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**Notice of Appeal.**

(Filed March 18, 1929)

IN CHANCERY OF NEW JERSEY.

Between PALISADE BUILDING & LOAN AS- SOCIATION, a Corporation of New Jersey,  Complainant,  and  IGNAZIO MILONE, <i>et als.</i> , Defendants.	}	On Bill &c.	10
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The defendant, Edsall Holding Company hereby  
appeals from the Interlocutory Decree made in the  
above entitled cause, on the 11th day of February, 1929, and from the whole and every part thereof  
TO THE COURT OF ERRORS AND APPEALS IN THE LAST  
RESORT IN ALL CAUSES. 20

Dated, March 11th, 1929.

I. FAERBER GOLDENHORN,  
Solicitor for and of Counsel with  
Defendant, Edsall Holding Company.

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

I. FAERBER GOLDENHORN,  
Of Counsel with Defendant,  
Edsall Holding Company.

Service of the within Notice of Appeal acknowl-  
edged this 14th day of March, 1929.

HOPKINS & HERR, 40  
Solicitors for Complainant.



**Petition of Appeal.**

(Filed April 2, 1929)

NEW JERSEY COURT OF ERRORS AND  
APPEALS.

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PALISADE BUILDING & LOAN ASSOCIATION, a Corporation of New Jersey,  
Complainant-Respondent,

vs.

IGNAZIO MILONE, *et als.*,  
Defendants-Appellants.

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On Appeal  
from the  
Court of  
Chancery by  
Defendant,  
Edsall  
Holding  
Company.

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TO THE HONORABLE THE COURT OF ERRORS AND APPEALS IN THE LAST RESORT IN ALL CAUSES :

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The petition of EDSALL HOLDING COMPANY, the appellant in the above entitled cause, respectfully shows that

1—Petitioner finds itself aggrieved by an Interlocutory Decree or Order made in the Court of Chancery, by his Honor, Edwin Robert Walker, Chancellor of the State of New Jersey, bearing date the 11th day of February 1929, in a certain cause in said Court of Chancery, wherein the said Palisade Building & Loan Association, a corporation of New Jersey was complainant and the said Edsall Holding Company and others were defendants, in this respect, to wit, that the said Interlocutory Decree or Order adjudges that

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“It is thereupon on this eleventh day of February, 1929 on motion as aforesaid ORDERED that Warren Dixon Jr. be and he is hereby ap-

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*Petition of Appeal.*

pointed Receiver of the rents, issues and profits of the said mortgaged premises pending the termination of these proceedings,

10       AND IT IS FURTHER ORDERED that said receiver be and he is hereby clothed with all the power and authority and subject to the duties appertaining to receivers in other foreclosure suits.

      AND IT IS FURTHER ORDERED that the said receiver give bond to the Chancellor in the sum of \$1,000 with good and sufficient surety to be approved as to form and sufficiency by any one of the Special Masters of this Court, conditioned upon the faithful performance of his duties as said receiver; said bond to be filed with the Clerk of this court.

20       AND IT IS FURTHER ORDERED that Ignazio Milone, Vincenza Milone, Edsall Holding Company and Ridgefield Supply Company who are the defendants in this suit be and they are hereby respectively enjoined and restrained from collecting the rents, issues and profits of said mortgaged premises, directly or indirectly, and from in any manner interfering with or obstructing the said receiver in his collection thereof.

30       AND IT IS FURTHER ORDERED that the said receiver out of the rents to be collected by him, may pay the taxes upon said premises as they become due and payable and may keep the premises in proper repair and in tenantable condition."

40       2—Petitioner appeals from the said Interlocutory Decree or Order of the Chancellor, which decrees as

*Petition of Appeal.*

aforesaid, upon the ground that the same is erroneous in that

(a) The Chancellor should have discharged the Order to Show Cause made and entered on the first day of February 1929, and denied the application of the complainant for a receiver to collect the rents.

(b) The Chancellor should have determined as a matter of law, that the complaint was not entitled to a Receiver to collect rents, pending the foreclosure suit. 10

(c) The Chancellor should have denied the application for a Receiver to collect rents on the ground that the bill-of-complaint does not disclose a cause of action in so far as the appellant, the Edsall Holding Company is concerned.

(d) The bill-of-complaint discloses on its face, the legal title to the premises under foreclosure is in the appellant, Edsall Holding Company, and the Chancellor should have held that by reason thereof, the said Edsall Holding Company is entitled to collect the rents. 20

(e) The bill-of-complaint discloses on its face that the title of the appellant, Edsall Holding Company is superior and prior to any right, title and interest which the complainant, Palisade Building and Loan Association may have by reason of its mortgage, mentioned in the bill-of-complaint. 30

(f) The Chancellor should have found as a fact from the allegations contained in the complainant's bill-of-complaint, the market value of said premises being foreclosed is in excess of the amount due on complainant's bond and mortgage, and that complainant's security was not impaired or depreciated. 40

*Petition of Appeal.*

(g) The Chancellor should have denied the application for a receiver to collect rents, pending the foreclosure suit, because there is no proof before the court that the persons who executed the bond and mortgage, held by the complainant, were insolvent or unable to answer for a deficiency in the event of a foreclosure and sale.

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Petitioner, therefore, prays that said Interlocutory Decree of the said Chancellor and the particulars aforesaid, 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.

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I. FAERBER GOLDENHORN,  
Solicitor for and of Counsel with Appellant,  
Edsall Holding Company.

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**Answer to Petition of Appeal.**

(Filed April 19, 1929)

NEW JERSEY COURT OF ERRORS AND  
APPEALS.

Between :

PALISADE BUILDING & LOAN ASSOCIA-  
TION, a corporation of New  
Jersey,

Complainant-Respondent,

and

IGNAZIO MILONE, *et als*,  
Defendants-Appellants.On Appeal  
from the  
Court of  
Chancery.

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The answer of the complainant-respondent to the petition of appeal of the defendant-appellant, EDSALL HOLDING COMPANY.

This respondent not acknowledging any or all the matters which in the said petition of appeal are contained to be true, for answer, nevertheless, says and admits that an interlocutory decree or order was, on the eleventh day of February, 1929, made and entered in the Court of Chancery in the cause, for that purpose mentioned in the said petition, as is therein stated; but as to the substance and form thereof, this respondent prays to refer thereto when the same shall be produced. And this respondent is advised and believes that the said interlocutory decree or order, in the particulars mentioned in said petition, and in all other particulars, is agreeable to equity, and it prays that the same may be in all particulars affirmed, with costs to be adjudged to this respondent.

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HOPKINS & HERR,  
Sol'rs of and of counsel with  
Palisade Bldg. & Loan Ass'n,  
a corp. of N. J., Complain-  
ant below.

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**Order.**

(Filed February 11, 1929)

## IN CHANCERY OF NEW JERSEY.

10	Between: PALISADE BUILDING & LOAN ASSOCIATION, a corp. of N. J., Complainant, and IGNAZIO MILONE, <i>et als</i> , Defendants.	}	On Bill, &c.
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20 This matter coming on to be heard on the return of the Order to Show Cause made and entered herein on the 1st day of February, 1929, in the presence of Dougal Herr of Hopkins & Herr, solicitors of complainant, and of I. F. Goldenhorn, solicitor of the defendant, Edsall Holding Company, and Anthony V. Avallone, solicitor of the defendants, Ignazio Milone and Vincenza Milone, and it appearing that due service of copies of the verified Bill of Complaint and Order to Show Cause were made upon the defendant, Ridgefield Building Supply Company, and it appearing to the court that the sum due on complainant's mortgage amounts to upwards of eighty per centum of the market value of the mortgaged premises and that the complainant is therefore entitled to have a receiver appointed of the rents, issues and profits of the said mortgaged premises pending the termination of this foreclosure proceeding, pursuant to the statute in such case made and provided (P. L. 1915, Chap. c 278, p. 506).

40 It is thereupon on this eleventh day of February, 1929, on motion as aforesaid ORDERED that Warren

*Order.*

Dixon, Jr., be and he is hereby appointed receiver of the rents, issues and profits of the said mortgaged premises pending the termination of these proceedings.

AND IT IS FURTHER ORDERED that said receiver be and he is hereby clothed with all the power and authority and subject to the duties appertaining to receivers in other foreclosure suits. 10

AND IT IS FURTHER ORDERED that the said receiver give bond to the Chancellor in the sum of \$1,000 with good and sufficient surety to be approved as to form and sufficiency by any one of the Special Masters of this Court, conditioned upon the faithful performance of his duties as said receiver; said bond to be filed with the clerk of this court.

AND IT IS FURTHER ORDERED that Ignazio Milone, Vincenza Milone, Edsall Holding Company and Ridgefield Supply Company who are the defendants in this suit be and they are hereby respectively enjoined and restrained from collecting the rents, issues and profits of said mortgaged premises, directly or indirectly, and from in any manner interfering with or obstructing the said receiver in his collection thereof. 20

AND IT IS FURTHER ORDERED that the said receiver out of the rents to be collected by him, may pay the taxes upon said premises as they become due and payable and may keep the premises in proper repair and in tenantable condition. 30

E. R. WALKER,  
C.

Respectfully advised,  
JNO. J. FALLON,  
V. C.

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**Bill of Complaint.**

(Filed February 1, 1929)

## IN CHANCERY OF NEW JERSEY)

To the Honorable EDWIN ROBERT WALKER,  
Chancellor of the State of New Jersey:

10 The complainant, PALISADE BUILDING AND LOAN  
ASSOCIATION, a corporation of the State of New  
Jersey, respectfully shows that;

20 1. On November 8, 1928, Ignazio Milone, being  
indebted to the complainant in the sum of Six  
Thousand (\$6,000.00) Dollars, executed to the com-  
plainant a bond of that date to secure that sum,  
payable in installments of One (\$1.00) Dollar per  
month on each of Thirty (30) shares of the capital  
stock of said Association, owned by the said mort-  
gagor and standing in his name on the books of  
the said Association and assigned to the complain-  
ant as collateral security for the payment thereof,  
and on which said loan is based, on the second  
Thursday of each and every month thereafter, or  
such other time as might thereafter be appointed  
for that purpose, until said shares should attain  
the par value of Two Hundred (\$200.00) Dollars  
each, together with interest on the said sum of Six  
30 Thousand (\$6,000.00) Dollars to be computed at  
the rate of four and one-half per centum per annum,  
and payable at the same time and in the same man-  
ner as the stock payments aforesaid, and also at the  
same time and during the said period a monthly  
premium of Fifty (\$.50) cents per share on each of  
said shares bid for by him on said loan; and also  
all fines that might become due as provided for by  
the constitution and by-laws of said Association,  
40 which were thereby made a part of said mortgage.

*Bill of Complaint.*

2. The said bond contains an agreement, that should any default be made in the payment of said interest or installments on said shares, or any part thereof, on any day whereon the same was made payable, and should the same remain unpaid and in arrears for thirty days, then the whole principal sum, with all arrearages of interest thereon, should, at the option of the complainant, its successors or assigns, become and be due immediately. 10

3. To secure the payment of the aforesaid bond, the said Ignazio Milone and Vincenza Milone, his wife, executed to the complainant a mortgage of even date with said bond, and thereby conveyed to it 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 on November 10, 1928 recorded in the Bergen County Clerk's Office in Book 1110 of Mortgages for said County, pages 507 etc. 20

4. The mortgaged premises are described as follows: 30

ALL that certain tract or parcel of land and premises, hereinafter particularly described, situate, lying and being in the Borough of Palisades Park, in the County of Bergen and State of New Jersey:

And on a certain map entitled "Hitchcock's Revised Map of Palisades Park and Palisades Heights, Bergen County, New Jersey, filed in the office of the Clerk of the County of Bergen on April 11th, 1900 as Map No. 469, are laid down and designated as 40

*Bill of Complaint.*

lots numbers twelve hundred fifty (1250) and twelve hundred fifty-one (1251). All as laid down on said map.

5. On or about the Seventh day of December, 1928, Harry C. Harper, Sheriff, conveyed said premises to Edsall Holding Co., by deed of conveyance dated that day and recorded December 8, 1928 in the Clerk's Office of Bergen County in Book 1620 of Deeds for said County, pages 385, &c.; said conveyance having been made in execution of an alleged judgment of Ridgefield Building Supply Co., plaintiff, against Frank P. Lore, defendant, claimed to have been signed and entered in the Bergen County Circuit Court on May 25, 1928 in the sum of Six Hundred Thirty-five (\$635.00) Dollars damages, without costs.

20 Any interest which the said defendant Edsall Holding Company may have in said premises, by virtue of said conveyance is subsequent to and subject to the lien of complainant's said mortgage.

30 Any interest which the said Ridgefield Building Supply Co. may claim to have in said mortgaged premises, by virtue of the said alleged judgment, is subsequent to and subject to the lien of complainant's said mortgage.

6. The said Ignazio Milone has made default in the payment of said monthly installments and payments of interest due upon the said bond and mortgage of the complainant and the same have remained unpaid and in arrears for upwards of thirty days and no part thereof has yet been paid. Complainant has elected that the whole principal sum, secured by said mortgage, with all unpaid interest, shall now be due.

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*Bill of Complaint.*

7. There is due on account of the principal of complainant's bond and mortgage, including fines charged thereon for non-payment of dues and interest, the sum of Five Thousand Eight Hundred Forty-one and 75/100 (\$5,841.75) Dollars.

8. The market value of said premises is Six Thousand (\$6,000.00) Dollars. 10

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

1. That Ignazio Milone, Vincenza Milone, Edsall Holding Co. and Ridgefield Building Supply Co. who are the defendants to this suit, may answer this bill of complaint and each statement therein made. 20

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

3. That a Receiver may be appointed by this court of the rents, issues and profits of the mortgaged premises pending the termination of these foreclosure proceedings, such Receiver to be clothed with all the power and authority and to be subject to the duties pertaining to receivers in foreclosure suits. 30

4. That the defendants, or one of them, may be decreed to pay to the complainant 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 40

*Bill of Complaint.*

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

10 6. 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.

HOPKINS & HERR,  
Solicitors for and of Counsel  
with Complainant.

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**Affidavit of Harry D. Schall, Annexed to  
Bill of Complaint.**

IN CHANCERY OF NEW JERSEY.

Between  
PALISADE BUILDING AND LOAN ASSO-  
CIATION, a corp. of N. J.,  
Complainant,

and

IGNAZIO MILONE, *et als.*,  
Defendants.

On Bill, &c.

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STATE OF NEW JERSEY, }  
COUNTY OF BERGEN, } ss.:

HARRY D. SCHALL, of full age, being duly sworn according to law, on his oath deposes and says:

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I have been in the real estate business at Palisade, in the Borough of Fort Lee, Bergen County, for the past fifteen years, and have made a great many sales of real estate in the vicinity of Fort Lee and other parts of Bergen County during said period. I am also Secretary of the Interborough Building and Loan Association of Palisade, and am accustomed in that capacity to pass upon the value of real estate offered for mortgage.

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I have examined the premises described in the bill of complaint herein, situated on the West side of Sixth Street, One Hundred Fifty (150) feet south of Palisade Boulevard, Borough of Palisades Park, Bergen County, New Jersey, and consisting of a plot of ground Fifty (50) feet wide in front and rear of One Hundred (100) feet deep through-out, on which is erected a one and one-half story

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*Affidavit of Harry D. Schall.*

and basement dwelling house, accommodating two families.

In my opinion the market value of said premises is Six Thousand (\$6,000.00) Dollars.

HARRY D. SCHALL.

10 Sworn and subscribed to before me }  
this 29th day of January, 1929. }

A. J. HUGHES,  
Notary Public of New Jersey.

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**Affidavit of John E. Davis, Annexed to  
Bill of Complaint.**

IN CHANCERY OF NEW JERSEY.

Between PALISADE BUILDING AND LOAN ASSO- CIATION, a corp. of N. J., Complainant,  and  IGNAZIO MILONE, <i>et als.</i> , Defendants.	}	On Bill, &c.	10
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STATE OF NEW JERSEY, }  
 COUNTY OF HUDSON, } ss. :

JOHN E. DAVIS, of full age, being duly sworn according to law on his oath deposes and says:

I am Secretary of the Palisade Building and Loan Association, a corporation of New Jersey, the complainant herein. 20

I have read the foregoing Bill of Complaint and the statements therein contained are true, except as to the valuation of the property of which I know nothing.

There is a balance of Five Thousand Eight Hundred Forty-one and 75/100 (\$5,841.75) Dollars due on the bond and mortgage made by Ignazio Milone and Vincenza Milone, his wife, to complainant, dated November 8, 1928 and recorded November 10, 1928 in the Bergen County Clerk's Office in Book 1110 of Mortgages for said County, pages 507, &c. 30

JOHN E. DAVIS.

Sworn and subscribed to before me }  
 this 30th day of January, 1929. }

ELIZABETH E. HAUENSTEIN,  
 Notary Public 40  
 of New Jersey.

**Order to Show Cause.**

(Filed Feb. 1, 1929)

## IN CHANCERY OF NEW JERSEY.

10	Between PALISADE BUILDING AND LOAN ASSO- CIATION, a corp. of N. J., Complainant,  and  IGNAZIO MILONE, <i>et als.</i> , Defendants.	}	On Bill, &c.
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20 Upon reading and filing the verified bill of complaint of the Palisade Building and Loan Association, the complainant in the above stated cause, it is on this 1st day of February, 1929, on motion of Hopkins & Herr, solicitors of complainant, ORDERED that the defendants Ignazio Milone, Vincenza Milone, his wife, Edsall Holding Co., a corporation, and Ridgefield Building Supply Co., a corporation, show cause before the Chancellor, at the Chancery Chambers in the City of Jersey City, on Monday 30 the 11th day of February, 1929, at ten o'clock in the forenoon, or as soon thereafter as counsel can be heard, why a Receiver should not be appointed *pendente lite*, pursuant to the prayer of the bill, and in the meantime and until further order of this court,

40 It is further ORDERED that the said defendants and their respective agents, servants and attorneys, and all persons acting for them, individually and severally, be and the same are hereby enjoined and restrained from collecting any rents from the prem-

*Order to Show Cause.*

ises described in the bill of complaint and from in anywise administering and dealing with said premises;

And it is further ORDERED that a true copy of the bill of complaint, affidavits and of this Order to Show Cause, which may be certified as true by the complainant's solicitors, be served upon each of the said defendants, or their respective solicitors, within five days from the date hereof. 10

E. R. WALKER,  
C.

Respectfully advised,  
JOHN J. FALLON,  
V. C. 20

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**Affidavit of Harry A. Birnbaum.**

(Filed Feb. 11, 1929)

IN CHANCERY OF NEW JERSEY.

10	Between PALISADE BUILDING AND LOAN ASSO- CIATION, a corp. of N. J., Complainant,  and  IGNAZIO MILONE, <i>et als.</i> , Defendants.	}	On Bill, &c.
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STATE OF NEW JERSEY, }  
 COUNTY OF HUDSON, } ss.:

20 HARRY A. BIRNBAUM, of full age, being duly sworn, on his oath, deposes and says:

1. I am the Secretary and Treasurer of Edsall Holding Co., a corporation of the State of New Jersey.

30 2. I have read the bill of complaint filed in the above entitled cause for the foreclosure of a mortgage held by the Palisade Building and Loan Association, alleged to be a lien up the lands and premises described in the bill of complaint.

3. I am advised and believe that the Edsall Holding Co., owns title to the lands and premises mentioned in the bill, in fee simple, free and clear of any encumbrances. Said mortgage of the complainant, I am advised and believe is not a lien against the lands and premises being foreclosed, but that

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*Affidavit of Harry A. Birnbaum.*

the title of the Edsall Holding Co., is superior and paramount to any right, title and interest of the complainant herein.

4. The Edsall Holding Co., acquired title to the lands and premises mentioned in the bill, by deed from Harry C. Harper, Sheriff of Bergen County, dated December 7th, 1928, and recorded on December 8th, 1928, in the Bergen County Clerk's Office in Book 1620 of Deeds, for said County, page 385, etc. This deed was delivered by the Sheriff to the Edsall Holding Co., by virtue of a writ of execution issued out of the Bergen County Circuit Court, in a suit wherein Ridgefield Building & Supply Company, is plaintiff and Frank P. Lore, is defendant, judgment having been entered against said defendant, Frank P. Lore, on May 25th, 1928, in the sum of Six Hundred and Thirty-five (\$635.00) Dollars damages, without costs. The said Frank P. Lore, being the owner of said premises.

5. The Edsall Holding Co., bought in the premises at the Sheriff's Sale held under this judgment and execution, and by reason thereof, I am advised and believe that Edsall Holding Co., has a good legal title in fee simple to the said lands and premises, free and clear of any alleged lien, which the said complainant herein claims by virtue of its alleged mortgage. The complainant's mortgage was not recorded until November 10th, 1928, almost six months after the judgment under which the Edsall Holding Co., acquired title, was entered in the Bergen County Circuit Court.

6. Edsall Holding Co. is now collecting the rents for said premises. I am advised and believe said

*Affidavit of Harry A. Birnbaum.*

complainant has no interest, right or title in the premises whatsoever.

HARRY A. BIRNBAUM.

Sworn and subscribed to before me }  
this 11th day of February, 1929. }  
10           ROBERT SCHENKER,  
              Notary Public of New Jersey.

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## New Jersey Court of Errors and Appeals

PALISADE BUILDING & LOAN ASSOCIATION, a corporation of New Jersey, Complainant-Respondent, and IGNAZIO MILONE, <i>et als.</i> , Defendants-Appellants.	}	On Bill, &c. Appeal of Defendant, Edsall Holding Company, from Court of Chancery.
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### BRIEF FOR DEFENDANT-APPELLANT, EDSALL HOLDING COMPANY.

The complainant filed its bill on February 1st, 1929 (p. 10) to foreclose its mortgage originally in the sum of Six Thousand (\$6,000.00) Dollars, covering certain lands and premises located in the borough of Palisades Park, Bergen County, New Jersey. On the filing of the bill, an Order to Show Cause was granted (p. 18) why a receiver should not be appointed to collect the rents. On the return of the Order to Show Cause, an Order was entered over the objection of the defendant, Edsall Holding Company, appointing a Receiver to collect rents pending the foreclosure suit (p. 8).

This appeal is brought for the purpose of reversing and setting aside the Order appointing the receiver, on the ground that the same is without warrant in law and that a receiver to collect the rents pending the foreclosure suit, should not have been appointed.

**POINT I.**

**The Chancellor should have determined as a matter of law that the complainant was not entitled to a receiver to collect rents, pending the foreclosure suit, because**

**(A). The bill-of-complaint on its face does not disclose a cause of action, in so far as the appellant, Edsall Holding Company is concerned.**

**(B). The bill-of-complaint discloses on its face, that the legal title to the premises under foreclosure is in the appellant, Edsall Holding Company. The Chancellor should have held that by reason thereof, the said Edsall Holding Company is entitled to collect the rents.**

**(C). The bill-of-complaint discloses on its face that the title of the appellant, Edsall Holding Company, is superior and prior to any right, title and interest which the complainant may have by reason of its mortgage.**

**(D). Complainant failed to prove that its mortgage security was impaired or had depreciated in value.**

The complainant's mortgage was executed on November 8th, 1928, and recorded on *November 10th, 1928* in the Bergen County Clerk's Office (see Bill, p. 10).

A perusal of Paragraph "5" of the bill-of-complaint, shows that the defendant-appellant, Edsall Holding Company, acquired title by a deed from Harry C. Harper, Sheriff of Bergen County, recorded on December 8th, 1928 in the Bergen County Clerk's Office. The deed was made in execution of a judgment of Ridgefield Building & Supply Co., plaintiff, against Frank P. Lore, defendant, entered in the Bergen County Circuit Court on May 25th, 1928, in the sum of Six Hundred and Thirty-five (\$635.00) Dollars damages.

The bill, therefore, shows on its face, that the judgment through which the Edsall Holding Company acquired title, *was a lien on the premises on May 25th, 1928, almost six months before the complainant acquired its lien by the recording of its mortgage.* It follows, as a matter of law, therefore, that the deed acquired by the defendant from the Sheriff of Bergen County, under an Execution Sale on this judgment, vested title in the Edsall Holding Company, free and clear of the complainant's mortgage. In fact, the complainant's mortgage was not in existence on May 25th, 1928. The Edsall Holding Company having a prior and superior title, could not be cut off by complainant's foreclosure proceedings. The Edsall Holding Company therefore is not a necessary or proper party to the foreclosure suit, and its *title relates back to the time the judgment became a lien, viz, May 25th, 1928.*

A perusal of the affidavit of Harry A. Birnbaum (p. 20), filed in opposition to the appointment of a Receiver, shows without contradiction that one Frank P. Lore was the owner of the premises in question when the judgment was entered against him by the Ridgefield Building Supply Co. on May 25th, 1928 in the Bergen County Circuit Court. It is difficult to comprehend under what theory the owner of the fee (Edsall Holding Company) could

be deprived of its rights to collect the rents of the premises, by reason of an alleged lien of a mortgagee, whose mortgage lien did not accrue until almost six months *after* the judgment had been entered. It would seem that if the complainant at the time it placed its mortgage, had made a proper search of the Bergen County Records, it would have discovered the judgment entered by the Ridgefield Building Supply Co. against Frank P. Lore, the then owner of the premises. The complainant placed its mortgage at its peril, knowing, or if it did not have actual knowledge, at least it had constructive knowledge, that a judgment had been entered against the then owner of the premises on May 25th, 1928, which judgment was a lien on the premises, prior to any mortgage of the complaint.

A judgment binds lands, tenements or hereditaments from the time of its actual entry. 3 Compiled Statutes, page 2956, Section 2; *Russell vs. Russell-Robertson Co.*, 86 N. J. L. 13.

A receiver to collect rents pending foreclosure, is granted only when the complainant's mortgage security has so depreciated in value as to render it precarious.

There is no showing before the learned Vice Chancellor that the complainant's mortgage security was in any wise impaired or rendered precarious. The complainant's mortgage was granted in November, 1928. The bill-to-foreclose was filed on February 1st, 1929. It is difficult to understand how during the short period of approximately three months, the premises could have so depreciated in value as to render the complainant's security precarious. Certainly if complainant had granted a Six Thousand Dollar Building & Loan Mortgage in November, 1928, its appraisal as to the value of the premises must have been a much larger amount. The affidavit of Harry D. Schall annexed to the bill-of-

complaint states that "in the affiant's opinion, the market value of the premises is Six Thousand (\$6,000.00) Dollars." The amount claimed due at the time of the filing of the bill on February 1st, 1929, according to Paragraph "7" of the bill-of-complaint, is Five Thousand Eight Hundred and Forty-one Dollars and Seventy-five Cents (\$5,841.75). *Complainant in its affidavits does not allege that the premises are out of repair or depreciated in value.* There is nothing to show why the premises, upon which the complainant granted a Six Thousand Dollar mortgage in November 1928, and which presumably were worth more at that time, were not worth as much on February 1st, 1929.

It is respectfully submitted that the appointment of a Receiver to collect rents, was unwarranted in law, and that the Edsall Holding Company as the owner of the fee, has a legal right to collect the rents, and that the Order appointing the Receiver on February 11th, 1929, should be reversed, set aside and for nothing holden.

I. FAERBER GOLDENHORN,

Counsel for Defendant-Appellant,  
Edsall Holding Company.

The first part of the book is devoted to a general history of the world, from the beginning of time to the present day. The author discusses the various civilizations that have flourished on the earth, and the progress of human knowledge and industry. He also touches upon the political and social changes that have shaped the modern world.

The second part of the book is a detailed account of the history of the United States, from its early settlement to the present. The author describes the struggles of the colonists for independence, the growth of the young nation, and the various conflicts and events that have marked its history. He also discusses the political and social developments that have shaped the United States into the great power it is today.

The third part of the book is a history of the world from the beginning of the Christian era to the present. The author discusses the rise and fall of the Roman Empire, the Middle Ages, the Renaissance, and the modern world. He also touches upon the various religions and philosophies that have influenced human thought and action.

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## New Jersey Court of Errors and Appeals

PALISADE BUILDING AND LOAN ASSOCIATION, a corporation of New Jersey,

Complainant-Respondent,

and

IGNAZIO MILONE, *et als*,  
Defendants-Appellants.

On Bill, &c.  
Appeal of  
Defendant,  
Edsall  
Holding Co.,  
from Court  
of Chancery.

### BRIEF FOR COMPLAINANT-RESPONDENT PALISADE BUILDING AND LOAN ASSOCIATION.

#### POINT ONE.

**There is no proof that the alleged judgment was prior in lien to respondent's mortgage.**

The verified bill of complaint (#5) challenges the validity of the alleged judgment and claims priority over it (p. 12, l. 20).

Respondent's mortgage was recorded about one month prior to the execution of the sheriff's deed to the appellant. Hence appellant took with notice of the mortgage, and took subject to it unless it be affirmatively shown that the alleged judgment upon which appellant's title is based was a lien on the premises paramount to the lien of the mortgage.

The alleged judgment was against one Frank P. Lore, who is not a party to the suit. There is no proof that Lore was the owner of record of the land at the time the alleged judgment was entered, or subsequently thereto at any time prior to the recording of the mortgage. The only proof on this subject appears in the affidavit of Harry A. Birnbaum (p. 21, l. 21) : "The said Frank P. Lore, being the owner of said premises". There is nothing to indicate that Lore's title (if he had a legal title) was of record, so as to constitute notice, nor is there anything to fix the period of time during which he was the "owner".

The test of the sufficiency of the affidavit is to assume a state of facts inconsistent with appellant's contention, and then to consider whether the affiant could be held for perjury on the affidavit.

Assume then that Lore never had the fee of the land, but was owner of the beneficial estate only. Or assume that he became seized of the fee after the mortgage was recorded. Or assume that he conveyed the land before the alleged judgment was entered. Or assume that his deed never had been recorded. Any one of these assumptions could be made and still the allegation of the affidavit: "The said Frank P. Lore, being the owner of said premises" would not be untrue.

But if any one of the above assumptions be made, the mortgage is clearly prior to the alleged judgment.

The burden was on appellant to prove its contention that the alleged judgment is prior to the mortgage and the proof does not establish such priority.

### **POINT TWO.**

**The undisputed proof shows that the amount due on the mortgage is more than 80% of the market value of the mortgaged premises.**

The sum due is \$5,841.75. The market value is \$6,000.00. The ratio is over 97% (p. 13, ll. 5-10). These figures are not disputed.

### **POINT THREE.**

**The statute provides for the appointment of a receiver in such a case.**

The statute (P. L. 1915, p. 506; Comp. Stat. Suppl. Vol. I, p. 232) is the basis of the order appealed from (p. 8, ll. 30-40) and provides as follows:

“When in any proceeding for the foreclosure of a mortgage held by a building and loan association, it shall appear to the court that the sum due on the mortgage, together with prior liens upon the mortgaged premises, amounts to upwards of eighty per centum of the market value of said premises, or that the premises are vacant or uncared for the complainant or plaintiff shall be entitled to have a receiver appointed of the rents, issues, and profits of the mortgaged premises pending the termination of the foreclosure proceedings, and such receiver shall be clothed with all the power and authority and subject to the duties appertaining to receivers in other foreclosure suits.”

**POINT FOUR.**

**The order appealed from should be affirmed, with costs.**

Respectfully submitted,

DOUGAL HERR,  
Of Counsel with  
Complainant-Respondent.