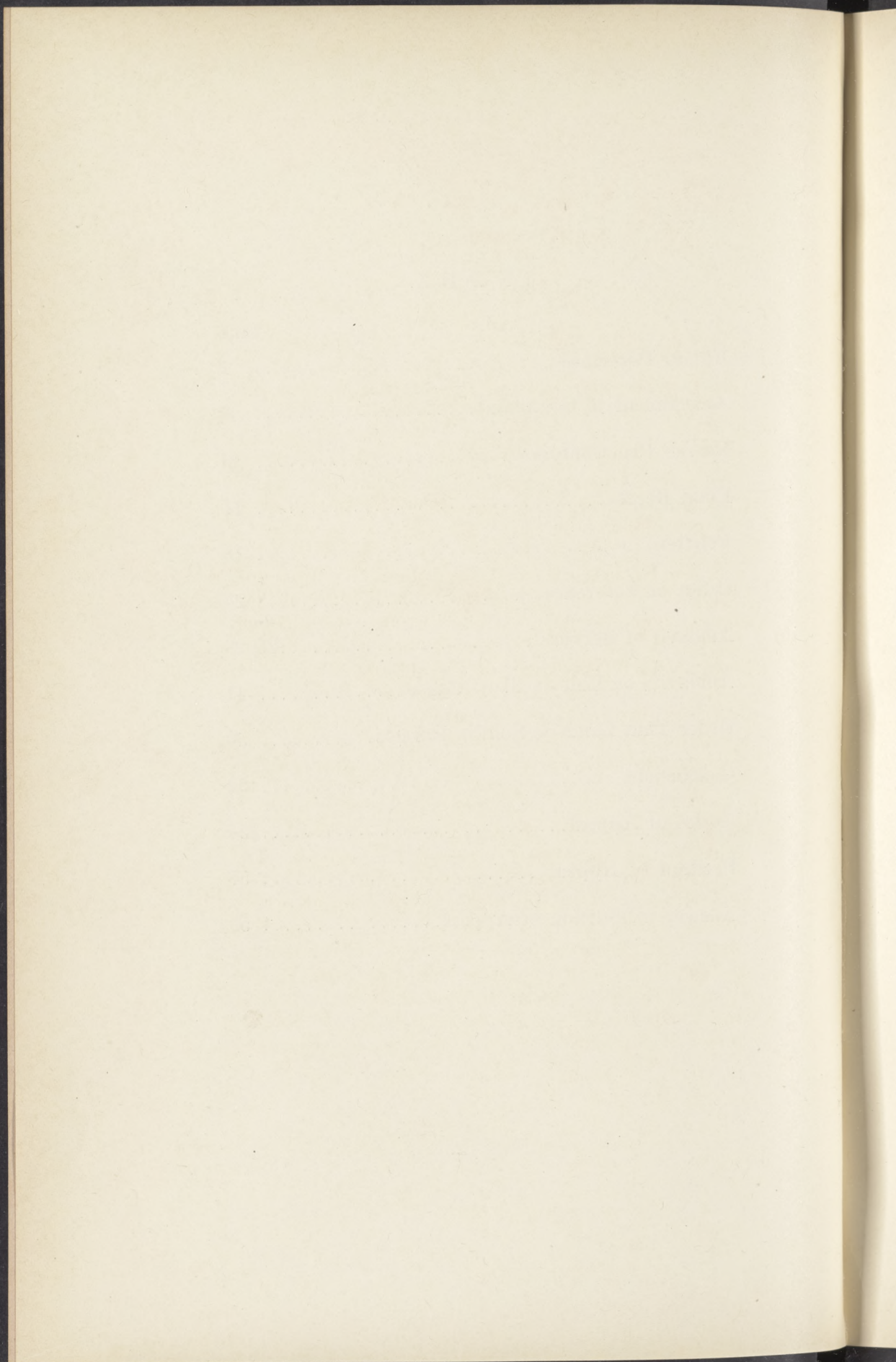


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BILL TO FORECLOSE.

(Filed November 30, 1928.)

IN CHANCERY OF NEW JERSEY.

*To the Honorable Edward Robert Walker, Chancellor of the State of New Jersey:*

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The complainant, The Ventnor City National Bank of Ventnor City, N. J., a corporation under the banking laws of the United States of America, respectfully shows:

1. That on April 13, 1925, William L. Moise, of Atlantic City, County of Atlantic and State of New Jersey, being indebted to The Ventnor City National Bank of Ventnor City, N. J., the complainant, in the sum of thirty thousand dollars (\$30,000), executed to it a bond of that date to secure that sum, payable at the expiration of three years from the date thereof, with interest at the rate of six per centum, per annum, payable semi-annually from the date of the bond. 20

2. That to secure the payment of the bond, the said William L. Moise, executed to the said The Ventnor City National Bank of Ventnor City, N. J., a mortgage of even date with the bond; and thereby conveyed to it in fee, the land 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 the acknowledgment duly endorsed thereon, was recorded, 30

in the Clerk's Office of Atlantic County, on April 14, 1925, in Book 334 of Mortgages, page 31.

3. That the mortgaged premises are located in the City of Ventnor City, Atlantic County, New Jersey, and are described as follows:

10 BEGINNING at a point in the Southwest corner of Atlantic and Weymouth Avenues, and extending thence (1) Westwardly and in the Southerly line of Atlantic Avenue, Fifty-six feet thence (2) Southwardly and parallel with Weymouth Avenue, One hundred feet; thence (3) Eastwardly and parallel with Atlantic Avenue, Fifty-six feet to the West line of Weymouth Avenue, thence (4) Northwardly in the Westerly line of Weymouth Avenue, One hundred feet to the Southerly line of Atlantic Avenue, the place of beginning.

20 Being the same premises conveyed by the Ventnor City National Bank of Ventnor City, N. J., to the present grantor, by deed, bearing even date herewith, this mortgage being given to secure the payment of a part of the purchase money in the said deed mentioned.

30 September 21, 1925, William L. Moise, and Carrie E., his wife, executed their mortgage, to David Paull, upon the described mortgaged premises, which is of record in the Clerk's Office of Atlantic County, at Mays Landing, N. J., but said mortgage is subsequent to and subject to the mortgage of the complainant.

October 28, 1925, David Paull, executed his certain deed of assignment of mortgage, and conveyed his said mortgage, to Carrie E. Moise, but said assignment of mortgage, which is of record in the Clerk's Office of Atlantic County, at Mays Landing, N. J., in Book 76 of Assignment of mortgages, page 368,

was subsequent to and subject to the complainant's mortgage.

September 22, 1925, William L. Moise and Carrie E., his wife, conveyed the mortgaged premises, to Martin I. Isen, subject to the mortgage of the complainant, which deed is of record in the Clerk's Office of Atlantic County, at Mays Landing, N. J., in Book 805 of Deeds, page 115.

September 23, 1925, Martin I. Isen, and Gussie Isen, his wife, conveyed the mortgaged premises to Warren L. Ridgway, which deed is of record in Clerk's Office of Atlantic County, at Mays Landing, N. J., in Book 805, page 117, said deed was made subsequent to and is subject to the mortgage of the complainant. 10

December 17, 1925, Warren L. Ridgway and Lottie Lee, his wife, conveyed to The Troy Corporation, a corporation under the laws of New Jersey, the lands and premises described as follows:—situate in Ventnor City, County of Atlantic and State of New Jersey, BEGINNING at the Southerly line of Atlantic Avenue, Seventy-five feet East of the East line of Little Rock Avenue, and extending (1) Eastwardly in and along the Southerly line of Atlantic Avenue. Fifty-six feet, thence extending Southwardly between parallel lines that width or breadth, along and parallel with Weymouth Avenue, Sixty feet; which is a part of the mortgaged premises. Which deed is of record in the Clerk's Office of Atlantic County, at Mays Landing, N. J., in Book 807, of Deeds, page 245, and is subsequent to and is subject to the lien and encumbrance of the mortgage of the complainant. 20 30

That Warren L. Ridgway, owner of a part of the mortgaged premises, is inter-married with one Lottie Lee Ridgway, and she claims to have some right

or interest in said mortgaged premises, but her interest, if any, is subject to the mortgage of the complainant.

4. That both bond and mortgage contained an agreement that if any installment of interest should remain unpaid for 30 days after the same should fall due, then the whole principal sum, with all unpaid interest, should, at the option of the mortgagee, its  
10 representatives or assigns, become immediately due.

5. That both bond and mortgage contained an agreement that the mortgagor should at any time fail to keep the buildings on the mortgaged premises insured against loss or damage by fire in a sum not less than \_\_\_\_\_ and assign the policies of insurance to the mortgagee, \_\_\_\_\_ representatives or assigns, then the whole principal sum secured by the said mortgage, with all unpaid interest, should at  
20 the option of the mortgagee, \_\_\_\_\_ representatives or assigns, become immediately due.

6. That both bond and mortgage contained an agreement that if any tax, or other municipal charge, assessed against the land, and the buildings and improvements thereon, should remain unpaid for 30 days after the same should be due and collectible by law, then the whole principal sum, with all unpaid interest, should at the option of the mortgagee, its  
30 representatives or assigns, become immediately due.

7. That the mortgage contained an agreement that the mortgagor, \_\_\_\_\_ heirs and assigns, should keep the the buildings on the mortgaged premises insured against loss or damage by fire in a sum not less than \_\_\_\_\_ and would assign the policies of

insurance to the mortgagee, representatives or assigns; and in default of so doing that the mortgagee, representatives or assigns, should be entitled to effect such insurance, and the premiums paid for the same by the mortgagee, representatives or assigns, with interest at six per centum, per annum, should be a lien on said land added to the amount of the mortgage debt and secured by the mortgage.

That on April 13, 1928, the principal of said mortgage was due and payable and on October 13, 1928, six months interest fell due on complainant's bond and mortgage, and remained unpaid for more than 30 days thereafter and no part thereof has yet been paid. 10

That said failed to keep the buildings on said land insured against loss or damage by fire in a sufficient sum; and on complainant caused the same to be insured in the sum of for year , and paid the sum of for insurance premium thereon; which sum, with interest at the rate of six per centum, per annum, is a lien on said premises added to the amount of the mortgage debt and secured by complainant mortgage, and is prior to the lien of any of the defendants. 20

That on October 1st, 1926, there was assessed \$1583.72 and October 1, of 1927, there was assessed, \$1548.10, of taxes in favor of Ventnor City against 1927 30

the mortgaged premises, the first half of which became due and payable on June 1st, 1927 and the second half of which became due and payable on December 1st, 1927, but complainant avers that the said taxes were not paid on December 1st, 1927, but are still due and owing to the said City of Ventnor City,

and have remained due and owing to the said Ventnor City for a period of more than 30 days after the same become due and collectible by law.

That by reason of the defaults mentioned in paragraphs 2, 4, 6, and terms of mortgage, complainant has elected that the whole principal sum of \$30,000 of said bond and mortgage, with all unpaid interest, shall be now due.

10 That said William L. Moise, Carrie E. Moise, David Paull, Martin I. Isen, Warren L. Ridgway, Lottie Lee Ridgway, Troy Corporation have always been in possession of the mortgaged premises.

That of the principal sum, \$30,000, with interest thereon, from April 13, 1925, is due upon the complainant's bond and mortgage.

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

20 1. That Troy Corporation, Warren L. Ridgway, Lottie Lee Ridgway, Carrie E. Moise, who are the defendants in this suit, may answer this bill of complaint without oath and each statement herein made;

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

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

4. That a decree may be made for the sale of the mortgaged premises to raise and pay to the com-

plainant the amount so found due on its mortgage, with interest and costs;

5. That the complainant may have such further and other relief as may be equitable and just;

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.

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J. S. WESTCOTT,  
ROBERT L. WARKE, JR.,  
*Of Counsel with Complainant.*

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30

## AMENDMENT TO COMPLAINT.

(Filed December 6, 1928.)

IN CHANCERY OF NEW JERSEY.

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Between

THE VENTNOR CITY NA-  
TIONAL BANK OF VENT-  
NOR CITY, N. J.,*Complainant,*

and

TROY CORPORATION, *et als.*,  
*Defendants.*On Foreclosure.  
Amendment to  
Complaint.

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30 The complainant amends the bill of complaint heretofore filed in the above cause, by inserting in paragraph 3, of said bill, that one Herman Aronovitz and Minnie Aronovitz, and one Morris DeRitis, are tenants in possession of some portion of the mortgaged premises, under and by virtue of a lease or otherwise, that said lease, or possession of a part of the mortgaged premises, and rights therein, of the said Herman Aronovitz, and Minnie Aronovitz, and Morris DeRitis, is and was, after the execution and the delivery of the mortgage, of the complainant, and their rights in the mortgaged premises is subject to the mortgage of the complainant.

That the said Herman Aronovitz and Minnie Aronovitz, and Morris DeRitis, may be each made a

party defendant in said cause, and that a state writ of subpoena may be issued commanding said defendants to answer this bill of complaint.

J. S. WESTCOTT,  
*Solicitor of Complainant.*

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DECREE PRO CONFESSO.

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(Filed January 22, 1929.)

IN CHANCERY OF NEW JERSEY.

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Between

THE VENTNOR CITY NA-  
TIONAL BANK OF VENT-  
NOR CITY, N. J.,

*Complainant,*

and

TROY CORPORATION, *et als.*,

*Defendants.*

On Bill, etc. 20  
Decree Pro Confesso.

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This cause being opened to the Court by Robert L. Warke, Jr., of counsel with the complainant, and it appearing that process of subpoena for the appearance of the defendants has been duly issued and returned, served upon Troy Corporation, Warren L. Ridgway, Lottie Lee Ridgway, Carrie E. Moise, Herman Aronovitz, Minnie Aronovitz, and Morris Deritis, and that the said defendants, Troy Corporation, Warren L. Ridgway, Lottie Lee Ridgway, Car-

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rie E. Moise, Herman Aronovitz, Minnie Aronovitz, Morris DeRitis, have not filed any answer to said bill within the time limited by law, but have wholly failed and neglected so to do:

It is thereupon, on this 22nd day of January in the year of our Lord one thousand nine hundred and twenty-nine, ordered, adjudged and decreed, that the said bill be taken as confessed as against Troy Corporation, Warren L. Ridgway, Lottie Lee  
10 Ridgway, Carrie E. Moise, Herman Aronovitz, Minnie Aronovitz, and Morris DeRitis, to the end that such decree may be made against them as the Chancellor shall think equitable and just.

E. R. WALKER,  
C.

FINAL DECREE.

(Filed May 7, 1929.)

IN CHANCERY OF NEW JERSEY.

Between

THE VENTNOR CITY NA-  
TIONAL BANK OF VENT-  
NOR CITY, N. J.,

*Complainant,*

and

TROY CORPORATION, *et als.*,  
*Defendants.*

On Bill, etc.  
Final Decree.

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This cause being opened to the Court by Robert L. Warke, of counsel with complainant, and it appearing that process of subpoena for the appearance of the defendants has been duly issued and returned by the Sheriff of the County of Atlantic, duly served on Troy Corporation, Warren L. Ridgway, Lottie L. Ridgway, Carrie E. Moise, Herman Aronovitz, Minnie Aronovitz and Morris DeRitis, and that the defendants have neglected to file any plea, demurrer or answer to the complainant's bill within the time limited by law; whereupon, and upon reading and filing a report made in this cause by John C. Reed, Esquire, one of the Masters of this Court, bearing date on the 29th day of April, in the year of our Lord one thousand nine hundred and twenty-nine, it ap- 30

pears that there is due to the complainant for principal and interest on its mortgage, the sum of \$31,880.01, and no cause being shown or appearing to the contrary; it is, on this 7th day of May, A. D. nineteen hundred and twenty-nine, by his Honor, Edwin Robert Walker, Chancellor of the State of New Jersey, ordered, adjudged and decreed, that the said bill of complaint be taken as confessed and that the said Master's report, and all the matters and things therein contained, do stand confirmed, and that the said complainant is entitled to have the said sum of \$31,880.01, with lawful interest thereon, to be computed from the date of said report, together with its cost of the suit, in which shall be included a counsel fee of \$295.00 dollars, raised and paid out of the mortgaged premises.

And it is further ordered, adjudged and decreed, that so much of the said mortgaged premises as will be sufficient to raise and satisfy the said debt, interest and costs, be sold; and that a writ of *feri facias* do issue for that purpose out of this Court, directed to the Sheriff of the County of Atlantic, commanding him to make sale, according to law, of so much of the said mortgaged premises as will be sufficient to satisfy the said debt, interest and costs, and that he do pay the same to the complainant or to its solicitor; and in case more money should be raised by the sale than shall be sufficient to answer such payment, such surplus be brought into this Court and deposited with the Clerk, to abide the further order of this Court, unless otherwise previously disposed of by order of the Court; and the said Sheriff is to make return to the Court of his proceedings by virtue of the said writ.

And it is further ordered, adjudged and decreed, that the defendants stand absolutely debarred and

foreclosed of and from all equity or redemption of,  
in and to so much of the said mortgaged premises as  
shall be sold as aforesaid by virtue of this decree.

E. R. WALKER,  
C.

Respectfully advised,  
W. M. J. BACKES,  
A. M.

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PETITION.

(Filed August 5, 1929.)

IN CHANCERY OF NEW JERSEY.

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Between	}	On Bill, etc. Petition.
VENTNOR CITY NATIONAL BANK,		
<i>Complainant,</i>		
and		
TROY CORPORATION, <i>et als.</i> ,	}	
<i>Defendants.</i>		

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*To the Honorable Edwin Robert Walker, Chancel-  
lor of the State of New Jersey:*

The petition of Warren L. Ridgway, a defendant  
in the above stated cause respectfully shows:

1. On or about January 1st, 1929, complainant in the above entitled cause filed a bill of complaint for the foreclosure of the mortgage hereinafter mentioned:

2. That the complainant in the above entitled cause is the owner and holder of a certain mortgage covering the following described premises:

10 "All that certain lot, tract or parcel of land and premises, situate, lying and being in the City of Ventnor City, County of Atlantic, and State of New Jersey, bounded and described as follows:

20 BEGINNING at a point in the Southwest corner of Atlantic and Weymouth Avenues; and extending thence (1) Westwardly, and in the southerly line of Atlantic Avenue, fifty-six feet; thence (2) Southwardly, and parallel with Weymouth Avenue, one hundred feet; thence (3) Eastwardly, and parallel with Atlantic Avenue, fifty-six feet to the Westerly line of Weymouth Avenue; thence (4) Northwardly, in the Westerly line of Weymouth Avenue, one hundred feet to the southerly line of Atlantic Avenue, the place of beginning."

30 3. That William L. Moise and Carrie E. Moise, his wife, are the owners of a second mortgage on said premises above described.

4. That on or about October 15th, 1925, the following described premises were released from the said mortgage of William L. Moise and Carrie E. Moise, his wife:

"All that certain lot, tract or parcel of land and premises, situate, lying and being in the

City of Ventnor City, County of Atlantic, and State of New Jersey, bounded and described as follows:

BEGINNING at a point in the Westerly line of Weymouth Avenue, fifty feet south of the southerly line of Atlantic Avenue; and extending thence (1) Westwardly, parallel with Atlantic Avenue, fifty-six feet; thence (2) Southwardly, parallel with Weymouth Avenue, fifty feet; thence (3) Eastwardly, parallel with Atlantic Avenue, fifty-six feet to the Westerly line of Weymouth Avenue; thence (4) Northwardly, in and along the westerly line of Weymouth Avenue, fifty feet to the place of beginning.” 10

5. That on or about December 17th, 1925, Warren L. Ridgway, being the owner of the premises described and mentioned in the complainant's mortgage, sold and conveyed the following described premises to the Troy Corporation, a corporation of the State of New Jersey: 20

“All that certain lot, tract or parcel of land and premises, situate, lying and being in the City of Ventnor City, County of Atlantic, and State of New Jersey, bounded and described as follows:

BEGINNING at a point in the southerly line of Atlantic Avenue, seventy-five feet east of the easterly line of Little Rock Avenue; and extending thence (1) Southwardly, and parallel with Little Rock Avenue, sixty feet; thence (2) Eastwardly, and parallel with Atlantic Avenue, fifty-six feet to a point in the westerly line of Weymouth Avenue; thence (3) Northwardly, in and along the Westerly line of Weymouth Avenue, sixty feet to a point in the southwest corner of 30

Atlantic and Weymouth Avenues; thence (4) Westwardly, in and along the southerly line of Atlantic Avenue, fifty-six feet to the place of beginning."

That there are erected upon the above described premises, three one-story brick stores.

6. That Warren L. Ridgway is the owner of the remainder of said premises, to wit:

10 "All that certain lot, tract or parcel of land and premises, situate, lying and being in the City of Ventnor City, County of Atlantic, and State of New Jersey, bounded and described as follows:

20 BEGINNING at a point in the Westerly line of Weymouth Avenue, sixty feet, south of the southwest corner of Atlantic and Weymouth Avenues; and extending thence (1) Westwardly and parallel with the southerly line of Atlantic Avenue; fifty-six feet; thence (2) Southwardly, parallel with Weymouth Avenue, forty feet; thence (3) Eastwardly, parallel with Atlantic Avenue, fifty-six feet to the Westerly line of Weymouth Avenue; thence (4) Northwardly, in and along the westerly line of Weymouth Avenue, forty feet to the point and place of beginning."

30 That said premises consists of a vacant lot upon which there is erected a private garage and used by the petitioner. That the petitioner's premises are subject only to the mortgage of complainant, the said William L. Moise and Carrie L. Moise, his wife, having released their mortgage from petitioner's premises as mentioned above.

7. That defendant, or any of the other defendants, in the above stated cause did not file an answer or

any proceedings and a decree *pro confesso* was entered in said proceedings.

8. That on May 2nd, 1929, a Master's Inspection Report was filed in this court by John C. Reed, Esquire, one of the Masters of this court from which it appears that there is due to the complainant for principal and interest upon its mortgage, the sum of \$31,880.01; that the said Master's report does not recommend whether the premises shall be sold as a whole or in parcels. 10

9. That on or about the 7th day of May, 1929, a final decree was entered in which it was ordered, adjudged and decreed that so much of the mortgaged premises as would be sufficient to raise and satisfy said debt, be sold, a copy of which decree is hereto annexed; that a writ of *feri facias* was issued out of this court directed to the Sheriff of the County of Atlantic; that said Sheriff of the County of Atlantic, in accordance with said writ of *feri facias* advertised said premises for sale for July 25th, 1929, the advertisement of which premises was advertised as a whole and not in parcels. 20

10. Shortly before the above stated proceedings were instituted and defendants had been served, an agreement of sale was entered into by the Troy Corporation, the owner of premises described in paragraph 5 for the sale of said premises to one, Charles L. Kahn. 30

11. That the Troy Corporation notified the complainant, through its solicitor, John S. Westcott, of the agreement of sale entered into for the sale of said premises. John S. Westcott, solicitor of com-

plainant, on behalf of complainant agreed to withhold taking further proceedings in order that an opportunity might be afforded the defendant, Troy Corporation, to sell said premises to said purchaser.

10 12. That the defendant, Warren L. Ridgway, relying upon the representation of complainant's solicitor, John S. Westcott, that said premises would not be sold by virtue of said foreclosure proceedings, pending negotiations endeavoring to comply with the Troy Corporation's agreement of sale, therefore, did not file exceptions to the Master's report or take any steps directing the Sheriff to advertise the premises separately.

20 13. That on July 25th, 1929, the petitioner, by his representative, appeared at the Sheriff's sale and notified the Deputy Sheriff, Robert C. Miller, that said advertisement was irregular because the premises were susceptible of division and should have been advertised for sale separately; that one week's adjournment was granted to the defendant; and later another week's adjournment was granted.

30 14. That complainant has refused to consent to any further extensions or adjournments of said sale and although requested, have refused to re-advertise the premises so that the same may be sold in parcels.

15. Your petitioner has requested the complainant to release the premises owned by petitioner for the reasonable value of the lands owned by petitioner which the complainant has also refused to do.

16. That said premises are advertised in the writ

of *feri facias* as a whole and have not been divided in parcels.

17. That petitioner is advised that the reasonable value of said lands and premises described in paragraph 5 is the sum of forty thousand dollars, and that the lands and premises described in paragraph 6 is the sum of five thousand dollars.

18. That a sale of said premises as two separate parcels will not materially affect or prejudice the rights of the complainant and the complainant will not suffer any substantial loss as a result of said premises being sold separately.

19. That defendant, Warren L. Ridgway, will be subject to a great loss and irreparable damage, if said premises are sold as a whole.

Petitioner, therefore, prays that the premises may be sold in parcels and not as a whole; that the premises now owned by the petitioner and the premises owned by the Troy Corporation may be sold separately; that the sale of said premises by the Sheriff of the County of Atlantic may be stayed; that the Sheriff of Atlantic County may be directed to re-advertise said premises so that the same may be sold in parcels; and that the final decree and *feri facias* of complainant be reformed, in order that said premises may be sold separately, and in parcels; and that the complainant and the Sheriff of the County of Atlantic, be ordered to sell said premises separately and in parcels and for such other relief as may be equitable and just.

And your petitioner will ever pray, etc.

S. PAUL RIDGWAY,  
*Solicitor of Petitioner.*

## FINAL DECREE.

## IN CHANCERY OF NEW JERSEY.

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10 Between  
 THE VENTNOR CITY NA-  
 TIONAL BANK OF VENT-  
 NOR CITY, N. J.,  
*Complainant,*  
 and  
 TROY CORPORATION, *et als.,*  
*Defendants.* )  
 On Bill, etc.  
 Final Decree.

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This cause being opened to the Court by Robert L. Warke, of counsel with complainant, and it appearing that process of subpoena for the appearance of the defendants has been duly issued and returned by the Sheriff of the County of Atlantic duly served on Troy Corporation, Warren L. Ridgway, Lottie E. Ridgway, Carrie E. Moise, Herman Aronovitz, Minnie Aronovitz and Morris DeRitis, and that the  
 30 defendants have neglected to file any plea, demurrer or answer to the complainant's bill within the time limited by law; whereupon, and upon reading and filing a report made in this cause by John C. Reed, Esquire, one of the Masters of this Court, bearing date the 29th day of April, in the year of our Lord one thousand nine hundred and twenty-nine, it appears that there is due to the complainant for prin-

cipal and interest on its mortgage, the sum of \$31,880.01, and no cause being shown or appearing to the contrary; it is, on this 7th day of May, A. D. nineteen hundred and twenty-nine, by his Honor, Edwin Robert Walker, Chancellor of the State of New Jersey, ordered, adjudged and decreed, that the said bill of complaint be taken as confessed and that the said Master's report, and all the matters and things therein contained, do stand confirmed, and that the said complainant is entitled to have the said sum of \$31,880.01 with lawful interest thereon, to be computed from the date of said report, together with its costs of the suit, in which shall be included a counsel fee of \_\_\_\_\_ dollars, raised and paid out of the mortgaged premises. 10

And, it is further ordered, adjudged and decreed, that so much of the said mortgaged premises as will be sufficient to raise and satisfy the said debt, interest and costs, be sold; and that a writ of *feri facias* do issue for that purpose out of this court, directed to the Sheriff of the County of Atlantic commanding him to make sale, according to law, of so much of the said mortgaged premises as will be sufficient to satisfy the said debt, interest and costs, and that he do pay the same to the complainant or to its solicitor; and in case more money should be raised by the sale than shall be sufficient to answer such payment, such surplus be brought into this court and deposited with the clerk, to abide the further order of this court, unless otherwise previously disposed of by order of the court; and the said Sheriff is to make return to the Court of his proceedings by virtue of the said writ. 20 30

And it is further ordered, adjudged and decreed, that the defendants stand absolutely debarred and foreclosed of and from all equity of redemption of,

in and to so much of the said mortgaged premises  
as shall be sold as aforesaid by virtue of this decree.

E. R. WALKER,  
C.

Respectfully advised,

WM. J. BACKES, A. M.

True copy,

FERD GARRETSON,

*Clerk.*

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STATE OF NEW JERSEY }  
COUNTY OF ATLANTIC } ss.

20 I, WARREN L. RIDGWAY, of full age, being duly  
sworn according to law, upon my oath, depose and  
say, that I am the petitioner in the foregoing peti-  
tion named; that I have read the aforesaid petition  
and the facts therein stated are true to the best of  
my knowledge, information and belief.

WARREN L. RIDGWAY.

Sworn and subscribed to before me this 5th day of  
August, 1929.

RAE CAPLIN,  
*Attorney-at-Law of New  
Jersey.*

30

ORDER OF REFERENCE.

(Filed August 5, 1929.)

IN CHANCERY OF NEW JERSEY.

Between  
 VENTNOR CITY NATIONAL  
 BANK,  
     *Complainant,*  
 and  
 TROY CORPORATION, *et als.,*  
     *Defendants.*

On Bill, etc.  
Order.

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A petition duly verified, having been presented herein by the defendant, Warren L. Ridgway, setting forth that petitioner is the owner of a tract of land described in the petition and which is covered by complainant's mortgage; and that the lands and premises described in complainant's mortgage are susceptible of division without material injury to or prejudice of the rights of the complainant and praying that the premises be sold in parcels and not as a whole; and that the premises owned by petitioner and the premises owned by the Troy Corporation be sold separately; and that the sale of said premises by the Sheriff of the County of Atlantic be stayed and that the final decree and *feri facias* be reformed in order that said premises may be sold

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separately; that the complainant and the Sheriff of the County of Atlantic be ordered to sell said premises separately and in parcels:

It is, on this fifth day of August, 1929, ordered that the above entitled cause be referred to Hon. R. H. Ingersoll, one of the Vice-Chancellors of this court, to hear the same on the 13th day of August, 1929, at 10.30 o'clock, daylight saving time, in the forenoon, at the Chancery Chambers at Atlantic  
10 City, that the complainant, Ventnor City National Bank, and the defendants, William L. Moise and Carrie E. Moise, show cause at the aforesaid time and place why said premises described in complainant's mortgage should not be sold in parcels and not as a whole; and why the premises now owned by the petitioner and the premises now owned by the Troy Corporation should not be sold separately and why the sale of said premises by the Sheriff of the County of Atlantic should not be stayed and the final  
20 decree and *feri facias* of complainant be reformed and why the complainant and the Sheriff of the County of Atlantic should not be ordered to sell said premises separately and in parcels.

It is further ordered that the Sheriff of the County of Atlantic take no further steps in the sale of said premises and that the writ of *feri facias* be stayed until the further order of this court, except that such sale be kept alive in the meantime by adjournments by said Sheriff from time to time.

30 It is further ordered that a true, but uncertified copy of this order and the petition, whereon the same is founded, be served upon the complainant and the defendants, William L. Moise and Carrie E. Moise, and said order only on said Sheriff within three days from the date hereof.

E. R. WALKER,  
C.

AFFIDAVIT OF SERVICE.

(Filed August 14, 1929.)

IN CHANCERY OF NEW JERSEY.

Between

· VENTNOR CITY NATIONAL  
BANK,

*Complainant,*

and

TROY CORPORATION, *et als.*,  
*Defendants.*

On Bill, etc.  
Affidavit of Service.

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STATE OF NEW JERSEY }  
COUNTY OF ATLANTIC } ss.

I, S. PAUL RIDGWAY, of full age, being duly sworn according to law upon my oath, depose and say, that I served a copy of the attached order upon Robert C. Miller, Deputy Sheriff, on the 8th day of August, 1929, by handing him a copy thereof and informing him of the contents.

S. PAUL RIDGWAY.

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Sworn and subscribed to before me this 14th day of August, 1929.

C. C. SHINN.

*M. C. C. of N. J.*

## ORDER.

## IN CHANCERY OF NEW JERSEY.

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10	Between VENTNOR CITY NATIONAL BANK, <i>Complainant,</i> and TROY CORPORATION, <i>et als.,</i> <i>Defendants.</i>	}	On Bill, etc. Order.
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20 A petition duly verified, having been presented herein by the defendant, Warren L. Ridgway, setting forth that petitioner is the owner of a tract of land described in the petition and which is covered by complainant's mortgage; and that the lands and premises described in complainant's mortgage was susceptible of division without material injury to or prejudice of the rights of the complainant and praying that the premises be sold in parcels and not as a whole; and that the premises owned by petitioner and the premises owned by the Troy Corporation be

30 sold separately; and that the sale of said premises by the Sheriff of the County of Atlantic be stayed and that the final decree and *feri facias* be reformed in order that said premises may be sold separately; that the complainant and the Sheriff of the County of Atlantic be ordered to sell said premises separately and in parcels;

It is, on this fifth day of August, 1929, ordered, that the above entitled cause be referred to Hon. R. H. Ingersoll, one of the Vice-Chancellors of this court, to hear the same on the 13th day of August, 1929, at 10.30 o'clock, daylight saving time, in the forenoon, at the Chancery Chambers at Atlantic City, that the complainant, Ventnor City National Bank, and the defendants, William L. Moise and Carrie E. Moise, show cause at the aforesaid time and place why said premises described in complainant's mortgage should not be sold in parcels and not as a whole; and why the premises now owned by the petitioner and the premises now owned by the Troy Corporation should not be sold separately and why the sale of said premises by the Sheriff of Atlantic, should not be stayed and the final decree and *feri facias* of complainant be reformed and why the complainant and the Sheriff of the County of Atlantic should not be ordered to sell said premises separately and in parcels. 10

It is further ordered that the Sheriff of the County of Atlantic take no further steps in the sale of said premises and that the writ of *feri facias* be stayed until the further order of this court, except that such sale be kept alive in the meantime by adjournments by said Sheriff from time to time. 20

It is further ordered that a true, but uncertified copy of this order and the petition, whereon the same is founded, be served upon the complainant and the defendants, William L. Moise and Carrie E. Moise and said order only on said Sheriff within three days from the date hereof. 30

E. R. WALKER.

## AFFIDAVIT OF SERVICE.

(Filed August 14, 1929.)

IN CHANCERY OF NEW JERSEY.

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Between

VENTNOR CITY NATIONAL  
BANK,*Complainant,*

and

TROY CORPORATION, *et als.*,  
*Defendants.*On Bill, etc.  
Affidavit of Service.

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STATE OF NEW JERSEY }  
COUNTY OF ATLANTIC } ss.

30 I, IRVING A. LILIENFELD, of full age, being duly sworn according to law, upon my oath, depose and say, that I served copies of the within petition and order, personally, on Carrie E. Moise, at 11 o'clock in the forenoon, daylight saving time, at 510 Schwehm Building, New York and Atlantic Avenues, Atlantic City, N. J., on Tuesday, the 6th day of August, 1929; personally on William L. Moise at 3 o'clock, in the afternoon, daylight saving time, at 510 Schwehm Building, New York and Atlantic Avenues, Atlantic City, N. J., on Tuesday, the 6th day of August, 1929, and, personally, on John S. Westcott,

solicitor of complainant, Ventnor City National Bank, at 11 o'clock in the forenoon, daylight saving time, at his offices in the Ventnor City National Bank, Atlantic and Surrey Avenues, Ventnor City, New Jersey, on the 7th day of August, 1929.

IRVING A. LILIENFELD.

Sworn and subscribed to before me this 12th day of August, 1929.

SAMUEL FREEDMAN, 10  
*An Atty.-at-Law of N. J.*

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ORDER.

IN CHANCERY OF NEW JERSEY.

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Between  
VENTNOR CITY NATIONAL  
BANK, )  
Complainant, )  
and )  
TROY CORPORATION, *et als.*, )  
Defendants. )  
On Bill, etc.  
Order.

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A petition duly verified, having been presented herein by the defendant, Warren L. Ridgway, setting forth that petitioner is the owner of a tract of land described in the petition and which is covered by complainant's mortgage; and that the lands and

premises described in complainant's mortgage was susceptible of division without material injury to or prejudice of the rights of the complainant and praying that the premises be sold in parcels and not as a whole; and that the premises owned by petitioner and the premises owned by the Troy Corporation be sold separately; and that the sale of said premises by the Sheriff of the County of Atlantic be stayed and that the final decree and *feri facias* be reformed in order that said premises may be sold separately; that the complainant and the Sheriff of the County of Atlantic be ordered to sell said premises separately and in parcels;

10 It is, on this fifth day of August, 1929, ordered, that the above entitled cause be referred to Hon. R. H. Ingersoll, one of the Vice-Chancellors of this court, to hear the same on the 13th day of August, 1929, at 10.30 o'clock, daylight saving time, in the forenoon, at the Chancery Chambers at Atlantic  
20 City, that the complainant, Ventnor City National Bank, and the defendants, William L. Moise and Carrie E. Moise, show cause at the aforesaid time and place why said premises described in complainant's mortgage should not be sold in parcels and not as a whole; and why the premises now owned by the petitioner and the premises now owned by the Troy Corporation should not be sold separately and why the sale of said premises by the Sheriff of Atlantic, should not be stayed and the final decree and *feri*  
30 *facias* of complainant be reformed and why the complainant and the Sheriff of the County of Atlantic should not be ordered to sell said premises separately and in parcels.

It is further ordered that the Sheriff of the County of Atlantic take no further steps in the sale of said premises and that the writ of *feri facias* be stayed until the further order of this court, except that such

sale be kept alive in the meantime by adjournments by said Sheriff from time to time.

It is further ordered that a true, but uncertified copy of this order and the petition whereon the same is founded, be served upon the complainant and the defendants, William L. Moise and Carrie E. Moise, and said order only on said Sheriff within three days from the date hereof.

E. R. WALKER.

A true copy,  
PAUL RIDGWAY,  
*Sol'r.*

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PETITION.

IN CHANCERY OF NEW JERSEY.

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Between  
VENTNOR CITY NATIONAL  
BANK,  
*Complainant,*  
and  
TROY CORPORATION, *et als.,*  
*Defendants.*

On Bill, etc.  
Petition.

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

The petition of Warren L. Ridgway, a defendant in the above stated cause respectfully shows:

1. On or about January 1st, 1929, complainant in the above entitled cause filed a bill of complaint for the foreclosure of the mortgage hereinafter mentioned:

2. That the complainant in the above entitled cause is the owner and holder of a certain mortgage covering the following described premises:

10        “All that certain lot, tract or parcel of land and premises, situate, lying and being in the City of Ventnor City, County of Atlantic, and State of New Jersey, bounded and described as follows:

20        BEGINNING at a point in the Southwest corner of Atlantic and Weymouth Avenues; and extending thence (1) Westwardly, and in the southerly line of Atlantic Avenue, fifty-six feet; thence (2) Southwardly, and parallel with Weymouth Avenue, one hundred feet; thence (3) Eastwardly, and parallel with Atlantic Avenue, fifty-six feet to the Westerly line of Weymouth Avenue; thence (4) Northwardly, in the Westerly line of Weymouth Avenue, one hundred feet to the southerly line of Atlantic Avenue, the place of beginning.”

30        3. That William L. Moise and Carrie E. Moise, his wife, are the owners of a second mortgage on said premises above described.

4. That on or about October 15th, 1925, the following described premises were released from the said mortgage of William L. Moise and Carrie E. Moise, his wife:

      “All that certain lot, tract or parcel of land and premises, situate, lying and being in the

City of Ventnor City, County of Atlantic, and State of New Jersey, bounded and described as follows:

BEGINNING at a point in the Westerly line of Weymouth Avenue, fifty feet south of the southerly line of Atlantic Avenue; and extending thence (1) Westwardly, parallel with Atlantic Avenue, fifty-six feet; thence (2) Southwardly, parallel with Weymouth Avenue, fifty feet; thence (3) Eastwardly, parallel with Atlantic Avenue, fifty-six feet to the Westerly line of Weymouth Avenue; thence (4) Northwardly, in and along the westerly line of Weymouth Avenue, fifty feet to the place of beginning.” 10

5. That on or about December 17th, 1925, Warren L. Ridgway, being the owner of the premises described and mentioned in the complainant's mortgage, sold and conveyed the following described premises to the Troy Corporation, a corporation of the State of New Jersey: 20

“All that certain lot, tract or parcel of land and premises, situate, lying and being in the City of Ventnor City, County of Atlantic, and State of New Jersey, bounded and described as follows:

BEGINNING at a point in the southerly line of Atlantic Avenue, seventy-five feet east of the easterly line of Little Rock Avenue; and extending thence (1) Southwardly, and parallel with Little Rock Avenue, sixty feet; thence (2) Eastwardly, and parallel with Atlantic Avenue, fifty-six feet to a point in the westerly line of Weymouth Avenue; thence (3) Northwardly, in and along the Westerly line of Weymouth Avenue, sixty feet to a point in the southwest corner of 30

Atlantic and Weymouth Avenues; thence (4) Westwardly, in and along the southerly line of Atlantic Avenue, fifty-six feet to the place of beginning.”

That there are erected upon the above described premises, three one-story brick stores.

6. That Warren L. Ridgway is the owner of the remainder of said premises, to wit:

10       “All that certain lot, tract or parcel of land and premises, situate, lying and being in the City of Ventnor City, County of Atlantic, and State of New Jersey, bounded and described as follows:

20       BEGINNING at a point in the Westerly line of Weymouth Avenue, sixty feet, south of the southwest corner of Atlantic and Weymouth Avenues; and extending thence (1) Westwardly and parallel with the southerly line of Atlantic Avenue; fifty-six feet; thence (2) Southwardly, parallel with Weymouth Avenue, forty feet; thence (3) Eastwardly, parallel with Atlantic Avenue, fifty-six feet to the Westerly line of Weymouth Avenue; thence (4) Northwardly, in and along the westerly line of Weymouth Avenue, forty feet to the point and place of beginning.”

30       That said premises consists of a vacant lot upon which there is erected a private garage and used by the petitioner. That the petitioner's premises are subject only to the mortgage of complainant, the said William L. Moise and Carrie E. Moise, his wife, having released their mortgage from petitioner's premises as mentioned above.

7. That defendant, or any of the other defendants, in the above stated cause did not file an answer or

any proceedings and a decree *pro confesso* was entered in said proceedings.

8. That on May 2nd, 1929, a Master's Inspection Report was filed in this court by John C. Reed, Esquire, one of the Masters of this court from which it appears that there is due to the complainant for principal and interest upon its mortgage, the sum of \$31,880.01; that the said Master's report does not recommend whether the premises shall be sold as a whole or in parcels. 10

9. That on or about the 7th day of May, 1929, a final decree was entered in which it was ordered, adjudged and decreed that so much of the mortgaged premises as would be sufficient to raise and satisfy said debt, be sold, a copy of which decree is hereto annexed; that a writ of *feri facias* was issued out of this court directed to the Sheriff of the County of Atlantic; that said Sheriff of the County of Atlantic, in accordance with said writ of *feri facias* advertised said premises for sale for July 25th, 1929, the advertisement of which premises was advertised as a whole and not in parcels. 20

10. Shortly before the above stated proceedings were instituted and defendants had been served, an agreement of sale was entered into by the Troy Corporation, the owner of premises described in paragraph 5 for the sale of said premises to one, Charles L. Kahn. 30

11. That the Troy Corporation notified the complainant, through its solicitor, John S. Westcott, of the agreement of sale entered into for the sale of said premises. John S. Westcott, solicitor of com-

plainant, on behalf of complainant agreed to withhold taking further proceedings in order that an opportunity might be afforded the defendant, Troy Corporation, to sell said premises to said purchaser.

10 12. That the defendant, Warren L. Ridgway, relying upon the representation of complainant's solicitor, John S. Westcott, that said premises would not be sold by virtue of said foreclosure proceedings, pending negotiations endeavoring to comply with the Troy Corporation's agreement of sale, therefore, did not file exceptions to the Master's report or take any steps directing the Sheriff to advertise the premises separately.

20 13. That on July 25th, 1929, the petitioner, by his representative, appeared at the Sheriff's sale and notified the Deputy Sheriff, Robert C. Miller, that said advertisement was irregular because the premises were susceptible of division and should have been advertised for sale separately; that one week's adjournment was granted to the defendant; and later another week's adjournment was granted.

30 14. That complainant has refused to consent to any further extensions or adjournments of said sale and although requested, have refused to re-advertise the premises so that the same may be sold in parcels.

15. Your petitioner has requested the complainant to release the premises owned by petitioner for the reasonable value of the lands owned by petitioner which the complainant has also refused to do.

16. That said premises are advertised in the writ

of *feri facias* as a whole and have not been divided in parcels.

17. That petitioner is advised that the reasonable value of said lands and premises described in paragraph 5 is the sum of forty thousand dollars, and that the lands and premises described in paragraph 6 is the sum of five thousand dollars.

18. That a sale of said premises as two separate parcels will not materially affect or prejudice the rights of the complainant and the complainant will not suffer any substantial loss as a result of said premises being sold separately. 10

19. That defendant, Warren L. Ridgway, will be subject to a great loss and irreparable damage, if said premises are sold as a whole.

Petitioner, therefore, prays that the premises may be sold in parcels and not as a whole; that the premises now owned by the petitioner and the premises owned by the Troy Corporation may be sold separately; that the sale of said premises by the Sheriff of the County of Atlantic may be stayed; that the Sheriff of Atlantic County may be directed to re-advertise said premises so that the same may be sold in parcels; and that the final decree and *feri facias* of complainant be reformed, in order that said premises may be sold separately, and in parcels; and that the complainant and the Sheriff of the County of Atlantic, be ordered to sell said premises separately and in parcels and for such other relief as may be equitable and just. 20 30

And your petitioner will ever pray, etc.

S. PAUL RIDGWAY,  
*Solicitor for Petitioner.*

## FINAL DECREE.

## IN CHANCERY OF NEW JERSEY.

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10 Between  
 THE VENTNOR CITY NA-  
 TIONAL BANK OF VENT-  
 NOR CITY, N. J.,  
*Complainant,*  
 and  
 TROY CORPORATION, *et als.,*  
*Defendants.* } On Bill, etc.  
 Final Decree.

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This cause being opened to the Court by Robert L. Warke, of counsel with complainant, and it appearing that process of subpoena for the appearance of the defendants has been duly issued and returned by the Sheriff of the County of Atlantic duly served on Troy Corporation, Warren L. Ridgway, Lottie E. Ridgway, Carrie E. Moise, Herman Aronovitz, Minnie Aronovitz and Morris DeRitis, and that the  
 30 or answer to the complainant's bill within the time limited by law; whereupon, and upon reading and filing a report made in this cause by John C. Reed, Esquire, one of the Masters of this Court, bearing date the 29th day of April, in the year of our Lord one thousand nine hundred and twenty-nine, it appears that there is due to the complainant for prin-

cipal and interest on its mortgage, the sum of \$31,880.01, and no cause being shown or appearing to the contrary; it is, on this 7th day of May, A. D. nineteen hundred and twenty-nine, by his Honor, Edwin Robert Walker, Chancellor of the State of New Jersey, ordered, adjudged and decreed, that the said bill of complaint be taken as confessed and that the said Master's report, and all the matters and things therein contained, do stand confirmed, and that the said complainant is entitled to have the said sum of \$31,880.01 with lawful interest thereon, to be computed from the date of said report, together with its costs of the suit, in which shall be included a counsel fee of \_\_\_\_\_ dollars, raised and paid out of the mortgaged premises. 10

And, it is further ordered, adjudged and decreed, that so much of the said mortgaged premises as will be sufficient to raise and satisfy the said debt, interest and costs, be sold; and that a writ of *feri facias* do issue for that purpose out of this court, directed to the Sheriff of the County of Atlantic commanding him to make sale, according to law, of so much of the said mortgaged premises as will be sufficient to satisfy the said debt, interest and costs, and that he do pay the same to the complainant or to its solicitor; and in case more money should be raised by the sale than shall be sufficient to answer such payment, such surplus be brought into this court and deposited with the clerk, to abide the further order of this court, unless otherwise previously disposed of by order of the Court; and the said Sheriff is to make return to the Court of his proceedings by virtue of the said writ. 20 30

And it is further ordered, adjudged and decreed, that the defendants stand absolutely debarred and foreclosed of and from all equity of redemption of,

in and to so much of the said mortgaged premises  
as shall be sold as aforesaid by virtue of this decree.

E. R. WALKER,  
C.

Respectfully advised,

WM. J. BACKES, A. M.

True copy,

FERD GARRETSON,

*Clerk.*

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STATE OF NEW JERSEY }  
COUNTY OF ATLANTIC } ss.

20 I, WARREN L. RIDGWAY, of full age, being duly  
sworn according to law, upon my oath, depose and  
say, that I am the petitioner in the foregoing peti-  
tion named; that I have read the aforesaid petition  
and the facts therein stated are true to the best of  
my knowledge, information and belief.

WARREN L. RIDGWAY.

Sworn and subscribed to before me this 5th day of  
August, 1929.

RAE CAPLIN,

*Attorney-at-Law of New  
Jersey.*

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AFFIDAVITS ON RULE TO SHOW CAUSE.

(Filed August 14, 1929.)

IN CHANCERY OF NEW JERSEY.

Between

VENTNOR CITY NATIONAL  
BANK OF VENTNOR  
CITY, N. J.,

*Complainant,*

and

TROY CORPORATION, *et als.*,  
*Defendants.*

On Bill, etc.

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STATE OF NEW JERSEY }  
ATLANTIC COUNTY } ss.

JOHN S. WESTCOTT, being duly sworn according to law, upon his oath deposes and says, that he is the solicitor of the complainant, in the above cause. That shortly after the bill was filed to foreclose the mortgage in the above cause, the subpoenas were issued thereon, Howard Campbell called upon this deponent, as representative of the Troy Corporation, and stated that they had entered into a contract for the sale of the mortgaged premises, obtained from him a statement of the amount due upon the mortgage for principal and interest, with the approximate costs and fees, stated that a settlement would

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be made in a few days at one of the title companies, and asked the deponent to take no further proceedings, that the matter would be settled. Subsequent thereto, Mr. Campbell again advised me that the settlement would be made at the title company on a certain day, and asked that I be present at the settlement, to adjust the matter, which was agreed to. At the time fixed for the making of the settlement, I was out of town on my vacation, but before leaving had prepared the papers, etc., ready for the settlement, which was at a date in February, and so far as the Ventnor City National Bank, the complainant, was concerned, Mr. E. S. Turner, the Assistant Cashier, was given charge of the matter, and I am informed and believe it to be true, had at a title company, at the time fixed, all the proper papers to settle the matter.

Thereafter, and frequently on many cases, beginning early in March of 1929, Mr. Campbell continued to tell me settlement was going to be made. And I continued to wait for Mr. Campbell in the settlement, and delayed prosecuting foreclosure proceedings, until I had become out of patience, being led to believe by his actions, that Mr. Campbell was not acting in good faith. And on May 7, 1929, entered final decree in the said cause.

And that in the meantime, to wit: on March 6, 1929, the lands described in the complainant's mortgage, was sold for taxes by the City of Ventnor City, assessed on said lands, for the year of 1927, and the interest and costs thereon. And at the said sale, the complainant purchased said lands and premises and paid therefor, as the taxes, costs, and interest, the sum of \$1788.61, which still remains due and unpaid, as also taxes assessed against the said lands for the year of 1928, which are due and payable, and became a lien upon the lands, December 1, 1928, in the sum

of approximately, \$1600, which remains due and payable, and a lien upon the mortgaged premises, with one half of the year of taxes assessed 1929, the approximate sum of \$900.

Deponent further says that Warren L. Ridgway, and Charlotte Ridgway, his wife, were made party defendants in the bill of foreclosure.

That at no time, until the day the lands were advertised, for sale by the Sheriff, was any application made to this deponent, or to the court, for the making of the sale of the mortgaged premises in two parcels, other than when Howard Campbell advised this deponent in January of 1929, of the intended sale to be made, or at the time when he advised this deponent of the date of the making of the settlement for the said lands. He, the said Howard Campbell, who was also associated with Warren L. Ridgway, stated that in the making of the sale and transfer, that he then had in contemplation, that in the making of the settlement, he might not be able to pay \$4000 or \$5000, in paying everything up, and asked this deponent, that if it was necessary and required to make the settlement and transfer, would the complainant, the Ventnor City National Bank, if all other matters were paid up, release the lot 56 feet by 60 feet, and allow the mortgage to remain for one year, for \$4000 or \$5000. And this deponent agreed that if a settlement was made as stated, that the complainant would extend the mortgage for one year for \$4000. Subsequently, this deponent was informed, Mr. Campbell had in contemplation, a sale of the corner, 56 feet by 60 feet, to some one for a gasoline station. As soon as this deponent heard of this, he advised Mr. Campbell that if such was the case, that a gasoline station was to be put on the lot, he desired the mortgage to be paid in full.

Deponent further says that the lands in the complainant's mortgage mentioned, is described as one piece.

J. S. WESTCOTT.

Sworn and subscribed before me this 12 day of August, 1929.

GEO. W. BOND,

(Seal)

*Notary Public of New Jersey.*

10 Commission expires February 16, 1933.

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IN CHANCERY OF NEW JERSEY.

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20	Between VENTNOR CITY NATIONAL BANK OF VENTNOR CITY, N. J., <i>Complainant,</i> and TROY CORPORATION, <i>et als.,</i> <i>Defendants.</i>	}	On Bill, etc.
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30	STATE OF NEW JERSEY } ATLANTIC COUNTY }	} ss.
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BYRON JENKINS, being duly sworn according to law, upon his oath deposes and says, that he is a resident of Ventnor City, and for more than 17 years last past, has been and is now, engaged in the active business of a real estate agent and broker within

said city. And that he well knows the values as well as the uses, for which lands in Ventnor City can be used and applied.

That he well knows the premises located at the Southwest corner of Weymouth Avenue and Atlantic Avenue, in Ventnor City, which has a width of 56 feet on Atlantic Avenue, and extending that width South, 100 feet. That erected upon the said lot on Atlantic Avenue, is three stores, of one story constructed of brick. That the said three stores have been erected upon the said lands for approximately five years. That during all the period of time, since the erection of the said stores, they have not been continuously occupied or rented, and in the opinion of the deponent the said stores have not been rented for more than one-half of the time. 10

That in the opinion of the deponent, the said stores as now erected, can not be rented successfully at a rental which would be sufficient to warrant a purchaser in buying that portion of the said premises, which is 56 feet wide on Atlantic Avenue, by 60 feet in depth, to purchase the same, at other than a very reasonable price therefor, inasmuch as the buildings erected thereon at this time, have not been successfully rented. 20

And in the opinion of the deponent, said lot being within the business and apartment zone, under the zoning laws of Ventnor City, the said land, should be and must be maintained as a whole, 56 feet wide in front by 100 feet in depth, to make it a commercial property. That is to say, that for the proper development of the said land, there should be erected thereon, and provide sufficient room therefor, an apartment house building or hotel. 30

That in the opinion of this deponent, the dividing of the lot aforesaid, 56 feet by 100 feet, into a lot



is, and for more than 15 years last past, has been actively engaged in the buying and selling of real estate in Ventnor City, as a real estate agent and broker. That he well knows the lands and property situate on the Southwest corner of Weymouth Avenue and Atlantic Avenue in Ventnor City, N. J., which is a lot 56 feet front on Atlantic Avenue by 100 feet in depth. That the size of the said lot has a material effect in the matter of the value thereof. That a division of the said lot into two lots, namely, 56 feet by 60 feet, and 40 feet by 56 feet in the rear, very materially depreciates the value of the said land. That when divided, neither of the said lots would be of a size which would begin to jointly equal the value as of one lot in its entirety, as the value of the land is very materially fixed, by fact that when undivided, the lot 56 feet by 100 feet provides sufficient ground for the erecting of buildings thereon, for apartment hotel purposes or otherwise, which would have an earning capacity to carry the same.

That at the present time, erected on the Atlantic Avenue front, of said lot, there is three big stores, one story in height, that have been there for approximately five years.

That from his own personal observation, in his judgment, they have not been successfully occupied by tenants for more than one half of that time. That on the rear end of the lot, is a small private garage. That in his opinion, it is necessary and required, that for any and all purposes, it is necessary and advisable that the said lot, 56 feet by 100 feet, should be sold as one and not divided. That the lot 40 feet by 56 feet, is necessary and required in connection with the front part of the lot 56 feet by 60 feet, for the proper use, and required as a part of the lot 56 feet by 60 feet, for the proper building upon and development of the lot 56 feet by 60 feet.



and for more than 15 years last past, has been actively engaged in the real estate and brokerage business, dealing in real estate in Ventnor City.

That he well knows the premises on the Southwest corner of Weymouth and Atlantic Avenues, in Ventnor City, N. J. Being lot 56 feet in front by 100 feet in depth. That a division of the said lot into two lots, 56 feet by 60 feet and lot 40 feet by 56 feet, would very materially depreciate the value of the said lands. That if divided, neither of the said lots could be used to an advantage for building purposes. That on the lot 56 feet by 60 feet on Atlantic Avenue, there is now three stores, of brick, one story high, which in the opinion of the deponent, was built and intended to have been built as a temporary improvement, to produce an income toward defraying the carrying charges of the property, awaiting further development or permanent improvement. But in the opinion of the deponent, to develop this property for building purposes and to make proper income therefrom. It is necessary and required that the lot 40 feet by 56 feet in the rear, should and must be used as a part of, and in connection with, the lot 56 feet by 60 feet. And in the opinion of this deponent, it is proper and necessary and required, that the said lot, 56 feet by 100 feet is sold as a whole and entirety, and not divided.

ALBERT L. CORYELL.

Sworn and subscribed before me this 9th day of 30 August, 1929.

(Seal) REGINA E. FARLEY,  
*Notary Public for New Jersey.*  
My commission expires February 10th, 1930.

ORDER THAT LAND BE SOLD IN PARCELS.

(Filed October 10, 1929.)

IN CHANCERY OF NEW JERSEY.

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Between	}	On Bill, etc. Order That Land Be Sold in Parcels.
VENTNOR CITY NATIONAL		
BANK,		
Complainant,		
and		
TROY CORPORATION,	}	
Defendant.		

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This cause being opened to the Court by Emerson L. Richards, Esquire, of counsel for petitioner, and in the presence of John L. Westcott, Esq., attorney for complainant, and it appearing that the premises mentioned in the said petition and in the complaint, should be sold in parcels and not as a whole, and that the Sheriff of the County of Atlantic should be instructed to sell the said premises separately and in parcels in the inverse order of alienation:

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It is, on this tenth day of October, 1929,  
Ordered that the said premises be sold separately and in the inverse order of alienation, to wit:  
The following tract to be first sold:  
“All that certain lot, tract or parcel of land and premises, situate, lying and being in the City of Ventnor City, County of Atlantic and

State of New Jersey, bounded and described as follows:

BEGINNING at a point in the Westerly line of Weymouth Avenue, sixty feet south of the southwest corner of Atlantic and Weymouth Avenues; and extending thence (1) Westwardly, and parallel with the southerly line of Atlantic Avenue, fifty-six feet; thence (2) Southwardly, parallel with Weymouth Avenue, forty feet; thence (3) Eastwardly, parallel with Atlantic Avenue, fifty-six feet to the Westerly line of Weymouth Avenue; thence (4) Northwardly, in and along the westerly line of Weymouth Avenue forty feet to the point and place of beginning.” 10

being premises now owned by Warren L. Ridgway.

And that secondly, in the event the aforesaid premises will not be sufficient to satisfy the said mortgage debt, interest and costs of the complainant, that the sheriff sell the following described premises: 20

“All that certain lot, tract or parcel of land and premises, situate, lying and being in the City of Ventnor City, County of Atlantic and State of New Jersey, bounded and described as follows:

BEGINNING at a point in the southerly line of Atlantic Avenue, seventy-five feet east of the easterly line of Little Rock Avenue; and extending thence (1) Southwardly, and parallel with Little Rock Avenue, sixty feet; thence (2) Eastwardly, and parallel with Atlantic Avenue, fifty-six feet to a point in the westerly line of Weymouth Avenue; thence (3) Northwardly, in and along the Westerly line of Weymouth Avenue, 30

sixty feet to a point in the southwest corner of Atlantic and Weymouth Avenues; thence (4) Westwardly, in and along the southerly line of Atlantic Avenue, fifty-six feet to the place of beginning."

E. R. WALKER,  
C.

Respectfully advised,

R. H. INGERSOLL,

10

V. C.

I hereby consent to the form of the above order.

*Solicitor of Complainant.*

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CONCLUSIONS.

(Filed December 9, 1929.)

20

IN CHANCERY OF NEW JERSEY.

Between

VENTNOR CITY NATIONAL  
BANK,

*Complainant,*

and

TROY CORPORATION, *et als.*,

*Defendants.*

30

Conclusions.  
(Not for Print.)

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MR. JOHN WESTCOTT, for the complainant.

MR. S. PAUL RIDGWAY and MR. EMERSON RICHARDS,  
for the defendant, WARREN L. RIDGWAY.

INGERSOLL, V. C.

Where part or parts of mortgaged premises are sold by the mortgagor, said premises will be sold at the sale by virtue of a decree foreclosing the mortgage and in the inverse order of alienation.

The complainant's decree in foreclosure directed the Sheriff to sell the lands described in the mortgage, to raise the amount of the decree. Prior to the foreclosure a portion of the mortgaged property was sold and conveyed to the Troy Corporation, a party defendant. 10

The hearing is upon an order to show cause "why said premises described in complainant's mortgage, should not be sold in parcels and not as a whole, and why the premises now owned by the petitioner and the premises now owned by the Troy Corporation should not be sold separately." 20

The complainant resists the application upon two grounds. First, that the petitioner is not entitled to the relief prayed for because it is a creature of the mortgage. This is insufficient to deny the relief. Others are stockholders in the company.

Second, that the complainant is unable to determine the value of the respective portions of the mortgaged premises, and that the land is of greater value if sold as one tract, and affidavits are presented that for the proper development of the land it should be sold as an entirety and that by selling it in two tracts it would materially destroy the value of the land. 30

This case is not within the rule laid down by Chancellor Williamson in *Parkhurst v. Cory*, 11 N. J. Eq. 233, in which it was held: "There are cases where the court, by virtue of the statute, may make

a decree to sell the whole mortgaged premises, even where the whole sum secured by the mortgage is not due—as when it shall appear to the court that a part of the premises cannot be sold to satisfy the amount due without material injury to the remaining part of the mortgaged premises—the execution then commands the sheriff to sell the whole of the premises \* \* \*.”

10 The law applicable here was laid down by Chancellor Vroom, at the October Term, 1831, to be:

20 “Where a man gives a mortgage upon his property, and after having done so sells a part of it to a third person for a valuable consideration, justice demands that the residue of the mortgaged premises, in the hands of the mortgagor, should satisfy the mortgage debt; and the purchaser acquires a right even against the mortgagee, so far as to compel him to have recourse to such residue for the satisfaction of his debt, if it shall be sufficient for that purpose. If the mortgagor sell a second parcel, the second purchaser immediately acquires rights as against the mortgagor, and also as against the mortgagee, and rights also accrue immediately between the first and second purchasers, as to their liability to the mortgagee; all of which the court will notice and protect. If the property remaining unsold in the hands of the mortgagor is sufficient to pay the debt, both purchasers will be protected. If insufficient, the last purchaser is always first liable. This is the settled rule of this court, and is founded on plain principles of justice.”

30

Shannon v. Marselis, 1 N. J. Eq., page 413, at page 421.

Vice-Chancellor Leaming in *Ingersoll v. Somers Land Co.*, 82 N. J. Eq. 476, states the same rule and cites *Shannon v. Marselis*, supra, and *Wikoff v. Davis*, 4 N. J. Eq. (3 Gr.) 224; *Weatherby v. Slack*, 16 N. J. Eq. (1 C. E. Gr.) 491; *Mount v. Potts*, 23 N. J. Eq. (8 C. E. Gr.) 188; *Warwick v. Ely*, 29 N. J. Eq. (2 Stew.) 82; *Hiles v. Coult*, 30 N. J. Eq. (3 Stew.) 40; *Bowles v. Griffith*, 37 N. J. Eq. (10 Stew.) 384; *Gray v. Hattersley*, 50 N. J. Eq. (5 Dick.) 206, 211; *Daly v. Ely*, 51 N. J. Eq. (6 Dick.) 105; *Davis v. Piggott*, 56 N. J. Eq. (11 Dick.) 634; *Jackson v. Dondict*, 57 N. J. Eq. (12 Dick.) 522.

I will advise an order that the said premises be sold separately and in the inverse order of alienation.

Determined: December 5th, 1929.



[ENDORSED]

Service acknowledged this 6th day  
of January, 1930.

S. Paul Ridgway,  
Sol'r. for Defendants.

10

PETITION OF APPEAL.

(Filed January 8, 1930.)

NEW JERSEY COURT OF ERRORS AND  
APPEALS.

20

Between

VENTNOR CITY NATIONAL  
BANK,  
*Complainant-Appellant,*  
and

TROY CORPORATION, *et al.*,  
*Defendants-Respondents.*

On Appeal from the  
Court of Chancery.  
Petition of Appeal.

30

*To the Honorable, The Court of Errors and Appeals  
in the Last Resort in All Causes:*

The petition of Ventnor City National Bank, the  
appellant in the above entitled cause, respectfully  
shows that:

1. The petitioner finds itself aggrieved by an order made in the Court of Chancery by his Honor Edwin Robert Walker, Chancellor of the State of New Jersey, on the advice of Vice-Chancellor Ingersoll, bearing date October 10, 1929, in a certain cause in said Court of Chancery wherein the said Ventnor City National Bank was complainant and the said Troy Corporation, and others, were defendants, in this respect, that the said order decrees that the  
10 mortgaged premises be sold in parcels and in the inverse order of alienation.

And petitioner appeals from the order of the Chancellor upon the ground that the same is erroneous in that the Court was without power to make such an order and that if it had a discretion such discretion was abused in the light of the uncontroverted facts.

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

JOHN S. WESTCOTT,  
*Solicitor for Appellant.*

C. L. COLE,  
*Of Counsel.*

30

[ENDORSED]

Service acknowledged this 6th day  
of January, 1930.

S. Paul Ridgway,  
Sol'r for Respondents.

ANSWER TO PETITION OF APPEAL.

(Filed January 16, 1930.)

NEW JERSEY COURT OF ERRORS AND  
APPEALS.

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Between	}		10
VENTNOR CITY NATIONAL		On Appeal from the	
BANK,		Court of Chancery.	
<i>Complainant-Appellant,</i>		Answer to Petition of	
and		Appeal.	
TROY CORPORATION, <i>et al.,</i>			
<i>Defendants-Respondents.</i>			

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The answer of Warren L. Ridgway, the above named appellee, to the petition of appeal of Ventnor City National Bank, the above named appellant: 20

This appellee, not admitting the truth of all or any of the matters in said petition of appeal contained, for answer thereto, nevertheless admits that an order was on the 10th day of October, 1929, 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. 30

This appellee is advised and believes that 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.

S. PAUL RIDGWAY,  
*Solicitor for and of Counsel  
with Appellee.*



NEW JERSEY  
Court of Errors and Appeals

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Between  
VENTNOR CITY NATIONAL BANK,  
Complainant-Appellant,  
and  
TROY CORPORATION, a corp., &c., *et al.*,  
Defendants-Respondents.

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ON APPEAL FROM CHANCERY

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BRIEF FOR APPELLANT

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STATEMENT

This is an appeal from an order directing the sale of mortgaged premises in inverse order of alienation. The order was made on petition of Warren L. Ridgway, a party to the bill. He filed no answer; a decree *pro confesso* was entered against him, followed by a final decree and execution. A day or two after the date set for sale, he filed his petition, procured an order to show cause why the sale should not be made in inverse order and the order from which the appeal is taken was accordingly made.

The property described in the mortgage is a *single*

tract of land, situated in the heart of Ventnor City. As appears by the bill, the mortgage is a purchase money mortgage made by William L. Moise and wife. Thereafter they executed a second mortgage on the mortgaged premises and later conveyed the mortgaged premises to Martin I. Isen, *subject* to complainant's mortgage. He then conveyed to Warren L. Ridgway, *subject* to the mortgage. Later Ridgway conveyed a portion of the mortgaged premises to the Troy Corporation and the bill avers that said conveyance "is subsequent to and subject to the lien and encumbrance of the mortgage of the complainant." The mortgaged premises are located at the southwest corner of Atlantic and Weymouth Avenues, being 56 feet on Atlantic Avenue by 100 feet in depth, on which are located stores covering the entire tract on Atlantic Avenue, but not to the full depth of the lot.

The tract conveyed to the Troy Corporation is 60 feet on Weymouth Avenue and running 56 feet parallel with Atlantic Avenue.

The Vice-Chancellor's conclusions are predicated upon the theory of marshaling assets, and that Ridgway has an absolute right to demand that the sale be made in inverse order.

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## ARGUMENT

**The Facts of the Case Do Not Justify Invoking the Principle of Marshaling Assets.**

It should be observed that the mortgaged premises are described as a *single* tract of land, and that it is a purchase money mortgage.

According to the averments of the bill, the conveyance out of the mortgagor to his immediate grantee Isen, was subject to the mortgage, and the averments are that the subsequent conveyances were made subject to said mortgage.

The opinion cites numerous cases in support of the conclusion reached, but do they apply and are they controlling?

In *Chancellor v. Towell* (in this court), 80 Equity, 223, the controversy concerned the sale of separate tracts of land embraced in the mortgage. The same was true in *Ingersoll against Somers Land Company*, 82 Equity, 476; also true in *Jackson v. Condict*, 57 Equity, 522. These cases are cited in the opinion.

That the principle invoked by the Vice-Chancellor is not applicable where the mortgaged premises are described as a single parcel of land, seems implied in Ruling Case Law, Volume 18, page 468, under Marshaling Assets.

Moreover, there is no equity in favor of Troy Corporation against appellant. In *Jackson v. Condict*, *supra*, Vice-Chancellor Emery said:

“The doctrine of marshaling portions of lands in discharge of a mortgage in the inverse order of their alienation does not apply where the alienations were not made by deeds of general warranty, and were given for a nominal consideration, and there were no circumstances from which an agreement could be implied that the portions conveyed were to be free from the mortgage.”

In the instant case, there is no evidence that any deed contained the covenant of general warranty, and, as already stated, conveyances out of and through the

mortgagor were subject to the mortgage. There is nothing in the record to show what the consideration was from Ridgway to the Troy Corporation, or that the land conveyed was to be free from the encumbrance.

Appertaining to such a situation, it is said in *Jackson v. Condict*:

“Where the deed is upon a nominal consideration and there is no agreement either express, as by warranty in the deed or other covenant, and no argument can be implied from the circumstances of the case, that the portion conveyed was to be free from encumbrances, I see no equitable reason for holding that there should be any marshaling of the different portions for the discharge of the common burden.”

The Troy Corporation could protect itself by paying the amount due complainant and accepting an assignment of the decree.

See *Magie v. Reynolds*, 51 Eq. at p. 122. Also Pomeroy's Eq. Rem., Vol. 2, Section 868:

“Nor is the doctrine applicable between a purchaser of the equity of redemption and a prior mortgagee.”

*Chancellor v. Towell*, *supra*, is in denial of the right asserted. There, the conveyance was subject to a mortgage. The fourth syllabi is:

“The fact that the defendant Towell became an alienee of the second and third tracts, conveyed to him expressly subject to the mortgage which he had previously covenanted to pay, must be regarded as decisive against him of the question of his equity which he has raised upon this appeal.”

Again:

"Where a purchaser of a part of mortgaged premises assumes the payment of all of the mortgage on the whole of such premises, the land so purchased is liable for the mortgage debt before the portion of the mortgaged premises remaining unconveyed by the mortgagor or his estate can be sold in satisfaction of the mortgage debt.

In such cases the rule in equity that the aliened portions shall be sold in the inverse order of their alienations does not apply."

The opinion quotes from Pomeroy's Equity Jurisprudence, paragraph 1225, in which, among other things, it is said:

"Whenever a grantee of any parcel either expressly assumes the payment of the mortgage, or his deed is of such a form that he takes the parcel conveyed to himself subject to the mortgage as a part of the consideration, then, as has already been shown, the parcel thus purchased becomes, in the hands of himself and of those holding under him primarily chargeable with the mortgage debt as against the mortgagor grantor, and consequently as against all subsequent grantees of other parcels from the mortgagor. By such an express or implied assumption, the doctrine of liability in the inverse order of alienation, and all its consequences are defeated with respect to the mortgagor and the subsequent grantees."

In concurring in the result reached to reverse the decree, Mr. Justice Garrison said:

"My vote to reverse is based solely upon the

equitable rule stated by Professor Pomeroy in the concluding paragraph of Section 1225 of his work on Equity Jurisprudence and quoted at length by Judge Vrendenburgh in his opinion.

The deeds on record at the time of the second mortgage was taken gave notice by their terms of the equities subsisting between the mortgagor and his grantee by which the direct and not the reverse order of alienation obtained."

In the case under consideration, Moise, owner, and who executed the purchase money mortgage under foreclosure, conveyed to Isen "subject to the mortgage of the complaint which deed is of record, &c." Isen could not, in the face of the cited cases and their reasoning, have insisted upon a sale in inverse order, and Ridgway, who took through him, can rise no higher.

## II

### **The Principle of Marshaling Assets Is Not Inflexible.**

It will not be invoked where it may work injustice. In *Chancellor v. Towell* it is said:

"The rule in equity that where mortgaged premises are sold in separate parcels successively to different purchasers with covenants against encumbrances, the parcels are liable to sale to satisfy the mortgage, in the inverse order of their sale, 'will not be applied in any case where its application would work injustice.'"

*Hoy v. Bramhall*, 19 N. J. Equity, page 563, is cited.

After adverting to the principle of marshaling assets, the opinion reads (page 569) :

“This exception is, however, founded on equitable principles and has no application where the encumbrance is, by agreement between the mortgagor and his grantee, made a charge upon the granted premises, either in whole or in part.”

It should be borne in mind that the equity here claimed by respondents is not against the mortgagor of complainant and his grantees, but against the appellant, the holder of the purchase money mortgage. See Pomeroy's Eq. Rem., Vol. 2, Section 866 :

“Relief will not be given if it will delay or inconvenience the paramount encumbrancer in the collection of his debt, or prejudice him in any way.”

Looking to the affidavits filed by appellant on the return of the order to show cause, it is demonstrated that appellant certainly may be and doubtless will be damaged, if required to first sell excepting the land described in the deed of the Troy Corporation.

Byron Jenkins and William Haverstick and Albert Coryell, reputable realtors of Atlantic County, submitted separate affidavits. No reply affidavits were filed.

The buildings which cover the entire width of the lot on Atlantic Avenue are all stores, and are made with an outlet on the land in the deed to the Troy Corporation, in order to retain their value. The affidavits show the impropriety of a sale in separate parcels with the likelihood of diminution of value, if that occurs. The reason for their conclusion is stated, and seems sane. We will

not quote from the affidavits as the Court, of course, will read them *in extenso*.

Any doubt as to the propriety of enforcing sale other than as a whole and probability of damage to the appellant should be resolved in its favor.

### III

#### Respondents' Application Came Too Late.

It did not answer the bill nor in any way before execution issued set up a claim of right to a sale in inverse order. As will appear by the affidavit of Mr. Westcott, solicitor for appellant, the representative of the Troy Corporation, not respondent, negotiated with him for an extension of the mortgage, &c. No claim was made that the property should not be sold as a whole. As already stated, no application was made to the Court until a day or two after the time set for the sale.

Under the circumstances, the respondent showed lack of diligence and such lack should be read as a waiver of his right to maintain the claim asserted.

For the reasons above stated, or any one of them, the order should be reversed.

Respectfully submitted,

JOHN S. WESTCOTT,

*Solicitor of Appellant.*

C. L. COLE,

*Counsel.*

NEW JERSEY COURT OF ERRORS  
AND APPEALS.

---

Between

VENTNOR CITY NATIONAL BANK,  
*Complainant-Appellant,*

and

TROY CORPORATION, a corporation, *et als.,*  
*Defendants-Respondents.*

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ON APPEAL FROM CHANCERY.

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BRIEF FOR RESPONDENT.

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FACTS.

On or about September 23rd, 1925, Warren L. Ridgway was the owner of the premises described in the bill of complaint filed in the above-entitled cause by the Ventnor City National Bank; said premises consist of three one-story brick stores on Atlantic Avenue, in Ventnor City, N. J., and immediately adjoining said stores and at the back of same is a vacant lot, upon which there is erected a private garage used by the respondent, Warren L. Ridgway; that the premises covered by the mort-

gage of the Ventnor City National Bank is two parcels of land; one upon which the three one-story brick stores are erected, being fifty-six feet on Atlantic Avenue and having a depth of sixty feet; and the other premises consisting of a vacant lot with private garage erected thereon, being forty feet on Weymouth Avenue by fifty-six feet deep, which are the premises at the back of the store properties.

On or about December 17th, 1925, the respondent, Warren L. Ridgway, conveyed said premises to the Troy Corporation, a corporation organized under the laws of the State of New Jersey, being the three store properties fronting on Atlantic Avenue, which were fifty-six feet on Atlantic Avenue, and having a depth of sixty feet; the said Warren L. Ridgway retaining title to the premises in the rear of said stores and erecting thereon a private garage; that the mortgage of the Ventnor City National Bank was made by William L. Moise on September 22nd, 1925; that said premises were conveyed by the said William L. Moise to Martin I. Isen, and by the said Martin I. Isen conveyed to the said Warren L. Ridgway.

At the time the premises were conveyed by the said Martin I. Isen, there was upon the premises a second mortgage held by Carrie E. Moise; that the parcel of land known as the vacant lot was released from the said mortgage of Carrie E. Moise on or about October 15th, 1925; that foreclosure proceedings were instituted by the appellant, Ventnor City National Bank, and the defendants duly served with process, and decree *pro confesso* entered against all of the defendants; that by virtue of said foreclosure proceedings the premises were advertised for sale under a *feri facias* directed to the Sheriff of Atlantic County, and on or about July 25th, 1929,

the date upon which the premises were advertised for sale, the Sheriff of the County of Atlantic was requested to sell said mortgaged premises in parcels, and objection made to the sheriff that the advertisement of the sale of said premises was irregular, because the premises were susceptible of division, and that said premises should be sold separately; that a request was made of the solicitor of the appellant, Ventnor City National Bank, to release premises owned by respondent, Warren L. Ridgway, from said mortgage, upon the payment of the reasonable value of said lands and premises referred to as a vacant lot in the rear of the three stores; that the appellant refused to release said premises on the payment of said sum, and the sale of said premises was adjourned by the Sheriff of Atlantic County for one week, at which time an application was made to the Chancery Court for a rule to show cause why premises should not be sold in two separate parcels in the inverse order of their alienation; the Vice-Chancellor hearing the cause, entered an order that said premises be sold in the inverse order of alienation.

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ARGUMENT.

I.

The doctrine of marshaling of assets is applicable to this case, and the mortgaged premises should be sold in the inverse order of alienation. The premises, as originally sold, was a single tract of land, but because of the size of the lot, it was divided into parcels, the front part of the premises

being used as stores, and the rear part being a vacant lot and private garage, which vacant lot and private garage are owned by the respondent. The appellant, Ventnor City National Bank, regarded the said premises as two parcels of land, and the solicitor of appellant agreed to release from its mortgage the front parcel on which the stores were erected, which was the lot fifty-six feet by sixty feet deep, and allow the balance of the mortgage to remain for one year for \$4,000.00 or \$5,000.00 on the back lot (State of Case, p. 43); that appellant refused to release said mortgage because a gasoline station was about to be erected upon front premises; that William L. Moise and Carrie E. Moise, who were the owners of the second mortgage in the sum of \$20,000.00 on said premises, executed a release to the respondent for the back lot and allowed his mortgage to remain upon the store properties, and by their action indicated that the premises were two parcels of land.

The cases recited by the Vice-Chancellor in arriving at his conclusions, on which decree in the Chancery Court was reached, recited numerous cases in support of the rights of respondent for a sale of said premises in the inverse order of alienation:

“In this State the rule has always been recognized that when lands subject to an incumbrance are sold to different purchasers in different parcels by conveyances which are intended to be free from the liens of the incumbrances as between the several grantees and the persons holding the incumbrances, the lands are in equity chargeable with the incumbrance in the inverse order of their alienation.”

*Ingersoll v. Somers Land Co.*, 82 N. J. E., p. 476.

The leading case in this State appears to be *Shannon v. Marselis*, 1 N. J. E., p. 413, which holds as follows:

“Where new rights or interests have originated since the execution of a mortgage, although the mortgagee is no party to them, and they may delay him in the prosecution of his remedy, yet the Court will protect them and direct the mortgage to be paid out of such parts of the property as may be most equitable to all parties concerned. Where a mortgagor, after giving a mortgage, sells part of the mortgaged premises to a third person for a valuable consideration; justice demands that the residue of the premises in the hands of the mortgagor should satisfy the mortgage debt and the purchaser acquires a right, even against the mortgagee, to compel him to have recourse to such residue for the satisfaction of his debt.”

In the case of *Wikoff v. Davis*, 4 N. J. E., p. 224, it was held:

“If the mortgagor sells the land covered by the mortgage in different parcels and at different times, that portion of the land last sold must first be applied in discharge of the mortgage debt, and if that is not sufficient, then the other portions in the inverse order of the sales; and the same principle applies, although the sales of parcels were not made by the mortgagor but by the person claiming under him.”

See also *Weatherby v. Slack*, 16 N. J. E., p. 491; *Mount v. Potts*, 23 N. J. E., p. 188.

In the case of *Hiles v. Coult*, 30 N. J. E., p. 40, the Court opened a final decree upon the petition of

grantees of the mortgagor and the Court held that the premises should be sold in the inverse order of alienation.

## II.

The application of the doctrine of marshaling of assets, if invoked in this case, would not cause the appellant any harm, and would not work injustice upon the appellant; the appellant would not be damaged by first selling the land described in the deed of the Troy Corporation. The petition of respondent shows that the reasonable value of the lands and premises owned by the Troy Corporation is \$40,000.00, and that the reasonable value of the lands and premises owned by the respondent, Warren L. Ridgway, is \$5,000.00. The appellant, Ventnor City National Bank, can suffer no injury by the selling of said premises in the inverse order of their alienation, because the premises owned by Troy Corporation are worth a sum sufficient to pay the mortgage of the appellant.

The affidavits submitted by the appellant did not deny that said premises owned by the Troy Corporation were worth less than \$40,000.00, and the only proof of value of the premises owned by the Troy Corporation is that submitted by the respondent, and must therefore be taken to be \$40,000.00. The affidavits submitted by the witnesses, Byron Jenkins, Winfield Haverstick and Albert Coryell, did not state any values of the premises in question, but stated that in their opinion to divide the premises would materially destroy the value of the land, but did not give the valuation of the land as one tract, or the value of the two parcels. The affidavit of Byron Jenkins, the real estate broker,

states that the premises should be sold as a whole to provide sufficient room thereon for an apartment house building or hotel (State of the Case, p. 45, line 32).

It would appear, after reading the affidavits of the real estate brokers, submitted by the appellant, that any loss because said premises were not sold as a whole would be to the Troy Corporation, and to Warren L. Ridgway, and that there would be no loss to the appellant, because the premises owned by the Troy Corporation are worth the amount of appellant's mortgage.

### III.

Appellant contends that the application for the sale of said premises in parcels came too late. In the case of *Winters v. Henderson*, 6 N. J. E., p. 31, which was an application by one of the defendants who was a purchaser from the mortgagor of a part of the premises, that said premises be sold in the inverse order of alienation, which application was made after the *feri facias* was issued to the sheriff commanding him to make sale, the Court held the defendant might rely upon the Court to sell the property in parcels and in their proper order, and that the defendant might rely upon the Court to follow the usual procedure in a foreclosure suit and that the premises would be sold according to the rules of equity as administered by the Chancery Court; and that therefore he might assume that the premises would be sold in parcels.

In the case at bar, the respondent had a right to assume that the premises would be sold in the inverse order of alienation, and that he might attend the sheriff's sale and bid such premises in as

were owned by respondent and covered by appellant's mortgage; that under the terms of the final decree entered in this case, a writ of execution was ordered to be issued directed to the Sheriff of the County of Atlantic, commanding him to make sale of *so much* of the mortgaged premises as would be sufficient to satisfy said debt, interest and costs (see State of the Case, p. 39, line 20); and that the *feri facias* also provided that so much of said premises be sold as would be sufficient to pay the debt, interest and costs of the complainant. The respondent, therefore, had a right to assume that the premises would be sold in parcels, and was under no duty to make an application to the Court sooner, to have said premises sold in parcels.

The conclusions arrived at by the Vice-Chancellor in the lower court were therefore proper, and his order entered herein should be affirmed.

Respectfully submitted,

S. PAUL RIDGWAY,  
*Solicitor of Respondent.*  
EMERSON RICHARDS,  
*Of Counsel.*

