

New Jersey Court of Errors and Appeals.

THE CITY OF CAMDEN,
Appellant,
and
TIMOTHY P. NEWELL,
Respondent.

ON BILL FOR AN
INJUNCTION.
DEFENDANT'S
POINTS.

The history of this cause here in this Court for adjudication is as follows : 10

On the fourth day of October, 1884, the complainant filed his bill of complaint in the Court of Chancery, alleging that he became the owner of premises 401 North Fourth street, in the city of Camden, by a Sheriff's deed made in a certain foreclosure suit, in which the city of Camden was made a party, in respect to the taxes of 1881 assessed against the premises, which were discharged by a decree in that suit, and that the city was proceeding to enforce the payment of these taxes by a sale of the premises, notwithstanding their discharge, and praying 20
for an injunction to restrain the city from further steps towards their enforcement. (Bill, p. 1, state of the case.)

The city of Camden duly answered the bill, p. 6, "denying that the taxes for the year eighteen hundred and

eighty-one, were barred, satisfied or in any way discharged or affected by the proceedings or decree of sale in the said cause." And averring "that in the year eighteen hundred and eighty-one, the said sum of one hundred and six dollars and eighty cents was duly assessed against the said premises for municipal, county and State taxes, which at the time of said assessment became a first lien on the said premises for the period of five years, under and by virtue of the charter of the city
 10 of Camden, and the public laws of the State relating to municipal taxation; and that the said taxes have never been paid, satisfied or discharged, and are at the present time a valid and subsisting first lien upon the said premises, unfavorable by law."

The case was heard upon bill and answer, without any proofs excepting the records of the foreclosure suit referred to in the complainants' bill, which the courts looked into by the consent of both parties. No witnesses were examined or testimony taken in the above cause.

The bill in the foreclosure suit states "that the city of
 20 Camden claims to have a further lien on said premises for the years 1880 and 1881, but she (the complainant,) charges that the said taxes being assessed subsequently to the execution and recording of your oratrix's said mortgage, they are subject to the lien of your oratrix's said mortgage,"—p. 20.

The ticket served on the city with the subpoena, was as follows: "You are made a party defendant and subpoenaed to answer the bill of complaint exhibited in the above cause, because it is therein alleged that you hold a
 30 certain declaration of sale and certain taxes against the premises mentioned and described in said bill, and by virtue thereof claim to have some lien upon or interest in the said mortgaged premises,"—p. 25.

January 2d, 1882, complainant's solicitor in that suit took the bond and mortgage before Master Hoffman, and

procured him to make a report of what was due thereon, without any regard to the city's claim for taxes,—pp. 26 and 27.

On the 9th day of January following, seven days after the ex-parte report was made, the complainant's solicitor procured the Chancellor to sign a final decree, confirming the report and ordering a sale of the premises for the payment of complainant's debt, and completely ignoring the claim and rights of the city in the premises, pp. 28-29. 10

By this course the city understood that the complainant concluded to take a decree of sale, subject to the city's claim for the taxes of 1881, and afterwards proceeded to enforce their payment, when it was stopped by the present injunction. Upon this state of facts the City of Camden, the appellant, insists

FIRST :

That as a matter of law the city's claim for the taxes of 1881 was a first lien on the premises and are not subsequent to the complainant's mortgage, as alleged in her bill. 20

Sec. 64, Charter of Camden, approved February 14th, 1871, Public Laws, 1871, p. 242, "make taxes a lien for five years."

The act entitled "a further supplement to an act entitled 'an act concerning taxes,' approved April 14, 1846, making the same a first lien on real estate;" Public Laws, 1880, p. 149.

An amendment to the last recited act, approved March 17th, 1882, Public Laws, 1882, page 130, make taxes a first lien for three years in cities where there is no time fixed in their charter. 30

That a State can make taxes a lien prior to all others has been repeatedly held.

In the late case of the Albany Brewing Company vs. The Town of Meriden, (48 Conn. p. 247) the Supreme Court of Connecticut, in speaking upon the subject of a tax lien, said :

10 "This lien takes precedence of all others. Mortgagees take their security with knowledge that the sovereignty must and will take by taxation all that is necessary to the preservation of its own life; the life of the State is of higher concern than the protection of a debt due to an individual member of it. Therefore, every piece of real estate must contribute its fair proportion to the public treasury if the authorities move within a specified time and according to statutory methods; and this regardless of mortgagees or purchasers."

Gormley's Appeal, 27 Penn. St., 51.

Parker vs. Baxter, 2 Mass. 185.

Langley vs. Chapin, 134 Mass., 82, 87.

In the case of Hopper vs. Malleson's Executors, 1 C. E. Gr., 386, Chancellor Green said on this subject:

20 "The power of the legislature, by virtue of its sovereignty, to make a tax a charge upon the estate of all parties interested in the land, and to make the tax title paramount to all other and prior claims and encumbrances is unquestionable."

Howell vs. Essex Co. Road Board, 5 Stewart Eq., 675.

Trustees of Public School vs. Trenton, 3 Stew. Eq., 679.

Paterson vs. O'Neil, 5 Stew. Eq., 386.

Pennington vs. Mendes, 11th Stewart, 336.

30 That the tax was a first lien appears upon the face of the bill and the allegation to the contrary was of no effect. Whether the taxes of 1881, by force of our public laws, were a first lien on the said premises was a matter of law that could not be settled by an unanswered allegation in the bill.

SECOND :

It has not been the practice in this State to settle priorities according to unanswered allegations in a bill of foreclosure, but they are universally settled by the Master, according to the proofs and without regard to the allegations in the bill.

By Rule 22 of the Court of Chancery, there should have been an order of reference to a Master to settle the priorities, if the complainant meant to destroy the city's 10 lien for taxes.

Then the city would have had notice to prove its claim, and a decree would have been made in regard to it. It has heretofore been the practice of many lawyers to advise clients who hold encumbrances not to go to the expense of answering a bill of foreclosure, but wait and go before the Master on notice and make proof of its priority then; but if the Vice Chancellor's ruling is right, hereafter, the Master will have to be guided entirely by allegations in the bill where they are unanswered, and everybody will have to answer. 20

THIRD :

But in the foreclosure suit in question neither the Master's report nor the decree speaks of the claim of the city, and it therefore stands outside of that case adjudicated.

Could the City of Camden have appealed from that decree in which it was not mentioned? It would seem very clear that such an appeal from nothing would have led to nothing. 30

FOURTH :

Without taxes our Government cannot exist, and it would seem to be the duty of our courts of justice to help public officials in their efforts to enforce the payment of

taxes imposed by law, rather than retard them by a strained construction of the law in favor of those who seek to evade them.

It is submitted that the injunction restraining the enforcement of these taxes is unwarrantable and ought to be dissolved.

J. WILLARD MORGAN, Sol'r., and
D. J. PANCOAST,
Counsel of Appellant.

IN CHANCERY OF NEW JERSEY.

To the Honorable Theodore Runyon, Chancellor of the State of New Jersey :

Humbly complaining showeth unto your honor, you orator, Timothy P. Newell, of the city of Camden, in the county of Camden and State of New Jersey, that he is owner in fee of all that lot of land situate in the city of Camden aforesaid, beginning at the northwest corner Fourth and Linden streets, and extending thence northward along the west line of Fourth street twenty feet in front or breadth, and westward of that reach ninety-five feet four inches in depth between the north line of Linden street and a line parallel therewith and at right angles with Fourth street to the east line of a four feet wide alley opening into Linden street. Together with the free and common use of and privilege forever of said alley, and numbered 401 North Fourth street. 10

And your orator further shows, that he became the owner of said premises under and by virtue of a certain sale thereof and conveyance therefor, bearing date the eighth day of April, in the year of our Lord one thousand eight hundred and eighty-two, of record in the Register's Office of Camden county, in Book No. 105 of Deeds, page 146, &c., to your orator, made by Theodore B. Gibbs, Sheriff of the county of Camden, in pursuance of a decree of this Court, bearing date the ninth day of January, in the year of our Lord one thousand eight 20

hundred and eighty-two, and a writ of fieri facias issued thereon in a certain cause depending in said Court, wherein Sarah Crawford was complainant and Alfred Hugg and the city of Camden were defendants, that in and by bill filed in said cause it was alleged that the said Sarah Crawford held a certain mortgage on said premises bearing date the first day of January, 1872, made by Abraham Browning and Mary P., his wife, and duly recorded on the January 16, 1882, in the office aforesaid, sought to be foreclosed therein, and the city of Camden, said defendant, had assessed certain taxes against said premises which the said Sarah Crawford charged therein to be subsequent to the lien of her said mortgage, if a lien at all on said premises; that in and by said decree said city of Camden was forever barred from proceeding on its said lien to collect the same from said property, except as the same were paid from the proceeds arising from said Sheriff's sale; that the city of Camden, by its City Council and City Solicitor, J. Willard Morgan, Esquire, notwithstanding said decree, now has said premises advertised for sale and propose to sell the same on the sixth day of October next, for the collection of the tax for the year 1881, the sum of \$106.50, and that said taxes are the same or a part of the same as those set forth in said bill and barred as aforesaid in and by said decree; that said sale and the deed or declaration of sale to be delivered in *lieu* thereof will cast a cloud upon the title of your orator to said premises and is contrary to equity and good conscience.

In consideration whereof, and for as much as your orator is without adequate remedy in the premises at and by the strict rules of the common law, and without the assistance of this honorable court, where matters of this nature are particularly cognizable and relievable; To the end, therefore, that the said defendants, and their confederates when discovered, may, without oath, full,

true, perfect and distinct answer make to all and every the matters aforesaid, and that the city of Camden, the City Council of the city of Camden and J. Willard Morgan, City Solicitor of said city, may, by the order and decree of this honorable Court, be restrained from in any way proceeding to sell, or dispose of said premises above described, under and by virtue of said taxes so as aforesaid assessed by the city of Camden for the year 1881, and that your orator may have such other and further relief in the premises as the nature of the case may require, 10 and as may be agreeable to equity and good conscience.

May it please your honor, the premises considered, to grant unto your orator not only the State's writ of injunction issuing out of and under the seal of this honorable Court, to be directed to the said The City Council of the City of Camden and J. Willard Morgan, City Solicitor of the city of Camden as aforesaid, to restrain them, or either of them, from in any way selling or disposing of the premises aforesaid, by virtue of the taxes assessed as aforesaid, but also the writ of subpoena of the State of New Jersey, to be directed to the said The City Council of the city of Camden and J. Willard Morgan, the City Solicitor of the city of Camden, therein and thereby commanding them, and each of them, at a certain day and under a certain penalty therein to be expressed, personally to be and appear before your honor in this honorable Court, then and there to answer the premises and to stand to, abide by, and perform such order and decree therein as to your Honor shall seem 20 30 meet. And your orator, as in duty bound, will ever pray, &c.

ALFRED HUGG,

Sol. for and of counsel with Complainant.

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

ALFRED HUGG, being duly sworn according to law, saith: That he is the solicitor of Timothy P. Newell, the complainant in the above bill of complaint; that the said bill so far as it relates to the acts and deeds of the complainant are true, and so far as it relates to the acts and deeds of others he believes them to be true, and especially is it true, that Sarah Ann Crawford held a
 10 mortgage on the premises in said bill described, bearing date the 1st day of January, 1872, and that the same was recorded in the Register's office of Camden county, on the 1st day of January, 1872, and that said mortgage was foreclosed in the Court of Chancery of said State, and said city of Camden made a party defendant in said foreclosure, for and on account of the taxes assessed against said premises for the year 1881, and that a final decree was taken in said foreclosure proceedings, and a fieri facias issued thereon, directed and delivered to the
 20 Sheriff of the said county of Camden, and that he, by virtue thereof, made and executed a deed of conveyance of said premises to the complainant, and that the City Council of the city of Camden, through the City Solicitor of the city of Camden, has caused the said premises to be advertised for sale on Tuesday, the sixth day of October next, to pay and satisfy the taxes assessed thereon for the year 1881.

ALFRED HUGG.

30 Sworn and subscribed before me this fourth day of October, A. D. 1884.

R. S. RIDGWAY,
 M. C. C.

A true copy,
 G. S. DURYEE, Cl'k.

IN CHANCERY OF NEW JERSEY.

Between	}	ON BILL FOR IN-	
TIMOTHY P. NEWELL,		JUNCTION.	
Complainant.		ANSWER OF DE-	
and		FENDANT,	10
THE CITY OF CAMDEN, AND OTHERS,	}	THE CITY OF CAM-	
Defendants.		DEN.	

The answer of the city of Camden to the complainant's bill of complaint in the above stated cause.

The city of Camden answering says, that it denies that the said complainant is the owner in fee of the premises at the northwest corner of Fourth and Linden streets in the city of Camden, described in the complainant's said bill of complaint, under and by virtue of a certain conveyance made to him by Theodore B. Gibbs, Sheriff of the county of Camden, dated the eighth day of April, eighteen hundred and eighty-two, in pursuance of a decree of this Court dated the ninth day of January, eighteen hundred and eighty-two, made in a certain cause wherein Sarah Crawford was complainant and Alfred Hugg and the City of Camden were defendants, as alleged in said bill of complaint. 20 30

This defendant admits that the said suit was brought by the said Sarah Crawford to foreclose a certain mortgage on the said premises, dated the first day of January, eighteen hundred and seventy-two, made by Abraham Browning and Mary P., his wife, and recorded as in the said bill alleged, and admits that in the bill of

complaint it was alleged that the said city of Camden had assessed certain taxes for the year eighteen hundred and eighty-one, amounting to one hundred and six dollars and fifty cents against said premises, which the said Sarah Crawford charged therein to be subsequent to the lien of her said mortgage if a lien at all upon said premises as set forth in the bill of complaint in this cause. But this defendant expressly denies that the said taxes for the year eighteen hundred and eighty-one were
 10 barred, satisfied or in any way or manner discharged or affected by the proceedings or decree of sale in the said cause.

And this defendant avers that no legal decree or order of this court was made in the said suit touching the said taxes or the legal or equitable rights of the city of Camden in the premises, and that the sale and conveyance of the said mortgaged premises by the said Sheriff, under and by virtue of the writ of fieri facias issued out of this Court in said cause, set forth in the complainant's
 20 said bill of complaint, did not operate to transfer the title of the said premises to the complainant as alleged in the said bill and in no way or manner affected the lien of the said taxes on the said premises.

That in the year eighteen hundred and eighty-one the said sum of one hundred and six dollars and eighty cents was duly assessed against the said premises for municipal, county and State taxes, which at the time of said assessment became a first lien on the said premises for the period of five years, under and by virtue of the
 30 charter of the city of Camden and the public laws of this State relating to municipal taxation, and that the said taxes have never been paid, satisfied or discharged and are at the present time a valid and subsisting first lien upon the said premises enforceable by law.

And this defendant admits that it has taken the steps

to enforce the same referred to in the complainant's said bill of complaint.

All of which matters, facts and things this defendant is ready to maintain and prove as this honorable Court shall direct and humbly prays to be hence dismissed with its reasonable costs and charges in this behalf most wrongfully sustained.

J. WILLARD MORGAN,
Solicitor and of Counsel with Defendant.

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STATE OF NEW JERSEY, } ss.
CAMDEN COUNTY.

Be it remembered, that on this twentieth day of December, in the year of our Lord one thousand eight hundred and eighty-four, at Camden, in the State of New Jersey, the defendant, The City of Camden, in verification of the truth of all and singular the statements, averments, denials, facts, matters and things set forth in said answer, hath by its Mayor, Claudius W. Bradshaw, affixed and caused its said defendant's common seal to be affixed hereunto and the same to be attested by its said Mayor.

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C. W. BRADSHAW, [L. s.]
Mayor of the city of Camden.

STATE OF NEW JERSEY, } ss.
CAMDEN COUNTY.

CLAUDIUS W. BRADSHAW, of the city and county of Camden, in the State of New Jersey, of full age, maketh oath and saith, that he is the Mayor of the city of Camden, the defendant mentioned in the above answer of the said defendant, and has been for more than four years last past; that the statements, matters and things set forth and contained in said answer, so far as they relate to the acts and deeds of this deponent are true, and that so far as they relate to the acts and deeds of said corporation and

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of any other person or persons he believes them to be true ; and that the seal affixed to the above certificate of said The City of Camden, in verification of the truthfulness of said answer, is the common seal of the said The City of Camden and that the attestation thereof is in the proper handwriting of this deponent.

C. W. BRADSHAW.

Sworn and subscribed at Camden, N. J., this twentieth 10 day of December, A. D. 1884, before me,

THOMAS B. HARNED,
M. C. C.

A true copy.

G. S. DURYEE,
Clerk.

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IN CHANCERY OF NEW JERSEY.

Between

TIMOTHY P. NEWELL,

Complainant.

and

THE CITY OF CAMDEN AND OTHERS.

Defendants.

ON BILL FOR IN-
JUNCTION.

ANSWER OF DE-
FENDANT,

J. WILLARD MOR-
GAN.

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The answer of J. Willard Morgan to the complainant's bill of complaint in the above stated cause.

J. Willard Morgan answering says, that he is the solicitor for the city of Camden ; that he denies that the said complainant is the owner in fee of the premises at the northwest corner of Fourth and Linden streets, in the

city of Camden, described in the complainant's said bill of complaint, under and by virtue of a certain conveyance made to him by Theodore B. Gibbs, Sheriff of the county of Camden, dated the eighth day of April, eighteen hundred and eighty-two, in pursuance of a decree of this Court, dated the ninth day of January, eighteen hundred and eighty-two, made in a certain cause wherein Sarah Crawford was complainant and Alfred Hugg and the city of Camden were defendants, as alleged in said bill of complaint. This defendant admits that the said suit was brought by the said Sarah Crawford to foreclose a certain mortgage on the said premises, dated the first day of January, eighteen hundred and seventy-two, made by Abraham Browning and Mary P., his wife, and recorded as in said bill alleged, and admits that in the bill of complaint in said suit it was alleged that the said city of Camden had assessed certain taxes for the year eighteen hundred and eighty-one, amounting to one hundred and six dollars and fifty cents against said premises, which the said Sarah Crawford charged therein to be subsequent to the lien of her said mortgage, if a lien at all upon said premises, as set forth in the bill of complaint in this cause. But this defendant expressly denies that the said taxes for eighteen hundred and eighty-one were barred, satisfied or in any way or manner discharged, affected by the proceedings or decree of sale in the said cause.

And this defendant avers that no legal decree or order of this Court was made in the said suit touching the said taxes or the legal or equitable rights of the city of Camden in the premises, and that the sale and conveyance of the said mortgaged premises by the said Sheriff, under and by virtue of the writ of fieri facias issued out of this Court in said cause, set forth in the complainant's said bill of complaint, did not operate to transfer the title of the said premises to the complainant as alleged

in the said bill, and in no way or manner affected the lien of the said taxes on the said premises; that in the year eighteen hundred and eighty-one the said sum of one hundred and six dollars and eighty cents was duly assessed against the said premises for municipal, county and State taxes, which at the time of said assessment became a first lien on the said premises for the period of five years, under and by virtue of the charter of the city of Camden and the public laws of this State relating to municipal taxation, and that the said taxes have never been paid, satisfied or discharged and are at the present time a valid and subsisting first lien upon the said premises, enforceable at law, and this defendant admits that he has taken the steps to enforce the same referred to in the complainant's said bill of complaint, and says that he has done so under and by virtue of a resolution of the City Council of the said city of Camden, passed July 9th, 1884, making it my duty to take the proceedings aforesaid :

20 All of which matters, facts and things this defendant is ready to maintain and prove as this honorable Court shall direct, and humbly prays to be hence dismissed with its reasonable costs and charges in this behalf most wrongfully sustained.

J. WILLARD MORGAN,
Solicitor for and of Counsel per se.

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

30 J. Willard Morgan being duly sworn saith, that he is defendant in the above answer mentioned; that the matters and things set forth in the above answer, so far as they relate to his own acts are true, and so far as they relate to the acts of others he believes them to be true.

J. WILLARD MORGAN.

Sworn and subscribed before me this twentieth day of
December, A. D. 1884.

WALTER P. BLACKWOOD,
M. C. C.

A true copy.

G. S. DURYEE,
Clerk.

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IN CHANCERY OF NEW JERSEY.

Between

TIMOTHY P. NEWELL,

Complainant,

and

THE CITY COUNCIL OF THE CITY OF

CAMDEN AND J. WILLARD MOR-

GAN, CITY SOLICITOR, &C.

Defendants.

ON BILL, &C.

FINAL DECREE.

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This cause coming on to be heard at the last regular
term of the Court of Chancery, held at the State House,
in Trenton, in the presence of Alfred Hugg, of counsel
with the complainant, and J. Willard Morgan, of counsel
with the defendants, and the pleadings having been read
and the arguments of the respective counsel having been
heard and considered, and the Court having duly con-
sidered the said pleadings and arguments, and it appear-
ing to the Court that the complainant is entitled to the

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relief sought and prayed for by him in his bill of complaint ;

10 It is, on this 29th day of July, in the year of our Lord one thousand eight hundred and eighty-five, by Theodore Runyon, Chancellor of the State of New Jersey, ordered, adjudged and decreed, and the said Chancellor, by virtue of the power and authority of this Court, doth hereby order, adjudge and decree, that the defendants
 20 and their agents, and each and every of them, be and they are hereby perpetually enjoined and restrained from in any way selling or disposing of the premises situated in the city and county of Camden, in said State, beginning at the northwest corner of Fourth and Linden streets, and extending thence northward along the west line of Fourth street twenty feet in front or breadth and westward of that breadth ninety-five feet four inches in depth, between the north line of Linden
 30 street and a line parallel therewith, and at right angles with Fourth street to the east line of a four feet wide alley opening into Linden street, together with the free and common use and privilege of said alley and numbered 401 North Fourth street, by virtue of the taxes assessed against said premises for the year eighteen hundred and eighty-one and that a writ of injunction issue accordingly. And it is further ordered and decreed, that the defendants pay to the complainant the costs of this suit, to be taxed, and that execution issue therefor according to the practice of this Court.

THEODORE RUNYON, C.

30 Respectfully advised,

JOHN T. BIRD, V. C.

A true copy.

G. S. DURYEE, Cl'k.

NEWELL

vs.

CITY OF CAMDEN, ET ALS.

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MR. ALFRED HUGG,
For Complainant.
MR. J. W. MORGAN,
For City of Camden.

BIRD, V. C: This bill is for an injunction to restrain the city of Camden from proceeding to collect certain taxes by sale of lands. It appears that Newell's title rests upon a sale made by the Sheriff, under an execution issued upon a decree of this Court in a suit to foreclose a mortgage in which the mortgagor and the city of Camden were defendants. The bill set out the mortgage and also the claims of the city for taxes, and alleged that the taxes, if liens at all, were subsequent to the mortgage of the complainant. The defendants, The City of Camden, did not answer. The complainant took no decree *pro confesso* in the first instance, but procured a Master to report the amount due upon his bond and mortgage. The Master reported \$5,750.83 to be due. A decree was then taken confirming the Master's report and also that the bill be taken as confessed upon which the execution issued. 20 30

It is now insisted by The City of Camden that that decree was not regularly obtained. This is the general allegation of the answer to this bill for injunction. Upon the argument, it was urged that the complainant in the foreclosure suit obtained no decree *pro confesso*

before he obtained a report of the amount due from the Master, nor did he summon the defendant, The City of Camden, to appear before the Master.

I am satisfied that no injustice has been done to the defendant, The City of Camden. It was made a defendant to the suit to foreclose. The complainant in that suit charged that the taxes, if a lien at all, were subsequent to his mortgage. The city did not in any manner question this allegation. The complainant then gave the city its proper place in the order of priority. In strict practice, it may be that the complainant should have taken a decree *pro confesso* before he obtained the report of the Master; but as to that, I can only say, it would have been more of form than substance. I think the twenty-first and twenty-second rules have been complied with substantially. The proceeds of the sale were only \$4,000, being \$1,700 less than the amount due upon the complainant's mortgage.

I think I should observe that if The City of Camden felt itself aggrieved by the alleged irregularity, equity would require it to promptly call attention to the irregularity. Had it not been a party it might sleep; but being in court, some diligence is required.

I will advise that the injunction be made perpetual, with costs.

IN THE COURT OF ERRORS AND APPEALS IN
THE LAST RESORT IN ALL CAUSES.

Between	}	
THE CITY COUNCIL OF THE CITY OF		ON BILL, &C.
CAMDEN AND J. WILLARD MOR-		10
GAN, CITY SOLICITOR, &C.		PETITION OF
Appellants,		
and		APPEAL.
TIMOTHY P. NEWELL,		
Respondent.	}	

*To the Honorable the Court of Errors and Appeals in the
last resort in all causes :* 20

The humble petition of The City Council of the city of Camden and J. Willard Morgan, City Solicitor of the city of Camden, the appellants in the above stated cause, respectfully shows that your petitioners find themselves aggrieved by a final decree made in the Court of Chancery by his honor Theodore Runyon, Chancellor of New Jersey, bearing date the twenty-ninth day of July, in the year of our Lord one thousand eight hundred and eighty-five, wherein Timothy P. Newell was complainant 30 and the said The City Council of the city of Camden and J. Willard Morgan, City Solicitor of the city of Camden, were defendants, in this respect, to wit: that the said decree adjudges "that the said defendants, and their agents, and each and every of them, be and they are hereby perpetually enjoined and restrained from in

any way selling or disposing of the premises situated in the city and county of Camden in said State, beginning at the northwest corner of Fourth and Linden streets and extending thence northward along the west line of Fourth street twenty feet in front or breadth and westward of that breadth ninety-five feet four inches in depth between the north line of Linden street and a line parallel therewith, and at right angles with Fourth street to the east line of a four feet wide alley opening into Linden street, together with the free and common use and
 10 privilege of said alley and numbered 401 North Fourth street, by virtue of the taxes assessed against said premises for the year eighteen hundred and eighty-one, and that a writ of injunction issue accordingly, and that which orders and decrees the defendants to pay to the complainants the costs of this suit to be taxed, and that execution issue therefor according to the practice of this Court. And your petitioners humbly appeal from that
 20 aforesaid, upon the ground that the same is erroneous, for that the said decree orders that the said defendants and their agents, and each and every of them, be and they are hereby perpetually enjoined and restrained from in any way selling or disposing of said premises by virtue of the taxes assessed against said premises for the year eighteen hundred and eighty-one, and that the defendants pay to the complainants the costs of this suit.

Your petitioners therefore pray that the said decree of the said Chancellor may be in the particulars aforesaid
 30 reversed, set aside and for nothing holden, and that your petitioners may have such relief in the premises as to this honorable Court shall seem meet.

J. WILLARD MORGAN,
 Sol'r for Appellant.
 D. J. PANCOAST,
 Counsel.

To the Honorable the Chancellor of the State of New Jersey :

Humbly complaining shows unto your Honor your oratrix, Sarah Crawford, of the city of Philadelphia, in the county of Philadelphia and State of Pennsylvania, that on or about the first day of January, in the year one thousand eight hundred and seventy-two, Abraham Browning and Mary P., his wife, of the city of Camden, in the county of Camden and State of New Jersey, became and were justly indebted unto Payson Crowell, of 10 the city of Philadelphia and State of Pennsylvania, in the sum of five thousand dollars; and being so indebted, the said Abraham Browning and Mary P., his wife, in order to secure the payment of the said sum of money, with interest, did make and execute under hand and seal, and deliver unto the said Payson Crowell, a certain bond or obligation, bearing date the same day and year last aforesaid, in the penal sum of ten thousand dollars, lawful money of the United States, with a condition thereunder written, that if the said Abraham Browning and Mary P., his wife, their heirs, executors, administra- 20 tors, should well and truly pay, or cause to be paid, unto the said Payson Crowell, his executors, administrators or assigns, the just and full sum of five thousand dollars, lawful money aforesaid, payable in five years from the date thereof, together with lawful interest thereon payable semi-annually, and if default should be made in the payment of said semi-annual interest for the space of thirty days after the same should at any time become due, then the whole of said principal and interest should immediately become due and payable, without any fraud 30 or further delay, then the said obligation should be void, otherwise to remain in full force and virtue, as in and by the said bond or obligation and the condition thereof, reference being thereunto had will more fully and at large appear. And your oratrix further shows, that the

said Abraham Browning and Mary P., his wife, in order to secure the payment of the said sum of money above mentioned, together with the interest which should accrue or become due thereon, executed and delivered unto the said Payson Crowell a certain indenture of mortgage, bearing date the same day and year last aforesaid, made by the said Abraham Browning and Mary P., his wife, of the first part, and the said Payson Crowell, of the second part; in and by which said indenture of mortgage the said party of the first part did grant, bargain, sell, alien, release, enfeoff, convey and confirm unto the said Payson Crowell, the said party of the second part, his heirs and assigns, all that certain lot of ground, with the three story brick messuage thereon erected, situate in the city and county of Camden and State of New Jersey, and bounded as follows: Beginning at the northwest corner of Fourth and Linden streets and extending thence northward along the west line of Fourth street twenty feet in front or breadth and westward of that breadth ninety-five feet four inches in depth, between the north line of Linden street and a line parallel therewith and at right angles with Fourth street to the east line of a four feet wide alley opening into Linden street, together with the free and common use and privilege forever of said alley. Being same premises which Esther L. Cooper, by a deed of indenture being dated the seventeenth day of November, A. D. 1869, and recorded in the Clerk's office of Camden county at Camden, in Book No. 64 of Deeds, page 444, conveyed unto Mary P. Browning aforesaid in fee, as by reference thereto will more fully and at large appear:

Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof; and also, all the estate, right, title, interest, use,

property, possession, claim and demand whatsoever, as well in law as in equity, of the party of the first part to the said indenture of mortgage, and every part and parcel thereof, with the appurtenances; to have and to hold the therein above granted and described premises, with the appurtenances, unto the said Payson Crowell, the said party of the second part, his heirs and assigns, to his and their own proper use, benefit and behoof forever; provided always, and the said indenture of mortgage was therein declared to be upon this express condition, that if the said Abraham P. Browning and Mary P., his wife, party of the first part to the said indenture of mortgage, his heirs, executors or administrators, should well and truly pay, or cause to be paid, unto the said Payson Crowell, his certain attorney or attorneys, executors, administrators or assigns, the said sum of money mentioned in the condition of the aforesaid bond or obligation, with the interest thereof, at the time and in the manner mentioned in the said condition, according to the true intent and meaning thereof, then the said indenture of mortgage, and the estate thereby granted, should cease, determine and from thenceforth be null and void.

And your oratrix further shows, that after the execution of the said indenture of mortgage, the same was in due form of law acknowledged by the said Abraham Browning and Mary P., his wife, before Frank Skinner, a Commissioner of Deeds for the county and State aforesaid, and duly recorded in the office of the Clerk in and for the said county of Camden, in Book R of Mortgages, page 94, &c., on the 16th day of January, in the year one thousand eight hundred and seventy-two, as by the certificate of the Clerk of the said county, endorsed on the said indenture of mortgage, more fully appears, and to which your oratrix, for greater certainty, begs leave to refer, if it be necessary so to do.

And your oratrix further shows, that on the day of 187 , the said Abraham Browning and wife executed a deed of conveyance of said premises to Alfred Hugg, by reason whereof the said Alfred Hugg claims to be the owner of said premises.

10 And your oratrix further shows, that on the 24th day of October, A. D. 1877, the said Payson Crowell, by deed of assignment under his hand and seal, assigned, transferred and set over unto your oratrix the said bond or obligation in writing and warrant of attorney to confess judgment, together with the said indenture of mortgage and all moneys due and to grow thereon, her heirs and assigns, subject to the proviso of redemption therein contained.

20 And your oratrix further shows, that the city of Camden claims to have a lien upon said premises by reason of a deed or declaration of sale for the term of fifty years from the day of 188 , made by order of the City Council of the city of Camden to the city of Camden for the taxes assessed for the year 187 , made by order of the City Council of the city of Camden to the city of Camden for the taxes assessed for the year 1879, but your oratrix charges that said sale was made subsequent to the execution and recording of your oratrix's said mortgage, and if the said The City of Camden has any lien upon said premises by reason of said declaration of sale, the same is subsequent and subject to your oratrix's said mortgage.

30 And your oratrix further shows, that the city of Camden claims to have a further lien on said premises for the taxes assessed on said premises for the years 1880 and 1881, but she charges that the said being assessed subsequently to the execution and recording of your oratrix's said mortgage they are subject to the lien of your oratrix's said mortgage.

And your oratrix further shows, that the whole of the

principal money mentioned in the said bond or obligation and secured thereby, and by the said deed of mortgage, with large arrears of interest, still remains due and owing to your oratrix, no part thereof having been paid to the said Payson Crowell or to your oratrix, so that your oratrix is greatly delayed and disappointed in the receipt of the said moneys, by means of which said several premises the said deed of mortgage, and the estate thereby mortgaged as aforesaid, has become absolute in your oratrix and his heirs.

And your oratrix further shows, that the said Abraham Browning and Mary P., his wife, and Alfred Hugg, since the execution of your oratrix's said mortgage, have possessed and enjoyed, and that the said Alfred Hugg does still possess and enjoy the said mortgaged premises, with the appurtenances, and that they have always received, and the said Alfred Hugg still does receive, the rents, issues and profits thereof.

And your oratrix further shows and expressly charges that the said mortgaged premises are a slender and scanty security for the payment of the said principal and interest moneys so due to your oratrix as aforesaid and that she or some other person or persons for her has frequently and in a friendly manner applied to the said Abraham Browning and Mary P., his wife, and Alfred Hugg, or one of them, and requested them, or one of them, to pay and discharge the said principal and interest moneys so due to your oratrix on the said bond or obligation and deed of mortgage hereinbefore mentioned and set forth; and your oratrix well hoped that they would have complied with such reasonable request of your oratrix and would have paid to her the said principal and interest moneys so as aforesaid due to your oratrix on the said bond or obligation and deed of mortgage, as in equity and good conscience they ought to have done. But now so it is, may it please your Honor,

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that the said Alfred Hugg and The City of Camden, combining and confederating together, and to and with divers other persons at present unknown to your oratrix but whose names, when discovered, she prays may be inserted herein, with proper and apt words to charge them as parties defendant hereto, and contriving how to injure and aggrieve your oratrix in the premises, and to defraud her of the said principal and interest moneys so as aforesaid due to your oratrix on the said bond or obligation and deed of mortgage hereinbefore mentioned,

10 sometimes give out and pretend, that although your oratrix's estate in the said mortgaged premises may have become absolute at law, yet that your oratrix cannot dispose of the same to any purchaser in any manner, and that the same will be subject to an equity of redemption; and at other times the said confederates pretend that the said mortgaged premises are charged or chargeable with other encumbrances prior to your oratrix's said mortgage but when and to whom given, and

20 for what consideration, they refuse to discover: Whereas, your oratrix charges and insists that if any such pretended encumbrances do exist, they are fraudulent and void, and given for no good or valuable consideration, or are paid and satisfied, and kept on foot by fraud to injure and aggrieve your oratrix, and ought to be delivered up to be canceled, or declared to be of no effect against your oratrix, who had no notice of any such pretended encumbrances. All which actings and doings of the said defendants and their confederates are contrary to

30 equity and good conscience, and tend to the manifest wrong, injury and oppression of your oratrix.

In tender consideration whereof, and forasmuch as your oratrix has not a complete and safe remedy in the premises at and by the strict rules of the common law, nor can foreclose the equity of redemption of the said mortgaged premises, or safely sell the same for the payment

and satisfaction of the said principal and interest moneys so as aforesaid due to your oratrix on said bond and obligation and deed of mortgage, without the aid and decree of this honorable Court;

To the end, therefore, that the said Alfred Hugg and The City of Camden, and confederates, when discovered, may, upon their several and respective corporal oaths, true, full and perfect answer make to all and singular the premises, as fully and particularly as if the same were here again repeated, and they and each of them there-
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 to particularly interrogated, according to the best of their respective knowledge, information, remembrance and belief; and that the said defendants, or some one of them, may be decreed to pay to your oratrix the said principal sum so due to her on the said bond or obligation and deed of mortgage hereinbefore mentioned and set forth, and all the interest money now due and to grow due thereon, together with all your oratrix's costs and charges in this behalf sustained, by a short day, to be appointed by this honorable Court; and in default
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 thereof, that the said defendants, and each of them, and all persons claiming or to claim under them, or any or either of them, may be foreclosed of and from all equity of redemption or claim of, in and to the said mortgaged premises, and every part and parcel thereof, with the appurtenances, and may deliver over unto your oratrix all deeds, demises and writings whatever relating to or concerning the same; or that all and singular the said mortgaged premises, with the appurtenances, may, by
 30
 the order and decree of this honorable Court, be sold, and out of the moneys arising from the sale thereof your oratrix may be paid the full amount of the said principal sum of money so due to your oratrix on the said bond or obligation and deed of mortgage as aforesaid, and all the interest now due and to grow due thereon,

together with all your oratrix's costs and charges in this behalf sustained ;

And that your oratrix may have such further and other relief in the premises as to your Honor may seem meet and shall be agreeable to equity and good conscience. May it please your Honor, the premises considered, to grant unto your oratrix a writ or writs of subpoena, issuing out and under the seal of this honorable Court, to be directed to the said Alfred Hugg and
 10 The City of Camden, therein and thereby commanding them, and each of them, on a certain day, and under a certain penalty therein to be inserted, to be and appear before your Honor in this honorable Court, then and there to answer all and singular the premises, and to stand to, abide by and perform such order and decree therein as to your Honor shall seem meet and shall be agreeable to equity and good conscience.

20 And your oratrix as in duty bound, will ever pray, &c.

RICHARD T. MILLER,

Solicitor for, and of Counsel with Complainant.

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IN CHANCERY OF NEW JERSEY.

Between

SARAH CRAWFORD,
Complainant,

and

ALFRED HUGG AND THE CITY OF
CAMDEN,

Defendants.

ON BILL TO

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FORECLOSE, &C.

SIR:—You are made a party defendant, and sub-
 pteaned to answer the bill of complainant exhibited in
 the above cause, because it is therein alleged that you
 hold a certain declaration of sale and certain taxes
 against the premises mentioned and described in said
 bill, and by virtue thereof claim to have some lien upon
 or interest in the said mortgaged premises. 20

Dated Sept. 12, 1881.

To The City of Camden.

Your ob't serv't,

RICHARD T. MILLER,
Sol'r for Complainant. 30

NEW JERSEY, to wit:—The State of New Jersey to Alfred
 Hugg and "The City of Camden, Greeting:
 We command you, that you personally appear
 before our Chancellor, in our Court of Chan-
 cery, on the twenty-seventh day of September
 instant, at Trenton, to answer a bill of complaint exhib-

L. S.

ited against you in our said Court by Sarah Crawford, and to do further, and to receive what our said Court shall have considered in that behalf; and this you are not to omit, under the penalty of five hundred dollars.

Witness his Honor, Theodore Runyon, Chancellor of said State, at Trenton, the twelfth day of September, in the year of our Lord one thousand eight hundred and eighty-one.

RICHARD T. MILLER,
Solicitor.

10 G. S. DURYEE,
Clerk.

IN CHANCERY OF NEW JERSEY.

Between

SARAH CRAWFORD,

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Complainant,

and

ALFRED HUGG, ET AL.,

Defendants.

ON BILL, &c.
MASTER'S REPORT.

30 I, William S. Hoffman, one of the Masters of the Court of Chancery of the State of New Jersey, do hereby certify and report to his Honor, the Chancellor, that I have seen and inspected the bond and mortgage, and assignment thereof, marked Exhibits A, B and C, mentioned in the said bill of complaint in this cause; and that there is due to the said complainant, on this day, on the bond, the payment whereof was intended to be secured by the said mortgage, the sum of five thousand

seven hundred and fifty dollars and eighty-three cents, lawful money of the United States, for principal and interest on the said bond, as by the schedule hereunto annexed will more fully appear.

All which is most respectfully submitted.

WM. S. HOFFMAN,
Master in Chancery.

Dated January 2d, 1882.

SCHEDULE.

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Bond, bearing date on the first day of January, A. D. 1872, in the penal sum of \$10,000, conditioned for the payment of \$5,000 in one year, with lawful interest, secured by the mortgage in complainant's bill mentioned..... \$5,000 00

Interest thereon, two years and six months from the first day of July, 1879, to January 2d, 1882—two years, six months and one day, at six per cent..... 750 83 20

Amount due complainant January 2d, 1882... \$5,750 00

WM. S. HOFFMAN,
Master in Chancery.

IN CHANCERY OF NEW JERSEY.

	Between	
10	SARAH CRAWFORD,	} ON BILL
	Complainant,	
	and	} TO FORECLOSE.
	ALFRED HUGG, et al.,	
	Defendants.	} FINAL DECREE.

20 This cause being opened to the Court by Richard T. Miller, solicitor and of counsel with the complainant, and it appearing that process of subpoena for the appearance of the defendants hath been duly issued and returned by the Sheriff of the county of Camden, and that the defendants have neglected to file any plea, demurrer or answer to the complainant's bill in the Clerk's office within the time limited by law. Whereupon, and upon reading and filing a report made in this cause by William S. Hoffman, one of the Masters of this Court, bearing date on the second day of January, in the year of our Lord one thousand eight hundred and eighty-two,

30 by which it appears that there is due to the complainant for principal and interest on her mortgage the sum of five thousand seven hundred and fifty dollars and eighty-three cents, and no cause being shown to the contrary; It is, on this ninth day of January, in the year of our Lord one thousand eight hundred and eighty-two, at a Court of Chancery, held at Trenton, by Theodore Run-

yon, Chancellor of the State of New Jersey, ordered, adjudged and decreed, that the said bill of complaint be taken as confessed, and the Master's report, and all the matters and things therein contained, do stand confirmed and the complainant is entitled to have said sum of five thousand seven hundred and fifty dollars and eighty-three cents, with the lawful interest thereof, computed from the date of the Master's report, together with her costs of this suit to be taxed, including a counsel fee of 10 twenty-five dollars raised and paid out of the mortgaged premises.

And it is accordingly further ordered, adjudged and decreed, that so much of the estate and premises in the said mortgage contained as will be sufficient to raise and satisfy the said debt, interest and costs, be sold, and that a writ of fieri facias do issue for that purpose out of this court, directed to the Sheriff of the county of Camden, commanding him to make sale, according to law, of so much of the said mortgaged premises as will be sufficient to satisfy the said debt, interest and costs; and 20 that he pay the same to the complainant or her solicitor; and that in case more money should be raised by the sale than shall be sufficient to answer such payment, such surplus money be brought into this Court, and deposited with the Clerk, to abide the further order of the Court, unless otherwise disposed of by the order of the Court; and that the said Sheriff make return to this Court of his proceedings by virtue of the said writ.

And it further ordered, adjudged and decreed, that the defendant stand absolutely debarred and foreclosed of 30 and from all equity of redemption of, in and to so much of the said mortgaged premises as shall be sold as aforesaid, by virtue of this decree.

THEODORE RUNYON,
C.

