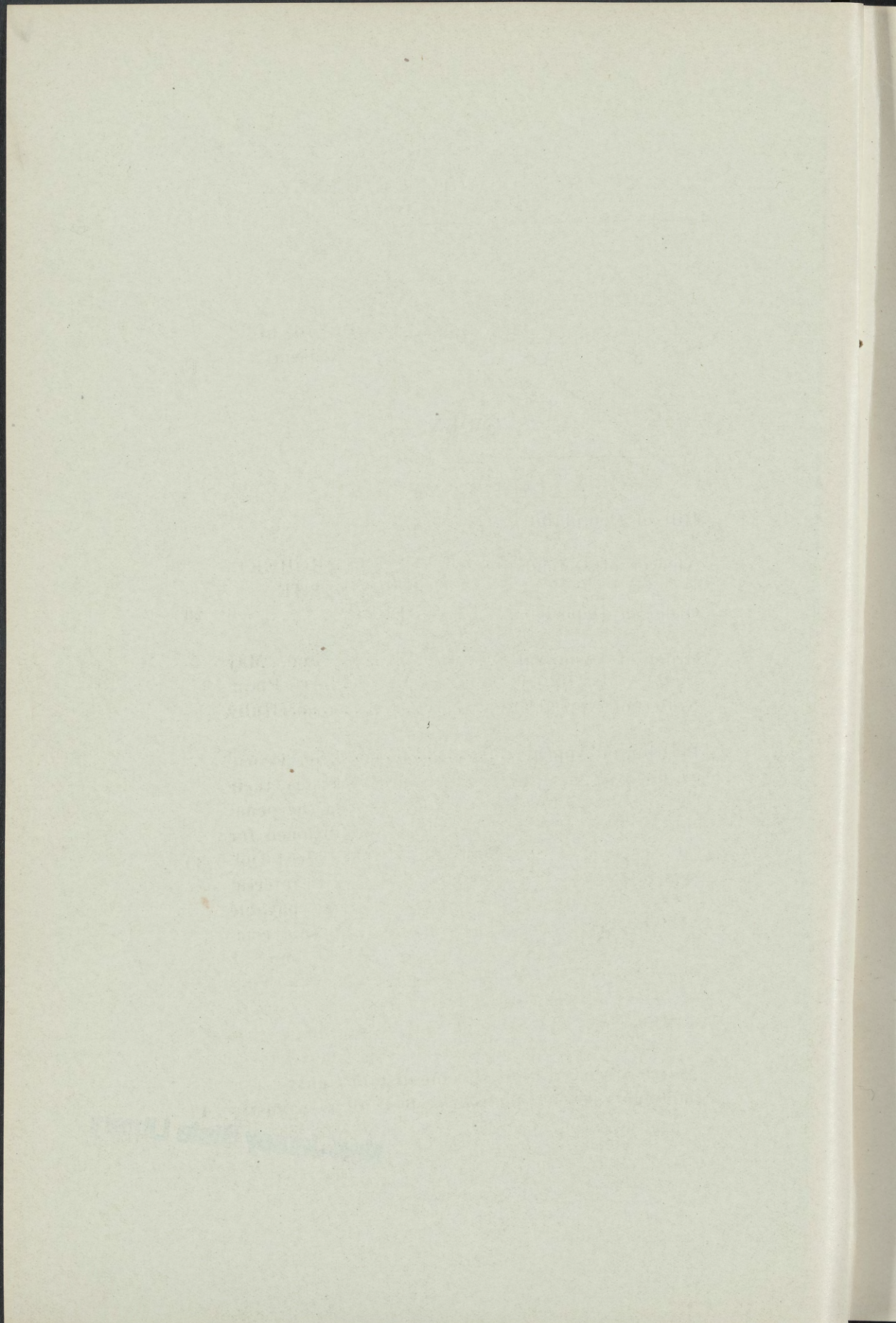


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New Jersey State Library



IN CHANCERY OF NEW JERSEY

Between:

JOHN SIERCKS and MAY
SIERCKS, his wife,

Complainants,

and

HERMAN E. RUCKERT,
et al,

Defendants.

On Bill to
Redeem

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BILL OF COMPLAINT

Filed Sept. 25, 1930

TO THE HONORABLE EDWIN ROBERT
WALKER, CHANCELLOR OF THE
STATE OF NEW JERSEY:

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The complainants, John Siercks and May Siercks, his wife, of the Township of North Plainfield, Somerset County, New Jersey, respectfully show, that:

1. That complainants heretofore and on February 21, 1927, gave to one Herman E. Ruckert, their certain bond dated on the above day in the penal sum of Eleven Thousand Dollars, conditioned for the payment of Six Thousand Five Hundred Dollars in one year from the date thereof, with interest at the rate of six per cent per annum, payable semi-annually, and to secure said bond said complainants gave back a mortgage in the sum of \$6500.00 on property described as follows: Lying and being in the Township of Piscataway, County of Middlesex, and State of New Jersey. Beginning at a point in the northwesterly side line of West Fourth Street, said point being distant eighty-seven and eighty-seven hundredths feet in a magnetic

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Bill of Complaint

course of North 51 degrees 12 minutes along said northwesterly side of West Fourth Street from the easterly side line of Rushmore Avenue; thence running along said northwesterly side line of West Fourth Street North 51 degrees 12 minutes East
10 75 feet to a point; thence running North 38 degrees 48 minutes west and at right angles with said West Fourth Street 100 feet to a point; thence running South 51 degrees 12 minutes West and parallel with said West Fourth Street fifty-six and seven one-hundredths feet to a point in the Easterly line of Rushmore Avenue; thence running along said easterly line of Rushmore Avenue South 8 degrees 5 minutes West twenty-five and ninety-three one-hundredths feet to a point; thence running South
20 38 degrees and 48 minutes East and at right angles with West Fourth Street aforesaid eighty two and twenty-eight one-hundredths feet to the place of beginning. Being known and described as lots 9, 10 and 11 on a certain map entitled Map of property situated in the Township of Piscataway, Middlesex County, New Jersey, June 1920, F. A. Dunham, C. E. of Plainfield, N. J.; which said mortgage is recorded in Book 522 of mortgages for Union County at page 409.

30 2. That on August 1, 1929 a bill to foreclose said mortgaged premises was filed by Herman S. Ruckert, the mortgagee within named, and such proceedings were had thereon that a final decree was made in this Court, decreeing that the sum of \$6731.83 was due the said Ruckert, the complainant in the foreclosure suit, and a writ of fieri facias was issued out of this Court directed to the Sheriff of Middlesex County, aforesaid, that he proceed
40 to collect the said sum aforesaid with costs and

Bill of Complaint

Sheriff's fees by a sale of the said mortgaged premises, and to report to this Court.

3. That on November 27, 1929, said premises above were sold by the said Sheriff, aforesaid, to the said Herman E. Ruckert, the complainant in the said suit, for the sum of \$4,000.00 leaving a balance still due under the said fieri facias of \$3220.78, and so reported to this Court by the said Sheriff aforesaid. Which sale was confirmed on December 9, 1929. 10

4. That the defendant, Herman E. Ruckert, the purchaser under the Sheriff's sale as aforesaid has been in possession of said premises under said purchase enjoying the rents and profits thereof.

5. That complainants tendered to the defendants and their solicitor the amount due at the time of the sale by the Sheriff, with all costs and expenses, which was refused and is now willing to pay such sum as is justly due and owing and that may be settled by this Court on a reference to a Master. 20

6. That later on the said Herman E. Ruckert brought suit in the Supreme Court of this State against Complainants, for the amount of the deficiency at the Sheriff's sale and interest and costs, and entered judgment for \$3500.86 on March 26, 1930. 30

7. Complainants now bring said redemption money into Court, and continue the tender thereof.

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

1. That Herman E. Ruckert, and Mrs. Herman E. Ruckert, his wife, who are the defendants to this suit, may answer this bill of complaint and each statement therein.

2. That complainants right to redeem said premises be declared and enforced, and the title and 40

Bill of Complaint

possession thereof be restored to them, as fully as though said sale has never been made.

10 3. That the defendants be compelled to account for the rents and profits of said premises while in their possession or under their control, and that a reference to a Master of this Court be had to ascertain the amount due.

4. That the defendant, Herman E. Ruckert, be restrained and prevented from proceeding under his judgment above set forth until the further order of this Court.

5. That complainants have such further and other relief in the premises as may be just and adequate.

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

John Siercks

May Siercks

William R. Wilson,

Sol'r. for and of Counsel with complainants.

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ANSWER OF DEFENDANTS

Filed October 15, 1930

The answer of the defendants, Herman E. Ruckert, and Mrs. Herman E. Ruckert, his wife, of the City of Plainfield, County of Union and State of New Jersey.

These defendants, Herman E. Ruckert, and Mrs. Herman E. Ruckert, his wife, answering the bill of complaint say that: 10

1. Paragraphs 1 to 3, inclusive, of the bill of complaint are admitted.

2. Paragraph 4 of the bill of complaint is denied.

3. Paragrah 5 is denied and these defendants say to the contrary that the complainants herein have never at any time or times made any tender to these defendants or their solicitor of the amount due at the time of the sale by the Sheriff, with all costs and expenses, and these defendants have never at any time refused to accept the amount due at the time of the sale by the Sheriff, with all costs and expenses. 20

4. Paragraph 6 of the bill of complaint is admitted.

5. These defendants have no knowledge or information sufficient to form a belief as to the statements in paragraph 7 of the bill of complaint.

6. These defendants have tendered the said premises to the complainants but the complainants refused to pay to these defendants the amount due at the time of the sale by the Sheriff, with all costs and expenses, by reason of which refusal the defendants herein have been put to great inconvenience and have necessarily incurred great expense. 30

William A. Coddington,
Solicitor of the Defendants, Herman E.
Ruckert and Mrs. Herman E. Ruckert
his wife. 40

ORDER OF DISMISSAL

Filed February 17, 1931

IN CHANCERY OF NEW JERSEY

<p>Between :</p> <p style="padding-left: 40px;">John Siercks & wife,</p> <p style="padding-left: 80px;">Complainants,</p> <p>and</p> <p style="padding-left: 40px;">Herman E. Ruckert and wife,</p> <p style="padding-left: 80px;">Defendants.</p>	}	<p>ORDER OF DISMISSAL</p>
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		20

This matter being opened to the Court by William A. Coddington, Esquire, Solicitor for the defendants in the presence of solicitor for complainants, and it appearing that due notice has been given to the complainants of this application and that complainant has failed to make the deposit heretofore directed.

It is on this seventeenth day of February, 1931 on motion, as aforesaid, ORDERED that the bill of complaint in this cause be, and the same is, hereby dismissed with costs. 30

Respectfully advised,

Malcolm G. Buchanan

V. C.

E. R. Walker

C.

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NOTICE OF APPEAL

Filed February 26, 1931

NEW JERSEY COURT OF ERRORS AND
APPEALS

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Between:

John Siercks & wife,
Complainants-Appellants,

and

Herman E. Ruckert and
wife,

Defendants-Respondents.

On Appeal

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The complainants hereby appeal from the whole and every part of the decree, made in this cause, on February 17, 1931, by the Chancellor on the advice of Vice Chancellor Malcolm G. Buchanan, to the Court of Errors and Appeals in the last resort in all causes.

Dated February 25, 1931.

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William R. Wilson,

Solicitor of Complainants and of Counsel

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

William R. Wilson,

of Counsel

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PETITION OF APPEAL

Filed March 16, 1931

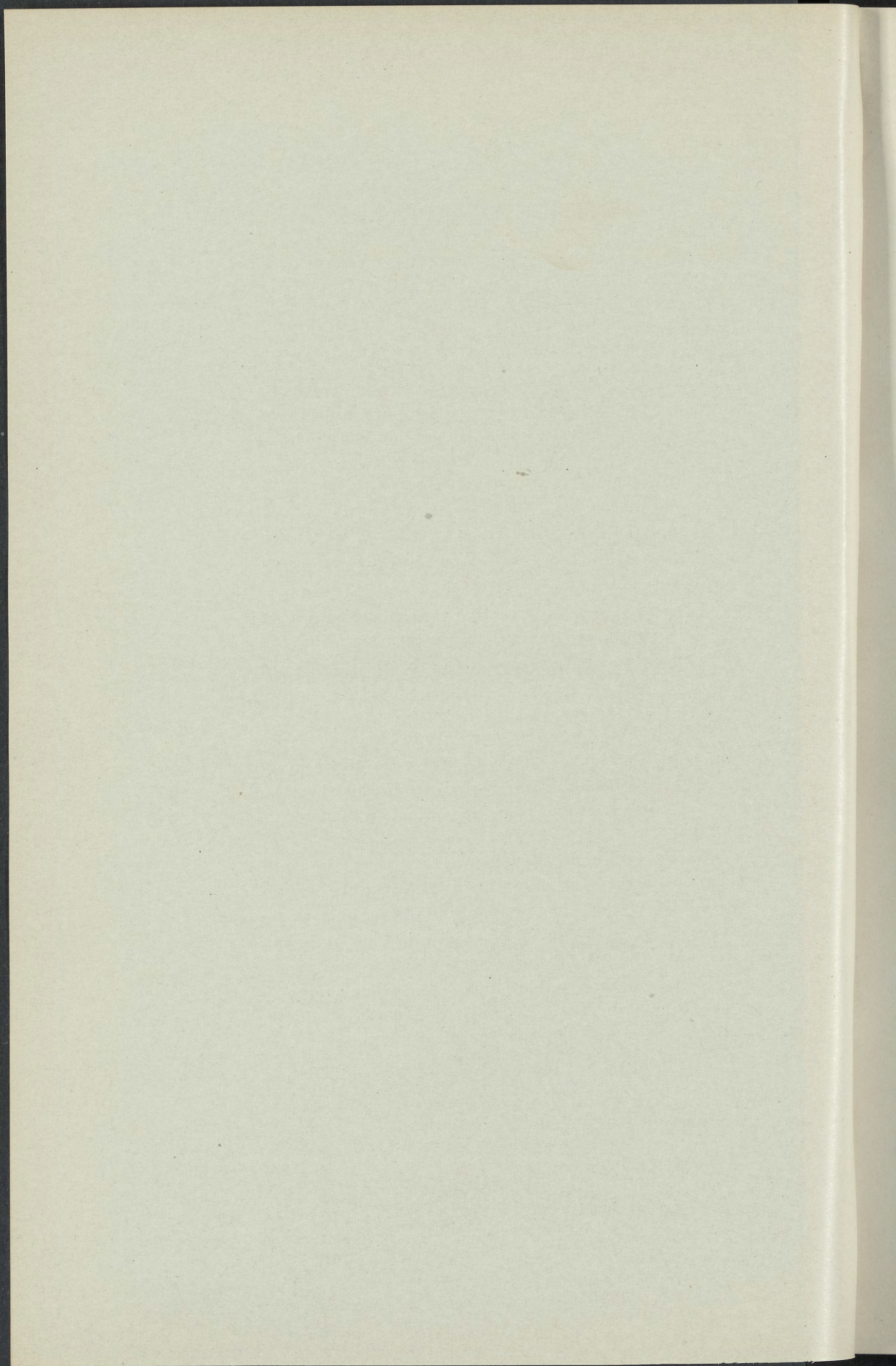
TO THE HONORABLE, The Court of Errors and Appeals in the last resort in all causes:

The petition of John Siercks and May Siercks his wife, the appellants in the above stated cause respectfully shows that your petitioners find themselves aggrieved, by a final order made in the Court of Chancery by his Honor, EDWIN ROBERT WALKER, Chancellor of the State of New Jersey, on the advice of Honorable Malcolm G. Buchanan, Vice Chancellor bearing date February 17, 1931, wherein the said John Siercks and May Siercks his wife were complainants and Herman E. Ruckert et als, were defendants in this respect, to wit: that the said order as aforesaid adjudges that the bill of complaint, heretofore filed in the Court of Chancery of this State be dismissed with costs.

And that your petitioner humbly appeal from that part of the order which decrees as above upon the ground that the same is erroneous, for that the said bill should have been sustained.

Your petitioners therefore pray, that the said order so as aforesaid made by the Chancellor on the advice of the Vice Chancellor aforesaid, may be reversed, set aside and for nothing holden and that your petitioners may have such relief in the premises as to this honorable Court shall seem meet.

William R. Wilson,
Solicitor of Appellants of Counsel with
Appellants.



MS

Arthur W. Cross, Law Printer, 55-57 Lafayette Street, Newark, N. J.

New Jersey Court of Errors and Appeals

Between

JOHN SIERCKS and wife,
Complainants-Appellants,

and

HERMAN E. RUCKERT and wife,
Defendants-Respondents.

On Appeal.

On Appeal

BRIEF OF COMPLAINANTS-APPELLANTS.

Facts.

The bill in this cause was filed to redeem the premises of Complainants in this cause, sold under foreclosure by the Sheriff of Middlesex County, at the instance of Ruckert and wife above, the complainants in the foreclosure case.

The bill to redeem was filed in pursuance of an act of the Legislature of this State, Laws of 1915, Chapter 179 amendatory of an act entitled, An act to amend an act entitled, "An act concerning proceedings on bonds and mortgages given for the same indebtedness and the foreclosure and sale of mortgaged premises thereunder." Approved March 12, 1880" amending section 3 of the act, which as amended reads as follows:

That if after the foreclosure and sale of the mortgaged premises, the person who is entitled to the debt shall recover a judgment in a suit on said bond for any balance of debt such recovery shall open the foreclosure and sale of said premises, and the person against whom the judgment has been recovered may redeem the property by paying the full amount of money for which the decree was granted, with interest to be computed from the date of said decree and all costs of proceedings on the bond; and all reason-

able expenses which the purchaser may have incurred in the meantime for taxes; assessments, other prior liens, necessary repairs upon said premises and interest on same, after deducting from the amount thereof such income as said holder may have derived from the possession of said premises whether as rent or otherwise; provided, that a suit for redemption is brought within six months after the entry of such judgment for the balance of the debt.

The bill to foreclose the mortgage given by Siercks and wife to said Ruckert was filed on August 1, 1929, and such proceedings were had that a final decree was made decreeing that \$6,731.83 was due the complainants Ruckert and wife, and a fieri facias was issued directed to the Sheriff of Middlesex County, directing him to collect the aforesaid sum with costs. That at the time of filing said bill, the mortgaged premises were occupied by one Goff under a lease, and such tenancy continued until after the sale by the Sheriff, and that said Goff was not made a party to the foreclosure by virtue of his tenancy, who had an equitable interest that could not be cut off by any sale.

That on November 27, 1929 the mortgaged premises were sold by the said Sheriff to said Henry E. Ruckert, the complainant, for the sum of \$4,000, leaving a deficiency at that time of \$3,220.78, and the sale was made in the absence of the defendant Siercks, and of the Solicitor who was then representing Mr. Siercks, who had charge of the matter of sale, but failed to appear at the Sheriff's Office at the time of sale; which sale was confirmed by the Court on December 9, 1929.

That said Ruckert the defendant in the bill to redeem, entered into possession of the premises

so as aforesaid purchased by him after said confirmation, and is enjoying the rents and profits thereof.

That later on said Herman E. Ruckert brought suit in the Supreme Court of this State against the Complainant Siercks in this cause, for the amount of the deficiency at the Sheriff's sale, and interest and costs, and entered judgment for \$3,500.85, on March 26, 1930. Complainant Siercks offered to redeem for the amount of \$7,500.85 being the amount of the judgment and the purchase price at sale, but the same was refused, and \$9,500 was demanded, the reason being given that extensive repairs had been made, and other charges taken care of.

The bill is in the nature of a bill for discovery, and there is a prayer in the bill for an accounting, and a reference to a Master. The bill to redeem was filed in time and stated the facts.

The same precision which is required in stating the case of a complainant, is not necessary in showing the interests of the defendant against whom the relief is sought, because the complainant cannot always be supposed to be cognizant of the nature of defendant's interest, and the bill must frequently proceed with a view to obtain a discovery of it. The matter came up before the Vice-Chancellor on a motion to dismiss the bill. No hearing or taking of testimony was had to determine the various interests, nor to determine the fact of the mortgagee taking possession of the premises after the sale and living in the same; nor to determine amount due for rent from the mortgagee in possession, nor to determine whether repairs had been made and whether same were necessary, and whether the tenant in possession Goff had been made a party

to the foreclosure suit, and what interest if any he had.

His Honor on the return date of notice, February 6, 1931 made an order requiring the complainants in the bill to redeem, John Siercks and wife, to deposit with the Clerk in Chancery, on or before February 17, 1931 the sum of \$5,500 to remain there until the further order of the Court.

The above order was not complied with in that the complainant did not make the deposit as directed, and on February 17, 1931 an order was made that the bill of complainants be dismissed.

LAW.

The complainant Siercks and wife feel that no such order should have been made, but that the whole matter should have been referred to a master for an accounting and for him to report to the Court; or the Vice-Chancellor should hear the matter by calling witnesses.

If referred to a master, that he should investigate and report to the Court of Chancery his findings, after an investigation under the act; and also whether there were any outstanding interest that had not been cut off by the proceedings, and such other matters that were pertinent to the issue, so that the party permitted to redeem would know the amount required of him to redeem and that he could redeem with safety.

It is respectfully submitted, that there is nothing in the law that requires a deposit to be made.

The third section of the act states what is to be done: "That he may redeem the property etc." The amount to be paid could only be ascertained by a reference to a master, and the amount

fixed by him approved by the Court, would be amount to be paid. The complainants in the bill filed to redeem were denied a hearing and furthermore were not permitted to have both sides of the case presented. They didn't have their day in Court to show what had been done by Ruckert with regard to the property, and what repairs if any had been made, and what amount for rent, use and occupation, by Ruckert should be paid by him.

Ruckert occupied the same position with regard to this property as a mortgagee in possession and is chargeable as such on a bill filed to redeem, and for an accounting of rents and profits.

The Courts have passed on questions of a similar nature. In the case of *Ketchum v. Bell*, 72 N. J. Equity 907, the Court stated as follows: Parties defendant in actual possession of real property, while holding thereto the relationship of mortgagees are chargeable, on a bill filed to redeem and for an accounting of rents and profits, with the fair annual value of the premises so occupied, as an occupation rent.

So also it was held in *Steward v. Fairchild*, 91 N. J. Equity 86 as follows: The rights of a mortgagee in possession are to collect the rents and profits, his responsibilities include a liability to account for those rents and profits on redemption.

See also *Brown v. Berry*, 89 N. J. Equity 230;

Merchants & Traders Realty Co. v. Stern, 101 N. J. Equity 629.

Case affirmed in 102 N. J. Equity 290.

Ruckert under the act, is holding the property and is in the actual possession of the same, holding the relation of mortgagee in possession, and is chargeable as such, on a bill filed to redeem, and for an accounting of rents and profits received, with the fair annual rental value of the premises so occupied, as an occupation rent.

To entitle the mortgagee to proceed for a deficiency nothing short of a complete exhaustion of the property, and all interests therein must be had, to satisfy the requirements of the statute.

Deal Park Co. v. Barnard, 2 N. J. Misc. R. 194.

The Complainant-Appellant respectfully asks that the decree appealed from be set aside and for nothing holden.

WILLIAM R. WILSON,
Solicitor for and of Counsel with Appellants.

Arthur W. Cross, Law Printer, 55-57 Lafayette Street, Newark, N. J.

New Jersey Court of Errors and Appeals

Between

JOHN SIERCKS and wife, <i>Complainants-Appellants,</i>	}	<i>On Bill, &c.</i>
<i>and</i>		<i>On Appeal.</i>
HERMAN E. RUCKERT and wife, <i>Defendants-Respondents.</i>		

BRIEF ANSWERING BRIEF OF DEFENDANTS-RESPONDENTS.

The appellants above feel that this Court should be advised with respect to the brief of the respondents, for the reason that the brief filed fails to state fully the act on which the bill is founded and misconceives the purport of the decisions set out in the brief.

The act on which the suit is based is as follows:

An act to amend an act entitled, "An act concerning proceedings on bonds and mortgages given for the same indebtedness and the foreclosure and sale of mortgaged premises thereunder." Approved March 12, 1880, amending section 3 of the act of 1915 which as amended reads as follows:

Than if after the foreclosure and sale of the mortgaged premises the person who is entitled to the debt shall recover a judgment in a suit on said bond for any balance of debt such recovery shall open the foreclosure and sale of said premises and the person against whom the judgment has been recovered may redeem the property by paying the full amount of money for which the decree was granted, with interest to be computed from the date of said decree and all

costs of proceedings on the bond; and all reasonable expenses which the purchaser may have incurred in the meantime for taxes, assessments, other prior liens, necessary repairs upon said premises and interest on same, *after deducting from the amount thereof such income as said holder may have derived from the possession of said premises whether as rent or otherwise; provided, that a suit for redemption is brought within six months after the entry of such judgment for the balance of the debt.*

The respondent's counsel in his brief, failed to set out all of the act which has a material bearing on the case. The part omitted I have supplied in italics and is the last part of the act.

The counsel for the respondents states in his brief, on paragraph 4, of page 2, a condition of affairs which is denied, and is a matter to be passed upon by a Master or a Vice-Chancellor and not on the uncorroborated statement of counsel, which of necessity must be hearsay. As to the first paragraph of page 3 the amount due at the time of sale was tendered and was refused, and an amount between \$9,500 and \$10,000 was demanded, which demand was not complied with. The negotiations extended over a period of two months, and nothing was accomplished and then notice to dismiss was given.

The rule is as follows:

"If a bill be suffered to lie without substantial prosecution for *one* year, it may be considered as abandoned and the bill may be dismissed on notice." Chancery rule 193.

The subpoenas in this case were not returnable until November 25, 1930.

No notice was given to require a deposit, but the notice was to dismiss for want of prosecu-

tion. Bill was filed September 25, 1930 and subpoenas were issued October 15th following. The respondents had 20 days after service of subpoenas to answer, which service was made November 5, 1930. And the matter remained in abeyance until notice of January 27, 1931 for dismissal. The delay was a reasonable one.

**AS TO THE RELEVANCY OF CASES CITED
BY RESPONDENTS.**

The case of *Shields v. Lozear*, 22 New Jersey 509 was heard before the learned Vice-Chancellor, Amzi Dodd, who said among other things the following:

“The effect of a tender when lawfully made is to discharge the debtor from subsequent interest. But to have this effect, the amount tendered must be kept in readiness and in the bill to redeem, or on plea or answer setting up tender the money must be paid into Court.”

The tender is made for the purpose of saving interest. As the Court above said, to have this effect the money must be paid into court, but is not compulsory.

See 22 New Jersey Equity at page 451 last paragraph.

So also the Court quotes in above case at page 452 from *Woodruff v. Trapnall*, 7 English 460 as follows:

“He who intends, it was said, must hold himself in readiness to pay; but in case of tender before suit, the party makes no deposit, he keeps the money, and may use it, if he will, but must hold himself in readiness to pay.”

And further along in the opinion of the learned Vice-Chancellor, he stated:

“The complainant in this case not having paid the money into Court it is unnecessary to decide how far he has shown by the evidence to have made use of the money tendered or what the effect of such use would be. He will be charged with interest from April 1, 1868 at the rate of seven per cent.” He also stated that, “the defendant mortgagee in possession should account for the rents from the same date (April 1, 1868) upon the terms agreed on by the parties for they are covered by the lease” (at bottom of page 452 case above).

So the learned Vice-Chancellor in the same case stated:

“But whatever doubts may exist as to the true meaning of readiness to pay, the authorities are agreed, that to *stop interest* the money must be paid into Court on filing the bill. Unless this is done he will be charged with interest and the defendant will be charged for use and occupation.”

The respondents failed to state in their answer the amount required to be paid to redeem, nor did they put in the amount laid out by them for necessary repairs.

The case before this Court on appeal is not a case where the matter came before the Vice-Chancellor for final hearing, and the case was heard on bill, answer and proofs, and a decree made by him after hearing the cause. But on his own motion, the Vice-Chancellor fixed the amount of deposit, although there had been no determination as to the amount to be paid.

The appellants feel that they have not had their day in court, and that their side has not been heard, and their constitutional rights have been invaded.

In a case determined at the present term of the Court of Errors and Appeals, the following pronouncement was made by Mr. Justice Bodine speaking for the Court.

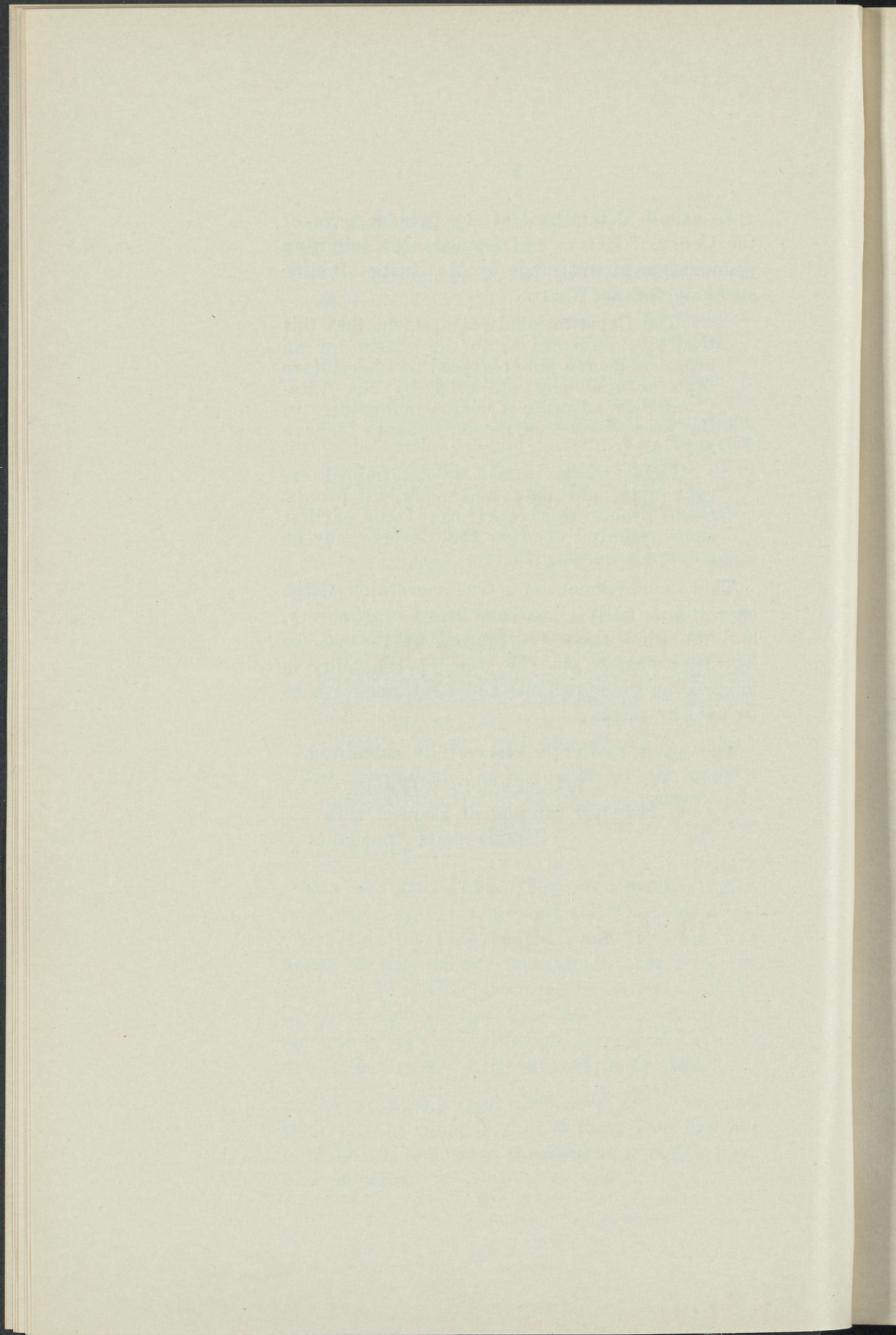
“The Constitutional requirement that this Court be informed as to the *reason* for an order or decree under appeal has heretofore been scrupulously observed by the Vice-Chancellor advising a decree before us. In the present case no reason appears to have been filed.

“Legal rights cannot be determined except upon adequate and sufficient proofs. Such proofs this court has from earliest times required in order that decrees may be entered according to law.”

This Court cannot get a true conception of the case at bar, until it has been heard in Chancery, and the whole case as required by the act, be heard, so that it may be seen what liability is imposed on the appellants and what amount is to be paid by them.

The whole matter is respectfully submitted.

WILLIAM R. WILSON,
Solicitor for and of Counsel with
Complainants-Appellants.



New Jersey Court
of
Errors and Appeals

On Appeal from the Court of Chancery

Between	}	ON APPEAL
JOHN SIERCKS & MAY SIERCKS		
his wife,		
Complainants-Appellants		
and		
HERMAN E. RUCKERT, et al.,		
Defendants-Respondents		

Brief of
Defendants-Respondents

STATEMENT OF THE CASE

This matter is before the Court on an appeal from an order of the Court of Chancery dismissing the Bill of Complaint herein upon motion of Defendants-Respondents to dismiss the bill for want of prosecution and for failure of Complainants-Appellants to deposit the sum of \$5,500.00, with the Clerk of the Court of Chancery as directed by a prior order of said Court.

The bill of complaint in this cause was filed by the Complainants-Appellants to redeem premises sold under foreclosure by the Sheriff of Middlesex County at the instance of the Defendants-Respondents the complainants in the foreclosure suit, pursuant to a final decree entered in the Court of Chancery decreeing the sum of \$6,731.83 to be due to the Defendants-Respondents.

At the Sheriff's public sale the mortgaged premises were sold to the Defendants-Respondents for the sum of \$4,000.00, they being the highest bidders therefor, leaving a deficiency of the sum of \$3,193.52.

Defendants-Respondents brought suit to recover this deficiency with interest and costs and on March 26th, 1930, judgment in the sum of \$3,300.86 was entered in the New Jersey Supreme Court in favor of the Defendants-Respondents.

Immediately after the foreclosure sale Defendants-Respondents took possession of the premises, which were then untenanted and vacant and in such state of repair as to be uninhabitable, and Defendants-Respondents made such repairs as were necessary to prevent the premises from complete deterioration.

Defendants-Respondents issued execution and Complainants-~~Respondents~~^{Appellants} brought this bill to redeem praying among other things that Defendants-Respondents be restrained from proceeding under their judgment.

Complainants-Appellants filed their bill to redeem on or about September 25, 1930, and service of subpoena was acknowledged by the solicitor for Defendants-Respondents September 26th, 1930, and answer was duly filed October 15, 1930, but on this date however the Defendants-Respondents were served by the Sheriff and Defendants-

Respondents on October 21, 1930, filed an answer which was a duplicate of the answer previously filed.

The bill alleged in Paragraph 5 thereof a tender to the Defendants-Respondents and their solicitor of the amount due at the time of the sale by the Sheriff, with all costs and expenses. No such tender was made either to the Defendants-Respondents or to their solicitor, and was consequently denied in the answers.

Complainants-Appellants made no move to prosecute the cause for over three months after the last step taken in the cause and over four months after the filing of the bill, consequently on January 28th, 1931, Defendants-Respondents served notice of a motion to have the bill dismissed for want of prosecution.

Upon the return day of this motion on February 6th, 1931, the learned Vice Chancellor gave the Complainants-Appellants the opportunity to deposit with the Court the sum of \$5,500.00, a sum even less than the Complainants-Appellants alleged to have tendered, and continued the hearing of the motion until February 17, 1931 (S. C. p. 6), upon which date the Complainants-Appellants having failed to make the deposit as ordered, and no excuse for such failure being offered the learned Vice-Chancellor advised the order dismissing the bill (S. C. p. 7).

By this appeal from the said order, the Complainants-Appellants seek to review the findings of the Vice-Chancellor and the only point to be considered is whether or not the Court of Chancery was correct in the conclusions reached by it after considering the arguments of counsel. On this point the brief of Complainants-Appellants is singularly silent, the brief relating almost wholly to matter substantiating the Bill of Complaint, and having no relevancy to the subject matter of this appeal.

BRIEF OF THE LAW**POINT I.**

The learned Court below did not err in dismissing Complainants-Appellants' Bill of Complaint.

The statute provides: "That if after the foreclosure and sale of any mortgaged premises" etc., "the person against whom the judgment has been recovered may redeem the property by paying the full amount of money for which the decree was granted, with interest to be computed from the date of said decree and all costs of proceedings on the bonds; and all reasonable expenses which the purchaser may have incurred in the meantime for taxes, assessments, other prior liens, necessary repairs upon said premises and interest on same" etc. (1 Supp. C. S. p. 1972, Sec. 49).

Certainly, therefore, the right of the Complainants-Appellants to redeem depended upon their paying the sums specified in the statute, and it is elementary that the order appealed from should not be set aside unless it invaded some right of Complainants-Appellants, for to warrant a reversal upon appeal from Chancery, some definite rule of law or equity must appear to have been violated. *Rogers vs. Hosack's Ex'rs.* 18 Wend 329 cited with approval in *Garr vs. Hill* 5 N. J. Eq. 639 at page 641, Attorney General, et als. vs. *City of Paterson* 9 N. J. Eq. 624 at page 629.

The learned Vice-Chancellor advised the order dismissing the Bill of Complaint upon the failure of the Complainants-Appellants to deposit the sum of \$5,500.00, which in the exercise of the sound discretion of the Court, they had been directed to deposit. It is only by showing an abuse of this discretion that the Complainants-Appell-

ants can show the invasion of any right, and Complainants-Appellants have utterly failed to show such an abuse.

The Vice-Chancellor after hearing arguments of counsel advised, in effect, only that the Complainants-Appellants should by depositing with the Court the sum of \$5,500.00, do, what by their pleadings in the cause, they represented themselves to be willing to do, that is, to hold themselves ready, to pay the sums required by the statute for redemption. The Defendants-Respondents, after having expended a large amount of money in the preservation of the property were by the redemption suit prevented from making any disposition of the property until the determination of the suit, and it seems to be no abuse of discretion on the part of the Vice-Chancellor to require the Complainants-Appellants, they having already unnecessarily delayed the prosecution of the suit, to produce some security that they would, upon the determination of the suit, be in a position to comply with the requirements of the statute.

Not only was there no abuse of discretion, but it was to the advantage of the Complainants-Appellants to deposit a tender in Court for it is only by this method that Complainants-Appellants could be discharged from subsequent interest. *Shields vs. Lozear* 22 N. J. Eq. 447; Affirmed. 23 N. J. Eq. 509; *Sharp vs. Todd* 38 N. J. Eq. 324.

In the *Shields* case, the Court said, "The effect of a tender lawfully made, is to discharge the debtor from subsequent interest. But to have this effect, the amount tendered must be kept in readiness, and on bill to redeem, or on plea or answer setting up tender, the money must be paid into court."

In *Fritz vs. Simpson* 34 N. J. Eq. 436, Chancellor Runyon declared that where it appeared necessary to protect the owner of the property

against bad faith, the Court would order that the money be paid into Court. True, this was to protect the mortgagor, but there was no suggestion that to require the money to be deposited in Court would overreach the discretion of the Court, and there appears to be no more reason why to require the money to be deposited for the protection of the mortgagee would be an abuse of discretion or a violation of any right of the Complainants-Appellants in this cause.

POINT II.

We respectfully submit that the argument of Point I disposes of the only question raised in this appeal, but shall devote Point II to answering the arguments contained in the brief of the Complainants-Appellants.

Complainants-Appellants state that they feel that the order appealed from should not have been made, that the matter should have been referred to a master and what his inquiries should have been, that the Defendants-Respondents occupied the same position as a mortgagee in possession, and cases are cited showing what the liabilities of mortgagees in possession are, and with what they are chargeable. None of this, however, relates to the only question involved in this appeal, which is, the propriety of the order dismissing the bill.

In the statement of the facts, Complainants-Appellants recite that one Goff was in possession at the time of filing the foreclosure bill, and that he was not made a party to the foreclosure suit. Defendants-Respondents are at a loss to see that this matter has any proper place in this appeal, for no new facts, not before the Court of Chancery can be raised on the appeal.

Black vs. Delaware and Raritan Canal
Co. 24 N. J. Eq. 455.

Miller vs. Miller 84 N. J. Eq. 218.

CONCLUSION

The Defendants-Respondents respectfully urge that the Court of Chancery did not err in dismissing the Bill of Complaint in that the order directing the dismissal was based upon the failure of the Complainants-Appellants to comply with an order directing them to deposit money in Court which order the Vice-Chancellor advised in the sound exercise of his discretion and which in no way violated any rule of law or equity and deprived the Complainants-Appellants of no rights whatsoever, therefore the order of the Court of Chancery should be affirmed.

Respectfully submitted,
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