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Bill of Complaint Filed July 5, 1917.

10

IN CHANCERY OF NEW JERSEY.

To THE HONORABLE EDWIN ROBERT WALKER,
Chancellor of the State of New Jersey.

The complainant, THE NEW JERSEY TITLE GUARANTEE AND TRUST COMPANY, a corporation of the State of New Jersey, having its office or principal place of business at No. 83 Montgomery Street, Jersey City, New Jersey, respectfully shows that: 20

1. On October 29, 1906, William J. Shearer, of the City of Elizabeth, in the County of Union and State of New Jersey, being indebted to Phebe O. Earl, of the Township of Union, in the County of Union, and State of New Jersey, in the sum of \$4,500.00, executed to her his bond of that date to secure that sum, payable in five years from the date thereof, with interest thereon at the rate of five per cent., payable semi-annually. 30

2. To secure payment of the bond said William J. Shearer and Carrie M. Shearer, his wife, executed to said Phebe O. Earl a mortgage of even date with said bond, and thereby conveyed to her in fee the lands next hereinafter firstly described, on the express condition that such conveyance should be void if payment should be made according to the terms of the bond, which mortgage having been first duly acknowledged and the certificate of acknowledgment duly endorsed thereon was recorded in the office of the Register of the County of Union, New Jersey, in Book 228 of Mortgages, page 178, &c., on October 31, 1906. 40

3. The lands and premises embraced by said mortgage are described as follows:

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10 ALL that certain tract or parcel of land and premises, hereinafter particularly described, situate, lying and being in the Township of Union, in the County of Union and State of New Jersey.

BEGINNING at a point in the southwesterly line of Magie Road at the northerly corner of a tract of land which was conveyed by Jonathan Magie and others to Willard J. Crawford and James Parmelee, on June 11, 1894, said conveyance being recorded in Book of Deeds for Union County 278, page 490; and from said beginnig point thence running along the northwesterly line of the tract conveyed by Jonathan Magie and others to Willard J. Crawford and James Parmelee, said line being parallel with and distant one hundred (100) feet westerly at right angles from the westerly line of a street called Summit Road, South thirty-five degrees thirty minutes West one thousand four hundred and eleven and twenty-hundredths (1,411-20/100) feet to a point; thence running South forty-six degrees six minutes West two hundred and nine and ten hundredths (209-10/100) feet to an easterly corner of lands conveyed to H. E. Dade; thence running along the northeasterly line of said lands of said H. E. Dade, North sixty-two degrees sixteen minutes West four hundred and twenty-seven and thirty hundredths (427-30/100) feet to another corner of said Dade's land, and a corner of lands conveyed by Jonathan Magie and wife, to Ernest L. Meyer, by deed dated June 8, 1867, recorded in Book of Deeds for Union County, 24, page 524; thence running along the line of lands so conveyed to Ernest L. Meyer, North thirty-five degrees twenty-three minutes East sixteen hundred and forty-one and seventy hundredths (1,641-

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70/100) feet to the southwesterly line of Magie Road; thence running along the southwesterly line of Magie Road south fifty-eight degrees thirty-four minutes East four hundred and sixty-seven and ten hundredths (467-10/100) feet to the place of beginning. 10

Containing seventeen and two hundred and forty-seven thousandths (17-247/1000) acres of land.

After the giving of said mortgage, the lands therein described were laid out into lots and blocks on a map on file in Union County Register's Office entitled, "El Mora Manor, Elizabeth, N. J." 20

4. On December 24, 1908, the said William J. Shearer and Jersey Co-operative Realty Company, a body corporate of the State of New York, being indebted to Myra S. Woodley, of Passaic, in the county of Passaic, and State of New Jersey, in the sum of \$10,000.00, executed to her a bond of that date to secure said sum payable on the 24th day of December, 1911, with interest at the rate of five per cent per annum, payable semi-annually from the date of said bond. 30

5. To secure payment of said last mentioned bond said William J. Shearer and Carrie M. Shearer, his wife, and the said Jersey Co-operative Realty Company executed to Myra S. Woodley a mortgage of even date with the bond, and thereby conveyed to her, in fee, the lands and premises next hereinafter described on the express condition that such conveyance should be void if payment should be made according to the terms of the bond; which mortgage having been duly acknowledged and the certificate of acknowledgment duly endorsed thereon, was recorded in the Office of the Register for the County of Union, New Jersey, in Book 255 40

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10 of Mortgages for said County, page 395, &c., on the 26th day of December, 1908.

6. The premises embraced by the last above mortgage consist of two tracts of land in the Township and County of Union and State of New Jersey, the first being the tract of 17.247 acres of land firstly above described by same description, the second tract being described as follows:

20 BEGINNING at a point in the northerly line of Old Magie Road at the corner of land now or formerly of I. F. Keeler; and running thence along the northerly line of said road north sixty degrees twenty-seven minutes west three chains and twenty links; thence still along the same north sixty-one degrees fifty-five minutes west five chains and twenty-six links; thence still along the same north seventy-three degrees five minutes west three chains and six links; thence still along the same north seventy-seven degrees forty-five minutes west nine chains and seventy-six links; thence still along the same north twenty-eight degrees twenty-five minutes west three chains and eighty links to land now or formerly of John R. Hoole; thence along his land north forty-four degrees and thirty-five minutes east twenty-eight chains and eighty-four links; thence still along his land south forty-six degrees thirty-five minutes east fourteen chains and forty-two links to land formerly of the Estate of Mathias Crane, now of the Estate of Patrick Maher; thence along said Maher's land south forty-three degrees and thirty minutes west six chains and thirty-seven

30

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links to a corner, thence still along the same 10
 south forty-five degrees fifteen minutes east
 four chains and twenty-eight links to a cor-
 ner; thence still along the same south thirty-
 one degrees and fifteen minutes west one
 chain and forty links to a corner; thence
 still along the same north forty-eight de-
 grees and two minutes west two chains and
 eighty-one links to a corner; thence still
 along the same south thirty-one degrees and 20
 forty minutes west eight chains and forty-
 two links to the center line of Magie Street
 as laid out by the Commissioners, thence
 along the center of said street south forty-
 seven degrees and forty-seven minutes east
 four chains and thirty links to said Keeler's
 line; thence along the same south forty-two
 degrees and forty-four minutes west five
 chains and forty-six links to the northerly
 line of said Old Magie Road and the point 30
 or place of beginning. Containing forty-
 eight acres according to a survey (from
 which this description is taken) made by
 Ernest L. Meyer, C.E., of Elizabeth, N. J.,
 in 1892.

After the giving of the said last mentioned mort-
 gage, said tract of 48 acres of land, together with
 other lands, was laid out into lots and blocks on 40
 a map filed in the office of the Register of Union
 County, November 1, 1909, entitled, "Map of Eliz-
 abeth Heights, Elizabeth, N. J."

7. By deed of conveyance under their hands and
 seals dated November 18, 1907, acknowledged the
 same day and recorded January 16, 1908, in Book
 500 of Deeds for Union County aforesaid, page 101,

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10 the said William J. Shearer and Carrie M., his wife, conveyed to Jersey Co-operative Realty Company, a corporation of the State of New York, in fee, two tracts of land in the Township and County of Union, New Jersey, the first being a tract of 24 acres, more or less, part of the said above described tract of 48 acres, and the second being the whole of the tract firstly above described.

20 8. By deed of conveyance under their hands and seals dated December 15, 1908, duly acknowledged December 24, 1908, and recorded December 26, 1908, in Book 517 of Deeds for Union County aforesaid, page 431, the said William J. Shearer and Carrie M., his wife, conveyed to said Jersey Co-operative Realty Company in fee that portion of said tract of 48 acres of land described in complainant's second and third mortgages above set forth adjoining on the north the 24 acres thereof
30 conveyed by said Shearer and wife to said Co-operative Realty Company by the deed referred to in the last preceding paragraph.

9. By deed of conveyance under their hands and seals dated *July 15, 1910*, duly acknowledged the same day and recorded January 16, 1911, in Book 564 of Deeds for Union County aforesaid, page 277, the said William J. Shearer and Carrie M., his wife, conveyed to *Paul Minarovich* in fee lots 50 and 51, "Map of Elizabeth Heights" on file in the Office
40 of the Register of Union County aforesaid; and by deeds of conveyance under their hands and seals dated *September 13, 1910*, duly acknowledged the same day and recorded June 15, 1912, in Book 598 of Deeds for Union County aforesaid, page 322, said William J. Shearer and Carrie M., his wife, conveyed to *Annie E. Scott* in fee lots 14 and 15 "Map of Elizabeth Heights" on file as aforesaid; and by

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deed of conveyance under their hands and seals 10
dated *October 20, 1910*, duly acknowledged the same
day and recorded *January 16, 1911*, in Book 564
of Deeds for Union County aforesaid, page 264, the
said William J. Shearer and Carrie M., his wife,
conveyed to *J. A. Emmerling* (whole full Christian
name was Joseph), in fee, lots 34, 35, and 36, "Map
of Elizabeth Heights," on file as aforesaid; and by
deed of conveyance under their hands and seals
dated *June 17 1914*, duly acknowledged the same 20
day, and recorded *June 23, 1914*, in book 642 of
Deeds for Union County aforesaid, page 485, the
said Joseph A. Emmerling and Harriet, his wife,
conveyed lots 34, 35 and 36, "Map of Elizabeth
Heights" on file as aforesaid, to "The Cook and
Bernheimer Company," a corporation of West Vir-
ginia, in fee; and by deed of conveyance under
their hands and seals dated *February 8, 1915*, ac-
knowledged the same day and recorded *February*
9, 1915, in Book 656 of Deeds for Union County 30
aforesaid, page 210, the said Joseph A. Emmerling
and Harriet, his wife, purported to convey the said
lots 34, 35 and 36, "Map of Elizabeth Heights," on
file as aforesaid, to Leopold Rothschild and Harry
Rothschild in fee; and by deed of conveyance under
their hands and seals dated *July 27, 1916*, acknowl-
edged *September 16, 1916*, and recorded *September*
23, 1916, in Book 689 of Deeds for Union County
aforesaid, page 522, the said Leopold Rothschild 40
and Anna W., his wife, and Harry Rotschild and
Harriet, his wife, conveyed said lots 34, 35 and
36, "Map of Elizabeth Heights," on file as afore-
said, to Alfred Emmerling; and by deed of convey-
ance under their hands and seals dated *October 26,*
1910, duly acknowledged the same day and recorded
January 16, 1911. in Book 564 of Deeds for Union

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- 10 aforesaid, page 266, the said William J. Shearer and Carrie M., his wife, conveyed to *Paul Babin* (whose correct name complainant believe to be Paul Babin) lots 37, 38 and 39, "Map of Elizabeth Heights," on file as aforesaid; and the said Paul Babin and Centa, his wife, mortgaged said lots 37, 38 and 39, "Map of Elizabeth Heights" to Frederick Boschen, to secure payment of the sum of \$2,000.00 and interest; and by deed of conveyance under their hands and seals dated December 1, 1910,
- 20 duly acknowledged the same day, recorded *January 16, 1911*, in Book 564 of Deeds for Union County aforesaid, page 269, the said William J. Shearer and Carrie M., his wife, conveyed to *Carl Foerster* lots 12 and 13, "Map of Elizabeth Heights," on file as aforesaid; and by deed of conveyance under their hands and seals dated *January 18, 1912*, duly acknowledged the same day and recorded March 24, 1913, in Book 617 of Deeds for Union County aforesaid, page 96, the said William J. Shearer and Carrie M., his wife, conveyed to *Georgiana Maynard* in fee lots 10 and 11, "Map of Elizabeth Heights," on file as aforesaid; and by deed of conveyance under their hands and seals dated *January 18, 1912*, duly acknowledged the same day and recorded March 24, 1913, in Book 617 of Deeds for Union County, page 99, the said William J. Shearer and Carrie M., his wife, conveyed to *Lillian Maynard* in fee lots 8 and 9, "Map of Elizabeth Heights"
- 30 on file as aforesaid; and by deed of conveyance under their hands and seals dated *January 23, 1912*, duly acknowledged the same day, recorded March 15, 1912, in Book 594 of Deeds for Union County aforesaid, page 126, the said William J. Shearer and Carrie M., his wife, conveyed to *Christian Winter* in fee lots 48 and 49, "Map of Elizabeth
- 40

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Heights," on file as aforesaid; and by deed of conveyance under their hands and seals dated *July 1, 1912*, duly acknowledged the same day and recorded July 22, 1912, in Book 601, page 179, the said Carl Foerster and Mary, his wife, conveyed to John L. W. Heitman in fee the lots numbered 12 and 13, "Map of Elizabeth Heights" on file as aforesaid conveyed to him by William J. Shearer and wife by deed above mentioned; and by deed of conveyance under his hand and seal date July 3, 1912, duly acknowledged the same day and recorded July 25, 1912, in Book 601 of Deeds for Union County aforesaid, page 252, the said John L. W. Heitmann (describing himself as unmarried) conveyed lots 12 and 13 "Map of Elizabeth Heights," on file as aforesaid, to Mary Foerster in fee.

The said Georgiana Maynard has exhibited to complainant's solicitors an agreement in writing made by her with the said William J. Shearer and under his seal dated June 27, 1908, whereby, in consideration of the sum of \$500.00, he agrees to sell unto her lots 8 and 9 on the map entitled "Elizabeth Park," Union County, New Jersey; and the said Lillian Maynard has exhibited to complainant's solicitors a similar contract, or agreement, made with her by the said William J. Shearer under his seal dated June 27, 1908, whereby, in consideration of \$600.00, he agrees to sell to her lots 10 and 11 on said map entitled, "Elizabeth Park." From a blueprint copy of said map also submitted for inspection by the said Georgiana and Lillian Maynard, it appears that no block numbers are thereon shown, and that said lots 8, 9, 10 and 11 are situate on Greene Avenue, Elizabeth, N. J. Neither of these lots comprise any portion of the lands and premises described in complainant's said

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10 mortgages. By letter dated June 21, 1917, the said William J. Shearer informed complainant's solicitors that the said Maynard lots are in Block No. 1 on said map entitled, "Map of Elizabeth Heights." Those lots do not form any part of the mortgaged premises.

20 All of the lots of land and premises referred to in this paragraph are stated in the various deeds and the said mortgage to be situate in the Township of Union, Union County, New Jersey. Complainant shows that none of the deeds and the mortgage given by Paul Babin and his wife to Frederick Boschen mentioned in this paragraph contain any reference to block numbers, and that the "Map of Elizabeth Heights" in said deeds and mortgage referred to is laid out into 23 blocks of land numbered from 1 to 23 consecutively, on which the numbers of the lots are duplicated in several of the blocks, and complainant is unable to determine whether
30 or not the said lots so conveyed are embraced in its said mortgage secondly above set forth by reason of the absence of block numbers, and therefore charges that the said Paul Minarovich, Annie E. Scott, The Cook and Bernheimer Company, Alfred Emmerling, Paul Babin (or Babinx), Frederick Boschen, Carl Foerster, Christian Winter and Mary Foerster may claim some interest in or lien upon some part of the lands embraced in the tract secondly described in its mortgage secondly above set forth. Any interest they or either of them may
40 have in said lands is subject to the lien of complainant's mortgage secondly above set forth. Complainant is informed, and believes it to be true, that the said Alfred Emmerling is an infant under the age of fourteen years, to wit, nine years.

10. The said Paul Babin (or Babinx) has a wife

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named Centa Babin (or Babinx); the said Carl 10
 Foerster has a wife named Mary Foerster. Said
 wives claim inchoate right of dower in the part of
 the mortgaged lands of their said husbands re-
 spectively owned by them, but such right is sub-
 ject to the lien of complainant's mortgage secondly
 above set forth.

Complainant has been unable to ascertain
 whether said Paul Minarovich and Christian Win- 20
 ter are married, but assumes that they are, and
 charges that any interest such wives may have in
 said mortgaged lands is subject to the lien of its
 mortgage secondly above set forth.

11. On *October 2, 1912*, the said Jersey Co-opera-
 tive Realty Company conveyed the said tract of
 17.247 acres of land in the City of Elizabeth (for-
 merly of Township of Union). Union County, New
 Jersey, described in the mortgages above set forth to
 William J. Shearer. The execution of said deed was 30
 proved on the day of its date and recorded October
 11, 1912, in Book 606 of Deeds for Union County,
 page 245. On October 3, 1912, said William J.
 Shearer and Carrie M., his wife, conveyed to Jersey
 Co-operative Realty Company in fee lots 1 to 65,
 both inclusive, Block 1, lots 1 to 103, both in-
 clusive, Block 2), lots 1 to 48, both inclusive,
 Block 3, and lots 1 to 22, both inclusive, Block
 4, and lots 1 to 10, both inclusive, Block 5;
 also another plot described as beginning at 40
 the southwest corner of lot 6, Block 23,
 on the "Map of Elizabeth Heights," filed in the
 office of the County Clerk of Elizabeth, N. J., run-
 ning in an easterly direction along the southerly
 boundary of said Block 23, 220 feet; thence 50 feet
 in a southerly direction parallel to Magie Avenue;
 thence in a southwesterly direction 200 feet more

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10 or less, parallel to the south boundary of Block
23 to Magie Road; thence in a westerly direction
parallel with Magie Road 110 feet, more or less, to
the place of beginning. The said last mentioned
deed was recorded June 2, 1913, in Book 622 of
Deeds for Union County, page 162. The descrip-
tion therein is evidently defective and wrong, as
the lines cannot be made to meet on the courses
and distances, so that it cannot be told to a cer-
20 tainty just what part of the mortgaged premises
is intended to be conveyed. Apparently to remove
all doubt as to the title of the Jersey Co-operative
Realty Company to the whole of the lands described
in complainant's mortgages, a deed of conveyance
was given by said William J. Shearer and Carrie
M., his wife, to said Jersey Co-operative Realty
Company dated *June 16, 1913*, acknowledged June
27, 1913, and recorded June 30, 1913, in Book 624
of Deeds for Union County aforesaid, page 200,
30 conveying the tract of 17.247 acres of land in the
City of Elizabeth (formerly Township of Union).
Union County, New Jersey, described solely in the
mortgage firstly above set forth and firstly described
in the mortgage secondly above set forth, and also
the tract of 48 acres secondly described in said
mortgage secondly above set forth.

By reason of said defective descriptions in the
various deeds made by the said William J. Shearer
and Carrie M. Shearer, his wife, above set forth
40 complainant charges that they may claim some out-
standing title or interest in said mortgaged
premises, or some part thereof. Such title or inter-
est, if any, is subject to the lien of complainant's
said mortgage.

12. The said Jersey Co-operative Realty Com-
pany, being on June 30, 1913, owner of all the

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mortgaged premises described in said two mortgages, applied to complainant for a loan of \$20,000.00, to be secured to be paid by its bond, and further secured by its mortgage covering the lands and premises hereinafter described—said loan of \$20,000.00 to be applied to the payment of a then existing mortgage held by The Mutual Life Insurance Company of New York covering the lands secondly described in the mortgage secondly above set forth, and also to the payment of the two mortgages above set forth. Complainant agreed to make said loan, and on June 30, 1913, the said Jersey Co-operative Realty Company, a corporation of the State of New York, executed to complainant a bond of that date to secure that sum payable June 30, 1916, with interest at the rate of six per cent per annum, payable July 1, 1913, and semi-annually thereafter.

13. To secure payment of the bond said Jersey Co-operative Realty Company executed to complainant a mortgage of even date with the bond, and thereby conveyed to it, in fee, two tracts of land and premises, the first being situate in the City of Elizabeth, in the County of Union and State of New Jersey (formerly in the Township of Union, Union County, New Jersey), and being the tract of 17.247 acres of land firstly above described, and the second being the tract of 48 acres in the Township of Union, Union County, New Jersey, above described as being embraced in the mortgage given by William J. Shearer to Myra S. Woodley, excepting, however, from said firstly described tract (being the tract of 17.247 acres), the following lots:

“known and designated on the Map of Elmora Manor, Elizabeth, N. J., as lots num-

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- 10 bered five (5), six (6), nine (9), ten (10),
thirty (30), thirty-one (31), thirty-seven
(37), thirty-eight (38), sixty (60), sixty
one (61), sixty-two (62), sixty-three (63),
sixty-four (64), sixty-five (65), in Block
one (1), seven (7), eight (8), seventeen
(17), eighteen (18), nineteen (19), twenty
(20), twenty-three (23), twenty-four (24),
thirty-four (34), thirty-five (35), forty-one
(41), forty-two (42), fifty-one (51), sixty
20 (60), sixty-one (61), eighty-eight (88),
eighty-nine (89), ninety (90), ninety-one
(91), ninety-six (96), ninety-seven (97),
ninety-eight (98), ninety-nine (99), one
hundred (100), one hundred and one (101),
one hundred and two (102), one hundred
and three (103), in Block 2; five (5), six
(6), nine (9), ten (10), forty (40), forty-
one (41), forty-four (44), forty-five (45),
30 forty-six (46), forty-seven (47), forty-eight
(48), forty-nine (49), fifty (50), fifty-one
(51), fifty-two (52), in Block three (3);
four (4), five (5), six (6), seven (7), nine
(9), ten (10), eleven (11), twelve (12),
nineteen (19), twenty (20), twenty-one
(21), twenty-two (22), in Block four (4);
three (3), four (4), nine (9), ten (10).
in Block five (5)."

- 40 And also excepting from said 48 acre tract sec-
ondly described therein and more particularly
above described the following described tract of
land forming part thereof, to wit:

"BEGINNING in the southwesterly line of
Magie Avenue, at a point distant one hun-
dred and thirty feet and fourteen one-hun-
dredths of a foot southeasterly from the in-

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tersection of said southwesterly line of 10
 Magie Avenue, with the southeasterly line
 of Wilson Avenue; thence in a course of
 south forty-eight degrees fifty minutes west
 one hundred and fifty feet; thence in a
 southeasterly direction and parallel with Ma-
 gie Avenue, one hundred feet and fourteen
 one-hundredths of a foot; thence in a course
 of south forty-eight degrees fifty minutes
 west two hundred and five feet and fifty one- 20
 hundredths of a foot, more or less, to the
 northeasterly line of Magie Road; thence in
 a course of south fifty-seven degrees thirty
 minutes east along the northeasterly line
 of Magie Road, one hundred and twenty-five
 feet, more or less, to the land formerly be-
 longing to I. F. Keeler; thence along the
 line of lands of the said I. F. Keeler, in a
 northeasterly direction three hundred and 30
 thirty feet, more or less, to the southwest-
 erly line of Magie Avenue; thence along the
 southwesterly line of Magie Avenue, in a
 northwesterly direction one hundred and
 eighty feet, more or less, to the point or place
 of beginning."

14. By reason of the giving of the deeds of con-
 veyance by William J. Shearer and wife above re-
 ferred to and for the full protection of complain- 40
 on making payment to the holders of the two mort-
 ant it was agreed and arranged that complainant,
 gages above set forth of the amounts due thereon,
 should take an assignment thereof. On June 30,
 1913, complainant paid to The Mutual Life Insur-
 ance Company of New York the sum of \$4,100.83
 principal and interest owing on its said mortgage
 covering the tract of land secondly described in the
 mortgage secondly above set forth. Said mortgage

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10 is recorded in Book 145 of Mortgages for Union
County, page 249, and, after payment by complain-
ant of said sum of \$4,100.83, was duly cancelled
of record in July 29, 1913; and on the same day,
to wit, June 30, 1913, paid to Richard S. Earl, ex-
ecutor of the last will and testament of Phebe O.
Earl, deceased (appointed as such executor by said
testatrix in and by her last will and testament
admitted to probate by the Surrogate of Union
20 County, New Jersey, November 12, 1910, and re-
corded in Book Z of Wills for said County, page
123 et seq.), the sum of \$4,548.00 in full for the
principal and interest owing on the mortgage firstly
hereinabove set forth, and thereupon said Richard
S. Earl, executor of Phebe O. Earl, deceased, by
assignment under his hand and seal dated June 21,
1913, acknowledged June 28, 1913, and recorded
July 5, 1913, in Book 53 of Assignments of Mort-
gages for Union County aforesaid, page 192, as-
signed, transferred and set over unto complainant
the said bond and mortgage, together with the mon-
30 eys due and to grow thereon with interest; and the
said bond, mortgage and assignment have been
from thence hitherto and now are in the possession
of complainant ready to be produced and proved
when and where this Court shall direct. And
complainant did further, on or about June 30, 1913,
pay to Myra S. Woodley, holder of the mortgage
secondly above set forth, the sum of \$7,655.87, be-
40 ing the balance of principal and interest owing
thereon, and thereupon the said Myra S. Woodley,
by assignment in writing under her hand and seal,
dated June 21, 1913, acknowledged June 27, 1913,
and recorded July 5, 1913, in Book 53 of Assign-
ments of Mortgages for Union County aforesaid,
page 190, in consideration of one dollar and other

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valuable considerations (being, in fact, the pay- 10
 ment to her by complainant of said sum of \$4,
 655.87), assigned, transferred and set over to com-
 plainant the last aforesaid bond and mortgage, to-
 gether with the moneys due and to grow due thereon
 and the interest; and the same together with said
 assignment from thence hitherto have been and still
 are in the possession of complainant ready to be
 produced and proved when and where this Court
 shall direct.

15. The balance of said mortgage loan of \$20,- 20
 000.00 was applied as follows: The sum of \$278.50
 retained by complainant, admitted to be due and
 owing it for search fees and expenses in relation
 to the examination of title to said tracts of land
 for the purpose of taking an assignment of said
 two prior mortgages and making its loan of \$20,-
 000.00 to Jersey Co-operative Realty Company.
 The balance of said loan, to wit, \$3,416.80, was paid 30
 by complainant to said Jersey Co-operative Realty
 Company on June 30, 1913.

16. In and by said last mentioned mortgage for 40
 \$20,000.00 complainant agreed to and with the said
 Jersey Co-operative Realty Company that it would
 release from the lien and operation thereof any
 lots shown on the map of "El Mora Manor, Eliz-
 abeth, N. J.," or on the "Map of Elizabeth Heights,
 N. J.," upon the payment of five dollars per front
 foot for each lot so to be released, and that the plot
 of ground, being about 100 feet in width by 205
 feet, more or less, in depth fronting in the north-
 easterly side of Magie Road, on which there is
 erected a dwelling house, would be released upon
 the payment of \$2,500.00. Under the said agree-
 ment complainant afterwards released to said Jer-
 sey Co-operative Realty Company from the lien of

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- 10 the two mortgages firstly and secondly above set forth the lots of land on map of "El Mora Manor, Elizabeth, N. J." excepted after the description of the first tract in complainant's last above stated mortgage; and did also release from the lien of the second above stated mortgage the parcel of land secondly excepted from the tract of 48 acres conveyed to complainant by its last above stated mortgage; and did further by release under its common seal dated August 22, 1913, duly proved and recorded August 23, 1913, in Book 27 of Releases of Mortgages for Union County aforesaid, page 490, release from the lien of all three of its mortgages lots 3, 4, 82 and 83, Block 2, as shown on said Map of "El Mora Manor, Elizabeth, N. J.," for the consideration of \$475.00; and by release under its common seal dated October 2, 1913, duly proved and recorded October 13, 1913, in Book 28 of Releases of Mortgages for Union County aforesaid, page 57, did release to said Jersey Co-operative Realty Company from the lien of all three of said mortgages, lots 7 and 8 Block 5 on the map of "El Mora Manor, Elizabeth, N. J.," aforesaid, for the consideration of \$250.00; and did further by release under its common seal dated November 10, 1913, duly proved and recorded November 15, 1913, in Book 28 of Releases of Mortgages for Union County aforesaid, page 185, release unto the said Jersey Co-operative Realty Company lots 1, 2 and 3, Block 23, "Map of Elizabeth Heights," for a consideration of \$300.00—said last mentioned three lots forming part of the lands and premises secondly described in the second and third of above mentioned complainant's mortgages, and the other lots so released forming part of the tract of 17.247 acres firstly described therein, and also conveyed by the mort-

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gages firstly and secondly above set forth. And 10
 complainant did further, by release under its com-
 mon seal dated June 23, 1914, duly proved the same
 day, in consideration of the sum of \$250.00, release
 to John G. Marr from the lien of all three of its
 said mortgages lots 58 and 59, in Block 2, as shown
 on said map of "El Mora Manor, Elizabeth, N. J.,"
 he being the record owner of said lots; and by re-
 lease under its common seal dated June 23, 1917,
 duly proved the same day, for and in consideration 20
 of the sum of \$375.00, did release unto Pauline
 Rossbach lots 19, 20 and 21 in Block 1 on said Map
 of "El Mora Manor, Elizabeth, N. J.," she being
 the record owner of said lots, and by release under
 its common seal dated June 25, 1917, proved the
 same day, in consideration of the sum of \$250.00,
 did release unto Gertrude Rossbach lots 22 and 23
 in Block 1 as shown on said Map of "El Mora
 Manor," Elizabeth, N. J., she being the record
 owner of said lots. 30

17. Jersey Co-operative Realty Company en-
 tered into a contract in writing under its com-
 mon seal dated *September 9, 1912*, proved Novem-
 ber 6, 1916, recorded November 15, 1916, in Book
 692 of Deeds for Union County aforesaid, page 587,
 to sell to *Joseph E. Poda* lots 76, 77, 78 and 79,
 Block 2, Map of "El Mora Manor, Elizabeth, N.
 J.," on file in the Register's Office of the County
 of Union aforesaid; and by agreement in writing 40
 dated *September 9, 1912*, under its common seal,
 proved February 16, 1917, recorded March 31, 1917,
 in Book 701 of Deeds, page 237, the said Jersey
 Co-operative Realty Company entered into an
 agreement to sell to *Edward McGrath* lots 5 and 6,
 Block 5 on said last mentioned map; and by agree-
 ment in writing under its common seal, dated *Scp*

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- 10 *tember 10, 1912*, proved October 2, 1913, recorded October 9, 1913, in Book 629 of Deeds for Union County aforesaid, page 429, the said Jersey Co-operative Realty Company agreed to sell to *Willard C. Foreman* lots 56 and 57, Block 1, on the map last aforesaid; and by agreement in writing under its common seal dated *September 24, 1912*, proved November 6, 1916, and recorded November 9, 1916, in Book 694 of Deeds for Union County aforesaid,
- 20 page 36, the said Jersey Co-operative Realty Company agreed to sell to *H. P. Baker* (whose full Christian name is Herbert), lots 22 and 23, Block 3, on the map last aforesaid; and by agreement in writing under its common seal dated *November 1, 1912*, proved November 13, 1916, and recorded December 4, 1916, in Book 694 of Deeds for Union County aforesaid, page 470, the said Jersey Co-operative Realty Company agreed to sell to *Herbert W. Park* lots 13 and 14, Block 3, on the map
- 30 last aforesaid; and by agreement in writing under its common seal, dated October 15, 1912, and recorded June 22, 1917, the said Jersey Co-operative Realty Company agreed to sell to *Charles H. Aschenbach* lots 1 and 2, Block 3, on the map last aforesaid; and by agreement in writing under its common seal dated *October 18, 1912*, recorded June 22, 1917, the said Jersey Co-operative Realty Company agreed to sell to *Frederick V. Price, Jr.*, lots 86 and 87, Block 2, on the map last aforesaid; and
- 40 by agreement in writing, under its common seal, dated *December 5, 1912*, recorded June 22, 1917, the said Jersey Co-operative Realty Company agreed to sell to *Mrs. A. R. Martin* lots 44 and 45, Block 1, on the map last aforesaid; and by agreement in writing, under its common seal, dated *October 15, 1913*, the said Jersey Co-operative Realty

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Company agreed to sell to *Charles W. Schear* 10
 (whose proper name is Schearer) lots 13 and 14,
 Block 4, on the map last aforesaid; and by agree-
 ment in writing, under its common seal, dated
November 8, 1912, recorded June 22, 1917, the said
 Jersey Co-operative Realty Company agreed to sell
 to *Florence Connelly* lots 42 and 43, Block 1, on
 the said map entitled, "Elizabeth Heights, Eliza-
 beth, N. J." No deeds of any of the lots so as
 aforesaid agreed to be sold by the said Jersey Co- 20
 operative Realty Company to the persons named
 in this paragraph appear of record. All of the
 said lots form a part of the tract solely described
 in complainant's first mortgage above set forth and
 firstly described in its mortgages secondly and
 thirdly above set forth. Any interest which the
 said Joseph E. Poda, Edward McGrath, Willard
 C. Foreman, Herbert P. Baker and Herbert W.
 Park may claim in and to the lots of land so as 30
 aforesaid agreed to be sold to them is subject to
 the lien of complainant's mortgages.

18. The said Jersey Co-operative Realty Com-
 pany, being owner of all the mortgaged premises
 described in complainant's three mortgages (sub-
 ject, however, to the exceptions contained in its
 last mortgage and also to the releases of other lots
 by complainant above set forth), has made the fol-
 lowing deeds of conveyance of parts of the lands 40
 covered by the said three mortgages, and being part
 of the tract of 17.247 acres firstly described by ref-
 erence to said map of "El Mora Manor" to the fol-
 lowing persons, namely:

(a) To Harry Knierim (or Kinerim) and Anna E.

Knierman (or Kinerim), his wife, dated Jan-
 uary 1, 1917, and proved the same day, re-

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10 corded January 20, 1917, in Book 698 of Deeds for Union County, page 162, lots 16 and 17, Block 3.

 This deed was made partly in performance of an agreement made by said Jersey Co-operative Realty Company with Mrs. Anna Knierim for sale of said lands dated September 10, 1912, proved November 24, 1916, and recorded the same day in Book 694 of Deeds for Union County, page 303.

20 (b) One to William L. Schilling, dated April 6, 1917, proved the same day, recorded April 10, 1917, in the Register's Office of Union County, for lots 46, 47, 48 and 49, Block 1.

 This deed was given in performance of a contract for sale of said lands entered into by the said Jersey Co-operative Realty Company with the said William Louis Schilling dated September 21, 1912, proved May 29, 1916, recorded August 28, 1916, in Book 688 of Deeds for Union County, page 272.

30 (c) One to Modern Homes Realty Company, a corporation of New Jersey, dated October 7, 1913, proved the same day, and recorded January 12, 1914, in Book 635 of Deeds for Union County, page 411, for lots 1 to 19, both inclusive, Block 23, and lots 1 to 41, both inclusive, Block 21, on "Map of Elizabeth Heights," on file in the Office of the Register of Union County—said lots forming part of the tract of 48 acres described in complainant's mortgages secondly and thirdly above set forth; also lots 58 to 65, both inclusive, in Block 1; lots 17 to 20, both inclusive, in Block 2; lots 88 to 103, both inclusive, in Block 2, and lots 42 and 43, Block 3, on the said map of "El Mora Manor."

40

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Lots 1, 2 and 3, Block 23, and lots 24 and 25, 10
 Block 21, on "Map of Elizabeth Heights,"
 have been released from complainant's said
 mortgages by releases above set forth. Lots
 60 to 65, both inclusive, Block 1; 17 to 20,
 both inclusive, Block 2, and lots 88 to 91, both
 inclusive, and 96 to 103, both inclusive, Block
 2, have been released from complainant's
 mortgages firstly and secondly above set forth
 and excepted from the lien of its mortgage 20
 thirdly above set forth.

By deed dated February 22, 1915, the said
 Modern Homes Realty Company conveyed to
 John Foerster (or Forrester) lots 30 and 31,
 Block 21 on said "Map of Elizabeth Heights."
 Said deed was proved on the day of its date
 and recorded March 30, 1915, in Book 659 of
 Deeds for Union County, page 299.

- (d) One to Daniel Burnett Wade, dated Novem- 30
 ber 19, 1913, proved the same day, recorded
 October 8, 1914, in Book 651 of Deeds for
 Union County, page 31, for lots 7 and 8, Block
 3, on said map of "El Mora Manor."
- (e) One to Mr. and Mrs. Carl Knierim dated Jan-
 uary 2, 1917, acknowledged the same day, re-
 corded January 25, 1917, in Book 696 of Deeds
 for Union County, page 559, conveying Lots 18
 and 19, Block 3 on said map of "El Mora
 Manor." 40
- (f) One to Charles A. Bird dated February 3, 1915,
 recorded January 19, 1916, in Book 675 of
 Deeds for Union County, page 213, purporting
 to convey lots 5 and 6, Block 2, on said map of
 "Elmore Manor." This deed is defective in
 that the execution and delivery of it is not
 proved as to the grantor. The certificate of

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- 10 proof states that it was executed and delivered by Modern Homes Realty Company.
- (g) One to Harold Brown and Arthur H. Brown dated April 10, 1915, recorded April 13, 1915, in Book 659 of Deeds for Union County, page 590, conveying lots 24 and 25, Block 1, on said map of "El Mora Manor." This deed is defective in that the proof of execution and delivery made by the grantor is not signed by the person who took it.
- 20 (h) One to Arthur C. Schoenwaldt, dated October 1, 1915, proved the same day, recorded November 11, 1915, in Book 671 of Deeds for Union County, page 472. This deed purports to convey lots 66 and 67, Block 3, on said map of "El Mora Manor." The wrong block number is given in the description, Block 2 being intended. There are no lots numbered 66 and
- 30 67 on the block referred to. To correct this error another deed was given by the said Co-operative Realty Company to the said Arthur C. Schoenwald dated April 11, 1916, proved the same day, recorded April 27, 1916, in Book 681 of Deeds for Union County, page 297, conveying 66 and 67, Block 2, on said map of "El Mora Manor." At the end of the description is the following: "This deed is given to correct an error in a previous deed."
- 40 (i) One to Cora Stryker Servis, dated February 7, 1916, proved the same day, recorded February 19, 1916, in Book 677 of Deeds for Union County, page 257, conveying lots 37, 38, 80 and 81, in Block 2 on said map of "El Mora Manor."
- (j) One to Edward Anderson dated June 26, 1916, proved June 29, 1916, recorded July 3, 1916.

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- in Book 685 of Deeds for Union County, page 147, conveying lots 11 and 12, Block 3, on said map of "El Mora Manor." 10
- (k) One to Irving Dow and William Dawes dated July 24, 1916, proved the same day, recorded August 9, 1916, in Book 687 of Deeds for Union County, page 162, conveying lots 15 and 16 in Block 1 on said map of "El Mora Manor."
- (l) One to John J. Reilly and Maud J. Reilly, his wife, dated July 24, 1916, proved the same day, recorded November 27, 1916, in Book 694 of Deeds for Union County, page 364, conveying lots 64 and 65, Block 2, on said map of "El Mora Manor." 20
- (m) One to Alvin (also known as Albin) McClelland, dated September 20, 1916, proved the same day and recorded the same day in Book 690 of Deeds for Union County, page 55, conveying lots 30, 31, 32 and 33, Block 3, on said map of "El Mora Manor." 30
- (n) One to H. A. Meeker (whose full Christian name is Henry), dated September 20 1916, proved the same day and recorded the same day in Book 690 of Deeds for Union County, page 58, conveying lots 32 and 33, Block 2, on said map of "El Mora Manor."
- (o) One to Samuel R. Ogden, trustee, dated May 1, 1917, proved the same day and recorded May 15, 1917, conveying lots 39 and 40, Block 1, on said map of "El Mora Manor." 40
- (p) Another to said Samuel R. Ogden, trustee, dated May 1, 1917, proved the same day and recorded May 15, 1917, conveying lots 28 and 29, Block 1, and 24 and 25, Block 3, on said map of "El Mora Manor."

Complainant is informed and charges the

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- 10 fact to be that the said Samuel R. Ogden, trustee, holds the lands so conveyed to him, referred to in the last two paragraphs, in trust for Edwin D. Goodnough and Frank E. Inch, who are both of full age.
- (q) One to Edwin D. Goodnough dated May 1, 1917, proved the same day, recorded May 15, 1917, conveying lots 35 and 36, Block 1, on said map of "El Mora Manor."
- 20 (r) One to Frank E. Inch, dated May 1, 1917, proved the same day and recorded May 15, 1917, conveying lots 26 and 27, Block 1, and 20 and 21, Block 3, on said map of "El Mora Manor."

Complainant charges that any interest the said Harry M. Knierim (or Kinerim) and Anna E. Knierim (or Kinerim), his wife, Modern Homes Realty Company, John Foerster (or Forrester), Daniel Burnett Wade, Carl Knierim and Mrs. Carl Knierim, his wife, Charles A. Bird, Harold Brown, Arthur H. Brown, Arthur C. Schoenwaldt, Cora Stryker Servis, Edward Anderson, Irving Dow, William Dawes, John J. Reilly and Maud J. Reilly, his wife, Alvin (or Albin) McClelland, Henry A. Meeker, Samuel R. Ogden, trustee for Edwin D. Goodnough and Frank E. Inch, and the said Edwin D. Goodnough and Frank E. Inch may have in and to said lands conveyed to them is subject

30 to the lien of its said three mortgages, as to the lots conveyed by reference to the map of "El Mora Manor" and to the lien of its mortgages secondly and thirdly above described as to the lots conveyed by reference to the "Map of Elizabeth Heights." and that any interest the said Jersey Co-operative Realty Company may claim in and to any of said

40 lots of land set forth in this paragraph by reason

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of the defects in its deeds herein set forth is subject to the lien of said mortgages. 10

The said William L. Schilling departed this life on May 29, 1917, intestate, leaving him surviving his wife Elsie Schilling. The said Elsie Schilling claims right of dower in the portion of the mortgaged premises so conveyed as aforesaid to her husband William L. Schilling, but such right is subject to the lien of your complainant's said mortgages. 20

The said John Foerster (or Forrester) is unmarried; as also the said Harold Brown, Arthur H. Brown, William Dawes and Henry A. Meeker; the proper Christian name of said Mrs. Carl Kinerim is Freda; the said Daniel Burnett Wade has a wife named Dora E. Wade; the said Charles A. Bird has a wife named Cora W. Bird; the said Edward Anderson has a wife named Annette Anderson; the said Irving Dow has a wife named Freda A. Dow; the said Alvin (or Albin) McClelland has a wife named Edith S. McClelland; the said Cora Stryker Servis has a husband named Peter S. Servis; the said Edwin D. Goodnough has a wife named Alice L. Goodnough, and the said Frank E. Inch has a wife named Meroe M. Inch. The said Dora E. Wade, Cora W. Bird, Annette Anderson, Freda A. Dow, Edith S. McClelland, Alice L. Goodnough and Meroe M. Inch, wives as aforesaid, claim inchoate right of dower in the portions of the mortgaged premises owned by their respective husbands, and the said Peter S. Servis claims inchoate right of courtesy in the portion of the mortgaged premises owned by his wife, the said Cora Stryker Servis. All such claims of inchoate right of dower and courtesy are subject to the lien of complainant's said mortgages. Complainant has been unable to 30 40

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10 ascertain whether the said Arthur C. Schoenwald is married, but assumes that he is, and says that his wife is a proper party defendant, and that any interest she may have in the mortgaged premises is subject to the lien of complainant's mortgages.

19. Complainant charges that the residue of said mortgaged premises not heretofore conveyed by the Jersey Co-operative Realty Company by deeds duly recorded is subject to the lien of its three mortgages so far as relates to any unsold or unreleased
20 lands forming part of the tract of 17.247 acres solely described in its first mortgage and firstly described in its mortgages secondly and thirdly above set forth, and to the lien of its mortgages secondly and thirdly above set forth so far as related to any unsold or unreleased lands forming part of said tract of 48 acres.

20. On May 18, 1915, the said Jersey Co-operative Realty Company mortgaged lots 1 to 79 both
30 inclusive, Block 12, lots 1 to 65, both inclusive, Block 15, and lots 1 to 43, both inclusive, Block 13 on said "Map of Elizabeth Heights," Union Township, Union County, New Jersey, to Patrick H. Gilhooley, trustee, to secure payment of \$5,950.00 and interest, which mortgage was proved on the day of its date and recorded December 28, 1915, in Book 384 of Mortgages for Union County aforesaid, page 72.

40 Complainant is informed and charges the fact to be that the said Patrick H. Gilhooley holds said mortgage in trust for the benefit of Robert Watt, Minnie Spear Morgan and Lizzie Thompson Cook, and it charges that the mortgage set forth in this paragraph is subject and subsequent to the lien of its two mortgages secondly and thirdly above set forth as to the whole of the premises mortgaged to said Patrick H. Gilhooly, trustee.

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21. On September 29, 1916, Sella P. Cole filed notice in the office of the Register of Union County, New Jersey, of pendency of a suit in this Court brought by him against the said Jersey Co-operative Realty Company to compel specific performance of an agreement in writing made with him by said Company dated March 6, 1915, for purchase by him and sale by said Company of lots 21 and 22, Block 2, on said Map of "El Mora Manor." Said notice was recorded in said office on September 29, 1916, in Book 5 of Lis Pendens, page 427. 10 20

22. On December 26, 1916, Edwin D. Good-nough filed notice in Union County Register's Office of a pendency of suit in this Court against the said Jersey Co-operative Realty Company to enforce specific performance of an agreement in writing between the parties, complainant and defendant, dated September 10, 1912, for the purchase by him and sale by said Company of lots 35 and 36, Block 1, on map of "El Mora Manor." Said notice was recorded in said office on December 26, 1916, in Book 5 of Lis Pendens, page 440. 30

23. On December 26, 1916, Frank E. Inch filed notice in Union County Register's Office of pendency of suit in this Court by him against said Jersey Co-operative Realty Company to compel specific performance of an agreement in writing dated September 16, 1912, made between the parties, complainant and defendant, for sales by defendant to complainant of lots 26 and 27, Block 1, and lots 20 and 21, Block 3, on said map of "El Mora Manor." Said notice was recorded in said office on December 26, 1916, in Liber 5 of Lis Pendens, page 439. 40

On May 24, 1917, the said Herbert P. Baker filed notice in Union County Register's Office of pend-

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10 ency of suit in this Court against the said Jersey Co-operative Realty Company and others to enforce specific performance of the agreement above stated made by the said Jersey Co-operative Realty Company with the said Herbert P. Baker to sell to him lots 22 and 23, Block 3, on the said map of "El Mora Manor," Elizabeth, N. J. Said notice was recorded in Union County Register's Office on May 24, 1917, in Book 5 of Lis Pendens, page 467.

20 Complainant charges that any interest the said Sella P. Cole, Edwin D. Goodnough, Frank E. Inch or Herbert P. Baker may have in the lands set forth in their notices respectively is subject and subsequent to the lien of complainant's said three mortgages.

24. On September 12, 1916, National State Bank of Elizabeth entered a judgment in New Jersey Supreme Court against Modern Homes Realty Company and William J. Shearer for \$796.20 damages and costs; and on September 30, 1916, this complainant, The New Jersey Title Guarantee and Trust Company entered a judgment in said Supreme Court against said Jersey Co-operative Realty Company and William J. Shearer for \$8,404.45; and on October 3, 1916, Union County Trust Company, a corporation, entered a judgment in Union County Circuit Court against Jersey Co-operative Realty Company and William J. Shearer for \$1,860.43, besides costs; and on the same day said Union County Trust Company entered a judgment against William J. Shearer in said Circuit Court for \$1,010.95 besides costs; and on the same day Union County Trust Company entered another judgment in said Circuit Court against the said Jersey Co-operative Realty Company and William J. Shearer for \$1,713.07 besides costs; and on the

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same day Union County Trust Company entered another judgment in said Circuit Court against the said Jersey Co-operative Realty Company and William J. Shearer for \$863.17 besides costs; and on October 13, 1916, said Union County Trust Company entered another judgment in said Circuit Court against Jersey Co-operative Realty Company and William J. Shearer for \$4,166.24. 10

By reason of the foregoing judgments complainant and the said National State Bank of Elizabeth, and Union County Trust Company claim a lien upon the said mortgaged premises, or some part thereof. Complainant charges that such liens are subject to the lien of its said mortgages. 20

25. On September 30, 1916, complainant caused to be issued out of the Supreme Court an execution on its said judgment entered therein on September 30, 1916, directed to the Sheriff of the County of Union, to levy upon the lands of the said Jersey Co-operative Realty Company to satisfy said judgment. The said execution was received by said Sheriff on October 5, 1916, at 9:57 A. M., and under it levy was made by said Sheriff upon the whole of the mortgaged premises then owned by the said Jersey Co-operative Realty Company, and the same was and is a first levy upon the said lands, prior to executions issued by the Union County Trust Company and National State Bank of Elizabeth. Complainant submits that it is entitled to have the amount owing to it on said judgment, with interest, costs and sheriff's fees ascertained in this suit and paid to it from any surplus on sale which may remain after paying to it the amount due upon its said mortgages with interest, costs and sheriff's fees. 30 40

26. Complainant charges that it has received

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10 for the said releases given by it from the lien of
 its said mortgages in all the sum of \$2,100.00 as
 follows: August 23, 1913, \$475.00; October 7, 1913,
 \$250.00; November 14, 1913, \$300.00; January 21,
 1914, \$200.00; June 23, 1917, \$250.00; and on the
 same day the further sum of \$375.00, and on June
 25, 1917, \$250.00; and that there is a balance owing
 for principal on said mortgages of \$17,900.00, with
 large arrears of interest thereon at the rate of six
 20 per cent per annum, and that there is owing on its
 said judgment the sum of \$8,362.92 damages, \$41.30
 taxed costs, making a total of \$8,404.22, with in-
 terest thereon from September 30, 1916, besides
 sheriff's execution fees.

Complainant is without adequate remedy in the
 courts of law, and therefore prays that Jersey Co-
 operative Realty Company, a corporation; William
 J. Shearer and Carrie M. Shearer, his wife; Paul
 30 Minarovich and Mrs. Paul Minarovich, his wife;
 Annie E. Scott; The Cook and Bernheimer Com-
 pany; Alfred Emmerling; Paul Babin (or Babinx)
 and Centa Babin (or Babinx), his wife; Frederick
 Boschen; Carl Foerster and Mary Foerster his wife;
 Christian Winter and Mrs. Christian Winter, his
 wife; Joseph E. Poda; Edward McGrath; Wil-
 lard C. Foreman; Herbert P. Baker; Herbert W.
 Park; Charles H. Aschenbach; Frederick V. Price,
 Jr.; Florence Connelly; Mrs. A. R. Martin; Charles
 40 W. Schearer (or Schear); Harry M. Knierim (or
 Kinerim) and Annie E. Knierim (or Kinerim), his
 wife; Modern Homes Realty Company; John Foer-
 ster (or Forrester); Daniel Burnett Wade and
 Dora E. Wade, his wife; Carl Knierim (or Kin-
 erim) and Freda Knierim (or Kinerim), his wife;
 Charles A. Bird and Cora W. Bird, his wife; Har-
 old Brown; Arthur H. Brown; Arthur C. Schoen-

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waldt and Mrs. Arthur C. Schoenwaldt, his wife; 10
 Cora Stryker Servis and Peter S. Servis, her husband; Edward Anderson and Annette Anderson, his wife; Irving Dow and Freda A. Dow, his wife; William Dawes; John J. Reilly and Maud J. Reilly, his wife; Alvin (or Albin) McClelland and Edith S. McClelland, his wife; Henry A. Meeker; Samuel R. Ogden, trustee for Edwin D. Goodnough and Frank E. Inch, and the said Edwin D. Goodnough and Alice L. Goodnough, his wife; and 20
 Frank E. Inch and Meroe M. Inch, his wife; Elsie Schilling; Patrick H. Gilhooley, trustee for Robert Watt, Minnie Spear Morgan and Lizzie Thompson Cook, and the said Robert Watt, Minnie Spear Morgan and Lizzie Thompson Cook; National State Bank of Elizabeth, and Union County Trust Company, who are the defendants in this suit, may answer this bill of complaint and each statement therein made.

2. That an account may be taken of the amount 30
 due on complainant's mortgages and also on its judgment, and that the mortgaged premises may be sold in two parcels, first the tract of 17.247 acres solely described in first mortgage and firstly described in its second and third mortgages, excepting from such sale the portions of said tract which have been released or excepted from the said mortgages; and if the amount realized on sale of the part of that tract so remaining unreleased shall 40
 be insufficient to pay and satisfy complainant's said mortgage debt with interest, costs and sheriff's fees, and also its said judgment, that then so much of the track secondly described in its mortgages secondly and thirdly set forth remaining unreleased from the lien thereof may be sold to pay the residue of said mortgage debt, interest, costs and sher-

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10 iff's fees, and judgment, with interest, costs and sheriff's fees.

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

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

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

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COLLINS & CORBIN,
Solicitors for and of Counsel
with Complainant.

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**Addition by Way of Supplement to
Original Bill.**

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Filed Oct. 11, 1917.

The complainant for addition by way of supplement to its original bill filed in this cause, respectfully shows:

1. Since the filing of its said bill and on the 4th day of September, 1917, Benjamin A. Vail, Esq., of the City of Elizabeth, County of Union and State of New Jersey, was, by order of this Court made in a cause wherein Chelsea Exchange Bank, a corporation of the State of New York, is complainant and the Jersey Co-operative Realty Company, a corporation of the State of New York, is defendant, appointed receiver for the stockholders and creditors of said Jersey Co-operative Realty Company. Said order was in confirmation of an order previously made by said Court in said cause on July 24, 1917, appointing said Vail receiver and granting leave to the executors and stockholders of said Jersey Co-operative Realty Company to apply to this Court on September 4, 1917, for the appointment of some other person as receiver, or for an additional receiver or receivers.

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2. Answers and counterclaims have been filed in the above-entitled suit of complainant on behalf of the defendants Joseph E. Poda, Frederick V. Price, Jr., Frank E. Inch and Meroe M. Inch, his wife, and Edwin D. Goodnough and Alice L. Goodnough, his wife, Sella P. Cole, Samuel R. Ogden, trustee for Frank E. Inch and Edwin D. Goodnough, Alvin B. McClelland and Edith S. McClelland, his wife, Charles A. Bird and Cora W. Bird, his wife, Patrick H. Gilhooly, Trustee, Harry

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Addition by Way of Supplement to Original Bill

10 M. Knierim and Annie E. Knierim, his wife; Carl
 Knierim and Frieda Knierim, his wife, Henry R.
 Meeker, Daniel Burnett Wade and Dora E. Wade,
 his wife, and Herbert P. Baker. Many of these de-
 20 fendants set up in their answers and counterclaims
 contracts alleged to have been made by and between
 them and the said Jersey Co-operative Realty Com-
 pany for the purchase of lots forming part of the
 premises mortgaged to complainant, and in said an-
 swers and counterclaims allege the payment of va-
 rious sums of money on account of said contracts to
 the Jersey Co-operative Realty Company and pray
 an accounting and sale of said mortgaged premises
 in inverse order of alienation and for such further
 and other relief as may be equitable and just.

3. Complainant shows that by reason of said
 answers and counterclaims the said Benjamin A.
 Vail, receiver of the Jersey Co-operative Realty
 30 Company, is a proper party defendant to this suit.

It therefore prays that order be made permitting
 it to join said Benjamin A. Vail, trustee of the
 Jersey Co-operative Realty Company, a party de-
 fendant to its above-entitled cause and that process
 of subpoena issue against him directing him to
 appear and answer in this cause and that its said
 suit proceed in all respects against him as if he
 had been a party defendant to its original bill.

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COLLINS & CORBIN,
 Solicitors for and of Counsel
 with Complainant.

**Abstract of Answer of Defendants,
 Frank E. Inch and Meroe M. Inch,
 his wife; Edwin D. Goodnough and
 Alice L. Goodnough, his wife; and
 Counterclaim filed August 22, 1917.**

Defendants admit paragraphs one (1) to eight (8) inclusive; eleven (11), twelve (12) and thirteen (13) of the Bill of Complaint; have no knowledge as to fourteen (14); admit, however, the execution and delivery of the assignments of mortgages; have no knowledge as to fifteen (15); admit paragraphs sixteen (16), seventeen (17) and eighteen (18), but deny that their interest is subject to the three mortgages of the Complainant; they admit paragraphs twenty-two (22) and twenty-three (23), but deny that their interest is subject to the Complainant's three mortgages; admit the recovery of judgment as alleged in paragraph eighteen (18), but deny the lien thereof upon lands conveyed to Inch and Goodnough; admit paragraph twenty-five (25), but deny Complainant's right to have judgment paid out of surplus from the sale of mortgaged premises; have no knowledge as to paragraph twenty-six (26).

By way of counterclaim against the Complainant and the Defendants, Jersey Co-operative Realty Company, a corporation, and Union County Trust Company, a corporation, they allege

1: The contract in writing dated September 16, 1912, Frank E. Inch with Jersey Co-operative Realty Company for Lots 26 and 27, Block 1, and Lots 20 and 21, Block 3, as laid down on Map entitled "El Mora Manor, Elizabeth, N. J.," for \$1,275, payable \$40.00 on signing agreement and \$20.00 monthly thereafter and conveyance of said premises to said Inch by deed of warranty, dated May 1, 1917, recorded May 15, 1917, Book 705 of Deeds. pages 172, etc.

Abstract of Answer of Defendants

10 2: Filing of Bill for specific performance of the aforesaid contract and filing *lis pendens*, December 26, 1916.

 3: Contract dated September 10, 1912, Jersey Co-operative Realty Company with Edwin D. Goodnough, for sale of Lots 35 and 36, Block 1, on Map entitled "Elmora Manor, Elizabeth, N. J.," for \$550, payable \$20.00 upon signing agreement and \$10.00 monthly thereafter and execution and delivery of warranty deed to Goodnough, dated, May 1, 1917, recorded May 15, 1917, Book 705, of Deeds, pages 165, etc.

 4: Filing of Bill to compel specific performance of contract last above mentioned.

 5: Premises purchased as aforesaid, part of tract containing 17,247 acres, particularly described in the third paragraph of Bill. This tract is laid out into lots and blocks by Jersey Co-operative Realty Company and delineated on Map entitled "Elmora Manor, Elizabeth, N. J.," and that Company was, at the time of making contracts and ever since, has been engaged in business of selling lots on instalment payments, all of which was well known to the Complainant, on June 30, 1913, and for a long time prior thereto.

 6: When the purchases were made by Inch and Goodnough, above tract was subject to mortgage by William J. Shearer and wife to Phoebe O. Earl, dated, October 29, 1906, Book 228 of Mortgages, pages 273, etc., which mortgage contains no provision for releasing any part of premises covered thereby; that said premises, with second tract of 48 acres, which was also laid out in lots and blocks and is particularly described in paragraph 6 of the Bill.

Abstract of Answer of Defendants

were subject to another mortgage, made by Shearer and wife and Jersey Co-operative Realty Company to Myra S. Woodley, to secure \$10,000, dated December 24, 1908, Book 255, pages 395, etc., which mortgage contains a provision for releasing parts of first tract (17.247 acres) and part of second tract (48 acres), which lies within 480 feet of Magie Road, in plots of one acre or more, at the rate of \$300 per acre and for releasing remainder of second tract in like plots at \$150 per acre.

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7. Making of mortgage Jersey Co-operative Realty Company to Complainant, June 30, 1913, for \$20,000, recorded July 5, 1913, Book 337, pages 256, etc. purporting to cover tracts of 17.247 acres and 48 acres with exceptions and Defendants "charge that said moneys were loaned by the Complainant to the said Jersey Co-operative Realty Company and said mortgage taken as security therefor, with knowledge by the Complainant of the contracts of purchase between said Jersey Co-operative Realty Company and the Defendants, Frank E. Inch and Edwin D. Goodnough above set forth, and that by reason thereof the said lots so conveyed to the said Defendants, as aforesaid, are free, clear and discharged from the lien and encumbrance of said mortgage."

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8: Provision in last mentioned mortgage for releasing lots upon payment of \$5.00 per front foot, pursuant to which numerous releases were made by Complainant as set forth in paragraph 16 of the Bill.

40

9: After taking assignments of Earl and Woodley mortgages, as set forth in paragraph 14 of the Bill "with full knowledge of the contracts of purchase of the said Defendants, Frank E. Inch and

Abstract of Answer of Defendants

- 10 Edwin D. Goodnough and their rights and interests in the lots hereinabove described, and without consideration passing to it therefor, the Complainant, by its deed of release, dated July 3, 1913, and recorded in Book 27 of Releases for Union County, on pages 492, etc., relieved from the lien of the mortgage formerly of Myra S. Woodley, hereinabove described, and by its deed of release bearing date on the same day and recorded in Book 27 of Releases, pages 494, etc., relieved from the lien of the mortgage of the said Phoebe O. Earl, the following described premises, constituting a part of the tract of 17.247 acres aforesaid, viz:

30 Known and designated on the "Map of Elmora Manor, Elizabeth, N. J.," as lots numbered five (5), six (6), nine (9), ten (10), thirty (30), thirty-one (31), thirty-seven (37), thirty-eight (38), sixty (60), sixty-one (61), sixty-two (62), sixty-three (63), sixty-four (64), sixty-five (65), in Block One (1), seven (7), eight (8), seventeen (17), eighteen (18), nineteen (19), twenty (20), twenty-three (23), twenty-four (24), thirty-four (34), thirty-five (35), forty-one (41), forty-two (42), fifty-one (51), sixty (60), sixty-one (61), eighty-eight (88), eighty-nine (89), ninety (90), ninety-one (91), ninety-six (96), ninety-seven (97), ninety-eight (98), ninety-nine (99), one hundred (100), one hundred and one (101), one hundred and two (102) and one hundred and three (103), in Block Two (2); five (5), six (6), nine (9), ten (10), forty (40), forty-one (41), forty-four (44), forty-five (45), forty-six (46), forty-seven (47), forty-eight (48), forty-nine (49), fifty (50), fifty-one (51),

Abstract of Answer of Defendants

and fifty-two (52), in Block Three (3); four 10
 (4), five (5), six (6), seven (7), nine (9),
 ten (10), eleven (11), twelve (12), nineteen
 (19), twenty (20), twenty-one (21), twenty-
 two (22), in Block four (4); three (3), four
 (4), nine (9), and ten (10), in Block five
 (5), of the value of \$10,000.

10: Release by Complainant without considera-
 tion and with full knowledge of the rights of De-
 fendant from Woodley mortgage the following de- 20
 scribed premises:

Beginning in the Southwesterly line of Magie
 Avenue, at a point distant one hundred and thirty
 feet and fourteen one-hundredths of a foot South-
 easterly from the intersection of said Southwesterly
 line of Magie Avenue with the Southeasterly line
 of Wilson Avenue; thence in a course of South
 forty-eight degrees fifty minutes West one hundred
 and fifty feet; thence in a Southeasterly direction
 and parallel with Magie Avenue, one hundred feet 30
 and fourteen one-hundredths of a foot, more or less
 to the Northeasterly line of Magie Road; thence in
 a course of South fifty-seven degrees thirty minutes
 East along the Northeasterly line of Magie Road,
 one hundred and twenty-five feet, more or less, to
 the land formerly belonging to I. F. Keeler; thence
 along the line of lands of the said I. J. Keeler in a
 Northeasterly direction three hundred and thirty
 feet, more or less, to the Southwesterly line of 40
 Magie Avenue; thence along the Southwesterly line
 of Magie Avenue in a Northwesterly direction, one
 hundred and eighty feet, more or less, to the point
 or place of Beginning, which are of the reasonable
 value of \$3,000.

11: Recovery of Complainant's judgment Sep-
 tember 30, 1916, in New Jersey Supreme Court

Abstract of Answer of Defendants

10 against the Jersey Co-operative Realty Company and William J. Sharer.

12: Recovery of three judgments by Union County Trust Company, October 3, 1916, against Shearer and Jersey Co-operative Realty Company and on October 13, 1916, against the same Defendants. Defendants charge that judgments were entered and recovered with knowledge of the contracts of Inch and Goodnough and rights in the lots of land above
20 described and that judgments are not liens thereon.

13: Since making contracts Jersey Co-operative Realty Company, has made many sales of lots out of the two tracts, some of which sales have been consummated by the delivery of deeds and other contracts have not been performed; most lots sold subject to the first or second of Complainant's mortgages and in some cases to both, and that deeds have been regularly given by the Company for lots
30 subject to said mortgages and the third mortgage of Complainant, in violation of the agreements under which conveyances were made and the covenants of warranty in the deeds contained.

14: Defendants had no knowledge of the existence of the mortgages set forth in the Complainant's Bill of Complaint before July 1, 1916.

15: Allege that Complainant has other security
40 for the moneys intended to be secured by the mortgages, which should first be applied to the satisfaction of the indebtedness.

Prayer.

That the Complainant and the Defendants, Jersey Co-operative Realty Company and Union County

Abstract of Answer of Defendants

Trust Company, answer the counterclaim; that an account be taken of the moneys due the Complainant on its mortgages "and that there be credited thereon, the reasonable value of the lands and premises released from the lien thereof, without consideration as hereinabove stated"; that Defendants' lots be decreed free and clear of liens of three mortgages of Complainant, its judgment and the judgments of Union County Trust Company; that Complainant and Union County Trust Company be compelled to exhaust remedies against other securities, etc., before resorting to lands conveyed to Defendants;

That the mortgaged premises be sold in lots or in such parcels as the Court shall direct, and that in the first place there be sold to satisfy the first mortgage of the Complainant, so much of the tract of 17.247 acres, above described, as is still owned by said Company, and if a deficiency exists, that secondly such lots as may have been sold out of such tract by said Company, be sold in the inverse order of their alienation and that to satisfy the second mortgage of the Complainant, there be firstly sold, such lots contained in the second tract of 48 acres aforesaid, as still belong to the said Jersey Co-operative Realty Company and should there be a deficiency, that there be secondly sold so many of the lots as have been sold by the said Company as shall be necessary to meet said deficiency, in the inverse order of their alienation, and if there be a deficiency, so many of the lots owned by the said Company, and remaining unsold, in the first tract of 17.247 acres, be sold and if a deficiency still remains, as many of the lots in said tract of 17.247 acres as have not been sold to satisfy the first mortgage of the Complainant and as shall be necessary to meet said deficiency, shall be sold in the inverse order of their alienation.

*Abstract from Answer and Counterclaim of
Defendant Frederick V. Price, Jr.*

10

If necessary to sell Defendants' lots, that they have leave to purchase them for a sum not to exceed what the Complainant would be entitled to receive for release thereof; that they may have other and further relief.

SIDNEY W. ELDRIDGE,
Solicitor for and of Counsel with said Defendants.

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Abstract From Answer and Counterclaim of Defendant, Frederick V. Price, Jr.

This Defendant admits paragraphs 1 to 8 inclusive, and paragraphs 11, 12 and 13 of the Bill; has no knowledge of paragraph 14, but admits execution and delivery of the assignment of the mortgages therein set forth; has no knowledge of 15; admits 16; admits 17, but denies that lots sold him are subject to the lien of Complainant's mortgages; denies 19; admits 24, but denies that judgments therein mentioned, are liens upon premises subject to his contract of sale; admits paragraph 25, but denies Complainant's right to have judgment and interest paid from surplus remaining after payment of Complainant's mortgages; has no knowledge as to 26.

40 By way of counterclaim against Complainant and the Defendants, Jersey Co-operative Realty Company and Union County Trust Company, this Defendant says:

1: October 18, 1912, Jersey Co-operative Realty Company made written contract to convey to him, by warranty deed free of all encumbrances, Lots 86 and 87, Block No. . . , on Map entitled "Elmora Manor, Elizabeth, N. J.," for \$650, payable \$30.00

*Abstract from Answer and Counterclaim of
Defendant Frederick V. Price, Jr.*

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on execution agreement and \$10.00 monthly thereafter. Agreement recorded June 22, 1917. Book 707, pages 172, etc.

2: Payment of \$450 on account and ready and willing to pay balance of the purchase money upon performance of contract by vendor.

3: Lots purchased, part of 17.247 acres laid out by Company into Lots and Blocks on Map entitled "Elmora Manor, Elizabeth, N. J.", and Company at the time of making contract, was and ever since has been engaged in the business of selling lots on instalment contracts, which was known to Complainant on June 30, 1916, and before.

20

4: Tract of 17.247 acres subject at the time of Defendant's purchase, to mortgage William J. Shearer and wife, to Phoebe O. Earl, mentioned in the second paragraph of Bill, to secure \$4,500, dated October 29, 1906, Book 228 of Mortgages, pages 178, etc., which mortgage contains no provision for releasing any part of lands covered thereby, and which tract, with another of 48 acres, described in paragraph 6 of the Bill, was subject to mortgage of \$10,000, made by Shearer and wife and Company to Myra S. Woodley, dated December 24, 1908, Book 255 of Mortgages, pages 295, etc., which last mentioned mortgage provides for releasing any part of said tracts lying within 480 feet of Magie Road in plots of one acre or more, at \$300 per acre and the remainder in like plots at \$150 per acre and that if the mortgaged premises be plotted into building lots, the same rate shall apply to lots.

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5: Mortgage Jersey Co-operative Realty Company to Complainant, dated June 30, 1913, for \$20,000, recorded July 5, 1913, Book 337, pages 205, etc., purporting to cover above two tracts with exceptions, providing for releasing lots on Map "Elmora Manor, Elizabeth, N. J.", and another Map

*Abstract from Answer and Counterclaim of
Defendant Frederick V. Price, Jr.*

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upon which is delineated 48 acre tract, laid out into lots and blocks, on payment of \$500 per front foot. And Defendant "charges and insists that the loan secured by said mortgage was made and said mortgage was accepted by the Complainant with full knowledge of the contract existing between the said Company and this Defendant, as set forth in the first paragraph of this counterclaim."

20

6: Several lots released as set forth in paragraph 16 of the Bill.

7, 8 and 9: Same releases as the foregoing abstract of Answer and Counterclaim of the Defendants, Frank E. Inch and others sets forth and charges that releases made without consideration that lots released were, at the time, reasonable and fair value of \$10,000 and \$3,000 respectively.

30

10: Judgment of Complainant against Jersey Co-operative Realty Company and William J. Shearer, September 30, 1916, three judgments of Union County Trust Company against the same Defendants, October 3, 1916, and another on October 13, 1916, charges that judgments were entered with full knowledge of the contracts of this Defendant and that they do not constitute a lien upon the premises purchased by him.

40

11: Since making contract the Company has sold lots at various times out of both above tracts; has in some cases delivered deeds and in others none has been delivered and that most of lots are subject to on or more of Complainant's mortgages.

12: No knowledge by Defendant of the mortgages of Complainant nor of judgments of Complainant and Union County Trust Company before January 1, 1917.

*Abstract from Answer and Counterclaim of
Defendant Frederick V. Price, Jr.*

10

Prayer.

That Complainant and Defendants, Jersey Co-operative Realty Company and Union County Trust Company may answer the counterclaim; that an account be taken of the moneys due the Complainant on its mortgages and that there be credited thereon the reasonable value of the premises so released from the liens thereof without consideration as aforesaid; that Defendant's lots be decreed free of the lien of the third mortgage of the Complainant and the judgments of the Complainant and Union County Trust Company; that the mortgaged premises be sold in lots or in such parcels as the Court shall direct and that in the first place, so much of 17.247 acres be sold as is owned by Jersey Co-operative Realty Company; secondly, that as many of the lots sold out of this tract as shall be necessary in the inverse order of their alienation; thirdly, as much of the tract of 48 acres as shall be owned by the Company to pay amount due upon second mortgage; fourthly, so much of the premises in the 17.247 acre tract belonging to the Company and remaining unsold be sold to pay deficiency. As many of lots within said tract of 48 acres as may be sold by the Company, be sold in the inverse order of their alienation and that Complainant and Defendant, Union County Trust Company, be compelled to resort to their remedies against William J. Shearer for the recovery of their judgments before resorting to lots sold by the Company, that if it be necessary to sell Defendant's lands they may be permitted to purchase at the sale for a sum not to exceed the balance due on his contract of purchase, etc., and for such other and further relief as may be equitable and just.

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**Abstract of Answer and Counterclaim
Sella P. Cole.**

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This Defendant, answering, admits paragraphs one to 8 inclusive, and paragraphs 11, 12 and 13 of the Bill; has no knowledge of 14, but admits assignments of mortgages; has no knowledge of 15; admits paragraphs 16, 17 and 18; denies that residue of mortgaged premises, as alleged in paragraph 19, is subject to the lien of Complainant's three mortgages, but admits balance of paragraph; admits paragraph 21, but denies that her interest in lands described in paragraph 21, is subject to Complainant's mortgages as alleged in paragraph 23; admits recovery of judgment by Complainant, September 30, 1916, but denies that judgment is lien against premises purchased by her; admits paragraph 25, but denies that Complainant is entitled to have judgment paid out of surplus after payment of Complainant's mortgages; has no knowledge of 26.

20

By way of counterclaim against Complainant and Defendants, Jersey Co-operative Realty Company and Union County Trust Company, says:

30

1: October 21, 1912, Jersey Co-operative Realty Company entered into agreement with Defendant for sale of Lots 21 and 22, Block 2, Map "Elmora Manor, Elizabeth, N. J.", for \$675, payable in monthly instalments of \$10.00 each, and to convey premises by warranty deed free of all liens and encumbrances.

10

2: March 3, 1915, instalment payments in arrear and payment to the Company on that date of arrearages. Was advised by President of Company that it was necessary for her to execute a new contract, defendant made further agreement in writing, dated, March 3, 1915, to purchase said lots, which was duly performed, October, 1915, and at the time, the Company delivered a deed of conveyance containing covenants of warranty, which deed, when submitted to counsel, was found defective and was

Abstract of Answer and Counterclaim, Sella P. Cole

handed back to Company for correction, which they promised to make, but never did make and that deed was held by the Company and it never has redelivered it. 10

3: Filing of Bill of Complaint by the Defendant to compel specific performance of Company's contract, notice of which was given by *lis pendens* as set forth in paragraph 21 of the Bill, which *lis pendens* was filed September 29, 1916, and that a decree pro fesso against the Jersey Co-operative Realty Company has been entered in said suit. 20

4: Premises purchased by defendant part of 17.247 acres described in third paragraph of Bill, which was cut off into lots and blocks shown on map "Elmora Manor, Elizabeth, N. J.", and that at the time of her purchase, the Company was engaged in selling lots on instalment contracts, which was known to Complainant on and before June 30, 1913.

At the time of defendant's purchase, the tract of 17.247 acres and 48 acres subject to the mortgages particularly referred to in the foregoing abstracts and the answers and counterclaims of Frank E. Inch and others and Frederick V. Price, Jr. 30

Release of premises from Earl and Woodley mortgages with full knowledge to the Complainant of Defendant's contract and without consideration as set forth in the foregoing abstracts of counterclaims and of Frank E. Inch and others, said premises being of the values therein stated, to wit: The lots released \$10,000, and the tract on Southwesterly line of Magie Avenue, \$3,000. 40

No knowledge or information by Defendant of mortgages of the Complainant before January 1, 1916.

Judgment of Complainant against Jersey Co-operative Realty Company and William J. Shearer, September 30, 1916, which judgment is subject to Defendant's rights in the lands purchased by her.

Abstract of Answer and Counterclaim, Sella P. Cole

10 Recovery by Union County Trust Company of three judgments, October 3, 1916, in Union County Circuit Court, against Jersey Co-operative Realty Company and William J. Shearer and one against the same parties October 13, 1916, and that judgments were entered with full knowledge of this Defendant's rights and do not constitute a lien upon the premises purchased by her.

20 Since making Defendant's contract the Company has sold many lots out of both above tracts at various times to various purchasers, some sales have been consummated by delivery of deed, others still pending on contract and most of lands sold and conveyed still subject to the first or second of Complainant's mortgages and in some cases to both, the Company having regularly given deeds for lots subject to said mortgages and to its third mortgage, in violation of the agreements under which conveyances were given and the covenants of warranty in deeds contained.

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Prayer.

The same as in Answer and Counterclaim, Frederick V. Price, Jr., with this additional prayer:

40 That Defendant may be permitted to buy the lots sold to her at public sale, if a sale be necessary, for a sum not to exceed the amount she will be obliged to pay the Complainant for a release thereof, in accordance with the terms of the third mortgage and excepting also the prayer for leave to purchase at such sale, for the balance due upon Defendant's contract of purchase.

Abstract From Answer and Counter-claim of Defendants, Alvin B. McClelland and Edith S. McClelland, his wife. 10

These Defendants, answering say:

They admit paragraphs 1 to 8 inclusive; 11, 12 and 13 of the Bill; have no knowledge of 14, but admit execution and delivery of assignments of mortgages; have no knowledge as to 15; admit 16 and 17; admit 18, but deny that their interest in premises conveyed to them is subject to the lien of the three mortgages of Complainant; admit recovery of judgment, September 30, 1916, by Complainant against Jersey Co-operative Realty Company and William J. Shearer as set forth in the 24th paragraph, but deny that lien of the judgment affects premises conveyed to Alvin B. McClelland; admit paragraph 25; have no knowledge as to 26. 20

By way of counterclaim against the Complainant and the Defendants, Jersey Co-operative Realty Company and Union County Trust Company, these Defendants say:

1: On September 10, 1912, Jersey Co-operative Realty Company entered into written agreement to sell the Defendant, Alvin B. McClelland, Lots 30, 31, 32 and 33, Block 3, laid down on Map entitled Elmora Manor, Elizabeth, N. J.", for \$1,100, and pursuant to the agreement the Company delivered warranty deed, dated September 20, 1916, which was recorded the same day in Book 690 of Deeds, on pages 55, etc., which premises are a part of the tract of 17.247 acres described in the third paragraph of the Bill. 30 40

The following allegations are practically the same as in the foregoing abstract of the Answer of Frederick V. Price, Jr.; these Defendants charging the Complainant with notice of its contract when making its third mortgage loan and when releasing part of the security pledged for the payment of the first and second of the Complainant's mortgages.

*Abstract from Answer and Counterclaim of Defdts.
Charles A. Bird and Cora W. Bird*

10

Prayer.

Same as in foregoing abstract of Answer and Counterclaim of Frederick V. Price, Jr., except that leave is asked to purchase lots at public sale, if such becomes necessary, at a sum not to exceed what the Complainant would be entitled to receive for a release thereof.

20

Abstract From Answer and Counterclaim of Defendants, Charles A. Bird and Cora W. Bird.

These Defendants answering say that they admit paragraphs one to 8 inclusive; 11, 12 and 13 of the Bill; have no knowledge as to 14, but admit execution and delivery of assignments of mortgages; have no knowledge as to 15; admit 16 and 17; admit 18, but deny that their interest in the premises conveyed to them as alleged in said paragraph, is subject to the lien of the three mortgages of the Complainant and that their deed is defective; admit recovery of judgment by Complainant, September 30, 1916, against Company and Shearer as alleged in 24th paragraph, but deny that lien thereof affects premises conveyed to Defendant, Charles A. Bird; admit paragraph 25, but deny Complainant's right to have judgment satisfied out of proceeds of sale after the payment of Complainant's mortgages; no knowledge as to 26.

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40

By way of counterclaim against the Complainant and the Defendants, Jersey Co-operative Realty Company and Union County Trust Company, these Defendants say:

1: On September 3, 1912, Jersey Co-operative Realty Company entered into a written agreement with the Defendant, Charles A. Bird, to sell Lots 5

*Abstract from Answer and Counterclaim of Defdts.
Charles A. Bird and Cora W. Bird*

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and 6, Block 2, map "Elmora Manor, Elizabeth, N. J.", for \$650, payments on account, September 3, 1912, \$10.00; September 9, 1912, \$190; October 1, 1913, \$200; November 23, 1914, \$250.00: that upon last date Defendant was entitled to warranty deed for said premises, which deed, bearing date February 3, 1915, was afterwards delivered and recorded, January 19, 1916, Book 675, pages 213, etc.

20

When contract made, Company was owner of 17.247 acres, including the Defendant's lots, which it divided into lots and blocks laid down on map entitled "Elmora Manor, Elizabeth, N. J.", and was then and ever since has been engaged in the business of selling lots on instalment payments which was known to the Complainant on and before June 30, 1913.

30

Premises subject to the Earl and Woodley mortgages as set forth in the foregoing abstract of the answer and counterclaim of Defendant, Frederick V. Price, Jr.

40

On June 30, 1913, Company made and executed to Complainant, mortgage \$20,000, recorded July 5, 1913, Book 337, pages 255, etc., covering tract of 17.247 acres and of 48 acres "and this Defendant charges that at the time that said Complainant agreed to make the loan aforesaid, to Jersey Co-operative Realty Company, which was intended to be secured by said mortgage, it had knowledge of the existing contract between said Jersey Co-operative Realty Company and this Defendant, Charles A. Bird, and of his rights and interests in and to the two lots of land conveyed to him by said Jersey Co-operative Realty Company as set forth in paragraph one of this counterclaim and that by reason thereof said mortgage is not a lien upon, nor does it affect the said lots of land."

Sets forth releases particularly referred to in the

*Abstract from Answer and Counterclaim of Defdts.
Charles A. Bird and Cora W. Bird*

10

foregoing abstract of the Answer and Counterclaim of the Defendant, Frederick V. Price, Jr., and states the value of the lands released as therein set forth, alleging that said releases were made with knowledge of the rights of the Defendants.

Judgment of Complainant recovered September 30, 1916, as set forth in paragraph 24 of the Bill, was entered with full knowledge af the rights of these Defendants.

20

Since making of mortgages Company has made many sales of lots to various persons out of the tracts affected by the first and second mortgages; some of the sales have been consummated by the delivery of a deed and in other cases contracts exist; practically all land affected by said sales is subject to either the first or some mortgage of the Complainant and in many cases to both, and the third mortgage purports to cover all thereof.

30

Recovery of the judgments of Union County Trust Company with full knowledge of the sale and conveyance to Defendant, Charles A. Bird, of the lots above mentioned and that they do not constitute a lien thereon.

Prayer.

The prayer the same as in foregoing abstract of Answer and Counterclaim of Defendant, Frederick V. Price, Jr.

40

Amendment to Counterclaim.

Pursuant to leave of Court, the Defendants, Edwin D. Goodnough and Alice L. Goodnough, his wife; Frank E. Inch and Meroe, his wife; Alvin B. McClelland and Edith S. McClelland, his wife; Charles A. Bird and Cora W. Bird, his wife; Sella P. Cole and Frederick V. Price, Jr., on October 1, 1917, amended their respective counterclaims in the following respects: 10

By adding thereto the following allegations:

On the Fourth day of September, 1917, Benjamin A. Vail, Esquire, was by an order of this Court, made in a cause wherein Chelsea Exchange Bank is complainant and Jersey Co-operative Realty Company, the defendant, appointed receiver of the stockholders and creditors of Jersey Co-operative Realty Company and thereupon all the right, title, and interest of the said Jersey Co-operative Realty Company in the premises included within the mortgages of the complainant vested in said receiver. 20

After his appointment as aforesaid, said Benjamin A. Vail, Receiver of Jersey Co-operative Realty Company was made a party defendant to the Bill of Complaint of the Complainant. 30

By adding to the first paragraph of the prayer for relief the name of Benjamin A. Vail, Receiver of Jersey Co-operative Realty Company.

By adding to the fifth paragraph of the prayer for relief, the name of said Receiver as owner of said mortgaged premises.

10 **Replication to Answer and Counter-**
claim of the Defendants, Frank E.
Inch and Meroe M. Inch, his wife,
and Edwin D. Goodnough and Alice
L. Goodnough, his wife.

October 8, 1917.

20 The complainant joins issue on the answer of the
defendants, Frank E. Inch and Meroe M. Inch, his
wife, and Edwin D. Goodnough and Alice L. Good-
nough, his wife.

As to the counterclaim contained in said answer
complainant says:

It has no knowledge of the contract referred to
in paragraph one, nor of the payments alleged to
have been made thereunder. It admits the record
of a deed as therein referred to.

It admits paragraph two.

30 It has no knowledge of the contract referred to in
paragraph three, nor of the payments alleged to
have been made thereunder. It admits the record-
ing of the deed to Edwin D. Goodnough set forth
in said paragraph.

It admits paragraph four.

40 It admits that the lands and premises purchased
by the defendants, Frank E. Inch and Edwin D.
Goodnough, described in said deeds, form part of
a tract of 17,247 acres, as alleged in par. 5, and
that said tract was laid out into lots and blocks as
shown on the map referred to in said paragraph,
but has no knowledge whether at the time of the
making of the alleged contracts with said defend-
ants by the Jersey Co-operative Realty Company
said Company was and from thence hitherto has
been engaged in the business of selling lots to
various persons on installment payments, and de-
nies that the same was well known to it on the
30th day of June, 1913, and for a long time prior
thereto.

*Replication to Answer and Counterclaim of Defdts.
Frank E. Inch and Meroe M. Inch, His Wife, and
Edwin D. Goodnough and Alice L. Goodnough,
His Wife* 10

It admits paragraph six.

It admits the making of the mortgage for \$20,000.00 to it dated June 30, 1913, set forth in paragraph seven, but denies that the monies were loaned by it to the Jersey Co-operative Realty Company and said mortgage taken as security therefor with full knowledge by it of the alleged contracts of purchase between the Jersey Co-operative Realty Company and the defendants, Farnk E. Inch and Edwin D. Goodnough; and further denies that the lots so conveyed to them are free, clear and discharged from the lien and encumbrance of its said mortgage referred to in said paragraph and charges that the same is a prior and paramount lien thereon. 20

It admits paragraph eight.

It admits the giving of the releases mentioned in paragraph nine, but denies that the same were given with full knowledge of the alleged contracts of purchase of the said defendants, Frank E. Inch and Edwin D. Goodnough, and also denies that said releases were given without consideration. 30

It admits the giving of the release set forth in paragraph ten, but denies that the same was given without consideration and with full knowledge of the alleged rights of the defendants, Frank E. Inch and Edwin D. Goodnough.

It admits paragraph eleven. 40

It admits the entry of the judgments referred to in paragraph twelve, but denies that its judgment therein referred to was entered and recovered by it with full knowledge of said alleged contracts of purchase and that its said judgment does not affect and is not a lien upon the lands described in said contracts and says that its judgment is a lien thereon.

*Replication to Answer and Counterclaim of Defdt.
Frederick V. Price, Jr.*

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As to paragraph thirteen it says it has no knowledge of the number of sales made by the Jersey Co-operative Realty Company of lands forming part of the premises covered by its mortgages nor whether said Realty Company has entered into contracts not yet performed, and charges that the whole of the land described in its said mortgages are subject to the lien thereof respectively, except such parts as have been released or excepted from such lien, as set forth in the bill of complaint.

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As to paragraph fourteen, complainant charges that the defendants, Frank E. Inch and Edwin D. Goodnough, had proper notice of the lien of its mortgages, the same having been duly recorded on the dates set forth in the bill of complaint.

It denies paragraph fifteen.

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Complainant submit that the defendants, Frank E. Inch, Meroe M. Inch, his wife, and Edwin D. Goodnough and Alice L. Goodnough, his wife, are not entitled to the relief prayed in said counterclaim except that as to whether the mortgaged premises should be sold in lots or parcels in inverse order of alienation it submits itself to this Court.

COLLINS & CORBIN,
Solicitors for Complainant.

40 **Replication to Answer and Counter-
claim of Defendant Frederick V.
Price, Jr.**

October 10, 1917.

The complainant joins issue on the answer of the defendant, Frederick V. Price, Jr.

*Replication to Answer and Counterclaim of Defd.
Frederick V. Price, Jr.*

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As to the counterclaim contained in said answer, complainant says:

It has no knowledge of the allegations of paragraphs one and two except as it is informed by said counterclaim.

It admits the allegation of paragraph three that the lands described in paragraph one of the counterclaim are part of a tract of 17,247 acres purchased by defendant Jersey Co-operative Realty Company and laid out into lots and blocks, as alleged in said paragraph, but has no knowledge whether said Jersey Co-operative Realty Company at the time of the making of the alleged contract with the defendant, Frederick V. Price, Jr., was and ever since has been engaged in the business of selling lots to various purchasers on installment contracts, or that the same was well known to it on the 30th day of June, 1916, and before then, as alleged in said paragraph three.

20

It admits paragraph four.

30

It admits the making of the mortgage to it of \$20,000.00 by Jersey Co-operative Realty Company set forth in paragraph five, but denies that the loan secured by said mortgage was made by complainant and said mortgage accepted by it with full knowledge of the alleged contract referred to in said paragraph five.

It admits paragraph six.

It admits the giving of the release set forth in paragraph seven, but denies that it had knowledge of the alleged rights of defendant, Frederick V. Price, Jr., therein referred to and that said release was given without consideration.

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It admits the making of the release referred to in paragraph eight, but denies that the released premises were at the time of the execution of such release of the reasonable and fair value of

*Replication to Answer and Counterclaim of Defd.
Frederick V. Price, Jr.*

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\$10,000.00, and says that the value of the same was far below that amount at that time.

It admits the making of the release set forth in paragraph nine, but denies that it was given without consideration, or that the released premises were at the time of the execution of such release of the reasonable and fair value of \$3,000.00, and says that the value of the same was far below that amount at that time.

20

It admits the entry of the judgments set forth in paragraph ten, and denies that its judgment therein referred to is not a lien upon the lands of the defendant, Frederick V. Price, Jr., described in said counterclaim, and charges that it is a lien thereon.

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As to paragraph eleven complainant says it has no knowledge of the number of sales made by the Jersey Co-operative Realty Company of the lands embraced by complainant's mortgages, except as set forth in its bill of complaint. It charges that the whole of the lands described in its said mortgages is subject to the lien thereof respectively, except such parts as have been released or excepted from such lien as set forth in the bill of complaint.

As to paragraph twelve complainant says that the defendant had proper notice of the lien of its mortgages, same having been duly recorded as set forth in the bill of complaint.

40

It denies the allegation of paragraph thirteen.

Complainant submits that the defendant, Frederick V. Price, Jr., is not entitled to the relief prayed in said counterclaim, except that as to whether the mortgaged premises should be sold in lots or parcels in inverse order of alienation it submits itself to this Court.

COLLINS & CORBIN,
Solicitors of Complainant.

**Replication to Answer and Counter-
claim of Sella P. Cole.**

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Filed October 8, 1917.

The complainant joins issue on the answer of the defendant, Sella P. Cole.

As to the counterclaim contained in said answer complainant says:

It has no knowledge of the allegations contained in paragraphs one and two.

It admits the filing of the notice of suit brought by the defendant, Sella P. Cole, against the Jersey Co-operative Realty Company set forth in paragraph three, but has no knowledge of the present status of said suit except as stated in said paragraph.

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It admits that the lands described in paragraph one of said counterclaim constitute a part of the tract of 17,247 acres described in the third paragraph of the bill of complaint and that said tract was laid out into lots as shown on the map entitled, "El Mora Manor, Elizabeth, N. J." It does not know whether the Jersey Co-operative Realty Company at the time of the making of the contract with the defendant, Sella P. Cole, was and ever since has been engaged in the business of selling lots located within said tract to various purchasers on installment contracts, and denies that it had knowledge thereof on and before the 30th day of June, 1913.

30

It admits paragraph five.

It admits the execution of the mortgage for \$20,000.00 to it referred to in paragraph six, but denies that said mortgage of \$20,000.00 was taken by it with full knowledge of the contract of purchase between the defendant Jersey Co-operative Realty Company and Sella P. Cole. It further denies that its said last mentioned mortgage is not a lien upon lands described in paragraph one of the counterclaim of the defendant, Sella P. Cole, and charges that it is a lien thereon.

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*Replication to Answer and Counterclaim of Sella
P. Cole*

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It admits paragraph seven.

It admits the giving of the releases mentioned in paragraph eight, but denies that it had knowledge of the contract of purchase by the defendant Sella P. Cole therein referred to, or of her alleged rights and interest in the lands described in paragraph one of her counterclaim, and also denies that said releases were given without consideration and that the lots so released described in said paragraph

20 eight were at the time of the execution of said releases of the reasonable and fair value of \$10,000.00, and says that the value of the same was far below that amount at the time of the execution of said releases.

It admits the execution of the release set forth in paragraph nine, but denies that the same was given by it without consideration and with full knowledge of the alleged rights of the defendant Sella P. Cole. It also denies that the lands described in

30 said paragraph nine were at the time of the giving of such release of the reasonable and fair value of \$3,000.00 and says that the value of that parcel was far below that amount at the time of the execution of said release.

As to paragraph ten complainant says that its mortgages were recorded on the dates and in the books and at the pages of record set forth in the bill of complaint and that the defendant, Sella P. Cole, had proper notice thereof.

40

It admits that recovery of its judgment set forth in paragraph eleven, but denies that it is subject and subsequent to the rights of the defendant, Sella P. Cole, in and the lots of land claimed by her and that it had knowledge of her alleged rights therein.

It admits the entry of the judgments set forth in paragraph twelve, but submits that they do not affect complainant's rights or claim.

*Replication to Answer and Counterclaim of Sella
P. Cole*

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As to paragraph thirteen it says that it has no knowledge of the number of sales made by the Jersey Co-operative Realty Company of the lands embraced by complainant's mortgages, or whether in many cases a contract only for purchase of lots or parcels covered by said mortgages is in existence. It charges that the whole of the lands described in its said mortgages are subject to the lien thereon respectively, except such parts as have been released or excepted from such lien, as set forth in the bill of complaint.

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Complainant submits that the defendant, Sella P. Cole, is not entitled to the relief prayed in said counterclaim except that as to whether the mortgaged premises should be sold in lots or parcels in inverse order of alienation it submits itself to this Court.

COLLINS & CORBIN,
Solicitors for Complainant.

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**Replication to Answer and Counter-
claim of the Defendants Alvin B.
McClelland and Edith S. McClelland.**

Filed October 8, 1917.

The complainant joins on the answer of the defendants, Alvin B. McClelland and Edith S. McClelland, his wife.

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As to the counterclaim contained in said answer complainant says:

It has no knowledge of the allegations of paragraph one.

It admits that a tract of 17,247 acres referred to in paragraph two was laid out into lots and blocks

*Replication to Answer and Counterclaim of Defdts.**Alvin B. McClelland and Edith S. McClelland*

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and a map thereof filed, as alleged in said paragraph, but has no knowledge whether the Jersey Co-operative Realty Company before and ever since the time of the making of the alleged contract between that Company and the defendant, Alvin B. McClelland, was regularly engaged in the business of selling lots to various purchasers upon installment contracts. It admits the allegations of the remainder of paragraph two.

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It admits the giving of the release set forth in paragraph three, but denies that said release was given without consideration.

It admits the giving of the release referred to in paragraph four, but denies that such release was given without consideration, or that the lands released were at the time of the execution of said release of the reasonable and fair value of \$10,000.00, and says that the value of said released premises was far below that amount at the time of such execution. It admits the giving of the release of the Woodley mortgage set forth in said paragraph, but denies that such release was given without consideration, or that the value of the released tract was \$3,000.00, and says that the value was far below that sum at the time of the giving of the release.

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It denies the allegation of paragraph five that on June 30, 1913, and for a long time prior thereto and at the time of the execution and delivery of the releases above mentioned it had knowledge of the contracts between the defendant Jersey Co-operative Realty Company and defendant, Alvin B. McClelland, referred to in said paragraph, or that it had any notice of the alleged rights of the defendant, Alvin B. McClelland, in the lots claimed to have been purchased by him, and denies that the lands so purchased by the defendant, Alvin B.

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*Replication to Answer and Counterclaim of Defdts.
Alvin B. McClelland and Edith S. McClelland*

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McClelland, are free and clear of the lien and encumbrance, of its mortgages, or that the defendant, Alvin B. McClelland, is entitled to have credited upon the first and second mortgages set forth in the bill of complaint the reasonable and fair value of the lands and premises so released as aforesaid from the lien thereof and that the lots purchased by the defendant, McClelland, should be relieved accordingly.

It admits paragraphs six and seven.

20

It admits the entry of the judgments set forth in paragraph eight, but submits that they do not affect the rights of the complainant in this cause.

As to paragraph nine complainant says that the defendants are chargeable with notice of the record of its mortgages. Record was made in the Union County Register's Office on the dates set forth in the bill of complaint.

It denies the allegations of paragraph ten.

The complainant submits that the defendants, Alvin B. McClelland and Edith S. McClelland, his wife, are not entitled to the relief prayed in said counterclaim except that as to whether the mortgaged premises should be sold in lots or parcels in inverse order of alienation it submits itself to this Court.

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COLLINS & CORBIN,
Solicitors of Complainant.

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10 **Replication to Answer and Counter-
 claim of Defendants Charles A. Bird
 and Cora W. Bird, his wife.**

 Filed October 8, 1917.

 The complainant joins issue on the answer of the
defendants, Charles A. Bird and Cora W. Bird, his
wife.

 As to the counterclaim contained in said answer
complainant says:

20 It has no knowledge or information sufficient to
form a belief as to the statements contained in
paragraph one, except that it admits the delivery
and recording of the deed therein referred to.

 It admits that at the time of the making of the
contract referred to in said counterclaim the de-
fendant Jersey Co-operative Realty Company was
the owner of the tract of land referred to in para-
graph two and caused said tract of land to be laid
out into lots on map entitled, "Map of El Mora
30 Manor, Elizabeth, N. J," and submits that it is im-
material whether or not the said Jersey Co-opera-
tive Realty Company sold lots by reference to said
map to various purchasers on installment pay-
ments, the mortgages of the complainant covering
the lots of the defendant, Charles A. Bird, being
recorded as in the bill of complaint alleged and
the defendants being charged with notice of the
record.

40 It admits paragraphs three and four of said
counterclaim.

 It admits the making, execution and delivery of
the mortgage to it set forth in paragraph five. but
denies that at the time it agreed to make the loan
of \$20,000.00 secured to be paid by said mortgage
it had knowledge of the existence of the contract
between said Jersey Co-operative Realty Company
and the defendant, Charles A. Bird. and denies
that its said last mentioned mortgage is not a lien

*Replication to Answer and Counterclaim of Defdts.
Charles A. Bird and Cora W. Bird, His Wife*

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upon the two lots of land in said paragraph referred to, and charges that it is a lien thereon.

It admits the giving of the releases mentioned in paragraph six, but denies that it had knowledge of the alleged rights of defendant there in referred to and that said releases were given without consideration, and also denies that the lots so released firstly described in said paragraph were at the time of the execution of said releases of the reasonable and fair value of \$10,000.00, or that the parcel secondly described in said paragraph was at the time of the execution of said release of the reasonable value of \$3,000.00 and says that the value of said lots firstly described was far below \$10,000.00 at the time of the execution of said release and that the value of the parcel secondly described was far below the value of \$3,000.00 at the time of the execution of said release.

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It admits the allegation of paragraph seven.

As to paragraph eight complainant says that it has no knowledge of the number of sales made by the Jersey Co-operative Realty Company of the lands embraced by complainant's mortgages, or whether in many cases a contract only for purchase of lots or parcels covered by said mortgages is in existence. It charges that the whole of the lands described in its said mortgages are subject to the lien thereof respectively, except such parts as have been released or excepted from such lien as set forth in the bill of complaint.

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It admits the entry of the judgments of Union County Trust Company against William J. Shearer and Jersey Co-operative Realty Company set forth in paragraph nine, but has no knowledge whether the same, or any of them, constitute a lien upon the lands of the defendant, Charles A. Bird.

It denies the allegations of paragraph ten.

Opinion on Final Hearing

10 Complainant submits that the defendant, Charles A. Bird and Cora W. Bird, his wife, are not entitled to the relief prayed in said counterclaim except that as to whether the mortgaged premises should be sold in lots or parcels in inverse of alienation it submits itself to this Court.

COLLINS & CORBIN,
Solicitors of Complainant.

20 **Replications.**

Edwin D. Goodnough and Alice L. Goodnough, his wife; Frank E. Inch and Meroe, his wife; Alvin B. McClelland and Edith S. McClelland, his wife; Charles A. Bird and Cora W. Bird, his wife; Sella P. Cole and Frederick V. Price, Jr., all filed formal replications to the answer of New Jersey Title Guarantee and Trust Company to their respective counterclaims.

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Opinion on Final Hearing.

Decided, May 8, 1918.

MR. CHARLES B. HUGHES, for complainant.

40 MR. SIDNEY W. ELDRIDGE, for defendants Sella P. Cole and others.

MR. CLARK MCK. WHITTEMORE, for defendants Patrick H. Gilhooley, Trustee, and others.

JAMES F. FIELDER, Advisory Master.

The defendant, Jersey Co-operative Realty Company, was the owner of two tracts of land in Union

Opinion on Final Hearing

County, the one known as the El Mora tract and 10
 the other as the Elizabeth Heights tract. Through
 an agent, it applied for and was granted a loan by
 complainant on bond and mortgage in the sum of
 \$20,000.00, which mortgage was dated June 30,
 1913, and recorded July 5, 1913. The mortgaged
 land was part of larger tracts owned by the mort-
 gator and its predecessors in title and was cov-
 ered by three mortgages, one held by the Mutual
 Life Insurance Company on the Elizabeth Heights 20
 tract, the second held by the Estate of Phoebe O.
 Earl, covering the El Mora tract and the third held
 by Myra W. Woodley, covering both tracts. The
 complainant applied its \$20,000 loan to pay off
 these three mortgages, the first being cancelled of
 record and the Earl and Woodley mortgages being
 assigned to complainant. The expenses of the loan,
 including the assignments, added to the amount of
 the three mortgages, left a balance of \$3,416.80,
 which was paid to the mortgator. Certain parts of 30
 the tracts covered by the assigned mortgages had
 been sold by the mortgator prior to the loan and
 the mortgator specifying lots or plo's which it de-
 sired excepted from the mortgage lien, they were
 not included in the new mortgage and were also,
 as part of the transaction, released by complainant
 as assignee of the two prior mortgages, such re-
 leases being given without consideration. This suit
 is brought to foreclose the three mortgages.

The Jersey Co-operative Realty Company was a 40
 land company and had made maps of both tracts
 showing streets, blocks and lots thereon.
 Deeds and contracts had been given and re-
 corded for lots it had sold prior to the ex-
 ecution of complainant's mortgage, while for
 others there were unrecorded contracts. When ap-
 plication was made for the \$20,000 loan, copies of
 the maps were furnished the complainant. with a

Opinion on Final Hearing

10 list of the lots which were to be included in the mortgage and complainant's title examination was made against the listed lots and so far as the record disclosed, title to all the lots mortgaged to complainant, was in the mortgagor free and clear of any contract to convey, or other interest or lien in any other person. As a matter of fact, there were outstanding contracts of which complainant claims it had no notice, but some of the answering defendants contend that complainant was actually informed that unrecorded contracts existed, or that its rights must be held to be subject thereto, because it knew that the mortgagor's business was selling lots and it was therefore charged with notice of all sales made by it. After the mortgage was recorded, contracts purporting to antedate the mortgage and deeds under such contracts, were placed on record for lots in the mortgaged tracts.

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30 The complainant's mortgage contained a clause whereby it agreed to release lots in either tract on payment of \$5 per front foot, but the Earl mortgage contained no release clause and the Woodley mortgage contained a provision for releases on the basis of an acreage value. From the Earl and Woodley mortgages, the complainant, as has been stated, gave releases without consideration, for property not included in its third mortgage and it further released various lots from all three mortgages on the basis of the front foot rate specified in the third mortgage. Some of these releases were given before and others after the answering defendants' interest were made matter of record, but again contending that complainant had actual or constructive notice of their rights, they say that complainant, under the Earl mortgage, could release only for an adequate consideration and under the Woodley mortgage for a consideration based on an acreage rate and that the consideration received was inadequate.

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Opinion on Final Hearing

The determination of the two points raised by the defendants turns upon the question of notice to complainant of their rights. The rule is that where the party sought to be charged has actual notice that the property was encumbered, or in some way affected by the rights of others, he is bound with constructive notice of facts which a proper inquiry made by him would disclose. There is no evidence in the case to show that the mortgagor's officers or agents informed the complainant of specific outstanding contracts affecting the property to be mortgaged. The officers of the complainant who had to do with the transaction, testify they had no such knowledge. The property was vacant and when complainant's officers inspected it, prior to agreeing to make the loan, there was no evidence of ownership by possession. The *president and the agent* of the mortgagor submitted to complainant a list of the lots which they proposed to mortgage and a list of others which were to be excepted from the mortgage and this was equivalent to a statement that those they proposed to mortgage, were free from claims of others and that those to be excepted were the ones already conveyed or under contract and the purpose of the releases from the Earl and Woodley mortgages were to free the excepted lots, so that the mortgagor could convey them, or assure good title to the holders of deeds. The only evidence in the case which might charge the complainant with notice of the defendant's claims was given by Mr. Woolley, a title examiner for complainant, who testified that *Seaman*, the *agent* who *negotiated the loan*, told him there might be outstanding contracts and that the complainant had better take assignments of the prior mortgages for its protection against any such. It is not necessary to discuss whether the position Woolley held with his company, bound the

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Opinion on Final Hearing

10 company's officers or directors with knowledge of such facts communicated to him, because it does not appear that any knowledge of sufficient definiteness was communicated to him which would put him or his principal on inquiry.

The complainant had before it the application for the loan made by Shearer, the president of the borrowing company, *which was in effect a statement that there were no outstanding contracts.* I refer to the following questions and answers therein contained:

9. Is the property encumbered by mortgage, easement, ground rent, mechanic liens, municipal liens, judgments, or "by other lien of encumbrance"?

Ans. \$4,500; \$4,000; \$10,000.

12. Objections to title known or rumored?

Ans. None. Restrictions in deeds by owner.

13. Unrecorded deeds, agreements, adverse claims and interest or secret trust, known or rumored to exist?

Ans. None.

The title examination showed the record clear and upon all these facts I conclude that no statement was made to complainant's officers which should have aroused their suspicions, or required inquiry on their part to ascertain whether there were unrecorded contracts or deeds for any part of the mortgaged premises and I am of the opinion that its mortgage is a prior lien to the defendants' claims.

We come next to consider the effect of complainant's releases. The releases from the Earl and Woodley mortgages, given at the time of the execution of its \$20,000.00 mortgage, were delivered before the defendants' interests were made matters of record and having no notice of such interests, complainant was justified in exacting no consideration

Opinion on Final Hearing

therefor. It was part of the agreement for the loan that they should be released and had complainant cancelled the Earl and Woodley mortgages of record, that would have been the effect. All other releases were given in accordance with the release clause contained in the \$20,000.00 mortgage. Under our decisions, a mortgagor is not charged with notice of subsequent encumbrances, or interests, merely by the recording of instruments evidencing the same, but knowing that the mortgagor was engaged in selling lots and that it would probably sell some of these mortgaged and having incorporated a release clause for that purpose in its mortgage, the complainant would probably be bound to take notice of the rights of subsequent purchasers, but as its real debt was the \$20,000.00 mortgage and the two prior mortgages were merely collateral thereto, I am of the opinion that the defendants have no rights as against the releases given for the consideration specified in the \$20,000.00 mortgage.

The complainant holds a judgment against the owner or owners of the premises in question and there is no dispute that its execution thereon and levy on the mortgaged premises, were prior to any other execution and levy. After the filing of the bill of complaint, a receiver for the owner was appointed by this Court, who was by proper proceedings on complainant's motion, made a defendant herein and the bill taken as confessed against him. I think the complainant is entitled to have its judgment made out of the sale of the mortgaged premises, in the proper order of its priority.

As to the method or manner of selling the mortgaged premises, I am willing to hear the parties further, but I think the property still covered by the complainant's mortgages should be sold to pay the amount found due thereon and in satisfaction also of the two mortgages it holds by assignment.

Final Decree Without Recitals

10 Such portion of the two tracts in which the answering defendants have no interest, should be sold first and the El Mora tract should be sold prior to the Elizabeth Heights tract. Each tract should be sold in parcels of two lots each and if sufficient is not realized to satisfy complainant's mortgage and judgment, the remaining part of the mortgaged premises should be sold in such order as may be settled by the decree to be entered herein.

20 It is suggested on behalf of the answering defendants that the property should be sold free of municipal liens and free of restrictions. I know of no statute authorizing such course with respect to liens and I can offer no different, or less or better title sold than the mortgage conveyed. I think the sale should be made by a Special Master; that he should be authorized to expend not exceeding \$300.00 to specially advertise the sale and that after paying the amount due the complainant on its mortgage and judgment and the amount due the defendant Gilhooley, trustee, on his mortgage, the surplus should be brought into court and the equities of the other defendants ascertained and a proper distribution then ordered.

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Final Decree Without Recitals.

40 It is thereupon, on this 15th day of August, 1918, by his Honor, Edwin Robert Walker, Chancellor of the State of New Jersey, ORDERED, ADJUDGED AND DECREED, and the said Chancellor doth, by virtue of the power and authority of this Court, hereby ORDER, ADJUDGE AND DECREE that at the time of the giving of the bond and mortgage to complainant by the defendant Jersey Co-operative Realty Company, dated June 30, 1913, recorded July 5,

Final Decree Without Recitals

1913, in Book 337 of Mortgages for Union County, page 295 &c. (being the mortgage of complainant thirdly set forth in the bill of complaint herein), the actual mortgage indebtedness of the said Jersey Co-operative Realty Company to the complainant, was the sum of \$20,000, and that the amounts owing on the two prior mortgages, one given by William J. Shearer to Phebe O. Earl, and the other given by the said William J. Shearer and the Jersey Co-operative Realty Company to Myra S. Woodley, both assigned to the complainant at or prior to the time of the giving of the said mortgage for \$20,000, were included and formed part of the said \$20,000 indebtedness, and said Earl and Woodley mortgages so assigned to complainant were merely collateral to the said mortgage of \$20,000 and that there is actually due and owing to complainant for principal on its said indebtedness the sum of \$17,500 and interest thereon from January 1, 1916, at the rate of 6% per annum, said interest amounting on the day of the date hereof to the sum of \$2,819.25, making an aggregate amount of \$20,719.25 due and owing to complainant on its said mortgage in indebtedness on the day of the date hereof, the original indebtedness of \$20,000 having been reduced by payments received by complainant for release of parts of the mortgaged premises set forth in the bill of complaint and the amendments thereto.

And it is further ordered, adjudged and decreed that there is due and owing to the complainant on its judgment against the Jersey Co-operative Realty Company, entered in New Jersey Supreme Court on September 30, 1916, and set forth in the bill of complaint, the sum of \$8,404.85 with interest thereon from September 30, 1916, said interest amount-

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Final Decree Without Recitals

10 ing on the day of the date hereof to the sum of \$946.85, making an aggregate sum of \$9,351.30 due and owing to complainant on its said judgment.

And it is further ordered, adjudged and decreed that the said sum of \$20,719.25 due to the complainant on its said mortgages is a lien on the whole of the lands and premises described in the bill of complaint herein, except such parts thereof as are excepted as in said bill set forth, and except
 20 also such parts as the complainant has released from the lien of its said mortgages by the releases set forth in said bill and amendment thereto, and that the amount due and owing to it on its mortgages as aforesaid is a lien on said mortgaged lands so remaining, prior to the lien of the mortgage of the defendant Patrick H. Gilhooly, trustee, hereinafter mentioned.

And it is further ordered, adjudged and decreed that there is due and owing to the defendant Patrick H. Gilhooly, trustee, on his mortgage set forth
 30 in the bill of complaint, the sum of \$5,950 of principal with interest thereon from November 18, 1915, which interests amounts, on the day of the date hereof, to the sum of \$981.75, making the aggregate sum of \$6,931.75 owing on the said last mentioned mortgage, and that the lien of the mortgage of the said defendant Patrick H. Gilhooly, trustee, on the lands embraced thereby, namely, the
 40 whole of blocks 12, 13 and 15, as shown on map on file in Union County Register's Office entitled "Map of Elizabeth Heights, Union Township, Union County, N. J.," is subsequent to the lien of the amount so as aforesaid owing on complainant's mortgages, but, as to the said lands embraced by it, is a lien prior to the aforesaid sum of \$9,351.30 due and owing to complainant on its said judgment.

Final Decree Without Recitals

And it is further ordered, adjudged and decreed 10
 that none of the defendants to this cause is enti-
 tled to any relief against the complainant by rea-
 son of the giving by it of the two releases to the
 Jersey Co-operative Realty Company, both dated
 July 3, 1913, and both recorded August 23, 1913,
 in Book 27 of Releases of Mortgages for Union
 County, at pages 492 and 494, respectively, releas-
 ing from the lien of its said mortgage indebted-
 ness the lands excepted from the lien thereof in 20
 and by its said mortgage for \$20,000 thirdly set
 forth in the bill of complaint.

And it is further ordered, adjudged and decreed
 that the complainant was not, at the time of the
 giving to it by the Jersey Co-operative Realty Com-
 pany of the bond and mortgage for \$20,000 set
 forth in the bill of complaint, chargeable with no-
 tice of the claims of any of the answering defend-
 ants under the contracts or agreements with the 30
 Jersey Co-operative Realty Company set forth by
 them in their answers and counterclaims on file
 in this cause.

And it is further ordered, adjudged and decreed
 that the said judgment of complainant is not a
 lien upon the following lots shown on said map
 entitled "Map of El Mora Manor, Elizabeth, N. J." 40
 on file in Union County Register's Office, namely:
 Lots 32 and 33, block 2, of defendant Meeker: lots
 30, 31, 32 and 33, block 3, of defendant McClelland:
 lots 15 and 16 block 1, of defendants Dow and
 Dawes: lots 11 and 12, block 3 of defendant Ander-
 son; lots 37, 38, 80 and 81, block 2, of defendant
 Servis: lots 5 and 6, block 2, of defendant Bird;
 lots 66 and 67, block 2, of defendant Schoenwaldt;
 lots 24 and 25, block 1, of defendant Brown: lots
 7 and 8, block 3, of defendant Wade: lots 58 and

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10 59, block 1, lots 92, 93, 94 and 95, block 2, and 42 and 43, block 3, of defendant Modern Homes Realty Company; lots 46 and 47, block 1, sold to William Louis Schilling in his lifetime; lots 56 and 57, block 1, of defendant Foreman; and lots 21 and 22, block 2, of defendant Sella P. Cole.

20 And it is further ordered, adjudged and decreed that so much of the said mortgaged premises so as aforesaid remaining subject to the lien of complainant's said mortgages, as may be necessary for the purpose, be sold to raise and satisfy the several sums of money due to the said complainant, that is to say, to the complainant the aforesaid sum of \$20,719.25 owing on its mortgage indebtedness, and also the further sum of \$9,351.30 owing to it on its aforesaid judgment, with interest on each of said sums from the day of the date hereof; with the costs in this cause to be taxed; and to satisfy to the defendant Patrick H. Gilhooly, trustee, the aforesaid sum of \$6,931.75 with lawful interest thereon from the date hereof and his costs to be taxed; from the sale of that portion of the mortgaged premises embraced by his mortgage, namely, blocks 12, 13 and 15, as shown on map on file in Union County Register's Office entitled "Map of Elizabeth Heights, Elizabeth, N. J.," if the same shall not have been sold in satisfaction of the prior lien of the complainant's mortgage indebtedness with interest, costs and Master's fees, such sales to be made in the manner hereinafter directed and by and under the direction of George T. Parrot, one of the Special Masters of this Court.

30
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And it is further ordered, adjudged and decreed that such sale be made in the order following, that is to say:

FIRST TRACT: Lots 1, 2, 3, 4, 7, 8, 11, 12, 13, 14,

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17, 18, 32, 33, 34, 41, 42, 43, 50, 51, 52, 53, 54, and 55, in block 1, as shown on said map entitled "El Mora Manor Elizabeth, N. J.," said lots fronting on the northwesterly line of William Avenue. 10

Lots 1, 2, 9, 10, 11, 12, 13, 14, 15, 16, 25, 26, 27, 28, 29, 30, 31, 36, 39, 40, 43, 44, 45, 46, 47, 48, 49, 50, 52, 53, 54, 55, 56, 57, 62, 63, 68, 69, 70, 71, 72, 73, 74, 75, 84 and 85 in block 2 on said map entitled "El Mora Manor, Elizabeth, N. J.," in twenty-five parcels of two lots each; said lots 1 and 2 being located on the southeasterly corner of William Avenue and Summit Place, said lots 9 to 16, both inclusive, 25 to 31, both inclusive, 36, 39, 40 and 43 to 50 inclusive, all fronting on the southerly line of William Avenue. and said lots 52 to 57, inclusive, 62, 63 and 68 to 75 inclusive, 84 and 85, fronting on the northwesterly line of Ralph Street. 20

Lots 3, 4, 15, 26, 27, 28, 29, 34, 35, 36, 37, 38 and 39 in block 3 on said map entitled "El Mora Manor, Elizabeth, N. J.," in eight parcels, seven thereof in parcels of two lots each, and the remaining one lot singly; said lots 3 and 4 fronting on the easterly line of Summit Place, said lots 15, 26, 27, 28, 29 and 34 to 39 inclusive, fronting on the southerly line of Ralph Street. 30

Lots 1, 2, 3, 8, 15, 16, 17 and 18, block 4. on said map entitled "El Mora Manor, Elizabeth, N. J.," in four parcels of two lots each, as follows: Lots 1 and 8 as one parcel, lots 15 and 16 as one parcel and lots 17 and 18 as one parcel; said lots 1, 2 and 3 fronting on the southerly side of William Avenue, and said lots 15, 16, 17 and 18 fronting on the westerly line of Summit Place, and said lot 8 fronting on the northwesterly line of Ralph Street. 40

Lots 1 and 2, block 5, on "Map of El Mora Manor

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10 Elizabeth, N. J.," in one parcel; said lots fronting on the southeasterly line of Ralph Street.

All of said lots to be sold in parcels of two lots each, where practicable in the judgment of said Master, and subject to any restrictions of record affecting the same.

20 If sufficient is not realized from the sale of said lots to satisfy the complainant's said mortgage indebtedness and judgment with interest, costs and Master's fees and commission, then that there be sold, as a whole, so much of the mortgaged premises as is described as follows:

SECOND TRACT: All that certain tract, piece or parcel of land, situate in the Township of Union, in the County of Union, and State of New Jersey.

Beginning at a point in the northerly side of the Old Magie Road, at the corner of land now or formerly of J. E. Keeler; thence along the northerly side of said road north sixty degrees twenty-seven
 30 minutes west three chains and twenty links; thence still along the same north sixty-one degrees fifty-five minutes west five chains and twenty-six links; thence still along the same north seventy-three degrees five minutes west three chains and six links; thence still along the same north seventy-seven degrees forty-five minutes west nine chains and seventy-six links; thence still along the same north
 40 twenty-eight degrees twenty-five minutes west three chains and eighty links to land now or formerly of John R. Hoole; thence along his land north forty-four degrees thirty-five minutes east twenty-eight chains and eighty-four links; thence still along his line south forty-six degrees thirty-five minutes east fourteen chains and forty-two links to land formerly of the estate of Mathias Crane, now of Patrick Maher; thence along said

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Maher's land south forty-three degrees thirty minutes west six chains and thirty-seven links to a corner; thence still along the same south forty-five degrees fifteen minutes east four chains and twenty-eight links to a corner; thence still along the same south thirty-one degrees fifteen minutes west one chain and forty links; thence still along the same north forty-eight degrees two minutes west two chains and eighty-one links; thence along the same south thirty-one degrees forty minutes west eight chains and forty-two links to the center line of Magie Street, as laid out by the Commissioners; thence along the center line of said street south forty-seven degrees forty-seven minutes east four chains and thirty links to said Keeler's line; thence along the same south forty-two degrees forty-four minutes west five chains and forty-six links to the northerly line of said Old Magie Road, and the point or place of beginning.

Containing 48 acres. The above description is taken from a survey made by Ernest L. Meyer, City Surveyor, Elizabeth, N. J., 1892.

Excepting from said premises, the following described tract of land:

Beginning in the southwesterly line of Magie Avenue at a point distant one hundred and thirty feet and fourteen one-hundredths of a foot southeasterly from the intersection of said southwesterly line of Magie Avenue, with the southeasterly line of Wilson Avenue; thence in a course of south forty-eight degrees fifty minutes west one hundred and fifty feet; thence in a southeasterly direction and parallel with Magie Avenue, one hundred feet and fourteen one-hundredths of a foot; thence in a course of south forty-eight degrees fifty minutes west two hundred and five feet and fifty one-

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10 hundredths of a foot, more or less, to the northeasterly line of Magie Road; thence in a course of south fifty-seven degrees thirty minutes east along the northeasterly line of Magie Road, one hundred and twenty-five feet, more or less, to the land formerly belonging to I. F. Keeler; thence along the line of lands of the said I. F. Keeler, in a northeasterly direction three hundred and thirty feet, more or less, to the southwesterly line of Magie Avenue; 20 thence along the southwesterly line of Magie Avenue, in a northwesterly direction one hundred and eighty feet, more or less, to the point or place of beginning.

And excepting also therefrom lots 1, 2 and 3, block 23, on map on file in Union County Register's Office entitled "Map of Elizabeth Heights, Elizabeth, N. J." Also excepting therefrom lots 24 and 25, in block 21, as shown on said "Map of Elizabeth Heights, Elizabeth, N. J.," and excepting 30 also the whole of blocks 12, 13 and 15 on said "Map of Elizabeth Heights, Elizabeth, N. J."

The balance remaining of the tract or parcel of land lastly above described, after deduction of the parcels of land so as aforesaid excepted therefrom, shall be sold in separate parcels in the following manner, namely:

(1) Beginning on the northeasterly side of Magie Road at the southwesterly corner on said road of the exception above described, being distant (125 feet) one hundred and twenty-five feet, more or less, southwesterly from the line of land formerly of I. F. Keeler; thence along said excepted tract north 48 degrees 50 minutes east, two hundred five and fifty one-hundredths (205.50) feet; thence still along said excepted tract parallel with Magie Avenue one hundred feet and fourteen one-

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hundredths of a foot (100.14); thence in a course 10
south 48 degrees 50 minutes west and along the
line of lots 12, 11, 10, 9, 8, 7 and 6 on Block 23,
on the "Map of Elizabeth Heights, Elizabeth, N.
J.," two hundred thirty-five feet and fifty-seven one-
hundredths of a foot (235.57) to the northeasterly
side of Magie Road; thence southeasterly along
said side of Magie Road one hundred four feet
(104), more or less, to the place of beginning.

(2) Lots 4, 5 and 6 on block 23 of said map in 20
one parcel.

(3) Lots 1 to 10 inclusive on block 21 of said
map; lots 1 to 10 inclusive of block 18; lots 1 to
6 inclusive of block 9; in separate parcels of two
lots each.

(4) Lots 7 to 16 inclusive, on block 23, in sep-
arate parcels of five lots each; lots 17, 18 and 19
on block 23 as one parcel.

(5) As separate parcels on block 21, lots 11 30
to 15 inclusive (5 lots) in one parcel; lots 16 to
21 inclusive (6 lots) in one parcel; lots 22 and 23
(2 lots) in one parcel; lots 26 to 31 inclusive (6
lots) in one parcel; lots 32 to 36 inclusive (5 lots)
in one parcel; lots 37 to 41 (inclusive (5 lots) in
one parcel.

(6) In separate parcels on block 18, lots 11 to
15 inclusive (5 lots) in one parcel; lots 16 to 20
inclusive (5 lots) in one parcel; lots 21 to 26 inclu-
sive (6 lots) in one parcel; lots 27 to 31 inclusive 40
(5 lots) in one parcel; lots 32 to 36 inclusive (5
lots) in one parcel; lots 37 to 40 inclusive (4 lots)
in one parcel; lots 41 to 45 inclusive (5 lots) in
one parcel; lots 46 to 50 inclusive (5 lots) in one
parcel.

(7) In separate parcels on block 9, lots 7 to
11 inclusive (5 lots) in one parcel; lots 12 to 15

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10 inclusive (5 lots) in one parcel; lots 17 to 21 inclusive (5 lots) in one parcel; lots 22 to 26 inclusive (5 lots) in one parcel; lots 27 to 31 inclusive (5 lots) in one parcel; lots 32 to 35 inclusive (4 lots) in one parcel; lots 36 to 41 inclusive (6 lots) in one parcel.

(8) On block 10, lots 1 to 23 inclusive as one parcel.

(9) On block 16, lots 1 to 42 inclusive as one parcel.

20 (10) On block 19, lots 1 to 40 inclusive as one parcel.

(11) On block 22, lots 1 to 25 inclusive as one parcel, together with the strip of land included in the above described tract of forty-eight acres, lying on the southerly side of Wilson Avenue between the center line of Magie Avenue and the center line of Chilton Avenue if extended southerly across said strip of land, and shown on said map.

30 (12) On block 11, lots 1 to 27 inclusive as one parcel.

(13) On block 14, lots 1 to 54 inclusive as one parcel.

(14) On block 17, lots 1 to 55 inclusive as one parcel.

40 (15) As one parcel on block 20, lots 1 to 56 inclusive, together with all that portion of the above described tract containing forty-eight acres lying southerly of Servis Avenue and easterly of the center line of Chilton Avenue, more particularly described as follows:

Beginning in the southeasterly line of Servis Avenue on the boundary line of said tract containing forty-eight acres in the line of land now or formerly owned by John R. Hoole; thence along said land south 46 degrees 35 minutes east twenty

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feet more or less to a corner of lands formerly of the Estate of Matthias Crane, now of the Estate of Patrick Maher; thence along said Maher's land south 43 degrees 30 minutes west six chains and 37 links to a corner; thence still along the same south 45 degrees 15 minutes east 4 chains and 28 links to a corner; thence still along the same south 31 degrees 15 minutes west one chain and 40 links; thence still along the same north 48 degrees 2 minutes west, two chains and 81 links; thence along the same south 31 degrees 40 minutes west 80 feet more or less to the center line of Chilton Avenue if extended in a southeasterly direction; thence along said center line northwesterly one hundred and seventy (170) feet more or less to the southerly line of Servis Avenue; thence northeasterly along said line of Servis Avenue five hundred and eighty (580) feet more or less to the point or place of beginning.

And it is further ordered, adjudged and decreed that if sufficient shall be realized from the sale of the parcels of land on the "Map of El Mora Manor" and on the "Map of Elizabeth Heights," above directed to be sold and designated as "first tract" and "second tract" to satisfy complainant's said mortgage indebtedness and judgment, with interest, costs and Master's fee and commission, that any lots or parcels of land then remaining unsold be sold by said Master to pay and satisfy the costs of the answering defendants Charles W. Shear, Frank E. Inch and Edwin D. Goodnough and their wives, Alvin B. McClelland and Edith S., his wife, Frederick V. Price, Jr., Samuel R. Ogden, trustee, Charles A. Bird and Cora W., his wife, Sella P. Cole, Daniel Burnet Wade and Dora E., his wife, and Patrick H. Gilhooly, trustee for Lizzie

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- 10 Thompson Cook, Minnie Spear Morgan and Robert Watt, to be taxed as hereinafter directed, and the counsel fee of \$150 hereinafter allowed to Sidney W. Eldridge and the sum of \$50 hereinafter allowed as counsel fee to John K. English and the sum of \$75 hereinafter allowed as counsel fee to Clark McK. Whittemore, but no part of the taxed costs of said answering defendants, or said counsel fees hereinafter allowed to the said Sidney W. Eldridge,
- 20 John K. English and Clark McK. Whittemore shall be a charge upon any part of the lands and premises hereinafter directed to be sold, nor shall any part thereof be sold to satisfy the same.

If sufficient is not realized from the sale of the lots and parcels of land above directed to be sold, in the manner above directed, to satisfy complainant's said mortgage indebtedness and judgment with interest, costs and Master's fees and commission, that then there be sold the following described

30 lots of land in the City of Elizabeth, Union County, New Jersey, all as shown on the said map entitled "Map of El Mora Manor, Elizabeth, N. J." on file in Union County Register's Office, in parcels of two lots each, where practicable in the judgment of said Master, subject to any restrictions of record affecting the same, in the following order, namely:

- 40 **THIRD TRACT:** (1) Lots 18 and 19, block 3, contracted to be sold to the defendant Carl Knierim and Freda Knierim, his wife, by said Company by agreement dated May 11, 1914, recorded October 17, 1916, in Book 691 of Deeds for said County, page 307, and afterwards conveyed by said Company to them by deed dated January 2, 1917, recorded in Book 696 of Deeds for said county, page 559.

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- (2) Lots 13 and 14, block 4, contracted to be sold to the defendant Charles W. Shear (or Shearer) by said Company by agreement dated October 15, 1913, and recorded in said Register's Office June 28, 1917. 10
- (3) Lots 44 and 45, block 1, contracted to be sold to the defendant Mrs. A. R. Martin by said Company by agreement dated December 5, 1912, and recorded in said Register's Office June 22, 1917.
- (4) Lots 13 and 14, block 3, contracted to be sold to the defendant Herbert W. Park by said Company by agreement dated November 1, 1912, and recorded December 4, 1916, in Book 694 of Deeds for said county, page 470. 20
- (5) Lots 86 and 87, block 2, contracted to be sold to the defendant Frederick V. Price, Jr., by said Company by agreement dated October 18, 1912, and recorded June 22, 1917, in Book 707 of Deeds for said county, page 172.
- (6) Lots 1 and 2, block 3, contracted to be sold to the defendant Charles H. Aschenbach by said Company by agreement dated October 15, 1912, and recorded June 22, 1917, in the office of the Register of said county. 30
- (7) Lots 22 and 23, block 3, contracted to be sold to the defendant Herbert P. Baker by said Company by agreement dated September 24, 1912, and recorded November 9, 1916, in Book 694 of Deeds for said county, page 36. 40
- (8) Lots 46 and 47, block 1, contracted to be sold to William Louis Schilling (now deceased) by said Company by agreement dated September 21, 1912, recorded August 28, 1916, in Book 688 of Deeds for said county, page 272, and afterwards conveyed to said William L. Schilling by said Company by deed dated April 6, 1917, recorded April 10, 1916, in said Register's Office.

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10 (9) Lots 26 and 27, block 1, and lots 20 and 21, block 3, contracted to be sold to the defendant Frank E. Inch by said Company by agreement dated September 16, 1912 (as appears in notice of suit filed by the said Frank E. Inch against said Company, recorded in Book 5 of Lis Pendens, page 439), not recorded, and afterwards conveyed to him by said Company by deed dated May 1, 1917, recorded in Book 705 of Deeds for said county, page 173.

20 (10) Lots 35 and 36, block 1, contracted to be sold to the defendant Edwin D. Goodnough by said Company by agreement dated September 10, 1912 (as appears from notice of pendency of suit filed by said Edwin D. Goodnough against said Company and recorded in Book 5 of Lis Pendens for said County, page 440), not recorded, and afterwards conveyed to him by said Company by deed dated May 1, 1917, recorded in Book 705 of Deeds for said county, page 165.

30 (11) Lots 16 and 17, block 3, contracted to be sold to the defendant Anna Knierim (or Kinerim) by said Company by agreement dated September 10, 1912, recorded November 24, 1916, in Book 694 of Deeds for said county, page 303.

40 (12) Lots 5 and 6, block 5, contracted to be sold to the defendant Edward McGrath by said Company by agreement dated September 9, 1912, recorded March 31, 1917, in Book 701 of Deeds for said county, page 237.

(13) Lots 76, 77, 78 and 79, block 2, contracted to be sold to the defendant Joseph E. Poda by said Company by agreement dated September 9, 1912, recorded November 15, 1916, in Book 692 of Deeds for said county, page 587.

And if sufficient shall not then have been real-

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ized to satisfy complainant's said mortgage indebtedness and judgment, with interest, costs and Master's fees and commission, that then there be sold the following described lots of land: 10

FOURTH TRACT: Lots 28, 29, 39 and 40, block 1, and 24 and 25, block 3, being lands conveyed to the defendant Samuel R. Ogden, trustee, by Jersey Co-operative Realty Company, by two deeds, both dated May 1, 1917, and recorded May 15, 1917, in Book 705 of Deeds for Union County, pages 168 and 170, respectively. 20

(2) Lots 48 and 49, block 1, being lands conveyed to William L. Schilling (now deceased) by said company by deed dated April 6, 1917, and recorded April 10, 1917, in said Register's Office.

(3) Lots 64 and 65, block 2, being lots conveyed to the defendants John J. Reilly and Maud Reilly, his wife, by said Company by deed dated July 24, 1916, recorded November 27, 1916, in Book 694 of Deeds for said County, page 364. 30

And if sufficient shall not be then realized to pay and satisfy complainant's said mortgage indebtedness with interests, costs and Master's fees and commission, that then the following described lots of land as shown on said map of "El Mora Manor," be sold to satisfy the same, free from the lien of complainant's judgment, the same not being subject thereto, and that said sale be made in parcels of two lots each, where practicable in the judgment of said Master (subject to any restriction of record affecting the same) in the following order, namely: 40

FIFTH TRACT: (1) Lots 32 and 33, block 2, being lots conveyed to the defendant Henry A. Meeker by said Company by deed dated September 20, 1916, recorded the same day in Book 690 of Deeds for said county. page 58.

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10 (2) Lots 30, 31, 32 and 33, block 3, being lots conveyed to the defendant Alvin B. McClelland by said Company by deed dated September 20, 1916, recorded the same day in Book 690 of Deeds for said county, page 55.

 (3) Lots 15 and 16, block 1, being lots conveyed to the defendants Irving Dow and William Dawes by said Company by deed dated July 24, 1916, recorded August 9, 1916, in Book 687 of Deeds for said county, page 162.

20 (4) Lots 11 and 12, block 3, being lots conveyed to the defendant Edward Anderson by said Company by deed dated June 26, 1916, recorded July 3, 1916, in Book 685 of Deeds for said county, page 147.

 (5) Lots 66 and 67, block 2, being lots conveyed to the defendant Arthur C. Schoenwaldt by said Company by deed dated April 11, 1916, recorded April 27, 1916, in Book 681 of Deeds for said county, page 297.

30 (6) Lots 37, 38, 80 and 81, block 2, being lots conveyed to the defendant Cora Stryker Servis by said Company by deed dated February 7, 1916, recorded February 19, 1916, in Book 677 of Deeds for said county, page 257.

 (7) Lots 24 and 25, block 1, being lots conveyed to the defendants Harold Brown and Arthur H. Brown by said Company by deed dated April 10, 1915, recorded April 13, 1915, in Book 659 of Deeds for said County, page 590.

40 (8) Lots 5 and 6, block 2, being lots conveyed to the defendant Charles A. Bird by said Company by deed dated February 3, 1915, recorded January 19, 1916, in Book 675 of Deeds for said county, page 213.

 (9) Lots 21 and 22, block 2, contracted to be

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sold to the defendant Sella P. Cole by said Com- 10
 pany by agreement dated March 16, 1915, referred
 to in notice of suit filed and recorded by said Sella
 P. Cole in Union County Register's Office Septem-
 ber 29, 1916.

(10) Lots 7 and 8, block 3, being lots conveyed
 to the defendant Daniel Burnet Wade by said Com-
 pany by deed dated November 19, 1913, recorded
 October 8, 1914, in Book 651 of Deeds for said
 county, page 31.

(11) Lots 58 and 59, block 1; lots 92, 93, 94 20
 and 95, block 2, and lots 42 and 43, block 3, being
 lands conveyed to the defendant Modern Homes
 Realty Company by said Company by deed dated
 October 7, 1913, recorded January 12, 1914, in Book
 635 of Deeds for said county, page 411.

(12) Lots 56 and 57, block 1, contracted to be
 sold to the defendant Willard C. Foreman by said
 Company by agreement dated September 10, 1912,
 recorded October 9, 1913, in Book 629 of Deeds for 30
 said county, page 429.

SIXTH TRACT: And if sufficient shall not then
 have been realized to pay and satisfy the complain-
 ant's mortgage indebtedness with interest, costs
 and Master's fees and commission, that then the
 whole of blocks 12, 13 and 15 as shown on said
 map entitled "Map of Elizabeth Heights, Eliza-
 beth, N. J.," on file in Union County Register's
 Office, be sold in three separate parcels to pay and 40
 satisfy the same.

And it is further ordered, adjudged and decreed
 that if sufficient shall be realized at said sale to
 pay and satisfy the complainant's said mortgage
 indebtedness with interest, costs and Master's fees
 and commission, without recourse to the sale of said
 blocks 12 13 and 15 as shown on said map enti-

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10 tled "Map of Elizabeth Heights, Elizabeth, N. J.,
that then said Master sell said blocks 12, 13 and 15
as shown on said last mentioned map, in three sep-
arate parcels to satisfy the mortgage of the defend-
ant Patrick H. Gilhooly, trustee.

And it is further ordered, adjudged and decreed
that there be allowed to the solicitors of complain-
ant their costs in this cause to be taxed, and also
the sum of \$313.68 search fees, and \$800 counsel
fee (both of said sums to be taxed in the costs),
20 both of said sums to be taxed in the costs, said
costs and counsel fees to be a charge upon all the
lands, and parcels of land, herein directed to be
sold until the same are satisfied.

And it is further ordered, adjudged and decreed
that the answering defendants Charles W. Shear,
Frank E. Inch, Edwin D. Goodnough, and their
wives, Alvin B. McClelland and Edith S., his wife,
Frederick V. Price, Jr., Samuel R. Ogden, trustee,
30 Charles A. Bird and Cora W., his wife, Sella P.
Cole, Daniel Burnet Wade and Dora E., his wife,
and Patrick H. Gilhooly, trustee for Lizzie Thomp-
son Cook, Minnie Spear Morgan and Robert Watt,
be allowed their costs to be taxed, and that there
be allowed to Sidney W. Eldridge, solicitor for all
of said answering defendants, except Daniel Burnet
Wade and wife, and Patrick H. Gilhooly, trustee,
the sum of \$150; that there be allowed to John K.
English, solicitor for the answering defendant
40 Daniel Burnet Wade and Dora E., his wife. the
sum of \$50, and that there be allowed to Clark McK.
Whittemore, who appeared for the defendants Liz-
zie Thompson Cook, Minnie Spear Morgan and
Robert Watt, the sum of \$75.

The taxed costs hereby allowed to said answer-
ing defendants, and said counsel fees allowed to

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Sidney W. Eldridge, John K. English and Clark 10
 McK. Whittemore to be chargeable only upon the
 parcels of lands firstly and secondly above de-
 scribed, and not to be paid and satisfied by sale
 of any part of the lands, or parcels of land, in-
 cluded in the tracts third, fourth, fifth and sixth
 directed to be sold in and by this decree.

And it is further ordered, adjudged and decreed
 that a writ of fieri facias do issue out of this
 Court, directed to said Master commanding him to 20
 make sale, according to law, of the said mortgaged
 premises in manner aforesaid, and that he adver-
 tise the sale of said lands in accordance with the
 provisions of the statute in such case made and
 provided, and the rules of this Court, and that
 he be allowed to expend for extra advertising of
 the sale of said premises a sum not exceeding \$300,
 and that out of the moneys arising from such sale
 he pay to the complainant, or to its solicitors, the 30
 amount so as aforesaid found due on its mortgage
 indebtedness, with lawful interest thereon from
 the date of this decree, and also the amount so as
 aforesaid found due to it on its said judgment, with
 lawful interest thereon from the date of this decree
 in manner aforesaid; and, as to said blocks 12, 13
 and 15, as shown on said "Map of Elizabeth
 Heights, Elizabeth, N. J.," if not required to be sold
 to satisfy complainant's mortgage indebtedness,
 then to be sold to satisfy the amount so as aforesaid 40
 found due and owing to the defendant Patrick H.
 Gilhooly, trustee, on his mortgage, with lawful in-
 terest from the date hereof; and in case more money
 shall be raised by the said sale than shall be suf-
 ficient to answer such several payments, that such
 surplus be brought into this Court, to abide its fur-
 ther order, unless otherwise previously disposed of

Interrogatories

10 by order of this Court, and that said Master make return without delay of his proceedings by virtue of the said writ.

Respectfully advised,

JAMES F. FIELDER,
Adv. Master.

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Interrogatories.

Issue having been joined in the above cause, the defendants Frank E. Inch and Meroe M. Inch, his wife, and Edwin D. Goodnough and Alice L. Goodnough, his wife, hereby serve upon the complainant, New Jersey Title Guarantee and Trust Company, the following written interrogatories:

30 (1) Who, on behalf of Jersey Co-operative Realty Company, applied to you for a loan of Twenty Thousand Dollars, on or about the 30th day of June, 1913, as set forth in the 12th paragraph of the Bill of Complaint herein?

(2) Please give full name and address of the officer or agent of the complainant company acting for the company making arrangements to loan the monies mentioned in paragraph No. 12 of the Bill of Complaint.

40 (3) Was the granting of said loan passed upon by the Board of Directors of the complainant company?

(4) Who, for the complainant company, brought to the attention of the Board of Directors, the application for the loan aforesaid?

(5) When did the Board of Directors of the complainant company determine to make the loan of Twenty Thousand Dollars, mentioned in the 12th paragraph of the Bill of Complaint?

Interrogatories

(6) Did any representative of the Jersey Co-operative Realty Company appear before the Board of Directors of the complainant company in connection with said loan? 10

(7) Between what representatives of the complainant company and Jersey Co-operative Realty Company was the agreement and arrangement made, as specified in the 14th paragraph of the Bill of Complaint?

(8) Upon and for what consideration did the complainant make, execute and deliver its certain deed of release, dated July 3, 1913, and recorded in Book 27 of Releases for Union County, page 492, &c, affecting the same premises described in paragraph 13 of the Bill of Complaint? 20

(9) Upon and for what consideration did the complainant make, execute and deliver its deed of release bearing date on the 3d day of July, 1913, and recorded in Book 27 of releases for Union County, page 494, &c, affecting the premises described in the 13th paragraph of the Bill of Complaint? 30

(10) Did the complainant company at any time receive from any person or persons a list of persons holding contracts for the purchase of real estate from Jersey Co-operative Realty Company, prior to the 1st day of July, 1913?

(11) Did the complainant company at any time receive from any person or persons a list of the names of persons holding contracts for the purchase of lands of Jersey Co-operative Realty Company, included within any of the tracts affected by any of the mortgages of the complainant? 40

(12) What is the name of the person or persons from whom such lists were received?

(13) What was contained in the list or lists aforesaid?

Interrogatories

- 10 (14) Did complainant company examine any of the books or other records showing sales of real estate made by Jersey Co-operative Realty Company or any of its agents?
- (15) What book or record was examined?
- (16) Who made such examination for the complainant company?
- (17) Where and when was the examination made?
- 20 (18) Who was present at the time of the examination?
- (19) Did the complainant company ask the defendant Jersey Co-operative Realty Company or its representative, what lots comprised within the mortgages of the complainant or any of them, were affected by contracts of purchase?
- (20) To whom was the last mentioned question put?
- (21) What was the reply to the question mentioned above?
- 30

Respectfully submitted,

SIDNEY W. ELDRIGE,
Solicitor for Defendants, Frank
E. Inch and Meroe M. Inch, his
wife, and Edwin D. Goodnough
and Alice L. Goodnough, his
wife.

Answer to Interrogatories.

The answer of The New Jersey Title Guarantee and Trust Company, complainant in above-entitled cause, to the interrogatories propounded on behalf of defendants Frank E. Inch and Meroe M. Inch, his wife, and Edwin D. Goodnough and Alice L. Goodnough, his wife. 10

In answer to the First Interrogatory, it says: William J. Shearer.

To the Second, it says: Daniel E. Evarts, First Vice President of the complainant, address 83 Montgomery Street, Jersey City, N. J., was the officer who discussed with Mr. Shearer the arrangement for the loan, but he did not undertake to bind the complainant Company. 20

To the Third, it says: The loan was passed upon by the "Finance Committee" of The New Jersey Title Guarantee and Trust Company, that being the Committee having authority to accept or reject applications for mortgage loans, and its action was approved by the Board of Directors. 30

To the Fourth, it says: Daniel E. Evarts, who brought it to the attention of the Finance Committee.

To the Fifth, it says: The Finance Committee approved a loan of \$15,000.00 (part of said loan of \$20,000.00) on April 11, 1913, and on May 23, 1913, approved the additional amount of \$5,000.00, making the total amount of mortgage loan \$20,000.00. The action of the Finance Committee as to the grant of \$15,000.00 was approved by the Board of Directors May 13, 1913. and as to the grant of the additional \$5,000.00 June 10, 1913. 40

To the Sixth, it says: No.

To the Seventh, it says: Between Clarence A. Seaman, General Manager of Louis Schlesinger, Inc., of Newark, N. J., the agents for the Jersey

Answer to Interrogatories

10 Co-operative Realty Company, who negotiated for that Company said loan of \$20,000.00, and James E. Woolley, Title Examiner, in the employ of The New Jersey Title Guarantee and Trust Company, in the presence of William J. Shearer, President of the Jersey Co-operative Realty Company.

To the Eighth, it says: When making its application for the said mortgage loan of \$20,000.00 the Jersey Co-operative Realty Company, by William J. Shearer, its President, stipulated that the lots of land and premises specifically excepted in the mortgage for \$20,000.00 should not form any part of the security for the mortgage loan. None of those excepted lots was ever given as security for the mortgage loan and it was never intended they should be. It was further stipulated by the Jersey Co-operative Realty Company, through William J. Shearer, its President, that those excepted lots and parcels of land not offered as security for the mortgage loan should be released from the lien of the two prior mortgages including them set forth in the bill of complaint and assigned to The New Jersey Title Guarantee and Trust Company. No money consideration was paid for the release mentioned in this paragraph, the same being given to release a portion of said excepted lots from the lien of the two prior mortgages aforesaid.

To the Ninth, it says: The answer to this interrogatory is the same as last above, except that said release was given to release the residue of the excepted lots of land and premises not included in the release referred to in Interrogatory No. 8.

To the Tenth, it says: No. Said William J. Shearer did, however, leave with The New Jersey Title Guarantee and Trust Company six unrecorded contracts of sale, as follows:

Answer to Interrogatories

One dated May 14, 1908, between William J. Shearer and Paul Babin and Joe Emmerling for sale of "a lot 150 feet on Green Lane 200 feet deep on south side of said street." (This agreement does not state where Green Lane is located.) 10

One dated June 27, 1908, made by said Shearer with Georgianna and Lillian Maynard for "lots 8 and 9 on a map entitled Elizabeth Park, in Union County, New Jersey."

One dated June 27, 1908, between William J. Shearer and Georgianna and Lillian Maynard for sale of "lots number 10 and 11 on a map entitled Elizabeth Park, in Union County, New Jersey." 20

One dated July 14, 1908, made by William J. Shearer with Christian Winters for sale of lots "Number 48 and 49 on a map entitled Elizabeth Park, in Union County, New Jersey."

One dated July 21, 1908, made by William J. Shearer with Paul Minarovich for sale of "lots number 51 and 52 on a map entitled Elizabeth Park, in Union County, New Jersey." 30

One dated September 3, 1908, made by William J. Shearer with Annie E. Scott for sale of lots 14 and 15 on a map entitled Elizabeth Park, in Union County, New Jersey.

The map referred to in five of the agreements above stated as entitled, "Elizabeth Park," is not on file in Union County Register's Office. No block numbers are given in the agreements, but The New Jersey Title Company was informed by William J. Shearer that the lots agreed to be sold by said six agreements are shown on the map on file in Union County Register's Office entitled, "Map of Elizabeth Heights." 40

To the Eleventh, it says: No. except as stated in answer to Interrogatory No. 10.

Answer to Interrogatories

- 10 To the Twelfth, it says: No lists received.
 To the Thirteenth, it says: No lists received.
 To the Fourteenth, it says: No.
 To the Fifteenth, it says: None.
 To the Sixteenth, it says: No examination made.
 To the Seventeenth, it says: No examination made.
 To the Eighteenth, it says: No examination made.
- 20 To the Nineteenth, it says: No.
 To the Twentieth, it says: Answered by foregoing answer to the Nineteenth Interrogatory.
 To the Twenty-first, it says: Answered by foregoing answer to the Nineteenth Interrogatory.

Respectfully submitted,

COLLINS & CORBIN,

Solicitors for Complainant.

30 STATE OF NEW JERSEY, }
 COUNTY OF HUDSON, } ss. :

40 DANIEL E. EVARTS, of full age, being duly sworn, according to law, on his oath, says that he is First Vice-President of The New Jersey Title Guarantee and Trust Company, complainant in above-entitled cause, and has personal knowledge of the matters inquired into by the interrogatories propounded on behalf of defendants Frank B. Inch and Meroe M. Inch, his wife, and Edwin D. Goodnough and Alice L. Goodnough, his wife, from one to six inclusive, and that the foregoing answers to said six interrogatories are true.

DANIEL E. EVARTS.

Subscribed and sworn to at Jersey }
 City, N. J., this 13th day of }
 November, 1917, before me. }

JAMES H. ISBILLS,

Master in Chancery of New Jersey.

Answer to Interrogatories

STATE OF NEW JERSEY, }
 COUNTY OF HUDSON, } ss. : 10

JAMES E. WOOLLEY, of full age, being duly sworn, according to law, on his oath, says that he is one of the Title Examiners of The New Jersey Title Guarantee and Trust Company; that he has personal knowledge of the matters inquired into by the interrogatories propounded on behalf of defendants Frank E. Inch and Meroe M. Inch, his wife, and Edwin D. Goodnough and Alice L. Goodnough, his wife, from number seven to number twenty-one, both inclusive, and that the foregoing answers to said interrogatories are true. 20

JAMES E. WOOLLEY.

Subscribed and sworn to at Jersey }
 City, N. J., this 13th day of }
 November, 1917, before me. } 36

PERCIVAL G. CRUDEN,
 Master in Chancery of New Jersey.

Petition of Appeal.

Filed October 11, 1918.

To the Honorable the Court of Errors and Appeals in the last resort in all causes: 40

The petition of Sella P. Cole, Charles A. Bird, Frederick V. Price, Jr., Alvin B. McClelland, Frank E. Inch and Edwin D. Goodnough, the appellants in the above stated cause respectfully show that your petitioners find themselves aggrieved by the final decree made in the Court of

Petition of Appeal

10 Chancery by his Honor Edwin Robert Walker, Chancellor of New Jersey, bearing date the Twelfth day of September, in the year 1918, wherein the said New Jersey Title Guarantee and Trust Company was Complainant and the said Jersey Co-operative Realty Company, these Appellants and others were Defendants, in the following respects, to wit:

20 That said decree adjudges that there is due upon the mortgage of the Complainant dated June 30, 1913, and recorded in Book 337 of Mortgages for Union County on Pages 295, etc., the sum of \$20,719.25, and that there is due to the Complainant on its judgment recovered in the New Jersey Supreme Court on September 30, 1916, against Jersey Co-operative Realty Company the sum of \$9,351.30, and that the amount so declared to be due upon the mortgage of the Complainant is a lien on the whole of the lands and premises described in the bill of complaint except such parts thereof as are excepted
30 as in said bill set forth and except also such parts as the complainant has released from the lien of said mortgages; and that the defendants, including these appellants, are entitled to no relief against the complainant by reason of the giving by it of the two releases to the Jersey Co-operative Realty Company, both dated July 3, 1913, and both recorded August 23, 1913, in Book 27 of Releases of Mortgages for Union County, on Pages 492 and
40 494, respectively, releasing from the lien of its said mortgage indebtedness the lands excepted from the lien thereof in and by its said mortgage for \$20,000 thirdly set forth in the Bill of Complaint; and that the complainant was not at the time of the giving to it by the Jersey Co-operative Realty Company of the Bond and Mortgage for \$20,000 set forth in the Bill of Complaint, chargeable with notice of the claims of any of the answering defendants under

Petition of Appeal

the contracts or agreements with Jersey Co-operative Realty Company set forth in their answers and counterclaims filed in this cause; and that so much of the said mortgaged premises, remaining subject to the lien of complainants said mortgages as may be necessary for the purpose, be sold to raise and satisfy the several sums of money due to the complainant upon its mortgage indebtedness and judgment. 10

And at that part of said decree declaring the order of sale of the "first tract" and that if sufficient is not realized from the sale of said lots to satisfy the complainant's said mortgage indebtedness and judgment with interest, costs and Master's fees and commission, then that there be sold as a whole, so much of the mortgaged premises as is described as the "second tract," containing forty-eight acres with the exceptions in said decree noted and that the balance remaining of the tract lastly described, after deducting the parcels excepted, should be sold in separate parcels in the order and manner in said decree stated. 20 30

And at that part thereof which declares that if sufficient is not realized from the sale of the lots and parcels of land above described to be sold in the manner above directed, to satisfy complainant's said mortgage indebtedness and judgment, with interest, costs and Master's fees and commission, that then there be sold the several parcels of land in said decree designated as the "third tract," including the lands of these defendants, and that lots 86 and 87, Block 2, contracted to be sold to the defendant, Frederick V. Price, Jr., should be fifthly sold and that Lots 26 and 27, Block 1, and Lots 20 and 21, Block 3, contracted to be sold to the defendant, Frank E. Inch, be ninthly sold and that Lots 35 and 36, Block 1, contracted to be sold to the defendant, Edwin D. Goodnough, be tenthly sold. 40

Petition of Appeal

10 And at that part which declares that if sufficient should not then have been realized to satisfy complainant's mortgage indebtedness and judgment with interest, costs and Master's fees and commission, that then there be sold the several parcels of land therein described as the "fourth tract," in the order and manner therein stated; and that if sufficient shall not be then realized to pay and satisfy the complainant's said mortgage indebtedness with interest, costs and Master's fees and commission,
20 that then the various lots of land therein described as the "fifth tract" be sold in the order and manner therein stated; and that Lots 30, 31, 32 and 33, Block 3, being lots conveyed to the defendant, Alvin B. McClelland, be secondly sold and that Lots 5 and 6, Block 2, being lots conveyed to the defendant, Charles A. Bird, be eighthly sold; and that Lots 21 and 22, Block 2, contracted to be sold to the defendant, Sella P. Cole, be ninthly sold.

30 And at so much of said decree as declares that the allowance to solocitors for complainant and its costs to be a charge upon all the lands and parcels of land in said decree directed to be sold.

And at that part thereof which decrees that a writ of fieri facias do issue directed to the Special Master commanding him to make sale according to law of the said mortgaged premises in the manner aforesaid and that out of the money arising from such sale, he pay to the complainant or its solicitors the amount so as aforesaid, found due on its
40 from the date of said decree and also the amount due to it on its said judgment with lawful interest thereon from the date of said decree.

And at so much thereof as declared that the complainant was not put upon inquiry concerning the contracts of these defendants set forth in the Bill of Complaint and their respective answers and counterclaims filed herein and the rights thereby

Petition of Appeal

acquired by them in the lands to which they relate; and that the mortgage of the complainant dated June 30, 1913, to secure the payment of \$20,000, was taken without notice of the contracts of purchase of these defendants and their rights in the premises purporting to be comprised within said mortgage prior to the execution, delivery and recording thereof; and that at the time of the execution and delivery of the two certain releases in said decree mentioned, both dated July 3, 1913, and both recorded August 23, 1913, in Book 27 of Releases of Mortgages for Union County, at pages 492 and 494 respectively, the complainant was without notice of the contracts of purchase of these defendants aforesaid, and their rights in the premises covered by the mortgages from which they were respectively intended to effect a release.

Upon the ground that the same is erroneous in that the complainant was chargeable with notice of the rights and interests of these appellants in the mortgaged premises at the time of the execution and delivery of the complainant's mortgage dated June 30, 1913, above mentioned, and there should have been credited on the indebtedness held by said complainant, fair and reasonable value of the premises released from the liens of its said mortgages as in said decree set forth and that said premises, in which the respective appellants are interested, are not subject to liens and encumbrances of the mortgage of the complainant dated June 30, 1913, in said decree mentioned nor to the judgment of the complainant therein set forth and the said premises should not be sold to pay any part of the moneys due upon said mortgage and judgment, and for various other reasons and in various other respects.

Your petitioners therefore pray that said decree of said Chancellor may be, in the particulars afore-

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Petition of Appeal

10 said, 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. Dated October 10, 1918.

SIDNEY W. ELDRIDGE,
Solicitor and of Counsel With
Appellants.

Answer.

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The Respondent filed a formal answer to the foregoing Petition, November 21, 1918.

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Testimony.

IN CHANCERY OF NEW JERSEY. 10 01

<p style="text-align: center;">Between</p> <p>NEW JERSEY TITLE GUARANTEE & TRUST COMPANY, a cor- poration,</p> <p style="text-align: right;">Complainant,</p> <p style="text-align: center;">and</p> <p>JERSEY CO-OPERATIVE REALTY COMPANY, a corporation. et als.,</p> <p style="text-align: right;">Defendants.</p>	} Minutes of Final Hearing.	20
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Chancery Chambers, Jersey City, N. J.

March 22d, 1918. 30

Before: HON. JAMES F. FIELDER, *Advisory Master.*

Appearances:

MESSRS. COLLINS & CORBIN (MR. HUGHES),
for the Complainant.

SIDNEY W. ELDRIDGE, Esq., for the Defend-
ants, Charles A. Bird et al.

JOHN K. ENGLISH, Esq., for the Defendant. 40

CLARKE MCK. WHITEMORE, Esq., for the
Defendant.

A. F. BENDER, Esq., for the Defendant.

M. B. STUTSMAN, Esq., for the Defendant.

William J. Shearer—Direct

10 WILLIAM J. SHEARER, SWORN:

Direct examination by Mr. Hughes:

Q. Mr. Shearer, I show you an agreement purporting to be a bond given by you to Phoebe O. Earl, dated October 29th, 1906, to secure the payment of \$4,500 in five years from date, with interest at the rate of five per cent. per annum, payable semi-annually, and I ask you whether that is
20 your signature on that bond? A. Yes, sir.

Q. I call your attention to the fact that no one signed as a witness? A. I see that now.

Mr. Hughes: I offer the bond in evidence.
(There being no objection the bond is admitted in evidence and marked C 1.)

Q. Do you know where A. W. Lassell is to be
30 found? A. No, sir, I do not know where he is to be found now.

Q. You were President of the Jersey Co-operative Realty Company and Mr. A. W. Lassell was at one time Secretary of your company? A. Yes, sir.

Q. In 1908? A. Yes, sir.

Q. I show you a bond given by William J. Shearer, President of the Jersey Co-operative Realty Company, to Myra S. Woodley, dated December 24th, 1908, given to secure the payment of \$12,000
40 on December 24th, 1908, with interest from the date of the bond, at five per cent. per annum, to be paid semi-annually, and I ask you whether that is your signature to that bond? A. Yes, sir, it is.

Q. Both individually and as President of the Jersey Co-operative Realty Company? A. Yes, sir.

Q. Did you see Mr. Lassell witness it as Secre-

William J. Shearer—Direct

tary of the Jersey Co-operative Realty Company? 10

A. Yes, sir.

Q. Did you say you did not know where I could find him? A. Yes, sir, I do not know where to look for him.

Mr. Hughes: I offer the bond in evidence.

(There being no objection, the bond is admitted in evidence and marked C 2.)

No cross examination at this time.

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WILLIAM J. SHEARER, SS., recalled:

Direct examination by Mr. Bender:

Q. I show you a paper purporting to be a bond made by the Jersey Co-operative Realty Company to Patrick H. Gilhooly, Trustee, bearing date May 18th, 1915, and ask you if you recognize the seals affixed thereto? A. Yes, sir.

30

Q. Is that the seal of the company? A. Yes, sir.

Q. Of the Jersey Co-operative Realty Company? A. Yes, sir.

Q. And whose signature is that on that bond? A. That is mine.

Q. I show you another paper, purporting to be a mortgage to secure said bond, bearing date May 18th, 1915, made by the Jersey Co-operative Realty Company to Patrick H. Gilhooly, Trustee, to secure the payment of \$5,950, and I ask you if you recognize the seal impressed thereon? A. Yes, sir, I do.

40

Q. Whose seal is it? The Jersey Co-operative Realty Company's seal.

Q. Whose signature is affixed thereto as President? A. Mine.

William J. Shearer—Direct

10 Q. Do you know who affixed the seal? A. I do not know; I suppose my son did.

Q. Was he there at the time? A. Yes, sir.

Mr. Bender: I offer the Bond and Mortgage in evidence.

(There being no objection, the Bond and Mortgage are admitted in evidence and marked respectively—Bond D 1, and Mortgage B 2.)

20

Q. Mr. Shearer, I show you a tracing, marked "El Mora Manor, Elizabeth, N. J.," and ask you if you recognize that tracing? A. Yes, sir.

Q. As the tracing of the El Mora Manor property referred to in the mortgage in this case? A. As far as I can see, it is.

Q. Can you tell the Court what improvements, if any, there are on those lots shown on this map?

30 A. Well, there is gas—(interrupted).

Mr. Hughes: In what way is that relevant?

A. (Resuming) There is a sewer that runs up this far on Summit Place and a sewer up Ralph Street to Magee Road and up Magee Road to Williams Avenue.

40 Q. I think to opposite Williams Avenue? A. No, it runs down Williams Avenue also, and there is gas, electric light, sidewalk, sewer, fire protection up Summit Place, and up Ralph Street to Magee Road.

Q. Are there any improvements south of Summit Place on Williams Avenue or Ralph Street? A. Yes, sir, there is a sewer; I know there is water up to this lot—lot 4 in block 1; I am not sure but what it runs farther.

William J. Shearer—Direct

Q. Are there any improvements south of Summit Place on Ralph Street? A. Yes, there is a sewer and some sidewalk on the east side. 10

Q. All improvements consisting of water, sewer and sidewalks exist in Magee Road, the entire length of this property? A. No, sir, they do not.

Q. Up to what point do they exist? A. The sewer runs to Wilson Street on Elizabeth Heights map and down that street to the end; the gas and water run to the same street. 20

Q. From where? A. From Summit Place up Ralph Street to Magee Road to Wilson Street, and down Wilson Street to Magee Street, over Magee Street several blocks to Maple Street. up Maple Street three or four blocks.

Q. Maple Street is not on this map? A. No, sir, it is on the Elizabeth Heights map.

Q. Is there any water in Williams Avenue? A. There is part of the way, but there is a sewer; I do not think the water runs up very far north of Summit Place. 30

Q. Is there any sidewalk on Wilson Avenue? A. Nothing but a sand and gravel sidewalk.

Q. Is there any sidewalk on Summit Place? A. Yes, sir, there is a cement sidewalk on Summit Place.

Q. Does the sidewalk on Summit Place continue to Magee Road? A. It does.

Q. Now, I show you a paper marked "Map of Elizabeth Heights" and I ask you if that is the map referred to in the mortgages in this case as the map of the property on Elizabeth Heights"? A. It is. 40

Q. How does the property on this map connect with the El Mora Manor property? A. It is southeast; the El Mora Manor property is southeast of the Elizabeth Heights property.

William J. Shearer—Direct

10 Q. And Magee Street is the same street designated on both maps by that name? A. Yes, sir.

Q. Now, show us on the Elizabeth Heights map which streets are sewerred? A. Only Wilson Street; that is the only street on which there are any buildings.

Q. How far away from where the sewer runs? A. From Magie Road down to this point on Magie Avenue from Wilson Avenue.

20 Q. There are no other sewers in that development? A. No, sir.

Q. Now, which streets in that development are supplied with water and gas? A. Water and gas run down Magie Road to Magie Avenue and up Magie Avenue to Maple Street, and up Maple Street to Burch Street and up Burch Street, up towards the end.

Q. To almost Conant Avenue? A. Yes, sir.

30 Q. Is that the regular one-inch water main service pipe? A. No, sir, as I remember it, my impression is that it is either two or two and a half inch pipe, but I am not sure.

Q. All the way? A. Yes, all the way, if I remember rightly.

Q. That pipe was laid by the developers, not by the Water Company? A. No, sir, it was made by the Development Company.

40 Q. Now, which streets on the Elizabeth Heights property are paved? A. What do you mean by "paved"; do you mean cement sidewalk? A. I mean the street? A. None.

Q. Which streets are equipped with sidewalks? A. Magie Road, Green Avenue, Maple Street, Wilson Avenue, Service Avenue, part way; Conant Street from Magie Road to Park Avenue; Jersey Avenue to Park Avenue from Magie Road, and

William J. Shearer—Cross

Baskerville Avenue from Magie Road to Magie Avenue; Maple Street from Magie Road to the end, with several inches of sand and gravel, but no cement on top of it. 10

Q. All the other sidewalks that you refer to are cement sidewalks? A. There are no cement sidewalks on the Elizabeth Heights property at all; no, sir.

Q. Can the sidewalks be seen without close examination to find out whether they are in existence? 20
A. I do not know; they were there, because when I was out there I had broken stone put on top.

Q. They are all covered by weeds now, are they not? A. Yes, sir.

Cross examination by Mr. Hughes:

Q. Mr. Shearer, tell us when those improvements were made on those streets on the map of Elizabeth Heights? A. I cannot answer that question except roughly, and say they were made several years ago, but the streets have been scraped each year up to two years ago when the trouble came up, and additional broken lime stone put on the top; I don't know exactly the year, Mr. Hughes. 30

Q. Have you anything which will show us when these improvements were made—sidewalks, etc?

A. There are no more sidewalks on this side (indicating). 40

Q. Well, improved sidewalks; you say some have improved on the Elizabeth Heights map? A. I should say probably in 1910, and continued till it was finished, some being down one year and some commenced the next year.

Q. Have you not any record? A. I have, but not in my head.

William J. Shearer—Cross

10 Q. You have a record in your office, have you?
 A. I probably have, but I have not that in my head. No, the Referee in Bankruptcy has them and has refused to return them.

Q. You do not know when these improvements were completed? A. I could if you tell me the street, because each street—this was made first on Green Avenue, because the company did not own that.

20 Mr. Hughes: I will say that our mortgage does not cover any lots on Green Avenue nor beyond, but all those lots down from Blocks 9, 10 and 11.

Q. Now, then, going to Baskerville Avenue, what improvements are there on that avenue? A. Nothing but sidewalk, which was dug out six inches and filled in with sand and gravel and covered on the top with broken lime stone.

30 Q. By the Jersey Co-operative Realty Company?
 A. Yes, sir.

Q. How wide is the sidewalk, the improvement that you are speaking about? A. I think four feet.

Q. Four feet? A. Yes, sir.

Q. Was it made on each side of the avenue? A. Yes, sir.

Q. And when was that begun and when completed? A. I should say about 1910 or 1912.

Q. Begun? A. I cannot say for sure.

40 Q. Are there any other improvements on Baskerville Avenue? A. No, sir; water and gas cross it, but are not on it.

Q. Now, take the next avenue, Jersey Avenue?
 A. The same—it was about the same time, when the streets were cut in.

Q. But you cannot swear when it was begun or when it was completed? A. No, sir, I cannot.

William J. Shearer—Cross

- Q. Is there anything on Jersey Avenue except the improved sidewalks? A. No, sir, except the character of the sidewalk I told you about. 10
- Q. Did you say this was done by the company at its own expense? A. Yes, sir.
- Q. Is there no water on this avenue? A. No, sir.
- Q. Conant Avenue—what improvements are there on that avenue? A. The same as Baskerville and Jersey Avenues; I should have said along all these streets we planted trees every twenty-five or thirty feet—shade trees and also fruit over each plot. 20
- Q. Some of it is field? A. No, sir; there was pretty near \$100,000.00 spent in improvements.
- Q. There are no improvements on Servis Avenue? A. Just the same as the others.
- Q. No water—just water and gas going across it? A. Yes, sir.
- Q. Wilson Avenue? A. The same, except sewer, water, gas and electric light.
- Q. When was the sewer put in in Wilson Avenue? A. About 1914, I should say. 30
- Q. There is an assessment on it? A. No, sir; that was put in by the company.
- Q. It was put in by the company? A. Yes, sir.
- Q. Will your records show us when that was put in? A. Yes, sir, if I had them.
- Q. Where does that sewer run from, to? A. It simply runs from Magie Road into a large cesspool, down Wilson Street to Magie Road.
- Q. It runs from the northerly line of Magie Road easterly through Wilson Avenue to Magie Avenue; is that it? A. I would not say that this is a northerly line of Wilson Avenue; it is nearer the southerly line. 40
- Q. To Magie Avenue; that is it, isn't it? A. Yes, sir.
- Q. That is a distance of about three hundred feet. isn't it? A. About six hundred feet.

William J. Shearer—Cross

10 Q. About six hundred feet, is that it? A. Yes, sir.

Q. When was this electric light put in, and who put it in? A. The electric light, the Public Service Company of Elizabeth ran their electric lights down there.

Q. Is there any electric light in Wilson Avenue? A. Yes, sir, the houses on that avenue are lighted by electric light.

20 Q. When was that put in? A. About 1912 or 1913.

Q. You don't know positively? A. No, sir.

Q. And you say on Magie Road there is a sewer and also electric light; is that correct? A. No, sir; I say electric light on Magie Road all around to Green Avenue to the railroad station, marked on the map.

Q. Electric light? A. Yes, sir.

30 Q. Are there any other improvements on Magie Road except the electric light? A. Gas and water as far as Wilson Avenue.

Q. And where from? A. From El Mora Manor on the opposite side of the street.

Q. Up to Wilson Avenue?

A. Yes, sir.

Q. Anything else besides the gas and electric light? A. Sidewalk similar to that already described.

Q. Put down by your company? A. Yes, sir.

40 Q. You don't know when, exactly? A. Not nearer than I have told you or heretofore stated.

Q. Now, turning to the Map of El Mora Manor; what improvements do you say are in Ralph Street, as shown on this map? A. There is gas, water, electric light, sewer, fire protection, I should say and sidewalks.

Q. When was the sewer put in—that was put in by the City? A. Yes, sir, the exact year I cannot

William J. Shearer—Cross

say, but it was about 1914 as near as I can tell. 10

Q. And the electric light, when was that put in?

A. About the same time.

Q. And the improvement in sidewalks, when was that put down? A. The same time.

Q. What does the improvement in sidewalks consist of? A. A cement sidewalk, four feet wide.

Q. How wide? A. My impression is it is at that place three and a half and four feet at some places.

Q. And you say that all of those improvements were made about the same time, the gas, electric light and the sewer? A. Yes, sir, after the mortgage was given. 20

Q. After the twenty thousand dollar mortgage was given? A. Yes, sir.

Q. Now, when was the water put in? A. About the same time.

Q. Fire plugs, also? A. No, sir, it took me about a year to get the fireplugs put in after the water was in there.

Q. Now, then, does that improvement run all the way from Magie Road to the end of the map? A. Yes, sir, to the end of Ralph Street, as shown on the map. 30

Q. Now, take Williams Avenue; what improvements did you say are on the Avenue? A. There was a kind of a sidewalk, described as sand and gravel and water to a short distance or nearly on the avenue, but to the end of the southern extremity of the avenue.

Q. It crosses Summit Place, according to that, then? A. Yes, sir. 40

Q. It has water then from the southerly end of the tract as shown on the map to a point about one hundred feet northerly on Summit Place? A. Some distance up, but I cannot say how much.

Q. Has that got electric light also? A. Yes, sir, to Summit Place.

William J. Shearer—Cross

10 Q. And beyond to Summit Place and Williams Avenue? A. I think not up to the avenue; I don't think the poles have been put up at all, as there were no buildings on that street; they will put them up when there are buildings on that street.

Q. Who made that improvement of the sidewalk?
A. The company.

Q. When was that done? A. About the same time.

20 Q. The same time as the improvement was made in Ralph Street? A. Yes, sir.

Q. And the same applies to the sewer and electric light? A. The sewer was put in by the city and the electric light by the Public Service Company.

Q. Did you say that they were put in after the mortgage was given? A. Yes, sir, they were put in after the mortgage was given.

Q. Are there any improvements in Summit Place? A. Yes, gas, water and electric light.

30 Q. All put in about the same time? A. Yes, sir.

By Mr. Bender:

40 Q. Calling your attention to the fact that the twenty thousand dollar mortgage was given June 3rd, 1913, and out of the proceeds you received some four thousand dollars; can you tell us when the improvements, whether they were made prior to that date or after? A. I said after the mortgage money was received. The most of the improvements were made after, Mr. Bender, the streets had been graded and the gravel sidewalk put in, but the cement sidewalk and the electric light and the gas and the water, and I think the sewer after.

Q. And how soon after? A. I cannot say that.

Q. Were any improvements made later than 1914? A. I think not.

William J. Shearer—Cross

Q. Do you know whether all of the improvements were completed in 1913. A. They were not, no. 10

Q. Do you know how early in 1914 they were completed? A. My impression is they were working the whole year and probably some of 1915.

Q. Were any improvements made on the El Mora Manor tract in 1914? A. Yes, sir.

Q. And what improvements were made in 1914 on that tract? A. I am quite sure that the cement sidewalks on both sides of Ralph Street were made in that year. 20

Q. Were any other improvements made on the property on this map in 1914? A. I think not; I think the houses had all been built by that time.

By Mr. Stutsman:

Q. Referring to the El Mora Manor map, can you tell us roughly how many lots still stand in the name of your company and how many have been sold? A. Well, I don't think I can; my son had charge of all those matters, and I don't believe I can. 30

Q. Have you any way of estimating how many lots still stand in the name of the Jersey Co-operative Realty Company, that is just on the El Mora Manor map not the Elizabeth Heights map? A. There are 250 lots altogether and I should say, if I had to guess, 150.

Q. You estimate that there are 150 lots still standing in the name of the Jersey Co-operative Realty Company? A. It is a guess without having any record before me. 40

Q. Well, do you think it is about that? A. Yes, more or less.

The Court: What is the use of going

William J. Shearer—Cross

10 ahead on this line when he says he can only guess.

Q. And are those lots in any certain location or are they scattered all over the map? A. Scattered all over the map.

By Mr. Whittemore:

20 Q. This El Mora Manor property is located within the City of Elizabeth? A. It is.

Q. And the dividing line between the City of Elizabeth and the Township? A. Yes, sir.

Q. And the sewer connected with it on the Elizabeth Heights map, the service in Wilson Avenue is only supplied by means of a cesspool? A. Yes, sir, that is all.

30 Q. Will you please indicate on the El Mora Manor map the location of the houses which have been built upon it? A. 7 and 8, block 5; 3 and 4, block 2; 60 and 61, block 2; 82 and 83, block 2; and I think 44 and 45, block 3, and there was an old house standing on 49, 50, 51 and 52, block 3.

Q. Which has been remodelled to some extent? A. Yes, sir, and it looks very well.

Q. And the outlet for this property to Summit Place brings you to the border line of the development of the El Mora Land Company? A. It does.

40 Q. You have indicated something—you do not mean that this is the El Mora Manor property, you are speaking of, is all east of the Summit Road? A. Yes, sir.

Q. I am speaking of southeast of Summit Place? A. Yes, sir.

Q. Immediately southeast of this property along the line of Summit Road? A. It is practically all vacant land for several lots in the direction of Elizabeth, with the exception of one house here (indicating).

William J. Shearer—Cross

Q. And then there are two or three or possibly four houses along Magie Road, in the direction southeast from the El Mora Manor property? A. Yes, sir. 10

Q. But on Wilson Avenue—turn to the Elizabeth Heights map—how many houses are there? A. Three, one located directly opposite Ralph Street.

Q. I asked you about Wilson Avenue? A. On Wilson Avenue, two.

Q. Two houses on Wilson Avenue? A. Yes, sir. 20

Q. Can you indicate the part of Wilson Avenue where they are? A. Yes, sir, I think they are on lots 24 and 25, block 21, and lots 1 and 2 and 3, block 23.

Q. The last mentioned lots are on the corner of Magie Road? A. Yes, sir.

Q. And that house faces Magie Road, does it not?

Q. Now, to the southeast of block 23, on property not connected in any way on the Elizabeth Heights map, there is a house facing Magie Road. A. Yes, sir. 30

Q. With the exception of the houses which you have mentioned there are no houses on the Elizabeth Heights map? A. There are none.

Q. The streets which were graded by you or by your company, have largely become overgrown with weeds? A. They have.

Q. The sewers built in Ralph Street and Summit Place by the City of Elizabeth have resulted in the imposition of assessments on lots in El Mora Manor wherever the sewer exists? A. Yes, sir. 40

Q. And those assessments are still unpaid, are they not? A. There have been some payments made, but comparatively few where houses were built and also on some other lots they paid.

Q. Speaking of fire plugs; is there more than one fire plug on the El Mora Manor map? A. Yes, sir there are two.

William J. Shearer—Cross

- 10 Q. Do you remember where they are located?
A. One is located on the corner of Summit Place and Ralph street and the other on Ralph street, near Magie road.
- Q. Are the houses now occupied which are located on the El Mora Manor map? A. So far as I know, they are.
- Q. Have you had any means of ascertaining recently? A. I have not been out there since last Fall.
- 20 Q. The houses are not now under your control?
A. They are not.
- Q. Are the houses on Wilson Avenue occupied as far as you know? A. I know that two of the three are; I am not sure about the others, I have not been out there since last Fall.
- Q. And when you speak of the electric light extending down Magie Road, you are referring to the lights which have been contracted for by the township of Union for lighting those roads? A. When I spoke of the electric light, I meant that the electric wires were there on the poles for service.
- 30 Q. The only patronage there is the patronage of the township of Union? A. Yes, sir
- Q. When speaking of the railroad station—there is no railroad station there now? A. There was a station at this place, and the trains of the Lehigh Valley Railroad used to stop there; whether they stop there now or not, I do not know.
- 40 Q. Don't you know that this station was moved away? A. I did not know that.
- Q. Was it not a very small station where they stopped trains for a certain period and then stopped? A. I don't know; the superintendent said that they would stop as many trains as there was need for the traffic.
- Q. That was two or three years ago? A. Yes, sir.

William J. Shearer—Cross

Q. Was it longer than that? A. Probably. 10

Q. It is not within your knowledge that any trains have stopped there within the last two or three years? A. It is not within my knowledge, no.

Q. And there is no station there now, at all? A. I didn't know that.

Q. Have you any knowledge as to the taxes remaining unpaid on this property; for how many years past? A. On which property?

Q. Well, take El Mora Manor first? A. No. I can't answer that; I do not know. 20

By Mr. Eldridge:

Q. Mr. Shearer, when you applied for this loan of twenty thousand dollars to the New Jersey Title Guarantee and Trust Company had you a detailed statement of what you had to offer as security? A. I probably had.

Q. And on that statement you set forth the improvements that were on the property? A. I don't think I did; I think I just orally told Mr. Evarts what improvements had been made on the property and he examined it very closely. 30

Q. Now, do you have in mind the parcel that was released from the two first mortgages on the south-westerly side of Magie Avenue? A. Do you mean on El Mora Manor map?

Mr. Hughes: No, on the Elizabeth Heights map. 40

A. My impression is that it was on this side there (indicating), that is the southeast—all that part of block 23 that is shown on the Elizabeth Heights map.

Q. Are there any streets laid out on that parcel?

William J. Shearer—Cross

10 A. Magie Avenue, running in the back of the parcel, was graded and laid out years ago, but it is not used, but Magie Road is used.

Q. Is there any other street that crosses it running north and south? A. There is not.

Q. Are there any improvements on that parcel? A. There is gas, water and sewer on the heights which adjoins that piece of property, but not on that property, except, I believe, there is a barn there

20 Q. Is this a private sewer that you speak of? A. No, sir, it is another one that runs to the cesspool, and the trunk sewer runs over in there (indicating).

Q. There are no buildings on this parcel? A. No, sir, I believe there is a barn.

Q. There is a barn? A. I think so.

Q. Is there not a house on it? A. No.

30 Q. What was the object in removing this property from the lien of these mortgages—the parcel I am speaking of? A. Well, so as to have it free and clear so that it could be sold.

Q. You are quite sure there are no improvements on it except a barn? A. There are not.

Q. And it has not been delineated on the map? A. No, sir.

Q. And the only street frontage it has is Magie Road and Magie Avenue? A. I think it has 130 feet frontage on Magie Road.

40 *By the Court:*

Q. On Magie Road. A. Yes, sir.

Q. And runs back to Magie Avenue? A. Yes, sir, I think it is about 130 feet deep.

*William J. Shearer—Cross**By Mr. Eldridge:*

10

Q. The ground is high there? A. That is the highest within three miles, probably.

Q. And Magie Road at this point is improved?

A. What do you mean by "improved?"

Q. Is it an improved street? A. It is macadamized.

Q. It is macadamized? A. Yes, sir.

Q. And there are no sidewalks there? A. There are not.

20

Q. None in front of this property? A. Only what I mentioned before, sand and gravel.

Q. There are no improvements on Magie Avenue?

A. No, sir, none.

By Mr. Hughes:

Q. How long has the barn been there on this plot? A. I don't know, probably 40 or 50 years, I don't know.

Q. Whose is it? A. I think the man lives in the adjoining house, the house that stands near to it.

30

Q. That is on this released part of it? A. Yes, sir.

Q. Is the house an old one, too? A. Yes, sir.

Q. How old? A. I don't know, probably as old as the barn.

Q. How old is the barn? A. I know it is 40 or 50 years old.

Q. Now, you say that on block 21 there are two houses? A. Yes, sir.

Q. There is one house on block 21 on lots 24 and 25, is that it, on the Elizabeth Heights map I am speaking about? A. I think it is lots 24 and 25.

40

Q. When was that house erected? A. About, I think, about 1913 or 1914.

Q. It was erected after the lots were released? A. No, sir, the house was erected and the lots were released before the mortgage was gotten on the house.

William J. Shearer—Cross

10 Q. Now, how about this house (indicating) right across Wilson Avenue, the one on lots 1, 2 and 3 in block 23? A. They were built about the same time.

Q. They were built about the same time? A. Yes, sir.

Q. You say there are no other houses on the Elizabeth Heights map? A. No., sir, there are no other houses on the Elizabeth Heights map.

20 Q. Now, we will take the other one. There are, you say, two houses on lots 30 and 31, in block 1? A. No, sir, I never said that.

Q. No. houses at all on block 1? A. No, sir.

Q. Lots 82 and 83, block 2? A. Yes, sir.

Q. When were those houses erected? A. The same, the same time as the other mentioned.

Q. As those mentioned on the Elizabeth Heights map, do you mean? A. Yes, sir.

Q. And those erected on lots 60 and 61, block 2; when were those erected? A. The following year.

30 Q. The following year? A. Yes, sir.

Q. Those erected on lots 44 and 45, block 3? A. The Summer of 1913 or 1914.

Q. The Summer of 1913 or 1914? A. Yes, sir, the Summer of 1913 or 1914, I am not sure which.

Q. Those on lots 7 and 8, block 5; are there two houses there? A. One house on lots 7 and 8, block 5, erected on the same side of the street.

Q. Lots 13 and 14, block 3? A. Yes, sir.

40 Q. Those are all the houses on that map? A. No, sir; there is one house on lots 3 and 4.

Q. One house? A. Yes, sir.

Q. When was that house erected on lots 3 and 4 in block 2? A. The same time as the others.

Q. About the same Summer? A. Yes, sir.

Q. You are not sure whether it was 1913 or 1914? A. No, sir.

Q. And you say your records are with the Ref-

William J. Shearer—Cross

erec in Bankruptcy? A. Yes, sir, with Bilder & Bilder for the company. 10

By Mr. Whittemore:

Q. Those houses which you have mentioned on the El Mora Manor map, are houses of about equal value, are they not? A. Substantially so.

Q. And about what would their value be? A. What they cost to build or what they would sell for? 20

Q. Well, give us both; first, what they cost to build? A. They run from four thousand to four thousand five hundred dollars.

By Mr. Hughes:

Q. Did you erect them? A. My company did.

By Mr. Whittemore:

Q. Those houses were commenced and carried along in the course of construction about the same time were they not? A. All but one, on lots 60 and 61, block 2; that was the last built. 30

Q. The building mortgages placed upon those houses and upon which they stand, were negotiated for after the houses were in course of construction? A. After the roofs were on.

Q. And the releases were obtained from the company, when new mortgages were placed, and after the roofs were on? A. I think some of them were released before, at least three of them were paid off at the time after the mortgage was gotten from the attorney. 40

Q. And that same custom or method was followed with regard to the two new houses on Wilson Avenue? A. I think so.

William J. Shearer—Cross

10 *By Mr. Hughes:*

Q. Did you say that these two houses on Wilson Avenue were erected about the same time as those on the El Mora Manor map? A. Yes, sir. I think I can give you the order in which they were erected, if you want that.

Q. Do you mean you have something to refer to? A. I can tell you which was first, second, third and fourth.

20 Q. If you can give us the dates?

A. I can't give you the dates; if I can get the books from the attorney I could tell you the dates.

By Mr. Eldridge:

Q. What use was made of the barn on this tract, which was released, of which I spoke a few moments ago? A. Why, it is a tumbled down affair, I think there are a couple of horses are kept there, and there is some other stuff kept there.

30 Q. Does it produce a rental? A. No, sir.

Q. None of the houses were built on the El Mora Manor tract before the sewer was laid, were they? A. I think they were, but we had assurances that the sewer would be laid; they were all finished, I believe, before the sewers were completed, as I remember, Mr. Eldridge.

Q. Was the sewer ready for entry as soon as the houses were completed, ready for occupancy? A. I think pretty soon thereafter, if not when they were finished.

Q. Now, the sidewalks were ready before the houses were built, were they not? A. You mean the cement sidewalks?

Q. Yes, the cement sidewalks? A. Part of it was and part of it was not.

Q. Well, what part was? A. My impression is

William J. Shearer—Cross

that on the south side of Ralph Street; that was finished and part of the other side of Ralph Street before the houses were finished; that in Summit Place was not put down until after the houses were finished. 10

Q. There is a cement sidewalk in Williams Avenue, is there not? A. No, sir, not cement.

By Mr. Whittemore:

Q. Mr. Shearer, is the property upon which the sewer is constructed subject to an assessment of 60 cents a running foot to the City of Elizabeth, or are all the charges included in the assessment? A. I don't understand your question, about all included in the assessment. 20

Q. You say that assessments have been made after the construction of the sewer against this property by the City of Elizabeth? A. Yes, sir.

Q. Are you familiar with the fact that the City of Elizabeth makes a charge for all connections of 60 cents a running foot? A. I am. 30

Q. Is that included in the assessment? A. I am not quite sure.

Q. Go on? A. All of that was included when that house was built and one payment was made for the right to enter that sewer.

Q. But you do not mean that you did not include 60 cents a running foot for the sewer? A. Well, they told me that that was everything that could be charged against those two lots. 40

Q. Do you remember whether it was made up in part by 60 cents a running? A. I do not remember that.

Q. Now, you sold the lots under contract and also in pairs, but subject to restrictions, did you not? A. I did.

Q. And those restrictions still affect the property, do they not? A. Not as far as I know.

William J. Shearer, Jr.—Direct

10 *By Mr. Eldridge:*

Q. Where did you say your books were? A. With Bilder & Bilder.

Q. Hasn't Mr. Atwood L. De Coster your books at the present time? A. Not unless Mr. Bilder sent them over.

Q. Do you recognize these three books as some of the company's books? A. They look like it, I did not know that Mr. Bilder had sent them to Mr.
20 De Coster.

Q. Can you tell how much has been paid in the matter of assessments for these improvements? A. I think my son William could; I don't know with reference to the improvements.

Q. With reference to the improvements that have been made? A. There is nothing in this contract; those are simply payments that have been made; so far as I know there is nothing in these books that bear on the subject of improvements; that
30 would be found, Mr. Eldridge, in probably a dozen time books which I think are in the same batch of books.

Q. Do you know that the Receiver has such books? A. I think he has everything.

Q. Do you know that they were turned over to him? A. I think they were.

Adjourned for recess untill two o'clock
P. M.

40

WILLIAM J. SHEARER, JR., sworn:

Direct Examination by Mr. Hughes:

Q. Mr. Shearer, were you on June 3th, 1913, Secretary of the Jersey Co-operative Realty Company? A. What date was that?

William J. Shearer, Jr.—Direct

Q. June 30th, 1913? A. Yes, sir, I was. 10

Q. I show you a Bond made by the Jersey Co-operative Realty Company to the New Jersey Title Guarantee and Trust Company, dated June 30th, 1913, given to secure the payment of \$20,000 on June 30th, 1916, with interest at the rate of six per cent. per annum, payable July 1st, 1913, and semi-annually thereafter, and I ask you whether this is your signature attached thereto? A. Yes.

Q. As Secretary of that company you witnessed this Bond of the Jersey Co-operative Realty Company of which your father is President? A. Yes, sir. 20

Mr. Hughes: I offer the Bond in evidence.
(There being no objection is admitted and marked Exhibit C-3).

Mr. Hughes: I also offer these three Mortgages:

Mortgage made by William J. Shearer and wife to Phoebe O. Earl, dated October 26th, 1906, to secure the payment of Bond for \$4,500, mortgage recorded in Book 228 of Mortgages for Union County, page 178, October 31st, 1906. 30

(Mortgage marked Exhibit C-4).

Mortgage made by William J. Shearer and wife and Jersey Co-operative Realty Company to Mary S. Woodley, dated December 24th, 1908, to secure the payment of a Bond for \$20,000, recorded in Book 325 of Mortgages for Union County, page 395, December 26th, 1908. 40

(Mortgage marked Exhibit C-5).

Mortgage made by Jersey Co-operative Realty Company to the New Jersey Title Guarantee and Trust Company, dated June 30th, 1913, to secure the payment of a Bond

Andrew C. Greene—Direct

10 for \$20,000, recorded in Book 337 of Mortgages for Union County, page 355, July 5th, 1913.

(Mortgage marked Exhibit C-6).

I also offer in evidence Assignment of Mortgage made and executed by Myra S. Woodley, to the New Jersey Title Guarantee and Trust Company, dated June 21st, 1913, acknowledged June 27th, 1913, and recorded in Book 53 of Assignments of Mortgages for Union County, whereby, in consideration of one dollar and other valuable considerations Myra S. Woodley assigned to said Company the Bond and Mortgage marked Exhibits C-5 and C-6).

(Assignment of Mortgage marked Exhibit C-7).

30 ANDREW C. GREENE, sworn :

Direct Examination by Mr. Hughes:

Q. Mr. Greene, you are the Treasurer of the New Jersey Title Guarantee and Trust Company, the complainant in this case? A. Yes, sir.

Q. Are you familiar with the giving or making of the loan of \$20,000, made June 30th, 1913, to the Jersey Co-operative Realty Company by your company on which the Bond and mortgage were given as set forth in this proceeding? A. Yes, sir.

Q. Can you tell us how the loan was disbursed and how it was applied? A. I can if I can refer to that paper; I can't from memory.

Q. What is that you produce? A. That is a copy of the General Ledger.

Mr. Eldridge: I object; we understood

Andrew C. Greene—Direct

that they were to produce the Original Ledger. 10

The Master: Well, you will have to produce the Original Book and the Checks.

Mr. Hughes: That is all for the present, Mr. Greene.

The Master: Mr. Hughes, isn't it up to you to offer your bonds and mortgages and prove the amount due and rest your case?

Mr. Hughes: Yes, sir.

The Master: It appears to me all you have to do is to prove your bonds and mortgages and the amount advanced on them and how much is due you. 20

Mr. Hughes: I would like to offer in evidence transcript of the record of the judgment recovered against the Jersey Co-operative Realty Company on September 30th, 1916, for \$8,362.82 damages and \$44.53 costs, making a total of \$8,406.35, entered September 30th, 1916. 30

(There being no objection Transcript of judgment is admitted in evidence and marked Exhibit C-8).

The Master: You have no further proof to offer at this time other than through Mr. Greene.

Mr. Hughes: No; now while waiting for Mr. Greene can we not proceed with the defence?

Mr. Eldridge: I think so; I have a number of witnesses here and I will call Mr. Bird. 40

Charles A. Bird—Direct

10

DEFENDANT'S CASE.

CHARLES A. BIRD, SWORN:

Direct examination by Mr. Eldridge:

Q. Mr. Bird, you are one of the defendants in this suit? A. Yes, sir.

Q. And you bought two lots in the El Mora Tract from the Jersey Co-operative Realty Company, did you not? A. Yes, sir.

Q. And you received a deed for them? A. Yes, sir.

30

Mr. Eldridge: I offer in evidence Deed of Jersey Co-operative Realty Company to Charles A. Bird, dated February 3, 1915, and Recorded in the Register's Office, Union County, January 19, 1916, in Book 675 of Deeds at pages 213, etc., also re-recorded on August 15, 1917, in Book 711 of Deeds for Union County, at pages 147, etc., affecting Lots 5 and 6, Block 2, map of El Mora Manor.

(There being no objection, the deed is admitted in evidence and marked Exhibit D-1.)

Q. Were those lots purchased on an instalment contract? A. Well, they were and they were not; I did not take the full term of the instalment plan, I made the payments in two or three payments.

40

Q. Did you have a contract? A. Yes.

Q. What became of the contract? A. I returned it to Mr. Shearer when I received the deed.

Mr. Hughes: I object to the witness testifying regarding a written contract unless the contract is produced.

Charles A. Bird—Direct

Q. What became of it? A. I gave it to Mr. Shearer. 10

Q. Have you had it since then? A. No, sir.

Q. Do you recall the approximate date of the contract?

Mr. Hughes: I object to that question. The contract itself is the best evidence.

The Master: Mr. Eldridge, you ought to make some attempt to get the contract before you attempt to prove its contents. 20

Mr. Eldridge: I think it is perfectly competent to show when the contract was made.

Mr. Hughes: I still maintain my objection.

The Master: I will allow him to prove it.

Q. Do you recall the approximate date of the contract? A. No, I can't any more than the check shows when I received the contract.

Q. Have you the checks that were given in the performance of this contract? A. Yes, sir. 30

Q. I produce these four checks bearing the respective dates of September 3rd, 1912, September 9th, 1912, October 1st, 1913, and November 23rd, 1914, and ask you whether those are for payments made on account of this contract? A. Yes, sir.

Q. And were those checks paid? A. Yes, sir.

Mr. Eldridge: I offer the four checks in evidence.

Mr. Hughes: I object to the offer. 40

The Master: They will be admitted.

(The four checks are offered in evidence subject to objection and marked as one Exhibit D-2.)

Q. I call your attention to the check of September 3rd, 1912, to the order of William J. Shearer.

Elwood W. Phares—Direct

10 and ask you whether that is for the first payment made on account of this contract? A. Yes, sir; that is the first payment on that contract.

Q. Mr. Bird, when did you first discover the existence of encumbrances on these lots? A. Well, I received notice from the New Jersey Title Guarantee and Trust Company that there was a mortgage on the property which was the first intimation that I knew of anything of the kind.

20 Q. Was that a letter which you turned over to me? A. I think you have it, yes, sir.

Q. Do you recall what year that was, Mr. Bird? A. I think it was about a year ago, somewhere around this time; I may be mistaken.

Q. I call your attention to a letter of May 8th, 1917, from Collins & Corbin, and ask you if that is the letter to which you refer? A. Yes, sir, that is the one.

30 Q. And you say that that was the first intimation that you had that the lots were subject to encumbrances? A. Yes, sir.

Mr. Eldridge: If there is no objection, Mr. Hughes, I will offer this letter from your firm.

Mr. Hughes: I object to the offer.

The Master: I will admit it.

(Letter admitted in evidence subject to objection and marked Exhibit D-3.)

No cross examination.

40

ELWOOD W. PHARES, SWORN:

Direct examination by Mr. Whittemore:

Q. You are engaged in the real estate business in the City of Elizabeth? A. Yes, sir.

Elwood W. Phares—Direct

Q. How long? A. Nineteen years, about. 10

Q. Are you familiar with the lots in the El Mora Manor tract? A. Yes, sir.

Q. And those on the Elizabeth Heights map? A. Yes, sir.

Q. What particular experience have you had in regard to real estate in the section of El Mora Manor? A. Well, I have had several transactions throughout this entire territory, but more particularly in connection with the El Mora Realty Company, which they have opened up there, on their Crawford & Parmelee tracts, involving quite a considerable amount of property, known as the section of El Mora. 20

Q. Will you please tell us what, in your opinion, the relative values was, or has been the relative values of lots during the last four or five years, on the map of lots on the El Mora Manor tract? A. Why, there has been very little change in actual values, the same rates would apply to lots on the El Mora tract as would apply on the El Mora Realty tract; there have been no great increases in the case of the El Mora Realty tract and the same would hold true on the El Mora Manor tract. 30

Q. What would you say would be the values of the lots on the map before you of El Mora Manor? A. Magie Road, shown on this map, is the only main thoroughfare through this property; it runs from Westfield Avenue in Elizabeth out back in the country to practically nowhere; these streets, which have been cut through on the El Mora Manor tract, run from Magie Road back to a dead end, after you have once gotten in there, there is only one way to get out and that is to practically turn around and go out; all developments that have such a condition are very much limited in the prices that are asked; take the Summit Place section, we find the best section in this tract; it is fairly well 40

Elwood W. Phares—Direct

10 drained from Summit Place back, and in my judgment those lots are worth from ten to twelve dollars a foot; down Ralph Street is the next best section in this tract, and on the other side the relative values would be in the neighborhood of ten dollars a front foot; when you get to Magie Road, such lots as those on Magie Road would be about the same values as those on Ralph Street from ten dollars to about twelve dollars a front foot.

20 Q. In what manner, in your judgment, would it be most to the interest of the parties concerned, to have those lots on the El Mora Manor tract sold, in what plots? A. In my judgment, the best way, if they could find purchasers, would be to sell them in pairs having a plot of one hundred feet.

30 Q. Will you turn to the Elizabeth Heights tract and tell us what in your judgment would be the best way to sell that property to the best interest of persons interested in it? A. If the lots were sold cheap enough, the lots could be sold in pairs, or threes or fours or units, making frontages of 45 to 80 feet and many of them between Magie Road and Magie Avenue could be marketed in this way.

40 Q. In your judgment the rest of them has very little market for at the present time? A. It might be possible, if you could have them put in car tracks, or put in a car line, and sell them to a man that wanted to build a home on the under-sized lot, or if a farmer wanted them for a chicken farm, you might be able to sell those lots, but I do not think it would be under any favorable condition to sell them in any other fashion.

By the Court:

Q. Is there any disadvantage that you note in selling the property on the Elizabeth Heights tract

Elwood W. Phares—Cross

in one parcel? A. Why, your Honor, there are 10
mighty few people buying land for development
purposes at present; this property has been placed
on the market, and a lot of noise made about it,
and it is now dead, and it is a much harder propo-
sition to revive the prices in lots that were once
marketed and have failed.

Q. If you attempted to sell this property in
small lots, do you think there would be any gain
in selling it that way rather than in small por- 20
tions? A. I have frequent inquiries for little
places in the country for raising chickens; take
a place where a man could, after his day's work
was done, have a garden, and to my mind this prop-
erty would be best adapted for this particular pur-
pose, and I believe that you will find a fairly good
market for it.

Cross examination by Mr. Hughes:

Q. Now, in giving us your estimate of values is 30
it based upon the land unimproved or upon im-
provements which are said to exist at the present
time? A. On all improvements.

Q. What was the value before the sewer was
made? A. The only cost in lots in Elizabeth is for
sewer, which is about two dollars a foot.

Q. And before the sewer was put in, would that
amount be deducted from your estimate? A. Yes,
sir.

Q. Did you take into consideration the cost of 40
marketing this property when you gave us your
estimate? A. Yes, sir.

Q. Is it not to be expected to add from 20 to 25
per cent, when you take into consideration the
taxes and the interest on the investment and pay-
ing the expenses, when you made your estimate?
A. Yes, sir.

(Mrs.) Sella P. Cole—Direct

10 Q. Do you know where there is anybody that can be found to purchase them at the price you speak of? A. I believe that this stuff could be marketed quite readily and I add 40 to 50 per cent.

Q. Have you marketed the property? A. No, Mr. Treacy did.

Q. Did you affect any sales yourself? A. I did not.

Q. How long have you had it on your books? A. Four or five years.

20 Q. And you never made any sales yourself? A. No, sir, it never appealed to me.

(MRS.) SELLA P. COLE, sworn:

Direct examination by Mr. Eldridge:

30 Q. Mrs. Cole, you are one of the defendants in this case, are you not? A. Yes, sir.

Q. And you bought two lots from the Jersey Co-operative Realty Company on the Map of the El Mora Manor Tract? A. Yes, sir.

Q. Do you recall what lots you bought? A. Yes, Nos. 21 and 22, Block 2.

Q. Do you recall the time when you bought these lots? A. Well, I don't; in October, 1912, I went over to Mr. Shearer's office in New York.

40 Mr. Hughes: I ask that that answer be stricken out.

The Master: I will let it stand.

Q. At that time did you make a written agreement to purchase these lots? A. Yes, sir.

Mr. Hughes: I object to all this testimony on this line unless the agreement is produced.

(Mrs.) Sella P. Cole—Direct

Q. Did you make a contract? And did you pursuant to a certain contract make payments on account? A. No, sir, I went over to see Mr. Shearer— 10

Mr. Hughes: I object to that; he should produce the agreement.

The Master: I will overrule the objection.

Q. Now, did you make payments on account of this contract? A. Yes, sir, so much per month.

Q. Have you any receipts or check vouchers to show the payments that you made? A. I have the checks here. 20

Q. Have you them with you? A. Yes, they are in my bag.

Q. They are in this bag (indicating a small bag)? A. Yes, sir.

Q. Now, will you produce them? A. Yes, sir (witness produces a bundle of checks).

Q. Now, you produce twenty-four check vouchers? A. Yes, sir. 30

Q. Do those check vouchers represent payments on account of the purchase price of those lots? A. They do.

Q. And all those checks have been paid? A. Yes, sir.

Mr. Eldridge: I offer these check vouchers in evidence.

Mr. Hughes: I object to the offer.

The Master: I will admit them. 40

(24 check vouchers offered in evidence subject to objection and marked as one Exhibit D-4.)

Q. Were there any other payments made for which you have no check vouchers? A. Yes, sir, I made a payment of \$60 at one time.

(Mrs.) Sella P. Cole—Direct

- 10 Q. Have you a receipt for that payment? A. No.
 Q. Do you recall when that payment was made?
 A. That was made in March, 1915.
 Q. And have you receipts for other payments which you made? A. No, excepting for the interest. I have a receipt for that.
 Q. Where is that receipt? A. I gave it to you, Mr. Eldridge, the last time I was over.
 Q. You say you gave me that receipt? A. Yes, sir.
- 20 Q. For how much money was that receipt, do you recall? A. I don't remember; I think it was for \$27 and some cents and then I had to pay the taxes.

By the Master:

Q. You say that that was for interest? A. Yes, sir, for the three years at the rate of five per cent.

30 *By Mr. Eldridge:*

Q. Now, you produce a receipt here of May 7th, 1915; is that something that is covered by a check voucher? A. Yes, sir, when I paid Mr. Shearer this at my residence he acknowledged the receipt on the back of the check.

Q. Now, this receipt for \$315 is that for money which you paid him at the time he gave you this paper or had you it previously? A. Yes, sir, I paid him on the date that he gave me that receipt.

40 Q. Do you recall the date? A. No, I know it was some time in the latter part of September of beginning of October, because my contract expired in November.

Q. Of what year? A. Of 1915.

Q. And this paper is signed by Mr. Shearer?
 A. Yes, sir.

(Mrs.) Sella P. Cole—Direct

Q. You mean William J Shearer, Jr.? A. Yes, 10
sir.

Mr. Eldridge: I offer the receipt in evidence.

Mr. Hughes: I object to the offer.

(Receipt admitted in evidence and marked Exhibit D-5.)

Q. Did you ever receive a deed for those lots? 20
A. Yes, sir.

Q. When did you receive a deed? A. Well, I received it shortly after I made that payment to Mr Shearer; I don't recollect the exact date; I think it was some time in November, 1915.

Q. And what did you do with that deed? A. Well, I kept it in my possession for some time and then I sent it to you in 1915 and asked you to record this deed; you wrote and asked me to forward the deed, which I did, and I have not seen it since 30

Q. You sent it to me? A. Yes, sir.

Q. Did you have the deed in your possession subsequently to that? A. No, sir.

The Master (addressing Mr. Eldridge) : Is the deed recorded?

Mr. Eldridge: No, sir, the deed is not recorded.

Q. What has become of the first contract you had? A. The first contract I had, when I entered 40
into an arrangement with Mr Shearer, I had it in my possession until March, 1915; when I went to New York I went to his office and gave him—no, it was March, 1914, I gave him \$60 and then he tore up that original contract, and I asked why he did it and he said, that would look as if I had

(Mrs.) Sella P. Cole—Cross

10 paid you this, and he simply tore it up and threw it in the scrap basket, and he drew up a new contract and assured me that it was the same as the first one.

Q. What did you do with that contract? A. Well, I returned that when they gave me the receipt.

Q. Who took it? A. Mr. William J. Shearer, Jr.

Q. And he asked you for your contract and receipts? A. Yes, sir.

20 Q. And you gave them to him? A. Yes, sir.

Q. You refer to the Secretary of the Company? A. Yes, sir, the Secretary of the Company.

Q. Have you now a deed for these lots? A. I have not.

Q. You started a suit to compel the company to give you a deed, did you not? A. Yes, sir.

Q. And that suit is still pending? A. Yes, sir.

30 Q. Now, when did you first learn that these lots were subject to encumbrances? A. In March, 1916.

Q. Have you paid all that is due for those lots? A. I have.

Cross examination by Mr. Hughes:

Q. When did you say that those \$315 were paid to Mr. Shearer? A. I think it was some time in the latter part of October or early part of November, 1915.

40 Q. Is it not true that Mr. Shearer on behalf of the Jersey Co-operative Realty Company offered you a deed which you refused? A. Yes, sir, he offered me a deed but not what I wanted; I wanted a warranty deed and he refused to give it to me.

Q. Did you tell him the reason why you refused to take it? A. I did not.

Q. Didn't he offer you a deed for other lots

Andrew C. Greene—Direct

which you agreed to take and then you refused to take it? A. No, sir, I did not; I went to his house one night to get him to live up to his promise. 10

Q. I call your attention to the fact that the majority of these checks are subsequent to the date on the mortgage?

The Master: When is the first check dated?

Mr. Eldridge: October, 1912, for ten dollars. 20

Mr. Hughes: And then they go along?

Q. Now, when did you commence this Chancery suit about which you have just testified? A. Well, I don't know; Mr. Eldridge has that in charge.

Mr. Eldridge: The *lis pendens* is on file.

By the Master:

Q. What day was it that you got the deed that you say was lost or which you sent to Mr. Eldridge? 30

A. Some time in November, 1915; I know it was shortly after I paid Mr. Shearer the money.

Q. What lots were covered by your deed? A. Lots 21 and 22, Block 2.

Q. On the map of El Mora Manor Tract? A. Yes, sir.

40

ANDREW C. GREENE, recalled:

Direct examination by Mr. Hughes:

Q. (Showing witness a book) What is this book that you produced? A. That is the General Ledger of the New Jersey Title Guarantee and Trust Company.

Andrew C. Greene—Direct

10 Q. Does this Ledger show the disbursements made by the New Jersey Title Guarantee and Trust Company of the \$20,000 loan made to the Jersey Co-operative Realty Company on its mortgage of June, 1913? A. It does.

Q. On what page? A. Page 938.

Q. I call your attention to an item here "July 5th," the year is not indicated? A. 1913.

20 Q. "Mutual Life Insurance Company \$4,100.83," and ask you if that item represents a payment to the Mutual Life Insurance Company on a mortgage which it held on the property mortgaged to your company? A. Yes, sir.

Q. Under the same date an item, "Richard S. Earl \$4,500"; what does that item represent? A. The payment of the mortgage.

Q. Is that the one which your company took an assignment of as set forth in the Bill of Complaint? A. Yes, sir.

30 Q. Item "Myra S. Woodley \$7,656.87," what is that for? A. That is for a mortgage that was assigned to our company.

Q. For the Woodley mortgage set forth in the Bill of Complaint? A. Yes, sir.

Q. Item "\$270"? A. That is payment for the charge of searching, etc. I have the bill here if you want to see it.

Q. Item \$3,416.80"; what is that for? A. That is the balance of the loan.

40 Q. Have you the checks with you? A. Yes, sir.

Q. Mr. Greene have you a record in this book of the amount which your company received for releasing a part of the lands on its mortgage for \$20,000? A. No, it is not in that book; it shows a part; there is the first payment (indicating).

Q. Turn to page 88 of the Ledger? A. That is an entry August 23, 1913, Jersey Co-operative Realty Company, \$475.

Andrew C. Greene—Direct

Q. Was that for a release or releases given by your company of part of the property mortgaged by the \$20,000 mortgage? A. Yes, sir. 10

Q. What was the date of that? A. August 23, 1913, according to the Ledger.

Q. Where is the next, Mr. Greene? A. Page 86 of the Ledger (Witness calls attention to item of "October 7, 1913, Jersey Co-operative Realty Company, \$250.")

Q. Was that for a release of one of the lots? A. Yes, sir. 20

Q. Page 100? A. "November 14, 1913, \$300."

By the Master:

Q. What do you produce now, Mr. Greene? A. This is the General Ledger for 1914.

Q. And you turn to what page? A. Page 37, On "January 21, 1914—\$200."

Q. What do you produce now? A. That is the General Ledger for 1917. 30

Q. And you turn to what page? A. Page 85 "June 21—\$250."

By Mr. Hughes:

Q. What year is that? A. 1917.

Q. Page 85 "June 23—\$375, page 85 "June 26—\$250"—Total of how much? A. \$2,100.

Q. Now, Mr. Greene, can you tell us how much is due on that \$20,000 mortgage after these deductions have been made? A. Yes, sir. 40

Q. How much is it? A. This is the Current Mortgage Register showing the amount due on that mortgage of \$17,900.

Q. That is the amount of principal? A. Yes, sir, that is the amount of principal.

Q. And from what date is interest owing? A.

Andrew C. Greene—Direct

10 Well, from January 1st I think; I could not tell you that from that.

Q. January 1st what year? A. January 1st, 1916.

Q. At the rate of six per cent. per annum? A. Yes, sir.

By the Master:

Q. How much did you say is due? A. \$17,900;
20 \$2,100 have been paid.

By Mr. Eldridge:

Q. Mr. Greene, are those the only records you have concerning this mortgage? A. Yes, sir.

Q. But you have not that record here? A. It is right here.

Q. Is that the initial record of all the payments made? A. No, sir.

30 Q. That is a summary of all the payments made in a condensed form? A. Well, there are some in this Ledger (indicating) and some in this one (indicating).

Q. It appears in evidence that no payments were received except from the proceeds of releases? A. Yes, sir.

Q. And no other payments were made? A. No, sir.

40 Q. And those records that you produce show moneys received for releases received? A. Yes, sir, that is the General Ledger.

Q. Made up of payments of every kind? A. Yes, sir. (Witness refers to a certain book.) This book shows the individual item.

Q. Had you anything to do with the making of the loan and securing it? A. No, sir.

Q. You simply recall that there was such a loan

Andrew C. Greene—Direct

made and you disbursed the money? A. Yes, sir. 10

Q. And all those items of disbursements were made on the same day, that is, the items of disbursement, on July 3rd out of the \$20,000? A. Yes, sir; I have the checks here if you wish to see them.

(Witness produces check books showing stubs and return vouchers Nos. 19050 to 19054 inclusive all dated July 3rd, 1913.)

20

Q. Now, Mr. Greene, frequently collateral is taken for loans? A. Yes, sir.

Q. Have you a book in which a record is kept of collateral received for loans? A. Yes, sir, we have.

Q. Are any of the records that are now in Court such as are used to keep records of collateral? A. No, sir.

Q. But you have a book in which there is a record kept of the fact that you have collateral loans? A. Yes, sir. 30

Q. But that record is not in Court? A. No, sir.

By Mr. Hughes:

Q. Was any other security given of any kind to the New Jersey Title Guarantee and Trust Company by the Jersey Co-operative Realty Company or by William J. Shearer? A. No, sir.

The Master: The judgment has been proved and there seems to be no argument over that fact? 40

Mr. Eldridge: I think I will ask the witness on that subject.

By Mr. Eldridge:

Q. Your company has a judgment against the Jer-

Andrew C. Greene—Direct

10 sey Co-operative Realty Company and William J. Shearer that is based on a promissory note? A. On promissory notes.

Q. But those notes are secured in part by this \$20,000 Mortgage? A. No. sir.

Q. They were not given as collateral? A. No, sir, absolutely not.

The Master (Addressing Mr. Eldridge)
Are you through with Greene?

20 Mr. Eldridge: Yes, your Honor, I think so.
Are you through with Mr. Greene?

The Master (Addressing Mr. Hughes)

By Mr. English:

Q. Does this entry on your book show that the \$2,100 or any portion of it was credited to any particular one of the three mortgages or just to the loan as a whole? A. It shows a credit to the general indebtedness of the \$20,000.

30 Q. That is all.

Mr. Hughes: I would like to offer in evidence the mortgage given by William H. Shearer to the Mutual Life Insurance Company, dated September 9th, 1897, and recorded in Book 145 of Mortgages for Union County, page 249, given to secure the payment of \$4,000 on September 15th, 1898, interest five per cent. per annum, embracing the tract on the Elizabeth Heights property. It is a mortgage that bears the cancelling record stamp, "July 29th, 1913, Frank H. Smith, Register."

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(Paper admitted and marked Exhibit C 11.)

Sidney W. Eldridge—Direct

SIDNEY W. ELDRIDGE, SWORN:

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Early in the year 1916 Mrs. Cole wrote to me and sent me the deed that she has referred to in her testimony for examination, to find out whether it was in proper form and also to record it and I suggested—

By the Master:

Q. Did you receive the deed? A. Yes, sir, I received the deed and it was defective in some respect, and I took it over to the office of the company and handed it to Mr. William J. Shearer, Jr., the Secretary, who said that he would correct it, but could not do it on that day, but would probably take it up the following day. It was a matter of a clerical error; I have forgotten now what the detail was and the deed had been off record for that time—for four or five months—as I recall it; Mrs. Cole had kept it for that time without putting it on record; a few days after the deed was left with me, and after I had made repeated efforts to get it back, Mr. William J. Shearer, Sr., came to me and said, that the lots that Mrs. Cole was buying were tied up in a Chancery suit in which the company and others were defendants, and that he could not very well make the title good, but that he would substitute other lots which were not affected by the Chancery suit, and as I had at that time learned the condition by an examination of the title, I told him I could not advise my client to make an exchange because I didn't know (I didn't tell him this) that the title to the substituted lot or lots to be substituted was equally as bad as the ones originally purchased and covered by the deed which my client had. Finally I examined the title to the two lots which were to be substituted and found that they were

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Sidney W. Eldridge—Direct

- 10 subject to sewer assessments, which, by the terms of the contract which Mrs. Cole had, I contended should be paid by the company, and there was some argument with Mr Shearer about that, he contended that we were obliged to pay the taxes and finally I concluded to take the substituted lots subject to the sewer assessments; things seemed to be going from bad to worse, and then he said that the company had conveyed them to his son and that he would have to see him, to see if he would give them
- 20 up, and it went along for months and months in this way and finally I filed a bill; I could get no other deed for the original lots or substituted lots, and I filed a bill in Chancery for Mrs Cole and took a decree *pro confesso*, and have taken some proofs but never took a final decree.

By Mr. Hughes:

- 30 Q. This first deed that you say was defective was offered for delivery in October, 1915, wasn't it?
A. Yes, sir, it was dated and probably delivered then.

- Q. You do not remember in what respect the deed was defective? A. Well, I might find out by going over my correspondence; it was a clerical error—oh, yes, this was it; Mrs. Cole—the masculine pronoun was used all the way through the deed and there was a misunderstanding as to whether the name was that of a man or a woman, clearly a mistake in the mind of the scrivener, and that was what
- 40 I wanted corrected; there may have been something else but I recall that distinctly.

- Q. Why wasn't that corrected? A. Well, I have never been able to find out; Mr. Shearer was in his office when I left the deed there and it was a matter of less than five minutes to correct it, and he said he was too busy and could not correct it then, and

Sidney W. Eldridge—Direct

he finally said that he would take it up on the following day. 10

Q. When was the conversation about the second deed, about how long after October, 1915? A. I did not get that deed; I didn't get it until early in 1916, that is four or five months after.

Q. That is the deed that was defective? A. Yes, sir, if it is important I can give you the exact date.

Q. When did you have this conversation with him about this second deed? A. Well, I suppose it was a matter of ten or fifteen days after the deed was handed back to him. 20

Q. Do you remember what lots he proposed to convey? A. Yes, sir, I think it was Lots 23 and 24.

Q. In the same block? A. Yes sir, the same block.

Q. Block 2? A. Yes, sir.

Q. And what did he say about that deed and the property that was conveyed by it? A. He didn't have any deed; he said he would make an exchange but he never tendered any new deed to me. 30

Q. Did he say that the new deed would be free from objection by you or anything of that kind? A. No, sir, he did not know at that time that I knew that his property had been covered by a mortgage and that he had been selling the property subject to mortgage, and I delayed making the exchange, fearing that they were even worse than the first lots my client had purchased.

Q. You brought your suit in December, 1915, according to the record? A. I don't recall; I should think that probably that was the time that the bill was filed. 40

Mr. Eldridge: I have some payments to be proved in the same manner.

William J. Shearer, Jr. (Recalled)—Direct

10 WILLIAM J. SHEARER, Jr., recalled:

Direct examination by Mr. Eldridge:

Q. You are the Secretary of the Jersey Co-operative Realty Company? A. I am.

Q. Mr. Shearer, I call your attention to a contract, dated September 10th, 1912, and not recorded, between the Jersey Co-operative Realty Company and A. B. McClelland, Lots 30, 31, 32 and 33,
20 Block 3, Map of El Mora Manor, consideration \$1,100, and ask you whether this contract was signed by you for the company as secretary and treasurer? A. It was.

Q. And Mr. McClelland's signature is also on that contract? A. Yes, sir.

Mr. Eldridge: I offer this contract in evidence.

(Contract marked Exhibit E 2.)

30 Q. I call your attention to 26 check vouchers, checks signed by A. B. McClelland, and ask you whether those checks were for payments on account of this contract? A. They were.

Mr. Eldridge: I offer 26 checks as one batch.

(Batch of 26 checks marked Exhibit E 3.)

40 Mr. Eldridge: I offer in evidence Deed of Jersey Co-operative Realty Company, to A. B. McClelland for Lots 30, 31, 32 and 33, in Block 3, Map of El Mora Manor, dated September 20th, 1916, proven September 20th, 1916, and recorded in the Register's Office of Union County, September 20th, 1916, in Book 690 of Deeds, pages 65, etc.

(Deed marked Exhibit E 4.)

William J. Shearer, Jr. (Recalled)—Cross

Q. Mr. Shearer, I show you a contract, dated September 10th, 1912, between Jersey Co-operative Realty Company and E. D. Goodnough for Lots 35 and 36, Block 1, Map of El Mora Manor, consideration \$550, purporting to be signed by William J. Shearer, as President of the company, and ask you whether that is the true signature of Mr. Shearer? A. That is my father's signature. 10

Q. And at that time he was President of the Jersey Co-operative Realty Company? A. He was. 20

Q. And Mr. Goodnough's signature is also affixed to this contract? A. It is.

Mr. Eldridge: I offer this contract in evidence.

(Contract marked Exhibit E 5.)

Mr. Hughes: That contract is not acknowledged or recorded?

Q. I show you a batch of check vouchers, signed E. B. Goodnough, and ask you whether those vouchers are for payments made on account of the contract just exhibited to you? A. Yes, sir. 30

Q. Mr. Goodnough has paid for his lots in full, has he not? A. Yes, he has.

Mr. Eldridge: I offer in evidence Deed of Jersey Co-operative Realty Company to Edwin B. Goodnough, for Lots 35 and 36, Block 1, Map of El Mora Manor, dated May 1st, 1917, proven on the same day and recorded May 15th, 1917, Book 705 of Deeds for Union County, on page 70, etc. 40

(Deed marked Exhibit E 6.)

Q. I show you another contract dated September 15th, 1912, between Jersey Co-operative Realty Company and Frank Inch affecting Lots 26 and 27,

William J. Shearer, Jr. (Recalled)—Direct

10 Block 1, and Lots 20 and 21, Block 3, Map of El Mora Manor, purchase price \$1,275, purporting to be signed by William J. Shearer, President of the Jersey Co-operative Realty Company, and ask you whether this signature is genuine? A. Yes, sir.

Q. And your father was at that time President of the company? A. He was.

Q. And this contract also bears the signature of Mr. Inch? A. It does.

20 Mr. Eldridge: I offer the contract in evidence.

(Contract admitted in evidence and marked Exhibit E7.)

Mr. Hughes: This contract is not acknowledged or recorded.

Q. I show you a batch of check vouchers signed Frank E. Inch and ask you whether those are for payments made on account of this contract? A.

30 They are.

Mr. Eldridge: I offer the check vouchers in evidence.

(Batch of check vouchers admitted in evidence and marked Exhibit C 8.)

40 Mr. Eldridge: I offer in evidence Deed of the Jersey Co-operative Realty Company to Frank E. Inch for Lots 26 and 27, Block 1, and Lots 20 and 21, Block 3, laid down on Map of El Mora Manor Property, dated May 1st, 1917, proven on the same date and recorded on May 15th, 1918, in the Office of the Register of Union County, in Book 705 of Deeds, on page 173, etc.

(Deed admitted in evidence and marked Exhibit E 9.)

Mr. Eldridge: I offer in evidence contract

William L. Shearer, Jr. (Recalled)—Direct

dated October 18th, 1912, between Jersey Co-operative Realty Company and Frederick F. Price, Jr., for sale of Lots 86 and 87, Block 2, Map of El Mora Manor property, consideration \$650, which contract is acknowledged by the vendee on the 22d June, 1917, and was recorded on June 22d, 1917, in the Office of the Register of Union County, in Book 707, page 172, etc. 10

(Contract admitted in evidence and marked Exhibit E 10.) 20

Q. I call your attention, Mr. Shearer, to some endorsements on this contract, indicating that payments were made on account; will you tell me wether those endorsements indicate the payment that were made? A. They do.

Q. And what is the total of the payments as therein indicated? A. \$450.

Q. \$450? A. Yes, sir.

Q. Will you refer to this book and tell me whether there are any other payments that have not been noted on the book? A. I can tell you without looking there, in as much as this was one of the contracts where the payments were lapsed, and where for quite a while the payments were not made regularly, therefore a new contract was furnished. 30

Q. Is that paper which you have in your hand a new or original contract? A. It is a new contract.

Q. And on that contract \$450 has been paid? A. Yes, sir. 40

Q. And the last payment was made when? A. June 23rd, 1916.

Mr. Eldridge: I offer the contract in evidence.

(Contract admitted and marked Exhibit E 11.)

William J. Shearer, Jr. (Recalled)—Cross

10 Q. I show you a batch of check vouchers, some of the Elizabeth Automobile Company and others of F. P. Price, Jr., and ask you whether they were payments made on account of this contract. A. They were.

Mr. Eldridge: I offer the batch of check vouchers in evidence.

(Batch of check vouchers admitted in evidence and marked Exhibit E 12.)

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Cross examination by Mr. Hughes:

Q. I call your attention to Exhibit E 12, being the contract between the Jersey Co-operative Realty Company and Frederick P. Price, Jr., in which I understand you to say that the rights of Mr. Price had lapsed by reason of his failure to make payments? A. Yes, sir, he had fallen down on his payments.

30 Q. Is there a provision in this contract that it shall become void on the failure to make payments?

Mr. Eldridge: I object to that question. The contract speaks for itself.

The Master: I understood the witness to say that there had been a new contract made.

Mr. Hughes: Then I call for the production of the original contract.

The Master: No one produces it, Mr. Hughes.

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Q. Now those two payments are all that have been made on it? A. Well, no, the way I arrived at that is I added up the payments on the original contract and credited them on this new contract.

Q. Have you the original contract? A. Oh, no, I have not the original contract.

Q. Do you know when the original contract was

William J. Shearer, Jr. (Recalled)—Cross

delivered; have you any record of that? A. Well, 10
it was delivered on this date, October 18th, 1912.

Q. It was delivered then, you say? A. Yes, sir,
it was.

Q. Calling your attention to contract Exhibit
E8 of Mr. Inch, which was not acknowledged or
proved, can you tell me when that was delivered?

A. The original contract was dated September 16th,
1912.

Q. That is the date of it? A. Yes, sir.

Q. But did you deliver it on that day or did you 20
hold it for some time before you did deliver it?

A. I could not say.

Q. You do not know when it was delivered? A.
No.

Q. I call your attention to Exhibit E 5, which
was not acknowledged or recorded and is dated
September 10th, 1912, can you tell when that con-
tract was delivered to Mr. Goodnough? A. I can't,
well, presumably it is signed up and delivered the
same day they are made out, there were few excep- 30
tional cases where that was not followed out.

Q. Was that one of the contracts which had
lapsed? A. I could not say.

Q. Calling your attention to Exhibit E 2, being
a contract between the Jersey Co-operative Realty
Company and Mr. McClelland, which was not ac-
knowledged or recorded and dated September 10th,
1912; can you tell us when that contract was de-
livered? A. Presumably on the 10th of September,
1912. 40

Q. Presumably, you do not know? A. I do not
know exactly, no. That was one of the contracts
where the party fell down.

Q. Where is the original contract? A. I could
not say.

Mr. Hughes: I ask for the production of
it.

William J. Shearer, Jr. (Recalled)—Cross

10 The Master: What do you say, Mr. Eldridge?

Mr. Eldridge: I never heard of such a contract.

The Master: You ask for the production of it and Mr. Eldridge says he never saw it and has not got it. Anything further, Mr. Hughes?

Mr. Hughes: No, your Honor.

20 Mr. Eldridge: Testimony has been given here this morning by Mr. Bird and by Mrs. Cole and perhaps others that their contracts had been delivered up to your company; assuming that their story is correct, have you such contracts?

The Witness: I have no such contracts.

Q. If you received them, what was done with them? A. Destroyed, or in case of alterations the part was cut out and the other part was destroyed.

30 Q. Now, what was the object in lapsing these contracts? A. What do you mean by the "object"?

Q. You spoke of some of the contracts lapsing?

Mr. Hughes: I object unless he has some books showing the transactions.

The Master: I cannot see how that is material.

Mr. Eldridge: I will withdraw the question.

40 Q. Is this book entitled "Jersey Co-operative Realty Company Book No. 2" a record of payments made on account of contracts? A. Partial list, yes, sir.

Mr. Eldridge: I am going to offer this book in evidence.

The Master: How is it material; this wit-

William J. Shearer, Jr. (Recalled)—Cross

ness has identified all the checks and you have produced your receipts on the contracts. There does not seem to be any dispute about these payments; I can not let you offer the whole book now. 10

Mr. Eldridge: I offer page 35 of this book.

Q. I call your attention to the record on page 35 of this book and ask you whether those payments refer to payments made by E. D. Goodnough on account of the contract? A. They do. 20

The Master: I do not see how you can get anywhere in that way.

Q. I call your attention to page 111 of the book and ask you whether that contains a record of the payments made by Frank Inch on account of his contract? A. It does.

Q. I call your attention to page 81 of the book and ask you whether that contains a record of payments made by Frederick F. Price on his contract? A. It does. 30

Q. I call your attention to page 121 of the book and ask you whether that contains a record of payments made by Charles Shearer on his contract? A. It does.

Q. I call your attention to page 101 of the book and ask you whether that contains a record of payments made by Mrs. Cole on her contract? A. It does. 40

Q. I call your attention to page 21 of the book and ask you whether that contains a record of the payments made by Charles A. Bird on his contract? A. It does.

The Master: The book may be marked on those pages.

(The pages above indicated were accordingly marked.)

Clark McK. Whittemore—Direct

10 CLARK MCK. WHITTEMORE, SWORN:

Direct examination by Mr. Bender:

Q. You are counselor at law and solicitor of this court? A. Yes, sir.

Q. You are and have been the attorney of the *cestui que* trust of Patrick H. Gilhooly, trustee?

20 A. I was.

Q. And as such attorney do you know how much is due upon that mortgage? A. The full amount of principal is \$5,750 with interest thereon from November 18th, 1915, and there was six months interest paid on the mortgage.

Q. When? A. On November 18th, 1915. The mortgage is dated November 9th, 1915.

30 Q. Are you familiar with the properties known as El Mora Manor and Elizabeth Heights Tracts in the City of Elizabeth? A. Yes, sir.

Q. And for how long have you been familiar with these properties? A. Well, almost ever since they were first laid out.

40 Q. Did you have any connection in any way with these properties? A. Not with these properties; I had and still have a connection with the property adjoining the El Mora Manor tract, on the southeast, in the direction of the City of Elizabeth, known as the Crawford & Parmelee property, now owned by the El Mora Realty Company.

Q. You are an officer of the El Mora Realty Company? A. Yes, and I have been since its incorporation the company's interest in Elizabeth.

Q. You have charge of the sales of the lots on the tract? A. It has been under my direction.

Q. For how many years? A. For five or six years past, and before that I had charge of the property for perhaps ten years; I have kept in touch

Clark McK. Whittemore—Direct

with the situation at El Mora and the improvements that have been made and developments of the property in that vicinity, an account of my interest as an officer in the El Mora Realty Company. 10

Q. Are you familiar with the values of the lots shown on the El Mora Manor Map and were you familiar with the values of those lots in 1913? A. I was familiar with them in a general way, and I believe I know their values as well as such things can be known by anybody; there would be perhaps differences of opinion, but I have my own opinion as to the present values. 20

Q. Since the year 1913 and the present time has there been any marked fluctuation in values of lots shown on the El Mora Manor Tract? A. In regard to lots on the El Mora Manor Tract I consider that the real estate market for those lots in 1913 or at the time when the property was laid out and the sales were first made were better than it is now, that is the condition of the times and the locality of the property made a better market for it than at the present time, but, on the other hand, while the market is now not so good and it may be said to be rather poor, the property has received some benefit from the building of houses on it and the improvements that have been made in the vicinity, as well as on the property, thus the effect of the improvements did not take place immediately but came through the course of time, so that, I think, considering both those elements—the better market of some years ago and the benefit to the property from the improvements, that the values would run about the same. 30 40

Q. Referring to the El Mora Manor Map, will you point out to the Court what section of the property there is considered the most desirable?

A. That which is more nearly adjacent to the developed El Mora Land Company; I do not refer to

Clark McK. Whittemore—Direct

10 the El Mora Realty Company but to the El Mora Land Company, which had the ownership and development of that property lying to the south of the entrance to Summit Place; that property has been quite well filled up with houses; many of the streets have been improved with brick pavements and there have been some nice homes built there and it is a very desirable section of Elizabeth.

Q. Have you Blocks 4 and 5? A. Well, Blocks 4 and 5 stand by themselves, the lots on the ends of
20 Blocks 4 and 5 are at the dead end of the street, they are also in the lower section, the lands run lower there than it does elsewhere and there is no means of exit, and I do not think that lots that have not an exit in both directions are as valuable as those that have both exits.

Q. Can you refer to the lots which are the most valuable? A. The lots fronting on Summit Place are probably the most valuable, and next to those are the lots extending along the line of Ralph
30 Street, gradually reducing in value as you approach Magie Road, but I do not mean to indicate that there is any great difference in value; the upper end of Magie Road is the higher end—it is appreciably higher than it is at the end of Summit Place.

Q. In your opinion what are the lots fronting on Summit Place worth in the open market? A. I think they are worth about \$12 a foot with a sewer.

Q. And what do you think was their value in
40 1913? A. I think that was the value right along; I think there was a time but there is no time now for anybody, but any one who wanted them I think that \$12 a foot would be a very fair price to pay for them; I know the fellows were selling lots, three or five blocks nearer to the City of Elizabeth, and we have sold lots as low as that, the adjacency to Elizabeth and the settled section makes them a little more valuable.

Clark McK. Whittemore—Direct

Q. What have you to say as to the lots in Ralph Street? A. I think the lots in Ralph Street, those nearest to Summit Place, are worth \$8 a foot. 10

Q. What have you to say as to the value of the lots fronting on William Avenue? A. They have no sewer and I think \$8 a foot would be a good value for them.

Q. Now, Judge, you are also familiar with the property shown on the Elizabeth Heights Map? A. Yes, sir.

Q. Will you point out to the Court the most desirable section of the property shown on that map? 20

A. Some difference exists over on the Elizabeth Heights property, one end of the property is not located within the City of Elizabeth and therefore is a little bit burdened because of its inability to get such improvements or the difficulty in connecting them, particularly sewer facilities; a point a short distance to the southeast of Block 23 is probably the highest point, and from that point the ground slopes down generally in a northwest and northerly direction; I think in the north corner it gets quite low; the most valuable improvements for this class of property is the improvements of a sewer; the other improvements do not count for very much, sidewalks and trees, and such things as that will help sell your lot, but it don't add very much to the value, but a sewer does add to its value; the streets are now overgrown with grass and weeds, so that they do not indicate very much in the way of consideration; the sidewalks which have been put down are not of such a lasting character as would add anything to the value of the property; they have become overgrown with weeds and it is hardly discernible that there are sidewalks there unless you make a careful examination; the property in my opinion is developed away ahead of this time. It would be a very difficult thing to get a 30 40

Clark McK. Whittemore—Direct

10 sewer in there, although I understand that it is possible to put a sewer there by connecting it to the municipal sewer, but I have doubt about it owing to the fact that that is limited and the quantity of sewage to be put into it is restricted and I have heard that the capacity has been entirely taken up already. To sewer that property to the city of Elizabeth would be almost an impossibility because of the hill that would have to be gone through and the depth of the excavation would in my opinion
 20 necessitate a tunnel of the whole hill to get a proper level to drain the property. The advertising done of both propositions and the strong efforts made in making sales has accomplished some results, but the boom I might say has collapsed and that is always an injury to property to have that happen and I think that this property is very much injured by the fact that it started so well and has had such a bad ending. On behalf of my client I am particularly interested in the way in which the property
 30 should be sold.

Q. Do you want to give us the value of the lots on this map? A. The values are less than they are on the El Mora Manor tract, and I do not think there is any question involved—I think there have been two released—but I wil say in relation to the lots on Magie Road in my judgment without any sewer except this one, which connects with a cess pool, corner of Wilson Avenue, would have a value
 40 of \$8 a foot; in my opinion a sewer connecting with a cess pool is a very slight benefit in the value. Lots 24 and 25 in Block 1, which I think were released, I doubt if they have a value of over \$5 or \$6 a foot; Magie Road is a very old road and extends out into the country from the city of Elizabeth and it has had broken stone put in the centre of it and rolled down so as to make a stone roadway to it, it might possibly be called a macadam roadway.

Clark McK. Whittemore—Direct

The lots along Magie Road in my opinion might be available for sale at this time as customers could be found for them in plots of not less than two lots together; I am quite sure there is no available in Elizabeth and its vicinity enough purchasers of lots. The entire Elizabeth Heights tract held by the New Jersey Title Guarantee and Trust Company, if those lots were sold off separately and not in pairs, there would be a tremendous slaughter and loss of value; if they were sold in that way they might be available for the needs of people who would be attracted by the purchase of a cheap lot; a certain number of the lots along Magie Avenue and on the streets running out of Magie Avenue, for a distance of possibly, as far as the other street designated on the map; I mean in my testimony to use the term Magie Road as being an old road, it has a macadam pavement on it; that street is known farther down as Magie Avenue; beyond Magie Avenue to the north I doubt if there would be many purchasers of lots to be found, if any at all, because it requires going over a dirt street for such a considerable distance to get to your lot through intermediary property, and to go out in a section where there would be almost no improvement; I am anxious to have this property sold so that it would produce the most money. I wish to see it sold in such a way that it will produce the most money for the benefit of the persons interested. I think if the lots on Magie Road are first sold in pairs and the lots on the side streets extending from Magie Road to Magie Avenue in pairs and threes and fours you will meet the needs of the various customers that might be in existence for those lots and get the highest prices for them; to the north of Magie Avenue, I believe, that the most values would be realized for the property by selling them in blocks or large sections, probably the only market for

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Clark McK. Whittemore—Cross

10 that land at the present time would be that afforded by speculators, who would buy the property and hold it, and would only buy it or be interested in it, at anywhere near fair figures, if they could have a large piece to handle when the occasion warranted it. On the El Mora Manor Map I think the lots should be offered for sale in pairs; the property is already so much sold and broken up that it is hardly possible to sell it in sections large enough to attract speculators for development purposes.

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Cross examination by Mr. Hughes :

Q. Judge, in giving us those estimates of values of properties on both maps did you take into consideration the expense of marketing them and finding customers and getting them sold? A. Yes, sir, I am taking into consideration the fact that you would have to find somebody who was anxious or willing to buy.

30 Q. And I understood you to say that there is a very poor market for it at the present time? A. Yes, sir, at this time, just now.

Q. And those values which you have placed upon the lots are those which were in effect in, say, June, 1913? A. No, I think the values which were in effect then by the Jersey Realty Company were considerably higher than my figures owing to their expense of marketing, as well as due to the fact that they sold them under the instalment plan. My prices
40 would allow for sale upon reasonable instalments, but I think not upon the basis that the Jersey Realty Company were selling—not the El Mora Realty Company—to any purchaser who desired to buy on a payment of ten per cent. of the purchase price and two per cent. per month with interest.

Q. In 1913 there were no improvements on the El Mora Manor tract, the electric light and other

Clark McK. Whittemore—Cross

improvements came later? A. I should judge that it was about that time; the values I have stated refers to values with the improvements.

Q. So if the improvements were not there in 1913 the values would be lower? A. Yes, sir; very much lower.

Q. You say the value on El Mora Manor tract were \$12 a foot without those improvements? You mean with the streets cut through, no sidewalks or sewers? A. The difference in values would probably be the cost of the sewer assessment; sewer assessments run in Elizabeth about \$2 a foot; the other improvements have very little effect, the Water Company and Gas Company always extend their mains without any cost to the property owner in Elizabeth as soon as there is any service to be rendered.

Q. So that the improvements make very little difference? A. Yes, sir.

Q. The main improvement is the sewer? A. Yes, sir.

Q. And do you think that those lots on Elizabeth Heights Map were worth \$8 a foot in 1913? A. I am speaking about Block 23 on Magie Road, I gave the value there of about \$8 a foot.

Q. Magie Road has always been an improved road? A. It is a country stone pavement upon the middle of it.

Q. What about the improvements of the intersecting street? A. Those are worth very much less, considerably less, adjacent to Magie Road, \$4 or \$5 a foot, and then go away down to the back end of the property I think the value would come down to \$50 a lot.

By the Master:

Q. What size lot? A. As given on the map, 20 feet by 100 feet.

James E. Woolley—Direct

10 *By Mr. Eldridge:*

Q. I wanted to ask you what your opinion was as to the values on the El Mora tract as of June, 1913? I understood you to say about the same as today? A. From and after the time the sewer was put down—I can't fix the time of the sewer; my estimate includes the sewer.

20 Q. How much does the sewer cost? A. The cost of the sewer is about \$2 a foot.

Q. That is all.

JAMES E. WOOLLEY, SWORN:

20 *Direct Examination by Mr. Eldridge:*

Q. Mr. Woolley, you are connected with the complainant in this suit? A. I am.

Q. And were you connected with the complainant in 1913? A. I was.

Q. In what capacity? A. As title examiner.

Q. Did you examine the title to the El Mora Manor tract and other property affected by the complainant's mortgage? A. I did.

40 Q. And did you interview Mr. William J. Shearer at all concerning this mortgage? A. Yes, sir, several times.

Q. Did you find any contracts of record affecting the property covered by the mortgage? A. None affecting the property; the contracts affected the Elizabeth Heights property; there were none included in the mortgage.

Q. Did you make any inquiries from Mr. Shearer whether there were any unrecorded contracts? A. I don't think so.

Q. Did you have any conversation with him as to whether or not there were any? A. No.

James E. Woolley—Direct

Q. You knew what business he was engaged in, didn't you? A. Yes, sir. 10

Q. You knew that the business he was engaged in was that of selling lots on installments, didn't you? A. Well, I did not know how he was selling his lots; I never thought of it.

Q. You knew from the contracts that you found that the business was that of selling lots on installments?

Mr. Hughes: I object to that. 20

The Court: The objection is sustained.

A. I did not.

Q. Did Mr. Shearer show you any contracts relating to this property? A. He did not—

Q. Affecting this property? A. None except—I think we had a list of those, or the original contracts were given to us; I think they are still in our possession.

Q. But no other contracts were shown to you? 30
A. No, sir, no other contracts were shown to me.

Q. Who was responsible for the suggestion that these two mortgages be taken over by assignment?
A. It is my recollection that Mr. Seaman suggested that to me.

Q. Did he specify his reason for suggesting that?
A. Yes, sir, to get rid of any contracts on outstanding sales.

Q. Did he say that there were some? A. No, I don't remember that he did; I don't remember his exact words, but that is my understanding that they were to take assignments so as to get ahead of any possible outstanding contracts. 40

Q. You had searched the property at this time, hadn't you? A. No, I had not.

Q. You certainly had made a search of the property? A. No, sir.

James E. Woolley—Direct

10 Q. Before the assignments were delivered, you searched the title to this property? A. Oh, yes.

Q. And you found there were no recorded contracts? A. Yes, sir.

Q. And under those circumstances your mortgage would have been prior to any such contracts? A. I don't know; that is a question of law and I do not know about it.

Q. I want to try and find out the arrangement? A. Why, I testified "to get ahead of any outstanding

20 contracts."

Q. And there were no contracts recorded? A. Well, of course that meant unrecorded contracts, although this suggestion was made to me long before we searched the title to the property.

Q. You don't recall whether he said there had been any sales or not? A. No, I don't recall whether he said there had been any sales or any sales having been made.

30 Q. Would you deny that he had made such a statement to you that there had been sales made?

A. I could not deny that he did not make such a statement to me that there were such contracts, but I do not remember any such statement.

Q. You knew, Mr. Woolley, as a lawyer, that your mortgage would be ahead of any unrecorded contracts? A. I know, as a lawyer, that unrecorded contracts would not be ahead of our mortgage.

40 Q. You made a search to determine whether the property was clear or not? A. We made a search to see whether the record title was good.

Q. And it was good? A. Yes, sir.

Q. And why would not your mortgage be sufficient security against unrecorded contracts of which you did not know anything about? A. Because the unrecorded contracts might have been made since the execution of the mortgage and that is why we took assignments of them.

James E. Woolley—Cross

Q. But your mortgage would have been security without taking any assignments of the contracts? 10
A. I don't know.

Q. You said you did not know anything about any contracts? A. No, I said that Mr. Seaman suggested to me that there were possibly outstanding contracts.

Q. Did you or not know there were outstanding contracts at the time you closed this matter? A. Well, I don't know whether I did or not.

By the Court: 20

Q. Have you any recollection, Mr. Woolley, now as to whether you knew at the time of the closing of this loan in 1913 that there were outstanding contracts or not affecting the mortgaged premises? A. Well, I have understood there were some outstanding contracts.

Q. You say you made a loan on this property knowing there were unrecorded contracts on some of the mortgaged land? A. Yes, sir. 30

Cross examination by Mr. Hughes:

Q. Was there ever anything said to you about the outstanding contracts that Inch, or Goodnoff, or McClelland, or Price, or Park, or Rielly, and others, were interested in? A. No, none of them.

Q. I show you the application blank for the loan in this matter, which has been marked for identification, and I call your attention to the answer to the question No. 8: "Agreement of sale," "If so, between whom"? Answer "No owners title." 40
A. This refers to whether Mr. Shearer is buying the property.

Q. Did you fill that out? A. Yes, sir, I filled that out.

Q. And you are quite sure that nothing was ever said to you by Mr. Shearer or any one else about

James E. Woolley—Cross

10 these outstanding contracts? A. There was no positive statement made except what Mr. Seaman said; he suggested that we take assignments of these contracts.

By the Court:

20 Q. What made you say that you knew there were outstanding contracts? A. The only knowledge I had of that was Mr. Seaman's statement; I knew nothing of my own knowledge excepting what he said.

Q. Did you know it from any other source? A. No, sir, I did not know it from any other source.

30 Q. Did Mr. Seaman tell you that there were some unrecorded contracts? A. I do not know; all I can say—

Q. Did Mr. Seaman tell you that he had been informed that there were outstanding unrecorded contracts for the sale of any of these lots? A. I don't know whether he did or not.

Q. Well, I understand from your statement which you have made—it is within a very short time—you said you had reason to believe, from what Mr. Seaman said to you, that there were outstanding unrecorded contracts? A. Yes, sir.

40 Q. The only reason you had to believe that was from Mr. Seaman's statement to you? A. Yes, sir, that was the only reason I had no statement from any one else, and that was the only time that it

was suggested to me.

By Mr. Hughes:

Q. Isn't it the fact that you took those assignments as a sort of a fortification? A. Yes, sir.

Q. You have testified to some contracts being left with you by Mr. Seaman or Mr. Shearer, I forget

James E. Woolley—Cross

which; I show you six contracts and I ask you if those are the documents you refer to? A. Yes, sir, those are the documents I referred to. 10

Q. As having been left with you? A. Yes, sir, as having been left with me.

Q. The lands described in those contracts do not constitute any part of the property covered by the mortgage? A. No, they do not.

Q. And no other contracts were left with you other than those six? A. No, sir, no other contracts were left with me other than those six. 20

Q. And nothing was said by Mr. Shearer to you about any others? A. No, sir.

By Mr. Eldridge:

Q. Did you undertake the matter of getting of those two Earle mortgages? A. I don't believe I did; I have looked through the papers and I cannot find any correspondence about them; Mr. Shearer, I think, must have negotiated all that himself. 30

Q. You did not ask Mr. Shearer for any statement regarding the El Mora Manor property? A. No, I did not.

Q. Nor any statement regarding the other property—the Elizabeth Heights property? A. No, sir, I did not.

By Mr. Hughes:

Q. I show you two blue prints of the El Mora Manor and Elizabeth Heights properties, which have been testified to in this case very frequently, and ask you whether those are the maps that you have referred to as having been left with you by Mr. Seaman? A. Yes, sir, those are the maps. 40

Q. You did not have any other maps left with you? A. No, sir, those are the only ones.

James E. Woolley—Cross

10 Q. I call your attention to the map of the El Mora Manor property and to a large tract of land colored yellow and I ask you if those are the excepted lots? A. Yes, sir, those are the excepted lots.

20 Q. I now call your attention to the map of the Elizabeth Heights property and to the yellow line running from the centre of blocks nine, ten and eleven down to Wilson Avenue, and then along the avenue and then following the lower white on the sketch to Magie Avenue and then running up to the centre line of blocks nine, ten and eleven, and ask you if that is the property? A. The property within those yellow lines is the land on Elizabeth Heights map.

Q. It does not cover any other property outside of that? A. No, sir.

30 Q. Is there any reference to any contract to any property on this map? A. No, I do not know to which property he referred.

By the Court:

Q. You mean Mr. Seaman? A. Yes, sir; I do not know which property he was talking about.

By Mr. Hughes:

40 Q. As a matter of fact there are none on this property; they are all on El Mora Manor property? A. Yes, sir.

Q. You said a little while ago that Mr. Seaman was mistaken about the maps being marked? A. I think he made some reference to the markings on the map; it is my recollection that the searcher made certain markings of the lots released, but at any rate, until this loan was completely closed and the money paid out and the mortgage executed and recorded there was no notation on this map of any

property that was sold, because I had complete control of this map, and I know that to be a fact.

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By Mr. Eldridge:

Q. Do you identify those two maps as the only maps which you had in connection with this property? A. Those are the only ones that I recall.

Q. Can you identify them? A. Well, they have my handwriting on.

Q. You say all these lead pencil marks and the yellow lines—in fact all the marks on this map, you put on yourself? A. Oh, no.

20

Q. What marks were on here when you got them? A. Why, I put on this red cross (indicating) and this yellow query mark (indicating) the word "rld" is in my handwriting where it occurs on the map; that is in my handwriting; none of the "X" marks are by me.

Q. All the work that you did on this map was with a colored pencil? A. All the work that I did personally on this particular map was with a colored pencil.

30

Some of the other marks were on when you got the map? A. No, sir.

Q. They were put on it subsequently? A. Every bit on it, with the possible exception of \$5,000, yes; I am not sure about that; I think that this was on: "This sold eighteen years ago for \$1,000 an acre."

By Mr. Hughes:

Q. You think that those words were on it when you got the map? A. I think so, I can't swear that everything on here was made subsequent, because here are a lot of notations about streets, etc.

40

Samuel R. Ogden—Direct

10 *By Mr. Eldridge:*

Q. Mr. Woolley, do you know who represented the Earl mortgage? A. I know that William H. Carey represented the Woodley people and I think some lawyer from Elizabeth represented the Earl people.

Q. That is all.

SAMUEL R. OGDEN, SWORN:

20

Direct examination by Mr. Eldridge: z

Q. What is your business? A. Real Estate.

Q. How long have you been in that business? A. Over thirty-five years.

Q. Where? A. In Elizabeth.

Q. Are you familiar with this property? A. Yes, in a general way.

30 Q. Were you asked to examine and appraise that part of the property that was released from the first two mortgages of the complainant lying easterly of the property outlined on Map of Elizabeth Heights Map and on the north side of Magie Road and Magie Avenue? A. It was the land right in here (indicating), Yes, sir.

Q. What in your opinion was the value of that parcel in June, 1913? A. That piece of property as described in there (indicating)——

40

Mr. Hughes: I object to this line of testimony as irrelevant.

(After argument of counsel.)

The Master: I will admit the testimony.

Q. Answer the question. A. This piece of land that was submitted to me 125 feet on Magie Road to 133 Magie Avenue in my judgment that piece of property, as a whole, is worth \$1,500.

Samuel R. Ogden—Cross

Cross examination by Mr. Hughes: 10

Q. Is that estimate value as of June, 1913? A. Well, I do not think there is any difference between now and at that time.

Q. You never had occasion to appraise it in 1913? A. I have appraised land in 1913 but not that particular land.

Q. There have not been any sales around there to form your opinion? A. There have been sales but not in that immediate vicinity. 20

Q. Have you made any sale on this property? A. No, sir, I have not made any sales in this property.

Q. It is just by guess work? A. No, sir, it is not by guess work.

Q. Have you taken into consideration the expense of marketing the tract to get \$1,500 for it? A. I consider it as acreage land.

Q. Has it been placed on your books for sale? A. I don't think so.

Q. None of it? A. I suppose I have had maps of it but I don't deal in instalment properties, but I have taken this value as acreage property. 30

Q. You have been in the real estate business over thirty-five years? A. Yes, sir.

Q. But you have not sold any property around there? A. No, sir.

By Mr. Eldridge:

Q. You are acquainted with the prices that have been paid for the property in that neighborhood? A. Yes, sir, I am. 40

By Mr. Hughes:

Q. You do not know of any sales having been made in the neighborhood? A. Yes, sir.

Daniel E. Evarts—Direct

10 *By the Master:*

Q. You are basing your valuation on the prices that were fixed for the sale of this property? A. No, sir, I do not, because those prices are very much higher than my figures.

By Mr. Hughes:

20 Q. You say you don't know of any sales around there? A. It was all farm land before it was cut up by Mr. Shearer.

Mr. Eldridge: I wish to call Mr. Evarts.

DANIEL E. EVARTS, SWORN:

Direct Examination By Mr Eldridge:

30 Q. Mr. Evarts, what position did you hold with the New Jersey Title Guarantee and Trust Company in 1913? A. Vice President.

Q. And how long did you hold that position approximately? A. Nine years.

Q. Did you enter into negotiations which finally resulted in the loan of \$20,000? A. Mr. Shearer made the application.

40 Q. Do you recall when that application was made? A. April, 1913, for one loan, and I think a little later on in May, another loan.

Q. What was the first loan, how much? A. If you will permit me to refer to the books; I have got them here.

Q. You may refer to the books? A. The reason the subsequent application was made was because of the fact that the first application did not cover any improved real estate and therefore we could

Daniel E. Evarts—Direct

not make the loan; the first application was on April 13th, 1913, for \$15,000; the subsequent application— 10

Q. Was there a written application made at that time? A. Yes, sir, it was signed in the book.

Q. You say it was signed in the book? A. Yes, sir.

Q. You refer to an application for a loan on page 71 in this book; what do you call it? A. Applications for loans, Book No. 11.

Q. This is for a loan of \$15,000? A. Yes, sir. 20

Q. On about 250 lots? A. Yes, sir, on William Street, Ralph Street and Summit Place, Elizabeth.

Q. Is this the only writing that you have relative to this application? A. As far as the application for the loan goes.

Q. When was the next application made? A. May 21st, 1913.

Q. And that was for what amount? A. \$5,000.

Q. And the application is on page 130 in the same book? A. Yes, sir. 30

Q. And that is for a loan of \$5,000? A. Yes, sir, on 660 lots; those loans were consolidated.

Mr. Eldridge: I offer those two pages in this book in evidence.

(Pages marked Exhibits E-15 and E-16 respectively).

Q. Do you know which of the lots it was proposed to pledge as security for the first loan that was asked? A. I do not know that; I know there was a map presented at the time. 40

By the Master:

Q. Can you tell by reference to the two maps that are before you? A. Yes, sir, this was one of

Daniel E. Evarts—Direct

10 them (indicating) and this one has got Magie Road on it; I think those are the two maps.

Q. You refer to the map entitled, "Elizabeth Heights, Elizabeth, N. J." and another entitled, "El Mora Manor, N. J."? A. Yes, sir.

Q. What lots on the first map was it intended to pledge as security? A. The application as signed by Mr. Shearer reads, "About 250 Lots, William Street, Ralph Street and Summit Place."

20 *By Mr. Eldridge:*

Q. Do you know what lots—can you point out what lots on this map were intended to be pledged as security? A. No, I can't do so.

Q. Now, with reference to the second application, just what property did he propose to pledge on this application? A. 660 lots William Street, Magie Road, Conant Street, Service Street, etc.

30 Q. Can you point out those particular lots on this map entitled, "Elizabeth Heights"? A. I cannot, perhaps the Title man can; I have nothing to do with picking out lots.

Q. Was this first application brought to the attention of your Board of Directors? A. Not to the Directors, but to the attention of the Finance Committee.

Q. Have you the Minutes of the Finance Committee? A. I have.

40 Q. When was this first considered by your Finance Committee? A. April 11th, 1913.

Q. What action was taken with respect to that application? A. That loan was granted.

Q. Will you refer me to the entry? A. Yes; "William J. Shearer, straight loan \$15,000, three years, property William, Ralph and Summit Place, Elizabeth, N. J., with the privilege of releasing the lots to be covered by this mortgage upon the pay-

Daniel E. Evarts—Direct

ment of \$6 per front foot, also releasing house and lot covered by the said mortgage together with the three adjoining lots upon the payment of \$25.00." 10

Q. Was there any further action taken by your Finance Committee on this subject? A. On this particular loan?

Q. Yes. A. Oh, yes, sir.

By the Master:

Q. Do you mean this application was presented by William J. Shearer? A. Yes, sir, we have a meeting once a week and we took this application and we have a committee that passes on it. 20

Q. Are you a member of that committee? A. No, sir, Mr. Greene is the secretary.

Q. Do you know whether the committee had before it anything more than this application on page 71 at the time the committee acted? A. On the first loan?

Q. On the first application? A. Well, I am not prepared to say about that; this loan to my mind was made in this way: we looked at the property and discovered that it was unimproved real estate and at that time Mr. Seaman—he was the man that brought this application to us; I presume as a broker for Mr. Shearer; I told him at the time that I did not think we could make the loan, and then he said there was another lot on which there was a house and by combining the two, making \$20,000 we could make the loan; our rule is not to make a loan on unimproved real estate. 30 40

By Mr. Eldridge:

Q. Just refer to what further action your committee took on the making of this loan? A. "William J. Shearer, straight loan for three years.

Daniel E. Evarts—Direct

10 William Conant, Service and Magie Road, Elizabeth Heights, Elizabeth, N. J.”

Q. Now, what other action was taken by the committee on the subject of those loans? A. Page 17 of the Minutes of May 29th, 1913. At the request of Mr. William J. Shearer that a loan of \$20,000 be executed to him covering 840 lots instead of 900 lots, property Elizabeth Heights, Elizabeth, N. J.,
20 provided that the money that would be paid for the releasing of the 60 lots be expended for the improvements of the streets, sidewalks, etc., in front of the property to be covered by this mortgage, it was, upon motion, granted.

Q. Is there any further action recorded regarding that loan? A. That is all sir.

Q. Did you receive any communications upon the subject of those loans from either Mr. Seaman or
30 Mr. Shearer? A. Not to my knowledge; they called each time there was anything to talk about with reference to the loans—they called personally.

Q. Did you know the character of the business that this company was engaged in? A. Well, I can't say that I did. I presumed they were engaged in selling lots.

Q. Did you make any inquiries as to whether any of those lots were subject to contracts? A. I did
40 not.

Q. Do you know whether your Finance Committee made any inquiries? A. I do not.

Q. Is your Title Officer here? A. Yes, sir, the Assistant Title Officer is here, he is the man that had charge of it.

Q. The form of application is taken down to the Banking Department and then all the details are worked out in the Title Department? A. Yes, sir.

Q. Is there any minute of any further inquiries in reference to this loan? A. Not that I know of; I think that is all.

Daniel E. Evarts—Direct

Q. It is necessary that the company act with its Directors or the Finance Committee to make the terms on which these loans are made? A. Yes, sir. 10

Q. Did Mr. Seaman see you about this loan in the first instance? A. He did.

Q. And did he tell you the price at which the lots had been sold? A. I think the prices were established by Mr. Shearer.

Q. Didn't Mr. Seaman tell you what they were getting for lots out there? A. That I don't recall; the only thing I can tell you about the prices on these lots is by the application here signed by Mr. Shearer. 20

Q. Didn't you make a preliminary inquiry before you placed this application on your books, approximately as to what this property was worth? A. We appraised it.

Q. Before you took the application in this form? A. Yes, sir.

Q. And when you say "we" who do you mean? A. One of the members of the Finance Committee. 30

Q. And didn't you first inquire whether it was worth your while to make an appraisal? A. I suppose it was represented that the property was worth so much money by Mr. Seaman, but the figures I do not recall.

Q. Do you recall that Mr. Seaman told you that they were selling lots on contract? A. I do not.

Q. Do you mean to say that he did not tell you that they were selling lots on contracts? A. Not to my recollection; this is quite some time ago—five or six years; he may have told me but I do not recall it now. 40

Q. What did you suppose they were doing with the property out there? A. Well, I supposed they were going to sell it if they got the price.

Q. You knew that it had been opened up for some years? A. I did not.

Daniel E. Evarts—Direct

10 Q. Did you examine these maps at all? A. I looked at them yes, but not very carefully.

Q. Did you look at them before the application was taken? A. That I don't recall.

Q. Do you know as a matter of fact that the maps indicate sold lots? A. That I do not know.

Q. Are you acquainted with the significance of the various marks on these maps? A. I am not; those are put on by the Title Department or by counsel, as I stated before these details are put on
20 in the Title Department.

Q. It is the business of that department to ascertain whether the application was accepted or not? A. Absolutely.

Q. Mr. Evarts, have you any other papers or any correspondence in connection with this matter? A. I have not.

Q. There is some other correspondence? A. If so, it will be in the Title Department.

30 Q. You say you have no other papers or any correspondence in connection with this matter? A. No, sir, I have not.

Hearing of above cause adjourned until April 10, 1918, at ten A. M.

CHANCERY CHAMBERS, JERSEY CITY, N. J.
APRIL 10, 1918.

40 Hearing of the cause resumed at ten o'clock a. m., before Hon. James F. Fielder, Advisory Master, and in the presence of the counsel for the respective parties.

Louis Schlesinger—Direct

LOUIS SCHLESINGER, SWORN.

10

Direct Examination by Mr. Eldridge:

Q. You are the President of Louis Schlesinger, Incorporated? A. I am.

Q. And were in the year 1913? A. yes.

Q. And in the year 1913 you had a man by the name of Seaman in your employ? A. A part of that time; he has been out of my employment since 1913.

20

Q. He ceased to be employed at that time? A. Yes, sir.

Q. And what employment did he have? A. He was in charge of the Loan Department, negotiating loans.

Q. Did you ever have any business with the Jersey Co-operative Realty Company through William J. Shearer? A. I recall the name of "William J. Shearer."

Q. Do you recall to what that business related, what property? A. Some part of Union County—I think it was down by El Mora or that section.

30

Q. You have been subpoenaed to produce what records you had in your office relating to a loan made by the New Jersey Title Guarantee and Trust Company to the Jersey Co-operative Realty Company on property at El Mora—have you got those papers here? A. Yes, sir; I have personally made a search, and I spent the best part of yesterday morning, and I can't find anything; I found one envelope; I simply have here "William J. Shearer, \$1000 loan, located at Rahway, N. J." I can't find anything. I looked through Mr. Seaman's papers, and I can't find anything relative to that property.

40

Q. In other words, you have no papers or records? A. No, I can't find them. My office is on the second floor of the Essex Building, and Mr. Seaman

William J. Shearer (Recalled)—Direct

10 had an office on the sixth floor and he was in charge of it, and what became of the correspondence, I don't know, if there was any.

Q. You paid no personal attention to this transaction? A. I didn't know anything about it.

Q. The matter was in the hands of Mr. Seaman, exclusively? A. Entirely.

20

WILLIAM J. SHEARER, recalled:

Direct Examination By Mr. Eldridge:

30 Q. (Showing witness a receipt) Mr. Shearer, is this a receipt issued by your company for the payment on the Inch lots? A. Yes, sir, that seems to be signed by my son.

Q. This is a receipt dated November 20th, 1912, also for a similar payment? A. Yes, sir.

Q. Was your son authorized to receive these payments under this contract? A. Yes, sir.

Q. I show you a letter dated September—directed to Frank Inch and ask you whether this is a letter from your company? A. Not from my company but from my son.

40 Q. But did it relate to payments made on the Inch contract? A. No doubt it did.

Q. And it is initialled by whom? A. William J. Shearer, Jr.

Mr. Eldridge: I offer the letter and two receipts in evidence.

(The two receipts and letter admitted in evidence and marked respectively D-1, D-2 and D-3.)

Q. Mr. Shearer, the Jersey Co-operative Realty Company was in a rather depressing financial con-

William J. Shearer (Recalled)—Direct

dition in 1913 was it not? A. I do not think it was in 1913; you mean at the time of getting the mortgage? 10

Q. Yes. A. Not specially, no, sir. The mortgage was gotten to pay off the other mortgages in order that deeds might be delivered.

Q. What deeds might be delivered? A. The deeds to lots which might be sold.

Q. The lots that were under contract that time? A. Yes, sir, a number at that time.

Q. The object of the loan was to secure money to pay off the other mortgages on lots that were then under contract? A. No, on the whole tract from which a number of lots had been sold or I think they had been sold at that time as near as I can remember. 20

Q. Was any of it applied for that purpose? A. To the paying off of the mortgage?

Q. Yes. A. Yes, I was present in the New Jersey Title Guarantee and Trust Company rooms when the money was paid over, as I supposed, to pay off the three mortgages; my attorney told me so. 30

Mr. Hughes: Your Honor, this is in the Inch case.

The Master: Well, he has a right to dispose of it and that is what he is intending to do.

Q. You refer to two mortgages that were taken over? A. I refer to three mortgages—one of Woodley, one of Earl and one of the Mutual Life Insurance Company; I thought the same thing had been done to all the mortgages; I did not know that any of them were against the property until three years after when I met Mr. Seaman; I understood that they were left open of record; it may have been explained to me by my attorney but I do not know if it was. 40

William J. Shearer (Recalled)—Direct

10 Q. Now, when you got this loan there were a great many lots sold subject to installment contract were there not? A. I don't think there was such a great many; I don't remember how many, quite a number I think.

Q. And it is true, Mr. Shearer, that most of your sales of lots were made prior to the date of this mortgage of \$20,000? A. I think not most of
20 them; without the books, which are still held by Bilder & Bilder, I could not answer.

Q. Well, you recall we had a book here at the last hearing containing a list of contracts? A. If I had that I could answer your question.

Q. Is that a complete record or supposed to be a complete record of your contracts? A. I think so, practically, as far as I know; my son said that it
30 was.

Q. Were any of those lots that were under contract excepted from the operation of that mortgage? A. There were quite a number, yes, sir.

Q. And they were specifically described as excepted in the mortgage, were they not? A. In the papers, yes, sir.

Q. Now, none of those lots were under installment contracts at the time, were they? A. I can't answer that question; I do not know
40

By the Master:

Q. What do you mean by that "none of the excepted lots were under contract"; I understood your previous answer to indicate that the lots that were under contract were excepted from the mortgage; that is not true? A. No, sir.

By Mr. Eldridge:

Q. That the excepted lots were under contract? A. No, sir.

William J. Shearer (Recalled)—Direct

Q. As a matter of fact the title to most of those
excepted lots were either then or shortly after
placed in some company or in some person, is that
not so? A. I do not think that is so, but some of
them may have been; I can't remember. 16

Q. There was a company known as the Modern
Homes Development Company? A. Yes, sir.

Q. And that company had a great many of those
lots? A. I think comparatively few; the record
will show; I can't answer that.

The Master: Are you now talking about
the lots that were specifically excepted from
the mortgage? 20

Mr. Eldridge: Yes, sir.

Q. Did you personally submit a list of lots that
were to be left out of the mortgage? A. Yes, sir.

Q. To whom did you submit this list? A. Mr.
Evarts.

Q. And he is Vice President of the New Jersey
Title Guarantee and Trust Company? A. So I
understand. 30

Q. But the number of lots included on your list
exceeded the number actually excepted? A. I
think not; I think it was about the same number; I
can't say exactly.

Q. And with what in mind did you make up your
list? A. I do not know what was in my mind at
the time; I merely gave what I wished to have free
and clear. 40

Q. Did you include in the list some of the instal-
ment contracts? A. I am pretty sure I did.

Q. Have you a copy of that list? A. I have it in
my papers and those are held by Bilder & Bilder.

Q. Are you able to say definitely whether your
list did include any of the lots that were under the
instalment contracts? A. I think I would be will-
ing to say, yes.

William J. Shearer (Recalled)—Direct

10 Q. Do you recall any of the lots that were excepted? A. I do not, no, sir.

Q. Some of the lots were released from the mortgage of the New Jersey Title Guarantee and Trust Company; they were lots that had been built on or were about to be built on? A. Yes, sir.

Q. They were the only lots that were released were they not? A. No, sir; there were others that I remember; as they paid up and were entitled to the deeds then they could not be released; there
20 were some released; I do not know how many without my books.

Q. Well, by reference to the records you can tell whether these lots that were not intended as a pledge for the mortgage. A. There were very few compared with the number of sales; I can't say how many; when they fell down in their payments attention was not paid to it, but if they kept up their payments the orders to my son were to arrange as soon as they were about to close the payments to
30 pay off the mortgage; that was the direction.

Q. You do not know now whether some of them were released? A. I do not know how many.

Q. Well, what number, for instance? A. Well, the first one I remember was a man from Trenton whose name I can't remember.

Q. I refer now particularly to the El Mora Manor Tract? A. Yes, sir, I am speaking of that tract; he was the first; I don't remember who the others were as I did not have any personal charge
40 of that matter; my son had it.

Q. You recall that you delivered a deed to Mrs. Cole, one of the purchasers. A. Yes, sir.

Q. And her property was subject to the mortgage? A. Yes, sir; I at once went to New York and asked her to take other lots and she said she would be glad to do so, but for some reason you would not permit her to do so.

William J. Shearer (Recalled)—Direct

Q. Why wasn't the mortgage on her lots paid at that time, at the time you delivered the deed? A. My impression is that some suit had been started or lis pendens or something like that had been filed, and I explained to her at the time the reason why those two lots could not be released, but the two adjoining ones, that were exactly the same, could be released, and she said that she urged you to take those two lots. 10

Q. Do you know whether the company was in a position to clear those particular lots? A. I can't answer that question; I think they probably had that money. 20

The Master: What is the date to which you refer?

Mr. Eldridge: I refer to the Fall of 1915. the time of the delivery of Mrs. Cole's deed

The Witness: I do not know.

Q. When subsequently did the company become insolvent? A. I do not know whether I understand what you mean by "insolvent"; the company is now and always has had sufficient to pay four times, if the property was handled right, what the company owes, so I do not know. 30

Q. Do you know when the Receiver was appointed? A. I do not; that was all taken out of my hands.

Q. Between the Fall of 1915 and the time that the Receiver was appointed had the company sold any lots on the El Mora Manor Tract? A. I think not, although they were receiving payments on contracts. 40

Q. Then you think that no sales were made from the Fall of 1915 to the date of the appointment of the Receiver? A. I think there were some sales made but very few; I can't answer definitely.

William J. Shearer (Recalled)—Direct

10 Q. What would assist you in answering that question? A. Why, if the law did not permit Bilder & Bilder to hold my books I could answer it.

Mr. Hughes: I cannot see how that is relevant. I object to this line of examination; it is cumbering up the record and taking up a lot of time, and it is not relevant to this case.

20 Q. Mr. Shearer, you made it a practice to secure a surrender of all contracts that were affecting particular lots when the deeds were delivered, did you not? A. I did not, my son may have and for that reason the contracts of sale had endorsements on them, the payments generally and the deed should be an indication of payment, so that you would have double receipts.

30 Q. You made a statement, or your son did, that they were asked for because they might get the company into trouble if they were allowed to be outstanding? A. I never heard him make that statement; he may have said that.

Q. Was he instructed to make this statement? A. Yes, sir.

Q. These contracts also had the endorsement of guarantee by the Fidelity Trust Company? A. Some of them.

A. The title of the Elizabeth Heights property was guaranteed by the Title Company.

40 Q. The Elizabeth Heights property on the opposite side of the street was guaranteed by the Fidelity Trust Company; was the El Mora Manor property tract guaranteed? A. It was not.

Q. And what endorsement was on the contracts of the El Mora Manor property? A. I don't know; there may have been some.

Q. And was not that done for the purpose of get-

William J. Shearer (Recalled)—Direct

ting rid of those contracts and that endorsement on them? A. It was not; it never entered my head to get rid of those contracts. 10

Q. Now, when did you open negotiations for this loan of \$20,000? A. I don't remember, probably at the time indicated by Mr. Schlesinger, shortly before we got the loan.

Q. And with whom did you communicate? A. With Mr. Seaman.

The Master: You are speaking now of the loan from the New Jersey Title Guarantee and Trust Company? 20

Mr. Eldridge: Yes, sir, I am speaking of the loan made to the company of \$20,000.

Q. Was he the first one you saw about it? A. Do you mean the first one of the company? 25

Q. Yes. A. Yes, it was he who introduced me to the New Jersey Title Guarantee & Trust Company. 30

Q. Whom did you see of that company? A. Mr. Evarts.

Q. Mr. Evarts? A. Yes, sir

Q. And was Mr. Seaman present at the time you interviewed Mr. Evarts? A. I think he was.

Q. And did you tell Mr. Evarts what you wanted? A. I think Mr. Seaman had told him all about the property and what I wanted; I don't remember that I told him.

Q. Did you submit anything in writing at that time or sign any papers? A. You mean at the time of getting the loan? 40

Q. At the time you saw Mr. Evarts, the first time? A. I can't say that I did submit anything in writing; I think I talked the matter over with Mr. Evarts and told him the facts in the case.

Q. Well, what facts did you tell him? A. I

William J. Shearer (Recalled)—Direct

10 don't remember now except that I remember telling him how many lots there were and what I felt the values of the lots were as shown by sales already made, and I probably answered any questions he asked me.

Q. Did you mention the fact that you were selling lots on contract?

20 Mr. Hughes: I object; let him tell what the conversation was.

The Master: I will overrule the objection.

Q. Was there anything said about the sale of lots on contract? A. I could not swear that there was; but yet I am quite sure that that was used in connection with my claim that the lots had a certain value.

30

By the Master:

Q. Can you tell the substance of what you said to Mr. Evarts at that time about selling lots on contract? A. I cannot say, Judge.

By Mr. Eldridge:

40 Q. Did you have a map with you? A. I am not sure that I had a map with me at that time, I know I had later, but I can't remember exactly what I had with me at that time; the matter was entirely in the hands of Mr. Seaman, and it was up to him to present all the facts.

Q. Did you at that time produce a list of the lots that you wished excepted? A. I think not; I think that was all done by letter later.

Q. Did you tell Mr. Seaman what you were getting for the lots up there? A. I probably did, but I can't say.

William J. Shearer (Recalled)—Direct

Q. And did you tell him how you were selling them, and what the conditions were, etc? A. I don't know, I probably did, and I probably showed him the contracts to convince him but I can't say for sure that I did; it was some time ago. 10

Q. Where were your interviews with Mr. Seaman?

The Master: (Addressing Mr. Hughes). You ought to object to all these questions; I do not see how they have any bearing on the case whatever, Mr. Eldridge, nor do I see that the conversations he had with Mr. Seaman have any bearing on the case, so far as Mr. Shearer is concerned. 20

Mr. Eldridge: It seems to me important to show that he was possessed of certain information.

The Master: What conversation he had with Mr. Seaman I do not think has any bearing on this case; I do not think it is admissible in evidence. 30

Mr. Eldridge: It seems to be perfectly competent to show that Mr. Seaman was informed about these contracts.

The Master: It is admissible to show what Mr. Seaman, this man's agent, said to the New Jersey Title Guarantee & Trust Company, but it is not admissible what Mr. Shearer said to him; I am going to rule it out. 40

Mr. Eldridge: I ask an exception to your Honor's ruling.

Q. Now, you had other interviews with the New Jersey Guarantee & Trust Company, did you not?
A. I did.

William J. Shearer (Recalled)—Direct

10 Q. And who else did you see there? A. You mean in connection with this loan?

Q. Yes. A. I don't think I met anyone else in connection with the loan except Mr. Evarts.

Q. Except who? A. Mr. Evarts.

Q. And did you meet the man who was examining the title to the property? A. When it came to turn over the papers?

20 Q. Yes.

Q. Who did you meet? A. Mr. Wooley.

Q. You mean about the execution of the papers? A. Yes, sir.

Q. Did you confer with him concerning the title during the progress of his work? A. I think I took to him a search made previously by Judge Gilhooly and loaned him that search.

30 Q. Was there anything said concerning those lots that were affected by contracts? A. I don't remember speaking to Mr. Wooley on that subject.

Q. Do you recall speaking to anybody on that subject, anybody connected with the Title Company, about those contracts?

A. I could not swear positively that I did, although, as I said before, I have a distinct impression of talking about the value of the property, and about the contracts and what I was getting for the lots to show that there was some value there.

40 Q. Didn't you, Mr. Shearer, exhibit those contracts to the officers of the Title Company? A. Not so far as I remember now; I do not think that they were called for.

Q. Well, didn't you produce them as convincing evidence on the subject?

Mr. Hughes: Produce them to whom?

The Master: To one of the officers of the New Jersey Title Guarantee & Trust Company.

William J. Shearer (Recalled)—Direct

The Witness: I do not think that I took the contracts with me to the Title Company at any time; I may have, but I do not remember having done so. 10

Q. Mr. Shearer, did you write any letters to Mr. Seaman concerning this loan?

Mr. Hughes: I object.

The Master: I will sustain the objection.

Mr. Eldridge: I ask an exception to your Honor's ruling. 20

Q. Did you write any letters to the New Jersey Title Guarantee and Trust Company concerning this transaction? A. I may have written one or two letters.

Q. Were there any letters received from the company, I mean prior to the time that the mortgage was executed and delivered? A. Yes, sir, I remember receiving one relating to it. 30

Q. Where is that letter? A. I do not know; it may be in the hands of Bilder & Bilder, as I turned over nearly everything to them and it must be with them.

Q. Do you recall having turned over any letters to them? A. Yes, sir, they asked me for everything pertaining to the business.

By the Master:

Q. And you gave them everything that you could find, the books and papers and everything? A. Yes, sir, the books and papers and everything I could find and they still have them. 40

By Mr. Eldridge:

Q. You kept a copy of the map showing the lots that were under contract, showing some marks on the lots that were sold? A. Yes, sir.

William J. Shearer (Recalled)—Direct

10 *By Mr. Whittemore:*

07

Q. Did you discuss with the Title Company at or about the time of the making of this mortgage about your selling lots and having to make sales under contract and about advertising the lots and the efforts you were making? A. I said before that almost the entire matter was in charge of Mr. Seaman, and I had very little conversation with Mr. Evarts until I had received a letter from him stating that the loan had been granted; then the conversation was almost entirely with reference to which lots should be excluded from the mortgage.

Q. Will you say that you did not inform the Title Company of the efforts that you were making to sell the lots? A. I have answered that question already, that I believe in making the point that there was some value there; I have already testified to that.

30 Q. You are now referring to the lots which you had already sold and about the efforts you were making and intended to make in the sale of lots? A. I am sure that I made mention of that to Mr. Evarts at a later date.

Q. Before the money was advanced on the mortgage? A. No, sir.

Q. Afterwards? A. Yes, sir, afterwards in discussing the matter with him.

40 Q. Do you mean to say that you did not mention it before? A. Afterwards; I have said twice that I said it in showing him the lots and in speaking to him about them.

Q. I don't think you understand me. You could not very well have referred to what you intended to do in the way of sale of lots; what you mean to say, if I understand you correctly, is that you established the value of the lots in your discussion with Mr. Evarts, by showing him the efforts you

William J. Shearer (Recalled)—Direct

had made? A. I say I may have done that about the matter of making sales. 10

By the Master:

Q. Did you hear Mr. Seaman say anything in your presence about the lots that you had sold?

A. No, sir, Mr. Seaman had made all the arrangements up to the getting of the loan.

Q. Can you say whether you told Mr. Evarts of any sales that you or your company had made prior to or at the time of the making of the loan? A. I can't say that I did, but I may have. 20

By Mr. Whittemore:

Q. Did you advise Mr. Evarts or anyone else of that company of your plan of continuing sales of the lots on instalments? A. I know that I mentioned it at some time, probably at that time, that I intended to continue the improving of the property and to continue the sale of the property on instalments. 30

By Mr. Hughes:

Q. You mean after the making of the mortgage?

A. I can't swear that it was before, but I believe it was before the money was paid over and before I got the mortgage.

By Mr. Whittemore:

Q. Do you recall whether any contracts had been made between the time the Title Company agreed to make the loan and the time that the money was paid over? A. I do not know. 40

William J. Shearer (Recalled)—Cross

10 *By Mr. Eldridge:*

Q. Just one question, Mr. Shearer, you said that you had a map on which your records were kept of lots sold and affected by contracts? A. Yes, sir.

Q. Was that map used at all in these negotiations? A. I think that that had very little to do with the negotiations; whether Mr. Seaman had a map I do not know; he made all the negotiations in getting the loan.

20 Q. Where is that map now? A. Bilder & Bilder may have it; I know I turned over everything to them.

Q. That was a map that was kept very carefully, wasn't it? A. Well, the office was closed at that time and the books and everything were turned over to Bilder & Bilder, and he was given perhaps ten maps altogether.

Q. That was a map that was kept very carefully, wasn't it? A. Not specially; it was a map—

30 Q. Wasn't it set aside from the rest of your maps? A. As I remember it was tacked on the wall, and as the lots were sold they were crossed off with red pencil.

Q. Was it a framed map? A. No, sir.

Mr. Hughes: I object to all this as irrelevant.

The Master: I will overrule your objection.

40 Mr. Eldridge: That is all.

Cross-Examination by Mr. Hughes:

Q. Mr. Shearer, you have testified that you do not remember having anything to do with the assignment of the prior mortgages, have you not?

A. I testified that I did not know of any books

William J. Shearer (Recalled)—Cross

that showed that there were any mortgages on that property until Mr. Bauer made me a proposition and told me about them. 10

Q. You do know that the Title Company was going to take an assignment of the Woodley and Earl contracts; didn't Mr. Carey of Verdenberg, Wall & Carey obtain an assignment by your direction? A. I think, if I remember rightly, Mr. Trimble was my attorney and Mr. Carey was the attorney for the Woodley people who held a \$10,000 mortgage. 20

Q. I show you a letter, dated June 2nd, 1913, and ask you if that is your signature to that letter? A. It is.

Q. To Mr. Daniel E. Evarts? A. Yes, sir.

Q. And I show you a schedule of lots attached, do you remember that? A. I do not but maybe by reading it I can refresh my memory. (After reading same) Yes, sir, that seems to be one made by my son.

Q. Now, I show you another letter of June 13th, 1913, and ask you if that is your signature to that? A. It is. 30

Q. That also has attached to it a list of lots with the word "Final" endorsed on it? A. Yes, sir, but that is not written by anyone that I know.

Q. I ask you to look at that list and say whether that is not your list that was finally submitted to the Title Guarantee Company? A. Yes, sir, that seems to have come from the office.

Q. And it makes a total of 180 lots? A. Yes, sir, on the El Mora Manor Tract. 40

Q. Now, I show you a paper endorsed "Memorandum of Applications to the New Jersey Title Guarantee and Trust Company for mortgage loan" and ask you is that your signature at the bottom of it? A. Yes, sir.

Q. That is dated May 21st, 1913? A. Yes, sir.

William J. Shearer (Recalled)—Cross

10 Q. Is that the application of your company for the mortgage loan that you made to that company?

A. Yes, sir, on 850 lots.

Q. I call your attention to the three mortgages mentioned by you in answer to the questions that were asked? A. Yes, sir, they were the liens for which the money was borrowed to pay.

Q. That is the application for the \$20,000 loan?

A. Yes, sir.

20 Q. I call your attention to question No. 8 on this memorandum which reads as follows: "Agreement to sell, if so, between whom" and your answer, "No, owners title"? A. I suppose that by that—

Q. My question is whether it is not a fact that you made no mention of any agreement when you signed this application? A. It says, "Agreement to sell, no, owners title."

Q. You did not mention that in any other memo of any kind, did you? A. No, sir.

30

Mr. Hughes: I offer that application for identification and it is marked C-1 for identification, April 10th, 1918.

Q. You have given us some testimony about your deal with Mrs. Cole. I understand you to say that you offered her two other lots alongside of those that were described in the contract and that she agreed to accept those two? A. Yes, sir.

40 Q. Is that a fact? A. Yes, sir.

Q. She was satisfied with them? A. More than satisfied.

Q. Did she accept them? A. She did not at the time she came out, but her husband came out and agreed to accept them.

Q. Did she accept them? A. Yes, sir, she did not.

William J. Shearer (Recalled)—Cross

The Master: Strike out the other answer. 10

Q. What reason, if any, did she give for not accepting those two lots?

Mr. Eldridge: I do not see the relevancy of that question.

The Master: You brought it out, Mr. Eldridge; I will allow the question.

A. She did not give any except to say that Mr. Eldridge must want to get another pick for her; she could not see why they should not be accepted. 20

Q. Now, Mr. Shearer, you were present the other day when Mr. Whittemore testified to the values of those mortgaged premises by reference to the lot numbers on the two maps, the El Mora Manor Map and the Elizabeth Heights Map, were you not?

A. I was.

Q. Are you a real estate dealer? A. Not now, no sir. 30

Q. Have you been engaged in the business? A. Yes, sir.

Q. For how many years? A. Well, for seven or eight years.

Q. Are you familiar with these two properties—the El Mora Manor and Elizabeth Heights Maps?

A. Yes, sir, I spent a great deal of money on the improvements, so I know something about them.

Q. Can you give us an opinion on the value of the lots at the time of the making of the loan of \$20,000 to the complainant in June, 1913; take first the land on the El Mora Manor Map, which I now show you, and which has been referred to in this case several times—first of all those lots colored yellow on those maps are the excepted lots, are they not? A. I do not know. 40

Q. Well, assuming that they are—it is a fact

William J. Shearer (Recalled)—Cross

10 all the same—well now, tell us about the value of the other lots which are not excepted and which are shown in yellow on this map in June, 1913, and that is before the sewer was built? A. You mean 25 or 50 feet lots?

Q. As shown on the map? A. Not less than two lots were sold to anyone and that is the reason why I asked that question. No lots were sold for
20 less than \$500 for 50 feet and others were sold as high as \$900 for 50 feet.

Q. Where were the best lots located? A. I consider those on Magie Road as being the highest and most valuable.

Q. Well, those on the Magie Road were excepted from the mortgage? A. Yes, sir.

Q. Now, take the lots on Ralph Street? A. The
30 lots on Ralph Street are more valuable than the lots on William Avenue, they were being sold for \$600 or more for a plot of 50 feet, and I should say that they were worth that or more, they were not able to sell lots elsewhere at that time.

Q. And on Williams Avenue? A. The same; some like one street and some the other.

Q. And there are a few lots on Summit Place which are not excepted from the mortgage; what have you to say about the value of those four lots?
40 A. Well, they are better than those in the lower part of Ralph Street which sold for \$800, or \$900 a fifty foot plot.

Q. What have you to say as regards Mr. Whittemore's testimony regarding improvements on this property? A. It was very unjust and a large part of it not true.

Q. What part was unjust and not true? A. He stated that the Elizabeth Heights property could not be sewerred.

Q. I am speaking of the El Mora Manor property? A. I take it that his statement made it appear

William J. Shearer (Recalled)—Cross

that the value of this property was comparatively small, whereas a number of years has brought the property up to \$1,000 an acre. 10

Q. Now, I refer you to the other map which has been referred to frequently in this case entitled "The Elizabeth Heights" in which you say he gave unjust and untrue values?

A. He stated that the sewer was the most important thing to the property; that this could not be sewerred, whereas to-day every one of those lots are drained which runs across that brook through property over a trunk sewer of Union Township and is ten feet under ground, and further a trunk sewer along the line of that small stream would thoroughly drain every lot in this thousand lot plot; I might add that that sewer is under contract now. 20

Q. What sewer? A. A sewer which crosses through Union Township about 200 or 300 yards from the property and for the right to pass through that township that trunk sewer must take 375,000 gallons a day, without any charge to the township, and I have the assurance of the Township that at any time we can connect with that sewer and therefore I say that that testimony is not true. 30

Q. Are there any others? A. He stated that that station on the Lehigh Valley Railroad was removed; it was there yesterday when I came through from Buffalo to attend this hearing, and they have built up near the Lehigh Valley Station on the north of the property; I should also state that the trolley is about two blocks north. 40

Q. Two blocks north? A. Yes, sir, north of the property, the Merris Avenue trolley.

Q. Does Magie Road divide the Elizabeth Heights and the El Mora Manor Tracts? A. It does.

Q. So that this tract is next south? A. Yes, sir. As to values I feel that it was very unfair state-

William J. Shearer (Recalled)—Cross

10 ments both by Mr. Whittemore and Mr. Pharis for the lots further away from the City, more than a hundred of them, not covered by this mortgage, but further out, were sold at from \$500 to \$700 a fifty foot plot.

Q. And those are the lots you are speaking of are not covered by the mortgage? A. Yes, sir, but those on the north, further out. and if those are worth that, the ones nearer to the City should be worth more; I refer to Blocks 1, 2, 3, 4, 5 and 6 and say that none of those are covered by the mortgage of the complainant.

07

By Mr. Eldridge:

Q. Who wrote this application blank; who filled it out? A. I do not know; it is not in my writing.

Q. Now, Mr. Shearer, do you remember that I called upon you a few days before Labor Day in 1916 at your house on Anna Street, Elizabeth, concerning Mrs. Cole's lots? A. I do.

30

Q. And do you recall your having stated to me that the assignments of the two mortgages, the Woodley and the Earl mortgages, were taken to maintain the priority over contracts including Mrs. Cole's contract? A. I do not.

Mr. Hughes: I object on the ground as not having anything to do with the company and not made in the presence of his company.

40

A. (Continuing) I do not; I remember of the meeting; I do not remember of telling you that; I may have done so, because at that time I had discovered through Mr. Bauer that they were still held over the property.

William J. Shearer (Recalled)—Cross

By Mr. Whittemore:

10

Q. The sales of lots on the El Mora Manor Tract, which you have testified at the values you have specified, were sales made after June, 1913, were they not? A. I cannot say that; some were made before that time.

Q. The majority of them, however, were made after that time? A. Yes, sir, the majority were, I should say.

Q. And on giving those values you are predicating them on the prices that you received for the contracts? A. That is the basis. 20

Q. The terms of the contracts provided for payments on instalments? A. Yes, sir.

Q. And what was the initial instalment that you accepted on those sales? A. I do not know, probably \$10.

Q. And the payments were by the month and at what rate per month? A. Yes, sir, \$10 and \$20 a month. 30

Q. Were there any sold for less than \$10 or \$20? A. I think not; there may have been times when they could not pay the contract price.

Q. Will you say that your contracts do not provide for any payments for less? A. I only recall one that was for less.

Q. Were your contracts made to provide for interest or without interest? A. My impression is that the contracts were with interest after one or two years if not paid up before that time. 40

Q. Did you use a uniform form of contract? A. Yes, sir, and no, sir; they were simply typewritten contracts and then there were printed contracts.

Q. The printed contracts were the most generally used? A. Yes, sir.

Q. And the form that has been produced here was the form that you used in making those sales? A. Yes, sir, as far as I know.

William J. Shearer (Recalled)—Cross

10 Q. The typewritten contracts, did they provide for interest or not? A. My impression was that they provided for interest after the first year and in some cases it may have been extended to two years.

Q. Who paid the taxes during the period of the contract, your company or the purchaser, under the terms of the contract? A. My impression is that the company was to pay for a term, which, I think, was one year; it may have been two years.

20

Mr. Hughes: I object; I think the contracts should speak for themselves.

The Master: Judge Whittemore is talking about the uniform of contract.

Q. Now, Mr. Shearer, the prices which you have given are the prices which you received or that were agreed to be paid on these contracts? A. Yes, sir.

30 Q. Did you make sales of some few lots for cash? A. Yes, sir.

Q. What reduction off the price did you give for cash? A. I instructed my son to give five per cent. off for cash and I suppose he did so; he had entire charge of the matter.

Q. Well, you were thoroughly in touch with him and you knew of every sale that was made? A. I was, but I do not know every lot which was sold by the different agents.

40 Q. Didn't you sell certain lots at a greater discount than five per cent. for cash? A. As I remember that was the discount for cash; it may be at times that my son gave ten per cent; certainly not more than that.

Q. You had agents who were employed in selling lots on commission? A. Yes, sir, I had.

Q. And what commission was given to those agents? A. They were given ten per cent.

William J. Shearer (Recalled)—Cross

Q. And you operated two automobiles in taking intending purchasers to the lots? A. I did. 10

Q. And you also had a large space in the newspapers in advertising the sale of this property, did you not? A. Not very large.

Q. Well, a quarter and a half page? A. Never, I never had such a size of advertisement as you used in my life.

Q. The size I used? A. Your company, I mean.

Q. Well, I won't argue with you, but the records will show? A. Well, I never had more than a space of five by five inches or five by six inches. 20

Q. You sent out circulars also, did you not? A. Some.

Q. Well, quite a large quantity, did you not? A. No.

By the Master:

Q. How many thousand, do you know? A. There were probably a thousand; I don't believe more than that were sent out by mail: 30

By Mr. Whittemore:

Q. Did you distribute circulars by hand? A. Yes, sir.

Q. And how many? A. I should say from five to ten thousand.

By the Master:

Q. Did your company pay for them? A. They were furnished by the company.

Q. Did the agent distribute them at his own expense? A. Yes, sir.

Q. And while this advertising was being made by automobiles and advertising in the newspapers and 40

William J. Shearer (Recalled)—Cross

10 employment of agents on commission, the bulk of the sales were on contract? A. Yes, sir.

Q. Now, you have spoken of the adjoining property or sale of it by the El Mora Realty Company? A. Yes, sir.

Q. Do you know the time of that purchase? A. Not the exact year; I know at the time that I looked it up, it was 18 years previous to that time; they
20 paid a thousand dollars for that property.

By the Master:

Q. Eighteen years before that sale? A. Yes, sir.

By Mr. Whittemore:

30 Q. Who did they buy it from? A. I don't remember all the details of the search, but I think it was from the Earl people.

Mr. Hughes: I object to this.

The Master: I will admit it.

Q. This was a piece of land very narrow at one end and coming to a point at the other for the purpose of straightening a street A. It was not.

40 Q. You are positive of that? A. I am prepared to say so far as I can see and I am guided by the survey it is as wide at one end as at the other.

Q. Do you know that there was a purchase of land along the border line of your property of a gore of land in order to make the depth of the lots on Summit Road equal throughout the entire line? A. I do not; I simply know that the lots sold to Judge Gilhooly were \$1,000 an acre. The search described a piece of ground purchased and stated what was paid for it and that figured as a \$1,000 an acre in that search.

William J. Shearer (Recalled)—Cross

By the Master:

10

Q. The search purported what the consideration was in the deed? A. Yes, sir.

By Mr. Whittemore:

Q. Don't you know, as a matter of fact, that Crawford and Parmelee, who were the purchasers in the El Mora Realty Company and the purchasers bought almost the entire property from J. L. Woods, at one purchase? A. I do not know the history of the property. 20

Q. Don't you know this, as a matter of fact, that that is the way the bulk of this property was acquired and that as a matter of fact the only other property acquired was a gore of land acquired to straighten out their line? A. I do not.

Q. Have you that search that shows the details that you say it does? A. I think I can locate it if Bilder & Bilder haven't it. 30

Q. What was it a search of? A. It was a search—when I purchased the seventeen acres from the Earls, Judge Gilhooly made the search and that was in this search.

The Master (addressing Mr. Whittemore):
Do you think you need to pursue that matter any further? I do not think that it has much materiality.

Q. Now, Mr. Shearer, about the sewer—the sewer that had an outlet to this property—running through Union Township—is a sewer constructed to supply the needs of Summit and other towns a good distance away from tide water? A. Yes, it does. 40

Q. And it goes through Union Township to the line of the City of Elizabeth and then through the

William J. Shearer (Recalled)—Cross

10 City of Elizabeth and then to tide water? A. It does.

Q. Now, that sewer in passing through Union Township gave a capacity to the people of Union Township for their service of 375,000 gallons a day?

A. I had that word from Mr. Morris, the Clerk of the Board who made the arrangement.

Q. You did not see the contract? A. I did not.

20 Q. And you do not know if you are right in your figure? A. No, only from his word and knowing what his integrity is.

Q. And when was it that you learned that? A. Before I purchased this property in this vicinity.

Q. And that would be somewhere around 1911?

A. I should say somewhere around there.

30 Q. Now, do you know how much of that capacity has been used up from 1911 to the present time? A. I do not.

Q. Have you made inquiry to find out whether the capacity of that sewer is not already overflowing? A. Not for two or three years; before that I took it up with Mr. Beach, who is the Clerk of Union Township and he said that they had a right to charge—

Q. Are you familiar with the fact that at times the manholes are blown off the top of that sewer?

40 A. I don't know but I heard they are.

Q. It is the sewer running down to Bayway?

A. You mean to another sewer?

Q. On Broad Street had the manhole head blown off? A. Yes, sir.

Q. What sewer? A. Why, the one that runs down past the property.

Q. Are you talking about explosions from gas, when the tops of the manhole were carried off? A. I don't know, I suppose that it was gas; you asked whether I knew that sewer.

Q. Don't you know that the sewer in Bayway—

William J. Shearer (Recalled)—Cross

this general municipality sewer—had the manhole top blown off from the contents of the sewer—the fluid matter in the sewer? A. I do not but I know that up Park Avenue— 10

Q. Don't you know that? A. I do not, no.

Q. If it is a fact that the capacity of this sewer has almost attained its limit, where it passes through Union Township and adjacent to your property, is there any way of sewerage the Elizabeth Heights property except by tunneling the hill or except by going a long way around with the sewer and create a very great difficulty? A. If that sewer cannot be used then to drain each lot. 20

Q. And the only other way to do it would be to tunnel the hill? A. I don't suppose there could be any other way.

Q. So the question remains whether or not a sewer could be built except at a very large expense? A. Why, certainly it would be a large expense to tunnel that hill.

Q. What system would be the larger expense? A. It certainly would be larger to go around in the trunk sewer which is near by. 30

Q. Wouldn't it be almost prohibitive? A. I do not know; I never considered it because I was assured by the township that they would not only lay it, but that they would lay it because they wanted houses built in that neighborhood.

Q. Now, you are familiar with the fact that the sewer does not carry any surface water? A. It is simply a house draining sewer. 40

Q. Now, about the Lehigh Valley Station? A. Yes, sir, I saw it yesterday and it had not been moved away.

Q. Don't you know that the station had been moved up to Townley? A. This is at Townley.

Q. Is not that the station at Townley? A. There is a station there on the Lehigh Valley; I don't know how many trains stop there.

William J. Shearer (Recalled)—Cross

10 Q. Was not the station moved from there up to Townley? A. It was not, for the same station was there yesterday and I saw it yesterday.

Q. You identified it? A. Yes, sir.

Q. Do they stop trains there now? A. I don't know if they stop trains there now, but I saw that some new buildings had gone up and a new sign was repainted and gilded.

Q. What was on the sign? A. Town of Townley.

07 Q. Was there anyone at the station; did you go through or pass on a train? A. I simply passed on a train, and I simply looked when I went to Buffalo and it was there, and it was there when I came back yesterday.

Q. Were those lots 1 to 6 which you say had a value of \$500 to \$700, were they sold under the same or similar conditions as those on El Mora Manor Tract? A. Yes, sir.

30 Q. And the last of those lots were sold how many years ago? A. I should say three or four years ago and it may be five years ago; they were sold first before any of this property was sold.

By the Master:

Q. Were they sold before the mortgage was placed on the other property? A. Yes, sir, they were sold long before and I may have used that as a proof of value.

40 *By Mr. Whittemore:*

Q. Do you know any people who have bought those lots who have offered them for sale? A. A number, probably a half dozen.

Q. Have you been informed of the prices which some of them were willing to accept? A. I have not.

Q. If you know of their offer for re-sale were you

William J. Shearer (Recalled)—Cross

not informed of the price at which they were willing to sell? A. Yes, sir, from those parties that wrote to me. 10

Q. And what price did they ask? A. Most wanted as much or more and perhaps two or three offered to sell for \$100 less because they wanted the money.

Q. How long ago was that? A. Well, probably two or three years ago.

Q. Have you heard of offer otherwise than to you for so much lower figures? A. Do you mean to other agents or otherwise in the city of Elizabeth? 20

Q. Yes. A. I may have; I don't remember now.

Q. Don't you know that there are a great many people up there who are very glad to sell their lots for less than half of the price that you sell them for? A. I do not; I saw advertisements in the papers advertising the lots that you sold and I still question it. I saw advertisements in the papers of those very people who wished to raise money. 30

Q. Have you seen any advertisements of lots that were sold—as a matter of fact you have not seen any advertisements of lots that were sold?

Mr. Hughes: I object to all that.

By the Master:

Q. When you refer to advertisements of lots for sale are you referring to lots for sale in the vicinity of the lots in question. A. Yes, sir; I do not know what blocks they are in because I did not look up the map, but they are business people who are willing to get rid of them so that they get the expense. 40

William J. Shearer (Recalled)—Cross

10 *By Mr. Whittemore:*

Q. Have there been any re-sales of lots in Blocks 1 to 6? A. Very few.

Q. How recently? A. Not within three or four years as far as I know.

Q. Isn't it longer than three or four years; have there been any sales there as late as 1914? A. When did the war start; during the first part of that year and the preceding I resold a number of
20 lots for people that wanted the money.

Q. And at how much discount? A. I do not think I sold any lower than the prices that the owners had paid.

Q. In Blocks 1 to 6? A. Yes, sir.

Q. Who for? A. For Mr. Martin, we resold two and Mr. Foster we resold four of the adjoining lots to the same party making the six without any loss to Mr. Foster and there were others, but I do not remember now who they were.

30 Q. Were those lots bought under contracts? A. They were.

Q. And you got other parties to take the contracts over? A. No, Mr. Pease and some others had definite payments but he wished to go back to the old country; that was during the period I was selling lots in that section.

Q. That was prior to 1914? A. It must have been.

40 Q. Because you operated in that section before you went into the El Mora Manor section? A. Yes, sir, but they had finished their instalments and therefore had carried them along for a year or two.

By Mr. Eldridge:

Q. I just want to ask you regarding those lots

William J. Shearer (Recalled)—Cross

on the El Mora Manor tract that were released. 10
 Now lots 3 and 4 in Block 2; have those lots been
 built upon? A. They have.

Q. Look at 82 and 83 in the same block, have
 they been built upon? A. I am quite sure they
 have.

Q. 7 and 8 in Block 5, have those lots been built
 upon? A. They have.

Q. 58 and 59, in Block 2; have they been built
 upon? A. I am not sure, but I think so.

Q. Now, refer to Block 1, have lots 19, 20 and 20
 21 been built upon? A. They have not.

Q. Are they as far as you know covered by any
 mortgages other than the one mentioned in the Bill
 of Complaint? A. I think not so far as I know.

Q. Do you know who owns them? A. I do not
 remember that.

Q. Is there a building on 22 and 23? A. There
 is not.

Q. Do you know who owns those lots? A. I do
 not. 30

Q. Do you know whether or not they are subject
 to a mortgage except those mentioned in the Bill
 of Complaint? A. I do not know unless they put
 it on those.

Q. You do not know whether they mortgaged
 those lots?

The Master: The record is the best evi-
 dence.

Q. Refer to Block 23 Elizabeth Heights map and 40
 A. I do not.

tell me if there is a building on those lots? A.
 There is not.

By Mr. Hughes:

Q. Mr. Shearer, at the last hearing you gave

Andrew C. Greene (Recalled)

10 some testimony about the construction of a sewer through the El Mora Manor Tract and said that it was your impression that it was made after the mortgage was given to the Title Company? A. Yes, sir, I don't remember.

Q. Now I show you a certificate of the City Clerk of the City of Elizabeth, attached to the map purporting to show the sewer marked red in it, the
20 certificate is dated March 28th, 1918, in which he certifies that the sewer shown it was commenced March 18th, 1914, and was completed May, 1914; is that your memory of the construction of this sewer? A. That is probably correct.

Q. That is all.

Mr. Hughes: I will have the Certificate
30 marked for identification.

(Plan marked C-2 for identification.)

ANDREW C. GREENE, recalled:

By Mr. Hughes:

Q. Mr. Green, you are the secretary of the New
40 Jersey Title Guarantee and Trust Company? A. I am.

Q. And you have been subpoenaed to bring all letters, etc., with reference to this loan transaction? A. I have.

Q. Have you all the papers here? A. I have.

Q. Where are they? A. They are here.

Q. Will you get the letters passing between your company and the Jersey Co-operative Realty Company and Mr. Shearer and Mr. Seaman and Leo Schlesinger, Inc.? A. Yes, sir.

James B. Throckmorton—Direct

JAMES B. THROCKMORTON, SWORN :

10

Direct Examination by Mr. Eldridge :

Q. You are connected with the complainant in this cause? A. Yes, sir, I am a Director and a Member of the Finance Committee of the New Jersey Title Guarantee & Trust Company.

Q. And you were one of the appraisers of this El Mora Manor property which is covered by the large mortgage from your company? A. Yes, sir, I went out and looked the property over. 20

Q. And how was that matter first brought to your attention? A. Well, it is customary for one or more of the Finance Committee to accompany Mr. Evarts to make these inspections and I went out there with him and I think I went out there twice.

Q. It first came to your Finance Committee and it was referred to you and Mr. Evarts, is that it? A. Yes, sir. 30

Q. Was William J. Shearer before your Committee? A. I think not.

Q. Was Mr. Seaman before your Committee at that time? A. I think not.

Q. Who went with you and Mr. Evarts to Elizabeth to examine this property, if anybody? A. My impression is that we met Mr. Seaman out there; I don't know if he went with us; I think Mr. Shearer was there and possibly somebody else.

Q. I presume that you and Mr. Evarts had a map of the property? A. We did. 40

Q. And were there any markings on this map that you had? A. If there were I paid no attention to them.

Q. Could you identify the map now, the map that you had at that time? A. I do not think I could.

James B. Throckmorton—Direct

10 Q. Where is the map that you had at that time?

A. Well, I could not tell you unless it is in the possession of the Title Company; I might have seen the map that day, but I could not tell you whether this was the map or not.

Q. Well, in whose possession was the map on that day? A. I presume in Mr. Evarts' possession.

20 Q. Now was anything said about the sale prices of lots out there by Mr. Shearer or Mr. Seaman?

A. I presume there must have been, but I don't remember anything specific about it.

Q. You knew at that time that Mr. Shearer and his company were engaged in selling lots on instalments. A. That is what he intended to do.

Q. You knew at that time that he had actually made sales? A. At that time?

30 Q. Yes. A. I cannot say that I did, but that part of the details I would not bother much about.

By the Master:

Q. When you went out to inspect the property were the lots staked out? A. I think some of them were.

Q. And the streets opened? A. There were some streets on part of the property and some improvements.

40 Q. And street signs up at the end of the streets?

A. I don't recall that.

By Mr. Eldridge:

Q. Are you able to distinguish between the El Mora Manor and the Elizabeth Heights property and did you at that time distinguish them? A. Well, my recollection is that in going from the avenue from Elizabeth west, that the El Mora Manor property was first and the other property was

James B. Throckmorton—Direct

back on the hill; there is not much of a hill; that is recollection about it. 10

Q. Did you go all over the El Mora Manor property? A. Well, we walked about and looked it over.

Q. What was said about the sale of lots, if anything? A. Well, I presume that those people intended to sell them just as fast as they could.

Q. Well, do you mean to say that there was no statement made that they had made sales? A. I don't know; I would not say that there was or not. 20

Q. Well, being a business man you would be anxious to hear what sales had been made?

Mr. Hughes: I object.

The Master: I will admit the question.

A. Naturally.

Q. Were any of the individual lots pointed out to you with comments about them? A. I think Mr. Shearer or Mr. Seaman pointed out what they expected to get for certain lots here and certain lots there, in a general way. 30

Q. That is, they just identified them as being on one side of the street? A. Yes, sir.

Q. Did you know at that time that they had sold lots on instalment contracts? A. I do not know; I don't think I did; that did not interest me; I went out there to appraise the property.

Q. You did not ask about that? A. No, sir.

Q. Didn't Mr. Shearer produce some of his contracts? A. Not in my presence. 40

Q. Did he offer to produce contracts to show what he was getting for such property? A. He may have to Mr. Evarts, but I do not recall any such conversation.

Q. Were you in conversation with Mr. Seaman or Mr. Shearer or both? A. Mr. Seaman went out from Newark.

James B. Throckmorton—Direct

10 Q. Did Mr. Seaman address himself to you particularly or to Mr. Evarts? A. The details were carried along with Mr. Evarts.

Q. Now, what appealed to you particularly in making your estimate for appraisalment? A. Well, we thought that it was adjacent to the City of Elizabeth and would be a development which would justify a reasonable mortgage.

20 Q. Do you recall what valuation you put upon the El Mora Manor tract? A. Yes, sir, to my recollection there were 250 lots there we put a valuation of \$50,000 or \$200 a lot, considering that some might be worth more and some less, we would take that average there.

Q. We are speaking now of the El Mora Manor tract? A. I am speaking of the first property as you go in there.

Q. Did that include all the lots? A. 250, that is what we were told; I do not know whether that included all of them or not.

30 Q. You do not know whether that included all the lots on the property or not? A. I do not.

By the Master:

Q. You were told that the mortgage was to cover about 250 lots? A. Yes, sir, that the mortgage was to cover about 250 lots and we valued them at about \$50,000.

By Mr. Eldridge:

40 Q. Do you know the size of those lots? A. I understood they were 50 feet front.

Q. Had you any way to fix a basis by way of comparison with sales of other properties? A. Only by conversation with Mr. Seaman and other people, we considered that we were making a fair, conservative appraisalment, knowing that it would be a good while to work those things out and knowing that there would be considerable expense attached to it.

James B. Throckmorton—Cross

Q. Did you take into account the improvements that were there and that were going to be made in making this appraisal? A. We could not take into account in making the appraisal any of the improvements that were going to be made; we probably considered what was made at that time. 10

Q. Did you know what further development they intended to do? A. No more than in a general way, that they expected to sell the lots as fast as they could. 20

Q. Do you recall what improvements were there at the time, Mr. Throckmorton; I refer now to the El Mora Manor tract? A. I do not recall anything more than that there were some streets cut through there; I could not say whether there were any sidewalks there or not; this is some years ago, and I could not carry this in my mind; I have not been near the property since.

Q. Do you recall whether there were any trees placed along the streets? A. I could not recall that. 30

Q. Were there any houses on this tract? A. There was one house on this tract.

Q. There were no new houses? A. I don't think so; there might have been one or two; I don't recall; anyhow I understood there were no houses on this property that this mortgage was to cover.

Q. You are not sure whether there were any new houses on this property or not? A. I do not know. 40

Cross-Examination by Mr. Hughes:

Q. Mr. Throckmorton, your appraisal was mostly by the location of the property, its general location to the city of Elizabeth and its surroundings?

A. Yes, sir.

Q. That is all.

Andrew C. Greene (Recalled)

10 *By Mr. Eldridge:*

Q. Did Mr. Seaman tell you how many lots he had sold? A. I do not think so, he may have.

Q. Did Mr. Shearer tell you how many he had sold? A. I don't think so.

Q. You must have been assured that there was a market for the lots at that time? A. From my knowledge of the property in New Jersey and my experience, I should say there was a market there;
20 I think that that property could be sold; that was my general idea of the situation as I looked it over.

ANDREW C. GREENE, recalled:

By Mr. Eldridge:

30 Q. Have you there a letter from Mr. Shearer or the Jersey Co-operative Realty Company, of April 12th, 1913? A. No, I have no such letter.

Mr. Eldridge (addressing Mr. Hughes):
May I have those two letters that you were exhibiting to the witness?

Mr. Hughes: They were given back to the witness.

Mr. Eldridge (addressing Mr. Hughes):
40 Is the application here?

Mr. Hughes: Yes, here it is.

Q. I call your attention to Exhibit C-1 for identification, the application for this loan of \$20,000 by your company and the reference in this application to a letter dated April 12th, 1913; do you understand to what that refers and if so, what does it mean? A. Your Honor, I am not familiar

Andrew C. Greene (Recalled)

with the papers; I am not the Searcher or the Examiner at all; Mr. Wooley is the man; I can't answer that question. 10

By the Master:

Q. Now, supplementing that, Mr. Greene, what can you say about that application or the statements that it contains? A. I never saw it before, because it is not in my department.

20

By Mr. Eldridge:

Q. Then you produce in response to this subpoena only such papers as are in your department? A. No, sir, I produce all the papers that you asked for, but as to testifying to them I cannot do so.

By the Master:

Q. You have different departments in your company but you brought them in? A. Yes, sir. 30

The Master (addressing counsel): Do you wish to ask Mr. Greene any more questions, gentlemen?

Mr. Eldridge: No, your Honor.

Mr. Hughes: No, sir.

The Master (addressing Mr. Eldridge): Do you want Mr. Greene to come down there and describe what those books are?

Mr. Eldridge: I think that that would be a good idea. 40

The Master: Mr. Greene, will you go down and describe what those books are?

Mr. Greene: Yes, your Honor.

Mr. Eldridge: I don't think I need to keep Mr. Greene here any longer.

The Master: You are through with Mr.

Clarence A. Seaman—Direct

10 Greene, are you, and he can take those books back, Mr. Eldridge?

Mr. Eldridge: Yes, your Honor.

CLARENCE A. SEAMAN, SWORN:

Direct Examination by Mr. Eldridge:

20 Q. Mr. Seaman, you were connected with Leo Schlesinger, Inc., in 1913. A. Yes, sir, a part of that year.

Q. And you were in charge of the Loan Department? A. Yes, sir.

Q. And you received an application for a loan from Mr. William J. Shearer on the property at El Mora Manor and other property down by Elizabeth? A. Yes, sir.

30 Q. And how did that matter first come to your attention or how was it first brought to your attention? A. My recollection is that Mr. Shearer came in in regard to a loan and I asked him the usual particulars about the property and such questions as might be pertinent and it seemed to me like a reasonable proposition.

Q. And you made a written memorandum at the time? A. Yes, sir, that is my recollection of it.

Q. Where is that memorandum? A. I could not say.

40 Q. I beg your pardon? A. I could not say.

Q. Where was it when you last knew of it? A. Well, it was the practice of the office, when I was there, to keep the records promptly filed; aside from that I cannot give you any information.

Q. You left it in the office when you left the employment of Leo Schlesinger, Inc.?

A. I must have, certainly I did not take the records with me.

Clarence A. Seaman—Direct

Q. Was there any representation as to values made at that time by Mr. Shearer? 19

The Master: Now, Mr. Eldridge, I am not going to let you go into conversations between Mr. Shearer and this witness, except the fact that there were representations made to the witness by Mr. Shearer concerning the property.

Mr. Eldridge: I would like an exception to your Honor's ruling. 20

Q. Mr. Seaman, what did you do concerning this loan?

By the Master:

Q. You took it to the New Jersey Title Guarantee and Trust Company? A. Yes, sir.

By Mr. Eldridge:

Q. How did you put it up to them, verbally or in writing? A. My recollection is that I came over and had a talk with Mr. Evarts about it; it was a matter that I thought would appeal to them. 30

The Master: That answers the question; you came over and talked to Mr. Evarts about it.

Q. Did Mr. Shearer come with you? A. No, sir. 40

Q. You talked to Mr. Evarts? A. Yes, sir.

Q. And what did you lay before him? A. The matter of making a loan on this particular property.

Q. Of how much? A. I think it was originally \$15,000.

Q. What did you tell him about the property?

Clarence A. Seaman—Direct

- 10 A. There was a bunch of lots out there that I thought were well located and should be marketable from the success of Doolittle of the adjoining property and the prices that I understood he had gotten for the property, and I understood from Mr. Shearer had sold some of his property at substantially the values—the established values of this land I thought it was well worth entertaining.
- 20 Q. Did you possess any information as to the value of this land? A. No, not at that time, because I didn't think there was any in that neighborhood; the sales spoke for themselves.
- Q. What sales did you call to his attention? A. I didn't call any to Mr. Evarts'; I don't think I knew of any.
- Q. Well, why did you make the statement, just now? A. Well, when a man builds a house for
- 30 \$15,000 or \$18,000 and then the station there on a certain piece of property, it is quite sure that they bought it, made it sufficient to make this loan.
- Q. Was there any house on this property? A. No, except an old house up at the head.
- Q. You did not know at that time that there had been any sales made on this property? A. It was my understanding that there had been sales made.
- 40 Q. Did you tell him that you understood there had been sales on this property? A. I don't think so, but it is highly probable that I did.
- Q. Did you have any figures of those sales? A. No, sir.
- Q. Did you know what the lots had been sold for? A. No, sir.
- Q. Did Mr. Evarts ask you what had been paid for lots out on that tract? A. I don't think so; in fact, he didn't; I anticipated the question of contracts, if there were any, and I particularly recall there were no contracts submitted, because

Clarence A. Seaman—Direct

I was suddenly expected to submit contracts and expected Mr. Shearer to bring them out. 10

Q. You said you anticipated what the properties sold for? A. Yes, sir.

Q. Did you receive any inquiry of that character? A. No, sir.

The Master: He says "no."

The Witness: I did not.

Q. Did you talk to Mr. Hughes about this matter? A. No, sir. 20

Q. Before the last hearing? A. Yes, sir, I have talked with Mr. Hughes; I have talked with Mr. Evarts and I have talked with others.

Q. Did you tell Mr. Hughes that there were several lots sold under contract when this loan was made?

Mr. Hughes: I object to that question.

The Master: I will admit it. 30

A. It is fairly correct to assume that I did, even——

The Master: Answer the question.

The Witness: I cannot tell you.

By the Master:

Q. The question is, whether since the last hearing you told Mr. Hughes that there were several lots sold under contract? A. I cannot say. 40

By Mr. Eldridge:

Q. Can you say whether or not you told Mr. Hughes that the company had sold several of the lots out of the El Mora Manor Tract prior to the

Clarence A. Seaman—Direct

10 making of the loan? A. I don't think that they had any of the lots.

Q. Did you tell it to Mr. Hughes? A. No, sir; how could—

By the Master:

20 Q. The question is; before the last hearing if you knew that the Jersey Co-operative Realty Company had sold lots within the tract which included the mortgaged premises? A. I don't recall definitely; it is possible I did.

By Mr. Eldridge:

30 Q. You went over this whole matter with Mr. Hughes before this case came up for hearing? A. Yes, sir.

Q. You went over your connection with it? A. Yes, sir.

Q. And you told Mr. Hughes then that you had informed the complainant in this suit that some of the lots had been sold on contracts?

Mr. Hughes: I object to that strenuously; no such conversation was ever had.

40 The Master: I will admit the question.

A. I could not so inform him; I didn't so inform him; I didn't know it.

Q. You at no time made such a statement to Mr. Hughes? A. I don't think so.

Q. You were in court when Mr. Hughes opened this case to the court? A. I think so.

Q. And you heard Mr. Hughes read a statement to the court; he said that "Shearer made his first negotiations for the loan through Clarence A. Seaman, then General Manager of Louis Schlesinger, Inc., of Newark, N. J. He showed Mr. Seaman maps

Clarence A. Seaman—Direct

and plans of the El Mora and Elizabeth Heights tracts and stated in a general way that the Jersey Co-operative Realty Company had made sale of a number of lots, by written agreements on the instalment plan, but that deeds had not been given, and without stating to whom or for what properties such contracts or agreements had been made or given, or furnishing any list thereof," etc. A. Yes, sir. 10

Q. Is that a correct statement of the facts? 20

Mr. Hughes: I object.

The Master: I will sustain the objection; I do not think that is admissible.

(Question withdrawn.)

Q. Did you do what Mr. Hughes says in this statement; he says you did in this statement?

By the Master:

Q. Do you want to read that statement over? 30

A. If I might be permitted——

Q. Answer the question; just read over the statement by Mr. Hughes and answer the question. A. Yes, sir, that is all right.

By Mr. Eldridge:

Q. Now, Mr. Seaman, did you submit a map of these properties to Mr. Evarts? A. It is my recollection that there were maps of the El Mora Manor and Elizabeth Heights tracts there at the time they were ready to entertain the application, probably with the application those maps were submitted. 40

Q. Were those maps marked in any manner?
A. That I can't recall; I think there were some marks on the maps that were submitted.

William P. Douglass (In Rebuttal)—Direct

10 Q. Would you be able now to identify them?

A. No, sir.

Q. What marks were on them? A. I think there were some marks that indicated that some of the lots had been sold; I could not identify the definite map.

By the Master:

20 Q. Were the lots marked included in the loan?
A. I think there was simply a reference made by their being approximately so many lots in this section.

Q. That is all.

Mr. Hughes: I have no questions.

COMPLAINANT'S REBUTTAL.

30

WILLIAM P. DOUGLASS, sworn:

Direct Examination by Mr. Hughes:

Q. Mr. Douglass, were you employed by the New Jersey Title Guarantee & Trust Company in 1913?

A. I was.

Q. In what capacity? A. As an examiner of titles.

40 Q. You have had many years' experience in that line of business? A. Oh, yes, sir, a great many.

Q. Did you attend to the closing of the mortgage loan of \$20,000 made by the New Jersey Title Guarantee & Trust Company to the Jersey Co-operative Realty Company? A. I did.

Q. On July 3rd, 1913? A. I don't remember the date; I know it was in July.

Q. Why did you attend to it instead of Mr. Wool-

William P. Douglass (In Rebuttal)—Direct

ley, who had charge of the matter? A. Mr. Woolley had just gone on his vacation a day or two before that and I took his place. 10

Q. And you were requested to close it? A. Yes, sir.

Q. Who were present at the closing? A. Well, I don't remember exactly.

Q. Was Mr. William J. Shearer there? A. I think Mr. Shearer was there a part of the time; my recollection is that he was in and out of the room, but he was not there at the final settlement. 20

Q. Was the mortgage produced there, executed? A. Yes, sir.

Q. Who produced it? A. Mr. Shearer, he was there part of the time.

Q. Did he produce the bond? A. Yes, sir, I think so.

Q. And you accepted those papers? A. Yes, sir.

Q. Was there anything said at this closing about any outstanding contracts or agreements to any persons? A. Nothing. 30

Q. Relating to any of the mortgaged property? A. Nothing.

Q. Do you find any mention of any such agreements or contracts in any of the papers submitted to you? A. There was no mention in any of the papers; I have the report of title and closed it on that.

Q. Did you at that time ever hear of any outstanding agreements or contracts on this property?

A. I never did until I was spoken to in regard to this suit. 40

Q. Did you have anything to do with the taking of the application or the early matters relating to the application? A. Nothing; the first and only thing I had to do with it was the closing; the examination was made by Mr. Gallagher.

10 *William P. Douglas (In Rebuttal)—Cross*
Clarence A. Seaman (In Rebuttal)—Direct

Cross-Examination by Mr. Eldridge:

Q. You closed entirely on the closing statement as was prepared for you, did you? A. Yes, sir.

CLARENCE E. SEAMAN, recalled in rebuttal:

20 *Direct Examination by Mr. Hughes:*

Q. Mr. Seaman, are you a real estate dealer? A. My business is that at the present time in the negotiations of mortgage investments and real estate appraisals.

Q. How long have you been in that business? A. For the past three or four years.

30 Q. Are you familiar with this El Mora Manor and Elizabeth Heights properties involved in this suit? A. Yes, sir, and I might say that previous to my going into the business of negotiator of mortgaged loans and real estate appraisals I was engaged for some ten or twelve years in the business of development of acreage, in the construction of improvements and in the general agency and brokerage business.

By the Master:

40 Q. What do you mean by "General Agency"? A. Real estate agency; in other words I had been active in all branches of real estate work.

Q. Buying and selling property for clients? A. Yes, sir, buying and selling property for clients and managing property for them.

*Clarence A. Seaman (In Rebuttal)—Direct**By Mr. Hughes:*

10

Q. You say you are familiar with these properties? A. Yes, sir.

Q. And how long have you been familiar with them? A. Since the application for this loan or thereabouts.

Q. The early part of 1913? A. Yes, sir.

Q. Did you know the values of the property at that time? A. I believe, sir, I am familiar with the comparative values of development propositions and the prospects of success of development propositions, not only in that section but in almost any section where I have interested myself to be conversant with the conditions that existed there.

20

Q. Did you familiarize yourself with the values of this property at the time the mortgage was made? A. Yes, sir.

Q. You were present at the hearing in this case when Mr. Whittemore and Mr. Pharis testified regarding land in this vicinity? A. Yes, sir.

30

Q. Do you recall their testimony? A. I do.

Q. I show you a map of the El Mora Manor property, which has been brought into this case a number of times and ask you whether you recall having seen that before? A. Yes, sir, it is very familiar.

Q. Is it the map that was furnished by you or Mr. Shearer to the New Jersey Title Guarantee and Trust Company? A. That I cannot say; I mean to say that the map of the lots is very familiar to me.

40

Q. You did not furnish it? A. I can't say that; Mr. Shearer may have and I may have brought that particular map over to the Title Company.

Q. Now, show us the values of those lots in 1913, just prior to this loan? A. I would say that Judge Whittemore's testimony was quite correct on the

Clarence A. Seaman (In Rebuttal)—Direct

10 face of it, but you must consider the purpose for which the property is to be used. I think he said about ten dollars a front foot; as a general proposition I think that was the basis of valuation in El Mora. Now, if a person was to buy an individual 50 foot lot I think that that used as the basis of value in general for the purpose of securing all the lots or land covering the entire property,
 20 why it is very misleading.

Q. In what respect is it misleading? A. Well, in order to obtain a mortgage, which will afford you a consideration of the value of your property, you have got to do certain things, which are going to cost you money; you have got to carry your property for a certain length of time, which is going to cost money, and you have got to pay the interest charges and taxes.

30 Q. Your interest on your investment? A. Yes, sir, and taxes and your commissions, you have got to pay brokers; you have got to pay for your advertising and you have got to furnish the plant—an office and minor other things that are necessary in the conduct of the business; the marketing of a piece of property very frequently involves transportation charges, which run into considerable money, and it is my experience that if a develop-
 40 ment is to be a successful development, it will take upwards of ten years before the major portion of the lots have been marketed.

Q. That is your opinion? A. Yes, sir.

Q. Now, taking all this into consideration, what is your opinion as to the values of those lots in 1913, just prior to the making of this loan? A. It resolves itself down to an acreage proposition with a value, assuming that ten dollars is correct, which I think is about correct, to add \$1 or \$1.50 per front foot plus the value of such improvements as have been made, which improvements represent per-

Clarence A. Seaman (In Rebuttal)—Direct

manency in their value. In other words, I do not recognize any disbursement which has resulted in a three foot sidewalk or any valuation to be placed upon a water main, which is inadequate to take care of the demands of the property developed; when I say "developed," I mean the adequacy of the improvements. 10

Q. Why is not the improvement to the sidewalk, such as it is, to be considered an improvement? 15

A. The width shows that it was temporary, as a matter of convenience in showing the property for sale. 20

By the Master:

Q. By a dollar or a dollar and a half, what do you mean? A. \$1 or \$1.50 plus the improvements which have been placed on the property, which are permanent, if it was graded, of course, that grading was a permanent improvement to the property; the streets were laid out, the gutters were there, nevertheless in the rough. 30

Q. Do you mean that the value of those lots in your opinion were \$1 to a \$1.50 a foot plus the permanent improvements to be added? A. Yes, sir.

Q. You think they are much less than what Judge Whittemore said; he said ten dollars a front foot?

A. I consider a purchaser who would buy a 50 foot lot \$10 would be a fair value, for the same that you have got to find or mortgage a piece of the property and to find a mortgage entails the necessary expense which reduces the value of the entire property. 40

By Mr. Hughes:

Q. What improvements were on this property at the time this loan was granted? A. The property

Clarence A. Seaman (In Rebuttal)—Direct

10 was graded and I think that that was about all as far as permanent improvements; there were a few little evergreens set out that did not amount to anything, the plan was, as I recall it at the time, to go right through.

Q. Do you recall any improvements besides the grading? A. I don't think there were any.

20 Q. About how much a lot would the valuation be increased by the grading? A. I don't think it would exceed a dollar.

Q. So that the lots at that time were worth about \$2.50 a front foot. A. Yes, sir, that would be a fair price for that property.

Q. For the whole property? A. Yes, sir.

Q. Now, taking the other map—Elizabeth Heights? A. Yes, sir.

30 Q. Were there any improvements on that property at the time this mortgage was made? A. I think there were, but for the reason that the Elizabeth Heights property was remote from that section of El Mora Manor, which was built up, we didn't pay as much attention to the Elizabeth Heights property as we did to the El Mora Manor property, even though I consider that certain parts of the Elizabeth Heights property was susceptible to a certain class of improvements; I refer to Magie
40 Road, which we did not inspect carefully, and quite a ways north, over the Magie Road, Magie Road being higher, in a time will be more valuable property.

Q. Well, do you know the lots covered by the Title Company's mortgage which are contained in Blocks 9, 10, 11, 12, 13 to 23 inclusive; what would you say was the value of those lots at that time? A. Well, they were not worth quite as much as the El Mora lots for the reason, as I say, that they were not as contiguous to the improved section of Elizabeth as the El Mora Manor property and I should

Clarence A. Seaman (In Rebuttal)—Direct

say probably not to exceed \$1.50 to \$2 per front foot; even with the improvements of grading. I must confess that I was never down in this section of the property, referring to Maple Avenue, Charlton Avenue, Park Avenue and Broad Avenue; I have been around it, but I have never been through there to inspect the property for purpose of improvements; I know that the streets are there and some of the sidewalks have been laid. 10

Q. Isn't it a fact that the streets are not distinguishable? A. They have been overgrown with weeds, but the value in the main, as far as the grading is concerned, has been preserved. 20

Q. Now, Mr. Seaman, what in your opinion is the best method of selling the lots on the El Mora Manor map, and also on the Elizabeth Heights map for the purpose of benefiting everybody who is concerned in this suit? A. Oh, there are a good many different things that might be done.

Q. Well, in your opinion what is the best method of selling under the foreclosure so as to get the best value for the money? A. Well, looking at it in a way— 30

Q. Just answer my question: In your opinion, what would be the best method to get the best value for these properties under the foreclosure proceedings so that the defendants, who have answered, may get their money out of it; should they be sold in parcels of two lots or more or sold in lots, and if so in how many lots or in acreage; what in your opinion would be the best method of making the sale? A. I think it would be far-sighted not to restrict the property. 40

Q. I am not asking about restriction; I am asking you how to get the best prices? A. Even so if you limit 50 feet to an individual.

Q. We can't restrict it? A. Nevertheless the kind of restriction you place on the property will be largely concerned.

Clarence A. Seaman (In Rebuttal)—Direct

20

The Master: There are not going to be any restrictions; I understand they are now going to foreclose the mortgage and this property will be sold free and clear.

Mr. Whittemore: Yes, sir.

The Witness: Well, it resolves itself down to auction it to the highest bidder in one parcel.

By Mr. Hughes:

10

Q. You think that that is the best method of selling? A. Yes, sir, not only from the standpoint of the best interest but from the standpoint of the community as a whole.

Q. Does that apply to the property on the Elizabeth Heights map? A. Yes, sir.

Q. And also on the El Mora Manor map? A. Yes, sir.

30 Q. In your opinion the lots should be sold in one parcel? A. Most assuredly — the surrounding property to this property——

The Master: We are not interested in the surrounding property; we are interested in the result that will accrue to this particular property.

40

The Witness: If you don't sell in a plot you are going to have a tail-end; if the first was sold with restriction you are going to safeguard the property; if you sell it by piece meal, I don't think you will attract the kind of parties desired.

The Master: I understand if you were to sell by the lot on El Mora Manor map that the prospective purchaser of adjacent lots would take that into consideration?

The Witness: Most assuredly and you

Clarence A. Seaman (In Rebuttal)—Direct

would limit yourself to the fellow who didn't care whether there were restrictins on it or not. 10

By the Master:

Q. How many 25 foot lots are there covered by this mortgage? A. 25 foot lots, in the neighborhood, I think of 1500; I think there were 750—50, it may be more inasmuch as the lots in Elizabeth Heights map are laid out at 50 foot lots. 20

By Mr. Hughes:

Q. 25 feet on some of them? A. Yes, sir.

Q. Elizabeth Heights is in the Township of Union? A. Yes, sir.

Q. And El Mora is in Elizabeth? A. Yes, sir.

Q. They are contiguous? A. The City of Elizabeth and El Mora Manor is divided by Magie Road. 30

Cross Examination By Mr. Whittemore:

Q. You don't remember that the number of lots represented at the time the loan was made was 650? A. Well, there was some Jewish talk—and when the Court asked me as to how many 25 foot lots, I simply doubled up on that.

Q. The lots were laid out on the map at that time? A. Oh, yes they were all plotted.

Q. Do you remember how many acres there were in the whole thing? A. No, I did not compute it in acreage. 40

Q. You figured about twelve lots to an acre? A. Yes. that you will get, probably.

Q. 25x100 foot lots when the streets are taken out of it? A. I think you get 540 feet to the square acre, and as I say, just about 210x220 feet; if you

Clarence A. Seaman (In Rebuttal)—Cross

10 are going to have them 25 front foot lots. You can't have them divided off into streets and have any width to your lots at all.

Q. Your business has been conducted at headquarters in the City of Newark, hasn't it? A. For the past five years.

Q. And prior to that, where? A. New York City as well as New Jersey; New York extending over Long Island.

20 Q. Did you ever have any business in Elizabeth or its vicinity other than this which you got through Mr. Shearer? A. Why, yes, sir, I have had small loan transactions.

As a matter of fact you had no considerable real estate business in Union County at all? A. Oh, no.

Q. You are not familiar with the local conditions of land in Elizabeth and sales that have been made; that did not come under your experience? A. Except as having come under my knowledge.

30 Q. I am trying to find out how, supposing your knowledge, your knowledge is concerning real estate affairs in Elizabeth? A. It is not supposing not from having actual charge of transactions as they have occurred.

Q. Did you ever sell any property in Elizabeth or its vicinity excepting the property which Mr. Shearer bought from the Dade Estate? A. I have not.

40 Q. Are you familiar with the prices obtained by the El Mora Land Company for lots at El Mora and prices obtained by the El Mora Realty Company for lots at El Mora? A. I am not, but I should judge that they were in the neighborhood of \$20 to \$25 a foot.

Q. You don't know? A. No, I don't know.

Q. You did not know that the El Mora Realty Company has a great many lots for sale for \$12 a foot nearer to Elizabeth than the Shearer property?

Clarence A. Seaman (In Rebuttal)—Cross

A. You are referring now to the Crawford & Parmley tract. 10

Q. Yes. A. I might say that at the time I was requested to inspect the El Mora Manor property for the purpose of this loan——

Q. I asked you if you did not know that the El Mora Realty Company has a great many lots for \$12 a foot nearer to Elizabeth than the Shearer property? A. No.

Q. Do you claim that the valuation of land on the Crawford & Parmley tract is less or greater than the property on the El Mora Manor Tract? 20

A. Naturally less.

Q. The Crawford & Parmley is less? A. Yes, sir, in places and on the average it is less than the property at El Mora Manor.

Q. How do you account for the fact that you claim from \$1 to \$1.50 a foot off property that is worth less, as selling \$12 a foot, and, as you said, you heard was selling from \$20 to \$25 a foot. A. When I said \$20 to \$25 a foot I referred to the property adjoining Westfield Avenue, practically good high property, and when I said \$20 or \$25 a front foot I referred to a wholesale price for the purpose of a loan or for a sale to a party who would purchase it as a whole—— 30

Q. So a dollar or two dollars a foot are the values that were given when the loan was obtained? A. I do not recall accurately any valuations that were given.

Q. Then if you gave them—if you submitted that to them you considered it was worthy of their consideration? A. That value, coupled with the value and my belief that if it would be promptly accepted it would incur considerable business for the Title Company and that led me to bring it to the New Jersey Title Guarantee and Trust Company and 40

Clarence A. Seaman (In Rebuttal)—Cross

10 recommend it as a good paying proposition and I have no doubt that they have ample security.

Q. And those considerations were to come in after the making of the loan? A. They were a consideration at that time.

Q. You did not know whether that company was going to develop it in any manner to make the loan? A. I felt by their efforts and considered it as good security; the property was sufficiently developed to determine that.

20 Q. Did you expect that the Title Company would make a loan of \$20,000 on land having a value of \$20 to \$25 a front foot? A. Yes, sir, that would give them ample equity, yes, sir.

Q. What. I don't understand your estimate of \$1.50 to \$2 a foot; is that its present value in the market? A. I thought you were referring to its value in 1913.

Q. So that its present value in the market is \$1.50 to \$2 a foot? A. Its wholesale value.

30 Q. What would that make by the acre? would you figure ten lots to an acre? A. You have got to use your pencil.

Q. I am asking you to demonstrate; I know how many square feet there are in an acre; but how many square feet do you figure there are in an acre? A. You figure you get more than ten lots 25 feet by the acre.

Q. Twelve? A. Yes, you will get twelve.

Q. Twelve? A. Yes, you will get twelve.

40 Q. Well, as a general thing real estate men generally consider twelve lots to an acre for a general development proposition? A. Yes, you would get twelve lots.

Q. Now, twelve lots would make a plot of land having 300 feet front, would it not? A. At least that.

Q. And that at \$1.50 a foot would be \$450 an acre? A. Yes, sir.

Clarence A. Seaman (In Rebuttal)—Cross

Q. And you tell the Court now, in your opinion 10
that El Mora property had a value of \$450 an acre
at the time this mortgage was taken? A. Yes, sir.

Q. I want you to give me what the value of that
property was in the market to be sold by the Court?

A. Well, I gave you it at that time as being \$250.

Q. The improvement that you refer to is the grad-
ing of the street in front of the lot? A. Yes, sir,
that and everything that was permanently
improved.

Q. That would make \$750 an acre, is that right? 20
A. Yes, sir, that is right.

Q. Is this El Mora Manor tract more valuable or
less valuable than the adjoining property of the
Dade Estate? A. I think the Dade Estate is sus-
ceptible of a little higher value than the El Mora
Manor property.

The Master: Don't make a speech, just
answer the question.

A. Per acre? 30

Q. Yes. A. By reason of the fact that this prop-
erty was improved it had a great value.

Q. This had a great value? A. Yes, sir.

Q. What was the date that you sold the Dade
property to Mr. Shearer? A. I don't recall
exactly.

Q. About 1913? A. I think somewhere around
there.

Q. How many lots were there in the Dade prop- 40
erty; how many acres were there in that property
that was sold to the Ersey Co-operative Realty
Company? A. I don't recall exactly.

Q. There were 42 acres? A. I don't recall ex-
actly; I thought there were 43 acres in one piece
and there was some on the south side of the Road;
that deducted from the 43 acres would give you the
acreage of the parcel sold to Mr. Shearer.

Clarence A. Seaman (In Rebuttal)—Cross

10 Q. Don't you know, as a matter of fact, that there were 42 acres in the land that was conveyed to Mr. Shearer? A. I think you are correct but I cannot say accurately.

Q. How much did you sell that Dade property for to Mr. Shearer? A. I think the consideration was \$35,000 or \$36,500.

Q. For 42 acres, approximately \$900 an acre? A. A little less than that, wasn't it.

20 Q. And there are not streets in that property at all; no streets laid out? A. Oh, my, yes.

Q. What streets? A. Why, Grand Avenue was a street.

Q. Grand Avenue divided the property into two sections—one section was on it and the Dade property immediately adjoins this El Mora Manor property? A. Yes, sir, at one small end.

30 Q. Do you know of any other property in that immediate neighborhood and the price at which it is being sold by the acre? A. I have not canvassed the situation.

Q. You don't know that? A. No, sir.

Q. Do you know whether, as a matter of fact, there is no land which you buy anywhere around there for less than a thousand dollars an acre? A. I guess you can buy the Dade piece for that.

Q. Well, I control the Dade piece now and I know that you can't? A. Well, I would not be surprised that you could at that.

40 Q. Well, I know that you can't.

Q. That is all?

CASE CLOSED.

"Exhibit "C 4."

OUTSIDE COUNTY.

10

No. G 16522.

MEMORANDUM OF APPLICATION.

For Examination and Guaranty of the Title to
Premises Described Below.

-
- 20
1. Name and Residence of Party to be Guaranteed: Ans. William J. Shearer, El Mora Tract. Jersey Co-operative Realty Co., owner of Elizabeth Heights Tract.
 2. Amount to be Guaranteed? \$20,000.
 3. Title, how derived?
 4. Interest to be Guaranteed, (whether fee simple, mortgage, etc.?) Ans. Mtg. to this Co. for \$20,000. 30
 5. Location and Description of Premises? Ans. 600 lots on Map of Elizabeth Heights and 250 lots on Map of El Mora Manor, in El Mora and Elizabeth, N. J., Union Co.
 6. Street No.?
 7. Shall Company have survey and inspection made? Ans. No. 40
 8. Agreement to sell? If so, between whom? Ans. No, owners title.
 9. Is the property encumbered? (a) By Mortgage? If so, give parties and amount. Ans.

Exhibit "C 4"

- 20 \$4,500, \$4,000, \$10,000. (b) By easement? (c) By ground rent? (d) By Mechanics' liens or Liability thereto? (e) By Lien for Municipal? (f) By Judgment or Attachment? (g) By other lien or encumbrance?
10. Possession held by and under whom? Ans. No. Releases for \$5.00 per front foot, see letter April 12, 1913.
- 10 11. Is any part of the premises, privy, yard, etc., used by any neighboring or adjoining owner? If so, what? Ans. No.
12. Objections to title known or rumored? Ans. None, Restrictions in deeds by owner.
13. Unrecorded deeds, agreements, adverse claims and interest or secret trust, known or rumored to exist? Ans. None.
- 30 14. Name and residence of seller, or mortgagor: Ans. 110 N. 34 St., New York.
15. Name of seller's or mortgagor's husband or wife? Ans. Carrie M. Shearer.
16. Attorney of seller? Ans. William H. Carey, Attorney.
- 40 Below this is an application for guarantee, which contains an agreement on the part of the applicant to pay Three Hundred and Fifty (\$350) Dollars therefor; it is dated, May 21, 1913, and signed "Wm. J. Shearer, Applicant."
- On page two of the foregoing application is a heading, "Plan of Premises showing distance from street corner and number of house." Nothing else appears on the page.

Exhibit "C 4"

On the third page is a heading, "I certify that 10
 on this _____ day of _____,
 19 _____, by order of: *THE NEW JERSEY TITLE
 GUARANTEE & TRUST COMPANY*, I visited
 and examined the premises described in the fore-
 going application and plan, and obtained the fol-
 lowing information relative thereto."

Below are Twelve (12) questions, none of which
 are answered and some of which are as follows:

7. Estimated Value.

10. All other information respecting the prem- 20
 ises the title thereto, character of presumed owner
 or that would in any way affect the interests of the
 Company in passing or guaranteeing the title

_____,
 Inspector.

Attached to this exhibit is the business card of
 Louis Schlesinger, Inc., Newark, N. J. Clarence A. 30
 Seaman, General Manager, Sales Dept., with the
 notation thereon "mail copy of appl. to Louis
 Schlesinger, Inc., Newark. N. J.

Exhibit "C 9."

20

NEW JERSEY SUPREME COURT.

NEW JERSEY TITLE GUARANTEED
and TRUST COMPANY

vs.

JERSEY CO-OPERATIVE REALTY
Co. and WILLIAM J. SHEARER

Action at Law.
By Default.
Collins & Corbin,
Attorneys

10

	Judgment entered this thirtieth day
	of September, A. D., nineteen hun-
\$8,362.92	dred and sixteen, for the sum of eight
41.53	thousand three hundred and sixty-two
_____	dollars and ninety-two cents damages
\$8,404.45	and forty-one dollars and fifty-three
	cents costs.

Wm. S. Gummere, C. J.

30

I, Enoch L. Johnson, Clerk of the Supreme Court of the State of New Jersey, do certify that the foregoing is a true copy of the judgment entered in above cause which said judgment is recorded in this office in Vol. 9 of judgments, page 441.

40

In testimony whereof I have hereunto set my hand and the seal of said Court at Trenton, this nineteenth day of March, A. D., nineteen hundred and eighteen.

ENOCH L. JOHNSON,
Clerk.

Exhibit "D 4."

LOUIS SCHLESINGER, INC.
NEWARK, N. J.

10

March 25th, 1913.

New Jersey Title Guarantee & Trust Co.,
No. 83-85 Montgomery Street,
Jersey City, N. J.

Gentlemen:

20

Pursuant to the writer's conversation yesterday with your first Vice-President, Mr. Evarts, we enclose you herewith blue print of property of William J. Shearer, located at Elizabeth, N. J., upon which Mr. Shearer desires to obtain a first mortgage loan of \$15,000 to replace present mortgages aggregating that amount. The object of replacing the present mortgages is to make possible the delivery of deeds to several of the lots to be covered, the several lots referred to being part of approximately 130 of the lots in the tract, which have been sold under contract for approximately \$40,000, the owners of the several lots desiring to pay the balance due on the contracts in order to obtain title and build. Inasmuch as *these contracts* have *two years yet* to run before Mr. Shearer has agreed to deliver title, he is in no particularly uncomfortable position, but appreciates that it would be good business to stand the expense of changing his mortgage indebtedness to a new mortgage containing a release clause and making possible building operations proposed by the several purchasers.

30

40

An inspection of the property will show the streets cut through as indicated on the blue print and all grading properly completed. The greatest amount of work on the sidewalks has also been done, in fact, a large part of the \$51,000 which Mr.

Exhibit "D 4"

10 Shearer has expended upon his holdings in the immediate vicinity of this parcel has been expended on the tract to be covered by the mortgage applied for.

To make possible your accepting this application and complying fully with your by-laws as regards loaning only on improved property, Mr. Shearer will include in the property to be covered by the mortgage, the residence property on the north side of Magie Avenue and directly opposite the developed tract, and as an added inducement to the 6% interest, he will contract with you for the guarantee policies which he proposes to give to each and all of the individual lot purchasers.

20 Remembering Mr. Evarts' statement that your committee would inspect the property Thursday afternoon, the writer communicated with Mr. Shearer and learned that it would be possible for Mr. Shearer to meet your representatives in Elizabeth any time after 2 o'clock, Thursday, submitting the full list of lots sold, together with the prices obtained which run from \$12 to \$20 per front foot, as substantiated by the contracts which he will have at hand at that time.

30 We shall appreciate your advising us at such a time as you may know definitely what hour it will be possible to visit the property and we shall be glad to have Mr. Shearer meet you.

Yours very truly,

40 LOUIS SCHLESINGER, INC.
C. A. Seaman, General Manager.

P. S.—We enclose check for \$25, same being appraisal fee as requested.

Exhibit "D 3."

LOUIS SCHLESINGER, INC.

10

NEWARK, N. J.

April 4th, 1913.

New Jersey Title Guarantee & Trust Co.,
83 Montgomery Street,
Jersey City, N. J.

Gentlemen: Attention Mr. Evarts.

20

Relative to the Shearer mortgage would advise that Mr. Shearer has arranged to have the mortgage of \$15,000 cover the entire tract as per blue print in your possession, including the four lots which were to be excepted, the house on the four lots making it unnecessary to cross to the north side of Magie Road with your mortgage which northerly property he is now negotiating the sale of.

As regards the guarantees, Mr. Shearer can probably use upwards to 20 policies at such time as he is in a position to give title to the individual plot purchasers. However, inasmuch as up to the present time he has not been in a position to deliver title and for that reason has discouraged purchasers who have solicited him in the matter of obtaining an early conveyance, he is unable to advise us definitely as to how many policies will be required at the time of settlement, and for that reason would like you to quote prices for guarantee policies in lots of 5, 10, 15 and 20. We appreciate that there will be a difference between the cost of 10 policies at the time of settlement of the loan as compared with subsequent lots of 10 policies.

30

40

The writer will telephone your Mr. Evarts about

Exhibit "D 3"

10 10 o'clock tomorrow (Saturday) morning to satisfy himself that the matter has been plainly stated.

Yours very truly,

LOUIS SCHLESINGER, INC.
C. A. Seaman, General Manager.

C. A. S.-S.

20

April 12, 1913.

Mr. W. J. Shearer,
11 Anna Street,
Elizabeth, N. J.

Dear Sir:—

30 Your application for a Straight Loan of \$15,000 for 3 years, property located William and Ralph Streets and Summit Place, Elizabeth, has been accepted, it being understood, however, that for release of any of the property covered by this mortgage, you are to pay \$6.00 per front foot, and for release of the house covered by this mortgage, you are to pay \$2,500.

We will search and guarantee the title covering this tract of land for \$200 and issue future Guaranties on the following basis:

40 \$20 for single Guaranties and \$10 each for five or more Guaranties received at any one time. Any Guaranty in excess of \$1,000—\$5 in addition to the above charge is to be added. This rate holds good for three years.

If the above meets with your approval, will you kindly call at the office of the Company to sign the

Exhibit "D 6"

application for the search, and bring with you a deposit of \$75 on account of same. 10

Yours very truly,

(Signed) D. E. EVARTS,
First Vice-President.

We have forwarded a similar letter to Mr. Clarence A. Seaman.

P. S.—It is, of course, understood that this loan is granted with the distinct understanding that sidewalks are to be laid on all the property in question, as well as the roads being rolled and graded; water, gas, and electricity to be furnished the various purchasers. 20

D. E. EVARTS,
First Vice-President.

Exhibit "D 6." 30

June 2, 1913.

Mr. Daniel E. Evarts,
N. J. Title, Guarantee & Trust Co.,
Jersey City, N. J.

Dear Mr. Evarts: 40

In compliance with your suggestion I am enclosing a list of lots on which mortgage should be drawn, when other matters are satisfactory. Will you kindly send same to the gentlemanly lawyer on the upper floor? I cannot now recall his name. At his suggestion I have today transferred the El Mora Manor lots and house across the street to the Jersey

Exhibit "D 6"

20 Co-operative Realty Company in order that the matter of transfer might be thereby simplified.

Thanking you for your past kindness, I am

WM. J. SHEARER.

Property of Jersey Co-operative Realty Company on which mortgage is to be given to the New Jersey Title Guarantee & Trust Company, together with assignment of other mortgages, which assignment should exclude lots not covered by mortgage for 10 \$20,000, mortgage to be given on 840 lots and plot including house.

1. The following lots at Elizabeth Heights:

Block 9, 1 to 41; Block 10, 1 to 23; Block 11, 1 to 27; Block 12, 1 to 79; Block 13, 1 to 43; Block 14, 1 to 54; Block 15, 1 to 65; Block 16, 1 to 42; Block 17, 1 to 55; Block 18, 1 to 50; Block 19, 1 to 40; Block 20, 1 to 56; Block 21, 1 to 41; Block 22, 1 to 25; Block 23, 1 to 19. Total, 660 lots on Elizabeth

30 Heights.

2. The following lots at El Mora Manor:

Block 1: 1 and 2—11 to 29 inclusive—32 to 36 inclusive—39 to 65 inclusive. Total, 53 lots.

Block 2: 3 to 6 inclusive—9 to 16 inclusive—21 and 22—25 to 50 inclusive—52 to 57 inclusive—62 to 103 inclusive. Total, 88 lots.

Block 3: 11 to 39 inclusive—42 to 47 inclusive. Total, 35 lots.

40 Block 4: 1 and 8. Total, 2 lots.

Block 5: 1 and 2. Total, 2 lots.

Total—180 lots on El Mora Manor.

Elizabeth Heights and El Mora Manor, 840 lots.

3. Plot adjoining Block 23, Elizabeth Heights and described as follows:

Parcel of land containing 12 rooms, slate roof,

Exhibit "D 7"

2½ story frame house. Beginning at the southwest corner of lot number 6, block 23, on Map of Elizabeth Heights, filed in the office of the County Clerk in Elizabeth, New Jersey, running in the easterly direction along the southern boundary of said block 23, 220 feet; thence 50 feet in a southerly direction parallel to Magie Avenue; thence in a southwesterly direction 200 feet, more or less, parallel to the southern boundary of block 23 to Magie Road; thence in a westerly direction parallel with Magie Road, 110 feet, more or less, to the point of beginning.

10

20

Exhibit "D 7."

WM. J. SHEARER,

110 West 34th St., New York.

June 13, 1913. 30

Mr. James E. Wooley,
N. J. Title, Guarantee & Trust Co.,
Jersey City, N. J.

Dear Mr. Woolley:

In accordance with the suggestion of Mr. Evarts I suggest the following 180 lots on El Mora Manor, in place of the 180 lots submitted in my last communication on the subject. You will note that half of these are to the left of blocks number 1, 2 and 3 and half to the right of same.

40

I have seen Mr. Carey who will see to the discharge of the Lis Pendens and a Bargain and Sale Deed from Woodley as you suggested.

The lots which were deeded were all in Block 1 of Elizabeth Heights (see enclosed list) which

Exhibit "D 7"

20 Block is not part of the property to be covered by your mortgage.

Trusting that in the fullness of time if not before, all these matters will be cleared up satisfactorily, I am

Very truly yours,

WM. J. SHEARER.

Lots to be Covered by Mortgage in El Mora Manor.

10

June 13, 1913.

Block 1: 1 to 4—7 and 8—11 to 29—32 to 36—39 to 49—50 to 59. Total, 51.

Block 2: 1 to 6—9 to 16—21 and 22—25 to 33—36 to 40—43 to 50—52 to 59—62 to 87—92 to 95. Total, 76.

Block 3: 1 to 4—7 and 8—11 to 39—42 and 43. Total, 37.

30 Block 4: 1 to 3—8—13 and 14—15 to 18. Total, 10.

Block 5: 1 and 2—5 and 6—7 and 8. Total, 6.
Total—180.

Final—Above is only land guaranteed.

June 13, 1913.

- L. Maynard—Lots 10 and 11.....Block 1
- G. Maynard—Lots 8 and 9Block 1
- 40 Joe Emmerling—Lots 37, 38, 39Block 1
- Paul Babine—Lots 35, 36, 34.....Block 1
- Paul Minaravitch—Lots 50 and 51.....Block 1
- Silas Many—Lots 29, 30, 89, 90.....Block 1
- C. Winters—Lots 48 and 49 Block 1
- A. E. Scott—Lots 14 and 15Block 1
- Carl Foerster—Lots 12 and 13.....Block 1

Exhibit "D 5."

March 9, 1916. 10

My dear Mr. Wooley:

When I borrowed to pay off three mortgages on property here, the three mortgages were left open of record, I think you said as colateral or for some other reason, but I was assured that, in reality, it was the same as your one mortgage being on the property, as release from yours released from all.

Frequently these other mortgages are questioned and I have trouble to explain why they are open of record. 20

On receipt of this, will you kindly write me note which I can show if questioned, so that it will be evident that I paid off these other mortgages?

Thanking you for your courtesy in this and other matters, I am, with high regard,

Sincerely yours,

WM. J. SHEARER. 30

Jersey City, N. J., March 10, 1916.

Mr. William J. Shearer,
110 West 34th St.,
New York City, N. Y.

Dear Sir: 40

Your letter of the 9th inst. received. The other mortgages you mentioned in your letter were assigned to this Company for the purpose of having the money we advanced on the property secured by a prior lien to possible outstanding contracts of sale. The mortgages were of course assigned to this

*Extract Minutes Finance Committee,
April 11, 1913.*

10

Company, and all of the mortgages are held by us to secure the payment of the mortgage debt. It is our custom, as you understand, to execute releases for all of the mortgages when any property is released from the mortgage made direct to this Company, and your total indebtedness to us could not of course exceed the amount of the mortgage made direct to us together with interest and other charges that might accrue thereunder. If any one ques-
20 tions the status of your property, you can refer them to us, whereupon we will acquaint them with any facts in our possession.

Very truly yours,

THE N. J. TITLE GUARANTEE & TRUST CO.
By J. E. Woolley.

30

**Extract Minutes Finance Committee,
April 11, 1913.**

William J. Shearer straight loan, \$15,000. Three years, property William, Ralph Streets and Summit Place, Elizabeth, N. J., with the privilege of releasing the land to be covered by this mortgage upon the payment of \$6 per front foot, also to re-
40 lease the house and lot covered by said mortgage together with the three adjoining lots upon the payment of \$2,500.

I hereby certify that the foregoing is a true copy.

A. C. GREENE, Secretary.

Extract From Minutes Finance Committee, May 23, 1913.

10

William I. Shearer, straight loan, \$5,000. Three years, property 660 lots, Wilson, Conant, Service Streets and Magie Road, Elizabeth Heights, Elizabeth, N. J.

I hereby certify that the foregoing is a true copy.

A. C. GREENE, Secretary.

20

Extract From the Minutes Finance Committee, May 29, 1913.

The request of Mr. William J. Shearer that the loan of \$20,000, to be executed by him to this Company cover 840 lots instead of 900 lots, property Elizabeth Heights, Elizabeth, N. J., provided that the money that would be paid for the release of the 60 lots be expended for the Improvement of the streets, sidewalks, etc, in front of the property to be covered by this Company's mortgage, was upon motion granted.

30

I hereby certify that the foregoing is true copy.

A. C. GREENE, Secretary.

40

Exhibit "E 2."

10

JERSEY CO-OPERATIVE REALTY	}	AGREEMENT. Dated, Sept. 10, 1912.
with		
ALVIN B. McCLELLAND		

20

Agreement for sale of Lots 30, 31, 32 and 33, in Block 3, on "Map of El Mora Manor, Elizabeth, N. J." for \$1,100, payable \$10.00 on the signing and delivery of the contract; \$25.00 on the second Monday of each and every month thereafter, payments to be made within four years from the above date.

30

Contains various provisions, among others, one waiving interest on deferred payments and another reading as follows: "The company guarantees that there shall be no expense to the purchaser for the installation of water mains in the street in front of same, (lots purchased) nor for a sidewalk along such street, nor for gas, nor for the grading of the street, which improvements (if not already made) the Company will make or cause to be made as soon as practicable."

Agreement signed for the Company by William J. Shearer, Jr., Secretary and Treasurer.

NOTE: The provision for improvement is found in all of the contracts offered in evidence in this cause.

40

Exhibit "E 3."

Check vouchers of Alvin B. McClelland for payments made on account of contract, Exhibit "E 2," bearing the following dates and for the following amounts:

10

March 10, 1913.....	\$ 25.00	
April 18, 1913.....	25.00	
June 9, 1913.....	50.00	
Oct. 7, 1913.....	25.00	
Nov. 10, 1913.....	25.00	
Jan. 5, 1913.....	25.00	20
Feb. 9, 1914.....	25.00	
March 9, 1914.....	25.00	
April 13, 1914.....	25.00	

Carried forward \$250.00

May 11, 1914.....	25.00	
June 8, 1914.....	25.00	
July 13, 1914.....	25.00	
Sept. 15, 1914.....	25.00	30
Oct. 13, 1914.....	25.00	
Nov. 9, 1914.....	25.00	
Dec. 14, 1914.....	25.00	
Jan. 10, 1914.....	25.00	
Feb. 15, 1915.....	25.00	
March 8, 1915.....	25.00	
April 12, 1915.....	25.00	
May 10, 1915.....	25.00	
July 12, 1915.....	25.00	
Aug. 17, 1915.....	100.00	40
Oct. 5, 1915.....	50.00	
March 30, 1916.....	25.00	
Sept. 10, 1916.....	100.00	

Exhibit "E 4."

20

JERSEY CO-OPERATIVE REALTY
COMPANY

to

ALVIN B. MCCLELLAND

WARRANTY
DEED, \$1.00,
etc.

Dated, Sept. 20, 1916.
Proved Sept. 20, 1916.
Rec'd, Sept. 20, 1916.
Book 690 of Deeds,
pp. 55, etc.

10

Conveys in the City of Elizabeth, County of
Union, New Jersey, Lots 30, 31, 32 and 33, Block 3,
"Map of El Mora Manor."

Deed contains building restrictions and cove-
nants of warranty.

Exhibit "E 5."

30

JERSEY CO-OPERATIVE REALTY
COMPANY

with

E. D. GOODNOUGH
of Girland, Pa.

AGREEMENT
For Sale of
Property.

Dated, Sept. 10, 1912.

40

Contract for sale of Lots 35 and 36, Block 1,
"Map of El Mora Manor," for \$550, with interest on
unpaid sums, two years from the date thereof, at
5% per annum; \$20.00 payable on signing agree-
ment; \$10.00 or more on second Monday of each
month.

Exhibit "E 6."

Check vouchers of E. D. Goodnough for pay- 10
 ments made on account of contract, exhibit "E 5,"
 bearing the following dates and for the following
 amounts:

September 9, 1912.....	\$ 20.00	
Sept. 12, 1912.....	10.00	
Nov. 4, 1912.....	10.00	
Dec. 9, 1912.....	10.00	
Jan. 13, 1913.....	10.00	
Feb. 10, 1913.....	10.00	20
March 6, 1913.....	10.00	
April 5, 1913.....	10.00	
May 6, 1913.....	10.00	
June 5, 1913.....	10.00	
July 10, 1913.....	10.00	
Aug. 7, 1913.....	10.00	
Sept. 5, 1913.....	10.00	
Oct. 11, 1913.....	10.00	
Nov. 8, 1913.....	10.00	
Dec. 5, 1913.....	10.00	30
Jan. 7, 1914.....	10.00	
Feb. 6, 1914.....	10.00	
March 3, 1914.....	10.00	
April 13, 1914.....	10.00	
May 11, 1914.....	10.00	
June 5, 1914.....	10.00	
July 9, 1914.....	10.00	
Aug. 10, 1914.....	10.00	
Sept. 12, 1914.....	10.00	
Oct. 9, 1914.....	10.00	40
Nov. 11, 1914.....	10.00	
Dec. 12, 1914.....	10.00	
Jan. 12, 1915.....	10.00	
Feb. 3, 1915.....	10.00	
March 11, 1915.....	10.00	
April 9, 1915.....	10.00	
May 7, 1915.....	10.00	

Exhibit "E 7."

20	June 3, 1915.....	10.00
	July 10, 1915.....	10.00
	Aug. 2, 1915.....	10.00
		\$370.00
	Carried forward	\$370.00
	Sept. 6, 1915.....	10.00
	Oct. 9, 1915.....	10.00
	Nov. 8, 1915.....	10.00
	Dec. 9, 1915.....	10.00
10	Jan. 10, 1916.....	10.00
	Feb. 10, 1916.....	10.00
	March 11, 1916.....	10.00
	April 8, 1916.....	10.00
	May 8, 1916.....	10.00
	June 7, 1916.....	10.00
	July 10, 1916.....	10.00
	Aug. 7, 1916.....	10.00
	Aug. 11, 1916.....	10.00
	Oct. 6, 1916.....	10.00
30	Nov. 14, 1916.....	10.00
		\$520.00

Exhibit "E 7."

40	<p style="text-align: center;">JERSEY CO-OPERATIVE REALTY COMPANY</p> <p style="text-align: center;">to</p> <p style="text-align: center;">EDWIN D. GOODNOUGH</p>	<p>WARRANTY DEED. \$1.00 etc. Dated May 1, 1917. Proved May 1, 1917 Retc'd May 15, 1917. Book 705. pages 165.</p>
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Conveys in the City of Elizabeth, Union County,
New Jersey, Lots 35 and 36, Block 1, Map entitled
"Elore Manor, Elizabeth, N. J."

Premises conveyed subject to certain restrictions.

Exhibit "E 8."

JERSEY CO-OPERATIVE REALTY
COMPANY,

with

FRANK E. INCH, of Carbon-
dale, Pa.

WARRANTY
DEED, \$1.00, etc.
Dated, May 1,
1917.
Proved, May 1,
Rec'd May 15,
1917.
Book 705, page
173.

10

AGREEMENT FOR SALE OF PROPERTY.

20

Dated Sept. 16, 1912.

Agreement for sale of Lots 26 and 27, Block 1,
and 20 and 21, Block 3, Map "Elmore Manor" for
\$1,275, with interest on unpaid sums, two years
from date, at 5% per annum; \$40.00 on the sign-
ing and delivery of agreement and \$20.00 or more
on the third Monday of each and every month, full
payment to be made within four years from date. 30

Contract contains special provisions concerning
taxes and delivery of a deed containing general
warranty free from all encumbrances excepting
certain building restrictions.

Contracts signed for the Company by William
J. Shearer, Pres.

40

Exhibit "E 9."

10 Check vouchers of Frank E. Inch for payments made on account of the foregoing contract, Exhibit "E 8," bearing the following dates and for the following amounts:

	Jan.	18, 1913.....	\$ 20.00
	Feb.	19, 1913.....	20.00
	March	18, 1913.....	20.00
	April	19, 1913.....	20.00
20	May	20, 1913.....	20.00
	June	19, 1913.....	20.00
	July	18, 1913.....	20.00
	Sept.	20, 1913.....	20.00
	Oct.	20, 1913.....	20.00
	Nov.	20, 1913.....	20.00
	Dec.	19, 1913.....	20.00
	Jan.	20, 1914.....	20.00
	Feb.	20, 1914.....	20.00
30	March	20, 1914.....	20.00
	April	20, 1914.....	20.00
	June	20, 1914.....	20.00
			\$320.00
	Carried forward,	\$320.00

	June	20, 1914.....	20.00
	July	20, 1914.....	20.00
40	Aug.	20, 1914.....	20.00
	Sept.	19, 1914.....	20.00
	Oct.	19, 1914.....	20.00
	Nov.	23, 1914.....	20.00
	Dec.	19, 1914.....	20.00
	Jan.	20, 1915.....	20.00
	Feb.	20, 1915.....	20.00
	March	20, 1915.....	20.00

Exhibit "E 10."

April	21, 1915.....	20.00	10
May	17, 1915.....	20.00	
June	26, 1915.....	20.00	
July	30, 1915.....	20.00	
Aug.	20, 1915.....	20.00	
Sept.	25, 1915.....	20.00	
Oct.	27, 1915.....	20.00	
Nov.	21, 1915.....	20.00	
Dec.	23, 1915.....	20.00	
Jan.	21, 1916.....	20.00	20
Feb.	21, 1916.....	20.00	
Mar.	21, 1916.....	20.00	
April	20, 1916.....	20.00	
May	27, 1916.....	20.00	
June	3, 1916.....	20.00	
July	13, 1916.....	40.00	
Sept.	15, 1916.....	40.00	
Oct.	25, 1916.....	20.00	
		\$920.00	30

Exhibit "E 10."

JERSEY CO-OPERATIVE REALTY
COMPANY,

to

FRANK E. INCH.

WARRANTY
DEED, \$1.00,
etc.

Dated, May 1, 1917.
Proved, May 1, 1917.
Rec'd. May 15, 1917.
Book 705, page 173.

40

Conveys in the City of Elizabeth, Union County, New Jersey, Lots 26 and 27, Block 1, and Lots 20 and 21, Block 3, Map entitled "Elmora Manor, Elizabeth, N. J."

Deed contains covenants and restrictions relating to nuisances and buildings.

Exhibit "E 12."

10

JERSEY CO-OPERATIVE REALTY
COMPANY,

with

FREDERICK V. PRICE, JR.

CONTRACT for
sale of property.
Dated, Oct. 18,
1912.
Ack'd June 22,
1917.
Recorded, June
22, 1917.
Book 707, pages
172, etc.

20 Agreement to sell Lots 86 and 87, Block 2, Map
of Elmora Manor, for \$650, with interest on unpaid
sums, three years after date at 5% per annum, in
manner following:

\$30.00 upon signing and delivery of contract, and
\$10.00 on the first Monday of each month there-
after, full payment to be made within five years
from date.

30 Agreement contains provisions concerning taxes
and assessments for the delivery of a general war-
ranty deed for the premises freed from all encum-
brances and concerning nuisances and building re-
strictions.

Agreement signed by William J. Shearer, Jr.,
Treasurer.

At the end of the contract there appears the fol-
lowing notations:

Date.	Amount of instalment.	Received.
June 1, 1916,	\$440.00	William J. Shearer, Jr.
40 June 23, 1916,	10.00	W. J. Shearer, Jr.

Exhibit "E 13."

Check vouchers of Elizabeth Automobile Company, F. V. Price, Jr., Treasurer, and F. V. Price, Jr., on account of contract Exhibit "E 12," bearing the following dates and for the following amounts:

December 7, 1912	\$ 30.00	
January 13, 1913	10.00	
August 14, 1913	50.00	
October 22, 1913	20.00	
December 15, 1913	20.00	20
May 25, 1914	10.00	
September 12, 1914	20.00	
	<hr/>	
	\$160.00	
Carried forward	\$160.00	
May 19, 1916	150.00	
July 10, 1914	10.00	
	<hr/>	
	\$320.00	30

Exhibit "D 1."

JERSEY CO-OPERATIVE REALTY COMPANY, to CHARLES A. BIRD.	DEED. \$1.00 and other val. cons. Dated, Feb. 3, 1915. Rec'd Jan. 19, 1916. Book 675, page 213.	40
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Conveys in Elizabeth, Union County, New Jersey, Lots 5 and 6, on Block 2, "Map of Elmora Manor, Elizabeth, N. J."

Subject to building restrictions.

Exhibit "D 1."

20 November 20, 1912, received of Frank E. Inch,
\$20.00 on Lots No. 26 and 27, B. 1, and 20 and 21,
B. 3, "Elmora Manor, Elizabeth, N. J."

\$20.00 Wm. J. SHEARER REALTY COMPANY:
Per R. L. S.

Exhibit "D 2."

10 January 21, 1913, received of Frank E. Inch,
\$20.00 on Lots No. . ., Block No. . ., "Elmora Ma-
nor, Elizabeth, N. J."

\$20.00 WILLIAM J. SHEARER REALTY COM-
PANY, per W. J. S., Jr.

Exhibit "D 3."

30

March 19, 1913.

Mr. Frank E. Inch,
Carbondale, Pa.

Dear Sir:

Your payments on Elmora Manor were as fol-
lows:

40 Sept. \$40.00; Oct. \$20.00; Nov. \$20.00; Dec.
\$20.00; Jan. \$20.00; Mar. \$20.00.

Trusting that this is satisfactory, we are,

Very truly yours,

W. J. SHEARER & SONS,
per W. J. S., Jr.

Exhibit "D 2."

Check vouchers, Charles A. Bird, for payments made on account of property conveyed to him by deed above, exhibit "D 1," bearing the following dates and for the following amounts: 10

Sept. 3, 1912.....	\$ 10.00	
Sept. 9, 1912.....	190.00	
Oct. 1, 1913.....	200.00	
Nov. 23, 1914.....	250.00	
	<hr/>	
	\$650.00	20

Exhibit "D 3."

Check vouchers of Sella Cole for payments made on account of contract to purchase Lots 21 and 22, Block 2, Map of "Elmora Manor," bearing the following dates and for the following amounts:

Oct. 19, 1912.....	\$ 10.00	30
Nov. 18, 1912.....	10.00	
Dec. 16, 1912.....	10.00	
Jan. 20, 1913.....	10.00	
Feb. 17, 1913.....	10.00	
March 17, 1913.....	10.00	
April 21, 1913.....	10.00	
May 19, 1913.....	10.00	
June 18, 1913.....	10.00	
July 21, 1913.....	10.00	40
Sept. 15, 1913.....	20.00	
Oct. 22, 1913.....	10.00	
Nov. 17, 1913.....	10.00	
Dec. 20, 1913.....	10.00	
Feb. 22, 1914.....	10.00	
March 19, 1914.....	10.00	
April 28, 1914.....	10.00	

Exhibits "D 4," "D 5."

20	May 20, 1914.....	10.00
	June 18, 1914.....	10.00
	Aug. 22, 1914.....	10.00
	Sept. 1, 1914.....	10.00
	July 3, 1915.....	10.00
	July 20, 1915.....	10.00
	Aug. 23, 1915.....	10.00
		<hr/>
		\$250.00

10

Exhibit "D 5."

Received of Sella P. Cole Three Hundred & Fifteen Dollars on Lots in Elmora Manor.

Wm. J. Shearer.

30

Exhibit "D 4."

May 7, 1915.

RECEIVED of Sella Cole, Ten Dollars, Payment of property in El Mora.

\$10.00

William J. Shearer, Jr.

40

Exhibit "D 9."**Stipulation.**

10

To avoid producing the following named witnesses before the Court to testify, it is stipulated that said witnesses, who are defendants to the above entitled suit, would testify if called, that up to the dates set opposite their respective names they had no actual notice or knowledge of the mortgages and judgments set forth in the Bill of Complaint in the said cause, nor did they have actual notice or knowledge, nor were they ever told of the existence of liens affecting the lots in which they are respectively interested:

20

Alvin B. McClelland.....January 1, 1917.

Edith S. McClelland..... " " "

Charles W. Shear.....November 1, 1916.

Edwin D. Goodnough.....December 10, 1916.

Alice L. Goodnough..... " "

Frank E. Inch..... " "

Meroe M. Inch..... " "

30

Samuel R. Ogden..... " "

Frederick V. Price, Jr.....January 1, 1917.

SIDNEY W. ELDRIDGE,
Solicitor of Defendants.

COLLINS & CORBIN,
Solicitors of Complainant.

40

NEW JERSEY
Court of Errors and Appeals.

BETWEEN

THE NEW JERSEY TITLE GUARANTEE AND TRUST COMPANY,
A CORPORATION,

Complainant-Respondent,
and

JERSEY CO-OPERATIVE REALTY
COMPANY ET ALS.,

Defendants,

SELLA P. COLE AND OTHERS,

Defendants-Appellants.

*On Appeal
from
Chancery*

Brief of Respondent

This case is before the Court on an appeal from a decree entered in the Court of Chancery, filed September 12, 1918 (p. 74), wherein it was ordered, adjudged and decreed that there is due upon the mortgage of complainant dated June 20, 1913, and recorded in Book 37 of Mortgages for Union County, page 295, &c., the sum of \$20,719.25, and that there is also due to the complainant on its judgment recovered in the New Jersey Supreme Court on September 30, 1916, against Jersey Co-Operative Realty Company the sum of \$9,351.30, and that the amount so declared to be due upon the mortgage of the complainant is a lien upon the whole of the lands and premises described in the bill of complaint except such parts thereof as are excepted in said bill set forth and also such parts as the complainant has released from the lien of its mortgages, and that said judgment is a lien upon

the portions of the mortgaged premises set forth in the said decree. In the Chancery suit answers were filed on behalf of twenty-seven defendants and the larger part of them added counterclaims to their answers, and notice of desire to have encumbrance reported upon was filed on behalf of another. Six of these defendants represented by Mr. Sidney W. Eldridge, to wit, Sella P. Cole, Charles A. Bird, Frederick V. Price, Jr., Alvin B. McClelland, Frank E. Inch and Edwin D. Goodnough, have appealed from the finding of the said decree. No appeal has been taken by any of the remaining answering defendants.

As on this 18th day of March, 1919, when preparing this brief, the "State of the Case" is not before us (not having as yet been served upon us), we are unable to determine whether or not the facts relative to the suit below have been fully stated. Mr. Eldridge for appellants has, however, left with us on this day a copy of the brief which he proposes to file in this Court. From that we find that the statement respecting the Earl and Woodley mortgages assigned to the respondent are substantially correct, except that in said brief the date of the assignment of the Woodley mortgage is given as June 30, 1913, whereas the correct date is June 21, 1913, it having been assigned at the same time as the Earl mortgage. His statement respecting the \$20,000 mortgage of the respondent company is correct. This mortgage is the principal one in contest, inasmuch as we contend that the Earl and Woodley mortgages are merged in it as one debt, the \$20,000 loaned by the respondent company to the Jersey Co. Operative Realty Company having been in part applied to the Earl and Woodley mortgages and an assignment of them taken on June 21, 1913. This mortgage of \$20,000 was given by

the Jersey Co Operative Realty Company to the respondent company on June 30, 1913, to secure payment of \$20,000 and interest.

The allegation of the appellants relative to the two releases given by the respondent company is correct, as also the remainder of the allegations of fact, except that this respondent denies that the Advisory Master found that the two releases above mentioned given by it "were made without consideration," and insists that what he did find was that they were made without any payment in money. We have no copy of his opinion, but ask this Court to refer to it in the "State of the Case" for his exact language.

Taking up the "Allegations of Error," set forth in the appellant's brief, in the order in which they appear therein, respondent says, in answer to the first (designated "a" in the brief), that it did not have any notice or knowledge of the deeds and contracts of the appellants when it made the loan, secured by its mortgage of \$20,000, dated June 30, 1913, and recorded July 5 of the same year, and when it recovered its judgment in the New Jersey Supreme Court, set forth in the bill of complaint, on September 30, 1916, except that it had knowledge of the recording of the deeds of the appellants Bird and McClelland recorded after its mortgage but before its judgment.

The answers and counterclaims of the appellants are practically the same for each, they having been drawn by Mr. Elridge. They all contend that the respondent company, on June 30, 1913, when the mortgage for \$20,000 was made to it by the Jersey Co Operative Realty Company, had knowledge of their respective claims under contracts, for sale of lots on the El Mora Manor Map, and that the two releases given by the respondent company, dated

July 3, 1913, and recorded August 23, 1913, in Book 27 of Releases for Union County, on pages 492 and 494, respectively, releasing the lots and plot, excepted in the \$20,000 mortgage, from the lien thereof, were made with full knowledge of their claims and given without consideration, and that the value of the lands so released should be charged against the amount owing on respondent's mortgage.

Taking them in the order of their names as they appear in the petition of appeal, their claims and the evidence regarding them appears to be as follows:

SELLA P. COLE: Her counterclaim sets forth agreement dated October 21, 1912, with Jersey Co-Operative Realty Company for sale to her of lots 21 and 22, block 2, El Mora Manor Map; also new agreement made with her by the same company, dated March 3, 1915, for the purchase of the same lots, and that the latter contract was performed about October, 1915, at which time the company delivered to her a deed which she alleges was defective.

The evidence in the case (pp. 140 to 144) regarding this appellant shows that her first contract lapsed by failure to comply with its provisions, and for that reason a new one was entered into. Mr. Shearer testified that the reason his company did not tender her a full covenant and warranty deed for the lots was because it was financially unable to obtain releases from the mortgages, and that he offered her two lots adjoining or nearby of equal value and size, which were unencumbered, and she agreed to accept these two lots, but her counsel, Mr. Elridge, advised her against so doing. We contend that her alleged contract of October 21, 1912, became null and void by failure to live up to its requirements, and that she must stand on the

contract dated March 3, 1913, made nearly eight months after the \$20,000 mortgage of respondent had been recorded. Neither of her contracts was recorded.

CHARLES A. BIRD: This appellant sets forth, in his answer and counterclaim, an agreement dated September 12, 1912, with Jersey Co-Operative Realty Company for sale to him of lots 5 and 6, block 2, El Mora Manor Map, for \$65 , and conveyance to him of those lots by deed, dated February 3, 1915, recorded January 19, 1916. His contract was not recorded and his deed was not recorded until upwards of two and a half years after the recording of respondent's \$20,000 mortgage.

FREDERICK V. PRICE, Jr.: This appellant, in his answer and counterclaim, sets forth contract, dated October 18, 1912, with Jersey Co-Operative Realty Company for sale to him of lots 86 and 87, block 2, El Mora Manor Map, for \$650, and record thereof on June 22, 1917, alleges that he has paid \$450 on account. His contract was not recorded and his deed was no recorded until nearly four years after respondent's \$20,000 mortgage had been placed on record.

ALVIN B. McCLELLAND: This appellant, in his answer and counterclaim, sets forth contract, dated September 10, 1912, with Jersey Co Operative Realty Company for sale to him of lots 30, 31, 32 and 33, block 3, El Mora Manor Map, for \$1,100, and conveyance of those lots to him by deed, dated September 20, 1916. His contract was not recorded. His deed was recorded September 20, 1916, upwards of three years after respondent's \$20,000 mortgage had been placed on record. Although his contract is dated September 10, 1912, the first payment that appears to have been made on it was on March 10, 1913.

FRANK E. INCH: In his answer and counterclaim this appellant sets forth contract dated September 16, 1912, with Jersey Co-Operative Realty Company for sale to him of lots 26 and 27, block 1 and lots 20 and 21, block 3, El Mora Manor Map, for \$1,275, and that the lots were conveyed to him May 1, 1917. His contract was not recorded, but his deed was recorded May 15, 1917, nearly four years after the recording of respondent's \$20,000 mortgage. It does not appear in the case just when his contract was delivered, but the first payment appears to have been made January 18, 1913, four months after the date of the contract.

EDWIN D. GOODNOUGH: In his answer and counterclaim this appellant sets forth contract dated September 10, 1912, with Jersey Co Operative Realty Company for sale to him of lots 35 and 36, block 1, El Mora Manor Map, for \$550, and conveyance of those lots to him by deed dated May 1, 1917. His contract was not recorded. His deed was recorded May 15, 1917, nearly four years after respondent's \$20,000 mortgage had been placed on record.

There is nothing in the evidence that clearly shows that the respondent company had notice of the said agreements between the appellants and the Jersey Co-operative Realty Company. It does appear that Clarence A. Seaman, who negotiated the \$20,000.00 loan with the respondent, knew that the applicant had been or was about to sell lots on the installment plan and that he was the agent for the Jersey Co-operative Realty Company and not the agent of the respondent company. It nowhere appears that Mr. Seaman told Mr. Evarts, First Vice President of the respondent company, Mr. Woolley, one of its title examiners, or Mr. Douglas who closed the matter of the loan, anything about

7

outstanding agreements. The list of 180 lots on the El Mora Manor Map, forming part of Exhibit D 7, which appears to have been sent to Mr. Woolley June 13, 1913, by Mr. Shearer, included *all* the lots of the appellants and also of all the other answering defendants in the cause and also of the one who gave notice of desire to have his encumbrance reported upon. Shearer admits that he cannot swear that he said anything about these agreements (case, p. 196), and Seaman does not remember to have said anything definitely about them (case, pp. 232 3). Mr. Woolley testified that he did not know anything about any outstanding contracts and that the assignments of the prior mortgages were taken as a protection to the company and to fortify its \$20,000 mortgage against any possible intervening claim or encumbrance. While Mr. Woolley admits that he understood the Co-Operative Company intended to sell lots on the installment plan and so incorporated the release clause in the \$20,000 mortgage, yet we contend that there is no evidence that he knew of the existence of outstanding contracts at the time of the making and delivery of the \$20,000 mortgage or that Mr. Evarts, First Vice President of the company, or any of its officers, knew anything about such agreements at that time. Nothing whatever appears to have been said about outstanding agreements either to Mr. Evarts or to Mr. Throckmorton when they inspected the lands in company with Mr. Seaman and Mr. Shearer at the time of the application for the loan. At the time the title to the lands was examined and at the time of the giving and recording of the \$20,000 mortgage to respondent, no outstanding agreements whatever appeared of record. We know of no rule which requires a mortgagee loaning money upon vacant lands and finding record title clear, to make inquiries as to the *possibility* of outstanding unrecorded agree-

ments. As to Mr. Woolley's letter to Mr. Shearer of March 10, 1916 (Ex. D 5), in which he states that the two prior mortgages (Earl and Woodley) assigned to the respondent company were so assigned for the purpose of having the money advanced by the company on the property secured by a prior lien to possible outstanding contracts to sell, we submit this letter can have no bearing on this case. In the first place it was written more than eight months after the \$20,000 mortgage had been given and recorded, and, in the second place, Mr. Woolley, as a clerk in the employ of the respondent company, could not bind it by such a statement made eight months after the loan had been granted and the mortgage recorded.

The property on the Elizabeth Heights Map in the Township of Union, Union County, New Jersey, covered by the \$20,000 mortgage of respondent, cannot be brought in question by the appellants, for the reason that none of them purchased lots on that map, but all on the Map of El Mora Manor in the City of Elizabeth.

Counsel for appellants asserts in his brief that Shearer communicated knowledge of lots sold and for what consideration to Mr. Evarts and the officers of the respondent. We submit that there is nothing in the testimony of Mr. Shearer or Mr. Evarts or any other officer of the respondent company bearing out this contention. He states further that Shearer probably showed Seaman the contracts themselves for lots sold. There is no evidence in this case that any contracts for lots alleged to have been sold on the El Mora Manor map were shown or spoken of by Shearer or Seaman to the officers of the company. The conversations and correspondence between Seaman and Shearer, or any understanding between them, cannot possibly effect the

respondent company, and the Advisory Master frequently so ruled in the course of the hearings.

Counsel tries hard to convince the Court that the respondent company had knowledge of the outstanding contracts of the appellants, but the evidence in the case fails to disclose any such knowledge on the part of the respondent. The witness, Woolley, who is one of the title examiners for the respondent (and not the title officer, as counsel alleges in his brief—the title officer at the time and now being Mr. Howard R. Cruse), speaks of knowledge of contracts affecting Elizabeth Heights property but not of any affecting the property included in the respondent's mortgage (p. 175). On cross-examination Mr. Woolley was asked (p. 173-4):

“Q. Was there ever anything said to you about the “outstanding contracts that Inch or Goodnough or “McClelland or Price or Park or Reilly or others “were interested in?

“A. No, none of them.” and again—

“Q. And you are quite sure that nothing was ever said to you by Mr. Shearer or anyone else about these outstanding contracts?

“A. There was no positive statement made except what Mr. Seaman said: he suggested that we take assignments of these “*contracts*.”

(This word “contracts” is evidently a mistake of the reporter. The word should be “mortgages.”

On page 175 the witness is asked:

“Q. You have testified to some contracts being left with you by Mr. Seaman or Mr. Shearer, I forget which. I show you six contracts and ask you if these are the documents you refer to?

“A. Yes, sir, these are the documents I refer to.

“Q. The lands described in those contracts do not constitute any part of the property covered by the mortgage?

“A. No, they do not.

“Q. And no other contracts were left with you other than those six?

“A. No, sir; no other contracts were left with me other than those six.

“Q. And nothing was said by Mr. Shearer to you about any others?

“A. No, sir.”

The six contracts referred to were marked in the case and it is not contended that they affect any part of the lands covered by the \$20,000 mortgage. It is quite clear from the testimony of all the witnesses that no other contracts were shown to any of the officers or appraisers of the respondent company, to Mr. Woolley, its title examiner, or to Mr. Douglas who closed the matter. Of course, the respondent company understood that the Jersey Co-Operative Realty Company intended to make sale of the mortgaged property in lots, and for that reason the release provision was inserted in the \$20,000 mortgage and a number of releases afterwards given under it. This, however, does not indicate knowledge of the outstanding contracts of the appellants or of those of any other defendants in the suit. The fact that Mr. Shearer omitted to bring any contracts with him when applying for the loan substantiates our contention that he gave no notice of the existence of any such contracts and it certainly was not incumbent on the respondent company to make inquiries as to outstanding contracts on vacant lands having no evidence of possession, especially as there was not a single one of record to give any intimation that such contracts were in existence. Application was made to the company

for the loan of \$20,000, the property inspected by the appraisers, the loan approved and examination made of the title. It has not been shown that the officers of the company had any knowledge of the existence of outstanding contracts and the fact that sales were made by the Jersey Co Operative Realty Company after the giving of the \$20,000 mortgage does not of necessity imply that the Jersey Co-Operative Realty Company had theretofore been engaged in selling some of the mortgaged lands on the installment plan. The conclusion of counsel that it became the duty of the respondent company to make its rights known to the purchasers assumes a state of facts which we claim has not been shown to exist. Had Mr. Shearer or Mr. Seaman presented to an officer of the respondent company or even to Mr. Woolley, its title examiner, a list of the persons having outstanding contracts, it might then certainly have become the duty of the respondent to inquire into the rights of these contract holders. The statement that the respondent company on its own initiative bought the two prior mortgages without consulting the mortgagors, is inaccurate. One of the letters in the case of Mr. Shearer (Ex. D 5) refers to the assignments and he was instrumental in obtaining them. In any event, the company had a right to purchase them, and as Mr. Shearer, maker of the Earl mortgage, and Mr. Shearer and the Jersey Co-Operative Realty Company, makers of the Woodley mortgage, informed the complainant of the existence of these mortgages, it was a matter of indifference to them whether or not respondent purchased them.

The statement of counsel in his brief that respondent company knew that of the 180 lots offered by Mr. Shearer as security for its mortgage, 58 were affected by contracts, is not borne out

by any evidence in the case. This is one of the many conclusions or constructions of the testimony by counsel for the appellants which is not warranted by the evidence. The respondent company had a right to rely upon the statements made in the application for the loan by Mr. Shearer, president of the Jersey Co-Operative Realty Company (Ex. C 4), which application was signed by him. In response to the question as to whether the property is encumbered, his written answer is, "Three mortgages, one of \$4,500, one of \$4,000, and one of \$10,000." In answer to the question, "Objections to the title, known or rumored," his answer is, "None. Restrictions in deeds by owner;" and in answer to question 13, "Unrecorded deeds, agreements, adverse claims and interest or secured trust, known or rumored to exist," he answered "None." Counsel for appellants attempts to argue that this application was not for a mortgage loan but for a guaranty. It distinctly states in answer to question that the application is "Mortgage to this company for \$20,000."

Referring to the letter to the respondent company of witness, C. A. Seaman, of March 25, 1913 (Ex. D 4), which counsel for the appellants seems to look upon as his trump card, we submit that it does not bear out his contention that under it the respondent company had full notice of the appellant's outstanding contracts. The letter is vague and indefinite, in that it does not specify the 130 lots that were under contract, or the persons to whom the Jersey Co Operative Realty Company contracted to sell them. It certainly does not amount to a notice to prevent a mortgage being given on the appellants' lots with the rest of the property, but, on the contrary, the plain import of the letter is that they are to be included in the

mortgage and that the parties holding contracts will be protected by the release clause contained in the mortgage on payment of the sum provided therein. The respondent company certainly did not have any notice from this letter requiring it to look up the 130 lot owners and give them notice of its mortgage.

Commenting on the testimony of the various witnesses in this cause, it appears that that of William J. Shearer, Sr., relates in its first installment to the Elizabeth Heights property, in which the appellants are not concerned. Considerable is said about improvements made after the mortgage to respondent company (pp. 110-119). He admits that these improvements were not made in 1913 (p. 119), and that he does not think he set forth a statement of improvements when he applied for the mortgage loan (p. 123); also says that there are no improvements on the Elizabeth Heights parcel, except a barn (p. 124-5) about forty or fifty years old, and that there is a house there as old as the barn. He says that the houses on the El Mora Manor lots were erected in the summer of 1913 or 1914 (p. 125).

The witness, Sella P. Cole, testifies that it was in March, 1914, that Shearer tore up her original contract and she gave him \$60 (p. 143). The greater part of her checks given in payment on her contract are subsequent to the date of respondent's mortgage (p. 144).

The testimony of Sidney W. Eldridge is not pertinent to the issues, as there is nothing in it to show that his client, Mrs. Sella P. Cole, was deceived or wronged in any way by the respondent company, but, if wronged or deceived at all, it was by Mr. Shearer.

The testimony of Edward W. Pharis relates to

values merely, the object sought being to charge the respondent company for the two releases given by it of the lots excepted in its mortgage. Further on he gives testimony as to what, in his opinion, would be the best manner of sale.

From the testimony of William J. Shearer, Jr. (recalled) it appears "there were a good many contracts that fell down," including that of the appellants Frederick P. Price, Jr. (p. 158) and McClelland (p. 159), and that he knew of the contracts of the appellants Bird & Cole (p. 160). From this witness' testimony, it appears that the appellant Bird paid \$330 on his contract and that such contract had lapsed by failure to keep up payments; that the appellant McClelland contracted to pay \$1 100 and "fell down on his contract" (p. 159); that the contract of the appellant Goodnough was in the sum of \$1,250 and that of appellant Inch \$1,275. Neither of these contracts was acknowledged. The appellant Price agreed to pay \$650 and had paid \$450. Witness says that his contract lapsed and that new contract was furnished (p. 158) and that the last payment was made June 23, 1916. The original contract was not produced (p. 158). No testimony of this witness was offered as to the contract of the appellant Sella P. Cole.

The testimony of the witness Clark McK. Whittemore is devoted to the value of the mortgaged lots and the suggested order of sale, and has little, if any, bearing upon the issues before this Court.

Portions of the testimony of the witness Woolley have heretofore been commented upon. He states that the mortgages of Earl and Woodley were assigned to respondent company at the suggestion of William J. Shearer "so as to get ahead of any possible outstanding contracts" (p. 171). He testifies that he searched the title before the assign-

ments were delivered and found there were no recorded contracts (p. 172) and that he does not recall that Shearer told him any sales had been made (p. 172). Asked why the company's mortgage would not be sufficient security against unrecorded contracts of which it had no knowledge, he says: "Because the unrecorded contracts might have been made since the execution of the mortgage and that is why we took assignments of them." It is evident from Mr. Woolley's testimony that he understood the property was to be sold in lots by the El Mora Manor Map, but it nowhere appears in his testimony or that of any other witness that he was informed of any outstanding contracts affecting the property mortgaged to the respondent company.

The testimony of Mr. Daniel E. Evarts (pp. 180 to 186) confirms that of Mr. Woolley, Mr. Throckmorton and Mr. Douglas, that no mention was made of outstanding contracts of appellants or any other person affecting the mortgaged premises.

William J. Shearer (recalled) says (p. 189) that he understood the prior mortgages were left open of record; admits that the lots excepted in the mortgage were under contract of sale (p. 190) and admits that he submitted the list of lots to be omitted from the \$20,000 mortgage to Mr. Evarts (p. 191); says (p. 196) that on making the application for the \$20,000 loan he told Mr. Evarts the number of lots and values, but could not swear that anything was said about selling lots on contract. Does not remember speaking to Mr. Woolley about any lots affected by contracts (p. 198), and that he does not recall speaking to anybody connected with the respondent company about them, and does not think he took the contracts with him to the respondent company (p. 198); says that he mentioned

to Mr. Evarts his efforts to make sale of the lots, but this was after the money was advanced on the \$20,000 mortgage. Admits that he cannot say that he told Mr. Evarts of any sales prior to or at the time of the making of the \$20,000 mortgage (p. 100). Admits that no mention was made of contracts or agreements in his written application for the loan, and

that in answer to the question on that application: "Agreement to sell, if so, between whom," his answer was: "No, owner's title;" and that he never mentioned any agreements in any other memorandum of any kind (p. 204). Remainder of this witness' testimony is immaterial and affects the Elizabeth Heights property only.

Mr. James B. Throckmorton, director and member of finance committee of the respondent company, in answer to the question (p. 222): "You knew that Mr Shearer and his company were engaged in selling lots on installments?" replied: "That is what he intended to do." Could not say that he knew that Shearer had actually made sales and would not say that no statement was made that Shearer had made sales (p. 222). He does not think he knew when he appraised the properties that Shearer sold lots on installment contracts; says he went there to appraise the properties (p. 223); that Shearer did not produce any contracts and he does not recall any conversation regarding them (p. 223). We submit that this witnesses' understanding that the Jersey Co-Operative Realty Company intended to engage in sale of the lots on the installment plan does not in any way indicate knowledge of the existence of outstanding contracts.

When this case was heard before the Advisory Master, counsel for the respondent company read a statement relative to the history of the case which

had been prepared for the use of the Advisory Master. Counsel for the appellants has seized upon a portion of this statement and incorporated it in the "State of the Case" as though it were a part of the evidence in the case, in the following manner:

"(p. 232). The witness, Charles A. Seaman, being under examination by Mr. Eldridge.

"Q. And you heard Mr. Hughes read a statement to the Court: he said, 'that Shearer made his first negotiations for the loan through Clarence A. Seaman, then General Manager of Louis Schlesinger, Inc., of Newark, N. J. He showed Mr. Seaman maps and plans of the El Mora and Elizabeth Heights tracts and stated in a general way that the Jersey Co-Operative Realty Company had made sale of a number of lots by written agreements on the installment plan but that deeds had not been given, and without stating to whom or for what properties such contracts or agreements had been made or given or furnishing any list thereof, etc,

"A. Yes, sir.

"Q. Is that a correct statement of the facts?

"Mr. HUGHES—I object.

"THE MASTER—I will sustain the objection; I do not think it is admissible.

"Question withdrawn."

Clearly the recited statement of respondents' counsel was not evidential.

The sworn testimony in the case is the evidence, not remarks made by counsel, correct or incorrect. The statement prepared for the Advisory Master is very voluminous and was prepared merely to aid the Court, and probably many statements made therein were not supported by the evidence or were

contradicted by it. At all events, even had it been made a part of the record, the portion quoted does not prove that the respondent company had knowledge of outstanding contracts, but only that Mr. Seaman had.

As the main question on this appeal is whether or not the respondent company had notice of the claims of the appellants at the time of the taking of its \$20,000 mortgage, and that if it had, the value of the lots excepted from its mortgage should be ascertained and credited thereon, we submit that the rule is laid down in 27 Cyc., page 1372, as follows:

“Where a mortgagee with notice of several successive alienations of parts of the mortgaged premises, releases that part which is primarily liable in equity, for the payment of the mortgage debt, he cannot be permitted to charge the other portions of the premises with the payment of the mortgage without deducting from the amount due the value of the part released. *But this rule does not apply where he makes the release in good faith and without knowledge of the equities of the parties nor where the portion released was the first sold and therefore the last to be liable.*”

The leading Court of Errors and Appeals case of *Hoy vs. Bramhall* (19 N. J. Eq., p. 563), holds as follows (syllabus, sec. 5):

“Where a prior mortgagee, with notice of several successive alienations of parts of mortgaged premises, releases that part which in equity is primarily liable for the payment of his mortgage debt, he will not be permitted to charge other portions with the payment of his mortgage without deducting from the amount due the value of the part released.

“The notice of such subsequent alienation or
 “encumbrance may be actual or constructive,
 “but the recording of a second deed or mort-
 “gage will not operate as constructive notice
 “to a prior mortgagee.”

On page 572 of this case the Court of Errors and Appeals refers to the case of *Jones v. Smith*, 1 Hare, 43, as follows:

“Vice Chancellor Wigram resolves the cases
 “in which constructive notice is estab-
 “lished into two classes: First, cases in
 “which the party charged has had actual
 “notice that the property in dispute was
 “in fact charged, encumbered or in
 “some way affected, and the Court has
 “thereupon bound him with construc-
 “tive notice of facts and instruments to
 “the knowledge of which he would have
 “been led by an inquiry after the charge,
 “encumbrance or other circumstance
 “affecting the property of which he had
 “actual notice; and secondly, cases in
 “which the Court has been satisfied
 “from the evidence before it *that the*
 “*party charged had designedly abstained*
 “*from inquiry for the very purpose of*
 “*avoiding notice.*”

This English case was cited with evident approval by our Court of Errors and Appeals, and we contend that complainant does not come within either of the two classes above mentioned. We submit that the evidence does not show that the complainant had “actual notice that the property in dispute “was in fact charged, encumbered or in some way “affected,” and certainly it cannot be charged with having designedly abstained from inquiry.

See also *Gaskill v. Sine*, 13 N. J. Eq., 400.

The numerous cases other than that of *Hoy vs. Bramhall* cited by counsel relative to what constitutes notice, do not apply to this case, our contention being that *no notice*, actual or constructive, was given to the respondent of the outstanding contracts of the appellants. After concluding his citations, counsel says in his brief:

“The precise question for this Court to determine is whether the mortgagee, knowing that part of the mortgaged premises is affected by contracts of sale, and who, with such knowledge, fails to make reasonable inquiry to ascertain what part is so affected, and in whose favor, can now claim a priority over such contracts,” &c.

This sentence is merely a conclusion on the part of counsel that respondent company did know, whereas we insist that it did not know and that the evidence does not show that it had such knowledge. Counsel, a little further on in his brief, sounds the true keynote to his clients' contentions, when he says: “The selling company is insolvent, its representative William J. Shearer is in bankruptcy, and the decision of this Court will be a matter of great concern to many individuals whose circumstances are such that they must resort to installment contracts when purchasing real estate.” In effect, this means that the respondent company must be penalized for the folly and stupidity of the appellants and other contract holders who simply accepted the word of the officers of the Jersey Co Operative Realty Company without question and made no attempt to ascertain whether the property contracted to be sold to them was or was not encumbered. They realize that they cannot make the bankrupt company pay and so resort to this proceeding to see if they cannot make the respondent com-

pany do so. It is the old, old story of persons buying cheap lots on the installment plan and afterwards learning that a blanket mortgage covering the property has been on record for a number of years. Counsel contends that the record of the \$20,000 mortgage was not notice to the appellants. There may be some force in this contention as to chattle mortgage, but only then to such payments on the contracts of the appellants as had been made up to the time of the recording of it viz.: July 5, 1913, or the recording of the two releases, August 13, 1913. These contract holders then certainly became charged with notice of the record of the \$20,000 mortgage and should have made payments to the respondent and not to the Jersey Co-Operative Realty Company. The evidence shows that a considerable part of the payments by the appellants was made after July 5, 1913. Apart from this, however, the appellants and all other contract holders were certainly chargeable with notice of the record of the Woodley mortgage, assigned to complainant and forming part of its \$20,000.00 mortgaged debt, dated December 24, 1908, and recorded December 26, 1908, in Book 25 of Mortgages for Union County, page 395. This mortgage embraces the whole of the El Mora Manor tract of 17,247 acres, without any exceptions, and of course includes all the lots described in the contracts of the appellants. None of these contracts was made before the year 1912, almost four years after the Woodley mortgage had been recorded. Mr. Greene in testifying to the application or disbursement of the \$20,000 loan showed the following: 1913.

July 29 Paid to Richard S. Earl, Executor of Phebe O. Earl, the whole of principal and interest owing on the Earl mortgage .	\$4,548.00
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July 29	Paid to Mutual Life Insurance Co. of N. Y. balance of principal and interest owing on its mortgage of \$10,000	4,100.83
“ “	Paid Myra S. Woodley, in full for principal and interest on his mortgage	7,655.87
	Retained by Company for search fees and expenses admitted to be due and owing to it in relation to examination of title	278.50
	Paid Jersey Co-Operative Realty Co., balance of loan	3,416.80
		<hr/>
		\$20,000.00

He also testified as to the releases given under the release clause of the \$20,000 mortgage and the amounts paid for same as follows:

Lots 3, 4, 82 and 83, block 2, “El Mora Manor” for	\$475.00
Also lots 7 and 8, block 5, same map, for	250.00
Also lots 1, 2 and 3, block 23, “Map of Elizabeth Heights” for	300.00
Also lots 24 and 25, block 21, “Map of Elizabeth Heights” for	200.00
Also lots 58 and 59, block 2, “El Mora Manor Map”	250.00
Also lots 19, 20 and 21, block 1, “El Mora Manor Map”	375.00
Also lots 22 and 23, block 1, “El Mora Manor Map”	250.00

making a total of \$2,100.00
and that the balance of the debt remaining unpaid was \$17,900.00 besides interest.

As shown by Mr. Greene's testimony, the respondent company paid Myra S. Woodley in full for principal and interest on his mortgage on taking the assignment of it on June 21, 1913, the sum of \$7,655.87. It is absurd to contend that this mortgage, at all events, was not notice to these appellants and other contract holders.

The reasoning throughout this brief relative to the question of notice and to the lien of the complainant's mortgages, applies also to its judgment recovered September 30, 1916, in the New Jersey Supreme Court, as to all lots on the El Mora Manor tract conveyed after that date, and it was so decreed. Those which were conveyed by deeds duly recorded prior to that date are excepted in the decree and included in this exception are lots 5 and 6, block 2 El Mora Manor Map, of the appellant Bird and lots 30, 31, 32 and 33, block 3, same map, of the appellant McClelland. We contend that the lots of the other appellants are subject to the lien of the judgment, as established by the final decree as well as to the mortgage of the respondent.

We do not deem it necessary to go into the question of the value of the lands excepted from the \$20,000 mortgage of the respondent and released by it, contending, as we do, that they are subject to the lien of respondent's mortgage debt and also to the lien of its judgment, except as qualified above as to the appellants, Bird and McClelland. The valuations placed upon the excepted lots by the witnesses for the appellants are excessive and largely guess work, and, in any event, we assume that this Court, if entertaining the contention of the appellants on this point, as contended in their brief, would refer the question back to the Court of Chancery.

Respecting the order of sale of the mortgaged premises, two hearings were had before the Advisory

Master on the settlement of the decree and suggestions as to the manner of sale were made by Mr. Eldridge, solicitor for appellants, Mr. John K. English, solicitor for others of the answering defendants, and by Clark McK. Whittemore. The suggestions made were adopted, the respondent company being perfectly willing to have sale decreed in any way which could possibly be of benefit to any of the contract holders. Mr. Whittemore made up a list of the lots on the El Mora Manor Map, and also on the Elizabeth Heights Map, and his suggestions as to method of sale were followed in the decree. Mr. Eldridge was present on both these hearings and made no objection to the method arrived at. He does not now suggest any better method, and we contend that the one adopted in the decree is for the best interest of all the parties.

We do not think that the accusations of bad faith on the part of the respondent company and the attacks upon the veracity of its officers and of its other witnesses in the cause, is deserving of consideration. The reputation of the company and its officers is of the highest, and counsel's attack upon them is deserving of reprobation.

It is respectfully submitted that the decree as made is in accordance with equity and should be affirmed.

COLLINS & CORBIN,
Of Counsel with Respondent.

NOTE—Since preparing this brief and placing the greater part of it in the hands of the printer, we have, on this March 20, 1919, received from counsel for appellants a galley proof of the "State of the Case," and, on receipt of it, made the references to the pages in the case in the galley proof of our brief as are hereinabove contained.

C. & C.

BOOK

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THE UNIVERSITY OF CHICAGO



Bound

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NEW JERSEY
COURT OF ERRORS AND APPEALS

NEW JERSEY TITLE GUARANTEE
AND TRUST COMPANY,
Complainant-Respondent,

and

JERSEY CO-OPERATIVE REALTY
COMPANY, et als.,
Defendants-Appellants.

ON APPEAL.

BRIEF FOR APPELLANTS.

Statement of Case.

The Bill in this case was filed to foreclose three mortgages. The first made by William J. Shearer to Phoebe O. Earl, dated October 29, 1906, to secure the payment of \$4,500, in five years, covering 17.247 acres of land in Elizabeth, which was subsequently laid out in Lots and Blocks and delineated on a Map entitled "El Mora Manor, Elizabeth, N. J.," and which tract will be hereafter referred to as "El Mora Manor."

The second made by William J. Shearer and wife and Jersey Co-operative Realty Company to Myra S. Woodley, dated, December 24, 1908, to secure the payment of \$10,000 in three years covering "El Mora Manor" and a tract of 48 acres, which was afterwards laid out into Lots and Blocks, which were delineated upon a Map entitled "Map of Elizabeth Heights, Elizabeth, N. J.," which last mentioned tract will be hereafter referred to as "Elizabeth Heights;" and a third mortgage made by Jersey Co-operative Realty Company to the Complainant, dated June 30, 1913, to secure the payment

of \$20,000 in three years, covering "El Mora Manor" and "Elizabeth Heights" with the exception of 72 lots on the "El Mora Manor" Map and a tract forming part of "Elizabeth Heights," which exceptions are described in paragraph 13 of the Bill of Complaint (Case, p. 13-14-15).

The first and second mortgages were acquired by the Complainant under assignments thereof, one transferring the Earl mortgage, dated June 21, 1913, and the other the Woodley mortgage, dated June 30, 1913.

By two releases, bearing date July 3, 1913, the Complainants released from its first and second mortgages those parts of the mortgaged premises excepted from the lien of the third mortgage.

The Appellants purchased from Jersey Co-operative Realty Company several lots of land forming a part of "El Mora Manor," under written contracts, providing for monthly installment payments on account of the purchase price. All of their contracts antedate the Complainant's third mortgage, but none of the contracts was recorded before the date thereof. Deeds have been delivered to some of the Appellants for the lots purchased by them (See Exhibits E-2, E-4, E-5, E-7, E-8, E-12, D-1, Case. pages 264-266, 268, 269, 272, 273 and testimony Charles A. Bird, p. 134, and Sella P. Cole, p. 140-143).

All of Complainant's mortgages secure the same debt, assignments of the first and second having been taken, according to the testimony, for the purpose of cutting out possible outstanding contracts affecting the property that the third mortgage was intended to cover (Case, p. 171-174 and Exhibit D-5, p. 261).

Complainant claims also, under a judgment recovered on September 30, 1916, against Jersey Co-operative Realty Company and William J. Shearer, in the Supreme Court for \$8,404.45 damages and costs, under which execution was issued and a levy

made, October 5, 1916, on the mortgaged premises (Exhibit C-9, p. 252).

The Appellants filed answers and counterclaims in the foreclosure suit in which they set forth their respective contracts and deeds and charge that when the Complainant advanced the moneys secured by its three mortgages, it had knowledge or notice of their respective contracts and of their rights in the premises proposed to be mortgaged and that therefore the third mortgage is subject to such contracts and the lots of those who have received deeds are free of this mortgage. They also charge that when the Complainant released a part of the mortgaged premises from the lien of its first and second mortgages, it did so with full knowledge or notice of the rights of the Appellants under their contracts, and without consideration, and that therefore it should credit on its first and second mortgages the reasonable value of the released parts as of the time the releases were given.

It is also charged that the Complainant's judgment was recovered with full knowledge or notice of the rights of the various Appellants (Counterclaims, Case, p. 37 to 58).

Releases recite a consideration of one dollar, and no proof was offered at the hearing that a valuable consideration was received. nothing was credited on the mortgages for such releases and the Master found that they were made without consideration (Case, p. 69, Opinion Master).

The Complainant, however, denies that it had any knowledge or notice of the contracts and deeds of the Appellants and that the premises released are of the value alleged by the Appellants (Replikations Case, p. 56 to 68).

In their counterclaim the Appellants pray for a marshalling of assets on a sale of the mortgaged premises in the manner therein specified (See Counterclaim, Frank E. Inch et al. and Frederick V. Price, Jr., Case, p. 42 to 44 and 47).

Allegations of Error.

Briefly stated, the Appellants contend that the decree is erroneous because:

(a) It declares that the Complainant had no notice or knowledge of the deeds and contracts of the Appellants when it made the loan secured by its mortgage of \$20,000, and recovered its judgment.

(b) No credit is allowed on account of the Complainant's mortgages for the reasonable value of lands released from the liens thereof without a reasonable and fair consideration.

(c) It declares the premises purchased by these Appellants subject to the liens of the mortgages of the Complainant and its judgment.

(d) It adjudges that lands of these Appellants be sold to pay and satisfy the moneys due on the mortgages and judgment of the Complainant.

(e) It erroneously fixes the order of sale of the mortgaged premises.

(f) It is erroneous in the other respects in the petition of appeal (Case, p. ...) and hereinafter specified.

The complainant had notice of the contracts of the appellants.

It matters not whether the Complainant had actual or constructive notice of the contracts of these Appellants, and, therefore all the evidence tending to establish notice, actual or constructive, will be discussed under this heading.

Of necessity the Appellants were obliged to rely mainly upon the testimony of adverse witnesses to sustain their contentions upon this subject. So far as the testimony indicates the only persons who participated in the negotiations leading up to the making and closing of the loan, represented by the third mortgage of the Complainant, were

called as witnesses. They are William J. Shearer, President of the mortgagor Company (Case, p. 108); Clarence A. Seaman, Manager of the Loan Department of Louis Schlesinger, Inc. (Case, p. 228); Daniel E. Evarts, Vice-President of the Complainant (Case, p. 180); Andrew C. Green, Secretary and Treasurer of the Complainant Company (Case, p. 132 and 220); James B. Throckmorton, a member of the Board of Directors and of its Finance Committee (Case, p. 221); Mr. James E. Wooley, Title Officer of the Complainant (Case, p. 170); and Mr. Douglas, also connected with the Complainant Company (Case, p. 234).

Mr. Shearer placed the matter of getting this loan in the hands of Mr. Seaman, who opened negotiations with the Complainant. He interviewed Mr. Evarts and, subsequently, on March 25, 1913, wrote the Complainant (Exhibit "D 4." p. 253), saying among other things:

"Remembering Mr. Evarts' statement that your Committee would inspect the property Thursday afternoon, the writer communicated with Mr. Shearer and learned that it would be possible for Mr. Shearer to meet your representatives in Elizabeth any time after two o'clock, Thursday, submitting the full lists of lots sold, together with the prices obtained which run from \$12.00 to \$20.00 per front foot, as substantiated by the contracts which he will have at hand at that time."

(This letter and others were produced at the close of the hearing by Mr. Green, Secretary and Treasurer of the Complainant Company (Case, p. 220), too late to permit of directing the attention of witnesses to them.)

Mr. Evarts, Mr. Throckmorton, Mr. Seaman and Mr. Shearer met at El Mora Manor presumably

in accordance with the plan set out in this letter, to make an appraisement of the property (Case, p. 221, Mr. Throckmorton, and p. 183, Mr. Evarts).

Mr. Evarts related but little of what transpired at this meeting. He remembered that they found the property to be vacant land, and, in answer to the question:

“Did he (Mr. Seaman) tell you the price at which lots had been sold?”

replied:

“I think the prices were established by Mr. Shearer” (Case, p. 185).

He possessed a map of the property proposed to be mortgaged but doesn't know whether it had anything upon it to indicate that lots had been sold (Case, p. 186).

Mr. Throckmorton testified that he did not remember whether anything was said about the sale prices of lots, but presumed that something was said (Case, p. 222). Asked whether he knew that lots had actually been sold, he says:

“I cannot say that I did, but that part of the details I would not bother much about” (Case, p. 222).

Continuing the inquiry upon this subject he was asked:

“Well, do you mean to say that there was no statement made that they had made sales?”

and he answered:

“I don't know, I could not say that there was or not.”

Q. "Well, being a business man you would be anxious to hear what sales had been made?"

A. "Naturally" (Case, p. 223).

Further on the witness was asked:

"Did you know at that time that they had sold lots on installment contracts?"

A. "I do not know. I don't think I did, that would not interest me. I went out there to appraise the property."

Mr. Throckmorton denies that Shearer produced any contracts in his presence, but says that he may have offered to produce contracts to Mr. Evarts with whom the details were carried along (Case, p. 223). He admits later on that Seaman may have told him how many lots he had sold (Case, p. 226). The witness admits that he had no basis for a comparison of valuations and says that in making his appraisal he relied upon what Mr. Seaman and other people told him (Case, p. 224). What Mr. Seaman said and what other people said does not appear.

Seaman says in his testimony that the value of the land had been established by sales (Case, p. 230). (Testimony is not clear upon this point but it was so understood by counsel.)

It was his understanding that sales had been made (Case, p. 230). To the next question:

"Did you tell him (Mr. Evarts) that you understood there had been sales of the property?"

he answered:

"I don't think so but it is highly probable that I did."

He denies knowledge of what lots had been sold for (Case, p. 230), but later says that he was expected to submit contracts and expected Mr. Shearer to bring them (Case, p. 230-231).

After repeatedly questioning Seaman upon his knowledge of the existence of contracts and receiving sometimes denials and at other times evasive replies, he confesses that he did what counsel said in his opening of the Complainant's case (Case, p. 232 and 233). After this disclosure the witness felt more communicative and informed the Court that on the maps in Mr. Evarts' hands "there were some marks that indicated that some of the lots had been sold" (Case, p. 234). Seaman is what is commonly called "a shifty witness." It would be difficult to learn the truth from him did we not have his letters (Exhibits D-4 and D-3, Case, p. 253-254), written before this dispute arose.

That this witness had actual knowledge of the lots sold and for what consideration and that he communicated it to Mr. Evarts and the Officers of the Complainant, is clearly proved by other evidence in this case which will be later referred to.

Shearer, the President of the borrowing Company, says that he saw Mr. Evarts in connection with the loan, talked the matter over with him and told Mr. Evarts the facts in the case; "how many lots there were and what he (I) felt the values of the lots were as shown by sales already made" (Case, p. 195 to 196). He was later asked the question, "Was anything said about the sale of lots on contract?" and answered, "I could not swear that there was, but yet I am quite sure that that was used in connection with my claim that the lots had a certain value" (Case, p. 196). He also said that he probably showed Mr. Seaman the contracts themselves for lots sold to convince him (Case, p. 197).

Repeating his statement that the contracts were spoken of, the witness was later asked:

"Didn't you, Mr. Shearer, exhibit these contracts to the Officers of the Title Company?"

and answered:

"Not so far as I remember now. I do not think that they were called for" (Case, p. 198).

Apparently Mr. Shearer had the contracts ready to be produced if called for. Further on in the case the witness is disposed to shift his position as to when these contracts were discussed, but finally concludes with a statement that the representations were made before the mortgage was obtained (Case, p. 201).

After reading the testimony of these four witnesses the conclusion is irresistible that it is biased. At one place or another in his testimony each witness contradicts himself. Self-interest and lapse of time have had a plain effect upon this evidence. The Officers of the Company seem to remember that nobody asked of Mr. Shearer whether he or the Company had sold any lots. They are quite certain upon this point, but they have an extremely vague recollection as to what information they possessed upon this subject. At first they deny any information and under persistent examination are disposed to think they might have known about the sale of lots on contracts. Here was Shearer with his contracts and full and detailed information as to the sales, offering to produce the contracts, and, as he says, actually using them to establish a value for his property.

Here were Trustees investing the moneys of their depositors in a mortgage upon real estate upon an appraisal made by them without any knowledge as to the sales of property in the neighborhood, who, knowing the character of the business in

which the borrower was engaged and the probability that sales had been made which might prove a guide in making the appraisal, chose to ignore the opportunity of getting valuable information. This is so highly improbable that it is beyond belief. The admitted facts speak for themselves.

One example of the imperfect memory possessed by Mr. Evarts is his testimony that the application for the first loan of \$15,000 was not granted, because the property was unimproved and that later and to overcome this difficulty it was proposed to include Elizabeth Heights with a dwelling house on it and make the mortgage loan of \$20,000 (Case, p. 183).

From his own testimony and the records of the Company it is apparent that the \$15,000 loan was actually granted and it was to be secured by a mortgage covering property in part improved (Case, p. 180 to 186, and Extract from Minutes, p. 262-263).

There is a strong probability that the contracts which Mr. Shearer had were actually exhibited to the Officers of the Company and they should be charged with actual notice of them.

If, after a review of the evidence referred to above, there is any doubt but that the Complainant knew that in the course of its business the borrower had sold lots on installment contracts it is dispelled by an examination of the documentary evidence in this case (Exhibits D-4, D-3, D-6, D-7 and D-5 and Letter of April 12, 1913, Case, p. 253 to 262), and the testimony of James E. Wooley (Case, p. 170 to 178).

On March 25, 1913, Seaman wrote the Complainant a letter (Exhibit "D 4"), referred to above, enclosing a blue print of "El Mora Manor," describing it as "blue-print of property of William J. Shearer, located at Elizabeth, N. J., upon which Mr. Shearer desires to obtain a first mortgage loan of \$15,000, to replace present mortgages aggreg-

gating that amount." He informed the Complainant that "the object of replacing the present mortgage" is "to make possible the delivery of deeds to several of the lots to be covered (by the mortgage) the several lots referred to being part or approximately 130 lots in the tract, which have been sold under contract for approximately \$40,000, the owners of the several lots desiring to pay the balance due on the contracts in order to obtain title and build." He continues further and informs the Complainant that *the contracts have two years yet to run*, but that Mr. Shearer thinks it good business to change the mortgage indebtedness to a new mortgage "containing a release clause and making possible building operations proposed by the several purchasers."

It may be questioned whether the writer of this letter referred to "El Mora Manor" or to both tracts affected by the Complainant's mortgages. All doubt that he meant "El Mora Manor" is removed because of these facts, firstly, this property was the one appraised (Case, p. 185), and the application for \$15,000 clearly relates to this property (Case, p. 181-182-183, 222 to 223). Secondly, reference is made in the letter to "the residence property on the North side of Magie Avenue and directly opposite the developed tract."

Magie Avenue or Magie Road as it is sometimes called, lies North of "El Mora Manor" and it is a bounding street (Testimony, Seaman, p. 230; Shearer, p. 111 to 112 and 207).

Thirdly, in the resolutions of the Complainant's Finance Committee, passed April 11, 1913 (Case, p. 262), a loan of \$15,000 is granted on "property William, Ralph Streets and Summit Place, Elizabeth, N. J." The streets last named are the only ones appearing on map of "El Mora Manor, Elizabeth, N. J." excepting, however, Magie Avenue or Magie Road as it is designated on said map.

Fourthly, none of these streets appears on "Elizabeth Heights" map.

Fifthly, practically all of the lots affected by contracts and deeds referred to in the Bill of Complaint, form a part of "El Mora Manor" and were in existence when Mr. Seaman's letter was written (Bill of Complaint, p. 1 to 36).

Sixthly, afterwards, and on the twenty-third day of May, 1913, Complainant's Finance Committee resolved to loan Shearer \$5,000 on "property 660 lots, Wilson, Conant, Service Streets and Magie Road, Elizabeth Heights, Elizabeth, N. J." (Case, p. 263).

There can be no doubt but that Seaman and the Complainant both thoroughly understood that reference was had in the letter of March 25, 1913, to "El Mora Manor" only, and the dwelling house across the street and on Magie Road.

On the "El Mora Manor" map are delineated 252 lots, so that deducting 130, the number under contract when Seaman wrote his letter, there would be free of contracts 122 lots, which might be pledged as security for the Complainant's loan.

As above set forth, Seaman speaks, in his letter of March 25, 1913, of the contracts themselves, affecting these 130 lots, which Shearer was to bring with him for inspection at their meeting, to be held the following Thursday.

The representations of Mr. Seaman were the representations of Shearer and Jersey Co-operative Realty Company, whose agent he was, for the very purpose of making known all the information that might bring about the procuring of this loan. He did not circulate rumor. He spoke with authority and in plain English told the Complainant that some of the lots, which he proposed to pledge as security for its mortgage, were subject to contracts, which contracts his clients were ready to produce and exhibit at any time.

Later and on April 4, 1913, Seaman wrote the

Complainant for the attention of Mr. Evarts (Exhibit "D 3," p. 255), its Vice-President, that Mr. Shearer had arranged to have the \$15,000 mortgage cover the entire tract shown on the blue-print, meaning the map of "El Mora Manor," "*including the four lots which were to be excepted, the house on the four lots, making it unnecessary to cross to the North side of Magie Road, with your mortgage which Northerly property he is now negotiating the sale of.*" At the time this letter was written there stood an old frame dwelling house at the Southeasterly corner of Ralph Street and Magie Road on lots 49, 50, 51 and 52, Block 3 (Case, p. 120, Testimony Shearer). "Elizabeth Heights" is North of Magie Road and North of "El Mora Manor" and the two parcels are separated by Magie Road (Case, p. 207).

In this letter reference again is made to the purchasers of lots for whom he wishes to arrange to get policies. On April 11, the Complainant's Finance Committee meets and resolves to grant the loan as per resolutions already referred to (Case, p. 262) including in the premises to be mortgaged, the house and lot referred to in Seaman's letter of April 4th.

Mr. Evarts, the Vice-President of the Complainant Company, on April 12, 1913, writes Mr. Shearer informing him of the action of the Finance Committee and of the terms for guarantees on the title, saying by way of postscript. "It is, of course, understood that this loan is granted with the distinct understanding that sidewalks are to be laid on all the property in question. as well as the roads being rolled and graded, water, gas and electricity to be furnished *the various purchasers*" (Case p. 256).

(The contracts of the Appellants contain a provision for such improvements to be made by the Company (Case, p. 264, Exhibit E-2).

Here again the Vice-President of the Company, a member of the Finance Committee and one of the

men to pass upon the desirability of this loan, indicates his knowledge that some of the lots proposed to be mortgaged have been sold.

Another application having been made by Mr. Shearer for a further loan of \$5,000, the Complainant's Finance Committee, on May 23, 1913, passed the resolution referred to above (Case, p. 181-182-183 and 263), granting a loan of \$5,000 on 660 lots as laid down on map of "Elizabeth Heights." Up to this point two separate and distinct loans were contemplated, one of \$15,000 on "El Mora Manor" and one of \$5,000 on "Elizabeth Heights." Afterwards William J. Shearer signed an application (Exhibit "C 4," Case, p. 249), this application is dated May 21, 1913, directed to the Complainant for the examination and guarantee of title to the extent of \$20,000 of premises described in answer to question 5, on said application blank as "600 Lots on Map of "Elizabeth Heights and 250 Lots on Map of El Mora Manor, in El Mora and Elizabeth, N. J., Union County."

On May 29, 1913. the Complainant's Finance Committee on the request of Mr. Shearer resolved "that the loan of \$20,000 to be executed by him to the (this) Company, cover 840 lots instead of 900 Lots of the Property "Elizabeth Heights, Elizabeth, N. J." (Case, p. 263).

This resolution evidently refers to the lots mentioned in the application (Exhibit "C 4"). Numbering in said application however, 850, not 840 lots.

After this resolution was passed, Mr. Shearer, under date of June 2, 1913, wrote Evarts advising that he was enclosing a list of lots on which mortgage (for \$20,000) should be drawn and advising that he had transferred the "El Mora Manor" lots and the house across the street to Jersey Co-operative Realty Company (Exhibit "D 6." p. 257 to 259).

Attached to this letter is a list of 180 lots on "El

El Mora Manor," which it was proposed to mortgage and 660 lots on the "Elizabeth Heights," making up the 840 lots referred to in the resolution last mentioned.

It must be kept in mind that there were but 122 lots on El Mora Manor according to the plain statement of the representative of Jersey Co-operative Realty Company and Mr. Shearer, that were free of contracts. In this letter Mr. Shearer points out 180 lots to be pledged as security. The Complainant knew that of these 180 lots 58 were affected by contracts. Mr. Seaman made this known in the first of his letters.

At the head of the statement containing a list of the lots to be mortgaged, reference is made to the assignments of the other mortgages, meaning the first and second of the mortgages of the Complainant. This is the first reference to these assignments appearing in the correspondence offered in evidence. Nothing appears in the record or the minutes of the Complainant upon this subject.

On June 13, 1913, Mr. Shearer wrote to James E. Wooley, Title Officer of the Complainant Company, and to whom he had been referred, advising him as follows (Exhibit "D 7," Case, p. 259-260):

"In accordance with the suggestion of Mr. Evarts, I suggest the following 180 lots on 'El Mora Manor' in place of the 180 lots submitted in my last communication on the subject." Why did Mr. Evarts suggest a change in the "El Mora Manor" lots to be pledged as security? No reason appears in the case. No explanation is made. The facts remain, however, that no matter which list of 180 lots was adopted for insertion in the mortgage, 58 at least of the lots were subject to contracts, which the Complainant was distinctly informed about. With this same letter of June 13th, the Complainant was given a list of lots which were deeded and which are situated in a block *not* forming a part of the mortgaged premises. They are the same re-

ferred to in paragraph 9 of the Bill of Complaint (Case, p. 6 to 10). None is subject to the mortgage nor ever intended to be (Case, p. 9 and 10 and Testimony Woolley, 174-175) as hereinafter shown.

In paragraph 14 of its Bill (Case, p. 15), Complainant alleges that it was agreed and arranged (Shearer claims to be ignorant of this agreement and arrangement, Case, p. 189) that when it paid the first and second mortgages of the Complainant it should take assignments thereof for its full protection because "of the giving of the deeds of conveyance by William J. Shearer and wife above referred to," presumably those alleged in said paragraph 9, which deeds did not, as set forth in the letter of Mr. Shearer, written before the mortgage was made, comprise any part of the property to be mortgaged. The explanation of the reason for taking assignments of these two mortgages, which was not within the contemplation of the parties when the application for the loan was made and granted, is so lame that it appears to be but an attempt to cloak the real reason, which was that the Complainant believed that by acquiring its first and second mortgages it could establish a claim prior to those arising out of unrecorded contracts affecting 58 lots on "El Mora Manor."

The Title Officer, Mr. Wooley, who handled this matter for the Complainant, throughout, confessed the real reason for these assignments (Case, p. 171. Exhibit D-5, p. 261-262).

On March 9, 1916, Mr. Shearer wrote to Mr. Wooley (Exhibit "D 5," Case, p. . .), in his usual suave and camouflaged style, "When I borrowed to pay off three mortgages on property here, the three mortgages were left open of record, I think you said as collateral or for some other reason, but I was assured that in reality it was the same as your one mortgage being on the property, as release from yours released from all."

Mr. Shearer asked for an explanation that he might offer to persons—and there were many—raising the question as to the extent of the mortgage encumbrances in favor of Complainant.

On March 10, 1916, Mr. Wooley, for the Complainant Company, replies to Mr. Shearer (Exhibit "D 5") as follows: "Your letter of the 9th instant received. The other mortgages you mentioned in your letter were assigned to this Company for the purpose of having the money we advanced on the property secured by a *prior lien to possible outstanding contracts of sale.*" Mr. Wooley too, emulating Mr. Shearer, cautiously speaks of "possible outstanding contracts." He knew at the time as he confessed to the Advisory Master, that some of the property which it was proposed to mortgage was subject to outstanding contracts of sale (Case, p. 173).

Mr. Wooley's manner on the stand hardly excites confidence, for although a lawyer and engaged in the examination of titles, he declares his ignorance of the priority of the third mortgage of the Complainant over unrecorded contracts of which the Complainant had no notice (Case, p. 172). Several times he interviewed Mr. Shearer concerning this mortgage but never asked about unrecorded contracts (Case, p. 170-171). He found no contracts of record affecting the premises included in the third mortgage of the Complainant. He refers in his testimony (Case, p. 170) to the contracts affecting "Elizabeth Heights" property. Mr. Wooley is asked on direct examination, he having been sworn as a witness for the Appellants:

Q. "Did you make any inquiries from Mr. Shearer whether there were any unrecorded contracts?"

A. "I don't think so."

Q. "Did you have any conversation with him as to whether or not there was any?"

A. "No."

Q. "You knew what business he was engaged in didn't you?"

A. "Yes, sir" (Case, p. 171).

Q. "Did Mr. Shearer show you any contracts relating to this property?"

A. "He did not."

Q. "Affecting this property?"

A. "None, excepting—I think we had a list of those or the original contracts were given to us; I think they are still in our possession."

On cross-examination by Mr. Hughes (Testimony, p. 174-175), the witness says in answer to the question:

"You have testified to some contracts being left with you by Mr. Seaman or Mr. Shearer, I forget which; I show you six contracts and ask you if those are the documents you refer to?"

A. "Yes, sir, those are the documents I refer to."

Q. "As having been left with you?"

A. "Yes, sir, as having been left with me."

Q. "The lands described in those contracts, do not constitute any part of the property covered by the mortgage?"

A. "No they do not."

Q. "And no contracts were left with you other than those six?"

A. "No, sir, no other contracts were left with me other than those six."

Q. "And nothing was said by Mr. Shearer to you about any others?"

A. "No, sir."

The contracts referred to by the witness are evidently those mentioned in paragraph 9 of the Bill

(Case, p. 6 to 10). They do not affect the mortgaged premises.

Mr. Wooley struggled for a long while to conceal the whole truth concerning his knowledge and the knowledge of his superior Officers of the existence of unrecorded contracts (Testimony, Woolley, Case, p. 173), but finally confessed the truth in response to the following questions put by the Advisory Master:

Q. "Have you any recollection Mr. Wooley now as to whether you knew at the time of the closing of this loan in 1913, that there were outstanding contracts or not affecting the mortgaged premises?"

A. "Well I have understood there were some outstanding contracts."

Q. "You say you made a loan on this property knowing there were unrecorded contracts on some of the mortgaged land?"

A. "Yes, sir."

Of course he knew of the existence of such contracts. Seaman told the Company and Wooley's superior Officers in black and white that such was the case and told Wooley verbally of their existence and suggested to him that to overcome their priority assignments be taken of the Earl and Woodley mortgages.

Counsel for the Complainant attempted to minimize the effect of this confession by showing that nothing was said about the contracts of the Appellants (Case, p. 173). The Court again takes a hand (Testimony, p. 174).

Q. "What made you say that you knew there were outstanding contracts?"

A. "The only knowledge I had of that was Mr. Seaman's statement; I knew nothing of my own knowledge excepting what he said."

The witness still sticks to his story that Seaman told him there were outstanding contracts, Seaman, the agent and representative of the borrower, with authority to speak upon this subject.

Reference is made in the Bill of Complaint to contracts affecting at least 24 lots on "El Mora Manor," which contracts antedate the Complainant's third mortgage and to deeds affecting 66 lots in the same tract, which were undoubtedly given pursuant to the terms of contracts made before the last mentioned mortgage.

The Complainant claims rights superior to all contract and deed holders in the lots affected by such contracts and deeds.

The attitude of the Complainant's Officers and representatives is hardly consonant with that of men who intend to respect the rights of others. It is inconceivable that they did not know the character of the business carried on by Shearer and his company. It is also inconceivable that they should have failed to appreciate the significance of the plain language employed by Mr. Seaman in his letter of March 25, 1913 (exhibit "D 4"), informing them of the sale of 130 lots of the "El Mora Manor" tract for \$40,000 and knowing, as they must have, the nature of the borrower's business and that outstanding contracts affected some of the property proposed to be mortgaged, should not they, as honorable men, at least ask Mr. Seaman to specify what lots were affected by contracts, or, better still, ask Mr. Shearer, the President of the vendor company the borrower? No such inquiry was made of Mr. Shearer, nor so far as the case shows, of any one else, familiar or unfamiliar with the facts.

Among the interrogatories submitted to the complainant are the following:

19. "Did the complainant company ask the defendant, Jersey Co-operative Realty Company, or its representative, what lots

comprised within the mortgages of the complainant or any of them, were affected by contracts of purchase?" (Case, p. 96).

A. "No."

14. "Did Complainant examine any of the books or other records showing the sales of real estate made by Jersey Co-operative Realty Company or any of its agents?"

A. "No."

Mr. Wooley makes the same answer to a similar question put to him on his examination (Case, p. 170, 175), and so does Mr. Evarts and Mr. Throckmorton (Case, p. 184 and 223).

It is clear that notwithstanding the information supplied by Mr. Seaman, nobody took the trouble to find out what interests the appellants had in the mortgaged premises.

The opinion of the Advisory Master (Case, p. 70), states the contention of the defendants, the appellants herein, to be that the complainant's "rights must be held to be subject thereto (their contracts) because it (complainant) knew that the mortgagor's business was selling lots and it was therefore charged with notice of all sales made by it." This is not a correct statement of the position of the appellants. That the mortgagor was engaged in such a business is an important element for consideration in determining the question of notice in connection with the various other facts in this case. These appellants claimed, before the Master and claim now, that the complainant had notice of their contracts, actual or constructive, and that because of such notice their contractual rights are superior to the third mortgage and judgment of the complainant and that the reasonable value of lands released after the dates of their contracts should be credited on account of the first and second mortgages and these encumbrances reduced accordingly.

The Advisory Master found the issue of notice against the appellants. He makes it a point that "there is no evidence in the case to show that the mortgagor's officers or agents informed the complainant of specific outstanding contracts affecting the property to be mortgaged" (Case, p. 71). Mr. Seaman, the authorized and recognized agent of the mortgagor company, made a very distinct statement concerning the existence of outstanding contracts. It is true he did not say that Frederick V. Price, Jr., had a contract dated October 18, 1912, affecting lots 86 and 87, on block 2, as laid down on map of "El Mora Manor" to purchase these lots for \$650. If he had we might successfully charge the complainant with actual notice.

Further continuing the master says, "the officers of the complainant who had to do with the transaction, testify they had no such knowledge" (Case, p 71). It is an easy matter to stretch the ordinary conscience to a statement of that character where the names of purchasers and the property purchased is not known, but it is hardly thought that Mr. Evarts and the other officers of the company having to do with this matter and into whose hands the correspondence came, would care to deny that they had seen such correspondence and were informed that 130 lots in "El Mora Manor" were affected by outstanding contracts. In fact they have not denied, as has been shown, that they were told that sales had been made.

It is quite apparent that the advisory master ignored the various letters passing back and forth between the complainant and Shearer and Seaman. Nowhere in his opinion does he refer to these letters, which were produced by Andrew C. Green, the secretary and treasurer of the complainant company, in response to a subpoena (Case, p. 220). In transcribing the record the stenographer omitted a statement of the offers of this documentary

evidence, but all of the letters were duly admitted in evidence and marked as exhibits, excepting the letter of the complainant under date of April 12, 1913 (Case, p. 256), which, through inadvertence, was not marked (Exhibits D-4, D-3, D-6, D-7, D-5, Case p. 253, etc.).

In further support of his conclusions he says (Case, p. 71), "The president and the agent of the mortgagor submitted to complainant a list of the lots which they proposed to mortgage and a list of others which were to be excepted from the mortgage and this was equivalent to a statement that those they proposed to mortgage were free from claims of others and that those to be excepted were the ones already conveyed or under contract and the purpose of the releases from the Earl and Woodley mortgages was to free the excepted lots so that the mortgagor could convey them or assure good title to the holders of deeds." The inference drawn by the master is not supported by any evidence in this case. He does not say that it is. If the property excepted from the complainant's third mortgage was so excepted for the purposes inferred by the master, why did not the complainant produce testimony to show that such was the case? Shearer says that none of the lots released was under contract (Case, p. 190-191) and that his object was to have them free so that he might sell them (Case, p. 191, 189). The very fact that the mortgagor submitted not only one list of 180 lots to be excepted, but two lists, differing as to the property included in them, but not as to the number of lots, clearly disproves the inference of the advisory master, if there is anything else that justifies it. (The lists referred to are part of Exhibits "D 6" and "D 7," Case, p. 257, 258, 259, 260.) The letter "D 7" opens as follows:

"In accordance with the suggestion of Mr. Evarts I suggest the following 180 lots on

“El Mora Manor” in place of the 180 lots submitted in my last communication on the subject.”

Why did not Mr. Evarts explain the change in this list? He offers no explanation. It is plain that throughout this entire transaction the officers of the complainant company chose to shut their eyes to everything but the records of the County of Union and to hear nothing.

Further along in his opinion (Case, p. 71) the master says “the only evidence in the case which might charge the complainant with notice of the defendants’ claims was given by Mr. Wooley, a title examiner for complainant, who testified that Seaman, the agent, who negotiated the loan, told him there might be outstanding contracts and that the complainant had better take assignments of the prior mortgages for its protection against any such.” This information, assuming but not conceding; that it clearly states the evidence, the master finds insufficient to charge the complainant “because it does not appear that any knowledge of sufficient definiteness was communicated to him which would put him or his principal upon inquiry” (Case, p. 72). Let us look at the testimony of Wooley (Case, p. 170 to 178). It has been commented on above, but special attention is directed to Mr. Wooley’s examination by the advisory master (Case, p. 173), where he is asked and makes reply to the following question:

Q. “You say you made a loan on this property knowing there were unrecorded contracts on some of the mortgaged land?”

A. “Yes, sir.”

The record does not picture the surprise of the master.

Of course, Mr. Wooley knew there were out-

standing contracts or he would never have suggested and arranged for assignments of the two prior mortgages. He would have you believe in parts of his testimony that Seaman, a layman, told him, a lawyer, that assignments of the prior mortgages should be taken for the protection of the complainant.

The master, in further support of his findings, refers to an application for the loan made by Shearer, the president of the borrowing company, which the master says (Case, p. 72), "was in effect a statement that there were no outstanding contracts." This is an application (Exhibit "C 4") for a title guarantee upon the two tracts, "El Mora Manor" and "Elizabeth Heights." It is a paper prepared, presumably on the day it bears date, May 21, 1913, and after the loan of \$15,000 on "El Mora Manor" had been voted. It was prepared by Mr. Wooley (Testimony, pp. 173, 208). The fifth question elicits the answer that the property to be guaranteed consists of "600 lots on map of Elizabeth Heights and 250 lots on map of El Mora Manor, in El Mora and Elizabeth, N. J., Union County."

The master has made a part of his opinion the ninth, twelfth and thirteenth questions propounded in this application and the answers thereto; the ninth question is not set forth as it appears on the application as will be seen by reference to exhibit "C 4" (Case, p. 249). Only that part of question nine relating to mortgages, is answered. The other two questions and answers are here repeated.

No. 12. "Objection to title known or rumored?"

A. "None, restrictions in deeds by owner."

No. 13. "Unrecorded deeds, agreements, adverse claims and interest or secret trust, known or rumored to exist?"

A. "None."

It was proposed to pledge as security only 180 lots of the "El Mora Manor" tract. There are only 252 lots in the whole tract and 72 of them were excepted from the complainant's mortgage. Now if this be accepted as an application for this loan of \$20,000, and if the inference drawn by the master from the fact that these 72 lots were excepted from the lien of the mortgage, viz.; that the parties contemplated that the lots had been sold, why did Wooley write the answers to the twelfth and thirteenth questions, knowing that they were false and why did he permit Mr. Shearer to sign the application? Wooley confesses that Seaman told him that there were outstanding contracts affecting not only the 250 lots mentioned in this application on "El Mora Manor," but the 180 lots which were actually pledged to secure the mortgage. He knew it long before the application was signed (Case, pp. 172, 173, and testimony already discussed), and yet he writes that there were no objections to the title *known or rumored*, no unrecorded deeds, agreements, adverse claims and interest or secret trust *known or rumored to exist*. Surely if the information Seaman conveyed about outstanding contracts was not definite, authentic and reliable, it was at least a rumor.

It appears further that Wooley never asked Mr. Shearer whether there were any outstanding contracts and, if so, what lots they affected? If then this paper (Exhibit "C 4") be considered as an application for a loan, how did Wooley get the necessary information to answer the question above referred to? He didn't get it from Seaman, for they confess his information was to the contrary.

The fact of the matter is simply this, the paper referred to by the advisory master, as an application for a loan, is nothing of the sort and was never intended to be such. The paper is, as distinctly stated at the head thereof, "Memorandum of Appli-

cation for Examination and Guarantee of the Title to Premises described below."

At the time Jersey Co-operative Realty Company had sold over half of the lots on the "El Mora Manor" tract, and it wished to give title guarantees to lot purchasers. When applying for the guarantee, the company included practically all the lots in the tract. It was an application made on behalf of the lot purchasers who were to receive title guarantees when deeds were delivered and had reference entirely to the title which the company would convey to the purchasers of individual lots. Lots purchased were at the time, as the application says, subject only to the three mortgages and the building restrictions, etc. In this connection see also correspondence (Exhibits "D 3 and 4"), and letter of April 12th, 1913 (Case, pp. 253 to 256), indicating the desire of the applicant to receive individual guarantees for lot purchases and in which last mentioned letter Mr. Evarts asks Mr. Shearer "*to call at the office of the company and sign the application for the search.*"

Another point in support of this contention is that the various applications for loans were contained in a special book maintained by the complainant for that purpose. The substance of which application appears in the testimony of Mr. Evarts (Case, pp. 180 to 186). It also appears that Mr. Greene never saw the application (Exhibit "C 4," Case, pp. 226, 227) and Mr. Evarts says nothing about it which is accounted for by its being outside of the departments of both of these men and in the Title Department (Case, pp. 227, 186). Then again, as has been said, the application was prepared by the title officer.

To state the case shortly this application was drawn by an officer of the company who failed to make inquiry as to outstanding contracts who at the time knew that they existed, or to say the least,

knew that they were rumored to exist, and who, if this application is to be treated as one for a loan, submitted answers known by him to be false, for the signature of the man whose chief concern was arranging for the delivery of guarantees to lot purchasers.

The facts in this case justify two conclusions; one, that this was considered by the Company merely an application on behalf of lot purchasers, as Mr. Evarts' letter would indicate; or, secondly, that the answer had no effect upon the minds of the representatives of the complainant and did not to the slightest degree influence their conduct because with one voice they deny that they ever asked Mr. Shearer or any representative of Jersey Co-operative Realty Company whether there were any unrecorded contracts affecting the premises proposed to be mortgaged and actually attempted to be mortgaged.

Counsel had no opportunity carefully to examine the application referred to above, during the hearing and therefore did not appreciate the possibility that it contained anything relevant to the case other than that to which counsel for the complainant called attention (Testimony, p. 173).

Any other or additional notice to the complainant must of necessity have been actual notice.

The complainant was clearly put upon inquiry. It contends that because it did not know the names of the purchasers and the lots affected, it should not be charged with notice of the contracts of these appellants. If the missing information were supplied what need would there be for inquiry? Only the terms of the contract would remain undisclosed. There remaining undisclosed only the terms of the contracts, would the complainant be charged with actual notice of the contracts or with constructive notice only?

This Court has frequently passed upon the question of constructive notice. One of the earliest cases which disposes of many points involved in the case now before the Court, is *Hoy v. Bramhall*, 5 C. E. Green, page 563, in which Justice Depue, at page 572, says:

“The general doctrine is that whatever puts a party upon inquiry amounts in judgment of law to notice, provided the inquiry became a duty, as in the case of purchasers and creditors, and would lead to the knowledge of the requisite fact, by the exercise of ordinary diligence and understanding.”

The opinion of Vice-Chancellor Wigram in *Jones v. Smith*, 1 Hare 43, is referred to, in which it is said this jurist resolves the cases in which constructive notice is established into two classes:

“First, cases in which the party charged has had actual notice that the property in dispute was in fact charged, encumbered, or in some way affected, and the Court has thereupon bound him with constructive notice of facts and instruments, to the knowledge of which he would have been led by an inquiry after the charge, encumbrance, or other circumstance affecting the property, of which he had actual notice, and secondly, cases in which the Court has been satisfied, from the evidence before it, that the party charged had, designedly abstained from inquiry for the purpose of avoiding notice.”

Justice Depue goes on to say:

“that the mortgagee knew before releasing a part of the mortgaged property that the mortgagor had disposed of most of it.”

It appears that the mortgagee released a part of the mortgaged premises knowing that the mortgagor had disposed of most of the property embraced in his mortgage, but evidently knowing not what part, to whom and when. Continuing, Justice Depue says:

“that knowledge was sufficient to put him upon inquiry, and amounts to constructive notice of the existence of the deeds to Kinne, of which he might have had actual notice, if he had pursued the usual course of examining the registry of deeds.”

The case is precisely in point with the present one.

In *Burnet v. Vredenburg*, 34 Equity, page 252, two mortgages, bearing even date, and affecting the same premises, were held by the same mortgagee. One mortgage was assigned, the mortgagee at the time stating that the mortgage was first in priority, but no such priority was set forth in the assignment. Later the other mortgage was assigned, the assignee claiming that the mortgagee assured him that the mortgage was a first lien on a part of the mortgaged premises. The last mentioned mortgage was secondly recorded and the former, according to the records, had priority. After holding that the mortgages in the hands of the original mortgagee were concurrent liens and that the second assignee was chargeable with notice of a change in the apparent equities, the Court says:

“The defendant could have relied upon the record, had he not been informed that it had been qualified to some extent.”

In *Raritan Water Power Company v. Veghte*, 21 Equity, 463, 478, it is said to be the rule of law that whatever is sufficient to direct the attention

of a purchaser to the prior rights and equities of third persons and enable him to ascertain their nature by inquiry, will operate as notice.

Gale v. Morris, 30 Equity, 285, is another interesting case disposed of by this Court. It was sought to reform a first mortgage drawn by New York counsel so that it would affect the fee of the land covered by it. A second mortgagee claiming a mortgage on the fee simple was made a defendant. The second mortgagee defended on the ground that she had no notice that a larger interest than a life estate was intended to be pledged as security for the first mortgage. She was asked whether she knew she was taking a second mortgage and whether she was not told that her mortgage would be subsequent to that of the first mortgagee. Her counsel objected and she declined to answer. In commenting upon the attitude of the mortgagee, the Court says:

“Her refusal to respond strengthens into conviction the suspicion which the formal answer to the bill engenders, that concealment was more to her interest than discovery, and justifies the strongest inferences against her, touching the subject of investigation.”

It was further contended

“that the notice to the mortgagee would have been only of those facts which she would have ascertained by reasonable inquiry consequent upon the notice; that such inquiry would have led to only an examination of the complainant’s mortgage, and that examination would have shown that their lien covered no more than a life estate.”

“To this contention two replies may be urged. First, if the rule be that notice,

which puts one on inquiry, charges him with knowledge of only such facts as reasonable investigation will disclose, yet it might well have happened in this case that due investigation would have brought to light the fact of a mistake in the complainant's mortgage, the word 'successors' following the description of the complainant's after executors, would of itself probably, to the common mind, and perhaps to the legal mind, suggest the idea that this mortgagor intended to encumber more than an estate for life. The probability of this suggestion would be heightened if the mind started with the impression (which we think was conveyed to this defendant), not merely that there was a mortgage, but that there was a mortgage of the whole estate. If this idea had been in fact suggested, it would have been the duty of the inquirer to pursue it, and that in the present case would inevitably lead to a knowledge of the truth. Either the complainants, or the mortgagor, or her own counsel, would have informed Mrs. Briggs for the asking, that the mortgage was intended to encumber the fee.

"But secondly I think the rule as applicable to the facts now before us is not correctly stated in this contention of the defendant. The rule so stated has reference to those facts which lie outside of the notice itself, but which would be learned by such inquiry as a prudent man would make in consequence of the notice. If the party notified make reasonable investigation, he obtains actual knowledge of these facts; if he choose not to make it, he is charged constructively with knowledge of them. The rule merely prohibits him from taking advantage of his own *imprudence* to the *detriment*

ment of another. But as to the matters that lie within the notice the principle assumes another form. It charges the party with knowledge of those matters so far as reasonable inquiry has not dissipated their credibility."

So in the present case the complainant answers the counterclaims of the appellants by denying notice of the business in which Jersey Co-operative Realty Company was engaged and that the releases from the liens of the first and second mortgages were without consideration. It, however, fails to say what consideration was given and offers no proof on the subject (Case, p. 56, &c.).

In *United States Steel Corporation v. Hodge*, 64 Equity, page 807, it was sought to restrain certain corporate action, the point being made that some of the directors of the company unknown to the stockholders, would profit by the proposed action. A notice went out to stockholders in which reference was made to the fact that some of the directors were members of the syndicate with which the contract was to be made.

The cases of *Gale v. Morris*, *Supra*; *Hazelett v. Stephany*, 10 Dick. 68, *Hoy v. Bramwell*, *Supra*; and the English cases of *Phosphate Lime Co. v. Greene*, 7 C. P. 43; and *May v. Chapman*, 16 Mess. and W. 355, are cited with approval, the Court finally saying:

"The stockholders of the company are therefore chargeable with express notice, that some directors were interested in the bankers' contract, and by reasonable inquiry at the meeting of May 19, they could have ascertained the names and number of such directors."

"They signified by their votes that they approved the contract with such full knowledge."

In the case quoted from, it was known that "some of the directors" were interested, and in the present case "some of the lots" were affected by contracts. Inquiries in both cases would have led to a discovery as to what directors were interested and as to what lots were under contracts.

Mr. Justice Bergen, then vice-chancellor, wrote the opinion in *Wahl v. Stoy*, 72 Equity, page 607. At page 614 he says:

"If it appears that the party obtains knowledge or information of such facts which are sufficient to put a prudent man upon inquiry and which are of such a nature that inquiry if prosecuted with reasonable diligence, would certainly lead to a discovery of the conflicting claim, then the inference that he acquired the information constituting actual notice is necessary and absolute, for this is only another mode of stating that the party was put upon inquiry, that he made the inquiry and arrived at the truth. And the same result follows if the party has sufficient knowledge to require him to make the inquiry, if he neglects to do it, or, having begun it, fails to prosecute it in a reasonable manner. The information need not be so full and detailed as to communicate a complete description of the opposing interest. It is sufficient if it asserts the *existence of a right or interest* as a fact. If a vendor informs the vendee that the subject matter is subject to an outstanding lien or equitable claim, such information is sufficient. It need not state all the facts or impart complete knowledge. It is enough if he has reasonable ground to believe that a conflicting right exists as a fact.

"A person is chargeable with constructive

notice where he has the means of knowledge and does not use them."

Converse v. Blumrich, 14 Mich. 109.

Purchasers are not protected but are rendered purchasers with notice, if they close their eyes to facts which are open to investigation by the exercise of that reasonable diligence which the law imposes.

Brush v. Ware, 40 U. S. 93.

To the same effect are:

Baldwin v. Howell, 45 Equity, 537; *Swarthout v. Curtis*, 5 N. Y., 301; *Van Dorn v. Robinson*, 1, C. E. Green 256; *Swartwood v. Lewin*, 2 McCarter 60; *McPherson v. Rollins*, 107 N. Y. 316; *Tantum v. Green*, 6 C. E. Green, 364; *Parker v. Parker*, 56 Atl. 1094; *Lee v. Woodworth*, 3 Equity, 36; *Perry v. Smith*, 29 Law, 74; *Ogden v. Delaware River & Atl. R. R. Co.*, 80 Equity, 191, *Raritan Power Co. v. Veghte*, *Supra*.

The precise question for this Court to determine is whether a mortgagee knowing that part of mortgaged premises is affected by contracts of sale, and who with such knowledge, fails to make reasonable inquiry to ascertain what part is so affected, and in whose favor, can now claim a priority over such contracts on the ground that they were not recorded and that he had no actual knowledge as to just what part of the mortgaged premises was affected by contracts of purchase and the names of the purchasers?

The bill of complaint herein discloses the existence of contracts affecting 24 lots in "El Mora Manor," and deeds affecting 66 lots, none of which was recorded before the third mortgage of the complainant. There are undoubtedly many more contracts outstanding, the holders of which have not been made parties to this suit.

The selling company is insolvent, its representative, William J. Shearer is in bankruptcy, and the

decision of this Court will be a matter of great concern to many individuals whose circumstances are such that they must resort to instalment contracts when purchasing real estate.

In common practice perhaps not one contract in a hundred, such as those herein referred to, is recorded. The contention between lot purchasers and mortgagees does not happen as frequently as might be expected because in the majority of cases the land divided into building lots is encumbered by a blanket mortgage before the sale of lots begins and, furthermore, most companies are disposed to deal honestly with their clients.

It would have been a very simple matter for this complainant to have asked for a list of contract holders and lots affected thereby, and if it deemed it necessary for the protection of its interests, the complainants might have notified the various lot holders of its mortgages and required payment of instalments to it. This would have been the reasonable, fair and intelligent thing to do. All of these things the complainant studiously refrained from doing and should be charged with notice of what inquiry would have disclosed.

It may be contended and perhaps it would appear from a casual examination of Woolley's testimony, that Woolley was acting on his own initiative in taking assignments of the complainant's first and second mortgages. If this be so, which is not conceded, has not the complainant ratified his act in now seeking to foreclose these very mortgages and secure all the benefits that may be derived through the possession of them? It cannot secure the benefits of the transaction and at the same time avoid the effect of notice to the agent whose act is ratified. The truth, however, is to be found in the following questions and answers appearing in the testimony of Mr. Woolley (Case, pp. 171, 172).

Q. "Who was responsible for the sugges-

tion that these two mortgages be taken over by assignment?" A. "It is my recollection that Mr. Seaman suggested that to me."

Q. "Did he specify his reason for suggesting that?" A. "Yes, sir, to get rid of any contracts on outstanding sales."

Q. "Did he say that there were some?" A. "No, I don't remember that he did. I don't remember his exact words, but that is my understanding that *they* were to take assignments so as to get ahead of any possible outstanding contracts."

The witness goes on to say that he didn't know that the Complainant's third mortgage would be ahead of unrecorded contracts if taken without notice. He was further questioned on the subject of the assignments as follows:

Q. "I want to try and find out the arrangement." A. "Why I testified 'to get ahead of any outstanding contracts.'"

Q. "And there were no contracts recorded?" A. "Well, of course that meant unrecorded contracts although this suggestion was made to me long before we searched the title to the property."

The pronoun 'they,' underscored above, undoubtedly relates to the officers of the Company.

Woolley knew long before he searched the title that unrecorded contracts existed and the suggestion had been made by the officers of the Complainant long before, that assignments be taken. It is highly improbable that Woolley, on his own initiative, undertook to get these assignments. It is also highly probable that if Woolley is responsible for taking these assignments, he acted upon due authority. His authority to act has never been denied and, as no contention has been raised upon

this point by the Complainant and the case seems free of all doubt upon this subject, very little attention is given to it in this brief.

Lots of appellants are free of the liens of the third mortgage and judgment of the complainant.

It follows that if the Complainant is chargeable with notice of their contracts and deeds, its rights under this mortgage and its judgment are subordinate to those of the Appellants.

Appellants are not chargeable with notice of the liens of the complainant's third mortgage and judgment.

It becomes important to consider this point because of the position of all of these Appellants whose rights arose and some of whose rights continue by virtue of installment contracts of purchase. It is probably true that the mortgagee, as between him and the mortgagor, would be entitled to claim a lien on such lots as have been sold, to the extent of the unpaid purchase money, but no such charge can be maintained as against these Appellants who, without notice or knowledge of the existence of the Complainant's third mortgage and judgment, continued their payments to the mortgagor and the performance of their respective contracts (Cyc. Vol. 27, p. 1037).

Frequently the Courts of this State have decided that the Registry Acts relate only to subsequent bona fide "purchasers, mortgagees and judgment creditors" (compiled Statutes, pp. 1552 and 1553, sections 53 and 54), and only as against them is a duly recorded instrument notice. The actual notice of the contracts of the Appellants chargeable to the Complainant, is equivalent to the constructive notice given by recording.

In its brief before the Advisory Master, the Complainant attempted to charge these Appellants with notice of its third mortgage by reason of its having been recorded. Such record is not notice.

Davis v. Cressman, 57 Equity 621.

Hoy v. Bramhall, Supra.

Cogswell v. Stout, 32 Equity 240.

Blair v. Ward, 2 Stockton 119.

Ward v. Hague, 10 C. E. Green 397.

Van Orden v. Johnson, 1 McCarter 376.

House for Friendless v. Traders Investment Co., 77 Equity 582.

Hill v. Howell, 36 Equity 25.

The burden of showing notice of its third mortgage and judgment is upon the Complainant, but it offers no testimony proving or tending to prove such notice.

Mr. Bird and Mrs. Cole testified that they had no knowledge or notice of the existence of the mortgages and judgment of the Complainant before May 8, 1917, and March, 1916, respectively, and as to those Appellants who did not appear before the Special Master, or, who appearing, were not examined upon the subject of notice, counsel for Complainant stipulated that they would testify if called that they had no actual notice or knowledge of said mortgages and judgment up to the time set opposite their respective names in the written stipulation (Exhibit "D 9", Case, p. 277).

Before they knew of the Complainant's mortgages and judgment, the Appellants, Cole, Bird and McClelland, had paid in full for their lots, (Case, pp. 134 to 145, 154).

Bird and McClelland have received and recorded Deeds (Case, pp. 273 and 266).

Mrs. Cole received a Deed which was returned to the Company under the circumstances hereinafter to be referred to, and the return of which it unlawfully refuses.

Goodnough and Inch have Deeds which were delivered after the mortgages of the Complainant were known to exist (Exhibits "E-7", "E-8", pp. 268, 269).

Price, after learning of the mortgages of the Complainant and its judgment, the insolvency of the mortgagor Company and the bankruptcy of William J. Shearer, made no further payments on his contract. He has, however, paid \$450, so that there remains due \$180, which he is ready to pay for a Deed for his lots free and clear of all encumbrances in accordance with the terms of his contract (Case, p. 157).

The complainant should credit on its mortgages the reasonable value of lands released, without consideration.

The complainant, with knowledge of the rights of the appellants, on July 3, 1913, released large parts of the mortgaged premises from the lien of its first and second mortgages without consideration (Conclusions of Master, Case p. 69).

This action increased the burden upon the lands of these appellants and under the well established rules of law, the complainant should be compelled to credit the reasonable value of the parts released on their first and second mortgages, as of the time such releases were given.

Hill v. Howell, 36 Equity, 25.

Hoy v. Bramhall, *Supra*.

Seventy-two of the lots on "El Mora Manor" were released from the first and second of complainant's mortgages and a parcel of land on the North Side of Magie Road adjoining "Elizabeth Heights" tract on the East was released from the second of its mortgages.

Of the lots released 16 are on Magie Road and

have a total frontage, according to the map, of 377.49 feet on that street; 10 are on the North Side of William Avenue and have a total frontage of 260.20 feet; 15 are on the South Side of William Avenue with a total frontage of 389.24 feet; 10 are on the North Side of Ralph Street and have a total frontage of 250 feet; 13 are on the South Side of Ralph Street with a total frontage of 335.28 feet; 6 are on the Southwesterly Side of Summit Place with a total frontage of 143.84 feet and 2 are on the Northeasterly Side of Summit Place with a frontage of 50 feet.

Testimony upon the subject of values was given by Judge Whittemore (Case, pp. 162 to 170), who has been in charge of an adjoining property and sold lots thereout for a number of years; E. W. Phares (Case, pp. 136 to 139), who is a real estate agent and has been for a great many years, doing business in Elizabeth, and has handled the sale of property in the vicinity of the premises in question; Samuel R. Ogden (Case, pp. 178 to 180), who has been in the real estate business in Elizabeth for upwards of thirty years and William J. Shearer (Case, pp. 154 to 157), who originally opened and sold parts of the premises in question.

Mr. Ogden's testimony fixes the value of the released part lying on the North Side of Magie Road at \$1,500.

The other witnesses testified principally to the values of property on the "El Mora Manor" tract.

Judge Whittemore, who is the best informed witness, fixes the value per front foot of lots on Summit Place at \$10.00; on Ralph Street and William Avenue at \$8.00 per foot and on Magie Road at \$8.00 per foot (Case, pp. 164-165).

Mr. Phares fixes the value of lots on Summit Place at from \$10.00 to \$12.00 a foot, on Ralph Street and William Avenue at \$10.00 a foot and on Magie Road at from \$10.00 to \$12.00 a foot (Case, pp. 137-138).

Mr. Shearer fixes a very much higher value on this property. Averaging up his valuations there should be a credit of \$27,288, for lands on "El Mora Manor" released from the mortgage.

Mr. Phares' figures, adopting the lowest valuation given, would require a credit of \$14,288.40, and Judge Whittimore's lowest figures would require a credit of \$14,836.08.

To these credits should be added the value of the property on the North Side of Magie Road established at \$1,500.

These values are fixed as of the time the releases were given.

Seaman was also sworn as an expert on values for the complainant (Case, pp. 236 to 248).

He places a nominal value on the property released, which probably differs from his estimate of value given the representatives of the complainant when he sought the loan from them. His testimony is hardly reliable.

The price of lots bought by the Appellants ought to afford some criterion of value. McClelland paid \$1,100 for four lots with a frontage of 100 feet on Ralph Street.

Price paid \$650 for two lots with a frontage of 50 feet on Ralph Street.

Inch paid \$1,275 for two lots on Ralph Street with a frontage of 50 feet and two lots on William Avenue with a frontage of 50 feet.

Bird paid \$650 for two lots on Summit Place with a frontage of 45 feet.

Cole paid \$675 for two lots on William Avenue with a frontage of 50 feet.

Striking an average rate per foot based upon these values, after deducting a discount of 10% for cash, the rate per front foot on William Avenue would be \$11.70, on Ralph Street \$10.66 and Summit Place \$14.44, making the total credit on these figures for lots on these three streets \$16,646.56.

The appraisal committee of the complainant Company fixed a value of \$200 a lot on all this property in "El Mora Manor." (Case, p. 224).

Applying this value to the 72 lots released, the total credit which the complainant should allow, would be \$14,400.

There should also be further credits as hereinafter set forth.

According to the brief of counsel before the Advisory Master and the Bill of Complaint, paragraph 14 (Case, p. 15, etc.), there was due the complainant on its first mortgage, at the time it released the 72 lots above mentioned, \$4,548. There was due on the second mortgage at the same time, \$7,655.87. It is unimportant to which mortgage the value of the lands released should be credited for the credit to be made will extinguish both mortgages in so far as the Appellants are concerned.

Releases from the lien of the third mortgage affecting lots in El Mora Manor were made at the agreed rate of \$5.00 a foot, the total amount received being \$1,600.

The first mortgage contains no release clause and as the complainant was chargeable with notice it should credit not only the reasonable value of lands released without consideration, but the reasonable value of lands released for a consideration, and there should be credited on account of the mortgages, the difference between \$1,600 and the reasonable value of the lots released, which should include the value of the houses on some of the lots. (Case, pp. 192, 219, 126, 127).

The first and second mortgages of the appellants are subject to the rights of these appellants.

The first and second mortgages were admittedly acquired by the complainant for the purpose of securing a priority over the holders of contracts

unrecorded, looking to the day when it should, in these proceedings, wipe out such rights. They were taken as collateral security, although not so noted in the records of the complainant.

Can anyone, after reading all the testimony and examining the correspondence passing on the subject of this mortgage loan, reach any other conclusion, than that bad faith is attributable to the complainant company?

Morris v. White. 36 Equity, 324.

Will this Court permit complainant to reap the benefit of what is, if not a moral, a constructive fraud upon these contract holders? The premises affected by these contracts were to be conveyed free and clear of all encumbrances by warranty deeds, and notice of the contents of these contracts is imputable to the complainant (Cases above cited). It is seriously contended that the complainant ought to be estopped from asserting both its first and second mortgages against these appellants.

The contract of Sella P. Cole supercedes the complainant's third mortgage and judgment.

Special reference is made to this contract for the reason that the complainant questioned the date thereof before the Advisory Master. Mrs. Cole testified that the date of her original contract was October, 1912, and that it expired in November, 1915. In March, 1914, she went to the New York Office of the vendor and saw Mr. Shearer, its president. She gave him \$60.00; he took the original contract and tore it up and when she asked why he did it, he made some unintelligible excuse and drew up a new one assuring her that it was the same as the first. The second contract, together with receipts for payments she made, she surrendered to the sec-

retary when she received a Deed (Case, p. 193). The secretary testified that all contracts surrendered were destroyed (Case, p. 160).

If there is any basis for the contention that Mrs. Cole's original contract was nullified by this act, it is plain that she was imposed upon by Mr. Shearer. She was ignorant of the claims of the complainant and as to her rights under the contract. She paid all moneys due on the contract, and, in the fall of 1915, the company gave her a Deed for her lots, which she held for some months and finally sent it to the subscriber for inspection and advice. The Deed was defective in some respects and was handed back to the company for correction. The Deed was never returned to her. A substitution of lots was proposed, but when Mrs. Cole expressed her assent to make the exchange it was refused (Case, p. 151, 152).

The questions for determination are whether this Court will recognize what is claimed to have been a forfeiture of Mrs. Cole's contract and whether it will allow Shearer's deception to create priorities in favor of the complainant which it would not otherwise possess. Both these questions should be answered in the negative.

Order of sale of the mortgaged premises.

If the appellants succeed in establishing notice, the credits to be allowed on the first and second mortgages for the reasonable value of lands released therefrom without consideration, or for an inadequate consideration, will extinguish said mortgages so far as these appellants are concerned and they will not be interested in the manner of selling the mortgaged premises.

If this issue goes against the appellants, then they are interested.

The question debated before the Advisory Master

at the time the final decree was fixed was whether the order of sale of the various lots purchased on contracts should be fixed with reference to the dates of the contracts or the dates of the deeds given pursuant to the terms thereof. The decree firstly directs the sale of lots purchased on contracts where deeds have not been given, regardless of the terms of the contracts which provide for the delivery of deeds long before the filing of the Bill of Complaint.

It is immaterial to the subscriber whether the decree is altered in respect of the order in which it directs the sale of the mortgaged premises.

Respectfully submitted,

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Solicitor and of Counsel with
Appellants, Charles A.
Bird, et als.