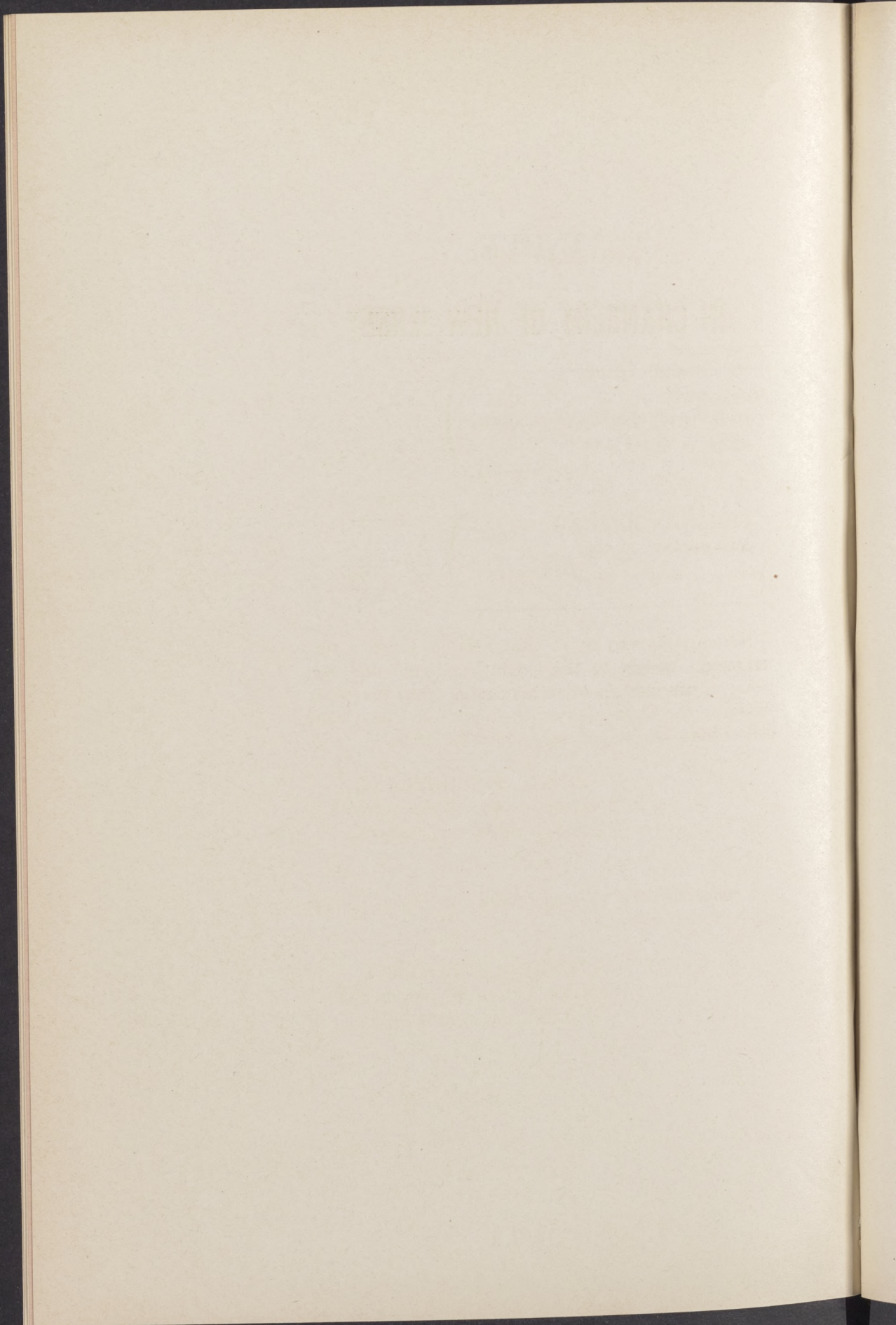


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NOTICE OF APPEAL.

IN CHANCERY OF NEW JERSEY

<hr/> <i>Between</i> R. B. HOLDING CO., a corpor- ation, et al., <i>Complainants,</i> <i>and</i> GREENE HOLDING CO., a corporation, et als., <i>Defendants.</i> <hr/>	} <i>On Bill, &c.</i> <i>Notice</i> <i>of Appeal.</i>	10
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Notice is hereby given that Feist & Feist, a corporation, appeals to the Court of Errors and Appeals in the last resort in all causes from the order made by the Chancellor on the advice of Vice Chancellor John H. Backes on August 19, 1929. 20

PHILIP J. SCHOTLAND,
Solicitor for and of counsel with
Feist & Feist, a corporation.

I conceive there is good cause for appeal in the above-stated cause. 30

PHILIP J. SCHOTLAND,
Solicitor for and of counsel with
Feist & Feist, a corporation.

PETITION OF APPEAL.

NEW JERSEY COURT OF ERRORS AND
APPEALS.

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*Between*R. B. HOLDING CO., a corpor-
ation, et al.,*Complainants,**and*GREENE HOLDING CO., a
corporation, et als.,*Defendants.**On Appeal
from the
Court of
Chancery.**Petition of
Appeal.*

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To the Honorable Judges of the Court of Errors and
Appeals in the last resort in all causes:

The petition of Feist & Feist, a corporation, the
appellant in the above-stated cause respectfully,
shows that:

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1. Your petitioner finds itself aggrieved by an
order made in the Court of Chancery by his Honor
Edwin Robert Walker, Chancellor of the State of
New Jersey, bearing date August 19, 1929, in a
certain cause wherein R. B. Holding Co., et al. are
complainants and Greene Holding Co. et als. are
defendants in this respect, to wit:— that said order
discharges an order to show cause issued in said
cause and denies the prayers of the said appellant
in its petition, wherein it prays that an order may
be made opening, vacating and setting aside the
final decree entered in this cause and permitting the
appellant to contest the amount due complainant
upon the tract of land described in paragraph 7 of

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Petition of Appeal.

the bill of complaint and ordering the sale of the second tract first, and for such other relief as appellant may be entitled to; and petitioner appeals from the said order of the said Chancellor upon the ground that the same is erroneous in that it dismisses the petition of appeal and denies petitioner the relief prayed for.

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2. Petitioner therefore prays that the said order of the Chancellor may be wholly reversed, set aside and for nothing holden, and that petitioner may have such other relief in the premises as to this court shall seem proper.

PHILIP J. SCHOTLAND,
Solicitor for and of counsel with
Feist & Feist, a corporation.

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ANSWER TO PETITION OF APPEAL.
NEW JERSEY COURT OF ERRORS AND
APPEALS.

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*Between*R. B. HOLDING CO., a corpor-
ation, et al.,*Complainants,**and*GREENE HOLDING CO., a
corporation, et als.,*Defendants.*

*On Appeal
from the
Court of
Chancery.*

*Answer to
Petition
of Appeal.*

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The answer of R. B. Holding Co., a corporation of New Jersey and Maurice J. Zucker, the above named appellees, to the petition of appeal of Feist & Feist, Inc., a corporation of New Jersey, the appellant herein, says that:

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These appellees not admitting the truth of all or any of the matters in the said petition of appeal contained, for answer thereto, nevertheless admit that an order was on August 19th, 1929, made and entered in the Court of Chancery of New Jersey in the above entitled cause, which order is based upon a memorandum opinion filed in the Court of Chancery of New Jersey in the above entitled cause denying the purposes in said petition mentioned and as therein set forth: but as to the substance and form of said order and memorandum opinion these appellees beg leave to refer thereto, when the same shall be produced.

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These appellees are advised and believe that the said order is agreeable to equity and that:

Answer to Petition of Appeal.

1. The appellant's judgment against Steinberg Bros., Inc., was recovered within four months of the decree of insolvency of Steinberg Bros., Inc., and therefore is void.

2. The appellant is a common judgment creditor and any relief goes to the receiver, through whom appellant must act. 10

3. Appellant is in laches. It was not barred by the injunction in the receivership suit from pursuing its claim. On the contrary appellant was present and was represented before the master at the hearing to determine the equities. Appellant knew of the master's report and the decree of sale but took no exception thereto.

4. Appellant had notice of the sale and obtained an adjournment on the ground that it was negotiating with a prospective customer for the Steinberg Tract, thereby consenting to the sale and waiving all objections thereto. 20

5 Appellees never agreed to accept a sum less than the full amount due them for their mortgage and deny any arrangement to enter a decree against the Steinberg Tract for Twenty-four Thousand Dollars (\$24,000.00) only, and further was without consideration. 30

6. Both tracts were sold for less than the amount of complainant's mortgage debt and the irregular manner of sale did not interfere with bidders for either tract.

7. The mortgage of Parrow Holding Co. contained a clause that upon the payment to it of a sum less than the sum due the appellees, but did not upon failure to pay the lesser sum deprive the appellees of their right to recover the full sum 40

Answer to Petition of Appeal.

because payment was a pre-requisite and no tender was ever made.

8. The price paid by the successful purchaser at the Sheriff's Sale was not inadequate. The sale was conducted fairly and according to law, and the bids were for the protection of the mortgages on the land and the building under construction.

These appellees pray that the said order may be affirmed with costs to be taxed in favor of these appellees.

ZUCKER & GOLDBERG,
Solicitors for and of Counsel
with Appellees.

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Petition and Affidavits.

line of Huntington Terrace, 183.03 feet on Shephard Avenue and 108.80 feet on Huntington Terrace. At the time when said mortgage was executed and recorded said land was vacant land.

10 2. At the time of the execution and delivery of said mortgage, Maurice J. Zucker, one of the complainants, was the sole owner of same but since then has sold a \$10,000. interest in said mortgage to the R. B. Holding Co., a corporation, which is joint complainant, as more fully appears by the bill of complaint filed in this cause to which reference is hereby made for greater certainty.

20 3. Said mortgage is a purchase money mortgage and is given by the Greene Holding Co. to said Maurice J. Zucker to secure the purchase price of said lands.

30 4. In the testimony given by Maurice J. Zucker in proving his mortgage and the amount due thereon, which testimony has been transcribed and is made a part of the report of the Master in this cause and to which for greater certainty reference is hereby made, said Maurice J. Zucker testified that the complainants' mortgage contained a provision that upon payment of the principal sum and interest he will at his own cost and expense procure releases from any and all prior underlying mortgages on said premises and further that he will release from the lien of his mortgage the first 94 feet on Shephard Avenue on the payment of \$250. per front foot and at the rate of \$225. per front foot for the remaining land. So far as petitioner knows, said Maurice J. Zucker has not paid off nor secured releases of said lands from the underlying mortgages on said premises.

40 5. Complainants' bill of complaint further sets forth that on January 8, 1928, the Greene Holding Co. conveyed said lands to the Parrow Holding Co.

Petition and Affidavits.

and that on April 20, 1928, the Parrow Holding Co. conveyed the first 94 feet of said lands to the Parmuf Investment Corporation and that on said April 20, 1929, the Parmuf Investment Corporation gave to the Parrow Holding Co. a purchase money mortgage in the sum of \$18,526.65, which mortgage is recorded in book G 65 of mortgages for Essex County on page 245. Said mortgage given by the Parmuf Investment Corporation to the Parrow Holding Co. contains a provision that upon payment to the Parrow Holding Co. of the said sum of \$18,526.65, it, the Parrow Holding Co., will secure release and cause the said first 94 feet to be released from the prior mortgages.

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6. Complainants' bill of complaint further shows that on August 24, 1928 said Parmuf Investment Corporation conveyed said first 94 feet to Steinberg Brothers, Inc., by deed recorded in book U 78 of deeds for Essex County on page 280 and that on the same day Steinberg Brothers, Inc., mortgaged said lands to the Parmuf Investment Corporation for \$20,000.

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7. Petitioner shows that said \$20,000. mortgage held by the Parmuf Investment Corporation and the interest of \$18,500. in which was assigned to Kuskin & Rotberg, Inc., was given to secure \$1,500. of the purchase money, the \$18,500. to be advanced as a construction loan to Steinberg Brothers, Inc., who immediately upon purchase of said first 94 feet began the erection of an apartment house thereon, which apartment house has been raised to the roof and is enclosed and in the erection of which there has been invested upwards of \$40,000., but that neither the Parmuf Investment Corporation nor Kuskin & Rotberg, Inc. have advanced \$18,500., but petitioner believes and has been so informed that all that has been advanced is \$8,500. so that said \$20,000. mortgage is only a lien on said first 94 feet in the sum of \$10,000.

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Petition and Affidavits.

8. Petitioner further shows that Steinberg Brothers, Inc., immediately after the purchase of said first 94 feet began the erection of a large apartment house thereon and expended through cash and credit upwards of \$40,000. in the erection of said building so far as it has advanced.

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9. Petitioner further shows that the remaining land is still vacant.

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10. Petitioner further shows that petitioner filed an answer to the bill of complaint in this cause in which it left the complainant to prove the allegations of their bill but petitioner alleged in said answer, to which for greater certainty reference is hereby made, that by agreement between the complainants and the Parrow Holding Co. the lien of complainants' mortgage on the said 94 feet which was purchased by said Steinberg Brothers, Inc. was reduced to the sum of \$18,526.65 and that the mortgage held by the Parrow Holding Co. in that sum represents the same indebtedness as the extent of the lien of complainants' mortgage on said 94 feet and thereby put in issue the question as to whether complainants could claim their entire \$44,000. mortgage as a lien on the said first 94 feet on which said Steinberg Brothers, Inc., were erecting an apartment house on the strength of the agreement that all that there was owing as a lien on said land was said sum of \$18,526.65.

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11. Petitioner recovered a judgment against said Steinberg Brothers, Inc., in the Esssx County Circuit Court on December 26, 1928 for the sum of \$3,560.30 which judgment is a lien on said first 94 feet owned by Steinberg Brothers, Inc., and on which said Steinberg Brothers, Inc., were erecting said apartment house, and this petitioner has no interest in or claim on the remaining vacant land which is still held by the Parrow Holding Co.

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Petition and Affidavits.

12. On or about the 19th day of February, 1929, Steinberg Brothers, Inc., was adjudicated an insolvent corporation by this Honorable Court and Simon Englander, Esq., was appointed receiver of said corporation and thereafter work on the erection of said apartment house stopped. Said order of this Honorable Court in said receivership proceeding restrained all creditors of said Steinberg Brothers, Inc., and lien holders from prosecuting or proceeding with any of their claims against said Steinberg Brothers, Inc. Petitioner was thereby restrained from proceeding in the foreclosure proceedings instituted in this cause. 10

13. The complainants contrary to the fact as set forth in the answer entered a decree pro confesso in this cause which contains a recital that this petitioner filed an answer, which answer does not deny the truth of the allegations contained in the bill of complaint as to the amount claimed to be due to complainants and that its lien is subsequent to complainants, whereas in truth and in fact said answer limited the lien of the complainants to that portion of the premises in which this petitioner is interested to the sum as above stated of \$18,526.65. 20

14. Petitioner further shows that petitioner's solicitor met the complainant, Maurice J. Zucker, and arranged with him that if the complainants would be permitted by an order of this Court to continue their foreclosure proceedings that they, the complainants, would only claim \$24,000. on their mortgage as a lien on said portion of the mortgaged land on which the Steinberg Brothers, Inc., partially erected said apartment and would arrange to have the decree provide that said portion of said mortgaged premises should be sold to satisfy not more than \$24,000. of the amount owing to complainants. 30

15. Petitioner further shows that petitioner's solicitor having been restrained from proceeding in 40

Petition and Affidavits.

10 this cause by an order of this Court adjudicating Steinberg Brothers, Inc., an insolvent corporation and appointing said Simon Englander, Esq., as receiver, paid no further attention to said foreclosure proceedings and relied entirely upon the representation of the complainant, Maurice J. Zucker, made on behalf of himself and his co-complainant, and that petitioner did not learn until the 9th day of July, 1929, a few minutes before the Sheriff's sale, of the Fi Fa issued in this cause, that the complainants had not carried out said understanding with petitioner's solicitor but had entered a Final Decree and secured a writ of execution directing that that portion of the premises on which this petitioner's judgment is a lien should be sold first to satisfy approximately \$48,000. due to complainants and that the vacant land in which petitioner has no interest should be secondly sold. Petitioner's solicitor thereupon, as soon as the Deputy Sheriff of the County of Essex announced said sale, applied for an adjournment of two weeks, announcing that the grounds of the application were to have time to apply to this Honorable Court to open the decree and enter a new decree directing the sale in accordance with the equities of the case and the understanding between the complainants and petitioner's solicitor, which application was denied and the premises upon which said Steinberg Brothers, Inc., had expended more than \$40,000. in the erection of the apartment house being erected thereon, were bought in by the complainants in the name of the Hawthorne Realty Co., a corporation of New Jersey.

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16. Petitioner charges on information and belief and believes same to be true that the Greene Holding Co. is a corporation owned and controlled by said Maurice J. Zucker and that the Parrow Holding Co. is a corporation owned and controlled by said Maurice J. Zucker and further charges the fact to be that Louis D. Goldberg, the law partner of said Maurice J. Zucker, acknowledged service of the sub-

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Petition and Affidavits.

poena in this cause on behalf of the Greene Holding Co. and also acknowledged service on behalf of the Parrow Holding Co. as President of said Parrow Holding Co.

17. Petitioner further shows that in the belief that at the Sheriff's sale, the tract in which it was interested would be offered for sale for the purpose of realizing not more than \$24,000. on the complainant's mortgage, and knowing that all that the second mortgagee would be entitled to receive would be \$10,000., had procured a purchaser ready, willing and able to purchase said portion of said mortgaged premises for the sum of \$40,000., but said purchaser after hearing the announcement made by petitioner's solicitor in applying for an adjournment of the sale, refused to bid at said sale and said Louis D. Goldberg, the law partner of the complainant Maurice J. Zucker, bid in said property for the sum of \$5,000. in the name of the said Hawthorne Realty Co., which petitioner believes said Maurice J. Zucker and Louis D. Goldberg own and control.

18. Petitioner has filed objection to the confirmation of said sale on the ground of inadequacy of consideration and has been served with a notice and affidavits bringing on the confirmation of said sale at Chancery Chambers in Jersey City, County of Hudson, on Monday, July 29, 1929, at 10 o'clock in the forenoon.

Petitioner therefore prays

1. That the final decree and decree pro confesso entered in this cause be opened.

2. That the cause be referred to one of the Vice Chancellors or to a Master of this Court to take testimony on the issue raised by the answer of this petitioner as to the amount that can be claimed as

Petition and Affidavits.

due and owing by the complainants on said first 94 feet of said mortgaged premises and the amount which is justly a lien on said first 94 feet of said mortgaged premises.

- 10 3. That in the meantime and until the further order of this Court, the complainants be restrained and enjoined from procuring a confirmation of the said Sheriff's sale and from taking any further steps in this cause.

And your petitioner will ever pray, &c.

PHILIP J. SCHOTLAND,
Solicitor for and of Counsel
with Petitioner.

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Petition and Affidavits.

IN CHANCERY OF NEW JERSEY

Between

R. B. HOLDING CO., a corporation, et al.,

*Complainants,**and*

GREENE HOLDING CO., a corporation, et als.,

*Defendants.**On Bill, &c.**Affidvit.*

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STATE OF NEW JERSEY }
COUNTY OF ESSEX } ss.

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Reuben L. Haas, of full age, being duly sworn according to law on his oath deposes and says:

1. I am employed by Feist & Feist, a corporation of New Jersey, with its principal office in the City of Newark, County of Essex, the petitioner herein, and am the person who had full charge of all the transactions connected with this cause and with the subject matter of this petition on behalf of Feist & Feist.

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2. On or about the 15th day of February, 1929, Feist & Feist was served with a subpoena in the above entitled cause in which the complainants R. B. Holding Co., a corporation, and Maurice J. Zucker are seeking to foreclose a mortgage given by the Greene Holding Co. on October 25, 1927, to secure the sum of \$44,000.00, which mortgage is recorded in book F 62 of mortgages for Essex County, on page 516-519 and covers a plot of ground situate in the City of Newark, County of Essex and State of

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Petition and Affidavits.

New Jersey, at the intersection of the southwesterly line of Shephard Avenue with the northwesterly line of Huntington Terrace, 183.03 feet on Shephard Avenue and 108.80 feet on Huntington Terrace. At the time when said mortgage was executed and recorded said land was vacant land.

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3. At the time of the execution and delivery of said mortgage, Maurice J. Zucker, one of the complainants, was the sole owner of same but since then has sold a \$10,000. interest in said mortgage to the R. B. Holding Co. a corporation. Said mortgage is a purchase money mortgage and is given by the Greene Holding Co. to said Maurice J. Zucker to secure the purchase price of said lands.

20

4. In the testimony given by Maurice J. Zucker in proving his mortgage and the amount due thereon, said Maurice J. Zucker testified that the complainants' mortgage contained a provision that upon payment of the principal sum and interest he will at his own cost and expense procure releases from any and all prior underlying mortgages on said premises and further that he will release from the lien of his mortgage the first 94 feet on Shephard Avenue on the payment of \$250. per front foot and at the rate of \$225. per front foot for the remaining land. So far as deponent knows said Maurice J. Zucker has not paid off nor secured releases of said

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lands from the underlying mortgages on said premises.

5. Complainants' bill of complaint further sets forth that on January 8, 1928, the Greene Holding Co. conveyed said lands to the Parrow Holding Co. and that on April 20, 1928, the Parrow Holding Co. conveyed the first 94 feet of said lands to the Parmuf Investment Corporation and that on said April 20, 1928, the Parmuf Investment Corporation gave to the Parrow Holding Co. a purchase money mortgage in the sum of \$18,526.65, which mortgage is

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Petition and Affidavits.

recorded in book G 65 of mortgages for Essex County on page 245. Said mortgage given by the Parmuf Investment Corporation to the Parrow Holding Co., contains a provision that upon payment to the Parrow Holding Co., of the said sum of \$18,526.65, it, the Parrow Holding Co. will secure releases and cause the said first 94 feet to be released from the prior mortgages. 10

6. Complainants' bill of complaint further shows that on August 24, 1928, said Parmuf Investment Corporation conveyed said first 94 feet to Steinberg Brothers, Inc. by deed recorded in book U 78 of deeds for Essex County on page 280 and that on the same day Steinberg Brothers, Inc. mortgaged said lands to the Parmuf Investment Corporation for \$20,000.

7. Deponent further says that said \$20,000. mortgage held by Parmuf Investment Corporation and the interest of \$18,500. in which was assigned to Kuskin & Rotberg, Inc., was given to secure \$1,500. of the purchase money, the \$18,500. to be advanced as a construction loan to Steinberg Brothers, Inc., who immediately upon purchase of said first 94 feet began the erection of an apartment house thereon, which apartment house has been raised to the roof and is enclosed and in the erection of which there has been invested upwards of \$40,000., but that neither the Parmuf Investment Corporation or Kuskin & Rotberg, Inc., have advanced \$18,500., but deponent believes and has been so informed that all that has been advanced is \$8,500., so that said \$20,000 mortgage is only a lien on said first 94 feet in the sum of \$10,000. 20 30

8. Deponent further says that Steinberg Brothers, Inc., immediately after the purchase of said first 94 feet began the erection of a large apartment house thereon and expended through cash and cred- 40

Petition and Affidavits.

it upwards of \$40,000. in the erection of said building so far as it has advanced.

9. Deponent further says that the remaining land is still vacant.

10 10. Deponent further says that petitioner filed an answer to the bill of complaint in this cause in which it left the complainants to prove the allegations of their bill but petitioner alleged in said answer that by agreement between the complainants and the Parrow Holding Co. the lien of complainants' mortgage on the said 94 feet which was purchased by said Steinberg Brothers, Inc., was reduced to the sum of \$18,526.65 and that the mortgage held by the Parrow Holding Co. in that sum represents the same indebtedness as the extent of the lien of complainants' mortgage on said 94 feet and thereby put
20 in issue the question as to whether complainants could claim their entire \$44,000. mortgage as a lien on the said first 94 feet on which said Steinberg Brothers, Inc. were erecting an apartment house on the strength of the agreement that all there was owing as a lien on said land was said sum of \$18,526.65.

30 11. Deponent further says that Feist & Feist recovered a judgment against said Steinberg Brothers, Inc., in the Essex County Circuit Court on December 26, 1928 for the sum of \$3,560.30, which judgment is a lien on said first 94 feet owned by Steinberg Brothers, Inc., and on which said Steinberg Brothers, Inc., were erecting said apartment house, and said petitioner has no interest in or claim on the remaining vacant land which is still held by the Parrow Holding Co.

40 12. On or about the 19th day of February, 1929, Steinberg Brothers, Inc., was adjudicated an insolvent corporation by this Honorable Court and Simon Englander, Esq., was appointed receiver of said

Petition and Affidavits.

Corporation and thereafter work on the erection of said apartment house stopped. Said order of this Honorable Court in said receivership proceeding restrained all creditors of said Steinberg Brothers, Inc., and lien holders from prosecuting or proceeding with any of their claims against said Steinberg Brothers, Inc. Feist & Feist was thereby restrained from proceeding in the foreclosure proceedings instituted in this cause. 10

13. The complainants, contrary to the fact as set forth in the answer, entered a decree pro confesso in this cause which contains a recital that this deponent's employer filed an answer which answer does not deny the truth of the allegations contained in the bill of complaint as to the amount claimed to be due to complainants and that its lien is subsequent to complainants', whereas in truth and in fact said answer limited the lien of the complainants to that portion of the premises in which the petitioner is interested to the sum as above stated of \$18,-526.65. 20

14. Deponent charges on information and belief and believes same to be true that the Greene Holding Co. is a corporation owned and controlled by said Maurice J. Zucker and that the Parrow Holding Co. is a corporation owned and controlled by said Maurice J. Zucker and further charges the fact to be that Louis D. Goldberg, the law partner of said Maurice J. Zucker, acknowledged service of the subpoena in this cause on behalf of the Greene Holding Co. and also acknowledged service on behalf of the Parrow Holding Co. as President of said Parrow Holding Co. 30

15. Deponent further says that believing that at the Sheriff's sale the tract in which his company, Feist & Feist, was interested, would be offered for sale for the purpose of realizing not more than \$24,- 40

Petition and Affidavits.

000. on the complainants' mortgage, and knowing that all that the second mortgagee would be entitled to receive would be \$10,000., Feist & Feist had procured a purchaser ready, willing and able to purchase said portion of said mortgaged premises for the sum of \$40,000., but said purchaser after hearing the announcement made by petitioner's solicitor in applying for an adjournment of the sale, refused to bid at said sale and said Louis D. Goldberg, the law partner of the complainant Maurice J. Zucker, bid in said property for the sum of \$5,000. in the name of the Hawthorne Realty Co., which deponent believes said Maurice J. Zucker and Louis D. Goldberg own and control.

REUBEN L. HAAS

Sworn and subscribed to before me
this 25th day of July, 1929.

JOSEPH J. SCHOTLAND,
Attorney at Law of New Jersey.

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Petition and Affidavits.

10 that the complainants' mortgage is only a lien to the extent of not more than \$24,000. upon that portion of the mortgaged premises in which my client Feist & Feist was interested as a judgment creditor of Steinberg Brothers, Inc., and that said portion of the mortgaged premises would be required to be sold to realize not more than \$24,000. of the complainants' lien.

20 5. I personally attended at the Sheriff's office in Essex County and learned for the first time a few minutes before the sale, being so informed by Louis D. Goldberg, the law partner of the complainant Maurice J. Zucker, that the final decree and the Fi Fa provided that that portion of the mortgaged premises upon which my client Feist & Feist had a lien as a judgment creditor of Steinberg Brothers, Inc., was to be first sold to satisfy complainants' entire mortgage with interest and cost and that the vacant land adjoining was to be secondly sold if the first tract did not result in producing the full amount of complainants' decree; I thereupon called Mr. Goldberg's attention to the fact that I had an understanding with Mr. Zucker as set forth in the previous paragraph of this affidavit, and also that the facts were that only approximately \$18,500. was really a lien on that portion of the premises in which I was interested and I wanted him to consent to an adjournment of two weeks to give me an opportunity to apply to this Court to open the final
30 decree and decree pro confesso and correct the proceedings so as to have a decree entered in accordance with the actual facts. Mr. Goldberg refused to consent to an adjournment and told me that the decree was in accordance with law because the law required that the blanket mortgage should be realized first out of the portion of the premises first sold.

40 6. When the Deputy Sheriff of Essex County reached the sale under the Fi Fa in this cause, I then

Petition and Affidavits.

applied for an adjournment of two weeks and stated as my grounds the same facts that I had stated to Mr. Goldberg as set forth in the previous paragraph of this affidavit for an adjournment, but upon objection of Mr. Goldberg the Deputy Sheriff refused to grant the adjournment, conducted the sale and Mr. Goldberg bought in the tract upon which my client has a lien and upon which more than \$40,000. had been expended in the erection of an apartment house in addition to the value of the land itself, for the sum of \$5,000. 10

7. I attended the said Sheriff's sale on behalf of my client for the purpose of arranging to buy in said property in which my client was interested for Hyman Katz, who had agreed to buy said portion of said premises for \$40,000., but after Mr. Katz heard my announcement in my application for an adjournment he refused to bid. 20

8. I did not know that there had been a decree pro confesso or a final decree entered in this cause in the form in which they were entered because, having been restrained by an order of this Court from proceeding in the cause, I relied entirely upon my understanding with Mr. Zucker and paid no attention to any further proceedings.

PHILIP J. SCHOTLAND

Sworn and subscribed to before me
this 25th day of July, 1929. 30

HELEN JEDELL,
Notary Public of N. J.

ORDER TO SHOW CAUSE.

IN CHANCERY OF NEW JERSEY

10	<i>Between</i> R. B. HOLDING CO., a corporation, et al., <p style="text-align: center;"><i>Complainants,</i></p> <i>and</i> GREENE HOLDING CO., a corporation, et als., <p style="text-align: center;"><i>Defendants.</i></p>	}	<i>Ou Bill, &c.</i> <i>On Petition.</i> <i>Order to</i> <i>Show Cause.</i>
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20 This matter being opened to the Court by Philip J. Schotland, solicitor for and of counsel with Feist & Feist, a corporation, one of the defendants in the above entitled cause, and the Court having considered the petition and affidavits thereto annexed,

30 It is on this 25th day of July, 1929, on motion of Philip J. Schotland solicitor of petitioner, ORDERED that the complainants R. B. Holding Co. and Maurice J. Zucker show cause on Tuesday, July 30th, 1929, at ten o'clock in the forenoon (daylight saving time) or as soon thereafter as counsel can be heard, at Chancery Chambers, 1060 Broad Street, in the City of Newark, why the prayers of the petitioner Feist & Feist, a corporation, should not be granted, and

40 It is further ORDERED that the complainants be and in the meantime hereby are, until the further order of this Court, restrained and enjoined from procuring a confirmation of the Sheriff's sale of the mortgaged premises and from taking any further steps in this cause, except to answer the petition and this order, and

Order to Show Cause.

It is further ORDERED that true copies of this order together with copies of the petition and affidavits, which may be certified as true by the solicitor for the petitioner, be served upon the complainants within one day from the date hereof.

Respectfully advised,

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JOHN H. BACKES,
Vice Chancellor

E. R. WALKER,
Chancellor

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AFFIDAVIT OF MAURICE J. ZUCKER.

IN CHANCERY OF NEW JERSEY

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Between

R. B. HOLDING CO., a corporation, et al.,

*Complainants,**and*

GREENE HOLDING CO., a corporation, et als.,

*Defendants.**On Bill, &c.**Affidavit.*

20

STATE OF NEW JERSEY }
COUNTY OF ESSEX } ss.

MAURICE J. ZUCKER, of full age, being duly sworn upon his oath, according to law, deposes and says:

30

I am one of the complainants in the above entitled cause. There was served upon me by the office of Philip J. Schotland, solicitor for Feist & Feist, petition and affidavits in the above entitled cause. The facts recited in paragraph one of said petition are true. The facts recited in paragraph two of said petition are true. The facts recited in paragraph three of said petition are true.

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As to the facts recited in paragraph four of the petition, deponent simply recited the exact words that appeared in deponent's mortgage hereinabove referred to and the Master, Richard Stockton, simply recited the words contained in the mortgage which deponent held as deponent recited it before the Master. No amount was ever paid to deponent in accordance with said release clauses and deponent

Affidavit of Maurice J. Zucker.

never was tendered any sum for the release of any portion of the land covered by deponent's mortgage. Deponent, however, at his own cost and expense, discharged or cancelled underlying mortgages which affected said properties and other properties to the extent of over \$32,000 as appears of record.

10

The facts recited in paragraph five of the petition are true. The facts recited in paragraph six of the petition are true.

As to the facts recited in paragraph seven (7) of the petition, that portion stating that there is a \$20,000 mortgage held by the Parmuf Investment Corporation and the interest of \$18,500 in said mortgage was assigned to Kuskin & Rotberg, Inc., is true, said mortgage, however, was an advance money mortgage. When the Parmuf Investment Corporation, represented by Thomas L. Parsonnet, an attorney of this city, sold the property covered by said mortgage to Steinberg Bros. Inc., the said Steinberg Bros., Inc., gave to Parmuf Investment Corporation a \$20,000 mortgage, \$1,500 of which mortgage was a purchase money mortgage and \$18,500 advance purchase money mortgage. About a month or a month and one-half after said transaction, Steinberg Bros., Inc., commenced the erection of said building on said property. I know as a matter of fact that Steinberg Bros., Inc., did not invest upwards of \$40,000, nor any sum near that amount in the erection of the building. I know as a matter of fact that the only moneys that they invested in said building is the money which they received on the advance money mortgage, and the balance is due to creditors who have rights of mechanic's liens against the premises. The actual amount advanced by Kuskin & Rotberg, Inc., which is proven by checks which they presented is the sum of \$12,622.50, the total amount being due them at the time of the Master's hearing in the above

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Affidavit of Maurice J. Zucker.

matter was \$13,302.60. In addition to that, there was \$1,500 due to the Parmuf Investment Corporation on their advance money mortgage.

10 As to paragraph eight of the petition, it is true that a considerable sum of money was expended in cash and credit in the erection of a building on the premises purchased by Steinberg Bros., Inc. The facts recited in paragraph nine of the petition are true.

20 As to the allegations contained in paragraph ten of the petition, it is true that an answer to the bill of complaint in this cause was filed, leaving the complainants to prove the allegations of their bill, and a hearing was had before Richard Stockton, Esquire, a Special Master of the above entitled court, on a reference made to him, at which hearings (there being two), the office of Philip J. Schotland was represented by Miss Helen Jedell. Your deponent was heard and proved the amount due upon his mortgage. The R. B. Holding Co. was heard and they proved the amount due on Their mortgage, as more fully appears in the Master's report in this cause.

30 Those facts alleged in paragraph ten of the petition, that the lien of the mortgage held by complainants in this cause on the tracts sold to Steinberg Bros., Inc., was reduced to \$18,526.65 is untrue, and the only communication had with Philip J. Schotland, the attorney for Feist & Feist, in this matter, is contained in letters, copies of which are annexed hereto. Feist & Feist never were in touch with the R. B. Holding Co., nor was Philip J. Schotland ever in touch with them, and no arrangements were ever made with them, nor with deponent, whereby deponent agreed to or could have agreed to any such representations as is alleged, deponent simply stated what the facts were and nothing more.

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Affidavit of Maurice J. Zucker.

The facts recited in paragraph eleven of the petition are true. The facts recited in paragraph twelve of the petition are true.

As to the allegations contained in paragraph thirteen, complainants did not enter any Decree Pro Confesso in this cause, but simply drew a Decree Pro Confesso, sent it to Trenton and a Decree Pro Confesso was advised by the Advisory Master William J. Backes.

10

As to the facts contained in paragraph fourteen (14) of the petition, your deponent denies that he at any time stated he would only claim \$24,000 on his mortgage as a lien on the portion of the mortgaged premises on which Steinberg Bros., Inc., partially erected an apartment house, nor did deponent ever say that he would arrange to have the Decree provide that said portion of the said mortgaged premises should be sold to satisfy not more than \$25,000.

20

Petitioner's attorney, Philip J. Schotland, knew that a hearing was being had before Richard Stockton, knew that Richard Stockton had made his report, knew that a Fi Fa had been issued and advertised, a copy of which advertisement is set forth in this affidavit.

Deponent does not know where Philip J. Schotland or Feist & Feist obtained such impression as deponent had no right to make such an agreement for the R. B. Holding Co., as he had nothing to do with them and did not make such arrangement for himself.

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As to the allegations contained in paragraph fifteen (15) of the petition, that statement that the petitioner paid no further attention to the foreclosure proceedings and relies upon the representations of deponent, is untrue, as deponent made no repre-

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Affidavit of Maurice J. Zucker.

10 sentations to petitioner or petitioner's solicitor. That petitioner was represented at every hearing before the Special Master and was present when deponent testified before the Special Master, and that the statement that petitioner did not learn until the 9th day of July, 1929, a few minutes before the Sheriff's sale, as to what was going on, is also
 20 untrue, as the sale had been advertised according to law and all the defendants had been notified of the fact that the said sale was originally to take place on July 2nd, 1929, and petitioner was represented at said sale, and at the request of Philip J. Schotland's office, Miss Helen Jedell being present at the Sheriff's office, one week's adjournment was had, and that on July 9th, 1929, the sale took place. That statement in paragraph fifteen (15) of the
 20 petition that complainants had not carried out said understanding with the petitioner's solicitor, but had entered a final decree and secured a writ of execution directing that portion of the premises on which this petitioner's judgment is lien to be sold first to satisfy approximately \$40,000 due to complainants, and that the vacant land in which petitioner had no interest should be sold secondly, is untrue, because deponent never made such an arrangement with Philip J. Schotland.

30 Petitioner's entire action throughout has been one of trying to harass complainant to compel complainant to pay the judgment which Feist & Feist, a corporation, obtained against Steinberg Bros. Inc., they knowing that by delaying deponent they will cause considerable expense to deponent, because deponent will not be able to complete the apartment house or get anyone to purchase the apartment house to complete the same by October 1st, 1929.

40 Those allegations contained in paragraph 16 of the petition, that the Greene Holding Co. is a corporation owned and controlled by your deponent is untrue as said corporation was organized by three

Affidavit of Maurice J. Zucker.

men, namely, Isidor Haber, Isidor Sperber and Albert J. Siegler, and your deponent is not in any way interested in said corporation except that the office of Zucker & Goldberg incorporated the said Greene Holding Co. for these three men. The Parrow Holding Co., however, is a corporation composed of Maurice J. Zucker and Louis D. Goldberg.

10

As to the allegations contained in paragraph seventeen of the petition, deponent says that no representations were ever made to petitioner, or his client, as set forth in paragraph 17, and that the allegation in said paragraph that petitioner procured a purchaser ready, willing and able to purchase the premises for \$40,000 may be true, but no one prevented any person from bidding for the property. That he at no time agreed to take less than the amount due to deponent and deponent's client, R. B. Holding Co.

20

A decree pro confesso and order of reference was entered in this cause and after its entry by the Clerk in Chancery a true copy was sent to your deponent by the Clerk in Chancery, the matter having been referred to Richard Stockton, a Special Master of this Court. Richard Stockton caused subpoenas to be issued to all the defendants in this cause and said subpoenas were served upon Philip J. Schotland and service acknowledged. In accordance with the service of said subpoena, Philip J. Schotland appeared by Helen Jedell before Richard Stockton, the special master before whom this matter was referred, on two occasions, there being two hearings in this matter, at which hearings your deponent testified and as a result of said hearings the Master filed his report. No exception was ever taken to the Master's report in this matter and a final decree was entered. No exception or appeal was taken to said final decree and a Fi Fa was issued, same was delivered to the Sheriff and at no time did the office of Philip J. Schotland ever question the

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Affidavit of Maurice J. Zucker.

10 proceedings. It was not until they found that a man by the name of Mr. Katz was interested in purchasing the property that they showed any interest in the matter. One of the reasons why you cannot get anyone to bid in on an uncompleted property in Essex County is that none of the Labor Unions will allow anyone to go to the job and finish the same unless the person who is finishing the building assumes to pay in full any and all sums due to contractors who have furnished labor and or material in the erection of said building, and this is common knowledge among all builders in Essex County and anyone who attempts to finish any uncompleted buildings cannot have the building completed unless all contractors are paid in full.

20 The amount due to Feist & Feist could never be paid out of said building as the lien of their judgment comes after the rights of mechanic's liens of persons who have furnished labor and or materials on said building, and those amounts would be far in excess of the value of the building. Petitioner knows all these facts but is trying by said petition to harass complainants, knowing that delay will cost complainants almost as much as the amount of the judgment which petitioner has against Steinberg Bros., Inc.

MAURICE J. ZUCKER

30 Sworn and Subscribed to before me
this 29th day of July, 1929

WILLIAM FOGEL,
An Attorney at Law of N. J.

PHILIP J. SCHOTLAND
 Counsellor at Law
 9 Clinton Street, Newark, N. J.

February 26th, 1929.

Messrs. Zucker & Goldberg,
 24 Branford Place,
 Newark, N. J.

Gentlemen:

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In the matter of your foreclosure on behalf of Mr. Zucker and the R. & B. Holding Company against the Greene Holding Company, et al., I beg to advise that, representing Feist & Feist, Inc., a judgment creditor of Steinberg Brothers, Inc., I, being amazed at the number of mortgages on a vacant piece of land 91½ feet front by 108 feet in depth, have made an investigation into the facts and find that the \$44,000 mortgage which you are foreclosing is only a lien on the property owned by Steinberg Brothers to the extent of \$18,526.65, and that the mortgage in the last mentioned sum held by the Parrow Holding Company represents the same indebtedness. I am also advised that the only portion of the \$20,000 mortgage originally given to the Parmuf Investment Corporation, which is purchase money is \$1,500, and that the other \$18,500 is supposed to be advanced by way of construction loan, and that very little has been advanced on that.

20

I have also learned that Kushkin & Rothberg are your clients, that the Parrow Holding Company is also a corporation controlled by you, and I have also been informed that it was understood, I have not yet been able to ascertain whether it was put in writing or not, but I have reason to believe it was put in writing, that upon payment of the \$18,526.65 mortgage held by Parrow Holding Company, the Steinberg land was to be discharged from the \$44,000 mortgage which you are foreclosing.

30

All of this information leads me to believe that there must be some purpose (the legitimacy of which I am not questioning, as there has been no information that anything illegitimate is being attempted) in foreclosing your mortgage in the present form of the bill of complaint, and if any attack by me would in-

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terfere with the plan, I am perfectly willing to execute an assignment of the Feist & Feist, Inc., judgment to whoever it may be necessary upon payment of the judgment.

10 I do not want to do anything which may be of no benefit to my client and may do other people harm by interfering with their plans, and I would like, if you find it convenient, to have you drop in and see me in a day or so to talk the matter over, so that if my information is wrong, you can correct it.

A part of my information is, of course, from the records of the Register's office.

Very truly yours,

S/R

PHILIP J. SCHOTLAND

A-823.

R. B. HOLDING COMPANY
GREENE HOLDING COMPANY

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February 28, 1929

Philip J. Schotland, Esq.,
9 Clinton Street,
Newark, New Jersey.

Dear Sir:

I desire to state explicitly the writer's position in reference to your letter of the 26th instant.

30 The writer sold to the Greene Holding Co. a strip of land on Shephard Avenue and took back from Greene Holding Co. a \$44,000 mortgage. R. B. Holding Co., which is controlled by Reiss Brothers of 38 Broadway, Newark, New Jersey, purchased from him a \$10,000 superior interest in this mortgage. Greene Holding Co. then conveyed this property, after it found out it could not proceed with the building, to Parrow Holding Co. Parrow Holding Co. conveyed the corner piece to Parmuf Investment Corp. and took back from Parmuf Investment Corp. a purchase money mortgage for \$18,526.00, which was the balance due to Parrow Holding Co. after the payments were made.

40 This mortgage has an express clause in it that upon there being paid to Parrow Holding

Co. the said sum of \$18,526.65, the Parrow Holding Co. would obtain releases from the prior mortgage affecting said property.

As to the advance money mortgage of the Parmuf Investment Corp. the amount advanced on said mortgage, I believe is about \$8,500. So you have a record of the entire transaction.

As far as I and the R. B. Holding Co. are concerned, I have no interest in the Feist & Feist, Inc., judgment and am willing to have the mortgage which Parrow Holding Co. holds assigned to Feist & Feist, Inc., if it desires to protect this judgment. If you contemplate any action whatsoever, kindly do not hold off because you think the action may interfere with my plans. I have no plans in the matter and am merely foreclosing this mortgage for the purpose of obtaining moneys due on a mortgage which is long past due.

Yours very truly,

MJZ|LR

ZUCKER & GOLDBERG

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PHILIP J. SCHOTLAND
Counsellor at Law
9 Clinton Street, Newark, N. J.

March 13th, 1929.

Maurice J. Zucker, Esq.,
24 Branford Place,
Newark, N. J.

Dear Sir:

I have just gotten around to your letter of the 28th ult. regarding your foreclosure against the Greene Holding Company, et al.,

I want to thank you for your frank and courteous letter, and assure you that I appreciate the information you gave me. I will probably file an answer on behalf of Feist & Feist, Inc. for the purpose of limiting the amount of the encumbrance against the part of the tract owned by Steinberg Bros., Inc., and if I do so, I will send you a copy at the same time that I send it to Trenton.

Very truly yours

J|R

PHILIP J. SCHOTLAND

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(Chancery D-424.)

SHERIFF'S SALE—In Chancery of New Jersey—Between R. B. Holding Co., a corporation, and Maurice J. Zucker, complainants, and Greene Holding Co., a corporation, et als., defendants. Fi. Fa., for Sale of Mortgaged Premises.

10 By virtue of the above stated writ of Fiera Facias, to me directed, I shall expose for Sale by Public Vendue, at Room 507, Hall of Records, in Newark, on Tuesday, the second day of July, next, at 2 o'clock P. M., all that certain tract or parcel of land and premises herein-

20 after particularly described, situate, lying and being in the City of Newark, Essex County, New Jersey, as follows:

Beginning at the corner formed by the intersection of the southwesterly line of Shephard Avenue with the northwesterly line of Huntington Terrace as the said avenue and terrace have recently been opened by the City of Newark; and running from thence along the said northwesterly line of Huntington Terrace south 47 degrees 48 minutes west 108.80 feet more or less to the northerly line of land lately belonging to the Ideal Improvement Co.; thence running along the said northerly line of said land lately belonging to the Ideal Improvement Co. and binding thereon north 42 degrees 59 minutes west 183.03 feet to the line of land conveyed to one Herman Pintel by Maurice J. Zucker by deed dated May 20th, 1926; thence running along the line of land of said Pintel and binding thereon in a course north 44 degrees 43 minutes east 108 feet more or less to the aforesaid southwesterly line of Shephard Avenue; thence running along the same south 30 42 degrees 58 minutes east 188.63 feet to the point and place of beginning.

To be sold in the manner following:

The Tract next described to be sold first.

40 Beginning at the corner formed by the intersection of the southwesterly line of Shephard Avenue with the northwesterly line of Huntington Terrace as the said avenue and terrace have recently been opened by the City of Newark; and running from thence along the said northwesterly line of Huntington Terrace

south 46 degrees 16 minutes west 108.80 feet more or less to the northerly line of land lately belonging to the Ideal Improvement Co.; thence along the said northerly line of said land lately belonging to the said Ideal Improvement Co. and binding thereon north 42 degrees 57 minutes west 91.50 feet to a point; thence running in a course north 44 degrees 53 minutes east 108 feet more or less to the aforesaid southwesterly line of Shephard Avenue; thence running along the said southwesterly line of Shephard Avenue south 42 degrees 58 minutes east 94.3 feet to the point and place of beginning.

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This description is in accordance with a survey made by Borrie & Kreiner, surveyors, dated September 21, 1927, and bearing their numbers 27-1119.

Being known and designated as Street Number 224 Shephard Avenue, Newark, New Jersey.

The Tract next described to be sold secondly.

Beginning at a point in the southerly line of Shephard Avenue distant westerly ninety-four feet and thirty-one one-hundredths (94.31) of a foot from the intersection of said side of Shephard Avenue with the westerly side of Huntington Terrace; thence running in a course south 44 degrees 53 minutes west one hundred eight (108) feet more or less to the northerly line of land lately belonging to the Ideal Improvement Co.; thence running along said northerly line of said land lately belonging to Ideal Improvement Co. and binding thereon north 42 degrees 59 minutes west ninety-one feet and fifty-three one-hundredths (91.53) of a foot to the line of land conveyed to one Herman Pintel by Maurice J. Zucker, by deed dated May 20, 1926; thence running along the line of land of said Pintel and binding thereon in a course north 44 degrees 43 minutes east one hundred eight (108) feet more or less to the aforesaid southwesterly line of Shephard Avenue; thence running along the same south 42 degrees 58 minutes east ninety-four feet and thirty-two hundredths (94.32) of a foot to the point and place of beginning.

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Being known and designated as Street Number 230 Shepard Avenue, Newark, New Jersey.

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The approximate amount of the Decree to be satisfied by said sale is the sum of Forty-eight Thousand Nine Hundred Fifty-seven Dollars and Eighty-nine Cents (\$48,957.89), together with the costs of this sale.

Newark, N. J., May 27th, 1929.

CONRAD DEUHLER, Sheriff.

\$49.14

Zucker & Goldberg, Sol'rs.

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Affidavit of Hyman Katz.

the Under-Sheriff and requested that the matter be adjourned for one week, that is until July 9, 1929, and the sale was adjourned until July 9th, 1929.

10 On July 9th, 1929, I was again present in the Sheriff's Sales Office in the Hall of Records, Newark New Jersey, together with Mr. Reuben L. Haas of Feist & Feist and Hyman Schneider. When the Sheriff read the sales, Mr. Goldberg of Zucker & Goldberg, answered that the premises in question be sold. A little while thereafter Philip J. Schotland, Esquire, came into the sales room and came up to Mr. Goldberg.

20 Thereafter when the Sheriff offered the property for sale, Mr. Schotland objected to the sale going on and requested that the same be adjourned for two weeks, because as he stated, he wanted to acquaint himself with the facts and it would take about two weeks to do so.

30 Mr. Goldberg then objected to the adjournment stating that the papers were regular and that a portion of the property consisted of an uncompleted apartment house and that while under ordinary circumstances he would not object to an adjournment of two weeks, yet in this instance the sale ought to go on in order to save the mortgagees from incurring great losses by reason of the non-completion of the building in time in the event that the mortgagees purchased the same at the sale. The Sheriff ruled in Mr. Goldberg's favor and the sale went ahead.

40 Mr. Goldberg gave a bid of \$5,000 for the corner parcel, and although Mr. Schotland was in the room and heard the bid offered and although Mr. Haas was in the room and heard the bid offered, neither one of them, nor did anyone else in the room offer any bid for the property. Mr. Goldberg being the highest bidder, the Sheriff sold the same to him for his clients for the sum of \$5,000.

Affidavit of Hyman Katz.

When the second parcel was offered for sale by the Sheriff, Mr. Goldberg made a bid of \$1,000, and although Messrs. Schotland and Haas were in the room all the time, they offered no bid whatever, and Mr. Goldberg being the highest bidder, the Sheriff sold the second parcel to him for his clients for \$1,000.

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When Mr. Goldberg proceeded to sign the Sheriff's docket of purchase, Mr. Schotland remarked audibly so that nearly everyone in the room heard, that he was not going to let him get away with buying such property at such prices and that he would immediately object to the confirmation of the sale and would go into court and reopen the proceedings.

On Wednesday, July 10th, 1929, I was in Mr. Goldberg's office with Mr. Haas and with a Mr. Hyman Schneider, and in the presence of Mr. Haas I negotiated for the purchase of the corner property but without success.

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On July 18th, 1929, we met at Mr. Goldberg's office again and we then decided that I was to buy the corner parcel for \$41,000 net subject to taxes and assessments, and that I was to pay Feist & Feist \$1,500 for their commission. Mr. Haas was present at this meeting and on behalf of Feist & Feist, consented to such an arrangement, and I then called my lawyer, Julius Stein from Mr. Goldberg's office, and he came over and we drew an agreement with the Hawthorne Realty Co., the purchaser at the Sheriff's sale, wherein it was agreed that I am to pay \$41,000 for the property, subject to taxes and assessments, and that I am to pay \$1,500 to Feist & Feist for their commission, and as a condition precedent to the exchange of the contracts, Mr. Haas was to produce and agreed to produce a general release to Hawthorne Realty Co. and Steinberg Bros., Inc., and Zucker & Goldberg, and a withdrawal of the objections to the confirmation of the sale filed

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Affidavit of Hyman Katz.

by Philip J. Schotland, Esquire. Mr. Stein took my copy of the contract and it was agreed that he should hold it until the following morning when Mr. Haas produced the release and withdrawal, at which time the contracts would be exchanged and I was to give Feist & Feist a paper that they were to get their \$1,500 from the first payment to be made by the standing mortgagee.

10

I considered the deal closed, when on the following day Mr. Haas called me to his office and stated that Mr. Abram Feist objected to the arrangement and that instead of the \$1,500 payment from the mortgage he wanted \$1,500 in cash. I told him that I had made an agreement and that I am willing to abide by it. Then Mr. Haas wanted me to pay \$750.00 in cash and the other \$750 payment on mortgage, but again I told him that that was not my agreement.

20

At no time was it my intention to bid at the Sheriff's sale the sum of \$40,000 for a portion of the said mortgaged premises because I knew that if I bid at the Sheriff's sale the sum of \$40,000 that I would have to pay the same in cash in order to get a deed delivered to me, and I hereby expressly deny the truth of the statement made by Reuben L. Haas in his affidavit, to wit, paragraph fifteen, wherein he stated that I was ready, willing and able to purchase said portion of the said mortgaged premises for the sum of \$40,000 at the sale. I never intended to bid and the announcement made by Mr. Schotland in no way deterred me from bidding.

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HYMAN KATZ

Sworn and Subscribed to before me
this 30th day of July, 1929.

WILLIAM FOGEL,
An Attorney at Law of N. J.

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Affidavit of Louis N. Reiss.

about any of the facts alleged therein and never made any arrangements, nor authorized anyone to make any arrangements about the interest of R. B. Holding Co. in said mortgage. The entire amount has been due for a long time and I have been promised the money as soon as the foreclosure proceedings were completed.

10

In April, 1929, I appeared before Richard Stockton, a Special Master of the Court of Chancery of New Jersey, and after being duly sworn by him I testified as to the amount due to R. B. Holding Co. on the aforesaid interest in said mortgage, and from that time on I knew nothing more about the matter.

LOUIS N. REISS

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Sworn and Subscribed to before me
this 30th day of July, 1929.

WILLIAM FOGEL,
An Attorney at Law of New Jersey.

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Affidavit of Louis D. Goldberg

never tendered and as soon as an equity receiver was about to be appointed for Steinberg Bros., Inc., the underlying mortgagee declared a default to exist and called the entire principal sum secured by said bond and \$44,000 mortgage.

10 In pursuance to an order of this Court made on April 9th, 1929, Richard Stockton, Esquire, one of the special masters of this Court, was ordered to ascertain and report the amount due to complainants for principal and interest upon the mortgage held by them upon the premises in question, and also the amount if any due to the other defendants, including the defendant, Feist & Feist. Whereupon, Richard Stockton caused summons to be issued requiring the defendants, including the defendant, Feist & Feist, to appear before him and prove their judgment, said Feist & Feist, theretofore by
20 their said solicitor, Philip J. Schotland, having filed an answer, which answer did not deny the truth of the allegations contained in the bill of complaint as to the amount claimed to be due to complainants. Said Philip J. Schotland, Esquire, appeared before said Master and proved his said claim, but the said Master was unable to report upon it because of the restraining order issued out of the Court of Chancery.

30 On July 2nd, 1929, I was present in the Sheriff's sales room, Hall of Records, Newark, New Jersey, and instructed the Sheriff to sell the premises described in the bill of complaint. Thereafter Miss Helen Jedell of Mr. Schotland's office entered and requested an adjournment of one week and the adjournment was granted, with the express understanding that no further adjournments are to be given nor requested, due to the fact that the time was very limited for the completion of the building and that whoever buys it would want to complete it by October 1st. This was consented to and we left
40 the room together.

Affidavit of Louis D. Goldberg

On July 9th, 1929 I was again present at the Sheriff's sales room and I again ordered the Sheriff to sell. Then Mr. Schotland himself came in and objected to the sale on the ground that he wanted to acquaint himself with the situation and that he might want to re-open the matter. That he had certain understandings with Maurice J. Zucker, which understandings Mr. Zucker later denied in my presence. The Sheriff then proceeded with the sale and I bid \$5,000 in behalf of my clients, the first mortgagees, for the corner parcel. Although Mr. Schotland was in the room at the time, also Mr. Haas of Feist & Feist, neither one of them nor any of them saw fit to give a bid, and as a matter of fact neither they nor anyone else made a bid, and I being the only bidder the Sheriff sold the same to me. Thereafter the second parcel was offered for sale and I bid \$1,000. Although Mr. Schotland and Mr. Haas were still in the room, neither one of them gave a bid nor did anyone else in the room give a bid and the same was sold to me for \$1,000 in behalf of my clients.

As I was signing the docket, Mr. Schotland remarked that he would not let me get away with buying such properties for \$6,000 and that he would reopen the proceedings, as if to show that he would teach me a lesson. I told him that no one had stopped him from offering a bid and why didn't he offer a bid.

As a matter of fact on July 9th, 1929, but before the time set for the Sheriff's sale, Feist & Feist sent over to my office a letter, a true copy of which is as follows:

Affidavit of Louis D. Goldberg.

FEIST & FEIST
Real Estate and Insurance
 58 Park Place, Newark, N. J.

July 9, 1929

10 Messrs. Zucker & Goldberg,
 Chamber of Commerce Building,
 24 Branford Place,
 Newark, New Jersey.

Gentlemen:

On behalf of our client, Mr. Hyman Katz,
 we wish to submit an offer for the unfinished
 apartment house on the southwest corner of
 Huntington Terrace and Shephard Avenue, for
 Forty Thousand (\$40,000) Dollars. This
 amount is to cover the building in its present
 condition and with the understanding that a
 deed is to be delivered free of all liens or claims.
 20 The lot adjoining the apartment is excluded.

It is understood that if this offer is accepted,
 that you will make satisfactory arrangements
 with reference to the payment of existing mort-
 gages, namely: that payment of these mort-
 gages will not be demanded until completion of
 the building, and a new loan raised.

It is also understood that if this offer is ac-
 cepted you are to pay us our claim against
 Steinberg Brothers amounting to Thirty-Five
 Hundred (\$3,500) Dollars.

We will await your reply with reference to
 this offer.

30

Very truly yours,

FEIST & FEIST, Inc.

R. L. HAAS,

R. L. Haas/RA

Real Estate Department

40 The second paragraph expressly disproves para-
 graph 17 of the petition and shows that Mr. Katz
 was not going to bid at the sale, but he desired to
 purchase the premises from the successful pur-
 chaser at the Sheriff's sale, so that he would not be

Affidavit of Louis D. Goldberg.

called upon to pay the full purchase price in cash, but terms would be arranged for him.

During the time between July 2nd and July 9th, Mr. Hyman Katz together with Mr. Haas were in my office, Mr. Haas having introduced Mr. Katz to me as a prospective purchaser who wanted to buy from the purchaser at the sale because he did not have sufficient cash to buy at the sale. I told him that he would have to wait until the property was offered for sale by the Sheriff before any deals could be made. 16

Mr. Katz attended the sale on July 9th, 1929, but did not make any bid. He told me beforehand that he could not bid for the property because it would require all cash and that he would rather make a deal with the purchaser at the sale, whoever he might be, because then it would require less cash. 20

On July 10th, 1929, Mr. Katz and Mr. Haas were in my office negotiating for the purchase but they could not agree upon a price.

On or about July 18th, 1929, Mr. Katz, Mr. Haas and Mr. Hyman Schreiber were in my office and after some discussion Mr. Katz agreed to purchase the corner parcel for \$41,000.00, net, subject to assessments and taxes for 1928 and 1929, and he agreed to pay \$1,500 to Feist & Feist in consideration of their cancelling the Steinberg Bros. judgment, deliver a release to the seller, Steinberg Bros. and Zucker & Goldberg, and a withdrawal of the objections to the confirmation of the sale theretofore filed. 30

Mr. Katz then called his attorney Julius Stein, Esquire, and an agreement was prepared and held in abeyance until Mr. Haas would produce the release, assignment and withdrawal, which he agreed to 40

Affidavit of Louis D. Goldberg.

produce and which he stated he would have the following morning. The following day, however, Mr. Haas called me on the telephone and stated that Mr. Abram Feist objected to the arrangement that he made and that he insisted upon \$1,500 in cash, and that unless the \$1,500 in cash was given they would not permit the deal to be made and would harass us in having the sale confirmed.

I know of my own knowledge that the said Greene Holding Co. is neither owned nor controlled by the said Maurice J. Zucker.

LOUIS D. GOLDBERG

Sworn and subscribed to before me
this 29th day of July, 1929.

WILLIAM FOGEL,
An Attorney at Law of N. J.

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BILL OF COMPLAINT.

IN CHANCERY OF NEW JERSEY

To The Honorable Edwin Robert Walker, Chancellor of the State of New Jersey:

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The complainants R. B. Holding Co., a corporation having its principal office in the City of Newark, and County of Essex, and State of New Jersey, and Maurice J. Zucker, respectfully show that:

1. On October 25, 1927, Greene Holding Co., a corporation of New Jersey, being indebted to Maurice J. Zucker in the sum of forty-four thousand dollars (\$44,000.), executed to him a bond of that date to secure that sum, payable on April 1st, 1928, with interest at the rate of six per cent per annum, payable half yearly from the date of the bond.

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2. To secure payment of the bond, said Greene Holding Co., a corporation of New Jersey, executed to said Maurice J. Zucker a mortgage of even date therewith, and thereby conveyed to him in fee the lands hereinafter described, on the express condition that such conveyance should be void if payment should be made according to the terms of the bond; which mortgage, having been first duly acknowledged, and the certificate of acknowledgment duly endorsed thereon, was recorded in the Register's Office of Essex County in Book F-62 of Mortgages for said county on pages 516-519.

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3. The mortgaged premises are described as follows:

ALL that certain tract or parcel of land and premises hereinafter particularly described, situate, lying and being in the City of Newark,

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Bill of Complaint.

in the County of Essex and State of New Jersey, as follows:

10 BEGINNING at the corner formed by the intersection of the southwesterly line of Shephard Avenue with the northwesterly line of Huntington Terrace as the said avenue and terrace having recently been opened by the City of Newark; and running from thence along the
 20 said northwesterly line of Huntington Terrace south 47 degrees 48 minutes west 108.80 feet more or less to the northerly line of land lately belonging to the Ideal Improvement Co., thence running along the said northerly line of said land lately belonging to the Ideal Improvement Co. and binding thereon north 42 degrees 59 minutes west 183.03 feet to the line of land conveyed to one Herman Pintel by Maurice J. Zucker by deed dated May 20th, 1926; thence running along the line of land of said Pintel and binding thereon in a course north 44 degrees 43 minutes east 108 feet more or less to the aforesaid southwesterly line of Shephard Avenue; thence running along the same some south 42 degrees 58 minutes east 188.63 feet to the point and place of BEGINNING.

This mortgage is a purchase money mortgage being given in partial consideration for the purchase of the above described premises.

4. Both bond and mortgage contained an agreement that if any installment of principal should remain unpaid for thirty days after the same should fall due, then the whole principal sum, with all unpaid interest should, at the option of the mortgagee, his heirs, executors, administrators or assigns, become immediately due.

Said bond and mortgage further contained a provision that the entire principal sum due thereon should become due and payable on April 1, 1928.

Complainants have, therefore, elected to demand the entire principal sum, with interest.

40 5. On November 15, 1927, complainant, Maurire

Bill of Complaint.

J. Zucker, by written assignment, assigned to R. B. Holding Co., a corporation of New Jersey, an interest in and to the said mortgage to the extent of \$10,000. which assignment was duly recorded in the Register's office of Essex County.

6. On January 8, 1928, Greene Holding Co., conveyed said premises to Parrow Holding Co., a corporation of New Jersey, which deed was recorded in the Register's Office of Essex County in Book N-77 of Deeds for said County on pages 321-322. 10

7. On April 20, 1928, Parrow Holding Co., a corporation, conveyed a portion of the said premises to Parmuf Investment Corp., a corporation of New Jersey, by deed recorded in the Register's Office of Essex County in Book T-78 of deeds for said county on page 132. The premises so conveyed are described as follows: 20

Premises in the City of Newark, County of Essex and State of New Jersey:

BEGINNING at the corner formed by the intersection of the southwesterly line of Shephard Avenue with the northwesterly line of Huntington Terrace, as the said avenue and terrace have recently been opened by the City of Newark, and running from thence along the said northwesterly line of Huntington Terrace south 46 degrees 16 minutes west 108.80 feet more or less to the northerly line of land lately belonging to the Ideal Improvement Co., thence along the said northerly line of said land lately belonging to the said Ideal Improvement Co. and binding thereon north 42 degrees 57 minutes west 91.50 feet to a point; thence running in a course north 44 degrees 53 minutes east 108 feet more or less to the aforesaid south westerly line of Shephard Avenue; thence running along the said southwesterly line of Shephard Avenue south 42 degrees 58 minutes east 94.3 feet to the point and place of BEGINNING. This description is in accordance with a survey made by Borrie & Kreiner, surveyors, 30 40

Bill of Complaint.

dated September 21, 1927 and bearing their number 27-1119.

10 8. On April 20, 1928, said Parmuf Investment Corp., a corporation of New Jersey, mortgaged said land so conveyed by Parrow Holding Co. to the said Parrow Holding Co., by giving to it a purchase money mortgage in the sum of \$18,526.65; which mortgage was given in partial consideration for the conveyance of the said premises, and which mortgage was on August 23, 1928, recorded in the Register's Office of Essex County in Book G-65 of mortgages on page 245.

Any interest which said Parrow Holding Co., a corporation, may have in said land, is subject to the lien of complainants' mortgage.

20 9. On August 24, 1928, Parmuf Investment Corp., a corporation, conveyed the premises last described to Steinberg Bros., Inc., by deed recorded in Book U-78 of deeds for Essex County on page 280.

Any interest which Steinberg Bros., Inc., may have in said land is subject to the lien of complainants' mortgage.

30 10. On August 24, 1928, Steinberg Bros. Inc., mortgaged said land to Parmuf Investment Corp. for \$20,000.00 which mortgage was on September 6, 1928, recorded in Book T-65 of mortgages for Essex County on page 126.

40 11. On January 31, 1929, Parmuf Investment Corp., a corporation, assigned a portion of its said mortgage, to wit to the extent of \$18,500 to Kuskin & Rotberg, Inc., a corporation, and reserved to itself the balance of the said mortgage, to wit: \$1,500.00. The assignment of Kuskin & Rotberg, Inc., having been first duly acknowledged, was recorded on January 31, 1929, in the Register's Office of Essex County.

Bill of Complaint.

Any interest which said Parmuf Investment Corp. and Kuskin & Rotberg, Inc., may have in said lands is subject to the lien of complainants' mortgage.

12. On October 11, 1928, Steinberg Bros., Inc., a corporation, mortgaged said land to Gem Building and Loan Association, a corporation, for \$105,000.00, which mortgage was on October 16, 1928, recorded in the Register's Office of Essex County in Book K-65 of mortgages for said county on page 540. 10

Any interest which said Gem Building and Loan Association may have in the said land is subject to the lien of complainants' mortgage.

13. On January 11, 1929, Steinberg Bros., Inc., a corporation, mortgaged said premises to Elin Oil-O-Matic Co., by mortgage dated January 11, 1929, and recorded on January 18, 1929, in the Register's Office of Essex County as No. 64 and which mortgage was given to secure the sum of \$3,700. 20

Any interest which said Elin Oil-O-Matic Co. may have in said land is subject to the lien of complainants' mortgage.

14. On December 27, 1928, Feist & Feist, Inc., a corporation of New Jersey, recovered a judgment against Steinberg Bros., Inc., a corporation, in the sum of \$3,500. besides costs, which judgment was entered on December 27, 1928 and recorded in the County Clerk's Office of Essex County in Book 106 of Circuit Court Judgments on page 253. 30

Any interest which said Feist & Feist, Inc., a corporation, may have in said lands is subject to the lien of complainants' mortgage.

15. The whole amount of principal with interest 40

Bill of Complaint.

thereon from October 25, 1927, is due upon complainants' bond and mortgage.

Complainant is without adequate remedy in the courts of law, and therefore prays:

10 1. That Greene Holding Co., a corporation, Parrow Holding Co., a corporation, Parmuf Investment Corp., a corporation, Kuskin & Rotberg, Inc., a corporation, Steinberg Bros., Inc., a corporation, Gem Building and Loan Association, a corporation, Elin Oil-O-Matic Co. and Feist & Feist, Inc., a corporation, who are the defendants to this suit, may answer this bill of complaint and each statement therein made;

2. That an account may be taken of the amount due on complainant's mortgage.

20 3. That the defendants, or one of them, may be decreed to pay complainants the amount so found due, with interest and costs, by a short day, to be appointed by this Court; and that in default of such payment, they, and each of them, be debarred and foreclosed of all equity of redemption in said lands; or

4. That a decree may be made for the sale of the mortgaged premises to raise and pay to the complainants the amount so found due on their mortgage, with interest and costs.

30 5. That a writ of subpoena may issue, commanding said defendants to answer this bill of complaint and to abide by such decree as this court may make in the premises.

ZUCKER & GOLDBERG,
Solicitors for and of counsel
with complainants.

A true copy,
FERD GARRETSON,
Clerk

Answer of Defendant, Feist & Feist, Inc.

to the Parrow Holding Company in the sum of \$18,526.65, represents the same indebtedness as the extent of the lien of complainants' mortgage on said lands for said amount.

10 3. Defendant further answering says that the lien of the mortgage given by Steinberg Bros., Inc., to the Parmuf Investment Corporation, described in paragraph 10 of the Bill of Complaint, which mortgage is now held in parts by the Parmuf Investment Corporation and Kuskin & Rothberg as set forth in paragraphs 10 and 11 of the Bill of Complaint is a lien to the extent of only \$8,500., that being the amount advanced on said mortgage on account of the \$20,000. which it was given to secure.

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PHILIP J. SCHOTLAND,
Solicitor for Defendant
Feist & Feist, Inc.

A true copy
FERD. GARRETSON,
Clerk.

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**DECREE PRO CONFESSO AND
ORDER OF REFERENCE.**

IN CHANCERY OF NEW JERSEY

<p><i>Between</i> R. B. HOLDING CO., a corporation, et al., <i>Complainants,</i> <i>and</i> GREENE HOLDING CO., a corporation, et als., <i>Defendants.</i></p>	}	<p><i>On Bill, &c.</i> <i>Decree</i> <i>Pro Confesso</i> <i>and Order of</i> <i>Reference.</i></p>	10
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This cause being opened to the court by Zucker & Goldberg, solicitors of the complainants, and it appearing that subpoena calling upon the defendants to answer the complainants' bill of complaint filed herein has been duly issued and returned served upon the defendants, Steinberg Bros., Inc., Greene Holding Co., Parrow Holding Co., Kuskin & Rotberg, Inc., Parmuf Investment Corp., Gem Building and Loan Association, Feist & Feist, Inc.,

And it appearing that the defendants, Steinberg Bros., Inc., Greene Holding Co., have not nor has any of them filed an answer to said bill of complaint within the time limited by law and said order, but have wholly failed and neglected so to do;

And it further appearing that the defendants, Parrow Holding Co., who holds a mortgage on a portion of the mortgaged premises described in the bill of complaint herein, Kuskin & Rotberg, Inc., who holds an interest in a mortgage on a portion of the mortgaged premises described in the bill of

Decree Pro Confesso & Order of Reference.

complaint herein and Parmuf Investment Corp. who holds an interest in a mortgage on a portion of the mortgaged premises described in the bill of complaint, Gem Building and Loan Association, who holds a mortgage on a portion of the mortgaged premises described in the bill of complaint herein, all of which mortgages and liens are subsequent to complainants', have given notice to the complainants that they desire to have their encumbrance reported upon, and that Feist & Feist, Inc., have filed an answer which answer does not deny the truth of the allegations contained in the bill of complaint as to the amount claimed to be due to complainants, and that its lien is subsequent to complainants', and that Channel Lumber Co., who were admitted as a party defendant have asked to have their encumbrance reported upon;

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It is, thereupon on this 9th day of April, 1929, on motion of Zucker & Goldberg, solicitors for complainants, ORDERED that the said complainants' bill of complaint be and the same is hereby taken as confessed against the said defendants, Steinberg Bros., Inc. and Greene Holding Co., and that it be referred to Richard Stockton one of the special masters of this court, to ascertain and report the amount due to the said complainants for principal and interest upon the mortgage held by them upon the premises mentioned and described in the said bill of complaint, and also the amount, if anything, due to the said defendants, Parrow Holding Co., Kuskin & Rotberg, Inc., Feist & Feist, Inc., Gem Building and Loan Association, Channel Lumber Co. and Parmuf Investment Corp. upon their respective mortgages and encumbrances and to report accordingly, and also to ascertain and report the order and priority of the said mortgages and encumbrances respectively, whether they all embrace the same premises, and whether the said mortgaged premises should be sold together or in parcels, and if in parcels, in

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Decree Pro Confesso & Order of Reference.

what order; and that the said master make his report with all convenient speed.

And all further equity is reserved until the coming in of the said special master's report.

Respectfully advised,

WM. J. BACKES,
A. M.

E. R. WALKER,
C.

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A true copy,
FERD GARRETSON,
Clerk.

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Master's Report.

kin & Rothberg, Inc., Feist & Feist, Inc., Gem Building and Loan Association and Parmuf Investment Company and also to Channel Lumber Co. which later was made a defendant to this suit and that service of such summonses was acknowledged by the respective solicitors of said defendants as appears by the endorsements on the said summonses which are hereto annexed. 10

And I further certify and report that I have been attended by Maurice J. Zucker, solicitor of said complainants, and also by the solicitors of said defendants, and have examined into and considered the matters referred to me by said order.

And I further report that the said solicitor of complainants produced before me the mortgage first mentioned and described in the said bill of complaint, which mortgage bears date October 25th, 1927, and was made by Greene Holding Co. to said complainant Maurice J. Zucker and which said mortgage was duly proved according to law by the said Greene Holding Co. and recorded as in the said bill mentioned, as appears by endorsements thereon, and the said solicitor of complainants also produced before me the bond which the said mortgage was given to secure and an assignment of an interest therein from said Maurice J. Zucker to said complainant R. B. Holding Co., which bond and mortgage were respectfully marked by me as Exhibits C 1 and C 2 on the part of said complainant Maurice J. Zucker and said assignment was marked by me as Exhibit C1 on the part of said complainant R. B. Holding Co. 20 30

And I find and report that there is due to said complainants on April 15th, 1929, for principal and interest upon the said mortgage held by them as aforesaid upon the premises mentioned and described in the said bill of complaint the sum of forty-seven 40

Master's Report.

thousand eight hundred and eighty-seven dollars and sixty-three cents, of which sum thirty-seven thousand and thirty seven dollars and sixty three cents is due to said complainant Maurice J. Zucker and ten thousand eight hundred and fifty dollars to said complainant R. B. Holding Co.

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And I further report that the schedule hereto annexed and making part of this, my report, contains a statement and account of the principal and interest money due to both of said complainants on said mortgage, to which, for greater certainty, I refer.

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And I further report that the said amount due on said mortgage is not greater than that stated in the depositions of said complainant Maurice J. Zucker and of Louis N. Reiss, the representative of said complainant R. B. Holding Co. which depositions are hereto annexed, and the amount due as stated in said depositions is not greater than the amount appearing to be due from the charges of the bill and the inspection of the said mortgage and the evidence of indebtedness secured thereby.

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And I further report that I am unable at this time to report the amount, if anything, due to any of the said defendants Parrow Holding Co., Kuskin & Rothberg, Inc., Feist & Feist, Inc., Gem Building and Loan Association, Parmuf-Investment Corp. and Channel Lumber Co. for the reason that the claims of all of said defendants are against Steinberg Bros., Inc., and that an order was made by this Court on February 11th, 1929, in the suit of Columbia Marble Works, Inc. v. Steinberg Bros., Inc., restraining and enjoining all persons from instituting or prosecuting or continuing the prosecution of any action or proceeding in law or in equity against the said defendant corporation though such restraint was specifically modified as to the complainants in this suit

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Master's Report.

by an order of this Court, entered in this cause on April 24th, 1929.

And I further report that the said mortgage of complainants is prior and superior in lien to the respective mortgages and judgments held by all of said defendants and that the said mortgages and judgments of said defendants do not embrace all of the premises covered by the said mortgage of complainants but only a portion thereof.

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And I further report that the premises covered by the said mortgage of complainants consists of a tract of land with a frontage of 188.63 feet as described in paragraph 3 of the bill of complaint herein and that there is a building erected on the easterly portion thereof which portion thereof was separately conveyed after the mortgage of said complainants was recorded and has a frontage of 94.3 feet as described in paragraph 7 of the said bill of complaint and that the remaining part of said tract is vacant property and that there are liens as aforesaid on the said easterly portion only and it would therefore seem more advantageous to have the said premises sold in two parcels; and I therefore recommend that an order be made by this Court directing that portion of said premises described in paragraph 7 of said bill of complaint be first sold under the direction of this Court to raise and pay the said amount due said complainants on their said mortgage and, if the sale of said portion of said premises be insufficient for that purpose, then the remainder of said premises described in paragraph 3 of said bill of complaint be sold for that purpose and that the balance of the moneys, if any, arising from such sale be paid into this Court to be there distributed according to law and the further order of this Court.

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All of which is respectfully submitted this 25th day of April, 1929.

RICHARD STOCKTON
Special Master in Chancery of New Jersey.

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*Master's Report.***SCHEDULE**

10	Bond made by Greene Holding Co. and Isidor Sperber, Isidor Haber and Louis J. Siegler to complainant Maurice J. Zucker, bearing date October 25th, 1927, in the penal sum of \$88,000. conditioned for the payment of \$44,000. on April 1st, 1928, with interest at 6% payable semi-annually and secured by the mortgage first mentioned and described in the bill of complaint herein and as assignment of an interest of \$10,000. therein on November 15th, 1927, by said complainant Maurice J. Zucker to complainant R. B. Holding Co.	\$ 44,000.00
20	Interest on \$34,000. thereof at 6% from October 25th, 1927, to April 15th, 1929, 1 year, 5 months and 21 days	3,037.63
	Interest on \$10,000. thereof at 6% from November 15th, 1927, to April 15th, 1929, 1 year and 5 months	850.00
	Amount due on said mortgage on April 15th, 1929	\$ 47,887.63
30	AMOUNT DUE COMPLAINANT MAURICE J. ZUCKER ON SAID MORTGAGE ON APRIL 15th, 1929,....	\$ 37,037.63
	AMOUNT DUE COMPLAINANT R. B. HOLDING CO. ON SAID MORTGAGE ON APRIL 15th, 1929	\$ 10,850.00

RICHARD STOCKTON

Special Master in Chancery of New Jersey

*Master's Report.***INDEX**

Witness	Direct	Master
Maurice J. Zucker	3-5 & 6-7	
Louis N. Reiss	6	

10 **SUMMONSES ISSUED APRIL 10th, 1929,
 RETURNABLE APRIL 15th, 1929.**

1. Parrow Holding Co.; service acknowledged by J. Charles Schnur, solicitor.

2. Kuskin & Rotberg; service acknowledged by William Fogel, solicitor.

3. Feist & Feist, Inc.; service acknowledged by Philip J. Schotland, solicitor.

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4. Gem Building and Loan Association; service acknowledged by Colton & Hare, solicitors.

5. Parmuf Building and Loan Association; service acknowledged by Thomas L. Parsonnet, solicitor.

6. Channel Lumber Co.; service acknowledged by M. J. Finkelstein, solicitor.

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APPEARANCES:

For complainants: Maurice J. Zucker of Zucker and Goldberg.

For defendants: Parrow Holding Co.; Louis D. Goldberg of Zucker and Goldberg.

Feist & Feist, Inc.; Miss Helen Jedel, representing Philip J. Schotland.

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Channel Lumber Co.; Milton J. Finkelstein.

Master's Report.

MAURICE J. ZUCKER, Direct.

MAURICE J. ZUCKER, being duly sworn, testified as follows:

I am one of the complainants in this suit and am solicitor pro se and am also solicitor of complainant R. B. Holding Co., a corporation of New Jersey. 10

I have here the original mortgage sought to be foreclosed in this suit and the bond which the said mortgage was given to secure.

The bond was made by Greene Holding Co., a corporation of New Jersey, and Isidor Sperber, Isidor Haber and Louis J. Siegler to me and is dated October 25th, 1927, and is in the penal sum of \$88,000. conditioned for the payment of \$44,000. on April 1st, 1928, with interest at 6% per annum, payable semi-annually; the bond is signed and sealed by said Greene Holding Co., Isidor Sperber, Isidor Haber and Louis J. Siegler. 20

The mortgage was made by said Greene Holding Co. to me and bears the same date and is in the same amount and has the same terms as the bond and is signed, sealed and proved by said Greene Holding Co. and is endorsed as recorded in the office of the Register of Essex County, N. J. on October 31st, 1927, in Book F 62 of Mortgages, pages 516-519. 30

This mortgage covers premises in the City of Newark, Essex County, New Jersey, being on the southwesterly corner of Shephard Avenue and Huntington Terrace and having a frontage of 188.63 feet on Shephard Avenue and a width in the rear of 183.03 feet and a depth of about 108 feet. The mortgage is a purchase money mortgage and is a first lien on the said premises and provides that upon payment of the principal sum and interest I will at my own cost and expenses procure releases 40

Master's Report.

from any and all prior underlying mortgages on said premises and that I will release from the lien of my mortgage the first 94 feet on Shephard Avenue on the payment of \$250. per front foot and at the rate of \$225. per front foot for the remaining land.

10 On November 15th, 1927, I assigned to the complainant R. B. Holding Co. an interest to the extent of \$10,000. in said mortgage with interest from November 15th, 1927, and provided in the assignment that upon the payment of \$5,000. to said R. B. Holding Co. it would execute a release for one-half of the premises described in said mortgage; I have here the original assignment which is endorsed as recorded in the office of said Register on November 17th, 1927, in Book 195 of Assignments of Mortgages, pages 48-49.

20 Mr. Zucker offers in evidence the said bond, mortgage and assignment and the Master admits same in evidence and marks the bond and mortgage respectively as Exhibits C 1 and C 2 on the part of said complainant Maurice J. Zucker and marks the assignment as Exhibit C 1 on the part of said complainant R. B. Holding Co.

MAURICE J. ZUCKER, Direct.

30 No part of the said principal sum was ever paid nor was any interest paid thereon and therefore there is now due on said mortgage the full principal sum of \$44,000. with interest at 6% from October 25th, 1927, to April 15th, 1929, which is 1 year 5 months and 21 days and amounts to \$4,887.63, making the total amount now due on said mortgage \$47,887.63.

40 All of this sum is due me except the \$10,000. interest therein I assigned to R. B. Holding Co. with interest on said \$10,000. at 6% from November 15th, 1927, to April 15th, 1929, which is 1 year and 5 months and amounts to \$850. making the R. B. Holding Co. entitled to \$10,-

Master's Report

850. and I am entitled to the balance of \$37,-
037.63.

There is a three story brick apartment in the course of construction on the easterly 94.31 feet of the premises in question but the westerly 94.32 feet of the property is vacant and unimproved. I should think the property will have to be sold in two parcels for the reason that some of the liens are only on the easterly 94 feet on which the house is built.
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LOUIS N. REISS, Direct.

MAURICE J. ZUCKER, Direct.

LOUIS N. REISS, a witness called by Mr. Zucker and duly sworn, testified as follows:

Q. What is your business?

A. Secretary of R. B. Holding Co., which is one of the complainants in this suit.

Q. Are you familiar with the mortgages, or interest in mortgages, held by your company?

A. Yes, and they include the \$10,000. interest in the mortgage being foreclosed in this suit and you have correctly testified as to the amount due thereon.

HEARING CONTINUED

FURTHER TESTIMONY taken April 25th, 1929, at ten A. M.

MAURICE J. ZUCKER, one of the complainants, testified further as follows:

I now offer in evidence a copy of an order of the Court of Chancery made on February 11th, 1929, in the suit of Columbia Marble Works, Inc. v. Steinberg Bros., Inc., directing, among other things, that all persons be restrained and enjoined from instituting or prosecuting or continuing the prosecution of any action or proceeding in law or in equity against the said defendant corporation.

I submitted this order to the Master at the

Master's Report.

last Hearing and he thought it precluded the continuance of this suit and so I appeared before Vice Chancellor Backes yesterday and had the said restraint modified as regards the complainant in this suit; I present a copy of the order so signed by the Court on April 24th, 1929.

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This order does not permit any of defendants to proceed; all their claims are directly against Steinberg Bros., Inc., but my mortgage covers other property.

I certify that the foregoing depositions were taken by Margaret Manson, a stenographer selected by me, and by me duly sworn to faithfully and truly take stenographically and reproduce in typewriting the testimony given, and that such depositions were taken in my immediate presence and hearing by said stenographer, sworn as above stated, and I believe that they accurately state the evidence given.

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RICHARD STOCKTON,
Special Master in Chancery of New Jersey.
Master's Summonses attached.

A true copy,
FERD. GARRETSON,
Clerk.

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FINAL DECREE.

IN CHANCERY OF NEW JERSEY

Between

R. B. HOLDING CO., a corporation and MAURICE J. ZUCKER,

*Complainants,**and*

GREENE HOLDING CO., a corporation, et als.,

Defendants.

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*On Bill, &c.**Final Decree.*

This cause being opened to the court by Zucker & Goldberg, solicitors for the complainants, and the complainants' bill of complaint having been heretofore taken as confessed against the defendants, Steinberg Bros., Inc., and Greene Holding Co., and it appearing that the defendants, Parrow Holding Co., Kuskin & Rotberg, Inc., Parmuf Investment Corp. and Gem Building and Loan Association, who hold mortgages on a portion of the mortgaged premises described in the bill of complaint which are subsequent to complainants' mortgage have given notice to the complainants that they desire to have their encumbrances reported upon, and that Feist & Feist, Inc., has filed an answer in this cause stating that it does not dispute the amount claimed by complainants as due to them by their bill of complaint, and that the Channel Lumber Company which was admitted as party defendant in this cause by an order made in this cause, has given notice to have its mechanic's lien which is subsequent to Complainants' mortgage and covers a portion of the premises described in the bill of complaint, reported upon; whereupon and upon reading a report on file made by Richard Stockton, one of the special mas-

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Final Decree.

ters of this court, bearing date the 25th day of April, 1929, whereby it appears that there is due to the complainants for principal and interest on their mortgage the sum of \$47,887.63, of which sum \$37,037.63 is due to complainant, Maurice J. Zucker, and \$10,850. to complainant, R. B. Holding Co. for principal and interest on their mortgage, and that the special master was unable at the time of the making of his report, to report the amount of anything due to any of the said defendants, Parrow Holding Co., Kuskin & Rotberg, Inc., Feist & Feist, Inc., Gem Building and Loan Association, Parmuf Investment Corp. and Channel Lumber Company, for the reason that the claims of all of said defendants are against Steinberg Bros., Inc., and that an order was made by this court on February 11, 1929, in the suit of Columbia Marble Works, Inc. vs. Steinberg Bros., Inc., restraining and enjoining all persons from instituting or prosecuting, or continuing to prosecute any action or proceeding in law or in equity against said defendant corporation, Steinberg Bros., Inc.,^a and that said restraint was specifically modified as to the complainants in this cause by an order of this court entered in this cause on April 24, 1929, and that said mortgage of complainants is prior and superior in lien to the respective mortgages and judgments held by all of the said defendants, and that said mortgages and judgments of said defendants do not embrace all of the premises covered by said mortgage of complainants, but only a portion thereof, and that said complainants' mortgage was made and recorded prior to any of the mortgages of any of the said defendants, or any of the said defendants' liens, and is entitled to priority of payment; and that the premises covered by the said mortgage of complainants, consist of a tract of land with a frontage of 188.63 feet as described in paragraph three of the bill of complaint in this cause filed, and that there is a building erected on the easterly portion thereof,

Final Decree.

which portion thereof was separately conveyed after the mortgage of said complainants was recorded and has a frontage of 94.3 feet as described in paragraph seven of the said bill of complaint; and that the remaining part of said tract is vacant property. There are liens as aforesaid on the said easterly portion only, and it would therefore be more advantageous to have the said premises sold in two parcels, and in the opinion of the special master, an order should be made by this court directing that that portion of the said premises described in paragraph seven of the bill of complaint in this cause be first sold under the direction of this court, to raise and pay said amount due said complainants on their said mortgage, and that if the sale of said portion of said premises be insufficient for that purpose, then the remainder of said premises described in paragraph three of said bill of complaint be sold for that purpose, and that the balance of the money, if any, arising from said sale, be paid to this court to be further distributed according to law and the further order of this court; and no cause appearing to be shown to the contrary, it is on this 7th day of May, 1929,

ORDERED, ADJUDGED AND DECREED that the said report and all of the matters and things therein contained, do stand ratified and confirmed; and that that portion of the premises described in paragraph seven of the bill of complaint, that is all that tract or parcel of land and premises in the City of Newark, County of Essex and State of New Jersey, more particularly described as follows:

BEGINNING at the corner formed by the intersection of the southwesterly line of Shephard Avenue with the northwesterly line of Huntington Terrace, as the same avenue and terrace have recently been opened by the City of Newark; and running from thence along the said northwesterly line of Huntington Terrace south 46 degrees 16 minutes west one hundred and eight feet and eighty-one-

Final Decree.

10 hundredths of a foot (108.80) more or less to the northerly line of land lately belonging to the Ideal Improvement Co., thence running along the said northerly line of said land lately belonging to the said Ideal Improvement Co. and binding thereon, north 42 degrees 57 minutes west ninety-one feet and fifty one-hundredths of a foot (91.50) to a point; thence running in a course north 44 degrees 53 minutes east one hundred and eight feet more or less to the aforesaid southwesterly line of Shephard Avenue south 42 degrees 58 minutes east ninety-four feet and thirty-one one-hundredths of a foot (94.31) to the point and place of BEGINNING.

This description is in accordance with a survey made by Borrie & Kriener, Surveyors, dated September 21, 1927, and bearing their numbr 27-1119.

20 Be sold as aforesaid to raise and satisfy the money due to said complainants, and that after said premises above described have been sold, that the remaining land described in the bill of complaint filed in this cause, and in the complainants' mortgage, be then sold; that is, the land left as described in complainants' mortgage after that portion of the land described in paragraph seven of the bill of complaint has been sold, that is all that tract or parcel of land and premises in the City of Newark, County of Essex and State of New Jersey, described as follows:

30 BEGINNING at a point in the southerly line of Shephard Avenue distant westerly ninety-four feet and thirty-one one-hundredths of a foot (94.31) from the intersection of said side of Shephard Avenue with the westerly side of Huntington Terrace; thence running in a course south 44 degrees 53 minutes west one hundred eight feet (108) more or less to the northerly line of land lately belonging to the Ideal Improvement Co., thence running along said northerly line of said land lately belonging to Ideal Improvement Co. and binding thereon north 42 degrees 59 minutes west ninety-one feet and fifty-

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Final Decree.

three one-hundredths of a foot (91.53) to the line of land conveyed to one Herman Pintel by Maurice J. Zucker, by deed dated May 20, 1926, thence running along the line of land of said Pintel and binding thereon in a course north 44 degrees 43 minutes east one hundred eight feet (108) more or less to the afcresaid southwesterly line of Shephard Avenue; thence running along the same south 42 degrees 58 minutes east ninety-four feet and thirty-two hundredths of a foot (94.32) to the point and place of BEGINNING.

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To pay and satisfy unto the complainants the sum of \$47,887.63 together with lawful interest thereon to be computed from the 25th day of April, 1929, being the date of the Master's report, with complainants' costs to be taxed, including a counsel fee of \$400.00 which is hereby allowed to said complainants; and that the balance of the moneys, if any, arising from said sales, be paid into this court to be there distributed according to law and the further order of this court; and that a writ of Fieri Facias issue for that purpose out of this court, directed to the Sheriff of the County of Essex, demanding him to make sale according to law of the mortgaged premises hereinbefore described, and that out of the money arising from said sale, to pay to the complainants or their solicitors, their said debts, interest and costs so far as the moneys realized from the sale of the last described portion of the mortgaged premises are concerned; and if more than sufficient shall be realized, such excess shall be paid to this court pending the further order of this court; and if an insufficient sum shall be realized to pay to complainants the amount due to them, then the amount received on the sale of the first described premises in this order shall be paid to the complainants for the balance due to them on their said debt, interest and costs, and in case more money shall be raised by said sales than shall be sufficient to answer the amount due to complainants,

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Final Decree.

said surplus shall be brought into this court to abide the further order of this court unless otherwise previously disposed of by this court and that the Sheriff make return without delay of his proceedings by virtue of said writ.

10 And it is further ORDERED, ADJUDGED AND
 DECREED that the defendants stand absolutely de-
 barred and foreclosed of and from all equity of
 redemption of, in and to the said mortgaged prem-
 ises when sold as aforesaid by virtue of this de-
 cree.

E. R. WALKER,
 C.

20 A true copy,
 FERD. GARRETSON,
 Clerk.

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SHERIFF'S NOTICE.

(Chancery D-424.)

SHERIFF'S SALE—In Chancery of New Jersey—Between R. B. Holding Co., a corporation, and Maurice J. Zucker, complainants, and Greene Holding Co., a corporation, et als., defendants. Fi. Fa., for Sale of Mortgaged Premises.

By virtue of the above stated writ of Fiera Facias, to me directed, I shall expose for Sale by Public Vendue, at Room 507, Hall of Records, in Newark, on Tuesday, the second day of July, next, at 2 o'clock P. M., all that certain tract or parcel of land and premises hereinafter particularly described, situate, lying and being in the City of Newark, Essex County, New Jersey, as follows:

Beginning at the corner formed by the intersection of the southwesterly line of Shephard Avenue with the northwesterly line of Huntington Terrace as the said avenue and terrace have recently been opened by the City of Newark; and running from thence along the said northwesterly line of Huntington Terrace south 47 degrees 48 minutes west 108.80 feet more or less to the northerly line of land lately belonging to the Ideal Improvement Co.; thence running along the said northerly line of said land lately belonging to the Ideal Improvement Co. and binding thereon north 42 degrees 59 minutes west 183.03 feet to the line of land conveyed to one Herman Pintel by Maurice J. Zucker by deed dated May 20th, 1926; thence running along the line of land of said Pintel and binding thereon in a course north 44 degrees 43 minutes east 108 feet more or less to the aforesaid southwesterly line of Shephard Avenue; thence running along the same south 42 degrees 58 minutes east 188.63 feet to the point and place of beginning.

To be sold in the manner following:

The Tract next described to be sold first.

Beginning at the corner formed by the intersection of the southwesterly line of Shephard Avenue with the northwesterly line of Huntington Terrace as the said avenue and terrace have recently been opened by the City of Newark; and running from thence along the said northwesterly line of Huntington Terrace

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Sheriff's Notice.

10 south 46 degrees 16 minutes west 108.80 feet more or less to the northerly line of land lately belonging to the Ideal Improvement Co.; thence along the said northerly line of said land lately belonging to the said Ideal Improvement Co. and binding thereon north 42 degrees 57 minutes west 91.50 feet to a point; thence running in a course north 44 degrees 53 minutes east 108 feet more or less to the aforesaid southwesterly line of Shephard Avenue; thence running along the said southwesterly line of Shephard Avenue south 42 degrees 58 minutes east 94.3 feet to the point and place of beginning.

This description is in accordance with a survey made by Borrie & Kreiner, surveyors, dated September 21, 1927, and bearing their numbers 27-1119.

Being known and designated as Street Number 224 Shephard Avenue, Newark, New Jersey.

20 The Tract next described to be sold secondly.

Beginning at a point in the southerly line of Shephard Avenue distant westerly ninety-four feet and thirty-one one-hundredths (94.31) of a foot from the intersection of said side of Shephard Avenue with the westerly side of Huntington Terrace; thence running in a course south 44 degrees 53 minutes west one hundred eight (108) feet more or less to the northerly line of land lately belonging to the Ideal Improvement Co.; thence running along said northerly line of said land lately belonging to Ideal Improvement Co. and binding thereon north 42 degrees 59 minutes west ninety-one feet and fifty-three one-hundredths (91.53) of a foot to the line of land conveyed to one Herman Pintel by Maurice J. Zucker, by deed dated May 20, 1926; thence running along the line of land of said Pintel and binding thereon in a course north 44 degrees 43 minutes east one hundred eight (108) feet more or less to the aforesaid southwesterly line of Shephard Avenue; thence running along the same south 42 degrees 58 minutes east ninety-four feet and thirty-two hundredths (94.32) of a foot to the point and place of beginning.

40 Being known and designated as Street Num-

Sheriff's Notice.

ber 230 Shepard Avenue, Newark, New Jersey.

The approximate amount of the Decree to be satisfied by said sale is the sum of Forty-eight Thousand Nine Hundred Fifty-seven Dollars and Eighty-nine Cents (\$48,957.89), together with the costs of this sale.

Newark, N. J., May 27th, 1929.

CONRAD DEUHLER, Sheriff.

\$49.14

Zucker & Goldberg, Sol'rs.

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DECISION.

IN CHANCERY OF NEW JERSEY

10 *Between*

R. B. HOLDING CO., a corporation, et al.,

*Complainants,**and*

GREENE HOLDING CO., a corporation, et als.,

Defendants.

*On Bill, &c.
Memorandum
of Decision
by Vice
Chancellor
Backes*

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The judgment of Feist & Feist against Steinberg Bros., Inc., was recovered within four months of the decree of insolvency of Steinberg Bros., Inc., and is void. Feist & Feist have no standing as judgment creditors to oppose confirmation of sale. They are common creditors and relief goes to the receiver through whom they must act. The merits of the petition are met. The debt of the complainant's mortgage is conceded to be due. That the lien of the mortgage on the Steinberg tract was to be limited to a sum less than the whole debt is denied. That one of the complainants (through the Parrow Holding Co.) agreed to release the Steinberg tract of the mortgage under foreclosure upon the payment of a lesser sum did not upon the failure to pay the lesser sum deprive the complainant of their right to recover the full sum. Payment was a pre-requisite.

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The claim that the complainant agreed with the petitioner to enter a decree against the Steinberg tract for \$24,000 only is denied and further was

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without consideration.

Decision.

The sale was not in the inverse order of alienation as it should have been, but no one was injured. Both tracts were sold for less than the complainant's mortgage debt. The irregular manner of sale did not obstruct or interfere with bidders for either tract, nor embarrass any defendant as prospective bidders, to protect their interests, surely not the receiver nor the petitioner **in right** of the receiver. The petitioners were not surprised and are in laches. They set up by their answer the alleged contract to limit the liability of the Steinberg tract. That question was referred to a master under direction to ascertain the amount due complainants under their mortgage. The master reported the full amount due to the mortgagee. The petitioners offered nothing of evidence of the limitation of liability of the respective tracts although present or represented before the Master at the hearing. They were not barred from doing this by the injunction in the receivership suit. They took no exceptions to the Master's Report of which they were charged with notice, as well as the decree of sale. They had notice of the sale and obtained one adjournment. It is too late to come in after the sale to make the defense. They had every opportunity to offer in the regular progress of the suit and concerning which they either were grossly careless or abandoned as not supportable. They are not maintained by the proofs on the motion. The motion to set aside the sale and open the decree is denied for want of surprise of merit and the sale will be confirmed with costs and counsel fee of Fifty Dollars (\$50.00).

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ORDER CONFIRMING SALE.

IN CHANCERY OF NEW JERSEY

10	<i>Between</i>	R. B. HOLDING CO., a corporation, et al.,	}	<i>On Bill, &c.</i>
		<i>Complainants,</i>		<i>Order</i>
	<i>and</i>	GREENE HOLDING CO., a corporation, et als.,		<i>Confirming</i>
		<i>Defendants.</i>		<i>Sale.</i>

20 CONRAD DEUHLER, Sheriff of the County of Essex, having filed his report made in the above entitled cause, of the sale of certain lands and premises in the bill of complaint in this cause particularly described, pursuant to a writ of fi fa issued out of this court and it appearing by said report that the said Conrad Deuchler, Sheriff of the County of Essex duly advertised the time and place of said sale according to law and did from time to time adjourn the said sale and did on the last adjournment, that is on July 9th, 1929 sell the said lands and

30 premises so advertised at public vendue to the highest bidder and that the Hawthorne Realty Co. bid therefore as follows:

40 For the first tract ordered to be sold first, the sum of Five Thousand Dollars (\$5,000.00) and for the second tract ordered to be sold secondly, the sum of One Thousand Dollars (\$1,000.00) and the Hawthorne Realty Co., being the highest bidder for the same, the said lands and premises were then and there struck off and sold to the said Hawthorne Realty Co., and, or its successors and assigns for the said sum of Five Thousand Dollars (\$5,000.00)

Order Confirming Sale.

for the first tract ordered first to be sold and One Thousand Dollars (\$1,000.00) for the tract ordered to be sold secondly, and Feist & Feist, defendant, in said cause having presented a petition to this court, ordering the complainants to show cause until the further order of this court, why the complainants should not be restrained and enjoined from procuring confirmation of the Sheriff's sale of the mortgaged premises, and why the final decree and decree pro-confesso entered in this cause should not be opened, and from taking any further steps in this cause except to answer the petition and said order to show cause and the court having heard the argument in favor of said order and petition by Philip J. Schotland, Esq., Solicitor for and of Counsel with Feist & Feist, Inc., and contra Zucker & Goldberg, Esqs., solicitors for the complainants and being satisfied that the petition and order to show cause made in behalf of Feist & Feist, Inc., one of the defendants in this cause, should be dismissed and the restraint heretofore issued vacated, IT IS on this nineteenth day of August, Nineteen Hundred and Twenty-nine, ORDERED, ADJUDGED and DECREED that the said sale aforesaid be and the same is hereby confirmed as valid and effectual in law, and it is further ORDERED that the said Conrad Deuchler, Sheriff of the County of Essex, execute and deliver a good and sufficient conveyance in law to the said Hawthorne Realty Co. and or its successors and assigns for the said lands so bought by it as aforesaid, upon it complying with the conditions of said sale and it is further

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ORDERED, ADJUDGED and DECREED that the petition and order to show cause heretofore filed by Feist & Feist, Inc., be and the same are hereby dismissed and the restraint heretofore issued be and the same is hereby vacated, and that the defendant Feist & Feist, Inc., a corporation, pay to the complainants their costs on said application by

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Order Confirming Sale.

Feist & Feist, Inc., as aforesaid together with a counsel fee in favor of said complainants and against the said defendant Feist & Feist, Inc., a corporation, in the sum of Fifty Dollars (\$50.00).

E. R. WALKER
C.

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Respectfully advised,
JOHN H. BACKES

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New Jersey Court of Errors and Appeals

<p><i>Between</i> R. B. HOLDING CO., a corporation, et al., <i>Complainants,</i> <i>and</i> GREENE HOLDING CO., a corporation, et als., <i>Defendants.</i></p>	}	<p><i>On Bill &c.</i> <i>On Appeal from Court of Chancery</i> <i>Brief on behalf of Defendant-Appellant</i> <i>Feist & Feist.</i></p>	<p>16</p>
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FACTS.

On October 25, 1927, the Greene Holding Co. executed and delivered its bond and mortgage to secure a debt of \$44,000. to Maurice J. Zucker, one of the complainants in the above entitled cause. Said mortgage was a purchase money mortgage and was recorded on October 31, 1927 in book F 62 of mortgages for Essex County, on page 516-519. This mortgage covered vacant land known as 224-230 Shephard Avenue, Newark, N. J. On November 15, 1927, the said Maurice J. Zucker assigned a \$10,000. interest in said mortgage to the R. B. Holding Co., the other complainant in this cause. Said assignment was recorded on November 17, 1927, in book 195 of Assignments of Mortgages, page 8-9. By the provisions of said mortgage the property known as 224 Shephard Avenue (the portion here involved) was to be released on the payment of \$250. per front foot. (State of case p. 69 L 15—P 70 L 18).

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10 On January 8, 1928, the said Greene Holding Co. not having done anything with the vacant land, conveyed all of it to the Parrow Holding Co. (a dummy corporation used, owned and controlled by complainant Maurice J. Zucker, to prevent a merger of the mortgages). On April 20, 1928, the said Parrow Holding Co., conveyed one-half of said lands known as 224 Shephard Avenue to the Parmuf Investment Corporation and took back a purchase money mortgage in the sum of \$18,526.65 and agreed by embodying the provisions in said mortgage that upon the payment of the said sum the Parrow Holding Co., would secure releases and cause 224 Shephard Avenue to be released from the prior mortgages (State of Case P 16 L 32—P 17 L 10).

20 On April 24, 1928, the said Parmuf Investment Corporation conveyed 224 Shephard Avenue to Steinberg Bros., Inc., and took back a mortgage in the sum of \$20,000. of which \$1,500. was purchase money and \$18,500. advance money to be advanced as the erection of an apartment house progressed. Said Parmuf Investment Corporation assigned an \$18,500. interest in said mortgage to Kuskin & Rotberg, Inc., but neither the said Parmuf Investment Corporation nor Kuskin & Rotberg, Inc., ever advanced more than \$8,500. on said mortgage. (State of Case P 17 L 21-36). Steinberg Bros., Inc., proceeded with the erection of an apartment house on said land.

30 On December 26, 1928, appellant Feist & Feist recovered a judgment in the sum of \$3,560.30 against Steinberg Bros. Inc., in the Essex County Circuit Court which judgment was recorded in book 106 of Circuit Court Judgments for Essex County, at page 253. On February 19, 1929, Steinberg Bros. Inc., was adjudicated an insolvent corporation and a receiver appointed and appellant along with the other creditors of the said Steinberg Bros. Inc., restrained from proceeding with the prosecution of any claim against Steinberg Bros. Inc. (State of Case P 18 L 28—P 19 L 12).

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By order of the Court of Chancery dated April 24, 1929, complainants in this suit were allowed to proceed with their foreclosure, but none of the other defendants herein were allowed to proceed (State of Case P 71 L30—P 72 L 14).

Appellant filed an answer to complainants' bill of complaint in this cause alleging that by agreement between the complainants and the Parrow Holding Co., the lien of complainants' mortgage on 224 Shephard Avenue was reduced to \$18,526.65 and that the mortgage held by the Parrow Holding Co., in that sum represents the same indebtedness as the extent of the lien of complainants' mortgage on 224 Shephard Avenue and that all there was in fact owing as a lien on said land was \$18,526.65. (State of Case P 18 L 10-27). Due to the aforementioned restraint appellant was unable to try out this question at any stage of the proceedings and took no further action in this foreclosure until the sale date.

On July 9, 1929, the adjourned day of the sale for the first time counsel for appellant learned that 224 Shephard Avenue on which appellant's judgment was a lien and on which the apartment house had been partially erected at a cost of \$40,000. was to be the first tract sold and to satisfy the whole indebtedness of over \$44,000.; appellant's counsel requested an adjournment of two weeks to afford an opportunity to apply to the Court of Chancery to open the final decree and correct the proceedings in accordance with the provisions of the mortgages. Upon objections by Mr. Goldberg, the Deputy Sheriff of Essex County refused an adjournment and sold the property to Mr. Goldberg for the Hawthorne Realty Co. for \$5,000. (State of Case P 22 L 2 P 23 L 13).

Appellant had procured a purchaser for 224 Shephard Avenue ready and willing to pay \$40,000. for said premises but said purchaser refused to bid at the sale upon hearing counsel's reasons for request-

ing an adjournment of the sale (State of Case P 19 L 37—P 20 L 16).

ARGUMENT.

APPELLANT CONTENDS THAT THE SAID SALE SHOULD NOT HAVE BEEN CONFIRMED FOR THE FOLLOWING REASONS:

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1. COMPLAINANTS' MORTGAGES BY THEIR OWN PROVISIONS WERE A LIEN ON 224 SHEP-HARD AVENUE ONLY TO THE EXTENT OF \$18,526.65 AND INTEREST.

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2. The properties were sold in the wrong order. It is fundamental and must necessarily be considered first, to decide whether appellant had a lien on the aforesaid premises. In the memorandum of decision filed by Vice Chancellor Backes to be found on page 82 of the State of Case, it is held that

“The judgment of Feist & Feist against Steinberg Bros. Inc., was recovered within four months of the decree of insolvency of Steinberg Bros. Inc., and is void. Feist & Feist have no standing as judgment creditors to oppose confirmation of sale. They are common creditors and relief goes to the receiver through whom they must act.” (State of Case P 82 L 20-27).

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Pamphlet Laws 1919 Chap. 208 provides as follows:

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“All levies, judgments, attachments or other liens obtained through legal proceedings against a corporation, if at any time such levy, judgment, attachment or other lien was obtained the said corporation be insolvent, at any time within four months prior to the filing of a bill or petition against it for the appointment of a receiver, under the provisions of the act to which this act is a supplement, shall be deemed null and void in case a receiver shall be appointed by the court and the assets of said corporation distributed in such proceedings.”

(Compiled Statutes of 1911 P 680 Sec. 47-86 K).

The judgment is only void under this statute "if at any time such—judgment—was obtained the said corporation be insolvent." The mere fact that the judgment was within four months of the appointment of the receiver, is not sufficient under the statute to void it. It is necessary for the court to make a finding both as to the four month period and as to the fact that the corporation was insolvent when the judgment was recovered. No finding on these facts was made because the question as to whether appellant's judgment was a valid lien was not presented to the Court below. No argument was had on it, no facts presented, there is no mention in any of the affidavits on this subject. Neither appellee nor appellant dealt with this at the hearing, and it is respectfully submitted that appellant's judgment was not void, and that appellant, who has been made a defendant because of its judgment, has a real interest in this proceeding.

Appellant was therefore holder of a lien on said premises and as such is entitled to a hearing on the amount due to complainants on their mortgage. Opportunity to present its case was denied it by the restraining order entered February 11, 1929, against the creditors of Steinberg Bros. Inc., at that date adjudicated an insolvent corporation. The Master reports his inability to report on the amounts due appellant and other creditors of Steinberg Bros. Inc.

"And I further report that I am unable at this time to report the amount, if anything, due to any of the said defendants Parrow Holding Co., Kuskin & Rothberg, Inc., Feist & Feist, Inc., Gem Building and Loan Association, Parmuf Investment Corp. and Channel Lumber Co., for the reason that the claims of all of the said defendants are against Steinberg Bros. Inc., and that an order was made by this Court on February 11, 1929, in the suit of Columbia Marble Works, Inc. v. Steinberg Bros. Inc. re-

straining and enjoining all persons from instituting or prosecuting or continuing the prosecution of any action or proceeding in law or in equity against the said defendant corporation though such restraint was specifically modified as to the complainants in this suit by an order of this Court, entered in this cause on April 24, 1929." (State of Case P 64 L 27-40—P 65 L 1-2).

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The order of April 24, 1929, modifying the order of February 11, 1929, allowed only the complainants to proceed before the Master. Maurice J. Zucker, one of the complainants and solicitor for the other, who procured the modifying order testified before the master,

"This order does not permit any of the defendants to proceed." (State of Case P 72 L 10-11).

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Appellant had put in an answer alleging that complainants lien only amounted to \$18,526.65 against this property and not \$44,000. The basis for this was that the mortgage given by the Parmuf Investment Corporation to the Parrow Holding Co., expressly provides for the release of these premises from prior mortgages upon payment of the said sum of \$18,526.65 (State of Case P 34 L 39—P 40 L 3. It is admitted by complainant Maurice J. Zucker in his affidavit (State of Case P 31 L 8-10) that he is one of the two stockholders of the Parrow Holding Co., the other stockholder being Louis D. Goldberg, who is also his law partner. Complainant Maurice J. Zucker is also the mortgagee of the mortgage under foreclosure. There were two mortgages therefore securing one debt. If this was not the real situation and if the two mortgages secured two debts, one payment would not have been sufficient to cancel both. Furthermore the \$44,000. mortgage was made when Maurice J. Zucker sold both tracts to the Greene Holding Co. The \$18,526.65 mortgage was made when the Parrow Holding Co., (Maurice J. Zucker in reality) sold to the Parmuf Invest-

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ment Corporation, which was after the Greene Holding Co. had conveyed to the Parrow Holding Co.; in other words, reconveyed to the vendor. The same seller held two purchase money mortgages, one of which was in existence at a time when he held title to said land. To avoid the possibility of a merger due to the fact that the mortgage title and the equity of redemption were in the same person, the new mortgage to the Parrow Holding Co. was executed. This new mortgage was not intended by the parties to increase the encumbrances on the property, and it is inequitable and deprives subsequent lienors of their rights, to allow the mortgagee to hold the same piece of property to satisfy double the amount of the debt. 16

As has been pointed out above, at no time was appellant afforded any opportunity to present these facts to any court for consideration. The decision of the learned Vice Chancellor that 20

"The petitioners were not surprised and are in laches. They set up by their answer the alleged contract to limit the liability of the Steinberg tract. That question was referred to a Master under direction to ascertain the amount due complainants under their mortgage. The master reported the full amount due to the mortgagee. The petitioners offered nothing of evidence of the limitation of liability of the respective tracts although present or represented before the Master at the hearing. They were not barred from doing this by the injunction in the receivership suit." (State of Case P 83 L 12-22). 30

completely disregards the fact that the Master refused to go on with the foreclosure suit at all before the entry of the modifying order of April 24, 1929, and that this order did not allow the appellant to participate in the hearings and that the proof before the Master by the complainants of the amount due them was put in at a later date and not in the presence of this defendant. (State of Case P 71 L 40

32—P 72 L 13. To refuse to allow a subsequent lienor to prove the prior liens are almost \$24,000. less than complainants assert in one proceeding, and then to hold him in laches later for failure to take part in the former proceedings, cut him off from every opportunity to establish his rights.

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The injustice that results in the complainants taking a decree for \$44,000. with interest and costs amounting to \$48,000., and directing the apartment house site to be sold first to satisfy the whole amount, is that all that an outside bidder could accomplish, would be to raise the Sheriff's fees as the complainant, as the decree stands, could bid beyond \$48,000. and still not be requested to invest anything any more than when he bid \$5,000. Furthermore, an advertisement showing an apartment house site with the building advanced as far as it has to be sold to satisfy less than \$20,000. in liens *would attract purchasers* while an advertisement showing that it is to be sold to satisfy \$48,000. when it is only worth \$40,000. *would attract no purchasers or bidders.*

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It is respectfully submitted that the appellant is entitled to its day in court, that since it took no part in the hearings before the Master, and since the Master did not report on its lien, it was in no position to except to the Master's report; that it took the earliest opportunity offered to it to protect itself and is not in laches, and that due to the very great hardship this sale would work on appellant if it stands confirmed, that it should not have been confirmed.

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Appellant further contends that said sale should not have been confirmed because the properties were sold in the order of alienation instead of in the inverse order. That this was error has been decided in *Thompson vs. Bird*, 57 N. J. Eq. 175, 40 Atl. 857, *Sternberger vs. Sussman*, 69 N. J. Eq. 199, 60 Atl. 195, *Ingersoll vs. Somers Land Co.*, 82 N. J.

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Eq. 476, 89 Atl. 288, and was stated by the learned Vice Chancellor in his decision,

“The sale was not in the inverse order of alienation as it should have been.” (State of Case P 83 L 1-2).

However, he goes on to say,

“but no one was injured. Both tracts were sold for less than the complainant’s mortgage debt. The irregular manner of sale did not obstruct or interfere with bidders for either tract, nor embarrass any defendant as prospective bidders, to protect their interests, surely not the receiver nor the petitioner in right of the receiver.” (State of Case P 83 L 3-12). 16

Appellant contends that this error was prejudicial and that complainant-appellee Maurice J. Zucker, in his affidavit, substantiated appellant’s contention.

“One of the reasons why you cannot get anyone to bid in on an uncompleted property in Essex County is that none of the Labor Unions will allow anyone to go to the job and finish the same, unless the person who is finishing the building assumes to pay in full any and all sums due to contractors who have furnished labor and or material in the erection of said building, and this is common knowledge among all builders in Essex County and anyone who attempts to finish any uncompleted buildings cannot have the building completed unless all contractors are paid in full.” (State of Case P 32 L 4-18). 20 30

The vacant land which should have been sold first but was sold second may have been far more attractive to bidders if they could expect to buy it at some fair figure. If sold first, bidders might not be subject to competition by the mortgagee for the full amount of his decree, because he would still have the improved tract to look to for further satisfaction. When sold second, all bidders knew the whole amount of the decree less the \$5,000. realized from 40

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the unattractive improved tract could be bid by the mortgagee for this second tract without entailing any new expense to him. If he let it go for less, a loss would occur as the owner, Steinberg Bros. Inc., was an insolvent corporation. The equity to have the land sold in the inverse order of alienation ran against the Parrow Holding Co., the vendor from whose grantee Steinberg Bros. Inc., took title. *Benedict v. Benedict* 15 N. J. Eq. 150. Due to the common interest of complainant Maurice J. Zucker and the Parrow Holding Co. this equity really ran against the complainant and should have been enforced against him.

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Appellant respectfully submits therefore that the said sale should not have been confirmed, that the final decree and decree pro confesso should be opened and appellant afforded an opportunity to protect its substantial rights by hearing before the Court.

PHILIP J. SCHOTLAND
Solicitor for and of Counsel
with Defendant-Appellant,
Feist & Feist, a corporation.

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New Jersey Court of Errors and Appeals

<p><i>Between</i> R. B. HOLDING CO., a corporation, et al.,</p> <p style="text-align: center;"><i>Complainants,</i></p> <p style="text-align: center;"><i>and</i></p> <p>GREENE HOLDING CO., a corporation, et als.,</p> <p style="text-align: center;"><i>Defendants.</i></p>	<p style="font-size: 4em; line-height: 1;">}</p>	<p><i>On Bil, &c.</i></p> <p><i>On Appeal from the Court of Chancery of New Jersey.</i></p> <p><i>Brief on Behalf of Complainants-Appellees.</i></p>	<p>10</p>
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FACTS

On October 25th, 1927, complainant, Maurice J. Zucker, conveyed to Greene Holding Co., 188.63 feet of land on the Southwest corner of Shephard Avenue and Huntington Terrace, Newark, New Jersey, and took back a purchase money mortgage of \$44,000.00. The mortgagee agreed to release the corner plot of 94 feet upon the payment of \$250.00 per front foot, with interest and the remainder at \$225.00 per front foot, with interest. 20

On November 15th, 1927 complainant assigned a \$10,000 interest in the said purchase money mortgage to his co-complainant, R. B. Holding Co., a corporation of New Jersey. 30

On January 8th, 1928, the Greene Holding Co., conveyed all of the said premises to Parrow Holding Co., which consisted at the time, of the complainant, Maurice J. Zucker and two other stockholders, and was not a dummy corporation used, owned and controlled by complainant, Maurice J. Zucker, said corporation having consisted of three stockholders and now consists of only two stock- 40

holders. (State of Case, page 31, lines 7 to 10.) Said conveyance was made subject to the lien of complainants' mortgage and was not for the purpose of preventing of merger of the mortgages.

10 On April 20th, 1928, Parrow Holding Co. conveyed the corner plot to Parmuf Investment Corp. and took back a purchase money mortgage of \$18,526.65.

20 On April 24th, 1928, Parmuf Investment Corp. conveyed the same premises, which it purchased from Parrow Holding Co. to Steinberg Bros. Inc., and took back a purchase money mortgage for \$20,000, of which \$1,500 was purchase money and \$18,500 advance money mortgage to be advanced to the mortgagor as the construction of an apartment house progressed. Parmuf Investment Corp. assigned the advance money mortgage to Kuskin & Rotberg, Inc. and the latter advanced on account thereof the sum of \$12,622.50. (State of Case, p 27, L. 37 to 40; p. 28, L. 1 to 3.)

On December 26, 1928, defendant-appellant recovered a judgment against Steinberg Bros. Inc. in the Essex County Circuit Court.

30 On February 19th, 1929, Steinberg Bros. Inc. was adjudicated an insolvent corporation and an Equity Receiver appointed to take charge of its affairs, and all creditors of Steinberg Bros. Inc. were restrained from proceeding against it.

Some time prior to the adjudication of Steinberg Bros. Inc., complainants filed their bill to foreclose their mortgage, and made the defendant-appellant a party defendant. Defendant-appellant filed an answer, paragraph 1 of which is as follows:

40 "It has no knowledge as to any of the allegations in the Bill of Complaint, and leaves plaintiffs to make such proof thereof as they are advised is necessary and proper, except that this defendant

admits the allegations of paragraph 14 of the bill of complaint so far as said paragraph sets forth the date of recovery and the amount of this defendant's judgment". (State of Case, P. 57, Ls. 25 to 32.)

Thereafter complainants, upon application to the Court, were permitted to proceed with their foreclosure. Complainants' solicitors prepared a Decree Pro Confesso and Order of Reference, and mailed the same to the Court of Chancery in Trenton, and Advisory Master Backes advised the same and referred it to Richard Stockton, Esquire, one of the Masters of the Court of Chancery to take testimony. Mr. Stockton issued Master's Summonses. Appellant's solicitor acknowledged service thereof (State of Case, P. 68, line 18) and appeared at the Master's Hearing (State of Case, page 68, line 38), the Master adjourned the hearing and appellant's solicitor again appeared on the adjourned day. Appellant knew, or should have known of the Master's report (State of Case, page 29, lines 23 to 28) yet took no exceptions to the Master's report, of which it was charged with notice, within the time limited by the rules of the Court of Chancery (State of Case, P. 83, lines 22 to 24.)

Thereafter complainants' solicitors prepared a Final Decree and Fieri Facias and again sent the same to the Court of Chancery at Trenton, and the Final Decree was advised by Advisory Master Backes, and the Writ of Execution having been delivered to the Sheriff of Essex County, he proceeded to advertise the premises in accordance with law and offered the same for sale on July 2nd, 1929. On that day, Miss Helen Jedell of Mr. Schotland's office appeared and requested an adjournment for one week, which adjournment was granted, she having stated that appellant was negotiating with a prospective purchaser, and that within a week he would arrange to purchase the same, the refer-

ence to a purchaser having been to one Hyman Katz, who in his affidavit, denies that he was at any time ready, willing and able to bid at the Sheriff's sale for the corner property (State of Case, P. 42, lines 22 to 34).

10 On July 9th, 1929, the adjourned date of the sale, Mr. Schotland appeared personally at the Sheriff's office and requested an additional ad-
 20 journalment of two weeks for the purpose, as he stated, to acquaint himself with the situation. Complainants' solicitors advised him that his office was represented at all the hearings, knew the contents of the proceedings, was granted an adjournment of one week as aforesaid and inasmuch as the corner plot consisted of an uncompleted apartment house, which house, if not completed by October 1st, 1929, would mean a great loss to
 20 any purchaser and would probably discourage other prospective purchasers from bidding, altogether by reason of the limited time for completion, that the sale ought to go on. The Sheriff ruled the sale to go on and sold the premises to the Hawthorne Realty Co.

In the light of the affidavit of Hymn Katz hereinbefore referred to, it is apparent that appellant never procured a purchaser for the corner tract.

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ARGUMENT

Answer to Point 1:

It is not a fact that complainants' mortgages, by their own provisions, were liens on the Steinberg tract only to the extent of \$18,526.65 and interest (State of Case, P. 28, lines 28 to 32; P. 8, lines 21 to 34; P. 16, lines 18 to 28).

40 Parrow Holding Co. and Maurice J. Zucker are not the same person, either at law or in reality, but were separate entities, with separate and dis-

tinct interests. As a matter of fact, appellant's counsel and its agent, deny their own statements by referring to an arrangement with complainants to limit the corner tract to \$24,000 by reason of their mortgage lien, (Decision of V. C. Backes, page 82, lines 36 to 40. State of Case, P. 11, lines 26 to 38; P. 21, lines 34 to 40; P. 22, lines 1 to 10), which arrangement is denied by complainants (State of Case, page 29, lines 14 to 22; P. 43, lines 40; P. 44, lines 1 to 10). 10

Appellant always knew that the entire amount, with interest, was due on complainants' mortgage.

Answer to Point 2:

The decision of the Vice Chancellor, "that the judgment of Feist & Feist against Steinberg Bros. Inc. was recovered within four months of the decree of insolvency of Steinberg Bros. Inc. and is void, they are common creditors, and relief goes to the Receiver through whom they must act," is correct and is in accordance with both the law and the facts in this cause. Appellant cites Pamphlet Laws of 1919, Chapter 208, which is Section 86-A, paragraph 2 of the General Corporation Act, to disprove the learned Vice Chancellor's finding, and urges that the judgment is only void if at the time of such judgment being obtained, the said corporation is insolvent. 20

Section 65 of the General Corporation Act, as construed by this Honorable Court, defines "insolvent" as "a general inability to meet pecuniary liabilities as they mature, by means of either available assets or an honest use of credit," (Empire State Trust Company vs. Trustees of William F. Fisher & Company, 67 N. J. Equity, page 602. Wright vs. American Finance, etc. Co., 85 N. J. Equity, page 181. Hoover Steel Ball Co. vs. Ball Bearing Co., 89 N. J. Equity, page 433. 30

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10 There is no dispute that Steinberg Bros. Inc. was unable to meet the liability of the judgment by means of either available assets or an honest use of credit. The learned Vice Chancellor decided this matter after oral argument had before him by counsel for both parties. After such oral argument, he ordered all pleadings and other papers appertaining to this cause sent to him, and it was only after his careful examination of all the papers and consideration of all the facts, that he rendered his opinion.

It should be noted that appellant recovered its said judgment six weeks prior to the decree of insolvency. The learned Vice Chancellor knew of those facts and rightfully decided as he did.

20 Furthermore, precedent long ago established that Courts may take judicial notice of proceedings in their own Courts and will take cognizance of facts which have already been judicially determined in their Courts, and also are justified in noticing judicially the proceedings in other causes directly allied to the one under consideration. This is done for the purpose of avoiding circuity of actions and to once and for all determine the matter sub judice. (15 Ruling Case Law, page 1111 and page 1112.)

30 The bankrupt laws require that all preferences acquired by legal process within four months of the filing of the bankruptcy, are void. (Hammer vs. Israel, 89 N. J. Equity, page 481; Kobrin vs. Drazin, 97, N. J. Equity, page 400.)

40 In Chancery the proceeding is very flexible and tolerant. The equity appealed to, while it scans the transaction with the severest scrutiny, looks at all facts, and giving to each one its due weight, deals with the subject before it according to its own ideas of right and justice. (Horton vs. Bramford, 79 N. J. Equity, page 381.)

The insolvency of Steinberg Bros. Inc. at the time when defendant-appellant recovered its general judgment is evident from the following facts:

1. It permitted itself to be ^{sued} used, although it was seeking credit.

2. It permitted the judgment to be entered, although it was still floundering in the commercial sea.

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3. It permitted the judgment to remain open of record without making any attempt to either pay, settle or compromise the same.

The opinion of the learned Vice Chancellor that defendant has no standing as a judgment creditor to appose confirmation of sale, and that relief goes to the Receiver through whom they must act, is in accordance with equity as well as in accordance with law.

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The rights of the Receiver are superior to the rights of a general creditor such as defendant-appellant. Immediately upon the appointment of a Receiver, the property of the insolvent corporation vests in such Receiver. *Generotsky vs. Barney Hotel Co.* 85 N. J. Equity, page 63. *Gallagher vs. True American Publishing Co.* 75 N. J. Equity, page 171. *B & L Association-Harmonia vs. Wolfskeil*, 85 N. J. Equity, page 218.

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Appellant's next contention is, that by reason of the restraining order entered February 11th, 1929 against Steinberg Bros. Inc., it was denied its day in Court. The facts clearly show the situation to be otherwise.

Appellant admits service of process (State of Case, page 7, lines 29 to 35) and filing of an Answer by it (State of Case, page 10, lines 13 to 19; page 57).

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Its solicitor acknowledged service of the Master's Summons (State of Case, page 68, line 17) and was present or represented at the Master's Hearing (State of Case, page 68, line 36).

The Master made his report to the Chancellor and appellant took no exceptions thereto.

10 The Master's report was approved and complainants applied for a Final Decree and Fieri Facias. The Decree was advised by Advisory Master Backes, and although appellant knew of the progress of the suit, yet remained inactive.

20 The premises were advertised for sale by the Sheriff of Essex County, and the date of sale set for July 2nd, 1929. On that day, appellant was represented at the sale and requested and was granted an adjournment of one week, upon its representation that it had a customer ready, willing and able to purchase the Steinberg tract. (State of Case, page 13, lines 9 to 17; page 23, lines 14 to 20; page 30, lines 16 to 19; page 39, lines 28 to 40; page 40, lines 1 to 3; page 46, lines 29 to 40.) On the adjourned date Mr. Schotland and Mr. Haas, agent of Feist & Feist, were both present (State of Case, page 30, line 17; page 40, lines 7 to 33; page 47, lines 1 to 19.)

30 The learned Vice Chancellor who advised confirmation of this sale, lifted the injunction in the insolvency suit against Steinberg Bros. Inc. and permitted Complainants to proceed with their foreclosure. In his decision (State of Case, P. 83, lines 21 and 2) he expressly states "They were not barred from doing this by the injunction in the receivership suit".

40 If appellant's solicitor earnestly believed that the injunction barred him from proceeding, why did he not take some steps to ascertain the effect of it? Why did he file an answer? Why did he

attend the Master's hearing? Why did he request an adjournment of the sale for one week?

Appellant's argument is that Maurice J. Zucker testified before the Master that order lifting the restraint of February 11th, 1929 did not permit the defendant to proceed. The logical question is, Since when is a complainant in a cause constituted an authority to construe and pass upon the orders made by the Chancellor? Appellant rightfully earned the rebuke of the Court, that it was not surprised and is guilty of laches. At no stage of the proceedings was appellant unaware of its progress.

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It is a general rule of law that a Court of Equity does not look with favor upon cases where complainant has remained inactive during which time he should have been active. (Schneider vs. Schmidt, 82 N. J. Equity, page 81).

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Equity does not extend its aid to the enforcement of stale or inequitable demands. Laches and neglect are always discountenanced.

It should be noted that appellant appeared or was represented throughout the proceedings. The law in this state is well settled that the general appearance of a defendant is a waiver of all objections to the form of process, the manner of its service, the matters disposed of and any irregularity including that of jurisdiction. (Clifford vs. Overseer of Poor of Frankfort, 37 N. J. Law, page 152. Polhemus vs. Holland Trust Company, 61 N. J. Equity, page 654. Johnson vs. Algor, 65 N. J. Law, page 663. McGuinness vs. McGuinness, 72 N. J. Equity, page 381. Laura vs. Pumcerelli, 91 N. J. Law, page 38. Gabriel vs. Mason Art, Inc., 125, Atl. Rep. page 125. Venghis vs. Commonwealth Casualty Company, 127 Atl. page 158. Mulhearn vs. Press Publishing Co. 53 N. J. Law, page 150.

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There must be an objection raised, otherwise the privilege of making a defense is waived by appearance, (*Edwards vs. Currie*, 78 N. J. Law, page 566) and once objection is waived, it is not again available. (*Johnson vs. Algor*, 65, N. J. Law, page 363). A defendant by submitting cures any defect. (*Thoril vs. Stephany*, 66 N. J. Law, page 171. *Hunton vs. Palmer*, 67 N. J. Law, page 94.)

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It is also well settled law that where a defendant appears and requests an adjournment without objection, any defects are cured by such appearance. (*Hauten vs. Potter*, 23 N. J. Law, page 338.)

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Under the circumstances, it is beyond question that defendant appeared, was heard, obtained an adjournment, did not deny the amount due complainants on their mortgage, nor their priority over defendant's judgment. It is therefore inequitable on the part of the appellant to come in at this time and request a reopening of the decrees.

The learned Vice Chancellor was correct in his ruling, "that it is too late to come in after the sale to make a defense. They had every opportunity to offer in the regular progress of the suit and concerning which they were either grossly careless or abandoned as not supportable. They are not maintained by the proofs on the motion."

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It is clear from the affidavits, that Maurice J. Zucker never held the fee since his conveyance to the Greene Holding Co. It is further evident that the conveyance from Greene Holding Co. to Parrow Holding Co. was made for a good and valuable consideration, and not to avoid a merger. The Parrow Holding Co. purchased all of the premises from the Greene Holding Co., subject to a \$44,000 mortgage, as by the record appears, and Parrow Holding Co. never was a dummy corporation for the use of Maurice J. Zucker and never was in reality Maurice J. Zucker.

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It is unfair on the part of the appellant to say that the proof before the Master, by the complainants, of the amount due them, was put in at a later date, and not in the presence of this defendant. The defendant-appellant was represented by Miss Helen Jedell of Mr. Schotland's office at both hearings. (State of Case, page 28, lines 18 to 22; page 63, lines 12 to 17), and appellant well knew the testimony given before said Master (State of Case, page 16, lines 18 to 20). 10

A novel reason for the opening of the decrees is advanced by appellant, namely, that an advertisement showing the improvements on the land would attract purchasers, while an advertisement merely describing the land to be sold will not attract purchasers. In Guaranty Trust & State Deposit Co. vs. Jenkins, 40 N. J. Equity, page 451, where a similar reason was advanced. Vice Chancellor Bird decided that such was not a good objection to the confirmation of a sale, and on bottom of page 454 he continues: 20

"It seems to me that it would be a very dangerous doctrine to hold that a judicial sale is not lawful because the officer failed to describe all the improvements upon the land for if it be a question of description, then the question would inevitably follow, How describe and to what extent characterize this or that structure? and the courts would be involved more extensively in determining whether the effort of their officers at describing were successful or not, than, without such effort, in determining whether a sale was fair or not, by leaving all persons interested, including bidders, to judge of those things for themselves. It is conceded that the officer in this case has faithfully pursued the description of the property contained in the writ. In this I think he was justified by what I understand to be the invariable practice in 30 40

10 such cases. But, in my judgment, on this point the defendant ought not be heard at this stage of the cause. The decree was entered thus describing the property and directing this sale. The execution commanded the Sheriff to sell the property by such description; the officer advertised it as he was bidden to do, adhering to the language of the writ; for more than two months public notice was given in five or more places, and for four weeks in two of the newspapers of the county; the defendant himself applied for and obtained three adjournments of the sale thus advertised, without uttering a word of complaint or attempting to show to the court that he would suffer in this estate by a sale under such notices."

20 It is next contended by the appellant that the sale was not in the inverse order of alienation, and therefore the decree should be re-opened.

This Honorable Court has held in the case of Chancellor of N. J. vs. Towell, 80 N. J. Equity 223 at page 227. That the inverse order of sale "will not be applied in any case where its application would work injustice." In contestably it would work an injustice in the instant case if the properties were ordered to be resold. But aside from the question of injustice the court further held that:

30 "The doctrine of inverse order of alienation is purely of equitable origin and not an absolute rule of law, and if the equitable reasons on which it rests are wanting, it ceases to operate." (Chancellor of N. J. vs. Towell, 80 N. J. Equity, page 223, bottom of page 227.) The opening of decrees rests in the sound discretion of the court and where there is no surprise and no apparent mistake upon the face of the proceedings, such decrees will not be re-opened. It is for the Court in each instance to determine, and this Honorable Court has further

40 held, in the Chancellor of N. J. vs. Towell case, that,

"the real question in such cases must always be, Who in equity is bound to pay the debt?"

Such error was not prejudicial to the appellant. The learned Vice Chancellor properly stated that, "both tracts were sold for less than the complainants' mortgage debt. The irregular manner of sale did not obstruct or interfere with bidders for either tract, nor embarrass any defendant, as prospective bidders, to protect their interests, surely not the Receiver, nor the petitioner **IN RIGHT** of the Receiver (State of Case, page 83, lines 3 to 13.)" 10

It is apparent that appellant never intended to bid for the properties, nor did it have anyone ready, willing and able to bid for them.

In his affidavit, Mr. Schotland states, "I attended the said Sheriff's sale on behalf of my client, for the purpose of arranging to buy in said property in which my client was interested for Hyman Katz, who had agreed to purchase said portion of said premises for \$40,000" (State of Case, page 23, lines 14 to 18.)" 20

Mr. Katz, in his affidavit, denies that it was his intention to bid any amount therefore (State of Case, page 42, lines 22 to 33) and as a matter of fact, the letter of Feist & Feist dated the same date, of the adjourned date of the sale, and delivered to complainants' solicitors a short time before the sale was held, expressly contradicts Mr. Schotland's statement and proves very clearly the attitude of appellant throughout the proceedings. If Mr. Katz was ready, willing and able to purchase the corner property for \$40,000, why was he willing to pay \$41,000 to the successful purchaser at the sale, and in addition thereto to pay to Feist & Feist, the \$1500 for its judgment? Why the letter from Feist & Feist of July 9th, 1929?" 30

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Appellants attitude throughout the proceedings was to delay, harass and embarrass complainants so as to force payment of its judgment by complainants. The sale was not of a more valuable property purchased for \$6,000. The bid was made to protect complainants' mortgage as well as the purchase money advance money mortgage and therefore the sale should stand confirmed. (Bethlehem Iron Co. vs. Philadelphia & Seashore Railroad Co. 49 N. J. Law, page 256). Dunlop vs. Chenoweth, 90 N. J. Equity, page 84, affirmed by Court of Errors and Appeals, 90 N. J. Equity, page 611.

It is, therefore, respectfully urged to this Honorable Court, that defendant-appellant had its day in Court, that the order advised by the learned Vice Chancellor is agreeable to equity and complainants-appellees respectfully urge the affirmance of the decision of the Court below.

ZUCKER and GOLDBERG,
Solicitors for and of Counsel with
Complainants-Appellees.

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Applicant's wife, Elizabeth, was to have been and certain conditions as to her part of the payment of same. The sum was not of a more suitable property purchased in 1900. The bid was made to prevent conditions, however, as well as the purchase price of the property.

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