

Case, p. 501. In this motion, the city failed to point out any absence of proof or any matter of law, disentitling the plaintiffs to go to the jury.

It was the duty of counsel to point out the questions of law or fact, or both, upon which he relies for a non-suit. *Koch v. Castello*, 108 Atl. 223, and *Ippolito v. Borough of Ridgely*, 100 Atl. 337.

We, therefore, respectfully urge and submit that the judgment should be reversed and the case be remanded for new trial except as to the sum of \$413.17 and as to that it is urged that judgment be entered in favor of Plaintiffs-Appellants and against the City of Perth Amboy in the sum of \$413.17 and interest from July 1, 1913.

WELANKO & STRAUSS,
Of Counsel with Plaintiffs-Appellants.

ABRAHAM WELANKO,
On the Brief.

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BILL OF COMPLAINT.

IN CHANCERY OF NEW JERSEY.

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

The complainant, South Jersey Title and Finance Company, a corporation of the State of New Jersey, 10 respectfully shows that:

1. On July 6, 1923, Julian N. Ireland and Dora Ireland, his wife, being indebted to the Baltimore Life Insurance Company of Baltimore City, in the sum of \$15,000, executed a bond of that date to secure that sum, payable at the expiration of three years from said date with interest thereon at the rate of six per cent per annum, payable semi-annually. 20

2. To secure the payment of the bond said Julian N. Ireland and Dora Ireland, his wife, executed to the Baltimore Life Insurance Company of Baltimore City, a mortgage of even date with the bond and thereby conveyed in fee to it the lands and premises 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 30 acknowledged and the certificate of acknowledgment duly endorsed thereon, was recorded in the Clerk's office of Atlantic County, New Jersey on July 7, 1923, in book 265 of mortgages, page 339 &c.

3. The mortgaged premises are described as fol-

lows: ALL that certain tract or parcel of land and premises hereinafter particularly described in the City of Margate City, in the County of Atlantic, and State of New Jersey:

BEGINNING in the Southeasterly corner of Ventnor Parkway and Pembroke Avenue, and extending thence (1st) Southwardly, along the Easterly line of Pembroke Avenue, Ninety feet; thence (2nd) Eastwardly, parallel with Ventnor Parkway, Eighty and twenty-five hundredths feet; thence (3rd) Northwardly, parallel with Pembroke Avenue, ninety feet to the Southerly line of Ventnor Parkway; thence (4th) Westwardly, in and along the said Southerly line of Ventnor Parkway, Eighty and twenty-five hundredths feet to the place of beginning.

BEING Lot No. 1, in Block 18, on plan of Margate Park, situate in Margate City, made November 1909, by Ashmead & Hackney, civil engineers.

4. Both said bond and mortgage contained an agreement that if default should be made in the payment of any semi-annual installment of interest for the space of thirty days after the payment thereof should fall due, then, and in every such case, whether it be the first or any subsequent default, the whole principal debt of said bond and mortgage should, at the option of the mortgagee, its successors or assigns, become due and payable immediately, and that payment of said principal debt, and all interest thereon might be enforced and recovered at once.

5. Both said bond and mortgage contained an agreement that the mortgagors and obligors therein should pay all taxes, assessments and charges in the nature thereof laid or levied upon the lands and

premises described in said mortgage immediately upon their assessment, and that the said obligors and mortgagors should produce to the mortgagee, its successors or assigns, receipts for all such taxes and assessments within sixty days after the same should first become due and payable, and that they, the said obligors and mortgagors, would also keep the building erected on said lands insured against loss or damage by fire in a responsible fire insurance companies satisfactory to the mortgagee, and endorse or assign and deliver all policies thereof to the mortgagee as collateral security for the payment of the principal debt and interest of said bond and mortgage, the aggregate amount of the insurance to be not less than \$15,000.

6. Said bond and mortgage contained a further agreement that should default be made in the payment of said taxes or assessments or if default should be made in the production in any year of the tax receipts as provided in said bond and mortgage, the whole principal debt of said bond and mortgage should become due and payable immediately and might be enforced and recovered at once.

7. Both said bond and mortgage contained an agreement that if default be made in the performance of the covenants and conditions of the said mortgage, the whole principal debt thereof should become due and collectible.

8. On March 27, 1926, the Baltimore Life Insurance Company of Baltimore City, a corporation of Maryland, by a written assignment of mortgage of that date and recorded in the Clerk's office of Atlantic County, New Jersey on April 1, 1926, assigned the said mortgage for \$15,000 and the bond therein recited unto the complainant.

9. On October 20, 1924, Julian N. Ireland and Dora R. Ireland, his wife, by deed of that date and recorded in the clerk's office aforesaid on October 22, 1924, in book 750 of deeds, page 475, conveyed the said mortgaged premises unto F. Ernest Todd, Incorporated, a corporation of New Jersey, in fee. Said deed expressly recited that the conveyance was subject to complainant's mortgage.

10 Any interest which the said F. Ernest Todd, Incorporated, acquired or has in the mortgaged premises, was and is subject to the lien of complainant's mortgage.

10. On October 20, 1924, said F. Ernest Todd, Incorporated, a corporation of New Jersey, mortgaged the said lands and premises to Julian N. Ireland and Dora R. Ireland for \$10,000 by mortgage of that date and recorded in the said clerk's office on October 22, 1924, in book 213 of mortgages, page 20 182.

Any interest which the said Julian N. Ireland and Dora R. Ireland have in the mortgaged premises is subject to the lien of complainant's mortgage.

11. On September 15, 1925, said Julian N. Ireland and Dora R. Ireland by written assignment of that date and recorded in the said clerk's office on September 17, 1925, assigned the said mortgage for \$10,000 unto Guarantee Trust Company, a corporation of New Jersey.

30 Any interest which the said Guarantee Trust Company acquired in the mortgaged premises was subject to the lien of complainant's mortgage.

12. On April 26, 1926, said Guarantee Trust Company, a corporation of New Jersey, by written assignment of that date and recorded in said clerk's

office on April 27, 1926, assigned the said mortgage for \$10,000 unto Julian N. Ireland and Dora R. Ireland, his wife.

Any interest which the said Julian N. Ireland and Dora R. Ireland acquired in the mortgaged premises by virtue of said assignment or by virtue of said mortgage for \$10,000 is subject to the lien of complainant's mortgage.

13. On October 22, 1924, F. Ernest Todd, Incorporated, a corporation of New Jersey, mortgaged the said lands and premises to William Schmid, trustee for persons hereinafter named, for \$8660.25, by mortgage of that date and recorded in the clerk's office aforesaid on October 22, 1924, in book 311, page 409, etc. Said mortgage contains a covenant and provision as follows:

10 "It is understood and agreed by and between the parties hereto that the aforesaid William Schmid, second party, is Trustee for the persons and corporations hereinafter named, for the express purpose of paying or causing to be paid to them the sums of money set opposite their respective names, and for said purpose is to hold the property conveyed by said mortgage in accordance with the terms thereof and in accordance with the conditions therein set forth.

The *Cestuis qui* trust are as follows:

John J. Hunter	\$645.00	
Chelsea Laundry Company, a corp.	356.68	30
William Gordon	2219.36	
Ocean Pier Fish Market, Inc., a corp.	465.08	
Charles E. Custer and Harry Kallas, partners trading as Custer and Kallas	1296.05	

William I. Segal	1468.57
Guarantee Trust Company, a banking corp. of N. J.	1200.00
William Lewis Company, a corp.	658.69
Supplee-Wills-Jones Co., a corp.	360.82''

10 Any interest which the said William Schmid, Trustee, John J. Hunter, Chelsea Laundry Company, a corporation, William Gordon, Ocean Pier Fish Market, Incorporated, a corporation, Charles E. Custer and Harry Kallas, partners trading as Custer and Kallas, William I. Segal, Guarantee Trust Company, a banking corporation of New Jersey, William Lewis Company, a corporation, and Supplee-Wills-Jones Co., a corporation, have in the mortgaged premises, is subject to the lien of complainant's mortgage.

20 14. On October 27, 1924, F. Ernest Todd, Incorporated, a corporation of New Jersey, mortgaged the said lands and premises to George J. Turcott, for \$2050.00 by mortgage of that date and recorded in the Clerk's office aforesaid on October 28, 1924, in book 314 of mortgages, page 191.

Any interest which the said George J. Turcott has in the mortgaged premises is subject to the lien of complainant's mortgage.

30 15. On November 3, 1924, F. Ernest Todd, Inc., a corporation of New Jersey, by deed of that date and recorded in the Clerk's office aforesaid, on November 13, 1924, in book 756 of deeds, page 175, conveyed the said lands and premises unto Ada L. Todd, in fee.

Any interest which the said Ada L. Todd has in the mortgaged premises is subject to the lien of complainant's mortgage.

16. The said deeds from Julian N. Ireland and Dora R. Ireland to F. Ernest Todd, Incorporated, and from F. Ernest Todd, Inc., to Ada L. Todd both recite a consideration of one dollar. Complainant is without knowledge of all the facts concerning the conveyance of the said lands and premises as recited by said deeds and charges that said Julian N. Ireland and Dora R. Ireland, notwithstanding said deed to F. Ernest Todd, Incorporated, and the said F. Ernest Todd, Inc., notwithstanding said deed of conveyance to Ada L. Todd, claim to and do have an interest as owners in the said mortgaged premises.

Any interest which the said Julian N. Ireland, and Dora R. Ireland, and said F. Ernest Todd, Inc., have as owners, or otherwise, is subject to the lien of complainant's mortgage.

20 17. On June 10, 1925, M. E. Blatt, a corporation, recovered in the District Court of Atlantic City, a judgment against Ada L. Todd and F. Ernest Todd for \$214.39 debt, and \$14.69 costs, and caused said judgment to be docketed in the Common Pleas Court of Atlantic County, New Jersey, on July 2, 1925, in book 5 of Docketed Judgments from Atlantic City District Court, page 263, for \$229.59, being the items of debt and costs aforesaid, plus fifty cents for transcript.

30 Any interest which the said M. E. Blatt, a corporation, has in the mortgaged premises is subject to the lien of complainant's mortgage.

18. The municipal taxes assessed against the mortgaged premises for the year 1925 amount to \$387.00. Default has been made in the payment of said taxes for the space of more than sixty days after the same

became due, and in the production to the mortgagee, its successors or assigns, of receipted tax bills as required by the terms and conditions of the complainant's mortgage. Said taxes still remain unpaid and the full amount thereof is still due, together with interest and costs.

19. The municipal taxes assessed against the mortgaged premises for the year 1926 amount to \$349.47, and default has been made in the payment of the first half of said taxes due June 1, 1926, and said default has continued for the space of more than sixty days.

20. The said Ada L. Todd is married and the name of her husband is F. Ernest Todd.

Any interest which the said F. Ernest Todd has in the mortgaged premises is subject to the lien of complainant's mortgage.

21. The obligors, Julian N. Ireland and Dora Ireland, named in and who executed the said bond for \$15,000, held by the complainant, are liable jointly and severally under said bond to complainant in the event there be a deficiency after the sale of the mortgaged premises.

22. On or about March 30, 1925, said Ada L. Todd and F. Ernest Todd entered into an agreement with Edward Liebe, whereby they agreed to convey to the said Edward Liebe, the mortgaged premises.

23. The said Edward Liebe and his wife, Blanche Liebe, are in possession of the mortgaged premises under said agreement.

24. The said Edward Liebe and Blanche Liebe claim to have an interest in said premises by virtue of said agreement and also claim to have a right of possession to said premises and interest therein. Any interest and rights which the said Edward Liebe and Blanche Liebe or either of them have in the said mortgaged premises by way of possession or interest by virtue of said agreement of sale or otherwise, are subject to the lien of complainant's mortgage.

25. The said Edward Liebe is married and the name of his wife is Blanche Liebe. Any interest which she has in the mortgaged premises by reason of being the wife of said Edward Liebe or otherwise, is subject to the lien of complainant's mortgage.

26. The said mortgage of complainant also provided that in default of providing fire insurance as required by the terms of the mortgage hereinabove referred to, the mortgagee, its successors or assigns, should have the option of effecting such insurance and pay for the same, and that the premium or premiums for effecting such insurance should be added to the principal moneys secured by this mortgage and be payable with interest.

27. Default was made in providing fire insurance as above mentioned and by reason of said default, complainant was obliged to effect fire insurance on the buildings erected upon the lands described in said mortgage at an expense of \$146.25, said insurance being placed and effected on June 30, 1926, in place of insurance which expired on that date, and which the owners of the mortgaged premises neglected to renew. No portion of said insurance premium of

\$146.25 has been paid, and there is due to the complainant the full amount thereof, together with interest from June 30, 1926.

28. By the terms and conditions of complainant's said bond and mortgage the whole principal sum of \$15,000 thereof became due and collectible on July 6, 1926, and the same has not been paid.

10 29. By reason of default in the payment of the municipal taxes assessed against said premises and production of receipts therefor to complainant as hereinabove set forth, the whole principal sum of complainant's mortgage has also become due, payable and collectible and complainant elects that the same has so become due, payable and collectible.

20 30. A semi-annual installment of interest became due on the said bond and mortgage of complainant on July 6, 1926, and remained unpaid for more than thirty days and is still unpaid, and by reason of that default, the entire principal of complainant's mortgage, together with interest thereon, has also become due and payable and complainant elects that the same has so become due and payable.

30 31. The whole amount of principal of \$15,000 with interest thereon from January 6, 1926, is due upon complainant's bond and mortgage, together with the further principal sum of \$146.25 paid out by complainant for fire insurance with interest thereon from June 30, 1926.

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

1. That Julian N. Ireland, Dora Ireland, F. Ernest Todd, Inc., a corporation of New Jersey, M. E. Blatt, John J. Hunter, Chelsea Laundry Company, a corporation, William Gordon, Ocean Pier Fish Market, Inc., a corporation, Charles E. Custer and Harry Kallas, partners, trading as Custer and Kallas, William I. Segal, Guarantee Trust Company, a banking corporation of New Jersey, William Lewis Company, a corporation, Supplee-Wills-Jones Co., a corporation, William Schmid, trustee for John J. Hunter, Chelsea Laundry Company, a corporation, William Gordon, Ocean Pier Fish Market, Inc., a corporation, Charles E. Custer and Harry Kallas, partners, trading as Custer and Kallas, William I. Segal, Guarantee Trust Company, a banking corporation of New Jersey, William Lewis Company, a corporation, and Supplee-Wills-Jones Co., a corporation; George J. Turcott, Ada L. Todd, F. Ernest Todd, Edward Liebe and Blanche Liebe, who are the defendants to this suit, may answer this bill of complaint without oath and each statement therein made. 10 20

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

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

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

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

BABCOCK & CHAMPION,
Solicitors for and of Counsel with Complainant.

PETITION FOR INJUNCTION.
IN CHANCERY OF NEW JERSEY.

Between:

20	SOUTH JERSEY TITLE & FINANCE COMPANY, a corporation, etc., <i>Complainant,</i> and JULIAN N. IRELAND, <i>et</i> <i>als.,</i> <i>Defendants.</i>	}	On Bill to Foreclose. Petition for Injunction.
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30 The petition of Julian N. Ireland, Dora R. Ireland, Ada L. Todd, F. Ernest Todd, Edward Liebe, Blanche V. Liebe, George J. Turcott and William Schmid, trustee for John J. Hunter, Chelsea Laundry Company, William Gordon, Ocean Pier Fish Market, Inc., Charles E. Custer and Harry Kallas, trading as Custer and Kallas, William I. Segal, Guarantee Trust Company, a banking corporation

of New Jersey, William Lewis Company and Supplee-Wills-Jones Company respectfully shows that:

1. Some time on or about November 24, 1922, petitioners Julian N. Ireland and Dora R. Ireland entered into written agreement with one Lewis P. Scott, whereby said Julian N. Ireland and Dora R. Ireland agreed to buy and said Lewis P. Scott agreed to sell certain premises situate in the City of Margate City, Atlantic County, New Jersey, and located at the southeast corner of Pembroke Avenue and Ventnor Parkway eighty and twenty-five hundredths (80.25) feet and eastwardly along the southerly line of Ventnor Parkway and ninety (90) feet southwardly along Pembroke Avenue, being known as lot number 1, block 18 on a certain plan of lots entitled "Plan of Margate Park" situate in Margate City, New Jersey, made November, 1909, by Ashmead & Hackney, civil engineers, filed December 16, 1909, in the clerk's office of Atlantic County, New Jersey.

2. On November 24, 1922, petitioners, Julian N. Ireland and Dora R. Ireland caused written application to be filed and made to the South Jersey Title & Finance Company, the complainant in this cause for a guarantee in its usual form guaranteeing the title of the land hereinbefore described in the sum of \$15,000.00, which said application is designated in the files of said South Jersey Title & Finance Company as application number 10702.

3. On December 21, 1922, said Julian N. Ireland and Dora R. Ireland, petitioners herein, and said Lewis P. Scott met in the offices of said South Jersey Title & Finance Company for the purpose of

making settlement under their said agreement hereinbefore referred to. At said time and place said South Jersey Title and Finance Company produced and exhibited to petitioners Julian N. Ireland and Dora R. Ireland what is commonly known as a settlement certificate certifying the condition of the title of said premises hereinbefore described as was disclosed after search of the public records of this State and Atlantic County. A copy of said settlement certificate is attached hereto, marked Exhibit A, and by this reference made a part hereof.

4. At the time of said final settlement a statement of said settlement was prepared in the offices of said South Jersey Title & Finance Company by a settlement clerk in its employ for the purpose of determining the moneys required to be paid by petitioners, Julian N. Ireland and Dora R. Ireland to said Lewis P. Scott under said agreement of sale, as well as the moneys due to said South Jersey Title & Finance Company for services rendered by it in compliance with said application for title insurance or guarantee. At said time and place said Julian N. Ireland and Dora R. Ireland were required to and did pay to said South Jersey Title & Finance Company the sum of forty-five (\$45.00) dollars as and for a premium to it for its guarantee of the title of said property in accordance with the facts disclosed on said settlement certificate attached hereto and marked Exhibit A.

5. At the time of said final settlement said premises consisted of a vacant lot of land upon which petitioners, Julian N. Ireland and Dora R. Ireland, had planned and arranged to build a certain dwelling house, which fact was then and there made known

to said South Jersey Title & Finance Company. Said Julian N. Ireland and Dora R. Ireland also then and there made known to said South Jersey Title & Finance Company that they had negotiated for and been promised a loan from the Baltimore Life Insurance Company, of Baltimore, Maryland, which said loan was to be secured by their bond and mortgage covering the premises herein described, and which said loan was to be advanced and said bond and mortgage executed and delivered at and upon the final completion of the erection and construction of said dwelling house. Because of these facts then and there made known to said South Jersey Title & Finance Company as aforesaid, it, the said company, did agree to and with said Julian N. Ireland and Dora R. Ireland that said title policy could and would remain open until such time as said dwelling house had been completely erected and constructed, when said title policy would then be issued to said Baltimore Life Insurance Company as the assured mortgagee, said title policy to accompany said bond and mortgage.

6. On July 7, 1923, said South Jersey Title & Finance Company in compliance with said understanding and agreement it had with petitioners Julian N. Ireland and Dora R. Ireland as aforesaid issued its policy number 10551 in the sum of \$15,000.00 to the Baltimore Life Insurance Company, of Baltimore City, insuring it and all persons or corporations to whom said policy might be transferred with the assent of said South Jersey Title & Finance Company against all loss or damage not exceeding said sum of \$15,000.00 which the insured should sustain by reason of defects in the title of the insured estate, mortgage or interest described in Schedule

A annexed to said policy, or because of liens or incumbrances charging the same at the date of said policy, saving the estates, defects, objections, liens or incumbrances excepted in Schedule B annexed to said policy. A copy of said title policy is hereto annexed, marked Exhibit B, and by this reference made a part hereof.

7. On the 20th day of October, 1924, petitioners
 10 Julian N. Ireland and Dora R. Ireland granted and conveyed the premises in question to F. Ernest Todd, Inc., a New Jersey corporation, which, in turn, granted and conveyed the same to Ada L. Todd, one of the petitioners herein and a defendant in this cause. At the time of said transfer of said property from Julian N. Ireland and Dora R. Ireland to F. Ernest Todd, Inc., there was executed and delivered by said F. Ernest Todd, Inc., to said Julian N. Ireland and Dora R. Ireland a bond and mortgage covering said
 20 premises to secure the payment of the sum of \$10,000.00, a part of the consideration price incident to said transfer. Said bond and mortgage is now in the possession of said Julian N. Ireland and Dora R. Ireland and is wholly unpaid and unsatisfied.

8. On the 30th day of March, 1925, by agreement bearing that date petitioners, Ada L. Todd and F. Ernest Todd, her husband, for a valuable consideration therein set forth agreed to convey to petitioner,
 30 Edward Liebe, the premises aforesaid by general warranty deed free from all encumbrance, excepting restrictions of record and the aforesaid mortgage of said Baltimore Life Insurance Company. Said Edward Liebe has entered into possession of said premises and has expended thereon for improvements a sum in excess of \$5000.00.

9. On October 22, 1924, said F. Ernest Todd, Inc., being indebted to petitioner, William Schmid, as trustee for John J. Hunter, Chelsea Laundry Company, Ocean Pier Fish Market, Inc., Charles E. Custer and Harry Kallas, trading as Custer and Kallas, William I. Segal, Guarantee Trust Company, a banking corporation of New Jersey, William Lewis Company and Supplee-Wills-Jones Company in the total sum of \$8660.25 executed to petitioner, William Schmid, trustee as aforesaid, a certain bond of that
 10 date to secure the payment of that sum and a mortgage conveying to him in fee the hereinbefore described land and premises, subject to redemption upon payment of said debt. Said bond and mortgage is now in possession of said petitioner William Schmid, trustee as aforesaid, and the same is wholly unpaid and unsatisfied.

10. On October 27, 1924, F. Ernest Todd, Inc., being indebted to petitioner, George J. Turcott in the sum of \$2050.00 executed to him a certain bond
 20 of that date to secure the payment of that sum and a mortgage conveying to him in fee the hereinbefore described land and premises, subject to redemption upon payment of said debt. Said bond and mortgage is now in the possession of said petitioner, George J. Turcott, and the same is wholly unpaid and unsatisfied.

11. On or about the time of the making of said agreement between said Ada L. Todd and F. Ernest
 30 Todd, her husband, and between Edward Liebe, hereinbefore referred to, petitioners herein were informed that the Exeter Land Company, a corporation of New Jersey, claimed to own said premises hereinbefore described, or some interest therein, or

to hold some lien or incumbrance thereon, which said claim was adverse to the title or interest of the petitioners herein in and to said premises.

12. As a result of the claim of said Exeter Land Company, as aforesaid, the petitioners herein filed their bill of complaint in this Court in a suit wherein they appear as complainants and Exeter Land Company, Raymond P. Read, Jane C., his wife, Carlton Godfrey, Annie M., his wife, and Baltimore Life Insurance Company appear as defendants, the purposes of which bill was to quiet the title to said lands and premises, and among other things, prayed:

“That the rights of all the parties to this suit in and to the lands hereinbefore set forth may be fixed and settled by this Court, and that complainant, Ada L. Todd, may be decreed to have a perfect title thereto, and that the mortgages created as aforesaid may be decreed to be good and valid liens in the order of their respective priorities, and that the defendant Exeter Land Company, have no estate, interest or right in or incumbrance upon said lands or in any part thereof.”

Said bill of complaint sets forth and alleges all the facts, circumstances and conditions upon which said Exeter Land Company bases its said claim, and also all the facts and circumstances upon which the parties to said suit base their respective claims of an interest in and to said premises. The cause wherein said bill of complaint has been filed is referred to in the clerk's office of said Court of Chancery as appearing in Docket No. 60, page 103, and for greater particularity petitioners herein beg leave to refer to the files of said cause as the same appear in said clerk's office.

13. As will appear by reference to the bill of complaint filed by petitioners herein as aforesaid the claim of said Exeter Land Company is alleged to exist because of certain facts and circumstances which occurred prior to the date when petitioners herein secured their interest in and to said premises and prior to the date when said South Jersey Title & Finance Company, complainant in this cause, issued its said policy of title insurance to said Baltimore Life Insurance Company wherein it insured said title against said claim of said Exeter Land Company, not by specific reference thereto but by reason of the fact that it does not appear therein among any of the exceptions noted in Schedule B attached thereto.

14. Shortly after petitioners' said bill of complaint was filed in said cause against said Exeter Land Company and others as aforesaid a subpoena *ad respondendum* issued out of this Court directed to said Baltimore Life Insurance Company, as well as all the other defendants, requiring it and them to answer all of the allegations of said bill of complaint.

15. Shortly thereafter said Baltimore Life Insurance Company demanded that said South Jersey Title & Finance Company, the complainant herein, should protect it from and against the claim of said Exeter Land Company by reason of the title insurance or guarantee which it, the said South Jersey Title & Finance Company, had issued and delivered to it, the said Baltimore Life Insurance Company as aforesaid. As a result of said demand made as aforesaid the said South Jersey Title & Finance Company did on or about March 27, 1926, pay to said

Baltimore Life Insurance Company all of the moneys then due to it under and by virtue of the bond and mortgage which it then held covering the premises hereinbefore described and hereinbefore referred to and received said bond and mortgage from said Baltimore Life Insurance Company by written assignment dated on that day. Said bond and mortgage was assigned as the same bond and mortgage mentioned in the bill of complaint filed in this cause by 10 said South Jersey Title & Finance Company as complainant, whereby it, the said South Jersey Title & Finance Company, seeks to foreclose the interest of all of the petitioners herein who are made parties defendant in and to said suit.

16. Said South Jersey Title & Finance Company, complainant as aforesaid, has, however, not included said Exeter Land Company as a party defendant in and to its said foreclosure suit.

20 17. Petitioners herein are also informed and therefore believe that coincident with the assignment and delivery of said bond and mortgage by said Baltimore Life Insurance Company to said South Jersey Title & Finance Company it, the said Baltimore Life Insurance Company, also surrendered and delivered up either by assignment, or otherwise, to said South Jersey Title & Finance Company its said title policy hereinbefore referred 30 to.

18. The issues of law and fact raised and before this Court by virtue of the allegations contained in petitioners' bill of complaint filed against said Exeter Land Company and others as aforesaid is still pending before and undetermined by this Court.

19. All of the petitioners herein who are also defendants to the foreclosure bill filed in this cause are unable to protect their respective interests in and to said premises aforesaid against the claims of said South Jersey Title & Finance Company, complainant herein, until their rights have been fixed and settled by this Court, as by and in the manner prayed for in their bill of complaint filed in this cause against said Exeter Land Company and others, and said petitioners herein do hereby offer 10 and tender themselves ready and willing to pay to said South Jersey Title & Finance Company, complainant herein, all of the moneys due under and by virtue of its said bond and mortgage if and at such time as this Court shall decree that said Exeter Land Company has no estate, interest or right in or incumbrance upon said lands or any part thereof as is prayed for in petitioners' bill of complaint.

Your petitioners therefore pray that an injunction may issue in favor of them and against said complainant herein, South Jersey Title & Finance 20 Company, to restrain it from proceeding further with the foreclosure suit instituted by it as aforesaid and now pending in this court entitled in this cause, and that petitioners may have further or other relief in the premises as the nature of the case may require and as shall be agreeable to equity and good conscience.

HARCOURT & STEELMAN,
Solicitors for and of Counsel 30
with Petitioners.

EXHIBIT "A."

COPY

SOUTH JERSEY TITLE AND FINANCE
COMPANY

Marine Trust Company Building,
Atlantic City, N. J.

This Company will not guarantee accuracy of
10 description unless an accurate survey has been obtained through the Company. The liability of this Company under this Certificate is limited to indemnifying the applicant aforesaid from loss arising from errors herein and omission herefrom to an amount not exceeding the amount of the guaranty requested in said application.

When the title is properly closed, the papers duly recorded by this Company and this Certificate returned to this Company with a complete report of
20 the closing, accompanied by the receipts and proofs required below, a guarantee in its usual form excepting all estates, liens and defects shown herein and not satisfactorily disposed of, will be issued in accordance with the application.

This Certificate shall not bind this company unless the charges referred to in the application are paid when demanded, nor after the guarantee has been issued.

The searches should be continued to the time of
30 closing. If this company has been notified of a date fixed for the closing of the transfer of title, it will make necessary continuations without any further request so to do; but if the date has not been fixed or has been changed this Company should be notified of the date set by being given at least two days' notice unless it consents to a shorter time.

This Company provides ample facilities for the closing of titles at its own offices. No charge is made therefor, but if the closing be made outside of its office and a representative of the Company is requested by the applicant to be present a settlement fee will be charged said applicant.

The identity of all persons executing papers must be established to the satisfaction of the Company. A statement of the facts relied upon in this connection should be furnished the Company in writing
10 where settlement is made without the aid of one of the Company's representatives. Papers sent this Company for recording after such a settlement will be recorded without delay at applicant's risk, but the Company will not issue its guaranty until satisfied on these points.

Application No. 10702 Block No. Sec. 17 Amount \$. .
Atlantic City, N. J. December 6, 1922.

The SOUTH JERSEY TITLE AND FINANCE
COMPANY hereby certifies to the applicant for
20 guaranty under above number and under the provisions thereof that it has examined the title to land in the City of Margate City, County of Atlantic, State of New Jersey, described

Beginning in the Southeasterly corner of Ventnor Parkway and Pembroke Avenue; thence

(1) Southwardly, along the Easterly line of Pembroke Avenue, 90 feet; thence

(2) Eastwardly, parallel with Ventnor Parkway, 80.25 feet; thence

(3) Northwardly, parallel with Pembroke Avenue,
90 feet to the Southerly line of Ventnor Parkway;
thence

(4) Westwardly, along the said line of Ventnor Parkway, 80.25 feet to the place of beginning

BEING Lot 1, Block 18 on Plan of Margate Park

situate in Margate City, Made November 1909 by Ashmead and Hackney, Civil Engineers. and finds that the title is subject to the following estates, liens, defects and questions which are to be excepted in the guaranty, unless documentary evidence of their removal be submitted which shall be satisfactory to this Company:

1. Rights of way, public or private.
2. Taxes and municipal claims for the current 10 years.
3. Mechanic's Lien Claims not filed, nor of record.
4. Occupancy of the premises.
5. Any variations in location of lines or dimensions, encroachments, objections, or easements which an accurate survey showing all physical conditions, including ways, buildings, fences and windows, would disclose, or which are visible, or are known to the insured.
6. Zoning and building regulations created by 20 public authority.
7. Liability to assessment for municipal improvements such as grading, paving, curbing, gutters and sidewalks done or being done.
8. Rights of the Delaware and Atlantic Telegraph and Telephone Company to construct, operate and maintain its poles and wires, etc., over Margate Park as contained in Grants from the Greater Atlantic Development Company to said Company, dated January 12, 1910 and recorded in Book 423, page 21.
9. Rights of the Atlantic City Electric Company 30 to construct, operate and maintain its poles and wires, etc., over Margate Park as contained in Grants from the Greater Atlantic Development Company, dated January 21, 1910 in Book 423, page 15.
10. Restrictive covenants as imposed by Howard G. Harris et ux in Deed to Margate Company, dated

January 19, 1910 and recorded in Book 423, page 36.

Cancelled 7/16/23

11. *MORTGAGE—Harold T. Monell to Emma E. M. Doherty, Trustee, Dated April 11, 1922 and recorded May 9, 1922 in Book 231, page 150, to secure \$2,000.00 payable at any time within three years from date with interest at six per cent payable semi-annually.

12. Production of a receipted Tax bill for the 10 year 1922.

13. Delivery and record of a mortgage—Julian N. Ireland and Dora Ireland to Insured.

14. Any conveyance or liens that may be lodged for record between the date of this certificate and date of final settlement.

*NOTE:—This Mortgage assigned to Estate of Daniel Gifford, Emma E. M. Doherty, Trustee, having been paid. Assignment dated December 21, 1922 and recorded January 12, 1923. 20

EXHIBIT "B."

SOUTH JERSEY
TITLE AND FINANCE COMPANY
Atlantic City, N. J.

Number	Dollars
10551 Marine Trust Company Building	\$15,000.00

THIS POLICY OF INSURANCE Witnesseth that the SOUTH JERSEY TITLE AND FINANCE 30 COMPANY in consideration of the payment of its charges for the insuring of the title to the land hereinafter described, hereby covenants that it will insure, indemnify and keep harmless The Baltimore Life Insurance Company of Baltimore City, a corporation of the State of Maryland. and all persons or corporations to whom this Policy

may be transferred with the assent of this Company evidenced by the signature of its proper officer endorsed thereon, against all loss or damage not exceeding the sum of Fifteen Thousand dollars which the insured shall sustain, by reason of defects in the title of the insured estate, mortgage, or interest described in Schedule A, hereto annexed, or because of liens, or incumbrances charging the same at the date of this Policy (unless some other date be mentioned in Schedule A, and then at the last mentioned date); saving the estates, defects, objections, liens or incumbrances excepted in Schedule B, or by the conditions of this Policy hereto annexed and hereby incorporated into and made part of this contract. The loss and the amount to be ascertained in the manner provided in the said conditions, and to be payable upon compliance by the insured with the stipulations of said conditions, and not otherwise.

This policy is issued upon an application numbered 10702, Section 17, and it is agreed by all persons or corporations claiming under it to be a warranty of the facts therein stated.

IN WITNESS WHEREOF, the SOUTH JERSEY TITLE AND FINANCE COMPANY has caused its corporate seal, to be hereunto affixed and these presents signed by its President, attested by its Assistant Secretary this Seventh day of July, in the year of our Lord one thousand nine hundred and Twenty-three.

.....
 President

 Assistant Secretary

True copy of
 policy #10551
 J. C. Kline
 Secretary
 10/4/26

SCHEDULE A.

1
 The estate or interest
 of the Party Insured
 covered by this Policy

2
 How title is vested in
 the Party Insured 10

3
 Description of Premises
 Interest as Mortgagee
 Mortgage—Julian N. Ireland and Dora Ireland, his
 wife, to Insured.
 Dated—July 6, 1923.
 Recorded—July 7, 1923.
 Book—265, page—339
 To secure the sum of \$15,000.00, payable at the ex- 20
 piration of three years from date thereof, interest
 6%, payable semi-annually.
 Situate in the City of Margate City, County of At-
 lantic and State of New Jersey, bounded and de-
 scribed as follows:
 BEGINNING in the Southeasterly corner of Vent-
 nor Parkway and Pembroke Avenue, and extending
 thence
 (1) Southwardly, along the Easterly line of Pem-
 broke Avenue, ninety feet; thence 30
 (2) Eastwardly, parallel with Ventnor Parkway,
 eighty and twenty-five hundredths feet; thence
 (3) Northwardly, parallel with Pembroke Avenue,
 ninety feet to the Southerly line of Ventnor Park-
 way; thence
 (4) Westwardly, in and along the said Southerly

line of Ventnor Parkway, eighty and twenty-five hundredths feet to the place of beginning.

BEING Lot, 1, in Block 18, on plan of Margate Park, situate in Margate City, made November 1909, by Ashmead & Hackney, Civil Engineers.

—
SCHEDULE B.

10

Showing estates, defects, or objections to title and liens, charges and incumbrances thereon, which do, or may now exist and against which the Company does not agree to guarantee or indemnify.

(1) Rights of way, public or private. (2) Taxes and municipal claims for the current year. (3) Mechanics' lien claims not filed, nor of record, in the office of the County Clerk in and for the County of Atlantic. (4) Occupancy of the premises. (5) Any variation in location of lines nor dimensions, encroachments, objections, or easements which an accurate survey showing all physical conditions, including ways, buildings, fences and windows, would disclose, or which are visible, or are known to the insured. (6) Zoning and building regulations created by public authority. (7) Liability to assessment for municipal improvements such as grading, paving, curbing, gutter and sidewalk done or being done.

30

(8) Rights of the Delaware and Atlantic Telegraph and Telephone Company, to construct, operate and maintain its poles and wires, etc., over Margate Park, as contained in Grants from the Greater Atlantic Development Company, to said Company, dated January 12, 1910 and recorded in Book 423, page 13 and 15 respectively.

(9) Rights of the Atlantic City Electric Company to construct, operate and maintain its poles and wires, etc., over Margate Park as contained in Grants from the Greater Atlantic Development Company to said Company, dated January 12, 1910, and recorded January 21, 1910 in Book 423, page 21 and 28 respectively.

(10) Restrictive covenants as imposed by Howard G. Harris et ux, in deed to Margate Company, dated January 19, 1910 and recorded in Book 423, page 36.

Exceptions Nos. 2, 3, 4 & 5 are hereby removed.

Assistant Secretary.

CONDITIONS OF THIS POLICY

1. No claim shall arise under this Policy unless (I) the party insured has been actually evicted under an adverse title insured against; or (II) there has been a final judgment and execution upon a lien or incumbrance not excepted in the Policy; or (III) where the insured shall have contracted in good faith, in writing, to sell the insured estate or interest, and the title has been rejected because of some defect or incumbrance not excepted in this Policy and notice in writing of such rejection shall have been given to this Company within ten days thereafter. For thirty days after receiving such notice this Company shall have the option of (a) paying the loss (of which the insured must present proper proof), or (b) of maintaining or defending, either in its own name, or, at its option in the name of the insured, some proper action or proceedings, begun or to be begun in a court of competent jurisdiction, for the purpose of determining the validity of the objection alleged by the vendee to the title—in which event, this Company shall be liable on this Policy, only in case of a final determination is made

in such action or proceeding, sustaining the objection to the title; or (c) offering to again guarantee in a guaranty similar to this and for regular charges, any grantee or mortgagee of the party herein guaranteed, against every alleged estate, encumbrance or defect not excepted herefrom; or (IV) where the insurance is upon the interest of a mortgagee, and the mortgage has been adjudged, by a final determination in a court of competent jurisdiction, to be invalid, or ineffectual to charge the premises described in this Policy, or subject to a prior lien or incumbrance not excepted in this Policy.

2. Any untrue statement made by the Insured or his agent, affecting the insurance, or any suppression of any material fact, or any untrue answer to written questions signed by the Insured or his agent before the issuing of the Policy, shall avoid the Policy, but an assignee for value to whom the Policy has been transferred with the consent of the Company endorsed thereon, shall not be affected by any untrue statements or answers, or suppressions or breach of warranty contained in the application, of which he was ignorant at the time the assent to the transfer to him was endorsed by the Company.

3. All interest in this Policy (saving that for damages accrued) shall cease by the transfer of the Policy, or of the title insured; except where the transfer of the Policy is authorized by its conditions, and transferred and approved. Partial transfers of title shall reduce the insurance in the proportion of the value of the estate transferred to that retained. Such transfers shall not affect the interest of a holder of this Policy transferred with the consent of the Company endorsed, as collateral security.

4. The liability of the Company to any holder of a

Policy transferred as collateral security, with the consent of the Company endorsed, shall in no case exceed the amount due from the pledgor to the pledgee, upon the debt intended to be secured by the pledge at the time of the loss; and the liability of the owner shall be diminished to the extent of the payment made to the pledgee.

5. This Policy may be transferred as follows, viz:

I. As collateral security to mortgagees or others interested only as creditors in the title insured. 10

II. If it shall have been issued solely upon a mortgage or other incumbrance; and then only to the assignee of such mortgage or incumbrance.

III. If it shall have been issued to cover some special risk (such as decedents' debts, or mechanics' liens). In case of transfers of the Policy, defects and incumbrances arising after the date of the Policy, or created or suffered by the Insured, are not to be deemed covered by the contract of insurance. No transfer will be valid until it shall have been approved by the Company, upon application made therefor, within thirty days after the assignment of the interest insured. 20

6. The SOUTH JERSEY TITLE AND FINANCE COMPANY will, at its own cost defend the Insured in all actions of ejectment or other proceedings founded upon a claim of title or incumbrance prior in date to this Policy, and thereby insured against. In case any person who has an interest in this Policy shall receive notice or have knowledge of any such action or proceeding, it shall be the duty of such person at once to notify the company thereof in writing, and secure it the right to defend the action. Unless the Company shall be so notified within five days after the service of the first writ, pleading or other paper, in such action or proceeding, the 30

insurance shall be void; and in such defence the insured shall furnish, without charge to the Company, such personal service and attendance as may be required in the conduct of the cause; this condition shall be a condition precedent.

7. In every case where the liability of this Company has been definitely fixed, in accordance with these conditions, the loss or damage shall be payable within thirty days thereafter. Provided, however, that in every case, if demanded by the Company, a valuation of the insured estate or interest shall be made by three arbitrators or any two of them; one to be chosen by the insured and one by this Company and the two thus chosen selecting the third. And no right of action shall accrue until thirty days after notice of the valuation ascertained as aforesaid, shall have been served upon this Company, and the Insured shall have tendered a conveyance or transfer of the insured estate or interest to this Company or to a purchaser to be named by this Company, at such valuation so ascertained, less the amount of any incumbrance on said insured estate or interest not hereby insured against, and this Company shall have failed within that time to find a purchaser for the estate or interest upon such terms; but under no circumstance shall this Company be liable in any event to pay an amount greater than that named in the Policy. All payments under this Policy shall reduce the amount of the insurance pro tanto. No payment or settlement can be demanded without producing this Policy for indorsement of the fact of such payment or settlement. If this Policy be lost, indemnity must be furnished to the satisfaction of this Company.

8. Whenever this Company shall have settled a claim under this Policy, it shall be entitled to all the

rights and remedies which the Insured would have had against any other person or property in respect to such claim, had this Policy not been made; and the Insured will transfer, or cause to be transferred, to this Company such rights and also the right to use the name of the Insured for the recovery or defense thereof. If the payment does not cover the loss of the Insured, this Company shall be subrogated to such rights, in the proportion with said payment; and the Insured warrants that such right of subrogation shall vest in this Company unaffected by any act of the Insured.

9. Defects and incumbrances arising after the date of this Policy, or created or suffered by the Insured, and assessments not confirmed at the date of this Policy, are not to be deemed covered by it; and no approval of any transfer of this Policy shall be deemed to make it cover any such defect, incumbrance or assessment. The term "the Insured" wherever it is used in this Policy, includes all described on its first page as those whom it insures, and the term "this Company," wherever it is used in this Policy means the SOUTH JERSEY TITLE AND FINANCE COMPANY.

STATE OF NEW JERSEY, }
COUNTY OF ATLANTIC, } ss.

JULIAN N. IRELAND, of full age, being duly sworn, according to law, on his oath, deposes and says: 30

1. I am one of the petitioners in the foregoing petition named. I have read the allegations in said petition and the same are true.

2. On or about November 24, 1922, I and my wife, Dora R. Ireland, agreed to purchase property described in the first paragraph of said petition from Lewis P. Scott, and then and there applied to the South Jersey Title & Finance Company of Atlantic City for insurance covering the title thereto to the amount of \$15,000.00, which said application is known in the files of said Company as Application Number 10702.

10

3. On December 21, 1922, my said wife and I and Lewis P. Scott met in the offices of said title company for the purpose of making final settlement, and said title company then and there produced and exhibited to us a settlement certificate showing the condition of the title to said premises. A copy of said certificate is attached to the foregoing petition.

20

4. Also, at the time of said final settlement a statement of settlement was prepared in the offices of said title company by one of its settlement clerks for the purpose of ascertaining what moneys were due from my wife and myself to said Lewis P. Scott as consideration for the passing and transfer of said property as well as the sum due said title company for its services under said application for title insurance. At that time my said wife and I were required to pay to said title company the sum of forty-five (\$45.00) dollars as a premium for said insurance.

30

5. At the time of said final settlement my wife and I had arranged to build a dwelling upon the said premises and had negotiated and secured from the Baltimore Life Insurance Company a loan of \$15,-

000.00 to be secured by bond and mortgage covering said premises. Said loan, however, was not to be advanced or said bond and mortgage executed and delivered until the said dwelling was completely constructed. Because of these facts we agreed with said title company that its said title policy could and would remain open to be issued to said Baltimore Life Insurance Company in connection with its said mortgage.

10

6. On June 7, 1923, in compliance with said understanding and agreement said title company issued its policy Number 10551 in the sum of \$15,000.00 to the Baltimore Life Insurance Company insuring it and all persons or corporations to whom said policy might be transferred with the assent of said South Jersey Title & Finance Company against all loss or damage not exceeding said sum of \$15,000.00 which the insured should sustain by reason of defects in the title of the insured estate, mortgage or interest described therein, or because of liens or incumbrances excepted in said policy. A true copy of said policy is attached to the foregoing petition.

20

7. On October 20, 1924, my wife and I conveyed said premises to F. Ernest Todd, Inc., which in turn conveyed same to Ada L. Todd, one of the petitioners herein. At the time of the transfer to F. Ernest Todd, Inc., it executed and delivered to my wife and me a bond and mortgage covering said premises to secure the payment of the sum of \$10,000.00, a part of the consideration price incident to said transfer. Said bond and mortgage is now in our possession and is wholly unpaid and unsatisfied.

30

8. On October 22, 1924, said F. Ernest Todd, Inc.,

executed and delivered to William Schmid as trustee for John J. Hunter, Chelsea Laundry Company, Ocean Pier Fish Market, Inc., Charles E. Custer and Harry Kallas, trading as Custer and Kallas, William I. Segal, Guarantee Trust Company, a banking corporation of New Jersey, William Lewis Company and Supplee-Wills-Jones Company a certain bond to secure the payment of \$8660.25 and a mortgage conveying to him in fee the hereinbefore described land and premises, subject to redemption upon payment of said debt. I am informed and advised and therefore believe that said bond and mortgage is now in the possession of William Schmid, trustee as aforesaid, and is wholly unpaid and unsatisfied.

9. On October 27, 1924, F. Ernest Todd, Inc., executed and delivered to George J. Turcott, one of the petitioners herein, its bond to secure the payment of \$2050.00 and a mortgage conveying to him in fee the hereinbefore described land and premises, subject to redemption upon payment of said debt. Said bond and mortgage is now in the possession of said George J. Turcott and is wholly unpaid and unsatisfied.

10. Because of certain claims made by the Exeter Land Company, a corporation of New Jersey, adverse to the title or interest of the petitioners herein in and to said premises all of said petitioners herein filed their bill of complaint in this court in a suit wherein they appear as complainants and Exeter Land Company, Raymond P. Read, Jane C., his wife, Carlton Godfrey, Annie M., his wife, and Baltimore Life Insurance Company appear as defendants, the purpose of which bill was to quiet the title to said lands and premises, and, among other things, prayed:

“That the rights of all the parties to this suit in and to the lands hereinbefore set forth may be fixed and settled by this Court, and that complainant, Ada L. Todd, may be decreed to have a perfect title thereto, and that the mortgages created as aforesaid may be decreed to be good and valid liens in the order of their respective priorities, and that the defendant, Exeter Land Company, have no estate, interest or right in or incumbrance upon said lands or in any part thereof.”

10. The claim of said Exeter Land Company is alleged to exist because of certain facts and circumstances which occurred prior to the date when petitioners herein secured their interest in and to said premises and prior to the date when said South Jersey Title & Finance Company, complainant in this cause, issued its said policy of title insurance to said Baltimore Life Insurance Company.

11. After petitioners' said bill of complaint was filed in said cause against said Exeter Land Company and others a subpoena *ad respondendum* issued out of this court directed to said Baltimore Life Insurance Company, and shortly after service thereof it, the said Baltimore Life Insurance Company, demanded that said title company protect it from and against the claim of said Exeter Land Company by reason of its said title insurance. As a result of said demand, said title company did on or about March 27, 1926, pay to said Baltimore Life Insurance Company all of the moneys then due to it under and by virtue of the bond and mortgage which it then held, and received from said Baltimore Life Insurance Company said bond and mortgage by as-

signment. Said bond and mortgage is the same as that mentioned in the bill of complaint filed in this cause, the foreclosure of which is being made.

12. Said title company has not included said Exeter Land Company as a party defendant in and to its said foreclosure suit.

13. I am informed and therefore believe that co-
10 incident with the assignment and delivery of said bond and mortgage said Baltimore Life Insurance Company also surrendered and delivered up either by assignment or otherwise to said title company its said title policy.

14. The issues of law and fact raised before this court by virtue of the allegations contained in petitioners' bill of complaint filed against said Exeter Land Company and others as aforesaid are still
20 pending before and undetermined by this Court.

15. Petitioners herein are unable to protect their respective interests in and to said premises aforesaid against the claims of said South Jersey Title & Finance Company, complainant herein, until their rights have been fixed and settled by this court, as by and in the manner prayed for in their bill of complaint filed against said Exeter Land Company and others.

30 16. I am informed and therefore believe that petitioners Ada L. Todd and F. Ernest Todd, her husband, have heretofore, to wit, on March 30, 1925, agreed to convey the premises herein described to petitioner, Edward Liebe, by general warranty deed free from all encumbrance, excepting restrictions of

record and the aforesaid mortgage of said Baltimore Life Insurance Company. Said Edward Liebe has entered into possession of said premises, and I am informed and therefore believe that he has expended thereon for improvements a sum in excess of \$5000.00.

JULIAN N. IRELAND.

Sworn and subscribed to before me an attorney at law of New Jersey, this 17th day of November, A. 10
D. 1926.

ROBERT N. McALLISTER,
Atty. at Law of N. J.

ORDER TO SHOW CAUSE.

IN CHANCERY OF NEW JERSEY.

20

Between	}	On Bill to Foreclose. On Petition for Injunction.
SOUTH JERSEY TITLE AND FINANCE COMPANY, a corporation, etc., Complainant,		
and	}	Order to Show Cause.
JULIAN N. IRELAND, et als., Defendants.		

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Upon reading the petition of petitioners in this cause and the affidavits thereto annexed and on motion of Messrs. Harcourt & Steelman, solicitors for and of counsel with said petitioners.

It is on this eighteenth day of November, A. D. 1926, ordered that the South Jersey Title & Finance Company, complainant herein, show cause before the Chancellor at the Chancery Chambers, Real Estate & Law Building, Atlantic City, New Jersey, on the 23rd day of November, next, at 10.00 o'clock in the forenoon, or as soon thereafter as counsel can be heard, why an injunction should not issue restraining and enjoining it from proceeding further with the foreclosure suit heretofore instituted against Julian N. Ireland and others, petitioners herein, now pending in this court and entitled in this cause and for such further relief as may be just.

It is further ordered that the said South Jersey Title & Finance Company, complainant herein, in the meantime and until the further order of this Court in the premises, be and it hereby is restrained and enjoined from proceeding further with the said foreclosure suit.

And it is further ordered that a copy of this order together with a copy of petition filed herein which need not be certified but may be marked as true copies by petitioners' solicitors be served on the said South Jersey Title & Finance Company, complainant herein, or upon its solicitor or solicitors as named in said foreclosure suit entitled in this cause within one day from the date of this order.

30

Respectfully advised,
R. H. INGERSOLL,
V. C.

AFFIDAVIT.

IN CHANCERY OF NEW JERSEY.

Between
SOUTH JERSEY TITLE AND FINANCE COMPANY, a corporation, etc.,
Complainant,
and
JULIAN N. IRELAND, et al.,
Defendants.

On Bill to Foreclose.
On Petition for Injunction.
Affidavit.

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STATE OF NEW JERSEY, }
COUNTY OF ATLANTIC, } ss.

JAY C. KLINE, of full age, being duly sworn according to law, deposes and says:

1. I am secretary of the South Jersey Title and Finance Company, complainant in the above stated cause.

2. The mortgage set out in complainant's bill was acquired by the complainant by virtue of an assignment of mortgage to it made by Baltimore Life Insurance Company, dated March 27, 1926, and recorded in the clerk's office of Atlantic County, New Jersey, on April 1, 1926.

30

3. The South Jersey Title and Finance Company did not issue to Dora Ireland and Julian N. Ireland its policy of title insurance insuring title to them under deed of conveyance made to them by Lewis P. Scott, bearing date December 21, 1922, and was under no obligation to issue title insurance to them, or any guarantee of the title to the premises described in said deed.

10 4. Policy of title insurance was, upon the application and at the request of the said Dora Ireland and Julian N. Ireland, issued to the Baltimore Life Insurance Company, insuring to that company title under the mortgage made by said Dora Ireland and Julian N. Ireland to said trust company and assigned by said trust company to the South Jersey Title and Finance Company, and which mortgage is now sought to be foreclosed. Copy of said title policy is annexed to the petition filed in this cause.

20 5. On October 20, 1924, Julian N. Ireland and Dora Ireland, his wife, by deed of that date and recorded October 22, 1924, conveyed the mortgaged premises to F. Ernest Todd, Incorporated. The deed was one of special warranty and expressly provided that the conveyance was subject to the said mortgage of the South Jersey Title and Finance Company for \$15,000.00.

30 6. The mortgage of the South Jersey Title and Finance Company was for \$15,000.00, is dated July 6, 1923, for a term of three years and provides that interest should be paid on said sum semi-annually, at the rate of six per cent per annum, and also provides that the mortgagors, their heirs or assigns, shall pay all taxes, assessments, etc., levied upon the lands and premises and produce to the mortgagee, or its assigns, receipts for all taxes, etc.,

within sixty days after the same first become due and payable and that the mortgagors, their heirs or assigns, shall keep the buildings erected on the lands in question insured against loss or damage by fire in safe and responsible fire insurance companies satisfactory to the mortgagee, and endorse or assign and deliver all policies and certificates thereof to the mortgagee, as collateral security for the payment of the principal and interest of the mortgage, the aggregate of the insurance to be not less than 10 \$15,000.00 and also provides that upon default in any of the terms and conditions of the mortgage, the whole principal thereof, together with interest thereon shall immediately become due and collectible.

7. There is interest unpaid on said mortgage from January 6, 1926; insurance was not provided as required by the terms of said mortgage and the South Jersey Title and Finance Company was obliged to effect such insurance on June 30, 1926, at a cost of 20 \$146.25. The municipal taxes assessed against the premises for 1925, amounting to \$387.00, besides interest and costs, and for the year 1926, amounting to \$349.47, besides interest and costs, have not been paid and the whole principal of the mortgage of the complainant, with interest from January 6, 1926, and the said insurance premium with interest thereon is due to the South Jersey Title and Finance Company by reason of the expiration of said term, as well as by reason of the other defaults set out in 30 the bill of complaint.

JAY C. KLINE.

Sworn and subscribed to before me this 30th day of November, 1926.

JAMES N. BUTLER,
M. C. C. of N. J.

AFFIDAVIT.

IN CHANCERY OF NEW JERSEY.

Between
 10 SOUTH JERSEY TITLE AND
 FINANCE COMPANY, a
 corporation, etc.,
Complainant,
 and
 JULIAN N. IRELAND, *et*
als.,
Defendants.

On Bill, etc.
 On Petition for In-
 junction.
 Affidavit.

STATE OF NEW JERSEY, }
 20 COUNTY OF ATLANTIC, } ss.

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

1. On November 23, 1926, I have examined the file in the pending chancery case of Ada L. Todd, *et als.* v. Exeter Land Company, *et als.*, and find that the bill of complaint in said proceeding was filed April 4, 1926, and subpoenas were issued February 18, 1926, and were made returnable twenty days
 30 after February 25, 1926.

2. The bill of complaint is entitled one to foreclose mortgage and the mortgage recited is one made by Margate Company to Emma E. Moitz Doherty, trustee, etc., for twenty-two hundred dollars (\$2200.00), dated March 8, 1912, and recorded in Book 129, page 76.

3. The mortgage held by the complainant, The South Jersey Title and Finance Company was assigned to it by the Baltimore Life Insurance Company on March 27, 1926. The Baltimore Life Insurance Company was made a party defendant in said proceeding brought by the said Ada L. Todd, *et als.*, and the reason for making the company a party is alleged in the bill of complaint as follows: "The Baltimore Life Insurance Company is made a party defendant herein because of its mortgage by virtue of
 10 which it has a claim or interest in derogation of any rights or pretended rights of the defendants, Exeter Land Company, Raymond P. Read and Jane C., his wife, and Carlton Godfrey and Annie M., his wife, and said Baltimore Life Insurance Company has refused to join with the other complainants in filing this bill of complaint."

4. The bill of complaint filed in the said proceeding instituted by Ada L. Todd, *et als.*, was amended
 20 by the filing of a new and entire bill of complaint. Said new bill of complaint is marked filed April 27, 1926, and was filed in the office of the clerk of the Court of Chancery on May 4, 1926. Service of subpoena upon the Baltimore Life Insurance Company was acknowledged by me. The new bill of complaint filed in substitution for or amendment of the original bill of complaint has not been served upon me nor has there been served any notice respecting the
 30 same.

CHARLES C. BABCOCK.

Sworn and subscribed to before me this 30th day of November, 1926.

JAMES N. BUTLER,
 M. C. C. of N. J.

Ireland, *et als.*, and the Court having read and considered the pleadings and affidavits submitted in behalf of the petitioner and complainant and having heard and considered the arguments of respective counsel and being satisfied that the prayer of the said petitioners should be denied:

It is on this 10th day of December, 1926, on motion of Babcock and Champion, solicitors of the said complainant, ordered that the petition filed in the above stated cause by the said Julian N. Ireland, *et als.*, praying for an injunction restraining and enjoining the complainant from proceeding further with the said foreclosure suit be, and the same is hereby dismissed with costs to the complainant, without prejudice to the right of the said petitioners to make application to this Court to restrain the sale of the lands and premises under foreclosure in event of the issuance of a writ of *feri facias* in said proceeding for such purpose.

It is further ordered that the restraint imposed in the said order to show cause of November 18, 1926, restraining the complainant from proceeding with the said foreclosure suit be, and the same is hereby discharged.

E. R. WALKER,
C.

Respectfully advised:

R. H. INGERSOLL,
V. C.

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NOTICE OF APPEAL.
IN CHANCERY OF NEW JERSEY.

Between
SOUTH JERSEY TITLE AND FINANCE COMPANY, a corporation of the State of New Jersey,
Complainant,
and
JULIAN N. IRELAND, *et al.,*
Defendants.

On Bill to Foreclose.
Notice of Appeal.

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20

The defendants hereby appeal from a decree dismissing a petition, praying for an injunction restraining and enjoining the complainant from proceeding with its foreclosure suit in the above entitled cause, which decree was made by Honorable Edwin Robert Walker, Chancellor, on the advice of Honorable Robert H. Ingersoll, Vice-Chancellor, on the 10th day of December, 1926, in the Court of Errors and Appeals, the last resort in all causes.

30

HARCOURT & STEELMAN,
Solicitors of Defendants.
HIRAM STEELMAN,
Of Counsel.

Dated December 23, 1926.

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

HIRAM STEELMAN.

Service acknowledged January 8, 1927.

10

PETITION OF APPEAL.

NEW JERSEY COURT OF ERRORS AND APPEALS.

Between

20 SOUTH JERSEY TITLE AND FINANCE COMPANY, a corporation of the State of New Jersey, Complainant-Respondent, and JULIAN N. IRELAND, et al., Defendants-Appellants.

Bill to Foreclose. On Petition for Injunction. Petition of Appeal.

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The petition of Julian N. Ireland, Dora R. Ireland, Ada L. Todd, F. Ernest Todd, Edward Liebe, Blanche V. Liebe, George J. Turcott and William Schmid, trustee for John J. Hunter, Chelsea Laundry Company, William Gordon, Ocean Pier Fish Market, Inc., Charles E. Custer and Harry Kallas, trading as Custer and Kallas, William I. Segal,

Guarantee Trust Company, a banking corporation of New Jersey, William Lewis Company and Supplee-Wills-Jones Company, defendants and appellants in the above stated cause, respectfully shows that your petitioners find themselves aggrieved by the decree made in the Court of Chancery by his Honor, Edwin Robert Walker, on the advice of the Honorable Robert H. Ingersoll, Vice-Chancellor, being dated the 10th day of December, 1926, wherein your petitioners herein were petitioners-defendants, and the said South Jersey Title & Finance Company was complainant, in this respect, to wit:

Said decree dismissed the appellants' petition for an injunction restraining the complainant from proceeding with the foreclosure of the mortgage owned by the complainant, covering the lands and premises described in the bill of complaint.

And your petitioners humbly appeal from said decree of the Chancellor, which decrees as aforesaid, upon the ground that the same is erroneous, for that the prayer of the petition should have been granted and should not have been refused and the decree should have been that an injunction issue in favor of the petitioners and against the complainant-respondent, restraining it from proceeding with its bill of complaint.

Your petitioners, therefore, pray that said decree of the Chancellor may be reversed, set aside and for nothing holden. And that your petitioner may have such relief in the premises as this Honorable Court shall deem meet.

HARCOURT & STEELMAN, Solicitors for and of Counsel with Defendants-Appellants.

Dated January 18th, 1927.

ANSWER.

NEW JERSEY COURT OF ERRORS AND
APPEALS.

10 Between
 SOUTH JERSEY TITLE AND
 FINANCE COMPANY, a
 corporation of the
 State of New Jersey,
Complainant-Respondent,
 and
 JULIAN N. IRELAND, *et*
al.,
 20 *Defendants-Appellants.*

Bill to Foreclose.
 On Petition for In-
 junction.
 Answer.

The answer of the respondent, South Jersey Title and Finance Company to the petition of appeal of the above named appellants.

This respondent not acknowledging all or any of the matters which in the said petition of appeal are contained to be true, for answer thereto, nevertheless says and admits that a decree was on the 30 tenth day of December, 1926, made and entered in the Court of Chancery in the cause, for the purpose mentioned in the said petition, as is therein stated, but as to the substance and form thereof, this respondent prays to refer thereto when the same shall be produced. And this respondent is advised and believes that the said decree is agreeable to equity

and it prays that the same may be affirmed with costs to be adjudged to this respondent.

The action by the Court of Chancery was within the discretion of the Court and is not reviewable on appeal.

The action by the Court of Chancery complained of in this appeal is not the proper subject for review in this Court.

BABCOCK & CHAMPION,
Solicitors for and of Counsel 10
with Respondent.

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NEW JERSEY COURT OF ERRORS AND
APPEALS.

Between
SOUTH JERSEY TITLE AND FINANCE COMPANY, a cor-
poration of the State of New Jersey,
Complainant-Respondent,
and
JULIAN N. IRELAND, *et al.,*
Defendants-Appellants.

ON BILL TO FORECLOSE.

ON PETITION FOR INJUNCTION.

BRIEF OF DEFENDANTS-APPELLANTS.

FACTS.

This is an appeal from a decree dismissing a petition for an injunction restraining the foreclosure of a mortgage now owned by the complainant-respondent.

On or about November 24th, 1922, Julian N. Ireland and Dora R. Ireland entered into written agree-

ment with one Lewis P. Scott, whereby said Julian N. Ireland and Dora R. Ireland agreed to buy and said Lewis P. Scott agreed to sell certain premises situate in the City of Margate City, Atlantic County, New Jersey, and they on that date caused written application to be filed and made to the South Jersey Title & Finance Company for a guarantee in its usual form guaranteeing the title of the land hereinbefore described in the sum of \$15,000.00, which said application is designated in the files of said South Jersey Title & Finance Company as application number 10702.

On December 21, 1922, said Julian N. Ireland and Dora R. Ireland and said Lewis P. Scott met in the offices of said South Jersey Title & Finance Company for the purpose of making settlement under their said agreement hereinbefore referred to. At said time and place said South Jersey Title and Finance Company produced and exhibited to Julian N. Ireland and Dora R. Ireland what is commonly known as a settlement certificate certifying the condition of the title of said premises as was disclosed after search of the public records of this State and Atlantic County.

At the time of said final settlement a statement of said settlement was prepared in the offices of said South Jersey Title & Finance Company by a settlement clerk in its employ for the purpose of determining the moneys required to be paid by Julian N. Ireland and Dora R. Ireland to said Lewis P. Scott under said agreement of sale, as well as the moneys due to said South Jersey Title & Finance Company for services rendered by it in compliance with said application for title insurance or guarantee. At said time and place said Julian N. Ireland and Dora R. Ireland were required to and did pay to said

South Jersey Title & Finance Company the sum of forty-five (\$45.00) dollars as and for a premium to it for its guarantee of the title of said property in accordance with the facts disclosed on said settlement certificate.

At the time of said final settlement said premises consisted of a vacant lot of land upon which Julian N. Ireland and Dora R. Ireland had planned and arranged to build a certain dwelling house, which fact was then and there made known to said South Jersey Title & Finance Company. Said Julian N. Ireland and Dora R. Ireland also then and there made known to said South Jersey Title & Finance Company that they had negotiated for and been promised a loan from the Baltimore Life Insurance Company, of Baltimore, Maryland, which said loan was to be secured by their bond and mortgage covering the premises herein described, and which said loan was to be advanced and said bond and mortgage executed and delivered at and upon the final completion of the erection and construction of said dwelling house. Because of these facts then and there made known to said South Jersey Title & Finance Company as aforesaid, it, the said company, did agree to and with said Julian N. Ireland and Dora R. Ireland that said title policy could and would remain open until such time as said dwelling house had been completely erected and constructed, when said title policy would then be issued to said Baltimore Life Insurance Company as the assured mortgagee, said title policy to accompany said bond and mortgage.

On July 7th, 1923, said South Jersey Title & Finance Company in compliance with said understanding and agreement it had with petitioners Julian N. Ireland and Dora R. Ireland as aforesaid issued its policy number 10551 in the sum of \$15,000.00 to the

Baltimore Life Insurance Company, of Baltimore City, insuring it and all persons or corporations to whom said policy might be transferred with the assent of said South Jersey Title & Finance Company against all loss or damage not exceeding said sum of \$15,000.00 which the insured should sustain by reason of defects in the title of the insured estate, mortgage or interest described in Schedule A annexed to said policy, or because of liens or incumbrances charging the same at the date of said policy, saving the estates, defects, objections, liens or incumbrances excepted in Schedule B annexed to said policy.

On the 20th day of October, 1924, Julian N. Ireland and Dora R. Ireland granted and conveyed the premises in question to F. Ernest Todd, Inc., a New Jersey corporation, which, in turn, granted and conveyed the same to Ada L. Todd, one of the appellants herein and a defendant in the foreclosure bill. At the time of said transfer of said property from Julian N. Ireland and Dora R. Ireland to F. Ernest Todd, Inc., there was executed and delivered by said F. Ernest Todd, Inc., to said Julian N. Ireland and Dora R. Ireland a bond and mortgage covering said premises to secure the payment of the sum of \$10,000.00, a part of the consideration price incident to said transfer. Said bond and mortgage is now in the possession of said Julian N. Ireland and Dora R. Ireland and is wholly unpaid and unsatisfied.

On the 30th day of March, 1925, by agreement bearing that date, Ada L. Todd and F. Ernest Todd, her husband, for a valuable consideration therein set forth agreed to convey to Edward Liebe the premises aforesaid by general warranty deed free from all encumbrance, excepting restrictions of record and the aforesaid mortgage of said Baltimore Life

Insurance Company. Said Edward Liebe has entered into possession of said premises and has expended thereon for improvements a sum in excess of \$5000.00.

The other appellants herein, who are defendants in the foreclosure proceedings, are owners of subsequent mortgages aggregating in excess of \$11,000.00.

On or about the time of the making of said agreement between said Ada L. Todd and F. Ernest Todd, her husband, and between Edward Liebe, hereinbefore referred to, the Exeter Land Company, a corporation of New Jersey, set up a claim to the ownership of said premises, which said claim was adverse to the title insured by the South Jersey Title and Finance Company.

As a result of the claim of said Exeter Land Company, as aforesaid, the appellants herein filed their bill of complaint in this Court in a suit wherein they appear as complainants and Exeter Land Company, Raymond P. Read, Jane C., his wife, Carlton Godfrey, Annie M., his wife, and Baltimore Life Insurance Company appear as defendants, the purpose of which bill was to quiet the title to said lands and premises, and among other things prayed:

“That the rights of all the parties to this suit in and to the lands hereinbefore set forth may be fixed and settled by this Court, and that complainant, Ada L. Todd, may be decreed to have a perfect title thereto, and that the mortgages created as aforesaid may be decreed to be good and valid liens in the order of their respective priorities, and that the defendant, Exeter Land Company, have no estate, interest or right in or incumbrance upon said lands or in any part thereof.”

Said bill of complaint sets forth and alleges all the facts, circumstances and conditions upon which said Exeter Land Company bases its said claim, and also all the facts and circumstances upon which the parties to said suit base their respective claims of an interest in and to said premises.

As will appear by reference to the said bill of complaint filed as aforesaid, the claim of said Exeter Land Company is alleged to exist because of certain facts and circumstances which occurred prior to the date when the appellants herein secured their interest in and to said premises and prior to the date when said South Jersey Title & Finance Company issued its said policy of title insurance to said Baltimore Life Insurance Company wherein it insured said title against said claim of said Exeter Land Company, not by specific reference thereto but by reason of the fact that it does not appear therein among any of the exceptions noted in Schedule B attached thereto.

Shortly after the appellants' bill of complaint was filed in said cause against said Exeter Land Company and others as aforesaid a subpoena *ad respondendum* issued out of the Court of Chancery, directed to said Baltimore Life Insurance Company, as well as all the other defendants, requiring it and them to answer all of the allegations of said bill of complaint, the Baltimore Life Insurance Company having been made a party defendant solely because it would not appear as a complainant.

Shortly thereafter said Baltimore Life Insurance Company demanded that said South Jersey Title & Finance Company should protect it from and against the claim of said Exeter Land Company by reason of the title insurance or guarantee which it, the said South Jersey Title & Finance Company, had issued

and delivered to it, the said Baltimore Life Insurance Company as aforesaid. As a result of said demand made as aforesaid the said South Jersey Title & Finance Company did on or about March 27, 1926, pay to said Baltimore Life Insurance Company all of the moneys then due to it under and by virtue of the bond and mortgage which it then held covering the premises hereinbefore described and hereinbefore referred to and received said bond and mortgage from said Baltimore Life Insurance Company by written assignment dated on that day. Said bond and mortgage was assigned as the same bond and mortgage mentioned in the bill of complaint filed in this cause by said South Jersey Title & Finance Company as complainant, whereby it, the said South Jersey Title & Finance Company, seeks to foreclose the interest of all of the petitioners herein who are made parties defendant in and to said suit.

Coincident with the assignment and delivery of said bond and mortgage by said Baltimore Life Insurance Company to said South Jersey Title & Finance Company it, the said Baltimore Life Insurance Company, also surrendered and delivered up either by assignment, or otherwise, to said South Jersey Title & Finance Company its said title policy hereinbefore referred to.

The issues of law and fact raised before by virtue of the allegations contained in appellants' bill of complaint filed against said Exeter Land Company and others as aforesaid is still pending before and undetermined by the Court of Chancery.

All of the appellants herein, who are also defendants to the foreclosure bill filed in this cause, are unable to protect their respective interests in and to said premises aforesaid against the claims of said South Jersey Title & Finance Company, complainant herein, until their rights have been fixed and

settled by this Court, as by and in the manner prayed for in their bill of complaint filed in this cause against Exeter Land Company and others.

ARGUMENT.

It is respectfully submitted that the South Jersey Title and Finance Company by foreclosing a mortgage guaranteed by it upon land, the title to which is questioned by legal proceedings, is attempting to use the Court of Chancery to assist it in its own wrong.

The alleged defect in the title existed when Ireland made his application for insurance. Had the Title Company discovered and disclosed that alleged defect it would of course have refused to issue its policy to the Baltimore Life Insurance Company, Ireland would have refused to take title, and the Baltimore Life Insurance Company would not have taken the mortgage now owned by the South Jersey Title and Finance Company. All of the appellants, whether they are in the position of owner or of subsequent mortgagees, are harmed by the negligence of the Title Company in not discovering the alleged defect in the title. Should the Title Company in this Court now be permitted to profit by its own error, or should it be restrained from proceeding with its foreclosure bill until the appellants here have established the validity of their title, which *ipso facto* will establish the validity of the insured mortgage?

Briefly the situation here presented is as follows: The South Jersey Title & Finance Company has accepted a fee from Ireland for insuring a mortgage on Ireland's property. Because of an alleged defect in the title it has been forced to purchase that mort-

gage from the mortgagee. It now attempts to foreclose that mortgage while Ireland, with others, is attempting to help it out of the situation which it is responsible for creating.

That equity will restrain an attempt to use the instrumentality of the law where an unconscionable advantage will thereby result is fundamental. 22 Cyc. 789, citing *Acquackanonk Water Co. v. Manhattan Life Ins. Co.*, 36 E. 586:

"A judicial proceeding will be enjoined to restrain the assertion of doubtful rights in a manner productive of irreparable damage, and to prevent injury to a person from the doubtful title of others."

Hemrod v. Jarvis, 27 E. 247.

To permit the foreclosure suit to proceed may be fatal to the rights of the appellants. To enjoin it can cause the respondents no injury. "If the injunction will cause defendant little inconvenience it should be granted even though complainants' rights are not clearly established." 22 Cyc. 783.

It has been said by our courts that equity does not concern itself with the motives of a complainant who has acquired a mortgage, in foreclosing. *Davis v. Flagg*, 35 Eq. 491. This is true, but equity will intervene and forbid or hold up a foreclosure to prevent an injustice at the hands of one where the use of court's machinery is unconscionable and will perpetrate an injustice. 27 Cyc. 1538.

It is respectfully submitted that the facts set forth disclose grounds for equitable relief and that the decree dismissing the order to show cause should be reversed.

HARCOURT AND STEELMAN,
Solicitors for and of Counsel with
Defendants-Appellants.

NEW JERSEY COURT OF ERRORS AND
APPEALS.

Between

SOUTH JERSEY TITLE AND FINANCE COMPANY, a cor-
poration of the State of New Jersey,

Complainant-Respondent,

and

JULIAN N. IRELAND, *et al.*,

Defendants-Appellants.

ON BILL TO FORECLOSE.

ON PETITION FOR INJUNCTION.

BRIEF OF SOUTH JERSEY TITLE AND FINANCE
COMPANY.

FACTS.

On October 6, 1926, the South Jersey Title and Finance Company filed a bill in the Court of Chancery of New Jersey to foreclose a mortgage made by Julian N. Ireland and Dora Ireland, his wife, to Baltimore Life Insurance Company of Baltimore City, dated July 6, 1923, for \$15,000.00 and which mortgage was assigned by the Baltimore Life Insurance Company of Baltimore City to the South Jersey Title and Finance

Company on March 27, 1926. Copy of the bill of complaint appears page 1 of the State of the Case.

Process was promptly and duly issued in the foreclosure proceeding and service was either made upon or acknowledged for all of the defendants. Just before the expiration of the time for answering and on November 18, 1926, a petition for injunction (p. 12) was filed by Julian N. Ireland et al to restrain the prosecution of the foreclosure proceeding. On the same date, an order to show cause (p. 40) was entered requiring the South Jersey Title and Finance Company to show cause before the Court of Chancery in Atlantic City, on November 23, 1926, why an injunction should not issue restraining the further prosecution of the foreclosure suit.

On the return date of the order to show cause, November 23, 1926, the order to show cause was heard and disposed of on the strength of the affidavit attached to the petition (p. 33) and the answering affidavits on the part of the South Jersey Title and Finance Company, pp. 39 and 41. After considering the application, his Honor, Vice Chancellor Ingersoll, filed an opinion as follows:

"Application is made to restrain the complainants from proceeding with the foreclosure suit which they have filed. As stated at the hearing—the proper procedure is to permit the foreclosure to proceed to decree and then should sufficient equities be shown, to restrain the execution thereof.

The petition will be denied, but with permission, at the proper time, to file a petition to restrain the sale of the lands and premises in question."

On December 10, 1926, decree of dismissal was entered dismissing the petition for injunction and dissolving the restraint contained in the order to show cause.

The present appeal is from that decree. From the recital of acts set forth in the petition for injunction,

it appear as that Julian Ireland and Dora Ireland agreed to purchase the property in question on November 24, 1922 (p. 13) and that they made settlement on December 21, 1922 (p. 13). The date of the deed is not given but probably bears the date of settlement. It also appears that after the purchase of the property Mr. and Mrs. Ireland made extensive improvements. After the improvements were completed, they secured a mortgage loan from the Baltimore Life Insurance Company of Baltimore City, of \$15,000.00. In contemplation of said mortgage, application was made to the South Jersey Title and Finance Company for title insurance to the extent of \$15,000.00 insuring title to the mortgagee. Settlement certificate was issued by the Title Company (p. 22) and by requirement 13 (p. 25) it clearly appears that the policy was to go to the mortgagee. The mortgage loan was consummated and in accordance with the understanding between the parties, title policy under said application was issued by the South Jersey Title and Finance Company to the Baltimore Life Insurance Company of Baltimore City, (p. 25).

There is no defense to the mortgage for \$15,000.00 being foreclosed. The petitioners for the injunction concede that they received the full proceeds of the mortgage for \$15,000.00 and that the entire amount with interest is due and unpaid. No defenses have been filed in the foreclosure proceeding and the purpose of the petition was to restrain the prosecution of the foreclosure proceeding until the determination of another proceeding pending in the Court of Chancery of New Jersey in which the South Jersey Title and Finance Company is not a party and which does not involve in any way the mortgage under foreclosure.

The other proceeding referred to was commenced by Ada L. Todd, et als against Exeter Land Company, et als on April 4, 1926 (p. 44).

The antecedent title to the land in question depends

upon a sale made by the Sheriff of Atlantic County under the foreclosure of a mortgage dated March 8, 1912. It is alleged that the actual owner of the title was not made a defendant in the old foreclosure proceeding and the case of Ada L. Todd, et al vs. Exeter Land Company, et als is in the nature of a bill to quiet title.

It is alleged in the bill of complaint that "The Baltimore Life Insurance Company is made a party defendant herein because of its mortgage by virtue of which it has a claim or interest in derogation of any rights or pretended rights of the defendants, Exeter Land Company, Raymond P. Read and Jane C., his wife, and Carlton Godfrey and Annie M., his wife, and said Baltimore Life Insurance Company has refused to join with the other complainants in filing this bill of complaint."

The bill of complaint against the Exeter Land Company was filed April 4, 1926. Subpoenae were issued February 18, 1926, and were made returnable twenty days after February 25, 1926. Service was acknowledged for the Baltimore Life Insurance Company. An entire new bill of complaint was filed April 27, 1926, and the new bill of complaint has not been served upon either the Baltimore Life Insurance Company or South Jersey Title and Finance Company nor has any notice been served respecting the same.

Default was made in the payment of interest, in providing fire insurance as required by the terms of the mortgage for \$15,000.00, and in the payment of municipal taxes assessed against the mortgaged premises (pp. 9-10) with the result that the mortgage and the bond therein recited were assigned by the Baltimore Life Insurance Company to the South Jersey Title and Finance Company on March 27, 1926.

Julian Ireland and Dora Ireland, who made the mortgage owned by the South Jersey Title and Finance Company, conveyed the mortgaged premises on October 20,

1924, to F. Ernest Todd, Inc., subject to the said mortgage for \$15,000.00 and the purchaser took credit for the full amount thereof in settlement (p.42). The result is that Ireland, who made the mortgage, received the full proceeds of \$15,000.00 and the present owner, purchased subject to it and received credit for the full amount thereof. There is not a suggestion of any defense in behalf of anyone against the mortgage. The full amount of the principal is overdue with large arrears of interest. Taxes are unpaid and the mortgagee has been compelled to act within the terms of the mortgage and place fire insurance in order to protect its interest. The only request of the petitioners in the injunction proceeding is that the foreclosure suit be restrained until a disputed claim made by some former owner against the property is settled in the proceeding to quiet title, a claim in which the South Jersey Title and Finance Company is not interested and which does not and could not in any way affect the mortgage under foreclosure.

ARGUMENT.

THE APPLICATION IS PREMATURE.

The mortgage for \$15,000. bears date July 6, 1923, and is payable at the expiration of three years from that date, together with interest thereon at the rate of six percent. per annum, payable semi-annually. An installment of interest amounting to \$450. became due July 6, 1926, and was not paid. The term of the mortgage expired July 6, 1926. Taxes for the year 1926, amounting to \$349.47 have not been paid. Taxes for 1927, of course, have not been paid. The mortgagee paid out \$146.25 on June 30, 1926, for fire insurance and is entitled to that sum in addition to interest. Considering the interest due and unpaid from January 6, 1926, together with the fire insurance premiums and

taxes, it is clear that the mortgagee may suffer if the proceeding to foreclose the mortgage is unnecessarily delayed.

The bill to quiet title does not challenge the mortgage in question. The excuse for making the Baltimore Life Insurance Company a party was because it held a mortgage by which it has a claim or interest in derogation of any rights or pretended rights of the defendants (in the suit to quiet title) Exeter Land Company, Raymond P. Read and Jane C., his wife, Carlton Godfrey and Annie M., his wife, and because the Baltimore Life Insurance Company had refused to join with the other complainants in filing a bill to quiet title (p. 45).

The mortgage for \$15,000 now being foreclosed was recited in the bill to quiet title and the prayer of that bill is "that the mortgages created as aforesaid (which include the mortgage in question) may be decreed to be good and valid liens in the order of their respective priorities." The parties in the petition for injunction are the same persons as the complainants in the bill to quiet title and having alleged the mortgage as being a valid transaction and a proper lien against the property and having asked that the mortgage be declared by the Court to be a valid lien against the property and having, in every way, conceded the correctness of the mortgage, it is, at least, inconsistent on the part of the petitioners to now ask that the Title Company be restrained in the foreclosure of a mortgage which they admit is valid and which they say should be decreed to be a good and valid lien. The defendants in the bill to quiet title are not parties to the injunction proceeding and there is no objection to the foreclosure of the mortgage from that quarter. The petition for injunction was in the nature of a motion addressed to the Court to stay the foreclosure proceeding until the bill to quiet title was finally adjudicated and the learned Vice Chancellor very properly decided (46-47) that the

proper procedure would be to permit the foreclosure to proceed to a decree and then, should sufficient equities be shown, to restrain the execution of the decree and advised that the petition be denied but with permission at the proper time to file a petition to restrain the sale of the premises in question.

The wisdom of the course suggested by the Vice Chancellor is at once manifest. The bill to quiet title was filed April 4, 1926. That bill was supplanted by an entirely new bill marked filed April 27, 1926, and filed in the office of the Clerk May 4, 1926 (pp. 44-45). The suit has not yet been tried. It does not appear in the record if there has even been a date fixed for trial but assuming the case should be tried at an early date, final disposition in the Court of Chancery and final determination in this Court, should there be an appeal, necessarily means considerable time and then add to that practically the same length of time to dispose of the foreclosure case, should the defendants decide to interpose a defense, makes it plain to be seen that there might be such an elapse of time as to very seriously affect the security of the mortgage, particularly, in view of the fact that interest, taxes and fire insurance premiums are being allowed to go by default. If the defendants in the foreclosure suit have a defense to the mortgage they can assert it now as well as at any other time, and it is respectfully submitted that the foreclosure suit should be allowed to proceed to the stage of a final decree and that if petitioners for the injunction feel that a sale under a foreclosure would be harmful to them, application may then be made to postpone execution and the application can be disposed of at that time on its merits.

THE DECREE IS NOT APPEALABLE.

The defendants-appellants did not file a bill for injunction. What they did was to file a petition which

was styled "petition for injunction," asking that the Court make an order staying the prosecution of the foreclosure case until the final disposition of the suit to quiet title. The fact that the application to the Court was made in the form of a petition gives it no greater weight than as though it had been made by motion upon notice. Hence, the situation is the same in effect as though the applicant had made motion for a continuance, for further time to plead or respecting any other phase of the prosecution of the case.

Our Statute provides "all persons aggrieved by any order or decree of the Court of Chancery may appeal from the same, or any part thereof, to the Court of Errors and Appeals and all appeals, except from final decrees, shall be made within forty days after filing the order or decree appealed from. * * *"

C. S. Vol. 1 Supplement 1911-1914, p.269

The late Chief Justice Beasley, speaking for this Court, in Camden and Amboy Railroad Co. v. Stewart, 21 N. J. Eq. page 485-87, said:

"The language of the statute upon this subject is that 'all persons aggrieved by any order or decree of the Court of Chancery may appeal from the same, or any part thereof, to the Court of Errors and Appeals, * * *'. From the terms here used, it is clear that the intention was to give a wide scope to appeals. The only limit imposed on the right is the circumstance that the party appealing must be, in a legal view, 'aggrieved' by the order sought to be reviewed. The restriction obviously excludes from the category of appealable matters, all orders which lie wholly in discretion, and which have no tendency to affect any right in litigation."

"All persons will probably admit that an order which does not, in any degree, reach to the merits of the controversy, or affect the substantial rights of a litigant, does not belong to the appealable class of order, * * *".

"From my examination of the authorities, and my reflection on this subject I am satisfied that it

is not practicable to settle any test which will be applicable in every case, so as to separate into classes those orders which are appealable and those which are not. There are many cases which are obviously appealable; there are some as obviously not appealable; but there is an intermediate class which cannot be reduced to any fixed rule. When this latter class is to be dealt with, it would seem that this Court is called upon to exercise a special judgment in each case, in view of its peculiar circumstances, and having regard to the general proposition above noticed, *that an order to be appealable must go, to some extent, to the merits of the controversy, or substantially affect the legal or equitable rights of the party appealing.*"

In re: Miller, 62 N. J. Eq. p. 764 (49 Atl. 149) this Court reviewed an order made by the Chancellor directing certain use to be made of funds of an estate. One or more of the persons in interest and affected by the order appealed. This Court held:

"it is urged that the Chancellor's order rests in discretion, but we think it comes in the class of appealable matters. It substantially affects equitable, if not legal, rights, and thus is a proper subject of appeal. *Transportation Co. v. Stewart*, 21 N. J. Eq. 484-488."

The law is well settled in this State that a decree or order to be appealable "must go to some extent to the merits of the controversy or substantially affect the legal or equitable rights of the party appealing."

The claim of the Exeter Land Company, if any, affects only the ground. The expensive buildings upon the lot were constructed by Ireland and there is, of course, no doubt about his complete equitable ownership of the property represented by the value of the buildings.

The claim of the Exeter Land Company is not a matter of controversy in the foreclosure proceeding, and, in fact, there is no controversy concerning the subject of the foreclosure case. Ireland got 100% for the

mortgage, the subsequent owners in buying took full credit for it and there is not as much as a pretense of any defense. The outcome of the suit to quiet title would not give any additional defenses and the result is that any defenses which the parties can ever have to the foreclosure proceeding are available at this time. The legal or equitable rights of the appellants in the foreclosure proceeding have not been affected, in a legal sense, by the order of the Vice Chancellor, and the order is not reviewable.

There is an insinuation in the recital of facts in the petition for injunction and in the brief of the appellants that the appellants may have some rights against the South Jersey Title and Finance Company, the holder of the mortgage being foreclosed, because the title policy which the Title Company issued to the Baltimore Life Insurance Company did not note any claim of the Exeter Land Company as an exception in the policy. A complete answer is that the application for title insurance was for such insurance to the Baltimore Life Insurance Company as mortgagee and the only obligation of the Title company under the policy was to the mortgagee. The only person who could be heard to complain respecting the policy would be the holder thereof. Assuming, but not conceding, that the appellants could have any rights against the Title Company respecting its policy, the action would be one at law for damages and would not be a defense in the foreclosure proceeding. Assuming the right may be exercised by way of counter-claim to the foreclosure proceeding, then the appellant should have filed a counter-claim.

POSITION OF SOUTH JERSEY TITLE AND
FINANCE CO.

The South Jersey Title and Finance Company owed a duty to no one under its policy except the Baltimore

Life Insurance Company and could not be compelled to respond to that Company until there had been a foreclosure of the mortgage and a loss sustained by the mortgagee occasioned by an outstanding interest not excepted in the policy. There is no evidence in the case that the South Jersey Title and Finance Company was obliged by the Baltimore Life Insurance Company to take an assignment of the mortgage. It does appear that the mortgagors and subsequent owners of the premises defaulted in the payment of interest, taxes and other charges and that the Title Company did take an assignment of the mortgage. As was held by this Court in *Davis vs. Flag*, "If the money secured by a mortgage is justly due, the motives of a person acquiring an assignment of it, and his refusal to assign it to a third party, the money due being tendered to him, lay no ground for the staying of such foreclosure suit."

The South Jersey Title and Finance Company stands in the exact situation of the Baltimore Life Insurance Company before the assignment was made and has the clear right to either have the money due paid or to proceed with its foreclosure case.

Respectfully submitted,

BABCOCK & CHAMPION,
Solicitors for and of Counsel with
Complainant-Respondent.

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