said party of the second part, and to his heirs and assigns, forever.

ALL THAT LOT, tract or parcel of land and premises, hereinafter particularly described, situate, lying and being in the Township of North Bergen, in the County of Hudson and State of New Jersey, and which plot may be more particularly described as follows:

BEGINNING, at a point in the northerly line of Thirty-first Street, produced easterly two hundred and twenty-nine and twenty-six hundredths feet (229.26') easterly from the intersection of the northerly line of Thirty-first Street, produced easterly and the easterly line of Bulls Ferry Road, as said streets are laid down on a certain map entitled "Map A of a portion of the property belonging to the Woodcliff Land Improvement Co., Township of North Bergen, Hudson County, N. J., Sept., 1892" duly filed in the Register's Office of the said County of Hudson

Respondents' Exhibit C-2, 3-25-27.

on the fifteenth day of September, 1892: thence
 (1) Northerly and at right angles to the northerly
 line of Thirty-first Street, produced easterly
 10 one hundred (100) feet to a point: thence (2)
 easterly and at right angles to the first course,
 fifty (50) feet to a point: thence (3) Southerly
 and parallel with the first course one hundred
 (100) feet to a point in the northerly line of
 Thirty-first Street, produced easterly, thence (4)
 Westerly and along the northerly line of Thirty-
 first Street, produced easterly fifty (50) feet to
 the point or place of beginning.

20

BEING the same premises conveyed to the said
 JAMES M. DERISO by THOMAS MADIGAN, Sheriff,
 by deed bearing date May 16, 1921;

TOGETHER with all and singular the houses,
 buildings, trees, ways, waters, profits privileges
 and advantages, with the appurtenances, to the
 same belonging or in anywise appertaining.
 30

ALSO, all the estate, right, title, interest,
 property, claim and demand whatsoever, of the
 said party of the first part, of, in and to the
 same, and of, in and to every part and parcel
 thereof.

TO HAVE AND TO HOLD, all and singular the
 above described land and premises, with the
 appurtenances, unto the said party of the second
 part, his heirs and assigns, to the only proper
 use, benefit and behoof of the said party of the
 second part, his heirs and assigns forever.
 40

Respondents' Exhibit C-2, 3-25-27.

IN WITNESS WHEREOF, the said party of the first part have hereunto set their hands and seals the day and year first above written.

JAMES M. DERISO, (L.S.)
PHILOMENA M. DERISO, (L.S.)

10

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:
WM. F. BURKE.

U. S. R. S. \$1.00.

20

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

BE IT REMEMBERED, That on this 21st day of June, in the year of our Lord, one thousand nine hundred and twenty-one, before me, the subscriber, a MASTER IN CHANCERY OF NEW JERSEY, personally appeared JAMES M. DERISO and PHILOMENA M. DERISO, his wife, who I am satisfied, are the grantors mentioned in the within Indenture, to whom I first made known the contents thereof, and thereupon they acknowledged that they signed, sealed and delivered the same as their voluntary act and deed, for the uses and purposes therein expressed.

30

WM. F. BURKE,
Master in Chancery of N. J.,

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Received and recorded in the office June 2nd,
1922 at 12:42 P. M. No. 5840.

M. O.' N.

Respondents' Exhibit I-1, 11-12-24.

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

10 I, John J. McMahon, Register of the County of Hudson, do hereby Certify that the foregoing is a true and correct copy of a certain Deed as the same is on Record in my Office in Book 1447 of deeds on page 92 &c.

20 IN TESTIMONY WHEREOF, I have hereunto set my hand and seal this 29th day of September, A. D., 1924.

(SEAL)

JOHN J. McMAHON,
 Register,
 By CHARLES M. AUSTIN,
 Deputy Register.

30 **Respondents' Exhibit I-1, 11-12-24.**

THIS INDENTURE, made the 15th day of September, in the year of our Lord One Thousand Nine Hundred and Twenty-two.

40 BETWEEN ANNA BRUCKHOFF AMOROSO and VINCENT AMOROSO, JR., of the Township of Weehawken, County of Hudson and State of New Jersey, party of the first part and JOHN J. McMAHON, of the Township of Weehawken, in the County of Hudson and State of New Jersey, party of the second part:

WITNESSETH That the said party of the first part, for and in consideration of one dollar, and

Respondents' Exhibit I-1, 11-12-24.

other valuable considerations, lawful money of the United States of America, to them in hand well and truly paid by the said party of the second part, at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, and the said parties of the first part being therewith fully satisfied, contented and paid, have given, granted, bargained, sold, aliened, released, enfeoffed, conveyed and confirmed, and by these presents do give, grant, bargain, sell, alien, release, enfeoff, convey and confirm unto the said party of the second part, and to his heirs and assigns, forever.

ALL that certain tract or parcel of land and premises, hereinafter particularly described, situate, lying and being in the Township of North Bergen, in the County of Hudson and State of New Jersey, and which plot may be more particularly described as follows:

BEGINNING at a point in the northerly line of Thirty-first Street, produced easterly 229.26 feet easterly from the intersection of the northerly line of Thirty-first Street produced easterly and the easterly line of Bulls Ferry Road as said streets are laid down on a certain map entitled (Map A of a portion of the property belonging to The Woodcliff Land Improvement Co., Township of North Bergen, Hudson County, N. J., Sept., 1892) duly filed in the Register's Office of the said County of Hudson on the 15th day of September, 1892; thence (1) northerly at right angles to the northerly line of Thirty-first Street produced easterly 100 feet to a

Respondents' Exhibit I-1, 17-12-24.

10 point; thence (2) easterly and at right angles to the first course 50 feet to a point; thence (3) southerly and parallel with the first course 100 feet to a point in the northerly line of Thirty-first Street produced easterly; thence (4) westerly and along the northerly line of Thirty-first Street produced easterly 50 feet to the point or place of beginning.

This deed is given subject to all encumbrances and restrictions thereon.

20 Being the same premises heretofore conveyed to the said Anna Bruckhoff Amoroso, by deed dated January 12th, 1917, in Book 1245 of Deeds, page 381, &c.

TOGETHER with all and singular the houses, buildings, trees, ways, waters, profits, privileges and advantages, with the appurtenances to the same belonging or in anywise appertaining:

30 ALSO all the estate, right, title, interest, property, claim and demand whatsoever, of the said parties of the first part, of, in and to the same, and of, in and to every part and parcel thereof,

40 TO HAVE AND TO HOLD all and singular, the above described land and premises, with the appurtenances, unto the said party of the second part, his heirs and assigns, to the only proper use, benefit and behoof of the said party of the second part, his heirs and assigns forever:

AND the said Anna Bruckhoff Amoroso and Vincent Amoroso, Jr., for themselves, their heirs, executors and administrators, do covenant, promise and agree to and with the said party of

Respondents' Exhibit I-1, 11-12-24.

the second part, his heirs and assigns, that they have not made, done, committed, executed or suffered any act or acts, thing or things whatsoever, whereby or by means whereof the above mentioned and described premises, or any part or parcel thereof, now are, or at any time hereafter shall or may be impeached, charged or encumbered, in any manner or way whatsoever. 10

IN WITNESS WHEREOF, the said parties of the first part have hereunto set their hand and seal the day and year first above written. 20

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF
WM. H. DRESCHER.

U. S. R. S.—\$1.00

VINCENT AMOROSO, JR., (L. S.)
ANNA BRUCKHOFF AMOROSO, (L. S.) 30

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

BE IT REMEMBERED, That on this 6th day of November, in the year of our Lord One Thousand Nine Hundred and Twenty-four, before me the subscriber, a Commissioner of Deeds of N. J., personally appeared ANNA BRUCKHOFF AMOROSO and VINCENT AMOROSO, JR., who, I am satisfied, are the grantors mentioned in the within Indenture, to whom I first made known the contents thereof, and thereupon they acknowledged that they signed, sealed and delivered the same as 40

Respondents' Exhibit I-2, 11-12-24.

10 their voluntary act and deed, for the uses and purposes therein expressed; And the said ANNA BRUCKHOFF AMOROSO, being by me privately examined, separate and apart from her husband, further acknowledged that she signed, sealed and delivered the same as her voluntary act and deed, FREELY, without any fear, threats or compulsion of her said husband.

WM. H. DRESCHER,
Commissioner of Deeds, N. J.

20

Respondents' Exhibit I-2, 11-12-24.

KNOW ALL MEN BY THESE PRESENTS, that we, ANN BRUCKHOFF AMOROSO and VINCENT AMOROSO, JR., of the Township of Weehawken, County of Hudson and State of New Jersey, for and in consideration of the sum of one (\$1.00) dollar, and other valuable considerations to us in hand paid by the said John J. McMahon, of the Township of Weehawken, County of Hudson and State of New Jersey, the receipt whereof is hereby acknowledged, have assigned, transferred and set over, and by these presents do assign, transfer and set over unto John J. McMahon, his heirs or assigns, any and all interest which we, or either of us have or may hereafter have, in and to certain moneys now on deposit with the Clerk in Chancery of the State of New Jersey, being or representing the surplus moneys in the foreclosure case in the Court of Chancery of New Jersey, No. 54/574, and entitled Between

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40

Respondents' Exhibit I-2, 11-12-24.

Margaret McMahon, complainant and Vincent Amoroso, Jr., et als, defendants, and we hereby nominate and appoint the said John J. McMahon our attorney irrevocably to sue for, demand, collect, compromise or to take any proceeding or proceedings necessary to enforce the payment of said sum and to give receipt or satisfaction therefor to the same extent as we or either of us might or could do, were these presents not made, hereby confirming all that our said attorney may do in the premises. 10

IN WITNESS WHEREOF, we have hereunto set our hands and seals this 6th day of November, 1924. 20

Signed, sealed and delivered
in the presence of
WM. H. DRESCHER.

VINCENT AMOROSO, JR., (L. S.)
ANNA BRUCKHOFF AMOROSO, (L. S.) 30

STATE OF NEW JERSEY, }
COUNTY OF HUDSON. } SS.:

BE IT REMEMBERED, that on this 6th day of November, in the year of our Lord one thousand nine hundred and twenty-four, before me the subscriber, a Commissioner of Deeds of N. J., personally appeared Anna Bruckhoff Amoroso and Vincent Amoroso, Jr., who I am satisfied are the persons mentioned in and who executed the foregoing assignment, and I having first made known the contents thereof they acknowledged 40

Respondents' Exhibit C-1, 3-25-27.

that they signed, sealed and delivered the same as their voluntary act and deed, for the uses and purposes therein expressed.

10 And the said Anna Bruckhoff Amoroso, being further examined by me separate and apart from her husband, she further acknowledged that she signed, sealed and delivered the assignment without any force, threats or compulsion from her said husband.

WM. H. DRESCHER,
Commissioner of Deeds, N. J.

20

Respondents' Exhibit C-1, 3-25-27.

Registers Office
7630
Jul 15 11 41 AM 1921
Hudson County, N. J.

30

D E E D

THOMAS MADIGAN
SHERIFF OF HUDSON COUNTY, N. J.

TO
JAMES M. DE RISO

Indexed under County Block No. 2634.

40

Dated, May 16th, 1921.

Received in the Register's Office of the County of Hudson, N. J., on the 15th day of July, A. D.,

Respondents' Exhibit C-1, 3-25-27.

1921, at 11:41 o'clock, A. M., and recorded the same day in 1408 Liber of Deeds, no page 366.

JOHN J. McMAHON, Register. 10

THIS INDENTURE, made this Sixteenth day of May, in the year of our Lord one thousand nine hundred and twenty-one, between THOMAS MADIGAN, Sheriff, of the County of Hudson, in the State of New Jersey, party of the first part, and JAMES M. DE RISO, of the Township of North Bergen in the County of Hudson and State of New Jersey, party of the second part, WITNESSETH, that whereas, on the seventh day of January, in the year of our Lord, one thousand nine hundred and twenty-one, a certain writ of *feri facias* issued out of the Hudson Circuit Court directed and delivered to the Sheriff of the said County of Hudson, in the words or to the effect following, to wit: 20

30

HUDSON COUNTY, ss.

THE STATE OF NEW JERSEY TO THE SHERIFF OF
THE COUNTY OF HUDSON, GREETING:

WE COMMAND YOU that you cause to (L. S.) be made the sum of Five hundred and thirty dollars and thirty cents which De Riso Bros., Inc., a corporation, plaintiff, lately in the District Court of the First Judicial District of the County of Hudson, recovered against Vincent Amoroso, Jr. builder, generally, as well for its damages which it had sustained on occasion of the non-performance of certain 40

Respondents' Exhibit C-1, 3-25-27.

10 promises and undertakings by the said Vincent Amoroso, Jr. builder, then lately made to the said De Riso Bros., Inc., as for its costs and charges by it about its suit in that behalf expended, whereof the said Vincent Amoroso, Jr. builder, is convicted as appears to us of record and specially to be made of the building and lands of Herman M. Diamond, owner, in the complaint in said action described, which judgment was afterwards on January 6th, 1921, docketed in our Circuit Court in and for our said County of Hudson, pursuant to the statute
20 in such case made and provided, as appears to us of record; and also the sum of two dollars costs of docketing the said judgment and of issuing execution thereon; of the following described lands, tenements and real estate of the said Herman M. Diamond, owner, viz:

30 The building is a two story and attic hollow tile and stucco one family dwelling house and same is erected upon a lot of land situated in the Township of North Bergen, in the County of Hudson and State of New Jersey and which plot may be more particularly described as follows:

40 Beginning at a point in the Northerly line of Thirty-first Street produced Easterly two hundred and twenty-nine and twenty-six hundredths feet (229.26') Easterly from the intersection of the Northerly line of Thirty-first Street produced Easterly and the Easterly line of Bulls Ferry Road as said Streets are laid down on a certain map entitled "Map A of a portion of the property belonging to The Woodcliff Land Improvement Co., Township of North Bergen, Hudson County, N. J. Sept. 1892" duly filed in the

Respondents' Exhibit C-1, 3-25-27.

Register's Office of the said County of Hudson on the fifteenth day of September 1892 thence (1) Northerly and at right angles to the Northerly line of Thirty-first Street produced Easterly One hundred (100) feet to a point; thence 10
 (2) Easterly and at right angles to the first course fifty (50) feet to a point; thence (3) southerly and parallel with the first course One hundred (100) feet to a point in the Northerly line of Thirty-first Street produced Easterly; thence (4) Westerly and along the Northerly line of Thirty-first Street produced Easterly fifty (50) feet to the point or place of beginning. 20

And have you these money before our Circuit Court aforesaid, at Jersey City, the second Tuesday of April next, to render unto the said De Riso Bros., Inc., for its damages and costs aforesaid, and have you then and there this writ.

Witness Luther A. Campbell Esq., Judge of our said Circuit Court at Jersey City aforesaid, the 7 day of January, in the year of our Lord One thousand nine hundred and twenty-one. 30

JOHN J. MCGOVERN, Clerk.

WM. F. BURKE, Attorney.

Received in Hudson County Clerk's Office this Jan'y 17 A. D. 1921 at M and recorded in Liber 24 of Execution on Contract page 70 $\frac{1}{2}$. 40

AND WHEREAS, I, the said THOMAS MADIGAN, as such Sheriff as aforesaid, did in due form of law, give notice by public advertisements signed by myself and put in five or more public places in the said County of Hudson, one of

Respondents' Exhibit C-1, 3-25-27.

which was in the Township, Ward or City where
said real estate is situated, of the time and place
appointed for such sale for at least three weeks,
10 next before the time appointed for said sale
and by causing the same to be published at least
once a week during four consecutive calendar
weeks, the last publication being not more than
seven days prior to the time appointed for sell-
ing the same in two of the newspapers printed
and published in said County, where the lands
above described are situated, one of which said
20 newspapers is printed and published at Jersey
City, the County seat of said County, advertised
the said building, land and premises, to be sold
under and by virtue of the said writ of *feri
facias* at public vendue to be held at County
Court House, in Jersey City, on Thursday, the
twenty-first day of April, in the year one thou-
sand nine hundred and twenty-one, at the hour
of two o'clock in the afternoon, at which said
30 time and place I did publicly adjourn said sale
by public adjournments of one week each until
Thursday, the fifth day of May, A. D. 1921, at
the hour of two o'clock in the afternoon, at which
said time and place I did accordingly offer and
expose the said building of land and premises
hereinbefore described, for sale at public vendue,
under and by virtue of the said writ of *feri
facias*; whereupon the said party of the second
40 part bidding therefore the sum of SIX HUNDRED
and TWENTY FIVE DOLLARS and no other person
bidding as much, I did then and there openly and
publicly, in due form of law, between the hours
of twelve and five in the afternoon, strike off
and sell the said building, land and premises,

Respondents' Exhibit C-1, 3-25-27.

for the sum of SIX HUNDRED and TWENTY FIVE DOLLARS, to the said party of the second part he, being then and there the highest bidder for the same. 10

Now, THEREFORE, this Indenture witnesseth, that I, the said THOMAS MADIGAN, as such Sheriff as aforesaid under and by virtue of the said writ of *feri facias* and in execution of the power and trust in me reposed and also for and in consideration of the said sum of SIX HUNDRED and TWENTY FIVE dollars to me in hand paid, the receipt whereof I do hereby acknowledge, and therefrom acquit, exonerate and forever discharge the said party of the second part, his heirs, executors and administrators have granted, bargained, sold, assigned, transferred and conveyed, and by these presents do grant, bargain, sell, assign, transfer and convey unto the said party of the second part, his heirs and assigns, all and singular the said building of land and premises, with the appurtenances, privileges, and hereditaments thereunto belonging or in any way appertaining; to have and hold the same, unto the said party of the second part, his heirs and assigns to his and their only proper use, benefit and behoof forever; in as full, ample and beneficial manner as by virtue of said writ of *feri facias* I may, can or ought to convey the same. 20 30 40

And I, the said THOMAS MADIGAN, do hereby covenant, promise and agree, to and with the said party of the second part, his heirs and assigns, that I have not, as such Sheriff as aforesaid, done or caused, suffered or procured to be

Respondents' Exhibit C-1, 3-25-27.

done any act, matter or thing whereby the said premises, or any part thereof, with the appurtenances, are or may be charged or encumbered in estate, title or otherwise.

10

IN WITNESS WHEREOF, I, the said THOMAS MADIGAN, as such Sheriff as aforesaid, have hereunto set my hand and seal the day and year aforesaid.

Signed, sealed and delivered
in the presence of
20 LEWIS G. HANSEN.

THOMAS MADIGAN [L. S.]
Sheriff.

(Documentary Stamp—\$1.)

State of New Jersey, }
Hudson County, } ss.:
30

I, THOMAS MADIGAN, Sheriff of the County of Hudson, do solemnly swear that the land and real estate described in the within deed, made by me to JAMES M. DE RISO, was by me sold by virtue of a good and subsisting execution as is therein recited; that the moneys ordered to be made have not been to my knowledge or belief paid or satisfied; that the time and place of the sale of said land and real estate was by me duly advertised, as required by law, and that the same was cried off and sold to a *bona fide* purchaser for the best price that could be obtained.

40

THOMAS MADIGAN,
Sheriff.

Respondents' Exhibit C-1, 3-25-27.

Sworn before me, one of the Masters in Chancery of the State of New Jersey, on this sixteenth day of May, A. D. 1921, and I have examined the deed above mentioned, do approve the same; and order it to be recorded as a good and sufficient conveyance of the land and real estate therein described. 10

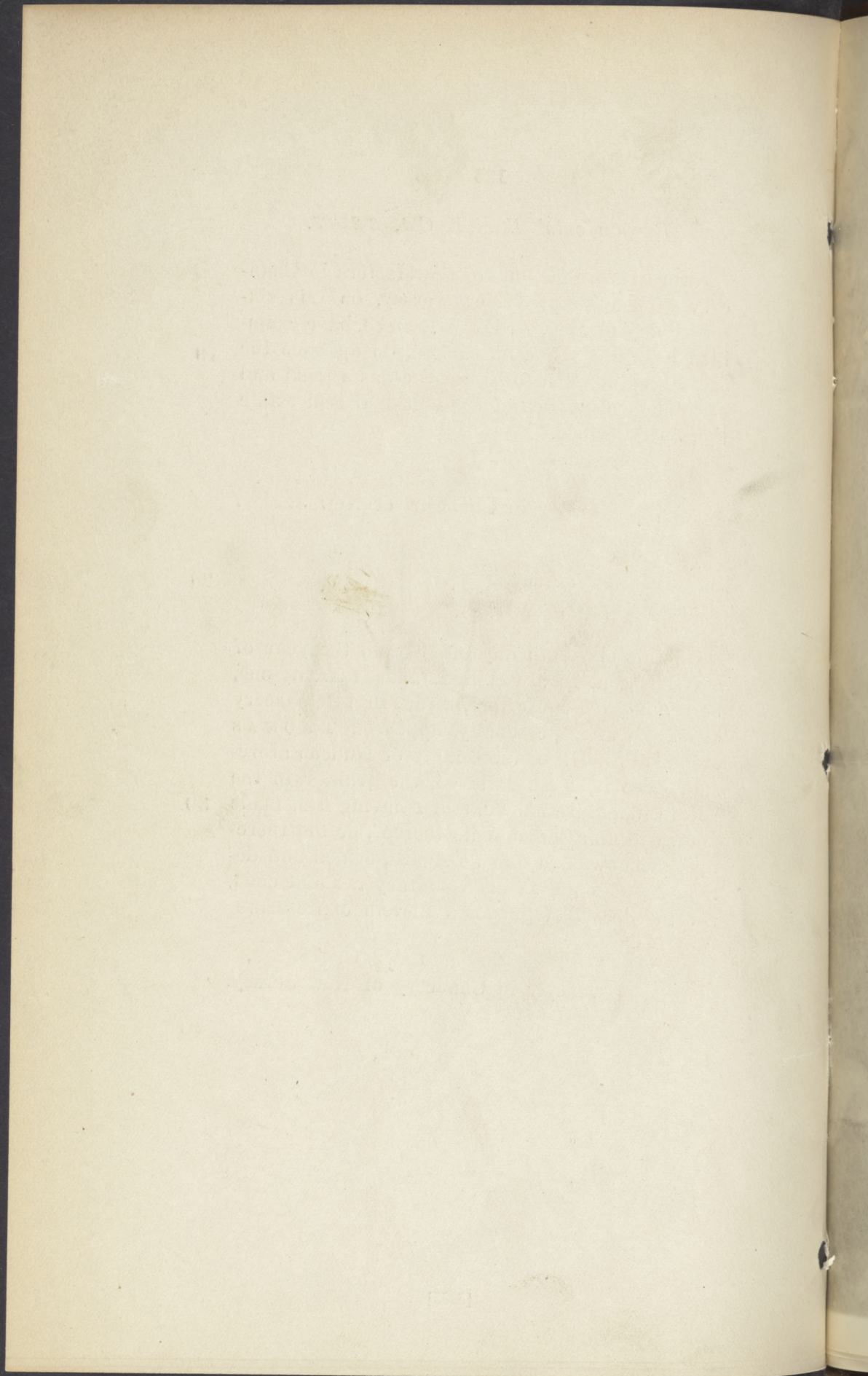
LEWIS G. HANSEN,
Master in Chancery of New Jersey.

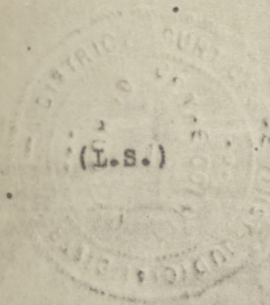
State of New Jersey, }
Hudson County, } ss.: 20

On this sixteenth day of May, in the year of our Lord, one thousand nine hundred twenty-one, before me, the subscriber, a Master in Chancery of said State, personally appeared THOMAS MADIGAN, Sheriff of the County of Hudson aforesaid; who is, I am satisfied, the grantor in the within indenture named, and I having first made known to him the contents thereof, he did thereupon acknowledge that he signed, sealed and delivered the same as his voluntary act and deed, for the uses and purposes therein expressed. 30

LEWIS G. HANSEN,
Master in Chancery of New Jersey.

40





The State of New Jersey To
 Vincent Amoroso Jr. and Herman M.
 Diamond.

You Vincent Amoroso Jr. Builder and
 Herman M. Diamond, Owner,
 are summoned to answer the annexed

complaint of De Riso Bros. Inc. a corporation in an action
 at law, in the District Court of the First Judicial District
 of the County of Hudson in which said De Riso Bros. Inc.
 claims a building lien on a certain building and lands of
 said Herman M. Diamond described in the complaint. And take
 notice that unless you file your answer to said complaint
 with the Clerk of said Court at the Court Rooms in the Des-
 patch Building, New York Avenue and Lewis Street, Town of
 Union, Hudson County, New Jersey, within twenty days after
 service upon you of this writ and the annexed complaint the
 plaintiff may proceed in the suit and judgment may be en-
 tered against you.

Witness Francis H. Mc Cauley, Esq. Judge of said
 Court at the Town of Union, this 23rd, day of August, 1920.

Wm. F. Burke
 Attorney

Henry Bender
 Clerk

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DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE COUNTY OF HUDSON.

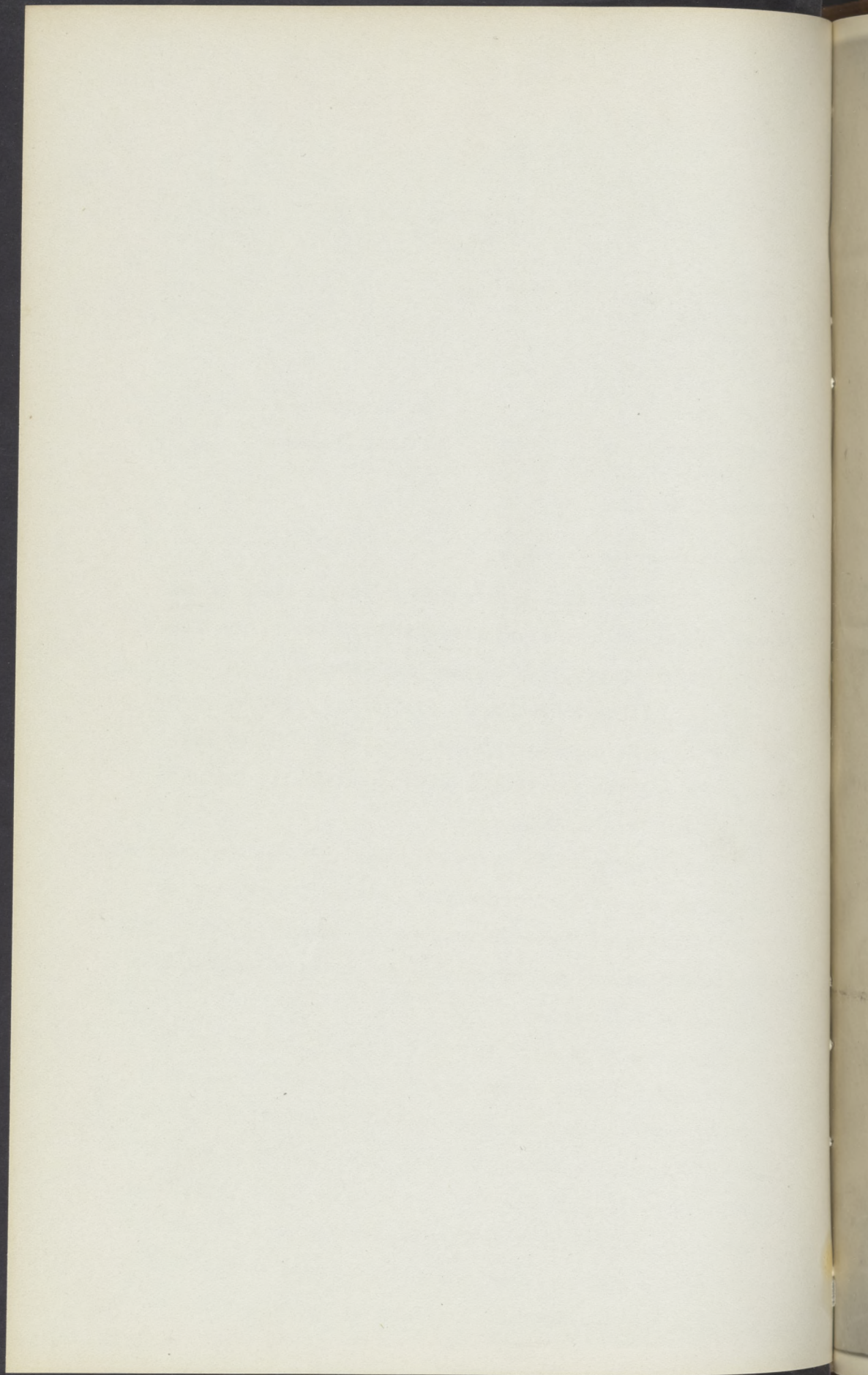
De Rico Bros. Inc.	"	
a corporation of	"	
New Jersey.	"	
Plaintiff	"	
-vs-	"	On Contract.
Vincent Amoroso Jr.	"	On Lien Claim.
Builder and	"	
Herman M. Diamond	"	
Owner.	"	

Plaintiff, a corporation of the State of New Jersey having its principal place of business at the Town of Union, Hudson County, New Jersey, says that :

1. At the times herein stated and prior to March 16, 1920 Anna B. Amoroso was the owner of a plot of land upon which was then erected a certain building; which land is described as follows :

All that certain tract or parcel of land and premises hereinafter particularly described, situate, lying and being in the Township of North Bergen, in the County of Hudson and State of New Jersey and which plot may be more particularly described as follows :

Beginning at a point in the Northerly line of Thirty-first Street produced Easterly Two hundred and twenty-nine and twenty-six hundredths feet (229.26') Easterly from the intersection of the Northerly line of Thirty-first Street produced Easterly and the Easterly line of Bulls Ferry Road as said Streets are laid down on a certain map entitled "Map A of a portion of the property belonging to The Wood-cliff Land Improvement Co., Township of North Bergen, Hudson



County, N. J. Sept. 1892" duly filed in the Register's Office of the said County of Hudson on the fifteenth day of September 1892 thence (1) Northerly and at right angles to the Northerly line of Thirty-first Street produced Easterly One hundred (100) feet to a point; thence (2) Easterly and at right angles to the first course fifty (50) feet to a point; thence (3) Southerly and parallel with the first course One hundred (100) feet to a point in the Northerly line of Thirty-first Street produced Easterly; thence (4) Westerly and along the Northerly line of Thirty-first Street produced Easterly fifty (50) feet to the point or place of beginning.

2. Prior to September 20, 1919 defendant, Vincent Amoroso, contracted with said *Anna B.* Amoroso to erect and finish certain alterations and new addition to said building.

3. Said contract was not filed in accordance with the provisions of the Act hereinafter mentioned.

4. On September 20, 1919 plaintiff and said Vincent Amoroso entered into an agreement in writing whereby plaintiff agreed to erect and finish the alterations and new addition to said building, agreeable to the drawings made by William Neumann Architect for the sum of Four Thousand Dollars (\$4000) which said Vincent Amoroso agreed to pay to plaintiff therefor.

5. On April 24, 1920, plaintiff completed said alterations and new addition to said building and there thereupon came due to it from said defendant the said sum of Four thousand Dollars (\$4000.)

6. Defendant Vincent Amoroso paid to plaintiff, on account of said sum the sum of Thirty-five hundred dollars (\$3500.) leaving due to plaintiff the sum of Five hundred

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Dollars (\$500.) No part thereof has been paid and the same remains due and unpaid.

7. Plaintiff has performed all of the terms and conditions of said contract on its part to be performed.

8. On March 16, 1920, said Anna B. Amoroso and Vincent Amoroso Jr. her husband conveyed said premises to defendant Herman M. Diamond, who is now seized in fee simple of said premises.

9. Plaintiff heretofore and on August 23, 1920, filed, in the Office of the Clerk of the County of Hudson, a notice of its claim to a mechanics lien upon said lands and building.

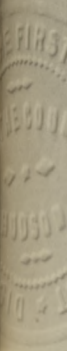
10. Said debt is a lien upon said building and land by virtue of the provisions of the Act entitled "An Act to secure to mechanics and others payment for their labor and materials in erecting any building" approved June 14, 1898, and the acts amendatory thereof and supplemental thereto.

Plaintiff demands as damages Five hundred dollars (\$500.)

John F. Burke
Attorney of Plaintiff.

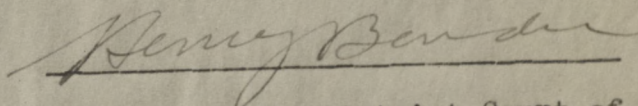
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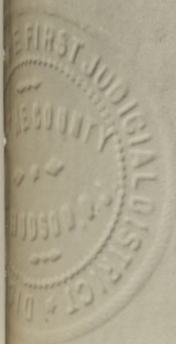


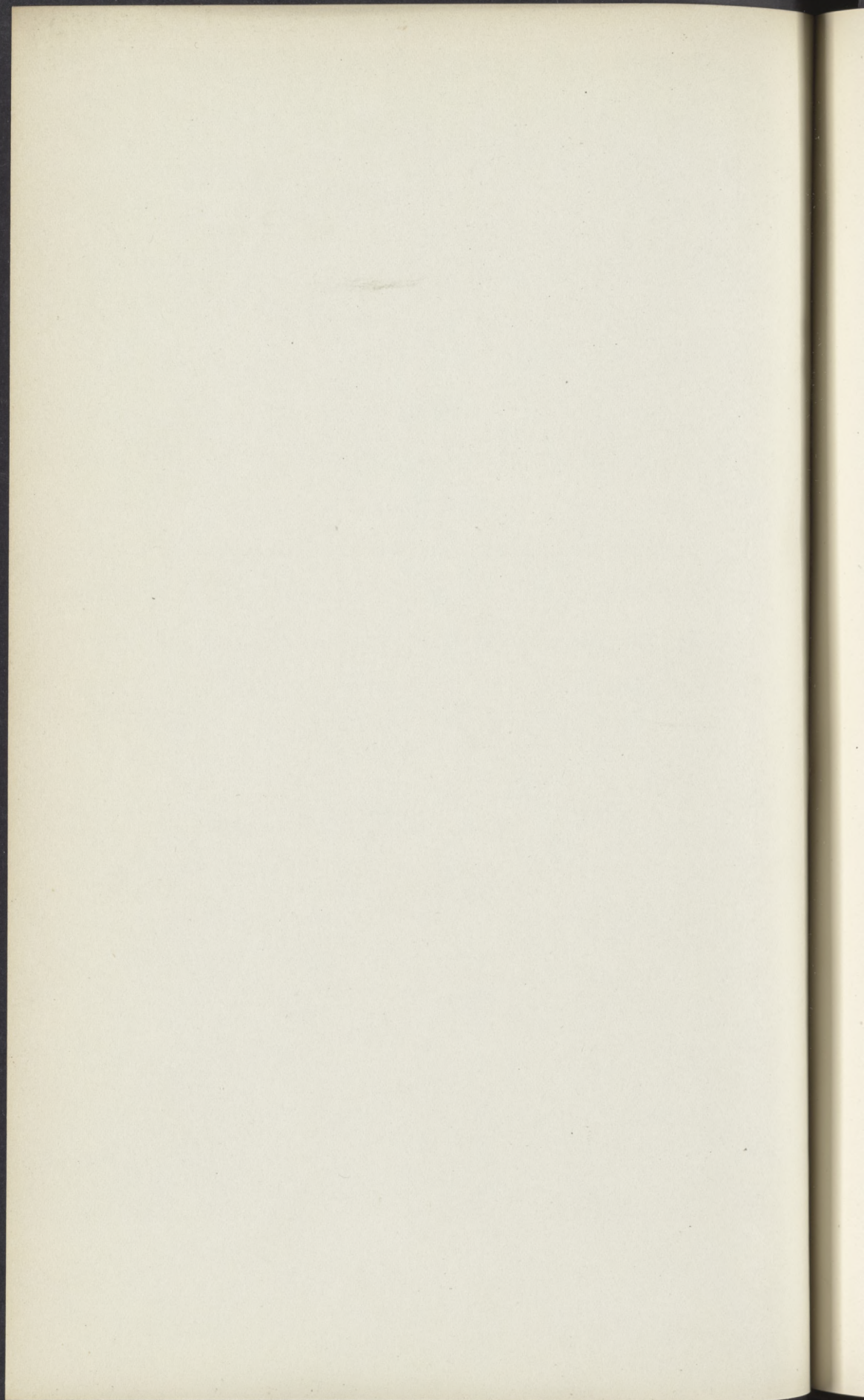
I, HENRY BENDER, Clerk of the District Court of the First Judicial District of the County of Hudson, do hereby certify that the foregoing four photographs of the carbon copy of the summons and complaint filed in the envelope containing the papers in the case of DeRiso Bros., Inc. plaintiff, vs. Vincent Amoroso, Jr. and Herman M. Diamond, defendants, case #14707, correctly picture the said carbon copy of the summons and complaint as it now appears.

10/28/30



Clerk of the District Court of
the First Judicial District of
the County of Hudson.





New Jersey Court of Errors and Appeals

Between

MARGARET McMAHON,
Complainant,

and

VINCENT AMOROSO, Jr., et al,
Defendants.

HERMAN M. DIAMOND,
Defendant-Appellant,

and

JOHN J. McMAHON,
Defendant-Respondent.

On Bill, &c.
On Petition
for Surplus
Money.
On Appeal
from Court
of Chancery.

Stipulation

It is hereby stipulated and agreed by and between the solicitors of the appellant and respondent that photographs of the carbon copy of the summons and complaint offered in evidence by respondent as shown by pages 39 and 40 of the state of the case and the certificate of Henry Bender, Clerk of the District Court of the First Judicial District of the County of Hudson, certifying that the said photographs are true copies of the carbon copy so offered in evidence and a copy of this stipulation be filed with the Clerk of the Court of Errors and Appeals as a supplemental state of the case and be considered by the Court of Errors and Appeals as a part of the state of the case on appeal from Chancery.

JOHN WARREN,
Solicitor for Herman M. Diamond,
Appellant.

PETER BENTLEY,
Solicitor for John J. McMahon,
Respondent.

10-28-30.

cial Master indicate that it was not the signature of the clerk. (Case p. 40).

The photographs of the carbon copy of the summons and complaint and of the certificate of the Clerk (Supplemental State of Case) show the *name* of Henry Bender as it appears on the carbon summons and his *signature* as it appears on the certificate. A comparison of both makes it apparent that Henry Bender, the Clerk, did not sign the carbon copy of the summons.

A comparison of the signature of William F. Burke and the name "Henry Bender" on the carbon copy of the summons evidences that the name "Henry Bender" was written by the attorney of the plaintiff. The attorney for the plaintiff evidently wrote the name of the clerk on the carbon copy left for service after the original summons, would be signed and issued by the clerk. But the original was never issued and the very presence of the carbon copy in the court jacket shows that it was never served. Furthermore, there is no evidence that service of the summons and complaint was made upon Amoroso the builder, or Diamond, the owner and there is no return of service on file in the District Court.

Since the production of the carbon before the Special Master, some one unknown, has added to the name "Henry Bender," hooks over the two "e's" in the name "Bender" in order to make it appear that the hand that wrote that name was not the same that wrote the attorney's name. A crude and futile attempt at fraud for the change is apparent from an inspection of the photograph and the one who did it did not change the "e" in the name "Henry," which has the same characteristics as the "e" in "Burke." The "B" in "Bender" and in "Burke" on the carbon copy

of the summons and the complaint show that all three names were written by the attorney for the plaintiff.

The statement of respondent that judgment was entered in the Circuit Court upon the filing of the certificate of docketing is not evidenced by the Clerk of the Circuit Court (case p. 126). The certificate is

“that the *foregoing* is a true and correct copy of Judgment on Mechanic’s Lien, Notice of Sale by Sheriff and Sheriffs return x x as the same is taken from and compared with the original as filed and recorded in my office.”

The “foregoing” (case pp. 114-125) shows the certificate for docketing (case pp. 123-125) which was filed in the County Clerk’s office *but does not show the entry of a judgment in the Circuit Court.*

As to Respondent’s Argument

I.

Appellant agrees with the rule of the cases cited by respondent, to wit, that judgment of one Court having jurisdiction of the parties and subject matter of the suit, cannot be attacked collaterally in another Court for irregularities, but the cases cited all recognize the rule that a void judgment or one procured by fraud, will be treated by any Court as a nullity. This latter rule is followed in the cases cited on pages 23 and 29 to 32 of appellant’s brief.

To the same effect are

Morris County Bank vs. Rockaway Manufacturing Co., 16 N. J. E., 150, at 160 and 161, where Chancellor Green, in a foreclosure suit treated as

a nullity a judgment in a mechanic's lien where the claim was not filed pursuant to the statute. This opinion was cited with approval in this court by Justice Dixon in the case of *Jacobus vs. Mutual Benefit Life Insurance Co.*, 27 N. J. E., 604, at page 626. In the *Jacobus* case, Justice Dixon cited with approval (pp. 623-626) other cases to the effect (some being foreclosure suits) that a judgment is void as against a ^{PERSON} party not a party or served with process or where entered upon an invalid lien claim.

In the foreclosure case of *Scudder vs. Harden*, 31 N. J. E., 503, Chancellor Runyon held that a judgment, general and special, on an invalid mechanic's lien claim was not prior to the mortgage of complainant.

It is submitted that if a judgment had been produced by the respondent, and none was produced, the court below should have treated it as a nullity because summons had not been issued or served upon Diamond or the builder. But this was unnecessary, because respondent did not produce a valid judgment and hence failed to prove his title to the surplus money.

II.

The respondent (respondent's brief p. 6) contends that the memo of the District Court Judge (case p. 70, 11. 19-21) is a judgment of the District Court even though not entered by the Clerk. The District Court act requires the clerk to enter the judgment in the Docket (2 C. S. p. 1961, Sec. 25) and no such entry was made (case p. 98, Exhibit D-1, 3-2-5-27).

The respondent does not state against whom or what a judgment was entered. It was not

against Amoroso, the builder, because his name is not mentioned in the memorandum. It was not specially against the lands of appellant Diamond, because it does not say so and no mention of the lands is made. If anything, it evidences a personal money judgment against Diamond and such a judgment could not be entered upon the complaint because a personal judgment was not, and in the suit could not be obtained against him. Furthermore, a special judgment could not be entered against Diamond's land unless a general judgment was entered against Amoroso, the builder and no such judgment was entered.

The clerk, testifying as to the said memorandum (case p. 70, LL. 22-24) said:

“Q. That does not disclose as to whether there was a personal judgment against the Builder and a special judgment against the land? A. No.

Q. And it would be impossible for you to enter judgment based upon such a memorandum? A. Yes.

Q. And did you ever receive anything in writing from the Judge whether the case was tried in the Court or in his office? A. No.

Q. Which would show whether or not there was a personal judgment against Vincent Amoroso and a special judgment against the land mentioned in the summons and complaint? A. No, I never did get any papers.

Q. And there is none on file in your Court? I think you already testified definitely, that there was no record as to who

was served, if anybody, in this suit? A. No.”

The memorandum does not evidence a judgment against Amoroso, generally or specially against the lands of appellant and none could have been entered because neither was in court as the summons had not been issued or served upon them.

III.

Respondent admits there is no proof of service of summons and complaint upon appellant Diamond and contends that no service was necessary because of the two stipulations signed by him (Exhibit D-4, 3-25-27, Case p. 101).

The first stipulation dated September 21, 1920, does contain the word “appears” but that this was not a general appearance waiving issuance and service of summons is plain as the stipulation continues “*and the time to issue summons and begin suit x x be and same is hereby extended to November 1, 1920.*” The stipulation was signed by Diamond, a layman and the attorney for plaintiff as was the second stipulation which *extended the time to issue summons and begin suit to November 15, 1920. BUT NO SUMMONS WAS EVER ISSUED.*

The court cannot take one word “appears” out of two stipulations and disregard the other language. The layman Diamond and the lawyer for plaintiff evidently were stipulating solely that the time for issuing summons and begin suit be extended and same is an admission on part of plaintiff’s attorney that summons had not been issued on August 23, 1920, as is entered illegally on the claim.

If the stipulation had been carried out and summons was issued and served on Diamond, he would have had twenty days after service to file his answer and he then could have answered that the plaintiff was not entitled to a special judgment against Diamond's land for the following reasons:

A. Summons was not issued within four months from the date the last work was done or material furnished as required by Section 18 of the Mechanic's Lien Act, 3 C. S. 3305.

B. That the issuance of summons (i. e. *real* issuance) was not endorsed on the claim within the same period as required by the same section.

C. That no written agreement for the extension of the time for the enforcement of the lien by summons was annexed to the lien *before August 24, 1920*, the last date for the issuance of summons as required by same section of the said Act.

D. That the clerk did not mark the lien docket "extended" as required by the same section of said statute. (Case, p. 141.)

E. That the *Clerk* of the District Court did not file a certificate of commencement of suit as required by the same section of said statute.

F. That the last work was not done May 24, 1920, or after Diamond took title in March, 1920, and that no money was due from Amoroso to plaintiff.

All of the above defenses except (F) as appears from the state of the case, would have been proven and a judgment would not have been entered against Diamond's land as the lien had expired.

Diamond did not have his day in court or any opportunity to be heard. When summons was not issued by November 15, 1920, he had a right to believe that the proposed suit had been abandoned. This he did and to award the surplus money to McMahon would deprive Diamond of his property without due process of law, in violation of Article V of the Constitution of the United States.

IV.

There was no general judgment against Amoruso or special judgment against the land of Diamond and the untruthful certificate of the clerk was a nullity. The right to docket a judgment makes necessary the pre-existence of a judgment. Where there is no judgment in a District Court, the fraudulent certification that there is cannot give validity to the docketing in the Circuit Court where there is in fact, no such judgment as is purported to be docketed.

Docketing is a mere clerical act and the record of docketing is no more valid than the judgment of the court below.

Furthermore, the respondent did not offer a Circuit Court judgment in evidence.

V.

To give to Section 15 of the Sales of Land Act the force contended by respondent, would make necessary the declaration of its unconstitutionality as it would here result in depriving appellant of his property without due process of law. If Respondent is right, then the court below should be instructed to withhold its decree until the

rights of the appellant can be determined by certiorari.

It is respectfully submitted that on the facts herein, the decree below deprives appellant of his property without due process of law, that McMahon did not prove his title by offering a valid judgment in support of his Sheriff's deed and that the decree below should be reversed and the surplus money awarded to appellant.

Respectfully submitted,

JOHN WARREN,

*Solicitor for and of Counsel
with Herman M. Diamond,
Defendant-Appellant.*

New Jersey Court of Errors and Appeals

Between

MARGARET McMAHON,
Complainant,

and

VINCENT AMOROSO, JR., *et al.*,
Defendants,

HERMAN M. DIAMOND,
Defendant-Appellant,

and

JOHN J. McMAHON,
Defendant-Respondent.

On Bill to
Foreclose.

On Petition
for Surplus
Money.

On Appeal
from
Chancery.

**BRIEF OF DEFENDANT-RESPONDENT
JOHN J. McMAHON.**

Statement.

As a result of a foreclosure sale, there was paid to the clerk in chancery a surplus of \$10,039.33; on surplus proceedings there were two contestants for the fund, Herman M. Diamond and John J. McMahon; on June 16, 1930, the Chancellor, on the advice of Vice Chancellor Lewis (for his opinion see Case, p. 81), directed the surplus to be paid to John J. McMahon. This appeal is by Diamond, he claiming the court below erred in ordering the fund paid to McMahon instead of to him.

Attention is called to the fact that the appellant's petition of appeal (Case, p. 95) is not as broad as

the grounds of appeal stated in the appellant's brief, on pages 6 to 9, consisting of nine separate and distinct grounds. It is respectfully urged that the appellant is limited to the grounds stated in his petition of appeal.

Facts.

On March 16, 1920, Amoroso and wife conveyed the premises described in the foreclosure proceedings to Herman M. Diamond. This deed was recorded March 24, 1920, in the Register's office of Hudson County, in book 1342, page 507 (Case, pp. 108 to 113).

On August 23, 1920, the clerk of the district court of the First Judicial District of the County of Hudson was on his vacation and George B. Spencer was acting clerk (Case, p. 31, l. 14; p. 69, l. 30; p. 70, l. 1). On the date mentioned a certificate was signed by the said acting clerk that a suit had been commenced in that district court wherein De Riso Bros. were plaintiffs, Amoroso was builder and Diamond owner (Case, p. 31, l. 22 to l. 35, p. 32). On the same day a lien claim was duly filed in the County Clerk's office (Ex. D-2, 11-12-24, Case, p. 118).

On September 21, 1920, Diamond *appeared* in the suit, *in person*, by a written stipulation (Case, p. 37, l. 10) and consented that the time to issue a summons should be extended to November 1, 1920. On November 1, 1920, there was a like stipulation, further extending the time to issue a summons, to November 15, 1920 (Case, p. 38, l. 19).

(Note: Respondent offered in evidence, from the records produced by the clerk of the district court, a summons and complaint which were produced on the subpoena of Diamond. Through inadvertence these exhibits were not printed in the state of the case. By stipulation a supplemental state of the

case is being prepared and will be presented to the court. This will contain copies of the exhibits.)

A summons and complaint were duly filed in the district court. They were produced by the clerk from the jacket containing the record. The summons is signed by the attorney for the plaintiff, bears the name of the clerk and the seal of the court. The complaint is in the usual form (Case, p. 39, l. 43, to p. 40, l. 33). (See supplemental state of case.)

A certificate was issued by the clerk of the district court that judgment was entered on December 27, 1920, in favor of De Riso Bros., and against Amoroso as builder, generally, and specially against the lands of Diamond (Case, pp. 123 and 124). The judgment was for \$500.00 and costs, and the clerk of the district court particularly so certified.

“I do hereby certify that the foregoing statement is correct and that said judgment stands open and unpaid of record in this court.”

On the strength of this certificate of the district court judgment was entered in the Hudson County Circuit Court on January 6, 1921, as certified by the clerk of the circuit court (case, p. 126).

An execution on this judgment was issued out of the Hudson Circuit Court and the lands in question were sold to the plaintiff in that case, De Riso Bros. by the sheriff of Hudson County. The sheriff's deed was dated May 16, 1921, and recited his proceedings and the execution in full (Case, pp. 189 to 195).

By deed dated June 21, 1921, and duly recorded, De Riso Bros. conveyed the property in question to McMahon (Case, p. 178).

There was no change in the title up to the time of the foreclosure sale by the sheriff.

ARGUMENT.

The appellant endeavored, in the court below, to collaterally impeach the proceedings of the district court and the circuit court, over the objections of the respondent. The special master permitted the introduction of evidence, over such objections, which attempted to collaterally impeach these proceedings. Neither of the judgments referred to in this case can be collaterally attacked.

A judgment rendered by a court having jurisdiction of the parties and the subject matter, unless reversed or annulled in some proper proceeding, is not open to contradiction or impeachment, in respect to its validity, verity, or binding effect, by parties or privies, in any collateral action or proceeding, except for fraud in its procurement. 34 *Corpus Juris*, 511, and cases cited from many jurisdictions.

In *Diehl vs. Paige*, 3 N. J. L. 143, Chancellor Vroom held that a judgment, though irregular and not pursuant to the statute, is not void, and cannot be impeached collaterally. This case was cited with approval in *Pittenger v. Pittenger*, 3 N. J. L. 156, in another opinion by the same Chancellor. It was there held that a decree of the orphans' court would be reversed as erroneous and unlawful, but that such decree could not be impeached collaterally, or treated as a nullity.

In *Hohokus v. Erie R. R. Co.*, 65 N. J. L., *Pittenger v. Pittenger*, *supra*, was cited with approval at page 361.

In *National Docks, etc. vs. Pennsylvania R. R. Company*, 52 N. J. Eq. 58, it was held that the de-

cision of a court of competent jurisdiction, similar to the district court, acting within the scope of its statutory powers, has inherent in it such conclusive force that it cannot be challenged collaterally; that such decision conclusively binds all parties embraced in it, unless an objection be made to such court itself, or in a course of direct appellate procedure.

In *Palmer, etc. vs. Freeholders of Essex*, 77 N. J. L. 145, it was held to be well settled that where a court had final jurisdiction of the subject matter, and had acquired jurisdiction over the person of the defendant, its judgment is invincible against collateral attack. That it is only where there is lack of jurisdiction, in one or both of the above particulars, that the judgment is void and may be so treated in a collateral proceeding.

In *Youngs adm'r. v. Rathbond*, 16 N. J. Eq. 224, many authorities are cited for the proposition that an order having been made by a court of general jurisdiction upon the subject matter, within its jurisdiction, is final and conclusive, and can never be questioned.

In the early case of *the State v. The Sheriff of Middlesex*, 15 N. J. L. 68, Mr. Chief Justice Hornblower held that where the court had jurisdiction of the subject matter, and hears and determines the same, such determination must remain in full force until reversed by a superior court having authority so to do.

In *Re Hall*, 94 N. J. Eq. 108, Vice Chancellor Buchanan held, in a case where an application was made for a writ of *habeas corpus* to discharge prisoners in a criminal case, that where the court had power or jurisdiction to render the particular judgment, even though it wrongfully exercised such power, the judgment may be avoided only by direct appeal.

Corpus Juris, volume 33, page 1078, citing the last mentioned case says:

“Want of jurisdiction must be distinguished from error in the exercise of jurisdiction. Where jurisdiction has once attached, mere errors or irregularities in the proceedings, however grave, although they may render the judgment erroneous and subject to be set aside in a proper proceedings for that purpose, will not render the judgment void, and until set aside it is valid and binding for all purposes and cannot be collaterally attacked.”

The record in the District Court, together with the record in the Circuit Court, and the execution sale under the Circuit Court judgment, legally divested Diamond of any interest which he had in the property in question.

It is submitted that the records of the District Court and Circuit Court are sufficient to support the respondent's deed.

The clerk of the district court said that he produced from the jacket, in the case in question, a memorandum signed by Judge McCauley, the judge of the District Court, reading “Dec. 27-20 De Riso Bros. vs. Diamond—Judgt. \$500. for Plt. F. H. M. C. J.” (Case, p. 70, l. 11). This is sufficient.

Corpus Juris, in volume 34, page 52, section 182, lays down the rule that as between parties, a judgment duly rendered is valid and effective, although not entered, that is, the neglect or failure of the clerk to make a proper entry of the judgment or his defective or inaccurate entry of it, will not deprive it of the force of a judicial decision. No case is found in the State of New Jersey which goes to the extent of this authority. However, the author cites cases from more than twenty states for the

soundness of his assertion. To the same effect is *Freeman on Judgments*, Vol. 1, sec. 371.

There can be no denying that on the strength of the clerk's record, in the District Court, he issued his certificate that a judgment had been rendered in the District Court on the 27th day of December, 1920, for the sum of \$500.00 debt, and costs, in favor of De Riso Bros., generally against Amoroso, builder, and specially to be made of the land which are described, being the same lands which the lien claim and the complaint alleged to be in the name of Diamond, as owner.

The amendment to the Mechanics' Lien Act. (P. L. 1898, p. 547) contained in P. L. 1912, page 470, for the first provided that mechanics' liens might be enforced by judgment in any district court of the county where the building is situated, provided the amount involved was \$500.00 or less. It further provided that the practice in the district court was to be as nearly as possible the same as provided by law or the practice act in contract cases in such district courts. The practice which was adopted was, and it was followed in this case, for the filing of a lien claim in the county clerk's office (Case, pp. 118-122). The certificate of the clerk of the District Court, certifying the commencement of the suit in the District Court, was duly filed with the clerk of the Circuit Court, the same having been first signed by Oscar B. Spencer, acting clerk, with the seal of the court (Case, pp. 127-128). Proceedings then continued (as hereinbefore set forth) until the clerk of the District Court certified that the judgment had been rendered (Case, pp. 123-126). Thereupon the Circuit Court clerk entered judgment in the Circuit Court in favor of De Riso Bros. and against Diamond and Amoroso. Subsequent proceedings (as referred to) brought about the sale of the property to De Riso. De Riso conveyed to McMahan.

Although there is no formal proof of the service of process on Diamond (and no service was necessary), he is bound by the proceedings because he entered a voluntary appearance which gave the court jurisdiction (Case, p. 101). The stipulations were signed by Diamond. The claimant agreed by the second stipulation not to take any steps or proceedings to enforce its lien claim before November 15th, 1920. The record shows that he kept his agreement and did not enter judgment until December 27, 1920.

If the District Court had jurisdiction, and it did, of the subject matter, the general or voluntary appearance of Diamond is equivalent to the service of process and conferred on the district court jurisdiction of his person so that he is now estopped from alleging that the court did not have jurisdiction. 4 Corpus Juris, 1350; *McDevitt v. Connell*, 63 Atl. Rep. 504.

To sum up the first point, it is respectfully submitted that a collateral attack, such as was made before the master, cannot be interposed as a defense against the deed of McMahan.

Even if the judgment in the District Court is defective and can be collaterally impeached, the judgment in the Circuit Court cannot.

It has been shown that on the proceedings as they were in the District Court, the clerk certified to the Circuit Court, under the statute, that a judgment had been duly entered in favor of McMahan, against Diamond as owner, and Amoroso as builder (Case, pp. 123-126). It is further shown in the record that the clerk of the Circuit Court entered judgment on the certificate of the District Court. It is further shown by the certified copies of the record of the clerk of the Circuit Court (Case, pp.

114-118) that an execution was duly issued on that judgment, directed to the Sheriff of the County of Hudson commanding him to make of the lands described in the lien claim, the debt with costs due the plaintiff. The sheriff's return shows that he sold the premises to the plaintiff; a certified copy of the deed from the sheriff to De Riso is found on page 188 in the State of the Case.

This judgment in the Circuit Court contained all the necessary elements and entries to make it a good and valid judgment. The proceedings were regular and so was the entry of the judgment and the issuing of the execution. In obedience to the writ of execution, which was issued on the judgment, the Sheriff's deed showed that that officer complied with all the requirements of the statute. Upon the sheriff conveying to De Riso Bros., they conveyed to McMahon. Diamond was stripped of any interest he had in the property and therefore in the surplus.

The Circuit Court judgment is sufficient, on its fact, to sustain an action in a foreign jurisdiction. That judgment, being regular on its face, would not be open to attack in a foreign jurisdiction.

"The validity of proceedings under such an execution (issued out of a circuit court on a transcript of the judgment of a justice of the peace) cannot be assailed collaterally, for reasons outside the record, no want of jurisdiction appearing, or other cause invalidating the judgment." *Sachse v. Clingingsmith*, 97 Mo. 406 (11 S. W. 69).

Two remedies were open to the appellant to properly test the validity of the District Court and Circuit Court judgments and the proceedings under the execution in the Circuit Court.

No one knew better than the solicitor for Diamond that by certiorari or by applications to the District Court and the Circuit Court could Diamond have tested the validity of the two judgments.

If he had followed the latter course and the judgment in the District Court was set aside it follows that the judgment, execution and sale thereunder in the Circuit Court would have been promptly set aside. Those courts have jurisdiction over their own proceedings and have power to repair or nullify any act done by their orders.

The appellant chose to proceed by certiorari. A writ of certiorari was allowed on the first day of September, 1922 (Case, pp. 129-130). It was directed to John J. McGovern, County Clerk of Hudson County and Clerk of the Hudson County Circuit Court. The appellant realized that the judgment in the Circuit Court until set aside was, on its face, a legal judgment, as were all proceedings thereunder. This writ was dismissed by order of the Supreme Court on the 5th day of October, 1926, for lack of prosecution.

In *Blessing v. Blackburn Varnish Co.*, 93 N. J. L. 321, the question arose as to the validity of a docketed judgment from the District Court into the Court of Common Pleas. A writ of attachment had issued out of the District Court and personal property of the defendant had been attached. Subsequently a judgment was entered in the District Court and that judgment was docketed in the Court of Common Pleas. The judgment was then docketed in the New Jersey Supreme Court. An application was made to the Supreme Court to set aside its judgment. The relief sought was granted. It was pointed out that the remedy to be pursued in having the common pleas judgment vacated was to apply to that court. Mr. Justice Kalisch said:

“Although the validity of the docketed judgment, as such, in the Court of Common Pleas, was necessarily considered by me in disposing of this case, I am satisfied that I am without authority, on this motion, to make any order regarding it, the proper practice to pursue is to apply to the court of common pleas wherein the judgment was docketed to have it vacated. *McLaughlin v. Cross*, 68, N. J. L. 599.”

In the latter case it was held that the Court of Common Pleas had full power and authority to deal with and set aside judgments docketed from a lower court.

The appellant, in his brief, page two, line five, said that De Riso did not pay any money to the sheriff for the deed for the property. There was no reason for De Riso to have paid any money. It was the purchaser at the sheriff's sale on its own judgment.

The decree of the Court of Chancery properly directed the surplus moneys to be paid to the respondent.

The Court of Chancery had before it the same record that is before this court. There was the Circuit Court judgment which was valid on its face. On that judgment an execution in regular form was issued and the sheriff, in obedience thereto, had sold and given his deed for the property in question. Subsequently, the property was conveyed to respondent.

So long as that judgment was of record, and the proceedings thereunder, the Court of Chancery was powerless to interfere therewith because of the statutes and decisions in this and other states.

It might not be amiss at this time to say that in all jurisdictions judgments have been carefully protected and especially those wherein the title to real

estate is involved. If judgments upon which titles to lands are made are not protected, the great security which the public has enjoyed would be interrupted and confidence lost; that is one of the reasons for the rule.

The fourteenth and fifteenth sections of the act entitled "Sale of land" (4. Comp. Stat. 4679), provide as follows:

"14. That the conveyance of any land or real estate sold by any sheriff or other officer, or by auditors in pursuance of a decree, judgment, execution or order of a court, heretofore or hereafter made and duly acknowledged or approved, and the record thereof, or a certified copy of such record, shall be good and sufficient *prima facie* evidence of the truth of the recital, in the said deed or conveyance contained (Rev. 1877 p. 1045).

15. That the provisions of the last preceding section shall apply to all deeds, declarations of sale and conveyances, duly acknowledged or proved heretofore or hereafter made by or by authority of any public or municipal authority, authorized or empowered by any law of the state to make and execute or to direct or procure the making and execution of any deed, declaration of sale or conveyance; and the proceedings upon which such deeds, declarations of sale and conveyances are founded shall not be subject to be questioned collaterally, but may be at any time reviewed by certiorari or other proper proceeding in the supreme or circuit courts (Rev. 1877 p. 1045)."

It is under these sections that the respondent argues that the proceedings upon which the deed in question was given by the sheriff cannot be attacked collaterally in this court.

Under the fourteenth section the deed from the sheriff to De Riso was sufficient *prima facie* evidence of the truth of the recitals therein. The fact

is that those recitals were true. These recitals showed two valid judgments, the execution sale, and the proceedings thereunder.

The fifteenth section, in apt words, refers to the fourteenth section and makes the fourteenth section a part of the fifteenth. If we eliminate the words of that section, which refer to other matters than the present deed, we have the sections reading as follows:

“15. That the provisions of the last preceding section shall apply to all deeds, * * *, duly * * * acknowledged * * * or hereafter made by * * * any public * * * authority, authorized * * * by any law of the state to make and execute * * * any deed, * * *; and the proceedings upon which such deeds, * * * are founded shall not be subject to be questioned collaterally, but may be at any time reviewed by certiorari or other proper proceedings in the supreme or circuit courts.”

The appellant argues that the sheriff is not a public officer under the fifteenth section. This section, if it makes the fourteenth section part thereof, includes a sheriff. If the sheriff is included in the fifteenth section he comes under it.

In *Doremus v. Cameron*, 49 N. J. Eq. 1, the Court of Chancery had before it a sale for unpaid taxes. At page nine the word “authority” was held to be synonymous with the word “officer”. A sheriff is and always has been held to be a public officer. 35 Cye, 1488.

In *Nicholas v. Older*, 78 N. J. Eq. 101, sections fourteen and fifteen referred to, came before the court for construction and it was held that the recitals in a deed by a public officer authorized by law to make such sale shall be taken *prima facie* as evidence of the truth of what is therein recited, and that the proceedings upon which such deeds

are founded shall not be questioned collaterally but may be reviewed by certiorari or other proper proceedings in the supreme or circuit court.

If the respondent is correct in his argument, Diamond cannot set up any defects (if there were any) in the proceedings under which the land in question was conveyed to De Riso—and then to McMahon—by the sheriff of Hudson County. *White v. Cadmus*, 84 N. J. Eq. 86.

As shown by Exhibit D-8 (Case, pp. 114 to 128) and Exhibit D-9 (Case, pp. 129 to 171) offered by Diamond before the master, Diamond had full knowledge on the date that he made his affidavit to obtain a writ of certiorari, namely, August 31, 1922, that McMahon claimed title to the property (Ex. D-9, Case, p. 146). By his failure to proceed under his writ of certiorari where he could have tested out the legal questions involved, he has permitted his rights, if any he had, to sleep, to his own detriment; he is now endeavoring to take advantage in this court of his own neglect.

It is respectfully submitted that the attempt of the appellant to collaterally attack the deed from the sheriff and impeach the proceedings upon which it was founded cannot be sustained and that therefore the appeal should be dismissed.

PETER BENTLEY,
Solicitor for Respondent,
John J. McMahon.

HERBERT CLARK GILSON,
Of Counsel.

New Jersey Court of Errors and Appeals.

Between

MARGARET McMAHON,
Complainant,
and

VINCENT AMOROSO, JR., *et al.*,
Defendants.

HERMAN M. DIAMOND,
Defendant-Appellant,
and

JOHN J. McMAHON,
Defendant-Respondent.

BRIEF FOR HERMAN M. DIAMOND, DEFENDANT-APPELLANT.

Statement of Case.

This is an appeal from an order of the Chancellor (Case, pp. 89-91) sustaining the exceptions (Case, pp. 79-81) of respondent, John J. McMahon to the report of Mark A. Sullivan, Special Master (Case, pp. 11-12). The order was advised by Vice Chancellor Lewis whose opinion appears on pp. 81-89 of the State of the Case. The order awards the surplus money of \$10,039.33 and interest in excess of \$1,800.00 (less the allowances to Special Master and counsel and the commissions of the Clerk in Chancery) to respondent, John J. McMahon, whose claim of title is based upon the Sheriff's deed to James

DeRiso (Exhibit C-1, 3-25-27, Case, pp. 188-195) and the deed from DeRiso to McMahon (Exhibit C-2, 3-25-27, Case, pp. 178-182) ~~recorded~~ McMahon paid for this title, \$625.00 which was DeRiso's bid at the Sheriff's sale. DeRiso did not pay any money to the Sheriff.

Appellant's claim of title is based on deed from Anna Bruckhoff Amoroso and Vincent Amoroso, Jr. (Exhibit D-7, 3-25-27, Case, pp. 108-113) and McMahon claims that Diamond's title was cut off by the Sheriff's deed aforesaid—that the Sheriff's deed makes his title without proof of a judgment and that Section 15 of the Sales of Land Act, 4 C. S. 4679, bars appellant from asserting the invalidity of the Sheriff's deed in the Court of Chancery, that his sole remedy is by certiorari and that such remedy has been lost.

The facts follow:

Anna Bruckhoff Amoroso on March 24th, 1920, was the owner of the mortgaged premises in North Bergen, N. J., through deed from James Thomson (Exhibit D-6, 3-25-27, Case, pp. 102-107).

She, together with her husband, Vincent Amoroso, Jr., conveyed the mortgaged premises to appellant, Diamond, subject to two mortgages aggregating \$7,400.00, by deed recorded March 24, 1920 (Exhibit D-7, 3-25-27, Case, pp. 108-113).

On August 23rd, 1920, DeRiso Brothers, Inc., filed a lien claim for \$500. against the property naming Vincent Amoroso, Jr., as builder and Diamond as owner and stating that the work was done between September 24th, 1919, and April 24, 1920 (Exhibit D-2, 11-12-24, Case, pp. 118-122).

On August 23rd, 1920, there was filed in the office of the County Clerk what purported to be a certificate of the commencement of a suit on said lien claim in the Judicial Court of the First Judicial District of the County of Hudson (Exhibit D-1, 11-12-24, Case, pp. 127-128), which stated that *summons had been issued August 23, 1920*. The certificate was signed by "Oscar Spencer, *Acting Clerk*". He merely assumed to act and had no authority so to do (Case, pp. 30, 35, p. 69, ll. 39-45, p. 70, ll. 1-10).

Because of said certificate the County Clerk endorsed upon said lien claim a statement that a summons was issued in the "First Judicial Court of Hudson Co." on August 23, 1920 (Exhibit D-2, 11-12-24, Case, p. 122).

No summons was issued on August 23, 1920, or on ~~September~~^{AUGUST} 24, 1920, which was the last day to issue summons and have the issuance endorsed upon the lien claim and on ~~September~~^{AUGUST} 24, 1920, *the lien became a nullity and the right to proceed against the land of Diamond terminated.*

On September 18, 1920, a deed from the grantors of Diamond to respondent McMahan was recorded (Exhibit P-1, 10-17-24, Case, pp. 172-178).

On September 21, 1920, a stipulation signed by Diamond and the attorney for DeRiso Bros., Inc., provided that the time "*to issue summons and begin suit on the lien claim*" be extended to November 1, 1920 (Exhibit D-4, 3-25-27, Case, p. 101), although the right to issue summons against Diamond expired August 24, 1920.

On November 1, 1920, another stipulation signed by Diamond was filed providing "*that the time to issue summons and begin suit on the lien claim * * * be and the same is hereby ex-*

tended to November 15, 1920, and the entry of the extension of time to said date may be entered on the said lien claim and the record thereof at that time" (Exhibit D-4, 3-25-27, Case, p. 101). The extension of time to issue summons was not entered on the lien claim (Exhibit D-2, 11-12-24, Case, p. 122).

No summons was issued on or before November 15, 1920.

No summons was ever issued and Diamond was never served with process (Case, p. 67, ll. 29-45, p. 68, ll. 12-15, ll. 21-22, p. 73, ll. 1-10, p. 71, ll. 1-2). There is no return of service on file showing service upon Amoroso or Diamond (Case, p. 68). Exhibit D-3, 3-25-27, Case, p. 100, is a photograph of the *summons which was never signed by the clerk.*

In the papers in the District Court is a pencil memorandum on a scrap of paper "Dec. 27-20 DeRiso Bros. vs. Diamond—Jdt. \$500. for plt. F. H. Mc. J." (Case, p. 70). There is no record in the District Court of a *judgment general against Amoroso or special against the lands of Diamond* (Case, pp. 64-67, 70, ll. 19-45).

Exhibit D-1, 3-25-27 (Case, p. 98) is a photograph of page 239 of the record book of the District Court for the said case #14707. *It does not show the issuing of summons, the service of summons, either against Amoroso or Diamond or the entry of a judgment general against Amoroso or special against the lands of Diamond.*

Exhibit D-2, 3-25-27 (Case, p. 99) is a photograph of page 240 of the same book in case #14708 entitled the same as #14707. The same state of facts are shown as on page 239. There are no papers on file in case #14708 (Case, p. 67).

On January 6, 1921, a statement for docketing was filed in the County Clerk's office, signed by the District Court Clerk and reciting the entry of judgment on December 27, 1920, in said District Court for \$500. dollars debt and \$30.30 costs in favor of DeRiso Bros., Inc., generally against Vincent Amoroso, Jr., and especially to be made of the lands of the appellant Diamond (Exhibit D-3, 11-12-24, Case, pp. 123-125). Although in fact no such judgments had been entered.

On January 7, 1921, a writ of execution on such docketed judgment was issued out of the Hudson County Circuit Court (Exhibit D-4, 11-12-24, Case, pp. 114-118), and under same on May 5, 1920, the Sheriff sold the lands of Diamond to James DeRiso for the sum of \$625. (Exhibit D-4, 11-12-24, Case, p. 114) which deed was recorded July 15, 1921.

James DeRiso and wife conveyed the property to respondent McMahan by deed dated June 21, 1921, and recorded June 2, 1922 (Exhibit C-2, 3-25-27, Case, pp. 178-182).

Respondent McMahan also holds unrecorded deed from appellant's grantors, dated September 15, 1922 (Exhibit I-1, Case, pp. 182-186), and an assignment from them of their interest in the said surplus money (Exhibit I-2, 11-12-24, Case, pp. 186-188).

When Diamond learned of the Sheriff's deed aforesaid, he sued out a writ of certiorari. On February 25, 1921, complainant, the wife of respondent, took an assignment of the first mortgage on said premises and later and after the allowance of the writ of certiorari, instituted this suit in which both respondent and appellant were made defendants and their interest in and claims to said land cut off and transferred to

the surplus money. Because of this the certiorari suit was not pressed and twice in 1925, respondent moved to dismiss same for lack of prosecution and both motions were denied upon showing by appellant of the pendency of the surplus money proceedings. At October Term, 1926, of the Supreme Court the writ was dismissed. Counsel for appellant here and Prosecutor there had no knowledge of the motion and the proof of service of the notice thereof shows that service was illegal (Exhibits D-9, 3-25-27, Case, p. 171).

Judge Sullivan, as Special Master, reported that at the time of the foreclosure sale in this suit that appellant Diamond was the owner in fee simple of the said premises and was entitled to the surplus moneys (Case, pp. 11-12).

The respondent filed two exceptions (Case, pp. 79-81), claiming that the report of Judge Sullivan was erroneous in that he should have reported that respondent was the owner in fee simple at the time of the foreclosure sale and therefore entitled to the surplus moneys.

These exceptions were sustained by order entered June 16, 1930 (Case, pp. 89-91), for the reasons stated in the opinion of Vice Chancellor Lewis (Case, pp. 81-89).

GROUNDS OF APPEAL.

A.

The Court below erroneously sustained the following exception of Respondent to the report of the Special Master:

“Because said Master reported that the defendant Herman M. Diamond was the owner in fee simple of the premises de-

scribed in the bill of complaint filed in this cause at the time of the sale thereof. And because the said Master further reported that the said Herman M. Diamond is entitled to receive the surplus moneys now on deposit with the Clerk of this Court in this cause, when the said Master should have reported that the said John J. McMahon was the owner in fee simple of the premises aforesaid at the time of said sale and was and is entitled to receive the surplus moneys now on deposit with the clerk of this court in this cause" (Case, pp. 78-80).

B.

The Court below erroneously sustained the following exception of Respondent to the report of the Special Master:

"Because said Master reported that the defendant Herman M. Diamond was the owner in fee simple of the premises described in the bill of complaint filed in this cause at the time of the sale thereof by the Sheriff of Hudson County under the *feri facias* issued in this cause, and because the said Master further reported that the said Herman M. Diamond is entitled to receive the surplus moneys now on deposit with the Clerk of this Court in this cause, when the said Master should have reported that the said John J. McMahon was the owner in fee simple of the premises aforesaid at the time of said sale and was and is entitled to receive the surplus moneys now on deposit with the clerk of this court in this cause" (Case, pp. 80-81).

C.

The Court below erroneously held that Section 15 of the Sale of Lands Act, 4 C. S. 4679 (by mistake cited as 4681) applies to a Sheriff's deed under execution and to the instruments of the officers mentioned in Section 14 of said statute.

D.

The Court below erroneously held that the words "public or municipal authority", as used in Section 15 of the Sale of Land Act, include a sheriff selling land in pursuance of a decree, judgment, execution or order of a court.

E.

The Court below erroneously held that the Sheriff's deed under execution cannot be attacked in the Court of Chancery where the mechanic's lien suit was never instituted, process was neither issued against nor served upon the builder or owner of the land, judgment was never entered against the builder generally or against the lands of appellant specially, the owner had no opportunity to file an answer or have a trial and the mechanic's lien had expired because summons had not been issued or the time for issuing same extended before the expiration of four months from the date the last work was done.

F.

The Court below erroneously held that the recitals in the Sheriff's deed were conclusive, that a judgment was recited therein and that appellant was not required to prove a judgment

not at variance with the execution in order to prove his title under the Sheriff's deed.

G.

That the Court below erroneously held that appellant's sole remedy is certiorari and that he has been barred of his rights to the surplus moneys.

H.

That the Court below erroneously held that the recitals in a Sheriff's deed under Section 14 of the Sales of Land Act, 4 C. S. 4679, are conclusive, make title to real estate and cannot be rebutted.

I.

The court below erroneously decided that "in 1921, suit was instituted on a mechanic's lien in the district court of Union City, N. J. The plaintiff was DeRiso Bros. The defendants were Amoroso as builder, and Herman M. Diamond, owner. A judgment in the case was entered in the district court in favor of the plaintiff and generally against the defendants Vincent Amoroso, Jr., as builder, and specially against Herman M. Diamond, owner. The judgment was recorded in the district court on January 6, 1921. The aforesaid judgment was entered in Hudson County court pursuant to the statute."

POINT I.

Section 15 of the Sales of Land Act, 4 C. S. 4679, has no application to the deeds mentioned in Section 14 of that Act.

"Section 14—Deed or conveyance; recital as *prima facie* proof.—That the *conveyance* of any land or real estate sold by any sheriff

or other officer, or by auditors, *in pursuance of a decree, judgment, execution or order of a court*, heretofore or hereafter made and duly acknowledged or approved, and the record thereof, or a certified copy of such record, shall be good and sufficient *prima facie* evidence of the truth of the recital, in the said deed or conveyance contained (Rev. 1877, p. 1045)."

"Section 15—Application of preceding section; collateral attack; review of proceedings.—That the provisions of the last preceding section shall apply to all deeds, declarations of sale and conveyances, duly acknowledged or proved, heretofore or hereafter made by or by authority of *any public or municipal authority*, authorized or empowered by any law of the state to make and execute or to direct or procure the making and execution of any deed, declaration of sale or conveyance; and the proceedings upon which *such* deeds, declarations of sale and conveyances are founded shall not be subject to be questioned collaterally, but may be at any time reviewed by certiorari or other proper proceeding in the supreme or circuit courts (Rev. 1877, p. 1045)."

By the language of Section 15, the provisions of Section 14 of the Sale of Land Act applies to all deeds affected by Section 15, but the contrary is not the case. Section 14 applies only to conveyances by a "*sheriff or other officer, or by auditors, in pursuance of a decree, judgment, execution or order of a court*", whereas the provisions of Section 15 relate only to "*deeds, declaration of sale and conveyances * * * made or by authority of any public or municipal authority*" and the prohibition therein contained against the collateral attack relates only to "*such deeds, declaration of sale and conveyances*" mentioned in the said paragraph and

not at all to the deeds of sheriffs or other officers acting under a decree, judgment or order of a court which are affected by Section 14.

If both Sections 14 and 15 applied to all deeds of all officers and authorities mentioned in both sections, there would have been no necessity for the Legislature enacting two Sections where one section would have done. As a matter of fact, the two sections deal not only with the instruments executed by entirely different classes of officials, section 14 applying to officials carrying out judicial processes and section 15 applying to officials carrying out administrative processes, but they deal with entirely two different subject matters.

Section 14 creates a new rule of evidence in certain cases while Section 15 adopting that new rule of evidence provided in Section 14 to other cases, provides a new rule of procedure as to such other cases without at all attempting to apply the same rule of procedure to the cases affected by Section 14.

Considering the great age of this statute, it is remarkable that this is the first case in which a court has been called upon to decide whether or not Section 15 is applicable to deeds of sheriffs or other officers executing judicial process which are mentioned in Section 14. I consider this an evidence of the opinion of the bar that Section 15 has no effect upon the instrument mentioned in Section 14. This opinion is justified by the decisions of this and lower courts which are hereinafter cited. These decisions could not have been rendered if it was conceived that Section 15 applies to the instruments mentioned in Section 14, that the sole remedy of one whose title is affected by a nugatory sheriff's

deed is by certiorari, that the recitals in a sheriff's deed are conclusive, that a sheriff's deed recites a judgment, that a sheriff's deed makes title and that one claiming thereunder does not have to prove the judgment and execution.

All of the cases cited by the learned Vice Chancellor in his opinion relate to deeds delivered under statutes for the sale of lands for unpaid taxes or assessments. These, of course, were "made by or by authority of * * * public or municipal authority". That Section 15 was enacted in order to protect the public revenues with reference to tax sales, has been decided many times by our courts. The following references will suffice.

In *Bozarth v. Egg Harbor City*, 89 Atl. Rep. 920, Justice Swayze, referring to Section 15, said:

"The object of this act was to do away with the inconvenience of trying out the validity of tax sales, collaterally in an action of ejectment, which might result adversely to the claim under the tax sale and in the loss to the municipality of taxes justly due. As a substitute for this collateral attack, the Legislature provided for a direct attack by certiorari."

In *Woodbridge v. Allen*, 43 N. J. L., 262, 266, Depue, J., in the Court of Errors and Appeals, said in speaking of Section 15:

"It was found, in practice, difficult to sustain tax titles, by reason of the technical rules by which such titles were tried; and if the title was set aside in ejectment, the result involved a loss to the public of the tax for which the property was sold. The legis-

lature, therefore, provided a remedy for illegalities and informalities in the proceedings on which the sale was founded, by certiorari, a proceeding on which the sale, if irregular or illegal, may be set aside, and proper steps be taken for the collection of the tax, if it was legally laid."

In *Kappes v. Rutherford Park Assn.*, 69 N. J. E., 129, 128, Pitney, V. C. in speaking of the Sales of Land Act with reference to sheriff's deeds mentioned Sections 13, 14 and 16 and made no reference to Section 15.

To hold that the prohibition of Section 15 against collateral attacks of proceedings upon which the instruments therein mentioned are founded and its requirement that such proceedings be reviewed by certiorari or other proper proceedings in the Supreme or other Circuit Courts, applies to the deeds or proceedings underlying such deeds which are mentioned in Section 14, is to decide that after a deed is delivered by a Sheriff, Special Master, Trustee or Receiver by virtue of a decree or order of the Court of Chancery in a foreclosure or partition suit or in a suit to wind up an insolvent corporation, a review of the proceedings can only be had by certiorari or some unknown "other proper proceeding in the supreme or circuit courts".

Such decision would oust the Court of Chancery of jurisdiction over its own proceedings and process. If such be the effect of Section 15, the said section is unconstitutional as the Legislature cannot interfere with the constitutional powers of the Court of Chancery or deprive a party to a proceeding therein of his right of appeal.

The learned Vice Chancellor's decision was based solely upon his opinion that a sheriff is a

public officer, that a public officer is a public authority and that therefore, Section 15 applies to a Sheriff's deed. The cases of *Doremus vs. Cameron*, 49, N. J. E. 1 and *Nicholas vs. Older*, 78 N. J. E. 101, cited in the opinion, are not authorities for such opinion for in those cases the court was dealing with the deeds of *municipal officers* which are admittedly subject to Section 15. Until now, no court has held that a *judicial officer* or one executing judicial process is a public authority within the meaning of Section 15.

In Section 15 the Legislature used the words "Municipal authority" and "public authority" synonymously and they are generally so used.

The Legislature as appears from the cases above cited, enacted Section 15 to protect the public revenues and it deals solely with the deeds of municipal officials. This is evidenced by the remedy recited, to wit, in the Circuit Court, which court is by various tax and assessment acts, named as the tribunal in which the proceedings for taxation or assessment shall be reviewed.

POINT II.

The Sheriff's deed to respondent did not recite a judgment against the land of appellant and is not evidential of such a judgment.

The assumption of McMahon that the so-called judgment general against Amoroso and special as against the lands of Diamond, is recited in the sheriff's deed is incorrect. A perusal of the deed (Exhibit C-1, 3-25-27, Case, pp. 188-195) demonstrates that the only things recited by the sheriff are the execution which is set forth in full,

his advertisement of sale, his adjournment of sale and his sale. There is no recital of the judgment by the sheriff contained in said deed, although of course, the County Clerk mentions a judgment in the writ of execution which is recited in the deed, but this mention in the execution by the County Clerk is not a recital by the sheriff, because the sheriff knows nothing about the judgment but acts under the writ of execution.

The only effect of Section 14 of the Sale of Lands Act is to make the recitals in a Sheriff's deed as to his own acts *prima facie* evidence of such acts. Not having custody of judicial records underlying an execution, he of course, cannot and does not recite them as he cannot certify to their validity or that they are not at variance with the execution.

There is no requirement in the law that the sheriff's deed shall recite the judgment. Section 8 of the Sale of Land Act, 4 C. S. 4675 provides:

“That the deed made by any sheriff or officer under and by virtue of any execution, shall recite the writ or writs of execution, by virtue whereof the said lands * * * were sold.”

The said section further provides that the deed shall be good and valid and received in evidence as such notwithstanding a variance between the recital in the deed and the execution and

“not withstanding any variance between the said execution or executions and the judgment or judgments upon which the said execution or executions were issued.”

In commenting upon this old statute, the Supreme Court in *Arrowsmith v. Sayre*, 16 N. J. L. 532, said on page 533:

“It cures a misrecital of the execution in the deed and a misrecital of the judgment is the execution. Now, *the judgment is never recited in the deed, except by way of reciting the execution.*”

and on page 534:

“It has never been required, that the sheriff’s deed reaching back of the execution, recite directly the judgment. *All the law requires is, that there should in point of fact, be a judgment existing as a ground work or authority for the sheriff to sell.*”

That the sheriff is not required to recite the judgment in his deed and that he does not do so, is further evidenced by Section 13 of the Sale of Land Act, 4 C. S. page 4678, affecting the same deeds affected by Section 14, which requires an affidavit upon the deed by the sheriff that the land and real estate described in the deed was by him sold “by virtue of a good and subsisting execution (or order) as is therein recited”. He does not have to swear to the existence of a judgment nor to the recital of the judgment. His sole warrant of authority is the execution which Section 8 requires him to recite in his deed and it is only as to the existence and recital of the execution to which he must take oath when executing his deed.

It is respectfully submitted that C-1 being the Sheriff’s deed to DeRiso, does not recite a judgment against either Amoroso or Diamond and the deed, therefore, is not under Section 14, *prima facie* evidence of the judgment, nor does

a careful reading of the execution itself disclose that a special judgment was entered against the particular lands described in the execution.

POINT III.

The Sheriff's deed does not make title and the respondent failed to prove his title because he did not prove a general judgment against Amoroso or a special judgment against the land of appellant.

Respondent bases his claim of title upon the sheriff's deed to James DeRiso and DeRiso's deed to him. He must prove his claim to the surplus money and he can only do that in the event that he has proven that Diamond's title was cut off by the sheriff's deed and part of his chain of evidence to support his title is the sheriff's deed, the execution and a valid judgment not at variance with the execution. The rule of evidence to prove title under a sheriff's deed is and always has been in this State that not only the deed but the writ of execution and the judgment must be proven. It is quite true that Section 14 of the Sale of Land Act, varies this rule ~~of~~ evidence to the extent only of making the recitals in the sheriff's deed *prima facie* evidence of the truth thereof, but only so far as the recitals of the sheriff are concerned and inasmuch as the sheriff has not recited a judgment as shown under Point II, there is no *prima facie* evidence in the sheriff's deed of the existence of a judgment. Consequently, it was necessary for McMahon to prove the existence of a valid judgment not at variance with the writ of execution and this he has wholly failed to do

either as to a judgment *in personam* against Mr. Amoroso or as to a special judgment against the land of Diamond.

Section 8 of the Sales of Land Act, 4 C. S. 4675, reads as follows:

“8. Deed or conveyance to purchaser; recitals; *record or exemplification of judgment or execution as evidence to support.*—That the deed made by any sheriff or officer under and by virtue of any execution shall recite the writ or writs of execution, by virtue whereof the said lands, tenements, hereditaments and real estate therein described, were sold as aforesaid; but the same, whether heretofore made or hereafter to be made, shall be good and valid, and received in evidence as such, notwithstanding any variance between the recital in said deed and the execution or executions by virtue of which the sale was made, and *notwithstanding any variance between the said execution or executions, and the judgment or judgments upon which the said execution or executions were issued; and further, that it shall be lawful for any court of this State, in which the record or exemplification of any judgment or execution shall be offered in evidence in support of any deed or conveyance made by a sheriff or other officer who may have sold any lands, tenements, hereditaments or real estate, by virtue of any writ or writs of execution issued as aforesaid, to consider the said judgment or or execution as amended in any particulars in which the same might, by the rules of law and practice, have been at any time amended by the court in which the said judgment was rendered, or out of which the said execution was issued; and the said judgment or execution shall have the same force and effect as if it was amended accordingly*” (Rev. 1877, p. 1043).

In this case the Court of Chancery could not and did not consider an amendment as the District Court itself could not have done so because there was no judgment in said Court, either against the builder or the lands of appellant. No suit had been instituted on the lien claim and the lien expired August 24, 1920, because a summons thereon had not been issued within four months from the date the last work was done.

While Section 8 was enacted to sustain titles where there were minor variances between an execution and an existing and valid judgment, it recognizes the rule of evidence before stated, that the judgment and execution must be proven in order to make title under a sheriff's deed. It is apparent that the learned Vice Chancellor erred in holding that respondent proved his title by offering the sheriff's deed. Section 14 could not have the effect of making the recitals in a sheriff's deed conclusive evidence of the facts recited in view of the language of said section, to wit, that they are only *prima facie* evidence, and the provisions of Sections 8 and 16 of the same act. Section 8 contemplates that evidence of a judgment and execution to support a sheriff's deed may be given in a court other than the one in which the judgment is entered. Certainly, if one who claims title under a sheriff's deed offers evidence, (as he must do to prove his title), of the existence of a valid judgment and execution, those whose claims of title are adverse to his may offer evidence of the invalidity of such execution and judgment, or that there is no judgment.

Even though the judgment were recited in the sheriff's deed, the effect of Section 14 of the Sale of Land Act is merely to create a presumption and this presumption is rebuttable and has been

conclusively rebutted (if it be assumed that the judgment is recited in the deed) by the evidence in this case, to which the attention of the court will be later directed.

In speaking of the statutes which later became Sections 14 and 15 of the Sale of Land Act, Chancellor Zabriskie in *Campbell v. Dewick*, 20 N. J. E. 186-190, said:

“*They do not at all affect the title itself, but only change the rule of evidence as to the manner of proving the facts required to make a valid sale.*”

and the substantive rule of law is well stated by Chief Justice Ewing in *Den v. Despreaux*, 12 N. J. L. 182, who said on page 183:

“*The rule that in deducing the title under a sheriff's sale, the judgment and execution are to be shown, as well as the deed from the sheriff to the purchaser, has been repeatedly decided, and, as it is believed, uniformly maintained and pursued, in our courts. The sheriff having no title in himself, and acquiring none by the execution, is the instrument of the law for the transfer of the title. The transfer is made by the deed; but the authority of the sheriff to effect it comes from the judgment and execution. Hence, it follows that these should be produced. The same rule prevails elsewhere. Jackson v. Hasbrouck, 12 John, 213. Lessee of Laning v. London, 4 Wash. 513. Lessee of Wilson v. McVeagh, 2 Yeates 86.*

By the 12th section of the act making lands liable to be sold for the payment of debts, it is enacted, that the deed to be made by the sheriff shall recite the writ or writs of execution, by virtue whereof the lands therein described, were sold. In the present case, the deed recites an execution on a judgment for seven hundred and eighty-

four dollars and sixty-eight cents of costs. Under that judgment the sheriff professes to have derived his authority to sell and to have sold. *But the judgment produced, is a different one; different in sum; and hence if the difference, being small in amount, is notwithstanding available, the plaintiff has failed to show the authority of the sheriff to sell, because he has not shown that authority under which the sheriff has declared, as required by law to do, that he did sell.* In *Den v. Wright*, Peters 66, in the Circuit Court of the United States for this district, the defendant, to prove his title, offered in evidence a deed from the sheriff to Mark Thompson, reciting a judgment and execution against Stacy Potts, for a certain sum. The deed was objected to because the judgment and execution produced were for a very different sum from that mentioned in the deed. *The court decided that the deed could not be given in evidence without producing the judgment and execution under which the sale was made; these documents being necessary to show that the sheriff had authority to sell. If so, a judgment and execution differing entirely from that recited in the deed, is the same thing as if no judgment was produced.* In *Mitchell v. Kirtland*, 7 Conn. Rep. 229, it was held that the acquisition of title by execution, being a proceeding *in invitum*, the requisites of which are prescribed by positive law in derogation of the common law, *a strict compliance with these requisites is indispensable to the transfer of title.*"

In an ejectment action where the plaintiff claimed title under a sheriff's deed, Justice Lippincott, in *Meyers v. Conover*, 65 N. J. L. 187, on page 189 said:

"The defendants have remained in possession of the premises, and the plaintiff can only recover against them upon the

strength and validity of his own title, but the defendants can defend their possession by attacking the validity and legality of the sale and conveyance to the plaintiff.

The recitals in the sheriff's deed of conveyance, duly acknowledged and proved, are prima facie evidence of the truth thereof, but in an action of ejectment based upon such a deed of conveyance, the truth of such recitals can be attacked by the defendants in possession, and it is not conceived that the defendants in possession are in any laches, even when they rest quietly and take no steps to avoid such sale and conveyance, even if they have knowledge of its existence."

This court in *Blatchford v. Conover*, 40 N. J. E., 205, through Depue, J., said on page 216:

"A sheriff selling lands has only a naked power to sell, given by the statute. *Todd v. Philhower*, 4 Zab. 796. The foundation of his power of sale is the judgment. The execution under which he acts is simply the process of the court authorizing its officer to carry the judgment into effect. 1 *Bouv. Law Dict.*, 495, tit. "Execution". In making title to lands under a sheriff's sale, the judgment, as well as the execution, must be shown in evidence. *Swan v. Despraux*, 7 Hal. 182. The statute has not dispensed with proof of either as a requisite to title under a sheriff's deed; it has only made the recitals in the deed prima facie evidence of the judgment and execution. Rev. 1045, par. 13. And the execution must be supported by the judgment produced."

The defendant Diamond, is not in this court, seeking to collaterally attack the judgment of the District Court of the First Judicial District of the County of Hudson, but if he were so doing, there is ample authority in the cases jus-

tifying such attack. It has been reiterated many times that a void judgment may be attacked collaterally but *here, there is no judgment*. The following cases hold that a void judgment is subject to a collateral attack:

Elmendorf v. Elmendorf, 58 N. J. E. 113;
Bray v. Neill, 21 N. J. E. 343;
Consolidated Electric Storage Co. v. Atlantic Trust Co., 50 N. J. E. 93;
Munday v. Vail, 34 N. J. L. 418;
Reynolds v. Stockton, 43 N. J. E. 211;
In re Braune's Estate, 103 Atl. Rep. 412;
Crawford v. Lees, 84 N. J. E. 324;
In re Struble's Estate, 87 N. J. E. 311.

The sheriff's deed does not by its recitals, make a title for the purchaser and the Sale of Land Act merely changes the rule of evidence as has been above pointed out.

Henderson v. Hayes, 41 N. J. L. 387;
Campbell v. Dewick, 20 N. J. E. 186;
Meyers v. Conover, 65 N. J. L. 187.

It is respectfully submitted that whereas Diamond could attack the proceedings collaterally, inasmuch as the judgment was void, this he has not done nor is he required so to do in this case. McMahon on the other hand, in order to support his title under the law, was obligated to prove his writ and his judgment and this he has failed to do. Such being the case, he has failed to prove his own title and his claim to the surplus money must fail.

POINT IV.

There is no judgment and the attempt to divest Diamond of his title without his knowledge through alleged judicial proceedings constituted gross fraud.

It is contended by McMahon that Diamond submitted to the jurisdiction of the court by virtue of the stipulations (D-4, 3-25-27, Case, p. 101). The first stipulation, dated September 1st, extended the time of the plaintiff to issue summons to November 1st, 1920, the plaintiff agreeing not to take any steps or proceedings to enforce his lien claim before November 1st. On August 24, 1920, the lien had died because summons had not been issued within the statutory period and after that date Diamond could not by stipulation, revive it and no special judgment could have been entered even if summons had later been issued. The second stipulation is dated November 1st, and is merely to the effect that the time to issue summons and begin suit on the lien claim of DeRiso Brothers was extended to November 15th, 1920, the plaintiff agreeing not to take any step or proceedings to enforce the lien before November 15th. Exhibit D-4, 3-25-27 (Case, p. 101), being a photograph of the summons, shows that it was never signed by the Clerk.

The testimony shows that the clerk was not present on August 23rd, 1920, nor was there a deputy clerk nor an acting clerk at that time (Case, p. 30, ll. 1-28, p. 69, ll. 10-45, p. 70, ll. 1-10) and that no summons in the case was ever issued (Case, p. 73, ll. 1-23) either before or after the signing of the stipulation.

Certainly, when Diamond executed the stipulation to the effect that the time for issuing the summons and commencing suit was postponed first to November 1st and then to November 15th, it was contemplated that suit would be instituted in the regular fashion thru the issuance of a regular summons and complaint to be properly served and thus enable Diamond to file his answer within twenty days after the service of the summons, as is permitted by law, but instead of on or before November 15th, issuing summons and commencing suit so that Diamond might be served and able to enter a defense, on December 27th, in the law office of the judge and not in the court, he pretended to give judgment to the plaintiff, although not even attempting to give special judgment against the land of Diamond. Such a judgment, rendered in the office of the judge without all parties having an opportunity to be present, is void. *Clark v. Reed*, 5. N. J. L. 571, 574. There never was a judgment as appears from Exhibit D-1, 3-25-27, Case, p. 98 and Exhibit D-2, 3-25-27, Case, p. 99, being photographs of the docket. The Clerk was on duty on December 27th, but he was not present at the entering of the judgment and it was never written up (Case pp. 66, 67).

No summons can issue out of the District Court without the signature of the clerk himself in the event that there is not a deputy or an assistant clerk (see section 55 of the District Court Act and 2 C. S., p. 1970) and so much stress was laid by the legislature upon the signing of processes by the clerk himself, that a penalty for signing processes in blank is provided in Section 54 of the District Court, 2 C. S., p. 1969. Of course, if a summons had been issued and served

and a judgment had been entered, it would have been entered in the docket, which the clerk is required to keep by Section 25 of the District Court Act, 2 C. S., p. 1961. It was also testified that there was no return of service upon either Amoroso or Diamond as required by Section 45 of the District Court Act, 2 C. S., p. 1966 (Case, p. 68).

Even though as late as November 1st, 1920, the plaintiff entered into a stipulation with Diamond, postponing the time for the issuance of summons and the commencement of suit the plaintiff on August 23rd, 1920, filed in the office of the Clerk of Hudson County, a certificate that suit on the lien claim had been commenced on that date in the District Court of the First Judicial District of the County of Hudson and that summons had been issued on that date, requiring the defendants to answer within twenty days after service upon them. This certificate was signed by Oscar B. Spencer "Acting Clerk" and was issued in face of the fact that no summons had been issued on that date and could not have been issued on that date because of the absence of the clerk. Section 20 of the District Court Act, 2 C. S., p. 1959, permits the judge in the illness, absence or disability of the clerk

"to designate and appoint in writing some fit person to sign the name of the clerk and to issue any writ or other instrument out of said court, during the illness, absence or disability of the clerk."

The testimony (Case, pp. 30, 36, 69, 70) shows that Spencer was an elected constable, who some times served processes of the District Court, that he made the District Court his headquarters and

that prior to 1923, he had never been designated in writing by the judge as acting clerk, and that on August 23rd, 1920, when he signed the said certificate included in Exhibit D-8, 3-25-27 (Case, pp. 127-128), that he merely assumed to be acting clerk and of course, the certificate so signed by him was void. *Meyer v. Bishop*, 27 N. J. E. 141. Even though he had been designated as acting clerk, he would have had no right to sign a certificate as such, but would only have had the right, under the court order to sign the name of the clerk and even this he did not attempt.

Having lulled Diamond into a belief that the lien claim had been abandoned because summons was never issued or served, after November 15th, the date fixed in the second stipulation, without any notice to him whatsoever, they go before the judge in his law office, without issuance of a summons, without a return of summons upon either the alleged builder or the land owner and claim that a money judgment was rendered, not, according to the judge's memorandum against Amoroso the builder, but against Diamond (Case, p. 70). *The memorandum does not profess to give judgment generally against Amoroso or specially against the land of Diamond.* No claim is made that a special judgment against appellant's land was given even in this informal, irregular and illegal way, and even though there is no entry in the docket of the clerk of the issuance or return of process or service upon either defendant or of a trial or entry of judgment, and relying upon the certificate of the acting clerk (sic) filed on August 23rd, McMahan now claims that suit was instituted and the commencement thereof evidenced by the aforesaid certificate filed as within time and that Diamond's rights are cut

off by a sale upon such docketed judgment. Was there ever a greater attempt to use the judicial process of a court to deprive a man of his property? A similar abuse is evidenced by the record of the certiorari suit introduced in evidence, which shows a rule to dismiss the writ, notice of a motion for which, counsel for Diamond never received and which according to the record of the Supreme Court, was illegally served, the notice according to the affidavit having been served at 4:40 in the afternoon. Of course, if this defective alleged service had been called to the attention of the Supreme Court, it would not have dismissed the writ.

Diamond knew nothing of the institution of a suit until after the sale to McMahan's dummy DeRiso, who paid nothing for the property and merely acted for McMahan, who paid the purchase price of six hundred twenty-five dollars. Certiorari proceedings were then promptly instituted but John McMahan's wife took an assignment of the mortgage on the premises and immediately foreclosed. The property was sold and purchased by McMahan, all interest of the parties, including Diamond, being wiped out in the foreclosure, their interest attaching to the surplus money of approximately \$12,000. Necessarily, the very questions raised in the certiorari suit had to be decided by the Court of Chancery in the surplus money proceedings and the delay in the certiorari case was caused by withholding action with the knowledge of the Supreme Court, until the question could be determined by the Court of Chancery as to whether or not the points in the certiorari case could be decided in the Court of Chancery, it being contended on a motion to dismiss the writ of certiorari by the

then attorneys for McMahon, that the writ should be dismissed because the very points could be decided by the Court of Chancery because it was not an attempt to collaterally impeach the judgment of a court, because if the facts were as alleged by Diamond, there was no judgment at all. As before stated, the dismissal of the writ was without the knowledge of Diamond's counsel until he was informed of the fact by counsel for McMahon at a hearing in the surplus money proceedings.

The Court of Chancery always has jurisdiction over fraud and will set aside a deed for fraud, even a tax deed affected by Section 15 of the Sales of Land Act.

The right of the Court of Chancery in a partition suit to hold a tax deed void because of fraud, was decided by Backes, V. C. in *Nugent v. Hayes*, 120 Atl. Rep. 38, while at the same time, recognizing the exclusive jurisdiction of the Supreme Court under Section 15 of the Sales of Land Act, to set aside the proceedings on certiorari, the court said:

“On the second ground—that the tax title deed under which Lindsley claims ownership was procured by fraud—there can be no question that equity can and will relieve, if it appears that the order of the circuit court to the comptroller to execute the tax deed to the purchaser was obtained by fraudulent representations that the ‘unknown owners’ were unknown to the purchaser, and in consequence, that the owners were without notice of the foreclosure proceedings. It is the peculiar province of equity to relieve against fraud regardless of correctness of legal formality.” (Citing cases.)

See also the same case 125 Atl. Rep. 576, setting aside the tax deed.

And again in *Welles v. Schaffer*, 129 Atl. Rep. 622, the same Vice Chancellor held that certiorari was the appropriate remedy where the tax proceedings were *voidable* but that ejection or equitable action was proper where the proceedings were *void*, and Vice Chancellor Lane, in *Cahill v. Harrison*, 100 Atl. Rep. 625, held:

“The rule seems to be that where under a statute providing for tax sales, etc., a deed delivered will be presumptive evidence of title, equity may intervene to either prevent the sale, or if the deed be delivered, to cancel it. Under the statute (section 8) a deed is made ‘presumptive evidence of title in the grantee therein named in all courts and places and in any proceedings or actions’.”

And he also said:

“if this court has jurisdiction it will settle all questions, legal and equitable.”

Certainly in the case at bar, the court *has* jurisdiction of both parties and subject matter. This is a proceeding *in rem* and the Court of Chancery must decide all questions of title in order to dispose of the *res*. That no statutory provision will be permitted to take away constitutional rights of a property owner, is evidenced by the rule that the statutory limitation on the issuance of a writ of certiorari has no application where the tax or assessment proceedings are in violation of constitutional rights and therefore void.

Mitsch v. Township of Riverside, 86 N. J. L. 603, 610;

Walsh v. Newark, 68 N. J. L. 168.

See also the leading case of *Bogert v. Elizabeth*, 27 N. J. E. 568, where Chief Justice Beasley, speaking for this Court, said:

“Whatever doubts formerly existed, there can be none at the present time, that in cases where an instrument exists which, though really void, has an ostensible validity, and which throws a doubt over the title to real estate, a court of equity will interfere, and relieve against the injustice of such an illusion. The duty of the Court to intervene on such an occasion, was derived from the fact that if an instrument could neither be used nor enforced, and was detrimental to the title of another, it was against conscience for the party holding it to retain it, since he could have none but an unworthy object for so long.”

And on page 572

“Nor is this a case to which the doctrine that a party will lose his remedy by his own laches, is to be applied. Where the proceeding complained of is so entirely ultra vires that it could not in any way have been made available, delay in seeking relief is not objectionable. The reason is, it then produces hardship and inflicts no loss. *The complainant was not bound to remove these proceedings by certiorari; they were absolutely void, from beginning to end, and he had a right so to treat them; they could not grow, by lapse of time, into a right. The city can gain nothing by retaining the shadow of a right under this sale; if retained for a century, it would be nothing but a shadow still. It is, therefore, a gratuitous injury to the complainant. He is, in my opinion, entitled to relief at the hands of the Court.*”

This doctrine was approved by the same Court in *Jersey City v. Lembeck*, 31 N. J. E. 255;

Newark v. Schub, 34 N. J. E., 262 and *Adams v. South Orange*, 80 N. J. E. 543.

For the reasons and on the cases herein set forth the order of the Court of Chancery should be reversed and it be decreed that Herman M. Diamond was the owner in fee simple of the mortgaged premises at the time of the foreclosure sale and therefore, entitled to the surplus moneys.

Respectfully submitted,

JOHN WARREN,
Solicitor for and of Counsel
with Herman M. Diamond,
Defendant-Appellant.

