

NEW JERSEY

Court of Errors and Appeals

BETWEEN

NOEL B. MARTIN,

Respondent,

and

ATLAS ESTATE COMPANY,

Def.-Petitioner,

Appellant.

} On Appeal from
Chancery.

Appellant's Brief.

FACTS.

This is an appeal from an order of the Court of Chancery, advised by Vice-Chancellor Garrison, discharging a previous order to show cause containing a restraint upon the Sheriff of Essex County, and the complainant in the action, from proceeding with an execution for the sale of mortgaged lands of which the defendant and appellant in this cause was the owner, and permitting the Sheriff to amend his return on the writ of subpcena issued in this cause.

The Order to Show Cause was made upon a petition alleging that the Court of Chancery did not have juris-

diction over the defendant to make the decree upon which the writ of *feri facias* was issued, because process of subpoena had not been served upon the defendant; that process was served upon one Harry B. Brockhurst, who was not the authorized and registered agent of said company for the service of process. Defendant is a corporation of this State doing business in this State with a principal office at No. 259 Washington Street, Jersey City, this State.

STATUTORY PROVISIONS FOR ACQUIRING JURISDICTION
OVER CORPORATIONS.

The Corporation Act (*Rev. 1896*) provides:

“In any *personal action* commenced against a corporation in any of the *Courts of Law* of this State, the first process to be made use of may be a *summons*, a copy whereof shall be served on the President or other head officer or Agent in charge of its principal office in this State, etc.”

P. L. 1896, page 305, § 87.

Section 88 of this Act cannot affect the question before the Court, as it is expressly stated to be applicable to suits or actions “against any foreign corporation.” The defendant in this suit was a domestic corporation.

These sections are parts of Article VIII of the Corporation Act entitled “Service of Process,” and are the only EXPRESS provisions for the service of process upon a corporation, whether domestic or foreign, in the entire Corporation Act. The act does not EXPRESSLY point out any method whatever for the service of a writ of subpoena. The words, “personal action” in any of the “Courts of Law” may be a “summons,” indicate clearly that the provisions of this Article are not intended to point out the method of the service of a writ of subpoena out of Chancery.

P. L. 1896, page 305, Art. VIII.

Chapter 247 of the Laws of 1903, entitled “An Act to regulate the Practice of ‘Courts of Law,’” cannot aid

this Court, as the title of the act clearly expresses the intention of the Legislature to limit the mode of procedure to COURTS OF LAW and not to point out the service of process in the Court of Chancery.

P. L. 1903, p. 537.

Article V of this Act, relating to process, refers to a "Writ of Error, certiorari and mandamus, summons *capias* and *scire facias*, all of them COMMON LAW WRITS. This section cannot aid the Court in determining the mode in which a writ of subpœna out of Chancery may be served.

P. L. 1903, page 547, Art. V.

Turning to the Chancery Act we find:

"Every subpœna or process for appearance shall be served by the Sheriff or other officer authorized to serve writs of summons and other common law processes *on the person* to whom it is directed by giving to him *personally* a copy, or leaving a copy thereof at his dwelling house or usual place of abode at least ten days prior to its return, etc."

P. L. 1902, page 511, Art. II, § 5.

This latter is the only method EXPRESSED by any of the laws of this State whereby process of subpœna out of Chancery may be served.

It DOES NOT point out how a corporation may be served, unless by inference the masculine gender be taken to mean neuter as well. It can hardly be conceived that it does, but conceding, for the purpose of argument, that this section points out the method of service of process on a corporation out of Chancery, as the Article II of the Act indicates, even then the defendant in this cause was not served.

Judge Dixon, when deciding whether or not personal service of a declaration could be made upon a corporation, says:

"If it be possible, it must be served upon the stockholders or the directors or the Trustees when convened as a body, for only such a body can in any fair sense be said to constitute the corporate

person. Other persons are but agents of the corporation.”

Laufman & Co. v. Hope Mnf. Co., 25 Vr. 70 and 72.

The return endorsed on the subpoena shows that an individual, not a collection of individuals, convened as a body, received a copy of the subpoena.

Although there is no EXPRESSED provision as to the mode of the service of a writ of subpoena upon a domestic corporation, there is one act of the Legislature which, by clear IMPLICATION, points out how such corporation or other corporation may be served by process of subpoena.

“Every *certificate*, report or statement now or hereafter required by any law of this State to be made to any officer or department of this State, or to be published, filed or recorded by any corporation, *domestic* or foreign, shall, in addition to the other matter required by law, set forth the location (town or city, street and number, if number there be) of its principal office in this State, and the *name of the agent*, therein and in charge thereof, and upon whom process against the corporation may be served.

* * * * *

“Such office of any domestic corporation so registered shall be and be deemed the office and post-office address of such *domestic* corporation, its officers, directors and stockholders, and whenever by the provisions of any law of this State any notice is required to be given to the corporation, its officers, stockholders or directors, such notice shall be sent by mail or otherwise, as the law may require, to such registered office, and such notice so given shall be and be deemed sufficient notice.”

P. L. 1898, page 410.

Judge Dill, in his book on New Jersey Corporations, says:

"This (the foregoing act) is intended for the benefit of those who desire to sue DOMESTIC CORPORATIONS and to put an end to the evasion of suit in New Jersey by Corporations organized under its laws."

Dill on N. J. Corp., p. 70 (1901.)

"The effect of this Section (*P. L. 1898, p. 410*, above stated) was to add to the number of those upon whom process against a corporation might be served, a person whom the company thereafter, and from time to time, should designate for the purpose, and place in charge of its principal office."

Nickolson v. Wheeling, 110 Fed. Rep. 105.

The Agent upon whom process against the corporation may be served therefore *must* be appointed by the corporation, his name *must* be inserted in all certificates filed by the corporation in public offices, one of which is the office of the Secretary of State, for the use of suitors against the corporation.

There is nothing in this section to indicate that the process is limited to the Courts of Common Law. Merely the word "process" is used. It needs no citation to demonstrate that a writ of subpoena ad respondendum is "process."

It was the intention of the complainant to serve the registered agent of the appellant in accordance with this section.

State of Case, page 11, lines 1-8.

The complainant sought for the registered agent of the company, but did not use the right source of information. The appellant had filed its annual report specifying Adolf L. Engelke as the agent of the company for the service of process.

The Legislature, by this statute, by implication points out that the registered agent of a corporation incorporated under the laws of New Jersey, whether foreign or domestic, is the only person upon whom a writ of subpoena, which is "process," out of the Court of Chancery can be served.

Harry B. Brockhurst, who is NOT the registered agent of the appellant, was served with process, and Adolf L. Engelke, the registered and authorized agent, was NOT served with process, which facts being undenied by complainant, the Court has, without due process of law, decreed the lands of the appellant to be sold.

State of Case, p. 9, lines 9-11.

“The general rule is that service of process to be binding upon a corporation, must be made upon the identical officer or agent, or one of the officers or agents, prescribed by statute.”

Clark & M. Corp., §267.

El Paso v. Kelly, 83 S. W. (Texas) 859.

“Due process of law” requires that service of process shall always be made. * * *

By actual service or in lieu thereof, acceptance of service, or waiver of service by an appearance in the action. Whether actual service shall be made by reading the summons or notice to the defendant or leaving a copy with him personally, or at his usual place of residence, IS FOR THE LEGISLATURE TO PRESCRIBE.

* * * * *

The plaintiff could not collaterally attack the judgments * * * but he has the right to insist that they are void if there was no service of process in any mode prescribed by law. * * * The defendant was not served personally and being a resident of this state, i. e., a domestic corporation, could not till the act of 1889 be served by publication. * * * Until the passage of this act, there was no means provided for service of process against a domestic corporation, whose officers and agents could not be found. It was simply a casus omissus. * * * Recourse must be had to the Legislature.

Bernhardt v. Brown, 36 L. R. A. (N. C. 1896), page 402.

Pinney v. Providence L. & I. Co., 50 *L. R. A.*, page 577, quotes—

Mr. Justice Field: "It is sufficient to observe here that by 'due process' is meant, one which following the forms of law is appropriate to the case and just to the parties to be affected. IT MUST BE PURSUED IN THE ORDINARY MODE PRESCRIBED BY LAW."

At Common Law, except by voluntary appearance, no valid judgment could be rendered, unless it was founded on actual personal service of process on the defendant, or on seizure of his property, within the jurisdiction of the Court, and by virtue of the interpretation which has been given to the 14th amendment of the Federal Constitution, the same rule now obtains.

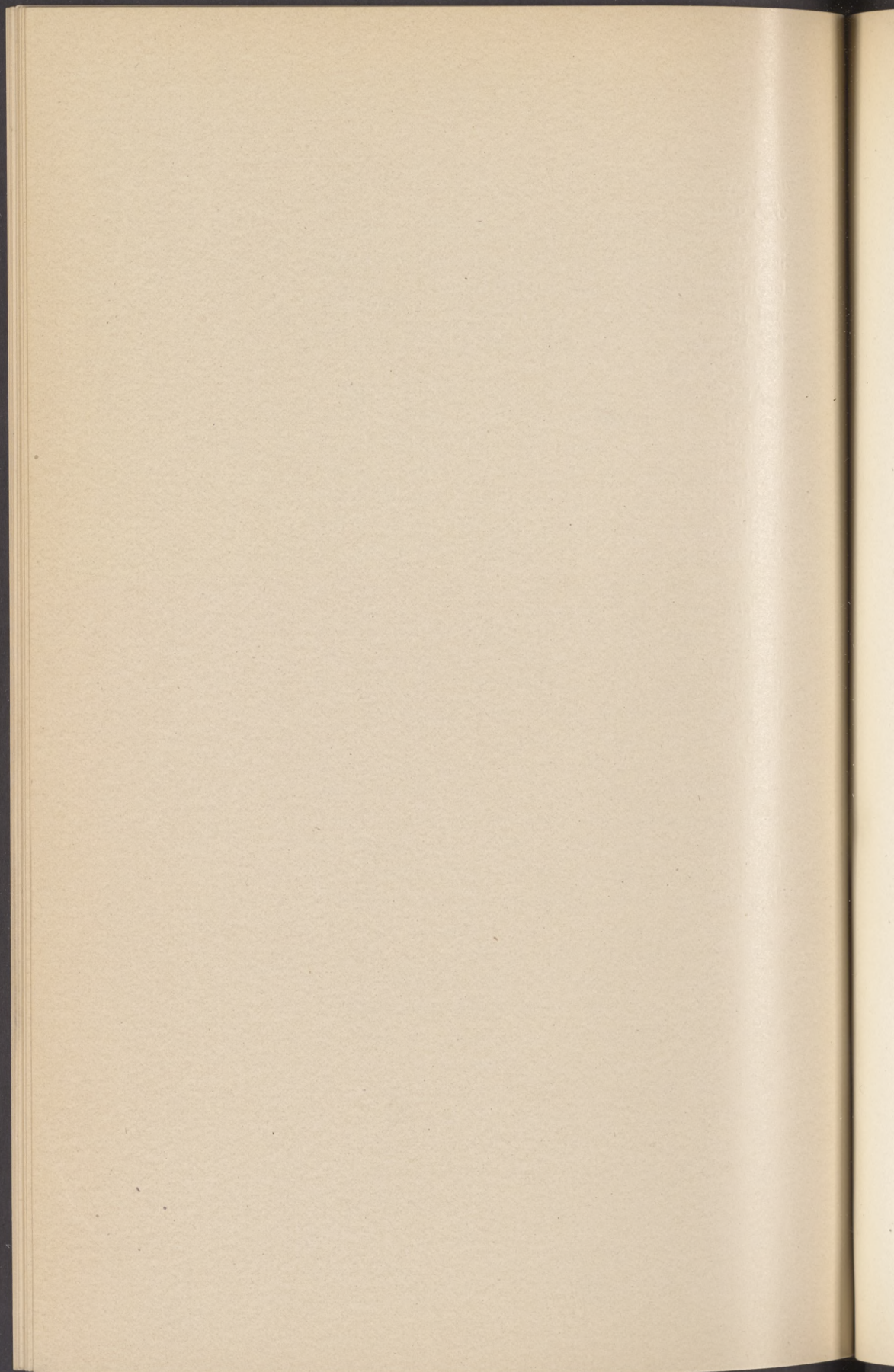
Pennoyer v. Neff, 95 *U. S.*, 714.

The general rule and the qualifications of that rule apply as well to domestic corporations as to natural persons, but the difference in the nature of the person, of course, affects their application.

50 *L. R. A.*, page 599, note.

The defendant having been denied due process of law as guaranteed by the constitution of this State and the United States, and the Court of Chancery being without jurisdiction, and having made a decree for the sale of appellant's lands, the said decree should be vacated and set aside, and the service of process declared void with costs.

Respectfully submitted,
ADOLF L. ENGELKE,
Of Counsel with Appellant.



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New Jersey
Court of Errors and Appeals

Between

NOEL B. MARTIN,

Complainant, Respondent,

AND

ATLAS ESTATE CO.,

Defendant, Appellant.

On Appeal 10
from Chancery.

BILL OF COMPLAINT.

(Filed August 8, 1905.) 20

This suit was commenced by filing bill of complaint against the Atlas Estate Company on August 8, 1905, for the foreclosure of a certain mortgage for Five Thousand Dollars on property in the Town of West Orange, County of Essex, described in the petition hereinafter set out.

Subpœna tested August 9, 1905, and returnable August 24, 1905, and bears the following return: 30
"Served within subpœna August 12, 1905, on the defendant Atlas Estate Company, by leaving a copy thereof with Harry B. Brockhurst, agent of said defendant company. John Zeller, by John H. Hogan."

No appearance entered or answer filed.

Decree pro con entered September 28, 1905.

Final Decree December 8, 1905.

Fi Fa to Sheriff of Essex for the sale of lands and premises of the defendant issued December 18, 1905.

Lands and premises duly advertised by said Sheriff for sale on February 27, 1906.

PETITION.

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(Filed Feb. 26, 1906.)

IN CHANCERY OF NEW JERSEY.

To his Honor, WILLIAM J. MAGIE,

Chancellor of the State of New Jersey:

20 The Atlas Estate Company, a corporation of the State of New Jersey, incorporated under an Act concerning Corporations, Revision 1896, and the supplements thereof and amendments thereto, the Petitioner, appearing in this cause for the sole purpose of objecting to the jurisdiction of this Court, and of protesting against the entry of the decree against it in the above entitled cause, shows, that your petitioner is the owner in fee simple of certain land and premises located in the Town of West Orange, County of Essex, and State of New Jersey, described as follows:—

30 All those tracts or parcels of lands and premises situate, lying and being in the Town of West Orange, Essex County, this State: First Tract: Beginning in the middle of Eagle Rock Road at the Northwesterly corner of land now or late of James W. Judd; thence running along his line $26^{\circ} 52'$ West five hundred and seventeen feet and eighty-three hundredths of a foot; thence North $52^{\circ} 50'$

West three hundred and seven feet and fifty-eight hundredths of a foot; thence North $62\frac{1}{4}^{\circ}$ West one hundred and sixty-nine feet and sixty-seven hundredths of a foot to the middle of "Long Branch" an Avenue fifty feet in width; thence Northeastwardly and Northwestwardly along the middle of said "Long Branch" forty-nine feet and seventy-four hundredths of a foot; thence North $41^{\circ} 39'$ East six hundred and fifteen feet and seventy-eight hundredths of a foot to the middle of said Eagle Rock Road; thence along the middle thereof South 12° East ten feet; thence along the same South 37° East three hundred and seventy-four feet and seventy-five hundredths of a foot to the place of beginning. Containing five acres and sixty-nine hundredths of an acre.

Second Tract: Beginning in the middle of "Long Branch" in Llewellyn Park, and at the southerly corner of land now or late of William A. Gellatly; thence running along the same South $62^{\circ} 15'$ East one hundred and sixty-nine feet and eight inches; thence along the same South $52^{\circ} 50'$ East three hundred and seven feet and seven inches to another corner of said Gellatly's land; thence running along same North $64^{\circ} 42'$ West four hundred and fifty-five feet and five inches to the middle of said "Long Branch"; thence along the middle of the same Northeastly following the several courses thereof seventy-two feet and six inches to the beginning. Containing forty-seven hundredths of an acre.

That your petitioner is informed and believes that on or about the ninth day of August, nineteen hundred and five, one Noel B. Martin, the complainant,

filed a bill of complaint against your petitioner for the purpose of foreclosing a certain indenture of mortgage bearing date the first day of September, eighteen hundred and eighty-four, which the said Martin in said bill of complaint alleges and claims to be a lien upon the said lands and premises hereinabove described.

10 And your petitioner is further informed and believes that the said Martin on or about the ninth day of August, aforesaid, caused a subpoena ad respondendum to be issued out of this Honorable Court directed to your petitioner, commanding it to be and appear in manner and form as required by law on the twenty-fourth day of August, A.D. 1905, and to answer said bill of complaint; that said subpoena was not served upon your petitioner as required by law; that said subpoena was served
20 upon one Harry B. Brockhurst, as appears from the return indorsed thereon, to wit: "Served within subpoena August 12, 1905, on the defendant Atlas Estate Company, by leaving a copy thereof with Harry B. Brockhurst, Agent of said defendant Company. John Zeller, by John H. Hogan," as will more fully appear reference being had to the original subpoena, and the indorsement thereon, as filed in the office of the Clerk of this Court;

30 And your petitioner further shows that no other subpoena or process to answer against this petitioner was served upon your petitioner or any other of its officers, directors or agents, so far as your petitioner knows or is informed or the records of this cause show, and that by reason thereof your petitioner has had no notice of the pendency of this suit.

And your petitioner further shows that said Harry B. Brockhurst was not at the time of the service of said subpoena ad respondendum upon him, the authorized and registered agent of your petitioner for the purpose of receiving service of process against your petitioner;

And your petitioner further shows that it has not filed any answer, plea or demurrer to said bill of complaint; but it is informed and believes that such proceedings were taken by the said Noel B. Martin, without any notice thereof to your petitioner, that on or about the fifth day of December, nineteen hundred and five, without jurisdiction in the premises, this Honorable Court ordered and decreed, that a writ of fieri facias for the sale of mortgaged premises issue to the Sheriff of the County of Essex for the sale of the lands and premises hereinabove described; that notice of the sale of said lands and premises on the twenty-seventh day of February, instant, at two o'clock in the afternoon, has been advertised in the "Sunday Call," a newspaper published in said County of Essex, and that from this notice your petitioner has gained the knowledge that its property will be sold at public vendue by the Sheriff of the County of Essex at the Court House in said County on Tuesday, the twenty-seventh day of February, instant, at two o'clock in the afternoon; and that Frank H. Sommers, Sheriff of the said County of Essex, threatens to and will expose for sale and sell, at the time and place aforesaid, the lands and premises of your petitioner hereinabove described, unless restrained by an order of this Honorable Court, whereby your petitioner will be deprived of its lands and prem-

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ises unlawfully.

10 And your petitioner therefore pray your Honor,
that the decree of this Honorable Court, heretofore
entered on the said fifth day of December, last past,
be opened, vacated and set aside and for nothing
holden and that the service of the said subpœna ad
respondendum be declared null and void and said
subpœna be vacated and set aside and that in the
20 meantime this honorable Court may make an
order restraining the said complainant, Noel B.
Martin, from proceeding any further in the above
entitled cause and from proceeding with the sale
of the lands and premises of your petitioner and
that the said Frank H. Sommers, the Sheriff of
Essex County, be restrained from proceeding with
the execution of the writ of fieri facias for the sale
of mortgaged premises, heretofore issued to said
Sheriff by this Honorable Court, in the above en-
titled cause; and that the complainant be ordered
to pay to your petitioner its reasonable costs and
charges in this behalf sustained; and that your
petitioner may have such other and further relief
in the premises as to your Honor shall seem meet.

And your petitioner will ever pray, etc.

ADOLF L. ENGELKE,

30 Solicitor of Petitioner and of
Counsel with Petitioner.

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

ZIMRI WEST, of full age, being duly sworn, on
his oath deposes and says: That he is now and for

several years last past has been the President of the Atlas Estate Company, the corporation named as petitioner in the above petition; and that by means of said office he has acquired and possesses, as he verily believes, particular knowledge of the matters stated in said petition; that he has read the above petition and knows the contents thereof, and that the same is true of his own knowledge except as to the matters that are therein stated to be on the information and belief of the petitioner, and that as to those matters he has been so informed and believes it to be true. 10

ZIMRI WEST.

Subscribed and sworn to this twenty-sixth day of February, 1906, at Jersey City, N. J., before me,

DANIEL P. BYRNES,
Master in Chy. of N. J. 20

ORDER TO SHOW CAUSE.

(Filed February 26, 1906.)

IN CHANCERY OF NEW JERSEY.

Upon reading and filing the verified petition of the Atlas Estate Company wherefrom it appears that the subpoena ad respondendum issued in the above entitled cause was not served upon said defendant corporation as required by law and that by a decree of this Court a writ of fieri facias was issued to the Sheriff of the County of Essex, to sell at public vendue, the lands and premises of the said Atlas Estate Company, as described in 30

the bill of complaint filed herein, on Tuesday, the twenty-seventh day of February, instant,

10 It is on this twenty-sixth day of February, nineteen hundred and six, ORDERED that the complainant, Noel B. Martin, do show cause before the Chancellor at Chancery Chambers, in Jersey City, on Monday, the fifth day of March, nineteen hundred and six, why the decree heretofore entered in the above cause should not be opened and vacated and the service of the subpoena be declared null and void and the said subpoena be set aside, vacated and for nothing holden;

AND IT IS FURTHER ORDERED that the said Noel B. Martin refrain from proceeding further in the above entitled cause until the further order of this Court;

20 AND IT IS FURTHER ORDERED that Frank H. Sommers, the Sheriff of the County of Essex, be and he is hereby restrained from exposing for sale and selling the lands and premises belonging to the said Atlas Estate Company, as set out in the bill of complaint filed in this cause, on Tuesday, the twenty-seventh day of February, instant, and until the further order of this Court;

30 AND IT IS FURTHER ORDERED that a copy of this order and the verified petition, which copy need not be certified, be served upon the said Noel B. Martin or his Solicitors in the above entitled cause and upon Frank H. Sommers, the Sheriff of the County of Essex, within two days of the date hereof.

AND IT IS FURTHER ORDERED that the petitioner have leave to take and read further affidavits on the return of this rule, provided copies

thereof be served upon the Solicitor for the complainant at least four days before the hearing thereon.

Respectfully advised,

LINDLEY M. GARRISON,
V. C.

W. J. MAGIE,
C.

On the hearing of the order to show cause, affidavits were filed and read by the defendant-petitioner proving the following facts:

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That the subpoena in this case was served by the Sheriff of Hudson County upon Harry B. Brockhurst, as Agent of the Atlas Estate Company; that at the time of the service of said subpoena the said Harry B. Brockhurst was not Agent for said Company, but was Vice-President and Director of said Company; that Adolf L. Engelke was Agent and in charge of the said principal office of said Company at No. 259 Washington Street, in Jersey City, since January 22, 1902.

20

The complainants filed and read the following affidavits:

State of New Jersey, }
County of Essex. } ss.

William Read Howe, of full age, being duly sworn, deposes and says that he is one of the solicitors in the above stated cause and the person actually entrusted with the management and conduct of this suit on the part of the complainant.

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Deponent further says that the bill of complaint was filed herein on the eighth day of August, 1905, and the subpoena tested August ninth, 1905, returnable August twenty-fourth, 1905.

Deponent further says that for some time prior to the said eighth day of August, 1905, negotiations had been pending between Zimri West, whom deponent believes is the same person who filed the affidavit, verifying the petition made herein, and who alleged himself to be the president of the defendant Atlas Estate Company, and the complainant herein; that the said Zimri West offered deed to premises to the complainant herein, and that it was only a question of time as to conveying the property that prevented the matter being closed; that the same Zimri West called at the office of the solicitors of the complainant before the time to answer had expired and requested an extension of time to answer, and that on or about September 22, 1905, this deponent received a letter from Adolf L. Engelke, a copy of which is hereto annexed, who deponent believes is and was one of the officers of the defendant Company, and who is also a counsellor at law and solicitor in Chancery, in which he stated that he represented the defendant Company in this suit, and requesting a copy of the foreclosure bill, and enclosing a stipulation, the original of which is hereto annexed, for an extension of time to file his answer; that an agreement could not be reached for the time of extension, but the same purpose was effected for defendant by amending the bill to bring in Zimri West personally as a defendant.

That subsequently the said Adolf L. Engelke appeared and objected to the subpœna as served on the defendant Zimri West, and the bill was discontinued as against him, as defendant.

Deponent further says that the last printed re-

port of the Secretary of State of Certificates of Incorporation showing the Atlas Estate Company is that of the year 1900, which shows the name of Harry B. Brockhurst as agent for the Atlas Estate Company, and the offices of said Company to be at 259 Washington St., Jersey City.

That deponent is informed and believes that the said office is a law office of the said Adolf L. Engelke, and that, as a matter of fact, the defendant Company, by means of its officers, received the subpoena in this action, and that the service by the Sheriff of the County of Hudson and that the said defendant Company has no just defense to the foreclosure on the merits of the case.

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Deponent further says that the property consists of six or more acres of land, practically wild and unimproved, and therein described as bordering upon a public road. It is practically impossible to reach the same because of a deep ravine or gully, that the only means of access to the property is through a private road in a private park, known as Llewellyn Park, and that the premises are more or less grown up in brush,

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That deponent further says there is a large amount of unpaid taxes and assessments against the property, both municipal and Llewellyn Park taxes, to wit: Municipal taxes from the year 1900 to date, and Park taxes from 1898, and that the property has been practically abandoned by the defendant Company, and that to set aside the service of the subpoena upon that defendant at this time will delay the proceedings for foreclosure, and be

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an injustice to the complainant and do him wrong.

WM. READ HOWE.

Subscribed and sworn to
this 5th day of March, 1906.

MARY PHILBROOK,
Master in Chancery.

10 State of New Jersey, }
County of Essex. } ss.

20 John H. Hogan, of full age, being duly sworn, on his oath deposes and says, that he is a deputy sheriff of Hudson County, and that on August twelfth, 1905, he went to the office of the Atlas Estate Company, the defendant herein, at No. 259 Washington Street, Jersey City, said County and State, with a subpoena directed to that Company with the intention of serving the same on said Company.

30 Deponent further says that upon entering the office of said Atlas Estate Company he was greeted by Harry B. Brockhurst, who upon being told by deponent that he wished to serve a subpoena on said Atlas Estate Company said, "I guess I am the agent of the Atlas Estate Company and the proper person to be served," and therefore deponent served the subpoena on the said Harry B. Brockhurst for the Atlas Estate Company.

JOHN J. HOGAN.

Subscribed and sworn to
before me, this 8th day of
March, A.D., 1906.

MARY PHILBROOK,
Master in Chancery of New Jersey.

ADOLF L. ENGELKE,
Counsellor-at-Law,
259 Washington Street,
Jersey City, N. J., Sept. 21, 1905.

MESSRS. HOWE & DAVIS,
252 Main Street, Orange, N. J.

Gentlemen—In the suit of Noel B. Martin against the Atlas Estate Company, I beg to inform you that I represent the defendant Company, and would request you, if you have a spare copy of the bill of complaint, to let me have same, or if you will loan me your office copy I will make a copy and return same to you. 10

I would also appreciate it, if you will sign the within stipulation, consenting to an extension of time to file an answer. Hoping to hear from you as soon as convenient, I am,

Yours very truly, 20
ADOLF L. ENGELKE.

It is hereby stipulated and agreed, by and between the Solicitors of both parties, that the defendant have Thirty (30) days further time, within which to answer, plead or demur, to the Bill of Complaint filed in the above suit.

.....,
Solicitor for Complainant. 30
ADOLF L. ENGELKE,
Solicitor for Defendant.

After the hearing of the proofs the matter was continued until March 26, 1906.

On March 19, 1906, notice, addressed to the Atlas Estate Company, of presentation of a petition by

the Sheriff of Hudson County annexed thereto, was served on the President, Vice-President, Treasurer, Secretary, Directors, Agent and Attorney of the Atlas Estate Company.

PETITION TO AMEND RETURN OF
SHERIFF.

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(Filed March 26, 1906.)

IN CHANCERY OF NEW JERSEY.

To his Honor WILLIAM J. MAGIE,
Chancellor of the State of New Jersey:

The petition of John Zeller, of the County of Hudson and State of New Jersey, respectfully shows:

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That in the month of August, 1905, he was Sheriff of said County of Hudson and a writ of subpœna was duly issued by the Clerk of the Court of Chancery, in a suit wherein Noel B. Martin was complainant and the Atlas Estate Company was defendant, was sent to your petitioner for service upon the defendant company; that your petitioner gave the writ to his special deputy, John J. Hogan, for service, and on the twelfth day of August, 1905, the said Hogan served the said writ upon one Harry B. Brockhurst, and made his return in manner following: "Served within subpœna August 12, 1905, on the defendant Atlas Estate Company, by leaving a copy thereof with Harry B. Brockhurst, agent of said Company. John Zeller, by John H. Hogan."

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Your petitioner further shows that subsequently and on or about the 26th day of February, 1906,

the said defendant Company, by special appearance in the above entitled cause, for the purpose of objecting to the jurisdiction, filed its petition in this Honorable Court, wherein it set forth that the said Harry B. Brockhurst was not the agent of the defendant Company on the 12th day of August, 1905, and praying that the sale by the Sheriff of the County of Essex of the premises described in the bill of complaint in accordance with the decree of foreclosure granted in this suit, be enjoined, and that the decree be opened and service set aside. That upon the hearing under the said petition, it appeared that the said Harry B. Brockhurst, upon whom the subpoena to answer was served, was not at the time of such service the agent of said Company, but was the Vice-President and one of the directors thereof, and the Vice-Chancellor hearing the application for the Chancellor held the service of the subpoena in this action upon the said Harry B. Brockhurst to be good service of the writ upon the defendant Company.

Your petitioner therefore prays that he be permitted to remove from the files in the office of the Clerk of this Court, the writ of subpoena in the above entitled action, and amend his return thereof by striking out the word "agent," and inserting in the place and stead thereof the words "Vice-President and Director," so that the said return shall be in accordance with the true facts of the case.

And your petitioner will ever pray.

JOHN ZELLER.

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

John Zeller, of full age, being duly sworn according to law, on his oath says that he is the petitioner in the foregoing petition named; that the statements therein made and set forth are true to the best of his knowledge, information and belief.

JOHN ZELLER.

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Subscribed and sworn to
before me, this 19th day of
March, 1906.

JOHN J. HEAVEY,
Notary Public of N. J.

ORDER.

(Filed March 26, 1906.)

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IN CHANCERY OF NEW JERSEY.

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This matter coming on to be heard on the return of the rule to show cause dated February 26th, and returnable March 5, 1906, why the service of process of subpoena on the defendant company should not be set aside, and the decree of foreclosure heretofore entered, opened and vacated; in the presence of Adolf L. Engelke, Solicitor and of Counsel with the defendant, appearing specially for the purpose of objecting to the jurisdiction of the Court, and of Howe & Davis, Solicitors and of Counsel with the complainant.

And it appearing to the satisfaction of the Court that the process of subpoena issued herein was served upon Harry B. Brockhurst, who was at the

date of service Vice-President and Director of the defendant Company, but that the return of the Sheriff on the said writ was returned as served upon the Agent.

And it appearing that the Sheriff has applied for leave to amend the return, and the Court having heard counsel for the respective parties, and read and considered the several petitions and affidavits herein.

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It is on this twenty-sixth day of March, nineteen hundred and six, on motion of Howe & Davis, solicitors for the complainant, ordered that leave be granted to John Zeller, late Sheriff of the County of Hudson, to amend his return on the writ of the subpoena issued herein by striking out the word "agent" and inserting in the place and stead thereof the words "Vice-President and Director."

It is further ordered that the rule to show cause granted herein on the twenty-sixth day of February, returnable on the fifth day of March, 1906, be discharged.

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It is further ordered that the service of the writ of subpoena issued in this cause upon the defendant be sustained and declared to be good and effectual service upon the defendant.

It is further ordered that the restraining order against the complainant Noel B. Martin and the Sheriff of the County of Essex, Frank H. Sommer, restraining them from proceeding further in the cause, and exposing the lands and premises of the defendant company for sale be dissolved.

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Respectfully advised,

LINDLEY M. GARRISON,
V. C.

W. J. MAGIE,
C.

The Vice-Chancellor delivered an oral opinion of which no stenographic notes were made.

PETITION OF APPEAL.

10 The petition of the Atlas Estate Company, the
appellant in the above stated cause, respectfully
shows that your petitioner finds itself aggrieved by
an order made in the Court of Chancery by his
Honor William J. Magie, Chancellor of New Jer-
sey, bearing date the twenty-sixth day of March, in
the year one thousand nine hundred and six, where-
in said Noel B. Martin was complainant and the
Atlas Estate Company was defendant and peti-
tioner, in this respect, to wit: That the said order
20 adjudges that the service of the writ of subpœna
issued in this cause upon the defendant be sus-
tained and declared to be good and effectual service
upon the defendant, and that the Sheriff of the
County of Hudson have leave to amend his return
endorsed on the writ of subpœna by striking out
the word "agent" and inserting in the place and
stead thereof the words "Vice-President and Direc-
tor," and that an order granted on the twenty-sixth
day of February, nineteen hundred and six, re-
30 straining Frank H. Sommers, Sheriff of the County
of Essex, and Noel B. Martin, the complainant in
said cause, from proceeding further in the cause
and exposing the lands and premises of the de-
fendant and petitioner Company for sale be dis-
solved and discharged.

And your petitioner humbly appeals from the
whole and every part of the order of the Chancellor

which orders as aforesaid, upon the ground that the same is erroneous for that, the Chancellor should have ordered that an injunction should issue against the said Sheriff of Essex County and Noel B. Martin, the complainant, below, from proceeding with the sale of the lands and premises of this petitioner, and that the said complainant should not be permitted to proceed with the sale by the Sheriff of Essex County of the lands and premises of this petitioner, and should not have ordered that the Sheriff of the County of Hudson be permitted to amend the return by him made and endorsed upon said subpoena ad respondendum. 10

Your petitioner therefore prays that the said order of the said Chancellor may be in the particulars aforesaid reversed, set aside and for nothing holden.

And that your petitioner may have such relief in the premises as to this Honorable Court shall seem meet. 20

ADOLF L. ENGELKE,
Solicitor and of Counsel with
Appellant.

ANSWER TO PETITION OF APPEAL.

The answer of the above respondent to the petition of appeal of the above appellant: 30

This respondent not acknowledging all or any of the matters which in said petition of appeal are contained, to be true, for answer thereto nevertheless says and admits that an order was, on the 26th day of March, 1906, made and entered in the Court of Chancery by his Honor, William J. Magie, Chan-

cellor of the State of New Jersey, in a cause for that purpose mentioned in 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 order is agreeable to equity, and prays that the same may be affirmed, with costs to be adjudged to this respondent.

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HOWE & DAVIS,
Solicitors for and of Counsel with
Complainant-Respondent.

STIPULATION.

It is hereby stipulated and agreed that the argument of the appeal in the above entitled cause be continued until November Term, 1906.

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ADOLF L. ENGELKE,
Solicitor for Appellant.
HOWE & DAVIS,
Solicitor for Respondent.

STIPULATION.

We hereby consent to the above abridgment and agree that the same shall be the state of the case appealed from.

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ADOLF L. ENGELKE,
Solicitor for and of Counsel with
Deft. and Petitioner-Appellant.

HOWE & DAVIS,
Solicitors for and of Counsel with
Complainant-Respondent.

