

INDEX

	PAGE
Amended Notice of Appeal	5
Petition of Appeal	6
Answer to Petition of Appeal	8
Petition	9
Affidavit	15
Affidavit	19
Affidavits	20
Order to Show Cause	23
Opinion	25
Order Discharging Rule to Show Cause	28

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IN CHANCERY OF NEW JERSEY
 AMENDED NOTICE OF APPEAL

Filed November 18, 1926

Between

ADAM MASONIS

Complainant

and

JENNIE ROMEL, et al.,

Defendants

On Bill etc.

The defendants hereby appeal from the order made by the Chancellor, on the advice of Vice Chancellor Church, dated November 9, 1926, and from the whole and every part thereof to the Court of Errors and Appeals, in the last resort in all causes.

Dated, November 18, 1926.

WILLIAM R. WILSON

Solicitor of Defendants and

of Counsel

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

WILLIAM R. WILSON

Of Counsel with Defendants.

NEW JERSEY COURT OF ERRORS
AND APPEALS

PETITION OF APPEAL

Filed December 8, 1926

Between

ADAM MASONIS
Complainant-Respondent.

and

JENNIE ROMEL, et al.,
Defendant-Appellant.

On Bill etc.

To the Honorable, the Court of Errors and Appeals in the last resort in all causes.

The petition of Jennie Romel and Adolf Romel the appellants in the above stated cause, respectfully shows, that your petitioner finds ^{himself} ~~himself~~ aggrieved by an order made in the Court of Chancery by his Honor Edwin Robert Walker, Chancellor of the State of New Jersey, on the advice of Vice Chancellor Church, bearing date the Ninth day of November, A.D. 1926, wherein the said Adam Masionis was complainant and the said Jennie Romel and Adolf Romel were defendants, in this respect, to wit, that the said order adjudges that the order to show cause granted October 6, 1926 be dismissed with costs, including a counsel fee or one hundred and fifty dollars be taxed against the defendants.

And your petitioners humbly appeal from that part of the order, which orders as aforesaid, upon the ground that the same is erroneous, for that

the said order to show cause granted October 6, 1926 should not have been dismissed with costs, nor should a counsel fee of one hundred and fifty dollars have been allowed to be taxed against the defendants.

Your petitioners therefore pray that the said order of the said Chancellor so as aforesaid advised by Vice Chancellor Church may be, in the particulars aforesaid, reversed, set aside and for nothing holden. And that your petitioner may have such relief in the premises as to his honorable Court shall seem meet.

WILLIAM R. WILSON,

Solicitor of Appellants of Counsel
with Appellant.

ANSWER TO PETITION OF APPEAL

Filed December 9, 1926

The answer of Adam Masionis, the above named appellee, to the petition of appeal of Jennie Romel and Adolf Romel, her husband, the above named appellants.

This appellee, not admitting the truth of all or any of the matters in the said petition of appeal contained, for answer thereto nevertheless admits that an order was, on the Ninth day of November, 1926 respectfully advised by Vice Chancellor Alonzo Church, made and entered in the Court of Chancery, in the above entitled cause, by his Honor Edwin Robert Walker, Chancellor of the State of New Jersey, for the purposes in said petition mentioned and as therein set forth; but as to the substance and form of said order, this appellee begs leave to refer thereto when the same shall be produced.

This appellee is advised and believes that the said order is agreeable to equity; and he prays that the same may be affirmed with costs to be taxed in favor of this appellee.

RICHARD H. CASHION,

Of Counsel with Appellee and

GEORGE MATULEWICH,

Solicitor of Appellee

IN CHANCERY OF NEW JERSEY

PETITION

Filed September 27, 1926

Between

ADAM MASONIS

Complainant

and

JENNIE ROMEL, et al.,

*Defendants**On Bill etc.*

To his Honor Edwin Robert Walker, Chancellor of the State of New Jersey.

The petition of Jennie Romel and Adolf Romel her husband of Elizabeth, New Jersey, respectfully shows:

1. That on March 1, 1924, they made and executed a bond to one Anton Czuzas of Elizabeth, New Jersey, to secure the payment of \$2,000. payable on March 1, 1925, and to draw interest from January 1, 1924, and at the same time executed a mortgage on the premises set out in the bill of complaint securing the payment of the said bond, and the payment of which mortgage was afterwards extended to January 1, 1926.

2. That later on, and in June 1925, the said Anton Czuzas demanded from your petitioners that five hundred dollars be paid on account of the principal of the said mortgage, and these petitioners informed Czuzas that they would endeavor to get it. They got the money and later informed

Czuzas that they had the money, and he told them to bring it to his saloon, 216 First Street, in Elizabeth, with the interest sixty dollars that would be due on July 1st following, and he would give a receipt for the same. Your petitioner, Jennie Romel, went to the saloon of Czuzas on the evening of June 27, 1925 and paid over to him five hundred and sixty dollars in cash, at the bar where he was standing. He counted the money and gave her a receipt for the money so paid, which receipt he had prepared in anticipation of the receipt of the money, and of which the following is a copy:—

“Elizabeth, N. J., June 27th, 1925.

Received of Mrs. Romel \$500 on bond and mortgage I hold on her house, 128 Bond St., Elizabeth, N. J., and \$60 interest Jan. to July 1, 1925. Mortgage is hereby extended until January 1, 1926.

Anton Czuzas.”

3. That at the time she paid the money there were several men standing around the bar drinking as she supposed, whom at that time she didn't recognize. That when she got her receipt she went home and heard nothing more about the mortgage until the foreclosure proceedings were commenced, when she went to Czuzas to inquire about the suit and why a party named Mansionis was foreclosing. He said he had nothing to do with the mortgage.

4. That a bill was filed in the above cause on February 13, 1926, by the complainant for the foreclosure of the mortgage so as aforesaid made to Anton Czuzas on the premises of your petitioners and above set forth alleging that the sum of \$2,000. was due and owing on the same together with interest on the same from July 1, 1925.

5. That the complainant recited in his bill that

he was assignee of the said mortgage so as aforesaid made by your petitioners to Czuzas, but without setting out the execution of a written assignment to him, and nowhere in the said bill is an assignment of the said bond and mortgage to said Complainant set out in detail, although there is recorded an assignment of a mortgage in the Union County Register's Office from Anton Czuzas to the complainant dated October 29, 1925, setting out the consideration of the assignment of said mortgage to be the sum of \$2,000.

6. That when your petitioners were informed of the foreclosure proceedings, the case was placed in the hands of Theodore J. Harrington, their solicitor, they informing him of the case, and instructed him to act for them. They were informed by him later on that an answer had been filed, in their behalf setting forth the fact of the payment of five hundred and sixty dollars to said Anton Czuzas to whom the mortgage had been given.

7. That later on your petitioners were informed that the master to whom the matter had been referred had reported on the same in July, 1926 and had refused to allow your petitioners the five hundred dollars so paid on account of the principal, because there wasn't proof enough of the payment, although they had a receipt from Czuzas signed by him.

8. That after filing of the master report a final decree was entered in the cause; and on August 17, 1926 a writ of fieri facias was issued to the Sheriff of Union County directing a sale of the property.

9. That when petitioners were informed that the fieri facias had been issued and they were likely to lose their property, they were very much worried and didn't know what to do, and they talked about the case in the neighborhood, where they

lived, and it became noised about that the Romels were going to lose their house, because the five hundred dollars your petitioner Jennie Romel had paid on account of the principal of the mortgage had not been credited on the mortgage, and her property was going to be sold.

10. That when these facts came to the ears of one Charles Wolinski, a friend of her husband, he became interested and first informed her husband that he remembered that the petitioner Jennie Romel came to the saloon of the said Anton Czuzas at 216 First Street in Elizabeth, one evening late in June, 1926, when he and Stephen Paszkiewicz and Karol Pecuin were standing drinking before the bar of said Czuzas, while Czuzas was serving drinks, and that your petitioner Jennie Romel came into the saloon entering from the rear side door of the same. That he saw said petitioner, Jennie Romel, hand Anton Czuzas a handful of money, some twenty dollar bills, some ten dollars and some other bills and heard her ask said Czuzas for a receipt of the same. That said Czuzas took the said money and counted it on the bar, and thanked her for the same and handed her a receipt for the same, which seemed to have been already prepared. That at the time there were about ten persons around the bar. That your petitioner was informed of the above on the 23d day of August last.

11. That the above evidence was not known to your petitioners until the said 23d day of August, and they were therefore prevented from presenting the above evidence before the master, because the same was not discovered until after the report of the master, and until a writ of fieri facias had been issued.

12. That sometime after the payment of the five hundred dollars on account of the principal as

above set forth, your petitioners desiring to pay the balance due on the said mortgage went to the said Czuzas with the fifteen hundred dollars to pay the same. He refused to accept the same saying that \$2000 must be paid, which petitioners refused to pay as only \$1500 was due on the principal and which said Czuzas knew to be so, as already five hundred dollars had been paid. Czuzas refused to receive the fifteen hundred dollars.

13. That your petitioners never knew that the complainant Masionis was the owner of the mortgage above until the foreclosure proceedings were started, and no demand was made on them by said Masionis to pay said mortgage.

14. That your petitioners are informed and believe it to be true, that at the time of the assignment of the mortgage to said Masionis, that only sixteen hundred dollars was paid for the same, and that later on when the said complainant was informed that five hundred dollars was alleged to have been paid to said Czuzas on account of said mortgage, the complainant demanded of said Czuzas one hundred dollars to make up the five hundred dollars alleged to have been paid, as he had got a discount of four hundred dollars on the mortgage.

15. That your petitioners were not aware that Charles Wolinski knew anything about the payment having been paid until so informed by him and that your petitioner Jennie Romel informed her solicitor, Mr. Theodore J. Harrington, and wasn't aware that Paskiewicz and Pecuin knew anything about the matter.

16. That your petitioners have been making diligent inquiries as to the whereabouts of the above Paskiewicz and Pecuin and are informed that they are at present out of the State, but believe that later on their testimony can be secured.

Your petitioners therefore pray that the said final decree may be reopened and that the said petitioners may be permitted to interpose their defence with regard to the payment made of five hundred dollars on account of the principal of said mortgage and that the said Sheriff of Union County may be restrained from further proceeding under the fieri facias now in his hands. And that your petitioners may have such further and other relief in the premises as shall be agreeable to equity and good conscience.

And your petitioners will ever pray, etc.

WILLIAM WILSON,

Solicitor of Counsel with Petrs.

NEW JERSEY
UNION COUNTY ss.

Adolf Romel of full age being duly sworn, deposes and says, that he is one of the petitioners above named. That the facts, matters and things above set forth so far as they relate to his own acts are true, and so far as they relate to the acts of others he believes them to be true.

ADOLF ROMEL

Sworn and Subscribed
before me September
27th A.D. 1926.

GEORGE W. HARRINGTON,
Attorney at Law of N. J.

AFFIDAVIT

NEW JERSEY

UNION COUNTY ss

Jennie Romel of full age being duly sworn deposes and says, that the facts, matters and things so as above set forth so far as they relate to her own acts are true and so far as they relate to the acts of others she believes them to be true.

1. Deponent further says that on March 1, 1924 she together with her husband, Adolph Romel, made and executed a bond to one Anton Czuzas to secure the payment of \$2000.00 payable March 1, 1925, and to draw interest from January 1, 1924, and at the same time executed a mortgage on the premises set out in the bill of complaint securing the payment of the said bond, and the payment of which mortgage was afterwards extended to January 1, 1926.

2. That later on and in June, 1925 the said Anton Czuzas demanded from deponent and her husband that five hundred dollars be paid on account of the principal of the mortgage, and this deponent said that she and her husband would endeavor to get it, and later informed Czuzas that they had the money and he told deponent to bring it to his saloon, 216 First Street in Elizabeth, with the interest sixty dollars that would be due on July first following, and he would give her a receipt for the same. She went to his saloon on the evening of June 27, 1925 and paid over to him in cash \$560 at one end of the bar where he was standing. He counted it and gave her a receipt which he had already prepared for the said money of which the following is a copy:

"Elizabeth, N. J., June 27th, 1925.

Received of Mrs. Romel \$500 on account of bond and mortgage, I hold on her house, 128 Bond St.,

Elizabeth, N. J., and \$60 interest Jan. to July 1, 1925. Mortgage is hereby extended until January 1, 1926.

Anton Czuzas."

3. That at the time she paid the money there were several men standing around the bar, drinking as she supposed, whom at that time she didn't recognize. That when she got her receipt she went home and heard nothing more about the mortgage until the foreclosure proceedings were commenced, when she went to Czuzas to inquire about the suit and why a party named Mansionis was foreclosing. He said he had nothing to do with the mortgage.

She then placed the matter in the hands of her solicitor, Mr. Theodore J. Harrington to find out about the matter and stated the case to him, and instructed him to act for her, and was informed later by him that an answer had been filed setting forth the fact of the payment of the five hundred and sixty dollars.

4. That later on she was informed, that the master to whom the matter had been referred had reported on the same in July, 1926 and had refused to allow her the five hundred dollars so paid by her on account of principal because she didn't have proof enough of the payment, although she had a receipt in Czuzas handwriting and on August 17, 1926 a writ of fieri facias was issued directing the sale of the property.

5. That when informed that she was likely to lose the five hundred dollars so paid by her, she and her husband were very much worried, and didn't know what to do, and they talked about the case in the neighborhood where they lived and it became noised about that the Romels were going to lose their house because she had paid five hundred dol-

lars on the principal and was given no credit for it and that her property was going to be sold.

6. These facts coming to the ears of one Charles Wolinski a friend of her husband, he came and told her that he remembered deponent coming to the saloon of Czuzas, at 216 First Street, one evening late in June 1926, when he and Stephen Paskiewicz and Karol Pecuin were standing drinking before the bar of said Czuzas, while Czuzas was serving drinks, and that she came into the saloon entering from the rear side door of the same. That he saw her hand Anton Czuzas a handful of money, some twenty dollar bills, some ten dollar bills and some other bills and asked said Czuzas for a receipt of the same. That said Czuzas took the said money and counted it on the bar and thanked her for the same and handed her a receipt for the same which seemed to have been already prepared. That at the time there were about ten persons around the bar. That deponent was informed of the above on the 23d day of August last.

7. That deponent further says, that she was prevented from presenting the above evidence on which defense could be made because the same was not discovered until after the report of the master and until a fieri facias had been issued.

8. That sometime after the payment of the five hundred dollars on account of principal as above set forth, deponent desiring to pay the balance due on the mortgage went to the said Czuzas with the fifteen hundred dollars balance due to pay the same. He refused to accept the same, saying that she must pay \$2,000.00 which deponent said was not the amount due, as he knew she had already paid five hundred dollars; but he refused to accept the same.

9. That on February 13, 1926 a bill to foreclose was filed in the cause and she instructed her solici-

tor to file an answer setting out the fact that the sum of five hundred dollars had been paid on account of the principal of said mortgage.

10. That the bill was filed by one Adam Masionis claiming to be the assignee of said Anton Czuzas, to foreclose the mortgage so as aforesaid made by deponent, to said Czuzas. That deponent never knew that Masionis was the owner of the mortgage above until the foreclosure proceedings were started, and no demand had been made by said Masionis to pay said mortgage.

11. That deponent is informed and believes it to be true that at the time of the assignment of the mortgage that only sixteen hundred dollars was paid for the same, and that later on when the complainant was informed that the claim was made that five hundred dollars had been paid on account of the said mortgage to said Czuzas, the complainant demanded of said Czuzas one hundred dollars to make up the five hundred dollars.

12. That deponent wasn't aware that Charles Wolinski knew anything about the payment until so informed by him and that she then informed her solicitor, and wasn't aware that Paskewicz and Pecuin knew anything about the matter.

13. That she has been making inquiries about the whereabouts of the above Paskewicz and Pecuin and is informed that they are at present out of the State but believes that later on she can secure their testimony.

JENNIE ROMEL

Sworn and subscribed
before me September 27
A.D. 1926.

GEORGE W. HARRINGTON,
Attorney at Law of N. J.

AFFIDAVIT

NEW JERSEY

UNION COUNTY

ss

Charles Wolinski of full age being duly sworn on his oath, deposes and say, that he lives in the City of Elizabeth, Union County, New Jersey. That he heard it talked of that the Romels were likely to lose their property from the fact that Mrs. Romel had paid five hundred and sixty dollars to Czuzas on account of a mortgage he held against their property and that she had paid it one night to said Czuzas in his saloon, 216 First Street. As soon as I heard it I saw the Romels about it, and said I remembered the fact of money being paid and that Stephen Paskewicz and Karol Pecuin were drinking with me at the bar, behind which was Czuzas and there were others about.

I remember being at the saloon of Czuzas, 216 First Street, Elizabeth, in this State, drinking with Paskewicz and Pecuin sometime in the evening late in June 1926. I saw Mrs. Jennie Romel come into said salon entering from the rear side door of the same, and hand to Anton Czuzas money, which was placed on the bar, in twenty dollar bills, some ten dollar bills and other bills which Czuzas counted and for which Mrs. Romel asked a receipt. Czuzas handed her a paper and thanked her for the same. She then left. There were other people standing around the bar. I understood the money paid was for some mortgage.

CHARLES WOLINSKI

Sworn and subscribed
before me September,
27, 1926.

GEORGE W. HARRINGTON,
Attorney at Law of N. J.

AFFIDAVITS

Filed October 18, 1926

IN CHANCERY OF NEW JERSEY

Between

ADAM MASONIS

Complainant

and

JENNIE ROMEL, and
ADOLF ROMEL, her husband*Defendants**On Bill to Foreclosure, etc. Notice, etc.*

To:

GEORGE MATULEWICH, Esquire,

Solicitor of Complainant, Newark, New Jersey.

Take notice that the attached affidavit or affidavits will be used on the application to be heard before Honorable Alonzo Church, at the Chancery Chambers, Industrial Office Building, Broad Street, Newark, New Jersey, on Tuesday, October 19th, 1926, at the hours of ten o'clock in the forenoon, at which time application will be made to re-open the above entitled cause.

WILLIAM R. WILSON,

Solicitor of Defendants.

Dated October 14th, 1926.

AFFIDAVITS.

STATE OF NEW JERSEY
 COUNTY OF UNION ss.

John Graibus, of full age being duly sworn on his oath, deposes and says that he resides in the City of Elizabeth, County of Union, and State of New Jersey; that he is personally acquainted and knows Anton Czuzas, the assignor of the mortgage of the subject of the above suit; that this deponent was employed by said Anton Czuzas as a handyman and bartender from July, 1924 until August, 1925; that sometime during the month of August, 1925, this deponent called on said Czuzas at his home at No. 115 Bond Street, Elizabeth, New Jersey, and said Czuzas at the time offered to this deponent a bond and mortgage he held on the premises known as No. 128 Bond Street, Elizabeth, New Jersey, signed by Jennie Romel, and, Adolf Romel, her husband, which said mortgage was made out in the sum of Two Thousand Dollars, all of which was offered to this deponent for the sum of Fifteen Hundred Dollars, One Thousand Dollars of which, said Czuzas desired in cash, and the balance of Five Hundred Dollars was to be paid by this deponent when he had obtained payment from Mr. and Mrs. Romel on account thereof. This deponent at the time told said Czuzas that he did not have any money to purchase same and asked said Czuzas why he was wasting Five Hundred Dollars by selling this deponent the mortgage for Fifteen Hundred Dollars; said Czuzas replied that he was getting old, as his reason for selling under the face value.

J. G. GRAIBUS

Sworn and subscribed to
 before me this 14th day
 of October, 1926.
 GEORGE W. HARRINGTON,
Attorney at Law of N. J.

NEW JERSEY
UNION COUNTY ss.

Karol Peciunas being duly sworn on his oath deposes and says that he lives in the City of Elizabeth, County of Union and State of New Jersey, and knows Mr. Anton Czuzas and Mrs. Jennie Romel and her husband Adolf Romel. That this deponent was present in the saloon owned by Anton Czuzas at 216 First Street, Elizabeth, N. J., sometime in the latter part of June, 1925 drinking with Mr. Charles Wolinski and Mr. Stephen Paskewicz at the bar of said saloon. That when this deponent entered the said saloon in the evening of the said day about seven or eight o'clock this deponent saw Mrs. Jennie Romel at the end of the bar standing, talking to Mr. Czuzas. Mrs. Romel talked a few minutes with Mr. Czuzas and then left the saloon, bidding Mr. Czuzas "good-bye." After Mrs. Jennie Romel left the saloon a couple of men who were standing at the bar commenced to jest with Mr. Czuzas that he got a bunch of money from the "plumber's wife" (meaning Mrs. Jennie Romel) Mr. Czuzas jesting at the time said that it was a good time for some person to come into his saloon and hold him up. (Meaning that he had received quite a sum of money.)

KAROL PECIUNAS

Sworn and subscribed to
before me this 13th day
of October A.D. 1926
GEORGE W. HARRINGTON,
Attorney at Law of N. J.

ORDER TO SHOW CAUSE

Filed October 6, 1926

Application having been made to this Court and upon reading the petition and affidavits filed in this cause, and it appearing that exception was taken to the Master's report finding \$2,120.33, including interest, due, and failing to give credit for an alleged \$500.00 paid on account of principal on June 27, 1926, and that defendants then Solicitor failed and neglected to appear before the Chancellor to argue said exceptions, although duly notified thereof, whereby said defendants suffered injury in that said exceptions were dismissed without hearing for want of appearance by their then Solicitor, and said defendants claiming to have discovered evidence of the payment of said \$500.00 on account of said mortgage since the final decree thereon which they were unable by due diligence to discover before.

It is on this Sixth day of October A. D. 1926 ordered that Adam Masionis the complainant show cause before the Chancellor at the Chancery Chambers, Industrial Office Building, Broad St., Newark, New Jersey, on Tuesday the Nineteenth day of October, A. D. 1926, at the hour of ten o'clock in the forenoon of that day, why the final decree heretofore entered in the above cause should not be opened for the purpose of permitting the petitioners to interpose their defense with regard to the payment of \$500.00 on account of the principal of the mortgage now under foreclosure in the above suit, And why the Sheriff of Union County should not be restrained from further proceeding under the fieri facias heretofore directed in the above suit; and for such other order as the Court may grant.

Leave is hereby granted to defendants to take and serve further affidavits herein.

And in the meantime and until further order of this Court, the said Adam Masionis, Complainant above, do refrain from proceeding in the action so as aforesaid brought by him except to defend against this order, and that the Sheriff of Union County refrain from further proceeding under the fieri facias to him directed and now in his hands until the further order of this Court, except that he may adjourn the sale advertised by him under the fieri facias in this cause from week to week until the further order of this Court.

And it is further ordered that this matter be referred to Honorable Alonzo Church, Vice-Chancellor, to hear the same for the Chancellor and report thereon to him and advise what order or decree should be made therein.

E. R. WALKER

C

OPINION

Filed November 8, 1926.

George Matulewicz for complainant.

William R. Wilson for defendants.

CHURCH, V. C.

This is a motion to open a decree of foreclosure in order that exceptions to a master's report may be heard and determined and new evidence taken.

The facts are as follows: Theodore J. Harrington, solicitor and of counsel with defendants, Jennie Romel and Adolph Romel, her husband, filed an answer to a bill filed February 13, 1926, to foreclose a bond and mortgage made and executed by said defendants to Anton Czuzas, assignor, in the sum of \$2,000, dated March 1st, 1924, subsequently assigned October 29, 1925, to Adam Masionis, the assignee and complainant in this suit.

In pursuance to an order bearing date June 19, 1926, it was referred to Lionel P. Kristeller, Esq. one of the masters of the court of chancery, to ascertain and report the amount due the complainant, Adam Masionis, for principal and interest upon said mortgage,

At the hearing, defendants, Jennie Romel and Adolph Romel, her husband, appeared with their counsel, Theodore J. Harrington, the solicitor of record, on July 2nd last.

The master filed a report in favor of the complainant, Adam Masionis, in the full amount with interest from July 1st, 1925, to which report exceptions were filed.

On August 10, 1926, a notice was served on solicitors of defendants, stating that on August 17, 1926, at the State House, at Trenton, counsel would

apply to the chancellor to move the argument on the exceptions taken by him to the report filed by the master. On that date complainant's counsel appeared before the chancellor and on failure of Theodore J. Harrington, solicitor, to appear, the exceptions were dismissed and a final decree entered and fieri facias issued.

On August 25, 1926, Theodore J. Harrington, solicitor, served on complainant's solicitor a notice of application to take additional testimony, and that on the 31st day of August, 1926, at the State House, at Trenton, he would apply to the chancellor for such order and for such other order as the court might grant, serving with said notice affidavits of Jennie Romel and Charles Wolinski. Complainant's counsel again appeared before the chancellor. Solicitor of defendants failed to appear. The chancellor denied the motion.

On September 27, 1926, William R. Wilson, not the solicitor of record, appeared before me with a petition and affidavits of Adolph Romel, Jennie Romel and Charles Wolinski and obtained a rule to show cause returnable October 13, 1926.

After this it was called to my attention that the chancellor himself denied a similar application to take additional testimony, made August 31, 1926, and I then entered an order vacating the said rule to show cause.

On October 6, 1926, the day set for the sheriff's sale of the mortgaged premises, William R. Wilson again made a similar application before the chancellor, at the State House, at Trenton. The chancellor granted a rule to show cause, returnable on the 19th day of October, 1926, why the final decree heretofore entered in this cause should not be opened, and in the same order directed that this matter be referred to me to hear and determine the same.

The dispute is as to whether a payment of \$500 was or was not made on this mortgage. The matter was discussed thoroughly before the master, who found that the defendants had not established the fact of such payment. I have read the testimony taken and I agree with the master. A paper purporting to be a receipt signed by Anton Cznzas was produced, which the defendant insists was signed by him. She called her husband to corroborate her, which he failed to do. Cznzas denies that the receipt is signed by him. Indeed, taking the testimony as a whole, there is a question as to whether this receipt was not manufactured after the foreclosure proceedings were begun. The additional affidavits filed are entirely too vague to be of any value.

The defendants have had their day in court and they failed to convince the master as to the authenticity of the so-called receipt.

The evidence, as I have said, does not convince me, either. Any further evidence now produced after the proceedings have been practically completed would in this case, I think, be open to grave suspicion.

I shall advise a decree denying the motion to reopen.

ORDER DISCHARGING RULE TO SHOW CAUSE

This matter being opened to the court by George Matulewich, solicitor for complainant, Adam Masionis, in the presence of William R. Wilson, solicitor and of counsel with defendants, Jennie Romel and Adolf Romel, her husband;

And it appearing that an application having been made to this court on the Sixth day of October, A. D. 1926 why the final decree heretofore entered in the above cause should not be reopened, ordered that Adam Masionis, the complainant, show cause before the Chancellor at Chancery Chambers, Industrial Building, Broad Street, Newark, New Jersey, on Tuesday the 19th day of October, 1926;

And it further appearing in said order that this matter be referred to Honorable Alonzo Church, Vice Chancellor, to hear same for the Chancellor and report thereon to him and advise what order or decree should be made therein;

It is on motion of George Matulewich solicitor of complainant, on this 9th day of November, 1926;

ORDERED that the rule to show cause granted October 6th, 1926, be dismissed with costs including a counsel fee of one hundred fifty dollars be taxed against the defendants.

And it is further ordered that true but uncertified copy of this order be served upon the Sheriff of Union County within three days from the date of this order.

Respectfully Advised,

E. R. WALKER

ALONZO CHURCH

C