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Bill of Complaint

(Filed July 20, 1929.)

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IN CHANCERY OF NEW JERSEY

To the Honorable Edwin Robert Walker, Chancellor of the State of New Jersey:

The complainant, Harrington Company, a corporation of the State of New Jersey, having its principal office at No. 556 Montgomery Street, Jersey City, Hudson County, New Jersey, respectfully shows that:

20

1. On December 1st, A.D. 1925, the municipal taxes lawfully assessed for 1925 by the duly constituted taxing authorities of the City of Trenton, in the County of Mercer, a municipal corporation possessing by law the power of levying, assessing and collecting taxes on lands within its jurisdiction, remaining unpaid and being delinquent, became a lien upon the hereinafter-described lands and premises, under and by virtue of the statute in such case made and provided; and remaining unpaid, has continued from thence hitherto to be and to remain a first lien thereon and paramount to all prior or subsequent alienations and descents of said lands or encumbrances thereon, except subsequent municipal liens.

30

2. That on the 9th day of September, A.D. 1926, Clinton J. Swartz, Receiver of Taxes of said

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Bill of Complaint

10 municipality, in order to satisfy and collect said delinquent taxes and in performance of the duty imposed upon him by law, sold an estate in fee simple in and to said lands and premises to complainant, in due form of law; and certified to said sale by his certificate of sale in due form of law, duly executed, acknowledged, and delivered; and received payment from complainant, of the sum of money certified therein to be due on said tax lien, before the close of said sale; and by virtue of the statute conveyed and passed said lien with said title to complainant.

20 3. That on the 23rd day of September, A.D. 1926, Clinton J. Swartz, Receiver of Taxes as aforesaid, duly executed and delivered to complainant, his official certificate of sale, in and by which he did certify and set out, among other things, that he had sold said lands to complainant for the sum of \$13.03, subject to redemption; and that the right to redeem would in all cases extend for two years from the date of said sale; and that said sale is subject only to municipal liens accruing after July 1st, of the year following that said certificate of sale was recorded in the Office of the Clerk of the County of Mercer as appears by the
30 certificate of said Clerk of said county, endorsed upon the said certificate of sale, now in the possession of complainant, ready to be produced and proven at such time and place as this Honorable Court may designate and appoint for that purpose in Book 437 of Mortgages, at page 168, etc.

40 4. That two years and more elapsed since the date of said sale and none of the defendants hereinafter named, nor any person or persons in their

Bill of Complaint

behalf have redeemed said lands from said sale; complainant therefore files its bill of complaint in this Honorable Court to foreclose the right of redemption of the hereinafter named defendants, and of each said defendants, in and to said lands, pursuant to the provisions of the statute in such case made and provided; and complainant brings the owners, mortgagees, occupants and other persons having an interest in said lands, here into this Court to make redemption of said lands in accordance with the statute and under the rules and practice of this Court, or to be forever barred of such right of redemption, and to have this Court decree that the title, in fee simple, purchased by complainant, subject to redemption as aforesaid, be made absolute.

5. That subsequent to the sale of said lands and premises aforesaid, said Receiver of Taxes duly sold said lands and premises to complainant at another and subsequent sale held by said Receiver according to law, to make and collect other and subsequent delinquent and unpaid municipal liens which had at another and subsequent time become and remained a first lien thereon, paramount to all prior or subsequent alienations and descents of said lands and premises or encumbrances thereon, except subsequent municipal liens; complainant further avers and shows that said latter sale was made to complainant, in fee simple, subject to redemption according to law, and that the right to redeem said lands and premises would continue for the space of two years from the date of said sale thereof as hereinafter set out; that said lands and premises have not been redeemed from said sale; that the amount

Bill of Complaint

10 due and to grow due on said sale and certificate of sale is added to the moneys due on the sale and certificate of sale set out in paragraphs 2 and 3 of this bill, and complainant prays that the said defendants hereinafter named shall by the decree of this Court be required to pay the full amount of said liens or to be barred and foreclosed of all right of redemption, in said lands and premises; that said sale is as follows:

20 (a) Sale held September 9, A.D. 1927, by Clinton J. Swartz, Receiver of Taxes as aforesaid, conveying Lot Numbered 196, Ward 5, City Atlas, page 46D, East Paul Street, being the hereinafter described lands in fee simple to complainant to satisfy and collect the delinquent taxes for 1926, for \$16.72, which sum includes interest and costs of sale; that the certificate of sale issued thereon and dated September 21, 1927, certifies that said sale is subject only to municipal liens accruing after July 1st, 1927; that said certificate of sale was recorded in the Clerk's Office of Mercer County in Book 477 of Mortgages for said County at page 22, etc.

30 6. That the said lands and premises purchased as aforesaid by complainant and which are set out and described by said Receiver of Taxes in the certificate of sale aforesaid as Lot Numbered 196, City Atlas, page 46D, Ward 5, East Paul Avenue on the Tax Duplicate of the City of Trenton and assessed thereon to John Chopko, may be more particularly described as follows:

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Bill of Complaint

ALL that one certain lot, plot or parcel of land and premises, situate, lying and being in the City of Trenton in the County of Mercer and State of New Jersey,

BEGINNING at a point in the Northeast- 10
 erly side of East Paul Avenue, formerly
 Paul Avenue distant fifty (50) feet South-
 easterly from the intersection of the said
 side of East Paul Avenue with the South-
 easterly side of Nassau Street and run-
 ning thence (1) in a Northeasterly direc-
 tion and along the Southeasterly boundary
 line of Lot Numbered 193 as shown on page
 46D, Trenton City Atlas, one hundred and
 eleven and eighty-eight one hundredths 20
 (111.88) feet to a point, which point is also
 the Northeasterly corner of Lot Numbered
 193, on said Map; thence running (2) in a
 Northwesterly direction and along the
 Northeasterly boundary lines of Lots
 Numbered 193 and 192 on said Map, fifty
 (50) feet to a point in the Southeasterly
 side of Nassau Street, which point is dis-
 tant one hundred and eleven and eighty- 30
 eight one hundredths (111.88) feet North-
 easterly from the point of intersection of
 the Northeasterly side of East Paul Ave-
 nue with the said Southeasterly side of
 Nassau Street on said Map; thence running
 (3) in a Northeasterly direction and along
 the Southeasterly side of Nassau Street on
 said Map fifteen (15) feet to a corner
 formed by the intersection of the said
 Southeasterly side of Nassau Street with 40
 the Southwesterly side of Sholtis Alley on

Bill of Complaint

10 said Map; thence running (4) in a South-
easterly direction and along the said South-
westerly side of Sholtis Alley, sixty-four
and six tenths (64.6) feet to the Northwest-
erly corner of Lot Numbered 290 on said
Map; thence running (5) in a Southwest-
erly direction and along the Northwest-
erly side of Lot Numbered 290, one
hundred and twenty-six and eighty-eight
one hundredths (126.88) feet to a point in
the Northeasterly side of East Paul Ave-
nue on said Map, which point is distant one
hundred and ninety-eight and five tenths
20 (198.5) feet more or less Northwesterly
from the point of intersection of the said
Northeasterly side of East Paul Avenue
with the Northwesterly side of Brunswick
Avenue on said Map; thence running (6)
in a Northwesterly direction and along the
said Northeasterly side of East Paul Ave-
nue fourteen and six tenths (14.6) feet to
the point or place of Beginning;

Being known as Lot Numbered 196, City
Atlas, page 46D, Ward 5 on the Map afore-
said;

30 Being also the same premises conveyed
by Mary M. Sholtis, Guardian of Mary K.
Sholtis, George C. Sholtis and Edward J.
Sholtis, minors, and Mary M. Sholtis, in-
dividually to John Chopko by deed dated
the 17th day of November, A.D. 1922, and
recorded in the Office of the Clerk of the
County of Mercer in Book 500 of Convey-
ances for said County at page 551.

40 7. That on and prior to the 26th day of Sep-

Bill of Complaint

tember, A.D. 1923, Jonathan H. Blackwell was vested with the fee simple title in and to the said lands and premises; that afterwards and on the last-mentioned date the said Jonathan H. Blackwell, together with Susan Blackwell, his wife, conveyed the said fee simple absolute title in and to the said lands and other property by deed of conveyance to George Sholtis; that said deed, after having been first duly acknowledged by the said grantors and delivered to the said grantee, was duly recorded in the Office of the Clerk of the County of Mercer in Book 363 of Conveyances for said county, at page 411. 10

8. That afterwards and on the 29th day of April, A.D. 1921, and while the said George Sholtis was still seized of the fee simple title in and to the aforesaid lands, the aforesaid George Sholtis departed this life intestate leaving him surviving as heirs at law and next of kin the following persons: Mary M. Sholtis, widow, and the following infant children: Clarence G. Sholtis, sometimes known as George C. Sholtis; Edward J. Sholtis and May K. Sholtis, sometimes known as Mary K. Sholtis. 20

9. That afterwards an application was made by the said Mary M. Sholtis, widow of the said George Sholtis, and mother of his infant children, to the Orphans' Court of the County of Mercer for an order to sell the said infants' interest in and to the above-described lands, and thereafter the said Mary M. Sholtis, having been appointed guardian of the infant children of the said George Sholtis, made an application to the said Orphans' Court, and afterwards and on the 7th day of 30 40

Bill of Complaint

February, A.D. 1922, the said Court made an order in said proceedings directing the sale of the said infants' interest in the above-described lands to be made by said guardian at public or private sale; that thereafter and by virtue of said order, said Mary M. Sholtis, guardian as aforesaid, sold said infants' interest in said lands to John Chopke, sometimes known as John Chopko, the defendant herein, which sale was by an order of said Orphans' Court made on the 10th day of February, A.D. 1922, confirmed and pursuant thereto the said Mary M. Sholtis, as guardian as aforesaid, executed and delivered to John Chopke, sometimes known as John Chopko, a deed of conveyance of the interest of the said infants in and to the above-described lands, in which conveyance the said Mary M. Sholtis joined individually; which deed of conveyance bearing date of February 10, 1922, and after having been duly acknowledged on the 10th day of February, A.D. 1922, was duly recorded in the Office of the Clerk of Mercer County in Book 488 of Conveyances, at page 24.

10. Inaccuracies in the description of the lands and premises of the orphans' interest, which had been conveyed as aforesaid, having been discovered, the said Mary M. Sholtis, on November 10, 1922, made another and further application to the said Orphans' Court to amend and correct the description of the lands described in the order hereinbefore mentioned and dated February 10, 1922, under which order the deed mentioned in the preceding paragraph was executed and delivered to the said John Chopke, sometimes known as John Chopko; that such proceedings were had on the last-mentioned application; that on November 10,

Bill of Complaint

1922, the said Orphans' Court made another and further order, properly describing the above-mentioned lands and premises intended to be conveyed by the original order dated February 10, 1922, and in compliance with the order made on November 10, 1922, the said Mary M. Sholtis, as guardian of May K. Sholtis, sometimes known as Mary K. Sholtis, and Clarence G. Sholtis, sometimes known as George C. Sholtis, and Edward J. Sholtis, infant children, and the said Mary M. Sholtis individually executed a second deed in and by which they conveyed the fee simple absolute title in and to the above-described lands and other property to the defendant John Chopko, also known as John Chopke, that said deed, after having been first acknowledged, was recorded in the Office of the Clerk of the County of Mercer in Book 400 of Conveyances for said county, at page 551.

11. That by virtue of the two aforesaid orders of the aforesaid Orphans' Court and by virtue of the two aforesaid deeds or for some other reason unknown to this complainant, the defendant John Chopke, sometimes spelled Chopko, pretends and claims to be vested with the fee simple title in and to the above-described lands and premises, and to be the owner thereof, but this complainant avers and shows that complainant has a first and paramount lien to any and all right, title or interest had or claimed to be had by the said defendant in and to the above-described lands and premises by reason of the tax sale hereinabove set out, and the aforesaid certificate of tax sale issued to complainant for the taxes aforesaid; that whatever right, title or interest the said defendant may have or may pretend and claim to have, in and to the said lands and premises is subject and subsequent

Bill of Complaint

10 to the lien and title of this complainant, under the
aforesaid sale and certificate of sale issued there-
on to complainant, and if the said defendant does
not redeem the said lands and premises from the
said tax sale and the said certificate of tax sale,
said defendant will be forever barred and fore-
closed of such right of redemption, and the right,
title or interest held or claimed to be held by the
said defendant will cease, terminate and be extin-
guished.

20 12. Complainant shows that the defendant
John Chopke, sometimes known as John Chopko,
is married and his wife's name is Anna Chopke,
sometimes known as Anna Chopko, who claims an
inchoate right of dower therein.

30 13. That by reason of the aforesaid marriage,
said defendant Anna Chopke, sometimes known as
Anna Chopko, pretends and claims to have and to
hold a lien, into and upon the hereinabove-de-
scribed lands and premises, or to have some other
right, title, interest, lien, claim or demand in and
to the same, the nature and particulars whereof
are unknown to this complainant; complainant
therefore charges the fact to be that said defend-
ant has no title, interest, lien, encumbrance or
other right in and to the hereinabove-described
lands and premises, except such as may by the law
of this State, vest in said defendant Anna Chopke,
sometimes known as Anna Chopko, by virtue
of said defendant Anna Chopke, sometimes
known as Anna Chopko, being the wife of
said defendant John Chopke, sometimes known
as John Chopko, as set out in the last preceding
40 paragraph of this bill; complainant therefore fur-

Bill of Complaint

ther avers and shows the fact to be that complainant has a first and paramount lien to any right, title or other interest held or claimed to be held by said defendant in and to the hereinabove-described lands and premises by reason of the tax sale and the certificate of tax sale hereinabove set out and described and issued to complainant for the taxes aforesaid; complainant further avers and shows the fact to be that whatever right, title or other interest the said defendant may have or may claim and pretend to have in and to said lands and real estate is subject and subsequent to the lien and title of this complainant as aforesaid; and if said defendant does not redeem the said lands and premises from the said tax sale and the certificate of tax sale issued thereon, said defendant will be forever barred and foreclosed of all right of redemption, and the right, title or other interest held or claimed to be held by said defendant will cease, terminate and be extinguished and obliterated by the decree of this Court according to law.

14. That the defendant City of Trenton claims and pretends to have and to hold various unpaid delinquent taxes and assessments, and various certificates of tax sale for various delinquent and unpaid taxes and assessments for various years, which taxes and assessments have not been filed or recorded in the Record of Unpaid Taxes in the Office of the Clerk of Mercer County; all of which are unknown to this complainant; that all of said taxes and assessments were levied and assessed prior to the 1st day of July, A.D. 1927.

15. That the said defendant City of Trenton

Bill of Complaint

claims to hold a lien or liens for all or some of said delinquent taxes, assessments or certificates of sale upon the said lands and premises or to have some other right, title or interest therein or there-
to; complainant therefore further avers and shows
10 the fact to be that complainant has a first and paramount lien to all of the aforesaid delinquent and unpaid taxes, assessments and certificates, assessed or levied prior to the 1st day of July, A.D. 1927, and any and all other right, title or other interest held or claimed to be held by said defend-
ant in and to the hereinabove-described lands and premises by reason of the tax sale and the cer-
tificate of tax sale hereinabove set out and de-
scribed and issued to complainant for the taxes
20 aforesaid; complainant further avers and shows the fact to be that the said defendant City of Tren-
ton is estopped, both in law and equity, to assert or claim to have and to hold any right, title, lien, or other interest, by reason of the said sale of said lands for the delinquent taxes of 1925 to complain-
ant and that all of said delinquent and unpaid taxes, assessments and certificates of sale afore-
said claimed to be held by said defendant City of
30 Trenton have been obliterated and made null and void by reason of the sale of said premises to complainant as aforesaid; but if this Court finds that said defendant has any lien by reason of the aforesaid delinquent and unpaid taxes, assess-
ments and certificates of sale aforesaid, then com-
plainant avers and shows the fact to be that com-
plainant has a first and paramount lien to any
right, title or other interest held or claimed to be
held by said defendant in and to the hereinabove-
described lands and premises by reason of the tax
40 sale and the certificate of tax sale hereinabove set

Bill of Complaint

out and described and issued to complainant for the taxes aforesaid; complainant further avers and shows the fact to be that whatever right, title or other interest the said defendant may have or may claim and pretend to have in and to said lands and real estate are subsequent to the lien and title of this complainant as aforesaid; and if said defendant does not redeem the said lands and premises from the said tax sale and the certificate of tax sale issued thereon, said defendant will be forever barred and foreclosed of all right of redemption, and the right, title or other interest held or claimed to be held by said defendant will cease, terminate and be extinguished and obliterated by the decree of this Court according to law.

16. That afterwards and on the 7th day of September, A.D. 1928, Clinton J. Swartz, Receiver of Taxes as aforesaid, sold Lot Numbered 196, City Atlas, page 46D, in the 5th Ward, East Paul Street, being the above-described premises for the delinquent taxes 1927, to the defendant City of Trenton, in fee simple and issued thereon his certificate of sale dated September 20, 1928, certifying that said sale was subject only to municipal liens accruing after July 1st, of the year following, which certificate of sale was duly recorded in the Office of the Clerk of the County of Mercer on September 26th, A. D. 1928, in Book 503 of Mortgages for said county, at page 55.

17. That the defendant City of Trenton claims to hold liens for the delinquent taxes and assessments levied and assessed for the years subsequent to the year 1927 and all of said liens have been added to the lien held by said defendant City

Bill of Complaint

10 of Trenton, under the aforesaid certificate of sale aforesaid, all of which complainant has no knowledge; that said defendant City of Trenton claims that all of the said liens held by it for municipal liens subsequent to July 1st, A.D. 1927, are prior and paramount liens to the said liens of complainant.

20 18. Complainant admits that all of said municipal liens levied or assessed subsequent to July 1st, A.D. 1927, are prior and paramount liens to complainant's liens; and that the amount of said liens be added to the lien set out in paragraph 16 of this bill under and by virtue of the statute, and complainant tenders payment thereof at such time and place as may be fixed by this Honorable Court and in such sum as may be found to be due said defendant.

19. That two years have expired since the date of said sale to complainant as set out in paragraphs 2 and 3 of this bill and that said premises have not been redeemed.

30 20. Complainant is without adequate remedy in the courts of law and therefore prays:

(a) That the said defendants, John Chopke, sometimes known as John Chopko; Anna Chopke, sometimes known as Anna Chopko, and City of Trenton, a municipal corporation, the defendants to this suit, may answer this bill of complaint without oath and each statement therein made:

40 (b) That a time and place may be appointed by this Court wherein and whereat

Bill of Complaint

the said lands may be redeemed by said defendants and all moneys due complainant on said certificates of sale, together with all municipal liens which complainant may be compelled to pay pursuant to the statute to preserve its priority and paramount lien, may be paid to complainant; that a time and place may also be fixed when and where redemption of complainant's and defendants' liens may be made. 10

(c) That by the decree of this Court, the right of the said defendants, to redeem said lands and premises may be absolutely barred and foreclosed of all prior and subsequent alienations and descents of said lands and encumbrances thereon, except subsequent municipal liens, may be extinguished and obliterated pursuant to the statute and in accordance with the rules and practice of this Court; that the defendants may deliver up to complainant all muniments of title to said real estate, with all paper writings evidencing any right, title or interest in said lands, to be cancelled of record or otherwise obliterated and made null and void. 20 30

(d) That complainant may be decreed to be lawfully seized in its own right, of a good, absolute and indefeasible estate of inheritance, in fee simple absolute, of, in and to all and singular the said lands sold as aforesaid and hereinabove set out, freed of and discharged from all right, title, interest, lien, claim, encumbrance or demand of every nature and kind whatsoever of the 40

Bill of Complaint

10 defendants, their ancestors and predecessors in title and their privies and that they and each of them have no right, title, restrictive interest, lien, claim, encumbrance or demand whatsoever in law or in equity, in and to the said lands and premises.

(e) That the sale and grant of the said lands and premises, by the Receiver of Taxes aforesaid, to complainant in fee simple, under the statute, by the decree of this Court may be made absolute.

20 (f) That all municipal liens due the City of Trenton for liens accruing after July 1st, A.D. 1927, may be fixed and a time and place may be fixed when and where complainant may pay and satisfy the same and that all such liens so paid and satisfied by complainant may be assigned to complainant and added to the liens now held by complainant, and paid by defendant before redemption of said lands may be made and that all municipal liens assessed and levied prior to
30 July 1st, A.D. 1927, and claimed by said defendant City of Trenton may be decreed to be obliterated and made null and void and decreed to be cancelled of record in the offices of the Collector, Clerk and other municipal offices, and in the Clerk's Office of Mercer County.

40 (g) That a writ of subpoena may issue commanding the defendants to answer this bill of complaint, without oath, and each and every allegation therein and to abide by such decree as this Court may have in

Notice of Lis Pendens

the premises, and that complainant may have such other and further relief in the premises as the Chancellor shall think equitable and just.

HARRY B. BROCKHURST,
Solicitor for and of Counsel with Com-
plainant, Harrington Company.

10

Notice of *Lis Pendens*

(Filed July 23rd, 1929.)

NOTICE IS HEREBY GIVEN, pursuant to the statute in such case made and provided, TO ALL TO WHOM IT DOETH OR MAY CONCERN, of the pendency of a suit in the Court of Chancery of New Jersey, and that the title of said suit is as follows:

20

IN CHANCERY OF NEW JERSEY

Between	}	
HARRINGTON COMPANY, a		
corporation,		
<i>Complainant,</i>		
and		
JOHN CHOPKE, sometimes known	}	On Bill to Foreclose
as JOHN CHOPKO; ANNA		
CHOPKE, sometimes known as		
ANNA CHOPKO, and CITY OF		
TRENTON, a municipal corpora-		
tion,		
<i>Defendants.</i>		

30

40

And that the general object of said suit is to

Notice of Filing Bill of Complaint

10 foreclose the right of redemption under the statute of the hereinabove-named defendants, and each of them, in and to the hereinafter-described lands and premises from the lien and effect of a certificate of tax sale, recorded in Book 437 of Mortgages, at page 168, etc.

That a description of the said lands and premises to be affected by said suit in the said Court of Chancery is as follows: Being known as Lot Numbered 196, City Atlas, page 46D, Ward 5, as shown on page 46D, Trenton City Atlas.

Bill was filed July 22nd, 1929.

Dated, Jersey City, N. J., July 22, 1929.

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HARRY B. BROCKHURST,
Solicitor for Complainant.

July 23, 1929—Fee paid County Clerk of Mercer County for filing and recording, \$1.25.

Notice of Filing Bill of Complaint

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TAKE NOTICE, that complainant herein has this day forwarded to the Clerk in Chancery, at the State House in Trenton, a bill of complaint to be filed in the above-entitled cause; and that redemption of the lands described therein shall be made only in the above-entitled cause.

40

TAKE FURTHER NOTICE, that said bill is filed to foreclose the right to redeem from the liens held by complainant under certain tax sale certificates covering the following-described lands and premises: Lot Numbered 196, City Atlas, page 46D,

Notice of Motion

Ward 5, and located on the northeasterly side of East Paul Avenue, in the City of Trenton.

July 19, 1929.

HARRY B. BROCKHURST,
Sol'r for Compl't, 10
Harrington Company.

Service of a true copy of the foregoing Notice is hereby acknowledged this 1st day of August, A.D. 1929.

CLINTON J. SWARTZ,
Collector of Taxes.

20

Notice of Motion

(Filed August 12, 1929.)

To the Complainant, Harrington Company a Corporation, or Harry B. Brockhurst, Solicitor for Complainant:

PLEASE TAKE NOTICE, that on Tuesday, the thirteenth day of August, 1929, at the hour of ten o'clock in the forenoon of said day, or as soon thereafter as counsel can be heard, at the Chancery Chambers, at the State Capitol, in the City of Trenton, New Jersey, I shall move before his Honor the Chancellor that the bill of complaint filed in the above-entitled cause be dismissed for the following reasons: 30

1. The said bill of complaint discloses no cause of action in that 40

Order Denying Motion

a. It appears from the allegations of said bill that the said complainant has no standing under the statute in such case made and provided to assert its claim therein made, or to obtain the relief therein prayed.

10

AMOS M. WALN,
Solicitor for Defendant John Chopke.

Service of the within Notice is hereby acknowledged, this 8th day of August, 1929.

HARRY B. BROCKHURST,
Solicitor for Complainant.

20

Order Denying Motion

(Filed Aug. 22, 1929.)

This matter coming on before the Chancellor on notice by the defendant John Chopke to dismiss the bill of complaint filed herein, and having been referred to William J. Backes, Advisory Master, and it appearing that the said bill of complaint filed herein should not be dismissed;

30

It is, on this 22nd day of August, A.D. 1929, on motion of Harry B. Brockhurst, of counsel with complainant, ORDERED, that the notice heretofore given by the defendant John Chopke to dismiss the bill of complaint filed by the complainant Harrington Company in the above-entitled cause be dismissed.

E. R. WALKER,
C.

Respectfully advised.

40

WM. J. BACKES,
A. M.

Notice

(Filed Aug. 12, 1929.)

To the Complainant, Harrington Company, a corporation, or Harry B. Brockhurst, Solicitor for Complainant:

PLEASE TAKE NOTICE that on Tuesday, the thirteenth day of August, 1929, at the hour of ten o'clock in the forenoon of said day, or as soon thereafter as counsel can be heard, at the Chancery Chambers, at the State Capitol, in the City of Trenton, New Jersey, I shall apply to his Honor the Chancellor for an order settling the amount due to the above-named complainant for principal, interest and costs upon the tax sale certificates held by it and being foreclosed in this cause, and fixing a time when and a place where the defendants may pay such amounts as may be so determined to be due to the said complainant, and requiring the said complainant, upon payment of such amounts, to endorse and surrender the said tax sale certificates, and discharge any notice of the pendency of this suit filed in the Mercer County Clerk's Office.

AMOS M. WALN,
Solicitor for Defendant,
John Chopke.

Petition

(Filed Aug. 12, 1929.)

To the Honorable Edwin Robert Walker, Chancellor of the State of New Jersey:

10 The petition of John Chopke, of the City of Trenton, in the county of Mercer and State of New Jersey, respectfully shows that:

1. Your petitioner is one of the defendants named in the bill of complaint in the above entitled cause, and is the owner of the lands and premises described in the said bill of complaint.

20 2. The said lands and premises were sold at a tax sale held by the Receiver of Taxes of the said City of Trenton, for unpaid municipal liens assessed for the year 1925, on September 9th, 1926, for the sum of \$13.03, and said lands and premises were also sold by said Receiver of Taxes, for unpaid municipal liens assessed for the year 1926, on September 9, 1927, for the sum of \$16.72. At each of said sales, complainant became the purchaser of the said lands and premises.

30 3. Your petitioner had no knowledge of either of said sales until he received a letter of inquiry from the solicitor of the complainant herein on or about July 23, 1929. Upon the receipt of said letter, petitioner consulted Martin P. Devlin, one of the solicitors of this Court, and, as a result of inquiries made by the said solicitor, petitioner learned of the aforesaid tax sales.

40 4. Petitioner, thereupon, by the said solicitor, made inquiry of the solicitor of the complainant

Petition

as to the amount necessary to be paid in order to redeem the said lands and premises from said sale, and the said solicitor of the complainant, in answer to said inquiry, on July 29, 1929, demanded the total sum of \$273.07 in settlement of the matter, which demand was itemized as follows:

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1925 tax lien covering Lot Numbered 196, City Atlas, page 46D, Ward 5, as certified to by the Harrington Co.	\$39.73
1926 tax lien covering Lot Numbered 196, City Atlas, page 46D, Ward 5, as certified to by the Harrington Co.	\$43.08
Court costs approximated to date	\$23.06
New Jersey Supreme Court and United States District Court Judgment	
Search	\$10.20
City tax search	\$ 2.00
Title search	\$80.00
Counsel fee	\$75.00
Total	\$273.07

20

5. Petitioner has never been served with any notice to redeem the said lands and premises from the said tax sales, or either of the same.

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6. A bill of complaint was filed in this Court in the above entitled cause on July 20, 1929, but neither this petitioner, nor his wife, who is the only other defendant, except the City of Trenton, has ever been served with any subpoena to answer the said bill. Petitioner is informed and believes that a notice of the pendency of a suit in this Court entitled as above set forth has been filed in the Mercer County Clerk's Office.

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7. On August 2, 1929, the solicitor for peti-

Petition

10 tioner went to Clinton J. Swartz, the Receiver of Taxes of the said City of Trenton, at his office, in the City Hall of said City, for the purpose of learning the true amount due to that date to the complainant upon the aforesaid tax liens, and announced to the said Receiver of Taxes that he desired to redeem the said property from the said tax liens on the day last aforesaid. The solicitor for the petitioner thereupon learned that a notice of the filing of the bill of complaint herein in this Court had been filed in the Office of said Receiver of Taxes on August 1, 1929, and the said Receiver of Taxes, by reason of the filing of said notice, announced to the solicitor for petitioner that he refused to accept redemption of said tax liens.

20

8. Petitioner is ready and willing to pay to the complainant, and hereby tenders to the complainant, any and all sums to which the complainant is justly and truly entitled for, on account of, or by reason of, the aforesaid tax liens, and is desirous of avoiding any further or additional expense or costs in respect to the same, but petitioner maintains that the demand made by complainant is outrageous and unconscionable, and that the sums demanded by complainant are greatly in excess of any sums to which complainant is justly and truly entitled.

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9. Your petitioner therefore prays that an order may be made by this Honorable Court settling and fixing the sums due to the said complainant for principal, interest and costs upon its aforesaid tax liens, and fixing a time when and a place where the defendants may pay such amounts as may be so determined to be due to the

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Petition

said complainant, and requiring the said complainant, upon payment of such amounts, to endorse and surrender the said tax sale certificates, and discharge any notice of the pendency of this suit filed in the Mercer County Clerk's Office.

And your petitioner will ever pray, etc. 10

AMOS M. WALN,
Solicitor for Petitioner.

State of New Jersey, }
County of Mercer, } ss.:

JOHN CHOPKE, of full age, being duly sworn according to law, upon his oath deposes and says:

1. I am the petitioner named in the foregoing petition. 20

2. The matters and things set forth in the foregoing petition are true to the best of my knowledge, information and belief.

JOHN CHOPKO,
Petitioner.

Sworn and subscribed to before me }
this 3rd day of August, 1929. }

MARTIN P. DEVLIN, JR.,
Atty. at Law of N. J. 30

Service of the within Notice and Petition is hereby acknowledged this 8th, day of August, 1929.

HARRY B. BROCKHURST,
Solicitor for Complainant.

The motion was denied. Aug. 16/29. 40

WM. J. BACKES,
A. M.

Sub. ad resp, Notices, Sheriff's Return

(Filed August 20, 1929.)

NEW JERSEY, to wit,

10 *The State of New Jersey, to John Chopke, sometimes known as John Chopko; Anna Chopke, sometimes known as Anna Chopko, and City of Trenton, a municipal corporation, GREETING:*

WHEREAS a bill of complaint has lately been exhibited against you in our Court of Chancery by Harrington Company, a corporation, to be relieved touching the matters therein contained.

20 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
23rd
days from and after the ~~nineteenth~~ day of August, 1929, and in default thereof such order or decree will be made against you as the Court shall think equitable and just.

30 WITNESS, his Honor, Edwin Robert Walker, Chancellor of our said State, at Trenton, the eighth day of August, in the year of our Lord one thousand nine hundred and twenty-nine,

HARRY B. BROCKHURST FERD GARRETSON
Sol'r. Clerk.

Sub. ad Resp., Notices, Sheriff's Return

To John Chopke, sometimes known as John Chopko:

You are made a party defendant, and subpoenaed to answer the bill of complaint exhibited in the above cause, because it is alleged that you claim to be vested with the fee simple title and to be the owner thereof, or claim to have some other right, title or interest in and 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 premises. 10

Dated August 8, 1929

Your ob't serv't,

HARRY B. BROCKHURST 20
Sol'r for Complainant.

To Anna Chopke, sometimes known as Anna Chopko:

You are made a party defendant, and subpoenaed to answer the bill of complaint exhibited in the above cause, because it is alleged that you claim to have an inchoate right of dower, or claim to have some other right, title or interest in and 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 premises. 30

Dated, August 8, 1929

Your ob't serv't,

HARRY B. BROCKHURST 40
Sol'r for Complainant.

Return of Sheriff

To City of Trenton, a municipal corporation:

10 You are made a party defendant, and subpoenaed to answer the bill of complaint exhibited in the above cause, because it is alleged that you claim to hold various unpaid delinquent taxes and assessments, and various certificates of tax sale for various delinquent and unpaid taxes and assessments for various years or claim to have some other right, title or interest in and 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 premises.

Dated August 8, 1929

20 Your ob't serv't,
HARRY B. BROCKHURST
Sol'r for Complainant.

Return of Sheriff

August 13, 1929

30 I hereby deputize and appoint Thomas Conrad of Hamilton Township for me and in my name to serve this writ.

WITNESS my hand and seal the day and year above written.

JOHN N. RACE (L. S.)
Sheriff of Mercer County
By PHILIP S. VINE, Under Sheriff.

40 Service of a copy of the within subpoena is

Complainant's Costs

hereby acknowledged this 14th day of August, 1929.

CHARLES E. BIRD,
City Counsel.

Served within Sub. ad Resp & Ticket August 14th, A. D., 1929, upon John Chopke sometimes known as John Chopko defendant, by leaving a copy of same with Anna Chopko, his wife; also service upon Anna Chopke, sometimes known as Anna Chopko, defendant, personally; said services made at their residence No 319 Second St. Trenton, N. J. 10

See acknowledgment of service for City of Trenton, a municipal corporation, hereto annexed.

Sheriff fees \$6.62. 20

JOHN N. RACE, Sheriff
By THOMAS CONRAD, Special Deputy.

**Complainant's Costs, Taxed at Request of
Defendant's Solicitor**

(Filed Aug. 20, 1929.)

	S. & C.	Ch.	Clk.	Als.	
Retaining fee for solicitor and counsel	4.00				
Drawing and eng. bill, 70 fol.....	21.00				
Filing bill and enter'g action.....			.16		
Motion for decree, dismissal.....	1.50	.50			
Drawing, eng. and fil'g decree.....	.60		.06		
Entering by clerk.....		.10			
Drawing and eng. costs.....	.90				
Taxing and fil'g costs and copy.....		.70			
	28.00	.50	1.02		
	.50				
	1.02				
	\$29.52				40

Decree *Pro Confesso*

(Filed Sept. 18, 1929.)

10 This cause being opened to the Court by Harry B. Brockhurst, Esq., of Counsel with the Complainant, and it appearing that process of subpoena for the appearance of the defendants hath been duly issued, and returned served upon Anna Chopke, sometimes known as Anna Chopko and City of Trenton, a municipal corporation and that the said defendants have not answered said Bill or filed any notice with respect thereto within the time limited by law, but have wholly failed and neglected so to do:

20 It is, on this 18th day of September, in the year of our Lord One thousand nine hundred and twenty nine, on motion of Harry B. Brockhurst, Esq., Solicitor for Complainant, ORDERED, ADJUDGED and DECREED that the said Bill be taken as confessed as against the aforesaid defendants to the end that such decree may be made against said defendants as the Chancellor shall think equitable and just.

E. R. WALKER,
C.

Answer and Answer in Lieu of Plea of Defendant, John Chopke

(Filed Sept. 4, 1929.)

The answer and answer in lieu of plea of defendant, John Chopke.

This defendant, John Chopke, answering the bill of complaint, says that: 10

1. This defendant admits paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9 and 10 of said bill.

2. This defendant says that the lands and premises described in said bill were conveyed to this defendant as set forth in said bill, and this defendant says that he is the owner in fee simple of said lands and premises. This defendant admits that the complainant is the holder of liens upon said lands and premises by virtue of the tax sales and the certificates thereof to complainant set forth in said bill of complaint. 20

3. This defendant admits paragraphs 12, 13, 16, 18 and 19 of said bill.

4. This defendant has no knowledge or information sufficient to form a belief as to the allegations contained in paragraphs 14, 15 and 17 of said bill. 30

This defendant, by way of answer in lieu of plea says that:

1. No notice to bar redemption of the said lands and premises from the liens held by the complainant has ever been given to this defendant, and this defendant had no knowledge of the tax 40

Answer and Answer in Lieu of Plea

10 sales to and the liens of complainant set forth in
the bill of complaint herein until on or about July
23, 1929, at which time this defendant received a
letter from the solicitor of the complainant herein
concerning the name and address of the owner of
the lands and premises described in said bill, upon
the receipt of which letter this defendant, by his
agent and attorney thereunto duly authorized,
made inquiry of the said solicitor of the said com-
plainant, and thereupon the said solicitor of the
said complainant, on July 29, 1929, and prior to
the commencement of this suit, disclosed to the
defendant the nature and extent of said complain-
ant's interest in and liens upon the said lands and
premises, and demanded the sum of \$273.07 in
20 payment and satisfaction thereof, which sum last
aforesaid was greatly in excess of any sum then
due and owing to complainant, and which said de-
mand was unconscionable and inequitable.

30 2. On August 2, 1929, and prior to the com-
mencement of this suit, this defendant, by his
agent and solicitor herein duly authorized, made
inquiry of Clinton J. Swartz, the Receiver of
Taxes of the said City of Trenton, at his office, in
the City Hall of said City, for the purpose of
learning the true and just amount due to the date
last aforesaid to the complainant upon its afore-
said tax liens, and announced to the said Receiver
of Taxes that this defendant desired to redeem the
said lands and premises from the said tax liens on
the date last aforesaid. At the time last aforesaid,
this defendant, by his said agent and solicitor,
learned that, on August 1, 1929, and prior to the
commencement of this suit, the complainant had
40 caused to be filed in the office of the said Receiver

Answer and Answer in Lieu of Plea

of Taxes a notice of the filing of the bill of complaint in this cause, and, although no notice to bar redemption had ever been given to this defendant, the said Receiver of Taxes, on August 2, 1929, announced to the said agent of and solicitor for this defendant that he refused to accept redemption of the said lands and premises from the aforesaid tax liens. This defendant believes and therefore charges that the said complainant caused the notice last aforesaid to be filed as aforesaid in the office of the said Receiver of Taxes for the express purpose of preventing this defendant thereby from exercising his right to redeem the said lands and premises from the said tax liens, and from effecting the redemption of the said lands and premises from the aforesaid tax liens prior to the commencement of this suit, and for the further purpose of compelling this defendant thereby to pay to complainant unjust, unconscionable, exorbitant and inequitable fees and charges in connection with the said liens. 10 20

3. On August 15, 1929, at the office of the solicitor of the complainant in the City of Jersey City, in the County of Hudson, in this State, this defendant by his agent thereunto duly authorized, tendered to the solicitor of the complainant, for the complainant, the sum of \$102.88, in payment of complainant's said liens, and the interest, fees, expenses and costs thereon, and although no notice to bar redemption of said lands and premises from said liens had ever been given to this defendant, the said solicitor of the complainant refused to accept the same. 30

4. On August 26, 1929, at a house in Barbour 40

Answer and Answer in Lieu of Plea

10 Square, in Elberon, in the County of Monmouth,
in this State, this defendant, by his agent there-
unto duly authorized, tendered to the solicitor of
the complainant, for the complainant, the sum of
\$113.10, in payment of complainant's said liens,
and the interest, fees, expenses and costs thereon,
and although no notice to bar redemption from
said liens had ever been given to this defendant,
the said solicitor of the complainant refused to ac-
cept the same.

20 5. This defendant is, and has been ever since
he had knowledge of complainant's said liens,
ready and willing to pay, and desirous of paying,
and hereby tenders himself ready and willing to
pay to the complainant the just and lawful sums
due to the complainant thereon in satisfaction of
the same, and this defendant herewith pays into
this Court the use of the said complainant the
sum of \$116.76, which sum last aforesaid this de-
fendant is informed and believes to be the just
and lawful sum due to the date of the filing here-
of to the said complainant upon its said liens.

30 AMOS M. WALN,
Solicitor for and of Counsel
with Defendant, John Chopke.

Notice of Motion to Strike Out Answer, Etc.

(Filed July 22, 1931.)

To: Amos M. Waln, Esq.,
 Solicitor for Defendant John Chopke,
 5 East State Street, Trenton, N. J.

PLEASE TAKE NOTICE, that on Monday, the
 thirtieth day of September, A. D., 1929, at the
 hour of ten o'clock in the forenoon, or as soon
 thereafter as counsel can be heard, at the Chan-
 cery Chambers in Jersey City, No. 1 Exchange
 Place, Jersey City, N. J., I shall apply to the
 Chancellor for an Order striking out the whole
 and each part of the Answer and Answer in Lieu
 of Pleas, filed by you for the defendant John
 Chopke, in the above entitled cause for the fol-
 lowing reasons:

(1) Because the said answer denies none
 of the allegations set out in said bill;

(2) Because all of the allegations in said
 bill are admitted;

(3) Because no defense is set up to any
 of the prayers of said bill;

(4) Because the facts alleged do not con-
 stitute a defense to the bill or bar the com-
 plainant's recovery of the relief prayed
 for;

And PLEASE TAKE FURTHER NOTICE that at the
 same time and place I shall move to strike out the
 whole and each separate paragraph of the answer

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Notice of Motion to Strike Out Answer, Etc.

in lieu of plea filed by you for the defendant John Chopke in the above entitled matter, upon the following grounds:

10 (a) Because the said answer in lieu of plea sets up several separate distinct matters each supposed to bar complainant's right to recover and each being contradictory of and inconsistent with the other;

(b) Because each of the several separate and distinct matters separately or collectively set up in the first paragraph of said answer in lieu of plea do not constitute a bar to complainant's right to bar redemption;

20 (c) Because defendant is charged by law with notice of the several matters by him alleged in defense of complainant's bill, and complainant is not by law required to give notice thereof;

(d) That the amount of moneys due complainant are properly fixed by this Court by a reference of this matter to one of the Masters of this Court to compute and fix the same in accordance with the terms of the statute;

30 (e) Because each of the several, separate and distinct matters separately or collectively set out in the second, third, fourth and fifth paragraphs of said answer in lieu of plea, do not bar complainant's right to bar redemption;

40 (f) Because the said Collector of Taxes

Notice of Motion to Strike Out Answer, Etc.

is divested of all power to receive redemption by virtue of the statute upon bill in foreclosure being filed in this Court and performed his duty in refusing to accept redemption from said defendant;

(g) Because nothing contained in said paragraph shows a proper tender of the moneys lawfully due complainant in settlement of complainant's lien and the costs and expenses of this action instituted in this Court; because the facts alleged in said answer in lieu of plea do not constitute a tender sufficient to bar complainant's right to recover the relief prayed for in its bill; 10

(h) Because the allegations in said answer in lieu of plea do not tender a single and separate defense to the complainant's bill; 20

(i) Because the allegations in said answer in lieu of plea attempt to set up several separate and distinct defenses;

(j) Because said defendant admits complainant's right to foreclose and shows no reason why this matter should not be referred to one of the Masters of this Court to hear the same and ascertain the moneys due complainant by virtue of the statute in such case made and provided; 30

And TAKE FURTHER NOTICE that at the time aforesaid I shall move the Court, if the said Answer and Answer in Lieu of Plea of the said defendant is stricken out, for an order taking the bill of complaint as confessed as against the said de- 40

Order on Motion to Strike Out Answer

10 fendant, and that the said cause be referred to one of the Masters of this Court to take complainant's proofs, and report the amount found to be due to the complainant and which should be paid in order to redeem the said lands and premises from complainant's tax sale certificates.

Dated, Jersey City, N. J., September 17th, 1929.

HARRY B. BROCKHURST,
Solicitor of Complainant.

Order on Motion to Strike Out Answer

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(Filed Oct. 7, 1929.)

30 This matter coming on to be heard on notice of the complainant to the defendant, John Chopke, to strike out the Answer and answer in lieu of plea of the said defendant, in the presence of Adolf L. Engelke, representing Harry B. Brockhurst, of counsel with the complainant, and Michael Felcone, representing Amos M. Waln, of counsel with the defendant John Chopke and the Court having heard the argument of counsel and it appearing to the Court that the motion should lie over and that in the meantime the matter should be referred to a Master to ascertain the amount due to the complainant upon its certificate or certificates of tax sale, reserving the question of counsel fees, and fees for the examination of the title to the lands described in the Bill of Complaint;

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It is, on this Seventh day of October, A. D.,

Order on Motion to Strike Out Answer

1929, on motion of Harry B. Brockhurst, of counsel with the complainant ORDERED that the motion to strike out be and the same is hereby continued until Monday, the Twenty-first day of October, 1929, at the Chancery Chambers in Jersey City at ten o'clock in the forenoon;

And it is further Ordered that this matter be referred to Daniel P. Byrnes, Esquire, one of the Masters of this Court, to ascertain and report to the Court and file his Report with the Sergeant-at-arms in the Chancery Chambers in Jersey City, aforesaid, on or before the Seventeenth day of October, A. D., 1929, the amount due to the complainant upon its certificate or certificates of tax sale, and it is further ordered that the question of counsel fees and fees for the search of the title to the lands described in the Bill of Complaint to be paid by the defendant to the complainant, be and the same is hereby reserved until the coming in of said Report, at which time either party shall be at liberty to further move the motion continued as above.

E. R. WALKER,
C.

Respectfully advised,
JNO. J. FALLON,
V. C.

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**Master's Report and Depositions on
Reference**

(Filed Oct. 21, 1929.)

*To the Honorable Edwin Robert Walker, Chan-
cellor of the State of New Jersey:*

10 1. In pursuance of an Order of this Court made on the 7th day of October, 1929, wherein and whereby it was referred to me, the subscriber, one of the Masters of this Court, to ascertain and report the amount due to the Complainant upon its Certificate or Certificates of Tax Sale, and to file my Report with the Sergeant-at-Arms, in the Chancery Chambers in Jersey City, on or before the 17th day of October, 1929.

20 2. I report that on said 7th day of October, 1929, I issued a Master's Summons, directed to John Chopke, one of the defendants herein, to be and appear at my office, Room 602, Trust Com-
pany of New Jersey Building, #921 Bergen Ave-
nue, Jersey City, State of New Jersey, on Friday,
the 11th day of October, 1929, at eleven o'clock in
the forenoon of that day; that on said last men-
tioned date Amos M. Waln, Solicitor of said de-
fendant, requested that this matter be adjourned
30 to another date; I accordingly adjourned the mat-
ter, by consent of the Solicitors of the Complain-
ant and defendant, until Thursday, October 16th,
1929, due and legal service of which Summons was
acknowledged by Amos M. Waln, as Solicitor for
said defendant, John Chopke, as more fully ap-
pears from said Summons hereto annexed and
made a part of this Report.

40 3. And I further report that on Thursday, the

Master's Report and Depositions

16th day of October, 1929, at eleven o'clock in the forenoon of that day, I attended at my office, and was attended by Harry B. Brockhurst, Solicitor of the Complainant, and by Amos M. Waln, Solicitor of the defendant, John Chopke.

I thereupon proceeded to take proofs and depositions relative to the matters and things referred to me in and by said Order of Reference, which proofs and depositions are hereto annexed and made a part of this Report.

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4. I find and report that the Complainant is the holder and owner of two Certificates of Tax Sale covering the lands and premises particularly described in the Bill of Complaint filed herein, and also known on City Atlas, page 46-D, as Lot 196, Ward 5, East Paul Avenue, City of Trenton.

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5. And I report that Harry B. Brockhurst, Solicitor of the Complainant, Harrington Company, produced before me the said Two Certificates of Tax Sale, the *first* of which is dated the 23rd day of September, 1926, and certifies that Clinton J. Swartz, Receiver of Taxes of the City of Trenton, in the County of Mercer, and State of New Jersey, on the 9th day of September, 1926, sold to said Complainant, Harrington Company, for the sum of \$13.03, for the non-payment of the 1925 taxes, the lands and premises aforesaid;

30

That the amount of the sale was made up of the following items:

Taxes, 1925	\$8.45
Interest	.58

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Master's Report and Depositions

Costs as follows:

	Preparing sale	\$0.25	
	Selling	.25	
	Certificate	.50	
10	Advertising	3.00	4.00
			\$13.03

20 Said Certificate recites that said sale is subject to redemption on repayment of the amount of the sale, together with interest thereon at the rate of eight per centum per annum from the date of sale and the costs incurred by the purchaser; that the right to redeem will expire in six months after service of notice to redeem, except that the right to redeem shall extend for two years from the date of sale; said Certificate of Sale was first duly acknowledged and then recorded in the Office of the Clerk of Mercer County on November 15th, 1926, in Book 437 of Mortgages for said County, at page 168 etc., and is marked by me as Exhibit C-1 on the part of the Complainant, Harrington Company; I find that there is now due to the Complainant on this Certificate of Tax Sale the sum of \$28.24 as appears by the proof of Rowe E. Whitman, Secretary of the Complainant, and by the accompanying schedule, both of which are hereto annexed and made a part of this Report.

30 6. The *Second* of said Certificates is dated the 21st day of September, 1927, and certifies that said Clinton J. Swartz, Receiver of Taxes afore-said, on the 9th day of September, 1927, sold to said Complainant, Harrington Company, for the

Master's Report and Depositions

sum of \$16.72, for the non-payment of the 1926 taxes, the aforesaid lands and premises;

That the amount of the sale was made up of the following items:

Taxes, 1926	\$11.85	10
Interest	.67	

Costs as follows:

Preparing sale	\$0.25	
Selling	.25	
Certificate	.50	
Advertising	3.00	4.00
	\$16.72	20

Said Certificate recites that said sale is subject to redemption on repayment of the amount of the sale, together with interest thereon at the rate of eight per centum per annum from the date of sale and the costs incurred by the purchaser; that said sale is subject only to municipal liens accruing after July 1, 1927; that the right to redeem will expire in six months after the service of notice to redeem, except that the right to redeem shall in all cases extend for two years from the date of sale; said Certificate was first duly acknowledged and then recorded in the Office of the Clerk of Mercer County on December 5th, 1927, in Book 477 of Mortgages for said County, at page 22 etc., and is marked by me as Exhibit C-2 on the part of the Complainant, Harrington Company; and I find that there is now due to the Complainant, on this Certificate of Tax Sale the sum of \$30.84 as ap-

Master's Report and Depositions

pears by the proof of Rowe E. Whitman, Secretary of the Complainant as aforesaid, and by the accompanying schedule, both of which are hereto annexed and made a part of this Report.

10 7. And I do further find and report that said
Certificates marked Exhibits C-1 and C-2 were
made, executed and delivered to the Complainant,
Harrington Company, the purchaser thereof, by
the Tax Receiver of said City of Trenton, in ac-
cordanance with the provisions of an Act of the
Legislature of the State of New Jersey, entitled
"AN ACT CONCERNING UNPAID TAXES, ASSESSMENTS
AND OTHER MUNICIPAL CHARGES ON REAL PROPERTY
AND PROVIDING FOR THE COLLECTION THEREOF BY THE
20 CREATION AND ENFORCEMENT OF LIENS THEREON (Re-
vision of 1918)" approved March 4th, 1918, and
the various acts supplemental thereto and amend-
atory thereof.

30 8. And I do further find and report that more
than two years have elapsed since the date of sale
set forth in the Certificate of Tax Sale marked
Exhibit C-1, namely, September 9th, 1926, and
that the lands and premises set forth and de-
scribed in said Certificate of Tax Sale have not
been redeemed from the sale mentioned and de-
scribed therein by any of the defendants herein,
nor by any person or persons whomsoever.

40 9. And I do further find and report that the
Bill of Complaint filed in this cause was filed to
foreclose the right of redemption of the defend-
ants in the lands and premises described in said
Certificate of Tax Sale marked Exhibit C-1 as
aforesaid, and also particularly mentioned and
described in said Bill of Complaint.

Master's Report and Depositions

10. And I do further find and report that there is now due to the Complainant on its two Certificates of Tax Sale marked Exhibits C-1 and C-2, the aggregate sum of \$59.08.

All of which is respectfully submitted this 17th day of October, A. D., 1929.

10

DANIEL P. BYRNES

Master in Chancery of New Jersey.

MASTER'S FEES

Making report	\$10.00
Sessions (1)	6.00
Drawing Report (15 fol. @	
40c)	6.00
Drawing Depositions (60 fol.	
@ 30c)	18.00
Exhibits (11)	1.65
Witnesses (4)	1.00
Summons (1)	.40
	\$43.00

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SCHEDULE

EXHIBIT C-1.

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Amount paid at Sale.....	\$13.03	
Recording fee	2.00	
Interest from September 9, 1926 to		
October 16, 1929, 3 Yrs. 1 Mo.		
7 Das. at 8%.....	3.21	
Legal fees	10.00	\$28.24

40

Master's Report and Depositions

EXHIBIT C-2.

	Amount paid at Sale.....	\$16.72	
	Recording fee	2.00	
	Interest from September 9th, 1927 to October 16th, 1929, 2 Yrs. 1 Mo.		
10	7 Das. at 8%.....	2.12	
	Legal fees	10.00	\$30.84
			\$59.08

DANIEL P. BYRNES

Master in Chancery of New Jersey.

20 I, Daniel P. Byrnes, one of the Masters of the Court of Chancery, hereby certify that the depositions hereto annexed were taken in my immediate presence and hearing by Grace Brennan, a stenographer, who was first sworn by me faithfully and truly to take stenographically and reproduce in manuscript or typewriting, the testimony given; and I believe that the same depositions accurately state the evidence given.

Dated, Jersey City, N. J., October 17th, 1929.

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DANIEL P. BYRNES

Master in Chancery of New Jersey.

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Stenographer's Oath

State of New Jersey, }
County of Hudson, } ss.:

GRACE BRENNAN, of full age, being duly sworn according to law, on her oath, deposes and says:

I will carefully, faithfully and impartially take the evidence given in this cause on behalf of Complainant, Harrington Company and of the defendant, John Chopke, before Daniel P. Byrnes, one of the Masters of this Court, pursuant to the Order of Reference made by this Court in this matter on the Seventh day of October, A. D., 1929, and make a true and correct transcript thereof. 10

GRACE BRENNAN 20

Sworn and subscribed to before me }
this 16th day of October, A. D., }
1929, at Jersey City, N. J. }

DANIEL P. BYRNES
Master in Chancery of New Jersey.

Master's Summons on Reference 30

By virtue of an Order of Reference made to me in the above entitled cause, you are hereby summoned to be and appear before me, one of the Masters of this Court, at my office (Room 602, Trust Company of New Jersey Building), No. 921 Bergen Avenue, in the City of Jersey City, County of Hudson and State of New Jersey, on Wednesday,

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Testimony Taken on Reference

the 16th day of October, A. D., 1929, at eleven o'clock in the forenoon of that day, at which time and place I shall proceed to examine witnesses and to take such proofs as may be offered before me to ascertain what is due the complainant upon its Certificate or Certificates of Tax Sale, as required by said Order of Reference.

Dated, Jersey City, N. J., October 7th, 1929.

DANIEL P. BYRNES,
Master in Chancery.

To:

JOHN CHOPKE.

HARRY B. BROCKHURST,
Solicitor.

Due and legal service of the within Summons is hereby acknowledged this 10th day of October, A. D., 1929, by

AMOS M. WALN,
Solicitor for the
Defendant, John Chopke.

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Testimony Taken on Reference

Testimony of witnesses, produced, sworn and examined before me, a Master in Chancery of New Jersey, pursuant to an Order of Reference made in this cause on the seventh day of October, 1929, at my office, No. 921 Bergen Avenue, Jersey City, New Jersey, at eleven o'clock in the forenoon, on the sixteenth day of October, 1929; said hearing having been previously set down for

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Testimony Taken on Reference

the 11th day of October, 1929, before me, and having been duly adjourned from that date to the present time at the request of Mr. Amos M. Waln, Solicitor of the defendant, John Chopke.

Said testimony was taken down stenographically by Grace Brennan, who was first duly sworn and subscribed to an oath to carefully, faithfully and impartially take the evidence and make a true and correct copy thereof, which oath is hereto annexed and made a part hereof.

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APPEARANCES:

Mr. HARRY B. BROCKHURST, Solicitor for the Complainant, Harrington Company.

Mr. AMOS M. WALN, Solicitor for the defendant, John Chopke.

20

The signatures of the witnesses to their respective testimony being hereby waived by the aforesaid parties.

Mr. Brockhurst: I offer Certificate of Sale bearing Collector's number 527, for the 1925 taxes, covering premises shown on City Atlas 46-D, Lot 196, Ward 5, on East Paul Avenue, Trenton, certifying to the sale of said premises on September 9th, 1926, for the sum of \$13.03, redeemable at eight per cent. interest, which Certificate was made by Clinton J. Schwartz, Receiver of Taxes of Trenton, duly acknowledged by the said Receiver on September 23, 1926, before Charles D. Bird, Master in Chancery of New Jersey, and duly recorded in Book of Mortgages 437, in the County Clerk's Office of Mercer County, at page 168, on November 15th, 1926, at 9.30 A. M. I offer this Certificate and also a certificate attached thereto

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Testimony Taken on Reference

by Harry C. Hartpence, and ask that the same be marked in evidence.

The Master: I mark said Certificate as Exhibit C-1.

10 Mr. Brockhurst: I offer Collector's Certificate Number 691, covering the lands therein described as City Atlas 46-D, Lot 196, Ward 5, on East Paul Avenue, certifying to the sale of the said premises on September 9th, 1927, to the Harrington Company, for the delinquent taxes of 1926, for the sum of \$16.72, redeemable at eight per cent. interest, Certificate dated September 21, 1927, and made by Clinton J. Schwartz, Receiver of Taxes, and duly acknowledged by Clinton J. Schwartz on September 21, 1927, before Charles E. Bird, Master in Chancery of New Jersey, and recorded in the Mercer County Clerk's Office in Book 477 of Mortgages, at page 22, on December 5th, 1927, at 10.10 A. M., and a Certificate by Charles P. Hutchinson, County Clerk, attached thereto, certifying to the recording, and ask that it be marked in evidence.

20

The Master: I mark this Certificate as Exhibit C-2.

30 Mr. Brockhurst: I also offer the search of these premises and the report on the title search of these premises, made by William C. Webb, whose signature is affixed to the report, and which signature I recognize to be Mr. Webb's signature, together with the diagram annexed showing the location of the premises and the abstract of the deeds and other instruments affecting the title to the premises.

40 Mr. Waln: I object to the admission of the search which is now offered; under the order of reference the question of allowance of search fees is reserved, and the Master, as I understand from

Testimony Taken on Reference

the terms of the Order of Reference, is not to report on any search fees.

The Master: The objection of the Solicitor for the defendants is noted on the record, as requested.

Mr. Brockhurst: I offer the search of the title, the report on the title, also the requisition for tax search, the diagram identifying the property, the abstract of the different instruments on record, the certificate of judgment search, the tax search made by Edward W. Lee, covering this property, and the judgment search made by Simpson Wallace, also the schedule showing the estimation of the fees, and ask that they be marked in evidence under one number as an Exhibit, which request has been objected to by the defendants.

The Master: I mark the foregoing papers, consisting of 26 pages, as Exhibit C-3.

Mr. Brockhurst: I also offer before the Master copy of the bill of complaint, copy of the *lis pendens*, a copy of the notice of the filing of the complaint, the receipt card by the Clerk in Chancery of the receipt of the bill, copy of the subpoena and tickets issued, copy of the application made by Mr. Waln, to fix the sums due to complainant, returnable at Trenton on August 13th, 1929, copy of the petition filed by Mr. Waln, as Solicitor, copy of an affidavit attached thereto by John Chopke sworn to August 3rd, 1929, a copy of notice of tender, a copy of notice of motion to be made by Mr. Waln on August 13th, 1929, at Trenton, a receipted card for an answer filed by Mr. Waln on September 4th, 1929, a decree *pro con* entered against Anna Chopke in the City of Trenton, on September 18th last, and a copy of a stipulation

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Rowe E. Whitman, direct

10 continuing motion to strike out answer and answer in lieu of plea. I offer these at this time for the purpose of placing before the Master a complete list of papers filed in this cause, and also to facilitate any further hearing that may be on in this matter before the Court on the return of the Master's Report.

Mr. Waln: I object to the admission of all of these documents that purport to be copies of the originals which are on file in the Chancery Clerk's Office and in other offices. There is no proof that the copies offered here are true copies and I think that the originals could be produced. The file could be produced from the Chancery Clerk's Office without any trouble.

20 Mr. Brockhurst: Under those circumstances I offer the original file in the Chancery Clerk's Office.

Mr. Waln: Mr. Brockhurst produces certain papers which he states are copies of other documents. I object to these papers being used as such copies because there is no proof whatever that they are copies and nothing along that line, except Mr. Brockhurst's mere statement of that.

30 The Master: Your objection shall be noted on the record.

The Master: The aforesaid papers, consisting of thirty-eight pages, are marked by me as Exhibit C-4.

ROWE E. WHITMAN, a witness on the part of the Complainant, being duly sworn by the Master and examined by Mr. Brockhurst, testified as follows:

40 Q. Mr. Whitman, you are the Secretary of the Harrington Company? A. I am.

Rowe E. Whitman, direct

Q. As such Secretary you have charge of the books, records and papers of the office? A. I have.

Q. I show you two Certificates of Tax Sale bearing Collector's numbers 527 and 691, respectively, and ask you if these Certificates of Sale are part of the records of the Harrington Company, which refer to the lands and premises described in the Bill of Complaint in this cause? A. They are. 10

Q. And which Certificates are marked Exhibits C-1 and C-2? A. Yes, they are.

Q. Have you the records of the Company with you relating to these two purchases? A. I have.

Q. I show you two cards marked 14278 and 15149, respectively. Do these cards refer to the lands located in the City of Trenton, known as City Atlas, page 46-D, Lot 196, Ward 5, City of Trenton, assessed against John Chopke, on East Paul Avenue, Trenton? A. Yes, they do. 20

Q. Have you computed the interest due on each of these two certificates from the date of sale to the present time and if so what is the amount of the interest?

Mr. Waln: I object to that question. Computation of the interest is a matter for the Master; the amount of sale is shown in the Certificates and the statute fixes the rate. It is simply a matter of calculation. 30

Mr. Brockhurst: It is the Master's duty to compute the amount due but this testimony is offered simply as a means of verifying such computation as may be made by the Master.

A. I have. 40

Rowe E. Whitman, direct

Q. What is the amount of interest as computed?

A. On the Certificate covering the 1925 taxes the amount of interest is \$3.21, at the rate of eight per cent. The amount of interest covering the 1926 taxes is \$2.12, at eight per cent.

10 Q. Will you state from what date to what date and on what amount this interest was computed?

A. On card 14278, from September 9, 1926, to October 16th, 1929, at eight per cent. on \$13.03. On card 15149, from September 9th, 1927, to October 16th, 1929, at eight per cent. on \$16.72.

Q. Will you state the total amount due to date on each of these two Certificates and state what the various items are for?

20 Mr. Waln: I object to him using the cards as reference.

The Master: The objection shall be noted on the record.

Q. Is card 14278 a part of the Harrington Company records? A. It is.

Q. And refers to which Certificate? A. Refers to Certificate 527, marked Exhibit C-1, and shows:

30	The amount paid the Collector	\$13.03
	Interest	3.21
		\$16.24
	Expenses for recording	2.00
	Search fee	10.00
	Total	\$28.24

40 Our office record card No. 15149 covers Certificate of Sale No. 691, being Exhibit C-2, and is as follows:

Rowe E. Whitman, cross

Amount paid Collector	\$16.72
Interest	2.12
Recording fee	2.00
Expenses	10.00
Total	\$30.84

10

Cross examination by Mr. Waln:

Q. Do you know whether the two items of \$2.00 recording fee on each of these Certificates was actually paid to the County Clerk? A. Yes, it was.

Q. Do you know whether proof of disbursements and memorandum of search fees were actually filed in the Office of the Receiver of Taxes at Trenton on each of these two liens? A. They were.

20

Mr. Brockhurst: Have you seen the premises in question in this suit?

A. No, I have not visited the premises.

Q. Has either of these two Certificates been redeemed at any time at the office of the Company? A. No, they are still open.

Q. Has any tender of any money ever been made at the office of the Company? A. It has not.

30

By Mr. Waln:

Q. Do you know who paid the recording fee of the County Clerk? A. Yes, the Harrington Company, by their check.

Q. Do you know whether proof of disbursements and certificate or memorandum of search were filed with the Collector of Taxes. Did you actually file them yourself? A. Yes.

40

Rowe E. Whitman, redirect

Q. Did you get the Collector's receipt for filing? A. Never received a receipt from the Collector.

Q. Is that the way you know that they were filed with the Collector, because you mailed them?

10 A. Yes, neither the memorandum of search, nor the proof of disbursements mailed to the Collector have ever been returned to the office. The envelope in which they are mailed has the name of Harrington Company and the address in the upper left hand corner, and the proofs and memorandum were never returned.

By Mr. Brockhurst:

20 Q. Have you been at the office of the Collector of Taxes at Trenton since the mailing of these memorandum of search and proofs of disbursements, and have you seen the Collector there personally? A. I have.

30 Q. Has he had any conversation with you when you saw him at his office, in regard to him having failed to receive the memorandum of search and proof of disbursements? A. I had a conversation with Mr. Schwartz last September, 1929, and at that time a question came up regarding the tax law and he informed me that he would not collect any fees on any certificates purchased at his sales unless proofs and memorandum had been filed in his office, and we have had a redemption after the ten day period in which Mr. Schwartz has not allowed us the fees or interest allowed by the statute.

40 Q. The question was, had you any conversation with Mr. Schwartz, the Collector of Taxes, since the mailing of these proofs and memorandum to

Harry B. Brockhurst, direct

him, in which he stated that he did or did not receive said proofs and memorandum? A. No, I have not.

Q. Has your Company incurred or paid out these expenses which you have entered on each of these Certificates? A. Yes.

10

MR. BROCKHURST, a witness on the part of the Complainant, being duly sworn by the Master, testified as follows:

I am the Solicitor of the Complainant in this cause.

The latter part of August, I believe about the 29th or 30th of August, I went personally to Trenton to look over the premises of the defendants in this suit. I saw the premises in question which is described in the two Certificates of Sale offered as Exhibits C-1 and C-2, and those premises are the same premises that are set out and shown in the diagram of the property annexed to the search filed here and marked Exhibit C-3. I caused the various searches, that have been offered in evidence under the designation of Exhibit C-3, to be made and I computed the estimation of fees attached to that search and that show 2819 books examined by means of the indices thereto in this search, also the bill of complaint and *lis pendens*, subpoena, tickets and decree *pro con* were filed by me in this cause, and the fees paid to the Clerk in Chancery thereon by me, and the fees paid to the County Clerk for recording the *lis pendens* amounting to \$1.25. I also attended at two notices of motion given to me as Solicitor of the Complainant, by Mr. Waln.

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Harry B. Brockhurst, cross

Mr. Waln: I object to this testimony. The Orders entered ordering this motion would show the appearance. The question of the appearance of the Solicitor of the Complainant on this motion is irrelevant at this hearing.

10

The Master: Your objection shall be noted on the record.

Cross examination by Mr. Waln:

Q. At the time that you went to Trenton, Mr. Brockhurst, and viewed the property as you have testified, did you have the diagram that you mentioned with you, and the tax certificates? A. I did.

20

Q. What relation, if any, does the person who made the search that you have offered in evidence, bear to the Complainant or to your office? A. Simply an employee of mine.

Q. A regular employee of yours? A. Yes, to this extent, I give him all the searches that I have made on foreclosures, and he makes them for me, he also works for other persons.

Q. Do you pay him a salary? A. No.

30

Q. How do you pay him for the searches he makes? A. By check.

Q. On what basis? A. On the basis of each search made.

Q. When and how much did you pay him for the making of the search which you have offered in evidence?

Mr. Brockhurst: I refuse to answer as it is immaterial and irrelevant.

40

Q. Has he been paid for making the search

Martin P. Devlin, Jr., direct

which you have offered in evidence? A. He was paid when he delivered the search to me.

Q. How much did you pay him at that time?

Mr. Brockhurst: I refuse to answer as it is immaterial and irrelevant.

10

Q. Where does he make his headquarters? A. At his office in Newark.

Q. Is that a branch office of yours, or is he connected with your office? A. In no way, shape, manner or form is he connected with me, or with my business, either as a relative or as a matter of business.

Q. Does the person who has made this search in question do other work for you besides making searches? A. No.

20

MR. MARTIN P. DEVLIN, JR., a witness on the part of the Defendants, being duly sworn by the Master, being examined by Mr. Waln, testified as follows:

Q. You are an Attorney at Law of the State of New Jersey? A. I am.

30

Q. And you are also a Solicitor of this Court? A. I am.

Q. Where are you engaged in the practice of law? A. In the Broad Street Bank Building, Trenton, New Jersey.

Q. With whom? A. With my father, Martin P. Devlin, Sr.

Q. Is that as a partnership, or individually? A. As a partnership.

Q. Under what name? A. Martin P. Devlin and Son.

40

Martin P. Devlin, Jr., direct

Q. Do you know whether your father was consulted by the defendant, John Chopke, in this matter? A. I do.

Q. Do you know about when that was? A. I don't believe I know the date.

10 Q. Can you tell, by reference to these letters?
A. Yes, I can, about the middle of July, 1929.

Q. And at that time did the defendant, John Chopke, bring any letter or document to your father? A. He did.

20 Q. I show you what appear to be two letters, the first appearing to be addressed to John Chopke on the stationery of and appearing to be signed by Harry B. Brockhurst, and the other on similar stationery and addressed to Mr. Brockhurst, and ask if they are the two letters which the defendant, John Chopke brought to your father at that time? A. They are.

Mr. Waln: I offer these and ask that they be marked as Exhibits.

The Master: I mark them as Exhibits D-1 and D-2.

30 Q. Do you know whether your father communicated with Mr. Brockhurst as a result of the conversation with the defendant, Chopke? A. I do.

Q. I show you a letter, dated July 24th, 1929, and ask you if it is the letter your father caused to be sent? A. Yes, it is.

Mr. Waln: I offer this letter and ask that it be marked as an Exhibit.

The Master: I mark it as Exhibit D-3.

40 Q. At that time, did your father or you receive

Martin P. Devlin, Jr., direct

an answer to the last named letter from Harry B. Brockhurst? A. We did.

Q. I show you a letter and ask if that is the letter? A. It is.

Mr. Waln: I offer this letter and ask that it be marked as an Exhibit.

10

The Master: I mark it Exhibit D-4.

Q. After the date of the last letter that you have referred to, did your father receive a further letter from Mr. Brockhurst in this matter? A. He did.

Q. Is that the letter he received? A. Yes, it is.

Mr. Waln: I offer this letter and ask that it be marked as an Exhibit.

20

The Master: I mark it as Exhibit D-5.

Q. Do you remember, Mr. Devlin, whether you inquired of the Receiver of Taxes of the City of Trenton, as to the amounts due to the Complainant upon its tax liens upon the property in question in this suit?

Mr. Brockhurst: I object to this. It is immaterial and irrelevant.

30

The Master: Objection noted.

Q. And were you informed by the Collector of Taxes of the City of Trenton as to the amounts that were due on these Certificates of Tax Sale covering the premises concerned in this suit?

Mr. Brockhurst: I object on the same grounds.

The Master: Objection noted.

40

A. Yes, I was.

Martin P. Devlin, Jr., direct

Q. Do you remember what amounts the Receiver of Taxes informed you were due upon the said Certificates?

Mr. Brockhurst: Objection on the same grounds.

10

The Master: Objection noted.

20

A. On the sale of the 1925 taxes, he stated that the amount was \$13.03 due on that tax sale certificate and on the tax sale certificate for the year 1926, sold on September 9, 1927, the sum of \$16.72 was due. On the Tax Certificate for the taxes for the year 1925 was due eight per cent. interest from September 9th, 1926; and on the Tax Certificate for the year 1926, the amount of \$16.72, was due eight per cent. interest from September 9th, 1927. There was also due a search fee amounting to \$10.00.

Q. The amount of \$10.00 was due on one of the Certificates or on each of them? A. On each of them.

Q. Do you remember going in company with me to the office of the Receiver of Taxes of the City of Trenton in this matter? A. I do.

30

Q. Do you remember when it was? A. I don't remember when it was.

Q. Do you remember what month it was? A. I think September. I am not sure of that.

Q. Can you fix the date by the date of the notice of the filing of the bill of complaint? A. I cannot tell you the month.

40

Q. Have you any recollection of seeing the notice of the filing of the bill of complaint in this cause, in the Receiver of Taxes office? A. Yes, it was shown to me.

Martin P. Devlin, Jr., direct

Q. From the date of service which appears on the notice, Exhibit C-3, can you tell when it was that you went with me to the office of the said Receiver of Taxes? A. Yes.

Mr. Brockhurst: I object because the date of service does not appear on the Exhibit but the date of acknowledgment of service does appear. 10

(Mr. Waln reframes question to state the acknowledgment of service in place of date of service.)

A. Yes, August 2, 1929.

Q. Do you know the purpose of going to the Collector's office on that date? A. To make a tender of the amount due. 20

Q. Was a copy of a notice marked Exhibit C-3 shown to us on that date by the Collector of Taxes? A. It was.

Q. Did you, or did you not hear me, on that day, state to the Collector of Taxes that we desired to make redemption on that day from the tax liens in this matter?

Mr. Brockhurst: I object to that question. It is immaterial, irrelevant and hearsay. 30

A. I did.

Q. And what was the answer, if any, of the Receiver of Taxes?

Mr. Brockhurst: Objection on same grounds.

A. That he could not receive a tender as a no- 40

Martin P. Devlin, Jr., cross

tice that the bill had been filed in the matter, had been served upon him.

Cross examination by Mr. Brockhurst:

10 Q. Do you take care of all the matters for your father? A. No, not all.

Q. Did your father discuss the receipt of Exhibit D-1 with you? A. That is your letter? Yes, he did.

Q. And in answer to Exhibit D-1 and the schedule that was enclosed therein he replied by his letter of July 24th? A. He did.

Q. And did not fill out or answer any of the questions contained in the schedule Exhibit D-1? A. Not to my knowledge.

20 Q. But retained it in his office? A. Yes.

Q. And in reply to your father's letter, Exhibit D-3, you received from me the letter Exhibit D-4? A. Yes.

Q. He discussed it with you also? A. He did.

Q. And after receiving my letter, Exhibit D-4, he did not fill out or answer any of the questions set out in Exhibit D-2, but still retained it in his office? A. He did, to the best of my knowledge.

30 Q. And did he discuss Exhibit D-1 with you after receiving my letter, Exhibit D-4? A. No, he didn't discuss that.

Q. And then he received this letter, Exhibit D-5, from me also, and discussed that matter with you again? A. Yes.

Q. And then your father wrote this letter, dated August 8th, 1929? A. Yes.

Q. Is that your father's signature? A. No, it is the signature of the stenographer in the office.

40 Q. So up to August 8th your father made no

Martin P. Devlin, Jr., cross

reply or furnished none of the information that was requested in the schedule marked Exhibit D-2? A. No, he did not, to my knowledge.

Q. And you have knowledge of all the matters pertaining to this action while it was in your father's office? A. I wouldn't answer that, yes.

10

Q. Would you answer it, no? A. I will answer it, yes.

Q. Now, after August 8th you went to the Collector's office in the City Hall to procure some information in this matter? A. I made two trips out there. I don't know whether the second trip was after August 8th or not.

Q. Referring to Exhibit C-5 and the date of that letter, would that help to refresh your memory as to whether it was after August 8th or not that you made a visit to the Collector's Office? A. No, I can't say that it would.

20

Q. You visited the Collector's office with Mr. Waln? A. I did.

Q. And at that time Mr. Waln represented the defendant, Chopke? A. Yes, he did.

Q. And Mr. Waln did not represent the defendant, Chopke, to your knowledge, prior to August 8th? A. Yes, he did.

30

Q. On what date did Mr. Waln take over the case? A. Mr. Waln was in the office in regard to this matter a few days or a week before August 8th, and at that time it was placed in his hands.

Q. When you went to the Collector's office a few days before August 8th, who did you see? A. A Mr. Tilton, I think that is his name, and Mr. Schwartz, Collector of Taxes.

Q. With whom did you converse? A. With both parties and also the City Counsel, Charles E. Bird.

40

Martin P. Devlin, Jr., cross

Q. Did either you or Mr. Waln ask to see the proofs of disbursements or memorandum of search in this matter? A. I did, I don't know whether Mr. Waln did or not.

10 Q. In giving the items due for the redemption of each of these liens, did Mr. Schwartz refer to any records? A. I don't think he did.

Q. Then the figures Mr. Schwartz gave to you and which you have testified to in your direct examination was given from his memory only? A. No, they were not given to me by Mr. Schwartz, they were given to me by Mr. Tilton, at his office.

20 Q. Did Mr. Tilton refer to any records when he gave you the figures you have testified to in your direct examination? A. Yes.

Q. What records did he refer to? A. The records of the office.

Q. Did you see the records? A. I saw some of the records, I cannot testify as to what records I did see.

Q. How many records did you see? A. I cannot testify as to that.

Q. Do you know what records you did see? A. No, I saw him open books.

30 Q. At the time Mr. Tilton gave you these figures he had already informed you that a notice of the filing of a bill of complaint had been served upon him? A. Yes.

Q. You have examined the records in the Chancery's Clerk's Office? A. No, I have not.

Q. Are you sure? A. Yes.

Fred H. Pierson, direct

MR. FRED H. PIERSON, a witness on the part of the Defendant, being duly sworn by the Master and being examined by Mr. Waln, testified as follows:

Q. Mr. Pierson, where do you live? A. At Trenton.

10

Q. On August 15th, 1929, were you employed by me for any purpose? A. Yes.

Q. For what purpose? A. For the purpose of going to Jersey City to tender a sum of money to Mr. Brockhurst.

Q. And do you remember what date you went to Jersey City? A. August 15th, 1929.

Q. And where did you come? A. To Mr. Brockhurst's office.

Q. In the City of Jersey City? A. Yes.

20

Q. Did you offer him any money? A. Yes.

Q. And the amount? A. \$102.88.

Q. Was that in check or cash? A. Cash.

Q. And at the same time that you offered Mr. Brockhurst this money, did you give him a document, entitled "A Notice of Tender"? A. Yes.

Q. I show you one of the papers that is marked Exhibit C-4 and entitled "Notice of Tender" and ask you if that is the notice that you gave Mr. Brockhurst at that time? A. Yes.

30

Q. Did you tell him at that time what the money you were offering him was in payment of? A. Yes.

Q. And what did you tell him? A. I told him it was in payment of that amount shown in the notice in this case.

Q. Did Mr. Brockhurst accept the money which you offered him? A. No.

Q. What did he say? A. He didn't know

40

Fred H. Pierson, direct

whether the statutory fees was included in that or not and he wanted me to produce the taxed bill of costs.

10 Q. At that time did he or did he not refuse to accept the sum of money? A. He refused to accept the sum of money.

Q. On August 24th, 1929, were you again employed by me for the purpose of making a tender to Mr. Brockhurst? A. Yes.

Q. And where did you go then? A. Barbour Square, Elberon.

Q. Did you go anywhere else first? A. To his office in Jersey City.

Q. Was he present at his office in Jersey City? A. No.

20 Q. Did you learn at his office where he then was? A. Yes.

Q. And where did you say you then went? A. Barbour Square, Monmouth County, New Jersey.

Q. And did you see Mr. Brockhurst there? A. Yes.

Q. Did you offer Mr. Brockhurst, at that time, any money? A. Yes.

Q. How much did you offer him? A. \$113.10.

Q. Was that sum of money in cash? A. Yes.

30 Q. Did you tell him what that sum was offered for? A. \$102.88 and the rest for Sheriff and subpoena fees.

Mr. Brockhurst: I object to any more testimony along this line as it is most leading.

The Master: Objection noted.

40 Q. Won't you state just what you told him and all that you told him that you were making this

Fred H. Pierson, cross

offer of this sum of money for? A. I told Mr. Brockhurst that I was down to settle the matter between Harrington Company versus John Chopke, and that I had the additional fees, subpoena and Sheriff's fees.

Q. On this last mentioned occasion did you give Mr. Brockhurst any other document? A. No. 10

Q. Just offered the money and showed him the papers? A. Yes.

Q. For the purpose of refreshing your memory I show you what purports to be a bill of costs taxed by the Clerk of this Court, and after looking at that paper can you state whether you gave Mr. Brockhurst any document at that time, at the time you made this offer of money? A. I showed Mr. Brockhurst all the papers and he refused to accept them, saying that he was in his office five days a week in Jersey City, and that he couldn't do business outside of his office and that he wouldn't accept any money. 20

Q. Did you show him any copy of a bill of costs? A. I showed him that paper with a bill of costs.

The Master: I mark this paper as Exhibit D-6.

30

Cross examination by Mr. Brockhurst:

Q. On what date did you call at my office in Jersey City? A. August 15th, 1929.

Q. August 15th was not the first day you called at my office? A. No.

Q. What was the first date you called? A. I cannot say the date.

Q. You served some papers on me on the first day you called? A. Yes. 40

Fred H. Pierson, cross

Q. They were notices returnable before the Chancellor at Trenton? A. Yes.

Q. On August 15th you called and served a petition, affidavit and notice on me? A. Yes.

10 Q. And we conversed over the matter for some time? A. Yes.

Q. And I complained that there was no counsel fee, search fee, or bill of costs served on me. A. Yes.

Q. And I stated that for that reason I could not accept tender? A. Yes.

Q. And we were the best of friends when you went away? A. Yes.

Q. Then you saw me again on August 24th at Elberon? A. Yes.

20 Q. On August 24th, that day was a Saturday, about three or four o'clock in the afternoon? A. Yes.

Q. And I stated to you that I transacted my business in my office five days a week and that I didn't transact my business at my home. A. Yes.

Q. With that we parted friends and you went away? A. Yes.

30 Q. You have stated, Mr. Pierson, that you showed to me this paper marked Exhibit D-6, on August 24th, at my home. A. Yes.

Q. Are you sure that you did this? A. I told you that I had these papers with me but you refused to look at them.

Q. Then the fact is that although you had this paper, Exhibit D-6 with you, it was not shown to me at that time? A. No.

Q. You gave me no further tender or sum or saw me again until today? A. No.

40

Mr. Waln: I would like to offer in evi-

Exhibits

dence the receipt of the Clerk of this Court for a payment of \$116.76.

Mr. Brockhurst: I object to the offering of this receipt, because it is not shown under what authority or order the payment was made.

The Master: Objection noted on the record. I mark the receipt as Exhibit D-7.

10

DANIEL P. BYRNES,
Master in Chancery
of New Jersey.

Exhibit C-1

20

CERTIFICATE OF SALE

(Chap. 237, Laws 1918)

I, Clinton J. Swartz, Receiver of Taxes of the City of Trenton, in the County of Mercer, and State of New Jersey, do hereby certify that at a public sale of real estate for delinquent taxes and assessments held on Sep 9 1926, I sold the property described below to Harrington Co., for the sum of Thirteen dollars and Three cents. City Atlas, page 46 D, Lot No. 196 Ward 5, Street East Paul Ave.,

30

Beginning at a point in the northerly line of Paul Ave. said point being distant about 50 ft. easterly from the northeast corner of Paul Ave. & Nassau St. runs thence (1) easterly along the northerly line of Paul Ave. 14 ft. 6 inches to a point, thence (2) northerly 126.88 ft. to a point in the southerly line of Sholtis Alley, thence (3)

40

Exhibits

10 westerly along the southerly line of Sholtis Alley 64.6 ft. to a point in the easterly line of Nassau St., thence (4) southerly along the easterly line of Nassau St. 15 ft. to a point in the rear line of lots fronting on the northerly side of Paul Ave. thence (5) easterly along the rear line of lots fronting on the northerly side of Paul Ave. 50 ft. to a point, thence (6) southerly 111.88 ft. to a point in the northerly line of Paul Ave. and the place of beginning.

The above-mentioned property is assessed on the tax duplicate of said municipality to John Chopko et ux as the owner for the year 1926. The amount of sale was made up of the following items:

20	Taxes 1925	\$ 8.45
	Sewer assessment	\$
	Pavement or Street Improvement assessment	\$
	Drain assessment	\$
	Water charges	\$
	Sidewalk and Curb assessment.....	\$
	Previous Tax Sales	\$
	Snow removal	\$
30	Interest	\$.58

Costs as follows:

Preparing sale	\$0.25	
Selling	.25	
Certificate	.50	
Advertising	3.00	4.00

Amount of sale \$13.03

Exhibits

Said sale is subject to redemption on repayment of the amount of sale, together with interest at the rate of 8 per centum per annum from the date of sale, and the costs incurred by the purchaser. Said sale is subject only to municipal liens accruing after July 1, 19 .

10

The right to redeem will expire in six months after service of notice to redeem, except the right to redeem shall extend in all cases for two years from the date of sale. If there shall be no redemption within the said term limited by said notice, or if there shall be no redemption within twenty years after the purchaser has entered into open possession, since continued under the sale; then in either case, the right of redemption shall be barred.

20

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 23rd day of Sep 1926.

CLINTON J. SWARTZ [L. s.]
Receiver of Taxes.

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

30

BE IT REMEMBERED, That on this 23rd day of Sep 1926 before me, a Master in Chancery, personally appeared CLINTON J. SWARTZ, Receiver of Taxes of the Taxing district of the City of Trenton, in the County of Mercer, who, I am satisfied, is the individual described in and who executed the above Certificate of Sale; and I having made known to him the contents thereof, he thereupon acknowledged to me that he signed, sealed and

40

Exhibits

delivered the same as his voluntary act and deed,
for the uses and purposes therein expressed.

CHAS. E. BIRD
M. C. C. of N. J.

- 10 Recorded in Book of mortgages 437 Page 168
etc. of Mercer County, this 15th day of Nov.,
1926 at 9:30 A. M.

HARRY C. HARTPENCE
County Clerk.

Exhibit C-2

20

CERTIFICATE OF SALE

(Chap. 237, Laws 1918)

- 30 I, Clinton J. Swartz, Receiver of Taxes of the
City of Trenton, in the County of Mercer, and
State of New Jersey, do hereby certify that at a
public sale of real estate for delinquent taxes and
assessments held on Sept. 9, 1927, I sold the prop-
erty described below to Harrington Co. for the
sum of Sixteen dollars and seventy-two cents.
City Atlas, page 46D, Lot No. 196 Ward 5, Street
E. Paul

- 40 Beginning at a point in the northerly line of E.
Paul Ave. said point being distant 50' easterly
from the northeast corner of Paul Ave. and
Nassau St. runs thence (1) easterly 14.6' to a
point; thence (2) northerly 126' more or less to a
point in the southerly line of Sholtis Al. thence
(3) westerly along the southerly line of Sholtis
Al. 62' more or less to a point said point being
the intersection of the southerly line of Sholtis
Al. and the easterly line of Nassau St. thence (4)

Exhibits

southerly along the easterly line of Nassau St. 15' to a point; thence (5) easterly 50' to a point; thence (6) southerly 111.88' to a point in the aforesaid northerly line of Paul Ave. and the place of beginning.

The above-mentioned property is assessed on the tax duplicate of said municipality to John Chopo as the owner for the year 1927 10

The amount of sale was made up of the following items:

Taxes 1926	\$11.85	
Sewer assessment	\$	
Pavement or Street Improvement assessment	\$	
Drain assessment	\$	20
Water charges	\$	
Sidewalk and Curb assessment.....	\$	
Previous Tax Sales	\$	
Snow removal	\$	
Interest	\$.87	

Costs as follows:

Preparing sale	\$0.25	
Selling	.25	
Certificate	.50	30
Advertising	3.00	4.00

Amount of sale \$16.72

Said sale is subject to redemption on repayment of the amount of sale, together with interest at the rate of 8 per centum per annum from the date of sale, and the costs incurred by the purchaser. Said sale is subject only to municipal liens accruing after July 1, 1927. 40

Exhibits

10 The right to redeem will expire in six months after service of notice to redeem, except the right to redeem shall extend in all cases for two years from the date of sale. If there shall be no redemption within the said term limited by said notice, or if there shall be no redemption within twenty years after the purchaser has entered into open possession, since continued under the sale; then in either case, the right of redemption shall be barred.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this twenty first day of September, 1927.

20

CLINTON J. SWARTZ [L. S.]
Receiver of Taxes.

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

30

BE IT REMEMBERED, That on this twenty-first day of September 1927 before me, a Master in Chancery, personally appeared CLINTON J. SWARTZ, Receiver of Taxes of the Taxing district of the City of Trenton, in the County of Mercer, who, I am satisfied, is the individual described in and who executed the above Certificate of Sale; and I having made known to him the contents thereof, he thereupon acknowledged to me that he signed, sealed and delivered the same as his voluntary act and deed, for the uses and purposes therein expressed.

40

CHAS. E. BIRD
M. C. C. of N. J.

Exhibits

Recorded in Mortgage Book 477 Page 22 etc. of Mercer County, this 5th day of Dec., 1927 at 10:10 A. M.

CHARLES P. HUTCHINSON
County Clerk.

10

Exhibit C-3

Exhibit C-3 is a lengthy search of the premises from August 16, 1892 to the date of the search June 6, 1929, containing twenty six pages including the page of computation of books and records searched. It consists of the following report on title of John Chopko City of Trenton, Mercer County, known as Lot 196, City Atlas, page 46D, Ward 5, on E. Paul Avenue,—

20

“Upon a careful examination of the foregoing title for a period of thirty-seven years, I find same vested in fee simple in John Chopke (Chopko); spouse's name Anna; residence, directory gives 29 Virginia Avenue, 224 Coates Street and 319 Second Street, Trenton, New Jersey; subject to the following liens and conditions:—tax certificates, Book 437-168; 477-22; 503-55; mortgages, none; agreements, none;

30

Note, title known to be good by deed 184-131 and run from that date.

Dated, June 6th, 1929, 9 A. M.

WILLIAM C. WEBB,
Examiner of Titles.”

There are twenty pages of abstracted public records and notes taken from the County Clerk's and Surrogate's offices of Mercer County; there

40

Exhibits

are two pages showing maps of property taken from Sheet 46D, Atlas of the City of Trenton of 1920.

10 There is attached an official tax search of the premises made by the City Comptroller of the City of Trenton setting out the following liens against the said premises:

	“1929 Taxes, whole year	\$13.88
	1928 Taxes, whole year	13.42
	1926 Tax Sale to Individual @ 8%	13.03
	Costs	12.00
	1927 Tax Sale to Individual @ 8%	16.72
	Costs	12.00
	1928 Tax Sale to City @ 7%	17.80
20	Street Imp. No. 468	75.00
	Assessed June 21st, 1929	

30 I, Edward W. Lee, Comptroller of the City of Trenton, New Jersey, hereby certify that I have searched the Records of the City of Trenton, and do not find any unpaid taxes, street assessments, charges for curbing and paving, sewer and drain assessments, tax sale, water liens or other charges, affecting the above described property, except as above set forth.

Dated July 11th, 1929
Fees \$2.00

EDWARD W. LEE, Comptroller.”

40 There is a certificate of search of the records in the offices of the Clerk of the Supreme Court of this State and in the office of the Clerk of the United States District Court for this District, as follows:—

Exhibits

"I hereby certify that I have examined the indices found in the office of the Clerk of the SUPREME COURT OF THE STATE OF NEW JERSEY and in the office of the Clerk of the UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY and that I do not find thereon indicated any Judgment, Attachment, Mandate, Decree, Recognizance, Proceeding in Bankruptcy or other lien made up of record or filed against: 10

Elizabeth W. Dolton	}	from July 17, 1909 to Jan. 19, 1912	
Edward B. Dolton,			
Emma E. Dolton,			
Jonathan H. Blackwell,	}	from July 17, 1909 to Oct. 10, 1913	
George Sholtis,			
Mary M. Sholtis,	}	from July 17, 1909 to Apr. 30, 1921	20
Clarence G. Sholtis,			
George C. Sholtis,			
Edward J. Sholtis,			
May (Mary) K. Sholtis			
John Chopko (Chopke),	}	from July 17, 1909 to Jan. 11, 1923	
		from July 17, 1909 to date	

Dated Trenton July 18, 1929 at 9 A. M. Signed 30
Simpson Wallace"

Fees \$10.20

There is a computation of libers and years searched by the Title Searcher, attached, as follows:—

Exhibits

"NAME
F-426

10

20

30

40

		Searched to Liber Number	Searched From Liber Number	Number of Deed Liber Searched	Number of Mortgage Liber Searched	Recognizances	Mechanic's Liens	Sheriff's Bonds	Attachments	Lis Pendens	Federal Liens	Circuit Judgments	Common Pleas Judgments	Docketed Judgments	Total Number of Books and Years
	William Dolton	Deeds 343	183												
	8/15/1892—1/9/1912	Mtgs. 203	90	161	114	3			3	2		3	3	3	292
	Jonathan H. Blackwell	D 364	183												
	8/15/1892—10/10/1913	M 225	90	182	136	5	1	5	2			5	5	5	346
	Edward B. Dolton, Exr.	D 343	199												
	5/12/1895—1/19/1912	M 225	111	145	115	3		3	2			3	3	3	277
	Emma E. Dolton, Exr.	D 343	199												
	same period	M 225	111	145	115	3		3	2			3	3	3	277
	George Sholtis	D 501	362												
	9/25/1913—1/11/1923	M 338	215	140	124	14	10	14	1			14	14	14	345
	Mary M. Sholtis	D 501	466												
	4/29/1921—1/11/1923	M 338	302	36	37	14	10	14	1			14	14	14	154
	George C. Sholtis	D 501	466												
	same period	M 338	302	36	37	14	10	14	1			14	14	14	154
	Edward J. Sholtis	D 501	466												
	same period	M 338	302	36	37	14	10	14	1			14	14	14	154
	Mary K. Sholtis	D 501	466												
	same period	M 338	302	36	37	14	10	14	1			14	14	14	154
	Mary M. Sholtis, Gdn.	D 501	466												
	same period	M 338	302	36	37	14	10	14	1			14	14	14	154
	John Chopke	D 651	487												
	2/9/1922—6/6/1929	M 513	325	165	189	620	16	20	3	1	20	20	20	20	480
	Harrington Co. Asg't		79	63											16
	9/9/1926—6/6/1929 Rel		19	15											4
		Disch. E	D												2
	City of Trenton	A	79	73											6
	9/7/1928—6/6/1929	R	19	16											3
		D	E	E											1

2819

at 4¢

.04

\$118.76''

*Exhibits***Exhibit C-4**

Original file of this case in office of the Clerk in
Chancery.

Exhibit C-5

10

Letterhead of

MARTIN P. DEVLIN AND SON

August 8, 1929.

Harry B. Brockhurst, Esq.,
Counsellor at Law,
Trust Company of N. J. Bldg.,
Jersey City, N. J.

20

Re: Harrington Co.
vs. Chopke, et als.,
74-243.

Dear Sir:

The above matter is in the hands of Amos M.
Waln, Counsellor at Law, Forst-Richey Bldg.,
Trenton, N. J., with whom you can deal in the
matter.

30

Very respectfully yours,

MARTIN P. DEVLIN
G

40

*Exhibits***Exhibit D-1**

LETTERHEAD OF

HARRY B. BROCKHURST

10

July 19, 1929.

John Chopke, Esq.,
319 Second Street
Trenton, N. J.

Dear Sir:

20

By reason of the similarity of your family name and believing that you may be, or may be related to, the person whom I am inquiring for, may I take the liberty of asking a reply to the inquiries on the enclosed schedule.

The name of the person whom I am inquiring for is John Chopke who purchased property located on the Northeasterly corner of Paul Avenue and Nassau Street, in Trenton, this State, from Mary M. Sholtis, on February 10, 1922.

Yours very truly,

30

HBB*LL

HARRY B. BROCKHURST

40

Exhibits

Exhibit D-2

LETTERHEAD OF

HARRY B. BROCKHURST

Mr. Harry B. Brockhurst
921 Bergen Avenue
Jersey City, N. J. 10

Dear Sir:

Answering the following inquiries as to John Chopke.

Are you the person inquired for?.....
What is your relationship, if any.....
Where does now reside?..... 20
Or present post office address?.....
What was last address known?.....
What is the name and address of any person or
persons who know the person inquired for?....

The return of this schedule in the enclosed, self-addressed stamped envelope with the information requested, or its return with the statement that the person inquired for is not known to you will be very helpful to me. 30

Thanking you for any information you can give me in this matter, I beg to remain,

Yours very truly,

*Exhibits***Exhibit D-3**

LETTERHEAD OF

MARTIN P. DEVLIN AND SON**BROAD STREET BANK BLDG.****Trenton, N. J.**

10

July 24, 1929.

Harry B. Brockhurst, Esq.,
Counsellor at Law,
921 Bergen Ave.,
Jersey City, N. J.

Dear Sir:

20

Your letter to John Chopke, of No. 319 Second Street, Trenton, N. J., has been referred to me, together with inclosure seeking specific answers to certain questions.

Mr. Chopke does not understand what the object of your inquiry is. I would, therefore, like to know what kind of information you desire and what use you wish to make of it. If you answer my letter it is likely I can give you what is required.

30

Very respectfully yours,

MARTIN P. DEVLIN

40

*Exhibits***Exhibit D-4**

LETTERHEAD OF

HARRY B. BROCKHURST

July 25, 1929

10

G 456

Martin P. Devlin and Son,
Broad Street Bank Building,
Trenton, N. J.

Dear Sirs:

Your favor of the 24th inst, in which you inquire about my letter addressed to John Chopke, No. 319 Second Street, Trenton, received. 20

Beg to advise that I have started a foreclosure proceeding in the Court of Chancery to foreclose on property known as Lot Numbered 196, City Atlas, page 46D, Ward 5, East Paul Avenue in Trenton which is owned by a party by the name of John Chopke. The nature of this foreclosure is to foreclose on a tax lien on this property.

My letter to Mr. Chopke was for the purpose of locating the present owner of this property, so that he could be notified of the pendency of this suit. 30

If you are in a position to acknowledge service for Mr. Chopke and his wife, in this matter I will appreciate your advising me of that fact, otherwise the subpoenae and tickets will be forwarded to the Sheriff of Mercer County for service.

Trusting this is the information you desire, I beg to remain, 40

Yours very truly,

HARRY B. BROCKHURST

GC:HMCD

*Exhibits***Exhibit D-5**

LETTERHEAD OF

HARRY B. BROCKHURST

10

July 29, 1929

G 456

Martin P. Devlin, Esq.
 Broad Street Bank Building,
 Trenton, N. J.

Re; Harrington Co.
 vs; John Chopke, et als.
 (74-283)

20 Dear Sir:

In accordance with your telephone request of
 this afternoon I am herewith sending you a state-
 ment of the amount that should be paid in order
 to obtain a settlement in this matter:

	1925 tax lien covering Lot Numbered 196, City Atlas, page 46D, Ward 5, as certified to by the Harrington Co.	\$ 39.73
30	1926 tax lien covering Lot Numbered 196, City Atlas, page 46D, Ward 5, as certified to by the Harrington Co.	\$ 43.08
	Court costs approximated to date.....	\$ 23.06
	New Jersey Supreme Court and United States District Court Judg- ment Search	\$ 10.20
	City tax search	\$ 2.00
40	Title search	\$ 80.00
	Counsel fee	\$ 75.00
	Total	\$273.07

Exhibits

On receiving check in the above total payable to myself as solicitor I will arrange to have the two certificates of sale, which are the basis of this foreclosure, properly endorsed for cancellation and will have a Warrant to Satisfy the Lis Pendens filed herein executed and will have a consent to the dismissal of this suit properly signed by the Chancellor executed and will forward same to you at which time this matter will be settled.

10

The City Tax search which I have procured in this matter is as follows:

That the 1925 and 1926 taxes were sold to an individual at 8% interest and that the 1927 taxes were sold to the City at 7% interest and that the taxes are delinquent and unpaid for the years 1928 and 1929 and that there is a lien for a street improvement No. 468, assessed June 21, 1929.

20

I will withhold further proceedings in this matter until August 5, awaiting a reply from you.

Yours very truly,

HARRY B. BROCKHURST

GC:HMcD

30

40

*Exhibits***Exhibit D-6****COMPLAINANT'S COSTS TAXED BY DEFENDANT AS ON DISMISSAL**

(Filed Aug. 20, 1929.)

10

	S. & C.	Ch.	Clk.	Als.
Retaining fee for solicitor and counsel	4.00			
Drawing and eng. bill, 70 fol.....	21.00			
Filing bill and enter'g action.....			.16	
Motion for decree, dismissal.....	1.50	.50		
Drawing, eng. and fil'g decree.....	.60		.06	
Entering by clerk.....			.10	
Drawing and eng. costs.....	.90			
Taxing and fil'g costs and copy.....			.70	

20

28.00 .50 1.02
.50
1.02

\$29.52

Filing subpoena and sheriff's fees.....			.06	6.62
Drawing, eng. and sealing subpoena	.40	.30	.08	
Drawing, eng. and filing tickets.....	.90		.18	

30.82 .30 .32 6.62
.30
.32
6.62

30

\$38.06

40

*Notice of Motion***Exhibit D-7****CHANCERY CLERK'S RECEIPT**

Office of Clerk in Chancery, New Jersey.

Trenton, N. J., September 3, 1929. 610

RECEIVED from Amos M. Waln One hundred and
 sixteen and 76 Dollars. Harrington Co. *vs.*
 Chopke 74-28
 \$116 76

FERD GARRETSON Clerk.
 per A. BARRISON

**Notice of Motion That Amount Due Complain-
 ant on Redemption Be Fixed and for
 Allowance of Counsel Fees and Costs to
 Defendant, John Chopke**

20

(Filed Apr. 14, 1931.)

*To the complainant, Harrington Company, a cor-
 poration;*

PLEASE TAKE NOTICE that, on Monday, the twen-
 tieth day of April, 1931, at the hour of ten o'clock
 in the forenoon of said day, or as soon thereafter
 as counsel can be heard, at the Chancery Cham-
 bers, in the City of Jersey City, New Jersey, I
 shall move before his Honor the Chancellor that
 the amount required to be paid by the defendant,
 John Chopke, to the said complainant in redemp-
 tion from the liens held by complainant upon the

30

40

Conclusions

premises described in the bill of complaint in this cause be fixed and determined, and also that the costs of the proceedings in this cause, together with a reasonable counsel fee, be allowed to the said defendant.

10 Dated: April 6th, 1931.

AMOS M. WALN

Solicitor for and of Counsel with
defendant, John Chopke.

Conclusions

20 (Filed May 14, 1931.)

FALLON, V.-C.:

30 This matter is now before the Court on complainant's application to strike out an answer and answer in lieu of plea filed in behalf of the defendant John Chopke. Complainant holding tax sale certificates for certain lands situate in the City of Trenton, described in the bill, filed its bill herein to foreclose defendant's right of redemption of such lands. Complainant prays that the defendants be required to redeem said lands, or, in default of redemption, that they be foreclosed of all rights therein. Section 49 of Chapter 237 of the Laws of 1918, known as "Tax Sale Revision," as amended by Chapter 139 of the Laws of 1929, provides—"On filing such bill the right to redeem shall exist and continue until barred by the decree of the court of chancery." A memorandum-brief
40 submitted by complainant's counsel recites—

Conclusions

“However inartistically and intechinally the defendant Chopke has endeavored to meet the complainant’s bill there can be no doubt that the defendant Chopke has until the final decree to redeem.” In view of complainant’s aforesaid concession I deem it unnecessary to consider and determine the alleged faults of defendant’s answer. A consideration and determination thereof would serve no useful purpose herein. Counsel for the respective parties agree that the only question remaining for determination herein is the amount required to be paid on redemption. A master has reported the amount due to complainant upon redemption, and has included therein two items of search fees of \$10.00 each, as expenses. Complainant urges that it is entitled to a search fee and counsel fee commensurate with services rendered by it, in addition to other fees and expenses allowable by law, and relies therefor upon the statute aforesaid which provides *inter alia*—“After the bill in equity has been filed, redemption shall be made in said cause only, provided notice of the suit has been filed in the office of the collector of taxes, and the court shall, upon application at any time after bill filed, allow costs, which shall include reasonable fees for an examination of the title to the lands described in the bill filed, disbursements incurred by the purchaser and his counsel, and counsel fees commensurate with the services rendered, in addition to the other fees and expenses in this act provided.” It appears herein that redemption from the tax sales of September 9, 1926, and September 9, 1927, for which complainant holds certificate, was sought in behalf of defendant John Chopke prior to the

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Conclusions

commencement of complainant's suit. The bill of complaint was filed July 20, 1929. A notice of the filing of the bill was filed with the receiver of taxes of the City of Trenton on August 1, 1929. Subpoena returnable August 23, 1929, tested August 9, 1929, was served on the defendant John Chopke August 14, 1929. Although the filing of the bill of complaint might ordinarily be regarded as indicative of the commencement of a suit, it has been repeatedly held that a suit in Chancery is not commenced until process of subpoena is issued after the filing of the bill. *Haughwout v. Murphy*, 22 N. J. Eq. 531; *Hermann v. Mexican Petroleum Corp.*, 85 N. J. Eq. 367; *Haupt Co. v. Board of Education of Edgewater*, 87 N. J. Eq. 362; *Malba Terrace Corp. v. Portaupeck Properties*, 105 N. J. Eq. 453, 455. In view thereof it cannot reasonably be urged that the mere filing of the bill of complaint herein and service of notice thereof upon the receiver of taxes suffices to defeat the right of defendant to redeem his property by application to such receiver under statutory procedure relating thereto. If such were to be countenanced, the mere filing of a bill, without issue and service of subpoena, would tend to deprive the property owner of the right to redeem his property except in the cause stated in the bill filed. It is not difficult to surmise many ways in which the property owner would be prejudiced thereby. No notice to bar redemption was given to the defendant, and he had no knowledge of the tax sales mentioned in complainant's bill until July 23, 1929, when he received a letter from complainant's solicitor with respect thereto. Upon receipt of such letter he caused his attorney to make inquiry of said solicitor, and on July 29, 1929, he

Conclusions

ascertained the nature and extent of complainant's interest in defendant's lands and that said solicitor demanded of the defendant for redemption the sum of \$273.07, an amount greatly in excess of the amount then lawfully due and owing to it upon redemption, which amount included items of \$80.00 for title search, and \$75.00 for counsel fee. On August 2, 1929, defendant's attorney made inquiry of the Receiver of Taxes of the City of Trenton of the amount required to be paid for redemption of the lands in question, and was informed by him that on August 1, 1929, the complainant had caused to be filed in his office a notice of the filing of the bill of complaint aforesaid, and that in view thereof he was unauthorized to accept any money from defendant's attorney to effect redemption of the lands in question. The proofs disclose that divers efforts were made in defendant's behalf to redeem the property in question. Tenders were made to complainant's solicitor of more than sufficient moneys to satisfy complainant's lawful claims, and such were refused. On August 15, 1929, a tender was made to the solicitor of complainant of the sum of \$102.88, which was more than the amount then required to be paid upon redemption. On August 26, 1929, defendant's attorney tendered to the solicitor of complainant the sum of \$113.10, which was more than the amount then required to be paid upon redemption. In consequence of complainant's refusal to accept such moneys as were tendered to its solicitor in its behalf, defendant caused to be deposited with the clerk of this court \$116.76, which was more than necessary to effect redemption. Complainant sought to require the defendant to make payment to it of a sum con-

Conclusions

10 siderably in excess of the amount it was entitled to under the law. The only tax sale certificate which the complainant was warranted in filing its bill in respect to at the time the bill was filed, was the certificate of September 9, 1926. Section 46 of the tax sale revision act, *supra*, provides that an owner, etc., may redeem within two years after the sale whether a notice to redeem has been given or not. At the time of the filing of the bill of complaint herein, and the filing of notice thereof with the Receiver of Taxes, a period of two years from the date of the 1927 tax sale (September 9, 1927) had not expired. In view thereof the complainant was unauthorized to file a bill to foreclose under the 1927 tax sale certificate, and the right of defendants to redeem by virtue of the bill filed herein will not be barred. The complainant, by including in its bill of complaint the 1927 tax sale lien, and the filing of notice with the Receiver of Taxes with respect thereto, deprived defendant of the right to redeem through the Receiver of Taxes under the 1927 tax sale. The complainant must be content with the grant of the prayer for relief wherein it asks that the defendant pay the amount found due to it. *Bourgeois v. Risley Real Estate Co.*, 82 N. J. Eq. 211; *Wittes v. Repko*, 105 N. J. Eq. 241. The rights of complainant herein are governed, as to the defendant's right of redemption, by the laws in force at the time of the tax sale. *Harrington v. Jones*, 104 N. J. Eq. 377; *Wittes v. Repko*, 107 N. J. Eq. 132. As stated in *Wittes v. Repko, supra*, "Statutes are to be considered prospective only, unless the language is such as to show clearly that they were intended to have a retrospective effect." The law as it existed at the time

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Conclusions

of the tax sales of 1926 and 1927 allow to the complainant a statutory fee of only \$10.00 on each purchase. As stated in *Rodgers v. Cressman*, 98 N. J. Eq. 209, a statute which takes away, reduces time for, or otherwise impairs the vested right of redemption, is unconstitutional. The search fee claimed herein by complainant is \$112.76. The search was made by an employee of the solicitor. It is not one which may be described as *official*. See *Keiler v. Bunn*, 84 N. J. Eq. 519, 522. Aside from Section 49 of the Tax Sale Revision Act, *supra*, counsel fees are allowed in the discretion of the Court. This Court has repeatedly held that such fees would not be allowed when it appears that the case smacks of an effort to obtain an extra few dollars for costs. *Harris v. McMurray*, 92 N. J. Eq. 1. It is manifest in the case *sub judice* the activities of complainant—and especially after July 29, 1929, when defendant made known his desire to redeem, was to impose additional expense upon defendant, and such activities were unwarranted and unconscionable. In *Harrington Co. v. Jones*, *supra*, Vice-Chancellor Berry says—"The only issue is as to the amount required for redemption. The sales were made pursuant to the 1903 Tax act and the laws in force at the dates of the sales control. *Rodgers v. Cressman*, 98 N. J. Eq. 209. Complainant urges chapter 273, P. L. 1916, p. 580, and chapter 211, P. L. 1928, p. 382, as authority for the items of search fee and counsel fee in its statement of the amount required for redemption. Obviously, the 1928 act does not apply. The 1916 act limits the amount of search fees to \$10. * * * Counsel fees are in the discretion of the court. *Harris v.*

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Conclusions

10 *McMurray*, 92 N. J. Eq. 1. No counsel fees will be allowed, as this suit smacks of an effort 'to obtain an extra few dollars in costs' as was suggested by the chancellor in *Harris v. McMurray, supra.*" In my judgment the rule of law above stated is applicable to the matter *sub judice*. The tax sale liens in question were created under the tax sale act of 1918. I am of the opinion that no such search fee or counsel fee as is sought by complainant herein should be allowed—even though Chapter 139 of the Laws of 1929 were to be regarded as applicable hereto. Search fees and counsel fees allowable under Section 49 of the "Tax Sale Revision" as amended by Chapter 139, P. L. 1929, relate only to tax sales subsequent to the passage of the amendatory act, in suits for the foreclosure of the owner's right of redemption, because an amendatory act, like other legislative enactments, takes effect only from the time of its passage and approval, and has no application to prior transactions, unless an intent to the contrary is expressed in the act or is clearly to be implied from its provisions. *In re St. Michael's Church*, 76 N. J. Eq. 524.

20 I will advise an order denying the complainant's application to strike out the answer and answer in lieu of plea filed in behalf of the defendant Chopke, and as the complainant has conceded the right of said defendant to redeem the premises described in the bill of complaint, upon payment to it of the amount required to be paid by law, and the question of the allowance of the search fee and counsel fee urged by complainant as allowable to it under Chapter 139 of the Laws of 1929 has been fully argued and is herein deter-

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Final Decree

mined adverse to complainant, I will advise a decree that the complainant cancel and discharge the tax sale certificates described in the bill of complaint upon the defendant making payment to complainant of the amount stated in the master's report aforesaid. No costs or counsel fees will be allowed herein to either of the parties. 10

Dated, Hoboken, N. J., May 13, 1931.

Final Decree

(Filed June 20, 1931.)

This cause coming on to be heard in the presence of Harry B. Brockhurst, solicitor for the complainant, and Amos M. Waln, solicitor for the defendant, John Chopke, on motion of the complainant to strike out the answer and answer in lieu of a plea of the said defendant herein; and the said complainant having, in the argument made and in the brief filed in its behalf in this matter, and by the prayer of the bill of complaint herein, conceded the right of the said defendant to redeem the lands and premises described in the said bill of complaint from the lien of the certificates of tax sale held by it covering the said lands and premises and set forth and described in said bill upon payment to it of the amount found to be due to it by law upon its said liens; and the Court having, by an order heretofore made herein, referred it to Daniel P. Byrnes, Esquire, one of the Masters of this Court, to ascertain and report the amount due to the complainant upon its said certificates of tax sale; and 20
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Final Decree

10 the said Master having thereafter filed his report,
wherein he reported that there was due to the
said complainant upon its said certificates of tax
sale the sum of \$59.08; and the Court having heard
and considered the arguments of, and having read
20 and considered the briefs filed by, counsel herein;
and the Court being satisfied that the said defend-
ant is entitled to redeem the said lands and prem-
ises from the lien of the said certificates of tax
sale upon payment to complainant of the amount
due to it upon said certificates of tax sale, and
being also satisfied that the sum of \$59.08 is the
amount due to complainant upon said certificates
of tax sale; and it further appearing that the said
defendant, at the time of the filing of the answer
and answer in lieu of plea herein, caused to be
deposited with the Clerk of this Court in this
cause the sum of \$116.76;

It is, on this 20th day of June, 1931, ORDERED,
ADJUDGED and DECREED that, upon payment being
made as hereinafter set forth to the said solicitor
for the complainant of the aforesaid sum of
\$59.08, the said complainant do forthwith deliver,
or cause to be delivered, to the said defendant,
30 or to his solicitor, the said certificates of tax sale
set forth and described in the bill of complaint
herein, duly endorsed for cancellation.

And it is further ORDERED that the said motion
of the complainant to strike out the answer and
answer in lieu of plea of the said defendant herein
be, and the same hereby is, denied, and that no
costs or counsel fees be allowed to either of the
parties in this cause.

40 And it is further ordered that the Clerk of this
Court do forthwith deduct from the aforesaid
sum of \$116.76 so deposited with him as aforesaid

Final Decree

the said sum of \$59.08, that the said Clerk do forthwith pay the said sum of \$59.08 to the said solicitor for the complainant, and that the said Clerk do pay the balance then remaining of the said sum of \$116.76 after having deducted therefrom the said sum of \$59.08 to the said solicitor for the said defendant. 10

And it is further ORDERED that, upon the presentation to, or receipt by, the said solicitor for the complainant herein, either at the time of the making of the aforesaid payment to him or at any time subsequent thereto, of a warrant for the discharge or satisfaction of the notice of the pendency of this suit filed in the office of the Clerk of the County of Mercer, the said solicitor for the complainant do execute and acknowledge said warrant, and do forthwith deliver the same, or cause the same to be delivered, to the said solicitor for the said defendant; 20

And it appearing to the Court that the determination of the matters aforesaid, and the aforesaid concession of complainant that the defendant John Chopke is entitled to redeem the premises in question upon payment of the moneys required to be paid by law, the amount whereof is hereinabove established, is dispositive of the complainant's suit as based upon its bill of complaint filed herein, and it is, therefore, unnecessary to maintain the bill for a final hearing thereon, it is hereby ordered that said bill be dismissed upon said defendant complying with the requirements of this decree as applicable to him. 30

Respectfully advised,

JNO. J. FALLON,
V. C. 40

E. R. WALKER,
C.

Notice of Appeal

(Filed July 31, 1931.)

10 The complainant, Harrington Company, hereby
appeals from the whole and every part of the
Final Decree made in the above entitled cause on
the twentieth day of June, A. D., nineteen hun-
dred and thirty-one, by the Chancellor on the ad-
vice of Vice Chancellor John J. Fallon, wherein
the Court adjudges that upon payment being
made to the solicitor of the complainant of the
sum of \$59.08 the complainant should forthwith
deliver or cause to be delivered to the defendant
or to his solicitor, the certificates of tax sale the
subject matter of the said suit, duly endorsed for
cancellation and wherein the Court adjudges that
20 the complainant's motion to strike out the an-
swer and answer in lieu of plea of the defendant
John Chopke, should be and is denied and that no
costs or counsel fees be allowed to either of the
parties in this cause and wherein the Court ad-
judges that the Clerk of this Court do forthwith
deduct from the sum of \$116.76 theretofore de-
posited with him, the sum of \$59.08 and pay the
said sum of \$59.08 to the said solicitor of the com-
plainant and the balance remaining of said sum
30 of \$116.76 to the solicitor of the defendant John
Chopke, and wherein the Court adjudges that
upon the presentation or receipt by the solicitor
of the aforesaid payment to him or at any time
subsequent thereto, of a warrant for the discharge
or satisfaction of the notice of the pendency of
this suit filed in the office of the Clerk of the
County of Mercer, the said solicitor for the com-
plainant should execute and acknowledge said

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Notice of Appeal

warrant and should forthwith deliver the same or
 cause the same to be delivered to the solicitor for
 the said defendant John Chopke, and wherein the
 Court adjudges that it would be unnecessary to
 maintain the bill of complaint for a final hearing
 thereon and adjudges and orders that said bill of
 complaint be dismissed upon the defendant John
 Chopke complying with the requirements of the
 said Decree applicable to him, to the Court of
 Errors and Appeals in the last resort in all
 causes. 10

HARRY B. BROCKHURST,
 Solicitor for Complainant.

I conceive there is good cause for appeal in
 the above cause. 20

ADOLF L. ENGELKE,
 Of counsel with Complainant.

Service of a true copy of the within Notice of
 Appeal is acknowledged this 25th day of July,
 A. D., Nineteen hundred and thirty-one.

AMOS M. WALN,
 Solicitor of Defendant,
 John Chopke. 30

Petition of Appeal

(Filed Aug. 12, 1931.)

To the Honorable the Court of Errors and Appeals in the Last Resort in all Causes:

10 The petition of HARRINGTON COMPANY, a corporation duly organized and existing under the laws of the State of New Jersey, appellant in the above entitled cause, respectfully shows that:

20 1. Your petitioner finds itself aggrieved by a Final Decree made in the Court of Chancery by his Honor Edwin Robert Walker, Chancellor of the State of New Jersey, on the advice of his Honor, John J. Fallon, Vice Chancellor, which Decree bears date the Twentieth day of June, A. D., Nineteen hundred thirty-one, in a certain cause in the said Court of Chancery wherein Harrington Company, a corporation, was complainant and John Chopke and others were defendants, and your petitioner finds itself aggrieved in these respects, to wit: The said Decree adjudges that upon the payment of the sum of \$59.08 being made to the solicitor for the complainant, the complainant should forthwith deliver or cause to be delivered to the defendant, John Chopke, or his solicitor, the certificates of tax sale set forth in the Bill of Complaint filed in the cause, duly endorsed for cancellation and that the motion of the complainant to strike out the Answer and Answer in Lieu of Plea, of the said defendant, John Chopke, should be and is denied and that no costs or counsel fees be allowed to the complainant in the cause and that the Clerk of the Court should forthwith deduct from the sum of \$116.76 theretofore de-

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Petition of Appeal

posited with him by the defendant, the sum of \$59.08, and that the Clerk should forthwith pay said sum of \$59.08 to the solicitor for the complainant and the balance then remaining of the said sum of \$116.76 to the solicitor for said defendant, and that upon the presentation to or receipt by the solicitor for the complainant either at the time of the making of the aforesaid payment to him, or at any time subsequent thereto, of a Warrant for the discharge or satisfaction of the notice of the pendency of this suit, filed in the office of the Clerk of the County of Mercer, the said solicitor for the complainant should execute, acknowledge and forthwith deliver the same or cause the same to be delivered to the said solicitor for said defendant;

2. And your petitioner humbly appeals from the whole and every part of said Decree which adjudges adversely to the complainant as aforesaid, upon the ground that the same are erroneous in that:

(1) It decrees a cancellation of complainant's certificates of tax sale upon payment of a sum certain without decreeing the right of said defendant to redeem therefrom;

(2) It decrees a cancellation of complainant's certificates of tax sale upon payment of a sum certain without granting the prayer of complainant's bill to decree redemption, but on the contrary decreeing a dismissal of complainant's bill;

(3) It fails to decree that said defend-

Petition of Appeal

ant was entitled to redeem according to the prayer of complainant's bill;

10 (4) It decrees a dismissal of complainant's bill but granting the said defendant relief without any appropriate pleading or application in behalf of said defendant to support the relief granted;

(5) It decrees relief according to the prayer of complainant's bill without granting complainant its costs of suit;

20 (6) It decrees relief according to the prayer of complainant's bill without granting complainant costs including reasonable fees for an examination of the title to the lands described in the bill filed, disbursements incurred by the purchaser and his counsel and counsel fees commensurate with services rendered in addition to the other fees and expenses in the statute in such case made and provided;

30 (7) It decrees a dismissal of complainant's bill after giving relief according to its prayer without any ground or reason;

(8) It decrees the complainant's interlocutory motion to strike out, as defective, said defendant's Answer in Lieu of Plea should be denied;

(9) It does not allow or deny the prayer for redemption prayed by the complainant in its bill of complaint;

40 (10) The decree is based on findings of fact which are not justified or supported by the evidence in that the Court found:

Petition of Appeal

(a) That redemption from the tax sale certificates of the complainant was sought by the said defendant prior to the commencement of this suit;

(b) That said defendant's inquiries made of the Receiver of Taxes on August 2, 1929, as to the amount required to be paid for redemption of complainant's certificates, was in effect a tender prevented by complainant's unjustified filing of a notice on August 1, 1929, with the Receiver of Taxes of the filing of its bill in this suit; 10

(c) That the sum of \$273.07 demanded by complainant of said defendant in redemption of its two certificates of tax sale, was an amount greatly in excess of the amount then lawfully due and owing to it upon redemption; 20

(d) That the activities of the complainant especially after July 29th, 1929, were unwarranted and unconscionable;

(e) That this suit smacks of an effort to obtain an extra few dollars in costs; 30

(11) That the decree is based upon evidence and findings of fact which occurred after the right of complainant to file its bill of complaint had accrued and after suit had been begun in this Court;

(12) The decree is based on erroneous conclusions of law, in that the Court held the law to be: 40

Petition of Appeal

10 (a) That the mere filing of the bill of complaint and service of notice thereof on the Receiver of Taxes, did not suffice to defeat the right of defendant to redeem by application to the Receiver of Taxes, and that such right exists until not only the bill is filed, but also the subpoena issued and served;

(b) That notice of redemption was necessary to be given;

20 (c) Complainant files its bill to foreclose defendant's equity of redemption on its two certificates of tax sale, whereas it foreclosed only under its certificate of 1926;

(d) That defendant was deprived of right to redeem from 1927 tax sale, by complainant filing notice with the Receiver of Taxes of filing its bill in equity to foreclose;

30 (e) That upon the payment to complainant of a sum less than any of the sums alleged to have been tendered complainant and less than the sum paid into Court, complainant should cancel its two certificates of tax sale;

(f) That part of the moneys tendered complainant and deposited in Court should be repaid to defendant;

40 (g) That although the defendant tendered the costs of suit, and deposited the sum tendered, the Court decreed that

Petition of Appeal

complainant be denied costs and the sum deposited by defendant be repaid him;

(h) That the amendment of Section 49 (P. L. 1929, Chapter 139) is not retrospective and remedial, but prospective legislation;

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(i) That complainant was not entitled to costs of suit in which should be included reasonable fees for an examination of the title to the lands described in the bill of complaint filed, disbursements incurred by the complainant and its counsel and counsel fees commensurate with the services rendered;

(j) That no such search fee or counsel fee as is sought by complainant herein should be allowed, even though Chapter 139 of Laws 1929 were to be regarded as applicable thereto;

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(13) The decree failed to, but should have adjudged:

(a) That the complainant upon any redemption to be made by the said defendant of the lands and premises from the said tax sales and the tax sale certificates thereof, held by the complainant, should pay not only the amount of money paid by the complainant for said tax sale certificates and the other sums found and allowed in the sum of \$59.08, but should have ordered, adjudged and decreed that the complainant before being compelled to surrender its said certificates of tax

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Petition of Appeal

10 sale duly endorsed for cancellation, should be entitled to receive of and from the said defendant its costs of this suit, which should include reasonable fees for an examination of the title to the lands described in the bill filed, disbursements incurred by the purchaser and its counsel and counsel fees commensurate with the services rendered;

20 (b) The complainant was entitled to file its bill of complaint and had the legal right when it filed its said bill of complaint to foreclose the statutory right of redemption of the said defendant and that no answer or answer in lieu of plea, or other pleading set forth any fact or facts which negative the right of the complainant to file its bill and no fact or facts appear before the Court which justified the Decree dismissing the bill and that the said Decree should have ordered, adjudged and decreed that the defendant was entitled to make redemption from the tax sales and the tax sale certificates thereof mentioned in the bill of complaint upon the payment to the complainant of the sum for which the lands were sold with interest at the rate shown by the certificates, together with the fees and expenses fixed by Section 44 of the Tax Sale Revision as amended in Chapter 120, 30 P. L. 1919, page 284, with the costs of the complainant's suit to be taxed in which should be included reasonable fees for an examination of the title to the lands de- 40

Petition of Appeal

scribed in the bill filed, disbursements incurred by the purchaser and its counsel and counsel fees commensurate with the services rendered;

(c) The Court should have ascertained and fixed a sum as counsel fees which would be commensurate with the services rendered by complainant's counsel in this suit, as well as a sum which would be a reasonable fee for the examination of the title to the lands described in the bill filed in this cause and have ascertained and allowed the disbursements incurred by the complainant and its counsel, and should have ordered the sums so found and fixed to be taxed and allowed as part of the costs of the complainant;

(14) The decree is contrary to the weight of the evidence;

(15) The decree is contrary to the principles of equity and law applicable to said cause.

Your petitioner therefore prays that the said Decree may be reversed, set aside and for nothing holden, and that your petitioner may have such other relief in the premises as to this Honorable Court may seem proper.

HARRY B. BROCKHURST
Solicitor for Complainant-Appellant.

ADOLF L. ENGELKE
Of Counsel with Complainant-Appellant.

Notice of Argument

(Filed October 3rd, 1931.)

Sat Below—WALKER C. FALLON, V.-C.

SIR:

10 PLEASE TAKE NOTICE that the argument of the Appeal in the above cause will be brought on at the next term of the Court of Errors and Appeals, to be held at the State House at Trenton, on Tuesday, the 20th day of October next, at eleven o'clock in the morning of that day, or as soon thereafter as counsel can be heard.

HARRY B. BROCKHURST
Solicitor for Complainant-Appellant.

20 To:

AMOS M. WALN, Esq.,
Solicitor for Defendant-Appellee.

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New Jersey Court of Errors and Appeals

Between

HARRINGTON COMPANY, a corporation,

Complainant-Appellant,

and

JOHN CHOPKE, sometimes known
as John Chopko,

Defendant-Appellee.

On Appeal from
Court of Chancery

BRIEF OF COMPLAINANT-APPELLANT

Concise Statement of the Case

This appeal arises by reason of the filing by the complainant of a bill in equity for the redemption from a tax sale made by the City of Trenton to the complainant or in default of redemption the foreclosure of the tax sale certificate under the provisions of the Tax Sale Revision, P. L. 1918, page 883.

The complainant filed its bill of complaint but before the issuance of process of subpoena thereon, the defendant moved to strike out the bill of complaint (Case, p. 19). This motion was denied (Case, p. 20).

Process of subpoena was thereupon served upon the defendant Chopke (Case, pp. 26-29), who filed an Answer and Answer in Lieu of Plea (Case, pp. 31-34), which complainant moved to strike out (Case, p. 35).

After argument of this motion the Court ordered that the motion to strike out be continued over and that in the meantime the matter be referred to a Master to ascertain and report the amount due to the complainant upon its two certificates of tax sale and reserved the question of counsel fees and fees for the search of the title until the coming in of the Master's Report (Case, p. 38).

The Master found and reported the amount due to the complainant.

On the coming in of the Master's Report the question reserved by the Court in the Order of Reference of counsel fees and search fees, was argued before the Vice-Chancellor and briefs submitted. The Vice-Chancellor denied complainant's motion to strike out the Answer and Answer in Lieu of Plea and denied complainant's motion to be allowed costs, disbursements and counsel fees and required the complainant upon being paid \$59.08 of the sum of \$116.76 theretofore deposited with the Clerk of the Court (Case, p. 89) that the said complainant should surrender to the defendant its two tax sale certificates duly endorsed for cancellation and ordered the Clerk of the Chancery Court to deduct the sum of \$59.08 from the said sum of \$116.76 theretofore paid into Court and to pay the balance to the solicitor for the defendant, and concluded the decree by ordering that the complainant's bill be dismissed upon the defendant complying with the require-

ments of the decree applicable to him (Final Decree, Case, p. 97).

From this decree complainant appealed to this Court alleging divers errors in law and in fact particularly set out in its petition of appeal (Case, p. 102).

The initial and all subsequent errors committed by the Vice-Chancellor below must be attributed to the Vice-Chancellor's disregard of the plain provisions of the Statute regulating the chief matters in issue. But for the fact that it is earnestly desired that this Court make its definite pronouncement of the meaning of the provisions of the Statute referred to and which reads:

“After the bill in equity has been filed, redemption shall be made in said cause only, provided notice of the suit has been filed in the office of the collector of taxes, and the Court shall, upon application at any time after bill filed, allow costs, which shall include reasonable fees for an examination of the title to the lands described in the bill filed, disbursements incurred by the purchaser and his counsel, and counsel fees commensurate with the services rendered, in addition to the other fees and expenses in this act provided;”

(Tax Sale Revision 1918, Section 49, amended P. L. 1929, p. 241 at 244.)

so as to guide the Courts in future applications of the Statute, the loss and expense occasioned the appellant in taking this appeal, would not be justified.

POINT I

**“After the bill in equity has been filed,”
NOT AFTER “the commencement of a suit,”
redemption shall be made in the Chancery
cause, is the provision of the Statute.**

The Vice-Chancellor finds that the defendant tendered redemption before the complainant “commenced” its suit, notwithstanding the fact that its bill of complaint was filed July 20, 1929 (Case, p. 1), and inquiry was made of the Receiver of Taxes on August 2, 1929 (Case, pp. 61 and 62), and no tender was ever made to the complainant and none to its solicitor, until August 15, 1929 (Case, p. 67).

The Vice-Chancellor seeks to support this finding with the argument that until subpoena issued no suit has been commenced.

Such a conclusion is inapplicable to the Statute under consideration. There is nothing in the language of the act which supports such contention.

The Vice-Chancellor in this conclusion disregards the clear import of the words of the Statute, and seeks to substitute his own. The words of the Statute are: “*After the bill in equity has been filed*, redemption shall be made in said cause only, * * *” This language is not ambiguous; it needs no interpretation.

When the words of a statute and their meaning are clear and they are not rendered dubious by the context, they cannot be controlled by judicial construction.

“Where that which is directed to be done is within the sphere of legislation, and the

terms used clearly express the intent, all reasoning derived from the supposed inconvenience or even absurdity of the result, is out of place. It is no province of the courts to supervise legislation, and keep it within the bounds of propriety and common sense so that even if in this case it could be demonstrated that the regulation in question was incommodious or even hurtful, an appeal for relief to the judicial power would be utterly in vain."

Douglass v. Freeholders, 38 N. J. L. 214 at 216;

cited with approval in

Bullock v. Biggs, 78 N. J. L. 63; 73 Atl. 69.

"Where an act is plain and unambiguous in its terms the rule is fundamental that there is no room for judicial construction since the language employed is presumed to evince the legislative intent."

In re Passaic, 94 N. J. L. 384; 116 Atl. 695;

cited with approval in

Trenton v. Wythman, 106 N. J. Eq. 93; 145 Atl. 462.

"* * * and where there is no obscurity in the meaning of a statute, obscurity is never to be created by construction."

Camden R. R. v. Commissioners, 18 N. J. L. 71.

"* * * But where, as in the case at bar, the legislative intent is expressed explicitly, * * * no room is left for construction or interpreta-

tion, and the express language of the statute becomes the sole and imperative guide for legal municipal procedure. *Commissioners v. Brewster*, 42 N. J. Law, 125; *In re Passaic* (N. J. Sup.) 116 Atl. 695."

Hale v. Council of Town of Kearny, 99 N. J. L. 334; 123 Atl. 724.

"The consensus of judicial opinion not only in this state but in sister states is to the effect that the reasonableness or unreasonableness of a legislative enactment is not subject to judicial review or control.

"The legislative body is the sole judge of the reasonableness of its enactment. The Court is wholly without power to nullify a legislative act because of its being unreasonable; to attempt to do so would be to encroach upon the legislative prerogative under the constitution."

In re Freeholders, 105 N. J. L. 57; 143 Atl. 536.

"With the wisdom or unwisdom of this legislation, this Court has, of course, nothing to do. It is our function to interpret the legislative will, not to question its exercise."

* * *

"Our first concern is the ascertainment of the legislative intent in the act of 1925—not what did it mean to say but what is the meaning of what it did say."

* * *

"The amendment is in clean and unequivocal language, * * * its meaning cannot be rendered doubtful or its application narrowed by any legitimate method of construction."

Connelly v. Bridgeport, 104 Conn. 238; 132 Atl. 690.

“We shall not enlarge the accumulation, particularly because, in our examination of judicial deliverances on this subject of our own and other jurisdictions, the question has in the end rested upon and been solved by a reliance upon the ancient and safe rule, to which this court has always adhered, that words in a legislative enactment are to be taken in their ordinary and general sense; and, unless the act sufficiently explains or qualifies the terms so as to necessitate an interpretation out of the current and popular signification, they must be deemed to have been used by the Legislature in the former sense.”

Commonwealth v. Wark Co., 151 Atl. 786
at 788; 301 Pa. 150.

The Legislature sought to and did fix a definite time when the right of redemption at the collector's office ceased and redemption in the equity “cause only” was substituted.

The Legislature sought to make something certain. If the Vice-Chancellor's views be adopted that which the Legislature had made certain becomes very uncertain. A delinquent taxpayer, as yet unserved with process in the equity cause, offers to make redemption from the Collector of Taxes, but the Collector has had filed with him the notice of the filing of the bill as required by Statute. Must the Collector ignore the notice he has and accept the redemption moneys on the assertion by the taxpayer that he has not been served with process, or should he refuse? Suppose, further, that process had been forwarded to the Sheriff but not yet served should the Collector accept the moneys and issue a redemption certificate? Suppose, again, that the person seeking redemption is a non-resident, an absent defendant in the

suit, and publication is being made, but both taxpayer and tax collector are ignorant of that fact, what shall the tax collecting officer do?

Granted, that when all the facts are gathered for the adjudication of a proper tribunal all the questions propounded may be satisfactorily answered, that still leaves the tax collector in an unenviable position and one in which the Legislature never intended to place him and one in which neither the Collector nor the taxpayer should be placed by ignoring the plain words of the Statute in question and placing a construction thereon which would lead to the uncertainty above illustrated.

"After the bill is filed" is easily demonstrated, it is left in no uncertainty. Notice thereof must be given the tax collector. This notice and nothing more should be his guide.

POINT II

"* * * redemption shall be made in said cause only, provided *notice of the suit* has been filed in the office of the collector of taxes" * * *.

The complainant's bill of complaint was filed July 20, 1929 (Case, p. 1).

Notice of the filing of complainant's bill was filed with Collector August 1, 1929 (Case, pp. 18-19).

The bill was filed to foreclose the tax sale certificate dated 1926 (Bill of Complaint, para. 3 and 4, Case, p. 2). In addition to this, complainant set out its tax sale certificate dated 1927 (Bill of

Complaint, para. 5, Case, pp. 3-4). To this action of complainant the Vice-Chancellor again erroneously takes exception and says, "The only tax sale certificate which the complainant was warranted in filing its bill in respect to at the time the bill was filed was the certificate of September 9, 1926" (Case, p. 94).

This is precisely what complainant did. It filed its bill to foreclose the tax sale of 1926 (Bill of Complaint, para. 4, Case, p. 4). It does not rest its right to foreclosure upon any other foundation than the failure of the defendant and others to redeem for the space of two years from the tax sale of 1926. It does build on this foundation, however, its right to be paid the subsequent lien represented by the 1927 tax sale (Bill of Complaint, para. 5, pp. 3-4) and alleges that the money due on such sale and certificate thereof "is added to the moneys due on the sale and certificate of sale set out in paragraphs 2 and 3 of" the bill of complaint (Case, p. 4, lines 2 and 3).

"In case the certificate of sale is not held by the municipality, the amount required for redemption shall include all sums for subsequent municipal liens, and interest and costs thereon, actually paid by the holder of the tax title, or his predecessor therein, together with interest on the amount so paid at the rate chargeable by the municipality; provided, the holder of such title shall have made and filed with such collecting officer an affidavit showing the amount of such payment, which affidavit may be taken before such officer." P. L. 1918, p. 894.

Previous to the adoption of the Tax Sale Revision of 1918 (P. L. 1918, p. 883) it is true the tax sale purchaser could not attach or claim in its

bill to foreclose or on an application of an owner &c. to redeem, the right to be paid any subsequent taxes paid by such tax sale purchaser (*Rodgers v. Cressman*, 98 Eq. 209; 130 Atl. 17).

This, however, was not the state of the law when the bill of complaint in the present case was filed. The scheme evolved by the Legislature, manifested in the provisions of Sections 41, 42 and 43 of the Tax Sale Revision (P. L. 1918, p. 894) was to provide that in any redemption made by a delinquent taxpayer as well as in any foreclosure procedure taken by a tax sale purchaser, all liens existing at the time of either action should be disposed of. In the vernacular, the situation was to receive a "clean bill of health."

The complainant held not only the certificate of tax sale which it foreclosed, dated 1926 by also one dated 1927. The complainant, the holder of the tax title filed with the Tax Collector proofs of disbursements which included the amount of money paid for the second tax sale certificate (Case, p. 55) consequently the foundation is clearly laid for the right to claim that the owner, Chopke, should pay not only moneys sufficient to redeem from the 1926 but also from the 1927 certificate.

There is in addition ample proof that Chopke and his solicitors, Waln and Devlin, had knowledge of this second certificate (Exh. C-12, p. 74) (Case, p. 62, p. 66) and the Master found the amount of the 1927 tax sale certificate to be due the complainant (Case, p. 42, para. 6) and the Vice-Chancellor found that the sum of both certificates was due complainant (Case, p. 98) and ordered the defendant to pay it as a condition precedent to complainant's surrendering "the said certificates of

tax sale set forth and described in the bill of complaint duly endorsed for cancellation" (Case, p. 98, line 29).

The complainant having filed its bill to foreclose a tax sale certificate after a lapse of two years and asked that there be added thereto its second certificate later in point of time but prior in point of lien, acted strictly in accordance with established statute law. A complainant who acts according to law, with no evil motive, surely ought not on that ground be deprived of its costs and counsel fees and a finding by a Vice-Chancellor that such conduct was "unwarranted and unconscionable" and thereby denies complainant its costs and counsel fees, should be reversed.

The Vice-Chancellor by adopting and applying his erroneous finding that complainant had but could not foreclose its second tax sale certificate, has again fallen into error in finding that "the complainant by including in its bill of complaint the 1927 tax sale lien and the filing of notice with the Receiver of Taxes with respect thereto, deprived the defendant of the right to redeem through the Receiver of Taxes under the 1927 sale" (Case, p. 94, line 21).

From what has already been said it is manifest that the Vice-Chancellor in so concluding fell into error

First, because the bill of complaint by the requirements of the statute necessitated the inclusion in it of the so-called 1927 tax sale lien;

Secondly, the notice to the Receiver of Taxes must perforce include all the liens held by the complainant of which it was seeking redemption and must foreclose in one suit;

Thirdly, because there is no warrant in law justifying the conclusion that the defendant might redeem from the so-called 1927 tax sale and leave the 1926 sale unredeemed in the hands of the complainant.

It may be well to note in this connection that even the defendant himself does not object to the inclusion in the bill of complaint of the two tax sale certificates as will appear from his Answer (Case, p. 31).

The purpose of Section 43, Tax Sale Revision 1918, is to prevent the filing of a bill on an earlier lien, omitting a later, but as yet unmatured lien, and subsequently filing a second bill on the later lien after it has matured. Such practice would well deserve condemnation as "unwarranted and unconscionable."

POINT III

"And the Court shall, upon application at any time after bill filed, allow costs, which shall include reasonable fees for an examination of the title to the lands described in the bill filed, disbursements incurred by the purchaser and his counsel and counsel fees commensurate with the services rendered in addition to the other fees and expenses in this act provided." (P. L. 1929, p. 244)

There is no ambiguity about these words. Yet, because the Vice-Chancellor has, in the first place, come to erroneous conclusions of fact unwarranted by the evidence, and in the second place has placed a misconstruction on the plain words and

import of the Statute when applying it to his conclusions of fact, this double error leads logically to the third, which results in his refusal to apply these beneficent provisions in complainant's favor.

The complainant having been justified in filing its bill, as has been demonstrated, if nothing more had occurred would have been entitled to its costs and counsel fees on redemption. Has anything occurred to change complainant's favorable position? It is respectfully submitted that nothing has.

After filing its bill, complainant filed the notice with the collector of taxes as required by Statute. That circumstance did not change complainant's favorable position although the Vice-Chancellor erroneously thought that it did.

Then complainant's solicitor inquired of the defendant Chopke (Exh. D-4, Case, pp. 82 and 83) made under the requirements of the rules of the Chancery Court (Rule No. 37). Surely that ought not to change complainant's favorable position.

This correspondence between defendant's solicitor Devlin and the complainant's solicitor (Exh. D-3, 4 and 5; Case, pp. 84-86) was in an endeavor to obtain from defendant a redemption of the property from complainant's tax liens. The bill was filed July 20, 1929, the correspondence ranged between July 19 and July 29, 1929. Surely these efforts at an adjustment between the parties, and while the solicitor of the complainant withheld the issuance of process (see Exh. D-5 at p. 87; Case, p. 29) ought not lessen complainant's favorable position.

Although the solicitor of the complainant had promised to withhold further proceedings until

August 5, 1929, he did not prepare the subpoena *ad resp.* until August 8, 1929 (Case, p. 26) when he was served by a notice to strike out the bill (Case, p. 19) service of which was acknowledged August 8, 1929 (Case, p. 20). This motion to strike out was denied (Case, p. 20).

Surely these last circumstances should not change complainant's favorable position. Complainant's bill is unsuccessfully attacked and then it issues process. Such conduct is the litigants' privilege and right.

On August 14, 1929, the defendant Chopke is served with process (Case, p. 29). Such conduct is likewise the complainant's right and ought not to preclude him from the favorable consideration of the Court.

The Vice-Chancellor says "such activities were unwarranted and unconscionable." (Case, p. 95, lines 21-26).

It seems rather illogical and wholly unjustified to characterize "such activities" as "unwarranted and unconscionable." Every effort a reasonable and prudent solicitor could make or should have made in behalf of his client was resorted to by the solicitor of the complainant. It is evident that he overstayed his limit three days,—August 5, to August 8, before issuing process against this defendant.

It is likewise evident that process would probably not have then issued were it not for the *activities* of the defendant, who, on August 8th, served notice of a motion to strike out the bill of complaint. (Case, pp. 19-20). It would seem that process of subpoena were hardly necessary to bring the defendant into Court; he came of his own volition by his own counsel.

Not content with the notice, the defendant filed a petition (Case, p. 22), on August 8, 1929, in which he complains that neither the defendant nor his wife had been served with any subpoena to answer the said bill (Case, p. 23, lines 32-36). It might be mentioned that on these motions and petitions, counsel was compelled to respond before the Chancellor at Trenton, although his office and that of the complainant is in Jersey City, necessitating expense and consumption of time, and although successful in each instance, he is denied his costs.

It is respectfully submitted that to find "that this suit smacks of an effort to obtain an extra few dollars in costs" is wholly unjustified.

Should complainant be thus branded because it seeks to strike from the record a pleading which does not conform to the rules and practice of the Court thereby endeavoring to shorten the litigation? Should complainant be so branded because, forsooth, in its brief, counsel concedes that notwithstanding the defendant's errors in pleading, complainant desires to have passed upon, in a fair and equitable way, its claim to statutory reimbursement for moneys expended by itself and its counsel and to have its counsel allowed a reasonable fee commensurate with the services rendered? An affirmative answer to these questions will instantly evoke emphatic contradiction. What chicanery, what covin, what fraudulent or sharp practices appeared in the evidence to have been practiced by the complainant or its solicitor? Has the cause of action been hidden from the defendant? Has complainant or its solicitor misrepresented anything? Has the defendant been lulled into inactivity or taken taken advantage of? Has

anything been suppressed that should have been divulged? If the answer to these questions be in the negative, then it is error to find the equities against complainant and deny it, as the prevailing party, its costs, disbursements and counsel fees.

Although the Vice-Chancellor concedes that costs and counsel fees are allowable in Chancery actions (C. S., p. 445, Sec. 91) and says that even if Section 49 of the Tax Revision amended in P. L. 1929, page 241, were applicable (Case, p. 96) he would not allow them to complainant because of the error into which he fell in finding and characterizing what complainant had done as "unwarranted and unconscionable."

While it is true that costs and counsel fees are allowed by the Court of Chancery in the exercise of the discretion of the Chancellor or Vice-Chancellor hearing the cause, yet the Chancellor and Vice-Chancellors do not arbitrarily disallow costs and counsel fees to a successful litigant but exercise their discretion after a full review of the equities, which of course, includes the conduct both prior and during the suit of the respective parties in determining which one of them shall be entitled to the expense of the litigation.

The Vice-Chancellor below in endeavoring to follow this practice, seeks to substantiate his conclusion to disallow complainant's costs and counsel fees by findings which have been demonstrated to be without a foundation in the evidence. Under such circumstances it is respectfully submitted, that this Court will review the facts in evidence and determine whether the Vice-Chancellor below has or has not committed an error in such findings.

"In any cause, matter or proceeding in the court of chancery the chancellor may

make such allowances by way of counsel fee to the party or parties obtaining the order or decree as shall seem to him to be reasonable and proper, and shall direct which of the parties shall pay such allowances;" * * *

C. S. page 445, Sec. 91.

"Considering this legislation as contrasted with the legislation as it previously existed, it seems to me to be clear that the clear intent was to vest the Chancellor with jurisdiction to allow counsel fees in every proceeding of every kind and description that might be brought in the Court of Chancery. * * *

"Whether they should be allowed or not is a matter of discretion."

V. C. Lane in *Hilton v. Hilton*, 89 N. J. E. 422; 105 Atl. 65.

In that case Vice-Chancellor LANE allowed costs and counsel fees in a contempt proceeding.

"In cases in which the complainant is *equitably entitled* to a decree for costs, the vice chancellor to whom the cause has been referred should hear the parties on the question of the allowance of a counsel fee to the complainant, and in advising a decree should report to the chancellor what is a reasonable fee to be allowed."

V. C. Grey in *McMullen v. Doughty*, 68 N. J. E. 776; 55 Atl. 115.

When objection was made to Chancellor MAGIE, as to the allowance made by Vice-Chancellor GREY in the last cited case, the Chancellor said:

"My examination of the case, and my consideration of the reasons given by Vice Chancellor Grey, satisfy me that the discretionary

power conferred on the Chancellor should be exercised. * * *

McMullin v. Doughty, 68 N. J. E. 776; 55 Atl. 284.

Costs and counsel fees have been allowed against receivers in their official capacity.

In re N. J. Refrigerating Co., 105 N. J. E. 305; 147 Atl. 780.

This Court on appeal has affirmed the allowance of costs and said:

“But the mere fact that the successful party is a municipal corporation does not deprive the Court of Chancery of power to award a counsel fee to the successful party to be taxed in the costs and to be paid by the unsuccessful party. P. L. 1910, p. 427.”

Mayor etc. of J. C. v. J. C. Water Supply Co., 93 N. J. E. 620; 117 Atl. 626.

“Costs are awarded or refused according to the justice of each particular case, but this discretion is not arbitrary. It is a judicial discretion calling for sound judgment upon all the facts and circumstances of the case and must not be so exercised as to result in injustice or oppression. In case the Court’s discretion is improperly exercised, its action may be reviewed and its decree in respect to costs revised or modified.”

11 Cyc. at 33.

The refusal to award counsel fees is appealable to this Court.

Commonwealth v. N. J. Lime Co., 86 N. J. E. 460; 99 Atl. 335.

Aside from the entirely discretionary view of the allowance of costs and counsel fees, it is respectfully submitted that they are required to be allowed under the provisions of the statute cited at the head of Point III:

The Court **shall** allow costs, which shall include **reasonable fees for the investigation** of the title of the lands described in the tax sale, **disbursements incurred** both by the tax sale purchaser and his counsel and **counsel fees** commensurate with the services rendered **in addition to the other fees and expenses** provided in the statute of which this section (section 49) is a part.

To thoroughly understand complainant's position it may be well to expatiate upon a condition that affects not only the complainant but many other individuals and corporations who purchase lands at tax sales held by the municipalities of this State.

Taxes are necessary. If the strength of the powerful arm of the state's authority delegated to the several municipalities were to suffer diminution what would be the effect? Without the collection of taxes and without the means of enforcing the collection of taxes the municipalities cannot continue to function. Their administrative powers would be crippled if not destroyed, for we have few instances of municipal servants drawing no salaries.

All that has been said is trite, yet in the attitude of the courts (and that attitude is reflected from numerous decisions), the individuals and corporations who are the true assistants of the municipali-

ties in the collection of the taxes and revenues necessary for the continuance of municipal maintenance, are treated very often as unfavored suitors. While it is the Court's duty, in enforcing the law especially as to forfeitures, to require that the purchaser shall show himself technically entitled to the relief prayed for before awarding that relief, yet the same rules against forfeitures should be equally resolved in favor of the purchaser where it is sought to work a forfeiture of the disbursements and expenses honestly and conservatively expended by him in providing a legal tribunal in which the delinquent may redeem his lands under the supervision of that Court. Especially, ought this rule prevail in view of the Legislature's express enactment that *this provision shall be liberally construed as remedial legislation to encourage the barring of the right of redemption by suits in the Court of Chancery*. P. L. 1929, page 241 at 245. The purchaser does not ask to be repaid the moneys he has paid arbitrarily, but only the "reasonable fees" he has expended and "counsel fees commensurate with the services rendered." The reasonableness of such search fees and counsel fees is not left in the purchaser's discretion, but by the express provisions of the statute are placed in the discretion of the Court of Chancery.

If the purchasers were to become wholly alienated and cease buying at the various municipal tax sales, it would not be difficult to imagine the consequences. It is only necessary to point to notable examples; the cities of New York and Chicago. There are many municipalities in New Jersey but it would serve no good purpose to now name them. The municipalities must have

money, not land, to conduct their affairs. What good can be accomplished by the municipality buying at tax sale the lands of its citizens if there be no tax sale purchaser to give it ready cash? Such frozen assets are of little avail where cash is necessary.

Counsel urges therefore, deliberate consideration of the purchaser as a municipal assistant and necessary servant of the public having a stabilizing effect and compelling force behind the too often willing tax delinquent, giving an attentive ear to the plea of the purchaser to be treated as one performing a most necessary and important public duty and materially aiding in maintaining the municipalities upon a liquid footing that they may carry on their administrative functions without financial embarrassment.

Counsel further urges that the construction, interpretation and application of tax sale legislation take place in the light of what has just been said regarding the beneficent function of the tax sale purchaser in the scheme of municipal affairs.

When, therefore, the 1918 Tax Sale Revision (P. L. 1918, p. 883) was adopted, provision for the redemption of property sold at tax sale was contained therein, originally appearing in sections 41, 42 and 43 of the Act. Since then, 13 Legislatures have elaborated upon the scheme. Many acts with regard to the redemption of taxes and the sale of lands for delinquent municipal liens, and the enforcement of such liens, have been passed.

Likewise there have been adopted provisions to secure to the purchaser the benefits of his purchase. Counsel is not unmindful of the fact that there is an impression among members of the

Court that a tax sale purchaser has "invested his money" in a lien somewhat akin to an investment in a real estate mortgage. This, however, is not the fact. He has *purchased* something. The municipality has *sold* something. Throughout the whole statute the legislative intent is a *sale* by the municipality and a *purchase of the fee* by the purchaser. No lesser estate than a fee can be sold. He has not loaned something. However, his purchase is defeasible; it may be defeated. His purchase may likewise become absolute; the conditional fee which he holds may be perfected. A perusal of the act clearly shows the intent to *sell* the lands for delinquent taxes, but with provisions for redemption from such sale.

Under the old Martin Act, a purchaser had but one means of perfecting his purchase. Under pain of losing the benefit of his purchase he must give notice to all persons interested in the lands, to redeem from him. Upon failure to redeem, provided always that proper notice had been given, the purchaser's title automatically became perfect. An element of this scheme survived in the Tax Sale Revision of 1918 (P. L. 1918, p. 896, sec. 48). The harshness of such a provision manifested itself to the Legislature; it adopted another and more just and equitable scheme. It was more just and equitable for the purchaser as well as the delinquent. That scheme consisted in the filing of a bill in equity which our courts have held to be a bill in the nature of a bill for strict foreclosure, *Mitsch v. Owens*, 82 Eq. 404; 89 Atl. 292. This scheme appears originally in section 49 (P. L. 1918, p. 897). It has been many times amended:

P. L. 1919, page 564;

P. L. 1928, page 382, and finally in

P. L. 1929, page 241,

which amendments sought to clarify the situation either from the viewpoint of the purchaser or for the benefit of the municipality or delinquent. In this case we are concerned with the last two amendments of this section (P. L. 1928, p. 382, and P. L. 1929, p. 241). In so far as the questions here involved are concerned, section 49 as amended in 1929 is practically the same as the amendment of 1928.

POINT IV

The complainant filed its Bill praying that the defendant REDEEM from its tax sale certificate or that the defendant's right of redemption BE FORECLOSED, but the Vice-Chancellor ordered complainant's certificates to be cancelled and its bill dismissed.

Although complainant prayed that defendant redeem (Case, p. 14, para. b) or, in default, that its lien be foreclosed, the Vice-Chancellor failed to grant its prayer but decreed, *without any affirmative pleading on defendant's part*, that upon defendant paying what the Vice-Chancellor found to be due on the certificates, that the complainant deliver up its certificates of tax sale endorsed for cancellation and then decreed that complainant's bill be dismissed (Case, p. 98, line 28).

The closest scrutiny of the various documents filed by the defendant will fail to reveal any allegation of fact which, if proven to be true, would negative or defeat the prayer of complainant's bill that he, the defendant, redeem or on failure thereof, be barred and foreclosed of his right of redemption.

The right of the owner of lands sold for delinquent taxes to redeem from the tax sale continues until barred by the Final Decree of the Court of Chancery when a Chancery proceeding such as was instituted by the complainant is brought (P. L. 1929, p. 241).

This statement of the law was the "concession" made by the complainant in its brief to the Vice-Chancellor below, to which he refers in his Opinion (Case, p. 91).

The right of the defendant to redeem has always been conceded by the complainant. Throughout complainant's bill it is conceded and the bill prays that the defendant may redeem as a matter of right. Complainant's concession was used by the Vice-Chancellor to sweep away all technical objections raised by complainant to an improper answer filed by the defendant. This was error. Although conceding the right of the defendant to redeem, rights in courts of equity as well as in courts of law are established by the litigants by the presentation to, and filing in the Court of the appropriate pleading so that the Court may judge what evidence is necessary to support the pleading.

The case is barren of any such pleading by the defendant seeking affirmative relief against the complainant. Affirmative relief is never granted upon an *Answer* alone, it requires a Cross Bill, now a counterclaim.

The only pleading filed by the defendant was his Answer, which in effect admitted the allegations of the complainant's Bill (Case, p. 31) and his Answer in lieu of plea (Case, p. 31) which set up no facts in contradiction of the complainant's prayer requiring the defendant to redeem or be foreclosed. Neither pleading of the defend-

ant set up facts justifying or prayed for any affirmative relief against complainant. On the contrary, numerous allegations were alleged of efforts to pay the complainant what the defendant thought was due complainant. The plea was technically bad and defective for the reasons set out in complainant's motion to strike it out (Case, pp. 36-37).

But the Vice-Chancellor deemed it unnecessary to consider and determine these flaws of the defendant's Answer and Plea because he thought it would serve no useful purpose (Case, p. 91) and by his Decree denied complainant's motion to strike out. This was a flagrant error, for two reasons:

first, because the complainant's motion ought to have prevailed under the rules of equity pleading as the plea violated all the requirements of such rules; and

second, because by leaving it stand and refusing to consider it, the Vice-Chancellor has embarrassed the record and leaves this Court in a position of being compelled to consider this defective pleading as the groundwork and foundation of the Court's decree dismissing complainant's bill and refusing complainant its costs and other expenses.

The Vice-Chancellor should have granted complainant's motion (Case, p. 35) in full, striking out the Answer which interposed no defense, striking out the plea because of its manifest defects, entering a Decree *Pro Confesso* against the defendant, and referring the sole question at issue, namely, the amount necessary to be paid for redemption to a Master of this Court for determina-

tion. After the Master had reported the amount due complainant upon its lien, a final decree fixing a positive time, place and hour for redemption, would have disposed of the cause in accordance with the prayer of complainant's bill.

Such a course would have been in accord with the orderly procedure of equity practice. The defendant would have been protected in having the amount to be paid upon redemption fixed; the complainant would have been protected in accordance with the prayer of its bill and would have received what it was entitled to receive, namely, a Decree in its favor, that the defendant redeem at a specified time and place or be forever foreclosed of that right.

However, instead of this, the Vice-Chancellor erroneously permits the faulty Answer to stand, but none the less refers, to a Master, for determination, the amount due upon complainant's two tax sale certificates.

While this error seems to be only an error in procedure, yet its effect is far greater than at first appears. It affects the substantial rights of the complainant. The Vice-Chancellor conceives that complainant's "activities," and this motion to strike out was its main "activity" so far as counsel can ascertain, were so "unwarranted and unconscionable" as to disentitle complainant to its costs, including therein its disbursements and counsel fees, etc.

Thus it plainly appears that what at first seemed but a slight error of procedure has grown to be one of such magnitude as to substantially affect and deny the complainant of its legal and substantial rights to costs, disbursements, etc.

Naturally the Master reports only the amount due on the certificates, namely, principal and interest; he cannot and does not deal with the question of costs, disbursements and counsel fees. These questions the Vice-Chancellor reserved to be adjudicated by himself upon the coming in of the Master's Report.

A recitation of the proceedings throughout this case fails to disclose any fact or circumstance which would throw the equities of the suit in favor of the defendant and against the complainant so as to preclude the latter from receiving its costs, disbursements and counsel fees, but notwithstanding this the Vice-Chancellor has erroneously found that the defendant was precluded from making a tender of what was due the complainant to the Tax Collector because the complainant filed with the Tax Collector a notice of the filing of its bill of complaint. The question of the propriety of filing this Notice has been argued in the earlier pages of this brief.

The Vice-Chancellor finds that tenders were made to complainant's solicitor of more than sufficient moneys to satisfy complainant's lawful claims and such were refused.

The proofs disclose that on August 15, 1929, defendant tendered to the complainant \$102.88 (Case, p. 67, l. 21); that on August 24, 1929, the defendant tendered to the solicitor of the complainant \$113.10 (Case, pp. 67-68).

Not satisfied with these tenders the defendant, without first procuring any order of the Court allowing it, deposited on September 3rd, 1929, with the Clerk of the Court \$116.76 (Case, p. 89, Exh. D-7). It is worthy of note to read in paragraph 5 of defendant's Answer in lieu of plea (Case,

p. 34) that he pays into Court for the "use of complainant the sum of \$116.76" because "*this defendant is informed and believes (it) to be the just and lawful sum due to the date of the filing hereof to the said complainant upon its liens.*"

There was evidence that an attorney went to the Collector's Office on August 2nd, 1929, for the purpose of making "redemption on that day from the tax liens in this matter" (Case, p. 63).

It were futile to argue that the Receiver of Taxes should have accepted payment because the Notice filed with him by the complainant effectually prevented the acceptance of such money. It is, however, insisted that the Collector's Office was not the place where, on August 2, 1929, the defendant, Chopke, should have made or attempted to make a tender. That tender by virtue of the statute could only then be made into court.

The subsequent tenders to the solicitor of the complainant made on August 15th and August 24th are equally abortive. At each of these times the defendant Chopke had previously been served with process of subpoena (Case, p. 29) and even under the argument of the Vice-Chancellor "the suit had been commenced" and the so-called tenders should have been made into court.

Notwithstanding defendant's abortive activities due to no fault of the complainant, the Vice-Chancellor wrongly blames the complainant for the result.

If what defendant did *after* complainant's bill was filed had been done by defendant *before* bill filed, he would have been entitled to the fruits of his efforts. The Vice-Chancellor feels that even *after* the bill is filed defendant should still have these fruits and consequently wrongly conceives

that all of defendant's woes are the result of complainant's "activity" in bringing this equity suit, and supports his theory by endeavoring to show that "no notice to bar redemption was given to defendant," although the statute plainly says that none need be (P. L. 1929, p. 241).

"And a tender, made after action has been commenced, in order to bar the recovery of subsequent interest and costs, must be of such sum as will cover the amount due, with interest to the day of tender, *and such costs as have accrued in the action up to that time*, the costs to be included in the sum tendered, comprehending everything accrued at the time of the tender or which must necessarily be expended by plaintiff in disposing of the matter of record, and such other items as plaintiff would be entitled to enter in the judgment."

38 Cyc. page 183.

"I am satisfied that the terms upon which the money is permitted to be paid into Court is, the payment of costs up to the time of payment; and if the plaintiff proceeds, he proceeds at his peril. I do not understand the books read to mean, that if the plaintiff proceeds and does not recover more than he has paid in, that he shall not recover the costs up to the time of the payment, and I can see no reason why the plaintiff should not have the costs up to that time."

State Bank v. Holcomb, 7 N. J. Law 193.

"The complainant is entitled to his costs of foreclosure. It is apparent from the evidence that the complainant in declining to receive the money proposed to be paid by the defendant acted in good faith under the advice of his counsel. * * * He was entitled to ask a decree of the Court to have the conflict-

ing claims adjusted and his own rights protected. The conduct of the complainant under the circumstances was neither unreasonable nor litigious."

Woodruff v. Depue, 14 Eq. 168 at 176.

"We think that even if he (the Judge below) erred in his finding on the second count, the planitiff would be entitled to costs on the first, as the established practice in this State is that a payment into Court must include the costs up to that time in any event."

Jackson v. United, 100 N. J. L. 317; 126 Atl. 296.

"A party pays money into court on a tender at his peril, for the money paid in belongs absolutely to the party for whose account it is paid, and remains subject to his order; and the tenderer cannot ordinarily withdraw it, even though the money was paid by mistake, except perhaps in case of fraud; and even if the parties proceed to trial and it then turns out that nothing is due, and verdict is for the tenderer, it belongs to the party for whom it was paid in, absolutely, and no part of it will be ordered repaid to defendant whatever may be the fate of the action."

38 Cyc. p. 176.

The Court of Errors and Appeals dealt with the principle above enunciated although, under the circumstances of the case there decided, it refused to apply it although it is manifest that the Court did not repudiate the doctrine.

See

Levin v. Goodman, 107 N. J. Eq. 473, 153 Atl. 476.

"When the sum tendered is less than the amount due, it is a conclusive admission of

the indebtedness to the extent of the tender, regardless of the final result of the action, and not only does the party paying it into court lose all right had, but the Court itself has no power to make an order in the same action which, in effect, retransfers the title."

Mann v. Sprout, 185 New York 109.

The Vice-Chancellor holds that because the complainant demanded \$273.07 in redemption of its two tax sale certificates, it demanded an amount greatly in excess of the amount then lawfully due.

The items of the complainant's demand are set forth in the defendant's Petition (Case, p. 23). It will be observed that in this computation complainant claimed for the title search \$80 and for counsel fees \$75 together \$155. Deducting these two items from the \$273.07 we have the sum of \$118.07 which is just \$1.31 in excess of the sum the defendant tendered and paid into court. From this statement of the figures it is manifest that the point in issue between the defendant and the complainant was the charge for disbursements, "search fees" and "counsel fees." So that if the complainant's contention that both are allowable under the 1929 amendment of section 49 of the Tax Sale Revision is correct, the gross excessiveness of its demand amounts to the munificent sum of \$1.31.

Surely this case is not like one where an unconscionable demand, known to be such, is made by a creditor of a debtor (*Woodruff v. Depue, supra*). This is a case where a complainant believing itself entitled to be reimbursed for its necessary expenses for search fees and counsel fees under the statute, asked of the tax sale delinquent, the defendant Chopke, to be reimbursed the mod-

est sums of \$80 for the search fee and \$75 for counsel fees. According to the statutory computation, the search fees would legally amount to \$118.76 (Case, p. 80). Surely \$80 of this amount is not excessive when an allowance of over \$38 from the legal fees which might have been computed, is made to the defendant. The allowance of \$75 as a counsel fee was modest indeed in consideration of the work entailed prior to as well as in the preparation of the Bill of Complaint, and other papers, prepared to that date in the cause.

The finding, therefore, that \$273.07 is "an amount greatly in excess of the amount then lawfully due and owing" (Case, p. 93) is unjustified by the facts.

POINT V

Section 49 of the Tax Sale Revision as amended in P. L. 1929, page 241, should have been applied by the Vice-Chancellor in the determination of the matters in issue in this cause.

To better understand this situation it is well to examine the course of the legislation leading up to this amendment.

In the 1903 General Tax Law the same character of legislation dealt with in the 1929 amendment above referred to, can be found.

Section 59 of "An act for the assessment and collection of taxes" (4 C. S., p. 5137 at 5138) begins the course of legislation sanctioning the equity procedure for the perfection of the tax sale

purchaser's rights. This section has the rudiments of the act as amended in 1929. It provides that after the lapse of two years, *whether notice to redeem had been given or not*, the purchaser may file a bill in equity to foreclose the delinquent's right of redemption.

In the Tax Sale Revision of 1918, section 49 deals with the same matters and outlines the same course of procedure to be adopted by a purchaser in almost the same words as the 1903 Tax Act, but adds to and elaborates upon the procedure to be adopted, the evidence to be adduced, and who might not be affected by the decree in equity. By its terms this act clearly indicates the method of procedure for the perfection of the purchaser's rights which, until he takes such action, remain dormant and inchoate, and the fee purchased remains defeasible.

In 1919 (P. L. 1919, p. 564) section 49 was again amended and the municipality was exempted from its operation in certain respects.

In 1928 (P. L. 1928, p. 382) this section was greatly enlarged.

The two notable additions by way of amendment are (1) the provision that after bill in equity has been filed, redemption may be made *only* in the cause, whereupon the Court shall fix the costs, "search fees" and counsel fees and allow them with the complainant's as well as its counsel's disbursements as part of the complainant's costs of the procedure; and (2) a paragraph which provided that the provisions of this section should be liberally construed as remedial legislation "*to encourage the barring of the right of redemption by suits in the Court of Chancery*" and to discourage the barring of such right by the method

of serving and recording notices to redeem. While this act was amended in 1929, P. L. 1929, page 241, the amendments in no wise alter the two notable provisions contained in the 1928 amendment except the elimination of the language which provided that the act was passed to discourage the barring of the right of redemption by the service and recording of notices to redeem. The provision of this act which the Vice-Chancellor has refused to apply, and which was dealt with on the first pages of this brief in so far as it relates to the complainant's costs, disbursements, search fees and counsel fees, was in no way affected by the amendment of 1929.

In the enforcement of the collection of delinquent taxes, the Legislature provided for a sale of the delinquent's lands. For a period of two years it was provided that such sale was defeasible by the act of the delinquent or others interested, upon paying certain moneys and fixed charges for a redemption to the Tax Collector. The original provision of such a character was found in the 1903 Tax Act (4 Comp. St., p. 5136, sec. 57). In the 1918 Tax Sale Revision it appears in section 37 (P. L. 1918, p. 893). Sections 38 to 45 likewise deal with the subject of redemption to be made of the collecting officer.

The tax delinquent's right to redeem from the Tax Collector during the period of two years next after the tax sale of his lands, is an absolute right and can in no way be curtailed or interfered with by anyone.

Immediately after the expiration of these two years there accrued a right to the tax sale purchaser to perfect and make absolute the fee title he had purchased at the tax sale. Two methods

were open to him, one, by serving and recording notices to redeem, and the second, by filing his bill in equity.

It happened prior to 1928 that when a bill in equity was filed the tax delinquent would seek to make redemption of the Tax Collector; sometimes the Collector accepted redemption, more times he refused it. The right to redeem at the Collector's office became uncertain, dependent upon the Collector and his whims.

If the tax delinquent sought to make redemption of the complainant, it led to the question of the payment of the sheriff's fees, publication fees and "Court Costs," as well as reimbursement for expenses of searches and counsel fees.

Such controversies frequently reached the courts. One such controversy is illustrated in the case of

Harris v. Mc Murray, 92 N. J. Eq. 1; 116
Atl. 702.

In this case Chancellor Walker after admitting that "in the usual mortgage foreclosure suit a defendant applying to redeem after bill filed, would ordinarily be required to pay complainant in addition to the moneys otherwise due on the indebtedness secured by the mortgage, the complainant's taxed costs in which would be included the fees and charges for services actually and necessarily paid or incurred for the purpose of the action," but citing the equitable rule that it is a matter of discretion whether to award costs in any case, adds, parenthetically "(I know of no statute making mandatory the award of costs in any such case as the one under consideration)", he says that he can perceive of no valid reason

why the defendant should not be required to pay the complainant's taxed costs. In concluding his opinion he determines, however, that in such taxed costs he is not authorized to include search fees as there is no statutory authority therefor and although admitting that a counsel fee may under the statutes of this state be awarded to a counsel in such an amount as would be deemed reasonable to be paid by the defendant to the complainant, in which the counsel might receive repayment of search fees, yet he states that he thinks such an allowance unjustifiable because he thinks that the Legislature had "fixed a limit upon the amount of search fees which a purchaser may expect to receive or an owner be compelled to pay for redemption." Of course he refers to section 57 of the 1903 Act as he is dealing with a matter that arose under that Act and of course prior to the provisions of the statute and amendments whose application is sought in the present appeal.

Section 57 of the 1903 Act is paralleled by section 44 of the 1918 Act although they are not in any respect similar in provision.

Both of these sections dealing with the amount to be paid on redemption, apply in their language and import to redemptions made through the Collector's Office and the true interpretation of these sections must be that they both refer to expenses incurred by a purchaser when seeking to ascertain within the two years after acquiring the tax title, the names of those interested in the lands, upon whom he may serve "Notice to redeem" to bar redemption by the recording method. The section applying to barring redemption by equity suit was utterly silent until the adoption of the 1928 Act.

There is no interdependence or the slightest connection between section 44 and section 49. The Legislature had not in mind when enacting section 44, any expenses, costs or counsel fees of a suit in equity because it dealt only with the subject of a redemption made by a purchaser in the ordinary course and not after litigation had been instituted.

Chancellor WALKER in the cited case states that his decision depends largely upon a "public policy" established by the Legislature: "The Legislature by fixing of this limitation, has expressed the public policy of this state." The "public policy" which the Chancellor then found was expressed in the then existent legislation can no longer be said to be the "policy" of the Legislature because in the act of 1928 and still existing in the act of 1929, the Legislature has declared that the State's policy shall be that these sections "*shall be liberally construed as remedial legislation to encourage the barring of the right of redemption by suits in the Court of Chancery.*" Since the adoption of section 49 of the 1918 act as amended in 1928, the courts should determine that the "public policy" has been expressed and that that policy is to encourage purchasers in bringing their suits for redemption in the Court of Chancery by reimbursing the complainant for his costs and disbursements and compensating complainant's counsel in a sum commensurate with the services he has rendered. The refusal to do this by the Courts is a denial of the Legislature's expression of "public policy" and an unwarranted usurpation of legislative authority.

POINT VI

Section 49, Tax Sale Revision, as amended P. L. 1929, page 241, is both prospective and retrospective as well as remedial.

The Vice-Chancellor below finds that the cited section has no application to "prior transactions" (Case, p. 96). He cites as his authority *Rodgers v. Cressman*, 98 N. J. Eq. 209; 130 Atl. 17.

The *Cressman* case may be readily distinguished from the present. In the *Cressman* case the sale was under the 1903 Tax Act and it was sought to apply the provisions of the 1918 Act. In the *Cressman* case there was an attempt to increase the burden of the tax delinquent by asking him to pay subsequent taxes which had been paid by the tax sale purchaser. At the time of the sale of the tax delinquent's lands there was no statutory authority requiring the tax delinquent to pay subsequent taxes upon redemption. The statutory authority casting this extra burden upon the tax delinquent was not adopted until the 1918 Act.

However, the Vice-Chancellor holds that the right of redemption would be burdened by the additional taxes paid by the tax sale purchaser because he finds that any statute which takes away, reduces the time for or otherwise impairs the right of redemption which has already vested, is unconstitutional. The provisions of the 1928 Act, amended in 1929 do not add a *burden* to the *right of redemption*. When speaking of vested rights, we cannot be partial. The tax sale purchaser as well as the tax delinquent has rights which become vested at certain times as fixed by the statute.

The complainant acquired the tax sale certificate on September 9, 1926 (Case, p. 71, l. 29). Its right to foreclose and to acquire an absolute fee simple title thereunder became vested after the lapse of two years, namely on September 9, 1928. At that time there had been adopted the amendment of 1928 (P. L. 1928, p. 382), which became effective on April 3rd, 1928 upon its approval, so that when complainant's vested right to bring this action to foreclose sprung into being, there already existed this statute regulating the practice in such cases to that of the Court of Chancery and providing for the allowance of costs including the disbursements, counsel fees, etc., upon application therefor at any time after the bill has been filed in order that the Court of Chancery might decree marketable titles and in order to encourage the bringing of suits in that jurisdiction.

In the sense just indicated, the statute is prospective. It came into effect some months before complainant's right to foreclose became a vested right.

Such construction cannot be deemed or held to be an invasion of the vested right of the tax delinquent who could have had at any time during the two years running after the issuance of the tax sale certificate, redeemed by the payment of the items exclusive of the cost of the equity procedure which his neglect and default had occasioned.

“The repeal of any statutory provision by this act, or by any act of the Legislature heretofore or hereafter passed, shall not affect or impair any act done or right or limitation

vested or accrued or any proceeding, suit or prosecution had or commenced in any civil cause before such repeal shall take effect, but every such act done, or right or limitation vested or accrued, or prosecution had or commenced, shall remain in full force and effect to all intents and purposes as if such statutory provision so repealed had remained in force, **except that where the course of practice or procedure for the enforcement of a right, or the prosecution of a suit shall be changed, actions now pending or hereafter commenced, shall be conducted as near as may be in accordance with such altered practice or procedure.**"

4 Comp. St., page 4971, sec. 3.

"This statutory provision preserves intact from future legislation, rights vested or accrued under existing legislation except 'where the course of practice or procedure for the enforcement of such right or prosecution of such suit shall be changed.' This exception refers to practice or procedure in the conduct of the suit, and not practice or procedure which directly affects the right which the statute was designed to protect."

Barnaby v. Bradley, 60 N. J. L. 158.

The right to redeem is, by the express terms of the 1918 Act and through its amendments to the 1929 Act, preserved intact to the tax delinquent. The institution and prosecution of a suit in equity to foreclose this lien remains the same from the 1903 Tax Act throughout the 1918 Tax Act and its several amendments. In 1928 and before the right of complainant to file its bill accrued or vested, it was provided what costs should be allowed in the procedure provided by that statute and paid by the tax delinquent to the complainant, not, as a

condition precedent to the right to redeem, but as an equitable reimbursement of the complainant of the costs and expense which the litigation entails.

The Legislature had previous to 1928 provided for a suit in equity but in 1928, while it does not change the procedure, it provides for the expense of such procedure to be paid by the one whose fault occasioned it.

The Legislature in the earlier acts presumed that the courts would in the orderly course of procedure protect and reimburse their litigants, but when the Chancellor in *Harris v. Mc Murray* intimated that he needed an expression of the Legislature so to do, the Legislature expressed itself in the 1928 statute.

Great force is lent to this argument by the express language of the Legislature which provides that this provision should be liberally construed and for the purpose of encouraging suits in equity for the enforcement of the tax purchaser's liens.

In Conclusion

Counsel respectfully submits that the Decree of the Court of Chancery which decrees:

That upon the payment of \$59.08, the complainant should cancel its certificates of tax sale set out in the Bill of Complaint;

That complainant's motion to strike out the defendant's Answer and answer in lieu of plea should be denied and no costs or counsel fees be allowed the complainant;

And that after the payment of the \$59.08 by the Clerk to the complainant, the Clerk should repay to the defendant who had deposited the sum of \$116.76, the balance remaining in Clerk's hands;

And that complainant's bill of complaint be dismissed upon defendant complying with the requirements of the decree;

be reversed in all these particulars

and the Chancellor directed to enter a decree permitting the defendant John Chopke to redeem the lands sold from the lien of the complainant's two certificates of tax sale upon the payment to the complainant of the moneys paid by it, with interest at 8% from the date of the respective sales, besides the complainant's costs to be taxed by the Clerk of the Court of Chancery, which shall include such fees for the examination of the title to the lands described in the Bill filed, as the Chancellor shall determine to be reasonable, with disbursements shown by the purchaser to have been incurred by it and its counsel and such counsel fees as the Chancellor shall determine are commensurate with the services rendered by the complainant's counsel.

Respectfully submitted,

HARRY B. BROCKHURST,
Solocator of Complainant.

ADOLF L. ENGELKE,
Of Counsel.

New Jersey Court of Errors and Appeals

Between, HARRINGTON COMPANY, a Corporation, Complainant-Appellant, and JOHN CHOPKE, sometimes known as JOHN CHOPKO, Defendant-Appellee.	}	On Appeal from De- 10 cree in Chancery.
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BRIEF OF DEFENDANT-APPELLEE

20

STATEMENT OF FACTS

The bill of complaint in this cause is a bill of strict foreclosure filed by the complainant to foreclose certain tax liens held by it upon lands located in the City of Trenton. The bill prays, as is usual in such cases, that the defendants be required to redeem, or that, in default thereof, they be barred. The bill of complaint was filed to foreclose not only one, but two, tax sale certificates. The property in question was sold by the Receiver of Taxes of said City of Trenton to complainant, on September 9, 1926, for the sum of \$13.03, and was again sold by said Receiver to complainant, on September 9, 1927, for the sum of \$16.72. The said bill of complaint was filed on July 20, 1929 (State of Case, p. 1, line 9). The fact that, in this bill, complainant sought the foreclosure of the tax lien acquired by reason of the 30

sale of September 9, 1927, as well as the lien acquired at the former sale, two years from the date of said later sale having not expired at the time of the filing of said bill, is important for the reasons hereinafter set forth.

1. Defendant attempted to make redemption, and was prevented from doing so by the improper demands and actions of complainant, and is therefore in a position equivalent to that of having made a tender, prior to the commencement of the suit.

While the bill of complaint was filed on July 20, 1929, the subpoena was not issued until August 8, 1929, (State of Case, p. 26, line 31), so that, even assuming the subpoena was placed in the course to be served on the same day as the date of issuance which it bears, no suit was commenced, or pending, until August 8, 1929. A suit in Chancery is not commenced, or pending, until process is issued after the filing of the bill.

Haughwout v. Murphy, 22 N. J. Eq. 531; *Hermann v. Mexican Petroleum Corp.*, 85 N. J. Eq. 367; *Haupt Co. v. Board of Education of Edgewater*, 87 N. J. Eq. 362; *Malba Terrace Corp. v. Portaupeck Properties*, 105 N. J. Eq. 453, 455.

- 30 Nevertheless, the complainant caused a notice of the then pendency of this suit to be filed in the office of the Clerk of Mercer County, on July 23, 1929, (State of Case, p. 17, line 18).

On July 29, 1929, in response to an inquiry made to him by Martin P. Devlin, Esquire, one of the Counselors-at-Law of this State, on behalf of the defendant, Chopke, the solicitor of the complainant demanded in settlement the sum of \$273.07 (Exhibit D-5, State of

Case, pp. 86 and 87). It should be observed by the Court at this point that the original investment of the complainant was \$13.03 on one tax sale, and \$16.72 on the other tax sale, making a total sum of \$29.75. With this small sum as a basis, with the trivial amount of interest which would then have accrued thereon, although no step other than the filing of the bill had then been taken in the suit, the demand of the plaintiff had, on July 29, 1929, grown from this insignificant basis of \$29.75 to the sum of \$273.07. When this demand was not immediately complied with, and on August 1, 1929, three days after the making of the demand aforesaid, the complainant caused to be filed in the office of the Receiver of Taxes a notice of the filing of the bill in this cause, which notice complainant claims to have so filed under the provisions of Chapter 139 of the Laws of 1929, P. L. 1929, p. 244. The only object of the filing of this notice was to prevent the defendant from making redemption to the Receiver of Taxes, in case he did not comply with the outrageous demand which had been made. 10

On August 2, 1929, and six days before the date of teste of the subpoena in this cause, the counsel with the defendant went to the office of the said Receiver of Taxes, and offered to make redemption on behalf of the defendant of the aforesaid tax liens, which offer was refused by the said Collector because of the said notice which had been filed in his said office by the complainant (State of Case, p. 63, line 18, to p. 64, line 2). The complainant, by the filing of the said notice, caused said Receiver of Taxes to refuse in advance a redemption 20 which he should have accepted. 30

So that, before this suit was commenced and pending, the complainant had not only demanded of the defendant in settlement a sum far in excess of any sum then lawfully due, but the defendant had also sought to make redemption at the office of the Receiver of Taxes, which redemption had been prevented by the complainant by the filing of the aforesaid notice.

Where a purchaser at a tax sale demanded an excessive sum to redeem, refused an interview to state an account, situation in regard to which was complicated, and stated it would accept nothing else than total sum demanded, filing a bill to redeem held a sufficient tender of payment.

- 10 *Gonzales v. Harrington Co.* (1923) (N. J. Ch.) (Fielder V. C.) (Not reported in N. J. Eq.) 2 N. J. Misc. Rep. 311, 126 A. 38, citing *Thorne v. Mosher*, 20 N. J. Eq. 257, *Trenton St. Railway Co. v. Lawlor*, 74 N. J. Eq. 828, 71 A. 234, 74 A. 668.

A tender to one who announces in advance that he will not accept it is unnecessary.

Trenton St. Ry Co. v. Lawlor (Ct. of Err. & App. of N. J.) 74 N. J. Eq. 828, 71 A. 234, 74 A. 668.

- 20 A refusal to accept is a sufficient excuse for not making the actual tender.

Thorne v. Mosher, 20 N. J. Eq. 257.

Mortgagee attempting to ascertain amount required to redeem property from tax sales from tax collector, *who declined to inform or accept any money from him*, and procuring official tax searches, which disclosed records from which it was impossible to determine sum payable, *held* not precluded, by failure to pay or tender payment to collector, from suing purchaser to redeem.

- 30 *Gonzales v. Harrington Co.* (1923) (N. J. Ch., Fielder V. C.) (Not reported in N. J. Eq.) 2 N. J. Misc. Rep. 316, 126 A. 40.

The Vice-Chancellor in the court below found that redemption was sought on behalf of this defendant prior to the commencement of complainant's suit, and that such

redemption was prevented by the actions of the complainant (Conclusions, State of Case, p. 91, line 36 to p. 92, line 10, and p. 94, line 21). Even if no other reason existed, these facts furnished a proper ground for the dismissal of complainant's bill.

2. The filing by the complainant in the office of the Receiver of Taxes of the notice of the filing of the bill of complaint in this cause was improper, prevented the defendant from exercising his legal rights, and was designed to oppress the defendant. 10

As has been previously adverted to, the bill of complaint in this cause was filed on July 20, 1929, and the date of teste born by the subpoena is August 8, 1929. Yet, on August 1, 1929, complainant caused to be filed in the office of the Receiver of Taxes a notice of the filing of said bill, by reason of the filing of which notice a redemption to the said Receiver of Taxes on a date prior to the issuance of the subpoena was prevented. The complainant claims the right to file such notice and to thereby prevent redemption thereafter to the Receiver of Taxes by reason of the provisions of Chapter 139 of the Laws of 1929, P. L. 1929, p. 244. The statute last aforesaid provides, among other things: 20

" . . . , after the bill in equity has been filed, redemption shall be made in said cause only, provided *notice of the suit* has been filed in the office of the Collector of Taxes," 30

Manifestly, the complainant could not properly file either any "notice of the filing of the bill in equity," or "notice of the suit," under the provisions of said statute until after the bill had been filed, and, when a bill in equity had been filed, complainant was required, by the

provisions of the statute, to file in the office of the Collector of Taxes, not a "notice of the filing of the bill" as complainant contends, but a "*notice of the suit*."

At the time the said notice of the filing of the bill (State of Case, p. 18, line 29) was filed by the complainant in the office of the said Receiver of Taxes, August 1, 1929 (State of Case, p. 19, line 14), no subpoena had been tested or issued, and no suit was, therefore, pending, and complainant could not then have properly filed any "*notice of the suit*," as required by the statute last aforesaid. Other notices of the pendency of a suit have been held to be ineffectual before bill filed and subpoena served.

Bill filed and subpoena served are necessary before a *lis pendens* becomes constructive notice to persons who shall acquire title from the parties to the suit, *pendente lite*.

Haughwout v. Murphy, 21 N. J. Eq. 118, 22 N. J. Eq. 531.

While notice (of *lis pendens*), under section 57, is ineffectual before bill filed and subpoena served, it may be thereafter filed at any time before final decree, and the time for appeal will be thereby abridged.

White v. White (1900) (Ct. of Err. & App.) 61 N. J. Eq. 629, 47 A. 628.

The complainant contends that the provisions of the statute last aforesaid may be construed to permit it to prevent redemption to the Collector of Taxes, and to compel redemption to be made "in the cause only," by filing in the office of said Collector a "notice of the filing of the bill" when no subpoena in the suit has been served or even issued. Such a construction would permit this complainant to file bills of complaint in all of its suits similar to the present one, and file similar notices in the offices of the Collectors of Taxes to prevent redemptions

from being made to such Collectors, and then refrain from issuing subpoenas for indefinite periods, during which periods it could file lengthy and frequent amendments to said bills, and make continued efforts to prevent proper tenders to it from being made, in its determination to increase its costs simply to derive as great a profit as possible from the defendants.

The filing of the aforesaid notice with the Receiver of Taxes in this matter was improper, and was done for the purpose of oppressing the defendant. One of the tax liens upon which the complainant's bill was based arose from a tax sale held on September 9, 1927. When the said bill was filed, on July 20, 1929, a period of two years from the date of the sale last aforesaid had not elapsed, and the complainant had no right at the time of the filing of said bill to foreclose the tax lien last aforesaid. The complainant had only the right, under the previous tax acts and also under the statutes of 1928 and 1929, to file a bill in equity to foreclose its tax liens, "*at any time after the term of two years*" (P. L. 1928, Chap. 211, p. 382, sec. 49, and P. L. 1929, Chap. 139, p. 241, sec. 49). By the provisions of the Tax Sale Revision, P. L. 1918, p. 893, sec. 37, and p. 895, sec. 46, the owner, and others, may redeem within two years after the sale, whether a notice to redeem has been given or not.

By filing its bill to foreclose the lien last aforesaid, in addition to its prior lien, and by filing the aforesaid notice of the filing of the said bill with the said Receiver of Taxes, the complainant prevented the defendant from redeeming from the tax lien last aforesaid to the Collector, although the complainant had then no right to foreclose upon the tax lien last aforesaid, and although the complainant had then no right, by any method, to bar the defendant from making redemption upon the lien last aforesaid to the Collector. The defendant was, by this action of the complainant, prevented from exercising his undoubted right to redeem to the Collector from the tax lien

last aforesaid, and to prevent the accumulation of any further interest and costs in respect to said lien.

The complainant bases its action of including in its bill of complaint the tax lien last aforesaid, and its barring of redemption to the Collector on said tax lien, upon the provisions of the statute, P. L. 1918, p. 894. This statute provides:

- 10 "In case the certificate of sale is not held by the municipality, the amount required for redemption shall include all sums for subsequent municipal liens, and interest and costs thereon, actually paid by the holder of the tax title, or his predecessor therein, together with interest on the amount so paid at the rate chargeable by the municipality; provided, the holder of such title shall have made and filed with such collecting officer an affidavit showing the amount of such payment, which affidavit may be taken before such officer."
- 20 P. L. 1918, p. 894.

- 30 Quite obviously, the section of the statute last aforesaid applies to further disbursements for subsequent taxes, assessments, etc., made by the tax sale purchaser in order to prevent a subsequent sale and to protect the tax sale purchaser from a loss of such additional sums so expended by him, for which sums he would have no separate certificate and lien, in case of redemption. This view is born out by the provision of the statute last aforesaid, "*provided, the holder of such title shall have made and filed with such collecting officer an affidavit showing the amount of such payment, . . .*" Such an affidavit would be entirely unnecessary in the case of a later sale and a later certificate of sale.

And it is worthy of note that, according to the provisions of the statute last aforesaid, the amount required for redemption does not include the subsequent disburse-

ments of the tax sale purchaser unless the affidavit aforesaid is filed with the collecting officer, and, the purchaser would apparently, if he fails to file said affidavit lose the sums paid for such additional disbursements. Certainly, this cannot apply to an additional tax sale certificate.

The complainant evidently considered that the provisions of the statute last aforesaid did not apply to a later tax sale certificate held by a former purchaser, for it produced no proof whatever before the Master that any affidavit as aforesaid required by said statute had been filed 10 by it in respect to the sums disbursed by it in making its purchase at the later sale, but only produced evidence that it had filed such an affidavit in respect to its payment of fees for recording the two tax sale certificates (State of Case, p. 55, line 12).

The aforesaid notice filed in the Collector's office by the complainant (State of Case, p. 18, line 28), and purporting to have been so filed under the provisions of Chapter 211 of the Laws of 1928, P. L. 1928, p. 382, and also Chapter 139 of the Laws of 1929, P. L. 1929, p. 20 241, was also improper for the reason that neither of the statutes last aforesaid apply in the present case because the tax liens upon which this foreclosure is based were created by sales held on September 9, 1926, and on September 9, 1927, both of which sales took place before either of said statutes were enacted.

The rights of an individual purchasing at tax sale, are governed, as to the owner's right of redemption, by the laws in force at the time of the 30 sale.

Harrington Co. v. Jones, (1929) 104 N. J. Eq. 377, 145 A. 869, decree unanimously affirmed on opinion filed in the Court of Chancery by Berry V. C. in 106 N. J. Eq. 280, 151 A. 906.

Even if it should be conceded that the complainant may file merely "a notice of the filing of the bill," before the commencement of the suit, in the office of the Collector of Taxes to prevent redemption to such Collector, instead of "notice of the suit" as the statute specifies, the notice which the complainant so filed is not even a proper notice "of the filing of the bill." The notice which complainant so filed (State of Case, p. 18, line 28), does not set forth the date of the filing of said bill, and does not even set forth
 10 that said bill has actually been filed. It merely states that a bill of complaint has been "forwarded to the Clerk in Chancery . . . to be filed." Whether said bill ever reached said Clerk's office, or whether said bill was in fact filed, is not stated in said notice.

3. The court below was justified in dismissing complainant's bill because of failure of the complainant to produce evidence to entitle it to a decree.
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The letter from the solicitor for the complainant to Martin P. Devlin, Esquire, (Exhibit D-5, State of Case, p. 87, line 14) sets forth:

"The City Tax search which I have procured in this matter is as follows:

That the 1925 and 1926 taxes were sold to an individual at 8% interest (*these represent the sales to the complainant*) and that the 1927 taxes were
 30 sold to the City at 7% interest and that the taxes are delinquent and unpaid for the years 1928 and 1929 and that there is a lien for a street improvement No. 468, assessed June 21, 1929."

The statute, Chapter 139 of the Laws of 1929, P. L. 1929, p. 244, provides:

“ . . . , but no foreclosure decree, except in cases where a municipality is the party complainant, shall be entered *unless evidence is produced in the foreclosure suit that all subsequent municipal liens have been paid to the time of the commencement of the suit, . . .*”

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No such evidence whatever was produced in the present suit.

4. The amendments to section 49 of the Tax Sale Revision by P. L. 1928, page 382, section 49, and by P. L. 1929, page 241, section 49, were properly held by the court below to have no application in this cause.

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One of the tax liens which complainant sought to foreclose in this suit arose as the result of a sale held on September 9, 1926, and the other of said tax liens arose as the result of a sale held on September 9, 1927, so that both of said sales had taken place prior to the enactment of either of the aforesaid amendments.

The law, as it existed at the time of each of said sales, allowed to the tax sale purchaser a statutory fee for searches, or expenses other than recording fees, etc., amounting to \$10.00, which said fee was allowed to the complainant in this suit on each of said tax sales by the Master to whom it was referred to find the amount due to the complainant.

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The complainant apparently contends that the said statutes of 1928 and 1929 should apply in this cause because of the fact that these said statutes are amendments to the former statute, and that the said amendments are,

therefore, retroactive. But such contention is certainly based on a fallacy.

An amendatory act, like other legislative enactments, takes effect only from the time of its passage and approval, and has no application to prior transactions, unless an intent to the contrary is expressed in the act or is clearly to be implied from its provisions.

- 10 In Re, *St. Michael's Church of Atlantic City*,
(Walker V. C.) 76 N. J. Eq. 524, 74 A. 491.

Although the statute, P. L. 1928, page 382, and also the statute P. L. 1929, page 241, by their terms, repeal all acts and parts of acts inconsistent therewith, such repeal cannot effect rights existing and vested prior to their passage. This has been held, in similar situations, in respect to statutes embracing different subject matter.

- 2) Act of March 14, 1895, shortening the time for filing mechanic's lien from one year to four months after completion of work, and repealing all acts inconsistent therewith, and made to take effect immediately, *does not apply to a case where the work has all been done before passage of the act*; the act relative to statutes of March 27, 1874 (section 3) providing "that the repeal of any statutory provision . . . shall not affect or impair any act done or right vested or accrued . . . before such repeal shall take effect; but every such act done or right vested or accrued . . . shall remain in full force and effect . . . as if such statutory provision . . . had remained in full force," with the exception "that where the practice or procedure for the enforcement of such right . . . shall be changed, actions shall be conducted as near as may be in accordance with such altered practice or procedure.
- 30)

Barnaby v. Bradley & Currier Co. (Ct. of Err. & App.) 60 N. J. L. 158, 37 A. 764.

The acts of 1881 and 1882 (Supp. Revision, 489, 490), which subject mortgaged estates to conditions of redemption in the hands of purchasers at foreclosure sales being unconstitutional as applied to antecedent mortgages, held, that the purchaser at a sale under proceedings for the foreclosure of a mortgage made prior to these acts took the estate of the mortgagee uneffected by the conditions of redemption created by those acts, although at the foreclosure sale enough was realized to pay the prior mortgage in full, and a small sum upon a second mortgage, which was made after these acts took effect. 10

Champion v. Hinkle (Ct. of Err. & App.) 45 N. J. Eq. 162, 16 A. 701.

The complainant also resorts to the argument that, as one of the said tax sales took place on September 9, 1926, its right to foreclose upon the lien which it acquired at said sale did not arise until September 9, 1928, which date last aforesaid was after the passage of the 1928 amendment aforesaid, and that, therefore, the said amendment of 1928 should apply. But complainant has apparently overlooked the fact that, although its right to foreclose arose at the expiration of two years from the date of said sale, the right of the defendant to redeem, which had existed from the date of said sale, did not cease when complainant's right to foreclose arose, but, by the express provisions of each of the said statutes of 1928 and 1929, the said right of the said defendant to redeem continued until barred by a decree of the Court of Chancery. And complainant also overlooks the fact that it has been held in several cases that it is the law which is in force at the time of the sale by which the right of redemption is governed. 20 30

Right to redeem property sold for taxes of 1903 and 1904, on payment of amount of purchase money with interest, but without payment of subsequent taxes paid by purchaser, was fixed and vested by 1903 Tax Act, in force at time of sale, and not affected by Tax Sale Revision Law of 1918, in force at time of offer to redeem, notwithstanding retrospective aspect of sections 59, 61 and 62, of latter act.

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Rights of a private person purchasing at tax sale are governed, as to owner's right of redemption, by law in force at time of sale.

A statute which takes away, reduces time for, or otherwise impairs a right of redemption which has already vested, is unconstitutional.

Rogers v. Cressman (1925) (Berry V. C.)
98 N. J. Eq. 209, 130 Atl. 17.

In the case last above, Berry V. C. said:

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"The Legislature has no power to increase the lien of taxes already levied, but this would, in effect, be the result of giving the 1918 act the retrospective effect claimed for it by the complainant. At the time of the sale, the defendant had the right to redeem upon payment of \$4.60, plus interest and costs. The lien of this amount was an incumbrance on the lands of the defendant. Her right to redeem that land from this lien for a certain specified sum, her equity of redemption, was a vested right in property. An equity of redemption is an estate in land, subject to the incumbrance, but which is capable of descent to heirs, subject to devise by will, or conveyance by deed. 1 Pomeroy's Equity Jurisprudence, Secs. 73, 162, 376. To my mind, the owner's right to redeem his property from a tax sale is similar

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to the mortgagor's equity of redemption. To give the 1918 act the construction claimed for it by the complainant would be to permit the Legislature to increase the lien or incumbrance resulting from this tax sale to \$191.78, plus interest and costs, bringing the total up to \$357.20, which is the amount the complainant now claims. Clearly this cannot be allowed. *Fitzsimmons v. Bonavita*, supra.

The rights of a private person purchasing at a tax sale are governed, as to the owner's right of redemption, by the law in force at the time of the sale. 12 Corpus Juris, p. 966, sec. 524; *Rogers v. Nicholas*, 186 Mass. 440, 71 N. E. 950; *Fitzsimmons v. Bonavita*, 77 N. J. Eq. 277, 76 A. 313." 10

In *Citizens' Gas Light Company v. Alden*, 44 N. J. L. on page 653, Knapp, J., in delivering the opinion of the Court of Errors and Appeals, said: 20

"Laws, generally, are enacted for the regulation of future affairs and conduct, and to establish the basis on which rights may thereafter under them be rested, and are not usually designed to alter or affect the quality or legal relations of past acts and concluded transactions, much less to disturb rights which have arisen under laws running concurrently with their birth. Hence we do not look for or expect in any enactment that it shall be operative as of time prior to its own existence; and before we are permitted to ascribe to it such purpose, there must be found in the law such clear and indubitable expression of the legislative design as precludes any other reasonable interpretation of the words used. *The rule in the courts is, that retroactive effect will not be* 30

10 *given to a statute when the words in it can be construed as designed to make it prospective only. Williamson v. N. J. S. R. R. Co., 2 Stew. Eq. 311. All legislation is framed, or presumed to be, in view of this conspicuous cannon of construction governing in courts where the duty of interpretation is imposed. And when the legislature intend to give to law of their enactment operation upon the past, they will and must do it with such choice of words as places it beyond the realm of doubt. I have not examined this statute in view of the question whether, if retroactive effect were given to it, it would disturb or impair vested rights. It is needless to say that it would be ineffective in that, on rules more cogent than those of mere construction."*

20 A statute will not be given a retroactive construction by which it will impose liabilities not existing at the time of its passage.

In *Re Parker* (1926) (California Supreme Court in Banc) 251 Pac. 907, 49 A. L. R. 1025.

This Court has also decided the question, in a foreclosure of a tax lien brought by the present complainant, as to whether owner's right of redemption is governed by the laws in effect at the time of the sale.

30 The rights of an individual, purchasing at tax sale, are governed, as to the owner's right of redemption, by the laws in force at the time of the sale.

Harrington Co. v. Jones, (1929) 104 N. J. Eq. 377, 145 A. 869, decree unanimously affirmed on opinion filed in the Court of Chancery by Berry V. C., in 106 N. J. Eq. 280, 151 A. 906.

The complainant, in its brief, apparently makes much of the fact that the aforesaid amendment of 1928, as well as the aforesaid amendment of 1929, provides that it shall be liberally construed as remedial legislation to encourage the barring of the right of redemption by suits in the Court of Chancery and for the decreeing of marketable titles therein, and to discourage barring the right of redemption by act of the purchaser by serving notices to redeem and filing and recording the proceedings as otherwise provided. But the fundamental rule appears to be that, however 10
liberally a statute should be construed for some purposes, it must be strictly construed in so far as it changes or diminishes fundamental rights, both in respect to the cases within its terms and the methods to be pursued.

While a statute relating to remedy and procedure is to be liberally construed with a view to the effective administration of justice, it must be strictly construed in so far as it changes or diminishes fundamental rights, both as to the cases 20
embraced within its terms and the methods to be pursued.

Hill v. Hill (1922) 93 N. J. Eq. 567, 117 A. 256.

Tax laws, if doubtful, are to be construed in favor of the taxpayer.

Red Wing Malting Co. v. Willcuts (U. S. Circuit Court of Appeals, eighth Circuit, November 5, 1926) 15 F. (2d) 626, 49 A. L. R. 459. 30

5. The Court below very properly refused to allow search fees in excess of the amount provided for in the statute in effect at the time of the tax sales.

As has been pointed out above, the amendments of 1928 and 1929 to the Tax Sale Revision of 1918, upon

which amendments complainant bases its right to the search fees which it contends should have been allowed, do not apply in the present case, because neither of said amendments were enacted until after both of the tax sales upon which this suit is based had taken place.

Even the search fees allowed by the Tax Sale Revision of 1918, amounting to \$10, plus the cost of recording, etc., and which search fees were allowed to the complainant in the sum found by the Master in the present cause, were not justly due to the complainant in this case. The statute, P. L. 1918, p. 895, sec. 45, provides, in respect to the search fees and expenses to be collected by the tax sale purchaser:

“ No fees or expenses incurred as aforesaid shall be collectable, unless the holder of the tax title shall have made and filed with such collecting officer affidavits showing *the amount or amounts of such expenses actually disbursed or incurred*, affidavits of service, including copies of the notices served, and certificates of the searches made in the form of an abstract of title covering a period of not less than twenty years.”

There was evidence produced in the Court below that certain documents, designated as proofs of disbursements and memoranda of search fees, were filed by the complainant with the Collector, but there was no evidence whatever that there was any affidavit so filed to show the amount of any search fees “*actually disbursed or incurred*,” and there was no evidence whatever produced before the Court below to show what sum any fees or expenses of the complainant “*actually disbursed or incurred*” amounted to. This is particularly significant because of the fact that the solicitor for the complainant refused to disclose before the Master, and has never disclosed to the Court below what sums were “*actually disbursed or in-*

cured" by the complainant for the searches which it produced.

Search fees and other fees prescribed by statute cannot be collected unless the provisions of the statute fixing such fees are strictly complied with.

Harrington Co. v. Jones (1929) 104 N. J. Eq. 377, 145 A. 869, decree unanimously affirmed on opinion filed in the Court of Chancery 10 By Berry V. C. in 106 N. J. Eq. 280, 151 A. 906.

There is an additional reason why complainant is not entitled even to the \$20 for search fees allowed by the Master. The statute, P. L. 1918, p. 895, sec. 45, requires the purchaser, in order to become entitled to the therein statutory fee of \$10, to make and file with the Collector "certificates of the searches made in the form of an abstract of title covering a period of not less than twenty years." The liens which complainant holds in the present case embrace the same property and arose but one year apart. The certificate of search which complainant would file, under the provisions of the statute last aforesaid, upon the second sale would simply amount to a repetition of the certificate of search upon the first sale for nineteen years of the period covered by said second search. Will a proper construction of the statute last aforesaid permit the complainant to obtain two statutory search fees in such a situation? Can the complainant, for instance, purchase the same property each year for ten consecutive years, and then, upon redemption, under the statute last aforesaid, collect the \$10 search fee upon each sale, making a total of \$100? 20 30

Even if it be conceded that the aforesaid amendments of 1928 and 1929 should apply to the present case, as complainant contends, neither of the statutes last afore-

said fix the amount of, or place any limitation upon, the amount of search fee or counsel fee which may be allowed thereunder. In the case of *Fitzsimmons v. Bonavita*, 77 N. J. Eq. 277, 76 A. 313, Emery V. C. held that, upon redemption from a tax sale, no fees or expenses other than those definitely fixed by statute should be required, and that any such fees or expenses should be fixed and definite in amount, rather than uncertain.

Also, even if it be conceded that the aforesaid amendments of 1928 and 1929 should apply to this suit, the Court below very properly refused to allow the search fees which complainant contends should have been allowed, for the reason that complainant produced before the Court below no evidence whatever of what sum constituted a proper amount for "reasonable fees for an examination of the title to the lands described in the bill filed," or, in other words, search fees. Complainant simply produced the search, Exhibit C-3 (State of Case, p. 77, line 12, to p. 80, line 40), annexed thereto being a schedule of fees, presumably made up at the statutory rate for official searches, amounting to the total sum of \$118.76, and contends that the Court below should have allowed the amount last aforesaid as "reasonable fees" for such searches. Nowhere in the case, with the exception of the said schedule, was there any evidence bearing upon the "reasonable fees" to be allowed for said searches. The complainant apparently contends that the amount of any allowance of search fees should be governed solely by the said schedule.

However, the search for which such allowance was asked is not even claimed to be an official search, but is only a search made by someone employed by the solicitor for the complainant, and the statutes relating to the rate of fees for official searches have no application. The present Chancellor, in the case of *Keiler v. Bunn*, 84 N. J. Eq. 276, 94 A. on page 204, said, in respect to the allowance of search fees:

"The amount which complainants would be entitled to be allowed for the search at the rate provided by statute for official searches is \$19.84, as shown by an itemized statement of the fees and charges for which taxation is asked, verified by affidavit of complainants' solicitor. The search, however, is not an official one, but was made by the solicitor, and I think an allowance of \$15 ample for the work involved in making the search."

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And the argument that a great deal more work is required in order to make searches preparatory to a foreclosure than to make the searches required by statute to be filed in the Collector's office to obtain the statutory allowance of search fee upon redemption there, is certainly without foundation. The present Chancellor, in *Harris v. McMurray*, 92 N. J. Eq. 1, 116 A. on page 702, said:

"The Legislature has expressly fixed a limit 20 upon the amount of search fees which a purchaser may expect to receive, or an owner be compelled to pay, for redemption, and in this particular I cannot see that there is any difference between redemption outside of this court and redemption by decree herein. *Complainant's searches have cost him no more for foreclosure in equity than they would for foreclosure by service of notice under the statute.*"

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But complainant has never asked the Court below to allow to it as "reasonable fees" what the said searches cost it. It has never sought in the Court below to be reimbursed for its expense for said searches. It has simply insisted that it should be allowed the amount shown by the said schedule annexed to the said search. But, in order that the complainant may be entitled to an allow-

ance of anything for search fees, it must certainly show what sum, if any, it has either paid or incurred for the searches in question. This, the complainant has declined to do. It has not only failed, but has refused, to show in the Court below any amount paid or incurred by it for fees for said searches. *The solicitor for the complainant, when testifying as a witness before the Master, refused, in answer to a direct question, to disclose what sum had been paid for the aforesaid searches.* (State of Case, p. 10 58, line 33). What could be the cause for such refusal? Can it be that the said solicitor did not wish to disclose to the Court the scheme carried on by the complainant for making a profit from its tax sale foreclosures? Is it not a reasonable inference that a part of such profit is in search fees? Is it not such an inference that this complainant, or its solicitor, has an arrangement with someone to make its searches at a trivial fixed charge, or for a percentage conditioned upon the recovery of search fees in the foreclosure suit, and that, if this complainant can exact from 20 the defendants, or succeed in prevailing upon the Court of Chancery to allow, search fees at the rate fixed for official searches, it puts into its pocket as profit the balance of such search fees so obtained or allowed above the small fixed fee or percentage which it pays to the searcher? Should this complainant be encouraged or permitted by this Court to collect a profit from defendants by such a method.

30 **6. The Court below properly refused to allow counsel fees to the complainant.**

Although the complainant appears to concede, on page 16 of its brief herein, that an allowance of counsel fees was within the discretion of the Court below, it apparently takes the position that the Court below abused such discretion in this case.

The record in this case shows a train of efforts on behalf of the defendant to make redemption from the very time he was apprised of the complainant's liens, and a succession of efforts on the part of the complainant to prevent such redemption, and to compel the defendant to yield to its demands. The bill of complaint was filed on July 20, 1929 (State of Case, p. 1, line 1). The letters in which the solicitor for the complainant sought the identity and address of the defendant (State of Case, pp. 82 and 83), while dated July 19, 1929, could not have reached the defendant until after the bill was filed. On July 29, 1931, the solicitor for the complainant, in answer to an inquiry by Martin P. Devlin, Esquire, demanded, by the letter Exhibit D-5 (State of Case, p. 86, line 43), the sum of \$273.07 in settlement. Before the information sought by the said letters of the solicitor for the complainant (Exhibits D-1 and D-2, State of Case, pp. 82 and 83) in respect to the identity and address of the defendant had been obtained, and before the said letter demanding the sum of \$273.07 (Exhibit D-5, State of Case, pp. 86 and 87) had been answered, the complainant filed, on August 1, 1929, the notice in the Collector's office in respect to the filing of the bill, in order to prevent redemption (State of Case, pp. 18 and 19). This notice caused the Collector to refuse to accept redemption when redemption was attempted to be made on August 2, 1929 (State of Case, p. 63, line 40). Then the defendant made an application to the Court of Chancery upon petition and notice (State of Case, pp. 21, 22, 23, 24 and 25) that said Court settle and fix the amounts due to the complainant for principal, interest and costs upon its aforesaid tax liens (State of Case, p. 24, line 36), and in which petition defendant offered to pay to complainant all sums due to it (State of Case, p. 24, line 22), service of which notice and petition was acknowledged by the solicitor for the complainant on August 8, 1929 (State of Case, p. 25, line 35). The complain-

ant, thereupon, not only made no application to the Court below for the fixing or allowance of any "reasonable fees" for searches, or "counsel fees commensurate with the services rendered" under the aforesaid amendments of 1928 and 1929 to the Tax Sale Revision, but, on the other hand, complainant opposed the said application of the defendant to have the amounts due fixed and determined, and said application was, for some unknown reason not appearing in the record, denied by the Advisory Master before whom it was heard (State of Case, p. 25, line 40). Thereafter, as the Court below found, a tender was made to the solicitor for the complainant, on August 15, 1929, of the sum of \$102.88, which was more than the amount then required to be paid upon redemption (Conclusions, State of Case, p. 93, line 28). Again, as the Court below also found, a tender was made to the solicitor for the complainant, on August 26, 1929, of the sum of \$113.10, which was more than the amount then required to be paid upon redemption (Conclusions, State of Case, p. 93, line 31). However, during the whole of said period within which these tenders were made, there was no application by the complainant to the Court below to fix and allow any search fees and counsel fees. Finally, on September 4, 1929, the defendant filed an answer and an answer in lieu of plea in said cause, in which defendant tendered himself ready and willing to pay to complainant the just and lawful sums due to complainant (State of Case, p. 34, line 20), and, on September 3, 1929, paid to the Clerk in Chancery in said cause the sum of \$116.76 (State of Case, p. 89, line 1). Still, the complainant made no application to the Court below to fix and allow any search fees or counsel fees, but instead, it gave defendant notice of a motion to strike out said answer and answer in lieu of plea (State of Case, pp. 35, 36, 37 and 38). Complainant noticed this motion at Jersey City, although the lands in question are situate in Trenton. It was only after it had been referred to a Master to find

the amounts due on the aforesaid tax sale certificates, and after said Master had filed his report, that complainant made any application to the Court below to fix and allow the search fees and counsel fees which it now contends should have been allowed.

From the very beginning, there has been no question about the amounts due to complainant upon its said tax sale certificates for principal, interest, statutory search fee of \$10, and recording fees. The defendant conceded the amounts of all of these items, and was ready, willing and anxious to pay them. There was no necessity whatever of going through all of the steps to a Master's report to learn the amount of what had been admitted. And the amount found due by the Master for all of said items amounted to only \$59.08 (State of Case, p. 46, line 13). Why did the complainant never, up until after a reference to and a report by a Master, apply to the Court below to fix and allow the search fees and counsel fees which it now contends should have been allowed? Because the whole plan and effort of the complainant, from the very beginning of this matter, was to obtain a few dollars, as profit, in costs, search fees and counsel fees. If your Honors will glance over the bill of complaint in this cause (State of Case, p. 1 to p. 17), you will probably be surprised at the great length of it, seventy folios, and at the mass of repetition and long drawn allegations therein contained. All of this abundance of language is simply for the purpose of lengthening the bill as much as possible in order to collect the largest possible amount in taxed costs. The Court will observe that the said bill was filed, and the alleged notice of the filing of said bill was filed in the Collector's office, before the information respecting the identity and address of the defendant was obtained. These are part of the plan, to place the bill on file, and also to file said notice with the Collector to prevent redemption through his office. Then, when the defendant is communicated with, he finds that he cannot redeem to the Col-

lector, and, if he does not comply with the demands of the complainant, the complainant immediately proceeds in the suit with every possible step in order to accumulate taxed costs. The complainant trusts to the fact that, if the defendant makes a tender, he will not be able to calculate exactly the amount due, including costs in the suit, and his tender will very likely be a few cents short. Then, before the defendant can learn the proper amount of costs, and make another tender, the complainant takes another

10 step in the suit, and the amount of taxed costs has thereby been increased. If the defendant continues to resist the demands which are made, he is harassed at every step, in an endeavor to make it cost him so much that he will finally feel that it would have been much cheaper for him to have yielded to the demands in the beginning, and to make later victims feel likewise so that they will not resist such demands when made to them. The whole conduct of the proceeding is planned from the point of view of profit to the complainant. This matter, from the very

20 beginning, has been but a brazen and determined effort on behalf of the complainant to obtain a few extra dollars in fees and costs. In such a situation, a court of equity will not allow counsel fees to this complainant. Such was the holding in another case involving this same complainant. *Harrington Co. v. Jones*, (1929) 104 N. J. Eq. 377, 145 A. 869, decree unanimously affirmed on opinion filed in the Court of Chancery by Berry V. C. in 106 N. J. Eq. 280, 151 A. 906.

30 The complainant sets forth in its brief, on page 3, line 11, that it is earnestly desired that this Court make its definite pronouncement of the meaning of the provisions of the statute, P. L. 1929, p. 241 at p. 244. It is no doubt quite true that complainant is very anxious to obtain such a pronouncement from this Court, not only in respect to the amounts involved in this cause, but with such a decision, if it be favorable to the complainant, the complainant would be able to force its future victims into sub-

mission and to successfully carry on its exactions uncurbed.

The complainant also, in its brief, on page 19 thereof, apparently takes the position that the said statute, P. L. 1929, p. 241, makes it mandatory for the Court of Chancery to allow search fees and counsel fees to a complainant in all suits of this character. Such a construction would cause a court of equity to be compelled to allow such fees to a complainant engaged in presenting the most outrageous claim and guilty of the most unconscionable conduct in respect thereto. 10

The defendant respectfully submits to this Court that the decree of the Chancellor appealed from in this cause should be affirmed.

AMOS M. WALN,
Solicitor for and of Counsel with
Defendant-Appellee.

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the ninety-ninth is the fact that the
the hundredth is the fact that the