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NOTICE OF APPEAL.

(Filed Jan. 8, 1930.)

IN CHANCERY OF NEW JERSEY.

55/620.

Between

ATLANTIC CITY NATIONAL
BANK, *et al.*,

Complainants,
and

ANDREW P. WILSON, *et*
al.,

Defendants.

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On Bill, &c.
Notice of Appeal.

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To Messrs. Bourgeois & Coulomb, Solicitors of De-
fendant, Edward Nicholson:

The defendant, Atlantic City Lumber Company,
appeals from the order of the Court of Chancery
dated December 18th, 1929, making the said Edward
Nicholson a party defendant to the above-entitled
cause; and also appeals from the order of the Court
of Chancery dated December 18th, 1929, which is an
order amending the final decree and execution, and
for payment of surplus moneys, allowed in the
above-entitled cause.

THOMPSON & HANSTEIN,
Solrs. for and of Counsel with
Defendant, Atlantic City
Lumber Company.

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

WALTER HANSTEIN,
*Of Counsel with Defendant,
Atlantic City Lumber Com-
pany.*

10

Due and legal service hereby acknowledged this 30 day of Dec., 1929.

BOURGEOIS & COULOMB,
*Solrs. of Deft., Edward
Nicholson.*

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30

AMENDED NOTICE OF APPEAL.

(Filed Jan. 16, 1930.)

IN CHANCERY OF NEW JERSEY.
55/620, &c.

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Between

THE ATLANTIC CITY NA-
TIONAL BANK, *et al.*,

Complainants,
and

ANDREW P. WILSON, *et*
al.,

Defendants.

On Bill, &c.
Amended Notice of
Appeal.

20

*To Messrs. Bourgeois & Coulomb, Solicitors of De-
fendant, Edward Nicholson:*

The defendant, Atlantic City Lumber Company, appeals from the order of the Court of Chancery dated December 18th, 1929, made by Edwin Robert Walker, Chancellor of the State of New Jersey, on the advice of Vice-Chancellor R. H. Ingersoll, one of the Vice-Chancellors of this court, making the said Edward Nicholson a party defendant to the above-entitled cause; and also appeals from the order of the Court of Chancery dated December 18th, 1929, made by Edwin Robert Walker, Chancellor of the State of New Jersey, on the advice of Vice-Chancellor R. H. Ingersoll, one of the Vice-

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Chancellors of this court, which is an order amending the final decree and execution, and for payment of surplus moneys, allowed in the above-entitled cause.

THOMPSON & HANSTEIN,
*Solrs. for and of Counsel with
Defendant, Atlantic City
Lumber Co.*

10

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

WALTER HANSTEIN,
*Of Counsel with Defendant,
Atlantic City Lumber Co.*

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Due and legal service hereby acknowledged as of 30 day of Dec., 1929.

BOURGEOIS & COULOMB,
*Solrs. for and of Counsel with
Deft., Edward Nicholson.*

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BILL OF COMPLAINT.

Filed May 1, 1924.)

IN CHANCERY OF NEW JERSEY.

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

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The complainants, Atlantic City National Bank, a corporation of the United States of America, doing business in the City of Atlantic City, in the County of Atlantic and State of New Jersey, and Louis Satanov, of the said city, county and State, respectfully show that:

1. On June 5, 1923, Andrew P. Wilson and Sarah Wilson, being indebted unto Louis Satanov in the sum of \$10,000, executed to him a bond of that date, to secure that sum, payable within one year from the date thereof, with interest at the rate of 6% per annum, payable semi-annually. 20

2. To secure the payment of the said bond, the said Andrew P. Wilson and Sarah Wilson, his wife, executed unto Louis Satanov a mortgage of even date with the bond, and thereby conveyed to him in fee the land hereinafter described, on the express condition that such conveyance should be void if payment should be made according to the terms of the said bond, which mortgage having been first duly acknowledged and the certificate of acknowledgment duly endorsed thereon was on June 9, 1923, recorded in the Clerk's Office of Atlantic County, at 30

Mays Landing, N. J., in Book 260 of Mortgages, page 479, &c.

3. The said mortgaged premises are located in Atlantic City, Atlantic County, New Jersey, and are bounded and described as follows:

10 BEGINNING on the east line of Wilson Avenue, sixteen feet South from the intersection of the East line of Wilson Avenue with the South line of a seventeen feet wide street or alley, said point being one hundred and seventeen feet South from the Southerly line of Pacific Avenue measured at right angles thereto, said point of intersection being also one hundred and thirty-five feet West of the West line of Providence Avenue, measured at right angles thereto, and running thence (1) Southwardly in and along the Easterly line of Wilson Avenue, seventeen feet; thence (2) Eastwardly and parallel with Pacific Avenue, sixty feet; thence 20 (3) Northwardly and parallel with Wilson Avenue, seventeen feet; thence (4) Westwardly, in, along and through the middle line of a party wall sixty feet to the place of beginning.

4. That both bond and mortgage contained an agreement that if any installment of interest should remain unpaid for thirty days after the same should fall due, then the whole principal sum, with all unpaid interest, should, at the option of the mortgagee, 30 his heirs and assigns, become immediately due.

5. That both bond and mortgage contained an agreement that if any tax or other municipal charges assessed against the said land and buildings and the improvements thereon should remain unpaid for

thirty days after the same should be due and collectible by law, then the whole principal sum, with all unpaid interest, should, at the option of the mortgagee, his heirs or assigns, become immediately due.

6. That the mortgage contained an agreement that the mortgagors, their heirs or assigns, should keep the buildings on the mortgaged premises insured against loss or damage by fire in a sum not less than \$10,000, and assign the policy or policies to the mortgagee; and that if default thereof, it should be lawful for the mortgagee to effect such insurance, and the premium or premiums paid for effecting the same should be a lien on the said mortgaged premises, added to the amount of the said bond and obligation and be payable on demand with legal interest. 10

7. On June 7, 1923, Louis Satanov, by written assignment, assigned the said bond and mortgage, with other bonds and mortgages, unto the Atlantic City National Bank, as collateral security for the payment by the said Louis Satanov of a certain promissory note, made by Louis Satanov, in the sum of \$45,000, dated June 1, 1923, and payable 3 months after date to the order of "Myself" and endorsed by the said Louis Satanov, which assignment having been first duly acknowledged and the certificate of acknowledgment duly endorsed thereon was, on June 9, 1923, duly recorded in the Clerk's Office of Atlantic County aforesaid, in Book 60 of Assignments of Mortgage, page 193. 20

8. On September 4, 1923, the said note fell due and a renewal note was given, made by Louis Satanov to the order of "Myself" in the sum of 30

\$45,000, and endorsed by him. Payment has been demanded on said note, but the same remains due and unpaid.

9. On June 5, 1923, the said Andrew P. Wilson and Sarah, his wife, mortgaged the lands and premises hereinabove described, with other premises, to William Staiger, to secure the payment of \$2500, which mortgage was on June 11, 1923, recorded in the clerk's office aforesaid in Book _____ of Mortgages, page _____, &c.

10 Any interest the said William Staiger may have in the said land is subject to the lien of complainants' mortgage.

10. On June 8, 1923, the said Andrew P. Wilson and Sarah, his wife, mortgaged the lands and premises hereinabove described, together with other lands, to the Atlantic City Lumber Company, to secure the payment of \$4500, which mortgage was, on June 16, 1923, duly recorded in the Clerk's Office of Atlantic County, at May's Landing, N. J., in Book _____ of Mortgages, page _____, &c.

20 Any interest the said Atlantic City Lumber Company may have in the said land is subject to the lien of complainants' mortgage.

11. On June 21, 1923, Andrew P. Wilson and Sarah, his wife, mortgaged the lands and premises hereinabove described, together with other lands, unto the Chelsea National Bank, to secure the payment of \$42,900, which mortgage was, on June 22, 1923, duly recorded in the clerk's office aforesaid in Book _____ of Mortgages, page _____.

30 Any interest the said Chelsea National Bank may have in the land is subject to the lien of complainants' mortgage.

12. On November 1, 1923, Willis A. Herbert and Willis A. Herbert, Jr., trading as W. A. Herbert & Son, caused to be recorded against Andrew P. Wilson a mechanic's lien for \$375 covering the premises hereinafter described, with other premises.

Any interest the said Willis A. Herbert and Willis A. Herbert, Jr., trading as W. A. Herbert & Son, may have in the said land is subject to the lien of complainants' mortgage.

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13. On July 30, 1923, Andrew P. Wilson and Sarah, his wife, mortgaged the lands and premises hereinabove described, together with other land, unto John Murtland, to secure the payment of \$3,807.60, and which mortgage was, on August 15, 1923, recorded in the Clerk's Office of Atlantic County, at May's Landing aforesaid, in Book of Mortgages, page , &c.

Any interest the said John Murtland may have in the said land is subject to the lien of complainants' mortgage.

14. The said Andrew P. Wilson and Andrew P. Wilson, Jr., entered into two recognizances to one John Wise, each in the sum of \$2,000, and which said recognizances were, on June 20, 1923, entered in the records of recognizances in the clerk's office aforesaid.

Any interest the said John Wise may have in the said land is subject to the lien of complainants' mortgage.

15. On September 13, 1923, the said Andrew P. Wilson, with one John W. Roberts, entered into a sheriff's bond to Malcolm B. Woodruff for \$2,000, which said bond was duly recorded in the Clerk's

Office of Atlantic County, at May's Landing aforesaid, in Book 2. Howard R. Cloud is now Sheriff of Atlantic County.

Any interest the said Malcolm B. Woodruff, late Sheriff of Atlantic County, or Howard R. Cloud, present Sheriff of Atlantic County, may have in the said land is subject to the lien of complainants' mortgage.

- 10 16. On July 16, 1923, Charles M. Mason and Berdell Gaskill, trading as Mason & Gaskill, caused to be recorded against Andrew P. Wilson a mechanics' lien for \$3,863.75, covering the premises hereinabove described, with other premises, and on November 3, 1923, the said Charles M. Mason and Berdell Gaskill, trading as Mason & Gaskill, recovered a judgment on mechanics' lien in the Atlantic County Circuit Court against said Andrew P. Wilson, Louis Satanov, William Staiger and John Murtland for
- 20 \$3,946.42, and which said judgment was duly filed on November 3, 1923, in Book 13 of Circuit Court Judgments, and it ordered that judgment be entered in favor of the plaintiffs and generally against Andrew P. Wilson, defendant, and specially to be made of the lands and buildings in complaint described, adjudged that the lien claim of the plaintiffs is prior to the liens of the mortgages of Louis Satanov, William Staiger and John Murtland. The said judgment still remains uncanceled and unsatisfied of record.

- 30 Any interest the said Charles M. Mason and Berdell Gaskill, trading as Mason & Gaskill, may have in the said land is subject to the lien of complainants' mortgage.

17. On or about October 30, 1923, Atlantic City Lumber Company, a corporation of the State of

New Jersey, recovered a judgment in the Atlantic County Circuit Court against the said Andrew P. Wilson for \$3,645.11, which judgment still remains uncanceled and unsatisfied of record.

Any interest the said Atlantic City Lumber Company may have in the said land is subject to the lien of complainants' mortgage.

18. On or about November 1, 1923, Joseph I. Levy recovered a judgment in the Atlantic County Circuit Court against the said Andrew P. Wilson for \$626.24, which judgment still remains uncanceled and unsatisfied of record. 10

Any interest the said Joseph I. Levy may have in the said land is subject to the lien of complainants' mortgage.

19. On or about November 1, 1923, William B. Riley recovered a judgment in the Atlantic County Circuit Court against the said Andrew P. Wilson for the sum of \$628, which judgment still remains uncanceled and unsatisfied of record. 20

Any interest the said William B. Riley may have in the said land is subject to the lien of complainants' mortgage.

20. On November 2, 1923, Andrew P. Wilson, John W. Roberts and William R. Brown entered into a sheriff's bond to Malcolm B. Woodruff for \$3,000, which bond was duly recorded in the Clerk's Office of Atlantic County, on November 2, 1923, in Book 2 of Sheriff's Bonds. Howard R. Cloud is now Sheriff of Atlantic County. 30

Any interest the said Malcolm B. Woodruff, late Sheriff of Atlantic County, or Howard R. Cloud, present Sheriff of Atlantic County, may have in the

said land is subject to the lien of complainants' mortgage.

21. On or about November 23, 1923, M. E. Blatt Company, a corporation of New Jersey, recovered a judgment in the Atlantic County Court of Common Pleas against the said Andrew P. Wilson for \$380.61, debt and costs, which judgment still remains uncanceled and unsatisfied of record.

10 Any interest the said M. E. Blatt Company may have in the said land is subject to the lien of complainants' mortgage.

22. On or about January 2, 1924, Bankers Trust Company, a corporation of New Jersey, recovered a judgment in the Atlantic County Circuit Court against the said Andrew P. Wilson and Joseph Friedberg, for \$1,055, debt and costs, which judgment still remains uncanceled and unsatisfied of record.

20 Any interest the said Bankers Trust Company may have in the said land is subject to the lien of complainants' mortgage.

23. On or about February 18, 1924, William H. Devitt, trading as Paul J. Devitt, recovered a judgment in the Atlantic County Circuit Court against Andrew P. Wilson for \$659.80 debt and costs, which judgment still remains uncanceled and unsatisfied of record.

30 Any interest the said William H. Devitt, trading as Paul J. Devitt, may have in the said land is subject to the lien of complainants' mortgage.

24. Complainants further show that the building erected on said mortgaged premises is a two-family

apartment house leased to two tenants, and that the following are the names of the tenants, as nearly as complainant can ascertain:

123-A (lower floor), Alice Hohg.

123-B (upper floor), Mrs. C. Gass.

Any interest that the above-named tenants may have in the said land is subject to the lien of complainants' mortgage.

25. That the said Andrew P. Wilson is a married man and that his wife's name is Sarah. Any claim or interest she may have by way of inchoate right of dower, or otherwise, is subject to the lien of complainants' mortgage. 10

26. That the said Andrew P. Wilson and Sarah Wilson, or one of them, have always been in possession of said mortgaged premises.

27. That the whole of the principal of \$10,000, with interest thereon from June 5, 1923, is due upon complainants' bond and mortgage. 20

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

1. That Andrew P. Wilson, Sarah Wilson, William Staiger, Atlantic City Lumber Company, a corporation of New Jersey; Chelsea National Bank, a corporation of the United States of America; Willis A. Herbert and Willis A. Herbert, Jr., trading as W. A. Herbert & Son, John Murtland, John Wise, Malcolm B. Woodruff, late Sheriff of Atlantic County; Howard R. Cloud, present Sheriff of Atlantic County; Charles M. Mason and Berdell Gaskill, trading as Mason & Gaskill; Joseph I. Levy, 30

William B. Riley, M. E. Blatt Company, a corporation of the State of New Jersey; Bankers Trust Company, a corporation of the State of New Jersey; William H. Devitt, trading as Paul J. Devitt; Alice Hohg and Mrs. C. Gass, who are the defendants to this suit, may answer this bill of complaint, without oath, and each statement therein made.

10 2. That an account may be taken of the amount due on complainants' bond and mortgage.

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

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

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

JOHN C. SLAPE,
Solicitor of Complainants.

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JOHN B. SLACK,
Of Counsel with Complainants.

FINAL DECREE.

(Filed June 19, 1925.)

IN CHANCERY OF NEW JERSEY.

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Between	}	No. 2. 55-626. On Bill to Foreclose. Final Decree.
ATLANTIC CITY NATIONAL		
BANK, <i>et al.</i> ,		
Complainants,		
and		
ANDREW P. WILSON, <i>et</i>		
<i>als.</i> ,		
Defendants.		
	—————	20

This cause coming on to be heard on bill, answers, replications, written evidence and oral proofs before the Honorable Robert H. Ingersoll, one of the Vice-Chancellors, to whom by a previous order herein it was referred to hear the same for the Chancellor and report thereon to him and advise what order or decree should be made therein, in the presence of John C. Slape, solicitor, and John B. Slack, of counsel with the complainants; John C. Reed, 30 solicitor for and of counsel with the defendant, Andrew P. Wilson; Thompson and Hanstein, solicitors for and of counsel with the defendant, Atlantic City Lumber Company; Elwood C. Weeks, solicitor for and of counsel with the defendants, Charles M. Mason and Berdell Gaskill, trading as Mason & Gaskill, and Willis A. Herbert and Willis A. Herbert,

Jr., trading as W. A. Herbert & Son; Herbert R. Voorhees, solicitor for and of counsel with the defendant, William Staiger; Joseph H. Carr, solicitor for and of counsel with the defendant, William H. Devitt, trading as Paul J. Devitt; Gorson & Gorson, solicitors for and of counsel with the defendants, Joseph I. Levy and William B. Riley, and Louis E. Stern, solicitor for and of counsel with the defendant, M. E. Blatt Co., and the Court having read
10 the pleadings, taken and examined the proofs and heard the arguments of counsel and duly considered the same, and it appearing by proof to the satisfaction of the Court that the mortgage of the complainants is first in execution and registry, and that there is due the complainant, Atlantic City National Bank, upon the bond held by it, payment whereof was intended to be secured by its mortgage, the sum of \$6,330.21—and that its mortgage debt is a first lien in order of priority upon the lot of land
20 and premises described in the bill of complaint and is entitled to be first paid and satisfied out of these premises; and that there should then be secondly paid to the complainant, Louis Satanov, the sum of \$4,935.69, which includes insurance premium advanced, from which there shall be deducted the sum of \$541.31, due Charles M. Mason and Berdell Gaskill, trading as Mason & Gaskill, and paid to them; that the mortgage of the defendant, William Staiger, is second in execution and registry; and
30 that there is due upon the bond held by him, payment whereof was intended to be secured by his mortgage, the sum of \$2,805.00; that his mortgage debt is a second lien upon the mortgaged premises described in the said bill of complaint, and upon other land, and is entitled to be thirdly paid and satisfied out of the said mortgaged premises, in the proportion of the one-half part of the said mort-

gage debt, first deducting the sum of \$541.31 therefrom, due Mason and Gaskill as aforesaid, and pay the same to the complainant, Louis Satanov; that the mortgage of the Atlantic City Lumber Company is third in execution and registry; that there is due upon the bond held by it, payment whereof was intended to be secured by its mortgage, the sum of \$5,046.75; that its mortgage debt is a third lien upon the mortgaged premises described in the bill of complaint, and upon other land, and is entitled to be fourthly paid and satisfied out of the said mortgaged premises in the proportion of the one-eighth part of its said mortgage debt; that there should be fifthly paid the sum of \$541.31, due Mason and Gaskill as aforesaid, to the said defendant, William Staiger; that the judgment on lien claim of the defendants, Willis A. Herbert and Willis A. Herbert, Jr., trading as W. A. Herbert & Son, is a lien upon the mortgaged premises described in the bill of complaint; that there is due the defendants thereon the sum of \$420.20, which sum is entitled to be sixthly paid and satisfied out of the said mortgaged premises; that the judgment of the defendant, Atlantic City Lumber Company, is a lien upon the mortgaged premises described in the bill of complaint; that there is due the said defendant thereon the sum of \$4,046.53, which sum is entitled to be seventhly paid and satisfied out of the said mortgaged premises; that the judgment of the defendant, Joseph Levy, is a lien upon the mortgaged premises described in the bill of complaint; that there is due the said defendant thereon the sum of \$753.34, which sum is eighthly entitled to be paid and satisfied out of the said mortgaged premises; that the judgment of the defendant, William B. Riley, is a lien upon the mortgaged premises, described in the bill of complaint; that there is due the said defendant thereon

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the sum of \$755.29, which sum is entitled to be ninthly paid and satisfied out of the said mortgaged premises; that the judgment of the defendant, M. E. Blatt Co., is a lien upon the mortgaged premises, described in the bill of complaint; that there is due the said defendant thereon the sum of \$416.13, which sum is entitled to be tenthly paid and satisfied out of the said mortgaged premises; that the judgment of the defendant, William H. Devitt, trading as Paul
10 J. Devitt, is a lien upon the mortgaged premises, described in the bill of complaint; that there is due the said defendant thereon the sum of \$712.47, which sum is entitled to be eleventhly paid and satisfied out of the said mortgaged premises; and that it is advisable and necessary that the said mortgaged premises be sold to raise and satisfy the several sums of money so as aforesaid found to be due and owing to the complainants and defendants respectively, with insurance advanced of \$45.90, with interest and costs of suit.
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It is, thereupon, on this seventeenth day of June, A. D. 1925, by his Honor, Edwin Robert Walker, Chancellor of the State of New Jersey, ordered, adjudged and decreed, and the said Chancellor doth, by virtue of the power and authority of this court, hereby order, adjudge and decree that there is due the Atlantic City National Bank, for principal and interest on its mortgage, on the date of this decree, the sum of \$6,330.21; that there is due the complainant, Louis Satanov, for principal and interest
30 and insurance premium advanced, the sum of \$4,935.69, from which there shall be deducted the sum of \$541.31, which is to be paid to Mason & Gaskill on their mechanics' lien judgment; that there is due the defendant, William Staiger, on the day of the date hereof, for principal and interest on his mortgage, the sum of \$2,805.00, from which there

shall be deducted the sum of \$541.31, due Mason & Gaskill as aforesaid and paid to said complainant, Louis Satanov; that there is due the defendant, Atlantic City Lumber Company, on the day of the date hereof, for principal and interest on its mortgage, the sum of \$5,046.75; that there is then due the defendant, William Staiger, the sum of \$541.31, due Mason and Gaskill as aforesaid on the day of the date hereof; that there is due the defendants, Willis A. Herbert and Willis A. Herbert, Jr., trading as W. A. Herbert & Son, on the day of the date hereof, for principal and interest on their lien claim judgment, the sum of \$420.20; that there is due the defendant, Atlantic City Lumber Company, on the day of the date hereof, for principal and interest on its judgment, the sum of \$4,046.53; that there is due the defendant, Joseph I. Levy, on the day of the date hereof, for principal and interest on his judgment, the sum of \$753.34; that there is due the defendant, William B. Riley, on the day of the date hereof, for principal and interest on his judgment, the sum of \$755.29; that there is due the defendant, M. E. Blatt Co., on the day of the date hereof, for principal and interest on its judgment, the sum of \$416.13; that there is due the defendant, William H. Devitt, trading as Paul J. Devitt, on the day of the date hereof, for principal and interest on his judgment, the sum of \$712.47, together with lawful interest thereon on said several sums of money, respectively, to be computed from the date of this decree; that the mortgage of the complainant, Atlantic City National Bank, is first in order and priority of lien upon the mortgaged premises and is entitled to be first paid and satisfied out of these premises; that the sum of \$4,935.69, due the complainant, Louis Satanov, is entitled to be secondly paid, from which there is

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to be first deducted the sum of \$541.31 due Charles M. Mason and Berdell Gaskill, trading as Mason & Gaskill, as aforesaid, and to be paid to them; that the mortgage of the defendant, William Staiger, is entitled to be thirdly paid and satisfied out of the same, in the proportion of the one-half part of the debt hereby decreed to be due thereon, less the sum of \$541.31 due Mason & Gaskill as aforesaid, which is to be paid to the complainant, Louis Sat-
10 anov; that the mortgage of the defendant, Atlantic City Lumber Company, is fourth in order and priority of lien upon the mortgaged premises and is entitled to be fourthly paid and satisfied out of the same in the proportion of the one-eighth part of the debt hereby decreed to be due thereon; that the lien claim of Mason & Gaskill of \$541.31 shall then be paid to the defendant, William Staiger, as the fifth claim; that the lien claim judgment of the
20 defendants, Willis A. Herbert and Willis A. Herbert, Jr., trading as W. A. Herbert & Son, is entitled to be sixthly paid and satisfied out of the same; that the judgment of the defendant, Atlantic City Lumber Company, is entitled to be seventhly paid and satisfied out of the same; that the judgment of the defendant, Joseph L. Levy, is eighth in order and priority of lien and is entitled to be eighthly paid and satisfied out of the same; that the judgment of the defendant, William B. Riley, is ninth
30 in order and priority of lien and is entitled to be ninthly paid and satisfied out of the same; that the judgment of the defendant, M. E. Blatt Co., is tenth in order and priority and is entitled to be tenthly paid and satisfied out of the same; that the judgment of the defendant, William H. Devitt, trading as Paul J. Devitt, is eleventh in order and priority of lien upon the mortgaged premises and is entitled to be eleventhly paid and satisfied out of the same;

that the said mortgaged premises be sold to raise and satisfy the several debts or sums of money so as aforesaid due to the complainants and defendants, respectively, together with interest and costs of suit; that is to say, to pay and satisfy, in the first place, unto the complainant, Atlantic City National Bank, the sum of \$6,330.21, together with lawful interest thereon from the date of this decree; to pay and satisfy, in the second place, to the complainant, Louis Satanov, the sum of \$4,935.69, together with lawful interest thereon from the date last mentioned, from which there is to be deducted the sum of \$541.31, due Mason & Gaskill as aforesaid, with interest from the date of this decree, which is to be paid to them; both the amounts due the complainants, Atlantic City National Bank and Louis Satanov, to be paid, including a counsel fee of \$200.00, which is hereby allowed to the said complainants, including the costs of the search, amounting to \$40.26, to be included in the taxed costs; to pay and satisfy, in the third place, unto the defendant, William Staiger, the sum of \$1,402.50, together with lawful interest thereon from the date last mentioned, from which there is to be deducted \$541.31, the amount due Mason & Gaskill, as aforesaid, and which is to be paid to the said complainant, Louis Satanov; to pay and satisfy in the fourth place, unto the defendant, Atlantic City Lumber Company, \$630.84, together with lawful interest thereon from the date last mentioned, to pay and satisfy, in the fifth place, unto William Staiger the sum of \$541.31 paid to the said Mason & Gaskill, as aforesaid, with interest thereon from the date of this decree; to pay and satisfy, in the sixth place, unto the defendants, Willis A. Herbert and Willis A. Herbert, Jr., trading as W. A. Herbert & Son, the sum of \$420.20, together with lawful interest

thereon from the date last mentioned, with their costs to be taxed; to pay and satisfy, in the seventh place, unto the defendants, Atlantic City Lumber Company, the sum of \$4,046.53, together with lawful interest thereon from the date last mentioned; to pay and satisfy, in the eighth place, unto the defendant, Joseph I. Levy, the sum of \$753.34, together with lawful interest thereon from the date last mentioned; to pay and satisfy, in the ninth place, unto the defendant, William B. Riley, the sum of \$755.29, together with lawful interest thereon from the date last mentioned; to pay and satisfy, in the tenth place, unto the defendant, M. E. Blatt Co., the sum of \$416.13, together with lawful interest thereon from the date last mentioned; to pay and satisfy, in the eleventh place, unto the defendant, William H. Devitt, trading as Paul J. Devitt, the sum of \$712.47, together with lawful interest thereon from the date last mentioned; and that there
20 be included in the taxed costs of said complainants, a counsel fee of \$200.00, allowed to the complainants, together with the fees for the search of \$40.26; and that a writ of *feri facias* issue for that purpose out of this court, directed to the Sheriff of the County of Atlantic, commanding him to make sale according to law of the said mortgaged premises and that out of the money arising from said sale he pay to the said complainants, or their solicitor, the said debt, interest and costs, and to the said
30 several defendants, or their respective solicitors, their said several debts, interest and costs, and that in case more money shall be raised by said sale than shall be sufficient to answer such several payments, that such surplus be brought into this court, unless otherwise previously disposed of by this Court, and that the sheriff make return without delay of his proceedings by virtue of this writ.

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

E. R. WALKER,
C.

Respectfully advised.

R. H. INGERSOLL,
V. C.

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A true copy.

THOMAS BARBER,
Clerk.

ORDER AMENDING FINAL DECREE.

(Filed Sept. 25, 1925.)

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IN CHANCERY OF NEW JERSEY.

Between

ATLANTIC CITY NATIONAL
BANK, *et al.*,

Complainants,
and

ANDREW P. WILSON, *et*
als.,

Defendants.

No. 2. 55-626.

On Bill to Foreclose.
Amendment to Final
Decree.

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A final decree having been entered in the above-stated cause by which there was allowed to com-

plainants a search fee of \$40.26, and it appearing that only one-eighth of this search fee should be taxed in the costs in the above-entitled cause:

It is, on this twenty-fifth day of September A. D. 1925, ordered that the above-mentioned final decree be amended so that the search fee in the above-stated cause be \$5.03 instead of \$40.26 as therein stated.

E. R. WALKER,
C.

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

EXECUTION.

(Filed Oct. 2, 1925.)

20 NEW JERSEY, to wit:

THE STATE OF NEW JERSEY TO THE SHERIFF OF THE
COUNTY OF ATLANTIC, GREETING:

Whereas, on the seventeenth day of
June, in the year of our Lord one thou-
(Seal) sand nine hundred and twenty-five, by a
certain decree made in our Court of
Chancery, before our Chancellor, at
Trenton, in a certain cause therein depending,
30 wherein Atlantic City National Bank, a corporation
of the United States of America, and Louis Satanov,
are complainants, and Andrew P. Wilson, Sarah
Wilson, William Staiger, Atlantic City Lumber
Company, a corporation of New Jersey; Chelsea
National Bank, a corporation of the United States
of America; Willis A. Herbert and Willis A. Her-

bert, Jr., trading as W. A. Herbert & Son; John Murtland, John Wise, Malcolm B. Woodruff, late Sheriff of Atlantic County; Howard R. Cloud, present Sheriff of Atlantic County; Charles M. Mason and Berdell Gaskill, trading as Mason & Gaskill; Joseph I. Levy, William B. Riley, M. E. Blatt Company, a corporation of the State of New Jersey; Bankers Trust Company, a corporation of the State of New Jersey; William H. Devitt, trading as Paul J. Devitt; Alice Hohg and Mrs. C. Gass, are the defendants, it was ordered, adjudged and decreed that so much of certain mortgaged premises, with the appurtenances, in the bill of complaint, in the said cause particularly set forth and described, that is to say: ALL that certain lot or tract of land and premises situate in the City of Atlantic City, in the County of Atlantic and State of New Jersey, bounded and described as follows:

BEGINNING on the East line of Wilson Avenue, sixteen feet South from the intersection of the East line of Wilson Avenue with the South line of a seventeen feet wide street or alley, said point being one hundred and seventeen feet South from the Southerly line of Pacific Avenue, measured at right angles thereto, said point of intersection being also one hundred and thirty-five feet West of the West line of Providence Avenue, measured at right angles thereto, and running thence (1) Southwardly, in and along the Easterly line of Wilson Avenue, seventeen feet; thence (2) Eastwardly, and parallel with Pacific Avenue, sixty feet; thence (3) Northwardly, and parallel with Wilson Avenue, seventeen feet; thence (4) Westwardly, in, along and through the middle line of a party wall, sixty feet to the place of beginning.

Together with all and singular the rights, privileges, hereditaments and appurtenances thereunto

belonging, or in anywise appertaining, and the re-
versions and remainders, rents, issues and profits
thereof, and also all the estate, right, title, prop-
erty, interest, use, claim and demand of the said
defendants, of, in, to and out of the same as may
be necessary for the purpose, be sold, to pay and
satisfy, in the first place, unto the complainant, At-
lantic City National Bank, the sum of \$6,330.21, and
in the second place, unto the complainant, Louis
10 Satanov, the sum of \$4,935.69, from which there is
to be deducted the sum of \$541.31 due Charles M.
Mason and Berdell Gaskill, trading as Mason & Gas-
kill, on their mechanics' lien judgment, the said
amounts due to the complainants, being the prin-
cipal and interest secured by a certain mortgage
given by the defendants, Andrew P. Wilson and
Sarah, his wife, to Louis Satanov, one of the com-
plainants, dated June 5, 1923, for \$10,000, and as-
signed by Louis Satanov to the Atlantic City Na-
20 tional Bank, by assignment of mortgage, bearing
that date, together with lawful interest on said sev-
eral sums from the seventeenth day of June, A. D.
1925 until the same be paid and satisfied, and also
the costs of the complainants, Atlantic City Na-
tional Bank and Louis Satanov, and the costs of
the defendant, Mason & Gaskill; and in the third
place, unto the defendant, William Staiger, the sum
of \$1,402.50, the principal and interest in the pro-
portion of the one-half part, of a certain mortgage
made by Andrew P. Wilson and Sarah, his wife,
30 to the said defendant, William Staiger, dated June
5, 1923, for \$2500, covering the lot above described
with another lot, together with lawful interest
thereon from June 17, 1925, until the same be paid
and satisfied, from which there is to be deducted
the sum of \$541.31, the amount due Mason & Gas-
kill, as aforesaid, and which is to be paid to the

complainant, Louis Satanov; to pay and satisfy, in the fourth place, unto the defendant, Atlantic City Lumber Company, the sum of \$630.84, the principal and interest, in the proportion of the one-eighth part thereof, of a certain mortgage made by Andrew P. Wilson and Sarah, his wife, to the defendant, Atlantic City Lumber Company, in the sum of \$4500, dated June 8, 1923, covering the lot above described with other lots, together with lawful interest thereon from June 17, 1925, until the same be paid and satisfied; to pay and satisfy, in the fifth place, unto William Staiger, the sum of \$541.31, paid to the said Mason & Gaskill, on their mechanics' lien judgment, together with interest thereon from June 17, 1925, until the same be paid and satisfied, and also the costs of the said defendants, Mason & Gaskill; to pay and satisfy, in the sixth place, unto the defendants, Willis A. Herbert and Willis A. Herbert, Jr., trading as W. A. Herbert & Son, the sum of \$420.20 for their mechanics' lien judgment, recovered November 1, 1923, against Andrew P. Wilson, together with interest thereon from June 17, 1925, and also the costs of the said defendants, W. A. Herbert & Son; to pay and satisfy, in the seventh place, unto the defendant, Atlantic City Lumber Company, the sum of \$4,046.53 on their judgment against Andrew P. Wilson, recovered October 30, 1923, together with interest thereon from June 17, 1925, until the same be paid and satisfied; to pay and satisfy, in the eighth place, unto the defendant, Joseph I. Levy, the sum of \$753.34, on his judgment against Andrew P. Wilson, recovered November 1, 1923, together with interest thereon from June 17, 1925, until the same be paid and satisfied; to pay and satisfy, in the ninth place, unto the defendant, William B. Riley, the sum of \$755.29, on his judgment against Andrew P. Wilson, recov-

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ered November 1, 1923, together with interest thereon from June 17, 1925, until the same be paid and satisfied; to pay and satisfy, in the tenth place, unto the defendant, M. E. Blatt Co., the sum of \$416.13, on its judgment against Andrew P. Wilson, recovered November 23, 1923, together with interest thereon from June 17, 1925, until the same be paid and satisfied; to pay and satisfy, in the eleventh place, unto the defendant, William H. Devitt, trading as Paul J. Devitt, the sum of \$712.47, on his judgment against Andrew P. Wilson, recovered February 18, 1924, together with interest thereon from June 17, 1925, until the same be paid and satisfied, and for that purpose a writ of *feri facias* should issue, directed to the Sheriff of the County of Atlantic, commanding him to make sale as aforesaid; and that the surplus money arising from such sale, if any there be, should be brought into the said court, as by the said decree, remaining of record, in our said Court of Chancery, at Trenton, does and may more fully appear. And whereas, the costs of the complainants, Atlantic City National Bank and Louis Satanov, have been duly taxed at the sum of three hundred forty-seven dollars and thirty-seven cents; and the costs of the said defendants, Charles M. Mason and Berdell Gaskill, trading as Mason & Gaskill, have been duly taxed at the sum of twelve dollars and forty-two cents, and the costs of the said defendant, William Staiger, has been duly taxed at the sum of ten dollars and six cents; and the costs of the Atlantic City Lumber Company has been duly taxed at the sum of seven dollars and ninety-eight cents; and the costs of the defendants, Willis A. Herbert and Willis A. Herbert, Jr., trading as W. A. Herbert & Son, have been duly taxed at the sum of twelve dollars and forty-two cents; and the costs of the

defendant, Joseph I. Levy, have been duly taxed at the sum of ten dollars and six cents; and the costs of the defendant, William B. Riley, have been duly taxed at the sum of ten dollars and six cents; and the costs of the defendant, M. E. Blatt Company, have been duly taxed, at the sum of ten dollars and six cents; and the costs of the defendant, William H. Devitt, trading as Paul J. Devitt, have been duly taxed at the sum of ten dollars and six cents.

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Therefore, we command you that you cause to be made of the premises aforesaid, by selling so much thereof as may be necessary for the purpose, 1st, the said sum of \$6,330.21, together with lawful interest thereon as aforesaid, and the said sum of costs, with lawful interest thereon from the date of said decree; 2nd, the said sum of \$4,935.69, together with lawful interest thereon as aforesaid, out of which there is to be paid the said sum of \$541.31; 3rd, the said sum of \$1,402.50, together with lawful interest thereon as aforesaid, and said sum of costs with lawful interest thereon from the date of said decree; out of which there is to be deducted the said sum of \$541.31; 4th, the said sum of \$630.84, together with interest thereon as aforesaid, and said sum of costs with lawful interest thereon from the date of said decree; 5th, the said sum of \$541.31, together with interest thereon as aforesaid, and said sum of costs, with lawful interest thereon from the date of said decree; 6th, the said sum of \$420.20, together with interest thereon as aforesaid, and said sum of costs, with lawful interest thereon from the date of said decree; 7th, the said sum of \$4,046.53, together with interest thereon as aforesaid and said sum of costs with lawful interest thereon, from the date of said decree; 8th, the said sum of \$753.34, together with interest thereon as aforesaid and said

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sum of costs, with lawful interest thereon from the date of said decree; 9th, the said sum of \$755.29, together with lawful interest thereon as aforesaid and said sum of costs, with lawful interest thereon from the date of said decree; 10th, the said sum of \$416.13, together with lawful interest thereon as aforesaid and said sum of costs with lawful interest thereon from the date of said decree; 11th, the said sum of \$712.47, together with lawful interest thereon as aforesaid, and said sum of costs, with lawful interest thereon from the date of said decree, and that you have these moneys before our said Chancellor, in our Court of Chancery, at Trenton aforesaid, on the second day of January next, to render to the said complainants and defendants, and also the surplus money, if any there be, to abide the further order of our said court, according to the decree aforesaid. And you are to make return at the time and place aforesaid, by certificate under your hand, of the manner in which you shall have executed this our writ, together with this writ.

Witness, EDWIN ROBERT WALKER, our Chancellor, at Trenton aforesaid, the second day of October, A. D. 1925.

THOMAS BARBER,
Clerk.

JOHN C. SLAPE,
Solicitor.

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Recorded in the Clerk's Office of the Court of Chancery of the State of New Jersey, at Trenton, in Book F 11 of Executions, page 214, &c., and examined by me.

THOMAS BARBER,
Clerk.

ORDER AMENDING EXECUTION.

(Filed Dec. 11, 1925.)

IN CHANCERY OF NEW JERSEY.

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Between	No. 2. 55-626. On Bill, &c. Order Amending Fi. Fa.
ATLANTIC CITY NATIONAL BANK, <i>et al.</i> ,	
<i>Complainants,</i>	
and	
ANDREW P. WILSON, <i>et</i> <i>als.</i> ,	
<i>Defendants.</i>	20

On motion of John C. Slape, solicitor of the complainants, and upon inspection of the final decree and the execution issued pursuant thereto, it is, on this eleventh day of December, A. D. 1925,

Ordered that the writ of *feri facias de bonis et terris* heretofore in the above-entitled cause issued and delivered to the Sheriff of Atlantic County be amended, by inserting between the word "purpose" and numeral "1" and the letters "st," expressed "1st" in line 5 on page 6 thereof, the words, "and out of the proceeds thereof you do pay unto the said complainants and to the said several defendants, or to their respective solicitors."

And it is further ordered that the said writ be and the same is hereby further amended by insert-

ing on page 6, line 10, between the words "paid" and "the," the words, "and paid to Mason and Gas-kill, or to their solicitor aforesaid, together with interest and costs," to the end that the command thereof conform to the direction of the final decree in said cause.

Respectfully advised.

R. H. INGERSOLL,
V. C.

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ORDER AMENDING EXECUTION.

(Filed Dec. 23, 1925.)

IN CHANCERY OF NEW JERSEY.

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Between

ATLANTIC CITY NATIONAL
BANK, *et al.*,

Complainants,
and

ANDREW P. WILSON, *et*
als.,

Defendants.

No. 2. 55-626.
On Bill, &c.
Order Amending
Fi. Fa.

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On motion of John C. Slape, solicitor of the complainants, and upon inspection of the final decree and the execution issued pursuant thereto, it is, on this 23rd day of December, A. D. 1925,

Ordered that the writ of *feri facias de bonis et*

terris, heretofore in the above-entitled cause issued and delivered to the Sheriff of Atlantic County, be amended on page 6, on line 14, after the amount \$541.31, by inserting the following: "and which said sum of \$541.31 is to be paid to the said complainant, Louis Satanov," to the end that the command thereof conform to the direction of the final decree in said cause.

E. R. WALKER, 10
C.

Respectfully advised.

R. H. INGERSOLL,
V. C.

BILL TO FORECLOSE (ATLANTIC CITY
LUMBER CO.).

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(Filed March 28, 1924.)

IN CHANCERY OF NEW JERSEY.

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

Complainant, Atlantic City Lumber Company, a corporation of the State of New Jersey, doing business in the City and County of Atlantic, State of New Jersey, respectfully shows that: 30

1. On June 8th, 1923, Andrew P. Wilson, being indebted to the Atlantic City Lumber Company, executed to it his promissory note in the sum of \$4500 payable three months after date.

2. That to secure the payment of the said note, or any renewals thereof, the said Andrew P. Wilson and Sarah Wilson, his wife, executed to the Atlantic City Lumber Company a mortgage, and thereby conveyed to it in fee, the land hereinafter described, on the express condition that such conveyance should be void if payment should be made according to the terms of the said note. Which mortgage, 10 having been first duly acknowledged, and the certificate of acknowledgment duly endorsed thereon, was recorded in the Clerk's Office of Atlantic County, on June 16th, 1923, in Book 269 of Mortgages, page 14, &c.

3. That the mortgaged premises are located in Atlantic City, Atlantic County, New Jersey, and are described as follows:

20 All that certain lot, tract or parcel of land and premises situate, lying and being in the City of Atlantic City, County of Atlantic and State of New Jersey;

BEGINNING at the intersection of the east line of Wilson Avenue with the south line of a 17 foot wide street or alley, said point being 117 feet south of the southerly line of Pacific Avenue measured on a line parallel with the west line of Providence Avenue and 135 feet west of the west line of Providence Avenue 30 measured on a line parallel with the south line of Pacific Avenue and running thence (1) Southwardly, along the easterly line of Wilson Avenue 135.33 feet; thence (2) Eastwardly, and parallel with the southerly line of Pacific Avenue 60 feet; thence (3) Northwardly, and parallel with the westerly line of Providence Avenue

- 135.33 feet to the said 17 foot wide street or alley; thence (4) Westwardly along the southerly line of said street or alley 60 feet to the place of beginning.

4. That the mortgage contained an agreement that if any installment of interest should remain unpaid for 30 days after the same should fall due, then the whole principal sum, with all unpaid interest, should, at the option of the mortgagee, its representatives or assigns, become immediately due. 10

5. That the mortgage contained an agreement that if any tax, or other municipal charge, assessed against the land, and the buildings and improvements thereon, should remain unpaid for 90 days after the same should be due and collectible by law, then the whole principal sum, with all unpaid interest, should, at the option of the mortgagee, its representatives or assigns, become immediately due. 20

5a. On June 19, 1923, Andrew P. Wilson, Sr., and Andrew P. Wilson, Jr., entered into two recognizances to John Wise, each in the sum of \$2,000, conditioned that if Andrew P. Wilson, Sr., and Andrew P. Wilson, Jr., be condemned in a certain action against them by John Wise, they shall pay the costs and condemnation of the Court.

Any interest said John Wise may have in said lands by reason of said recognizances is subject to the lien of complainant's mortgage. 30

6. That on June 21st, 1923, Andrew P. Wilson and Sarah Wilson, his wife, made and executed a mortgage to the Chelsea National Bank to secure

the sum of \$42,900, which mortgage covers, *inter alia*, the above-described premises, and was recorded on June 22nd, 1923, in the Atlantic County Clerk's Office in Book 265 of Mortgages, page 170.

Any interest which the Chelsea National Bank may have in said premises is subject to the lien of complainant's mortgage.

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7. That on July 30th, 1923, Andrew P. Wilson and Sarah Wilson, his wife, made and executed a mortgage to John Murtland covering the above-described premises to secure the sum of \$3,807.60, which said mortgage was recorded in the Atlantic County Clerk's Office on August 15th, 1923, in Book 274 of mortgages, page 88.

Any interest which the said John Murtland may have in said premises is subject to the lien of complainant's mortgage.

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8. That on July 16th, 1923, Charles M. Mason and Berdell Gaskill, trading as Mason and Gaskill, builders, filed a lien claim against Andrew P. Wilson, which covers the above-described premises, and which is docketed in Lien Docket 4, page 423, in the Atlantic County Clerk's Office.

Any interest which the said Charles M. Mason and Berdell Gaskill, trading as Mason and Gaskill, may have in said premises is subject to the lien of complainant's mortgage.

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9. On November 3rd, 1923, Charles M. Mason and Berdell Gaskill, trading as Mason and Gaskill, entered a judgment on said mechanics' lien claim against Andrew P. Wilson, Louis Satanov, William Staiger and John Murtland.

Any interest which the said Charles M. Mason and Berdell Gaskill, trading as Mason and Gaskill, may have in said premises is subject to the lien of complainant's mortgage.

10. That on August 8th, 1923, Gary Wilson, alias Andrew Wilson, entered into a recognizance with the State of New Jersey conditioned for the appearance of Andrew Wilson on the 9th day of October, 10 1923.

Any interest which the State of New Jersey may have in said premises is subject to the lien of complainant's mortgage.

11. On September 13th, 1923, said Andrew P. Wilson entered into a replevin bond to Malcolm B. Woodruff, Sheriff of the County of Atlantic, conditioned for the prosecution by the said Andrew P. Wilson of a replevin suit against Craig Wilkinson 20 in the Atlantic County Circuit Court, and further conditioned to return said goods replevied if a return thereof should be awarded, otherwise to remain in full force and virtue; said bond was recorded on September 15th, 1923, in the Atlantic County Clerk's Office in Book S. B. 2, page 238; since that date the term of the said Malcolm B. Woodruff as sheriff has expired and Howard Cloud is now Sheriff of the County of Atlantic.

Any interest which the said Howard Cloud, 30 Sheriff of the County of Atlantic, may have in said premises is subject to the lien of complainant's mortgage.

12. On October 30th, 1923, said Atlantic City Lumber Company entered a judgment against An-

drew P. Wilson in the Atlantic County Circuit Court.

Any interest which the said Atlantic City Lumber Company may have in said premises is subject to the lien of complainant's mortgage.

10 13. On November 1st, 1923, Joseph I. Levy entered a judgment against Andrew P. Wilson in the Atlantic County Circuit Court.

Any interest which the said Joseph I. Levy may have in said premises is subject to the lien of complainant's mortgage.

14. On November 1st, 1923, William B. Riley entered a judgment against Andrew P. Wilson in the Atlantic County Circuit Court.

20 Any interest which the said William B. Riley may have in said premises is subject to the lien of complainant's mortgage.

15. That on November 1st, 1923, Willis A. Herbert and Willis A. Herbert, Jr., trading as W. A. Herbert & Son, builders, filed a lien claim against Andrew P. Wilson, covering the above-described premises, which is docketed in Lien Docket 4, page 452, in the Atlantic County Clerk's Office.

30 Any interest which the said Willis A. Herbert and Willis A. Herbert, Jr., trading as W. A. Herbert & Son, may have in said premises is subject to the lien of complainant's mortgage.

16. That on November 2nd, 1923, Andrew P. Wilson entered into a replevin bond to Malcolm B. Woodruff, Sheriff of the County of Atlantic, which said bond was filed in the replevin suit of Daniel

L. Collins against Andrew P. Wilson; that the same is conditioned for the return by the said Andrew P. Wilson to Daniel L. Collins of certain goods in said suit replevied, if the same should be adjudged to the said Daniel L. Collins; said bond was recorded on November 2nd, 1923, in the Atlantic County Clerk's Office in Book 2, page 245; that since that date the term of the said Malcolm B. Woodruff, as sheriff, has expired, and Howard Cloud is now Sheriff of Atlantic County. 10

Any interest which the said Howard Cloud, Sheriff of the County of Atlantic, may have in said premises is subject to the lien of complainant's mortgage.

17. On November 23rd, 1923, M. E. Blatt Co. obtained a judgment in the Atlantic City District Court against Andrew P. Wilson for the sum of \$380.61, which judgment was docketed on November 27th, 1923, in the Atlantic County Clerk's Office in Book 4, page 321. 20

Any interest which the said M. E. Blatt Co. may have in said premises is subject to the lien of complainant's mortgage.

18. On January 2nd, 1924, Bankers Trust Company obtained a judgment in the Atlantic County Circuit Court against Andrew P. Wilson for the sum of \$1,102.69, which was docketed in Book 13, page 443. 30

Any interest which the said Bankers Trust Company may have in said premises is subject to the lien of complainant's mortgage.

19. Said note fell due on the 10th day of September, 1923, and was renewed by the said Andrew P.

Wilson for three months, making the same payable on December 10th, 1923; that on said December 10th, 1923, he failed to pay the same.

20. That on September 10th, 1923, interest fell due on complainant's note and remained unpaid for more than 30 days thereafter, and no part thereof has yet been paid.

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21. That on the 1st day of October, 1922, there was assessed \$401.08 of taxes in favor of the City of Atlantic City against the mortgaged premises, which became due and payable one-half on the 1st day of April, 1923, and delinquent if not paid on or before the 1st day of June, 1923, and the other half payable on or before the 1st day of October, 1923, and delinquent if not paid on or before the 1st day of December, 1923; that said taxes payable on said 1st day of April and the 1st day of October were not paid, nor was a receipt for said taxes produced on or before the 1st day of June or the first day of December, 1923, and have remained due and owing to the said City of Atlantic City for a period of more than sixty days after the same became due and collectible by law.

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22. That by reason of the defaults mentioned in paragraphs 19, 20 and 21, complainant has elected that the whole principal sum of \$4500 of said note and mortgage with all unpaid interest shall be now due.

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23. That Lewis (fictitious) I. Dunn, Mae Gamber, Harry Grossman, Dora (fictitious) Strumpf, Edwin (fictitious) M. Veasey and Morris (fictitious)

S. Ingersoll, Irwin B. Croney, Edward (fictitious) Keinert, Harriett H. Shoen, John (fictitious) Ashhurst, John (fictitious) Wise, Andrew (fictitious) H. Anderson, Caroline Gass, Anna Dinke, Harry (fictitious) Harrold have always been in possession of said premises.

24. That of the principal sum, forty-five hundred (\$4500.00) dollars, with interest thereon from September 10th, 1923, is due upon the complainant's note and mortgage. 10

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

1. That Chelsea National Bank, John Murtland, John Wise, Charles M. Mason and Berdell Gaskill, trading as Mason and Gaskill; State of New Jersey, Howard Cloud, Sheriff of Atlantic County; Atlantic City Lumber Company, Joseph I. Levy, William B. Riley, Willis A. Herbert and Willis A. Herbert, Jr., trading as W. A. Herbert and Son; M. E. Blatt Co., Bankers Trust Company, Lewis (fictitious) I. Dunn, Mae Gamber, Harry Grossman, Dora (fictitious) Strumpf, Edwin (fictitious) M. Veasey and Morris (fictitious) S. Ingersoll, Irwin B. Croney, Edward (fictitious) Keinert, Harriett H. Shoen, John (fictitious) Ashhurst, John (fictitious) Wise, Andrew (fictitious) H. Anderson, Caroline Gass, Anna Dinke, Harry (fictitious) Harrold, Andrew P. Wilson and Sarah Wilson, who are defendants in this suit, may answer this bill of complaint without oath, and each statement therein made; 20 30

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

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

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

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

*Solicitors for and of Counsel
with Complainant.*

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FINAL DECREE.

(Filed June 10, 1925.)

IN CHANCERY OF NEW JERSEY.

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Between	}	On Bill to Foreclose. Final Decree.
ATLANTIC CITY LUMBER COMPANY, a corpora- tion,		
<i>Complainant,</i>		
and		
ANDREW P. WILSON, <i>et</i> <i>al.</i> ,		
<i>Defendants.</i>	20	

This cause coming on to be heard in the presence of Thompson & Hanstein, solicitors and of counsel with the complainant, and the complainant's bill having been heretofore taken as confessed against John Wise, L. I. Dunn, Mae Gamber, E. M. Veasey, Caroline Gass, Anna Dinke, Harry Harrold, Irwin B. Croney, Harriet H. Shoen, Lewis R. Ashurst, E. Keinert, Arthur Anderson, John Wise, State of New Jersey, Howard R. Cloud, Sheriff of Atlantic County; M. E. Blatt Company, Bankers Trust Company, Andrew P. Wilson and Sarah Wilson, some of the defendants; and

Whereas, a report was made and filed in this cause by Joseph A. Corio, Esquire, one of the Mas-

ters of this court, bearing date Augsut 29, 1924, which is hereinafter more specifically referred to; and

Whereas, exceptions were filed to said report and the same were argued before the Honorable Robert H. Ingersoll, Vice-Chancellor; and

Whereas, this Court, upon the advice of the said Vice-Chancellor, overruled said exceptions and entered an order confirming said Master's report; and

10 Whereas, it appears by said Master's report that there was due to the complainant on the day of the said report, for principal and interest on its mortgage, the sum of \$4,761.75, and to the following defendants the amount set opposite their respective names, to wit:

	Chelsea National Bank	\$45,316.70
	Mason & Gaskill	4,190.87
	John Murtland	4,035.42
	Atlantic City Lumber Co.	3,869.61
20	Joseph I. Levy	680.64
	William B. Riley	682.42
	W. A. Herbert & Son	395.59
	Paul J. Devitt	688.11

30 That the same premises are comprised in the respective mortgages of the complainant and Chelsea National Bank and John Murtland, and that the mortgage of the Atlantic City Lumber Company is first in registry and execution, and is entitled to priority of payment; that the mortgage of the Chelsea National Bank is second in registry and execution, and is entitled to be secondly paid; that the judgment of Mason & Gaskill is third in registry and execution, and is entitled to be thirdly paid; that the mortgage of John Murtland is fourth in registry and execution, and is entitled to be fourthly paid; that the judgment of Atlantic City Lumber Company is fifth in registry and execution, and is

entitled to be fifthly paid; that the judgment of Joseph I. Levy is sixth in registry and execution, and is entitled to be sixthly paid; that the judgment of William B. Riley is seventh in registry and execution and is entitled to be seventhly paid; that the judgment of W. A. Herbert & Son is eighth in registry and execution, and is entitled to be eighthly paid; that the judgment of Paul J. Devitt is ninth in registry and execution, and is entitled to be ninthly paid;

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And that it is necessary and advisable that the whole of the mortgaged premises should be sold to raise and pay the money so due as aforesaid;

And no cause being shown or appearing to the contrary:

It is, thereupon, on this tenth day of 1925, by Edwin Robert Walker, Chancellor of the State of New Jersey, ordered, adjudged and decreed, and the said Chancellor doth, by virtue of the power and authority of this Court, hereby order, adjudge and decree, that the said report, and all the matters and things therein contained, do stand ratified and confirmed, and that the said mortgaged premises be sold to raise and satisfy the several sums of money due to the said complainant and defendants, \$4,761.75, together with interest thereon to be computed from the 29th day of August, 1924, being the date of the Master's report, with the complainant's costs in this cause to be taxed; and in the second place, to pay unto the following defendants the amounts set opposite their respective names in the following order:

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Chelsea National Bank	\$45,316.70
Mason & Gaskill	4,190.87
John Murtland	4,035.42
Atlantic City Lumber Co.	3,869.61
Joseph I. Levy	680.64

William B. Riley	682.42
W. A. Herbert & Son	395.59
Paul J. Devitt	688.11

together with lawful interest thereon, as aforesaid, with their costs to be taxed.

And that a writ of *feri facias* do issue for that purpose out of this court, directed to the Sheriff of the County of Atlantic, commanding him to make sale, according to law, of the said mortgaged premises, and that out of the money arising from such sale, he pay to the complainant, or to its solicitor, its said debt, interest and costs;

And also to the aforesaid several defendants their said debts, interests and costs, in manner aforesaid, or to their several and respective solicitors;

And in case more money should be raised by the said sale than shall be sufficient to answer such several payments, that such surplus be brought into this court, to abide the further order of the Court, unless otherwise previously disposed of by the order of this Court; and that the said sheriff make return without delay of his proceedings by virtue of the said writ.

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

Respectfully advised.

30 R. H. INGERSOLL,
V. C.

PETITION OF EDWARD NICHOLSON.

(Filed Dec. 17, 1925.)

IN CHANCERY OF NEW JERSEY.

Between

THE ATLANTIC CITY NA-
TIONAL BANK and
LOUIS SATANOV,

Complainants,
and

ANDREW P. WILSON, *et*
als.,

Defendants.

On Bill to Foreclose.
Petition of Edward
Nicholson.

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

The petition of Edward Nicholson, of the City of Atlantic City, County of Atlantic and State of New Jersey, respectfully shows:

1. On or about the 28th day of March, 1924, the Atlantic City Lumber Company, of Atlantic City, New Jersey, filed its bill in this court to foreclose a certain mortgage made and executed by Andrew P. Wilson and Sarah, his wife, to said Atlantic City Lumber Company, bearing date of June 8, 1923, given to secure the payment of \$4500 covering cer-

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tain premises situate in the City of Atlantic City, County of Atlantic and State of New Jersey, and bounded and described as follows: BEGINNING at the intersection of the East line of Wilson Avenue with the South line of a 17 foot wide street or alley, said point being 117 feet South of the Southerly line of Pacific Avenue measured on a line parallel with the West line of Providence Avenue and 135 feet West of the West line of Providence Avenue, measured on a line parallel with the South line of Pacific Avenue and running thence (1) Southwardly, along the Easterly line of Wilson Avenue 135.33 feet; (2) Eastwardly and parallel with the Southerly line of Pacific Avenue 60 feet; (3) Northwardly, and parallel with the Westerly line of Providence Avenue, 135.33 feet to the said 17 foot wide street or alley; thence (4) Westerly along the Southerly line of said street or alley 60 feet to the place of beginning.

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2. In said suit to foreclose said mortgage said Atlantic City Lumber Company was complainant and Chelsea National Bank, John Murtland, John Wise, Charles M. Mason and Berdell Gaskill, trading as Mason and Gaskill; The State of New Jersey, Howard Cloud, Sheriff; Atlantic City Lumber Company, Joseph I. Levy, William B. Riley, Willis A. Herbert, Senior, and Willis A. Herbert, Junior, trading as Willis A. Herbert and Son; M. E. Blatt Company, Bankers' Trust Company, Louis I. Dunn (tenant), May Gamber (tenant), Harry Grossman (tenant), Dora Strumpf (tenant), Edwin M. Vesey (tenant), Morris M. Ingersoll (tenant), Irwin B. Croney (tenant), Edwin Keinert (tenant), Harriet H. Schoh (tenant), John Ashurst (tenant), John Wise (tenant), Andrew H. Anderson (tenant), Car-

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oline Gass (tenant), Anna Dinke (tenant), Harry Harrold (tenant), Andrew P. Wilson, Sarah Wilson, William H. Devitt, trading as Paul J. Devitt, were defendants.

3. On or about June 26, 1924, an interlocutory decree was entered in said suit whereby it was ordered that said bill should be taken as confessed as against said defendants and referring said matter to Joseph A. Corio, Master, to report.

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4. On or about October 15, 1924, said Master filed his report, reporting that there was due complainants and defendants in the following order of priority: Complainant, \$4,761.75; Chelsea National Bank, \$45,316.70; Mason and Gaskill, \$4,190.87; John Murtland, \$4,035.42; Atlantic City Lumber Company, \$3,869.61; Joseph I. Levy, \$680.64; William B. Riley, \$682.42; William A. Herbert and Son, \$395.59; Paul J. Devitt, \$688.11.

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5. On or about the 10th day of June, 1925, a final decree was entered in said suit confirming the report of said Master and ordering that the mortgaged premises be sold to pay the sums reported due the complainant and defendants in the order of priority above described and that execution be issued to the Sheriff of Atlantic County commanding him to make sale of the mortgaged premises to raise and pay the sums reported due. Surplus money, if any, to be paid into court. Defendants stand absolutely debarred and foreclosed of and from all equity and redemption.

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6. On August 19, 1925, said Sheriff of Atlantic County exhibited said property for sale at public

auction, under execution issued under said decree, and said property was struck off and sold to your petitioner as the highest bidder for the sum of \$5,527.73. Shortly thereafter your petitioner delivered to the said sheriff the sum of \$4,979.39, representing the balance of the purchase price of said premises and said sheriff thereupon delivered to your petitioner a deed conveying said premises to your petitioner, said deed is dated September 3,
10 1925, and is recorded in Book 787 of Deeds for Atlantic County, pages 123, etc.

7. Subsequent to the institution of the foreclosure proceedings hereinabove recited and before final decree therein and on or about May 1st, 1924, bills of complaint were filed by the Atlantic City National Bank and Louis Satanov in the present suits to foreclose eight certain mortgages in the sum of \$10,000 each, made and executed by said Andrew P. Wilson and Sarah, his wife, to Louis Satanov, dated June 5th, 1923, covering the same premises hereinabove set forth, which were the subject of the foreclosure suit instituted by the said Atlantic City Lumber Company. Said mortgages were assigned on June 7, 1923, by said Louis Satanov to said Atlantic City National Bank. In said suit said Atlantic City National Bank and Louis Satanov are complainants and Andrew P. Wilson and Sarah Wilson and William Staiger, Atlantic City Lumber Company, Chelsea National Bank, and Willis A. Herbert, Senior and Willis A. Herbert, Junior, trading as Willis A. Herbert and Son, John Murtland, John Wise, Malcolm B. Woodruff, sheriff, Howard P. Cloud, sheriff, Charles M. Mason and Berdell Gaskill, trading as Mason and Gaskill, Joseph I. Levy, William B. Riley, M. E. Blatt Company, Bankers Trust Com-
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pany, William H. Devitt, trading as Paul J. Devitt, Alice Hohg, Harry Harrold, are defendants.

9. On August 19th, 1925, and prior to the sale of said premises by the sheriff aforesaid, a final decree was filed in said suits, by which it was ordered that there was due as follows: Atlantic City National Bank, \$6,330.21; Louis Satanov, \$4,935.60, from which deduct \$541.31; to be paid Mason and Gaskill; William Staiger, \$2,805.00, from which deduct \$541.31; to be paid Mason and Gaskill; Atlantic City Lumber Company, \$5,046.75; William Staiger, \$541.31, due Mason and Gaskill; Willis A. Herbert and Son, \$420.20; Atlantic City Lumber Company, \$446.53; Joseph I. Levy, \$753.34; William B. Riley, \$755.29; M. E. Blatt Company, \$416.13; William H. Devitt, \$712.47. Further ordered that payments shall be made in the sums and order of priority as above decreed and that execution for sale of mortgaged premises issue to sheriff of Atlantic County. Surplus money, if any, to be paid into court. Defendants stand absolutely debarred and foreclosed of and from all equity and redemption.

10. In pursuance of said decrees execution was issued to the said sheriff of Atlantic County and said sheriff exhibited said property for sale at public auction and said property was struck off and sold to your petitioner as the highest bidder on December 3, 1925, for the total sum of \$118,475 and your petitioner paid to said sheriff the sum of \$11,847.50 required as a deposit upon said purchase price your petitioner is further about to pay to said sheriff the balance due upon said purchase price.

11. Upon the purchase of said premises by your petitioner at the foreclosure sale first mentioned,

wherein said Atlantic City Lumber Company was complainant, the liens of all the defendants in said suit who were the holders of encumbrances on said premises subsequent to the Atlantic City Lumber Company were extinguished and said defendants were barred of all further rights in said property. All of the defendants who were the holders of encumbrances upon said premises subsequent to the Atlantic City Lumber Company, or your petitioner, who were named in the final decree filed in the present suit are the same defendants named in the final decree filed in said former suit and said defendants have no interest in the moneys arising from the sale under foreclosure in the present suit.

Your petitioner therefore prays that said sheriff of Atlantic County, after paying and satisfying the encumbrances upon said property held by the Atlantic City National Bank, Louis Satanov, Mason and Gaskill, and William Staiger (which said last-mentioned encumbrance your petitioner is informed and believes has been purchased by the said Louis Satanov) may pay the balance of the money arising from said sale to your petitioner and that in the meantime said sheriff of Atlantic County may be ordered to desist and refrain from making payment in any other manner.

Your petitioner further prays that your Honor may order said defendants, Willis A. Herbert, Senior, and Willis A. Herbert, Junior, trading as Willis A. Herbert and Son, Atlantic City Lumber Company, Joseph I. Levy, William B. Riley, M. E. Blatt Company and William H. Devitt to show cause for the Honorable Robert H. Ingersoll, one of the Vice-Chancellors of this Court at the Chancery

Chambers at Atlantic City, New Jersey, at some short day, why the prayer of this petition should not be granted.

And your petitioner will ever pray, etc.

Solicitors of Petitioner.

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

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EDWARD NICHOLSON, of full age, being duly sworn according to law, on his oath deposes and says:

1. I am the petitioner named in the foregoing petition. I am familiar with the contents of the said petition and the matters and things therein contained are true.

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2. I am informed and believe that on or about the 28th day of March, 1924, the Atlantic City Lumber Company of Atlantic City, New Jersey, filed a bill in the Court of Chancery of New Jersey to foreclose a certain mortgage made and executed by Andrew P. Wilson and Sarah, his wife, to said Atlantic City Lumber Company, dated June 8, 1923, in the sum of \$4500 covering certain lands and premises in the City of Atlantic City, in the County of Atlantic and State of New Jersey, which said lands and premises are located on the east line of Wilson Avenue in said city and are described in the petition hereto annexed.

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3. I am further informed and believe that in said foreclosure suit, said Atlantic City Lumber Com-

pany was complainant and Chelsea National Bank, John Murtland, John Wise, Charles M. Mason and Burdell Gaskill, trading as Mason and Gaskill, the State of New Jersey, Howard Cloud, sheriff, Atlantic City Lumber Company, Joseph I. Levy, William B. Riley, Willis A. Herbert, Senior, and Willis A. Herbert, Junior, trading as Willis A. Herbert and Son, M. E. Blatt Company, Bankers Trust Company, Louis I. Dunn (tenant), May Gamber (tenant), Harry Grossman (tenant), Dora Strumpf (tenant), Edwin M. Vesey (tenant), Morris M. Ingersoll (tenant), Irwin B. Croney (tenant), Edwin Keinert (tenant), Harriet H. Schoh (tenant), John Ashurst (tenant), John Wise (tenant), Andrew H. Anderson (tenant), Caroline Gass (tenant), Anna Dinke (tenant), Harry Harrold (tenant), Andrew P. Wilson, Sarah Wilson, William H. Devitt, trading as Paul J. Devitt, were defendants.

20 4. I am further informed and believe that on June 26, 1924, an interlocutory decree was entered whereby it was ordered that said bill should be taken as confessed as against said defendants and referring said matter to Joseph A. Corio, Master, to report; that said Master filed his report on or about October 15, 1924, setting forth the amounts due complainant and defendants and the order of priority thereof.

30 5. I am further informed and believe that a final decree was entered in said suit on or about June 10, 1925, by which decree the report of said Master was confirmed and it was there ordered that said mortgaged premises be sold to pay the sums reported due the complainant and the defendants and that execution be issued to the sheriff of Atlantic County

to put said property up for sale at public auction. I attended said sale and bid upon said property and was the highest bidder therefor and the sheriff struck off said property to me as the highest bidder for the sum of \$5,527.73. A short time thereafter I paid to the sheriff the sum of \$4,979.39, representing the balance of the purchase price of said premises, and said sheriff thereupon delivered to me a deed conveying said premises to me. Said deed is dated September 3, 1925, and I caused the same to be recorded in the office of the clerk of Atlantic County and said deed is recorded in Book 787 of Deeds for said Atlantic County, pages 123, etc. 10

6. I am further informed and believe that on or about May 1st, 1924, which was subsequent to the institution of the foreclosure suit above recited, bills of complaint were filed by the Atlantic City National Bank and Louis Satanov to foreclose eight certain mortgages in the sum of \$10,000 each, made and executed by said Andrew P. Wilson and Sarah Wilson, his wife, to Louis Satanov, dated June 5, 1923, covering the same premises which were the subject of the foreclosure suit instituted by the said Atlantic City Lumber Company. Said mortgages were executed prior to the mortgage held by the said Atlantic City Lumber Company and were assigned on June 7, 1923, by said Louis Satanov to said Atlantic City National Bank. In said suit said Atlantic City National Bank and Louis Satanov were complainants and Andrew P. Wilson and Sarah Wilson, his wife, William Staiger, Atlantic City Lumber Company, Chelsea National Bank, Willis A. Herbert, Senior, and Willis A. Herbert, Junior, trading as W. A. Herbert and Son, John Murtland, John Wise, Malcolm B. Woodruff, sheriff, Howard P. Cloud, 20 30

sheriff, Charles M. Mason and Berdell Gaskill, trading as Mason and Gaskill, Joseph I. Levy, William B. Riley, M. E. Blatt Company, Bankers Trust Company, William H. Devitt, trading as Paul J. Devitt, Alice Hohg, Harry Harrold, defendants.

7. I am further informed and believe that on August 19, 1925, a final decree was entered in the said last-mentioned foreclosure suit, setting forth the
10 amounts due the complainants and defendants in the order of priority of said payments, and ordering that payments should be made in the sums in order of priority as therein decreed and that execution for the sale of said premises, issue to the sheriff of Atlantic County, surplus money, if any, to be paid into Court. Defendants stand absolutely debarred and foreclosed of and from all equity and redemption.

20 8. Said sheriff of Atlantic County put up said property for sale at public auction on December 2, 1925. I attended said sale and bid upon said property and the property was struck off to me as highest bidder, and I paid to the sheriff immediately at the conclusion of said sale a deposit required by said sheriff amounting to ten per cent of its purchase price, or \$11,847.50. A balance of said purchase price is due and payable two or three weeks from the date of said sale and I expect to make payment of said
30 balance whenever the same is due and payable and is demanded of me by said sheriff.

9. I am further informed and believe that the defendants who were the holders of encumbrances upon the said premises subsequent to the mortgage of the said Atlantic City Lumber Company and whose rights and priorities were set forth in the

final decree filed in the said foreclosure suit instituted by the Atlantic City Lumber Company are the same defendants set forth in the final decree filed in the present suit as the holders of liens subsequent to said Atlantic City Lumber Company or myself.

Petitioner.

Sworn and subscribed to before me this day 10
of December, 1925.

ORDER TO SHOW CAUSE.

(Filed Dec. 17, 1925.)

IN CHANCERY OF NEW JERSEY.

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Between	}	On Bill, etc. Order to Show Cause.
ATLANTIC CITY NATIONAL BANK and LOUIS SAT- ANOV,		
<i>Complainants,</i> and		
ANDREW P. WILSON, <i>et</i> <i>al.,</i> <i>Defendants.</i>		

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A petition duly verified having been presented herein by the petitioner, Edward Nicholson, setting forth that prior to the institution of the foreclosure proceedings in the above-entitled cause of action, a

bill was filed by the Atlantic City Lumber Company to foreclose a certain mortgage covering the premises which are the subject of the foreclosure proceedings in the present cause of action, which said mortgage was held by the Atlantic City Lumber Company and was executed subsequent to the mortgages upon which foreclosure proceedings were instituted herein; and that a final decree in said foreclosure suit instituted by said Atlantic City Lumber Company was duly made and entered, setting forth the amounts due the complainants and defendants therein, all of which defendants named in said final decree as the holders of encumbrances upon said property, to wit: Atlantic City Lumber Company, John Murtland, Joseph I. Levy, William B. Riley, William A. Herbert and Son, and Paul J. Devitt, are defendants in the present suit; and that the said property was purchased at foreclosure sale on said mortgage held by the Atlantic City Lumber Company by the petitioner herein; and it further appearing that subsequent to the institution of the foreclosure proceedings by the Atlantic City Lumber Company and to final decree therein, bills of complaint were filed in the present suits and that the final decree herein was entered before the sale of the said premises, under the foreclosure proceedings in the said former suit; and it further appearing that the defendants who were the holders of encumbrances in said former suit, are the same defendants named in the final decree as holders of encumbrances in the present suit; and it further appearing that said premises have been purchased at foreclosure sale by the petitioner in the present suit; and the petitioner praying that the sheriff of Atlantic County, after paying and satisfying the encumbrances upon said property held by The Atlantic City National Bank, Louis Satanov, Mason and

Gaskill, and William Staiger, may pay the balance of the money arising from said sale to the petitioner, and that in the meantime said sheriff of Atlantic County may be ordered to desist and refrain from making payment in any other manner.

It is, on this 17th of December, 1925, ordered that the said defendants: The Atlantic City Lumber Company, John Murtland, Joseph I. Levy, William B. Riley, William A. Herbert and Son, and Paul J. Devitt, show cause on the 22nd day of December, 10
1925, before the Chancellor or such Vice-Chancellor of this court as may sit for him in the Chancery Chambers, Atlantic City, New Jersey, at 10 o'clock in the forenoon, or as soon thereafter as counsel can be heard, why the prayer of said petitioner should not be granted and why the said sheriff of Atlantic County should not be ordered and directed, after paying and satisfying the said encumbrances upon said property held by the Atlantic City National Bank, Louis Satanov, Mason and Gaskill, and Wil- 20
liam Staiger, to pay the balance of the money arising from said sale to the petitioner.

And it is further ordered that the said sheriff of Atlantic County in the meantime and until the further order of this Court, desist and refrain from paying the balance of the money arising from said sale, after the payment of the encumbrances held by the Atlantic City National Bank, Louis Satanov, Mason & Gaskill, and William Staiger, to any person whomsoever. 30

And it is further ordered that copies of this rule to show cause be served on said defendants and upon said sheriff of Atlantic County within two days of the date hereof and the same may be certified by the solicitor of the petitioner to be true copies thereof.

E. R. WALKER,
Chancellor.

[ENDORSED]

Dec. 17, 1925.

We hereby certify that the within is
a true copy of order to show cause al-
lowed in the above-stated cause on the
17th day of December, 1925.

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Bourgeois & Coulomb,
Solicitors for and of Counsel
with Petitioner.

CONCLUSIONS.

(Filed May 27, 1929.)

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IN CHANCERY OF NEW JERSEY.

Between	THE ATLANTIC CITY NA-	}	On Bill to Foreclose. On Petition for Surplus. Conclusions.
	TIONAL BANK, <i>et al.</i> ,		
	<i>Complainants,</i>		
	and		
30	ANDREW P. WILSON, <i>et</i>		
	<i>als.,</i>		
	<i>Defendants.</i>		

These conclusions are not to be published in the
official or unofficial reports.

Messrs. Bourgeois & Coulomb for petitioner, Edward Nicholson.
 Mr. U. G. Styron, for petitioner, Louis Satanov.
 Mr. John C. Slape and Mr. John B. Slack for complainant, Atlantic City National Bank.
 Messrs. Thompson & Hanstein for defendant, Atlantic City Lumber Company.
 Mr. Elwood C. Weeks for defendants, W. A. Herbert & Son and Mason & Gaskill.
 Mr. John C. Reed for defendant, Andrew P. Wilson. 10
 Mr. Herbert R. Voorhees for defendant, William Staiger.
 Mr. Joseph H. Carr for defendant, William H. Devitt.
 Messrs. Gorson & Gorson for defendants, Levy and Stern.
 Mr. Louis E. Stern for defendant, M. E. Blatt Co.

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INGERSOLL, V. C.:

The supplemental brief filed by one of the solicitors for Satanov, states the facts as follows:

“This is a contest over the disposition of two funds arising out of mortgage foreclosure proceedings—one fund in the hands of a receiver appointed in the cause and consisting of rents collected *pendente lite*, and the other being proceeds of sale of the mortgaged premises.” 30

The controversy is between the purchaser at the sheriff's sale, and encumbrancers whose debts were ascertained and the lien and priority thereof established by the final decree.

The persons chiefly concerned with the contro-

versy are Edward Nicholson, the petitioner, whose claim to the fund is based upon the fact that he purchased the mortgaged premises at the sheriff's sales and holds the sheriff's deeds; Louis Satanov, a first mortgagee; William Staiger, a second mortgagee (whose interest has been secured by Satanov); Atlantic City Lumber Company, a third mortgagee; Mason & Gaskill, judgment mechanic's lien claimants and Atlantic City Lumber Company, holder of
10 a judgment lien upon the mortgaged premises.

The relation of these parties to this controversy and their respective claims to the funds arose out of the following circumstances:

On June 5, 1923, Andrew P. Wilson owned a parcel of land approximately 135 feet front by 65 feet deep, on Wilson Avenue in Atlantic City, and on that date, he mortgaged the property in fee (by 8 separate mortgages) to Satanov, to secure \$80,000. These mortgages were duly recorded and on the
20 same day assigned as collateral to Atlantic City National Bank.

On the same day, June 5, 1923, Wilson executed four other mortgages on the same land to William Staiger, to secure \$10,000 (\$2500 each) which were also seasonably recorded.

On June 8, 1923, Wilson again mortgaged the land, this time to the Atlantic City Lumber Company to secure \$4500 which mortgage was likewise recorded and was a third lien thereon.

30 On July 16, 1923, Mason & Gaskill filed a mechanic's lien claim against the building and lands for the sum of \$3946.42, making the three prior mortgagees parties. Neither Satanov nor Staiger contested the priority of the lien claim, with the result that judgment by default was entered. A statutory priority of the Mason & Gaskill lien claim

judgment over the 1st and 2nd mortgages was thus established.

On October 30, 1923, the Atlantic City Lumber Company recovered a judgment against Wilson for \$3645.11.

This left the respective priorities of the liens of the several encumbrances, at this juncture standing as follows:

1. The Satanov mortgage (second as to Mason & Gaskill mechanic's lien judgment). 10
2. The Staiger mortgage (third as to Mason & Gaskill).
3. The Atlantic City Lumber Company mortgage. (But with priority of lien until paid over the Satanov and Staiger mortgages).
4. The judgment of the Atlantic City Lumber Co. 20

Subsequently a number of judgments were recovered against Wilson during the period of his ownership, and became liens on the land, but they are not involved in this controversy.

On March 28, 1924, the Atlantic City Lumber Co. filed a bill to foreclose its third mortgage, bringing in as parties defendant, Wilson, the mortgagor and all incumbrancers subsequent to its mortgage. Neither the Atlantic City National Bank nor Satanov, nor Staiger were—nor could they have properly been included as parties defendant. On June 26, 1924, a decree *pro confesso* was entered. On October 15, 1924, the Master's report was made, and on June 10, 1925, a final decree entered in the cause confirmed the Master's report, ascertained the debts 30

due the several parties complainant and defendants, and the order of priority of payment as between themselves and condemned the mortgaged premises to sale to raise and pay the moneys so ascertained and decreed. On August 19, 1925, the mortgaged premises were brought to sale to satisfy this decree and were sold by the sheriff and purchased by the petitioner, Nicholson, for \$5527.73, the amount of his bid. This sum about equalled the amount decreed to complainant so that no surplus remained to be paid by the sheriff into court.

The sheriff satisfied the complainant's decree from the proceeds of sale and by his deed transferred title to the purchaser. The lien of the third mortgage was thus extinguished, the interest of the third mortgagee and of the mortgagor passed to the purchaser, and the mortgage itself as an element for consideration on this motion has wholly disappeared from the case.

On May 1, 1924, a little more than two months after proceedings to foreclose the third mortgage was commenced, the Atlantic City National Bank and Louis Satanov joined in filing a bill of complaint to foreclose the first mortgage, making parties defendant all junior encumbrancers, including Staiger, the 2nd mortgagee and Atlantic City Lumber Co., the third mortgagee, whose foreclosure suit was then pending. On June 17, 1925, a final decree was made, which was filed August 19, 1925, which decree in like manner ascertained the amounts and decreed the payment of the debts of the complainants and each subsequent encumbrancer, declares that they are entitled to have their respective debts made out of the mortgaged premises, condemns the premises to sale to make the debts so decreed, and decrees the payment thereof out of the proceeds of sale in the order of priority therein ascertained. This

decree finds the amount due the defendant, Atlantic City Lumber Co., and decreed its payment. Pursuant to this decree and the execution issued thereon, the sheriff, on December 3, 1925, again sold the premises and Nicholson, the petitioner, was again the purchaser for his bid of \$117,475.00, and in due course received the sheriff's deed. That sum was sufficient to pay the complainant's decree in full, leaving a surplus to be applied to the payment to subsequent incumbrancers. That surplus and the rents collected by the receiver appointed in this cause, and the application thereof has occasioned the present controversy. 10

Nicholson, the petitioner, claims priority of right in the distribution of the surplus money resting his right upon the fact that he is the owner of the property by virtue of the sheriff's deed and by the force and effect of the final decree in the third mortgage foreclosure suit; Satanov, on the other hand claims to be entitled to the surplus and rents by force of the final decree in the first mortgage foreclosure suit to the extent necessary to pay the balance of the debt decreed to be paid upon the second mortgage. 20

The final decree in this cause expressly provides: That the said mortgaged premises be sold to raise and satisfy the said several debts and sums of money, so as aforesaid due to the complainants and defendants, respectively, * * * that is to say, to pay and satisfy in the first place unto the complainant, Atlantic City National Bank, the sum of \$6330.21, * * * ; to pay and satisfy in the second place to the complainant, Louis Satanov, the sum of \$4935.69, * * * from which is to be deducted the sum of \$541.31, due Mason & Gaskill, as aforesaid, * * * which is to be paid to them; both the amounts due the complainants, Atlantic City National Bank and 30

Louis Satanov to be paid * * * including, &c., * * * ; to pay and satisfy in the third place unto the defendant, William Staiger, the sum of \$4092.50 * * * from which is to be deducted \$541.31, the amount due Mason & Gaskill, as aforesaid, and which is to be paid to the said complainant, Louis Satanov; to pay and satisfy in the fourth place unto the defendant, Atlantic City Lumber Company, \$630.84, * * * ; to pay and satisfy in the fifth place unto William
 10 Staiger the sum of \$541.31, paid to the said Mason & Gaskill as aforesaid, * * * .

Both decrees contain the clause that: The defendants stand absolutely debarred and foreclosed of and for all equity of redemption of, in and to the said mortgaged premises when sold as aforesaid by virtue of this decree.

Nicholson claims both funds and the basis of his claim is that he purchased at sheriff's sale the equity of redemption mortgaged to the Atlantic City Lum-
 20 ber Company, and that the sheriff's deed operated as an assignment of the priority of claim which that mortgage enjoyed in the decree in the Atlantic City National Bank foreclosure suit.

The claim of Satanov is that as owner of the Staiger mortgage, he is entitled to have that mortgage satisfied in accordance with its priority as originally ascertained and ordered paid by the decree in the Atlantic City National Bank suit, and as modified by the payment of the third mortgage and
 30 the Mason & Gaskill claim, subsequent to decree."

In *Gifford v. McGuinness*, 63 N. J. Eq. 834, the Court of Errors and Appeals said: "We entirely assent to the view that any Court may compel money raised by its process to be brought into court for distribution, and that from an order made for that purpose no one suffers an appealable grievance. To obtain an order merely for such payment neither

written pleading nor proof is essential. The Court is merely enforcing a regulation customarily dispensed with. Presumably the money will be paid as previously adjudged. The only burden will be that of notice to interested parties."

In *Schreiver v. Green*, 90 N. J. Eq. 333, it was held: "Rents collected by a receiver in a foreclosure suit will be disbursed according to the order of priority ascertained by the final decree irrespective of the party upon whose application the receiver 10 was appointed."

As to the funds in the sheriff's hands, Chancellor Green in *Lithauer v. Royle*, 17 N. J. Eq. 40, stated the law to be, "The decree and execution in this case contains specific directions for the appropriation of the proceeds of sale * * *. No change in the mode of appropriating the fund can be made, excepting by opening and correcting the decree and altering the execution. This can only be done upon notice." This is still the law. 20

No application has been made to amend the final decree and executions in the foreclosure proceeding in which the alleged surplus money accrues.

It therefore follows that upon the record as it now appears, payments of said funds must be made in order of priority as set forth in the final decree and executions.

Determined: May 27th, 1929.

ORDER OF DISMISSAL.

(Filed June 4, 1929.)

IN CHANCERY OF NEW JERSEY.

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Between

ATLANTIC CITY NATIONAL
BANK,*Complainant,*

and

ANDREW P. WILSON, *et*
*al.,**Defendants.*On Petition, &c.
Order.

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An order to show cause having been allowed in the above-entitled cause upon the petition of Edward Nicholson, and the matter having come on to be heard before Honorable Robert H. Ingersoll, one of the Vice-Chancellors of this Court, and the Court being of the opinion that the order to show cause should be dismissed.

It is, therefore, on this 4th day of June, 1929,
30 ordered, adjudged and decreed, that that certain order to show cause bearing date December 17th, 1925, be, and the same is hereby dismissed.

E. R. WALKER,

C.

Respectfully advised,

R. H. INGERSOLL,

V. C.

A true copy.

FERD GARRETSON,
Clerk.

SUPPLEMENTAL PETITION.

(Filed May 31, 1929.)

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No. 3 55-621.

IN CHANCERY OF NEW JERSEY.

Between

THE ATLANTIC CITY NA-
TIONAL BANK and LOUIS
SATANOV,

Complainants,
and

ANDREW P. WILSON, *et*
al.,

Defendants.

} On Bill to Foreclose.
Supplemental Peti- 20
tion of Edward
Nicholson.

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

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The supplemental petition of Edward Nicholson, of the City of Atlantic City, County of Atlantic, and State of New Jersey, respectfully shows:

1. On or about the 28th day of March, 1924, the Atlantic City Lumber Company, of Atlantic City,

N. J., filed its bill in this court, to foreclose a certain mortgage made and executed by Andrew P. Wilson and Sarah, his wife, to said Atlantic City Lumber Company, bearing date June 8th, 1923, given to secure the payment of \$4,500, covering certain premises situate in the City of Atlantic City, County of Atlantic and State of New Jersey, and bounded and described as follows:

10 BEGINNING at the intersection of the East line of Wilson Avenue with the South line of a 17 foot wide street or alley, said point being 117 ft. South of the Southerly line of Pacific Avenue measured on a line parallel with the West line of Providence Avenue and 135 feet West of the West line of Providence Avenue, measured on a line parallel with the South line of Pacific Avenue and running thence (1) Southwardly, along the Easterly line of Wilson Avenue 135.35 ft.; (2) Eastwardly and parallel with the Southerly line of Pacific Avenue 60 ft.; 20 (3) Northwardly, and parallel with the West-erly line of Providence Avenue, 135.33 ft. to the said 17 foot wide street or alley; thence (4) Westerly along the Southerly line of said Street or alley 60 ft. to the place of beginning.

2. In said suit to foreclose said mortgage, said Atlantic City Lumber Company was complainant and Chelsea National Bank, John Murtland, John 30 Wise, Charles M. Mason and Berdell Gaskill, trading as Mason and Gaskill, the State of New Jersey, Howard Cloud, sheriff, Atlantic City Lumber Company, Joseph I. Levy, William B. Riley, Willis A. Herbert, Sr., and Willis A. Herbert, Jr., trading as Willis A. Herbert and Son, M. E. Blatt Company, Bankers Trust Company, Louis I. Dunn (tenant),

May Gamber (tenant), Harry Grossman (tenant), Dora Strumpf (tenant), Edwin M. Vesey (tenant), Morris M. Ingersoll (tenant), Irwin B. Croney (tenant), Edwin Keinert (tenant), Harriet H. Schoh (tenant), John Ashurst (tenant), John Wise (tenant), Andrew H. Anderson (tenant), Caroline Cass (tenant), Anna Dinke (tenant), Harry Harrold (tenant), Andrew P. Wilson, Sarah Wilson, and William H. Devitt, trading as Paul J. Devitt, were defendants.

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3. On or about June 26th, 1924, an interlocutory decree was entered in said suit, whereby it was ordered that said bill should be taken as confessed as against said defendants, and referring said matter to Joseph A. Corio, Master, to report.

4. On or about October 15th, 1924, said Master filed his report, reporting that there was due complainants and defendants in the following order of priority; complainant, \$4,761.75; Chelsea National Bank \$45,416.70; Mason and Gaskill \$4,190.87; John Murtland \$4,035.42; Atlantic City Lumber Company \$3,869.61; Joseph I. Levy \$680.64; William B. Riley \$682.42, Willis A. Herbert and Son \$395.59; Paul J. Devitt \$688.11.

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5. On or about the 10th day of June, 1925, a final decree was entered in said suit, confirming the report of said Master, and ordering that the mortgaged premises be sold, to pay the sums reported due the complainant and defendants, in the order of priority above described, and that execution be issued to the sheriff of Atlantic County, commanding him to make sale of the mortgaged premises, to raise and pay the sums reported due; surplus

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money, if any, to be paid into court; and defendants stand absolutely debarred and foreclosed of and from all equity of redemption.

10 6. On August 19th, 1925, the said sheriff of Atlantic County exhibited said property for sale at public auction, under execution issued under said decree, and said property was struck off and sold to your petitioner, to the highest bidder, for the sum of \$5,527.73. Shortly thereafter, your petitioner delivered to the said sheriff the sum of \$4,979.39, representing the balance of the purchase price of said premises, and said sheriff thereupon delivered to your petitioner a deed conveying said premises to your petitioner. Said deed is dated September 3rd, 1925, and is recorded in Book 787 of Deeds for Atlantic County, p. 123, &c.

20 7. Subsequent to the institution of the foreclosure proceedings hereinabove recited, and before final decree therein, and on or about May 1st, 1924, the Atlantic City National Bank filed its foreclosure bill against Andrew P. Wilson and Sarah, his wife, and others, for the foreclosure of a certain mortgage for \$10,000, made and executed by the said Andrew P. Wilson and Sarah, his wife, to Louis Satanov, dated June 5th, 1923, covering the same premises hereinabove set forth, which were the subject of the foreclosure suit instituted by the said Atlantic City Lumber Company. Said mortgage was assigned on June 30 7th, 1923, by said Louis Satanov to the said Atlantic City National Bank. In said suit the following persons were made parties defendant: Andrew P. Wilson and Sarah Wilson, Chelsea National Bank, Willis A. Herbert, Sr., and Willis A. Herbert, Jr., trading as Willis A. Herbert and Son, John Murt-

land, John Wise, Malcolm B. Woodruff, sheriff, Howard R. Cloud, sheriff, Charles M. Mason and Berdell Gaskill, trading as Mason and Gaskill, Joseph I. Levy, William B. Riley, M. E. Blatt Company, Bankers Trust Company, William H. Devitt, trading as Paul J. Devitt, Alice Hohg, and Harry Harrold.

8. That such proceedings were had therein, that a final decree was entered therein, bearing date the 19th day of June, 1925, and execution was issued thereon, directed to the sheriff of Atlantic County, to expose for sale the premises, to raise and pay said mortgage debt, together with the amount due the defendants therein named. 10

9. That in pursuance of said execution, the said sheriff exhibited said property for sale at public auction, and said property was struck off and sold to your petitioner, as the highest bidder, on December 3rd, 1925, for the sum of \$14,750, and your petitioner paid to said sheriff the sum of \$1,475 required as a deposit upon said purchase price, and later paid to the said sheriff the balance of said purchase price, to wit: \$13,275. 20

10. Upon the purchase of said premises by your petitioner at the foreclosure sale first mentioned, wherein said Atlantic City Lumber Company was complainant, the liens of all the defendants in said suit, who were the holders of encumbrances on said premises subsequent to the Atlantic City Lumber Company, were extinguished, and said defendants were barred of all further rights in said property. All of the defendants who were the holders of encumbrances upon said premises, subsequent to the Atlantic City Lumber Company or your petitioner, 30

who were named in the final decree filed in the present suit are the same defendants named in the final decree filed in the suit of the Atlantic City Lumber Company, and said defendants have no interest in the moneys arising from the said sale under said foreclosure in the present suit.

10 11. Your petitioner further shows that after the consideration of the petition and the arguments of counsel, thereon, this Court, in an opinion delivered by the Honorable Robert H. Ingersoll, Vice-Chancellor, determined that it had no jurisdiction to grant the relief prayed for in said original petition, on the ground that the Court had no jurisdiction unless and until the final decree and execution therein were amended.

20 12. Petitioner further shows that a receiver was appointed in this cause to collect the rents, issues and profits of the mortgaged premises, and that said receiver collected the rents, issues and profits thereof from the date of his appointment to the date of the sale of said mortgaged premises under and by virtue of the decree and execution entered herein. Your petitioner further says that he is entitled to receive all of the rents, issues and profits collected by said receiver from on and after the 17th day of June, 1925, the date upon which he became the owner of said premises under and by virtue of the sale in the cause wherein Atlantic City Lumber Company was complainant and Chelsea National Bank, *et al.*, were defendants, hereinabove referred to, less such fees, commissions, etc., to which such receiver may be entitled.

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Your petitioner, Edward Nicholson, therefore, prays:

1. That he be admitted as party defendant in said cause, in order to appear and move to amend the final decree entered in said suit.

2. That said final decree may be amended in accordance with the copy of the proposed amended final decree hereunto annexed and made a part hereof.

3. That the execution issued in said cause be 10
amended in accordance with the directions of said final decree, as amended.

4. That it may be decreed that the surplus moneys arising from the sale of the property described in this suit, be paid to the petitioner, Edward Nicholson, in accordance with the terms of the proposed final decree as amended, copy of which is hereunto annexed and made a part hereof.

5. That an order be entered directing the receiver 20
in this cause to pay to petitioner all of the rents, issues and profits from said mortgaged premises collected by him from on and after the 17th day of June, 1925, less such fees, commissions, etc., to which such receiver may be entitled.

6. That the petitioner, Edward Nicholson, have such other and further relief, either as to the amendment of said final decree and execution or to 30
the payment of the whole or such part of said surplus moneys to him, as this Court may find equitable.

And your petitioner will ever pray, &c.

BOURGEOIS & COULOMB,
Solicitors of Petitioner,
Edward Nicholson.

AMENDED FINAL DECREE.

No. 3 55-621.

IN CHANCERY OF NEW JERSEY.

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Between

ATLANTIC CITY NATIONAL
BANK, *et al.*,*Complainants,*
andANDREW P. WILSON, *et*
al.,*Defendants.*} On Bill to Foreclose.
} Amended Final
} Decree.

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This cause coming on to be heard on bill, answers, replications, written evidence and oral proofs before the Honorable Robert H. Ingersoll, one of the Vice-Chancellors, to whom by a previous order herein it was referred to hear the same for the Chancellor and report thereon to him and advise what order and decree should be made therein, in the presence of John C. Slape, solicitor and John B. Slack, of counsel with the complainants; John C. Reed, solicitor for and of counsel with defendant, Andrew P. Wilson; Thompson & Hanstein, solicitors for and of counsel with the defendant, Atlantic City Lumber Company; Elwood C. Weeks, solicitor for and of counsel with the defendants, Charles M. Mason and Berdell Gaskill, trading as Mason & Gaskill, and

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Willis A. Herbert and Willis A. Herbert, Jr., trading as W. A. Herbert & Son; Herbert R. Voorhees, solicitor for and of counsel with the defendant, William Staiger; Joseph H. Carr, Solicitor for and of counsel with the defendant, William H. Devitt, trading as Paul J. Devitt; Gorson and Gorson, solicitors for and of counsel with defendants, Joseph I. Levy and William B. Riley; and Louis E. Stern, solicitor for and of counsel with the defendant, M. E. Blatt Co., and the Court having read the pleadings, taken 10
and examined the proofs and heard the argument of counsel, and duly considered the same, and it appearing by proof to the satisfaction of the Court that the mortgage of the complainants is first in execution and registry, and that there is due the complainant, Atlantic City National Bank upon the bond held by it, payment whereof was intended to be secured by its mortgage, the sum of \$6,330.21; and that its mortgage debt is a first lien in order of priority 20
upon the lot of land and premises described in the bill of complaint and is entitled to be first paid and satisfied out of these premises, and that there should then be secondly paid to the complainant, Louis Satanov, the sum of \$4,935.69 which includes insurance premium advanced, from which there shall be deducted the sum of \$541.31, due Charles M. Mason and Berdell Gaskill, trading as Mason & Gaskill, and paid to them; that the mortgage of the defendant, William Staiger, is second in execution and registry; 30
and that there is due upon the bond held by him, payment whereof was intended to be secured by his mortgage, the sum of \$2,805.00; that his mortgage debt is a second lien upon the mortgaged premises described in said bill of complaint, and upon other land, and is entitled to be thirdly paid and satisfied out of the said mortgaged premises, in the proportion of the one-half part of the said mortgage debt,

first deducting the sum of \$541.31 therefrom, due Mason and Gaskill, as aforesaid, and pay the same to the complainant, Louis Satanov; that the mortgage of the Atlantic City Lumber Company is third in execution and registry; that there is due upon the bond held by it, payment whereof was intended to be secured by its mortgage, the sum of \$5,046.75; that its mortgage debt is a third lien upon the mortgaged premises described in the bill of complaint
10 and upon other land, and is entitled to be fourthly paid and satisfied out of the said mortgaged premises in the proportion of the one-eighth part of its said mortgage debt; that there should be fifthly paid the sum of \$541.31 due Mason and Gaskill, as aforesaid, to the said defendant, William Staiger; that the judgment on lien claim of the defendants, Willis A. Herbert and Willis A. Herbert, Jr., trading as W. A. Herbert & Son, is a lien upon the mortgaged premises described in the bill of complaint; that
20 there is due the defendants thereon the sum of \$420.20, which sum is entitled to be sixthly paid and satisfied out of the said mortgaged premises; that the judgment of the defendant, Atlantic City Lumber Company is a lien upon the mortgaged premises described in the bill of complaint; that there is due the said defendant thereon the sum of \$4,046.53, which sum is entitled to be seventhly paid and satisfied out of the said mortgaged premises; that the judgment of the defendant, Joseph Levy, is a lien
30 upon the mortgaged premises described in the bill of complaint; that there is due to the said defendant thereon the sum of \$753.34, which sum is eighthly entitled to be paid and satisfied out of the said mortgaged premises; that the judgment of the defendant, William Riley, is a lien upon the mortgaged premises, described in the bill of complaint; that there is due to the said defendant thereon the sum of \$755.29,

which sum is entitled to be ninthly paid and satisfied out of said mortgaged premises; that the judgment of the defendant, M. E. Blatt Co., is a lien upon the mortgaged premises described in the bill of complaint; that there is due to said defendant thereon the sum of \$416.13; which sum is entitled to be tenthly paid and satisfied out of the said mortgaged premises; that the judgment of the defendant, William H. Devitt, trading as Paul J. Devitt, is a lien upon the mortgaged premises described in the bill of complaint; that there is due to the said defendant thereon the sum of \$712.47 which sum is entitled to be eleventhly paid and satisfied out of the mortgaged premises; and it further appearing that the Atlantic City Lumber Company, one of the above-named defendants, filed its bill of complaint in court, making parties thereto the following named defendants, Chelsea National Bank, John Murtland, John Wise, Charles M. Mason and Berdell Gaskill, trading as Mason and Gaskill, The State of New Jersey, Howard Cloud, sheriff, Atlantic City Lumber Company, Joseph I. Levy, William B. Riley, Willis A. Herbert, Sr., and Willis A. Herbert, Jr., trading as W. A. Herbert and Son, M. E. Blatt Company, Bankers Trust Company, Louis I. Dunn (tenant), May Gamber (tenant), Harry Grossman (tenant), Dora Strumpf (tenant), Edwin W. Vesey (tenant), Morris M. Ingersoll (tenant), Erwin B. Cronney (tenant), Edwin Keinert (tenant), Harriet H. Schoh (tenant), John Ashurst (tenant), John Wise (tenant), Andrew H. Anderson (tenant), Caroline Gass (tenant), Anna Dinke (tenant), Harry Harrold (tenant), Andrew P. Wilson, Sarah Wilson and William H. Devitt, trading as Paul J. Devitt, and that such proceedings were had in said suit that a sale thereof was held, in pursuance of the final decree and execution issued therein, on August 19th, 1925, at which

said sale the premises described in the bill of complaint in this cause was, together with other premises, sold and conveyed by the sheriff of the County of Atlantic to Edward Nicholson, and the said Edward Nicholson succeeded to all of the rights of the Atlantic City Lumber Company, Chelsea National Bank, John Murtland, John Wise, Charles M. Mason and Berdell Gaskill, trading as Mason and Gaskill, The State of New Jersey, Howard Cloud, sheriff,

10 Atlantic City Lumber Company, Joseph I. Levy, William B. Riley, Willis A. Herbert, Sr., and Willis A. Herbert, Jr., trading as W. A. Herbert and Son, M. E. Blatt Company, Bankers Trust Company, Louis I. Dunn (tenant), May Gamber (tenant), Harry Grossman (tenant), Dora Strumpf (tenant), Edwin M. Vesey (tenant), Morris M. Ingersoll (tenant), Irwin B. Croney (tenant), Edwin Keinert (tenant), Harriet H. Schoh (tenant), John Ashurst (tenant), John Wise (tenant), Andrew H. Anderson

20 (tenant), Caroline Gass (tenant), Anna Dinke (tenant), Harry Harrold (tenant), Andrew P. Wilson, Sarah Wilson and William H. Devitt, trading as Paul J. Devitt, in and to said premises, in whatever manner arising; and that it is advisable and necessary that the said mortgaged premises be sold to raise and satisfy the several sums of money so as aforesaid found to be due and owing to the complainants and defendants, respectively, with insurance advanced of \$45.90, with interest and costs of

30 suit.

It is thereupon, on this day of May, 1929, as of the seventeenth day of June, A. D. 1925, by his Honor, Edwin Robert Walker, Chancellor of the State of New Jersey, ordered, adjudged and decreed, and the said Chancellor doth, by virtue of the power and authority of this Court, hereby order, adjudge and decree, that there is due the Atlantic

City National Bank for principal and interest on its mortgage, on the date of this decree, the sum of \$6,330.21; that there is due to the complainant, Louis Satanov, for principal and interest and insurance premium advanced, the sum of \$4,935.69, from which there shall be deducted the sum of \$541.31, which is to be paid to Mason & Gaskill on their mechanics' lien judgment; there there is due the defendant, William Staiger, for principal and interest on his mortgage, the sum of \$2,805.00, in the proportion of the one-half part of the said mortgage debt, first deducting the sum of \$541.31 therefrom, due Mason and Gaskill, as aforesaid, and paid to the said complainant, Louis Satanov; and that the said Edward Nicholson is entitled to receive and be paid all of the surplus moneys arising from the sale of said premises; after making the payments, aforesaid; that the mortgage of the complainant, Atlantic City National Bank, is first in order and priority of lien upon the mortgaged premises, and is entitled to be first paid and satisfied out of these premises; that the sum of \$4,935.69, due the complainant, Louis Satanov, is entitled to be secondly paid, from which there is to be first deducted the sum of \$541.31 due Charles M. Mason and Berdell Gaskill, trading as Mason & Gaskill, as aforesaid, and to be paid to them; that the mortgage of the defendant, William Staiger is entitled to be thirdly paid and satisfied out of the same, in the proportion of the one-half part of the debt hereby decreed to be due thereon, less the sum of \$541.31 due Mason & Gaskill, as aforesaid, which is to be paid to the complainant, Louis Satanov; and that the surplus money, if any there be, after the making of the payments aforesaid, be paid to the said Edward Nicholson; that the said mortgaged premises be sold to raise and satisfy the several debts or sums of money so as aforesaid due to the

complainants and defendants, respectively together with interest and costs of suit; that is to say, to pay and satisfy in the first place unto the complainant, Atlantic City National Bank, the sum of \$6,330.21, together with lawful interest thereon from the date of this decree; to pay and satisfy in the second place to the complainant, Louis Satanov, the sum of \$4,935.69, together with lawful interest thereon from the date last mentioned, from which there is to be

10 deducted the sum of \$541.31 due Mason & Gaskill, as aforesaid, with interest from the date of this decree, which is to be paid to them; both the amounts due the complainants, Atlantic City National Bank and Louis Satanov to be paid, including a counsel fee of \$200.00, which is hereby allowed, to the said complainants, including the costs of the search, amounting to \$40.26, to be included in the taxed costs; to pay and satisfy in the third place unto the

20 defendant, William Staiger, the sum of \$1,402.50, together with lawful interest thereon from the date last mentioned, from which there is to be deducted \$541.31, the amount due Mason & Gaskill, as aforesaid, and which is to be paid to the said complainant, Louis Satanov; and the surplus moneys, if any there be, after paying the several sums of money above mentioned, be paid to the said Edward Nicholson; and that there be included in the taxed costs of said complainants, a counsel fee of \$200 allowed to the complainants, together with the fees for the search

30 of \$40.26; and that a writ of *feri facias* issue for that purpose out of this Court, directed to the sheriff of the County of Atlantic, commanding him to make sale according to law of the said mortgaged premises, and that out of the money arising from said sale he pay to the said complainants, or their solicitors, the said debt, interest and costs, and to the said several defendants, or their respective

solicitors, their said several debts, interest and costs; and that the sheriff make return without delay of his proceedings by virtue of this writ.

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

Respectfully advised:

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

EDWARD NICHOLSON, of full age, being duly sworn according to law, on his oath deposes and says: 20

I am the petitioner mentioned in the foregoing petition.

I have read the same, and the statement therein made are true, to the best of my knowledge and belief.

EDWARD NICHOLSON.

Sworn and subscribed before me this 31st day of May, 1929.

(Seal) MADELINE M. NEWELL, 30
Notary Public of New Jersey.
My commission expires October 31st, 1929.

[ENDORSED]

June 3rd, 1929.

I, Harry R. Coulomb, of the firm of
Bourgeois & Coulomb, solicitors for
petitioner in the above-entitled cause,
do hereby certify, that the within are
true copies of the supplemental petition
filed and order to show cause allowed
therein.

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Bourgeois & Coulomb,
By H. R. Coulomb.

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ORDER TO SHOW CAUSE ON SUPPLE-
MENTAL PETITION.

(Filed May 31, 1929.)

IN CHANCERY OF NEW JERSEY.
No. 3—55-621.

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Between	}	On Bill, &c. On Supplemental Petition of Edward Nicholson. Order.	20
THE ATLANTIC CITY NA- TIONAL BANK and LOUIS SATANOV,			
<i>Complainants,</i>			
and			
ANDREW P. WILSON, <i>et</i> <i>al.,</i>			
<i>Defendants.</i>			

This matter being opened to the Court by Bourgeois & Coulomb, solicitors for and of counsel with petitioner, Edward Nicholson; and upon reading and filing the petition for leave to amend the final decree and execution in the above-stated cause:

It is, on this 31st day of May, 1929, ordered, that the parties, complainant and defendant, in said suit show cause before this Court at Chancery Chambers, 1421 Atlantic Avenue, Atlantic City, N. J., on the 11th day of June, 1929, at ten o'clock in the forenoon (Daylight Saving Time) why the prayer of said petition should not be allowed. 30

It is further ordered, that a copy of this order and petition, certified by solicitors for petitioner, be served upon each of the parties or their solicitors within five days from the date hereof.

It is further ordered, that in the meantime, and until the further order of this Court, all proceedings in this cause be stayed.

E. R. WALKER,
C.

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

CONCLUSIONS.

(Filed Nov. 29, 1929.)

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IN CHANCERY OF NEW JERSEY.

30	Between THE ATLANTIC CITY NA- TIONAL BANK, <i>et al.</i> , <i>Complainants,</i> and ANDREW P. WILSON, <i>et</i> <i>als.,</i> <i>Defendants.</i>	} On Bill, &c. On Petition. Conclusions.
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These conclusions are not to be published in the official or unofficial reports.

- Messrs. Bourgeois & Coulomb for petitioner, Edward Nicholson.
- Mr. U. G. Styron for petitioner, Louis Satanov.
- Mr. John C. Slape and Mr. John B. Slack for complainant, Atlantic City National Bank.
- Messrs. Thompson & Hanstein for defendant, Atlantic City Lumber Company.
- Mr. Elwood C. Weeks for defendants, W. A. Herbert & Son and Mason & Gaskill.
- Mr. John C. Reed for defendant, Andrew P. Wilson. 10
- Mr. Herbert R. Voorhees for defendant, William Staiger.
- Mr. Joseph H. Carr for defendant, William H. Devitt.
- Messrs. Gorson & Gorson for defendants, Levy and Stern.
- Mr. Louis E. Stern for defendant, M. E. Blatt Co.

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INGERSOLL, V. C.:

On May 27th, 1929, I filed an opinion in this matter as follows:

“The supplemental brief filed by one of the solicitors for Satanov, states the facts as follows:

“This is a contest over the disposition of two funds arising out of mortgage foreclosure proceedings—one fund in the hands of a receiver appointed in the cause and consisting of rents collected *pendente lite*, and the other being proceeds of sale of the mortgaged premises. 30

The controversy is between the purchaser at the sheriff's sale, and encumbrancers whose debts were ascertained and the lien and priority thereof established by the final decree.

The persons chiefly concerned with the controversy are Edward Nicholson, the petitioner, whose claim to the fund is based upon the fact that he purchased the mortgaged premises at the sheriff's sale and holds the sheriff's deeds; Louis Satanov, a first mortgagee; William Staiger, a second mortgagee (whose interest has been secured by Satanov); Atlantic City Lumber Company, a third mortgagee; Mason & Gaskill, judgment mechanics' lien claimants and Atlantic City Lumber Company, holder of a judgment lien upon the mortgaged premises.

The relation of these parties to this controversy and their respective claims to the funds arose out of the following circumstances:

On June 5, 1923, Andrew P. Wilson owned a parcel of land approximately 135 feet front by 65 feet deep, on Wilson Avenue in Atlantic City, and on that date, he mortgaged the property in fee (by eight separate mortgages) to Satanov, to secure \$80,000. These mortgages were duly recorded and on the same day assigned as collateral to Atlantic City National Bank.

On the same day, June 5, 1923, Wilson executed four other mortgages on the same land to William Staiger, to secure \$10,000 (\$2500.00 each) which were also seasonably recorded.

On June 8, 1923, Wilson again mortgaged the land; this time to the Atlantic City Lumber Company to secure \$4500 which mortgage was likewise recorded and was a third lien thereon.

On July 16, 1923, Mason & Gaskill filed a mechanics' lien claim against the building and lands for the sum of \$3946.42, making the three prior mortgagees parties. Neither Satanov nor Staiger contested the priority of the lien claim, with the result that judgment by default was entered. A stat-

utory priority of the Mason & Gaskill lien claim judgment over the first and second mortgages was thus established.

On October 30, 1923, the Atlantic City Lumber Company recovered a judgment against Wilson for \$3645.11.

This left the respective priorities of the liens of the several encumbrances, at this juncture, standing as follows:

1. The Satanov mortgage (second as to Mason & Gaskill mechanics' lien judgment). 10

2. The Staiger mortgage (third as to Mason & Gaskill).

3. The Atlantic City Lumber Company mortgage. (But with priority of lien until paid over the Satanov and Staiger mortgages.) 20

4. The judgment of the Atlantic City Lumber Co.

Subsequently a number of judgments were recovered against Wilson during the period of his ownership, and became liens on the land, but they are not involved in this controversy.

On March 28, 1924, the Atlantic City Lumber Co. filed a bill to foreclose its third mortgage, bringing in as parties defendant Wilson, the mortgagor and all incumbrancers subsequent to its mortgage. 30 Neither the Atlantic City National Bank nor Satanov, nor Staiger were—nor could they have properly been included as parties defendant. On June 26, 1924, a decree *pro confesso* was entered. On October 15, 1924, the Master's report was made, and on June 10, 1925, a final decree entered in the cause

confirmed the Master's report, ascertained the debts due the several parties complainant and defendants, and the order and priority of payment as between themselves and condemned the mortgaged premises to sale to raise and pay the moneys so ascertained and decreed. On August 19, 1925, the mortgaged premises were brought to sale to satisfy this decree and were sold by the sheriff and purchased by the petitioner, Nicholson, for \$5527.73, the amount of his
10 bid. This sum about equalled the amount decreed to complainant so that no surplus remained to be paid by the sheriff into court.

The sheriff satisfied the complainant's decree from the proceeds of sale and by his deed transferred title to the purchaser. The lien of the third mortgage was thus extinguished, the interest of the third mortgagee and of the mortgagor passed to the purchaser, and the mortgage itself as an element for
20 consideration on this motion has wholly disappeared from the case.

On May 1, 1924, a little more than two months after proceedings to foreclose the third mortgage was commenced, the Atlantic City National Bank and Louis Satanov, joined in filing a bill of complaint to foreclose the first mortgage, making parties defendant all junior encumbrancers, including Staiger, the second mortgagee and Atlantic City Lumber Co., the third mortgagee, whose foreclosure suit was then pending. On June 17, 1925, a final
30 decree was made, which was filed August 19, 1925, which decree in like manner ascertained the amounts and decreed the payment of the debts of the complainants and each subsequent encumbrancer, declares that they are entitled to have their respective debts made out of the mortgaged premises, condemns the premises to sale to make the debts so de-

creed, and decrees the payment thereof out of the proceeds of sale in the order of priority therein ascertained. This decree finds the amount due the defendant Atlantic City Lumber Co. and decrees its payment. Pursuant to this decree and the execution issued thereon, the sheriff, on December 3, 1925, again sold the premises and Nicholson, the petitioner, was again the purchaser for his bid of \$118,475.00, and in due course received the sheriff's deed. That sum was sufficient to pay the complainant's decree in full, leaving a surplus to be applied to the payment to subsequent incumbrancers. That surplus and the rents collected by the receiver appointed in this cause, and the application thereof has occasioned the present controversy. 10

Nicholson, the petitioner, claims priority of right in the distribution of the surplus money resting his right upon the fact that he is the owner of the property by virtue of the sheriff's deed and by the force and effect of the final decree in the third mortgage foreclosure suit; Satanov, on the other hand claims to be entitled to the surplus and rents by force of the final decree in the first mortgage foreclosure suit to the extent necessary to pay the balance of the debt decree to be paid upon the second mortgage. 20

The final decree in this cause expressly provides: That the said mortgaged premises be sold to raise and satisfy the said several debts and sums of money, so as aforesaid due to the complainants and defendants, respectively, * * * that is to say, to pay 30 and satisfy in the first place unto the complainant, Atlantic City National Bank, the sum of \$6330.21, * * *; to pay and satisfy on the second place to the complainant, Louis Satanov, the sum of \$4935.69, * * * from which is to be deducted the sum of \$541.31, due Mason & Gaskill, as aforesaid, * * *

which is to be paid to them; both the amounts due the complainants, Atlantic City National Bank and Louis Satanov to be paid * * * including &c., * * *; to pay and satisfy in the third place unto the defendant, William Staiger, the sum of \$4092.50 * * * from which is to be deducted \$541.31, the amount due Mason & Gaskill, as aforesaid, and which is to be paid to the said complainant, Louis Satanov; to pay and satisfy in the fourth place unto the defendant,
 10 Atlantic City Lumber Company \$630.84, * * *; to pay and satisfy in the fifth place unto William Staiger the sum of \$541.31, paid to the said Mason & Gaskill as aforesaid, * * *.

Both decrees contain the clause that: The defendants stand absolutely debarred and foreclosed of and for all equity of redemption of, in and to the said mortgaged premises when sold as aforesaid by virtue of this decree.

20 Nicholson claims both funds and the basis of his claim is that he purchased at sheriff's sale the equity of redemption mortgaged to the Atlantic City Lumber Company, and that the sheriff's deed operated as an assignment of the priority of claim which that mortgage enjoyed in the decree in the Atlantic City National Bank foreclosure suit.

The claim of Satanov is that as owner of the Staiger mortgage, he is entitled to have that mortgage satisfied in accordance with its priority as originally ascertained and ordered paid by the decree
 30 in the Atlantic City National Bank suit, and as modified by the payment of the third mortgage and the Mason & Gaskill claim, subsequent to decree."

In *Gifford v. McGuinness*, 63 N. J. Eq. 834, the Court of Errors and Appeals said: "We entirely assent to the view that any Court may compel money raised by its process to be brought into court for

distribution, and that from an order made for that purpose no one suffers an appealable grievance. To obtain an order merely for such payment neither written pleading nor proof is essential. The Court is merely enforcing a regulation customarily dispensed with. Presumably the money will be paid as previously adjudged. The only burden will be that the notice to interested parties."

In *Schreiber v. Green*, 90 N. J. Eq. 333, it was held: "Rents collected by a receiver in a foreclosure suit will be disbursed according to the order of priority ascertained by the final decree irrespective of the party upon whose application the receiver was appointed." 10

As to the funds in the sheriff's hands, Chancellor Green in *Lithauer v. Royle*, 17 N. J. Eq. 40, stated the law to be, "The decree and execution in this case contains specific directions for the appropriation of the proceeds of sale * * *. No change in the mode of appropriating the fund can be made, excepting by opening and correcting the decree and altering the execution. This can only be done upon notice." This is still the law. 20

No application has been made to amend the final decree and executions in the foreclosure proceedings in which the alleged surplus money accrues.

It therefore follows, that upon the record as it now appears, payments of said funds must be made in order of priority as set forth in the final decree and executions." 30

On June 1st, 1929, eight supplemental petitions were filed (there being eight mortgages and proceedings thereunder) praying that decrees be amended, and that the order of payment of the surplus money arising from the sale, and of money in the hands of the receiver, be corrected.

The last brief was filed August 26th, 1929, and it became necessary to again consider the entire application.

The sale under the Atlantic City Lumber Company's foreclosure decree, so long as it stands against the defendant's, vested in Nicholson as purchaser not only the rights of the complainant under its mortgage and decree, but also all the rights of the defendants in the suit. *Wimpfheimer v. Prudential Insurance Co. of America*, 56 N. J. Eq. 585; *Baldwin v. Howell*, 45 N. J. Eq. 519, 538.

Such sale vests in the purchaser a legal right to the property free of encumbrances imposed upon it subsequent to the mortgage foreclosed, provided that the holders of such encumbrances are made parties to the foreclosure. *Krich v. Zemel*, 99 N. J. L. 191.

It follows, therefore, that Nicholson obtained title to said premises subject only to such encumbrances as existed prior to the mortgage of the Atlantic City Lumber Company, and to any later encumbrances, the holders of which were not made parties to said foreclosure.

Therefore, he (the purchaser) is entitled to receive from the funds in Court, all surplus beyond the amount necessary to pay the encumbrances prior to the mortgage under which he first obtained title. That is, of the Atlantic City Lumber Company.

The lien claim of Mason & Gaskill, although not prior to the Atlantic City Lumber Company, and therefore not payable by Nicholson or from funds otherwise due him, is by virtue of the statute prior to the Staiger mortgage and the amount due on said liens should be paid out of the amount due under said Staiger mortgage.

Having heretofore determined that the order of

payment of this fund could not be made otherwise than by obeying the terms of a final decree in force, I will advise that the decree heretofore existing should be modified as to the order of payment and to that extent only.

The money received by the receiver prior to the sale to Nicholson should be paid to the first encumbrance remaining unpaid out of the proceeds of the sale. Should the receiver have collected any money after the sale to Nicholson, the same should be paid 10 to the holder of encumbrances prior to the Atlantic City Lumber Company's, if any remain unpaid. Any amount remaining after the payment of such prior encumbrance, should be paid to Nicholson.

Determined: November 29th, 1929.

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Order Adding Edward Nicholson As Party Defendant 97

Herbert R. Voorhees, Esquire, solicitor for defendant, William Staiger; Joseph H. Carr, Esquire, solicitor for defendant, William H. Devitt; Gorson & Gorson, Esquires, solicitors for defendants, Levy and Stern; Louis E. Stern, Esquire, solicitor for defendant, M. E. Blatt Co.; and it appearing that the petitioner, Edward Nicholson, has heretofore, to wit; on the 1st day of June, 1929, filed his supplemental petition praying, among other things, that he be admitted as a party defendant in this cause, in order to appear and move to amend the final decree entered in said cause; and the Court having heard and considered the arguments of counsel in respect thereto, and being of the opinion that the petitioner has sufficient interest in the premises and subject-matter to entitle him to be admitted as a party defendant in this cause; and no good cause appearing to the contrary: 10

It is, on this 18th day of December, 1929, on motion of Bourgeois & Coulomb, solicitors for the petitioner, Edward Nicholson, ordered, that the said petitioner, Edward Nicholson, be and he is hereby admitted as a party defendant to this cause. 20

E. R. WALKER,
C.

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

98 *Order Amending Final Decree and Execution and for Payment of Surplus Money*

ORDER AMENDING FINAL DECREE AND
EXECUTION AND FOR PAYMENT
OF SURPLUS MONEY.

(Filed Dec. 18, 1929.)

10 IN CHANCERY OF NEW JERSEY.
No. 1 55-620.

Between
ATLANTIC CITY NATIONAL
BANK, *et al.*,
Complainants,
and
20 ANDREW P. WILSON, *et*
al.,
Defendants.)

On Bill to Foreclose.
Order Amending
Final Decree, and
for Payment of
Surplus Moneys.

30 This matter coming on to be heard in the presence of Bourgeois & Coulomb, solicitors for and of counsel with Edward Nicholson, one of the defendants in the above cause, Thompson & Hanstein, solicitors for and of counsel with Atlantic City Lumber Company, U. G. Styron, Esq., solicitor for and of counsel with Louis Satanov and William Staiger, and no other parties to said cause appearing, or being represented by counsel, and it being made to appear to the Court that said Edward Nicholson was made a party to this cause by order bearing date the 18th

day of December, A. D. 1929, by reason of the fact that he became the purchaser of the premises described in the bill of complaint in this cause, under a certain sheriff's sale, held on August 19th, 1925, under and by virtue of a final decree and execution in a certain cause wherein the Atlantic City Lumber Company was complainant, and Chelsea National Bank, John Murtland, John Wise, Charles M. Mason and Berdell Gaskill, trading as Mason and Gaskill, the State of New Jersey, Howard Cloud, Sheriff, Atlantic City Lumber Company, Joseph I. Levy, William B. Riley, Willis A. Herbert, Sr., and Willis A. Herbert, Jr., trading as Willis A. Herbert and Son, M. E. Blatt Company, Bankers Trust Company, Louis I. Dunn (tenant), May Gamber (tenant), Harry Grossman (tenant), Dora Strumpf (tenant), Edwin M. Vesey (tenant), Morris M. Ingersoll (tenant), Harriet H. Schoh (tenant), Irwin B. Croney (tenant), Edwin Keinert (tenant), Andrew H. Anderson (tenant), John Ashurst (tenant), John Wise (tenant), Caroline Gass (tenant), Anna Dinke (tenant), Harry Harrold (tenant), Andrew P. Wilson, Sarah Wilson, and William H. Devitt, trading as Paul J. Devitt, were defendants. 10

And it further appearing that under said sheriff's sale, the said sheriff made, executed and delivered a deed of conveyance for said premises to the said Edward Nicholson on or about the 3rd day of September, A. D. 1925, which deed was duly recorded. 20

And it further appearing that thereafter, and on the 3rd day of December, A. D. 1925, under a final decree and execution issued out of the Court of Chancery in the above stated cause, said property was again exposed for sale by the sheriff of Atlantic County, and again purchased by the said defendant, 30

100 *Order Amending Final Decree and Execution and for Payment of Surplus Money*

Edward Nicholson, for the sum of \$14,800, and a deed of conveyance therefor duly delivered to him by the sheriff of the County of Atlantic, and duly recorded.

And it further appearing that said final decree provided for the disposition of the proceeds of the sale of said property in the following manner, to

10 wit:

“To pay and satisfy in the first place, unto the complainant, Atlantic City National Bank, the sum of \$6,330.21, together with lawful interest thereon from the date of this decree; to pay and satisfy in the second place to the complainant, Louis Satanov, the sum of \$4,935.69, together with lawful interest thereon from the date last mentioned, from which there is to be deducted the sum of \$541.31, due Mason & Gaskill as aforesaid, with interest from the date of this decree; which is to be paid to them; both the amounts due the complainants, Atlantic City National Bank and Louis Satanov to be paid, including a counsel fee of \$200.00 which is hereby allowed to the said complainants, including the costs of the search amounting to \$5.03, to be included in the taxed costs; to pay and satisfy in the third place unto the defendant, William Staiger, the sum of \$1,402.50, together with lawful interest thereon from the date last mentioned, from which there is to be deducted \$541.31, the amount due Mason & Gaskill, as aforesaid, and which is to be paid to the said complainant, Louis Satanov; to pay and satisfy in the fourth place unto the defendant, Atlantic City Lumber Company, \$630.84, together with lawful interest thereon from the date last

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Order Amending Final Decree and Execu- 101
tion and for Payment of Surplus Money

mentioned, to pay and satisfy in the fifth place unto William Staiger the sum of \$541.31 paid to the said Mason & Gaskill as aforesaid, with interest thereon from the date of this decree; to pay and satisfy in the sixth place unto the defendants, Willis A. Herbert and Willis A. Herbert, Jr., trading as W. A. Herbert & Son, the sum of \$420.20, together with lawful interest thereon from the date last mentioned, with their costs to be taxed; to pay and satisfy in the seventh place unto the defendants, Atlantic City Lumber Company, the sum of \$4,046.53 together with lawful interest thereon from the date last mentioned; to pay and satisfy in the eighth place unto the defendant, Joseph I. Levy, the sum of \$753.34, together with lawful interest thereon from the date last mentioned; to pay and satisfy in the ninth place unto the defendant, William B. Riley, the sum of \$755.29, together with lawful interest thereon from the date last mentioned; to pay and satisfy in the tenth place unto the defendant, M. E. Blatt Company, the sum of \$416.13, together with lawful interest thereon from the date last mentioned; to pay and satisfy in the eleventh place unto the defendant, William H. Devitt, trading as Paul J. Devitt, the sum of \$712.47, together with lawful interest thereon from the date last mentioned; and that there be included in the taxed costs of said complainants, a counsel fee of \$200.00, allowed to the complainants, together with the fees for the search of \$5.03; and that a writ of *feri facias* issue for that purpose out of this Court, directed to the sheriff of the County of Atlantic, commanding him to make sale according to law of the said mortgaged premises

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and that out of the money arising from said sale he pay to the said complainants, or their solicitor, the said debt, interest and costs, and to the said several defendants, or their respective solicitors, their said several debts, interest and costs, and that in case more money shall be raised by said sale than shall be sufficient to answer such several payments, that such surplus be brought into this court, unless otherwise previously disposed of by this Court, and that the sheriff make return without delay of his proceedings by virtue of this writ.”

And it further appearing that the said defendant, Edward Nicholson, has applied to this Court for an order amending the final decree heretofore entered herein, in order that the surplus moneys arising from the sale of said property under the final decree and execution issued herein, after paying the sums respectively due the said Atlantic City National Bank, Louis Satanov, William Staiger, and Charles M. Mason and Berdell Gaskill, trading as Mason and Gaskill, together with their respective costs, counsel fees, sheriff's fees, etc., should be paid to the said Edward Nicholson.

And it further appearing that out of the purchase price so as aforesaid paid by the said Edward Nicholson for said premises, to wit, the sum of \$14,800, the sheriff of the County of Atlantic has paid to the said Atlantic City National Bank, Louis Satanov, William Staiger and Mason and Gaskill, the sums respectively due them as provided in said final decree, together with their respective counsel fees, costs of suit, sheriff's fees, etc., in the following amounts, to wit:

Order Amending Final Decree and Execution and for Payment of Surplus Money 103

To complainants	\$11,411.58
To Mason and Gaskill	570.71
To William Staiger	940.45
To Louis Satanov	541.31

and the Court, after hearing the oral and written arguments of respective counsel, and considering the facts, as shown by the respective pleadings and other proceedings in this cause, and also in the cause wherein the Atlantic City Lumber Company 10 was complainant, and Andrew P. Wilson, *et al.*, were defendants, as well as considering the facts shown by the respective affidavits filed upon this application, and being of the opinion that the said surplus moneys arising from the sale of the premises in the above cause, after paying to the said Atlantic City National Bank, Louis Satanov, William Staiger, and Mason and Gaskill, the respective amounts due them, together with their respective counsel fees, costs, etc., should be paid to the said Edward Nicholson. 20

It is, on this 18th day of December, A. D. 1929, on motion of Bourgeois & Coulomb, solicitors for and of counsel with the defendant, Edward Nicholson, ordered, adjudged and decreed that the said final decree, heretofore entered in this cause, be and the same is hereby amended, to read as follows:

* * * "To pay and satisfy in the first place unto the complainant, Atlantic City National Bank, the sum of \$6,330.21, together with lawful interest thereon from the date of this decree; 30 and to pay and satisfy in the second place unto the complainant, Louis Satanov, the sum of \$4,935.69, together with lawful interest thereon from the date of this decree, from which there is to be deducted the sum of \$541.31, due Mason & Gaskill, as aforesaid, with interest from the date

104 *Order Amending Final Decree and Execution and for Payment of Surplus Money*

of this decree, which is to be paid to them; both the amounts due the complainants, Atlantic City National Bank and Louis Satanov, to be paid, including a counsel fee of \$200.00 which is hereby allowed to the said complainants, including the costs of the search amounting to \$5.03, to be included in the taxed costs; to pay and satisfy in the third place unto the defendant, William Staiger, the sum of \$1,402.50, together with lawful interest thereon from the date last mentioned, from which there is to be deducted \$541.31, the amount due Mason and Gaskill as aforesaid, and which is to be paid to the said complainant, Louis Satanov; and to pay the surplus moneys, if any, arising from the sale of said premises, to the said Edward Nicholson, or his solicitors."

20 And it is further ordered, adjudged and decreed, that in order to conform to the direction and mandate of said final decree, as heretofore directed to be amended; the execution issued thereon be, and the same is hereby amended so as to provide that after paying from the proceeds of the sale of said property, the sums respectively due the Atlantic City National Bank, Louis Satanov, William Staiger, and Charles M. Mason and Berdell Gaskill, trading as Mason and Gaskill, as set forth and provided in said final decree, and in the amendment heretofore directed to be made; the said sheriff of the County of Atlantic shall pay the surplus remaining therefrom, to the said Edward Nicholson, or to his solicitors.

30 And it appearing, as aforesaid, that said premises have been sold under and by virtue of said final de-

Order Amending Final Decree and Execution and for Payment of Surplus Money 105

cree, and the execution issued thereon, and that the sheriff has disbursed to the said Atlantic City National Bank, Louis Satanov, William Staiger, and Charles M. Mason and Berdell Gaskill, trading as Mason and Gaskill, the sums respectively due them as provided in said final decree, together with their respective counsel fees, costs, sheriff's fees arising on the sale of said premises, etc., and has remaining in his hands for distribution as surplus, the sum of 10 \$924.65.

It is further ordered, adjudged and decreed, that the sheriff of the County of Atlantic do pay to the said Edward Nicholson, or his solicitors, said surplus moneys aforesaid, with such accumulations of interest as may have accrued thereon, and

It is further ordered, adjudged and decreed, that in order to carry out the terms and provisions of said decree and execution, as herein directed to be amended, this order itself shall be deemed to be an 20 amendment of said decree and execution, in order to provide for the disposition of said surplus moneys heretofore referred to; in accordance with the direction and provisions of this order.

Respectfully advised,

PETITION OF APPEAL.

NEW JERSEY COURT OF ERRORS
AND APPEALS.

10 Between
 THE ATLANTIC CITY NA-
 TIONAL BANK, *et al.*,
Complainants,
 and
 ANDREW P. WILSON, *et*
al.,
Defendants. } On Appeal from the
 Court of Chancery.
 Petition of Appeal.

20 ATLANTIC CITY LUMBER
 Co.,
Appellant,
 v.
 EDWARD NICHOLSON,
Respondent. } On Appeal from the
 Court of Chancery.
 Petition of Appeal.

30 *To the Honorable, the Court of Errors and Appeals*
in the last resort in all causes:

The petition of Atlantic City Lumber Company,
 the appellant in the above-entitled cause, respect-
 fully shows that:

1. Petitioner finds itself aggrieved by an order of the Court of Chancery of New Jersey, made by Honorable Edwin Robert Walker, Chancellor of the State of New Jersey, bearing date December 18th, 1929, making Edward Nicholson a party defendant in a certain cause in said court, wherein Atlantic City National Bank and Louis Satanov were complainants, and Andrew P. Wilson, and others were defendants.

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2. Said petitioner also finds itself aggrieved by an order of the Court of Chancery bearing date December 18th, 1929, in said cause, which is an order amending the final decree and execution entered therein, and for payment of surplus moneys; and

3. Your petitioner appeals from said order admitting the said Edward Nicholson as a party defendant on the ground that the same is erroneous in that the said Edward Nicholson has no such interest in the subject-matter of said suit as would entitle him to be made a party to said cause, and the application for said order was made too late; and

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4. Your petitioner appeals from the order amending the final decree and execution, and providing for the payment of surplus moneys on the ground that the same is erroneous, in that the Atlantic City Lumber Company is entitled to be paid, in accordance with the final decree originally entered; prior to any payment to be made to the said Edward Nicholson, and the application for said order to amend was made too late.

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Petitioner, therefore, prays that said orders may be set aside and for nothing holden, and that the

petitioner may have such other relief in the premises as to this Court shall be deemed proper.

THOMPSON & HANSTEIN,
*Solicitors for and of Counsel with
Defendant-Appellant, Atlantic
City Lumber Company.*

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[ENDORSED]

Due and legal service hereby acknowledged this 30 day of Dec., 1929.

Bourgeois & Coulomb,
Solicitors for and of Counsel
with Defendant-Respondent.

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ANSWER TO PETITION OF APPEAL.

(Filed Jan. 8, 1930.)

NEW JERSEY COURT OF ERRORS
AND APPEALS.

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Between
THE ATLANTIC CITY NA-
TIONAL BANK, *et al.*,
Complainants,
and
ANDREW P. WILSON, *et*
al.,
Defendants. }
On Appeal from the
Court of Chancery.
Answer to Petition of
Appeal.

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ATLANTIC CITY LUMBER
Co.,
Appellant,
v.
EDWARD NICHOLSON,
Respondent. }
On Appeal from the
Court of Chancery.
Answer to Petition of
Appeal.

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The answer of Edward Nicholson, the above-named respondent to the petition of appeal of the Atlantic City Lumber Co., the above-named appellant:

This respondent not admitting the truth of all or

any of the matters in said petition of appeal contained, for answer thereto, nevertheless, admits that two certain orders were on December 18, 1929, made and entered in the Court of Chancery in the above-entitled cause for the purpose in said petition mentioned and as therein set forth; but as to the substance and form of said orders, this respondent begs leave to refer thereto when the same shall be produced.

- 10 This respondent is advised and believes that said orders are agreeable to equity; and he prays that the same may be affirmed with costs to be taxed in favor of this respondent.

BOURGEOIS & COULOMB,
*Solicitors for and of Counsel
with Respondent.*

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[ENDORSED]

Service of the within answer to petition of appeal duly acknowledged, this day of January, A. D. 1930.

Sol. of Appellant.

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STIPULATION.

(Filed Jan. 17, 1930.)

NEW JERSEY COURT OF ERRORS
AND APPEALS.

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Between ATLANTIC CITY NATIONAL BANK, <i>et al.</i> , <i>Complainants,</i> and ANDREW P. WILSON, <i>et</i> <i>al.</i> , <i>Defendants.</i>	}	On Appeal from the Court of Chancery. Stipulation.
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ATLANTIC CITY LUMBER Co., <i>Appellant,</i> v. EDWARD NICHOLSON, <i>Respondent.</i>	}	On Appeal from the Court of Chancery. Stipulation.
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It is stipulated by and between Thompson & Han-
stein, solicitors for and of counsel with defendant-
appellant, Atlantic City Lumber Company, and
Bourgeois & Coulomb, solicitors for and of counsel
with defendant-respondent, Edward Nicholson, that

this suit is identical in facts and law with seven other suits, all entitled as the above suit and all involving the same questions of law and fact, varying only as to the amounts set forth in the decree; that similar proceedings have been followed throughout all of said eight suits, and similar orders and decrees entered; that this appeal shall be dispositive of all of said cases, and that similar orders may be entered in each of said cases, in accordance with the
10 order of the Court of Errors and Appeals to be entered in this case, without the necessity of a formal appeal in each of said cases, and that pending this appeal no proceedings are to be taken in the other seven suits for the collection of any money by the said Edward Nicholson, under the orders entered in said cases.

It is further stipulated and agreed that the printing of the records and exhibits in this case has been
20 abridged, and the following is stipulated as to facts:

(1) The mortgage from Andrew P. Wilson and Sarah, his wife, to Louis Satanov, was dated June 5th, 1923, in the amount of \$10,000.00.

(2) Said mortgage *inter alia* was assigned by Louis Satanov to Atlantic City National Bank, on June 7th, 1923, for a consideration of \$45,000.00.

30 (3) The mortgage from Andrew P. Wilson and Sarah, his wife, to William Staiger, was dated June 5, 1923, in the sum of \$2,500.00.

(4) The mortgage from Andrew P. Wilson and wife to Atlantic City Lumber Company was dated June 8, 1923, in the sum of \$4,500.00.

(5) The judgment of Atlantic City Lumber Company against Andrew P. Wilson was recovered on October 30, 1923, for \$3,645.11.

(6) Mason and Gaskill recovered their judgment on mechanics' lien against Andrew P. Wilson, Louis Satanov, William Staiger and John Murtland on November 3, 1923, in the sum of \$3,946.42.

(7) The sum of \$541.31 was deducted from the amount due Louis Satanov, and paid to Mason & Gaskill, and in turn deducted from the amount due William Staiger, and paid to Louis Satanov; because, as set forth in paragraph 6, above, the said Mason & Gaskill had recovered a mechanics' lien judgment against Louis Satanov, William Staiger and others; the said Louis Satanov and William Staiger, mortgagees, having failed to defend the said mechanics' lien suit, and thus allowed the priority of Mason & Gaskill's claim to be established over their said mortgages; whereas the Atlantic City Lumber Company did successfully defend said mechanics' lien suit, on the ground that the claim had not been properly apportioned; so that the lien of Mason & Gaskill, while prior to that of Louis Satanov and William Staiger, was subsequent to that of the Atlantic City Lumber Company, who were subsequent to Satanov and Staiger; and in order to preserve the proper priority under this anomalous condition, the above method of payment was adopted.

(8) The foreclosure bill of Atlantic City Lumber Company was filed on March 28, 1924.

(9) The foreclosure bill of Atlantic City National Bank was filed on May 1, 1924.

(10) The following named were defendants in the foreclosure bill of Atlantic City Lumber Company:

Chelsea National Bank, John Murtland, John Wise, Charles M. Mason and Berdell Gaskill, trading as Mason and Gaskill, The State of New Jersey, Howard Cloud, sheriff, Atlantic City Lumber Company, Joseph I. Levy, William B. Riley, Willis A. Herbert, Sr., and Willis A. Herbert, Jr., trading as Willis A. Herbert and Son, M. E. Blatt Company, Bankers Trust Company, Louis I. Dunn (tenant), May Gamber (tenant), Harry Grossman (tenant), Dora Strumpf (tenant), Edwin M. Vesey (tenant), Morris M. Ingersoll (tenant), Irwin B. Croney (tenant), Edwin Keinert (tenant), Harriet H. Schoh (tenant), John Ashurst (tenant), John Wise (tenant), Andrew H. Anderson (tenant), Caroline Gass (tenant), Anna Dinke (tenant), Harry Harrold (tenant), Andrew P. Wilson, Sarah Wilson, and William H. Devitt, trading as Paul J. Devitt.

(11) The following named parties were defendants in the foreclosure bill of Atlantic City National Bank:

Andrew P. Wilson and Sarah Wilson, Chelsea National Bank, Willis A. Herbert, Sr., and Willis A. Herbert, Jr., trading as Willis A. Herbert and Son, John Murtland, John Wise, Malcolm B. Woodruff, sheriff, Howard R. Cloud, sheriff, Charles M. Mason and Berdell Gaskill, trading as Mason and Gaskill, Joseph I. Levy, William B. Riley, M. E. Blatt Company, Bankers Trust Company, William H. Devitt, trading as Paul J. Devitt, Alice Hohg, and Harry Harrold.

(12) The report of priorities as ascertained in the foreclosure bill of Atlantic City National Bank was as follows:

Complainant, Atlantic City National Bank, \$6,330.21; complainant, Louis Satanov, \$4,935.69; from which is to be deducted the sum of \$541.31, to be paid to Mason & Gaskill; William Staiger, \$1,402.50, from which is to be deducted the said sum of \$541.31, paid by Louis Satanov to Mason & Gaskill, and which is to be paid to Louis Satanov; Atlantic City Lumber Company, \$630.84, William Staiger, \$541.31; Willis A. Herbert and Willis A. Herbert, Jr., trading as Willis A. Herbert and Son, 10 \$420.20, Atlantic City Lumber Company, \$4,046.53; Joseph I. Levy, \$753.34; William B. Riley, \$755.29; M. E. Blatt Company, \$416.13; William H. Devitt, trading as Paul J. Devitt, \$712.47.

(13) The report of priorities as ascertained in the foreclosure bill of Atlantic City Lumber Company was as follows:

Complainant, \$4,761.75; Chelsea National Bank, \$45,316.70; Mason and Gaskill, \$4,190.87; John 20 Murtland, \$4,035.42; Atlantic City Lumber Company, \$3,869.61; Joseph I. Levy, \$680.61; William B. Riley, \$682.42; Willis A. Herbert and Son, \$395.59; Paul J. Devitt, \$688.11.

(14) Under and by virtue of the final decree in the foreclosure suit of the Atlantic City Lumber Company, the premises were sold on August 19, 1925, to Edward Nicholson, for the sum of \$5,527.73, and a deed therefor was delivered to said Nicholson on 30 September 3, 1925, and recorded in Book 787 of Deeds for Atlantic City, p. 123, &c.

(15) Under and by virtue of the final decree and execution in the foreclosure suit of Atlantic City National Bank, the said premises were sold on Decem-

ber 3rd, 1925, to Edward Nicholson, for the sum of \$14,750.00, which amount was sufficient to satisfy the mortgage of the Atlantic City National Bank, and some of the subsequent encumbrances, and, to a certain extent would have been sufficient to satisfy the judgment of the Atlantic City Lumber Company, and a deed therefor was delivered to said Nicholson in December, 1925, and duly recorded.

- 10 (16) Under and by virtue of the execution in said foreclosure suit of Atlantic City National Bank, the sheriff of Atlantic County made distribution of the proceeds of said sale as follows:

To complainants	\$11,411.50
To Mason & Gaskill	570.71
To William Staiger	897.96
To Louis Satanov	541.31

- and has remaining in his hands for distribution, the sum of \$918.22, which, under the original decree,
20 was payable to the Atlantic City Lumber Co.

(17) The original petition of Edward Nicholson was filed on December 17, 1925.

(18) The order denying the prayer of the original petition was dated June 4, 1929.

- 30 (19) The supplemental petition of Edward Nicholson was filed on June 1, 1929.

(20) The order on the supplemental petition was made on December 18, 1929.

(21) The order to show cause allowed upon the first petition, and the order to show cause allowed on the second petition, were served upon all of the

defendants named in both the suit of the Atlantic City National Bank v. Wilson, *et als.*, and in the suit of Atlantic City Lumber Company v. Wilson, *et als.*, with the exception of the tenants.

(22) On October 27, 1924, a decree was entered in the suit of the Atlantic City Lumber Company, adjudging there to be due to said Atlantic City Lumber Company, the sum of \$4761.75, on its mortgage.

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(23) Under an execution issued, pursuant to said decree, the mortgaged premises were sold, on August 19th, 1925, to Edward Nicholson for \$5527.73, a sum sufficient to satisfy the decree in favor of the Atlantic City Lumber Company's mortgage, with interest and costs, but none of the other defendants in said cause; said premises were sold at that time subject to unpaid taxes, and the first and second mortgages, with interest.

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(24) Counsel for the Atlantic City Lumber Company stated in open court that the Atlantic City Lumber Company waived all rights to be paid anything on account of the decree in the suit of the Atlantic City National Bank on account of its mortgage, which had been satisfied in the foreclosure suit of Atlantic City Lumber Company against Wilson, but did not waive any rights as to its judgment.

(25) On the argument on the first petition the Atlantic City Lumber Co. filed a brief, which, in part, contained the following: 30

“To direct the payment of any of the money arising from this sale to Mr. Nicholson would be in effect, to change the mode of apportioning the fund, as set forth in the decree. This cannot be done on a petition for surplus money.

'No change in the mode of apportioning the fund can be made except by opening and correcting the decree and altering the execution.' Lithauer v. Royle, *et al.*, 17 Equity 40.'

THOMPSON & HANSTEIN,
*Solicitors for and of Counsel with
Defendant-Appellant, Atlantic
City Lumber Company.*

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BOURGEOIS & COULOMB,
*Solicitors for and of Counsel with
Defendant-Respondent, Edward
Nicholson.*

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NEW JERSEY COURT OF ERRORS
AND APPEALS

Between

ATLANTIC CITY NATIONAL BANK, *et al.*,
Complainants,

and

ANDREW P. WILSON, *et al.*,
Defendants.

ATLANTIC CITY LUMBER CO.,
Appellant,

and

EDWARD NICHOLSON,
Respondent.

ON APPEAL

BRIEF OF APPELLANT, ATLANTIC
CITY LUMBER CO.

This appellant, Atlantic City Lumber Co., brings up two orders of the Court of Chancery, one adding the respondent, Edward Nicholson, as a party de-

defendant, and the other, an order amending the final decree and execution. Similar orders were entered in seven other suits, all entitled as above, and all involving the same questions of law and fact, and all of which are to be controlled by the decision in this case, in accordance with the stipulation between the parties, filed in this cause, and set forth in the record of the case.

The appellant, Atlantic City Lumber Co., filed a bill on March 28th, 1924, to foreclose a certain mortgage of \$4500 owned by it. Said mortgage was a lien on all eight of the properties involved in these suits. It made parties defendant in said foreclosure suit, all subsequent encumbrancers, including itself, by reason of its holding a judgment against Andrew P. Wilson, the owner of the mortgaged premises. The foreclosure was carried through, in due course, and resulted in a sale under an execution, in that cause, which sale took place on August 19th, 1925, when the property was purchased by respondent, Edward Nicholson, for a sum sufficient to satisfy the decree of the Atlantic City Lumber Co. in that cause, but which said sum was not sufficient to satisfy any subsequent encumbrancer. Nicholson was not a party to the proceedings, nor did he have any connection with the property.

Prior to the Atlantic City Lumber Co.'s sale, to wit: on May 1st, 1924, the Atlantic City National Bank and Louis Satanov, filed eight separate bills to foreclose eight separate mortgages, which said mortgages covered, as first liens, all of the premises covered by the Atlantic City Lumber Co.'s mortgage. The foreclosure of those mortgages was so prosecuted that a final decree was entered in each of said foreclosures on June 17th, 1925. Said final

decrees provided for the payment, first, of the amount due to the Atlantic City National Bank; then, the amount due to Louis Satanov, the co-complainant with the Atlantic City National Bank (who had assigned said mortgages to the Atlantic City National Bank, as collateral security); then, to William Staiger, upon his second mortgage; then, to the Atlantic City Lumber Co. upon its mortgage; thence, to W. A. Herbert & Son, upon its lien claim; then, to the Atlantic City Lumber Co., upon its judgment, etc.

It will be observed that throughout the directions of the decree with regard to payment, there is a provision with regard to the sum of \$541.31 due to Mason & Gaskill, which is deducted from some of the various amounts ordered to be paid. The situation with regard to the payment of that money arises from the fact that Mason & Gaskill had a lien claim, which it reduced to judgment, and under which it obtained priority over some mortgages, and not over all, and the facts with regard to it are rather confusing, but do not affect the adjudication of the points raised on this appeal (see stipulation).

Pursuant to said final decree an execution was issued, and a sale held thereunder on December 31st, 1925, at which time, Nicholson again bought in the property, this time for the sum of \$14,750, which amount was sufficient to satisfy the decree of the complainants, and the subsequent encumbrances up to, and including, to a certain extent, the judgment of the Atlantic City Lumber Co.

The Court's attention is directed to the fact that, as set forth in the stipulation of the parties, the Atlantic City Lumber Co., this appellant, waives all right to be paid anything decreed to be due to it on

account of its mortgage, which had been satisfied in its own foreclosure suit, but did not waive any rights to be paid what was decreed to be due to it under its judgment.

Nicholson filed a petition on December 17th, 1925, praying for the surplus money over and above the amount necessary to satisfy the encumbrances prior to the Atlantic City Lumber Co.'s mortgage. On the argument on that petition, the Atlantic City Lumber Co. argued that "Until the decree of the Court had been fully satisfied, there is no surplus money, and that an order to direct the payment of the money arising from the sale to Mr. Nicholson, would be, in effect, to change the mode of apportioning the fund as set forth in the decree. This cannot be done on a petition for surplus money," and counsel for the Atlantic City Lumber Co. quoted from *Lithauer v. Royle, et al.*, 17 N. J. Equity 40, as follows:

" 'No change in the mode of apportioning the fund can be made, except by opening and correcting the decree and altering the execution.' "

The petition for surplus money was dismissed, the Court relying upon the cause of *Lithauer v. Royle*, cited in the Atlantic City Lumber Co.'s brief.

Thereafter, namely on May 31st, 1929, Nicholson filed a petition, praying that he be admitted as a party defendant in order to appear and move to amend the final decree, and that the final decree and execution be amended in accordance with the form of final decree annexed to his petition, and that the execution be amended in accordance with the direction of the final decree, and that the surplus

money arising from the sale, after satisfying the decree, as proposed to be amended, should be paid to Nicholson, and that the receiver appointed in the cause, be directed to pay to Nicholson all the rents and profits from the mortgaged premises, collected by him after June 17th, 1925.

The Court of Chancery entered two orders upon said petition, one, an order admitting Edward Nicholson as a party; the other, an order amending the final decree, from both of which orders this appeal is taken. For the sake of easy reference the important dates in this matter are set out in chronological order:

May 1st, 1924—Atlantic City National Bank and Louis Satanov foreclosure bill filed;

June 17, 1925—Final decree allowed in Atlantic City National Bank's foreclosure suit;

August 19, 1925—Edward Nicholson purchased at Atlantic City Lumber Co.'s sale;

December 3, 1925—Nicholson purchased at Atlantic City National Bank's foreclosure;

It is ^{submitted} admitted that the orders complained of are erroneous for the following reasons:

I. EDWARD NICHOLSON IS IN LACHES.

The reversal, or alteration of a final decree can only be accomplished by a bill of review, or a bill in the nature of a bill of review, and, although the

practice with regard to bills of review has been modified by the present practice, so that the result can be accomplished by petition, nevertheless, all the essential ingredients of a bill of review attaches to such a petition.

One of the most essential elements of a bill of review is that a bill of review will not lie after the time for appeal has expired.

“And in the Supreme Court of the United States, in the case of *Thomas v. Harvie’s Heirs*, 10 Wheat. 146, Justice Washington, in commenting upon the question of the limitation of the right to file a bill of review said: ‘It must be admitted that bills of review are not strictly within any Act of limitation prescribed by Congress, but it is unquestionable that courts of equity, acting upon the principle that laches and neglect ought to be discountenanced, and that in cases of stale demands its aid ought not to be affected, have always interposed some limitation to suits brought in those courts.’ And this case explicitly declares the rule, never since departed from in that court, as follows: ‘There is no statute expressly limiting bills of review, but the courts of the United States are governed in this particular by the analogous limitation of the right of appeal, and, therefore, a bill of review cannot be filed after the lapse of five years from the final decree.’ Applying this rule to the practice in our State, after the lapse of three years leave would not be granted to file a bill of review.” *Watkinson v. Watkinson*, 68 N. J. Equity p. 632, at page 641-642. *Michell v. Mitchell*, 97 N. J. Equity p. 298.

The decree which Nicholson asks to amend is dated June 17th, 1925. The petition to amend that decree is dated June 1st, 1929, practically four years after the entry of the decree which the said Nicholson desires to have amended. Clearly he is too late.

We submit that the case of *Watkinson v. Watkinson*, and *Mitchell v. Mitchell*, above cited, are clearly dispositive of Nicholson's right to have the decree amended.

Aside from Nicholson's tardiness in filing his petition to amend, he was equally in laches, even before the Atlantic City National Bank's sale. He bought the property on August 19th, 1925, under the Atlantic City Lumber Co.'s sale, which, as has been pointed out, was a sale under a third mortgage. At that time there was a decree two months old, decreeing the order of payment under the Atlantic City National Bank's sale, and decreeing, so far as the Atlantic City Lumber Co. is concerned, that its mortgage should be paid, and its judgment should be paid, in their regular order. It cannot be questioned but that the decree in the Atlantic City National Bank's foreclosure was eminently correct, and it has never been suggested that there was any error in the entry of the decree. The most that has ever been contended is that subsequent events made it erroneous.

It might have been that Nicholson had a right, by virtue of the interest which he acquired in the property through the Lumber Company's sale, to ask, prior to the bank's sale, that he be made a party in the bank's foreclosure, either on general principles of equity, or under the statute, 2 C. S. 421, s. 29 (repealed by laws of 1915, chapter 116, s. 13, but substantially continued in effect by Chan-

cery Rules 13 and 14). However, he failed to do so, and failed to ask to have the decree in the bank's foreclosure changed, and on December 3rd, 1925 (nearly four months after he had purchased at the lumber company's sale), he again went in to a sheriff's sale, and again purchased the same property, this time at the bank's sale.

On this phase of the question the case presents no different aspect from that which was presented in the case of *Mount v. The Manhattan Company*, 43 Equity, 25; affirmed in 44 Equity, 297. There it was contended that an assignee in bankruptcy appointed under the Federal Bankrupt Law, after a foreclosure against the bankrupt had been commenced and after the bankrupt had appeared in the foreclosure suit and filed an answer, was not bound by the decree of foreclosure rendered against the bankrupt. In disposing of this contention, Vice-Chancellor Van Fleet said, page 29, "The rule is now established that where a mortgagor is adjudged a bankrupt during the pendency of a suit for the foreclosure and sale of his mortgaged premises, and an assignee is appointed, the assignee stands, in respect to the mortgaged premises, *in the same position as any other purchaser pendente lite. If the assignee desires to become a party to the suit he must ask to be substituted in the place of the bankrupt, and if he fails to do so, his non-intervention will raise an implication, either that he has no defense, or that he has elected to waive any defense he may have. If he fails to intervene, and a decree for sale is made, he will be concluded by it; and a sale made in execution of the decree will bar his rights as effectually as it does those of the bankrupt.*"

We have underscored the part of the Vice-Chancellor's opinion which we deem to be particularly applicable to the present case. The Vice-Chancellor applied to an assignee in bankruptcy what he said was the rule applicable to any purchaser *pendente lite*. Nicholson, in the present case, is such a purchaser and is subject to that rule. As was pointed out in the Vice-Chancellor's opinion (and the Court of Errors affirmed the decision in the Chancery Court on the opinion rendered by the Vice-Chancellor) it was incumbent on Nicholson to intervene promptly and before sale under the decree which he now urges was erroneous. To paraphrase the language of the Court in the Mount case, Nicholson's non-intervention raised an implication either that he had no objection to the provisions contained in the decree of the Court or that he had elected to waive any objections that he may have had—with the result that the sale made in execution of the decree effectually barred Nicholson's rights.

Another and very recent authority to substantially the same effect is *New Home Building & Loan Association v. Wel-Bilt Construction Company*, 98 Equity 545, 131 Atlantic 523. The case cited bears a remarkable resemblance to the present case in that there, as here, a party claiming to have a right to be paid out of the proceeds of a sheriff's sale prior to the right of another party, both being subsequent encumbrancers in a foreclosure suit, failed to assert that right in the suit until after the sale had been had and had produced a surplus beyond the amount necessary to satisfy the complainant. The head note of the case succinctly states its result and it seems to us that it covers completely the present application of Edward Nicholson with the

single change that Nicholson's claim is that of a purchaser *pendente lite* instead of that of a mechanics' lien claimant. It is as follows:

“Where a party filed a mechanics' lien against certain real estate, and neglected to prosecute his claim until after sale under foreclosure of the real estate, he is guilty of laches, and his petition to be made a party to the suit for the purpose of establishing the priority of his claim should be denied.”

One more case may be mentioned. In *McKaig v. McCallum*, 60 Equity, 33, a decision by Vice Chancellor Henry C. Pitney in 1900, a motion was made “to vary the Master's report of priorities and the decree confirming the same” (page 34). The motion was made after the sale under a decree of foreclosure, which produced enough money to create a surplus above the amount necessary to pay the complainant. The moving party was a mortgagee whose mortgage was determined by the decree of foreclosure to be subsequent to the liens of several judgment creditors. It clearly appeared that because of a decision of the Court of Errors and Appeals in the case of *Grimshaw v. Carroll*, 33 Vroom, 730, that the judgment creditors were not entitled to the priority over the mortgagee accorded them by the decree. The decree was, therefore, clearly erroneous as to priorities. The decision of the Court of Errors and Appeals referred to had been made after the making of the Master's report, but before the entry of final decree. The Court held that it was not equitable to allow the mortgagee to vary the terms of the decree under which the sale in execution had been had. The following language

of the Vice-Chancellor in reaching his decision is material to the consideration of the present case. "They have lain still from that time—March, 1898 (*i. e.*, the time of the making of the Master's report)—for a period of two years, without moving to vary the Master's report and decree, and in the meantime the property has been sold on the basis of the validity of the judgment liens and their priority over the mortgages of the mortgagees now contesting it" (page 39).

Also in accordance with the contention which we are now making is the decision of the Court of Errors and Appeals in *State Mutual Building & Loan Association against O'Callahan*, 65 Equity,, 738, in which the Court held, reversing a decree advised by Vice-Chancellor Pitney, that an application to vary the terms of a decree should be passed upon before the execution of the decree by the sale of the mortgaged premises.

It may be important to observe that the above-cited cases do not rest upon any showing of actual injury to the person whose rights were sought to be disturbed after the execution of a decree in his favor. The result of the cases is, that a person who has rights by which a decree may be varied and which might have been asserted before the actual execution of the decree, may not be heard, after the decree has been executed by a sale, to say that the monies should be paid in some different way from that which the decree specifies. The reason for this is plain. No one can tell what a sale of land might have produced under a decree different from that under which the sale was actually had. The failure of a person to effect a change in the decree before sale does and should bar him from accomplishing a change in it after sale.

It may also be important to observe that on the point now under discussion the case of *Riverside Building & Loan Association v. Bishop*, 98 Equity, 508, 131 Atlantic, 78, which was cited by the appellee in the Chancery Court and which may be cited again here, is clearly distinguishable. The Court's attention is respectfully called to the last paragraph of the opinion of Vice-Chancellor Buchanan (98 Equity, at page 512), in which he says:

"It is argued that petitioner is barred by laches or estoppel. Not so. The moving papers show that as soon as it learned of the foreclosure suit it applied to be made a party and to stay the sale, and, being unsuccessful in the latter, gave notice, both at the sale and by letter to each defendant weeks before the sale, of its claims of priority."

The quoted paragraph turns the case into an authority in favor of the appellant. Obviously, the moving party in the Riverside case acted immediately as soon as his rights were known, and Vice-Chancellor Buchanan pointed out that thereby he saved himself from the bar of laches or estoppel. That is exactly what is not true in the present case.

The defendants in the bank's foreclosure relied upon the validity of the decree that had been entered, and went to the sale and bid to protect their respective interests, and Mr. Nicholson competed in the bidding; when the defendants bid what they felt would protect them, they let Mr. Nicholson buy on his next bid; no suggestion was ever made at the sale by Mr. Nicholson that he claimed to be entitled to the money which he was bidding, and his conduct in that respect alone would be sufficient to

bar him from having the decree amended when he permitted all of the defendants to rely upon it.

It may be that Nicholson will contend here, as he contended below, that he filed a petition for surplus money within the time limited for the filing of a bill of review, but that the matter was not determined on the merits because the Court indicated that it could only be done on a motion to amend the final decree. However, we submit that that would be no answer to Nicholson's laches, because (as appears from the stipulation), in the first brief filed by the lumber company, answering Nicholson's petition for surplus money, we made the following statement:

"To direct the payment of any of the money arising from this sale to Mr. Nicholson would be in effect, to change the mode of apportioning the fund, as set forth in the decree. This cannot be done on a petition for surplus money.

'No change in the mode of apportioning the fund can be made except by opening and correcting the decree and altering the execution.' *Lithaur v. Royle, et al.*, 17 N. J. Equity, 40."

The Court, in dismissing the petition for surplus money, relied upon the case of *Lithaur v. Royle*, cited by us.

In the case of *Grazioso v. Hirshfield*, 128 Atlantic Reporter, 541 (not yet official reported) the Supreme Court reversed a judgment in a case brought against only one of two joint contractors, and the Court pointed out that the defendant immediately took the position that the plaintiff's suit must fall because both joint contractors were not joined, and the Court further pointed out that the defen-

dant gave written notice of that objection in ample time for the amendment of the pleadings, and also moved to strike out the pleadings for that reason at the commencement of the trial.

The case of *Grazioso v. Hirshfield* seems to us to be a complete answer, if Nicholson makes the argument we anticipate. The very remedy now being sought by respondent was pointed out to the respondent by this appellant when Nicholson's petition for surplus money was first presented to the Court, and, therefore, we say that Nicholson was put on notice that his procedure was wrong, and having been put on notice that his only proper procedure was to open the decree, in ample time for him to have done so, before he was barred by the rules and practice of this Court, he cannot now complain if he failed to take advantage of the suggestion made to him.

II.

NICHOLSON WAS NOT A PARTY TO THE LITIGATION.

Nicholson never asked to be made a party defendant until he filed his petition of May 31st, 1929. Certainly that was not the diligence required of a suitor in Chancery. He was then asking to be made a party in order to pray for the amendment of a decree made four years before. Up until then he had only the limited status as a party that accrues to him as a purchaser.

“While a purchaser at a judicial sale, not a party to the suit, is made a party by the purchase, so far as questions arising from the sale

are concerned (*Collins v. Kidereling*, 87 N. J. Eq. 12), nevertheless, according to the decision of the Court of Errors and Appeals in the Equitable Life Assurance Society's case, such a purchaser, not being a party to the suit, cannot make a collateral attack upon the judgment of a court of general jurisdiction ordering the sale." *Lintott v. McCluskey*, Vol. 7, Advanced Reports, #51, at page 365 (not yet officially reported).

It should be noted that he does not make any claim that he is entitled to the money, which, by the amended decree is directed to be paid to him, by virtue of his status as purchaser in the bank's sale, but he claims to be entitled to the money by reason of his status as a purchaser in the lumber company's sale, which is, of course, a very different thing. Nicholson's rights as a purchaser at the lumber company's sale ceased when the bank's sale took place.

It seems to us that he had his right to ask to be made a party in the time intervening between his purchase at the lumber company's sale and the bank's sale, but after that he was clearly in laches, and to wait four years more, certainly bars him.

NICHOLSON HAS NO EQUITY.

The law favors the diligent. Laches and neglect are discountenanced and stale demands are not aided by the Court of Chancery.

The lumber company was diligent. It extended credit to the defendant, Wilson, the owner of the

fee; not obtaining its money, it instituted a suit, obtained a judgment, foreclosed a prior mortgage which it held, asserted its rights in the Atlantic City National Bank's foreclosure, saw to it that a decree was entered in its favor, and went to the sheriff's sale and protected its interest at the sale. It had an equity in the real estate in question. It did everything possible to protect it. What equity had Nicholson? He had absolutely no interest in the property in question. When the property was put up for sale at the lumber company's sale, he injected himself into that sale and bought the property. He knew of the decree in favor of the lumber company entered in the bank's foreclosure. He attended a second sale and again injected himself into the transaction and bought the property at the price which he considered a fair price. We say this advisedly; he had no interest to protect at that sale, and so had no reason to bid more than he considered the property was worth. He bid that figure; he got the property; he bought in the face of the decree; he says that he could have amended the decree before the sale, but he did not see fit to do so. Now, having bid what he considers a fair price, and having obtained the property, and having permitted the lumber company to believe for four years that it would receive its money, he now petitions the Court to return to him part of the very money which he bid, on his own idea, as to the fair price of the property. We submit that on a balancing of equities Nicholson's position is not as favorable as the lumber company's, the diligent creditor.

Nicholson relies solely upon the technical position that the lumber company's judgment was wiped out in the lumber company's sale.

That is not the fact, under the circumstances of

this case. At the time of the lumber company's sale, a decree in the bank's foreclosure was already two months old. By the terms of that decree it was decreed that monies be paid to this appellant. Just as a mortgage is merged into a decree, so was the lumber company's judgment merged into that decree. Looking at this case from Nicholson's angle, we find him, at the conclusion of the lumber company's sale, owning a property, not subject to prior mortgages, but subject to a decree. In that decree was an adjudication in favor of the lumber company's judgment. It could not be contended that that decree was wiped out, modified or in any way changed by the lumber company's sale. It survived the sale intact. It had to be complied with, or altered in a regular way. Nicholson did nothing in regard to it, but acquiesce in it. He recognized its validity when he bought the property affected by it, under an execution issued pursuant to it.

He bid at the sale under that execution without in any way suggesting that he did not consider it binding, or valid, and without suggesting that he intended to contest it.

"In *Chadwick v. Island Beach Company*, 43 Equity, 616, at page 624, Chief Justice Beasley said:

'Thus, if a man, having a title to an estate, which is offered to sale, and, knowing his title, stands by and encourages the sale, or does not forbid it, and thereby another person is induced to purchase the estate, under the supposition that the title is good, the former, so standing by, and being silent, will be bound by the sale, and neither he nor his privies will be at liberty to dispute the validity of the purchase.' If this be the law, as it unquestionably is, how can it

be said that the defendant was not called upon to divulge his title, when he stood by and saw the suit proceed to decree and sale?"

And so, a man having a right to the money to be realized from a sale, cannot stand by and permit the persons to whom it is decreed that money should be paid, to go to the sale and bid on the property, and he, thereafter, ask to be paid that money.

It is respectfully submitted that the orders of the Court of Chancery herein complained of should be reversed.

THOMPSON & HANSTEIN,
*Solrs. for Defendant-Appellant,
Atlantic City Lumber Co.*
WALTER HANSTEIN,
*Of Counsel with Defendant-Appellant,
Atlantic City Lumber
Co.*

NEW JERSEY COURT OF ERRORS AND
APPEALS.

Between

ATLANTIC CITY NATIONAL BANK, *et al.*,
Complainants,
and
ANDREW P. WILSON, *et al.*,
Defendants.

ATLANTIC CITY LUMBER Co.,
Appellant,
and
EDWARD NICHOLSON,
Respondent.

ON APPEAL FROM COURT OF CHANCERY.

BRIEF OF BOURGEOIS & COULOMB, FOR
RESPONDENT.

The appeal in this case is from two orders made in the above foreclosure suit; one admitting the respondent, Edward Nicholson, as a party defendant

to the cause; and the other amending the final decree and execution. Similar orders were made in seven other foreclosure suits, having the same title as the above suit, and, by stipulation, the decision in this case is to control the disposition of these other orders. The facts which have been stipulated, and which are hereinafter more particularly set forth, are briefly as follows: The Atlantic City Lumber Company, one of the defendants in the above suit, on March 28, 1924, filed a bill of foreclosure, making parties defendant to said suit, all incumbrancers subsequent to its mortgage, including itself as a judgment creditor. On May 1, 1924, the Atlantic City National Bank and Louis Satanov filed eight separate bills to foreclose eight separate mortgages against the property covered by the Atlantic City Lumber Company's mortgage. In these eight cases, the Atlantic City Lumber Company was made a party, both by virtue of its mortgage, and also by virtue of its judgment, and all parties subsequent thereto, and who had been made parties in the Atlantic City Lumber Company's suit, were made parties in the eight suits instituted by the Atlantic City National Bank, *et al.* Such proceedings were had in the Atlantic City Lumber Company's suit that a foreclosure sale of the premises therein described was had, on August 19, 1925, and the premises sold to Edward Nicholson, the respondent herein, for the sum of \$5,527.73, and a deed therefor delivered to him on September 3, 1925. Such proceedings were had in the eight suits of the Atlantic City National Bank that a sale in those suits was had on December 3, 1925, and the properties in each of those sales were purchased by Nicholson, the respondent herein; the price paid for the property in the instant case being \$14,750. There was due to

the complainants upon their decree, including interest and costs, the sum of \$13,831.78, made up as follows:

To complaints	\$11,411.50
To Mason & Gaskill	570.71
To William Staiger	897.96
To Louis Satanov	541.31
Sheriff's costs	410.30
	<hr/>
	\$13,831.78

leaving a balance in the hands of the sheriff, amounting to \$918.22.

The priority of the Mason & Gaskill claim over the mortgages of Satanov and Staiger, arose out of these facts: The Mason & Gaskill claim was on a mechanics' lien suit. Satanov and Staiger did not defend. The Atlantic City Lumber Company, however, did defend, and Mason & Gaskill's claim was, therefore, subsequent to the Atlantic City Lumber Company's claim, but prior to the Satanov and Staiger claim. The facts are somewhat confusing, and have no part in the consideration of this appeal.

The following discrepancies should be noted: In presenting the petitions to the Court, upon the eight foreclosure bills filed by the Atlantic City National Bank, they were numbered from 1 to 8. In printing the State of the Case, the appellant has printed the decree and orders in case #1, while in referring to the figures, it has referred to those contained in decree #2. The discrepancy is of no importance whatever, and the Court's attention is directed to it, only to account for a difference in the figures contained, both in the appellant's brief, and in our brief, as compared to the figures contained in the printed decree and orders.

Edward Nicholson, as purchaser of the property in question, under the Atlantic City Lumber Company's mortgage foreclosure suit, having succeeded to the rights of the Atlantic City Lumber Company, by virtue of its mortgage and its judgment, and to the rights of all subsequent incumbrancers mentioned in that suit, claims he is entitled to all the surplus money arising from the sale, notwithstanding the decree in the Atlantic City National Bank suit directed that that surplus should be paid to the Atlantic City Lumber Company, and to the subsequent incumbrancers in their order; and the moneys still being in the hands of the sheriff, Nicholson filed a petition in the Court of Chancery in this suit, asking that the moneys be paid to him. This petition was filed on December 17, 1925, two weeks after the sale. Notice was given to all parties, and several arguments had thereon. The learned Vice-Chancellor, on May 27, 1929, filed an opinion in which he denied the prayer of the petition, on the ground that no change or alteration could be made in the distribution of the surplus fund, unless and until the final decree and execution were amended; and on June 4, 1929, an order was entered, dismissing the petition in accordance with that opinion. A supplemental petition was filed by Edward Nicholson, the respondent, on June 1, 1929, praying that he be admitted as a party defendant to the cause, and that the decree and execution be amended, to the end that the surplus moneys be directed to be paid to him; and on December 18, 1929, orders were entered, making Nicholson a party to the cause, and amending the decree and execution, in order that the surplus moneys might be paid to him. These are the orders from which this appeal is taken.

The facts are stipulated, and appear at page 111, State of the Case. An orderly statement of the sequence of events is as follows:

March 28, 1924, Atlantic City Lumber Company foreclosure bill filed.

May 1, 1924, Atlantic City National Bank foreclosure bill filed.

October 27, 1924, final decree in suit of Atlantic City Lumber Company.

June 17, 1925, final decree in suit of Atlantic City National Bank.

August 19, 1925, sale in suit of Atlantic City Lumber Company.

December 3, 1925, sale in suit of Atlantic City National Bank.

December 17, 1925, first petition of Edward Nicholson filed.

May 27, 1929, Vice-Chancellor's conclusions on first petition.

June 1, 1929, second petition of Edward Nicholson filed.

December 18, 1929, date of order on second petition.

Other important facts to be noted are:

1. All of the parties in the foreclosure suit of the Atlantic City Lumber Company, including the Atlantic City Lumber Company as complainant, by virtue of its mortgage, and also by virtue of its judgment, were parties to the foreclosure suits of the Atlantic City National Bank. Some of the tenants were not made parties to the Atlantic City National Bank suit, but this is of no significance in this case (Par. 11, stipulation).

2. The proceeds of the foreclosure sale in the At-

Atlantic City Lumber Company's foreclosure suit were sufficient to satisfy in full the Atlantic City Lumber Company's mortgage decree and costs (Par. 23, stipulation).

3. The mortgage from Wilson and wife to Satanov was dated June 5th, 1923, in the amount of \$10,000 (Par. 1).

4. Said mortgage, *inter alia*, was assigned by Louis Satanov to Atlantic City National Bank, on June 7, 1923, for a consideration of \$45,000 (Par 2).

5. The mortgage from Wilson and wife to Staiger was dated June 5, 1923, for \$2,500.00 (Par. 3).

6. The mortgage from Wilson and wife, to Atlantic City Lumber Company was dated June 8, 1923, in the sum of \$4,500 (Par. 4).

7. The judgment of Atlantic City Lumber Company against Andrew P. Wilson was recovered on October 30, 1923, for \$3,645.11 (Par. 5).

8. Mason and Gaskill recovered their judgment on mechanics' lien against Andrew P. Wilson, Louis Satanov, William Staiger and John Murtland on November 3, 1923, in the sum of \$3,946.42 (Par. 6).

9. The order to show cause allowed upon the first petition, and the order to show cause allowed on the second petition, were served upon all of the defendants named in both the suit of the Atlantic City National Bank v. Wilson, *et als.*, and in the suit of Atlantic City Lumber Company v. Wilson, *et als.*, with the exception of the tenants (Par. 21).

ARGUMENT.

The petitioner-respondent contends:

1. That by virtue of his having purchased the property at the Atlantic City Lumber Company's foreclosure sale, he succeeded to all of the rights of the complainant, Atlantic City Lumber Company, by virtue of its mortgage, its right as owner of the judgment, and also all of the rights of all the incumbancers mentioned therein, either as complainant or defendant.

2. That he was not guilty of laches.

3. That it was neither necessary nor proper to proceed in the cause by way of bill of review, or bill in the nature thereof.

4. That he had a standing in court to file the petition.

I.

PETITIONER-RESPONDENT, BY REASON OF HAVING PURCHASED THE PROPERTY IN QUESTION IN THE SUIT OF THE ATLANTIC CITY LUMBER COMPANY UPON ITS MORTGAGE, SUCCEEDED TO AND BECAME VESTED WITH ALL OF THE RIGHTS OF THE ATLANTIC CITY LUMBER COMPANY IN THE PROPERTY IN QUESTION, BY VIRTUE OF ITS MORTGAGE, AS WELL AS BY VIRTUE OF ITS

JUDGMENT; AND LIKEWISE WITH ALL OF THE RIGHTS OF ALL OF THE PARTIES TO SAID SUIT, WHETHER COMPLAINANTS OR DEFENDANTS.

As we read the brief of the appellant, it practically concedes the right of the petitioner to the surplus moneys arising out of the foreclosure suit of the Atlantic City National Bank, by reason of the petitioner having purchased the property at the sale under the Atlantic City Lumber Company's foreclosure suit. The petitioner purchased the property on the Atlantic City Lumber Company's suit, on August 19, 1925, and, therefore, at the time of the sale under the Atlantic City National Bank's suit, on December 3, 1925, the petitioner was the owner of said property, subject only to the rights of the complainants therein; and of the defendant Staiger, holder of the second mortgage, and being such owner at the time of said sale, was entitled to be paid the surplus arising therefrom, after the complainant's interests had been paid and satisfied. The stipulation shows that the amount he paid at the sale was \$14,750; that the amount necessary to satisfy the complainants was \$13,421.48, which, with sheriff's costs of \$410.30, leaves a surplus of \$918.22; that the next incumbrancer entitled to be paid, so far as the decree of the Atlantic City National Bank was concerned, was the Atlantic City Lumber Company by virtue of its mortgage. This claim, as has been shown, was fully paid and satisfied out of the funds received from the sale of the property under the Atlantic City Lumber Company's foreclosure suit. If the money in question is not paid to the petitioner, it must, under the decree in the Atlantic City National Bank suit, be paid to the Atlantic

City Lumber Company, by virtue of its mortgage; and thus the Atlantic City Lumber Company's mortgage will be twice paid. It is true that the Atlantic City Lumber Company says that it has waived its right to receive this money by virtue of its mortgage, in favor of its right under its judgment. The fact that the Atlantic City Lumber Company's judgment was second in order of priority to its mortgage, is purely accidental in this case. If we assume that the next incumbrancer, instead of being the Atlantic City Lumber Company, was some other individual or corporation, the incongruity of the situation is at once made obvious, for in such an event, the Atlantic City Lumber Company could not be compelled, if its position is correct, to waive its right to the funds in question, in favor of a stranger; and as we have above indicated, the result would be that its mortgage would be paid twice; if not in full, then in part.

It cannot be denied that a purchaser under a foreclosure sale acquires the title of the mortgagee, and the interests of all defendants, as of the time of institution of suit. *Bourgeois v. Edwards, et al.*, 104 Atl. Rep., 447 (Not officially reported).

“A sale under a decree foreclosing the equity of redemption of all the defendants thereto vests in the purchaser not only the rights of the mortgagee under whose mortgage the premises were sold, but all rights of the defendants in the suit.” *Wimpfheimer, et al. v. Prudential Insurance Co.*, 56 N. J. Eq. 585.

“The title made under a decree condemning mortgaged premises to sale invests the purchaser with all the rights and equities inhering in either of the parties to the suit, whether com-

plainant or defendant, at the time of the institution of the suit.”

Mount v. Manhattan Co., 43 N. J. Eq. 25.

“The purchaser of land sold on foreclosure of a mortgage takes all the title which the mortgagor had and conveyed by such mortgage.”

Heninger v. Heald, 52 N. J. Eq. 431.

“The purchaser on foreclosure sale takes the title which the mortgagee had by virtue of his mortgage.”

Baldwin v. Howell, 45 N. J. Eq. 519.

“Title acquired by foreclosure relates back to the date of the mortgage, so as to cut off intervening equities and rights. If all subsequent purchasers and incumbrancers are made parties to the bill, the title under the mortgage is perfected to an absolute one. In such case the purchaser acquires the title of the mortgagee, and also the title of the mortgagor as it stood at the time of the making of the mortgage * * *. The purchaser occupies the same position as to the priority of claims or liens on the property that the mortgagee did.”

2 *Jones on Mortgages*, 5th Ed., Sec. 1654, p. 549.

“In general, a valid and completed foreclosure operates to divest the title to the mortgaged premises possessed by the mortgagor and to which the mortgage has attached, and to vest the same in accordance with the method of foreclosure pursued, either in the mortgagee directly or in the mortgagee or a third person

purchasing at a foreclosure sale; either in an action or other judicial proceeding to foreclose or under a power in the mortgage as of the date of the mortgage, discharged of all rights and claims acquired subsequent to such date * * *."

41 *C. J.*, Sec. 1113, p. 891.

It is, therefore, clear that when Mr. Nicholson purchased the property in question in the foreclosure suit of the Atlantic City Lumber Company, he became vested, by reason thereof, with all of the right, title and interest of the Atlantic City Lumber Company by virtue of its mortgage, the Atlantic City Lumber Company by virtue of its judgment, and of all other incumbrancers subsequent to the mortgage and judgment of the Atlantic City Lumber Company; all of whom were made parties, either complainant or defendant, in that suit. It is clear, also, that the incumbrance or lien of the Atlantic City Lumber Company by reason of its mortgage, and also by virtue of its judgment, and the incumbrances or liens of all parties subsequent thereto, and made parties, either complainant or defendant, in the Atlantic City Lumber Company's suit, were no longer liens or incumbrances upon the property in question; notwithstanding the decree in the Atlantic City National Bank suit mentioned them as lienors and incumbrancers, and directed the payment of the moneys to them. If this were not true, then these incumbrancers would be paid twice, first in the suit of the Atlantic City Lumber Company, and second in the suit of the Atlantic City National Bank. As we have seen, the lien, when once discharged, can never again attach to the property; first, because it was cut off by virtue of the suit and sale, and second, because there would be no con-

sideration for its attaching. We do not contend, of course, that their claims are satisfied, but only that they are no longer liens or incumbrances against the property.

We note that the appellant, in its brief, declares that Mr. Nicholson was an interloper, and voluntarily injected himself into the picture, without any legal right, when he purchased the property at the Atlantic City National Bank's sale, and created the fund out of which this controversy arises. It is, of course, obvious that counsel for the appellant entirely misconceives the position of Mr. Nicholson. At the time of the sale under the Atlantic City National Bank's foreclosure suit, Mr. Nicholson was the owner in fee of the property in question, subject only to the rights of the complainants in the Atlantic City National Bank suit, and of the defendant Staiger, holder of the second mortgage, which, of course, had not been cut off by the suit of the Atlantic City Lumber Company; first, because they were liens prior to the mortgage and judgment of the Atlantic City Lumber Company, and secondly, because they were not made parties therein. It is quite clear, therefore, that the surplus moneys belong, not to the Atlantic City Lumber Company by virtue of either its mortgage or its judgment, but to Mr. Nicholson.

II.

IN VIEW OF THE FACT THAT NICHOLSON FILED HIS PETITION FOR THE SURPLUS MONEYS ON DECEMBER 17, 1925, TWO WEEKS AFTER THE SALE, HE IS NOT IN LACHES.

Counsel for the Atlantic City Lumber Company, in his brief has argued that the respondent, Nicholson, is barred from the relief sought, because of his laches.

It is a fundamental doctrine of our Courts that laches cannot be urged by a defendant unless he has suffered some disadvantage by reason of the delay. *Tynan v. Warren*, 53 N. J. Eq. 313 at p. 321. In the present case, the Atlantic City Lumber Company suffered no disadvantage whatever, because, in any event, if our position on the main point is correct, Mr. Nicholson was entitled to all the proceeds of the sales under the various mortgages in these several cases, after satisfying the first mortgages. The Atlantic City Lumber Company could not, by any possibility, have reaped any of the proceeds from these sales; in other words, its equity against the property having been discharged by virtue of the previous sale, it had no equity to protect. It is not like a case where by bidding up to a certain amount, it could either have purchased the property, or participated in the distribution of the proceeds. In the present case, the fund in dispute was created by Mr. Nicholson, and not by the Atlantic City Lumber Company. It was part of the price paid by him for the property. There is no proof that the Atlantic City Lumber Company bid

anything at the sale, but whether it did, or did not, the fund now being applied for was paid by Mr. Nicholson.

In addition to the above, it is scarcely necessary to point out that Mr. Nicholson did not delay asserting his rights to the fund in question. The following authorities all support the proposition that laches cannot be charged to a party who has prosecuted his claim in another tribunal under a mistake of jurisdiction, or under a mistake as to the remedy, etc.:

21 *C. J.*, 242:

“Delay in instituting suit may be excused where the matter in dispute has in the meantime been the subject of litigation. Time does not run against a plaintiff after he has instituted his suit, provided it is diligently prosecuted, or pending an appeal therein * * *. Delay pending other proceedings has been held excusable, not only where the termination of such proceedings was necessary for the ascertainment of facts or the establishment of rights or liabilities involved in the later suit, but also where the former suit had a similar object but proved unavailing.

4 *Pomeroy's Equity Jurisprudence* (4th Ed.), 3466, Sec. 1455:

“The pendency in the same or in another jurisdiction of a suit relating to the subject-matter is generally regarded as an excuse for delay until its termination; provided, however, this other suit is prosecuted with due diligence. Such a condition may arise when the complainant seeks the wrong jurisdiction or the wrong remedy in the first instance; and it may also

occur when the decision in one case depends largely upon that in another.”

In *Forman v. The Executors of Edmund Brewer, et al.*, 62 N. J. L. 748, it was held:

“When a claim is submitted to the jurisdiction of a court for determination, the common statute of limitations, and the analogous bars and presumptions in equity and at law, are regarded, for all purposes of the pending litigation, as having ceased to operate against the claim, so that, if he be not then barred, the subsequent lapse of time will not defeat it.”

In *Hines v. Fulton*, 114 S. E., 684; 92 W. Va., 204, it was held:

“A bill will not be dismissed because of laches where it appears that plaintiff was vigorously prosecuting a suit to vindicate his rights against defendant in another court during all of the time that elapsed between the accrual of the cause of action and the institution of the suit sought to be barred by laches.”

In *Central R. Co. of N. J. v. Jersey City*, 199 Fed. 237, it was held:

“A delay of several years by a railroad company before commencing a suit against a city for unlawful discrimination in the taxing of its property did not constitute laches which barred it from relief, where, during the time, it was litigating the right of the city to tax its property at all, and, pending such litigation, the city did not attempt to enforce collection of the taxes.”

In *Gilmer v. Morris*, 43 A. L. R. 922; 43 Fed. 456, the Court said:

“However, the institution of a previous suit against the same parties for the recovery of the same property, which resulted in an adverse decision to the plaintiff on the question, apart from the merits of the case, was held to be a good defense to negative the idea of laches arising from a five year delay in commencing an action for breach of trust, where no change injurious to the parties has occurred.”

It will be observed from the facts, above narrated, that Mr. Nicholson filed his petition in this cause on December 17, 1925. This was about the time that he received the deed. That petition prayed the Court to make an order in the Atlantic City National Bank suit, directing that the surplus moneys arising from the sale in that suit, should be paid to Nicholson as the owner of the property at the time of that sale. It is true that there was no specific prayer that the decree or execution should be amended, but the effect of the order, if it had been made pursuant to the prayer of the petition, would have been to amend the decree and execution. No decision was rendered on the petition filed on December 17, 1925, until May 27, 1929, and immediately the present supplemental petition was filed, asking that Nicholson be made a party to the suit, and that the decree and execution be amended, so as to provide for the distribution of the surplus moneys to him. It is inconceivable how it can plausibly be argued that the petitioner, Nicholson, was in any wise in laches.

III.

IT WAS NOT NECESSARY FOR THE PETITIONER TO FILE A BILL OF REVIEW, OR A BILL IN THE NATURE OF A BILL OF REVIEW, IN ORDER TO HAVE THE SURPLUS MONEYS DIRECTED TO BE PAID TO HIM.

The next point raised by counsel for the Atlantic City Lumber Company is that a decree can only be opened by a bill of review, or a bill in the nature of a bill of review. There is no proof in this case that the decree herein had been enrolled, and it is clear that the moneys, *i. e.*, the subject-matter of the controversy are still in Court and not yet disbursed.

The decree in this case could very properly have provided for the payment of all of the moneys into court, excepting possibly, the moneys due the complainants, and even in such a case, unless there was a direction to pay the money to the complainants, the sheriff would be obliged to pay the money into court.

In the case of *Riverside B. & L. v. Bishop*, 98 N. J. Eq. 508, Vice-Chancellor Buchanan, in passing on a precisely similar situation, held that a decree in a foreclosure suit might be opened upon petition and amended in order to adjust the interests of the petitioner acquired after the filing of the bill or after final decree. We submit that the procedure followed by the petitioner in the present case to protect such an interest, is completely vindicated by the decision in that case.

In the case of *Gifford, et al v. McGuinness, et al.*, 63 N. J. Eq. 834, it was held that:

“The Court, out of which an execution issues,

may, at its discretion, order paid into court money which by the terms of the writ is payable to a person named.”

In that case, the decree, after directing the sale of the property, provided for the payment of the proceeds in the manner therein specified, to wit: to the complainant, and then to a judgment creditor, and directed the sheriff to have the moneys in court to render the same to the parties in accordance with the decree. After the sale, and before the disposition of the proceeds, the wife of McGuinness filed her petition in the Court of Chancery setting forth that the judgment of McLaughlin, to whom the decree had directed part of the proceeds to be paid, was collusive; and that she had certain rights by virtue of an inchoate right of dower, and had procured a writ of sequestration.

Upon this situation, the Chancellor referred the matter to a Master to determine the truth of the allegations, and directed the sheriff to pay into Court all of the proceeds of the sale above the amount due complainants, and afterwards denied an application by McLaughlin to discharge or modify the order, upon which ruling McLaughlin appealed to the Court of Errors and Appeals. Justice Collins, for the Court of Errors and Appeals, said:

“So far as payment into court is concerned, the order appealed from was entirely discretionary with the Chancellor, and is not subject to review. Originally, under an execution of the tenor of that under which the sale was made, framed, as it was, on the common law *fieri facias*, payment could only be made publicly in court by the sheriff or other officer executing the writ. A relaxation of this strictness, per-

mitting payment out of court, and the acceptance, in lieu of cash, of the receipt of the party entitled to payment under the judgment or decree—which became almost a matter of course where such party was the purchaser—led to the contention that neither the officer nor the court could adopt any other course. This contention was effectually disposed of by Chief Justice Hornblower, in the Supreme Court, in 1833. *Stebbins v. Walker*, 2 Gr. 90. The Chief Justice, after a historical review of the subject, said: ‘I cannot doubt that we have the right, whenever application is made to us for that purpose and a proper case stated, to compel the sheriff to bring the money into court. Neither have I any doubt but that the sheriff, whenever he chooses for his own convenience, instead of paying the money to the party out of court, may, in obedience to the command of the writ, bring it here and pay it into court.’ This case, also, is authority for the right of the sheriff to discharge himself by taking the receipt of the clerk; *a fortiori* this is his only permissible course where payment into court is ordered.

The practice thus declared has never since been questioned. It was re-asserted as proper in *Cox v. Marlatt*, 7 Vr. 390, and in *Wandling v. Thompson*, 12 Vr. 142, and the Supreme Court held in contempt a sheriff who, after an order to pay into court the proceeds of an execution, gave a deed for land sold by him to a plaintiff in execution, and accepted his receipt in lieu of cash. We entirely assent to the view that any Court may compel money raised by its process to be brought into court for distribution, and that from an order made for that purpose no

one suffers an appealable grievance. To obtain an order merely for such payment neither written pleading nor proof is essential. The Court is merely enforcing a regulation customarily dispensed with. Presumably the money will be paid as previously adjudged. The only burden will be that of notice to interested parties.

Chancellor Green well held, in *Lithauer v. Royle*, 2 C. E. Gr. 40, that no change can be made in the mode of apportioning a fund ordered raised by decree, except by opening and correcting the decree and altering the execution. The same thing is, of course, true of a common law judgment.

The proceeding to correct the adjudication may, of course, be instituted before the money is ordered paid into court, and a very proper course is that which was taken in the present case, namely, to include prayer for that relief in the application for the order for such payment."

It will be observed that in this case, McLaughlin was a judgment creditor to whom the moneys had been directed to be paid. It is true that the sheriff was directed to pay them into court, but, nevertheless, in order to displace McLaughlin to give the relief to Mrs. McGuinness, prayed for, the final decree had to be amended. This was done in this case upon petition, and upon appeal, it was affirmed.

In the case of *Stebbins v. Walker*, 14 N. J. L. 90, the control by the court over surplus moneys arising out of the sale of property under execution was fully exemplified and vindicated. This case was cited by Justice Collins, in the *McGuinness* case above referred to.

In the case of *Equitable Life Assurance Society v. Laird*, 24 N. J. Eq. 319, the final decree provided for the sale of the mortgaged premises in a way which was found to be disadvantageous, and an execution was issued in accordance with such decree. By agreement and on motion, application was made to amend the final decree and execution, not for the purpose of providing a different method of disbursing of the proceeds, but in a more vital particular providing for a different method of sale. The order was made, amending the decree.

In the case of *Lithauer v. Royle*, 17 N. J. Eq. 40, cited by Mr. Justice Collins in the McGinness case, and by the Vice-Chancellor in the present case, it appeared that the final decree and execution contained specific directions for the payment of the proceeds of the sale both as to the debts and costs of the respective incumbrancers. The Court held that no changes could be made in the appropriation of the proceeds without an amendment of the decree and execution, and held that such an amendment could only be done upon motion and notice. The Court in this case entertained a motion to vary the terms of the decree and execution, and wrote an elaborate opinion touching the merits of the case, and the motion was disallowed, not because of any defect in procedure, but upon the merits.

An examination of the executions in the present case will disclose this interesting situation. The original execution after setting forth the various sums due, etc., provided as follows:

“And that you have these moneys before our said Chancellor, in our Court of Chancery, at Trenton, aforesaid, on the second day of January next, to render to the said complainants and defendants, and also the surplus money, if any there be” (p. 30, ll. 11-14, S. C.).

On the 11th day of December, 1925, another amendment was entered, and the execution was ordered amended in the following particulars: "And out of the proceeds thereof you do pay unto the said complainants and to the said several defendants, or to their respective solicitors," and again in the same order, in the following method: "and paid to Mason and Gaskill, or to their solicitor as aforesaid, together with interest and costs."

On the 23d day of December, 1925, the execution was amended further, as follows:

"Be amended on page 6, on line 14, after the amount \$541.31, by inserting the following: 'and which said sum of \$541.31 is to be paid to the said complainant, Louis Satanov.'"

It will be observed that the original execution directed the moneys due the complainants and defendants be paid into court, to be rendered, etc. Neither one of the amendments above referred to altered this provision, so that the situation is that all of the moneys, not only the surplus moneys, but the moneys found to be due to the complainants and the defendants, were required to be paid into court. This was the same situation as existed in the case of *Gifford v. McGuinness, supra*.

In the present case, the petitioner, Nicholson, had no interest in the premises in question at the time of the making of the final decree. Mr. Nicholson became a purchaser on August 19, 1925, and the final decrees in the eight cases of the Atlantic City National Bank, *et al.*, were entered on June 17, 1925, so that at the time that these decrees were entered, Mr. Nicholson had no interest in the premises.

Under the cases herein cited, Mr. Nicholson, by reason of the sale to him on August 19, 1925, suc-

ceeded to the rights of the Atlantic City Lumber Company as mortgagee, and the Atlantic City Lumber Company as a judgment creditor, and all of the other encumbrancers subsequent to the Atlantic City Lumber Company's mortgage, all of whom are made parties in the Atlantic City Lumber Company's suit. Mr. Nicholson, having succeeded to the rights of these parties in the premises, is clearly entitled to the surplus moneys. Now, under the final decree and the execution, the moneys now under consideration were paid into court, and are now in court awaiting distribution. These moneys belong to Nicholson by virtue of his having succeeded to the rights and liens of the complainant and the various defendants in the Atlantic City Lumber Company's suit. We are asking the Court that this money be paid to Nicholson, to whom it belongs. The Atlantic City Lumber Company is asking that the money be paid to it, to whom it does not belong, merely because a final decree and an execution directed that it was entitled to it, notwithstanding that before it was paid to it, and before distribution, the whole matter is brought before the Court upon a petition to amend the decree. Mr. Nicholson would not be entitled to the moneys in question, had he not succeeded to the rights of the complainants and the defendants in the Atlantic City Lumber Company suit, and he is asking for the moneys because he has stepped into the place of these complainants and defendants. His rights to the fund are as complete as though there had been an actual assignment to him by the various parties of their interest in the fund. The assignment, it is true, is not a conventional assignment, in writing or otherwise. It is an assignment by operation of law.

We submit that the amendment is not in reality

altering the decree in any respect, bearing in mind that it is merely substituting Nicholson for the parties named in the decree by reason of the fact that Nicholson has succeeded to their rights in the premises.

Even in cases where the decree itself was actually vacated and permission to file answers given, we find that it could be done by petition.

Mitchell v. Mitchell, 127 Atl. 185;

Brinkerhoff v. Franklin, 21 N. J. Eq. 334;

Carpenter v. Muchmore, 15 N. J. Eq. 123.

Application for these moneys was made promptly. The matter was argued on the merits on at least two occasions, and briefs filed. The question of the merits was not determined because the Court felt, or at least indicated, that it could only be done on a motion to amend the final decree, etc. There could certainly be no laches charged against the petitioner.

In the original petition the prayer was specifically for the payment of the money to Nicholson. If, in order to grant this relief, it was necessary that Nicholson should have been made a party, and the decree amended, the relief prayed for might well have been granted under the original petition. We do not understand that it is necessary, in Chancery practice, where specific relief is prayed for, that the petition should set forth the procedure by which such relief is to be obtained. Chancery Rule 60 provides:

“Relief other than that prayed for may be given (without a prayer for general relief) to the same extent as if general or other relief had been prayed for.”

It must be noted that the effect of the amendment of the decree in the present case is not to displace

the Atlantic City Lumber Company and the subsequent incumbrancers in favor of a stranger to their interests; but to substitute one who has succeeded to their interests, by virtue of the purchase at the previous foreclosure sale. All of the interest of the Atlantic City Lumber Company, by virtue of its mortgage and judgment, in the property in question, or by virtue of the Atlantic City National Bank decree, became vested in Nicholson by virtue of his purchase at the Atlantic City Lumber Company's foreclosure sale; and the interest of the Atlantic City Lumber Company, by virtue of its mortgage and judgment, transferred to the moneys paid by Nicholson at such sale. As we have above pointed out, there is in reality no substantial change in the decree. The effect of the change was to substitute for the Atlantic City Lumber Company, by virtue of its mortgage and judgment, the petitioner Nicholson, who had succeeded to its rights in the decree by virtue of his purchase.

An analysis of the cases cited by the appellant will disclose that in each of them, the moving party was a party to the original cause, and that the relief prayed for required an integral alteration or change in the decree; not, as in the present case, a substitution for the party to whom certain moneys were directed to be paid, of a party who had succeeded to those rights.

We respectfully submit that the present case is not one requiring a bill of review, or a bill in the nature of a bill of review.

IV.

THE PETITIONER, AS A PURCHASER, UNQUESTIONABLY HAS A STANDING IN COURT TO ASSERT HIS RIGHT TO THE SURPLUS MONEYS WHICH BELONG TO HIM.

Counsel for the Atlantic City Lumber Company objects, in that Mr. Nicholson, as a purchaser, has no standing in the court to assert his right to the surplus moneys arising from the sale of the property under the Atlantic City National Bank foreclosure suit. Nicholson was the purchaser, not only under the Atlantic City Lumber Company's mortgage, *i. e.*, the first mortgage foreclosure suit, but also under the eight foreclosure suits in which the Atlantic City National Bank was complainant.

In the case of *Shann v. Jones*, 19 N. J. Eq. 251, Chancellor Zabriskie held as follows:

“A purchaser at sheriff's sale, when not a party to the original suit, is held to be made a party by the purchase, so far as to be subject to the jurisdiction of the court on questions arising from the sale. Upon the same principle, he may be held to have a standing in court sufficient to be heard upon the subject of the disposition of the purchase money, while still in court, when part has been paid by him, and he claims the right to have it restored.”

The doctrine laid down in the *Shann* case was approved in the case of *Collins v. Kiederling, et al.*, 87 N. J. Eq. 12, in which Vice-Chancellor Walker, now Chancellor, at page 14, says:

“This is not the case of a purchaser asking

to be relieved of his bid because of the existence of any lien or incumbrance on the premises sold, under Section 35 of the Act relating to the sale of lands (*Comp. Stat. p. 4686*), and yet, under the proviso of that Act, the Court might direct the liens to be paid out of the proceeds of the sale on application of the purchaser or other party. A purchaser at a judicial sale, not a party to the suit, is made a party by the purchase, so far as questions arising from the sale are concerned; and he has standing in court sufficient to be heard upon the subject of the disposition of the purchase money, so far as he may be interested in its distribution."

For the reasons above discussed, we submit that the order appealed from should be affirmed.

BOURGEOIS & COULOMB,
*Solicitors for and of Counsel
with Respondent.*





