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**Notice of Appeal.**

(Filed May 2, 1929)

**NEW JERSEY SUPREME COURT.**

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POINT BREEZE FERRY AND IM-  
PROVEMENT COMPANY,  
Prosecutor,

vs.

THE MAYOR AND ALDERMEN OF  
JERSEY CITY, a Municipal Corpo-  
ration,

and

JAMES RADIGAN, City Collector,  
Defendants.

---

On  
Certiorari.

10

To:

EDWARD P. STOUT, Esquire,  
Attorney for Defendants:

20

TAKE NOTICE that the prosecutor appeals from the judgment vacating the allocatur and dismissing the writ of certiorari in this action, which judgment was entered October 31, 1928, to the Court of Errors and Appeals on the following grounds:

30

1. The Supreme Court erred in this, that it failed to determine the disputed questions of facts at issue in the cause;

2. The Supreme Court erred in entering said judgment in that it proceeded upon alleged facts and circumstances not in the record or legally before the Court;

40

*Notice of Appeal.*

7. The Court having allowed the writ, and the defendants having made return thereto, and the Court having made an order for the taking of depositions, the Prosecutor was entitled to a determination of the disputed questions of fact;

10 4. The writ having been allowed and the defendants having made return thereto, and the prosecutors having filed their reasons for reversal, and a rule having been entered for the taking of depositions, the prosecutors were entitled to have the disputed questions of fact and of law and the mixed questions of fact and law at issue between the parties, determined by the Supreme Court;

20 5. That the reasons recited in the rule for the entry of the judgment are insufficient therefor;

6. The Court erred in holding that the allocatur of the writ of certiorari should be vacated and the writ of certiorari be dismissed because they were allowed without notice;

30 7. The Court erred in holding that the allocatur of the writ of certiorari should be vacated and the writ of certiorari be dismissed because the writ was allowed without the prepayment of taxes.

JOHN WAHL QUEEN,  
Attorney for Prosecutor.

**Notice of Motion to Dismiss.**NEW JERSEY COURT OF ERRORS AND  
APPEALS.

POINT BREEZE FERRY AND IM-  
PROVEMENT COMPANY,

Prosecutor,

vs.

THE MAYOR AND ALDERMEN OF  
JERSEY CITY, a Municipal Corpo-  
ration,

and

JAMES RADIGAN, City Collector of  
Jersey City,

Defendants.

10

} On Appeal

20

Dear Sir:

PLEASE TAKE NOTICE that on Tuesday, the 21st day of May, 1929, at 10:30 o'clock in the forenoon, at the State House, Trenton, New Jersey, I shall apply to the New Jersey Court of Errors and Appeals for an order to dismiss the appeal taken by the prosecutor in the above-entitled cause, on the grounds that:

1. The alleged grounds of appeal are not stated in accordance with the rules and practice of this court. 30

2. The alleged grounds of appeal are not specific.

3. The allocatur of the writ of certiorari was vacated because the writ was improvidently and improperly allowed.

40

*Notice of Motion to Dismiss.*

4. The writ of certiorari was dismissed by the Supreme Court because it was improvidently and improperly allowed.

5. The action of the Supreme Court in vacating the allocatur of the writ of certiorari was discretionary and, therefore, not subject to appeal.

10

6. The action of the Supreme Court in dismissing the writ of certiorari was discretionary and, therefore, not subject to appeal.

Dated: May 10th, 1929.

Yours respectfully,

20

EDWARD P. STOUT,  
Attorney for Defendants.

To:

JOHN WAHL QUEEN,  
Attorney for Prosecutor.

30

40

**Rule Denying Motion.**

(Filed May 23, 1929)

NEW JERSEY COURT OF ERRORS AND  
APPEALS.

---

 POINT BREEZE FERRY AND IM-  
PROVEMENT COMPANY,  
Prosecutor-Appellant,

vs.

MAYOR AND ALDERMEN OF JERSEY  
CITY, a Municipal Corporation,

and

JAMES RADIGAN, City Collector of  
Jersey City,  
Defendants-Respondents.
 

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On Appeal  
from the  
Supreme  
Court.

10

On Motion  
to Dismiss  
Appeal.

20

Application being made to this Court to dismiss the appeal taken from the judgment of the Supreme Court vacating the allocatur to the writ of certiorari, and dismissing the writ of certiorari entered in the Supreme Court on October 31, 1928, on the ground that the action of the Supreme Court in vacating the allocatur and dismissing the writ of certiorari was discretionary; and the Court having heard the argument of counsel and being of the opinion that the said motion should not prevail;

30

IT IS ORDERED that the motion of the defendants to dismiss the appeal be, and the same is hereby denied.

Dated, May 21st, 1929.

Allowed in open Court on motion of  
JOHN WAHL QUEEN,  
Attorney for Appellant.

40

**Affidavit of James Currie.**

(Filed September 1, 1928.)

## NEW YORK SUPREME COURT.

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

10 JAMES CURRIE, of full age, being duly sworn, on his oath deposes and says that he is and has been since the death of his brother, Mungo J. Currie, in 1922, President of the Point Breeze Ferry and Improvement Company, a Corporation of the State of New Jersey; that the said company is the owner of a narrow strip of Riparian land extending from the Morris Canal to the border of New York Bay, as it existed in and prior to the year 1876; that under two certain Riparian leases, one dated September 30, 1876, and the other September 20, 1879, the said

20 Company now holds a leasehold estate to approximately 142.127 acres of lands contiguous to the aforementioned Riparian lands, extending from the shore of New York Bay as it existed in 1876, to what is known as the Pierhead line of the New York Bay; that of this 142.127 acres, according to figures made by the Engineer of the State Board of Taxes and Assessment, in the year 1918,

30 The area reclaimed and partially improved by filling from the original shore line to the original solid filling line, 65.228 acres,

Area extending from original solid filling line to new solid filling line unreclaimed and entirely under water, 40.432 acres,

40 Area from new solid filling line to new pierhead line, entirely unimproved, 36.467 acres.

*Affidavit of James Currie.*

The Riparian lease of September 30, 1876 has been assigned by assignments and mesne assignment and is now held by the Morris & Cumings Dredging Company in part, to support its leasehold title to similar lands to the south of the lands of Point Breeze Ferry and Improvement Company, and to support the title of the Point Breeze Ferry and Improvement Company to a portion of the filled lands and lands under water. 10

Under the said lease of September 30, 1879, there is payable to the State of New Jersey an annual rent of \$878.50, payable in the first instance by Morris & Cumings Dredging Company, and for which complainant reimburses the said Morris & Cumings Dredging Company for its ratable portion.

Under the lease of September 20, 1876, there is payable to the State of New Jersey an annual rental of \$1260. If the said rent or any installments thereof are not paid, the said leases, by appropriate proceedings may be forfeited by the State. 20

The Riparian lands owned by the Point Breeze Ferry and Improvement Company by an indefeasible estate in fee, and the other lands above mentioned, making up the 142.127 acres are included in and comprise what is presently known as Lot C, in Block 1514, Tax Map of Jersey City.

In the figures of the Engineer of the State Board of Taxes and Assessment, above mentioned, the Riparian lands are apparently included in the item of filled lands or the item of 65.228 acres. 30

In determination of the Engineer of the State Board of Taxes and Assessment, in 1918, it was determined that the Morris & Cumings Dredging Company property within the City of Jersey City, consisted of the following: 40

*Affidavit of James Currie.*

- Area reclaimed and partially improved by filling from original shore line to original solid filling line, 34.989 acres,
- 10 Area Extending from original solid filling line to new solid filling line, unreclaimed and entirely under water, 22.14 acres,
- Area from new solid filling line to new pierhead line entirely unimproved, 16.272 acres.

These lands are shown in the City's new tax map as Lot B, in Block 1514, but Lot B, in Block 1514 as shown on the map includes the adjoining or supporting Ripa.

- 20 The water covering the forty acres of unfilled but fillable land, range in depth, according to deponent's observation and information, from about four to ten feet. The filled in lands range anywhere from tide level to five or six feet above tide level. The fill to a depth of two yards, placed upon the forty acre tract, would not fill the same to a height equivalent to the height of the 65 acre tract.

- 30 In 1925, the Point Breeze Ferry and Improvement Company had under advisement, negotiations for the filling in of the unfilled lands and the bringing of the filled lands up to a uniform height of 6 ft. Engineers estimated that this would require 3,000,000 yards of fill. The price to be paid for this fill then under discussion was 30¢ a cubic yard, and deponent caused inquiry to be made and was informed that that was a fair market price at that time for such fill under such conditions. On the basis of 30¢ per cubic yard, the price of placing
- 40 2 yard depth of fill upon 40 acres of land would involve the filling of 387,200 cubic yards, and the

*Affidavit of James Currie.*

price would be \$116,160. or at a rate of \$2,904. an acre, or if 3 yards, instead of 2, were placed upon these lands under water, the expense would be \$4,356. per acre.

Nowhere in the assessment or taxing proceedings hereinafter mentioned has the City of Jersey City taken any note or made any distinction between the upland or riparian lands to which the Point Breeze Ferry and Improvement Company holds an indefeasible estate and the lands now or formerly under water, which they hold by a defeasible leasehold as aforesaid. Neither have the taxing authorities of Jersey City made any distinction of the value of the lands filled from the riparian lands or from the lands that may be hereafter, but which have not presently been filled, or from the lands upon which pierheads alone may be built.

The City of Jersey City has assessed the property covered by both of the above leaseholds for purposes of taxation for many years, and the owners thereof have disputed the right of the City to levy such taxes, as well as the amount thereof, so that said tax claims have now accumulated to large amount.

Prior to the year 1922, said City of Jersey City assessed the entire area covered by both of the aforesaid leases, together with certain parcels of natural upland, together as an entire parcel described as Blocks 1513-1514, Lots B, C, G and H, and assessed the same to the Point Breeze Ferry and Improvement Company as the owner thereof without making separate assessment against Morris & Cumings Dredging Company and Point Breeze Ferry and Improvement Company according to their respective ownerships.

On appeal of Morris & Cumings Dredging Company (New York) from the taxes assessed against

*Affidavit of James Currie.*

said entire parcel for the year 1916, the State Board of Taxes and Assessment reduced the amount of the tax and directed an apportionment thereof between the Morris & Cumings Dredging Company (New York) and the Point Breeze Ferry and Improvement Company.

10 Notwithstanding such reduction and apportionment, the City of Jersey City continued to assess the area covered by both leases as an entirety against Point Breeze Ferry and Improvement Company to and including the year 1921, and the State Board of Taxes and Assessment, upon appeal, each year directed the apportionment thereof.

20 Beginning with the year 1922, said City of Jersey City assessed said parcels separately to the respective owners, assessing Lot B to the Morris & Cumings Dredging Company as a plot of 73.401 acres, and Lot C to the Point Breeze Ferry and Improvement Company as a plot of 142.127 acres.

In the year 1908, a statute of the State of New Jersey known by the short title of the "Martin Act", being an act concerning the collection and settlement of arrears of unpaid taxes, etc., approved March 30, 1886, was in effect.

30 This statute provided for the appointment of Commissioners of Adjustment in case of arrearages, "to examine into and fix, adjust and determine as to each parcel of land, how much of such arrearages and subsequent taxes, assessments or water rates, if any, ought, in the way of tax, assessment or water rate, in fairness, equity and justice to be laid, assessed and charged against and actually collected from said land for or on account of said taxes, assessments or water rates", etc.

40 Said statute further provided that said Commissioners of Adjustment should file their report in the office of the Clerk of the Court by which ap-

*Affidavit of James Currie.*

pointed, which Court should thereupon confirm said report or refer the same back to the Commissioners for reconsideration, and that the amount so fixed, determined, certified and confirmed should thereupon become and be the tax upon said lands in lieu and instead of all outstanding claims of the City for arrears of taxes, etc., levied prior to the making of said report, and that a certified copy of said report after confirmation should be transmitted to the Comptroller of the City, and that thereupon the amount of said tax so fixed and certified should become due and payable, with interest at the rate of seven per cent. from the date of such filing. 10

Pursuant to said statute, the Commissioners of Adjustment for the City of Jersey City in 1908 filed their Report No. 113, purporting to adjust the amount of all arrearages assessed upon the aforesaid lands, Blocks 1513-1514, Lots B, C, G and H, prior to and including the taxes assessed for the year 1907, at the sum of \$143,833.84, which said report was confirmed by the presiding Judge of the Hudson County Circuit Court on June 30, 1908. 20

The amount of said adjustment was thereafter found to be excessive by reason of the inclusion in the area adjusted of a certain portion of said leasehold situate in the City of Bayonne, and the amount of such excess was found to be \$3111.46. 30

On June 26, 1928, the Board of Commissioners of the Mayor and Aldermen of Jersey City did adopt a resolution introduced May 29, 1928, for the apportionment of assessments for taxes and other municipal assessments, charges or liens on the lands and premises of Morris & Cumings Dredging Company described as Block 1513-1514, Lot B, and Point Breeze Ferry and Improvement Company described as Block 1513-1514, Lot C, apportioning the 40

*Affidavit of James Currie.*

Martin Act adjustment and the subsequent taxes theretofore assessed by said City against the premises designated as Block 1513-1514, Lots B, C, G and H, as an entirety to Point Breeze Ferry and Improvement Company as owner, as well as restating the taxes separately assessed against Morris & Cumings Dredging Company as the owner of Lot B, and Point Breeze Ferry and Improvement Company as the owner of Lot C, for the years 1922 to 1927, inclusive.

The amount of taxes so apportioned against and imposed upon the Morris & Cumings Dredging Company as the owner of Lot B, pursuant to said resolution of June 26, 1928, is as follows:

	Adjusted taxes to and including 1907, \$48,254.96
	1908 4,234.66
	1909 4,122.64
20	1910 4,348.87
	1911 4,392.80
	1912 4,832.08
	1913 4,662.96
	1914 4,640.99
	1915 4,498.23
	1916 8,239.58
	1917 8,937.56
	1918 5,502.98
30	1919 13,848.96
	1920 13,180.77
	1921 21,403.73
	1922 25,308.66
	1923 41,376.15
	1924 39,691.60
	1925 37,819.87
	1926 39,426.81
	1927 39,360.75
40	<hr/> \$378,085.61 <hr/>

*Affidavit of James Currie.*

The amount of said taxes apportioned against and imposed upon the Point Breeze Ferry & Improvement Company as the owner of Lot C, pursuant to said resolution of June 26, 1928, is as follows:

Adjusted amount to and including 1907, \$88,467.42		
1908	8,220.22	10
1909	8,002.78	
1910	8,441.93	
1911	8,527.20	
1912	9,379.92	
1913	9,051.62	
1914	9,008.99	
1915	8,731.85	
1916	15,694.46	
1917	17,023.94	
1918	10,481.89	20
1919	26,379.01	
1920	25,106.26	
1921	41,444.23	
1922	49,005.39	
1923	80,117.00	
1924	76,855.18	
1925	73,230.94	
1926	76,343.34	
1927	76,215.43	30
	<hr/>	
	\$725,729.00	

Said apportionment to and including the year 1922, apportions the entire tax theretofore assessed against Lots B, C, G and H, to Lots B and C.

Appeals were taken by the owners from the taxes assessed by said City for the years 1908 to 1915, inclusive, to the County Board of Taxation for the County of Hudson, which affirmed the same, and

*Affidavit of James Currie.*

appeals were thereupon taken by said owners from said County Board of Taxation to the State Board of Taxes and Assessment, which latter Board has never decided said appeals.

Said appeals were taken pursuant to the laws of the State of New Jersey.

10 For the year 1916 and subsequent years to and including the year 1927, appeals were taken to the County Board of Taxation and to the State Board of Taxes and Assessment, which reduced or affirmed said taxes in the amounts shown in the tabulation of taxes for said years as stated in the resolution of the Board of Commissioners of Jersey City, of June 26, 1928.

20 The taxes assessed to Point Breeze Ferry and Improvement Company as the owner of Block 1513-1514, Lots B, C, G and H, for the years 1908 to 1915, inclusive, are based upon a valuation of said parcels as an entirety of \$646,000, being assessed sometimes as an area of 212 acres and sometimes as an area of 9,234,720 square feet, showing an average assessed valuation for said area of \$3047.17 per acre, or seven cents per square foot.

30 For the year 1916, the taxing authorities of said City increased the assessed valuation of said lands as an entirety to \$3,294,000. being at the rate of \$15,000. per acre.

The State Board of Taxes and Assessment reduced said assessment, apportioning thereof \$425,598. to the Morris & Cumings Dredging Company at the average rate of \$5798. per acre, and apportioning \$810,664. to the Point Breeze Ferry and Improvement Company, at the average rate of \$5704. per acre.

40 During the following years 1917 to 1920, inclusive, the taxing authorities of the City of Jersey

*Affidavit of James Currie.*

City continued to assess all of the above described property as an entirety at the rate of \$15,000. per acre, and said State Board of Taxes and Assessment each year reduced and apportioned the same at the amounts fixed by it for the year 1916.

For the year 1921, the City again assessed said property as an entirety at the rate of \$15,000. per acre, and said State Board, on appeal, reduced said valuation to \$10,000. per acre, and apportioned the same \$734,010. to Morris & Cumings Dredging Company, and \$1,421,270. to Point Breeze Ferry and Improvement Company. 10

For the year 1922, the City separately assessed Lot B to Morris & Cumings Dredging Company and Lot C to Point Breeze Ferry and Improvement Company, each at the rate of \$15,000. per acre, and said State Board of Taxes and Assessment reduced the same to \$10,000. per acre. 20

For the years 1923 to 1927, inclusive, said City has continued to assess said premises separately at the rate of \$15,000. per acre, and said State Board of Taxes and Assessment, upon appeal, has affirmed the same, being an assessed valuation against Morris & Cumings Dredging Company for each year of \$1,101,015., and against Point Breeze Ferry and Improvement Company of \$2,131,900.

Neither the assessments by the Assessor of Jersey City nor the decisions of the State Board of Taxes and Assessment took into consideration the fact that the estate of the Point Breeze Ferry and Improvement Company to all of said lands now or formerly under water, is a defeasible estate predicated upon the annual payment of a fixed rent, but assessed the property as an indefeasible estate and actually far in excess of the value of said property at the time the various assessments were made. 30 40

*Affidavit of James Currie.*

Deponent is advised and therefore says that the said Resolution of June 26, 1928, of the City Commissioners of Jersey City, copy of which is hereto annexed, was made without authority in law, and that it attempted to apportion between the Point Breeze Ferry and Improvement Company and the Morris and Cummings Dredging Company not only the acreage of said leasehold lands, but the values thereof as between said companies, and further attempted to apportion the said arrearages of taxes contrary to law.

The submerged lands held under leasehold as aforesaid, lie under tidal waters, and the general public enjoys every use thereof that the owners could enjoy, except the one privilege of filling in and building piers, and the said lands under water are in nowise benefited by any municipal service or protection. No public street or road of Jersey City gives access to the said land. The said lands under water are policed by the State of New York, if policed at all, under a treaty between the State of New York and the State of New Jersey. There are no streets, avenues, roads or public places on said lands or near thereto, and the said leasehold lands are not such as receive any of the benefits of government for which taxes are levied.

James Radigan, City Collector of Jersey City, has given notice that on Friday, September 7, 1928, at ten o'clock in the forenoon of that day, at the City Hall in Jersey City, he will expose for sale and sell said lands and other lands to make the amount severally chargeable against the same on the first day of July, 1927, as computed on the list of lands subject to sale on file in his office, together with interest on said amount from the first day of July, 1927, with interest to the date of sale and

*Affidavit of James Currie.*

costs of sale, in pursuance of the provisions of an Act of the Legislature of the State of New Jersey known as "Tax Sale Revision", Revision of 1918. A copy of said notice is hereto annexed and made part hereof.

JAMES CURRIE.

10

Subscribed and sworn to before me, at Jersey City, New Jersey, this 30th day of August, 1928.

MARY E. NELSON,

(Seal)

Notary Public of New Jersey.

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**Tax Sale, Annexed to Affidavit.**

OFFICE OF THE CITY COLLECTOR,  
Jersey City, New Jersey

**TAX SALE No. 65**

10 PUBLIC NOTICE is hereby given that, pursuant to the provisions of an ACT of the Legislature of the State of New Jersey known as the "Tax Sale Revision" Revision of 1918, and the acts amendatory thereof, the undersigned, City Collector of Jersey City, will sell at PUBLIC AUCTION, in the ASSEMBLY CHAMBER in the City Hall in said City, on

Friday, September 7, 1928

at ten o'clock, in the forenoon, the several lots and parcels of land described below to such persons as will purchase the same.

20 Said lands will be sold to make the amounts severally chargeable against the same on the first day of July, 1927, as computed on the list of lands subject to sale on file in my office, together with interest on said amount from said first day of July, 1927 with interest to the date of sale and costs of sale.

30 The following is a description of the several lots and parcels of land to be sold, the owner's name as contained on the list in my office with the total amount due as computed to the first day of July, 1927, with interest to the date of sale and costs of sale.

**JAMES RADIGAN,**  
City Collector.

*Tax Sale, Annexed to Affidavit.*

**TAX SALE NO. 65**

Sales No.	Block	Lot	Location	To Whom Assessed	Total Amt. Due	
35488	New 1514	C	New York Bay	Point Breeze Ferry and Improvement Co.	\$1,055,290.22	
	Old 1513 to 1517					
35489	New 1514	B	New York Bay	Morris & Cummings Dredging Company	552,513.31	10
	Old 1513 to 1517					

—Jersey Journal, Aug. 24th, 1928.

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**Public Notice, Annexed to Affidavit.**

10 TAKE NOTICE, that on the 12th day of June, 1928,  
 at eleven o'clock in the forenoon (Daylight Saving  
 Time) or as soon thereafter as the matter can be  
 heard, a public hearing will be held before the  
 Board of Commissioners of the Mayor and Alder-  
 men of Jersey City in the Assembly Chamber, City  
 Hall, Jersey City, New Jersey, on a certain resolu-  
 tion introduced in said Board of Commissioners the  
 20 29th day of May, 1928, for the apportionment of  
 assessments for taxes and other municipal assess-  
 ments, charges or liens on lands and real estate be-  
 longing to the Point Breeze Ferry & Improvement  
 Company and Morris & Cummings Dredging Com-  
 pany, which lands and real estate are located in  
 the City of Jersey City and are now or were for-  
 merly lying underneath the waters of New York  
 Bay.

The said resolution reads as follows:

30 RESOLUTION FOR THE APPORTIONMENT OF ASSESS-  
 MENT FOR TAXES AND OTHER MUNICIPAL ASSESS-  
 MENTS, CHARGES OR LIENS ON LANDS AND REAL  
 ESTATE BELONGING TO THE POINT BREEZE FERRY &  
 IMPROVEMENT COMPANY AND MORRIS & CUMMINGS  
 DREDGING COMPANY, LOCATED IN THE CITY OF JERSEY  
 CITY AND NOW OR FORMERLY LYING UNDERNEATH THE  
 WATERS OF NEW YORK BAY.

40 WHEREAS, on September 30, 1876, the State of  
 New Jersey did lease to the Point Breeze Ferry &  
 Improvement Company land and certain rights  
 therein belonging to the State of New Jersey, lying  
 underneath the waters of New York Bay adjacent  
 to and in the City of Jersey City, which said lands  
 are more particularly described in a certain inden-  
 ture of lease between the State of New Jersey and

*Public Notice, Annexed to Affidavit.*

the said Point Breeze Ferry & Improvement Company, recorded in the Register's Office of Hudson County, November 11, 1876, in Book 303 of Deeds, page 570; and

WHEREAS, thereafter on September 20, 1879 the State of New Jersey leased unto the said Point Breeze Ferry and Improvement Company certain other of its lands and certain rights therein lying under the Tide Waters of the Bay of New York, immediately north of and adjacent to the lands mentioned and referred to hereinabove and set forth in said lease above mentioned which said indenture of lease was recorded in the Register's Office of Hudson County, New Jersey, on January 6, 1881, in Book 350 of Deeds, page 731; and

WHEREAS, the lands and rights therein which are hereinabove referred to as being conveyed by the indenture of lease, date September 30, 1876, together with the extension thereof to the present pier head and bulkhead lines are the lands which were, up to the year 1916, designated on the map of the Assessment Commissioners of Jersey City, as Lot B, Block 1513; and

WHEREAS, the lands hereinabove referred to as being conveyed by the indenture of lease, dated September 20, 1879, together with the extension thereof to the present pier head and bulkhead lines are the lands which were up to the year 1916, designated on Map of the Assessment Commissioners of Jersey City, New Jersey, as Lot C, Block 1513; and

WHEREAS, the said Point Breeze Ferry & Improvement Company did by deed of conveyance,

*Public Notice, Annexed to Affidavit.*

dated March 5, 1896, transfer and convey to the Morris & Cummings Dredging Company all of its interest and ownership in a part of the area described in the lease hereinabove referred to, dated September 30, 1876, the said part of the area being defined by survey thereto annexed and being that part of the entire area in said lease of September 30, 1876, which lies south of the line offsetting 91 feet, 6 inches from the northerly boundary of the said leasehold along the base line thereof narrowed to an offset of 75 feet on the original bulkhead line; and

WHEREAS, the said Point Breeze Ferry & Improvement Company did also in further consummation of said contract dated, March 5, 1896, and for the purpose of supplementing said deed of conveyance execute an assignment to said Morris & Cummings Dredging Company of the lease dated September 30, 1876, which said assignment was thereafter duly recorded in the Hudson County Register's Office in Book 644 of Deeds, page 541; and

WHEREAS, under date of February 24, 1904, the said Morris & Cummings Dredging Company did transfer and convey to Daniel J. Leary all of its interest in the land and rights therein obtained by it under the deed of conveyance aforesaid on March 5, 1896, and the said assignment of September 30, 1876, said assignment being recorded as aforesaid in the Hudson County Register's Office in Book 644 of Deeds, page 541, and thereafter the said Daniel J. Leary did by instruments recorded in the Register's Office of Hudson County, New Jersey in 1915, reassign and re-convey to said Morris & Cummings Dredging Company all of the lands and

*Public Notice, Annexed to Affidavit.*

rights therein which he, the said Daniel J. Leary, had obtained from said Morris & Cummings Dredging Company as aforesaid; and

WHEREAS, the total area of the land and rights therein belonging to the said Point Breeze Ferry & Improvement Company and said Morris & Cummings Dredging Company within the limits of Jersey City, comprises in all 215.528 acres, of which area there belongs to and is owned by the Point Breeze Ferry & Improvement Company 142.127 acres and of which there belongs to and is owned by the Morris & Cummings Dredging Company 73.401 acres; and

WHEREAS, both the said Point Breeze Ferry & Improvement Company and the said Morris & Cummings Dredging Company did file and take separate appeals to the State Board of Taxes and Assessments from the taxes assessed against the aforesaid lands and real estate for the year 1916 and did in said appeal, among other things, pray for an apportionment of said lands and real estate and the said State Board of Taxes and Assessments did, under date of March 5, 1918, render its judgment in said proceedings of appeal and did make the apportionment so prayed for by the owners aforesaid of said lands and real estate, and did determine that there be apportioned and assessed to the said Point Breeze Ferry & Improvement Company a total of 142.127 acres and to the said Morris & Cummings Dredging Company a total of 73.401 acres as aforesaid; and

WHEREAS, for the years 1877 to 1879 inclusive, the whole of the lands and rights therein conveyed

*Public Notice, Annexed to Affidavit.*

to the Point Breeze Ferry & Improvement Company by the aforesaid lease of September 30, 1876, has been assessed to the said Point Breeze Ferry & Improvement Company and from the years 1880 to 1915 inclusive, the whole area included in the leases of September 30, 1876, and September 20, 1879, and comprising in all 215.528 acres, has been assessed to the Point Breeze Ferry & Improvement Company, and it is desired and intended that an apportionment of assessment for taxes and other municipal assessments, charges or liens on said lands and real estate be made between the respective owners thereof, now, therefore, be it

RESOLVED: By the Board of Commissioners of The Mayor and Aldermen of Jersey City that any and all municipal assessments, charges or liens, together with any assessment for taxes or other municipal charge, which are or may become a lien upon the said lands and real estate for the said years, 1877 to 1915 inclusive, and have become due and payable or may become due and payable to the City of Jersey City, including any and all claims of the said Jersey City under any sale for the enforcement of taxes or other municipal liens or charges shall be apportioned among the owners of the aforesaid lands and real estate, according to the values of the respective subdivisions at the time when the respective assessments, charges, liens or assessment for taxes were levied or imposed in the manner following:

STATEMENT OF UNPAID TAXES FOR THE YEARS 1877 TO 1927, INCLUSIVE, LEVIED AGAINST  
POINT BREEZE FERRY AND IMPROVEMENT COMPANY

Block 1513-1514, Lot C

Year	Tax	Year	Tax	Interest	Total
1877.....	\$157.87	1903.....	\$3,294.23		
1878.....	143.62	1904.....	3,282.24		
1879.....	131.31	1905.....	3,270.27		
1880.....	2,763.08	1906.....	2,982.77		
1881.....	2,632.27	1907.....	1,938.20	\$90,519.12	
1882.....	3,916.75	Less Per Order of Ct.	2,051.70	\$88,467.42	\$116,949.07
1883.....	5,864.37	1908.....		8,220.22	11,066.89
1884.....	4,294.00	1909.....		8,002.78	10,213.96
1885.....	4,896.60	1910.....		8,441.93	10,183.51
1886.....	4,735.18	1911.....		8,527.20	9,689.47
1887.....	2,848.61	1912.....		9,379.92	10,001.82
1888.....	2,932.78	1913.....		9,051.62	9,018.14
1889.....	2,755.63	1914.....		9,008.99	8,345.05
1890.....	2,598.17	1915.....		8,731.85	7,477.10
1891.....	2,809.04	1916.....		15,694.46	12,340.58
1892.....	2,809.04	1917.....		17,023.94	12,194.28
1893.....	2,720.02	1918.....		10,481.89	6,774.46
1894.....	2,720.02	1919.....		26,379.01	15,761.26
1895.....	2,720.02	1920.....		25,106.26	13,243.38
1896.....	2,712.60	1921.....		41,444.23	19,875.44
1897.....	2,861.10	1922.....		49,005.39	18,989.24
1898.....	2,831.40	1923.....		80,117.00	25,436.59
1899.....	2,811.60	1924.....		76,855.18	19,021.12
1900.....	3,402.04	1925.....		73,230.94	12,997.98
1901.....	3,354.12	1926.....		76,343.34	8,206.38
1902.....	3,330.16	1927.....		76,215.43	2,857.54
				\$725,729.00	\$360,643.26
					\$1,086,372.26

Public Notice, Annexed to Affidavit.

STATEMENT OF UNPAID TAXES FOR THE YEARS 1877 TO 1927, INCLUSIVE, LEVIED AGAINST  
MORRIS & CUMMINGS DREDGING COMPANY

Known as Block 1513-4, Lot B

Year	Tax	Year	Tax	Interest	Total
1877.....	\$923.45	1903.....	\$1,697.02		
1878.....	840.07	1904.....	1,690.85		
1879.....	768.05	1905.....	1,684.68		
1880.....	1,481.93	1906.....	1,536.58		
1881.....	1,411.78	1907.....	998.47	\$49,314.72	
1882.....	2,100.69	Less as Per Court Order	1,059.76	\$48,254.96	\$63,790.41
1883.....	3,145.26	1908.....		4,234.66	5,701.12
1884.....	2,217.98	1909.....		4,122.64	5,261.73
1885.....	2,529.24	1910.....		4,348.87	5,246.04
1886.....	2,445.87	1911.....		4,392.80	4,991.54
1887.....	1,471.39	1912.....		4,832.08	5,152.45
1888.....	1,514.87	1913.....		4,662.96	4,645.71
1889.....	1,423.37	1914.....		4,640.99	4,298.96
1890.....	1,342.03	1915.....		4,498.23	3,851.84
1891.....	1,450.96	1916.....		8,239.58	6,478.79
1892.....	1,450.96	1917.....		8,937.56	6,401.98
1893.....	1,404.98	1918.....		5,502.98	3,556.58
1894.....	1,404.98	1919.....		13,848.96	8,274.65
1895.....	1,404.98	1920.....		13,180.77	6,952.76
1896.....	1,397.40	1921.....		21,403.73	9,792.05
1897.....	1,473.90	1922.....		25,308.66	9,806.92
1898.....	1,458.60	1923.....		41,376.15	13,136.64
1899.....	1,448.40	1925.....		39,691.60	9,823.40
1900.....	1,752.56	1925.....		37,819.87	6,712.76
1901.....	1,727.88	1926.....		39,426.81	4,238.10
1902.....	1,715.54	1927.....		39,360.75	1,475.75
				\$378,085.61	\$189,590.18
					\$567,675.79

Public Notice, Amended to Affidavit.

*Public Notice, Annexed to Affidavit.*

Notice is hereby given to the said Point Breeze Ferry & Improvement Company and the said Morris & Cummings Dredging Company and to all who have or claim to have any right, title, claim or interest whatsoever in the said lands and real estate, that they may be present and heard.

BY ORDER OF THE BOARD OF COMMISSIONERS OF JERSEY CITY. **10**

Dated City Clerk's Office,  
Jersey City, June 1, 1928.

EDWARD J. HOLLAND,  
City Clerk.

**20**

**30**

**40**

**On Application for Writ of Certiorari.**

## NEW JERSEY SUPREME COURT.

POINT BREEZE FERRY AND IM-  
PROVEMENT COMPANY,  
Prosecutor,

vs.

MAYOR AND ALDERMEN OF JERSEY  
CITY, a Municipal Corporation,  
and JAMES RADIGAN, City Collec-  
tor,  
Defendants.

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## POINT I.

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No distinction is made between the ripa and the leasehold estates.

## POINT II.

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142 acres and upwards are assessed as a single unit although it includes riparian lands held in indefeasible fee, and filled in leasehold lands held by defeasible estate, and land under water that may be filled in, held under defeasible estate, and lands under water upon which piers can be built, but which cannot be put to any other use, and no distinction has ever been made in any proceedings between these several parcels.

## POINT III.

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The appeals from the assessments for the years 1908 to 1915 have never been determined by the State Board of Taxes and Assessment, therefore, the assessment is not a finality and the amount due for taxes is not determined.

*On Application for Writ of Certiorari.*

## POINT IV.

The Resolution of June 26, 1928, which undertook to apportion some \$1,100,000. of taxes running over a long period of years, between the Point Breeze Ferry and Improvement Company and the Morris & Cummings Dredging Company, was illegal in that it was a Judicial act and the proceedings were not according to due process of law. 10

## POINT V.

The statute which authorized, or attempted to authorize the City Commissioners to apportion these taxes between these two adjacent owners is unconstitutional in that it attempts to confer upon a purely legislative body, judicial functions. 20

## POINT VI.

The Resolution of June 26, 1928 is illegal in this: It attempts to apportion between the two companies concerned, the acreage, the assessment and the taxes over a long number of years, which constitutes really a year by year reassessment by the City Commission.

## POINT VII. 30

These lands, a great bulk of which are held merely under leasehold, are assessed at the same rate as if they were owned in indefeasible fee. Similar lands held in fee are assessed at no greater amount per acre.

*On Application for Writ of Certiorari.*

## POINT VIII.

- 10 The lands upon which piers can be built and the lands still under water can be used by the general public for every purpose that the leaseholder can use it for, except for piers and filling in respectively, and the general public cannot be excluded from the partially filled and the unfilled portions until they are filled in.

## POINT IX.

No allowance has been made for the payment of an annual rent.

## POINT X.

- 20 These lands under water are of no present use to their owners. The lands are the beneficiaries of no municipal service of any sort. No road or street leads to them. No fire service, of course, is furnished them. No one lives on them nor are they capable of human habitation. Insofar as they are policed at all, they are policed by the State of New York. The fact that they receive no benefits merely clarifies the proposition that they are not presently of value to the leaseholder in the same sense that
- 30 lands are, upon which every benefit is conferred, and in connection with which every form of ownership can be exercised to the exclusion of all the world. Private ownership ordinarily means the right to exclude all the world from the enjoyment of the thing owned. This is precisely what the leaseholder does not have. Any member of the general public owning a boat, may sail his boat over these lands, or anchor his boat upon them or fish
- 40 in the waters which cover them.

*On Application for Writ of Certiorari.*

## POINT XI.

The Pitney opinion in the Compiled Statutes Supreme Court, in the Leary case, 243 U. S. does not conflict with any point made here, but in last analysis it is not necessarily the law either of this case or of this State.

It was not rendered in a case to which the prosecutor was a party and therefore, not binding in that sense upon the Point Breeze Ferry and Improvement Company. On the other hand, it was in favor of the City of Jersey City, a State Agency, and had to do with a matter peculiarly within the jurisdiction of the State Courts, therefore, not binding upon the Courts of New Jersey. 10

JOHN WAHL QUEEN, 20  
Attorney of Applicant.

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**Writ of Certiorari.**

(Allowed Sept. 1, 1928.)

(Filed Sept. 12, 1928.)

NEW JERSEY, SS. :

THE STATE OF NEW JERSEY TO THE MAYOR AND ALDERMEN OF JERSEY CITY, A MUNICIPAL CORPORATION, AND JAMES RADIGAN, CITY COLLECTOR,  
 10 GREETING:  
 (L.S.)

We being willing for certain reasons to be certified of the notice of sale given by James Radigan, City Collector of Jersey City, for the sale of certain lands for unpaid taxes and municipal liens, to be held on Friday, September 7, 1928, in pursuance of the provisions of an Act of the Legislature of the State of New Jersey, known as the "Tax Sale Revision", Revision of 1918, and the acts amendatory thereof, and the record of said taxes and proceedings for said sale so far as they affect Lot C, in Block 1514, old Block 1513-1517, location New York Bay, assessed to Point Breeze Ferry and Improvement Company,  
 20

Do COMMAND YOU, that the notice of said sale and record of said taxes and proceedings for the sale, so far as they affect said lot C, in Block 1514, and the Resolution of the Mayor and Aldermen of Jersey City, dated June 26, 1928, for the apportionment between the Point Breeze Ferry and Improvement Company and the Morris & Cumings Dredging Company of the assessment for taxes and other municipal assessments, charges or liens on said lands and certain lands of the Morris & Cumings Dredging Company, together with all things touching and concerning the same as fully and entirely as before you they remain, to the Justices of our Supreme  
 30  
 40

*Writ of Certiorari.*

Court of Judicature at TRENTON, the 12th day of September, 1928, you do certify and send, together with this writ; That therein, may be done what of right and according to the laws of this State should be done.

WITNESS WILLIAM S. GUMMERE, Esquire, Chief Justice of OUR SUPREME COURT, this 4th day of 10  
September, 1928.

FRED L. BLOODGOOD,  
Clerk.

A true copy.

FRED L. BLOODGOOD,  
Clerk.

JOHN WAHL QUEEN, 20  
Attorney.

I allow this Writ. Let it be sealed.

Sept 1/28.

JAMES F. MINTURN,  
J. S. C. 30

**Return.**

(Filed Sept. 12, 1928.)

## NEW JERSEY SUPREME COURT.

10	POINT BREEZE FERRY AND IMPROVEMENT COMPANY, Prosecutor,  vs.  THE MAYOR AND ALDERMEN OF JERSEY CITY, a municipal corporation, and JAMES RADIGAN, City Collector, Defendants.	}	On Certiorari.
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20 To the Honorable, the Justices of the Supreme Court of Judicature of New Jersey:

30 In obedience to the command of the writ, hereto annexed, directed to the Mayor and Aldermen of Jersey City, a municipal corporation, and James Radigan, City Collector, we do hereby certify and send to you, the honorable justices of the Supreme Court of Judicature of New Jersey, the notice of sale mentioned and described in said writ, and the record of the taxes and proceedings for said sale, so far as they affect Lot C in Block 1514, old Block 1513-1917, located on New York Bay, assessed to Point Breeze Ferry and Improvement Company, and the Resolution of The Mayor and Aldermen of Jersey City, dated June 26th, 1928, for the apportionment between the Point Breeze Ferry and Improvement Company and the Morris and Cumings Dredging Company of the assessment for taxes and other municipal assessments, charges or liens on said lands and certain lands

40 of the Morris and Cumings Dredging Company,

*Return.*

together with all things touching and concerning the same as fully and entirely as before The Mayor and Aldermen of Jersey City and James Radigan, City Collector, they remain, as appears by the schedules and records hereto annexed, as we are commanded.

IN WITNESS WHEREOF, I, HARRY J. MAUCHET, 10  
Acting Clerk of The Mayor and Aldermen of Jersey City, have hereunto set my hand and the seal of said The Mayor and Aldermen of Jersey City; and I, JAMES RADIGAN, City Collector of The Mayor and Aldermen of Jersey City, have hereunto set my hand and official seal, this 11th day of September, A. D. 1928.

(Seal) H. J. MAUCHET, 20  
Acting Clerk of The Mayor and Aldermen of Jersey City.

(Seal) JAMES RADIGAN,  
City Collector of The Mayor and Aldermen of Jersey City.

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**Schedule "A".**

(Schedule attached to report #113 Commissioners of Adjustment &c. of Jersey City,  
showing adjustment of taxes in arrears)

St. or Av.	Blk.	Lot	Name	Year	Amt. as Adjusted
New York Bay &c.	1513 and 1514	B.C.G.H.	Point Breeze Ferry Co. &c.	1874	\$1,589.64
				1875	1,293.70
				1876	1,116.66
				1877	1,081.32
				1878	938.69
				1879	899.36
				1880	4,245.01
				1881	4,044.05
				1882	6,017.44
				1883	9,009.62
				1884	6,511.98
				1885	6,425.84
				1886	7,181.05
				1887	4,320.00
				1888	4,447.65
				1889	4,179.00
1890	3,940.20				
1891	4,260.00				
1892	4,260.00				
1893	4,125.00				
1894	4,125.00				

1895	4,125.00
1896	4,110.00
1897	4,335.00
1898	4,290.00
1899	4,260.00
1900	5,154.60
1901	5,082.00
1902	5,045.70
1903	4,991.25
1904	4,973.10
1905	4,954.95
1906	4,519.35
1907	2,936.67

\$143,833.84

*Schedule "A".*

37

NOTE: Affirmed by Hudson County Circuit Court, and certified copy of said Report &c. filed with the City Comptroller of Jersey City, July 9th, 1908.

Said Report &c. (with other Reports) were removed by certiorari to the New Jersey Supreme Court, and Affirmed, as appears by Judgment entered April 26th, 1909.

In a proceeding in the U. S. Circuit Court of Appeals (3rd Circuit) said adjusted taxes were reduced.....

\$3,111.46

Total Amount of Adjusted Taxes.....

\$140,722.38

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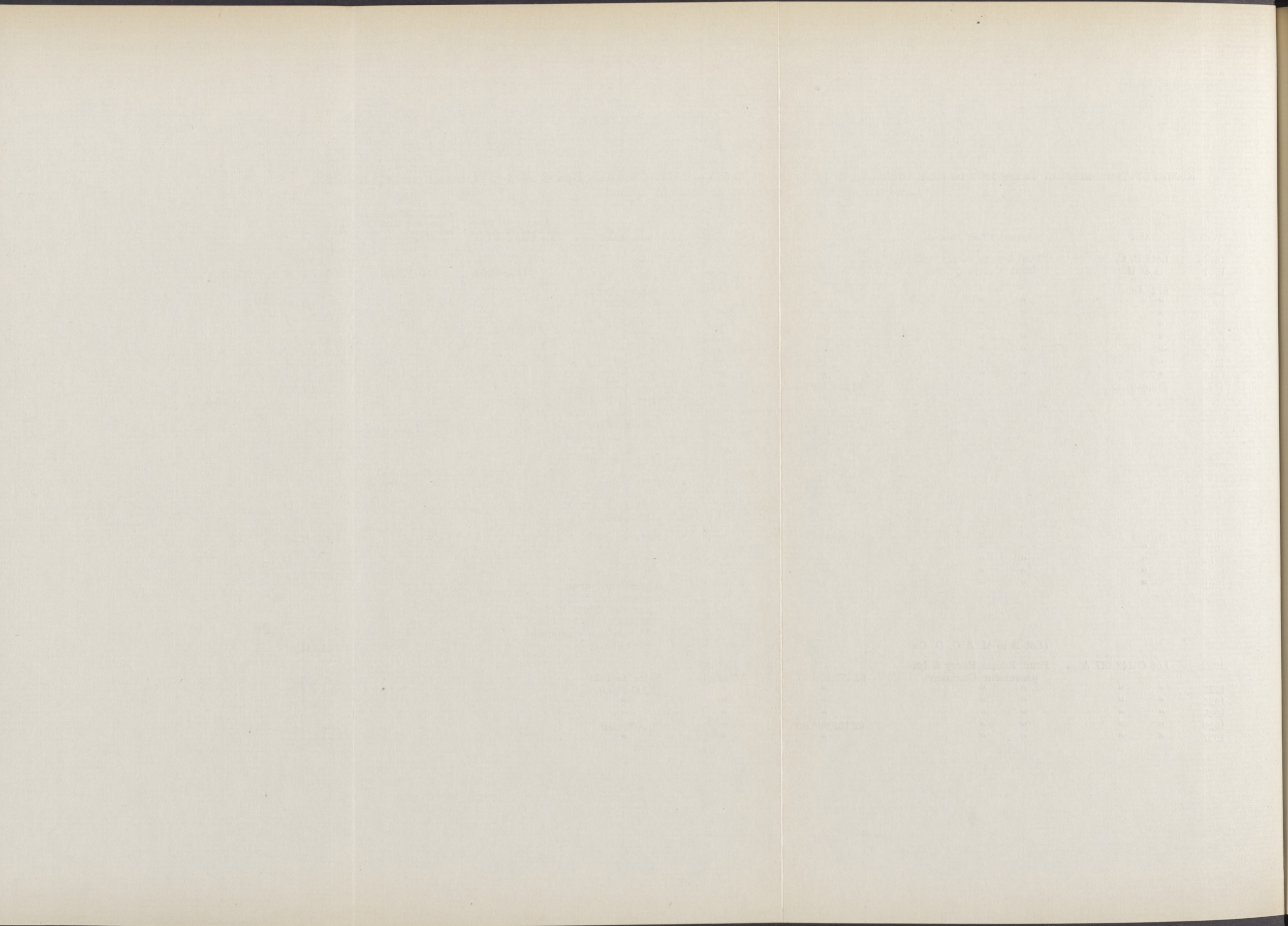
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1919	1920	1921	1922	1923	1924
1925	1926	1927	1928	1929	1930
1931	1932	1933	1934	1935	1936
1937	1938	1939	1940	1941	1942
1943	1944	1945	1946	1947	1948
1949	1950	1951	1952	1953	1954
1955	1956	1957	1958	1959	1960
1961	1962	1963	1964	1965	1966
1967	1968	1969	1970	1971	1972
1973	1974	1975	1976	1977	1978
1979	1980	1981	1982	1983	1984
1985	1986	1987	1988	1989	1990
1991	1992	1993	1994	1995	1996
1997	1998	1999	2000	2001	2002
2003	2004	2005	2006	2007	2008
2009	2010	2011	2012	2013	2014
2015	2016	2017	2018	2019	2020
2021	2022	2023	2024	2025	2026
2027	2028	2029	2030		

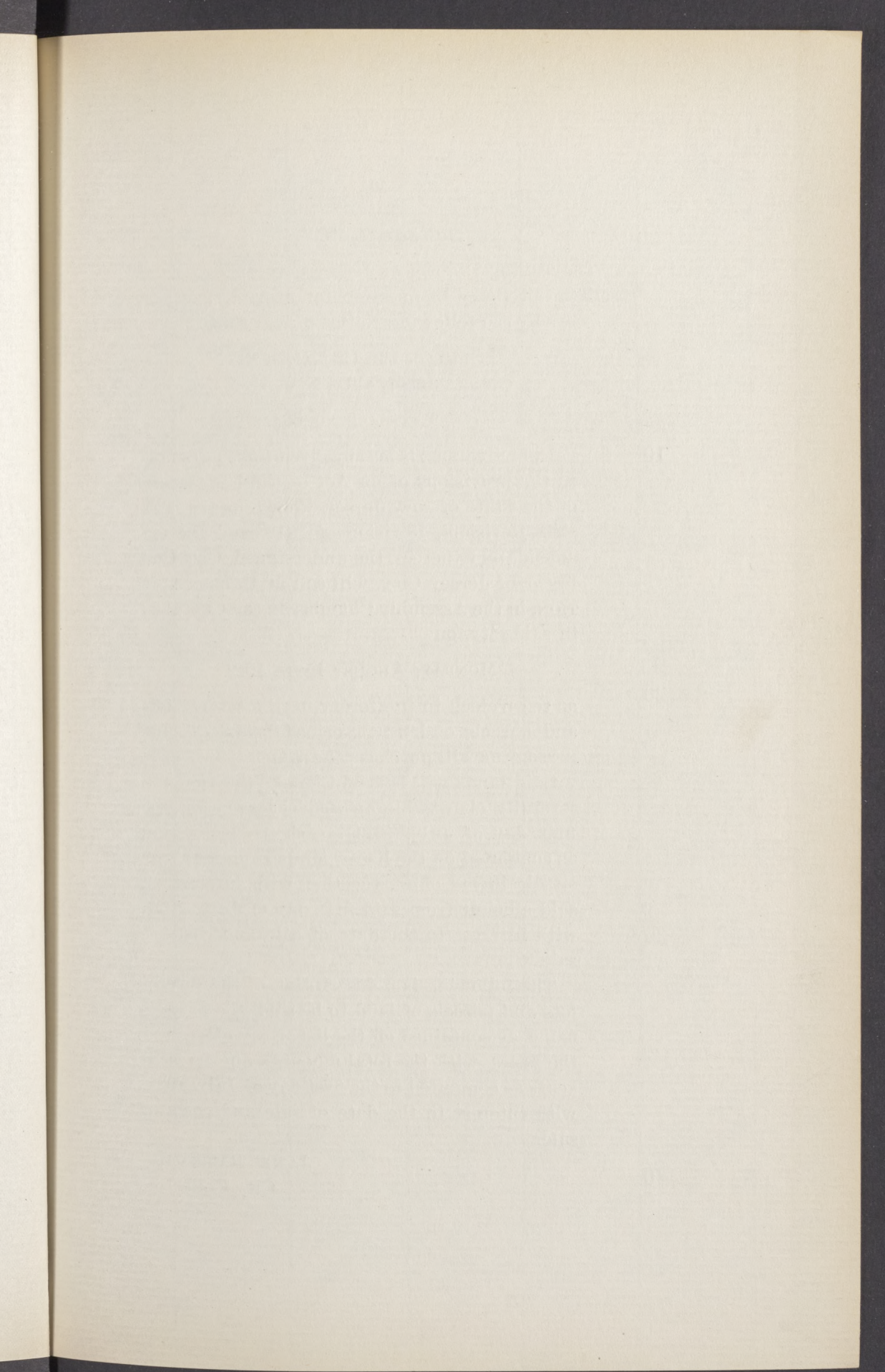
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## Schedule "B".

Record of Assessment of Taxes 1874 to 1927, inclusive, of property on New York Bay known as Blocks 1513-1514, Lots B and C (Riparian Lands) Lots G & H (very small strip of upland).

Years	Area	Against Whom Assessed	Assessed Valuation	Action of County Board	Action of State Board	Amount of Taxes Adjusted by Martin Act Commissioners	Amount of Taxes as Reduced by U. S. Circuit Court of Appeals (3rd Circ.)	Amount of Taxes (As Assessed, \$725,729.00)	
1874-1907	Lots B. C. G & H.	Point Breeze Ferry and Impt. Company				\$143,833.64	\$140,722.38	\$140,722.38	
1908	212 Ac.	" "	\$646,000.00	Affirmed	Appeal dismissed			12,454.88	10
1909	"	" "	"	"	No appeal			12,125.42	
1910	"	" "	"	"	" "			12,790.80	
1911	"	" "	"	"	" "			12,920.00	
1912	"	" "	"	No appeal	" "			14,212.00	
1913	"	" "	"	Affirmed	" "			13,714.58	
1914	"	" "	"	"	" "			13,649.98	
1915	"	" "	"	"	" "			13,230.08	
1916	219.603 Ac.	" "	\$3,294,000.00	"	Apportioned area Lot C & Part Lot B to Point Breeze Ferry & Impt. Co. consisting of 142.127 Ac \$810,664.00			23,934.04	20
					Part of Lot B To Morris & Cummings 73.401 Ac \$425,598.				
1917	219.603 Ac	" "	\$3,294,000.00	Affirmed	Same as 1916			25,961.50	
1918	"	" "	"	\$1,236,262.00	" "			15,984.87	
1919	"	" "	"	"	" "			26,379.01	
1920	"	" "	"	"	" "			25,106.26	
1921	"	" "	"	Affirmed	Apportioned area Same as for 1916 assessed Point Breeze \$1,421,270.00 Morris and Cummings \$734,010.00			41,444.23	30
		(Lot B to M. & C. D. Co.)							
1922	Lot C 142.127 A	Point Breeze Ferry & Improvement Company	\$2,172,270.00	Affirmed	Same as 1921			49,005.39	
1923	" "	" "	"	"	\$2,131,905.00			80,117.00	
1924	" "	" "	"	"	"			76,855.18	
1925	" "	" "	"	"	"			73,230.94	
1926	" "	" "	\$2,131,900.00	"	Affirmed			76,343.34	
1927	" "	" "	"	"	"			76,215.43	





**Schedule "C".**

The Taxing District of Jersey City undertook to sell the property in question for unpaid taxes, as appears by the following Notice of Tax Sale:

"Office of the City Collector,  
Jersey City, N. J.

TAX SALE NO. 60.

10 PUBLIC NOTICE is hereby given that, pursuant to the provisions of an Act of the Legislature of the State of New Jersey, known as the 'Tax Sale Revision', Revision of 1918, and the act amendatory thereof, the undersigned, City Collector of Jersey City, will sell at PUBLIC AUCTION, in the Assembly Chamber in the City Hall in said city, on

MONDAY, AUGUST 15TH, 1921,

20 at ten o'clock in the forenoon, the several lots and parcels of land described below to such persons as will purchase the same.

Said lands will be sold to make the amounts severally chargeable against the same on the first day of July, 1921, as shown below and as computed on the list of lands subject to sale on file in my office, together with interest on said amount from said first day of July, 1921, with interest to the date of sale and costs of sale.

30 The following is a description of the several lots and parcels of land to be sold, the owner's name, as contained on the list in my office, and the years, with the total amounts due for said years as computed to the first day of July, 1921, with interest to the date of sale and costs of sale.

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JAMES RADIGAN,  
City Collector.

Sales No.	Blk.	Lot	Street	Owner's Name	Years	Total Amt' Due
30965	1507	Old Plot 2, New Part 2L	New York Bay	Penna. R. R. Co.	1892 to 1908 inc. & 1910	\$949,030.74
30966	1513 1514	B, C, G, H,	New York Bay	Point Breeze Ferry & Improvement Co. and Morris and Cummings Dredging Co.	1874 to 1918 inc.	517,328.74
30967	1513	A9	Morris Canal & C. R. R.	Est. James Currie	1919 to 1920 inc.	427.67
30968	1513	A1	Morris Canal & C. C. R.	Est. James Currie	1906 to 1920 inc.	467.60"

Schedule "C".

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*Schedule "C".*

NOTE: The Mayor and Aldermen of Jersey City and James Radigan, City Collector, were restrained by the Court of Chancery from selling said property pursuant to said Notice of Sale, in a suit brought by Point Breeze Ferry & Improvement Co. vs. The Mayor and Aldermen of Jersey City and James Radigan, City Collector, the bill of complaint alleging that the total taxes were illegal. This suit was set down for final hearing, and on the date so fixed Counsel for Complainant stated in open court that complainant was not prepared to offer any proof to sustain or support the allegations and charges of its bill of complaint; and, upon motion of Counsel for Defendants, the bill of complaint was ordered dismissed and the restraint dissolved, as appears by copy of Order, which is as follows:

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## IN CHANCERY OF NEW JERSEY.

10	POINT BREEZE FERRY & IMPROVE- MENT COMPANY, Complainant,  vs.  THE MAYOR AND ALDERMAN OF THE CITY OF JERSEY CITY, and JAMES RADIGAN, City Collector of the City of Jersey City, Defendants.	} On Bill &c.  } Order Dismissing Bill of Complaint.
30		

40 It being represented to the Court by John M. Enright, Counsel for Complainant, at the time and place duly designated for the hearing of the above-entitled cause, that the complainant was not prepared to offer any proof to sustain or support the

*Schedule "C".*

allegations and charges of its bill of complaint; and Edward P. Stout, Counsel for the defendant, moving to dismiss the bill of complaint because of complainant's failure to proceed with this cause,

It is, on this 16th day of January, 1928, ORDERED that the bill of complaint herein be and the same is hereby dismissed without prejudice, and the restraint heretofore granted herein be and the same is hereby dissolved. **10**

Respectfully advised:

E. R. WALKER,  
C.

(Signed) JAMES F. FIELDER, V. C. **20**

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**Schedule "D".**

INTRODUCTION of Resolution to apportion taxes between Point Breeze Ferry and Improvement Company and Morris and Cummings Dredging Company.

10 COPY OF  
MINUTES OF THE BOARD OF COMMISSIONERS  
MEETING MAY 29TH, 1928.

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BY COMMISSIONER QUINN :

20 INTRODUCING a resolution entitled "Resolution for the apportionment of assessment for taxes and other municipal assessments, charges or liens on lands and real estate belonging to the Point Breeze Ferry & Improvement Company and Morris & Cummings Dredging Company, located in the City of Jersey City and now or formerly lying underneath the waters of New York Bay."

30 On motion made seconded and carried, the foregoing resolution of the City of Jersey City, was introduced, received and read and ordered placed on file in the office of the City Clerk for a period of two weeks for the purpose of giving public notice thereof as required by law.

*Schedule "D".*

(Form of Resolution, as introduced, is as follows) :

RESOLUTION FOR THE APPORTIONMENT OF ASSESSMENT FOR TAXES AND OTHER MUNICIPAL ASSESSMENTS, CHARGES OR LIENS ON LANDS AND REAL ESTATE BELONGING TO THE POINT BREEZE FERRY & IMPROVEMENT COMPANY AND MORRIS & CUMMINGS DREDGING COMPANY, LOCATED IN THE CITY OF JERSEY CITY AND NOW OR FORMERLY LYING UNDERNEATH THE WATERS OF NEW YORK BAY. 10

WHEREAS, on September 30, 1876, the State of New Jersey did lease to the Point Breeze Ferry & Improvement Company land and certain rights therein belonging to the State of New Jersey, lying underneath the waters of New York Bay adjacent to and in the City of Jersey City, which said lands are more particularly described in a certain indenture of lease between the State of New Jersey and the said Point Breeze Ferry & Improvement Company, recorded in the Register's Office of Hudson County, November 11, 1876, in Book 303 of Deeds, page 570; and 20

WHEREAS, thereafter on September 20, 1879 the State of New Jersey leased unto the said Point Breeze Ferry and Improvement Company certain other of its lands and certain rights therein lying under the Tide Waters of the Bay of New York, immediately north of and adjacent to the lands mentioned and referred to hereinabove and set forth in said lease above mentioned, which said indenture of lease was recorded in the Register's Office of Hudson County, New Jersey on January 6, 1881, in Book 350 of Deeds, page 731; and 30 40

*Schedule "D".*

10      WHEREAS, the lands and rights therein which are hereinabove referred to as being conveyed by the indenture of lease, date September 30, 1876, together with the extension thereof to the present pier head and bulkhead lines are the lands which were, up to the year 1916, designated on the map of the Assessment Commissioners of Jersey City, as Lot B, Block 1513; and

WHEREAS, the lands hereinabove referred to as being conveyed by the indenture of lease, dated September 20, 1879, together with the extension thereof to the present pier head and bulkhead lines are the lands which were up to the year 1916, designated on Map of the Assessment Commissioners of Jersey City, New Jersey, as Lot C, Block 1513; and

20      WHEREAS, the said Point Breeze Ferry & Improvement Company, did by deed of conveyance dated March 5, 1896, transfer and convey to the Morris & Cummings Dredging Company all of its interest and ownership in a part of the area described in the lease hereinabove referred to, dated September 30, 1876, the said part of the area being defined by survey thereto annexed and being that part of the entire area in said lease of September  
30      30, 1876, which lies south of the line offsetting 91 feet, 6 inches from the northerly boundary of the said leasehold along the base line thereof narrowed to an offset of 75 feet on the original bulkhead line; and

40      WHEREAS, the said Point Breeze Ferry & Improvement Company did also in further consummation of said contract dated, March 5, 1896, and for the purpose of supplementing said deed of convey-

*Schedule "D".*

ance executed an assignment to said Morris & Cummings Dredging Company of the lease dated September 30, 1876, which said assignment was thereafter duly recorded in the Hudson County Register's Office in Book 644 of Deeds, page 541; and

WHEREAS, under date of February 24, 1904, the said Morris & Cummings Dredging Company did transfer and convey to Daniel J. Leary all of its interest in the land and rights therein obtained by it under the deed of conveyance aforesaid on March 5, 1896, and the said assignment of September 30, 1876, said assignment being recorded as aforesaid in the Hudson County Register's Office in Book 644 of Deeds, page 541, and thereafter the said Daniel J. Leary did by instruments recorded in the Register's Office of Hudson County, New Jersey in 1915, reassign and re-convey to said Morris & Cummings Dredging Company all of the lands and rights therein which he, the said Daniel J. Leary, had obtained from said Morris & Cummings Dredging Company as aforesaid; and

WHEREAS, the total area of the land and rights therein belonging to the said Point Breeze Ferry & Improvement Company and said Morris & Cummings Dredging Company within the limits of Jersey City, comprises in all 215.528 acres, of which area there belongs to and is owned by the Point Breeze Ferry & Improvement Company 142.127 acres and of which there belongs to and is owned by the Morris & Cummings Dredging Company 73.401 acres; and

WHEREAS, both the said Point Breeze Ferry & Improvement Company and the said Morris & Cum-

*Schedule "D".*

10 mings Dredging Company did file and take separate appeals to the State Board of Taxes and Assessments from the taxes assessed against the aforesaid lands and real estate for the year 1916 and did in said appeal, among other things, pray for an apportionment of said lands and real estate and the said State Board of Taxes and Assessments did, under date of March 5, 1918, render its judgment in said proceedings of appeal and did make the apportionment so prayed for by the owners aforesaid of said lands and real estate, and did determine that there be apportioned and assessed to the said Point Breeze Ferry & Improvement Company a total of 142.127 acres and to the said Morris & Cummings Dredging Company a total of 73.401 acres as aforesaid; and

20 WHEREAS, for the years 1877 to 1879 inclusive, the whole of the lands and rights therein conveyed to the Point Breeze Ferry & Improvement Company by the aforesaid lease of September 30, 1876, has been assessed to the said Point Breeze Ferry & Improvement Company and from the years 1880 to 1915 inclusive, the whole area included in the leases of September 30, 1876, and September 20, 1879, and comprising in all 215.528 acres, has been assessed to the Point Breeze Ferry & Improvement Company, and it is desired and intended that an apportionment of assessment for taxes and other municipal assessments, charges or liens on said lands and real estate be made between the respective owners thereof, now, therefore, be it

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40 RESOLVED: By the Board of Commissioners of The Mayor and Aldermen of Jersey City that any and all municipal assessments, charges or liens, together with any assessment for taxes or other municipal

*Schedule "D".*

charge, which are or may become a lien upon the said lands and real estate for the said years, 1877 to 1915 inclusive, and have become due and payable or may become due and payable to the City of Jersey City, including any and all claims of the said Jersey City under any sale for the enforcement of taxes or other municipal liens or charges shall be apportioned among the owners of the aforesaid lands and real estate, according to the value of the respective subdivisions at the time when the respective assessments, charges, liens or assessment for taxes were levied or imposed in the manner following:

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STATEMENT OF UNPAID TAXES FOR THE YEARS 1877 TO 1927, INCLUSIVE, LEVIED AGAINST  
POINT BREEZE FERRY AND IMPROVEMENT COMPANY

Block 1513-1514, Lot C

Year	Tax	Year	Tax	Interest	Total
1877.....	\$157.87	1903.....	\$3,294.23		
1878.....	143.62	1904.....	3,282.24		
1879.....	131.31	1905.....	3,270.27		
1880.....	2,763.08	1906.....	2,982.77		
1881.....	2,632.27	1907.....	1,938.20		
1882.....	3,916.75	Less Per Order of Ct.	2,051.70		
1883.....	5,864.37			\$88,467.42	\$116,949.07
1884.....	4,294.00	1908.....		8,220.22	11,066.89
1885.....	4,896.60	1909.....		8,002.78	10,213.96
1886.....	4,735.18	1910.....		8,441.93	10,183.51
1887.....	2,848.61	1911.....		8,527.20	9,689.47
1888.....	2,932.78	1912.....		9,379.92	10,001.82
1889.....	2,755.63	1913.....		9,051.62	9,018.14
1890.....	2,598.17	1914.....		9,008.99	8,345.05
1891.....	2,809.04	1915.....		8,731.85	7,477.10
1892.....	2,809.04	1916.....		15,694.46	12,340.58
1893.....	2,720.02	1917.....		17,023.94	12,194.28
1894.....	2,720.02	1918.....		10,481.89	6,774.46
1895.....	2,720.02	1919.....		26,379.01	15,761.26
1896.....	2,712.60	1920.....		25,106.26	13,243.38
1897.....	2,861.10	1921.....		41,444.23	19,875.44
1898.....	2,831.40	1922.....		49,005.39	18,989.24
1899.....	2,811.60	1923.....		80,117.00	25,436.59
1900.....	3,402.04	1924.....		76,855.18	19,021.12
1901.....	3,854.12	1925.....		73,230.94	12,997.98
1902.....	3,330.16	1926.....		76,343.34	8,206.38
		1927.....		76,215.43	2,857.54
				\$725,729.00	\$360,643.26
					\$1,086,372.26

Schedule "D".



**Schedule "E".**

## PUBLIC NOTICE OF HEARING ON FOREGOING RESOLUTION SET FORTH IN SCHEDULE "D".

## PUBLIC NOTICE

10 TAKE NOTICE, that on the 12th day of June, 1928 at eleven o'clock in the forenoon (Daylight Saving Time) or as soon thereafter as the matter can be heard, a public hearing will be held before the Board of Commissioners of the Mayor and Aldermen of Jersey City in the Assembly Chamber, City Hall, Jersey City, New Jersey, on a certain resolution introduced in said Board of Commissioners on the 29th day of May, 1928, for the apportionment of assessments for taxes and other municipal assessments, charges or liens on lands and real estate belonging to the Point Breeze Ferry & Improvement Company and Morris & Cummings Dredging Company, which lands and real estate are located in the City of Jersey City and are now or were formerly lying underneath the waters of New York Bay.

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The said resolution reads as follows :

30 RESOLUTION FOR THE APPORTIONMENT OF ASSESSMENT FOR TAXES AND OTHER MUNICIPAL ASSESSMENTS, CHARGES OR LIENS ON LANDS AND REAL ESTATE BELONGING TO THE POINT BREEZE FERRY & IMPROVEMENT COMPANY AND MORRIS & CUMMINGS DREDGING COMPANY, LOCATED IN THE CITY OF JERSEY CITY AND NOW OR FORMERLY LYING UNDERNEATH THE WATERS OF NEW YORK BAY.

40 WHEREAS, on September 30, 1876, the State of New Jersey did lease to the Point Breeze Ferry & Improvement Company land and certain rights therein belonging to the State of New Jersey, lying

*Schedule "E".*

underneath the waters of New York Bay adjacent to and in the City of Jersey City, which said lands are more particularly described in a certain indenture of lease between the State of New Jersey and the said Point Breeze Ferry & Improvement Company, recorded in the Register's Office of Hudson County, November 11, 1876, in Book 303 of Deeds, page 570; and **10**

WHEREAS, thereafter on September 20, 1879 the State of New Jersey leased unto the said Point Breeze Ferry and Improvement Company certain other of its lands and certain rights therein lying under the Tide Waters of the Bay of New York, immediately north of and adjacent to the lands mentioned and referred to hereinabove and set forth in said lease above mentioned, which said indenture of lease was recorded in the Register's Office of Hudson County, New Jersey on January 6, 1881, in Book, 350 of Deeds, page 731 and **20**

WHEREAS, the lands and rights therein which are hereinabove referred to as being conveyed by the indenture of lease, date September 30, 1876, together with the extension thereof to the present pier head and bulkhead lines are the lands which were, up to the year 1916, designated on the map of the Assessment Commissioners of Jersey City, as Lot B, Block 1513; and **30**

WHEREAS, the lands hereinabove referred to as being conveyed by the indenture of lease, dated September 20, 1879, together with the extension thereof to the present pier head and bulkhead lines are the lands which were up to the year 1916, designated on Map of the Assessment Commissioners of Jersey City, New Jersey, as Lot C, Block 1513; and **40**

*Schedule "E".*

10       WHEREAS, the said Point Breeze Ferry & Improvement Company, did by deed of conveyance dated March 5, 1896, transfer and convey to the Morris & Cummings Dredging Company all of its interest and ownership in a part of the area described in the lease hereinabove referred to, dated September 30, 1876, the said part of the area being defined by survey thereto annexed and being that part of the entire area in said lease of September 30, 1876, which lies south of the line offsetting 91 feet, 6 inches from the northerly boundary of the said leasehold along the base line thereof narrowed to an offset of 75 feet on the original bulkhead line; and

20       WHEREAS, the said Point Breeze Ferry & Improvement Company did also in further consummation of said contract dated, March 5, 1896, and for the purpose of supplementing said deed of conveyance executed an assignment to said Morris & Cummings Dredging Company of the lease dated September 30, 1876, which said assignment was thereafter duly recorded in the Hudson County Register's Office in Book 644 of Deeds, page 541; and

30       WHEREAS, under date of February 24, 1904, the said Morris & Cummings Dredging Company did transfer and convey to Daniel J. Leary all of its interest in the land and rights therein obtained by it under the deed of conveyance aforesaid on March 5, 1896, and the said assignment of September 30, 1876, said assignment being recorded as aforesaid in the Hudson County Register's Office in Book 644 of Deeds, page 541, and thereafter the said Daniel J. Leary did by instruments recorded in the Register's Office of Hudson County, New Jersey in 1915,

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*Schedule "E".*

reassign and re-convey to said Morris & Cummings Dredging Company all of the lands and rights therein which he, the said Daniel J. Leary, had obtained from said Morris & Cummings Dredging Company as aforesaid; and

WHEREAS, the total area of the land and rights therein belonging to the said Point Breeze Ferry & Improvement Company and said Morris & Cummings Dredging Company within the limits of Jersey City, comprises in all 215.528 acres, of which area there belongs to and is owned by the Point Breeze Ferry & Improvement Company 142.127 acres and of which there belongs to and is owned by the Morris & Cummings Dredging Company 73.401 acres; and

WHEREAS, both the said Point Breeze Ferry & Improvement Company and the said Morris & Cummings Dredging Company did file and take separate appeals to the State Board of Taxes and Assessments from the taxes assessed against the aforesaid lands and real estate for the year 1916 and did in said appeal, among other things, pray for an apportionment of said lands and real estate and the said State Board of Taxes and Assessments did, under date of March 5, 1918, render its judgment in said proceedings of appeal and did make the apportionment so prayed for by the owners aforesaid of said lands and real estate, and did determine that there be apportioned and assessed to the said Point Breeze Ferry & Improvement Company a total of 142.127 acres and to the said Morris & Cummings Dredging Company a total of 73.401 acres as aforesaid; and

WHEREAS, for the years 1877 to 1879 inclusive, the whole of the lands and rights therein conveyed to

*Schedule "E".*

10 the Point Breeze Ferry & Improvement Company by the aforesaid lease of September 30, 1876, has been assessed to the said Point Breeze Ferry & Improvement Company and from the years 1880 to 1915 inclusive, the whole area included in the leases of September 30, 1876, and September 20, 1879, and comprising in all 215.528 acres, has been assessed to the Point Breeze Ferry & Improvement Company, and it is desired and intended that an apportionment of assessment for taxes and other municipal assessments, charges or liens on said lands and real estate be made between the respective owners thereof, now, therefore, be it

20 RESOLVED: By the Board of Commissioners of The Mayor and Aldermen of Jersey City that any and all municipal assessments, charges or liens, together with any assessment for taxes or other municipal charge, which are or may become a lien upon the said lands and real estate for the said years, 1877 to 1915 inclusive, and have become due and payable or may become due and payable to the City of Jersey City, including any and all claims of the said Jersey City under any sale for the enforcement of taxes or other municipal liens or charges shall be

30 apportioned among the owners of the aforesaid lands and real estate, according to the value of the respective subdivisions at the time when the respective assessments, charges, liens or assessment for taxes were levied or imposed in the manner following:

40

STATEMENT OF UNPAID TAXES FOR THE YEARS 1877 TO 1927, INCLUSIVE, LEVIED AGAINST  
POINT BREEZE FERRY AND IMPROVEMENT COMPANY

Block 1513-1514, Lot C

Year	Tax	Year	Tax	Interest	Total
1877.....	\$157.87	1903.....	\$3,294.23		
1878.....	143.62	1904.....	3,282.24		
1879.....	131.31	1905.....	3,270.27		
1880.....	2,763.08	1906.....	2,982.77		
1881.....	2,632.27	1907.....	1,938.20	\$90,519.12	
1882.....	3,916.75	Less Per Order of Ct.	2,051.70	\$88,467.42	\$116,949.07
1883.....	5,864.37	1908.....		8,220.22	11,066.89
1884.....	4,294.00	1909.....		8,002.78	10,213.96
1885.....	4,896.60	1910.....		8,441.93	10,183.51
1886.....	4,735.18	1911.....		8,527.20	9,689.47
1887.....	2,848.61	1912.....		9,379.92	10,001.82
1888.....	2,932.78	1913.....		9,051.62	9,018.14
1889.....	2,755.63	1914.....		9,008.99	8,345.05
1890.....	2,598.17	1915.....		8,731.85	7,477.10
1891.....	2,809.04	1916.....		15,694.46	12,340.58
1892.....	2,809.04	1917.....		17,023.94	12,194.28
1893.....	2,720.02	1918.....		10,481.89	6,774.46
1894.....	2,720.02	1919.....		26,379.01	15,761.26
1895.....	2,720.02	1920.....		25,106.26	13,243.38
1896.....	2,712.60	1921.....		41,444.23	19,875.44
1897.....	2,861.10	1922.....		49,005.39	18,989.24
1898.....	2,831.40	1923.....		80,117.00	25,436.59
1899.....	2,811.60	1924.....		76,855.18	19,021.12
1900.....	3,402.04	1925.....		73,230.94	12,997.98
1901.....	3,354.12	1926.....		76,343.34	8,206.38
1902.....	3,330.16	1927.....		76,215.43	2,857.54
				<hr/>	<hr/>
				\$725,729.00	\$360,643.26
					\$1,086,372.26

STATEMENT OF UNPAID TAXES FOR THE YEARS 1877 TO 1927, INCLUSIVE, LEVIED AGAINST  
MORRIS & CUMMINGS DREDGING COMPANY

Known as Block 1513-4, Lot B

Year	Tax	Year	Tax	Interest	Total
1877.....	\$923.45	1903.....	\$1,697.02		
1878.....	840.07	1904.....	1,690.85		
1879.....	768.05	1905.....	1,684.68		
1880.....	1,481.93	1906.....	1,536.58		
1881.....	1,411.78	1907.....	998.47	\$49,314.72	
1882.....	2,100.69	Less as Per Court Order	1,059.76	\$48,254.96	\$63,790.41
1883.....	3,145.26	1908.....		4,234.66	9,935.78
1884.....	2,217.98	1909.....		4,122.64	5,261.73
1885.....	2,529.24	1910.....		4,348.87	5,246.04
1886.....	2,445.87	1911.....		4,392.80	4,991.54
1887.....	1,471.39	1912.....		4,832.08	5,152.45
1888.....	1,514.87	1913.....		4,662.96	4,645.71
1889.....	1,423.37	1914.....		4,640.99	4,298.96
1890.....	1,342.03	1915.....		4,498.23	3,851.84
1891.....	1,450.96	1916.....		8,239.58	6,478.79
1892.....	1,450.96	1917.....		8,937.56	6,401.98
1893.....	1,404.98	1918.....		5,502.98	3,556.58
1894.....	1,404.98	1919.....		13,848.96	8,274.65
1895.....	1,404.98	1920.....		13,180.77	6,952.76
1896.....	1,397.40	1921.....		21,403.73	9,792.05
1897.....	1,473.90	1922.....		25,308.66	9,806.92
1898.....	1,458.60	1923.....		41,376.15	13,136.64
1899.....	1,448.40	1925.....		39,691.60	9,823.40
1900.....	1,752.56	1925.....		37,819.87	6,712.76
1901.....	1,727.88	1926.....		39,426.81	4,238.10
1902.....	1,715.54	1927.....		39,360.75	1,475.75
				\$378,085.61	\$189,590.18
					\$567,675.79

Schedule "E".

*Schedule "E".*

Notice is hereby given to the said Point Breeze Ferry & Improvement Company and the said Morris & Cummings Dredging Company and to all who have or claim to have any right, title, claim or interest whatsoever in the said lands and real estate, that they may be present and heard.

BY ORDER OF THE BOARD OF COMMISSIONERS OF  
JERSEY CITY. 10

Dated City Clerk's Office,  
Jersey City, June 1, 1928.

EDWARD J. HOLLAND,  
City Clerk.

Duly published.

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**Schedule "F".**

STIPULATION between Point Breeze Ferry and Improvement Co. and The Mayor and Aldermen of Jersey City, adjourning the hearing on the foregoing Resolution from June 12th, 1928 to June 26th, 1928.

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IN THE MATTER

OF

The Apportionment of Assessments for taxes and other municipal assessments, charges or liens on lands and real estate belonging to the POINT BREEZE FERRY & IMPROVEMENT COMPANY and MORRIS & CUMMINGS DREDGING COMPANY, which lands and real estate are located in the City of Jersey City and are now or were formerly lying underneath the waters of New York Bay.

20

STIPULATION.

IT IS HEREBY STIPULATED AND AGREED by and between the Point Breeze Ferry and Improvement Company and the Board of Commissioners of The Mayor and Aldermen of Jersey City, as follows:

30 That due and timely notice has been received by the said Point Breeze Ferry & Improvement Company and by all persons and parties having an interest therein of a hearing (of which notice was given for June 12th 1928 at eleven o'clock in the forenoon at the Assembly Chamber in the City Hall, Jersey City, New Jersey) to be held on a certain resolution to apportion assessments for taxes and other municipal assessments, charges or liens on lands and real estate belonging to the said Point Breeze Ferry

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*Schedule "F".*

& Improvement Company in Jersey City, and more particularly set forth and described in a resolution, a copy of which is hereto annexed and made a part hereof, and also that the said hearing appointed for June 12th 1928 as aforesaid was, at the request of the said Point Breeze Ferry & Improvement Company, adjourned to Tuesday, June 26th 1928, at the time and place set forth in the first notice. 10

(Signed) RICHARD BOARDMAN,  
Atty. for Point Breeze Ferry &  
Improvement co.

(Signed) THOMAS J. BROGAN,  
Atty. for The Mayor and Alder-  
men of Jersey City.

20

NOTE: The Notice and Resolution above referred to (as being annexed to this Stipulation) are the same as set forth in the foregoing "Schedule E".

Due Notice of the public hearing as fixed for June 26th 1928 was given to Morris & Cummings Dredging Co., and service of a copy of the Notice was acknowledged by Morris & Cummings Dredging Company's Attorneys, McDermott, Enright & Carpenter. 30

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**Schedule "G".**

Hearing on foregoing Resolution to apportion taxes between Point Breeze Ferry & Improvement Co. and Morris & Cummings Dredging Company.

COPY OF  
MINUTES OF THE BOARD OF COMMISSIONERS  
MEETING JUNE 26, 1928.

10

Hearing on the resolution introduced May 29th, 1928, for the apportionment of assessments for taxes, &c., on lands and real estate belonging to the Point Breeze Ferry & Impvt. Company and the Morris & Cummings Dredging Company, having been adjourned and continued to this time and place, the City Clerk read the public notice and then called

20 for anyone who might desire to be heard or protest against the passage of said resolution.

No one appeared to object and no written protests were received.

Mr. Oatjen of the Morris & Cummings Dredging Co. appeared at the meeting.

Commissioner Fagen moved that the resolution be referred to Miscellaneous Business for final passage.

30 CARRIED.

NOTE: (Form of Resolution is as set forth in "Schedule D", adopted in the form as introduced.)

40

**Schedule "H".**

NOTICE OF TAX SALE, for Friday, Sept. 7th, 1928.

Previous notice of this Tax Sale was advertised for Friday, August 3rd, 1928, but was incorrectly published in The Jersey Journal; and, on July 31st, 1928, the Board of Commissioners of Jersey City passed a Resolution, copy of which is as follows:

"RESOLUTION FOR RE-ADVERTISING OF TAX SALE No. 65, by James Radigan, City Collector of the City of Jersey City, New Jersey. 10

WHEREAS, James Radigan, City Collector of the City of Jersey City, New Jersey, did give public notice that pursuant to the provisions of act of the Legislature of the State of New Jersey, known as the "Tax Sale Revision", Revision of 1918, and the acts amendatory thereof, he the said City Collector of Jersey City, New Jersey, would sell at public auction in the Assembly Chamber, City Hall, of said City, on Friday, August 3rd, 1928, at ten o'clock in the forenoon, the several lots and parcels of land described in said notice to such persons as would purchase same, and that the said land would be sold to make the amounts severally chargeable against the same on the first day of July, 1927, as computed on the list of lands subject to sale on file in his office together with interest on said amount from said first day of July 1927 with interest to the date of sale and costs of sale, the following being a description of the several lots and parcels of land to be sold as aforesaid, the owners names as contained on the list in his office with the total amount as computed to the first day of July 1927, with interest to the date of sale and costs of sale and said sale being known as Tax Sale No. 65 in his office; and 20 30 40

*Schedule "H".*

10           WHEREAS, public notice of the sale of said several lots and parcels of land above described were made and given by the said James Radigan, City Collector, as aforesaid by publishing said notices in the HUDSON DISPATCH, a newspaper circulating in the said municipality of Jersey City, and also the HUDSON OBSERVER, a newspaper circulating in the said municipality of Jersey City, also in the JERSEY JOURNAL, circulating in the said municipality, the said notices were published and appeared in the newspapers above mentioned on the following dates, namely, Friday, July 6, 1928; Friday, July 13, 1928; Friday, July 20, 1928; Friday, July 27, 1928; and

20           WHEREAS, the notices of said sale which were published and appeared in the said Jersey Journal on the above mentioned dates in July 1928, were incorrectly printed and published by said newspaper in that said Jersey Journal stated and published that the said sale was to be made pursuant to the provisions of an Act of the Legislature of the State of New Jersey known as 'Tax Sale Revision', Revision of 1928 and the acts amendatory thereof, when and although in truth and fact the notices aforesaid should have stated that the sale would be made pursuant to the provisions of an act of the Legislature of the State of New Jersey known as 'Tax Sale Revision,' Revision of 1918 and acts amendatory thereof; and

30

40           WHEREAS, it is deemed proper and advisable that this error be corrected and that the publication and notices aforesaid should contain a correct reference to the law and statutes in ac-

*Schedule "H".*

cordance with the provisions of which the said sale is to be made, therefore, be it hereby

RESOLVED: By the Board of Commissioners of The Mayor and Aldermen of Jersey City that the said James Radigan, City Collector of Jersey City, as aforesaid, do and he is hereby authorized and directed to republish in the newspapers above mentioned, notice of sale above referred to and for the purpose above mentioned, of the several lots and parcels of land hereinabove described, and that the sale of the said lots and parcels of land above referred to notified for Friday, August 3, 1928, by the said James Radigan, City Collector as aforesaid be adjourned accordingly." 10

A copy of said Notice, as re-advertised for sale, is as follows: 20

OFFICE OF THE CITY COLLECTOR,  
Jersey City, New Jersey.

## TAX SALE No. 65.

PUBLIC NOTICE is hereby given that, pursuant to the provisions of an Act of the Legislature of the State of New Jersey known as the "Tax Sale Revision of 1918, and the acts amendatory thereof, the undersigned, City Collector of Jersey City, will sell at PUBLIC AUCTION, in the ASSEMBLY CHAMBER in the City Hall in said City, on 30

FRIDAY, SEPTEMBER 7, 1928

at ten o'clock in the forenoon, the several lots and parcels of land described below to such persons as will purchase the same. 40

*Schedule "H".*

Said lands will be sold to make the amounts severally chargeable against the same on the first day of July, 1927, as computed on the list of lands subject to sale on file in my office, together with interest on said amount from said first day of July, 1927, with interest to the date of sale and costs of sale.

10

The following is a description of the several lots and parcels of land to be sold, the owner's name as contained on the list in my office with the total amount due as computed to the first day of July, 1927, with interest to the date of sale and costs of sale.

JAMES RADIGAN,  
City Collector.

20

30

40

TAX SALE No. 65

Sales No.	Block	Lot	Location	To Whom Assessed	Total Amt. Due
35488	New	1514	New York Bay	Point Breeze Ferry and Improvement Co. ....	\$1,055,290.22
	Old	1513 to 1517			
35489	New	1514	New York Bay	Morris & Cummings Dredging Com- pany. ....	552,513.31
	Old	1513 to 1517			

NOTE: The above Notice of Sale was duly posted in 5 of the most public places in Jersey City, and was duly published Aug. 3rd, 10th, 17th, 24th and 31st, 1928, in THE JERSEY JOURNAL, JERSEY OBSERVER, and HUDSON DISPATCH, newspapers circulating in Jersey City.

Schedule "H".

**Reasons.**

(Filed Sept. 20, 1928.)

## NEW JERSEY SUPREME COURT.

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POINT BREEZE FERRY AND IMPROVE-  
MENT COMPANY,  
Prosecutor,

10

vs.

MAYOR AND ALDERMEN OF JERSEY  
CITY, a Municipal Corporation,  
and JAMES RADIGAN, City Collec-  
tor of Jersey City,  
Defendants.

---

20 The said Point Breeze Ferry Improvement Com-  
pany, by John Wahl Queen, its Attorney, comes and  
prays that the notice of the sale of certain lands  
for unpaid taxes and municipal liens, to be held on  
Friday, September 7, 1928, in pursuance of the pro-  
visions of an Act of the Legislature of the State of  
New Jersey known as the "Tax Sale Revision", Re-  
vision of 1918, and the acts amendatory thereof, and  
the record of said taxes and the proceedings for  
said sale, so far as they affect Lot C, in Block 1514,  
30 old Block 1513-1517, location New York Bay, as-  
sessed to Point Breeze Ferry and Improvement  
Company, and the Resolution of the Mayor and  
Aldermen of Jersey City, dated June 26, 1928, for  
the apportionment between Point Breeze Ferry and  
Improvement Company and the Morris & Cum-  
mings Dredging Company, of the assessment for  
taxes and other municipal assessments, charges or  
liens on said lands and certain lands of the Morris  
& Cummings Dredging Company, may be set aside,  
40

*Reasons.*

reversed and for nothing holden for the following reasons :

1. The lands against which the taxes under review in this suit have been assessed, consist of 142 acres and upwards. This includes or included at least prior to 1916, taxes levied against a very small strip of upland or riparian land owned by the prosecutor in fee, certain lands now or formerly under the waters of New York Bay, which are held by the prosecutor under riparian lease dated September 20, 1879, and certain lands now or formerly under water of New York Bay, held under a riparian lease dated September 30, 1876, the riparian lease in this latter case having been itself assigned to Morris & Cummings Dredging Company, who hold it in trust for the protection of the prosecutor to the extent of the lands which have been assessed as the lands of the prosecutor. Of these lands now or formerly under water, practically 65 acres have been so far filled in as to exclude the tidal waters generally, but not sufficiently to be of any practical value, and about 40 acres, being lands which may be filled in, but which are presently under tidal waters of New York Bay, about 36 acres of lands upon which piers may be built, but which may not be use for filling in.

For these lands, now or formerly under water, an annual rent is payable to the State of New Jersey and if not paid, the leases are forfeitable by the State.

The property in question, during the whole term for which taxes are alleged to be in arrears, including the entire corporate existence of the prosecutor and the entire duration of the leasehold estates, has been in the open market and offered for sale. No

*Reasons.*

firm offer has ever been refused. No firm offer has ever been received by the prosecutor.

10 The property is unique in its nature. There is and has been no market value or standard by which a market value could have been determined by testimony of expert or otherwise. No streets of Jersey City or other street affords access to the property in question. No city street crosses it or leads to it. No city sewer affords it any drainage. The property is uninhabited and practically incapable of habitation, and is absolutely unproductive. In so far as the property can be said to be policed, it is policed if at all, by the City or State of New York. The property is the beneficiary of no municipal service or benefit from the municipality of Jersey City. So much of the leasehold lands as have been filled in, 20 have not been filled in sufficiently to be of any beneficial use to the prosecutor, and in respect to the lands actually under waters of New York Bay, the prosecutor has no exclusive right of possession against the public, for the waters covering said lands are tidal waters and subject to the laws relating to tidal waters.

30 The taxes against the property are illegal for each and every year under review for the reason that in making the assessment and affirming the same by the assessor, and in affirming the same by the several reviewing bodies, there has been a total neglect to allow:

(a) For the rent reserved by the State;

(b) For the fact that practically the whole land is held by a defeasible leasehold estate;

(c) No distinction has been made between the lands held in fee and leasehold lands;

40

*Reasons.*

(d) That there is no market value to the lands;

(e) That they are unique in their location and inaccessibility;

(f) That they are the recipients of no municipal benefits from the City of Jersey City;

(g) That the prosecutor has no exclusive rights to the lands now or formerly under water, and that the prosecutor has no right to any exclusive use of the lands under water, and has had no right to any exclusive use of the lands under water, except the single right to fill and to build piers on part of it.

(h) That no distinction has been made between the lands from which tidal waters have been excluded and those under waters where the tide rises and falls.

2. In making the assessments from 1916, no distinction has been made in the amount of valuation placed upon the riparian lands held in fee, the lands partially filled, the lands which may be filled and the lands upon which piers may be built, but a flat per acre valuation has been spread over them all.

3. The taxes for no year as so assessed that the prosecutor could pay the taxes solely upon the riparian lands owned by it in fee.

4. In case of sale, a purchaser cannot purchase the riparian lands held by the prosecutor in fee, in reference to which no question of title can arise, without also purchasing the defeasible leasehold estates.

10

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30

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*Reasons.*

10 5. In none of the assessments under review, nor in the notice of sale is any differentiation made between the lands held by the prosecutor under lease to the Point Breeze Ferry and Improvement Company, dated September 20, 1879, and those lands held by the prosecutor under lease made to the Point Breeze Ferry and Improvement Company under date of September 30, 1876, which latter mentioned lease has been assigned to the Morris & Cummings Dredging Company, by deed of assignment dated March 5, 1896, and which lease is now held by the Morris & Cummings Dredging Company, a Delaware corporation.

20 6. The appeals from the assessments for the years 1908 to 1915, taken by the prosecutor from the Hudson County Board of Taxation to the State Board of Taxes and Assessment, have never been determined, and the assessments for said years are not a finality and the amounts due for taxes are not determined.

30 7. The resolution of the Board of Commissioners of Jersey City, of June 26, 1928, which undertook to apportion some One Million, One Hundred Thousand Dollars of taxes, running over a long period of years, between the Point Breeze Ferry and Improvement Company and the Morris and Cummings Dredging Company, was illegal in that it was a judicial act and the apportionment proceedings were not according to due process of law.

40 8. The Statute, Chapter 121 of the Laws of 1919, being entitled "An Act for the Apportionment of Assessments for Taxes and other Municipal Assessments, Charges or Liens", does not justify the reso-

*Reasons.*

lution of June 26, 1928, and the attempted apportionment by it of assessments and taxes long overdue between two private owners under the circumstances presented by the facts and records.

9. Chapter 121 of the Laws of 1919 is unconstitutional insofar as it confers or attempts to confer upon the governing body of the municipality the right by resolution to apportion between two parties, taxes long overdue, which had been assessed against one party: 10

(a) In that it confers upon a purely legislative body powers strictly judicial;

(b) In that such jurisdiction is in derogation of the jurisdiction of this court exercisable under the writ of certiorari; 20

(c) That the proceedings provided for by the said Act are not according to the law of the land or according to due process of law.

10. The resolution of June 26, 1928, is illegal in this, that it attempts to apportion between the two companies concerned, the acreage, the assessments and the taxes over a large number of years, which constitutes really a year by year reassessment by the City Commission. 30

11. These lands, the great bulk of which are held merely under leasehold, are assessed at the same rate as if they were owned in indefeasible fee. Other lands under water, more advantageously situated, owned by other persons and held in fee, are assessed at no greater amount per acre.

12. The lands upon which piers can be built and the lands still under water can be used by the gen- 40

*Reasons.*

10 eral public for every purpose for which the leaseholder can use it, except for piers and filling in respectively, and the general public cannot be excluded from the partially filled in and unfilled portions until they are filled in. The prospective right of the leaseholder to fill in and to build piers is not taxable. The prospective right of prosecutor in this instance is assessed herein as if it were a legal estate held in fee simple, covering the entire acreage of such lands.

20 13. In fixing the assessments under review, no allowance has been made for the annual stipend payable to the State, nor for the stipend payable to Morris & Cummings Dredging Company, by virtue of which stipends the prosecutor holds such rights in the property concerned as it does hold.

14. The property is not so assessed nor advertised for sale that the part covered by the lease of 1879, now held by the prosecutor, can be purchased at tax sale separately from that part of the property held under the lease of 1876, which lease has been assigned to the Morris & Cummings Dredging Company.

30 15. The property is not so assessed nor advertised for sale, that the part covered by the lease now held by Morris & Cummings Dredging Company can be purchased at tax sale separately from the rest of the property.

40 16. The lands now or formerly under water are of no present use to the prosecutor. Private ownership ordinarily means the right to exclude all the world from the thing owned. This is precisely what

*Reasons.*

the riparian leaseholder does not have. Any member of the general public owning a boat, may sail his boat over these lands or anchor his boat upon them, or fish in the waters which cover them. On the other hand, the lands are beneficiaries of no municipal service of any sort. No road or street leads to them. No fire service is furnished them. They are not sewered. No one lives on them nor are they capable of human habitation. They are without present value and can only be rendered valuable by being filled in and the cost of filling in will equal their value when filled in. 10

17. The amount for which said taxes were advertised to be sold is an amount exceeding the true amount of the taxes, assessments and other municipal charges which were a lien on said lands on July 1, 1927. 20

18. The said notice of sale and the record of said taxes and the proceedings for said sale are in divers other respects illegal, unjust and oppressive and should be set aside and for nothing holden.

JOHN WAHL QUEEN,  
Attorney for Point Breeze Ferry and  
Improvement Company, 30  
Prosecutor.

**Rule to Take Depositions.**

(Filed Sept. 18, 1928.)

## NEW JERSEY SUPREME COURT.

10	POINT BREEZE FERRY AND IMPROVE- MENT COMPANY, Prosecutor,  vs.  MAYOR AND ALDERMEN OF JERSEY CITY, a municipal corporation, and JAMES RADIGAN, City Collec- tor, Defendants.	}	On Certiorari.
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20 Application being made for leave to take depositions to be used in the argument of the above stated cause;

It is ordered that the said Prosecutor and Defendants have leave to take depositions to be used in the said argument.

30 On motion of  
 JOHN WAHL QUEEN,  
 Attorney of Prosecutor.

Dated September 18th, 1928.

Let the above rule be entered on the minutes.

JAMES F. MINTURN,  
 J. S. C.

40

**Notice of Motion to Dismiss Writ.**

(Filed Oct. 31, 1928.)

## NEW JERSEY SUPREME COURT.

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POINT BREEZE FERRY AND IMPROVE-  
MENT COMPANY,  
Prosecutor,

vs.

THE MAYOR AND ALDERMEN OF JER-  
SEY CITY, a municipal corpora-  
tion, and JAMES RADIGAN, City  
Collector of Jersey City,  
Defendants.

---

10

On  
Certiorari.

DEAR SIR :

PLEASE TAKE NOTICE that on Tuesday, the 23rd 20  
day of October, 1928, at 1:30 o'clock in the after-  
noon, at the State House, Trenton, New Jersey, I  
shall apply to the New Jersey Supreme Court, Part  
II, for an order to dismiss the Writ of Certiorari al-  
lowed September 1st 1928 in the above-entitled  
cause: because

1. No notice was given to defendants of the ap-  
plication for the writ, and the attorney for defend- 30  
ants did not have knowledge of this failure until  
after the filing of the return;

2. The writ was improvidently allowed;

3. The writ was improperly allowed;

4. Matters and things have arisen since the al-  
lowing of the writ, which show that prosecutor was  
not entitled to it;

40

*Notice of Motion to Dismiss Writ.*

5. If certain material facts had been disclosed to the court on application for the writ, it would not have been allowed; and, in support of the motion, the defendants will rely upon the record in this action, and also upon the record in the United States District Court for the District of New Jersey in a suit brought by  
10 prosecutor in that court, after the writ in this action had been allowed, between the same parties and involving the same subject-matter as involved in this action.

Dated: October 16th, 1928.

EDWARD P. STOUT,  
Attorney for Defendants.

20 To:  
JOHN WAHL QUEEN,  
Attorney for Prosecutor.

30

40

**Per Curiam.**

## NEW JERSEY SUPREME COURT.

OCTOBER TERM 1928.

POINT BREEZE FERRY AND IMPROVE-  
MENT COMPANY,  
Prosecutor,

vs.

MAYOR AND ALDERMEN OF JERSEY  
CITY, a Municipal corporation,  
*et al.*,  
Defendants.

10

On  
Certiorari.

Argued October 25th, 1928. Decided October  
29th, 1928.

20

Before Justices Minturn, Black and Campbell.

For the Prosecutor, Messrs. John W. Queen and  
Richard Boardman.

For the Defendants, Mr. Edward P. Stout.

30

## PER CURIAM.

This is an application to vacate an allocatur of a certiorari. The certiorari was allowed to review the sale of taxes affecting lot C in Block 1514, old Block 1513—1517 on property located on New York Bay, and also the resolution of the Mayor and Aldermen of Jersey City, dated June 26th, 1928, for the apportionment of said taxes. The return made to the certiorari shows, that the taxes involved were levied

40

*Per Curiam.*

10 for the years 1874 to 1907. These taxes were in the report of the Commissioners of Adjustment of Jersey City, No. 113. This report was affirmed by the Hudson County Circuit Court on July 9th, 1908. The report was removed by certiorari to the Supreme Court and was affirmed by that Court on April 26th, 1909. Subsequent taxes were levied down to the year 1927. A bill was filed in the Court of Chancery affecting these taxes, which was dismissed on the 16th day of January, 1928, by an order of that Court. Subsequently a bill was filed in the United States District Court for the District of New Jersey affecting these taxes, which on the 8th day of October, 1928, was dismissed by that Court.

20 We think, that in matters affecting municipalities a certiorari should not be allowed, except upon notice, and where municipal taxes are involved, the certiorari should not be allowed, except upon the payment of taxes conceded to be due. This was the practice adopted in the case of the Trustees of Stevens Institute of Technology v. State Board of Taxes and Assessments, decided by this Court at the October Term, 1928.

30 We think the allocatur should be vacated and the certiorari dismissed.

A rule to that effect may be entered.

**Rule Vacating Allocatur and Dismissing  
Writ of Certiorari.**

(Filed Oct. 3, 1928.)

NEW JERSEY SUPREME COURT,

PART II, OCTOBER TERM, 1928.

POINT BREEZE FERRY & IMPROVE-  
MENT COMPANY,  
Prosecutor,

vs.

THE MAYOR AND ALDERMEN OF JER-  
SEY CITY, a municipal corpora-  
tion, and JAMES RADIGAN, City  
Collector of Jersey City,  
Defendants.

10

On  
Certiorari.

On Motion  
to Dismiss  
Writ of  
Certiorari.

20

Due application having been made to this court by Edward P. Stout, Attorney for Defendants in the above-entitled cause, in the presence of John Wahl Queen, Attorney for Prosecutor, to dismiss the writ of certiorari allowed herein to review certain municipal taxes, because said writ was improvidently and improperly allowed; and the court having inspected the record, and duly considered the grounds for dismissal, and heard the argument of counsel thereon, and being of the opinion that the writ of certiorari should not have been allowed without notice to the defendants and then, only, upon payment of the taxes conceded to be due;

30

It is, thereupon, ORDERED that the allocatur of said writ of certiorari be and the same is hereby

40

*Rule Vacating Allocatur and Dismissing Writ of  
Certiorari.*

vacated, and the writ of certiorari be and the same  
is hereby dismissed.

Entered October 31st, 1928.

A true copy.

10

FRED L. BLOODGOOD,  
Clerk.

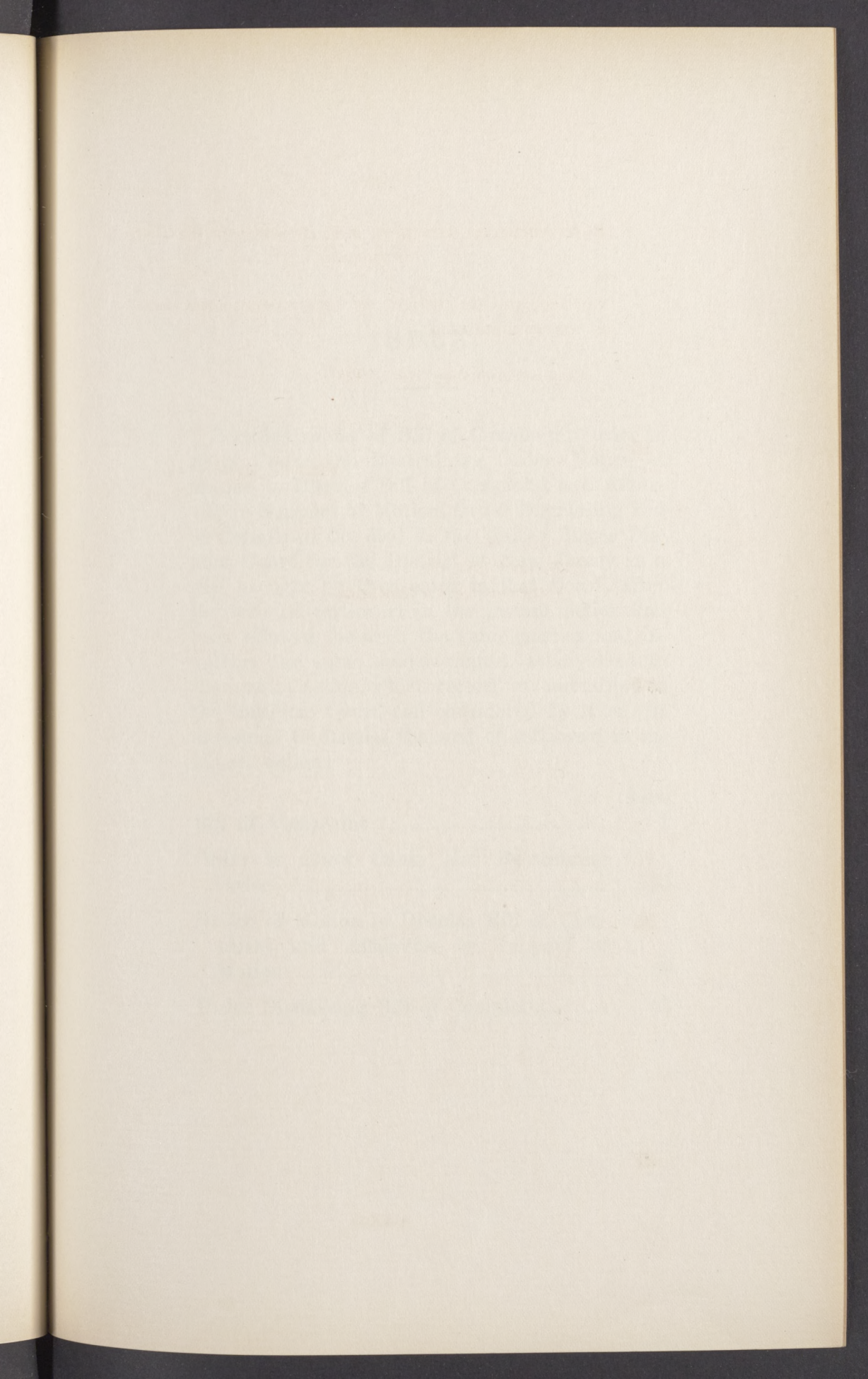
On motion of:

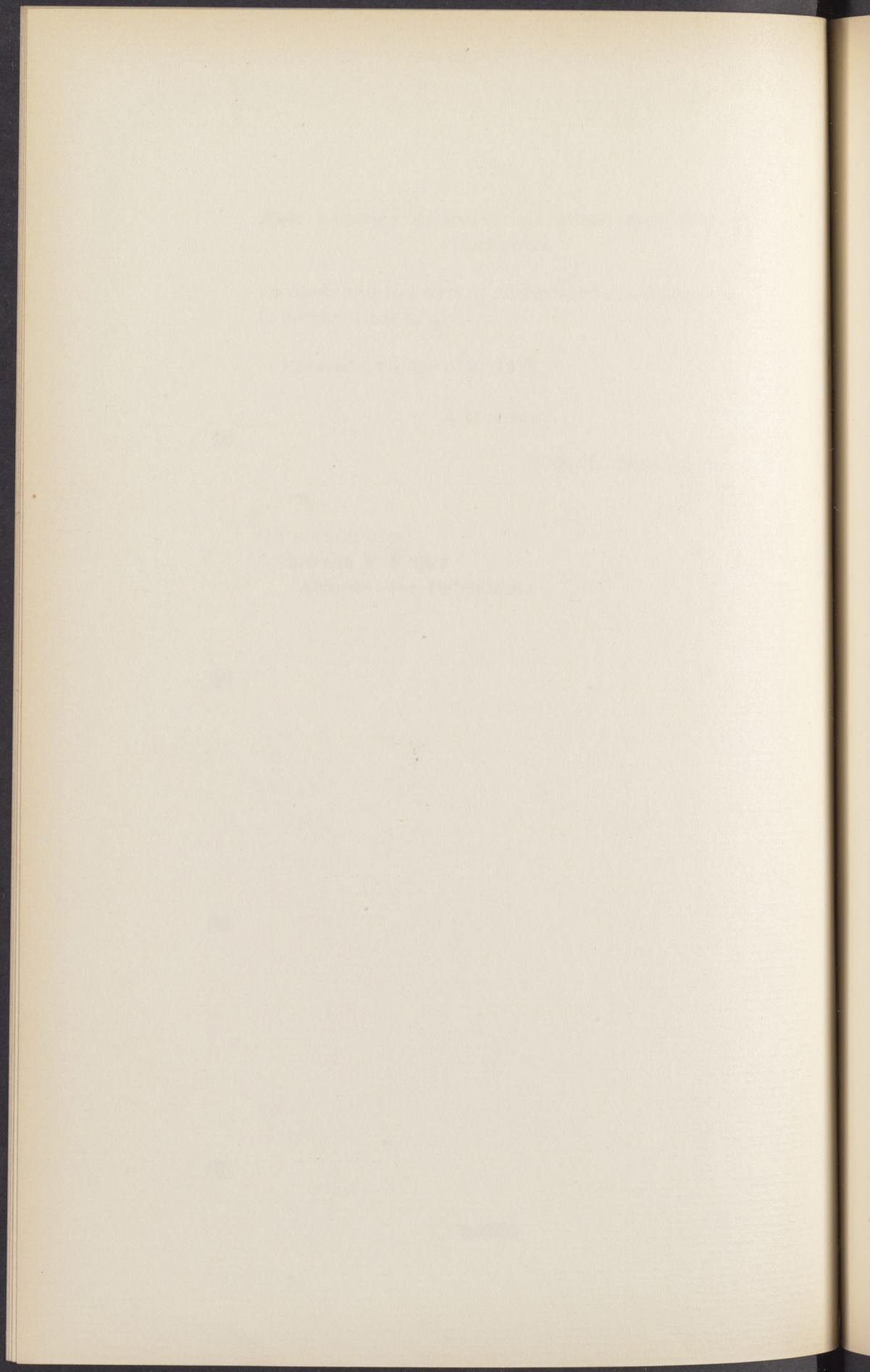
EDWARD P. STOUT,  
Attorney for Defendants.

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## INDEX.

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Certified copies of Bill of Complaint, Order to Show Cause and Restraining Order, Notice of Motion to Dismiss Bill of Complaint and Affidavits in Support of Motion, Order Dismissing Bill of Complaint &c. filed in the United States District Court for the District of New Jersey in a suit brought by Prosecutor in that Court, after the writ of certiorari in the instant action had been allowed, between the same parties and involving the same subject-matter as involved in the instant action, which record was submitted to the Supreme Court and considered by it on the argument to dismiss the writ of certiorari in the instant action:

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THE HISTORY OF THE

ROYAL SOCIETY OF LONDON

FROM ITS INSTITUTION

TO THE PRESENT TIME

BY JOHN VAN DER HAEGHE

ESQ. OF THE SOCIETY

LONDON

PRINTED BY RICHARD CLAY AND COMPANY

BUNGAY, SUFFOLK

1924

THE HISTORY OF THE

ROYAL SOCIETY OF LONDON

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BUNGAY, SUFFOLK

1924

Certified Copy of

**Bill of Complaint.**

(Submitted to the Supreme Court  
October 25th, 1928.)

**United States District Court** 10  
FOR THE DISTRICT OF NEW JERSEY.

POINT BREEZE FERRY AND IM-  
PROVEMENT COMPANY, a Corpo-  
ration,

Complainant,

*vs.*

MAYOR AND ALDERMEN OF JERSEY  
CITY, a Municipal Corporation,  
and JAMES RADIGAN, City Col-  
lector,

Defendants.

In Equity.  
Bill of Complaint. 20

*To the Honorable the Judges of the District Court  
of the United States for the District of New  
Jersey:* 30

Point Breeze Ferry and Improvement Com-  
pany, a Corporation incorporated and existing  
under the laws of the State of New Jersey, brings  
this its bill of complaint against the Mayor and  
Aldermen of Jersey City, a Municipal Corpora-  
tion organized and existing under the laws of the  
State of New Jersey, and James Radigan, City  
Collector of the City of Jersey City, a citizen  
and resident of the State of New Jersey, and  
shows and charges as follows: 40

*Bill of Complaint.*

1. This is a suit of a civil nature, in equity, arising under the Constitution of the United States.

10 2. Complainant is the owner of a part of one certain riparian leasehold and of the entire second  
20 riparian leasehold, both under the laws of the State of New Jersey, affecting lands now or formerly lying under the waters of New York Bay, within the territorial boundaries of the City of Jersey City. The said leasehold owned by the complainant is now described on the tax maps of the City of Jersey City as Lot C, in Block 1514, located on New York Bay, and consists of an area extending from the original natural shore line of New York Bay in a southeasterly direction  
20 to a line established by the State of New Jersey for the exterior line of piers in said bay, and comprises an area of 142.127 acres.

Said lands were originally part of the public domain of the State of New Jersey and were leased in perpetuity, pursuant to the laws of the said state, to complainant by two certain indentures, the one dated September 30, 1876, at an annual rental of \$878.50, and the other dated September 20, 1879, at an annual rental of \$1,260,  
30 both of which leases contained a covenant on the part of the State of New Jersey to grant the lands, rights, liberties, privileges and franchises to the lessee, its successors and assigns, free and discharged of said rent, on payment to the State of New Jersey in the former instance of \$12,550, and in the latter instance of \$18,000. Said former lease and all rights thereunder, except with respect to a strip running along the northerly side of the lands granted, from the shore line to the  
40 pier head line, about 75 ft. in width, rights in

*Bill of Complaint.*

which latter strip still belong to the Point Breeze Ferry and Improvement Company, were thereafter assigned and granted by the complainant to the Morris & Cummings Dredging Company, a New York Corporation, by deed of assignment dated March 5, 1896, and were thereafter conveyed by mesne conveyances and are now held by Morris & Cummings Dredging Company, a Delaware Corporation. All rights arising under said riparian leases of the State of New Jersey aforesaid are now vested in the complainant herein, with respect to the entire area covered by the latter lease, and so much of the area covered by the former lease as is included in Lot C, in Block 1514. 10

3. Under the terms of the aforesaid leases, the grantee has the right to reclaim the lands of the State of New Jersey by filling to a theoretical line in the Bay of New York and to devote said lands, when reclaimed, to exclusive private uses, and to erect piers extending from said solid filling line to a theoretical line established in said Bay for pierheads, and to enjoy therefrom the perquisites of wharfage. 20

Complaint over a term of years prior to 1890, partially reclaimed a portion of said area with an incomplete filling comprising about one-half of the area which may be lawfully filled under said lease, but the remaining portion of the area of said lease has never been reclaimed and still remains wholly submerged by the waters of the Bay of New York. 30

The portion of the leasehold area partially filled comprises an area of about 65.228 acres.

The portion of the leasehold area which may be filled in but which is wholly unreclaimed comprises an area of about 40.432 acres. 40

*Bill of Complaint.*

The portion of the leasehold area upon which piers may be built but which may not be filled in, known as pierhead area, comprises 36.467 acres.

10 Upon such portion of the area as has been partially reclaimed, the operation has never been completed. The filling has not been brought to a sufficient height above the waters of the Bay for practical purposes, and is of irregular contour.

4. The lands covered by the said two leases insofar as they are presently owned by complainant, are the lands now described on the Tax Map of the City of Jersey City as Lot C, in Block 1514.

20 The City of Jersey City has assessed the property covered by both of the above leaseholds for the purpose of taxation for many years, in the same manner as if the complainant was the owner of an absolute indefeasible estate, in fee simple absolute of the said property, and the owners thereof have disputed the right of the city to levy such taxes, as well as the amount thereof, so that such tax claims have now accumulated to a large amount.

30 Prior to the year 1922, said City of Jersey City assessed the entire area covered by both of the aforesaid leases, together with certain parcels of natural upland, together as an entire parcel described as Blocks 1513-1514, Lots B, C, G and H, and assessed the same to the Point Breeze Ferry and Improvement Company as the owner thereof without making separate assessment against Morris & Cummings Dredging Company and Point Breeze Ferry and Improvement Company according to their respective ownerships.

40 On appeal of Morris & Cummings Dredging Company (New York) from the taxes assessed

*Bill of Complaint.*

against said entire parcel for the year 1916, the State Board of Taxes and Assessment reduced the amount of the tax and directed an apportionment thereof between the Morris & Cummings Dredging Company (New York) and the Point Breeze Ferry and Improvement Company.

Notwithstanding such reduction and apportionment, the City of Jersey City continued to assess the area covered by both leases as an entirety against Point Breeze Ferry and Improvement Company to and including the year 1921, and the State Board of Taxes and Assessment, upon appeal, each year directed the apportionment thereof.

Beginning with the year 1922, said City of Jersey City assessed said parcels separately to the respective owners, assessing Lot B to the Morris & Cummings Dredging Company as a plot of 73.401 acres, and Lot C to the Point Breeze Ferry and Improvement Company as a plot of 142.127 acres.

5. In the year 1908, a statute of the State of New Jersey known by the short title of the "Martin Act", being an act concerning the collection and settlement of arrears of unpaid taxes, etc., approved March 30, 1886, was in effect.

This statute provided for the appointment of Commissioners of Adjustment in case of arrearages, "to examine into and fix, adjust and determine as to each parcel of land, how much of such arrearages and subsequent taxes, assessments or water rates, if any, ought, in the way of tax, assessment or water rate, in fairness, equity and justice to be laid, assessed and charged against and actually collected from said land for or on account of said taxes, assessments or water rates", etc.

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*Bill of Complaint.*

Said statute further provided that said Commissioners of Adjustment should file their report in the office of the Clerk of the Court by which appointed, which Court should thereupon confirm said report or refer the same back to the Commissioners for reconsideration, and that the amount so fixed, determined, certified and confirmed should thereupon become and be the tax upon said lands in lieu and instead of all outstanding claims of the City for arrears of taxes, etc., levied prior to the making of said report, and that a certified copy of said report after confirmation should be transmitted to the Comptroller of the City, and that thereupon the amount of said tax so fixed and certified should become due and payable, with interest at the rate of seven per cent. from the date of such filing.

6. Pursuant to said statute, the Commissioners of Adjustment for the City of Jersey City in 1908 filed their Report No. 113, purporting to adjust the amount of all arrearages assessed upon the aforesaid lands, Blocks 1513-1514, Lots B, C, G and H, prior to and including the taxes assessed for the year 1907, at the sum of \$143,833.84, which said report was confirmed by the presiding Judge of the Hudson County Circuit Court on June 30, 1908.

The amount of said adjustment was thereafter found to be excessive by reason of the inclusion in the area adjusted of a certain portion of said leasehold situate in the City of Bayonne, and the amount of such excess was found to be \$3,111.46.

7. On June 12, 1928, the Board of Commissioners of the Mayor and Aldermen of Jersey City did adopt a resolution introduced May 29, 1928, for the apportionment of assessments for

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taxes and other municipal assessments, charges or liens on the lands and premises of Morris & Cummings Dredging Company described as Block 1513-1514, Lot B, and Point Breeze Ferry and Improvement Company described as Block 1513-1514, Lot C, apportioning the Martin Act adjustment and the subsequent taxes theretofore assessed by said City against the premises designated as Block 1513-1514, Lots B, C, G and H, as an entirety to Point Breeze Ferry and Improvement Company as owner, as well as restating the taxes separately assessed against Morris & Cummings Dredging Company as the owner of Lot B, and Point Breeze Ferry and Improvement Company as the owner of Lot C, for the years 1922 to 1927, inclusive.

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The amount of taxes so apportioned against and imposed upon the Morris & Cummings Dredging Company as the owner of Lot B, pursuant to said resolution of June 12, 1928, is as follows:

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Adjustment taxes to and including	1907.....	\$ 48,254.96	
“ “ “ “ “	1908.....	4,234.66	
“ “ “ “ “	1909.....	4,122.64	
“ “ “ “ “	1910.....	4,348.87	
“ “ “ “ “	1911.....	4,392.80	
“ “ “ “ “	1912.....	4,832.08	
“ “ “ “ “	1913.....	4,662.96	
“ “ “ “ “	1914.....	4,640.99	30
“ “ “ “ “	1915.....	4,498.23	
“ “ “ “ “	1916.....	8,239.58	
“ “ “ “ “	1917.....	8,937.56	
“ “ “ “ “	1918.....	5,502.98	
“ “ “ “ “	1919.....	13,848.96	
“ “ “ “ “	1920.....	13,180.77	
“ “ “ “ “	1921.....	21,403.73	
“ “ “ “ “	1922.....	25,308.66	
“ “ “ “ “	1923.....	41,376.15	
“ “ “ “ “	1924.....	39,691.60	
“ “ “ “ “	1925.....	37,819.87	40
“ “ “ “ “	1926.....	39,426.81	
“ “ “ “ “	1927.....	39,360.75	
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		\$378,085.61	

*Bill of Complaint.*

The amount of said taxes apportioned against and imposed upon the Point Breeze Ferry and Improvement Company as the owner of Lot C, pursuant to said resolution of June 12, 1928, is as follows:

10	Adjusted amount to and including 1907.....	\$ 88,467.42
	“ “ “ “ “ 1908.....	8,220.22
	“ “ “ “ “ 1909.....	8,002.78
	“ “ “ “ “ 1910.....	8,441.93
	“ “ “ “ “ 1911.....	8,527.20
	“ “ “ “ “ 1912.....	9,379.92
	“ “ “ “ “ 1913.....	9,051.62
	“ “ “ “ “ 1914.....	9,008.99
	“ “ “ “ “ 1915.....	8,731.85
	“ “ “ “ “ 1916.....	15,694.46
	“ “ “ “ “ 1917.....	17,023.94
20	“ “ “ “ “ 1918.....	10,481.89
	“ “ “ “ “ 1919.....	26,379.01
	“ “ “ “ “ 1920.....	25,106.26
	“ “ “ “ “ 1921.....	41,444.23
	“ “ “ “ “ 1922.....	49,005.39
	“ “ “ “ “ 1923.....	80,117.00
	“ “ “ “ “ 1924.....	76,855.18
	“ “ “ “ “ 1925.....	73,230.94
	“ “ “ “ “ 1926.....	76,343.34
	“ “ “ “ “ 1927.....	76,215.43
		<hr/>
		\$725,729.00

30 Said apportionment to and including the year 1922, apportions the entire tax theretofore assessed against Lots B, C, G and H, to Lots B and C.

40 8. Appeals were taken by the owners from the taxes assessed by said City for the years 1908 to 1915, inclusive, to the County Board of Taxation for the County of Hudson, which affirmed the same, and appeals were thereupon taken by said owners from said County Board of Taxation to

*Bill of Complaint.*

the State Board of Taxes and Assessment, which latter Board has never decided said appeals.

Said appeals were taken pursuant to the laws of the State of New Jersey.

9. For the year 1916 and subsequent years to and including the year 1927, appeals were taken to the County Board of Taxation and to the State Board of Taxes and Assessments which reduced or affirmed said taxes in the amounts shown in the tabulation of taxes for said years as stated in the resolution of the Board of Commissioners of Jersey City of June 12, 1928. 10

The taxes assessed to Point Breeze Ferry and Improvement Company as the owner of Block 1513-1514, Lots B, C, G and H, for the years 1908 to 1915, inclusive, are based upon a valuation of said parcels as an entirety of \$646,000, being assessed sometimes as an area of 212 acres and sometimes as an area of 9,234,720 square feet, showing an average assessed valuation for said area of \$3,047.17 per acre, or seven cents per square foot. 20

For the year 1916, the taxing authorities of said City increased the assessed valuation of said lands as an entirety to \$3,294,000 being at the rate of \$15,000 per acre. 30

The State Board of Taxes and Assessment reduced said assessment, apportioning thereof \$425,598 to the Morris & Cummings Dredging Company, at the average rate of \$5,798 per acre, and apportioning \$810,664 to the Point Breeze Ferry and Improvement Company, at the average rate of \$5,704 per acre. 30

During the following years 1917 to 1920 inclusive, the taxing authorities of the City of Jersey City continued to assess all of the above described 40

*Bill of Complaint.*

property as an entirety at the rate of \$15,000 per acre, and said State Board of Taxes and Assessment each year reduced and apportioned the same at the amounts fixed by it for the year 1916.

10 For the year 1921, the City again assessed said property as an entirety at the rate of \$15,000 per acre, and said State Board, on appeal, reduced said valuation to \$10,000 per acre, and apportioned the same \$734,010 to Morris & Cummings Dredging Company, and \$1,421,270 to Point Breeze Ferry and Improvement Company.

20 For the year 1922, the City separately assessed Lot B to Morris & Cummings Dredging Company and Lot C to Point Breeze Ferry and Improvement Company, each at the rate of \$15,000 per acre, and said State Board of Taxes and Assessment reduced the same to \$10,000 per acre.

30 For the years 1923 to 1927, inclusive, said City has continued to assess said premises separately at the rate of \$15,000 per acre, and said State Board of Taxes and Assessment, upon appeal, has affirmed the same, being an assessed valuation against Morris & Cummings Dredging Company for each year of \$1,101,015, and against Point Breeze Ferry and Improvement Company of \$2,131,900.

40 10. Complainant shows and charges that the assessed valuations upon which taxes have been assessed against it by the taxing authorities of the City of Jersey City, as apportioned and reduced or affirmed by the State Board of Taxes and Assessment, exceeded the true value of said property and were the result of excessive valuations imposed upon somewhat similar riparian properties belonging to wealthy railroad corporations fronting on New York Bay.

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11. The Constitution of the State of New Jersey provides that all taxes shall be assessed under general laws and at uniform rules, according to the true value of the property assessed, and the several general taxing statutes of the State of New Jersey in force during the years during which the aforesaid taxes accumulated against the lands of the complainant, and pursuant to which statutes said taxes were levied, provide that in making their assessments for taxes, the assessors of the several taxing districts in the State shall ascertain the full and true value of the property to be assessed at the actual value thereof. 10

Complainant shows that notwithstanding the Constitution and laws of the State of New Jersey aforesaid, the taxing authorities of the City of Jersey City and the assessors thereof charged with the taxation of property within the limits of said City, designedly, intentionally, habitually and systematically undervalued the property of individuals and others within the limits of said City, during the years aforesaid, except in a few isolated instances of property owned by railroad corporations and other corporations in the vicinity of such railroad properties, including the property of the complainant and Morris & Cummings Dredging Company, at rates less than seventy per cent. of the true value of the properties assessed, and, at the same time, overvalued the lands of the complainant for the purpose of taxation at valuations exceeding the true value thereof. 20 30

By reason of the premises there has been habitually and systematically assessed upon and against the aforesaid lands of complainant, during the years aforesaid, taxes largely in excess of those assessed and placed upon the property of 40

*Bill of Complaint.*

10 other owners in said taxing district contributing to the same common burden of taxation therein, whereby complainant is discriminated against and its property taken, or about to be taken, without due process of law, and whereby complainant is denied the equal protection of the law not only in violation of the Constitution of the State of New Jersey requiring property to be assessed for taxation by uniform rules, and according to its true value, and of the statutory provisions of said statute as aforesaid, but also in violation of the Fourteenth Amendment of the Constitution of the United States of America.

20 12. This Court heretofore in a suit brought by the Central Railroad of New Jersey against the Mayor and Aldermen of Jersey City and the City Collector thereof, for relief with respect to the taxes assessed by said City upon unimproved lands lying under the waters of New York Bay nearly adjacent to the lands of complainant, for the years 1899 to 1907, inclusive, found as a fact, upon final hearing, that there existed:

30 “ . . . a well defined, a systematic, plan persistently carried out by the City Assessors” (of Jersey City), “whereby they intentionally grossly underassessed the property of others within the City, and cast upon complainant” (Railroad Company) “a greater burden of taxation than its lawful and just share. This practice was in disregard of the constitutional mandate that ‘property shall be assessed for taxes under general laws and by uniform rules according to its true value’ (New Jersey Constitution, Art. IV, Section 7, Par. 12), and the general laws framed to effect such tax laws (3 Gen. Stats. N. J. 1895, pp. 3282, 3344, P. L. 1903, p. 394), and is such a denial of the equal protection of

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*Bill of Complaint.*

the laws guaranteed by the Fourteenth Amendment to the Constitution of the United States as to require this Court to take jurisdiction and relieve the complainant" (Railroad Company) "from the unjust part of the proposed tax, regardless of the absence of diverse citizenship, or that a state court of equity has jurisdiction in the premises. . . . 10  
 The percentage of valuations and assessments imposed upon the other properties below true value varied. The evidence satisfies me, however, that the general purpose of the City Assessors in valuing such properties was to assess at seventy per cent. of the true value, though much of it was assessed below that figure; and the Court will accept that percentage as the basis of valuation in determining the amount of taxes that should be paid."

The findings of the Court as aforesaid are reported in Volume 199 of the Federal Reporter, page 237, and will more fully appear by the files and records of this Court. 20

The bill of complaint and the conclusions of the Court in said case further show that the undervaluation complained of applied generally throughout the City "except in a few isolated incidents of properties owned by railroad corporations and other corporations immediately adjoining the large railroad yards in said City". 30

Thereafter, in a certain other suit brought in this Court by Lehigh Valley Harbor Terminal Railway Company against the Mayor and Aldermen of Jersey City to restrain said City from proceeding with the sale of lands for taxes assessed against similar property situate on New York Bay, for the year 1915 and preceding years, this Court made its final decree, after a trial of the issues involved therein dated July 27, 1925, among 40

*Bill of Complaint.*

10 other things, adjudicating that the assessed valuation of the property of the complainant therein as assessed by the taxing authorities of the City of Jersey City for the purposes of taxation for the years 1908 to 1915, inclusive, exceeded the true value of said lands for the respective years, and that during the same period lands other than the lands of such complainant and adjacent owners were designedly, intentionally, habitually and systematically assessed at not exceeding seventy per cent. of the true value thereof, and that the complainant should not be required to pay taxes to said City upon its property during the years aforesaid, upon a basis of valuation in excess of  
20 assessed by the taxing authorities of the City of Jersey City.

Said last mentioned decree was affirmed, with modification only as to computation of certain interest, by the Circuit Court of Appeals of the United States for the Third Circuit in an opinion reported in Volume 13 Federal Reporter (2nd Series), page 984.

30 Complainant charges that the lands now held by it, being Block 1513-1514, Lot C, and the adjoining lands of the Morris & Cummings Dredging Company, being Block 1513-1514, Lot B, lie immediately south of the Greenville yard of the Pennsylvania Railroad Company and the yard of the Lehigh Valley Harbor Terminal Railway Company above referred to, and during the years in question were assessed on a basis of valuation comparable with said railroad yards and not with the general average of valuation prevailing in the  
40 city at large.

*Bill of Complaint.*

13. The practice with respect to full or over-assessment by the City of Jersey City of the properties of the Railroad Companies and the few other owners adjacent thereto, including complainant, and the general underassessment of the other taxable property in said City of Jersey City found to exist by this Court, as aforesaid, up to and including the assessment of taxes for the year 1915, has continued to the present time, whereby an unjust and unequal burden of taxation has been placed upon the property of the complainant for the current years subsequent to the Martin Act adjustment of taxes assessed prior to and including the year 1907, which said unjust and unequal burden of taxation has been further imposed by the apportionment and imposition resulting from the resolution of said Board of Commissioners of June 12, 1928, aforesaid.

14. The statutes of the State of New Jersey as interpreted by the decisions of its Courts give no other remedy to a taxpayer whose property is subject to an unequal burden of taxation, resulting from the undervaluation of other property within the taxing district, than to apply to the County Board of Taxation or to the State Board of Taxes and Assessment, upon appeal, year by year, to increase the assessment upon property undervalued by the taxing district, but such increase can only be made after due investigation in the nature of a judicial proceeding, upon notice to the owners of each parcel of property so underassessed.

Such remedy, in case of general and systematic undervaluation as prevails in the City of Jersey City, is wholly inadequate for the reason that the number of parcels of real estate in the City of

*Bill of Complaint.*

Jersey City so underassessed during the years in question amounted to at least 160,000 separate parcels owned by at least 60,000 separate owners, and complainant charges that not only would it be impossible within any practicable period of time, to identify and give notice to each of such owners, but that the cost of proceeding individually against each of said owners underassessed would have been absolutely prohibitive and that the above statutory remedy is, in fact, not a remedy at all.

Complainant further charges that in the event of payment of the taxes assessed against it, it has no adequate remedy by suit to recover back the excessive part thereof inasmuch as no statutory procedure for such suit has been provided by the laws of the State of New Jersey, and, even if such procedure were provided, there would result a multiplicity of suits in attempting to recover the same from each of the public bodies to whom said taxes, upon payment, are distributed.

15. Notwithstanding the premises, the defendant Mayor and Aldermen of the City of Jersey City claims that the full amount of the taxes assessed and apportioned, as aforesaid, are due and payable and a paramount lien upon the interest and estate of the complainant in the lands described as Block 1514, Lot C, amounting to the principal sum of \$725,729, to and inclusive of the taxes assessed for the year 1927, together with an accumulation of interest thereon computed to and including the 7th day of September, 1928, in all amounting to the sum of \$1,055,290.22, and have instructed the defendant, James Radigan, as City Collector of said City, to sell said premises for nonpayment of said taxes, and said City

*Bill of Complaint.*

Collector has advertised that on the 7th day of September, 1928, at ten o'clock in the forenoon, he will sell at public auction, at the City Hall in the City of Jersey City, said premises, to make the aforesaid amount of \$1,055,290.22.

In consideration whereof and forasmuch as complainant is without adequate remedy in the premises at law and is only relievable in a court of equity where matters of this kind are properly cognizable, complainant prays relief as follows: 10

1. That the defendants Mayor and Aldermen of Jersey City and James Radigan, City Collector of Jersey City, may, but without oath, make answer to the foregoing bill and all matters therein contained. 20

2. That the amount of taxes which complainant should justly and equitably be required to pay on account of the aforesaid lands for the years aforesaid, be determined by this Court.

3. That said defendants and each of them be enjoined and restrained from selling or attempting to sell the aforesaid property of complainant for the taxes aforesaid, in excess of the amount which this Court may determine that complainant should justly pay, and from collecting or attempting to collect taxes thereon in excess of said amount, and that the defendant Mayor and Aldermen of Jersey City be enjoined and commanded to cancel of record upon the tax records of said City of Jersey City all taxes against the aforesaid property in excess of the amount which this Court may determine to be justly due. 30

4. That complainant may have such other and further relief as may be equitable and just. 40

*Bill of Complaint.*

5. That a writ of injunction may issue out of this Court, directed to said defendants, enjoining and restraining them as above prayed.

10 6. That a writ of subpoena may issue out of this Court, according to the practice thereof, directed to said defendants, commanding them to appear herein and make answer to all and singular the premises, as aforesaid, and abide such decree as may be made herein.

JOHN WAHL QUEEN,  
Solicitor for and of Counsel  
with Complainant.

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Affidavit of James Currie, Annexed to Bill.

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

30 JAMES CURRIE, of full age, being duly sworn according to law, on his oath deposes and says that he is President of Point Breeze Ferry and Improvement Company, a Corporation of the State of New Jersey, the complainant named in the annexed bill of complaint, and has been such President since the death of his brother, Mungo J. Currie, in 1922, and deponent has been a Director of the Point Breeze Ferry and Improvement Company for many years previous to the time he became President;

Deponent has read the foregoing bill of complaint and says that the matters and things therein set forth are true, so far as they relate to matters within his own knowledge, and as to matters not within his own knowledge, he believes them to be true;

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Deponent on behalf of complainant corporation has knowledge on all matters of taxation affect-

*Bill of Complaint.*  
(*Affidavit of James Currie*)

ing the property described in the bill of complaint, including the various litigations affecting the taxability of said lands and proceedings for the reduction of said taxes before the taxing authorities and Appellate Boards, as referred to in said bill; 10

The complainant is the owner of a narrow strip of Riparian lands lying between the line of the Morris Canal and New York Bay as the shores of New York Bay existed in the year 1876. This land is owned and held by the complainant in an indefeasible title, in fee absolute. Extending from this ripa or riparian basis, the complainant is the holder of a leasehold estate of something over 142 acres on lands now or formerly under the waters of New York Bay. About 65 acres of this leasehold land has been partially filled in, which 65 acres lies between the original shore line of New York Bay and the old bulkhead line. This filling has raised the surface of said 65 acres above the waters of New York Bay, although some swamps and swampy places still exist therein, but the filling has never been completed by raising a sufficient height above the waters to make the same practical for use, nor has the same been graded but is still irregular in contour. Before the completion of such filling as has been done, the State of New Jersey extended the line for solid filling for a further distance of 2,480 ft. beyond the old solid filling or bulkhead line and filling operations were discontinued some time prior to 1890. 20 30

In 1918, the Engineer of the State Board of Taxes and Assessment of New Jersey, in connection with a tax appeal then pending before said Board, involving the taxes assessed against property of Morris & Cummings Dredging Com- 40

*Bill of Complaint.*  
(*Affidavit of James Currie*)

pany and Point Breeze Ferry and Improvement Company as an entirety, determined the areas of the respective owners as follows:

10	POINT BREEZE FERRY AND IMPROVEMENT COMPANY:	
	Area reclaimed and partially improved by filling, from original shore line to original solid filling line.....	65.228 acres
	Area extending from original solid filling line to new solid filling line, unreclaimed and entirely under water.....	40.432 acres
20	Area from new solid filling line to new pierhead line, entirely unimproved .....	36.467 acres
	MORRIS & CUMMINGS DREDGING COMPANY:	
	Similar areas within the City of Jersey City as follows:	
	Area reclaimed and partially improved by filling, from original shore line to original solid filling line.....	34.989 acres
30	Area extending from original solid filling line to new solid filling line, unreclaimed and entirely under water.....	22.14 acres
	Area from new solid filling line to new pierhead line, entirely unimproved .....	16.272 acres

40 These figures disregard or seem to disregard the adjoining or supporting Ripa, referred to in the bill and mentioned above, and the first item in each of the above statements seems to include the supporting ripa, without any mention being made of that fact. The partially filled land is not used or capable of present use. The water

*Bill of Complaint.**(Affidavit of James Currie)*

covering the lands even out to the new pierhead line is shallow, and the new pierhead line is about a mile distant from the ship channel of the Bay.

Immediately to the north of the property of the complainant lies the Greenville yard of the Pennsylvania Railroad, held by a subsidiary corporation known as the New York Bay Railroad Company. Immediately north of the said property of the New York Bay Railroad Company lies the terminal yard of the Lehigh Valley Railroad Company, held by a subsidiary corporation known as the Lehigh Valley Harbor Terminal Railway Company. Immediately north of the latter property lies the terminal yard and property of the Central Railroad of New Jersey. The lands of all the above named railroad companies were originally similar in character to the leasehold lands of the complainant.

The Pennsylvania tract has been partially reclaimed and improved with railroad terminal facilities, including a channel dredged to deep water, but a considerable part thereof remains unimproved.

The property of the Lehigh Valley Railroad Company has been partially reclaimed and improved with like railroad facilities but a considerable part thereof remains unimproved.

The same is true of the property of the Central Railroad of New Jersey.

The property of Morris & Cummings Dredging Company, as set off and apportioned by the State Board of Taxes and Assessment in 1918, is now designated upon the tax maps of Jersey City as Lot B, Block 1514, and the area likewise set off to the Point Breeze Ferry and Improvement Company is now known upon said tax maps as Lot C, Block 1514.

*Bill of Complaint.**(Affidavit of James Currie)*

10 The statements with respect to the assessment of taxes and appeals therefrom as set forth in the foregoing bill, are based upon tax bills from time to time received by deponent in his capacity of officer of complainant and the various proceedings with reference thereto have been under deponent's management.

The allegation of the bill with respect to the resolution of the Board of Commissioners of Jersey City, dated June 26, 1928, is based upon a copy of such resolution as published by the City authorities in the Jersey Journal.

20 In deponent's opinion the assessed valuations against said property exceed the true value thereof during each of the years subsequent to the Martin Act Adjustment of the taxes to and including the year 1907.

Deponent is informed and believes that there is a general policy prevailing in the City of Jersey City for the assessment of taxes upon a scale of valuation less than the true value thereof, and that said general basis of assessment prevailing in the City at large, from a time long prior to 1907 and continued to the present time, is less than seventy per cent. of the true value thereof.

30 During the current year 1928 there has been considerable agitation in the City of Jersey City respecting taxation, and in connection therewith the Chamber of Commerce of the City of Jersey City appointed a Special Committee consisting of William C. Heppenheimer and Hugo Bermann to assemble the facts with respect to public taxation in Jersey City and present them to the members of the Chamber and to the public.

40 This Committee made a report to the Board of Directors of said Chamber at its meeting held on June 22, 1928, among other things, reporting:

*Bill of Complaint.**(Affidavit of James Currie)*

“We have also examined into the proposition that Jersey City assesses its real property at a higher average than other cities and we find from a survey made by the State Tax Board, a report of which was filed June 20, 1928, that Jersey City’s real property is assessed at 67.4 per cent. of its real value, which figure was reached by the State Tax Board experts after examination and inquiry into 2219 sales of real property.” 10

The same figures appear in a report of a conference between members of the State Board of Taxes and Assessment and the County Tax Board for Hudson County, as reported in the Jersey Journal of June 20, 1928, a copy of which newspaper report is hereto annexed. 20

Deponent further says that it is a matter of common knowledge among the property owners of Jersey City and those who have occasion to inform themselves of taxation matters therein, that taxes generally in said City are not assessed upon the basis of true value but that the prevailing and established rates applying generally throughout the City do not exceed seventy per cent. thereof.

Deponent further says that notwithstanding the general average of assessed valuation prevailing throughout the City at large, the lands of the great railroad corporations and other owners in proximity thereto are, and systematically have been for many years, assessed at excessive amounts, not only exceeding the general average of valuation prevailing in the City, but actually exceeding the true value thereof. 30

The lands of complainant, to deponent’s knowledge, have been in the market for sale continually since deponent’s connection with said company. 40

*Bill of Complaint.*  
*(Affidavit of James Currie)*

At periods, active publicity campaigns have been conducted by various real estate agencies but no firm offers have ever been received.

10 Deponent further says that the defendant James Radigan, as City Collector of Jersey City, has advertised a public sale of complainant's lands for unpaid taxes as apportioned and determined by the Commissioners of the Mayor and Aldermen of Jersey City under their resolution dated June 26, 1928, for the years prior to and including the year 1927, in an aggregate amount of \$1,055,290.22, which sale is advertised to be held at the City Hall, in the City of Jersey City, on Friday, September 7, 1928, at ten o'clock in the forenoon.

20 A true copy of said advertisement as the same appears published in the Jersey Journal of Jersey City is hereto annexed.

JAMES CURRIE.

Subscribed and sworn to before me, }  
at Jersey City, New Jersey, the }  
4th day of September, 1928. }

30 [L. S.] MARY E. NELSON,  
Notary Public of New Jersey.

*Bill of Complaint.*  
(*Affidavit of James Currie*)  
*Newspaper Report Annexed.*

(JERSEY JOURNAL, June 20, 1928.)

**JERSEY CITY TAXED NEARLY 70  
PER CENT OF MARKET VALUES**

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**Figures Quoted at Tax Equalization Conference Show City  
Most Heavily Burdened in County—Hoboken  
Second on List—Secaucus Lowest.**

Jersey City, according to a survey made by Field Secretary Frank O'Connor of the State Tax Board, is burdened with taxes at the highest percentage rate of valuations in Hudson County, while Secaucus boasts the lowest percentage. The Jersey City percentage is 67.4; Secaucus, 33.9, while Hoboken's is 64.7.

These figures were quoted yesterday afternoon at the Court House where the State Tax Board members were in conference with the County Tax Board and all the county assessors.

The survey which furnished the figures quoted is the last of 21 similar county surveys throughout the state and on Aug. 1 all the county boards will meet to consider plans for state-wide equalization of taxation.

The surveys were mandatory under the Laws of 1921, Chapter 350, and the amendment under Chapter 98 of the Laws of 1923.

Consequent on the survey and investigation which was based upon sales of real estate in the county municipalities, said sales numbering from 15 to 2,219, as in the case of Jersey City, the County Tax Board was ordered by the state tax body to have the communities which are under-assessed to be reassessed at a higher percentage in future.

This percentage increase means that the county will be entitled to a larger portion of certain state apportionment funds. This, however, will not affect the tax rate.

A statistical report of the survey referred to follows:

<i>Taxing District</i>	<i>No. of Deeds Examined</i>	<i>Total Consideration</i>	<i>Total Assessed Value</i>	<i>Percentage</i>
Jersey City .....	2,219	\$48,020,199	\$32,364,050	67.4
Bayonne .....	595	9,306,774	4,239,020	45.5
Hoboken .....	316	6,956,916	4,500,100	64.7
North Bergen.....	406	4,629,431	2,279,100	49.2
Secaucus.....	66	415,563	140,935	33.9
Union City (West Hoboken).....	188	4,040,810	2,387,600	59.1
Union City (Town of Union).....	101	3,103,434	1,805,800	58.2
West New York.....	275	7,164,043	3,617,620	50.5
Weehawken.....	90	1,862,899	854,200	45.9
Guttenberg.....	47	607,100	262,800	43.3
Kearny.....	404	4,514,074	2,295,350	50.8
Harrison.....	74	888,361	464,100	52.2
East Newark.....	15	183,280	99,000	54
<b>Totals.....</b>	<b>4,796</b>	<b>\$91,692,884</b>	<b>\$55,309,675</b>	<b>60.3</b>

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*Bill of Complaint.*  
(*Affidavit of James Currie*)

Notice of Tax Sale  
No. 65

(JERSEY JOURNAL, August 10, 1928.)

10

OFFICE OF THE CITY COLLECTOR,

Jersey City, New Jersey.

**TAX SALE No. 65**

PUBLIC NOTICE is hereby given that, pursuant to the provisions of an ACT of the Legislature of the State of New Jersey known as the "Tax Sale Revision" Revision of 1918, and the acts amendatory thereof, the undersigned, City Collector of Jersey City, will sell at PUBLIC AUCTION, in the ASSEMBLY CHAMBER in the City Hall in said City, on

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**Friday, September 7, 1928**

at ten o'clock, in the forenoon, the several lots and parcels of land described below to such persons as will purchase the same.

Said lands will be sold to make the amounts severally chargeable against the same on the first day of July, 1927, as computed on the list of lands subject to sale on file in my office, together with interest on said amount from said first day of July, 1927, with interest to the date of sale and costs of sale.

The following is a description of the several lots and parcels of land to be sold, the owner's name as contained on the list in my office with the total amount due as computed to the first day of July, 1927, with interest to the date of sale and costs of sale.

JAMES RADIGAN,  
City Collector.

30

**Tax Sale No. 65**

<i>Sales No.</i>	<i>Block</i>	<i>Lot</i>	<i>Location</i>	<i>To Whom Assessed</i>	<i>Total Amt. Due</i>
35488	New 1514	C	New York Bay	Point Breeze Ferry and Improvement Co.	\$1,055,290.22
	Old 1513 to 1517				
35489	New 1514	B	New York Bay	Morris & Cummings Dredging Company	552,513.31
	Old 1513 to 1517				

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*Bill of Complaint.*

Affidavit of Thomas A. Ryer, Annexed to Bill.

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

THOMAS A. RYER, being duly sworn, according to law, on his oath deposes and says:

That he resides in the City of Jersey City and is engaged in the business of real estate agent, broker and real estate appraiser, and has been engaged in such business in the City of Jersey City since the year 1900, for a part of said time maintaining an office in the Greenville section of Jersey City, and now maintaining an office at Journal Square in said City. 10

Deponent further says that he is familiar with the riparian lands located on the shores of New York Bay included within the riparian leases made by the State of New Jersey to Point Breeze Ferry and Improvement Company and now designated on the tax books of Jersey City as Block 1514, Lots B and C. 20

Lot C, now belonging to Point Breeze Ferry and Improvement Company, comprises an area of 142.127 acres, extending from the original or natural shore line to the present exterior line for piers.

Of this area, 65.228 acres, extending to the original solid filling line, has been reclaimed by an irregular filling and is now above the waters of New York Bay at ordinary tides, but of irregular elevations. 30

This filling is incomplete and needs to be raised for a considerable additional height in order to make it available for practical utility purposes.

There is an additional area lying in front of this partial fill extending to the new solid filling line, which is wholly unreclaimed and is entirely 40

*Bill of Complaint.**(Affidavit of Thomas A. Ryer)*

submerged by the waters of the Bay, having an area of 40.432 acres.

0 In front of this is the further area which, under the terms of the lease, may be utilized only for piers, comprising 36.467 acres.

The property has existed in the same physical condition ever since I have known it and has never been put to any productive use.

20 Deponent, in addition to general familiarity with real estate values and conditions in the City of Jersey City and the County of Hudson, has made a particular study of values of waterfront property along the Hudson River and New York Bay, in the State of New Jersey, and particularly the properties of the several railroads having terminals upon the waterfront in Hudson County and adjoining lands of similar character, and has appeared as an expert witness on such values on many occasions in the Courts of New Jersey and before various taxing authorities with respect thereto.

30 In 1906 deponent made a detailed appraisal of a large number of properties in the City of Jersey City and compared the same with the assessed valuation thereof for the purpose of taxation, and qualified as an expert witness for the railroads in connection with their proceedings of that year to set aside the tax levy of the City of Jersey City because of the under-assessment of property in general throughout the City, other than railroad property.

40 In the latter part of 1911 or 1912, deponent made a particular study of the waterfront property of the Central Railroad of New Jersey situate on New York Bay, known as Lot 22 in Block 2154, and Lot 1 in Block 1497, and the true value and assessed value thereof and the general basis of

*Bill of Complaint.**(Affidavit of Thomas A. Ryer)*

assessment for the purposes of taxation in the City of Jersey City, and testified in the suit brought in this Court by Central Railroad Company of New Jersey against Jersey City with respect thereto, resulting in decree filed January 21, 1913. Said suit involved the taxes for the years 1899 to 1907, inclusive, and resulted in a decree that taxes in general throughout the City for said years were assessed upon the basis of seventy per cent., or less of true value, whereas said Railroad lands were assessed at full value. 10

Deponent later made a study of the assessed values of similar lands of the Pennsylvania Railroad Company covering the years 1892 to 1908, inclusive, and the similar lands of the Lehigh Valley Harbor Terminal Railway Company known as Lots 4B and 7B, in Block 1507, covering the years 1908 to 1915, inclusive, and the general basis of assessment during said years prevailing in the City of Jersey City, and gave testimony as an expert witness with respect thereto in suits pending in this Court brought by the New York Bay Railroad Company and Lehigh Valley Harbor Terminal Railway Company, respectively, in January, 1925, which suits resulted in a similar decree. 20

Deponent also had occasion to make a study of the general basis of assessment prevailing in the City of Jersey City up to and including the year 1921. 30

Deponent has further studied and testified with respect to the values of the riparian properties covered by the leases to Point Breeze Ferry and Improvement Company designated as Lots B and C, Block 1514, in connection with tax appeals to and including the taxes assessed for the year 1927, although he has not had particular occasion 40

*Bill of Complaint.**(Affidavit of Thomas A. Ryer)*

to make a study of the basis of valuation of property in general throughout the City of Jersey City since the year 1921.

10 Deponent says that for the tax years 1908 to 1921, inclusive, taxes in general throughout the City of Jersey City were assessed upon the basis of valuation of properties in general and seventy per cent. or less of the true value thereof, and that such seventy per cent. basis of valuation was pursuant to a general policy well known throughout said City.

20 There were occasional variations from this rule of assessment, particularly with respect to the property of railroad corporations and some other large corporations, which were assessed at full value and often in excess of full value, and other properties immediately adjoining the properties of such corporations and so situated as to invite comparison, were, likewise, assessed at full value, but the prevailing rate of assessment aimed at by the taxing authorities with respect to other properties in general did not exceed seventy per cent. of true value.

30 Deponent further says that since the year 1921 to the present time, there has been a considerable increase in assessed valuations, but there has also been a large increase in true value, but deponent has not had occasion to make a study as to the comparative relation between assessed values and true values during such subsequent period.

40 Deponent states, however, that the policy of assessing values for taxation at less than the true value thereof (other than the properties of railroad corporations and other owners similarly situated), still prevails, but deponent is unable at this time, without further study, to state the percentage of such variation since 1921.

*Bill of Complaint.**(Affidavit of Thomas A. Ryer)*

Deponent has examined the taxes assessed against the properties of the Point Breeze Ferry and Improvement Company and Morris & Cummings Dredging Company now designated as Lots B and C, Block 1514.

10

For the years 1908 to 1915, inclusive, said taxes were assessed on an average valuation each year of \$3047. per acre.

For the years 1916 to 1920, inclusive, said taxes were assessed upon a valuation each year averaging \$5798. per acre.

Said taxes for the years 1921 and 1922 were assessed on valuations averaging \$10,000 per acre, and for the years 1923 to 1927, inclusive, on valuations averaging \$15,000. per acre.

20

Above figures relate to the assessments as finally fixed by the State Board.

In deponent's judgment such assessed valuations far exceeded the true value of the property.

The true value of said property during the years 1908 to 1915, inclusive, did not exceed \$3,000.00 per acre; during the years 1916 to 1920, inclusive, did not exceed \$5,000.00 per acre; and during the years 1921 to 1927, inclusive, did not exceed between \$5,000. and \$5,500. per acre.

30

Deponent had occasion to consult the abstract of ratables for the years 1908 to 1909 within the City of Jersey City and ascertained that the same then included 165,785 separate lots or parcels of land. This number of separate parcels has since been considerably increased due to the subdivision of tracts, but deponent has not had occasion to definitely ascertain the present number of parcels, but can safely say that the same largely ex-

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*Bill of Complaint.**(Affidavit of Thomas A. Ryer)*

ceeds the above figures. These parcels are owned  
by many thousand different owners.

THOS. A. RYER.

10 Subscribed and sworn to before me }  
this 4 day of Sept., 1928. }

IRVING MYERS,  
A Master in Chancery  
of New Jersey.

Filed  
September 6, 1928,  
at 10:30 o'clock A. M.

20 GEORGE T. CRANMER,  
Clerk.

*Certificate*

UNITED STATES OF AMERICA }  
DISTRICT OF NEW JERSEY } SS.:

30 I, GEORGE T. CRANMER, Clerk of the United  
States District Court in and for the District of  
New Jersey, do hereby certify that the annexed  
and foregoing is a true and full copy of the orig-  
inal Bill of Complaint now remaining among the  
records of the said Court in my office.

(Seal) IN TESTIMONY WHEREOF, I have here-  
unto subscribed my name and affixed  
the seal of the aforesaid Court at  
Trenton, this 23rd day of October,  
A. D. 1928.

GEORGE T. CRANMER,  
Clerk.

40 By CHARLES S. CHEVRIER,  
Deputy Clerk.

Certified Copy of  
**Order to Show Cause and Restraining Order.**

(Submitted to Supreme Court,  
 October 25th, 1928.)

UNITED STATES DISTRICT COURT,  
 DISTRICT OF NEW JERSEY.

10

POINT BREEZE FERRY AND IM-  
 PROVEDMENT COMPANY, a Corpo-  
 ration,

Complainant,

*vs.*

MAYOR AND ALDERMEN OF JER-  
 SEY CITY, a Municipal Corpora-  
 tion, and JAMES RADIGAN, City  
 Collector,

Defendants.

In Equity.  
 On Bill, &c.  
 Order to  
 Show Cause and  
 Restraining  
 Order.

20

Complainant having filed its bill of complaint herein, from which it appears that defendant James Radigan, City Collector of the City of Jersey City, has advertised a sale of certain lands and premises of the complainant designated as Lot C, Block 1514, on the tax maps of the City of Jersey City, for September 7, 1928, to make the amounts charged against said premises on the 1st day of July, 1927, for taxes amounting to the total sum of \$1,055,290.22, and it further appearing from said bill of complaint and the affidavits thereto annexed that the taxes claimed have been assessed and apportioned against said lands on the basis of assessed valuations equalling or ex-

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*Order to Show Cause and Restraining Order.*

ceeding the true value of said lands, whereas the general basis of taxation prevailing in the City of Jersey City is the valuation of real estate at not exceeding seventy per cent. of true value, and that by reason thereof complainant and its lands have been discriminated against and subjected to an undue burden of taxation,

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IT IS, on this 6th day of September, 1928, on motion of John Wahl Queen, solicitor of complainant, ORDERED that the defendant, Mayor and Aldermen of Jersey City, a municipal corporation, and James Radigan, City Collector of said City, show cause before the United States District Court for the District of New Jersey, or such Judge thereof as shall sit for motions therein, at the Court room, Post Office Building, in Trenton, New Jersey, on the 24th day of September, 1928, at the hour of 10:30 o'clock in the forenoon, or as soon thereafter as counsel can be heard, why they should not be enjoined and restrained from proceeding with the aforesaid tax sale on the advertised date or upon any adjournment thereof, until the final hearing of the above entitled cause.

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FURTHER ORDERED that a copy of this order and of the bill of complaint and affidavits annexed thereto, be served upon the defendants within 2 days from the date hereof.

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J. L. BODINE,  
J.

Counsel for Jersey City agreed in open court to adjourn said sale for 3 weeks.

Filed, September 6th, 1928,  
at 12:00 o'clock N.

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GEORGE T. CRANMER,  
Clerk.

*Order to Show Cause and Restraining Order.  
Certificate.*

UNITED STATES OF AMERICA }  
DISTRICT OF NEW JERSEY } ss.:

I, GEORGE T. CRANMER, Clerk of the United States District Court in and for the District of New Jersey, do hereby certify that the annexed and foregoing is a true and full copy of the original Order to Show Cause and Restraining Order now remaining among the records of the said Court in my office. 10

(Seal) IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the seal of the aforesaid Court at Trenton, this 23rd day of October, A. D. 1928. 20

GEORGE T. CRANMER,  
Clerk.

By CHARLES S. CHEVRIER,  
Deputy Clerk.

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Certified Copy of

**Notice of Motion to Dismiss Bill of Complaint.**

(Submitted to Supreme Court, October 25, 1928.)

10 UNITED STATES DISTRICT COURT,  
FOR THE DISTRICT OF NEW JERSEY.

POINT BREEZE FERRY AND IM-  
PROVEMENT COMPANY, a cor-  
poration,

Complainant,

*vs.*

20 THE MAYOR AND ALDERMEN OF  
JERSEY CITY, a municipal cor-  
poration, and JAMES RADIGAN,  
City Collector,

Defendants.

In Equity.

On Bill, &c.

Notice of Motion  
to Dismiss Bill of  
Complaint.

*Sir:*

30 PLEASE TAKE NOTICE that on Monday, the 24th  
day of September, 1928, at ten-thirty o'clock in  
the forenoon, or as soon thereafter as counsel  
can be heard, I shall apply to the Honorable  
Joseph L. Bodine, one of the Judges of the United  
States District Court for the District of New Jer-  
sey, or such other Judge as shall sit for motions  
therein, at the Court Room thereof, in the Federal  
Building, Trenton, New Jersey, for an order dis-  
missing the bill of complaint in the above-entitled  
suit:

40 (1) because complainant is chargeable with  
inexcusable delay for many years in not seek-  
ing or endeavoring to have the alleged errors,  
irregularities, inequities and discriminations

*Notice of Motion to Dismiss Bill of Complaint.*

in the assessments, now complained of, corrected;

(2) because complainant has known for many years the nature, manner and amount of said assessments, and has never initiated any step or proceeding to have the validity or amount of the taxes in controversy determined or to have same apportioned; 10

(3) because the Point Breeze Ferry and Improvement Company, in whose name said assessments were made, filed a bill in 1921 in the Court of Chancery of New Jersey, alleging that said taxes were illegal and thereon obtained from said Court an order restraining the collection of said taxes for the years 1874-1918 at a tax sale advertised for August 15th, 1921; but, on final hearing on said bill, failed to offer any proof to support the allegations thereof, and same was dismissed; 20

(4) because complainant is guilty of laches, to the great prejudice and damage of defendants;

(5) because complainant has acquiesced in and consented to said assessments, and the amount and apportionment of said taxes;

(6) because complainant did not, prior to the filing of said bill of complaint or at any other time, pay said taxes or tender payment to defendants of the taxes which are conceded by complainant to be due or which can be seen to be due on the face of said bill of complaint; 30

(7) because complainant by said bill of complaint does not allege that, prior to bringing its suit, it tendered to defendants payment of so much of said taxes as it is clear it ought to pay;

(8) because complainant by said bill of complaint does not offer to pay to defen- 40

*Notice of Motion to Dismiss Bill of Complaint.*

dants the proportion of said taxes with interest which are just and lawful, as a condition for contesting the alleged excess;

(9) because complainant is seeking equity without first doing equity.

10 Dated: September 18th, 1928.

Yours respectfully,

EDWARD P. STOUT,  
Solicitor for Defendants.

To:

JOHN WAHL QUEEN, Esq.,  
Solicitor for Complainant.

20 (The Affidavits annexed hereto will be read in support of the motion.)

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*On Motion to Dismiss Bill of Complaint.*

*(Affidavit of James Radigan)*

to and including 1921, Lots G and H in Block 1513 consisting of a narrow 2-ft. strip of upland about 1600 sq. ft. in area, along the westerly side of the Morris Canal in the rear of Plot B, were transferred to Tidewater Oil Co. in 1919. Lots B and C in Block 1514 consisting of 215.527 acres were acquired by said Point Breeze Ferry and Improvement Company from the State of New Jersey, part by riparian lease dated Sept. 30th, 1876, and part by riparian lease dated Sept. 20th, 1879. On or about March 5th, 1896, the Point Breeze Ferry and Improvement Company assigned a portion of Lot B consisting of 73.401 acres to the Morris and Cummings Dredging Company, by assignment in writing of the date, as stated in the bill of complaint. The taxing district of Jersey City, however, even after this assignment, continued to assess all of these lands in the name of the Point Breeze Ferry and Improvement Company, because, as deponent is informed, the Point Breeze Ferry and Improvement Company did not pay the taxes which were in arrears at the time of the assignment, nor did it or said Morris and Cummings Dredging Company apply for an apportionment of said lands for the purposes of assessment.

The taxes assessed against these lands for the years 1874-1907 inclusive were adjusted in 1908 by Martin Act Commissioners appointed pursuant to the "Martin Act" referred to in said bill of complaint. The records of the City Collector's office further show as follows: that on July 9th, 1908, there was filed in that office a certified copy of Report #113 of the Commissioners of Adjustment, together with an assessment map showing adjustment of the foregoing taxes which were then in arrears; that the amount of said adjusted

*On Motion to Dismiss Bill of Complaint.**(Affidavit of James Radigan)*

taxes, as appears by said report, was \$143,833.64; that, after the filing of said report, it, together with other reports, was removed by certiorari to the New Jersey Supreme Court, and affirmed by judgment entered April 26th, 1909; that the United States Circuit Court of Appeals (3rd Circuit) in a suit on appeal reduced said adjusted taxes \$3,111.46, for the reason that a very small portion of said lands assessed to said Point Breeze Ferry and Improvement Company for the years in question was without the territorial taxing district of Jersey City and located in the taxing district of Bayonne; that the total amount of adjusted taxes, as so reduced, is \$140,722.38, a copy of the Schedule to Report #113 of Commissioners of Adjustment, &c., showing the adjusted taxes in arrears, being hereto annexed and marked "Schedule A".

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The records of said City Collector's Office further shows that the taxing district of Jersey City continued to assess for the years 1908-1921 inclusive, the Point Breeze Ferry and Improvement Company for all of said riparian lands known as Lots B and C in Block 1514, but beginning with the 1922 assessment 73.401 Acres of said lands were assessed to the Morris and Cummings Dredging Company, and 142.127 Acres thereof assessed to the Point Breeze Ferry and Improvement Company.

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The records of the City Collector's office further show: that on appeal of the Point Breeze Ferry and Improvement Company and of the Morris and Cummings Dredging Company, respectively, from the action of the Hudson County Board of Taxation to the State Board of Taxes and Assessment for the year 1916, the State Board apportioned the whole assessment to said Lots B and C, and entered a judgment fixing the

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*On Motion to Dismiss Bill of Complaint.*

*(Affidavit of James Radigan)*

10 assessment on part of Lot B (73.401 Acres) against the Morris and Cummings Dredging Company at a valuation of \$425,598.00, and as to the remainder of Lot B and all of Lot C (142.127 Acres) against the Point Breeze Ferry and Improvement Company at a valuation of \$810,664.00; but the taxing district of Jersey City, as above stated, continued to assess all of said lands to the Point Breeze Ferry and Improvement Company, down to and including the year 1921.

20 In respect to the 1922 assessment, the taxing district of Jersey City apportioned said Lots B and C, and established and designated on the Official Assessment Map of Jersey City a new Lot B in Block 1514, consisting of 73.401 Acres, which it assessed and has continued to assess to the Morris and Cummings Dredging Company, and established and designated on the Official Assessment Map of Jersey City of new Lot C in Block 1514, consisting of 142.127 Acres, which it assessed and has continued to assess to the Point Breeze Ferry and Improvement Company.

30 Annexed hereto, and marked "Schedule B", is a copy of the records of said City Collector's Office, of the assessment of taxes for the years 1908-1927 inclusive, of said riparian land which Schedule shows the year, area, against whom assessed, assessed valuation, action of the County Board, action of the State Board, and total amount of taxes as assessed.

40 In 1921, as City Collector of Jersey City, I undertook to sell said riparian lands of the Point Breeze Ferry and Improvement Company and of the Morris and Cummings Dredging Company, for unpaid taxes for the years 1874-1918 inclusive. The proposed sale was advertised to take place Monday, August 15th, 1921, as appears by Notice

*On Motion to Dismiss Bill of Complaint.**(Affidavit of James Radigan)*

of Tax Sale #60, copy of which is hereto annexed marked "Schedule C".

The Point Breeze Ferry and Improvement Company, in whose name the taxes for those years had been assessed, filed a bill of complaint in the Court of Chancery of New Jersey alleging that these taxes were illegal, and applied to said court to restrain the defendants herein from selling these lands, which restraint was granted. The lands of the Morris and Cummings Dredging Company, as well as the lands of the Point Breeze Ferry and Improvement Company, were involved in that suit. The solicitors and counsel for the Point Breeze Ferry and Improvement Company were the same as those who now represent the Morris and Cummings Dredging Company. The Point Breeze Ferry and Improvement Company and its solicitors did nothing to bring the suit on for final hearing and, in 1926, the solicitor for defendants took proceedings and succeeded in having the cause set down for final hearing on June 6th and 7th, 1927. The Point Breeze Ferry and Improvement Company and the Morris and Cummings Dredging Company, through their solicitors, had two months' notice of the time fixed for final hearing, and on the day so fixed for the hearing counsel for complainant in that suit appeared in open court and stated that complainant was not prepared to offer any proof to support or sustain the allegations and charges of its bill of complaint, and counsel for defendants moved to dismiss the bill and dissolve the restraint, because of complainant's failure to proceed with the cause. Thereafter Vice Chancellor Fielder, to whom the cause was referred, advised an order dismissing the bill of complaint and dissolving the restraint,

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*On Motion to Dismiss Bill of Complaint.*

*(Affidavit of James Radigan)*

10 as appears by order of his Honor, under date of January 16th, 1928, copy of which is hereto annexed marked "Schedule D". The defendants had engaged valuation experts to appraise the lands involved in that suit, for the purpose of testifying at the hearing as to the value thereof for the years in question. These experts performed these services, and the City of Jersey City was required to pay them \$11,000.00.

20 The records of the City Collector's office further show: that on June 26th, 1928, the taxes assessed against said Lots B and C were apportioned by the Board of Commissioners of The Mayor and Aldermen of Jersey City between the Morris and Cummings Dredging Company and the Point Breeze Ferry and Improvement Company, respectively, as stated in the bill of complaint; and, in July, 1928, as City Collector of Jersey City, I again undertook to sell said lands of the Morris and Cummings Dredging Company and the Point Breeze Ferry and Improvement Company, at a tax sale advertised for August 3rd, 1928, but one of the newspapers in which the notice of said sale was advertised incorrectly published same, and I thereupon had the notice of said tax sale re-advertised to take place on Friday, September 7th, 1928, and had said notice posted in accordance with the Tax Sale Revision Act of 1918 (P. L. 1918, p. 883); and, on September 6th, 1928, the bill of complaint was filed in this suit, and the order to show cause made therein returnable September 24th, 1928, and said proposed tax sale adjourned until September 28th, 1928.

30  
40 The records of the City Collector's office further show: that from 1874 down to the present time no payments have ever been made on account

*On Motion to Dismiss Bill of Complaint.**(Affidavit of James Radigan)*

of these taxes or any part thereof; and, since I have been City Collector, which is upwards of 10 years last past, neither the Morris and Cummings Dredging Company or the Point Breeze Ferry and Improvement Company, nor anyone for them, has ever tendered payment of said taxes or of any portion thereof but they have both at all times during my incumbency of the City Collector's Office refused and resisted payment of said taxes, and when, as such City Collector, I have undertaken to collect said taxes by a sale of said lands they have applied to the courts to enjoin me from collecting said taxes. 10

JAMES RADIGAN. 20

Subscribed and sworn to before me, }  
 this 19th day of September, 1928, }  
 at Jersey City, New Jersey. }

HELEN E. RECTOR,  
 Notary Public of New Jersey.

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*On Motion to Dismiss Bill of Complaint.*  
*(Affidavit of William B. Quinn.)*

UNITED STATES DISTRICT COURT  
 FOR THE DISTRICT OF NEW JERSEY.

10

POINT BREEZE FERRY AND IMPROVEMENT COMPANY, a corporation,

Complainant,

*vs.*

THE MAYOR AND ALDERMEN OF JERSEY CITY, a municipal corporation, and JAMES RADIGAN, City Collector,

20

Defendants.

In Equity.  
 On Bill, &c.  
 On Order to Show Cause.  
 On Application to Dismiss Bill of Complaint.  
 Affidavit.

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

WILLIAM B. QUINN, being duly sworn according to law, upon his oath, deposes and says:

I am the Director of Revenue and Finance of The Mayor and Aldermen of Jersey City, one of the defendants in the above entitled suit. I have been a member of the Board of Commissioners of The Mayor and Aldermen of Jersey City since Sept., 1922, and have been Director of Revenue and Finance since January, 1926, and since that date, as such Director, charged with the taxation of all property within the limits of the taxing district of Jersey City, and also, as such Director, have jurisdiction and supervision over the Office of the City Collector of Jersey City.

I am familiar with the records of the City Collector's office, and have read the foregoing affi-

*On Motion to Dismiss Bill of Complaint.**(Affidavit of William B. Quinn.)*

davit of James Radigan, City Collector of Jersey City, and the statements made in his affidavit are true.

I further say, that shortly after June 6th, 1927, Mr. George Leary, an official of the Morris and Cummings Dredging Company, and acting for it, called upon me by appointment, at my office in the City Hall, Jersey City, New Jersey, and represented to me, in the presence of Edward P. Stout, then Assistant Corporation Counsel of Jersey City, that the Morris and Cummings Dredging Company had an option or some agreement with the Point Breeze Ferry and Improvement Company to sell said lands of the Point Breeze Ferry and Improvement Company in conjunction with said lands of the Morris and Cummings Dredging Company. At this interview, Mr. Leary requested me, in the presence of Mr. Stout, to have him withhold taking an order dismissing the bill of complaint and dissolving the restraint in the above-mentioned suit, and also requested that no action be taken to sell the lands of the Morris and Cummings Dredging Company and of the Point Breeze Ferry and Improvement Company at a tax sale until he (Mr. Leary), acting for the Point Breeze Ferry and Improvement Company and the Morris and Cummings Dredging Company, had an opportunity to sell these lands at private sale, he representing that he either had a prospective purchaser or that he believed that he could obtain a purchaser on or before October 15th, 1927, and that if these lands were sold by him at private sale the taxes with interest would be paid in full out of the proceeds of such sale. Relying upon these representations of Mr. Leary, I assured him that defendants would withhold taking an order dismissing the

*On Motion to Dismiss Bill of Complaint.*

*(Affidavit of William B. Quinn.)*

bill of complaint, &c., and postponed taking any  
action to sell these lands at a tax sale. On or  
about October 15th, 1927, Mr. Leary not having  
sold these lands at private sale, again interviewed  
10 me at the City Hall, Jersey City, in the presence  
of Mr. Stout, requesting that I have no action  
taken to sell said lands at a tax sale, he then rep-  
resenting that he had reason to believe that he  
could obtain a purchaser on or before January  
1st, 1928, and that if he failed the Morris and  
Cummings Dredging Company would not there-  
after in any way attack the validity or amount of  
said taxes for said years, or in any way or man-  
ner seek to restrain or enjoin the City Collector  
20 from undertaking after January 1st, 1928, to en-  
force the payment of said taxes by a tax sale of  
said lands, and that the Morris and Cummings  
Dredging Company would sign an agreement to  
that effect. Mr. Leary stated, also, that he would  
endeavor to induce the Point Breeze Ferry and  
Improvement Company to do likewise. There-  
after an agreement was drafted by Mr. Stout and,  
in my presence, submitted to Mr. Leary, but he  
failed to have it executed by the Morris and Cum-  
30 mings Dredging Company and the Point Breeze  
Ferry and Improvement Company. Mr. Leary  
having failed to have said agreement signed, and  
having failed to sell said lands at private sale on  
or before January 1st, 1928, I instructed Mr.  
Stout to obtain an order dismissing said bill of  
complaint and dissolving the restraint in the  
above-mentioned suit. I then, through Mr. Stout,  
took up with the Morris and Cummings Dredging  
Company and the Point Breeze Ferry and Im-  
40 provement Company, the apportionment of these  
taxes, and a statement of a proposed apportion-

*On Motion to Dismiss Bill of Complaint.**(Affidavit of William B. Quinn.)*

ment was submitted to them. The Morris and Cummings Dredging Company and the Point Breeze Ferry and Improvement Company having failed to apply to the governing body of Jersey City for an apportionment of these taxes, the Board of Commissioners of Jersey City, the governing body of Jersey City, took proceedings under the Act of 1919 entitled "An Act for the Apportionment of Assessment for Taxes and other Municipal Charges or Liens" (P. L. 1919, Chapt. 121, p. 285) to apportion said taxes; and, on May 29th, 1928, I caused to be introduced a Resolution to that end, a copy of which Resolution is annexed hereto marked "Schedule E". Thereafter, public notice of this Resolution was duly given and service thereof made upon the Point Breeze Ferry and Improvement Company and Morris and Cummings Dredging Company, and duly acknowledged by them.

The hearing on the resolution was fixed for June 12th, 1928, but the Point Breeze Ferry and Improvement Company requested that the hearing be adjourned to Tuesday, June 26th, 1928, and a stipulation was entered into between Point Breeze Ferry and Improvement Company and The Mayor and Aldermen of Jersey City, adjourning the hearing on the foregoing Resolution, from June 12th, 1928, to June 26th, 1928, as appears by copy of said stipulation hereto annexed marked "Schedule F". Written notice of the adjournment of the hearing was given to the Morris and Cummings Dredging Company and service thereof duly acknowledged.

On June 26th, 1928, the date of the hearing, no one appeared on behalf of the Point Breeze Ferry and Improvement Company, but a Mr. Oatjen ap-

*On Motion to Dismiss Bill of Complaint.*

*(Affidavit of William B. Quinn.)*

10 peared on behalf of the Morris and Cummings Dredging Company. No one objecting to the resolution, and no written protests having been received, the Board of Commissioners of Jersey City passed the resolution in the form in which it had been introduced May 29th, 1928 (as shown by said "Schedule E").

I further say, that there is no merit in complainant's charge in its bill of complaint that:

20 "the taxing authorities of the City of Jersey City and the assessors thereof charged with the taxation of property within the limits of said city, designedly, intentionally, habitually and systematically undervalued the property of individuals and others within the limits of said city, during the years aforesaid, except in a few isolated instances of property owned by railroad corporations and other corporations in the vicinity of such railroad properties, including the property of the complainant and the Morris and Cummings Dredging Company, at rates less than seventy per cent. of the true value of the properties assessed, and, at the same time, overvalued the lands of the complainant for the purpose of taxation at valuations exceeding the true value thereof."

30 I further say, that the lands of the Morris and Cummings Dredging Company and of the Point Breeze Ferry and Improvement Company were not assessed in excess of their true value for the years in question, but that all property within the limits of Jersey City was uniformly assessed at the same percentage of value.

The above facts, or those presented by the bills of complaint, show that:

40 (1) Morris and Cummings Dredging Company and Point Breeze Ferry and Improve-

*On Motion to Dismiss Bill of Complaint.**(Affidavit of William B. Quinn.)*

ment Company are chargeable with inexcusable delay for many years in not seeking or endeavoring to have the alleged errors, irregularities, inequities and discriminations in the assessment, now complained of, corrected;

(2) Morris and Cummings Dredging Company and Point Breeze Ferry and Improvement Company have known for many years the nature, manner and amount of said assessments, and have never initiated any step or proceeding to have the validity or amount of the taxes in controversy determined, or to have same apportioned;

(3) Point Breeze Ferry and Improvement Company, in whose name said assessments were made, filed a bill in 1921 in the Court of Chancery of New Jersey, alleging that said taxes were illegal, and thereon obtained an order for the years 1874-1918 at a tax sale advertised for August 15th, 1921; but, on final hearing on said bill, failed to offer any proof to support the allegations thereof, and same was dismissed;

(4) Morris and Cummings Dredging Company and Point Breeze Ferry and Improvement Company are guilty of laches, to the great prejudice and damage of defendants;

(5) Morris and Cummings Dredging Company and Point Breeze Ferry and Improvement Company have acquiesced in and consented to said assessments, and the amount and apportionment of said taxes;

(6) Morris and Cummings Dredging Company and Point Breeze Ferry and Improvement Company did not, prior to the filing of their respective bills of complaint, or at any other time, tender payment to defendants of so much of said taxes as are conceded by complainants to be due or which can be seen

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*On Motion to Dismiss Bill of Complaint.**(Affidavit of William B. Quinn.)*

to be due on the face of their respective bills of complaint;

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(7) Morris and Cummings Dredging Company and Point Breeze Ferry and Improvement Company failed to allege in their respective bills of complaint that, prior to the bringing of their respective suits, they tendered to defendants payment of so much of said taxes as it is clear they ought to pay;

20

(8) Morris and Cummings Dredging Company and Point Breeze Ferry and Improvement Company failed to allege in their respective bills of complaint that they offered to pay defendants the proportion of said taxes with interest, which are just and lawful, as a condition for contesting the alleged excess; and

(9) Morris and Cummings Dredging Company and Point Breeze Ferry and Improvement Company are seeking equity without first doing equity.

30

I further say that the alleged intentional discrimination charged by Morris and Cummings Dredging Company and Point Breeze Ferry and Improvement Company in their respective bills of complaint, is not made in good faith, but for the purpose of further postponing and delaying the collection of the taxes in question which are due to the City of Jersey City.

WILLIAM B. QUINN.

Subscribed and sworn to before me, }  
 this 19th day of September, 1928, }  
 at Jersey City, New Jersey. }

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HELEN E. RECTOR  
 Notary Public of New Jersey.

Sales No.	Bl.
30965	150
30966	151 152
30967	153
30968	154

*On Motion to Dismiss Bill of Complaint.*

*(Affidavit of William B. Quinn.)*

**Schedule "C".**

**(Copy of Notice of Tax Sale No. 60.)**

OFFICE OF THE CITY COLLECTOR,

10

JERSEY CITY, N. J.

TAX SALE No. 60.

PUBLIC NOTICE is hereby given that, pursuant to the provisions of an Act of the Legislature of the State of New Jersey, known as the "Tax Sale Revision", Revision of 1918, and the act amendatory thereof, the undersigned, City Collector of Jersey City, will sell at Public Auction in the Assembly Chamber in the City Hall, in said City, on Monday, August 15, 1921, at ten o'clock in the forenoon, the several lots and parcels of land described below to such persons as will purchase the same.

20

Said lands will be sold to make the amounts severally chargeable against the same on the first day of July, 1921, as shown below and as computed on the list of lands subject to sale on file in my office, together with interest on said amount from said first day of July, 1921, with interest to the date of sale and costs of sale.

30

The following is a description of the several lots and parcels of land to be sold, the owner's name, as contained on the list in my office, and the years, with the total amounts due for said years as computed to the first day of July, 1921, with interest to the date of sale and costs of sale.

JAMES RADIGAN,  
City Collector.

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Sales No.	Blk.	Lot	Street	Owner's Name	Years	Total Amt. Due
30965	1507	Old Plot 2, New Part 2L	New York Bay	Penna. R. R. Co.....	1892 to 1908, inc., & 1910	\$949,030.74
30966	1513 1514	B, C, G, H	New York Bay	Point Breeze Ferry & Improvement Co., and Morris and Cummings Dredging Co.....	1874 to 1918, inc.	517,328.74
30967	1513	A9	Morris Canal and C. R.R.	Est. James Currie.....	1919 to 1920, inc.	427.67
30968	1513	A1	Morris Canal and C. R.R.	Est. James Currie.....	1906 to 1920, inc.	427.60

*On Motion to Dismiss Bill of Complaint.*

*(Affidavit of William B. Quinn.)*

**Schedule "D".**

IN CHANCERY OF NEW JERSEY

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POINT BREEZE FERRY AND IM-  
PROVEMENT COMPANY,  
Complainant,

*vs.*

THE MAYOR AND ALDERMEN OF  
THE CITY OF JERSEY CITY, and  
JAMES RADIGAN, City Collector  
of the City of Jersey City,  
Defendants.

20

On Bill, &c.  
Order Dismissing  
Bill of Complaint.

30 It being represented to the Court by John M. Enright, Counsel for Complainant, at the time and place duly designated for the hearing of the above-entitled cause, that the complainant was not prepared to offer any proof to sustain or support the allegations and charges of its bill of complaint; and Edward P. Stout, Counsel for Defendants, moving to dismiss the bill of complaint because of complainant's failure to proceed with this cause;

It is, on this 16th day of January, 1928, ORDERED that the bill of complaint herein be and the same is hereby dismissed without prejudice, and the restraint heretofore granted herein be and the same is hereby dissolved.

E. R. WALKER,  
C.

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Respectfully advised:

(Signed) JAMES F. FIELDER,  
V. C.

*On Motion to Dismiss Bill of Complaint.*

*(Affidavit of William B. Quinn.)*

**Schedule "A".**

(Schedule attached to report #113 Commissioners of Adjustment, &c., of Jersey City, showing adjustment of taxes in arrears.)

<i>St. or Av.</i>	<i>Blk.</i>	<i>Lot</i>	<i>Name</i>	<i>Year</i>	<i>Am't as Adjusted</i>
New York	1513 and		Point Breeze	1874	\$1,589.64
Bay &c.	1514	B. C. G. H.	Ferry Co. &c.	1875	1,293.70
				1876	1,116.66
				1877	1,081.32
				1878	938.69
				1879	899.36
				1880	4,245.01
				1881	4,044.05
				1882	6,017.44
				1883	6,009.62
				1884	6,511.98
				1885	6,425.84
				1886	7,181.05
				1887	4,320.00
				1888	4,447.65
				1889	4,179.00
				1890	3,940.20
				1891	4,260.00
				1892	4,260.00
				1893	4,125.00
				1894	4,125.00
				1895	4,125.00
				1896	4,110.00
				1897	4,335.00
				1898	4,290.00
				1899	4,260.00
				1900	5,154.60
				1901	5,082.00
				1902	5,045.70
				1903	4,991.25
				1904	4,973.10
				1905	4,954.95
				1906	4,519.35
				1907	2,936.67

\$143,833.84

NOTE:—Affirmed by Hudson County Circuit Court, and certified copy of said Report &c. filed with the City Comptroller of Jersey City, July 9th, 1908.

Said Report &c. (with other Reports) were removed by certiorari to the New Jersey Supreme Court, and Affirmed, as appears by Judgment entered April 26th, 1909.

In a proceeding in the U. S. Circuit Court of Appeals (3rd Circuit) said adjusted taxes were reduced.....

3,111.46

Total Amount of Adjusted Taxes.....

\$140,722.38

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## On Motion to Dismiss Bill of Complaint.

(Affidavit of William B. Quinn.)

## Schedule "B".

Assessment of Taxes 1908 to 1927 inclusive of Property on New York Bay Known as Block 1513-1514, Lots B & C (Riparian Lands) and Lots G & H (Very Small Strip of Upland) as appears by the records of the City Collector's Office.

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Year	Area	Against Whom Assessed	Assessed Valuation	Action of County Board on Appeal by Taxpayer		Action of State Board on Appeal by Taxpayer		Amount of Taxes Against	
				Point Breeze Ferry & Impt. Company	Morris and Cummings Dredging Co.	Point Breeze Ferry & Impt. Company	Morris and Cummings Dredging Co.	Point Breeze Ferry & Impt. Company	Morris and Cummings Dredging Co.
1908	Lots B C G & H 212 Ac	Point Breeze Ferry & Impt. Company	\$646,000.00	Affirmed	Affirmed	App. dismissed	No judgment Pending U. S. Court Decision	\$12,454.88	
1909	"	"	"	"	"	No appeal	No appeal	12,125.42	
1910	"	"	"	"	"	"	No judgment	\$12,790.80	
1911	"	"	"	"	"	"	"	12,920.00	
1912	"	"	"	No appeal	"	"	"	14,212.00	
1913	"	"	"	Affirmed	"	"	"	13,714.58	
1914	"	"	"	"	"	"	No appeal	13,649.98	
1915	"	"	"	"	"	"	"	13,230.08	
1916	219.603 Ac	"	\$3,294,000.00	"	"	(Appor- tioned area) Lot C and Part B 142.127 Ac \$810,664.00	Part Lot B 73.401 Ac \$425,598.00	23,934.04	
1917	"	"	"	"	"	"	"	25,961.50	
1918	"	"	"	\$1,236,262.00	"	"	"	15,984.87	
1919	"	"	"	"	"	"	"	26,379.01	\$13,848.96
1920	"	"	"	"	"	"	"	25,106.26	13,180.77
1921	"	"	"	Affirmed	"	(Appor- tioned area) same as 1916 \$1,421,270.00	\$734,010.00	41,444.23	21,403.73
1922	New Lot C 142.127 Ac	"	\$2,172,270.00	"	"	"	"	49,005.39	
1923	"	"	"	"	"	2,131,905.00	"	80,117.00	
1924	"	"	"	"	"	"	"	76,855.18	
1925	"	"	"	"	"	"	"	73,230.94	
1926	"	"	2,131,900.00	"	"	Affirmed	"	76,343.34	
1927	"	"	"	"	"	"	"	76,215.43	
1922	New Lot B 73.401 Ac	Morris and Cummings Dredging Co.	1,121,780.00	"	"	"	Same as 1921		25,308.66
1923	"	"	"	"	"	"	1,101,015.00		41,376.15
1924	"	"	"	"	"	"	"		39,691.60
1925	"	"	"	"	"	"	"		37,819.87
1926	"	"	1,101,015.00	"	"	"	Affirmed		39,426.81
1927	"	"	"	"	"	"	"		39,360.75

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*On Motion to Dismiss Bill of Complaint.*

*(Affidavit of William B. Quinn.)*

**Schedule "E".**

**(Copy of Resolution to apportion taxes between Point Breeze Ferry and Improvement Company and Morris and Cummings Dredging Company, as introduced at the Meeting of the Board of Commissioners of Jersey City, May 29, 1928.)** 10

RESOLUTION FOR THE APPORTIONMENT OF ASSESSMENT FOR TAXES AND OTHER MUNICIPAL ASSESSMENTS, CHARGES OR LIENS ON LANDS AND REAL ESTATE BELONGING TO THE POINT BREEZE FERRY & IMPROVEMENT COMPANY AND MORRIS & CUMMINGS DREDGING COMPANY, LOCATED IN THE CITY OF JERSEY CITY AND NOW OR FORMERLY LYING UNDERNEATH THE WATERS OF NEW YORK BAY. 20

WHEREAS, on September 30, 1876, the State of New Jersey did lease to the Point Breeze Ferry & Improvement Company land and certain rights therein belonging to the State of New Jersey, lying underneath the waters of New York Bay adjacent to and in the City of Jersey City, which said lands are more particularly described in a certain indenture of lease between the State of New Jersey and the said Point Breeze Ferry & Improvement Company, recorded in the Register's Office of Hudson County, November 11, 1876, in Book 303 of Deeds, page 570; and 30

WHEREAS, thereafter on September 20, 1879, the State of New Jersey leased unto the said Point Breeze Ferry and Improvement Company certain other of its lands and certain rights therein lying under the Tide Waters of the Bay of New York, immediately north of and adjacent to the lands mentioned and referred to hereinabove and set forth in said lease above mentioned, which said indenture of lease was recorded in the Register's 40

*On Motion to Dismiss Bill of Complaint.**(Affidavit of William B. Quinn.)**Schedule "E".*

Office of Hudson County, New Jersey, on January 6, 1881, in Book 350 of Deeds, page 731; and

10       WHEREAS, the lands and rights therein which are hereinabove referred to as being conveyed by the indenture of lease, date September 30, 1876, together with the extension thereof to the present pier head and bulkhead lines are the lands which were, up to the year 1916, designated on the map of the Assessment Commissioners of Jersey City, as Lot B, Block 1513; and

20       WHEREAS, the lands hereinabove referred to as being conveyed by the indenture of lease, dated September 20, 1879, together with the extension thereof to the present pier head and bulkhead lines are the lands which were up to the year 1916, designated on Map of the Assessment Commissioners of Jersey City, New Jersey, as Lot C, Block 1513; and

30       WHEREAS, the said Point Breeze Ferry & Improvement Company did by deed of conveyance, dated March 5, 1896, transfer and convey to the Morris & Cummings Dredging Company all of its interest and ownership in a part of the area described in the lease hereinabove referred to, dated September 30, 1876, the said part of the area being defined by survey thereto annexed and being that part of the entire area in said lease of September 30, 1876, which lies south of the line offsetting 91 feet, 6 inches from the northerly boundary of the said leasehold along the base line thereof narrowed to an offset of 75 feet on the original bulkhead line; and

40       WHEREAS, the said Point Breeze Ferry & Improvement Company did also in further consummation of said contract dated March 5, 1896, and

*On Motion to Dismiss Bill of Complaint.**(Affidavit of William B. Quinn.)**Schedule "E".*

for the purpose of supplementing said deed of conveyance execute an assignment to said Morris & Cummings Dredging Company of the lease dated September 30, 1876, which said assignment was thereafter duly recorded in the Hudson County Register's Office in Book 644 of Deeds, page 541; and

10

WHEREAS, under date of February 24, 1904, the said Morris & Cummings Dredging Company did transfer and convey to Daniel J. Leary all of its interest in the land and rights therein obtained by it under the deed of conveyance aforesaid on March 5, 1896, and the said assignment of September 30, 1876, said assignment being recorded as aforesaid in the Hudson County Register's Office in Book 644 of Deeds, page 541, and thereafter the said Daniel J. Leary did by instruments recorded in the Register's Office of Hudson County, New Jersey, in 1915, reassign and re-convey to said Morris & Cummings Dredging Company all of the lands and rights therein which he, the said Daniel J. Leary, had obtained from said Morris & Cummings Dredging Company as aforesaid; and

20

WHEREAS, the total area of the land and rights therein belonging to the said Point Breeze Ferry & Improvement Company and said Morris & Cummings Dredging Company within the limits of Jersey City, comprises in all 215.528 acres, of which area there belongs to and is owned by the Point Breeze Ferry & Improvement Company 142.127 acres and of which there belongs to and is owned by the Morris & Cummings Dredging Company 73.401 acres; and

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WHEREAS, both the said Point Breeze Ferry & Improvement Company and the said Morris & Cummings Dredging Company did file and take separate appeals to the State Board of Taxes and

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*On Motion to Dismiss Bill of Complaint.**(Affidavit of William B. Quinn.)**Schedule "E".*

Assessments from the taxes assessed against the aforesaid lands and real estate for the year 1916 and did in said appeal, among other things, pray  
 10 for an apportionment of said lands and real estate and the said State Board of Taxes and Assessments did, under date of March 5, 1918, render its judgment in said proceedings of appeal and did make the apportionment so prayed for by the owners aforesaid of said lands and real estate, and did determine that there be apportioned and assessed to the said Point Breeze Ferry & Improvement Company a total of 142.127 acres and to the  
 20 said Morris & Cummings Dredging Company a total of 73.401 acres as aforesaid; and

WHEREAS, for the years 1877 to 1879 inclusive, the whole of the lands and rights therein conveyed to the Point Breeze Ferry & Improvement Company by the aforesaid lease of September 30, 1876, has been assessed to the said Point Breeze Ferry & Improvement Company and from the years 1880 to 1915 inclusive, the whole area included in the leases of September 30, 1876, and September 20,  
 30 1879, and comprising in all 215.528 acres, has been assessed to the Point Breeze Ferry & Improvement Company, and it is desired and intended that an apportionment of assessment for taxes and other municipal assessments, charges or liens on said lands and real estate be made between the respective owners thereof, now, therefore, be it

RESOLVED: By the Board of Commissioners of The Mayor and Aldermen of Jersey City that any and all municipal assessments, charges or liens,  
 40 together with any assessment for taxes or other municipal charge, which are or may become a lien upon the said lands and real estate for the said years, 1877 to 1915 inclusive, and have become due and payable or may become due and payable

On Motion to Dismiss Bill of Complaint.

(Affidavit of William B. Quinn.)

Schedule "E".

to the City of Jersey City, including any and all claims of the said Jersey City under any sale for the enforcement of taxes or other municipal liens or charges shall be apportioned among the owners of the aforesaid lands and real estate, according to the values of the respective subdivisions at the time when the respective assessments, charges, liens or assessment for taxes were levied or imposed in the manner following:

STATEMENT OF UNPAID TAXES FOR THE YEARS 1877 TO 1927, INCLUSIVE,  
LEVIED AGAINST POINT BREEZE FERRY AND IMPROVEMENT COMPANY  
Block 1513-1514, Lot C

Year	Tax	Year	Tax	Interest	Total
1877	\$157.87	1903	\$3,294.23		
1878	143.62	1904	3,282.24		
1879	131.31	1905	3,270.27		
1880	2,763.08	1906	2,982.77		
1881	2,632.27	1907	1,938.20		
1882	3,916.75	Less Per Order of Ct.	\$90,519.12 2,051.70	\$88,467.42	\$116,949.07
1883	5,864.37	1908		8,220.22	11,066.89
1884	4,294.00	1909		8,002.78	10,213.96
1885	4,896.60	1910		8,441.93	10,183.51
1886	4,735.18	1911		8,527.20	9,689.47
1887	2,848.61	1912		9,379.92	10,001.82
1888	2,932.78	1913		9,051.62	9,018.14
1889	2,755.63	1914		9,008.99	8,345.05
1890	2,598.17	1915		8,731.85	7,477.10
1891	2,809.04	1916		15,694.46	12,340.58
1892	2,809.04	1917		17,023.94	12,194.28
1893	2,720.02	1918		10,481.89	6,774.46
1894	2,720.02	1919		26,379.01	15,761.26
1895	2,720.02	1920		25,106.26	13,243.38
1896	2,712.60	1921		41,444.23	19,875.44
1897	2,861.10	1922		49,005.39	18,989.24
1898	2,831.40	1923		80,117.00	25,436.59
1899	2,811.60	1924		76,855.18	19,021.12
1900	3,402.04	1925		73,230.94	12,997.98
1901	3,354.12	1926		76,343.34	8,206.38
1902	3,330.16	1927		76,215.43	2,857.54
				\$725,729.00	\$360,643.26
					\$1,086,372.26

STATEMENT OF UNPAID TAXES FOR THE YEARS 1877 TO 1927, INCLUSIVE,  
LEVIED AGAINST MORRIS & CUMMINGS DREDGING COMPANY  
Known as Block 1513-4, Lot B

Year	Tax	Year	Tax	Interest	Total
1877	\$923.45	1903	\$1,697.02		
1878	840.07	1904	1,690.85		
1879	768.05	1905	1,684.68		
1880	1,481.93	1906	1,536.58		
1881	1,411.78	1907	998.47		
1882	2,100.69	Less as Per Court Order	\$49,314.72 1,059.76	\$48,254.96	\$63,790.41
1883	3,145.26	1908		4,234.66	5,701.12
1884	2,217.98	1909		4,122.64	5,261.73
1885	2,529.24	1910		4,348.87	5,246.04
1886	2,445.87	1911		4,392.80	4,991.54
1887	1,471.39	1912		4,832.08	5,152.45
1888	1,514.87	1913		4,662.96	4,645.71
1889	1,423.37	1914		4,640.99	4,298.96
1890	1,342.03	1915		4,498.23	3,851.84
1891	1,450.96	1916		8,239.58	6,478.79
1892	1,450.96	1917		8,937.56	6,401.98
1893	1,404.98	1918		5,502.98	3,556.58
1894	1,404.98	1919		13,848.96	8,274.65
1895	1,404.98	1920		13,180.77	6,952.76
1896	1,397.40	1921		21,403.73	9,792.05
1897	1,473.90	1922		25,308.66	9,806.92
1898	1,458.60	1923		41,376.15	13,136.64
1899	1,448.40	1924		39,691.60	9,823.40
1900	1,752.56	1925		37,819.87	6,712.76
1901	1,727.88	1926		39,426.81	4,238.10
1902	1,715.54	1927		39,360.75	1,475.75
				\$378,085.61	\$189,590.18
					\$567,675.79

*On Motion to Dismiss Bill of Complaint.*

*(Affidavit of William B. Quinn.)*

**Schedule "F".**

10 (Stipulation between Point Breeze Ferry and Improvement Company and The Mayor and Aldermen of Jersey City, adjourning the hearing on the foregoing Resolution from June 12th, 1928 to June 26th, 1928.)

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"IN THE MATTER

*of*

20 The apportionment of assessments for taxes and other municipal assessments, charges or liens on lands and real estate belonging to the POINT BREEZE FERRY AND IMPROVEMENT COMPANY and MORRIS AND CUMMINGS DREDGING COMPANY, which lands and real estate are located in the City of Jersey City and are now or were formerly lying underneath the waters of New York Bay.

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Stipulation.

IT IS HEREBY STIPULATED AND AGREED by and between the Point Breeze Ferry and Improvement Company and the Board of Commissioners of The Mayor and Aldermen of Jersey City, as follows: That due and timely notice has been received by the said Point Breeze Ferry & Improvement Company and by all persons and par-

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*On Motion to Dismiss Bill of Complaint.**(Affidavit of William B. Quinn.)**Schedule "F".*

ties having an interest therein of a hearing (of which notice was given for June 12th, 1928, at eleven o'clock in the forenoon at the Assembly Chamber in the City Hall, Jersey City, New Jersey), to be held on a certain resolution to apportion assessments for taxes and other municipal assessments, charges or liens on lands and real estate belonging to the said Point Breeze Ferry & Improvement Company in Jersey City, and more particularly set forth and described in a resolution, a copy of which is hereto annexed and made a part hereof, and also that the said hearing appointed for June 12th, 1928, as aforesaid, was, at the request of the said Point Breeze Ferry & Improvement Company, adjourned to Tuesday, June 26th, 1928, at the time and place set forth in the first notice.

(Signed) RICHARD BOARDMAN  
Atty. for Point Breeze Ferry &  
Improvement Co.

(Signed) THOMAS J. BROGAN  
Atty. for The Mayor and Aldermen  
of Jersey City" 30

Filed September 24, 1928 at 9 o'clock a. m.

GEORGE T. CRANMER,  
Clerk.

*On Motion to Dismiss Bill of Complaint.  
Certificate.*

DISTRICT COURT OF THE UNITED  
STATES OF AMERICA

10

DISTRICT OF NEW JERSEY

I, GEORGE T. CRANMER, Clerk of the District Court of the United States of America, for the District of New Jersey, in the Third Circuit, do hereby certify the foregoing to be a true copy of the original Notice of Motion to Dismiss Bill of Complaint and Affidavits on file, and now remaining among the records of the said Court, in my office.

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(Seal) IN TESTIMONY WHEREOF, I have here-  
unto subscribed my name and affixed  
the seal of the said Court, at Tren-  
ton, in said District, this 23rd day  
of October, nineteen hundred and  
twenty-eight.

GEORGE T. CRANMER,  
Clerk, District Court, U. S.

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By CHARLES S. CHEVRIER,  
Deputy.

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Certified Copy of

**Order Dismissing Bill of Complaint.**

(Submitted to Supreme Court,  
October 25th, 1928.)

UNITED STATES DISTRICT COURT, 10  
DISTRICT OF NEW JERSEY.

POINT BREEZE FERRY AND IM-  
PROVEMENT COMPANY,  
Complainant,

*vs.*

MAYOR AND ALDERMEN OF JERSEY  
CITY, *et al.*,  
Defendants.

In Equity.  
On Bill, &c.  
Order.

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The order to show cause made herein dated  
September 6, 1928, returnable September 24, 1928,  
coming on to be heard in the presence of John  
Wahl Queen, of counsel with complainant, and  
Edward P. Stout, of counsel with defendants, and  
it appearing to the Court that the amount due  
upon the taxes set forth in the complaint with re-  
spect to which there is no substantial dispute, to-  
gether with interest thereon, amounts to at least  
the sum of \$820,163.12,

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IT IS, on this 8th day of October, 1928,

ORDERED that said order to show cause be dis-  
charged and the Bill of Complaint be dismissed  
unless the complainant herein, within thirty days  
from September 24th, 1928, pays to the defendant

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*Order Dismissing Bill of Complaint.*

Mayor and Aldermen of Jersey City, or to the Collector of Taxes thereof, said sum of \$820,163.12 on account of the taxes in arrears upon the lands of the complainant as more particularly specified in complainant's bill.

- 10      FURTHER ORDERED that in the event that the complainant pays said sum of \$820,163.12 on account of said taxes within the time above specified, then that the defendants be restrained from further proceedings for the sale of the lands of the complainant for the unpaid taxes set forth in complainant's bill, until the final hearing of this cause.

J. L. BODINE  
Judge U. S. District Court.

- 20      Filed October 16th, 1928  
         at 3:40 o'clock P. M.

GEORGE T. CRANMER,  
Clerk.

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*Order Dismissing Bill of Complaint.*  
*Certificate.*

UNITED STATES OF AMERICA }  
DISTRICT OF NEW JERSEY } ss.:

I, GEORGE T. CRANMER, Clerk of the United States District Court in and for the District of New Jersey, do hereby certify that the annexed and foregoing is a true and full copy of the original order now remaining among the records of the said Court in my office. 10

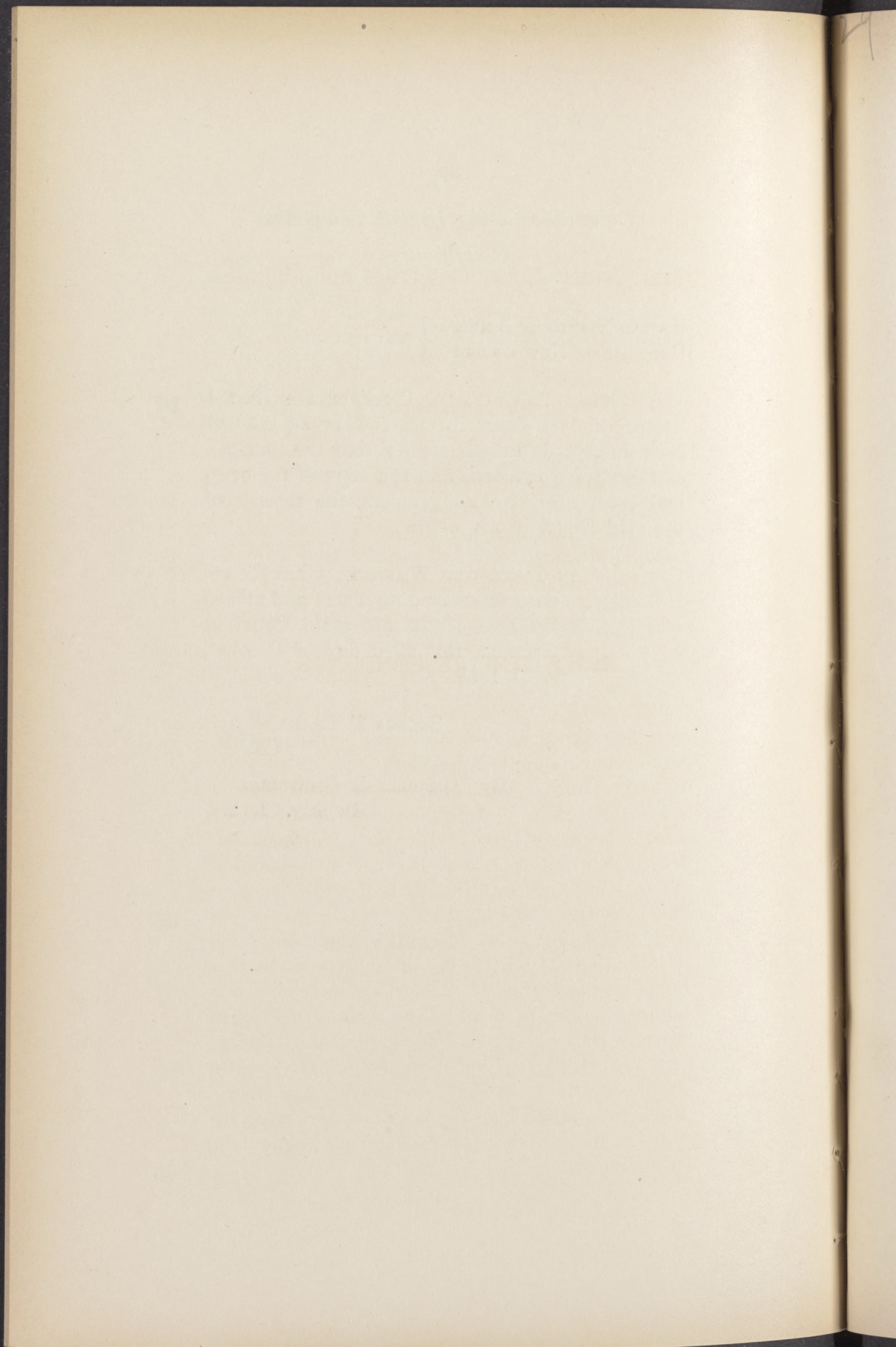
(Seal) IN TESTIMONY WHEREOF, I have here-  
unto subscribed my name and affixed  
the seal of the aforesaid Court at  
Trenton, this 23rd day of October, 20  
A. D. 1928.

GEORGE T. CRANMER,  
Clerk.

By CHARLES S. CHEVRIER,  
Deputy Clerk.

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## New Jersey Court of Errors and Appeals

POINT BREEZE FERRY & IMPROVE-  
MENT COMPANY,  
Prosecutor-Appellant,

*vs.*

THE MAYOR AND ALDERMEN OF  
JERSEY CITY, a municipal cor-  
poration, and JAMES RADIGAN,  
City Collector,  
Defendants-Respondents.

On Appeal from  
Supreme Court.

On Certiorari.

### BRIEF FOR RESPONDENTS.

The appeal in the instant case brings up for review the record and proceedings before the Supreme Court on defendants' motion to dismiss the writ of certiorari herein (which had been allowed to test the legality of a proposed tax sale of prosecutor's property) because the writ had been improvidently allowed and because matters had arisen since the granting thereof which showed that prosecutor should not have the benefit of the writ. The Court below ordered a dismissal of the writ and prosecutor appealed therefrom to this Court on the ground that the Supreme Court was without power to dismiss the writ after return thereto. Defendants then moved to dismiss the appeal because the action of the Supreme Court in dismissing the writ was discretionary and, therefore, not appealable. This Court, however, decided to the contrary; and the appeal is now here on its merits.

### Statement of the Case.

Respondents controvert the case as abstracted by appellant and present their own statement of the case in respect to the kind of estate appellant had in the lands in question, the tax assessments thereof, the apportionment and adjustment of the taxes as assessed and the litigation in respect thereto, as same appeared before the Supreme Court on its dismissal of the writ of certiorari.

Appellant in 1874 was the owner of a very narrow strip of upland (ripa) fronting on New York Bay, running to the boundary line between Jersey City and Bayonne. In 1876 it acquired, under a riparian lease, certain submerged lands fronting on this ripa and, in 1879, acquired under another lease other submerged lands fronting on the remainder of this ripa. The total leased lands, with the extensions thereof, so acquired, consisted of 215.528 acres. In 1896 appellant sold and transferred to the Morris & Cumings Dredging Company 73.401 acres of the lands which it had acquired under the lease first above-mentioned. From the time of the acquisition of these leased lands by appellant, Jersey City assessed same with the ripa from year to year for municipal taxes as acreage, and same were known as Lots B and C, and G and H, respectively, in Blocks 1513-1514 on the Official Assessment Map of Jersey City and the owners thereof have never paid one cent of the taxes to the City. In 1908 Commissioners of Adjustment appointed pursuant to the so-called "Martin Act" (P. L. 1886, Chapt. 112) adjusted the taxes so assessed for the years 1874 to 1907 inclusive in the name of appellant. The report of the Commissioners as to the adjustment was affirmed by the Hudson County Circuit Court, and same was thereafter removed, together

with other reports, by certiorari to the Supreme Court and there affirmed.

From 1908 to 1921 inclusive Jersey City continued to assess all these riparian lands for taxes as acreage in the name of appellant. With the exception of 1912, appellant appealed to the Hudson County Board of Taxation from the assessments, and the County Board each year affirmed the assessments as made. Appellant also appealed to the State Board of Taxes and Assessment from the action of the County Board for each year, with the exception of 1909 to 1915 inclusive, and that Board dismissed the appeal for 1908, and for the years 1916 to 1921 inclusive reduced the assessments and apportioned same between appellant and the Morris & Cumings Dredging Company in respect to the portion of these riparian lands held by each. For the years 1922 to 1927 inclusive, Jersey City only assessed appellant for the acreage owned by it and each year appellant appealed therefrom to the County Board which affirmed same as made. Appeals were then taken by appellant from the judgments of the County Board to the State Board which reduced the assessments for the years 1921 to 1925 inclusive and affirmed them for 1926 and 1927. This is the history of the assessments of appellant's lands at the time of the instituting of the instant proceedings.

In 1921 shortly after the United States Supreme Court, following the decisions of our courts, had decided in the case of *Leary vs. Jersey City*, 246 U. S. 328 that riparian lands, held such as these, were subject to taxation as a fee, Jersey City undertook to sell these lands for unpaid taxes for the years 1874 to 1918 inclusive. Upon receiving notice of this proposed tax sale, appellant filed a bill in the Court of Chancery of New Jersey alleging that the taxes in question were unlawful

and that the lands were not subject to taxation, and obtained an order in that suit restraining the proposed tax sale until final hearing on its bill. That suit was brought to final hearing by defendants therein and, on the date so fixed complainant therein through its counsel in open court stated that it was not prepared to offer any proof to sustain or support the allegations and charges of its bill; and, upon motion of defendants' counsel, the bill was dismissed and the order of restraint dissolved by the Court on January 16th, 1928.

During all of these years appellant had never made any effort or attempt to adjust or pay these taxes. It contented itself with contesting the assessments before the County Board and then the State Board of Taxation, as above stated, but took no action in respect to its final determinations.

After dismissal of the Chancery suit, the governing body of Jersey City took proceedings pursuant to the Act of 1919 entitled "An Act for the apportionment of assessments for taxes and other municipal assessments, charges or liens" (P. L. 1919, p. 285), to have these taxes as finally determined apportioned between appellant and the Morris & Cumings Dredging Company which was in effect only an apportionment of the taxes for the years 1874 to 1915 inclusive, because the State Board had apportioned the taxes between the owners of these lands for the years 1916 to 1921 on the appeals of appellant and the Morris & Cumings Dredging Company to that Board from the assessments for each of those years, and for the years 1922 to 1927 inclusive Jersey City had made separate assessments in the name of appellant and the Morris & Cumings Dredging Company in respect to the acreage owned by each, which assessments were reduced or affirmed on

the appeals of the owners to the State Board. As appears by the record, the apportionment of the assessments by the State Board for the years 1916 to 1921 inclusive was made upon the same unit basis of valuation of the lands, and the assessment by Jersey City for the years 1922 to 1927 inclusive of the respective lands of appellant and the Morris & Cumings Dredging Company was also based upon the same unit valuation. In other words, the State Board and Jersey City had determined that these riparian lands owned partly by appellant and partly by the Morris & Cumings Dredging Company had the same unit valuation per acre. Neither appellant nor the Morris & Cumings Dredging Company have ever in any proceedings raised any question that these lands did not have the same unit value.

It is to be noted that the governing body of Jersey City in apportioning the taxes for the years prior to 1916 under the Act of 1919, *supra*, has taken the same unit basis of valuation of these lands as was determined by the State Board, namely, that the lands owned by appellant and the Morris & Cumings Dredging Company, respectively, have the same unit value per acre and that the amount of the taxes should be apportioned accordingly.

Appellant was given notice in the apportionment proceedings pursuant to the statute, and appeared therein and raised no objection thereto, but failed to attend the hearing on the adoption of the resolution by the governing body of Jersey City apportioning these taxes. The apportionment was duly made on June 26th, 1928, and appellant took no proceedings to question the apportionment or the constitutionality of the Act under which same was made, but, in effect, consented to same. Jersey City then gave public notice that it would sell at a tax sale advertised to take place

on September 7th, 1928, the lands of appellant and the Morris & Cumings Dredging Company, for the unpaid taxes as apportioned.

It was not until September 1st, 1928, more than two months after the apportionment, that appellant applied to Justice Minturn, on affidavit, for a writ of certiorari to review the proposed tax sale. No notice of the application for the writ was given to Jersey City, and it was allowed on September 1st, 1928, without the municipality being heard and without requiring appellant to pay as a condition for the allowance of the writ, any portion of these taxes.

On September 6th, 1928, only 6 days after the allowance of the writ of certiorari, appellant filed a bill of complaint in the United States District Court for the District of New Jersey (in equity) alleging that the taxes in question were unlawfully assessed, and that the lands in question were not subject to taxation, and that the proposed tax sale was illegal, *and further alleging that complainant was without adequate remedy at law*, and applied to the Court for an order to restrain the proposed tax sale. This bill raised the same issues and others presented by the writ, and was almost identical in its allegations with the bill that appellant had filed in 1921 in the Court of Chancery of New Jersey, which, as heretofore stated, was dismissed because appellant had admitted in open court that it had no proofs to offer to support and sustain the allegations thereof.

It was at this stage in the instant proceedings that present counsel was retained by the City to represent it in this litigation, and the return was filed to the writ of certiorari without his being informed that it had been allowed without notice to the City. Counsel for the City then moved to dismiss the bill of complaint filed in the United States District Court and to discharge the order

to show cause issued therein upon several grounds, among which was that the complainant should not be permitted to maintain its bill and restrain the proposed tax sale unless it paid or tendered to Jersey City the taxes which were conceded by complainant to be due or which could be seen to be due on the face of its bill.

That Court, after hearing the motion, made an order on October 8th, 1928, that the bill would be dismissed and the order to show cause discharged unless complainant within 30 days from September 24th, 1928, pay to Jersey City \$820,163.12 of the taxes in question, which that Court determined from the face of the bill were not in substantial dispute. This amount of the taxes was not paid within the time limited and the bill was accordingly dismissed and the order discharged.

Counsel for Jersey City then gave due notice of motion to appellant that it would apply to the Supreme Court to dismiss the writ of certiorari in the instant action on the following grounds (Case, pp. 77-78):

- “1. No notice was given to defendants of the application for the writ, and the attorney for defendants did not have knowledge of this failure until after the filing of the return;
2. The writ was improvidently allowed;
3. The writ was improperly allowed;
4. Matters and things have arisen since the allowing of the writ, which show that prosecutor was not entitled to it;
5. If certain material facts had been disclosed to the court on application for the writ, it would not have been allowed;

and that, in support of the motion, defendants would rely upon the record in the certiorari action, and also upon the record in the United States District Court for the Dis-

trict of New Jersey, in a suit brought by prosecutor in that court (after the writ had been allowed) between the same parties and involving the same subject-matter as involved in the certiorari action.”

At the hearing on this motion, counsel for the City submitted to the Supreme Court a certified record of the proceedings in the United States District Court, which record was received by the Supreme Court, without objection from appellant's counsel, and considered by that Court in dismissing the writ. The Court consisted of Justices Minturn, Black and Campbell, Justice Minturn (who had allowed the writ of certiorari) presiding. With the record in the certiorari action and the record in the suit in the United States District Court before it, and after hearing argument of counsel and considering the same, the Court filed an opinion October 29th, 1928, in which it said:

“We think, that in matters affecting municipalities a certiorari should not be allowed, except upon notice, and where municipal taxes are involved, the certiorari should not be allowed, except upon payment of taxes conceded to be due. This was the practice adopted in the case of the Trustees of Stevens Institute of Technology *vs.* State Board of Taxes and Assessment, decided by this Court at the October Term, 1928.

We think the allocatur should be vacated and the certiorari dismissed.”

In accordance with this opinion, a rule was entered October 31st, 1928, vacating the allocatur and dismissing the writ.

The bill of complaint in the suit in the United States District Court having been dismissed, and the order therein having been discharged, and the writ of certiorari in the instant action having

been dismissed and all restraints and stays having been removed, the proposed tax sale of appellant's lands (which sale had been continued from week to week, under the Tax Sale Act (Rev. of 1918), to November 3rd, 1928), was held and the appellant's lands sold and struck off to Jersey City for the amount of the unpaid taxes because there was no other purchaser.

It should also be noted (Appellant's Brief, p. 20) that appellant had failed to pay to the State the rent charges due under the riparian leases. The fact is that Jersey City, since it purchased these lands at the tax sale, has paid these rent charges to the Board of Commerce and Navigation so as to prevent a forfeiture of these riparian lands to the State.

### Questions Argued.

1. Whether the appeal should be dismissed because appellant was guilty of inexcusable delay in taking its appeal, to the great prejudice and damage of respondents.
2. Whether the appeal should be dismissed because the alleged grounds are not stated in accordance with the rules and practice of this Court.
3. Whether the appeal should be dismissed because the alleged grounds of appeal are without merit.
4. Whether the appeal should be dismissed because the record before the Supreme Court justified it in dismissing the writ of certiorari as being improvidently allowed.

## ARGUMENT.

### POINT I.

**Appellant was guilty of inexcusable delay in taking its appeal, to the great prejudice and damage of respondents, and therefore the appeal should be dismissed.**

The allowance of the writ of certiorari stayed the proposed tax sale. The dismissal of the writ removed the stay and appellant should have immediately applied to the Court for an order to continue or restore the stay, if it desired to protect its rights under the writ (as was declared by this Court in *Handwerk vs. Guttenberg*, 92 N. J. L. 181). Instead, appellant permitted the proposed tax sale to take place and stood idly by and saw its property sold and then waited for over six months after the City had changed its position before it took an appeal to this Court to review the action of the Supreme Court in dismissing the writ.

The purpose of the writ was to review the validity of the taxes and the apportionment thereof, involved in the proposed tax sale. The sale having taken place through appellant's failure to continue or restore the stay of the sale, the relief which was sought by the writ cannot now be secured to appellant therein because its lands have been sold.

Furthermore Jersey City, since the tax sale, has paid to the State of New Jersey a large sum of money (the rent charges then in arrears under the riparian leases) to prevent a forfeiture of these lands and protect the City's interest therein.

Obviously, appellant should have paid these rent charges which were in arrears and have immediately applied to the Court to continue or restore the stay of the writ, if it intended to contest the action of the Supreme Court in dismissing the writ and, by its failure so to do, it is guilty of inexcusable delay to the great prejudice and damage of respondents, and its appeal to this Court should, therefore, be dismissed.

## POINT II.

**This Court, having denied respondents' motion to dismiss the appeal on the ground that the action of the Supreme Court therein was not appealable, the appeal is now here on its merits.**

Appellant, however, argues under Point I of its Brief (p. 6) that:

“The motion for dismissal of the appeal in this case, heard and decided at the May Term, is dispositive of this appeal.”

Respondents submit that this argument of appellant is frivolous because the only question considered by this Court on defendants' motion to dismiss the appeal was, whether the action of the Supreme Court in dismissing the writ of certiorari as improvidently allowed was discretionary, and, if so, it was not the subject of appeal. That this was the only question considered by this Court, is clearly indicated by its rule denying defendants' motion to dismiss the appeal. The rule in substance states (Case, p. 5) that application having been made to this Court to dismiss the appeal on the ground that the action of the Supreme Court in vacating the allocatur and dismissing the writ of certiorari was discretionary and this

Court having heard the argument of counsel and being of the opinion that the motion should not prevail, denied defendants' motion.

Manifestly, the denying of respondents' motion to dismiss the appeal did not dispose of the appeal on its merits in favor of appellant because the merits of the appeal were not argued, namely, whether the court below on the record and proceedings before it rightfully dismissed the writ of certiorari. This is the question to be argued here.

Respondents, in closing their argument under this point, have not overlooked the insulting and disrespectful statements of Counsel for Appellant contained in its Brief (p. 6) that,

“the Supreme Court acted on the theory that it had an unlimited discretion in the matter of the dismissal of the writ of certiorari. It heard the motion without reference to the briefs filed or any discussion of the issues involved, and in obvious ignorance of the facts of the case.”

and (p. 7) that,

“the Supreme Court acted upon the theory that it was accountable to no one. That, too, was the theory of Counsel for the City.”

There is nothing in the record to show that the court below did not give due consideration to the motion to dismiss the writ, nor that the Supreme Court or Counsel for the City acted upon the theory that they were accountable to no one. A reference to the opinion of the court below (Case, pp. 79-80) refutes these insulting and disrespectful remarks of Counsel for Appellant.

This Court, speaking through Chancellor Walker, in *A. Makray, Inc. vs. McCollough*, 103 N. J. L. 346, approved the principle that, a brief in no case can be used as a vehicle for the con-

veyance of insult or disrespect for the court below or opposing counsel or professional discourtesy of any nature. The Brief in that case was suppressed and not preserved with the printed record of the case.

These respondents submit that Appellant's Brief in this case should receive the same condemnation from this Court.

### POINT III.

**The Supreme Court was justified in dismissing the writ because the record before it showed that the writ should never have been allowed.**

Appellant, under the second Point of its Brief, and relying upon its 1st, 3rd and 4th grounds of appeal (Case, p. 1):

- “1. The Supreme Court erred in this, that it failed to determine the disputed questions of fact at issue in this cause;
3. The Court having allowed the writ, and the defendants having made return thereto, and the Court having made an order for the taking of depositions, the Prosecutor was entitled to a determination of the disputed questions of fact;
4. The writ having been allowed and the defendants having made return thereto, and the prosecutors having filed their reasons for reversal, and a rule having been entered for the taking of depositions, the prosecutors were entitled to have the disputed questions of fact and law at issue between the parties, determined by the Supreme Court”;

argues (p. 8) that the Supreme Court owed a duty to decide the issues of fact pending before it.

What are these disputed questions of fact? Appellant has not specified same in these grounds of appeal, as required by the rules and practice of this Court and, therefore, these grounds of appeal should not be considered.

*Bowen vs. State Highway Commission*,  
135 Atl. (N. J.) 340 and cases cited  
therein;

*Lutlopp vs. Heckmann*, 70 N. J. L. 272  
(Ct. Err. & App.);

*Sullivan vs. Magnolia Construction Co.*,  
96 N. J. L. 214.

Furthermore, appellant in its Brief also fails to specify what facts are in dispute in the instant case. Respondents say that there are no disputed questions of fact presented by the writ and return thereto. The record indicates that none of the facts stated in the return to the writ are disputed by appellant. If appellant questioned any of these facts, or if the return did not set forth and specify all the matters and things commanded by the writ, or if the facts were incorrectly or imperfectly stated therein, prosecutor should on the filing thereof have made an allegation of diminution of the record or obtain a rule to correct or perfect the return, and, failing to do so, it is presumed that the return is in accordance with the facts. This is the status of the instant case.

*State vs. Water Commissioners of J. C.*  
*&c.* 30 N. J. L. 247.

It is obvious from the foregoing that the cases cited by appellant under Point II of its Brief, that a duty was imposed on the Supreme Court to decide the disputed questions of fact, have no application to the case at bar. However, the question to be argued here is, not whether there are disputed questions of fact in the record, but, whether

the Supreme Court on the matters and things properly before it on defendants' motion to dismiss the writ was justified in dismissing same because it had been improvidently allowed, or that matters and things had arisen since the granting thereof which showed that prosecutor should not have the benefit of the writ. These matters and things were stated in the return and in the record before the Supreme Court, and are the facts which appellant should have presented to Justice Minturn on the application for the writ and would have been presented by the City if it had been given notice of the application, and it is respondents' contention that Justice Minturn, in deciding with his associates that the writ should be dismissed because it had been improvidently allowed, in effect, held that if these facts had been before him on the application for the writ, it would never have been allowed.

What are these facts that appellant should have presented to Justice Minturn on application for the writ? They are set forth in the Statement of the Case herein (pp. 2-9) and are in substance, that:

- (1) The lands in question were held by appellant, in fee, and under the decisions of our Courts and the United States Supreme Court were subject to taxation as such.

*Hudson Tunnel Co. vs. Attorney General*, 27 N. J. Eq. 573;

*Cook vs. Bayonne*, 80 N. J. L. 596;

*Ocean Front Improvt. Co. vs. Ocean City Garden Co.*, 103 Atl. (N. J. Eq.) 419, 421;

*Leary vs. Jersey City*, 189 Fed. 419; 208 Fed. 854; 248 U. S. 328; 63 L. Ed. 271.

Appellant, on the contrary, urged as its principal ground for the allowance of the writ that its lands were not so taxable (Case, pp. 28-31).

- (2) The taxes for the years 1874-1907, inclusive, had been adjusted by Martin Act Commissioners, and their report affirmed by the Courts (Case, pp. 36-37) and, therefore, could not be collaterally attacked in this or any other proceeding.

*Stanley vs. Albany County*, 121 U. S. 535; 30 L. Ed. 1,000.

- (3) The taxes assessed for the years 1908-1927, inclusive, had been duly assessed and that appellant had, for most of the years, appealed to the County Tax Board and then to the State Tax Board, from the assessments (Case, p. 38), and the determinations of those boards were final and conclusive unless questioned on direct appeal by certiorari to the Supreme Court.

*Conover vs. Honce*, 46 N. J. L. 347;  
*Royal Mfg. Co. vs. Rahway*, 75 N. J. L. 416.

- (4) The State Board, for the years 1916-1921, inclusive, on the appeals of appellants, had apportioned the assessments of taxes between it and the Morris & Cumings Dredging Company in accordance with their respective holdings, and no appeal or proceedings had ever been taken by appellant from that Board's apportionment of the assessments. These assessments, as so apportioned by the State Board, were made on the basis that the lands owned by appellant and by the Morris & Cumings Dredging Company had the same unit value (Case, p. 38).

For the years 1922-1927, inclusive, Jersey City had separately assessed the lands of the respective owners, and appellant had appealed each year to the County Tax Board and then to the State Tax Board, which either reduced or affirmed the assessments (Case, p. 38), and which assessments and apportionment thereof cannot be collaterally attacked.

*Stanley vs. Albany, supra.*

- (5) Appellant in 1921 filed a bill in the Court of Chancery, restraining a proposed tax sale of these lands, alleging unlawful assessments thereof, and that same were not subject to taxation, and on the hearing of its bill admitted in open court that it had no proof to offer to sustain and support the allegations of its bill (Case, pp. 42-43).
- (6) The governing body of Jersey City duly apportioned the taxes for the years prior to 1916, pursuant to the "Act concerning the apportionment of assessments for taxes, &c." (P. L. 1919, Chapt. 121). Appellant appeared in these proceedings for the apportionment, and raised no objection thereto (Case, pp. 60-61), and the apportionment of the assessments was made upon the same basis of valuation as applied by the State Board on the apportionment of the assessments for the years 1916-1921 inclusive. This apportionment was for the benefit of the appellant because the total taxes prior to 1916 had been assessed on all of the lands as a unit, and were therefore a lien upon the portion of these lands retained by appellant, *Maricopia &c. R. Co. vs. Arizona*, 156 U. S. 347; and Jersey City could have sold the portion of these lands retained by appellant for the total taxes as assessed.

*Askew vs. Scottish American Mtg. Co.*,  
114 Ga. 300; 40 S. E. 256;

*Merchants Nat'l Bank of Rome vs.*  
*McWilliams*, 107 Ga. 532; 33 S. E.  
860.

The fact that appellant had sold and conveyed in 1896 to the Morris & Cumings Dredging Co. a part of these riparian lands, and had sold and conveyed in 1919 the ripa (a very small strip of land—not 4.19 acres, as appellant assumes in its Brief, pp. 13-14) and other lands to the Tide Water Oil Co., should not relieve appellant from paying these taxes which were a lien on the part retained by it. Furthermore, a deduction was made from the total taxes and charged to the ripa, and the balance apportioned between appellant and the Morris & Cumings Dredging Company.

- (7) The apportionment of the assessments of taxes was made on June 26th, 1928 (Case, p. 62), and appellant took no proceedings to question the validity thereof, or the constitutionality of the act under which they were apportioned until September 1st, 1928 (Case, p. 6), after Jersey City had advertised appellant's lands to be sold at the instant tax sale for these unpaid taxes, as apportioned (Case, pp. 63-67).
- (8) At the time of the proposed tax sale, advertised to take place on September 7th, 1928 (Case, pp. 63-67), appellant was in default under the riparian leases by which it held title to these lands and, under the Act of the Legislature entitled "An Act to ascertain the rights of the State and of the riparian owners in the lands lying under the waters of the Bay of New York and elsewhere in the State" (Comp. Stat. of N. J., Vol. IV, p. 4382, par. 44), these lands and all rights of appellant therein were subject to forfeiture to the State of New Jersey. Jersey City, after purchasing these lands at the tax sale, paid to the Board of Commerce and Navigation, the agency of the State in this matter, a large sum of money to prevent such a forfeiture. This payment is referred to on page 20 of Appellant's Brief.

It is respectfully submitted that if all of these facts, as above detailed, had been brought to the attention of Justice Minturn on the application for the writ, same would not have been allowed, and, further, when they were made known to the Supreme Court on defendants' motion to dismiss the writ of *certiorari* as improvidently allowed, that Court was justified in dismissing the writ.

Respondents also contend that the Supreme Court was justified in dismissing the writ, when it was brought to its attention that appellant (only 6 days after obtaining the writ) filed a bill under oath in the United States District Court for the District of New Jersey (in equity) in which it raised the same issues of law and others as presented by the writ and the return thereto, and alleging in its bill that the taxes in question were unlawful, and that the lands in question were not

subject to taxation, and *that complainant therein was without adequate remedy at law*. The Federal Court in that suit, on defendants' motion to dismiss the bill, ordered complainant to pay Jersey City \$820,163.12 as a condition for maintaining its bill and restraining the proposed tax sale, which amount that Court had determined from the face of the bill was the amount of taxes not in substantial dispute (Respondents' Blue Book, pp. 65-66). It may well be assumed that Justice Minturn would have found the same, on the application for the writ, if appellant had presented the same facts to him as were presented to the United States District Court. As pointed out above, the bill in the Federal Court was dismissed and the restraint dissolved because complainant therein failed to comply with the order of the Court.

With due deference to this Court, and mindful that we are in a court of law, respondents contend that appellant is entitled to the same consideration and no better here than it received in the Federal Court in respect to being required to paying the taxes not in substantial dispute as a condition for the relief it seeks. The rule in the Federal Court, as laid down by Mr. Justice Miller, in the United States Supreme Court, in *Taylor vs. Secor*, *Miller vs. Jessup*, *Lieb vs. Kidder*, "State Railroad Taxes", 92 U. S. 575, 616; 23 L. Ed. 663, 674, is as follows:

"Before complainants seek the aid of the court to be relieved of the excessive tax, they should pay what is due. Before they ask equitable relief, they should do that justice which is necessary to enable the court to hear them.

It is a profitable thing for corporations or individuals whose taxes are very large to obtain a preliminary injunction as to all their taxes, contest the case through several years

litigation, and when in the end it is found that but a small part of the tax should be permanently enjoined, submit to pay the balance. This is not equity. It is in direct violation of the first principles of equity jurisdiction. It is not sufficient to say in the bill, that they are ready and willing to pay whatever may be found due. They must first pay what is conceded to be due, or what can be seen to be due on the face of the bill, or be shown by affidavits, whether conceded or not, before the preliminary injunction should be granted. The State is not to be thus tied up as to that of which there is no contest, by lumping it with that which is really contested. If the proper officer refuses to receive a part of the tax it must be tendered, and tendered without the condition annexed of a receipt in full for all the taxes assessed.

We are satisfied that an observance of this principle would prevent the large part of the suits for restraining collection of taxes which now come into the courts. We lay it down with unanimity, as a rule to govern the courts of the United States in their action in such cases.

Bill dismissed."

and, in *German National Bank of Chicago vs. Kimball, Collector, &c.*, 103 U. S. 732, 26 L. Ed. 469, Mr. Justice Miller said:

*Fatal Objections to the bill:*

"The first of these is there is no offer to pay any sum as the tax which the shares of the Bank ought to pay.

We have announced more than once that it is the established rule of this court that no one can be permitted to go into a court of equity to enjoin the collection of a tax until he has shown himself entitled to the aid of the court by paying so much of the tax assessed against him as it can be plainly seen he ought to pay. That he shall not be permitted, because his tax is in excess of what is just and

lawful, to screen himself from paying any tax at all until the precise amount which he ought to pay is ascertained by a court of equity. That the owner of property liable to taxation is bound to contribute his lawful share to the current expenses of government and cannot throw that share on others while he engages in an expensive and protracted litigation to ascertain that the amount which he is assessed is or is not a few dollars more than it ought to be. But that before he asks this exact and scrupulous justice he must first do equity by paying so much as it is clear he ought to pay, and contest and delay only the remainder.”

Bill dismissed.

In the bank case, *supra*, the complainant attempted, as appellant attempts here in the certiorari action, to evade the payment of any taxes as a condition for the relief it sought by alleging in its bill that all of the taxes were illegal and, therefore, none of them ought to be paid.

Respondents argue that if appellant had been as frank to Justice Minturn on the application for the writ as it was compelled to be on its application for injunctive relief in the Federal Court, Justice Minturn could have ascertained and computed the same as the Federal Court the amount of taxes which appellant should have paid as a condition for obtaining the writ. Manifestly, when all of these facts were brought to the attention of the Supreme Court by defendants on their motion to dismiss the writ, the court below was justified in dismissing same and permitting Jersey City to proceed with its proposed tax sale of appellant's lands.

Under this Point it is also significant to note the default of the appellant in the payment of the rent charges under the riparian leases as same might have affected Jersey City's ultimate col-

lection of these taxes. If, under appellant's default, these lands (against which the City had a lien for upwards of \$1,250,000 for unpaid taxes) had been forfeited to the State of New Jersey before the City acquired title thereto and was in a position to pay the arrears of rent, the City would have sustained a loss to the extent of these unpaid taxes, because the forfeiture would have wiped out the lien thereof.

As above mentioned, the City after it had acquired these lands paid the rent charges in arrears to prevent a forfeiture of these lands to the State of New Jersey. This payment was opposed by appellant, and it now comes in very poor grace from appellant to say in its Brief (p. 20) that the Board of Commerce and Navigation hesitated to take the City's money for these rent charges when, as a matter of fact, appellant objected to the payment and, by its attitude of failure to pay itself, would have permitted these lands to be forfeited to the State.

It might well be argued that this Court should affirm the action of the Supreme Court in dismissing the writ of certiorari, if for no other reason than it removed the stay of the proposed tax sale and permitted the City to sell appellant's lands and protect its interests therein and prevent a forfeiture of these lands to the State of New Jersey. If the writ had not been dismissed, and the restraint thereof continued, and appellant allowed to litigate what it refers to as the "disputed questions of fact at issue", and if the City had eventually won in such a contest, it would have been a sad victory for the City if, in the meantime, appellant's lands had been forfeited to the State of New Jersey, and Jersey City sustained a loss of over \$1,250,000.00.

Respondents submit that the restraint of a prerogative writ should conserve and protect the

rights and interests of parties pending a determination thereof and not to destroy them.

In further discussion of this point, respondents say that there is abundant authority in this State for the proposition that the Supreme Court may, on its own motion, quash a writ of certiorari whenever it discovers that the writ was improvidently allowed.

*State vs. Blauvelt*, 34 N. J. L. 261;

*Applegate vs. Pownell*, 49 N. J. L. 169.

In *State vs. Kingsland*, 23 N. J. L. 85, it was held that where the allowance of a writ of certiorari is a matter of discretion with the Court, the Court may upon the argument, if the ends of justice require it, dismiss the certiorari on their own motion.

In *State vs. Water Commissioners of Jersey City, &c.*, 30 N. J. L. 247, at 249 (*supra*), the Court said, following the decision in *Haines vs. Champion*, 18 N. J. L. 49:

“It has frequently been held that the allowance of a common law writ is a matter of discretion, and that whenever, in the progress of the cause, the court discovers facts which, had they been disclosed on the application for the writ would have induced a refusal of the *allocatur*, the court may, *ex mero motu*, dismiss the writ.”

In *State, Weart, vs. Jersey City*, 43 N. J. L. 662, the Court said, at page 663:

“The only difference between the case thus presented to this court and that of *State vs. Wood*, 3 Zab. 560, and decided in this court, is in the feature that in that case, on an application to the Supreme Court for the allowance of the *certiorari*, the court refused its *allocatur*, while in the present instance that court dismissed the writ after it had been allowed by a justice.

In the case cited from the report of Zabris-  
 kie, it was decided by this court that the order  
 refusing the awarding of the *certiorari* was  
 an order resting in discretion, and therefore  
 could not be reviewed by this court. Thus  
 far the matter is *res adjudicata*. When the  
 court reviews the act of awarding the writ, it  
 does so upon the principle of discretion, and  
 upon no settled rule of law. Upon referring  
 to the case above cited of *State vs. Wood*, it  
 will be perceived that all reasoning which led  
 to the conclusion that the refusal of the writ  
 was discretionary and, therefore, not the sub-  
 ject of a writ of error, will apply, with its full  
 force, to the present proceeding."

In *Voorhees vs. North Wildwood*, 80 N. J. L. 81,  
 the Court said:

"The judge of the Circuit Court, under the  
 act of 1898, merely takes part in a municipal  
 proceeding, as in *East Orange vs. Hussey*,  
 41 Vroom 244. It is well settled that the writ  
 of *certiorari* in such cases where the public  
 interest is involved, is a discretionary writ.  
*State vs. Middleton*, 4 Zab. 124. For this rea-  
 son, a writ of error will not lie to a refusal  
 of the writ (*State vs. Wood*, 3 Id. 560); and  
 the court may quash the writ, even of its own  
 motion, after its allowance (*Haines vs. Cam-  
 pion*, 3 Harr. 49), and an order dismissing  
 the writ as improvidently allowed is not lia-  
 ble to review upon a writ of error. *Weart vs.  
 Jersey City*, 14 Vroom 662.

We think the writ in the present case  
 should in the exercise of our discretion be  
 dismissed."

In conclusion of the argument of this Point, re-  
 spondents again submit that on the record and  
 proceedings before the Supreme Court on defend-  
 ants' motion to dismiss the writ as improvidently  
 allowed, the Court was justified in dismissing the  
 same and its action should be affirmed by this  
 Court.

## POINT IV.

**The Federal Court Record in the suit above referred to was properly before the Supreme Court on defendants' motion to dismiss the writ.**

Appellant, by its 2nd ground of appeal assigns as error that:

“The Supreme Court erred in entering said judgment, in that it proceeded upon alleged facts and circumstances not in the record or legally before the court.”

and attempts to argue this alleged ground of appeal under Point III of its Brief.

Respondents submit that under the authority of *Bowen vs. State Highway Commission* and the other cited cases, *supra*, this ground of appeal should not be considered by this Court because it does not specify what “facts and circumstances were not in the record or legally before the Supreme Court”.

The argument of appellant is that the certified record of the proceedings in the Federal Court as they appear in what appellant calls “Respondents' Blue Book” was not before the Supreme Court, nor is it before this Court. The fact is that a certified copy of the Federal Court record of the suit in that Court between the same parties and involving the same subject matter as in the instant certiorari action was submitted to the Supreme Court, without objection, on defendants' motion to dismiss the writ. Furthermore, the notice of motion to dismiss the writ, served on appellant, stated that defendants in support of the motion would rely upon the record in the certiorari action and also upon the record in the Federal Court (Case, pp. 77-78). Obviously, appellant was just as familiar with the facts of the Federal Court

record as respondents were, and the only object of bringing this record (which could not be questioned by appellant) to the attention of the Supreme Court, was to apprise that Court that since the allowance of the writ appellant had instituted such a suit in the Federal Court, alleging that it had no adequate remedy at law, and to show to the Supreme Court that by appellant's conduct in that suit it was not entitled to the benefit of the writ of certiorari in the instant action.

Appellant has printed in the State of Case the affidavit on which it relied for the allowance of the writ (Case, pp. 6-27).

It is fundamental that the affidavit on which prosecutor relies for the allowance of a writ is not a part of the record on appeal.

*Siebke vs. Chester*, 4 N. J. Mis. R. 226.

The Federal Court record was not actually filed in the Clerk's Office of the Court below as was appellant's affidavit but it was submitted, without objection, to the Supreme Court and received by it on the oral argument on defendants' motion to dismiss the writ, and was as much a part of the record before the Supreme Court on that argument as if it had been filed with the Clerk.

Respondents, therefore, submit that if it was proper to print in the State of Case appellant's affidavit (on which it relied on application for the writ) as a part of the record before the Supreme Court on defendants' motion to dismiss, it was also proper to print in the State of Case the Federal Court record. Appellant having failed to do so, respondents had same printed and submit it to this Court as "Additional Record before the Supreme Court".

If appellant was aggrieved by the form in which the Federal Court record was submitted to the Supreme Court, it should have objected then.

Respondents, however, contend that this record was properly brought to the attention of the Supreme Court. It is the practice, on application for a writ of certiorari, to submit *ex parte* affidavits or other informal proof, under the rules of the Supreme Court (Rule 168) and respondents submit that the same kind of informal proof should be permitted to be submitted to the Supreme Court on motion to dismiss a writ, when there are no disputed questions of fact presented by the writ and the return thereto.

Appellant, however, relying upon the case of *Baldwin vs. Flagg*, 43 N. J. L. 496, contends that the only way that this Federal Court record could have been properly brought before the Supreme Court on defendants' motion to dismiss the writ, was under the rule to take depositions. Respondents say that there is no merit to this contention because there were no facts to be established by deposition.

There is authority in this State that defendant, upon notice to prosecutor, may attack a writ of certiorari as being improvidently allowed.

*State vs. New Brunswick*, 38 N. J. L. 320;  
*State vs. Manning*, 40 N. J. L. 461.

It is common practice to move by notice to dismiss an action at law when improvidently brought, and on such motion the moving party relies upon informal proof of undisputed facts.

In conclusion of this point, respondents say that the Federal Court record was properly before the Supreme Court, but whether it was or not is immaterial because the return to the writ established sufficient facts to justify the Supreme Court in dismissing the writ as being improvidently allowed.

## POINT V.

**The rule dismissing the writ is sufficient therefor.**

Appellant contends, under this Point, that the reasons recited in the rule for entry of the judgment are insufficient therefor and bases its argument upon its 5th, 6th and 7th grounds of appeal (Brief, pp. 5-6):

- “5. That the reasons recited in the rule for the entry of the judgment are insufficient therefor;
6. The Court erred in holding that the allocatur of the writ of certiorari should be vacated and the writ of certiorari be dismissed because they were allowed without notice;
7. The Court erred in holding that the allocatur of the writ of certiorari should be vacated and the writ of certiorari be dismissed because the writ was allowed without the prepayment of taxes.”

It was not necessary to state in the rule dismissing the writ any ground therefor. The rule is sufficient if the case before the Supreme Court justifies it in dismissing the writ.

It is a principle of law enunciated by this Court in many cases that a ground of appeal based upon the finding or opinion of the Court below is bad. What this Court considers on review is, whether there are any tenable grounds in the record to support the action of the Court below.

*Diamond Mills Paper Co. vs. Leonard Hygiene Ice Co.*, 95 N. J. L. 540;  
*Healy vs. Braested*, 98 N. J. L. 520;  
*Kleinert vs. Hutchinson*, 98 N. J. L. 831;

*McCrorry Stores Corp. vs. Braunstein*,  
122 Atl. (N. J.) 814;  
*Shawinger vs. Apter*, 125 Atl. (N. J.) 31.

Respondents, therefore, submit that these alleged grounds of appeal are bad in law under the above cited authorities and should not be considered by this Court.

Appellant, however, in arguing these alleged grounds of appeal says that (p. 7):

“There is no stated rule of the Supreme Court which requires notice of an application for a writ to be given to a municipality, where a municipality is concerned. There is no statute which requires such notice to be given. Some Justices require it; some do not.”

and further says that at the time of the allowance of the writ,

“There were no taxes ‘conceded to be due’. There was no data before the court or obtainable, upon which such a requirement as is suggested in the *per curiam* opinion could have been predicated.”

In answer thereto respondents say that if, at the time of the hearing of the motion to dismiss the writ in the instant case, there were no such rules, they were laid down by the Supreme Court then, and made applicable thereto.

The Supreme Court, by Statute, has the right and power to promulgate its own rules in respect to practice before that Court. Comp. Stat. p. 4128, §§253, 254; P. L. 1912; Chapt. 231, p. 383, §32.

The Supreme Court also has the right and power to settle by decision, rules of practice in that Court.

Chief Justice Hornblower, in *Ogden vs. Robertson*, 15 N. J. L. 124, said that the rules of a Court

were the law of the land and he questioned whether error might not be assigned on their violation.

In the instant case, the Supreme Court laid down as rules of practice in that Court, that in matters affecting municipalities a certiorari should not be allowed except on notice and, when municipal taxes are involved, the certiorari should not be allowed except upon the payment of taxes conceded to be due.

*Point Breeze, &c. vs. Mayor, &c., J. C.,*  
6 N. J. Mis. Rep. 974.

In *State, Newhall vs. Bassett*, 33 N. J. L. 26, it was held that matters resting on the rules and practice of the Court below are under the control of that Court and are not subject to review.

The importance of the first rule of practice settled by the decision of the Court below in the instant case is, that if respondents had been given notice of appellant's application for the writ and the facts and circumstances as shown by the return thereto had been presented to the Supreme Court Justice on application therefor, the writ would not have been allowed. The importance of the other rule of practice settled by this decision is, that no taxpayer should be permitted by a writ of certiorari to restrain the collection of that portion of municipal taxes which, in good faith, he cannot controvert.

Under this Point of its Brief, appellant devotes most of its argument to the question that appellant's lands are not subject to taxation. Appellant, however, has not assigned this question as a ground of appeal and, therefore, same should not be considered by this Court. Furthermore, this question has been decided adversely to appellant by our courts and the United States Supreme

Court in the following cases cited under Point III of this Brief (p. 15):

*Hudson Tunnel Co. vs. Attorney General,*  
*supra;*

*Cook vs. Bayonne, supra;*

*Ocean Front Improvt. Co. vs. Ocean City*  
*Garden Co., supra;*

*Leary vs. Jersey City, supra.*

Even though appellant argues that our courts and the Federal Courts are all wrong in deciding that lands such as those in question are subject to taxation, we submit that this Court should not disturb a principle of law affecting title to land, which is so firmly fixed in our jurisprudence; or consider appellant's argument, which is against all State and Federal authorities on this question.

Respondents, in closing their argument, say that appellant is guilty of inexcusable delay in taking its appeal; that its alleged grounds of appeal are not stated in accordance with the rules and practice of this Court; that the alleged grounds of appeal are without merit; that the Supreme Court was justified in dismissing the writ of certiorari, as being improvidently allowed, and that for these reasons this court should dismiss the appeal.

Respectfully submitted,

EDWARD P. STOUT,  
Counsel for Respondents.

