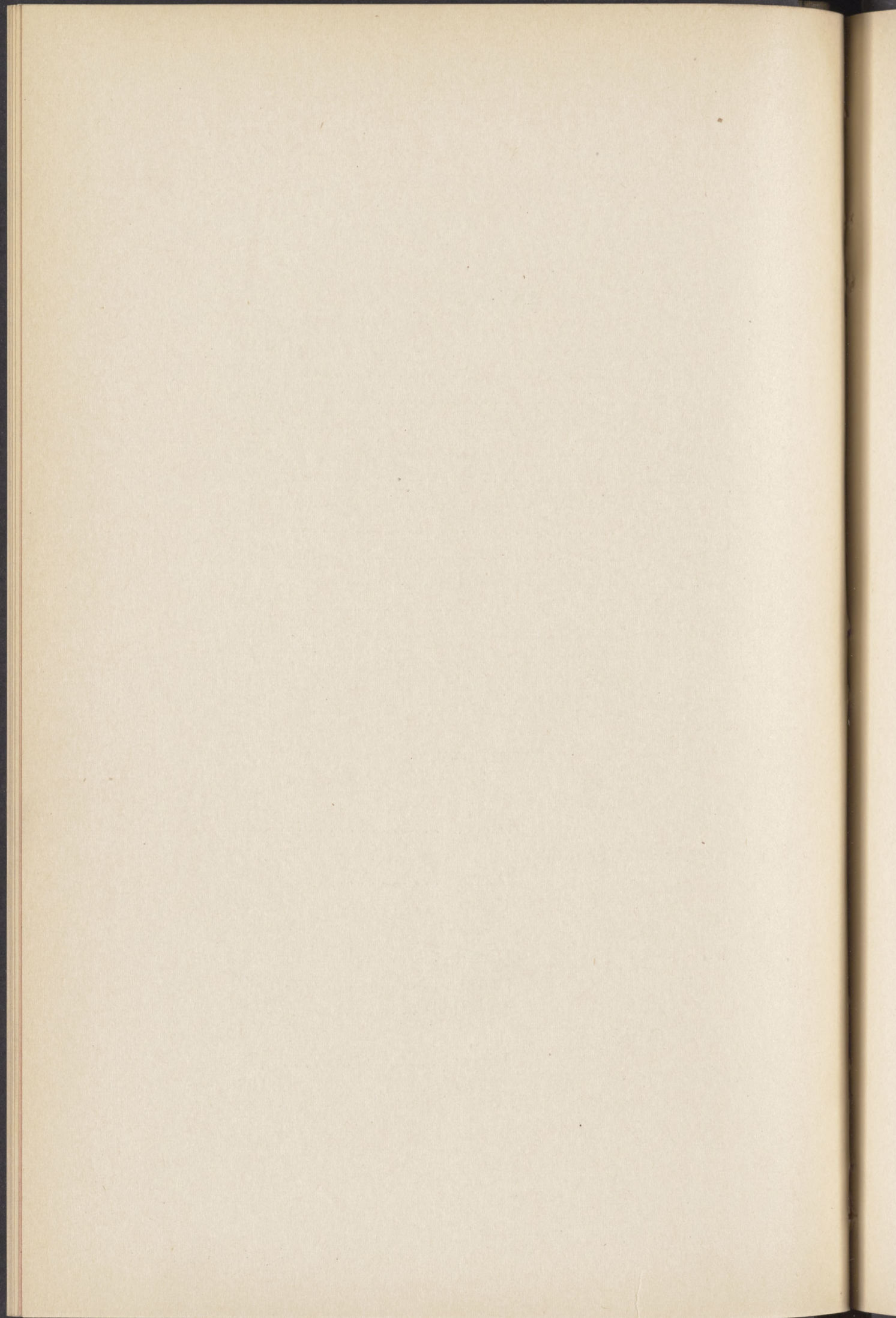


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Filed January 19th, 1918.

**Complaint.**

IN CHANCERY OF NEW JERSEY.

10

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

The complainant, Marie Schmidt, of the Borough of Maywood, in the County of Bergen, New Jersey, respectfully shows that:

(1) On June 8, 1908, the Schmidt Realty and Construction Company, a corporation of the State of New Jersey, being indebted to complainant, Marie Schmidt, in the sum of \$20,000, executed to her a bond of that date to secure that sum, payable on June 19th, 1914, with interest to be computed from June 19, 1908 at and after the rate of five per centum per annum, and to be paid on June 19, 1909, and sem-annually thereafter, that is, on the nineteenth days of June and December of each year until the whole amount should be paid. 20

(2) To secure payment of the bond the said The Schmidt Realty and Construction Company, executed to complainant a mortgage of even date with the bond; and thereby conveyed to her in fee the land hereinafter described on the express condition that such conveyance should be void if payment should be made according to the terms of the bond. Which mortgage having been first duly proved or acknowledged and the appropriate certificates duly endorsed thereon or attached thereto was recorded in the Clerk's Office of Bergen County on June 20, 1908, in Book 212 of Mortgages, page 665 &c. 30 40

(3) The mortgaged premises are described as follows:

10 ALL those tracts or parcels of land and premises hereinafter particularly described, situate, lying and being in the Borough of Maywood, in the County of Bergen and State of New Jersey, as follows:

#### THE FIRST TRACT.

Being the Homstead Farm.

BEGINNING in the middle of the Spring Valley Road, at the southwesterly corner of the said lot, thence running (1) along the middle of said road, north twenty-four degrees and twenty-four  
20 minutes east, six chains and thirty-seven links; thence (2) north twenty-two degrees and seventeen minutes east, five chains and twenty-six links thence (2) north twenty-two degrees and seventeen minutes east, five chains and twenty-six links; thence (3) north twenty-one degrees and nineteen minutes east, two chains and seventy-three links; thence (4) south forty-eight degrees and thirty-one minutes east twenty-two chains and sixty-six  
30 links; thence (5) north sixteen degrees and eighteen minutes east, seven chains and six links; thence (6) south forty-five degrees and fifteen minutes east, thirty-two chains and ninety links to the middle of the brook; thence (7) along the middle of said brook southerly the several courses and distances thereof, to a line which is the southerly side of Blocks thirty-two and thirty-three as designated on a certain map entitled, "Map of Maywood Heights, Maywood, New Jersey, made by Alfred W. Williams" and recorded in the office of the  
40 Clerk of Bergen County, April 3rd, 1906, as Map

*Complaint.*

number 994; thence (8) westerly along the said southerly side of Blocks thirty-two and thirty-three to the easterly side of Jersey Avenue as designated on the said map; thence (9) northerly along the said easterly side of Jersey Avenue to the most northerly line of said tract; and (10) commencing at a point on the westerly side of said Jersey Avenue where it intersects with the said most northerly line of said tract; thence (11) southerly along said westerly side of Jersey Avenue to a point at the intersection thereof with a line which is the northerly side of Forest Avenue as designated on said map; thence (12) westerly along the last mentioned line to a point at the intersection of the said northerly side of Forest Avenue with the westerly side of Maywood Avenue; running thence southerly along the said westerly side of Maywood Avenue to a point at the intersection of the said westerly side of Maywood Avenue with a line which is the northerly side of Parkway as designated on said map; thence (13) westerly along the said northerly side of Parkway to a point at the intersection thereof with a line which is the westerly line of Poplar Avenue as designated on said map; thence (14) southerly along the said westerly side of the said Poplar Avenue to a point at the intersection thereof with the northerly side of the second tract hereinafter described; thence (15) westerly along the said northerly side of the said second and fourth tracts hereinafter described to the middle of Spring Valley Road, the point or place of beginning. The said Lafayette Avenue, Jersey Avenue and Forest Avenue so far as they adjoin the southerly boundaries of above described tract shall not be used or granted for any use other than that of public streets or avenues, except with the consent of the party of the first part.

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## THE SECOND TRACT:

10 BEGINNING in the middle of the public road leading from Paramus to Hackensack, at the most southerly corner of the third tract hereinafter described; thence running (1) south forty-eight degrees east along the middle of said road fifteen chains and thirteen links; thence (2) north twenty-seven and three-quarters degrees east, seventeen chains and fifteen links; thence (3) north forty-eight degrees west, fifteen chains and thirteen links; thence (4) south twenty-seven and three-quarters degrees west, seventeen chains and fifteen links to the place of beginning.

20 Bounded, southerly by the middle of the aforesaid road; easterly by land now or late of John C. Van Saun; northerly by the first tract above described and westerly by the third and fourth tracts hereinafter described.

Containing, twenty-five acres and thirteen hundredths of an acre.

Excepting and reserving from the above described tracts, the following described lands:

30 BEGINNING at a point on the westerly line of Maywood Avenue, which said point is the southeast corner of land hereby described and the northeast corner of lands of John C. Van Saun; thence running (1) along the westerly side of Maywood Avenue, north twenty-six degrees and forty-two minutes east, four hundred and forty-five feet; thence (2) at right angles to said Maywood Avenue, north sixty-three degrees and eighteen minutes west, three hundred feet; thence (3) on a line parallel with the westerly line of Maywood Avenue South twenty-six degrees and forty-five minutes west, five hundred and four feet; thence (4) south  
40 forty-three degrees and thirteen minutes east, one

hundred and eighty and six-tenths feet to land of John C. Van Saun; thence (5) along lands of said John C. Van Saun, north thirty-two degrees and fifty-seven minutes east, one hundred and sixty and forty-seven one hundredths feet; thence (6) still along lands of said John C. Van Saun south forty-four degrees and twenty-eight minutes east, one hundred and nineteen and three-tenths feet to the westerly line of Maywood Avenue, the point or place of beginning. 10

Containing three and thirty-eight hundredths acres.

#### THE THIRD TRACT:

BEGINNING at the middle of the Spring Valley Road and at its junction with the road leading from Hackensack to Paramus; and from thence running (1) north twenty-nine degrees east, seven chains and sixty-five links thence (2) south forty-nine degrees and fifteen minutes east, eleven chains and eighty-six links; thence (3) south twenty-nine degrees and forty-five minutes, west eight chains and three links to the said Paramus Road; thence (4) along said road north forty-seven degrees west, eleven chains and ninety links to the place of beginning. 20

Containing nine and nine one hundredths acres. 30

Bounded, southerly by the Paramus Road; westerly by the Spring Valley Road; northerly by the fourth tract hereinafter described and easterly by the second tract hereinbefore described.

Excepting and reserving from the second and third tracts above described, all the following described tract:

Being a plot of land for an electric railway forty feet wide, measured twenty feet on each side of a line described as follows: 40

10 BEGINNING at a point in the easterly line of lands of formerly of Cornelius W. Anderson, distant along said line on a course north thirty-three degrees and four minutes, east three hundred and seventy-two feet and seventy-three hundredths of a foot; from the center line of Passaic Street; thence running north forty degrees and twelve minutes west, a distance of one thousand seven hundred and eighty-seven feet and eighty-four hundredths of a foot to a point in the easterly line of Spring Valley Road, said point being distant along said easterly line of said Spring Valley Road, on a course of north thirty-two degrees and thirty-three minutes east four hundred and sixty-five feet and two-tenths of a foot from the center line of Passaic Street. Said plot containing 1-6417/10000  
20 acres.

Granting, however, to the said party of the second part, its successors and assigns, the right reserved to said Cornelius W. Anderson and conveyed by him to the party of the first part in the grant of said right-of-way to open up streets across the plot hereby excepted not closer than three hundred feet and not less than sixty feet in width.

#### THE FOURTH TRACT:

30 BEGINNING at the middle of the Spring Valley Road being the northwesterly corner of the lot and the southwesterly corner of the first tract herein described; and from thence running (1) south forty-seven degrees east, twelve chains and four links; thence (2) south twenty-nine degrees and forty-five minutes west, eight chains and eighty-three links; thence (3) north forty-nine degrees and fifteen minutes west, eleven chains and eighty-six links to the middle of said road; thence (4)  
40 along the middle of said road north twenty-nine

*Complaint.*

degrees east, nine chains and twenty-six links to the place of beginning.

Bounded westerly by the Spring Valley Road; northerly by the first tract above described; easterly by the second tract above described and southerly by the third tract above described.

Containing ten acres and fifty-five hundredths of an acre. 10

Being the same premises now subject to a certain mortgage, bearing date March 15th, 1908, made by the said Company to one Cornelius W. Anderson.

Also the following described pieces, parcels or tracts of land located in said Borough of Maywood, westerly from Maywood Avenue and as shown and designated on a certain map known as "Map of Maywood Heights," filed in the Bergen County Clerk's office as map number 994, April 3rd, 1906, as lots 20 numbered thereon respectively, one to twenty-four inclusive, and twenty-nine to forty-one inclusive, in Block numbered thirty-six. Also lots numbered consecutively one to seventeen inclusive, in Block numbered thirty-seven.

Reference to said "Map of Maywood Heights" herein is made only for the purpose of convenience of description, and it is not intended that such reference shall be construed to mean a dedication of streets or to bind the party of the first part to the plotting of said map, or in any other way except by express provision. 30

(4) Both bond and mortgage contain an agreement that if any installment of interest, or any part thereof, should remain unpaid for forty-five days after the same should fall due, then the whole principal sum, with all unpaid interest, should, at the option of the mortgagees, her representatives or assigns, become immediately due. 40

*Complaint.*

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(5) By written assignment, dated June 20, 1908, complainant, Marie Schmidt, assigned said bond and mortgage to Archibald C. Hart; which assignment was recorded in said Clerk's office June 20, 1908, in Book 46 of Assignments of Mortgages, for said County at page 338, etc.

10

(6) By written assignment, dated July 7, 1916, said Archibald C. Hart assigned said bond and mortgage to complainant, which assignment was recorded on July 10th, 1916, in said Clerk's office of Bergen County, in Book 81 of Assignments of Mortgage, page 280, etc.

20

(7) On or about December 3, 1908, by deed of release, said Archibald C. Hart released to The Schmidt Realty and Construction Company from the lien of said mortgage the following described premises:

30

ALL that part of said mortgaged premises hereinafter described, situate in the Borough of Maywood, as follows: Lots one, two, three and four, in Block thirty-six, as shown on a certain map entitled, "Map of Maywood Heights, Maywood, New Jersey," filed in the office of Bergen County, April 3rd, 1906, as Map No. 994, and which said lots are more particularly described as follows:

40

BEGINNING at a point at the intersection of southerly side of Woodland Avenue with westerly side of Coles Street, running thence southerly along westerly side of Coles Street one hundred and fifty feet; thence westerly at right angles to Coles Street and parallel to Woodland Avenue one hundred feet; thence northerly again at a right angle and parallel to Coles Street one hundred and fifty feet; thence easterly along southerly side of Woodland Avenue

*Complaint.*

one hundred feet to place of beginning, which said deed of release was thereafter and on the same day duly acknowledged and was recorded on December 16, 1908, in Book 18 of Releases, at page 441.

(8) On September 20, 1910, said Archibald C. Hart released from the lien of said mortgage to The Schmidt Realty and Construction Company the following described premises: 10

ALL that tract or parcel of land and premises situate, lying and being in the Borough of Maywood, in the County of Bergen and State of New Jersey.

BEGINNING at a point on the westerly line of land of John C. Van Saun at a point distant 897.15 feet northerly from the northerly side of Passaic Street, running thence along said line 125.135 feet; thence westerly at a right angle to a line which is drawn at an angle of seventy degrees thirty-eight minutes and thirty-seven seconds to the center line of the right of way of an electric railway which passes through the property of the party of the second part 120.575 feet; thence at a right angle southerly one hundred and twenty-five feet; thence again at a right angle easterly 114.95 feet to the said westerly line of land now or formerly of John C. Van Saun, the point or place of beginning. 20 30

Being known as lots numbers sixteen, seventeen, eighteen and nineteen and twenty, in Block "H" on a map entitled, "Map No. 2 of Maywood Heights, Maywood, N. J.," together with that portion of Oak Street lying in front of the same. It is, however, expressly understood and agreed that the reference to said map is used only for convenience of location and description, and it is not intended or construed as dedicating or offering to dedicate to 40

*Complaint.*

public use any of the streets or avenues on said map, which said deed of release was subsequently and on October 5, 1910, recorded in the Clerk's office of Bergen County in Book 23 of Releases, pages 189, etc.

- 10 (9) On October 3, 1910, said Hart released from the lien of said mortgage to The Schmidt Realty and Construction Company the following described premises:

ALL that tract or parcel of land and premises situate, lying and being in the Borough of Maywood, in the County of Bergen and State of New Jersey.

## FIRST TRACT.

- 20 BEGINNING at the northwesterly corner of Parkway and Maywood Avenue and running thence (1) northerly at right angles to Parkway and along the westerly side of Maywood Avenue six hundred feet to the southwesterly corner of Forest Avenue and Maywood Avenue; thence (2) westerly at right angles to Maywood Avenue and along the southerly side of Forest Avenue one hundred and twenty-five feet to a point in the middle of the block; thence (3) southerly and parallel with the first course 30 six hundred feet to the northerly side of Parkway and thence (4) easterly and at right angles to the last mentioned course and along the northerly side of Parkway one hundred and twenty-five feet to the point of beginning. Being known as lots one to twenty-four inclusive, in Block "R" on a map entitled, "Map of Maywood Heights, Maywood, N. J."

## SECOND TRACT.

- 40 BEGINNING at the northwesterly corner of Forest Avenue and Maywood Avenue and running

*Complaint.*

thence (1) westerly at right angles to Maywood Avenue and along the northerly side of Forest Avenue two hundred and fifty feet to the north-easterly corner of Oak Avenue and Forest Avenue; thence (2) northerly and parallel with Maywood Avenue and along the easterly side of Oak Avenue seventy-five feet; thence (3) easterly and parallel with Forest Avenue one hundred and twenty-five feet to the center of the block; thence (4) northerly and parallel with Maywood Avenue three hundred and thirty-seven feet to the northerly line of land of the party of the second part; thence (5) easterly or southeasterly along the said northerly line one hundred and twenty-seven feet to the westerly side of Maywood Avenue; and thence (6) southerly along the westerly side of Maywood Avenue three hundred and seventy-five feet to the point or place of beginning.

Being known as lots one to fifteen inclusive, and thirty-one and thirty-two in Block Thirty on said map. Together with that portion (to the respective lines thereof) of Parkway, Forest and Poplar Avenues, lying in front of the premises hereinbefore described, which said deed of release was thereafter recorded on October 8, 1910, in the Bergen County Clerk's office in Book 23 of Releases, at pages 399.

(10) On January 12, 1911, said Hart released from the lien of said mortgage to The Schmidt Realty and Construction Company the following described premises:

ALL that part of said mortgaged premises situate in the Borough of Maywood, County of Bergen and State of New Jersey.

BEGINNING at a point on easterly side of Oak Avenue at a point seventy-five feet northerly from

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10 the northerly side of Forest Avenue; running thence northerly along said easterly side of Oak Avenue three hundred feet; thence at right angles easterly one hundred and twenty-five feet to a point in center line between said easterly side of Oak Avenue and westerly side of Maywood Avenue; thence at right angles parallel with Maywood Avenue and Oak Avenue three hundred feet; thence westerly again at right angles and parallel to Forest Avenue one hundred and twenty-five feet to place of beginning.

## SECOND TRACT.

20 Commencing at a point on northerly side of Passaic Street distant 105.70 feet westerly from the land now or formerly of John C. Van Saun, running thence westerly along said northerly side of Passaic Street seventy-five feet to the corner of a proposed street; thence northerly at a right angle along easterly side of said proposed street one hundred feet; thence easterly parallel with the first course seventy-five feet; thence southerly at a right angle to Passaic Street one hundred feet to point or place of beginning; that the said release was duly acknowledged on the same day and was, on January 30 12, 1911, recorded in the Bergen County Clerk's Office in Book 24 of Releases at pages 147, etc.

(11) On October 17, 1911, said Hart released from the lien of said mortgage to The Schmidt Realty and Construction Company the following described premises:

40 ALL that part of the said mortgage premises, situate, in the Borough of Maywood, County of Bergen and State of New Jersey.

BEGINNING at a point on the southeasterly line of Oak Avenue distant fifty feet southwesterly at right angles to the center line of land of the Hudson River Electric Railroad; thence southwesterly by the southwesterly line of Oak Avenue one hundred and twenty-five feet; thence southeasterly at right angles to last described line one hundred and thirty-nine feet to westerly line of land of John C. Van Saun; thence northeasterly along said westerly line of land of John C. Van Saun one hundred and twenty-eight feet to a line parallel to and distant fifty feet from center line of land of the Hudson River Trolley; thence northwesterly parallel to said center line 102.96 feet to the point of beginning, which said release was on the same day duly acknowledged and was thereafter on October 18, 1911, recorded in the Clerk's Office at the County of Bergen in Book 26 of Releases at pages 399, etc

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20

(12) On October 22, 1912, said Hart released from the lien of said mortgage to The Schmidt Realty and Construction Company the following described premises.

ALL that part of said mortgaged land, hereinafter particularly described, situate, lying and being in the Borough of Maywood, in the County of Bergen and State of New Jersey, bounded and described as follows:

30

BEGINNING at a point at the intersection of the northerly line of Passaic Street and easterly side of Palmer Avenue and running thence northerly along said easterly side of Palmer Avenue, at an angle to Passaic Street one hundred (100) feet; thence easterly, parallel to Passaic Street seventy-five (75) feet; thence southerly parallel to the first course one hundred (100) feet to the northerly side

40

of Passaic Street, and thence westerly along said northerly side of Passaic Street seventy-five (75) feet to the point or place of beginning. The intersection of the easterly side of Palmer Avenue and the northerly side of Passaic Street being a point distant six hundred forty and seven tenths (640.7) feet from the westerly line of the land of John C. Van Saun.

BEGINNING at a point on the westerly side of Palmer Avenue, at a point distant one hundred (100) feet northerly from the northerly side of Passaic Street, running thence westerly, parallel to Passaic Street one hundred (100) feet; thence northerly parallel to the westerly side of Palmer Avenue seventy-five and ninety-nine hundredths (75.99) feet more or less; thence easterly one hundred (100) feet to the westerly side of Palmer Avenue; thence southerly at a right angle to the last line seven and forty-eight hundredths (7.48) feet; thence continuing southerly, forming an angle with the last course of one hundred seventy-seven degrees, sixteen minutes, thirty-seven seconds sixty-five and sixty-six hundredths (65.66) feet to the point or place of beginning. The whole being a plot of one hundred (100) feet in depth on each side, said sides being almost parallel and being seventy-three and fourteen hundredths (73.14) feet in front and seventy-five and ninety-nine hundredths (75.99) feet more or less on the rear line. The intersection of the easterly side of Palmer Avenue and the northerly side of Passaic Street being a point distant six hundred forty and seven tenths (640.7) feet from the westerly line of the land of John C. Van Saun, said Palmer Avenue being sixty (60) feet wide.

BEGINNING on the easterly side of Palmer Avenue, at a point distant one hundred (100) feet

*Complaint.*

northerly from the northerly side of Passaic Street, and running thence easterly and parallel to Passaic Street one hundred (100) feet; thence (2) northerly on a line at a right angle to Passaic Street forty-five and seventy-two hundredths (45.72) feet; thence westerly on a line parallel to the first course and at a right angle to the easterly side of Palmer Avenue one hundred (100) feet, and thence southerly along the easterly side of Palmer Avenue and at a right angle to Passaic Street forty-seven and sixty-two hundredths (47.62) feet to the point or place of beginning. 10

BEGINNING at a point on the westerly side of Bergen Avenue, at a point distant one hundred fifty (150) feet southerly from the center line of the land of the Hudson River Electric Railway; thence westerly parallel to said center line one hundred (100) feet; thence southerly at a right angle to the first course forty-five and seventy-two hundredths (45.72) feet more or less; thence easterly parallel or nearly so to the first course one hundred (100) feet; thence northerly along the westerly side of said Bergen Avenue, forty-three and eighty-four hundredths (43.84) feet at a right angle to the first course to the point or place of beginning. 20

The release therefore was recorded October 25, 1912, in the Clerk's Office of Bergen County in Book 29 of Releases of Mortgage, at page 296. 30

(13) On April 5, 1915, said Hart released from the lien of said mortgage to one Max Newman the following described premises.

ALL that part of said mortgaged lands, situate, lying and being in the Borough of Maywood, in the County of Bergen and State of New Jersey: 40

10 BEGINNING at a point at the intersection of the easterly side of Oak Avenue and the northerly side of Parkway; running thence northerly along the easterly side of said Oak Avenue one hundred fifty (150) feet; thence easterly at a right angle and parallel to Parkway, one hundred twenty-five (125) feet; thence southerly at a right angle parallel to Oak Avenue and to the first course one hundred fifty (150) feet to the northerly side of Parkway one hundred twenty-five (125) feet to the point or place of beginning.

Being a rectangular tract of one hundred fifty (150) feet front and rear by one hundred twenty-five (125) feet on each side.

20 The release therefore was recorded April 19, 1915, in the Clerk's Office of Bergen County, in Book 35 of Releases of Mortgage, at page 510.

14. The property covered by complainant's mortgage or a portion thereof is shown on three maps entitled as follows.

(1) "Map of Maywood Heights, N. J., Alfred W. Williams Civil Engineer and Surveyor, Hackensack, N. J., 1906", filed in the Clerk's Office of the County of Bergen, April 3, 1906.

30 (2) "Map No. 2 of Maywood Heights, Maywood, N. J., property of the Schmidt Realty & Construction Company," filed in the County Clerk's Office of Bergen County, August 25, 1910.

(3) "Map of 'Maywood Heights' The Maywood Company owners," filed in the Bergen County Clerk's Office, August 11, 1914.

40 On the map first above mentioned the blocks are numbered. In the second and third maps above mentioned the blocks are lettered. References to

*Complaint.*

said maps will be made in this bill for convenience and descriptions by metes and bounds will control. Unless otherwise specifically indicated in this bill the references to numbered blocks will be to the first of said maps and the references to lettered blocks will be to the second of said maps. The third of said maps will be referred to as the map of the Maywood Company. 10

15. The premises included in complainant's mortgage were at one time covered by a prior mortgage made by Schmidt Realty & Construction Company, a corporation of New Jersey to Cornelius W. Anderson, dated March 15, 1906 recorded March 15, 1906 in book 175 of Mortgages for Bergen County, page 430. The latter mortgage covered all the property included in complainant's mortgage and other property, excepting lots 1 to 17 in block 37 and 1 to 24 and 29 to 41 in block 36. 20

16. Cornelius W. Anderson assigned his said mortgage to George P. Rust by written assignment dated September 8, 1910 recorded September 28, 1910 in book 55 of Assignment of Mortgages for Bergen County, page 303.

17. Said George P. Rust executed a release to the Schmidt Realty & Construction Company, dated September 19, 1910, recorded September 21, 1910 in Book 23 of Releases for Bergen County, page 279, wherein he released from the operation of the said prior mortgage several tracts including the following: 30

Beginning at a point in the northerly line of Passaic St. at the southwesterly corner of lands of John C. Van Saun, and "two hundred and forty seven and seventy nine one hundredths (249.79) 40

feet" distant from the westerly side of Maywood Av. and running thence (1) westerly along the northerly line of Passaic St. 187.07 feet, thence (2) northerly at right angles to Passaic St. 152.16 feet to an iron bolt, thence (3) northerly at a right angle to the line of the Electric Railway 172.74 feet to the easterly line of land of the said Electric Railway, thence (4) easterly along the southerly side of the said Electric Railway 100 feet, thence (5) southerly at right angles to the last mentioned course 20 feet, and thence (6) southerly along the westerly line of the said John C. Van Saun 308.9 feet to the place of beginning. This tract includes all of block A. on the map of the Maywood Company of which lots 1, 1a and 2, 3 and 6, 7 and part of 8 were included in complainant's mortgage and not released: Lots 25 to 42 in block 19, also known as block R, lots 16 and 17 in block 30, also known as block Y, all of block 31, all of block 32, all of block 33 including part of Coles Street. The said releases also cover other property.

18. Other releases were made by said Rust on said prior mortgage affecting lots which were either subsequently released from complainant's mortgage or which were sold under foreclosure of the said first mortgage, which proceedings will be hereafter referred to.

19. As above stated the following lots were not included in said Anderson first mortgage and were included in and had not been released from complainant's mortgage: Lots 1 to 17, block 37, lots 5 to 24 and lots 29 to 41 in block 36.

20. On November 16, 1912, George R. Rust filed a bill in Chancery of New Jersey in a cause entitled

*Complaint.*

George P. Rust complainant and Schmidt Realty & Construction Company and other defendants, and proceedings were taken therein for the foreclosure of the said Anderson first mortgage and under an execution issued in said cause a large portion of the premises covered by complainant's mortgage was sold by the Sheriff of Bergen County and a deed was delivered by said Sheriff to Archibald C. Hart and William L. Wemple, dated January 8, 1914, recorded March 13, 1914 in book 876 of Deeds for Bergen County, page 141. The said execution and deed specifically except from the description of the premises conveyed those tracts which had previously been released from the operation of the said Anderson, first mortgage. 10

21. The complainant after said Sheriff's sale and deed retained a first lien on a portion of the premises as follows. 20

Lots west of Maywood Avenue:

Lots 25 to 42 in block R or 19,.....	18 lots
Lots 16 and 17 in block Y or 30,....	2 lots
Lots 1a, 1, 2 and 6, 7 and part of 8 in block A. on the Maywood Company map. ....	6 lots

Total, ..... 26 lots 30

Lots east of Maywood Avenue:

Block 36 lots 29 to 41 inclusive,....	13 lots
Block 35 lots 5 to 24 inclusive.....	20 lots
Block 37 lots 1 to 17 inclusive,.....	18 lots
All of block 31 being.....	24 lots
All of block 32 being.....	31 lots
All of block 33 including part of Coles Street, .....	15 lots

121 lots 40

*Complaint.*

The following is a more particular description of the premises on which *complainant now has a first lien*. ALL those certain tracts or parcels of land and premises hereinafter particularly described, siuate, lying and being in the Borough of Maywood in the County of Bergen and State of  
 10 New Jersey, described as follows:

## FIRST TRACT:

All of blocks 31, 32 and 33 including some part of Cole Street as lie between blocks 32 and 33 as shown on a map entitled "Map of Maywood Heights, Maywood, N. J., Alfred W. Williams, Civil Engineer and Surveyor, Hackensack, N. J., 1906", filed in the Clerk's Office of the County of  
 20 Bergen, April 3, 1906 as Map No. 994.

## SECOND TRACT:

Lots 25 to 42 inclusive in block 19 and lots 16 to 17 in block 30 on the aforesaid map; also on a map entitled "Map of 'Maywood Heights,' the Maywood Company owners", filed in the Bergen County Clerk's office August 11, 1914 as lots 25 to 42 inclusive in block R. and lots 16 and 17 in  
 30 block Y.

## THIRD TRACT.

Also the following described pieces, parcels or tracts of land located in said Borough of Maywood easterly from Maywood Avenue and as shown and designated on a certain Map known as Map of Maywood Heights filed in the Bergen County Clerk's Office as Map number 994 April  
 40 3rd, 1906 as lots numbered thereon respectively one to twenty four inclusive and twenty nine to

forty one inclusive in block numbered thirty six. Also lots numbered consecutively one to seventeen inclusive in block numbered thirty-seven; excepting, however, property described in release made by Archibald C. Hart to Schmidt Realty & Construction Company, dated December 3, 1908, recorded book 18 of Releases, page 441; as follows: 10

Lots numbered 1, 2, 3, 4, in block numbered 136 as shown on Map of Maywood Heights, Maywood, N. J., filed in Clerk's office of Bergen Co. Apr. 3, 1906 as #994, described as follows:

Beginning at a point at the intersection of the southerly side of Woodland Av. with the westerly side of Coles St. running thence southerly along said westerly side of Coles St. 150 feet, thence westerly at right angles to Coles St. and parallel to Woodland Av. 100 feet, thence northerly again at right angles and parallel to Coles St. 150 feet, thence easterly along the southerly side of Woodland Av. 100 feet to the point or place of beginning. 20

#### FOURTH TRACT:

Beginning at a point in the northerly line of Passaic St. at the southwest corner of lands of John C. Van Saun, and "two hundred and forty-seven and seventy one hundredths (249.70) feet" distant from the westerly side of Maywood Av. and running thence (1) westerly along the northerly line of Passaic St. 187.70 feet, thence (2) northerly at right angles to Passaic St. 152.16 feet to an iron bolt, thence (3) northerly at a right angle to the line of the Electric Railway 172.74 feet to the easterly line of land of the said Electric Railway, thence (4) easterly along the southerly side of 40

the said Electric Railway 100 feet, thence (5) southerly at right angles to the last mentioned course 20 feet, and thence (6) southerly along the westerly line of the said John C. Van Saun 308.9 feet to the place of beginning; excepting therefrom the following portions thereof released by two releases made by Archibald C. Hart to Schmidt Realty & Construction Company, one dated October 17, 1911, recorded in book 26 of Releases for Bergen County, page 399, the other dated January 12, 1911, recorded book 24 of Releases, page 147:

FIRST TRACT RELEASED:

Beginning at a point on the southeasterly line of Oak Av. distant 50 feet southwesterly and at right angles to the entire line of the land of the Hudson River Electric Railroad, thence southwesterly by the southeasterly line of Oak Av. 125 feet, thence southeasterly at right angles to the last described line 139 feet more or less to the westerly line of land of John C. Van Saun, thence northeasterly along said westerly line of land of John C. Van Saun 128 feet more or less to a line parallel to and distant 50 feet from the centre line of the land of the Hudson River Trolley, thence northwesterly parallel to said centre line 102.96 feet to the point or place of beginning.

SECOND TRACT RELEASED.

Commencing at a point on the northerly side of Passaic St. distant 105.70 feet westerly from the land now or formerly of John C. Van Saun, thence westerly along the said northerly side of Passaic St. 75 feet to the corner of a proposed street, thence northerly at a right angle along the easterly side of said proposed street 100 feet, thence

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easterly parallel with the first course 75 feet, thence southerly again at a right angle to Passaic St. 100 feet to the point or place of beginning.

The said Fourth Tract is also known as Block A on a map entitled "Map of 'Maywood Heights,' the Maywood Company owners" filed in the Bergen County Clerk's Office, August 11, 1914, and the first portion released being known as lots 9 to 13, inclusive, and part of 8 in block A on said map and the second portion released being known as lots 3, 4 and 5 in blocks A on said map. 10

22. The 26 lots west of Maywood Avenue referred to in the previous paragraph had been released from the Anderson first mortgage and were not intended to be sold or conveyed under said foreclosure proceedings. The description in the execution and Sheriff's deed is ambiguous, but complainant charges that no title was conveyed or intended to be conveyed to said twenty-six lots under the foreclosure proceedings and Sheriff's deed aforesaid and the complainant has a prior lien thereon prior to any claim of Archibald C. Hart and William L. Wemple or the following grantees and mortgagees of the said Archibald C. Hart and William L. Wemple: 20

(a) The Maywood Company, a corporation of New Jersey, who acquired the premises covered by said Sheriff's deed by deed of William L. Wemple, Dorothy, his wife, Archibald C. Hart, Lilly L., his wife, dated March 7, 1914, recorded March 13, 1914, book 876 of Deeds of Bergen County, page 147. 30

(b) William L. Wemple and Archibald C. Hart who acquired a mortgage on the premises covered 40

by said Sheriff's deed by mortgage made by the Maywood Company, dated March 11, 1914, recorded March 13, 1914, in book 323 of Mortgages for Bergen County, page 165, securing the sum of \$8,646.19.

- 10 (c) David A. Himadi, who acquired an assignment of the said mortgage by deed of assignment made by William L. Wemple and Archibald C. Hart, dated June 21, 1915, recorded June 28, 1915, in book 77 of Assignment of Mortgages for Bergen County, page 378.

20 Complainant charges that the said Maywood Company, a corporation of New Jersey, William L. Wemple, Dorothy Wemple, his wife, Archibald C. Hart, Lilly L. Hart, his wife, and David A. Himadi have no claim or interest in the aforesaid twenty-six lots west of Maywood Avenue.

- 30 23. On September 16, 1910, the Schmidt Realty & Construction Company executed a mortgage to George P. Rust, dated the same day, registered September 17, 1910, in book 251 of Mortgages for Bergen County, page 569 securing the sum of \$3,500 covering a large tract of land, all west of Maywood Avenue. Any interest which George P. Rust may claim in the aforesaid twenty-six lots west of Maywood Avenue is subject and subsequent to the lien of complainant's mortgage.

- 40 24. On October 4, 1909, the Schmidt Realty & Construction Company executed a mortgage to Robert D. Kent of the same date, registered October 7, 1909, in book 235 of Mortgages for Bergen County, page 205, securing the sum of \$10,000 covering a large tract of land, all west of Maywood Avenue, including the aforesaid twenty-six

*Complaint.*

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lots. Kent subrogated his mortgage to the \$3,500 mortgage of George P. Rust aforesaid by deed of subrogation, dated September 19, 1910, recorded September 23, 1910, book 254 of Mortgages for Bergen County, page 505. Said Kent executed a release to Schmidt Realty & Construction Company, dated September 19, 1910, recorded September 26, 1910, liber 23 of Releases for Bergen County, page 322, whereby he released from his said mortgage several tracts of land including the six lots in block A, on which complainant has a first lien.

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George P. Rust died on or about April 21, 1913, leaving a will which was probated on or about May 1, 1913, by the Surrogate of Passaic County wherein he named Charles Rust as the executor and sole devisee. Said executor duly qualified. Any interest he may claim is subject and subsequent to complainant's mortgage.

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25. The Schmidt Realty & Construction Company executed a mortgage to Miner R. Knowlton, dated November 28, 1910, recorded December 6, 1910, in book 258 of Mortgages for Bergen County, page 390, securing the sum of \$200 covering several tracts including lots 1A, 1 and 2 in block A on the Map of the Maywood Company.

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26. The said Schmidt Realty & Construction Company executed a mortgage to Esther Sarluis, dated January 6, 1911, recorded January 7, 1911, in book 257 of Mortgages for Bergen County, page 645, securing the sum of \$555 and covering lots 37 to 42 in block 19.

Any interest which Robert D. Kent, Miner R. Knowlton or Esther Sarluis may claim in the premises is subject and subsequent to the lien of complainant's mortgage.

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10 27. The Schmidt Realty & Construction Company executed another mortgage to C. Olivia Sabine, dated February 26, 1908, recorded February 27, 1908, in book 209 of Mortgages for Bergen County, page 191, securing the sum of \$2,000, covering several tracts of land including the lots on which complainant now has a first lien in the following blocks: 37, 36, A or 1. The said mortgage was assigned by C. Olivia Sabine to George P. Rust by assignment of mortgage, dated September 7, 1910, recorded September 21, 1910, in book 55 of Assignment of Mortgages for Bergen County, page 302.

20 28. George P. Rust assigned the said mortgage to E. Max Applegate by written assignment of mortgage, dated October 23, 1912, recorded October 24, 1912, in book 65 of Assignment of Mortgage, page 216.

30 29. All of the lots covered by said mortgage on which complainant now has a first lien in the following blocks were released from said Sabine mortgage, to wit, block A or 1 and blocks 36 and 37 by written release by George P. Rust to Schmidt Realty & Construction Company, dated September 19, 1910, recorded September 21, 1910, in book 23 of Releases for Bergen County, page 277.

Any interest which C. Olivia Sabine, George P. Rust and E. Max Applegate may claim in the premises is subject to the lien of complainant's mortgage.

40 30. The legal title to the aforesaid twenty-six lots is now in the Schmidt Realty & Construction Company. Their interest in said lots, however, is subject and subsequent to the lien of complainant's mortgage.

31. As to the lots east of Maywood Avenue on which complainant now has a first lien as aforesaid the following is the condition of the title: as shown in this and the succeeding paragraphs:

The Schmidt Realty & Construction Company executed a mortgage to C. Olivia Sabine, dated September 7, 1910, registered September 8, 1910, in book 254 of Mortgages for Bergen County, page 361, securing the sum of \$3,301, covering the following lots: Lots 1 to 10 and 13 to 24 in block 31 and lots 24 to 31 and part of 23 in block 32 as more specifically shown in the description by metes and bounds in said mortgage. 10

32. The Schmidt Realty & Construction Company executed another mortgage to C. Olivia Sabine, dated October 7, 1912, recorded July 3, 1913, in book 308 of Mortgages, page 243, securing the sum of \$5,609 and covering the following lots: Lots 1 to 22 and part of 23 in block 32 and all of block 33, lots 1 to 17 in block 37, excepting lots 14 and 15, lots 9 to 18 in block 36, all as more specifically shown in the description by metes and bounds contained in said mortgage: 20

33. The Schmidt Realty & Construction Company executed a deed to Bradwell Building & Construction Company, a corporation of New Jersey, dated October 8, 1909, recorded October 23, 1909, in book 737 of Deeds for Bergen County, page 339, conveying lots 7 and 8 in block 36 as more specifically described by metes and bounds in the description in said deed. 30

34. The Bradwell Building & Construction Company executed a mortgage to the Schmidt Realty & Construction Company, dated October 11, 1909, 40

registered December 7, 1909, in Book 240 of Mortgages for Bergen County, page 233, securing the sum of \$165 and covering the same premises as described in the preceding deed.

10 35. The Felter Coal & Lumber Company obtained a judgment against the Bradwell Building & Construction Company in the Circuit Court of Bergen County for the sum of \$638.07 damages and \$80.71 costs, which judgment was entered November 26, 1910, and recorded in book of Circuit Court Judgments of Bergen County, page 537. The Bradwell Building & Construction Company became insolvent and pursuant to the provisions of the Corporation Act of New Jersey deeds of real estate of said company were executed by Joseph  
20 Zalkind as the only surviving director and trustee of said corporation in liquidation according to the provisions of the Corporation Act of New Jersey.

30 36. The Schmidt Realty & Construction Company executed a deed to Jennie Wormser, dated April 12, 1911, recorded April 27, 1911, in book 781 of Deeds for Bergen County, page 483, conveying lots 14 to 21 in block 31, more specifically described by metes and bounds in said deed.

37. Said Jennie Wormser and Samuel Wormser, her husband, conveyed the premises described in the preceding deed to N. Mayer, Inc., a corporation of New York, by deed dated May 17, 1911, recorded May 24, 1911, book 784 of Deeds for Bergen County, page 367.

40 38. Said N. Mayer, Inc., executed a deed to Nathan Mayer, dated January 16, 1912, recorded

*Complaint.*

January 18, 1912, in book 805 of Deeds for Bergen County, page 535, conveying the same premises as in the preceding deed.

39. The said Schmidt Realty and Construction Company executed a deed to Wendell J. Wright, dated July 2, 1909, recorded July 7, 1909, in book 725 of deeds for Bergen County, page 440, conveying lots 32 to 37 in block 36, more specifically described by metes and bounds. 10

40. On November 12, 1912, Merchants Bank of Passaic recovered a judgment against the Schmidt Realty & Construction Company and Philip Zalkind in the New Jersey Supreme Court for \$861.87.

Any interest which C. Olivia Sabine, the Bradwell Building & Construction Company, Joseph Zalkind, as the only surviving director and trustee of the Bradwell Building & Construction Company, a corporation of New Jersey, in liquidation according to the provisions of the Corporation Act of New Jersey, the Felter Coal & Lumber Company, the Schmidt Realty & Construction Company, Wendell J. Wright, Jennie Wormser, Samuel Wormser, her husband, N. Mayer, Inc., a corporation of New York, Nathan Mayer and Merchants Bank of Passaic may claim in the premises is subject and subsequent to the lien of complainant's mortgage. 20 30

41. Said Schmidt Realty & Construction Company, Bradwell Building & Construction Company, Joseph Zalkind, as the only surviving director and trustee of said corporation, Nathan Mayer and Wendell J. Wright have always been in possession of the mortgaged premises.

42. Of the principal sum of \$20,000 less various sums paid for the release of portions of the mort- 40

*Complaint.*

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gaged premises with accumulated interest is due upon complainant's bond and mortgage.

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

- 10      1. That the Schmidt Realty & Construction Company, a corporation of New Jersey, Charles Rust, executor of the estate of George P. Rust, deceased, C. Olivia Sabine, E. Max Applegate, Archibald C. Hart, Lilly L. Hart, his wife, Robert D. Kent, Esther Sarluis, Miner R. Knowlton, William Y. Wemple, Dorothy Wemple, his wife, the Maywood Company, a corporation of New Jersey, David A. Himadi, Wendell J. Wright, Catharine G. Wright, his wife, Bradwell Building  
20      & Construction Company, a corporation of New Jersey, Joseph Zalkind, as the only surviving director and trustee of Bradwell Building & Construction Company in liquidation under the provisions of the New Jersey Corporation Act, Jennie Wormser, Samuel Wormser, her husband, N. Mayer, Inc., a corporation of New York, Nathan Mayer, Felter Coal & Lumber Company, a body corporate, Merchants Bank of Passaic, who are defendants in this suit, may answer this bill of  
30      complaint without oath and each statement therein made.

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

3. That the defendants, or one of them, may be decreed to pay complainant the amount so found due, with interest and costs, by a short day, to be appointed by this court, and that in default of such  
40      payment, they, and each of them, be debarred and

*Complaint.*

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foreclosed of all equity of redemption in said lands; or

4. That it be decreed that William L. Wemple, Dorothy Wemple, Archibald C. Hart, Lilly L. Hart, David A. Himadi and The Maywood Company, a corporation of New Jersey, have no claim or interest in the twenty-six lots west of Maywood Avenue, referred to in paragraph 21. 10

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

6. That a writ of subpoena may issue, commanding said defendants to answer this bill of complaint and to abide by such decree as this court may make in the premises. 20

McDERMOTT & ENRIGHT,  
Solicitors for and of  
Counsel with Complainant.

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Filed April 22nd, 1918.

**Answer.**

IN CHANCERY OF NEW JERSEY.

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Between

MARIE SCHMIDT,  
Complainant,

and

SCHMIDT REALTY & CONSTRUCTION Co., et als.,  
Defendants.

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The defendant, Schmidt, Realty & Construction Company, a corporation of New Jersey, answering said bill of complaint, says:

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1. It denies every allegation therein contained, asserting that complainant has a valid mortgage, herein sought to be foreclosed, and denies every specific allegation setting forth that complainant has a lien on the property of this defendant, and denies every specific allegation setting forth that by reason of said mortgage herein sought to be foreclosed there is a lien prior to any other mortgage or encumbrance mentioned in said bill of complaint.

2. Admits paragraph 1 of the complaint, except that it denies defendant was indebted to complainant.

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3. Subject to qualifications hereinabove set forth this defendant admits the paragraphs of the complaint numbered 2 to 20, both inclusive.

4. Admits paragraph numbered 21, but denies the allegation that complainant retained a lien on premises therein described.

5. It denies paragraph 22 of said complaint, in so far as it alleges a lien by this complainant, but has not information sufficient to form a belief concerning the 26 lots therein specifically mentioned. 10

6. Admits paragraph 23, except the allegation that "any interest which George P. Rust may claim in the aforesaid twenty-six lots west of Maywood Avenue is subject and subsequent to the lien of complainant's mortgage," which allegation it denies.

7. Denies allegation in paragraph 24 of the complaint alleging that complainant has a lien on the property described. 20

8. Admits paragraphs 25 and 26, 27, 28 and 29, but denies that complainant has any lien, and denies that complainant has a lien prior to that of mortgages mentioned in said paragraphs, prior to the mortgages of said Appelgate, Rust, Sarluis, Knowlton and Sabine and Kent.

9. As to paragraph 30 this defendant has not information sufficient to form a belief as to the condition of the title of the twenty-six lots therein referred to, but denies that complainant has any lien on the same. 30

10. Denies allegation of complainant—paragraph 31 of the complaint asserting a lien on the premises therein described.

11. Admits paragraphs 32, 33, 34, 35, 36, 37, 38, 39, and the first part or sentence of paragraph 40; 40

but denies that any interest which the parties mentioned in said paragraph have in the premises is subject and subsequent to the lien which complainant asserts herein.

12. It admits paragraph 41 of said complaint.

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13. It denies paragraph 42 of said complaint.

For further answer to the bill of complaint this defendant says:

14. The Schmidt Realty & Construction Company, this defendant, was incorporated in the State of New Jersey on December 20, 1905. The complainant herein was one of the original incorporators; that at various times, with the consent of all the stockholders and all the persons interested in the said corporation, the said corporation issued and delivered to the said Marie Schmidt shares of its preferred and common stock as follows:

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On February 1st, 1906, 140 shares preferred stock, par value \$14,000.00.

On March 15, 1907, 95 shares preferred stock, par value \$9,500.00.

On Jan. 20, 1906, 122 shares common stock, par value \$12,200.00.

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No other preferred stock was or ever has been issued to any body.

15. That on or about the 7th day of July, 1907, at the special instance and request of the said Marie Schmidt, and relying on her promise to pay into the said corporation the sum of \$5,000.00, part of the sum which she had previously agreed to invest in the said company, Philip Zalkind, now, but not at the time said promise was made, president of the said Schmidt Realty & Construction Company per-

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sonally obligated himself to purchase and pay for, and did purchase and has paid for all the outstanding common stock of the corporation, not then held by said Marie Schmidt, in order to acquire, at her request, the control of the said corporation, and thereupon and thereafter gave all his time and attention to the affairs and business of the said corporation. Previously said Zalkind held only one share of common stock, and was secretary and counsel of the company. 10

16. That the said Marie Schmidt did not fulfill her promise to pay into the treasury of the said corporation the said sum of \$5,000.00, which was necessary to save the company from the financial difficulties then existing, and the said Philip Zalkind, as president of the said corporation, thereupon had to undertake to raise funds for necessary capital for the corporation, and found one John G. Pepler, an officer of a bank in New Jersey, and a capitalist, who agreed to invest the sum of \$25,000.00 cash for stock representing a half interest in a proposed corporation, which, pursuant to an agreement made, was duly organized, to take over most of the property then owned by The Schmidt Realty & Construction Company, to develop and market it, leaving, however, certain of the property in the ownership of said Schmidt Realty & Construction Company to be used for, and which, it was calculated, would be sufficient to liquidate and pay all claims then existing against said Schmidt Realty & Construction Company in full. Pending the arrangements for the payment into the treasury of the new corporation the said sum of \$25,000.00, and control of which said new corporation was to have been, as per agreement, equally divided between the interest represented by the complainant herein, said Zalkind and The 20 30 40

- Schmidt Realty & Construction Company, on the one hand, and, on the other hand, the said new interests, represented by said Pepler, by each, the old and new interests, selecting an equal number of directors of the new corporation (the said Marie Schmidt to have been one of said directors).
- 10 Pending the arrangements for payment of said \$25,000.00, the said Zalkind, president of the said Schmidt Realty & Construction Company discovered, by the voluntary confession of said Marie Schmidt, the complainant herein, that she had entered into a conspiracy with the said Pepler to use the control of the said new corporation against the interest of the said Zalkind, and to put the said Zalkind out of the said new company as soon as possible after the ownership of the property passed
- 20 to the new company. By reason of these facts, revealed and admitted by the said Marie Schmidt, the complainant herein, the deal between the interests represented by The Schmidt Realty & Construction Company and the said Pepler interests was destroyed, and the said Schmidt Realty & Construction Company was left in its previous precarious financial condition, but with more accrued interest and taxes due and valuable time lost.
- 30 17. Soon thereafter the said Marie Schmidt retained counsel and brought an action in this court against the said Schmidt Realty & Construction Company, Zalkind and others, based on false and malicious charges and allegations to support a claim and praying that this court adjudge that the property of The Schmidt Realty & Construction Company was in trust for said Marie Schmidt, the complainant herein, and simultaneously with the
- 40 said action, the said Marie Schmidt applied to this court for an injunction to restrain and prevent the said corporation, Zalkind and the defendants there-

in named from selling or conveying any of the property of the corporation, and asking for the appointment of a receiver. The matter having come on to be heard in this court before Mr. Vice Chancellor Garrison, and on the application for injunction and a receiver, all the facts having been presented by affidavit wherein all the history and details of all the transactions pertaining to the said property, were fully set forth, the said application was denied by this court, with costs, the Vice Chancellor in the course of his decision rendered in open court, stated that the allegations of the complainant were absolutely impossible unless she were "incapable of a single intellectual operation, or is an imbecile or is insane," and suggesting that in that event the only proper proceeding in behalf of the complainant would be to have a commission appointed to take charge of her person and property. 10

18. This however did not dispose of the action. Counsel for the complainant, had filed with his bill of complaint in this court, a notice of the pendency of the said action, which there was no way to dispose of or clear from the records except by waiting for the trial of the action, and this by reason of the condition of the Court's calendar at that time, could not be for many months thereafter. 20 30

19. Without regard to the merits of the action, there was no way to dispose of or remove the *lis pendens* by bond or otherwise, except to await the final disposition of the case. The financial condition of the company was precarious, and it became of vital practical importance that without regard to the merits of said action, that the same should be disposed of at the very earliest moment. Whereupon negotiations were commenced and carried on 40

10 by counsel for the respective parties for settlement, and a settlement was finally made, by which the said Marie Schmidt agreed to return all the shares of stock which she held in the said company to its treasury and the company agreed to and did issue to the said Marie Schmidt a second mortgage for  
20 the sum of twenty thousand dollars, containing among other provisions a clause making the same second and subordinate to any mortgage or mortgages then existing or afterwards placed to the extent of \$30,000.00. This sum of \$20,000.00 represented a profit to complainant of more than six thousand dollars as shown by the itemized accounting asked for and rendered to her counsel as to all moneys received from her, or invested by her in the company, which accounting was not excepted  
20 to in any particular, or as to any item, and which showed that the total amount which had been received from the said Marie Schmidt, the complainant herein, by the company was \$13,943.97 for which she held, as herein above stated \$23,500 par value of its preferred stock and \$12,200 of its common stock; and she was the only holder of preferred stock.

30 20. As the result of said settlement, said Marie Schmidt resigned as a director and officer of said corporation removed from the occupancy of premises owned by the said company and her connection with the said company was severed. Although as was not known at the time, either by counsel for said Marie Schmidt or counsel for the company, the said mortgage was absolutely void at its inception by reason of certain statutory provisions hereinafter referred to and set forth; the said Schmidt Realty & Construction Company resumed business  
40 with the full good faith, intention and expectation

to pay to the said Marie Schmidt, the full amount represented by the said mortgage herein sought to be foreclosed, and interest according to its tenor. Said Marie Schmidt, the complainant herein, however, not content with her settlement, maliciously undertook to obstruct and prevent the said corporation from succeeding in its business and developing and marketing its tract of land herein described, and promoted and carried on a continuous and persistent campaign of slander against the company, its officers and its property, using the fact that she was an elderly woman as her principal weapon, and worked up an atmosphere of sympathy for herself and general ill-will towards the company and particularly towards its president, Philip Zalkind. Not stopping with merely conducting and promoting this campaign of slander, she also engaged in various other ways to injure this defendant, and its president, including on one occasion, entering into and carrying out a criminal conspiracy with one Jensen, the caretaker thereof, to rob and destroy a valuable poultry plant which was on the property of this defendant and causing and assisting in destroying and robbing the said poultry plant one night about or after midnight, on an occasion when the said Philip Zalkind, president of this defendant company, then residing in the Borough of Maywood, where its property is located, had gone with his wife to New York; when said Zalkind having been notified the next morning by the Borough Marshal of Maywood, of what had taken place, said Zalkind caused the arrest of said Jensen who had been caretaker and in charge of the said poultry plant. The said Marie Schmidt, the complainant, herein, then assisted the said Jensen to escape from the custody of the said Borough Marshal; the said Jensen was subsequently recap-

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10 tured and released on bail, the same counsel who appeared for the said Marie Schmidt in the action above mentioned personally obligated himself on said bail by reason of which he was released from custody, after which said Jensen, as this defendant is informed and believes, left the state of New Jersey and has remained out of the state ever since and was never tried. As the result of these malicious acts, slanders and propaganda conducted and promoted by this complainant, the company and its officers were surrounded by and subjected to the ill-will of the community where its property was located, the co-operation and good-will of which was vitally essential for success in developing and marketing its real property, and as a result of  
20 which it was extremely difficult and most of the time impossible for the company to make sales and to accomplish the many other things peculiarly necessary in the development of a tract of suburban land, and this defendant therefore found it exceedingly difficult to meet its obligations, pay its taxes, and finally by reason of the non-payment of interest on the first mortgage, a foreclosure of the same was instituted and carried through to a sale.

30 21. Pending the foreclosure of the first mortgage which was held by one George P. Rust, now deceased, which foreclosure proceeding was nevertheless not attended by any ill-will from or by either party thereto, but on the contrary, with every courtesy and consideration on the part of the said George P. Rust and his counsel, Arthur S. Corbin, in the said foreclosure, the defendant was making persistent efforts to refinance the company, to save its property and to meet all its  
40 obligations, because it believed and believes that

the value of the property which it owned was many times the value of all its incumbrances and obligations. This defendant succeeded in making certain financial arrangements to save its property from being lost through the foreclosure of said Rust mortgage.

22. On the sale in the said Rust foreclosure, as alleged by the complainant, Sheriff's deed was delivered, as alleged, to one A. C. Hart who at all the times hereinabove mentioned, the counsel, attorney and trustee for the complainant, and one William L. Wemple who had been and was counsel for this defendant in connection with its efforts to save its property. Through the foreclosure, the said Wemple and Hart, and others caused to be incorporated on the 10th day of March, 1914, in New Jersey a corporation known as The Maywood Company, which company acquired title to the identical premises conveyed by the said Sheriff's deed. The said property was paid for solely and entirely by and with funds raised on the security of the property so acquired. Whereupon the said Maywood Company, after issuing mortgages representing the purchase price and other sums necessary to acquire and clear the title under the foreclosure, issued to the said Archibald C. Hart, as trustee for the said Marie Schmidt, the complainant herein, a mortgage on its whole property for the sum of \$19,113.34, bearing date of March 11, 1914, recorded in Bergen County on March 13, 1914, which amount this defendant is informed and believes was the exact amount as calculated to be due on that day to said Marie Schmidt on the mortgage herein sought to be foreclosed.

23. Subsequently the said Marie Schmidt, without the knowledge of and without notice of any

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kind to this defendant, and without giving it or any of the others interested an opportunity to protect its rights or interests in the premises, sold and parted absolutely with, and transferred the said mortgage received by the said complainant in payment of and in lieu of the mortgage herein  
10 for the said mortgage so sold and transferred by her, a large sum of money, as deponent is informed and believed, the amount being unknown to this defendant, the amount so received by her has not been mentioned or credited by complainant in the complaint herein.

FOR A FURTHER DEFENSE THIS DEFENDANT SAYS:

20 24. That the sole consideration to the defendant, The Schmidt Realty & Construction Company, for the making and executing the mortgage herein sought to be foreclosed was the return and transfer to it by the said complainant Marie Schmidt, of the shares of its capital stock held by her, as herein set forth. The said shares of stock were the identical shares of stock issued to her as herein set forth in the months of January, February of the year 1906, and March, 1907.

30 25. The mortgage herein sought to be foreclosed was made and executed and delivered in June, 1918, as alleged in the complaint, and in no particular conformed to the statutory requirements and provisions hereinafter cited and referred to.

40 26. The said bond and mortgage were therefor absolutely void at their inception, and are now void, by reason of the provisions contained in Section 18, Section 18A and Section 30, of An Act of the Legislature of the State of New Jersey, entitled "An

Act concerning Corporations (Revision of 1896)" and the several supplements thereto and Acts amendatory thereof.

27. This complainant has received in various amounts and at various times on account of principal and interest of the said mortgage sums aggregating more than six thousand dollars. 10

28. That the damage and injury to the defendant by reason of the aforesaid conspiracy by and between her and the said Jensen whereby the poultry plant on the property of the corporation was robbed and destroyed is more than \$1,000.

29. That the damage to this defendant in its business, goodwill, value of its property, and in other effects directly resulting from the malicious activities of the complainant herein set forth is more than \$100,000. 20

WHEREFORE this defendant prays that the said bill of complaint will be dismissed with costs, and that said complainant be decreed by this court to pay to this defendant all moneys received by her from the said company, or from any other source or sources on account or by reason of the mortgage which is herein sought to be foreclosed, together with interest on the same; and that the said mortgage herein sought to be foreclosed be declared and adjudged to be null and void and that the same be cancelled off record. 30

ISAAC F. GOLDENHORN.

Solicitor for and of Counsel with defendant The Schmidt Realty & Construction Company.

40

Filed November 7th, 1918.

**Order Striking Out Answer.**

IN CHANCERY OF NEW JERSEY.

10

MARIE SCHMIDT,  
Complainant,

vs.

SCHMIDT REALTY & CONSTRUCTION COMPANY, et al.,  
Defendants.

On Bill &c.

20

This matter coming on to be heard in the presence of McDermott & Enright, solicitors of complainant, and Isaac F. Goldenhorn, solicitor of defendant Schmidt Realty & Construction Company, and after hearing the arguments of counsel,

It is on this 4th day of November, 1918, on motion of McDermott & Enright, solicitors of complainant.

30

ORDERED that the answer of the defendant Schmidt Realty & Construction Company be stricken out with costs and that the said defendants be permitted to file an amended answer within thirty days.

Respectfully advised,

E. R. WALKER,  
C.

VIVIAN M. LEWIS, V. C.

A true Copy.

ROBERT H. MCADAMS,

40

Clerk.

Filed December 4th, 1918.

**Answer.**

IN CHANCERY OF NEW JERSEY.

Between

MARIE SCHMIDT,  
Complainant,

and

SCHMIDT REALTY & CONSTRUCTION COMPANY, et al.,  
Defendants.

10

The defendant, The Schmidt Realty & Construction Company, a corporation of New Jersey, answering said bill of complaint, says: 20

1. It denies every allegation therein contained; and denies that complainant has valid mortgage, herein sought to be foreclosed, and denies every specific allegation setting forth that complainant has a lien on the property of this defendant, and denies every specific allegation setting forth that by reason of said mortgage herein sought to be foreclosed there is a lien prior to any other mortgage or encumbrance mentioned in said bill of complaint. 30

2. Admits paragraph 1 of the complaint, except that it denies defendant was indebted to complainant and also denies making of a valid bond and mortgage.

3. Subject to qualifications hereinabove set forth this defendant admits the paragraphs of the com- 40

plaint numbered 2 to 20 inclusive, but denies that said bond and mortgage are a valid bond and mortgage.

4. Denies paragraph numbered 21.

10 5. It denies paragraph 22 of said complaint, insofar as it alleges a lien by this complainant, but has not information sufficient to form a belief concerning the other allegations in said paragraph.

6. Denies the allegation in paragraph 23, that complainant has a lien on premises therein mentioned or described.

20 7. Denies allegation in paragraph 24 of the complaint alleging that complainant has a lien on the property described, or that said interest of Charles Rust as executor and sole devisee of George P. Rust deceased, was subject and subsequent to alleged mortgage herein sought to be foreclosed.

30 8. Admits paragraphs 25 and 26, 27, 28 and 29 but denies that complainant has any lien, and denies that complainant has a lien prior to the mortgages of said Appelgate, Rust, Saluis, Knowlton and Sabine and Kent.

9. As to paragraph 30 this defendant has not information sufficient to form a belief as to the condition of the title of the twenty-six lots therein referred to, but denies that complainant has any lien on the same.

40 10. Denies all allegations of complaint, paragraph 31 of the complaint asserting a lien on the premises therein described.

11. Admits paragraphs 32, 33, 34, 35, 36, 37, 38, 39, and the first part of sentence of paragraph 40; but denies that any interest which the parties mentioned in said paragraph have in the premises is subject and subsequent to lien which complainant asserts herein, and alleges that complainant has no lien.

10

12. It admits paragraph 41 of said complaint.

13. It denies paragraph 42 of said complaint, and alleges that no sum is due the complainant.

For further answer to the bill of complaint this defendant says:

14. That the mortgage described in bill of complaint and which herein sought to be foreclosed was given by this defendant without valid consideration and was given in exchange for shares of common and preferred stock of this defendant corporation issued to the complainant on January 30, 1906, February 1, 1906, and March 15, 1907, and the sole and only consideration for the making and execution of said bond and mortgage to complainant herein was the return to this defendants corporation of said shares of its own common stock and preferred stock held by the complainant, contrary to the provisions of an act of the Legislature of New Jersey, entitled, "An Act concerning corporations (Revision of 1896) and the several supplements thereto and Acts amendatory thereof."

20

30

15. This defendant further answering says: That on November 16th, 1912, George P. Rust began foreclosure of a mortgage which he had on part of the premises mentioned in the mortgage herein sought to be foreclosed; that upon the sale under said foreclosure the same was purchased by one

40

Archibald C. Hart, attorney and trustee for complainant, and one William L. Wemple who was attorney and counsel for this defendants, and a Sheriff's deed was given to them for same as alleged by complainant, that subsequently said Hart and Wemple conveyed the premises described in said Sheriff's deed to a corporation of the State of New Jersey, organized by them for the purpose and known as The Maywood Company; that the title was acquired and payment made for said Sheriff's deed solely by and from funds procured on loans secured by mortgages on the lands and premises conveyed by said Sheriff's deed; that thereafter the said The Maywood Company made, executed and delivered to the complainant herein a new bond secured by a mortgage upon the same lands and premises acquired by The Maywood Company as aforesaid for the sum of \$19,113.34 as full payment of the sum of money claimed by the complainant herein to be due at that time from this defendant corporation on the bond and mortgage herein sought to be foreclosed; that subsequently complainant herein received various large sums of money on account of the sum claimed to be due from this defendant, on said mortgage, the amount being unknown to this defendant corporation.

16. Subsequently the said complainant herein, without notice of any kind to this defendant, without the knowledge of this defendant, and without the knowledge of and without giving notice to it or to any of the other defendants, or others interested, an opportunity to protect its or their rights, and interests in the premises, sold and parted absolutely with and transferred the said mortgage of the Maywood Company received by the said complainant in payment of and in lieu of the mortgage herein sought to be foreclosed,

and she received for the said mortgage so sold and transferred by her a large sum of money, the amount so received being unknown to this defendant, and the said amount so received by complainant has not been mentioned or credited in the complaint herein.

17. The total amounts paid into the treasury of this defendant corporation by the complainant for the shares of stock hereinabove mentioned and the return of which was the sole consideration for the making of the mortgage herein sought to be foreclosed, as aforesaid, was less than Fourteen thousand Dollars, and the complainant has been paid, and received solely by reason of and on account of the alleged indebtedness of this defendant to her, and the said bonds and mortgages held by her as herein set forth, amounts aggregating more than the total sums paid in by her to the defendant corporation for and on account of the said shares of common and preferred stock hereinbefore mentioned.

WHEREFORE this defendant prays that the said bill of complaint be dismissed with costs, and that said complainant be decreed by this Court to pay to this defendant all moneys received by her from the said company, or from any other source or sources on account of or by reason of the mortgage which is herein sought to be foreclosed, together with interest on the same, and that the said mortgage herein sought to be foreclosed be declared and adjudged to be null and void and that the same be cancelled or recorded.

ISAAC F. GOLDENHORN,  
Solicitor for and of Counsel with  
defendant The Schmidt Realty &  
Construction Company.

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Filed December 14th, 1918.

**Replication.**

IN CHANCERY OF NEW JERSEY.

10

MARIE SCHMIDT,  
Complainant,

vs.

SCHMIDT REALTY & CONSTRUCTION COMPANY, et al.,  
Defendants.

On Bill, &c.

20

Complainant joins issue on the amended answer of the defendant Schmidt Realty & Construction Company.

McDERMOTT & ENRIGHT,  
Solicitors of Complainant.

30

40



**Testimony.**

## IN CHANCERY OF NEW JERSEY.

10	Between <p style="text-align: center;">MARIE SCHMIDT, Complainant,</p> <p style="text-align: center;">and</p> <p style="text-align: center;">THE SCHMIDT REALTY AND CON- STRUCTION COMPANY, et al., Defendants.</p>	}	On Bill to Foreclose. Testimony.
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20 Transcript of testimony taken in the above-entitled cause, at the Chancery Chambers, Jersey City, New Jersey, on the sixth day March, 1919, before Hon. Vivian M. Lewis, Vice-Chancellor.

## APPEARANCES.

McDERMOTT & ENRIGHT, Esqs., for the complainant.  
 ISAAC F. GOLDENHORN, Esq., and PHILIP ZALKIND,  
 Esq., for the defendants.

30 Mr. McDermott: I offer the original bond and a certified copy of the mortgage under foreclosure. Both papers are admitted in the answer.

Marked "Exhibit C 3."

I also offer original assignment of the mortgage.

Marked "Exhibit C 3."

40 Now, we admit the following credits on the mortgage—the amount received by delivery for releases under that mortgage is \$2,730.00—the amount received by the complainant for releases under the mortgage made by the Maywood Company, \$1,-

140.00—the amount received on the cancellation of the Maywood mortgage, \$6,000.00—total credits, \$9,870.00—leaving balance due of \$10,130.00 principal (and interest—we can later submit a statement of the interest). The interest would be somewhat complicated to calculate, because of the large number of releases at different times, and certain amounts paid for those releases; and the calculation of the interest would take some time, but they are all matters of record; and they are admitted in the answer. 10

Complainant rests.

Mr. Goldenhorn: We have disputed the fact—although the mortgage was executed we have set up in our answer that it does not amount to a mortgage because of certain legal objections which we set up; I would like to read over this answer; it is very brief. This is the last answer; it denies every allegation therein contained (reading answer). 20

Complainant or somebody who knows, should be required to show to your Honor, under oath, aside from the statements of counsel—I desire at this time to move to dismiss.

The Court: Do you rest?

Mr. Goldenhorn: No. 30

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DEFENSE.

WILLIAM SOLOMON, sworn in behalf of the defendants, testified as follows:

Direct Examination by Mr. Philip Zalkind:

Q. What is your business? A. Attorney and counsellor-at-law of the City of New York. 40

Q. What is your relation to this matter?

Mr. McDermott: Objected to as too general; he is his own witness.

Q. Are you counsel for complainant in this case?

10 A. No, sir.

Q. Do you know the complainant in this case?

A. Yes, sir.

Q. How long have you known the complainant?

A. About 11 years.

Q. What relation do you bear to the complainant? A. I married her granddaughter.

Q. How long have you known about these matters—the subject matter of the bill of complaint?

A. About 11 years.

20 Q. How did you come to know about these matters?

Mr. McDermott: I object.

The Court: The objection is overruled.

A. I had desk room in your office.

Q. Where was my office? A. At 38 Park Row.

Q. When did your desk room arrangement commence? A. In August or September, 1906, I think.

30 Q. Was that the sole and only relation that you had with me—that you had desk room in my office?

Mr. McDermott: Objected to as immaterial and irrelevant.

Mr. Zalkind: We have a hostile witness.

The Court: I don't know about that.

The Witness: I tried cases for you.

The Court: How is that material?

40 Mr. Zalkind: I am getting into the merits of the case, and I would ask your Honor to

bear with me because I have to be rather guarded in what I ask.

Q. Did you have any connection with litigation in which the Schmidt Realty and Construction Company, the defendants herein, and myself personally, and one Gustav Schroeder, and one Charles B. Davidson, now deceased, were defendants, and the complainant herein was the complainant? A. Yes, sir. 10

Q. When did those proceedings commence? A. In, I think, the fall of 1907, I am not sure, or 1908.

Q. And who was the complainant's attorney in these proceedings? A. Archibald C. Hart, Esquire, Hackensack.

Q. You were at that time in my office? A. I had desk room in your office. 20

Q. You knew Mr. Hart? A. Yes, sir.

Mr. McDermott: May we not, at this time, introduce what is in one of the answers filed by the defendant in that relation? They place themselves squarely on the record in relation to that very matter in an answer which was filed by the defendant. It may simplify the proceeding.

The Court: I think we will let the examination proceed. 30

Mr. McDermott: I will object at the proper time on the ground that the admissions on record control. I will do that.

The Court: All right.

Q. Who was the attorney of record for the defendants in that proceeding? A. Saul Cohen, of Newark, New Jersey.

Q. Anyone else? A. He was the attorney of record. 40

Q. Was there any other attorney acting in behalf of the defendants in that matter? A. You and I and Saul Cohn, Esquire.

Q. Anyone else at any stage of the proceedings at any time between the beginning and the end? A. No, sir.

10 Q. Was Mr. Wendell J. Wright in it? A. No, sir.

Q. Did you assist me and Mr. Cohn in the preparation of the defense in that proceeding? A. Yes, sir.

Q. What did you do? A. You talked to me about the case; I discussed it with you; you showed me some of the papers; I escorted you to court on several occasions.

20 Q. Is that all? A. That is all that I remember.

Q. Your memory is good? A. Yes, sir.

Q. Did you take any active part in that proceeding? A. I helped you very actively.

Q. What do you mean by that? A. You consulted me and talked to me about the case, and showed me the papers in the case, and I helped you very actively and discussed the entire case with you up to the time it was settled.

Q. Did you assist Mr. Cohn in the matter? A. Yes; sir; we all consulted and talked over the case.

30 Q. Mr. Cohn was a dear friend of yours? A. Yes, sir.

Q. Did you help to prepare the papers that were served? A. Yes, sir.

40 Q. What was that proceeding; when did that proceeding start? A. That was an action brought by Mr. Schmidt, the complainant herein, charging you, Gustav Schroeder and Charles G. Davidson with obtaining money from her, amounting to about \$25,000, and buying property in the name of the Schmidt Realty and Construction Company in spite

of your having made representations that you were to buy the property in her name.

Q. I? A. I think she made those accusations against all of you at that time, and she brought action to set aside the title in the company, and to have it declared in her personally, that was the action.

10

Q. What was the first step in that action?  
A. A temporary injunction was obtained, I think, granted by Vice-Chancellor Garrison, and the motion was argued before Vice-Chancellor Garrison, and the motion was denied with costs.

Q. Who appeared for the complainant in that motion? A. You argued the motion in your own behalf; Mr. Hart argued in behalf of the complainant.

Q. You were present? A. Yes, sir.

20

Q. And Mr. Cohn was present? A. Yes, sir.

Q. And don't you remember clearly what opinion Vice-Chancellor Garrison expressed in denying their application and removing the temporary restraining order? A. He said there was not sufficient evidence on the papers to continue the injunction, but if any other evidence was produced he would hear it, and he did not determine the case at that time.

Q. And don't you recall that Vice-Chancellor Garrison, in determining those preliminary steps, said that the plaintiff's papers—

30

Mr. McDermott: How is it pertinent what the Vice-Chancellor said? A. What happened was, that they subsequently settled the case, and that part of it I suppose counsel is coming to. What the reflections of the Vice-Chancellor from the bench may have been on hearing that motion, are entirely irrelevant and immaterial.

40

Q. You were in my office at that time? A. I had desk room in your office.

Q. Do you recall that you were one of the affiants in behalf of the defendant? A. Yes, sir.

10 Q. Do you remember what you said in that affidavit? A. I have a very faint recollection of what I said; that is eleven years ago.

Q. Mr. Solomon, I show you from the records of this court the original affidavits filed on behalf of the defendants in the proceedings of Marie Schmidt, complainant, vs. Philip Zalkind, the Schmidt Realty and Construction Company and others; affidavit dated December 20, 1907; I ask you if that is your signature? A. Yes, sir, that is my signature.

20 Mr. Zalkind: I offer it in evidence.

Mr. McDermott: I object; nothing can be more absurd than the offer of that affidavit. Mr. Solomon is produced and offered as a witness by the defendant, and in the course of his examination now it is proposed, I understand, to offer the affidavit of Mr. Solomon, who, it appears by his testimony, was associated with the attorney or counsel of the defendant in that proceeding. It is not offered by way of cross-examination of him; it is offered in support—  
30 an affidavit made in support of this cause. It is absolutely incompetent; there is no ground upon which they can offer an ex parte affidavit, made years ago, in support of the cause.

Mr. Goldenhorn: We are going to show that this witness made this affidavit in this very proceeding in the cause, which throws a side light on the consideration for this  
40 mortgage, and the circumstances under

which we have interposed our defence. From the answer which I read you saw that part of our defence here is usury; the consideration was common and preferred stock of this very corporation that they are now seeking to foreclose this mortgage against. The witness made an affidavit of certain facts which throw a light on the defence which we have interposed. 10

The Court: I think the objection to it at this time is well taken; I won't allow it at present.

Mr. Goldenhorn: We could offer the entire record, as it is a record of this court.

Mr. McDermott: Of course, an ex parte affidavit taken in this cause, if Mr. Solomon's affidavit in this cause, it should not be offered now. This matter of usury is of no consequence, because a corporation cannot set up usury in our State under our statute. Under our statute, usury is not a defense; it cannot be set up; and I still think that it is important to get before the Court the answer of these defendants. 20

The Court: I have sustained the objection.

Q. Did you at any time during those proceedings have occasion to confer with the complainant, Mrs. Schmidt? A. Yes, sir. 30

Q. What was the occasion? A. You sent me over with Miss Catherine Falk; you felt sorry for Mrs. Schmidt; you said she should get consideration for the money that she advanced, and you asked me to go over with Miss Catherine Falk to try to induce Mrs. Schmidt to accept a \$25,000 mortgage of the company, and you offered to give her a lease of a farmhouse, and some land, that she should 40

live there, as she had lived there at the time, until the property was sold.

10 You were very bitter at Mr. Hart because you said he had furnished to the Hackensack papers a story which appeared on the first page of these papers, accusing you and the other defendants of fraud, and you wanted her to discharge Mr. Hart, and I went over there at your solicitation, and because I wanted to see Mrs. Schmidt.

Q. Did that result in the making of a mortgage, your effort to induce her to save herself, to take a mortgage for \$25,000? A. You sent me over there to try to induce her to take that mortgage and she refused to take it, because she refused to discharge Mr. Hart as her attorney, and subsequently the case was settled; the *lis pendens* was cancelled and releases exchanged, and her stock surrendered to the company in consideration for this mortgage.

20 Q. Who conducted the negotiations; when did negotiations which resulted in the making of this mortgage, commence; after the complainant had been beaten in this court in the preliminary steps, or before? A. After the motion for permanent injunction was denied, then you began to negotiate for the settlement of the case.

30 Q. When you say I began to negotiate, what do you mean? That I personally— A. Yes, sir.

Q. With whom personally? A. First, through Mr. Cohn, of Newark, New Jersey, your attorney, and then I think you and Mr. Hart, or somebody in Mr. Hart's office, talked about the settlement of the case.

40 Q. Did you ever see me in any conference, in any juxtaposition with Mr. Hart, except in such relation as now with our opponents? A. I think you went over there to Mr. Saul Cohn's—either to Mr.

Hart's office or to Mr. Saul Cohn's office; I was not there myself.

Mr. McDermott: I ask to have that struck out.

The Court: I will let it stand.

Q. Do you know when this mortgage was given; this mortgage sought to be foreclosed? A. On the date of it, June 8, 1908. 10

Q. Did you ever receive this paper (showing witness a paper)? A. No, sir, I did not; I don't remember seeing it.

Q. I show you a paper marked "Triplicate original"—an agreement between The Schmidt Realty and Construction Company, a corporation, party of the first part, Philip Zalkind, party of the second part; Marie Schmidt, party of the third part; I will mark this for identification, "D-1 for identification." Do you know the signature of Marie Schmidt? A. Yes, sir. 20

Q. Is that the signature of Marie Schmidt, the complainant herein? A. I suppose it is.

Q. Have you ever seen the signature of Mr. Hart, who was her counsel at that time? A. I won't say anything about Mr. Hart's signature.

Q. Do you know whether a mortgage, at issue in the present case, was given as the result of a written agreement, or in accordance or pursuant to a written agreement? A. I don't remember any written agreement being entered into; I know it was given in settlement of the case of Marie Schmidt, against the defendant you first mention. Do you know whether Mrs. Schmidt the complain- herein, was a stockholder in the defendant company, the Schmidt Realty and Construction Com- 30  
pany? A. Yes, sir. 40

Q. Do you know how much stock she had? A. No, sir, I don't know.

Q. Do you know what kinds of stock? A. I think there were two kinds.

Q. Do you know what kind she had? A. I know she did not have control.

10 Q. I did not ask that. A. I think she had both common and preferred.

Q. Do you know whether she retained any of it? A. No; that was given up—

Q. After the mortgage? A. I don't think so, no, I don't think she did.

Q. Do you know what became of her stock? A. When the case was settled she gave up her stock.

20 Q. What do you mean? A. At the time she got the mortgage the case was settled, and the settlement was, that she was to get a mortgage; she was to give up her stock and sign a general release and discontinue the action and cancel the *lis pendens*.

30 Mr. Zalkind: I would like to read to the Court and offer in evidence the agreement, in performance of which the mortgage at issue was given, which was signed by the complainant, which agreement was signed by the complainant and witnessed by her then counsel, Mr. Archibald C. Hart, and which the witness has identified as the signature of the complainant.

The Court: I do not think it is the best proof. You will have to have the best proof here.

Mr. McDermott: I object to it at this time; it is a new paper to me.

The Court: The objection is sustained.

40 Q. Were you present when this mortgage was executed? A. I don't remember that, Mr. Zalkind.

Q. You were at that time engaged to Miss Schmidt, who is now your wife?

Mr. McDermott: That is objected to.

The Court: If you want to attack this witness, you should not have called him in this way; he would have been called by the other side, I suppose. 10

Q. Do you know what became of Mrs. Schmidt's stock? A. Yes, sir—when the case was settled she gave up her stock.

Q. To whom? A. To you.

Q. How do you know that? A. Because you told me.

Q. It is hearsay? A. Yes, sir.

Q. And I was president of the Schmidt Realty and Construction Company at that time, as I am now? A. I don't know—or was Mr. Schroeder president; I don't remember whether it was you or Mr. Schroeder that was the president. 20

Q. In the eleven years, more or less, that you have known Mrs. Schmidt, and in recent years, did you ever go into any detailed accounting with Mrs. Schmidt as to what money was received by the corporation from her? A. Since 1911 I got to know Mrs. Schmidt intimately, much better than I knew her before, and she discussed the case with me fully since then. 30

Q. And has relied on you entirely since then? A. No, sir.

Q. Has taken your advice as to what to do? A. I think she has very good counsel.

Q. I will ask you whether it was on your advice that her counsel was selected? A. Yes.

Q. And have you taken any part in advising 40

with her counsel and directing her counsel? A. They directed me; I have not directed them.

Q. You made an affidavit in a motion that we had in this cause, in opposition to our application to open the default? A. Yes, sir, I did.

10 Q. In which affidavit you set forth that you had no professional relations with me—we simply shared offices.

Mr. McDermott: I object to the question.

Q. Do you know what kind of a mortgage this was that Mrs. Schmidt, the complainant, got?

Mr. McDermott: You mean the mortgage now sought to be foreclosed?

20 Mr. Zalkind: No—the mortgage now sought to be foreclosed.

Mr. McDermott: I submit the mortgage itself is the best evidence of that.

Q. Do you know what lien it was on the property? A. Second.

Q. Do you know what was ahead of it? A. I think a mortgage for about \$30,000 or \$26,000.

30 Q. Do you know exactly what mortgage was ahead of it at the time this second mortgage was given? A. I think a mortgage for either \$26,000 or \$30,000 was ahead of it.

Q. Do you know who held it at that time? A. I think a Mr. Anderson held it.

Q. And what became of that mortgage after that—the first mortgage? A. Which was foreclosed—

Q. What became of it—did it pass out of Mr. Anderson's hands before it was foreclosed? A. I think so.

40 Q. Do you know what became of it? A. I think Mr. Rust bought it.

Q. Do you know whether it was foreclosed? A. Yes, sir, then it was foreclosed.

Q. And do you know what happened at the foreclosure of that mortgage? A. It was foreclosed against the Schmidt Realty and Construction Company.

Q. Do you know who the parties were in that foreclosure? A. I think Mr. Rust was the complainant. 10

Q. What Mr. Rust? A. George P. Rust; the Schmidt Realty and Construction Company was one of the defendants; and Archibald C. Hart as trustee for Marie Schmidt was another defendant.

Q. Were you in my office at the time this foreclosure was started? A. I did not have desk room with you then.

Q. Were you in my office, or did you have desk room, or were you associated with me at the time this Rust mortgage was foreclosed? A. No, sir, I did not have desk room, nor was I associated with you then. 20

Q. How do you know about a foreclosure? A. From seeing copies of the record.

Q. What occasion did you have to go and see copies of the record? A. When we were preparing this case for trial we had a search made in the County Clerk's Office in Bergen County. 30

Q. We? What do you mean by "we"? A. Mr. McDermott, Mr. Eichmann and myself.

Q. That was how long ago when you were preparing to institute these foreclosure proceedings, and when this sale at the foreclosure took place? A. That was about a year ago.

Q. Did you know there was a foreclosure pending by George P. Rust? A. Yes, sir.

Q. Do you know how long ago that was? A. I think that foreclosure was in 1914, or 1913. 40

Q. And didn't you know that foreclosure was pending before this search was made? A. I did not know definitely about it; I knew the suit was pending.

10 Q. Were you not on friendly terms with me all the time up to this recent dispute as to whether you gave me an oral extension of time to answer or not? A. Not since 1911 have I been on intimate terms with you.

Q. Do you know when the sale on the Rust foreclosure took place? A. No, sir, I do not.

Q. Were you married at that time? A. I was married in November, 1914.

Q. And were you not on intimate terms with Mrs. Schmidt since 1911? A. Yes, sir.

20 Q. And were you not interested in whether she was going to be wiped out entirely by reason of her taking a second mortgage subsequent or junior to the Rust mortgage in 1911, and subsequent to 1911? A. In 1911 she still held this mortgage.

Q. Were you interested in finding out what was going to happen to her interest by reason of her having a second mortgage that was subsequent and was threatened to be wiped out on the foreclosure of the Rust mortgage? A. Yes, sir, I was interested—in a way.

30 Q. What do you mean? A. I was not as interested then as I was later on.

Q. In what way were you interested? A. I visited her home to see her granddaughter.

Q. You were interested in her saving what she could out of the smash-up? A. Yes, sir.

Q. Were you present at the sale on the foreclosure? A. No, sir.

Q. Did you know when the sale took place? A. No, sir.

40 Q. Didn't you know at the time of this sale of

the Rust mortgage that preceded the Schmidt mortgage—were you not interested sufficiently to know what took place at that sale? A. I know that a sale took place.

Q. And at the time it took place, didn't you know it was about to take place, or that it had taken place and how it affected Mrs. Schmidt's interest? 10

A. I know the mortgage was foreclosed, and that Mrs. Schmidt through Archibald C. Hart was a defendant in the foreclosure—that she was in danger of being wiped out by the foreclosure; that Archibald C. Hart was her attorney; that he was taking care of her interest, and he said he would look out for her, and that is all that I knew at the time.

Q. Did you have any interest in trying to get a first new mortgage for her to protect her interest?

A. I made no effort. 20

Q. Do you know what became of the property that was sold under that foreclosure; do you know who bought it? A. Yes, sir.

Q. Who bought it? A. The Maywood Land Company.

Mr. McDermott: I object to this question as somewhat ambiguous; the impression seems to prevail that this first mortgage foreclosed the entire property we are interested in. I think Mr. Zalkind should ask his question in such a way as to show that the mortgage only affected a part of the property. 30

Q. Do you know whether Mrs. Schmidt had any subsequent connection with the property or interest in, or relation to, the property that was sold under the Rust foreclosure? A. Yes, sir.

Q. What interest did she have? A. After that first mortgage was foreclosed, in which Mrs. 40

Schmidt was a defendant, Mr. Archibald C. Hart, in accordance with his promise, gave Mrs. Schmidt a third mortgage as security for the payment of a mortgage which she is seeking to foreclose in this action.

10 Q. Mr. Archibald C. Hart personally, as the maker of a third mortgage, gave Mrs. Schmidt a mortgage on the property that was sold by Mr. Rust? A. No, sir.

Q. Were you present at the sale under the Rust foreclosure? A. No, sir.

Q. Mrs. Schmidt received a mortgage for how much—a third mortgage for how much, and from whom and on what? A. She received a third mortgage made by the Maywood Land Company.

20 Mr. McDermott: This is all a matter of record—mortgage made by the Maywood Land Company to Archibald C. Hart, trustee of Marie Schmidt, dated March 11, 1914, approved March 11, 1914, recorded March 13, 1914, in the Bergen County Clerk's office, in Liber 323 of Mortgages, pages 171, &c.; the amount of that mortgage is \$19,113.00. That mortgage contains this

30 recital: "It is covenanted and agreed between the parties to this mortgage and bond accompanying it, that where the mortgagee (that is Archibald C. Hart, as trustee, but appearing individually)—any mortgage hereinafter mentioned at the present time—possesses a mortgage upon realty given as security for the payment of principal before described in this mortgage, and the bond accompanying it, upon other realty than that

40 described herein (they don't want it to merge) should the party of the second part (that is, Mr. Archibald C. Hart, trustee, or

Mrs. Schmidt either) receive any payment from such other realty or from any other source, upon said bond and mortgage, it is to be credited upon the principal of this mortgage and the bond accompanying."

Q. Does Mrs. Schmidt own that mortgage now? 10

A. No, sir.

Q. Do you know what became of it? A. Yes, sir.

Q. You are referring now to the 1914 mortgage, the Maywood Company mortgage? A. It was either cancelled or satisfied for the sum of \$6,000.

By the Court:

Q. Did you cancel it for her? A. No sir; Mr. McDermott did. 20

Further Direct:

Q. To the best of your recollection can you say what notice of that mortgage was given to this defendant, the Schmidt Realty and Construction Company?

Mr. McDermott: I object to the question.

Mr. Goldenhorn: If Mr. Hart accepted this mortgage as security for the indebtedness of the Schmidt Realty and Construction Company, and they then accepted \$6,000 in satisfaction of a \$19,000 mortgage, without knowledge to us, it seems to me they have thereby cancelled any obligation they have against us. 30

By the Court:

Q. Do you know whether the defendants were advised of the transaction? A. I knew Mr. Zal-kind knew. 40

Further Direct:

Q. You thought I knew? A. Yes, sir.

Q. How do you know that? A. Because you talked to me about it.

10 Q. When? A. You called me up numerous times to find out what was going on, and you were at my office.

Q. When was this? A. That was in 1915 and 1916.

20 Q. Didn't you testify that since 1911 we have been sort of scarce to each other and we did not get together much? A. We have not been intimate, but we were not unfriendly; you met me at my office and we discussed the situation and you called me up on the telephone at times; we spoke to each other; we did not stop greeting each other.

Q. Was any written notice given to any of the other interests that they were about to sell this third mortgage? A. Not that I know of.

Q. The Maywood Company consisted of whom; and how did the Maywood Company come to be the owner of this property? A. They bought it in under foreclosure, I suppose; I don't know.

30 Q. Do you know who incorporated the Maywood Company? A. I don't know.

Q. The mortgage that you are now seeking to foreclose covered all of this property, 140 lots, and didn't it cover also all that was covered by this new mortgage? A. I don't know.

Q. What did the mortgage you are now attempting to foreclose originally cover? A. It covered the entire Schmidt Realty and Construction Company tract with the exception of some property.

40 Q. And in that tract were the 900 lots that were foreclosed under the Rust mortgage, and the lots that you are now trying to foreclose — A. This

mortgage was a second mortgage against a large tract, and the first mortgage against about 140 lots; the second mortgage was foreclosed by the Rust foreclosure.

Q. How did it become a first mortgage as to part of those lots? A. I don't know.

Q. Don't you know this whole mortgage, the Schmidt mortgage as it was originally, was a second mortgage as to everything that it covered; that it was not a first mortgage as to anything, particularly not as to this 140 lots? A. I think that is correct, but I am not sure about that. 10

Q. What do you know about the releases that were given by Mrs. Schmidt under the original mortgage, under the Maywood mortgage, and do you know what moneys were received? A. I know generally that she executed releases for that Schmidt Company. 20

Q. Do you know anything about values of property in Maywood? A. No, sir.

Q. Nothing at all? A. I have a vague idea.

Q. You own some property there? A. Yes, sir.

Q. What did you own? A. I owned a triangle of about six lots.

Q. How long did you own it?

Mr. McDermott: I object. 30

The Court: Objection sustained.

Q. What did those lots cost you, and how did you get them?

Mr. McDermott: Objected to.

The Court: Objection overruled.

A. I loaned you money, and you could not repay it, and you gave me those lots. 40

Q. Have you sold those lots? A. Yes, sir.

Q. How much did you get for those six lots?

A. I received \$150 in cash, and a thousand-dollar second mortgage against a house and lot in Maywood; then I received \$100 on the second mortgage and sold the balance of the second mortgage, amounting to \$900.

10 Q. So you got for that triangle, which was six lots—they were full lots were they? A. They were irregular.

Q. A total area of what—about four lots? A. About five or six lots.

Q. You got \$1150 for that? A. I did not.

Q. You got \$150 cash? A. Yes, sir.

Q. Now, the lots that are sought to be foreclosed here, 140 approximately, are they of an average value equal to those lots? A. No, sir.

20 Q. What sizes are these lots that you are seeking to foreclose; what size are these 140 lots that you are seeking to foreclose? A. 25 feet by 100 feet.

Q. You cannot swear to that? A. No, sir.

Q. You have had occasion to look at the map in the course of the preparation of these papers? A. Mr. Eichmann got up a map that I looked at with him.

30 Q. Did Mrs. Schmidt, the complainant in this foreclosure, assign that Maywood Company mortgage—the \$19,000 plus something mortgage? A. She got \$6,000.

Q. Did she assign it? A. I don't know about that.

Q. Was it assigned? A. I don't know whether it was assigned, cancelled or satisfied.

Q. Did Mr. McDermott handle this transaction of the \$6,000 mortgage? A. Yes, sir.

40 Q. Entirely? A. Yes, sir.

Q. You did not? A. I consulted with him and spoke to him about it.

Q. Did Mr. McDermott serve any notice on anybody that this mortgage was to be assigned or cancelled or destroyed? A. I don't know whether he did or not.

Q. Was any written notice served on the Schmidt Realty and Construction Company? A. I don't know. 10

Q. Or any other defendant, or anyone else that was interested, that this mortgage was about to be assigned or given away or cancelled? A. I don't think so.

Q. Do you know exactly what releases were given by Mrs. Schmidt or by Mr. Hart as her trustee under this third mortgage of the Maywood Company, what releases, and on what lots? A. They are all matters of record. 20

Mr. McDermott: That is a matter of record, and we have a complete list of them, and counsel are welcome to them, of course.

Q. Did you keep Mrs. Schmidt's books at the time these transactions were going on? A. No, sir, I did not, and Mrs. Schmidt kept no books.

Q. Do you know what this \$2,730 consists of? 30

Mr. McDermott: The \$2,730 is moneys paid to Mrs. Schmidt for releases of the mortgage under foreclosure. The sum of \$1140 represents moneys paid to Mrs. Schmidt for releases of the Maywood mortgage; that is, those payments were made either to Mrs. Schmidt or to Mr. Hart, who, at one time, held the mortgages as trustee, and the \$6,000 was received on the cancellation of the Maywood mortgage. 40

Mr. Zalkind: Can you give us the details of the lots released, and the amounts of the \$1,140 and \$2,730?

Mr. McDermott: Certainly.

10 Q. What did this \$1,140.00 consist of? A. I don't know.

Q. Do you know whether Mrs. Schmidt originally, when she got her stock in the company originally, whether she paid any cash money for the stock?

20 Mr. McDermott: I object to the question on the ground that there was an admission in the original answer filed by the defendants, and the proof is also to the same effect, that the consideration of this mortgage was the settlement of a Chancery suit brought by this complainant against the same defendant and Mr. Zalkind, in which the complainant set up that the title to this Maywood property was purchased by her funds, and on the understanding that the title was to be in her name, and that title was placed in the name of the Schmidt Company, and an action was brought to set aside the title, and there were also charges of fraud, and in settlement of that this mortgage was given. That, of course, constitutes a proper consideration for a mortgage, and I think that it is not proper now to go into the question of how much stock she had and how much she paid for the stock originally.

30 40 The Court: Was there a final decree?

Further Direct:

Q. Did she pay cash for the stock? A. She claimed she paid something like \$37,000, and you claimed she only paid \$23,000.

Q. You don't know, of your own knowledge; this was before you had desk room in my office—in 1905, wasn't it? A. I know of my own knowledge that she paid money. 10

Q. Were you present when she paid the money? A. I was present when she made a mortgage of #869 Amsterdam Avenue.

Q. Please commence at the beginning. A. I was present when she executed a mortgage—the first mortgage of \$8,000, and that money was paid to Mr. Zalkind for the company.

Q. Do you know how much was released on that mortgage and what became of it? A. I know it was \$8,000. 20

Q. Was that money turned over to Mr. Zalkind? A. Yes, sir, substantially \$8,000, I think it was \$8,780.00.

Q. Where do you get those figures? A. From recollection.

Q. Do you know whether the title to 869 Amsterdam Avenue was good? 30

Mr. McDermott: Now, I object.

The Court: The objection is sustained.

Q. When did this transaction take place with reference to Amsterdam Avenue? A. I think in the early part of 1907—in March, 1907, I think.

Q. Cannot you make a definite statement as to the date; can you tell us whether all of this money was paid at one time or two or three years apart? 40

Mr. McDermott: Objected to as asking several questions in one.

10 Q. Can you state, of your own knowledge, whether all of the money claimed by Mrs. Schmidt to have been paid for stock was paid in at one time or at various times? A. She paid it in at various times.

Q. Two or three or four or five times; do you mean two installments or three installments from 1908? A. This I know from my being in your office, and from talks with Mrs. Schmidt, from 1905 to 1907, Mrs. Schmidt claimed that she advanced \$27,000 or \$29,000.

20 Q. Do you know what was paid; what payments did she make it in? A. She claimed that she paid \$500.00 two different times; two other times \$1,000 each, and she conveyed property that she owned, and the company used the funds to buy the Maywood property with the proceeds of that sale, and that at various times she advanced about \$1,000 in installments, making in all about \$27,000.

Q. Do you know whether the titles to each of these properties was bad? A. I know from what you told me.

30 Q. Didn't you take part in helping to cure the defects in each of those titles? A. I assisted you in making searches.

Q. And you were in my office at the time the \$8,000 loan was made? A. Yes, sir.

Q. And do you know that that property had been sold by Mr. Schroeder several years before? A. I don't know.

40 Q. Do you know whether out of this \$8,000 loan that was made on the Amsterdam Avenue property, whether that was not made after I had spent a great deal of time in curing the defective title?

Mr. McDermott: Objected to.

The Court: Objection sustained.

Q. Do you know whether, at the time of the making of that loan, the Title Guarantee and Trust Company retained \$1,000 to cover certain advances out of the thousand dollars?

10

Mr. McDermott: Objected to.

The Court: Objection sustained.

Q. Do you know whether Mrs. Schmidt has at times, various times, received money from the Schmidt Realty and Construction Company? A. I don't know, except what she told me.

Q. Outside of releases? A. Except that she told me.

20

Q. Didn't you ever see a check from the Schmidt Realty and Construction Company to her? A. I may have done so.

Q. Do you know whether Mr. Hart ever received a detail statement from me during these proceedings, of the moneys— A. I don't know.

Q. Do you know whether at the time of the settlement whether there was any money paid by Mrs. Schmidt to the Schmidt Realty and Construction Company in the settlement of that account? A. I know there was not.

30

Q. The stock that you turned over to the corporation was the stock of the Schmidt Realty and Construction Company? A. Yes, sir.

Q. There was no other stock? A. No, sir.

Q. Also do you know whether originally and until 1907, whether I had any knowledge or interest in the company other than being its legal adviser, or any relation to Mrs. Schmidt other than being a legal adviser— A. I don't know the date,

40

but I know you owned one share of stock, and you became the President of the company.

Q. Do you know how that came about? A. You bought the majority of the stock from Mr. Schroeder for a promissory note for \$4,000.

10 Q. And the company was in a rather precarious condition? A. The company was always in a precarious condition, and so were its officers.

Q. Do you know why you came to my office, why you got desk room in my office?

Mr. McDermott: Objected to.

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20 MRS. MARIE SCHMIDT, being duly sworn, testified as follows:

Direct Examination by Mr. Goldenhorn:

Q. I show you a paper which has been marked "Exhibit D1 for identification," and I ask you if that is your signature to that paper? A. Yes, sir.

Q. And had you seen that paper before? A. Yes, sir.

30 Q. Was it read to you by anyone? A. No, sir, I did not read it.

Q. Do you recall your having an attorney; do you recall your having an attorney by the name of Hart, Archibald C. Hart? A. Yes, sir.

Q. And that is his signature as the witness to it? A. I wrote my name by him and I did not know what I wrote.

Q. When you did write your name, your name was witnessed by A. C. Hart? A. Yes, sir.

40 Q. And you recognize his signature there, too? A. Yes, sir.

Mr. Goldenhorn: I now desire to offer this paper in evidence.

The Court: I will receive it subject to any objection as to its materiality.

Q. Now, Mrs. Schmidt, do you recall at any time the Schmidt Realty and Construction Company paying to you any moneys; did you ever receive any moneys? A. Release money, but not before I got Mr. Hart. 10

Q. Mrs. Schmidt, before this paper, "Exhibit D1," which I have offered in evidence, before you signed that paper, did you have any talk with Mr. Zalkind, the gentleman who is here (indicating), and with Mr. Hart about a settlement of your difficulties? A. No, sir.

Q. Do you recall giving up some stock of the Schmidt Realty and Construction Company? A. That is what Mr. Hart said. 20

Q. And whatever he told you to do, you did? A. Yes, sir.

Q. Did he tell you to turn over this stock to the company at the time you got the mortgage? A. Yes, sir.

Q. Did you turn over any money at that time, or did you just turn over the stock? A. Just the stock, and Mr. Hart said that Mr. Zalkind was to make a settlement, and he said he wanted to give me a \$20,000 mortgage, and I said to Mr. Hart, "I cannot do that; I worked hard for my money in my young years." 30

Q. Do you recall when the mortgage was foreclosed by Mr. Rust? A. I did not know anything about that.

Mr. McDermott: She was in Europe at that time. 40

Q. Do you remember when the property was sold up there, do you? A. No, sir.

Q. But you did hear it was sold? A. Some time after.

Q. Then you got another mortgage, didn't you, on the property? A. No, sir.

10 Q. Do you remember Mr. Hart giving you a mortgage on the property? A. Yes, sir.

Q. Now, that mortgage you sold for \$6,000, didn't you; do you remember that? A. It is too long ago.

Q. Do you recall how much money you got back altogether? A. I got very little from that; Mr. Zalkind had so many judgments.

Q. Did you know Mr. Schroeder? A. Sure.

20 Q. At the time you were doing business with Mr. Zalkind, he was simply your lawyer, wasn't he? A. Mr. Schroeder came first in my house.

Q. He tried to get you to invest your money in real estate? A. No, sir; I am 66 years of age—

Q. Can you tell us about how much you got back of all these mortgages; do you know how much you got in cash? A. About \$2,600.00 release money—I don't know.

Cross Examination by Mr. McDermott:

30 Q. Mrs. Schmidt, whom did you meet first, Mr. Schroeder or Mr. Zalkind? A. Mr. Schroeder.

Q. And Mr. Schroeder introduced you to Mr. Zalkind? A. Yes, sir.

Q. Then Mr. Schroeder became president of the Schmidt Realty and Construction Company? A. A. I did not know at that time that it was a company.

40 Q. When Mr. Schroeder first came to your home, what did he say to you?

*Philip Zalkind—Direct Examination*

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Mr. Goldenhorn: Objected to as incompetent, irrelevant and immaterial.

Q. Now, did you give Mr. Zalkind any money?

A. Yes, sir.

Q. You gave \$500.00 to Mr. Schroeder when Mr. Zalkind was there? A. Yes, sir.

10

Q. Did they tell you what they were going to do with the \$500?

Mr. Goldenhorn: Objected to as not cross examination, and it is going into the details of the suit.

The Court: It is not proper cross examination but if he desires to make her his own witness, all right; the objection is sustained.

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PHILIP ZALKIND, sworn in behalf of the defendants, testified as follows:

Direct Examination by Mr. Goldenhorn:

Q. You are a member of the Bar of New York and New Jersey? A. Yes, sir.

30

Q. And what office do you hold in the Schmidt Realty and Construction Company? A. I am president of the Schmidt Realty and Construction Company, but I guess a more accurate technical designation would be this—that the corporation has been dissolved for non-payment of franchise tax. Under the New Jersey Statutes it exists for the purpose of liquidation and such things as we are doing now.

Q. Now, do you recall this transaction of the giving of a mortgage—do you recall the transac-

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tion of the giving of a mortgage to the complainant in this case? A. Yes, sir.

Q. Just tell us the circumstances under which you met Mrs. Schmidt originally, and under which the original mortgage was given.

10 Mr. McDermott: Objected to on the same ground that I made on my other objection, without stating it in detail.

The Court: The objection is overruled.

20 Mr. McDermott: Since that time, too, the instrument of settlement has actually been put in by the other side. As to the original transaction they have put in themselves, they have called Mr. Solomon, who testifies to the litigation that was pending, and the fact that that litigation was settled by the giving up of Mrs. Schmidt's stock to the corporation, and the execution by the corporation to her of this mortgage now under foreclosure. They proved that by Mr. Solomon, and they proved by putting in the paper itself, which is evidence of settlement actually entered into at that time; I submit that under that, this testimony as to what Mrs. Schmidt originally invested, is not only im-

30 material and irrelevant, but it is absolutely incompetent. They have already put in the best evidence of what the consideration was and the circumstances under which this mortgage was given.

The Court: I shall sustain the objection.

Q. As a result of whatever negotiations there were pending in court or otherwise over this mortgage now sought to be foreclosed, there was this agree-

40 ment entered into called "Exhibit D-1," is that

right? A. Yes, sir, that was the agreement of settlement.

Q. What were the circumstances attendant upon the making of that agreement; why was that agreement made?

Mr. McDermott: Objected to.

10

The Court: Objection sustained.

Q. At the time that agreement was made—I will read this. (Mr. Goldenhorn reads the memorandum of agreement.) Now, Mr. Zalkind, after the execution of that agreement, was there a mortgage made to Mrs. Schmidt for \$20,000? A. Yes, sir.

Q. This mortgage that is now sought to be foreclosed? A. Yes, sir.

Q. Is that right? A. Yes, sir.

20

Q. Now, that mortgage included all the lots at Maywood? A. All of the lots with very few exceptions.

Q. And in addition to that mortgage there was a mortgage that was foreclosed on part of these lots? A. There was a mortgage on all of these lots that was subsequently foreclosed. This mortgage at issue was a second mortgage entirely; it was not at that time first as to anything. It became a first subsequently as to these 140 lots when I refinanced the first mortgage in order to get a better release clause. I also arranged to have these 140 lots released from what was the first mortgage, and this mortgage then became a first mortgage.

30

Q. Only as to these 140 lots? A. Yes, sir.

Q. When we refer then to the third mortgage that was assigned by Mr. Hart to Mrs. Schmidt, the complainant, what did that cover? A. The third mortgage was a mortgage given by a new corporation which took over through the resources

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and assets of the old corporation, the 900 lots, more or less, that were sold under the Rust foreclosure.

Q. Now, then, after that foreclosure, that is, the Rust mortgage foreclosure, were you apprised of the fact that the complainant, Marie Schmidt, had obtained that mortgage? A. No, sir.

10 Q. Were you apprised by her that she had subsequently sold that mortgage? A. No, sir.

Q. Was the Schmidt Realty and Construction Company, to your knowledge, ever apprised officially or otherwise of the sale of any property covered by any mortgage which Mrs. Schmidt had through Mr. Hart? A. I got these various items of information subsequently, after they had taken place through Mr. Corbin, and in other ways.

20 Q. How long after was it that you were first apprised of the situation whereby the complainant herein obtained the other security for the indebtedness due by the Schmidt Realty Construction Company to her? A. The property was purchased in the Rust foreclosure; the 900 lots were purchased at the Rust foreclosure by William L. Wemple, who was helping me, and he purchased it at the sale—he was present at the sale—in the name of himself. He had been negotiating for me with Mr. Hart, who was acting for Mrs. Schmidt, and who was  
30 trying to help save the situation in the interest of Mrs. Schmidt. Mr. Wemple was carrying on the negotiations with Mr. Hart for us; Mr. Hart represented Mrs. Schmidt. Also, in the course of all that, I was making efforts to find a new mortgage. The situation that produced the foreclosure—I don't suppose I ought to go into that—Mr. Wemple, acting for the Schmidt Realty and Construction Company was negotiating for me. That foreclo-  
40 sure of the Rust mortgage was pending and had been pending for a considerable time, and I was

getting adjournments, and I was making efforts myself and through brokers, and particularly through a broker named Mears.

The Court: Strike this answer out.

Recess to 2 P. M.

10

After recess.

PHILIP ZALKIND, resumes the witness stand.

Direct Examination (continued) by Mr. Goldenhorn:

Q. Mr. Zalkind, at the time this property was bought in at the foreclosure, under the Rust mortgage, do you know who bought it in? A. William L. Wemple and A. C. Hart.

20

Q. Wemple you said this morning was your attorney, the attorney for the Schmidt Realty and Construction Company? A. Yes, sir.

Q. And Mr. Hart represented the complainant in this case? A. Yes, sir.

Q. And do you know why it was bought in in their joint names? A. They bought it in.

30

Q. Was that in pursuance of an understanding between you, representing the Schmidt Realty and Construction Company, and Mr. Hart, representing the complainant? A. No, sir.

Q. Was it in pursuance of any agreement and understanding between you and the complainant? A. No, sir.

Q. How was it arrived at then?

Mr. McDermott: Objected to.

40

Q. Mr. Wemple had been the attorney for you and for the Schmidt Realty and Construction Company for how long prior to that foreclosure? A. I cannot tell you exactly, but for a considerable time.

10 Q. And was Mr. Hart the representative and attorney for the complainant in this case? A. Yes, sir.

Q. And he had been for some time prior to that foreclosure also? A. Yes, sir.

Q. What were the facts, so far as you know, and only of your own knowledge, with respect to the purchase of this property at that foreclosure sale by Mr. Wemple and Mr. Hart?

20 Mr. McDermott: Objected to, and I reserve my right to strike it out. I object to the question now. It is one of those things which gives a witness an opportunity to ramble on about a great many things; it is too general.

The Court: Limit it as far as you can, Mr. Goldenhorn.

By the Court:

30 Q. Were you present at any of these conversations between Mr. Wemple and Mr. Hart? A. No, sir, I was not present.

Further Direct:

Q. How did you learn about it? A. Wemple reported to me.

The Court: Then we don't want it.

40 Q. By reason of what he reported, did you take up the matter with Mr. Hart? A. I never personally dealt with Mr. Hart.

Q. Did you deal with Mrs. Schmidt always? A. No, sir.

Q. Then you don't know, of your own knowledge, how it was that the property was bought in?

A. Yes, I do know that.

Q. How did you acquire that knowledge? A. Mr. Wemple was the attorney for the Schmidt Realty and Construction Company and was helping me to straighten out the affairs of the company. Mr. Hart was looking after the interest of Mrs. Schmidt; the Rust mortgage was under foreclosure. It became necessary, in order to save the property, to find a new first mortgage. I engaged as a broker for the property— 10

Mr. McDermott: I submit this has not anything to do with it at all. 20

The Court: Answer strictly one way or the other.

The Witness: I was present at the sale.

Further Direct:

Q. When you were present at the sale did you have any talk with Mr. Wemple or with Mr. Hart; did you hear them talking among themselves? A. I was present at the sale; Mr. Wemple purchased it and told the sheriff that he was buying for himself and Mr. Hart. 30

Q. Was Mr. Hart there at the time, or anyone representing him? A. I think that either he or somebody representing him—it was bought in his name and Hart's.

Q. After the purchase in the name of Hart and Wemple, do you know whether the Maywood Company was formed and who constituted that company? A. I have a copy of the certificate of incorporation of the Maywood Company. 40

Q. Do you know who composed that company?  
A. William L. Wemple, A. C. Hart, Robert D. Kent, W. Howard Mears and Edward F. Hackett; those were the incorporators.

10 Q. How long after that company was incorporated was it that the company gave the mortgage, the third mortgage, to Mr. A. C. Hart, as trustee?

Mr. McDermott: March 11, 1914.

The Witness: \$19,113.34.

Q. Now, then, were you told, or was your company told in any way that that mortgage had been made to Mr. Hart as trustee, and that it was subsequently transferred by assignment to the complainant in this cause? A. Yes, sir.

20 Q. When were you told about it? A. I was told some time after the mortgage was made—by Mr. Corbin.

Q. Did you know, or did your company know, to your knowledge, that Mr. Hart assigned that mortgage to the complainant, the new third mortgage? A. I got that information from Mr. Corbin.

Q. And that was subsequent to making of the mortgage? A. Yes, sir.

30 Q. Were you told by the complainant or by anyone representing her, or was your company informed that she was going to sell or cancel that mortgage? A. No, sir.

Q. When did you learn of that first? A. I learned of it recently.

Q. Didn't you learn it when the bill of complaint was filed in this case? A. No, sir, I knew it a little before that.

Q. Who told you about it? A. I think Mr. Wemple did.

40 Q. Had you at that time, the time that the mort-

gage was given to Mr. Hart as trustee, had you any idea of the value of the property upon which that mortgage was given? A. Yes, sir.

Q. Now, Mr. Zalkind, at the time when the stock was turned back, as you say, to your company, in consideration of the making of this mortgage, the subject matter of this foreclosure, can you tell us how many shares of the stock of your company, and the character of the stock it was that was turned over? A. Yes, I think it is in the answer (Witness turns to the answer); common stock 122 shares, par value \$100.00; preferred stock, 234 shares, par value \$100.00. Mrs. Schmidt was the only stockholder who had any preferred stock. 10

Q. She was the only preferred stockholder? A. Yes, sir.

Q. With 234 shares? A. Yes, sir. 20

Q. Was there any money turned over at that time? A. When?

Q. In consideration for that mortgage? A. No, sir.

Q. Had Mrs. Schmidt ever made any demand on your company for any part of the principal sum of this mortgage? A. When the mortgage was first given in 1908, it was given without any thought other—

Q. (Question read). A. For the principal—no, sir. 30

Q. Were you ever given a statement by Mrs. Schmidt, or by anyone representing her, of the amount of money which she had received in the Maywood, or for any of these? A. No, sir.

Q. When did you first learn that she had received \$6,000 from the Maywood Company? A. From Mr. Wemple—sometime before this action was commenced.

Q. That would be in the year 1918? A. I think so. 40

Q. Were you ever told by anyone that they had collected releases in the neighborhood of \$2730.00?

A. Probably that much that I had paid out to them on some releases; that was probably releases paid on the original mortgage—on the original second mortgage she had.

10 Q. But you never received any statement of what they demanded just before this foreclosure? A. No, sir.

Cross-examination by Mr. McDermott:

Q. When was the last interest paid on the mortgage under foreclosure? A. I cannot tell you exactly, but some years ago; it was before the commencement of the foreclosure of several years ago, which was abandoned.

20

By Mr. Goldenhorn:

Q. For the purpose of this case, I think the record should show, in justice that they would be entitled to interest from June 19, 1912, if they are entitled to anything—is that right? A. I don't know.

Q. There was no interest paid since the time of the Rust foreclosure? A. No, sir, I am quite sure there was not.

30

Q. Was the Schmidt Realty and Construction Company a party in that Rust foreclosure? A. Yes, sir.

Q. And Mrs. Schmidt or A. C. Hart, as trustee for Mrs. Schmidt? A. I think so.

Q. And was a final decree entered against the Schmidt Realty and Construction Company? A. I don't know; I presume so.

40

Mr. Goldenhorn: The record shows that.

The Witness: I want to say that the Maywood Company, or Wemple and Hart, acquired what they acquired without putting up a single dollar of their own money; that what they took title with was the proceeds of loans on the very property that they took.

Mr. McDermott: I move to strike that out. 10

Mr. Goldenhorn: I think this is very material.

Mr. McDermott: I move to strike that out; the witness is speaking from some conclusion or other about it.

Both sides rest.

Mr. Zalkind: We submit that Mr. Wemple and Mr. Hart are in the position of resulting trustees. 20

The Court: This case will be adjourned to one week from to-day, at Jersey City, and if they make the application to restrain the action, as I suppose they are going to do, I suggest he will probably give notice to the other side, so that they will know.

Adjourned to March 13, at 10:30 A. M.

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## IN CHANCERY OF NEW JERSEY.

10	Between <p style="text-align: center;">MARIE SCHMIDT, Complainant,</p> <p style="text-align: center;">and</p> <p style="text-align: center;">SCHMIDT REALTY &amp; CONSTRUCTION COMPANY, et al., Defendants.</p>	}	On Bill to Foreclose.
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## TESTIMONY.

20 Continuation of the taking of testimony in the above-entitled cause, at the Chancery Chambers, Jersey City, New Jersey, on the twenty-fifth day of March, 1919, before Hon. VIVIAN M. LEWIS, Vice-Chancellor.

Same appearances as before noted.

30 A. S. CORBIN, being duly sworn, testified as follows:

Direct Examination by Mr. Zalkind:

Q. You are a member of the Bar of New Jersey?

A. Yes, sir.

Q. And you have been practicing law how long?

A. Since 1902.

40 Q. You are an officer and general counsel of the Guarantee Mortgage and Title Insurance Company? A. Yes, sir.

Q. How long have you been an officer and counsel of that company? A. I have been an officer since 1905, and counsel since 1913.

Q. And you have been associated with that company since 1905? A. Yes, sir.

Q. Since its organization? A. Yes, sir.

Q. And you have had a great deal of experience in connection with real estate and the valuation of real estate in New Jersey? A. Yes, sir. 10

Q. Since your connection with the company the loans made by that company were made in part on your valuation? A. In part.

Q. And you have had to do with real estate, buying and selling, the valuation, for how long? A. About twenty years.

Q. You are acquainted with practically all real estate development in the northern part of New Jersey? A. A large part. 20

Q. Are you acquainted—do you know where Maywood, New Jersey, is? A. Yes, sir.

Q. Do you know the property known as Maywood Heights? A. Yes, sir.

Q. Have you on any occasions made any inspections of the property? A. Yes, sir.

Q. Are you well acquainted with the property? A. Yes, sir, I am.

Q. Have you made loans on the property? A. Yes, sir. 30

Q. Loans on the property as a whole and on various parts of the property? A. Yes, sir.

Q. Have you made building loans on the property? A. Yes, sir.

Q. And mortgages loans on building? A. Yes, sir.

Q. Do you know Maywood Avenue? A. Yes, sir.

Q. And Passaic Street? A. Yes, sir.

Q. And Spring Valley Road? A. Yes, sir. 40

Q. And Palmer Avenue? A. Yes, sir.

Q. Do you know those are public, macadamized streets? A. All excepting Palmer Avenue, I should say.

Q. You have seen maps of this property? A. Yes, sir.

10 Q. That you have known to be correct maps? A. Yes, sir.

Q. I show you map entitled "Map of Maywood Heights, Maywood, New Jersey, 1911, Frederic R. Page, C. E., 50 Church Street, New York."

Mr. McDermott: I object to the map as a map of the property.

The Court: The objection is sustained.

20 Mr. Zalkind: I offer map of Maywood Heights, Maywood, New Jersey, Alfred W. Williams, Engineer and C. E., Hackensack, New Jersey, 1906.

Mr. McDermott: I object to it.

Q. Have you ever seen the map referred to in the bill of complaint as "Map 993, filed April 3;" have you ever seen that map? A. I don't know what is referred to in the bill.

30 Q. You have examined the tile of this property a great many times? A. Yes, sir.

Q. And in the course of various examinations, you have had occasion to refer to map on file? A. Yes, sir, there is a number of maps.

Q. Three maps? A. Yes, sir.

Q. Can you tell whether this map is the map on file in your office, and on file in the County Clerk's office as the first map filed of the Maywood property? A. This is a copy of one of the maps; I don't know whether it is the first one or not.

40

Mr. McDermott: I object.

The Court: The objection is sustained.

Mr. Zalkind: Can I have the witness follow this for his own guidance?

The Court: Not if there is objection to it, no.

Q. Do you know the lots on Passaic Street, adjoining—on the North side of Passaic Street—adjoining on the East, adjoining on the West, I mean—the property of Van Saun? A. Yes, sir. 10

Q. Do you know the lots, five lots, a corner 25 feet by 100 feet at the corner of Passaic Street and Oak Avenue, an adjoining lot 25 by 100; adjoining to that 25 by 100; adjoining that 32 by 100; and adjoining that 73 55/100 feet front by 100 feet in depth by 48 99/100 feet on the rear line, by 105 feet on the Easterly line, being a plot consisting of six lots therein at the Northeast corner of Oak Avenue and Passaic Street, mentioned in release by Hart to Schmidt Realty and Construction Company, dated December 3, 1908, release recorded in Liber 18, page 441, mentioned in paragraph 7 of the bill of complaint; can you tell us the value of those lots? 20

Mr. McDermott: Objected to as immaterial and irrelevant. 30

This mortgage, which was drawn by Mr. Zalkind, provides for releases at a certain amount and the complainant was bound to release; Mr. Hart simply held the mortgage for the complainant; he was bound to release at that price whatever the value might be.

Mr. Zalkind: We have set forth in our answer that the mortgage is void, and we have asked for a return among other things; 40

we have set forth a demand for the return of the money received on releases.

The Court: That you can have on an accounting, if you prevail.

10

Mr. Zalkind: As a matter of law those who hold those mortgages that were affected by the releases on mortgage are entitled to deduct the value of the lots.

The Court: That is all on a subsequent proceeding in case you reach such a point; I will give you the right to an accounting if you prevail. This is an out and out foreclosure. I think the objection at this time should be sustained.

20

Mr. Zalkind: Then I will proceed to examine along the same line as to lots that were released not under this mortgage, but under the mortgage received by the complainant from the Maywood Company, which we say constitutes payment.

The releases from that subsequent mortgage received by Marie Schmidt from the Maywood Company we have nothing to do with.

30

Q. No, do you know that block of lots bounded on the South by Passaic Street, on the North by Pleasant Avenue—on the East by Oak Avenue—and on the West by Bergen Avenue? A. Yes, sir.

Q. Can you state the value of the lots? (Speaks to Mr. Eichmann). The lot numbers given to me by Mr. Eichmann as contained in Liber 34, page 62 covers, among other lots, Nos. 34, 35, 36, 37 and 38 in Block B; do you know where the old stone farmhouse and barn are located on the Maywood property? A. Yes, sir.

40

Q. On the Northwesterly quarter of the property? A. Yes, sir.

Q. Did you ever see and inspect that stone house? A. I have seen it.

Q. Can you tell me the value of lots in that part of the property?

Mr. McDermott: Objected to; it is utterly immaterial as far as anything can be seen at this time; there are two kinds of releases referred to; the releases under the other mortgage which was made by the Maywood Company to Mrs. Schmidt, and after both Mrs. Schmidt and the Schmidt Company had been foreclosed and sold out by the Sheriff, and under a provision in that mortgage which provides for a fixed price, for releases also. 10

The Court: Doesn't he have to establish that this mortgage was given in payment? 20

Mr. Zalkind: This mortgage was given in place of the old mortgage.

The Court: I shall sustain the objection at this time.

Mr. Zalkind: My understanding is this—

The Court: If you believe that this mortgage of yours was given in payment—or the complainant's mortgage—or in part payment thereof, I will permit you to prove what the amount of the releases were. 30

Mr. Zalkind: They have conceded and credited us with the amounts received on that mortgage; they concede that mortgage was received by the complainant in place of the foreclosed mortgage.

Mr. McDermott: No, no.

The Court: That was strongly resisted; they do not concede it.

Mr. McDermott: We have not even contemplated conceding it. 40

Q. Mr. Corbin, how long have you known the Schmidt Realty and Construction Company, and how long have you known me as President of that Company? A. I have known of the company, and I have known you for ten years.

10 Q. And you have had a great many transactions with me for the company, in connection with Maywood property? A. Yes, sir, a number.

Q. You were associated in business with Mr. George P. Rust, now deceased? A. Yes, sir.

Q. During all the time up to his death since you first met me, I had dealings also with Mr. Rust? A. Yes, sir.

20 Q. And all the dealings and transactions that I had with you and Mr. Rust with the Guarantee Mortgage and Title Insurance Company, came within your personal knowledge and supervision? A. Most of them, I should say.

Q. Do you know whether Mr. George P. Rust made a mortgage loan on land of the Maywood property? A. On that part of it, or the major part of that part which runs West of Maywood Avenue.

Q. About 900 lots or more? A. Yes, sir.

30 Q. And that was secured by Rust taking an assignment of an original first mortgage that was held by one Anderson? A. Yes, sir.

Q. And from which Mr. Rust at the time of the making of the loan, released the lots included in this mortgage? A. I believe that is correct.

Q. Mr. Charles Rust was made a party defendant in this foreclosure? A. I don't know about that.

Q. Do you know that substantially all of the property covered by the mortgage of George P. Rust, which was originally for \$30,000, was foreclosed? A. Yes, sir.

40 Q. You were the attorney of record in that foreclosure? A. Yes, sir.

Q. And everything incident to that foreclosure was within your personal knowledge? A. Yes, sir.

Q. Do you know whether that property was sold under that foreclosure? A. It was, yes, sir.

Q. And do you know who purchased it? A. I don't recall the individual that purchased it, but I think it was Mr. Hart or someone who represented him, or was acting in conjunction with him. 10

Q. I show you a typewritten statement—abstract of various transactions, and ask you whether this was prepared by you or under your supervision in your office? A. It was prepared in our office.

Mr. McDermott: If you are going to use it, let me see it.

The Witness: It is an abstract of some deeds. 20

Mr. McDermott: All right.

Mr. Zalkind: I would like to have the witness refer to it.

Mr. McDermott: It is a recital of various deeds and mortgages.

Q. Can you tell whether the transactions or the transactions mentioned in this transcript, took place in your office and with your participation? A. The first is a brief abstract of the particulars of a deed from the sheriff of Bergen County of Mr. Hart and Mr. Wemple. Now, that did not take place in our office. It was a deed that was made by the sheriff to these men pursuant to a decree in foreclosure that was instituted in our office. The sale took place, and the deed was made and it was recorded. 30

Q. And the purchase price set forth there was the purchase price? A. I think those are the correct figures, as nearly as I can tell, \$37,678.67. 40

Q. And that was the amount that Mr. Charles P. Rust received? A. I don't know that that follows.

The Witness: I believe that is correct.

10 Q. Now, the next transaction? A. The next is a deed from William L. Wemple and wife and Archibald C. Hart and wife to the Maywood Company; and such a deed was given and is recorded in Bergen County; the particulars of the deed are given here.

Q. And the next transaction? A. The next is a mortgage from the Maywood Company to the Guarantee Mortgage and Title Insurance Company for \$23,000; such a mortgage was given and is recorded.

20 The next is an abstract of an assignment of the \$23,000 mortgage from the Guarantee Mortgage and Title Insurance Company to George Krause; there was such an assignment, and it is recorded.

Next is a mortgage made to the Guarantee Mortgage and Title Insurance Company for \$12,000; there was such a mortgage and that is recorded, made by—

Q. That \$23,000 and the \$12,000 were first mortgages? A. Yes, sir.

30 Q. And those aggregate \$35,000? A. Yes, sir; the next is an assignment of the \$12,000 mortgage to Albert C. Wall and William H. Carey; there was such an assignment, and that is recorded. The next instrument is a mortgage made by the Maywood Company to William L. Wemple and Archibald C. Hart for \$8,646.19; I don't recall distinctly about that, but undoubtedly there is a mortgage, and my recollection is that that is correct, that the amount is correct, that there was such a mortgage.

40 Q. Do you know who advanced the money rep-

resented by that mortgage? A. I don't personally know; it is all hearsay that I know about it.

Q. You were a director in the Merchants' Bank of Passaic; don't you recall whether or not exactly that sum was advanced by the Merchants' Bank of Passaic—that that exact amount was advanced by them on that mortgage? A. I know there was an advance made by the Merchants' Bank on a Maywood Company mortgage, but I do not recall the exact amount; I could not say this is the exact amount. 10

Q. Do you recall how that happened to be exactly that amount; do you recall whether that amount— A. The exact figures I could not tell, but I know there was the \$35,000 and the additional sum necessary to pay up all taxes and foreclosure costs, and the excess over and above \$35,000 required for the bid—it probably was in the neighborhood of this amount; it might have been exactly this amount, but I have not the detailed figures in mind. 20

Q. Are there any more? A. There is one other instrument, a mortgage by the Maywood Company to A. C. Hart trustee for Marie Schmidt for \$19,113.34, and there is such a mortgage on record.

Q. Now, all of these mortgages and instruments that you have just recited affect the property that was originally covered by the Rust mortgage, and which were sold under the Rust foreclosure and bought by Wemple and Hart? A. The \$23,000 mortgage does; and the \$12,000 mortgage does. Now, whether the remaining two mortgages affect more properties than that covered by the Rust mortgage I cannot say; they may. 30

Q. Do you know whether Hart and Wemple could have owned or could have conveyed to the new company any other property? 40

Mr. McDermott: Objected to.

The Court: That calls for a conclusion anyhow.

The Witness: I remember in a general way most of the situation.

10 Q. Here is a note as to the deed of Wemple and Hart to the Maywood Company made by you; it says, "Conveys in fee premises in the Borough of Maywood, Bergen County, New Jersey,"—some four tracts, by same description as in deed, Robert N. Heath, Sheriff, to the parties of the first part, dated January 8, 1914.

This note was made by you at the time; do you know whether that is correct? A. That is the deed from Wemple and Hart to the Maywood Company, 20 conveys the same property that was conveyed by the Sheriff to Hart and Wemple.

Q. Are there similar notes as to those other instruments, abstracted, from which you might be able to testify definitely? A. No, sir, there are not similar notes, but I believe this all relates to the same property; that is my recollection.

Q. Do you recall the arrangement that was made for the guarantee of the principal and interest of a \$35,000 mortgage loan to be made on the prop- erty to be sold or sold under the Rust foreclosure, and which were subsequently purchased by Wemple and Hart at the sheriff's sale, at the foreclosure sale; do you know how that guarantee came about? 30

Mr. McDermott: Objected to; it is immaterial.

The Court: What is the materiality of this?

Mr. Zalkind: We set up and are trying to prove that Wemple and Hart took title 40

to this property without a dollar, without putting up a dollar, by raising on this very property a mortgage loan on a guarantee which I arranged and loans which we procured, by a broker whom I engaged, and who did not turn over the loan to me but turned it over to Hart, because he wanted me to give him a third interest in the property as a commission. I think we will show the materiality of it. We are claiming a resulting trust. 10

Mr. McDermott: That has nothing to do with it at all, and this deal with the broker has nothing to do with it; it is incompetent, irrelevant and immaterial.

The Court: I am unable from my view of the case to understand how it is material. 20

Mr. Zalkind: If we can show that all of these were part of one transaction, it cannot be required that we should let them proceed on their foreclosure and not set up these equities as a defence.

The Court: I do not see the materiality of it, but being in a state of dubiety I will let it go in.

Mr. Zalkind: I have a rather arduous task in trying to convince the Court of what I know is an almost unbelievable story. 30

The Court: You can argue that later; you charge fraud and about everything else, I understand.

Mr. Zalkind: Not everything, but pretty nearly.

The Court: I will take the testimony and note the objection.

Q. (Question read.) A. I remember that while the foreclosure was pending you made an applica- 40

tion for the guarantee of a mortgage, and that the company agreed to guarantee such a mortgage provided you became the owner of the property; there was also another application made in a similar way and on similar terms, with relation to the proposed company. You did not become the owner of the property at the sheriff's sale. The other person who made the application, or his associate, became the owner, and we guaranteed the mortgage to the persons who became the purchasers at the sheriff's sale.

10 Q. Who was present when the arrangement was made with me by you for your company with me to guarantee the principal and interest on the \$35,000 mortgage?

20 Mr. McDermott: I make the same objection.

The Court: The objection is overruled.

Q. Who was present in your office when your company agreed to make the guarantee of the \$35,000 mortgage? A. I don't recall who was present.

30 Q. Do you recall whether Mr. Wemple was with me then in your office? A. Mr. Wemple was in our office with you on one or more occasions; whether he was present at that particular time or not I do not recall.

Q. Mr. Wemple, for a considerable time, to your knowledge, was working with and for me to help save the property?

Mr. McDermott: I object to that question as leading and suggestive and calling for a conclusion.

40 Q. Do you know whether Mr. Wemple worked for and with me to help me preserve or retain the property?

Mr. McDermott: Objected to.

The Court: I do not see that that is material at all.

Mr. Zalkind: We are trying to show that they paid that mortgage by issuing another mortgage on property that we were the equitable owners of, and I am trying to prove that through all these transactions. I want to show that they took the title by using the resources which we created. 10

The Court: Why don't you do it? What efforts you made is not material.

Mr. McDermott: Mr. Wemple is easily reached; I think he lives in New Jersey.

The Court: I will sustain the objection to that as immaterial. 20

Q. Wemple and Hart purchased this property at the foreclosure; do you know whether they paid any of their own money to acquire the title? A. I don't know.

Q. Do you know whether any money other than money derived from these two loans, the \$35,000 loan and the \$8,000 plus loan, which were mortgages as testified on property acquired, do you know whether any other money was put up by anybody for acquiring title? A. They aggregate more than the amount that was due; that is all I know. 30

Recess to 2 P. M.

After Recess.

A. S. CORBIN resumes the stand:

Cross Examination by Mr. McDermott:

10 Q. Mr. Corbin, I show you a copy of the return by the sheriff, showing the amounts due on this Rust foreclosure? A. Yes.

Q. And the total amount due appears to be something over \$59,000—when you include the mortgage of Mrs. Schmidt? A. Yes, sir.

Q. And the sale was for the amount you have already mentioned, \$37,678.67? A. Yes, sir.

Q. The sheriff made this deed which you have already referred to? A. Yes, sir.

20 Q. To Mr. Wemple and Mr. Hart? A. Yes, sir.

Q. And that cut off the Schmidt mortgage? A. Yes, sir.

Q. You spoke of two mortgages aggregating \$35,000, which had been guaranteed by your company; in those two mortgages you guaranteed your company? A. Why, Mr. Hart and Mr. Wemple signed the original bond.

Q. You required that? A. Yes, sir.

30 Q. In addition to the real estate security? A. Yes, sir.

Q. They were not the makers of the mortgage; that was made by the Maywood Company, but you required their personal security as well? A. Yes, sir.

Q. I understood that you were a director of the bank by which this loan of \$8,646 was made? A. I was a director of the Merchants' Bank at the time when that mortgage was made.

40 Q. That was a mortgage of the Maywood Company? A. Yes, sir.

Q. And who secured that mortgage? A. I am not positive of the original security; my recollection is that Mr. Hart and Mr. Wemple also signed the bonds or the notes; it may have been that in connection with that mortgage notes were given.

Q. But the bank required that additional security to the real estate security? A. I believe they did. 10

Q. You foreclosed the Rust mortgage? A. Yes, sir.

Q. And the execution appears to have been issued in April, 1913? A. Yes, sir.

Q. As a matter of fact, that sale was carried over by adjournments for many months before it was actually sold? A. Yes, sir.

Re-direct Examination by Mr. Zalkind: 20

Q. You say that according to your recollection, Mr. Wemple and Mr. Hart went on the bonds of the mortgages that they gave? A. Yes, sir.

Q. That would be the case in any event with any mortgage given? A. This was a corporation mortgage, not a personal.

Q. That mortgage for \$8,646.19, that was in the first instance made by the Maywood Company to Wemple and Hart, wasn't it? A. Yes, sir. 30

Q. And then assigned by them to the Merchants' Bank of Passaic? A. Yes, sir.

Mr. Zalkind: If your Honor please, I want to take the witness stand just a minute.

PHILIP ZALKIND, recalled:

The mortgage sought to be foreclosed here was given in exchange for stock.

Mr. McDermott: That is already in.

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The Witness: For stock in the Schmidt Realty and Construction Company, originally issued to the complainant herein. The total amounts received into the treasury of the Schmidt Realty and Construction Company—

By the Court:

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Q. Is this as to the original consideration? A. Yes.

Mr. McDermott: I object; we have gone over that so often; they produced a written agreement which showed that all of that matter had become the subject of a settlement which was crystallized in this written agreement which they put in showing it was all settled and closed at that time.

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The Witness: I want to show the exact amount. We are maintaining that that mortgage is void.

Mr. McDermott: That has already been ruled out.

The Witness: I don't recall that it was ruled on even.

The Court: Where was it ruled out?

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Mr. McDermott: It was ruled out in the course of the testimony, after the agreement was put in; here it is (reading the testimony).

The Court: That settles it then.

Mr. Zalkind: I have no more evidence today, your Honor.

Mr. McDermott: The case was rested, according to the record, some weeks ago, and then the privilege was given to bring Mr. Corbin here. I now insist that counsel shall close the case for their side. I don't know what I want to do until I know whether it is closed or not. I think counsel should rest or put in his defence now. 10

The Court: I don't see how it is going to help the Court by keeping it open.

Mr. Zalkind: If you will admit the value of those lots tentatively that would save some time.

The Court: I think you had better rest where you are, Mr. Zalkind. 20

Mr. Zalkind: I will gracefully bow to the suggestion of the Court.

The Court: I don't think I ought to adjourn the case any further. Now, have you any further witnesses, Mr. McDermott?

Mr. McDermott: Mr. Hart was our witness, but I don't see any reason for calling him.

The Court: Then the case is rested on both sides. 30

Both sides rest.

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 IN CHANCERY OF NEW JERSEY.
 

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10	Between  MARIE SCHMIDT, Complainant.  vs.  SCHMIDT REALTY & CONSTRUCTION COMPANY, et al., Defendants.	}	On Bill, &c., Testimony.
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20 Transcript of testimony taken in the above entitled cause, at the Chancery Chambers, Jersey City, New Jersey, on the thirteenth day of March, 1919, before Hon. VIVIAN M. LEWIS, Vice-Chancellor.

## APPEARANCES:

Mr. EICHMANN and Mr. McDERMOTT, of the firm of McDermott & Enright, for the Complainant;

30 Mr. ISAAC F. GOLDENHORN, for the Schmidt Realty & Construction Company, Defendant;

Mr. TAMBLYN, of the firm of Lum, Tamblyn & Colyer, for Petitioning Creditor.

Mr. PHILIP ZALKIND was associated with Mr. Goldenhorn.

40 Mr. Tamblyn: In this case I have an application to make. One of the defendants, the Schmidt Realty and Construction Company has, since this matter has been before your Honor, been adjudi-

cated a bankrupt, and a few days ago we made an application to Judge Haight in Newark, New Jersey, in the bankruptcy proceeding, and I did not attend at the hearing before Judge Haight, but I am informed Judge Haight thought that under the circumstances, comity required him to allow this matter to be presented to your Honor in this Court. 10  
My application is—I make application on behalf of one of the petitioning creditors in the bankruptcy proceeding—we are making an application primarily for a stay of proceedings here in such a way as will permit the trustee when he is appointed, to intervene here and examine the situation and see what needs to be done to protect the interest of the bankrupt. I have here an affidavit which I would like to read, made by one of the petitioning creditors (reads affidavit). So our petition at the present time, your Honor, is informal in this way, because no trustee has been appointed as yet; until someone is appointed in that relation, there is no one that has any status as yet, except a petitioning creditor of the proceeding in New York, to make that application. 20

The Court: What do you say about that, Mr. Eichmann?

Mr. Eichmann: I appeared before Judge Haight on that application, and Judge Haight held that where the State Court acquires possession of the res and the suit involves a lien which arose more than four months prior to the filing of the petition, that the bankruptcy court has no jurisdiction in the matter. Now, this mortgage was made ten years ago and the bill of complaint was filed almost a year and a half ago. An answer was filed almost a year ago, and then an amended answer. Now, if the creditors really wanted to have contested this matter, they had ten years within which 30  
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to do it. Certainly, they should have made some attempt before this. (Continuing argument.)

The Court: Where are the witnesses?

Mr. Zalkind: They will be here, your Honor.

Mr. Corbin is to be here from Passaic.

10 Mr. Eichmann: I want to offer the Master's report and final decree in the Rust foreclosure, and also a calculation of the interest.

The Court: I will take your application under advisement, and we will let it rest there.

Did Judge Haight say that this matter was to be presented to the Court of Chancery?

Mr. Eichmann: He said the United States had no jurisdiction whatever since the mortgage was ten years old.

(After further discussion.)

20 Mr. Tamblyn: I will leave the papers with your Honor regarding Mr. Stoutenberg.

Mr. Goldenhorn: Can you continue this for two weeks and give the creditors a chance to come in and assert any rights they may have in the way of a cross-bill or answer?

30 The Court: The case won't be closed this morning; it won't be closed today, but I want to know where your witnesses are. I set this day apart to have these witnesses here and no one is here for you, Mr. Goldenhorn. We will wait a little while to see if Mr. Corbin is coming here.

Did Judge Haight intimate to you that he thought the whole matter would be disposed of here?

Mr. Tamblyn: He thought it should not be taken out of the jurisdiction of the Court of Chancery, and our application is merely to give the trustee a chance to come in here.

40 Mr. Eichmann: I wish to offer the following papers in the case of George P. Rust, complain-

ant, and The Schmidt Realty and Construction Company and others, defendants: The Master's report—final decree and execution, and return of the execution. They are Chancery records in the other suit.

Mr. Goldenhorn: What is the object of the offer?

Mr. Eichmann: The bill and answer refer to the foreclosure of the first mortgage, and these proceedings on the foreclosure of the first mortgage also took in the Schmidt mortgage, and the decree was both for the first and second mortgages and showed the amount which was then due to the Schmidt Company, and the amount of interest due; and the execution will show what the result of that foreclosure was, whether there was any surplus in favor of the Schmidt Company; there was no surplus, as a matter of fact; and the final decree shows that there was a decree in favor of the complainant in this suit here against the Schmidt Company on this very same mortgage. 10 20

Mr. Goldenhorn: I don't see its materiality; it is simply cumbering up the record; the facts are admitted by the answer I take it.

The Court: I will permit it to stand for the present, and will note the objection to it on the ground of it being immaterial.

I don't believe Mr. Corbin is coming to-day; if he took the 10:39 A. M. he would be here probably in about ten or fifteen minutes. 30

Mr. Eichmann: I also offer the calculation of interest due and statement of the amount received for releases, and copies were given to the other side.

Mr. Goldenhorn: I want it understood that in allowing these amounts for releases, which we cannot dispute, and which we believe to be absolutely true, in no way to interfere with the legal objec- 40

tion which we shall make to the right to foreclose at all, on the ground that it is res adjudicata with respect to this mortgage. In other words, I don't want to waive any rights we have on the law, in the case; I want to preserve whatever rights we have.

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Adjourned to a day to be fixed.

Filed April 10th, 1919.

**Final Decree.**

IN CHANCERY OF NEW JERSEY.

20

MARIE SCHMIDT,  
Complainant,

vs.

SCHMIDT REALTY & CONSTRUCTION COMPANY et al.,  
Defendants.

On Bill, &c.

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This matter coming on to be heard on bill, answer replication and proofs in the presence of McDermott & Enright, of counsel with complainant, and Isaac F. Goldenhorn, and Philip Zalkind, of counsel with defendant Schmidt Realty & Construction Company, and it appearing that there is due complainant on the bond and mortgage mentioned in the bill of complaint for principal and interest on this day the sum of \$15,099.91;

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IT IS on this 9th day of April, 1919, by his Honor Edwin Robert Walker, Chancellor of the State of New Jersey,

ORDERED, ADJUDGED AND DECREED that complainant is entitled to have the said sum of \$15,099.91 with lawful interest thereon from the date of this decree, together with costs of this suit to be taxed, raised and paid out of said mortgaged premises.

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AND IT IS ACCORDINGLY FURTHER ORDERED, ADJUDGED AND DECREED that so much of the said mortgaged premises as will be sufficient to raise and satisfy the said debt, interest and costs be sold; and that a writ of Fieri Facias do issue for that purpose out of this Court directed to the Sheriff of the County of Bergen, commanding him to make sale according to law of so much of the said mortgaged premises as will be sufficient to satisfy the said debt, interest and costs, and that he pay the same to the complainant or her solicitors; and that in case more money should be raised by said solicitors than shall be sufficient to answer such payment, such surplus money be brought into this Court and deposited with the Clerk to abide the further order of this Court, unless otherwise previously disposed of by order of this Court, and that said Sheriff do make return to this Court without delay of his proceedings by virtue of the said writ.

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AND IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the defendant stand absolutely debarred and foreclosed of and from all equity of redemption of, in and to so much of the said mortgaged premises as shall be sold as aforesaid by virtue of this decree.

AND IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the sum of \$87.75 be allowed and paid to the solicitors of the com-

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*Affidavit of Charles F. Landmesser.*

plainant 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.

10 Respectfully advised:

VIVIAN M. LEWIS,  
V.-C.

Filed April 6th, 1920.

**Affidavit.**

IN CHANCERY OF NEW JERSEY.

20

Between

MARIE SCHMIDT,  
Complainant,

and

SCHMIDT REALTY & CONSTRUCTION COMPANY, et al.,  
Defendants.

On Bill, etc.

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

Charles F. Landmesser, being duly sworn upon his oath according to law, saith that he is a counselor at law of the State of New Jersey and is associated with the firm of Lum, Tamblyn & Colyer, of counsel with the defendant, Schmidt Realty & Construction Company.

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Deponent further saith that the said Schmidt Realty & Construction Company was duly adjudi-

cated a bankrupt by the United States District Court for the Southern District of New York on the eleventh day of March, Nineteen hundred and nineteen; that Albert A. Raphael was appointed by said Court trustee of the estate of the said bankrupt at the first meeting of creditors on the tenth day of April, Nineteen hundred and nineteen and that the said Albert A. Raphael qualified as such trustee on the third day of April, Nineteen hundred and twenty. 10

Deponent further saith that a decree was entered in the above entitled cause on the ninth day of April, Nineteen hundred and nineteen, against the said Schmidt Realty & Construction Company and others for the foreclosure and sale of certain lands and premises of the said company to pay and satisfy moneys alleged to be due to the complainant. 20

Deponent further saith that by virtue of the appointment of the said Albert A. Raphael as trustee as aforesaid and his qualification as such trustee he succeeds to all the right, title and interest of the bankrupt pursuant to the Acts of Congress relating to bankruptcy.

Deponent further saith that said firm of Lum, Tamblyn & Colyer has been retained by the said Albert A. Raphael, trustee as aforesaid, to prosecute an appeal from the aforesaid decree, and that the said Albert A. Raphael, trustee as aforesaid, desires to be substituted as defendant in his capacity as trustee of the above named bankrupt. 30

CHARLES F. LANDMESSER.

Subscribed and sworn to before me  
this sixth day of April, 1920.

HELEN OPPENHEIMER,  
Notary Public  
Of New Jersey. 40

Filed April 7th 1920.

**Order for Substitution.**

IN CHANCERY OF NEW JERSEY.

10	Between <p style="text-align: center;">MARIE SCHMIDT, Complainant, and SCHMIDT REALTY &amp; CONSTRUCTION COMPANY, et al., Defendants.</p>	}	On Bill, etc.
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20 This matter being opened to the court by Lum, Tamblyn & Colyer, of counsel with Albert A. Raphael, as trustee in bankruptcy of Schmidt Realty & Construction Company, and upon reading and filing the affidavits of Charles F. Landmesser by which it appears that the said defendant Schmidt Realty & Construction Company has been duly adjudicated a bankrupt, pursuant to the Acts of Congress relating to bankruptcy and that the said Albert A. Raphael has been appointed trustee of said bankrupt and has duly qualified as such and desires to be substituted as defendant,

30 to the end that he may appeal from the decree entered in this cause:

It is thereupon on this 6th day of April, A. D. Nineteen hundred and twenty, on motion of Lum, Tamblyn & Colyer, of counsel as aforesaid, ORDERED that the said Albert A. Raphael, as trustee in bankruptcy of the said Schmidt Realty & Construction Company, be and he is hereby

40 substituted as defendant in the place and stead

*Notice of Appeal.*

of the said Schmidt Realty & Construction Company, to the end that he may prosecute an appeal from the final decree entered in this cause.

Respectfully advised,

JAMES F. FIELDER,  
V. C.

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Filed April 7th, 1920.

44/766

**Notice of Appeal.**

IN CHANCERY OF NEW JERSEY.

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Between

MARIE SCHMIDT,  
Complainant,

and

SCHMIDT REALTY & CONSTRUCTION COMPANY, et al.,  
Defendants.

On Bill, etc.

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Albert A. Raphael, trustee in bankruptcy of Schmidt Realty & Construction Company, substituted in the place and stead of the defendant Schmidt Realty & Construction Company pursuant to an order made in this cause on the sixth day of April, Nineteen hundred and twenty, hereby appeals from the final decree made in the above cause on the ninth day of April, Nineteen hundred and nineteen and from the whole and every part

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*Petition of Appeal.*

thereof to the Court of Errors and Appeals in  
the last resort in all causes.

Dated April 6, 1920.

10 Solicitors of substituted defendant  
Albert A. Raphael, trustee in bank-  
ruptcy of Schmidt Realty & Con-  
struction Company,

LUM, TAMBLYN & COLYER,  
of Counsel.

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

RALPH E. LUM,  
Of counsel with said defendant.

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Filed April 28th, 1920.

**Petition of Appeal.**

Between

MARIE SCHMIDT,  
Complainant,

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and

SCHMIDT REALTY & CONSTRUC-  
TION COMPANY, et al.,  
Defendants.

On Bill, etc.

NEW JERSEY COURT OF ERRORS AND  
APPEALS.

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To the Honorable The Court of Errors and Ap-  
peals in the last resort in all causes:

*Petition of Appeal.*

The Petition of Appeal of Albert A. Raphael, Trustee in Bankruptcy of Schmidt Realty & Construction Company, a corporation of New Jersey, and Charles Rust, executor of the estate of George P. Rust, deceased, Estella Sabine Watson, and Edward W. Lester, executors under the last will and testament of Caroline Olivia Sabine, deceased and Estella Sabine Watson and Olivia Sabine Lester, residuary legatees under the last will of Caroline Olivia Sabine, deceased, E. Max Applegate, Archibald C. Hart, Lilly L. Hart, his wife, Robert D. Kent, Esther Sarluis, Miner R. Knowlton, William L. Wemple, Dorothy Wemple, his wife, the Maywood Company, a corporation of New Jersey, David A. Himadi, Wendell J. Wright, Catharine G. Wright, his wife, Bradwell Building & Construction Company, a corporation of New Jersey, Joseph Zalkind as the only surviving director and trustee of Bradwell Building & Construction Company in liquidation under the provisions of the New Jersey Corporation Act, Jennie Wormser, Samuel Wormser, her husband, N. Mayer, Inc., a corporation of New York, Nathan Mayer, Felter Coal & Lumber Company, a body corporate, Merchants Bank of Passaic, a body corporate, the appellants in the above stated cause, respectfully shows that your petitioners find themselves aggrieved by a final decree made in the Court of Chancery by his Honor Edwin Robert Walker, Chancellor of the State of New Jersey, bearing date the ninth day of April, Nineteen hundred and nineteen, wherein Marie Schmidt was complainant and your petitioners herein were defendants in this respect, to wit: that the said decree adjudges "that the complainant is entitled to have the said sum of \$15,099.91 with lawful interest thereon from the date of this decree, together with costs of this suit

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to be taxed, raised and paid out of said mortgaged premises."

10 "AND IT IS ACCORDINGLY FURTHER ORDERED, ADJUDGED AND DECREED that so much of the said mortgaged premises as will be sufficient to raise and satisfy the said debt, interest and costs be sold; and that a writ of Fieri Facias do issue for that purpose out of this court directed to the Sheriff of the County of Bergen, commanding him to make sale according to law of so much of the said mortgaged premises as will be sufficient to satisfy the said debt, interest and costs, and that he pay the same to the complainant or her solicitors; and that in case more money should be raised by said solicitors than shall be sufficient to answer such payment, such surplus money be brought into this court and deposited with the Clerk to abide the further order of this court, unless otherwise previously disposed of by order of this court, and that said Sheriff do make return to this court without delay of his proceedings by virtue of the said writ."

30 "AND IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the defendant stand absolutely debarred and foreclosed of and from all equity of redemption of, in and to so much of the said mortgaged premises as shall be sold as aforesaid by virtue of this decree."

40 "AND IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the sum of \$87.75 be allowed and paid to the solicitors 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."

*Petition of Appeal.*

And your petitioners humbly appeal from the said decree of the Chancellor which decrees as aforesaid, upon the grounds that the same is erroneous for that the mortgage mentioned in complainant's bill was issued for an inadequate consideration; for that any monies due upon the said mortgage were paid; and for that the same was discharged by complainant by taking a mortgage from the Maywood Company for the same debt; and further for that the value of the security of the Maywood Company mortgage was sufficient to satisfy any indebtedness due complainant; and also for that the amount of indebtedness as found by the Court of Chancery was erroneous; and further for that the complainant should be denied the relief sought and prayed for by her in her bill. 10

Your petitioners therefore pray that the said decree of the said Chancellor may be in the particulars aforesaid, reversed, set aside and for nothing holden. And that your petitioners may have such relief in the premises as to this honorable court shall seem meet. 20

LUM, TAMBLYN & COLYER,  
Sol'rs. for and of counsel with  
Petitioner and appellant Al-  
bert A. Raphael, Trustee in  
Bankruptcy of Schmidt Realty  
& Construction Company, 30

RALPH E. LUM,  
of Counsel with said appellant.

Filed May 6th, 1920.

**Answer to Petition of Appeal.**

NEW JERSEY COURT OF ERRORS AND  
APPEALS.

10 Between

ALFRED A. RAPHAEL, Trustee in  
Bankruptcy of Schmidt Realty  
& Construction Company, et al.,  
Defendants-Appellants,

and

MARIE SCHMIDT,  
Complainant-Respondent.

On Appeal  
from  
Chancery.

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This respondent not acknowledging all or any of the matters which in the said petition of appeal are contained to be true, for answer thereto, nevertheless, says and admits that a final decree was on the 9th day of April, 1919, made and entered in the Court of Chancery, in the cause for that purpose mentioned in the said petition, as is therein stated; but as to the substance and form thereof, this respondent prays to refer thereto when the same shall be produced. And this respondent is

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advised and believes that the said decree is agreeable to equity, and she prays that the same may be affirmed, with costs to be adjudged to this respondent.

McDERMOTT & ENRIGHT,  
Solicitors for and of  
Counsel with Respondent.

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The Schmidt Realty and  
Construction Company

To  
Marie Schmidt

Mortgage \$20,000  
Dated June 8th 1908.

This mortgage made the 8th day of June, 1908,  
between The Schmidt Realty and Construction  
Company, a corporation duly organized and exist- 10  
ing under the laws of the State of New Jersey  
party of the first part and Marie Schmidt of the  
Borough of Maywood, County of Bergen, state of  
New Jersey of the second part, witnesseth that  
the said party of the first part for and in considera-  
tion of the sum of Forty thousand (\$40,000) Dol-  
lars lawful money of the United States of Amer-  
ica to it in hand well and truly paid by the said  
party of the second part at or before the sealing 20  
and delivery of these presents the receipt whereof  
is hereby acknowledged and the said party of the  
first part therewith fully satisfied contented and  
paid has granted bargained and sold and by these  
presents does grant bargain sell and convey to the  
said party of the second part and to her heirs and  
assigns forever.

All those tracts or parcels of land and premises  
hereinafter particularly described situate lying 30  
and being in the Borough of Maywood in the  
County of Bergen and State of New Jersey as  
follows: The First Tract: Being the Homestead  
Farm. Beginning in the middle of the Spring  
Valley Road at the southwesterly corner of the  
said lot thence running (1) along the middle of said  
road north twenty-four degrees and twenty-four  
minutes east six chains and thirty-seven links  
thence (2) north twenty-two degrees and seventeen  
minutes east five chains and twenty-six links  
thence (3) north twenty-one degrees and nineteen min- 40  
utes east two chains and seventy-three links thence

- (4) south forty-eight degrees and thirty-one minutes east twenty-two chains and sixty-six links thence (5) north sixteen degrees and eighteen minutes east seven chains and six links thence (6) south forty-five degrees and fifteen minutes east thirty-two chains and ninety links to the middle of the brook thence (7) along the middle of said brook southerly the several courses and distances thereof to a line which is the southerly side of Blocks thirty-two (32) and thirty-three (33) as designated on a certain map entitled "Map of Maywood Heights, Maywood, New Jersey" made by Alfred W. Williams and recorded in the office of the clerk of Bergen County April 3rd 1906 as map number 994 thence (8) westerly along the said southerly side of blocks thirty-two (32) and thirty-three (33) to the easterly side of Jersey Avenue as designated on the said map thence (9) northerly along the said easterly side of Jersey Avenue to the most northerly line of said tract and (10) commencing at a point on the westerly side of said Jersey Avenue where it intersects with the said most northerly line of said tract thence (11) southerly along said westerly side of Jersey Avenue to a point at the intersection thereof with a line which is the northerly side of Forest Avenue as designated on said map thence (12) westerly along the last mentioned line to a point at the intersection of said northerly side of Forest Avenue with the westerly side of Maywood Avenue running thence southerly along the said westerly side of Maywood Avenue to a point at the intersection of the said westerly side of Maywood Avenue with a line which is the northerly side of Parkway as designated on said map thence (13) westerly along the said northerly side of Parkway to a point at the intersection thereof with a line which is the westerly line of Poplar Avenue

as designated on said map thence (14) southerly along the said westerly side of the said Poplar Avenue to a point at the intersection thereof with the northerly side of the second tract hereinafter described thence (15) westerly along the said northerly side of the said second and fourth tracts hereinafter described to the middle of Spring Valley Road the point or place of beginning. The said Lafayette Avenue, Jersey Avenue and Forest Avenue as far as they adjoin the southerly boundaries of above described tract shall not be used or granted for any use other than that of public streets or avenues except with the consent of the party of the first part. 10

The Second Tract: Beginning in the middle of the public road leading from Paramus to Hackensack at the most southerly corner of the third tract hereinafter described thence running (1) south forty-eight degrees east along the middle of said road fifteen chains and thirteen links thence (2) north twenty-seven and three-quarter degrees east seventeen chains and fifteen links thence (3) north forty-eight degrees west fifteen chains and thirteen links thence (4) south twenty-seven and three-quarter degrees west seventeen chains and fifteen links to the place of beginning. Bounded: Southerly 30 by the middle of the aforesaid road, easterly by land now or late of John C. Van Saun, northerly by the first tract above described and westerly by the third and fourth tracts hereinafter described. Containing twenty-five acres and thirteen hundredths of an acre.

Excepting and reserving from the above described tracts the following described lands: Beginning at a point on the westerly line of May- 40

- wood Avenue which said point is the southeast corner of land hereby described and the northeast corner of lands of John C. Van Saun thence running (1) along the westerly side of Maywood Avenue north twenty-six degrees and forty-two minutes east four hundred and forty-five feet thence (2) at right angles to said Maywood Avenue north sixty-three degrees and eighteen minutes west three hundred feet thence (3) on a line parallel with the westerly line of Maywood Avenue south twenty-six degrees and forty-five minutes west five hundred and four feet thence (4) south forty-three degrees and thirteen minutes east one hundred and eighty and six-tenths feet to land of John C. Van Saun thence (5) along lands of said John C. Van Saun north thirty-two degrees and fifty-seven minutes east one hundred and sixty and forty-seven one hundredths feet thence (6) still along lands of said John C. Van Saun south forty-four degrees and twenty-eight minutes east one hundred and nineteen and three-tenths feet to the westerly line of Maywood Avenue the point or place of beginning. Containing three and thirty-eight one hundredths acres.

- The third Tract: Beginning at the middle of the Spring Valley Road and at its junction with the road leading from Hackensack to Paramus and from thence running (1) north twenty-nine degrees east seven chains and sixty-five links thence (2) south forty-nine degrees and fifteen minutes east eleven chains and eighty-six links thence (3) south twenty-nine degrees and forty-five minutes west eight chains and three links to the said Paramus Road thence (4) along said road north forty-seven degrees west eleven chains and ninety links to the place of beginning. Containing nine and nine one hundredths acres. Bounded southerly by the Paramus Road, westerly by the Spring Valley Road,

northerly by the fourth tract hereinafter described and easterly by the second tract hereinbefore described.

Excepting and reserving from the second and third tracts above described, all the following described tract: Being a plot of land for an electric railway forty feet wide, measured twenty feet on each side of a line described as follows: Beginning at a point in the easterly line of lands formerly of Cornelius W. Anderson, distant along said line on a course of north thirty-three degrees and four minutes east three hundred and seventy-two feet and seventy-three hundredths of a foot from the centre line of Passaic Street, thence running north forty degrees and twelve minutes west a distance of one thousand seven hundred and eighty-seven feet and eighty-four hundredths of a foot to a point in the easterly line of the Spring Valley Road, said point being distant along said easterly line of said Spring Valley Road on a course of north thirty-two degrees and thirty-three minutes east four hundred and sixty-five feet and two tenths of a foot from the centre line of Passaic Street. Said plot containing  $1 \frac{6,417}{10,000}$  acres. Granting, however, to the said party of the second part, it successors and assigns the right reserved to said Cornelius W. Anderson and conveyed by him to the party of the first part in the grant of said right of way to open up streets across the plot hereby excepted not closer than three hundred feet and not less than sixty feet in width.

The Fourth Tract: Beginning at the middle of the Spring Valley Road, being the northwesterly corner of the lot and the southwesterly corner of the first tract herein described and from thence running (1) south forty-seven degrees east twelve chains and four links thence (2) south twenty-nine degrees and forty-five minutes west eight

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chains and eighty-three links, thence (3) north forty-nine degrees and fifteen minutes west eleven chains and eighty-six links, to the middle of said road, thence (4) along the middle of said road north twenty-nine degrees east nine chains and twenty-six links to the place of beginning.

10 Bounded Westerly by the Spring Valley Road, northerly by the first tract above described easterly by the second tract above described and southerly by the Third tract above described. Containing ten acres and fifty-five hundredths of an acre, being the same premises now subject to a certain mortgage bearing date March 15th, 1908, made by the said Company to one Cornelius W. Anderson.

20 Fifth Tract: . Also the following described pieces, parcels or tracts of land located in said Borough of Maywood, easterly from Maywood Avenue, and as shown and designated on a certain map known as Map of Maywood Heights, filed in the Bergen County Clerk's Office as Map number 994, April 3rd, 1906, as lots numbered thereon respectively one to twenty-four inclusive, and twenty-nine to forty-one inclusive, in block numbered thirty-six. Also lots numbered consecutively one to seventeen inclusive, in block numbered thirty-seven. Reference to said Map of Maywood Heights herein is made only for the purpose of convenience of description, and it is not intended that such reference shall be construed to mean a dedication of streets or to bind the party of the first part to the platting of said map or in any other way except by express provision.

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40 Together with all and singular the profits, privileges and advantages with the appurtenances to the same belonging or in anywise appertaining. Also all the estate, right, title, interest, property claim and demand whatsoever of the said party of the first part of, in and to the same and of, in and

to every part and parcel thereof. To have and to hold all and singular the above described tracts or parcels of land and premises with the appurtenances unto the said party of the second part, her heirs and assigns to the only proper use, benefit and behoof of the said party of the second part, her heirs and assigns forever. Subject, however, to a certain mortgage now a lien on the said premises and other liens not exceeding in all thirty thousand (\$30,000) dollars. This mortgage shall be and remain second and subordinate to the *to the* present mortgage and liens or renewals thereof or other mortgage or mortgages or liens hereafter to be placed on the property but this mortgage shall not be second and subordinate to such prior lien liens mortgage or mortgages beyond the sum of \$30,000 not to an aggregate amount which shall be greater than of an average of thirty dollars per lot of the lots then subject to said mortgage. Provided always and it is agreed by and between the parties to these presents that if the said The Schmidt Realty and Construction Company or its successors or assigns do and shall well and truly pay or cause to be paid to the said party of the second part or to her certain attorney or attorneys heirs executors administrators or assigns the sum of twenty thousand (\$20,000) dollars on the day fixed in the bond herewith with interest thereon at the rate of five per cent per annum all payable according to the conditions of a certain bond of even date herewith. And provided also that the party of the first part has and shall have the privilege of paying off all of the principal sum at any time and receive therefor a good and sufficient satisfaction of mortgage the party of the first part has also the privilege of paying on account of this mortgage indebtedness sums of not less than one thousand (\$1,000) dollars to apply for the reduc-

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tion of said mortgage as a whole also the mortgagee herein agrees to deliver good and sufficient release or releases of mortgage to any lot or lots herein conveyed on payment thereon at the rate of thirty dollars per lot as the lots are laid out according to a certain map known as "Map of Maywood Heights" filed in the Bergen County Clerk's office April 3rd 1906 as map #994 but reference to said map shall not be construed to bind the mortgagor herein its successors or assigns to the platting as shown on said map. The mortgagor shall have the right to replat said property as may seem to it wise and proper and the said mortgage shall be subject to the present platting and any new platting and changes in the same at the option of the mortgagor as to it may seem proper and the mortgagee shall make execute acknowledge and deliver good and sufficient release or releases of mortgage as may be necessary and proper whenever required by the mortgagor on three days notice mailed to her last known post-office address postage prepared shall be sufficient. In case of her failure or refusal to deliver such release or releases as herein provided said mortgage shall cease and be void as to the lots required to be released upon a written offer by the mortgagor its successors or assigns to make such payment such offer being delivered to her personally or mailed to her postage prepaid addressed to her last known post-office address the accrual of interest on said mortgage shall cease and be suspended and the period of forty five days mentioned in the interest clause of the bond herewith given shall be extended for as many days as her failure or refusal to so make execute acknowledge and deliver such release or releases shall continue. The like provisions shall apply to the payments of sums of one thousand (\$1,000) dollars or more upon the reduction of said mortgage in-

debtedness as above provided. On such payment or payments as the case may be being made without any deduction or defalcation for taxes assessments or any other imposition whatsoever then and from thenceforth these presents and said obligations and everything herein and therein contained shall cease and be void anything herein and therein contained to the contrary in any wise notwithstanding and the said The Schmidt Realty and Construction Company does covenant and grant to and with the said party of the second part her heirs and assigns that the said party of the first part and its successors shall not nor will apply for or claim any deduction by reason of this mortgage from the taxable value of the said lands and premises and that the said party of the second part her heirs and assigns shall and may from time to time and at all times after default shall be made in the performance of the provisos or conditions herein contained peaceably and quietly enter into have hold use occupy possess and enjoy all and singular the above granted and bargained premises with the appurtenances without the let suit trouble hindrance or denial of the said The Schmidt Realty and Construction Company and its successors or of any other person or persons whatsoever.

In witness whereof the said party of the first part has caused these presents to be signed by its president and its common seal be hereto affixed the day and year first above written.

Signed sealed and delivered in the presence of

THE SCHMIDT REALTY and  
Construction Company (Seal)

by

PHILIP ZALKIND,  
President.

Attest:

CHARLES G. DAVISON,  
Secretary.

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State of New York, }  
County of New York, } ss. :

10 Be it remembered that on this 8th day of June one thousand nine hundred and eight before me the subscriber William Solomon personally appeared Charles G. Davison who being by me duly sworn doth depose and make proof to my satisfaction that he well knows the corporate seal of the The Schmidt Realty and Construction Company the grantor mentioned in the within Indenture that the seal thereto affixed is the proper corporate seal of said corporation that the same was so affixed thereto and the said deed signed and delivered by Philip Zalkind who was at the date and execution thereof  
20 of the said deponent as the voluntary act and deed of the said Corporation and that the said deponent thereupon signed the same as subscribing witness.

CHARLES G. DAVISON.

Sworn and subscribed before me  
on the day and year aforesaid.

30 WILLIAM SOLOMON,  
Commr. of Deeds  
N. Y. City.

State of New York, }  
 County of New York, } ss.:

I, Peter J. Dooling, Clerk of the County of New York and also Clerk of the Supreme Court for the said County the same being a Court of Record do hereby certify that William Solomon whose name is subscribed to the certificate of the proof or acknowledgment of the annexed instrument and thereon written was at the time of taking such proof or acknowledgment a Commissioner of Deeds in and for the City of New York duly commissioned and sworn and authorized by the laws of said State to take the acknowledgments and proofs of deeds of conveyances for land tenements or hereditaments in said State of New York. And further that I am well acquainted with the handwriting of such Commissioner of Deeds and verily believe that the signature to said Certificate of Proof or acknowledgment is genuine.

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In testimony whereof I have hereunto set my hand and affixed the seal of the said Court and County the 10 day of June, 1908.

PETER J. DOOLING,  
 Clerk (Seal)

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Received in the office and recorded June 20th,  
 1908 at 9.15 A. M.

JOHN R. RAMSEY,  
 Clerk.

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State of New Jersey, }  
County of Bergen, } ss.:

10 I, George Van Buskirk, Clerk of the County of Bergen in the State of New Jersey and also Clerk of the Circuit and Common Pleas Courts, in and for said County (Courts of Record), do hereby certify that I have compared the copy of the Mortgage hereto annexed, with the original record thereof in Liber 212 of Mortgages at pages 665, &c., in my office at Hackensack in said County, and that the same is a true copy thereof, and of the whole of such original record.

20 (Seal) IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Courts and County, at Hackensack aforesaid, this 14th day of September one thousand nine hundred and Sixteen.

GEORGE VAN BUSKIRK.

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30 KNOW ALL MEN BY THESE PRESENTS, That THE SCHMIDT REALTY and CONSTRUCTION COMPANY, a corporation of the State of New Jersey, is held and firmly bound unto Marie Schmidt, of the borough of Maywood, Bergen County, New Jersey, in the penal sum of Forty Thousand Dollars (\$40,000), lawful money of the United States of America, to be paid to the said Marie Schmidt, her heirs, executors, administrators or assigns; for which payment well and truly to be made it binds itself, its successors and assigns firmly by these presents. Sealed with its seal; Dated the eighth day of June, Nineteen hundred  
40 Eight.

THE CONDITION OF THE ABOVE OBLIGATION is such that if the above bounden The Schmidt Realty and Construction Company, its successors or assigns, shall well and truly pay or cause to be paid unto the above named Marie Schmidt or her heirs, legal representatives or assigns, the just and full sum of Twenty Thousand (\$20,000) Dollars on the Ninteenth day of June, Ninteen hundred fourteen, and the interest thereon, to be computed from the nineteenth day of June, nineteen hundred eight, at the rate of five per centum, per annum, and to be paid on the nineteenth day of June, nineteen hundred nine, and semi-annually thereafter, that is, on the nineteenth days of December and June of each year thereafter until the full amount is paid, without any fraud or other delay, then the above obligation to be void, otherwise to remain in full force and virtue.

This bond is secured by a mortgage on certain property of the said THE SCHMIDT REALTY and CONSTRUCTION COMPANY, bearing date even with the date of this instrument, which said mortgage is and is to remain second and subordinate to prior mortgages and liens or renewals thereof, or other mortgage or mortgages, lien or liens hereafter to be placed on the said property, but said mortgage is not to be second and subordinate to such prior, liens, mortgage or mortgages, beyond the sum of Thirty Thousand Dollars, nor any other amount which shall be greater than of an average of thirty dollars per lot of the lots at the time subject to said second mortgage. The said The Schmidt Realty and Construction Company, its successors or assigns, has and shall have the privilege of paying off all of the principal sum herein mentioned at any time and receive therefor the return of this instrument, and a good and

- sufficient satisfaction of said mortgage; the obligor has also the privilege and right of paying on account of the principal sum herein named sums of not less than One thousand dollars to apply for the reduction of the said mortgage as a whole; and sums of thirty dollars each or multiples thereof which shall apply to the reduction of the principal, and for which the obligor shall receive release or releases of mortgage, as may be required, to any lot or lots subject to said mortgage, at the rate of one lot for every sum of Thirty dollars, according to a certain map known as Map of Maywood Heights, Maywood, N. J., made by Alfred W. Williams, civil engineer, filed in the office of the Clerk of Bergen County, April 3rd, 1906, as map number 994. Reference to said map shall not be construed to bind the mortgagor, its successors or assigns to the platting as shown on said map. The mortgagor shall have the right to replat said property as may seem to it wise and proper, and the said mortgage shall be subject to the present platting and any new platting, and changes in the same, at the option of the mortgagor, as to it may seem proper, and the mortgagee, shall make, execute and deliver good and sufficient release or releases of mortgage, as may be necessary and proper, whenever required by the mortgagor, on three days notice; notice mailed to the last known post office address of the obligee, postage prepaid, shall be sufficient. In case of her failure or refusal to deliver such release or releases as herein provided, said mortgage shall cease and be void as to the lots required to be released, and this bond shall be void to the extent of the amount offered to be paid, upon a written offer by the mortgagor or obligor, its successors or assigns to make such payment, such offer being delivered to her personally or mailed to her, postage prepaid, addressed to

her last known post office address; the accrual of interest on this obligation shall cease and be suspended, and the period of forty-five days mentioned in the interest clause herein shall be extended for as many days as her failure or refusal to so make, execute, acknowledge and deliver such release or releases shall continue. The like provision shall apply to the payment of sums of One Thousand dollars, or more, upon the reduction of said mortgage indebtedness, as above provided. 10

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 date whereon the same is made payable as above expressed, or should any tax assessment, 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 arrears for the space of forty-five days, or said tax assessment, water rent or other municipal or governmental rate, charge, imposition or lien, or any or either of them unpaid and in arrears for the space of ninety days after notice and demand, 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 Twenty Thousand (\$20,000) Dollars, with arrearage of the interest thereon, shall, at the option of the said Marie Schmidt, her heirs, 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 herein before contained to the contrary thereof in anywise notwithstanding. 20 30

IN WITNESS WHEREOF, the corporate seal of the said corporation is hereto affixed, and these 40

presents duly signed by its president and attested by its Secretary.

This 8th day of June, 1908.

10 THE SCHMIDT REALTY AND  
CONSTRUCTION COMPANY,  
By PHILIP ZALKIND,  
President.

ATTEST:

CHAS. G. DAVISON, . .  
Secretary.

KNOW ALL MEN BY THESE PRESENTS

20 THAT I, Archibald C. Hart, of Hackensack,  
Bergen County, New Jersey, party of the first part,  
in consideration of the sum of One Dollar, lawful  
money of the United States of America to me in  
hand paid by Marie Schmidt of the Township of  
New Barbadoes, County of Bergen, and State of  
New Jersey, party of the second part, at or before  
the ensealing and delivery of these presents, the  
receipt whereof is hereby acknowledged, have  
granted, bargained, sold, assigned, transferred, and  
set over, and by these presents do grant, bargain,  
30 sell, assign, transfer, and set over unto the said  
party of the second part, her Executors, Adminis-  
trators or Assigns, a certain INDENTURE OF  
MORTGAGE bearing date the eighth day of June,  
one thousand nine hundred and eight, made by  
The Schmidt Realty and Construction Company,  
a corporation, to Marie Schmidt on lands in the  
Borough of Maywood in the County of Bergen and  
State of New Jersey, to secure the payment of the  
sum of Twenty thousand Dollars (\$20,000.00),  
40 which mortgage is recorded in the Clerk's office

of the County of Bergen in Book 212 of Mortgages, pages 65 &c., on June 20th, 1908; which mortgage and accompanying bond were assigned by the said Marie Schmidt to the party of the first part on or about June 20th, 1908, by an assignment of mortgage dated and acknowledged on that day and recorded on the same date in said Clerk's Office in Book 46 of Assignments of Mortgages, pages 338, &c. 10

TOGETHER with the bond or obligation described, and the money due and to grow due thereon, with the interest. TO HAVE AND TO HOLD the same, unto the said party of the second part, and her Executors, Administrators and assigns, forever, subject only to the proviso in the said Indenture of Mortgage mentioned: AND I do hereby make, constitute, and appoint the said party of the second part, my true and lawful attorney irrevocable, in *her* name or otherwise, but at her proper costs and charges, to have, use and take all lawful ways and means for the recovery of all the said money and interest; and in case of payment to discharge the same as fully as I might or could do if these presents were not made. 20

This assignment is made for a nominal consideration only, the purpose being to vest the legal title to said mortgage and bond in the said Marie Schmidt in whom the beneficial title thereto has remained since the execution and delivery thereof. 30

It is further understood and agreed that whatever moneys may be received by the assignee, her Executors, Administrators or Assigns, upon the mortgage hereby assigned will be credited upon the principal of another bond and mortgage assigned to the said Marie Schmidt by the said Archibald C. Hart upon this date. 40

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IN WITNESS WHEREOF, I have hereunto set my hand and seal the seventh day of July, in the year of our Lord one thousand nine hundred and sixteen.

ARCHIBALD C. HART.

10 Signed, Sealed and Delivered  
in presence of  
WM. E. REARDON.

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State of New Jersey, { ss. :  
County of Bergen,

20 BE IT REMEMBERED, That on this seventh day of July in the year of our Lord one thousand nine hundred and sixteen, before me, a Commissioner of Deeds of New Jersey, personally appeared, Archibald C. Hart, who, I am satisfied, is the Assignor in the within Deed of Assignment named; and I having first made known to him the contents thereof, he did acknowledge that he signed, sealed and delivered the same as his voluntary act and deed, for the use and purposes therein expressed.

30 WM. E. REARDON,  
Commissioner of Deeds of N. J.



the eleventh day of March, which will be in the year one thousand nine hundred and seventeen and the interest thereon to be computed from the date hereof at and after the rate of six per cent. per annum and to be paid semi-annually in gold as aforesaid and shall also pay all taxes assessments water rents and other governmental or municipal rates charges and liens imposed or acquired upon the property described in the mortgage given to secure the payment of this bond which mortgage is hereto annexed without any fraud or other delay then the above obligation to be void otherwise to remain in full force and virtue.

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And it is 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 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 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 \$19,113.34 with all arrearage of interest thereon shall at the option of the said party of the second part or his heirs administrators executors and assigns 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.

THE MAYWOOD COMPANY (SEAL)  
By A. C. Hart,  
President.

Signed sealed and delivered  
in the presence of 10

ATTEST W. HOWARD MEARS,  
Secy.

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This indenture made the 11th, day of March, nineteen hundred and fourteen between the Maywood Company a corporation of the State of New Jersey, party of the first part and Archibald C. Hart Trustee of Marie Schmidt, of the Township of New Barbadoes County of Bergen and State of New Jersey, party of the second part Witnesseth that the said party of the first part for and in consideration of Nineteen thousand one hundred and thirteen and thirty four one hundredths Dollars (\$19,113.34) lawful money of the United States of America, to it in hand well and truly paid by the said party of the second part at or before the sealing and delivery of these presents the receipt whereof is hereby acknowledged and the said party of the first part being therewith fully satisfied contented and paid has given granted bargained sold aliened released enfeoffed conveyed and confirmed and by these presents does give grant bargain sell alien release enfeoff convey and confirm unto the said party of the second part and to his heirs and assigns forever. 20 30

All those tracts or parcels of land and premises hereinafter particularly described situate lying and being in the Borough of Maywood County of 40

Bergen and State of New Jersey, as follows: First Tract Being the Homestead Farm Beginning in the middle of the Spring Valley Road, at the south-westerly corner of the said lot thence running (1) along the middle of said road north 24 degrees 24 minutes east 6 chains and 37 links thence (2) 10 north 22 degrees 17 minutes east 5 chains and 26 links thence (3) north 21 degrees and 19 minutes east 2 chains and 73 links thence (4) south 48 degrees 31 minutes east 22 chains and 66 links thence (5) north 16 degrees and 18 minutes east 7 chains and 6 links thence (6) south 45 degrees 15 minutes east 32 chains and 90 links to the middle of the brook thence (7) along the middle of said brook southerly the several courses and 20 distances thereof to the southeasterly corner of said lot or tract thence (8) north 45 degrees 21 minutes west 15 chains and 6 links thence (9) south 45 degrees 52 minutes west ten chains and 32 links thence north 45 degrees 13 minutes west 34 chains and 25 links to the place of beginning. Containing 78 acres be the same more or less. Bounded westerly by the middle of the Spring Valley Road northerly by lands formerly of Benjamin P. Price, easterly by middle of said Brook southerly by lands formerly of John I. Terhune deceased, John C. Van Saun, and the second and fourth tracts hereinafter described.

Second Tract Beginning in the middle of the Public road leading from Paramus to Hackensack at the most southerly corner of the third tract hereinafter described thence running (1) south forty eight degrees east along the middle of said road 15 chains and 13 links thence (2) north 27 $\frac{3}{4}$  degrees east 17 chains and 15 links thence 40 (3) north 48 degrees west 15 chains 13 links thence (4) south 27 $\frac{3}{4}$  degrees west 17 chains and 15

links to the place of beginning Bounded southerly by the middle of the aforesaid road easterly by land now or late of John C. Van Saun northerly by the first tract above described and westerly by the third and fourth tracts hereinafter described Containing 25.13 acres.

Third Tract Beginning at the middle of the Spring Valley Road and at its junction with the road leading from Hackensack to Paramus and from thence running (1) north 29 degrees east 7 chains and 65 links thence (2) south 49 degrees 15 minutes east 11 chains and 86 links thence (3) south 29 degrees and 45 minutes west 8 chains and 3 links to the said Paramus Road thence (4) along said road north 47 degrees west 11 chains and 90 links to the place of beginning Containing 9.09 acres Bounded southerly by the Paramus Road westerly by the Spring Valley Road northerly by the fourth tract hereinafter described and easterly by the second tract hereinbefore described. 10 20

Fourth Tract Beginning at the middle of the Spring Valley Road being the northwesterly corner of the lot and the southwesterly corner of the first tract herein described and from thence running (1) south 47 degrees east twelve chains and 4 links thence (2) south 29 degrees and 45 minutes west 8 chains and 83 links thence (3) north 49 degrees and 15 minutes west 11 chains and 86 links to the middle of the said road thence (4) along the middle of the said road 29 degrees east 9 inches and 26 links to the place of beginning Bounded westerly by the Spring Valley Road northerly by the first tract above described easterly by the second tract above described and southerly by the third tract above described Containing 10.55 acres. 30 40

Excepting and reserving from the first and second tracts the following Beginning at a point on the westerly line of Maywood Avenue which point is the southeast corner of land hereby described and the northeast corner of lands of John C. Van Saun thence running (1) along the westerly side of Maywood Avenue north 26 degrees and 42 minutes east 445 feet thence (2) at right angles to said Maywood Avenue north 63 degrees and 18 minutes west 300 feet thence (3) on a line parallel with the westerly line of Maywood Avenue south 26 degrees and 45 minutes west 504 feet thence (4) south 43 degrees and 13 minutes east 180.6 feet to land of John C. Van Saun thence (5) along lands of said John C. Van Saun north 32 degrees 57 minutes east 160.47 feet thence (6) still along lands of said John C. Van Saun south 44 degrees and 28 minutes east 119.3 feet to the westerly line of Maywood Avenue to the point or place of beginning containing 3.38 acres.

Also excepting and reserving from the second and third tracts above described all the following described tracts Being a plot of land for an electric railway 40 feet wide measured 20 feet on each side of a line described as follows Beginning at a point in the easterly line of lands formerly of Cornelius W. Anderson distant along said land on a course of north 33 degrees and 4 minutes east 372.73 feet from the center line of Passaic Street thence running north 40 degrees and 12 minutes west a distance of 1787.84.....to a point in the easterly line of the Spring Valley Road said point being distant along said easterly line of said Spring Valley Road on a course of north 32 degrees 33 minutes east 465.2 feet from the center line of Passaic Street Said plot containing 1 6417/40 10,000 acres Granting however to the said party

of the second part its successors and assigns the right reserved to the said Cornelius W. Anderson and conveyed by him to the party of the first part in a grant of said right of way to open up streets *across* the plot hereby excepted not closer than 300 feet and not less than 60 feet in width.

Also excepting and reserving from the first tract  
 10 the following Beginning at a point in the easterly line of Maywood Avenue which said point is the southwesterly corner of the lands herein intended to be excepted thence runniing (1) northerly along said easterly line of Maywood Avenue 467.50 feet thence (2) at right angles to said Maywood Avenue 250 feet thence (3) northerly on a line parallel with the easterly line of Maywood Avenue and distant easterly 250 feet therefrom 412 feet to a point thence (4) easterly 1280 feet more or  
 20 less to the center of the brook thence (5) southerly along the center of the brook as it winds and turns to the southeast corner of the land hereby described thence (6) westerly along the southerly line of the lands hereby described 997.39 feet more or less to a point thence (7) southerly along the easterly line of the land hereby described 682.2 feet to the southeast corner of the land hereby described thence (8) westerly along the southerly  
 30 line of the land hereby described 293.67 feet more or less to the point or place of beginning. The property herein described having been heretofore divided into lots in accordance with a map or maps heretofore filed in the Office of the Clerk of Bergen County the party of the second part agrees to release any one or more of the lots or any part of the premises in question from the lien of this mortgage upon the payment of \$30.00 for each and every lot released. The party of the first  
 40 part reserves the right of replotting the said prop-

erty. This mortgage is intended to be a lien upon the premises in question second only to the lien of two mortgages aggregating \$35,000. one upon a part of the premises in question and the other upon the balance thereof. It is covenanted and agreed between the parties to this mortgage and the bond accompanying it that whereas the mortgagee as Trustee but appearing individually in mortgage hereinafter mentioned at the present time possesses a mortgage upon realty given as security for the payment of the principle before described in this mortgage and the bond accompanying it upon other realty than that described herein should the party of the second part receive any payment from such other realty or from any other source upon said bond and mortgage it is to be credited upon the principal of this mortgage and the bond accompanying.

Together with all and singular the privileges and advantages with the appurtenances to the same belonging or in anywise appertaining. Also all the estate right title interest property claim and demand whatsoever of the party of the first part in and to the same and of in and to every part and parcel thereof. To have and to hold all and singular the above described tracts or lots of land and premises with the appurtenances unto the said party of the second part his heirs and assigns to the only proper use benefit and behoof of the said party of the second part his heirs and assigns forever. Provided always and it is agreed by and between the parties to these presents that if the said party of the first part its successors or assigns do and shall well and truly pay or cause to be paid to the said party of the second part or to his certain attorney or attorneys heirs executors administrators or assigns the sum of Nineteen thousand one hundred

and thirteen and thirty four one hundredths Dollars (\$19,113.34) according to the condition of the said bond made executed and given by the party of the first part to the said party of the second part bearing even date herewith drawn in the penal sum of Thirty eight thousand two hundred and twenty six and sixty eight one hundredths Dollars (\$38,226.68) and containing thirty days interest tax and default clauses without any deduction or defalcation for taxes assessments or any other imposition whatsoever then and from thenceforth these presents and said obligation and everything herein and therein contained shall cease and be void anything herein and therein contained to the contrary in anywise notwithstanding. 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 hereinbefore expressed and should the same remain unpaid and in arrear for the space of thirty days that then and from thenceforth that is to say after the lapse of the said thirty days the aforesaid principal sum of money with all arrearages of interest thereon shall at the option of the said party of the second part his heirs executors administrators or assigns become and be due and payable immediately thereafter although the time above limited for the payment thereof may not then have expired anything thereinbefore contained to the contrary thereof in anywise notwithstanding as by said bond or obligation and the condition thereof reference being thereunto had may more fully appear. And the said party of the first part for itself its successors and assigns does covenant and agree with the said party of the second part his heirs executors administrators and assigns that the said party of the first part its

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10 successors and assigns will pay in full all taxes levied or to be levied upon the lands embraced in this mortgage and will not claim or demand or be entitled to receive any credit or credits on the interest payable hereon or on the moneys to secure payment of which this mortgage is made for so much of the taxes assessed against said land as shall be equal to the tax rate applied to the amount due on this mortgage or any part thereof and that no deduction shall be made from the taxable value of the land by reason of this mortgage.

20 And it is also agreed by and between the parties to these presents that the said party 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 in some safe and responsible insurance company or companies to an amount not less than \$19,113.34 and assign the policy and certificate thereof to the said party of the second part as collateral security for the payment of the principal and interest aforesaid and in default thereof it shall be lawful for the party of the second part to effect such insurance and the premium or premiums paid for effecting the same shall be a lien on the said mortgaged premises added to the amount of said bond or obligation and secured by these presents and payable 30 on demand with legal interest. And the said party of the first part for itself its successors and assigns does covenant and agree to and with the said party of the second part his heirs and assigns that the said party of the second part shall and may from time to time and at all times after default shall be made in the performance of the proviso or condition herein contained peaceably and 40 quietly enter *into* have hold use occupy possess and enjoy all and singular the above granted and bargained premises with the appurtenances with-

out the let suit trouble hindrance or denial of the said party of the first part its successors or assigns or any other person or persons whatsoever.

In witness whereof the party of the first part hath caused these presents to be sealed with its corporate seal signed by its President and attested by its Secretary the day and year first above written. 10

The Maywood Company (Seal)  
By A. C. Hart,  
President.

Attest:

W. HOWARD MEARS,  
Secy.

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State of New Jersey, } ss.:  
County of Bergen, }

Be it remembered that on this 11th day of March in the year of our Lord one thousand nine hundred and fourteen before me the subscriber a Commissioner of Deeds of New Jersey personally appeared W. Howard Mears who being by me duly sworn doth depose and make proof to my satisfaction that he is the Secretary of and well knows the corporate seal of The Maywood Company the mortgagor named in the foregoing instrument that the seal thereto affixed is the proper corporate seal of said corporation and was thereto affixed and said instrument signed and delivered by Archibald C. Hart who was at the date and execution thereof President of said corporation as and for his voluntary act and deed and as and for the voluntary act and deed of said corporation in the 30 40

presence of deponent who thereupon signed the same as subscribing witness.

Sworn and subscribed to before me,  
the day and year aforesaid,

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VICTOR A. HART,

Commissioner of Deeds of New Jersey "south-  
westerly" changed to "southeasterly" "links" writ-  
ten over erasure

Received in the office and recorded Mar 13 1914  
at 12.27 P. M.

CHARLES F. THOMPSON,  
Clerk.

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State of New Jersey, }  
County of Bergen, } ss.:

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I, George Van Buskirk, Clerk of the County  
of Bergen in the State of New Jersey, and also  
Clerk of the Circuit and Common Pleas Courts, in  
and for said County (Courts of Record), do hereby  
certify that I have compared the copy of the Mort-  
gage hereto annexed, with the original record there-  
of in Liber 323 of Mortgages at pages 171, &c., in  
my office at Hackensack in said County, and that  
the same is a true copy thereof, and of the whole  
of such original record.

IN TESTIMONY WHEREOF, I have  
hereunto set my hand and affixed the  
(Seal) seal of the said Courts and County,  
of Hackensack, aforesaid, this 31st  
day of March A. D. one thousand  
nine hundred and Nineteen.

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GEO. VAN BUSKIRK,  
Clerk.

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IN CHANCERY OF NEW JERSEY.

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Between

GEORGE P. RUST,  
Complainant,

and

THE SCHMIDT REALTY and CON-  
STRUCTION COMPANY, et als.,  
Defendants.

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On Bill, &c. 10  
Final Decree.

THIS CAUSE BEING OPENED TO THE COURT, by Arthur S. Corbin, of counsel with the complainant, and it appearing that process of subpoena for the appearance of the defendants has been duly issued and returned, with service acknowledged thereon by the defendants, The Schmidt Realty and Construction Company, Robert D. Kent, Merchants Bank of Passaic, E. Max Applegate and Archibald C. Hart, and the defendant, Miner R. Knowlton returned "not found" and an order of publication having been taken against him, and that the time limited therein has expired, and that the defendants have neglected to file any plea, demurrer or answer to the complainant's bill in the Clerk's office within the time limited by law and the said order: 20 30

WHEREUPON, and upon reading and filing a report made in this cause by Thomas P. Costello, one of the Masters of this Court bearing date on the twenty eight day of March, Nineteen Hundred and Thirteen, by which it appears that there is due to the complainant for principal and interest on his two mortgages, the sum of Thirty-five 40

thousand two Hundred and twenty-six Dollars and ninety-two Cents. That there is due the defendant, E. Max Appelgate for principal and interest on his mortgage, the sum of One Thousand Seven Hundred and Ninety Nine Dollars and Forty One Cents. That there is due the defendant, Archibald C. Hart for principal and interest on his mortgage, the sum of Eighteen Thousand Two Hundred and Fifty Dollars and Eighty Four Cents, and no cause being shown to the contrary, it is, on this Seventh day of April, Nineteen Hundred and Thirteen, by Edwin Robert Walker Chancellor of the State of New Jersey, Ordered, adjudged and decreed that the Master's report and all the matters and things therein contained do stand ratified and confirmed, and that the said complainant is entitled to relief and to a sale of so much of the said mortgaged premises as shall be necessary to satisfy to the said complainant and the said defendants, E. Max Appelgate and Archibald C. Hart the amounts so as aforesaid reported due to them respectively, together with their respective costs to be taxed.

And it is accordingly further ordered, adjudged and decreed that so much of said estate and premises described in the said mortgages as will be sufficient to raise and satisfy the said sums so as aforesaid reported to be due to them, respectively, with their respective costs to be taxed, be sold, and that a writ of fieri facias do issue for that purpose out of this court, forthwith directed to the Sheriff of the County of Bergen, commanding him to make sale, according to law, of the said mortgaged premises to pay and satisfy the amounts respectively due to the said complainant and the said defendants, E. Max Appelgate and Archibald C. Hart, together with their respective costs to be taxed; and that out of the moneys arising from such sale,

he in the first place, pay to the said complainant, George P. Rust, or to his solicitor, the sum of Thirty Five Thousand Two Hundred and Twenty Six Dollars and Ninety Two Cents (\$36,226.92) with lawful interest thereon as aforesaid, together with his costs to be taxed, including a counsel fee of One hundred & thirty two dollars, instead of fee allowed by law; and that in the second place he pay to the defendant, E. Max Appelgate, or his solicitor, the sum of One Thousand Seven Hundred and Ninety Nine Dollars and Forty One Cents (\$1,799.41) with lawful interest thereon as aforesaid, together with his costs to be taxed; and that in the third place, he pay to the defendant Archibald C. Hart, or his solicitor, the sum of Eighteen Thousand Two Hundred and Fifty Dollars and Eighty Four Cents (\$18,250.84) with lawful interest thereon as aforesaid, together with his costs to be taxed. And in case more money should be raised by such sale than shall be sufficient to answer such payments, then that the surplus be brought into this court and deposited with the clerk to abide the order of this court unless otherwise previously disposed of by the further order of the court; and that the said Sheriff make return to this court of his proceedings by virtue of the said writ.

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

E. R. WALKER,  
C.

A true copy

JESSE R. SALMON,  
Clerk.

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HACKENSACK, BERGEN COUNTY,  
NEW JERSEY,

Robert N. Heath, Sheriff.

IN CHANCERY OF NEW JERSEY.

S. B. Folio 169.

10 Between  
 GEORGE P. RUST,  
 Complainant,  
 and  
 THE SCHMIDT REALTY AND CON-  
 STRUCTION CO., et als.,  
 Defendant.

35-564.  
 Fi. Fa. for Sale  
 of Mortgaged  
 Premises.  
 Returnable  
 May Term,  
 1913.

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Decree for Complainant.....	\$35,226.92
Interest from Mar. 28, 1913, to Mar. 13, 1914 .....	2,054.90
Costs taxed at.....	380.21
Interest from April 7, 1913, to Mar. 13, 1914 .....	21.54
	<hr/>
	\$37,683.57
30 Decree for E. Max Applegate,.....	1,799.41
Interest from Mar. 28, 1913, to Mar. 13, 1914 .....	104.96
Costs taxed at.....	12.16
Interest from April 7, 1913, to Mar. 13, 1914 .....	.69
Decree for Archibald C. Hart.....	18,250.84
Interest from Mar. 28, 1913, to Mar. 13, 1914 .....	1,064.63
Costs taxed at.....	4.76
Interest from April 7, 1913, to Mar. 13, 1914 .....	.27
40 Sheriff's Execution Feess .....	339.29
	<hr/>
Total .....	\$59,260.58

159  
*Exhibits.*

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Proceeds of Sale:

Bid, \$37,678.67; Interest, \$507.56; Deed and Certificate, \$6.00.	38,192.23	
Deficiency .....	\$21,068.35	10
Levy and Ret.....	\$1.12	
Posting .....	3.50	
Publishing .....	3.00	
Statement .....	1.00	
Commission .....	213.39	
Deed .....	5.00	
Crier .....	1.00	
Report .....	1.40	
Certificate .....	1.00	20
Printing .....	78.88	
Adjournments .....	30.00	
Total .....	\$339.29	

BY VIRTUE of the annexed Writ I did, on the seventeenth day of December, 1913, sell at Public Vendue at the Sheriff's Office, in the Village of Hackensack, having first duly advertised the same, the land and premises described in said Writ, to A. C. Hart and Wm. L. Wemple for the sum of Thirty-seven thousand six hundred seventy-eight (\$37,600.78) Dollars, he being the highest bidder for the same. 30

I hereby certify that the above statement is correct.

ROBERT N. HEATH,  
Sheriff.

Dated, March 13, 1914.

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IN CHANCERY OF NEW JERSEY.

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	Between	}	Order Con- firming Sale of Mortgaged Premises, &c.
10	GEORGE P. RUST, Complainant,		
	and		
	THE SCHMIDT REALTY & CON- STRUCTION Co., et als., Defendants.		

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20 Upon reading and filing a report made by Robert N. Heath Sheriff of the County of Bergen bearing date the seventeenth day of December nineteen hundred and thirteen and the affidavit thereto attached, whereby it appears that on the seventeenth day of December nineteen hundred and thirteen he sold at public Vendue, at the Court House in the village of Hackensack, N. J. (having first duly advertised the same), the lands and premises described in the writ of Execution issued to him in the above-stated cause, to A. C. Hart & Wm. L. Wemple of the

30 village of Hackensack, and the State of New Jersey, for the sum of thirty-seven thousand six hundred and seventy-eight dollars and sixty-seven cents, and being the highest bidder therefor, and that the said lands and premises were so sold at the highest and best price the sale would then bring in cash, and no cause being shown or appearing to the contrary;

40 It is, on this thirtieth day of December nineteen hundred and thirteen ordered that the said sale be, and the same is hereby, confirmed as valid and effectual in law. And it is further ordered that the said sheriff do execute a good and sufficient convey-

ance in the law to the said purchaser for the said mortgaged premises so sold.

E. R. WALKER,  
C.

A true copy.

SAML. K. ROBBINS,  
Clerk.

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MEMORANDUM OF AGREEMENT made between THE SCHMIDT REALTY AND CONSTRUCTION COMPANY, a corporation, party of the first part, PHILIP ZALKIND, party of the second part, and MARIE SCHMIDT, party of the third part:

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WHEREAS, there are pending certain suits between the parties hereto, namely a suit in Chancery of New Jersey, between Marie Schmidt, complainant, and Philip Zalkind, Gustav Schroeder, Charles G. Davidson and The Schmidt Realty and Construction Company, defendants, actions in ejectment in the Supreme Court of New Jersey between the Schmidt Realty and Construction Company, plaintiff, and Marie Schmidt, Frederick Schmidt and John Schmidt, defendants, and an action in the Bergen Circuit Court, between Sophie Muller, plaintiff, and The Schmidt Realty and Construction Company, defendant, and

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WHEREAS it appears to the advantage of all the parties herein named to settle and discontinue the suits now pending; and

WHEREAS the party of the third part has advanced certain moneys to the party of the first part

40

and has received in return therefor certain stock of the said corporation,

10        THEREFORE, THIS MEMORANDUM OF AGREEMENT WITNESSETH: That for and in consideration of the premises and of the mutual covenants and agreements herein contained, the parties hereto hereby agree as follows:

The party of the third part will turn over, transfer and give up to the party of the first part all of the stock of the said The Schmidt Realty and Construction Company which she now has in her name, or otherwise, and all the stock of said company which has ever been issued to her.

20        The said party of the third part will and hereby does assume, and agree to take care of and pay a certain indebtedness represented by a note made by the said party of the third part and one Gustav Schroeder to one Sophie Muller, and to procure, cancel and turn over to The Schmidt Realty and Construction Company a certain promissory note for One Thousand Dollars which is the subject matter of an action now pending between the said Sophie Muller as plaintiff, and The Schmidt Realty and Construction Company as defendant, and agrees to pay the said sum and save harmless the  
30        said Company and the said Gustav Schroeder from any and all liability of any kind whatsoever thereon, and to procure from the said Sophie Muller what is known as a general release to the said The Schmidt Realty and Construction Company and the said Gustav Schroeder, and the said promissory note and deliver the same to the party of the first part.

40        The party of the third further agrees to release and to execute proper and sufficient instruments of release releasing the party of the first part, the party of the second part and the said Gustav

Schroeder from any and all claims whatsoever, and for that purpose to execute what is known as a general release to each of said parties; and the party of the third part further agrees to forthwith upon the execution of this instrument, deliver up possession of the premises occupied by her and owned by the said corporation in Maywood, N. J., to vacate the same and to remove therefrom with her husband and household, without notice or demand. She further agrees to deliver forthwith to the said Philip Zalkind or his attorney all books, papers, vouchers, documents, seals, furniture and any and all other personal property in her possession or control, belonging to either of the parties of the first and second parts, or both and particularly the stockbook, stockledger, transfer book, and seal of the said The Schmidt Realty and Construction Co., and book and seal of a corporation known as The Maywood Heights Improvement Company, all of which that are or have been in her possession. 10

In consideration of these covenants and agreements to be carried out by the party of the third part, the party of the first part agrees to pay to the party of the third part the sum of Twenty Thousand (\$20,000) dollars by the execution and delivery to the said party of the third part of a proper and sufficient bond and mortgage of said amount on its property situated in the Borough of Maywood, County of Bergen, State of New Jersey, now subject to a certain mortgage known as the Anderson mortgage and all its other property in said Maywood, not heretofore sold or conveyed, which bond and mortgage of Twenty Thousand Dollars shall become due six years from the date thereof, and shall bear interest at the rate of five per cent per annum, and shall contain a provision that no interest shall be payable until one year from the date of said mortgage, but semi-annually thereafter. 20 30 40

10 The said bond and mortgage shall contain the usual clause with a provision that the mortgagor shall have forty-five days before any default in the payment of interest or principal shall entitle the mortgagee, or her assigns, to institute legal proceedings for the collection thereof, or to commence foreclosure proceedings.

And the said mortgage shall also contain a subordination clause whereby the said mortgage shall be and remain second and subordinate to first or other mortgage, lien or liens not to exceed Thirty Thousand Dollars in all.

20 The said bond and mortgage shall also contain a provision that the same may be paid in full at any time and the party of the third part shall thereupon execute, acknowledge and deliver a proper and sufficient satisfaction of mortgage as to the amount paid. Said mortgage shall also contain a provision that the mortgagee shall release any part of said property from said mortgage on payment thereon at the rate of Thirty (\$30) Dollars per lot as the lots are laid out on a certain map known as map of Maywood Heights filed in the Bergen County Clerk's Office April 3rd, 1906, as map number 994, but reference to said map shall not be construed to bind the mortgagor, its successors or assigns to the platting as shown in said map. The mortgagor shall have the right to replat said property as may seem to it wise and proper, and the said mortgage shall be subject to the present platting and any new platting, and changes in the same, at the option of the mortgagor; and the mortgagee shall make execute and acknowledge good and sufficient release or releases of mortgage whenever required by the mortgagor on three days' notice, notice mailed to her last known post office address, postage prepaid, shall be sufficient. In  
40 case of her failure or refusal to so make execute

and deliver such release said mortgage shall cease and be void as to the lots required to be released, upon a written offer by the mortgagor, its successors or assigns, to make such payment delivered to her personally or mailed to her postage prepaid addressed to her last known post office address, and accrual of interest on said mortgage shall cease and be suspended, and the period of forty-five days mentioned in the interest clause of said bond and mortgage shall be extended for as many days as her failure or refusal to make, execute, acknowledge and deliver such release or releases shall continue. The mortgagor shall also have the privilege of making a payment or payments at any time of not less than One Thousand Dollars to apply to the reduction of the said bond and mortgage as a whole, and receive therefor properly executed and acknowledged release or satisfaction to the extent of such payments, with the like provisions and conditions as heretofore set forth in reference to release of one or more lots.

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20

The party of the first part agrees to execute and deliver to the party of the third part a release in the form known as a general release.

The said party of the second part agrees to execute and deliver to the party of the third part a general release in like form, and to use his best efforts to carry out this agreement according to the meaning and intent thereof.

30

It is further mutually agreed between all the parties hereto that the said suits pending in the Court of Chancery of New Jersey, The Supreme Court, and the Bergen Circuit Court, above mentioned shall each and all of them be discontinued without costs to either party as against the other.

Every action now pending between any of the parties hereto shall be released and discontinued upon the same terms.

40

This agreement shall bind the heirs, executors, administrators, successors and assigns of the respective parties.

10 IN WITNESS WHEREOF the party of the first part has caused this agreement to be signed by its president and its corporate seal to be hereto affixed and the same to be duly attested by its secretary, and the parties of the second and third parts have hereunto set their hands and seals, all this day of May, 1908.

MARIE SCHMIDT, (L. S.)

Witnessed by:

A. C. HART.

20

Received the papers and documents herein.

A. C. HART.  
for M. SCHMIDT,

June 20, 1908.

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IN CHANCERY OF NEW JERSEY.

<p style="text-align: center;">MARIE SCHMIDT, Complainant, vs. SCHMIDT REALTY &amp; CONSTRUCTION COMPANY, et al., Defendants.</p>	}	On Bill &c.	10
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STATEMENT OF INTEREST DUE.

Balance of principal due complainant as shown in affidavit of A. C. Hart and Master's report in Rust foreclosure suit,	\$17570.	
Interest June 19, 1912 to March 28, 1913, as shown in affidavit of A. C. Hart and Master's report in Rust foreclosure,	\$ 680.84	20
Interest March 28, 1913 to August 10, 1914 on \$17570,	1200.61	
Interest August 10, 1914 to September 8, 1914, on \$17180,	66.80	
Interest September 8, 1914 to April 5, 1915, on \$16910,	486.16	
Interest April 5, 1915 to June 21, 1915 on \$16610,	175.32	30
Interest June 21, 1915 to July 16, 1915 on \$16550,	57.46	
Interest July 16, 1915 to July 30, 1915 on \$16490,	32.06	
Interest July 30, 1915 to December 1, 1916 on \$16130,	1077.57	
Interest December 1, 1916 to March 13, 1919 on \$10130,	1156.51	
	\$4933.33	40
Total interest		
Balance of principal	\$10130.00	
Total principal and interest		
March 13, 1919	15063.33	

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**Statement of Amount Received on  
Releases.**

IN CHANCERY OF NEW JERSEY.

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10	MARIE SCHMIDT, Complainant, vs. SCHMIDT REALTY & CONSTRUCTION COMPANY, et al., Defendants.	}	On Bill &c.
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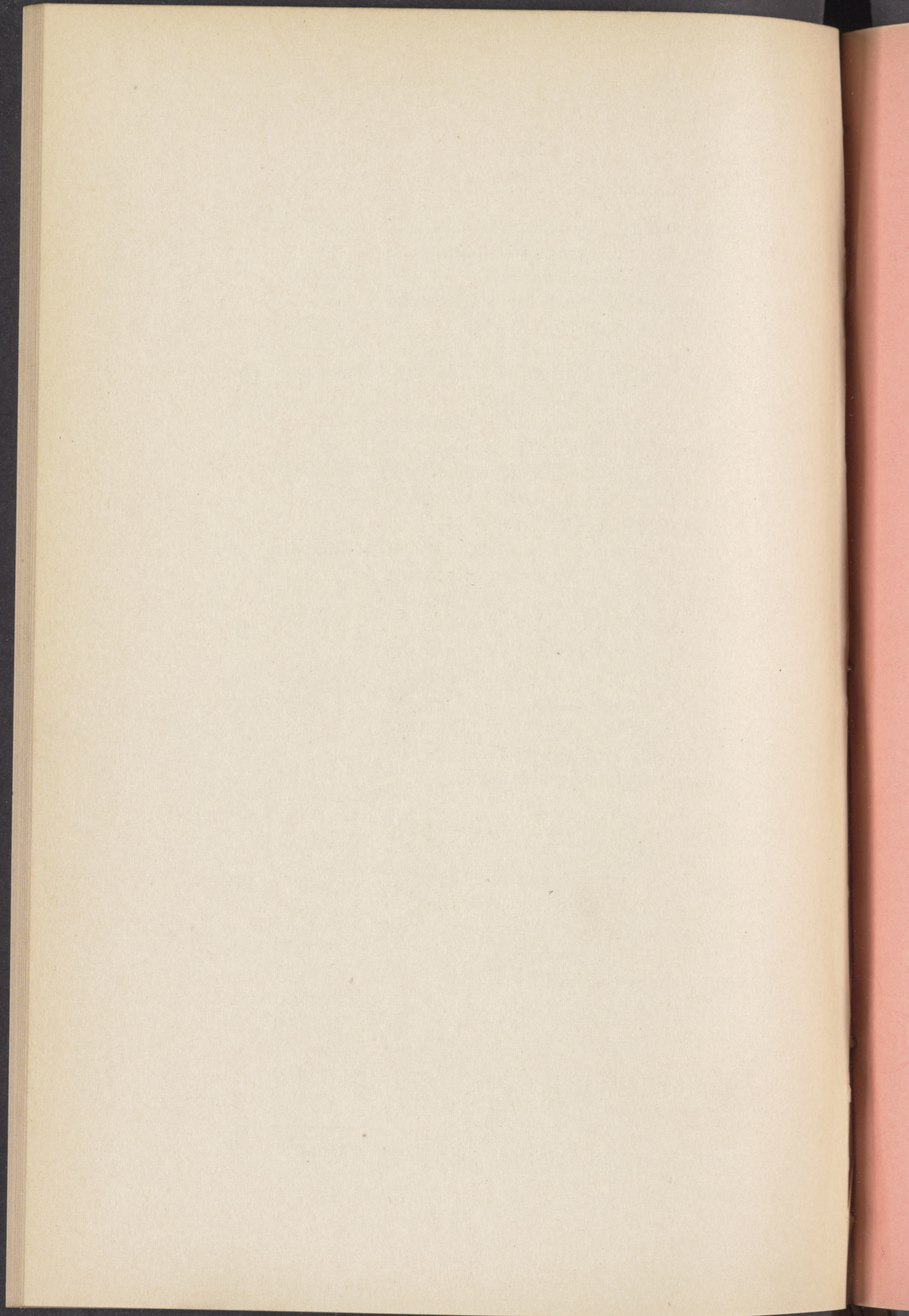
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Releases under mortgage under foreclosure.

- |    |  |          |
|----|--|----------|
| 20 | 1. Release Hart to Schmidt Company<br>December 3, 1908 liber 18, page 441<br>covers four lots, paragraph 7 of bill<br>of complaint, consideration,     | \$120.00 |
|    | 2. Release Hart to Schmidt Company<br>September 20, 1910 liber 23, page<br>389 covers five lots paragraph 8 of<br>bill, consideration,                 | 150.00   |
| 30 | 3. Release Hart to Schmidt Company<br>October 3, 1910 liber 23, page 399<br>covers 42 lots paragraph 9 of bill,<br>consideration,                      | 1260.00  |
|    | 4. Release Hart to Schmidt Company,<br>January 12, 1911, liber 24, page 147<br>covers 15 lots, paragraph 10 of bill,<br>consideration,                 | 450.00   |
|    | 5. Release Hart to Schmidt Company<br>October 17, 1911, liber 26, page 399,<br>covers 5 lots and a fraction, para-<br>graph 11 of bill, consideration, | 150.00   |
| 40 | 6. Release Hart to Schmidt Company<br>October 22, 1912, liber 29, page 296,<br>covers 10 lots paragraph 12 of bill,<br>consideration,                  | 300.00   |

*Exhibits.*

7. Release Hart to Newman April 5, 1915 liber 35, page 510, paragraph 13 of bill consideration,	300.00	
Total amount received for releases on mortgage under foreclosure,	2730.00	
Releases under mortgage made by Maywood Company.		10
Release Hart to Maywood Company August 10, 1914 liber 34, page 162 covers 13 lots amount received,	\$390.00	
Release Hart to Maywood Company September 8, 1914, liber 34, page 255, covers 9 lots amount received,	270.00	
Release Hart to Maywood Company June 21, 1915, liber 36, page 126 covers 2 lots, consideration,	60.00	20
Release Hart to Maywood Company July 16, 1915 liber 36 page 470 covers 2 lots consideration,	60.00	
Release Hart to Maywood Company July 30, 1915 liber 37, page 265 covers 14 lots consideration,	360.00	
	<hr/>	
Total amount received on releases under Maywood mortgage,	\$1140.00	
Satisfaction of Maywood Company, dated December 1, 1916 liber 15 Satisfaction of Mortgages, page 444, amount received,	6000.00	30
Total amount received,	9870.00	
Principal of mortgage,	20000.00	
Less credits,	9870.00	
	<hr/>	
Balance of principal,	\$10130.00	
Interest to March 13, 1919 at 5%,	4933.33	
	<hr/>	
Total amount due principal and interest	\$15063.33	40



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