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BILL OF COMPLAINT.

Filed April 27, 1926.

In Chancery of New Jersey

To Honorable Edwin Robert Walker, Chancellor. 10

Hyman Liss, of the City of New York, County and State of New York, complains of United States Finance and Securities Corporation, Louis E. Goldfarb, Philip J. Schotland and Herman Steiner, all of the City of Newark, in the County of Essex and State of New Jersey, and says:

(1) In November, 1922, one Hyman White purchased from the Curtiss-Warner Corporation, body corporate, and Samuel Goldfarb, a certain tract of land in the Ampere section of Bloomfield, 20 Essex County, New Jersey, containing 30 lots for building and described as follows:

> Beginning at a point formed by the intersection of Ampere Parkway (formerly North 18th street) with the northeasterly side of Beardsley avenue, from thence running (1) northeasterly along Ampere Parkway two hundred twenty-five feet to the southwesterly side of Floyd avenue; thence (2) northwesterly along the same four hundred ninety-seven feet and ninety hundredths of a foot more or less to the southeasterly side of Grove street; thence (3) southwesterly along the said southeasterly side of Grove street two hundred thirty-six feet and seventy-four hundredths of a foot more or less to the aforesaid side of Beardsley avenue; thence (4) southeasterly along the same five hundred seventy-one feet and fifty-two

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hundredths of a foot more or less to the place of Beginning.

Said lands were conveyed to him subject to a mortgage in the sum of Fifteen Thousand Dollars, held by Granite Realty Company, body corporate, payable November 28, 1924, with in-
10 terest thereon, at the rate of six per cent. per annum, payable quarter-annually, and recorded in the Register's office of Essex County, in book B-47 of mortgages for said County on pages 203-205. Said Hyman White mortgaged said lands to Samuel Goldfarb and Curtiss-Warner Corporation, by a purchase money mortgage for the balance of the purchase price thereof, ($44,-000.00), being $29,000.00, dated December 13, 1922, and recorded in the Essex County
20 Register's office, in book K-47 of mortgages for said County, on pages 203-205, which they later sold and assigned to Warner-Bloom Corporation, by Assignment, dated January 3, 1923, and recorded in the Essex County Register's office, in book 158 of assignments for said County on pages 185-186.

(2) Thereafter, on December 13, 1922, said Hyman White, conveyed fourteen of said lots
30 to Isadore A. Sisselman and sixteen of said lots to his brother-in-law, Hyman Liss, by two deeds, dated December 13, 1922, and recorded in the Register's office of Essex County, in book Q-67 of deeds for said County on pages 165 to 168. The description of the deed to Hyman Liss, being as follows:

Premises situate, lying and being in the Town of Bloomfield, County of Essex and State of New Jersey.

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FIRST TRACT: BEGINNING at the northeast corner of Grove St. and Beardsley Ave. thence (1) Northerly along the Easterly line of Grove Street 59.81 feet; thence (2) Easterly at right angles to Grove Street 100 feet; thence (3) Southerly parallel with Grove Street 27 feet to the Northerly line of Beardsley Ave. and thence (4) Westerly along the same 105.25 feet to the point and place of BEGINNING. 10

SECOND TRACT: BEGINNING at a point in the Easterly line of Grove Street, distant 59.81 feet Northerly from the Northerly line of Beardsley Avenue; thence (1) Easterly at right angles to Grove St.; 100 feet; thence (2) Northerly parallel with Grove St. 37 feet; thence (3) Westerly at right angles to Grove St. 100 feet to the Easterly line of Grove St. and thence (4) Southerly along the same 35 feet to the point and place of BEGINNING. 20

THIRD TRACT: BEGINNING at a point in the Easterly line of Grove St. distant 94.81 feet Northerly from the Northerly line of Beardsley Ave. thence (1) Easterly at right angles to Grove St. 100 feet; thence (2) Northerly parallel with Grove St. 35 feet; thence (3) Westerly at right angles to Grove St. 100 feet to the Easterly line of Grove St. and thence (4) Southerly along the same 35 feet to the point and place of BEGINNING. 30

FOURTH TRACT: BEGINNING at a point in the Westerly line of North 18th St. distant 37.50 feet Northerly from the Northerly line of Beardsley Ave. thence (1) Westerly at right angles to North 18th St. 100 ft.; thence (2) Northerly parallel with North 18th St. 40

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37.50 ft.; thence (3) Easterly at right angles to North 18th St. 100 ft. to the Westerly line of North 18th St. and thence (4) Southerly along the same 37.50 ft. to the point and place of BEGINNING.

FIFTH TRACT: BEGINNING at a point in 10 the Westerly line of North 18th St. distant 75 ft. Northerly from the Northerly line of Beardsley Ave. thence (1) Westerly at right angles to North 18th St. 100 ft.; thence (2) Northerly parallel with North 18th St. 37.50 ft.; thence (3) Easterly at right angles to North 18th St. 100 ft. to the Westerly line of North 18th St. and thence (4) Southerly along the same 37.50 ft. to the point and place of BEGINNING.

20 SIXTH TRACT: BEGINNING at a point in the Northwesterly corner of North 18th St. and Beardsley Ave. thence (1) Westerly along the Northerly line of Beardsley Ave. 100 ft.; thence (2) Northerly parallel with North 18th St. 37.50 ft.; thence (3) Easterly at right angles to North 18th St. and parallel with Beardsley Ave. 100 ft. to the Westerly line of North 18th St. and thence (4) Southerly along the same 37.50 ft. to the point and 30 place of BEGINNING.

SEVENTH TRACT: BEGINNING at a point in the Northerly line of Beardsley Ave. distant 270 ft. Westerly from the Westerly line of North 18th St. thence (1) Northerly at right angles to Beardsley Ave. 112.50 ft.; thence (2) Westerly parallel with Beardsley Ave. 34 ft.; thence (3) Southerly at right angles to Beardsley Ave. 112.50 ft. to the Northerly line of Beardsley Ave. and thence 40 (4) Easterly along the same 34 ft. to the point and place of BEGINNING.

Eighth Tract: Beginning at a point in the Northerly line of Beardsley Ave. distant 304 ft. Westerly from the Westerly line of North 18th St. thence (1) Northerly at right angles to Beardsley Ave. 112.50 ft.; thence (2) Westerly parallel with Beardsley Ave. 34 ft.; thence (3) Southerly at right angles to Beardsley Ave. 112.50 ft. to the Northerly line of Beardsley Ave. and thence (4) Easterly along the same 34 ft. to the point and place of Beginning.

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Ninth Tract: Beginning at a point in the Northerly line of Beardsley Ave. distant 338 ft. Wly from the Wly line of N. 18th St., thence (1) Nly at right angles to Beardsley Ave., 112.50 ft.; thence (2) Westerly parallel with Beardsley Ave. 34 feet; thence (3) Southerly at right angles to Beardsley Avenue 112.50 ft. to the Northerly line of Beardsley Avenue, and thence (4) Easterly along the same 34 feet to the point and place of Beginning.

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Tenth Tract: Beginning at a point in the Northerly line of Beardsley Avenue, distant 372 feet Westerly from the Westerly line of North 18th Street; thence (1) Northerly at right angles to Beardsley Avenue, 112.50 ft.; thence (2) Westerly parallel with Beardsley Ave. 34 feet; thence (3) Southerly at right angles to Beardsley Ave. 112.50 ft. to the Northerly line of Beardsley Ave. and thence (4) Easterly along the same 34 feet to the point and place of Beginning.

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Eleventh Tract: Beginning at a point in the Northerly line of Beardsley Ave., distant 100 ft. Westerly from the Westerly line of North 18th St., thence (1) Northerly at right

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angles to Beardsley Ave., 112.50 feet; thence (2) Westerly parallel with Beardsley Ave., 34 feet; thence (3) Southerly at right angles to Beardsley Ave., 112.50 feet to the Northerly line of Beardsley Ave., and thence (4) Easterly along the same 34 feet to the point and place of BEGINNING.

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TWELFTH TRACT: BEGINNING at a point in the Northerly line of Beardsley Avenue distant 134 ft. Westerly from the Westerly line of North 18th St., thence (1) Northerly at right angles to Beardsley Ave., 112.50; thence (2) Westerly parallel with Beardsley Ave., 34 ft.; thence (3) Southerly at right angles to Beardsley Ave., 112.50 ft. to the Northerly line of Beardsley Ave., and thence (4) Easterly along the same 34 feet to the point and place of BEGINNING.

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THIRTEENTH TRACT: BEGINNING at a point in the Northerly line of Beardsley Avenue distant 168 feet westerly from the Westerly line of North 18th St., thence (1) Northerly at right angles to Beardsley Ave., 112.50 feet; thence (2) Westerly parallel with Beardsley Ave., 34 ft.; thence (3) Southerly at right angles to Beardsley Ave., 112.50 feet to the Northerly line of Beardsley Ave., and thence (4) Easterly along the same 34 feet to the point and place of BEGINNING.

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FOURTEENTH TRACT: BEGINNING at a point in the Northerly line of Beardsley Ave. distant 302 feet Westerly from the Westerly line of North 18th Street; thence (1) Sly at right angles to Beardsley Ave., 112.50 feet; thence (2) Westerly parallel with Beardsley Ave., 34 feet; thence (3) Southerly at right angles to Beardsley Ave., 112.50

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feet to the Northerly line of Beardsley Ave., and thence (4) Easterly along the same 34 feet to the point and place of Beginning.

Fifteenth Tract: Beginning at a point in the Nly line of Beardsley Ave., dist. 236 ft. Wly from the Wly line of N. 18th St., thence (1) Nly at right angles to Beardsley Ave. 112.50 ft. thence (2) Wly parallel with Beardsley Ave. 34 ft.; thence (3) Sly at rt angles to Beardsley Ave. 112.50 ft. to the Nly line of Beardsley Ave., and thence (4) Ely along the same 34 ft. to the pt and pl of Beginning. 10

Sixteenth Tract: Beginning at a point in the Nly line of Beardsley Ave. dist. 406 ft. Wly from the Wly line of N. 18th St. thence Nly. at rt angles to Beardsley Ave. 112.50 ft.; thence (2) Wly parallel with Beardsley Ave. 24.44 ft. to the rear line of lots fronting on Grove St. thence (3) Southerly along the same parallel with Grove Street 118.41 feet to the Northerly line of Beardsley Avenue and thence (4) Easterly along the same 61.35 feet to the point and place of Beginning. 20

(3). Subsequently under contract with said Hyman Liss, as owner, said Hyman White, constructed sixteen dwelling houses on the sixteen lots aforesaid, to a point where they were about two-thirds finished, and was obliged to stop proceedings under the following circumstances. 30

(4). United States Finance & Securities Corporation, of which Louis E. Goldfarb was a head official and Philip J. Schotland was counsel, granted a mortgage construction loan of $6,-000.00, on each of the sixteen lots aforementioned, 40

each of which mortgages is made by Hyman Liss and Celia, his wife, six mortgages are dated December 13, 1922, and recorded respectively, in the Register's office of Essex County in book H-47 of Mortgages for said County on pages 344 to 353, and ten mortgages are dated De-
10 cember 18, 1922, and recorded respectively, in the Register's office of Essex County in book R-47 of Mortgages for said County on pages 67 to 74, the payments thereon, being arranged in portions as the work progressed, the final payment of ($1,550.00), to be made when the house was completed on each lot.

(5) The first intention was to build a house similar to other houses constructed by said Hyman White in Roselle, N. J., upon which said
20 United States Finance & Securities Corporation held mortgages, but at the suggestion of said Louis Goldfarb, when the mortgages were executed, it was determined by said Hyman Liss and Hyman White to build a larger house, with rooms in the attic and to leave the payments on the mortgages as arranged for the smaller house, said Louis E. Goldfarb, promising on behalf of said United States Finance & Securities Corporation, and for himself that they would
30 help through with the buildings by advancing sufficient payments as the work progressed notwithstanding the stipulated sums.

(6) Said United States Finance & Securities Corporation charged and deducted a bonus of twelve per cent. from the moneys loaned on said mortgages. Almost immediately after the beginning of said construction, said United States Finance & Securities Corporation, acting through said Louis E. Goldfarb and Philip J. Schotland,
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so conducted the disbursing of the construction payments, as to greatly hamper the work. It became necessary to get cement blocks for foundations amounting to about $300.00, a house, and after arranging for their payment to the satisfaction of the dealer from the second, third and fourth payments, on the construction loan, for which the dealer accepted an order on said Company payable as aforesaid. Said Company, however, when the blocks were furnished and the second payment came due on each house, being $850.00, less twelve per cent., compelled the payment of the entire amount of the price of said blocks, therefrom, leaving insufficient money to carry on the house to the next construction payment ($500 each house). He insisted because he had other business dealings with the cement block people and wanted to get their good will for his own schemes.

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(7) Finding that it was impossible to continue the plan of construction, with the payments as stipulated, said Liss and White, having used up all their own money, besides made application to Messrs. Schotland and Goldfarb, as representing said United States Finance & Securities Corporation, and reminded them of their promise made, to see the work through notwithstanding the stipulated payments. They refused to increase the payments but finally agreed to pay said White $100.00, a week to carry on the work, telling him he could put on as much help as he required to finish the construction.

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(8) By this time, payments for material were overdue and one creditor, the American Wood Lumber Company went bankrupt and a lien

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claim was filed on its behalf against the houses, which affected greatly the credit of the builder and owner and said Louis Goldfarb, taking upon himself, to explain the matter to the creditors made it worse. Said White thereupon found it necessary to make substantial payments to the
10 lumber and trim people, Baltz-Howell Company, and to Hudson Plumbing Supply Company, and to the plastering supply people, and at that time the houses were raised, three houses had rough plumbing and steam heat in, three houses were ready for plastering, fourteen houses had electrical wiring installed, all the shingles were painted, the clapboards were primed, and all the chimneys were in, which warranted the payments asked for, namely $2,000.00, to Baltz-Howell Company, $2,000.00 to Hudson Plumbing
20 Supply Company, and $1,000.00, to the Plastering Material Firm, a total of $5,000.00. This payment would have enabled the owner and builder to obtain all the credit necessary for the completion of the buildings. There was at that time $56,000.00, yet, to come from the construction loans aforesaid, and said owner and builder were rightfully entitled to the payment of said $5,000.00, asked.

30 (9) Said Goldfarb refused to make the payment, unless all the supply houses would agree to furnish sufficient material to complete the buildings. Representatives from said supply houses met thereafter, on the following Monday, with Mr. Goldfarb, at his office, when he refused to make a payment until the material men should also give him a contract and agreement to furnish the entire amount of material necessary to complete the buildings. This they said they
40 would do if said Goldfarb, would agree not to

press the construction mortgages for payment at the expiration of their term, then approaching, so that the owner and the builder might have a fair chance to complete and sell them. This he declined, saying, "Nothing doing. Why should I do that, when it is fifty per cent. lost?" He thereupon told the material men, that it was useless for them to, "butt in," as he intended to take away the property, anyhow. They then withdrew and declined further credit, for fear they would get in deeper than they were already. At the end of the week, Mr. Goldfarb, refused to advance the payroll, to pay the workmen on the various houses, claiming that the interest had not been paid on said construction loans, when in fact said interest had been deducted at the outset, by said Louis Goldfarb, besides the bonus of twelve per cent. aforesaid, and should have been paid by said Goldfarb or his said Company.

(10) By reason of such non-payment of interest, foreclosure proceedings were begun on the first and second mortgages aforesaid, and said foreclosures were both brought about by said Louis Goldfarb and his connivance in order to get complete control of the property, without advancing the moneys required to be advanced under the said construction loans. The builders and Hyman White succeeded in stopping the foreclosure of the first mortgage, at that time, but the second mortgage held by the Warner-Bloom Corporation, of which said Louis Goldfarb, was president and said Philip J. Schotland, counsel, continued its foreclosure to decree for sale, but never sold thereunder. Said Hyman White, also succeeded in stopping the foreclosure of the mortgage of the Granite Realty

Company, covering the tract adjoining the premises in question, title to which was held in the name of Curtiss-Warner Corporation, upon the payment of one year's interest. This was done upon the promise of said Goldfarb and Schotland, that they would help said owner and builder to go through to completion with the proposition.

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(11) At a conference later held at the office of said Schotland, the said Goldfarb, offered to help complete as promised, if complainant would transfer his title to the Curtiss-Warner Corporation, and pay 10% bonus to said Goldfarb, for carrying on the work and an additional ten per cent. bonus on the money which was lying there already, which would amount again to around $20,000.00. Complainants offered to convey the property by trust deed, but said Goldfarb would not accept this. Later he offered to carry out his promise to complete for a fifty-fifty division of the profits, all claims however to be paid out of the fifty per cent. share of the owner and builder. He had already made a profit of $24,000.00, on the land and $12,000.00, in bonuses and yet wanted whatever remained. At the instigation of said Goldfarb (no interest having been paid by said United States Finance & Securities Corporation, as agreed), proceedings to foreclose the second mortgage, held by his Company, the Warner-Bloom Corporation were begun, to which answer was filed on behalf of Herman Liss, the complainant, and said foreclosure was not pressed to a sale.

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(12) In the meantime, the sale of the Bloomfield properties, together with certain properties in Roselle Park, was negotiated by complainant, with one Updike, of Trenton, for $99,200.00, and

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an agreement was made between the complainant and said United States Finance & Securities Corporation, to pay said corporation for its interest in the property, $78,000.00, of which $10,000.00, was paid in cash. On account of Mr. Updike's subsequent severe illness, the deal could not go through and the said United States Finance & Securities Corporation, retained the $10,000.00 down payment.

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(13) Thereafter, a second foreclosure was begun by the Granite Realty Corporation, on its first mortgage and finally proceeded to decree and Sheriff's sale, the premises being bought in by United States Finance & Securities Corporation, for $18,000.00, and later sold by them to said Louis E. Goldfarb, who conveyed a half interest to one Hyman Steiner, and various parcels of the property to other persons by deeds, a list of all said conveyances, being hereinafter set forth:

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1. Warranty Deed from Louis E. Goldfarb and Tillie, his wife and Herman Steiner and Sarah, his wife to Meyer Kasofsky, dated April 23, 1925, and recorded April 29, 1925, in the Register's office of Essex County, in book K-72 of deeds for said County on page 44.

a. Warranty Deed from Meyer Kasofsky and Fannie his wife, to Elsworth J. Wyre, dated Sept. 10, 1925, and recorded Oct. 1, 1925, in book V-72 of deeds for Essex County on page 560.

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b. Warranty Deed from Meyer Kasofsky and wife to Elsworth J. Wyre, dated September 10, 1925, and recorded Oct. 1, 1925, in book V-72 of deeds for Essex County on page 561.

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c. Warranty Deed from Meyer Kasofsky and wife to Grace M. Wyre, dated Sept. 1, 1925, and recorded Oct. 1, 1925, in book V-72 of deeds for Essex County on page 562.

d. Waranty Deed from Meyer Kasofsky and wife to Grace M. Wyre, dated Nov. 2, 1925, and recorded Nov. 9, 1925, in book L-73 of deeds for Essex County on page 318.

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e. Warranty Deed from Meyer Kasofsky and wife to Joseph Crowley, dated October 20, 1925, and recorded October 27, 1925, in book G-73 of deeds for Essex County on page 191.

2. Warranty Deed from Louis E. Goldfarb *et ux et als.* to Nellie Jevons, dated June 9, 1925, and recorded July 8, 1925, in the Register's office of Essex County, in book K-72 of deeds for said County on page 582.

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3. Warranty Deed from Louis E. Goldfarb *et ux et als.*, to Cosimo Rusignuolo and Gondolfo Rizzo, dated May 28, 1925, and recorded June 3, 1925, in book Q-72 of deeds for Essex County on page 22.

4. Warranty Deed from Louis E. Goldfarb *et ux et als.*, to Thomas Barry, dated July 9, 1925, and recorded Sept. 2, 1925, in the Register's office of Essex County, in book A-73 of deeds for said County on page 364.

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5. Warranty Deed from Louis E. Goldfarb *et ux et als.*, to Mary Snyder and Ira, her husband, dated September 15, 1925, and recorded October 2, 1925, in book F-73 of deeds for Essex County on page 72.

6. Warranty Deed from Louis E. Goldfarb *et ux et als.*, to Joseph Varveri, Jr., dated Oc-

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tober 1, 1925, and recorded October 19, 1925, in book L-73 of deeds for Essex County on page 115.

7. Warranty Deed from Louis E. Goldfarb *et ux et als.,* to Angiolina Simiele and Nicola, her husband, dated June 2, 1925, and recorded July 1, 1925, in book R-72 of deeds for Essex County on page 236. 10

8. Warranty Deed from Louis E. Goldfarb *et ux et als.,* to Anthony F. Kousky and Susan A., his wife, dated July 17, 1925, and recorded August 26, 1925, in book V-72 of deeds for Essex County on page 320.

9. Warranty Deed from Louis E. Goldfarb *et ux et als.,* to Frank Rizzo and Gondolfo Rizzo, dated Aug. 18, 1925, and recorded Sept. 18, 1925, in book V-72 of deeds for Essex County on page 471. 20

10. Warranty Deed from Louis E. Goldfarb *et ux et als.,* to Harry C. Greenfield, dated January 22, 1926, and recorded February 4, 1926, in book A-74 of deeds for Essex County on page 19.

11. Warranty Deed from Elsworth J. Wyre and Grace M., his wife to Edna May Dirgo, dated October 13, 1925, and recorded October 16, 1925, in book F-73 of deeds for Essex County on page 176. 30

The subsequent mortgages and assignments cover the various parcels of the property sold to the said Louis E. Goldfarb:

1. Six mortgages from Hyman Liss and Celia, his wife, to United States Finance & Securities Corporation, $6,000 each, dated December 13, 1922, and recorded December 15, 1922, in book 40

H-47 of mortgages for Essex County on pages 344 to 353.

2. Ten mortgages from Hyman Liss *et ux* to United States Finance & Securities Corp.; $6,-000.00 each, dated Dec. 18, 1922, and recorded Dec. 22, 1922, in book R-47 of mortgages for Essex County on pages 67 to 74.

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United States Finance & Securites Corp. assigns the foregoing 16 mortgages to Abraham Bloom, by assgnment dated June 17, 1924, and recorded June 18, 1924, in book 167 of assignments for Essex County on page 255.

Abraham Bloom, reassigns the said 16 mortgages back to the United States Finance & Securities Corp., by assignment dated April 12, 1925, and recorded May 29, 1925, in book 171 of assignments, page 345.

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3. Hyman Liss and Celia, his wife, mortgage said premises to John R. Walker, trustee, by mortgage for $14,598.64, dated Aug. 6, 1923, and recorded Aug. 8, 1923, in book H-49 of mtgs. for Essex County on page 201.

4. Hyman Liss and wife give mortgage to Joseph Gross, amount $6,000.00, dated November 1, 1923 and recorded November 11, 1923, in book O-49 of mtgs. for Essex County on page 428.

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Joseph Gross assigns said mortgage to Laura L. Crouse, wife of Ira R. Crouse, by assignment dated June 30, 1925, and recorded July 8, 1925, in book 171 of assignments for Essex County on page 507.

5. Louis E. Goldfarb gives a mortgage to U. S. Finance & Securities Corp., dated March 11, 1925 and recorded Mar. 13, 1925, in book U-53 of mortgages for Essex County on page 196 said mortgage has been cancelled August 26, 1925.

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6. Six mortgages given by Louis E. Goldfarb to Usbe B & L Assn.,amount $11,000 each, dated March 11, 1925 and recorded March 13, 1925, in book Y-53 of mortgages for said County on page 17 to 25.

7. Two mortgages given by Goldfarb to Waverly B & L dated Mar. 11, 1925 and recorded Mar. 13, 1925, in book Y-53 of mortgages for Essex County on page 27 to 29, $11,000 each. 10

8. Five mortgages given by Goldfarb to Waverly B & L Assn., dated Mar. 11, 1925 and recorded March 13, 1925, amt. $11,000 each, book X-53 of mtgs. for said County on page 29 to 37.

9. Six mortgages given by Goldfarb to Richmont B & L Assn., dated March 11, 1925 and recorded March 13, 1925, amount $11,000 each, book X-53 of mtgs. for said County on page 38 to 44 and book U-53 of mortgages, page 192 to 194. 20

10. Eleven mtgs. from Meyer Kasofsky to Louis E. Goldfarb and Herman Steiner, as follows: dated April 23, 1925 and recorded April 29, and assigned by Goldfarb and Steiner by assignments dated Sept. 22, 1925, and recorded Sept 10, 1925:

Mortgage Book	*Amount*	*Assignee*	*Book*
G-54 page 50	$2,437.50	George Snyder	175 p. 239
G-54 page 51	2,437.50	Vailsburg Trust Co.	173 p. 533
G-54 page 52	2,437.50	" " "	173 p. 533
G-54 page 53	1,665.00	" " "	173 p. 533
G-54 page 54	1,665.00	" " "	173 p. 533
G-54 page 55	1,642.50	George Snyder	175 p. 240
G-54 page 56	1,642.50	Vailsburg Trust Co.	173 p. 533
G-54 page 57	1,642.50	" " "	173 p. 533
Z-53 page 340	1,642.50	" " "	173 p. 533
Z-53 page 341	1,642.50	" " "	173 p. 533
Z-53 page 342	1,642.50	" " "	173 p. 533

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11. Four mtgs. from Meyer Kasofsky and Fannie, his wife to Richmont B & L Assn., 40

dated July 28, 1925 and recorded Aug. 13, 1925, amounts $11,000.00, and recorded in book H-55 of mortgages for said County on pages 102 to 108.

12. Three mtgs. from Elsworth J. Wyre to Meyer Kasofsky dated Sept. 10, 1925 and re-
10 corded Oct. 1, 1925, in book T-55 of mtgs. for said County on page 128 to 132, amounts $1,-800.00, $1,600.00; $2,300.00. One mtg. from Grace M. Wyre and Elsworth J., her husband to Kasofsky, dated Sept. 10, 1925 and recorded October 1, 1925 in book W-55, page 375. Said four mortgages were assigned by Kasofsky to Newark Construction Co., dated Jan. 20, 1925 and recorded same, book 175 of assignments, page 477 and reassigned to John P. Callaghan Co., book
20 178 of assignments, page 241.

13. Mtg. from Edna May Dirgo and Emil, her husband to Elsworth J. Wyre and Grace M., his wife, dated Oct. 13, 1925 and recorded Oct. 16, 1925, book E-55 of mtgs. page 578. Amount $1,840.35.

14. Mtg. Joseph J. Crowley, single to The Channel Lumber Co. of Belleville, N. J., dated Mar. 23, 1926 and recd. March 27, 1926. Book L-57, page 85. Amount $3,006.00. Mtg. from
30 Crowley to Meyer Kasofsky, dated Oct. 20, 1925 and recd. Oct. 27, 1925. Book P-55, page 324. Amount $3,480, and assigned to Newark Construction Co., book 175 of assignments page 477. A mortgage from Crowley to Plaza Realty Co., dated Nov. 6, 1925 and recorded November 11, 1925, in book E-56 of mtgs. on page 44. Amount $24,000.00. Assigned by Plaza Realty to Lena Mendel, dated Dec. 29, 1925 and recorded Dec. 29, 1925, book 175 of assignments, page 387.
40 For part consideration of $6,000.00, and assigned by Plaza Realty Co. for the balance of the con-

sideration $18,000 to Lena Fishbach, dated Dec. 21, 1925 and recorded December 22, 1925. Book 176, page 493.

15. Mortgage from Nellie Jevons and George, her husband to Louis E. Goldfarb and Herman Steiner, dated June 9, 1925, and recorded July 8, 1925 in book V-53, page 563, amount $4,858.41, and assigned by Goldfarb and Steiner to Percy Menage, trustee for Vailsburg Trust Co., dated Aug. 6, 1925 and recorded Aug. 19, 1925 in book 174 of assignments, page 591.

16. Mtg. from Thomas Barry, widower to The Half Dime Savings Bank, of the City of Orange, dated Feb. 8, 1926 and recorded February 10, 1926, book E-57 of mortgages, page 34. Amount $6,000.00.

17. Mtg. from Mary Snyder and Ira, her husband to Louis E. Goldfarb and Herman Steiner, dated Sept. 15, 1925 and recorded October 2, 1925, book X-55 of mortgages page 88, amount $3,519.94.

19. Mtg. from Joseph Varveri, Jr., to Goldfarb and Steiner, dated October 1, 1925 and recorded October 19, 1925, book V-55 of mtgs. page 76. Amount $3,634.32.

20. Mtg. from Angiolina Simiele and Nicola, husband to Goldfarb and Steiner, dated June 2, 1925 and recorded July 1, 1925, book B-54, page 229, amount $3,850.

21. Mtg. from Anthony F. Kousky and Susan A., his wife, to Waverly B & L Assn., dated July 17, 1925 and recorded August 26, 1925, book M-55 page 206, amount $1,000.00.

22. Mtg. from Frank Rizzo and Gondolfo Rizzo to Goldfarb and Steiner, dated Sept. 15, 1925 and recorded Sept. 18, 1925, book B-55 page

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482. Amount $2,700.00 assigned to Morris Sossner, dated January 6, 1926 and recorded January 7, 1926, book 176, page 519.

23. Mtg. from Cosimo Rusignuolo and Gondolfo Rizzo to Goldfarb and Steiner, dated June 1, 1925 and recorded June 3, 1925. Book I-54, page 248. Amount $4,670. Assigned to Percy B. Menage, trustee Vailsburg Trust Co., dated Sept. 6, 1925 and recorded Sept. 19, 1925. Book 174, page 591.

24. Mtg. from Harry C. Greenfield to Goldfarb and Steiner dated January 22, 1926 and recorded February 4, 1926. Book I-56, page 401. Amount $3,851. Assigned to Samuel Goldfarb, dated February 18, 1926 and recorded February 23, 1926, book 178 of assignments, page 279.

14. Complainant was not made properly a party to the suit nor served with process in the foreclosure proceedings and the proceedings and the sale were not properly and legally advertised. Defendants acquired no legal or equitable title by said sale and hold the same by themselves and their grantees in trust for complainant, whose title has never been cut off according to law. After the aforesaid Sheriff's sale a strict foreclosure suit was begun by the Granite Realty Company, against said lands on the first mortgage aforesaid, for the purpose of correcting the defects in service of process and advertising in the former proceedings, in as much as the purchasers at said Sheriff's sale, U. S. Finance & Securities Corporation delayed in taking title and paying the price, because of such defects, but during the pendency of said strict foreclosure suit, the purchase money was paid and the suit was, against the objections of this complainant, discontinued. Complainant avers that said de-

fendant, United States Finance & Securities Corporation, and Louis E. Goldfarb, in withholding payments from the construction loans, when due complainant, as hereinbefore noted caused a stoppage of the work of construction and by withholding interest payments and other active efforts, induced persons with mortgage and other claims against the premises to begin actions for the recovery thereof for the purpose of and with the result of preventing complainant from proceeding to completion with the said building, and selling them at a profit, which could readily have been done, as there was at that time an active demand for dwellings of that class, thereby intending to and actually working a fraud upon complainant by which he was stripped of all his property and completely impoverished. Only $52,000 of the $96,000 due on the construction loans was paid out to complainant, less $12,000, as hereinbefore stated, while the whole amount thereof appears as mortgage liens upon the property.

15. Complainant is without adequate relief in the courts of law, and therefore prays:

1. That the United States Finance & Securities Corporation; Louis E. Goldfarb; Herman Steiner; Philip J. Schotland; Curtiss-Warner Corporation; Warner-Bloom Corporation; Meyer Kasofsky and Fanny, his wife; Tillie Goldfarb, wife of Louis E. Goldfarb; Sarah Steiner, wife of Herman Steiner; Elsworth J. Wyre and Grace M. Wyre, his wife; Joseph Crowley (single); Nellie Jevons and George, her husband; Edna May Dirgo and Emil, her husband; Cosimo Rusignulo and (Anna) fictitious Rusignulo, his wife; Gondolfo Rizzo and (Anna) fictitious Rizzo, his wife; Thomas Barry (widower); Mary Snyder

and Ira, her husband; Half Dime Savings Bank of Orange, N. J.; Joseph Varveri, Jr. and (Anna) fictitious Varveri, his wife; Angiolina Simiele and Nicola, her husband; Anthony F. Kousky and Susan A. Kousky, his wife; Waverly Building and Loan Assn. of Newark, New Jersey; Frank Rizzo and (Anna) fictitious Rizzo, his
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wife; Harry C. Greenfield and (Anna) fictitious Greenfield; his wife; Richmont Building and Loan Assn. of Newark, New Jersey; John R. Walker, trustee; Joseph Gross, assignee; Laura L. Crouse, wife of Ira R. Crouse, assignee; Abraham Bloom, assignee; George Snyder, assignee; Percy B. Menage, trustee for Vailsburg Trust Co., assignee; Vailsburg Trust Company, assignee; Usbe Building & Loan Assn. of Newark, New Jersey, The Channel Lumber Company of Belle-
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ville, New Jersey; Newark Construction Company; John P. Callaghan Company, assignee; Plaza Realty Company, Lena Mendel, assignee; Morris Sossner, assignee; Samuel Goldfarb, assignee, may answer this bill of complaint.

2. That said United States Finance & Securities Corporation, Louis E. Goldfarb, Philip J. Schotland, Curtiss-Warner Corporation, Herman Steiner and Warner-Bloom Corporation may be
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required to account in this cause for all their transactions in connection with the premises aforesaid, the rents, issues, and profits thereof, as well as the selling price of all or any part thereof.

3. That said United States Finance & Securities Corporation, Louis E. Goldfarb, Philip J. Schotland, Curtiss-Warner Corporation, Herman Steiner and Warner-Bloom Corporation, their heirs and successors, executors, administrators and assigns, be required by decree herein to re-
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convey to complainant or his assigns the premises hereinbefore described upon being repaid such sum as may be due to them if any, upon such accounting, free from any liens except such as legally existed thereon at the time of the Sheriff's Sale aforesaid.

4. That a Writ of Subpoena issue, directed to United States Finance & Securities Corporation, Louis E. Goldfarb, Philip J. Schotland, Curtiss-Warner Corporation, Warner-Bloom Corporation, Herman Steiner, Tillie Goldfarb, wife of Louis E. Goldfarb; Sarah Steiner, wife of Herman Steiner; Meyer Kasofsky and Fanny, his wife; Elsworth J. Wyre and Grace M. Wyre, his wife; Joseph Crowley (single); Nellie Jevons and George, her husband; Edna May Dirgo and Emil her husband; Cosimo Rusignulo and (Anna) fictitious Rusignulo, his wife; Gondolfo Rizzo and (Anna) fictitious Rizzo, his wife; Thomas Barry (widower); Mary Snyder and Ira, her husband; Half Dime Savings Bank of Orange, N. J.; Joseph Varveri, Jr. and (Anna) fictitious Varveri, his wife; Angiolina Simiele and Nicola, her husband; Anthony F. Kousky and Susan A. Kousky, his wife; Waverly Building and Loan Assn. of Newark, New Jersey; Frank Rizzo and (Anna) fictitious Rizzo, his wife; Harry C. Greenfield and (Anna) fictitious Greenfield; his wife; Richmont Building and Loan Assn. of Newark, N. J.; John R. Walker, Trustee; Joseph Gross, Assignee; Laura L. Crouse, wife of Ira R. Crouse, Assignee; Abraham Bloom, Assignee; George Snyder, Assignee; Percy B. Menage, Trustee for Vailsburg Trust Co., Assignee; Vailsburg Trust Co., Assignee; Usbe Building & Loan Assn. of Newark, New Jersey; The Channel Lumber Company of Belleville, New Jersey; Newark Con-

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struction Company; John P. Callaghan Company, Assignee; Plaza Realty Company, Lena Mendel, Assignee; Morris Sossner, Assignee; Samuel Goldfarb, Assignee; commanding them to appear in this court in this cause and to stand to and abide by such decree as may be made therein.

10 5. That complainant may have such other and further relief as may be equitable.

MICHAEL J. TANSEY.
Solicitor for and of Counsel with Complainant.

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ORDER FOR SECURITY OF COSTS.

Filed May 17, 1926.

IN CHANCERY OF NEW JERSEY.

Between

HYMAN LISS,
Complainant,

and

UNITED STATES FINANCE & SECURITIES CORPORATION, *et als.*,
Defendants.

On Bill, etc.

Order for Security of Costs.

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It appearing to the Court that Hyman Liss, the complainant in the above-stated cause, resides out of the State of New Jersey and in the State of New York;

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It is, on this 17th day of May, 1926, on motion of Lum, Tamblyn & Colyer, of counsel with the defendants, Sarah Steiner, Herman Steiner, Abraham Bloom, assignee; Mary Snyder, Frank Rizzo, Frances Rizzo, Rose Rusignulo, Cosimo Rusignulo, Gondolfo Rizzo, Tillie Goldfarb, Louis E. Goldfarb, Curtiss-Warner Corporation, Philip J. Schotland, Warner-Bloom Corporation, United States Finance & Securities Corporation, Angioliano Simiele, Nicola Siemiele, Usbe Building & Loan Association, Waverly Building & Loan Association, Richmont Building & Loan Association and Ira Snyder, ORDERED that the complainant in this cause do within three days after service upon him or his solicitors of notice of this order, give security for costs in this cause, to each of the said defendants above

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named in the sum of $150.00, according to law, and that until this order be complied with all further proceedings in this cause be stayed; and it is further ORDERED that if such security be not filed or the deposit in lieu thereof made within the time above limited, the defendants
10 may apply to dismiss the bill in this cause.

E. R. WALKER,
C.

Respectfully advised,

ALONZO CHURCH,
V.-C.

Bond $1,000.00 of Hyman Liss with Nat'l Surety Company securing costs filed June 1,
20 1926.

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DISCONTINUANCE.

Filed June 1, 1926.

IN CHANCERY OF NEW JERSEY.

Between HYMAN LISS, *Complainant,* *and* LOUIS E. GOLDFARB, *et ux., et als.,* *Defendants.*	*On Bill, &c.* *Discontinuance.*

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Complainant Hyman Liss, by Michael J. Tansey, his solicitor, discontinues his action against the following-named defendants, served with subpoenas to answer in the above cause of action, but who have not as yet answered the bill filed in the said suit, namely, to wit: Granite Realty Company, Meyer Kasofsky and Fanny Kasofsky, his wife; Elsworth J. Wyre and Grace M. Wyre, his wife; Joseph Crowley (single), Edna May Dirgo and Emil Dirgo, her husband; Thomas Barry (widower), Half Dime Savings Bank of Orange, New Jersey; Harry C. Greenfield and Ella D. Greenfield, his wife; George Snyder, The Channel Lumber Company of Belleville, N. J.; Newark Construction Company, John P. Callaghan Company, Granite Realty Company, Samuel Goldfarb, and the Plaza Realty Company and Lena Mendel (assignee), having been served with subpoena and having answered the bill, hereby consent by their solicitors, Saul

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and Joseph E. Cohn, to the discontinuance of the above cause of action without costs.

MICHAEL J. TANSEY,
Solicitor for Complainant.

We hereby consent to said discontinuance.

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SAUL AND JOSEPH E. COHN,
Solicitors for Plaza Realty Company
and Lena Mendel (Assignee).

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NOTICE OF MOTION TO STRIKE OUT BILL.

60-573.

IN CHANCERY OF NEW JERSEY.

Between HYMAN LISS, *Complainant,* *and* LOUIS E. GOLDFARB, *et als., Defendants.*	*On Bill, etc.* *Notice of Motion to Strike Out Complaint.*

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PLEASE TAKE NOTICE that on Tuesday, the 22nd day of June, 1926, at 10:00 o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard, at the Chancery Chambers, in the City of Newark, we shall make an application before the Chancellor to strike out the bill of complaint filed in this cause upon the following grounds:

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1. Because the bill filed herein discloses no cause of action against the defendants.

2. Because the United States Finance & Securities Corporation were bona fide purchasers of the lands and premises mentioned in the bill at the sale upon the foreclosure of the Granite Realty Corporation mortgage.

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3. Because it appears from said bill that the defendants who are successors in the title so acquired by the United States Finance & Securities Corporation, and their respective mortgagees, hold the said land and premises as bona fide purchasers without notice of any alleged rights of the complainant.

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Notice of Motion to Strike Out Bill.

4. Because the allegations in the bill do not sustain the demand for relief prayed for against the defendants.

5. Because the allegations in the bill do not sustain the prayer for the setting aside of the foreclosure sale under the Granite Realty Corporation mortgage.

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6. Because it appears by the bill that the complainant seeks redress for alleged wrong or injury in the nature of a tort as to which this Court has no jurisdiction.

7. Because it appears from the allegations in the bill that the complainant seeks damages for the alleged breach of a contract as to which this Court has no jurisdiction.

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8. Because the complainant has an adequate remedy at law.

9. Because the complainant is in laches in his attempt to set aside or annul the title to the lands made under the foreclosure of the said Granite Realty Corporation mortgage.

Dated, June 16, 1926.

Yours respectfully,

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LUM, TAMBLYN & COLYER,
Solicitors for Defendants.

To Michael J. Tansey, Esq., solicitor for complainant.

Service of a copy of the within notice is hereby acknowledged this 16th day of June, 1926.

MICHAEL J. TANSEY,
Solicitors for Complainant.

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ORDER STRIKING OUT BILL OF COMPLAINT.

Filed July 20, 1926.

60-573.

IN CHANCERY OF NEW JERSEY. 10

Between HYMAN LISS, *Complainant,* *and* LOUIS E. GOLDFARB, *et als., Defendants.*	*On Bill, etc.* *Order Striking Out Bill of Complaint.*

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This cause coming on to be heard in the presence of Michael J. Tansey, Esquire, of counsel with the complainant, and Ralph E. Lum, Esquire, of counsel with the defendants, and it appearing to the Court that due notice of the motion of the defendants to strike out the bill of complaint filed in this cause has been served upon the solicitor of the complainant and the argument of counsel having been heard, and it appearing to the Court that the bill of complaint filed herein should be stricken out, 30

IT IS, on this 20th day of July, A. D. 1926, on motion of Lum, Tamblyn & Colyer, of counsel with the defendants, ORDERED that the bill of complaint filed herein be and the same is hereby stricken out and that the complainant pay to the defendants their costs of this application to

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be taxed, in which shall be included a counsel fee of $100.

E. R. WALKER,
C.

Respectfully advised,

10 MAJA LEON BERRY,
V.-C.

NOTICE OF APPEAL.

Filed August 17, 1926.

IN CHANCERY OF NEW JERSEY.

20 *Between*

HYMAN LISS, *Complainant,* and LOUIS E. GOLDFARB, *et als., Defendants.*	*On Bill, etc. Notice of Appeal.*

The complainant, Hyman Liss, hereby appeals
30 from the order striking out bill of complaint, made in the above-entitled cause on Tuesday, July 20, 1926, by the Chancellor on the advice of Vice-Chancellor Maja Leon Berry, and from the whole and every part thereof, to the Court of Errors and Appeals in the last resort in all causes.

Dated, August 14, 1926.

MICHAEL J. TANSEY,
40 Solicitor for and of Counsel with
Complainant, Hyman Liss.

Notice of Appeal.

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

MICHAEL J. TANSEY,
Of Counsel with Complainant, Hyman Liss.

Service of the above notice of appeal and the petition of appeal acknowledged 16th day of August, 1926.

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LUM, TAMBLYN & COLYER,
Solicitors for and of Counsel with Defendant.

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PETITION OF APPEAL.

Filed August 17, 1926.

New Jersey Court of Errors and Appeals

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Between Hyman Liss, *Complainant-Appellant,* *and* Louis E. Goldfarb, *et als.,* *Defendants-Respondents.*	*On Appeal from the Court of Chancery.* *Petition of Appeal.*

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

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The petition of Hyman Liss, the appellant in the above-entitled cause, respectfully shows that:

1. Petitioner finds himself aggrieved by a final order, made in the Court of Chancery of New Jersey by his Honor Edwin Robert Walker, Chancellor, on the advice of Vice-Chancellor Maja Leon Berry, bearing date the 20th day of July, 1926, in a certain cause in said Court of

30 Chancery, wherein the said Hyman Liss was complainant and the said Louis E. Goldfarb, *et als.,* were defendants, in this respect, to wit:

That the said order adjudges that the bill of complaint filed therein discloses no cause of action, and the same therefore should be dismissed with costs and counsel fees.

2. And petitioner appeals from the final order of the Chancellor which orders as aforesaid, upon the ground that the same is erroneous in

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that it should have ordered that the said bill of complaint did disclose a cause of action and that the defendants be put upon their answers with costs.

Petitioner therefore prays that the said order of the Chancellor may be wholly reversed, set aside and for nothing holden, and that petitioner may have such other relief as to this Court may seem proper. 10

HYMAN LISS,
Petitioner.

MICHAEL J. TANSEY,
Solicitor for and of Counsel with Appellant.

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ANSWER TO PETITION OF APPEAL.

Filed September 3, 1926.

NEW JERSEY COURT OF ERRORS AND APPEALS.

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Between HYMAN LISS, *Complainant-Appellant,* *and* LOUIS E. GOLDFARB, *et als., Defendants-Respondents.*	*On Petition of Appeal, etc.* *Answer to Petition of Appeal.*

The answer of the respondents to the petition
20 of appeal of the above-named appellant:

These respondents, not acknowledging all or any of the matters which in the said petition of appeal are contained to be true, for answer thereto, nevertheless, say and admit that a decree was, on the 20th day of July, 1926, made and entered in the Court of Chancery, in the cause for that purpose mentioned in the said petition, as is therein stated; but as to the substance and form thereof, these respondents pray
30 to refer thereto when the same shall be produced. And these respondents are advised and believe that the said decree is agreeable to equity, and they pray that the same may be affirmed, with costs to be adjudged to these respondents.

LUM, TAMBLYN & COLYER,
Solicitors for Respondents.

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OPINION.

IN CHANCERY OF NEW JERSEY.

HYMAN LISS, *Complainant,* and LOUIS GOLDFARB, *et als., Defendants.*	*On Bill, &c.* *Opinion.*

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BERRY, *V.-C.*

The motion on behalf of defendants to strike out the bill of complaint in this cause will be granted, with costs. The bill discloses no grounds for equitable relief except such as may have been presented to this Court in the foreclosure proceedings referred to in the bill of complaint. Obviously, the relief of reconveyance of the properties involved could not be had because on the complainant's own statement, the title is now vested in various bona fide purchasers for value without notice. The only relief which this Court could under any circumstances award to the complainant would be an accounting by certain of the defendants, but such accounting could have been had either in the suit for foreclosure of the first mortgage or in the strict foreclosure suit mentioned in the bill of complaint. Not having availed himself of the opportunity to ask for an accounting in those suits, that relief is not available here. There are no allegations in the bill which would indicate in what particular service of process on this complainant in the foreclosure suit referred to was defective, and while it is possible that

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the particulars of such defect need not be specifically alleged (which point, however, I do not now decide) it is quite apparent from the bill that the complainant had complete and full knowledge of the foreclosure proceedings referred to and could have had himself made a party to the bill had he so desired and there presented his claim for an accounting, or might even have applied to re-open the decree and been permitted to interpose a defense, if he was not properly served with process. Aside from that, complainant might very well have obtained all relief to which he was entitled in the strict foreclosure proceeding. His long delay after the sale under foreclosure and after the dismissal of the strict foreclosure suit to assert any rights whatever against any of the defendants constitutes such laches as to now bar him from relief in this Court. The most that can be said of the bill of complaint is that it states a possible basis for an action at law for damages for breach of contract.

I am returning to counsel for defendants the copy of the bill of complaint submitted on this motion.

1000OCT.1.1926

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

New Jersey Court of Errors and Appeals

Between

HYMAN LISS,
Complainant-Appellant,

and

LOUIS E. GOLDFARB, *et als.,*
Defendants-Respondents.

On Bill, etc.

On Appeal from the Court of Chancery.

BRIEF FOR RESPONDENTS.

Statement of the Case.

This appeal is taken from the order of the Court of Chancery striking out the bill of complaint in this cause.

In the first place it becomes necessary, therefore, to briefly summarize the allegations of the bill.

By reference thereto it is alleged that in November, 1922, one Hyman White purchased from Curtis-Warner Corporation and Samuel Goldfarb a certain tract of land in the Ampere section of Bloomfield in this State containing thirty lots, which are particularly described (Case, p. 1). These lands were conveyed subject to a mortgage of $15,000 held by Granite Realty Company. Said White gave back a purchase money mortgage to the vendors for the balance of the purchase price, amounting to $29,000.00, which mortgage was subsequently assigned to the Warner-Bloom Corporation. These mortgages and the assignment were recorded in the Essex County Register's Office (Case, p. 2). Thereafter White conveyed fourteen of the lots to

another party and sixteen of the lots to his brother-in-law, Hyman Liss, the appellant herein and the complainant below. A description of the premises conveyed to Liss is set forth in the bill (Case, pp. 2, 3, 4, 5, 6 and 7).

After so acquiring title to the sixteen lots the appellant entered into a contract with White to construct sixteen houses on the sixteen lots and, according to the allegations of the bill, the construction proceeded to a point where they were about two-thirds finished, whereupon operations ceased, and the complainant proceeds to explain his financial difficulties. (Case, p. 7, l. 30.)

Thereupon it is alleged that United States Finance & Securities Corporation, of which Louis E. Goldfarb was an official head and Philip J. Schotland was counsel, granted a mortgage construction loan of $6,000.00 on each of the sixteen lots. Six of these mortgages are dated December 13, 1922, and ten are dated December 18, 1922, and are made by the complainant and his wife and recorded in the Essex County Register's Office, the payments on said mortgages being arranged in portions as the work progressed, "the final payment of $1,550.00 to be made when the house was completed on each lot." (Case, pp. 7 and 8.)

By reference to the allegations in the fifth, sixth and seventh paragraphs of the bill it appears that the complainant set forth his difficulties in financing the project, which allegations, however, are immaterial and irrelevant. (Case, pp. 8 and 9.)

By reference to paragraph eighth it appears that the creditors of the complainant were pressing him for payments which he was unable to meet, and that he was seeking advancements on

the construction loans before the condition of the houses would warrant the same. (Case, pp. 9 and 10.)

Again referring to paragraph nine the complainant therein sets forth that he was engaged in negotiations with the mortgagees looking toward advancements of money in order to enable him to meet his engagements with his creditors. (Case pp. 10 and 11.)

In the tenth paragraph of his bill complainant sets forth that by reason of non-payment of interest foreclosure proceedings were begun on the first and second mortgages above mentioned. He charges that the foreclosures were brought about by Louis Goldfarb and his connivance in order to get control of the property without advancing the moneys required to be advanced under the construction loans. He further alleges that the builders (whoever they were) and White succeeded in stopping the foreclosure of the first mortgage, but the second mortgage held by the Warner-Bloom Corporation was continued to foreclosure decree but no sale was made thereunder. There is a reference also in this paragraph to a foreclosure by the Granite Realty Company of a mortgage held on a tract not involved in this litigation. (Case, pp. 11 and 12.)

In paragraph eleven of the bill complainant sets forth his efforts to induce the building loan mortgagee to enter into some arrangement with him to complete the buildings, but none evidently resulted therfrom. It is then charged that at the instigation of Goldfarb, no interest having been paid, the foreclosure of the second mortgage was begun, but the foreclosure was not pressed to sale. Reference had previously been made to this foreclosure in paragraph ten. (Case, p. 12.)

In paragraph twelve of the bill complainant recounts further efforts to sell his properties in the condition they then were, apparently to a person named Updike of Trenton, and he alleges that an agreement was made between him and the United States Finance & Securities Corporation to pay it for its interest in the property, $78,00.00, of which $10,000.00 was paid in cash. On account of Updike's severe illness the negotiation failed. (Case, pp. 12 and 13.)

Thereafter, as alleged in paragraph thirteen of the bill, a second foreclosure proceeding was begun by the Granite Realty Company on its first mortgage and finally proceeded to decree and sheriff's sale and the premises were bought in by United States Finance & Securities Corporation for $18,000.00 and later sold by them to Louis E. Goldfarb, who conveyed a one-half interest to one Herman Steiner. Goldfarb and Steiner conveyed the various parcels of the property to other persons by appropriate deeds. There is then set forth in the bill a statement of the various deeds made by Goldfarb and Steiner to the present owners of the lands. Complainant also sets forth a detailed statement of the mortgages and assignments thereof affecting the various parcels of the property sold to said Goldfarb. (Case, pp. 13, 14, 15, 16, 17, 18, 19 and 20.)

After setting out all this conveyancing, the complainant, in the fourteenth paragraph of the bill, alleges that he was not made properly a party to the suit nor served with process in the foreclosure proceedings and the proceedings and sale were not properly legally advertised and charges that the defendants acquired no legal or equitable title by said sale and hold the same by themselves and their grantees in trust for complainant, whose title has never been cut off ac-

cording to law. It is further alleged that after the foreclosure sale a strict foreclosure suit was begun by the Granite Realty Company against said lands on the first mortgage aforesaid for the purpose of correcting the defects in service of process and advertising in the former proceedings, but it is alleged that during the pendency of the strict foreclosure suit the purchase money was paid by the purchaser and the suit was, "against the objections of this complainant," discontinued.

The final charge against the United States Finance & Securities Corporation and Goldfarb is that they withheld payments from the construction loans, thereby causing a stoppage of the work, and that they withheld interest payments and by other active efforts induced persons with mortgage and other claims against the premises to begin actions thereon for the purpose of preventing the complainant from completing the buildings and selling them at a profit, intending thereby to work a fraud upon the complainant. (Case, pp. 20 and 21.)

In his supplications the complainant prays that the United States Finance & Securities Corporation, Louis E. Goldfarb, Philip J. Schotland, Curtis-Warner Corporation, Herman Steiner and Warner-Bloom Corporation may be required to account in this cause for all their transactions in connection with the premises aforesaid, the rents, issues and profits thereof, as well as the selling price of all or any part thereof. And again he prays that the said defendants last named, "their heirs and successors, executors, administrators and assigns," be required to reconvey to complainant or his assigns the premises hereinbefore described upon being repaid such sums as may be due to them, if any, upon such ac-

counting "free from any liens except such as legally existed thereon at the time of the sheriff's sale aforesaid." (Case, pp. 22 and 23.)

These prayers are followed by a prayer for process and a prayer for general relief.

The defendants gave a notice of an application to the Court of Chancery to strike out the bill upon certain grounds which are particularly set forth in said notice of motion, which will be found on pages 29 and 30 of the printed case. After argument an order was entered in the Court of Chancery striking out the complaint with costs to the defendants. (Case, pp. 31 and 32.)

BRIEF OF THE ARGUMENT.

Complainant is bound by the foreclosure decree.

In the fourteenth paragraph of his bill complainant proceeds as follows:

> "Complainant was not made properly a party to the suit nor served with process in the foreclosure proceedings and the proceedings and the sale were not properly and legally advertised. Defendants acquired no legal or equitable title by said sale and hold the same by themselves and their grantees in trust for complainant, whose title has never been cut off according to law. After the aforesaid sheriff's sale a strict foreclosure suit was begun by the Granite Realty Company, against said lands on the first mortgage aforesaid, for the purpose of correcting the defects in service of process and advertising in the former proceedings, in as much as the purchasers at said sheriff's sale, U. S. Finance & Securities Corporation delayed in taking title and paying the price, because of such defects, but during the pendency of said strict foreclosure suit, the purchase money was paid and the suit was,

against the objections of this complainant, discontinued.'' (Case, p. 20, l. 20.)

By reference to the introduction to the bill itself it appears that the complainant is a resident of the City, County and State of New York (Case, p. 1, l. 10), and it is quite evident, therefore, that formal service of process could not be made upon him under such circumstances. It is not alleged that he was not made a party nor served with process, but rather that he was not properly a party, nor was he properly served with process. He does not indicate in what respects he was not properly a party to the suit nor in what respect he was not properly served with process. However, upon a suit to foreclose a mortgage, he could have been and undoubtedly was properly brought in court by appropriate proceedings to that end, whereby he would have received adequate notice of the foreclosure proceedings. According to the statute and the rules of the Court of Chancery made in pursuance thereof an order of publication would have been taken out against the absent defendant and notice of the pendency of the action published and mailed to him. In this manner the complainant would have been properly before the court. It is very apparent that he does not state that he had no knowledge or information concerning the pendency of this foreclosure suit. He simply charges that he was not served with process, but he does not say that proper proceedings were not taken against him as a non-resident defendant, and he does not say that he did not receive notice of the pendency of this suit in the manner required by law and the practice of the Court of Chancery.

Furthermore, in this connection, whatever may have been the reason which actuated the Granite

Realty Company to file its strict foreclosure bill, the complainant evidently had full knowledge of this and states that the suit was discontinued against his objections.

The effect of a decree against a non-resident was construed by this court in the case of *McCahill* v. *Equitable Life Assurance Society*, 26 N. J. Eq., 531. The headnote to this reads as follows:

> "The statute directs that a decree *pro confesso* may be taken against a non-resident failing to appear after proof of service of the publication of the order for his appearance 'to the satisfaction of the Chancellor' and the order of the Chancellor declaring that such publication has been made to his satisfaction and directing a decree, is conclusive upon the question as between such non-resident defendant and the purchaser under the decree."

In view of the non-residence of the complainant as stated in his bill, it is incumbent upon him at least to show in what respects the proceedings were irregular which may have been taken to notify him of the pendency of the action. All presumptions are in favor of regularity and it is incumbent upon the complainant to set forth the particulars in which the proceedings are defective. In fact, according to the allegations in the bill, before the sale under the decree was consummated he was a party apparently to the strict foreclosure suit, which he alleges was discontinued against his objections. It is quite apparent, therefore, from the allegations of the complaint and in view of the non-residence of the complainant, that he had notice of the pendency of the foreclosure suit in the Court of Chancery and that he is not in a position at this time to question the conclusiveness of the decree of fore-

closure as between himself and the purchaser under the decree.

Furthermore, according to the allegations, the Granite Realty Company, the complainant in the foreclosure suit, after the sheriff's sale therein, began what complainant calls "a strict foreclosure suit" against the lands subject to the first mortgage "for the purpose of correcting the defects in service and advertising in the former proceedings." The allegation is that the purchasers at the sheriff's sale on the foreclosure of the Granite Realty Company's mortgage (United States Finance & Securities Corporation) delayed in taking title and paying the price because of such defects.

The Granite Realty Company, according to the allegations of the bill, had begun its suit to foreclose its mortgage and, pursuant to the decree therein, the sheriff had proceeded with the sale. The Granite Realty Company having proceeded to foreclose by sale according to the established practice in our Court of Chancery, could not, with such a suit pending, have filed any strict foreclosure suit. Apparently, then, whatever proceedings were taken after the sheriff's sale must have been taken in the original foreclosure suit of the Granite Realty Company for the purpose, as complainant says among other things, of correcting the defects in service of process. It is very evident from these allegations that the complainant was a party to the suit and had been proceeded against therein according to the practice of the Court of Chancery. If there were any defects in the service of process he evidently appeared in the proceedings, as he alleges, when steps were taken to correct such defects. Having, therefore, appeared in the foreclosure suit, he cannot in any such collateral

way attempt to challenge the final decree entered therein.

The effect of a decree in foreclosure was considered in *Cannon* v. *Wright,* 49 N. J. Eq. 17. In the course of the opinion the Chancellor refers to the case of *McCahill* v. *Equitable Life Assurance Society (supra).* Referring to the doctrine in that case, the Chancellor says, at page 22:

> "This situation effectually precludes me from granting the relief which the complainant now seeks. His remedy is by direct application to this court to open its decree and permit him to become a party and assert his right, and his success in such an application must depend largely upon circumstances, which may not here appear or are not here fully shown. In such an application he must, among other things, excuse the delay which appears to constitute laches on his part."

It is very evident, therefore, that the complainant cannot attack the decree in the foreclosure suit in any such collateral method as he has adopted in this case. Furthermore, it is perfectly apparent from the allegations of his own bill that he appeared in the foreclosure suit and, despite any alleged defects therein, he is bound thereby.

By reference to the brief for the appellant it appears that the defect complained of was in the published notice of the order of publication directed to the complainant in which the lands in question were described as being located in the City of East Orange instead of the Town of Bloomfield.

By reference to the doctrine laid down by this court in *McCahill* v. *Equitable Life Assurance Society* (*supra*), it is very apparent that the de-

cree was binding upon the complainant, and, as stated in that case, is conclusive as between the non-resident defendant and the purchaser under the decree.

The title to the lands and premises is now vested in various bona fide purchasers for value without notice.

In his supplications the complainant prays that United States Finance & Securities Corporation, Louis E. Goldfarb, Philip J. Schotland, Curtis-Warner Corporation, Herman Steiner and Warner-Bloom Corporation, "their heirs and successors, executors, administrators and assigns," be required to re-convey to complainant or his assigns.

Upon the motion to strike out the bill the defendants assigned as the grounds that the bill disclosed no cause of action against the defendants; that the United States Finance & Securities Corporation were bona fide purchasers of the lands upon the foreclosure of the Granite Realty Company mortgage; and that it appears from the bill that the defendants, who are successors in the title so acquired and their respective mortgagees, hold the lands as bona fide purchasers without notice of any alleged rights of complainant and that the allegations in the bill do not sustain the demand for the relief prayed for against defendants.

Referring to the statements in the bill (which we have above summarized), it appears that at the time of the sheriff's sale the liens on the premises were (1) the mortgage held by the Granite Realty Company, (2) the mortgage originally given to Goldfarb and the Curtis-Warner Corporation to secure part of the pur-

chase money and later assigned to the Warner-Bloom Corporation, and (3) the sixteen mortgages given to United States Finance & Securities Corporation. There may have been other liens existing at that time in the nature of mechanics' liens pursuant to certain of the allegations in the bill. Evidently, then, what the complainant seeks to accomplish is to have the foreclosure sale set aside and the status of the property restored as it existed prior to the foreclosure.

So far as any allegations in the bill are concerned, there is nothing therein that would support any such prayer for relief even against the purchaser at the foreclosure sale, the United States Finance & Securities Corporation. It must be assumed that the mortgage held by the Granite Realty Company was due and owing. There is no allegation to the contrary. Furthermore, there are allegations in the bill that on a prior occasion this same company proceeded with foreclosure and was induced by someone on behalf of the complainant to stay the proceedings. Furthermore, procedure had been instituted upon the second mortgage which proceeded to a decree, but no sale was made thereunder. Furthermore, complainant had offered in his prior negotiations to pay the building loan mortgagee, the United States Finance & Securities Corporation, the sum of $78,000.00, representing the amount apparently which had been advanced on the sixteen building loan mortgages.

There are no appropriate allegations which would justify the setting aside of the sale under the foreclosure decree in the suit brought by the Granite Realty Company. The complainant has not questioned the right of that mortgagee to

proceed, nor has he shown that he has any semblance of a defense whatsoever to such a suit. The proceedings are presumed to have been taken in accordance with law and the practice of the Court of Chancery. No allegations are made which, if established, would move a court of equity to set aside the sale.

The title of the first mortgagee under its mortgage being unquestionable, the purchaser at its foreclosure sale likewise acquired a good title.

The purchaser at the foreclosure sale acquired the title of the mortgagee and of the mortgagor at the time of the making of that mortgage. The effect of a sale is considered in *Champion* v. *Hinkle,* 45 N. J. Eq., 162, at the top of page 165, Justice Depue, in the course of the opinion, says:

> "In a suit by a mortgagee to enforce his mortgage, whether by *scire facias* or by bill for foreclosure and sale, a purchaser at the sale of the mortgaged premises takes the place of the mortgagee in proceedings in strict foreclosure at common law. His title relates to the time of the execution of the mortgage. He succeeds as well to the title and estate acquired by the mortgagee, by the delivery of the mortgage deed, as to the estate the mortgagor had at the time of the execution of the mortgage."

Again referring to this subject, Vice-Chancellor Emery, in *Wimpfheimer* v. *Prudential Ins. Co.,* 56 N. J. Eq. 585, at the top of page 591, says that:

> "The sale, when made under the decree and so long as it stands against the defendants, vests in the purchaser, as purchaser, not only the rights of the complainant under his mortgage and decree but also all the rights of the defendants in the suit."

By reference to the first paragraph of complainant's bill it appears that the Granite Realty

Company mortgage was payable on November 28, 1924, with interest at the rate of six per cent. per annum. When this mortgage debt became due the mortgagee was entitled to file a bill in the Court of Chancery to foreclose its mortgage, which evidently was done. In fact, complainant recognizes this mortgage everywhere in his bill as a valid and subsisting lien at all times. Therefore, upon a foreclosure sale the defendant, United States Finance & Securities Corporation, acquired the same rights as any other purchaser would have acquired. Said company acquired the interest of all the parties to the suit, as indicated by the opinions above quoted. This purchaser was a *bona fide* purchaser for a valuable consideration. The mortgage debt was due and the mortgage was a lien admittedly on these premises and the complainant in that suit was entitled to sell the lands and make the amount of money due thereout. It should be remembered also, as stated above, that the first mortgagee had previously filed a bill to foreclose and that the second mortgagee, whose mortgage must have been due, had also entered up a decree in foreclosure but had not proceeded to sale. It thus appears that both the first and second mortgages were due and payable before the first mortgagee instituted its second suit to foreclose.

According to the prayer of the bill the complainant seeks now a decree to restore the title to him with all these mortgage liens in the same position that they were at the time of the foreclosure sale. Even if such relief were granted, nothing would be accomplished by the complainant because the several mortgagees would be immediately entitled to file bills to foreclose their respective mortgages. Furthermore, it appears from the allegations of the bill that when the

third mortgagee bought in on the foreclosure the several properties were conveyed to Goldfarb and Steiner, who have in turn disposed of all the lots and made conveyance thereof to third parties. The several persons who have succeeded to the title to these lots through the foreclosure proceeding are certainly in such a position that their respective titles cannot be attacked by this complainant. In his bill complainant sets forth that all of these lots have been transferred and conveyed and that mortgages have been imposed thereon by the several purchasers thereof. There are no allegations in the bill charging these several purchasers and subsequent mortgagees with notice of any claims made by the complainant against his original building loan mortgagee. The several owners and mortgagees at the present time are each in the position of a subsequent purchaser and mortgagee for a consideration and without notice. There is no allegation of the existence of any facts which would have given notice to the present owners and encumbrancers of the alleged claims of the complainant.

In *Lavalette* v. *Thompson,* 13 N. J. Eq., 274, at page 267, the Chancellor says:

> "An innocent purchaser is not liable to a latent equity of which he was ignorant." Citing *Reilly* v. *Mayer,* 1 Beasley, 59.

Again on this subject see *Paul* v. *Kerswell,* 60 N. J. L., 273, at page 278, where Judge Depue says, with regard to persons taking title through a *bona fide* purchaser:

> "The rule of law being well settled in this State that a person, though he may have had notice of a previous outstanding title, may protect himself in virtue of the title of his vendor, to whose title he, by a subsequent purchase, has succeeded. The title of a prior purchaser, being perfect by reason of it hav-

> ing been acquired bona fide, will be transmitted to his vendee—a rule that is necessary to secure to a bona fide purchaser without notice the full benefit of his purchase." (Cases cited.)

The complainant is in laches.

The defendants have assigned as a ground for striking out the bill that the complainant is in laches in his attempt to set aside and annul the title to the lands made under the foreclosure proceedings of the Granite Realty Company. (Case, p. 30, l. 23.)

The complainant is estopped at this time to seek the relief prayed for against the several defendants. Even in case of a bill for redemption the mortgagor must act promptly . On this subject we quote from 27 Cyc., page 1918:

> "And generally he is so estopped by any declarations, promises or conduct on his part, inconsistent with his right to redeem, which have so affected the rights or actions of other persons, that they would be materially prejudiced by a redemption effected contrary to their justifiable belief."

In the instant case the complainant has stood by and witnessed the sale and disposition of this property by the purchaser at the foreclosure. He was familiar and was undoubtedly a party to the proceeding which he calls a strict foreclosure suit. During the pendency of this proceeding, whatever it was, the purchaser paid to the sheriff the purchase money and secured its deed. With full knowledge of these facts the complainant stands by and allows the purchaser to make disposition of all this property to strangers, who evidently have no knowledge or information with regard to any of the claims that he has made.

Divers conveyances of the lots in question have been made since the foreclosure sale and the several parties who have succeeded to the title to the lots have given mortgages thereon in great numbers, as appears from the bill of complaint.

When the purchaser received his deed from the sheriff does not appear, but it does appear from the bill that after the purchaser sold to Goldfarb and Steiner they made disposition of the premises immediately thereafter. The first deed mentioned in the thirteenth paragraph of the bill (Case, p. 13, l. 23) was made by Goldfarb and wife and Steiner and wife to one Meyer Kasofsky, which was dated April 23, 1925, and recorded April 29, 1925. The bill in this case was filed on April 27, 1926. Evidently, then, the title made by the sheriff's sale was consummated more than a year before this bill was filed, and in the meantime there have been dozens of conveyances and almost as many mortgages made by different parties interested therein.

After standing by and allowing property to be dealt with in this manner the complainant herein is certainly estopped to claim any such relief against the present owners and mortgagees which would be so prejudicial to their rights and so contrary to equity and good conscience.

If complainant has any rights against any of the defendants to this action he has an adequate remedy at law.

By the sixth, seventh and eighth grounds for dismissal of the bill defendants have substantially alleged that the complainant has an adequate remedy at law.

In the first place, we would point out that the complainant has in reality no grievance against his building loan mortgagee. He alleges in the bill that this mortgagee agreed to advance to him some $6,000.00 on each of the houses to be built on the sixteen lots. The money was to be advanced in installments from time to time as the work of construction progressed, but the final amount, which was $1,550.00, was not to be advanced until the houses were complete. Under this scheme of financing the complainant would have been entitled to receive, when all of the houses were complete, the sum of $24,800.00 out of the total amount to be advanced. Despite all his charges against this mortgagee it appears by his own statements that money was advanced to him more rapidly than he was entitled to receive the same under the trms of the original loan. When he realized that he was unequal to the task of financing this project he says he made an attempt to interest a citizen of Trenton in the project. On that occasion the houses were about two-thirds finished when matters reached their climax. Apparently up to that time he had received about $78,000.00 from the mortgagee because it was at that figure that he agreed to settle with this mortgagee in case the deal with Updike should be consummated. Assuming that this money, *i. e.*, $78,000.00, was used in the building operations, it would require approximately $39,000.00 more to complete the work. The utmost that he was entitled to receive from his building loan mortgagee was $18,000.00 to make up the $96,000.00 originally agreed to be loaned.

Furthermore, complainant prays for an accounting against the defendant Philip J. Schotland. There is no attempt to state any cause of action whatsoever either at law or in equity

against Mr. Schotland. He is mentioned two or three times in the course of the bill as counsel for the corporations that were interested in the property and in the mortgages.

Complainant also prays for an accounting against Louis E. Goldfarb. However, there are no allegations whatsoever throughout the bill with respect to any personal dealings between this defendant and the complainant. It is alleged that he was an officer of United States Finance & Securities Corporation, but in all his dealings with the complainant he was acting as such officer and not in any personal capacity.

Likewise, complainant seeks an accounting against Curtis-Warner Corporation and Warner-Bloom Corporation. It is inconceivable that the complainant has rights of any nature against these defendants. These two companies hold a second mortgage, the validity of which has not been the subject of attack in any way.

A like relief is prayed against the defendant Herman Steiner. This defendant is only referred to as one to whom a one-half interest in the premises was conveyed after the completion of the foreclosure proceeding.

In fact, the only defendant against whom any complaint is made by the complainant is United States Finance & Securities Corporation. We have indicated above that this corporation, while it was the purchaser on the foreclosure of the Granite Realty Company mortgage, has no interest in the property. The title it so acquired was soon thereafter conveyed to third parties and this company is no longer interested in the property.

Looking at the facts stated in the bill in the most favorable aspect, the only claim that the

complainant could make against the mortgage loan corporation would be for an alleged breach of contract. In other words, the complainant has not stated in his bill any grounds for equitable relief against this defendant. If he has a cause of action against this defendant for a breach of any contract in connection with the building enterprise to which he refers in his bill he has an adequate remedy at law. In fact, the complainant is seeking as against this defendant unliquidated damages for the alleged breach of contract as to which a court of equity has no jurisdiction. If he has any cause of action for any alleged wrong or injury in the nature of a tort a court of equity has no jurisdiction and he must seek his remedy in a court of law.

We respectfully submit that the order of the Court of Chancery should be affirmed with costs.

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New Jersey Court of Errors and Appeals

Between HYMAN LISS, *Complainant-Appellant,* *and* LOUIS E. GOLDFARB, *et als.,* *Defendants-Respondents.*	*On Bill, &c.* *On Appeal from the Court of Chancery.*

BRIEF FOR COMPLAINANT-APPELLANT.

Statement of the Case.

This case was on motion to strike out bill of complaint on the grounds:

(See p. 29, State of Case.)

Vice-Chancellor Berry granted the motion to strike out, writing the following memo:

(See p. 37, State of Case.)

BRIEF OF THE ARGUMENT.

First of all, the defendant's remark that the bill tells a "rambling" story, can be answered to the effect that any fraudulent transactions being the outgrowth of mental processes, must necessarily be tedious in the telling, at least in the beginning. The Court of Chancery in tracing fraud is not deterred by the length or the texture of the story.

The bill sets up the purchase of thirty lots of the land in Bloomfield by Hyman White, who later conveyed sixteen of them to Hyman Liss, the present complainant, and contracted to build a dwelling house on each of a certain type, and upon each of which the U. S. Finance & Securities Corporation, of which Louis Goldfarb was president or other head official and Philip J. Schotland was counsel, also a director, made a construction loan of $6,000, or a total of $96,000. Leaving out for the present other allegations of the bill,

which have nothing to do with this loan, the allegation is that said Goldfarb and Schotland, acting on behalf of the U. S. Finance & Securities Corporation, first of all deducted a bonus on the loan of about $12,000 and then held up the payments, so they were not made when due to the contractors and materialmen, thus causing a stoppage of the work, and prevented the completion in time to sell in the market, which then was high. This was done designedly, so as to get the property away from Liss. This appears from the fact that notwithstanding the houses were about two-thirds completed, only $52,000 had been advanced by U. S. Finance & Securities Corporation, less the $12,000 bonus, or $40,000—for which they held $96,000 in mortgages against the properties.

Assuming that they were to hold out $1,550 on each house till completion, which would be $24,800 for the sixteen, and adding the $12,000 bonus and the cash paid, $40,000—total $76,800—there would still be a balance of $19,600 available for payments on the houses, which was ample to satisfy the materialmen and laborers so as to keep the work going on to completion.

It is alleged in the bill that at the time when the work stopped, only payments aggregating $5,000 on all the houses would have been sufficient to satisfy the materialmen and enable the complainant to obtain sufficient further credit to complete the entire job. It is further alleged that Goldfarb, representing the U. S. Finance & Securities Corporation at a conference with the materialmen, not only refused to make this payment, but said it was useless for the materialmen to "butt in," as he meant to take away the property from complainant, anyway. The materialmen, in fact, were willing to furnish sufficient material to complete without money payments if Goldfarb would agree not to press the construction mortgages for payment on their maturity then approaching. The charge is made that Goldfarb and Schotland deliberately created the situation which caused a stoppage of

the work and refused to clear the matter up by the payment of $5,000, when at the time there was upward of $19,000 to the credit of complainant in their hands and available for the work.

Besides this, later on when complainant had negotiated a sale of the property to a man named Updike, in Trenton, and obtained a payment of $10,000 on account, he turned the $10,000 over to Goldfarb, Schotland and the U. S. Finance & Securities Corporation as a payment on the construction mortgages, and they still hold that sum of money, although the deal was never consummated because of the failing health of Mr. Updike, so that they took unto themselves $22,000 for the very doubtful services which they claimed to have rendered complainant in the procuring of the construction loan for him.

It will be seen from the foregoing that the U. S. Finance & Securities Corporation, Louis E. Goldfarb and Philip J. Schotland had prevented the payments necessary from being made on the houses for their completion, although they had sufficient available funds of complainant's for the purpose. They did more than this. They actively worked to induce Granite Realty Company to foreclose its first mortgage, and also procured the Warner-Bloom Corporation to foreclose its second mortgage; one cause being the neglect to pay interest from the complainant's funds available, after agreeing to do so. The only mortgage which proceeded to sale was that of Granite Realty Corporation, and in the advertised notice of the order of publication directed to complainant and others, the location of the land in question is given as East Orange instead of Bloomfield, which appears to be a substantial defect and prevents the cutting off

of complainant's interest in the premises, by the decree.

U. S. Finance & Securities Corporation purchased at the sheriff's sale for $18,000, but did not pay over the purchase money because of the defect, and thereupon Granite Realty Corporation began a suit of strict foreclosure to correct this and other defects. Complainant answered this bill and tendered himself ready to pay off the mortgage in full when the amount due should be ascertained, but in the meantime the U. S. Finance & Securities Corporation paid up the $18,000 purchase price at the sheriff's sale and took title to the property under the defective advertisement mentioned. The bill for strict foreclosure was then dismissed by the Granite Realty Corporation and the suit discontinued, over complainant's objection.

The U. S. Finance & Securities Corporation purchased at the sheriff's sale with full knowledge of complainant's rights and of the defects in advertisement. It later conveyed to Louis E. Goldfarb and he conveyed some of the plots to other persons after conveying one-half interest to one Steiner. The purchasers have been made parties by reason of conveyances to them.

A defective foreclosure proceeding is not cured by the sheriff's sale and purchasers thereat are not protected from flaws in the title caused by errors in procedure. I do not think it necessary to cite authorities to sustain this. Their title cannot cut off complainant's right to redeem from the illegal sale. They are proper parties to the bill. Discontinuances were entered as to parties who purchased some of the lots on the thirty-lot tract outside of the sixteen lots

bought by complainant, and were made parties to the bill through inadvertence.

The Granite Realty Company is not a necessary party, since U. S. Finance & Securities Corporation purchased at its sale and succeeded to its rights and afterwards transferred its rights to Louis E. Goldfarb. Discontinuance was entered in favor of Granite Realty Company. If the alleged conduct of defendants, U. S. Finance & Securities Corporation, Louis E. Goldfarb and Philip J. Schotland, who was president and treasurer of said corporation, as well as its counsel, can be proved, it appears to set out a clear case of fraud, and all moneys and property coming to their hands therefrom would be liable to accounting and reconveyance. The case of *McCahill* v. *Equitable Life,* 26 Eq. 531, is not in point, being that of a purchaser at a sheriff's sale seeking to be relieved of his bid, because of an alleged failure to give proper notice by publication to a non-resident, where the decree recited that due notice had been given. Besides, there was no fraud alleged in the case. If the mortgagees had purchased at their own sale, or the persons who brought the foreclosure by fraudulent means had purchased, and the mortgagor sought to redeem, I am quite sure that the Court would consider the defective publication notice important in affording the petitioner relief.

Cameron v. *Wright,* 49 Eq. 17, was a case where the holder of a recorded mortgage, by unrecorded assignment was held cut off in foreclosure proceedings by notice to the record holder of the mortgage. This also is not a case in point.

The correct doctrine is stated in *Boorum* v. *Tucker,* 51 Eq. 135 at 139:

> "The rule in New Jersey is that a purchaser at a judicial sale is bound to take such title as an examination of the proceedings will show that he will get. He is bound to examine for himself beforehand to see what title he will obtain by the sale."

In addition to this, it is quite plain that the U. S. Finance & Securities Corporation and Louis E. Goldfarb and Philip J. Schotland knew of the defects in the proceedings for the purchase of the mortgage of the Granite Realty Company, since they appeared in the proceedings for strict foreclosure, subsequently brought to clear the title, and pending this suit, paid the purchase money bid of $18,000, and Goldfarb thereafter took title from the U. S. Finance & Securities Corporation, and conveyed the half interest to one Steiner and subsequently conveyed separate parcels to others of the defendants named in the bill.

The case of *Johns* v. *Norris,* 27 Eq. 485, is an authority directly opposite to the doctrine contended for in defendant's brief. It expressly holds that either actual or constructive notice of fraud in a purchaser at foreclosure sale will vitiate the title of purchasers from such grantee, and that in such case they take their title subject to the trust with which it was burdened in the hands of the grantor. The possession of the premises by complainant under his record title was constructive notice to all the world of his rights in the property.

In that very case a scheme to cause the foreclosure of mortgages through the non-payment of interest was held by the Court to be fraudulent, and formed part of the basis of its decree

setting aside the sale to third parties, who alleged they were bona fide holders for value without notice.

Freichnecht v. *Meyer,* 39 N. J. Eq. 551-558, expressly permits on a bill to redeem, defects in the record and procedure to be shown. In that case it was said that the question of title depended upon the sufficiency or insufficiency of the constable's written return to his execution, and because of such insufficiency the defendant's title under the sheriff's deed was held bad and the complainant was allowed to redeem on terms.

In the case of *Cresse* v. *Security Land Investment Co.,* 54 Eq. 447, there was no defect alleged in the published notice to appear, and the non-resident received the notice and helped resident defendant to fight the case until the decree went against him and execution had issued on the decree.

The rights of a non-resident defendant to come in and appear in a suit after final decree are well stated in *Consolidated Electric Storage Co.* v. *Atlantic Trust Co.,* 50 Eq. 93-97.

The case of *Sanford* v. *Wellborn,* 85 Eq. 577, expressly holds that final decree, even when regularly obtained and entered by default, may be opened to give opportunity for defense on the merits where defendant has been deprived of such defense either through mistake or accident. Certainly, where fraud has intervened, his right is clearer even.

The citation on defendant's brief to 27 Cyc. 1918, in relation to estoppel of complainant to redeem is wrong and should be 27 Cyc., page

1819. On page 1817, Sec. D, however (27 Cyc.), it is said:

> "As courts do not favor forfeitures but do favor redemptions, they will accord time to parties to effect a redemption where there is some substantial reason for such indulgence and where its refusal would work hardship or injustice."

And in Sec. C, top of page 1817:

> "And on a bill for redemption the time to be allowed for this purpose rests very much in the discretion of the Court, except that it should not be made unreasonably short."

The bill to redeem in *Johns* v. *Norris,* 27 Eq. 485, was not filed until several years after the sale at which title passed from the complainant. In *Brown* v. *Berry,* 89 Eq. 230-233, twenty years is said allowable within which a mortgagor may redeem. It is respectfully submitted that the bill of complaint states a cause of action and should not be stricken out.

See also as to purchasers, *Donovan* v. *Smith,* 88 Atl. 167.

The bill shows sufficient equity to be retained for final hearing.

The point made that complainant could have obtained relief in the Granite Realty Company foreclosure is not well taken, because there was no defense to that, except in the faulty advertisement of Sheriff's sale, and in the strict foreclosure, the complainants set this up by answer and objected to the dismissal of the bill, but were overruled.

Their relief as against the defendants is based upon the failure of the latter to pay interest as agreed on this mortgage, and their active efforts to force a foreclosure so they could purchase the

title which they finally did through the United States Finance and Securities Corporation, which conveyed to Goldfarb, who thus got the equity of redemption worth very much more for the amount of the mortgage foreclosed.

Goldfarb and Schotland participated actively in the inequitable conduct complained of and individually as well as officially representing the United States Finance and Securities Corporation profited by the outcome. The bill properly prays an accounting against them.

Motion to strike out the bill is equivalent to a demurrer to the whole bill. The charges in the bill on such a motion must be taken to be true. Where the demurrer is general to the whole bill, and there is any part either as to the relief or the discovery to which defendants ought to put in an answer, the demurrer being entire, must be overruled.

Vail's Executors v. *C. R. R. of N. J.*, 23 Eq. 466;

Metler's Adm'rs v. *Metler,* 18 Eq. 270.

Where as in this case it appears that defendants purposely withheld payments due on construction loans so as to prevent the completion of the buildings; stated that it was their purpose to get the property away from complainant; procured the foreclosure of the mortgages upon which they had failed to pay interest as agreed, bought in the property themselves, and still retain in their hands $56,000 of complainant's money, besides the $12,000 bonus, which they first deducted, a case of fraud is made out calling for answer by defendants, and for relief cognizable only in equity.

Further that the purchasers from Goldfarb of the lots sold, were bona fide is subject to proof

and not of assumption, also whether all the land has been sold to such holders as claimed in defendants' brief.

The bill states a cause of action and should be retained.

Respectfully submitted,

MICHAEL J. TANSEY,
Of Counsel with Complainant-Appellant.