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Court of Errors and Appeals.

KATARINA P. SCHMIDT,
Plaintiff and Respondent,

vs.

CHARLES FREY and LENA FREY,
Defendants and Appellants.

*On Appeal
from New
Jersey
Supreme
Court.*

10

STATEMENT OF THE CASE.

Notice of Appeal.

Filed

20

SUPREME COURT OF NEW JERSEY.

KATARINA P. SCHMIDT,

Appellee,

vs.

CHARLES FREY and LENA FREY,

Appellant.

*Action
at Law.
Appeal
to Court
of Errors
and
Appeals.*

30

To John J. Fallon, Esq., Attorney of Plaintiff:

TAKE NOTICE, that the defendants appeal to the Court of Errors and Appeals from the whole of the judgment entered in this cause on the following grounds:

40

Notice of Appeal.

1. The complaint discloses no cause of action in that it fails to show that a suit was brought on the bond within six months after the date of the sale of the real estate by the sheriff under the foreclosure proceedings set out in the complaint.

2. That the court erred in overruling the motion for non-suit.

10

3. That the court erred in overruling the following question:

Q What if anything did the auctioneer announce before the sale?

4. That the court erred in overruling the following question:

Q Now, Mr. Frey, did you or did you not rely when you purchased the property upon the advertisement and upon the announcement made by the auctioneer at the sale?

20

5. That the court erred in overruling the following question:

Q The question is. What was Mr. Mayer's business?

6. That the court erred in overruling the following question:

Q Was Mr. Mayer a brewer?

30 7. That the court erred in overruling the following question:

Q Did you lose any money in the property?

8. That the court erred in overruling the following question:

Q When you purchased the property, did you, or did you not rely upon the representations made in the advertisement and upon the representations and announcements made by the auctioneer?

40

Notice of Appeal.

9. That the court erred in overruling the following question:

Q By reason of you not being very well, your husband attended the active part of your business?

10. That the court erred in overruling the following question:

Q Is it or is it not a fact that your husband has acted for you in some of these matters because of the fact that you are not able to do it yourself because of your health? 10

11. That the court erred in overruling the following question:

Q Do you remember that your husband bought the property in later at a sheriff's sale under the foreclosure?

12. That the court erred in overruling the following question: 20

Q Did you or did you not rely upon that advertisement as to information about the property at the time you bought it at public sale?

13. That the court erred in overruling the following question:

Q Tell us what Mr. Tissot, the auctioneer, announced as to the property as near as you can remember before the auction sale commenced and before you purchased the property? 30

14. That the court erred in overruling the following question:

Q Now, Mr. Frey, did you or did you not in purchasing this property rely upon the advertisement I have mentioned and upon the representations and announcements made by the auctioneer as to the property, and did or did not they induce you to purchase it? 40

Notice of Appeal.

15. That the court erred in overruling the following question:

Q What did the auctioneer announce?

16. That the court erred in overruling the following question:

10 Q Now, I would ask again, Mr. Frey, how much money you lost in the nature of rent and other items on the property that you bought at the public sale advertised by C. A. Tissot, August 20, 1907, being the property owned by Schmidt?

17. That the court erred in overruling the following question:

Q Did you or did you not trade off the property after you bought it?

18. That the court erred in overruling the following question:

20 Q How long did you own the property in question?

19. That the court erred in overruling the following question:

Q Now, tell us how much money and give in detail how you arrive at it, did you lose by reason of trading or selling of the property in question after you had bought it and received a deed for it?

30 20. That the court erred in overruling the following question:

Q Was there or was there not at the time you bought the property in question at public sale secured leases on the property?

21. That the court erred in overruling the following question:

40 Q Was there or was there not a lease on that property guaranteed by one of the richest brewers or breweries in the United States?

Notice of Appeal.

22. That the court erred in overruling the following question:

Q Did you have any notice of the sale under foreclosure proceedings of the Josephine Weidner mortgage?

23. That the court erred in overruling the following question.

Q Did you know that the property in question was to be sold by the sheriff under these foreclosure proceedings? 10

24. That the court erred in overruling the following question of Juror Liebel as follows:

Q A copy for the advertisement was originally written in German, wasn't it? Who translated it into English, your husband or Mr. Tissot, the agent?

25. That the court erred in overruling the following question: 20

Q You acted for your wife in this matter?

26. That the court erred in overruling the following question of Juror Liebel:

Q Did you write the ad, the copy for the ad out in German first before you translated it into English?

27. That the court erred in directing a judgment in favor of the plaintiff, whereas judgment should have been directed in favor of the defendants. 30

28. The court erred in so directing a judgment and taking the case away from the jury.

PEIRCE & HOOVER,
Attorneys of Defendants.

Notice of Appeal.

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

JOHN M. ROBERTS, being conscientiously scrupulous against taking an oath, and being duly affirmed on his solemn affirmation, says that he served a true copy of the within notice personally on John J. Fallon, Esq., on the 22nd day of December, 1913.

10

JOHN M. ROBERTS.

Affirmed and subscribed to before
 me this 23rd day of December,
 1913.

HEDWIG M. BREMER,
Notary Public of New Jersey.

20

30

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Judgment Record.

NEW JERSEY SUPREME COURT.

KATARINE P. SCHMIDT,

vs.

CHARLES FREY AND LENA FREY.

*Judgment
Record.*

10

Plaintiff residing at Hoboken, in the County of Hudson and State of New Jersey, says that:

First Count.

1. On August 31st, 1907, defendants executed their bond of that date to the plaintiff, in the penal sum of \$10,000, conditioned to pay \$5,000 with interest at five per cent. per annum. 20

2. To secure said bond defendants executed a mortgage of the same date to the plaintiff, upon certain lots whereof defendants were seized in fee simple at Hoboken, Hudson County, New Jersey, known on a certain map entitled "Map of property situate at Hoboken, Hudson County, N. J., belonging to the estate of John G. Coster, deceased, surveyed and laid out into lots November, 1860, by Daniel Ewen and Austin D. Ewen, city surveyors, New York," and duly filed in the office of the clerk (now register) of said County of Hudson, as Lot 8 in Block 17. 30

3. On August 30, 1906, plaintiff being then the owner of said lands, made and executed a bond and mortgage for the sum of \$10,000 to one Josephine Weidner.

4. On August 31st, 1907, the plaintiff and George Schmidt her husband conveyed the said land to the

40

Judgment Record.

said Charles Frey and Lena Frey in fee simple, expressly subject to the mortgage of Josephine Weidner mentioned in paragraph three.

5. On April 24th, 1911, the defendants conveyed the said land to John C. Forster and Charles Beirne.

10 6. On November 16th, 1912, a final decree for the sale of said land and the foreclosure of said mortgage of said Josephine Weidner was made in the Court of Chancery in a suit brought for that purpose by the said Josephine Weidner against the plaintiff and others, and the said decree adjudged that there was then due upon the bond and mortgage of the complainant Josephine Weidner the sum of \$10,508.89, and to the defendant therein and plaintiff herein, Katarine P. Schmidt, upon her bond and mortgage the sum of \$5,169.44, and that the mortgage of the
20 said Josephine Weidner was first in registry and execution and entitled to priority of payment, and that the mortgage of the defendant, this plaintiff, Katarine P. Schmidt, was second in registry and execution and entitled to be secondly paid, and directed that a writ of *feri facias* be issued to the sheriff of Hudson County for the sale of said mortgaged premises to make said sums with interest at the rate of six per cent. per annum from November 4th, 1912, and complainant's costs in that suit which were thereupon taxed at the sum of \$244.68, and costs of the
30 defendant Katarine P. Schmidt the plaintiff herein which were thereupon taxed at \$4.76.

7. On January 9th, 1913, the said sheriff by virtue of said writ of execution, duly sold said premises, according to law, at public vendue, to George E. Schmidt, he being the highest bidder at said sale for the sum of \$11,175.00.

40 8. The plaintiff received from said sheriff the sum of \$65.40, being the amount remaining in the hands

Judgment Record.

of the sheriff realized from said sale after the payment by him to the complainant the amount of her decree, costs and interest, and the deduction by the sheriff of his fees and commissions, all of which appears upon the said writ of execution which was duly returned into court.

9. After crediting upon the said decree and execution to the defendants the said sum of \$65.40 received by the plaintiff from the proceeds of said sale, there remains due to this plaintiff from said defendants upon the same, a deficiency of the amount of \$5,177.68. 10

10. Defendants have not paid said sum of \$5,177.68, or any part thereof.

Second Count.

1. Defendants, by their bond, dated August 31st, 1907, bound themselves under seal to plaintiff to pay plaintiff \$10,000, on condition, nevertheless, that said obligation should be void if defendants pay to plaintiff \$5,000, on August 31st, 1917, with interest thereon from the date of said bond at the rate of five per cent. per annum to be paid semi-annually. 20

2. In said bond or obligation it was further expressly agreed that should any default be made in the payment of any interest or any part thereof on any day whereon the same was made payable, and should said interest or any part thereof remain unpaid and in arrears for the space of thirty days, that then and from thenceforth the aforesaid principal sum of \$5,000 with all arrears thereon should at the option of the plaintiff become and be due and payable immediately thereafter. 30

3. On March 2nd, 1912, \$125.00 being six months interest under the terms of said obligation became due and payable from the defendants to the plaintiff. and defendants made default in the payment thereof, 40

Judgment Record.

and the same remained in default for more than thirty days, said interest nor any part thereof have not since been paid.

4. By the condition of said bond the principal sum of \$5,000, with all arrears of interest thereon is now due and payable from the defendants to the plaintiff.

5. Nothing has been paid on said bond.

10 Plaintiff demands, as damages, on the first count, \$5,177.68 with interest from January 9th, 1913, and upon the second count, as damages, \$5,000 with interest from March 2nd, 1912, and judgment according to the statute for \$10,000.

JOHN J. FALLON,
Attorney for Plaintiff.

20 The defendants, Charles Frey and Lena Frey, his wife, residing at Demarest, in the County of Bergen, and State of New Jersey, by Peirce & Hoover, their attorneys, answering the complaint of Katarina P. Schmidt, comes into court and says:

- (1) They admit paragraph 1, of complaint
 - (2) They admit paragraph 2, of complaint.
 - (3) Defendants have no personal knowledge and leave plaintiff to prove same.
 - (4) Defendants admit this.
 - (5) Defendants admit paragraph 5.
 - 30 (6) Defendants deny paragraph 6.
 - (7) Defendants deny paragraph 7.
 - (8) Defendants deny paragraph 8.
 - (9) Defendants deny paragraph 9.
 - (10) Defendants deny paragraph 10.
- Second Defense to paragraph 9.

40 That heretofore the plaintiff caused to be advertised for sale at public vendue, the premises set out in the complaint filed in this cause; that the plaintiff caused her agent to announce at said sale that there was a ten year lease on said premises held by and rent-

Judgment Record.

ed to one of the richest brewers or breweries in the State of New Jersey, and that said brewery was required to pay a rental of one thousand dollars a year for the term of ten years from the date of sale; that relying upon this representation, defendants purchased the property in question for twenty-two thousand, five hundred dollars; paying therefor seven thousand dollars in cash, and taking the property subject to an encumbrance of fifteen thousand dollars, part of encumbrance being a mortgage of five thousand dollars made by defendants and referred to in the complaint filed in this cause; that defendants relied absolutely upon said representations made at the date of sale; that after the deed had been delivered by the plaintiff to the defendants, and the bond and mortgage set out in the complaint executed and delivered, it was discovered by defendants that said representation was false in that while there was a ten year lease upon said premises, part of which term had expired, it was not held by one of the richest brewers or breweries in the State of New Jersey, and furthermore, the tenant who held the lease was an irresponsible tenant financially, and failed to comply with the terms of the lease; that by reason of said false and fraudulent representation, defendant incurred a loss of ten thousand dollars. That defendants well and truly performed, fulfilled and kept all the conditions of contract to purchase the premises set out in the bill of complaint.

Third defense to paragraph 9.

That the said plaintiff and her husband, George E. Schmidt, conspired together to cheat and defraud the defendants by having the price of the property set out in the complaint run up on defendants at the time of the public sale when defendants purchased said property of plaintiff, by having a collusive bidder or bidders, who did not intend to purchase said property, but were engaged to put in fictitious bids to run up

Judgment Record.

over ten thousand dollars beyond what the property was worth, which was done, thereby committing a fraud on defendants and by reason of said fraud induced defendants to execute the bond and mortgage set out in the complaint. That defendants had no knowledge of said fraud until after they had executed and delivered said papers. By reason of said fraud said bond and mortgage defendants allege are void
 10 against defendants.

Defense to paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9 and 10 of count one.

That under and by virtue of an act of the legislature of the State of New Jersey entitled, "An act concerning proceedings on bonds and mortgages given for the same indebtedness, and foreclosure and sales of mortgaged premises thereunder, approved March 12, 1880, and the amendments thereto," especially the amend-
 20 ment passed by the legislature of the State of New Jersey, March 23, 1881, suit on a bond having been given with a certain mortgage and for the same debt, as set out in the complaint, was required to have been begun within six months from the date of the sale of said mortgaged premises, and defendant pleads said laws of the State of New Jersey in defense to the above action, and alleges that the sale of the mortgaged premises under and by virtue of foreclosure proceedings affecting the bond and mortgage set out in the complaint occurred more than six months before
 30 the beginning of the action in this cause, and that by reason of the lapse of said six months' time, said plaintiff's action is barred and judgment should be rendered in favor of the defendant.

Second count.

- (1) Defendants admit paragraph 1.
- (2) Defendants admit paragraph 2.
- (3) Defendants deny paragraph 3.
- (4) Defendants deny paragraph 4.
- 40 (5) Defendants deny paragraph 5.

Judgment Record.

As a defense to paragraphs 1, 2, 3, 4 and 5 of count two, defendants say that heretofore the plaintiff caused to be advertised for sale at public vendue, the premises set out in the complaint filed in this cause; that the plaintiff caused her agent to announce at said sale that there was a ten year lease on said premises held by and rented to one of the richest brewers or breweries in the State of New Jersey, and that said brewery was required to pay a rental of one thousand dollars a year for the term of ten years from the date of sale; that relying upon this representation, defendants purchased the property in question for twenty-two thousand, five hundred dollars; paying therefor seven thousand dollars in cash, and taking the property subject to an encumbrance of fifteen thousand dollars, part of encumbrance being a mortgage of five thousand dollars made by defendants and referred to in the complaint filed in this cause; that defendants relied absolutely upon said representations made at the date of sale; that after the deed had been delivered by the plaintiff to the defendants, and the bond and mortgage set out in the complaint executed and delivered, it was discovered by defendants that said representation was false in that while there was a ten-year lease upon said premises, part of which term had expired, it was not held by one of the richest brewers or breweries in the State of New Jersey, and furthermore, the tenant who held the lease was an irresponsible tenant financially, and failed to comply with the terms of the lease; that by reason of said false and fraudulent representation, defendant incurred a loss of ten thousand dollars. That defendants well and truly performed, fulfilled and kept all the conditions of contract to purchase the premises set out in the bill of complaint.

That the said plaintiff and her husband, George E. Schmidt, conspired together to cheat and defraud the defendants by having the price of the property set out

Judgment Record.

10 in the complaint run up on defendants at the time of the public sale when defendants purchased said property of plaintiff, by having a collusive bidder or bidders, who did not intend to purchase said property, but were engaged to put in fictitious bids to run up over ten thousand dollars beyond what the property was worth, which was done, thereby committing a fraud on defendants and by reason of said fraud induced defendants to execute the bond and mortgage set out in the complaint. That defendants had no knowledge of said fraud until after they had executed and delivered said papers. By reason of said fraud said bond and mortgage defendants allege are void against defendants.

20 Nor has plaintiff complied with an act entitled, "A supplement to the act entitled, 'An act concerning proceedings on bonds and mortgages given for the same indebtedness and the foreclosure and sale of mortgaged premises thereunder, approved March 12, 1880.'" which supplement was approved May 28, 1907.

Therefore judgment should be given in favor of the defendants.

PEIRCE & HOOVER,
Attorneys for defendants.

30 1. The plaintiff admits that the plaintiff heretofore caused to be advertised for sale at public vendue, the premises mentioned and described in the complaint filed herein and that defendants purchased the said property for the sum of \$22,000 paying therefor \$7,000 in cash as alleged in the second defense to paragraph 9, in defendants amended answer.

2. The plaintiff denies each and every other allegation contained in the second defense to paragraph 9, in defendants amended answer.

40 3. The plaintiff denies every allegation in the third defense to paragraph 9 in defendants' amended answer.

Judgment Record.

4. Plaintiff denies that plaintiff's action is barred by reason of the allegations in the defendants' amended answer as a defense to the first count of the complaint.

5. In reply to the allegations in defendants' amended answer as a defense to paragraphs 1, 2, 3, 4 and 5 of the second count of the complaint, plaintiff admits that the plaintiff heretofore caused to be advertised for sale at public vendue the premises mentioned and described in the complaint filed herein and that defendants purchased the said property for the sum of \$22,000 paying therefor \$7,000 in cash, but denies each and every other allegation therein. 10

As a separate reply plaintiff will object:

1. That the amended answer discloses no defense to the action. It fails to show that the representations alleged in said amended answer to have been made by the plaintiff through her agent "that there was a ten-year lease on said premises held by and rented to one of the richest brewers or breweries in the State of New Jersey, and that said brewery was required to pay a rental of one thousand dollars a year for the term of ten years," or any memorandum or note thereof was in writing and signed by the plaintiff, or some other person thereunto by her lawfully authorized. 20

2. Plaintiff will object that parol evidence is not admissible to prove the said allegations in defendants amended answer, and will also reply upon, "An act for the prevention of frauds and perjuries." 30

JOHN J. FALLON,

Attorney of Plaintiff.

This case was tried before Judge Benjamin A. Vail with a jury, in the Hudson Circuit, on December 10th, 1913. 40

Judgment Record.

The jury by direction of the court, rendered a general verdict against the defendants and in favor of the plaintiff for five thousand four hundred and sixty-five dollars (\$5,465.00).

Whereupon it is adjudged that the plaintiff recover of the defendants the sum of five thousand four hundred and sixty-five dollars and her costs which are taxed at the sum of fifty-three dollars and sixty-eight cents, making in the whole the sum of five thousand five thousand five hundred and eighteen dollars and sixty-eight cents.

10

\$5,465.00

53.68

\$5,518.68

WILLIAM S. GUMMERE,

Judgment entered

C. J.

December 17, 1913.

20

I, William C. Gebhardt, Clerk of the Supreme Court of the State of New Jersey, do certify that the foregoing is a true copy of the judgment entered in the above stated cause as the same remains of record in my office.

In testimony whereof I have set my hand and the seal of said court at Trenton, this 24th day of December, A. D., nineteen hundred and thirteen.

(SEAL)

WM. C. GEBHARDT,

Clerk.

30

PLAINTIFF'S WITNESSES TESTIFIED AS
FOLLOWS:

Mr. Fallon. I will offer in evidence bond and mortgage made by Charles Frey and Lena Frey his wife, to Katarina P. Schmidt in the penal sum of \$10,000, to secure the payment of \$5,000, payable on the 31st day of August, 1917, with interest at the rate of five per cent. per annum, payable semi-annually. The bond in question is dated August 31, 1907.

40

(Paper marked Exhibit P. 1.)

Opening.

Also offer in evidence, with the consent of the other side, the mortgage which was given to accompany that bond, bearing like date, covering lands in Hoboken.

(Paper marked Exhibit P. 2.)

I offer in evidence also the transcript of all proceedings in the foreclosure suit in Chancery of New Jersey between Josephine Weidner, complainant, and John C. Foster, et ux. et als, defendants; this transcript being certified to by the Clerk in Chancery. 10

(Paper marked Exhibit P. 3.)

I offer in evidence also the record of the notice of *lis pendens* as applicable to this suit, as contained in Liber 10 of *lis pendens* for Hudson County, on pages 552, 553 and 554, which was received in the office of the register and recorded August 18, 1913, at 3.24 P. M.

(Book considered to have been marked P. 4.) 20

The Court. When was this sale?

Mr. Peirce. January 9, 1913, I think.

The Court. That is recited in the deed?

Mr. Fallon. Yes.

Mr. Peirce. That is admitted by both sides.

The Court. And your *lis pendens* was filed in August following?

Mr. Fallon. Yes.

Mr. Peirce. Better put on record the date of the beginning of this action. 30

Mr. Fallon. August 19, 1913.

The Court. The day after you filed the *lis pendens*?

Mr. Fallon. Yes.

Katarina P. Schmidt, direct.

KATARINA P. SCHMIDT, sworn.

Direct examination by Mr. Fallon.

Q Mrs. Schmidt, you are the person named in the bond given by Charles Frey and Lena Frey his wife to Katarina P. Schmidt? A Yes, sir.

Q On August 31, 1907? A Yes, sir.

10 Q Up to what time was interest paid on that bond to you by any person? A Well, that interest was paid until February.

Q When; what year? A What year? I think last year.

Q Do you know when it was paid? You must not think; we want to know when it was paid? A Well, it was paid in February.

Q Did you collect it yourself personally? A I collected it myself. It was due in February and I collected it in March.

20 *By the Court.*

Q Did you endorse it on the bond? A Yes.

Mr. Fallon. No; it is not.

By Mr. Fallon.

Q Did you receive any interest thereafter on that bond from any person? A No.

Q Did you receive any part of the principal moneys due on that bond from any person? A Yes; I received from Mr. Frey twice.

30 Q Do you know what I mean by principal? A No; I don't know what you mean.

Q Did you receive any part of the five thousand dollars mentioned in that bond? A No, no, no, nothing at all.

The Court. You want to prove she received something from the sheriff.

Mr. Fallon. It is stipulated that we did receive \$64.

Katarian P. Schmidt, cross.

Q Do you know how much you received from the sheriff after the partnership sale? A I was not present.

The Court. You can agree on that.

Mr. Peirce. I don't know.

A I left that to my husband.

Mr. Fallon. The sheriff's record shows it.

The Court. Yes.

10

Cross examination by Mr. Peirce.

Q When was the last interest paid you, Mrs. Schmidt? A What I say in February.

Q I have to cross examine you, Mrs. Schmidt. What date in February? A It was due in February. I had to go over to Mr. Foster and he paid it in cash.

Q It was paid in March, 1912? A Yes.

Q You did not have much to do with this business, did you, with Mr. Frey? A No.

Q Your husband acted as your agent? A Not my agent—

20

Mr. Fallon. I object on the ground it is not proper cross examination.

The Court. It is not cross examination. She was only asked as to the interest she received, and that is all you can cross examine about.

Mr. Peirce. Perhaps I can get it in another way.

Q The interest was not paid to you, but to your husband, wasn't it? A Mr. Frey came in the house and he paid it, unless he sent it by check or by mail.

30

Q That interest was paid to your husband for you? A It was sent to the house.

Q Won't you answer my questions, please? Was not that interest paid to your husband and didn't he receive it for you? A No; the letter comes in the house and I opened it and I see what it was.

Q Wasn't the money deposited in your husband's account in the bank?

40

Motion for Non-suit.

Mr. Fallon. I object to it as immaterial, irrelevant and not proper cross examination

A No.

10 *The Court.* Do not answer. I do not think that would make any difference. That might operate against you if it was given to somebody else. She admits she received it. She admits she received the interest that was due in February, 1912. You received nothing since?

A No; I don't receive anything since.

PLAINTIFF RESTS.

Motion to Non-Suit.

20 *Mr. Peirce.* If you honor please, we move for non-suit on the ground shown by the record that the bond sued upon was accompanied by a mortgage, which mortgage and bond represent the sum of the indebtedness, and that there was a foreclosure of the mortgage accompanying the bond sued upon, by Mrs. Katarina P. Schmidt being made a party to a foreclosure instituted by the first mortgage of \$10,000 on the property, in a case entitled "In Chancery of New Jersey, between Josephine Weidner, complainant, and
30 John C. Foster and others, defendants," as shown by the transcript from the Court of Chancery, which is in evidence, and we claim that under the laws of the State of New Jersey this action now pending has not been brought within six months from the date of the sale by the sheriff, said sale being January 9, 1913, and the action now at bar being started August 19, 1913, more than six months thereafter. By reason of that we move for a non-suit.

Charles Frey, direct.

The Court. The motion is denied under the authority of the case of *Wheeler vs. Ellis*, 56 N. J. Law.

Mr. Peirce. I take an objection.

Defendant's witness testified as follows:

CHARLES FREY, sworn.

Direct examination by Mr. Peirce.

Q Mr. Frey, you are one of the defendants in this cause? A Yes, sir.

10

Mr. Frey. Any objection to consenting to the offer of this newspaper file by consent? I have the man here to prove it.

Mr. Fallon. No; I will admit it.

Mr. Peirce. It is offered in evidence by consent of both sides, being the files of the Observer, a paper published in Hoboken, New Jersey, covering June, July, August, 1907, and particular reference being made to the advertisement which reads as follows:

20

"Auction Sale. Choice Investment. C. A. Tissot, Auctioneer, will sell at public auction on Tuesday, August 20, 1907, at 2 P. M., on the premises, of the northeast corner of Madison and Ferry Streets, Hoboken, New Jersey. This property has thereon a four-story brick store and flat building, in every way up to date, substantially constructed and well rented under secured leases. It is doubtful if ever a more perfect investment was ever offered at a public sale, and the same will be sold, due to the departure of the present owner. Sale is positive, rain or shine. Further particulars can be obtained of the auctioneer, 57 Newark Street, Hoboken. No sales are conducted by C. A. T. unless his name appears in the advertisement."

30

Q Did you see that advertisement in the Hoboken Observer?

40

Charles Frey, direct.

Mr. Fallon. I object to this line of examination. I would like to ask Mr. Peirce to disclose now, if he will, what the purpose of this line of examination is, so I will not be compelled to object; otherwise I will object to this line of examination.

10 *Mr. Peirce.* My opening shows that. I am setting up fraud. I will connect it up.

The Court. I will allow this question as to whether he saw the advertisement.

Q Go ahead. A Yes; I seen this advertisement.

Q After you saw the advertisement what did you do?

Mr. Fallon. I object.

A I intend to buy it.

20 *Mr. Fallon.* I object to it as immaterial, irrelevant and in no wise binding upon this plaintiff in this suit.

The Court. Not unless they connect it, but I will take this now.

Q What did you do after you saw the advertisement? A I made up my mind to go to the auction and buy it.

Q Did you attend the auction? A Yes.

Q Did you buy the property? A Yes.

Q What, if anything, did the auctioneer announce before the sale?

30 *Mr. Fallon.* I object, on the ground that there is no foundation laid to indicate that anything that the auctioneer had said was in any wise binding upon the plaintiff in this suit.

Mr. Peirce. I want to find out what did happen and then I am going to connect it up.

The Court. I overrule the question until it is first shown that the auctioneer was authorized to make the representations.

40 *Mr. Peirce.* Note an objection.

Charles Frey, direct.

Q Now, Mr. Frey, did you or did you not rely, when you purchased the property, upon the advertisement and upon the announcement made by the auctioneer at the sale?

Mr. Fallon. I object.

A I did rely on it.

Mr. Fallon. I object. Do not answer. I object to it as immaterial and irrelevant.

10

The Court. Question overruled.

Mr. Peirce. Objection.

Mr. Fallon. I ask that the answer be stricken out.

The Court. Yes; if he did answer. The witness must not answer until counsel has an opportunity to object.

Q Was there a lease on the property in question running for ten years, guaranteed by one of the richest brewers or breweries in the United States?

20

Mr. Fallon. I object to it as immaterial, irrelevant and an improper method of providing a lease, and that the witness' answer, if made, would be calling for a conclusion.

The Court. That is not the proper way to prove a lease, and as far as the reference to one of the richest brewers in the United States, how are you going to prove it?

Mr. Peirce. Not by the production of the lease.

30

The Court. You probably would have to call every brewer in the United States and each would say he is the richest. It is not the proper way to prove it. I will overrule it on that ground.

Q Who held the lease?

Mr. Fallon. I object.

Mr. Peirce. I can produce the record.

Mr. Fallon. Then we will stipulate.

Mr. Peirce. Why don't you go ahead?

40

Charles Frey, direct.

Mr. Fallon. Here is a lease.

Q Who had the lease on the property?

Mr. Fallon. I object.

The Court. It was a recorded lease?

Mr. Fallon. Yes.

The Court. The record is the best evidence.

Mr. Peirce. I have a record here.

10 It is stipulated by both sides and agreed that John P. Mayer held the lease upon the property in question from June 10, 1907.

Q What was John P. Mayer's business?

The Court. What is the term of the lease?

Mr. Peirce. The lease was for ten years; a thousand dollars a year.

Q What was Mr. Mayer's business?

Mr. Fallon. Objected to as immaterial and irrelevant.

20 *The Court.* I do not think that would be material. The representation in the advertisement was that there was a ten year lease; isn't that so?

Mr. Peirce. No.

Mr. Fallon. He says guaranteed by one of the richest brewers.

Mr. Peirce. The advertisement says this. "And well rented under secured leases." It was announced at the sale that it was leased by the brewer.

30 *The Court.* The record shows there was a ten year lease of the property at a thousand dollars a year.

Q The question is, what was Mr. Mayer's business?

Mr. Fallon. Objected to on the ground of immaterial and irrelevant.

The Court. I think it is irrelevant. I will overrule it.

40 *Mr. Peirce.* Note an objection.

Charles Frey, direct.

Q Was Mr. Mayer a brewer?

Mr. Fallon. Objected on the ground it is immaterial and irrelevant.

The Court. Overruled.

Mr. Peirce. Note an objection.

The Court. I do not overrule it on the ground it is leading, although it is leading, but I overrule it on the ground it is irrelevant. 10

Q How much money did you lose in the nature of rent and other items after you purchased the property at the sale advertised to occur August 20, 1907?

Mr. Fallon. Objected to as irrelevant and immaterial and the question in itself presupposes that a loss was sustained by the witness.

The Court. Overruled.

Mr. Peirce. Note an objection.

Q Did you lose any money in the property? 20

Mr. Fallon. Objected to as immaterial and irrelevant.

The Court. Overruled.

Mr. Peirce. Note an objection.

Q Tell us exactly how much money you lost by reason of purchasing the property in question August 20, 1907, and give in detail just what the figures are?

Mr. Fallon. Objected to as immaterial and irrelevant.

The Court. Overruled. 30

Mr. Peirce. Note an objection.

Q When you purchased the property did you or did you not rely upon the representations made in the advertisement and by the representations and announcement made by the auctioneer?

Mr. Fallon. Objected to as immaterial and irrelevant and furthermore that there is no foundation laid to indicate that this auctioneer was in any way authorized to bind the plaintiff. 40

Mrs. Katarina P. Schmidt, direct.

The Court. Overruled.

Mr. Peirce. Note an objection.

Q Now suppose you step aside a minute, Mr. Frey, with your honor's permission.

(Witness temporarily withdrawn from stand.)

10 MRS. KATARINA P. SCHMIDT, recalled by defendant.

Direct examination by Mr. Peirce.

Q Do you remember being examined before Mr. Bernhardt, the Supreme Court Commissioner? A Yes.

Q Remember that you said at that time: "Q And your husband has nothing? A He is my agent. Q Now are you sure of that? A Yes."

20 *Mr. Fallon.* I object. I submit there is nothing she can be contradicted on yet.

Mr. Peirce. I can ask the question. I can even contradict my own witness. I cannot impeach my own witness, but I can contradict her.

The Court. Yes; but you haven't laid any foundation yet for contradiction.

Mr. Peirce. I am asking this question, and your honor can see the reason for it.

30 *The Court.* I will allow you to ask her the questions and I will not consider her in this case your witness, because she is an adverse witness, of course.

Q Now you are a property owner to a considerable extent, are you not, Mrs. Schmidt? A Yes.

Q You inherited a lot of money, didn't you? A Yes.

Q You have not been very well, have you?

Mr. Fallon. I object to the question.

40 *The Court.* Confine the questions to this transaction.

Mrs. Katarina P. Schmidt, direct.

Q By reason of your not being very well your husband attended the active part of your business?

Mr. Fallon. Objected to as immaterial and irrelevant and leading.

The Court. This is an adverse witness really and I will allow you to lead, but I think it is irrelevant, and it is overruled on that ground.

Mr. Peirce. Note an objection.

10

Q Is it or is it not a fact that your husband has acted for you in some of these matters because of the fact that you were not able to do it yourself because of your health?

Mr. Fallon. I object to it as too general and it does not relate in any wise to this particular suit and is immaterial.

The Court. Overruled.

Mr. Peirce. Note an objection.

20

Q You remember the sale of the property located on the north-east corner of Madison and Ferry streets, Hoboken, do you not? A Sure.

Q That was sold at public sale? A Yes.

Q You had that property sold at public sale, did you not? A Yes.

Q And the man who was your agent was C. A. Tissot in the matter?

Mr. Fallon. I object to it as leading and calling for a conclusion.

30

The Court. He might have been her agent for the purpose of a sale, but the particular purpose of his duties are limited. I will allow that question. She may answer.

A Yes; Mr. Tissot was the man.

Q You wanted to get the largest price you could for that property, did you not?

The Court. Who wouldn't?

Mr. Fallon. I object to it as immaterial and irrelevant.

40

Mrs. Katarina P. Schmidt, direct.

The Court. Any one would. We will assume she did want to get the largest price she could for the property.

Q Did you attend the sale? A No.

Q Sure of that? A No.

Q Your husband attended the sale for you?

Mr. Fallon. I object.

10 A Yes.

Mr. Fallon. I object to the question in that way, as very leading.

A I don't understand.

Mr. Fallon. The question is your husband attended the sale for you.

A Yes, for me—for me. Mr. Schmidt for me.

Mr. Fallon. My objection was before the answer was given, and I objected to it, and I ask to have the answer stricken out.

20

The Court. He might have been her agent for the purpose of seeing the sale was properly conducted, but that would not make him the agent to make fraudulent representations.

Mr. Peirce. I can only prove this one step at a time. I can't help asking something to start off. Does your honor overrule it?

The Court. No; I will allow it. She says he was her agent for the purpose of selling the property.

30

Q You paid the auctioneer to advertise the property, did you not? A No, I did not.

Q You did not pay him to advertise it? A I can't remember. I don't know; it is so long ago—several years ago. I can't remember so well.

Q You can remember everything else, can you, but this? A I don't know.

Mr. Fallon. That is a pretty general question.

A Seven years is a long time.

40

Mrs. Katarina P. Schmidt, direct.

Q You do remember the property was advertised for sale and was sold, don't you? You know that anyhow? A Well, Mr. Schmidt was very sick—

Q Just answer the question. You do remember that the property was advertised for sale and was sold? A Sure.

Q You live where, in Hoboken? A Yes.

Q What paper do you take? A Oh, I don't know; I can't remember. 10

Q Can't remember? A No.

Q Do you know the *Observer*, a paper published there? A Oh, I always read a German paper.

Q Eh? A I always read a German paper.

Q Do you mean to say that you do not read the Hoboken *Observer*? A Oh, yes, now—at that time—now I read it, but not at that time, because I couldn't read English so well then. Now, I can read it better. 20

Q Do you mean to say that you did not see the Hoboken *Observer* in July or August, 1907? A No, no; my husband come home and he says—

Q Never mind. You said no. Didn't you and your husband take the *Observer* and have it daily in your home in 1907?

Mr. Fallon. I object to what she and her husband did.

A I don't see—

The Court. It might have been in the house, but she said she could not read it. It was in English. 30

Mr. Peirce. I am cross examining.

Q You did know that the property was advertised, didn't you? Now answer that, Mrs. Schmidt.

A Sure.

Q Yes. A Yes.

Q How did you know that? A Well, I told my husband he shall sell the property, because he was sick—people thought he had the consumption—and I 40

Mrs. Katarina P. Schmidt, direct.

had rheumatiz, and I say if it don't bring twenty-one thousand then you let it go, but I must have twenty thousand. We say, "You sell it for twenty-one thousand," so he did. He came home and he told me.

Q How long have you been in this country, Mrs. Schmidt? A Well, thirty years.

Q Thirty? A Yes.

10 Q Then you could read English some in 1907? Couldn't you? A Well, I was not interested. We don't take the English paper.

Q You were not interested in seeing the advertisement of the sale of your own property at that time?

A Well, I thought if my husband manage it it was all right.

Q Anything your husband did you approved of? A Yes; it was all right.

20 Q Your husband read English, didn't he? A Oh, yes, sir.

Q Aren't you mistaken when you say that anything that your husband did was all right in this matter? A Yes; it was all right, what he did.

Q It was all right. Don't have any mistake about that. Now you did see the advertisement of this property in the Observer in August, 1907, did you not? A I can't remember. I can't remember. I don't—

Q Well, you knew that the property had to be advertised in order to sell it at public sale, didn't you?

30 A Left that all to my husband.

The Court. Well, as a matter of law it wouldn't. This was not a sale by the sheriff. A private sale. It didn't have to be advertised.

Mr. Peirce. All right, sir.

Q You knew the property was advertised to be sold by Mr. Tissot, didn't you? A Yes; my husband told me.

Q Your husband told you? A Yes, sir.

George E. Schmidt, direct.

Q Your husband transacts your business matters, does he not? A Yes; my husband manages everything for me.

Mr. Fallon. Of course if you don't talk louder the jury can't hear you.

A I say my husband managed that all for me.

Q Aren't you mistaken about that? A No; I am not mistaken.

Q He managed it satisfactorily to you, did he? A Yes. 10

Mr. Fallon. I object. Well, go ahead. I withdraw the objection.

Q Do you remember that your husband bought the property in later at a sheriff's sale under the foreclosure?

Mr. Fallon. I object to it as entirely immaterial and irrelevant.

The Court. The record shows how it was bought and who bought it. 20

A I don't know.

Mr. Fallon. Do not answer until the court says you shall answer.

The Court. I overrule it.

Mr. Peirce. Note an objection.

No cross examination.

GEORGE E. SCHMIDT, sworn.

Direct examination by Mr. Peirce.

Q Mr. Schmidt, you are the husband of the plaintiff in this case? A Yes, sir. 30

Q You can read and write English? A Yes.

Q You acted for your wife at the time of the sale of the property to Mr. Frey? A Yes.

Q You employed Mr. Tissot as an auctioneer? A Yes.

Q You saw the advertisement contained in the Observer of August 7, 1907, as to this property, didn't you? A Yes. 40

Charles Frey, direct.

Q Now you were present at the sale, weren't you?

A Yes.

Q You know that Mr. Frey bought the property at the sale? A Yes.

Q Which occurred by reason of the advertisement which I have mentioned?

10 *Mr. Fallon.* Objected to, if the court please, as calling for a conclusion. He doesn't know what induced him to buy it.

Q You do know that Mr. Frey bought the property at the sale? A Yes.

Q Was there any other advertisement except that contained in the form and in the words of the Observer of August 7, 1907? A There was no other advertisement.

Q No other advertisement? A No.

20

No Cross Examination.

CHARLES FREY, re-called.

Direct examination by Mr. Peirce.

Q Now, Mr. Frey, you said that you saw the advertisement in the Observer as to the sale of the Schmidt property, didn't you? A Yes.

Q Did you or did you not rely upon that advertisement as to information about the property at the time you bought it at public sale?

30

Mr. Fallon. I object to it as immaterial, irrelevant and there is no proof yet offered in evidence that C. A. Tissot was authorized to make this advertisement read in the way it does read.

The Court. Overruled.

Mr. Peirce. Note an objection.

Q Tell us what Mr. Tissot, the auctioneer, announced as to the property as near as you can remember before the auction sale commenced and before you purchased the property?

40

Charles Frey, direct.

Mr. Fallon. I object on the ground there is no proof to evidence that Mr. Tissot was authorized to make any announcement whatever in behalf of the plaintiff in this suit, and furthermore upon the ground that the question is immaterial and irrelevant.

The Court. Overruled.

Mr. Peirce. I would like to put on the record 10
that I think there is sufficient connection made for this question to be answered and to go to the jury. There is a scintilla of evidence, and perhaps a whole lot more than that.

The Court. I am sorry I cannot agree with you.

Q Now, Mr. Frey, did you or did you not in purchasing this property rely upon the advertisement I have mentioned and the representations and announcement made by the auctioneer as to the property, and did or did not they induce you to purchase it? 20

Mr. Fallon. I object on the ground that it is immaterial and irrelevant and there is no proof that any announcement was authorized by this plaintiff to that auctioneer.

The Court. Overruled.

Mr. Peirce. Note an objection.

Mr. Fallon. And furthermore there is no proof to show what representation was made by the auctioneer other than as stated in this written advertisement, and that, I say, is not in any wise binding upon us at the present time. 30

Q You were present at the sale, were you not? A Yes.

Q You heard what the auctioneer announced? A Yes.

Q What did the auctioneer announce?

Charles Frey, direct.

Mr. Fallon. I object on the ground it is immaterial and irrelevant and there is no proof here that the auctioneer was authorized to make any announcement whatever on behalf of the plaintiff.

The Court. Overruled.

Mr. Peirce. Note an objection.

10 Q Now, I would ask again, Mr. Frey, how much money you lost in the nature of rent and other items on the property that you bought at the public sale advertised by C. A. Tissot, August 20, 1907, being the property owned by—

The Court. You did ask that and I overruled it.

Mr. Peirce. You said I had not connected up the agency.

The Court. You may ask the question.

20 Q (Question repeated.) —property owned by the Schmidts.

Mr. Fallon. I object on the grounds heretofore stated. It is immaterial and irrelevant and there is no proof that any loss whatever was sustained by the witness.

The Court. Overruled.

Mr. Peirce. Note an objection.

Q Did you or did you not trade off the property
30 after you bought it?

Mr. Fallon. I object to it as immaterial and irrelevant.

The Court. Overruled.

Mr. Peirce. Note an objection.

Q How long did you own the property in question?

Mr. Fallon. Objected to as immaterial and irrelevant.

40 *The Court.* Overruled.

Charles Frey, direct.

Mr. Peirce. Note an objection.

Q Now tell us how much money, and give in detail how you arrive at it, did you lose by reason of the trading or selling of the property in question after you had bought it and received a deed for it?

Mr. Fallon. I object to it as immaterial and irrelevant and there is no proof offered thus far that there was any trading or selling of this property. 10

The Court. Overruled.

Mr. Peirce. Note an objection.

Q Was there or was there not at the time you bought the property in question at public sale secured leases on the property?

Mr. Fallon. Objected to as immaterial and irrelevant and furthermore that the question calls for a conclusion. 20

The Court. Overruled.

Mr. Peirce. Note an objection.

Q Was there or was there not a lease on that property guaranteed by one of the richest brewers or breweries in the United States?

Mr. Fallon. Objected to as irrelevant and immaterial.

The Court. Overruled.

Mr. Peirce. Note an objection. 30

Q Did you have any notice of the sale under foreclosure proceedings of the Josephine Weidner mortgage?

Mr. Fallon. Objected to on the ground it is immaterial and irrelevant and not within the issue.

The Court. It would not be relevant, because the sheriff's return is that he acted according to law, and if the man did not know it that is his misfortune. Overruled. 40

Charles A. Tissot, direct.

Mr. Peirce. Note an objection.

Q Did you know that the property in question was going to be sold by the sheriff under these foreclosure proceedings?

Mr. Fallon. Objected to as immaterial and irrelevant.

The Court. Overruled.

10

Mr. Peirce. Note an objection.

Q Have you bought and sold real estate to any extent? A Yes, sir.

Q Have you bought and sold real estate in Hoboken—have you ever owned any in Hoboken? A Yes.

Q Have you had anything to do with saloons or hotels where there was a license, except this particular case? A No, sir.

No cross examination.

20

CHARLES A. TISSOT, sworn.

Mr. Peirce. I understand Mr. Tissot is sick. I will excuse him.

The witness. I was going to ask your honor—they could have called me earlier. I have been knocked out by nervous prostration. I will answer any questions, being I am here.

Mr. Peirce. No, that is all.

A Juror. May I ask Mr. Tissot a question?

30

Mr. Peirce. I object to that.

The Court. Just as you say.

The Juror. There was a point there I was very much puzzled on. I think it would not bother him any.

Mr. Peirce. I do not call Mr. Tissot.

The Court. No; it would not be proper.

Mrs. Katarina P. Schmidt, direct.

MRS. KATARINA P. SCHMIDT, recalled.

Direct examination by Mr. Peirce.

Q Mrs. Schmidt, you talked with your husband about this sale before it occurred? I am referring now to the public sale of your property? A Yes.

Q And he talked with you about the advertisement that was in the Observer, didn't he?

Mr. Fallon. I object to it as very leading and as immaterial. There is nothing to indicate that this witness is in any way hostile. 10

The Court. I will allow the question.

A No, I didn't speak, because he was sick and I was sick and I thought we better sell it. We had an understanding together.

Q Never mind. You did talk with each other about the sale, you say? A No; he—I don't think so. He came home and he told me it was sold for twenty-one thousand. 20

Q You do not understand my question, perhaps? A Well, I can't remember. I don't know that. I don't know that.

Q You remember that the property was advertised in the Observer? A I don't think he told me that. I don't know. He attended to that himself.

Q Your husband attended to that himself? A Yes, of course.

The Court. She has already said that.

A Of course how can I do that? 30

Q Didn't he talk to you about that advertisement? A Oh, we talked all the time, because we both were sick.

Q You talked all the time, you say? A Yes; because we wanted to sell it. It was a good business.

Q That's all.

Juror Liebel. May I ask Mrs. Schmidt a question?

The Court. Yes. 40

George P. Schmidt, direct.

Juror Liebel. The copy for the advertisement was originally written in German, wasn't it? Who translated it into English; your husband or Mr. Tissot, the agent?

Mr. Fallon. There is no such evidence of that.

The Court. There is no such evidence.

10 *Juror Liebel.* There may not be. I was only trying to find out. The expressions in the ad in the newspaper—it was such a translation that—

Mr. Fallon. If the juror wants to know—

By Mr. Peirce.

Q Who prepared the advertisement? A I don't know.

Q Who did the writing? A I don't know.

Q Don't you know that your husband did put an advertisement in the Observer? A No; I don't know. I can't remember anything like that.

20 Q Well, will you say that you don't know that he put it in? A I don't know.

Q You won't say that you don't know; is that right? A I can't remember. This was long ago. It is seven years ago. I got other things to think.

Q Don't you remember the time that your husband wrote this advertisement up in your house and had it put in the Observer?

Mr. Fallon. I object.

The Court. I will allow it.

30 A I don't remember.

Q Don't remember? A No.

GEORGE E. SCHMIDT, recalled.

Direct examination by Mr. Peirce.

Q Did you or your wife prepare the advertisement that was put in the Observer for public sale of this property? A With that we had nothing to do.

40 Q What? A We had nothing to do with the advertisement.

George P. Schmidt, direct.

Q You say that you knew that the advertisement was running in the Observer, though? A Oh, yes.

Q And you can read English? A Yes.

Q And could in 1907? A Yes.

Q You acted for your wife in this matter?

Mr. Fallon. I object to it as calling for a conclusion as to how he acted. If he puts a specific question as to whether or not the witness acted in a proper manner for his wife I have no objection, but to ask him generally whether he acted for his wife I will object to that. 10

The Court. I overrule it.

Mr. Peirce. Note an objection.

Q You attended to the details and arrangements for the sale, did you not? A Yes.

Q You did that for your wife? A I managed it.

Q For your wife, I say? A Yes, sir.

Q You talked over the matter of the sale with your wife, did you not? A No. 20

Q Do you mean to say that you had this sale and did not talk with your wife about it? A My wife said, "If you get twenty-one thousand dollars I could sell it," and that is the only—

Q You have not answered my question. Do you mean to say that you did not talk over with your wife the details of the sale of this particular property? A Oh, yes, that is right.

Q Certainly you did. A That is right. Right. 30

Q Now you are not mistaken about that, are you?

A No.

Q She knew all about it then, didn't she?

Mr. Fallon. About what?

Q Yes? A About what?

Q About a sale? A Yes, of course; that is right.

Q It was her property, wasn't it? A Yes.

Q How many times did you talk with her before the sale; every day? A I couldn't say how many times. 40

George P. Schmidt, direct.

Q It was frequently, wasn't it? A Why, it was seven years ago.

Q I say it was frequently, wasn't it? A It was often.

Q You saw the advertisement in the Observer? A Yes.

The Court. He said so two or three times.

Don't go over it again.

10

Q You talked with your wife about that advertisement, didn't you? A I couldn't remember that if I talked with her.

Q Didn't you talk with your wife about the advertisement that was in the Observer? A I couldn't remember that.

Q Will you swear that you did not? A No—I don't say I did or did not. We had nothing to do with the advertisement. Mr. Tissot done that.

20

Q I am asking you if you did not talk with your wife about that advertisement? A No.

Q You did have the advertisement of the house? A I had.

Q Will you say that your wife could not read and write English in 1907? A She could not read English at that time, you know.

Q Will you swear that she could not read English in 1907? A No, no, no; she couldn't read English.

30

Q Didn't you talk with her in German as to this sale? A About the sale, yes.

Q You told her about the advertisement in the Observer, didn't you? A I couldn't remember what I said, you know, about the—

Q I am not asking you what you said, but you did tell her about the Observer, didn't you? A I don't know what I said, you know.

Q You don't answer my question. I want to know, you did talk to her about that advertisement? A I—

Q Say yes?

40

Mr. Fallon. No, he won't say yes.

George P. Schmidt, direct.

A I couldn't remember what I told her at that time to her, you know.

Q Will you say whether or not you did talk with your wife about this advertisement? A I don't know. It is seven years ago, if I talked to her or spoke to her or not.

The Court. He has said that several times.

Q Did you talk with your wife about the sale after it had occurred? 10

Mr. Fallon. I object to it as immaterial and irrelevant.

The Court. It makes no difference what he said afterwards.

By Mr. Fallon.

Q Did your wife say anything to you about this property before the sale of the property other than that she wanted you to get no less than twenty-one thousand for it? A Yes; she said not only twenty-one thousand, so we want to sell it. 20

Q Is that all she said about it? A That is all we said about it.

By Juror Liebel.

Q Did you write the ad., the copy for the ad. out in German first before you translated it into English?

A I had nothing to do with the advertisement.

The Court. He said he had nothing to do with the advertisement. 30

Juror Liebel. I know he said so, but I don't believe it.

The Court. What! Do you mean to say you do not believe what the witness stated?

Juror Liebel. It is unbelievable to me.

The Court. If you make such a statement as that you are liable for contempt of court.

Juror Liebel. I won't make it.

George E. Schmidt, direct.

The Court. When you say that you do not believe him without any foundation for it you are liable for contempt of court.

Juror Liebel. I didn't mean that, sir. I doubt if he—that is what I was going to say. I withdraw it.

10 *The Court.* You have to apologize now to the court and counsel.

Juror Liebel. I apologize to court and counsel. I was trying to find out whether—

The Court. I don't care what you are trying to find out. I understood what you said and I know you said you did not believe the witness. That is sufficient.

20 *The Court.* I do not see that you have made any legal defense to this case, Mr. Peirce. You have the record in as good shape, it seems to me, as you can have. I do not see that I can do anything but direct a verdict.

Mr. Peirce. We think there is sufficient to take it to the jury. There is a scintilla of evidence at least which the jury could properly construe as agency.

The Court. I will overrule your motion.

Mr. Peirce. Note an objection.

30

40

Exhibit P. 3.

Charge to Jury.

The court charged the jury as follows:

The Court. Gentlemen of the jury, there is no legal defense interposed in this case, and the amount due upon the bond with interest, less the credit of the amount received by the plaintiff, as the result of the sheriff's sale, is \$5,465.50, and for that you will render a verdict in favor of the plaintiff and against the defendant. 10

Mr. Peirce. I would like to enter an objection to your honor's ruling in that matter.

The Court. You have an objection.

(5) The jury returned a general verdict for the plaintiff for five thousand, four hundred and sixty-five dollars and fifty cents (\$5,465.50).

(6) Annexed is a list of the documentary evidence relevant to the questions on review arranged in order of their dates. 20

Exhibit P. 3.

To the Honorable the Chancellor of the State of New Jersey:

Edwin R. Walker, humbly complaining, show unto your honor your oratrix Josephine Weidner, of the City of Jersey City, in the County of Hudson and State of New Jersey, that on or about the thirtieth day of August in the year One Thousand Nine Hundred and Six, Katarina Perpetua Schmidt, and George Schmidt, her husband, of the City of Hoboken, in the County of Hudson and State of New Jersey, became and were justly indebted unto your oratrix in the sum of ten thousand Dollars and being so indebted, the said Katarina Perpetua and George Schmidt in order to secure the payment of the said sum of money, with interest, did make and execute under their hands and seals and deliver unto your 30 40

Exhibit P. 3.

oratrix A CERTAIN BOND OR OBLIGATION, bearing date the same day and year last aforesaid, in the penal sum of twenty thousand Dollars, lawful money of the United States, with a condition thereunder written, that if the said Katarina Perpetua Schmidt and George Schmidt, their heirs, executors, or administrators, should well and truly pay, or cause to be paid, unto your oratrix, her executors, administrators, or assigns, the just and full sum of ten thousand Dollars, on the thirtieth day of August, which would be in the year one thousand nine hundred and sixteen and the interest thereon to be computed from the day of the date thereof, at and after the rate of five per cent, per annum, and to be paid semi-annually,

Then the said obligation should be void, otherwise to remain in full force and virtue. And it was therein expressly agreed, as follows:

“And it is hereby expressly agreed, that should any default be made in the payment of the said interest, or any part thereof, on any day whereon the same is made payable as above expressed, or should any tax, assessments, water rent or other municipal or governmental rate, charge, imposition or lien be hereafter imposed or acquired upon the premises described in the mortgage accompanying this bond, and become due and payable; and should the said interest remain unpaid and in arrear for the space of thirty days, or said tax, assessment, water rent, or other municipal or governmental rate, charge, imposition or lien, or any or either of them, remain unpaid and in arrear for the space of ninety days then and from thenceforth, that is to say, after the lapse or expiration of either of the said periods,

As the case may be, the aforesaid principal sum of ten thousand dollars with all arrearages of interest thereon, shall, at the option of the said Josephine Weidner, or her legal representatives, become and be due and payable immediately thereafter, although the period first above limited for the payment thereof

Exhibit P. 3.

may not have expired, anything herein before contained to the contrary thereof in anywise notwithstanding," as in and by the said bond or obligation and the condition thereof, reference being thereunto had, will more fully and at large appear. And your oratrix further shows, that the said Katarina Perpetua Schmidt and George Schmidt, her husband, in order to secure the payment of the said sum of money above mentioned, together with the interest thereon, executed and delivered unto your oratrix 10

A CERTAIN INDENTURE OF MORTGAGE, bearing date the same day and year first aforesaid, made by said Katarina Perpetua Schmidt and George Schmidt, her husband, as parties of the first part, to your oratrix, as party of the second part, whereby the said parties of the first part did grant bargain, sell, alien, release, convey and confirm unto the said party of the second part and to her heirs and assigns forever, ALL that certain lot tract or parcel of land 20
and premises hereinafter particularly described, situate, lying and being in the City of Hoboken in the County of Hudson, and State of New Jersey; and which on a certain map, entitled "Map of property, situate at Hoboken, Hudson County, New Jersey, belonging to the Estate of John G. Coster, deceased, surveyed and laid out into lots November 1860, by Daniel Ewen and Austin D. Ewen, City Surveyors, New York" and duly filed in the Office of the Clerk (now Register) of said County of Hudson, is known 30
and distinguished as lot number eight (8) in Block number seventeen (17) as laid down on said map, said lot being twenty-five feet wide in front and rear by one hundred feet (100) deep throughout.

And being the same premises conveyed to the said Katarina Perpetua Schmidt by said Josephine Weidner and husband, by deed bearing even date with said mortgage, this mortgage being given to secure a part of the consideration in said deed mentioned. 40

Exhibit P. 3.

TOGETHER WITH ALL AND SINGULAR, the tenements, hereditaments and appurtenances and reversions, remainders, rents, issues and profits thereof; AND ALSO all the estate, right, title, interest, curtesy and right of curtesy, property, possession, claim and demand whatsoever, as well in law as in equity, of the parties of the first part therein: TO HAVE AND TO HOLD, the
10 said granted and described premises, with the appurtenances unto the said party of the second part her heirs, and assigns to her and their own proper use, benefit and behoof forever; PROVIDED ALWAYS, that if the said parties of the first part thereto, their heirs, executors or administrators, should well and truly pay or cause to be paid, unto the party of the second part, her executors, administrators or assigns, the said sum of money mentioned in the condition of the
20 said bond with the interest thereof, at the time and in the manner mentioned in the said condition, according to the true intent and meaning thereof, then the said indenture of mortgage, and the estate thereby granted, should cease, determine and void. And your oratrix further shows that the said mortgage contains a clause similar to the one above set out in respect to the prompt payment of interest, taxes, assessments, water rent or other municipal or governmental rate, charge, imposition or lien and that if
30 said interest should remain unpaid for thirty days or any tax, assessment, water rent or other municipal or governmental rate, charge, imposition or lien remain unpaid for ninety days, after the same or any of them become due and payable, that thereupon, at the option of the party of the second part, or her legal representatives, the whole principal sum should become due and payable. AND your oratrix further shows that after the execution of the said indenture of mortgage, the same was in due form of law acknowledged by the said Katarina Perpetua Schmidt
40 and George Schmidt, her husband, before Harry W.

Exhibit P. 3.

Lange, one of the Masters of this Court, on August thirtieth, nineteen hundred and six, and duly recorded in the office of the Register in and for the said County of Hudson in Book 597 of Mortgages, page 77 on the thirty-first day of August in the year One Thousand Nine Hundred and Six; as by the certificate so endorsed on the said indenture of mortgage, more fully appears, which bond and mortgage are in the possession of your oratrix and ready to be produced and proved. 10

And your oratrix further shows that on the first day of March, nineteen hundred and twelve, the sum of two hundred and fifty dollars (\$250), being six months interest on said principal sum of ten thousand dollars (\$10000.), secured to be paid by the bond and mortgage of your oratrix, became due and remained unpaid for more than thirty days after the same became due, and your oratrix elected and does elect that the whole of said principal sum of ten thousand dollars (\$10000), secured to be paid by said bond and mortgage shall be due and payable. 20

And your oratrix further shows that afterwards, and on or about the thirty-first day of August, nineteen hundred and seven the said Katarina Perpetua Schmidt and George Schmidt, her husband conveyed the said mortgaged premises to Charles Frey and Lena Frey, his wife in fee simple, expressly subject to the mortgage of your oratrix and with full knowledge thereof. 30

And your oratrix further shows that afterwards, and on or about the thirty-first day of August, nineteen hundred and seven the said Charles Frey and Lena Frey, his wife executed to the said Katarina P. Schmidt, a mortgage to secure payment of the sum of five thousand dollars (\$5000.) and interest, covering the said mortgaged premises, by virtue of which mortgage the said Katarina P. Schmidt claims to have some lien on the said mortgaged premises; but your 40

Exhibit P. 3.

oratrix charges that the said mortgage was executed subsequent to the execution of the mortgage of your oratrix and with full notice thereof, and if a lien at all upon the said premises, is subject and subsequent to the encumbrance of the mortgage of your oratrix.

10 And your oratrix further shows that afterwards, and on or about the twenty-fourth day of April, nineteen hundred and eleven the said Charles Frey and Lena Frey, his wife conveyed to John C. Forster and Charles Beirne, the said mortgaged premises in fee simple, expressly subject to the mortgage of your oratrix and with full knowledge thereof.

20 And your oratrix further shows that afterwards, and on or about the twenty-fourth day of April, nineteen hundred and eleven the said John C. Forster and Mary F., his wife and Charles Beirne, widower, executed to one James H. Troy, a mortgage for three thousand dollars (\$3,000), covering the said mortgaged premises; by virtue of which mortgage the said James H. Troy claims to have some lien upon the mortgaged premises; but your oratrix charges that the said mortgage was made and executed subsequent to the execution of the mortgage of your oratrix and with full notice thereof and if a lien upon the said mortgaged premises is subject and subsequent to the encumbrance of the mortgage of your oratrix.

30 And your oratrix further shows, that the said mortgaged premises consists of a lot of land, having thereon erected a four story brick store and dwelling house, and is occupied by a number of families and now in the possession of Edward Shannon, John Condon, Mrs. Agnes Giddens, Oscar Casper, Joseph Whitmore and Fletcher Johnson, who claim to have some interest in or lien upon the said mortgaged premises as tenants or otherwise; but your oratrix charges that the interest or lien of said Edward Shannon, John
40 Condon, Mrs. Agnes Giddens, Oscar Casper, Joseph

Exhibit P. 3.

Whitmore and Fletcher Johnson in the mortgaged premises, if any, was acquired subsequent to the execution of the mortgage of your oratrix, and with full knowledge thereof and if a lien at all upon the said premises is subject to the encumbrance of the mortgage of your oratrix.

And your oratrix further shows that the said John C. Forster is married to Mary F. Forster who claims 10
to have an inchoate right of dower in said mortgaged premises; but your oratrix charges that the interest of dower or otherwise of said Mary F. Forster in said premises, is subject and subsequent to the mortgage of your oratrix; the said interest having been acquired after the execution of the mortgage of your oratrix and with full notice thereof.

And your oratrix further shows that the whole of the principal money mentioned in and secured by the said bond and mortgage, with large arrears of interest, still remains due and unpaid to your oratrix, 20
whereby the said mortgage, and the estate thereby granted, have become absolute in your oratrix and her heirs.

And your oratrix further shows that the said Katarina Perpetua Schmidt, and George Schmidt, her husband, Charles Frey and Lena Frey, his wife, John C. Forster and Mary F. Forster, his wife, Charles Beirne, widower, James H. Troy, Edward Shannon, John Con- 30
don, Mrs. Agnes Giddens, Oscar Casper, Joseph Whitmore and Fletcher Johnson since the execution of your orator said mortgage have possessed and enjoyed, and do still possess and enjoy, the said mortgaged premises, and have always received, and still receive the rents, issues and profits thereof; and that the said premises are a scanty security for the payment of the said principal and interest moneys so due to your oratrix as aforesaid, and that she or some other person or persons, for her has frequently and in a friendly manner applied to the said Katarina Perpetua 40

Exhibit P. 3.

Schmidt and George Schmidt her husband, Charles Frey and Lena Frey, his wife, John C. Forster and Mary F. Forster, his wife, Charles Beirne, widower, James H. Troy, Edward Shannon, John Condon, Mrs. Agnes Giddens, Oscar Casper, Joseph Whitmore and Fletcher Johnson, or one of them, and requested them or one of them, to pay and discharge the said principal and interest moneys so due to your oratrix on the said bond and mortgage, and your oratrix well hoped that they would have complied with such reasonable requests, as in justice and equity they ought to have done.

In tender consideration whereof, and for as much as your oratrix has not a complete remedy in the premises at the common law, nor can foreclose the equity of redemption of the said mortgaged premises, or safely sell the same for the payment and satisfaction of the said principal and interest moneys without the aid of this honorable court, where matters of this nature are particularly cognizable and relievable—to the end, therefore, that the said defendants may, without oath true, full and perfect answers make to all and singular the premises, as fully as if here repeated and they thereto particularly interrogated, and that they or some of them may be decreed to pay to your oratrix the said principal sum so due on the said bond and mortgage and the interest due and to grow due thereon, with your oratrix costs and charges in this behalf sustained, by a short day, to be appointed by this honorable court; and that in default thereof, the said defendants, and all persons claiming or to claim under them, or any of them, may be foreclosed of and from all right, title and equity or redemption in and to the said mortgaged premises and every part thereof, with the appurtenances, and may deliver unto your oratrix the possession thereof, and all deeds, demises and muniments of title relating to or concerning the same; or that the said mortgaged

Exhibit P. 3.

premises, with the appurtenances may be sold, and that out of the moneys arising from such sale your orator may be paid the said principal, interest and costs.

And that your oratrix may have such further and other relief in the premises as the case may require, and as shall be agreeable to equity and good conscience.

May it please your honor, the premises considered, 10
to grant unto your oratrix a writ or writs of subpoena, issuing out of and under the seal of this honorable court, to be directed to the said John C. Forster and Mary F. Forster, his wife, Charles Beirne, widower, Katarina Perpetua Schmidt, James H. Troy, Edward Shannon, John Condon, Mrs. Agnes Giddens, Oscar Casper, Joseph Whitmore and Fletcher Johnson, therein and thereby commanding them on a certain day and under a certain penalty to be and appear 20
before your honor in this honorable court, then and there to answer the premises and to stand to, and abide by and perform such decree therein as to your honor shall seem meet and agreeable to equity and good conscience. And your orator will ever pray, &c.

JOHN R. SPOHR,

Solicitor and of Counsel with Complainant.

Exhibit P. 3.

Endorsed :

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IN CHANCERY OF NEW JERSEY.

10 *Between*
 JOSEPHINE WEIDNER,
 Complainant,
 and
 JOHN C. FORSTER, *et ux, et als.,*
 Defendants.

BILL TO FORECLOSE.

JOHN H. SPOHR, SOLICITOR.

20 Office and Post Office Address,
 No. 84 Washington Street, Hoboken, N. J.

Filed August 7, 1912.

NEW JERSEY, HUDSON COUNTY, ss.

30 John Daly, Special Deputy Sheriff of Hudson
 County, being duly sworn, on his oath saith that he
 has inquired for John C. Forster, Mary F. Forster,
 Charles Beirne and James H. Troy, named in the
 annexed process for the purpose of serving them
 therewith, and has not been able to find them in said
 county, and this deponent is credibly informed and
 verily believes that they cannot be found in this State.

JOHN DALY,
Special Deputy Sheriff.

Subscribed and sworn to this 13th
 City, before me.

day of August, 1912, at Jersey

40 JOHN J. HOGAN,
 Commissioner of Deeds of New Jersey.

Exhibit P. 3.

316—Ticket with Subpoena in Chancery.

IN CHANCERY OF NEW JERSEY.

Between

JOSEPHINE WEIDNER,

Complainant,

and

JOHN C. FORSTER, *et ux, et als.,*

Defendants.

On bill to 10
foreclose, &c.

SIR:

You are made a party defendant, and subpoenaed to answer the Bill of Complaint exhibited in the above cause, because it is therein alleged that you are one 20 of the owners of the premises mentioned and described in the said bill, and by virtue thereof claim to have some lien upon or interest in the said mortgaged premises, a sale of which is prayed for in said bill.

Your Ob't Serv't,

JOHN R. SPOHR,

Sol'r for Complainant.

Dated, August 9, 1912.

To John C. Forster.

30

Exhibit P. 3.

316—Ticket with Subpœna in Chancery.

IN CHANCERY OF NEW JERSEY.

10	<i>Between</i> JOSEPHINE WEIDNER, <i>Complainant,</i> <i>and</i> JOHN C. FORSTER, <i>et ux, et als.,</i> <i>Defendants.</i>	<i>On bill to foreclose, &c.</i>
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SIR:

20 You are made a party defendant, and subpœnaed to answer the Bill of Complaint exhibited in the above cause, because it is therein alleged that you are one of the owners of the premises mentioned and described in the said bill, and by virtue thereof claim to have some lien upon or interest in the said mortgaged premises, a sale of which is prayed for in said bill.

Your Ob't Serv't,

JOHN R. SPOHR,
Sol'r for Complainant.

30

Dated, August 9, 1912.
 To Charles Beirne.

40

Exhibit P. 3.

316—Ticket with Subpœna in Chancery.

IN CHANCERY OF NEW JERSEY.

Between

JOSEPHINE WEIDNER,

Complainant,

and

JOHN C. FORSTER, *et ux, et als.,*

Defendants.

*On bill to
foreclose, &c.*

10

MADAM :

You are made a party defendant, and subpœnaed to answer the Bill of Complaint exhibited in the above cause, because it is therein alleged that you are the wife of John C. Forster, one of the owners of the premises mentioned and described in the said bill, and by virtue thereof claim to have some lien upon or interest in the said mortgaged premises, a sale of which is prayed for in said bill.

20

Your Ob't Serv't,

JOHN R. SPOHR,

Sol'r for Complainant.

30

Dated, August 9, 1912.
To Mary F. Forster.

Exhibit P. 3.

316—Ticket with Subpœna in Chancery.

IN CHANCERY OF NEW JERSEY.

Between

JOSEPHINE WEIDNER,

10

Complainant,

and

JOHN C. FORSTER, *et ux., et als.,*

Defendants.

*On bill to
foreclose, &c.*

MADAM:

20

You are made a party defendant, and subpœnaed to answer the Bill of Complaint exhibited in the above cause, because it is therein alleged that you are one of the mortgagors and also hold a mortgage covering the premises mentioned and described in the said bill, and by virtue thereof claim to have some lien upon or interest in the said mortgaged premises, a sale of which is prayed for in said bill.

Your Ob't Serv't,

JOHN R. SPOHR,
Sol'r for Complainant.

30

Dated, August 9, 1912.
To Katarina Perpetua Schmidt.

40

Exhibit P. 3.

316—Ticket with Subpœna in Chancery.

IN CHANCERY OF NEW JERSEY.

Between

JOSEPHINE WEIDNER,

Complainant,

and

JOHN C. FORSTER, *et ux, et als.,*

Defendants.

*On bill to
foreclose, &c.*

10

SIR:

You are made a party defendant, and subpoenaed to answer the Bill of Complaint exhibited in the above cause, because it is therein alleged that you are hold a mortgage covering the premises mentioned and described in the said bill, and by virtue thereof claim to have some lien upon or interest in the said mortgaged premises, a sale of which is prayed for in said bill.

20

Your Ob't Serv't,

JOHN R. SPOHR,

Sol'r for Complainant.

Dated, August 9, 1912.

To James H. Troy.

30

40

Exhibit P. 3.

316—Ticket with Subpœna in Chancery.

IN CHANCERY OF NEW JERSEY.

Between

JOSEPHINE WEIDNER,

10

Complainant,

and

JOHN C. FORSTER, *et ux, et als.,*

Defendants.

*On bill to
foreclose, &c.*

SIR:

20 You are made a party defendant, and subpoenaed to answer the Bill of Complaint exhibited in the above cause, because it is therein alleged that you are in possession as tenant, or otherwise of a part of the premises mentioned and described in the said bill, and by virtue thereof claim to have some lien upon or interest in the said mortgaged premises, a sale of which is prayed for in said bill.

Your Ob't Serv't,

JOHN R. SPOHR,

Sol'r for Complainant.

30 Dated, August 9, 1912.

To Edward Shannon.

Exhibit P. 3.

316—Ticket with Subpœna in Chancery.

IN CHANCERY OF NEW JERSEY.

Between

JOSEPHINE WEIDNER,

Complainant,

and

JOHN C. FORSTER, *et ux, et als.,*

Defendants.

*On bill to
foreclose, &c.*

10

SIR:

You are made a party defendant, and subpœnaed to answer the Bill of Complaint exhibited in the above cause, because it is therein alleged that you are in possession as tenant, or otherwise of a part of the premises mentioned and described in the said bill, and by virtue thereof claim to have some lien upon or interest in the said mortgaged premises, a sale of which is prayed for in said bill.

20

Your Ob't Serv't,

JOHN R. SPOHR,

Sol'r for Complainant.

Dated, August 9, 1912.

30

To John Condon.

Exhibit P. 3.

316—Ticket with Subpœna in Chancery.

IN CHANCERY OF NEW JERSEY.

10	<i>Between</i> JOSEPHINE WEIDNER, <i>Complainant,</i> <i>and</i> JOHN C. FORSTER, <i>et ux, et als.,</i> <i>Defendants.</i>	} <i>On bill to foreclose, &c.</i>
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MADAM :

20 You are made a party defendant, and subpœnaed to answer the Bill of Complaint exhibited in the above cause, because it is therein alleged that you are in possession as tenant, or otherwise of a part of the premises mentioned and described in the said bill, and by virtue thereof claim to have some lien upon or interest in the said mortgaged premises, a sale of which is prayed for in said bill.

Your Ob't Serv't,

JOHN R. SPOHR,
Sol'r for Complainant.

30 Dated, August 9, 1912.
 To Mrs. Agnes Giddens.

Exhibit P. 3.

316—Ticket with Subpœna in Chancery.

IN CHANCERY OF NEW JERSEY.

Between

JOSEPHINE WEIDNER,

Complainant,

and

JOHN C. FORSTER, *et ux, et als.,*

Defendants.

*On bill to
foreclose, &c.*

10

SIR:

You are made a party defendant, and subpœnaed to answer the Bill of Complaint exhibited in the above cause, because it is therein alleged that you are in possession as tenant, or otherwise of a part of the premises mentioned and described in the said bill, and by virtue thereof claim to have some lien upon or interest in the said mortgaged premises, a sale of which in prayed for in said bill.

20

Your Ob't Serv't,

JOHN R. SPOHR,

Sol'r for Complainant.

Dated, August 9, 1912.

To Oscar Casper.

30

40

Exhibit P. 3.

316—Ticket with Subpœna in Chancery.

IN CHANCERY OF NEW JERSEY.

10	<i>Between</i> JOSEPHINE WEIDNER, <i>Complainant,</i> <i>and</i> JOHN C. FORSTER, <i>et ux, et als.,</i> <i>Defendants.</i>	<i>On bill to foreclose, &c.</i>
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SIR:

You are made a party defendant, and subpœnaed to answer the Bill of Complaint exhibited in the above cause, because it is therein alleged that you are in possession as tenant, or otherwise of a part of the premises mentioned and described in the said bill, and by virtue thereof claim to have some lien upon or interest in the said mortgaged premises, a sale of which is prayed for in said bill.

Your Ob't Serv't,

JOHN R. SPOHR,
Sol'r for Complainant.

Dated, August 9, 1912.
To Joseph Whitmore.

Exhibit P. 3.

316—Ticket with Subpœna in Chancery.

IN CHANCERY OF NEW JERSEY.

<i>Between</i> JOSEPHINE WEIDNER, <i>Complainant,</i> <i>and</i> JOHN C. FORSTER, <i>et ux, et als.,</i> <i>Defendants.</i>	}	<i>On bill to</i> <i>foreclose, &c.</i>	10
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SIR:

You are made a party defendant, and subpœnaed to answer the Bill of Complaint exhibited in the above cause, because it is therein alleged that you are in possession as tenant, or otherwise of a part of the premises mentioned and described in the said bill, and by virtue thereof claim to have some lien upon or interest in the said mortgaged premises, a sale of which is prayed for in said bill. 20

Your Ob't Serv't,

JOHN R. SPOHR,
Sol'r for Complainant.

Dated, August 9, 1912.
To Fletcher Johnson.

30

Exhibit P. 3.

Chancery No. 59.

NEW JERSEY, *to wit*: *The State of New Jersey to*

John C. Forster and Mary F. Forster, his wife, Charles Beirne, Katarina Perpetua Schmidt, James H. Troy, Edward Shannon, John Condon, Mrs. Agnes Giddens, Oscar Casper, Joseph Whitmore and Fletcher Johnson,

(SEAL)

10

GREETING: We command you, that you appear in manner and form required by law in our Court of Chancery, on the twenty-

fourth day of August instant at Trenton, to answer to a bill of complaint exhibited against you in our said court by Josephine Weidner and to do further and receive what our said court shall have considered in that behalf; and this you are not to omit, under the penalty that may fall thereon.

20

WITNESS, his Honor, EDWIN R. WALKER, Chancellor of our said State, at Trenton, the ninth day of August, in the year of our Lord one thousand nine hundred and twelve.

SAM'L K. ROBBINS,

Clerk.

JOHN R. SPOHR, *Solicitor.*

30

Notice.—The defendant is NOT required to appear at Trenton in person, at the return day, but if he intends to make a defense it is only necessary for him to answer, plead or demur to the bill within the time required by law.

SAM'L K. ROBBINS,

Clerk.

40

Exhibit P. 3.

Endorsed :

IN CHANCERY OF NEW JERSEY.

Between

JOSEPHINE WEIDNER,

Compl't,

and

JOHN C. FORSTER, *et ux.*,

et als.,

Def't.

*Sub ad
Resp.*

10

Returnable August 24, A. D. 1912.

JOHN R. SPOHR,

Sol'r.

Filed Aug. 22, 1912.

I hereby deputize John Daly to serve the within writ.

20

Witness my hand and seal this 10th day of August, 1912.

NICHOLAS P. WEDIN,

Sheriff.

JAS H. CLARK,

Under Sheriff.

Sheriff's fees \$6.41 (L. S.).

Served within subpoena and ticket August 10, 1912, personally on the defendant, Mrs. Agnes Giddens, and on the defendants, Edward Shannon and Joseph Whitmore, Fletcher Johnson, and Oscar Casper, by leaving a true copy thereof for each at their usual place of abode with a member of their family above the age of fourteen years whom I informed of the contents thereof. And on August 14, 1912, personally on the defendant, Katarina Perpetua Schmidt.

30

NICHOLAS P. WEDIN,

Sheriff.

By JOHN DALY,

S. D. S.

40

Exhibit P. 3.

IN CHANCERY OF NEW JERSEY.

	<i>Between</i>	} <i>On Bill, etc. Order of Publication.</i>
	JOSEPHINE WEIDNER,	
	<i>Complainant,</i>	
	<i>and</i>	
10	JOHN C. FORSTER, <i>et ux, et als.,</i>	}
	<i>Defendants.</i>	

The complainant having filed her bill in the above cause and process of subpoena having been issued and returned according to law, and it appearing by affidavit that the defendants, John C. Forster and Mary F. Forster, his wife, Charles Beirne and James H. Troy reside out of the State of New Jersey, and that process could not be served upon them.

It is on this twenty-seventh day of August, nineteen hundred and twelve, on motion of John R. Spohn, of counsel with the complainant, ordered that the said absent defendants do appear, plead, answer or demur to the complainant's bill on or before the twenty-eighth day of October next or that in default thereof, such decree be made against them as the Chancellor shall think equitable and just:

And it is further ordered that the notice of this order prescribed by law and the rules of this court shall within ten days hereafter be served personally on the said absent defendants by a delivery of a copy thereof to them personally, or be published within the said ten days in the Hudson Observer, a public newspaper, printed at Hoboken, in the County of Hudson in this State for four weeks successively at least once in each week and in case of such publication, that copy thereof be also mailed within the same

Exhibit P. 3.

time to the said absent defendants, directed to their postoffice addresses, if the same can be ascertained, in the manner prescribed by law and the rules of this court.

E. R. WALKER,
C.

10

Endorsed :

35/271

IN CHANCERY OF NEW JERSEY.

Between

JOSEPHINE WEIDNER,

Complainant,

and

JOHN C. FORSTER, *et ux., et als.,*

Defendants.

20

On Bill, &c.

Order of Publication.

JOHN R. SPOHR,
Solicitor.

30

Filed Aug. 27, 1912.

40

Exhibit P. 3.

IN CHANCERY OF NEW JERSEY.

10	Between JOSEPHINE WEIDNER, and JOHN C. FORSTER, <i>et ux., et als.</i> , Defendants.	{	On Bill to Foreclose. Notice of Desire to Have Encumbrance Recorded Upon.
----	--	---	--

20 Sir: Take notice that I have been made a party defendant in the above entitled cause because I hold a subsequent encumbrance upon the property mentioned and described in the bill of complaint. I do not dispute the priority of the mortgage in the bill mentioned, which you seek to foreclose, over the order and priority of the subsequent encumbrances, as therein stated, but instead of making and answer setting up my encumbrances, I desire to have my mortgage reported upon by the master to whom this cause is referred, and I do hereby give notice of my desire in pursuance of the rules of the Court of Chancery.

30 Dated September 6, 1912.

To JOHN R. SPOHR, ESQ.,
*Solicitor for and of Counsel
 with Complainant.*

KATARINA PERPETUA SCHMIDT,
Defendant.

Exhibit P. 3.

Endorsed :

35/271

IN CHANCERY OF NEW JERSEY.

Between

JOSEPHINE WEIDNER,

Complainant,

and

JOHN C. FORSTER, *et ux, et als.,*

Defendants.

10

On Bill to Foreclose.

Notice of desire to have encumbrance recorded
upon.

20

KATARINA PERPETUA SCHMIDT,

Defendant.

Service of the within notice acknowledged this
ninth day of Sept., A. D. 1912.

JOHN R. SPOHR,

Solicitor of Complainant.

Filed Sep. 9, 1912.

30

40

Exhibit P. 3.

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

10 Fred A. Seide, being duly sworn according to law, upon his oath saith, that he is Asst. Manager of the "Hudson Observer," a public newspaper printed and published in the City of Hoboken, County of Hudson and State of New Jersey; that a notice, of which the annexed is a true copy, was published in said newspaper on the 31st day of August, 1912, and continued therein for three weeks successively thereafter, at least once in each week; to wit, on the 7th, 14th and 21st days of September, 1912, making four publications in all.

FRED A. SEIDE.

20 Sworn and subscribed before me
this 21st day of Sept., A. D.
1912.

FRED'K A. KAUFMANN,
Notary Public of N. J.

IN CHANCERY OF NEW JERSEY.

30 *To John C. Forster and Mary F. Forster, his wife,
Charles Beirne and James H. Troy:*

40 By virtue of an order of the Court of Chancery of New Jersey, made on the day of the date hereof, in a cause wherein Josephine Weidner is complainant and you and Katarina Perpetua Schmidt, Edward Shannon, John Condon, Mrs. Agnes Gidden, Oscar Casper, Joseph Whitmore and Fletcher Johnson, are defendants, you are required to appear, plead, demur or answer to the complainant's bill, on or before the

Exhibit P. 3.

twenty-eighth day of October next, or the said bill will be taken as confessed against you.

The said bill is filed to foreclose a mortgage made by Katarina Perpetua Schmidt and George Schmidt, her husband, to the said complainant, dated August 30, nineteen hundred and six, on certain lands in the City of Hoboken, in the County of Hudson and State of New Jersey, and you, John C. Forster, are made a defendant in said cause, because you own said lands or some part thereof. And you, Mary F. Forster, are made a defendant in said cause, because you are the wife of John C. Forster and by reason thereof claim to have an inchoate right of dower in said lands or in some part thereof. And you, Charles Beirne, are made a defendant in said cause, because you own said lands or some part thereof. And you, James H. Troy, are made a defendant in said cause, because you hold a mortgage covering said lands.

JOHN R. SPOHR,
Solicitor of Complainant.

Office and postoffice address, 84 Washington street,
Hoboken, N. J.

Dated, August 27th, 1912.

Exhibit P. 3.

IN CHANCERY OF NEW JERSEY.

Between

JOSEPHINE WEIDNER,

*Complainant,**and*

10

JOHN C. FORSTER, *et ux, et als.,**Defendant.**On Bill, etc.*

NEW JERSEY, ss.

JOHN R. SPOHR, of full age being duly sworn according to law on his oath saith that he is the solicitor of the complainants, and the person actually intrusted with the management of this suit; that he has in good faith made diligent inquiry for the residence and postoffice address of the defendants, John C. Forster and Mary F. Forster, his wife, Charles Beirne and James H. Troy, and that he is credibly informed by Joseph J. Harris, counselor at law, at number ninety-nine Nassau street, New York City, to whom this deponent was referred by the said John C. Forster, as the attorney of the said defendants, and verily believes it to be true that the said John C. Forster and Mary F. Forster, his wife, reside at number 343 West 47th street, New York City, New York; and that the post-office address of said John C. Forster and Mary F. Forster, his wife, is at number 343 West 47th street, New York City, New York; and that the business address of Charles Beirne and of James H. Troy, is at number 724 Eighth avenue, New York City, New York. That this deponent verified the said addresses by reference to the directory for New York City and learned further by such reference that the residence of the said Charles Beirne is at number 269 West 45th street, New York City, New York, and that the residence of the said James H. Troy is

Exhibit P. 3.

at number 311 West 46th street, New York City, New York; and that this deponent did on the fifth day of September, nineteen hundred and twelve, place in the postoffice of the City of Hoboken, a letter directed to the said defendant, John C. Forster, at his said postoffice address; and that this deponent did on the fifth day of September, nineteen hundred and twelve, place in the postoffice of the City of Hoboken, a letter directed to the said defendant, Mary F. Forster, at her said postoffice address; and that this deponent did on the fifth day of September, nineteen hundred and twelve, place in the postoffice of the City of Hoboken, a letter directed to the said defendant, Charles Beirne, at his said business address; and that this deponent did on the fifth day of September, nineteen hundred and twelve, place in the postoffice of the City of Hoboken, a letter directed to the said defendant, Charles Beirne, at his postoffice address number 269 West 45th street, New York City, New York; and that this deponent did on the fifth day of September, nineteen hundred and twelve, place in the postoffice of the City of Hoboken, a letter directed to the said defendant, James H. Troy, at his said business address; and that this deponent did on the fifth day of September, nineteen hundred and twelve, place in the postoffice of the City of Hoboken, a letter directed to the said defendant, James H. Troy, at his postoffice address number 311 West 46th street, New York City, New York; with the postage on each of said letters prepared and each letter containing a copy of the notice hereto annexed.

JOHN S. SPOHR.

Subscribed and sworn to before me
this tenth day of October, nineteen hundred and twelve.

JOHN D. PIERSON,

Master in Chancery of New Jersey.

Exhibit P. 3.

IN CHANCERY OF NEW JERSEY.

*To John C. Forster and Mary F. Forster, his wife,
Charles Beirne and James H. Troy:*

10 By virtue of an order of the Court of Chancery of
New Jersey, made on the day of the date hereof, in a
cause wherein Josephine Weidner is complainant and
you and Katarina Perpetua Schmidt, Edward Shan-
non, John Condon, Mrs. Agnes Gidden, Oscar Casper,
Joseph Whitmore and Fletcher Johnson, are defend-
ants, you are required to appear, plead, demur or
answer to the complainant's bill, on or before the
twenty-eighth day of October next, or the said bill
will be taken as confessed against you.

20 The said bill is filed to foreclose a mortgage made
by Katarina Perpetua Schmidt and George Schmidt,
her husband, to the said complainant, dated August
30, nineteen hundred and six, on certain lands in the
City of Hoboken, in the County of Hudson and State
of New Jersey, and you, John C. Forster, are made
a defendant in said cause, because you own said lands
or some part thereof. And you, Mary F. Forster,
are made a defendant in said cause, because you are
the wife of John C. Forster and by reason thereof
claim to have an inchoate right of dower in said lands
30 or in some part thereof. And you, Charles Beirne,
are made a defendant in said cause, because you own
said lands or some part thereof. And you, James H.
Troy, are made a defendant in said cause, because you
hold a mortgage covering said lands.

JOHN R. SPOHR,
Solicitor of Complainant.

Office and postoffice address, 84 Washington street,
Hoboken, N. J.

40 Dated, August 27th, 1912.

Exhibit P. 3.

Endorsed:

35/271

IN CHANCERY OF NEW JERSEY.

Between

JOSEPHINE WEIDNER,

Complainant,

and

JOHN C. FORSTER, *et ux, et als.,*

Defendants.

10

On Bill, etc.

Proof of Inquiry and Mailing Notices to Absent
Defendants, & Pub.

20

JOHN R. SPOHR.

Filed Oct. 11, 1912.

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IN CHANCERY OF NEW JERSEY.

	<i>Between</i>	}	
	JOSEPHINE WEIDNER,		
	<i>Complainant,</i>		
10	<i>and</i>		<i>On Bill, etc.</i>
	JOHN C. FORSTER, <i>et ux., et als.,</i>	}	
	<i>Defendants.</i>		

INTERLOCUTORY DECREE.

This cause being opened to the court by John R. Spohr, of counsel with the complainant, and it appearing that process of subpoena for the appearance of the defendants hath been duly issued and returned served upon the defendants Katarina Perpetua Schmidt, Agnes Giddons, Edward Shannon, Oscar Casper, Joseph Whitmore and Fletcher Johnson; and that due notice of the order of this court made on the twenty-seventh day of August, nineteen hundred and twelve, directing the defendants John C. Forster, Mary F. Forster, Charles Beirne and James H. Troy to appear, plead, answer or demur to the complainants' bill on or before the twenty-eighth day of October then next, has been fully published and also mailed to the said defendants John C. Forster, Mary F. Forster, Charles Beirne and James H. Troy, in the manner and as in the said order directed and prescribed; and that the defendant Katarina Perpetua Schmidt, has filed a notice that she does not dispute the priority of the complainant's mortgage, over her lien, and that in lieu of filing an answer to the bill of complaint, she desired to have her encumbrance reported upon; and that the said defendants have not filed any plea, de-

Exhibit P. 3.

murrer or answer to said bill, within the time limited by law and said order, but have wholly failed and neglected so to do.

It is thereupon, on this twenty-ninth day of October, in the year of our Lord one thousand nine hundred and twelve, ordered, adjudged, and decreed, that the said bill be taken as confessed as against the said defendants, and that it be referred to John D. Pier- 10
son, Esquire, one of the masters of this court, to ascertain and report the amount due to the said complainant, for principal and interest upon the mortgage held by her upon the premises mentioned and described in the said bill of complaint, and also the amount due, if anything, to the said Katarina Perpetua Schmidt, upon her mortgage, and to report accordingly; and also to ascertain and report the order and priority of the said mortgages, and whether they embrace the same premises; and whether the said mortgaged premises should be sold together or in par- 20
cels, and if in parcels, in what order, and that the said master do make his report thereon with all convenient speed.

And all further equity is reserved until the coming in of the said report.

E. R. WALKER, C.

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Exhibit P. 3.

Endorsed:

35/271

In CHANCERY OF NEW JERSEY.

10	<i>Between</i> JOSEPHINE WEIDNER, <i>Complainant,</i> <i>and</i> JOHN C. FORSTER, <i>et ux., et als.,</i> <i>Defendants.</i>
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On Bill, etc.

INTERLOCUTORY DECREE.

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JOHN R. SPOHR,
Solicitor.

Filed Oct. 29, 1912.

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IN CHANCERY OF NEW JERSEY.

Between

JOSEPHINE WEIDNER,

*Complainant,**and*JOHN C. FORSTER, *et ux., et als.,**Defendants.**On Bill, etc.*

10

MASTER'S REPORT.

In pursuance of an order of this court, entered in the above cause, bearing date the twenty-ninth day of October, in the year of our Lord one thousand nine hundred and twelve, I have been attended by John R. Spohr, solicitor of the complainant, and Katarina P. Schmidt, one of the defendants, being represented in person, and in the presence of the parties attending me, I have considered of the matters thereby referred to me. And the solicitor of the complainant produced before me the mortgage in his bill mentioned, bearing date the thirtieth day of August, nineteen hundred and six, and made and executed by Katarina Perpetua Schmidt and George Schmidt, her husband, which said mortgage was duly acknowledged according to law and recorded as in the bill mentioned, as appears by endorsements thereon; and the said complainant's solicitor also produced to me the bond intended to be secured by the said mortgage, which said bond and mortgage are marked Exhibits C. 1 and C. 2, on the part of the complainant. And the solicitor of the complainant also produced before me, an affidavit of the complainant which was taken before me and is hereto annexed stating the amount due on her

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Exhibit P. 3.

said mortgage; and I find that there is due to the complainant on her said mortgage, for principal and interest on this day, the sum of ten thousand five hundred eighty-eight dollars and eighty-nine cents (\$10,588.89); and I certify and report that the schedule hereto annexed, marked Schedule A, and making part of this my report, contains a statement and account of the principal and interest money due to the complainant on her said mortgage; to which, for greater certainty, I refer. And I further certify and report, that the defendants Katarina P. Schmidt produced before me the mortgage in the said complainant's bill referred to, bearing date the thirty-first day of August, nineteen hundred and seven, and made and executed by Charles Frey and Lena Frey, his wife, to the said Katarina P. Schmidt; which said mortgage was duly acknowledged according to law, and recorded in the office of the Register of the County of Hudson, on the ninth day of September, nineteen hundred and seven, in Book 629 of Mortgages, on pages 44, etc., as appears by endorsements thereon; and said Katarina P. Schmidt also produced to me the bond referred to in the last mentioned mortgage, the payment of which was intended to be secured thereby, which last mentioned bond and mortgage are marked Exhibits D. 1 and D. 2 on the part of the defendant, Katarina P. Schmidt. The said Katarina P. Schmidt produced before me the affidavit of her husband and agent, stating the amount due on her said mortgage and the bond accompanying the same for principal and interest, on this day, which was taken before me and is attached hereto; and I find that there is due to the said Katarina P. Schmidt on her said mortgage for principal and interest on this day, the sum of five thousand one hundred sixty-nine dollars and forty-four cents (\$5,169.44); and I certify and report that the schedule hereto annexed marked Schedule B, and making part of this report, contains

Exhibit P. 3.

the statement of the principal and interest money due to the said Katarina P. Schmidt on her said mortgage, to which, for greater certainty, I refer. And I further certify and report that the same premises comprised in the complainant's mortgage are also comprised in the mortgage of the said Katarina P. Schmidt, and that the mortgage of the said complainant was made and executed and also recorded prior to the mortgage to the said Katarina P. Schmidt and is entitled to priority in payment; and that it is necessary and advisable that the whole of the mortgaged premises should be sold to raise and pay the money so due to the complainant and the said Katarina P. Schmidt, respectively, together with the costs of this suit. And I further certify and report that I have examined the abstract of search and the statement of fees and charges claimed and in my opinion such searches were necessary for the proper purposes of the suit and that the sum of sixty-one dollars and thirty-four cents incurred therefor, does not exceed the fee allowed by law.

All which is respectfully submitted this fourth day of November, in the year one thousand nine hundred and twelve.

JOHN D. PIERSON,
Master in Chancery of New Jersey.

Exhibit P. 3.

SCHEDULE A.

	Bond bearing date August 30, 1906, in the penal sum of \$20,000 conditioned for the payment of \$10,000, August 30, 1916, with interest from date at the rate of 5% per annum secured by the mortgage in the complainant's bill mentioned.....	\$10,000.00
10	Interest from August 30, 1911, to date....	588.89
	Amount due complainant this Nov. 4, 1912	\$10,588.89

SCHEDULE B.

	Bond bearing date August 31, 1907, in the penal sum of \$10,000 conditioned for the payment of \$5,000, August 31, 1917, with interest from date at the rate of 5% per annum secured by the mortgage in the complainant's bill secondly men- tioned, and marked Exhibit D. 2.....	\$5,000.00
20	Interest from February 29, 1912 to date, at the rate of 5% per annum.....	169.44
	Amount due defendant, Katrina P. Schmidt, this November 4, 1912.....	\$5,169.44

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JOHN D. PIERSON,

Master in Chancery of New Jersey.

Exhibit P. 3.

IN CHANCERY OF NEW JERSEY.

Between

JOSEPHINE WEIDNER,

*Complainant,**and*JOHN C. FORSTER, *et ux, et als.,**Defendants.**On Bill, etc.**Affidavit of**Amount Due.*

10

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

Josephine Weidner being duly sworn according to law on her oath says, that she is the complainant in the above entitled cause and is the holder of the bond secured by the mortgage being foreclosed therein; that there is due on said bond and accompanying mortgage the sum of ten thousand dollars (\$10,000) being the entire principal sum secured thereby, together with interest thereon from the thirtieth day of August, nineteen hundred and eleven at the rate of 5% per annum; that the said interest at the present time amounts to the sum of five hundred eighty-eight dollars and eighty-nine cents (\$588.89) making the entire amount due complainant on this day on her said bond and mortgage for principal and interest, the sum of ten thousand five hundred eighty-eight dollars and eighty-nine cents (\$10,588.89).

20

30

JOSEPHINE WEIDNER.

Sworn and subscribed to before me this
 fourth day of November, A. D., 1912.

JOHN D. PIERSON,

Master in Chancery of New Jersey.

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Exhibit P. 3.

IN CHANCERY OF NEW JERSEY.

10	<i>Between</i> JOSEPHINE WEIDNER, <i>Complainant,</i> <i>and</i> JOHN C. FORSTER, <i>et ux, et als.,</i> <i>Defendants.</i>	} <i>On Bill etc.</i> <i>Affidavit of</i> <i>Amount Due.</i>
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STATE OF NEW JERSEY, }
 COUNTY OF HUDSON. } ss.

20 George E. Schmidt, being duly sworn according to law on his oath says, that he is the husband of Katarina P. Schmidt, one of the defendants in the above entitled cause, that the said Katarina P. Schmidt is the holder of the mortgage referred to in the bill of complaint, made by Charles Frey and Lena Frey, his wife to the said Katarina P. Schmidt and the bond accompanying the said mortgage; that this deponent is the agent of this said wife for the collection of the interest due on said mortgage and has charge of the collection thereof and that deponent is familiar

30 with the facts herein set forth and that there is due on said mortgage and the bond which it was given to secure the entire principal sum of five thousand dollars (\$5,000) together with interest thereon from the twenty-ninth day of February, nineteen hundred and twelve at the rate of five per cent. per annum, and that said interest amounts, at the present time to one one hundred and sixty-nine dollars and forty-four cents, making the total amount due to the said Katarina P. Schmidt on this day for principal and

Exhibit P. 3.

interest the sum of five thousand one hundred and sixty-nine dollars and forty-four cents.

GEO. E. SCHMIDT.

Sworn and subscribed to before me this
fourth day of November, nineteen
hundred and twelve.

JOHN D. PIERSON,

Master in Chancery of New Jersey.

10

Endorsed :

35/271

IN CHANCERY OF NEW JERSEY.

Between

JOSEPHINE WEIDNER,

Complainant,

and

JOHN C. FORSTER, *et ux, et als.,*

Defendants.

20

On Bill, etc.

MASTER'S REPORT.

JOHN R. SPOHR,

Solicitor.

30

Master's Fees.

Attendance fee.....	\$4.00
Making report	4.00
Drawing report 8 fol. @ 30 c.....	2.40
Drawing schedules 1 fol. @ 10 c.....	.10
Making four exhibits @ 10 c.....	.40

\$10.90

40

Filed Nov. 11, 1912.

IN CHANCERY OF NEW JERSEY.

	<i>Between</i>	}	
	JOSEPHINE WEIDNER,		
	<i>Complainant,</i>		<i>On Bill etc.</i>
10	<i>and</i>		<i>Final Decree.</i>
	JOHN C. FORSTER, <i>et ux, et als.,</i>		
	<i>Defendants.</i>		

This cause coming on to be heard in the presence of John R. Spohr, solicitor and of counsel with the complainant, and the complainant's bill having been heretofore taken as confessed against the defendants John C. Forster, Mary F. Forster, his wife, Charles

20 Beirne, Katarina Perpetua Schmidt, James H. Troy, Agnes Giddons, Edward Shannon, Oscar Caspar, Joseph Whitmore and Fletcher Johnson; whereupon, and upon reading a report upon file, made by John D. Pierson, Esquire, one of the Masters of this court, bearing date on the fourth day of November, in the year of our Lord one thousand nine hundred and twelve, from all of which it appears that there was due on the complainant on the day of the making of the said report for principal and interest on her

30 mortgage, the sum of ten thousand five hundred and eighty-eight dollars and eighty-nine cents and to the defendant Katarina Perpetua Schmidt upon her mortgage, the sum of five thousand one hundred and sixty-nine dollars and forty-four cents, and that the mortgage of the said complainant is first in registry and execution, and is entitled to priority of payment; and that the mortgage of the defendant Katarina Perpetua Schmidt is second in registry and execution and is entitled to be secondly paid; and

Exhibit P. 3.

it is necessary and advisable that the whole of the mortgaged premises be sold to raise and pay the money so due as aforesaid; and no cause being shown or appearing to the contrary.

It is thereupon, on this sixteenth day of November in the year of our Lord, one thousand nine hundred and twelve, by Edwin R. Walker, Chancellor of the State of New Jersey, ordered, adjudged and decreed, and the said Chancellor doth, by virtue of the power and authority of this court, hereby order, adjudge, and decree that the said report, and all the matters and things therein contained, do stand satisfied and confirmed, and that the said mortgaged premises be sold to raise and satisfy the several sums of money due to the said complainant and defendant, that is to say, in the first place to pay the complainant, the sum of ten thousand five hundred and eighty-eight dollars and eighty-nine cents together with lawful interest thereon, to be computed from the fourth day of November, in the year of our Lord one thousand nine hundred and twelve, being the date of the master's report, with the complainant's costs in this cause to be taxed; and in the second place, to pay unto the defendant Katarina Perpetua Schmidt, the sum of five thousand one hundred and sixty-nine dollars and forty-four cents together with lawful interest thereon as aforesaid, with her costs to be taxed, and that a writ of *feri facias* do issue for that purpose out of this court, directed to the Sheriff of the County of Hudson commanding him to make sale according to law, of the said mortgaged premises, and that out of the money arising from such sale, he pay to the claimant or to her solicitor, her said debt, interest and costs; and also to the aforesaid defendant her said debt, interest, and cost, in manner aforesaid, or to her solicitor; and in case more money should be raised by the said sale than shall be sufficient to answer such several payments, that such surplus be brought into

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Exhibit P. 3.

this court, to abide the further order of the court, unless otherwise previously disposed of by the order of this court; and that the said sheriff make return without delay of his proceedings by virtue of the said writ.

And it is further ordered, adjudged, and decreed, that the defendants stand absolutely debarred and foreclosed of and from all equity of redemption of, in, and to the said mortgaged premises, when sold as aforesaid by virtue of this decree.

And it is further ordered, adjudged, and decreed, that the sum of seventy-five dollars be allowed and paid to the solicitor of the complainant instead of the retaining fee now allowed to counsel by statute, and that the same be included in the taxed bill of costs and collected with the other items of said bill.

E. R. WALKER,

C.

Endorsed :

35/271

IN CHANCERY OF NEW JERSEY.

Between

JOSEPHINE WEIDNER,

Complainant,

and

JOHN C. FORSTER, *et ux, et als.,*

Defendants.

On Bill, etc.

FINAL DECREE.

JOHN R. SPOHR,

Solicitor.

Filed Nov. 16, 1912.

Exhibit P. 3.

IN CHANCERY OF NEW JERSEY.

Between

JOSEPHINE WEIDNER,

Complainant,

and

JOHN C. FORSTER, *et ux, et. als.,*

Defendants.

*Fi. Fa. for
Sale of
Mortgage
Premises.*

10

*To his Honor, Edwin R. Walker, Chancellor of the
State of New Jersey:*

I, NICHOLAS P. WEDIN, Sheriff of the County of Hudson, do hereby respectfully report that I did, on the 9th day of January, 1913, sell at public vendue, at Court House, Jersey City (having first duly advertised the same), the lands and premises described in the writ of execution issued to me in the above stated cause, to George E. Schmidt of Hoboken, N. J., for the sum of eleven thousand, one hundred, seventy-five & 00/100 dollars, he being the highest bidder therefor. 20

Respectfully submitted the 9th day of January, 1913.

NICHOLAS P. WEDIN,

Sheriff.

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Exhibit P. 3.

NEW JERSEY, }
HUDSON COUNTY. } ss.

10 Nicholas P. Weden, Sheriff of the County of Hudson, State of New Jersey, being duly sworn according to law, on his oath says, that the mortgaged premises mentioned and referred to in the foregoing report were duly sold by me at the highest and best price the same would bring in cash at the time of said sale.

NICHOLAS P. WEDIN,
Sheriff of New Jersey.

Subscribed and sworn to before me
this 9th day of January, A. D.
1913,

20 THOMAS F. O'CONNOR,
Notary Public.

Endorsed:

35/271

IN CHANCERY OF NEW JERSEY.

30 Between
 JOSEPHINE WEIDNER,
 Complainant,
 and
 JOHN C. FORSTER, *et ux, et als.*,
 Defendants.

Fi. Fa., &c.
Report of Sale.

JOHN R. SPOHR,
Solicitor.

40 Filed Jan. 11, 1913.

Exhibit P. 3.

IN CHANCERY OF NEW JERSEY.

Between

JOSEPHINE WEIDNER,

*Complainant,**and*JOHN C. FOERSTER, *et ux, et als.,**Defendants.**On Bill to
Foreclose.*

10

Upon reading and filing the report of Nicholas P. Wedin, Esquire, Sheriff of the County of Hudson, whereby it appears that on the ninth day of January, nineteen hundred and thirteen, he made sale according to law, of the mortgaged premises described in the writ of *fieri facias* issued in this cause, after due and lawful notice and advertisement, by public vendue, to George E. Schmidt of the City of Hoboken, Hudson County, New Jersey, for the sum of eleven thousand, one hundred and seventy-five dollars, that being the highest bid therefor; and upon reading and filing the affidavit of said sheriff, whereby it further appears, that the said property was sold at the highest and best price the same would then bring in cash, and no cause being shown or appearing to the contrary.

20

It is on this twentieth day of January, nineteen hundred and thirteen, on motion of John R. Spohr, solicitor of the said complainant, ORDERED, that said sale be, and the same hereby is ratified and confirmed, as valid and effectual in law; and the said sheriff is hereby directed to execute a good and sufficient conveyance, in law, to the said purchaser, for the mortgaged premises so sold as aforesaid.

30

E. R. WALKER,

C.

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35/271

IN CHANCERY OF NEW JERSEY.

Between
JOSEPHINE WEIDNER,
Complainant,
and
JOHN C. FOERSTER, *et us, et. als.*,
Defendants.

Order confirming Sheriff's Sale.

JOHN R. SPOHR,
Solicitor.

Filed Jan. 20, 1913.

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Exhibit P. 3.

IN CHANCERY OF NEW JERSEY.

No. 308.

Between

JOSEPHINE WEIDNER,

Complainant,

and

JOHN C. FORSTER, *et ux.*, *et als.*,
Defendants.Fi. Fa. for
Sale of
Mortgaged
Premises.

10

1. Decree for Compl't.....	\$10,588.89	
Int. from Nov. 4, 1912 to Jany. 24, 1913	140.98	
Cost taxed at.....	244.68	
Int. from Nov. 16, 1912, to Jany. 24,		20
1913	2.77	
2. Decree for Def't Katarina Perpetua		
Schmidt	5,169.44	
Int. from Nov. 4, 1912, to Jany. 24, 1913	68.82	
Cost taxed at	4.76	
Int. from Nov. 16, 1912, to Jany. 24,		
1913	.06	
3. Decree for Def't.		
Int. from 190 to 190		
Cost taxed at		30
Int. from 190 to 190		
Sheriff's Ex'n fees.....	132.28	
Total	\$16,352.68	
Proceeds of Sale.....	11,175.00	
Deficiency	\$ 5,177.68	
Levy and Ret.....	\$3.50	
Printing	34.00	
Posting	3.50	40

Exhibit P. 3.

Publishing	\$3.00
Crier	1.00
Deed	4.00
Report and Affidavit.....	1.40
Adjnt's	
Com's	80.88
Statement	1.00

10

\$132.28

By virtue of the annexed writ, I did on the 9th day of January 1913, sell at Public Vendue, at REAL ESTATE SALESROOMS, COURT HOUSE, JERSEY CITY, having first duly advertised the same, the land and premises described in said writ, to George E. Schmidt, Hoboken, N. J., for the sum of eleven thousand one hundred and seventy-five and 00/100 dollars, he being the highest bidder for the same.

20

I hereby certify that the above statement is true and correct.

NICHOLAS P. WEDIN,
Sheriff.

Dated January 24, 1912.

NEW JERSEY, to wit:

The State of New Jersey to the Sheriff of the County of Hudson, GREETING:

30

WHEREAS, on the sixteenth day of November, in the year of our Lord one thousand (L. S.) nine hundred and twelve, by a certain decree made in our Court of Chancery, before our Chancellor, at Trenton, in a certain cause therein depending, wherein Josephine Weidner is complainant and John C. Forster and Mary F. Forster, his wife, Charles Beirne, Katarina Perpetua Schmidt, James H. Troy, Agnes Giddens, Edward Shannon, Oscar Casper, Joseph Whitmore and Fletcher Johnson, are defendants, it was ordered, adjudged

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Exhibit P. 3.

and decreed that certain mortgaged premises, with the appurtenances, in the bill of complaint in the said cause particularly set forth and described, that is to say: All that certain lot, tract or parcel of land and premises hereinafter particularly described situate, lying and being in the City of Hoboken in the County of Hudson and State of New Jersey, and which on a certain map, entitled "Map of property, situate at Hoboken, Hudson County, New Jersey, belonging to the estate of John G. Coster, deceased, surveyed and laid out into lots November, 1860, by Daniel Ewen and Austin D. Ewen, City Surveyors, New York, and duly filed in the office of the Clerk (now Register) of said County of Hudson, is known and distinguished as lot number eight (8) in Block number seventeen (17) as laid down on said map, said lot being twenty-five feet wide in front and rear by one hundred feet (100) deep throughout.

And being the same premises conveyed to the said Katarina Perpetua Schmidt by said Josephine Weidner and husband, by deed bearing even date with said mortgage, this mortgage being given to secure a part of the consideration in said deed mentioned.

TOGETHER with all and singular the rights, liberties, privileges, hereditaments and appurtenances thereunto belonging or in any wise appertaining, and the reversions and remainders, rents, issues and profits thereof, and also all the estate, right, title, interest, use, property, claim and demand of the said defendants of, in, to and out of the same, be sold, to pay and satisfy in the first place, unto the said complainant the sum of ten thousand five hundred and eighty-eight dollars and eighty-nine cents, secured to be paid by a certain mortgage made by Katarina Perpetua Schmidt and husband to the said complainant dated the thirtieth day of August, nineteen hundred and six and recorded in Book 597 of Mortgages for Hudson County, New Jersey, on page 77, etc., together with

Exhibit P. 3.

lawful interest thereon to be computed from the fourth day of November in the year of our Lord one thousand nine hundred and twelve, being the date of the Master's report in said cause, with the complainant's costs in this cause to be taxed, and in the second place to pay unto the defendant Katarina Perpetua Schmidt the sum of five thousand one hundred and sixty-nine dollars and forty-four cents, secured to be paid by a
 10 certain mortgage made by Charles Frey and wife to said Katarina Perpetua Schmidt and dated August thirty-first, nineteen hundred and seven, together with lawful interest thereon from the fourth day of November, nineteen hundred and twelve, until the same be paid and satisfied, and also the costs of the said complainant and defendant; and that, for that purpose, a writ of *fieri facias* should issue, directed to the sheriff of the County of Hudson, commanding him to make sale as aforesaid; and that the surplus money
 20 arising from such sale, if any there be, should be brought into the said court, subject to the further order of the said court, as by the said decree remaining as of record in our said Court of Chancery, at Trenton, doth and may more fully appear.

AND WHEREAS, the costs of the said complainant have been duly taxed at two hundred forty-four dollars and sixty-eight cents, and of the said defendant, Katarina Perpetua Schmidt, at four dollars and seventy-six cents.

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Exhibit P. 3.

THEREFORE you are hereby commanded that you cause to be made of the premises aforesaid, by selling the same for the purpose, and out of the proceeds thereof you do pay unto the said complainant in the first place the sum of ten thousand five hundred and eighty-eight dollars and eighty-nine cents, together with lawful interest thereon as aforesaid, and also the sum aforesaid of costs; and in the second place to pay unto the defendant Katarina Perpetua Schmidt the sum of five thousand one hundred and sixty-nine dollars and forty-four cents together with lawful interest thereon, as aforesaid; and also the sum aforesaid of costs; and that you have these moneys before our said Chancellor, in our Court of Chancery aforesaid, at Trenton, on the first Tuesday of February next, to render to the said complainant and defendant, and also the surplus money, if any there be, to abide the further order of our said Court, according to the decree aforesaid. And you are to make return at the time and place aforesaid, by certificate under your hand, of the manner in which you shall have executed this our writ, together with this writ.

WITNESS, Edwin R. Walker, Esquire, our Chancellor, at Trenton aforesaid, the Ninth day of December in the year of our Lord one thousand nine hundred and twelve.

SAML. K. ROBBINS,

Clerk. 30

JOHN R. SPOHR,

Sol'r.

35/271 No. 308

IN CHANCERY OF NEW JERSEY.

Between
JOSEPHINE WEIDNER,
10 Complainant,
and
JOHN C. FORSTER, *et ux, et als.,*
Defendants.

Returnable February Term A. D., 1913.

JOHN R. SPOHR,

Solicitor.

Levy :—

Complainants Decree	\$10,588.89
Interest from No. 4/12 to Jan. 24/13....	140.98
Costs taxed at.....	244.68
Interest from	2.77

\$10,977.32

Decree for debt.

Katarina P. Schmidt.....	\$5,169.44
Interest from Nov. 4, 1912 costs taxed at.	4.76

Filed June 3, 1913.

Besides Sheriff's Executive Fees.

To the Sheriff—

The act approved March 12th, 1880, requires that the sale under this writ be confirmed by the Chancellor before delivery of the deed.

VIVIAN M. LEWIS,

Clerk.

Exhibit P. 3.

Recorded in the Clerk's Office of the Court of Chancery of the State of New Jersey, at Trenton, Book G-9 of Executions, page 66 &c., and examined by me.

SAML. K. ROBBINS,
Clerk.

Rec'd Jersey City, Jany. 24, 1913 from Nicholas P. Wedin, Sheriff of Hudson County, N. J. Deed of property described in execution issued in above cause to _____ in lieu of _____ Dollars, proceeds of sale under said execution less Sheriff's ex. fees. 10

March 8/13 Returned to Court Statement annexed.

N. P. WEDIN,
Sheriff.

By JAS. H. CLARK,
Under Sheriff. 20

Sheriff's Office.

Received Dec. 12, 1912 o'clock.

Sheriff.

Rec'd Jersey City, Jany. 24, 1813 from Nicholas P. Wedin, Sheriff, of Hudson County, N. J., sixty-five 40/100 dollars, amount due Defendant, Katarina P. Schmidt, from proceeds of sale under within execution. 30

JOHN R. SPOHR,
Atty. of Katarina P. Schmidt, Deft.

Rec'd Jersey City, Jany. 24, 1813 from Nicholas P. Wedin, Sheriff of Hudson County, N. J., Ten thousand nine hundred and seventy-seven 32/100 Dollars, Complainant's Decree costs and Interest in within execution.

JOHN R. SPOHR,
Solr. of Compl't. 40

Exhibit P. 1.

I, SAMUEL K. ROBBINS, Clerk of the Court of Chancery of the State of New Jersey, the same being a Court of Record, DO HEREBY CERTIFY that the foregoing is a
 (SEAL) true TRANSCRIPT of all the proceedings in the cause wherein Josephine Weidner is complainant and John C. Forster, *et ux.*, *et als.*, are defendants, now on the files of my office.

10

In testimony whereof, I have hereto set my hand and affixed the seal of said court, at Trenton, this tenth day of November, A. D. nineteen hundred and thirteen.

SAM'L K. ROBBINS,
Clerk.

20

Exhibit P. 1.**BOND.**

Charles Frey and Lena Frey to Katarina P. Schmidt.
 Amount,\$
 Date,
 Due,
 Interest Payable,

30

Law Offices of
 Weller & Lichtenstein,
 Hudson Trust Building,
 Hoboken, N. J.

Ex. P. 1.

40

Know all men by these presents: That we, Charles Frey and Lena Frey, his wife, of the borough of Demarest, in the County of Bergen and State of New Jersey, are held and firmly bound unto Katarina P. Schmidt, of the City of Hoboken, in the County of Hudson and State of New Jersey, in the penal sum of

Exhibit P. 1.

ten thousand dollars, lawful money of the United States of America, to be paid to the said Katarina P. Schmidt, her executors, administrators or assigns: for which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents. Sealed with our seals. Dated the thirty-first day of August, one thousand nine hundred and seven. 10

The condition of the above obligation is such that if the above bounden Charles Frey and Lena Frey, their heirs, executors or administrators, shall well and truly pay, or cause to be paid, unto the above named Katarina P. Schmidt, her executors, administrators or assigns, the just and full sum of five thousand dollars on the thirty-first day of August, which will be in the year one thousand nine hundred and seventeen, and the interest thereon, to be computed from the day of the date hereof, at and after the rate of five per cent. per annum, and to be paid semi-annually, without any fraud or other delay, then the above obligation to be void, otherwise to remain in full force and virtue. 20

And it is hereby expressly agreed, that should any default be made in the payment of the said interest, or of any part thereof, on any date whereon the same is made payable as above expressed, or should any tax, assessment, water rent or other municipal or governmental rate, charge, imposition or lien be hereafter imposed or acquired upon the premises described in the mortgage accompanying this bond, and become due and payable; and should the said interest or any part thereof remain unpaid and in arrear for the space of thirty days, or said tax, assessment, water rent, or other municipal or governmental rate, charge, imposition or lien, or any or either of them, remain unpaid and in arrear for the space of sixty days, then and from thenceforth, that is to say, after the lapse or expiration of either of the said periods, as the case 30 40

Exhibit P. 1.

may be, the aforesaid principal sum of five thousand dollars, with all arrearage of interest thereon, shall, at the option of the said Katarina P. Schmidt, or her legal representatives, become and be due and payable immediately thereafter, although the period first above limited for the payment thereof may not then have expired, anything hereinbefore contained to the contrary thereof in anywise notwithstanding.

10

CHARLES FREY, (L. S.)
LENA FREY. (L. S.)

Signed, sealed and delivered
in the presence of
FREDERICK W. SCHAAF.

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Exhibit P. 2.

5779

EXHIBIT P. 2.

Sep. 9, 2:22 P. M., 1907.

Hudson County, N. J.

MORTGAGE.

Charles Frey, *et ux.*, to Katarina P. Schmidt.

Dated, August 31st, 1907.

10

Received in the Register's Office of the County of Hudson, N. J., on the 9th day of Sept., A. D. 1907, and recorded in Book 629 of Mortgages for said County, on pages 44, and indexed under County Block No. 1746.

JAMES C. CLARKE,

Register.

Ex. P. 2.

This Indenture, made the thirty-first day of August, 20
in the year of our Lord one thousand nine hundred and
seven, between Charles Frey and Lena Frey, his wife,
of the borough of Demarest, in the County of Bergen
and State of New Jersey, of the first part, and Kata-
rina P. Schmidt, of the City of Hoboken, in the County
of Hudson and State of New Jersey, party of the sec-
ond part; *Whereas*, the said parties of the first part
are justly indebted to the said party of the second
part, in the sum of five thousand dollars, lawful money
of the United States of America, secured to be paid by 30
their certain bond or obligation, bearing even date
with these presents, in the penal sum of ten thousand
dollars, lawful money as aforesaid conditioned for the
payment of the said first-mentioned sum of five thou-
sand dollars, lawful money as aforesaid, to the said
party of the second part, her executors, administra-
tors or assigns, on the thirty-first day of August,
which will be in the year one thousand nine hundred
and seventeen, and interest thereon, to be computed
from the day of the date hereof at and after the rate of 40

Exhibit P. 2.

five (5%) per cent. per annum, and to be paid semi-annually.

10 *And it is thereby expressly agreed* that should any default be made in the payment of the said interest or of any part thereof, on any day whereon the same is made payable, as above expressed, or should any tax, assessment, water rent or other municipal or gov-
20 ernmental rate, charge, imposition or lien be hereafter imposed or acquired upon the premises described in this mortgage, and become due and payable, and should the said interest or any part thereof remain unpaid and in arrear for the space of thirty days, or said tax, assessment, water rent or other municipal or governmental rate, charge, imposition or lien, or any or either of them remain unpaid and in arrear for the space of thirty days then and from thenceforth, that is to say, after the lapse or expiration of either
30 of the said periods as the case may be, the aforesaid principal sum of five thousand dollars, with all arrearage of interest thereon, shall, at the option of the said party of the second part, or her legal representatives, become and be due and payable immediately thereafter, although the period above limited for the payment thereof may not then have expired, anything therein before contained to the contrary thereof in anywise notwithstanding: as by the said bond or obligation, and the condition thereof, reference being thereunto had, may more fully appear.

30 *Now this indenture witnesseth,* That the said parties of the first part, for the better securing the payment of the said sum of money mentioned in the condition of the said bond or obligation, with interest thereon, according to the true intent and meaning thereof, and also for and in consideration of the sum of one dollar, to them in hand paid by the said party of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged,
40 have granted, bargained, sold, aliened, released, con-

Exhibit P. 2.

veyed and confirmed, and by these presents do grant, bargain, sell, alien, release, convey and confirm, unto the said party of the second part, and to her heirs and assigns forever.

All that certain lot, tract or parcel of land and premises, hereinafter particularly described, situate, lying and being in the City of Hoboken, in the County of Hudson and State of New Jersey, and which on a certain map entitled "Map of property, situate at Hoboken, Hudson County, New Jersey, belonging to the estate of John G. Coster, deceased, surveyed and laid out into lots, November, 1860, by Daniel Ewen and Austin D. Ewen, City Surveyors, New York," and duly filed in the office of the Clerk (now Register) of said County of Hudson, is known and distinguished as lot number eight (8) in block number seventeen (17) as laid down on said map. Said lot being twenty-five feet (25') wide in front and rear by one hundred feet (100') deep throughout.

Being the same lands and premises conveyed to the said Charles Frey and Lena Frey by the said Katarina P. Schmidt and husband, by deed bearing even date with these presents; this mortgage being given to secure the payment of part of the purchase money in said deed mentioned.

Exhibit P. 2.

Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof. And also, all the estate, right, title, interest, property, possession, claim and demand whatsoever, as well in law as in equity, of the said parties of the first part, of, in and to the same, and every part and parcel thereof, with the appurtenances: To have and to hold the above granted and described premises, with the appurtenances, unto the said party of the second part, her heirs and assigns, to her and their own proper use, benefit and behoof forever. Provided always, and these presents are upon this express condition, that if the said parties of the first part, their heirs, executors or administrators, shall well and truly pay unto the said party of the second part, her executors, administrators or assigns, the said sum of money mentioned in the condition of said bond or obligation, and the interest thereon, at the time and times, and in the manner mentioned in the said condition, according to the true intent and meaning thereof, that then these presents, and the estate hereby granted, shall cease, determine and be void.

And the said parties of the first part for themselves, their heirs, executors and administrators, do covenant and agree to pay unto the said party of the second part, her heirs, executors, administrators or assigns, the said sum of money and interest, as mentioned above and expressed in the conditions of the said bond.

And it is also agreed, by and between the parties to these presents, that the said parties of the first part, shall and will keep the buildings erected, and to be erected, upon the lands above conveyed, insured against loss or damage by fire, by insurers, and in an amount approved by the said party of the second part, her executors, administrators or assigns, and assign

Exhibit P. 2.

the policy and certificates thereof to the said party of the second part; and in default thereof, it shall be lawful for the said party of the second part to effect such insurance, and the premium and premiums paid for effecting the same shall be a lien on the said mortgaged premises, added to the amount of the said bond or obligation, and secured by these presents, payable on demand, with interest at the rate of five per cent. per annum, from the time of payment of such premium or premiums. 10

And the said parties of the first part, the owners of the lands above described for themselves, their heirs and assigns, do further covenant and agree to and with the said party of the second part, her heirs, executors, administrators and assigns, that they will pay in full all taxes levied, or to be levied, upon the lands embraced in this mortgage, and will not claim any credit on, or make any deduction from the interest or principal hereby secured by reason of the payment of any taxes so levied or to be levied, during the continuance of the lien of this mortgage, and upon the breach of this covenant or any part thereof, this mortgage may become and be due and payable immediately, at the option of the said party of the second part thereto. 20

In Witness Whereof, the said parties of the first part have hereunto set their hands and seals the day and year first above written. 30

CHARLES FREY, (L. S.)
LENA FREY. (L. S.)

Signed, sealed and delivered
in the presence of

FREDERICK W. SCHAAF.

Exhibit P. 2.

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

Be it remembered, That on this thirty-first day of August, in the year of our Lord one thousand nine hundred and seven, before me, the subscriber, a Commissioner of Deeds, Bergen County and State of New Jersey, personally appeared Charles Frey and Lena Frey, his wife, who, I am satisfied, are the mortgagors mentioned in the within instrument, to whom I first made known the contents thereof, and thereupon they acknowledged that they signed, sealed and delivered the same as their voluntary act and deed, for the uses and purposes therein expressed; and the said Lena Frey, being by me privately examined, separate and apart from her husband, further acknowledged that she signed, sealed and delivered the same as her voluntary act and deed, **FREELY**, without any fear, threats or compulsion of her said husband.

FREDERICK W. SCAAF,
Commissioner of Deeds.

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Exhibit P. 4.

EXHIBIT No. 4.

NEW JERSEY SUPREME COURT.

KATARINA P. SCHMIDT, <i>vs.</i> CHARLES FREY and LENA FREY, <i>Defendants.</i>	}	<i>Plaintiff,</i> <i>Notice of Proposed Action at Law.</i>	10
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Notice is hereby given, pursuant to the directions of the statute in such case made and provided, to all to whom it doth or may concern, that an action is about to be begun in the New Jersey Supreme Court entitled as follows:

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NEW JERSEY SUPREME COURT.

HUDSON COUNTY.

KATARINA P. SCHMIDT, <i>vs.</i> CHARLES FREY and LENA FREY, <i>Defendants.</i>	}	<i>Plaintiff,</i> 	30
---	---	---------------------------	----

To recover the sum of five thousand dollars with interest from March 2nd, 1912, upon a certain bond bearing date August 31st, 1907, made, executed and delivered by the said Charles Frey and Lena Frey to Katarina P. Schmidt in the penal sum of Ten thousand dollars, conditioned to pay the sum of Five Thousand Dollars, with interest at five per cent per annum, and the payment of which said bond is fur-

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Exhibit P. 4.

ther secured by a mortgage made by the said Charles Frey and Lena Frey to the said Katarina P. Schmidt, bearing date August 31st, 1907, and which said mortgage was duly recorded in the office of the Register of the County of Hudson in Book 629 of mortgages, page 44, &c.

10 The following is a description of the lands and real estate described in said mortgages:

20 "All that certain lot, tract or parcel of land and premises, hereinafter particularly described, situate, lying and being in the City of Hoboken, in the County of Hudson and State of New Jersey, and which on a certain map entitled "Map of property, situate at Hoboken, Hudson County, New Jersey, belonging to the estate of John G. Coster, deceased, surveyed and laid out into lots, November, 1860, by Daniel Ewen and Austin D. Ewen, City Surveyors, New York" and
 20 duly filed in the office of the Clerk (now Register) of said County of Hudson, is known and distinguished as lot number eight (8) in Block number seventeen (17) as laid down on said map. Said lot being twenty-five feet (25') wide in front and rear by one hundred feet (100') deep throughout.

Being the same lands and premises conveyed to the said Charles Frey and Lena Frey by the said Katarina P. Schmidt and husband, by deed bearing even date with said mortgage.

30

JOHN J. FALLON,
Attorney of the Plaintiff,
Katarina P. Schmidt.

Filed and recorded in Hudson County Register's office August 18, 1913.

PEIRCE & HOOVER,
Attorneys of Defendants and Appellants.

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New Jersey Court of Errors and Appeals

KATARINA P. SCHMIDT,

Plaintiff and Respondent,

vs.

CHARLES FREY and LENA FREY,

Defendants and Appellants.

Action

at Law.

On Appeal

from New

Jersey

Supreme

Court.

Brief of Appellants.

Facts.

During the months of June, July and August, nineteen hundred and seven, the respondent advertised in the "Observer," a Hoboken paper, to be sold at public sale, the premises on the northeast corner of Madison and Ferry streets, Hoboken, New Jersey, as per copy of advertisement on page 21 of the Case. By this advertisement it appears that the property was represented as "this property has thereon a four-story brick store and flat building; in every way up-to-date, substantially constructed and well rented under secured leases. It is doubtful if ever a more perfect investment was ever offered at a public sale and the same will be sold due to the departure of the present owner" (Case, page 21, line 27, &c.).

This advertisement was seen by Charles Frey, and due to it he attended the sale which was held August twentieth, nineteen hundred and seven. At this sale, the auctioneer, Mr. Charles A. Tissot, announced that there was a lease on the property guaranteed by one of the richest brewers or breweries in the United States; that relying upon this advertisement and the

*Counsel of Appellants
have not seen the
brief of Respondent*

announcement at the sale, Mr. Frey purchased the property for the large sum of twenty-two thousand dollars (\$22,000) (Case, page 14, line 31). That the consideration paid was seven thousand dollars (\$7,000) cash (Case, page 14, line 32) and the property was purchased subject to a ten thousand dollar (\$10,000) mortgage then existing given by Mr. and Mrs. Schmidt to one Josephine Weidner, and a second mortgage of five thousand dollars (\$5,000) given to Mrs. Katarina P. Schmidt by Charles Frey and Lena Frey, his wife, dated August thirty-first, nineteen hundred and seven, being the balance of the sum of twenty-two thousand dollars (\$22,000). That the said Mr. and Mrs. Frey thereupon received a deed for the premises. Neither Mr. nor Mrs. Frey had any knowledge that the statements contained in the advertisement and in the announcement of the auctioneer at the sale were false and untrue until after the receipt of the deed and the payment of the purchase money. The first mortgage of ten thousand dollars (\$10,000) held by Josephine Weidner was foreclosed. In these proceedings the Schmidt mortgage was made a party as shown by the record (Case, page 47, lines 24 to 30; page 51, line 15). Katarina P. Schmidt gave notice that "I desire to have my mortgage reported upon by the Master to whom this cause is referred, and I do hereby give notice of my desire in pursuance of the rules of the Court of Chancery" (Case, page 68, line 5). John D. Pierson, Esquire, Master, reported on the said Schmidt mortgage and found that there was due for principle and interest the sum of five thousand one hundred seventy-nine dollars and forty-four cents (\$5,179.44). Final decree was given in these proceedings and the sale of the property by the sheriff occurred on the ninth day of January, nineteen hundred and thirteen (Case, page 94, line 12; page 17, lines 22 to 25). The surplus money in the sum of sixty-four dollars (\$64) remain-

ing from the sale after the first mortgage, costs and expenses were paid, was paid by the sheriff to Katarina P. Schmidt on account of the second mortgage as per final decree of the court (Case, page 18, line 37).

The suit at bar was not commenced until August nineteenth, nineteen hundred and thirteen (Case, page 17, lines 30 to 33), more than six months after the sale under the foreclosure proceedings. The action at bar is to recover a deficiency claimed to be due upon the bond accompanying the five thousand dollar (\$5,000) mortgage given by Mr. and Mrs. Frey to Mrs. Katarina P. Schmidt, being a second mortgage subsequent to the lien of the ten thousand dollar (\$10,000) mortgage which had been given by Mr. and Mrs. Schmidt, while they owned the premises, to Mrs. Josephine Weidner.

The appellants alleged the following exceptions and any of said exceptions that are not specifically referred to in this brief are not abandoned:

1. The complaint discloses no cause of action in that it fails to show that a suit was brought on the bond within six months after the date of the sale of the real estate by the sheriff under the foreclosure proceedings set out in the complaint.

2. That the court erred in overruling the motion for non-suit.

3. That the court erred in overruling the following question:

“Q What, if anything, did the auctioneer announce before the sale”?

4. That the court erred in overruling the following question:

“Q Now, Mr. Frey, did you or did you not rely when you purchased the property upon the advertisement and upon the announcement made by the auctioneer at the sale”?

5. That the court erred in overruling the following question:

“Q The question is, what was Mr. Mayer’s business”?

6. That the court erred in overruling the following question:

“Q Was Mr. Mayer a brewer”?

7. That the court erred in overruling the following question:

“Q Did you lose any money in the property”?

8. That the court erred in overruling the following question:

“Q When you purchased the property, did you, or did you not rely upon the representations made in the advertisement and upon the representations and announcements made by the auctioneer”?

9. That the court erred in overruling the following question:

“Q By reason of you not being very well, your husband attended the active part of your business”?

10. That the court erred in overruling the following question:

“Q Is it or is it not a fact that your husband has acted for you in some of these matters because of the fact that you are not able to do it yourself because of your health”?

11. That the court erred in overruling the following question:

“Q Do you remember that your husband bought the property in later at a sheriff’s sale under the foreclosure”?

12. That the court erred in overruling the following question:

"Q Did you or did you not rely upon that advertisement as to information about the property at the time you bought it at public sale"?

13. That the court erred in overruling the following question:

"Q Tell us what Mr. Tissot, the auctioneer, announced as to the property as near as you can remember before the auction sale commenced and before you purchased the property"?

14. That the court erred in overruling the following questions:

"Q Now, Mr. Frey, did you or did you not in purchasing this property rely upon the advertisement I have mentioned and upon the representations and announcements made by the auctioneer as to the property, and did or did not they induce you to purchase it"?

15. That the court erred in overruling the following question:

"Q What did the auctioneer announce"?

16. That the court erred in overruling the following question:

"Now, I would ask again, Mr. Frey, how much money you lost in the nature of rent and other items on the property that you bought at the public sale advertised by C. A. Tissot, August 20, 1907, being the property owned by Schmidt"?

17. That the court erred in overruling the following question:

"Q Did you or did you not trade off the property after you bought it"?

18. That the court erred in overruling the following question:

"Q How long did you own the property in question"?

19. That the court erred in overruling the following question:

"Q Now, tell us how much money and give in detail how you arrive at it, did you lose by reason of trading or selling of the property in question after you had bought it and received a deed for it"?

20. That the court erred in overruling the following question:

"Q Was there or was there not at the time you bought the property in question at public sale secured leases on the property"?

21. That the court erred in overruling the following question:

"Q Was there or was there not a lease on that property guaranteed by one of the richest brewers of breweries in the United States"?

22. That the court erred in overruling the following question:

"Q Did you have any notice of the sale under foreclosure proceedings of the Josephine Weidner mortgage"?

23. That the court erred in overruling the following question:

"Q Did you know that the property in question was to be sold by the sheriff under these foreclosure proceedings"?

24. That the court erred in overruling the following question of Juror Liebel as follows:

"Q A copy for the advertisement was originally written in German, wasn't it? Who translated it into English, your husband or Mr. Tissot, the agent"?

25. That the court erred in overruling the following question:

"Q You acted for your wife in this matter"?

26. That the court erred in overruling the following question of Juror Liebel:

"Q Did you write the ad, the copy for the ad out in German first before you translated it into English"?

27. THAT THE COURT ERRED IN DIRECTING A JUDGMENT IN FAVOR OF THE PLAINTIFF, WHEREAS JUDGMENT SHOULD HAVE BEEN DIRECTED IN FAVOR OF THE DEFENDANTS.

28. The court erred in so directing a judgment and taking the case away from the jury.

Law I.

The appellants claim (1) the right to show fraud perpetrated upon them by reason of the advertisement and by reason of the announcement made at the time of the sale of the property to them, and to offset or recoup their damage against anything claimed by the respondent to be due upon said bond accompanying said mortgage. There was evidence of fraud, which evidence should have been admitted by the trial judge, which evidence would have been sufficient to send the case to the jury. There was evidence that the defendant bought the premises under representations made by the seller and her agent which were false and untrue to the knowledge of the seller, and which representations the appellants relied upon in purchasing the said property to their damage. The court erred in refusing to allow questions which were competent, material and relevant to show the fraud practiced by the respondent in selling the property to the appellants, which fraud was false representations, announcements and advertisements concerning the nature, condition and value of the said property, which representations, announcements and advertisements—induced appellants to purchase and were relied upon by the appellants to their damage. The representations were that the property was well rented, under secured leases and

that there was a lease on the property guaranteed by one of the richest brewers or breweries in the United States, which representations were false and untrue as the seller well knew, and appellants relied upon such representations and purchased the property, and the property was of a great deal less value because it was not as so represented. The law of New Jersey is that when fraud is shown, evidence may be admitted to go behind a deed and show such fraud, and if the fraud is sufficient, the sale may be rescinded or damages may be set off or recouped in another action. This is especially true, as in the present case the appellants took the deed and gave the mortgage before they knew of the said false representations and fraud of the seller and without any negligence on their part in not discovering the said fraud.

13 Cyc. page 618.

Davis vs. Clark, 47 N. J. L., page 338, (Court of Errors and Appeals).

Which case holds that "where a deed is made and accepted in pursuance of an executory contract, the law presumes that it fully expresses the final intentions of the parties—the plaintiff *in the absence of fraud* is precluded from maintaining his action. Not only is no fraud proved, but none is alleged, and even the intention to impute it is disclaimed." See also:

Jones vs. Wood, 16 Pa. St. R., page 25, at page 39.

Haggerty vs. Fagan, 2 P. & W. (Pa.), page 533.

Brown vs. Moorehead, 8 Sargt. & Rawle, page 568.

Horner vs. Lowe (Ind.), 64 N. E., page 218.

Slocum vs. Brocy, 56 N. W., page 826.

Martin vs. Hamlin, 18 Mich., page 354.

Griswold vs. Eastman (Minn.), 54 N. W., page 542.

Disbrow vs. Harris (N. Y.), 25 N. E., page 356.

Devlin on Deeds, Secss. 850, 1027.

Fraud which would vitiate a sale would likewise vitiate the consideration for the sale and part of the consideration of the sale of the premises was the giving of the second mortgage and bond, which is the subject of this suit.

(A) The false representations made by the seller was the advertisement stating that "this property has thereon a four-story brick store and flat building, in every way up-to-date, substantially constructed and well rented under secured leases" (Case, page 21, line 28).

The questions relative to the announcements made by the auctioneer at the sale and which questions should have been admitted by the trial judge on the ground that were relevant, competent and material to show such representations:

"Q What if anything did the auctioneer announce before the sale"? (Case, page 22 line 28).

And question:

"Tell us what Mr. Tissot, the auctioneer, announced as to the property as near as you can remember before the auction sale commenced and before you purchased the property"? (Case, page 32, line 36).

And question:

"What did the auctioneer announce"? (Case, page 33, line 39).

The respondent could not take the fruit of the auctioneer's fraud, and in addition it is not necessary to show first in so many words that the auctioneer was authorized to make these representations. The respondent was present at the sale and the auctioneer is presumably authorized to make certain statements and representations relative to the nature, condition and value of the property he is selling or is about to sell. In case of fraud:

"Evidence tending to show what representations were actually made, and the manner of

making them, is of course admissible on behalf of either plaintiff or defendant."

20 Cyc., page 112.

Smith vs. Smidt, 5 Kan., 30.

Williams vs. McFadden (Fla.), 1 So., 618.

Bradbury vs. Bardin, 35 Conn., 577.

Prout vs. Martin, 160 (Ill.), App., 11.

Hall vs. Car Co. (Mich.), 135 N. W., 118.

Rollins vs. Quimby (Mass.), 92 N. E. 493, which was the case of statement made by an agent.

Ward vs. Cook (Mich.), 122 N. W., 785.

McMullen vs. Rousseau (Wash.), 82 Pac., 883.

In *Foster vs. Trenary* (Iowa), 22 N. W., 898 the court holds that:

"Where a third person accompanying a vendor at a sale makes in the vendor's presence uncontradicted by him statements to the prospective purchaser regarding the property to be sold, such statements are binding on the vendor and admissible against him, in an action of deceit brought by the purchaser."

(B) The evidence as to whether a buyer at an auction sale of real estate relied upon advertisements and such announcements as are made by the auctioneer is competent, material and relevant because such reliance can be shown as one of the necessary steps to prove fraud at the sale.

Thus question:

"When you purchased the property, did you, or did you not rely upon the representations made in the advertisement and by the representations and announcement made by the auctioneer"? (Case, page 25, line 32).

And question:

"Did you or did you not rely upon that advertisement as to the information about the property at the time you bought it at public sale?" (Case, page 32, line 27).

And question :

"Now, Mr. Frey, did or did you not in purchasing this property rely upon the advertisement as mentioned and upon the representations and announcements made by the auctioneer as to the property, and did or did not they induce you to purchase it"? (Case, page 33, line 15).

Should have been admitted in evidence. It is impossible for a party to put his entire case in evidence all at once, for it must be put in question by question and point by point.

In case of fraud :

"Evidence is admissible of any facts tending to show reasons for reliance upon defendant's representation—as—that plaintiff was ignorant of the matters to which the representations related while the defendant was familiar with them.

"Any evidence otherwise competent, tending to show that plaintiff relied upon the defendant's representations is admissible. Evidence as to what plaintiff relied on in making transactions is admissible. It is proper to allow the plaintiff to testify that he relied upon defendant's representations and believed them to be true, or in case of a purchase that he relied on receiving what he had bargained for."

20 Cyc., page 117.

McKindley vs. Drew (Vt.), 37 Atl., 285.

Thorn vs. Helmer, 4 Abb. 313., Dec. (N. Y.), 408.

Avery Plantor Co. vs. Murphy (Kan.), 40 Pac., 626.

Smith vs. Kingman (Minn.), 73 N. W., 253.

Von Bruck vs. Peyser, 4 Rob. (N. Y.), 514.

Cummings vs. Cummings, 5 Watts & S. (Pa.), 553.

Lobdell vs. Baker, 1 Metc. (Mass.), 193.

Aldrich vs. Scribner (Mich.), 109 N. W., 1121.

Adams vs. Barber (Mo.), 139 S. W., 489.

Collins vs. Chipman (Tex.), 95 S. W., 666.

Haldeman vs. Schuh, 109 Ill. App., 259.

Kearney vs. Davis, 162 Ill. App., 37.

(C) The evidence as to the fact that the damage and loss of money so incurred by a purchaser of real estate at the auction sale in relying upon the advertisements and upon false representations made at the said sale are competent, material and relevant to show necessary steps to constitute fraud sufficient to vitiate such sale. Thus question:

"Now, I would ask you again, Mr. Frey, how much money you lost in the nature of rent and other items on the property that you bought at the public sale advertised by C. A. Tissot, August 20, 1907, being the property owned by the Schmidts"? (Case, page 34, line 20).

And question:

"Q Did you or did you not trade off the property after you bought it"? (Case, page 34, line 29).

And question:

"How long did you own the property in question"? (Case, page 34, line 35).

And question:

"Now, tell us how money, and give in detail how you arrived at it, you lost by reason of the trading or selling of the property in question after you had bought it and received a deed for it"? (Case, page 35, line 2).

Should have been admitted in evidence to show such damage and the refusal of the trial judge to admit same was error.

In case of fraud:

"Any evidence otherwise competent tending to show that plaintiff suffered damage from the alleged fraud is admissible."

20 Cyc., page 118.

Anderson vs. Snyder, 14 Pa. Super. Ct., 424.

Hindman vs. Louisville First Nat. Bank., 112 Fed., 931.

McDonough vs. Williams (Ark.), 92 S. W., 783.

Belka vs. Allen (Vt.), 74 Atl., 91.

Rowley vs. Shepardson (Vt.), 81 Atl., 917.

See *Kearney vs. Davin*, 162 Ill. App., 37.

(D) Evidence should have been admitted that the representations, the advertisements and announcements made concerning the sale of real estate by the seller or her agent were false on the ground that the falsity of such representations is one of the necessary steps to prove fraud in order to vitiate the sale, and thus such evidence is competent, material and relevant to the issue. Thus question:

"Was there or was there not at the time you bought the property in question at public sale secured leases on the property"? (Case, p. 35, line 14).

And question:

"The question is, what was Mr. Mayer's business"? (Case, page 34, line 33).

And question:

"Was Mr. Mayer a brewer"? (Case, page 35, line 1).

Should have been admitted to show that the representations, and advertisements and announcements were false to the knowledge of the seller.

"As previously indicated, circumstantial evidence is admissible to prove fraudulent intent, such as that the false representations were made with knowledge of their falsity and with the intent that plaintiff should act upon them, and great latitude is allowed in the introduction of evidence for this purpose."

20 Cyc., page 116.

White vs. Leszynsky, 14 Cal., 165.

Brewster vs. Crossland (Colo.), 31 Pac., 236.
Castle vs. Bullard, 23 How. (U. S.), 172.
Williams vs. Wood, 14 Wend. (N. Y.), 126.
Kempe vs. Bennett (Iowa), 111 N. W., 926.
Ward vs. Cook (Mich.), 122 N. W., 785.

II.

The appellants claim (2) that evidence of a wife is competent, material and relevant to show whether or not her husband acted as her agent relative to the selling of her real estate and as to the representations and advertisements made concerning said sale and the nature, condition and value of said property, and, therefore, such evidence should have been admitted, and the refusal of the trial judge to admit such evidence was error. Thus question:

"By reason of your not being very well your husband attended the active part of your business"? (Case, page 27, line 1).

And question:

"Is it or is it not a fact that your husband has acted for you in some of these matters because of the fact that you were not able to do it because of your health"? (Case, page 27, line 11). Should have been admitted to show such agency.

"Any evidence which is otherwise competent that has a tendency to prove agency is admissible, even though it be not full and satisfactory, as it is the province of the jury to pass upon it."

31 Cyc., page 1650.

Columbia Delaware Bridge Co. vs. Geisse, 38 N. J. L., 39, aff'd 38 N. J. L., 580.

State, Brahn, pros. vs. J. C. Forge Co., 38 N. J. L., 74.

Robinson vs. Greene (Ala.), 43 So., 797.

Sellers vs. Commercial F. Ins. Co. (Ala.), 16 So., 798.

- South etc. R. Co. vs. Henlein*, 52 Ala., 606.
Hyman vs. Waas (Conn.), 64 Atl., 354.
Statsney vs. Marschall, 37 Ill. App., 137.
Dickinson vs. Salmon, 73 N. Y. Suppl. 196,
 affirming 72 N. Y. Supp., 1099.
Tebbetts vs. Levy, 11 N. Y. Supp., 684.
Bell vs. S. (Ark.), 125 S. W., 1020.
Forbes Co. vs. Leonard, 119 Ill. App., 629.
Bank vs. Hohn (Mo.), 125 S. W., 539.
Fee vs. Exp. Co., 38 Pa. Supp. Ct., 83.
Holbrook vs. Quinlay (Vt.), 80 Atl., 339.
Range Co. vs. Leach (Okl.), 123 Pac., 419.

III.

The appellants claim (3) that evidence to show that the appellants had no notice of the foreclosure proceedings of the prior mortgage held by Josephine Weidner should have been admitted as competent, material and relevant. Thus question:

“Did you have any notice of the sale under foreclosure proceedings of the Josephine Weidner mortgage?” (Case, page 35, line 30.)

And question:

“Did you know the property in question was going to be sold by the sheriff under these foreclosure proceedings?” (Case, page 36, line 2.)

Should have been admitted.

IV.

The appellants claim (4) that the trial court erred in overruling the questions of Juror Liebel as the said questions were competent, material and relevant both as to obtaining evidence and also to test the credibility of the witnesses, which is clearly within the power and right of a juror. Thus question:

"The copy for the advertisement was originally written in German, wasn't it?" "Who translated it into English; your husband or Mr. Tissot, the agent?" (Case, page 38, line 1.)

And question:

"Did you write the ad, the copy for the ad out in German first before you translated it into English?" (Case, page 41, line 26.)

Should have been admitted.

V.

THE APPELLANTS CLAIM (5) THE COMPLAINT DISCLOSES NO CAUSE OF ACTION IN THAT IT FAILS TO SHOW THAT A SUIT WAS BROUGHT ON THE BOND WITHIN SIX MONTHS AFTER THE DATE OF THE SALE OF THE REAL ESTATE BY THE SHERIFF UNDER THE FORECLOSURE PROCEEDINGS SET OUT IN THE COMPLAINT; AND (6) THE COURT ERRED IN OVERRULING THE MOTION FOR NON-SUIT; (7) THAT THE COURT ERRED IN DIRECTING A JUDGMENT IN FAVOR OF THE PLAINTIFF, WHEREAS JUDGMENT SHOULD HAVE BEEN DIRECTED IN FAVOR OF THE DEFENDANT; AND (8) THE COURT ERRED IN SO DIRECTING A JUDGMENT AND TAKING THE CASE AWAY FROM THE JURY.

This suit was brought on a mortgage bond for deficiency after six months time had expired after the sale of the premises under the foreclosure proceedings Supplement to the act concerning mortgages, P. L. 1880, page 255, as amended P. L. 1881, page 184; 3 Comp. Stat. of N. J., 3421, sec. 48:

"That in all cases where a bond and mortgage has or may hereafter be given for the same debt, all proceedings to collect said debt shall be, first,

to foreclose the mortgage, and as to the sale of the mortgaged premises under said foreclosure proceedings, the said premises should not sell for a sum sufficient to satisfy said debt, interest and costs, then and in such case it is but lawful to proceed on the bond for the deficiency, and that all suits on said bond shall be commenced within six months from the date of the sale of said mortgaged premises, and judgment shall be rendered and execution issued only for the balance of debt and costs of suit."

To be sure the act refers to suits on bonds for a deficiency after the mortgage has been foreclosed and in the present case the mortgage was a second mortgage, a party to the foreclosure, and "was passed on" by the court and the amount due was stated by the court's decree in a suit to foreclose a prior mortgage.

And although the Supreme Court of New Jersey in the case of *Wheeler vs. Ellis*, 56 N. J. L., page 287 (1893), holds that the limitation of six months in which to bring suit for deficiency on a mortgage bond applies only to cases where the suit of foreclosure has actually been brought to foreclose the mortgage in question, and that the fact that the court has "passed on" a second mortgage in a suit foreclosing a prior mortgage, is not a foreclosure of a second mortgage and the statute setting six months limitation on the suit for deficiency does not apply. *We contend, however:*

(A) That this case of *Wheeler vs. Ellis* is contrary to the actual wording of the statute. (See *supra*.)

(B) That it has been practically overruled by a supplement to the said statute, which said supplement acts as a reiteration of the statute in plain terms after the said decision was rendered, namely, in P. L. 1907, page 563; 3 Comp. Stat. of N. J., page 3423, sec. 51:

"No judgment shall be entered by confession on any bond where a mortgage has or may hereafter be given for the same debt or in any action on said bond unless prior to the entry of such judgment, if the same shall be by confession, or prior to the beginning of such action if the proceedings be by action, there shall be filed in the office of the clerk of common pleas, except in counties where there is a register of deeds and mortgages, then in the office of the register of deeds and mortgages of the county in which the lands described in the mortgage given with such bonds are situate, a written notice of the proposed judgment or action setting forth the court in which it is proposed to enter such judgment or begin such action, the names of the parties to such bond and to such judgment or action, the book and page of the record of the said mortgage, together with a description of the lands or real estate described therein."

This supplement to the said act was passed in the year 1907 and after the said decision of *Wheeler vs. Ellis* was rendered and the said supplement acted as a re-enactment of the act concerning mortgages and re-enacted sec. 48, *supra*, in plain terms, and under the reasoning of *Wheeler vs. Ellis* the Legislature meant to include second mortgages especially in view of the fact that *lis pendens* was required to be filed, which was to apprise subsequent purchasers of the equities under the foreclosure.

(C) We contend further that the case of *Wheeler vs. Ellis* is contrary to sound legal theory. When a mortgage is foreclosed and a sale of land is had of the premises, the surplus money remaining after the mortgage and expenses have been paid stands in place of the land itself. *Servis vs. Dorn*, 76 N. J. Eq., page 241.

Robertson vs. Brooks, 91 N. W. (Neb.), 709.

Thus when a decree of Chancery directs that the surplus money shall be paid over to the second mortgagee, when a prior mortgage is being foreclosed, that is a virtual foreclosure of the second mortgage to all intents and purposes. For the second mortgagee has absolutely no right to the land prior to the foreclosure of his own second mortgage. Therefore, on strict legal theory, the second mortgagee should have no right to the land or to the surplus money standing in place of the land after a foreclosure of a prior mortgage, until his own second mortgage has been foreclosed. A mortgagee's right to the land or to the surplus money standing in place of the land depends, and stands or falls upon the question as to whether or not he has foreclosed his own mortgage. The practice of allowing a second mortgagee to be a party to the foreclosure of a prior mortgage and asking the Court of Chancery to "pass on" his second mortgage whereby the Court of Chancery ascertained what is due on the second mortgage and decrees that any surplus money, remaining over after payment of expenses and first mortgage, shall be applied in payment of the second mortgage *is a foreclosure of the second mortgage.*

It is not necessary that a second mortgagee should go into the Court of Chancery on a separate bill of complaint to foreclose his own second mortgage, but the very fact that he enters into a suit commenced by a prior mortgagee submits him (second mortgagee) to the same right and liability as if he brought a separate suit of his own.

Robertson vs. Brooks, 91 N. W. (Neb.), 709.

If the passing on the second mortgage in the foreclosure of the first mortgage is not a foreclosure of the second mortgage, then on what ground or legal theory can the surplus money be applied by the court in payment of the second mortgage? If on the other hand such passing on the second mortgage, etc., is

a foreclosure of the second mortgage, then the case comes within the statutory limitation and a suit on the mortgage bond for a deficiency should have been brought within six months after the sale of the premises.

The statute of New Jersey requires that a mortgage shall be first foreclosed before suit is instituted or a mortgage bond for a deficiency. The case of *Franklin Building and Loan Association vs. Richman*, 65 N. J. L., page 526, holds that where a mortgagor conveyed land to a third person with the agreement that the grantee should sell it clear of the mortgage and apply the proceeds on the bond that the mortgagee could lawfully take judgment upon the bond without first foreclosing the mortgage in court, and in the case of *Seigman vs. Streeter*, 64 N. J. L., page 169, holds that where a mortgagor is made party to a partition suit and the land is sold free and clear of the mortgage, the effect of the proceedings was to wipe out the mortgage, and leave the payment of the bond unsecured by that collateral and consequently the statute requires the holder of a bond and mortgage to first exhaust his remedy on the mortgage before proceeding upon the bond had no application.

The law of New Jersey is that the statute does not apply where there is no mortgage or where the mortgage is a nullity and, therefore, if there is no mortgage, it is not necessary to attempt to foreclose the mortgage before suit is instituted on the bond for a deficiency. In the present case, however, a mortgage is not wiped out, nor is it a nullity, for although the land is sold under the decree of the court free from encumbrances, still the surplus money remaining, namely to the amount of sixty-four dollars (\$64.00) is held for the benefit of the second mortgagee and the money itself stands in place of the land. Therefore, no matter how small the amount may be, it is an amount which necessitates a foreclosure be-

fore suit can be instituted on the bond for a deficiency. Thus we have this dilemma. The second mortgage has been foreclosed or it has not been foreclosed. If it has been foreclosed, then the suit on the bond should have been brought within six months after the sale of the premises. If, on the other hand it has not been foreclosed, then the suit on the bond for a deficiency could not have been brought at all under the statute. The only possible way of getting out of this dilemma is by bringing the present case within the rule that the mortgage is a nullity and that no foreclosure need be attempted before instituting suit on the bond, but that rule does not apply here, for there is money to the amount of sixty-four dollars (\$64.00) remaining as a surplus after payment of the first mortgage and expenses, which surplus, by the decision of New Jersey, stands in place of the land, and therefore, there is something which the second mortgagee can and must foreclose before he can bring suit on the bond for a deficiency.

The hardships alleged by the decision in the case of *Wheeler vs. Ellis*, namely, "that the conclusive character of a sale in foreclosing of a prior mortgage will not be ascertained until, after subsequent mortgagee, necessarily made a party to the foreclosure proceedings, has had six months in which to bring suit on his bond, and, in case of any such suit, until it is ended by final judgment, and perhaps until six months afterwards" and that "evidently this would render the foreclosure of prior mortgages very precarious and would enable the mortgagor to impair seriously the value of such securities by giving subsequent mortgages," are no greater than what originally existed when the subsequent mortgages remained of record and of complete notice to the purchaser of the mortgaged premises, and especially is this true now in view of the fact that the supplement to the mortgage act P. L. 1907, page 563 (quoted at

length, *supra*), requires that a *lis pendens* shall be filed before suit is started on a mortgaged bond for a deficiency. Thus the purchaser of the premises at foreclosure sale has notice not only of the record of the subsequent mortgage, but also additional notice of the *lis pendens* under the 1907 Supplement and it seems indeed of little hardship on such purchaser to be bound by such notice when only a year's time is allowed to redeem the premises and the purchaser himself cannot be the loser by such redemption.

We submit the Legislature's intention is clear that a suit on such a bond as that held by the respondent must be bought within *six* months from the date of the sheriff's sale, *which was not done in this case*.

For the reasons above stated it is submitted that the Circuit Court should be reversed.

Respectfully,

PEIRCE & HOOVER,

Attorneys and of Counsel with Appellants.

New Jersey Court of Errors and Appeals ¹⁰

KATARINA P. SCHMIDT, Plaintiff-Respondent,	}	Action at Law.
vs.		On Appeal
CHARLES FREY and LENA FREY, Defendants-Appellants.		From New Jersey Su- preme Court.
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BRIEF OF RESPONDENT.

Facts.

This appeal is from a judgment obtained by respondent, a *second mortgagee*, for the amount of the deficiency due on defendants' bond to her, after the sale of the mortgaged premises by the Sheriff of Hudson County under *fi fa* in a foreclosure suit brought by the *first mortgagee*, in which the plaintiff-respondent herein was made a party defendant. 30

On August 30th, 1906, plaintiff-respondent, being then the owner of said lands, made and executed a bond and mortgage thereon for the sum of \$10,000.00 to one Josephine Weidner.

On August 20th, 1907, the premises in question were sold at public auction, by C. A. Tissot, auctioneer, and bid in by the defendants-appellants for the sum of \$22,000.00.

On August 31st, 1907, eleven days later, plaintiff and her husband, by their deed bearing date on that day, conveyed said premises to the defendants-appellants for the consideration of \$22,000.00. The consideration was paid as follows: \$7,000.00 in cash; \$10,000.00 by the Freys assuming and agreeing to pay the mortgage made by Schmidt to Weidner; and the balance of \$5,000.00 by the Freys executing and delivering to Schmidt their bond and mortgage for that amount.

On April 24th, 1911, the Freys conveyed said premises to John C. Forster and Charles Beirne (Case, page 48, line 9).

On August 7th, 1912, Josephine Weidner, as complainant, filed her bill in the Court of Chancery for the foreclosure of the mortgage of \$10,000.00 made by the Schmidts to her (Exhibit, page 3, Case, pages 43 to 52). The respondent, Katarina P. Schmidt, was made a party defendant because she held a mortgage against said premises (Case, page 47, line 31, et seq., Case, page 56). Said foreclosure suit proceeded to decree *fi fa* and sale thereunder (Exhibit, page 3, transcript of foreclosure proceedings Weidner vs. Forster, et al., pages 43 to 100 inclusive).

The premises were sold under said foreclosure on January 9th, 1913, by the Sheriff of the County of Hudson to George E. Schmidt for \$11,175.00 (Case, page 89). The proceeds of the sale were distributed by the Sheriff as follows: \$10,977.32 to complainant, Josephine Weidner, being the amount of her decree, costs and interest; \$132.28 retained by the Sheriff as his fees under the execution and

sale, and the balance of \$65.40 to the plaintiff, Katarina P. Schmidt (Case, page 93 to 99 inclusive).

The last interest paid on said bond was in March, 1912, for the interest which by the terms of the bond became due in February, 1912.

The suit at bar was commenced August 19th, 1913 (Case, page 17, lines 30 to 33).

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LAW.

POINT I

Under the Act entitled, "An Act concerning proceedings on bonds and mortgages given for the same indebtedness, and the foreclosure and sale of mortgaged premises thereunder," approved March 12th, 1880, and the amendment thereof passed March 23rd, 1881, Comp. Stat., Sec. 48, page 3421, the right of action upon a bond secured by mortgage will not be barred by the lapse of six months after sale of the mortgaged premises in proceedings instituted to foreclose a prior mortgage.

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Wheeler vs. Ellis, 56 N. J. L. (27 Vr.), page 28;

Seigman vs. Streeter, 64 N. J. L. (35 Vr.), page 169;

Pruden vs. Savage, 70 N. J. L. (41 Vr.), page 22.

The supplement to the above act approved May 28th, 1907 (P. L., 1907, page 563), Comp. Stat.,

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Sec. 51, page 3423, providing for the filing of notice of lis pendens prior to the beginning of any action on a bond accompanied by mortgage does not in any manner alter the construction of Secs. 2 and 3 of the above act, P. L., pages 184-185, Comp. Stat. Secs., 48 and 49, pages 3421-3422, by the Court in *Wheeler vs. Ellis* (supra).

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POINT II.

The Court did not err in denying the motion for a nonsuit.

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The motion for nonsuit was made solely upon the ground that respondent's action was not brought until more than six months after the sale by the Sheriff of the lands covered by the mortgage accompanying respondent's bond. It was contended by counsel for appellants that there was a foreclosure of the mortgage accompanying the bond sued upon, by Katarina P. Schmidt being made a party to the foreclosure of the first mortgage instituted by Josephine Weidner (Case, page 20, lines 19, et seq.).

The Court properly denied this motion under the authority of the case of *Wheeler vs. Ellis* (supra).

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POINT III.

The Court did not err in overruling the following question:

"Q. What, if anything, did the auctioneer announce before the sale?" (Case, page 22, line 28.)

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The trial court properly overruled this question upon the ground that it must be first shown that the auctioneer was authorized by the plaintiff to make the representations.

POINT IV.

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The Court did not err in overruling the following question:

“Q. Now, Mr. Frey, did you or did you not rely, when you purchased the property, upon the advertisement and upon the announcement made by the auctioneer at the sale?” (Case, page 23, line 1.)

The Court properly overruled this question as irrelevant because the plaintiff had not shown that the auctioneer was authorized by the plaintiff to make any particular announcement at the sale. 20

POINT V.

The Court did not err in overruling the following questions:

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“Q. The question is what was Mr. Mayer’s business? (Case, page 24, line 33.)

Q. Was Mr. Mayer a brewer?” (Case, page 25, line 1.)

It had been admitted that one John P. Mayer held a lease, which was recorded, upon the property in question for a period of ten years at \$1,000.00 a year (Case, page 24). When appellants’ counsel asked the question what was Mr. 40

Mayer's business the Court properly overruled it as irrelevant. There was no foundation for this question. There was no evidence in the case at this point that the plaintiff had authorized the auctioneer to make any statement or announcement relative to a lease or leases upon the premises, or any evidence that any announcement was made.

POINT VI.

The Court did not err in overruling the following question:

"Q. Did you lose any money in the property?" (Case, page 25, line 20.)

The question is so manifestly immaterial and irrelevant at this point that it does not require any comment.

POINT VII.

The Court did not err in overruling the following question:

"When you purchased the property, did you, or did you not, rely upon the representations made in the advertisement and by the representations and announcements made by the auctioneer?" (Case, page 25, line 33.)

This question was properly overruled as immaterial and irrelevant because at this point defendants had failed to show that the auctioneer was authorized by plaintiff to make any representations; nor was there any evidence that any announcement was made.

POINT VIII.

The Court did not err in overruling the following questions:

“Q. By reason of your not being well your husband attended to the active part of your business? (Case, page 27, line 1.)

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Q. Is it or is it not a fact that your husband has acted for you in some of these matters because of the fact that you are not able to do it yourself because of your health?” (Case, page 27, line 1.)

The Court overruled these questions upon the ground that they were irrelevant. It is contended that these questions are too general in their scope and not relevant to the question at issue.

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POINT IX.

The Court did not err in overruling the following question:

“Q. Do you remember that your husband bought the property in later at a Sheriff’s sale under the foreclosure?” (Case, page 31, line 14.)

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This question is clearly irrelevant. The Court properly overruled this question and stated “the record shows how it was bought and who bought it.” The transcript of the foreclosure proceedings was in evidence and shows who bought in the property.

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POINT X.

The Court did not err in overruling the following questions:

10 “Q. Did you or did you not rely upon that advertisement as to information about the property at the time you bought it in at public sale (Case, page 32, line 27)? Q. Tell us what Mr. Tissot, the auctioneer, announced as to the property as near as you can remember, before the auction sale commenced and before you purchased the property (Case, page 32, line 37)? Q. Now, Mr. Frey, did you or did you not, in purchasing this property, rely upon the advertisement I have mentioned and the representations and announcement made
20 by the auctioneer as to the property, and did or did not that induce you to purchase it (Case, page 33, line 17)? Q. What did the auctioneer announce (Case, page 33, line 40)?”

 These questions were objected to as immaterial and irrelevant, and upon the ground that there was no proof in evidence that C. A. Tissot, the auctioneer, was authorized to make the advertisement read as it does read, or to make any announcement whatever in behalf of the plaintiff; and they were
30 properly overruled by the trial court.

POINT XI.

The Court did not err in overruling the following questions:

40 “Q. Now, I ask you again, Mr. Frey, how much money you lost in the nature of rent and other items on the property that you bought

at the public sale advertised by C. A. Tissot, August 20th, 1907, being the property owned by Schmidt (Case, page 34, line 10)? Q. Did you or did you not trade off the property after you bought it (Case, page 34, line 29)? Q. How long did you own the property in question (Case, page 34, line 36)? Q. Now, tell us how much money and give in detail how you arrive at it, did you lose by reason of trading or selling of the property in question after you had bought it and received a deed for it (Case, page 35, line 1)?" 10

The above questions were all properly overruled as immaterial and irrelevant because defendants had not shown that plaintiff had authorized any announcement to be made by the auctioneer which defendants alleged were not true and by reason whereof defendants allege they sustained a loss. 20

It was in evidence that the Freys had conveyed away the property to Forster & Beirne in April, 1911—almost four years after the Schmidts had conveyed to them (Case, page 48, line 9). It may be presumed that they paid interest thereon regularly. It is in evidence that Mrs. Schmidt received her interest to March, 1912 (Case, pages 18 and 19). The auctioneer was present in court and called as a witness by the defendants but was excused and not examined (Case, page 36, line 20). Defendants could have readily ascertained from Mr. Tissot what announcements, if any, he was authorized to make by plaintiff at the sale. 30

Testimony of agent is competent to establish fact of agency.

Colloty vs. Schuman, 66 Atl. Rep., 933.

There was no attempt upon the part of the plaintiff to prove the signing of any conditions of sale. The deed was executed and delivered at least eleven days after the sale, and the defendants had ample opportunity to ascertain the truth or falsity of any alleged representations. The title was closed and deed accepted and the defendants continued to pay interest on the bond for a period of at least three and a half years and conveyed the property. There was no attempt upon the part of the defendants to show any offer to rescind. After the conveyance by the Freys to Forster and Beirne they were no longer in a position to restore the plaintiff, Mrs. Schmidt, to the position she was at the time of the sale.

“It is settled that where a party seeks to be relieved from a contract upon the ground that it was induced by fraud, he must, except so far as he has some legal excuse for failure, restore his adversary to the position he was in at the time of the contract, and that there can be no rescission as long as he retains anything received under the contract which he might have returned and the withholding of which might be injurious to the other party.”

Roberts vs. James, 54 Vr., 492-494;

Citing

Byard vs. Holmes, 4 Vr., 119-127;
Crosby vs. Wells, 44 id., 790-801.

“It is also well settled that one who desires to rescind a contract, must act within a reasonable time.”

Roberts vs. James (*supra*).

“Delay in exercising the power of rescission is evidence of an election to treat the sale as valid, of more or less weight, according to the circumstances of the case, but of itself does not operate as an estoppel, unless, in the meantime, superior rights of third persons have intervened.” 10

Roberts vs. James (*supra*).

The conveyance by the Schmidts to the Freys of the land in question evidences that the contract to sell theretofore entered into between them was fully executed and was in law an “executed contract.”

In Roberts vs. James (*supra*) the defendant repudiated his obligation at the very start by failing to pay any installment of the price, and if the plaintiff did not know the position taken by the defendant, he could easily have ascertained it. 20

In the case at bar there is no evidence of any repudiation; the contract for sale, as has been before stated, was fully executed by the delivery of the deed by the Schmidts to the Freys and the payment by the Freys to Mrs. Schmidt of \$7,000.00 in cash, the assumption of the \$10,000.00 first mortgage held by Mrs. Weidner, and by the execution and delivery by the Freys to Mrs. Schmidt of the bond in suit for the sum of \$5,000.00 secured by second mortgage on the premises in question. Interest was paid by the Freys to Mrs. Schmidt upon her said bond for a period of almost four years. There is no evidence in the case that the plaintiff had any knowledge of the position now taken by the defendant, that the execution and delivery of 30 40

the bond in suit was induced by fraud. On the contrary, defendants, by their action in paying interest to plaintiff, and by selling the property to Forster and Beirne, fully ratified the contract if further ratification was, in anywise, necessary, and estopped themselves from thereafter setting up any claim of fraud.

- 10 It is held in *Allgood vs. Piedmont Bank*, 115 Ala., 418, cited in 39 Cyc., page 1918, note 72:

“That a purchaser who, knowing of false and fraudulent representation, makes no offer to rescind until suit is brought on the purchase money notes five and one-half years after the sale is barred by his delay.”

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POINT XII.

The Court did not err in overruling the following questions:

- 30 “Q. Was there, or was there not, at the time you bought the property in question, at public sale, secured leases on the property? (Case, page 35, line 14). Q. Was there, or was there not, a lease on that property guaranteed by one of the richest brewers or breweries in the United States?” (Case, page 35, line 24.)

These questions were properly overruled as immaterial and irrelevant, and upon the further ground that the questions called for a conclusion. And, further, there was no evidence in the case that there was a lease guaranteed by a brewer or brewery.

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POINT XIII.**The Court did not err in overruling the following questions:**

"Q. Did you have any notice of the sale under foreclosure proceedings of the Josephine Weidner mortgage? (Case, page 35, line 3.) 10
 Q. Did you know that the property in question was going to be sold by the Sheriff under these foreclosure proceedings?" (Case, page 36, line 2.)

These questions were properly overruled as irrelevant. The Sheriff's return which was in evidence in the transcript of the foreclosure proceedings showed that the property had been advertised for sale according to law. 20

POINT XIV.**The Court did not err in directing judgment in favor of plaintiff and taking the case away from the jury.**

There was no competent evidence before the Court as to the extent of the authority of the auctioneer, and no evidence before the Court that the plaintiff or any one authorized by her had made any representations, fraudulent or otherwise, as to the property sold to the Freys. 30

"An auctioneer in making a sale, whether of personalty or realty, is primarily the agent of the seller. When, however, the property is struck off, he becomes also the agent of the purchaser, to the extent of binding both parties by his memorandum of sale." 40

4 Cyc., 1040-1041.

"An auctioneer has no authority to bind the seller by a warranty of the goods sold, unless specially instructed to do so."

4 Cyc., 1041.

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"Not only does the burden of proof as to the fact of agency rest with one who seeks to charge another as principal with the acts of an alleged agent, but the burden rests with him to prove the extent of the agency."

31 Cyc., 1644.

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"Whether there is any competent evidence to establish the extent of the authority is a question of law for the Court, and it has been held that the question of the extent of the authority should not be submitted to the jury where there is no competent evidence or where it is manifestly insufficient to prove the authority, nor where undisputed facts relating to the authority are such that reasonable minds could draw only one conclusion therefrom."

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31 Cyc., 1676.

POINT XV.

The appellant claims that the Court erred in overruling the following question of juror Liebel:

"Q. A copy of the advertisement was originally written in German, wasn't it? Who

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translated it into English, your husband or Mr. Tissot, the agent?" (Case, page 38, at top of page.)

There was no such evidence before the Court; there was no ruling upon said question by the Court, and there was no exception noted thereto, and consequently error cannot be assigned thereon. 10

POINT XVI.

The appellant also claims that the Court erred in overruling the following question:

"Q. You acted for your wife in this matter?" (Case, page 39, line 5.) 20

The Court properly overruled said question. The question was not specific enough and counsel for plaintiff stated (Case, page 39) that he would have no objection to a more specific question.

POINT XVII.

The appellant also claims that the Court erred in overruling the following question of Juror Liebel: 30

"Q. Did you write the ad, the copy for the ad out in German first before you translated it into English?" (Case, page 41.)

It will be noted that the witness, George P. Schmidt, answered said question as follows: "A. I had nothing to do with the advertising." The 40

Court did not overrule said question, nor was any objection made by counsel for defendants with reference to the colloquy between the juror and the Court.

POINT XVIII.

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Much has been stated by counsel for appellants in his brief, as alleged facts, which is not in anywise borne out by the facts in the case.

Much of the matter stated in Point I (law 1) of the appellants' brief is gratuitous and not borne out by the facts in the state of the case, and should be disregarded. The respondent does not deem it necessary to further comment thereon.

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The judgment of the Supreme Court should be affirmed with costs.

JOHN J. FALLON,

Attorney for and of Counsel with Respondent.

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