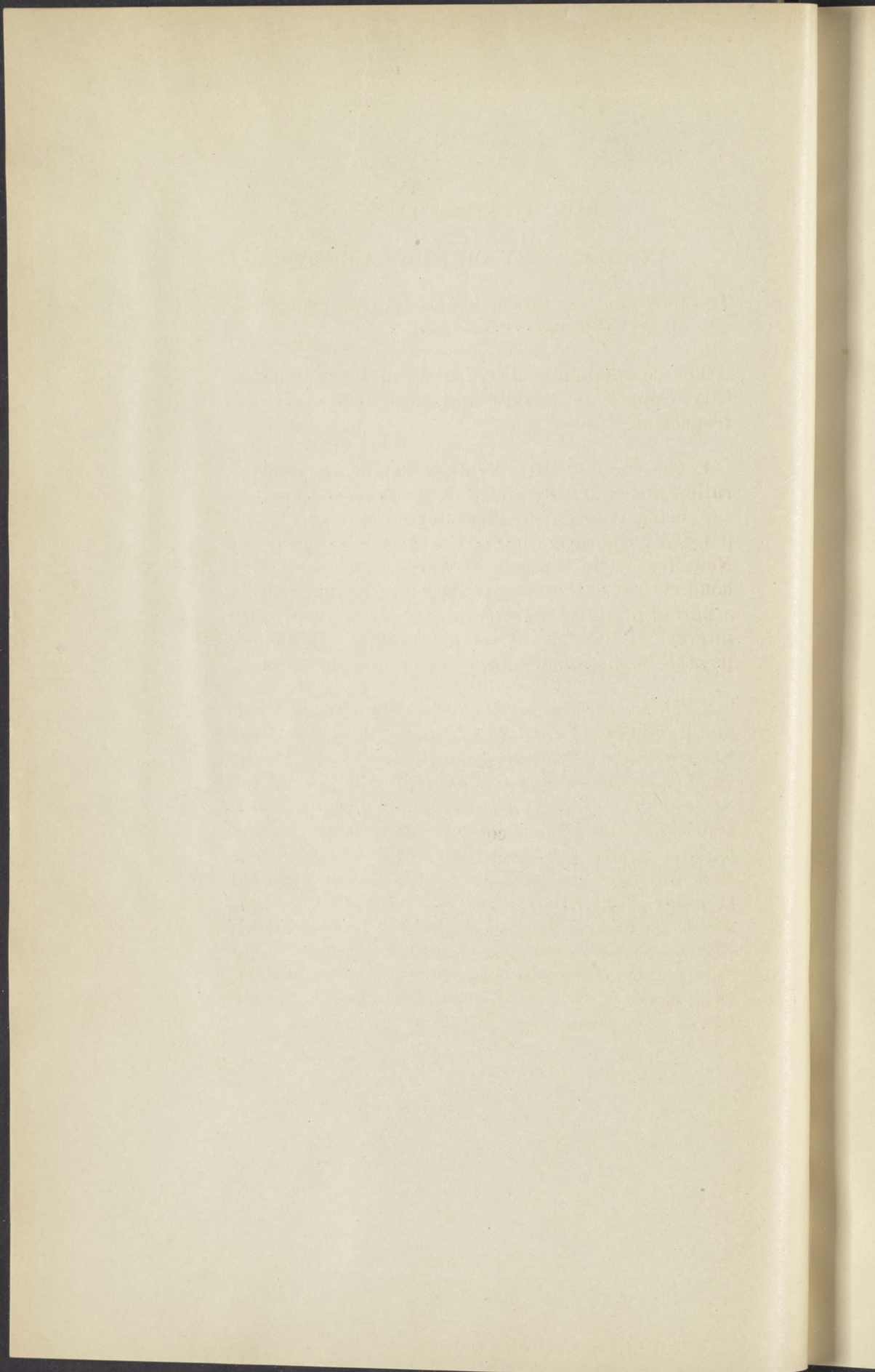


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BILL TO FORECLOSE.

IN CHANCERY OF NEW JERSEY.

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

The complainant, Mary E. Westcott, of Ventnor City, County of Atlantic and State of New Jersey, 10 respectfully shows that:

1. On July 19, 1911, Ventnor Syndicate, a corporation under and by virtue of the laws of New Jersey, being indebted to West Jersey Mortgage Company, a corporation under the laws of the State of New Jersey, in the sum of \$2000, executed to it a bond of that date to secure that sum, payable within a period of three years from the date thereof, with interest at the rate of six per centum per annum, 20 payable semi-annually from the date of the bond.

2. To secure the payment of the bond, said Ventnor Syndicate, a corporation under the laws of the State of New Jersey, executed to West Jersey Mortgage Company, a corporation under the laws of the State of New Jersey, a mortgage of even date with said bond; and thereby conveyed to it in fee the land hereinafter described, on the express condition that such conveyance should be void if payment should 30 be made in accordance with the terms of the bond; which mortgage, having been first duly acknowledged and the certificate of acknowledgment being duly endorsed thereon, was recorded on August 11, 1911, in the clerk's office of Atlantic County, in book 121 of mortgages, page 279, &c.

3. The mortgaged premises are described as follows:

10 Situate in the City of Ventnor City, County of Atlantic and State of New Jersey, beginning at a point in the easterly line of Washington Avenue, one hundred feet south of the southerly line of Atlantic Avenue; extending thence (1) eastwardly parallel with Atlantic Avenue, sixty-two and five-tenths feet; thence (2) southwardly parallel with Washington Avenue, fifty feet; thence (3) westwardly parallel with first course, sixty-two and five-tenths feet to the east line of Washington Avenue; and thence (4) northwardly in and along the easterly line of Washington Avenue fifty feet to the place of beginning. Being lot 3, in Block 108-A on a certain plan of lots entitled "Map of Property situate in and adjacent to Ventnor City, N. J., belonging to Ventnor Syndicate. Scale 1 inch—
20 80 feet. Dec. 23, 1910, by W. I. Risley, civil engr. and surveyor, Atlantic City, N. J."

4. On September 28, 1911, West Jersey Mortgage Company, a corporation of New Jersey, executed and delivered a certain deed or assignment of mortgage unto one Ida M. Gage and Jessie A. Gage, guardian for Elizabeth D. Gage, in equal share of \$1000 each, and did sell and assign all moneys due or to grow due upon said bond and mortgage. Which
30 assignment of mortgage is of record in the clerk's office of Atlantic County, at Mays Landing, N. J., in Book No. 33 of Assignments of Mortgages, page 179, etc.

5. On April 10, 1928, Jessie A. Gage, guardian of Elizabeth D. Gage, being deceased, and Elizabeth

D. Gage having arrived at full age, and having intermarried with one Howard Buzby, she, the said Elizabeth D. Buzby, nee Gage, together with Ida M. Gage, did execute and deliver their certain assignment of mortgage, and did sell, transfer and assign unto Mary E. Westcott, the complainant, the said bond and mortgage, with all moneys due, or to grow due. Which assignment of mortgage is in the possession of Mary E. Westcott, complainant, ready to be produced at such time and place as this Court may direct. 10

6. On February 6, 1912, Ventnor Syndicate, a corporation of New Jersey, conveyed the mortgaged premises to the Roebing Realty Company, a corporation of New Jersey, which deed is of record in Book 481, page 381, in the county clerk's office at Mays Landing, N. J., but said conveyance is subject to the lien of the mortgage of the complainant. 20

7. On February 6, 1912, Roebing Realty Company, a corporation of New Jersey, conveyed the mortgaged premises to E. G. Harris Company, a corporation of New Jersey, which deed is of record in the county clerk's office at Mays Landing, N. J., in Book 481 of Deeds, page 384, but said conveyance is subject to the mortgage of the complainant.

8. On February 6, 1912, E. G. Harris Company, a corporation of New Jersey, executed a mortgage 30 upon the mortgaged lands to the Roebing Realty Company, to secure the payment of \$800 or some other sum. Which mortgage is of record in the clerk's office of Atlantic County, at Mays Landing, N. J., in Book 128 of Mortgages, page 98. Said mortgage is subject to the lien of the mortgage of the complainant.

9. On May 11, 1912, Roebling Realty Company, a corporation of New Jersey, assigned said bond and mortgage to one John J. Jones, which assignment is of record in the clerk's office of Atlantic County, at Mays Landing, N. J., in Book 37 of Assignments of Mortgages, page 206. Said assignment of mortgage is subject to the mortgage of the complainant.
10. On November 18, 1912, John J. Jones assigned the aforesaid mortgage to Richard T. Bowen, which assignment of mortgage is of record in the clerk's office of Atlantic County, at Mays Landing, N. J., in Book 37 of Assignments of Mortgages, page 210. The said mortgage and assignment of mortgage being subject to the lien of the mortgage of the complainant.
20. On April 26, 1912, E. G. Harris Company, a corporation of New Jersey, conveyed the mortgaged premises, with other lands, to Ambrose L. Hammell, which deed is of record in the clerk's office of Atlantic County, at Mays Landing, N. J., in Book 483, page 168. But said conveyance is subject to the lien and operation of the mortgage of the complainant.
30. On May 22, 1912, Ambrose L. Hammell and Charlotte B., his wife, conveyed the mortgaged premises to Ansley B. Bowen, which deed is of record in the clerk's office of Atlantic County, at Mays Landing, N. J., in Book 483, page 292.
13. On July 18, 1913, Ansley B. Bowen and Lurena, his wife, conveyed the mortgaged premises to one James Keernes, which deed is of record in the clerk's office of Atlantic County, at Mays Land-

ing, N. J., in Book 515, page 277. But such conveyance is subject to the mortgage of the complainant.

14. The complainant is unable to ascertain whether James Keernes is intermarried or not, but if so, any interest that Mrs. James Keernes may have in the premises is subject to the mortgage of the complainant.

10

15. On July 5, 1921, James Keernes executed a mortgage to one Absecon Land Company, a corporation of New Jersey, covering the mortgaged premises, to secure the payment of \$500 or some other sum. Which mortgage was recorded January 3, 1922, in the clerk's office of Atlantic County, at Mays Landing, N. J., but said mortgage is subject to the lien or encumbrance of the mortgage of the complainant.

20

16. On July 19, 1914, the principal of said mortgage was due and payable, and on January 19, 1918, and each six months therefrom to date.

The defendants hereinafter named, Ventnor Syndicate, Roebing Realty Company, E. G. Harris Company, John J. Jones, Ambrose L. Hammell, Richard T. Bowen, Ansley B. Bowen, James Keernes, Mrs. James Keernes, Absecon Land Company, have from time to time possessed and enjoyed the said mortgaged premises and now in possession of the same, but such possession is subject to complainant's mortgage.

30

The sum of two thousand dollars, with interest thereon from July 19, 1917, is due upon complainant's bond and mortgage.

Complainant is without adequate remedy in the Courts of Law and therefore prays:

I. That James Keernes, Mrs. James Keernes, Richard T. Bowen, and Absecon Land Company, who are the defendants to this suit, may answer this bill of complaint, without oath, and each statement therein made.

10 II. That an account may be taken of the amount due upon complainant's mortgage.

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

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

ANSWER AND CROSS-BILL OF ABSECON
LAND COMPANY, ETC., A DEFENDANT.

IN CHANCERY OF NEW JERSEY.

10

Between	}	In Foreclosure. Answer and Cross- Bill of Absecon Land Company, &c., a Defendant.
MARY E. WESTCOTT, <i>Complainant,</i>		
and		
JAMES KEERNES, <i>et al.</i> , <i>Defendants.</i>		

Absecon Land Company, a corporation of New Jersey, a defendant, answering the bill of the complainant of the above-stated cause, says that:

1. Paragraph 1 thereof is admitted.
2. Paragraph 2 thereof is admitted.
3. Paragraph 3 thereof is admitted.
4. Paragraph 4 thereof is admitted.

30

5. This defendant has no information as to paragraph 5 thereof whereon to base an admission or denial.

6. Paragraph 6 thereof is admitted.

8 *Answer and Cross-Bill of Absecon Land
Company, etc., a Defendant*

7. Paragraph 7 thereof is admitted other than the lien of complainant's mortgage, as alleged, which is denied.

8. Paragraph 8 thereof is admitted other than the lien of complainant's mortgage on said premises, as alleged, which is denied.

10 9. Paragraph 9 thereof is admitted other than the lien of complainant's mortgage on said premises, as alleged, which is denied.

10. Paragraph 10 thereof is admitted other than the lien of complainant's mortgage on said premises, as alleged, which is denied.

20 11. Paragraph 11 thereof is admitted other than the lien of complainant's mortgage on said premises, as alleged, which is denied.

12. Paragraph 12 thereof is admitted.

13. Paragraph 13 thereof is admitted other than the allegation as to the lien of complainant's mortgage on said premises, which is denied.

30 14. This defendant has no information whereon to base an admission or denial as to paragraph 14 thereof.

15. Paragraph 15 thereof is admitted other than the allegation as to the lien of complainant's mortgage on said premises, which is denied.

CROSS-BILL.

By way of cross-bill, the defendant, Absecon Land Company, a corporation of New Jersey, says that:

1. On October 6, 1915, one Karl Schaffer purchased in fee the land and premises mentioned in the complainant's bill at a sale for delinquent taxes due thereon for the year 1913, at a sale held by James G. Scull, collector of Ventnor City, New Jersey, as evidenced by a certificate of tax sale duly acknowledged and of record in the clerk's office of Atlantic County, New Jersey. 10
2. On September 27, 1916, said Karl Schaffer likewise purchased said premises at a sale for delinquent taxes due thereon for the year 1914, at a sale held by James G. Scull, collector of Ventnor City aforesaid, as evidenced by a certificate of tax sale duly acknowledged and of record in the clerk's office of Atlantic County aforesaid. 20
3. Under statutory proceedings had and taken by said Karl Schaffer as purchaser thereof as aforesaid, the same being of record in the clerk's office of Atlantic County aforesaid in Deed Books Nos. 678, at page 70, and 717, at page 18, the mortgage of the complainant was cut out and thereby eliminated as further lien on said land and premises. 30
4. Said Karl Schaffer having failed and neglected to give notice to this defendant to redeem said premises from the liens thereon created by his certificates

10 *Answer and Cross-Bill of Absecon Land
 Company, etc., a Defendant*

of tax sales as aforesaid as provided by the statute, its right to redemption under its said mortgage still subsists.

This defendant, being without adequate remedy in the courts of law, therefore prays:

1. That the complainant's mortgage be held and
10 decreed as null, void, and of no effect as a lien on said land and premises;

2. That Karl Schaffer, who is a defendant to this cross-bill, may answer with oath the allegations therein made;

3. That an accounting may be had of the amount due said Karl Shaffer on account of his tax liens on said premises, and upon payment thereof the same
20 may be decreed to be delivered up and cancelled of record;

4. That this defendant may have such further and other relief as the nature of the case may require and as may be agreeable to equity;

5. That a writ of subpoena may issue commanding the defendant, Karl Schaffer, to answer this cross-bill, and to abide by such decree as this Court
30 may make in the premises.

H. W. LEWIS,
*Solicitor and Counsel of Absecon
Land Company, a Corporation
of New Jersey, a Defendant.*

ANSWER OF THE DEFENDANT, KARL
SCHAFFER, TO THE CROSS-BILL OF
THE DEFENDANT, ABSECON
LAND COMPANY, A COR-
PORATION.

10

IN CHANCERY OF NEW JERSEY.

Between	} On Bill to Foreclose. Answer of the Defen- dant, Karl Schaf- fer, to the Cross- Bill of the defen- dant, Absecon Land Company, a Corporation.	} 20
MARY E. WESTCOTT,		
<i>Complainant,</i>		
and		
JAMES KEERNES, <i>et al.</i> ,		
<i>Defendants.</i>		

This defendant, Karl Schaffer, residing at the
Borough of Roselle, in the County of Union and
State of New Jersey, says:

1. Paragraph #1 of the cross-bill is admitted. 30
2. Paragraph #2 of the cross-bill is admitted.
3. Paragraph #3 of the cross-bill is admitted.
4. Answering paragraph #4, this defendant says

12 *Answer of Defendant, Karl Schaffer, to
Cross-Bill of Defendant, Absecon
Land Company*

that subsequent to the sale of the premises in question for unpaid taxes mentioned and set forth in the bill of complaint and in the answer and cross-bill of the defendant, Absecon Land Company, a corporation, there was delivered to this defendant, and he did receive from the City of Ventnor City, by James J. Scull, tax collector, certificates of tax sale dated, respectively, October 13th, 1915, and October 2nd, 1916, for the mortgaged premises described in the bill of complaint.

The premises mentioned and designated in said certificates of tax sales were designated as lot #3 in Block #108-A, which are the same lands and premises more fully mentioned and designated in the complainant's bill of complaint.

That said certificates of tax sales were duly recorded by this defendant in the office of the clerk of the County of Atlantic on December 23rd, 1915, in Book 28 of Mortgages, on page 164, and on March 28th, 1917, in Book 165 of Mortgages, on page 281, respectively;

That subsequent thereto and on the 4th day of December, 1915, this defendant having made an examination of the record title to the said lands and premises, did cause notices to be given to all of the persons interested therein, including the then owner, the defendant, James Keernes, to redeem the said premises from the said tax sale in accordance with the statute in such case made and provided. And subsequently on the 22nd day of April, 1922, this defendant caused said certificates of sales and affidavits of service with affidavits of non-residence to be recorded as a deed in the clerk's office of the County of Atlantic in Book 678 of Deeds for said

Answer of Defendant, Karl Schaffer, to 13
Cross-Bill of Defendant, Absecon
Land Company

county, on page 70. And subsequent, on the 9th day of November, 1916, after further examination of the record title to the said premises, did give other and further legal notice to all persons interested therein, including the then owner, James Keernes, to redeem the said lands and premises from the said tax sale for the year 1914. And subsequently thereto, and on the 14th day of June, 1923, did cause said certificate of tax sale, with notice of affidavit of service thereto attached, to be recorded in the clerk's office of the County of Atlantic, as a deed in Book 717 of Deeds for said county, on page 18. 10

That at the time this defendant caused such notice to be given to all of the persons interested in the said lands and premises to redeem the same from the aforesaid tax sales, the defendant, Absecon Land Company, a corporation, was not the holder of the mortgage on the said premises mentioned and set forth in the bill of complaint and in the answer and cross-bill of the Absecon Land Company, a corporation, and was not entitled to receive such notices to redeem from this defendant, but any mortgage or interest of the defendant, Absecon Land Company, a corporation, covering, or in the said premises, was acquired subsequent to the serving of notices heretofore mentioned by this defendant to all of the persons of record interested in the said premises. 20 30

This defendant prays that the cross-bill of the defendant, Absecon Land Company, a corporation, therefore be dismissed with costs to this defendant.

ABE J. DAVID,
Solicitor for and of Counsel with
the Defendant, Karl Schaffer.

REPLICATION.

IN CHANCERY OF NEW JERSEY.

10

Between MARY E. WESTCOTT, <i>Complainant,</i> and JAMES KEERNES, <i>et al.</i> , <i>Defendants.</i>	}	In Foreclosure. Replication of Absecon Land Co., of the Defendants, to Answer of Karl Schaffer, a Defendant.
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20

The defendant, Absecon Land Company, a corporation of New Jersey, joins issue on the answer of Karl Schaffer, a defendant, to its cross-bill as filed in the above-stated cause.

H. W. LEWIS,
Solicitor of Absecon Land Co., &c.,
a Defendant.

30

NOTICE.

IN CHANCERY OF NEW JERSEY.

Between MARY E. WESTCOTT, <i>Complainant,</i> and JAMES KEERNES, <i>et als.,</i> <i>Defendants.</i>	{	On Bill to Foreclose. Notice.	10
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To Henry W. Lewis, Esq., Solicitor of the Defendant, Absecon Land Company: 20

Sir: You will please take notice that on the 30th day of October, 1928, at the hour of 10 o'clock in the forenoon, or as soon thereafter as counsel can be heard, I shall apply to the Chancellor or Vice-Chancellor sitting before him, at Chancery Chambers in the Law Building, at Atlantic City, N. J., to strike out the answer and cross-bill filed by you, in the above cause, as frivolous, for the purpose of delay, and without equity or merit. At which time, in support of such motion, I will offer the affidavit, a copy of which is hereby attached, and also certified copies of the certificate of tax sale of the mortgaged premises, for taxes assessed for the year of 1914, in Ventnor City, N. J., made by James G. Scull, tax collector, to Karl Schaffer, with the proceedings 30

thereon of record in the clerk's office of Atlantic County, at Mays Landing, N. J., in Book No. 717 of Deeds, page 18, etc.

I shall at the same time ask that the matter be referred to a Master, to report the amount due upon the complainant's mortgage.

Respectfully yours,

J. S. WESTCOTT,
Solicitor of Complainant.

10

AFFIDAVIT.

IN CHANCERY OF NEW JERSEY.

20	Between MARY E. WESTCOTT, <i>Complainant,</i> and JAMES KEERNES, <i>et al.,</i> <i>Defendants.</i>	}	On Foreclosure. On Motion to Strike Out. Affidavit.
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30	STATE OF NEW JERSEY, COUNTY OF ATLANTIC,	}	ss.
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KARL SCHAFFER, being duly sworn according to law, upon his oath deposes and says, that he was the purchaser of the lands mentioned and described in the bill of complaint, at a sale for taxes, made by

the City of Ventnor City, for the year of 1913 and for the year of 1914, respectively. That subsequent to the making of the said sale there was delivered to him, and he did receive from Ventnor City, by James G. Scull, tax collector, certificates of tax sale, dated October 13, 1915, and October 2, 1916, respectively, for the mortgaged premises. The premises covered by said certificates of tax sale being designated as lot 3, in Block 108-A, which is the same lands and premises as are more fully mentioned 10 and described in the complainant's bill; that said certificates of tax sale the deponent caused to be recorded in the clerk's office of Atlantic County, at Mays Landing, N. J., on December 23, 1915, in Book 28, page 164, and on March 28, 1917, respectively, in Book 165, page 281. That subsequent thereto, to wit: that on December 4, 1915, he, this deponent, after having made an examination of the record title to the said lands and premises, did cause 20 notice to be given to all the persons interested therein to redeem the mortgaged premises from the tax sale of 1918, in accordance with the statutes in such case made and provided, and subsequent thereto, to wit: on April 22, 1922, caused said certificates of tax sale, and affidavits of service, with affidavits of no redemption, to be recorded as a deed in the clerk's office of Atlantic County, at Mays Landing, N. J., in Book 678, page 70; and did on the 9th day of November, 1916, after further examination of the record titles to the said premises, give legal 30 notice to all the persons interested thereon to redeem the lands and premises from sale of 1914, and did subsequent thereto, to wit: on June 14, 1923, cause said certificates of tax sale, with notice and affidavit of service thereof, to be recorded in said clerk's office as a deed in Book 717, page 18.

Deponent further says that, notwithstanding the proceedings hereinbefore mentioned, he has consented to, and has released, the above-mentioned mortgage of the complainant from the effect and rights acquired by him in said mortgage of the complaint, in the complainant's bill mentioned.

KARL SCHAFFER.

Sworn and subscribed before me this 2nd day of
10 October, 1928.

GEO. W. BOND,
Notary Public of N. J.

20

30

AFFIDAVIT, &c.

IN CHANCERY OF NEW JERSEY.

Between
MARY E. WESTCOTT,
Complainant,
and
JAMES KEERNES, *et al.*,
Defendants. } In Foreclosure.
Affidavit, &c. 10

STATE OF NEW JERSEY, }
ATLANTIC COUNTY, } ss. 20

WILLIAM P. JOYCE, of full age, being duly sworn according to law, on his oath deposes and says that:

1. I am vice-president of Absecon Land Company, a corporation of New Jersey, a defendant of the above-stated cause. 30

2. Said Absecon Land Company is the holder and owner of a certain indenture of mortgage made by James Keernes as mortgagor to said Absecon Land Company as mortgagee of date July 5, 1921, to secure the payment of \$500 within two years from

the date thereof, together with interest thereon at the rate of six per cent per annum, payable semi-annually from the date thereof, and covering the land and premises in the complainant's bill in this cause mentioned and described, which mortgage, having first been duly acknowledged, was recorded on January 3, 1922, in Book No. 222 of Mortgages at pages 420, &c., as appears from the certificate of said clerk thereon endorsed.

10

3. The amount secured by said mortgage is still due and owing said Absecon Land Company, no part thereof having been paid or satisfied.

4. No notice has been given by Karl Schaffer to said Absecon Land Company or received by it to redeem said mortgaged premises from the liens thereon created by any certificate or certificates of tax sale thereof that he may have held or now holds.

20

Sworn and subscribed to before me October 24th, 1928.

30

CONCLUSIONS.

IN CHANCERY OF NEW JERSEY.

Between MARY E. WESTCOTT, <i>Complainant,</i> and JAMES KEERNES, <i>et al.,</i> <i>Defendants.</i>	}	On Bill, &c. On Motion to Strike. Conclusions.	10
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(These conclusions are not to be published in the official or unofficial reports.) 20

MR. J. S. WESTCOTT, for the complainant;
 MR. HENRY W. LEWIS, for the defendants.

INGERSOLL, V. C.:

An order will be made to strike the answer and cross-bill. Defendants may have fifteen days to file further pleadings. 30

ORDER TO STRIKE OUT ANSWER.

(Filed Feb. 13, 1929.)

IN CHANCERY OF NEW JERSEY.

10 Between
 MARY E. WESTCOTT,
Complainant,
 and
 JAMES KEERNES, *et al.*,
Defendants. } On Foreclosure.
 Order to Strike Out
 Answer.

20 This matter coming on to be heard before the
 Court on notice of the complainant to strike out the
 answer and cross-bill of the defendant, the Absecon
 Land Company, and after having heard the argu-
 ments of John S. Westcott, solicitor of the com-
 plainant, and Henry W. Lewis, solicitor of the an-
 swering defendant, the Absecon Land Company,
 and after having considered of the same, it is on
 this 13 day of February, 1929, ordered that the an-
 30 swer and cross-bill heretofore filed for the Absecon
 Land Company be and the same is hereby stricken
 out. Defendants may have 15 days to file further
 pleadings.

E. R. WALKER,
 C.

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

A true copy.

FERD GARRETSON,
Clerk.

NOTICE OF APPEAL.

IN CHANCERY OF NEW JERSEY.

10

Between

MARY E. WESTCOTT,
Complainant,

and

JAMES KEERNES, *et al.*,
Defendants.

On Bill, &c.
Notice of Appeal.

20

To John S. Westcott, Esquire, Solicitor of Com-
plainant:

The defendant, Absecon Land Company, a corpo-
ration of New Jersey, hereby appeals from the de-
cree made in the above-stated cause by the Chancel-
lor on advice of Vice-Chancellor R. H. Ingersoll, of
date February 13th, A. D. 1929, and from the whole
and every part thereof, to the Court of Errors and
Appeals in the Last Resort in All Causes.

30

Dated May 10th, A. D. 1929.

H. W. LEWIS,

Solicitor for and of Counsel
with Absecon Land Com-
pany, a Corporation of New
Jersey, of the Defendants.

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

H. W. LEWIS,
*Of Counsel with Absecon Land
Co., &c., a Defendant.*

10

[ENDORSED.]

Due and legal service acknowledged
this May 11, 1929.

J. S. Westcott,
Sol'r of Compl't.

20

30

PETITION OF APPEAL.

NEW JERSEY COURT OF ERRORS AND APPEALS.

MARY E. WESTCOTT,
Complainant-Appellee,

v.

JAMES KEERNES, *et al.*, (Ab-
secon Land Company,
&c.,)
Defendants-Appellants.

10

On Appeal from the
Court of Chancery.
Petition of Appeal.

20

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

The petition of Absecon Land Company, a corpo-
ration of New Jersey, the appellant in the above-
entitled cause, respectfully shows that:

1. Petitioner finds itself aggrieved by an inter-
locutory decree made in the Court of Chancery by
his Honor, Edwin Robert Walker, Chancellor of the
State of New Jersey, bearing date February 13th,
A. D. 1929, in a certain cause in said Court of Chan-
cery wherein said Mary E. Westcott was the com-
plainant and James Keernes, *et al.* (the said Ab-
secon Land Company, &c., of the others), were
defendants, in this respect, to wit: that said decree

30

adjudges that the answer and cross-bill of the said Absecon Land Company, &c., be struck out.

2. This petitioner appeals from the decree of the Chancellor which decrees as aforesaid, upon the grounds that the same is erroneous, viz:

(a) Because complainant's mortgage constituted no lien on the land and premises as alleged in her
10 bill.

(b) Because the lien of the complainant's mortgage on said lands and premises was voided by the proceedings had by one Karl Schaffer to perfect his tax title thereon as alleged in said answer and cross-bill.

(c) Because the mortgage of said Absecon Land Company, &c., on said lands and premises was not
20 affected by said proceedings of Karl Schaffer to perfect his tax title thereto.

Petitioner therefore prays that said decree of said Chancellor may be wholly reversed, set aside and for nothing holden, and that petitioner may have such other relief in the premises as to this Court shall seem proper.

H. W. LEWIS,

*Solicitor for and of Counsel
with Absecon Land Com-
pany, &c., Defendants-Appellants.*

ANSWER TO PETITION OF APPEAL.
NEW JERSEY COURT OF ERRORS AND
APPEALS.

Between

MARY E. WESTCOTT,
*Complainant-
Respondent,*

and

JAMES KEERNES, *et al.*,
Defendants-Appellants.

On Appeal. 10
Answer to Petition of
Appeal.

The answer of the above-named respondent, Mary E. Westcott, to the petition of appeal of the appellant, says that this respondent, not acknowledging 20 all or any part of the matters which in the said petition of appeal are contained to be true, for answer thereto, nevertheless, says and admits that on the 13th day of February, 1929, a final decree was allowed and filed in the Court of Chancery of New Jersey, in the cause for that purpose mentioned in the said petition, as is therein stated; but as to the substance and form thereof, this respondent prays to refer thereto when the same shall be produced.

And this respondent is advised and believes that 30 the said final decree is just and prays that the same may be affirmed, with costs to be adjudged to this respondent.

THOMPSON & HANSTEIN,
*Solicitors for and of Counsel
with Complainant - Respon-
dent.*



New Jersey Court of Errors and Appeals

MARY E. WESTCOTT,
Complainant-Appellee,
v.

JAMES KEERNES, *et al.*, ABSECON LAND
CO., &c.,
Defendants-Appellants.

ON APPEAL FROM THE COURT OF CHANCERY ON ORDER
STRIKING OUT ANSWER OF ABSECON LAND
CO., &c., OF THE DEFENDANTS.

BRIEF IN BEHALF OF ABSECON LAND CO.,
&c., THE DEFENDANT-APPELLANT.

STATEMENT.

This is an appeal from an order of the Court of Chancery of New Jersey striking out the answer filed in behalf of the Absecon Land Company, &c., of the defendants, to a bill of foreclosure filed in behalf of Mary E. Westcott, complainant.

From the affidavits and schedules produced upon the hearing of the motion to strike out the answer filed in behalf of Absecon Land Co., of the defen-

dants, it appears that one, Karl Schaffer, bought in the premises in question, sold for delinquent taxes, due thereon for the year 1914, and took a certificate of tax sale therefor.

On November 9, 1916, he appears to have mailed notices to redeem to James Keernes, Mrs. James Keernes, Ida M. Gage, Jessie A. Gage, Elizabeth D. Gage, and Richard T. Bowen—then being the parties of interest—as well as posted such notice on the premises. Thereafter, on June 11, 1923, he made affidavit of such mailing and posting; and that such certificate of tax sale, notice and affidavit attached were filed and recorded in the clerk's office of Atlantic County, New Jersey, on *June 14, 1923*, in Book No. 717 of Deeds at pages 18, &c.

Pending the mailing of said notices and the taking of the affidavit and filing thereof as aforesaid, viz—on July 5, 1921, said James Keernes being seized thereof, mortgaged said premises to the Absecon Land Co., &c., the defendant-appellant, to secure the payment of \$500.00, with interest thereon at the rate of six per cent per annum, payable semi-annually from the date thereof, which mortgage was duly acknowledged and recorded in said clerk's office of Atlantic County on *January 3, 1922*, in Book No. 222 of Mortgages at pages 420, &c.; and that said mortgage is due and unpaid.

Thus it appears that the record of said mortgage antedates the taking of the affidavit of the mailing said notice of redemption and recording thereof for approximately one and one-half years.

The complainant-appellee procured the assignment to herself of a prior mortgage held by the Gages on said premises as well as a relinquishment of said Schaffer's rights under his procedure to perfect his title under his certificate of tax sale as afore-

said, and files her bill to foreclose the same, making the Absecon Land Co., a party defendant by reason of its said mortgage.

The Absecon Land Company answering the complainant's bill of foreclosure, denies the lien of her mortgage on the premises, and by way of a cross-bill sets up the facts as therein stated, and for relief asks an accounting of the amount due on account of Schaffer's tax liens, and that the same may be cancelled upon payment thereof by the answering defendant.

ARGUMENT.

Insofar as the lien of the mortgage of the Absecon Land Company, the defendant-appellant, is concerned, it is respectfully submitted that it is in no wise affected by the notice given by Schaffer under his certificate of tax sale, and said defendant is legally entitled to redeem the premises from the liens of such tax sale upon a proper accounting as prayed for in its cross-bill.

While without doubt Schaffer has cut out and barred those of interest in the premises as served from the date of filing and recording the proceedings taken by him to perfect his tax title, viz.—*June 14, 1923*, under Section 50 of the Tax Act of 1903 (P. L. 1903, p. 432), he not having made the proof of service of the notice and filed and recorded the proceedings to bar as required by the statute until long after the mortgage of the Absecon Land Company was executed and recorded, the defendant-appellant as possessed of an interest in the premises

thereunder, can in nowise be bound thereby, and therefore had the right to presume that it could redeem from the lien of such tax sale as provided in Section 57 of said Tax Act of 1903 (P. L. 1903, p. 431).

Under the Act relating to conveyances (2 C. S., p. 1553, Sec. 54) an unrecorded conveyance is void as against a subsequent *bona fide* mortgage.

Granted that the proceedings taken by Schaffer to perfect his tax title to the premises were valid as against the parties of interest upon whom notice to redeem was served, and of whom were the then holders of the complainant's mortgage, the defendant-appellant had no means other than a search of the records whether or not its mortgagor was still seized of the premises, or whether his right to redeem from the lien of said certificate of tax sale had been cut off or not by the service of the proper statutory notice and affidavit thereof. Not being so disclosed by the records, when the defendant-appellant acquired its interest under its mortgage as stated, it had the right to presume that it could redeem the premises from the tax liens as provided by the statute above referred to.

Vice-Chancellor Pitney in an opinion stated in 19 Atl. Reporter at p. 199, observed that a purchaser (in this case, a mortgagee) is to be protected by the statute relating to filing and recording instruments as to insure a title free from any latent equities to which the premises might be subject, which object is a wholesome one and is broad enough (in the case cited) to cut out a mortgage subsequent to a foreclosure. Therefore it follows under Section 57 of the Tax Act (P. L. 1903, p. 431), the defendant-appellant having acquired an interest under its mortgage as stated could redeem the premises

from Schaffer's tax lien until properly cut off by the proceedings as designated in Section 50 of said Act.

Reduced to its logical sequence, the complainant's assignors having been so noticed, their mortgage assigned to the complainant subsequent to the filing and recording of Schaffer's proceedings to perfect title under the lien of his certificate of tax sale, was cut off and eliminated as a further lien or encumbrance on the premises. Such being so, it is in effect non-existent insofar as the lien thereon of the defendant-appellant's mortgage is concerned inasmuch as this mortgage was recorded long prior to that of Schaffer's proceedings to perfect his tax title as aforesaid.

Despite the effort of Schaffer to reinstate the complainant's mortgage as set forth in the affidavit in support of the motion to strike the answer, such mortgage having already been eliminated and cut out by his (Schaffer's) procedure as aforesaid, such effort may not now be permitted to make it effective as a lien in precedence against the defendant-appellant's mortgage recorded one and one-half years in advance of Schaffer's said procedure. Therefore it is respectfully submitted that the complainant's mortgage having been thus eliminated and cut out by Schaffer's procedure to perfect his tax title as aforesaid, the defendant-appellant still being a party of interest in the premises not affected or cut out by said procedure, is legally and equitably entitled to an accounting of the amount as may be due on account of Schaffer's tax liens with view of redeeming the same in accordance with its prayer of its cross-bill.

Again, it will be observed that the motion in behalf of the complainant can in nowise affect the issue as between this defendant and Schaffer, who

has been brought in as a party under the defendant-appellant's cross-bill.

It is respectfully submitted that the order striking out the answer and cross-bill filed in behalf of the defendant-appellant be reversed.

H. W. LEWIS,
*Attorney of Absecon Land Co., &c.,
the Defendant-Appellant.*

Additional Points:

1. The recording of the original certificate of tax sale is only a notice of the lien for the taxes due, and can of itself raise no presumption that the statutes relative to cutting off the right of redemption have been strictly and properly complied with.

2. Before such equity of redemption is cut out, every detail of the statutory requirements must be complied with, and how can such be ascertained until disclosed by the records thereof? For instance, in the case cited by appellee, from the records there appeared a defect in the affidavit of mailing.

3. "May" as used in the section relative to filing and recording procedures in certificates of tax sales is to be taken in contra distinction with the alternate procedure to cut out equities of redemption by foreclosure as mentioned in a further section of the act.

4. While as between the party of interest who has been served with a proper notice to redeem and the holder of the certificate of tax sale, the equity of redemption may be cut out upon the expiration of sixty days as provided by the statute, yet before the filing and recording of the notice and affidavit of service thereof, a third party acquiring a bona fide interest would not be affected.

As for example, A., being seized of a premises, conveys same to B, who fails to put his deed of record. Then C. in good faith and after a search of the records made takes a deed thereto also from A., and at once puts it of record. C. then has a title paramount to B., altho as between A. and B. admittedly A. has no title.

5. Clearly, a party who would acquire an interest in premises has only the records to guide him, and what the records fail to disclose should not be for his injury.

6. Likewise, he would have the right to ascertain whether the procedure taken to bar an equity of redemption is proper and regular, as for instance it was held in the case cited by appellee that the notice as given, or the affidavit relative to the service thereof was defective.

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New Jersey Court of Errors and Appeals

MARY E. WESTCOTT,
Complainant-Respondent,

v.

JAMES KEERNES, *et al.*,
Defendants-Appellants.

ON APPEAL.

BRIEF OF COMPLAINANT-RESPONDENT.

FACTS.

The complainant filed her bill to foreclose a mortgage. She made, as defendant, among others, the Absecon Land Company, which company has of record what purports to be a mortgage made by one James Keernes to it dated July 5th, 1921, recorded January 3rd, 1922. The bill of complaint alleges that the mortgage in question is subject to the lien of complainant's mortgage.

Defendant, Absecon Land Company, answered, denying the lien of complainant's mortgage, and filed a cross-bill, which sets up, in substance, that

one Karl Schaffer purchased the premises in question at a tax sale for the year 1913, and also for the year 1914, and that both of said certificates of tax sale were recorded; that said Karl Schaffer served notices under his certificates of tax sale, upon the then holder of the complainant's mortgage, and that he did not give any notice to the defendant, Absecon Land Company.

The cross-bill alleges that by reason of the service of notices by the said Karl Schaffer, upon the complainant's predecessor in title to the mortgage, the lien of said mortgage was destroyed as a lien on the premises, and that by reason of Karl Schaffer failing to serve notice upon the Absecon Land Company, its mortgage is still valid, and the cross-bill prays that the complainant's mortgage be declared null and void, and that an accounting be had as to the amount due the said Karl Schaffer on account of his tax lien and that upon the payment of the same the same may be decreed to be delivered up and cancelled.

It should be noted that Karl Schaffer was not a party to the original bill to foreclose.

A notice of motion to strike the answer on the ground that the same was sham and frivolous, based upon the affidavits printed in the state of the case and documentary evidence, was made. The affidavits and documentary evidence disclosed that Karl Schaffer bought in the mortgaged premises at tax sale under two certificates, one dated October 13th, 1915, for the 1913 taxes, which was recorded December 23rd, 1915, and the other certificate dated October 2nd, 1916, for the 1914 taxes, which was recorded March 28th, 1917. A notice to redeem from the October 13th, 1915, certificate was served on defendant, James Keernes, on December 4th, 1915, and a notice to redeem from the October 2nd, 1916,

sale was served on November 9th, 1916. It is, therefore, apparent that all of the right, title and interest of James Keernes in the premises expired, at the very latest, in October, 1918.

As pointed out above, on July 5th, 1921, three years after Keernes lost all title in the premises, he executed the mortgage to the defendant. On April 22nd, 1922, the certificate of tax sale, with affidavits of service, and affidavits of non-redemption, were recorded in the Atlantic County Clerk's office for one of the sales; and on June 14th, 1923, similar papers were filed in the clerk's office for the other sale.

The affidavit further discloses that the said Karl Schaffer, despite the fact that he cut out the rights of the first mortgagee under his tax foreclosure proceedings, released the complainant's mortgage from the effect of his tax foreclosure proceedings, and consented to it being foreclosed.

The answer and cross-bill were stricken.

ARGUMENT.

We submit that the order striking the answer and cross-bill was proper.

The proceedings taken by Karl Schaffer under the tax sales were in accordance with the Tax Act of 1903, Section 59, 4 Compiled Statutes, 5137. Under that section notices are to be served on all persons interested in the land. The notices, in this case, were admittedly served upon the defendant, Keernes, then owner. The statute provides that "if there shall be no redemption within the time limited by the notice, then the right of redemption

shall be barred." It, therefore, follows that in 1921, when Keernes made the mortgage to Absecon Land Company, Keernes had no title, and it, obviously, follows from that, that the mortgage made by Keernes to the Absecon Land Company is a mere nullity.

In *Simonton on Tax Sales in New Jersey*, page 91, we find the following:

"As to the time with respect to which the various interests to be served are to be determined, the rule is laid down in *Pugh v. Gardner*—'That the time when the notice is given is the time with respect to which the ownership—the lien upon property, is to be determined and—a purchaser— when he gives a notice, acquires as of that time subject only to the rights of those who are owners and encumbrancers as of that time, and the notice must, therefore, be served upon the very persons in being and in interest at the time the notice is given, and third persons acquiring rights in the property after the giving of such notice, including infants and other persons under disability, occupy the position of purchasers *pendente lite*, and are governed by the principles applicable to such purchasers.'"

The appellants contend that inasmuch as no proof of service in accordance with the Tax Act was filed, prior to the making of said mortgage, that the mortgage is good, and rely for their proposition upon the section of the Conveyancing Act which provides that:

"Any instrument entitled to record, under the twenty-first section of the Conveyancing Act, shall, until duly recorded, be void and of

no effect against subsequent judgment creditors, without notice, and against all subsequent bona fide purchasers, and mortgagees, for valuable consideration, not having notice thereof, whose deed or mortgage shall have been first duly recorded."

We submit that Section 54 of the Conveyancing Act has no application, and also contend that, even if it should have application, the Absecon Land Company does not come within its provisions.

In the first place, Section 59 of the Tax Act is very clear that the right of a person served with notice to redeem is cut out by virtue of the expiration of the statutory time, after the service of the notice, and the Act does not require that the proof of service be filed in order to make the cutting out effective. That view was stated by Vice-Chancellor Backes in the case of *McCandless v. Schaffer*, 6 A. R. 1247; 142 Atlantic Reporter, 566 (not officially reported), page 567:

"The right is barred (*i. e.*, the right of redemption—our insertion), not by a perfect record title, but by the failure to redeem within the time limited by law after notice. An owner has two years from the date of sale in which to redeem, provided 60 days' notice to redeem be given within that time, and thereafter, 60 days after notice. Thereafter, the statute says, 'the right of redemption shall be barred.' The purchaser's title is thenceforth absolute, and he may make it a matter of record by recording the certificate, proof of service and proof of failure to redeem, and the record is his deed or conveyance and presumptive evidence of a valid legal title."

It is significant that the Tax Act, which was passed in 1903, subsequent to the Conveyancing Act, does not make it obligatory upon the purchaser at tax sale, after serving the notice, to file his notices, &c. The Act distinctly says "he may." There is nothing in the Act which imposes any penalty for his failure to do so, nor anything in the Act that even indicates that the failure to do so may operate to nullify the service of the notices.

The Act was obviously passed subsequent to the passage of Section 54 of the Conveyancing Act, and with the knowledge of that Act in the minds of the legislators. Had it been intended that the failure to file the notices, &c., should operate favorably to a bona fide purchaser for value, the Act, it seems to us, would have fully provided for a time within which such notices, &c., must be filed. As a matter of fact, the purchaser at tax sale is prohibited from filing his notices, &c., until after the time for redemption expires, and we, therefore, contend that Section 54 of the Conveyancing Act has no application.

Assuming, however, that we should be wrong in this contention, and assuming that Section 54 of the Conveyancing Act is applicable, we then say that, under the facts in this case, the Absecon Land Company is not a mortgagee for valuable consideration, without notice, as required by the Act.

The reason we say that it is not, is because he necessarily had notice. The certificates of tax sale, upon their being delivered to Karl Schaffer, were recorded. Under Section 56 of the 1903 Tax Act, it is provided that the purchaser may present his certificate of tax sale to the county clerk, within a specified time, and it is the duty of the clerk to enter the name of the purchaser in the record of unpaid taxes for the taxing district, *which entry*

shall constitute constructive notice of the sale as recorded in the record of tax sales of the clerk of the taxing district. The Act provides that "unless the certificate is either so entered in the record of unpaid taxes, or so recorded as a mortgage before the expiration of the term for which the record of unpaid taxes is constructive notice of the lien, it shall be void as against any bona fide purchaser, lessee or mortgagee, whose deeds, lease or mortgage is recorded before the recording of the certificate."

The Absecon Mortgage Company, having taken its mortgage with constructive notice of the tax sale, cannot say that it comes within Section 54 of the Conveyancing Act. It was bound to have knowledge of the likelihood that the interest of Keernes had been cut out.

It is, therefore, submitted that the mortgage of the Absecon Land Company is a nullity, and in no sense a lien upon the premises in question, and therefore, the Absecon Land Company is not in a position to dispute the priority of the complainant's lien, and it has no standing to assert its cross-bill against complainant.

The defendant's prayer in the cross-bill that the complainant's mortgage be declared null and void, and of no effect, as a lien on the lands and premises, is equally without any merit in equity. It is true enough that by the service of the notices, under the tax proceeding Schaffer cut out the complainant's mortgage; nevertheless, it appears that he has released the complainant's mortgage from his tax proceeding, which gives it a valid standing as a mortgage, and, besides, it would be a most anomalous condition if the defendant could assert that by reason of the validity of the Schaffer tax proceedings, the first mortgage was cut out, but the

defendant's was not; hence the defendant would be entitled to the status of a first mortgagee.

Even if Schaffer had not released his mortgage, and even if the defendant's mortgage would be good, nevertheless, the defendant could not assert, in equity, that he had a first mortgage, because under those circumstances, Schaffer would be subrogated to the rights of the first mortgagee, and the defendant's mortgage would retain its original status. *Nugent v. Lindsley*, 100 N. J. Equity, 87.

It is, therefore, obvious that there was no merit in either the answer or the cross-bill from either of these two standpoints.

Beyond that, the cross-bill is designed to secure a redemption from the defendant, Karl Schaffer. Complainant is in no sense concerned with the controversy between the two defendants as to the right of redemption. Her foreclosure should not be held up while the defendants litigate that question; that is a matter for a separate bill.

Hence, it is apparent that for that reason the cross-bill was properly stricken.

It is, therefore, respectfully submitted that the order of the Court of Chancery should be sustained.

JOHN W. WESTCOTT,
Solr. for Complainant.

THOMPSON & HANSTEIN,
Of Counsel with Complainant-Respondent.

Brief of Complainant-Respondent

(To be inserted in complainant-respondent's
brief following the citations on page 5.)

Premises belonging to one, Eldridge, were sold for taxes under the Martin Act. The purchaser perfected the sale and received a deed. Between the date of the sale and the receipt of the deed, the former owner, Eldridge, conveyed the property to the mother of the parties in this suit. Held—that Eldridge's grantee took nothing. "First, *because notice to redeem was served upon her predecessor in title*, and secondly, because her deed had not been recorded." *Saling v. Saling*, 95 N. J. Equity 611.

Here record owner was dead at the time of service of notice. Held—that it might be argued if the record owner was alive, notice addressed to him is, in fact, notice to the true owner, though he may be other than the record owner.

Reason being, that if the true owner allows the evidence of his title to remain off the record, and leads the public to believe his property belongs to another, he, by this conduct, agrees that he will look to another for his notice.

But here the record owner was dead, and the Court could not infer the true owner would receive notice from him.

No service of notice here. *Hardy v. Woods*, 132 N. W. 692.

An affidavit filed by a purchaser at a tax sale, to procure the issuance of a tax deed to himself, stating that he served a notice some six months before, on one who "is" the owner of land described in said notice, is defective for failure to state said person "was" the owner at the time the notice was served, within 3 Starr & C. Am. St. 3487, providing that the notice shall be served on the owners or the parties interested in said lot.

Brief of Complainant-Respondent

This case relies on *Gonzalia v. Bartelsman*, 32 N. E. 532.

Taner v. Weber, 52 N. E. 489; 177 Ill. 116.

An affidavit of service of notice by purchasers, at a tax sale, which took place 19 months previous to such service, stated that notice was served on the parties interested and occupying said lands, when the same was sold.

Held: A defective notice under Rev. 51, 1891-120-216, which required that such notice be served on "the owners of or parties interested in," and "every person in actual possession of or occupancy of" such land since these provisions, have reference to those who are interested in and occupying the land, at the time the notice is given, and not at the time of sale.

The land was sold for taxes on June 5, 1884, a year and 7 months before service of notice on January 13, 1886. The parties who were interested in the land in 1884, may have parted with their interest before 1886.

The affidavit is defective in showing service upon those who were interested at the time of the sale, and in not showing service upon those interested at the time of giving of the notice. *Gonzalia v. Bartelsman*, 32 N. E. 532; 143 Ill. 534.

"That purchasers and persons otherwise acquiring rights in the property after the giving of such notice, would simply occupy the position of purchasers, *pendente lite*, and be governed by principles applicable to such purchasers." *Taylor v. Wright*, 13 N. E. 529.

Const. III, Act 955, provides:

"Occupants of land which has been sold for taxes shall in all cases be served with personal notice, before time of redemption expires, and

Brief of Complainant-Respondent

it is provided that this notice shall be given three months before the time expires.”

Held: That persons who acquire rights in the property after this notice is given, are not entitled to notice, but hold as purchasers, *pendente lite*. *Taylor v. Wright*, 13 N. E. 529.

1870

1871

1872

