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AMENDED BILL OF COMPLAINT.

(Filed April 27, 1926.)

IN CHANCERY OF NEW JERSEY.

Between

ADA L. TODD, F. ERNEST TODD, EDWARD LIEBE, BLANCHE V. LIEBE, JULIAN H. IRELAND, DORA H. IRELAND, GEORGE J. TURCOTT and WILLIAM SCHMID, trustee for JOHN J. HUNTER, CHELSEA LAUNDRY COMPANY, WILLIAM GORDON, OCEAN PIER FISH MARKET, INC., CHARLES E. CUSTER and HARRY KALLAS, trading as CUSTER & KALLAS, WILLIAM I. SEGAL, GUARANTEE TRUST CO., a banking corporation of New Jersey, WILLIAM LEWIS CO., and SUPPLEE-WILLS-JONES COMPANY,

Complainants,

and

EXETER LAND COMPANY, RAYMOND P. READ, JANE C., his wife, CARLTON GODFREY, ANNIE M., his wife, and BALTIMORE LIFE INSURANCE COMPANY,

Defendants.

On Bill to Quiet Title. Amended Bill of Complaint.

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

The complainants, Ada L. Todd, F. Ernest Todd, Edward Liebe, Blanche V. Liebe, Julian N. Ireland, Dora R. Ireland, George J. Turcott, and William Schmid, trustee for John J. Hunter, Chelsea Laundry Company, William Gordon, Ocean Pier Fish Market, Inc., Charles E. Custer and Harry Kallas, trading as Custer & Kallas, William I. Segal, Guarantee Trust Co., a banking corporation of New Jersey, William Lewis Co., and Supplee-Wills-Jones Company, all being of the City of Atlantic City, respectfully show that:

1. On the 8th day of March, 1912, the Margate Company, a corporation of the State of New Jersey, being indebted to Emma E. Moitz Doherty, trustee for Esther Y. Moitz Fuller under the will of Maximilian Moitz, deceased, in the sum of twenty-two hundred dollars ($2200.00), executed in her a certain bond of that date to secure the payment of twenty-two hundred dollars ($2200.00), payable at the expiration of three years from the date thereof, together with interest thereon at the rate of 6% per annum, payable semi-annually from the date of said bond.

2. To secure payment of said bond said Margate Company executed to said Emma E. Moitz Doherty, trustee as aforesaid, a mortgage of even date with said bond, and thereby conveyed to her in fee the tract of land hereinafter described, on the express condition that such conveyance should be void if payment should be made according to the terms of said bond, which mortgage, having been first duly

acknowledged, and the certificate of acknowledgment duly endorsed thereon was recorded in the clerk's office of Atlantic County in Book 129 of Mortgages, page 76 on June 10th, 1912.

3. Said mortgaged premises are bounded and described as follows: All that certain lot, tract or parcel of land and premises situate in the City of Margate City, County of Atlantic and State of New Jersey, bounded and described as follows:

BEGINNING at the intersection of the Easterly line of Pembroke Avenue with the Southerly line of Ventnor Parkway and extending thence (1) Eastwardly in and along the Southerly line of Ventnor Parkway eighty and twenty-five hundredths (80.25) feet; thence (2) Southwardly parallel with Pembroke Avenue ninety (90) feet; thence (3) Westwardly, parallel with Ventnor Parkway Eighty and twenty-five hundredths (80.25) feet to the Easterly line of Pembroke Avenue; thence (4) Northwardly in and along said Easterly line of Pembroke Avenue ninety (90) feet to the place of beginning.

BEING lot 1, Block 18, on a certain plan of lots entitled "Plan of Margate Park, situate in Margate City, New Jersey, made November, 1909, by Ashmead and Hackney, Civil engineers," filed December 16th, 1909, in the Clerk's Office of Atlantic County, New Jersey.

4. That on April 26th, 1916, Annie E. Hand obtained a judgment against the Margate Company in the sum of five thousand and five dollars and fifty cents ($5005.50), which said judgment was recorded in Circuit Court Judgment Book 12, page

263, and which said judgment was subsequent to the lien of the aforesaid mortgage.

5. That on July 29th, 1916, said Annie E. Hand assigned said judgment to Raymond P. Read, one of the defendants herein, by assignment of that date, and recorded in Book 1 of Assignment of Judgments, page 464, in the clerk's office of Atlantic County.

No part of the consideration therefor was furnished by the said Raymond P. Read, but was paid by him for and in behalf of the defendants, Exeter Land Company, Carlton E. Godfrey, or one of them.

6. That on October 10th, 1916, pursuant to an execution and levy issued under and by virtue of the aforesaid judgment said premises were granted and conveyed by Joseph R. Bartlett, sheriff of Atlantic County, to the aforesaid Raymond P. Read, together with other premises.

7. That on May 16th, 1917, solicitors for the said Emma E. Moitz Doherty, trustee as aforesaid, caused to be filed in the Court of Chancery of New Jersey a bill in equity, praying for a decree foreclosing the equity of redemption of the defendants therein named, in and to the mortgaged premises hereinbefore described, and the defendants to said bill of complaint were the Margate Company, Lillie B. Barton, Charles Turnbull, Annie D. Shivers, Harry Earl, Harriet Levy, trustee for Jane Lipchutz, Raymond P. Read and Jane C. Read, his wife, and John G. Horner, receiver of the West Jersey Mortgage Company.

8. That the foreclosure search ordered by the com-

plainant in that case showed the title to said premises to be vested in Raymond P. Read by virtue of the deed from Joseph R. Bartlett, sheriff as aforesaid.

9. That between the date of said search and the date of filing said bill, to wit, May 16th, 1917, the said Raymond P. Read and Jane C., his wife, joined with defendant, Carlton Godfrey and Annie M., his wife, in a conveyance to the Exeter Land Company. The premises conveyed thereby included in the premises hereinbefore described, as well as other premises, and the consideration therefor recited in said deed of conveyance was the sum of five thousand dollars ($5000.00), but the complainant charges that no portion of the consideration therein named was paid to the said Raymond P. Read or to Jane C. Read, his wife, excepting and in so far as the consideration for the sale of said premises to the said Read, as hereinbefore set forth, had been provided by the said Carlton S. Godfrey, Exeter Land Company, or one of them.

Said deed bears date the 2nd day of May, 1917, and was recorded on May 5th, 1917, in the clerk's office of Atlantic County, in Book 576 of Deeds, at page 110.

10. During the time of the occurrence of the aforesaid transaction the aforesaid defendants, Raymond P. Read and Carlton Godfrey, were partners or associates in the practice of law under the firm name of Godfrey and Read.

11. The defendant, Exeter Land Company, was a corporation created by the defendant, Carlton Godfrey, for the purpose of dealing in real estate, prin-

cipally in Margate, New Jersey, and the said Carlton Godfrey was the principal stockholder therein and the said Raymond P. Read was a minority stockholder therein, and the attorneys for said corporation were the aforesaid Godfrey and Read.

12. Service of subpoena *ad respondendum* in the foreclosure proceedings aforesaid was acknowledged for Raymond P. Read and Jane C., his wife, by Godfrey and Read, solicitors, and the aforesaid Carlton Godfrey was the person who actually inscribed the signature of Godfrey and Read thereon.

13. The offices of Godfrey and Read, Carlton Godfrey, Raymond P. Read and the principal office of the Exeter Land Company in the State of New Jersey was 135 Guarantee Trust Building, Atlantic City, New Jersey.

14. No answer was filed to said bill of complaint by any of the defendants therein and on August 16th, 1917, a final decree was entered debarring and foreclosing the defendants to said foreclosure bill from all equity of redemption in the aforesaid premises when sold as provided in said decree.

15. On August 29th, 1917, a writ of *fieri facias* issued out of this Court directed to the sheriff of Atlantic County, ordering him to sell the mortgaged premises to satisfy the aforesaid decree, in two parcels, and on October 18th, 1917, the report of said sheriff sale was filed showing that sale was made in accordance with the directions of said writ and that the premises hereinbefore described were sold to the highest bidder therefor, to wit, the complainant in said cause, Emma K. Moitz Doherty, trustee, etc.

16. On October 22nd, 1917, an order was duly entered confirming the aforesaid sale and directing the sheriff to execute a deed for the mortgaged premises to said purchaser.

17. On October 25th, 1917, Joseph R. Bartlett, sheriff of Atlantic County, on deed bearing that date, granted and conveyed to Emma E. Moitz Doherty, the aforesaid premises, which deed was recorded in the clerk's office of Atlantic County, in Book 581 of Deeds, page 480.

18. On December 21st, 1922, Lewis P. Scott, having acquired title to the premises in question through mesne conveyances from the aforesaid Emma E. Moitz Doherty, trustee, granted and conveyed the same to complainant, Julian N. Ireland by deed bearing that date, which deed was recorded in the clerk's office of Atlantic County on December 22nd, 1922.

19. The said complainant, Julian N. Ireland, thereupon erected upon the premises in question valuable improvements in the form of a modern dwelling-house at a cost of approximately twenty-seven thousand dollars ($27,000.00).

20. On July 6th, 1923, said complainant, Julian N. Ireland, borrowed from and became indebted to defendant, Baltimore Life Insurance Company, in the sum of fifteen thousand dollars ($15,000.00) to secure which indebtedness he and his wife, complainant, Dora R. Ireland, executed and delivered to said Baltimore Life Insurance Company a mortgage for that amount, payable at the expiration of three years from the date thereof and bearing interest at the

rate of six per cent per annum, which mortgage granted and conveyed to the aforesaid Baltimore Life Insurance Company an estate in fee in the aforesaid premises, subject to the right of redemption of the said complainants, Julian N. and Dora R. Ireland, their executors, administrators and assigns. Said mortgage has not been paid and is still of record, and the interest thereon has always been paid by the complainants, Julian N. Ireland, Dora R. Ireland, Ada L. Todd, Edward Liebe and Blanche V. Liebe or one of them. The Baltimore Life Insurance Company is made a party defendant herein because of its mortgage, by virtue of which it has a claim or interest in derogation of any rights or pretended rights of the defendants, Exeter Land Company, Raymond P. Read and Jane C., his wife, and Carlton Godfrey, and Annie M., his wife, and said Baltimore Life Insurance Company has refused to join with the other complainants in filing this bill of complaint.

21. On the 20th day of October, 1924, complainants Julian N. Ireland, and Dora R. Ireland granted and conveyed the premises in question to F. Ernest Todd, Incorporated, a New Jersey corporation, which in turn granted and conveyed the same to Ada L. Todd, one of the complainants herein.

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

Company. Complainants stand ready to produce said agreement. Said Liebe has entered into possession of said premises and has expended thereon for improvements a sum in excess of five thousand dollars ($5000.00).

23. Complainants, Ada L. Todd, F. Ernest Todd, Edward Liebe and Blanche Liebe are now in possession of said premises.

24. None of the defendants has ever been in possession of said premises.

25. Defendant, Exeter Land Company, claims to be the owner of the fee of said premises because it was not made a party to the foreclosure proceedings aforesaid, but complainants charge that the title conveyed to defendant, Raymond P. Read by Joseph R. Bartlett, sheriff, was conveyed to him as agent and trustee for the Exeter Land Company, that he held said title for the benefit of the defendant, Exeter Land Company; that the said Exeter Land Company had knowledge of the existence of the aforesaid mortgage and of the pendency of its foreclosure, and that in said transaction it was in fact the undisclosed principal of the said defendant, Raymond P. Read.

26. That neither the defendants, Raymond P. Read, Carlton Godfrey nor the Exeter Land Company, during the time that they have held the title conveyed to them by Joseph H. Bartlett, sheriff, have paid or offered to pay the interest charges or the taxes upon the premises in question, but that said charges and taxes have always been paid by the grantees and their assigns holding title thereto

by virtue of the foreclosure of the aforesaid mortgage.

That said defendants have never at any time offered to pay either interest upon or principal of the aforesaid mortgage of Emma Moitz Doherty, but on the contrary have recognized the validity of the foreclosure proceedings instituted to collect principal and interest, particularly by remaining silent when the fact of said foreclosure was within the knowledge of defendant, Carlton Godfrey, as one of the solicitors for defendant, Raymond P. Read, as an officer and majority stockholder in the defendant, Exeter Land Company, as solicitor for said defendant, Exeter Land Company, and as one of the grantors who joined with defendant, Raymond P. Read, in the deed conveying said premises to the Exeter Land Company.

27. That on October 20th, 1924, F. Ernest Todd, Incorporated, having purchased the hereinbefore described premises from the complainants, Julian N. Ireland and Dora R. Ireland, and being indebted to them in the sum of ten thousand dollars ($10,000.00) executed to them a certain bond of that date to secure the payment of that sum, and as part of the purchase price therefor, within one year, together with interest at the rate of six per cent per annum from the date thereof, and to secure the payment of said bond executed to them a mortgage conveying to them in fee the hereinbefore described land and premises, subject to redemption upon payment of said debt. Said mortgage was duly recorded in the clerk's office of Atlantic County in Book of Mortgages, page .

27A. That said defendants have further recognized the validity of the foreclosure proceedings

aforesaid by permitting the aforesaid mortgage to take possession under and by virtue of said sheriff's deed, and by permitting her and her subsequent grantees, some of whom are the complainants herein, to openly and notoriously place valuable improvements thereon, to encumber the same with mortgages and to pay large sums to the City of Margate City for taxes and assessments without at any time informing the complainants that they or one of them claimed to be the owner of said premises.

27B. That defendants never pretended to own said premises until they or one of them was informed that there was a claim of interest outstanding in the Exeter Land Company by reason of the fact that said company had not been made a party-defendant to said foreclosure proceedings.

28. That on October 22nd, 1924, complainant, F. Ernest Todd, Incorporated, being indebted to complainants, John J. Hunter, Chelsea Laundry Company, William Gordon, Ocean Pier Fish Market, Inc., Charles E. Custer and Harry Kallas, trading as Custer and Kallas, William I. Segal, Guarantee Trust Company, a banking corporation of New Jersey, William Lewis Company, and Supplee-Wills-Jones Company, in the total sum of eight thousand six hundred and sixty dollars and twenty-five cents ($8,660.25), executed to complainant, William Schmid, as their trustee, a certain bond of that date to secure the payment of that sum within one year, together with interest thereon at the rate of 6% per annum from the date of said bond, and to secure the payment of said bond executed to said trustee a mortgage conveying to him in fee the hereinbefore described land and premises, subject to redemption upon payment of said debt. Said mortgage was duly

recorded in the clerk's office of Atlantic County in Book of Mortgages, page .

29. On October 27th, 1924, F. Ernest Todd Incorporated, being indebted to George J. Turcott in the sum of two thousand and fifty dollars ($2,050.00) executed to him a certain bond of that date to secure the payment of that sum on demand, together with interest at the rate of six per cent per annum from the date thereof, and to secure the payment of said bond executed to him a mortgage conveying to him in fee the hereinbefore described land and premises, subject to redemption upon payment of said debt. Said mortgage was duly recorded in the clerk's office of Atlantic County in Book of Mortgages, page .

30. Complainants, or one of them, have ever since the recording of the deed to Emma Moitz Doherty, trustee as aforesaid, been in peaceable possession of the land therein described, and have always claimed and now do claim to own the same.

31. Complainants' title to said lands is denied and disputed by defendant, Exeter Land Company, which claims to own the same, or some interest therein, or to hold some lien or encumbrance thereon.

32. No suit is pending to enforce or test the validity of the said Exeter Land Company's title, claim or encumbrance.

Complainants are without adequate remedy in the courts of law and, therefore, pray:

1. That the Exeter Land Company, Raymond P. Read, Jane C., his wife, Carlton Godfrey, Annie M.,

his wife, and the Baltimore Life Insurance Company, who are the defendants to this suit, may answer this bill of complaint and each statement therein made.

2. That the said defendant, Exeter Land Company, may set forth its title, claim or encumbrance to or upon said lands and premises hereinbefore described, and how and by what instrument the same is derived or created.

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

4. That it may be further decreed that the defendant, Raymond P. Read, was acting for and in behalf of the defendant, Exeter Land Company, as his undisclosed principal and that the foreclosure decree against him effectually barred and foreclosed any and all rights of the defendant, Exeter Land Company, in and to the premises aforesaid.

5. That a writ of subpoena may issue commanding the said defendants to answer this bill of complaint and to abide by such decree as this Court may make in the premises, and that complainants may have such relief as may to this Honorable Court seem equitable and just in the premises.

HARCOURT & STEELMAN,
Solicitors for and of Counsel with Complainants.

ANSWER AND COUNTER-CLAIM OF EXETER LAND COMPANY.

(Filed Dec. 2, 1926.)

IN CHANCERY OF NEW JERSEY.

Between ADA L. TODD, *et al.*, *Complainants,* and EXETER LAND COMPANY, *et al.*, *Defendants.*	On Bill, &c. Answer of Defendant, Exeter Land Company.

This defendant, answering the amended bill of complaint, says that:

1-3. It admits, on information and belief, paragraphs 1 to 3, inclusive.

4. It admits paragraph four.

5. It admits paragraph five.

6. It admits paragraph six.

7. It admits, on information and belief, paragraph 7.

8. It admits paragraph 8.

9. It admits paragraph 9.

10. It is without knowledge or information upon which to found any belief respecting the matters alleged in paragraph 10.

11. It admits that Carlton Godfrey and Raymond P. Read were stockholders of this defendant as alleged in paragraph 11; the remaining allegations in said paragraph are denied.

12. It has no knowledge, nor any information sufficient to found any belief respecting any of the matters alleged in paragraph 12.

13. It admits that its principal office was at room #315 Guarantee Trust Building, Atlantic City, New Jersey, as alleged in paragraph 13. It is without knowledge or information, upon which to found any belief as to the prior or present location of the offices of Godfrey and Read.

14. It admits on information and belief that no answer was filed by any defendant to the bill of complaint in the foreclosure suit referred to in paragraph 14 and that a final decree was entered in said suit as in said paragraph alleged. This defendant avers that it was not made party defendant to said bill, although at the time of the filing thereof and at the date of the said final decree, it was the legal owner by recorded title of the land intended and sought to be affected by said bill and by said decree.

15-24. This defendant is a stranger to all and every of the matters and proceedings alleged in paragraphs 15 to 24 inclusive. It avers that it has no knowledge thereof nor any information upon which to form any belief touching said allegations or any of them.

25. It admits that it claims to be owner in fee of the land described in said amended bill and referred to in paragraph 25 thereof and avers that it is the owner of the equity of redemption therein; that it has never been brought into court as party defendant to any suit, action or proceeding prosecuted or instituted for the purpose of barring or cutting off such equity of redemption; that although it was the owner and held title of record to said premises at the time of the filing of the bill to foreclose the mortgage mentioned in said amended bill, it was not made a party thereto, and its right and estate as owner of the equity of redemption was not foreclosed or in issue and was in no wise affected by the said final decree; wherefore this defendant avers that it is in law and in fact the owner of the right or equity of redemption in said land and premises and the complainants herein, or some of them, have or are or may be entitled to have and occupy the character, status or rights of mortgagee of said premises in possession thereof after default.

26. It denies paragraph 26.

27. It has no knowledge nor information upon which to found any belief touching the allegations of paragraphs 27, 27A and 27B. This defendant answering for itself, denies the allegations contained in paragraphs 27A and 27B.

28-30. It has no knowledge nor any information upon which to form belief, as to the matters alleged in paragraphs 28 to 30, inclusive.

31-32. It admits paragraphs 31 and 32.

By way of counter-claim exhibited against the complainants and against the defendant, Baltimore Life Insurance Company, Defendant Exeter Land Company says:

1. On March 8, 1912, Margate Company, a corporation, was the owner in fee simple of the land and premises described in the amended bill of complaint, and being indebted to one Emma E. Moitz Doherty, trustee for Esther Y. Fuller, under the will of Maximilian Moitz, deceased, in the sum of $2,200, mortgaged said land and premises to her, in fee, to secure the payment of said sum, evidenced by its bond or obligation of even date, at the expiration of three years from the date of said mortgage and bond, together with interest thereon, to be paid semi-annually from said date at the rate of 6% per annum; which mortgage bearing date on the said March 8, 1912, was duly recorded on June 10, 1912, in the office of the clerk of the County of Atlantic at Mays Landing, in Book 129 of Mortgages, page 76, &c.

2. Said mortgage was given and accepted on the express condition therein set forth, that the conveyance thereby effected should be void if payment should be made according to the terms of said bond.

3. Thereafter and on April 26, 1916, one Annie E. Hand recovered a judgment in the Atlantic County

Circuit Court against Margate Company for the sum of $5,005.50 damages and costs, which judgment is recorded in the office of the clerk of said court, in Book 12 of Circuit Court Judgments, page 263, and thereupon became a lien upon the said mortgaged premises subsequent and subject to the lien of said mortgage.

4. On July 29, 1916, said judgment was assigned by said Annie E. Hand, together with the moneys due and to grow due thereon to one Raymond P. Read, which assignment is recorded in said clerk's office in Book 1 of Assignments of Judgments, on page 464, &c.

The consideration paid for the purchase and assignment of said judgment was furnished as this defendant is informed and believes, by Carlton Godfrey, who was the beneficial owner thereof, although the assignment thereof for convenience, was taken and held in the name of said Raymond P. Read.

5. On October 10, 1916, by deed bearing date on that day, and duly recorded, Joseph R. Bartlett, sheriff of the County of Atlantic, having theretofore pursuant to execution, issued on said judgment, sold said land at public vendue, to said Raymond P. Read, granted and conveyed to him, the said Raymond P. Read, all the right, title, interest and equity of redemption of the Margate Company, the said mortgagor, in and to the said mortgaged premises with other lands. Although said Raymond P. Read, at the sale thereof by the sheriff, purchased said land and premises, and title thereto was conveyed to him by the sheriff's deed as aforesaid, the real and beneficial owner thereof was the said Carlton

Godfrey, this defendant, and the said Raymond P. Read had no actual beneficial estate or interest therein, or in the title thereof.

6. On May 2, 1917, said Raymond P. Read and Jane C., his wife, at the direction of said Carlton Godfrey, and for an adequate consideration, by deed bearing date on that day, and recorded May 5, 1917, in the office of the clerk of said county, in Book 576 of Deeds of Real Estate, page 110, conveyed said land and premises, with other land, to this defendant, whereby there was vested in this defendant and it became seized of and entitled, subject to said mortgage, to the whole right, title, interest and estate, including the equity of redemption, of the Margate Company, the mortgagor, aforesaid, in and to the said mortgaged premises, of all of which complainants had record and constructive notice.

7. On May 16, 1917, said Emma E. Moitz Doherty, trustee, as aforesaid, still being the holder of said mortgage, filed her bill of complaint in this court, praying the foreclosure thereof, and the sale of the mortgaged premises to raise and pay the said mortgage debt, and such proceedings were had in said cause; that afterwards, on August 16, 1917, a final decree was entered therein decreeing the sale of the mortgaged premises and further decreeing that all of the defendants be debarred and foreclosed of and from all equity of redemption of, in and to the said mortgaged premises when sold by virtue of said proceedings, and said premises were sold by the sheriff of the County of Atlantic, to the said Emma E. Moitz Doherty, the complainant to whom the said sheriff executed and delivered his

deed purporting to convey the legal title to said premises, including the right or equity of redemption therein. This defendant avers that prior to and at the time of the filing of the said bill to foreclose said mortgage, it was the owner of the mortgaged premises by virtue of a deed of conveyance duly recorded; that it was not made a party defendant to said bill, as the owner of the equity of redemption or otherwise; that its right and title as owner were not put in issue in said suit, and that the equity of redemption was not cut off or barred by the terms of said final decree nor in any wise affected thereby.

8. This defendant charges and submits that it is entitled to redeem the said mortgage, and in redemption tenders itself ready and willing to pay the principal sum of said mortgage with all accrued interest due thereon or whatever moneys it ought equitably to be required to pay, but the various parties to this suit having acquired from and under the said Emma E. Moitz Doherty, trustee, mortgagee as aforesaid, rights to or interest in said mortgage of redemption money, and this defendant being unable to determine to whom the same rightfully belongs or should be paid, it hereby offers to pay such money into this court for the benefit of such persons or person, complainants or defendants as may be determined and adjudged to be entitled to receive the same.

This defendant, therefore, prays that:

1. The said complainants and said defendant, Baltimore Life Insurance Company, may answer this counter-claim without oath, and each statement therein made.

2. This defendant may be decreed to be entitled to redeem the said mortgage, defendant hereby tendering itself ready and willing to pay at any time, when permitted so to do, whatsoever sum of money this Court may adjudge to be the sum which it should pay to satisfy and discharge the said mortgage.

3. Upon payment by this defendant of the amount decreed to be equitably due on said bond and mortgage, that the same be delivered up or cancelled, and also that the full possession of the mortgaged premises be delivered up to this defendant.

4. An account be taken under the direction of this Court, of what is equitably due and owing by this defendant on said bond and mortgage, and also what credits should be allowed this defendant in respect to the rents, and profits, use and occupation of the mortgaged premises since October 25, 1917, and the balance due and to whom due.

5. Such further or other relief as the nature of the case renders equitable and appropriate.

U. G. Styron,
Solicitor of Defendant, Exeter Land Company.

ANSWER OF CARLTON GODFREY.

(Filed Dec. 2, 1926.)

IN CHANCERY OF NEW JERSEY.

Between ADA L. TODD, *et al.*, *Complainants,* and EXETER LAND COMPANY, *et al.*, *Defendants.*	On Bill, &c. Answer of Carlton Godfrey to Amended Bill, &c.

Defendant, Carlton Godfrey, residing in Atlantic City, New Jersey, answering the amended bill of complaint, says that:

1-4. He admits paragraphs 1 to 4, inclusive.

5. He admits paragraph 5 and avers that he furnished the money with which said judgment was purchased and caused the same to be assigned to defendant, Raymond E. Read.

6-8. He admits paragraphs 6 to 8, inclusive.

9. He admits paragraph 9 and he avers that the consideration of the conveyance therein mentioned was provided by defendant, Exeter Land Company,

and was paid in lawfully issued capital stock of said company, and that said company defendant thereupon became, and now is, a bona fide purchaser of said land for value, without notice, save such notice as the public records afforded, and he further avers that the said defendant, Exeter Land Company, thereby acquired a good and valid title to said land subject only to the lien of the mortgage of said Emma E. Moitz Doherty, trustee, set forth in paragraph 1 of said amended bill.

10-14. Paragraphs 10 to 14, inclusive, are admitted. Further answering paragraph 14, defendant avers that he was not a party to the said bill of complaint upon which the said decree was entered, and was not barred or foreclosed thereby or named therein.

15-24. Paragraphs 15 to 24, inclusive, are admitted on information and belief.

25. Paragraph 25 is admitted as to the following allegation:

Defendant, Exeter Land Company, claims to be the owner of the fee of said premises because it was not made a party to the foreclosure proceedings aforesaid.

The other allegations contained in said paragraph are denied.

26. Paragraph 26 is denied.

27-32. Defendant has no knowledge nor any information upon which to found any belief as to the allegations contained in paragraphs 27 to 32, inclusive.

U. G. Styron,
Solicitor of Defendant,
Carlton Godfrey.

ANSWER OF RAYMOND P. READ, ET UX.

(Filed Dec. 2, 1926.)

IN CHANCERY OF NEW JERSEY.

Between ADA L. TODD, *et al.*, *Complainants,* and EXETER LAND COMPANY, *et al.*, *Defendants.*	On Bill, &c. Answer of Raymond P. Read, and Jane C. Read, defendants.

The joint and several answer of Raymond P. Read and Jane C. Read, his wife, defendants, residing in Atlantic City, New Jersey, to the amended bill of complaint, filed in this cause avers that:

1-9. They admit paragraphs 1 to 9, inclusive.

Further answering said paragraph 9, these defendants say that they did not, nor did either of them, receive any consideration for the conveyance in said paragraph mentioned, that they had no personal financial or beneficial interest in said transaction, nor do they now claim to have had or to have any such interest, but that defendant, Raymond P. Read, held title to the land described in said amended bill merely as a trustee and conveyed the same in execution of said trust upon the request of the person

equitably entitled to said land and rightfully to have the conveyance thereof.

10-11. Paragraphs 10 and 11 are admitted.

12. Paragraph 12 is admitted excepting that part thereof alleging as follows: The aforesaid Carlton Godfrey was the person who actually subscribed the signature of Godfrey and Read thereon. Answering said excepted portion of said paragraph, defendants, Raymond P. Read and Jane C. Read, severally say that they do not remember if there ever was in fact a partnership existing between Carlton Godfrey and Raymond P. Read, and that if Carlton Godfrey actually signed the firm name on said subpoena as an acknowledgment of service thereof, that he, the said Raymond P. Read has no knowledge at this time and if relevant or pertinent requires proof thereof.

13-14. Paragraphs 13 and 14 are admitted.

15-32. Defendants have no knowledge nor any interest nor are concerned with any of the allegations contained in paragraphs 15 to 32, inclusive, nor any information which enables them to form any belief respecting the same, and if it be assumed or contended that the facts so alleged are relevant or competent, they require legal proof thereof.

U. G. Styron,
Solicitors of Defendants,
Raymond P. Read and
Jane C. Read.

REPLICATION.

(Filed Dec. 23, 1926.)

IN CHANCERY OF NEW JERSEY.

Between
ADA L. TODD, *et al.*,
Complainants,
and
EXETER LAND COMPANY, *et al.*,
Defendants.

On Bill, etc.
Replication.

Complainants join issue on the answer of Carlton Godfrey.

HARCOURT & STEELMAN,
Solicitors of Complainants.

REPLICATION.

(Filed Dec. 23, 1926.)

IN CHANCERY OF NEW JERSEY.

Between
ADA L. TODD, *et al.*,
Complainants,
and
EXETER LAND COMPANY,
et al.,
Defendants.

On Bill, etc.
Replication.

Complainants join issue on the joint and several answer of defendants, Raymond P. Read and Jane C. Read.

HARCOURT & STEELMAN,
Solicitors of Complainants.

REPLICATION AND ANSWER TO COUNTER-CLAIM.

(Filed Dec. 23, 1926.)

IN CHANCERY OF NEW JERSEY.

Between ADA L. TODD, *et al.*, *Complainants,* and EXETER LAND COMPANY, *et al.*, *Defendants.*	On Bill, etc. Replication and Answer to Counter-claim.

Complainants join issue on the answer of defendant, Exeter Land Company.

As to the counter-claim contained in said answer, complainants say:

1. They admit paragraphs 1 to 3, inclusive.

2. They admit the allegation contained in paragraph 4, that on July 29th, 1916, said judgment was assigned by said Annie E. Hand, together with the moneys due and to grow due thereon to one, Raymond P. Read, which assignment is recorded in said clerk's office in Book 1 of Assignments and Judgments, on page 464, etc.

As to the remainder of paragraph 4, they have no knowledge upon which to found a belief respecting the matters alleged therein and, therefore, leave defendant to its proof thereof.

3. These complainants have no knowledge upon which to found a belief respecting the matters alleged in paragraph 5 and, therefore, leave defendant to its proof.

4. They deny paragraph 6.

5. They admit the allegations contained in paragraph 7, excepting that they deny that defendant was not made a party-defendant to said bill as the owner of the equity of redemption or otherwise; that its right, title and interest as owner were not put in issue in said suit, and that the equity of redemption was not cut off or barred by the terms of said final decree nor in any wise affected thereby, and these complainants, to avoid repetition, refer to paragraph 25 of complainants' amended bill of complaint, making the same a part hereof by said reference.

6. They deny paragraph 8, except the allegations of defendants' ready and willing to pay the principal sum of said mortgage with all accrued interest thereon or whatever moneys it ought equitably to be required to pay, of which matters complainants have no knowledge.

HARCOURT & STEELMAN,
Solicitors of Complainants.

REPLICATION.

(Filed Jan. 12, 1927.)

IN CHANCERY OF NEW JERSEY.

Between ADA L. TODD, *et al.*, *Complainants,* and EXETER LAND COMPANY, *et al.*, *Defendants.*	On Bill, etc. Replication to Answer to Counter-claim.

Defendants, Exeter Land Company, joins issue in the answer of complainant to the counter-claim of this defendant.

U. G. STYRON,
Solicitor of Defendant, Exeter Land Company.

ORDER OF REFERENCE.

(Filed Feb. 16, 1927.)

IN CHANCERY OF NEW JERSEY.

Between
ADA L. TODD, *et al.*,
Complainants,
and
EXETER LAND COMPANY, *et al.*,
Defendants.

On Bill, etc.
Order of Reference.

This matter being opened to the Court by Harcourt and Steelman, solicitors of the complainants, and with the consent of U. G. Styron, Esquire, solicitor for the defendants, Exeter Land Company, Raymond P. Read, Jane C. Read, Carlton Godfrey, and Annie M. Godfrey:

It is, on this 16th day of February, 1927, on motion of Harcourt and Steelman, solicitors of the complainants, ordered that the above-entitled cause be referred to the Honorable R. H. Ingersoll, one of the Vice-Chancellors of this court, to hear the same for the Chancellor and to report thereon to him, and to advise what order or decree should be made therein.

E. R. WALKER.

Consent hereby given to entering within order.

U. G. STYRON,
Solr.

TESTIMONY.

IN CHANCERY OF NEW JERSEY.

Between
ADA L. TODD, *et als.*,
Complainants,
and
EXETER LAND COMPANY,
et als.,
Defendants.

On Bill, &c.
Final Hearing.

Atlantic City, N. J., December 20, 1927.

TESTIMONY.

Before HON. R. H. INGERSOLL, Vice-Chancellor.

APPEARANCES:
For complainants, MESSRS. HARCOURT & STEELMAN.
For defendants, CARLTON GODFREY, ESQ., U. G. STYRON, ESQ., R. H. MCCARTER, ESQ.

(Mr. Steelman opens for the complainants.)

(Recess taken to 1:00 P. M.)

AFTERNOON SESSION.

(Trial of the cause resumed at 1:00 P. M.)

Mr. Steelman: I am going to offer the foreclosure file in the case of Emma E. Moitz Doherty, trustee, and against Raymond P. Read, et als.,

(File admitted in evidence but not marked.)

Mr. Steelman: Mr. Godfrey, will you produce deed from Read to the Exeter Land Company?

Mr. Godfrey: We have a certified copy of it. We tried to find the deed, but I didn't locate it and we got a certified copy.

(Certified copy produced, offered, received in evidence and marked Exhibit C1.)

LEWIS P. SCOTT, sworn.

Direct examination.

By Mr. Steelman:

Q. Mr. Scott, you were at one time the owner of the premises in question, were you not?
A. I was.
Q. Will you produce the deed under which you took title, if you have it?

(Deed produced, offered, received in evidence and marked Exhibit C2.)

Q. Mr. Scott, to whom did you sell the premises?

A. To Julian Ireland.

Q. During the time that you owned that property did you do anything with it? Was it unimproved at that time?

A. It was unimproved. and I just held it.

Q. Pay the taxes?

A. Yes.

Q. Were you ever disturbed in your possession?

A. No, I was not.

Q. How long did you hold the property, do you recall?

A. I don't recall exactly, until I sold it to Mr. Ireland, just the length of time I don't recall.

Q. At that time what was the condition of the property in that neighborhood so far as improvements were concerned? Were there very many houses in that neighborhood?

A. No. It was practically all unimproved.

Q. This is in a section that is known as Ventnor Park, is it not, or Margate Park?

A. Margate Park.

Q. You say it was practically all unimproved?

A. Yes.

Q. Did you own the property free and clear of encumbrances, or was there a mortgage on it while you owned it?

A. There was a mortgage on it.

Q. Do you recall who held that mortgage?

A. I think Emma Doherty.

Q. Doherty?

A. Yes, Doherty.

Q. That was the complainant in the foreclosure proceedings, was it not?

A. Yes.

Q. Pay the interest to her?

A. Yes.

Cross-examination.

By Mr. McCarter:

Q. When you say it was practically unimproved, you don't mean on the whole Margate Park there were no houses?

A. Very few houses. There were streets, curbs and gutters, those improvements, but as far as building was concerned very little.

Q. What do you mean by that, half a dozen or dozen?

A. Well, I suppose there is ten or twelve houses, now, at that time I don't suppose there were more than two or three

Q. When have you been down there?

A. Every day; I live there.

Q. You say there are ten or twelve there now?

A. Yes.

Q. Shouldn't you think there were two hundred?

A. No, not along the Parkway.

Q. Along the Parkway?

A. Yes.

Q. Do you know how large a tract this so-called Margate Park?

A. No, what I am referring to is that section of Ventnor Avenue that is known as Margate Parkway.

Q. You are confining your evidence to that alone?

A. Yes.

Q. Now, when did you sell to Ireland, don't you know?

A. Not accurately, no. I think I held it about a year or a year and a half.

JULIAN N. IRELAND, sworn.

Direct examination.

By Mr. Steelman:

Q. Mr. Ireland, you are the Julian N. Ireland who is one of the complainants to this bill of complaint?

A. I was.

Q. And you at one time were the owner of the premises in question?

A. I was.

Q. From whom did you purchase, Mr. Ireland?

A. From Captain Scott.

Q. That is the witness who was just on the stand?

A. Yes.

Q. Was the lot improved or unimproved when you purchased it?

A. Unimproved.

Q. What did you do with it when you bought it?

A. Built.

Q. What steps did you take about financing the building of your house?

A. Got a mortgage on it.

Q. From whom?

A. The Baltimore Life.

Q. What was the amount of that mortgage?

A. Fifteen thousand.

Q. What were the nature of the improvements that you put on there? Describe generally what kind of a house it was.

A. I put a cottage on there.

Q. How large a cottage?

A. Right good-sized one.

Q. How many rooms?
A. About nine or ten rooms.

Mr. McCarter: Can't hear you.

A. Ten rooms.
Q. Were there many other houses in that neighborhood when you put that house on the lot?
A. No, not in the Parkway.
Q. Are there at the present time?
A. There is more there now, yes.
Q. During the time that you owned the property, who paid the taxes?
A. I did.
Q. Did you pay the interest on the mortgage?
A. I did.
Q. Were you ever disturbed in your possession?
A. I was not.
Q. Did the Exeter Land Company, or Mr. Godfrey or Mr. Read or either of them, ever approach you about the property?
A. They did not.
Q. Did you know them in connection with your ownership?
A. I did not.
Q. Without going into the details of the amount of money that you spent on the property, can you tell us generally, in round figures, what the house cost you to build?
A. About twenty-seven thousand, I guess, twenty-five to twenty-seven thousand.
Q. And is it a house that would be noticed? Is it an outstanding improvement?
A. Yes, sir.
Q. To whom did you sell?
A. Todd.

Q. That was F. Ernest Todd, Incorporated, was it not?

A. Yes.

Q. At the time that you sold to Mr. Todd, did you take back, did you get all in cash, or did you take back a mortgage?

A. No, I took back a mortgage.

Q. Is that the bond and mortgage that you received?

A. Yes, sir.

Mr. McCarter: How much?

Mr. Steelman: $10,000. Dated October 20th, 1924.

(Bond and mortgage offered, received in evidence and marked Exhibits C3 and C4 respectively.)

Q. Has that mortgage ever been paid?

A. No.

Cross-examination.

By Mr. McCarter:

Q. When did you buy, Mr. Ireland, do you remember?

A. November 21, 1922, settled for it on December, 21, 1922.

Q. And you sold out to Todd when?

A. On October 20th, 1924.

Q. Who searched your title when you bought?

A. South Jersey Title.

Q. And gave you an insurance policy?

A. Did.

Q. Beg pardon?

A. The Baltimore Life got it, yes, got a title policy.

Q. You negotiated with the South Jersey Title Company, handed over to the Baltimore Life when they advanced $15,000?

A. That is the idea.

Q. You didn't bother yourself with the details because you had this insurance policy?

A. No.

Q. How soon after you bought did you build the house?

A. Oh, about a month or so.

Q. How long did it take you to build it?

A. We finished it about in the spring.

Q. You were building ——

A. During the winter.

Q. During the winter, November, and ready for occupancy the following summer?

A. Following spring, yes, a little before summer. I think it was in June or May, I think it was, we got in there.

Q. What is the size of the lot?

A. Eighty by ninety.

Q. Pardon me?

A. Eighty by ninety.

Q. That is the size of the lot?

A. That is the size of the lot.

Mr. Steelman: I am offering settlement certificate between the South Jersey Title & Finance Company on the purchase of the property by Ireland from Scott.

The Court: Any objection?

Mr. McCarter: We say it is immaterial.

The Court: Objection sustained.

By Mr. Steelman:

Q. Mr. Ireland, at the time that you placed, the mortgage was placed on there, the mortgage was created, did you get the title insurance at that time?
A. Yes.
Q. When was the policy actually delivered?
A. I couldn't say about that. I think that was then, that is when I got the title policy, when the mortgage was placed.

Mr. McCarter: Can't hear a word you say.

A. I got the title policy when the mortgage was placed, I think.
Q. Did you get the promise of the money first?
A. Oh, yes.
Q. And how long after that was it before you got —before you actually got the money?
A. I guess it must have been three weeks.
Q. Was the house completed when you got the money?
A. Yes.
Q. Is that when the policy was delivered?
A. Yes.

GEORGE J. TURCOT, sworn.

Direct examination.

By Mr. Steelman:

Mr. Steelman: I will offer in evidence the mortgage of F. Ernest Todd, Incorporated, to George J.

Turcot, together with the bond, dated October 27, 1924. The amount is $2,050.

(Bond and mortgage received in evidence and marked Exhibits C5 and C6 respectively.)

Q. Are you the George J. Turcot mentioned in that mortgage?
A. Yes, sir.
Q. Is that your mortgage?
A. Yes, sir.
Q. Has this been paid?
A. It has not.

Cross-examination.

By Mr. McCarter:

Q. Did you have the title examined when you took that mortgage, Mr. Turcot?
A. I did not, no, sir.
Q. Beg pardon?
A. No, sir.
Q. Just took it?
A. Just took it, yes.

JAY C. KLINE, sworn.

Direct examination.

By Mr. Steelman:

Q. Mr. Kline, do you occupy any position with the South Jersey Title Company?

A. Secretary.

Q. Have you a mortgage here of Julian N. Ireland to the Baltimore Life Insurance Company?

A. I do.

Q. How does that come to be in your possession?

A. This mortgage came to be in our possession by virtue of an assignment, Baltimore Life Insurance Company of Baltimore City, a corporation of Maryland, to the South Jersey Title & Finance Company, State of New Jersey, dated the 27th day of March, 1926, duly recorded in Book 79 of Assignments of Mortgages, page 419.

Q. Is the South Jersey Title & Finance Company now the owner of that mortgage?

A. It is.

(Bond, mortgage and assignment offered, received in evidence, marked Exhibits C7, C8 and C9 respectively.)

Q. Has that mortgage been paid?

A. It has not.

Q. Mr. Kline, have you the records of Mr. Ireland's application for title insurance on the premises in question?

A. I do.

Q. When was that application made?

Mr. McCarter: Objected to as immaterial.

The Court: I will permit it.

A. Application dated November 24, 1922.

Q. Was the title policy subsequently issued under this application?

A. It was.

Q. To whom?

A. Baltimore Life Insurance Company.

Q. When?

A. Mr. Steelman, I don't have a copy of that policy here. Your Honor has the mortgage there? That policy would have been dated—I am not reading from the policy—but that policy would have been dated the 7th day of July, 1923.

Q. And the application was November 24, 1922, is that correct? The settlement between Scott and Ireland took place when?

A. December 21, 1922.

Q. Now, that settlement was made under the same application that the policy had been made, was it not?

A. That is right.

Q. And the policy, however, was held open until a later date, is that correct?

A. At request it was.

Q. At whose request?

A. Mr. Ireland's.

Cross-examination.

By Mr. McCarter:

Q. Well, at the time that that policy was issued, did you search the title personally?

A. I did not.

Q. Who did?

A. I suppose one of our examiners. I couldn't tell you at this moment who it might be.

Q. Well, it transpired that ——

A. We have nine or ten of them.

Q. —— your company had overlooked the fact that one of the parties who owned the title had been omitted from the foreclosure, that transpired later, didn't it?

A. So disclosed, yes.

Q. That had been overlooked by your company?

A. That is my inference.

Q. Beg pardon?

A. That is my inference.

Q. It is a fact, isn't it? Do you propose to answer that question or don't you?

A. I will put it this way.

Q. Put an answer to the question that is truthful, please. What is the fact? It had been overlooked, hadn't it?

A. I will give you the fact, upon a re-examination of the chain of title it would appear that a conveyance was made I think between Godfrey and Read and the Exeter Land Company between the date of the closing of the search and the recording date of the bill to foreclose. I will also state this way ——

Q. Now, I want an answer to my question. That fact had been overlooked by your company, hadn't it?

A. It had been overlooked by our company.

Q. And when you discovered this fact later, in order to protect you, so far as possible, you bought the Baltimore judgment, didn't you, the Baltimore mortgage?

A. We bought the Baltimore mortgage to make our policy good.

Q. You bought the Baltimore mortgage after this mistake had been discovered?

A. That is right.

Q. When was, so far as you know or have been informed by anybody in connection with your company, your company first apprized of this oversight?

A. My recollection of this matter that the first time we had any inkling whatever that there was a defect in the title, I think, grew from a circumstance

——

Q. Please answer my question, Mr. Kline.

A. Sir?

Q. Please answer my question, Mr. Kline.

A. I am trying to, Mr. McCarter, trying to lead up to it. This is four years ago. I am trying to lead up to the circumstance when it was first brought to my knowledge. I believe another title company had disclosed the defect. That is the first time it was brought to my knowledge.

Q. When was that?

A. When? Possibly two years ago.

Q. And the other title company was what company?

A. I believe that was the Chelsea Title & Guarantee Company.

Q. Now, had you been, or had your company guaranteed this title previous to this application to which you have just alluded that was made November 24th, 1922, by Mr. Ireland?

A. Did I understand your question, had we insured it before?

Q. Yes.

A. No.

Q. That is your first entrance into this particular title?

A. That is right.

Q. And the fact that this error or oversight or mistake had been made was brought to your attention before you bought the Baltimore mortgage and by the Chelsea Title Company?

A. That is right.

Q. When did you inform Mr. Ireland, if at all, of this oversight?

A. Mr. McCarter, you are directing direct questions at me. I wasn't the secretary of the company at that time. I was of a minor capacity and lots of these questions I have tried to answer both by in-

ference and by personal knowledge. To my personal knowledge Mr. Ireland was never notified.

Q. Was the Baltimore Trust notified?

A. Sir?

Q. Was the Baltimore Trust Company notified?

A. My recollection is the first inkling that the Baltimore Trust Company had knowledge of the defect, I believe, was when a subpoena was served upon them in this very suit.

Q. That is all.

ROY HAZLETON, sworn.

Direct examination.

By Mr. Steelman:

Q. Mr. Hazleton, will you turn to your records of a mortgage made by F. Ernest Todd to William Schmidt? You are an employe of the County Clerk's office of Atlantic County, Mr. Hazleton?

A. I am.

Q. Do you have access to the records?

A. I do.

Q. At my request did you make an examination of the records for such conveyances and mortgages that are of record?

A. I did.

Q. Will you refer to a mortgage dated October 22, 1924, from F. Ernest Todd, Incorporated, to William Schmidt, and tell me whether or not the record discloses such a mortgage?

A. It does.

Q. The amount of it is what?

A. $8,660.25. And it was recorded Book 311, page 409.

Q. Has that mortgage been cancelled of record?

A. It has not.

(No cross-examination.)

F. Ernest Todd, sworn.

Direct examination.

By Mr. Steelman:

Q. Mr. Todd, are you the F. Ernest Todd who was a member of F. Ernest Todd, Incorporated, a corporation of the State of New Jersey?

A. Yes, sir.

Q. Did you buy the—did you acquire title to the premises in question at any time, or did the corporation acquire title?

A. Yes, sir.

Q. From whom did you acquire title?

A. It came through Dora and Julian Ireland.

Q. Was it a cash transaction or did it figure in a trade?

A. No, it was a part trade.

Q. What was the consideration on your side, what went into the trade?

A. Well, I sold them my hotel for a certain sum cash plus this house.

Q. Then you created a purchase money mortgage to them, did you not, also in addition to that?

A. Yes, sir.

Q. For how much?

A. Ten thousand dollars, I believe, was the figure.

Q. Have you paid that off?

A. No, sir.

Q. Still owe him?

A. Yes, sir.

Q. About how long did F. Ernest Todd, Incorporated, own the property?

A. I should judge it was about a month.

Q. Then what became of it?

A. The title was transferred to my wife, if I remember correctly.

Q. Ada L. Todd?

A. Yes.

Q. Who is one of the complainants in this bill of complaint?

A. Yes.

Q. During the time that F. Ernest Todd, Incorporated, owned it, and during the time that your wife has owned the property, have you been disturbed in your possession by anyone?

A. No.

Q. Nobody has taken it away from you?

A. No.

Q. Have you entered into an agreement for the sale of that property?

A. Yes.

Q. To whom?

A. Edward Liebe.

Q. Under the agreement, what has Mr. Liebe done? Has he taken possession?

A. Yes.

Q. Is he living in the house?

A. Yes.

Q. Do you know whether or not he has made any improvements there?

A. I believe he has made considerable.

Q. The settlement with Mr. Liebe has been made or is it still pending?

A. Still hanging fire.

Cross-examination.

By Mr. McCarter:

Q. When the F. Ernest Todd, Incorporated, bought the property, who examined the title for the concern?

A. South Jersey Title & Finance Company.

Q. South Jersey Title Company? Did it give you a policy?

A. Not to my personal knowledge. I believe they gave one to the Baltimore Life.

Q. You didn't make an application to them for a policy?

A. No, sir.

Q. You just took it without any application or anything else, is that right?

A. As I remember, the search was made at that time, but I did not apply for a policy.

Q. Who made the search?

A. Now, I don't just remember.

Q. Now, Mr. Todd, you are a gentleman of intelligence. Did you have an examination of the title made at the time that the corporation bought? You didn't, did you?

A. Mr. McCarter, I am under the impression that we did, but I wouldn't want to say definitely. I don't remember.

Q. Whom did you employ for that purpose?

A. It would have been the South Jersey Title & Finance Company, if such examination was made.

Q. And paid them?

A. I say it would have been the South Jersey

Title & Finance Company if such examination was made.

Q. I am not asking you what would have been. I ask you whom you employed to examine the title to that property at the time that your company purchased it, no one, did you?

A. I can't say definitely. I don't remember.

Q. And, of course, when title was transferred to your wife, no examination was made, was there?

A. No.

Q. Now, when did you agree to sell to Mr. Liebe?

A. I don't just remember the date of that agreement. It has been ——

Q. Mr. Liebe ——

A. Two years and a half ago, I think along in April of that year.

Q. And Mr.—how do you pronounce that word?

A. Liebe.

Q. He had the title examined and this defect was discovered, wasn't it?

A. Yes, sir; that is right.

Q. And that has hung up your agreement?

A. That is right.

By Mr. Steelman:

Q. Did the Exeter Land Company, Mr. Godfrey or Mr. Read ever demand that you deliver the premises to them?

A. No, sir.

Q. Ever hear of them in connection with it?

A. No, sir.

LUCIUS I. WRIGHT, sworn.

Direct examination.

By Mr. Steelman:

Q. Mr. Wright, by whom are you employed?
A. C. J. Adams Company.
Q. Are you familiar with this matter involving the Baltimore Life Insurance Company mortgage on the premises in question?
A. Yes.
Q. Have you had charge of the collection of the interest for the Baltimore Life Insurance Company on that mortgage during the time that they owned it?
A. Yes.
Q. By whom was the interest paid?
A. The first payment, I have a memoranda of it, December 31, 1923, Mr. Ireland paid the six months' interest due January 6th, 1924, $450. On June 27th, 1924, Mr. Ireland paid the six months' interest due July 6th, 1924, $450. That is all that Mr. Ireland paid to us.
Q. Has the Exeter Land Company or Mr. Godfrey or Mr. Read ever paid any interest to you?
A. No.
Q. That is all.

Cross-examination.

By Mr. McCarter:

Q. When was it that the title company took the mortgage out of your care, when they got an assignment?

A. Yes. In other words, we had two other interests that were collected there, if you want the testimony on that.

Q. I asked you if they took it our of your possession?

A. I suppose they did, yes.

Q. And you haven't had anything to do with it since?

A. No.

Q. That is all.

RAYMOND P. READ, sworn.

Direct examination.

By Mr. Steelman:

Q. Mr. Read, you are a member of the bar of the State of New Jersey, are you not?

A. I am.

Q. Were you practicing in 1917?

A. Yes.

Q. Where were you practicing at that time?

A. At 315 Guarantee Trust Building.

Q. Were you practicing alone, or with some one else?

A. With Carlton Godfrey.

Q. What was your business relationship with Mr. Godfrey?

A. We were in partnership.

Q. Do you recall a transaction that took place in the office when you acquired title to certain properties in Margate from Joseph Bartlett, the sheriff of Atlantic County, through a judgment against the Margate Company, held by one Anna E. Hand?

A. The names that you mention are, of course, familiar to me, but I have no personal recollection of the matter, the details of it.

Q. Do you recall—you don't recall the details of the transfer of the title to you?

A. No.

Q. Do you recall whether you put up the money or not for the purpose of the title?

A. Personally?

Q. Yes.

A. No.

The Court: What do you mean?

A. I didn't put it up.

Q. You didn't put it up?

A. No.

Q. Did you take any part in the negotiations yourself?

A. Not that I recall. You mean in the sale?

Q. Yes.

A. Not that I can recall, Mr. Steelman.

Q. At the time that the deed was made from you, in which your wife joined and in which Mr. Godfrey joined and in which Mrs. Godfrey joined, conveying the premises to the Exeter Land Company, did you have anything to do with the preparation of those papers?

A. Not to my knowledge.

Q. Do you recall having been made a defendant in a foreclosure proceeding brought by Emma Moitz Doherty against Raymond P. Read?

A. I really can't say that I recollect being a defendant in any foreclosure proceedings.

Q. I show you the original or what purports to be original of a subpoena ad respondendum in the matter of Emma E. Moitz Doherty, trustee, against

Raymond P. Read, and I show to you an acknowledgment of due and legal service on behalf of Raymond P. Read and Jane C. Read and the Margate Company, and I ask you if that is your signature?

A. No.

Q. Do you recognize that signature?

A. Yes.

Q. Whose signature is that?

A. Mr. Godfrey's, Carlton Godfrey's.

Q. How much stock, Mr. Read, did you own in the Exeter Land Company?

A. I couldn't tell you that.

Q. The company was incorporated in the office of Carlton Godfrey, was it not?

A. I think that is correct.

Q. And Godfrey & Read were the solicitors for the company?

A. So far as I know.

Q. Were you ever called in to any of the—were you on the board of directors of the Exeter Land Company?

A. Well, from my own personal knowledge, I have no recollection whether I was on the board of directors or not. I presume that was a company in the office, I presume.

Q. And I presume this was a corporation of convenience, wasn't it, like we all have?

Mr. McCarter: One moment. If that is your conclusion I object.

The Court: I sustain the objection.

Q. Do you know what the purpose of the incorporation of this company was, Mr. Read?

Mr. McCarter: I suppose that is expressed in the charter.

The Court: I sustain the objection.

Q. Do you recall how much stock Mr. Godfrey had in the company?

A. No.

Q. Were you a majority or minority stockholder?

A. I couldn't tell you. I have no recollection of the amount of stock for anybody.

Q. Do you have any now in the company?

A. Not to my knowledge.

Q. Do you know what became of your stock?

A. No.

Q. You don't recall whether it was assigned to anyone or not?

A. Why, Mr. Steelman, I couldn't say that I actually had stock in the company. I probably was, being a company of the office, I presume I qualified in that company.

Q. The stock was never actually delivered to you, you mean?

A. I couldn't say that, may have been and may not.

Cross-examination.

By Mr. McCarter:

Q. Mr. Read, I show you a stock certificate book and refer you to the stub marked number 3, certificate for seventeen shares, dated May 2nd, 1917, issued to Raymond P. Read. Is that your writing?

A. That is, yes.

Q. That would indicate, then, that you had seventeen shares of stock?

A. Absolutely.

Q. And Mr. Carlton Godfrey apparently had thirty-three?

A. As the stub would indicate.

Q. And one share to Annie M. Godfrey, I think is Mrs. Godfrey?

A. Mrs. Godfrey.

Q. You are unable at the present time to recall what became of your certificate that apparently was issued to you for seventeen shares later?

A. I couldn't tell you.

Mr. McCarter: I call the counsel and Court's attention to the fact that these three certificates, or stubs on these three certificates are all dated May 2nd, 1917, which seems to have been the date of the deed to the Exeter Land Company from Mr. Read and Mr. Godfrey and their respective wives, which is already in evidence.

(Stipulated and agreed between counsel that a certified copy of the certificate of incorporation of the Exeter Land Company may be offered in evidence later.)

(Stock book of the Exeter Land Company offered and received in evidence and marked Exhibit C10.)

COMPLAINANTS REST.

DEFENDANT'S TESTIMONY.

CARLTON GODFREY, sworn.

Direct examination.

By Mr. McCarter:

Q. Now, Mr. Godfrey, you are one of the defendants in this action?
A. I believe so.

Mr. McCarter: I offer in evidence the deed which the other side has failed to put in from Joseph R. Bartlett, sheriff, to Raymond P. Read, dated October 10th, 1916, reported October 24, 1916, in Deed Book No. 563, page 260.

(Deed admitted in evidence and marked Exhibit D1.)

Q. I call your attention to the description in this deed. Please read the description of the property conveyed.
A. "All the right, title and interest of Margate Company in blocks 11 to 75, inclusive, block 78, strip of 23.49 feet along the southwest line of lot 21 in the division of inside sand-hills beaches, from the south side of Ventnor Parkway to the Thorofare as shown on Margate Park plan in Margate City, New Jersey, on file in the Clerk's office at Mays Landing, N. J.
2. All the right, title and interest of Margate Company in lot 9 in the above division consisting of about 30¼ acres in Margate City, N. J.

3. All the right, title and interest of Margate Company in lot 10 in the above division consisting of about 31½ acres in Margate City, N. J."

Q. Now, I refer you to Exhibit C1, which is the deed from Mr. Read and his wife and yourself and Mrs. Godfrey to the Exeter Land Company, and refreshing your recollection by looking at the description and say whether it conveyed other property than the property that the sheriff, by the description you have already read, had sold to Raymond P. Read?

A. The deed conveys much less than the land described in the deed we have just referred to.

Q. Had Mr. or Mrs. Read any interest in the other land to which you have alluded?

A. They did not.

Q. So that the effect of the joint deed from yourself and Mr. Read and your respective wives in the Exeter Land Company was to convey not only the land that Mr. Read had acquired by the deed from the sheriff, but also some land that you and Mrs. Godfrey were interested in independently altogether of that?

A. Correct.

Q. Now, this property at Margate back in 1916 and 1917, what was the condition? Was it valuable or had there been a slump, or what was the situation?

A. There was at that time a serious slump in values.

Q. In the value of that particular property?

A. Value of all property in that neighborhood.

Q. Calling your attention to the description that you have already read to the Vice-Chancellor from the deed from the Sheriff to Mr. Read, were you either then or now able, without considerable plot-

ting and examination, to identify what was conveyed there by the other deed?

A. Let me carefully read the description and I will try to answer the question. It would require a very great deal of effort and care in determining exactly what land in Margate Park was conveyed by this deed.

Q. You were a stockholder of the Exeter Land Company, were you?

A. Please repeat the question.

Q. You were a stockholder of the Exeter Land Company, were you?

A. I was.

Q. Owing to the slump that occurred in the value of property in that vicinity, did you take, during the year, 1916 and 1917, any active interest in the property?

A. My interest in the property was very much less than before that period.

Q. Now, I show you a map or a sketch called "Plan of Margate Park, situate in Margate City, New Jersey, made November, 1909, by Ashmeade & Hackney, civil engineers." Are you familiar with that map?

A. I am.

Q. Does that include all of the property that we have been speaking of, the Margate Park property?

A. It includes the property known as Margate Park.

Q. Can you designate on that map the particular lot that is in issue in this suit?

A. If you will read the description I will endeavor to do so.

Q. "Beginning at the intersection of the easterly line of Pembroke Avenue with the southerly line of Ventnor Parkway, and extending thence one eastwardly along the southerly line of Ventnor Park-

way 80.25 feet, thence 2 southerly, parallel with Pembroke Avenue 90 feet; thence 3 westerly parallel with Ventnor Parkway 80.25 feet to the easterly line of Pembroke Avenue; thence 4 northwardly in and along the said easterly line of Pembroke Avenue 90 feet to the place of beginning.'' Do you find the lot?

A. The lot is number 1 in block 18, upon this map.

Q. Suppose you put a cross on it.

(Witness complies.)

Q. Now, as a matter of fact, when, if at all, and for the first time, did you first become aware that the lot in question was or was not included in the peculiar description that you read in the deed from the sheriff to Mr. Read?

A. A very short time before the commencement of this suit.

Q. Prior to that time you did not know, as a matter of fact, that that particular lot was included in that deed, is that right?

A. That is correct.

Q. What brought that to your attention?

A. Some one called upon me, perhaps it may have been some one connected with the title company, in connection with the questions that arose concerning this title.

Q. I show you the subpoena to answer in the foreclosure case, which is of record and which is marked as Exhibit C1, and call your attention on the first page, on the outside of the subpoena, to the words, ''Due and legal service acknowledged of subpoena and tickets for Raymond P. Read, Jane C. Read and Margate Company, Godfrey & Read, solicitors, May 17, 1917.'' Whose writing is that?

A. I believe it is my writing.

Q. Have you any recollection of the fact of your affixing the firm name of Godfrey and Read to that subpoena?

A. Not except as is refreshed by looking at the document itself.

Q. Now, the stock book, which has been referred to of the Exeter Land Company, you have produced, Mr. Godfrey?

A. Yes.

Q. And I observe that the stock that seems to have been issued is designated as one share to Mrs. Godfrey, thirty-three shares to yourself and seventeen shares to Raymond P. Read; is that in accordance with your recollection?

A. That is in accordance with my recollection of the facts.

Q. The par value of that stock was $100 each?

A. $100.

Q. And that would represent how many shares?

A. Fifty-one.

Q. Fifty shares?

A. Fifty shares.

Q. This other land that was conveyed by Mrs. Godfrey and you was entirely outside of this Margate tract?

A. It was. Part of it was in the tract, but outside of the land conveyed by the ——

Q. By the sheriff?

A. By the sheriff sale, or this sheriff sale.

Q. Well, the stock that was issued in the three certificates to which I have alluded represented the $5000 recited in the deed to have been paid for that particular land?

A. The certificates of stock was the consideration of the conveyance in the deed from Raymond Read and myself to the corporation.

Q. Now, some reference has been made to the fact that during the intermediate period between 1917 and the present time, and I think about 1922, a house was erected upon this property, this lot in question; did you know that that house was erected on property that was included in the deed that the Exeter Land Company received from Mr. and Mrs. Read and yourself and Mrs. Godfrey?

A. I did not until my attention was called to it just prior to this suit.

Q. Prior to filing this bill?

A. Yes.

Cross-examination.

By Mr. Steelman:

Q. You didn't even know that you owned the lot, did you?

A. I didn't know that this particular lot was a part of the lot conveyed by the deed in question.

Q. What did you do with the subpoena and respondendum that was served upon you in the Doherty foreclosure?

A. My knowledge of that would be almost a guess. Frequently subpoenas were served upon me by the sheriff, and I acknowledged service in many cases. Perhaps this may have been one of the cases.

Q. Well, that still doesn't answer my question. I, of course, know that you acknowledged service on it. My question was what you did with it after you got it.

A. I cannot tell you that.

Q. Did you notify Mr. Read?

A. That would be a mere guess. I cannot remem-

ber. I have no doubt that he knew about it at the time.

Q. Well, that was, the date of that was on May the 17th, 1917; that was about two weeks from the time when the conveyance had been made of this land to the Exeter Land Company, was it not?

A. It may have been.

Q. Well, didn't the two events associate themselves in your mind at all, didn't one recall the other to you?

A. I cannot tell what happened then.

Q. As a matter of fact, you were not very much impressed with the ownership of this lot anyway, I guess, at this time, were you, Mr. Godfrey?

A. I didn't know that that deed conveyed this particular lot. You couldn't determine that by the description except by a very laborious examination.

Q. Well, you did know that it contained that block, did you not?

A. Contained that block? My view is, from reading the description, that it conveyed all the right, title and interest of Margate Company in certain blocks.

Q. You knew that that block was one of them, didn't you?

A. That block is included in the blocks conveyed by that deed.

Q. Well, this transaction meant something, didn't it, or was it just a mere abracadabra?

A. I don't understand your question.

Q. Real estate wasn't very active in 1917 in Margate, was it, Mr. Godfrey?

A. Not very active, no.

Q. In fact, it was a long time after that before it did exhibit any activity, was it not?

A. It was quite some years after that before it became active again.

Q. But you had been for a long time very much interested in the development of Margate, had you not, particularly the park?

A. At one time I was very much interested in it.

Q. As a matter of fact, you were one of the pioneers in the development, were you not?

A. May be so termed.

Q. And you watched that development very closely, as you would the development of a child, didn't you, as a matter of interest to you?

A. I did the best I could during the time that it was being developed to do everything I could to aid the development.

Q. And when, after the slump, the properties began to take on a new lease of life down there, you followed it along at that time, did you not, with some degree of interest?

A. Very little.

Q. It was a matter of interest to you, wasn't it, to see it come back, to know that your prediction about it was correct in the first place?

A. There was some interest in that view of it, yes, sir.

Q. And you began to see new buildings come up from time to time, did you not?

A. New buildings did finally appear.

Q. That is not what I asked you. You saw them come up?

A. I saw new buildings on the tract appear.

Q. And you saw buildings on the tract, which had been conveyed by you and Raymond Read to the Exeter Land Company, did you not?

A. No, I couldn't say that I saw any buildings upon that tract conveyed by that deed.

Q. Then you were not sufficiently interested in

your development down there to watch that feature of it; is that correct?

A. That is not an appropriate question.

Q. Now, when did you first learn about the interest of the Exeter Land Company in this particular lot?

A. A very short time before this particular suit was brought.

Q. And from 1917 until that time you paid no attention to it whatsoever and didn't know anything about it?

A. I didn't say that.

Q. Well, will you answer my question? And from 1917 until that time you paid no attention to it whatsoever, and didn't know anything about it?

A. During that period I didn't know that the deed from Read and myself to the corporation, the Exeter Land Company, conveyed this particular lot.

Q. In your answer—in the answer of the Exeter Land Company to this bill you state that, "The real and the beneficial owner of the property as purchased from the sheriff was Carlton Godfrey, this defendant, did you not?

Mr. McCarter: He didn't say that.

Q. The answer of your company, the Exeter Land Company, states that, does it not?

A. The answer, I suppose, will state itself better than I can remember it.

Q. Is that a correct statement, Mr. Godfrey? I show it to you as it appears in the answer, referring to page 5, paragraph 5 of the cross-bill.

Q. (Repeated.)

A. That calls in the answer ——

Q. Pardon me. Just answer the question first

and you may explain it afterwards. That is what you say in the answer of the Exeter Land Company, isn't it?

A. I am just endeavoring to reply to your question.

Mr. McCarter: You say his answer.

The Court: Admitting this company has anything to do with the Exeter Land Company ——

Mr. Steelman: This answer says, while it is the answer of the Exeter Land Company, it was the real and beneficial owner thereof ——

The Court: Where does it say that in their answer?

Mr. Steelman: I didn't mean that. This answer of the Exeter Land Company says the real and beneficial owner thereof was the said Carlton Godfrey, this defendant. It refers to Mr. Godfrey as, "this defendant" in the Exeter Company's answer. That is what I am getting at.

Mr. McCarter: I don't construe it that way myself.

The Court: It don't say that at all. The consideration paid for the purchase and assignment of this to this defendant, Exeter Land Company by Carlton Godfrey who was the beneficial owner thereof, although the assignment was issued and held in the name of Raymond P. Read.

Mr. Steelman: I am reading from paragraph 5.

The Court: I see what you mean. Probably a typographical error because it can't be.

Mr. Steelman: My point is, if the Court please, that they are using each other interchangeably all the way through.

The Court: That may be true, but don't say so.

Q. Then is this answer correct, is the statement in this answer correct when it asserts that Carlton Godfrey was the beneficial owner of the property purchased from the sheriff?

A. That was not my view at the time.

Mr. Steelman: If the Court please, may I have a direct answer to the question?

Mr. McCarter: That is an answer.

(Question repeated.)

The Court: Can be answered yes or no, or that he don't know.

A. I can only testify as to my knowledge and my recollection is that that property was bought in by the sheriff, by Read, that I put up the actual money which went to the sheriff to pay for that conveyance, but that Mr. Read had an interest in that property, which interest was conveyed to the Exeter Land Company, and which was paid for by a certificate of stock issued by the Exeter Land Company, to him, and my interest, the property that I conveyed, which was other property, was also paid by the remaining stock issued. That was my recollection of the facts.

Q. Then the further statement is made in the answer of the Exeter Land Company that Raymond P. Read had no actual, beneficial estate or interest therein or in the title thereto; is that correct or is it incorrect?

A. Upon the dissolution of the firm ——

Q. Pardon me, Mr. Godfrey.

A. I am going to answer it exactly as I understand it, but I can't answer it any other way.

10

The Court: Then say you can't answer the question.

A. If the Court will let me answer it, I can furnish ——

The Court: Counsel asks for an answer yes or no, or you can't answer it, and he is entitled to it in that way. If you can't answer it, say so.

20

A. I can't answer it by a question yes or no.

Q. What was Raymond Read's interest?

A. My knowledge is, my recollection is that his interest was the interest which represented the title which he conveyed to the Exeter Land Company by the deed which he signed, and which property he bought at the sheriff's sale.

Q. Then, if you put up all the money, Mr. Godfrey, what was Raymond Read's interest?

30 A. That is, I put up the money, but the title, the interest he and I were partners in business, and my recollection was then and is now that the title was exactly of that proportion, which came to me when we dissolved the firm of Godfrey ad Read.

Q. You were in the law business together, were you not?

A. We were.

By Mr. McCarter:

Q. Did you have any knowledge of the devolution of title of this particular lot in question in this suit, or any mortgages or agreements to convey it that had been made by the different people that have testified here today?

A. I did not.

Q. Did anyone, previous to the occasion which you have described as being just before the filing of the bill in this cause, ever come to you from any of them or from any title company or anybody else and direct your attention to the fact that this particular tract or lot was included in that right, title and interest deed that the sheriff conveyed to Read, and Read and his wife later conveyed to the Exeter Land Company, was this particular lot, and that it had not been included in the foreclosure proceedings to which allusion has been made?

A. Not until just prior to the beginning of this suit.

Q. Exactly. That is all.

By Mr. Steelman:

Q. All of these subsequent conveyances were a matter of record, however, were they not?

A. I assume so.

Q. That is all.

Mr. McCarter: We will offer the stock book and map. The stock book is in. We will offer the map.

(Map admitted in evidence and marked Exhibit D2.)

DEFENDANTS REST.

TESTIMONY CLOSED.

EXHIBIT C1.

DEED—READ TO EXETER LAND CO.

DEED—Raymond P. Read, et al, to Exeter Land Co.

THIS INDENTURE, made the second day of May in the year of our Lord one thousand nine hundred and seventeen.

BETWEEN Raymond P. Read and Jane C. Read, his wife, Carlton Godfrey and Annie M. Godfrey, his wife all of the city of Atlantic City, County of Atlantic and State of New Jersey parties of the first part and Exeter Land Company, a corporation existing under and by virtue of the laws of the State of New Jersey, party of the second part:

WITNESSETH that the said party of the first part for and in consideration of the sum of Five thousand dollars lawful money of the United States of America, well and truly paid by the said party of the second part to the said party of the first part, at and before the ensealing and delivery of these presents the receipt whereof is hereby acknowledged have granted, bargained, sold, aliened, enfeoffed, released, conveyed and confirmed and by these presents do grant, bargain, sell, alien, enfeoff, release, convey and confirm unto the said party of the second part, its successors and assigns all those certain lots, tracts or parcels of land and premises hereinafter particularly described, situate, lying and being in the city of Margate City, County of Atlantic and State of New Jersey;

PARCEL No. 1. BEGINNING at a point in the westerly line of Vendome Avenue three hundred and fifty-two feet north of a corner in said westerly

line of Vendome Avenue, which is two hundred twenty-two and ninety-four-hundredths feet northwest of the northwesterly line of Fremont Avenue and extending thence (1) weswardly, at right angles to the said westerly line of Vendome Avenue one hundred feet to the exterior line for piers in Beach Thoroughfare; thence (2) northwardly along said exterior line for piers and parallel with the westerly line of Vendome Avenue thirty-two feet; thence (3) eastwardly parallel with the first course one hundred feet to the westerly line of Vendome Avenue; thence (4) southwardly, in said westerly line of Vendome Avenue thirty-two feet to the place of beginning. Being lot No. 17 in block 57 on a certain map entitled, "Plan of Margate Park, situate in Margate City, New Jersey, made November, 1909 by Ashmead & Hackney, civil engineers."

PARCEL No. 2. BEGINNING at a point in the westerly line of Union Avenue eleven hundred and ninety-five feet north of the northerly line of Amherst Avenue and extending thence (1) northwardly, along said westerly line of Union Avenue thirty feet; thence (2) westwardly, parallel with Amherst Avenue one hundred feet to the exterior line for piers in Beach Thoroughfare; thence (3) southwardly, along said exterior line and parallel with Union Avenue thirty feet; thence (4) eastwardly, parallel with Amherst Avenue one hundred feet to the place of beginning. Being lot No. 11 in block 57 on the aforesaid map.

PARCEL No. 3 BEGINNING at a point in the westerly line of Union Avenue thirteen hundred seventy-five feet north of the northerly line of Amherst Avenue and extending thence (1) westwardly, parallel with Amherst Avenue one hundred feet to

the exterior line for piers in Beach Thoroughfare; thence (2) southwardly, along said exterior line and parallel with Union Avenue ninety feet; thence (3) eastwardly, parallel with Amherst Avenue one hundred feet to the westerly line of Union Avenue; thence (4) northwardly, in and along the said westerly line of Union Avenue ninety feet to the place of beginning. Being lots 6, 7, and 8 in block 57 on the aforesaid map. Also being the same premises which Joseph R. Bartlett, sheriff of Atlantic County, granted and conveyed unto Raymond P. Read by deed bearing date June 14, 1916, and of record in the Atlantic Country clerk's office in book No. 556 of deeds, page 233.

PARCEL No. 4 BEGINNING at a point in the easterly line of Nassau Avenue one hundred and fifty-six and nineteen-hundredths feet south of the southerly line of Atlantic Avenue and extending thence (1) eastwardly, at right angles with the easterly line of Nassau Avenue seventy-two and fifteen-hundredths feet; thence (2) southwardly, fifty and four-one-hundredths feet; thence (3) westwardly, parallel with the first course seventy and seventeen-hundredths feet to the easterly line of Nassau Avenue; thence (4) northwardly along said easterly line of Nassau Avenue fifty feet to the place of beginning. Being lot No. 4 in block No. 10 on the aforesaid map. Also being the same premises which Joseph R. Bartlett, sheriff of Atlantic County granted and conveyed by deed bearing date June 14, 1916, unto R. P. Read, which deed is of record in the Atlantic County clerk's office in book No. 565 of deeds, page 58 (said R. P. Read being Raymond P. Read the grantor herein.)

PARCEL No. 5. BEGINNING at a point in the

easterly line of Thurlow Avenue two hundred and sixty-five feet south of the southerly line of Winchester Avenue and extending thence (1) eastwardly at right angles with said easterly line of Thurlow Avenue eighty feet; thence (2) southwardly, parallel with Thurlow Avenue fifty-three feet; thence (3) westwardly, parallel with the first course a distance of eight feet to the easterly line of Thurlow Avenue; thence (4) northwardly, in and along said easterly line of Thurlow Avenue fifty-three feet to the place of beginning. Being lot No. 6 in block 24 on the aforesaid map. Also being the same premises which Joseph R. Bartlett, sheriff of Atlantic County granted and conveyed unto Carlton Godfrey by deed bearing date August 24, 1916, and of record in the Atlantic County clerk's office in book No. 562 of deeds, page 230.

PARCEL No. 6. BEGINNING at a point in the easterly line of Thurlow Avenue three hundred and eighteen feet south of the southerly line of Winchester Avenue and extending thence (1) eastwardly, at right angles with said easterly line of Thurlow Avenue eighty feet; thence (2) southwardly, parallel with Thurlow Avenue fifty-three hundredths feet; thence (3) westwardly, parallel with Ventnor Parkway eighty and twenty-five-hundredths feet to the easterly line of Thurlow Avenue; thence (4) northwardly in and along said easterly line of Thurlow Avenue forty-six and sixty-nine-hundredths feet to the place of beginning. Being lot No. 7 in block 24 on the aforesaid map. Also being the same premises which Joseph R. Bartlett sheriff of Atlantic County granted and conveyed unto Carlton Godfrey by deed bearing date August 24, 1916, and of record in the Atlantic County clerk's office in book No. 562 of deeds, page 233.

PARCEL No. 7. BEGINNING at a point in the westerly line of Kenyon (formerly Cairo) Avenue one hundred feet south of the southerly line of Atlantic Avenue and extending thence (1) Westwardly parallel with Atlantic Avenue sixty-two and fifty-hundredths feet; thence (2) southwardly, parallel with Kenyon (formerly Cairo) Avenue fifty feet; thence (3) eastwardly, parallel with the first course a distance of sixty-two and fifty-hundredths feet to the westerly line of Kenyon (formerly Cario) Avenue; thence (4) northwardly in and along said westerly line of Kenyon (formerly Cairo) Avenue fifty feet to the place of beginning. Being lot No. 11 in block No. 12 on a certain plan of lots entitled "Plan of lands belonging to Ventnor Syndicate at Margate Park, Margate City, N. J., made November, 1910 by Ashmead & Hackney, civil engineers, scale 100 feet to the inch," and duly filed in the County Clerk's office of Atlantic County, New Jersey. Also being the same premises which Joseph R. Bartlett, sheriff of Atlantic County granted and conveyed unto Carlton Godfrey by deed bearing date, December 2, 1916, and of record in the Atlantic County clerk's office, in book No. 572, of deeds, page 154.

PARCEL No. 8. BEGINNING at a point in the easterly line of Delaware (formerly Lehigh) Avenue fifty feet south of the southerly line of Atlantic Avenue and extending thence (1) eastwardly, parallel with Atlantic Avenue sixty-two and five-tenths feet; thence (2) southwardly, parallel with Delaware Avenue (formerly Lehigh) Avenue fifty feet; thence (3) westwardly, parallel with the first course sixty-two and five-tenths feet to the easterly line of Delaware (formerly Lehigh) Avenue; thence (4) northwardly, in and along the said easterly line

of Delaware (formerly Lehigh) Avenue firty feet to the place of beginning. Being lot No. 2, in block 88B on a certain plan of lots entitled, "Map of property, situate in and adjacent to Ventnor City, New Jersey, belonging to Ventnor Syndicate, scale 1 in. 80 ft., Dec., 23, 1910, by W. I. Risley, civil engineer and surveyor, Atlantic City, N. J.," duly filed in the clerk's office of the County of Atlantic, at Mays Landing, N. J. Also being the same premises which Joseph R. Bartlett, sheriff of Atlantic County granted and conveyed unto Carlton Godfrey, by deed bearing date September 16, 1916, and recorded in the aforesaid clerk's office, in book No. of deeds, page

PARCEL No. 9. BEGINNING at the intersection of the easterly line of Douglas (formerly Mobile) Avenue, and the southerly line of Atlantic Avenue and extending thence (1) eastwardly in and along the southerly line of Atlantic Avenue sixty-two and five-tenths feet; thence (2) southwardly, parallel with Douglas (formerly Mobile) Avenue fifty feet; thence (3) westwardly, parallel with the first course sixty-two and five-tenths feet, to the easterly line of Douglas (formerly Mobile) Avenue; then (4) northwardly, in and along said easterly line of Douglas (formerly Mobile) Avenue fifty feet to the place of beginning. Being lot No. 1, in block 88A, on a certain plan of lots entitled, "Map of property, situate in and adjacent to Ventnor City, New Jersey, belonging to Ventnor Syndicate scale 1 in. 80 ft., Dec., 23, 1910, by W. I. Risley, civil engineer and surveyor, Atlantic City, N. J.," and duly filed in the clerk's office of the County of Atlantic, at Mays Landing, N. J. Also being the same premises which Joseph R. Bartlett, sheriff of Atlantic County, granted and conveyed unto Carlton Godfrey, by

deed bearing date September 16, 1916, and of record in the aforesaid clerk's office in book No. of deeds, page .

PARCEL No. 10. All the right, title and interest of the said Raymond P. Read and Jane C. Read, his wife, in and to the land and premises situate in the city of Margate City, County of Atlantic and State of New Jersey, known and described as blocks 11 to 75 inclusive, block 78 and strip of twenty-three and forty-nine-hundredths feet along the southwest line of lot 21 in the division of Inside and Sand Hills Beaches, from the south side of Ventnor Parkway to the Thoroughfare as shown on Margate Park plan, in Margate City, New Jersey, on file in the clerk's office at Mays Landing, New Jersey, and lot No. 9, in the said division consisting of about thirty and one-fourth acres in Margate City, New Jersey, and lot No. 10, in the said division consisting of about thirty-one and one-half acres in Margate City, New Jersey, which right, title and interest in said land and premises was conveyed unto the said Raymond P. Read, by Joseph R. Bartlett, sheriff of the County of Atlantic by deed bearing date October 10, 1916, and recorded in the clerk's office of Atlantic County in book No. 563, of deeds, page 260 etc.

TOGETHER with all and singular the improvements, woods, ways, rights, liberties, privileges, hereditaments and appurtenances to the same belonging or in anywise appertaining and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and of every part and parcel thereof; and also all the estate, right, title, interest, property, possession, claim and demand whatsoever, both in law and equity of the said party of the first part, of, in and to the said pre-

mises and every part thereof, with the appurtenances.

TO HAVE AND TO HOLD the said premises above described, with all and singular the hereditaments and appurtenances unto the said party of the second part, its successors and assigns to the only proper use, benefit and behoof of the said party of the second part, its successors and assigns forever. And the said party of the first part, for themselves, their heirs, executors, administrators or assigns, do by these presents covenant, grant and agree to and with the said party of the second part, its successors and assigns, that they the said party of the first part, and their heirs all and singular the hereditaments and premises above described anl granted, or mentioned and intended so to be with the appurtenances unto the said party of the second part, its successors and assigns, against them the said party of the first party and their heirs and against all and every person or persons whomsoever lawfully claiming or to claim the same or any part thereof, by, from, through or under him, them or any of them, shall and will warrant and forever defend.

In WITNESS WHEREOF, the said party of the first part to these presents hath hereunto set their hands and seals dated the day and year first above written.

Raymond P. Read (seal)
Jane C. Read (seal)
Carlton Godfrey (Seal)
Annie M. Godfrey (seal)

Signed, sealed and delivered)
in the presence of)
Page 2, last line words)
"seventy-two" written over)
an erasure before signing.)
G. V. Etter)
Notary Public of N. J.)

State of New Jersey, Atlantic County, ss.

BE IT REMEMBERED that on this second day of May in the year of our Lord one thousand nine hundred and seventeen, before me the subscriber a Notary Public of N. J. personally appeared Raymond P. Read and Jane C., his wife, Carlton Godfrey and Annie M., his wife, who I am satisfied are the grantors mentioned in the above deed or conveyance and I having first made known to them the contents thereof they acknowledged that they signed, sealed and delivered the same as their voluntary act and deed; and the said Jane C. Reed and Annie M. Godfrey being of full age on a private examination apart from their said husbands, before me acknowledged that they signed, sealed and delivered the same as their voluntary act and deed, freely, without any fear, threats or compulsion of their said husbands. All of which is hereby certified.

G. V. Etter,
Notary Public of N. J.

Received and recorded May 5, 1917 at 9 A. M.
Edwin A. Parker, Clerk.
Deed Book No. 576, page 110.

STATE OF NEW JERSEY.

County of Atlantic.

I, William A. Blair, Clerk of the County of Atlantic, and also clerk of the Common Pleas Court holden therein, said court being a court of record, having a common seal, do hereby certify, that the

foregoing is a true copy of a certain deed—Raymond P. Read, *et al.* to Exeter Land Co. as the same is recorded in my said office.

In testimony whereof, I have hereunto set my hand and affixed my official seal at May's Landing, N. J., this 19th day of December A. D. 1927.

WILLIAM A. BLAIR,
Clerk.
By
(Seal) *Deputy Clerk.*

EXHIBIT D1.

DEED SHERIFF TO READ.

DEED—Joseph R. Bartlett, Sheriff to Raymond P. Read.

THIS INDENTURE, made the tenth day of October in the year of our Lord one thousand nine hundred and sixteen.

BETWEEN Joseph R. Bartlett, Sheriff of the County of Atlantic, in the State of New Jersey, of the first part, and Raymond P. Read of the city of Atlantic City, County of Atlantic and State of New Jersey, of the second part:

WHEREAS on the twenty sixth day of April in the year of our Lord one thousand nine hundred and sixteen, a certain writ of Fieri Facias was issued out of the Atlantic Circuit Court directed to me, the said Joseph R. Bartlett, then and still being Sheriff of the said County of Atlantic and which said writ was in the words or to the effect following, that is to say: Atlantic County, to wit: The State of New Jersey to our Sheriff of our County of Atlantic, Greeting: (Seal)

We command you that of the goods and chattels, rights and credits of Margate Co. in your County you cause to be made the sum of Five Thousand five dollars and fifty cents, which to Annie E. Hand, lately before our Circuit Court, holden at Mays Landing, in and for our said County of Atlantic, were adjudged for her debt & costs which she had sustained as well by occasion of the not performing certain promises and undertakings then lately made by the said defendant to the said plaintiff as for her costs and charges by her about her suit, in that behalf expended whereof there is a recovery: And if sufficient goods and chattels of the said defendant cannot be found in your County of Atlantic whereof the debt & costs aforesaid may be made, then you are hereby further commanded, that you cause the whole or the residue as the case may require of the said damages to be made of the lands, tenements, hereditaments and real estate, whereof the said defendant was seized on the twenty fifth day of April, in the year of our Lord one thousand nine hundred and sixteen, or at any time afterwards, in whose hands soever the same may then be. And have you that money before our Court aforesaid, at Mays Landing aforesaid, on the second Tuesday of May next, to render to the said plaintiff for her debt & costs aforesaid. And have there this writ.

Witness Howard Carrow, Esq. Judge of our said Court at Mays Landing, aforesaid the 26th day of April in the year of our Lord one thousand nine hundred and sixteen.

Edwin A. Parker, Clerk, by
Burton A. Gaskill, Deputy Clerk.

Wm. M. Clevenger, Atty.

Recorded in the office of the Clerk of Atlantic County, in Book No. 3 of Circuit Court executions

in case page 296, &c. And whereas sufficient goods and chattels of the said defendant could not be found to make the said debt and costs, the said Joseph R. Bartlett, Sheriff as aforesaid, did levy upon, seize and take, all the right, title and interest of Margate Company in Blocks 11 to 75 inclusive, Block 78 and strip of 23.49 feet along southwest line of lot 21 in the division of Inside and Sand Hills Beaches from the south side of Ventnor Parkway to the Thoroughfare as shown on Margate Park Plan in Margate City N. J. on file in the Clerk's office at Mays Landing, N. J.

2. All the right, title and interest of Margate Company in lot 9 in the above division consisting of about 30¼ acres in Margate City, N. J.

3. All the right, title and interest of Margate Company in lot 10 in the above division consisting of about 31½ acres in Margate City, N. J.

AND WHEREAS to the end that a sale of the said lands and premises should be made, pursuant to the statute in such case made and provided, the said Joseph R. Bartlett, Sheriff as aforesaid, by public advertisements, signed by himself and set up at five or more public places in the said County of Atlantic, to wit: one each at the hotel of Robert Bastian, Jr. Mays Landing; at the Guarantee Trust Building, Atlantic City; at the Law Building, Atlantic City; at the White House, Margate City, and at the Sheriff's Office, Mays Landing, one whereof was in the said city where such lands and real estate are situate at least three weeks next before the time appointed for selling the same, and also published in the "Atlantic County Record" and "Atlantic City Daily Press" two of the newspapers printed and published in the County of Atlantic in which said lands and real estate are situate, of which one the "Atlantic County Record"

was a newspaper printed and published at the County Seat of said County at least four weeks successively, once a week, next preceeding the time appointed for said sale, did give public notice that the said lands and premises would be exposed to sale at public vendue on Wednesday the twenty sixth day of July, nineteen hundred and sixteen at two o'clock in the afternoon at the Court Room No. 201, Second Floor, Guarantee Trust Building, Atlantic City, Atlantic County, New Jersey and at the time and place so appointed and advertised did openly and publicly in due form of law adjourn said sale until Wednesday the second day of August, nineteen hundred and sixteen, at the same hour and place aforesaid and at the same time and place to which said sale was adjourned as aforesaid, did again openly and publicly in due form of law adjourn said sale until Wednesday the ninth day of August, nineteen hundred and sixteen, at the same hour and place aforesaid and at the same time and place to which said sale was adjourned as aforesaid; did again openly and publicly in due form of law adjourn said sale until Wednesday the sixteenth day of August nineteen hundred and sixteen, at the same hour and place aforesaid and at the same time and place to which said sale was adjourned as aforesaid, I did accordingly offer and expose the said lands and premises to sale by public vendue and Raymond P. Read being the highest bidder for the said lands and premises the same were then and there between the hours of twelve and five o'clock in the afternoon of the day last aforesaid to wit: at two o'clock struck off and sold to the said Raymond P. Read, for the sum of Five hundred dollars according to the form of the Statute in such case made and provided.

NOW THIS INDENTURE WITNESSETH that

the said Joseph R. Bartlett, Sheriff as aforesaid for and in consideration of the sum of Five hundred dollars to him paid the receipt whereof is hereby acknowledged hath granted, bargained, sold, and by these presents doth grant, bargain, sell and convey unto the said Raymond P. Read his heirs and assigns, all of the above described tracts of land and premises, together with the hereditaments and appurtenances thereunto belonging or appertaining.

TO HAVE AND TO HOLD the above mentioned and described tracts of land and premises with the appurtenances unto the said Raymond P. Read, his heirs and assigns forever and absolutely as the said Joseph R. Bartlett, Sheriff as aforesaid, can, may or ought by virtue of said writ and of the Statute made and provided to grant, bargain, sell and convey the same.

And the said Joseph R. Bartlett does hereby covenant, promise and agree to and with the said Raymond P. Read, his heirs and assigns, that he has not as said Sheriff as aforesaid done or caused, suffered or procured to be done, any, act, matter or thing whereby the said premises or any part thereof, with the appurtenances can or may be charged in estate, title or otherwise.

IN WITNESS WHEREOF the said Joseph R. Bartlett as such Sheriff as aforesaid has hereunto set his hand and seal the day and year first above written.

Joseph R. Bartlett (Seal)
Sheriff.

Signed, sealed and delivered in the presence of Albert C. Abbott

State of New Jersey, Atlantic County, ss.

BE IT REMEMBERED that on this tenth day of October nineteen hundred and sixteen before me a Master in Chancery of said State personally appeared Joseph R. Bartlett Sheriff of the County of Atlantic, who I am satisfied is the grantor within named and I having first made known to him the contents of the within deed of conveyance he acknowledged that he signed, sealed and delivered the same as his voluntary act and deed for the uses and purposes therein expressed.

Albert C. Abbott
M. C. C. of N. J.

I, Joseph R. Bartlett, Sheriff of the County, do solemnly swear that the lands and real estate described in this deed, made by me to Raymond P. Read, were by me sold by virtue of a good and subsisting execution as is therein recited; that the money ordered to be made has not been to my knowledge or belief paid or satisfied; that the time and place of the sale of the said lands and real estate were by me duly advertised as required by law, and that the same were cried off and sold to a bona fide purchaser for the best price that could be obtained.

Joseph R. Bartlett,
Sheriff.

Sworn before me, one of the Masters in Chancery of the State of New Jersey on this tenth day of October, nineteen hundred and sixteen and I having examined the above mentioned deed, do approve the same and order it to be recorded as a

good and sufficient conveyance of the land and real estate therein described.

Albert C. Abbott,
M. C. C. of N. J.

Received and recorded October 24, 1916 at 8. A. M.
Edwin A. Parker, Clerk.
Deed Book No. 563, page 260.

STATE OF NEW JERSEY.

COUNTY OF ATLANTIC.

I, WILLIAM A. BLAIR, Clerk of the County of Atlantic, and also clerk of the Common Pleas Court holden therein, said court being a court of record, having a common seal, do hereby certify, that the foregoing is a true copy of a certain deed—Joseph R. Bartlett, Sheriff to Raymond P. Read, as the same is recorded in my said office.

In testimony whereof, I have hereunto set my hand and affixed my official seal at Mays Landing, N. J., this 19th day of December A. D. 1927.

W. A. BLAIR,
Clerk.
By
Deputy Clerk.

(Seal)

CONCLUSIONS.

(Filed Oct. 9, 1928.)

IN CHANCERY OF NEW JERSEY.

Between
ADA L. TODD, *et als.*,
Complainants,
and
EXETER LAND COMPANY,
et als.,
Defendants.

On Bill, &c.
On Final Hearing.
Conclusions.

MESSRS. HARCOURT & STEELMAN for the complainants.
MR. U. G. STYRON for the defendants.

INGERSOLL, V. C.

The Margate Company was a New Jersey corporation organized to develop and exploit a large tract of land in Margate. On March 8th, 1912, the said company created a mortgage on the lands in question in this suit to Emma Moitz Doherty to secure the payment of the sum of $2,200.00.

On April 26, 1916, Annie E. Hand recovered a

judgment in the Atlantic County Circuit Court against the Margate Co. for the sum of $5,005.50. On July 29th, 1916, this judgment was assigned to the defendant, Raymond P. Read. On October 10th, 1916, the property previously levied upon by the sheriff on August 16th, 1916, was by him sold to said Reed. The sheriff's deed was recorded October 24th, 1916. On April 11th, 1917, Carlton Godfrey and said Raymond P. Read, who constituted the law firm of Godfrey & Reed, incorporated the Exeter Land Company—they being the only stockholders (except the wife of Mr. Godfrey, who had one share —manifestly for incorporating purposes). The company was admittedly a firm incorporation.

There can be no doubt but that Godfrey was the dominant factor in the partnership of Godfrey & Read, and of the corporation, Exeter Land Company, and he was very extensively interested in the Margate Company, being an officer therein and his firm being the legal representative thereof. The registered office of the Exeter Land Company was the office of Godfrey and Read, and its registered agent was Carlton Godfrey. The sheriff's deed described the land deeded to Read as follows:

"all the right, title and interest of Margate Company in Blocks 11 to 75, inclusive, Block 78 and strip of 23.49 feet along southwest line of lot 21 in the division of Inside and Sand Hill Beaches, from the south side of Ventnor Parkway to the Thoroughfare as shown on Margate Park Plan in Margate City, N. J., on file in the clerk's office at Mays Landing, N. J.

2. All the right, title and interest of Margate Company in lot 9 in the above division consisting of about 30¼ acres in Margate City, N. J.

3. All the right, title and interest of Mar-

gate Company in lot 10 in the above division, consisting of about 30½ acres in Margate City, N. J."

It is also admitted that the land in question is within this description, and that Godfrey furnished the money for the consideration therefor. Read was only acting as a conduit for the title, and on May 2nd, 1917, a conveyance was made by him and his wife and Carlton Godfrey and his wife to the Exeter Land Company, conveying *inter alia* the lands above described. This deed was recorded on May 5th, 1917.

Default having been made in the payment of the said mortgage, proceedings were taken to foreclose.

The searches obtained for the purpose of this foreclosure proceedings were made prior to May 5th, 1917, the date of the record of the deed to the Exeter Land Company and correctly evidenced the title to the land in question to be in Read. The bill, however, was not filed until May 16th, 1917, and Read was made a party thereto, but the pleader failed to include the Exeter Land Company as a party defendant. Evidently the precaution of having the search continued until or after the filing of the bill was not taken.

Service of the subpœna *ad respondendum* was acknowledged for the Margate Company and for Raymond P. Read by Carlton Godfrey in the name of Godfrey & Read, solicitors.

No answer or other pleadings were filed by any defendant, and the cause proceeded to a final decree. A writ of *fiere facias* was issued to the sheriff of Atlantic County, who proceeded to advertise and make sale thereunder. Sale was made to Emma E. Moitz Doherty, the complainant in said cause and

through mesne conveyances the title became in Julia N. Ireland, one of the complainants, on December 21st, 1922. Ireland erected a dwelling on the property at a cost of about $27,000. She borrowed $15,000 on a construction mortgage. This mortgage was insured by a title company, which evidently overlooked the title of the Exeter Land Company, although it was then of record. It should be said that the title company now holds the mortgage so insured by virtue of an assignment from the original mortgage.

Ireland, after living in the premises for some time, conveyed same to F. Ernest Todd, Inc. This company entered into an agreement to convey to the complainant, who ordered title insurance. It was then discovered that although the Exeter Land Company had title at the time of filing the bill to foreclose, it had not been made a party.

I have no doubt that Mr. Godfrey's attention was called to the erection of this dwelling. The fact that the Margate Company had had as the brief of the defendant says, "a checkered career," that Godfrey had been an officer and attorney of that company, that he had provided the consideration for the purchase of a judgment against it and for the purchase of the land, and its conveyance to Read and by him to the Exeter Land Company, and that without doubt he was trying to save from the wreck of the Margate Company any property possible, convinces me that the erection of a building such as was erected on this land could not have been without his knowledge.

A public record is an available means of information as to questions of title and one who does not take advantage of it cannot claim an estoppel against one who merely fails to furnish such information, 21 C. J. 1130, 1131.

In New Jersey it has been held that he may be

estopped by his silence when he knows or is informed that others are negotiating for rights and interests in property bound by his title of record.

All authorities are agreed that the general rule is that possession of real estate which is actual, open and visible occupation, inconsistent with the title of the apparent owner by the record, and not equivocal, occasional or for a temporary or special purpose, is constructive notice to all the world of the rights of the party in possession. Wood v. Price, 79 N. J. Eq. 620, 624.

One who stands by and silently permits another to make large expenditures in improvements on land under an honest belief that he is the rightful owner must be held to have acquiesced and to be estopped from being heard to complain. Bridgewater v. Ocean City Association, *et al.*, 85 N. J. Eq. 379.

The brief of the defendant concedes this rule, but insists that there has been no proof of knowledge on the part of the Exeter Land Company.

This is a question of fact to be determined by the Court, and as stated above, I find the fact to be that the president of the company had such knowledge, and that knowledge must be imputed to the company. Not necessarily because he was the president of the company, but because he was in effect the company.

The rule as stated by Prof. Pomeroy in "Equity Jurisprudence" (fourth edition), Sec. 818, is:

"If one maintain silence when in conscience he ought to speak, equity will debar him from speaking when in conscience he ought to remain silent." Prof. Pomeroy proceeds: "A most important application includes all cases where an owner of property, A, stands by and knowingly permits another person, B, to deal with the property as though it were his, or as though he were rightfully dealing

with it, without interposing any objection, as by expending money upon it, making improvements, erecting buildings, and the like."

It is to be noted that no defense was made to the foreclosure proceedings, and in view of the facts as presented the defendant is between Scylla and Charybdis. If Messrs. Godfrey and Read knew Read was an unnecessary party to the proceedings and that the Exeter Land Company was rightfully a defendant, and they permitted the purchaser at the sale (or her assigns) to expend large sums in the building heretofore referred to, the company which they represented can not now be heard to complain.

In the event that they believed Read to be a proper party defendant, they waived all rights by failing to make a defense to the proceedings.

In either instance, complainant is entitled to a decree.

FINAL DECREE.

(Filed October 16, 1928.)

IN CHANCERY OF NEW JERSEY.

Between
ADA L. TODD, *et al.*,
Complainants,
and
EXETER LAND COMPANY, *et al.*,
Defendants.

On Bill to Quiet Title.
Final Decree.

This cause coming on to be heard in the presence of Harcourt and Steelman, solicitors of the complainants, and U. G. Styron, solicitor of the defendants, and the Court having read the pleadings and having taken proofs orally and in open court, and having heard and considered the arguments of counsel thereon,

And it appearing to the satisfaction of the Court that the said defendant, Exeter Land Company, set up and relied upon certain claims to and estates and interests in the lands and premises described in the bill of complaint in this cause, and that the defendants, Carlton Godfrey, Annie M. Godfrey, Raymond P. Read and Jane C. Read, claimed no interest in said lands and premises;

And it further appearing to the Court that the complainants are in peaceable possession of said lands and premises and are entitled to bring and maintain their suit in Chancery to settle the title thereto and clear up all doubts and disputes concerning the same;

And it further appearing that the claim of said defendant, Exeter Land Company, in and to the said lands and premises, which it claims and insisted on as aforesaid, is not valid, and that the said defendant has not any such estate or interest therein as was so claimed or set up in this cause; and no further claim being set up by said defendant, or now appearing, and the complainants appearing to be entitled to the relief prayed in this bill, and the defendant, Exeter Land Company, appearing not to be entitled to the relief prayed for in its counterclaim;

It is on this 16th day of October, 1928, ordered, adjudged and decreed that the said defendant, Exeter Land Company, has no estate or interest in or encumbrance upon said lands and premises or any part thereof.

It is further ordered, adjudged and decreed that as to all of said lands and premises described in said bill of complaint, to wit:

> ALL THAT CERTAIN lot, tract or parcel of land and premises situate in the City of Margate City, County of Atlantic, and State of New Jersey, bounded and described as follows:
>
> BEGINNING at the intersection of the Easterly line of Pembroke Avenue with the Southerly line of Ventnor Parkway and extending thence (1) Eastwardly in and along the Southerly line of Ventnor Parkway Eighty and twenty-five hundredths (80.25) feet; thence (2) Southwardly parallel with Pembroke Avenue

ninety (90) feet; thence (3) Westwardly parallel with Ventnor Parkway Eighty and twenty-five hundredths (80.25) feet to the Easterly line of Pembroke Avenue; thence (4) Northwardly in and along said Easterly line of Pembroke Avenue Ninety (90) feet to the place of beginning.

BEING Lot 1, Block 18, on a certain plan of Lots entitled "Plan of Margate Park, situate in Margate City, New Jersey, made November, 1909, by Ashmead and Hackney, Civil Engineers," filed December 16th, 1909, in the Clerk's Office of Atlantic County, New Jersey.

So far as relates to any claim thereon by or on behalf of the said defendant, Exeter Land Company, the title of the said complainants, Ada L. Todd, and the respective interests of complainants, F. Ernest Todd, Edward Liebe, Blanche Liebe, Julian N. Ireland, Dora R. Ireland, George J. Turcott, William Schmid, trustee, &c., and of the defendant, Baltimore Life Insurance Company, as mortgagee of Julian N. and Dora R. Ireland, in and to the same and every part thereof, is hereby fixed and settled, and declared to be good.

And it is further ordered that said defendant, Exeter Land Company, pay to said complainants the costs of this suit to be taxed, including a counsel fee of two hundred dollars, which is hereby allowed complainants.

E. R. Walker,
C.

Respectfully advised,
R. H. Ingersoll,
Vice-Chancellor.

ORDER SUBSTITUTING SOLICITORS.

(Filed Oct. 18, 1928.)

IN CHANCERY OF NEW JERSEY.

Between ADA L. TODD, *et als.*, *Complainants,* and EXETER LAND COMPANY, *et als.*, *Defendants.*	On Bill, &c. Order Substituting Solicitors for Exeter Land Company.

Counsel consenting:

It is, on this 18th day of October, 1928, ordered that U. G. Styron be and he is hereby relieved as counsel for Exeter Land Company in the above-entitled matter, and it is further ordered that McCarter & English be and they are hereby substituted in the place and stead of the said U. G. Styron therein.

E. R. WALKER,
C.

We consent to the entry of the above order.

U. G. STYRON,
Retiring Counsel for Defendant,
Exeter Land Company.

NOTICE OF MOTION TO ADD PARTY-DEFENDANT.

IN CHANCERY OF NEW JERSEY.

Between ADA L. TODD, *et als.*, *Complainants,* and EXETER LAND COMPANY, *et als.*, *Defendants.*	On Bill, &c. Notice of Motion to add Party-Defendant. 60-103

To the complainants and to South Jersey Title & Finance Co., which last-named corporation has acquired the interests of defendant, Baltimore Life Insurance Company:

Please take notice that on Tuesday, the twenty-third day of October, 1928, we shall apply to the Chancellor or such Vice-Chancellor as may sit in his stead at the Chancery Chambers in Atlantic City, N. J., at ten o'clock in the forenoon or as soon thereafter as counsel can be heard, for an order adding as a party-defendant to the above-entitled cause the South Jersey Title & Finance Co., for the reason that said South Jersey Title & Finance Co. has acquired all of the rights of defendant, Baltimore Life Insurance Company, in the subject-matter of this litigation, that is to say, the South Jersey Title &

Finance Co. has acquired by assignment the mortgage theretofore held by the Baltimore Life Insurance Company and covering the premises described in the bill of complaint.

And take further notice that we shall rely as proof of the said assignment, upon the testimony heretofore taken at the final hearing herein.

McCarter & English,
Solicitors for Defendant,
Exeter Land Company.

ORDER ADDING PARTY-DEFENDANT.

(Filed Nov. 2, 1928.)

IN CHANCERY OF NEW JERSEY.

Between Ada L. Todd, *et als.*, *Complainants,* and Exeter Land Company, *et als.*, *Defendants.*	On Bill, &c. Order Adding Party Defendant.

This matter coming on to be heard on notice in the presence of Charles C. Babcock, counsel for South Jersey Title & Finance Co., in the presence of Aug. B. Repetto, appearing for McCarter & English, counsel for Exeter Land Company, on application of

Exeter Land Company for an order making the South Jersey Title & Finance Co. a party-defendant hereto:

And it appearing that the interest of the South Jersey Title & Finance Co. in the subject-matter of this suit is the same interest which was formerly held by the Baltimore Life Insurance Company, one of the defendants, that is to say, the South Jersey Title and Finance Company has acquired by assignment a certain mortgage in the amount of fifteen thousand ($15,000.00) dollars, dated July 6, 1923, and given by Julian N. Ireland, *et ux.*, to the Baltimore Life Insurance Company covering the premises in question, and which mortgage was assigned by the Baltimore Life Insurance Company to the South Jersey Title and Finance Co. by assignment dated March 27, 1926, and recorded in the Atlantic County clerk's office on April 1, 1926, in Book 79 of Assignments of Mortgages, page 419.

And it further appearing by testimony of an officer of the South Jersey Title & Finance Co. in the course of the final hearing in this cause that the said title company had theretofore acquired said interest in the manner and by the assignment aforementioned:

And no one objecting to the entry of this order, and said counsel for the said title company consenting in open court to the entry of the same:

It is, thereupon, on this 2nd day of November, 1928, on motion of McCarter & English, solicitors for and of counsel with defendant, Exeter Land Company, the moving party in the above application, ordered that the South Jersey Title & Finance Co. be and it is hereby admitted as a party-defendant to the above-entitled cause in the place of and as the assignee of the Baltimore Life Insurance Company and entitled to the rights of the said Balti-

more Li[illegible] Insurance Company in the subject mat[illegible]
of th[illegible] litigation and in the benefits of the fi-
nal decree heretofore entered herein, without pre-
judice, however, to the right of the said South
Jersey Title and Finance Company to prosecute its
~~mortgage~~ existing or any other proceeding to
Respectfully advised: foreclose or judgment on mortgage

E.R.WALKER, C.

R.H.INGERSOLL, V.C.

We consent to the entry of the above order.
Babcock & Champion,
Solicitors for South Jersey
Title & Finance Co.

NOTICE OF APPEAL.

(Filed Oct. 22, 1928.)

IN CHANCERY OF NEW JERSEY.

Between
ADA L. TODD, *et als.*, *Complainants*,
and
EXETER LAND COMPANY, *et als.*, *Defendants*.

On Bill, &c.
Notice of Appeal.

The defendant, Exeter Land Company, hereby appeals from the final decree made in the above-en-

titled cause on October 16th, 1928, and from the whole and every part thereof, to the Court of Errors and Appeals, in the last resort in all causes, said decree having been advised by Honorable Robert H. Ingersoll, one of the Vice-Chancellors.

Dated: October 16, 1928.

McCarter & English,
Solicitor for and of Counsel with Defendant, Exeter Land Company.

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

Robert H. McCarter,
Of Counsel with Defendant, Exeter Land Company.

Service acknowledged.

Harcourt & Steelman,
Solicitors for Complainants.

AMENDED NOTICE OF APPEAL.
IN CHANCERY OF NEW JERSEY.

Between
ADA L. TODD, *et als.*,
Complainants,
and
EXETER LAND COMPANY, *et als.*,
Defendants.

On Bill, &c.
Amended Notice of Appeal.
60-103

Exeter Land Company, one of the defendants to the above-entitled cause, hereby appeals from the final decree made on the sixteenth day of October, 1928, by the Chancellor in the above-entitled cause, and from the whole and every part thereof, to the Court of Errors and Appeals, in the last resort in all causes, which said decree was advised by Honorable Robert H. Ingersoll, one of the Vice-Chancellors.

Dated: November 22, 1928.

McCARTER & ENGLISH,
Solicitor for and of Counsel with Defendant, Exeter Land Company.

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

ROBERT H. McCARTER,
Of Counsel with Defendant, Exeter Land Company.

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

PHILIP S. GODFREY, of full age, being duly sworn according to law, upon his oath deposes and says:

1. I served the within amended notice of appeal upon the complainants by handing a true copy thereof to Hiram Steelman, of the firm of Harcourt & Steelman, solicitors for said complainants, on Tuesday, November 27, 1928, in the afternoon before the hour of four o'clock.

PHILIP S. GODFREY. (Sgn.)

Sworn and subscribed to before me this 28th day of November, 1928.

RUSSELL GODFREY,
Atty.-at-Law of N. J.

Nov. 27, 1928.
Service acknowledged of within notice.

BABCOCK & CHAMPION,
Solicitors for South Jersey
Title & Finance Co.

PETITION OF APPEAL.

(Filed Oct. 22, 1928.)

NEW JERSEY COURT OF ERRORS AND APPEALS.

Between ADA L. TODD, *et als.*, *Complainants,* and EXETER LAND COMPANY, *et als.*, *Defendants.*	On Appeal of Exeter Land Company, one of the defendants from Final Decree entered in the Court of Chancery. Petition of Appeal.

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

The petition of Exeter Land Company, appellant in the above-entitled cause, respectfully shows that:

1. Petitioner, Exeter Land Company, finds itself aggrieved by a final decree made in the Court of Chancery by his Honor Edwin Robert Walker, Chancellor of the State of New Jersey, which said final decree was advised by Honorable Robert H. Ingersoll, one of the Vice-Chancellors, bearing date the sixteenth day of October, 1928, in a certain cause in said Court of Chancery wherein Ada L. Todd, F. Ernest Todd, Edward Liebe, Blanche C. Liebe,

Julian N. Ireland, Dora R. Ireland, George J. Turcott, and William Schmid, trustee, &c., were complainants, and Exeter Land Company, Carlton Godfrey, Annie M. Godfrey, Raymond P. Read, Jane C. Read and Baltimore Life Insurance Company, were the defendants, in this respect, to wit, that the said decree adjudges that Exeter Land Company has no estate nor interest in nor encumbrance upon the lands and premises described in the bill of complaint filed therein, to wit:

ALL THAT CERTAIN lot, tract or parcel of land and premises situate in the City of Margate City, County of Atlantic and State of New Jersey, bounded and described as follows:

BEGINNING at the intersection of the Easterly line of Pembroke Avenue with the Southerly line of Ventnor Parkway and extending thence (1) Eastwardly in and along the Southerly line of Ventnor Parkway Eighty and twenty-five hundredths (80.25) feet; thence (2) Southwardly parallel with Pembroke Avenue ninety (90) feet; thence (3) Westwardly, parallel with Ventnor Parkway Eighty and twenty-five hundredths (80.25) feet to the Easterly line of Pembroke Avenue; thence (4) Northwardly in and along said Easterly line of Pembroke Avenue Ninety (90) feet to the place of beginning.

BEING Lot 1, Block 18, on a certain plan of Lots entitled "Plan of Margate Park, situate in Margate City, New Jersey, made November, 1909, by Ashmead and Hackney, Civil Engineers," filed December 16th, 1909, in the Clerk's Office of Atlantic County, New Jersey.

And that the title and respective interests of com-

plainants and of defendant, Baltimore Life Insurance Company, in said premises so far as relates to any claim thereon by or on behalf of Exeter Land Company, is thereby and by said decree fixed and settled and declared to be good; and that said Exeter Land Company pay to complainants the costs of said suit to be taxed, including a counsel fee of two hundred dollars which is thereby and by said decree allowed to complainants.

2. And petitioner, Exeter Land Company, appeals from the said final decree of the Chancellor, advised by Vice-Chancellor Ingersoll as aforesaid, which adjudges as hereinabove mentioned, upon the ground that the same is erroneous for that the said final decree should have ordered, adjudged and decreed that the prayers of the bill of complaint should be denied and that the prayers of the counter-claim of Exeter Land Company should have been granted and the defendant, Exeter Land Company, should have been adjudged to be entitled to redeem the said premises from the lien of a certain mortgage in said bill referred to, in as much as the equity of redemption of the said Exeter Land Company in and to said lands and premises has never been foreclosed and debarred, and defendant, Exeter Land Company, should have been adjudged to be entitled to a decree fixing the amount due the holder of said mortgage for principal and interest and fixing the amount which should be paid by Exeter Land Company to the holder of said mortgage to redeem said premises, and said Exeter Land Company should have been further decreed to have, upon making redemption as aforesaid, a good and perfect title in and to said premises as against all of the other parties to this suit, and said defendant, Exeter Land

Company, should have been adjudged to be entitled to a counsel fee and its costs of this suit to be taxed.

Petitioner, Exeter Land Company, therefore prays that the said decree of the said Chancellor, advised by Vice-Chancellor Ingersoll as aforesaid, may be, in the particulars aforesaid and wholly reversed, set aside, and for nothing holden, and that petitioner, Exeter Land Company may have such other relief in the premises that to this Court shall seem proper.

McCarter & English,
Solicitors for and of Counsel with
Exeter Land Company.

AMENDED PETITION OF APPEAL.

NEW JERSEY COURT OF ERRORS AND APPEALS.

Between ADA L. TODD, *et als.*, *Complainants,* and EXETER LAND COMPANY, *et als.*, *Defendants.*	On Appeal of Exeter Land Company, one of the defendants, from Final Decree entered in the Court of Chancery. Amended Petition of Appeal.

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

The petition of Exeter Land Company, appellant in the above-entitled cause, respectfully shows:

1. Petitioner, Exeter Land Company, finds itself aggrieved by a final decree made in the Court of Chancery by his Honor Edwin Robert Walker, Chancellor of the State of New Jersey, which said final decree was advised by Honorable Robert H. Ingersoll, one of the Vice-Chancellors, bearing date the sixteenth day of October, 1928, in a certain cause in said Court of Chancery wherein Ada L. Todd, F. Ernest Todd, Edward Liebe, Blanche C. Liebe, Julian N. Ireland, Dora R. Ireland, George J. Tur-

cott, and William Schmid, trustee, &c., were complainants, and Exeter Land Company, Carlton Godfrey, Annie M. Godfrey, Raymond P. Read, Jane C. Read, and Baltimore Life Insurance Company were the defendants, and in which cause the South Jersey Title and Finance Company was admitted as a party defendant in the place of and as assignee of the Baltimore Life Insurance Company, petitioner being aggrieved in this respect, to wit, that the said decree adjudges that Exeter Land Company has no estate nor interest in nor encumbrance upon the lands and premises described in the bill of complaint filed therein, to wit:

ALL THAT CERTAIN lot, tract or parcel of land and premises situate in the City of Margate City, County of Atlantic and State of New Jersey, bounded and described as follows:

BEGINNING at the intersection of the Easterly line of Pembroke Avenue with the Southerly line of Ventnor Parkway and extending thence (1) Eastwardly in and along the Southerly line of Ventnor Parkway Eighty and twenty-five hundredths (80.25) feet; thence (2) Southwardly parallel with Pembroke Avenue ninety (90) feet; thence (3) Westwardly, parallel with Ventnor Parkway eighty and twenty-five hundredths (80.25) feet to the Easterly line of Pembroke Avenue; thence (4) Northwardly in and along said Easterly line of Pembroke Avenue Ninety (90) feet to the place of beginning.

BEING Lot 1, Block 18, on a certain plan of Lots entitled "Plan of Margate Park, situate in Margate City, New Jersey, made November, 1909, by Ashmead and Hackney, Civil Engineers," filed December 16th, 1909, in the Clerk's Office of Atlantic County, New Jersey.

And that the title and respective interests of complainants and of defendant, Baltimore Life Insurance Company (which said defendant insurance company has assigned its interests in the subject-matter thereof to the title company hereinabove named), in said premises so far as relates to any claim thereon by or on behalf of Exeter Land Company, is thereby and by said decree fixed and settled and declared to be good; and that said Exeter Land Company pay to complainants the costs of said suit to be taxed, including a counsel fee of two hundred dollars which is thereby and by said decree allowed to complainants.

2. And petitioner, Exeter Land Company, appeals from the said final decree of the Chancellor, advised by Vice-Chancellor Ingersoll as aforesaid, which adjudges as hereinabove mentioned, upon the ground that the same is erroneous for that the said final decree should have ordered, adjudged and decreed that the prayers of the bill of complaint should be denied and that the prayers of the counter-claim of Exeter Land Company should have been granted and the defendant, Exeter Land Company, should have been adjudged to be entitled to redeem the said premises from the lien of a certain mortgage in said bill referred to, inasmuch as the equity of redemption of the said Exeter Land Company in and to said lands and premises has never been foreclosed and debarred; and defendant, Exeter Land Company, should have been adjudged to be entitled to a decree fixing the amount due the holder of said mortgage for principal and interest and fixing the amount which should be paid by Exeter Land Company to the holder of said mortgage to redeem said premises; and said Exeter Land Company should

have been further decreed to have, upon making redemption as aforesaid, a good and perfect title in and to said premises as against all of the other parties to this suit, and said defendant, Exeter Land Company, should have been adjudged to be entitled to a counsel fee and its costs of this suit to be taxed.

Petitioner, Exeter Land Company, therefore prays that the said decree of the said Chancellor, advised by Vice-Chancellor Ingersoll as aforesaid, may be, in the particulars aforesaid and wholly reversed, set aside, and for nothing holden, and that petitioner, Exeter Land Company, may have such other relief in the premises that to this Court shall seem proper.

McCarter & English,
Solicitors for and of Counsel with
Exeter Land Company.

State of New Jersey, }
County of Atlantic, } *ss.*

Philip S. Godfrey, of full age, being duly sworn according to law, upon his oath deposes and says:

1. I served the within amended petition of appeal upon the complainants by handing a true copy thereof to Hiram Steelman of the firm of Harcourt & Steelman, solicitors for said complainant, on Tuesday, November 27, 1928, in the afternoon before the hour of four o'clock.

Philip S. Godfrey. (Sgn.)

Sworn and subscribed to before me this 28th day of November, 1928.

Russell Godfrey,
Atty. of Law of N. J.

Service acknowledged of within amended petition 11-27-1928.

BABCOCK & CHAMPION,
Solicitors for South Jersey Title & Finance Co.

ANSWER OF SOUTH JERSEY TITLE & FINANCE CO. TO PETITION OF APPEAL.

(Filed 1929.)

NEW JERSEY COURT OF ERRORS AND APPEALS.

Between
ADA L. TODD, *et als.*,
Complainants-Respondents,
and
EXETER LAND COMPANY, *et als.*,
Defendants-Appellants.

On Appeal of Exeter Land Company.
Answer.

The answer of South Jersey Title and Finance Company, one of the defendants in the above-stated proceedings and one of the respondents to the petition of appeal of the above-named appellants.

This respondent not acknowledging all or any of the matters which in the said petition of appeal are contained, to be true, for answer thereto, nevertheless, says and admits that a decree was on the sixteenth day of October, 1928, 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 advised and believes that the said decree is agreeable to equity and it prays that the same may be affirmed with costs to be adjudged to this respondent.

This respondent further answering said petition of appeal says that it was not a defendant at the time the decree mentioned in said petition was made but that it was after that time on the motion of counsel for the appellants, made a defendant by order of the Court of Chancery of New Jersey, which order was made the second day of November, 1928, and which orders as follows: "Ordered that the South Jersey Title & Finance Co. be and it is hereby admitted as a party defendant to the above-entitled cause in the place of and as the assignee of the Baltimore Life Insurance Company and be entitled to the rights of the said Baltimore Life Insurance Company in the subject matter of this litigation and in the benefits of the final decree heretofore entered herein, without prejudice, however, to the right of said South Jersey Title and Finance Company to prosecute its existing or any other proceeding to foreclose its said mortgage," that by said order this respondent is entitled to the benefits of the said final decree and by said order the appellants waived all rights of appeal from said

final decree as far as the same affects and is for the benefit of this respondent.

BABCOCK & CHAMPION,
Solicitors for and of Counsel with Respondent, South Jersey Title and Finance Company.

ANSWER TO PETITION OF APPEAL.

NEW JERSEY COURT OF ERRORS AND APPEALS.

Between ADA L. TODD, *et al.*, *Complainants-Respondents,* and EXETER LAND CO., *et al.*, *Defendants-Appellants.*	On Appeal from Court of Chancery. Answer to Petition of Appeal.

The answer of Ada L. Todd, F. Ernest Todd, Edward Liebe, Blanche Liebe, Julian N. Ireland, Dora R. Ireland, George J. Turcott and William Schmid, trustee for John J. Hunter, Chelsea Laundry Company, William Gordon, Ocean Pier Fish Market, Inc., Charles E. Custer and Harry Kallas, trading as Custer & Kallas, William I. Segal, Guarantee Trust Co., a banking corporation of New Jersey, William Lewis Co., and Supplee-Wills-Jones

Company, the above-named respondents, to the petition of appeal of Exeter Land Company, the above-named appellants.

These respondents, not admitting the truth of all or any of the matters in said petition of appeal contained, for answer thereto, nevertheless, admit that a decree was on the 16th day of October, 1928, made and entered in the Court of Chancery of New Jersey in the above-entitled cause for the purposes in said petition mentioned and as therein set forth; but as to the substance and form of said decree these respondents beg leave to refer thereto when the same shall be produced.

These respondents are advised and believe that the said decree is agreeable to equity; and they pray that the same shall be affirmative with costs to be taxed in favor of these respondents.

HARCOURT & STEELMAN,
Solicitors for and of Counsel with Respondents.

Endorsed:

"Filed Jan. 7, 1929.
JOSEPH F. S. FITZPATRICK,
Clerk."

NEW JERSEY COURT OF ERRORS
AND APPEALS.

Between

ADA L. TODD, *et als.*,
Complainants-Respondents,

and

EXETER LAND COMPANY,
Defendant-Appellant.

ON APPEAL FROM CHANCERY.

BRIEF FOR DEFENDANT-APPELLANT.

STATEMENT.

This is an appeal from a final decree made in Chancery and advised by Vice-Chancellor Ingersoll.

The decree appealed from fixes and settles and declares to be good the title or interests of complainants-respondents, as far as defendant-appellant, Exeter Land Company, may claim same or any interest therein. There is also one defendant-respondent, to wit, South Jersey Title and Finance Company, assignee of Baltimore Life Insurance

Company, as mortgagee in a mortgage created by complainant, Ireland and his wife. The decree mentions the Baltimore Life Insurance Company and a subsequently made order places the South Jersey Title and Finance Company in the shoes of the Baltimore Life Insurance Company, by reason of said assignment, and entitled to the rights and benefits of the final decree.

The bill of complaint on which the decree appealed from is based, is in the nature of a bill to quiet title. It does not, however, allege twenty years possession nor seek to quiet the title under the statute. Complaniants were in possession less than four years when the bill was filed.

The remedy is attempted to be sought upon—we submit with all due respect to the Court below—a highly colored and strongly exaggerated theory of equitable estoppel.

The testimony is absolutely devoid of any suggestion that appellant did any act which induced respondents to do as they did do—build upon the land which stood for ten years and still stands in the name of appellant as the record owner. There is not one iota of proof that Exeter Land Company knew that someone was building upon its land. There isn't a word that appellant encouraged or even knew about the giving of the various deeds and mortgages which will be rendered valueless if appellant is successful in this litigation. There are tremendous broad statements of this sort of thing in the bill of complaint—but no testimony to support them.

It is admitted by everyone that the *locus in quo* stands of record in the name of Exeter Land Company. We submit that the record was notice to the world that appellant owned the premises and anyone moved at their peril and risk who bought the

premises, took a mortgage thereon or built upon the same either without searching the records or in examining the records, if they failed to see that appellant was the record owner—there not being any overt act on the part of the appellant and record owner which would induce the actions taken.

NOTE.

As to the respondent, South Jersey Title and Finance Company.

In the answer (pp. 111 to 113) filed by the South Jersey Title and Finance Company to the amended petition of appeal, appears at line 15, on page 112, this curious averment:

> "This respondent further answering said petition of appeal, says that it was not a defendant at the time the decree mentioned in said petition was made, but that it was after that time on the motion of counsel for the appellants, made a defendant by order of the Court of Chancery of New Jersey * * *, that by said order this respondent is entitled to the benefits of the said final decree and by said order the appellants waived all rights of appeal from said final decree as far as the same affects and is for the benefit of this respondent."

Just how appellants waived all or any rights of appeal from said final decree as far as same relates to the South Jersey Title and Finance Company, or in any other relation, is undisclosed. But it seems impossible that the title company means to take the position that there is no right of appeal against it merely because it was not a defendant at the time

the decree was signed (having subsequently been substituted for defendant, Baltimore Life Insurance Company, as the result of testimony during the trial below from the mouth of the secretary of the title company to the effect that the title company had acquired the mortgage of the Baltimore Life Insurance Company and all the latter's interest in the subject-matter of this suit).

The title company can not take such a position because if the title company is not to be bound to defend the decree in question, it would not be entitled to the protection of that decree. It can not blow hot and cold in the same breath. It can not say to the Exeter Land Company that as assignee of the Baltimore Life Insurance Company (the assignment being made prior to the trial), it, the title company, is entitled to the benefit of the adjudication in Chancery (here appealed from), unless it, the title company, carries the burden of defending that decree when it is attacked in this appellate court.

To thoroughly understand the situation into which the title company is placed, one would need but to review the circumstances surrounding its admission as a party-defendant in the suit at law and as a respondent here.

On page 7, l. 28, par. 20 of the amended bill of complaint reads:

> "On July 6th, 1923, said complainant, Julian N. Ireland, borrowed from and became indebted to defendant, Baltimore Life Insurance Company, in the sum of fifteen thousand dollars ($15,000.00), to secure which indebtedness he and his wife, complainant, Dora R. Ireland, executed and delivered to said Baltimore Life Insurance Company a mortgage for that amount, payable at the expiration of three years from the date thereof and bearing interest at the rate

of six per cent per annum, which mortgage granted and conveyed to the aforesaid Baltimore Life Insurance Company an estate in fee in the aforesaid premises, subject to the right of redemption of the said complainants, Julian N. and Dora R. Ireland, their executors, administrators and assigns. Said mortgage has not been paid and is still of record, and the interest thereon has always been paid by the complainants, Julian N. Ireland, Dora R. Ireland, Ada L. Todd, Edward Liebe and Blanche V. Liebe, or one of them. The Baltimore Life Insurance Company is made a party-defendant herein because of its mortgage, by virtue of which it has a claim or interest in derogation of any rights or pretended rights of the defendants, Exeter Land Company, Raymond P. Read and Jane C., his wife, and Carlton Godfrey, and Annie M., his wife, and said Baltimore Life Insurance Company has refused to join with the other complainants in filing this bill of complaint."

On page 13, in the prayers of the said amended bill, the Baltimore Life Insurance Company is made a party in order that its "rights may be fixed and determined."

On page 94, in the decree appealed from, "the interests of defendant, Baltimore Life Insurance Company, as mortgagee of Julian N. and Dora R. Ireland is hereby fixed and settled and declared to be good" so far as relates to any claim thereon by or on behalf of defendant, Exeter Land Company.

On pages 97 to 99, appears an order substituting the South Jersey Title and Finance Company as a defendant in the place of the Baltimore Life Insurance Company by reason of the assignment aforementioned. This order reads as follows:

"This matter coming on to be heard on notice in the presence of Charles C. Babcock, counsel for South Jersey Title & Finance Co., in the presence of Aug. B. Repetto, appearing for McCarter & English, counsel for Exeter Land Company, on application of Exeter Land Company for an order making the South Jersey Title & Finance Co. a party-defendant hereto:

And it appearing that the interest of the South Jersey Title & Finance Co. in the subject-matter of this suit is the same interest which was formerly held by the Baltimore Life Insurance Company, one of the defendants, that is to say, the South Jersey Title & Finance Co. has acquired by assignment a certain mortgage in the amount of fifteen thousand ($15,000.00) dollars, dated July 6, 1923, and given by Julian N. Ireland, *et ux.*, to the Baltimore Life Insurance Company covering the premises in question, and which mortgage was assigned by the Baltimore Life Insurance Company to the South Jersey Title and Finance Co. by assignment dated March 27, 1926, and recorded in the Atlantic County clerk's office on April 1, 1926, in Book 79 of Assignments of Mortgages, page 419.

And it further appearing by testimony of an officer of the South Jersey Title & Finance Co. in the course of the final hearing in this cause that the said title company had theretofore acquired said interest in the manner and by the assignment aforementioned:

And no one objecting to the entry of this order, and said counsel for said title company consenting in open court to the entry of the same:

It is, thereupon, on this 2nd day of Novem-

ber, 1928, on motion of McCarter & English, solicitors for and of counsel with defendant, Exeter Land Company, the moving party in the above application, ordered that the South Jersey Title & Finance Co. be and it is hereby admitted as a party-defendant to the above-entitled cause in the place of and as the assignee of the Baltimore Life Insurance Company and entitled to the rights of the said Baltimore Life Insurance Company in the subject-matter of this litigation and in the benefits of the final decree

thout prejudice, however, to the right of the said outh Jersey Title and Finance Company to prosecute ~~said mortgage~~ existing or any other proceeding to foreclose said mortgage.

respectfully advised:

R. H. Ingersoll,
V. C.

We consent to the entry of the above order.
Babcock & Champion,
Solicitors for South Jersey
Title & Finance Co."

It ought to be noticed that the entry of this order substituting the South Jersey Title & Finance Co. for the Baltimore Life Insurance Company, as a party-defendant, above quoted, was consented to by Babcock & Champion, solicitors for the said South Jersey Title & Finance Co. In other words, the title company itself consented to being made a party-defendant; if it was not obliged to take cognizance of this appeal up to that moment, certainly with the signing of this consent the title company becomes a party to the suit as though originally admitted.

But there is also another reason why the title company is bound by the decree entered in Chancery; and that is because an officer of the title company appeared as a witness and introduced in evi-

ber, 1928, on motion of McCarter & English, solicitors for and of counsel with defendant, Exeter Land Company, the moving party in the above application, ordered that the South Jersey Title & Finance Co. be and it is hereby admitted as a party-defendant to the above-entitled cause in the place of and as the assignee of the Baltimore Life Insurance Company and entitled to the rights of the said Baltimore Life Insurance Company in the subject-matter of this litigation and in the benefits of the final decree heretofore entered herein.

E. R. Walker,
C.

Respectfully advised:
R. H. Ingersoll,
V. C.

We consent to the entry of the above order.
Babcock & Champion,
Solicitors for South Jersey
Title & Finance Co."

It ought to be noticed that the entry of this order substituting the South Jersey Title & Finance Co. for the Baltimore Life Insurance Company, as a party-defendant, above quoted, was consented to by Babcock & Champion, solicitors for the said South Jersey Title & Finance Co. In other words, the title company itself consented to being made a party-defendant; if it was not obliged to take cognizance of this appeal up to that moment, certainly with the signing of this consent the title company becomes a party to the suit as though originally admitted.

But there is also another reason why the title company is bound by the decree entered in Chancery; and that is because an officer of the title company appeared as a witness and introduced in evi-

dence an assignment prior in date and also prior in date of record to the filing of the amended bill of complaint upon which this suit was litigated. Said bill was filed on April 27, 1926 (see page 1). The assignment to the title company is dated March 27, 1926, and was recorded April 1, 1926 (see order above).

The mortgage so held by the title company flows from the title of Julian N. and Dora R. Ireland. The record title to the *locus in quo* in Exeter Land Company was prior to Ireland and is in derogation thereof. If the decree made in Chancery is reversed in this court, the title of Exeter Land Company will be paramount to any interest which the title company may claim therein by reason of said mortgage. Hence, the title company is not only a proper defendant-respondent to the appeal, but really the most important one. The South Jersey Title & Finance Co. is, therefore, properly before this Court on this appeal, because; (a) said title company consented to the entry of the order admitting them thereto; and (b) said title company is the owner by assignment from defendant, Baltimore Life Insurance Company of the $15,000 mortgage aforementioned.

FACTS.

There is little or no dispute about the facts in this case. They are simple and easy of comprehension. Some time before the occurrences connected with this suit, and certainly as early as 1909 (see map, Exhibit D2), the Margate Company had been organized to develop and exploit a large tract of land south of Atlantic City. This tract, according to the map, consisted of at least 1,525 lots.

On the 8th of March, 1912, the said company mortgaged one individual lot of this large tract, to Emma E. Moitz Doherty, trustee, for the sum of $2,200. The property mortgaged is the *locus in quo,* and consists of a lot 80.25 feet by 90 feet.

The company seems to have had a somewhat checkered career, and on April 26, 1916, one, Annie E. Hand, recovered in the Atlantic County Circuit Court, a judgment against it in the sum of $5,005.50. A levy followed the entry of the judgment, and on July 29, 1916, the judgment was assigned to the defendant, Raymond P. Read. Hand's attorney was William M. Clevenger, Esq., and the levy made by the sheriff under said judgment, pursuant to the directions of the plaintiff's attorney, was (we presume because of the checkered career that the Margate Company had undergone) upon:

> "All the right, title and interest of Margate Company in Blocks 11 to 75, inclusive, Block 78, and strip of 23.49 feet along southwest line of Lot 21 in the division of Inside and Sand Hill Beaches from the south side of Ventnor Parkway to the Thoroughfare, as shown on Margate Park plan in Margate City, N. J., on file in the clerk's office at Mays Landing, N. J.
>
> 2. All the right, title and interest of Margate Company in Lot 9 in the above division, consisting of about 30¼ acres in Margate City, N. J.
>
> 3. All the right, title and interest of Margate Company in Lot 10 in the above division, consisting of about 30½ acres in Margate City, N. J."

On October 10, 1916 (see the sheriff's deed, page 79), the property was sold by the sheriff to Raymond P. Read by the description above quoted, coin-

ciding with the terms of the levy. This deed was recorded October 24, 1916, in Book 563 of Deeds, page 260 (p. 85, l. 5). It is conceded that at the time of this transaction, Mr. Read was a partner of Mr. Godfrey, and that Mr. Read personally supplied none of the money that was paid to Hand for her assignment to him.

A short time bebore the 2nd of May, 1917, the Exeter Land Company was incorporated under the laws of New Jersey, and we may conclude that the firm of Godfrey & Read brought it about. On page 55, line 17, Mr. Read speaks of it as "a company of the office."

On May 2, 1917, Mr. and Mrs. Read, and Mr. and Mrs. Godfrey united in a deed (Exhibit C1, p. 70) to the Exeter Land Company, which conveyed a number of tracts of land, in addition to that under the description above given, so purchased by Mr. Read from the sheriff as above noted. The consideration named in this deed is $5,000, and it is undisputed that on its date, thirty-three shares of the Exeter Land Company stock was delivered to Carlton Godfrey, and seventeen shares to Read, or a total of fifty shares. Later, one share was delivered to Annie M. Godfrey. This latter was evidently deducted from the thirty-three shares issued to Mr. Godfrey. Mr. Godfrey testifies (p. 67, ll. 29 to 35), that while he, Godfrey, advanced the money to Hand for the assignment of the judgment to Read, nevertheless:

> "Mr. Read had an interest in that property, which interest was conveyed to the Exeter Land Company, and which was paid for by a certificate of stock issued by the Exeter Land Company to him, and my interest, the property that I conveyed, which was other property, was also paid by the remaining stock issued."

Again, on page 68, ll. 31 to 34, he says:

> "He and I were partners in business, and my recollection was then and is now that the title was exactly of that proportion which came to me when we dissolved the firm of Godfrey & Read."

The description above quoted of the land purchased from the sheriff by Read, and later conveyed by him and his wife to the Exeter Land Company, covered, as we have seen, all the right, title and interest of the Margate Company in a very large tract of land, consisting of many acres, and as Mr. Godfrey testifies, to ascertain whether an individual lot among the 1,525 passed under its general terms, involved not only a minute examination of the map, and the description in the deed, but a title search to ascertain what lots had previously been conveyed by the Margate Company, either voluntarily or involuntarily. This fact, taken in conjunction with the description of the other lands entirely outside of those levied upon and sold by the sheriff, enables one readily to understand how it is, and was that Mr. Godfrey really did not know whether the particular lot 80.25 x 90 feet, was, or was not, included. This is particularly so, as real estate had in the meantime slumped, and active interest had correspondingly lessened. Hence, Mr. Godfrey testifies that he was entirely unaware that this particular lot had been included in the transfer to the Exeter Land Company. (See testimony of Carlton Godfrey, p. 57, l. 23, to p. 60, l. 28; and p. 62, ll. 1 to 12.)

FIRST POINT.

Appellant has never been foreclosed out of its equity of redemption.

Consistent with the fact of the real estate slump, and with the financial difficulties that the Margate Company underwent, on the *16th of May, 1917,* Emma E. Moitz Doherty, as trustee, filed in the Court of Chancery, a bill to foreclose her mortgage upon the *locus in quo.* This was about six months after the recording of the omnibus deed from Read and Godfrey to the Exeter Land Company. For some reason, either because of the difficulty of ascertaining, because of the character of the description contained in the sheriff's deed, whether the *locus in quo* was included therein, or through carelessness and neglect, or purposely, the Exeter Land Company, the owner of the equity of redemption, as it now appears, in the *locus in quo,* was not made a party-defendant to this foreclosure suit, and, of course, *its interest in the property was not cut out by the foreclosure proceedings,* which ripened into a sale and sheriff's deed to the plaintiff's assignee, Read, dated October 10, 1916; and which interest Read had conveyed to said Exeter Land Company, on May 2, 1917, as referred to above. This is too well settled to require argument.

Woodside v. Adams, 40 N. J. Law 417;
Brundred v. Walker, 12 N. J. Equity 140;
Van Keuren v. McLaughlin, 21 Id. 163;
Eisele v. Schmitz, 67 N. J. Law 58;
Atwood v. Carmer, 75 N. J. Equity 319.

The respondents *concede the correctness of this familiar rule,* but by the broad unverified allega-

tions of their bill of complaint—claim that their position is such as to make it inequitable and improper for the Exeter Land Company to rely thereon. Hence the bill to quiet title. This claim requires a reference to further undisputed facts. The *locus in quo* at the time of the sheriff's deed of it to Emma Doherty, was simply a vacant lot in a prairie of other similar lots. She conveyed the lot to Lewis P. Scott, who, in turn, sold it, on the 21st of December, 1922, still in its unimproved condition, to Julian N. Ireland (p. 36, l. 20). Mr. Ireland negotiated a mortgage with the Baltimore Life Insurance Company, and with his own funds, as well as from the proceeds of that loan (p. 39, l. 10), about a month after his acquisition of title, commenced the erection thereon of a cottage that cost him somewhere about $27,000. He swears the house was completed in the following spring, and it is admitted that from that time the premises have been occupied by one or more of the respondents. It appears from the cross-examination of Mr. Ireland (p. 39, l. 9) that at the time of his purchase, he had no independent examination of the title made, but that the Baltimore Life Insurance Company procured a title policy from the South Jersey Title & Finance Company. Mr. Kline, the secretary of that company, testifies (p. 42, l. 31, to p. 43, l. 20) that his company examined the title, at the application on November 24, 1922, of Mr. Ireland, and delivered an insurance policy to the Baltimore Life Insurance Company and that his company, in the examination of the title previous to the issuance of its policy, overlooked the fact that the Exeter Land Company, whose deed, with the general description above noted, had been recorded for at least six months before the commencement of the foreclosure proceedings under which Ireland claimed, had not been made a party

to the foreclosure suit. In other words, apparently his company, owing to the same difficulty to which Mr. Godfrey alludes in his evidence, had made the same blunder that had been made in searching the title, when the foreclosure proceedings were instituted. Ireland, as we have seen, during the winter of 1922 and 1923, improved the property. He later mortgaged it to Turchot for $2,050. Mr. Turchot, as he concedes (p. 41, ll. 19 to 39), made no examination of the title whatever at the time he took that mortgage. As shown by the 21st paragraph of the amended bill of complaint, Ireland and wife, on the 20th of October, 1924, conveyed the premises to F. Ernest Todd, Incorporated, who, in turn, conveyed the same to Ada L. Todd, one of the complainants herein. Mr. Todd is a witness and states that his transaction with the Irelands took the form of a trade, and included a purchase money mortgage thereon. It is apparent from his evidence (pp. 49 and 50), he caused no examination of the title whatever to be made, probably relying on the fact that the Baltimore Life Insurance Company had a policy. Interest has been paid to date on the mortgage held by the Baltimore Life Insurance Company. While the property was owned by F. Ernest Todd, Incorporated, it placed a mortgage thereon to one, William Schmidt, for $8,660.25, but so far as appears, Mr. Schmidt caused no examination of the title to be made. It appears (p. 44) by the evidence of Mr. Kline, the secretary of the South Jersey Title & Finance Company, some examination of the title to this lot later made by the Chelsea Title & Guaranty Company, disclosed the defect in the title which the South Jersey Company had overlooked, and for which the solicitor in the foreclosure suit was responsible. Immediately upon that discovery, the South Jersey Title & Finance Company, in order to

protect itself, purchased from the Baltimore Life Insurance Company, the mortgage, and owns it today, without disclosing to the Baltimore Company the error it had made by issuing to it a title insurance policy which overlooked the defect.

Mr. Wright, employed by the C. J. Adams Company, testifies that while the Baltimore Life Insurance Company held that mortgage, he collected the interest for the company, but after the South Jersey Title & Finance Company purchased that mortgage, the C. J. Adams Company ceased to act as agent for the collection of the interest, and the same has since been paid direct to the South Jersey Title & Finance Company. Mr. Wright shows that he ceased collecting interest (page 51) from Mr. Ireland in July, 1924. Not a great while thereafter, the bill to quiet title was filed, which was later amended, and Mr. Godfrey testifies unequivocally that he first learned of the interest of the Exeter Land Company in the *locus in quo,* a short time before the commencement of this suit (see page 65), and that from 1917, down until the suit was commenced, he did not know that the deed from Read and himself had conveyed this particular lot. (See, also, pages 63 and 64.) He shows (page 60) that at that time someone called upon him, possibly connected with the title company, and brought the matter to his attention, and that as a consequence (page 62) he did not know, prior to this action, that the house had been erected on property that was included in the deed to the Exeter Land Company. Indeed, it is not claimed by respondents that Mr. Godfrey, or anyone else connected with the defendant company, actually knew of the erection of the house, to whomsoever it belonged. They claim that the Exeter Land Company, as owner of the property, is chargeable with notice of the erection of the building. This

is undoubtedly true, but such constructive notice cannot, as we shall show, be relied on to raise an equity against the company that was all unconscious of its ownership of the lot whereon it was erected. Twenty years open, notorious and undisputed possession of the house might create an adverse title in the occupier, but it cannot here do more. It must be remembered this house was not erected until 1922-1923.

SECOND POINT.

Not knowing of its rights, appellant is not estopped by silence from exerting them upon learning of them.

In the face of these undisputed facts, the respondents contend that our right to insist upon the survival of our title, because it was not cut out by the foreclosure, should not be permitted to be asserted because we stood by until now before exerting our claims, before flying our flag of ownership as set up in our counter-claim on the basis of which we prayed to be permitted to redeem the *locus in quo* from the mortgage aforementioned, given to Emma E. Moitz Doherty.

An inherent and essential element underlying this principle, is the knowledge of the person of his rights, and his silence, notwithstanding such knowledge, as against the person who buys or takes a mortgage on the property.

From the days of Chancellor Vroom, who wrote the opinion in *Crawford v. Bertholf*, 1 N. J. Equity 458, it has universally been held in New Jersey:

> "It is a general rule in equity, that where a person having rights, *and knowing these rights,*

> sees another person take a mortgage upon property without disclosing his title, he shall not be allowed afterwards to set up his title to defeat the mortgage."

We do not have to go outside of New Jersey to find further expressions of this idea, and to become convinced that knowledge on the part of the person sought to be estopped, is a prerequisite of the rule.

In *Dugan v. Lyman,* 23 Atlantic Reporter, at 663, Vice-Chancellor Bird said:

> "Besides, it is a well-settled rule of law that an estoppel cannot be pleaded or enforced because of mere acquiescence or silence, unless it appears that the person charged had full knowledge of all of the circumstances of the case out of which the estoppel arose, as well as his own rights."

In 21 *Corpus Juris* 1159, we find:

> "And it is essential to the creation of an estoppel that the owner should have known that his property was the subject of, or included in, the sale, that the purchaser should have been in ignorance of his rights, and that the purchaser was induced by his conduct to make the purchase."

In *Kirchner v. Miller,* 39 N. J. Equity 355, Chancellor Runyon said:

> *"Qui tacet, consentire viedtur; qui potest et debet vetare, jubet si non vetet,* is applicable. 'In order to justify the application of the principle,' says Mr. Kerr, 'it is indispensable that the party standing by should be fully apprised of his rights, and should, by his conduct, en-

> courage the other party to alter his condition, and that the latter should act on the faith of the encouragement so held out.' Kerr on F. & M. 132. 'It will be observed,' says Lord Cranworth, in Ramsden v. Dyson, L. R. (1 H. of L.) 129, 141, 'that to raise such an equity two things are required, first, that the person expending the money supposes himself to be building on his own land; and secondly, that the real owner, at the time of the expenditure, knows that the land belongs to him and not to the person expending the money in the belief that he is the owner.' To the same effect are remarks of Lord Wensleydale, in the same case."

This language is adopted by Vice-Chancellor Pitney in *Summer v. Semton,* 47 N. J. Equity 103, and by Vice-Chancellor Emery in *Junior Order v. Sharpe,* 63 N. J. Equity 500.

So in *Baldwin v. Howell,* 45 N. J. Equity 517, the Court said on this subject of estoppel:

> "But I do not find that Isaac had any knowledge of these transactions. And it is this entire absence of information that leads me to conclude that there is nothing that Isaac can set up by way of estoppel, not even this record of pretended cancellation, as a protection against the original Wells mortgage."

It is sought by respondents to spell out this requisite knowledge on the part of the Exeter Land Company in order that it should be estopped, by reason of the fact that Mr. Godfrey, on the 17th of May, 1917, acknowledged service of a subpœna to answer the foreclosure suit commenced the day before. Granting, for the sake of the argument, although we

deny it, that the Exeter Land Company is chargeable with his conduct in thus acknowledging service on behalf of the defendant Read, all that follows therefrom is that he thereby knew, and by hypothesis also knew, that foreclosure proceedings had been commenced, which, whether purposely or through inadvertence, failed to include the Exeter Land Company as a party. Knowledge of an agent of A and B, that a suit has been brought against A (which should also have been brought against B), does not charge B with any responsibility for that suit. Service of the writ in the foreclosure case, undoubtedly charged Mr. Godfrey and Godfrey and Read with knowledge that a suit had been commenced against Read and others, but not against the Exeter Land Company. If the bill had made the Exeter Land Company a party, and through some error the subpœna had failed to cover an admission of service for it, as well as for Read, perhaps upon this point a different question would arise. If we substitute here for the Exeter Land Company, an individual B, and B heard that a suit had been commenced to foreclose a mortgage upon his property in which he, B, was not named or his interest sought to be foreclosed, could the mere fact that he therefore paid no attention to the suit, there being no service upon him of a subpœna to answer, charge him with any responsibility in connection with the matter? *Has not he a right to proceed upon the hypothesis that evidently the pleader does not seek to cut out his equity?* It is a new idea that a person having an interest in land, hearing of a suit concerning that land, which suit utterly ignores him and his interest therein, is bound to come forward and fly his flag, and seek an opportunity to be brought into the suit, at the expense of thereafter being met with the idea that his silence estops him from there-

after asserting his rights. The foreclosure proceedings from beginning to end will be searched in vain to find a suggestion that thereby it was sought, either by the bill, or by the decree, to foreclose or affect the equity of the Exeter Land Company. All that any purchaser at the foreclosure sale could possibly acquire, would be the equity of the parties named. Suppose B learns of the commencement of foreclosure proceedings of a mortgage upon property which he owns, and lays the matter before his solicitor, and the latter, upon an examination of the papers, ascertains that his client B is not a party, is B to be held estopped thereafter from asserting his conceded title which was not sought to be affected in the suit, and would not B be entirely justified in relying upon the advice of his attorney, and would not the attorney be justified in giving the advice, that inasmuch as you are not a party to the suit, and therefore are completely ignored, you may thus ignore it, and proceed safely upon the hypothesis that whatever happens in the suit, and whoever purchases at the expected foreclosure sale, will acquire no rights as against B. *The stream cannot rise higher than its source.*

THIRD POINT.

Casual knowledge gained by the president of appellant corporation is not notice such as would work an estoppel.

The foregoing is based entirely, as we have seen, upon the hypothesis that the Exeter Land Company did in fact have knowledge of the commencement of the foreclosure proceedings. Such, however, is not

the fact, but the complainants seek to charge it with knowledge by reason of the fact that Mr. Godfrey, as a member of the firm of Godfrey & Read, on the 17th of May, 1917, admitted service of a subpœna on behalf of Read. Godfrey at that time was undoubtedly president of the Exeter Land Company, and the effort is to charge that company with the knowledge, which its president, not in the course of his duty as president, but as a member of the firm of Godfrey & Read, practicing lawyers, casually acquired, in the course of his practice, of the commencement of the suit.

In *Thompson v. Central Passenger Ry. Co.,* 83 N. J. Law 773, it was held by the Court of Errors and Appeals:

> "A corporation is not chargeable with information casually obtained by a director when he is not officially engaged for the corporation from the mere fact of the director's knowledge."

In *Tate v. Security Trust Co.,* 63 N. J. Equity (Reed, V. C.), the second syllabus reads:

> "2. The president of a trust company, acting as attorney for other parties, negotiated the execution of a mortgage to his clients. The mortgage was subsequently assigned to the trust company, it not appearing who conducted this transaction on its behalf. *Held,* that the company was not chargeable with any knowledge its president may have had in regard to the purpose for which the mortgage was given."

See also *Fidelity Trust Company v. Federal Trust Company,* 87 N. J. Equity 550; *Shaw v. Standard Piano Co.,* 86 Id. 137, at 142, where we find:

"While it does not appear that Mr. Patterson ever had knowledge of any infirmity in complainant's notes, if he did, it would not be sufficient to charge the bank, and therefore, complainant, who acquired from it some of the notes he now holds, with knowledge of the alleged infirmity, unless it further appeared that Mr. Patterson acquired this knowledge while acting as a member of the board of directors of the bank convened in its official capacity (First National Bank v. Christopher, 40 N. J. Law 435), or that while acting as the agent of the bank, and within the scope of his authority, he received the information at the time he was actually acting as agent in behalf of his principal. Hanford v. Duchastel, 87 N. J. Law 205."

See also:

Conda Mfg. Co. v. Woodbridge, 58 N. J. Law 134;

DeKay v. Jersey City Insurance, 44 N. J. Law 273;

Graham v. Orange Co. Bank, 59 N. J. Law 225;

Barnes v. Trenton Gas, 27 N. J. Law 33;

First National Bank v. Christopher, 40 N. J. Law 435.

The question whether a principal is bound by the notice of one of its agents, depends, as settled by *Sooy v. State,* in the Court of Errors & Appeals, 41 N. J. Law 394-400, upon the following:

"Whenever the principal, if acting in the matter for himself, would have received the notice, the knowledge of his agent shall be chargeable

> to him. This would ordinarily restrict the binding force of the agent's knowledge to those cases where it was acquired in the transaction of his principal's affairs."

To the same effect see *Vulcan Detinning Company v. American Can Co.* (Errors & Appeals), 72 N. J. Equity 387, 400.

Thus, in our case, if the corporation as a person had conducted all its affairs in person, it would not have had any notice of the foreclosure. Not being named as a party, and not being included in the subpœna to answer, there is no way by which it, as a person, if it had conducted all its own affairs in person, would have had, or acquired any knowledge of the suit.

FOURTH POINT.

Appellant did nothing to induce respondents to act as they did.

Again it is to be noted, that this principle of estoppel which is sought here to be applied, is stated in 21 *Corpus Juris* 1174-5; to involve the following:

> "However, in order to create the estoppel there should be either knowledge of his rights in the property on the part of the party estopped, ore else something which fairly puts him on inquiry to learn the true facts, and also knowledge of the dealings in which the title to or authority over the property is involved, and the existence of circumstances which impose on him the duty to make known his rights to the party claiming the estoppel. Furthermore, it is essential that the party claiming the estoppel

> should have been ignorant of the rights of the party against whom the estoppel is claimed, and that he should have acted in reliance on his conduct or representations to his prejudice. There can be no estoppel in favor of persons who did not act in reliance on the acts or representations of the party whom it is sought to estop, either against the party, or his privies."

It will be noted that the case is barren of a single fact existing, or step taken by the Exeter Land Company, which could be said to induce whatever action the respondents, or any of them, have taken under the foreclosure title.

In *Junior Order v. Sharpe,* 63 N. J. Equity 500, the following facts appear from the head-note:

> "Land of a judgment debtor was sold under execution, the debtor knowing of the advertisement for the sale, and procuring one adjournment thereof. The purchaser went into possession and collected rents, with the knowledge of the judgment debtor, and mortgaged the premises to pay the price and satisfy prior liens. The purchaser sold the premises and his vendee went into possession. The judgment, under which the execution sale was made, was void for failure to comply with the acts relating to docketing of judgments on bill filed to foreclose the mortgage and charge the land upon the mortgage and payments."

Vice-Chancellor Emery says, at page 502:

> "In reference to estoppels of a judgment debtor from asserting his title against a purchaser at sheriff's sale, or his grantees, there is a question, in my mind, whether an estoppel

can be created by mere acquiescence and silence, in the absence of acts or conduct showing active participation on the debtor's part to induce the purchase, because the sale is made *in invitum* and by an officer of the law, in the exercise of a statutory power, against the will of the debtor. Under ordinary circumstances the rule of *caveat emptor* must apply to such sales, and certainly no more liberal rule than the one above stated can apply, and the present case does not come within any of the decisions allowing relief by way of estoppel to which I have been referred."

"Neither the purchase, the loan, nor the payment of the previous liens appears to have been induced by any positive acts or statements on the part of the owner, made for the purpose of inducing either the purchase or the investment; nor does it appear that the owner himself, at the time of the purchase or investment, knew of the legal defect in the judgment, or knew that the belief of either the purchaseer or complainant as to the validity of the title was a mistaken one."

Moreover, there was astounding negligence throughout on the part of all the purchasers and mortgagees of this land. Not one of them, prior to 1922, when the building was erected, undertook to examine the title, and, as we have seen, when Ireland purchased, he relied wholly upon the examination of the title by the South Jersey Title & Finance Company, who issued a policy to the Baltimore Life Insurance Company. That title company, in evident appreciation of its liability for its blunder, has taken an assignment of the mortgage, and Mr.

Ireland, we assume, has his claim against the insurance company for the damage he has suffered by reason of its mistake. Neither Turchot nor Schmidt, who loaned by mortgage upon the premises, made any examination of the title, *and the case is entirely devoid of any reliance by any of the respondents here, upon any act done, or statement made by the Exeter Land Company justifying the assertion of an estoppel in their favor against it.*

In *Mutual Life v. Norris,* 31 N. J. Equity 583, Chancellor Runyon said:

> "Where both parties have equal opportunities of knowledge, and they both act in ignorance of the real state of the case, and the complainant's act, which he says was induced by the defendant, appears to be rather the result of his own will or judgment, than the consequence of the defendant's act or representation, there can be no estoppel. Baldwin v. Richman, 1 Stock. 399; Richman v. Baldwin, 1 Zab. 403. The main purpose of the doctrine is to prevent fraud; there can, therefore, be no estoppel without fraud, either actual or legal."

The respondents cannot escape the legal requirement that they are chargeable with the knowledge of what the records disclosed at the time of their respective purchases or mortgages. Those records, if examined, would have displayed the very situation upon which we rely. Every prudent purchaser in buying land, carefully causes an examination of foreclosure proceedings creating a sheriff's deed in the chain of title, to ascertain whether all owners or persons interested in the equity of redemption, have been made parties, and thereby eliminated from the title. This, these purchasers did not do.

In *Philhower v. Todd,* 11 N. J. Equity 316, we find:

> "The defendant, then, does not occupy the position of an individual standing by, and seeing another advance his money upon an invalid title. The title of Todd was upon the public record, and the negligence was altogether on the part of the complainant, who was thus notified of Todd's claim. He is justly chargeable with concealing his intention to purchase from the defendant, and not the defendant with permitting the complainant to purchase, and concealing his title with a fraudulent intent of suffering an advantage to be taken of the complainant."

It is respectfully, but confidently submitted that the respondents have shown no reason why the otherwise undisputed claim of the title in the Exeter Land Company, which has never been foreclosed or cut out, should not be maintained, and that, therefore, the bill of complaint ought to have been dismissed and appellants ought to have been granted a decree for redemption as prayed for in the counter-claim; and that the Court below ought, therefore, to be reversed.

McCARTER & ENGLISH,
Solicitors for Appellants.
ROBERT H. McCARTER,
Of Counsel.

NEW JERSEY COURT OF ERRORS AND APPEALS

Between

ADA L. TODD, ET ALS.,
Complainants-Respondents,
and
EXETER LAND COMPANY,
ET ALS.,
Defendants-Appellants.

ON BILL, ETC.
ON APPEAL.

BRIEF OF SOUTH JERSEY TITLE & FINANCE COMPANY.

The decree (p. 92), which was made October 16, 1928, and from which this appeal is taken, decrees (p. 94):

> "so far as relates to any claim thereon by or on behalf of the said defendant, the title of the said complainants . . . and of the defendant, Baltimore Life Insurance Company, as mortgagee of Julian N. and Dora R. Ireland in and to the same and every part thereof is hereby fixed and settled and declared to be good."

By order made after final decree and on November 2, 1928, on motion of the appellants, the South Jersey Title and Finance Company was admitted as a party defendant in the place of and as the assignee of the Baltimore Life Insurance Company

> "and entitled to the rights of said Baltimore Life Insurance Company in the subject matter of this litigation and in the benefits of the final decree heretofore entered herein."

The testimony in the case shows that the mortgage for fifteen thousand dollars ($15,000.00), which was held by the Baltimore Life Insurance Company, had been assigned to the South Jersey Title and Finance Company. The above-mentioned order provided that it should not affect the right of the South Jersey Title and Finance Company to proceed with the pending foreclosure of the said mortgage. The facts are fully set forth in the conclusions of the Vice Chancellor (p. 86) and his finding of facts is supported by the testimony.

FACTS.

Raymond Read held title to the lands in question, with other lands, under a deed made to him by the Sheriff of Atlantic County, dated October 10, 1916, and recorded October 24, 1916. On May 2, 1917, a deed was made for the same property by Reed and wife and Carlton Godfrey and wife, to Exeter Land Company, which deed was recorded May 5, 1917. Very shortly prior to May 5, 1917, searches had been obtained for the purpose of foreclosing a mortgage upon the premises. The bill was filed May 16, 1917, and Reed was made a party, but the Exeter Land Company was omitted as a party defendant apparently by reason of the searches not having been continued to cover the date of the filing of the bill.

Raymond Read and Carlton Godfrey were practicing law as partners at the time the foreclosure proceeding was instituted and the service of a subpoena, which included Read as a defendant and which had annexed a ticket showing he was made a defendant because of being the owner of the mortgaged premises, was acknowledged by Godfrey for Read and his wife.

The foreclosure proceeded to a sale of the property and through mesne conveyances the title became vested in Julian N. Ireland on December 21, 1922. He erected a dwelling house upon the property at a cost of about twenty-seven thousand dollars ($27,000.00), and borrowed from the Baltimore Trust Company fifteen thousand dollars

($15,000.00), which is represented by the mortgage which was made to the Baltimore Life Insurance Company and which was assigned by that company to the South Jersey Title and Finance Company. The alleged transfer of the property by Read to the Exeter Land Company was a mere paper performance, Godfrey and Read were the corporation and they permitted, without the slightest objection, Ireland and the other owners of the property to occupy it, to expend large sums of money, to pay all of the taxes, interest and carrying charges. At the time when the property was sold by the Sheriff it was not worth anything above the first mortgage and was bought in by the first mortgagee. At that time Mr. Godfrey was quite willing to allow the appearances to indicate that there were no outstanding interests, but in later years, after innocent persons had acquired interests and had expended large sums of money in improvements and in carrying charges, and after the property had become valuable, then the appellants made claim although they must have known all that was going on.

THE VICE CHANCELLOR FOUND THE FACTS AGAINST THE APPELLANTS.

The Vice Chancellor, who had the opportunity of observing the witnesses upon the witness stand has found the facts in favor of the respondents, and it is respectfully submitted that his finding should carry great weight.

In *Garton v. Phelps,* 109 Atl. 291, 91 Eq. 312, the Court held:

> "On an appeal from a decree from the Court of Chancery, great weight is given to a finding upon a question of fact, because the Vice Chancellor, who hears the case in the Court below and sees the witnesses and hears them testify, has better opportunities to judge their credibility than the reviewing Court. . . .
>
> "However, the rule giving great weight in the appellate court to the Vice Chancellor's finding on a question

of fact imposes no restraint on the power of the former to ascertain, by full investigation and analysis of the evidence, what the facts are, and whether the general finding is consistent therewith."

The Findings of Fact Are Supported by the Testimony.

Messrs. Read and Godfrey were partners in the practice of law. Mr. Godfrey was one of the originators of the Margate Company which first developed the lands of which the property in question is a part, and was most familiar with all that went on by way of development and improvement of all of the property in the Margate Tract.

It appears there was a judgment against that company and at a Sheriff's sale all the interest of the Margate Company in certain tracts of land, including the property in question, was sold to Raymond Read on October 10, 1916 (p. 79). At the time the foreclosure search was made Read still held the title in his individual name.

A few days before the bill was filed for the foreclosure of the mortgage, which is the basis of the title of the respondents, Read and wife and Godfrey and wife executed a deed to the Exeter Land Company, so, that at the time when the bill was filed and subpoena was issued there had been made a deed to that company.

The Exeter Land Company was formed, obviously, for the exclusive benefit of Messrs. Read and Godfrey. The former owned one-third and the latter two-thirds. It does not appear by the testimony that the corporation was ever fully completed or that it even organized or ever held a meeting. All there is to show the existence of such a corporation is the certificate of incorporation, which was offered in evidence, and the stock book, which shows seventeen shares to Read, thirty-three shares to Godfrey and a qualifying share to Mrs. Godfrey. The proportion of stock of one-third to Read and two-thirds to Godfrey was the

same as the proportion of their interest in the partnership. Mr. Godfrey testified:

> "A. I can only testify as to my knowledge and recollection is that that property was bought in by the Sheriff, by Read, that I put up the actual money which went to the Sheriff to pay for that conveyance, but *that Mr. Read had an interest in* that property, which interest was conveyed to the Exeter Land Company, and which was paid for by a certificate of stock issued by the Exeter Land Company to him, and my interest, the property that I conveyed, which was other property, was also paid by the remaining stock issued. That was my recollection of the facts." (p. 67.)

The same witness also testified:

> "Q. And I observe that the stock that seems to have been issued is designated as one share to Mrs. Godfrey, thirty-three shares to yourself and seventeen shares to Raymond P. Read; is that in accordance with your recollection?"
>
> "A. That is in accordance with my recollection of the facts."
>
> "Q. The par value of that stock was $100.00 each?"
>
> "A. $100.00."
>
> "Q. And that would represent how many shares?"
>
> "A. Fifty-one."
>
> "Q. Fifty shares?"
>
> "A. Fifty shares." (p. 61.)

Mr. Read and his wife were parties defendant in the foreclosure proceeding. Mr. Godfrey acknowledged service of the subpoena, knew of the foreclosure suit and knew that the ticket with the subpoena set out that Mr. and Mrs. Read were made defendants because of the title to the property being in Read. He remained silent. The foreclosure was but a few days after the conveyance by Messrs. Read and Godfrey to the Exeter Land Company and Mr. Godfrey must have associated the two transactions, but still he remained silent. In that situation he remained silent while

innocent parties, believing they had perfect title, made large outlays in improvements, in carrying charges, etc. Hence, on the one hand, Mr. Read and his wife were made parties and they were barred as far as their interest was concerned, and, on the other hand, Mr. Godfrey, who constitutes the corporation, stood by and silently permitted others to make large expenditures on the land under the honest belief that they were the rightful owners, and he is thereby estopped from now being heard to complain. The authorities are contained in the conclusions of the Vice Chancellor and also in the brief of the other respondents and we deem it unnecessary to duplicate them here.

THERE IS NO RIGHT OF APPEAL AS FAR AS THE SOUTH JERSEY TITLE AND FINANCE COMPANY IS CONCERNED.

The order admitting the South Jersey Title and Finance Company a party defendant is as follows:

> "IT IS, thereupon, on this Second day November, 1928, on motion of McCarter & English, Solicitor for and of counsel with Defendant Exeter Land Company, the moving party in the above application, ORDERED that the South Jersey Title & Finance Co. be and it is hereby admitted as a party Defendant to the above entitled cause in the place of and as the assignee of the Baltimore Life Insurance Company and be entitled to the rights of the said Baltimore Life Insurance Company in the subject matter of this litigation and in the benefits of the Final Decree heretofore entered herein, without prejudice, however, to the right of said South Jersey Title and Finance Company to prosecute its existing or any other proceeding to foreclose its said mortgage."

The order was made on the application of the Exeter Land Company and it is their order consented to by us.

The final decree decrees in effect the mortgage of the Baltimore Life Insurance Company to be superior to any interest or estate of the appellants.

The order making the South Jersey Title and Finance Company party defendant first makes the Title Company

> "a party defendant to the above entitled cause in the place of and as the assignee of the Baltimore Life Insurance Company,"

and then provides that the South Jersey Title and Finance Company shall

> "be entitled to the rights of the said Baltimore Life Insurance Company in the subject matter of this litigation and in the benefits of the Final Decree heretofore entered herein."

The benefit of the final decree is that the mortgage which the South Jersey Title and Finance Company holds, by assignment, is paramount to any interest of the Exeter Land Company and the Exeter Land Company agrees, by its own order, that the South Jersey Title and Finance Company shall unqualifiedly have the benefit of that final decree.

Counsel for the appellants argue that being guaranteed the benefits of the decree should not excuse us from the duty to defend the decree. We certainly are not bound to defend the decree against the attack of the Exeter Land Company, who said and agreed that we should have the benefits thereof. There was clearly a waiver of the right of appeal as to the South Jersey Title and Finance Company.

> "A party may not only waive his right to appeal or maintain proceedings in error by express agreement or stipulation, but a waiver may also be implied from, or he may be estopped by, an act or agreement which is inconsistent with such right." (3 C. J. 664.)

This objection is set up in the answer to appeal and was also made the subject of a motion for the dismissal of the appeal.

The appellants evidently desired to have the South Jersey Title and Finance Company admitted a party to complete the record. The order was made after final decree and no opportunity whatever was afforded the new defendant to participate in the trial of the case. Naturally the new defendant was unwilling to consent to being made a party except it received the benefits of the decree.

It is respectfully submitted that the decree of the Court of Chancery should be affirmed.

BABCOCK & CHAMPION,
Solicitors for and of Counsel with Respondent, South Jersey Title and Finance Company.

NEW JERSEY COURT OF ERRORS AND APPEALS

Between

ADA L. TODD, ET AL.,
Complainants-Respondents,

and

EXETER LAND COMPANY,
ET AL.,
Defendants-Appellants.

ON APPEAL FROM CHANCERY.
ON BILL TO QUIET TITLE.

Brief for Complainants-Respondents

FACTS.

The Margate Company, a New Jersey Corporation, organized to exploit and develop a large tract of land in Margate City, being the owner of the premises in question, created a mortgage thereon to one Emma Moitz Doherty, on March 8, 1912, to secure the principal sum of twenty-two hundred dollars ($2200.00). On May 16, 1917, a bill to foreclose said mortgage was filed by the said Doherty, through her solicitors for that purpose. Sometime prior to the filing of the foreclosure bill, one Annie E. Hand recovered a judgment for five thousand five dollars and fifty cents ($5,005.50) against the Margate Company, and pursuant to an execution issued thereunder the premises in question were seized, together with other lands. Before sale the judgment was assigned to defendant, Raymond P. Read, an attorney at law, who was a law partner of defendant, Carlton Godfrey. No part of the consideration was paid by Read but all of it was paid by defendant, Godfrey. On October 10, 1916, the Sheriff proceeded under the writ and sold all of the lands covered by the execution and title

thereto was taken in the name of Raymond P. Read. At the time that the foreclosure search was made by Doherty's solicitors title to the premises in question was still in Read, but between that date and May 16, 1917, the date of the filing of the foreclosure bill, Read and his wife, and Godfrey and his wife, joined in a conveyance of lands including the locus in quo to the defendant, Exeter Land Company. The Exeter Land Company was incorporated April 11, 1917, and the incorporators were defendants, Carlton Godfrey, Annie M. Godfrey, his wife, and Raymond P. Read. In the Certificate of Incorporation their respective interests appear as follows: Carlton Godfrey, eighty shares; Annie M. Godfrey and Raymond P. Read, one share each, while the registered office of the company is the office of Godfrey and Read, 315 Guarantee Trust Building, Atlantic City, and the registered agent is Carlton Godfrey. The date of the aforesaid conveyance from Read, Godfrey, et uxores, to the corporation, was May 2, 1917, recorded May 5, 1917. Subsequently shares in the corporation were issued to Godfrey and Read in the proportion of two to one, Annie M. Godfrey having only a qualifying interest. Read's testimony is to the effect that his interest was of such a character as to make no impression whatever upon him; and it is apparent that the company was from its very inception and is at the present a creature of the defendant, Godfrey, who is the only one having a substantial interest therein. The corporation is Godfrey,—Godfrey is the corporation. Read's acts were their acts. The character of and purposes of ownership never differed either when it was in Read or the corporation. Read's testimony (State of Case, p. 54) furnishes abundant proof of it.

Service of the subpoena ad respondendum in the foreclosure proceeding was acknowledged for the Margate Company and for Raymond P. Read by Godfrey and Read, attorneys, but the person who actually acknowledged this service was Carlton Godfrey, a member of the firm of Godfrey and Read, an officer of the original Margate Company, extensively interested in that company, attorney for that company, organizer of the Exeter Land Company,

majority stockholder in it, officer in and agent for it, attorney for it and the person who actually provided the cash with which Read bought the judgment under which title was acquired for the Exeter Land Company.

No answer or other pleadings were ever filed by any of the defendants in the foreclosure proceedings, and eventually a final decree was entered, a writ of fieri facias issued to the Sheriff, and sale held, Godfrey and the company all the while knowing that a subpoena was in their possession and that the land under foreclosure was land, title to which was in their little family corporation. The complainant purchased the premises at the sale; after several mesne conveyances, the property, on December 21, 1922, was purchased by Julian N. Ireland, one of the complainants herein, who proceeded to erect thereon a modern dwelling costing him approximately twenty-seven thousand dollars ($27,000.00). This house was one of a very few then built in the entire tract. It was an outstanding accomplishment, one that would attract attention, particularly the attention of one who had played an important part in the developing of the tract originally; who was an officer in the company that had created the original mortgage, the Margate Company; who was sufficiently interested to cause to be purchased through his representative a judgment against that company and to buy the land itself under an execution sale and to have title taken in a corporation in which he was majority stockholder; who joined in that conveyance as a grantor; and finally, who himself had acknowledged service in the foreclosure proceedings through which title eventually descended to the complainants in this bill. True, upon cross examination, Mr. Godfrey's answers to questions seeking to bring out his continued interest in the Margate Park development were evasive, but in view of the established facts as above recited these answers by their very evasiveness emphasize the fact that his interest had never waned. The Court below had the opportunity of listening to these answers as they came from the mouth of the witness, Godfrey; it had the further opportunity of observing his demeanor on the witness stand, for which there is no adequate substitute to

assist the Appeal Court; it had the opportunity to interpret his answers and his demeanor in the light of the other facts and inferences to be drawn from them, and the learned Vice Chancellor's interpretation is:

> "I have no doubt that Mr. Godfrey's attention was called to the erection of this dwelling. The fact that the Margate Company had had, as the brief of the defendant says, 'a checkered career,' that Godfrey had been an officer and attorney of that company, that he had provided the consideration for the purchase of a judgment against it and for the purchase of the land, and its conveyance to Read and by him to the Exeter Land Company, and that without doubt he was trying to save from the wreck of the Margate Company any property possible, convinces me that the erection of a building such as was erected on this land could not have been without his knowledge." (State of Case, p. 89, l. 19.)

Complainant Ireland occupied the house built by him until 1924, having in the meantime borrowed fifteen thousand dollars ($15,000.00) on a construction mortgage from the defendant, Baltimore Life Insurance Company, whose mortgage was insured as a first mortgage by the South Jersey Title and Finance Company, the alleged outstanding title in the Exeter Land Company not having been disclosed by their title examination, although of record. Ireland subsequently sold to F. Ernest Todd, Inc., which in turn conveyed to Ada L. Todd, who entered into an agreement to convey to complainant, Liebe. It was through title insurance being ordered by Liebe that it was discovered that the Exeter Land Company, as such, had not been made a party defendant to the Doherty foreclosure bill, although Read, who had held the title to the property for a brief period pending the transfer to the Exeter Land Company, was a defendant in those proceedings, and not only he, but defendants Godfrey and Exeter Land Company had actual knowledge of the foreclosure. With this knowledge they

stood by and permitted the proceedings to progress to a sale, permitted the complainant to buy, permitted changes in title to be made, valuable improvements to be erected, permitted the premises to be occupied, permitted mortgages to be created of approximately thirty-six thousand dollars ($36,000.00), permitted others to pay the taxes, made no attempt to pay the interest or principal of the original mortgage, and never pretended that the interest that they or any of them claimed to have had not been foreclosed. The only explanation that the sole witness for the defendants, Mr. Godfrey, offers is that the deed to the Exeter Land Company contained so much land that he had no specific knowledge that the locus in quo was included even though it was a prominent corner lot, eighty by ninety feet. But the real inference to be drawn therefrom is that at the time of the foreclosure there was such a slump in real estate values, one lot was not worth protecting for approximately twenty-five hundred dollars ($2500.00), when the entire holdings of the Exeter Land Company had been purchased for five thousand five dollars and fifty cents ($5,005.50). If the situation were otherwise, some step would have been taken when the subpoena ad respondendum was placed in their hands.

LAW.

It is submitted that in view of the peculiar circumstances surrounding the transactions of Read, Godfrey, Godfrey and Read as a partnership, and Godfrey and Read as owners of the Exeter Land Company, the decree against Read effectually barred the company and that this is so even without taking into consideration their subsequent conduct. But supposing, without conceding that such is not the case, we then have an instance of the real owner standing by, charged with the knowledge of the true conditions, permitting another to deal with its property as his own, and therefore coming squarely within the rule that an owner of property who stands by and sees a third person selling or mortgaging it under a claim of title without asserting his

own title or giving the purchaser or mortgagee any notice thereof is estopped, as against such purchaser or mortgagee, from afterward asserting his title. The general principle is found in 21 C. J. 1154, and among the cases cited in support thereof is *Crawford v. Bertholf,* 1 N. J. E. 458, wherein Chancellor Vroom says, at p. 471:

> "It is a general rule in equity, that where a person having rights, and knowing those rights, sees another person taking a mortgage upon property without disclosing his title, he shall not be allowed afterwards to set up his title to defeat the mortgage."

The same rule would of course apply where the owner sees another take legal title and make improvements. To the same effect is *Haring v. Fornes,* Gilb. Eq. Co. 85. The rule is succinctly stated in *Jowers v. Phelps,* 33 Ark. 465, in words of the Chancellor.

> "Men are not required to be clamorous in asserting their rights, nor to be active in seeking others about to deal concerning them, in order to prevent anticipated mischief. To stand by and see a sale to an innocent purchaser, would be, however, a breach of moral duty, unless the owner meant to abide by it."

See also *Brinkerhoff v. Brinkerhoff,* 23 E. 477, at p. 482; *Dellett v. Krueble,* 23 E. 58; *Race v. Groves,* 43 E. 284. The rule is even more emphatically stated by Justice Harlan in *Kirk v. Hamilton,* 102 U. S. 68, quoting Chancellor Kent:

> "There is no principle better established, nor one founded on more solid considerations of equity and public utility, than that which declares that a man who, knowingly, though he does it passively, looks on and suffers another to purchase and expend money on land, without making known his own claim, shall not be permitted to exercise his legal right against such person. It

> would be an act of fraud and injustice and his conscience is bound by this equitable estoppel."

And in *King v. Bitterton,* 6 T. R. 554, Mr. Justice Lawrence said:

> "I remember a case some years ago in which Lord Mansfield would not suffer a man to recover, even in ejectment, where he had stood by and seen the defendant build on his land."

See also *Pace v. Bartles,* 47 E., at p. 179; and in *Kelly v. Hurt,* 74 Mo. 561, where the facts are almost identical with those of the principal case, it was said:

> "If a mortgagor, with full knowledge of irregularities in the sale of his land, stands by without complaint for a period of years, while the purchaser clears the land, pays taxes and makes valuable improvements, he will be estopped from challenging the sale."

In *Gaddes v. Pawtucket Institution for Savings,* 80 Atl. Rep., p. 415 (R. I.), the Court said:

> "One who knowingly and without disclosing his title, stands by and permits his property to be mortgaged or sold by another to one who is, to the owner's knowledge, relying on the apparent ownership of the grantor, is estopped to assert title against the grantee, irrespective of who benefits by the transaction,"

and further,

> "the phrase 'stands by,' within the equitable principle that one is estopped to claim title to land which, while standing by, he has permitted another to mortgage or sell, does not necessarily mean actual presence, but implies knowledge under such circumstances as render it the duty of the possessor to communicate it."

Again in our own State the doctrine was clearly stated by Vice Chancellor Van Fleet:

> "Where one person, by either words or conduct, induces another to believe that he may safely purchase certain property, or take a certain security, and he subsequently relying on such representation, acquires property or security, the former will never be permitted, in courts of equity, to overthrow the title so acquired."

Woodruff v. Morristown Institute of Savings, 34 E. 174, at p. 180. *Bridgewater v. Ocean City Association,* 85 E. 379, *Philhower v. Todd,* 11 E. 315. In the latter case equitable relief was denied but in doing so the Court points out that in their bill of complaint the complainants did not allege that the defendants knew of the pending ejectment suit, the inference being that had it ben alleged and proved, the result would have been otherwise. In the principal case knowledge of the defendants is not only alleged and proven, but it is found by the learned Vice Chancellor to have existed to his satisfaction as a fact:

> "This is a question of fact to be determined by the Court, and as stated above, I find the fact to be that the president of the company had such knowledge, and that knowledge must be imputed to the company. Not necessarily because he was the president of the company, but because he was in effect the company." (State of Case, p. 90, l. 21.)

While it would seem that there is sufficient evidence in the case that there must have been ample notice to the defendants of the complainants' title, such as ownership of the mortgage, the foreclosure proceedings, the public records of subsequent conveyances, the payment of taxes, the open and notorious use and occupation of the premises, it is submitted that some of these things in themselves, even without actual knowledge, charge the defendants with notice upon which they are bound to act by promptly asserting their

rights. Occupancy is sufficient. *Haven v. Bliss,* 26 E. 370; *Wanner v. Sisson,* 29 E. 150, and in *Hodges Executors v. Amerman,* 40 E. 104, Van Fleet, V. C., says:

> "Now it is well settled in cases of this kind that implied or constructive notice may be just as effectual as actual notice and that constructive notice may arise from possession alone, but, in order to give it that effect, it must be open, notorious, exclusive and unequivocal. It need not be actual residence on the land but where there is no actual pedis possessio, dominion must be manifested by such open and notorious acts of ownership as will naturally be observed by others, and the acts must be of a character so certain and definite in denoting ownership as not to be liable to be misunderstood or misconstrued."

Obviously the requirements therein set forth are herein found.

The Court of Errors and Appeals in the leading case of *Wood v. Price,* 79 E. 620, has likewise stated the law to be that:

> "Possession of real estate which is actual, open, visible, occupation inconsistent with the title of the apparent owner by the record and not equivocal, occasional or for a temporary or special purpose, is constructive notice to all the world of the rights of the party in possession."

Having disposed of the question of notice it may be pertinent to inquire as to the effect upon the corporation of the service upon Read. It must be born in mind that while title had actually changed from Read to the corporation, Read's title had always been that of the corporation, that he was a partner in the law firm of Godfrey and Read, who acknowledged service for him, that defendant, Godfrey, who actually acknowledged the service for Read was in fact the

corporation for which Read was acting as Trustee, for he was its registered agent, he was its president, he was its majority stockholder.

> "Where the defendant is a corporation . . . a service on an officer or agent of the company whose duty it is either in his official capacity or by virtue of his employment, to communicate the fact of such service to the governing body of the corporation is good." *Dock v. Elizabethtown Steam Manufacturing Co.*, 34 L. 312.

Can defendants, Exeter Land Company and Godfrey now say, "We propose to use the Court of Equity to establish our legal claim after almost eleven years of silence because Mr. Godfrey, as agent, did not formally report to Mr. Godfrey, the principal, or to Mr. Godfrey, the corporation, that a mortgage on their property was being foreclosed?" Already possessing that information in fact would the formal relaying of the information in such a fashion have produced a different course of conduct from what they actually pursued from that day to the present time? Obviously, the answer to these questions is found in the foregoing excerpt from the Court's opinion. The information that Mr. Godfrey had obtained was important. It affected the company's business, the very purpose for which it shortly before had been incorporated.

> "Where information is casually obtained by an agent of a corporation, the corporation is not charged with notice from the mere fact of its agent's knowledge, but if the corporation acts through such agent in a matter where the information possessed by him is pertinent, the knowledge of the agent will be implied to the principal." *Willard vs. Denise*, 50 Eq. 482.

See also *Sooy v. State*, 41 L. 395, wherein it is held that:

> "The knowledge of the agent is chargeable upon his

> principal wherever the principal, if acting for himself, would have received notice of the matters known to the agent."

As pointed out hereinbefore no different course of action could or would have been pursued by any of the defendants had the Exeter Land Company been actually named as a party defendant, and it has long been held in this Court that where the legal right is purely technical and no beneficial purpose can be answered by enforcing the rule, it will not be followed. *Parker v. Stevens,* 3 E. 55.

The difficulty with the appellant's case is manifest from an examination of its brief. It recognizes the principles for which the respondents contend, but stands out against their application on the grounds that the appellants had no notice of respondents' rights. This is a question of fact which has been decided against them in the Court below. With the equities of the case against them, the legal principles against them and the facts themselves against them, it is respectfully submitted that their appeal should be dismissed and that the decree of the Court of Chancery should be affirmed.

HARCOURT AND STEELMAN,
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HIRAM STEELMAN,
Of Counsel.