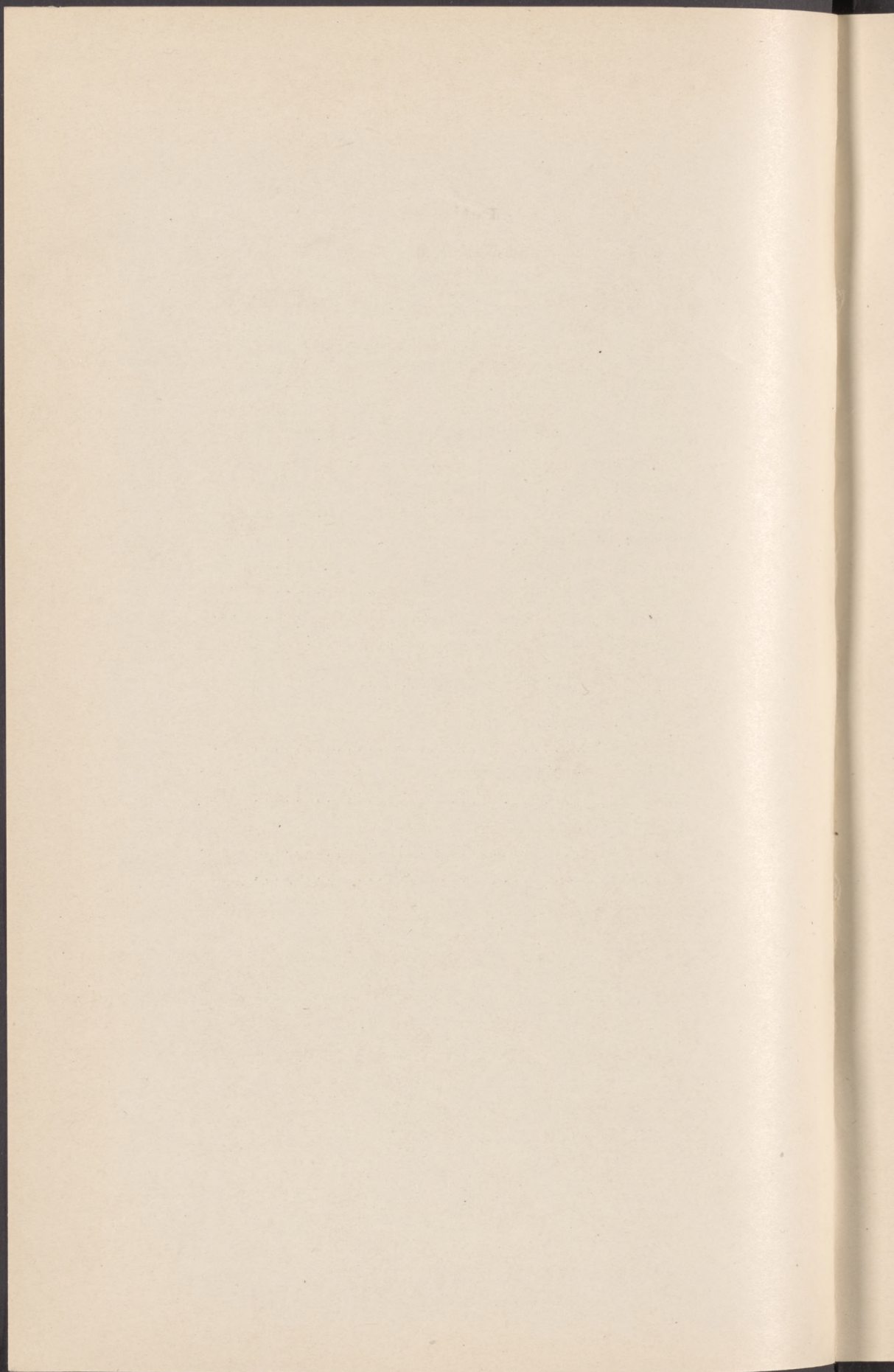


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Petition.

(Filed March 24, 1925.)

In Chancery of New Jersey

WILLIAM E. MOUNT,
Complainant,

v.

CHARLES T. E. MATTHEWS and
BESSIE L. LESTER,
Defendants.

On Petition,
&c.

10

To the Honorable EDWIN ROBERT WALKER, Chan-
cellor of the State of New Jersey:

20

The petition of Charles R. English, of the Bor-
ough of Red Bank, in the County of Monmouth and
State of New Jersey, respectfully shows that:

(1) Petitioner is an attorney in fact for the com-
plainant in the above entitled cause.

(2) The said bill of complaint was filed to set
aside as fraudulent a certain chattel mortgage
made between the defendants, and upon the filing
of said bill there issued from this Court an order
restraining the said defendants from holding a
public sale under said chattel mortgage, which sale
was advertised to take place on February 25, 1925,
at 11:00 o'clock in the forenoon.

30

(3) In accord with said restraining order, true
but uncertified copies were served upon the said

40

Petition.

Charles T. E. Matthews and the said Bessie L. Lester personally on February 25, 1925, at 10:35 o'clock in the forenoon.

10 (4) The said defendants, notwithstanding said order, held the sale which the order restrained on February 25, 1925, at 11:00 o'clock in the forenoon.

Petitioner therefore prays that the said defendants, Charles T. E. Matthews and Bessie L. Lester, may be punished for their contempt in willfully violating the terms of the restraining order aforementioned.

LESTER C. LEONARD,
Solicitor of Petitioner.

20 State of New Jersey, }
County of Monmouth, } ss.:

CHARLES R. ENGLISH, of full age, being duly sworn according to law, upon his oath deposes and says:

(1) I am an attorney in fact for the petitioner in the foregoing petition named, and the matters and things therein contained are true.

30 (2) I, in behalf of Mr. Mount, retained the services of Lester C. Leonard, a Solicitor in Chancery, with offices at Red Bank, New Jersey, who, at my request, filed a bill in this Court to set aside as fraudulent a certain chattel mortgage executed by Charles T. E. Matthews to Bessie L. Lester.

40 (3) I was informed by the said Lester C. Leonard that at the time of the filing of the said bill of complaint an order issued restraining the sale under the chattel mortgage, which sale was advertised for February 25, 1925.

Petition.

(4) I was also informed by the said Lester C. Leonard that he served upon the defendants personally true but uncertified copies of the restraining order, but notwithstanding the defendants disobeyed said order by holding the sale at the time set forth in the advertisement.

CHARLES R. ENGLISH.

10

Sworn and subscribed before me }
 this 13th day of March, 1925. }

(Seal) RUTH A. PENNINGTON,
 Notary Public of N. J.

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

LESTER C. LEONARD, of full age, being duly sworn according to law, upon his oath deposes and says:

20

(1) I am the solicitor of the complainant in the above entitled suit.

(2) On February 24, 1925, in behalf of the said William E. Mount, I obtained from the Court of Chancery an order restraining the sale of certain chattels under a chattel mortgage made by Charles T. E. Matthews to Bessie L. Lester, which sale was advertised to take place on February 25, 1925, at 11:00 o'clock in the forenoon.

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(3) On February 25, 1925, at 10:35 o'clock in the forenoon, I personally served true but uncertified copies of said order upon Charles T. E. Matthews and Bessie L. Lester.

(4) Service was first made upon Bessie L. Lester, who said she did not understand anything about the matter but would seek the advice of Mr.

40

Petition.

Matthews, who, after a few minutes, came out of the house. It is my understanding that Bessie L. Lester is the housekeeper for Charles T. E. Matthews.

10 (5) At the time I served the copy upon Mr. Matthews I informed him of its contents, and he thereupon replied, "I don't give a damn for any order, we are going on with this sale and no one is going to prevent us." He further said that he had sought legal advice on the entire situation. I replied that if I were he I should get in touch with his counsel immediately as no lawyer would advise the disobedience of a court order. I further advised Mr. Matthews that should he disobey the order he would be in contempt of court and liable to arrest. To that he replied, "I don't care anything
20 for courts or contempts, we have planned for this sale to take place this morning and it's going to go through." While this conversation took place Bessie L. Lester again came to the door but said nothing.

(6) About 11:30 or 12:00 o'clock I returned to Mr. Matthews' premises and found the sale in progress.

30 (7) After the sale I was informed by Mr. Charles E. Cook, counsel for Charles T. E. Matthews and Bessie L. Lester, that as a result of the sale there was a considerable surplus after deducting the amount alleged due under the mortgage. He further informed me, however, that \$319.81 of that surplus had been used in paying taxes that were due, while other sums had been expended for advertising fees, auctioneer's charges, clerks' salaries and discounts.

40 (8) Prior to the institution of the suit in equity

Order to Show Cause.

and before the said sale, a levy had been made upon the chattels in question by the Sheriff of Monmouth County by reason of an execution issuing out of a judgment obtained by William E. Mount against the said Charles T. E. Matthews.

LESTER C. LEONARD.

10

Sworn and subscribed before me }
 this 13th day of March, 1925. }

(Seal) RUTH A. PENNINGTON,
 Notary Public of N. J.

Order to Show Cause.

(Filed March 24, 1925.)

IN CHANCERY OF NEW JERSEY.

20

WILLIAM E. MOUNT, Complainant, <i>v.</i> CHARLES T. E. MATTHEWS and BESSIE L. LESTER, Defendants.	}	On Petition, &c.
--	---	---------------------

Upon the opening of this matter to the Court by Lester C. Leonard, solicitor of the petitioner, and upon reading and filing the petition of William E. Mount, and the affidavits of Charles R. English and Lester C. Leonard, whereby it appears that the defendants, Charles T. E. Matthews and Bessie L. Lester, were personally served on February 25, 1925, with true but uncertified copies of a restraining order made in this cause on February 24, 1925, and that the said defendants, Charles T. E. Mat-

30

40

Order to Show Cause.

10 thews and Bessie L. Lester, have willfully violated and disobeyed the directions of a certain order restraining the sale of certain chattels covered by a chattel mortgage made between the defendants, and praying that the said defendants, Charles T. E. Matthews and Bessie L. Lester, may be adjudged in contempt for their contumacy in the particulars aforesaid and punished accordingly;

20 It is, on this 24th day of March, 1925, ORDERED that the said defendants, Charles T. E. Matthews and Bessie L. Lester, show cause before the Chancellor, at the Chancery Chambers, in the City of Newark, on the 7th day of April, 1925, at the hour of ten o'clock in the forenoon, or as soon thereafter as counsel can be heard, why they should not be adjudged guilty of contempt of this Court in the premises and punished accordingly.

It is further ORDERED that copies of this order, certified by the solicitor of the petitioner, together with copies of the petition and affidavits on which this order is founded, also be certified, be served on the said Charles T. E. Matthews and Bessie L. Lester personally within eight days from the date of this order.

30 Respectfully advised,

E. R. WALKER,
C.

JOHN H. BACKES,
V. C.

A true copy.
LESTER C. LEONARD,
Solicitor of Petitioner.

Bessie L. Lester, direct.

IN CHANCERY OF NEW JERSEY.

Between

WILLIAM E. MOUNT,
Complainant,

and

CHARLES T. E. MATTHEWS and
BESSIE L. LESTER,
Defendants.

10

Transcript of testimony taken before his Honor MAJA LEON BERRY, Vice-Chancellor, at the City Hall, Long Branch, N. J., on the 18th day of June, 1925, at ten o'clock A. M.

APPEARANCES:

20

MR. LESTER C. LEONARD, for Complainant.

MR. CHARLES E. COOK, for Defendants.

BESSIE L. LESTER, duly sworn according to law on her oath, testifies as follows:

Direct examination by Mr. Cook:

Q. Where do you live? A. Colt's Neck.

Q. In this County? A. Yes, sir.

Q. What is your business or profession? A. 30
Trained nurse.

Q. Are you the party who held the chattel mortgage made by Mr. Matthews to you, for \$2,200? A. Yes, sir.

Q. That was made when, do you recall? A. I can't just remember.

The Court: That is not material. Let us get to the point.

40

Bessie L. Lester, direct.

10 Q. It has been charged that you violated an order of Vice-Chancellor Church, restraining the chattel mortgage sale held February 25th, 1925, at Colt's Neck. Were you served with any papers in this case? A. The man came to the door and he asked me if I was Mrs. Lester. He says, "I have a paper to stop the sale." He says, "Send Mr. Matthews here and I will explain it to him." I went back in the room and when he came in he handed me both the papers, and I never looked at them until afterwards, and I thought it was a frame-up, because there had been so many papers, and the auctioneer and all was there and the sale had commenced, I presume.

20 The Court: What do you mean by "Presumed had commenced"?

The Witness: You know, it had started.

The Court: What had started?

The Witness: The sale had started.

The Court: Had anybody bought anything when this paper was served?

The Witness: I didn't follow the men out.

The Court: Weren't you there at the sale?

30 The Witness: I didn't go outside.

The Court: Then you don't know whether the sale had commenced or not?

The Witness: Yes.

The Court: The sale was advertised for eleven o'clock and this order was served on you at ten-forty-five?

The Witness: Ten minutes to eleven.

The Court: The sale didn't begin before eleven o'clock, did it?

40 The Witness: Begin?

Bessie L. Lester, direct.

The Court: Yes.

The Witness: Why it began just as soon as the auctioneer got there.

The Court: Why did you begin the sale before the time you had advertised it for?

The Witness: I don't know.

The Court: Do you mean to say that the sale was actually in progress at the time this paper was served upon you? 10

The Witness: Yes, I say the sale was.

The Court: Had the auctioneer offered anything for sale?

The Witness: Well, I tell you I didn't go out to the barn.

The Court: Then you don't know whether the sale was actually in progress or not?

The Witness: Well, they said the sale was in progress. 20

The Court: Who did?

The Witness: The ones that was there.

The Court: You didn't see it yourself?

The Witness: No.

The Court: Don't testify to anything you don't know about personally.

Q. Were any papers handed to you by Mr. Leonard? A. No, the papers were brought in afterward. 30

Q. When did you first see the paper? A. About half-past four.

Q. Mr. Leonard handed both papers to Mr. Matthews? A. They were on the desk. I didn't look at them.

Q. Did Mr. Leonard tell you it was an order signed by Vice-Chancellor Church, or issued out of the Court of Chancery to stop the sale? A. No, sir. 40

Bessie L. Lester, direct.

Q. Did you willingly and knowingly violate this order? A. I did not. I didn't violate any order or anything from the Court.

The Court: Had you known that this was such an order would you have obeyed it?

The Witness: I certainly would.

10

The Court: Do you mean to tell me that when Mr. Leonard served this order on you, or handed you a copy of it, at ten-thirty in the morning, he was telling you a falsehood?

The Witness: He said, "Send Mr. Matthews here," and I did.

The Court: He told you he had a paper to stop the sale, didn't he?

20

The Witness: He told me he had a paper to stop the sale, yes.

The Court: And in spite of that you went on and had the sale. You understood the English language enough to know what the words, "Stop the sale" meant, didn't you?

The Witness: Yes.

The Court: Was there any other paper served on you before that in this proceeding?

30

The Witness: No, sir.

The Court: Do you mean to tell me that you didn't see this paper at all?

The Witness: Not until half-past four, until after the officer came and arrested him.

Q. An officer came and arrested you. What were you arrested for? A. He didn't arrest me. He said it was for contempt of court.

Q. On the same afternoon of the sale? A. Yes, sir.

40

Charles T. E. Matthews, direct.

Q. Aren't you mistaken about that. Do you know what the process was that you were arrested under, at half-past four? A. I wasn't arrested. Mr. Matthews was arrested. He didn't serve any paper on me.

Q. You spoke about an arrest—who was arrested? A. Mr. Matthews. 10

Q. The same afternoon? A. Yes, sir.

Mr. Cook: Some man got a warrant for conspiracy. This case went before the Grand Jury and was thrown out.

Mr. Leonard: No questions.

CHARLES T. E. MATTHEWS, duly sworn according to law on his oath, testifies as follows:

Direct examination by Mr. Cook: 20

Q. Where do you live, Mr. Matthews? A. Colt's Neck.

Q. And what is your business? A. Farmer.

Q. You are the person who executed the chattel mortgage to Mrs. Lester? A. Yes, sir.

Q. Will you tell us what happened on the day of the chattel mortgage sale? A. Yes, there was a man came there to my place with a paper which he handed to me and told me it was for to stop the sale. I says, "Stop the sale?" He says, "Yes." I says, "Who are you?" He says, "Lester Leonard." "Well," I says, "The sale is about to start." I said, "I don't know what we are to do about it." I says, "Everybody's here." I went on with the sale. I told him we was going on with the sale. He says, "All right, then, I will stick around." That was all that was said, so I took the papers in and laid them down on the desk. 30

Charles T. E. Matthews, direct.

Q. How many papers did he hand you? A. Two, one for Mrs. Lester and one for myself.

Q. Did he hand both papers to you? A. Yes, sir.

Q. You took them in and put them on the desk?
A. Yes, sir.

10 Q. Do you know when Mrs. Lester actually saw the papers? A. Mrs. Lester?

Q. Yes. A. Not until after the constable came there and arrested me. When the officer came there to arrest me I asked him what this warrant was for and he said for conspiracy. I didn't know what conspiracy was.

The Court: I am not concerned in that. What I want to know is about this sale.

20 Q. Was it made known to you by Mr. Leonard that this was an order signed by Vice-Chancellor Church, or any other Vice-Chancellor, to restrain that sale? A. He never told me anything about it, and I didn't know anything about it until I called you, after I was arrested. Then I thought I took it to you, just after that conspiracy arrest, didn't I?

Q. I am not testifying.

Mr. Cook: He called me up about the arrest and arranging about the bond.

30 A. I called you up and asked you what they arrested me for.

Q. Mr. Matthews, would you knowingly or willfully violate any order of the Court, in regard to the restraint of this sale? A. Would I?

Q. Would you, knowingly and deliberately? A. If I had known it had been from the Court?

Q. Yes. A. No, sir, I wouldn't have, because I know I would be liable.

40 Q. You had nothing to do with this, you were the mortgagor? A. I gave the mortgage.

Charles T. E. Matthews, direct.

Q. And Mrs. Lester was foreclosing the chattel mortgage? A. Foreclosing the chattel mortgage.

Q. So you had no control over this sale? A. Absolutely no control whatever.

Q. Was this sale well advertised? A. All over the county.

Q. Were there any people there on the day of the sale? A. I imagine when Mr. Leonard was there, there was probably a couple of hundred people, or more. 10

Q. Did you know Mr. Leonard before this time? A. No, never saw him.

Q. Did he tell you who he was that day? A. He said he represented W. E. Mount.

Q. But he didn't give you his name? A. He said his name was Mr. Leonard.

Q. And he represented Mr. Mount? A. Yes. 20

Mr. Cook: Does the Court wish anything further?

The Court: You can read the English language, I presume?

The Witness: Yes, sir.

The Court: What time was it in the morning when this order was served on you?

The Witness: Why the auctioneer had the conditions of the sale in his hand, ready to go out and start the sale. 30

The Court: He was in the house?

The Witness: He was on the porch or in the house. He was close by me. I guess Mr. Leonard seen him.

The Court: Nothing had been actually offered for sale at the time this order was served on you?

The Witness: No, sir.

Charles T. E. Matthews, direct.

The Court: Why didn't you read the order?

The Witness: Why listen, I was understood—I was informed that there would be some lawyer come there with a notice to serve on me for a bluff, to try to stop the sale.

10

The Court: Who told you it was a bluff?

The Witness: Different ones.

The Court: Did any lawyer tell you it was going to be a bluff?

The Witness: No lawyer told me it was going to be a bluff. I never had been informed. If I would have been informed that Mr. Mount or any of my creditors would have gotten an order from a Court of Chancery or any Court, I would have been on my lookout.

20

The Court: What did you understand by the words, "This is an order to stop the sale"?

The Witness: I knew he was a lawyer.

The Court: And you knew he must have had some order from some Court?

The Witness: I know. I didn't know it, and if I had known it I would certainly stop.

30

The Court: Did you tell him, "I don't give a damn for any of them, we are going on with the sale—no one is going to prevent us"?

The Witness: No, sir, I made no such remarks.

The Court: Did you further say, when Mr. Leonard advised you, you would be in contempt of Court, "I don't care anything for courts or contempts, we have planned this

40

Lester C. Leonard, direct.

sale for this morning and we are going through with it." Did you say that?

The Witness: No, sir, absolutely no, Judge. I did not make any such remark. I am a good enough law-abiding citizen to never say such things as that. I think Mr. Leonard is away off to go and accuse a good, loyal American citizen of that. 10

The Court: Mr. Leonard is a member of the Bar of this State. As such he is an officer of this Court. He is under oath to uphold the United States Constitution and the laws of the country. I think I would take his word just as quickly as I will yours, and I am going to hear what he has got to say about this. 20

LESTER C. LEONARD, sworn for examination by the Court:

Q. Tell me what took place on the 25th of February, 1925, when you served this order. A. The day prior to that time I had obtained the restraining order from Vice-Chancellor Church, and prepared the restraining order in duplicate together with the bill. I drove out to this farm of Mr. Matthews, at Colt's Neck, and knocked at the side, or the rear door, and Mrs. Lester came out. I served her with a copy of the restraining order and the bill of complaint about twenty-five minutes to eleven, and told her that that was an order from the Court of Chancery restraining the sale that she was about to have go on. She said that she didn't understand it, but would call Mr. Matthews and she went in the house and came back with him, and both of them stood on the porch. I gave Mr. Matthews a copy of the restraining order and also a copy of 30 40

Lester C. Leonard, cross.

the bill of complaint, saying that the order was issued from the Court of Chancery and restrained the proposed sale, and he said that no order could do that, that he had been advised by his attorney that nothing could stop the sale. I represented to him that apparently, if he were so advised, his attorney didn't have in mind an order of the Court of Chancery, and consequently if I were he I should immediately get in touch with his counsel, thereupon I introduced myself and said he would be guilty of contempt if he violated the order and would be liable to be punished for such violation. He said, "We advertised to have the sale go on, in the papers," and he said in the presence of Mrs. Lester, "We are going on. I don't give a damn for any courts, contempts or anything of the like, We planned to go on with this sale and we are going on with it, this order or nothing else is going to stop us." I went on to Freehold and about half-past eleven I returned and saw the sale in progress. At the time the order was served the sale was not in progress.

Q. Did Mrs. Lester say anything to you? A. No, she just stood alongside of Mr. Matthews when he did the talking, except that she said she would get him when I first saw her.

Q. You actually gave the copy of the bill and affidavits to them? With the order? A. To Mrs. Lester.

Q. To both of them? A. To her first and then when he came out, to him.

Cross examination by Mr. Cook:

Q. Isn't this a fact, that after talking to Mrs. Lester, as you have outlined, she said she didn't understand it and she would go get Mr. Matthews,

Lester C. Leonard, cross.

is that so? A. I don't recall she said she didn't understand it, but she did go in and get Mr. Matthews.

Q. After Mr. Matthews came back, didn't you hand these two copies to Mr. Matthews? A. One was a bill of complaint and one was a restraining order.

Q. So you didn't hand her anything? A. Yes, I gave her them first. 10

Q. Didn't you hand Mr. Matthews the two copies of the restraining order and the two copies of the bill of complaint? A. No, I gave them both a copy of all papers.

Q. When did you first give the papers to Mrs. Lester? A. When I first saw her on the porch.

Q. What was the arrest—had it any relation to this contempt? A. That was on a complaint sworn out by Mr. English, of Mount-English, Inc., setting forth a violation of that section of the Crimes Act providing where two or more parties agree or connive to violate a Court's process, that constitutes conspiracy, and as I recall, the complaint set forth those facts, and a warrant was issued for conspiracy to defeat the laws of the Court of Chancery. 20

Q. Was it not a complaint charging fraud as against them to defeat a creditor? A. No, as I recall it was conspiracy; conspiracy to violate an order. 30

The Court: How is that material?

Mr. Cook: I wanted to show that no order came from this Court on that day.

Mr. Leonard: It is conceded this rule to show cause was served on Mrs. Lester?

Mr. Cook: Yes, and Mr. Matthews appears voluntarily.

Case.

The Court: Mr. Matthews and Mrs. Lester, stand up here.

10 Mr. Leonard: I ask this question, that the cause fall within the province of *Ashby v. Ashby*, in which Vice-Chancellor Grey commented that contempt proceedings had two phases; he remarked of that fact in this language: "A proceeding for contempt of this character has two phases, and the order of the court thereon must have two considerations, one of which is full redress to the party injured. He is entitled to full restoration, and if expenditure of money be required to procure that restoration, the party who did the wrong must meet it. Another aspect of the case is the assertion of the dignity of the court. This will be accomplished by imposing upon the defendant such proper punishment as will teach him that he is bound to recognize the law of the land in which he lives, upon which he depends for his own safety and for the protection of his property."

20

It is the first point that I desire to dwell upon. It is admitted there was a surplus of some five or six hundred dollars.

30 Mr. Cook: Three hundred and some odd dollars.

Mr. Leonard: A gross surplus, after the sale, of some six hundred dollars. I believe you said that netted \$2,800. I have Mr. Cook's figures in which he said that there was derived from the sale the sum of \$2,801.75. The mortgage, the first mortgage was \$2,200, as I recall. That left a balance of \$600. We, I believe, have the right to as-

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Case.

sume that the Court order would be obeyed, consequently I didn't have a deputy sheriff there to levy upon the surplus, and as a result, part of that was dissipated, that is, certain taxes were paid. Whether those taxes would be prior to the levy would be a question.

10

The Court: Taxes on personal property?

Mr. Leonard: Yes. I think personally that comes under the Tax Act, and we were deprived of our opportunity to try that tax lien, if it were a lien. We never were given any opportunity, but on the contrary they arbitrarily—

The Court: What was the total of your judgment?

Mr. Leonard: Seven hundred and some odd dollars.

20

The Court: How much of it would you apply to it?

Mr. Leonard: There is a net balance of \$302.02. That tax, of course, was levied on the property of Charles T. E. Matthews, and Mrs. Bessie Lester had no right to pay that tax, which apparently she did, out of the proceeds derived from the sale and they dissipated that fund, or at least prevented our inquiring into the propriety of such payment, with the result that we insist, if your Honor please, that the complainant be made whole to the extent of the entire surplus resting in the hands of Mrs. Lester at the time of the termination of that sale, less the actual expenses of the sale.

30

Mr. Cook: There was a levy and a constable there at the time of the sale. I think

40

Case.

10 he gave them notice that that sale could not proceed until his money was paid or assured. There had been a levy upon this particular property for taxes due whatever township that may be in. Of course that would be a legitimate claim on behalf of the Township as against these goods, prior to the mortgage or any debtor's levy, or anything of that kind.

The Court: There had been a levy prior to the sale, you mean?

Mr. Cook: Yes, but by the Collector of Taxes.

The Court: Have you any proof of that?

Mr. Cook: The parties themselves have told me that.

20 The Court: I wouldn't take their word for it.

Mr. Cook: I only know what I am told about it. I don't know what happened before.

The Court: He says that Mr. Harold McDermott knows something about it. (Calling Mr. McDermott.) Do you know about whether there had been a levy by the tax collector on this personal property which was sold?

30 Mr. McDermott: The only thing I know is that I represent the Township and the Tax Collector—this is purely from recollection—Mr. Walter Fields, came to see me about the taxes. He said he understood that the property had been advertised for sale and that Mr. Matthews said there were delinquent taxes due the Township, and as I recall, I advised him under the law to have the cer-

40

Case.

tified copy of his tax duplicate as I recall it now, and make his distress under the law on the property about to be sold and claim his taxes.

The Court: Do you know whether that was done or not?

Mr. McDermott: I wasn't present, you know. I understood from Mr. Fields that the taxes had been collected. I was not personally present at the sale, and I don't know what the procedure was at the sale. I simply advised him as to the rights of the Township. Simply advised him he should go there, as collector and make his levy for taxes and to insist that the taxes would have to be first paid. 10

Mr. Leonard: Assuming that they were a lien. By reason of the violation of the restraining order procured by us we were deprived of the right to try the validity of that lien. 20

The Court: There is no proof before me that there was any lien.

Mr. Cook: The expenses that had been incurred?

The Court: Those expenses were proper charges against the surplus funds. I think I understand this matter sufficiently to dispose of it right now. 30

There is not any question in my mind that both defendants on this rule have violated and willfully violated an order of the Court of Chancery, and I adjudge you both in contempt of Court. I have no reason whatever to doubt the sworn testimony of Mr. Leonard, who is a member of this bar, and 40

Case.

10 an officer of the Court, to the effect that this order of Vice-Chancellor Church was disregarded by both of you with the utmost contempt. I want both of you, and everybody else, to understand that when this Court issues an order it expects obedience to that order, no matter what it is, and no matter how burdensome or how difficult obedience to that order may be by those to whom it is directed. You seek the protection of this country's laws, and when you seek that protection you must also have some respect for the laws of this country and the orders of the Court which are obtained to enforce those laws.

20 I am going to make this disobedience on your part of the Court's order so unpleasant to you that in the future when an order is served on you, you will recognize the importance of it, and will not deride it with the contempt which was shown in this case. The judgment of the Court will therefore be that you account to the judgment creditor, Mount, I think the name is, for the surplus moneys received upon the sale of the chattels, less the expenses of the sale, and that
30 in addition you, Mrs. Lester, pay a fine of \$100, and that you, Mr. Matthews, because I think your contempt is the greatest, pay a fine of \$200. I will give you one week within which to account for that surplus and pay the fines and if not paid within the week, commit you both to jail. You may take your seats.

40

**Amended Order Adjudging Defendants in
Contempt.**

IN CHANCERY OF NEW JERSEY.

<p style="text-align: center;">WILLIAM E. MOUNT, Complainant,</p> <p style="text-align: center;"><i>v.</i></p> <p style="text-align: center;">CHARLES T. E. MATTHEWS and BESSIE L. LESTER, Defendants.</p>	}	<p>On Petition, &c.</p>	10
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This matter coming on to be heard in the presence of Lester C. Leonard, Solicitor of the petitioner, William E. Mount, and Charles E. Cook, Solicitor of the defendants, Charles T. E. Matthews and Bessie L. Lester, and it appearing that by an order made in this cause on March 24th, 1925, it was ORDERED that the said defendants Charles T. E. Matthews, and Bessie L. Lester show cause before the Chancellor, at the Chancery Chambers, in the City of Newark, on the 7th day of April, 1925, why they should not be adjudged guilty of contempt of this Court in the premises and punished therefor;

And it further appearing that said return day was from time to time duly continued, and it further appearing that copies of the aforesaid order to show cause, together with copies of the petition and affidavits on which the same was founded, together with copies of the orders of continuance were duly served on the defendant, Bessie L. Lester; and it further appearing that the defendant, Charles T. E. Matthews voluntarily appeared before this Court on the return day aforementioned as duly continued.

Amended Order Adjudging Defts. in Contempt.

And the court having heard and considered the proofs and arguments of counsel and being satisfied that the defendants, Charles T. E. Matthews and Bessie L. Lester are guilty of the contempt and that they have violated the order of this court mentioned in said petition in that they proceeded
10 with a certain chattel mortgage sale on February 25th, 1925, in violation of the said order as aforesaid,

It is on this 3d day of July, 1925 as of June 19th, 1925, ORDERED, ADJUDGED AND DECREED that the said defendants, Charles T. E. Matthews and Bessie L. Lester are guilty of contempt of this court in violating and disobeying the said order of this court made on February 24th, 1925.

20 It is further ORDERED that the defendant, Bessie L. Lester, pay to the Clerk of this Court a fine of \$100 for the use of the State of New Jersey, and that the said defendant, Charles T. E. Matthews pay to the Clerk of this Court a fine of \$200 for the use of the State of New Jersey, and further pay the cost of these proceedings to be taxed.

And as a further penalty, it is further ORDERED, that the said defendants, Charles T. E. Matthews and Bessie L. Lester account to petitioner, William
30 E. Mount, the complainant in the suit instituted against said defendants to set aside a certain chattel mortgage as being fraudulently made for the surplus resulting from said chattel mortgage sale, namely the sum of seven hundred sixty-two dollars and sixty-eight cents (\$762.68) from which sum, however, there is to be deducted the costs of said chattel mortgage sale amounting to the sum of one hundred forty-one dollars and two
40 cents (\$141.02), leaving a surplus of six hundred

Notice of Appeal.

twenty-one dollars and sixty-six cents (\$621.66) which sum is hereby allowed to the said complainant, and is to be paid by the said defendants on or before July 3d, 1925, to the said complainant, William E. Mount, said net surplus when paid as aforesaid to apply on account of a certain judgment held by the said William E. Mount against Charles T. E. Matthews entered in the Monmouth County Court of Common Pleas, January 31st, 1925. 10

Respectfully advised,

E. R. WALKER
C.

MAJA LEON BERRY,
V. C.

A true copy. 20
LESTER C. LEONARD,
Solicitor of Petitioner and Complainant.

**Notice of Appeal from Order Adjudging
Defendants in Contempt.**

IN CHANCERY OF NEW JERSEY.

Between WILLIAM E. MOUNT, Complainant-Appellee, and CHARLES T. E. MATTHEWS and BESSIE L. LESTER, Defendants-Appellants.	}	On Bill, &c.	30
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The defendants hereby appeal from so much of the final order adjudging defendants in contempt 40

Notice of Appeal.

of Court, made in the above entitled cause July 3, 1925 as directs the said defendants as follows:

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"It is, on this 3rd day of July, 1925, as of June 19, 1925, ordered, adjudged and decreed that the defendants, Charles T. E. Matthews and Bessie L. Lester, are guilty of contempt of this Court in violating and disobeying the said order of this Court made on February 24, 1925.

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"It is further ordered that the defendant Bessie L. Lester pay to the Clerk of this Court a fine of \$100.00 for the use of the State of New Jersey, and that the defendant Charles T. E. Matthews pay to the Clerk of this Court a fine of \$200.00 for the use of the State of New Jersey; and further pay the costs of these proceedings to be taxed.

30

"And as a further penalty, it is further ordered that the said defendants, Charles T. E. Matthews and Bessie L. Lester, account to William E. Mount, complainant in a suit instituted against said defendants to set aside a certain chattel mortgage as being fraudulently made, for the surplus resulting from the said chattel mortgage sale, namely, the sum of seven hundred sixty-two dollars and sixty-eight cents (\$762.68), from which sum there is to be deducted the costs of said chattel mortgage sale, amounting to the sum of \$141.02, leaving a surplus of \$621.66, which sum is hereby allowed to said complainant, and is to be paid by said defendants on or before June 3, 1925, to said complainant, William E. Mount; said net surplus when paid as aforesaid, to apply on

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Petition of Appeal.

account of a certain judgment held by the said William E. Mount against Charles T. E. Matthews, entered in the Monmouth County Court of Common Pleas, January 31, 1925."

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

10

CHARLES E. COOK,
Solicitor for and of Counsel with
Defendants.

Dated, July 20, 1925.

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

CHARLES E. COOK,
Of Counsel with Defendants.

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Petition of Appeal.

NEW JERSEY COURT OF ERRORS AND
APPEALS.

Between

WILLIAM E. MOUNT,
Complainant-Appellee,

and

CHARLES T. E. MATTHEWS and
BESSIE L. LESTER,
Defendants-Appellants.

On Appeal from
Order Adjudg-
ing Defendants
in Contempt.

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

The petition of the appellants in the above entitled cause respectfully shows that:

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Petition of Appeal.

1. Petitioners find themselves 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 July 3, 1925, advised by his Honor Maja Leon Berry, Vice-Chancellor, in a certain cause in said Court of Chancery where-
10 in the said William E. Mount was complainant and the said Charles T. E. Matthews and Bessie L. Lester were defendants, in this respect, to wit: that the said order directs the defendant, Bessie L. Lester, to pay to the Clerk of the Court of Chancery a fine of \$100.00 for the use of the State, and directs the defendant, Charles T. E. Matthews, to pay to the Clerk of said Court a fine of \$200.00 for the use of the State, and further to pay the costs of said proceedings, to be taxed; that said order
20 provides, as a further penalty, that the defendants, Charles T. E. Matthews and Bessie L. Lester, account to the said William E. Mount, complainant, * * * for the surplus money resulting from the said chattel mortgage sale, namely, the sum of \$762.68 less a deduction allowed of the costs of said chattel mortgage sale amounting to the sum of \$141.02 leaving a surplus (as alleged in said order) of \$621.66, directed to be applied on account of a certain judgment held by William E.
30 Mount against Charles T. E. Matthews entered in the Monmouth County Court of Common Pleas, January 31, 1925.

And petitioners appeal from the order of the Chancellor, which decrees as aforesaid, upon the ground that the same is erroneous in that:

(a) Because the Court of Chancery was without power to make the order appealed from insofar as the fines or sentences imposed upon the appel-

Petition of Appeal.

lants exceeds the sum of \$50.00 as against each defendant; the only fine the Court has power to inflict for such contempt is the fine of \$50.00 each.

(b) Because the Court refused to allow the defendants, out of the surplus mentioned in the order, the additional sum of \$319.81, being the amount of money actually paid by the mortgagee to the Collector of Taxes of the Township of Atlantic in the County of Monmouth, New Jersey, that sum being the amount of taxes assessed against the goods sold at said chattel mortgage sale as the property of the mortgagor, Charles T. E. Matthews, for taxes due by him to said Township, which chattel mortgaged goods were levied upon and seized prior to the sale by said Collector of Taxes by warrant of distress, and which sum the mortgagee was first obliged to pay, and did pay, out of the proceeds of the chattel mortgage sale. The failure of the Court to allow this sum to be deducted was error.

(c) Because the Chancellor refused to direct that out of said surplus money there be paid to the defendant Charles T. E. Matthews the sum of \$200.00 as and for his exemption under the laws of the State of New Jersey, he being a married man having a family residing in the State of New Jersey dependent upon him for support, due notice of such claim for exemption, in writing, having been served upon the complainant, William E. Mount, and upon the deputy sheriff holding the execution of said William E. Mount issued out of the Court of Common Pleas of the County of Monmouth.

(d) Because said order is erroneous in that the

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Petition of Appeal.

10 true surplus remaining after the deduction of the tax levy of the Township of Atlantic made on February 20, 1925, as aforesaid, and the claim for exemption of \$200.00, as well the sum of \$141.02 expenses of sale, leaves a surplus in the hands of the mortgagee, Bessie L. Lester, belonging to the complainant, William E. Mount, of \$101.85 instead of the sum of \$621.66 as directed by said order to be paid.

20 (e) Because the effect of the order of the Chancellor in the present contempt proceedings practically disposes of the suit now pending in the Court of Chancery between the parties hereto to set aside the same on the ground that said chattel mortgage was fraudulent as against complainant's judgment against defendant Charles T. E. Matthews, which cause is at issue and the merits thereof undetermined; and if the order of the Chancellor herein referred to is enforced the rights and equities of the defendants will be destroyed.

30 Petitioners therefore pray that the order of the Chancellor may be, in the particulars aforesaid, reversed, set aside and for nothing holden, and that the petitioners may have such other relief in the premises as to this Court shall seem proper.

CHARLES E. COOK,
Solicitor for and of Counsel with
Defendants-Appellants.

Answer to Petition of Appeal.NEW JERSEY COURT OF ERRORS AND
APPEALS.

WILLIAM E. MOUNT,
Complainant-Appellee,

v.

CHARLES T. E. MATTHEWS and
BESSIE L. LESTER,
Defendants-Appellants.

On Appeal from
the Court of
Chancery.

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The answer of William E. Mount, the above named appellee, to the petition of appeal of Charles T. E. Matthews and Bessie L. Lester, the above named appellants.

This appellee, not admitting the truth of all or any of the matters in the said petition of appeal contained, for answer thereto nevertheless admits that an order was on July 3rd, 1925, made and entered in the Court of Chancery of New Jersey, in the above entitled cause, for the purposes in said petition mentioned and as therein set forth; but as to the substance and form of said order, this appellee begs leave to refer thereto when the same shall be produced.

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

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LESTER C. LEONARD,
Solicitor for Complainant-Appellee.

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Notice of Tax Claim.

To Charles C. T. Matthews and Bessie L. Lester,
 Chattel Mortgagee:

10 Notice is hereby given you that there is due to the Township of Atlantic for taxes assessed against the personal property of Charles C. T. Matthews, the sum of \$288.57 together with interest thereon at eight per cent., and that said tax is a first and paramount lien on the personal property of the said Charles C. T. Matthews. Under and pursuant to the statute in such case made and provided, I do hereby distraint said goods and chattels of the said Charles C. T. Matthews now on his farm in Atlantic Township, Monmouth County, New Jersey, and unless the said taxes are paid I will sell said goods and chattels at public sale. .

20 Annexed hereto is a copy of the entry of the taxes assessed against the personal property of the said Charles C. T. Matthews, certified to by me as collector of the Township of Atlantic, to be a true copy taken from my duplicate as said collector.

W. D. FIELDS,
 Collector.

30 The following is a copy truly taken from the tax duplicate of the taxes due on the personal property of Charles C. T. Matthews:

Date	Assessment	Amount
1921	2,601	\$57.96
1922	2,501	71.02
1923	2,506	75.30
1924	2,502	84.29
		<hr/>
		\$288.57

40 W. D. FIELDS,
 Collector.

Claim for Exemption.

Colt's Neck, N. J.,
March 16, 1925.

To William E. Mount, and John Gravatt, Con-
stable, or whom it may concern:

TAKE NOTICE: I do hereby demand that out of
the goods and chattels or moneys and proceeds de- 10
rived therefrom, which may be received or come
to the hands of you or any of you as hereinafter
set forth, that you cause to be reserved, set aside
and paid to me the value or sum of Two Hundred
(\$200.00) Dollars, I being a debtor of the said Wil-
liam E. Mount, resident of the State of New Jersey
and having a family residing in this State. This
exemption is claimed under and by virtue of the
laws of the State of New Jersey, by reason of a 20
certain execution against me issued out of the
Common Pleas Court of the County of Monmouth
founded on a judgment in a suit wherein the said
William E. Mount is plaintiff and myself defend-
ant.

(Sgd) CHARLES T. E. MATTHEWS,
Claimant.

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Notice of Argument.NEW JERSEY COURT OF ERRORS AND
APPEALS.

10	WILLIAM E. MOUNT, Complainant-Appellee, and CHARLES T. E. MATTHEWS and BESSIE L. LESTER, Defendants-Appellants.	}	On Appeal from Chancery.
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To Lester L. Leonard, Attorney for Complainant-Appellee:

20 TAKE NOTICE that on the third Tuesday of October, A. D. 1925, at the hour of ten o'clock in the forenoon, or as soon thereafter as I can be heard, at the State House in the City of Trenton, New Jersey, and before the Court of Errors and Appeals therein sitting, I shall move the argument in the above entitled cause.

Very truly yours,

CHARLES E. COOK,
 Attorney for Defendants-Appellants.

30 Dated September 30, 1925.

[3991]

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New Jersey Court of Errors and Appeals

WILLIAM E. MOUNT,
Complainant-Appellee,

and
CHARLES T. E. MATTHEWS and
BESSIE L. LESTER,
Defendants-Appellants.

On Appeal from
an Order of the
Court of Chancery.

BRIEF OF DEFENDANTS-APPELLANTS.

Statement.

This appeal brings up a certain order of the Chancellor advised by Vice-Chancellor Berry, dated July 3, 1924 (printed case, p. 23).

Briefly the following facts appear:

On December 1, 1924, defendant Matthews executed a Chattel Mortgage to defendant Bessie L. Lester covering all the personal property of defendant Charles T. E. Matthews to secure the sum of \$2,010.97 for services rendered to him. This mortgage was payable on demand with lawful interest, and was in proper form and immediately recorded.

On January 31, 1925, complainant below recovered a judgment against Charles T. E. Matthews for \$712.59 damages and \$40.97 costs; on the same day execution was issued out of the Monmouth Common Pleas Court against him and a levy made upon all the personal property in the possession of Matthews, subject to the lien and effect of the above mentioned Chattel Mortgage.

Demand having been made for payment of principal and interest due on the chattel mortgage to defendant Bessie L. Lester, she duly and extensively advertised the chattel mortgaged goods for sale at public vendue on the premises near Colts Neck, New Jersey on February 25, 1925, at eleven o'clock in the forenoon.

On February 24, 1925, complainant below filed a bill in the Court of Chancery to set aside said mortgage as against complainant, a judgment creditor, alleging the mortgage was not supported by a valid consideration, and on the day of sale served an order to show cause why an injunction should not be granted restraining the sale, which order contained a preliminary injunction. The order was served about the hour of the sale, but the sale took place and the personal property was sold under the mortgage for \$2,801.75. The amount due on complainant's mortgage with interest from December 1, 1924, was \$2,040.22; the expenses of the sale amounted to \$141.02, making a total due of \$2,181.24 and leaving a surplus of \$620.51.

On March 24, 1925, a rule to show cause was obtained against defendants to show cause April 7, 1925, why defendants should not be punished for contempt for violation of the order restraining the sale, and the matter was heard before Vice-Chancellor Berry at Long Branch on June 18, 1925.

The Vice-Chancellor by order dated July 3, 1925 (printed case, p. 23) fined the defendant Charles T. E. Matthews \$200.00 and the defendant Bessie L. Lester \$100.00 for such alleged contempt, and in addition ordered the mortgagee, Bessie L. Lester, to account to complainant, the judgment creditor, for the surplus money derived from the sale of the chattel mortgaged goods, less the expenses of the sale, to be applied on the judgment of complainant.

The Law.

By force of P. L. 1909, page 270, 1 Comp. Stat., page 452, Section 113a, and the statutes, rules and practice, an appeal in contempt proceedings may be taken from the Court of Chancery to the Court of Errors and Appeals in cases of this character.

Section 82 of the Chancery Act, 1 Comp. Stat., page 442, provides:

“To enforce obedience to the process, rules and orders of the Court of Chancery, where any person shall be in contempt, according to the law, practice, or course of the said Court, he shall, for every such contempt, and before he be released or discharged from the same, pay to the Clerk in Chancery, for the use of this State, a sum not exceeding \$50.00 as a fine for the said contempt.”

Argument.

The first cause of appeal (printed case, pp. 28 and 29) is directed to the jurisdiction of the Court in respect to the amount of the fine imposed. By force of the statutes it is respectfully contended the learned Vice-Chancellor exceeded this jurisdiction in both instances.

It is further contended that the defendant Matthews, while if the statement made by complainant's witness be true, should not be punished for contempt for disobedience of the order of injunction because the chattel mortgage sale was being conducted by the mortgagee, Bessie L. Lester, under foreclosure of the chattel mortgage for default in its payment, and defendant Matthews had no control as mortgagor, over such proceedings. Therefore, we claim that he could not be guilty of a violation of the order of injunction as he had no power to stop the sale, that being a matter solely in the hands of the mortgagee, Bessie L. Lester, and the auctioneer at her direction.

It is not contended the Court was without power to direct, in its order, that the defendant mortgagee account to complainant below for the surplus money derived from the chattel mortgage sale, but an appeal is also taken from that part of the order affording relief *inter partes*. It is claimed that the Court refused to make certain allowances and deductions from the surplus moneys to which the defendants were entitled. This is treated generally in the second, third and fourth causes of appeal.

The second cause of appeal is directed to the balance of the order wherein the Court refused to allow the defendant Lester out of the surplus of \$620.51 a further sum of \$319.81, being the amount of money actually paid by the mortgagee out of the surplus fund to the Collector of Taxes of Atlantic Township; that sum being the amount of taxes assessed against the goods sold under the chattel mortgage sale for taxes due by defendant Matthews on the identical personal property under a levy made for past due taxes prior to the date of the chattel mortgage and prior to the date of the judgment of complainant below, by distress proceedings at the instance of the Township; which levy was a lien prior to the liens of both the chattel mortgage and the judgment.

The third cause of appeal: A claim was made by defendant Matthews upon William E. Mount for an exemption of \$200.00 out of the surplus money; Matthews contending that he was a resident of New Jersey and having a family residing in this State, and that he was entitled to have set off to him the sum of \$200.00 as and for his exemption against the execution levy of complainant under the statute of this State.

That these two items deducted from the surplus money would leave a balance of surplus of \$28.70

instead of the sum of \$620.66 provided by the order appealed from.

The fourth cause of appeal is that the effect of the order of the Chancellor, if enforced, actually disposes and ends the subject-matter of the bill in Chancery, and the issues involved, and all rights and equities of the parties now pending between the complainants and defendants to set aside the chattel mortgage on the ground that the same is not supported by a legal consideration, and is fraudulent as to complainant's judgment against defendant Matthews; this cause being at issue on bill, answer and replication, and the merits thereof undetermined, if the order of the Chancellor herein referred to is enforced the defendants will be deprived of their respective rights and equities for the reason that the contempt proceedings determines all questions in favor of the complainant without giving the defendant Bessie L. Lester, mortgagee, an opportunity to be heard in support of the *bona fides* of her mortgage or a credit for the tax lien paid by her and defendant Matthews is denied his right to an exemption of \$200.00 out of the surplus fund.

This constitutes all the grounds of appeal in the case and for the reasons above stated, it is respectfully submitted the order should be set aside;

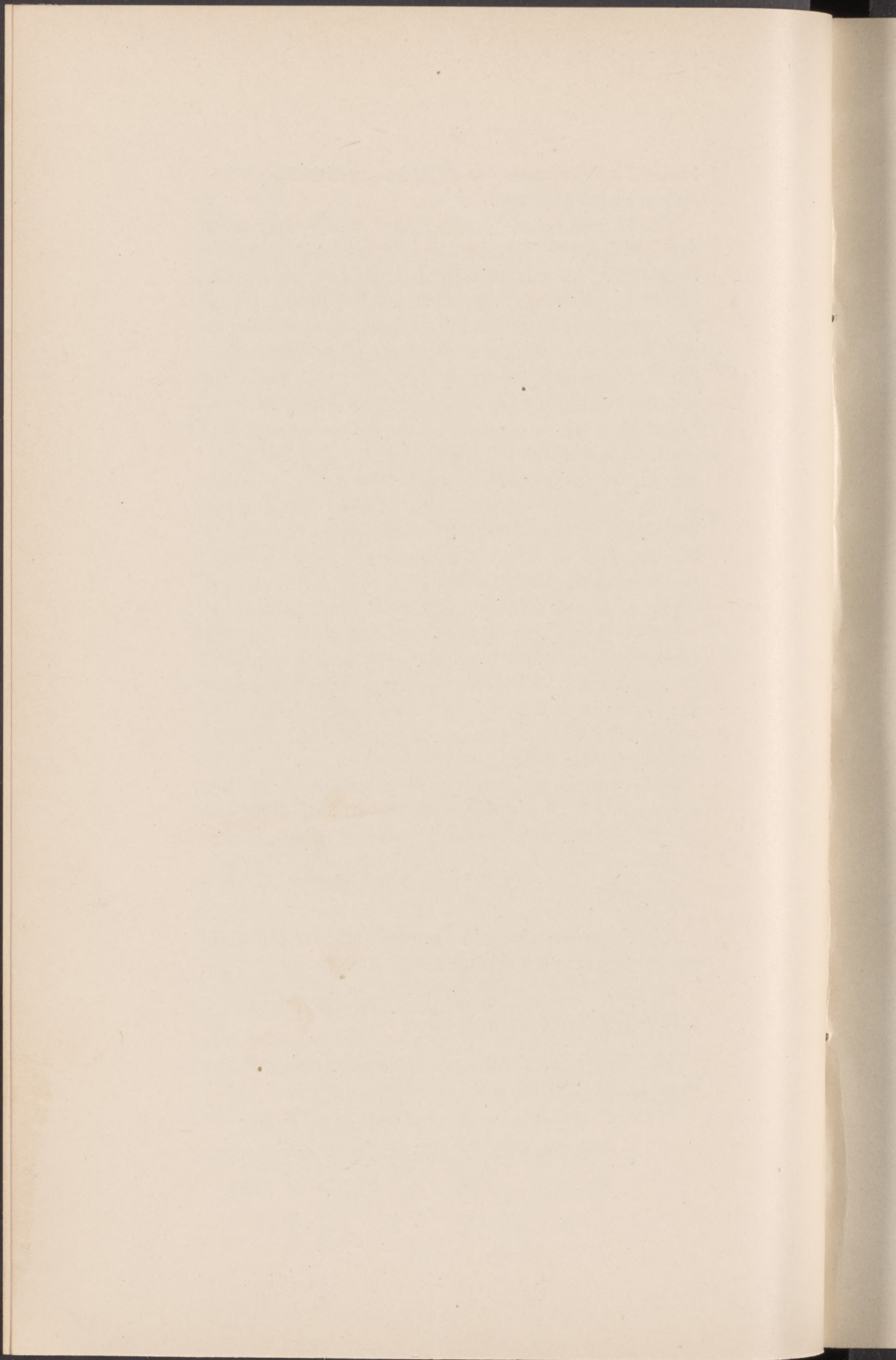
(1) The fine imposed on each defendant was unwarranted and excessive.

(2) The lien for taxes paid should be allowed out of the surplus fund.

(3) The exemption of Matthews should be allowed out of the surplus fund.

(4) The rights and equities of defendants have been denied.

CHARLES E. COOK,
Of Counsel with Defendants-Appellants.



New Jersey Court of Errors and Appeals

Between

WILLIAM E. MOUNT,

Petitioner-Appellee,

and

CHARLES T. E. MATTHEWS and

BESSIE L. LESTER,

Defendants-Appellants.

*On Appeal
from the
Court of
Chancery.*

BRIEF OF PETITIONER-APPELLEE.

PRELIMINARY STATEMENT.

The defendants appeal from an order of the Court of Chancery adjudging them both in contempt.

RE-STATEMENT OF FACTS.

On January 31st, 1925, a judgment for \$753.53 was entered in the Court of Common Pleas of Monmouth County in favor of William E. Mount and against one of the defendants, Charles T. E. Matthews.

On February 24th, 1925, the judgment creditor filed a bill in Chancery praying that a certain mortgage executed by the defendant, Charles T. E. Matthews, to his housekeeper, Bessie L. Lester, and covering substantially all the personalty of Charles

T. E. Matthews, be declared fraudulent. The bill further alleged that the judgment was obtained on a promissory note dated November 7th, 1924; that after entry of judgment, execution issued and a levy was made upon all the personal property of Charles T. E. Matthews.

A sale under the chattel mortgage was advertised for February 25th, 1925. On February 24th, 1925, an order issued out of the Court of Chancery restraining Matthews and Mrs. Lester from proceeding with this sale.

True copies of the restraining order, the bill of complaint and affidavits were personally served upon both defendants by Lester C. Leonard, solicitor of the petitioner. Service was made about a half an hour before the sale. After being informed of the contents of the papers as well as their effect, Matthews said (p. 16),

We advertised to have the sale go on in the papers and we are going on. I don't give a damn for any courts, contempts or anything of the like. We planned to go on with this sale and we are going on with it, this order or nothing else is going to stop us.

This language was used in the presence of Mrs. Lester who, a short time previously, had been similarly served. Within an hour after service, Mr. Leonard returned and found the sale in progress.

From the sale there resulted a surplus of \$762.68 over and above the amount of the mortgage and interest. The expenses of the sale were \$141.02, leaving a net surplus of \$621.66 no part of which has ever been paid to petitioner.

Thereafter Chancery issued an order directing both defendants to show cause why they should not be adjudged in contempt. On the return of this rule Matthews was fined \$200.00 and costs, while Mrs. Lester was fined \$100.00. The court further decreed that both defendants account to William

E. Mount for the surplus received from the chattel mortgage sale, less the actual expenses of the sale.

POINT I.

That the Order Did Not Violate Section 82 of 'An Act Respecting the Court of Chancery (Revision of 1902)', 1 C. S. 442.

Section 82, which counsel for the defendants in his brief neglected fully to set forth, reads as follows:

To enforce obedience to the process, rules and orders of the Court of Chancery, where any person shall be in contempt according to the law, practice or course of the said court he shall, for every such contempt, and before he be released or discharged from the same, pay to the clerk in chancery, for the use of this state, a sum not exceeding fifty dollars as a fine for the said contempt; and the said person being in court, upon process of contempt or otherwise, shall stand committed and remain in close custody until the said process, rule or order shall be obeyed and performed, and until the fine so imposed for such contempt, with the costs, be fully paid.

The purpose of this section is *to enforce obedience* to the process, rules and orders of the Court of Chancery. That it performs this office and no other is held in *FRANK v. HEROLD*, 64 N. J. Eq. 372 at 373.

When the defendants were adjudged in contempt, there was no order to enforce nor was it the object of the court to compel obedience. The order of February 24th, 1925, could be obeyed in only one way—by defendants not holding the chattel mortgage sale. Holding the sale, left nothing to be obeyed, nothing to be enforced.

Chancery neither needed the aid of Section 82 nor was its jurisdiction by that section limited. With the enforcing of that which disobedience could not render incapable of enforcement, the court was not concerned. The contempt order was fashioned

rather to foster and compel respect for solemn decrees so that litigants may with safety rely upon them and not be subjected to embarrassment and pecuniary loss, occasioned by another's pertinacious resistance to authority.

This two-fold purpose of a proceeding for contempt is succinctly described by the late Vice-Chancellor Grey in *ASHBY v. ASHBY*, 62 N. J. Eq. 618 at 622, where similar restoration was directed.

A proceeding for contempt of this character has two phases, and the order of the court thereon must have two considerations, one of which is full redress to the party injured. He is entitled to full restoration and if expenditure of money be required to procure that restoration, the party who did the wrong must meet it. Another aspect of the case is the assertion of the dignity of the court. This will be accomplished by imposing upon the defendant such proper punishment as will teach him that he is bound to recognize the law of the land in which he lives, upon which he depends for his own safety and for the protection of his property.

Such *inter partes* relief does not fall within the purview of Section 82 which concerns only that *inter partes* relief as can be given by enforcing obedience to something which might still be done. The past is gone.

POINT II.

That Both Defendants Could Be, and Were in Fact Guilty of Violating the Restraining Order.

It is argued in defendants' brief that Matthews could not be guilty of violating the order of injunction as he had no power to stop the sale, 'that being a matter solely in the hands of the mortgagee, Bessie L. Lester, and the auctioneer at her direction'.

The gist of the cause set forth in the bill is that

the chattel mortgage was fraudulently made. If this allegation be true, and the restraining order was necessarily issued upon that hypothesis, then the sale becomes merely one of numerous steps taken to consummate the fraudulent act in which both defendants participated and over which both, if not solely Matthews, exercised control. The record is barren of any suggestion that Matthews attempted to prohibit the sale, on the contrary he engineered the project and acted as Mrs. Lester's spokesman.

POINT III.

That the Order Properly Directed the Return of the Net Surplus Undepleted by Exemptions or Deductions for Taxes.

Claim is made for an exemption of \$200.00 out of the surplus money and also for \$319.81 alleged to have been paid for taxes. No such tax lien is shown upon the record, indeed the court remarked (p. 21), 'There is no proof before me that there was any lien'. Notwithstanding, counsel for defendants has without consent, and without the document ever having been offered in evidence, added to the record on page 32 an undated notice of tax claim. Even though there were proof before the court of such a lien that proof should be rendered ineffective by defendants' willful disobedience which deprived petitioner of his right to question the validity of the alleged lien. This important legal right should not be destroyed by the stroke of another's unlawful conduct.

It cannot be seriously claimed that petitioner was negligent in not having a deputy-sheriff present at the sale, the holding of which a court's order had restrained.

A way is provided for the head of a family to claim an exemption of \$200, to which defendants'

defiant conduct in pocketing the money bears no resemblance.

Again, in the entire absence of consent, without the instrument having been offered in evidence, without establishing the time of service, or even service and without showing that defendant has a family, there is annexed to the printed record (p. 33) a paper entitled, 'Claim for Exemption'. Counsel in his brief insists the court erred in not recognizing this exemption. How could the court allow an exemption which was never before it claimed, or even referred to directly, or indirectly?

The proof of all conditions precedent entitling defendant to assert this claim would not warrant his boldly taking and withholding \$200.00 from the surplus of a sale held in violation of a court's order; nor would such proof justify his retaining the sum in the absence of proof showing he had no other property.

In any event the propriety of recognizing an exemption when ordering restoration to an injured party may be questioned. An exemption must be claimed on subject-matter belonging to the claimant. Here the court ordered the return of money unlawfully taken by defendant and to which he never had legal title. He was prevented from acquiring legal title to the surplus by the intervention of petitioner's levy. Even though he were not thus hindered, his wrongful conduct should estop his asserting the claim in a court of equity.

POINT IV.

That the Effect of the Order for Contempt Upon the Suit to Set Aside the Mortgage is Coincidental.

In the last point of defendants' brief it is argued the order for contempt entirely disposes of the suit to set aside the mortgage. The order does nothing of the kind. Restoration is directed to be made only from the net surplus, a surplus insuffi-

cient to satisfy entirely petitioner's judgment. The fund constituting principal, interest and costs in the foreclosure is left unmolested.

If either Matthews or Mrs. Lester after the sale chose to remove a then outstanding and prior lien for taxes and thus render good the title of purchasers they might do so, but not from the surplus, once the fund has assumed the character of surplus and is treated as such. That it was so treated is not only shown by the conduct of the defendants, but also by their counsel's brief in which he says (p. 4),

The second cause of appeal is directed to the balance of the order wherein the Court refused to allow the defendant Lester out of the surplus of \$620.51 a further sum of \$319.81, being the amount of money actually paid by the mortgagee out of the surplus fund to the Collector of Taxes of Atlantic Township.

On page 5 of his brief he ventures the further suggestion that Mrs. Lester is entitled to a 'credit' for the tax lien paid by her.

As a deficiency gives rise only to a right of action against the mortgagor, defendants to be consistent are bound to show that a mere 'credit' or right of action is superior to petitioner's judgment.

As between a judgment and a lien for taxes there is priority in the latter if the lien be regularly acquired and asserted. Whether that regularity can be established in face of an attack, the law and not defendants should determine.

Because the defendants have not offered sufficient and legal reason why the order should be modified, this honorable court is respectfully urged to affirm it in all respects.

Respectfully submitted,

LESTER C. LEONARD,

Solicitor of Petitioner-Appellee.

HOWARD S. HIGGINSON,

of Counsel.



