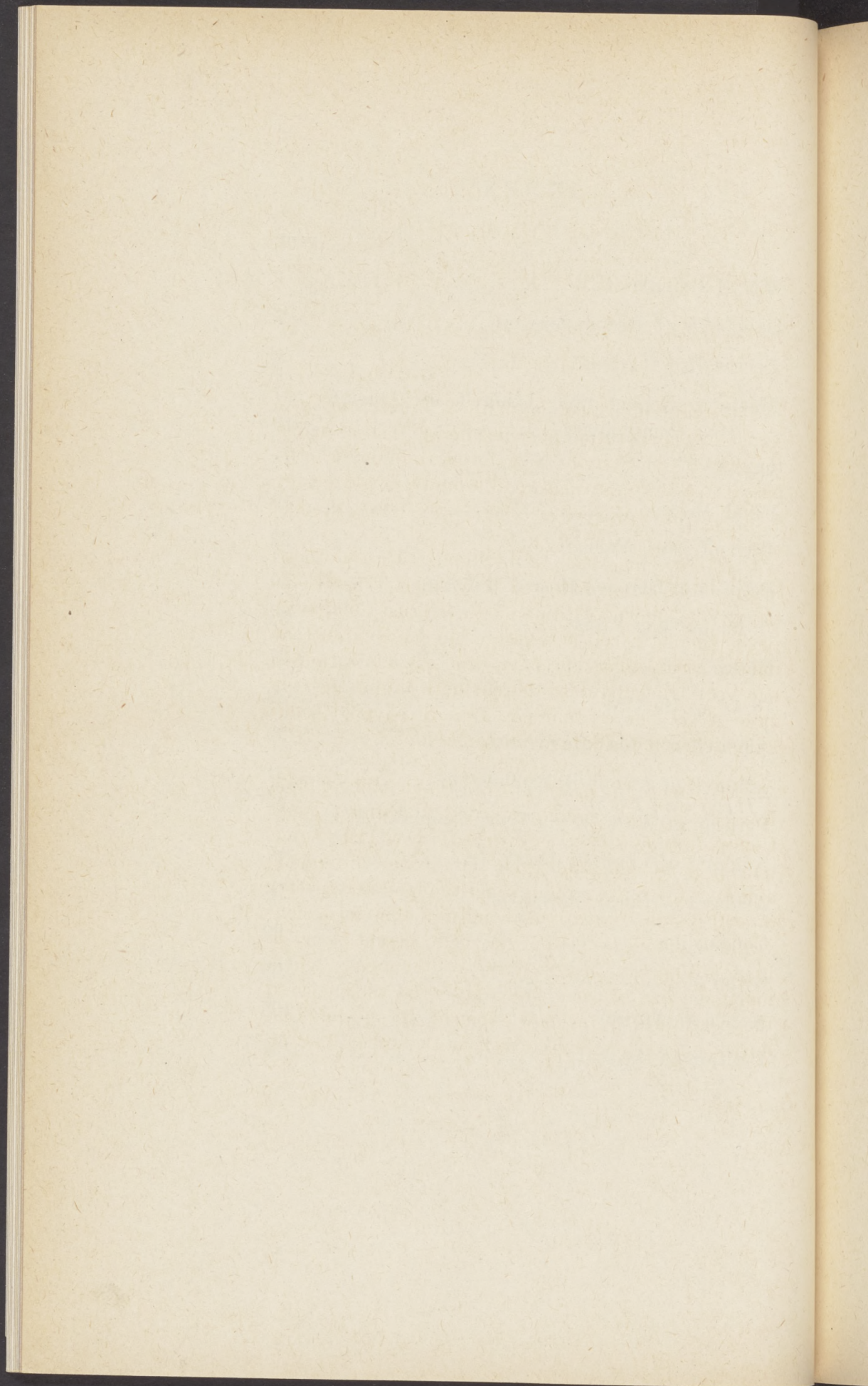


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BILL OF COMPLAINT.

IN CHANCERY OF NEW JERSEY.

*To the Honorable Luther A. Campbell, Chancellor of  
the State of New Jersey:*

The complainant, Pitman Title & Trust Company, 10  
Trustee, a corporation organized and existing under  
the laws of the State of New Jersey, and doing busi-  
ness in the Borough of Pitman, County of Gloucester  
and State of New Jersey, respectfully shows that:

1. On November 20, 1924, Stephen Roscoe Bate-  
man, single, being indebted to Pitman Trust Com-  
pany (now known as Pitman Title & Trust Company)  
in the sum of \$20,000.00 executed to it a bond of that  
date to secure that sum, payable at the expiration of 20  
one year from the date thereof with interest at the  
rate of six per centum per annum, payable semi-  
annually from the date of the bond.

2. To secure the payment of the bond said Stephen  
Roscoe Bateman, single, executed to Pitman Trust  
Company (now known as Pitman Title & Trust Com-  
pany), a mortgage of even date with said bond;  
and thereby conveyed to it in fee the land hereinafter 30  
described, on the express condition that such con-  
veyance should be void if payment should be made  
in accordance with the terms of the bond; which  
mortgage having been first duly acknowledged and  
the certificate of acknowledgment being duly en-  
dorsed thereon, was recorded on December 3, 1924,

*Bill of Complaint*

in the Register of Deeds office of Camden County, in book 244 of mortgages, page 259 &c., and was recorded on Jan. 10, 1925, in the Clerk's Office of Gloucester County in Book 143 of Mortgages, page 594.

3. The mortgaged premises are described as follows:

All the following described tract or piece of land, situate at Grenloch, New Jersey, being Tract No. 10, and being partly in the Township of Washington, County of Gloucester, and partly in the Township of Gloucester, County of Camden, and specifically bounded and described as follows: (Containing 102 acres more or less.)

4. 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, its representatives or assigns, become immediately due.

5. The mortgage also contained an agreement that the mortgagor, his heirs and assigns, would keep the buildings on the mortgaged premises insured against loss or damage by fire in a sum not less than the principal of the mortgage debt, and would assign the policy of insurance to the mortgagee, its representatives or assigns; and in default of so doing that the mortgagee, its representatives or assigns, should be entitled to effect such insurance, and the premiums

*Bill of Complaint*

paid for the same by the mortgagee, or its assigns, with interest at six per centum per annum, should be a lien on said land added to the amount of the mortgage debt and secured by the mortgage.

6. On November 20, 1924, Stephen Roscoe Bateman, single, mortgaged said land to Grenloch Real Estate Company, for \$15,000.00, which mortgage was, on December 3, 1924, recorded in the Register of Deeds office of Camden County in Book 244 of mortgages, page 263, and which mortgage was on January 10, 1925, recorded in the Clerk's office of Gloucester County, in Book 143 of mortgages, page 598. 10

Any interest which said Grenloch Real Estate Company may have in said lands is subject to the lien of complainant's mortgage.

7. On January 1, 1933, one half year's interest fell due on complainant's bond and mortgage, and remained unpaid for more than thirty days thereafter, and no part thereof has yet been paid. Complainant has elected that the whole principal sum with all unpaid interest shall be now due. 20

8. Stephen Roscoe Bateman failed to keep the buildings on said land insured against loss or damage by fire in any sum; and on July 6, 1934, complainant caused the same to be insured in the Scottish Union and National Insurance Company in the sum of \$2400.00, for one year and paid the sum of \$98.16 for insurance premium thereon; and on July 6, 1934, complainant caused the same to be insured in the Automobile Insurance Company of Hartford, Conn., 30

*Bill of Complaint*

in the sum of \$2400.00, for one year and paid the sum of \$98.16 for insurance premium thereon; and on July 6, 1934, complainant caused the same to be insured in the Queen Insurance Company of America in the sum of \$2500.00 for one year and paid the sum of \$102.25 for insurance premium thereon; and on July 6, 1934, complainant caused the same to be  
10 insured in the National Fire Insurance Company of Hartford, in the sum of \$2500.00, for one year and paid the sum of \$102.25 for insurance premium thereon; which several sums, with interest at the rate of six per centum per annum, is a lien on said premises added to the amount of the mortgage debt and secured by complainant's mortgage, and is prior to the lien of the mortgage of said Grenloch Real Estate Company.

20 9. One, William Dilks is now a tenant and occupies a portion of the said mortgaged premises.

Any claim or interest which said William Dilks may have in said lands is subject to the lien of complainant's mortgage.

10. The Grenloch Park Amusement Co. is now a tenant and occupies a portion of the said mortgaged premises.

30 Any claim or interest which said Grenloch Park Amusement Co. may have in said lands is subject to the lien of complainant's mortgage.

11. The Grenloch Park Skooter Inc. is now a tenant and occupies a portion of the said mortgaged premises.

Any claim or interest which said Grenloch Park Skooter, Inc. may have in said lands is subject to the lien of complainant's mortgage.

12. One, Vince Borelli is now a tenant and occupies a portion of the said mortgaged premises.

Any claim or interest which said Vince Borelli may have in said lands is subject to the lien of complainant's mortgage. 10

13. One, Vincent Innuzzi is now a tenant and occupies a portion of the said mortgaged premises.

Any claim or interest which said Vincent Innuzzi may have in said lands is subject to the lien of complainant's mortgage.

14. One, Jacob Voron is now a tenant and occupies a portion of the said mortgaged premises. 20

Any claim or interest which said Jacob Voron may have in said lands is subject to the lien of complainant's mortgage.

15. One, O. P. Newcomb is now a tenant and occupies a portion of the said mortgaged premises.

Any claim or interest which said O. P. Newcomb may have in said lands is subject to the lien of complainant's mortgage.

30

16. One, Louis Cerone is now a tenant and occupies a portion of the said mortgaged premises.

Any claim or interest which said Louis Cerone may have in said lands is subject to the lien of complainant's mortgage.

*Bill of Complaint*

17. The defendants hereinafter named, Stephen Roscoe Bateman, William Dilks, Grenloch Park Amusement Co., Grenloch Park Skooter, Inc., Vince Borelli, Vincent Innuzzi, Jacob Voron, O. P. Newcomb and Louis Cerone have from time to time possessed and enjoyed the said mortgaged premises and one, or several of them are now in actual possession  
10 of the same but such possession is subject to complainant's mortgage.

18. The sum of \$20,000.00 with interest thereon from July 1, 1932, is due upon complainant's bond and mortgage.

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

20 I. That Stephen Roscoe Bateman, Grenloch Real Estate Company, William Dilks, Grenloch Park Amusement Co., Grenloch Park Skooter Inc., Vince Borelli, Vincent Innuzzi, Jacob Voron, O. P. Newcomb and Louis Cerone who are the defendants to this suit may answer this bill of complaint without oath and each statement therein made.

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

30 III. That the defendants, or one 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 they, and each of them be debarred and

foreclosed of all equity of redemption in said lands;  
or

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 its mortgage with interest and costs.

10

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

JOSEPH R. APPLEBAUM,  
*Solicitor for and*  
CHARLES CAMP COTTON,  
*of Counsel with Complainant.*

SUBPOENA AD RESPONDENDUM.

20

NEW JERSEY, TO WIT:

*The State of New Jersey to Stephen Roscoe Bateman, Grenloch Real Estate Company, Grenloch Park Amusement Co., William Dilks, Grenloch Park Skooter, Inc., Vince Borelli, O. P. Newcomb, Greeting:*

Whereas, a bill of complaint has lately been exhibited against you in our Court of Chancery by Pitman Title & Trust Company, Trustee, to be relieved touching the matters therein contained;

Therefore, we command you, if you intend to make a defence, that you file an answer to said bill in the

*Decree Pro Confesso*

office of the Clerk of our said Court, at Trenton, within twenty days after service upon you of this writ, and in default thereof such order or decree will be made against you as the Court shall think equitable and just.

Witness, his Honor, LUTHER A. CAMPBELL, Chancellor of our said State, at Trenton, the fifteenth  
10 day of November, in the year of our Lord one thousand nine hundred and thirty-four.

EDW. L. WHELAN,  
*Clerk.*

JOSEPH R. APPLEBAUM,  
*Solicitor.*

(Above named defendants served.)

---

DECREE PRO CONFESSO.

20

(Filed Jan. 18th, 1935.)

IN CHANCERY OF NEW JERSEY.

---

Between

PITMAN TITLE & TRUST  
COMPANY, Trustee,  
*Complainant,*

and

30 STEPHEN ROSCOE BATE-  
MAN, *et als,*

*Defendants.*

} On Bill to Foreclose,  
&c.

} Decree Pro Confesso.

---

This cause being opened to the Court by Joseph R. Applebaum, solicitor of the complainant, and it appearing that process of subpoena calling upon the

defendants to answer the complainant's bill of complaint filed herein has been duly issued and returned, served upon the defendants, Stephen Roscoe Bateman, Grenloch Real Estate Company, William Dilks, Grenloch Park Amusement Co., Grenloch Park Skooter, Inc., Vince Borelli and O. P. Newcomb;

And it further appearing that the said defendants, Stephen Roscoe Bateman, Grenloch Real Estate Com- 10  
pany, William Dilks, Grenloch Park Amusement Co., Grenloch Park Skooter, Inc., Vince Borelli and O. P. Newcomb have not, nor has any of them, filed an answer to said bill of complaint within the time limited by law, but have wholly failed and neglected so to do;

It is thereupon, on this 18th day of January, nineteen hundred and thirty-five, on motion of Joseph R. Applebaum, solicitor of the complainant, ordered that the complainant's said bill of complaint be and 20  
the same is hereby taken as confessed against the said defendants Stephen Roscoe Bateman, Grenloch Real Estate Company, William Dilks, Grenloch Park Amusement Co., Grenloch Park Skooter, Inc., Vince Borelli and O. P. Newcomb, to the end that such decree may be made against them as the Court shall deem equitable and just.

LUTHER A. CAMPBELL,

C.

A true copy:

EDW. L. WHELAN,

*Clerk.*

30

## MASTER'S REPORT.

IN CHANCERY OF NEW JERSEY.

10

Between

PITMAN TITLE & TRUST  
COMPANY, Trustee,*Complainant,*

and

STEPHEN ROSCOE BATE-  
MAN, *et als,**Defendants.*} On Bill to Foreclose.  
} Master's Report.

20

*To the Honorable, Luther A. Campbell, Chancellor  
of the State of New Jersey:*

I, Charles Camp Cotton, one of the Masters in Chancery of the State of New Jersey, do hereby report that I have seen and inspected the bond and mortgage mentioned in the bill of complaint filed in this cause, which said bond and mortgage are marked  
30 Exhibits "A" and "B" on the part of the complainant.

There is due to said complainant to the date hereof, on said bond, the payment of which was intended to be secured by said mortgage, the sum of \$23,486.17 for principal and interest, as will more fully appear

*Master's Report*

on the schedule hereto annexed and made a part hereof.

I do further certify and report that Joseph R. Applebaum, the solicitor of said complainant, produced before me the abstract and certificate of search marked Exhibit "C" on the part of the complainant, setting forth the date of the mortgage being foreclosed, and I have examined said search and statement of fees and charges claimed, and that in my opinion, such search was necessary for a proper foreclosure of said mortgage; and I respectfully recommend that there be allowed said complainant as part of its taxed costs, the sum of \$33.42 as shown by the affidavit to said search annexed. 10

All of which is respectfully submitted this 22nd day of January A. D. 1935.

CHARLES CAMP COTTON,  
*Master in Chancery of New Jersey.* 20

---

SCHEDULE.

Bond bearing date November 20, 1924, in the penal sum of Forty Thousand Dollars, conditioned for the payment of \$20,000.00 at the expiration of one year from the date thereof, with interest at 6% per annum payable semi-annually, made by Stephen Roscoe Bateman, single man, to Pitman Trust Company (now Pitman Title & Trust Company) secured by the mortgage mentioned in the bill of complaint 30

*Master's Report*

		\$20,000.00
	Interest from July 1, 1932, to date	3,073.33
	Fire Insurance premiums as follows:	
	July 6, 1934, Scottish Union and National Insurance Co. in the sum of \$2400.00 for one year	\$98.16
10	July 6, 1934, Automobile Insur- ance Company of Hartford, Conn., in the sum of \$2400.00 for one year	98.16
	July 6, 1934, Queen Insurance Company of America in the sum of \$2500.00 for one year	102.25
	July 6, 1934, National Fire In- surance Company of Hart- ford, in the sum of \$2500.00 for one year	102.25
20		400.82
	Interest on above amounts from July 6, 1934, to date	12.02
		<hr/> \$23,486.17

Amount due complainant this twenty-second day of January, nineteen hundred and thirty-five, twenty-three thousand, four hundred eighty-six dollars and 30 seventeenth cents (\$23,486.17).

CHARLES CAMP COTTON,  
*Master in Chancery of New  
Jersey.*

*Affidavit of Amount Due Complainant*AFFIDAVIT OF AMOUNT DUE COM-  
PLAINANT.

State of New Jersey, }  
County of Gloucester, } ss.

10

OSCAR DAVENPORT, of full age, being duly sworn according to law, upon his oath deposes and says:

I am the treasurer of the Pitman Title & Trust Company, the complainant in the above entitled cause, and the holder of the bond and mortgage particularly described in the bill of complaint filed herein, to foreclose which mortgage this suit has been instituted. There is due on said mortgage which bears date November 20, 1924, and was made and executed by Stephen Roscoe Bateman, single man, to Pitman Trust Company, the sum of \$20,000.00 with interest on the same from July 1, 1932, at the rate of 6% per annum, and insurance premiums paid in the sum of \$400.82, together with interest on the same from July 6, 1934, at the rate of 6% per annum. 20

I now produce said bond which is dated November 20, 1924, made by Stephen Roscoe Bateman, single man, to Pitman Trust Company, given to secure payment of \$20,000.00 with interest as therein stated. (Bond offered in evidence and marked Exhibit "A" on the part of complainant.) 30

I now produce said mortgage given to secure payment of the bond, Exhibit "A", between the aforesaid Stephen Roscoe Bateman, single man, and Pit-

man Trust Company, and bearing the same date, and which mortgage was recorded in the Gloucester County Clerk's Office in Book 143 of Mortgages, page 594, and in the Camden County Register's Office in Book 244 of Mortgages, pages 259, &c. (Mortgage offered in evidence and marked Exhibit "B" on part of complainant.)

10 No part of said principal sum or of said interest has ever been paid, or said insurance premiums.

OSCAR DAVENPORT.

Sworn and subscribed to before me this 22nd day of January, A. D. 1935.

K. E. HENDRICKS,  
*Notary Public of N. J.*

My Commission Expires Sept. 27, 1939.

20

SEARCH.

30 Against premises situate partly in the Township of Washington, County of Gloucester, and partly in the Township of Gloucester, County of Camden, and State of New Jersey, more particularly set forth and described in mortgage made by Stephen Roscoe Bateman, single, to Pitman Trust Company, recorded in the Gloucester County Clerk's Office in Book 143, page 594, and in the Register of Deeds office of Camden County in Book 244 of Mortgages, pages 259, &c.

I hereby certify that I have made an examination of the index of records in the Camden County Reg-

## Search

ister of Deed's Office, for conveyances and uncancelled mortgages affecting the premises in question, between the following dates inclusive.

Made or given by	From	To
Stephen Roscoe Bateman	Jan. 5, 1925	Oct. 23, 1934

And I do further certify that I have made an examination of the index of judgments in the aforesaid Register's office, recorded or filed between the following dates inclusive. 10

Against	From	To
Stephen Roscoe Bateman	Jan. 5, 1925	Oct. 23, 1934

And found nothing

## EXCEPT

Mortgage	Dated Nov. 20, 1924	
Stephen Roscoe Bateman, single	Rec'd Dec. 3, 1924	
to	Book 244, page 259	
	\$20000.00	
Pitman Trust Company	Covers premises in question.	20

Mortgage	Dated Nov. 20, 1924	
Stephen Roscoe Bateman, single	Rec'd Dec. 3, 1924	
to	Book 244, page 263	
	\$15000.00	
Grenloch Real Estate Co.	Covers premises in question.	

Mortgage	Dated Dec. 30, 1927	30
Stephen Roscoe Bateman, single	Rec'd Jan. 12, 1928	
to	Book 326, page 198	
	\$18,800.00	
Louis C. Joyce, Jr.	Covers portion of premises in question.	

- Deed  
 Stephen R. Bateman  
 to  
 County of Camden  
 10
- Release of Mortgage  
 Pitman Title & Trust  
 Co.  
 to  
 Stephen Roscoe Bate-  
 man  
 20
- Release of Mortgage  
 Louis C. Joyce, Jr.  
 to  
 Stephen Roscoe Bate-  
 man  
 30
- Release of Mortgage  
 Grenloch Real Estate  
 Co.
- Dated Sept. 30, 1930  
 Rec'd Oct. 14, 1932  
 Book 776, page 341  
 \$325.22  
 Covers portion of prem-  
 ises in question.  
 Paving, Guttering, &c.
- 
- Dated Oct. 7, 1930  
 Rec'd June 25, 1931  
 Book 47, page 266  
 \$1.00  
 Covers portion of prem-  
 ises in question de-  
 scribed in Deed re-  
 corded in Book 776,  
 page 341.
- 
- Dated Oct. 7, 1930  
 Rec'd June 16, 1931  
 Book 47, page 244  
 \$1.00  
 Covers portion of prem-  
 ises in question de-  
 scribed in Deed re-  
 corded in Book 776,  
 page 341.
- 
- Dated Oct. 7, 1930  
 Rec'd Sept. 20, 1934  
 Book 50, page 225  
 \$1.00  
 Covers portion of prem-

*Search*

	to	ises in question de- scribed in Deed re- corded in Book 776, page 341.	
Stephen Roscoe Bate- man			
<hr/>			
Assignment of Mortgage		Dated Oct. 10, 1932	
Louis C. Joyce Jr.		Rec'd Oct. 22, 1932	
		Book 94, page 221	10
	to	\$18,800.00	
Pitman Title & Trust Co.		Assigns mortgage re- corded in Book 326, page 198.	
<hr/>			
Condemnation proceed- ings		#25408	
State Highway Com- mission		Dated March 2, 1933	
	v.	Rec'd July 10, 1933	20
Stephen Roscoe Bate- man			
<hr/>			
Deed		Dated Aug. 17, 1933	
		Rec'd Feb. 3, 1934	
Stephen Roscoe Bate- man		Book 803, page 346	
	to	\$1.00	
State of New Jersey		Covers portion of prem- ises in question.	30
<hr/>			
Release of Mortgage		Dated July 19, 1934	
Pitman Title & Trust Company		Rec'd July 21, 1934	
		Book 50, page 125	
		\$1.00	
	to	Covers portion of prem-	

*Search*

	The State of New Jersey	ises in question described in deed in Book 803, page 346.
	Release of Mortgage	Dated July 18, 1934 Rec'd July 21, 1934
10	Grenloch Real Estate Co.	Book 50, page 120 \$1.00
	to	Covers portion of premises in question described in deed in Book 803, page 346.
	The State of New Jersey	
	Release of Mortgage	Dated July 19, 1934 Rec'd July 21, 1934
20	Pitman Title & Trust Company	Book 50, page 123 \$1.00
	to	Covers portion of premises in question described in deed in Book 803, page 346.
	The State of New Jersey	

In witness whereof I have hereunto set my hand and seal this 23rd day of October, 1934.

*Final Decree*

## FINAL DECREE.

(Filed Jan. 30, 1935.)

IN CHANCERY OF NEW JERSEY.

10

Between

PITMAN TITLE & TRUST  
COMPANY, Trustee,  
*Complainant,*

and

STEPHEN ROSCOE BATE-  
MAN, *et als,*  
*Defendants.*On Bill to Foreclose  
Final Decree.

20

This cause being opened to the Court by Joseph R. Applebaum, solicitor of the complainant, and it appearing that process of subpoena calling upon the defendants to answer the complainant's bill of complaint, filed herein, has been duly issued and returned served upon the defendants, Stephen Roscoe Bateman, Grenloch Real Estate Company, William Dilks, Grenloch Park Amusement Co., Grenloch Park Skooter, Inc., Vince Borelli and O. P. Newcomb, and that the said defendants, Stephen Roscoe Bateman, Grenloch Real Estate Company, William Dilks, Grenloch Park Amusement Co., Grenloch Park Skooter,

30

Inc., Vince Borelli and O. P. Newcomb, have not, nor have any of them filed an answer to said bill of complaint, within the time limited by law, but have wholly failed and neglected so to do; and it further appearing that this cause has been discontinued as to the defendants, Vincent Innuzzi, Jacob Voron and Louis Cerone; and it further appearing that on the eighth  
10  
teenth day of January, 1935, by an order duly made in this cause, the bill of complaint herein was taken as confessed against the said defendants; whereupon and upon reading a report on file made by Charles Camp Cotton, Esquire, one of the masters of the Court of Chancery, bearing date the twenty-second day of January, nineteen hundred and thirty-five, whereby it appears that there is due to the complainant for principal and interest on its mortgage, as well as fire insurance premiums paid by it, the  
20  
sum of twenty-three thousand four hundred and eighty-six dollars and seventeen cents (\$23,486.17) and no cause appearing to the contrary;

It is, on this 28th day of January, nineteen hundred and thirty-five, ordered, adjudged and decreed that the said report, and all the matters and things therein contained do stand ratified and confirmed; and that the complainant is entitled to have the sum of \$23,486.17, with lawful interest thereon to be computed from the twenty-second day of January, nine-  
30  
teen hundred and thirty-five, being the date of the said Master's report, together with the complainant's costs in this cause to be taxed, including a counsel fee of forty-seven dollars, which is hereby allowed to said complainant, raised and paid out of the mortgaged premises in said bill of complaint described.

*Final Decree*

It is further ordered, adjudged and decreed that so much of the said mortgaged premises be sold as will be sufficient to raise and satisfy the said debt, interest and costs, and that a writ of *feri facias* issue for that purpose out of this Court, directed to Willis Tullis Porch, Esquire, one of the Special Masters of the Court of Chancery of New Jersey, commanding him to make sale, according to law, of 10  
 so much of the said mortgaged premises as will be sufficient to satisfy the said debt, interest and costs, and out of the moneys arising from such sale to pay to the complainant, or its solicitor, its said debt, interest and costs; and that in case more money shall be raised by said sale than shall be sufficient to answer said several payments, such surplus money be brought into this court to abide the further order of this Court, unless otherwise previously disposed of, and that the Special Master make his return, with- 20  
 out delay, of his proceedings by virtue of said writ.

It is further ordered, adjudged and decreed that the defendants and each of them stand absolutely debarred and foreclosed of and from all equity of redemption of, in and to so much of the said mortgaged premises as shall be sold as aforesaid by virtue of this decree.

LUTHER A. CAMPBELL,  
 C.

Respectfully advised,

WM. J. BACKES,  
 A. M.

30

A true copy:

EDW. L. WHELAN,  
 Clerk.

## WRIT OF FIERI FACIAS.

NEW JERSEY, TO WIT:

10 *The State of New Jersey to Willis Tullis Porch, Esquire, one of the Special Masters in Chancery of the State of New Jersey, Greeting:*

Whereas, on the 28th day of January in the year of our Lord one thousand nine (Seal) hundred and thirty-five, by a certain decree made in our Court of Chancery, before our Chancellor, at Trenton, in a certain cause therein depending, wherein Pitman Title & Trust Company, trustee is complainant, and Stephen Roscoe Bateman, Grenloch Real Estate Company, William Dilks, Grenloch Park Amusement Co., 20 Grenloch Park Skooter, Inc., Vince Borelli and O. P. Newcomb are defendants, it was ordered, adjudged and decreed that 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 the following described tract or piece of land, situate at Grenloch, New Jersey, being Tract No. 10 and being partly in the Township of Washington, 30 County of Gloucester and partly in the Township of Gloucester, County of Camden, and specifically bounded and described as follows:

Together, with all and singular the rights, liberties, privileges, hereditaments and appurtenances thereunto belonging or in anywise appertaining, and the

*Writ of Fieri Facias*

reversion and remainders, rents, issues and profits thereof, and also all the estate, right, title, interest, use, property, claim and demand of the said defendants of, in, to and out of the same, be sold, to pay and satisfy in the first place unto the said Pitman Title & Trust Company, Trustee, the sum of \$23,486.17, the principal and interest secured by a certain mortgage given by Stephen Roscoe Bateman, single- 10  
 man to Pitman Trust Company, bearing date the twentieth day of November, nineteen hundred and twenty-four, together with lawful interest thereon from the twenty-second day of January, nineteen hundred and thirty-five, until the same be paid and satisfied and also the costs of the said complainant, and that, for that purpose, a writ of *feri facias* should issue, directed to Willis Tullis Porch, Esquire, one of the Special Masters of the Court of Chancery of New Jersey, commanding him to make sale as afore- 20  
 said; and that the surplus money arising from such sale, if any there be, should be brought into said court, subject to the further order of the said Court, as by the said decree remaining as of record in our said Court of Chancery, at Trenton doth and may more fully appear. And whereas the costs of the said complainant have been duly taxed at the sum of \$170.49;

Therefore, you are hereby commanded that you cause to be made of the premises aforesaid, by selling 30  
 so much of the same as may be needful and necessary for the purpose, the said sum of twenty-three thousand four hundred and eighty-six dollars and seventeen cents, and the same you do pay to the said complainant, together with lawful interest thereon

as aforesaid, and the sum aforesaid of costs, together with lawful interest thereon from the date of said decree, and that you have the surplus money, if any there be, before our said Chancellor, in our Court of Chancery aforesaid, at Trenton, on the 4th day of May next, to abide the further order of our said Court, according to the decree aforesaid. And  
10 you are to make return at the time and place aforesaid, by certificate under your hand, of the manner in which you have executed this our writ, together with this writ.

Witness, his Honor, LUTHER A. CAMPBELL, our Chancellor, at Trenton aforesaid, the 4th day of February in the year of our Lord one thousand nine hundred and thirty-five.

EDW. L. WHELAN,  
*Clerk.*

20 JOSEPH R. APPLEBAUM,  
*Solicitor.*

PETITION.

IN CHANCERY OF NEW JERSEY.

Between		
PITMAN TITLE & TRUST	} On Bill to Foreclose.	10
COMPANY,		
<i>Complainant,</i>		
and		
STEPHEN ROSCOE BATE-	}           Petition.	
MAN, <i>et als,</i>		
<i>Defendants.</i>		

The petition of Stephen Roscoe Bateman, the defendant in the above entitled cause, respectfully shows: 20

1. On November 20th, 1924, this defendant, your petitioner, obtained a mortgage loan of \$20,000 from the Pitman Title & Trust Company and made and executed to the said Pitman Title & Trust Company, a mortgage bearing that date, in the amount of \$20,000 covering certain premises described in the bill of complaint known as Grenloch Park and being located on the boundary line between Camden and Gloucester Counties. 30

2. At the time said mortgage loan was obtained from the complainant, Pitman Title & Trust Company, complainant, the complainant insisted that interest be paid thereon at the rate of 9% per annum,

and the interest at 9% per annum was paid by your petitioner on said mortgage from that time until November of 1927, at the rate of 9% per annum.

3. In the year of 1927, the complainant, Pitman Title & Trust Company made an additional loan to your petitioner, the defendant, of \$5000 making a  
10 total amount of money loaned to your petitioner, the sum of \$25,000 at which time the said Pitman Title & Trust Company, complainant, in order to obtain the maximum amount of interest on the total loan of \$25,000 at 9% per annum, requested your petitioner to give them an additional note of \$12,500 the interest being at the rate of 6% per annum thereafter on the total obligation of \$37,500. The note of \$12,500 given by your petitioner was not for any funds  
20 counted, the amount thereof was not placed to the credit of your petitioner as to be subject to check or withdrawal, but was at all times under the complete control of the complainant Pitman Title and Trust Company.

4. From 1927 until 1931, your petitioner paid the interest on the total amount of the obligations, that is to say, interest at the rate of 6% per annum on \$25,000 borrowed from the Pitman Title & Trust  
30 Company and interest at the rate of 6% per annum on the note of \$12,500 obtained as heretofore set forth in 1927. The interest on said sum for the period above set forth is the sum of \$3600 and the amount actually paid was \$5400, leaving a difference of \$1800 paid in excess of legal interest.

*Petition of Stephen Roscoe Bateman*

5. From 1927 when the loan to the petitioner was increased from \$20,000 to \$25,000 the interest paid during that period of time was the sum of \$9000 whereas the legal interest on the moneys advanced, and paid to the petitioner during that same period of time was the sum of \$6000, leaving an excess of \$3000 having been paid by your petitioner over and above the lawful interest on the amount borrowed 10  
for his use.

6. The mortgage in question as set forth in the bill of complaint was for \$20,000 and the difference in interest between amounts paid and the lawful interest thereon was the sum of \$4800.

7. Your petitioner is advised that under the law of the State of New Jersey, that no person or corporation, shall upon contract take directly or indirectly on a loan of any money above the value of \$6 for the forbearance of \$100 for the year, and that said law further provides that in all cases of suits at law or in equity to enforce any note, bill, bond, mortgage, contract, etc., which shall be hereafter made for the payment or delivery of any money, etc., and on which a higher rate of interest shall be reserved or taken than was or is allowed by the law of the place where the contract was made or is to be performed, the amount or value actually lent without interest or costs of suit, may be recovered and no more; and if any premium or illegal interest shall have been paid to the lender, the sum or sums so paid shall be deducted from the amount that may be due as aforesaid and recovery had for the balance only. 20  
30

8. The several acts or laws of the State of New Jersey relating to usury are pleaded herewith for the purpose of this application.

9. The interest at the rate of 6% for the year following 1931 was paid on the total amount of the above indebtedness.

10

10. Your petitioner is the owner in fee of the premises covered by said mortgage and for some years prior to 1934 had operated the park property under the name of the Grenloch Amusement Company and was the president and treasurer of this company. In March of 1934, the complainant insisted that the management of the park be turned over to them to operate and that a man by the name of Rosenberger was employed by the Pitman Title & Trust Company to act as manager of the Grenloch Park during the year of 1934, and at the request and instance of the Pitman Title & Trust Company said Rosenberger was made treasurer of the company operating the amusement park and thereafter continued during the year of 1934 to make, contract, create indebtedness and generally operate the said park and to receive all the income therefrom. The said Rosenberger nor the Pitman Title & Trust Company have not accounted to your petitioner for the moneys received by them on account of the revenue from operating the park during the year of 1934, but the Pitman Title & Trust Company, complainant, through their treasurer, a Mr. Davenport, has advised your petitioner that there was credited on account of interest from receipts of said park be-

*Petition of Stephen Roscoe Bateman*

tween \$800 and \$1000. Your petitioner had no part in the operating of the amusement park during the year of 1934.

11. In the fall of 1934, after the park season had closed Mr. Rosenberger resigned as treasurer of the operating company known as the Grenloch Park Amusement Company and shortly thereafter, to wit, 10  
on or about November 15th, 1934, a bill was filed to foreclose the above mentioned mortgage of \$20,000 as stated herein and more fully set forth in the bill of complaint. After the filing of the bill of complaint, your petitioner went to see the complainant, Pitman Title & Trust Company, in regard to an adjustment of this particular mortgage with the trust company and was advised by Mr. Davenport, the treasurer of said Pitman Title & Trust Company, that if your petitioner could obtain a cancellation 20  
of the second mortgage indebtedness on said property held by the Grenloch Real Estate Company in the amount of \$15,000 that they would accept a deed for the property. Your petitioner was assured by the Pitman Title & Trust Company and by Mr. Davenport, its treasurer, that no further action would be taken in the foreclosure proceedings pending an attempt to adjust the matter of the mortgage on said premises. During the time your petitioner was attempting to adjust the mortgage of the complainant 30  
and the second mortgagee and other creditors, to find out what could be done he called on an attorney, the solicitor in this suit, who called a meeting of all the persons interested in the particular amusement park, by reason of being creditors or holding mort-

gages thereon and which meeting was held on February 7th, 1935, at the office of Oscar B. Redrow, 428 Market Street, Camden, New Jersey, and at which meeting the Pitman Title & Trust Company was represented by Mr. Davenport, its treasurer, and wherein Mr. Davenport further agreed that no proceedings would be taken in regard to the foreclosure of their mortgage until such times as it may have been possible to work out some adjustment of the different creditors. Mr. Davenport stated at this meeting in Mr. Redrow's office that nothing had been done except the filing of the bill and the serving of subpoenas and that nothing further would be done until all possibility of adjustment failed. As a matter of fact at the time of said meeting on February 7th, 1935, a decree *pro confesso* had been entered in the above entitled cause on January 18th, 1935, and on January 22nd, Mr. Davenport, had signed an affidavit as to the amount due on said mortgage, the Master's report was filed on January 25th, 1935, and the final decree was entered on January 28th, 1935, and an execution had issued out of the Court of Chancery dated February 1st, 1935, though according to the docket entered February 4th, 1935. The execution in this matter was directed to Willis Tullis Porch, special master, for sale because of the property being in two counties and the said Willis Tullis Porch has proceeded to advertise for sale the aforesaid premises on March 25th, 1935, at the post office in Grenloch at 2 o'clock on said day.

12. Your petitioner did not file any answer or other pleading in the foreclosure suit for the reason that he relied entirely upon the statements made by

*Petition of Stephen Roscoe Bateman*

Mr. Applebaum, the solicitor of the complainant and the Pitman Title & Trust Company, to him that no further action would be taken by them until his attempts to adjust the matter had either succeeded or fallen through and he had no knowledge that any proceedings had been taken in the foreclosure suit other than the serving of the subpoenas, until the notice of the advertising of said premises for sale, 10  
under a decree of this Court, was observed by him on or about March 1st, 1935, in a newspaper.

Your petitioner, therefore, prays that an order may be made by this honorable Court opening the final decree made in this cause, and that the matter be referred to a Master to ascertain and report the exact amount that may be lawfully due on the bond and mortgage set forth in the bill of complaint and that your petitioner may have credits made thereon 20  
of the unlawful interest collected thereon by the complainant and for such sum or sums of money as may have been collected by the said complainant from the operation of the aforesaid amusement park during the year of 1934. And that all further proceedings in this suit be restrained by this Court, including the sale of said premises under the execution hereinbefore referred to, until such time as the correct amount due on said bond and mortgage may be ascertained and determined and that your petitioner 30  
may have such other additional relief as may be just.

OSCAR B. REDROW,  
*Solicitor and Counsel with  
the Petitioner.*

State of New Jersey, }  
 Camden County, } ss.

STEPHEN ROSCOE BATEMAN, being duly sworn, according to law, on his oath deposes and says:

I am the petitioner in the above entitled cause. I  
 10 reside at Grenloch, New Jersey. On November 20th,  
 1924, I gave to the Pitman Title & Trust Company,  
 the complainant in this cause, a mortgage in the  
 amount of \$20,000 covering what is commonly known  
 as the Grenloch Park. The interest thereon as stated  
 in the mortgage was at the rate of 6% per annum. The  
 Pitman Title & Trust Company insisted that I pay  
 9% interest per annum on said mortgage and this  
 amount of interest at the rate of 9% was paid by me  
 for a period of three years. In 1927 I borrowed an  
 20 additional \$5000 from the Pitman Title & Trust Com-  
 pany, making a total of \$25,000 at which time the  
 Pitman Title and Trust Company insisted on my  
 signing a new note for \$12,500, but I did not receive  
 any part of this \$12,500 nor was any part placed to  
 my credit nor turned over to any other person for me  
 or my benefit. From 1927 until 1931, I paid the in-  
 terest on the full amount of \$37,500, but did not dur-  
 ing that period of time, have any use whatever of  
 the \$12,500. The only amount of money which was  
 30 available to me was the sum of \$25,000; \$20,000 se-  
 cured by a mortgage and \$5000 by a note. In March  
 of 1934 the Pitman Title & Trust Company insisted  
 on taking possession of the Grenloch Park and  
 placed a Mr. Rosenberger in charge as manager and  
 also had him elected treasurer of a company which

*Petition of Stephen Roscoe Bateman*

had previously operated the park. The Pitman Title & Trust Company collected all of the revenue during the year 1934 and did not account to me for the moneys received or for any possible moneys paid out, but did tell me they had a credit on account of the mortgage of about \$1000, but I never received any accurate accounting. The bill to foreclose this mortgage was filed on or about November 15th, 1934, 10 and I talked both with Mr. Applebaum and Mr. Davenport, treasurer of the Pitman Title & Trust Company, about what to do and Mr. Davenport wanted me to give him a deed and have the second mortgage held by the Grenloch Realty Company cancelled. Mr. Davenport told me at the time that they would take no further proceedings in the foreclosure suit until I could see what I could do. I went to see the Grenloch Realty Company and other of the creditors and finally went to see Mr. Redrow, an attorney, and at 20 his suggestion we called a meeting of all of the parties interested in the such at which meeting Mr. Davenport represented the Pitman Title & Trust Company and he advised me at the time of the meeting on February 7th, 1934, that nothing had been done since the bill was filed except service of the subpoenas and as a result of this meeting, the Pitman Title & Trust Company would do nothing, until such 30 times as the adjustments agreed upon that day were either accepted or rejected. I am advised that even prior to the meeting that decrees had been taken and affidavits made by Mr. Davenport prior to the meeting and which he must have known about on that day. I did not know of any other arrangement until I saw an advertisement appearing in one of

*Petition of Stephen Roscoe Bateman*

the Gloucester County papers on or about March 1st, 1935, that the property was being sold. I do not owe the amount claimed by the complainant on the mortgage and the complainant has not credited me with the moneys received by it during the year of 1934.

STEPHEN ROSCOE BATEMAN.

10

Sworn and subscribed this 8th day of March, 1935, before me, a notary public.

ALVIN I. HAINES,  
*Notary Public N. J.*

A true copy:

OSCAR B. REDROW,  
*Solr. of Complt.*

20

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*Order to Show Cause*

## ORDER TO SHOW CAUSE.

## IN CHANCERY OF NEW JERSEY.

Between

PITMAN TITLE & TRUST  
COMPANY,*Complainant,*  
andSTEPHEN ROSCOE BATE-  
MAN, *et al,**Defendants.*} On Bill to Foreclose.  
} Order to Show Cause.

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Upon opening the matter in this cause to the Court, and it appearing by the petition of Stephen Roscoe Bateman, one of the defendants in the above entitled cause, that he is the owner of the property described in the bill of complaint and that interest on said mortgage was charged to him and paid by him in excess of the legal rate of interest as provided by law and that he has received no accounting of the moneys he claimed were collected by the complainant during the year of 1934, and requests that the final decree in the above entitled cause be opened for the purpose of correcting the amount due to the complainant and that all proceedings in this suit be restrained until such time as the correct amount due

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*Order to Show Cause*

on the aforesaid bond and mortgage may be ascertained and determined.

It is thereupon on this 11th day of March, 1935, on motion of Oscar B. Redrow, of counsel with the petitioner, ordered, that the said Pitman Title & Trust Company, the complainant in this suit, show cause on the 18th day of March, 1935, before the Chancellor, at the Chancery Chambers, in the Court House, in the City and County of Camden and State of New Jersey, at ten o'clock in the forenoon or as soon thereafter as counsel may be heard, why an order should not be made opening the final decree entered in the above entitled cause for the purpose of determining the correct amount due thereon and restraining any further proceedings in this suit, as set forth in said petition.

It is further ordered that the solicitor of the petitioner serve an uncertified copy of the petition and this order on the complainant, Pitman Title & Trust Company, or its solicitor within two days from the date hereof.

LUTHER A. CAMPBELL,  
C.

Respectfully advised.

F. B. DAVIS,  
V. C.

A true copy:  
30 OSCAR B. REDROW,  
*Solr. of Complainant.*

## NOTICE.

*To Joseph R. Applebaum, Solicitor of the Complainant:*

In addition to the matters and things set forth in the petition of Stephen Roscoe Bateman, and the order to show cause made by Vice-Chancellor Davis, by order, bearing even date herewith, I hereby give you notice that at the time and place designated in said order, to wit, on March 18, 1935, at the Chancery Chambers, in the Court House, in the City and County of Camden and State of New Jersey, at 10 o'clock in the forenoon or as soon thereafter as may be heard, I will make application for the opening of the final decree entered in the above entitled cause for the reason that the proofs as contained in the Master's report, as to the amount due, was not taken in accordance with the rules of the Chancery Court, in that the Master's report was signed by Charles Camp Cotton, as a Master in Chancery, and that the said Charles Camp Cotton also appeared on the bill of complaint as counsel for the complainant, and which rule heretofore referred to provides that such testimony shall not be taken before a Master who is a partner of, or connected in business with, or clerk for, the solicitor or counsel of either of the parties to the suit then pending.

OSCAR B. REDROW,  
*Solicitor of the Defendant,*  
*Stephen Roscoe Bateman.*

## PROOF OF SERVICE.

State of New Jersey, }  
 10 County of Camden, } ss.

OSCAR B. REDROW, being duly sworn on his oath deposes and says, I am the solicitor of the petitioner, Stephen Roscoe Bateman. On March 11, 1935, I served upon Joseph R. Applebaum, solicitor of the complainant, a true copy of the petition and order to show cause hereto attached "personally" at his office No. 37 South Broadway, Pitman, New Jersey.

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OSCAR B. REDROW.

Sworn and subscribed before me this 12th day of March, 1935.

JAMES T. DAWSON,  
*A Master in Chancery of  
 New Jersey.*

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AFFIDAVIT.

IN CHANCERY OF NEW JERSEY.

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Between

PITMAN TITLE & TRUST  
COMPANY, Trustee,  
*Complainant,*

v.

STEPHEN ROSCOE BATE-  
MAN, *et als,*  
*Defendants.*

Affidavit.

20

State of New Jersey, }  
County of Gloucester, } ss.

OSCAR DAVENPORT, of full age, being duly sworn according to law, upon his oath deposes and says:

1. I am the treasurer of the Pitman Title and Trust Company, the complainant in the above entitled matter, and duly authorized to make this affidavit on its behalf. I have been in the employ of the said Pitman Title and Trust Company since December, 1921, and am entirely familiar with the transactions set out herein and qualified to make this affidavit. 30

*Affidavit of Oscar Davenport*

2. I have read the petition of Stephen Roscoe Bateman, as well as the affidavit annexed thereto, and deny the statements contained therein, the true facts being as follows:

3. On or about November 20, 1924, Stephen Roscoe Bateman executed a bond and mortgage to the  
10 Pitman Trust Company, in the sum of \$20,000.00, covering certain premises described in the bill of complaint, and more familiarly known as Grenloch Park, a portion of the said premises being in both Camden and Gloucester Counties, which mortgage bore interest at the rate of 6% per annum and was due one year from the date of its execution.

I deny that any stipulation was made at the time the mortgage loan was created, or any time thereafter, that interest should be paid thereon other than  
20 at the legal rate of 6% per annum, and further say that interest was never paid on any loans, in excess of this rate.

On January 4, 1926, the Pitman Title and Trust Company made an additional loan of \$2000.00 to the said Stephen Roscoe Bateman, and on December 30, 1926, a further additional loan was made in the sum of \$3000.00, making in all, a total of \$25,000.00, as of December 30, 1926, due to the Pitman Title and Trust Company from the petitioner herein, which loan bore  
30 interest at the legal rate of 6% per annum. On March 1, 1927, a further loan was made by the said Pitman Title and Trust Company, to Stephen Roscoe Bateman in the sum of \$12,500.00 which money was credited to his account until October 24, 1933, at which time the petitioner paid off the instrument in

*Affidavit of Oscar Davenport*

question by having the same charged to his account. This instrument, together with the other loans of the petitioner were defaulted on by failure of any further payments of interest from some time after June 1, 1931, and no interest has been paid on the same from that time until the present, with the exception of three payments made on October 2, November and December 2, 1931, each being in the sum of \$100.00, making a total of \$300.00 in all. 10

On the eighth day of May, 1934, Stephen Roscoe Bateman, the petitioner herein, duly signed, set over and transferred to the Pitman Title and Trust Company, all of his right, title and interest in the rents due, or to become due for the season of 1934, in the operation of the Grenloch Park Amusement Company, and further authorized A. C. Rosenberger, treasurer of the said Grenloch Park Amusement Company to pay the said Pitman Title and Trust Company any sum or sums that might be due them on account of interest on the obligations of Stephen Roscoe Bateman with the said bank. A copy of the said assignment is annexed hereto, marked Exhibit "A" and considered a part hereof. Stephen Roscoe Bateman is a stockholder and registered agent, as well as an officer and director of the said company. 20

After the close of the park season, Mr. Rosenberger filed an accounting with the Grenloch Park Amusement Company, which accounting is duly recorded on their books, and a copy of which is hereto annexed, marked Exhibit "B" and considered a part hereof, and which accounting was always open to inspection by the petitioner herein, as well as any of the other stockholders of the said company, the said 30

petitioner having been president of the company in question at that time.

Some time in October of 1934, I turned the bond and mortgage of Stephen Roscoe Bateman over to Joseph R. Applebaum, an attorney situated at Pitman, New Jersey, for the purpose of instituting foreclosure proceedings on the aforesaid mortgage in  
10 the sum of \$20,000.00, covering premises more fully set out in the bill of complaint. Mr. Applebaum advised me a short time after he received these papers that Mr. Bateman had called at his office and asked to have the foreclosure proceedings withheld until February 1, 1935, so that he might have the opportunity of selling the property covered by the said mortgage and thereby avoid the need of foreclosure. I advised Mr. Applebaum that this would not be satisfactory as it would prevent a favorable sale or  
20 leasing of the park and farm covered by the said mortgage, at the time of sale, if foreclosure proceedings should be instituted at so late a date in the year.

I next heard from Mr. Bateman personally when he called on me at the bank in Pitman and asked me what he could do in order to relieve himself of the embarrassment of this foreclosure action. I stated that it might be possible to relieve him of the burden of this suit, providing he would have the Grenloch  
30 Real Estate Company cancel their second mortgage of \$15,000.00 held on the premises in question, and then give the Bank a deed conveying a marketable title. This arrangement was satisfactory to Mr. Bateman and I am advised that he communicated with the Grenloch Real Estate Company and made

*Affidavit of Oscar Davenport*

an effort to have this company execute a cancellation of their mortgage. I was later informed by Mr. James P. Kincaide, a stockholder and president of the said Grenloch Real Estate Company, that he would not consent to a cancellation of this second mortgage until he had an opportunity to investigate the matter further. My conversation with Mr. Kincaide took place some time between the fifteenth and the thirtieth of January, 1935. 10

In my conversation with Mr. Bateman, after the foreclosure action had been instituted, there was no mention made of any illegal interest charges or any accusations or discussion of this question in any manner or form. Some time during the latter part of January, I received a letter from Oscar B. Redrow, Esquire, asking me to call at his office the next time I was in Camden. I called Mr. Redrow by telephone and advised him that it would not be possible for me to come to Camden at the time suggested by him, and he suggested then that I attend a creditor's meeting of Mr. Bateman, which would be held within the very near future, and of which he would give me notice. I received such a notice, and on February 7, 1935, attended a creditors meeting at the office of Oscar B. Redrow, wherein the affairs of Stephen Roscoe Bateman were discussed. At this meeting Mr. Redrow, for the first time, made an offer of \$15,000.00 to the Pitman Title and Trust Company in full satisfaction of all the obligations of Mr. Bateman to the said Bank, the whole sum of which totaled \$24,250.00 excluding the accumulations of interest and costs of foreclosure, which had been instituted prior to this time. 20 30

I agreed at this time to refrain from pushing the foreclosure action to a sale until the Board of Directors of the Pitman Title and Trust Company had an opportunity to either accept or reject this offer of Mr. Redrow.

I then suggested to Mr. Redrow that he personally appear before the Board of Directors at their next  
10 meeting on February 14, 1935, at 5.30 P. M. and state his proposition to them. This was not satisfactory to Mr. Redrow as he had a previous engagement so that I then suggested that he call on the following day, February 15, 1935, and I would arrange to have the directors meet him at that time. Mr. Redrow did appear on the latter date and submit his proposition to our board, and it was, at that time, that he first made mention of the fact that he would contest the  
20 of interest had been charged against the loans in question to Stephen Roscoe Bateman, and that no credit had been given to Mr. Bateman for money realized from the operation of Grenloch Park during the summer of 1934.

The proposition as submitted by Mr. Redrow was again considered by our Board on February 21, 1935, and after a full discussion the same was rejected and I was authorized to instruct Mr. Applebaum to communicate with Mr. Redrow to advise him as to  
30 our conclusion.

I have no recollection of advising Mr. Redrow, or anyone else, that the foreclosure action had gone no further than the filing of a bill and the serving of subpoenas, because I am unfamiliar with the technical nature of foreclosure proceedings and my as-

*Affidavit of Oscar Davenport*

surances concerned themselves only with the question of a satisfactory adjustment on some cash basis. Such an adjustment having failed, I saw no reason to withhold any proceeding in this matter for any longer period of time, and consequently allowed the matter to go to its final conclusion in the usual manner. I was also instructed by my Board of Directors to see that this matter was expedited and brought to an early conclusion as they were of the opinion that it had already been delayed sufficiently and for no valid purpose. 10

I have made an examination of the books of the Pitman Title and Trust Company and find therefrom that there is now due and owing to the said bank on the mortgage in question the principal sum of \$20,000.00, together with interest at the rate of 6% per annum from July 1, 1931, to April 1, 1935, including charges for fire insurance premiums and a credit for the payment of \$1000.00 made by the Grenloch Park Amusement Company, showing a net total of \$3700.82. There is also due and owing the sum of \$1315.26 for taxes on the premises covered in the bill of complaint filed herein, together with interest and penalties on the said tax account. A copy of this accounting is annexed hereto, marked Exhibit "C" and considered a part hereof. 20

OSCAR DAVENPORT. 30

Sworn and subscribed to before me this 18th day of March, A. D. 1935.

KATHRYN E. HOFFMAN,  
*Notary Public of New Jersey.*

## EXHIBIT "A."

(COPY)

Blackwood, New Jersey  
May 8, 1934.

10 FOR VALUE RECEIVED, I hereby assign, set over  
and transfer unto Pitman Title and Trust Company  
of Pitman, New Jersey, all my right title and inter-  
est in rents due, past due or to become due for the  
season of 1934 from Grenloch Park Amusement Com-  
pany and do hereby authorize A. C. Rosenberger,  
Treasurer, of Grenloch Park Amusement Company  
to pay from available funds due said Pitman Title  
and Trust Company, such sum or sums as may be  
20 due them on account of interest upon my obligations  
with them.

(Signed)

S. R. Bateman.

Witness:  
Louis C. Joyce, Jr.

*Affidavit of Oscar Davenport*

## EXHIBIT "B."

(COPY)

GRENLOCH PARK AMUSEMENT COMPANY  
 CASH RECEIPTS AND DISBURSEMENTS FOR  
 THE YEAR FROM JAN. 1st to DEC. 31st, 1934. 10

## RECEIPTS

Rent of Concessions	\$171.85	
Hot Dog Sales	231.51	
Cigarette Shooting Gallery	73.93	
Orangeade	60.73	
Baseball Game	28.86	
Candy Stand	446.51	
Woodwork Stand	49.35	20
Rifle Gallery	68.98	
Fish Pond	134.97	
Ticket (Advance Sales)	133.05	
Misc. Receipts	70.46	
Boat Revenue	885.17	
Bath House Revenue	1,288.21	
Skimmer Revenue	60.96	
Wheel & Swing	514.49	
Scooter Revenue	666.72	
Custer Car	100.28	30
Skee Ball	52.33	
Pretzel	118.22	
	<hr/>	
TOTAL RECEIPTS	\$5,157.58	

*Affidavit of Oscar Davenport*

## DISBURSEMENTS

	Scooter Rent	150.00	
	Payroll (Includes Scooter)	2,367.02	
	Advertising	676.09	
	Bath House Expense	22.74	
	Boats Expense	117.53	
10	Electric Light	158.19	
	Insurance	234.24	
	Interest	98.43	
	General Expense	106.57	
	Repairs to Real Estate	205.28	
	Capital Stock Tax	5.00	
		<hr/>	4,141.09
			<hr/>
			1,016.49
20	To Pitman Title & Trust Company		1,000.00
			<hr/>
	CASH BALANCE AT Pitman T & T Co.		\$ 16.49

## RENT OF CONCESSIONS — \$171.85

	Dance Hall	100.00
	Cigar & Cigarettes	1.85
	Restaurant	50.00
	Cook's Quarters	15.00
30	Boy Scout Camp Ground	5.00

## MISCELLANEOUS RECEIPTS — \$70.46

	High Striker	9.55
	Dart Game	4.22
	Penny Arcade	32.39
	Glass Blower	24.30

*Affidavit of Oscar Davenport*

## EXHIBIT "C."

S. R. BATEMAN MORTGAGE ACCOUNT  
June 1, 1931 to March 31, 1935

July 1, 1931	\$100.00	
Aug. 1, 1931	100.00	10
Sept. 1, 1931	100.00	
Oct. 1, 1931	100.00	Paid Oct. 2, 1931
Nov. 1, 1931	100.00	“ Nov. 2, “
Dec. 1, 1931	100.00	“ Dec. 2, “
Jan. 1, 1932	100.00	
Feb. 1, 1932	100.00	
Mar. 1, 1932	100.00	
Apr. 1, 1932	100.00	
May 1, 1932	100.00	
June 1, 1932	100.00	20
	<hr/>	
	\$1200.00	
Credit	300.00	
	<hr/>	
	\$900.00	
July 1, 1932 to		
July 1, 1933	1200.00	
July 1, 1933 to		
July 1, 1934	1200.00	30
	<hr/>	
	\$3300.00	
Insurance	400.82	
July 1, 1934 to		
April 1, 1935	1000.00	
	<hr/>	
	\$4700.82	

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*Affidavit of Oscar Davenport*

Credit Grenloch Park  
Amusement Co.    1000.00  

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\$3700.82

TAXES DUE — PLUS INTEREST

10 1931	\$368.88
1932	353.22
1933	293.56
1934	299.60
	<hr style="width: 10%; margin-left: auto; margin-right: 0;"/>
	\$1315.26

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AFFIDAVIT.

IN CHANCERY OF NEW JERSEY.

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Between  
 PITMAN TITLE & TRUST  
 COMPANY, Trustee,  
     *Complainant,*  
 and  
 STEPHEN ROSCOE BATE-  
 MAN, *et als,*  
     *Defendants.*

} Affidavit.

20

State of New Jersey, }  
 County of Gloucester, } ss.

JOSEPH R. APPLEBAUM, of full age, being duly sworn according to law upon his oath deposes and says:

1. I am the solicitor of the complainant in the above entitled cause and have read the petition of Stephen Roscoe Bateman, and his affidavit attached thereto. 30

2. I deny the matters contained in the said petition and affidavit so far as they relate to me, and say that the true facts are as follows:

On October 6, 1934, I wrote to the petitioner advising him that the Pitman Title & Trust Company had turned over to me for my attention his bond and mortgage to them in the sum of \$20,000.00 and asked him to communicate with me or call at my office to discuss the situation. A copy of this letter is attached hereto, marked Exhibit "A," and considered a part hereof.

Some time after October 6, 1934, the petitioner called upon me at my office at Pitman, N. J., and in the course of our conversation I told him that the bank was demanding payment of the principal and arrearages on the mortgage in question, and asked the petitioner whether he was in a position to make payment. The petitioner told me that he was not able to pay the money due on the mortgage but asked me if I could have the bank agree to withhold the foreclosure suit until the first of February, 1935, the reason being that the petitioner thought he would be able to sell the property covered by the said mortgage at that time. I made no promises to the petitioner, except to state that I would communicate with the proper officers of the Pitman Title and Trust Company, which I did, and I was advised by Mr. Oscar Davenport, treasurer of the said Trust Company, that this plan of the petitioner's was not satisfactory and for me to advise Mr. Bateman to that effect. Mr. Davenport further stated that to delay the foreclosure suit until February would make it impossible to either rent or sell the farm and Amusement Park, of which the premises in question are composed, in time for the coming summer season, and also instructed me to continue with the fore-

*Affidavit of Joseph R. Applebaum*

closure. In accordance with these instructions, I again communicated with the petitioner by letter dated October 19, 1934, a copy of which is hereto annexed, marked Exhibit "B" and considered a part hereof, wherein I advised the petitioner of the bank's answer and told him I would start the foreclosure action.

After completing my searches, I duly forwarded 10 my foreclosure bill in this matter to the office of the Clerk of the Court of Chancery, at Trenton, New Jersey, and the same was filed on November 13, 1934.

On or about January 17, 1935, I mailed a decree *pro confesso* in this cause to the said Clerk of the Court, which was duly filed on January 18, 1935, the said defendants having failed to file an answer within the statutory time after the service of subpoenas upon them, and promptly thereafter on January 27, 1935, appeared before the Master in this cause, Charles Camp Cotton, Esq., and a Master's report was subsequently issued as of that date, which I also forwarded by mail to the Clerk of the Court of Chancery, at Trenton, New Jersey, together with the final decree, write of *feri facias*, as well as the necessary affidavits in the cause. The said final decree was filed on or about January 28, 1935, and execution issued thereafter on or about February 1, 1935, but I withheld the arrangements for advertising the property for sale pending the outcome of the conference between Mr. Redrow and Mr. Davenport which was to take place, I am advised, some time in the early part of February, 1935. 20 30

On January 23, 1935, for the first time, I received a communication from Oscar B. Redrow, Esq., a

*Affidavit of Joseph R. Applebaum*

copy of which is annexed hereto, marked Exhibit "C" and considered a part hereof, wherein he asked me to mail him a copy of my bill of complaint. I had never heard from Mr. Redrow in this matter before, and had no idea as to whom he might represent, or whether he represented any of the parties in interest in this cause, as his letter did not disclose this information. This communication from Mr. Redrow was received by me several days after the decree *pro confesso* had been entered in this cause.

Therefore, on or about February 4, 1934, I mailed my only copy of the bill of complaint in this matter to Mr. Redrow, in accordance with his request, and the same was returned to me on March 14, 1935.

I have never, at any time, made any representations, either oral or written, to the petitioner or his counsel, concerning an abatement or withholding of the foreclosure action in this cause, except as recited hereinbefore, and at no time attempted to withhold any information from the petitioner or anyone else. As a matter of fact, I never had any further dealings with the petitioner from the time he visited my office to date, and the only occasion I had to speak with Mr. Redrow was over the telephone on February 22, 1935, when I was instructed by Mr. Davenport to advise Mr. Redrow that some offer which he had made to the bank was not satisfactory.

JOSEPH R. APPLEBAUM.

Sworn and subscribed to before me this 18th day of March, A. D. 1935.

KATHRYN E. HOFFMAN,  
*Notary Public of New Jersey.*

*Affidavit of Joseph R. Applebaum*

## EXHIBIT "A."

(COPY)

October 6, 1934.

Mr. S. Roscoe Bateman,  
Grenloch, N. J.

10

Dear Sir:

The Pitman Title and Trust Company has asked me to communicate with you concerning your mortgage to them in the sum of \$20,000.00.

If you could arrange to call at my office some day during the early part of next week, I believe we could discuss the matter further in a more satisfactory manner than by mail or telephone.

I would suggest that you call my office before starting in order to make certain that I will be in. 20

Very truly yours,  
(Signed) Joseph R. Applebaum.

## EXHIBIT "B."

(COPY)

October 19, 1934. 30

Mr. S. Roscoe Bateman,  
Grenloch, N. J.

Dear Sir:

I have just spoken with the officers of the Pitman Title and Trust Company concerning our recent con-

*Affidavit of Joseph R. Applebaum*

versation. They do not believe that your offer is sufficiently definite to warrant consideration. Therefore I have been authorized to institute a foreclosure action in this matter.

Very truly yours,  
(Signed) Joseph R. Applebaum.

10

## EXHIBIT "C."

(COPY)

January 22, 1935.

Joseph R. Applebaum, Esq.,  
20 Pitman, N. J.

Dear Sir:—

In regard to Pitman Title and Trust Co., Trustee, vs. Bateman, will you kindly advise me if you are proceeding with the foreclosure of this mortgage, if so will you kindly send me a copy of the bill of complaint.

Very truly yours,  
(Signed) Oscar B. Redrow.

30

Petition of West Jersey Trust Company,  
et al.

56-A

IN CHANCERY OF NEW JERSEY

STIPULATION.

PETITION OF WEST JERSEY TRUST  
COMPANY, ET AL.

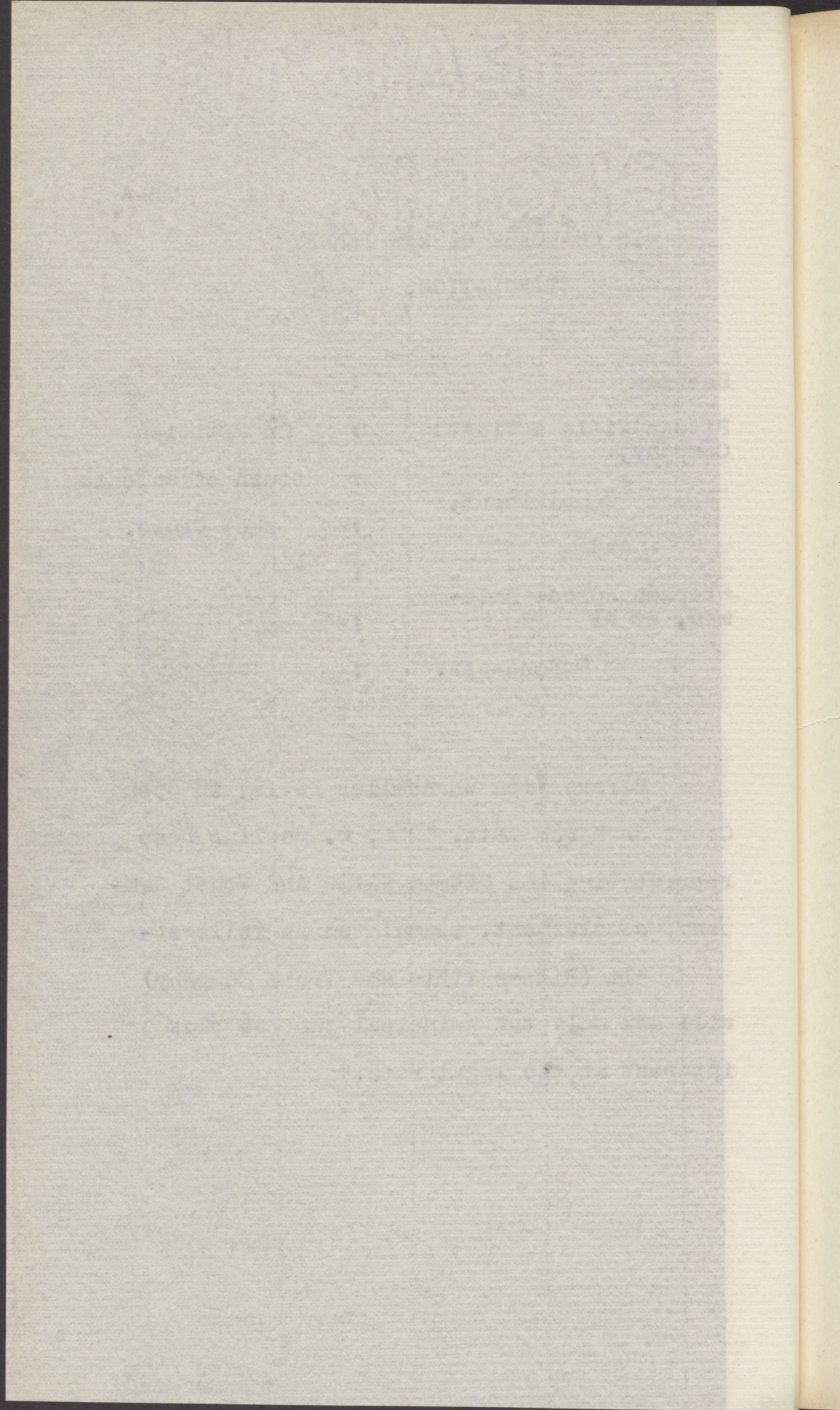
Between IN CHANCERY OF NEW JERSEY.

			10
Pitman Title & Trust Company,	:	On Petition	
	:	Return of Rule to	
Complainant,	:	Show Cause.	
PITMAN TITLE & TRUST COMPANY, and	:	On Petition.	
Complainant,	:	Petition of West Jer-	
Stephen Roscoe Bate-	:	sey Trust Company,	
man, et al	:	et al.	
MAN, et al.	:		
Defendants.	:		20

The petitioners, West Jersey Trust Company of Camden, New Jersey, Trustee, First National Bank and the Camden Safe Deposit and Trust Company of Camden, New Jersey, and S. Rusling Leap representing the Pitman Title and Trust Com-

pany, complainant, stipulated as follows:-  
defendants Grandloch Amusement Company and Stephen Roscoe Bate-

"It (Pitman Title and Trust Company) will ask only the principal sum due plus interest at the legal rate."  
tioners and others on certain promissory notes in an amount of approximately \$16,000 which notes were issued by Louis C. Joyce, Jr.



*Petition of West Jersey Trust Company,  
et al.*

57

PETITION OF WEST JERSEY TRUST  
COMPANY, ET AL.

IN CHANCERY OF NEW JERSEY.

10

Between

PITMAN TITLE & TRUST  
COMPANY,

*Complainant,*

and

STEPHEN ROSCOE BATE-  
MAN, *et al,*

*Defendants.*

On Petition.  
Petition of West Jer-  
sey Trust Company,  
*et al.*

20

The petitioners, West Jersey Trust Company of Camden, New Jersey, Trustee, First National Bank and Trust Company of Blackwood, New Jersey, and the Camden Safe Deposit and Trust Company of Camden, New Jersey, respectfully show:

1. On January 3rd, 1928, or prior thereto the de- 30  
fendants Grenloch Amusement Company and  
Stephen Roscoe Bateman were indebted to peti-  
tioners and others on certain promissory notes in  
an amount of approximately \$18,800 which notes  
were endorsed by Louis C. Joyce, Jr.

*Petition of West Jersey Trust Company,  
et al.*

2. In order to secure the payment of said notes and said endorsements, the said defendant Stephen Roscoe Bateman on January 3rd, 1928, made and executed a bond and mortgage to Louis C. Joyce, Jr. in the amount of \$18,800 to bear interest at the rate of six per cent per annum, and payable within three  
10 months from the date thereof, the mortgage was recorded in the Clerk's Office of Gloucester County in book 161 of Mortgages, pages 119, and in the Register of Deeds Office of Camden County in Book 326 of Mortgages, pages 199, and covering a part of the mortgaged premises with other land, and on December 30th, 1927, the said Bateman made and executed to said Joyce, another bond and mortgage to secure the same amount of \$18,800 within three  
20 months with interest at 6% per annum, which mortgage was recorded in the Clerk's Office of Gloucester County in Book 161 of Mortgages, page 515, on January 3rd, 1928, and which mortgages covered also another part of the mortgaged premises and other lands.

3. At the time the above bonds and mortgages were created on January 3rd, 1928 there was executed an agreement and contract between Stephen Roscoe Bateman and Louis C. Joyce, Jr., wherein it was  
30 fully set forth and stipulated that the mortgages were given to secure the payment of the notes heretofore set forth made by Stephen Roscoe Bateman and/or the Grenloch Amusement Company and endorsed by the said Louis C. Joyce, Jr., so that in fact the said Louis C. Joyce, Jr., became the holder

*Petition of West Jersey Trust Company,  
et al.*

of said mortgages as trustee for the petitioners and other holders of such notes.

4. The complainant had knowledge of this agreement at or about the time it was made, and held notes in the same form as those of the petitioners.

10

5. By reason of said agreement the notes held by your petitioners were extended and said mortgages were considered security for the payment of said notes as if made to each of the banks separately.

6. On October 10th, 1932, the complainant caused Louis C. Joyce, Jr., to assign to it the above mentioned two mortgages which assignment was recorded in both Camden and Gloucester Counties, and the said complainant thereby became trustee in the place and stead of Joyce, for the petitioners and others as herein stated.

20

7. On October 10th, 1932, when the mortgages were assigned by Joyce to the complainant the said Joyce particularly set forth in a letter to the complainant that the mortgages were held as collateral for the notes endorsed by him in the several banks.

8. After the filing of the bill to foreclose in this cause on February 7th, 1935, the said complainant admitted that it had notice of the agreement that they were given to secure the notes in the manner heretofore indicated to the several banks.

30

9. The said mortgages are liens on the property

*Petition of West Jersey Trust Company,  
et al.*

now being foreclosed but are not set out in the bill of complaint.

10. On March 12th, 1935, this Court allowed a rule to show cause in this case, which rule was granted upon the petition of the defendant Bateman, and was  
10 served on the solicitor of the complainant the same day. After the service of said rule and with full knowledge of the claims of your petitioners, the said complainant caused to be assigned to the said Louis C. Joyce, Jr., the mortgages set forth in paragraph two of this petition by assignment dated March 12th, 1935, and recorded March 13th, 1935, in the Clerk's Office of Gloucester County in Book G1, of Assign-  
20 ment of Mortgages, and thereupon caused the said Louis C. Joyce, Jr., to make and execute a release from the mortgages set forth in paragraph two of this petition, of the lands covered by the mortgages being foreclosed, and to thereafter cause the said Louis C. Joyce, Jr., to reassign to the complainant the two mortgages set forth in paragraph two of this petition by assignment of mortgage dated March 12th, 1935, and recorded March 13th, 1935, in the Clerk's Office of Gloucester County, whereby the complainant has knowingly destroyed the security of the petitioners.

30

11. Louis C. Joyce, Jr., individually and as trustee for your petitioners is a proper party defendant in this suit, but has not been made a party.

12. Your petitioners are proper parties defendants

*Petition of West Jersey Trust Company,  
et al.*

in this suit but have not been made parties and have thereby been excluded from protecting the collateral security they hold in the determination of this suit.

13. There is now due to the petitioners on the notes heretofore stated the following sums, to wit:

West Jersey Trust Company, Trustee	\$3190.87	10
First National Bank and Trust Company of Blackwood, N. J.	1560.00	
Camden Safe Deposit and Trust Com- pany	2056.32	
Camden Safe Deposit and Trust Com- pany	370.00	

Your petitioners, therefore, pray:

1. That the complainant, by reason of its action 20  
in causing the mortgages set forth in paragraph  
two of this petition to be released as a lien on the  
mortgaged premises being foreclosed, be decreed to  
pay to your petitioners the respective amounts due  
to them as herein set forth.

2. Or that, if by appropriate proceedings the re-  
lease of the mortgages from the lien against the  
premises in question may be set aside or annulled,  
that then your petitioners may be made parties de- 30  
fendant to this suit so that they may appear and  
defend their rights and interest in the property as  
hereinbefore set forth.

3. That the final decree and all proceedings there-  
under be set aside.

*Petition of West Jersey Trust Company,  
et al.*

4. That the complainant be restrained from assigning or releasing the above mortgages pending the determination of this suit.

OSCAR B. REDROW,  
*Solicitor of the Petitioner.*

---

10 State of New Jersey, }  
Camden County, } ss.

S. ROSCOE BATEMAN, being duly sworn on his oath says that he has read the above petition and the matters and things therein set forth are true to the best of his knowledge and belief and particularly is it true that the bonds and mortgages set forth in paragraph two of said petition, were given to secure the payment of the notes at the several banks, endorsed by Louis C. Joyce, Jr.

S. ROSCOE BATEMAN.

Sworn and subscribed before me this 5th day of May, 1935.

ANNA M. HURLEY,  
*Notary Public of N. J.*

---

AFFIDAVIT.

30 State of New Jersey, }  
Camden County, } ss.

S. ROSCOE BATEMAN, being duly sworn on his oath says that he is one of the defendants in the above entitled cause and the owner of the property being

*Petition of West Jersey Trust Company,  
et al.*

foreclosed. The property being foreclosed consists of a lake and several small tracts of woodland of about thirty acres and the homestead farm of my father adjoining of about seventy acres. The mortgage being foreclosed does not cover all of what is considered "Grenloch Park," the tract of land on which there are tennis courts and parking space for cars of three or four acres is not included in this mortgage. 10

Sometime after I purchased the lake proper from the Grenloch Real Estate Company, I began extensive improvements at the Lake and Park, about 1924, and soon had invested around \$85,000. In order to operate the park a small company was organized known as the Grenloch Park Amusement Company with a total capital of \$1,000. I owned sixty per cent of the stock and my brother-in-law one share, and the balance was owned by Louis C. Joyce, Jr. The amusement company made an agreement with me to pay me six per cent interest on my investment or about \$5300 a year and to pay all insurance, water, electricity, gas and operating expenses of the Park and one-half of the taxes. I erected many buildings, diving tower, pavilions and furnished tables, seats, chairs, benches and equipment which was included in my investment. I had borrowed money from several banks and on account of the association of Mr. Joyce in the operating of the Park, he had endorsed notes for me, both in my name and in the name of the amusement company. The money would be borrowed in different names at the various banks, at some banks the notes would be given by me per- 20 30

*Petition of West Jersey Trust Company,  
et al.*

sonally and endorsed by Mr. Joyce, at other banks the notes would be given by the Grenloch Amusement Company and endorsed by both Mr. Joyce and myself. The total amount of these notes made by both myself and the Grenloch Amusement Company in December, 1927, amounted to \$18,800. These notes 10 included both capital and operating expense, capital money spent by me in improvements, and operating expense such as insurance, both were signed by Mr. Joyce and myself and endorsed by both. Mr. Joyce felt that while the Park belonged to me he should be secured on his endorsement on my notes as well as those of the Grenloch Amusement Company, and in order to secure to him his endorsement on the paper he had signed for the amusement company and myself, I gave him two mortgages, each in the 20 amount of \$18,800, and covering several properties as well as being a third mortgage on the property being foreclosed in these proceedings, with the definite and clear understanding that it was to be used as collateral for the payment of the notes which Mr. Joyce had endorsed for me both for the Grenloch Amusement Company and my own personal notes. The notes intended to be secured at that time was one of \$3500 at the Laurel Springs National Bank, one of \$2500 at the First National Bank of 30 Blackwood, one of \$6000 at the South Camden Trust Company, one at the Pitman Trust Company of \$5000, and besides other miscellaneous notes, some notes of the Grenloch Amusement Company to Mr. Joyce for insurance premiums. These all went to make up the total amount of the mortgage of \$18,800.

*Petition of West Jersey Trust Company,  
et al.*

The notes of the amusement company to Mr. Joyce for insurance premiums at about that time or afterwards were endorsed at Mr. Joyce's request by myself and turned over to the Camden Safe Deposit and Trust Company. At the exact date of making the mortgage some of the above notes had been materially reduced so that amount then due was the amount of the mortgage. The amounts now due on these notes is the sum of \$385 to the Laurel Springs National Bank, which I am advised has been paid or settled by Mr. Joyce, one at the West Jersey Trust Company, trustee in liquidation for the South Camden Trust Company of \$3190.87, two at the Camden Safe Deposit and Trust Company of \$2,056.32 and \$370 respectively, and one at the First National Bank and Trust Company of Blackwood, New Jersey, of \$1560, and one at the Pitman Title and Trust Company of \$4250. These notes all represent balances now due on the original notes endorsed by Mr. Joyce, and for which I gave him the mortgage of \$18,800. When the mortgage was assigned to the complainant in October, 1932, a copy of the agreement and letter hereto attached, as well as a statement of the notes then outstanding was turned over to the complainant. On February 7th, 1935, Mr. Joyce stated that he had informed Mr. Davenport when the mortgage was assigned to his bank that it did secure the other endorsements at the other banks, and Mr. Davenport who was present at the same time said he did not remember. After the mortgage was given to Mr. Joyce I was asked by the First National Bank of Blackwood to pay my notes and I informed them

*Petition of West Jersey Trust Company,  
et al.*

as to why the mortgage was given, and thereafter continued to pay interest and payments on account as I had done previously and to that extent I know this bank relied upon the agreement. The note of the Pitman Title & Trust Company for \$4250 was reduced from \$5000 and the interest was paid for  
10 two or three months after their bill was filed or up to and including February 28th, 1935.

The second mortgage on this property held by the Grenloch Realty Company, I am advised has been sold by them to complainant for \$1000 under some agreement to sell a part. I do not know whether such an agreement has been reduced to writing.

On February 25th, 1935, Mr. Redrow wrote a letter of Mr. Porch, Special Master, a copy of which is hereto attached, as is a copy of the letter from Mr.  
20 Porch to Mr. Redrow, advising that Mr. Applebaum and Mr. Davenport had directed him to proceed with the advertising at once. Copies of letters of February 23rd, 1935, to Mr. Davenport and February 27th, 1935, to Mr. Applebaum are also herewith attached.

The Grenloch Amusement Company as such ceased to operate the Park in 1933 and during the year of 1934, the Park was operated by a Mr. Rosenberger for the complainant and in the affidavit of Mr. Davenport, previously filed under Schedule "B", a credit  
30 of \$1000 is given but no accounting has been made to deponent of the actual monies received and disbursed by them during that past year.

I have furnished to the defendant's solicitor a complete list of all monies paid by me on account of

*Petition of West Jersey Trust Company,  
et al.*

interest on all notes as well as those items of interest on the notes making a total of \$20,000. This interest was paid by deducting at the time the loan was granted, by charging my account and by check and cash. I have caused to be checked with all my books, checks and bank statements the interest paid by me to the complainant on the note of \$20,000 and the notes prior thereto before that amount had been borrowed and find that there was paid exclusive of all other notes or interest the sum of \$17,921, that the interest on said notes at the rate of six per cent per annum from the date of the first note of August 7th, 1924, to April 1, 1935, is the sum of \$12,236.34, or a difference of \$5684.66, to be deducted from the note of \$20,000 secured by this mortgage as shown by the statement hereto attached, in addition to which there should also be deducted \$1000 received by the complainant from operation during 1934. 10

I have had checked the report made by Mr. Benjamin Yard with the assistance of the officers of the Pitman Trust Company and the amounts therein stated are incorrect both as to the interest charged and paid. The item of interest charged at six per cent is not far apart and this interest can be readily calculated, but they have not given credit for all monies paid for interest on the notes in question. On page two of this audit they have set up excess interest on other notes in the amount of \$734.02 which no credit should be given. The last item on page 2 shows interest paid of \$2193.52 as against proper interest of \$1559.50. This is an arbitrary 20 30

*Petition of West Jersey Trust Company,  
et al.*

charge on their part as this interest was not charged in this manner and as an example copies of receipts for May 31st, 1927 and August 27th, 1927, are herewith attached, both showing interest on \$12,500, as excess and the latter one on \$4500 extra. No credit is shown on page 3 for the payments shown by these  
10 receipts. The amount due on the \$20,000 note after giving credit for the excess interest paid is the sum of \$14,316.34.

S. ROSCOE BATEMAN.

Sworn and subscribed this 22 day of May, 1935,  
before me,

ANNA M. HURLEY,  
*Notary Public of N. J.*

20 THIS AGREEMENT, made this thirtieth day of December, A. D. one thousand nine hundred twenty-seven;

BETWEEN STEPHEN ROSCOE BATEMAN, of the Township of Gloucester and the County of Camden and the State of New Jersey, hereinafter called the party of the first part;

30 AND LOUIS C. JOYCE, JR., of Blackwood, in the County of Camden and the State of New Jersey, hereinafter called the party of the second part;

WITNESSETH that whereas the said party of the second part has endorsed notes, at various banks, and notes given unto various trades-people, upon which notes the said party of the first part has re-

*Petition of West Jersey Trust Company,  
et al.*

ceived either cash, merchandise or services and labor;  
AND WHEREAS the said party of the second part  
has loaned various sums of money to the said party  
of the first part at various times, which said sums  
are still owing;

NOW, THEREFORE, in consideration of which 10  
and of the further sum of ONE DOLLAR paid by  
the said party of the second part unto the said party  
of the first part, receipt whereof is hereby acknowl-  
edged, the said party of the first part has this day  
executed and delivered unto the said party of the  
second part a bond and mortgage covering all his  
real estate holdings, for which the above is the true  
consideration.

And the said party of the second part does hereby 20  
agree to release said bond and discharge said mort-  
gage upon the payment to him of the sums owing,  
with interest at the legal rate, and provided further  
that the said party of the first part shall pay or  
cause to be paid the notes upon which the said party  
of the second part is endorser; OTHERWISE, said  
bond and mortgage to remain in full and/or any  
indebtedness or losses which may be occasioned to  
the said party of the second part by reason of his  
endorsement or guarantee. 30

IN WITNESS WHEREOF, the parties hereto  
have hereunto affixed their hands and seals the day  
and year first above written.

Stephen Roscoe Bateman  
Louis C. Joyce, Jr.

Witness: Ursual W. Read.

*Petition of West Jersey Trust Company,  
et al.*

October 10, 1932

Oscar Davenport, Treasurer,  
Pitman Title and Trust Company,  
Pitman, New Jersey.

Dear Mr. Davenport:

10 Enclosed herewith find Assignment of Mortgages recorded in the Office of the Clerk for Gloucester County, at Woodbury, New Jersey, in Book 161 of Mortgages, on pages 519 &c., and in the Office of the Register of Deeds for the County of Camden, at Camden, New Jersey in Book 326 of Mortgages, on pages 199 &c; ~~on pages 199 &c~~; and Book 161 of Mortgages of Gloucester County on pages 515 &c, S. R. Bateman to myself, assigned to you as collateral to a note of S. R. Bateman which I have endorsed for his account.

20 I would direct to your attention that these mortgages do not represent an actual debt, but are given to me merely to secure my endorsement under and subject to an agreement, copy of which I am enclosing for your information.

The Assignment is made and tendered to you with the understanding that it is collateral only for that portion of Mr. Bateman's indebtedness to you, on which I am liable as endorser, and the assignment is not intended as blanket collateral.

30

Yours truly,

Louis C Joyce Jr., (signed)

LCJ:MW.

*Petition of West Jersey Trust Company,  
et al.*

Feb, 25th., 1935

Hon. Willis Tullis Porch,  
Pitman, N. J.

My dear Judge:

I have been furnished to-day with a copy of the files in the matter of the Pitman Title and Trust Company vs Bateman, and I find that the execution 10 was directed to you as Special Master to sell. I represent Mr Bateman and several of his creditors, and have been trying to work out some form of settlement or to have some one take over the debt that may be owing to the trust company. I had an agreement with Mr Davenport that nothing would be done pending these negotiations and was surprised to see that a decree had been taken and execution issued.

Under these circumstances I would appreciate if 20 you will defer taking any action under this execution until I have some definite word from Mr. Davenport or can take the matter up with the Vice Chancellor.

Very truly yours,

R/R

---

WILLIS TULLIS PORCH

Counselloer at Law.

Pitman, New Jersey.

28th February, 1935. 30

Oscar B. Redrow, Esq.,  
428 Market Street,  
Camden, New Jersey.

Dear Oscar:—

*In re Pitman Title and Trust Company vs. Bateman.*

Replying to your letter of the 25th instant. I imme-

*Petition of West Jersey Trust Company,  
et al.*

diately communicated with Mr. Applebaum and Mr. Davenport, both of whom instructed me to proceed with the advertising at once. The fact is I had prepared the advertisement prior to the receipt of your letter.

I regret that the instructions given me precluded the  
10 granting of your request.

Very truly yours,

Willis Tullis Porch

b.

Feb. 23, 1935.

Pitman Title & Trust Co.,  
Attention Mr. Davenport,  
Pitman, N. J.

Gentlemen:—

20 On Friday, Feb. 15th, when I met a committee of your Board of Directors, a proposition was presented to you to retire the Trust Company indebtedness against Mr. Bateman, upon the payment of \$15,000.00, and I explained to you that it would take about forty-eight hours to verify such a settlement, if it could be procured.

Yesterday afternoon, Mr. Applebaum called me on the phone and said the arrangement was not satisfactory. I do not know to what he refers and would  
30 like to hear from you as to just what you have in mind to do.

When you were in my office and also when I was discussing the matter with you on the 15th inst., you assured me that no action had been taken in the foreclosure proceedings, excepting to file a bill and

*Petition of West Jersey Trust Company,  
et al.*

serve subpoenas, and that no further action would be taken pending the attempt to come to some agreement as to what should be done looking toward a settlement.

I am anxious to know just what your position is now, because if there is no possibility of effecting a settlement along the lines that we had discussed, I intend to make application to the court and file an answer for Mr. Bateman in your foreclosure suit, setting out the facts which we have already discussed in connection with this line of credit. 10

Very truly yours,

OBR/H

February 27, 1935 20

Joseph R. Applebaum, Esq.,  
Pitman, N. J.

Dear Sir:—

In the matter of Pitman Title and Trust Company, Trustee, vs. Bateman, I note that Mr. Cotton signed the bill of complaint and that he also signed the Master's Report which I do not think he can properly do. I find the amount sworn to in the affidavit of Mr. Davenport is not due on this mortgage and that no mention of the mortgage held by the trust company in the amount of \$18,800. is set out in your bill, final decree or execution, and that this mortgage is a lien on the property in question. 30

If you care to make any corrections in these pleadings, I will be glad if you will do so and I am

*Petition of West Jersey Trust Company,  
et al.*

giving you the opportunity before making my application to the Vice Chancellor. I have written to Judge Porch requesting a postponement of any proceedings under the execution for the present.

Very truly yours,

OBR/G

10

Pitman, N. J. May 31, 1927

S. R. Bateman  
Grenloch, N. J.

To PITMAN TRUST COMPANY, Dr.

20

To Interest on Demand Loans, as follows:

\$ 1,500.00 from 3-1 to 5-31, inclusive 92  
days, @ 6% \$

\$20,000.00 from 3-1 to 5-31 inclusive 92  
days, @ 6% \$

\$ 3,000.00 from 3-1 to 5-31, inclusive 92  
days, @ 6% \$

\$ 500.00 from 3-1 to 5-31, inclusive 92  
days, @ 6% \$

30 \$12,500.00 from 3-1 to 5-31, inclusive 92  
days, @ 6% \$

37,500.00

\$574.99

Received Payment,  
Pitman Trust Co.

*Petition of West Jersey Trust Company,  
et al.*

Pitman, N. J., August 27, 1927

S. R. Bateman  
c/o L. C. Joyce, Blackwood, N. J.

To PITMAN TRUST COMPANY, Dr.

To Interest on Demand Loans, as follows:		10
\$ 1,500.00 from 6-1 to 8-31, inclusive 92	days, @.....%	\$ 23.00
\$20,000.00 from 6-1 to 8-31, inclusive 92	days, @.....%	\$ 306.66
\$ 3,000.00 from 6-1 to 8-31, inclusive 92	days, @.....%	\$ 46.00
\$ 5,000.00 from 6-1 to 8-31, inclusive 92	days, @.....%	\$ 7.67
\$12,500.00 from 6-1 to 8-31, inclusive 92	days, @.....%	\$ 191.67
		20
		575.00

Received Payment,  
Pitman Title and Trust Co.  
Per H. J. Dykes

---

Interest Paid

8- 7-24	13.75	30
9- 6-24	12.91	
10-10-24	12.91	
10-11-24	13.75	
11- 1-24	25.00	
12- 3-24	26.67	

*Petition of West Jersey Trust Company,  
et al.*

	12-23-24	10.00
	12-31-24	\$26.67
	1- 2-25	25.00
	1-13-25	26.67
	1-19-25	10.67
10	1-29-25	600.00
	4- 1-25	300.00
	4- 1-25	703.37
	4-21-25	94.17
	5-26-25	25.00
	8- 3-25	313.37
	7-10-25	800.00
	8-12-25	23.50
	11- 4-25	309.99
	11- 4-25	23.25
20	1- 5-26	575.00
	6-30-26	813.98
	11-21-26	506.00
	12- 3-26	500.50
	3- 8-27	250.00
	2-28-27	368.75
	6-29-27	574.99
	8-21-27	575.00
	12-30-27	568.75
	6- 1-28	575.00
	7- 2-28	575.00
30	12-31-28	1143.76
	7- 1-29	1150.00
	8- 8-29	526.66
	12-24-29	1143.75
	1- 3-30	100.00
	6- 3-30	1137.49

*Petition of West Jersey Trust Company,  
et al.*

6- 1-31	1000.00	
6-19-31	1339.72	
9-30-31	100.00	
10-30-31	100.00	
11-30-31	100.00	
2- 2-32	100.00	
6- 6-32	100.00	10
6-28-32	300.00	
7- 6-32	300.00	
	<hr/>	
	17,921.00	

20

30

		20			10	
	Date Issued	Amount	Date due	Discounted	Interest Paid	Principal Paid
Note	8-7-24	\$2500.00	9- 8-24	7- 7-24	\$ 12.50	
Note	9- 8-24	2500.00	10-11-24	9- 8-24	12.50	
Note	10-11-24	2500.00	11-11-24	10-11-24	12.50	11- 8-24
Note	11- 3-24	5000.00	12- 3-24	11- 3-24	25.00	
Note	12- 2-24	5000.00	1- 2-25	12- 2-24	25.00	
Note	1- 2-25	5000.00	2- 2-25	1- 2-25	23.34	1-29-25
Note	12-22-24	2000.00	1-22-24	12-22-24	10.00	
Note	1-20-25	2000.00	2-20-25	1-20-25	3.00	1-29-25
Note	1-29-25	15,000.00	3-29-25	1-29-25	152.00	
Note	4- 1-25	15,000.00	8- 1-25	4- 1-25	300.00	8- 3-25
Note	4-21-25	5000.00	8-21-25	4-21-25	85.00	8- 3-25
Note	8- 3-25	20,000.00	11- 3-25	8- 3-25	300.00	
Note	11- 4-25	20,000.00	2- 4-26	11- 4-25	200.00	1- 4-26
Note	1- 4-26	20,000.00	4- 1-35	1- 4-26	11,075.50	
					<hr/>	
					\$12,236.34	

*Petition of West Jersey Trust Company,  
et al.*

State of New Jersey }  
Camden County, } ss

C. Russell Briant being duly sworn on his oath deposes and says, I am Assistant Treasurer of the Camden Safe Deposit and Trust Company of Camden, New Jersey, and have under my control as such assistant treasurer certain notes. Among the notes being handled by me is a note given by S. R. Bateman to the Camden Safe Deposit and Trust Company, dated January 24, 1935, endorsed by Louis C. Joyce in the amount of Three Hundred and Seventy (\$370.00) Dollars, a copy of which is hereto attached. There is due on said note the sum of Three Hundred Seventy (\$370) Dollars, with interest from January 24, 1935. 10

There is also under my control on said bank a note given by the Grenloch Park Amusement Company to Louis C. Joyce, Jr., dated September 24, 1934, for the sum of Two Thousand and Fifty-Six Dollars and thirty-two cents (\$2056.32), a copy of which note is hereto attached. This note is endorsed by Louis C. Joyce Jr. There is due on this last mentioned note the sum of Two Thousand and Fifty-Six dollars and thirty-two cents (\$2056.32) with interest from November 26, 1934. Both of these notes are renewals of previous notes held by Camden Safe Deposit and Trust Company. 20 30

O. Russel Briant

Sworn and Subscribed before me :  
this 25th day of May 1935. :

D. Irvin Robinson

Notary Public of N. J.

*Petition of West Jersey Trust Company,  
et al.*

\$2,056.32

Camden, New Jersey Sept. 24th 1934.

Two Months after date, I We or either of us promises to pay to the order of Louis C. Joyce, Jr., at the Camden Safe Deposit & Trust Company of Camden, N. J. Two Thousand Fifty six 32/100—Dollars, with-

10

out defalcation or discount for value received.  
Grenloch Park Amusement Co.  
S. R. Bateman  
Treas.

No.....Due 11-26-34

Address Grenloch, N. J.

Endorsement

Louis C. Joyce, Jr.

20

1.97 Int.

Camden, New Jersey, Jan. 24, 1935

\$370.00

371.97

One months after date, I, We or either of us promise to pay to the order of Camden Safe Deposit & Trust Co. at the Camden Safe Deposit & Trust Company of Camden, N. J. Three hundred seventy &—xx/100 Dollars without defalcation or discount for value received.

30

with interest

No.....Due 2-24

S. R. Bateman

Address

Grenloch, N. J.

Endorsed

Louis C. Joyce, Jr.

*Petition of West Jersey Trust Company,  
et al.*

State of New Jersey }  
Camden County,        } ss

Sylvan G. Fletcher, being duly sworn on his oath deposes and says, I am a duly authorized representative of the West Jersey Trust Company, Trustee for South Camden Trust Company in liquidation, a banking institution of the State of New Jersey. As such agent and representative I have charge and supervision over the notes of the trust company in liquidation. Such Trust Company as Trustee has a note given by S. R. Bateman of Grenloch, New Jersey, payable to the West Jersey Trust Company, and endorsed by Louis C. Joyce, Jr., dated January 28, 1935, in the amount of Thirty-Four Hundred (\$3400.) Dollars. A copy of which note is hereto attached. This note became due on February 28, 1935, and was duly protested by Virginia DiPaolo in the amount of Thirty-Four Hundred (\$3400.) Dollars, plus protest fees and postage, or a total of Thirty-Four Hundred and Two Dollars and twenty-six cents (\$3402.26). On April 15, 1935, there was a credit on account of said note of \$209.13 on a charge of a Savings Account, leaving a balance due paid on said note of \$3193.13 with interest from February 28, 1935. This note is a renewal of previous notes held by the West Jersey Trust Company as trustee, and formerly held by the South Camden Trust Company prior to its liquidation.

Sylvan G. Fletcher.

Sworn and Subscribed before me  
this 23 day of May 1935.

Virginia Di Paoli  
Notary Public of N. J.

*Petition of West Jersey Trust Company,  
et al.*

3190.87

~~3400.00~~

Camden, N. J., Jan. 28, 1935.

One months after date I promise to pay to The Order  
of West Jersey Trust Co. at the South Camden  
Trust Company, Camden, N. J. Thirty-four hundred  
10 Dollars, without defalcation for value received, to-  
gether with all costs and an attorney's fee of 15%  
should it become necessary to collect the amount due  
hereon, by or through the services of an attorney.

S. R. Bateman  
Grenloch, N. J.

No. 29439 Due Feb. 28,

Endorsement

Louis C. Joyce, Jr.

20 \$3400.00 Bal. on Louis C. Joyce Jr.  
209.13 Savings Acct. " 4-15-35

---

 \$3190.87

2.26 Protest fee

---

 3193.13

---

 Protested 2-28-35

*Petition of West Jersey Trust Company,  
et al.*

State of New Jersey }  
Camden County,        }ss

Alvin I. Haines, being duly sworn on his oath deposes and says, I am the cashier of the First National Bank and Trust Company of Blackwood, New Jersey. There is discounted on the First National Bank and Trust Company of Blackwood, New Jersey, a note made by the Grenloch Park Amusement Company, dated February 7th, 1935, and endorsed by Louis C. Joyce Jr., and S. R. Bateman. The amount of this note is Fifteen Hundred and Sixty (\$1560.00) Dollars, and the same became due on March 7th, 1935 and remains unpaid, and was protested on the last named date. There is due on said note the sum of Fifteen Hundred and Sixty (\$1,560.00) Dollars, with interest from March 7, 1935, a copy of which note is hereto attached. This note is a renewal of a former note held by this bank on which reductions have been made from time to time.

Alvin I. Haines

Sworn and Subscribed before me  
this 23 day of May 1935.

Thelma I. Downer  
Notary Public of N J

10  
20  
30

*Petition of West Jersey Trust Company,  
et al.*

Copy of Note

\$1560.

Feb. 7, 1935

One month after date we promise to pay to the order  
of The First National Bank & Trust Co. of Black-  
10 wood, N. J. The sum of \$1560. and 00 cts DOLLARS  
at the First National Bank and Trust Company, of  
Blackwood, N. J. 55-376- without defalcation or dis-  
count. For value received. And all costs and an  
attorney's fee of 10 per cent should it become neces-  
sary to collect this note through an attorney.

Grenloch Park Amusement Co.

S. R. Bateman, Treas.

Louis C. Joyce, Jr., Secretary

No. 5945

20 Due Mar. 7, 1935

Endorsement—Louis C. Joyce, Jr.

S. R. Bateman

*Petition of West Jersey Trust Company,  
et al.*

AFFIDAVIT.

IN CHANCERY OF NEW JERSEY.

	—————	10
Between	}	Bill to Foreclose on Petition. Affidavit.
PITMAN TITLE & TRUST COMPANY,		
<i>Complainant,</i>		
and		
STEPHEN ROSCOE BATE- MAN, <i>et als,</i>		
<i>Defendants.</i>	—————	20

State of New Jersey, }  
County of Gloucester, } ss.

WILLIAM R. STORRIE, being on his oath duly sworn,  
deposes and says:

I am engaged in the real estate business at 35  
Cooper St., Woodbury, New Jersey, and have been  
engaged in real estate since 1911. I am familiar,  
through the sale and mortgaging and appraisal of  
property, with the value of real estate in Washing-  
ton Township, particularly Grenloch, New Jersey,  
and throughout Camden and Gloucester Counties. 30

For more than fifteen years I have been engaged in  
appraisal work and have made appraisements for

*Petition of West Jersey Trust Company,  
et al.*

the State Highway Commission, various banks, and any number of clients for property situated in both Camden and Gloucester Counties. I have appraised different parks and lakes on behalf of my clients, including the State Highway Commission and some banks and other clients who employed me for that  
10 purpose. I have qualified as an expert in the value of real estate in this vicinity in almost every court of the State.

The property appraised consists of a lake, park and farm, containing approximately one hundred and three acres, as more particularly set forth in my certificate of appraisal hereto attached. The value of this property after careful consideration of its special and peculiar nature, for the purposes for which it is used, as of the date hereof, is thirty-four  
20 thousand four hundred twenty-five dollars, as set forth in the certificate of appraisal hereto attached.

W.M. R. STORRIE.

Sworn and subscribed to before me this 24 day of May 1935.

(Seal)

LILLIAN M. DUNHAM,  
*Notary Public of New  
Jersey.*

My commission expires Oct. 24, 1937.  
30 Dated May 23, 1935.

*Affidavit of Louis C. Joyce, Jr.*

AFFIDAVIT.

IN CHANCERY OF NEW JERSEY.

	10
<p>Between</p> <p style="padding-left: 40px;">PITMAN TITLE &amp; TRUST COMPANY, Trustee, <i>Complainant,</i></p> <p style="padding-left: 80px;">and</p> <p style="padding-left: 40px;">STEPHEN ROSCOE BATE- MAN, <i>et als,</i> <i>Defendants.</i></p>	<p style="font-size: 4em;">}</p> <p>On Bill to Foreclose. On Petition. Affidavit.</p>

20

State of New Jersey, }  
County of Camden, } ss.

LOUIS C. JOYCE, JR., being duly sworn on his oath deposes and says:

I am a resident of Merchantville, Camden County, State of New Jersey.

It has been called to my attention that the Camden Safe Déposit & Trust Company are the owners of 30 certain notes of Stephen Roscoe Bateman, as maker, on which I am alleged to be the endorser. At the present time the Camden Safe Deposit & Trust Company have deposited with them for collection one note dated September 24th, 1934, payable to my

- order, signed by the Grenloch Park Amusement Company, Stephen Roscoe Bateman, Treasurer, which note is in the amount of \$2,056.32; a second note of Stephen Roscoe Bateman as maker, dated January 24th, 1935, in the amount of \$370.00. Neither of these notes have been discounted by the Camden Safe Deposit & Trust Company. The Camden Safe
- 10 Deposit & Trust Company have been directed by me to apply any moneys collected on these notes to my account and for my benefit. There are no other notes of any kind made by Stephen Roscoe Bateman which are owned or have been discounted by the Camden Safe Deposit & Trust Company which have been endorsed by me or in which I am obligated in any manner. Copies of the only notes so held by the Camden Safe Deposit & Trust Company are attached hereto and marked Schedule A and Schedule B.
- 20 It has also been called to my attention that it is claimed that I am a joint maker with Stephen Roscoe Bateman on a note held by the First National Bank & Trust Company of Blackwood, New Jersey, which note is alleged to be in the amount of \$1560.00. The First National Bank & Trust Company of Blackwood, New Jersey, do not hold any paper made by Stephen Roscoe Bateman individually, or by Stephen Roscoe Bateman and this deponent jointly and endorsed by this deponent in any amount whatever.
- 30 It has also been called to my attention that the South Camden Trust Company, now in liquidation by the West Jersey Trust Company, of Camden, are the owners of a note made by Stephen Roscoe Bateman and endorsed by me, which note is in the amount of \$3190.87. I have personally pledged with the

*Affidavit of Louis C. Joyce, Jr.*

former South Camden Trust Company, as collateral, shares of stock of the First National Bank and Trust Company of Blackwood, New Jersey which, at the time of my endorsement, had a book value of approximately \$7500.00. This figure also represented the market value as of the time of the making of the loan. It is my recollection that since the making of the loan the par value of the Blackwood bank stock has been cut in half and at the present time the number of shares have been doubled, and it is my understanding that the former South Camden Trust Company now hold sixty shares. Based on the last sale of the stock of the First National Bank & Trust Company, of Blackwood, New Jersey, I believe that the security so held by the West Jersey Trust Company to be worth at least \$2500.00. 10

I was also endorser on paper of Stephen Roscoe Bateman at the Laurel Springs National Bank, of Laurel Springs, New Jersey, which notes have since been paid in full by me. 20

Shortly after I had become endorser at the Pitman Title & Trust Company for Stephen Roscoe Bateman I secured from Bateman a third mortgage covering the Grenloch Park property and farm at Grenloch and included in this same mortgage were some lots and miscellaneous property in and around Grenloch Park, which property was all owned by Stephen Roscoe Bateman. This mortgage was in the amount of \$18,800.00, recorded both in Camden and Gloucester County. This mortgage was given to secure me by reason of certain endorsements that I had made for Bateman and also to secure to me the payment of certain moneys that I had personally advanced 30

and loaned to said Bateman. By the time of the execution of the mortgage in question Bateman and deponent executed an agreement, a copy of which is annexed and marked Schedule C.

The Pitman Title & Trust Company, by reason of the fact that the note that I endorsed for Bateman at that bank amounted to \$5,000.00, requested that I  
10 give them collateral of some sort to secure my endorsement. I accordingly forwarded a copy of the agreement between Bateman and me to the Pitman Title & Trust Company by letter dated October 10th, 1932, copy of which letter is hereto attached and marked Schedule D. The written agreement between Bateman and this deponent which is marked Schedule C sets forth the entire transaction between the two of us in reference to the mortgage which said Bateman had executed.

20 I have, at no time, made any declaration, nor have I made any agreement with any bank or person other than the Pitman Title & Trust Company to the effect that the mortgage from Bateman to me, was, in any way, to be held as security either directly or indirectly by me, for the benefit of any person or corporation except for myself. I took this assignment of mortgage solely for the purpose of protecting myself by reason of the endorsements and to secure the loans that I had made to said Bateman.

30 The property in question consists of a park and small farm at Grenloch, Camden and Gloucester County, New Jersey. The Pitman Title & Trust Company hold a mortgage of \$20,000.00 as security for certain loans which it made to said Stephen Roscoe Bateman. The Grenloch Real Estate Company hold a

*Affidavit of Louis C. Joyce, Jr.*

mortgage in the amount of \$12,000.00, which is second to the mortgage so held by the Pitman Title & Trust Company. There is due on this second mortgage at the present time, including principal and interest, \$16,705.16. I am in possession of this information because of the fact that I am secretary and treasurer of the Grenloch Real Estate Company. The third mortgage which was referred to in the agreement, Schedule D, is a third lien and subject to these other amounts due to the Pitman Title & Trust Company and also to the Grenloch Real Estate Company. When I learned that some question had been raised concerning the rights of the Pitman Title & Trust Company to the third mortgage, the Pitman Title & Trust Company assigned the third mortgage to me and I then executed a release of the park and farm properties which were covered by the first mortgage and second mortgage which was held by the Grenloch Real Estate Company. I then re-assigned the third mortgage to the Pitman Title & Trust Company and that company still holds the mortgage which covers miscellaneous properties in and about Grenloch, as security for my endorsement. I executed this release in favor of the Pitman Title & Trust Company by reason of the fact that I was fully acquainted with the property in question and was of the opinion that there was absolutely no equity so far as the property that was covered by the first and second mortgages was concerned.

LOUIS C. JOYCE, JR.

Sworn and subscribed before me this 22nd day of May, 1935.

WILLIAM R. SMITH,  
*Attorney at Law of N. J.*

*Affidavit of Louis C. Joyce, Jr.*

## SCHEDULE "A".

## COPY.

\$2056.32

Camden, New Jersey Sept. 24th 1934  
 10 Two Months Months after date, I, we or either  
 of us promise to pay to the order of Louis C. Joyce,  
 Jr., at the CAMDEN SAFE DEPOSIT & TRUST  
 COMPANY of Camden, N. J. Two Thousand Fifty  
 six 32/100 . . . . . Dollars without defalcation or  
 discount for value received.

Grenloch Park Amusement Co.  
 S. R. Bateman  
 Treas.

No. Due 11-26-34.

20

Address Grenloch, N. J.

ENDORSED.

Louis C. Joyce, Jr.

1.97 Int.

\$370.00

371.97

Camden, New Jersey Jan. 24 1935.

One months after date, I we or either of us promise  
 to pay to the order of Camden Safe Deposit & Trust  
 30 Co. at the CAMDEN SAFE DEPOSIT & TRUST  
 COMPANY of Camden, N. J. Three hundred seventy  
 & . . . . . xx/100 Dollars without defalcation or  
 discount for value received with interest.

No. Due 2-24 S. R. Bateman

Address Grenloch, N. J.

*Affidavit of Louis C. Joyce, Jr.*

Camden Safe Deposit and Trust Company  
 Camden, N. J.  
 Collection  
 No. 14837.

ENDORSED.

Louis C. Joyce, Jr.

SCHEDULE "B." 10

(Written in Ink)

N P  
 55-87

Camden Safe Deposit &  
 Trust Company  
 Collection  
 11611  
 Camden N. J.

20

10.56 Int.  
 \$2,045.76

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2,056.32

May 21st, 1934.  
 (Written in Ink)  
 Camden Safe Deposit  
 & Trust Co  
 Paid  
 Jun 21, 1934  
 Camden, N. J.

30

One month after date — I — promise to pay to  
 the order of Louis C. Joyce, Jr.

the sum of \$2045 and 76 cts —Dollars  
 100

*Affidavit of Louis C. Joyce, Jr.*

Payable at CAMDEN SAFE DEPOSIT AND  
TRUST COMPANY, Camden, New Jersey without  
defalcation. Value received.

GRENLOCH PARK AMUSEMENT  
COMPANY

(Signed) A. C. Rcsenberger, Treas.

No. .... Due .....

10

ENDORSED.

Louis C. Joyce, Jr.

1.92  
\$372.45  

---

374.37

May 21st, 1934.

One month—after date — I — promise to pay to  
the order of Louis C. Joyce, Jr.

20

the sum of \$372 and 45 cts

— Dollars

100

Payable at CAMDEN SAFE DEPOSIT AND  
TRUST COMPANY, Camden, New Jersey without  
defalcation. Value received.

(Signed) S. R. BATEMAN

No. .... Due .....

Grenloch, N. J.

30

(Written in Ink)

Camden Safe Deposit and  
Trust Company  
Collection  
No. 11610  
Camden, N. J.

*Affidavit of Louis C. Joyce, Jr.*

NP  
 55-87  
 Camden Safe Deposit  
 & Trust Co  
 Paid  
 June 21, 1934  
 Camden, N. J.

ENDORSED. 10  
 Louis C. Joyce, Jr.

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SCHEDULE C.

C O P Y.

THIS AGREEMENT, made this thirtieth day of  
 December, A. D. one thousand nine hundred twenty- 20  
 seven;

BETWEEN STEPHEN ROSCOE BATEMAN of  
 the Township of Gloucester and the County of Cam-  
 den and the State of New Jersey, hereinafter called  
 the party of the first part;

AND LOUIS C. JOYCE, JR., of Blackwood, in the  
 County of Camden and the State of New Jersey,  
 hereinafter called the party of the second part: 30

WITNESSETH that whereas the said party of the  
 second part has endorsed notes, at various banks,  
 and notes given unto various trades-people, upon  
 which notes the said party of the first part has re-  
 ceived either cash, merchandise or services and labor;

*Affidavit of Louis C. Joyce, Jr.*

AND WHEREAS the said party of the second part has loaned various sums of money to the said party of the first part at various times, which said sums are still owing;

10 NOW THEREFORE, in consideration of which and of the further sum of ONE DOLLAR paid by the party of the second part unto the said party of the first part, receipt whereof is hereby acknowledged, the said party of the first part has this day executed and delivered unto the said party of the second part a bond and mortgage covering all his real estate holdings, for which the above is the true consideration.

20 And the said party of the second part does hereby agree to release said bond and discharge said mortgage upon the payment to him of the sums owing, with interest at the legal rate, and provided further that the said party of the first part shall pay or cause to be paid the notes upon which the said party of the second part is endorser; OTHERWISE, said bond and mortgage to remain in full and/or any indebtedness or losses which may be occasioned to the said party of the second part by reason of his endorsement or guarantee.

30 IN WITNESS WHEREOF, the parties hereto have hereunto affixed their hands and seals the day and year first above written.

Stephen Roscoe Bateman  
Louis C. Joyce, Jr.

Witness: Ursula W. Read

*Affidavit of Louis C. Joyce, Jr.*

SCHEDULE D.

C O P Y.

October 10, 1932.

Oscar Davenport, Treasurer,

Dear Mr. Davenport:

10

Enclosed herewith find Assignment of Mortgages recorded in the Office of the Clerk for Gloucester County, at Woodbury, New Jersey, in Book 161 of Mortgages, on pages 519 &c., and in the Office of the Register of Deeds for the County of Camden, at Camden, New Jersey, in Book 326 of Mortgages, on pages 199 &c; and Book 161 of Mortgages for Gloucester County on pages 515 &c, S. R. Bateman to myself, assigned to you as collateral to a note of S. R. Bateman which I have endorsed for his account. 20

I would direct to your attention that these mortgages do not represent an actual debt, but are given to me merely to secure my endorsement under and subject to an agreement, copy of which I am enclosing for your information.

The Assignment is made and tendered to you with the understanding that it is collateral only for that portion of Mr. Bateman's indebtedness to you, on which I am liable as endorser, and the assignment is not intended as blanket collateral. 30

Yours truly,  
Louis C. Joyce, Jr.

*Affidavit of Oscar Davenport*

State of New Jersey, }  
County of Gloucester, } ss.

OSCAR DAVENPORT, of full age, being duly sworn according to law, upon his oath deposes and says that:

Deponent is treasurer and cashier of the Pitman  
10 Title and Trust Company and has made this affidavit  
by way of further amplifying and supplementing  
previous affidavits made in the cause known as Pit-  
man Title and Trust Company against Stephen Ros-  
coe Bateman and others.

Deponent says that the amount stipulated as being  
due, which was set forth in the final decree in the  
cause mentioned above, was correct, and without  
error.

Deponent further says, however, that in accordance  
20 with the instructions of the Vice-Chancellor in this  
matter, he has gone over the records of the Pitman  
Title and Trust Company and given credit for inter-  
est that may have been charged in excess of 6% on  
account of the principal sum due, by crediting such  
excess interest on the amount of the decree, which  
would allow a credit of \$4,334.21, and would have  
the effect of reducing the amount due for principal  
and interest to the sum of \$19,151.96, which sum is  
30 as of April 1, 1935, excluding costs of suit and at-  
torneys fees. This figure represents the money  
due on account of principal and interest on the mort-  
gage upon which foreclosure was instituted and which  
covered certain premises including those known as  
Grenloch Park, and a farm adjacent thereto, all of

*Conclusions*

which is now before the Court of Chancery for consideration.

OSCAR DAVENPORT.

Sworn and subscribed to before me this 23rd day of May, A. D. 1935.

KATHRYN E. HOFFMAN,  
*Notary Public of N. J.* 10

My Commission Expires Sept. 27, 1939.

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CONCLUSIONS.

IN CHANCERY OF NEW JERSEY.  
106-115

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20

Between

PITMAN TITLE & TRUST  
COMPANY, Trustee,

*Complainant,*

and

STEPHEN ROSCOE BATE-  
MAN, *et als,*

*Defendants.*

} On Bill to Foreclose.  
} On Petition to Vacate  
} Final Decree.  
} Conclusions.

30

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JOSEPH R. APPLEBAUM, Esq. with whom appeared  
HON. S. RUSLING LEAP, for Complainant.  
OSCAR B. REDROW, Esq., for Defendants.

DAVIS, V. C.

The foreclosure herein preceeded, *ex parte*, to a final decree and *feri facias*, the latter directed to a special Master of this Court to sell the mortgaged premises which lay in two counties. The Special Master advertised the properties for sale at an expense of approximately \$500, and at that point a  
10 petition was filed by defendant, Bateman, owner, for an order vacating the final decree and *feri facias* and permitting him to file an answer. Bateman avers that he was obliged by complainant to pay 9% interest on the mortgage loan for several years and that he was also obliged to keep on deposit with complainant for several years the sum of \$12,500 without access to or use of said sum, in other words he charges complainant with usury to the extent  
20 of \$4800. The petition, however, is not based wholly on this ground; if it were, the application would be denied, since such a defense must be timely and strictly pleaded. Nevertheless, the relief sought by this portion of the petition is substantially accomplished by the voluntary offer of complainant to credit on the amount of the decree the sum of \$4334.21. But petitioner also avers that he assigned to complainant the operating rights to an amusement  
30 park for the season of 1934 for which he says he has not been given a proper credit. For this reason I am inclined to believe that he is entitled to put in an answer, on terms, however, in order that complainant may be obliged to render an accounting of the park operations; unless the parties can agree on the amount of credit which should be allowed the petitioner on this account, an order will be made

*Conclusions*

permitting the filing of an answer upon the payment by petitioner of the fees of the Special Master and the advertising expenses already incurred by him.

There is also filed with me a petition on behalf of three banks, represented by Mr. Bateman's solicitor, to which petition Mr. Bateman makes an affidavit of general verification only, asking that the final decree be vacated and that they be permitted to appear as parties and make claim against complainant for payment of promissory notes held by them which they claim are secured by a junior mortgage covering the premises described in the bill (and other land) executed by Bateman to one Joyce and assigned by Joyce to complainant. The claim of the petitioning banks to an equitable interest in that mortgage seems to me to be without the slightest foundation; so far as appears before me neither the bond and mortgage, nor the agreement executed by Bateman and Joyce when the mortgage was executed, refer in any way to the creation of any lien or interest in favor of the banks, nor has any deponent made any specific statement in support of such a claim; on the contrary, however, Mr. Joyce denies categorically that such a scheme or plan was contemplated by anyone at any time. That petition is therefore dismissed.

Another matter which has been brought to the attention of the Court is the fact that the Master's report on which the final decree is based, was made by the counsel who signed the bill of complaint. This, of course, should not be. If petitioner, Bateman, elects to file an answer on the terms herein suggested, the Master's report becomes a nullity; on the

*Order*

other hand, if the parties agree upon the amount for which the property shall be sold, or redeemed by Bateman, then there will be no need for considering further the matter of the Master's report.

Let the parties agree promptly on the form of order to be made herein, otherwise counsel may present their respective drafts on Monday, July 29th, 10 1935, at which time the form will be settled.

Determined: July 23, 1935.

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 ORDER.

(Filed July 30th, 1935.)

IN CHANCERY OF NEW JERSEY.

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 Between

PITMAN TITLE & TRUST  
COMPANY,

*Complainant,*

and

STEPHEN ROSCOE BATE-  
MAN, *et als,*

*Defendants.*

} On Bill to Foreclose.  
Order.

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This matter being opened to the Court by Oscar B. Redrow, Esquire, solicitor for Stephen Roscoe Bate-

## Order

man, defendant, and also as solicitor for petitioners, Camden Safe Deposit and Trust Company, of Camden, First National Bank of Blackwood, West Jersey Trust Company of Camden, and Joseph R. Applebaum, Esquire and S. Rusling Leap, Esquire, appearing for the complainant;

It appearing that a petition was filed by Stephen Roscoe Bateman, defendant, for an order vacating the final decree and *feri facias* and permitting him to file an answer on the ground that he was charged by the complainant with usury to the extent of \$4800.00 and further on the ground that he assigned to the complainant the operating rights to an amusement park at Grenloch, New Jersey, for the season of 1934 for which he says he has not been given a proper credit. 10

It further appearing that a petition to intervene was also filed on behalf of the First National Bank and Trust Company of Blackwood, New Jersey, Camden Safe Deposit and Trust Company of Camden, New Jersey, and the West Jersey Trust Company of Camden, New Jersey, wherein Mr. Redrow also appeared as solicitor, claiming certain trust rights in a junior mortgage encumbering the premises described in the bill, together with other lands, which mortgage had been executed by Stephen Roscoe Bateman to one Joyce and assigned by said Joyce to the complainant, and it further appearing that the complainant has voluntarily offered to credit upon the decree and *feri facias* the sum of \$4334.21; 20 30

It is, on this 30th day of July, 1935, ordered that the petition filed on behalf of the Camden Safe Deposit and Trust Company of Camden, New Jersey,

First National Bank of Blackwood, New Jersey, West Jersey Trust Company of Camden, New Jersey, be, and the same is hereby dismissed.

It is further ordered that that part of the petition of Stephen Roscoe Bateman which asks for an order vacating the final decree and *feri facias* permitting him to file an answer alleging usury be and the same  
10 is hereby denied.

It is further ordered that, in the event that Stephen Roscoe Bateman, prior to the fifteenth day of August, 1935, pay to the Special Master his fees and the expenses already incurred by him in connection with the advertising for sale of the property described in the bill filed in the above entitled cause, the *feri facias*, the final decree and the Master's report are vacated and the defendant, Stephen Roscoe Bateman, shall have leave to file an answer re-  
20 quiring the complainant to render an accounting of the operation of the park during the season of 1934 in order that credit may be given to the defendant, Stephen Roscoe Bateman for such sums, if any, as may be shown to be due upon said accounting from the operation of said park aforesaid; the answer so to be filed to be limited to the matter of the accounting for the operation of Grenloch Park during the season of 1934.

It is further ordered that in the event that said  
30 Stephen Roscoe Bateman shall not have paid to said Special Master his said fees and the advertising expenses already incurred by him by the date hereinabove set forth, the writ of *feri facias* shall be credited with the said sum of \$4334.21, thus reducing the amount due from twenty-three thousand four hun-

*Notice of Appeal*

dred and eighty-six dollars and seventeen cents (\$23,486.17) to the sum of nineteen thousand one hundred fifty-one dollars and ninety-six cents (\$19,151.96), and the Special Master shall proceed with the sale of the premises as directed by the writ of *feri facias* heretofore issued, and the order heretofore entered restraining said Special Master is hereby vacated. 10

Respectfully advised,

F. B. DAVIS,  
V. C.

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NOTICE OF APPEAL.

IN CHANCERY OF NEW JERSEY.

106-115

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Between,

PITMAN TITLE AND TRUST  
COMPANY,

*Complainant,*

and

STEPHEN ROSCOE BATE-  
MAN, *et al,*

*Defendants.*

} On Bill to Foreclose.  
} Notice of Appeal.

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The defendant, Stephen Roscoe Bateman, and the petitioners, Camden Safe Deposit and Trust Com-

*Notice of Appeal*

pany, West Jersey Trust Company, trustee in liquidation for the South Camden Trust Company, and The First National Bank and Trust Company of Blackwood, New Jersey, hereby appeal from the final decree, as amended by an order made by the Chancellor on the advice of Honorable Francis B. Davis, one of the Vice-Chancellors of this Court and from  
10 said order, dated July 30th, 1935, and from the whole and every part thereof, to the Court of Errors and Appeals in the last resort in all causes.

Dated, July 31st, 1935.

OSCAR B. REDROW,

*Solicitor for and of Counsel with the Defendant, Stephen Roscoe Bateman, and the petitioners, Camden Safe Deposit and Trust Company, West Jersey Trust Company, trustee in liquidation for the South Camden Trust Company, and The First National Bank and Trust Company of Blackwood, New Jersey.*

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

OSCAR B. REDROW,

*Of Counsel with the Defendant and Petitioner Appellants.*

*Petition of Appeal*

## PETITION OF APPEAL.

## COURT OF ERRORS AND APPEALS.

Between,		10
PITMAN TITLE AND TRUST COMPANY,	}	
<i>Complainant-Respondent,</i>		
and		
STEPHEN ROSCOE BATE- MAN, CAMDEN SAFE DE- POSIT AND TRUST COM- PANY, WEST JERSEY TRUST COMPANY, Trus- tee in liquidation for the SOUTH CAMDEN TRUST COMPANY and the FIRST NATIONAL BANK AND TRUST COM- PANY of Blackwood, New Jersey,	}	
<i>Defendants-Appellants.</i>		
	On Appeal.	
	Petition of Appeal.	20

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

The petition of Stephen Roscoe Bateman and the  
Camden Safe Deposit and Trust Company, West

Jersey Trust Company, trustee in liquidation for the South Camden Trust Company and the First National Bank and Trust Company of Blackwood, New Jersey, the appellants in the above stated cause, respectfully show that your petitioners find themselves aggrieved by the final decree and the order amending the proceedings on said final decree made in the  
10 Court of Chancery, by his Honor, Luther A. Campbell, Chancellor of the State of New Jersey, bearing date the 30th day of July, 1935, wherein the Pitman Title and Trust Company, Trustee, was complainant and the said Stephen Roscoe Bateman and others were defendants, and the said Camden Safe Deposit and Trust Company, West Jersey Trust Company, trustee in liquidation for the South Camden Trust Company and the First National Bank and Trust Company of Blackwood, New Jersey, were petition-  
20 ers to be made defendants in this respect, to wit:

1. Wherein said final decree was made by virtue of a Master's report made by Charles Camp Cotton, a Master in Chancery and which said Charles Camp Cotton was also counsel who signed the bill of complaint.

2. Wherein the said Master's report and final decree, nor any other papers filed in the cause under-  
30 take to make as a party defendant a third mortgage covering the premises in question, which was alleged to be held by the Pitman Title and Trust Company as collateral security for a loan to some person not a party of the suit. The appellants, Camden Safe Deposit and Trust Company, West Jersey Trust

*Petition of Appeal*

Company, trustee in liquidation for the South Camden Trust Company and First National Bank and Trust Company of Blackwood, New Jersey, claiming an interest in said mortgage, having filed a petition to be made parties, which petition was denied.

3. Wherein the said final decree set forth there was due on said bond and mortgage the sum of \$23,- 10  
486.17, as of January 19th, 1935, or the sum of \$19,-  
151.96, as set forth by the order dated July 30th,  
1935, the petitioners allege the true amount due  
after deducting the usurious and or excess interest  
charged on said mortgage being the sum of \$14,866  
remaining due.

4. Which denied the appellant, Bateman, a right  
to file an answer setting forth the facts set forth  
in the petition as to usury and excess interest and 20  
further denied said appellant the right for an ac-  
counting except upon terms as indicated by said  
order.

5. And to the whole and every part of said final  
decree dated January 19th, 1935, and the order  
amending the same dated July 30th, 1935, your peti-  
tioners humbly appeal upon the ground that the  
same is erroneous for that the said petitioner, Bate-  
man, should have been permitted to file an answer 30  
setting forth the facts alleged in his petition and the  
appellants, Camden Safe Deposit and Trust Com-  
pany, West Jersey Trust Company, trustee in liqui-  
dation for the South Camden Trust Company and  
the First National Bank and Trust Company of

*Petition of Appeal*

Blackwood, New Jersey, should have been permitted in equity to have been made party defendants to the end that they may have proved the allegations set forth in their petition.

Your petitioner, therefore, prays that the said decree and order of the said Chancellor may be, in the  
10 particulars aforesaid, reversed, set aside, and for nothing holden. And that your petitioners may have such relief in the premises as to this Honorable Court shall seem meet.

OSCAR B. REDROW,  
*Solicitor and of Counsel with  
the Appellants.*

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NEW JERSEY COURT OF ERRORS  
AND APPEALS.

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Between  
PITMAN TITLE AND TRUST COMPANY,  
*Complainant-Respondent,*  
and  
STEPHEN ROSCOE BATEMAN, *et als.,*  
*Defendants-Appellants.*

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ON APPEAL FROM NEW JERSEY COURT OF CHANCERY.

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BRIEF OF DEFENDANTS-APPELLANTS.

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STATEMENT OF THE CASE.

The appellant, Bateman, was the owner of an amusement park and farm located at Grenloch, New Jersey, which was rebuilt by him in 1924. On August 11th, 1924, Bateman borrowed \$2500 from the Pitman Title and Trust Company on a promissory note. In November, 1924, Bateman and the Pitman Title and Trust Company made an agreement whereby the Pitman Title and Trust Company would loan to Bateman on notes up to \$20,000

*Brief of Defendants-Appellants*

and Bateman gave a mortgage to the Pitman Title and Trust Company for \$20,000, covering the amusement park and farm as collateral security for the payment of the money he intended to borrow on notes. The mortgage was dated November 20th, 1924, and was given to secure the just sum of \$20,000 and was recorded on December 3rd, 1924, in Camden County, and on January 10th, 1925, in Gloucester County.

At the time the mortgage was given the loans made to Bateman on notes amounted to \$5000. On January 29th, 1925, the amount loaned on notes was increased to \$15,000. On April 21st, 1925, an additional \$5000 was loaned on a note and on August 3rd, 1925, the \$15,000 note and the \$5000 note were incorporated in one note of \$20,000, and on January 4th, 1926, the notes were changed to a demand note which note recited that the mortgage was given as collateral for the payment of the note in the amount of \$20,000. The mortgage further recited interest at the rate of six per cent per annum.

There was no interest paid on the mortgage as such but interest was paid on the notes. There was a charge made, in some instances, of interest directly at the rate of nine per cent per annum. From May 31st, 1927, there was a note carried of \$12,500 on which interest was charged at the rate of six per cent per annum and it was paid by Bateman up until the latter part of 1932. This note of \$12,500 was not money actually loaned by the Pitman Title and Trust Company to Bateman, but was

*Brief of Defendants-Appellants*

what may be determined a dummy note and no funds were available from this note for Mr. Bateman but the transaction was entirely under the control of the Pitman Title and Trust Company and for the purpose of collecting the additional interest. Bateman having failed to pay this interest, the Pitman Title and Trust Company on November 13th, 1934, filed a bill to foreclose the mortgage, but no suit was brought on the notes. The foreclosure proceedings did not show in the foreclosure of the mortgage that the mortgage was collateral for the note.

Bateman had in 1924 spent considerable more than \$20,000 on the improvements in the park and had borrowed money elsewhere. Prior to November 20th, 1924, the lake at Grenloch Park was owned by the Grenloch Real Estate Company and Bateman gave to the Grenloch Real Estate Company a mortgage on November 20th, 1924, covering all of this property. He also gave them other collateral of stock in the Grenloch Real Estate Company to secure the obligation due to them of \$15,000 and this obligation was reduced at the time the bill to foreclose was filed to approximately \$12,000.

The farm itself was operated by Bateman, but the park was operated by a company known as the Grenloch Park Amusement Company, consisting of Mr. Bateman, his brother-in-law, and a Mr. Joyce. Moneys was borrowed from different banks by Bateman both in his own name and in the name of Grenloch Park Amusement Company, and a number of these notes were endorsed by Mr. Joyce

as an accommodation endorser for both Mr. Bateman and the Grenloch Amusement Company.

On or about December 20th, 1927, the amount of these notes then outstanding, together with other small bills for insurance and other minor obligations, amounted to \$18,800, and these included notes discounted at the Camden Safe Deposit and Trust Company, notes discounted at the South Camden Trust Company, since taken over by the West Jersey Trust Company, Trustee in liquidation, and for notes at the First National Bank and Trust Company of Blackwood, New Jersey, notes at the Laurel Springs National Bank, and for notes at the Pitman National Bank and Trust Company. In order to secure the payment of these notes, on December 30th, 1927, Stephen Roscoe Bateman executed a bond and mortgage to Louis C. Joyce, Jr., in the amount of \$18,800, which covered not only the park and farm property but practically all the other real estate owned by Mr. Bateman. On the same day the mortgage was given an agreement was made (Schedule C, Case, page 95), between Mr. Bateman and Mr. Joyce which stated in part,

“Whereas the said party of the second part has endorsed notes at various banks—upon which notes the said Bateman has received either cash, merchandise or services and labor. Now therefore in consideration of which and the further sum of One Dollar paid by the party of the second part unto the said party of the first part the receipt whereof is hereby acknowledged the said party of the first part has

*Brief of Defendants-Appellants*

this day executed and delivered unto the said party of the second part a bond and mortgage covering all his real estate holdings for which the above is the true consideration.”

As noted above, one of the banks from which Bate-  
man had borrowed money was the Pitman Title and  
Trust Company, which note was originally \$5000  
and which note was subsequently reduced from time  
to time by monthly payments to \$4350 on February  
1st, 1935. The amount due to the other banks had  
also been reduced and there was due on the notes  
held by the Camden Safe Deposit and Trust Com-  
pany on March 25th, 1935, \$2426.32, and to the  
West Jersey Trust Company, Trustee in liquidation  
for the South Camden Trust Company, \$3193.13,  
and to the First National Bank and Trust Company  
of Blackwood, New Jersey, \$1560. The note of the  
Laurel Springs National Bank had been paid.

On October 10th, 1932, Mr. Joyce assigned this  
mortgage of \$18,800 to the Pitman Title and Trust  
Company and on the day the mortgage was assigned  
he also gave the Pitman Title and Trust Company  
a letter (Case 97) which in part stated as follows:

“I would direct your attention that these  
mortgages do not represent an actual cash  
debt, but are given to me merely to secure my  
endorsement under and subject to an agree-  
ment, a copy of which I am enclosing for your  
information.”

(Case 95):

“The assignment is made and tendered to  
you with the understanding that it is collateral

*Brief of Defendants-Appellants*

only for that portion of Mr. Bateman's indebtedness to you, on which I am liable as endorser and the assignment is not intended as blanket collateral."

The other banks who held notes of the same nature as the one of \$5000 held by the Pitman Title and Trust Company were not advised that an assignment had been made of this mortgage but they had been informed that the mortgage had been given to Mr. Joyce, the endorser, covering all of Bateman's real estate which was intended to be collateral for the payment of these several notes at the different banks. The notes were due to the other banks as stated heretofore when the bill to foreclose was filed.

This note of \$5000 made by Mr. Bateman and endorsed by Mr. Joyce had nothing whatever to do with the transaction concerning notes given by Bateman to the bank for which the mortgage in question was given as collateral.

In 1934 the State Highway had improved the Black Horse Pike and a small strip of land was conveyed and released from the several mortgages to the State Highway.

The bill to foreclose filed in this cause did not make the mortgage shown in the search (Case, page 15) given by Bateman to Joyce for \$18,800 a party defendant nor did it make Mr. Joyce a defendant even though it knew it held this mortgage in trust or as collateral.

After Bateman had been notified of the fore-

closure proceedings some time about December 1st, 1934, he went to Mr. Applebaum, the solicitor of the complainant, and to the treasurer of the Pitman Title and Trust Company to see what arrangements could be made and Mr. Davenport (Case, page 33, line 15) told him that they would take no further proceedings in the foreclosure suit until Bateman could see what could be done. From that time until February 7th, 1934, there were several propositions discussed and on the last named date a meeting was held of all of the creditors, including the banks hereinbefore set forth, in which no settlement was made but at which meeting Mr. Davenport, the treasurer of the Pitman Title and Trust Company, stated that nothing had been done since the bill was filed up to the time of the meeting. In fact, a decree *pro confesso*, Master's report, final decree and execution had been made prior to that time, and the Master's report had been signed by the some counsel who signed the bill of complaint, to wit, Charles Camp Cotton. (Case, page 33, line 22.) At this meeting it was agreed to submit a proposition of settlement which was done on February 15th, 1935, and which was held under advisement by the Pitman Title and Trust Company for ten days or two weeks when they advised that they would not accept the proposed settlement. Bateman then found out, about March 5th, 1935, that the decree had been taken against him and that the place was advertised for sale and he filed a petition in the Court of Chancery, setting out the facts hereinbefore stated and requested (Case, page 31, line 14)

the Court to open the final decree and have the matter referred to a Master to ascertain and report the exact amount due on the bond and mortgage and asked that he be given credit for any excess interest which may have been paid.

Subsequently the appellants, Camden Safe Deposit and Trust Company, West Jersey Trust Company, trustee in liquidation for the South Camden Trust Company, and the First National Bank and Trust Company of Blackwood, New Jersey, filed a petition requesting that they be made parties defendants to the foreclosure suit, setting out the notes which were due to them and secured by the mortgage of \$18,800 given by Bateman to Joyce, and subsequently assigned by Joyce to the Pitman Title and Trust Company, in trust, wherein they set forth (Case, page 60, line 10); that after the granting of the restraint and the rule to show cause by the Court of Chancery on March 12th, 1935, the said Pitman Title and Trust Company assigned the mortgage for \$18,800 held by it in trust, to Mr. Joyce, and caused Mr. Joyce to execute a release from the mortgage to Bateman for the lands described in the bill of complaint and then caused Joyce to have reassigned to it the mortgage in question. The petition also set out that they had an interest in this mortgage by reason of the agreement made between Bateman and them and also by reason of the agreement between Bateman and Joyce (Case, page 68, line 20) and also set out the amounts due to them and asked that the Pitman Title and Trust Company, by reason

*Brief of Defendants-Appellants*

of its action in having the mortgage of \$18,800 released from the property in question, be required to pay the amounts due to said banks, or that the said banks be made parties defendants in order that they might appear and defend and assert their rights and interest in the property in question.

The matter was heard before Vice-Chancellor Davis on affidavits and the amount due on the notes secured by the mortgage of \$20,000 from the auditors' account for Mr. Bateman was \$14,316.34 and the amount due from the affidavit of Mr. Davenport (Case, page 98, line 28) was \$19,151.96, which sum did not take into account the full amount of excess interest paid or checks which were offered to the accountants showing that considerable more moneys had been paid. There was no reference to a Master by the Vice-Chancellor to determine the amount due. On March 18th, 1935, in open court before Vice-Chancellor Davis, Mr. Leap, representing the Pitman Title and Trust Company, stated, "We will stipulate and agree to ask only the principal sum due plus interest at the legal rate." It also appeared from the affidavits that there had been no accounting for the operation of the park during the year 1934, when it was operated by the Pitman Title and Trust Company.

On this state of facts an order was made denying the West Jersey Trust Company, as trustee, and the other banks who held notes which they felt were secured by the mortgage of \$18,800, a right to be made parties defendant and also denied Bateman an order of reference to a Master to determine the amount due on the notes.

Since the appeal was taken I am advised that the mortgaged premises were sold without notice for a nominal consideration.

POINT I.

The rule as to pleading usury does not apply. Section 2, *Comp. Stat.* 5705.

“That in all cases of suits at law or in equity to enforce any note, bill, bond, mortgage, contract, covenant, conveyance, or assurance, which shall be hereafter made for the payment or delivery of any money, wares, merchandise, goods, or chattels lent, and on which a higher rate of interest shall be reserved or taken than was or is allowed by the law of the place where the contract was made or is to be performed, the amount or value actually lent, without interest or costs of suit, may be recovered, and no more; and if any premium or illegal interest shall have been paid to the lender, the sum or sums so paid shall be deducted from the amount that may be due as aforesaid, and recovery had for the balance only.”

Under this section the Pitman Title and Trust Company would have been limited in their recovery to the amount actually lent, less the payments made, without interest or costs of suit.

The Court below apparently misunderstood the prayer of the Bateman petition.

*Brief of Defendants-Appellants*

(Case, page 31, line 14):

“Your petitioner, therefore, prays that an order may be made by this honorable Court opening the final decree made in this cause, and that the matter be referred to a Master to ascertain and report the exact amount that may be lawfully due on the bond and mortgage set forth in the bill of complaint and that your petitioner may have credits made thereon of the unlawful interest collected thereon by the complainant and for such sum or sums of money as may have been collected by the said complainant from the operation of the aforesaid amusement park during the year of 1934. And that all further proceedings in this suit be restrained by this Court, including the sale of said premises under the execution hereinbefore referred to, until such time as the correct amount due on said bond and mortgage may be ascertained and determined and that your petitioner may have such other additional relief as may be just.”

Should the Court have made a reference to a Master we could and would have by appropriate pleading submitted an answer offering to pay the principal actually received, with lawful interest.

We have never asked that all of the interest be thrown off.

The case of *Hill v. Colie*, 25 Eq. 469, is in point.

“They will not be permitted to set forth the forfeiture of interest and costs, but will be

*Brief of Defendants-Appellants*

ordered—to introduce into the answer an offer to pay the amount of principal actually received, with lawful interest.”

## POINT II.

The appellant, Bateman, should have been permitted to intervene so that the true amount due could be determined.

When the bill was filed, Bateman (Case, page 29, line 24):

“was assured by the Pitman Title and Trust Company and by Mr. Davenport, its Treasurer, that no further action would be taken in the foreclosure proceedings pending an attempt to adjust the matter of the mortgage.”

(Case, page 33, line 16):

“Davenport told me at the time that they would take no further proceedings in the foreclosure suit until I could see what I could do.”

In a letter from Mr. Redrow to the Pitman Title and Trust Company dated February 23, 1935 (Case, page 72, line 32):

“When you were in my office and also when I was discussing the matter with you on the 15th instant you assured me that no action had been taken in the foreclosure proceedings, except to file a bill and serve subpoenas, and

*Brief of Defendants-Appellants*

that no further action would be taken pending the attempt to come to some agreement,"

and these statements are not denied.

From the affidavits of the Pitman Title and Trust Company there is a wide variance.

(Case, page 12, line 25) affidavit to Master's report \$23,486.17, (Case, page 45, line 16) affidavit on return of rule to show cause \$24,700.82, (Case, page 98, line 28) affidavit supplemental \$19,151.21, all made by Davenport.

Bateman's affidavit and proof show: (Case, page 68, line 12) that there was due as of April 1, 1935, \$14,316.34, and (Case, page 43, line 30) he offered to pay approximately this amount to settle, to wit, \$15,000, on February 15, 1935.

POINT III.

It is impossible to determine from all the affidavits of the Pitman Title and Trust Company the correct amount due for principal and interest.

The only proof of the amount due is in the affidavits of Davenport. In the affidavit attached to the Master's report (Case, page 13, line 18), Davenport said: "There is due on said mortgage,—the sum of \$20,000 with interest on the same from *July 1st, 1932*, at the rate of 6 per cent per annum, and insurance premiums of \$400.82, together with interest on the same from July 6th, 1934, at the rate of 6 per cent per annum." This interest amounted to \$3073.33 on the mortgage and \$12.02

on the insurance premiums, or a total of \$23,486.17 for principal, insurance and interest. Master's report (Case, page 12, line 25), no mention is made of any credit of \$1000 received from the operation of the park during the year 1934.

In the next affidavit of Mr. Davenport (Case, page 45, line 16), made on the return of the rule to show cause, Davenport says: "there is now due and owing to said bank on the mortgage in question the principal sum of \$20,000 together with interest at the rate of 6 per cent per annum from *July 1, 1931* (not July 1, 1932, as stated in his previous affidavit attached to the Master's report) to April 1, 1935, including charges for fire insurance premiums and a credit for the payment of \$1000 made by the Grenloch Park Amusement Company, showing a net total of \$3700.82." On Exhibit "C" referred to in said affidavit (Case, page 49), a total of \$4700.82 is charged for interest and insurance premiums, which would make a total of \$24,700.82 due as of April 1, 1935. By the Master's report and the previous affidavit of Mr. Davenport shows that on January 22nd, 1935, there was due \$23,486.17 and by adding the interest from that date until April 1st, 1935, about \$230, the amount due would be \$23,716.17 and this affidavit shows a difference of one year in the amount of interest due or approximately \$1200, and there is no credit for the \$1000 received from the operation of the park for the year 1934.

Then in a subsequent affidavit, made on May 23rd, 1935, Davenport said (Case, page 98, line 22:

*Brief of Defendants-Appellants*

“He has gone over the records of the Pitman Title and Trust Company and given credit for interest that may have been charged in excess of 6 per cent on account of the principal sum due, by crediting such excess interest on the amount of the decree which would allow a credit of \$4334.21 and would have the effect of reducing the amount due for principal and interest to the sum of \$19,151.96—as of April 1st, 1935.”

He also says in this affidavit (Case, page 98, line 15), that “the amount stipulated as being due which was set forth in the final decree in the cause mentioned was correct and without error.” The amount set due in the final decree (Case, page 20, line 21) is \$23,486.17, which is the same amount set forth in the Master’s report and we submit from these affidavits which have been made by Mr. Davenport, it would be impossible for the Court to determine just what might be due for principal and lawful interest thereon, and it is quite evident that affidavits such as these are very unsatisfactory to determine the amounts due where the amount is disputed. None of these figures can be made to agree and in one affidavit he says there is a year’s more interest due than he does in the other and in the affidavit attached to the Master’s report on which the final decree was made there is no credit given for the \$1000 obtained from the operation of the park.

As Vice-Chancellor Lewis said in the case of

*Goldberg v. Macchiarelli*, 162 Atl. 109: "I do not feel that the Court should find on affidavits alone that there is no truth in the defense." And certainly this variation in Davenport's affidavits should mean that the truth could only be determined by reference to a Master.

As to the amount due on this particular note secured by a mortgage, the affidavit of Mr. Bateman, after explaining the various items (Case, page 67) of payments having been made, shows that the actual amount due (Case, page 68, line 12) is the sum of \$14,316.34 as set forth in the schedules showing the payments of moneys made by Bateman beginning on Case, page 75, line 28, and extending to line 15, on page 77. On page 78 is a statement showing the notes actually discounted, the last item showing the payment of \$11,075.50 on the note of \$20,000 up to April 1st, 1935.

#### POINT IV.

Where the respondent filed a bill to foreclose a mortgage, held as collateral security for notes leaving out of the bill, a third mortgage, which it then held as collateral or in trust, and thereafter caused the Master's report to be made by the same person who signed the bill of complaint, contrary to the intent if not the rule of the Chancery Court, whereby the title to the property would be clouded and the interest of all parties in the property not settled by a sale under the foreclosure, the final decree

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should be set aside and the pleadings amended and the defendant permitted to answer.

The mortgage was given as collateral security for the payment of the notes. See list of notes (Case, page 78), affidavit of Davenport (Case, page 40, line 27), "making in all \$25,000 \* \* \* which loan bore interest at the rate of 6 per cent per annum." "On *March 1, 1927* a further loan was made in the sum of \$12,500—until *October 24, 1933*, at which time the petitioner paid off the instrument in question by having the same charged to his account." (Case, page 67, line 18) "note of \$20,000 secured by this mortgage," receipts (Case, 74-75), "To interest on demand loans, \$20,000 from 3-1 to 5-31 inclusive, 92 days, at 6 per cent"; August 27, 1927, To interest on demand loans (Case, page 75, line 13), \$20,000 from 6-1 to 8-31 inclusive, 92 days, \$306.66.

The bill of complaint was signed by Charles Camp Cotton as counsel (Case, page 7, line 17). The Master's report was signed by the same party, Charles Camp Cotton (Case, page 11, line 19; Case, page 12, line 31).

Rule 95, Chancery, provides:

"Testimony shall not be taken, except by consent, before a Master who is a partner of, or connected in business with, or clerk for, the solicitor of either of the parties."

It is our contention that counsel who signs the bill of complaint is connected in business with the solicitor of the complainant in this particular litigation.

The third mortgage (Case, page 15, line 30) held by respondent (Case, page 17, line 8) in trust (Case, page 95, line 32):

“Whereas the said party of the second part has endorsed notes at various banks (Case, page 96, line 12) has this day executed and delivered unto the said party of the second part, a bond and mortgage, covering all his real estate holdings, for which the above is the true consideration (Case, page 97, line 27), the assignment is made and tendered to you with the understanding that it is collateral.”

In the case of *Miller v. Rushforth*, 4 N. J. Eq. 174, a final decree was opened, where it appeared by affidavits that the Master's report and final decree exceeded the sum actually due thereon, at the date of the decree, by \$1051.88.

To justify the Court in opening a decree it is not necessary that the defendants satisfy the Court that their defense will be successful. It is sufficient if they show that there is sufficient doubt respecting the present decree.

*Day v. Allaire*, 31 N. J. Eq. 303.

The decree was opened in the case of *Williamson v. Syskey*, 13 N. J. Eq. 182, after a lapse of two years, to prove the amount due.

If Joyce, who claims to hold the third mortgage, is not a party to the suit, then a sale would not cut out his interest and the Pitman Title and Trust Company would have a preference in buying at a

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sale, any other bidder would still be required to deal with this third mortgage.

## POINT V.

The Pitman Title and Trust Company agreed and stipulated to accept the principal sum due plus lawful interest.

At the return of the rule to show cause Senator Leap, representing the mortgagee, said (Case, page 56-A): "It will ask only the principal sum due plus interest at the legal rate."

As previously discussed under Point III, the true amount due cannot be determined from the affidavit of Mr. Davenport.

The defendant is entitled to a credit on the principal of the interest payment made in excess of the legal rate:

- Kohn v. Kelly*, 76 N. J. Eq. 132;
- Pond v. Causdell*, 23 N. J. Eq. 181;
- Bedle v. Wardell*, 25 N. J. Eq. 349;
- Terhune v. Taylor*, 27 N. J. Eq. 80;
- Mahn v. Hussey*, 28 N. J. Eq. 546;
- Boyd v. Engelbrecht*, 36 N. J. Eq. 612;
- Pfenning v. Scholar*, 43 N. J. Eq. 15;
- Hintze v. Taylor*, 57 N. J. Eq. 239.

## POINT VI.

Where on the return of a rule to show cause to open a decree of the Court of Chancery to file an

answer disputing the amount due on the mortgage, the mortgagee admits that the decree is for a greater amount than is actually due, and agrees and stipulates to accept the sum loaned, plus interest at the rate of 6 per cent per annum, which sum would be considerably less than amount of the decree, there should be a reference to a Master to ascertain and determine the exact amount due.

In point III we have previously discussed the affidavit as to the amount due made by Davenport. A case in point *Van Deventer v. Stiger*, 25 N. J. Eq. 224.

“In this case there was a mortgage as collateral security for the payment of notes, the defendant did not answer in time and made application to defend. There was a question raised between the parties as to the amount due if anything on the notes the complainant held and the Chancellor said at page 226: ‘It also appears that the complainant made no proof of his claim, but took a decree for the whole amount of the principal of the mortgage, with interest thereon, from the date of that instrument, March 12th, 1870, while the principal of his demand, according to his own statement, consisted of debts contracted in August and October, 1871, amounting in all to \$2400, less by \$75 than the principal of the mortgage. So that, to say nothing of the objectionable frame of his bill, if he were entitled to the decree pro confesso, he is not entitled to the final decree which he has entered, for he should have caused

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an account to be taken of the amount due him on the claim, as collateral to which, as he alleges, he holds the mortgage in suit, and for the amount shown to be due to him by that account, he should have entered a decree and issued execution. Instead of that, he has taken a decree and issued execution for the sum due according to the terms of the mortgage, an amount considerably greater than his demand, according to his own statement of it.

These facts are sufficient grounds for setting aside the execution and decree and letting the defendants in to answer.”

## POINT VII.

Where a party gives to an endorser a mortgage to secure his endorsement on notes in several banks, and an agreement reciting that the mortgage is given to secure the payment of notes in the several banks, the banks have an equitable estate in the mortgage.

The learned Vice-Chancellor, in the opinion filed (Case, page 101, line 23), referring to the claim of the banks' interest in the third mortgage, “Nor has any deponent made any specific statement in support of such a claim,” must have overlooked the affidavit of Mr. Bateman, wherein the agreement was not only fully set forth but when some of the banks found out that Bateman had mortgaged all his property, they demanded that the notes be paid,

then Bateman assured the banks that this mortgage was given for their benefit they relied on this mortgage to satisfy their claims.

(Case, page 64, line 19:)

“I gave him two mortgages, each in the amount of \$18,800, and covering several properties as well as being a third mortgage on the property being foreclosed in these proceedings, with the definite and clear understanding that it was to be used as collateral for the payment of the notes which Mr. Joyce had endorsed for me both for the Grenloch Amusement Company and my own personal notes. The notes intended to be secured at that time was one of \$3500 at the Laurel Springs National Bank, one of \$2500 at the First National Bank of Blackwood, one of \$6000 at the South Camden Trust Company, one at the Pitman Trust Company of \$5000, and besides other miscellaneous notes, some notes of the Grenloch Amusement Company to Mr. Joyce for insurance premiums. These all went to make up the total amount of the mortgage of \$18,800.”

(Case, page 65, line 11:)

“The amounts now due on these notes is the sum of \$385 to the Laurel Springs National Bank, which I am advised has been paid or settled by Mr. Joyce; one at the West Jersey Trust Company, trustee in liquidation for the South Camden Trust Company, of \$3190.87; two at the Camden Safe Deposit and Trust

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Company of \$2056.32 and \$370, respectively, and one at the First National Bank and Trust Company of Blackwood, New Jersey, of \$1560, and one at the Pitman Title and Trust Company of \$4250. These notes all represent balances now due on the original notes endorsed by Mr. Joyce, and for which I gave him the mortgage of \$18,800. When the mortgage was assigned to the complainant in October, 1932, a copy of the agreement and letter hereto attached, as well as a statement of the notes then outstanding, was turned over to the complainant. On February 7th, 1935, Mr. Joyce stated that he had informed Mr. Davenport when the mortgage was assigned to his bank that it did secure the other endorsements at the other banks.”

(Case, page 65, line 33:)

“After the mortgage was given to Mr. Joyce I was asked by the First National Bank of Blackwood to pay my notes and I informed them as to why the mortgage was given, and thereafter continued to pay interest and payments on account as I had done previously and to that extent I know this bank relied upon the agreement.”

The notes set out in the petition of the West Jersey Trust Company *et al*, to be made parties have not been paid. Joyce has not paid them. The affidavits of the banks (Case, pages 79, 81, 83) show

there is still due on these notes endorsed by Joyce, \$7179.45.

The situation presented is this, if the Court of Chancery is correct, that a man may give an endorser a lien on all his property as security for such endorsement, that the endorser need not pay such notes, but may release the mortgage from any of the property, even though the banks have relied on the mortgage to pay their notes.

It is our contention that when the mortgage was given to Joyce, he became a trustee for all the banks who had discounted notes for Bateman or the Grenloch Amusement Company, endorsed by him, and to see that the moneys received therefrom and the mortgage itself was used for that purpose, particularly where the banks were notified that the mortgage was created to pay off their notes.

The agreement made at the time the mortgage was given, provides (Case, page 68, line 34):

“WITNESSETH that whereas the said party of the second part has endorsed notes, at various banks, and notes given unto various trades-people, upon which notes the said party of the first part has received either cash, merchandise or services and labor.

NOW, THEREFORE, in consideration of which and of the further sum of ONE DOLLAR paid by the said party of the second party unto the said party of the first part, receipt whereof is hereby acknowledged, the said party of the first part has this day executed and delivered unto the said party of the second part a bond

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and mortgage covering all his real estate holdings, for which the above is the true consideration.

And the said party of the second part does hereby agree to release said bond and discharge said mortgage upon the payment to him of the sums owing, with interest at the legal rate, and provided further that the said *party of the first part shall pay or cause to be paid the notes upon which the said party of the second part is endorser*; OTHERWISE, said bond and mortgage to remain in full and/or any indebtedness or losses which may be occasioned to the said party of the second part by reason of his endorsement or guarantee."

In the letter from Joyce to Davenport when the mortgage was assigned to the Pitman Title and Trust Company, he said (Case, page 70, line 17): "assigned to you as collateral to a note of S. R. Bateman which I have endorsed for his account." (Line 25):

"The assignment is made and tendered to you with the understanding that it is collateral only for that portion of Mr. Bateman's indebtedness to you, on which I am liable as endorser."

The affidavit of Mr. Joyce admits the endorsement of the various notes held by the banks (Case, page 87, line 35), to the Camden Safe Deposit and Trust Company \$2056.32 and \$370, he says these

are held as collateral, the banks want the opportunity to show that these are his obligations, and he says (Case, page 88, line 26) that the Blackwood Bank does not hold any paper made by Bateman endorsed by him, but does not deny and cannot deny that this bank holds a note of the Grenloch Amusement Company endorsed by himself and Bateman (Case, page 83, line 11), which is one of the notes secured by the mortgage. Joyce admits the note of the West Jersey Trust Company, trustee (Case, page 88, line 30), but says they have other collateral.

Here is a property worth over \$34,000 (Case, page 86, line 19) on which we claim there is due on the first mortgage \$14,316.14, a second mortgage, which has been purchased by the first mortgage for \$1000, as stated in Bateman's affidavit (Case, page 66, line 12) and not denied, where the first mortgagee holds a third mortgage in trust or as collateral without bringing in the parties interested in the trust, or collateral, and then, after the final decree, assigning this third mortgage to Joyce, having him execute a release without consideration and reassign the mortgage to them. (Case, page 91, line 14.)

In the case of *West Jersey Trust Company v. Read*, 58 Atl. 113, 109 N. J. Eq. 475, a similar case.

The owner of insurance policies payable to his wife and two daughters made an agreement with them that the proceeds of the policies would go to pay his creditors. The language used was "Any bank or trust company in the City and County of

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Camden and State of New Jersey," it was held that such banks became vested of an equitable estate, even though they were not advised of the declaration.

Delivery of the agreement or notice of its existence was unnecessary.

*Janes, admx., v. Falk*, 50 N. J. Eq. 468;

*Collins v. Stewart*, 58 N. J. Eq. 392;

*In re Farrell*, 110 N. J. Eq. 260.

The agreement itself refers to the banks in which the notes endorsed by Joyce were discounted. The affidavits of Bateman and Joyce both give the names of some of these banks. They can be properly identified by parol evidence in the same manner that the banks were identified in the West Jersey Trust Company case against Read, *Ibid.* Courts of equity have always provided for the introduction of parol testimony to explain a written instrument or to create a new agreement.

In *O'Brien v. Paterson Brewing Co.*, 69 N. J. E. 117.

Testimony was introduced to vary and explain a note and mortgage to the effect that no suit was to be brought provided O'Brien continued to purchase beer from the company.

There is no necessity to change the terms of the written agreement, but the identification of the banks is a matter of right.

## POINT VIII.

If the banks have an interest then they are entitled to have the final decree opened to require an accounting for rents for the operation of the park by the first mortgagee for the year 1934 and permitted to prove the amount due on the first and subsequent mortgages.

*Moore v. DeGraw*, 5 N. J. Eq. 346.

In this case a second mortgagee made a party to a foreclosure suit was away when subpoena was left at his home. On his return he made application to have the final decree opened to require an accounting of rents. The Chancellor said:

“Under the circumstances I cannot deny him relief against the omission of the complainant to make proper credits on his mortgages. The decree and the Master’s report will be opened.”

We submit for these reasons that the final decree and all proceedings thereunder should be set aside so that the defendant, Bateman, might answer and prove before a Master the exact amount due, and that the Camden Safe Deposit and Trust Company, West Jersey Trust Company, trustee, and the First National Bank and Trust Company of Blackwood, New Jersey, might be made parties defendants so that their interest in the third mortgage might rightfully be determined.

Respectfully submitted,

OSCAR B. REDROW,

*Solicitor and of Counsel  
with Appellants.*

NEW JERSEY COURT OF ERRORS  
AND APPEALS.

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Between  
PITMAN TITLE AND TRUST COMPANY,  
*Complainant-Respondent,*  
and  
STEPHEN ROSCOE BATEMAN, *et als.,*  
*Defendants-Appellants.*

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ON APPEAL FROM THE NEW JERSEY COURT OF  
CHANCERY.

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BRIEF OF COMPLAINANT-RESPONDENT.

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STATEMENT.

An examination of the State of the Case filed in this court by the appellant will reveal the substantial facts upon which the action of the Court below was based. It must be pointed out, however, that the statement of the case as outlined by counsel for appellant in his brief, does not correctly set forth the facts as they appear. I consider it necessary to present the following statement:

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Stephen Roscoe Bateman was the owner of the majority of the stock in the Grenloch Park Amusement Company and has been the person actually in charge of the operation of the park for a good many years and was the owner of the lands whereon the park was located. He arranged for a line of credit with the Pitman Title and Trust Company, complainant herein. Under the plan he was to borrow up to \$20,000. In pursuance of the plan he executed a bond and mortgage dated November 20th, 1924, with interest at six per cent, as evidence of and security for the debt of \$20,000. As a matter of convenience, separate notes were given as each particular loan was made and by the 21st of April, 1925, the full \$20,000 had been advanced or loaned to Bateman. Sometime after the full \$20,000 had been advanced, arrangements were made between Bateman and the trust company whereby the bank received an extra three per cent. This was accomplished by taking an additional note from Bateman upon which this interest was paid. On May 28th, 1934, Bateman assigned to the complainant all of his right, title and interest in the rents due from the Grenloch Park Amusement Company, S. C., page 46. The operation of the park was continued by the company through a man named Rosenberger, treasurer of the park company, S. C., page 41, line 12. The trust company at no time operated the park. As the result of the assignment by Bateman, the trust company received from the park company the total sum of \$1000.00, S. C., page 45, line 20, and due credit was given Bateman on account of his

*Brief of Complainant-Respondent*

obligation to the bank. In the month of October the trust company directed its solicitor, Joseph Applebaum, to foreclose the mortgage, S. C. 42, line 3, and on October 6th, 1934, solicitor of the complainant wrote Bateman, S. C., page 55, Exhibit A, notifying him of the intended suit. Shortly after the mailing of the letter Bateman called on complainant's solicitor asking that the foreclosure be postponed until February, 1935, S. C. 52, lines 11 to 25, and on October 19th, 1934, complainant's solicitor wrote Bateman, S. C., page 55, line 30, to the effect that the trust company had rejected Bateman's proposition and Bateman was advised that foreclosure proceedings were being instituted. Process was issued on November 15th, 1934, directed to Stephen Roscoe Bateman, together with other defendants, S. C., page 7, line 20, and as is noted in the State of the Case, page 8, line 16, "The above named defendants served." On January 18th, 1935, the decree *pro confesso* was filed, S. C. 8, line 20, and the matter proceeded through to final decree which was entered January 28th, 1935, S. C. 20, line 24. On January 22nd, 1935, counsel for defendant wrote solicitor for complainant requesting copy of the bill of complaint, S. C. 56, line 20. After the entry of the decree some further negotiations were had between the parties, S. C. 43, line 12. However, nothing resulted and on or about March 11th, 1935, a petition was filed by Bateman asking that the final decree be opened and that the matter be referred to a Master to determine certain credits claimed by Bateman. The petition was, in

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fact, an application to open the decree to permit Bateman to file an answer alleging usury and also alleging that credit had not been given for the moneys received from the operation of the park, S. C., page 31, line 14. The order to show cause was returnable on March 18th and at the time of the return of the order an affidavit of Oscar Davenport, S. C., page 39, was read setting forth the fact that full credit had been given for the \$1000.00 received from the treasurer of the park company. Counsel for the complainant announced in open court that complainant would ask for the payment of the principal and interest at the legal rate. On May 23rd, 1935, S. C., page 98, Oscar Davenport, the cashier of the trust company, stated that he had gone over the bank record and had given credit for all interest charged in excess of six per cent with the result that the bank was willing to allow a credit of \$4334.21 on the amount shown due by the final decree, reducing the amount to be raised at the sale. This had the effect of reducing the amount to be raised at the sale to \$19,151.96, the credit for the \$1000.00 received by the bank having been previously allowed, S. C., page 45, line 20.

On May 5th, 1935, Mr. Bateman's counsel presented a petition as solicitor for the First National Bank and Trust Company of Blackwood, Camden Safe Deposit and Trust Company, Camden, West Jersey Trust Company, as liquidator for the South Camden Trust Company, claiming that the three banks were interested in the third mortgage covering the premises in question, together with other

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property, basing their claim on an agreement made between Stephen Roscoe Bateman and Louis C. Joyce, under date of December 30th, 1927, S. C. 68, line 20, contending that by reason of that agreement Joyce was trustee for the three banks. It should be noted that this petition was not verified by any of the officers of the petitioning banks and contained a general verification made by the defendant Bateman, S. C., page 62, line 10. Later, on May 22nd, 1935, Bateman furnished an additional affidavit stating his version of the transaction with Joyce, S. C., page 62, line 30. On the 25th of May, 1935, three affidavits were presented by officials of the petitioning banks, S. C., pages 79 to 84. It should be noted that in these affidavits no reference was made to the agreement between Bateman and Joyce or to the bond and mortgage given by Bateman to Joyce and there was no suggestion of a trust and no claim that credit was extended to Bateman on the strength of the Bateman-Joyce agreement. The recital in the Bateman-Joyce agreement, S. C., page 95, line 32, is as follows: "Witnesseth that whereas the said party of the second part has endorsed notes, at various banks, and notes given unto various tradespeople, upon which notes the said party of the first part has received either cash, merchandise or services and labor; And whereas the said party of the second part has loaned various sums of money to the said party of the first part at various times, which said sums are still owing." The agreement went on to provide that Bateman was to cause the notes to be paid on

which Joyce was the endorser; otherwise "said bond and mortgage to remain in full and/or any indebtedness or losses which may be occasioned to the said party of the second part by reason of his endorsement or guarantee." This agreement between Joyce and Bateman has no connection whatever with the principal case and was dealing solely with other transactions between Bateman and Joyce and, as stated in the agreement, was given to protect Joyce by reason of his said endorsements. Bateman borrowed additional money from the Pitman Title and Trust Company aside from the \$20,000 and Joyce was the endorser on this paper and as Joyce states in his affidavit, S. C. 89, line 32, "This mortgage (referring to the one covered by the agreement) was given to secure me by reason of certain endorsements that I had made for Bateman, and also to secure to me the payment of certain moneys that I had personally advanced and loaned to Bateman."

On or about the 10th of October, 1932, the Pitman Title and Trust Company required collateral from Bateman and Joyce and Joyce accordingly assigned the \$18,800.00 mortgage to the Pitman Title and Trust Company as such collateral, S. C. 90, line 5. Joyce, in his affidavit, S. C. 90, line 20, denies that the agreement between Bateman and Joyce was made for the benefit of any other person or persons or other banks, and states that the assignment was taken solely for the purpose of protecting himself by reason of his endorsements and to secure the loans that he had made to Bateman. It is also pointed out in that affidavit, S. C., page 87, that the notes at the

Camden Safe Deposit and Trust Company were deposited by him for collection, S. C. 88, line 9, and that the Camden Safe Deposit and Trust Company had been directed by him to apply any moneys collected, to his account and for his benefit, and also that the \$2,056.32 note was a note of the Grenloch Park Amusement Company and not an individual note of Bateman. At page 88, line 20, he also states that the note held by the First National Bank and Trust Company of Blackwood, New Jersey, in the amount of \$1560.00 is not an individual note of Stephen Roscoe Bateman, and at page 88, line 30, he also states that the note held by the South Camden Trust Company, now in liquidation by the West Jersey Trust Company of Camden, was a note of Bateman's endorsed by Joyce, and that Joyce had personally pledged, as collateral, stock of the First National Bank and Trust Company of Blackwood, New Jersey, which, at the time of his endorsement, had a book value of approximately \$7500.00.

The agreement between Bateman and Joyce, it will be noted, refers only to Bateman's notes and does not refer to notes of the Grenloch Park Amusement Company. The third mortgage given by Bateman to Joyce was not joined in the present foreclosure and Joyce, during the course of the proceedings, released the premises covered by the foreclosure.

I would like to call attention to the affidavit of William R. Storrie, S. C. 85. During the course of the proceedings on the petition to open the decree, the Pitman Title and Trust Company made an ap-

plication for receiver of rent. The Storrie affidavit has no place whatever in the present proceedings and was filed by Bateman, opposing the receivership of rents. Had the receivership proceedings been included in the record there would have been shown an affidavit by Oscar Davenport, cashier of the Pitman Title and Trust Company valuing the property covered by the Pitman mortgage at approximately \$18,000.00. The use of this affidavit in these proceedings is not warranted. Solicitor for Mr. Bateman should also have called attention to the Court that the items of interest paid, S. C. 75, line 30, in many instances, represented withdrawals by Bateman from one bank and deposits in the Pitman Title and Trust Company, and also represented payments on account of other notes having no connection whatever with the present proceedings.

The affidavit of Oscar Davenport, S. C. 98, sets forth the total of all credits to which Bateman was entitled.

Counsel, in his brief, at page 10, also comments that the mortgaged premises were sold without notice for a nominal consideration. This statement has no place in these proceedings and, in fact, an additional adjournment was made at the request of the office of the solicitor for the defendant.

ISSUE.

The issue raised by the petition of appeal, S. C. 108, line 22, is:

First—The fact that the Master's report was made by the same person who signed the bill as counsel.

Second—That the third mortgage from Bateman to Joyce was not joined in the proceedings giving rise to the claims of the three other banks and also the denial by the Court of Chancery of the three banks to become parties defendant.

Third—The difference in the amount of the final decree.

Fourth—The denial of the right of the defendant, Bateman, to file an answer setting up usury and to demand an accounting.

Fifth—The fifth reason or ground is an omnibus statement embracing the other four.

## ARGUMENT.

## POINT I.

The solicitor for the defendant has not grouped his points in his brief in relation to the grounds of appeal and it is quite difficult to follow the order established by his points by reason of the fact that in several of his points he refers to all of the grounds of appeal.

The first point refers to the third and fourth assigned grounds of appeal, that is, the refusal of the Court to permit Bateman to file his answer setting forth the defense of usury and an accounting.

“When a defendant fails to answer the complainant’s bill within the prescribed time, and is compelled to appeal to the favor of the Court for leave to file his answer, he will be restricted to an equitable defense and will not be permitted to set up usury.” “The plea of usury, when interposed in season, is not available because it is equitable but because it is the strict legal right of the defendant to set it up.”

*Vanderveers, Administrators v. Holcomb*, 22 N. J. Eq., 555, at page 556 and 557.

Section 2, Vol. 4, Compiled Statutes, page 5705, is a section of the New Jersey Usury Act,

“Whether or not a Final Decree should be opened is discretionary in the Court of Chan-

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cery and where an Order refusing to open a Decree was neither an abuse of such discretion nor the result of a mistake or of any imposition practiced on that Court, this Court will not review such order for the mere purpose of substituting its discretion for that of the Court of Chancery.’’

*Williams, Jr. v. Lowe*, 79 N. J. Eq. (E. & A.), page 173;

*Sanford v. Wellborn*, 85 N. J. Eq., 577, at page 588.

In the instant case Bateman was advised by letter written by the solicitor of the complainant, S. C., page 55, line 30, and process of this Court was duly served upon said defendant so that he had ample notice of the proceedings and failed to file his answer. The letter of the solicitor above referred to could leave absolutely no doubt in anyone’s mind but that the foreclosure suit was to proceed and also in the affidavit of Oscar Davenport, S. C. 42, line 25, Bateman also endeavored to arrange to convey the premises in question in the event of his being able to secure a cancellation of the mortgage held by the Grenloch Real Estate Company, and solicitor for the defendant, Bateman, S. C., page 43, line 29, made an offer of \$15,000.00 to satisfy the obligations of Bateman to the bank.

In all of the cases dealing with the right of a defendant to open a decree to let in a defense of usury, the question as to whether the Court properly exercised its right of discretion was dependent

upon the fact whether or not the defendant had actual notice of the suit and whether or not he was guilty of laches in failing to file his answer. In fact, it should be noted that the Court, in the order, S. C. 104, line 33, directed that the execution be credited with the sum of \$4334.21, reducing the amount due from \$23,486.17 to the sum of \$19,151.96. The Court also in the order, S. C. 104, line 11, gave an opportunity to Bateman to file an answer on terms in order to require the complainant to render an accounting of the operation of the park during the season of 1934. The defendant did not avail himself of that opportunity and the Special Master proceeded with the sale.

#### POINT II.

Point II also refers to the third and fourth grounds of appeal and is generally covered by our argument under Point I. I would like to make this comment, however, that the complainant was within its right to charge interest in accordance with its arrangement with the defendant and by reference to the letters, S. C. 55, and the affidavit of Davenport, S. C., page 52, line 24, it will be noted that the matter was fully discussed and that Bateman had full knowledge that the suit to foreclose had been commenced.

POINT III.

The third point also refers to the third and fourth grounds of appeal and relates to the right of the defendant to have the decree opened in order to file his defense of usury. The fact should be considered that the Vice-Chancellor, after considering the evidence presented by both the complainant and the defendant, refused to exercise his discretion in opening the decree and in his conclusions, S. C., page 100, line 22, stated "Nevertheless, the relief sought by this portion of the petition is substantially accomplished by the voluntary offer of the complainant to credit on the amount of the decree the sum of \$4334.21."

POINT IV.

The fourth point deals, in part, with the ground not covered by the petition of appeal. It also refers to the first ground in the petition of appeal, that Charles Camp Cotton, who signed the bill of complaint as counsel, also signed the Master's report. The records of the State of New Jersey will disclose that Joseph Applebaum was not a counsellor at law at the time of the filing of the bill. The entry of the final decree cures defects of this character in the proceedings.

*Shultz v. Sanders*, 38 Equity 154 at 157;  
*McCahill v. Equitable Life Assurance Society*, 26 Equity 531 at 533.

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By reference to the Master's report, S. C., page 13, it will be noted that the affidavit proving the amount due the complainant, was not sworn to before the Master but before a notary public, so that in the strict sense, no testimony was taken by the Master.

Solicitor for defendant under this point again enters into a discussion of the second ground of appeal and again refers to the agreement between Bateman and Joyce, S. C. 95, line 32. This agreement, between Bateman and Joyce, at no place and in no manner, makes any reference nor does it create any trust on the part of Bateman for the benefit of the petitioning banks, as an inspection of the agreement itself will disclose. Further the Master's report and final decree did not exceed the sum actually due thereon but by reason of the voluntary offer of the complainant the sum of \$4334.21 was credited on the execution. It should be further noted that the lien of the third mortgage which was not joined in the suit has been released insofar as it affects the premises covered by the present foreclosure suit. Defendant's brief, page 8.

## POINT V.

The fifth point has been fully discussed in the preceding four points and, in fact, the credit as voluntarily offered by the complainant, has been given on the execution.

POINT VI.

The sixth point deals with the petition of the defendant to open the decree in order that a defense of usury could be made and refers to the discretionary power of the Court as heretofore discussed.

POINT VII.

The seventh point apparently is intended to refer to the second ground of appeal. The first statement in the defendant-appellant's brief, page 21, has no foundation in the facts of the instant case. The agreement between Bateman and Joyce contains no such language as is therein recited, as by reference to S. C., page 96, will be seen. The agreement between Bateman and Joyce is more or less in the common form as used to protect endorsers and, to my mind, cannot be said to even contemplate or suggest that any person other than Mr. Joyce is to receive the protection. There appears at no place in the State of the Case any statement by any of the officers of the banks to the effect that credit was granted to Bateman and Joyce by reason of the mortgage or that they even claimed any benefit therefrom. It should also be noted at S. C., page 90, line 20, that Joyce stated, "I have, at no time, made any declaration, nor have I made any agreement with any bank or person other than the Pitman Title and Trust Company, to the effect that

the mortgage from Bateman to me was, in any way, to be held as security either directly or indirectly by me, for the benefit of any person or corporation except for myself. I took this assignment of mortgage solely for the purpose of protecting myself by reason of the endorsements and to secure the loans that I had made to said Bateman." This is an absolute denial of the statement made by Bateman, S. C. 65, line 11, and the letter from Joyce to the Pitman Title and Trust Company, S. C. 70, line 20, states "I would direct to your attention that these mortgages do not represent an actual debt but are given to me merely to secure my endorsements under and subject to an agreement, copy of which I am enclosing for your information."

There is no justification whatever for the statement made in the Bateman affidavit and repeated on page 23 of defendant's brief. Further, there is no proof by the First National Bank of Blackwood to corroborate the Bateman statement on S. C., page 65, line 33. It is my contention that the Bateman-Joyce agreement, as set forth on page 68, line 20, of the State of the Case and the letter from Joyce to the Pitman Title and Trust Company set forth on page 70 of the State of the Case, are complete answers to defendant's argument in his seventh point.

Throughout the entire brief attempts have been made by defendant's counsel to quote this agreement, and in no two places is the quotation complete or entirely correct.

The Joyce affidavit, S. C., page 87, line 35, does not state that the Camden Safe Deposit and Trust

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Company notes were held as collateral but does state that the notes were deposited with the Camden Safe Deposit and Trust Company for collection with instructions to apply the moneys collected to Joyce's own account and for his own benefit. It is my contention that the Bateman-Joyce agreement does not even protect Joyce for his endorsements of the Grenloch Park Amusement Company notes.

As stated previously, counsel has no right to rely upon the Storrie affidavit, which is not a part of the present proceedings and is improperly included in the State of the Case.

The case of *West Jersey Trust Company v. Read*, 109 N. J. Equity, 475, was a case where the beneficiaries agreed, in writing, with the assured that at his death they would distribute the insurance money to be received by them to the insured's creditors in the manner specified by the agreement.

In the Read case there is a specific declaration of trust; the instant case presents no such agreement and is one solely for the benefit of the endorser.

The matter of the question of delivery is not an issue in this case.

The Bateman-Joyce agreement does not refer to the banks in the sense of giving them protection.

VIII.

Defendant's eighth point is a continuation of his argument under the seventh and other previous points.

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By way of summary, I wish, for the moment, to return to the petition of appeal:

The first ground has been covered in our argument under Point IV.

The second ground of appeal has been covered partly by the argument under Point IV and Point VII of the brief.

The third and fourth grounds of appeal have been discussed under Points I, II, III, partly by Point IV and Point VII.

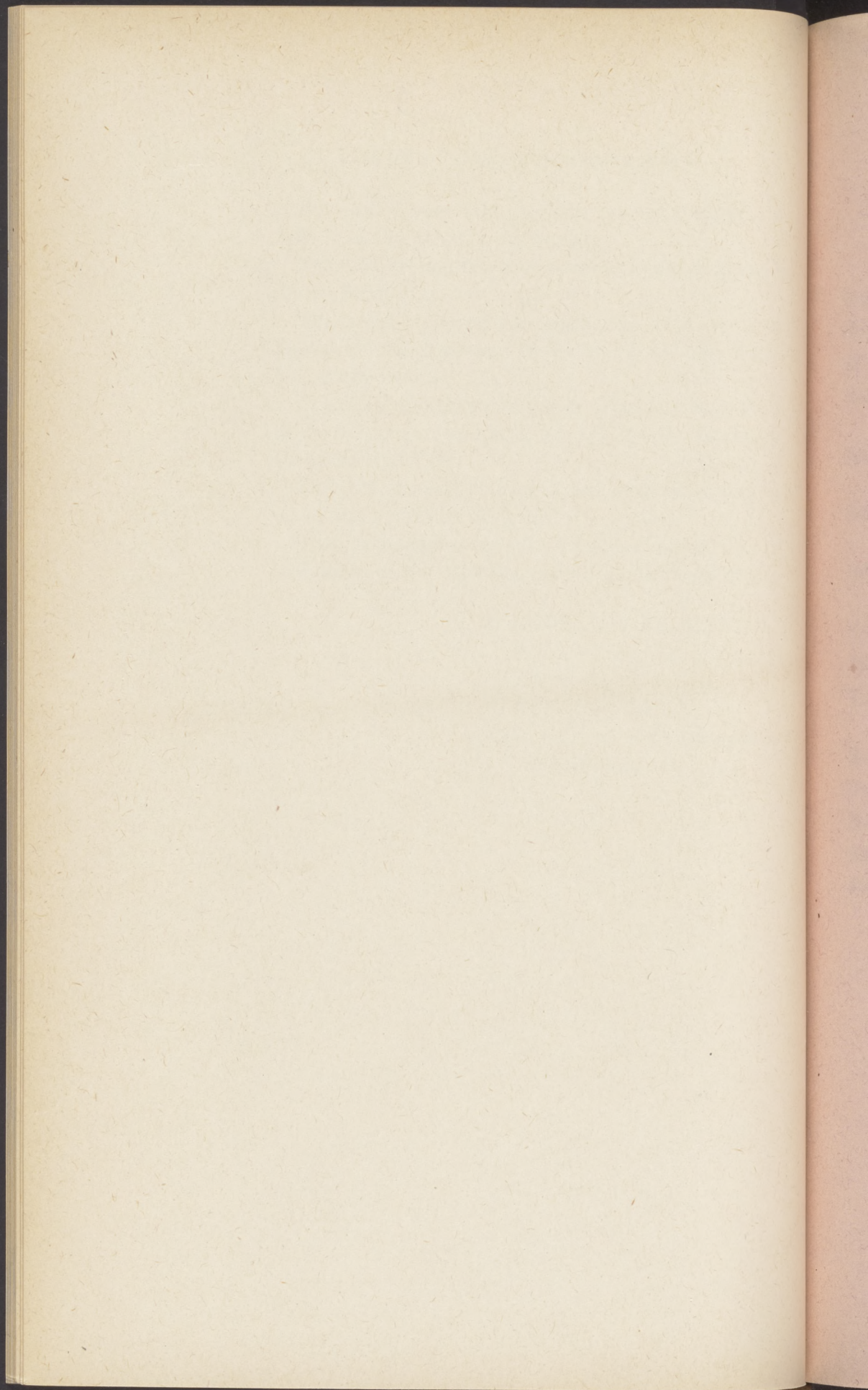
The fifth ground of appeal has been discussed in all of the points of the brief.

Your respondent, therefore, prays that the decree and order of the said Chancellor should be affirmed.

JOSEPH R. APPLEBAUM,  
*Solicitor for Complainant-  
Respondent.*

S. RUSLING LEAP,  
*Of Counsel with Complainant-  
Respondent.*

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