1896

Foreclosure of a Mortgage by Action with Special Reference to New York Law

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FORECLOSURE OF A MORTGAGE BY ACTION WITH SPECIAL
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THESIS PRESENTED FOR THE DEGREE OF BACHELOR OF LAWS.

BY

CLEVELAND GARDNER BABCOCK.

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CORNELL UNIVERSITY.

SCHOOL OF LAW.

1896.
That the object of this thesis may be more readily apparent, my purpose is first; to briefly explain the progressive steps in the foreclosure of a mortgage by action in the Supreme Court under the Code of Civil Procedure of New York where there is a default as to all parties except an infant defendant, and secondly; to make a judgment roll of a real case to illustrate such foreclosure. It is not my purpose to give the historical development of the different methods of foreclosure which led to the adoption of this form of action nor discuss any other form of this subject, but simply to state the law of New York as it exists under sections 1626 to 1637 inclusive of the Code.

In opening the thesis proper, it would perhaps be the more advisable plan to first briefly define the terms mortgage and foreclosure, and to give the purpose and effect of such foreclosure. A mortgage in New York, is the conveyance of an estate or property in land by way of pledge to secure the payment of a debt and to become void on such payment. And "Foreclosure is the process by which a mortgagee acquires or trans-
fers to a purchaser an absolute title to the property on which he has previously had a mere lien by way of mortgage". Wiltsie on Mortgages, p.5. With every mortgage there exists an inherent right to foreclose but such right is not an unrestrained one, for so long as the mortgagor keeps his covenants, the mortgagee can have no grievance to redress, and the mortgagor will be entitled to the undisturbed possession of the premises, therefore so long as the covenants are observed by the mortgagor, and there is no default in payment of principal or interest, the mortgagee can do nothing. Two purposes are now generally sought to be accomplished in foreclosures: first, the extinguishment of the title in the mortgagee and mortgagor, and those claiming under them, so as to offer a perfect title at the sale, or such a title as the court will compel a bidder to accept; this purpose aims at exhausting every remedy against the land for collecting the mortgage debt: second, the recovery of a personal judgment for any deficiency that may remain after the proceeds of the sale are applied to the payment of the mortgage debt against all who have in any way become liable for the money secured by the mortgage. This latter purpose was originally accomplished only in actions in personam and the union of these two results is allowed only by statute. Code. Sect-
ions 1627 and 1632. The title and possession remain in the mortgagor until such conveyance upon sale; the interest of the mortgagee remains until then that of a mere lienor. The commencement of a foreclosure gives him no title, as his mortgage is only security for the debt; the title and seizin remain in the mortgagor until the referee's deed upon sale is actually delivered to the purchaser. Hubbell v Moulsen, 53 N.Y.225. The effect of foreclosure in this state, is to pass and vest title in the purchaser the estate which would have passed to and vested in the mortgagee if there had been a strict foreclosure no more and no less: Lawrence v Delano, 3 Sandf.333. And a sale made pursuant to a judgment or decree of a competent court having jurisdiction of the subject matter and of the parties, passes title to the purchaser, even though the judgment afterwards on appeal, should be set aside for error or irregularity. Blakeley v Calder, 15 N.Y.617. The deed of the officer of the court conveying the property will be as valid as if it had been executed by the mortgagor and mortgagee, and will be an entire bar against each of them, and against all parties to the suit in which the decree for such sale was made, and against their heirs and representatives, and all parties claiming under them or their heirs, Blakeley v Calder, supra.
Code, Section 1632, as well as against an assignee in bankruptcy, 5 U.S. Statutes at Large 446, who has notice of a suit pending against the bankrupt to foreclose the mortgage although he was not made a party to the action; Clive v Boerum, 24 N.Y. 613: and such deed will be an entire bar to the equity of redemption where the mortgagor becomes the purchaser the same as where the property is purchased by a stranger. Lansing v Goelet, 9 Cow. (N.Y.) 346. The decree of foreclosure and sale thereunder operates as a payment of the debt to the extent of the value of the property. Vausant v Allmon, 23 Ill. 50.

Jurisdiction in foreclosure cases is given to the Supreme Court as successor to the Court of Chancery, Code, Section 217, also to the County Courts, Code, Section 340, but the latter court has not the power to reform a mortgage and foreclose it, Avery v Willis, 24 Hun 548, nor to correct a mistake therein, Thomas v Harmon, 46 Hun 75, and its jurisdiction must appear on the face of the pleadings since it is a court of limited statutory jurisdiction. Kundolf v Thalheimer, 12 N.Y.593. Foreclosure actions are local and must be tried in the county where the property or some part thereof is located, subject to the power of the court to change the place of trial. Code, Sections 982 and 987 also Gould v Bennett, 59 N.Y.124. If no
objection is made that the place of trial is not the proper county, it will not affect the regularity of the proceedings. Marsh v Lowry, 26 Barber 177. And unless a reference is made in an action of foreclosure, it can only be tried at Special Term in the county where the property is located. Gould v Bennett, supra. The parties are not entitled to a trial by jury. Barker v Burton, 67 Barber 458.

There are two leading principles which control the courts of equity in determining the proper parties to a suit: first, that the rights of no man shall be decided in a court of justice unless he himself is present; second, that the decree rendered shall provide for the rights of all persons whose interests are in any way connected with the subject matter of the action. Combined, these have given rise to the general rule that all persons having an interest ought to be made parties. As applied in New York, the Code provides that "All persons having an interest in the subject matter of the action, and in obtaining the judgment demanded, may be joined as plaintiffs", Code, Section 446, and that "Any person may be made a defendant who has, or claims an interest in the controversy adverse to the plaintiff, or who is a necessary party defendant, for the complete examination or settlement of a question invol-
ved therein”. Code, Section 447. It is indispensible that the plaintiff have a real interest in the action as the Code provides that “every action must be prosecuted in the name of the real party in interest except that an executor or administrator, a trustee of an express trust, may sue, without joining with him the person for whose benefit the action was prosecuted.” Code, Section 449. These rules as prescribed by the Code are very general, and it would seem advisable to give a few examples of the decisions to illustrate their application to foreclosure cases. The only proper parties are the mortgagor, mortgagee, and those who have acquired rights under them subject to the mortgage, and these parties only are affected by the judgment of foreclosure. Emigrant Savings Bank v Goldman, 75 N.Y. 127. And no persons should be made parties except those who have title to or lien upon the premises. Gardner v Lansing, 28 Hun 413. As to parties plaintiff, the original mortgagee if he still holds the mortgage can foreclose. The assignee of a mortgagee can foreclose, Andrews v Gillespie, 47 N.Y. 487, but if the assignment is as collateral security, both assignor and assignee should join as plaintiffs. Hoyt v Martense, 16 N.Y. 251. The power to foreclose may be exercised by one owning only a part of the mortgage debt, and if he
claims too much, that does not render the sale void. Batterman v Albright, 6 St. Rep. 334. If the party bringing the foreclosure has not the entire interest, the interested parties should be plaintiffs unless they refuse, which should be alleged, and then they should be made defendants. Hancock v Handcock, 22 N.Y. 568. Joint holders of a mortgage should be co-plaintiffs, unless upon refusal of one to join, and then he may be made a defendant, the reason therefore being stated in the complaint. Code, Section 448. Parties who are entitled to the benefits of the mortgage security, although not named as mortgagees, or holding the assignment, may foreclose as equitable assignees in some cases. Carpenter v O'Dougherty, 58 N.Y. 681. A surety who has been obliged to pay a mortgage debt may be subrogated to the rights of the mortgagee and maintain foreclosure. Marshal v Davis, 78 N.Y. 414. Where the mortgage is given to the special guardian of an infant, the guardian is the proper party to file a bill for redemption and assignment of a second mortgage on the same premises. Pardoe v Van Aiken, 3 Barb. 534. One executor or trustee may foreclose against another. Lawrence v Lawrence, 3 Barb. Ch. 71. Turning now to parties defendant it is very plain that the mortgagor, if he has not parted with his title, is a necessary defendant, Reed v Marble,
10 Paige 409, but he is not a necessary party where he has parted with his title by a recorded conveyance. Griswold v Fowler, 6 Abbot 133. If the mortgagor died holding the title, his heirs should be made defendant. Dodd v Neilson, 90 N.Y. 243. The real owner of the mortgaged premises does not forfeit his right to be made a party defendant by omission to record his deed; and, provided he made application in due time, it is the duty of the court to direct him to be brought in. Johnson v Donovan, 106 N.Y. 269. Where the bond is executed by the mortgagor and another it is proper to make all parties defendant and demand judgment against all. Thorne v Newby, 59 How. 120. All parties entitled to redeem from a mortgage must be made parties to the action. Russ v Stratton, 11 Misc. Rep. 565. The holder of the equity of redemption is a necessary defendant. Miner v Beekman, 50 N.Y. 337. The wife is a necessary party if married after the giving of the mortgage. Smith v Gardner, 42 Barb. 356. Liens of judgment creditors will not be cut off unless they are made parties. Verdin v Slocum, 71 N.Y. 345. In order that the purchaser may obtain a perfect title subsequent lienors are necessary defendants, as are holders of subsequent mortgages; if not a party he may redeem. Benjamin v Elmira etc., R.R. Co., 54 N.Y. 675. In foreclosure actions,
only subsequent lienors should be made defendants. Bram v Bram, 34 Hun 487. The validity of liens prior to the mortgage cannot be contested, "For in a mere action of foreclosure a title acquired prior to the execution of the mortgage can neither be contested or defeated. This is the rule as it was settled previous to the adoption of the present system of practice and it still continues to be the law". The Emigrant Industrial Savings Bank v Clute, 33 Hun 82. But it has been held in a later case that, "where, in an action brought to foreclose, a person whose title to the mortgaged premises is superior and prior to the mortgagor, is made a defendant, and it is alleged in the complaint that he has some claims to or interest in the mortgaged premises, which, if any, accrued subsequent to the execution of the mortgage, such persons rights will not be affected by the foreclosure judgment, nor will he be estopped thereby from afterwards asserting his title to the premises in question. But it is otherwise if the defendant in the foreclosure action so made a party, sets up by answer his prior right or claim to the premises, and, stating the facts in regard to his interest therein, asks the court to determine as to his interest thereto". The judgment entered in such case fixing the rights of such defendant estops his heirs and
privies from thereafter asserting any title to the premises other than that determined by such judgment. Fletcher v Barber, 82 Hun 405. "A person claiming dower by title paramount to a mortgage upon real estate cannot be brought into court in an action to foreclose the mortgage, and compelled to test the validity of her right to dower. Nelson v Brown, 144 N.Y.384. The mortgagee has no right to make a person, claiming title to the premises adversely to that of the mortgagor, and prior to the mortgage, a defendant. Emigrant Bank v Goldman, supra.

An action to foreclose a mortgage is a civil action and where all the parties are known and reside within the state, it is commenced by personal service of the summons and complaint, or of the summons alone. Code, Sections 416-423. And where some of the parties defendant are absentees, service can be made by publication, Section 438, and such publication bars the defendants even if they are infants. Wheeler v Scully, 50 N.Y. 667. In an action to foreclose, where the wife has only an inchoate right of dower, service of the summons on the husband is good for both husband and wife. Feitener v Hoeber, 121 N.Y. 660. "Where a personal claim is not made against the defendant, a notice, subscribed by the plaintiff's attorney, setting forth the general object of the action, a brief descrip-
tion of the property affected by it, if it affects specific real or personal property, and that a personal claim is not made against him may be served with the summons. If the defendant so served, unreasonably defends the action, costs may be awarded against him". Code, Section 423. Thus, if, after being served with notice in foreclosure, with a stipulation that nothing in the judgment shall affect her claim to dower, a wife appears and sets up that she is not a necessary party, neither party will be entitled to costs as against the other. Barker v Burton, supra. But if another action was pending to foreclose a mortgage upon the same property, or final judgment for the plaintiff had been given, a new foreclosure action could not be started by service of a summons unless leave of the court, in which the former action was brought, was obtained. Code, Section 1628. Affidavit of service should be made as in all ordinary cases of service.

The complaint in foreclosure should set out facts constituting the cause of action and not evidence of the facts. Code, Section 481. Under this rule it is improper to set out the mortgage and bonds or notes secured at length; and while the bond and mortgage should be described, a mere technical variance will be disregarded. Hadley v Champin, 11 Paige Ch. 245.
The breach of condition, which gives the right to foreclose, as well as the amount of plaintiff's debt due must be fully alleged. Second Am. Bldg. Ass. v Platt, 5 Duer 675. And where neither a default nor any fact from which it could be inferred to exist, were alleged and set forth in the complaint, it was held demurrable. Davies v N.Y. Concert Co., 5 St. Rep. 21. The several assignees of a mortgage should be set forth in full. Thorn v Desmond, 12 How. 321. And where there are infant defendants, the complaint should allege the requisite facts to show what are the interests of the defendants. Aldrich v Lapham, 6 How. 129. But it is not necessary to allege the indebtedness for which the bond and mortgage were given, and, if alleged, it need not be proved. Day v Perkins, 2 Sandf. Ch. 359. "The complaint, in an action to foreclose a mortgage upon real property, must state, whether any other action has been brought to recover any part of the mortgage debt, and, if so, whether any part thereof has been collected". Code, Section 1629. The complaint should ask for judgment, Code, Section 481, and costs and also for judgment for the deficiency, because the court cannot render a judgment for the deficiency unless demanded in the complaint. Swart v Boughton, 35 Hun 281. Affidavit of service should be made.
"The plaintiff must, at least twenty days before a final judgment directing a sale as rendered, file, in the clerk's office of each county where the mortgaged property is situated, a notice of the pendency of the action, as prescribed in section 1670 of this act; which must specify, in addition to the particulars required by that section, the date of the mortgage, the parties thereto, and the time and place of recording it."

And section 1670 provides that in an action affecting real property, that the plaintiff may, when he files his complaint, or at any time before final judgment, file a notice of pendency of the action, in the county clerk's office of every county where the property is situated, giving the names of the parties, the object of the action, and containing a brief description of the property in that county affected thereby. Such a notice may be filed with the complaint, before the service of the summons, but, in that case, personal service of the summons must be made upon a defendant, within sixty days after the filing, or else, before the expiration of the same time, publication of the summons must be commenced, or service thereof must be made without the state, pursuant to an order obtained therefor. And section 1671 provides that where such notice may be filed, it is constructive notice, from the time of filing, to a purchaser.
or incumbrancer of the property affected thereby, from or against a defendant, with respect to whom the notice is directed to be indexed. A person whose conveyance or incumbrance is subsequently executed or recorded, is bound by all the proceedings in the action after filing of the notice, as if he were a party to the action. And by section 1672 each county clerk with whom the notice is filed must immediately record it, and index to the name of each defendant specified in a direction in the notice, which notice is signed by the plaintiff's attorney. This notice of pendency of action has no effect until the complaint is filed. Stern v O'Connell, 35 N.Y. 104. It is binding upon subsequent purchasers and lienors but not upon prior incumbrancers. Fuller v Scribner, 76 N.Y. 190. The right to file such notice is absolute in all actions affecting real estate. Mills v Bliss, 55 N.Y. 159. A notice of lis pendens cannot be removed or cancelled until after the action has been settled, discontinued, or abated. Mills v Bliss, supra. Code, Section 1674. This paper is generally filed with the complaint.

The answer of the defendant in the action to foreclose a mortgage, is regulated in respect to its form by the Code the same as the answer in any civil action. Code, Section 500.
In such action, the defendant may plead the same matters in defense against the mortgage, except only the Statute of Limitations, that he could against the note or bond which the mortgage was given to secure. A defendant should not serve a general answer, merely admitting that the several rights and interests alleged in the complaint are correctly set forth, without at the same time setting up new matter constituting a defense, counterclaim or set-off. Where the defense consists of new matters by way of avoidance the defendant must set forth the facts of his defense in full and prove them as alleged. Where an answer setting up no new matter constituting a defense, counterclaim or set-off is filed, the plaintiff may move at a Special Term of the court to strike it out as sham or frivolous, and at the same time apply for judgment: or, he may, upon previous notice, apply to the court for judgment upon the pleadings as they stand. Code, Sections 537 and 545, Rule 60. Defendants may in their answer set out their respective rights so far as it may be necessary to enable the court to make a proper decree for sale in parcels, so as to protect the rights of the several defendants on the reference as to surplus moneys. Tanner v White, 11 Paige 395. An answer setting up title in a third person is not frivolous, but shows a good defense.
Fougera v. Moissen, 16 Hun 237. A grantee assuming a mortgage is estopped from denying its existence and validity. Haile v. Nichols, 16 Hun 37. In a foreclosure suit by an assignee, the defendant may show that the assignment was obtained by fraud, and that he has paid the mortgage debt to the mortgagee. Hall v. Erwin, 60 Barb. 349. aff'd. 57 N.Y. 645. A purchaser of mortgaged premises, who takes a deed subject to the mortgage and assumes and agrees to pay the same, is estopped from contesting its consideration or validity; and where the mortgage was given by his grantor for purchase money, such grantee, so long as he remains in possession of the premises, cannot defend against the mortgagee because of failure of title. Parkinson v. Sherman, 74 N.Y. 88. A set-off may be allowed, but it must be of a debt due and payable at the commencement of the action. Holden v. Gilbert, 7 Paio 208. Code, Section 501. But demands purchased after the commencement of the action cannot be set off. Knapp v. Burnham, 11 Paio 330.

Where there are infant defendants in a foreclosure action and the summons has been served upon them, such infants must appear by guardian, "who must be a competent and responsible person, appointed upon the application of the infant, if he is of the age of fourteen years, or upwards, and applies
within twenty days after personal service of the summons upon him or after service thereof is complete: or, if he is under that age, or neglects so to apply, upon the application of any other party to the action, or of a relation or friend of the infant. Where the application is made by a person, other than the infant; notice thereof must be given to his general or testamentary guardian, if he has one within the State: or, if he has none, the infant himself, if he is of the age of fourteen years, or upwards, and within the State; or, if he is under that age, and within the State to the person with whom he resides." Code, Section 471. The court or judge may appoint a guardian ad litem for an infant either plaintiff or defendant where the infant is incapable on account of his age, or where he is capable, but fails to do so. The clerk, when appointed, must act in that capacity, but no person other than the clerk shall be appointed such guardian unless his written consent, duly acknowledged, is produced to the court or judge making the appointment. Code, Section 472. And "No person shall be appointed guardian ad litem either upon application of the infant. or otherwise, unless he be the general guardian of such infant, or is fully competent to understand and protect the rights of such infant, and has no interest adverse to that of
the infant, and is not connected in business with the attorney or counsel of the adverse party. And no person shall be appointed such who is not of sufficient ability to answer to the infant for any damages which may be sustained by his neglect or misconduct in the defense or prosecution of the suit, and such ability shall be shown by affidavits stating facts in respect thereto. And no person shall be appointed guardian ad litem who is nominated by the adverse party." Rule 49. An affidavit in violation of rule 49 of the Supreme Court will be set aside on a motion of any party interested, Hecker v Sexton, 43 Hun 593. It is the duty of every attorney or officer of the court to act as such guardian for an infant defendant, whenever appointed for that purpose by an order of this court. The person appointed should examine into the circumstances of the case so as to enable him to make a proper defense if necessary. Rule 50. But in the case of foreclosure where the infant is made a defendant to bar any subsequent claims which he may have against the mortgaged property the guardian simply puts in a general answer which does not raise an issue but simply puts the plaintiff to his proofs. Code, Section 1218. The guardian ad litem cannot be appointed until after service of the summons upon the infant, and if service has been made upon the
guardian ad litem and not upon the infant, a purchaser upon foreclosure sale will not be compelled to pay his bid and accept the deed. Ingersoll v Mangam, 84 N.Y. 622. And an appearance by one appointed guardian ad litem for an infant, who has not been served with papers, is not a voluntary appearance which is equivalent to personal service of the summons. Code, Sections 468 - 477. Ingersoll v Mangam, supra. An adjudication made in proceedings to which an infant regularly represented in accordance with the practice of the court, is a party, has the same effect as an adjudication between adults. Matter of Hawley, 100 N.Y. 206. An answer by an infant need not be verified. Code, Section 523.

"When no answer is put in by the defendant, within the time allowed for that purpose, or an answer denying any of the material facts of the complaint, the plaintiff, after the cause is in readiness for trial, as to all the defendants, may apply for judgment at any Special Term, upon due notice to such of the defendants as have appeared in the action, and without putting the cause on the calender." The motion is based upon the pleadings and upon an affidavit stating the facts, by reason of which the plaintiff claims to be entitled to the order. "The plaintiff in such case, when he moves for judgment, must show,
by affidavit or otherwise, whether any of the defendants who have not appeared are absentees: and, if so, he must produce the report as to the proof of the facts and circumstances stated in the complaint, and of the examination of the plaintiff or his agent, on oath, as to any payments which have been made. And in all foreclosure cases the plaintiff, when he moves for judgment, must show by affidavit, or by the certificate of the clerk of the county in which the mortgaged premises are situated, that a notice of the pendency of the action, containing the names of the parties thereto, the object of the action, and a description of the property in that county affected thereby, the date of the mortgage, and the parties thereto, and the time and place of recording the same, has been filed at least twenty days before such application for judgment, and at or after the time of filing of the complaint as required by law. It must appear from the affidavit that proper and complete service of the summons has been made upon each of the defendants. Goodyear v Brooks, 4 Robt. (N.Y.) 682. And that the money secured by the mortgage is due and payable and no copy of the answer has been served upon the plaintiff's attorney within the prescribed time. The affidavit must also state whether any of the defendants are infants or absentees. Anonymous, 3 How. 158.
Where there are infant defendants, the application should show
the time of the appointment of the guardian ad litem, because a
judgment by default cannot be taken against an infant defendant
until the expiration of twenty days after appointment of his
guardian ad litem; Code, Section 1218; but if such guardian
has appeared or pleaded, judgment may be taken immediately. New-
ins v Baird, 19 Hun 306. If service of the summons on any of
the defendants was made by publication, the motion papers should
show that service is completed, and that all requirements of
the statute are observed. Code, Section 1216. The affidavit
must also state whether any previous application has been made
for such an order, "and, if made, to what court or judge, and
what order or decision is made thereon, and what new facts, if
any, are claimed to be shown. For failure to comply with this
rule, any order made on such application may be revoked or set
aside." Rule 25. Upon this application, which must be made
at a Special Term in the district embracing the county in which
the action is triable, Rule 26, where due notice has been given
to such defendants who have appeared, the Court may, instead of
computing the amount due; refer it to some suitable person as ref-
erree, to compute the amount due to the plaintiff, and to such
of the defendants as are prior incumbrancers of the mortgaged
premises; and to examine and report whether the mortgaged premises can be sold in parcels, if the whole amount secured by the mortgage is not due. Rule 60. And this reference is not such a new and independent proceeding as to require new notice to be given the defendant. Kelly v Searing, 4 Abbott 354. The referee must be appointed by the Court, but the Court cannot appoint as such referee a person named by either of the parties to the action or their attorneys, nor can a partner or clerk of either attorney be appointed. Rule 61. The order appointing the referee in a foreclosure action is his commission to act, and until such order has actually been entered, and a certified copy served upon him, he should not proceed with the reference, for the validity of all his proceedings depends entirely upon the extent and scope of the order from which he derives his authority. Bonner v Mc Phail, 31 Barb. 106.

The duties of a referee in foreclosure vary but little from the duties of an ordinary referee, and a mere outline only will be attempted to be given here of such duties in foreclosure, as directed by the order of reference. Where the whole amount secured by the mortgage is due, and none of the defendants are infants or absentees, the order of reference should simply direct that the referee within sixty days, make
a computation of the amount due to the plaintiff, and to such of the defendants as are prior incumbrancers of the mortgaged premises, if there are any such. Such an order of reference is to be regarded as an interlocutory decree, made by the court and is not appealable. Bryan v Brennon, 7 How. 359. But as an order of reference is in aid of final judgment, an appeal from the final judgment will bring up for review all previous interlocutory orders and decrees. Chamberlain v Dempsey, 36 N.Y. 144. In case where the whole amount has not become due the referee is also directed "to examine and report whether the mortgaged premises can be sold in parcels." Rule 60. Furthermore "If the defendant is an infant, and has put in a general answer by his guardian, or if any of the defendants are absentees, the order of reference should also direct the person to whom it is referred to take proof of the facts and circumstances stated in the complaint, and to examine the plaintiff or his agent, on oath, as to any payments which have been made, and to compute the amount due on the mortgage, preparatory to the application for judgment of foreclosure and sale." Rule 60. It is the duty of the referee to report the proofs and the examinations had before him, Wolcott v Weaver, 3 How.P. 159, that the court may make such order thereon as shall be just. It is
not sufficient for the referee simply to report the result of his examination of the witnesses, or of his own conclusions from the evidence; but the proofs whether documentary or oral, should be fully reported to the court, Wolcott v Weaver, supra., and accompanied with an abstract of the documentary evidence produced before him. Security Fire Ins. Co. v Martin, 15 Abbott 479. In general, the referee must report upon all the matters embraced in the order of reference, as this report is the basis for a judgment and decree of sale.

Upon the coming in of the referee's report, it must be filed with the clerk; a note of the day of filing should also be entered in the proper book under the title of the cause or proceeding, Morgan v Stevens, 6 Abb. N.C. 356. The report must be presented at a Special Term for confirmation, Swarthout v Curtis, 4 N.Y. 415, and upon confirmation it becomes the act of the court as fully as if done by the court itself. McGowan v Newman, 4 Abb. N.C. 80.

In a mortgage foreclosure, judgment on default, where a reference has been directed and a report thereon has been made, follows as a matter of course, and such judgment of foreclosure is final. Morris v Morange, 38 N.Y. 172. In determining what the judgment shall be, the court will not be limited
to the report of the referee as the only evidence before it, but it may also look to the pleadings and receive other evidence in its discretion. Gregory v Campbell, 16 How. 417. "In an action to foreclose a mortgage upon real property, if the plaintiff becomes entitled to final judgment, it must direct the sale of the property mortgaged, or of such part thereof as is sufficient to discharge the mortgage debt, the expenses of the sale, and the costs of the action." Code, Section 1626. The judgment may also direct a sale of the mortgaged premises, either as an entirety or in separate parcels, as the referee may have reported to be the most advantageous: or that one part or parcel be sold first and that the remainder be left unsold, unless the sale of such remainder shall be necessary to pay the amount due, with the costs and expenses. Code, Sections 1636 and 1637. "The description and particular boundaries of the property to be sold, so far also, at least, as the same can be ascertained from the mortgage, shall be inserted. And, unless otherwise specially ordered by the court, the judgment shall direct that the mortgaged premises, or so much thereof as shall be sufficient to discharge the mortgage debt, the expenses of the sale and costs of the action, as provided by sections 1626 and 1676 of the Code, and which may be sold separately without
material injury to the parties interested, to be sold by or under the direction of the sheriff of the county, or a referee, and that the plaintiff, or any other party, may become a purchaser on such sale: that the sheriff or referee execute a deed to the purchaser: that out of the proceeds of the sale, unless otherwise directed, he pay the expenses of the sale, as provided by section 1676 as aforesaid, and that he pay to the plaintiff, or his attorney, the amount of his debt, interest and costs, or so much as the purchase money will pay of the same, and that he take the receipt of the plaintiff, or his attorney, for the money so paid, and file the same with his report of sale, and that the purchaser at such sale be let into possession of the premises on production of the deed." Rule 61.

The judgment should also direct the payment by the mortgagor of any deficiency of the mortgage debt that may remain unpaid after sale of the mortgaged premises, where the mortgagor is personally liable for the debt secured by the mortgage, and such judgment can be enforced like other judgments. Schwinger v Hickok, 53 N.Y. 280. Code, Section 1627. Where a judgment in foreclosure does not decree that a party shall be liable for any deficiency on the sale, an order granting such judgment for deficiency upon the referee's report of sale is irregular, and
will be set aside. Day v Johnson, 5 N.Y. Weekly Dig. 237.
The judgment should also direct that all surplus moneys arising
from the sale be paid to the treasurer of the county by the
referee or sheriff within five days after the same is received
and ascertainable, and every judgment shall contain such di-
rections, except where other provisions are specially made by
the court. Rule 61.

The plaintiff having duly procured the judgment of fore-
closure and sale and entered the same, is entitled to proceed
to have the mortgaged premises sold for the payment of his debt.
A sale under such decree is, in contemplation of law, the act
of the court. The duties of the officer appointed to sell are
purely ministerial in their nature, and he cannot vary the judg-
ment in prescribing the terms of sale, nor relieve himself
thereby from the performance of his duties. People v Bergen,
53 N.Y. 404. It is his duty to proceed to execute the decree
of sale without delay, if he is requested to do so by any of
the parties to the suit who will be injured by delay, regard-
less of any directions he may receive from the plaintiff or his
attorney. And should he refuse to proceed the court will di-
rect such officer to proceed upon the application of any person
interested in the sale. Kelley v Israel, 11 Paige Ch. 147.
It is the duty of the officer to follow the decree in its directions and such sections of the Code as are applicable to the sale of real property in general. Rule 62, Code citations, and Rule 61. But before a deed is executed to a purchaser by the sheriff or referee at the sale, it shall be the duty of the plaintiff "to file such mortgage and any assignment thereof in the office of the clerk, unless such mortgage and assignments have been duly proved and acknowledged, so as entitle the same to be recorded; in which case if it has not already been done, it shall be the duty of the plaintiff to cause the same to be recorded, at full length, in the county or counties where the lands so sold are situated, before a deed is executed to the purchaser on the sale: the expense of which filing or recording, and the entry thereof, shall be allowed in the taxation of costs; and, if filed with the clerk, he shall enter in the minutes the filing of such mortgage and assignments, and the time of filing. But this rule shall not extend to any case where the mortgage or assignments appear by the pleadings or proof in the suit commenced thereon, to have been lost or destroyed." Rule 63.

The referee or officer who makes the sale in a mortgage foreclosure acts simply as the agent of the court, therefore his
The report should be prepared and filed by the officer as soon as practicable after the disposition of the proceeds of the sale, as directed by the judgment. It should be a complete history of his proceedings, and should show that every direction given in the judgment has been executed. It should contain a statement of his fees and of the necessary expenses connected with the sale, and should be accompanied by proper receipts or vouchers for all payments and disbursements. All receipts and vouchers should be attached to the report and filed with the clerk, and a note of the day of filing the report should be entered by the clerk in the proper book under the title of the cause. Rule 30. Where there is a surplus, a report of the sale cannot be filed or confirmed unless accompanied by a proper voucher for the surplus moneys, showing that they have been paid to the proper parties or deposited pursuant to the directions of the judgment. Rule 61. Where there is a deficiency, it is not necessary to apply to the court for an order confirming the report of the referee before issuing execution against the defendant for the amount of the deficiency: nor does it appear to be necessary to enter any further judgment upon the filing of such report. Moore v Shaw, 15 Hun. 428 aff'd.
77 N.Y.512; see also Section 1627, Code. But the better practice appears to be to have the report of the referee confirmed and to enter judgment for the deficiency. Moore v Shaw, supra. In this state such sale need not be confirmed but title passes immediately to the purchaser by the deed. Moore v Shaw, supra.

The plaintiff is entitled to costs upon the rendering of judgment in his favor, where the complaint demands judgment for a sum of money exceeding fifty dollars. Code, Section 3228, subd.4. But there are a few regulations in regard to costs in foreclosure which are out of the general rules of costs, and these will now be discussed. "Application for an additional allowance can only be made to the court before which the trial is had, or judgment rendered, and shall in all cases be made before final costs are adjusted." Rule 45. These additional percentages to the plaintiff in foreclosure are allowed where judgment is rendered in his favor and he recovers costs. The percentages are to be estimated upon the amount found to be due upon the mortgage: if the sum does not exceed two hundred dollars, ten per centum; upon an additional sum, not exceeding four hundred dollars, five per centum; upon an additional sum not exceeding one thousand dollars, two per centum. Where such an action is settled before judgment, the plaintiff is entitled to
a percentage upon the amount paid or secured upon the settlement, at one-half of these rates. And where a part of the debt is not due, if the final judgment directs the sale of the whole property, the percentages must be computed upon the whole sum, unpaid upon the mortgage. But if it directs a sale of a part only, they must be computed upon the sum actually due, and if the court subsequently directs the sale of the remainder or a part thereof, the percentages must be computed upon the amount then due; but the aggregate of the percentages shall not exceed the sum, which would have been allowed, if the entire sum secured by the mortgage had been due, when final judgment was rendered. Code, Section 3252. The plaintiff is entitled as a matter of right, to the percentages given by section 3252 and the clerk enters the extra allowance as a matter of course. Hunt v Middlebrook, 14 How. 300. The court has no discretion to make any allowance other than that prescribed, and the allowance can be to the plaintiff only. Hunt v Chapman, 62 N.Y. 333. In a difficult and extraordinary case, the court may also, in its discretion award to any party a further sum not exceeding two and a half per centum upon the sum due or claimed to be due upon the mortgage, nor the aggregate sum of two hundred dollars. Code, Section 3253. The Code does not make it obligatory upon
upon the court to grant an allowance in every case considered by it to be difficult and extraordinary, and the granting of such an allowance is in the discretion of the court. Hurd v Farm. L. & T. Co., 16 Weekly Dig. 489. A defendant not entitled to costs cannot have an allowance. Couch v Millard, 41 Hun 212. But the sum awarded to the plaintiff in section 3252 cannot exceed in the aggregate two thousand dollars. Code, Section 3254. The allowance in section 3252 is taxed by the clerk as in the ordinary case, but the value of the property, required to be ascertained for that purpose must be ascertained by the court unless it has been fixed by the decision or report upon which final judgment is entered. Where costs are in the discretion of the court, the report or decision or the final judgment upon default, must specify which party or parties are entitled to costs, but the amount must be ascertained by taxation. Code, Section 3262.
TABLE OF CASES.

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Agricultural Ins. Co. v Barnard, 96 N. Y. 525.
Andrews v Gillespie, 47 N. Y. 487.
Anonymous, 3 Howard 158.
Avery v Willis, 24 Hun 548.
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Battermen v Albright, 6 State Reporter 354.
Benjamin v Elmira etc. R. R. Co., 54 N. Y. 675.
Blakeley v Calder, 15 N. Y. 617.
Bonner v Mo Phail, 31 Barber 106.
Bram v Bram, 34 Hun 487.
Bryan v Brennon, 7 Howard's Pr. 359.
Carpenter v O'Dougherty, 58 N. Y. 481.
Chamberlain v Dempsey, 36 N. Y. 144.
Clive v Boerum, 24 N. Y. 613.
Couch v Millard, 41 Hun 212.
Day v Johnson, 5 N. Y. Weekly Dig. 237.
Day v Perkins, 2 Sandf. Ch. 359.
Dodd v Neilson, 90 N. Y. 243.
Emigrant Industrial Savings Bank v Clute, 33 Hun 32.
Emigrant Savings Bank v Goldman, 75 N. Y. 127.
Feitner v Hoeger, 121 N. Y. 660.
Fletcher v Barber, 82 Hun 405.
Fougera v Moissen, 16 Hun 237.
Fuller v Scribner, 76 N. Y. 190.
Gardner v Lansing, 28 Hun 415.
Goodyear v Brooks, 4 Robt. (N.Y.) 682.
Gould v Bennett, 59 N. Y. 124.
Gregory v Campbell, 16 Howard's Pr. 417.
Griswold v Fowler, 6 Abbott 133.
Hadley v Champin, 11 Paige Ch. 245.
Haile v Nichols, 16 Hun 37.
Hall v Erwin, 60 Barber 349 aff'd. 57 N. Y. 643.
Hancock v Hancock, 22 N. Y. 508.
Hawley, Matter of, 100 N. Y. 20C.
Hecker v Sexton, 43 Hun 593.
Holden v Gilbert, 7 Paige 208.
Hoyt v Martense, 16 N. Y. 231.
Hubbell v Moulsen, 53 N. Y. 225.
Hunt v Chapman, 63 N. Y. 333.
Hunt v Middlebrook, 14 Howard 300.
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Ingersoll v Mangam, 82 N. Y. 622.
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Kelley v Israel, 11 Paige Ch. 147.
Kelly v Searing, 4 Abbott 354.
Kundolf v Thalheimer, 12 N. Y. 593.
Lansing v Goelet, 9 Cow. (N.Y.) 346.
Lawrence v Lawrence, 3 Barber's Ch. 371.
Lawrence v Delano, 3 Sandf. 333.
Marsh v Lowry, 26 Barber 177.
Mills v Bliss, 55 N. Y. 139.
Miner v Beckman, 50 N. Y. 337.
Moore v Shaw, 15 Hun 428 aff'd. 77 N. Y. 512.
Morgan v Stevens, 6 Abbott's N. C. 356.
Morris v Morange, 38 N. Y. 172.
Nelson v Brown, 144 N. Y. 384.
Newins v Baird, 19 Hin 306.
Pardee v Van Aikon, 3 Barber 534.
Parkinson v Sherman, 74 N. Y. 88.
People v Bergen, 53 N. Y. 404.
Reed v Marble 10 Paige 409.


Schwinger v Hickok, 53 N. Y. 280.

Second Am. Bldg. Ass. v Platt, 5 Duer 675.


Smith v Gardner, 42 Barber 356.

Stern v O'Connell, 35 N. Y. 104.

Swart v Boughton, 35 Hun 281.

Swarthout v Curtic, 4 N. Y. 415.

Tanner v White 11 Paige 395.

Thomas v Harmon, 46 Hun 75.

Thornev Newby, 59 Howard 120.

Vausant v Allmon, 23 Ill. 30.

Verdin v Slocum 71 N. Y. 345.

Wheller v Scully 50 N. Y. 667.

Wolcott v Weaver, 3 Howard's Pr. 159.

Thorne v Desmond 12 Howard 321.
OTHER REFERENCES.

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Code Sections.


Supreme Court Rules.

25, 26, 30, 45, 49, 50, 60-63,

5 United States Statutes at Large 446.
Supreme Court, County of Charleston

To the above named Defendant:

You are hereby Summoned, to answer the complaint in this action, and to serve a copy of your answer on the plaintiff's attorney within twenty days after the service of this Summons, exclusive of the day of service; and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Trial desired in the County of .

Dated the day of 189 .

Plaintiff's Attorney

P. O. Address,

AND YOU WILL FURTHER TAKE NOTICE that a personal claim is not made against you or any of the defendants in said action, except the defendant .
Court

against

SUMMONS.

Plaintiff's Attorney.
To the above named Defendant:

You are hereby Summoned, to answer the complaint in this action, and to serve a copy of your answer on the plaintiff's attorney within twenty days after the service of this Summons, exclusive of the day of service; and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Trial desired in the County of

Dated the ........................................... day of ...........................................

Plaintiff's Attorney

P. O. Address,

N. Y.

Clerk of the County of

State of New York, in Book of Mon.

being date

o'clock in the

room

to secure the payment of the sum of

with interest from ..........................................., according to the condition of a certain Bond or writing obligatory, bearing even date therewith, and upon which said Bond and Mortgage there is now due and unpaid the sum of $........................................... of principal, with interest thereon from the ............... day of ........................................., and that the following is a brief description of the property affected by this action, namely: ALL THAT TRACT OR PARCEL OF LAND situate in the ............... of

County of ..........................................., and State of New York.
Supreme Court, County of Chautauqua

George Miller
Aet.

John Jones, Mary Jones
Henry Stewart, Michael Lewis

To the above named Defendant:

You are hereby Summoned, to answer the complaint in this action, and to serve a copy of your answer on the plaintiff's attorney within twenty days after the service of this Summons, exclusive of the day of service; and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Trial desired in the County of Chautauqua

Dated the 30th day of January 1896

Henry George
Plaintiff's Attorney

P. O. Address:

Greenville, N.Y.

To secure the payment of the sum of $1,700.00, with interest from January 1, 1891, according to the condition of a certain Bond or writing obligatory, bearing even date therewith, and upon which said Bond and Mortgage there is now due and unpaid the sum of $1,700.00 of principal, with interest thereon from the thirtieth day of January 18, 1891, and that the following is a brief description of the property affected by this action, namely: ALL THAT TRACT OR PARCEL OF LAND situate in the Town of , County of Chautauqua, and State of New York, being...
AND YOU WILL FURTHER TAKE NOTICE that a personal claim is not made against you or any
of the defendants in said action, except the defendant John Jones of Hooerville, New York.

Dated the 2nd day of ___

Henry Gray
Plaintiff's Attorney

IN COURT.
INFANT DEFENDANT:

PLEASE TAKE NOTICE that you are hereby required to appear by your general guardian in the above entitled action, if you have one, and if not, that you appear and apply for the appointment of a special guardian to appear and act in your behalf in said action within twenty days after the service of this summons and notice upon you. Or in case of your failure to do so, plaintiff above named will apply to have such appointment made after the expiration of said time.

Dated at Woodstock, N.Y., the 30 day of January, 1896.

Yours, etc.,

Henry J. (Signature)  
Plaintiff's Attorney

[Additional handwritten text with measurements]}
Dated the 30th day of January, 1896

George Smith

against

John Jones and Michael Brown

Plaintiff’s Attorney

David of Personal Service.

Plaintiff’s Attorney

N. Y.
The Complaint of the above named plaintiff respectfully shows to this Court that the defendant, John Jones and Mary Jones, for the purpose of securing the payment to George Smith of the sum of One Thousand Dollars, with interest thereon, on or about the first day of January, one thousand eight hundred and forty-two, executed and delivered to said Smith a bond bearing date on that day, sealed with the seal, whereby the said John Jones, Mary Jones, heirs, executors and administrators in the penalty of One Thousand Dollars, upon condition that the same should be void if the said John Jones and Mary Jones, the heirs, executors or administrators should pay to the said George Smith his executors, administrators or assigns, the sum of money first above mentioned, as follows:  

Two Thousand Five Hundred Dollars and entrance as follows: the interest to be paid semi-annually and to commence at the rate of 6% per annum, the principal sum of $2,500.00 to be paid five years after date.

and, as collateral security for the payment of the said indebtedness, the said John Jones and Mary Jones on the same day executed, duly acknowledged and delivered to the said George Smith a mortgage, whereby they granted, bargained and sold to the said George Smith the following described premises, with the appurtenances thereto, that is to say:
All that Tract or Parcel of Land situate in the Town of _______ County of _______ and State of New York, being a part of a Township which, on a survey of Tract or Parcel of Land and for the said Land Company by Joseph Elliott, Esq., is designated by lots, Number 6 in the 11th Tract or Parcel of Land, and which said Tract of Land is a certain Tract of Land on a certain line upon a survey of said Township made by the said Elliott for the said Land Company, as his conduct by the part of said Town as more in said Town. to be described as follows: Commencing at a point on the said line of land from the said by a noted corner, the said line of land from the said by a noted corner 300 feet next to the line of the Highway leading from Towne to Charles Towne, thence and thence to the said Tract of Land, as 50 lines; thence North 75° 20' degrees West 30° 30' thence North 75° 20' degrees East 75° 20' thence North 75° 20' degrees West 75° 20' thence North 75° 20' degrees East 30° 20' thence North 75° 20' degrees West 30° 20' thence North 75° 20' degrees East 30° 20' thence North 75° 20' degrees West 30° 20' thence North 75° 20' degrees East 30° 20' thence North 75° 20' degrees West 30° 20' thence North 75° 20' degrees East 30° 20'.

The said mortgage containing the same conditions as the said bond, and the further condition that if the said mortgagor should not pay the monies thereby secured, according to the terms thereof then the said George(3) Jones, h.e. heirs, executors, administrators or assigns, were empowered to sell the said mortgaged premises in due form of law, and out of all the monies arising from such sale to pay the said sum of money and interest in and by said bond secured to be paid, with costs and expenses of the proceedings thereupon, the surplus, if any there should be, to be returned to the mortgagor.

And the plaintiff further shows that the said mortgage was duly recorded in the office of the Clerk of the County of _______ New York, on the 3rd day of January, One thousand eight hundred and _______ day at 1 o'clock P.M., in Book No. 17 of Mortgages, at page _______.

And the plaintiff further show that said bond contained the agreement that should any default be made in the payment of the interest or principal sum when due, or should continue and remain unpaid for ten days then the whole amount accrued thereon by said mortgage and the bond should at the option of the owner or order of owner become absolute due and payable immediately upon said default and plaintiff became entitled to recover the whole amount secured by said bond and sum of

And the said plaintiff further show that the said defendant failed to comply with the conditions of the said bond and mortgage, by omitting to pay the sum of $2,500 on the first day of January, 1896, which, by the terms and conditions of the said bond and mortgage, became due on the first day of January, 1896, and there is now justly due the plaintiff upon the said bond and mortgage the sum of

Andrew Stewart upon information and belief, that

The plaintiff further show that no proceedings have been had at law, or otherwise, to the knowledge or belief of said plaintiff, and no other action has been brought to recover said mortgage debt, or any part thereof.

And the plaintiff further show that Hiram Lewis, an infant under the age of fourteen years, and Michael Lewis, have some interest in, or lien upon, the said mortgaged premises, or some part thereof, which interest or lien, if any, has accrued subsequently to the lien of the said mortgage.

And the plaintiff further show that
The plaintiff therefore demands that the defendant, and all persons claiming under subsequent to the commencement of this action, and every person whose conveyance or incumbrance is subsequent, or is subsequently recorded, may be barred and foreclosed of all right, claim, lien and equity of redemption in said mortgaged premises; that the said premises, or so much thereof as may be sufficient to raise the amount due to the plaintiff for principal, interest and costs and which may be sold in parcels without material injury to the interests of the parties, may be decreed to be sold according to law; that out of all the moneys arising from the sale thereof, the plaintiff may be paid the amount due on the said bond and mortgage, with interest to the time of such payment, and the costs and expenses of this action, so far as the amount of such moneys properly applicable thereto will pay the same; that the officer, on making such sale be directed to pay out of the proceeds of the sale all taxes, assessments and water rates which are liens upon the property sold; and that the defendant may be adjudged to pay any deficiency which may remain after applying all of said moneys so applicable thereto:

and that the plaintiff may have such other or further relief, or both, in the premises, as shall be just and equitable.

STATE OF NEW YORK,
County of

being duly sworn, say he is the plaintiff in the above entitled action; that the foregoing complaint is true to his own knowledge except as to the matters therein stated to be alleged on information and belief, and that as to those matters he believes it to be true.

Sworn to before me, this day of 186.
Notice is hereby given, That an action has been commenced, and is now pending in the Supreme Court, upon the complaint of the above named plaintiff against the above named defendants, filed in the office of the Clerk of the County of Orleans for the foreclosure of a mortgage, bearing date the 1st day of ______, one thousand eight hundred and ______, executed by ______ to ______.

and recorded in the office of the Clerk of the County of Orleans at ______ N. Y., on the ______ day of ______, one thousand eight hundred and ______, in Liber ______ of Mortgages, at page _______, at ______ o'clock in the ______ noon; and that the mortgaged premises in the last mentioned County, affected by the said action, were, at the time of the commencement thereof, and at the time of filing this notice, are situated in the Village of ______ in said County, and are described in the said mortgage as follows, to-wit:

All that Tract or Parcel of Land, situate in the Town of ______ in the County of ______ and State of New York, being a part or parcel of a certain Township, which on a map or survey of the said Township, is described as follows, to-wit:

______ County of ______ New York, and State of New York, being a part or parcel of a certain Township, which on a map or survey of said Township, is described as follows, to-wit:

______ County of ______ New York, and State of New York, being a part or parcel of a certain Township, which on a map or survey of said Township, is described as follows, to-wit:
Dated January 30, 1896.

Henry George
Plaintiff's Attorney
New York.

To the Clerk of the County of

You are hereby directed to index the foregoing notice to the names of...

John...

Henry George
Plaintiff's Attorney
New York.
Supreme Court, Charlestown County.

George Smith
Age 20.

John Jones and
Mary Jones, Etc.

The defendant, Henry Alden, answering the complaint in the above entitled action by his guardian ad litem, Roger Williams, says he is a stranger to all and recognizes the parties in the complaint in the action set forth, and that he is an infant under the age of twenty-one years, and claims and is interested in the premises as he is entitled to, and he submits his rights and interests in the matters in question in this action to the protection of the Court.

R. Learns,

Attorney for Roger Williams, Guardian of Infant, Defendant, Henry Alden.
Supreme Court, County of Chautauqua

George Smith

John Jones and
Mary Jones et al

State of New York,
COUNTY OF Chautauqua SS.

Of the Village of Forestville

being duly sworn, says that he is the attorney for the plaintiff in the above entitled action; that this action was brought to foreclose a mortgage upon real property; that the complaint herein was filed in the Clerk's Office of Chautauqua County on the 30th day of January 1896; that a notice of the pendency of this action* in the form prescribed by the Code of Civil Procedure, containing the names of the parties thereto, the object of the action, the date of the said Mortgage and the parties thereto, and the time and place of recording the same, the description of the mortgaged premises, and containing correctly and truly all the particulars required by law to be stated in such notice, was more than twenty days since, viz., on the 30th day of January 1896, filed in the Clerk's Office of the County of Chautauqua N. Y., that being the County in which the mortgaged premises were and are situated, which filing was at or after the time of filing said complaint; and that since the filing of said notice the complaint in this action has not been amended by making new parties to the action, or so as to affect other property not described in the original complaint, or so as to extend the claims of the plaintiff as against the mortgaged premises.

And this deponent further says that none of the defendants absentees

that all the defendants herein have been personally served with the summons and complaint.*

* Rule 60.
more than twenty days since, except the defendants Henry Clear and Michael Reeves, who were served by

who were served by notice of personal service herein. And none of said defendants have appeared, answered or demurred herein, except the defendant Henry Clear as appears by the notice of hereto annexed.

And this deponent further says, that one of the defendants Henry Clear, an infant, is a party and judgment should not be rendered.

Deponent further says that the moneys secured by said bond and mortgage have all become due and are unpaid, except the sum of Dollars ($_________) to become due,

Subscribed and sworn to before me, this day of February 1896.

Henry George

[Signature]
At a Special Term of the Supreme Court, held at the Court House in Chautauqua County, on the 20th day of February, 1876, Present Hon. J. T. Lambert, Justice of said Court.

George Smith

against

John Jones & Mary Jones &c.

On Reading the Complaint on file in this action, also the affidavit of Henry George, plaintiff’s Attorney, and it appearing that this action was brought to foreclose a mortgage, and that the whole amount secured thereby is actually due; now on filing proof of the personal service of the summons in this action on the defendant, John Jones, Mary Jones, Henry Stewart and Michael Lewis, more than twenty days since, and that no answer to the said complaint has been served by either or any of them, except the general answer of the defendant, Henry Stewart, by Roger Williams, his guardian ad litem, infants by a guardian.

On motion of Henry George, Attorney for the plaintiff.

It is Ordered, That it be referred to C. W. Brown Esquire, residing in the Village of Forestville, N. Y., to compute the amount due to the plaintiff for principal and interest upon the bond and mortgage set forth in the plaintiff’s complaint, which is filed in this action. And also, to take proof of the facts and circumstances stated in the plaintiff’s complaint, and to examine the plaintiff or his agent on oath as to any payments which have been made.

John T. Lambert
J. T. C.
George Smith

against

John Jones
Mary Jones
& Co. et al.

Sum of Reference.—Whole Amount
Due.—Absentees or Infants.

Henry George
Plaintiff, Attorney

Wanted at within Term. To be entered
in the office of the Clerk of the County.

E., Pullman
Clerk.

and entered. Feb 22, 1876
STATE OF NEW YORK,

County of Schuyler

of

I, C. W. Record, the Referee appointed in this action, being duly sworn, do say that I will faithfully and fairly try the issues and determine the questions referred to me, in this action, and a just and true report make therein, according to the best of my understanding.

Sworn to before me, this 24th day of February, 1896

C. W. Record

Referee

Notary Public
against

REFEREE'S OATH.
In Pursuance of an Order of this Court, made in the above entitled action, on the 28th day of February in the year one thousand eight hundred and thirty-eight, by which it was referred to the undersigned Referee to ascertain and compute the amount due to the plaintiff upon and by virtue of the bond and mortgage mentioned and set forth in the plaintiff complaint, which is filed in this action: and also to take proof of the facts and circumstances stated in the plaintiff complaint, and to examine the plaintiff or his agent, on oath, as to any payments which have been made: I, C N Record

DO REPORT, that I have computed and ascertained the amount due to the plaintiff upon and by virtue of the said bond and mortgage, and that I find, and accordingly report, that there is due to the above named plaintiff, for principal and interest on said bond and mortgage, at the date of this my report, the sum of Twenty-Five Hundred and Twenty-Five Dollars.

SCHEDULE "A," hereunto annexed, shows a statement of the amounts due for principal and interest respectively, the period of the computation of the interest, and its rate.

And I do further certify and report, that I have taken proof of the facts and circumstances stated in said plaintiff complaint, and have examined the plaintiff on oath, as to any payments which have been made on account of the demand mentioned in said complaint, and which ought to be credited thereon; and I am of opinion, and hereby report, that the facts and circumstances stated in said complaint are true.

Dated the day of. 188. C N Record. Referee.
SCHEDULE "A."

One bond dated the first day of January, 1891, in the penal sum of $1,000.00 conditioned to pay $2,500.00 as follows:

The principal sum of $1,000.00 to be paid in five years from due, at the rate of six per cent semi-annually, payable semi-annually,

which is accompanied by a mortgage of the same date.

Principal sum due. $2,500.00
Interest thereon from the first day of January, 1891, being one year, two months and one day, at 6 per cent per annum, is $25.00.
Amount due plaintiff this first day of March, 1896, $2,525.00.

C. N. Record. Referee.
At a Special Term of the Supreme Court of the State of New York, held at the Court House in the County of Chauncey in said State, on the 12th day of March, Eighteen hundred and ninety-six.

Present—Hon. John S. Lamont, Justice of said Court.

George D. Smith

John Jones, Mary Jones

Henry Stuart and Michael Lewis

In Order of Reference, having been duly made to compute the amount due to the plaintiff upon the bond and mortgage set forth in the complaint in this action, and also to examine the plaintiff or such of the claimants of the mortgage defendant, hereby it is set forth

and the referee named in said order having made his report dated April 27, 1896, whereby he finds that there was due to the plaintiff at the date of said report the sum of Twenty-five Hundred and Eighty-five Dollars 262,625 Cents.

Now, on filing said report, together with due proof that notice of the pendency of this action, in the form prescribed by law, together with the complaint herein, were duly filed in the Clerk's office of the County where the mortgaged property is situated, more than twenty days since, and on motion of Henry George, plaintiff's attorney, it is ordered that the said report be and the same is confirmed; and it is further ORDERED AND ADJUDGED that the mortgaged premises described in the complaint in this action, as hereinafter set forth, or such part thereof as may be sufficient to discharge the mortgage debt, the expenses of the sale, and the costs of the action, and which may be sold separately without material injury to the parties interested, be sold at public auction, in the County of Chauncey, by a person to whom it is hereby referred to make such sale; that the said referee give public notice of the time and place of such sale according to law and the practice of this Court; that either or any of the parties to this action may become a purchaser on such sale; that the said referee execute to the purchaser or purchasers a deed or deeds of the premises sold; that out of the proceeds of the sale, after deducting the amount of his fees and expenses on such sale, the said referee pay to the plaintiff or his attorney the sum of Dollars and Cents, adjudged to the plaintiff for costs and charges in this action, with interest thereon from the date hereof, and also the amount so reported due as aforesaid, with interest thereon from the date of said report, or so much thereof as such proceeds will pay of the same, and take a receipt therefor and file the same with his report of sale, and that if there is any surplus he bring the same into Court, by paying the same to Treasurer of said County, within five days after the same shall be received and be ascertainable, for the use of the person or persons entitled thereto. That said referee make a report of such sale, and file it with the Clerk of this Court with all convenient speed. And it is further adjudged that if the proceeds of such sale be insufficient to pay the amount so reported due to the plaintiff with the interest, expenses and costs as aforesaid, the said referee specify the amount of such deficiency in his report of sale, and that the defendant...

pay the same to the plaintiff, and that the purchaser or purchasers at such sale be let into possession of the premises so sold on production of the said referee's deed thereof.

* See Rule Sixty.
AND IT IS FURTHER ADJUDGED that the defendants and all persons claiming under them, or any or either of them, after the filing of said notice of pendency of this action, be forever barred and foreclosed of all right, title, interest, claim, lien or equity of redemption in and to the said mortgaged premises so sold, or any part thereof.

The following is a description of the said mortgaged premises hereinbefore mentioned:

[Description of the property]
Know all Men by these Presents, That

And Mary Jones, his wife, are

held and firmly bound unto

in the sum of

Dollars, to be paid to the said

or to his certain attorneys, executors, administrators or assigns,

for which Payment, well and truly to be made bind

and his heirs, executors and administrators, jointly and severally, firmly by these presents. Sealed with seal. Dated the first day of January

in the year of our Lord one thousand eight hundred and ninety-

The Condition of this Obligation is such, That if the above bounden

heirs, executors, administrators, or any of them, shall and do well and truly pay, or cause to be paid, unto the above mentioned

certain attorneys, executors, administrators or assigns, the just and full sum of Two Thousand Five Hundred Dollars and interest

as follows: the interest to be paid semiannually

and to remain at the rate of six per cent per

annum; the principal sum of $2,500.00 to be paid

six years after date, that is to say, January

first, 1896.

and keep the obligations hereinafter contained, without fraud or other delay, then this obligation to be void, else to remain in full force and virtue.

And it is hereby further Provided, That should any default be made in the payment of the said principal or interest, or any part thereof, hereby secured, or in the payment of the taxes, assessments or insurance, as hereinafter provided, and should the same remain unpaid and in arrears for the space of ten days after the same shall, by the terms hereof, become due and payable, then that and in that case, the whole principal sum hereby secured to be paid, together with the interest thereon, shall, at the option of said obligee his executors, administrators or assigns, become and be due and payable immediately thereupon, anything herein contained to the contrary notwithstanding.

And it is hereby further Agreed, That the part of the first part shall and will keep the buildings erected and to be erected on the premises described in a certain mortgage executed by the said Jones & Jones

and bearing even date herewith, and being collateral hereto, insured in some solvent incorporated insurance company, Against Loss or Damage by Fire, to an amount not less than $5,000.00 Dollars, and shall assign the policy to be taken for such insurance to the obligee herein, or to his assigns as collateral security hereto.

And in case the said Insurance shall not be effected or continued in the manner above provided, then the said obligee his executors, administrators or assigns, may effect or continue such insurance in the name of said obligee or otherwise, and the premiums paid therefor shall be added to the principal sum hereby secured to be paid, and payable on demand with interest.

And it is also Agreed, That should default at any time be made in the payment of the taxes or assessments, which shall or may be taxed or assessed against said mortgaged premises, and should the same at any time remain unpaid for the space of ten days after the same shall become due and payable, it shall be lawful for the said party of the second part, his representatives or assigns, as mortgagee or otherwise, to pay such tax or assessment, and the sum or sums so paid shall be a lien on said mortgaged premises, added to the amount otherwise secured by these presents, and payable on demand with interest.

Sealed and delivered

IN PRESENCE OF

Henry L. and

Franklin Chase.
Received on the within Bond $_________ the________ day of________ 189

Received on the within Bond $_________ the________ day of________ 189

Received on the within Bond $_________ the________ day of________ 189

Received on the within Bond $_________ the________ day of________ 189

Received on the within Bond $_________ the________ day of________ 189

Received on the within Bond $_________ the________ day of________ 189

Received on the within Bond $_________ the________ day of________ 189

Received on the within Bond $_________ the________ day of________ 189

Received on the within Bond $_________ the________ day of________ 189

Received on the within Bond $_________ the________ day of________ 189
This Indenture,

Made this first day of January in the year of our Lord one thousand eight hundred and ninety one.

BETWEEN

John Jones and Mary Jones, his wife of Forest Hill, Chautauqua County, New York, of the first part, and

George Smith of the same place of the second part,

Witnesseth, That the said parties of the first part, in consideration of the sum of Two Thousand Five Hundred Dollars, ($2,500.00) to them duly paid, have sold, and

By these Presents, do hereby grant and convey to the said party y of the second part, his heirs and assigns,

All that Tract or Parcel of Land, situate in the Town of

Harmon, County of Chautauqua and State of New York, being a part or parcel of certain

land or lands, in the above-mentioned Town, bounded as follows: Beginning at a point on the said line of land, thence South 76.44°

West 67 links to a point on the center of the highway

leading from Point A to Point B, thence North 18°

34 links to the place of beginning.
This Grant is intended as a security for the payment of the sum of
Two Thousand Five Hundred Dollars and
Interest

according to the conditions of a BOND this day executed and delivered by the said
Peter Jones and Mary Jones,

to the said part of the second part; and this conveyance shall be void if such payment be made as herein specified. And in case default shall be made in the payment of the principal sum hereby intended to be secured, or in the payment of the interest thereof, or any part of such principal or interest as above provided, or the taxes, assessments or insurance hereinafter mentioned, for the space of ten days after the same shall become due and payable, it shall be lawful for the part of the second part, his executors, administrators or assigns, at any time thereafter, to sell the premises hereby granted, or any part thereof, in the manner prescribed by law, and out of all the moneys arising from such sale to retain the amount then due for principal and interest, and for taxes and insurance paid, together with the costs and charges of making such sale, and the over-plus, if any there be, shall be paid by the party making such sale, on demand, to the said

And it is hereby expressly Agreed that in case any installment of principal or any part thereof, or any interest moneys, or any part thereof, hereby secured to be paid, or any money paid for insurance, taxes or assessments herein specified, shall remain due and unpaid by said party of the first part, for the space of ten days after the same shall, by the terms hereof, become due and payable, that then and in that case the whole principal sum hereby
secured to be paid, together with all arrearage of interest thereon, shall, at the option of said part of the second part, his or her executors, administrators or assigns, become due and payable forthwith, anything herein contained to the contrary notwithstanding.

And it is also Agreed, by and between the parties of these presents, that the said part of the first part shall and will keep the buildings erected and to be erected upon the lands above conveyed, insured in some solvent, incorporated fire insurance company, against Loss or Damage by Fire, in an amount not less than dollars, the insurance to be chosen or approved by the part of the second part, his or her heirs or assigns, and assign the policy and certificate thereof to the said part of the second part. And in default thereof it shall be lawful for the said part of the second part to effect such insurance as mortgagee or otherwise, and the premium or premiums paid for effecting or continuing the same shall be a lien on the said mortgaged premises, added to the amount secured by these presents, and payable, on demand, with interest, and shall be collectible in the same manner, at the same time, and upon the same conditions as the interest hereinbefore mentioned.

And it is hereby expressly Agreed, by and between the parties to these presents, that the said part of the first part, his or her heirs or assigns, will pay and discharge all taxes and assessments that are now or shall hereafter be levied or assessed upon the above described premises or any part thereof, when the same shall become due and payable, and in default thereof for thirty days after the same shall be so levied or assessed and become payable, the said part of the second part, his or her heirs or assigns, may pay such taxes and assessments, and expenses of the same, and the amount so paid, and the interest thereon from the time of such payment, shall forthwith be due and payable, from the said part of the first part, his or her heirs or assigns, to the said second part hereto, his or her heirs, representatives or assigns, by virtue hereof, and the same shall be deemed a part of the moneys payable and secured by these presents, and shall be collectible in the same manner, at the same time and on the same conditions as the interest on the principal sum hereinbefore specified.

And this conveyance shall be void if full payment of the aforesaid moneys, both principal and interest, be made as hereinbefore specified, and if the aforesaid covenants, and each of them, be well and truly kept and performed as hereinbefore provided and specified.

In Witness Whereof, The part of the first part, hath hereunto set hand and seal the day and year first above written.

SEALED AND DELIVERED IN PRESENCE OF

State of New York,
COUNTY OF "County of New York"

On this day of , in the year Eighteen hundred and ninety- before me, the subscriber, personally appeared to me personally known to be the same person described in and who executed the foregoing instrument, and the acknowledged to me that they executed the same.
Mortgage.

REST, INSURANCE, TAX AND ASSESSMENT CLAUSES.

John Jones &
Mary Jones

TO
George Smith

Sum $750.00
Received January 1, 1897.

Houlauqua County, ss.
recorded on the ______ third ______ day of
January ______ A.D., 1897, at
____ o'clock, P.M., in Liber 177
Mortgages, at page 269 and exam-

E. P. Butterworth
Clerk.
The premises described in the annexed Advertisement of Sale will be sold under the direction of George Smith, on the following terms:

1st.—Ten per cent. of the purchase money of said premises will be required to be paid to the said William non at the time and place of sale, for which the receipt will be given.

2d.—The residue of said purchase money will be required to be paid to the said William non at his office, in the village of Rochester, on the first day of June when the said deed will be ready for delivery.

3d.—The reference is not required to send any notice to the purchaser; and if he neglects to call at the time and place above specified, to receive his deed, he will be charged with interest thereafter on the whole amount of his purchase, unless the reference shall deem it proper to extend the time for the completion of said purchase.

4th.—All taxes, assessments and other incumbrances which, at the time of sale, are liens or incumbrances upon said premises, will be allowed by the reference out of the purchase money, provided the purchaser shall, previously to the delivery of the deed, produce to the reference proof of such liens, and duplicate receipts for the payments thereof.

5th.—The purchaser of said premises, or any portion thereof, will at the time and place of sale, sign a memorandum of his purchase.

6th.—The biddings will be kept open after the property is struck down, and in case any purchaser shall fail to comply with any of the above conditions of sale, the premises so struck down to him will be again put up for sale, under the direction of said William non under the same terms of sale, without application to the Court, unless the plaintiff attorney shall elect to make such application: and such purchaser will be held liable for any deficiency there may be between the sum for which said premises shall be struck down upon the sale, and that for which they may be purchased on the re-sale, and also any costs or expenses occurring on such re-sale.

Dated 15th day of April 1896.

MEMORANDUM OF SALE.

Samuel Rogers have this 15th day of April 1896 purchased the premises described in the above annexed printed advertisement of sale for the sum of Three Hundred Dollars and hereby promise and agree to comply with the terms and conditions of the sale of said premises as above mentioned and set forth.

Dated April 15th 1896. Received from Samuel Rogers the sum of Thirty Thousand Dollars being ten per cent. on the amount bid by J. Rogers for property sold by me, under the judgment in the above entitled action.

§ 304, 30.
IN PURSUANCE AND BY VIRTUE OF A JUDGMENT OF THIS COURT, made in the above entitled action, on the ______ day of ________ in the year one thousand eight hundred and ninety--- and heretofore duly entered, by which it was, among other things, ordered and adjudged, that all and singular the mortgaged premises mentioned in the complaint in this action, and hereinafter described, or such part thereof as is sufficient to discharge the mortgage debt, the expenses of the sale, and the costs of the action, and which might be sold separately without material injury to the parties interested, be sold at public auction by or under the direction of the subscriber, a Referee duly appointed therein, for the purpose of making such sale; that the said sale be made in the county where the said mortgaged premises, or the greater part thereof, are situated; that the Referee give public notice of the time and place of such sale, according to law and practice of this Court, and that the plaintiff or any of the parties to this action might become a purchaser on such sale; that the Referee execute a deed to the purchaser of the mortgaged premises sold on said sale; and that the said Referee pay all taxes, assessments and water rates, which are liens upon the property sold, etc., and also pay to the said plaintiff, or his attorney out of the proceeds of the said sale, ________ dollars, costs and charges in this action as adjusted, and also the amount reported due plaintiff together with legal interest thereon from the date of the Referee's report; or so much thereof as the purchase money of the mortgaged premises sold would pay of the same, and that the Referee take plaintiff's receipt for the amount so paid, and file the same with his report; and that he pay the surplus moneys arising from the said sale, if any there should be, into Court, for the use of the person or persons entitled thereto, subject to the further order of the Court. And whereby it was further ordered and adjudged that if the proceeds of the said sale should be insufficient to pay the amount so reported due to the plaintiff with the interest, expenses, taxes and costs aforesaid, that the said Referee specify the amount of such deficiency in his report of the sale.

And Whereby it was Further Adjudged, that*

I, the subscriber, ___________ Referee as aforesaid, residing in ______ N. Y., do respectfully certify and report such sale and proceedings as follows: that having been charged by the attorney for the plaintiff with the execution of said judgment, I advertised said premises to be sold by me at public auction, at the

in the ________ County of ______ N. Y., on the ______ day of ______ in the year one thousand eight hundred and ninety---

That previous to said sale I caused notice thereof to be publicly advertised for ______ weeks successively, as follows, viz: by causing a printed notice thereof to be fastened in three public and
conspicuous places in the village where such premises were to be sold, and also in three public and conspicuous places in the village where the said mortgaged premises are situated, at least forty two days before the sale, and also by causing a copy of such notice to be published in each week during the two weeks immediately preceding such sale, in a public newspaper published in said County of ________ County to wit, in the ________ Advertiser, published at ________ in said County, which notice contains a brief description of said mortgaged premises.

AND I DO FURTHER REPORT that on the said ________ day of ________ in the year one thousand eight hundred and ninety ________, the day on which the said premises were so advertised to be sold as aforesaid, I attended at the time and place fixed for said sale, and exposed said premises for sale at public auction to the highest bidder, and the said premises were then and there fairly struck off to William Brown, for the sum of ________ Three Thousand ________ Dollars, he being the highest bidder therefor, and that being the highest sum bid for the same.

AND I DO FURTHER CERTIFY AND REPORT that I have executed, acknowledged and delivered to said purchaser the usual Referee's Deed of said premises, and have paid over or disposed of the purchase money, or proceeds of said sale, as follows, viz: I have paid to the attorney for the plaintiff the sum of ________ Ten ________ Dollars ________, being the amount of ________ costs and charges of this suit, with the interest as adjusted, and have taken a receipt therefor, which is hereto annexed.

I have also retained in my hands the sum of ________ Twenty Four Dollars, being the amount of my fees and disbursements on said sale, including costs for publishing notices of sale.

And I have paid to the ________ for the plaintiff the sum of ________ Twenty Six Sixty ________ Dollars, and have taken ________ receipt therefor, which is hereto annexed.

I have, as directed, also paid to the Treasurer of ________ County, for the use of the person or persons entitled thereto the sum of ________ Three ________ Dollars, the surplus herein, and have taken his receipt therefor, which is hereunto annexed.

I have paid for City Taxes ________

" " County Taxes ________

" " Water Rates ________

" " Printing and posting notices of sale ________

" " ________

and taken receipts therefor, which are hereunto annexed.

I have retained for my fees and commission ________ Twenty Five ________ Dollars.

I have also ________

AND I DO FURTHER CERTIFY AND REPORT that the premises so sold and conveyed as aforesaid, were described in said judgment, and in the deed so executed by me aforesaid, as follows, viz:

All that Tract or Parcel of Land situate in the ________ of ________ County of ________ and State of New York, known as ________.
AND I HEREBY FURTHER CERTIFY AND REPORT, that after such sale herein and the disposal of the proceeds as above provided, the amount of deficiency herein is $______ for which the defendant

is liable under said judgment.

All which is respectfully reported to this Court. Dated______

§102, §106, 2 Rese in case of surplus.

Repose

Court.

George Smith

John Jones and

Mary Jones et al.

Received, _______________ 1896, of __________ Recorded

the Referee who made the sale of the premises under and by virtue of the judgment in the above cause, the sum of Twenty Five Hundred Dollars and________ Cents ($______), which sum, being part of the proceeds of the sale of said premises is received by me under and by virtue of the provisions of said judgment, being________ the amount adjudged to be paid to said plaintiff with interest thereon as mentioned in said judgment.

Henry George

Attorney for Plaintiff
At a Special Term of the Supreme Court, held at the Court House, in Troyville, County of Chautauqua, N. Y., on the Sixth day of April, 1894.

Present—Hon. J. J. Lambert, Justice.

George Smith

against

John Jones, Mary Jones
Et al.

On Reading and Filing the Report of the Report of the Referree heretofore appointed herein, of the sale of the mortgaged premises mentioned and described in the complaint in this action, which report is dated Oct 28, 1894; now, on motion of Henry Jones, attorney for the plaintiff, Ordered, That said Report be, and the same is, hereby in all things confirmed.
Received, April 16, 1896, of C. M. Read,

John Jones
Mary Jones, Esq.
This Indenture,

Made this first day of June in the year of our Lord one thousand eight hundred and ninety-six BETWEEN

Referee in the action hereinafter mentioned, of ____________________________

in the County of Chautauqua, New York, of the first part, and

Samuel Rogers, also of the same place

of the second part:

Whereas, At a Special Term of the Supreme Court of Chautauqua County held at _________ on the first day of _________ in the year of our Lord one thousand eight hundred and ninety-six, it was, among other things, ordered, adjudged, and decreed by the said Court, in a certain action then pending in the said Court, between ____________________________ and ____________________________, that all and singular the premises described in a mortgage executed by ____________________________, and recorded in Chautauqua County Clerk's office, in Liber 7 of Mortgages, at page ..., and being the same premises mentioned in the complaint in said action, and in said judgment described, or such part thereof as is sufficient to discharge the mortgage debt, the expenses of the sale, and costs of said action, and which might be sold separately without material injury to the parties interested, be sold at public auction, according to law and practice of said Court, by and under the direction of the said ____________________________, who was appointed a Referee in said action and to whom it was referred by the said judgment, among other things to make such sale; that the said sale be made in the county where the said mortgaged premises, or the greater part thereof, are situated; that said Referee give public notice of the time and place of such sale, according to the course and practice of said Court, and that any of the parties in said action might become a purchaser or purchasers on such sale; that the said Referee execute to the purchaser or purchasers of the said mortgaged premises, or such part or parts thereof as should be sold, a good and sufficient deed or deeds of conveyance for the same, and pay taxes, assessments or water rates which were liens upon the property sold, etc.

And Whereas, The said Referee, in pursuance of the order and judgment of the said Court, did, on the __________ day of _________ in the year of our Lord one thousand eight hundred and ninety-six, sell at public auction, at _______________ in the County of Chautauqua, the premises in the said order and judgment mentioned, due notice of the time and place of such sale being first given, pursuant to the said judgment; at which sale the premises hereinafter described were fairly struck off to the said party of the second part for the sum of ____________________________ Dollars, that being the highest sum bid for the same.
Now this Indenture Witnesseth, That the said Referee, the party of the first part, to these presents, in order to carry into effect the sale so made by him as aforesaid, in pursuance of the order and judgment of said Court, and in conformity to the Statute in such case made and provided, and also in consideration of the premises, and of the said sum of money so bidden as aforesaid having been first duly paid by the said party of the second part, the receipt whereof is hereby acknowledged, hath bargained and sold, and by these presents doth grant and convey unto the said party of the second part, all the right, title and interest which the said... John Jones and Mary Jones Mortgagors, aforesaid, had at the time of the execution or recording of said mortgage, it being their interest in said premises which was so sold and is hereby conveyed in and to

All that Tract or Parcel of Land, situate in the Town of Harrow in the County of Chautauqua and State of New York, described as follows; to wit: being a part or parcel of a certain Township which, on a map or survey of townships, is called the Tract or Parcel of Land made for the Nearer Company by Joseph Allen, Surveyor, is described as Township No. 6 in the Eleventh Range of Said Township, and containing certain other area or surface of said Township, to be bounded by the said lines for the said Company, is distinguished by a post set at S in Said Township, to wit: as follows: Thence running at a point on the

With the land primarily owned by land

4 chains 12 links farther from the south of the last land

Namely from Westville to town, when due

18 ½ degrees West 2 chains 30 links; thence South

46 ½ degrees East 3 chains and 1 link; thence North

12 0 10 east 20 links North 7 ½ links South

3 14 degrees East 4 7 links South

47 ½ degrees East 7 ½ links, thence North

19 14 degrees, due North 4 7 links, thence

North 3 4 ½ degrees East 7 ½ links, thence North

1 14 12 degrees, due South 3 4 links by th

13th part in the Southwesterly 2nd of the

points, thence South 50 5 degrees West

thence West 71 49 degrees North, thence

due West 15 links, thence South

13 links to the place of commencing

more 1 less.
To Have and to Hold, All and singular, the premises above mentioned and described, and hereby conveyed unto the said party of the second part, heirs and assigns forever.

In Witness Whereof, The said party of the first part, Referee as aforesaid, hath hereunto set his hand and seal the day and year first above written.

SEALED AND DELIVERED IN PRESENCE OF

[Referee]
STATE OF NEW YORK,
County of ___________________ ss.

On this ______ day of _______ in the year one thousand eight hundred and ninety, before me, the subscriber, personally appeared. ______, Referee, etc., of the ______ of ______, New York, to me known to be the same person described in and who executed the within instrument, and acknowledged that he executed the same.

________________________
Fred Thomas

Notary Public
<table>
<thead>
<tr>
<th>Costs by Statute</th>
<th>25 00</th>
</tr>
</thead>
<tbody>
<tr>
<td>Additional defendants at $2.00 each</td>
<td>8 00</td>
</tr>
<tr>
<td>Necessary defendants exceeding ten, at $1.00 each</td>
<td></td>
</tr>
<tr>
<td>Commission on</td>
<td>2 10</td>
</tr>
<tr>
<td>&quot; additional, at ten per cent,</td>
<td>2 00</td>
</tr>
<tr>
<td>&quot; at five &quot;</td>
<td>2 00</td>
</tr>
<tr>
<td>&quot; at two &quot;</td>
<td>6 00</td>
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</tbody>
</table>

**FEES AND DISBURSEMENTS.**

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Clerk, for certificate of search</td>
<td>$2.75</td>
</tr>
<tr>
<td>Clerk, for recording Lis Pendens</td>
<td>25</td>
</tr>
<tr>
<td>For serving summons and notices</td>
<td></td>
</tr>
<tr>
<td>Clerk, for entry order of reference</td>
<td>2 25</td>
</tr>
<tr>
<td>&quot; for certified copy order of reference</td>
<td></td>
</tr>
<tr>
<td>&quot; for entering judgment of sale and foreclosure</td>
<td>1 10</td>
</tr>
<tr>
<td>&quot; for certificate do.</td>
<td>2 25</td>
</tr>
<tr>
<td>&quot; for copy of decree for Sheriff or referee</td>
<td>2 25</td>
</tr>
<tr>
<td>Referee's fees for computing the amount due</td>
<td>3 00</td>
</tr>
<tr>
<td>Trans. of judg't, filing do., entering satisfaction</td>
<td>1 15</td>
</tr>
<tr>
<td>Postage, affidavits</td>
<td>1 00</td>
</tr>
<tr>
<td>Sheriff's return execution</td>
<td>6 25</td>
</tr>
<tr>
<td>Clerk, filing execution and entering satisfaction</td>
<td>2 25</td>
</tr>
<tr>
<td>&quot; certifying papers to be filed in another county</td>
<td></td>
</tr>
<tr>
<td>&quot; for entry order of confirmation</td>
<td></td>
</tr>
<tr>
<td>&quot; for certified copy order of confirmation</td>
<td></td>
</tr>
<tr>
<td>&quot; making entry, surplus moneys</td>
<td>5 00</td>
</tr>
</tbody>
</table>

Taxed at $101.26 this 16 day of 1896.

E. Renown
Clerk.

County of New York

Sworn to before me, this day of April, 1896.

* Laws N. Y., 1890, Chap. 330.
Plaintiff's costs on foreclosure.

Clk.

Filed