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**Notice of Appeal.**  
(Filed October 16, 1928.)

IN CHANCERY OF NEW JERSEY.

Between SAMUEL BERNSTEIN, Complainant, and B. H. K. REALTY Co., a corporation, Defendant.	}	On Bill &c.	10
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The complainant, Samuel Bernstein hereby ap-  
peals from the Final Decree, made in the above en-  
titled cause on July 19th, 1928, made by the Chan-  
cellor on the advice of Vice Chancellor James F.  
Fielder, and from the whole and every part thereof  
to the Court of Errors and Appeals in the last re-  
sort in all causes.

Dated, October 13th, 1928.

SAUL NEMSER,  
Solicitor for and of Counsel with  
Complainant, Samuel Bernstein.

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

SAUL NEMSER,  
Of Counsel with Complainant,  
Samuel Bernstein.

**Petition of Appeal.**

(Filed Nov. 3, 1928.)

NEW JERSEY COURT OF ERRORS  
AND APPEALS.

10	SAMUEL BERNSTEIN, Complainant-Appellant,  vs.  B. H. K. REALTY Co., a corporation of New Jersey, Defendant-Respondent.	}	On Appeal from the Court of Chancery.
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TO THE HONORABLE THE COURT OF ERRORS AND APPEALS IN THE LAST RESORT IN ALL CAUSES.

20 The petition of Samuel Bernstein, the appellant in the above entitled cause, respectfully shows that

1. Petitioner finds himself aggrieved by a Final Decree made in the Court of Chancery by his Honor, Edwin Robert Walker, Chancellor of the State of New Jersey, bearing date July 19th, 1928, in a certain cause in said Court of Chancery wherein the said Samuel Bernstein was complainant and the said B. H. K. Realty Co., a corporation of New Jersey was defendant in this respect, to wit, that the said Final Decree adjudges that the bill-of-complaint be and the same is dismissed with costs.

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2. And petitioner appeals from the said Final Decree of the Chancellor, which decrees as aforesaid, on the ground that the same is erroneous in that:

(a) The Chancellor should not have dismissed  
 40 the complainant's bill-of-complaint, but should have

*Petition of Appeal.*

granted to complainant the relief prayed for in said bill-of-complaint.

(b) The Chancellor should have decreed that the complainant was entitled to redeem the lands and premises set forth in the bill-of-complaint, upon the payment of the monies found due to the defendant herein, and that upon the payment of the said monies due to the defendant, the defendant should have been compelled to convey to complainant all of its interest and title acquired by the said defendant in the premises described in the bill-of-complaint and to cancel its tax lien of record. 10

(c) The Chancellor should have found as a fact that the decree obtained by the defendant in the suit in Chancery, entitled B. H. K. Realty Company, complainant and John B. Eritrodamo, also known as John B. Erit, et als, defendants, docket 65 page 367, under which the defendant obtained title to the lands and premises, was obtained by fraud and that the Court of Chancery in said suit had not acquired jurisdiction over the defendants in said suit mentioned. 20

(d) The Chancellor should have found as a fact that the acts of the defendant and its agents, in refusing to permit or to allow the complainant to redeem the said lands and premises from the said tax sale, were fraudulent. 30

(e) The Chancellor should have permitted the complainant to redeem the said lands and premises, because the decree obtained in Chancery by the said B. H. K. Realty Company in its suit against John B. Eritrodamo, also known as John B. Erit, et als, docket 65 page 367 supra, and all proceedings there- 40

*Petition of Appeal.*

in were irregular, defective, fraudulent and contrary to law, in that

(1) The said defendants in said suit, viz, John B. Erit, Laura Erit, Amadee Erit and Lena Erit never received any notice of the said suit, instituted by the B. H. K. Realty Company.

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(2) Said B. H. K. Realty Co. never made any bona fide attempt or effort to investigate and find out the whereabouts of the said Erits, for the purpose of giving notice of the said suit.

(3) The affidavits filed in the said cause by the said B. H. K. Realty Company in order to obtain the Order of Publication therein mentioned, and the affidavits of mailing and inquiry filed in said cause are false and fraudulent, and publication was not made in accordance with the order therefor.

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(4) Said B. H. K. Realty Co. in said cause did not make any inquiry in said cause as by the rules and statute were required, and did not make any inquiry for the purpose of ascertaining the whereabouts of the said Erits, nor mail notice of the Order of Publication to the said Erits, so as to give them notice of the said suit brought by the B. H. K. Realty Co.

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(5) The address of the said Erits was and still is known to the said B. H. K. Realty Co. and the said B. H. K. Realty Co. deliberately and for the purpose of defrauding the said Erits from their rights to redeem the said lands and premises being foreclosed, filed false and fraudulent affidavits in said cause, setting forth in substance that the said B. H. K. Realty Co. had made diligent and careful

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*Petition of Appeal.*

inquiry for the whereabouts of the said Erits, and had been unable to ascertain whether the said Erits were still alive, and made diligent and careful inquiry for the names and addresses of the heirs, devisees and personal representatives of the said Erits but had been unable to ascertain their addresses, whereas the said B. H. K. Realty Co. knew all the time that the said Erits were and are still alive, and knew all the time the residences and addresses of the said Erits, all of whom are still alive and reside in New York. 10

(f) The Chancellor should have permitted the complainant to redeem the said lands and premises, in accordance with the statute in such case made and provided, viz, 1 Compiled Statutes, page 416, Section 18; P. L. 1902 page 516. 20

Petitioner, therefore, prays that the said Final Decree of the said Chancellor may be wholly reversed, set aside and for nothing holden and that petitioner may have such other relief in the premises as to this court shall seem proper.

SAUL NEMSER,  
Solicitor for and of Counsel with Appellant. 30



**Final Decree.**  
(Filed Aug. 4, 1928.)

IN CHANCERY OF NEW JERSEY.

Between SAMUEL BERNSTEIN, Complainant, and B. H. K. REALTY Co., a corporation of N. J., Defendant.	}	On Bill, etc.	10
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This cause coming on to be heard in the presence of Saul Nemser, Solicitor of the complainant and Henn and Burr, Esquires, solicitors of defendant, and the court having examined the pleadings and having taken proofs orally, in open court, and having heard and considered the arguments of counsels thereon; and it appearing to the court that the complainant is not entitled to the relief sought and prayed for by him in his bill of complaint: 20

It is on this 19th day of July, 1928, ORDERED, ADJUDGED and DECREED, by Edwin Robert Walker, Chancellor of the State of New Jersey, that the bill of complaint be, and the same is hereby dismissed with costs.

And it is further ORDERED that the said complainant pay to the said defendant, B. H. K. Realty Co., a corporation, its costs of this suit to be taxed, and in default of such payment, the said defendant have execution therefor according to the practice of this Court. 30

E. R. WALKER,  
C.

Respectfully advised,  
 JAMES F. FIELDER,  
 V. C.

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**Complaint.**

(Filed March 3, 1928.)

## IN CHANCERY OF NEW JERSEY.

TO HIS HONOR EDWIN ROBERT WALKER, CHANCELLOR OF THE STATE OF NEW JERSEY :

10 Complainant, Samuel Bernstein, of the Borough of Palisades Park, County of Bergen and State of New Jersey, respectfully shows that :

1. By deed dated March 28th, 1906, Otto B. Hartwich and Anna Sophia, his wife, conveyed the lands and premises hereinafter particularly described, to John B. Eritrodamo and Amadeo Eritrodamo, which deed was recorded April 10th, 1906, in Bergen County Clerk's Office, in Book 624 of Deed for said County, page 510. Said lands and  
20 premises are described as follows :

All those certain five (5) lots, tracts or parcels of land and premises, hereinafter particularly described, situate, lying and being in the Borough of Maywood, in the County of Bergen and State of New Jersey; known and designated on a certain Map entitled "Map of Property of Otto B. Hartwich, Maywood, New Jersey"; surveyed by L. Lozier, C. E., and surveyor, filed on August 30th,  
30 1905, in the Office of the County Clerk of Bergen County, N. J., BEING lots numbered fifty-seven, fifty-eight, fifty-nine, sixty and sixty-one (57-58-59-60-61) each of these lots being twenty-five feet wide in front and rear, and one hundred twelve feet in depth.

Also being known and designated as lots 72-73-74-75-76 in Block 28 on the Tax Duplicate of said Municipality.

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*Complaint.*

Also known and designated as lots 57 to 61, inclusive in block 28 in the Township of Midland, Borough of Maywood, County of Bergen, State of New Jersey.

2. By deed dated November 23rd, 1927, the said John B. Eritrodamo, also known as John B. Erit, his wife, Amadeo Eritrodamo also known as Amadeo Erit, and Lena, his wife, conveyed the aforesaid lands and premises to the complainant herein, which deed was recorded on December 5th, 1927, in the Bergen County Clerk's Office in Book 1535 of Deeds for said County on page 567, etc. The said John B. Eritrodamo and Amadeo Eritrodamo had their names changed to Erit, by order of the Supreme Court, State of New York, County of New York, Justice Leonard Geigrich presiding, June 1, 1912, and your complainant shows that the said John B. Eritrodamo and Amadeo Eritrodamo and John B. Erit and Amadeo Erit are one and the same persons.

3. That at a public sale for unpaid municipal liens, duly held by William F. Munday, Collector of Taxes of the Taxing District, of the Borough of Maywood in the County of Bergen and State of New Jersey, the Borough of Maywood purchased the premises known and designated as lots 72 to 76 inclusive in block 28 on the tax duplicate of said municipality and assessed thereon to J. B. Erit as for the year 1923 and also known as lots 57-58-59-60-61 in block 28 in the Township of Midland, Borough of Maywood, Bergen County, N. J., and also known and designated on a certain map entitled, "Map of property of Otto B. Hartwich, Maywood, N. J., surveyed by L. Lozier, Civil Engineer and

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*Complaint.*

surveyor," and duly filed in the Clerk's Office of said County of Bergen, August 30th, 1905, each of said lots being 25 feet wide in front and rear and 112 feet in depth in block 28 as laid down on said map for the sum of \$265.42 and that the said Borough of Maywood received from the said Collector of Taxes, a certificate of sale, duly signed and acknowledged  
10 by him, bearing date the 23rd day of December, 1924, a copy whereof is hereto annexed, and which certificate of sale was recorded in the Clerk's Office of Bergen County on the 16th day of March, 1925 as a mortgage, in Book 736, page 309, as by the statute in such case made and provided.

4. That on the 20th day of April, 1927, the Borough of Maywood, did by written assignment, assign  
20 all the right, title or interest in and to the said certificate of sale above referred, to Archie McKay, which assignment was duly acknowledged and recorded in the Clerk's Office of Bergen County, in Book 159 of Assignment of Mortgages, page 462, on the 11th day of May, 1927.

5. On the 11th day of May, 1927, by written assignment, said Archie McKay assigned all of his said interest to the B. H. K. Realty Co., which assignment  
30 was recorded in the Clerk's Office of Bergen County, on the 11th day of May, 1927, in book 159 of assignment of mortgages, page 464.

6. On September 16th, 1927, B. H. K. Realty Co. filed its amended Bill of Complaint in this Court, against John B. Eritrodamo, also known as John B. Erit and Amadeo Eritrodamo, also known as Amadeo Erit and their heirs, devisees or personal representatives and they or any of their heirs,  
40 devisees, executors, administrators, grantees, as

*Complaint.*

signs, or successors in right, title or interest to foreclose the equity of redemption of the said defendants in the said amended bill of complaint mentioned, in and to the above described premises, the original bill of complaint having been filed on September 10th, 1927, and process of subpoena was issued thereon addressed to Mort L. O'Connell, Sheriff of the County of Bergen, who duly returned the subpoena to answer non est as to the defendants in said amended bill of complaint mentioned, and that thereupon, an order of publication was entered in said cause on the 3rd day of October, 1927, whereby the said defendants mentioned in said amended bill of complaint, were required to appear and answer on or before the 5th day of December, 1927, or that in default thereof, such decree may be made against them as the Chancellor shall deem equitable and just.

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7. The said defendants in said amended bill of complaint mentioned, did not answer or appear on or before the 5th day of December, 1927, and thereupon, an interlocutory decree was entered in said cause on the 7th day of December, 1927, whereby the said amended bill of complaint was taken as confessed against the said defendants therein mentioned, and the matter was referred to Pierre F. Cook, one of the Masters in the Court of Chancery of New Jersey, to compute and ascertain what is due to the complainants in said suit, viz.: B. H. K. Realty Co., upon its tax lien mentioned in the amended bill of complaint in said cause. Thereafter, on the 30th day of December, 1927, the said Pierre F. Cook, Master referred to, filed his report, stating the amount due on the tax lien of the B. H. K. Realty Co., complainant in said cause. There-

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*Complaint.*

after, on the 3rd day of January, 1928, an order was entered confirming the said Master's Report.

10 Your complainant is informed and believes that no other proceedings have been taken in said cause subsequent to an order confirming Master's Report dated January 3rd, 1928, and that no final decree has been as yet entered, barring and foreclosing the equity of redemption of the said defendants in the said cause mentioned.

20 8. Your complainant shows, that under and by virtue of the deed to him set forth in paragraph 2 aforesaid, that said complainant has succeeded to all the rights and equity of redemption that the said John B. Erit and Amadeo Erit and their wives have or may have in and to the lands and premises being foreclosed and more particularly described in paragraph one aforesaid.

30 9. Your complainant charges that said John B. Erit and Laura Erit his wife, and Amadeo Erit and Lena Erit, his wife, defendants in the above entitled cause mentioned, never received any notice of said suit brought by the B. H. K. Realty Co., as aforesaid, and your complainant charges that the said B. H. K. Realty Co. never made any attempt or effort to investigate and find out the whereabouts of the said Erits for the purpose of giving them notice of the said suit, and that the affidavits filed in said cause by the said B. H. K. Realty Co., in order to obtain the order of publication therein mentioned, and the affidavits of mailing and inquiry filed in said cause, are false and fraudulent, and that the said B. H. K. Realty Co. did not make any inquiry as by the rules and statute required, and it did not make any bona fide inquiry for the pur-  
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*Complaint.*

pose of ascertaining the whereabouts of the said Erits nor mail notice of the order of Publication to the said Erits so as to give them notice of the pendency of the said suit brought by the B. H. K. Realty Co.

And your complainant charges that the address of the said Erits was and is well known to the said B. H. K. Realty Co., and that the said B. H. K. Realty Co. deliberately and for the purpose of defrauding the said Erits of their right to redeem the lands and premises being foreclosed, filed false and fraudulent affidavits in said cause setting forth in substance, that the said B. H. K. Realty Co., had made diligent and careful inquiry for the whereabouts of the said Erits but had been unable to ascertain whether the said Erits were still alive, and had made diligent and careful inquiry for the names and addresses of the heirs, devisees and personal representatives of the said Erits, but had been unable to ascertain their addresses.

Whereas, as complainant charges, the said B. H. K. Realty Co., knew all the time that the said Erits were and are still alive, and knew all the time the residences and whereabouts of the said Erits, all of whom are still alive, and reside in New York City.

The complainant charges that if the B. H. K. Realty Co., had made bona fide inquiry at the Tax Collector's Office, of the Borough of Maywood, that they would have ascertained that the said Erits are still alive, and would have ascertained that said Erits reside in New York City.

And your complainant charges that if the said B. H. K. Realty Co., had looked up the directory and telephone book, they would have found the telephone number and addresses of the said Erits.

Your complainant charges that the affidavits filed in the said cause by the said B. H. K. Realty Co.,

*Complaint.*

and all the proceedings in said cause are not bona fide and constitute a fraud upon the Court of Chancery.

10        10. Your complainant further shows that on November 23rd, 1927, your complainant notified the solicitors of the said B. H. K. Realty Co., that they had purchased the premises from the said Erits, and had succeeded to their rights, and would redeem the lands and premises being foreclosed by the said B. H. K. Realty Co., and your complainant charges that ever since the 23rd of November, 1927, said B. H. K. Realty Co., knew of the rights and interest of your complainant in the said premises, and that your complainant had a right to redeem the said premises from the said tax sale, and your complainant shows that the said B. H. K. Realty Co., has evaded and refused to permit this complainant to redeem the said lands and premises from the said tax sale, although your complainant shows that he and his representatives had tendered the said B. H. K. Realty Co., all sums of moneys due to it under the said tax sale, together with all lawful costs to which the said B. H. K. Realty Co. may be entitled.

30        11. Your complainant charges that all proceedings had in the cause by the B. H. K. Realty Co., are defective and irregular and not in accordance with the rules of the Court of Chancery and the statutes in such case made and provided, and that the suit instituted by the B. H. K. Realty Co., by reason of said defects and irregularities has been ineffectual to bar or foreclose the equity of the said Erits and the said complainant in the said lands and premises, and that the said Court of Chancery in said suit has not acquired jurisdiction over the  
40        said defendants in said cause mentioned.

*Complaint.*

12. Complainant now has an absolute right to redeem the said lands and premises.

13. The complainant has been and now is, and hereby tenders himself ready, willing, able and desirous of paying to the said B. H. K. Realty Co., the amount of the said tax lien together with lawful interest, tax costs and other charges accruing thereon, and all taxes, assessments and other lawful charges on the said lands that have been paid by it. 10

14. Complainant has not investigated or questioned whether the said tax sale hereinbefore referred to is valid and lawful, but for the purpose of this suit, he admits said tax sale to be lawful and valid.

Complainant is without adequate remedy in the Courts of law, and therefore prays: 20

1. That B. H. K. Realty Co., which is the defendant in this suit, may answer this bill of complaint and each statement therein made.

2. That an account may be taken of the amount due the said B. H. K. Realty Co., on its said tax sale. 30

3. That the complainant may be decreed to be entitled to redeem the said premises upon the payment of the moneys which this court may find to be due to the defendant, which the complainant hereby tenders and is ready and willing to pay.

4. That upon the complainant paying the amounts which this court shall find to be due, the defendant may be compelled to convey to him all 40

*Complaint.*

interest acquired by the said B. H. K. Realty Co., in the above described premises, and to cancel its said tax lien of record.

5. That a writ of subpoena may be issued commanding said defendant to answer this bill of complaint and to abide any such decree as the complainant may make in the said premises.

10

SAUL NEMSER,  
Solicitor and of Counsel with Complainant.

20

30

40



*Answer.*

Amadeo Eritrodamo on February 29, 1928 which said final decree was recorded in the Office of the Clerk of the County of Bergen on March 9, 1928 in Book 1561 of Deeds for said County, page 503 etc.

10 4. Defendant has no knowledge or information sufficient to form a belief as to paragraph 8 and leaves complainant to his proof thereof.

5. Defendant denies paragraph 9. Defendant alleges that complainant or his attorney never made any tender to defendant or the attorneys for defendant or to the master to whom the matter was referred.

20 6. Defendant denies paragraph 10 and leaves the complainant to his proof thereof.

7. Defendant denies paragraph 11 and 12 and leaves complainant to his proof thereof.

8. Defendant has no knowledge or information sufficient to form a belief as to paragraph 13 and 14 and leaves complainant to his proof thereof.

## FIRST SEPARATE DEFENSE.

30

Complainant never made any tender to the defendant or to the attorneys for the defendant or to the master to whom the hearing in the foreclosure of the tax certificate in the matter of B. H. K. Realty Co. vs. John B. Erit, et al. was referred.

## SECOND SEPARATE DEFENSE.

40 Complainant is attempting by this proceeding to attack collaterally the proceedings taken by defend-

*Answer.*

ant B. H. K. Realty Co. to foreclose the tax lien held by it on premises more particularly described in the bill of complaint.

## THIRD SEPARATE DEFENSE.

The matters and things alleged by the complainant in the bill of complaint and the prayers for relief prayed for by him are Res Adjudicata. 10

Defendant reserves the right to move to strike out the complaint any time before or at the hearing of this case on the ground that:

1. Said complaint discloses no cause of action against the defendant.

2. That by this bill, complainant is attempting to attack collaterally proceedings of this court taken by the defendant in the matter of the foreclosure by it of the tax lien on the premises more particularly described in the bill of complaint. 20

3. The matters and things complained of by the plaintiff in his bill of complaint and relief prayer if by him is Res Adjudicata.

HENN & BURR,  
Attorneys of Defendant, 30  
B. H. K. Realty Co.



**Case.***John B. Erit. Called by Complainant. Direct.*

## IN CHANCERY OF NEW JERSEY.

BETWEEN

SAMUEL BERNSTEIN,  
Complainant,

and

B. H. K. REALTY Co.,  
Defendant.

On Bill, &amp;c. 10

TRANSCRIPT OF SHORTHAND NOTES OF TESTIMONY  
taken on final hearing in above stated cause, June  
28 and July 5, 1928, at Chancery Chambers, Jersey  
City, before His Honor James F. Fielder, Vice  
Chancellor.

20

## APPEARANCES.

SAUL NEMSER, Esq., for complainant.

Messrs. HENN & BURR (Mr. Kettell) for de-  
fendant.

## COMPLAINANT'S CASE.

30

JOHN B. ERIT, sworn as a witness on the part of  
the complainant, testifies as follows:

DIRECT EXAMINATION BY MR. NEMSER:

Q. Did you always use the name "Erit"? A. No;  
not always.

Q. What was it originally? A. "Eritrodamo".

40

*John B. Erit. Called by Complainant. Direct.*

- Q. Since when have you used the name of Erit?  
 A. Since June 1, 1912.
- Q. By what authority? A. Supreme Court of New York.
- Q. You mean you had your name changed? A. Yes; legally.
- Q. Are you married? A. Yes.
- 10 Q. What is your wife's name? A. Laura.
- Q. Have you a brother? A. Yes.
- Q. What is your brother's name? A. Amido Erit.
- Q. Is your brother married? A. Yes.
- Q. What is his wife's name? A. Lena Erit.
- Q. Does he also call himself Erit? A. Yes.
- Q. Are you the same John B. Eritrodamo who purchased five lots in the Borough of Maywood, Bergen County, from— A. Yes.
- 20 Q. When was that? A. April, 1906.
- Q. Title was taken in your name and in your brother's name? A. Right.
- Q. Did you pay taxes after you accepted that conveyance? A. Yes; right along.
- Q. For how long a period of time? A. Seventeen years.
- Q. Where do you live? A. 240 Central Avenue, Union City.
- Q. How long have you been living there? A.
- 30 Three years.
- Q. Where did you live prior to that? A. Jersey City Heights.
- Q. How long did you live there about? A. About nine or ten years.
- Q. How long have you lived in Hudson County?  
 A. About twelve or thirteen years.
- Q. Where is your business? A. 225 Broadway, New York.
- 40 Q. Are you listed in the New York telephone book? A. Yes.

*John B. Erit. Called by Complainant. Direct.*

- Q. At what address? A. 225 Broadway.
- Q. Under what name? A. John B. Erit.
- Q. And what business? A. It does not state the business, but I am a financial agent.
- Q. What is your telephone number? A. Whitehall 8267.
- Q. Does that appear in the telephone book? A. It does; Whitehall 8267. 10
- Q. Have you a telephone at your house in New Jersey? A. I have.
- Q. What is the number? A. Palisade 1459.
- Q. Did you ever receive notice of a suit pending in the Court of Chancery of New Jersey, wherein the B. H. K. Realty Company was complainant and you, your wife, your brother and your sister-in-law were defendants, in order to foreclose a tax lien on these five lots in Maywood? A. I did not; no, sir. 20
- Q. Did you ever receive any notice of an order of publication entered in that suit? A. Never.
- Q. Did you ever know of the existence of such a suit? A. No, sir.
- Q. When did you first become aware of the fact that a foreclosure of a tax lien was pending against your property in Maywood? A. Last November, when Mr. Birnbaum brought it to my attention.
- Q. You mean November, 1927? A. November, 1927. 30
- Q. Do I understand that that was the first knowledge you had that there was a suit pending? A. Right.
- Q. Were you ever served with any papers in that suit? A. No, sir.
- Q. You and your wife and your brother gave a deed for this property in November, 1927, to Samuel Bernstein? A. Yes.
- Q. (Showing witness.) Is this the deed? A. Yes. 40

*John B. Erit. Called by Complainant. Direct.*

Mr. Nemser: I offer in evidence deed dated November 23, 1927; recorded in the Bergen County Clerk's Office on December 5, 1927, in Book 1535 of Deeds, page 567.

(Marked Exhibit C-1.)

10 Q. Did you personally pay taxes on this property during the period of about seventeen years? A. I did. We paid the taxes.

Q. To whom did you send the tax payments? A. To the tax collector.

Q. What is his name? A. Monday was the last, and prior to him it was Zenn.

Q. Did the tax collector of the Borough of Maywood have your address? A. Oh, certainly.

20 Q. Did any people around the neighborhood know you? A. Yes; the neighbors knew me because I went out there, and I conversed—

Q. Did the neighbors know how to get in touch with you if anything happened? A. I believe he knows my address.

Q. Did you know Mr. Monday, the tax collector, personally? A. No, sir.

BY THE COURT:

30 Q. What neighbors knew your address? A. The people across the way—painter and decorator.

Q. His name? A. I don't recollect his name.

BY MR. NEMSER:

Q. Is that his business—painter and decorator? A. Painting and decorating.

BY THE COURT:

40 Q. What kind of property was this—vacant or improved? A. Unimproved. Do you mean my property?

*John B. Erit. Called by Complainant. Direct.*

Q. This property that is the subject of this suit.  
A. Unimproved.

BY MR. NEMSER:

Q. Did you have a sign on the property? A.  
Yes; twice.

Q. Whose name was on the sign? A. My name. 10

Q. And your address? A. Yes.

Q. What address? A. 24 Gray Street, Jersey  
City, on the first; 109 North Street, Jersey City,  
on the second.

BY THE COURT:

Q. When was that sign there last? A. I first put  
it up about eight years ago, and the second two or  
three years later. 20

Q. When was it there last to your knowledge?  
A. It was there the last time I visited the place,  
which must be about three or four years ago.

Q. You said the second sign you put up there  
two or three years ago? A. No; two or three years  
later than the first.

Q. I thought you said two or three years ago? A.  
No. The first one was put up about eight years ago,  
and the second was about five years ago. 30

BY MR. NEMSER:

Q. Where does your brother Amido live? A.  
Westport, New York.

Q. Does he live with his wife? A. Yes.

Q. Have you any of those old tax bills with you?  
A. Not with me; no.

Q. Do you know in whose name the property was  
taxed? A. My name right along. 40

*John B. Erit. Called by Complainant. Cross.*

Q. John B. Erit? A. John B. Erit, and bills were sent to me and paid by me.

Q. Each year did the collector mail a bill to you? A. Yes, sir.

Q. Your brother and sister in law are living? A. Yes.

10 CROSS EXAMINATION BY MR. KETTELL:

Q. Have you ever filed the order that was made by the courts of New York changing your name, in this state? A. No; not in this state.

Q. You say you purchased this property in April, 1906? A. Yes.

Q. You paid taxes for seventeen years? A. Right.

Q. You stated you personally paid these taxes? A. Yes.

20 Q. To whom did you pay them? A. To the tax collector.

Q. Who was the tax collector? A. Monday was the last one, and prior to him—

Q. You testified a few minutes ago on direct examination that you did not know Mr. Monday? A. I don't know him personally. That is the man whose name appeared on the tax bill and to whom I made out the checks.

30 Q. Where were the tax bills sent to? A. The last bills were sent to Box 1238, City Hall Station, New York City Post Office.

Q. Isn't that the address that all the bills were sent to? A. No; prior to that—

Q. What was the address that the bills were sent to prior to the time they were sent to Box 1238, City Hall Station, New York City Post Office? A. No. 1 Wall Street.

40 Q. Were they ever sent to you at your address at 240 Central Avenue, Union City, where you say you lived for three years? A. No, sir.

*John B. Erit. Called by Complainant. Cross.*

Q. Were they ever sent to you at your address in Jersey City where you say you lived for nine or ten years? A. No, sir.

Q. Then the only address that the tax collector had of yours to send tax bills to was either No. 1 Wall Street or Box 1238, City Hall Station, New York City Post Office; is that correct? A. That is correct; yes.

10

Q. Then, so far as the tax collector was concerned, you had no address in this state; is that correct? A. Yes.

BY THE COURT:

Q. How long had your brother lived at Westport? A. Twenty-one years.

Q. Consecutive years? A. Yes.

20

BY MR. KETTELL:

Q. Mr. Erit, I show you copy of a letter dated April 22, 1927, addressed to Mr. John B. Erit, Box 1238, City Hall, New York City, and ask you if you ever received that letter from the firm of Henn & Burr? A. I don't recall receiving any letter.

Q. Do you still receive mail addressed to Box 1238, City Hall Station? A. I do; yes.

30

Q. Yet you do not recall receiving this letter? A. No; I do not.

Mr. Kettell: I ask to have this letter marked for identification.

(Marked D-1 for identification.)

Q. When did you say you first learned that this property was being foreclosed at tax sale? A. Last November, 1927.

40

*John B. Erit. Called by Complainant. Cross.*

BY THE COURT:

Q. How did you learn it? A. Through Mr. Birnbaum.

Q. Who is he? A. Mr. Samuel Birnbaum—I believe he is here in court.

10 Q. Who is he? A. He is a real estate dealer, as far as I know.

Q. In New York City or Philadelphia or Maywood? A. Jersey City.

BY MR. KETTELL:

Q. What did you do when you learned the property that you had owned was being foreclosed at a tax sale? A. I endeavored to realize something on it.

Q. Did you see a lawyer? A. No.

20 Q. You did not? A. No.

Q. Do you know Mr. Goldenhorn? A. Yes.

Q. Did you retain Mr. Goldenhorn—yes or no? A. No.

Q. Did you retain any lawyer? A. No, sir.

BY THE COURT:

30 Q. When you say that after you learned of the foreclosure through Mr. Birnbaum, you attempted to realize something on the property, in what way did you attempt to realize? A. Well, to get some money as a final liquidation—

Q. In what way? A. Mr. Birnbaum offered to pay me for my interest in the property.

Q. At the same time he notified you of the foreclosure? A. Yes.

BY MR. KETTELL:

40 Q. Did you agree to sell this property to Mr. Birnbaum's client in furtherance of this attempt to realize some money? A. Yes.

*John B. Erit. Called by Complainant. Cross.*

Q. Who was Mr. Birnbaum's client? A. Mr. Bernstein.

BY THE COURT:

Q. Did he offer to buy your brother's interest, too? A. Yes.

10

BY MR. KETTELL:

Q. Then, to your knowledge, Mr. Bernstein knew that the B. H. K. Realty Company was foreclosing the tax sale in November, 1927; is that correct? A. No; I didn't know about that.

Q. Did you not testify that Mr. Birnbaum notified you that this foreclosure proceeding was being taken by the B. H. K. Realty Company? A. No. No, he didn't mention the name of any party at all.

20

Q. You testified a few moments ago that that is the party from whom you learned that this proceeding was being taken? A. I testified that I learned from Mr. Birnbaum that proceedings were in action.

Q. When? A. Last November.

BY THE COURT:

Q. What did he tell you? A. He told me that they were being—that I was losing my interest, the time was up; that there were proceedings being taken to liquidate the property for tax liens and I was still in time to realize something on it.

30

BY MR. KETTELL:

Q. And as a result of that information communicated to you by Mr. Birnbaum, you gave a deed to Mr. Birnbaum's client; is that correct? A. Yes.

40

*John B. Erit. Called by Complainant. Cross.*

BY THE COURT:

Q. What year taxes did you not pay? A. I think the last year was 1923 or 1924; I am not certain of that now.

Q. You knew that you had not paid this year's taxes, didn't you? A. Yes.

10 Q. It was not an oversight? A. Oh, no, no. I was disgusted with the situation and I let them go after that.

Q. And after that, whether it was 1923 or 1924, you did not pay any more taxes? A. No. I decided to let it go. I felt that I should not pay any more taxes for a property that was not yielding me anything and was not yielding any prospect of realizing what I had already put in it, not taking the interest and taxes.

20

BY MR. KETTELL:

Q. The deed in evidence and marked Exhibit C-1, purporting to be executed by you and your wife and by your brother and his wife, do you recall the date when this deed was executed; what was the date of the execution of this deed? A. November. Towards the end of November.

30

BY THE COURT:

Q. The deed is dated the twenty-third day of November, 1927; it is recorded December 5, 1927, and there is a certificate of acknowledgment by Harry A. Birnbaum, Commissioner of Deeds, that on the twenty-ninth day of November, 1927, you and your wife and your brother and his wife appeared before him and acknowledged the execution of that deed.

40 A. That is about right.

*John B. Erit. Called by Complainant. Cross.*

Q. Would that be the date that you signed the deed? A. Yes.

Q. Did your brother appear before Birnbaum?  
A. They all got together; yes.

Q. He did come down from Westport? A. He would not—

Q. He did come down from Westport and sign the deed? A. Yes. 10

BY MR. KETTELL:

Q. You are certain of that? A. Yes.

Q. Your brother and his wife came down from Westport. Can you tell us where this deed was executed? A. In New York City.

Q. Where, in New York City? A. 225 Broadway. 20

Q. Whose office is at 225 Broadway? A. That is my office.

Q. Is the Birnbaum who took your acknowledgment the same Birnbaum who negotiated the sale of these premises from you to Mr. Bernstein? A. Yes.

Q. Was Mr. Bernstein present when this deed was signed? A. No.

Q. What was the consideration for this? A. Three hundred dollars. 30

Q. Was it paid over on the day this instrument was signed by you? A. Yes.

Q. Who paid it over to you? A. I received a check from Mr. Birnbaum; that is, he handed me the check.

Q. Do you recall whose check that was? A. No.

Q. Had you ever seen Mr. Bernstein? A. No.

Q. Have you ever seen Mr. Bernstein? A. Yes; I have seen him since. 40

*John B. Erit. Called by Complainant. Cross.*

Q. You had never seen him prior to delivering this deed to him? A. No, sir.

Q. You could not tell us at this time whether the check that you received was drawn by Mr. Bernstein? A. No.

10 Q. In fact, do you remember by whom it was drawn? A. No; I do not at this day. I handle a great many checks, and I would not recall any single check.

Q. When was the first time that you knew that it was Mr. Bernstein for whom Mr. Birnbaum was negotiating this purchase? A. About the date of the transfer, when the deed was given.

BY THE COURT:

20 Q. How long after Mr. Birnbaum came and told you about these foreclosure proceedings, was it that you signed the deed? A. I believe within a week or ten days.

Q. Within two weeks? A. Yes; the same month—November.

BY MR. KETTELL:

30 Q. You protected yourself in the sale of this property by inserting in the deed: "This property is sold subject to all tax liens and assessments that might be against the said property." Is that correct?

The Court: If it is in there, it is there.

A. I didn't put it in there.

40 Q. After you had sold this property and delivered the deed to Mr. Birnbaum for Mr. Bernstein, did you ever notify the tax collector that you had sold this property? A. No. I didn't see any occasion for it.

*John B. Erit. Called by Complainant. Cross.*

Q. Did Mr. Birnbaum tell you by whom these proceedings were being taken? A. No, sir. In fact, I didn't know but they were being taken by the tax collector or town authorities.

Q. He merely told you that someone was taking proceedings? A. He said the proceedings, as I recall, were in course of execution whereby I would lose all right to any chance to get any of the money that I had sunk in the property. 10

BY THE COURT:

Q. Did he say it was a foreclosure of a tax sale? A. I could not recall if he said "foreclosure." He said there was unpaid taxes. Of course, I knew it would be for unpaid taxes. I had not paid a penny of taxes in— 20

Q. (Interrupting) He advised you to realize what you could on it. A. No; he did not advise me, but as a business proposition, under these conditions as they were, I realized it was the thing to do to get something out of it.

Q. He did not notify you he was taking this procedure so as to give you a chance to redeem this property, did he? A. No.

The Court: Mr. Erit has already said that Mr. Birnbaum told him that he still had time to protect his interest, to realize on his interest. 30

BY THE COURT:

Q. Is that what Mr. Birnbaum told you? A. Yes, but I wanted to get something out of that property and get out of the property. I was disgusted with the way things had been conducted over there, and I did not want to be a tax-payer in any sort of a situation such as developed there. 40

*John B. Erit. Called by Complainant. Cross.*

BY MR. KETTELL:

Q. Did you, on or about December 6, 1927, engage one I. Faerber Goldenhorn to act for you as attorney for the purpose of redeeming this property from the tax sale foreclosure? A. I do not recall having done so.

10 Q. When was the first time you met Mr. Goldenhorn? A. Today.

Q. Today was the first time you met Mr. Goldenhorn? A. Yes.

Q. Have you ever written to Mr. Goldenhorn? A. Not that I know of.

Q. Not that you know of. If you had written him, you would recall it, would you not? A. I would recall it, I am sure.

20 Q. Has your brother taken any interest in this property? A. No; he has not. Ever since he has left New York he has turned the matter over entirely to me, and I have always looked after it. I was the only one on record, the only one whose address is recorded. He never bothered with it at all.

Q. When was the last time you saw your brother? A. About two years ago.

Q. About two years ago? A. Yes. I did not see him in connection with this at all.

30 Q. You did not see him in connection with this? A. No. It is one of those family matters that I do not want to talk about.

Q. When was the last time you saw your brother? A. About two years ago.

Q. Where? A. In New York City, my office.

Q. You testified a little while ago that you were present when the deed from you and your wife and your brother and his wife was executed in New York? A. No, sir; I did not testify—or I did not

40

*John B. Erit. Called by Complainant. Cross.*

intend to testify that I was present. I was not present. I did not want to be present when this matter was discussed in family circles because of the very obvious reason I was not present, it was a bone of contention for years.

Q. The deed was signed in your office, was it not?

A. Yes; I signed it in my office.

10

BY THE COURT:

Q. Do you know where your brother signed it?

A. I imagine he was there, too.

Q. If he came to your office to sign the deed, you did not see him? A. I did not see him; I did not want to be present.

Q. The question is: Did you? A. That is correct.

20

BY MR. KETTELL:

Q. Do you know whether your brother signed it in your office on this day? A. I believe he did, yes. There was no reason why he should not. There is no reason to suppose anything else.

Q. You did not know he was there? A. I know he was there, yes.

Q. You were not there? A. I know the deed was there.

30

Q. Do you know whether your brother was present in your office on that occasion?

Mr. Nemser: I object. The certificate of acknowledgment shows that he was there.

Q. At the time that you saw Mr. Birnbaum did he show you the clipping in the paper about the case? A. I don't remember.

40

*William F. Monday. Called by Complainant. Direct.*

Q. Did you ever call Mr. Goldenhorn on the telephone? A. I do not recall.

Q. Do you know whether your wife has received a notice of this suit? A. No, sir; she would not receive it, because the only address they had over there was—

10 Mr. Nemser: I object.  
The Court: Objection sustained.

Q. As far as you know, you say she did not receive it? A. No.

Q. Do you know whether you brother and sister-in-law received the notice?

Mr. Nemser: Objected to.  
The Court: Objection sustained.  
20

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WILLIAM F. MONDAY, sworn as a witness on the part of the complainant, testifies as follows:

DIRECT EXAMINATION BY MR. NEMSER:

Q. Where do you live? A. Maywood, New Jersey.

30 Q. What is your occupation? A. I am an accountant and Tax Collector.

Q. You are Tax Collector of the Borough of Maywood? A. Right.

Q. You have been so how long? A. About seven years.

Q. Do you know Mr. John B. Erit? A. Personally I did not. I met him this morning.

40 Q. Did you ever correspond with him? A. I sent him tax bills every year and assessment bills.

*William F. Monday. Called by Complainant. Direct.*

Q. Have you the records of your office with you?  
A. The address book—Box. 1238 City Hall Station.

Q. Let me ask you this: You were subpoenaed to appear here today? A. I was.

Q. (Showing witness) What is this book supposed to be? A. That is the address book.

Q. Address book containing the addresses of whom? A. The taxpayers of Maywood. 10

Q. Is there any page there with the notation of John B. Erit? A. There is.

Q. What page? A. They are not numbered.

Q. Show me in the book where his name appears?  
A. (Indicating) Here it is.

Q. (Indicating) What is this? A. 28 is the block number and 72-76 the lots numbers.

Q. That means that the name above these figures represents the owner of these lots? A. That is right. 20

Q. And this—"247"? A. "247 West Eleventh Street, New York City," that is the address that was marked out—

Q. Is there any other address besides that in this book? A. Box 1238, City Hall Station.

Q. Is that in your handwriting? A. Yes.

Q. Where did you get that address from? A. Apparently from a letter or a notice on an envelope from Mr. Erit when he sent the taxes in. 30

Q. Did anybody, during your incumbency of your present office, inquire of you for the address of Mr. John B. Erit? A. Yes.

Q. Who was that? A. Mr. McKay.

Q. When did Mr. McKay make such inquiry? A. At the time he purchased at the tax sale.

Q. That was what date, do you recall? A. I don't remember.

Q. That was the 20th day of April, 1927, was it not? A. I could not say; I don't remember. 40

*William F. Monday. Called by Complainant. Cross.*

Q. What did he ask you? A. He asked me if I knew where John B. Erit lived.

Q. What did you tell him? A. I told him Box 1238, City Hall Station, New York.

Q. Did he tell you what the purpose of that inquiry was? A. I knew what the purpose was.

10 Q. How did you know? A. Because he had purchased at the tax sale.

Q. At the time he purchased he asked you for the address?

Mr. Kettell: Objected to.

Mr. Nemser: Question withdrawn.

Q. When was this inquiry made, what year or month? A. It was

20 Q. Are you positive it was before September, 1927? A. Absolutely.

Q. Would you say it was in the Spring? A. I would say it was about the time of the tax sale.

BY THE COURT:

30 Q. What connection did Mr. MacKay have with the Realty Company? A. I cannot tell you whether he is an officer of the B. H. K. Realty Corporation or not.

Mr. Henn: It is admitted that he is an officer of the B. H. K. Realty Corporation.

CROSS EXAMINATION BY MR. KETTELL:

Q. You say you have been tax collector for seven years? A. I have.

40 Q. The tax bills that you mailed out to Mr. Erit on this property were all addressed to what ad-

*William F. Monday. Called by Complainant. Cross.*

dress? A. Box 1238, City Hall Station, New York City.

Q. The envelopes in which the tax bills were mailed, they had a return address on, had they not? A. Absolutely.

Q. Were any of them every returned to you "Not Found"? A. They were not.

Q. That was the only address that you had of Mr. Erit? A. That is the address that I sent all the tax bills and assessment bills to. 10

Q. Up to the time of the tax sale, bills were mailed every year there? A. Every year.

BY THE COURT:

Q. Did you know, as a matter of fact, where his place of business was? A. I did not.

Q. Did you ever see any sign on this property—any "For Sale" sign? A. At the time the first sale took place, the original tax sale, I took the time to go up and look at the property to see whether there was any information there by which I could get a better address, and there was no such indication. 20

BY MR. NEMSER:

Q. Did you ever inquire of the neighbors? A. I did not.

Q. Are you familiar with the neighbors around there? A. Yes. 30

Q. Is there a painter and decorator over there? A. There is one a block and a half away, not nearby; it is not what you would call nearby.

Q. You knew, of course, that all of your communications were being received? A. He got them.

Q. When you advertised this property for sale, you were satisfied that the notice of sale sent to him at his usual address would reach him? A. I was. 40

*H. A. Birnbaum. Called by Complainant. Direct.*

Q. It was not necessary for you to get a better address? A. No; except I thought perhaps I was going to satisfy myself there was no further address.

---

10 HARRY A. BIRNBAUM, sworn as a witness on the part of the complainant, testifies as follows:

DIRECT EXAMINATION BY MR. NEMSER:

Q. Where do you live? A. 132 Thirty-fourth Street, Union City, New Jersey.

Q. Do you know Mr. John B. Erit? A. Yes, sir.

Q. You are the party who negotiated the sale of this property to Mr. Samuel Bernstein? A. Yes, sir.

20 Q. Do you recall when you first saw Mr. Erit? A. I should judge around the 17th or 18th of November.

Q. Where? A. 225 Broadway, New York City.

Q. What was the occasion of your visit there? A. I went over there to see if I could get a deed to some property in Maywood, New Jersey, which I saw in the papers was to be foreclosed.

30 Q. Did you call that fact to Mr. Erit's attention? A. I had the clipping with me.

Q. What clipping was that? A. The suit for foreclosure.

Q. As a result of your conversation with Mr. Erit, you succeeded in getting him to agree to sell? A. Yes.

Q. The title was taken in the name of Samuel Bernstein? A. Yes.

40 Q. This deed that has been marked in evidence is the deed? A. That is the deed.

*H. A. Birnbaum. Called by Complainant. Direct.*

Q. Now, after this deed was delivered, did you have occasion to see Mr. Henn? A. Once.

Q. When? A. I believe around February 29th.

Q. What year? A. 1928.

Q. Where did you see him? A. At his office.

Q. Were you alone? A. No; I had Mr. Bernstein with me.

Q. What was the occasion of your visit there? A. 10  
To make cash tender.

Q. And did you make a cash tender? A. We tried to pay the money, to tender the money, and Mr. Henn refused to take it.

BY THE COURT:

Q. You say you went there to make a tender. What for? A. Why, he took the money out of his pocket,— 20

Q. What did he take out of his pocket? A. He had \$1,000, I believe, in cash.

Q. What makes you think it was a thousand dollars? A. Because he cashed the check.

BY MR. NEMSER:

Q. \$1,000 in cash? A. Yes.

Q. Did you see the cash? A. Yes.

Q. So, this cash that you saw was tendered to Mr. Henn? A. Yes. 30

Q. What did he do? A. He refused to accept it, saying that Mr. Bernstein was not the owner of the property.

Q. Did you show him the deed? A. I did.

Q. What did he say then? A. He said that Mr. Erit had no right to sign a deed, therefore, he would not entertain any tender. 40

*H. A. Birnbaum. Called by Complainant. Direct.*

Q. Was anything else said? A. Well, we had quite a discussion and tried to persuade him to take the tender, but he refused to take it.

Q. Did you see Mr. Henn after that? A. I never saw him after that.

10 Q. Before you went to see Mr. Henn did you ever consult a lawyer in regard to the matter? A. Why, some time after I saw Mr. Erit I called up Mr. Goldenhorn with reference to the taxes that were to be paid on this property, and I asked Mr. Goldenhorn whether it would be possible for me to have Mr. Erit and his wife and his brother and his brother's wife sign the deed if we paid the taxes and gave him this amount of money that was agreed upon, and Mr. Goldenhorn advised me it would be all right to let him sign the deed as it was and Mr. Bernstein pay the taxes.

20 Q. Now, you say that after this occasion in February, 1928, you never saw Mr. Henn again? A. No, sir; not until today.

Q. Did you ever see Mr. Cook, a lawyer? A. I never saw the gentleman.

BY THE COURT:

Q. How did you come to go to 225 Broadway to find Mr. Erit? A. We had written a letter to him.

30 Q. Written a letter where? A. It was not a letter, if I recall correct, looking through the telephone book I noticed his number.

Q. What telephone book? A. The New York telephone directory.

Q. How did you come to look in the New York book? A. Why, the post-office address was Box 1238 City Hall Station.

Q. Where did you get that from? A. From Mr. Monday.

40 Q. The tax collector? A. Yes, sir.

*H. A. Birnbaum. Called by Complainant. Cross.*

CROSS EXAMINATION BY MR. KETTELL:

Q. Mr. Birnbaum, what is your occupation? A. I am an investigator.

Q. An investigator? A. Yes, sir.

Q. What kind of an investigator? A. Just how do you mean?

Q. What do you investigate? A. To look up the addresses of people and see if I cannot locate them. 10

Q. How long have you been engaged in that business? A. About a year and a half.

Q. Who engaged you to look up the address of Mr. Erit? A. I am employed by Mr. Silverman, who was the agent of the broker and I was told by him to look up the addresses, which I did.

Q. What addresses? A. Oh, all addresses,—any that were given to me. 20

BY MR. KETTELL:

Q. What addresses were given to you? A. Anybody,—well, the tax liens.

Q. Principally the tax liens? A. Not necessarily.

BY THE COURT:

Q. Was this address given to you to look up? A. John B. Erit's? 30

Q. Yes. A. Yes, sir.

Q. By whom? A. By Mr. Silverman.

Q. What Mr. Silverman? A. Mr. Samuel W. Silverman.

BY MR. KETTELL:

Q. Who is Samuel Bernstein? A. The gentleman whom the property was bought for. 40

*H. A. Birnbaum. Called by Complainant. Cross.*

BY THE COURT:

Q. Is he in court? A. Yes, sir.

BY MR. KETTELL:

10 Q. What is Mr. Bernstein's occupation, if you know? A. Well, I know him as a law student.

Q. By whom is Mr. Bernstein employed, if you know? A. The New Jersey Bond & Mortgage Corporation.

Q. Where is the office of the New Jersey Bond & Mortgage Corporation? A. 210 Main Street, Hackensack.

Q. Has Mr. Silverman an office at 210 Main street Hackensack? A. No, sir; he has not.

20 Q. Do you know by whom Mr. Bernstein is employed? A. By the New Jersey—

Mr. Nemser: —I do not see the materiality of this.

Q. Do you know if Mr. Samuel Silverman is an officer of that company? A. He is not.

30 Q. The first time that you went over to 225 Broadway to see Mr. Erit, for whom were you acting—for Mr. Bernstein or for Samuel W. Silverman?

Mr. Nemser: I object to that as immaterial.

Mr. Kettell: This is to show that Mr. Bernstein is not the party in interest, but that Samuel W. Silverman is the party in interest.

The Court: The deed is made to Mr. Bernstein. Objection sustained.

40 Q. Were you acting for Mr. Bernstein when you entered into negotiations with Mr. Erit?

*H. A. Birnbaum. Called by Complainant. Cross.*

Mr. Nemser: I object to that as immaterial.

The Court: I will allow the question.

A. I was told to go—

BY THE COURT:

Q. Were you acting for Mr. Bernstein? A. No, 10  
sir.

BY MR. KETTELL:

Q. Whom were you acting for? A. Mr. Silver-  
man.

Q. On what occasion was this? A. On the first  
occasion.

Q. When you went to see Mr. Erit? A. Yes, sir. 20

BY MR. KETTELL:

Q. When next did you go to 225 Broadway to in-  
terview Mr. Erit? A. A couple of days after that.

Q. Can you remember specifically as to the date?  
A. I don't know. It may have been the 23rd. I  
cannot be sure.

Q. Was it November 25 or was it November 29?  
A. I believe it was November 23.

Q. How many times were you in Mr. Erit's office 30  
in New York? A. About three times.

Q. When was the second time? A. About the  
23rd—a few days after the first visit.

Q. For whom were you acting on the 23rd? A.  
For Mr. Silverman.

Q. You say the first time you visited Mr. Erit's  
office, 225 Broadway, was November 29? A. That  
was the third time.

Q. Was that the date the deed was signed? A. 40  
Yes.

*H. A. Birnbaum. Called by Complainant. Cross.*

Q. For whom were you acting on the 29th? A. For Mr. Silverman.

Q. For Mr. Silverman? A. Yes.

Q. Was Mr. Bernstein there that day? A. No, sir.

10 Q. Did you know on that day that there was a tax sale proceeding pending in the Court of Chancery? A. What day?

Q. On November 29, the day that the deed was signed? A. Yes, sir.

Q. Who drew the deed in evidence, marked Exhibit C-1? A. I cannot tell you that. The deed was delivered to me.

BY THE COURT:

Q. Who gave it to you? A. Mr. Silverman.

20 BY MR. KETTELL:

Q. Did you ever see a notice of sale similar to this which I show you? A. I have seen so many of them it would be pretty hard to identify them.

BY THE COURT:

Q. Take a look at this? A. I believe so; yes, sir.

Q. Who showed it to you, or where did you get it? A. From Mr. Silverman.

30 Q. That was before you saw Erit at all? A. Yes, sir.

Mr. Kettell: I ask that this be marked for identification.

(Marked D-2 for identification.)

Q. As to the time you testified that you visited Mr. Henn's office, can you tell us where Mr. Henn's office is? A. Yes, sir.

40 Q. What address? A. It is the Spingarn Building.

*H. A. Birnbaum. Called by Complainant. Cross.*

Q. Do you know the street number? A. It is Newark avenue; I do not know the street number.

Q. Whereabouts on Newark avenue is it located?

A. Right on the point.

Q. To the best of my knowledge there are two Spingarn Buildings. Can you distinguish between the two of them? A. Yes; one is the Spingarn Building and one is the Spingarn Arcade.

10

Q. Which is it that Mr. Henn's office is in? A. The Spingarn Building.

Q. You testified that you visited Mr. Henn on February 29; is that the date? A. February 29.

Q. What time of the day? A. Approximately around one or two; I cannot tell you the exact hour.

Q. Who was with you at the time that you visited Mr. Henn's office? A. Mr. Bernstein.

Q. Did you know how much was due to redeem this property at the time you visited Mr. Henn's office? A. I cannot say positively. I understood the figure was about eight hundred dollars more or less.

20

Q. Now, will you tell us just what happened when you were admitted to Mr. Henn's private office with Mr. Bernstein? A. The conversation started by Mr. Bernstein asking Mr. Henn for the amount of money. Mr. Henn wanted to know—

30

BY THE COURT:

Q. You do not mean that. A. He asked for the amount of money due, and Mr. Henn asked Mr. Bernstein who he was.

BY MR. KETTELL:

Q. Go ahead. A. Mr. Bernstein said he was the purchaser of the property. Mr. Henn then turned to

40

*H. A. Birnbaum. Called by Complainant. Cross.*

10 Mr. Bernstein and asked him how he knew he was Mr. Bernstein. I said that I could identify the man, that I knew him as Mr. Bernstein. Then Mr. Henn says: "Well, you ought to know that the deed is not valid anyway. Mr. Erit has no right to sign that with the name of Erit". I tried to tell Mr. Henn that Mr. Erit had his name changed by order of a Supreme Court Justice in New York some time ago. Mr. Henn retorted by saying that it was not lawful, inasmuch as it was not recorded in New Jersey, and that they were not familiar with that over here.

Q. They were not familiar with what? A. With the order for changing his name from Eritrodamo to Erit.

20 Q. Did Mr. Henn ask the address of Mr. Erit upon that occasion? A. No, sir.

Q. Did you give it to him? A. No, sir.

Q. Or who Mr. Erit might be? A. He asked that question and I answered by saying that he is the gentleman who owned the property.

Q. Is it not a fact, Mr. Birnbaum, that Mr. Henn said that before anyone could take this deed it would require an affidavit that Erit and Eritrodamo were one and the same party? A. Not that I recall.

30 Q. You do not recall any such conversation? A. No, sir.

Q. Do you know how this deed is signed? A. This deed?

Q. Yes. A. Yes.

Q. How? A. Erit.

40 Q. Is it not a fact that Mr. Henn pointed out to you the discrepancy in the names contained in the granting clause and the signatures on this instrument?

*H. A. Birnbaum. Called by Complainant. Cross.*

The Court: Suppose he did. Has that any think to do with the issues in this case?

Mr. Kettell: I am trying to point out that Mr. Henn had no way of identifying the purchaser and had no way of telling that Erit and Eritrodamo were one and the same person.

The Court: Is the tender otherwise made invalid because Mr. Henn does not know the man who makes the tender? 10

Mr. Kettell: I believe under the tax act this property can only be redeemed by the owner.

The Court: I say that the fact that Mr. Henn has not received a personal introduction, does not make the tender invalid.

Q. You testified that Mr. Birnbaum made a cash tender to Mr. Henn? A. May I amplify that by saying that he did not make the cash tender, trying to count out the money. He first asked for the figures and they were refused, and naturally he could not make a tender. 20

Q. You testified awhile ago that you knew what the amount was. A. I did not say anything like that.

Q. Did you know? A. I did not know the exact amount; no, sir.

Q. You did not know the exact amount? A. No, sir. 30

Q. What did you mean by— A. In dollars and cents. I had an idea from what I overheard, it was around \$800 more or less.

BY THE COURT:

Q. From what you had heard? A. From what I had heard. 40

*H. A. Birnbaum. Called by Complainant. Cross.*

Q. How much money did Birnbaum have? A. \$1,000 in cash. He had 100 \$10 bills.

Q. How do you know that? A. I was with him.

Q. Where were you with him? A. In the bank.

Q. What bank? A. In Hackensack.

Q. Did you see it counted out? A. I was in the bank with him.

10 Q. Did you see it counted out? A. Yes, sir.

BY MR. KETTELL:

Q. Did you see it counted out in the bank or in Mr. Henn's office? A. I saw the money counted out in the bank. Mr. Birnbaum came with me in my car, and we went to Jersey City together.

Q. Did he withdraw that from a checking account or a savings account? A. I cannot tell you that.

20 Q. What bank in Hackensack? A. The Peoples Trust & Guarantee Company.

BY THE COURT:

Q. He offered this roll of bills to Mr. Henn, did he? A. Before he pulled the money out he asked for the figures, that he had the money in his hand.

Q. Did he take it out of his pocket? A. It was out of his pocket.

30 Q. Did he offer the roll of bills to Mr. Henn? A. No; he did not offer the roll of bills. There was \$1,000 there.

Q. Did he take it out of his pocket and— A. (Interrupting) He held it there waiting for Mr. Henn to give him the figures.

Q. Did Mr. Henn offer to count it? A. No, sir.

Q. What did Mr. Henn say? A. He told him that in the first place he wanted to know who Bernstein was; he would not touch the money.

40

*H. A. Birnbaum. Called by Complainant. Cross.*

Q. What did he say about the money? A. He would not touch it at all. He did not say anything about it. He would not accept it.

Q. Did Bernstein say what he was there to do with the money? A. Yes.

Q. What did he say? A. He told him he came there to redeem the property at Maywood.

10

BY MR. KETTELL:

Q. Did not Mr. Henn tell you on that occasion that he was only the attorney for the owner? A. Not to me. He might have said something to Mr. Bernstein, but he did not say anything to me. I was only there as a witness to the tender.

Q. This money, were you present in the bank when Mr. Bernstein got this money? A. Yes, sir.

20

Q. Don't you recall whether he presented a pass book to get this money? A. No, sir; I do not; I was not paying particular attention.

Q. You testified you saw the money counted out? A. I saw him count the money in the bank.

Q. You saw him count what? A. The bills.

Q. The bills after he received them from the teller? A. Yes, sir.

Q. Did you see it when the teller gave it to him? A. No, sir; I did not walk up to the window with him.

30

Q. Did you inquire of Mr. Henn who the B. H. K. Realty Company was? A. I did not inquire of Mr. Henn; no, sir.

Q. You knew that Mr. Henn was not interested in this tax sale certificate, did you not? A. I certainly did.

Q. You knew that Henn & Burr were the attorneys? A. Yes, sir.

40

*H. A. Birnbaum. Called by Complainant. Cross.*

Q. Did you inquire who the B. H. K. Realty Company was? A. That was not within my province.

BY THE COURT:

Q. Did you? A. No, sir.

10 BY MR. KETTELL:

Q. You knew they were the owners of the tax sale certificate, did you not? A. The B. H. K., yes.

Q. You say on or about that time, about November, you consulted Mr. Goldenhorn; is that correct?

A. Yes, sir.

Q. Is Mr. Goldenhorn your personal attorney?

A. No, sir.

Q. For whom did you consult Mr. Goldenhorn?

20 A. For Mr. Bernstein.

Q. That was before the deed was delivered to Bernstein? A. That was before the deed was delivered.

Q. And what was the purpose of consulting Mr. Goldenhorn? A. As I said before, it was to find out whether it would be all right to give Mr. Erit the entire amount, including anything we might find out was the amount of money due on the property for tax liens, the amount we had agreed upon to give him, or just to give him the amount of the deed and pay the taxes ourselves.

30

Q. Is it not a fact that you testified a little while ago that even on the last visit you represented Mr. Silverman? A. Certainly.

Q. What need was there for Mr. Bernstein to consult Mr. Goldenhorn then with reference to taking this deed? A. Because I had spoken to Mr. Bernstein on the wire.

40

*I. F. Goldenhorn. Called by Complainant. Direct.*

Q. When? A. I cannot recall. Some time between the first visit and the second visit.

Q. You testified before that even up to the third visit, the day the deed was delivered, that you represented Mr. Silverman? A. Yes, sir; I did.

Q. Well, can you tell me why Mr. Bernstein had to consult Mr. Goldenhorn? A. Well, I wanted to make sure that I could close the deal for Mr. Bernstein, the name was on the deed, to make sure that I could close it for him all right the way it was. 10

Q. You testified that you did not represent Mr. Bernstein, that you represented Mr. Silverman?

The Court: Why spend so much time on an unimportant matter like that?

Mr. Nemser: Will it be stipulated that the office of the B. H. K. Realty Company is in the same office—that the principal office of the B. H. K. Realty Company is in the same office as Henn & Burr? 20

Mr. Henn: Yes. It is admitted that the principal office of the B. H. K. Realty Company is in the same office with Henn & Burr, and that the principal agent is Mackay who is the secretary of the company.

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I. FAERBER GOLDENHORN, sworn as a witness on the part of the complainant, testifies as follows: 30

DIRECT EXAMINATION BY MR. NEMSER:

Q. Were you ever consulted by anybody in reference to the foreclosure of a tax sale on Maywood lands?

Mr. Kettell: Objected to.

*I. F. Goldenhorn. Called by Complainant. Direct.*

Q. Were you ever consulted by Mr. Birnbaum, the preceding witness, with respect to the foreclosure suit pending on certain land in Maywood? A. I was.

Q. Do you recall when that was? A. Some time about the middle of November, 1927.

10 Q. Did you ever see Mr. Birnbaum about it personally? A. I think I did on one or two occasions.

Q. After you had conferences with Birnbaum did you do anything with reference to the matter? A. I did.

Q. What did you do? A. I wrote a letter to Messrs. Henn & Burr.

Q. When? A. The first letter I wrote to them was on November 23, 1927.

20 Q. Was that letter written by you? A. Dictated to my stenographer and I have a copy of it in my hand now. I am in error about that. The first letter I wrote was December 1, 1927.

Q. I show you this letter dated December 1, 1927. I ask you if that is a copy of the letter which you say you sent to Messrs. Henn & Burr? A. That is the letter.

Q. Please read that letter? A. December 1,—

30 The Court: Are you going to offer that letter in evidence in that way?

Mr. Nemser: I offer the letter in evidence. (Marked Exhibit C-2.)

Q. Did you receive any reply to that letter? A. I did.

Q. On what date? A. I received a reply on December 6.

Q. From whom? A. From Messrs. Henn & Burr.

40 Q. Have you that reply here? A. I have.

*I. F. Goldenhorn. Called by Complainant. Direct.*

Mr. Nemser: I offer in evidence letter from Henn & Burr to I. Faerber Goldenhorn.

(Marked Exhibit C-3.)

Q. Did you do anything further? A. I did. On December 13, 1927, I wrote them another letter, in answer to a letter of theirs of December 6.

10

Mr. Nemser: I call for production of letter from I. Faerber Goldenhorn to Henn & Burr.

(Letter is produced.)

Q. (Showing witness) Is that the letter you received? A. That is the letter which I received.

Mr. Nemser: I offer letter in evidence.

(Marked Exhibit C-4.)

20

Q. Did you receive any reply to that last letter? A. I did not receive any other letter from Messrs. Henn & Burr until February 21, 1928, but I wrote to them in the meantime.

Q. On what date? A. On January 17, 1928. I have a copy here.

Mr. Nemser: I call for the production of that letter.

30

Q. Have you a copy of that letter? A. I have. It is a very short letter.

Q. Will you present it? A. Here it is.

Mr. Nemser: I offer this copy in evidence.

(Marked Exhibit C-5.)

Q. Did you get a reply to that letter? A. No, sir.

40

*I. F. Goldenhorn. Called by Complainant. Direct.*

Mr. Nemser: I call for the production of that letter.

10 Mr. Kettell: I object to the introduction of the letter marked C-5 in evidence. It purports to be a copy of a letter sent to Henn & Burr. I call Your Honor's attention to the fact that the words "Messrs. Henn & Burr," are written in typewriting and this is not a carbon copy.

Mr. Nemser: I ask for the production of the letter of February 17, 1928.

The Court: Produce them all.  
(Letters produced.)

Q. Are these the letters? A. They are both written and signed by me.

Q. What date? A. February 17, 1928.

20 Mr. Nemser: I offer these two letters in evidence.

(Marked Exhibit C-6 and Exhibit C-7).

Q. Did you receive a reply? A. I did.

Q. Under what date? A. Under date of February 21, 1928.

30 Mr. Nemser: I offer in evidence letter dated February 21, 1928, from Messrs Henn & Burr.  
(Marked Exhibit C-8).

Q. Did you have any further communication with Henn & Burr in the form of letters? A. No; I do not recall any other letter.

Q. Did you ever get in touch with Henn & Burr over the telephone or personally? A. I am giving you my best recollection. I recall speaking to Mr. Henn once over the telephone about this matter.

40

*I. F. Goldenhorn. Called by Complainant. Direct.*

Q. Do you remember when that was? A. Yes, sir; it was some time in the month of February, 1928.

Q. Give us the substance of that conversation? A. The substance of it was that I had sent him a letter—

Q. Can you fix the date? A. I should say it was some time around the 23rd or 24th of February. It was about four or five days after I received the letter from Messrs. Henn & Burr, and the substance of that conversation was that I said to Mr. Henn over the telephone: "Why is it that I do not get a statement of the exact amount due for the taxes on this property up there at Maywood?" And Mr. Henn said: "You never sent me the record to show who the owner was." I said: "Of course, I did. I sent you a clipping showing the transfer of the property to Bernstein." He said: "I never got it." I said: "Do you want me to send you a memorandum of the book and page where it is recorded?" I do not know whether he said "Yes" or "no" to that. I said: "If you want it I will send it."

I said: "I also notice that you have begun foreclosure proceedings," and I said, "my client does not intend to pay you anything more than the amount of taxes due up to the time that I sent you the first letter." That is all I recall about it.

Q. That is the substance of the conversation? A. That is the substance of the conversation, yes.

Q. I direct your attention to copy of letter marked for identification and ask you whether that is a copy of the letter you originally sent? A. Yes.

Q. Do you know whether that was mailed or not? A. Yes.

Q. How do you know that? A. Why, I usually drop the mail myself. All mail is left for me late

*I. F. Goldenhorn. Called by Complainant. Direct.*

in the afternoon and I drop the mail myself, because I look over it. In that carbon copy the reason why the typewriting is there is because there was some catch in the typewriter machine at the time the carbon was made. I noticed it myself, and the name was imprinted at my request.

- 10            Mr. Nemser: I offer this letter in evidence.  
               Mr. Kettell: I object to it.  
               The Court: So you want to cross examine  
                   on the letter?  
               Mr. Kettell: I would like to ask a few ques-  
                   tions.

BY MR. KETTELL:

- 20            Q. You testified that you mailed this letter? A.  
               That is my custom.  
               Q. That is your custom? A. Yes.  
               Q. You testified that on the day this letter was  
                   written, January 17, 1928, something was wrong  
                   with the machine, with the result that the words  
                   "Messrs. Henn & Burr" did not come through on  
                   the carbon copy? A. That is it.  
               Q. Was there anything else on that letter that  
                   had to be typed in later? A. I do not recall at this  
 30            moment whether there was or not.  
               Q. But you do specifically recall that the words  
                   "Messrs. Henn & Burr," did not come through on  
                   the carbon and had to be typed in later? A. That  
                   is my very best recollection.  
               Q. Would it surprise you if I told you that the  
                   date had also to be typed in later? A. I would  
                   not be surprised. I am not surprised at anything.  
               Q. As a general thing, in dictating your letters,  
 40            how do you end your letters? A. Well, it depends

*I. F. Goldenhorn. Called by Complainant. Direct.*

on the amount of affection I have for the person to whom I am sending the letter.

Q. As a general rule— A. I have no general rule; I never had a general rule; I never follow the herd in anything; I try to be original.

Q. I call your attention to the letter marked Exhibit C-2, dated December 1, which ends “Respectfully yours,” and I call your attention to letter of February 17, marked Exhibit C-6, which ends “Respectfully yours,” and I call your attention to letter dated February 17, marked Exhibit C-7, which ends “Respectfully yours,” and I call your attention to letter dated December 13, marked Exhibit C-4, and call your attention to the fact that that also says “Respectfully yours”? A. That is the biggest surprise you have given me yet. 10

Q. Will you say you have never sent a letter the salutation of which was different? A. I would not say that; no. 20

Q. I call your attention to the letter marked C-5? A. I would say that that was different, it is written here “sincerely yours.”

Q. You said that you usually dictate the salutation according to the amount of love and affection you have for the party you are writing to? A. My affection, of course, for Mr. Henn. 30

BY THE COURT:

Q. Your respect lessened— A. I would not say that. People frequently change toward me, but I do not change my affection for them.

Mr. Nemser: I offer the copy in evidence.

The Court: It will be admitted.

(Marked Exhibit C-9).

Mr. Nemser: I have no further direct examination. 40

*I. F. Goldenhorn. Called by Complainant. Cross.*

CROSS EXAMINATION BY MR. KETTELL:

Q. Are you acquainted with Mr. Erit? A. I never saw him in my life until I saw him this morning.

Q. You were never engaged by Mr. Erit to act as his attorney? A. Only through Mr. Birnbaum.

10 Q. When were you engaged? A. About the middle of November, 1927.

Q. Did you hear Mr. Erit testify that he never engaged you as his attorney? A. Yes; I heard him say that.

Q. That he did not even know you and had not met you until this morning? A. I heard him say that.

Q. Did you ever call on Mr. Cook to find out how much was due on the property? A. I called up Mr. Cook.

20 Q. Did you ever call on him personally? A. No; I did not.

Q. Did you know he was the Master before whom the proceedings were being taken? A. I did.

Q. To foreclose? A. I did.

Q. When did you find that out? A. Sometime in the month of January or February, to my best recollection.

30 Q. Can you remember more specifically? A. I cannot; no.

Q. Was it before or after the time had expired for redemption? A. I would not say that. I do not recall whether that was so or not. I know that I wrote to Messrs. Henn & Burr when I had that information imparted to me by Mr. Cook.

Q. To which letter is that that you refer? A. It was a letter in which I said we would not pay any more—it is the letter of December 1, 1927. I can-

*I. F. Goldenhorn. Called by Complainant. Cross.*

not tell you the exhibit number. If you have the copy of the letter—

Mr. Henn: Exhibit C-7.

Q. I show you letter under date of February 17, marked Exhibit C-7, and ask you if according to that letter you did not know at that time the amount necessary to redeem this property from the tax sale? A. Yes; I must have known at that time. 10

Q. You also knew at that time that Mr. Cook was the Master before whom these proceedings were being taken? A. Yes; I knew that. That is my best recollection that I was informed of it by Mr. Silverman.

Q. Did you convey this information to your client? A. No; I do not think I did.

Q. Why not? A. Because I did not see my client, and the only communications I had with him were through Mr. Silverman. Mr. Silverman wrote me or telephoned me about it. When I say "my client"— 20

BY THE COURT:

Q. You are speaking of Mr. Erit? A. Yes; his client was Mr. Erit.

BY MR. KETTELL: 30

Q. I call your attention to the fact, Mr. Goldenhorn, that the February 17 letter about which you are now testifying, you said in that letter that you represented Mr. Bernstein,—not Mr. Erit? A. Yes; I represented Mr. Bernstein, too.

Q. You represented Mr. Bernstein? A. Yes; I represented him through Mr. Birnbaum.

*I. F. Goldenhorn. Called by Complainant. Cross.*

Q. You also represented Mr. Silverman who gave you this information? A. I represented Mr. Silverman from the first.

10 Q. At this time you know the amount necessary to redeem this property from the tax sale, and you knew the Master to whom tender would have to be paid, and yet you did not inform your client of these facts so that he could make the tender to the Master? A. I never had any exact figures from Mr. Henn, I could not get them, and the figures that I had—the figures that I got from Mr. Henn were so grossly in excess of what I thought this man ought to pay, or the amount I was informed he ought to pay, that I said he would not pay any more than the amount due up to the time I wrote my letter.

20 Q. Didn't you meet Mr. Henn in Vice Chancellor Fallon's chambers, and didn't you ask him the amount necessary to redeem the property and did he not on that occasion tell you the amount necessary to redeem this property and that you could pay it to Mr. Cook, and did he not tell you also at that time that Mr. Cook would give you the exact figure? A. I do not recall any such conversation at all because if he did I had the money to redeem it and I would have redeemed it. I never got the exact figure.

30 Q. You said that you had the money to redeem this property? A. Yes, sir.

Q. From whom did you get the money? A. Mr. Silverman gave me the money.

Q. Mr. Silverman gave you the money? A. Yes.

Q. And you knew to whom the money could be paid, namely, to the Master?

40 The Court: He has already said that Mr. Cook was the Master.

*I. F. Goldenhorn. Called by Complainant. Cross.*

Q. Did you ever go down to Mr. Cook's office and inquire how much it would cost to redeem the property? A. No; I did not, but I spoke to Mr. Cook on the telephone, as I told you before, and he gave me some figures.

Q. I asked did you go there personally? A. I never went there personally. They were so astounding I wrote or called you about it. 10

Q. How much was it, the amount that was so astounding? A. I cannot tell you at this time, I do not recall, but I know from the figure given me by Mr. Silverman, from the amount of taxes due, I thought they were very largely in excess of what you were entitled to. They were not exact. I would not tell what the exact amount was.

Q. You could not tell how much? A. No; I never knew the exact figure. 20

BY THE COURT:

Q. You knew that Mr. Cook was an officer of the Court appointed to ascertain and fix the amount?

A. I could not say.

Q. Would he not be more likely to know the exact amount than Mr. Henn? A. Yes, probably so.

Q. Why didn't you go and see him? A. I don't know why I did not go. I know I did not. That is all. 30

(At this point adjournment is taken to July 5, 1928, at ten o'clock in the forenoon.)

*S. Bernstein. Called by Complainant. Direct.*

Met pursuant to adjournment this 5th day of July, 1928, at ten o'clock in the forenoon.

Appearances as heretofore.

10 SAMUEL BERNSTEIN, the complainant, sworn as a witness in his own behalf, testifies as follows:

DIRECT EXAMINATION BY MR. NEMSER:

Q. You are the complainant in this suit? A. I am.

Q. And you are the Samuel Bernstein mentioned in this deed, Exhibit C-1? A. I am.

20 Q. Did you make any effort to redeem this property from the tax sale? A. I did.

Q. Under what circumstances? A. On February 29, 1928.

Q. What did you do? A. I went to the office of Henn & Burr.

Q. Where is that? A. Located in the Spingarn Building—I believe it is called the Spingarn Building.

Q. In Jersey City? A. Yes.

30 Q. Who was with you? A. I was with Mr. Birnbaum.

Q. What time of day was it? A. I should say it was one o'clock in the afternoon.

Q. Did you see Mr. Henn? A. I did.

Q. About what time? A. I should say we waited about an hour or so. He was in conference at the time.

40 Q. Tell us what happened after you saw Mr. Henn? A. I came into the room, into Mr. Henn's office, with Mr. Birnbaum, and I told him I was the

*S. Bernstein. Called by Complainant. Direct.*

Bernstein who was interested in the property in Maywood and I came to redeem it. I took out my wallet, and in the wallet I had \$1,000 to cover the expenses of the tax sale and so forth. I showed Mr. Henn the deed which I had procured through Mr. Birnbaum.

Q. That is the deed marked Exhibit C-1? A. Yes. He refused to acknowledge the deed. He said he thought it was defective, that there was no such person as Erit, because a Mr. DeDarmo or some such name, had bought the property in 1900, and he refused to accept the deed as good. I asked him whether he would let me redeem, which he says no, and then we left his office. 10

Q. Did you have the cash then? A. I did.

Q. What did the cash consist of? A. It consisted of ten one hundred dollar bills. 20

Q. Did you offer him the cash? A. I did.

Q. How long did you talk to him altogether? A. I should say it was about fifteen or twenty minutes at the most.

Q. As I understand you, Mr. Bernstein, the reason assigned by Mr. Henn was that he would not recognize any deed signed by Erit? A. That is right.

Q. Did you give him any other proof of your identification? A. I did, my wallet. 30

Q. What did the wallet show? A. My name and address, and Mr. Birnbaum identified me also.

Q. Mr. Birnbaum was the officer who took the acknowledgment to this deed marked Exhibit C-1? A. He did.

Q. What did you do after you left Mr. Henn's office? A. I went back to Hackensack after that.

Q. Did you ever see Mr. Henn again after that? A. No. 40

*S. Bernstein. Called by Complainant. Cross.*

Q. In regard to this matter? A. No.

Q. Did you ever talk to him about it? A. No.

CROSS EXAMINATION BY MR. KETTELL:

Q. What is your occupation? A. Title Examiner.

10 Q. For whom do you work? A. New Jersey Bond & Mortgage Corporation.

Q. Where are the offices of the New Jersey Bond & Mortgage Corporation? A. 210 Main Street, Hackensack, New Jersey.

Q. Do you know who the parties interested in the New Jersey Bond & Mortgage Corporation are?

The Court: Why go into that?

20 Q. Were you acting in this transaction for yourself or for somebody else? A. For myself.

Q. You stated that you did make an offer to redeem this property? A. Yes; on February 29, 1928.

Q. On February 29, 1928—you yourself personally? A. Yes; personally myself.

BY THE COURT:

30 Q. Was the thousand dollars you had with you your own money? A. Yes, sir.

BY MR. KETTELL:

Q. Did you retain Mr. Goldenhorn? A. I did not retain Mr. Goldenhorn personally. Mr. Silverman was acting as my agent. I asked Mr. Silverman if he could procure for me an investment, and he said he could, and I left all the legal matters, the forms and so forth, in his hands.

40 Q. In whose hands? A. Mr. Silverman's hands, and he in turn consulted the counsel.

*S. Bernstein. Called by Complainant. Cross.*

Q. Did you give any money to Mr. Goldenhorn to redeem this property? A. I did not.

Q. Did you hear Mr. Goldenhorn testify? A. Yes.

Q. You heard Mr. Goldenhorn testify that he had the money to redeem this property? A. I gave Mr. Silverman the money.

Q. How much? A. \$1,500.

Q. When? A. Some time between the 20th and 24th of November, 1927. 10

Q. For what purpose did you give Mr. Silverman this money? A. To buy this property and clear it all up.

Q. Did you ever examine this property personally? A. I did not.

Q. Do you know what this property is worth? A. Well, it is worth much more than I gave Mr. Silverman to pay for it. That is my own consideration. 20

BY THE COURT:

Q. What do you think it is worth? A. I should think it is worth about \$3,500.

BY MR. KETTELL:

Q. You said you never examined this property? A. No.

Q. On what do you base that estimate? A. Just on what Mr. Silverman told me, that it would be a very good investment for me. 30

Q. This thousand dollars that you say you had with you when you visited Mr. Henn at his office, how did you procure that? A. As I said before, some time between the 20th and 24th—I do not recall what date—

Q. February 29, 1928? A. Mr. Silverman handed me back the money on the morning of February 29, 40

*S. Bernstein. Called by Complainant. Cross.*

at the Title Trust Building in Hackensack, 210 Main Street, Hackensack.

Q. Then, as testified by Mr. Birnbaum, you did not withdraw this money from the bank on that day, did you?

10 Mr. Nemser: I object. Mr. Birnbaum did not testify he withdrew it. Mr. Birnbaum did not say he got it from the paying teller.

The Court: Objection sustained.

Q. You stated you gave Mr. Silverman \$1,500 to redeem this property? A. That is right.

20 Q. You are just after testifying that Mr. Silverman, on February 29, 1928, in this bank in Hackensack, handed you \$1,000? A. Yes; he told me that would be enough to cover the redemption of this property.

Q. Do you know on what he based the assertion that that would be enough to redeem this property? A. I did not question him.

BY THE COURT:

30 Q. When did the matter of investment in this property first come to your attention? A. Some time, I should say, during the latter part of October I saw Mr. Silverman out in Hackensack. I just happened to be married around that time and I asked Mr. Silverman whether he could get for me a pretty good investment in real estate. He said he had something in mind. I told him I would give him some cash, and some time during the week, between the 20th and 24th, I do not recall, I gave him the money, \$1,500.

40 Q. Did this come to your attention in October? A. Yes; the latter part of October.

*S. Bernstein. Called by Complainant. Redirect.*

Q. Did Mr. Silverman tell you what it was? A. No. He told me he could pick me up a nice bargain.

Q. When did he first tell you where the bargain was? A. That was during this conversation I had with him.

Q. In October? A. Yes.

Q. What did he tell you? A. He just said he had something in view in Maywood. 10

Q. Did he tell you what it was? A. He said it consisted of five lots.

Q. Did he tell you about the tax sale? A. Yes; he told me there was a tax sale on it and he thought he could get a deed for it and clear it up.

Q. Did he tell you there were proceedings pending to foreclose the tax sale? A. No.

Q. When did he tell you about that? A. I found that out about two or three weeks later. 20

Q. About the first of November? A. Somewhere around that time.

BY MR. KETTELL:

Q. You knew of the tax sale proceedings in November; is that correct? A. Yes.

Q. And yet you testify that the first and only attempt you made to redeem this property personally was on February 29, 1928; is that correct? A. Yes. 30

REDIRECT EXAMINATION BY MR. NEMSER:

Q. What were your relations with Mr. Silverman with regard to trust and confidence? A. I do not get that.

Q. Did you have a lot of confidence in Mr. Silverman's ability and opinion as a real estate man? A. I did. 40

*Samuel Silverman. Called by Complainant. Direct.*

Q. Is that the reason why you did not— A. (Interrupting) A. Yes.

Q. You say you were married when? A. October 23, 1927.

Mr. Kettell: Objected to.

The Court: Objection overruled.

10

SAMUEL SILVERMAN, sworn as a witness on the part of the complainant, testifies as follows:

DIRECT EXAMINATION BY MR. NEMSER:

Q. You are a friend of Mr. Bernstein, the preceding witness? A. Yes, sir.

20 Q. Did you make any effort in Mr. Bernstein's behalf to redeem the premises from the tax sale? A. I did.

Q. What did you do? A. I wrote to Henn & Burr on November 23, 1927.

Q. Did you mail the letter yourself? A. Yes, sir. I also mailed a copy to Mr. Goldenhorn at the same time.

30 Q. I show you what purports to be a copy of a letter sent November 23, 1927, and ask you if this is a correct copy of the letter that you mailed to Henn & Burr? A. It is.

Mr. Nemser: I offer this in evidence.

Mr. Kettell: I object to its introduction.

The Court: Let it be marked.

(Marked Exhibit C-1, July 5, 1928.)

40 Q. After writing this letter what did you do? A. I wrote another letter to Mr. Goldenhorn and told him—

*Samuel Silverman. Called by Complainant. Direct.*

Q. What did you do toward redeeming this property? You wrote to Mr. Goldenhorn again? A. I did, up to February 14. I had been in Trenton, and I wondered, I did not see any printed notices in the newspapers about redemption and I searched the records and I found the Master's Report was on file.

10

BY THE COURT:

Q. When was this? A. February 14.

BY MR. NEMSER:

Q. That is the time you say you searched the records? A. Yes.

Q. Who was the master? A. Mr. Pierre Cook.

20

BY THE COURT:

Q. When you say you searched the records in Trenton, are you talking about the files in the Chancery suit to foreclose? A. Yes, sir.

BY MR. NEMSER:

Q. After you made the search what did you do? A. We got in touch with Mr. Cook on February 18. Mr. Cook was not in. We called to see him again on February 16.

30

Q. What was the conversation you had with him? A. I spoke with Mr. Cook and told him I understood he was the Master in the suit of B. H. K. Realty Corporation vs. Erit. He did not remember about it. He says: "I keep copies of my reports," and he went to his files and brought out the report. He said nothing had been done further and

40

*Samuel Silverman. Called by Complainant. Direct.*

he had sent his Master's report to Trenton. I spoke to Mr. Cook and I told him I thought the procedure was that they should be advertised and notice should be sent to the various parties.

Q. What was the purpose of your going to see Mr. Cook? A. For the purpose of redeeming the property.

10 Q. Did you make any offer? A. I did not have the money that time, and Mr. Cook told me to see Messrs. Henn & Burr.

Q. At that time did you have the figure necessary to redeem? A. The figure he gave me, it was, as I recall, something a little over \$700.

Q. You say you, at Mr. Cook's suggestion, saw Henn & Burr? A. Yes.

20 Q. What did you do? A. I went up to Henn & Burr's office and I went to see Mr. Burr, Mr. Henn's partner—

Q. What was the date? A. Mr. Goldenhorn gave me a letter, I think it was dated February 22, or 23 or 24, that the decree had already been taken.

Q. A letter from whom? A. From Henn & Burr.

Q. To Henn & Burr? A. To Mr. Goldenhorn, which Mr. Goldenhorn sent to me.

30 Q. (Showing witness) Is this the letter marked Exhibit C-8 that was shown to you by Mr. Goldenhorn? A. Yes, sir.

Q. You went to see Mr. Burr? A. I told Mr. Burr that that letter is not right—

Mr. Kettell: I object.

The Court: What has Mr. Burr to do with it?

Mr. Nemser: Henn & Burr were the solicitors of the complainant, the B. H. K. Realty Company.

40 The Court: Objection overruled.

*Samuel Silverman. Called by Complainant. Direct.*

Q. What was your conversation with Mr. Burr?

A. I told Mr. Burr that I had seen the letter sent to Mr. Goldenhorn. I told him I could not understand the procedure because they were supposed to advertise thirty days in the newspapers when and where we can go to redeem. I was watching for this advertisement and I had never seen it in the newspapers. Burr said that it was a matter for Mr. Henn, that he handled these things personally.

10

He says: "What do you want to do?" I says: "I want to redeem it." I says: "I have the money to pay you. Let me see what your costs are?" He says: "I cannot do anything, I haven't the papers in the case." He called the stenographer and she brought the papers in. Finally he told me there wasn't any costs, that he had not any amount, that he had sent for the costs.

20

Q. What was the date of that? A. February 25; I believe it was on a Saturday morning.

Q. What did you do after that? A. He was supposed to fix me for an appointment on Monday, but then he said: "Mr. Henn will not be in, but he will be in Tuesday, I believe, the following morning."

I went there on February 28th. It must have been about half-past nine or ten o'clock.

Q. Whom did you see? A. Mr. Henn.

Q. Personally? A. Yes.

30

Q. What was the conversation with him? A. I told Mr. Henn I had come there on behalf of Mr. Bernstein to redeem the property. I says: "I have got the money." Then I pulled out \$1,000 in cash. Then he said: "That deed is no good."

BY THE COURT:

Q. Did you have the deed with you? A. Yes; I had the deed with me.

40

*Samuel Silverman. Called by Complainant. Direct.*

BY MR. NEMSER :

Q. Go on. A. I said: "Why isn't it any good?" He said: "In my opinion it is not, and furthermore we do not recognize any lawyers in this matter. Mr. Bernstein must come himself and then he must be identified."

10 Q. Did you offer Mr. Henn the money? A. I did.

Q. Was there anything else said? A. Why, we had a little chat for a few minutes afterward. I told him I will get in touch with Mr. Bernstein this afternoon or the next morning and have him there promptly.

20 Q. Did you do that? A. I did. February 29th I went to Hackensack. I met Mr. Bernstein at the Peoples Trust Building. I said: "It seems to me you better go yourself and get someone to identify you. Here is \$1,000. Go down and redeem your property."

Q. Did you ever see Mr. Cook after this occasion on February 15 or 16? A. Yes, sir; I think it was on the first of March, the following day after Bernstein could not redeem, I went to see Mr. Cook.

Q. What for? A. To redeem the property.

30 Q. What did Mr. Cook say? A. Mr. Cook says: "I am afraid you are too late. I certified late last night to Henn & Burr that no redemption had been made."

Q. What did you do after that? A. I went to you on March 1st and put the facts before you, and you called him up in my presence—

Q. Did you ever see Mr. Henn again? A. I do not recall.

40 Q. How many times did you see Mr. Henn personally about this matter so far as redemption is concerned? A. I think once or twice, I am not sure.

*Samuel Silverman. Called by Complainant. Cross.*

Q. Once at his office? A. Once at his office I know I saw him. I believe once I spoke to him on the street.

Q. What was that conversation? A. I think that must have been in November or December—

Q. What year? A. 1927. I told him: "Why don't you send the figures down to Goldenhorn to redeem?" 10

Q. What did Mr. Henn say? A. I do not recall. I think he said he would take care of it, something like that; I do not recall.

CROSS EXAMINATION BY MR. KETTELL:

Q. When did you first call to Mr. Bernstein's attention this particular property, Mr. Silverman? A. I believe it was the latter part of October, 1927. 20

Q. When did it come to your attention? A. That is the time I seen the advertisement in one of the Hackensack newspapers of a tax sale foreclosure.

BY THE COURT:

Q. Have you got a copy of that notice that you saw? A. I believe Mr. Nemser has it.

BY MR. KETTELL:

30

Q. (Showing witness) I show you Exhibit D-2. Is this the advertisement that you saw in the newspaper? A. I could tell if I saw the original better. It is the same.

Q. At the time you saw this advertisement in the paper did you know Mr. Erit's address? A. I looked it up in the New Jersey telephone book.

Q. Did you know it at that time? A. No; I found it in the telephone book at that time. 40

*Samuel Silverman. Called by Complainant. Cross.*

BY THE COURT:

Q. When; how long after you saw this notice? A. In October, perhaps within two or three days later.

BY MR. KETTELL:

10 Q. Did you represent Mr. Bernstein at that time?  
A. I did.

Q. You knew at that time that Henn & Burr were the attorneys in the suit being advertised in the paper? A. I did.

Q. Why didn't you go to Henn & Burr's office at that time and offer to redeem? A. I had a lawyer to take care of that.

Q. Did you engage Mr. Goldenhorn? A. I did.

20 Q. To represent whom? A. To represent Mr. Bernstein or Mr. Erit, either one.

Q. When did you engage Mr. Goldenhorn? A. On the same day I wrote to your office, November 23, I wrote to Mr. Goldenhorn a letter and I went to see him.

Q. Did Mr. Erit engage Mr. Goldenhorn? A. Through me, he did.

30 Q. Can you fix the date that you engaged Mr. Goldenhorn for Mr. Erit? A. I sent him the letter which I wrote on November 23, and I saw him personally on December first, and I asked him what he had done in the matter.

Q. Who? A. Mr. Goldenhorn, and I told him I wanted him to go down and redeem that property.

BY THE COURT:

40 Q. Did you give Mr. Goldenhorn money to redeem? A. I gave him a check for \$750, at that

*Samuel Silverman. Called by Complainant. Cross.*

time, and I says: "Get the figures on this and go down and redeem this property for me."

BY MR. KETTELL:

Q. You testified on direct examination that you did not engage Mr. Goldenhorn until February 14?

A. I never testified to that. I beg your pardon. I said on February 14 I came back from Trenton when I found the Master's report on file, and I went down to Goldenhorn and raised the devil why he had not filed an answer in the case. 10

BY THE COURT:

Q. Did you tell him to file an answer? A. When I seen the Master's—

Q. Had you told him before that? A. I told him to use all legal rights and redeem that property. I figured he would file an answer. 20

BY MR. KETTELL:

Q. If you knew and wanted Mr. Goldenhorn to redeem this property, why did you say just now that you wanted Mr. Goldenhorn to file an answer? A. Well, we could not redeem until we filed an answer. 30

Q. Didn't you know that you could pay the money to the collector? A. No; you cannot. After foreclosure is once started the collector will send you to the attorney in the case.

Q. You knew that you could redeem it through the Master? A. I went to the Master, and the Master referred me to your office.

Q. What was the date when you saw the Master? A. On the 16th of February. 40

*Samuel Silverman. Called by Complainant. Cross.*

BY THE COURT:

Q. Did you say the Master refused to take your tender? A. He told me to see Messrs. Henn & Burr, that they will accept it.

BY MR. KETTELL:

10

Q. Did you make tender to the Master? A. I did not exactly make him tender because he spoke to me about it and told me to see Henn & Burr, which I did, but I did make tender to him on March 1st, when it was too late he said.

Q. And the first tender you ever made to the Master was on March 1st? A. Yes, sir.

Q. When was the first time you called at the office of Henn & Burr? A. On February 25th.

20

Q. And at that time whom did you see? A. Mr. Burr—Edward Burr.

Q. And the next time that you visited Henn & Burr's office, whom did you see? A. Mr. Henn on February 28, in the morning, about nine-thirty or a quarter to ten.

Q. Did you make a tender to Mr. Henn on February 28th? A. I had \$1,000 in cash and laid it on the table and counted it out.

30

Q. On February 29? A. On February 28, and he even commented about me, that I had gold tenders.

Q. You say that you laid the cash on his desk? A. Right on his desk and a little over for the taxed costs.

Q. Was there anybody present at that time? A. The two girls were in the outside room there.

Q. Then, the next day, you testified, you went to Hackensack and told Mr. Bernstein to redeem?

40

A. I did.

*Samuel Silverman. Called by Complainant. Cross.*

Q. Is that correct? A. Yes.

Q. You gave him the \$1,000 in cash? A. Yes, sir.

Q. Do you know when the time expired to redeem this property from the Master? A. I would say the expiration of the time is thirty days after the date advertised in the newspaper, which is customary in all tax lien foreclosures.

Q. You say that that is customary in all tax lien foreclosures? A. Yes. 10

Q. What experience have you had? A. I have been following tax sales since 1918, and I have always received double advertisements.

Q. Did you say you have been following this since 1916? A. I have been buying and selling tax liens since 1918. I have followed up the procedure in tax lien foreclosures.

Q. Then, you were fully acquainted with your rights in this matter without having first to consult counsel, were you not? A. I was to a certain extent, but it is always best to have counsel in the matter. 20

Q. You were not relying entirely on what counsel was doing for you? A. I was. I had hundreds of others things to contend with. This is not the only matter I have had to bother with.

Q. With your extensive knowledge of tax titles, you would not depend entirely on Mr. Goldenhorn? A. I always depend on a lawyer. 30

Q. You testified a little while ago that as early as November or December that you were dissatisfied with the way Mr. Goldenhorn was handling the matter for you? A. No. On February 14 when I came back from Trenton.

Q. Did you give Mr. Goldenhorn any money to redeem this property? A. I give him a check the first of December. 40

*Samuel Silverman. Called by Complainant. Cross.*

Q. For what purpose? A. To redeem this property.

Q. How much was the check? A. I give him a blank check; I always trusted him with checks; it has been my custom always.

Q. Was it signed? A. Yes.

10 Q. By whom? A. By the Silverman Development Company, by me as president.

Q. After you tendered this check to Mr. Goldenhorn in December, didn't you make any inquiry of him and ask him whether he had redeemed, up to February 14?

Mr. Nemser: I object.

The Court: Objection overruled.

20 A. I have seen Mr. Goldenhorn and I have asked him and he said: "I am waiting for their answer. They are to send the figures to me."

Q. You just testified the check was in blank? A. Yes. I told him it would be about \$750; that \$750 would be about the amount.

Q. You did not fill the check in? A. No.

Q. I thought that he testified that the check was filled in for \$750? A. If he filled it in, I don't know. I have not filled it in.

30 Q. Have you that check with you? A. No; I have not.

Mr. Nemser: I do not think Mr. Goldenhorn said anything about a \$750 check at all.

The Court: I do not either.

BY THE COURT:

40 Q. I show you the files in the case of B. H. K. Realty Company against John B. Eritrodamo,

*Samuel Silverman. Called by Complainant. Cross.*

docket 65, page 365. Are those the files that you examined down in Trenton? A. Yes, sir.

Q. That was in February? A. February 14th.

Q. Did you see this order concerning the Master's Report filed January 5, 1928? A. No, sir. That is the one that showed the amount, where Mr. Cook is the Master.

Q. You did see this Master's Report filed January 5, 1928? A. Yes. It is dated January 3, 1928, and sets thirty days time. 10

Q. It confirms the Master's Report and directs payment within thirty days after the date thereof? A. Yes; that is the time it was brought to my attention, and I went to Goldenhorn and asked him what was the matter, and at that time Mr. Goldenhorn wrote a letter, dictated it, in my presence, to Henn & Burr. 20

BY MR. KETTELL:

Q. When was the first time you visited Mr. Cook's office? A. The 15th he was out, and on the 16th of February—

Q. What happened on the 16th of February? A. I tried to explain to Mr. Cook the procedure, that I thought it had to be advertised where and when redemption could be made, and he said all he knew about it, he filed the Master's Report; that is all he ever did in the matter and he advised me to go down to Henn & Burr and straighten the matter out. 30

Q. You had examined this file in Trenton? A. Yes.

Q. You knew that thirty days—

The Court: He said he read the order. 40

*Pierre F. Cook. Called by Complainant. Direct.*

Q. You knew that on February 16th the time had expired to redeem? A. Why, under the order it expired February 5, because that was thirty days after filing the report. The report was made the 3rd of January and it was filed on the 5th.

10 Q. At any time when you saw Mr. Cook or Mr. Henn, did they ever give you the figures necessary to reedem? A. No one gave me the figures, but Mr. Cook told me the figures that were in his report, but he did not have the taxed costs.

Q. Did anybody ever tell you the taxed costs? A. Nobody ever told me the taxed costs.

BY THE COURT:

20 Q. Did you ever ask Mr. Goldenhorn to have the costs taxed? A. Yes; he told me he was going to get them from Henn & Burr.

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PIERRE F. COOK, sworn as a witness on the part of the complainant, testifies as follows:

DIRECT EXAMINATION BY MR. NEMSER:

30 Q. You are the Master to whom the reference was made in the foreclosure suit of the B. H. K. Realty Company against Erit? A. Yes.

Q. At any time at all during the pendency of that suit did you know what the taxed costs amounted to? A. No, sir.

Q. Did you know what the figures were—what the figures amounted to that were necessary to redeem? A. I knew what figures were stated in my report that I signed.

*Frederick C. Henn. Called by Complainant. Direct.*

Q. And your report, of course, made no reference to taxed costs? A. I do not recall that now.

Q. At any time, did the solicitors of record, Messrs. Henn & Burr, ever give to you the amount of taxed costs? A. They gave me no figures except those which were embodied in the report.

No cross examination.

10

FREDERICK C. HENN, sworn as a witness on the part of the complainant, testifies as follows:

DIRECT EXAMINATION BY MR. NEMSER:

Q. Are you connected in any manner, shape or form, with the B. H. K. Realty Company? A. No, sir; no other than acting as attorney. 20

Q. Are you interested financially in that company? A. No, sir.

Q. Is Mr. Burr? A. No, sir; not that I know of.

Q. Do you know how the name of the company came to be B. H. K. Realty Corporation? A. Nothing more than what might have—

Q. Do not the initials B. H. K. stand for Burr, Henn & Kettell? A. It stands for Bergen & Hudson & Kay; Mr. Kay wanted the initials to describe the property; he was— 30

Q. (Interrupting) You represented him? A. I do.

Q. And the company? A. Yes.

Complainant rests.

40

*Frederick C. Henn. Called by Defendant. Direct.*

DEFENDANT'S CASE.

FREDERICK C. HENN, already sworn as a witness on the part of the complainant, called as a witness on the part of the defendant, testifies as follows:

DIRECT EXAMINATION BY MR. KETTELL:

10

Q. You are a member of the firm of Henn & Burr?

A. I am.

Q. And the person actually in charge of the case of the B. H. K. Realty Company against Eritrodamo? A. Yes.

Q. Do you know what inquiries were made in this case as to the address of Eritrodamo?

20

The Court: I would like to ask counsel for the complainant to state to me what difference it makes in this case on the proofs now in, whether Mr. Erit got notice of this foreclosure or not, or whether proper inquiry was made to ascertain his address, considering the fact that he has no interest whatever in this property now, having sold out his interest.

30

Mr. Nemser: He conveyed his right of redemption. The defendant is relying upon a decree of the Court of Chancery which, to all intents and purpose, is a good decree. They say that Erit and his heirs are barred by that decree. We will show that the decree is not based on truthful facts.

40

Q. What inquiry was made by you for the purpose of the suit of B. H. K. Realty Company against Eritrodamo as to his address? A. Mr. Mackay had brought the certificate of sale in for the purpose of

*Frederick C. Henn. Called by Defendant. Direct.*

foreclosure. I inquired as to service on the owner, and I asked him if he had made inquiries of his present whereabouts. He said he had; he had been out to the property and had made inquiry in the neighborhood; he went to the collector and the collector informed that his address was over in New York at a post office box. When he gave me that information I wrote a letter to Mr. Erit, a copy of which you will find in the papers, with the address of our office to return if it was not delivered. 10

Q. I show you copy of letter marked D-1 for identification. Is that a copy of the letter you wrote Mr. Erit? A. Yes, sir; on April 22, 1927, in which I informed him that Mr. Mackay had delivered to us the certificate of tax sale, and I also stated the law provided for redemption and asked him if he wanted to redeem the property. That letter was never returned. 20

Mr. Kettell: I offer that letter in evidence.

Mr. Nemser: May I examine on this letter?

The Court: Yes.

BY MR. NEMSER:

Q. Did you mail this letter personally? A. No, sir. 30

Q. All you remember is that you dictated it and told your girl to mail it? A. I dictated it, signed it and gave it to the girl to mail, with the ordinary mail that went out.

BY THE COURT:

Q. In the usual routine course of business? A. Yes, sir. 40

*Frederick C. Henn. Called by Defendant. Direct.*

BY MR. KETTELL:

Q. That letter was never returned? A. No, sir.

Mr. Nemser: I object to the admission of the letter in evidence.

The Court: Objection overruled.

10 (Letter heretofore marked D-1 for identification, marked Exhibit D-1.)

Q. As a result of your inquiry, from what you were able to ascertain, Mr. Erit lived in New York?

A. Yes, sir.

Q. As a consequence, you proceeded by publication? A. I did.

20 Q. I show you copy of publication marked D-2 for identification. Is that a copy of the advertisement? A. It is.

Mr. Kettell: I offer that in evidence.

(Paper heretofore marked D-2 for identification is marked Exhibit D-2.)

Q. Did you also mail a copy of that notice? A. A copy of this was also sent to Erit at the same address to which this letter was sent.

30 Q. Was that returned? A. No, sir.

BY THE COURT:

Q. Where did you mail that letter; to whom did you address it? A. Why, J. B. Erit, post office box—I do not recall the number—it is referred to.

Q. It is embodied in the proof of publication? A. Yes; the address should be given.

40 Q. Where did you mail it? A. To J. B. Erit, at the post office referred to in the letter of April 22, 1927; that is the only address I had of Mr. Erit.

*Frederick C. Henn. Called by Defendant. Direct.*

Q. Mailed in one of your envelopes? A. Yes.

Q. Did it come back? A. It did not.

BY MR. KETTELL:

Q. I show you a letter marked Exhibit C-1, supposed to have been written by Mr. Silverman, and ask you if that letter was ever received by Henn & Burr? A. This letter never came to my office. If it was received in the office it was never filed with the papers in the case. The first time I saw that letter was today. 10

Q. I show you letter marked Exhibit C-2, and ask you if that was the first indication that you had that anyone wanted to redeem this property? A. Yes; I received this letter December 1, 1927, in which Mr. Goldenhorn informed me he was acting as attorney for Mr. Erit. I then, of course, knew that Mr. Erit,—that the notices that had been mailed from the office had been received by him. Upon receipt of this letter I asked Mr. Mackay,—by the way I have the letter addressed to Mr. Mackay,—to give me the necessary figures to redeem. I met Mr. Goldenhorn a few days after this information was given to me, in the hall outside of this court room, and I told him that any time he wanted to redeem, that Mr. Mackay can be found; he knew Mr. Mackay's address; Mr. Silverman and Mr. Mackay were in this business together a number of years,—to send up to Mr. Mackay's office; I was not interested any more than acting as attorney for Mr. Mackay. 20 30

Q. I show you a letter marked Exhibit C-3, and ask you if you also sent that letter to Mr. Goldenhorn, in answer to his letter? A. Yes, sir; that is in answer to the letter of December 1st. 40

*Frederick C. Henn. Called by Defendant. Direct.*

10 Q. And in that letter you called Mr. Goldenhorn's attention to the discrepancy in regard to the party for whom he was acting as attorney? A. In his letter of December 1st he says: "I am attorney for J. B. Erit and Amidio Erit", and in this letter I called his attention to the fact, to the statement that he made, that he claimed to be acting as attorney for Samuel Bernstein. I told him in this letter that I had caused a search to be made of the property in Hackensack and found no deed recorded to Bernstein. So I ask in this letter: "Will you please let me know when it was Mr. Bernstein purchased this property? Upon due proof we will advise you whether or not same can be redeemed."

Q. I show you Exhibit C-4 and ask you if you received that from Mr. Goldenhorn? A. Yes, sir.

20 Q. That was in reply to your letter of December 6? A. It was.

Q. I show you Exhibit C-5 and ask you if that was ever received by the office of Henn & Burr? A. I have no recollection of this letter. If there was such a letter received it has never been brought to my attention, nor can it be found in the files of the case kept in our office.

30 Q. I show you exhibits marked C-6 and C-7. Were those letters ever received from Mr. Goldenhorn? A. They were.

Q. In his second letter of February 17, he states the amount necessary to redeem. Were those the correct figures as of this date? A. They were the correct figures, excepting, of course, what fees there were of the Master in making his report and what filing fees there were to be added to that on the filing of the Master's Report, the actual filing fees of the court, and in this letter Mr. Goldenhorn says that his client absolutely refuses to pay these costs.

40

*Frederick C. Henn. Called by Defendant. Direct.*

Q. As a result of his letter of December 1st you did inform him what the amount was? A. I did.

BY MR. NEMSER :

Q. Under what date? A. I think it was by a telephone communication. Mr. Goldenhorn called me up and I got this letter, and the figures in this letter are identical with the figures contained in Mr. Goldenhorn's letter as of February 17th. Those figures were obtained by me within a few days of December 1st, from Mr. Mackay. 10

BY MR. KETTELL :

Q. I show you letter dated February 21, addressed to I. Faerber Goldenhorn, marked Exhibit C-8, and ask you if you sent that letter to Mr. Goldenhorn? A. I did. 20

Q. In this letter you informed Mr. Goldenhorn that at no time had his client tendered any money to you in payment of this tax sale proceeding? A. That is correct.

Q. You also informed him at that time that the decree had been entered in this foreclosure suit? A. That is correct.

Q. And that you would be glad to refer him to Mr. Mackay for any further negotiations? A. That is correct. 30

Q. Did Mr. Goldenhorn ever make any tender to you of the money necessary to redeem this property? A. No, sir.

Q. Did Mr. Birnbaum, on his visit to your office, February 29, 1928, bring a tender? A. That was the second visit after Mr. Silverman was at my office. Mr. Birnbaum and another gentleman who introduced himself as Mr. Bernstein called at my 40

*Frederick C. Henn. Called by Defendant. Direct.*

office and said that they were at the office to make a tender of the amount due on the Erit foreclosure. They did not make a tender at that time. Mr. Bernstein presented a deed and on looking it over I said to Mr. Birnbaum and Mr. Bernstein: "Of course, I am only acting as solicitor in this matter. I have no authority to accept any money. I do not know the Master's fees, nor do I know the taxed costs", and I told them that if they wanted to take the matter up with Mr. Mackay, or they could go to Mr. Mackay then, that the time had already expired for the redemption. I had the paper before me and explained it to them. Then I said to Mr. Bernstein: "If you do redeem this property, Mr. Bernstein, if I were you I would be very careful because this deed that you got from Mr. Erit is not properly signed, and I then explained to him that the name in the foregoing part of the deed was John B. Eritodamo and it was signed John B. Erit. He then told me that Mr. Erit had had his name changed. I think he said that it was in New York that he had had it done. I then asked who Amidio was, and I think he said it was either his wife or his brother. I said: "If it is his brother, has he had his name changed too?" He said: "I don't know". I said: "Before you redeem this property from Mr. Mackay, if you are going to redeem it, I would get a corrected deed so that your title will be good in the event that you sell this property".

Then Mr. Bernstein, I think, put his hand in his pocket and said: "I have got the money here to redeem it". I says: "I do not know what the costs are, and I have no authority to take your money", and with that they walked out. They said: "Well, we are here to make a tender". And that is all there was to it.

*Frederick C. Henn. Called by Defendant. Direct.*

Q. Had the time expired for redemption on February 29? A. It had, because a few days prior to that date I had sent down the decree to the Court of Chancery. It was due on that very day, on February 29, and I told them that it might be that the decree was signed on the day that they were in my office.

Q. Then, as testified to by Mr. Bernstein, he did not pull this cash out of his pocket and tender it to you to take out whatever was necessary? A. No, sir; he had bills in his hand which he drew from his pocket, but the amount of them and the denomination I did not know. 10

Q. Did he tender them? A. No. He said—

Q. On February 28, when Mr. Silverman testified he called at your office and interviewed you, will you tell us the circumstances of his visit? A. Mr. Silverman came in my office—I would not say the day before Mr. Bernstein—it might have been two or three days before—and said that he was attorney for Mr. John B. Erit. I know Mr. Silverman and have known him for a number of years. I said: “Sam, since when are you an attorney?” He says: “I am a lawyer; I am a member of the bar of”—I think he said North Carolina or South Carolina. I said: “That is news to me, Sam, but if you are acting as attorney for Erit,” I said, “I have some letters from Mr. Goldenhorn, stating that Erit sold this property to Bernstein.” Some further conversation took place. He said “I came up here to pay you what is due on this foreclosure.” I said: “Sam, this matter has been referred to Mr. Cook.” I said: “Mr. Cook has filed his report.” 20 30

I said: “I have no figures; I have not the taxed bill of costs, but if you want me to get this for you, I will be glad to do it, and you can step in another 40

*Frederick C. Henn. Called by Defendant. Direct.*

time and I will have Mr. Mackay here so that you can make the check to him."

10 I said: "I have no authority to accept any money." As a matter of fact I told Mr. Silverman and I also told Mr. Bernstein that it would require either an assignment of that tax certificate or an assignment of the decree as well as a deed, and it would require Mr. Mackay's signature so that if they paid me the money they would want something from Mr. Mackay, which I would have to have a day or two in order to communicate with Mr. Mackay.

20 So he said: "I have got the money. I have a check here." I do not recall just exactly what it was that I told him at that time, but I did not think he had the right by deed any way if he wanted to make a tender. He said: "If there is any question about the ownership, I will send Mr. Bernstein here himself."

I said: "Well, Sam, if you want to go through the formality of a tender, you better have Mr. Bernstein come to my office. Let me know and I can have Mr. Mackay here, if you want him." He says: "All right," and he walked out of the office.

Q. At the time of Mr. Silverman's visit to your office, had the time expired for redemption? A. It had.

30 Q. At any time previous to the expiration of the time for redemption, had there been any tender or offer to redeem—any bona fide offer to redeem? A. No, sir.

The Court: The question is objectionable in that form "bona fide offer to redeem." The question should be: Had there been any offer to redeem?

*Frederick C. Henn. Called by Defendant. Cross.*

Q. Had there been any offer to redeem? A. No, sir; no offer had been made to me.

Q. By anyone? A. No, sir.

Q. Outside of the letters now in evidence from Mr. Goldenhorn, did you receive any other communication prior to the expiration of the time to redeem? A. Why, I met Mr. Goldenhorn a half dozen times, maybe more, particularly down here in the Court of Chancery. I come down here every Monday morning on other matters. Mr. Goldenhorn I met in the hall several times, and I think I met Mr. Nemser once or twice, and several times the discussion came up, and one time particularly, Mr. Goldenhorn said: "I am not getting anything out of this thing. Get Mackay to knock off some of these costs and we will get the thing cleaned up." I says: "All right. The matter is entirely up to Mr. Mackay." 10 20

BY THE COURT:

Q. Mr. Nemser had nothing to do with the matter until the suit was brought? A. I think Mr. Nemser called up my office with some information and I knew Mr. Nemser was closely associated with Mr. Silverman.

I think I will add to that answer also, if my recollection serves me, right, that Mr. Nemser called me up before I even received a letter from Mr. Goldenhorn. 30

Q. Before you received any letter from Mr. Goldenhorn? A. Before I received any letter; yes, sir.

CROSS EXAMINATION BY MR. NEMSER:

Q. When was the first time that you ever spoke to me about this whole matter? A. To you personal- 40

*Frederick C. Henn. Called by Defendant. Cross.*

ly, Mr. Nemser, I think it was only after this suit had been started.

Q. Well, was it before you had obtained the final decree in the first suit, or after? A. In the first suit?

Q. The foreclosure suit; yes. A. That I would not say.

10 Q. Well, you surely did not talk to me before you got the decree in the first suit, did you? A. Maybe; possibly.

BY THE COURT:

20 Q. To get the date in your mind, the decree confirming the Master's Report is dated January 3, 1928; the bill in the case we are now trying was filed March 3, 1928? A. I think now no personal communication between Mr. Nemser and myself took place until this bill had been filed, and then I called up Mr. Nemser; and after reading the bill after I had received it from the clerk, I called Mr. Nemser's attention to the allegation in the bill, where he had alleged that no decree had been entered, and I asked Mr. Nemser if he wanted to amend his bill and informed him that the decree had been entered. I said that we did not want to take up the time of the Court and make a motion to strike out the bill. Mr. Nemser told me he was going to continue with the bill.

30

BY MR. NEMSER:

Q. The final decree in the foreclosure suit is dated February 29, and the bill of complaint in this suit was filed March 3, 1928. Your communication with me was after February 29, 1928? A. Yes, sir.

40 Q. I wrote you with regard to redeeming this property, didn't I; didn't you send me this letter

*Frederick C. Henn. Called by Defendant. Cross.*

in response? A. Yes; that I think was the result of our personal talk in the hall here when you asked me if I would send you the figures, after I had previously told you that Mr. Goldenhorn had the figures.

Q. This letter was signed by you? A. No, sir; it was not signed by me, but it was dictated by me.

Mr. Nemser: Is there any objection to having this letter offered now? 10

Mr. Kettell: No objection.

(Letter is marked Exhibit C-2, July 5, 1928).

Q. You say the time you saw Birnbaum and Bernstein was when? A. It was either the 29th day of February or it was in the early part of March.

Q. Well, your final decree is dated February 29, 1928—you are satisfied of that? A. Yes, sir. 20

BY THE COURT:

Q. You send the decree down before you saw either Bernstein or Birnbaum? A. Yes, sir.

BY MR. NEMSER:

Q. The decree was entered— A. (Interrupting) I would not say as to its being entered. According to my diary it was due to be signed on the 29th of February, and it may be, as a matter of routine, it was sent down one or two days before. 30

Q. It was sent down before February 29th? A. Yes, sir; but it was not due until the 29th.

BY THE COURT:

Q. Why do you say it was not due until the 29th of February? The order of the Master's Report is 40

*Frederick C. Henn. Called by Defendant. Cross.*

January 3, 1928, and provides for thirty days, which would make your final decree due on February 3, or somewhere around that date? A. Well, the Master did not send down the Master's Report the day it was dated. In my diary I had entered thirty days from the day I received a copy of Mr. Cook's report.

10 Q. Mr. Cook's report was filed December 30, 1927, the order confirming the report was filed January 5, 1928. Now, the certificate of the Master that no one had redeemed was not filed until February 29, 1928? A. Yes.

20 Q. It was due long before that? A. It may have been due before that. The day when I sent it down, the notation which I had in my diary—I do not recall the circumstances now—I remember when Mr. Bernstein was in my office I had told him the decree confirming the Master's Report had already been signed.

BY MR. NEMSER :

30 Q. Mr. Bernstein and Mr. Birnbaum testified that the visit to your office was February 28, the day before this— A. They have testified the 29th. If they said it was the 29th that they were at my office, I would take their statement as being true. I think it was either the same day or the following day that I received a certified copy of the decree. No more than one or two days elapsed.

Q. Mr. Silverman saw you a day or two before? A. I would not say it was one day. I am not quite sure whether two or three days had elapsed.

40 Q. Did you tell Mr. Silverman at that time that you had sent down for the final decree and that his right to redeem was barred, if he had any such right? A. I do not think I did. I do not think that

*Frederick C. Henn. Called by Defendant. Cross.*

came up. Mr. Silverman was so positive of his right in the matter and so formal that he did not give me any chance to discuss.

BY THE COURT:

Q. He was speaking as an attorney? A. He was speaking as an attorney.

10

BY MR. NEMSER:

Q. You knew he was not an attorney? A. Yes; that surprised me when he told me he was an attorney.

Q. You knew him practically all your life? A. Absolutely; from boyhood.

Q. I call your attention to Exhibit C-1, dated February 21, 1928, in which you say that decree had been entered in the foreclosure suit. That was a mistake, was it? A. Yes, sir; it might have been there was a decree entered January 3.

20

Q. Didn't you seek to give the impression by this letter, that whatever rights Silverman, Erit or Bernstein had, had been cut off? A. No, sir; not at all. I told him in that letter to take up further negotiations with Mr. Mackay, because Mr. Silverman and Mr. Mackay had formerly been associated in matters of—

30

Q. Is not that the real source of trouble, the relations that had formerly existed between Mackay and Silverman; is not that why you sent Silverman to Mackay? A. No, sir; I had no responsibility whatever; I had no authority whatever to take any money for Mr. Mackay and no one in our office has.

Q. Why didn't you have the authority as solicitor for Mr. Mackay's company? A. Well, if you want

40

*Frederick C. Henn. Called by Defendant. Cross.*

to pass title on a tax title, you will find that a signature of some kind will be necessary from Mackay in order to perfect title and therefore if I took the money I could not sign Mr. Mackay's name and I asked Mr. Silverman to let me know when Mr. Bernstein would call and I would have Mr. Mackay at my office and that he could execute whatever  
 10 papers were necessary, if a redemption was made.

Q. As a matter of fact, you never knew and you do not know today the amount necessary to redeem this property? A. The exact amount, do you mean?

Q. Yes. A. No; I do not.

Q. Then, it would be absolutely futile for Mr. Silverman or anyone to make any tender of any amount or any kind of an offer?

20

The Court: Do you mean legally futile?

Mr. Nemser: I withdraw the question.

Q. If Silverman or Birnbaum or Bernstein or anybody connected with them had tendered you any sum of money whatever, you would not have taken it? A. I told you that I—

Q. (Interrupting.) Yes or no? A. No; I could not take it.

30

Q. And the reason why you could not take it was because you did not know the amount? A. No, sir; because I had no authority to take it.

Q. You had never ascertained the taxed costs? A. No.

The Court: The record shows the absence of any taxed bill of costs in the case.

40 Q. Mr. Henn, going back to the time Birbaum and Bernstein were at your office, you did not tell them

*Frederick C. Henn. Called by Defendant. Cross.*

at that time that the time to redeem had expired, did you? A. I think I said something to them. I said—I think I put the question to them as to why they did not go down to Mr. Cook and make the tender.

BY THE COURT:

Q. Did you tell them that you had sent down your final decree the day before? A. I really do not know whether I told them that or not, but I know I had. Whether I told them or not I do not know, because I knew both were lay men; they were not lawyers.

Q. Did Mr. Goldenhorn ever ask you to give him some definite amount as to the costs? A. No, sir; the taxed costs.

Q. Did he ever ask you to give him some definite amount to pay? A. Yes, sir.

Q. Did you ever send it to him? A. Yes.

Q. When? A. I telephoned his office—

Q. Did you ever send it by mail? A. I did not think it was necessary.

Mr. Nemser: I move to strike out the answer.

The Court: It may be stricken out.

Q. Did you ever send it by mail? A. No, sir; I did not; not by mail.

Q. As a matter of fact, Mr. Henn, when Birnbaum and Bernstein came to your office, you just tried to stall them along? A. I did not.

Q. You never thought it was necessary or important during the three or four months between February or March to at any time write either Silverman or Goldenhorn stating the exact figures to redeem? A. I did not.

*Frederick C. Henn. Called by Defendant. Cross.*

Q. During the month of December when you wrote these letters to Mr. Goldenhorn, did you mention in any of these letters the fact that the matter had been referred to Mr. Cook to report the amount due? A. No; I do not recall outside of, I think, I told Mr. Goldenhorn, and Mr. Goldenhorn, I think, bears that out in his testimony, that he got tele-  
10 phone communication with Mr. Cook.

Q. Did you, in any of your letters, ever refer to Mr. Cook? A. Likely I did in my conversations—

Q. In your letters. A. No; not in letters; no.

Q. You did not think that was necessary, did you? A. No.

Q. Now, this point that you referred to in your conversation with Birnbaum and Bernstein about Eritrodamo, you knew all the time that that name  
20 had been changed? A. I did not.

Q. Didn't you, in all of your proceedings, refer to "Eritrodamo, also known as Erit"? A. That is the way the certificate was made out.

BY THE COURT:

Q. When you wrote Mr. Erit and told him about this tax sale, in your letter of April 22, you addressed him as J. B. Erit? A. Yes.

30 Q. You knew he was J. B. Eritrodamo? A. I did not know it was Eritrodamo. I did not find that out until after the search was made.

BY MR. NEMSER:

Q. At the time you filed the bill to foreclose the tax lien, you relied upon the information Mr. Mackay gave you as to the whereabouts of Erit? A. Yes.

40

*Frederick C. Henn. Called by Defendant. Cross.*

Q. You did not make any personal investigation yourself? A. Other than writing a letter.

Q. Writing this letter to Mr. Erit? A. Yes.

Q. In other words, you did not consult any directories or telephone books or election lists or anything of that kind, to ascertain his whereabouts?

The Court: Mr. Henn says he wrote Mr. Erit to the address Mr. Erit said was his address, and notice of the pendency of the suit, under the order of publication, was sent to the same address. 10

Q. Did you send that notice? A. I directed it to be sent as soon as it came out. I give the advertisement to Mr. Mackay and told him to attend to it.

Q. I call your attention to an affidavit filed in the foreclosure suit, in which you said: "I have made a careful and diligent inquiry as to the present whereabouts of one John B. Eritrodamo and Amidio Eritrodamo, also known as John B. Erit and Amidio Erit, and as the result of such inquiry I have been unable to ascertain the present whereabouts of John B. Eritrodamo," and so forth. That was a statement contained in an affidavit you signed September 15, 1927? A. That is correct. 20 30

Q. Is that accurate? A. Yes, sir.

Q. You knew in April, 1927, where he was? A. I did not know. It was a post office address, indicating that his home address was, for some purpose, concealed, or that he was moving about and getting his mail at the post office.

Q. You knew the letter you sent him in April, 1927, had never been returned? A. Yes. 40

*Frederick C. Henn. Called by Defendant. Cross.*

Q. When you say you had made careful and diligent inquiry, you mean you had made inquiry of your client, Mr. Mackay? A. Yes.

Q. And when you say you had been unable to ascertain the whereabouts of Erit, were you accurate in that statement? A. I was.

10 Q. Why didn't you mention in this affidavit where Erit was? A. I did not know where he was.

Q. You knew his mail box address in New York? A. Yes.

Q. You did not mention that in your affidavit? A. I did not.

Q. You say in your affidavit you have been unable to ascertain his Christian name? A. Yes.

Q. What effort did you make to ascertain that? A. The same.

20 Q. What do you mean by "the same"? A. Well, I asked Mr. Mackay and Mr. Mackay said that he went up to the town collector and the town collector had mailed bills to Mr. Erit's address in New York and he could not find out any information as to his whereabouts, and upon that information I made my affidavit.

30 Q. Now, the time the Master fixed within which to redeem, as thirty days after January 3, did you send notice of that time fixed for redemption to Mr. Erit? A. No; I did not.

Q. Did anybody in your office send notice to him? A. Not that I know of.

Q. Will you explain how you expected Mr. Erit to receive notice of the time to come in and redeem and the amount necessary to redeem? A. I think at that time that Mr. Erit or Mr. Bernstein was represented by Mr. Goldenhorn, and Mr. Goldenhorn knew all about the procedure.

40 Q. Well, why didn't you send Mr. Goldenhorn a copy? A. I did not think it was necessary. I thought

*Frederick C. Henn. Called by Defendant. Cross.*

he was a lawyer, and he said he had been in communication with Mr. Cook.

Q. Why didn't you send him a copy of the notice to redeem? A. There is nothing in the Act for a notice to be sent, and I do not know the procedure is such that it should be.

Q. Was the notice to redeem ever advertised? A. No, sir. 10

Q. In other words, it was a mere form? A. I think that is all it could have been.

Q. In other words, Erit never had an opportunity to know the time and place to redeem? A. I consulted Mr. Cook about that, and we looked it up together, and we came to the conclusion that you do not have to give notice of the time and place to redeem.

Q. Did Mr. Cook ever tell you that Mr. Silverman was down there to see him about redeeming this property? A. I believe he did. 20

Q. Did you tell him that you had sent him to Mr. Mackay?

The Court: What has that to do with it?

Q. This order of publication was published in the Hackensack Republican, was it not? A. I believe it was. 30

Q. The order for publication was entered October 3, 1927; is that correct? A. I do not know; the record will show that.

The Court: The record shows that.

Q. You say, when you wrote this letter of December 6, to Mr. Goldenhorn, that you requested some record of this deed to Bernstein; is that correct? A. Yes; I asked him—I said: "Will you please let us 40

*Frederick C. Henn. Called by Defendant. Cross.*

know when it was that Mr. Bernstein purchased this property?"

Q. He sent you a reply setting forth an abstract of the deed? A. Yes, but it—

Q. (Interrupting) He sent you a reply setting forth an abstract of the deed? A. Yes; he did.

10 Q. As a matter of fact, do you know that the deed was recorded in the Bergen County Clerk's office December 5, 1927? A. No; I do not.

Q. I show you this deed marked Exhibit C-1. You do not know it at all? A. No, sir; I do not know that.

Q. Did you ever see this property in question? A. No, sir.

20 Q. Do you know that since the institution of this suit by me that a portion of this property has been sold by the B. H. K. Realty Company? A. No, sir.

Q. Would it surprise you to learn that—

Mr. Kettell: Objected to.

The Court: What materiality has that?

Mr. Nemser: Question withdrawn.

30 Q. Now, Mr. Henn, although you say that notice of the time and place fixed by the Master was never mailed or published, you did have the Master file a second report setting forth that no redemption had been made within the time set forth by the order; is that right? A. Well, they would not enter a decree unless there was a certificate from the Master.

40 Q. You filed an affidavit in the case under date of October 3, 1927, at the time you filed the order of publication. I desire to call your attention to the third paragraph of that affidavit, in which you say: "I have, in good faith made diligent and careful inquiry not only in the manner required by the rules

*Pierre F. Cook. Called by Defendant. Direct.*

of this court as in cases of absent defendants but from all other sources from which I thought it probable that I might be able to ascertain whether the said defendants are still alive but have been unable to ascertain whether or not they are alive." Did you say that in that affidavit filed on October 3, 1927?  
A. Yes.

Q. You sent a letter in April, 1927, which did not come back? A. Yes. 10

The Court: This is highly argumentative.

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PIERRE F. COOK, a witness heretofore sworn on the part of the complainant, called as a witness on the part of the defendant, testifies as follows:

20

DIRECT EXAMINATION BY MR. KETTELL:

Q. You are the Master to whom the foreclosure suit was referred? A. Yes.

Q. You filed your report in that matter on December 22, 1927? A. The endorsement will show.

Q. Did you make a report in that matter on December 22? A. As I recall it, I delivered the report to Mr. Henn. I did not file it personally myself.

30

Q. Has there been any tender made to you to redeem this property from the time the matter was referred to you up to the present time? A. I recall Mr. Silverman coming in my office and he spoke to me about this case, and I got an office copy of the report that I had, and I looked up the time which was stated as the time to redeem. He then said that he wanted to redeem the property, and as I recall it he exhibited to me a check signed by the Silverman

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*Pierre F. Cook. Called by Defendant. Cross.*

something or other company, by Mr. Silverman in some capacity, the rest of the check being a blank, and I said: "Well, Sam, that would not be tender." He then said: "I can go down to the bank and get the money," and that was all that was said about any tender, and Mr. Silverman went away, and that is all of the circumstance that I recall.

10

BY THE COURT:

Q. Do you recall whether that was in January or February? A. The only thing I remember about time, as I recall it, was that it was after the time that was suggested in the report as the time to redeem.

Q. It had expired then? A. I do recall that distinctly.

20

CROSS EXAMINATION BY MR. NEMSER:

Q. Did you send him to Mr. Henn? A. Did I what?

Q. Did you send Mr. Silverman to Mr. Henn? A. I do not know that you would call it sending him to Mr. Henn, but I suggested that he see Mr. Henn.

Q. Did Mr. Goldenhorn ever communicate with you in regard to this matter? A. Not to my recollection.

30

Q. Over the telephone? A. He might have done so. If he did, it did not impress itself upon my memory at all.

Q. If anybody had come in to redeem this property, you would have sent him to Mr. Henn; isn't that so?

40

The Court: That question is based entirely on speculation.

*Pierre F. Cook. Called by Defendant. Cross.*

Q. As a matter of fact, you would have to do that, because you did not know the final figure? A. No; I did not know.

BY THE COURT:

Q. You would not have sent him to Mr. Henn. You would have found out the amount of costs and told him to come back again? A. Yes. 10

BY MR. NEMSER:

Q. As a matter of fact you did know that redemption if made should be made through Mr. Henn?

The Court: That is not so.

Q. Did you ever see Mr. Silverman after that? A. Many times. 20

Q. In regard to his redemption? A. Oh, no; no. I see Mr. Silverman very frequently on the street.

Q. I mean in regard to the redemption of this property? A. I think Mr. Silverman called at the office one day and exhibited what I think, or what I recall it to be, a bunch of certified copies of the pleadings in this suit which is now pending here, and said that he was going after somebody pretty hard, but that is all I recall about it. 30

Q. Did he say anything about that being the first time he knew that the time to redeem had expired? A. I could not have been because this was the second visit. On the first visit, I went over the report and showed him that the time had expired.

Q. Did he tell you Henn & Burr would not let him redeem? A. Oh, yes, because he said he was getting ready to proceed against them.

Defendant rests. 40

*I. Faerber Goldenhorn. Called in Rebuttal. Direct.*

## REBUTTAL.

I. FAERBER GOLDENHORN, a witness heretofore sworn on the part of the complainant, recalled in rebuttal and further testifies as follows:

DIRECT EXAMINATION BY MR. NEMSER:

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Q. Mr. Goldenhorn, did you have any conversation with Mr. Henn on the telephone or personally, or in any other way, in regard to the amount necessary to redeem this property from the tax sale? A. Yes.

Q. Did you ever speak to Mr. Henn about this matter in the Court of Chancery? A. I did.

20

Q. When was that? A. I do not recall the time, except that it was about the time that we had this lengthy correspondence.

Q. What was the conversation? A. I asked him to give me the figure that we would have to pay, whatever it was. I told him a check had been left with me and I was getting the devil because of the fact it was not settled.

BY THE COURT:

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Q. Did you ever try to get the costs taxed? A. I did not. I asked him if he had the taxed costs.

Q. Did you ever try to get the costs taxed? A. I did not.

BY MR. NEMSER:

40

Q. What did Mr. Henn say to you? A. He said he would give me the figures; he would get hold of Mr. Mackay and have him send the figures to me; and I never got them, and I read him the letter which you have had here.

*Samuel Silverman. Called in Rebuttal. Direct.*

Q. Did you ever speak to Mr. Cook about the redemption? A. I called up Mr. Cook once on the telephone about the time that I wrote Mr. Henn about the figures of which I told you. I did not think my client ought to be held for more than the amount that was due with interest at the time I first communicated with him and demanded the figures.

10

No cross examination.

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SAMUEL SILVERMAN, a witness heretofore sworn as a witness on the part of the complainant, recalled in rebuttal, further testifies as follows:

DIRECT EXAMINATION BY MR. NEMSER:

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Q. Did you ever tell Mr. Henn that you were acting as attorney for any of these parties or that you were an attorney in some southern state? A. No. He knows better than that. He went to school with me.

Case closed.

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**Conclusions.**

The Court (orally, at close of argument) : I find no fraud in the proceedings entitled B. H. K. Realty Company against John B. Eritrodamo and others (which is the foreclosure of a tax lien) in the respect alleged by the complainant in the suit now under consideration. In that foreclosure suit I can find no attempt to conceal the fact of the proceedings from the parties then having the record interest in the property, and when I say "then" I mean at the time the bill of complaint was filed. The only information that seems to have been procurable as to the address of John B. Eritrodamo was the information obtainable from the tax collector of Maywood, who gave the address which he had and which Eritrodamo, when he testified here in this suit, said was his address; and that on this information inquiry was made to ascertain the correctness of such address and the whereabouts of Eritrodamo and also to give him notice of the tax sale. When the foreclosure proceedings were instituted by bill filed, notice was published to Eritrodamo and his brother and their respective wives and there was a mailing of the notice in compliance with the statute, to the address which the complainant then knew.

If, however, there was any irregularity in the proceedings as to Eritrodamo, the two Eritrodamos ceased to have an interest in the property when, by conveyance during the pendency of the suit, they transferred their title to Mr. Bernstein, the complainant in this suit. Mr. Bernstein brought a lawsuit. He knew there were proceedings pending for the foreclosure of this tax sale. He had information and notice of it at the time. For some time prior to the date of taking conveyance from the Eritrodamos he knew of the publication of the no-

*Conclusions.*

tice to the Eritrodamos of the pendency of the suit and when he took his deed he knew he had to redeem within the time fixed by law or an order of the court. He was bound to take notice of the law and of the proceedings in the Court of Chancery.

The matter was turned over to Mr. Goldenhorn, a member of the bar of this county, who has practised a number of years, and he knew, of course, from his experience and learning, the procedure to be followed in these cases. He made an effort to ascertain from Mr. Henn the amount due or the amount required to be paid to redeem the property from the tax sale. He was not bound to depend upon Mr. Henn for this information; it was easily procurable by Mr. Goldenhorn without recourse to Mr. Henn and if it appeared to Mr. Goldenhorn that Mr. Henn was postponing giving the information that Mr. Goldenhorn required, or was withholding it for the purpose of allowing the time within which to redeem to expire, Mr. Goldenhorn, as an attorney, knew that he could apply to this court to have the new parties in interest made parties defendant to the foreclosure suit and he could have had the costs taxed; he could have readily ascertained the proper amount to be paid in order to redeem and he could have tendered it to Mr. Henn, or to Mr. Burr, as the solicitors for the complainant and in the event of their refusal to accept the tender, he could have paid the money into court and filed an answer in the case; the rights of the parties could then have been determined. If the amount paid in as tender was the correct amount, no more could have been collected from Mr. Bernstein, then the owner of the property. If it was not the correct amount, he would have been required to pay the amount which

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*Conclusions.*

the court might fix as the correct amount to redeem, but no such proceedings were taken. Nobody made to Henn & Burr, the solicitors of the complainant—and I will say here that if proper tender had been made to the solicitors, I think it would have been sufficient tender—but nobody made a tender to Henn & Burr of the amount due or the approximate amount due. The excuse is: “We did not know how much the costs were.” As I said before the costs could have been taxed and could have been very easily ascertained. Time went by until February 29th before there was any real and actual tender made. The tender was made on the day on which the decree of this court had been entered forever barring the defendants in the foreclosure suit of any rights or equity of redemption.

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20 It not only barred the defendants in the foreclosure suit but it barred all those who claimed under them and that includes Bernstein. On that day they went to Henn and Burr’s office and they say they made a tender to Mr. Henn. It is unnecessary to determine whether that tender was actually made or whether it was a sufficient tender, being made to the solicitors of the complainant in that case, because the time had expired. The first intimation that Bernstein or those who represent him had of

30 the pendency of the suit, the time from which their right ran, was November, 1927. They allowed all this time to elapse until February 29, 1928, before they made a legal tender and then it was too late; there had been a decree of this court entered that barred the right of Bernstein to whom Eritrodamo had conveyed the land. The bill of complaint will be dismissed.

40 I am not disposed to make an allowance for counsel fee in this case. I think these parties had the

*Conclusions.*

right to come into court and have a decree as to their rights and it seems to me that the owner of this property is sufficiently well paid in purchasing the property at the tax sale without assessing any more costs against Bernstein who seems to have lost about \$300. There will be costs of suit, however.

10203040



*Complainant's Notice to Produce.*

TAKE NOTICE: That upon your failure to produce the original letters above mentioned, I will introduce secondary evidence as to the contents thereof.

Dated, June 26th, 1928.

Very truly yours,

SAUL NEMSER,  
Solicitor of Complainant.

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**Defendant's Notice to Produce.**

IN CHANCERY OF NEW JERSEY.

10	Between SAMUEL BERNSTEIN, Complainant, and B. H. K. REALTY Co., a Corporation, of N. J., Defendant.	}	On Bill, etc.
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To SAUL NEMSER,  
Solicitor of Complainant.

SIR :

20 PLEASE TAKE NOTICE THAT THE DEFENDANT will require you to produce at the final hearing of the above entitled cause, the following original letters, viz :

1. Letter dated April 22, 1927 addressed to J. B. Erit, written by Frederick C. Henn of the firm of Henn & Burr.

2. Letter dated December 6, 1927, written by Frederick C. Henn, to I. Faerber Goldenhorn.

30 3. Letter dated February 21, 1928, written by Frederick C. Henn to I. Faerber Goldenhorn.

TAKE NOTICE that upon your failure to produce the original letters above mentioned, we will introduce secondary evidence as to the contents thereof.

Dated : June 26th, 1928.

Very truly yours,

HENN & BURR,  
Solicitors of Defendant.

**Exhibit C-1.**

## THIS INDENTURE,

Made the twenty-third day of November, in the year of our Lord One Thousand Nine Hundred and Twenty-seven,

BETWEEN John B. Eritrodamo, also known as John B. Erit, and Laura, his wife. Amadeo Eritrodamo, also known as Amadeo Erit, and Lena, his wife, of the City of New York in the County of New York and State of New York, party of the first part; 10

AND Samuel Bernstein, of the Borough of Palisades Park in the County of Bergen and State of New Jersey party of the second part:

WITNESSETH, That the said party of the first part, for and in consideration of One Dollar (\$1) and other good and valuable considerations, lawful money of the United States of America, to them in hand well and truly paid by the said party of the second part, at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, and the said party of the first part being therewith fully satisfied, contented and paid, have given, granted, bargained, sold, aliened, released, enfeoffed, conveyed and confirmed, and by these presents do give, grant, bargain, sell, alien, release, enfeoff, convey and confirm unto the said party of the second part, and to his heirs and assigns, forever, ALL those certain five (5) lots, tracts or parcels of land and premises, hereinafter particularly described, situate, lying and being in the Borough of Maywood in the County of Bergen and State of New Jersey, Known and designated on a certain Map entitled "Map of Property of Otto B. Hartwich, Maywood, New Jersey"; surveyed by L. Lozier, C. E., and surveyor, filed on August 30th, 20 30 40

1905, in the Office of the County Clerk of Bergen County, N. J., BEING lots numbered fifty-seven, fifty-eight, fifty-nine, sixty and sixty-one (57-58-59-60-61) each of these lots being twenty-five (25) feet wide in front and rear, and one hundred twelve (112) feet in depth.

10 ALSO being known and designated as lots seventy-two, seventy-three, seventy-four, seventy-five and seventy-six (72-73-74-75-76) in Block twenty-eight (28) on the Tax Duplicate of said municipality.

ALSO known and designated as lots fifty-seven to sixty-one, inclusive (57 to 61) in Block twenty-eight (28) in the Township of Midland, Borough of Maywood, County of Bergen, State of New Jersey.

This property is sold subject to all taxes, liens and assessments that may be against the said property.

20 This being the same premises conveyed to John B. Eritrodamo and Amadeo Eritrodamo by Otto B. Hartwich and Anna Sophia, his wife, by deed dated March 28th, 1906 and recorded April 10th, 1906 in Book of Deeds 624, page 510.

The names of John B. Eritrodamo and Amadeo Eritrodamo were changed to Erit by order of the Supreme Court, State of New York, County of New York; Justice Leonard Giegerich, Presiding, dated June 1, 1912.

30 TOGETHER with all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof.

40 AND ALSO, all the estate, right, title, interest, dower and right of dower property, possession, claim and demand whatsoever, as well in law as in equity, of the said party of the first part, of, in and

to the above described premises, and every part and parcel thereof, with the appurtenances TO HAVE AND TO HOLD, all and singular the above mentioned premises, together with the appurtenances, unto the said party of the second part, his heirs and assigns, to his own proper use, benefit and behoof forever.

AND the said John B. Eritrodamo & Amadeo Eritrodamo for their heirs, executors and administrators, do covenant, grant and agree to and with the said party of the second part, his heirs and assigns, that the said property at the time of the sealing and delivery of these presents was lawfully seized in  
of a good, absolute, and indefeasible estate of inheritance in fee simple, of and in all and singular the above granted, bargained and described premises, with the appurtenances  
and have good right, full power and lawful authority to grant, bargain, sell and convey the same in manner and form aforesaid.

AND that the said party of the second part, his heirs and assigns, shall and may at all times hereafter, peaceably and quietly have, hold, use occupy, possess and enjoy the above granted premises, and every part and parcel thereof, with the appurtenances, without any let, suit, trouble, molestation, eviction or disturbance of the said party of the first part, their heirs or assigns, or of any other person or persons lawfully claiming or to claim the same.

AND that the same now are free, clear, discharged and unencumbered of and from all former and other grants, titles, charges, estates, judgments, taxes, assessments and incumbrances of what nature and kind soever.

AND ALSO, that the said party of the first part, and their heirs, and all and every other person or persons whomsoever. lawfully or equitably deriving

any estate, right, title or interest of, in or to the hereinbefore granted premises, by, from, or in trust for them, shall and will at any time or times hereafter, upon the reasonable request and at the proper costs and charges in the law, of the said party of the second part, his heirs and assigns, make, do, and execute, or cause or procure to be made done or executed, all and every such further and other lawful and reasonable acts, conveyances and assurances in the law for the better and more effectually vesting and confirming the premises hereby intended to be granted in and to the said party of the second part, his heirs and assigns forever, as by the said party of the second part, his heirs, or assigns, or counsel learned in the law, shall be reasonably advised or required.

20 AND the said John B. Eritrodamo & Amadeo Eritrodamo, their heirs, the above described and hereby granted and released premises, and every part and parcel thereof, with the appurtenances, unto the said party of the second part, his heirs and assigns, against the said party of the first part, and their heirs, and against all and every person or persons whomsoever, lawfully claiming or to claim the same, shall and will warrant and by these presents forever Defend.

30 IN WITNESS WHEREOF, the said party of the first part have hereunto set their hands and seals the day and year first above written.

JOHN B. ERIT (L.S.)

LAURA ERIT (L.S.)

AMEDEO ERIT (L.S.)

LENA ERIT (L.S.)

Signed, Sealed and Delivered }  
in the Presence of }

40

HARRY A. BIENBAUM.

STATE OF NEW YORK, }  
 COUNTY OF NEW YORK, } ss.:

BE IT REMEMBERED, That on this twenty-ninth day of November in the year of Our Lord One Thousand Nine Hundred and twenty-seven before me, the subscriber, Harry Birnbaum, a Foreign Commissioner of Deeds for the State of New Jersey in the State of New York, personally appeared John B. Eritrodamo, also known as John B. Erit, and Laura, his wife, Amadeo Eritrodamo, also known as Amadeo Erit, and Lena, his wife, who, I am satisfied, are the grantors mentioned in the within Instrument, to whom I first made known the contents thereof, and thereupon they acknowledged that, they signed, sealed and delivered the same as their voluntary act and deed, for the uses and purposes therein expressed. 10

HARRY A. BIRNBAUM, 20  
 A Foreign Commissioner of Deeds,  
 For New Jersey in the State of New York.

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DEED.

JOHN B. ERITRODAMO, *et al.*,

TO

SAMUEL BERNSTEIN. 30

Dated, November 23rd, 1927.

Received in the Clerk's Office of the County of Bergen, N. J., on the 5 day of Dec. A. D., 1927, at 3.33 o'clock, in the afternoon, and Recorded in Book 1535 of Deeds for said County, on page 567 &c.

JAMES W. MERCER,  
 County Clerk. 40

**Exhibit C-2.**

I. FAERBER GOLDENHORN  
 Counsellor at Law  
 Chamber of Commerce Building  
 1 Newark Avenue  
 Jersey City, N. J.

Telephone 460 Montgomery

10

New York Office  
 256 Broadway

Phone 6573 Barclay

Dec. 1, 1927.

20

Messrs. Henn & Burr,  
 665 Newark Avenue,  
 Jersey City, N. J.

Re: Lots 72 to 76 in Block 28, May-  
 wood, New Jersey.  
 B. H. K. Realty Co. v. J. B. Erit.

30

Gentlemen:

I am the attorney for John B. Erit and Amadio Erit who, on November 23rd last, sold five lots in Maywood, New Jersey to Samuel Bernstein of Morsemere, New Jersey. I am informed that you are foreclosing a tax lien on behalf and for the B. H. K. Realty Company. In examining your bill of complaint, filed September 10th, 1927, I noticed that your decree called for the following amounts due your client, namely, \$662.25 taxes, \$2.90 recording fee, \$10.00 search fee and \$19.93 for first half of 1927 taxes.

40

My clients are going to redeem the said property, and I wish you would let me know the cost of your

publication and I wish you would figure the interest on your decree up to and including December 10th, 1927 on which date my client will pay you in full and will expect from you a discontinuance of the case.

Awaiting your immediate reply, I beg to remain,

Respectfully yours,

I. F. GOLDENHORN.

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IFG:RM.

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**Exhibit C-3.**

HENN AND BURR  
Counsellors at Law  
665 Newark Avenue  
Five Corners

FREDERICK C. HENN  
E. EDWARD BURR

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Jersey City, N. J., Dec. 6, 1927.

Mr. I. F. Goldenhorn,  
1 Newark Avenue,  
Jersey City, N. J.

B. H. K. Realty Co. vs. Erit, et als.

Dear Sir:

20

We have your letter of the 1st inst. regarding the sale of the above matter and note that you claim to be the Attorney of Samuel Bernstein who you say purchased the lands on November 23d last. We have caused to be made a search of the property in Hackensack and find no deed of record to Bernstein.

30

Will you please let us know when it was that Mr. Bernstein purchased this property and upon due proof we will advise you whether or not the sale can be redeemed.

Very truly yours,

HENN & BURR.

FCH/G

40

**Exhibit C-4.**

I. FAERBER GOLDENHORN  
 Counsellor at Law  
 Chamber of Commerce Building  
 1 Newark Avenue  
 Jersey City, N. J.

—  
 Telephone 460 Montgomery

10

New York Office  
 256 Broadway

—  
 Phone 6573 Barclay

Dec. 13, 1927.

Messrs. Henn & Burr,  
 665 Newark Avenue,  
 Jersey City, N. J.

20

Gentlemen:

In answer to your letter of December 6th, re B. H. K. Realty Co. vs. Ehret et als. I am sending you herewith a copy of the record of the deed, showing that Mr. Bernstein purchased the property and has the right to redeem it.

Will you please let me know the amount due to date, so that we can close the matter up.

30

Respectfully yours,

I. F. GOLDENHORN.

IFG:RM.

40

**Exhibit C-5.**

Jan. 17, 1928.

Messrs. Henn & Burr,  
665 Newark Avenue,  
Jersey City, N. J.

Gentlemen:

**10** Some time ago you asked me to give you a memorandum of the Bergen County title, which I did.

Will you please let me know the amount that will be required to redeem this property?

Appreciating your early reply, I beg to remain,

Sincerely yours,

I. F. GOLDENHORN.

IFG:RM.

**20**

**30**

**40**

**Exhibit C-6.**

I. FAERBER GOLDENHORN  
 Counsellor at Law  
 Chamber of Commerce Building  
 1 Newark Avenue  
 Jersey City, N. J.

Telephone 460 Montgomery

10

New York Office  
 256 Broadway

Phone 6573 Barclay

Feb. 17, 1928.

Messrs. Henn & Burr,  
 665 Newark Avenue,  
 Jersey City, N. J.

20

Gentlemen:

I wrote to you a number of times in regard to property in Bergen County, which Mr. Silverman wanted to redeem, and I asked you to give me the figures, so that we could straighten the matter out.

At your request I gave you a description of the property and told you where the deed was recorded. I have not heard anything from you.

30

Will you please give me these figures at once, so that we can get this matter straightened out, and please do not go to any further expense in the matter.

Awaiting your reply, I beg to remain,

Respectfully yours,

I. F. GOLDENHORN.

IFG:RM.

40

**Exhibit C-7.**

I. FAERBER GOLDENHORN  
 Counsellor at Law  
 Chamber of Commerce Building  
 1 Newark Avenue  
 Jersey City, N. J.

—  
 Telephone 460 Montgomery

10 New York Office  
 115 Broadway

—  
 Phone 4665 Rector

Feb. 17, 1928.

Messrs. Henn & Burr,  
 665 Newark Avenue,  
 Jersey City, N. J.

Re: Lots 72-76 Lot 28. Maywood, N. J.  
 B. H. K. Realty Co. vs. Erit, etc.

20

Gentlemen:

On November 23rd, 1927 I received word that Mr. Erit sold the above property to Mr. Bernstein, and I received a letter from Mr. Silverman, addressed to you on November 23rd, 1927 advising you to have figures ready for redemption.

30

On December 1st, 1927 I wrote to you, asking for amount due for redemption, and at that time I notified you, that in accordance with the records on file in the Court of Chancery that there was due you the following amounts, to wit:

\$662.25 for taxes  
 2.90 for recording fee  
 10.00 for searching fee  
 19.93 for first half of 1927 taxes.

40

On December 6th, 1927 you wrote me, requesting information regarding the title, and on December 13th, 1927 I forwarded to you all the information requested, but I did not receive from you the amount

due for redemption. On January 17th, 1928 I again wrote to you and repeatedly telephoned your office, for the amount due.

To my amazement I noticed, on December 17th, 1927, the Master held an examination which was filed in Trenton, on January 5th, stating the amount to be due, and I wish to hereby inform you that the only amount that can be realized from my client is the exact amount due which was due you at the time when I requested of you a statement of the amount due, which was on December 1st, 1927.

10

Upon receipt of the exact amount, I will forward you my check for same, at which time I will want a proper cancellation of the certificate, and of the proceedings in the Court of Chancery, in foreclosure.

In the testimony given before the Special Master, Mr. Pierre Cook, an affidavit was made by Mr. Archie McKay, to the effect that he did not know who the owner was. Apparently he has made a mistake in his testimony, because the City Collector knew who the owner was, and I am advised that Mr. McKay was informed who the owner was, and that he attempted to secure a deed from the owner, upon a previous occasion.

20

Under these circumstances, it seems to me that you were more than sufficiently notified of the interests of my client, and I am prepared to pay the exact amount due and no more.

30

I also wish to notify you not to add any more expenses to this matter, because my client will under no circumstances be responsible for any added expense.

Awaiting your immediate reply, I beg to remain,

Respectfully yours,

I. F. GOLDENHORN.

IFG:RM  
S.

40

**Exhibit C-8.**

HENN AND BURR  
 Counsellors at Law  
 665 Newark Avenue  
 Five Corners

FREDERICK C. HENN  
 E. EDWARD BURR

10

Jersey City, N. J., Feb. 21, 1928.

Mr. I. Faerber Goldenhorn,  
 1 Newark Avenue,  
 Jersey City, N. J.

In re: lots 72-76, 28, Maywood.

Dear Sir:

20

Replying to your letter of the 18th inst. we wish to state that at no time had you, or your client, tendered any moneys in payment of the tax certificate held by our client, and therefore, we proceeded with the foreclosure of the lien claim. A decree has been entered in the foreclosure suit and if your client is desirous of re-purchasing the property I will be glad to refer the matter to Mr. McKay who will enter into further negotiations.

30

Very truly yours,

HENN AND BURR.

FSH/G

F. C. Henn.

40

**Exhibit C-1, dated July 5, 1928.**

November 23rd, 1927.

Messrs. Henn & Burr,  
5 Corners,  
Jersey City, N. J.

Re: B. H. K. Realty Co. vs.  
John B. Eritrodamo.

10

Gentlemen:

I notice in an advertisement that you are foreclosing a tax lien in the above matter.

I beg to inform you that this property was sold by Mr. Eritrodamo of Broadway, New York, to Samuel Bernstein, of Palisades Park, N. J.

No doubt, their attorney, Mr. I. F. Goldenhorn will get in touch with you within a few days, for the purpose of redeeming the said property. Please have the figures ready for him.

20

Very truly yours,

SWS:SCS.

S. W. SILVERMAN.

30

40

**Exhibit C-2, dated July 5, 1928.**

HENN AND BURR  
 Counsellors at Law  
 665 Newark Avenue  
 Five Corners

FREDERICK C. HENN  
 E. EDWARD BURR

10

Jersey City, N. J., Mar. 5, 1928.

Mr. Saul Nemser,  
 75 Montgomery St.,  
 Jersey City, N. J.

Dear Mr. Nemser:

20

We communicated with Mr. McKay regarding the tax title of John B. Erit and placed before him the proposition of having your client redeem the property from the tax sale. Mr. McKay feels that he has good title to the lot in question and will be interested to hear from your client as to what he will offer for a deed conveying the title.

As soon as you communicate with your client and advise us we will immediately communicate your offer to Mr. McKay.

30

Very truly yours,

FCH/G.

HENN & BURR.

40

**Exhibit D-1.**

Apr. 22, 1927.

Mr. J. B. Erit,  
 Box 1238,  
 City Hall,  
 New York City.

Dear Sir:

10

A client of our office has taken an assignment of Certificate of Tax Sale #40, for taxes of 1923 to date, from the Borough of Maywood, covering lots 72 to 76, Block 28, recorded in your name.

The law provides that the sale is subject to redemption on payment of the amount of sale together with interest at the rate of 8% per annum and the costs incurred by the purchaser. Your right to redemption will expire after six months after service of notice to redeem. The right to redeem shall extend two years from the date of sale. This property was sold on December 2d, 1924.

20

If you do not care to redeem the property from us we should be glad to pay you the sum equivalent to the cost of foreclosure proceedings for the deed.

Will you please advise us what is your desire in the matter.

Very truly yours,

30

FCH/G

HENN &amp; BURR.

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**Exhibit D-2.**

## IN CHANCERY OF NEW JERSEY.

10 To John B. Eritrodamo, also known as John B. Erit, Mrs. John B. Eritrodamo, also known as Mrs. John B. Erit, Amadeo Eritrodamo, also known as Amadeo Erit, Mrs. Amadeo Eritrodamo, also known as Mrs. Amadeo Erit, and their and each of their unknown heirs, devisees or personal representatives, and they or any of their unknown heirs, devisees, executors, administrators, grantees, assigns or successors in right, title or interest.

20 By virtue of an order of the Court of Chancery of New Jersey, made on the day of the date hereof, in a cause wherein the B. H. K. Realty Co., a corporation of the State of New Jersey, is complainant, and John B. Eritrodamo, also known as John B. Erit, Mrs. John B. Eritrodamo, also known as Mrs. John B. Erit, and their and each of the unknown heirs, devisees or personal representatives, and Amadeo Eritrodamo, also known as Amadeo Erit, Mrs. Amadeo Eritrodamo, also known as Mrs. Amadeo Erit, and their and each of their unknown heirs, devisees or personal representatives, and they or any of their heirs, devisees executors, administrators, grantees, assigns or successors in right, title or interest, are defendants, you are required to appear and answer the bill of said complainants on or before the 5th day of December, 1927, or the said bill will be taken as confessed against you.

30

40 The said bill is filed to foreclose your equity of redemption in a certain tax certificate made by William F. Munday, Collector of Taxes of the Taxing District, of the Borough of Maywood, in the County of Bergen and State of New Jersey, dated

December 23d, 1924, covering premises in the Borough of Maywood, known and designated as lots 72 to 76 inclusive in Block 28 on the tax duplicate of said municipality and assessed thereon to J. B. Erit as and for the year 1923 and also known as lots 57 to 61 inclusive in Block 28 in the Township of Midland, Borough of Maywood, Bergen County, N. J.

And you John B. Eritrodamo, also known as John B. Erit, and Amadeo Eritrodamo, also known as Amadeo Erit, are made party defendants because you appear to be the owners of record of said premises; and you Mrs. John B. Eritrodamo, also known as Mrs. John B. Erit and Mrs. Amadeo Eritrodamo, also known as Mrs. Amadeo Erit, are made party defendants because you may have an inchoate right of dower in the premises; and you and their and each of their unknown heirs, devisees or personal representatives, and they or any of their heirs, devisees, executors, administrators, grantees, assigns or successors in right, title or interest, are made party defendants because in case John B. Eritrodamo also known as John B. Erit, and Amadeo Eritrodamo, also known as Amadeo Erit, are dead, you are the owners or have an interest in said premises.

Dated, October 3d, 1927.

HENN & BURR,  
Solicitors,  
665 Newark Avenue,  
Jersey City, N. J.

13-16 \$30.66

**10** Herewith follows pleadings and documents on file  
in the office of the Clerk of Chancery in the follow-  
ing case:

Between

B. H. K. REALTY COMPANY,  
Complainant,

and

**20** JOHN B. ERITRODAMO, *et als.*,  
Defendant.

Docket 65, Page 367.

**30**

**40**

**Complaint.**

## IN CHANCERY OF NEW JERSEY.

TO HIS HONOR, EDWIN ROBERT WALKER, CHANCELLOR OF THE STATE OF NEW JERSEY :

Complainant, B. H. K. Realty Co., a Corporation of the State of New Jersey, having its principal office at 665 Newark Avenue, in the City of Jersey City, County of Hudson and State of New Jersey, says: 10

1. That at a public sale for unpaid municipal liens, duly held by William F. Munday, Collector of Taxes of the Taxing District, of the Borough of Maywood in the County of Bergen and State of New Jersey, the Borough of Maywood, purchased the premises known and designated as lots 72 to 76 inclusive in block 28 on the tax duplicate of said municipality and assessed thereon to J. B. Erit as for the year 1923 and also known as lots #57-58-59-60-61 in block 28 in the Township of Midland, Borough of Maywood, Bergen County, N. J. and also known and designated on a certain map entitled, "Map of property of Otto B. Hartwich, Maywood, N. J., surveyed by L. Lozier, Civil Engineer and surveyor," and duly filed in the Clerk's Office of said County of Bergen, August 30, 1905, each of said lots being 25 feet wide in front and rear and 112 feet in depth in Block 28 as laid down on said map for the sum of \$265.42 and that the said Borough of Maywood received from the said Collector of Taxes, a certificate of sale, duly signed and acknowledged by him, bearing date the 23rd day of December 1924, a copy whereof is hereto annexed, and which certificate of sale was recorded in the Clerk's office of Bergen County on the 16th day of March 1925 as a 20 30 40

mortgage, in Book 736 page 309 as by the statute in such case made and provided.

2. John B. Eritrodamo and Amadeo Eritrodamo are or appear to be the owners of said premises.

10 3. That on the 20th day of April, 1927, the Borough of Maywood, did by written assignment, assign all the right title or interest in and to the said certificate of sale above referred, to Archie McKay, which assignment was duly acknowledged and recorded in the Clerk's Office of Bergen County, in Book 159 of assignment of mortgages page 462 on the 11th day of May, 1927.

20 4. On the 11th day of May, 1927 by written assignment said Archie McKay, assigned all of his said interest, to the complainant, B. H. K. Realty Co., which assignment was recorded in the Clerk's Office of Bergen County, on the 11th day of May, 1927, in book 159 of assignment of mortgages page 464.

30 5. That John B. Eritrodamo, also known as John B. Erit, and Amadeo Eritrodamo, also known as Amadeo Erit and their heirs, devisees or personal representatives and they or any of their heirs, devisees, executors, administrators, grantees, assigns, or successors in right, title or interest, also have or claim to have some right, title or interest in and to the said premises, and a right to redeem the said premises from the said sale thereof, but whatever right, title or interest they, or any of them have in said premises, complainant alleges is subordinate to said Certificate of Sale.

40 6. That more than two years have elapsed since said sale, without redemption and complainant who is the owner and holder of said Certificate of Sale,

has paid all municipal liens on said premises subsequent to the said sale thereof to it, down to the time of filing of this bill, amounting to the sum of \$662.25.

7. The complainant has also expended the sum of \$2.90 for recording fees, for recording said certificate as a mortgage, and also the sum of \$10.00 for search fees, which search was in the form of an abstract of title, covering a period of not less than twenty years, affidavits of which expenditures were duly made by complainant. 10

8. That there is due complainant on account of said Tax Sale the sum of \$662.25 paid by it at said sale; \$19.93 for taxes one-half year 1927 paid by it; the sum of \$2.90 for recording said Certificate of Sale and the sum of \$10.00 for a tax search as aforesaid; with proper interest thereon as allowed by law, no part of which has been paid. 20

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

1. That John B. Eritrodamo, also known as John B. Erit and Amadeo Eritrodamo, also known as Amadeo Erit and their heirs, devisees or personal representatives and they or any of their heirs, devisees, executors, administrators, grantees, assigns, or successors in right, title or interest, who are the defendants in this suit, may answer this bill of complaint, without oath, and each statement therein made. 30

2. That an account may be taken of what is due and owing to complainant on account of said tax sale and the payments made by it as aforesaid, and that the said defendants be ordered to pay com- 40

plainant what may be found due it on taking the said account together with the cost of this suit, by a short day, to be appointed by this honorable Court for that purpose; or in default thereof, that the said defendants, and all persons claiming by, through or under them, may be barred and foreclosed of and from all equity and right of redemption in or to the premises in said Certificate of Sale mentioned and described, and every part thereof.

10

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

HENN & BURR,  
Solicitors and Counsel with Complainant.

20

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		TAX AND ASSESSMENT SALE.
J. B. Erit	)	Dated December 23, 1924
	)	Ack'd December 23, 1924
to	)	Rec. March 16, 1925
	)	Book 736 page 309
Borough of Maywood)	)	Cons. \$265.42

Do hereby certify that at a public sale of lands for delinquent taxes under and by virtue of the provisions of an act of the Legislature of the State of New Jersey entitled "An act concerning unpaid taxes, assessment and other municipal charges on real property and providing for the collection thereof by the creation and enforcement of liens thereon" (Revision of 1918) approved March 4th, 1918 and the supplements and amendments thereto in said taxing district on the 22nd day of December, A. D., 1924, I sold to Borough of Maywood for \$265.42 the lands described and designated as follows:

Lots 72 to 76 in Block 28 on the tax duplicate of said municipality and assessed thereon to J. B. Erit as owner for the year 1923.

The amount of the sale was made up of the following items:

Taxes	\$76.38
Interest	13.51
Assessment	143.75
Interest	28.03

Costs as follows:

Preparing and publishing notice of sale	2.50
Service in making sale	.50
Certificate of Sale	.50
Acknowledgments and affidavits	.25
	<hr/>
	\$265.42

10

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Said sale is subject to redemption on repayment of the amount of the sale together with interest at the rate of 8% per annum from the date of sale and the costs incurred by the purchaser.

Said sale is subject only to municipal liens accruing after January, 1924.

10 The right to redeem will expire in 6 months after service of notice to redeem except the right to redeem shall in all cases extend for two years from the date of sale.

In case no notice is given and there shall be no redemption within 20 years after the purchaser has entered into open possession since continued under the sale, then in either case the right to redemption shall be barred.

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## IN CHANCERY OF NEW JERSEY

Between

B. H. K. REALTY Co.,  
Complainant,

and

JOHN B. ERITRODAMO, *et al.*,  
Defendants.On Bill, etc.  
Affidavit.

10

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

Frederick C. Henn, of full age, being duly sworn according to law, deposes and says:

1. I am a member of the firm of Henn & Burr, solicitors of the complainant and have charge of the management of this suit. I have made a careful and diligent inquiry as to the present whereabouts of one John B. Eritrodamo and Amadeo Eritrodamo also known as John B. Erit and Amadeo Erit, or their heirs, devisees or personal representatives, and as a result of said inquiry, I have been unable to ascertain the present whereabouts of John E. Eritrodamo also known as John B. Erit and Amadeo Eritrodamo, also known as Amadeo Erit, or their heirs, devisees or personal representatives and they or any of their heirs, devisees, executors, administrators, grantees, assigns, or successors in right title or interest, or subsequent of them as may be proper party defendants in this suit.

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30

2. Such inquiry was made at the Office of the Collector of Taxes in the Borough of Maywood wherein the property is located which is being fore-

40

closed and upon all persons in said Borough and from predecessors in title.

FREDERICK C. HENN.

Sworn and subscribed before me }  
this 9 day of September, 1927. }

**10** F. S. SULLIVAN,  
Notary Public of New Jersey.  
(Seal)

**20**

**30**

**40**

**Amended Bill of Complaint.**

## IN CHANCERY OF NEW JERSEY

Between B. H. K. REALTY Co., a Corporation of the State of New Jersey, Complainant,  and  JOHN B. ERITRODAMO, <i>et als.</i> , Defendants.	}	On Bill, etc. Amended Bill of Complaint.	<b>10</b>
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Complainant, B. H. K. Realty Co., A Corporation of the State of New Jersey, having its principal office at 665 Newark Avenue, in the City of Jersey City, County of Hudson and State of New Jersey says:

**20**

1. That at a public sale for unpaid municipal liens duly held by William F. Munday, Collector of Taxes of the Taxing District, of the Borough of Maywood in the County of Bergen and State of New Jersey, the Borough of Maywood, purchased the premises known and designated as lots 72 to 76 inclusive in block 28 on the tax duplicate of said municipality and assessed thereon to J. B. Erit as for the year 1923 and also known as lots #57-58-59-60-61 in block 28 in the Township of Midland, Borough of Maywood, Bergen County, N. J., and also known and designated on a certain map entitled, "Map of property of Otto B. Hartwich, Maywood, N. J. surveyed by L. Lozier, Civil Engineer and surveyor" duly filed in the Clerk's Office of said County of Bergen, August 30, 1905, each of said lots being 25 feet wide in front and rear and 112 feet in depth in Block 28 as laid down on said map for the sum of

**30****40**

\$265.42 and that the said Borough of Maywood received from the said Collector of Taxes, a certificate of sale, duly signed and acknowledged by him bearing date the 23rd day of December, 1924, a copy whereof is hereunto annexed and which certificate of Sale was recorded in the Clerk's Office of Bergen County on the 16th day of March 1925 as a mortgage, in Book 736 page 309 as by the statute in such case made and provided.

10

2. John B. Eritrodamo and Amadeo Eritrodamo are or appear to be the owners of said premises (and that they are married but their wives names are unknown to complainant).

20

3. That on the 20th day of April, 1927, the Borough of Maywood, did by written assignment, assign all the right title or interest in and to the said certificate of sale above referred, to Archie McKay, which assignment was duly acknowledged and recorded in the Clerk's Office of Bergen County, in Book 159 of assignment of mortgages page 462 on the 11th day of May, 1927.

30

4. On the 11th day of May, 1927 by written assignment, said Archie McKay, assigned all of his said interest, to the complainant, B. H. K. Realty Co., which assignment was recorded in the Clerk's Office of Bergen County, on the 11th day of May, 1927, in book 169 of assignment of mortgages page 464.

40

5. That John B. Eritrodamo also known as John B. Erit and Mrs. John B. Eritrodamo and also known as Mrs. John B. Erit and Amadeo Eritrodamo, also known as Amadeo Erit and Mrs. Amadeo Eritrodamo and also known as Mrs. Amadeo Erit and their heirs, devisees or personal representatives and they or any of their heirs, devisees, executors,

administrators, grantees, assigns, or successors in right, title or interest, also have or claim to have some right, title or interest in and to the said premises, and a right to redeem the said premises from the said sale thereof, but whatever right, title or interest they, or any of them have in said premises, complainant alleges is subordinate to said Certificate of Sale.

6. That more than two years have elapsed since said sale, without redemption and complainant who is the owner and holder of said Certificate of Sale, has paid all municipal liens on said premises subsequent to the said sale thereof to it, down to the time of filing of this bill, amounting to the sum of \$662.25. 10

7. The complainant has also expended the sum of \$2.90 for recording fees, for recording said certificate as a mortgage, and also the sum of \$10.00 for search fees, which search was in the form of an abstract of title, covering a period of not less than twenty years, affidavits of which expenditures were duly made by complainant. 20

8. That there is due complainant on account of said Tax Sale the sum of \$662.25 paid by it at said sale; \$19.93 for taxes one-half year 1927 paid by it; the sum of \$2.90 for recording said Certificate of Sale and the sum of \$10.00 for a tax search as aforesaid; with proper interest thereon as allowed by law, no part of which has been paid. 30

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

1. That John B. Eritrodamo, also known as John B. Erit and Mrs. John B. Eritrodamo also known as Mrs. John B. Erit and Amadeo Eritrodamo, also 40

known as Amadeo Erit and Mrs. Amadeo Eritrodamo, also known as Mrs. Amadeo Erit, and their heirs, devisees or personal representatives and they or any of their heirs, devisees, executors, administrators, grantees, assigns, or successors in right, title or interest, who are the defendants in this suit, may answer this bill of complaint, without oath, and each statement therein made.

- 10      2. That an account may be taken of what is due and owing to complainant on account of said tax sale and the payments made by it as aforesaid, and that the said defendants be ordered to pay complainant what may be found due it on taking the said account together with the cost of this suit, by a short day, to be appointed by this honorable Court for that purpose; or in default thereof, that the said defendants, and all persons claiming by, through or under them may be barred and foreclosed of and from all equity and right of redemption in or to the premises in said Certificate of Sale mentioned and described, and every part thereof.
- 20

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

30

HENN & BURR,  
Solicitors and Counsel with Complainant.

40

		TAX AND ASSESSMENT SALE.
J. B. Erit	)	Dated December 23, 1924
	)	Ack'd December 23, 1924
to	)	Rec. March 16, 1925
	)	Book 736 page 309
Borough of Maywood)	)	Cons. \$265.42

Do hereby certify that at a public sale of lands for delinquent taxes under and by virtue of the provisions of an act of the Legislature of the State of New Jersey entitled "An act concerning unpaid taxes, assessment and other municipal charges on real property and providing for the collection thereof by the creation and enforcement of liens thereon" (Revision of 1918) approved March 4th, 1918 and the supplements and amendments thereto in said taxing district on the 22nd day of December, A. D., 1924, I sold to Borough of Maywood for \$265.42 the lands described and designated as follows:

Lots 72 to 76 in Block 28 on the tax duplicate of said municipality and assessed thereon to J. B. Erit as owner for the year 1923.

The amount of the sale was made up of the following items:

Taxes	\$76.38
Interest	13.51
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Costs as follows:

Preparing and publishing notice of sale	2.50
Service in making sale	.50
Certificate of sale	.50
Acknowledgments and affidavits	.25
	<hr/>
	\$265.42

40

Said sale is subject to redemption on repayment of the amount of the sale together with interest at the rate of 8% per annum from the date of sale and the costs incurred by the purchaser.

Said sale is subject only to municipal liens accruing after January, 1924.

10 The right to redeem will expire in 6 months after service of notice to redeem except the right to redeem shall in all cases extend for two years from the date of sale.

In case no notice is given and there shall be no redemption within 20 years after the purchaser has entered into open possession since continued under the sale, then in either case the right to redemption shall be barred.

20

30

40

## IN CHANCERY OF NEW JERSEY.

Between

B. H. K. REALTY Co.,  
Complainant,

and

JOHN B. ERITRODAMO, *et al.*,  
Defendants.On Bill, etc.  
Affidavit.

10

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

Frederick C. Henn, of full age, being duly sworn according to law, deposes and says:

1. I am a member of the firm of Henn & Burr, solicitors of the complainant and have charge of the management of this suit. I have made a careful and diligent inquiry as to the present whereabouts of one John B. Eritrodamo and Amadeo Eritrodamo also known as John B. Erit and Amadeo Erit, or their heirs, devisees or personal representatives, and as a result of said inquiry, I have been unable to ascertain the present whereabouts of John B. Eritrodamo also known as John B. Erit and Amadeo Eritrodamo also known as Amadeo Erit, or their heirs, devisees or personal representatives and they or any of their heirs, devisees, executors, administrators, grantees, assigns, or successors in right title or interest, or subsequent of them as may be proper party defendants in this suit.

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2. I have endeavored to ascertain the christian name of the wife of John B. Eritrodamo also known as John B. Erit and the name of the wife of Amadeo

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Eritromado also known as Amadeo Erit, but that I am unable to obtain such information.

3. Such inquiry was made at the Office of the Collector of Taxes of the Borough of Maywood wherein the property is located which is being foreclosed and upon all persons in said Borough and from predecessors in title.

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FREDERICK C. HENN.

Sworn and subscribed to before me }  
this 15th day of September, 1927. }

ALFRED L. KETTELL,  
Attorney at Law of N. J.

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**Subpoena.**

NEW JERSEY }  
 BERGEN COUNTY } ss. :

Mort L. O'Connell Sheriff of said County, being duly sworn according to law, on his oath says that he has inquired for John B. Eritrodamo, also known as John B. Erit, Mrs. John B. Eritrodamo also known as Mrs. John B. Erit, Amadeo Eritrodamo also known as Amadeo Erit, Mrs. Amadeo Erit and their heirs, devisees or personal representatives and they or any of their heirs, devisees executros, administrators, grantees, assigns or successors in right, title or interest of the defendants named in the annexed process, for the purpose of serving them therewith and has not been able to find them in this County, and this deponent is credibly informed and verily believes, that the said John B. Eritrodamo, also known as John B. Erit, Mrs. John B. Eritrodamo, also known as Mrs. John B. Erit, Amadeo Eritrodamo, also known as Amadeo Erit, Mrs. Amadeo Eritrodamo also known as Mrs. Amadeo Erit and their heirs, devisees or personal representatives and they or any of their heirs, devisees, executors administrators, grantees, assigns or successors in right, title or interest cannot be found in this State Addresses unknown

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MORT L. O'CONNELL  
 Sheriff.

Sworn and subscribed 20th }  
 day of September 1927, before me }

WILLIAM H. BRATH  
 Notary Public.

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## IN CHANCERY OF NEW JERSEY.

Between

B. H. K. REALTY Co.,  
Compl't,

and

JOHN B. ERITRODAMO, *et als.*,  
Def't.On bill to  
foreclose, &c.

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SIR:

You are made a party defendant, and subpoenaed to answer the bill of complaint exhibited in the above cause, because on December 22, 1904 you were the record owner of the lands and premises which were sold for the payment of taxes to the Borough of Maywood and you claim legal title to the premises mentioned and described in the said bill, and by virtue thereof claim to have some lien upon or interest in the said mortgaged premises.

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Dated. September 10th, 1927.

Your ob't serv't

HENN & BURE  
Sol'rs for Complainant.

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To John B. Eritrodamo, also known as  
John B. Erit.

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## IN CHANCERY OF NEW JERSEY.

Between

B. H. K. REALTY Co.,  
Compl't,

and

JOHN B. ERITRODAMO, *et als.*,  
Def't.On bill to  
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10

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You are made a party defendant, and subpoenaed to answer the bill of complaint exhibited in the above cause, because on December 22, 1904 you were the record owner of the lands and premises which were sold for the payment of taxes to the Borough of Maywood and you claim legal title to the premises mentioned and described in the said bill, and by virtue thereof claim to have some lien upon or interest in the said mortgaged premises.

20

Dated. September 10th, 1927.

Your ob't serv't

HENN & BURR  
Sol'rs for Complainant.

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To Amadeo Eritrodamo, also known as  
Amadeo Erit.

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New Jersey, to wit, The State of New Jersey, to

(Seal) John B. Eritrodamo, also known as John B. Erit, Mrs. John B. Eritrodamo, also known as Mrs. John B. Erit, Amadeo Eritrodamo, also known as Amadeo Erit, Mrs. Amadeo Eritrodamo, also known as Mrs. Amadeo Erit, and their heirs, devisees or personal representatives and they or any of their heirs, devisees, executors, administrators, grantees, assigns or successors in right, title or interest.

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GREETING: WHEREAS a bill of complaint has lately been exhibited against you in our Court of Chancery by B. H. K. Realty Co., to to be relieved touching the matters therein contained.

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Therefore, we command you, if you intend to make a defense, that you file an answer to said bill in the office of the Clerk of our said court at Trenton, on or before the expiration of twenty days from and after the twenty-second day of September 1927, and in default thereof such order or decree will be made against you as the Court shall think equitable and just.

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WITNESS, his Honor, EDWIN ROBERT WALKER, Chancellor of our said State, at Trenton, the fifteenth day of September, in the year of our Lord one thousand nine hundred and twenty-seven.

THOMAS BARBER  
Clerk.

HENN & BURR  
Sol'rs.

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(On Back)

IN CHANCERY OF NEW JERSEY

Between B. H. K. REALTY Co., Complainant and JOHN B. ERITRODAMO, <i>et als.</i> , Defendants	}	10
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Sub. ad Resp.

HENN & BURR, Solicitors  
 665 Newark Ave.,  
 Jersey City, N. J.

Returnable September 22, A. D. 1927.

MORT L. O'CONNELL  
 Sheriff 20

I hereby deputize and appoint JAMES F. DALY,  
 Under Sheriff BERGEN COUNTY—HACKENSACK, N.  
 J. for me in my name to serve this writ.

Witness my hand and seal the day and year above  
 written.

Sheriffs Fees \$1.50  
 Filed Sept. 28, 1927

Received Sheriff's Office Bergen County, N. J. 30  
 Sept. 19, 1927.

The within writ returned non est as to the defend-  
 ants See affidavit annexed

JAMES DALY  
 Under Sheriff.

MORT L. O'CONNELL  
 Sheriff 40

**Affidavit of Frederick C. Henn.**

## IN CHANCERY OF NEW JERSEY

10	Between B. K. H. REALTY Co., Complainant,  and  JOHN B. ERITRODAMO, <i>et als.</i> , Defendants.	}	On Bill etc. Affidavit.
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STATE OF NEW JERSEY, }  
 COUNTY OF HUDSON       } ss. :

20 Frederick C. Henn, of full age, being duly sworn upon his oath deposes and says:

I am a member of the firm of Henn & Burr, Solicitors of the above named complainant and have the care and management of said suit.

30 The defendants, John B. Eritrodamo, also known as John B. Erit, and Mrs. John B. Eritrodamo, also known as Mrs. John B. Erit, his wife, and Amadeo Eritrodamo, also known as Amadeo Erit, and Mrs. Amadeo Eritrodamo, also known as Mrs. Amadeo Erit, his wife, and their heirs, devisees or personal representatives and they or any of their heirs, devisees, executors, administrators, grantees, assigns or successors in right, title or interest, are proper parties defendants to the said bill of complaint.

40 I have in good faith made diligent and careful inquiry not only in the manner required by the rules of this Court as in the case of absent defendants but from all other sources from which I thought it probable that I might be able to ascertain whether the said defendants are still alive but have been un-

able to ascertain whether or not they are alive. I have also in like manner made diligent and careful inquiry for the names and addresses of the heirs, devisees or personal representatives of the said defendants and their heirs, devisees, executors, administrators, grantees, assigns or successors in right, title or interest, but have been unable to ascertain their names and addresses.

FREDERICK C. HENN. 10

Sworn and subscribed to before me }  
this 28th day of September, 1927. }

F. A. SULLIVAN  
Notary Public of New Jersey.  
(Seal)

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**Affidavit of Archie McKay.**

IN CHANCERY OF NEW JERSEY

10	Between B. H. K. REALTY Co., Complainant, and JOHN B. ERITRODAMO, <i>et als.</i> , Defendants.	}	On Bill etc. Affidavit.
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STATE OF NEW JERSEY }  
 COUNTY OF HUDSON } ss.:

Archie McKay, of full age, being duly sworn upon his oath deposes and says:

20 I reside in the City of Hackensack, County of Bergen and State of New Jersey.

I am an officer of the complainant company, the present holder of a certificate of sale for non-payment of taxes of the Town where the property is located.

30 I have in good faith made diligent and careful inquiry for the residence of the defendants, John B. Eritrodamo, also known as John B. Erit, Mrs. John B. Eritrodamo, also known as Mrs. John B. Erit, Amadeo Eritrodamo, also known as Amadeo Erit, and Mrs. Amadeo Eritrodamo, also known as Mrs. Amadeo Erit, and their heirs, devisees or personal representatives and they or any of their heirs, devisees, executors, administrators, grantees, assigns or successors in right, title or interest, by consulting directories, making inquiry of the Collector of Taxes and also of persons who reside in and about the property described in the complaint and I have

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been unable to ascertain whether or not the defendants are still alive nor have I been able to ascertain the whereabouts of their heirs or any of their heirs.

ARCHIE MCKAY.

Sworn and subscribed to before me }  
this 29 day of September, 1927. }

F. A. SULLIVAN,  
Notary Public of New Jersey.  
(Seal)

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It is on this 3rd day of October, 1927, ordered that the said John B. Eritrodamo also known as John B. Erit, Mrs. John B. Eritrodamo also known as Mrs. John B. Erit, Amadeo Eritrodamo also known as Amadeo Erit, Mrs. Amadeo Eritrodamo also known as Mrs. Amadeo Erit, or their heirs, devisees or personal representatives, do appear and answer the bill of complaint on or before the 5th day of December, 1927, or that in default thereof such decree may be made against them as the Chancellor shall think equitable and just;

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And it is further ordered that notice of this order, entitled in the Court only, not in the cause, addressed to the defendants, John B. Eritrodamo also known as John B. Erit, Mrs. John B. Eritrodamo also known as Mrs. John B. Erit, Amadeo Eritrodamo also known as Amadeo Erit, Mrs. Amadeo Eritrodamo also known as Mrs. Amadeo Erit, and their heirs, devisees or personal representatives and they or any of their heirs, devisees, executors, administrators, grantees, assigns or successors in right, title or interest, and containing a brief statement of the object of this suit be published within ten days from the date hereof in *The Hackensack* one of the public newspapers printed and published at *Republican* in the County of Bergen in this State for four weeks successively, at least one in each week; and that a copy thereof be also mailed to the said defendants and their heirs, devisees or personal representatives, or any of them, directed to their post-office address if the same can be ascertained.

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E. R. WALKER

C.

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**Notice.**

## IN CHANCERY OF NEW JERSEY

10 To John B. Eritrodamo, also known as John B. Erit, Mrs. John B. Eritrodamo, also known as Mrs. John B. Erit, Amadeo Eritrodamo, also known as Amadeo Erit, Mrs. Amadeo Eritrodamo, also known as Mrs. Amadeo Erit, and their and each of their unknown heirs, devisees, or personal representatives, and they or any of their unknown heirs, devisees, executors, administrators, grantees, assigns or successors in right title or interest.

20 By virtue of an order of the Court of Chancery of New Jersey, made on the day of the date hereof, in a cause wherein the B. H. K. Realty Co., a corporation and John B. Eritrodamo, also known as John B. Erit, Mrs. John B. Eritrodamo, also known as Mrs. John B. Erit, and their and each of the unknown heirs, devisees or personal representatives and Amadeo Eritrodamo, also known as Amadeo Erit, Mrs. Amadeo Eritrodamo, also known as Mrs. Amadeo Erit, and their and each of their unknown heirs, devisees or personal representatives and they and any of their heirs, devisees, executors, administrators, grantees assigns, or successors in right, title or interest are defendants, you are required to appear and answer the bill of said complainants on or before the 5th day of December, 1927, or the said bill will be taken as confessed against you.

30 The said bill is filed to foreclose your equity of redemption in a certain tax certificate mad by William F. Munday, Collector of Taxes of the Taxing District of the Borough of Maywood in the County of Bergen, State of New Jersey, dated December 23, 1924, covering premises in the Borough of Maywood known and designated as Lots 72 to 76 inclusive in

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Block 28 on the tax duplicate of said Municipality and assessed thereon to J. B. Erit as and for the year, 1923 and also known as lots 57 to 61 inclusive in Block 28 in the Township of Midland, Borough of Maywood, Bergen County, New Jersey.

And you John B. Eritrodamo, also known as John B. Erit, and Amadeo Eritrodamo, also known as Amadeo Erit are made party defendants because you appear to be the owners of record of said premises and you Mrs. John B. Eritrodamo also known as Mrs. John B. Erit, and Amadeo Eritrodamo also known as Mrs. Amadeo Erit are made party defendants because you may have *inchate* right of dower in the premises; and you and their and each of their unknown heirs, devisees or personal representatives and they or any of their heirs, devisees, executors, administrators, grantees, assigns, or successors in right, title or interest are made party defendants because, in case John B. Eritrodamo also known as John B. Erit and Amadeo Eritrodamo, also known as Amadeo Erit are dead you are the owners or have an interest in said premises.

Dated October 3, 1928.

HENN & BURR,  
Solicitors,  
665 Newark Avenue,  
Jersey City, N. J.

STATE OF NEW JERSEY, }  
 BERGEN COUNTY, } ss.:

George D. Tillotson, of said county being duly sworn, says that he is Secretary of THE HACKENSACK REPUBLICAN, a newspaper published and printed at Hackensack, in the County of Bergen aforesaid, and that the notice of which the annexed is a printed copy was published in the said Newspaper on Oct. 1~~7~~, 21, 28, Nov. 4 being four weeks successively, at least once in each week.

GEORGE D. TILLOTSON.

Sworn to before me this }  
 4th day of November, 1927. }

STARR BAKER.  
 (L. S.)

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**Proof of Mailing.**

## IN CHANCERY OF NEW JERSEY

Between B. H. K. REALTY Co., a corporation of New Jersey, Complainant, and JOHN B. ERITRODAMO, <i>et als.</i> , Defendants.	}	On Bill etc. Proof of Mailing.	10
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STATE OF NEW JERSEY, }  
 COUNTY OF HUDSON, } ss. :

Archie McKay, of full age, being duly sworn upon his oath deposes and says:

On the 13th day of October, 1927, I caused to be mailed to the last known address of John B. Eritrodamo, also known as John B. Erit, Mrs. John B. Eritrodamo, also known as Mrs. John B. Erit, Amadeo Eritrodamo, also known as Amadeo Erit, Mrs. Amadeo Eritrodamo, also known as Mrs. Amadeo Erit, a copy of the attached notice of publication, which were placed in envelopes, with proper postage affixed thereto, with the return to Henn and Burr by depositing the said envelopes at the post-office, Five Corners Branch, Jersey City, New Jersey, on the day aforesaid. 20 30

ARCHIE MCKAY.

Sworn and subscribed to before me }  
 this 5th day of December, 1927. }

F. A. SULLIVAN,  
 Notary Public of New Jersey.  
 (L. S.)

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**Interlocutory Decree.**

## IN CHANCERY OF NEW JERSEY

10	Between B. H. K. REALTY CO., a corporation of the State of New Jersey, Complainant,  and  JOHN B. ERITRODAMO, <i>et als.</i> , Defendants.	}	On Bill etc. Interlocu- tory Decree.
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20 This matter being opened to the court by Henn and Burr, Solicitors for complainant, and it appearing that process of subpoena for the appearance of the defendants, John B. Eritrodamo, also known as John B. Erit, Mrs. John B. Eritrodamo, also known as Mrs. John B. Erit, Amadeo Eritrodamo also known as Amadeo Erit, Mrs. Amadeo Eritrodamo, also known as Mrs. Amadeo Erit, has been duly issued and returned, and that due notice of the order of this court made on the 3rd day of October, 1927, directing the defendants, John B. Eritrodamo, also known as John B. Erit, Mrs. John B. Eritrodamo, also known as Mrs. John B. Erit, Amadeo Eritrodamo, also known as Amadeo Erit, Mrs. Amadeo Eritrodamo, also known as Mrs. Amadeo Erit, to appear, plead or answer to the complainant's bill of complaint on or before the 5th day of December, 1927, has been duly published directed to the said John B. Eritrodamo also known as John B. Erit, Mrs. John B. Eritrodamo also known as Mrs. John B. Erit, Amadeo Eritrodamo also known as Amadeo Erit, Mrs. Amadeo Eritrodamo also known as Mrs. Amadeo Erit, their heirs, devisees and personal

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representatives, in the manner and as in the said order directed and prescribed:

And it further appearing that the said defendants have not filed any answer to the said bill within the time limited by law and the said order, but have wholly failed and neglected so to do;

It is, thereupon, on this 7th day of December, 1927, ordered, adjudged and decreed, that the said bill be taken as confessed against the said defendants, and that it be referred to Pierre F. Cook, one of the Master's of this Court, to compute and ascertain what is due to the complainant upon its tax lien mentioned in the bill in this cause. 10

And it is further ordered, adjudged and decreed that upon the defendants paying to the complainant the amount which shall be reported due him, together with his taxed costs of suit, within thirty days after the said Master's report shall have been confirmed, at such time and place as he shall appoint, the said complainant do deliver up possession of the said premises mentioned in the bill of complaint, and held by complainant by virtue of its tax lien, to the said defendants, and cancel and discharge the said tax sale thereof of record, or otherwise dispose of the same as the court may further direct, and that in default of such payment, in the manner and within the time aforesaid, the said defendants, their heirs, devisees or personal representatives, stand absolutely debarred and foreclosed of and from all right of equity of redemption in and to said premises. 20 30

E. R. WALKER,  
C.

**Master's Report.**

## IN CHANCERY OF NEW JERSEY

10	Between B. H. K. REALTY Co., a corporation of the State of New Jersey, Complainant,  and  JOHN B. ERITRODAMO, <i>et als.</i> , Defendants.	65-367 On Bill to Foreclose. Master's Report.
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To His Honor EDWIN ROBERT WALKER,  
 Chancellor of the State of New Jersey.

20 In pursuance of an order of this Court entered in the above entitled cause, bearing date the seventh day of December, 1927, I have been attended by Messrs. Henn & Burr, solicitors of the complainant, and in their presence have considered the matters thereby referred to me.

30 And I certify and report that I permitted the examination to be taken by a stenographer selected by me and by me duly sworn faithfully and truly to take stenographically and to reproduce in type-writing the testimony given herein, and that such depositions were taken in my immediate presence and hearing by said stenographer sworn as above stated, and that I believe that they accurately state the evidence given.

40 And the solicitors of the complainant produced before me a Certificate of Tax Sale for municipal liens in its bill mentioned, bearing date the twenty-third day of December, 1924, made and executed by William F. Munday, Collector of Taxes of the tax-

ing district of the Borough of Maywood, in the County of Bergen, No. 40, and issued to said Borough of Maywood, which said Certificate of Tax Sale was duly acknowledged, according to law, by the said William F. Munday, Collector as aforesaid, and recorded in the Clerk's Office of Bergen County, on the sixteenth day of March, 1925, in Book 736 of Mortgages for said County, page 309 &c., as appears by endorsements thereon, which said Certificate of Tax Sale was on the twentieth day of April, 1927, assigned to Archie McKay by assignment in writing dated on that day, and recorded in said Clerk's Office on the eleventh day of May, 1927, in Book 159 of Assignments of Mortgages for said County, page 462, as appears by endorsements thereon, and was further assigned by said Archie McKay to the complainant, B. H. K. Realty Co., on the eleventh day of May, 1927, by assignment in writing dated on that day, and recorded in said Clerk's Office on the eleventh day of May, 1927, in Book 159 of Assignments of Mortgages for said County, page 464, which said Certificate of Tax Sale and said Assignments are marked exhibits C1, C2 and C3 respectively.

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And I find that there is due to the complainant on said Certificate of Tax Sale on this date, the sum of \$700.72, including interest.

And I further report that the complainant produced before me a receipted tax bill of the said Borough of Maywood for the first half of the year 1927, on the property described in said Certificate of Tax Sale, marked exhibit C1, and mentioned in the bill of complaint, the amount of said taxes having been paid by complainant since the issuance to it of said Certificate of Tax Sale.

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And I find that there is due to the said complainant for taxes paid by it for the first half of the year

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1927, on said property described in the bill of complaint herein, the sum of \$19.93.

10 And I certify and report that the schedule hereto annexed marked No. 1 and making part of this report, contains a statement and account of the principal and interest moneys due to the said complainant on its said Certificate of Tax Sale, and for said taxes for the first half of the year 1927, for recording fees and fees allowed by Statute for the expense in ascertaining the persons interested in the said premises, and for service of the notice of redemption, and newspaper publication to which for greater certainty I refer.

And I further report that the total amount due to the said complainant, as shown by said Schedule, is the sum of \$767.11.

20 And I further certify and report that all municipal liens upon the premises described in the Certificate of Tax Sale marked exhibit C1, subsequent to the date of the issuance of such Certificate of Tax Sale, have been paid to the time of the commencement of this suit.

I hereby appoint Room 618, 1 Exchange Place, Jersey City, N. J., within thirty days after this report shall have been confirmed, as the time and place at which defendants may pay the amount herein reported due to the complainant, together with the taxed costs of this suit.

30 All of which is respectfully submitted this Twenty-second day of December, nineteen hundred and twenty-seven.

PIERRE F. COOK  
Master in Chancery of New Jersey.

## SCHEDULE No. 1.

Certificate of Tax Sale,	\$662.25	
Interest from April 20, 1927, to December 22, 1927,	38.47	
Recording two assignments,	5.80	
Fee allowed by Statute for the purpose of ascertaining the persons interested in the premises in question, and for service of the Notice of Redemption,	10.00	10
Fees paid for newspaper publication	30.66	
Taxes, first half of 1927,	19.93	
	<hr/>	
	\$767.11	

PIERRE F. COOK  
Master in Chancery of New Jersey.

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**Affidavit of Archie McKay.**

IN CHANCERY OF NEW JERSEY

Between  
 B. H. K. REALTY Co., a corporation  
 of the State of New Jersey,  
 Complainant,

and

JOHN B. ERITRODAMO, *et als.*,  
 Defendants.

On Bill to  
 Foreclose.  
 Affidavit.

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

ARCHIE MCKAY, being duly sworn, according to  
 law, on his oath, says:

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I am the secretary of the B. H. K. Realty Co.,  
 who is the holder and owner of a certificate of sale  
 issued by William F. Munday, Collector of Taxes of  
 the Taxing District of the Borough of Maywood, in  
 the County of Bergen and State of New Jersey,  
 dated December 23, 1924, for lots known and desig-  
 nated as No. 72 to 76 inclusive, in Block 28 on the  
 Tax Duplicate of said municipality, and assessed  
 thereon to John B. Erit as owner, for the year 1923,  
 for the sum of \$265.42, recorded March 16, 1925, in  
 Book 736 of Mortgages, page 309, in the Bergen  
 County Clerk's Office. The property having been  
 sold to the Borough of Maywood and assigned to  
 me, Archie McKay, on April 20, 1927, by assignment  
 recorded May 11, 1927, in Book 159 of Assignments,  
 page 462, for the sum of \$665.25, paid by me to the  
 Borough of Maywood for the consideration of said  
 assignment. On May 11, 1927, I assigned the said  
 certificate of sale to the complainant, B. H. K.

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Realty Co. which assignment was recorded in the Clerk's Office of Bergen County on May 16, 1927, in Book 159 of Assignments, page 464.

There is due to the complainant upon the said certificate of sale the sum of \$662.25, with interest at 8% from the twentieth day of April, 1927, recording fee of the assignment amounting to \$2.90 from the Borough of Maywood to me, and the sum of \$2.90, recording fee of the assignment to the B. H. K. Realty Co., also the sum of \$10.00, being the fee allowed by statute for the expense in ascertaining the persons interested in the premises to be sold, and for the service of the notice of redemption. 10

Complainant has paid all subsequent taxes from the date of said sale and the taxes for the first half of 1927, amounting to \$19.93. The fees paid for newspaper publication in this suit, \$30.66; the amount of interest due on \$662.25, the consideration paid to the Borough of Maywood, to the sixteenth day of December, 1927, is the sum of \$48.27, making in all due to the complainant upon said certificate of sale the sum of \$776.91. 20

Certificate of sale offered in evidence. Marked exhibit C1. 1927 tax bill offered in evidence. Marked exhibit C2.

The assignment made by the Borough of Maywood to me has been lost or misplaced, and I have made a diligent search to find the same, but without success. I will produce a certified copy of it. 30

ARCHIE MCKAY.

Sworn and subscribed this 16th }  
day of December, 1927, before me. }

PIERRE F. COOK

Master in Chancery of New Jersey.

**Order Confirming Master's Report.**

## IN CHANCERY OF NEW JERSEY

10	Between B. H. K. REALTY Co., a corporation of the State of New Jersey, Complainant, and JOHN B. ERITRODAMO, <i>et als.</i> , Defendants.	}	On Bill etc. Order Confirming Master's Report.
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20 Upon reading a report upon file made by Pierre F. Cook, one of the Masters of this Court, dated December 22d, 1927, wherein it appears that there is due to the complainant the sum of \$767.11 for taxes paid upon the property described in the bill of complaint and that all municipal lien upon the described premises have been paid subsequent to the date of the issuance of a certificate of tax sale and to the time of the commencement of this suit, and no cause being shown or appearing against confirming the said report,

30 It is on this 3rd day of January 1928 ordered that the said report and all the matters and things therein contained stand ratified and confirmed, and that the defendants may pay to the complainant the amount found due it in said report together with the taxed costs of this suit within thirty days after date hereof, at the office of the said Master, at room 618, 1 Exchange Place, Jersey City, New Jersey.

E. R. WALKER, C.

Respectfully advised  
 BAYARD STOCKTON,  
 A. M.

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**Decree.**

## IN CHANCERY OF NEW JERSEY

Between B. H. K. REALTY Co., a corporation of the State of New Jersey, Complainant,  and  JOHN B. ERITRODAMO, <i>et als.</i> , Defendants.	}	On Bill etc. Decree.	10
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This cause coming on to be heard in the presence of Henn and Burr, solicitors for and of counsel with complainant, and it appearing that by an order of this court made in this cause on the 3rd day of January, 1928, among other things, it was ordered that the defendants pay to the petitioner the amount found due him in the Master's report with the taxed costs within thirty days after the date of said order at the office of the Special Master, and it further appearing that the defendants nor neither of them have made such payment, and the time has since elapsed. 20

It is on this 29th day of February, 1928, ordered, adjudged and decreed that the defendants stand absolutely debarred and foreclosed of and from all equity of redemption of, in and to said premises by virtue of this decree. 30

E. R. WALKER  
C.

Respectfully advised  
 WM. J. BACKES  
 A. M.

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54 FEB. 7. 1923

## New Jersey Court of Errors and Appeals

Between

SAMUEL BERNSTEIN,  
Complainant-Appellant,

and

B. H. K. REALTY CO.,  
Defendant-Respondent.

ON APPEAL  
FROM THE  
COURT OF  
CHANCERY.

### BRIEF FOR APPELLANT.

#### Statement of Case.

This suit arises primarily out of a tax sale of five certain lots, located in the borough of Maywood, Bergen County, New Jersey, known as lots numbered 57, 58, 59, 60 and 61, on a certain map entitled "Map of property of Otto B. Hartwich, Maywood, N. J., surveyed by D. Lozier, C. E., filed on August 30th, 1905 in the Bergen County Clerk's Office." The premises had been owned by John B. Eritrodamo and his brother, Amadeo Eritrodamo since March 28th, 1906, the date of the conveyance to them of the aforementioned premises. Both brothers, John B. Eritrodamo and Amadeo Eritrodamo had their sur-names changed to "ERIT", by an Order of the Supreme Court of the State of New York, County of New York, Justice Leonard Giegerich, Presiding, on June 1st, 1912. Since that time the said John B. Eritrodamo and Amadeo Eritrodamo, his brother, have been known respectively as John B. Erit and Amadeo Erit. John B. Erit is married

and his wife's name is Laura. Amadeo Erit is married and his wife's name is Lena.

The Erits paid taxes on the premises for seventeen years and then went into default. The premises were sold by William F. Munday, Collector of Taxes for the taxing district of the borough of Maywood, in the County of Bergen and State of New Jersey at a public sale held by the said Tax Collector, for taxes in default for the year 1923 and at the said tax sale the said premises were bought in by the Borough of Maywood for the sum of Two Hundred and Sixty-five Dollars and Forty-two Cents (\$265.42), and the said Municipality received from the Collector of Taxes of the taxing district of the Borough of Maywood, County of Bergen, a certificate of tax sale bearing date December 23rd, 1924, which certificate of tax sale was recorded in the Bergen County Clerk's Office on March 16th, 1924.

On April 20th, 1927 the Borough of Maywood, the holder of the tax certificate, by written assignment assigned said tax certificate and all of its right, title and interest therein to one Archie McKay, who in turn by written assignment, assigned the said Tax Certificate to the defendant herein, viz, the B. H. K. Realty Company by assignment dated May 11th, 1927 and recorded on the same date in the Bergen County Clerk's Office.

The B. H. K. Realty Company in September 1927 filed its bill to foreclose the said tax certificate, making as parties to the foreclosure suit, the said John B. Erit and Amadeo Erit, his brother, and their respective wives aforementioned, together with their heirs, devisees and personal representatives, etc. Such proceedings were had in said foreclosure suit that on *February 29th, 1928* there was entered in the Court of Chancery, a final decree in said foreclosure suit, which final decree purports to forever

bar and cut off the equity of redemption which the said Erits and their wives had in the said five lots, and vesting title to the said five lots in the complainant in that suit, the B. H. K. Realty Co.

*Pending the foreclosure suit above mentioned, entitled B. H. K. Realty Company vs. Erit, et als., Docket 65, Page 367, and on November 23rd, 1927, the said John B. Erit and Laura Erit, his wife, Amadeo Erit and Lena Erit, his wife, conveyed the said lands and premises, being the five lots in the borough of Maywood, aforementioned, to the complainant in this suit, viz, Samuel Bernstein, which deed was recorded on December 5th, 1927 in the Bergen County Clerk's Office in book 1535 of deeds, page 567.*

As will be pointed out hereafter, immediately upon the acquisition of title by the said Samuel Bernstein from the Erits, he endeavored to redeem the premises under foreclosure in the suit then pending by the B. H. K. Realty Co. against Erit, and although the said Bernstein, the successor in title to the Erits of the said five lots, tendered monies sufficient to redeem the premises from the tax sale, both to the Solicitor of the B. H. K. Realty Co. and to the Master in the said suit, to whom the matter had been referred, the said Bernstein was unable to make redemption due to the hindering tactics of the said B. H. K. Realty Co.

At any rate, on March 3rd, 1928, within three days after the entry of the final decree in the suit of *B. H. K. Realty Co. vs. Erit*, the complainant in the suit at bar, viz, Samuel Bernstein, filed his bill against the B. H. K. Realty Co. for the redemption of the said five lots from the lien of the tax sale and certificate held by the said B. H. K. Realty Co. praying in said suit that an accounting may be taken of the amount due to the said B. H. K. Realty Co. on its tax sale and that a decree may be entered

that the said Samuel Bernstein, the complainant be entitled to redeem the said premises upon paying to the said B. H. K. Realty Co., the amount that may be found due to it on its tax sale, and that the defendant, B. H. K. Realty Co. may be compelled to convey to the complainant, all the interest in the land that may have been acquired by the said B. H. K. Realty Co. under its foreclosure suit against the Erits.

The complainant, Samuel Bernstein, contended in the court below and contends in this Honorable Court that he has a legal and equitable right to redeem the said premises from the lien of the tax sale, and that the decree obtained by the B. H. K. Realty Co. against the Erits is based upon false and fraudulent affidavits, that the court never acquired any jurisdiction in said suit over the Erits, as absent defendants, nor was the interest or title of the Erits ever effectually foreclosed or cut off in said suit.

The defendant in the suit, at bar, viz, B. H. K. Realty Co. contended, that the complainant was attempting to attack collaterally the decree of the Court of Chancery, which it had obtained against the Erits, and denied that there was any fraud in acquiring jurisdiction over the Erits in said suit, and denied the right of complainant, Samuel Bernstein to redeem the said premises.

The learned Vice Chancellor in the court below after final hearing, orally dictated conclusions and dismissed the complainant's bill to redeem. The complainant now appeals to this Honorable Court for relief and contends that the dismissal of his bill of complaint by the Vice Chancellor below was error, and that he should have been granted the relief prayed for, viz, the redemption of the premises from the tax lien held by the defendant.

The complainant will present its argument under the following headings, viz,

1—The final Decree entered in the Court of Chancery in the tax foreclosure suit in which the B. H. K. Realty Co. was complainant and John B. Erit, *et als*, were defendants, is

(a) Based upon irregular and defective proceedings therein, and

(b) The bona fide inquiry to discover the whereabouts of absent defendants, required by the rules of this Court and the statute was not made, nor was a bona fide effort made to give the absent defendants notice of the pendency of the suit, so that the Court of Chancery never acquired jurisdiction in said suit, over the absent defendants therein, and

(c) Said decree is ineffectual to debar the complainant or the complainant's predecessors in title from redeeming the premises from the lien of the tax sale.

2—The complainant has a legal and equitable standing to attack the validity of the decree in the said suit in which the B. H. K. Realty Co. is complainant and John B. Erit, *et als* are defendants.

3—Complainant should be permitted to redeem the said lands and premises from the lien of the tax sale.

4—Complainant as the successor in title to the Erits, who were absent, non-resident defendants, had a right to redeem the lands and premises in accordance with the Statute in such case made and provided, 1 Compiled Statutes, Page 416, Section 18, P. L. 1902, page 516.

For the sake of clarity counsel desires to point out to this Honorable Court that there are two suits which the court will have to consider on this appeal, *first*, the suit entitled "In Chancery of New Jersey, Docket 65, Page 367, wherein B. H. K. Realty Co. is complainant and John B. Eritrodamo, *et als*, are defendants", wherein a Final Decree was entered on February 29th, 1928, and *secondly*, the present suit which is the subject matter of this appeal, entitled "In Chancery of New Jersey, between Samuel Bernstein, Complainant, and B. H. K. Realty Co., defendant; docket 67, page 391", in which suit the Final Decree of Dismissal was entered on July 19th, 1928, and which suit attacks the validity of the Decree entered in the suit mentioned, wherein "John B. Eritrodamo, *et als*" are defendants.

**POINT I.**

The final decree entered in the Court of Chancery in the tax foreclosure suit in which the B. H. K. Realty Co. was complainant and John B. Erit, *et als.*, were defendants, is (A) based upon irregular and defective proceedings therein and (B) the bona fide inquiry to discover the whereabouts of absent defendants, required by the rules of this court and the statute was not made, nor was a bona fide effort made to give the absent defendants notice of the pendency of the suit so that the Court of Chancery never acquired jurisdiction in said suit over the absent defendants therein, and (C) said decree is ineffectual to debar the complainant or the complainant's predecessors in title from redeeming the premises from the lien of the tax sale.

(A) The proceedings are irregular and defective, because

(1) The Order of Publication (p. 164) provides on page 165 that the notice of the same be published "within *ten days* from the date hereof, etc." The Order of Publication is dated October 3rd, 1927. The first publication should have been made not later than October 13th, 1927. As a matter of fact, the Affidavit of Publication (p. 168) shows that the first publication was made on *October 14th, 1927*.

(2) The order confirming the Master's Report (p. 178), dated January 3rd, 1928, provides sub-

stantially that redemption be made within thirty days after date, at the office of the Master, 1 Exchange Place, Jersey City, N. J. In other words, the time to redeem expired February 3rd, 1928.

The record in the suit is absolutely barren of evidence to show that notice of the time and place to redeem before the Master was ever brought to the attention of the defendants. As a matter of fact, both the Master and the solicitor for the B. H. K. Realty Company admit that no attempt was made to notify the defendants of the time and place fixed for redemption. The Master's Report (p. 174, l. 24) also fixes the time and place for redemption as thirty days after the report shall have been confirmed. The report was confirmed on January 3rd, 1928.

Frederick C. Henn, solicitor for the B. H. K. Realty Co., testified on page 102 and page 103 as follows:

“Q. Now, the time the Master fixed within which to redeem, as thirty days after January 3, did you send notice of that time fixed for redemption to Mr. Erit? A. *No; I did not.*

Q. Did anybody in your office send notice to him? A. *Not that I know of.*

Q. Will you explain how you expected Mr. Erit to receive notice of the time to come in and redeem and the amount necessary to redeem? A. I think at that time that Mr. Erit or Mr. Bernstein was represented by Mr. Goldenhorn, and Mr. Goldenhorn knew all about the procedure.

Q. Well, why didn't you send Mr. Goldenhorn a copy? A. *I did not think it was necessary.* I thought he was a lawyer, and he said he had been in communication with Mr. Cook.

Q. *Why didn't you send him a copy of the notice to redeem?* A. *There is nothing in the Act for a notice to be sent, and I do not know the procedure is such that it should be.*

Q. Was the notice to redeem ever advertised? A. *No, sir.*

Q. In other words, it was a mere form? A. *I think that is all it could have been.*

Q. In other words, Erit never had an opportunity to know the time and place to redeem? A. *I consulted Mr. Cook about that, and we looked it up together, and we came to the conclusion that you do not have to give notice of the time and place to redeem.*

Q. Did Mr. Cook ever tell you that Mr. Silverman was down there to see him about redeeming this property? A. *I believe he did."*

In other words, the fixing of the time and place for redemption by the Master was a mere empty gesture. To fix the time and place for redemption, without making an effort to notify the defendants of the same is certainly of no avail. Notice of the time and place for redemption, fixed by the Master, should either be brought to the attention of the defendants personally, or by sending them a notice through the Mail, or by advertising. The law certainly does not require the Master to do a useless thing and fix the time and place for redemption without making an attempt to notify the defendants of the same. If notice of the time and place fixed for redemption does not have to be brought to the attention of the defendants, then it may be asked what is the use of going through that procedure? What protection is there to a defendant? Nor was the notice of the time and place fixed for redemption ever brought to the attention of the defendant, Bernstein, the complainant in this suit, although the Solicitor for the B. H. K. Realty Co. knew on January 3rd, 1928 that Bernstein had an interest in the property and was the owner thereof.

The solicitor for the B. H. K. Realty Co. again testified on page 104 as follows:

“Q. Now, Mr. Henn, although you say that notice of the time and place fixed by the Master was never mailed or published, you did have the Master file a second report setting forth that no redemption had been made within the time set forth by the order; is that right?  
A. Well, they would not enter a decree unless there was a certificate from the Master.”

A suit to foreclose a tax lien is analagous to a strict foreclosure of a mortgage and is so held by the Chancellor in the case of *Mitsch vs. Owens*, 89 Atlantic Reporter, 292. Common sense alone and the dictates of justice would seem to indicate that fixing a time and place to redeem by a Master should not be a mere pretense or form and that the Master should not report that no redemption had been made at the time and place fixed, unless the Master is satisfied that a bona fide effort had been made to give the defendants notice of the time and place to redeem. Otherwise there would be absolutely no use fixing a time and place for redemption and a Decree could be entered immediately upon the filing of the Master's Report.

(B) *A bona fide inquiry to discover the whereabouts of the Erits was not made, nor was a bona fide effort made to give them notice of the pendency of the suit.*

Annexed to the amended bill-of-complaint is an affidavit by the solicitor of the complainant (p. 151) in which he says substantially that he has made a *careful and diligent* inquiry as to the present whereabouts of John B. Eritrodamo and Amadeo Eritrodamo, also known as John B. Erit and Amadeo Erit, or their heirs, devisees and personal representatives, and as a result of said inquiry he was unable to ascertain their present whereabouts. Also that he made an effort to ascertain the Christian names

of the wives of the two Erits, but was unable to ascertain this information.

The Solicitor also states that he made such inquiry at the office of the Collector of Taxes of the Borough of Maywood, and of all persons in said Borough, and from predecessors in title.

The Solicitor also makes an affidavit (p. 160) in which he states substantially that he has been unable to ascertain *whether the Erits are still alive*.

The Affidavit of Archie McKay (p. 162) also states substantially that he made diligent and careful inquiry for the residence of the Erits by consulting directories making inquiry of the Collector of Taxes, and also persons residing in and about the property described in the complaint, and that he also has been unable to ascertain whether or not the Erits are still *alive*.

The Order of Publication (p. 164) recites that the complainant after diligent and careful inquiry was unable to ascertain whether the defendants (Erits) were alive, and was unable to ascertain their addresses.

Archie McKay in an affidavit containing proof of mailing (p. 169) says he caused a Notice of the Order of Publication to be mailed to the Erits at the last known address, *not mentioning what address the notice was sent to*.

Archie McKay was the Secretary of the B. H. K. Realty Co., and the principal office of the B. H. K. Realty Co. was the same office as that occupied by the Solicitor of the B. H. K. Realty Co., viz, 665 Newark Avenue, Jersey City, N. J. (p. 53, l. 23; p. 83, ll. 19-34).

The Solicitor of the B. H. K. Realty Co. testified (p. 84, l. 35) when asked what inquiry he had made for the purpose of this suit, said that he made inquiries of Mr. McKay. Mr. McKay told him that he, McKay had made inquiries of the Owners'

present whereabouts, and that he, McKay went out and made inquiry in the neighborhood, that he, McKay went to the Collector, and that the Collector informed him that the address of the defendants was over in New York at a Post Office Box, and thereupon Mr. Henn, Solicitor of the B. H. K. Realty Co. wrote a letter to the Erits dated April 22nd, 1927 which was marked in evidence and printed in the State of Case as Exhibit D-1 at page 133.

It should be noted here that this letter sent on April 22nd, 1927, was sent long before the bill to foreclose was filed. The foreclosure bill was filed in *September, 1927*. It was further testified that while the letter was mailed, it was never returned, although Counsel had not mailed the letter personally (p. 85). He dictated it and it was given to the girl in the office to mail. *Mr. Erit denies he ever received any such letter* (p. 27, l. 31). The solicitor of the B. H. K. Realty Co. was asked the following question on his direction examination:

“Q. As a result of your inquiry, from what you were able to ascertain, Mr. Erit lived in New York? A. Yes, sir” (p. 86).

However, in none of the affidavits annexed to the bill of complaint or amended bill of complaint, or filed for the purpose of obtaining the Order of Publication, is there a single statement by the solicitor of the B. H. K. Realty Co. or by Archie McKay that they knew that Mr. Erit lived in New York, or knew his Post Office Mailing Box, or of his whereabouts at all. In fact, the affidavits state specifically that the affiants did not even know whether the Erits were alive or dead.

The solicitor also testified that a copy of the Notice of the Order of Publication (Exhibit D-2, p. 134) was also mailed to Mr. Erit to the same

address as the letter of April 22nd, 1927, was mailed (p. 86).

Archie McKay, Secretary of the B. H. K. Realty Co., was not called as a witness. This is a significant fact. McKay was the one who said in his affidavits that he had made inquiry as to the whereabouts of the defendants, the Erits, and that he did not know their whereabouts, or whether they were alive or dead. He knew more about whether inquiry was made, and a *bona fide* effort made to give the defendants notice of the suit, than anyone else. His failure to take the stand and make an honest disclosure of his efforts to discover the whereabouts of the Erits is a reason to believe that if he had testified he would not have been able to corroborate the affidavits which he had filed in the cause.

A perusal of the testimony of John B. Erit, called as a witness by the complainant (p. 21) discloses that he had been paying taxes on the premises for about seventeen years, that he lives at the present time at No. 240 Central Avenue, Union City, N. J., and has been living there three years. Prior to that time he had been living in Hudson County for twelve or thirteen years. His business is at No. 225 Broadway and listed in the New York telephone book under the name of John B. Erit, telephone number "Whitehall 8267." He also has a telephone in his home in New Jersey, viz., "Palisade 1459." He testified also that he never received any notice of the suit pending against him and his wife, his brother and sister-in-law, in regard to the five lots located in the Borough of Maywood, and he never received Notice of the Order of Publication which the solicitor of the B. H. K. Realty Co. had testified was mailed to him. That he never knew of the existence of the suit. The first knowledge he had of the suit

was in November, 1927, when it was brought to his attention by Mr. Birnbaum.

On November 23rd, 1927, John B. Erit and his brother, Amadeo Erit, and their respective wives, gave a deed to Samuel Bernstein, the complainant, for the five lots in the Borough of Maywood. This deed was recorded in the Bergen County Clerk's Office on December 5th, 1927. The deed is set out in full as Exhibit C-1, page 117.

Mr. Erit also testified that neighbors near the premises in the Borough of Maywood knew him, conversed with him (p. 24), and that a certain painter and decorator across the street from the premises knew his address (p. 24). He had a sign on the premises with an address, viz., 24 Gray Street, Jersey City, N. J., and a second address, viz., 109 North Street, Jersey City, N. J. (p. 25).

Mr. Erit also testified that his brother, Amadeo Erit, lives with his wife at Westport, New York, and that his brother and sister-in-law are living (p. 26).

It seems strange, to say the least, that affidavits should be filed stating that the whereabouts of the Erits were unknown, and it was unknown whether they were alive or dead. At all times two of the Erits, John B. Erit and his wife, resided a few miles from the property in Hudson County, New Jersey, and had been residing in Hudson County for a number of years last past. If proper inquiry had been made by consulting directories or telephone books, undoubtedly the whereabouts of John B. Erit and his wife in the State of New Jersey would have been disclosed. If inquiry had been made of some of the people living in the neighborhood of the premises in the Borough of Maywood, Erit's whereabouts and residence would have been disclosed. The statements made in the affidavits of Archie McKay (p. 162) that he was unable to

ascertain whether or not the Erits were still alive are palpably untrue.

It is submitted that unless the affidavits of inquiry are made in good faith and are true in fact, the Court never acquires jurisdiction over absent defendants.

(C) The Final Decree (p. 179) was ineffectual to debar the Erits from their equity of redemption and likewise ineffectual to debar the complainant, Samuel Bernstein, as successor in title, unless the Court of Chancery acquired jurisdiction over the Erits in that suit. The foreclosure proceedings are not only irregular and defective in the particulars set forth above, but it is respectfully submitted that an examination of the testimony has pointed out and leads to the conclusion that *a bona fide inquiry to discover the whereabouts of the Erits was never made. That a bona fide effort to give them notice of the pendency of the foreclosure suit was likewise never made.* The affidavit of Archie McKay of his pretended inquiry as to the whereabouts of the Erits and his inability to discover whether they were alive or dead, is not an earnest, sincere and honest inquiry. That he never made any effort or wanted to give the Erits notice of the pendency of the foreclosure suit. *Ostrom vs. Ferris*, 99 N. J. E. 551.

**POINT II.**

**The complainant has a legal and equitable standing to attack the validity of the decree in the said suit in which the B. H. K. Realty Co. is complainant and John B. Erit, et als., are defendants.**

It was contended in the court below by the respondents that the complainant, Bernstein was collaterally attacking a decree of this court in another suit, viz, *B. H. K. Realty Co. vs. Erit, et als.* Complainant contended in the court below and now contends in this Honorable Court that he is *not* attacking the final decree against the Erits *collaterally*, but he is doing what the Erits themselves could have done, that is, *attacking the decree directly*. If proceedings taken in the suit in which the B. H. K. Realty Co. is complainant, and Erits, *et als.* are defendants, are irregular, defective and void for the reasons argued under Point I, there cannot be any question but that the Erits themselves, who were the defendants to that suit, could have come into court and attacked the decree against them. In other words, the Erits could have attacked the decree in that suit *directly*. *The complainant, Bernstein, by acquiring the deed from the Erits, succeeded to their right and has the same standing in this court to attack the decree that the Erits would have had.*

Complainant by acquiring the deed from the Erits, succeeded to their equity of redemption. If the Erits are barred by the Final Decree in the suit against them, then, of course, the complainant, Bernstein, is barred. If the Erits are not barred, and still have their rights in the premises, and an

equity of redemption therein, then complainant, as their successor in title, has the same rights.

Furthermore, complainant has attacked the decree in the suit of *B. H. K. Realty Co. vs. Erit, et als.*, on the ground of fraud in obtaining jurisdiction over the absent defendants. That an original bill can be filed for this purpose is strikingly illustrated in the case of *Ostrom vs. Ferris*, 99 N. J. E. 551, in which case the court said :

“The bill is an original bill to set aside a decree for fraud in its procurement or for fraud extrinsic and collateral to matter on which the decree rests and under which a third party has acquired an interest and permission to file it is unnecessary. (Citing cases.)”

### POINT III.

**Complainant should be permitted to redeem the said lands and premises from the lien of the tax sale.**

The Court will seize upon the slightest flaw of substance in tax sales to restore property to the owner. *McCandless, Inc., vs. Schaffer, et als.*, 6 N. J. Advanced Reports, Vol. 29, page 1247.

The extent to which a Court of Equity will go in protecting an owner, to prevent the forfeiture of owners' equity of redemption, is well illustrated in the case of *Harrington vs. Forster*, 89 N. J. E. 270.

Counsel will now endeavor to point out the effort made by the complainant Bernstein, and his agents, to redeem the premises from the tax sale *while the same was pending* and *before* the Final Decree therein, and show how all the efforts of Bernstein and his agents to redeem and to tender the amount due to the B. H. K. Realty Co. and its

agents, were deliberately frustrated by the said B. H. K. Realty Co. Counsel will endeavor to point out how the B. H. K. Realty Co. deliberately postponed and withheld giving the information to Bernstein and his agents, as to the amount necessary to redeem, and purposely avoided Bernstein and his agents in their efforts to redeem until such time as redemption would be barred, and until the entry of the Final Decree in the foreclosure suit.

First, the Court's attention is called to the various letters exchanged between the solicitors of the B. H. K. Realty Co. and the solicitor for Bernstein and the Erits, Exhibits C-2, C-3, C-4, C-5, C-6, C-7, C-8; Exhibit C-1, July 5th, 1928, and Exhibit C-2, July 5th, 1928, which will be found on pages 122-132.

Exhibit C-2, at page 122, dated December 1st, 1927, is a letter addressed by the attorney for Bernstein and Erit to the solicitors for the B. H. K. Realty Co., and discloses a direct statement to the solicitors of the B. H. K. Realty Co. that redemption was to be made, and requesting certain figures. Instead of getting a reply from the Solicitors of the B. H. K. Realty Co., showing the amount necessary to redeem, the said B. H. K. Realty Co., through its solicitors, as shown by Exhibit C-3, on page 124, sent a letter dated December 6th, 1927, but do not give any figures at all or show the amount necessary for redemption, but evade the inquiry of Bernstein's Counsel and dispute the question of whether Bernstein was the owner of the property, although, as a matter of fact, the deed to Bernstein had been recorded in the Bergen County Clerk's Office on December 5th, 1927 (p. 121).

In reply to this letter of December 6th, 1927, Bernstein's attorney wrote a letter dated December 13th, 1927, shown as Exhibit C-4, on page 125, in which Bernstein's Counsel enclosed a copy of the

record of the deed, showing that Bernstein had purchased the property and had a right to redeem it, winding up with this sentence, viz. :

*"Will you please let me know the amount due to date, so that we can close the matter up."*

No reply was made to this letter, nor did the B. H. K. Realty Co. or their solicitors send to Bernstein's attorney figures of the amount necessary to redeem.

Again, on January 17, 1928, Bernstein's solicitor wrote a letter, marked Exhibit C-5, addressed to the B. H. K. Realty Company's attorney, again stating that a memorandum of the Bergen County Title had been sent to them and stating—

*"Will you please let me know the amount that will be required to redeem this property?"*

On February 17, 1928, Bernstein's attorney again wrote to the attorneys for the B. H. K. Realty Co., Exhibit C-6, page 127, in which Bernstein's attorney said :

*"I wrote to you a number of times in regard to property in Bergen County, which Mr. Silverman wanted to redeem, and I asked you to give me the figures, so that we could straighten the matter out.*

*At your request, I gave you a description of the property and told you where the deed was recorded. I have not heard anything from you.*

*Will you please give me these figures at once, so that we can get this matter straightened out, and please do not go to any further expense in the matter."*

A perusal of Exhibit C-7 (p. 128) and Exhibit C-8 (p. 130) and Exhibit C-1 (p. 131) and Exhibit C-2 (p. 132) will disclose to this Honorable Court the extent to which the representatives of the B. H. K. Realty Co. cooperated with Bernstein and the

Erits attorney in trying to arrive at a figure necessary for redemption.

It is most significant that at no time during the exchange of this correspondence did the attorneys for the B. H. K. Realty Co. ever set forth in *writing* or otherwise the amount necessary to redeem. At no time did they ever make a *direct reply* to the inquiry contained in the letters of Bernstein's counsel. At no time did they disclose *that the Master had filed his report*, nor that a *time and place for redemption had been fixed by the Master*, continuing to drag matters out until the entry of the Final Decree in the foreclosure suit on February 29, 1928; and then Bernstein's counsel, acting in good faith and relying upon good faith of the representatives of the B. H. K. Realty Co., wrote letter after letter as shown by the Exhibits, requesting a statement of the amount due to redeem, but never obtained any satisfaction, or got a direct, responsive answer. The evasiveness of the representatives of the B. H. K. Realty Co. is apparent. They did not give Bernstein's counsel the information he desired, nor cooperate with him in his efforts to redeem for the simple reason *that they did not want Bernstein to redeem*. The court's attention is respectfully directed to Exhibit C-7, page 129, wherein Bernstein's counsel says:

"To my amazement, I noticed, on December 17th, 1927, the Master held an examination", etc.

Of course, Bernstein's counsel was amazed at the treatment received and lack of cooperation and courtesy displayed by the B. H. K. Realty Co.

The foregoing comments disclose the *written* evidence in the case relating to the effort made by Bernstein to redeem.

It should be noted that during the exchange of the correspondence between the attorneys for the respective parties, beginning with Exhibit C-2 down to and including Exhibit C-8, that the period of time covered was from December 1, 1927 to February 21, 1928. It is very significant that during all this period of time, in none of the replies made by counsel for the B. H. K. Realty Co. was attention called to the fact that in the foreclosure suit an Interlocutory Decree had been entered on December 7, 1927, and the matter referred to Pierre F. Cook, one of the Masters of the Court of Chancery (p. 170), nor that the Master filed his report on December 22, 1927 (p. 172), nor that an order had been entered confirming the Master's Report on January 3, 1928 (p. 178), nor that the time and place fixed for redemption by the Master was thirty days after January 3, 1928, nor were these matters ever brought home to Bernstein or Bernstein's attorney, or Bernstein's other representative in the matter. Of course, it might be said that counsel for the B. H. K. Realty Co. were not under any legal obligation to disclose the foregoing to Bernstein's counsel, and that Bernstein's counsel acted at his peril in relying upon his honest belief that the counsel for the B. H. K. Realty Co. would keep him informed of the various steps in the case and cooperate with him, seeking to bring about the redemption of the premises. Common courtesy and the ordinary dictates of justice certainly require that the time and place fixed by the Master for redemption should have been brought home by the B. H. K. Realty Co. to Bernstein or Bernstein's attorney.

The court's attention will now be drawn to the *oral* evidence in this case, bearing upon the question of the efforts made by Bernstein to redeem, and the frustration of those efforts by the machina-

tions of the B. H. K. Realty Co. On this subject complainant produced, outside of himself, three other witnesses, viz.: Birnbaum, Silverman and Goldenhorn.

Silverman, who was acting for Bernstein and assisting him in the matter, was asked whether he made any efforts in Mr. Bernstein's behalf to redeem the premises from the tax sale, and he testified he had (p. 70). He wrote a letter to Henn & Burr on November 23, 1927 (Ex. C-1, p. 131). He then turned the matter over to Mr. Goldenhorn for his attention. That on February 14, 1928, he examined the file in the case in the Clerk's Office in Trenton (p. 71) and found out the matter had been referred to Mr. Cook, the Master. He then got in touch with Mr. Cook, and that in his conversation with Mr. Cook he told Mr. Cook that he thought the notice of the time and place fixed for redemption should have been advertised and notice thereof sent to the various parties, and that his purpose in seeing Mr. Cook was to redeem the property. That Mr. Cook told him to see Messrs. Henn & Burr, solicitors for the B. H. K. Realty Co. Acting at Mr. Cook's suggestion, he went to the office of Henn & Burr. Mr. Henn was out and he spoke to Mr. Burr. Mr. Burr said: "What do you want to do?" Silverman replied: "I want to redeem it" (p. 73). "I have the money to pay you. Let me see what the costs are." Mr. Burr told me he did not have any costs, after examining the file in his office, and through an arrangement with Mr. Burr an appointment was to be made on the following Monday for me to see Mr. Henn on February 28th, between half-past nine and ten in the morning. The following conversation took place (p. 73, l. 31):

"Q. What was the conversation with him?  
A. I told Mr. Henn I had come there on behalf of Mr. Bernstein to redeem the property. I

says: "I have got the money." Then I pulled out \$1,000. in cash. Then he said: "That deed is no good."

BY THE COURT:

Q. Did you have the deed with you? A. Yes; I had the deed with me.

Q. Go on. A. I said: "Why isn't it any good?" He said: "In my opinion it is not, and furthermore we do not recognize any lawyers in this matter. Mr. Bernstein must come himself and then he must be identified."

Q. Did you offer Mr. Henn the money? A. I did.

Q. Was there anything else said? A. Why, we had a little chat for a few minutes afterward. I told him I will get in touch with Mr. Bernstein this afternoon or the next morning and have him there promptly."

After having this conversation with Mr. Henn, Silverman went to see Mr. Cook, the Master, to whom the matter had been referred. Cook told him he was too late, he had certified the night before that no redemption had been made (p. 74).

Silverman further testified on his cross examination that he had given to Mr. Goldenhorn sufficient monies to redeem, with instructions to redeem the property (p. 76, l. 39). On February 28, 1928, the day before the final decree was entered in the foreclosure suit, he made a tender to Mr. Henn of One thousand (\$1,000) Dollars in cash, laid it on the table and counted it out (p. 78, l. 27).

Bernstein, the complainant, testified (pp. 64-70) that he also tendered to Mr. Henn, One Thousand (\$1,000.00) Dollars to make redemption. That Mr. Birnbaum was present at the time and Mr. Henn said he would not recognize any deed signed by Erit (p. 65, l. 24).

Birnbaum, called as a witness by the complainant (p. 40), testified that he was present with

Bernstein at the time the tender was made to Mr. Henn, and Mr. Henn refused to take it, Mr. Henn saying at the time that Bernstein was not the owner of the property (p. 41, l. 33). The deed from the Erits to Mr. Bernstein was shown to Mr. Henn and Mr. Henn said Erit had no right to sign a deed and therefore he, Henn, would not entertain any tender (p. 41, l. 35). Birnbaum further testified (p. 41, l. 1) that he and Bernstein tried to persuade Henn to accept the tender but he refused to take it (p. 42).

Birnbaum also testified as follows (p. 47) :

“Q. Now, will you tell us just what happened when you were admitted to Mr. Henn’s private office, with Mr. Bernstein? A. The conversation started by Mr. Bernstein asking Mr. Henn for the amount of money. Mr. Henn wanted to know—

By the Court:

Q. You do not mean that. A. He asked for the amount of money due, and Mr. Henn asked Mr. Bernstein who he was.

By Mr. Kettell:

Q. Go ahead. A. Mr. Bernstein said he was the purchaser of the property. Mr. Henn then turned to Mr. Bernstein and asked him how he knew he was Mr. Bernstein. I said that I could identify the man, that I knew him as Mr. Bernstein. Then Mr. Henn says: “Well, you ought to know that the deed is not valid anyway. Mr. Erit has no right to sign that with the name of Erit.” I tried to tell Mr. Henn that Mr. Erit had his name changed by order of a Supreme Court Justice in New York some time ago. Mr. Henn retorted by saying that it was not lawful, inasmuch as it was not recorded in New Jersey, and that they were not familiar with that over here.

Q. They were not familiar with what? A. With the order for changing his name from Eritrodamo to Erit.

Q. Did Mr. Henn ask the address of Mr. Erit upon that occasion? A. No, sir.

Q. Did you give it to him? A. No, sir.

Q. Or who Mr. Erit might be? A. He asked that question and I answered by saying that he is the gentleman who owned the property.

Q. Is it not a fact, Mr. Birnbaum, that Mr. Henn said that before anyone could take this deed it would require an affidavit that Erit and Eritrodamo were one and the same party?

A. Not that I recall.

Q. You do not recall any such conversation?

A. No, sir.

Q. Do you know how this deed is signed?

A. This deed?

Q. Yes. A. Yes.

Q. How? A. Erit.

Q. Is it not a fact that Mr. Henn pointed out to you the discrepancy in the names contained in the granting clause and the signatures on this instrument?

The Court: *Suppose he did. Has that anything to do with the issues in this case?*

Mr. Kettel: I am trying to point out that Mr. Henn had no way of identifying the purchaser and had no way of telling that Erit and Eritrodamo were one and the same person.

The Court: *Is the tender otherwise made invalid because Mr. Henn does not know the man who makes the tender?*

Mr. Kettel: I believe under the tax act this property can only be redeemed by the owner.

The Court: *I say that the fact that Mr. Henn has not received a personal introduction does not make the tender invalid."*

Also, on page 50, Birnbaum testified in answer to the cross questions that before Bernstein pulled the money out of his pockets, he asked for the figures. Bernstein had the monies in his hands. Bernstein held the monies, waiting for Henn to give him the figures for redemption. Henn did not take the money, but wanted to know in the first

place who Bernstein was. Henn would not touch the money (p. 50, l. 35). Bernstein said he came to redeem the property at Maywood (p. 51, l. 5).

Mr. I. F. Goldenhorn, a member of the Bar of New Jersey, also testified (p. 53) as to the exchange of the correspondence heretofore mentioned between himself and Messrs. Henn & Burr, solicitors for B. H. K. Realty Co., and also what efforts he made to secure redemption on behalf of Bernstein.

Complainant also called as a witness in his behalf Mr. Cook, the Master in the foreclosure suit. He testified, on page 82:

“PIERRE F. COOK, sworn as a witness on the part of the complainant, testifies as follows:

DIRECT EXAMINATION BY MR. NEMSER:

Q. You are the Master to whom the reference was made in the foreclosure suit of the B. H. K. Realty Company against Erit. A. Yes.

Q. *At any time at all during the pendency of that suit did you know what the taxed costs amounted to?* A. *No, sir.*

Q. Did you know what the figures were—what the figures amounted to that were necessary to redeem? A. I knew what figures were stated in my report that I signed.

Q. And your report, of course, made no reference to taxed costs? A. I do not recall that now.

Q. At any time, did the solicitors of record, Messrs. Henn & Burr, ever give to you the amount of taxed costs? A. They gave me no figures except those which were embodied in the report.”

From the foregoing testimony of Mr. Cook it will appear that at no time did he know what the taxed costs amounted to, the inference being, of course, that if anybody had come to Mr. Cook for the pur-

pose of making redemption, the Master would have been unable to accept redemption because he did not have the full final figures before him. The taxed costs in the foreclosure suit would have been a proper item that would have to be paid by the party making redemption.

In defense to the foregoing testimony of the complainant and his witnesses on the subject of tender and effort to redeem, Mr. Frederick C. Henn, a member of the Bar of this State, was called as a witness by the defendant. Mr. Henn testified on his direct examination (p. 87), admitting receipt of the letter marked Exhibit C-2, dated December 1st, 1927, written to him by Mr. Goldenhorn, Bernstein's solicitor, and that he asked Mr. McKay, the secretary of the B. H. K. Realty Co., for the necessary figures to redeem. He met Bernstein's attorney, Mr. Goldenhorn, a few days later, outside of the court room and told Goldenhorn that at any time he wanted to redeem that Mr. McKay could be found and that he, *Henn, was not interested any more than acting as attorney for McKay.*

He also admitted receiving a letter dated December 13th, 1927, from Mr. Goldenhorn, marked Exhibit C-4, although he had no recollection of having received Exhibit C-5, but admits receiving Exhibits C-6 and C-7 (p. 88, l. 30).

Mr. Henn corroborated the visit of Bernstein and Birnbaum to his office for the purpose of making redemption (p. 89, l. 35), and that Bernstein presented a deed and looking it over, he, Henn, said to Bernstein and Birnbaum:

*"Of course, I am only acting as solicitor in this matter. I have no authority to accept any money. I do not know the Master's fees, nor do I know the taxed costs," and I told them that if they wanted to take the matter*

*up with Mr. McKay, or they could go to Mr. McKay then, that the time had already expired for the redemption" (p. 90).*

Mr. Henn testified, corroborating Bernstein and Birnbaum that this visit by Bernstein and Birnbaum was made on February 29th, 1928, which was the date of the Final Decree, in the foreclosure suit (p. 179). It seems that even at this time Mr. Henn did not know what the taxed costs were, or if the costs had ever been taxed, and that the exact amount for redemption was unknown to the solicitor of the B. H. K. Realty Co. As a matter of fact, the costs had never been taxed in the foreclosure suit (p. 98). Although the Master in his report (p. 174, l. 35) appoints the time and place for redemption "At which the defendants may pay the amount herein reported due to the complainant, together with the *taxed costs* of this suit," and although the order confirming the Master's Report (p. 178) recites that the *taxed costs* of this suit must be paid at the time and place fixed by the Master for redemption, and although the Final Decree in the cause (p. 179) recites in effect that no redemption had been made and that none of the defendants had appeared to make such payment, including the *taxed costs*. It is apparent, therefore, that the B. H. K. Realty Co. in its foreclosure suit was demanding the taxed costs, and all the papers in the cause relating to redemption, state that taxed costs would have to be paid. In other words, redemption would not have been made unless the taxed costs were paid and yet the solicitor for the B. H. K. Realty Co. did not know what the taxed costs were on February 29th, 1928, the date of the entry of the Final Decree. As a matter of fact, the costs never were taxed in said foreclosure suit (p. 98).

Mr. Henn further testified at the bottom of page 90:

"Then Mr. Bernstein, I think, put his hand in his pocket and said: 'I have got the money here to redeem it.' I says: 'I do not know what the costs are, and I have no authority to take your money,' and with that they walked out. They said: 'Well, we are here to make a tender.' And that is all there was to it."

Henn further admitted to Silverman that he did not have the taxed bill of costs (bottom of p. 91), and also admitted that he had no authority to accept any money (top of p. 92), and further admitted that he never told Silverman that a Final Decree had been entered and that the right to redeem was barred (bottom of p. 96). Mr. Henn admitted that the statement in his letter dated February 21st, 1928 (p. 130), *that a decree had been entered in the foreclosure suit was a mistake* (p. 97, l. 20). Mr. Henn also stated that he had no authority as solicitor to take any money for Mr. McKay, the secretary of the B. H. K. Realty Co., and that no one in his office had the authority, and when asked if he did not have the authority as solicitor for Mr. McKay's company, he replied, on page 87, line 39, in substance, that McKay's signature would be necessary.

Mr. Henn was asked (p. 98):

"Q. As a matter of fact, you never knew and you do not know today the amount necessary to redeem this property? A. The exact amount, do you mean?"

Q. Yes. A. *No; I do not.*

Q. Then, it would be absolutely futile for Mr. Silverman or anyone to make any tender of any amount or any kind of an offer?

The Court: Do you mean legally futile?

Mr. Nemser: I withdraw the question.

Q. *If Silverman or Birnbaum or Bernstein or anybody connected with them had tendered you any sum of money whatever, you would not have taken it?* A. I told you that I—

Q. (Interruption) Yes or no? A. No; I could not take it.

Q. And the reason why you could not take it was because you did not know the amount? A. No, sir; because I had no authority to take it.

Q. You had never ascertained the taxed costs? A. No.

The Court: The record shows the absence of any taxed bill of costs in the case."

It is apparent from this that Mr. Henn, acting as the solicitor for the B. H. K. Realty Co. never knew the amount necessary to redeem the property, and that if anybody, whether it was Silverman, Birnbaum, Bernstein or anybody else, desired to make a tender to Henn, *that he would not have been able to take it.* In other words, even if a tender had been made to Mr. Henn as solicitor for the B. H. K. Realty Co., *even within the time limited by the Master,* such a tender would have been refused and would have been futile and would not have been accepted under any conditions, Mr. Henn taking the position that he never had any authority to accept a tender, even though he was solicitor for the B. H. K. Realty Co.

On page 99, the Witness Henn, further testifying, admitted that at no time had he ever sent the amount necessary to redeem, nor the amount of the taxed costs to Mr. Goldenhorn, Bernstein's solicitor, by *mail*, and at the bottom of page 99, he was asked:

"Q. You never thought it was necessary or important during the three or four months between February or March to at any time write either Silverman or Goldenhorn stating the exact figures to redeem? A. *I did not.*"

This Honorable Court's attention is respectfully called to Mr. Henn's testimony on pages 100 to 105, inclusive. Mr. Cook, the Master in the foreclosure suit, admitted that he did not know what the final figures were (top of p. 107).

It is respectfully submitted that from the testimony given by Mr. Henn it must be apparent that a tender for the purpose of redemption would have been useless and would have been rejected under any circumstances. Mr. Henn, although Solicitor for the B. H. K. Realty Co., assumed the position that he had no authority to accept a tender, that he would not take any money even if offered in time. His position was it had to be paid over to Mr. McKay, Secretary of the B. H. K. Realty Co.

Although in the foreclosure suit payment of the taxed costs is mentioned as one of the conditions precedent to redeem, at no time were the costs ever taxed. Whenever the complainant or his representatives requested the final figures for the purpose of redemption from Mr. Henn, he would be advised to see the Master. Whenever he went to see the Master, he would be advised to see Mr. Henn. As a matter of fact, Mr. Henn never knew and did not know at the time of the Final Hearing, the amount necessary to redeem the premises from the tax sale; nor did the Master ever know. It is apparent, after reading the testimony of the solicitor for the B. H. K. Realty Co., why the letters written by him in response to Bernstein's attorney's letters were so evasive and why he never at any time mentioned in *writing* the amount necessary to redeem. It seems to counsel that there was a studied and deliberate effort made by the B. H. K. Realty Co. *to refuse redemption under any and all circumstances*, and to drag the matter out to the entry of the Final Decree, in the meantime lulling the attorney for Bernstein into a certain sense of security and ex-

pectation, leading him to believe that the figures necessary to redeem would be forthcoming.

It is difficult to believe that a Court of Equity will permit the forfeiture of an owner's equity of redemption under these circumstances. Especially where that owner has at all times been ready, willing and extremely anxious to make redemption. Certainly the B. H. K. realty Co. can in no wise be harmed if the complainant is permitted to redeem. They will receive all their money, the taxed costs and interest, and complainant will receive his property.

#### POINT IV.

**Complainant as the successor in title to the Erits, who were absent, non-resident defendants, had a right to redeem the lands and premises in accordance with the statute in such case made and provided, 1 Compiled Statutes, page 416, Section 18, P. L. 1902, page 516.**

Under this Statute, the Erits had a right at any time within three years after the entry of the Decree against them as absent, non-resident defendants, to have either petitioned the court to reopen the decree, or had the right to file a bill of an accounting. If the Erits, as absent, non-resident defendants, had an absolute right under this Statute to file a bill for an accounting at any time within three years after the entry of the Final Decree, as a matter of course, then, the complainant as the successor to the Erits in title would have the same right "and stand in their shoes".

**CONCLUSION.**

It is respectfully submitted that the Decree of the Court of Chancery should be reversed, set aside and for nothing holden. That the record should be remitted to the court below, with instructions to enter a Decree in favor of the complainant-appellant, granting to him the relief prayed for.

SAUL NEMSER,  
Of Counsel with Complainant-  
Appellant.



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**New Jersey Court of Errors and Appeals**

Between SAMUEL BERNSTEIN, Complainant-Appellant  and  B. H. K. REALTY Co., a Corporation of New Jersey, Defendant-Respondent.	}	On Appeal From the Court of Chancery.
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**BRIEF FOR RESPONDENT.**

**Preliminary Statement.**

This case is before this Court on appeal from a decision of the Court of Chancery dismissing the bill of complaint of Samuel Bernstein, complainant-appellant, which sought to set aside the final decree entered in the case of *B. H. K. Realty Co., a corporation of New Jersey vs. John B. Eritrodamo, et als*, docket 65, page 367.

**State of Facts.**

On December 23, 1924, William F. Munday, Collector of Taxes for the taxing district of the Borough of Maywood, at a public sale held by said Tax Collector, sold Lots 72-76 in Block 28 on the tax duplicate of said municipality and assessed thereon to John B. Erit as owner, for taxes for the year 1923, to the Borough of Maywood for \$265.00 and delivered to said Borough of Maywood a certificate of tax sale which was recorded in the Bergen County Clerk's Office on May 16, 1924.

On April 20, 1927, the Borough of Maywood by written assignment, assigned said tax sale certificate to one Archie McKay who by written assignment dated May 11, 1927, assigned said certificate of tax sale to B. H. K. Realty Co., a corporation of New Jersey, the complainant in the case of *B. H. K. Realty Co. vs. Erit, et als.*, docket 65, page 367, and the defendant in the Court below and defendant-respondent in this case, which assignment was recorded in the Clerk's Office of Bergen County on May 11, 1927, in Book 159 of Assignments of Mortgages, page 464.

On April 22, 1927, immediately upon the B. H. K. Realty Co. acquiring the said certificate of tax sale, their attorneys, Messrs. Henn & Burr, sent a letter to J. B. Erit in whose name the property was assessed addressed to Box 1238, City Hall Station, New York, which address was the only address which the Tax Collector of the Borough of Maywood had and which address Mr. J. B. Erit in his testimony at page 27 of the State of the Case L-30 admitted was and still is his post office address. This letter was never returned to the sender, Messrs. Henn & Burr, although their address was printed on the outside of the envelope. This letter is more particularly set out on page 133 of the State of the Case and marked Exhibit D-1.

On September 10, 1927, the B. H. K. Realty Co. filed a bill in the Court of Chancery of New Jersey to foreclose the equity of redemption of John B. Eritrodamo, *et ux, et als.*, and they or any of their heirs, devisees, executors, administrators, grantees, assigns, or successors in right, title or interest, in the premises described in said Certificate of tax sale. On February 29, 1928, a final decree was entered in the Court of Chancery in which it was ordered, adjudged and decreed that the defendants stand absolutely debarred and foreclosed of and

from all equity of redemption of, in and to said premises.

Pending the foreclosure suit above referred to Samuel Bernstein, complainant-appellant, who at that time was neither the owner, mortgagee, or occupant, nor one having any interest in said land, or an heir-at-law of said owners, or in anywise related by consanguinity or affinity to any of the said persons, officiously intermeddles in the B. H. K. Realty Co.'s said suit under foreclosure and acquired a deed from the defendants, the Erits, and their wives, by false and fraudulent statements whereby the Erits were grossly deceived and lead to believe that the only way for them to realize anything from the said property was by giving a deed to Samuel Bernstein. The said Samuel Bernstein *with notice* of the B. H. K. Realty Co.'s prior title and of the pending action to foreclose the equity of redemption of the owners, or their heirs, or assigns or successors in right, title or interest, officiously intermeddled in said suit and purchased as the learned Vice Chancellor who heard the case in the Court below said in his conclusions, a law suit then being litigated.

On December 5, 1927, the said Samuel Bernstein, complainant-appellant, placed on record the said deed which he had secured from the Erits by false and fraudulent representations as to their rights, and which is now recorded in the Bergen County Clerk's Office in Book 1535 of deeds, at page 567, a copy of which deed is set out in the State of the Case at page 117 and marked Exhibit C-1.

On December 2, 1927, and after the execution of the deed from the Erits and their wives to Samuel Bernstein, Messrs. Henn & Burr, Solicitors for B. H. K. Realty Co., received a letter from one I. F. Goldenhorn, a counsellor-at-law of this State which

letter was offered in evidence and marked Exhibit C-2 and which is set out in the State of the Case at page 122, in which letter Mr. Goldenhorn states that he represents the Erits whereas in truth and in fact as will be noted from the testimony of John B. Erit Mr. Goldenhorn never represented the Erits. The letter then sets out the amount of money necessary to redeem which is the same sum found by the master, Pierre F. Cook, to whom the case was referred as being the figures necessary to redeem. This letter conclusively shows that Mr. Goldenhorn who later claims to have represented Samuel Bernstein, the complainant-appellant in this cause, was fully aware even at this early date of the amount necessary to be paid by anyone in interest to redeem. The letter then asks the amount of the cost of the publication against the Erits which costs are shown by the copy of the notice offered in evidence and marked Exhibit D-2 was printed on said notice and as testified by Mr. Birnbaum who claimed to be acting for and in behalf of Samuel Bernstein, the complainant-appellant, it was by reading a copy of said notice in the newspapers that complainant-appellant Samuel Bernstein, first learned that this foreclosure proceeding was being taken and therefore it follows that he knew of or should have known at that time, the costs of the publication.

There was no attempt to redeem nor any tender of the amount necessary for redemption of this property from the tax sale made by any one to either the Solicitors of the B. H. K. Realty Co., the complainant in said suit or to Pierre F. Cook, a special master of the Court of Chancery to whom this cause was referred until February 29, 1928, when the time for redemption had expired and a final decree had been entered although Mr. Goldenhorn who claims to have represented Samuel Bern-

stein, the complainant-appellant, admitted in his testimony receiving the figures necessary for redemption both from Mr. Henn of the firm of Henn & Burr, Solicitors of B. H. K. Realty Co. and Pierre F. Cook, the special master of the Court of Chancery to whom the case was referred, to find the amount necessary to redeem. The learned Vice-Chancellor who heard this case in the Court below was taken ill while sojourning in Europe during the summer and did not return in time to write a formal opinion before this appeal was perfected so that the defendant-respondent has not the benefit on this appeal of a formal opinion by the learned Vice-Chancellor but must rely on the conclusions orally given at the close of the case.

#### **Question of Law Raised in this Case.**

Did the Court of Chancery err in dismissing the bill of complaint of complainant?

#### **Argument of Law.**

The complainant-appellant Samuel Bernstein contended in the Court below that his bill was a bill to redeem the property foreclosed by the B. H. K. Realty Co., a corporation of New Jersey, in the case of *B. H. K. Realty Co. vs. John B. Eritrodamo, et als.*, docket 65, page 367, and then proceeds to attack the jurisdiction of the Court of Chancery over the parties to said suit. If, as complainant contends his bill was a bill to redeem then the complainant is precluded under the case of *Clift vs. Frenche*, 83 N. J. E. 437, from attacking any of the proceedings taken by the B. H. K. Realty Co. in the foreclosure proceedings by it against the Eritrodamos. The Court in that case laid down the rule that

“A suit to redeem from the tax sale proceeds on the assumption that the defendant has or can acquire an absolute title, and the validity of his title under the sale cannot be attacked.”

and in the case of *Welles vs. Schaeffer*, 98 N. J. E. 31, Vice Chancellor Backes laid down the rule that

“A bill to redeem property from a tax sale proceeds upon the assumption that the purchaser has a valid, inchoate, but defeasible title by virtue of the tax certificate, and the only issue, which the court can entertain and decide, is whether the right to redeem is open to the complainant, and if so, to decree redemption.”

In the case of *McCahill vs. Equitable Life Assurance Society*, 98 N. J. E. 381, this Honorable Court speaking through Chief Justice Beasley laid down the rule

“That a judgment of a superior Court cannot be impeached collaterally, for want of jurisdiction over the parties to it”

and further

“That where the statute directs that a decree pro confesso may be taken against a non-resident failing to appear after proof of service of the publication of the order for his appearance ‘to the satisfaction of the Chancellor’ and the order of the Chancellor declaring that such publication has been made and directing a decree is conclusive upon the question as between such non-resident defendant and the purchaser under the decree.”

In this case there was an order of the Chancellor declaring that such publication had been made to his satisfaction and, therefore, it is conclusive as against the Erits and anyone claiming under them and that includes Samuel Bernstein, the complainant-appellant.

The Court then went further and said

“The decision of a domestic court of general jurisdiction acting within the scope of its powers has inherent in it such conclusive force that it cannot be challenged collaterally, and that such decision definitely binds all parties embraced in it, unless an objection made to the Court itself in direct course of appellate procedure. The remedy is by direct application to the Court to open its decree and permit him to become a party and assert his right.”

The complainant relied in the Court below on the allegations of fraud in his bill to take said bill out of the rule set out above and the rules requiring a person seeking to open a final decree to first obtain permission of the Court and at the same time show a meritorious case and to bring it within the rule laid down in the case of *Ostrom vs. Ferris*, 99 N. J. E. 551.

The complainant-appellant failed to sustain the burden of proof of fraud on the part of the defendant B. H. K. Realty Co. in the case of *B. H. K. Realty Co. vs. John B. Eritrodamo*, docket 65, page 367. The Court below found as a fact that there was no fraud in said proceedings and that the Court of Chancery had acquired jurisdiction over all of the defendants and therefore, complainant's bill failed and he had no right to file an original bill under the rule laid down in the case of *Ostrom vs. Ferris* and his bill then became merely a collateral attack on a decree of a Court of competent jurisdiction which the cases hold will not be permitted. The complainant's remedy was to apply to the Court of Chancery immediately upon his acquiring the interests of the defendants in the case of *B. H. K. Realty Co. vs. John B. Eritrodamo, et als.*, during the pendency of said suit and ask to be made a party defendant in said suit as the new party in interest.

This he failed to do although he had the advice of able and competent counsel and neither he nor his counsel nor any one acting for them made any attempt to redeem or tender of the amount necessary to redeem or tender of any sum although both complainant-appellant and his counsel were aware of the amount necessary to redeem even before Samuel Bernstein, complainant-appellant, acquired an interest in said property until it was too late and the time set by the Master, Pierre F. Cook, as the time within which redemption could be made had long expired and a decree had been entered in said suit barring the defendants of and from all equity of redemption in and to said premises and that included Samuel Bernstein, complainant-appellant as successor to the right, title and interest of said defendants.

Defendant-respondent, B. H. K. Realty Co., a corporation of New Jersey, for the sake of clarity will now take up and answer the four points raised by complainant-appellant in his brief, in the order and sequence set out in his brief.

### **POINT I.**

#### **(a) The proceedings are irregular and defective.**

(1) The Order of Publication provided that the notice be published in the Hackensack Republican, a newspaper printed and published in the City of Hackensack, within ten days from the date of the order of publication. Said Hackensack Republican is a weekly paper and is printed on Friday of each and every week. The first issue of said paper following the receipt by Messrs. Henn & Burr, Solicitors of the B. H. K. Realty Co. of a certified copy

of the order of publication from the Clerk in Chancery in which said notice could be published was the day following the time limited in said order for the first publication. This the defendant-respondent, B. H. K. Realty Co. contends in nowise effects said publication as the publication in all other respects was in conformance with the order of publication.

(2) The Tax Sale Revision Act of 1918 does not provide for any notice or publication of the time and place set by the master for redemption. The complainant-appellant Samuel Bernstein, and his counsel I. Faerber Goldenhorn, for some time prior to the date of the delivery of the deed by the Erits to him, namely, November 29, 1927, knew of the publication of the notice to the Eritrodamos of the pendency of the suit and when the complainant-appellant took the deed he knew he had to redeem within the time fixed by law or the order of the Court. He was bound to take notice of the law and of the proceedings in the Court of Chancery.

**(b) A bona fide inquiry to discover the whereabouts of the Erits was not made, nor was a bona fide effort made to give them notice of the pendency of the suit.**

Defendant-respondent, B. H. K. Realty Co. contended in the Court below and the Court found as a fact that a bona fide effort was made to discover the whereabouts of the Erits and to give them notice of the pendency of the suit. Messrs. Henn & Burr, Solicitors for the B. H. K. Realty Co., immediately upon the B. H. K. Realty Co. acquiring said tax sale certificate mailed a letter to Mr. J. B. Erit at Box #1238, City Hall, New York City, which letter is more particularly set out on page 133 of the State of the Case and marked Exhibit D-1.

Frederick C. Henn, of the firm of Henn & Burr, a witness called by the defendant in the Court below testified on pages 84, 85, 86 and 87 as follows:

“Q. What inquiry was made by you for the purpose of the suit of B. H. K. Realty Company against Eritrodamo as to his address? A. Mr. Mackay had brought the certificate of sale in for the purpose of foreclosure. I inquired as to service on the owner, and I asked him if he had made inquiries of his present whereabouts. He said he had; he had been out to the property and had made inquiry in the neighborhood; he went to the collector and the collector informed him that his address was over in New York at a post office box. When he gave me that information I wrote a letter to Mr. Erit, a copy of which you will find in the papers, with the address of our office to return if it was not delivered.

Q. I show you copy of letter marked D-1 for identification. Is that a copy of the letter you wrote Mr. Erit? A. Yes, sir; on April 22, 1927, in which I informed him that Mr. Mackay had delivered to us the certificate of tax sale, and I also stated the law provided for redemption and asked him if he wanted to redeem the property. That letter was never returned.

Q. Did you mail this letter personally? A. No, sir.

Q. All you remember is that you dictated it and told your girl to mail it? A. I dictated it, signed it and gave it to the girl to mail, with the ordinary mail that went out.

Q. In the usual routine course of business. A. Yes, sir.

Q. That letter was never returned? A. No, sir.

Q. As a result of your inquiry, from what you were able to ascertain, Mr. Erit lived in New York? A. Yes, sir.

Q. As a consequence, you proceeded by publication? A. I did.

Q. I show you copy of publication marked D-2 for identification. Is that a copy of the advertisement? A. It is.

Q. Did you also mail a copy of that notice?  
A. A copy of this was also sent to Erit at the same address to which this letter was sent.

Q. Was that returned? A. No, sir.

Q. Where did you mail that letter; to whom did you address it? A. Why, J. B. Erit, post office box—I do not recall the number—it is referred to.

Q. It is embodied in the proof of publication? A. Yes; the address should be given.

Q. Where did you mail it? A. To J. B. Erit, at the pose office referred to in the letter of April 22, 1927; that is the only address I had of Mr. Erit.

Q. Mailed in one of your envelopes? A. Yes.

Q. Did it come back? A. It did not."

WILLIAM F. MUNDAY, a witness called by the *complainant-appellant*, in the Court below on direct examination testified on pages 37 and 38 as follows:

"Q. Did anybody, during your incumbency of your present office, inquire of you for the address of Mr. John B. Erit? A. Yes.

Q. Who was that? A. Mr. McKay.

Q. When did Mr. McKay make such inquiry? A. At the time he purchased at the tax sale.

Q. What did he ask you? A. He asked me if I knew where John B. Erit lived.

Q. What did you tell him? A. I told him Box 1238, City Hall Station, New York.

Q. Did he tell you what the purpose of that inquiry was? A. I knew what the purpose was.

Q. How did you know? A. Because he had purchased at the tax sale."

WILLIAM F. MUNDAY, a witness called by the *complainant-appellant*, in the Court below on cross examination testified on pages 38 and 39 as follows:

"Q. You say you have been tax collector for seven years? A. I have.

Q. The tax bills that you mailed out to Mr. Erit on this property were all addressed to

what address? A. Box 1238, City Hall Station, New York City.

Q. The envelopes in which the tax bills were mailed, they had a return address on, had they not? A. Absolutely.

Q. Were any of them ever returned to you 'Not Found'? A. They were not.

Q. That was the only address that you had of Mr. Erit? A. That is the address that I sent all the tax bills and assessment bills to.

Q. Up to the time of the tax sale, bills were mailed every year there? A. Every year.

Q. Did you know, as a matter of fact, where his place of business was? A. I did not.

Q. Did you ever see any sign on this property—any 'For Sale' sign? A. At the time the first sale took place, the original tax sale, I took the time to go up and look at the property to see whether there was any information there by which I could get a better address, and there was no such indication.

Q. You knew, of course, that all of your communications were being received? A. He got them.

Q. When you advertised this property for sale, you were satisfied that the notice of sale sent to him at his usual address would reach him? A. I was.

Q. It was not necessary for you to get a better address? A. No; except I thought perhaps I was going to satisfy myself there was no further address."

In view of the foregoing testimony there can be no question but that a bona fide effort to discover the Erits was made and a bona fide effort was made to give them notice of the pendency of suit and the mere denial made by the addressee that said notice was never received by him is not sufficient to overcome the presumption of the truth of the affidavit of statutory service by mail, in view of the case of *Welles vs. Schaeffer*, 98 N. J. E. 31, in which Vice Chancellor Backes held that

"Statutory presumption of the truth of affidavit of statutory service, by mailing notice to redeem from tax sale, held not overcome by testimony of addressee that he did not receive it."

**(c) The said decree is ineffectual to debar the complainant or complainant's predecessors in title from redeeming the premises from the lien of the tax sale.**

Defendant-respondent contends that the final decree was effectual to debar the Erits from the equity of redemption and all those who claim under them and that includes Samuel Bernstein, complainant-appellant. The Court acquired jurisdiction over the absent defendants by substituted service and this Honorable Court has held in the case of *McCahill vs. Equitable Life Assurance Society*, 26 N. J. E. 531, that

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

On November 29, 1927, when Samuel Bernstein, complainant-appellant, took the deed for the property from John B. Erit, *et als.*, the Erits ceased to have any interest in the property and the proceedings affecting said property and Mr. Bernstein's remedy when he bought the property with knowledge of and during the pendency of the foreclosure suit was to apply to the Court of Chancery to be made a party defendant as a new party

in interest. This Mr. Bernstein failed to do and the decree having been entered in the Court of Chancery barring the equity of redemption of the Erits and all those claiming under them, Mr. Bernstein as the successor in title of the Erits is likewise barred by said decree.

## POINT II.

**The Complainant has a legal and equitable standing to attack the validity of the decree in the said suit in which the B. H. K. Realty Co. is complainant and John B. Erit, et als., are defendants.**

The defendant-respondent, B. H. K. Realty Co., contended in the Court below and contends in this Honorable Court that there was no fraud in the foreclosure proceedings entitled, *B. H. K. Realty Co. vs. Erit*, and the lower court found as a fact from the testimony produced before it that there was no fraud in the proceedings and that when the proceedings were instituted by bill filed, notice was published to the defendants and there was a mailing of the notice in compliance with the Statute to the address which the complainant then knew. A decree *pro confesso* was taken against the said defendants which decree recited that publication had been made to the satisfaction of the Chancellor. Under the case of *MacCahill vs. Equitable Life Assurance Society*, 26 N. J. E. 531, the said decree is conclusive upon the question as between such non-resident defendant and a purchaser under the decree and if the said decree is conclusive as against the Erits it is likewise conclusive against the complainant-appellant, Samuel Bernstein who succeeded to the rights of the Erits. Vice Chancellor Buchanan

speaking for the Court of Chancery in the case of *Elmora Development Co. vs. Binder*, 97 N. J. E., 126, said:

“A decree is conclusive and binding upon all subsequent representatives or successors in right, title or interest of the persons against whom it was rendered.”

### POINT III.

**Complainant should be permitted to redeem the said lands and premises from the lien of the tax sale.**

The Courts in this State favor and encourage the barring of the right of redemption by suits in the Court of Chancery and the decreeing of marketable titles therein and to discourage the barring of the right of redemption by act of the purchaser in serving a notice to redeem and filing and recording the proceedings. It is only in the cases where there was an attempt to bar the right of redemption by an act of the purchaser and notice to redeem that the Court will seize upon the slightest flaw to restore property to the owner.

Counsel will now endeavor to point out that there was no attempt to redeem or any tender of the amount necessary to redeem made by complainant-appellant until the time set by the master, Pierre F. Cook, the master to whom the matter was referred, as the time to redeem, had long expired and a final decree had been entered barring the right of redemption.

Harry A. Birnbaum, called as a witness on the part of the complainant-appellant, testified on direct examination on page 41 as follows:

“Q. Now, after this deed was delivered, did you have occasion to see Mr. Henn? A. Once.

Q. When? A. I believe around February 29th.

Q. What year? A. 1928.

Q. Where did you see him? A. At his office.

Q. Were you alone? A. No; I had Mr. Bernstein with me.

Q. What was the occasion of your visit there? A. To make cash tender.

Q. And did you make a cash tender? A. We tried to pay the money, to tender the money, and Mr. Henn refused to take it."

I. Faerber Goldenhorn, called as a witness on the part of the complainant-appellant, testified on cross examination on pages 60, 61, 62 and 63, as follows:

"Q. Did you ever call on Mr. Cook to find out how much was due on the property? A. I called up Mr. Cook.

"Q. Did you ever call on him personally? A. No; I did not.

Q. Did you know he was the Master before whom the proceedings were being taken? A. I did.

Q. To foreclose? A. I did.

Q. You also knew at that time that Mr. Cook was the Master before whom these proceedings were being taken? A. Yes; I knew that. That is my best recollection that I was informed of it by Mr. Silverman.

Q. Did you convey this information to your client? A. No; I do not think I did.

Q. Why not? A. Because I did not see my client, and the only communications I had with him were through Mr. Silverman, Mr. Silverman wrote me or telephoned me about it. When I say 'my client'—

Q. At this time you knew the amount necessary to redeem this property from the tax sale, and you knew the Master to whom tender would have to be paid, and yet you did not inform your client of these facts so that he could make the tender to the Master? A. I

never had any exact figures from Mr. Henn, I could not get them, and the figures that I had—the figures that I got from Mr. Henn were so grossly in excess of what I thought this man ought to pay, or the amount I was informed he ought to pay, that I said he would not pay any more than the amount due up to the time I wrote my letter.

Q. Did you ever go down to Mr. Cook's office and inquire how much it would cost to redeem the property? A. No; I did not, but I spoke to Mr. Cook on the telephone, as I told you before, and he gave me some figures.

Q. I asked did you go there personally? A. I never went there personally. They were so astounding I wrote or called you about it.

Q. How much was it, the amount that was so astounding? A. I cannot tell you at this time, I do not recall, but I know from the figure given me by Mr. Silverman, from the amount of taxes due, I thought they were very largely in excess of what you were entitled to. They were not exact. I would not tell what the exact amount was.

Q. You could not tell how much? A. No; I never knew the exact figure.

Q. You knew that Mr. Cook was an officer of the Court appointed to ascertain and fix the amount? A. I could not say.

Q. Would he not be more likely to know the exact amount than Mr. Henn? A. Yes, probably so.

Q. Why didn't you go and see him? A. I don't know why I did not go. I know I did not. That is all."

Samuel Bernstein, testifying in his own behalf under direct examination testified on page 64 as follows:

"Did you make any effort to redeem this property from the tax sale? A. I did.

Q. Under what circumstances? A. On February 29, 1928."

Samuel Bernstein, testifying in his own behalf under cross examination testified on page 69 as follows:

“Q. You knew of the tax sale proceedings in November; is that correct? A. Yes.

Q. And yet you testify that the first and only attempt you made to redeem this property personally was on February 29, 1928; is that correct? A. Yes.”

Samuel Silverman, a witness called on behalf of the complainant-appellant under direct examination, testified on pages 72 and 74 as follows:

“Q. What was the purpose of your going to see Mr. Cook? A. For the purpose of redeeming the property.

Q. Did you make any offer? A. I did not have the money that time, and Mr. Cook told me to see Messrs. Henn & Burr.

Q. At that time did you have the figure necessary to redeem? A. The figure he gave me, it was, as I recall, something a little over \$700.

Q. Did you ever see Mr. Cook after the occasion on February 15 or 16? A. Yes, sir; I think it was on the first of March, the following day after Bernstein could not redeem, I went to see Mr. Cook.

Q. What for? A. To redeem the property.

Q. What did Mr. Cook say? A. Mr. Cook says: ‘I am afraid you are too late. I certified late last night to Henn & Burr that no redemption had been made.’”

**POINT IV.**

**Complainant as the successor in title to the Erits who were absent, non-resident defendants, had a right to redeem the lands and premises in accordance with the statute in such case made and provided, 1 Compiled Statutes, page 416, Section 18, P. L. 1902, page 516.**

Defendant-respondent, B. H. K. Realty Co., contends that the section of the Chancery Act above referred to is not applicable to this case. The section of the Chancery Act above referred to gives an absent defendant the right to come in and petition the Court to re-open the decree upon his showing a meritorious defense or to file with the permission of the Court a bill in the nature of a bill for an accounting. This the complainant-appellant has not elected to do. The bill filed by complainant-appellant was in the nature of an original bill to set aside the decree on the ground of fraud. The complainant-appellant, Samuel Bernstein, officiously intermeddled in the B. H. K. Realty Co.'s suit to foreclose and acquire an interest in the said premises. His remedy was by direct application to the Court to be made a party defendant as a new party in interest and the said complainant-appellant having slept on his rights should not be allowed at this time to take advantage of this section of the Chancery Act.

**CONCLUSION.**

In view of the foregoing cases and testimony it is respectfully submitted by the defendant-respondent, B. H. K. Realty Co. that the said bill of complaint of the complainant-appellant was not a bill

to redeem because if said bill was a bill to redeem the only question the court could have entertained was whether the right to redeem was open to the complainant or not. The testimony shows and the Court found that there was no irregularity or fraud in the proceedings in the case of *B. H. K. Realty Co. vs. Erit, et als*, and therefore said bill fails to come within the rule laid down in the case of *Ostrom vs. Ferris* and it was so found by the learned Vice Chancellor in the Court below. The said bill as the defendant-respondent contends is merely a collateral attack upon the decree of a court of competent jurisdiction, which in view of the cases cited and the law of this State, this Honorable Court will not entertain.

**It is, therefore, respectfully submitted that for the reasons heretofore stated the decree of the Court of Chancery should be affirmed.**

HENN & BURR,  
Solicitors for and of Counsel  
With Complainant.



