



**New Jersey
Court of Errors and Appeals**

JOSEPH W. SUTTON,
Prosecutor-Appellant,

vs.

THE TOWNSHIP OF MAURICE RIVER
IN THE COUNTY OF CUMBERLAND,
Defendant-Respondent.

ON CERTIORARI
ON APPEAL FROM SUPREME COURT

STATE OF THE CASE

WALTER H. BACON,
Attorney for Prosecutor-Appellant

LOUIS H. MILLER,
Attorney for Defendant-Respondent

June Term, 1919.

New Jersey State Library

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Supreme Court of New Jersey.

JOSEPH W. SUTTON,
Prosecutor.

vs.

THE TOWNSHIP OF MAURICE
RIVER IN THE COUNTY OF CUM-
BERLAND,

Defendant.

ON CERTIORARI

10

STATE OF THE CASE

20

WRIT AND RETURN

STATE OF NEW JERSEY, ss.

[SEAL]

THE STATE OF NEW JERSEY TO THE TOWN-
SHIP OF MAURICE RIVER, IN THE COUNTY
OF CUMBERLAND, GREETING:—

We being willing for certain reasons to be certified of
all proceedings of the Assessor and Collector of Taxes of
the Township of Maurice River, in the County of Cumber-
land, and of the Township Committee of said Township of
Maurice River, in the matter of the assessment and sale for
taxes levied and assessed for the year nineteen hundred and
thirteen, of property of Joseph W. Sutton, known and
described as "The Wm. Chance Homestead situated in
Leesburg Containing about 5 acres" and of all subsequent

30

proceedings whereby said Township Committee has sold, or is attempting to sell, by means of advertisements or otherwise, burial lots in what is known as the "Chance Cemetery" in Leesburg, Cumberland County, New Jersey, under and by virtue of any tax sale or otherwise, together with all other matters and things touching and concerning the same, as fully and entirely as they remain before you, by whatsoever name the said matters and things may be called, do command you that you openly and directly send the same to
 10 our Justices of our Supreme Court of Judicature at Trenton, on the twenty-eighth day of January, nineteen hundred and eighteen, together with this writ, that we may further cause to be done what of right and according to law should be done.

WITNESS, WILLIAM S. GUMMERE, Esquire,
 Chief Justice of our said Court at Trenton, this ninth day of January, nineteen hundred and eighteen.

20 WALTER H. BACON, WM. C. GEBHARDT,
Attorney. *Clerk.*

ENDORSEMENT

I allow this writ. Let it be sealed.
 Jan. 8, 1918.

CHAS. C. BLACK,
 J. S. C.

30

Due and legal service of the within writ on the Township of Maurice River in the County of Cumberland is hereby acknowledged this 12th day of January 1918.

LOUIS H. MILLER,
Tp. Atty.

The record and proceedings within mentioned as fully and entirely as before us they remain together with all things touching and concerning the same, to the Justices of our Supreme Court of Judicature, the Township of Maurice River in the County of Cumberland, doth certify and seal, as within it is commanded.

In witness whereof the said Township has caused its corporate seal to be hereto affixed and these presents to be signed by the Chairman of the Township Committee and attested its Clerk this day of January, 1918. 10

THE TOWNSHIP OF MAURICE RIVER,
[SEAL] By WILBERT CRUSE,
Chairman Township Committee.
Attest: J. H. SCHUMAN.
Township Clerk.

EXTRACT FROM TAX DUPLICATE OF Maurice River Township for 1913. 20

Name: Joseph Sutton
Number of Acres: 5
Value of Land Chance Homestead
 Propt. Lees 600
Value of Improvements 200
Value of personal prop.

Total value of real and personal property 800
State Tax (26) 2.08 30
County Tax (46) 3.68
Special School Tax (81) 6.48
Local Tax (63) 5.04
Dog Tax, number of dogs
Poll Tax
Total amount of Tax \$17.28

REPORT OF SALE FOR TAXES

Held in Dorchester Aug. 8th, 1914 by Ellis Boggs, Collector of Maurice River Township for the uncollected taxes against Real Est. in said Township assessed in the year 1913.

I gave public notice of time and place of the sale of the lands, tenements, hereditaments and real estate to be sold, by advertisement signed by my self in the Bridgeton
10 Evening News, a newspaper printed and published in the City of Bridgeton in Cumberland County, once in each week for five weeks successively next preceding the 8th day of August A. D. 1914. Being the day appointed for such sale, a copy of which said notice with proof of publication is hereto annexed.

I gave like notice of the time and place of said sale by copies of the said notice so advertised as aforesaid, signed by my self and set up in five of the most public places in said
20 Township, I also mailed a copy of said notice to each of the owners of said lands, tenements, hereditaments and real estate, directed to each of them at their last known post office address, respectfully with full postage prepaid thereon.

In pursuance of said notice I sold the premises assessed to Thomas M. Sharp Est to Joseph Henderson for the term in "fee" for the sum of Three 93-100 dollars. Being the amount due for tax, interest, cost, fee, charges and expenses, which sum the said Joseph Henderson paid to me.

30 Also in pursuance of said notice I sold the premises assessed to Jennie Wasner to Joseph H. Powell for the term of 30 yrs. for the sum of Nine 74-100 dollars being the amount due for tax, interest, cost, fees, charges and expenses which sum the said Joseph H. Powell paid to me.

I also sold the premises assessed to
Burto Bresnwidouce \$6.25 for the sum of six 25-100
Margaret Cross \$5.09 for the sum of five 09-100.

Carrie Van Drach \$3.35 for the sum of three 35-100.
Frank Lee Dickman \$3.93 for the sum of three 93-100.
Benjamin Downes \$4.51 for the sum of four 51-100.
Lucruto Francicas \$3.93 for the sum of three 93-100.
Jack Myres \$14.39 for the sum of fourteen 39-100.
Ray Carmella Wurtha \$3.35 for the sum of three 35-100.
Zebulon Polhamus Est. \$4.29 for the sum of four 29-100.
Linsey S. Reed \$5.09 for the sum of five 09-100.
Seth P. Sharp \$43.38 for the sum of forty-three 38-100.
Frederick A. Smith \$3.93 for the sum of three 93-100. 10
Sallie B. Smith \$16.72 for the sum of sixteen 72-100.
Adella Sutton \$5.09 for the sum of five 09-100.
Joseph Sutton \$37.65 for the sum of thirty-seven 65-100.
Joseph Sutton \$8.00 for the sum of eight 00-100.
Joseph Sutton \$21.37 for the sum of twenty-one 37-100.
Joseph Sutton \$21.37 for the sum of twenty-one 37-100.
Joseph Sutton \$13.23 for the sum of thirteen 23-100.
Joseph Sutton \$3.93 for the sum of three 93-100.
Joseph Sutton \$5.09 for the sum of five 09-100. 20
Joseph Sutton \$16.72 for the sum of sixteen 72-100.
Joseph Sutton \$19.04 for the sum of nineteen 04-100.
Joseph Sutton \$16.72 for the sum of sixteen 72-100.
Joseph Sutton \$39.97 for the sum of thirty-nine 97-100.
Joseph Sutton \$132.29 for the sum of One Hundred thirty-
two 29-100.
Seth P. Sharp \$6.23 for the sum of Six 23-100.
S. F. Simpson \$54.00 for the sum of Sixty 91-100.

To Maurice River Township for the term in "fee" 30
for the sum set opposite their respective names, being the
amount due for tax, interest, costs, fees, charges and ex-
pense, which sum the said Township of Maurice River paid
to me.

IN WITNESS WHEREBY I have hereunto set my
hand this 31st day Dec. 1914.

ELLIS BOGGS,
Collector of Taxes.

STATE OF NEW JERSEY }
 CUMBERLAND COUNTY. } ss.

ELLIS BOGGS, Collector of Taxes for the Township of Maurice River in said county on his oath deposes and says that the foregoing report is true in all respects.

Sworn and subscribed before
 me this 31st day of December
 1914.

ELLIS BOGGS,
Collector of Taxes.

10 J. H. SHUMAN,
Twp. Clerk.

SALE OF LANDS FOR UNPAID TAXES
 MAURICE RIVER TOWNSHIP

Public notice is hereby given by Ellis Boggs, Collector of Taxes of the Township of Maurice River, County of Cumberland, State of New Jersey, that at the time and place hereinafter mentioned in pursuance of the provisions of an act entitled, "An Act for the assessment and collection of taxes", approved April 8, 1903, and the Acts supplemental thereto and amendatory thereof, he will sell at public auction all the lands, tenements, hereditaments and Real Estate hereinafter mentioned, to make the taxes assessed thereon in and for the year 1913, and cost of collection and sale, lawfully chargeable against the same.

20 The said collector at the said sale will sell at public auction each parcel of Real Estate hereinafter described or any part thereof sufficient for the purpose, to any person or persons that will purchase the same for the shortest term and pay the tax lien, including interest, and cost of sale, or in fee where no one will bid for a shorter term.

30 Purchasers other than the Township of Maurice River are by law required to pay the tax with interest, cost and disbursements charged against each parcel purchased by

them before the conclusion of the sale or the property will be resold.

The said sale will take place in front of the store of C. W. Champion, in Dorchester, N. J., at 2.30 o'clock, P. M.

SATURDAY, AUGUST 8, 1914.

The said lands, tenements, hereditaments and Real Estate so to be sold and the names of persons against whom the said taxes have been laid and assessed on account of the same, and the amount of delinquent taxes laid or assessed on account of each parcel, are as follows. All assessed for the year 1913: 10

(Here follows description of a number of properties, names of owners, amounts, etc., including the following:)

Joseph Sutton, the Wm. Chance homestead, situated at Leesburg, containing about 5 acres..... 17 28

Interest at the rate of 12 per centum per annum, is due from the 20th day of December, 1913, to date of sale on each of aforesaid delinquent's taxes, and the same will be added to each such tax and said interest with cost of sale for each parcel, must be paid with said tax by the purchaser at the tax sale. 20

ELLIS BOGGS, Collector.

P. O. address, Port Elizabeth, N. J.

Dated July 7, 1914.

PROOF OF PUBLICATION

STATE OF NEW JERSEY }
COUNTY OF CUMBERLAND } ss.

30

F. A. Stanger, of full age, being duly sworn on his oath saith, that he is the Secretary and Treasurer of the Evening News Co., publishers of the Bridgeton Evening News, a newspaper printed and published at Bridgeton in the County of Cumberland, in the State of New Jersey; that the City of Bridgeton is the County seat of said County and is the municipality in said County having the largest

population by the last preceding federal and State census, and that the notice of sale of which the annexed is a printed copy, was published in said newspaper five times, at least once a week, during five consecutive calendar weeks, the last publication being not more than seven days prior to the time appointed for said sale, and that the dates on which said publication was so made as aforesaid are

July 9, 1914

July 23, 1914

July 16, 1914

July 30, 1914

Aug. 6, 1914

10

Subscribed and sworn to before
me this 8th day of August, A. D.

1914.

F. A. STANGER.

MARTHA B. HEWITT,
Notary Public.

Attached to the foregoing affidavit is a clipping from a newspaper of an advertisement in the same form as the printed notice of tax sale accompanying the report of the
20 Collector and hereinbefore set out and marked 1.

STATE OF NEW JERSEY }
COUNTY OF CUMBERLAND } ss.

J. H. Shuman, being duly sworn according to law, on his oath deposes and says that the foregoing is a true copy of a certain report of land for taxes filed with me by Ellis Boggs, Collector of Taxes of Maurice River Township, on the second day of February, nineteen hundred and fifteen,
30 at which date I was the Clerk of said Township.

Sworn to and subscribed before
me this day of January,
1918.

Notary Public of N. J.

STATE OF NEW JERSEY }
COUNTY OF CUMBERLAND } ss.

J. Herman Schuman, being duly sworn on his oath deposes and says that he now is and for the two years past has been continuously Clerk of the Township of Maurice River, New Jersey, and that he has knowledge of the facts set forth in this affidavit, and deponent further says that the sale referred to in the within notice and certificate of Tax Sale has not been redeemed.

J. HERMAN SCHUMAN. 10

Sworn to and subscribed before me this 8th day of January A. D. 1918.

ROBT. S. SCHILLER,
Master in Chancery of New Jersey.

MAURICE RIVER TOWNSHIP
NOTICE TO REDEEM

20

To Joseph Sutton; and to the owner or owners, mortgagee or mortgagees, occupant or other person having an interest in the lands sold for taxed and hereinafter mentioned.

You and each of you are hereby notified:

1. That the Collector of Taxes of the Township of Maurice River, in the County of Cumberland and State of New Jersey, at a public sale of real estate, made at Dorchester, N. J., in said Township, on the 8th day of August A. D. 1914, for the purpose of making certain taxes on account of which said real estate was assessed in said Maurice River Township in the year 1913, did strike off and sell to the Township of Maurice River in the County of Cumberland and State of New Jersey, all that certain real estate assessed to and described as follows, to wit: Wm. Chance, homestead situate in Leesburg, containing about 5 acres, was struck off 30

and sold to Maurice River Township for the term of in fee from the date of sale, the said Township of Maurice River in the County of Cumberland having bid and agreed to take the said real estate for said term to wit: in fee (said lands having then and there first been put up and offered for sale for a lesser term) and said municipality having bid and agreed to take said real estate for the shortest term of years for which any person would purchase the same and pay the amount of tax with interest thereon and cost of sale, and
 10 the Township of Maurice River, in the County of Cumberland having then and there paid therefor the sum of 17.28 Dollars before the conclusion of said sale, which amount was made up of the tax on the said real estate being the sum of

		\$17.28
	And of the interest thereon being the sum of	1.32
	And of costs, fees, charges and expenses, as follows, to wit:	
	Filing lien,	.07
20	Listing for publication,	.25
	Advertising,	1.00
	Selling .25; certificate .50,	.75
	Acknowledgement .50; Township Clerk, re- cording .10	.60
	Postage, stationery, and affidavits,	.10
	Total,	\$21.37

2. That the right of the owner or owners, mortgagee
 30 or mortgagees, occupant or any other person or persons having either a legal or equitable interest in the said real estate, to redeem the same, will expire on the 8th day of Aug. A. D., 1916.

3. That within ten days after the sale of said real estate the Collector of said Township did deliver to the Township of Maurice River in the County of Cumberland a certificate of sale under his hand and seal duly acknow-

ledged by him setting forth that the property named aforesaid had been sold by said Collector to the said purchaser, the name of the delinquent owner or owners the term for which sold, the year for which assessed and that the right to redeem would expire on the 8th day of Aug. 1916, which certificate of tax sale was recorded in the office of the Clerk of the County of Cumberland, New Jersey, on the 4 day of September, 1914, in Book 9 of Tax Certificates, at pages 491, &c.

4. That you the said owner or owners, mortgagee or mortgagees, occupant or other person having an interest in said lands sold for taxes, have yet a right to redeem said lands so sold for taxes as aforesaid, and that unless you or some or one of you do redeem said lands from said tax sale within the term of two years after said sale if this notice is served more than sixty days before the end of said term of two years, or within sixty days after the service of this notice if served later, your right of redemption will be barred.

10

20

5. That said lands may be redeemed from said tax sale by paying to the Collector, for use of said purchaser, its successors or assigns the amount of the purchase moneys shown on the tax certificate, with interest at the rate of eight per centum per annum thereon from the date of sale, together with such other expenses that may have been incurred by the purchaser, its successors or assigns, under the tax laws of the State, for recording fees, fees paid for service of notices necessarily served and the fees and expenses in ascertaining the owner or owners, mortgagee or mortgagees, occupant or other person having an interest or lien in or on said premises so sold for taxes, as provided by Section 57 of the General Tax Act of this State, as amended by Chapter 273 of the Laws of 1916.

30

IN WITNESS WHEREOF the Township of Maurice River, in the County of Cumberland by due corporate ac-

tion, has caused these presents to be signed by the Chairman of its Township Committee, attested by its Clerk, and its corporate seal to be hereto affixed, this 3d day of July, nineteen hundred and seventeen.

THE TOWNSHIP OF MAURICE RIVER
IN THE COUNTY OF CUMBERLAND,

[SEAL]

By R. S. HENDERSON,
Chairman of Township Committee.

Attest:

J. H. SCHUMAN,
Township Clerk.

10

STATE OF NEW JERSEY }
COUNTY OF CUMBERLAND } ss.

William Langley, of full age, being duly sworn according to law, on his oath deposes and says, that he is one of the Constables of the County of Cumberland, and resides in the Township of Maurice River in said County, and that he has made diligent and careful inquiry in order to ascertain the residence and post-office address of the persons named in the within notice, and this deponent says:

That he served the within notice on Joseph Sutton for Wm. Chance Homestead within named on the 25 day of April A. D. 1917, by delivering a duplicate of the same to him personally.

Sworn to and subscribed before me this 14 day of June, 1917.

WILLIAM LANGLEY.

30

J. H. SCHUMAN,
Notary Public.

Received in the Clerk's Office of Cumberland County, N. J., this 5th day of July A. D. 1917, at 3 o'clock in the afternoon and recorded in Book 137 of mortgages page 552 &c.

L. H. HOGATE,
County Clerk.

CERTIFICATE OF SALE OF REAL ESTATE
MAURICE RIVER TOWNSHIP

I, Ellis Boggs, Collector of Taxes of the Township of Maurice River, in the county of Cumberland, and State of New Jersey, do hereby certify that at a public sale of real estate made at Dorchester in said Township, on the eighth day of August, A.D., 1914, for the purposes of making certain taxes on account of which said real estate was assessed in said Maurice River Township in the year 1913, 10
all that certain real estate assessed to Joseph Sutton and described as follows to wit: the Wm. Chance Homestead, situate in Leesburg, containing about 5 acres, was struck off and sold to Maurice River Township for the term of in fee, the said Maurice River Township having bid and agreed to take the said real estate for the shortest term of years for which any person would take the same and pay the amount of tax, with the interest thereon and cost of sale. And I do further certify that the said Maurice River Township has 20
paid therefor the sum of twenty-one 37-100 dollars, which amount is made up of the tax on the said real estate being the sum of \$17.28

And of the interest thereon being the sum of 1.32

And of costs, fees, charges and expenses, as follows,

to wit:

Filing lien,	07
Listing for publication	.25
Advertising	1.00
Selling .25; Certificate .50	.75 30
Acknowledgement, .50; Township Clerk, recording, .10	.60
Postage, Stationery and Affidavits	.10

Total, \$21.37

And I do further certify that the right of the owner or owners, mortgagee, occupant or any other person or persons having either a legal or equitable interest in the said real

estate, to redeem the same, will expire on the eighth day of August A. D. 1916.

In witness whereof, I have hereunto set my hand and seal this eighteenth day of August A. D. 1914.

ELLIS BOGGS,
Collector.

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

10 Be it remembered, that on this 18th day of August in the year of our Lord one thousand nine hundred and fourteen before me, an Attorney at Law of N. J., personally appeared Ellis Boggs, Collector of Taxes in the Township of Maurice River in the County of Cumberland, and I having first made known to him the contents of the foregoing certificate of sale, he did thereupon acknowledge that he signed, sealed and delivered the same as his voluntary act and deed for the uses and purposes therein expressed.

20 J. ROY OLIVER,
Attorney at Law of N. J.

ENDORSEMENT
CERTIFICATE OF SALE OF REAL ESTATE
Maurice River Township
Ellis Boggs, Coll.
To
Maurice River Township

30 Received in the Clerk's Office of Cumberland County, N. J., the 4th day of September, A. D., 1914, at 9.45 o'clock in the forenoon and recorded in Book 9 of Tax Certificates, p. 49, &c.

SAMUEL M. SHELDON,
County Clerk.

Filed January 8, 1918, 10 a. m.

L. H. HOGATE,
County Clerk.

STATE OF NEW JERSEY }
CUMBERLAND COUNTY } ss.

I, L. H. Hogate, Clerk of the County of Cumberland, also Clerk of the Circuit Court and Court of Common Pleas in and for said County, the same being courts of record, do hereby certify the foregoing to be a true copy of the Certificate of sale of Real Estate, Notice to Redeem, and affidavit of non-redemption therein recited, as taken from and compared with the Original Certificate of Sale of Real Estate, Notice to Redeem and Affidavit of Non-Redemption 10
duly filed in my office January 8th, 1918, at 10 o'clock A. M. and to be duly recorded in its turn in the record of Deeds in and for said County.

[SEAL] In witness hereof I have hereunto set my hand and affixed the seal of said County and Courts this twenty first day of January, nineteen hundred and eighteen.

L. H. HOGATE,
County Clerk. 20

ENDORSEMENT

The within certified copy of deed filed in my office Jan. 23, 1918.

J. H. SCHUMAN,
Township Clerk.

EXTRACTS FROM THE MINUTES OF THE TOWNSHIP COMMITTEE OF THE TOWNSHIP OF MAURICE RIVER

* * * *

Leesburg, N. J.

March 7th, 1916.

The Township Committee met at the house of J. H. Shuman at 10 a. m. for the transaction of its regular business. Roll call showed all members present. * * *

10 Mr. Joseph Sutton came before the Committee in reference to his tax. It was shown that since his property had in various instances depreciated in value his taxes remained the same as though no depreciations had occurred. The matter was taken up and reviewed by the Committee.

Mr. Cruse then made a motion that a Committee be appointed to wait upon the Assessor with the idea of adjusting the matter. This motion was carried and adopted. Mr. Cruse and Mr. Newcomb being appointed by the Chair
20 The Committee previously advising Mr. Sutton that this was a matter for the County Board of Taxation to adjust.
* * *

Received from State Fire Dep't.	\$ 16.98
Received from Collector	100.00
Received from Collector	300.00
Received for land redeemed by Joseph Sutton	689.01
Of this amount \$102 was paid on account by Mr. Sutton June 1, 1915.	
Received from Mr. Sutton favor the Chance estate	35.00

30

Leesburg, N. J.

June 1st, 1915.

The Twp. Committee met at the house of J. H. Shuman at 10.30 A. M. for the transaction of its regular business. * * *

Received from Joseph Sutton \$102 on account of unpaid taxes favor Maurice River Township.

Leesburg, N. J.

Jan. 1st, 1917.

The Township Committee met at the house of J. H. Shuman at 10 a. m. for its regular business. Roll call showing all members present. * *

A motion was presented and carried that Mr. Sutton be notified to redeem the five pieces of property held by the Township for taxes before the first Tuesday in February or the Committee will thereafter immediately proceed to file affidavit.

10

Leesburg, N. J.

Febr. 6, 1917.

The Township Committee met at the house of J. H. Shuman at 10 a. m. for its regular business. Roll call showing all members present . * * *

Report of Committee.

Mr. Newcomb reported on the matter respecting the estate of Jos. Sutton. He promising to settle his account this day.

20

Leesburg, N. J.

May 1, 1917.

The Twp. Com. met at the house of J. H. Shuman for the transaction of its regular business. Roll call showed all members present. * * *

30

Wm. Langley reported that notice to redeem was served on Joseph Sutton for five pieces of property April 26, 1917.

Leesburg, N. J.

July 3, 1917.

The Township Committee met in regular session at 10 a. m. for the transaction of its regular business. All members were present at roll call. * * *

By order of the Committee the Clerk was ordered to inform Joseph Sutton that the five pieces of property on which a sixty day notice to redeem had been given. The conditions not having been complied with—that the Committee had proceeded to file affidavit at Bridgeton. Also to further state that all crops shall remain in ground and not to be removed by him. Also all rents, moneys, etc., accruing from same shall be turned over to Treasurer of Township as provided by law the properties having passed into the possession of the same.

The Committee also ordered that all tenants or those renting these properties the rents and proceeds to be turned over to the Township Committee. * * *

20

Leesburg, N. J.

Aug. 7, 1917.

The Twp. Com. met at the house of J. H. Shuman Aug. 7 for the transaction of its regular business. All members present at roll call. * * *

Mr. Sutton came before the Committee requesting that it accept his proposition to take over the five pieces of property lately coming in possession of the Township through the delinquency of Mr. Sutton.

The offer of Mr. Sutton was taken up and discussed. No final decision having be(en) reached, the members expressing themselves as follows:

Mr. Cruse gave his views saying that as to the Cemetery in particular should not be owned by a private individual but should be dominated by either the Twp. Com. or the

Trustees of the Church, so as to be an advantage to the community instead of private gain to the individual.

Mr. Newcomb in expressing his views stated that he had heard nothing contrary to Mr. Sutton's desire to redeem the property, except the Cemetery.

Mr. Henderson in expressing his views felt that he as a public servant should work for the interest of the Township rather than favor private individuals, and that the matter should be carefully investigated before any definite decision should be given. * * *

10

Continuation of preceding meeting Aug. 10 for the purpose of giving Mr. Arthur opportunity to complete reading the deeds for the Steelman purchase. * * *

Mr. Sutton also presented papers giving him the privilege to redeem certain properties held by the Township. These properties coming directly under the jurisdiction of the Township are the Chance Meadow and the Cemetery.

20

Sutton presented the names of those holding mortgages. They are as follows:

The mortgage for 1000 in Carlisle Plan is held by Idella Sutton, his wife.

John Chance property mortgage 200 held by Jos. Marshall est. of Tuckahoe.

The Cemetery Plot Sutton claimed was recorded in Bridgeton Jan. 2, 1903, Book No. 132 according to law.

It was moved and carried by the Committee that this information and title of properties be investigated before proceeding further.

30

Property known as Zadok Chance property mortgage for same held by Wm. B. Mayhew, Millville, N. J.

Leesburg, N. J.

9-4-17.

The Two. Committee met at 10 a. m. at the house of J. H. Shuman for the transaction of its regular business. Mr. Newcomb was absent at roll call—all other members present. * * *

Joseph Sutton presented himself again before the Committee concerning the redemption of the five pieces heretofore mentioned.

10 Mr. Henderson reported that the search of records disclosed the fact that J. S. Chance, Carlisle Place and Z. Chance properties he had the privilege of redeeming for the reason that they were mortgaged and the mortgagees had not been notified to redeem.

The report was then declared accepted filed and committee discharged.

Leesburg, N. J.

10-2-17.

The Township Committee met at the house of J. H. Shuman at 10 a. m. for the transaction of its regular business. Roll call showed all members present. * * *

30 In deferred business Mr. Sutton again came before the Committee in reference to the property hereinbefore mentioned. The Committee was disposed to allow him to redeem the properties mentioned except the properties of the Homestead and Meadow properties were objected to on the ground that they were now the properties lawfully owned by the Township.

It was moved and carried that the properties viz: the Carlisle places, J. D. Chance house and the Zadok Chance house that Mr. Sutton be allowed to redeem the three properties as authorized by the mortgagees. The other two properties viz. Homestead and Meadow be retained by the

Two. Committee and to be disposed of to the best advantage to Two. This motion was made by Mr. Cruse and seconded by the other members of the Com. Since the properties had legally come into possession of the Township. The Committee notified Sutton that he should not remove or dispose of any part or parcel of said property. * * *

The Clerk was ordered to notify Mr. Sutton's tenants Lore and Moore that since all liens and taxes had been paid the rents should recede to him.

Mr. Sutton asked for the privilege of using the three acres of homestead property for a nominal sum until the dispute is settled. 10

It was moved and carried that he be granted the privilege for the sum of Five dollars. * * *

Recd. from Joseph Sutton for land redeemed:

J. C. Chance property	65.64	
Zadock Chance	85.87	
Carlisle Plan	165.52	
Nine tax certifs. at 75c	6.75	
Searching	10.00	20
Sum for three acres Homestead	5.00	

Leesburg, N. J.

Dec. 4, 1917.

The Twp. Com. met in regular Session at the house of J. H. Shuman for transaction of its business.

Roll call showed all members present. * * * 30

Motion made and carried that the Committee dispose of Meadow property formerly owned by Jos. W. Sutton the same coming in possession of the Twp. through unpaid taxes.

The Committee offered him the privilege of purchase and to make the Township an offer in writing for the same by Dec. 20, 1917.

By virtue of purchase of the Wm. Chance Homestead property, the Twp. Com. will sell burial lots therein.

Persons desirous of procuring lots may do so application to the Clerk.

By order Twp. Committee.

Moved and carried that Mr. Arthur go to Bridgeton and make copy of Map of Cemetery. He to receive \$5.00 for same.

10 The notice of lots in Cemetery for sale to be printed by Evening News for one week, a dozen copies be sent to the Clerk, a marked copy to be sent to Mr. Sutton, also notice to be posted in five different places and one on the ground.

Leesburg, N. J.

Dec. 20, 1917.

20 The Twp. Com. met at 2.30 at the house of J. H. Shuman to receive bids for the filling in of a map for the Township of Maurice River. * * *

Mr. Sutton appeared before the Committee relative to his offer to M. R. Twp. wherein he agrees to pay Maurice River Twp. the sum of \$10.00 above the taxes, interest and costs on the Meadow land being possessed by M. R. T. for unpaid taxes the same being \$27.42 due Sept. 8, 1917.

30 Motion was made and carried to accept the same, being \$37.42. Sutton paying the same he was given the tax certificate for cancellation.

Mr. Arthur presented the map of Leesburg Cemetery which he was instructed to make for the Township the same needing further work to make it complete. Mr. Cruse was instructed to procure the same.

Motion made and carried to pay Mr. Arthur \$5.00 for services. * * *

Mr. Arthur for map of cemetery	\$5.00
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Leesburg, N. J.

Dec. 27, 1917.

The Committee met on this day to continue the work of preceding day.

There being no communications from the public a motion was made and carried to dispose of the Cemetery property lately acquired by the Committee of J. W. Sutton for the non payment of taxes.

The motion is herein appended.

Motion is hereby made that the Township Clerk notify the Trustees of the Leesburg M. E. Church, that the Township Committee is willing to dispose of the property held by the Township known to the public as the Chance Cemetery. Same being bounded on the North by Harris Ave., on the South by south-east Ave., and in the East as far as Chance Homestead property extends on a line with Harris Ave. and that the same shall be sold for a consideration agreeable to both parties, and that a maximum price shall be fixed upon the lots before the sale so as to benefit the several communities. 10
20

By order of Twp. Com.

Leesburg, N. J.

Jan. 1, 1918.

Committee met in regular session at the house of J. H. Shuman at 10 a. m. for the transaction of its regular business. 30

Roll call showed all members present except Mr. R. S. Henderson. * * *

Communication from the Trustees of Leesburg Church was presented by Mr. Newcomb.

The Trustees of the $\frac{3}{4}$ Church took into consideration the offer made by the Committee. They agreed to make an offer of \$100 to the Township for the Chance Cemetery.

They proposed not to charge more than \$40 for large lots and \$25 for small lots, 75% of the money chargeable for lots in the new cemetery to be placed in a fund and the interest therefrom to be used in the upkeep of the Cemetery and the other 25% to be expended in keeping up the general expense.

It was moved and carried that the proposition presented by Trustees of Leesburg Church to offer \$100.00 for the Cemetery be accepted by the Committee. The Township's
 10 Committee agreed to defend the title.

I, J. H. SHUMAN, Clerk of the Township Committee of the Township of Maurice River, in the County of Cumberland and State of New Jersey certify the foregoing to be true extracts taken from the Minutes of the Township Committee of said Township as compared with the original Minutes Book by me.

IN WITNESS WHEREOF I have hereunto signed
 20 my name and caused the seal of said Township to be affixed
 this _____ day of January, nineteen hundred
 and eighteen.
 [SEAL] *Township Clerk.*

There is also attached to the return a map which is marked as follows:

Copy of map of Leesburg Cemetery. Original map filed in County Clerk's office January 2, 1903, Record No. 152. This copy made December 5, 1917, from the original
 30 in Clerk's office by J. Wesley Arthur, surveyor.

This copy of the original map has been made for and by the directions of the Township Committee of Maurice River Township in accordance with the action of said Committee had at their regular meeting held December 4, 1917.

J. WESLEY ARTHUR, C. E.

Filed December 20, 1917.

J. H. SCHUMAN, *Township Clerk.*

NEW JERSEY SUPREME COURT

JOSEPH W. SUTTON,

Prosecutor,

vs.

TOWNSHIP OF MAURICE RIVER,
IN THE COUNTY OF CUMBER-
LAND,

Defendant.

ON CERTIORARI
DEPOSITIONS

10

Depositions taken in the above stated matter by consent of counsel this 27th day of April, A. D., 1918, at 10 o'clock A. M., at the office of Walter H. Bacon, Esq., No. 2 Pioneer Building, in the city of Bridgeton, N. J., before Edward I. Berry, Supreme Court Commissioner, in the presence of Walter H. Bacon, Esq., representing the prosecutor, and Louis H. Miller, Esq., appearing for the defendant.

It is agreed that the depositions shall be taken stenographically and the signatures of the witnesses waived.

30

SAMUEL M. SHELDON, Sworn.

MR. BACON. Mr. Miller, will you admit Mr. Sheldon's qualifications as civil engineer and land surveyor?

MR. MILLER. Yes, I certainly will.

By MR. BACON.

Q. Mr. Sheldon, did you make a survey for Joseph W. Sutton of the property at Leesburg, known as the Chance Homestead property, and also the Chance cemetery?

A. I did.

Q. When?

A. Well, you have got me guessing now; I didn't put
10 it on there.

Q. About when?

A. I have got the date here, Mr. Bacon,—March 26,
1918.

Q. Is this map which you have produced and handed me a map which correctly shows the result of the survey which you made of the property mentioned?

A. It does.

Q. What, if anything, did you find on the ground indicating any division line between what is known as the
20 Homestead property and the cemetery?

A. A line fence, and at the extreme south end there is a stone in the line of the West Jersey & Seashore Railroad Company's property.

Q. What, if anything, is there along the street to indicate that this property, which you have marked as a cemetery, is such cemetery?

A. There are two large posts at the entrance to the driveway, and a sign over the top of it says, "Chance's
30 Cemetery." I think that is what it says, "Chance's Cemetery."

Q. And what sort of fence is there along the street front?

A. An iron fence.

Q. From what point to what point does that fence extend, that iron fence?

A. Extends from the Methodist Church property east

along the south line of the street to the intersection of the road leading from Leesburg to Riggins' place.

Q. Is there a dwelling house property fronting on the road from Leesburg to the Riggins' place east of the cemetery and near to the entrance?

A. There is.

Q. Did you run that out?

A. Only the front and back lines, Mr. Bacon; I measured the front and back lines. The depth of the lots I took off of the deed.

10

Q. Does the westerly side line of that property run back to the cemetery line?

A. It does.

Q. And how is it indicated,—that is, how is the corner indicated?

A. At this point where it intersects, the southerly point where it intersects the line of the cemetery, there is a stone there. I don't think there is anything but a stake at the other corner.

Q. What other stones or marble monuments, if any, did you find in the division line of the cemetery?

20

A. I found one at the intersection of said line with the line of the railroad company's property.

Q. Any others—any other stones?

A. Yes, there is other stones; on the cemetery property, you mean?

Q. Yes.

A. There is another stone at the angle on the—well, I don't know.—wait a minute—I don't know exactly how to designate that, that is, to determine—these stones, I mean.

30

Q. I don't care particularly about the description of them; say how many you found.

A. All right, four, and this one would make five stones.

Q. You went on this property—

A. That is, on the cemetery property proper, now, five stones.

Q. Yes; when you went on this property which you have marked there as "Chance's Cemetery", what, if anything, did you find there which indicated to you that it was a cemetery or a burial place?

A. Lots of tombstones, monuments there, indicating graves, and also little walks running at right angles to each other, copings around the different lots to locate them.

10

MR. BACON. I offer the map, Exhibit P. 1.

(Said map so marked).

Cross-Examination.

By MR. MILLER.

Q. What is there between the point which I first indicate and which I ask the Commissioner to mark as A and the point which I secondly indicate and which I ask the
 20 Commissioner to mark as Point B, to indicate a dividing line or division between the three and fifteen-hundredths acre tract and the two and seventy-five-hundredths acre tract?

A. A line fence.

Q. What is there in the southern part of the lot marked "Methodist Church property"—is there an open lot or what?

A. That is a graveyard.

30

Q. An old graveyard?

A. An old graveyard.

Q. And is the sign, "Chance's Cemetery" eastward of the Methodist Church property lot at the foot of Church Street?

A. Yes.

Q. Is there a driveway along the east line of the Methodist Church property used for an entrance to the so-called Chance's Cemetery?

A. Yes; I don't think there is a driveway, but I think there is a walk which enters down there, and there is a gate right at the intersection of the east line of the church property with the south line of the street.

Q. A gate used for wagons?

A. No, just a small gate, and this is a foot way, I think; I don't think there is any driveway there. There is a driveway on the east part of the cemetery property and along the line fence dividing the three and fifteen-hundredths acre tract from the two and seventy-five-hundredths 10
acre tract.

Q. Is that used by wagons getting in the cemetery?

A. Yes.

Q. Have you made a search of that property, Mr. Sheldon?

A. I have not.

Q. What is the two and seventy-five-hundredths acre tract?

A. It represents—

Q. No, what does it consist of? 20

A. Oh, what does it consist of?

Q. Yes.

A. Nothing but farm land.

By MR. BACON.

Q. The area which you give to the cemetery is three and seventy-five-hundredths acres?

A. Three and fifteen-hundredths.

Q. Three and fifteen-hundredths acres—is that the area of the entire tract represented on your map irrespective of the burial lots which are actually occupied? 30

A. It is.

JOSEPH W. SUTTON, sworn.

By MR. BACON.

Q. Where do you live?

A. Leesburg, New Jersey.

Q. Cumberland County, New Jersey?

A. Yes.

Q. How long have you lived there?

A. Thirty-five years.

10 Q. What is your occupation?

A. At the present time I am superintendent of the State Prison farm at Leesburg.

Q. Where do you live with respect to the cemetery property and the Methodist Church property referred to in Mr. Sheldon's testimony?

A. Right opposite, across the street.

Q. Do you live then on the corner of Church Street and the road from Leesburg to the Riggins' place indicated on Mr. Sheldon's map, Exhibit P. 1?

20 A. Yes, sir.

Q. How long have you lived in that house?

A. Thirty-four years.

Q. What is there, if anything, at the entrance to the Chance Cemetery indicating that it is such cemetery?

A. Over the driveway on the entrance here is a big arch, with letters probably a foot square, "Chance's Cemetery."

30 Q. How long has that sign been there to your knowledge?

A. Well, I suppose fifteen or twenty years probably, I couldn't say sure about that, probably not that long.

Q. How long have you known this property to be a cemetery?

A. Twenty-five to thirty years.

Q. Are any members of your family buried there?

A. Yes, sir.

Q. What members?

A. I have a brother buried there and a father.

Q. Have you any children buried there?

A. I have two children buried in my own cemetery, a lot separate from my father's lot,—and my mother—I have a mother there.

Q. How many years ago was your father buried there?

A. I think twenty-four.

Q. And how long has it been since your brother was buried there?

10

A. Twenty-six, I think, twenty-five or six years.

Q. Do you know how many lots are actually sold there for burial purposes in what is known as Chance's Cemetery—

A. Somewhere about two hundred and thirteen, I think.

Q. Is there a map of the cemetery on file in the County Clerk's office?

A. Yes.

Q. You have seen it there?

20

A. Yes, sir.

Q. Who owns the portion of Chance's Cemetery not actually sold off in lots for burial purposes?

A. I own it, I suppose; I bought it.

Q. How did you acquire title to it?

A. I bought it from Mr. Bishop.

Q. Did you buy it from Sylvester Bishop?

A. Yes, sir.

Q. Is this paper which I have in my hand the deed for the property?

30

A. Yes, sir, that is the deed for the two properties.

Q. For two properties?

A. Yes.

Q. You bought two properties at the same time from Mr. Bishop, did you?

A. Yes, what is known as the Chance Homestead property and the cemetery.

MR. BACON: I offer in evidence deed from Sylvester Bishop and wife to Joseph W. Sutton, dated February 2, 1912, recorded March 15, 1912, in Book 320 of Deeds, page 478, including an entry on the back of the deed which reads as follows: "In compliance with the statute I have presented an abstract of the within deed to the Assessor of the taxing district therein mentioned. Samuel M. Sheldon, County Clerk."

10

(Said deed is marked Exhibit P. 2.)

Q. Referring, Mr. Sutton, to this deed, what is Lot No. 1 described therein?

A. It is known as the Chance Homestead property.

Q. What is given as the area?

A. Three acres, thereabout.

Q. No, what is given as the area?

A. "Containing about three acres."

20

Q. What is Lot No. 2?

A. Chance's Cemetery.

Q. What is the area given to Lot No. 2?

A. "Containing about two acres."

Q. To whom was the Chance Homestead property assessed for taxes in 1912?

A. Assessed to me.

Q. Were there any improvements on the Chance Homestead when you bought it in February, 1912?

A. Yes, sir, there was a dwelling house.

30

Q. What happened to that dwelling house between February, 1912, and May 20, 1912?

A. The house burned down.

Q. What did that leave on Lot No. 1 as improvements?

A. A little old stable and a brick wall, and a stone wall for an ice-house that burned down at the same time the house burned.

Q. What was the assessed value placed upon this Lot No. 1 by the taxing authorities of Maurice River Township for the year 1912?

A. \$800.

Q. Divided how?

A. Five acres on the Homestead property.

Q. No, but divided how—how much for land and how much for improvements?

A. \$600 for land and \$200 for improvement.

Q. Did you pay that tax as it was assessed?

10

A. Yes, sir.

Q. When?

A. Some time the following year, I couldn't tell you what date.

Q. Did you have any negotiations with the Township Committee looking toward a reduction of the tax because of the destruction of the buildings?

A. Yes, sir.

Q. With what result?

A. Well, they told me they would try to adjust matters with me. I had paid the taxes that year, and I didn't notice it when I paid it, but when I paid it I looked it over afterward and found that I was assessed for \$800, and I thought the taxes were too high, and they agreed to make that thing right if the law would allow them to.

20

Q. Well, Mr. Sutton, you did not pay that tax until after the property was advertised for sale, did you?

A. No, I guess not.

Q. I direct your attention to a printed advertisement of sale for unpaid taxes in Maurice River Township dated July 14, 1913, with the name Ellis Boggs, Collector, printed thereon, and I ask you to read into the record the advertisement of the sale for taxes of this Homestead property and Cemetery for the year 1912.

30

A. "Joseph Sutton, the William Chance Homestead and Cemetery, situated at Leesburg, containing about five acres * * * * \$15.55."

Q. Is this paper from which you have read one of the official advertisements of sale of land for taxes made in 1913?

A. Yes, sir.

Q. There are a number of ink marks on there opposite some of these lots; who furnished you with this, and who made those marks?

A. Mr. Boggs, he mailed that to me.

Q. Mr. Boggs, the Collector?

10 A. The Collector of Maurice River Township.

Q. He mailed this to you?

A. Yes.

Q. And what you have read there is the manner in which this particular property was advertised for sale for taxes for that year, is it?

A. Yes, sir.

Q. Mr. Boggs is present in the room here now, isn't he?

A. Yes, sir.

20 Q. Now, after that you paid the taxes for 1912, did you?

A. Yes, sir.

Q. Now, this property was again assessed to you in the year 1913, was it not?

A. Yes, sir.

Q. And did you allow it to be sold for taxes for that year?

A. Yes, sir.

30 Q. Was or was not the assessment the same for 1913 as it was in 1912?

A. Yes, sir.

Q. Were other properties of yours sold by the Township for the taxes of 1913?

A. Yes, sir.

Q. When were they so sold?

A. 1914, I think in August, the year that the taxes were due, or the year before—1913, and sold in 1914.

Q. Now, let's get it right; don't answer if you don't know. They were sold, weren't they, on August 8, 1914?

A. Yes, sir.

Q. And they were sold by the same Ellis Boggs, Collector, who made the previous sale?

A. Yes, sir.

Q. And in that advertisement this property was described, wasn't it, as follows: "Joseph Sutton, the Wm. Chance Homestead, situated at Leesburg, containing about five acres, \$17.28."?

10

A. Yes.

MR. MILLER. That is taken from the return, is it?

MR. BACON. From the return, yes.

Q. On April 25, 1917, did William Langley serve on you notices to redeem these five properties of yours from the tax sale made for the taxes of 1913?

20

A. Yes, sir.

Q. Have you those several notices to redeem here?

A. Yes, sir.

Q. They are on printed forms, aren't they?

A. Yes.

Q. And all alike?

A. Yes, sir.

MR. BACON. I ask Mr. Miller if he will admit that a copy of one of these notices to redeem, namely the one with respect to the Chance Homestead property, was included in his return to the certiorari and is printed in the book?

30

MR. MILLER. It is intended to be, but that one, I suppose, I ought to offer later.

MR. BACON. Well, you can offer it later.

MR. MILLER. Yes, unless you do it now. I think that one ought to go in anyway.

MR. BACON. I don't want to print it twice, is all; it is the same thing.

MR. MILLER. When the time comes, I suppose I will offer it.

MR. BACON. Well, do you admit that or
10 don't you?

MR. MILLER. I say, it is intended to be; I haven't seen it.

Q. Did you take off of these five notices a statement of the amount of taxes, interest and costs which you were required to pay in order to redeem these five pieces of land from the sale which was made for the taxes of 1913?

A. Yes, sir, I figured it up.

Q. What is the total amount that these notices to
20 redeem require you to pay?

A. \$107.43.

Q. Now, there is a statement in the notice that in addition to the fixed amount, you are required to pay eight per cent. interest and some charges accruing after the sale, isn't there?

A. Yes, sir.

Q. On May 19, 1917, what did you do, if anything
30 with respect to paying or attempting to pay the taxes and costs which you were required to pay in order to redeem these five pieces of property from this tax sale?

A. I went to the Millville bank and drew \$250 to take down to Mr. Henderson that evening.

Q. Have you in your hand the cancelled check which you gave to the bank when you drew out this money?

A. Yes, sir.

Q. Did you draw \$250 from the bank on that check?

A. Yes, sir.

Q. And did you take that \$250 with you to Leesburg?

A. Yes, sir.

Q. Now, to whom did you go for the purpose of redeeming these properties from this tax sale?

A. Mr. Henderson, Chairman of the Township Committee, at Port Elizabeth.

Q. Why did you go to him?

A. Well, I took the matter up with Mr. Schuman, the Township Clerk, and he directed me to Mr. Henderson, he knew the circumstances.

10

Q. When you got to Mr. Henderson's house, what did you do with this money, this \$250, and any other money that you may have had with you, if you had any other money that day?

A. Well, I took a statement I made, as near as I could figure it, and took the money and statement, laid it on the table, and he said when he looked at it that it wasn't enough.

Q. How much money did you lay down on the table? 20

A. I laid down the amount that was figured up on the list that I had: I don't remember just what that amount was.

Q. Was it more than \$107.43?

A. Yes, sir, it was more than that; I made it a great deal more than that.

Q. Was it less than \$250?

A. Yes.

Q. Did you or did you not lay the entire \$250 down for them to take out whatever there was due? 30

A. Not that evening, no; I laid the money down on the counter or on his table, what my list called for, what I figured up, took it out of my pocket and laid it there. He said, "That is not enough." Then I said, "I will have to ask you to give me a little extension of time, because I haven't enough money to settle it," for it was \$395, as near as he could tell.

Q. How much did he demand from you at that time in order to redeem these five properties from the tax sale?

A. He said he thought as near as he could tell by memory that it was \$395, and gave me a note to take to Mr. Schuman to see if that was the correct amount.

Q. I show you a paper writing in lead pencil, dated 5-19-17, addressed, "Mr. Schuman," purporting to be signed, "Yours, Henderson." Is that the paper which Mr. Henderson gave you?

10 A. Yes, sir.

MR. BACON. I will read it into the record:
"Mr. Schuman, You will remember the day that you and I went over Mr. Sutton's five properties and figured it up about, I think, \$395. You have the paper with the amount on it in my handwriting. I have explained it to him and he expects to settle at an early date. Kindly tell him the amount due from our data. 5-19-17. Yours, Henderson." I offer that.

20

(Said paper is marked Exhibit P. 3).

Q. Now, did you then go to Mr. Schuman?

A. I saw Mr. Schuman down at the Post Office one evening.

Q. That same evening?

A. No, some time later.

30 Q. And what conversation did you have with him about the amount that was due on these five properties?

A. He told me, if my memory serves me right, that there was about \$395, according to Mr. Henderson's figures.

Q. Did Mr. Schuman then or at any other time give you a statement showing you the amount they claimed that you would have to pay before you could redeem these lands from this tax sale?

A. This is a statement that I settled with, on what they would allow me to redeem, and the amounts are carried out.

Q. In whose handwriting is that?

A. I think that is Mr. Henderson's, the Chairman of the Committee.

Q. Now, what did you do, Mr. Sutton, between May 19, 1917, being the time that you made this tender to Mr. Henderson of a sum of money somewhat less than \$250, and the time when you actually did pay these taxes, to get a settlement with the Township Committee? 10

A. I went before the Committee several times and offered them the money for the face of their expenses and costs and taxes, and they would not accept it.

Q. Did you finally pay them some money in October, 1917?

A. Yes, sir.

Q. At that time or at any time previous were you handed this long slip of paper?

A. When I settled with them, that was the slip they handed me. 20

MR. BACON. I offer this long piece of paper in evidence.

(Said paper is marked Exhibit P. 4 for Prosecutor).

Q. On October 2, 1917, did you pay to Mr. Schuman \$333.78?

A. Yes, sir.

Q. Did he give you a receipt for it? 30

A. Yes, sir.

Q. Is that the receipt which you have in your hand?

A. Yes, sir.

MR. BACON. It is offered.

(Said paper is marked Exhibit P. 5 for Prosecutor).

Q. Are the sums which went to make up the item of \$333.78 for which receipt P. 5 was given, shown on Exhibit P. 4?

A. Yes, sir, they checked those up and gave me that as a statement to show that I had paid it and what the balance was due on the Homestead property.

Q. You paid then, did you, Mr. Sutton, to redeem from the tax sale of 1913, for the Zadok Chance property \$85.87?

10 A. Yes, sir, according to the way they figured it there.

Q. What was the taxes, interest and costs on that property as shown by the notice to redeem served on you?

A. \$21.37.

Q. You paid, did you, to redeem the John Chance property \$65.64?

A. Yes, sir.

Q. What was the amount called for by the notice to redeem?

A. \$16.72.

20 Q. You paid, did you, to redeem the Carlisle place \$165.52?

A. Yes.

Q. What was the amount for taxes, interest and costs stated in the notice to redeem?

A. \$39.97.

Q. In addition to the three sums which I have mentioned, there is also a charge of nine certificates at seventy-five cents, and an item of costs, \$10, is there not, included in your check?

30 A. Yes, sir.

Q. Now, on this same sheet there are the following words and figures, aren't there: "Due September 8, 1917, Meadow land, \$27.42, Chance Homestead, \$71.57," added up \$98.99?

A. Yes, \$98.99.

Q. What did Mr. Henderson tell you that these figures that I have just read represented?

A. For the redeeming of the three properties.

Q. No, this last?

A. Oh, that was for the balance that was due them for the Homestead property and the meadow.

Q. Now, for the meadow, they wanted \$27.42; what is the amount named in the notice to redeem?

A. Eight dollars.

Q. For the Chance Homestead they demanded \$71.57?

A. Yes.

Q. What is the amount named in the notice to re- 10
deem?

A. \$21.37.

Q. Now, Mr. Sutton, did you ever confer with the Township attorney with reference to redeeming these lands from this tax sale?

A. Yes, sir.

Q. When was that?

A. Sometime, I think, in July.

Q. What did he tell you to do?

A. He told me to go get legal tender and offer it to 20
the Committee for my taxes, legal tender bills, money.

Q. Did you do that?

A. Yes, sir.

Q. When did you do it?

A. I drew a check on the 8th of August, and I couldn't say—that wasn't the day that I went before the Committee, but I went in a few days after that, or whenever they met, and offered them the gold certificate money for to pay the bill.

Q. Was that what the Township attorney advised you 30
to do?

A. Yes, sir.

Q. For how much is that check?

A. That check is \$400.

Q. Did you get gold certificates from the Bank?

A. Yes.

Q. From the Millville National Bank?

A. Yes.

Q. Did you take those gold certificates to the Township Committee?

A. Yes.

Q. Now, what did you do with them?

A. Took them there and offered them to them for to square this matter up in full for all taxes and costs.

Q. Did you display the money?

A. Yes, sir.

10 Q. How did you do it—what did you do? What did you actually do?

A. I took it out of my pocket book and told them I had the cash to settle up the taxes and costs to date, and they said they wouldn't receive it on that date because they wanted to look up some records.

Q. What else did the Township attorney, if anything, do while you were in his office with respect to writing a letter to the Township Committee?

20 A. I heard him dictate a letter to his stenographer and advise the Township Committee to take my money for the taxes.

Q. And did you suppose, therefore, when you went down with this money that they would take it?

A. Certainly, of course, I didn't think anything else.

Q. How much money did you actually tender when you went there with this \$400.?

30 A. Why, I had \$400, \$200 in \$100 bills, and the other was \$50's, and I laid a hundred dollar bill down for them to take the balance what they couldn't take out, after they settled for that part, laid the hundred dollars down for them to take ninety-eight, the balance of that last there.

Q. The \$98.99?

A. Yes, I laid a hundred dollar bill down for them to take that amount of money out of it, settle it in full.

Q. And did that hundred dollar bill cover the demand which had been made on you for the taxes on the Chance Homestead property?

A. Yes, sir.

Q. And they never did take it?

A. No.

Q. What has the Township Committee done to your knowledge to indicate that they claim title or ownership or right of possession of this Chance Cemetery?

A. I find on record where they have filed that tax lien.

Q. And have you seen in the newspapers an advertisement of the sale of these cemetery lots by the Township Committee?

10

A. No, sir, I didn't see that.

Q. Well, I show it to you then; I show you a copy of the Bridgeton Evening News, dated December 6, 1917, and direct your attention to an advertisement appearing in that paper which reads as follows: "Notice. By virtue of purchase of the William Chance Homestead property situated in Maurice River Township, the Township Committee will sell burial lots therein."

"Persons desiring to procure lots may do so by applying to Township Clerk." Then in large capital letters, "BY ORDER OF TOWNSHIP COMMITTEE. 12-6 d. 5 t." Have you had any talk with any of the Township Committee in which they have told you what their purpose and intention was with respect to this property?

20

A. Yes, sir.

Q. What have they told you?

A. Why, Mr. Cruse said, Mr. William Cruse—

Q. A member of the Township Committee?

A. Yes.

30

Q. What did he tell you?

A. He told me that if they could hold that cemetery they expected to do so for the Township.

Q. Who else told you anything about it?

A. And Mr. Henderson; he was one that said he was willing to give it up, he thought they ought to do it when I had the conversation with him.

Q. What, if anything, do you know about an attempt to sell it to the Methodist Church?

A. Well, I understood the Methodist Church appointed a Committee, they asked them to appoint a Committee to wait on the Committee to buy it for the Methodist Church people.

Q. To whom was this Chance Homestead, including the cemetery, assessed for taxes in the year 1917?

A. Assessed to me.

10 Q. Have you here, have you produced and handed to me two tax notices and the judgment of the County Tax Board with respect to the taxes on this Homestead and cemetery?

A. Yes, sir.

Q. The bill which you first received was for an assessment of five hundred dollars on the Chance Homestead, containing five acres, was it?

A. Yes, sir.

20 Q. And then did you appeal to the County Tax Board?

A. Yes, sir.

Q. And was a notice served by you of the appeal on the Township Clerk?

A. Yes, sir.

Q. Did the County Tax Board meet thereafter at Leesburg?

A. Yes, sir.

Q. Did you appear?

A. Yes, sir.

30 Q. Was the Township represented?

A. Mr. Reeves, the Township Assessor, was there.

Q. Was this matter presented to the Tax Board at that time?

A. Yes, sir.

Q. Did they go and view the property?

A. Yes, sir.

Q. Did they set aside the assessment on the cemetery?

A. Yes, sir.

MR. MILLER. Well, I don't think that ought to go any further; I object.

Q. Does that appear by the judgment of the Tax Board which you have here?

A. Yes, sir.

MR. MILLER. I object to that as a conclusion, as to the effect of any judgment by the County Board. I object to the testimony because it has no force or relevancy touching the present issue.

10

Q. Did the Tax Collector afterward send you a bill for the taxes on the Homestead property?

A. Yes, he gave me a bill; he renewed the bill, gave me a new bill.

Q. Gave you a new bill?

A. And receipted it, and I paid the taxes on that and on the other property.

Q. Is that the signature of Ellis Boggs, the Collector, to this tax bill?

20

A. Yes, sir.

Q. And did you pay the taxes to the Collector?

A. Yes, sir.

Q. On the 20th of January, 1917?

A. Yes, sir.

Q. On the Chance Homestead property?

A. Yes, sir.

Q. After the assessment on it had been reduced to \$200?

30

A. Yes, sir.

MR. BACON. I offer the two tax bills and the judgment of the County Tax Board as one Exhibit.

(Said papers are marked together Exhibit P. 6).

Q. The signature to the judgment of the County Tax Board is the signature of the Clerk of the Board, is it?

A. Yes, sir.

Q. You paid that tax on December 20, 1917, did you?

A. Yes, sir.

Q. And it was accepted by Mr. Boggs, the Collector, who was the man who had sold or undertaken to sell this same property for taxes?

A. Yes, sir.

10 Q. Now, Mr. Sutton, was there any other matter in difference between you and the Township Committee with respect to the taxes on any other property which affected in any way the settlement of the taxes of 1913?

A. Yes, sir.

Q. On these five properties, including the Chance Homestead and cemetery?

A. Yes, sir.

Q. How did that controversy arise, and what amount of money was involved?

20 A. Why, at the Sheriff's sale there was \$92. or thereabouts due on twelve pieces of land that were sold by the Sheriff subject to these taxes.

Q. Mr. Sutton, you are now talking about a sale which Mr. Bacon, as attorney for the Millville National Bank, made of twelve properties which belonged to William Chance, are you?

A. Yes.

30 Q. And they were sold by the Sheriff at public sale and bought by different persons?

A. Yes.

Q. You bought how many of them?

A. Two.

Q. And how many properties were there altogether?

A. Twelve.

Q. The twelve properties had been assessed to William Chance, had they not?

A. Yes.

Q. And did this controversy arise over a proper adjustment of the total tax, and the apportionment of it between the purchasers of the twelve lots?

A. Yes, sir.

Q. How much of that \$92. had they assessed you?

A. \$71.60.

Q. Although you only bought two pieces?

A. Two pieces, yes.

Q. And how much did they finally accept?

A. Thirty-five dollars.

10

Q. When did they take the thirty-five dollars?

A. Well, I gave them a check for it; I can't remember the date.

Q. (Showing witness paper). Is that the check?

A. Yes, sir.

Q. That is March 7, 1916, is it?

A. Yes, sir.

Q. Thirty-five dollars?

A. Yes.

Q. And the check which you have in your hand is a cancelled check drawn by you to the order of Howard Newcomb, and endorsed, "For deposit to the credit of Maurice River Township"? 20

A. Yes.

Q. Now, how many years was that a matter of controversy between you and the Township before they settled it?

A. I took it up with the Committee as soon as the sale was over, and asked them to have Mr. Reeves, the Assessor— 30

Q. When was the sale over?

A. 1912; I could tell you by the deed.

Q. Well, it was 1912, was it?

A. Yes.

Q. And you were four years getting that matter adjusted, were you, with the Township Committee?

A. Yes, sir.

Q. Was or was not that a matter of debate and discussion between you when you were trying to settle these other taxes?

A. Yes, sir.

Q. You stated earlier in your examination that after the Homestead burned down, you undertook to have these taxes adjusted and reduced because of that fact. What promises, if any, did various members of the Township Committee make to you about that?

10 A. They told me that they would adjust it, and the Township Clerk was Mr. Samuel Foster at that time, and he said the only way he could see that they could do it legally would be to sell the property and then adjust the matter, get it in the Township's hands and turn the property back to me. That was the old Committee, two of them, Grassman and Mr. William Carlisle, and Mr. Cruse and Mr. Henderson have been elected in their places since that time. Of course, that was news to them when I took the matter up with them.

20 Q. And did you ever get that matter adjusted with them?

A. No, sir.

Cross-Examination.

By MR. MILLER.

30 Q. Mr. Sutton, you claim the ownership of this property which you refer to as the cemetery under the deed Exhibit P. 2, don't you?

A. Yes, sir, that is the title I had for it.

Q. You don't claim that this property is owned by a corporation, a cemetery association of any kind?

A. No.

Q. You claim personal ownership?

A. Yes, personal ownership.

Q. Now, in what part of the premises, the three and fifteen-hundredths acre lot, are the bodies buried that you say are buried there?

A. All the way down here and down to here (Indicating on plan); scattered around different parts of the cemetery.

Q. Won't you indicate by check marks, make X marks where—

A. Well, I could tell you from the original map I sell from.

10

Q. Have you such a map here?

A. Yes.

MR. BACON. I call Counsel's attention to the fact that he attached to the return a map which is certified by the Township Surveyor to be a correct copy of the map in the County Clerk's office.

Q. You mean the original map you have of the cemetery property, so-called? 20

A. That is the map of the property.

Q. And you have such a map, have you?

A. That is it, yes, sir.

Q. That is it right here?

A. Yes.

Q. Where are bodies buried?

A. All over; these lots are marked up to the man who purchases them, or the woman.

Q. That is, wherever there is a name written on a designated lot, there a sale has been made? 30

A. Yes.

Q. Can you say that a burial has been made in every instance?

A. Not all of them, no, there has not.

Q. But in a great many of these instances, a body has been buried, is that true?

A. Yes, but there is some who bought them to get them in a location near their friends that haven't had no deaths in the family.

Q. Now, may I ask this question: In every case where a name appears on this map, title has passed to someone, some person other than you, is that true?

A. Yes.

Q. So that you really don't claim ownership to all of the lands described in the deed Exhibit P. 2, do you?

10 A. Yes, I claim except what Mr. Chance sold before I bought it, the number of lots Mr. Chance sold before I bought it.

Q. I see, except what Chance sold?

A. Yes.

Q. Now, what about these others, those where there is writing in blue ink, what are those?

A. They were sold by—

Q. Chance?

20 A. Some sold' by me, some by Chance. I don't know just what lots were sold on there by Chance. I think there was somewhere about probably a hundred and fifty or sixty lots, or a hundred and thirteen lots sold, and I sold somewhere around fifty since I have owned it, something like that; I couldn't tell you exactly.

Q. I see. Well, now, Mr. Sutton, this so-called cemetery adjoins or is built right up against the cemetery that is in the rear of the Methodist Church, isn't it?

30 A. No, sir, adjoins the cemetery, the Church cemetery. There is where it adjoins the Church cemetery (Indicating on plan).

MR. BACON. I didn't hear you; you will have to talk louder than that, Mr. Sutton.

THE WITNESS. I say, it adjoins the Church Cemetery on the northeast side and the south side.

Q. What is there between the Methodist Church Cemetery and what you call the Chance cemetery, a fence or line of demarcation of some sort? If so, what?

A. Corner stones.

Q. But is there any iron fence or board fence to separate them?

A. Not between the two, no.

Q. Then the two cemeteries appear to the eye as one property, do they?

A. No, there is a driveway between them.

10

Q. Except for the driveway?

A. Yes.

MR. MILLER. I offer in evidence the map which Mr. Sutton has produced and ask that it be marked as an Exhibit for the defendant.

(Said map is marked Exhibit D. 1 for identification).

MR. MILLER. I ask the witness to produce the notice to redeem the Chance Homestead property referred to in his testimony.

20

MR. BACON. The answer is, it is produced. Now, go on and ask him questions. I will give it to you as soon as I find it.

Q. That notice was served, you testified, on the 17th day of April, 1917, was it?

A. Yes.

Q. Within sixty days after the service of that notice, do you say that you tendered to the Township Committee any sum of money?

30

A. Yes, sir.

Q. How much money, now, within the sixty day period?

A. On the 19th of May following.

Q. And how much did you tender?

A. The amount, I couldn't tell you what it was. He figured it up on a piece of paper and said it wasn't enough, and I let them figure it at that time.

Q. It was less than \$250. and more than \$107.?

A. What I figured it up, it amounted to a hundred and some dollars.

Q. I say, the amount you tendered' was less than \$250.?

A. Yes.

10 Q. And more than \$107., you testified; is that correct?

A. That is the way I figured it. I probably might have made a mistake in figuring up the interest; I am not very exact on figures.

Q. And that amount you tendered in satisfaction for all the property?

A. The five pieces.

Q. And what was the manner of your tender? What did you do, I mean?

20 A. Well, I took it up to Mr. Henderson, the Chairman of the Committee.

Q. At his house?

A. Yes.

Q. What did you say or do there?

A. What did I say?

Q. With relation to the tender, I mean?

30 A. Well, I went in and told him I had come up to settle my taxes, and I laid the list down there what I had, and laid the money down, and he looked it over, and said, "Mr. Sutton, this is not enough; if my memory serves me right," he says, "this amount of taxes amounts to more than that; you haven't got it figured right." I said, "Well, if that is the case, then, Mr. Henderson, I will have to ask you to extend a little more time to me." He said that was all right; he said, "As long as you are willing to pay eight per cent. interest and the Township can get what money they want for six, we won't—

Q. I see. Mr. Sutton, you never did, as far as you have testified, make any tender to the Township Collector, Mr. Boggs, did you?

A. Well, I was directed by—

Q. I would rather have an answer to the question.

(Question repeated).

Q. Now, did you ever make such a tender to Mr. Boggs after the service of the notice to redeem?

A. No, I was directed to Mr. Henderson; that is why I went there. 10

Q. Mr. Sutton, you have testified that you came to the Township attorney in August about this redemption; you mean myself, don't you?

A. Mr. Miller, yes, sir.

A. I told you that I supposed that the Township would take the money if you tendered it, didn't I?

A. Yes.

Q. And I told you I had never known a municipality to refuse a tender of delinquent taxes, didn't I? 20

A. That is what you said, yes.

Q. I then directed you to the Committee because the time for redemption had expired, in order to get their authority to Mr. Boggs to satisfy the taxes; isn't that correct?

A. I don't remember that.

Q. You don't know the reason why I directed you to them?

A. No. 30

Q. Don't you recall that I said you would now have to go to the Committee since the sixty day period had lapsed in order to get authority for a settlement of the taxes—you don't remember that?

A. I don't remember just what you said, Mr. Miller, about it.

Q. Now, Mr. Sutton, the only reason the Committee did not permit redemption of the so-called cemetery grounds

was that the public had become interested and thought they would rather have the Church own it than to have private ownership?

10 MR. BACON. I object to that on the ground that this witness has not yet shown any qualification to state what the reasons were which actuated the Township Committee in their designs, and unless Mr. Sutton is first qualified as a mind-reader he is hardly competent to testify. I have no objection to his testifying as to what the Township Committee told him.

20 MR. MILLER. That is very good. I would like to say he has already been qualified by Mr. Bacon when he attempted to set up evidence from which might be inferred malice on the part of the Township Committee, evidence from which the Supreme Court might be asked to infer that they maliciously refused to permit him to redeem. Since that line has been taken by Mr. Bacon, I propose to show that the Township Committee was merely influenced by a proper motive, and inspired by the public sentiment prevailing, and I therefore ask that the Commissioner direct him to answer, if he knows.

A. I can't tell you, only what Mr. Cruse told me, Mr. Miller; he told me that he thought it would be well for the Township to have it; he thought I was making too much
30 money out of it by selling it; that is what he told me.

Q. Did he tell you that the Township had arranged or bargained to sell this cemetery for the nominal sum of one hundred dollars to the Church?

MR. BACON. I object to that on the ground that it is not proper crossexamination, and that the testimony sought to be elicited cannot in any way affect the validity or invalidity of the sale.

A. No, he never told me that.

Q. Is this the only property that has been used as a burying ground in Leesburg in the last ten years?

A. There is a cemetery at the P. M. Church.

Q. You mean the M. P. Church?

A. No, the P. M. Church up further, but I don't recall anybody being buried there for a number of years.

Q. Is there a burying ground at Dorchester?

A. No, sir.

Q. That is distant about one mile from Leesburg, isn't it? 10

A. Yes, sir.

Q. Mr. Sutton, this burying ground in the last ten years has been used by families from Heislerville and sections two or three miles around Leesburg, hasn't it?

A. They buy cemetery lots there from all over the Township, some of them, no matter where they come from, I sell them lots. It is not a question of where they live.

Q. And whatever the outcome of this suit might be, you are willing to concede that the Township Committee has been trying to act in response to a public sentiment down there touching the ownership of the cemetery, aren't you? 20

MR. BACON.. I object to that on the ground that it has no bearing whatever upon this issue, which is one of legality.

MR. MILLER. The testimony is offered merely to rebut the suggestion that might be contained in the testimony brought out by the Prosecutor, the suggestion that there was some malice on the part of the Township Committee. 30

(Question repeated).

A. No, sir, I wouldn't place it that way to my knowledge.

Q. Now, Mr. Sutton, all of these lots on Exhibit D. 1 on which no names are marked are not yet used for burial purposes, are they?

A. Some of them are, because I don't mark them until they pay for them; some hasn't paid for them yet.

Q. Indicate those, won't you, where there were burials and not paid for?

A. Some over on this line (Indicating).

Q. Well, point them out and give the number.

10 A. I couldn't do that here, Mr. Miller; I have a record of that at home. I think there is one in that section and one in that, and probably one here.

Q. Pointing at—what do you call that, Lot 14?

A. This is 14.

Q. Pointing to Lot 14; is that what you mean now?

A. That is one hasn't had no deed for it (Indicating).

Q. How is that numbered?

A. It runs in sections, plots; they are sold by numbers and plots; Section 2, Plot North-east.

20 Q. That was lot what now of that section?

A. 14.

Q. Lot 14 of Section 2 Northeast?

A. Yes.

Q. Can you point out any other one?

A. Now, I didn't sell that lot; that was before my day; I bought the remainder of Mr. Chance's property here and that lot was sold to Mr. Polhamus, but he never paid for it, he never got a deed for it, and it wasn't marked on the map, see?

30 Q. Well, point out another one.

A. Over here somewhere a man by the name of Henderson buried two children there when Mr. Chance had it.

Q. Where is that?

A. Over here in this section somewhere; I don't know just which lot it is.

Q. That is Section 1?

A. I don't know just where it is.

Q. Either Lot 1 or Lot 8 you point to; that is right near the Church land, isn't it?

A. That is the third row from the Church yard.

Q. The third row from the Church yard?

A. Yes.

Q. Any more?

A. I don't know of any others.

Q. Except those two lots then, all of the other plots where names are not marked do not contain the remains of persons who have died, and hence those lots are not burial grounds, are they? 10

A. Yes, sir.

Q. Well, there is nobody buried in them?

A. Well, they are mapped there for that purpose.

Q. Oh, you mean mapped there by you and Mr. Chance?

A. No, mapped there by Mr. Chance; I had nothing to do with that map.

Q. You mean that they are laid out on this map as lots that you intend to sell for the purpose of burial grounds—that is what you mean, don't you, Mr. Sutton? 20

A. That is what I bought it for, yes, sir.

Q. These taxes having been assessed in 1913, you made no application to the taxing authorities, that is to say, the County Board of Taxation—

A. I made my application—

Q. For an exemption of this land, did you, speaking of 1913 taxes?

A. I made my application to the Township Committee to adjust that matter, sir; the question has been open from that time on for an adjustment. 30

Q. What proceedings, if any, have you ever instituted before the Township Committee that you can point out? What proceedings do you say that you have brought before the Township Committee for a separation or a setting apart of the three and fifteen-hundredths tract from the two and seventy-five-hundredths acre tract?

A. Well, I have always understood that cemeteries were not assessable, and that is a matter I brought up before the Committee one time.

Q. How did you bring it up—what did you do?

A. I brought it up when I met them and talked the matter over at different places.

Q. You mean you appeared before them at some place and offered that?

A. I talked to the Committee at different times when
10 I met them on the subject, when they were not in session.

Q. But you never brought it formally before the Township Committee?

A. If my memory serves me, I did when we got into this dispute later on.

Q. Well, when do you mean, Mr. Sutton?

A. Well, I couldn't give you the dates.

Q. You filed no written petition accompanied by any map asking for a separation of it, did you?

A. No, sir.

20 Q. Now, Mr. Sutton, with respect to the amount of moneys you paid to the Township Committee or some members of it for the redemption of the other four tracts, you have stated that it was in excess of the amount stated in certain notices to redeem. Was that because you paid the taxes subsequent to 1913, that is to say, when you redeemed these other parcels you paid the taxes of 1914, 1915 and 1916?

A. I would answer that question this way: They did
30 all the figuring. He told me what it was, I handed him over the money and he gave me a receipt for it, that is all: I didn't figure it at all.

Q. That is true—it covered the subsequent taxes, didn't it, as you understood it, paid up to date?

A. I suppose—I don't remember what date it was, for that matter.

Q. You did not understand then that you were squaring up your taxes to date?

A. I understood I was squaring up that delinquent list.

Q. Did you get a receipt from Mr. Boggs?

A. Got a receipt from the Township Clerk.

Q. That is all you got, is it?

A. Yes.

Q. Well, in making your settlements, Mr. Sutton, you have not dealt with the Township Collector then, have you?

A. Sometimes, yes, but this matter was in the Township Committee's hands; I settled directly with them. 10

Q. You mean where there had been sales?

A. Yes.

Q. And the period of redemption had gone by, you mean?

A. No, I went there to settle before that period. I didn't have money enough to settle that in full, and they told me they would extend the time for me. I had money enough to pay what I figured it up, but it was more money the way they figured it than I had figured it. 20

MR. MILLER. I offer in evidence the notice to redeem produced by the Prosecutor, and which he says was served on the 17th day of April, 1917.

Q. You don't remember the date, do you, Mr. Sutton, of service, about?

A. No, I don't remember the date.

Q. It was in April, 1917?

A. Yes. 30

MR. MILLER. I offer that.

(Said paper is marked Exhibit D. 2 for Identification).

MR. BACON. I tender to Counsel, if he wants them, the other four notices to redeem.

MR. MILLER. Well, let me see what they are.

MR. BACON. That is precisely the same form, and I have correctly stated in the testimony the amounts which are called for by the several notices. They are on printed forms and all alike excepting the descriptions of the property and the amounts, but I am entirely willing that they shall go in if Counsel wants them in.
 10 I left them out merely as a matter of economy.

Q. Well, Mr. Sutton, when you settled for the properties redeemed in October, 1917, that was after the time limited in the notices to redeem had expired, wasn't it?

A. That was the earliest date that I could get a settlement with the Township Committee; they wouldn't take the matter up—

Q. And they gave you receipts which are endorsed in each case either on the notice to redeem or on the certificate of sale, didn't they?
 20

A. I don't understand the question.

Q. They gave you receipts endorsed in each case either on the notice to redeem or on the certificate of tax sale?

A. They gave me a receipt on a piece of paper there for the amount that I paid them, and wrote on them to cancel the certificate, and I presented them to the County Clerk's office and had them cancelled.

Q. Well, this authority to cancel was endorsed on either the notice to redeem or on the certificate in each case, wasn't it, where you did make redemption?
 30

A. Yes.

Q. Under the seal of the Township?

A. Yes.

Q. So that in addition to the receipt you offered, you had this other receipt under the seal of the Township, endorsed, as I say, either on the notice or on the certificate?

A. They gave me a receipt for the amount of money

I paid them on these accounts, which I thought was too much; I thought I over-paid them.

Q. Yes, and they also gave you an endorsement on either the notice to redeem or the certificate, didn't they?

A. I didn't get that question.

Q. Authorizing the Clerk to cancel the taxes of record?

A. I don't think they gave it to me on the notice to redeem; if they did, they made a mistake, I think, because they undertook to give it on the tax warrant, I think you called it there, Mr. Bacon. 10

MR. BACON. The certificate of tax sale.

THE WITNES. The certificate; that is what they aimed to do.

Q. Well, I show you one of the notices you have produced, a notice to redeem, and call your attention there to an endorsement showing the payment of the tax with authority to cancel. Now, that was given to you, wasn't it? 20

A. Well, Mr. Schuman fixed that with Mr. Henderson; I didn't do it.

Q. Yes, under the seal of the Township?

A. That was the day I was there to settle.

Q. But you think that was a mistake and should have been on the certificate, do you?

A. Well, I suppose they gave it to me on the other certificates, and I had them cancelled.

Q. These five properties you have had cancelled of record, haven't you? 30

A. No, I haven't had the Homestead property cancelled; I haven't had it.

Q. Well, the four you redeemed, you cancelled them of record in the County Clerk's office?

A. Yes.

By MR. BACON.

Q. Mr. Sutton, in response to a question on cross-examination you testified that you paid \$333.78 on October 2, 1917, which was several weeks after the time for redemption had expired?

A. Yes, sir.

Q. Why didn't you pay the taxes on the Chance Homestead property at that time?

10 A. They wouldn't accept it.

Q. Did they make any objection to accepting the taxes on the other properties?

A. They were going to hold them all, but there happened to be a mortgage and they hadn't notified the mortgagees; they said it wasn't legal and they couldn't hold them; they would have to give them up.

Q. What had been said to you, if anything, about extending your time for the payment of these taxes if you would pay the interest?

20 A. They told me they would extend the time as long as I was willing to pay eight per cent., providing they could get money from the Millville Bank for six per cent., and it wouldn't be any detriment to the Township to do so.

Q. And did you therefore rest easy about these taxes?

A. Yes, sir.

By MR. MILLER.

Q. When was that, Mr. Sutton?

30 A. That was in May when I went up to settle the taxes and hadn't money enough.

Q. That is what you mean Henderson told you at his house—is that what you mean?

A. Yes.

Q. That wasn't at a meeting of the Committee—that was when you talked to Henderson at his house?

A. I talked to Henderson about it and talked to Mr. Newcomb about the same subject at Leesburg.

Q. Where did you talk to Newcomb, at his house?

A. At the Post Office.

Q. At the Post Office?

A. Outside the Post Office, yes, sir; I said to Mr. Newcomb— If it is in order, I will tell you what I said to him.

Q. I would like to know what you said to Newcomb and where.

A. Down to Leesburg Post Office.

Q. At what time was that?

A. During that period of the settlement.

10

Q. You mean, within the sixty days?

A. Yes.

Q. What did he say?

A. I said to Mr. Newcomb, I went up to settle my taxes up to Mr. Henderson's, and I couldn't do it, they had the bills made up so big I didn't have money enough to pay them. I said, "I am going to get it together as soon as I possibly can." He said, "That is all right, the Township is willing to pay six per cent. for it as long as you are willing to pay eight per cent. for it; they have no kick coming, because they get money from the Millville Bank at six per cent. on temporary loans, and they won't be nothing out of pocket by waiting for you at eight per cent." So I went up soon after in August there, the next meeting, and tried to get a settlement, and they wouldn't settle, and I took the original mortgagees who held the mortgages against this property to them to show them, and they wouldn't take even that for granted, that that was the title, they wanted to go over and search the records, see if that was correct. Then they put it off to another meeting, and I went up to a special meeting they had.

20

30

Q. Mr. Sutton, you didn't go before them at their May meeting, did you, or June or July?

A. I wasn't at the July meeting; I was down at Delmont inspecting salt hay for the State.

Q. How about the June meeting; were you there then?

A. I don't recall that, Mr. Miller.

Q. Do you remember about the May meeting?

A. I had this conversation—No, the May meeting was before I went up to tender the money.

PROSECUTOR RESTS

10

At this point a recess was taken until 1.30 o'clock P. M.

Hearing of the matter resumed at 1.30 o'clock P. M., pursuant to adjournment, in the presence of Counsel for respective parties.

20

MR. MILLER. I offer in evidence the map and notice to redeem heretofore marked respectively Exhibits D. 1 and D. 2 for Identification.

(Said papers are marked respectively Exhibits D. 1 and D. 2-).

J. WESLEY ARTHUR, sworn.

By MR. MILLER.

30

Q. Mr. Arthur, your business is what?

A. Surveyor, constructing engineer.

Q. You mean, surveyor of land?

A. Surveyor of land, yes.

Q. How long have you been engaged in that business?

A. Over seven years.

Q. By whom are you at present employed?

A. Millville Manufacturing Company.

Q. In what department?

A. In the engineering department.

Q. Have you been engaged as a practical surveyor in and around Maurice River Township?

A. Yes, sir.

Q. Surveying lands in that Township during the last few years?

A. In that Township, and in Atlantic County.

Q. Did you at my request make a survey of this so-called Chance Homestead property at Leesburg?

10

A. Yes, sir.

Q. Is this the map you prepared?

A. Yes, sir.

Q. Will you mark in ink on your map, the map you produce, the two plots shown on Exhibit P. 1 as the Methodist Church property and Chance's cemetery, three and fifteen hundredths acres?

A. It is so indicated here; here is the Methodist Episcopal Church property and burial ground, then the William Chance Cemetery. The cemetery is there. This shows the driveways around the cemetery.

20

Q. What is this Plot F., cultivated ground, one and fifty-eight hundredths acres—is that shown on Mr. Sheldon's map, Exhibit P. 1?

A. The rear of that.

Q. How have you indicated on your map the cemetery lots shown on Exhibit D. 1?

A. They come within the sections marked G. H. and I.

30

Q. Then the Plot F. shown on your map and indicated as cultivated ground, one and fifty-eight hundredths acres, is not part of the ground laid out in cemetery lots shown on Exhibit D. 1?

A. It comes in the rear of it.

Q. Is it?

A. No, sir.

Q. Did you personally make this survey?

A. Yes, sir.

Q. Indicated by the map you produced?

A. Yes, sir.

Q. And you then saw this so-called cultivated ground, one and fifty-eight hundredths acres, did you?

A. Yes.

Q. Won't you describe that Plot F., "Cultivated Ground," one and fifty-eight hundredths acres?

A. Well, the ground had been plowed, cultivated, had
10 remains of last year's crops in the way of vines, some few squash that had not been removed, and what appeared to be tomato vines.

Q. How was the line of demarcation between Lot F. and Lots G. and H. indicated or marked on the ground?

A. Why, indications of a driveway.

Q. No fence or anything of that sort?

A. There is an indication that there has been a fence on the eastern end; there is the remains of pieces there
20 which formed sections for letting down the bars in a fence.

Q. What is there, if anything, between Lot D. and Lot F.?

A. D. and Lot F.?

Q. Yes, sir, what is there, if anything?

A. There is a wire fence, so indicated on the map.

Q. Is there any means of access from Lot D. to Lot
F.?

A. Not that I noticed.

Q. How do you get into Lot F.?

A. Through the driveway from Wood Street.
30

Q. And along the Cemetery driveway?

A. Yes, sir.

Q. Have you had any experience in searching titles, Mr. Arthur?

A. Yes, sir.

Q. And did you examine the Clerk's records to ascertain whether or not the titles to Lots A. B. C. D. and E.

eastwardly of the wire fence, and the lots F. G. H. and I. westwardly of the fence line, were all in one title?

A. Yes, sir.

Q. Down to what time?

A. I would have to refer to my notes on that.

Q. I mean by that—

A. Recent years.

Q. Recent years, eh?

A. Yes, since 1912.

Q. Were they split up by Sheriff's sale, that is to say, ¹⁰
the title to F.?

A. The title to the lots mentioned was by Sheriff's sale to Sylvester Bishop, and then Sylvester Bishop to Mr. Joseph Sutton, in one deed, but—

Q. In two descriptions?

A. In two descriptions.

Q. Prior to that time, however, they were in one title, were they?

A. Yes, sir.

Q. That is, down to the time of the Sheriff's sale in ²⁰
1912?

A. They were in one title.

MR. MILLER. I offer the map in evidence,
Exhibit D. 3.

(Said map so marked.)

NO CROSS-EXAMINATION

HENRY REEVES, sworn.

By MR. MILLER.

Q. Are you the Assessor of Maurice River Township?

A. Yes.

Q. For how long have you held that office?

A. Since 1892.

Q. You mean for about twenty-six years last past?

A. Yes.

10

Q. Continuously?

A. Yes.

Q. During all that time, have you assessed this Chance Homestead property, Mr. Reeves?

A. Yes.

Q. Where do you live?

A. Leesburg.

Q. Have you lived in Leesburg for the last twenty years or more?

20

A. Thirty-four years.

Q. So you are personally familiar with this property, are you, Mr. Reeves?

A. Yes.

Q. Now, according to the return containing a copy of your tax duplicate, as I understand, all this property known as the Chance Homestead, and including lots which I will now point out, namely, Lots A. B. C. D. E. F. G. H. and I on Exhibit D. 3, were all assessed as one tract—am I correct in that understandin?

30

A. Yes.

Q. When did you begin to so assess that land as one tract, in 1913? Was that the first time you ever did it?

A. Oh, no.

Q. When did you begin to assess it?

A. If my memory serves me right, I always assessed it as one tract, that is, in Mr. Chance's time, when he had the property.

Q. And he had it down to what time, Mr. Reeves?

A. Well, really, I don't know just exactly; I think probably in 1911 or 1912 it was sold; I won't be sure about it.

Q. Sold by the Sheriff, was it?

A. Sold by the Sheriff, yes.

Q. And do you remember who bought it?

A. Why, I wasn't present at the sale but I understood Mr. Bishop bought it.

Q. And he sold to Sutton?

10

A. Sold to Mr. Sutton, yes.

Q. Now, why was it you assessed this as one tract prior to the time that Chance was sold out by the Sheriff?

A. Well, Mr. Chance—I assessed it that way because he used part of the land for other purposes, other than a cemetery, and he spoke to me upon one or two occasions, he thought it ought to be exempt, if cemeteries were not exempt. I says, "They are, I guess, under certain conditions," but he utilized that for farming purposes, and I considered it more a speculative plan than I did a public cemetery, so I felt I was justified; and he never made any appeal to the County authorities or Township authorities for any adjustment, and I felt I was doing right in assessing it, considering what it was used for, for taxes.

20

Q. Now, the question first was, why did you assess, we will say, the lot which is indicated as F. on Exhibit D. 3 and Lot D. as one tract, when they were separated by a wire fence?

A. Well, there was no wire fence then; I don't know how long that wire fence has been there.

30

Q. Within your recollection it has been placed there, has it?

A. Oh, yes.

Q. I see; and the title was all in one person, was it?

A. Yes.

Q. And was Lot F. in part used for the same purpose as Lots D. C. and B. were?

A. They were all farm lots.

Q. All farm?

A. Yes.

Q. Hence you assessed one tract?

A. Assessed it as one tract, yes.

Q. You are familiar with these grounds indicated as Lot F., cultivated ground?

A. Yes.

Q. Were they really cultivated last Fall, last summer?

10 A. Well, I wasn't there; I wasn't on the premises there, on that lot at that time, but I saw where there were crops that had been growing. Mr. Arthur wanted me to instruct him where the property was, and I went and showed him where the property was.

Q. You pointed out to him, did you, the condition?

A. Well, he asked me—I was at the depot when he came, he said he had been sent down to survey it, wanted to know if I would show him where it was, which I did.

20 That is the only time that I was on the premises, I think, during the winter.

Cross-Examination.

By MR. BACON.

Q. So that your assessment of the William Chance Homestead property was intended at all times to include the cemetery, was it?

A. Yes.

30 Q. You never assessed the William Chance Homestead property in any other way than as including the cemetery?

A. I might have mentioned the cemetery probably in with it; I won't say that I did not mention it, designate it as a cemetery property in with the assessment; I won't say that years ago I might not have done it; I don't think I did, but I might have done it.

Q. But whenever you did assess the William Chance Homestead property as containing five acres, you intended to include the cemetery in that five acres, didn't you?

A. Yes, I thought it was about five acres in the survey.

Q. Including the cemetery?

A. Yes, sir.

Q. And when you got notice from Mr. Sheldon that the property had been sold by Mr. Bishop to Joseph W. Sutton, you still continued to assess it as one piece and not as two pieces, did you?

10

A. I think I assessed it as five acres.

(The answer is objected to by Mr. Bacon, and the question repeated).

A. I will have to depend upon the record: I don't know whether Mr. Boggs has it or not, the duplicate; I will have to depend upon the duplicate: I can't remember.

Q. Produce it.

A. I have the duplicate here of 1913.

20

Q. Produce it. To what book are you now referring?

A. To the duplicate of 1913.

Q. Made up by you?

A. Yes.

Q. Please look at that and answer the question.

A. Yes, five acres; Chance Homestead, five acres.

Q. Please read the entire record of your assessment, which you say included the Chance Homestead and cemetery.

A. You mean just this one?

30

Q. Well, now, you ought to know.

A. (Reading) "Chance Homestead, Leesburg, five acres land, \$600; improvements, \$200., total \$800."

By MR. MILLER.

Q. Mr. Reeves, when you assessed this as one tract in the name of Mr. Sutton, you did not mean to include

those lots which he had sold and where there were bodies buried in the cemetery, did you?

A. No, because there is really over five acres in the survey.

Q. What you did mean to assess was whatever of that land he owned and retained the title to?

A. Yes.

Q. Not what he had sold to others, and where people had been buried?

10

MR. BACON. I object to that as leading and suggesting the answer.

A. No.

MR. BACON. And I submit that the question should be to the Assessor what he did as a matter

of fact intend to assess.

Q. Do you own one of these lots, Mr. Reeves?

A. No.

20

Q. In the so-called Chance Cemetery?

A. No.

Q. Any of your family own them?

A. I don't know that any of my family do; none of my immediate family owns any there.

Q. Do you know people who have purchased lots there?

A. Oh, yes.

Q. Well, can you name one or two?

30

A. Well, McClain, Hosea McClain, a neighbor of mine.

Q. Where is his lot indicated on the Exhibit?

A. I couldn't tell you a thing about that.

Q. Can you tell approximately where it is?

A. No, because I haven't been in the yard; couldn't tell you a thing about that.

Q. When you assessed Joseph Sutton five acres, did you intend to include Mr. McClain's lot?

A. Well, his lot has been purchased since the assessing time. I did not intend to include anybody's lot that had been purchased and used.

Q. Only Sutton's land—is that the idea?

A. Only the land outside of the cemetery, that is, outside what is actually used for the purposes of burial, that is used in lots. It is kept entirely separate from the other part of the plot, if you understand what I mean. They keep in line burying and go all the way out; they don't pick here, there and everywhere, burying all over the premises, you know; they keep a line as they go out from the road, the street, out extending toward the railroad back. 10

Q. I will ask you in another way: Did you intend to include in your assessments any land except the lands to which Mr. Sutton had acquired title?

MR. BACON. Don't answer that question until he gets through. 20

Q. Or did you intend to include the whole tract, whether it has been sold off to others for a burying ground or not?

A. No.

Q. Now, just explain what you mean when you say no, that you did mean to include lots where people were buried or not?

A. Well, my position is this: I have no way of determining the exact amount of land, but I have been informed there was something over five acres there, possibly five and a half or five and three-quarters acres. There is more than five acres in the survey, a little, and there hasn't very much been used for burial purposes, and I felt I was within bounds in saying—I put the acres at five acres, and I thought I would cover about—I haven't undertook to assess those that have bought and buried; I haven't undertook to assess those lots for them to pay taxes on. 30

Q. I see, and if you had, you would assess it to those owners, wouldn't you?

A. Most assuredly; they have titles and have them recorded.

Q. Certainly, that is what I am trying to get at; what you did assess was lands owned by Joseph Sutton there?

A. To the best of my ability.

Q. And not the lands owned by other people who had bought from Sutton and Chance before him?

10 A. No.

Q. Where they had buried bodies?

A. No.

By MR. BACON.

Q. Now, did you intend to include in your assessment the various lots which are plotted here on the map, Exhibit D. 1, scattered around through various parts of the cemetery, which are laid off as burial lots on the plan that was filed in the Clerk's office, of which this is a copy?

20

MR. MILLER. But which haven't been sold—

MR. BACON. Now, wait.

A. Why, I assessed the lands that have not been sold.

Q. Then you assessed, did you, this Lot No. 7 in between Dan Errickson's lot and Mrs. Christie Lee's lot, didn't you?

A. Possibly not.

30

Q. Why not?

A. Possibly it has not been assessed.

Q. Why didn't you assess that, Reeves? Good Heavens, there is a lot there that must be ten feet square.

A. Possibly I didn't assess it.

Q. You left that out, did you?

A. Possibly I did.

Q. How about Lots 17 and 18, in between Harry Cousins and J. Branch?

A. Now, those lots are not designated in the plot; they may be designated on the map, but not on the plot. I had no access to the map sections there; no doubt if I had had the map, and could have seen those plots and seen that they were not sold, I should certainly have assessed them.

Q. So you meant to assess every one of these lots that are plotted out here, but were unsold?

A. They are not plotted out; there are no lots plotted out except what I saw on the front. This land is not plotted as per this map: that doesn't exist at all.

10

Q. Aren't there walks and drives in between these various lots that are occupied?

A. What is occupied, yes.

Q. And do those paths stop at these lots that are in between the occupied lots, but are not sold?

A. I never noticed anything about that; it is just like this—

Q. No, let's talk about this map now.

A. Well, I don't know anything about that map.

20

Q. Did you assess Lot No. 22, that has occupied lots on three sides of it?

A. No.

Q. You didn't assess that lot?

A. No, sir.

Q. Did you assess lots 35 and 38, which have lots on the two sides of them occupied by burial lots?

A. I didn't assess any lots that were laid out as lots and kept up as the cemetery property.

Q. You assessed no part of the cemetery then?

30

A. No. Yes, I did; I assessed this plot back here, that was not occupied; that is the part I assessed; I didn't assess—

Q. But not these lots that were laid out as cemetery lots, you didn't assess, that were still owned by Sutton?

A. I didn't see them laid out.

Q. But if there were any lots there that were laid off

as part of the cemetery, although not sold for burial purposes, you did not assess them?

A. If you will allow me to explain—

Q. Answer the question.

MR. MILLER. He has answered once; he said he did asses them.

A. I didn't assess those that were occupied, nor none of these scattered around in amongst those that were occupied; but if there were fifty out here that were graded up, but wasn't used or wasn't occupied, I assessed them. You understand, this is on a line, where these graves are being sold and occupied.

MR. MILLER. There is only one other thing I think I need, Mr. Bacon, and that is, I would like to have the testimony of Mr. Newcomb and Mr. Henderson. It would take about possibly a half hour. I don't know just how we can work that.

At this point an adjournment was had until Saturday, May 4, 1918, at ten o'clock A. M. at the same place.

NEW JERSEY SUPREME COURT

JOSEPH W. SUTTON,

Prosecutor,

vs.

TOWNSHIP OF MAURICE RIVER,
IN THE COUNTY OF CUMBER-
LAND,

Defendant.

ON CERTIORARI
DEPOSITIONS

10

Bridgeton, N. J., May 4, 1918.

Hearing of the above stated matter resumed at ten o'clock A. M. on this date, pursuant to adjournment, in the presence of Counsel for the respective parties.

20

RAYMOND S. HENDERSON, sworn.

By MR. MILLER.

Q. Mr. Henderson, in the year 1917 you were a member of the Township Committee of Maurice River Township, and the Chairman of that Committee, weren't you?

A. Yes, sir.

Q. Have you resigned?

A. I resigned to take effect at the meeting in February, the first Tuesday in February.

30

Q. So that you are not now—

A. Not now a member of the Committee.

Q. Not now a member of the Township Committee, nor are you in any way connected with the Township Government, are you?

A. Not in any way at all, not at present.

Q. Do you recall anything about the proceedings that

were initiated last year by the Township with reference to delinquent taxes due from Joseph W. Sutton? You have some recollection of some proceedings, haven't you, in your mind, Mr. Henderson?

A. Yes we served notices on Mr. Sutton.

Q. What kind of notice was that?

A. A notice of redemption according to law.

Q. What was the purpose of that?

A. The purpose of that was to give Mr. Sutton sixty
10 days notice to redeem his property, which was sold to the Township under the fee act, and it was a notice to redeem his property within the requirements of the law, which was sixty days.

Q. And that notice was served in a general way what time—do you remember when?

A. That was sometime last Fall; I can't just tell you the date. It was sometime last fall, but I can't recall the date.

Q. You remember there was a notice to redeem?
20

A. Oh, yes, there was a notice to redeem.

Q. After that did Mr. Sutton come to you to make some settlement?

A. Mr. Sutton came to me to see about it, yes, he stopped at the house.

Q. Now, that is what I want to direct your attention to. Do you remember the conversation that resulted when he came to your house?

A. Mr. Sutton came to my house—

Q. I say, do you remember it?
30

A. Oh, yes.

Q. And was that the occasion when he offered some sort of payment to you?

A. He said he came to settle.

Q. Well, that is the occasion that I direct your mind to. Now, just tell us what happened, what was said by him and by you on that occasion.

A. Well, Mr. Sutton came and produced these five notices of redemption, which there was five properties at that time, and he wanted to settle, but he simply—The impression that Mr. Sutton had was that he could settle, or all that he had to settle for was what was mentioned on those notices of redemption, which I think amounted to about \$107 to \$109., somewhere around there; that was the face value of them. But I called Mr. Sutton's attention to the fact that there was two years' taxes intervening after, that is, up until the date of settlement, and I told him that we couldn't settle under any such circumstances, only for the entire amount, and I said then that that would have to be done before the Committee, that I had no authority whatever to make any such settlement, even if he paid it in full. Now, as far as I can remember, I explained it fully, "Now," I says,—I called Mr. Sutton's attention to this fact—"Mr. Sutton," I says, "you know that you have received these notices of redemption and that the law gives you sixty days to redeem it in. Now", I says, "you take my advice and redeem before the sixty days is up," and he promised me that he would, and he went out apparently satisfied, as far as I could see, as to his knowledge that he had to settle for this full amount, which I think amounted to about four hundred dollars.

Q. Now, Mr. Henderson, did you, by anything you said, convey to Mr. Sutton the idea, or did you say anything from which he might reasonably infer that the Township did not care whether or not he redeemed, and that the matter could drift along?

MR. BACON. One minute; I object to that on the ground that the question calls for an inference as to the state of mind of a third person, and as to the conclusion which the third person might have drawn from an undisclosed statement.

MR. MILLER. I won't press the question.

Q. Did Mr. Sutton on that occasion make a tender to you of the payment of any money by offering the money to you?

A. I didn't see money of any kind at that time, simply the papers.

Q. And simply this conversation that you have referred to?

A. Some conversation, yes.

10

Cross-Examination.

By MR. BACON.

Q. Where did you have this interview with Mr. Sutton?

A. In the sitting room of my home.

Q. You were then the Chairman of the Township Committee, were you?

A. Yes, at that time.

20 Q. Had there been any previous discussion between you and Mr. Sutton as to the amount of the taxes?

A. None whatever.

Q. Or the amount which Mr. Sutton should pay?

A. No.

Q. Had there been any previous discussion of the matter between you and Mr. Schuman, the Township Clerk?

MR. MILLER. I object to that as not relevant.

30

A. Mr. Schuman and I had gone over the transaction of Mr. Sutton's account, and figured out the total, which would amount to, I think, around four hundred dollars; that was the total as we had figured it up. That is the only discussion we had ever had regarding that, only figuring it out.

Q. I show you Exhibit P. 3; look at it and say whether or not that is in your hand-writing?

A. Yes, that is; I think that is the slip that I gave Mr. Sutton to take down to Mr. Schuman when he promised that he would settle the amount, the whole amount before the date of the sixty days was up.

Q. Did you give Mr. Sutton this paper, Exhibit P. 3, on the occasion of the interview you had with Mr. Sutton in your sitting room, concerning which you have testified on your examination in chief?

A. I think I did.

Q. I direct your attention to the fact that on the bottom line there are the following figures, "5/19/17"—what do those figures indicate? 10

A. That is the fifth month, nineteenth, 1917.

Q. Is that the date that you put on that paper as the date that you wrote it?

A. Yes, sir, that is the date I wrote it.

Q. You have testified, Mr. Henderson, that your impression is that the notices to redeem were served sometime in the fall. I direct your attention to Exhibit D. 2; please look at it and see what the date is on that notice. 20

A. April 25th; that is the date.

Q. Well, give the date?

A. April 25, 1917.

Q. Does that refresh your recollection, and do you now think that the notice to redeem was served in April?

A. Yes, that was the notice of redemption in April.

Q. And was served at or about that time?

A. About that time, yes, sir.

Q. So that May 19, 1917, would be within the sixty days, wouldn't it? 30

A. Yes.

Q. Now, when Mr. Sutton came to your house on May 19, 1917, what did he tell you that he came there for?

A. He came there to see me about those papers.

Q. What papers?

A. Those five notices of redemption.

Q. And did he want to know how much he owed for those taxes?

A. He wanted to know how much he owed, yes.

Q. Did he ask you how much money it would take to redeem his land from this tax sale that was made for the taxes of 1913?

A. Mr. Sutton,—if I can recall correctly the words that he said when he came in, was that he came up to see me about settling or the settlement for this notice of re-
10 demption.

Q. And he had the notices of redemption with him, did he?

A. Yes, he had them all with him, and I showed him each one.

Q. And you went over the matter and figured it up and found that if he paid the amount of money that was called for by the notices, he would owe \$107 or \$108., did you?

A. No, we did not. Well, we simply counted these
20 five notices up just roughly on a little piece of paper, and it showed, I think, about \$107 or \$109; but then was when I saw that he was under the impression that that was his settlement price. Then I distinctly told him to the best of my ability and explained it to him just what the amount was, but I didn't figure it out for him because I had already figured it.

Q. Well, you got the impression, Mr. Henderson, didn't you, from the interview, that Mr. Sutton thought
30 that all he owed was what was called for by these notices, plus interest and whatever charges there might be up to that time?

A. That was Mr. Sutton's impression.

Q. And that is what he evidently came there to do, to settle in accordance with this notice, wasn't it?

A. I imagine that he came there to settle if he could, but I distinctly told him—

Q. Settle if he could for the amounts called for by these notices, plus—

A. Interest to date.

Q. Interest and costs to date?

A. Yes, that was his idea.

Q. Now, you wouldn't settle on that basis, would you?

A. I told him, as I answered the question before, that I couldn't settle on any basis whatever, because I was only one member of the Committee, and I had no authority to settle, but I distinctly explained it to him how that he could settle and what he should settle for. 10

Q. And he couldn't redeem his land from the tax sale of 1913 unless he paid the taxes for 1914, 1915 and 1916?

A. The taxes to date at that time.

Q. Now, Mr. Henderson, I show you Exhibit P. 4; please look at that paper and say in whose hand-writing it is and what that represents.

A. That is my hand-writing. I don't know, but I think that is the paper that I left with Mr. Schuman. 20

Q. And what does it represent?

A. I think it represents information for Mr. Sutton should he call.

Q. With respect to what?

A. With respect to—

Q. Well, isn't that paper the paper that you and Mr. Schuman figured up as showing the amount of money which you would require Mr. Sutton to pay in order to redeem his land from the tax sale of 1913? Can't you answer that question, Mr. Henderson? 30

A. I was just trying to recall.

Q. Suppose I ask you another question or two which may serve to refresh your recollection.

A. You see, I am a little out of this.

Q. You testified that you had no authority to make settlement with Mr. Sutton; who did have such authority?

MR. MILLER. I object to that; the law fixes that. I don't think that any conclusion of law in that regard stated by the witness should be noted on the record. I object to the Commissioner making such a note; he is supposed to take testimony. I also desire noted on the record this statement to the witness whom I produced on the stand that he don't have to answer that question, and give an opinion on a point of law.

10

A. Well, we left this in the hands of Mr. Schuman.

Q. And Mr. Schuman was the agent of the Township Committee to make this settlement, wasn't he?

A. He was the Township Clerk?

Q. And he had been made the agent of the Township Committee to make this settlement?

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MR. MILLER. I object to this because the question implies that the Township Committee could constitute the Town Clerk an agent for the purpose of settling taxes, whereas the law distinctly says that the Township Collector is the only man who can make a settlement.

A. We had left it in his hands.

Q. I show you Exhibit P. 5 for Prosecutor; in whose handwriting is that?

A. Mr. Schuman's.

Q. That is in the hand-writing of the Mr. Schuman whom you have stated was the Township Clerk?

30

A. Yes.

Q. That paper, Exhibit P. 5, is a receipt which Mr. Schuman gave to Mr. Sutton for a sum of money which corresponds precisely with the sum total of the five items in your handwriting at the top of Exhibit P. 4, doesn't it?

A. Yes, that is in settlement of these three properties.

Q. And the sum of \$333.78 which Mr. Sutton was required to pay on these three properties included not only

the moneys named in the notice to redeem, but also included all subsequent taxes between the time of the sale and the time of the settlement, didn't it, to date?

A. To the date of the settlement.

Q. And it was your understanding that you had a right to demand that of Mr. Sutton, wasn't it?

A. Yes.

Q. And that he could not redeem his land from the tax sale unless he at the same time paid all of the other taxes?

10

A. That was our impression, he should settle in full.

Q. Now, the sum of \$333.78 was considerably more than enough to have paid the taxes for 1913 on all five properties, together with interests and costs thereon, wasn't it?

A. You mean just the face value of the five combined—the total, you mean?

A. I mean the amounts called for by the five notices to redeem, plus interest at eight per cent. and subsequent costs.

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MR. MILLER. If you know. That is objected to because it has not been developed that the witness knows anything about it. In order that the witness might know the amount required to redeem these properties, he ought to know the fees that had accrued to the Township Collector's office on account of searches and services of notices and other expenses which the property-owner is required to pay under the Tax Act. The Chairman of the Township Committee had at hand not sufficient data from which he could make such a calculation, and he is not a competent witness to testify touching the amount required to redeem, unless it is first disclosed that he had gone that day to the Collector's office and gathered the different items of information re-

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ferred to, and even then he would not be a competent witness; what he testified would be mere hearsay.

A. I can't answer.

Q. Do you mean to testify, Mr. Henderson, that you do not know the basis of the demand which you made on Mr. Sutton for the payment of money to the Township of Maurice River?

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MR. MILLER. I object to that; the demand made by Maurice River Township is in writing and it is in evidence. Counsel refers to the notices to redeem, the purport of which is perfectly plain.

A. I was just going to say, only what was on the notices.

Q. Mr. Henderson, I show you again Exhibit P. 3. Did you give that paper to Mr. Sutton?

20

A. I did.

Q. Did you give it to him so that he might take it to Mr. Schuman and make settlement of the taxes?

A. I gave this to him to deliver to Mr. Schuman to give Mr. Schuman an idea as to the papers that had been left in his office for the information of Mr. Sutton should he call.

Q. And this paper, Exhibit P. 4, which you say is in your hand-writing, is one of the papers that had been figured up by you and left with Mr. Schuman?

30

A. I think that is one of the papers, yes, sir.

Q. For the purpose of making this settlement with Mr. Sutton?

A. For information, yes.

Q. Now, then, I ask you to state in detail the items which go to make up the figures which you put on this piece of paper, Exhibit P. 4?

A. Which is P. 4, this?

Q. Being the sum of money which you or Mr. Schuman demanded from Sutton before you would release his five properties from the tax sale of 1913.

MR. MILLER. I object because the question contains an inference that the witness has testified that he made some demand on Sutton.

(Question repeated).

MR. MILLER. I also call Counsel's attention to the fact that if all the matters set out in his question are warranted, it would not be necessary to ask the question at all, because he has answered it himself.

10

A. Why, this paper, as near as I can recall, included the face of the certificates and the taxes for the two additional years and costs and interest to date.

Q. I show you Exhibit D. 2, being the notice to redeem which was served on Mr. Sutton for the William Chance Homestead; what amount of money is called for by that notice?

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MR. MILLER. I object to that; the notice speaks for itself. It requires quite a calculation and the ascertainment of various items of expense, the costs, search fees, &c.

A. Do you mean this to the date, the total that we had figured out here?

Q. No, I am asking you to state now what is called for by that notice. I may say to you that I am going to ask you to take that notice and also take your sheet there, Exhibit P. 4, and I am going to ask you to say how you figured that Sutton owed \$71.57 in order to redeem the Chance Homestead from this tax sale when the notice to redeem only called for \$21.37. In other words, there is a difference there of \$50.20 over and above the amount which is called for by the notice to redeem, and I am going to ask you to figure that up, Mr. Henderson, and tell us

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how you get it, or else to say you can't do it, and I don't care much which you say. What I want to do is to give you an opportunity to justify it, if you can.

MR. MILLER. Well, he isn't on trial. I certainly object to any such proceeding as that. What is the pending question, Mr. Commissioner?

(Question repeated).

10 MR. MILLER. I object to that on the ground that the notice speaks for itself.

THE COMMISSIONER. Answer the question.

A. \$21.37.

Q. The amount which you and Mr. Schuman figured that Mr. Sutton would be required to pay in order to redeem the Chance Homestead from this tax sale, as shown on the paper, Exhibit P. 4, was how much?

A. That shows \$71.57.

20 Q. I ask you now, Mr. Henderson, to state how you arrive at those figures of \$71.57?

A. That included the two years' taxes, which I can't give you the amounts off hand, and the interest to date.

Q. What else did it include?

A. Well, it included the costs of serving these notices and affidavits.

Q. And was that all?

A. As far as I can remember, it was.

30 Q. Are you or are you not able to reproduce the figures which go to make up this sum of \$71.57?

A. I think the Clerk can.

Q. Who is the Clerk?

A. Mr. Schuman; I could soon figure it if I had the figures here.

Q. Look at Exhibit P. 4 again, being the so-called settlement sheet; you have at the bottom of that, "9 Certificates, \$6.75," haven't you?

A. It is not at the bottom; it is up here.

Q. That is included in the \$333.78, is it?

A. That is included in there, yes, totalled in there.

Q. And also an item of costs, \$10., isn't there?

A. Yes.

Q. What does that \$10. represent?

A. The ten dollars represents—if I had been right in touch with this, I could have recalled it—I think that is the search costs at Bridgeton, expenses to Bridgeton.

Q. Whose expenses to Bridgeton?

A. I think Mr. Schuman's and mine. I only think that; I am not saying that positively. I think it was Mr. Schuman's and mine. 10

Q. What do the nine certificates represent?

A. That represents an item that Mr. Schuman or that Mr. Sutton owed us from the settlement of the nine other properties. He failed at that time—and his attention was called to it at that time, that he had not redeemed the Township or had not reimbursed the Township for the seventy-five cents covering the fee on each of the nine certificates that he had redeemed before, and he promised us that he would add this in when he settled for the other five properties; but that wasn't held over him in any way, only just simply added in the day that it was settled, with his permission. That is how it appears on there as totalled. 20

By MR. MILLER.

Q. Was this sheet, Exhibit P. 4., made out the day he did settle?

A. I think that was made out, Mr. Miller, the date that Mr. Sutton settled at the Committee meeting. 30

Q. That was in the fall, or that was after the expiration of the sixty days, wasn't it?

A. Yes; these three were the ones that were—

Q. I am just fixing the time now; I say, this settlement sheet, Exhibit P. 4. was made after the expiration of the sixty days, was it?

A. On these, yes, I think it was.

HOWARD J. NEWCOMB, sworn.

By MR. MILLER.

Q. Mr. Newcomb, last year, during the year 1917, you were a member of the Township Committee, weren't you?

A. Yes.

Q. Your time expired last January?

10 A. Last January; the first day of January I went out.

Q. Do you recall something of the proceedings relating to the Sutton properties that had been sold by tax sale proceedings that were had last year?

A. Yes, sir.

Q. Do you recall the giving of a notice to redeem with respect to his properties?

A. Yes, sir.

Q. And that was last Spring sometime, wasn't it?

A. Well, I don't know as I can give you the date.

20 Q. No, but you remember the time; it was sometime last Spring?

A. Last year sometime; I don't know just the date; I think it was in the Spring.

Q. Do you remember after the notices were given Mr. Sutton came to you and said something on the street at Leesburg about the notices that had been served on him?

A. I talked with him several times.

30 Q. Now, wait a minute; you talked with him several times after the notices to redeem had been given, did you?

A. I didn't talk about that property every time, but I have been in conversation with him several times, you know, about the thing.

Q. About that?

A. Not very much about that.

Q. Did he say to you, "I went up to settle my taxes, up to Mr. Henderson's, and I couldn't do it; they had the bills made up so big I didn't have money enough to pay

them; I am going to get it together as soon as I possibly can," and did you say, "That is all right; the Township is willing to pay six per cent for it as long as you are willing to pay eight per cent. for it; they have no kick coming because they get money from the Millville Bank at six per cent. on temporary loans, and they won't be nothing out of pocket by waiting for you at eight per cent."?

A. No, I didn't tell him that. I told him—I will tell you what I told him.

Q. Now, wait; you didn't tell him that? Now, what was that conversation? 10

A. I told him that people found fault with the Committee because they didn't sell the property, but, I said, "The Committee can't do nothing until the Township holds the property two years; just so they get the interest that satisfies them; they can't do nothing until they hold it two years." That is what I told him.

Cross-Examination.

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By MR. BACON.

Q. Mr. Newcomb, while you were a member of the Township Committee, it was customary for the Clerk or any member of the Committee to take money from people who wanted to pay their taxes, wasn't it?

A. No, sir.

Q. Did you ever accept any money from anybody for taxes while you were a member of the Township Committee? 30

A. I don't know that I did. Well, I can't recall it; I might have done it.

Q. I direct your attention to a paper dated December 20, 1917, and to the signature there, and ask you if that is not your signature?

A. That is for—

Q. Never mind, now; is that your signature? Did you sign your name there? Don't you know your own hand-writing when you see it?

A. Yes, I know it.

Q. Did you sign your name there?

A. Yes, sir, I signed my name there.

Q. Is that all the money that you have got from Sutton for taxes?

A. Well, I can't recall just what I did get.

10 Q. Can't eh? Well, suppose I show you a check here for \$582.93, drawn by J. W. Sutton to the order of Howard Newcomb; what is that check for?

A. Well, I can't say just what it was for.

Q. Don't you know that was for taxes?

A. Oh, yes, for taxes, but what property I can't say.

Q. What did you do with it?

A. Why, that went to Bank certainly; that is where I put the money, in Bank.

20 Q. To whose credit?

A. The Township's.

Q. And it shows on the back of it, don't it, that you put it to the credit of the Township?

A. I don't know whether it does or not.

Q. Well, look at it.

A. Yes.

Q. You do not dispute, do you, that the Township got that money for taxes?

A. No, sir.

30 Q. Did you have authority to tax this money?

A. I suppose I did; I don't know what the law is on it.

Q. You did it anyhow, didn't you?

A. I done it; I don't know what the law is on it.

Q. And you took it for tax money and put it to the credit of the Township, didn't you?

A. Yes.

Q. Now, I show you another check for \$35., J. W.

Sutton to the order of Howard Newcomb; wasn't that for taxes?

A. That was for money that he agreed to pay on, I think, some of the Chance property.

Q. Well, it was taxes, wasn't it?

A. When it was sold; yes, sir.

Q. And you put that to the credit of the Township, didn't you?

A. The Committee agreed to let him have it for that money. 10

Q. Answer the question; did you put it to the credit of the Township?

A. Yes, sir.

Q. You didn't keep it yourself?

A. No, I didn't want it.

Q. Now, what did you do with this \$37.42 represented by that receipt which I just show you?

A. I suppose it went in the Bank, I expect.

Q. You didn't keep it yourself, did you? 20

A. I don't think I did.

Q. You turned it over to the Township Committee of Maurice River, didn't you?

A. I put it in Bank to the credit of the Township.

Q. Now, that is a receipt for the taxes on one of the same properties that were sold at this sale of 1913, isn't it?

A. I think it is.

Q. And I direct your attention to Exhibit P. 4 for Prosecutor, and to an item that reads as follows: "Due September 8, 1917, Meadow land \$27.42" and ask you if this receipt which I show you dated December 20, 1917, is not for the taxes on that meadow land? 30

A. That is for that and ten dollars; ten dollars, I think was added to it. The ten dollars was added to it for the privilege of him buying it back, that was it; the Township decided to let him have it back.

By MR. MILLER.

Q. Well, you let Mr. Sutton have all the properties back except the so-called cemetery lot, didn't you, Mr. Newcomb?

A. Three of them had mortgages on, and we had to leave him have them back because we didn't know anything about the mortgages, and the meadow piece, we sold that back to him because we didn't care about keeping it.

10 Q. But you did—you let him have all his properties back except this so-called cemetery lot in Leesburg?

A. And the Homestead together.

Q. You were the Township Treasurer last year, weren't you, Mr. Newcomb?

A. Yes.

Q. These moneys which you received from Sutton, covered by the checks which have been just shown you on cross-examination, were all paid you in the fall, weren't they, after the expiration of the sixty days notice to re-
20 deem?

A. That five hundred dollar check and something; I don't know; that was—

MR. MILLER. May I see that, Mr. Bacon?

MR. BACON. That was March 7, 1916.

THE WITNESS. That was for other taxes before that.

Q. You mean other delinquent taxes; is that the point
30 you had in mind?

A. Yes, he was behind with the taxes another year before that, and I think that was the settlement; I think it was.

Q. Do you know why he settled that with your office instead of with the Collector?

A. No, sir, I don't know.

Q. Was there a dispute about that tax, or did it require any adjustment?

A. At that time, that five hundred and some dollars?

Q. Yes.

A. I don't know that there was; I don't think there was.

Q. You have no recollection then why he came to you instead of going to the Collector's office?

A. Well, I think the Committee had the certificates; I think it was turned over to the Township; I think maybe that was the reason.

10

By MR. MILLER.

Q. I want to ask you something I ought to have asked you on direct: Were you a Committee of the Township Committee appointed for the purpose of negotiating a sale of this Cemetery property to the Methodist Church in Leesburg?

A. No, I wasn't on no Committee.

Q. Didn't you make a report concerning a sale to the Methodist Church of the cemetery lot?

20

A. Oh, I think they did tell me to see the Treasurer or somebody down there, and I saw him and he said that they would buy it.

Q. For how much?

A. The Church would buy it.

Q. For what price?

A. I think that was for a hundred dollars. I think the Township—

Q. That was done before this suit was commenced, wasn't it?

30

A. That suit?

Q. No, I say, that was done before this suit was started?

A. We heard about it the same day; we heard about the suit the same day this was done, and the preacher, he came up to the—I think he was there.

Q. Who was the preacher?

A. Mr. Naylor; he was coming up the road and I think he stopped there.

Q. And you reported that back to the Township Committee?

A. I had made the report before he got there, I think; I think I told the Committee about it before he got there, before the preacher got there.

Q. Got where?

A. Got to Mr. Schuman's.

10 Q. Then the preacher did come in relation to that business up here before the Township Committee, did he?

A. He came the same day.

Q. And what did he say to the Township Committee?

A. He said they would buy it, but he said the Church didn't want to make any profit on it. He said they were going to take seventy-five per cent. of the money that came in from the lots, and put it into a fund on interest for the up-keep of the cemetery, and the other twenty-five per cent., they were going to spend that every year for anything that
20 needed to be done around the cemetery, fences or anything like that.

Q. After making that report did he offer on behalf of the Church to buy this lot, the Cemetery property?

A. Yes, sir, he made me an offer.

Q. That is, he had made the offer?

A. And then he said the same thing that I told them, that they would take it.

Q. For a hundred dollars?

30 A. Yes.

Q. Was something said about the costs of any litigation?

A. The Township, they were to stand for anything like that; the Church wouldn't buy it under that consideration, that they were to stand for any expenses like that.

By MR. BACON.

Q. So that it was and is the purpose and intention of the Township Committee to sell this cemetery to the Methodist Church, is it?

A. Yes, sir.

MR. MILLER. Mr. Cruse, another member of the Township Committee who was present, and the prosecutor required his testimony, he is here to testify. I know of nothing I need ask him for the purpose of making proofs for the defendant or to rebut anything said by Mr. Sutton. Is there something you would like to ask him, Mr. Bacon?

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MR. BACON. I have no questions to ask the witness until after he has testified on direct-examination, and shall then confine my questions to legitimate cross-examination.

20

DEFENDANT RESTS

MR. BACON. I direct Counsel's attention to the fact that it was my understanding that he agreed to put Mr. Schuman on the stand.

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MR. MILLER. Well, I have him here; I don't remember that there is anything— What is it you want of him?

MR. BACON. I don't want to say definitely, but my recollection is that Mr. Henderson testified that Mr. Schuman had these figures, and I asked if you intended to put Mr. Schuman on the

stand, and I didn't insist on Mr. Henderson making up the figures because I understood him to say that Mr. Schuman had them.

MR. MILLER. Just note on the record, Mr. Commissioner, that Mr. Schuman is in Court, and is perfectly ready to testify to any matters desired to be elicited by the Prosecutor. He also has the minute book with him.

10 MR. BACON. Well, if you rest, it is up to you; it is not up to me.

PROSECUTOR'S REBUTTAL

JOSEPH W. SUTTON, recalled.

By MR. BACON.

20 Q. Mr. Sutton, when, if at any time, after you bought this Chance Cemetery property, did you undertake to improve it?

A. Improve it?

Q. Yes.

A. We undertook to improve the back part of it where it had growed up into rubbish in 1916.

Q. What was the reason for your so doing?

30 A. Well, we wanted to get it in lawn grass, and we plowed it up and sowed it, or my sons did, and it didn't take, and last year we plowed it up and put it in potatoes and squashes on one side to get humus and manure in it so the grass would take this year.

Q. Are you a farmer?

A. Yes, sir.

Q. Do you have charge of the State Prison Farm at Leesburg?

A. Yes, sir.

Q. Is that or was that originally largely timberland and brush land, wild land which had to be cleared up?

A. Yes, sir.

Q. Are you familiar as a farmer with the proper method of clearing up land that has been uncultivated for many years?

A. Yes, sir, we had some old fields like that down at the State Farm.

Q. Prior to the time that you plowed this up in 1916, for many years had it been uncultivated?

10

A. To the best of my knowledge it had never been cultivated for thirty-five years, since I lived opposite to it.

Q. In what way had it grown up?

A. In sassafras and Pride of Chinas and briars and wild cherry, small wild cherry trees and Indian grass, which all wild fields—which accumulate in all old fields.

Q. Did you also turn cattle on this back part of the cemetery before you plowed it up?

A. Yes, sir.

Q. For what purpose?

20

A. Mr. Carlisle told me that they would kill the sassafras out by biting the tops off while they were young, and I tried it and it didn't work.

Q. And then did you take the cattle out and plow it up?

A. Yes, sir.

Q. When this was plowed, were there any walks and drives running through the part that you plowed up?

A. Yes, sir.

Q. How far back toward the railroad did they extend?

30

A. They intersected the railroad lines.

Q. I show you Exhibit D. 3., being the map brought here by Mr. Arthur, and direct your attention to Lot F., which he has marked "Cultivated Ground." Did these walks and avenues extend through Lot F.?

A. Yes, sir.

Q. Back to the line of the railroad?

A. Yes, sir, and back to Mr. Smith's line, which intersects the railroad line on the south.

Q. Why did you pay the \$333.78 to Mr. Schuman instead of to Mr. Boggs?

A. Well, they said they was the proper ones to settle with.

Q. When you say "they" whom do you mean?

A. I mean the Township Committee.

Q. Did you then make the payment to Schuman at
10 the direction of the Township Committee?

A. I paid it to the Township Committee while they were in session.

Q. Oh, you paid it to them while they were in session?

A. Yes, at Mr. Schuman's house, and they ordered him to give me a receipt for it.

Q. And it was paid then in the presence of the members of the Township Committee?

A. Yes.

Q. To Schuman?

20

A. Yes.

Q. And Schuman then gave you a receipt for the money—is that right?

A. Yes, sir.

Q. So that the entire Township Committee were present when they demanded and took from you \$333.78?

A. Yes, sir.

Q. And was that sum of money more than sufficient to have paid all the taxes on all five properties for the year
30 1913 with interest at eight per cent. and subsequent costs up to that time?

A. Yes, sir, according to my figures.

Cross-Examination.

By MR. MILLER.

Q. If there had been walks laid out on Lot F. of Exhibit D. 3, I understand you to say that you plowed them up in nineteen hundred and what, fourteen?

- A. Sixteen.
Q. Is that when you sowed the grass?
A. Yes.
Q. That didn't take?
A. No.
Q. Then the next year, that is, 1917, you put certain crops in there, Mr. Sutton?

A. I told the boys to manure the ground and put it into potatoes, so we could sow grass this year, which we did so. Now we have got it ready to sow; we have got it plowed this year, harrowed down, ready to sow grass again. 10

By MR. BACON.

- Q. Well, have you got the grass seed?
A. Yes, sir.
Q. Ready to be sowed?
A. Yes, sir, anytime that the boys may have an hour to do it.

20

GEORGE HAMPTON, Esq. sworn.

By MR. BACON.

- Q. Mr. Hampton, are you the Chairman of the Cumberland County Board of Taxation?
A. Yes, sir.
Q. And were you such Chairman during the year 1917?
A. Yes, sir. 30

Q. I show you Exhibit P. 6 for Prosecutor in this case; will you be good enough to look at that and say whether that is the usual form of copies of judgment of the Tax Board which are sent out to persons who appeal from taxation in this County and are successful in their appeals?

MR. MILLER. I object to that; whether it is the usual notice or not is not of any moment.

A. This is a certified copy—well, no, it is not a certified copy; it is a notice to a person taking an appeal before the Board of the decision of the Board upon his appeal.

Q. Does looking at that paper refresh your recollection about the appeal taken by Joseph W. Sutton from the assessment of taxes on certain property of his in Maurice River Township for the year 1917?

A. I recall that appeal, yes.

10 Q. Do you recall the fact that the County Tax Board inspected the premises?

A. Yes.

Q. Did you go there in a body? That is, did all of you go there?

A. We were all there, yes; just whether we went there in procession or a body or not, I don't recall, but we were all there on the ground.

Q. You were all there on the ground?

A. Yes.

20 Q. Now, Mr. Hampton, what evidence did you find there on the ground indicating to your mind that a part of Mr. Sutton's property had been set off as a cemetery?

A. We went up to a church and passed the church and in through a gate, an ornamental iron gate, if I recall it, and down in through quite a number of graves with stones, and that property was fenced in.

Q. Was it fenced in clear back to the railroad?

A. Not back to the railroad track, but apparently back to the railroad' right of way.

30 Q. And did you consider that all of the property within the fence back to the railroad right of way was cemetery?

A. That was our conclusion, yes.

Q. And did you base your judgment, that is, the judgment of the Tax Board, on that conclusion?

A. Yes.

Q. And did you exempt the property that was within the fence from tax on the ground that it was a cemetery?

A. We did.

Q. And the County Tax Board reached the conclusion that this property was a cemetery, did it?

A. Yes.

Q. And that applied as well to the part in which bodies were actually interred as to the remaining property in the fence back to the railroad right of way?

A. Yes.

Cross-Examination.

10

By MR. MILLER.

Q. I call your attention to the Plot F. on map Exhibit D. 3, and ask you if there were any stones, gravestones on that plot?

A. There was a portion of the ground toward the railroad that apparently had not been used for interments; I suppose that is what is indicated by F.

Q. Had that been plowed up last year to all appearances and used for agricultural purposes?

20

A. It looked as if an effort had been made to clear it up; I don't recall seeing any crops there.

Q. Did you have a map of this cemetery property at the time you allowed the exemption exhibited to you?

A. I think not.

Q. Did Mr. Sutton have a map?

A. I don't recall seeing any.

Q. I show you map, Exhibit D. 1, and ask you if that was laid before you.

30

A. I don't remember seeing that map. I wouldn't say that it wasn't there, but I don't recall seeing it.

Q. Did you see any map of the cemetery?

A. I don't remember seeing any.

Q. And was proof offered that there had been some plotting by Chance, a former owner of a contemplated cemetery, which plot had been placed on file?

A. There was testimony to that effect, I recall.

Q. And was the testimony as it came before you to the effect that all of this lot enclosed within the fence you referred to, and shown on Exhibit D. 3 as lots F. G. H. and I., was shown on the plotting—that is, was there testimony to that effect?

A. That all within the fence—

Q. Yes.

A. I don't know whether there was or not.

Q. Well, was the testimony to the effect that only lots
 10 G. H. and I. had been plotted for a contemplated cemetery by Chance, and that Lot F. was not included in his plotting, as shown on the records in the County Clerk's office?

A. I think there was some argument to that effect; but I don't recall any testimony taken.

Q. You didn't look on the records?

A. No.

Q. You took it to be that all of the lots F. G. H. and I. were included in the plan?

A. We took it that all that was included in the same
 20 fence was in the cemetery property.

Q. And had been intended and plotted for that purpose—was part of the cemetery grounds?

A. Yes.

Q. And did you understand that no cemetery association had owned this property or did own it?

A. I understood that it was originally a private enterprise of a man named Chance.

Q. And that the title to the lands had passed to—

A. To Sutton.
 30

Q. Through a Sheriff's sale?

A. I don't know how now.

Q. But by some ordinary conveyance?

A. Yes.

Q. And with that knowledge you deemed he might really own what in law would constitute a cemetery?

A. Yes.

WILLIAM HAND, sworn.

By MR. BACON.

Q. Where do you live?

A. Leesburg.

Q. How long have you lived there?

A. About 32 years.

Q. Does the property where you live adjoin Chance's Cemetery property?

A. Yes, sir.

Q. How long have you lived where you live now? 10

A. About eighteen years, I think, as near as I can tell.

Q. Are you familiar with what is known as the Chance Cemetery, now owned by Joseph Sutton?

A. Yes, sir.

Q. While you lived there and in Mr. Chance's lifetime, did you ever see him working in this cemetery?

A. Yes, sir.

Q. What was he doing there?

A. Well, he was grading up the lots, cutting the grass and cutting the walk-ways out and the avenues, the drive-ways, and so on. 20

Q. How far back toward the railroad were these drives and walks and avenues laid out?

A. Why, there was a driveway along each side of it and one through the centre clean back to the railroad property and to the Smith property.

Q. How long has it been to your knowledge since those drives have been laid out back to the railroad and Smith property? 30

A. Well, I should judge about eighteen years I have lived there, and I have known them to be there that long anyway.

Q. Do you remember the fact that sometime in 1916 this back part of the cemetery was plowed up?

A. Yes, sir.

Q. Who did it?

A. Why, Mr. Sutton's two boys was both out there plowing at the time; I was out in the garden working while they were doing it.

Q. Have you seen it since?

A. Yes.

Q. Do you frequently have occasion to go through there?

A. Why, I go to the station most of the time back through there, on account it is the nearest way, instead of
10 going out by the road, down along the line.

Q. You have occasion to use the railroad' trains there twice a week, do you?

A. I go away Monday morning and come back Saturday, yes.

Q. And your house is so situated that it is convenient for you to go through this property?

A. It is nearer, yes, sir.

Q. Is there any evidence now on the ground, notwithstanding the fact that this ground has been plowed up, of
20 these drives and walks through this back part of the cemetery?

A. Yes, sir, it shows some.

Q. Shows where?

A. Shows sloped on each side and the centre, and also the street that goes crossways, and the alleys or whatever you call them; it is a little bit sloped there, but, of course, it has been worked and it don't show as plain, but you can discover the difference.

30 Q. You can see that before the plowing was done it had been laid off into plots?

A. Yes.

Q. And walks and drives?

A. Yes.

A. And is that so with respect to the whole thing back to the railroad?

A. Yes, sir.

Cross-Examination.

By MR. MILLER.

Q. You can recall this property how long, Mr. Hand?

A. Why, eighteen years I have lived there where I do now and I join it, and I work my garden; I have been around there about eighteen years, I should judge.

Q. And you do recall when Mr. Sutton plowed it up in 1916 or his boys did? 10

A. Yes, I remember the time he plowed it.

Q. What had been the condition of the rear end of this so-called cemetery lot, the end toward the railroad which was plowed up—what had been the condition of that part of the land for the preceding four or five years?

A. Well, it was grown up in Pride of Chinas.

Q. In what?

A. Pride of Chinas.

Q. What is that, a sort of bush?

A. That is a bush, yes, grows up into a tree if you let it grow long enough. 20

Q. And in other bushes?

A. Sassafras, two or three cherry trees along the line there, and naturally that sort of stuff out in the field, out in the cemetery, rather, and wild grass.

Q. How long had this wild grass, Pride of Chinas and sassafras trees been on the rear end toward the railroad to your recollection?

A. Well, they had been there quite a little. Of course, when Mr. Chance first taken it, when he was able to take care of it, it wasn't so bad, but along in his last years it got the better of him and grew up. 30

Q. Would you say the last three or four years that Chance had it?

A. It got the best of him; he couldn't take care of it.

Q. And he lost the property in 1912, didn't he, about six years ago?

A. I couldn't tell you that.

Q. Wasn't it?

A. I couldn't just say the time.

Q. Well, you do remember that three or four years before Chance parted with it, it got grown up with this wild stuff?

A. Yes, sir.

Q. And remained so until Mr. Sutton's boys plowed it up?

10 A. In 1916.

Q. Now, what was it that Mr. Sutton's boys did to this ground beside plowing it up—did they plant it in anything?

A. Well, they plowed it up and levelled it off; I didn't see them sow any grass seed.

Q. You didn't see them sow any grass seed?

A. No, sir, which they told me they were going to; they went through the same motion which we all do when we sow grass seed, but to see them—

20 Q. You didn't count the seed?

A. No, sir.

Q. Next year, that is, 1917, they appeared there again and plowed it up, didn't they?

A. Yes, sir.

Q. And planted something?

A. Yes.

Q. Now, what did they plant?

30 A. They claimed they had squashes or pumpkins on the other side and potatoes next to me. They had potatoes, but what they had the other side I don't know, because it didn't amount to anything; I couldn't tell, something that run anyhow, either squashes or pumpkins.

Q. You are a farmer; you say you farm a little?

A. I farm some, yes.

Q. Do you have to put the ground in squashes and potatoes in order to get it ready for a crop of grass, to get a plot ready for graveyard purposes?

A. Well, I tell you, we generally farm our land to get it in shape and work it, pulverize it up, before we sow the grass. That is what we generally do anyway, before we do it; we think that is the best.

Q. Just one more question: What is the condition of the ground there now.

A. Nice condition.

Q. Plowed up again, is it?

A. Yes, sir, levelled off nice, ready for grass.

Q. When was it levelled off?

10

A. This spring; I couldn't tell you just when, but this spring.

WILLIAM CARLISLE, sworn.

By MR. BACON.

20

Q. Mr. Carlisle, where do you live?

A. Delmont.

Q. How far is that from Leesburg?

A. About three miles and a half, I think.

Q. Are you familiar with the cemetery at Leesburg known as the Chance Cemetery?

A. Yes, sir.

Q. How long have you known it?

A. Well, I have known it twenty-five years.

Q. Are members of your family buried in that cemetery?

30

A. Yes.

Q. And they were—some of them were buried as long ago as twenty-five years?

A. Yes, sir.

Q. Do you know whether or not there is a fence around the cemetery?

A. Yes, sir, there is on one side of it now, one side and the end.

Q. Are there any walks and drives through there, through the cemetery?

A. Yes, sir.

Q. How long have they been there, to your knowledge?

A. Well, they have been there ever since I knew the place.

10 Q. And how far back toward the back line of the property, toward the railroad and the Smith property, did those walks and drives go twenty-five years ago?

A. Well, they went clear through.

Q. What do you mean by "clear through"?

A. Off from the main road back to the railroad.

Q. And has that been the condition ever since until, as Mr. Sutton testifies, he plowed it up for the purpose of getting it down in grass in 1916?

20 A. I think it has; I never knew it to be plowed before that way.

Q. In all your knowledge of the cemetery, have you ever known it to be plowed or cultivated, excepting as has been testified to here by Mr. Sutton?

A. I never knew it.

Q. Are you a farmer?

A. Yes, sir.

30 Q. In your opinion as a farmer, is the proper method of preparation of land of that character for the sowing of grass to first cultivate it and raise some sort of crop?

A. Yes, sir, I should think so.

Q. Why?

A. Well, in plowing it, that kind of land, and sowing grass on it, I don't think it would ever amount to anything; you would have to get some manure, fertilizer of some kind in to kill out the wild nature of it, lime or something like that.

Q. And is that why it is customary to raise a crop on

wild land of that sort before you undertake to seed it back to grass?

A. Yes, sir, I think it is.

Cross-Examination.

By MR. MILLER.

Q. This cemetery extends all the way back to the railroad right of way here?

A. Is this the railroad here (indicating on plan)? 10

Q. Yes.

A. Yes, it goes back to the railroad.

Q. How near the railroad track?

A. Oh, I don't know; it is quite a ways off, you know; as far as the railroad runs out, you know, railroad property, I suppose that runs right up to it. I don't know exactly whether that is railroad property on the outside; I suppose it is.

Q. How near the tracks does it come?

A. Well, I couldn't tell you that; quite a ways off 20
from the track.

Q. Now, Sutton plows right up near the railroad track, does he, now?

A. No, I guess he just plows inside of the—what I saw, in this graveyard; he just plowed inside of his fence.

Q. How far is the fence from the railroad?

A. Well, I couldn't tell you that.

Q. Fifty feet?

A. Yes, I should judge it was.

Q. Sixty feet? 30

A. Now, I couldn't tell you that.

Q. Please point out on the map Exhibit D. 1 the plot in which your family are buried?

A. Well, it is a sister.

Q. Where your sister was buried?

A. I think it is right here somewhere (pointing to a plot in the narrow tract fronting the main street).

WILLIAM SUTTON, sworn.

By MR. BACON.

Q. Are you one of the sons of Joseph Sutton?

A. I am.

Q. Who plowed up the back part of this cemetery property in the Fall of 1916

A. Yes, sir.

Q. What means did you use to plow it up?

10 A. Well, we plowed it and harrowed it down.

Q. No, but what did you use? Did you use a one horse plow or a two horse plow, or what?

A. Used a two horse plow out in the centre, and around the fence, where we couldn't get to with two horses, we used a one horse plow, so we could get closer.

Q. What was the condition of the cemetery, or the portion of it that you plowed up at the time that you plowed it?

20 A. Well, it was growed up in wild stuff, briars and Pride of Chinas, sassafras, wild cherry, most everything that grows wild in there.

Q. How old are you?

A. Twenty-five.

Q. How long have you lived in Leesburg?

A. I have lived there all my life.

Q. Have you lived with your father directly opposite the entrance to this cemetery?

A. I have.

30 Q. And have you been familiar with this cemetery all your life?

A. I have.

Q. Did you ever know this piece that you and your brother plowed in the fall of 1916 to be plowed in your life time before that?

A. I never did.

Q. When you plowed it, what evidence, if any, did you find that the piece that you plowed up had been laid

A. Yes.

Q. And at that time you ran the barbed wire?

A. No, ran the barbed wire before that.

Q. Now, when did you run the barbed wire?

A. We ran the barbed wire in 1916.

Q. In 1916?

A. Yes, sir.

Q. That is, before you turned cattle in there, wasn't it?

A. Well, we put the barbed wire there for the purpose of turning cattle in. 10

Q. You did, eh?

A. Yes.

Q. Will you indicate on this map, Exhibit D. 3, where you extended the barbed wire fence? Here is the front of it; here is the Church; here is the back end and there is the railroad; and you must live there, don't you?

A. I live right across the street from the Church. Can I see the other map? I can point it out on the other map. 20

MR. BACON. Referring to Exhibit D. 1.

Q. Please do that.

A. Right between here (indicating on Exhibit D. 1).

MR. BACON. Indicating a point to the rear of the lot marked "Emma Robbins."

THE WITNESS. The fence went right across here. 30

Q. Indicating from where now, went right across where?

A. Went right across from this side here to the other.

Q. Went right across from one side of the cemetery to the other—is that the idea?

A. Right across through the centre of the cemetery.

Q. What is that fence?

A. A wire fence.

Q. A plain wire fence, eh?

A. I suppose wire about like telephone wire.

Q. Do you remember when that was built?

A. I do not.

10

J. HENRY SCHUMAN, sworn.

By MR. BACON.

Q. Are you the Township Clerk of Maurice River Township?

A. I am.

Q. How long have you been such Township Clerk?

A. About four years.

Q. I show you Exhibit P. 4 for Prosecutor; look at the entry there which reads as follows: "Chance Home-
stead, \$71.57." Do you know the items that compose that
20 sum of \$71.57?

MR. MILLER. The question is, Do you know?

A. No, I couldn't tell just the exact number of dollars.

Q. Was that paper made up in your presence by Mr. Henderson?

A. I couldn't say just as to that, whether it was or not.

Q. Did you and Henderson together figure up the
30 amount of money which you or the Township Committee
would require him to pay in order to satisfy the claim that
you had against him for taxes for the year 1913?

A. We did.

Q. And did you and he figure together that that was
\$395?

A. Yes, sir.

Q. And Mr. Sutton brought you this paper, dated
May 19, 1917, from Mr. Henderson, didn't he?

out with walks, avenues and drives through it?

A. Well, there were drives and walks and avenues all the way through it.

Q. All the way through from what place to what place?

A. From the railroad line to the front, and all the way around Mr. Hand's line and Smith's; there was a driveway all the way around the lot along the fence, and one down through the centre, and plots were staked off around there.

10

Q. How had these driveways been made? Were they mere paths, or had something been done artificially to form a drive?

A. Well, they were turfed out and the turf put up on the side, and made a place about six or eight inches deep for the drive.

Q. Did or did not these walks and drives show plainly when you started to plow?

A. They did.

20

Q. Is there still evidence of them there?

A. There is.

Q. Why? That is, what reason can you give for their still showing, notwithstanding the fact that you plowed them up?

A. Well, it is lower where the walks and drives were, and you can very plainly see where they were.

Q. Can you see them now? If a man was to go out there in this back part of the cemetery now, could he see where the walks and drives had been?

30

A. He can.

Q. What, if anything, did you do toward cultivating this ground before the fall of 1916, or to break it up?

A. Well, we had men go there and grub it out, undertook to kill it out that way, and it still came up just the same. So we decided to plow it.

Q. Did you also pasture cattle there?

A. We did just a short time.

Q. And' what did you do to keep the cattle out of the other part of the cemetery?

A. We put up two strands of barbed wire fence.

Q. Across the cemetery?

A. Right across.

Q. What did you do with that fence after you took the cattle out?

A. Why, took the fence down.

10 Q. Did you take it all down?

A. All down but one bar post left at the side.

Q. And where was that bar post with respect to the line?

A. It was right on the line.

Q. And you left that there?

A. Left that there.

Q. All the rest of it was taken down, was it?

A. All the rest was taken down.

20 Q. Now, did you sow grass on this in the fall of 1916?

A. I did.

Q. Did' you sow it yourself?

A. I did.

Q. What did you sow?

A. I sowed white clover and green grass.

Q. Was that the proper mixture of grass seed and clover seed to sow on this property?

A. Well, I think it was, yes.

30 Q. Did it take?

A. No.

Q. Why?

A. Well, I think the ground was so poor, too wild.

Q. Are you a farmer?

A. I am.

Q. Do you have charge of one of your father's farms?

A. I do.

Q. How long have you had charge of it?

A. Well, I farmed there all my life, and I have had charge of it since he has been to the State Farm, I don't know whether it is three or four years.

Q. What did you do in the spring of 1917 with this back part of the cemetery?

A. We plowed it and used fertilizer on there, and planted potatoes on one side.

Q. Now, why did you do that? What connection, if any, did that have with getting a take of grass on it? 10

A. Well, we put a crop there so we could tend it and keep the wild stuff killed out, and thought the grass would take better if we got the ground pulverized, and the fertilizer would help.

Q. Was there any Indian grass on this cemetery plot?

A. There was.

Q. Is that a grass that produces a considerable mass of roots?

A. Yes. 20

Q. And is it necessary to destroy those roots in order to kill it out?

A. Yes.

Q. Is there anything except cultivation that you know of that will kill the roots of Indian grass?

A. I don't know of anything; they are in great round bunches.

Q. It is a bunch grass, is it?

A. It is a bunch grass, yes, and the roots are all massed together. 30

Q. Is that lot now ready for the sowing of grass seed?

A. It is.

Q. And have you got the grass seed on hand ready to sow?

A. We have.

Q. In your opinion, as a farmer of experience, did you or did you not pursue in your work at the cemetery

the proper method to pursue in order to insure a satisfactory take of grass, in doing what you say you did in 1917?

A. Well, I thought that was the proper thing to do.

Cross-examination.

By MR. MILLER.

Q. Let's see, when was it you put the fence around it, Mr. Sutton, the barbed wire fence?

10 MR. BACON. I object to that on the ground there is no testimony that the barbed wire fence extended around the cemetery, and that therefore Counsel is inadvertantly mis-stating the testimony, the testimony being that the barbed wire fence was put to separate that part of the cemetery in which the cattle were put for the purpose of killing this sassafras from the other part of the cemetery, and there being no testimony that it

20 Q. Well, across the cemetery lot, then; when did you put it?

A. We put it across there, I think, in 1916.

Q. Was that about the time you took up the sassafras?

A. Yes, we grubbed the sassafras out for three springs; Somers Cole and Henry Williams and a colored fellow, they were there three different springs grubbing.

Q. That spring you grubbd it, did you?

30 A. We grubbed it for three springs before we put the fence around.

Q. '16, '15 and '14, eh?

A. No, '15, '16 and '17.

Q. '15, '16 and '17?

A. Yes.

Q. And then you tried putting cattle in there for the purpose of eating up the young shoots of the sassafras, is that the idea?

A. Yes, sir.

Q. And did Mr. Sutton have any conversation with you when he brought this paper to you?

A. No, sir, not any particular conversation other than that he didn't have the money, or something to that effect.

Q. Didn't have money enough, did he not?

A. Yes, sir.

Q. To pay as much as that?

A. Yes.

Q. But he had money enough to pay what he thought 10
was the amount, but didn't have that much—isn't that what he told you?

A. He didn't have that much. Well, of course—if you allow me to make a little explanation there—what date is this?

Q. May 19th.

A. What year?

Q. 1917.

A. Somewhere about January, I think, I was instructed by the Committee to write him a letter stating— 20

Q. No, I am not going back now; I only want to know whether or not—

A. Well, I have got to make a statement, because on May 19th I couldn't accept the money, because he had been notified to redeem and he hadn't redeemed, and therefore I couldn't accept the money. As far as—

Q. That, according to your idea, his time to redeem had expired?

A. His time to redeem had expired.

Q. And you had no right to accept the money that he 30
tendered you for the taxes of 1913?

A. He didn't tender me the taxes for 1917.

Q. You understood that you had no right then to let him redeem this land from the tax sale, is that right?

A. If he had had the money, I wouldn't have had the right to take the money.

Q. Because his time to redeem had expired?

A. Because his time to redeem had expired.

Q. And that was your understanding of it?

A. Yes.

Q. And that was why you refused to take the money, is that right?

A. No, that is not right.

Q. Well, is that why you demanded \$395?

A. That is why the demand for three hundred—I don't understand that question.

10 Q. What was included in the \$395?

A. Why, it was included, the taxes and costs.

Q. Taxes for what years?

A. Well, for the years that were due.

Q. Well, that is for the years 1914, 1915 and 1916?

A. I can't just say as to the number of years; I don't have a record of that.

Q. Well, did you demand from him the taxes for years other than the year for which the property was sold?

20 A. I made no demand for taxes, because it wasn't my business to demand the taxes.

Q. Do you know what was included in the \$395?

A. Well, I can't just state what was included; I presume I could—

Q. State what you do know about it.

A. I could if I had the papers to figure over—to look over what work we did in regard to that; I couldn't just say.

Q. Where are they?

30 A. I presume they are at the house.

Q. Will you send them to the Commissioner so that they may be marked as an Exhibit?

MR. MILLER. Now, wait; I am going to object to that.

A. If I am able to find them, I will do it.

MR. MILLER. I object to their being used that way. If you want to use them, you will have

to produce them, Mr. Bacon. I base my objection upon a declaration made by Vice Chancellor Leaming a few days ago in the Court of Chancery in a case before him where such an offer was made, and he declared that such practice was without any legal foundation, and papers produced in that way could not possibly have any evidential value.

Cross-examination.

By MR. MILLER.

10

Q. Now, Mr. Schuman, referring to Exhibit P. 3, I call your attention to the fact that the document recites that you have a certain paper with the amounts on in Mr. Henderson's handwriting. Is the paper there referred to the paper Exhibit P. 4, or is it some other paper?

A. You will have to put your question again; I didn't catch it all.

(Question repeated).

A. I couldn't definitely state because the papers were all included in the figures, and I think perhaps this was copied from it, or something to that effect. 20

Q. Well, Exhibit P. 4 was made on or about September, wasn't it?

A. Yes, sir.

Q. And exhibit P. 3 was made in May according to the date, wasn't it?

A. 5/19/17, yes, sir.

Q. Now, was Exhibit P. 4 copied from the paper referred to in Exhibit P. 3, or don't you know that? 30

A. Was Exhibit P. 3—

Q. No, was Exhibit P. 4, this document containing the figures, copies from the paper referred to in this Exhibit P. 3, mentioned by Mr. Henderson?

A. I think it was.

BOTH SIDES REST

EXHIBIT P. 2

THIS INDENTURE, made the 2 day of Feb., in the year of our Lord one thousand nine hundred and twelve, between Sylvester Bishop and Eliza W. Bishop, his wife, of the Township of Dennis, in the County of Cape May, and State of New Jersey, party of the first part, and Joseph W. Sutton, of the Township of Maurice River, in the
10 County of Cumberland and State of New Jersey, party of the second part:

WITNESSETH, That the said party of the first part, for and in consideration of the sum of One Dollar, lawful money of the United States of America, well and truly paid by the said party of the second part to the said party of the first part, at and before the ensealing and delivering of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, aliened, enfeoffed,
20 released, conveyed and confirmed, and by these presents do grant, bargain, sell, alien, enfeoff, release, convey and confirm, unto the said party of the second part, his heirs and assigns, ALL those certain tracts of land situate in Leesburg, Maurice River Township, Cumberland County, New Jersey, bounded and described as follows:—

No. 1, Known as the Chance Homestead property on the southerly side of the road leading to the railroad station, having a frontage of about one hundred and fifty feet on said road, a frontage of about three hundred and fifty
30 feet on Chance's cemetery, a frontage of about three hundred and seventy-eight feet on the West Jersey and Seashore Railroad, and adjoining lands of Spencer C. Chance, Coleman Chance, William C. Chance, Jr., and others.

Containing about three acres.

No. 2, Known as the William C. Chance, Sr., cemetery or burying ground in Leesburg.

Containing about two acres.

And is the same land the said Sylvester Bishop purchased of Harry J. Garrison, Sheriff of the County of Cumberland, by deed dated September 21, 1911, and recorded in the Clerk's office of Cumberland County in Deed Book No. 317, page 540.

TOGETHER with all and singular, the buildings, improvements, woods, ways, rights, liberties, privileges, hereditaments and appurtenances, to the same belonging or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and the profits thereof, and of every part and parcel thereof; 10

AND ALSO, all the estate, right, title, interest, property, possession, claim and demand whatsoever, both in law and equity, of the said party of the first part, of, in and to the said premises, with the appurtenances:

TO HAVE AND TO HOLD the said premises, with all and singular the appurtenances, unto the said party of the second part, his heirs and assigns, to the only proper use, benefit and behoof of the said party of the second part, his heirs and assigns forever. 20

And the said Sylvester Bishop, for himself, and his heirs, executors and administrators, doth by these presents covenant, grant and agree to and with the said party of the second part, his heirs and assigns, that he the said Sylvester Bishop, his heirs, all and singular the hereditaments and premises, herein above described and granted, or mentioned and intended to be so, with the appurtenances, unto the said party of the second part, his heirs and assigns, against him the said Sylvester Bishop, his heirs, and against all and every other person or persons whomsoever lawfully claiming or to claim the same, or any part thereof, from, through, by or under him, them or any of them, shall and will warrant and forever defend. 30

IN WITNESS WHEREOF, the said party of the

first part to these presents have hereunto set their hands and seals dated the day and year first above written.

Signed, Sealed and Delivered

in the presence of

C. M. BROUGHTON,

SYLVESTER BISHOP [SEAL]

ELIZA W. BISHOP [SEAL]

Duly Acknowledged

10 In compliance with the statute I have presented' an abstract of the within deed to the Assessor of the taxing district therein mentioned.

SAMUEL M. SHELDON,
County Clerk.

DEED

Sylvester Bishop, et ux,

to

Joseph W. Sutton, Leesburg, N. J.

Dated Feb. 2, 1912

20 Received in the Clerk's office of the County of Cumberland on the 15th day of March, A. D. 1912, at 3.35 o'clock in the afternoon, and recorded in Book 320 of Deeds for said County, on pages, 478, &c.

SAMUEL M. SHELDON,
Clerk.

EXHIBIT P. 3

30 Mr. Schuman:—

You will remember the day that you and I went over Mr. Sutton's five properties and figured it to be about, I think, \$395. You have the paper with the amounts on in my hand writing. I have explained it to him, and he expects to settle at an early date. Kindly tell him the amount due from our data.

Yours,
HENDERSON.

5/19/17

EXHIBIT P. 4

Zadoc Chance property,	\$ 85.87
John C. Chance property,	65.64
Carlisle Place	165.52
9 Certificates @ 75c,	6.75
Costs	10.00

Pd. \$333.78

Due Sept. 8th, 1917, 10

Meadow Land	\$27.42
Chance Homstead	71.57

\$98.99

350.00
333.78
 16.22

20

EXHIBIT P. 5

(\$333.78) Leesburg, N. J., Oct. 2, 1917.

The Township Committee of Maurice River Township has this day received from Jos. W. Sutton Three hundred thirty three dollars seventy eight cents for taxes and costs on the J. C. Chance, Zadok Chance and the Carlisle Place.

30

J. H. Schuman, Twp. Clerk.

EXHIBIT P. 6

TAX NOTICE

Mr. Joseph Sutton

Your tax for the year 1917 in Maurice River Township is Eleven Dollars and ten Cents.

The valuation of your taxable property and your assessment follows:

10	Rate of assessment on One Hundred Dollars Valuation	\$2.22.
	Number of Acres or Lots	5
	Value of Land Chance Homestead	\$400 00
	Value of Buildings and other Improvements	100 00
	Value of Personal Property	
	Total Value of Real Estate and Personal Property	
	Net Valuation, Taxable	500 00
	State School Tax	.26..... 1 30
	County Tax	.40..... 2 00
20	State Road Tax	.10..... 50
	Local Tax	\$1.46..... 7 30
	Dox Tax, Number of Dogs	
	Poll Tax	
	Total Amount of Tax	11 10
	Revised by C. Board \$200.00.	Amt. 4.44

This tax is now due and payable to Ellis Boggs, Collector, Port Elizabeth, New Jersey. A rebate on the Even Dollars of two per cent. will be allowed on taxes settled in full on or before November 30th next. A rebate on the 30 Even Dollars of one per cent will be allowed on all taxes settled in full after the thirtieth day of November and before the twentieth day of December, next.

All taxes not paid on or before the twentieth day of December next must draw interest at 8 per cent until paid. All taxes on real estate not paid before February 1st will be returned to County Clerk, and filed as first lien against said real estate. Also, all taxes on real estate remaining

unpaid on July first, next, will be advertised for sale according to law.

The County Board of Taxation will sit at the I. O. O. F. Hall, Leesburg, on Thursday, November 15, 1917, at 11 a. m., to hear cases of appeal. All appeals must be by petition, properly sworn to according to law. Blank forms will be mailed on application to the Secretary, Bridgeton, N. J., or may be had from the Collector of Taxes.

Appeals to the County Tax Board must be made by petition and a copy thereof served on the municipal clerk before the appeal will be heard. 10

The Collector will be at the store of Charles M. Thurston, Delmont, Thursday, December 13th; at the store of Arthur Corson, Heislerville, Friday, December 14th; at I. O. O. F. Hall, Leesburg, Saturday, December 15th; at the store of C. W. Champion, Dorchester, Tuesday, December 18th; at the store of M. B. Oliver, Port Elizabeth Thursday, December 20th, to receive taxes. If receipt is wanted be sure to return this notice.

ELLIS BOGGS, Collector, 20

Post Office Address, Port Elizabeth, N. J.

Received the above taxes in full191

Collector.

No receipt returned unless stamped, self-addressed envelope is enclose

Revised by Cy. Board

TAX NOTICE

Mr. Joseph Sutton

Your tax for the year 1917 in Maurice River Township is Four Dollars and forty-four Cents.

The valuation of your taxable property and your assessment follows:

Rate of assessment on One Hundred Dollars Valuation \$2.22.

Number of Acres or Lots 5

10	Value of Land Wm. Chance Homestead.....	\$200 00
	Value of Buildings and other Improvements.....	
	Value of Personal Property	
	Total Value of Real Estate and Personal Property	
	Net Valuation, Taxable	200 00
	State School Tax	26..... 52
	County Tax	40..... 80
	State Road Tax	10..... 20
	Local Tax	1.46..... 2 92
	Dox Tax, Number of Dogs	
20	Poll Tax	
	Total Amount of Tax	4 44
		04
		<hr/>
		4 40

This tax is now due and payable to Ellis Boggs, Collector, Port Elizabeth, New Jersey. A rebate on the Even Dollars of two per cent. will be allowed on taxes settled in full on or before November 30th next. A rebate on the 30 Even Dollars of one per cent will be allowed on all taxes settled in full after the thirtieth day of November and before the twentieth day of December, next.

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ELLIS BOGGS, Collector,
Post Office Address, Port Elizabeth, N. J.

Received the above taxes in full Dec. 20, 1917.

ELLIS BOGGS,
Collector.

No receipt returned unless stamped, self-addressed envelope is enclosed

THE CUMBERLAND COUNTY BOARD OF
TAXATION

In the matter of the appeal of
Joseph Sutton, from an assessment
in the Township of Maurice River
for the year 1917.

To the Collector of Maurice River Township.

THIS IS TO CERTIFY, that at a session of the
10 Board held this day the following action was taken upon
said appeal:

That the assessment of \$400. upon the portion of said
premises occupied as a Cemetary be set aside and vacated,
and the valuation of the remaining portion of said premises
for taxation for the year 1917 be fixed and established at
\$200. (Known as Chance Homestead)

Dated December 14, 1917.

GEORGE HAMPTON,
WILBERT H. ROBBINS,
EDWARD H. CORSON,

20

Attest: V. E. EDWARDS,
Secretary.

NEW JERSEY SUPREME COURT

JOSEPH W. SUTTON,

Prosecutor,

vs.

TOWNSHIP OF MAURICE RIVER,
IN THE COUNTY OF CUMBER-
LAND,

Defendant.

ON CERTIORARI
STIPULATION

10

It is stipulated and agreed by and between counsel of the respective parties in the above stated cause that six sheets of paper produced by the witness J. H. Schuman, and containing the calculations upon which Exhibits P3 and P4 were based, and being the sheets referred to by said witness in his direct examination shall be received in evidence, and marked Exhibit P7, with the same force and effect, as if said Exhibit had been produced before the Supreme Court Commissioner while said witness was on the stand.

20

It is further stipulated and agreed that the copy of Exhibit D 1 attached to and sent up with the return to the writ shall be used on the argument in the place of the original Map Exhibit D 1.

30

Dated May 11, 1918.

WALTER H. BACON,
Attorney for Prosecutor.

LOUIS H. MILLER,
Attorney for Defendant.

EXHIBIT P. 7

Leesburg, N. J., May 8, '18.

Mr. Miller:

Enclosed is papers asked for as near as I can come to it.

Very truly,
SCHUMAN.

	Paper No. 1	
10	Joseph Sutton, Chance Homestead,	10 90
	“ “ Zadoc Chance propt.	17 44
	“ “ Carlisle Place, 1916	34 88
	“ “ Chance Meadow	3 27
	“ “ John C. Chance propt	13 08
	Zadoc Chance propt.	16 24
	Wm. Chance Homestead	16 24
	John Chance propt., 1914	12 18
20	Carlisle place	32 48
	Chance Meadow	5 59
	Chance Homestead	10 60
	Zadoc Chance propt.	16 96
	John Chance propt., 1915	12 72
	Carlisle Place	33 92
	Chance Meadow	4 77

30 Paper No. 2 Sept. 8th, 1917.

Wm. Chance Homestead	
1913, Taxes	\$ 17.28
Costs, Int., etc.	4.09
Int. from Aug. 8th, 1914, to Sept. 8th, 1917, @	
8%	4.26
Recording Fee75
1914, Taxes	16.24

Int. from Dec. 20th, 1914, to Sept. 8th, 1917, @ 8%	3.57	
1915, Taxes	10.60	
Int. from Dec. 20th, 1915, to Sept. 8th, 1917, @ 8%	1.48	
1916, Taxes	10.90	
Int. from Dec. 20th, 1916, to Sept. 8th, 1917, @ 8%65	
Affidavit25	
Serving charges35	10
Recording Notices	1.15	
	<u>71.57</u>	

Paper No. 3

Charges on Joseph Sutton's Property to date Mar. 14th, 1917.

Charges and Interest to date Sale Aug. 14, 1914...\$	20.49	
Taxes 1913, Date Sale	86.94	
2 yrs. and 7 mos. Int. to date @ 8%	18.30	20
Taxes 1914	82.73	
2 yrs. and 3 mos. Int. to date, @ 8%	14.89	
Taxes 1915	78.97	
1 yrs. 3 mos. Int. to date @ 8%	7.89	
Taxes 1916	79.57	
3 months Int. to date @ 8%	1.75	
Recording Fee on five certificates @ 75c	3.75	
	<u>395.28</u>	

9 Tax Certificates recording @ 75c.....\$6.75 30

Meadow Land	\$ 27.42
Chance Homestead ..	71.57
Zadoc " Property	85.87
John C. " Property	65.64
Carlisle Place	165.52
	<u>416.02</u>

Paper No. 4

Charges and Interest Dec. 20th, 1913-Aug. 14th, 1914.

- \$ 5.41—Carlisle Place
- 3.14—Meadow Land.
- 4.09—Wm. Chance Homestead.
- 4.09—Zadoc “ House.
- 3.76—J. C. “ House.

	<hr/> \$20.49—Charges.				
10	1913	1914	1915	1916	
	\$34.56	32.48	33.92	34.88	Carlisle Place
	4.86	5.59	4.77	3.27	Meadow Land.
	17.28	16.24	10.60	10.90	Wm. Chance Homestead
	17.28	16.24	16.96	17.44	Zadoc Chance Property
	12.96	12.18	12.72	13.08	J. C. Chance Property.
	<hr/>	<hr/>	<hr/>	<hr/>	
	\$86.94	82.73	78.97	79.57	
	2 yr.	2 yr.	1 yr.	3 mos.	
20	7 mo.	3 mos.	3 mos.		
	18.30-Int.	14.89-Int.	7.89-Int.	1.75-Int.	

14 pieces Property recording @ 75c.....\$10.50

Paper No. 5.

Charges Due

- 9 Tax Certificates @ 75c\$6.75
- 30** Searching—

Paper No. 6

1913
86.94—107.43

Mr. Joseph Sutton

1914	1915	1916
5.59	4.77	3.72
16.24	10.60	10.90
16.24	16.96	17.44
12.18	12.72	13.08
32.48	33.92	34.88
<hr/>	<hr/>	<hr/>
82.73	78.97	80.02
		78.97
		82.73
		107.43
		<hr/>
		\$349.15

10

20

EXHIBIT D. 2

NOTICE TO REDEEM

(This is the same as the notice to redeem printed on pp. 9, 10, 11 and 12 hereof, which see).

NEW JERSEY SUPREME COURT

<p>JOSEPH W. SUTTON, <i>Prosecutor,</i></p> <p style="text-align: center;">vs.</p> <p>TOWNSHIP OF MAURICE RIVER, 10 IN THE COUNTY OF CUMBER- LAND, <i>Defendant.</i></p>	}	<p>ON CERTIORARI REASONS</p>
--	---	----------------------------------

Filed Feb. 11, 1918.

20 The said prosecutor, by Walter H. Bacon, his attorney, comes and prays that all proceedings of the assessor and collector of taxes of the Township of Maurice River, in the County of Cumberland, and of the Township Committee of said Township of Maurice River, in the matter of the assessment and sale for taxes levied and assessed for the year 1913 of property of prosecutor known and described as "The Wm. Chance Homestead situated in Leesburg, containing about 5 acres", and all subsequent proceedings whereby said Township Committee has sold, or is attempting to sell, by means of advertisements or otherwise, burial lots in what is known as the "Chance Cemetery" in Leesburg, Cumberland County, New Jersey, 30 under and by virtue of any tax sale or otherwise, and all other proceedings of said Township Committee in selling or attempting to sell the property of prosecutor known as the "Chance Cemetery" may be set aside, reversed and for nothing holden, for the following reasons:—

1. Said cemetery is by law exempt from taxation.
2. A sale for taxes of property exempt from taxation is a nullity.

3. Said cemetery property was not described as such, nor described in such manner that it could be identified, either in the assessment, tax notice, advertisement, collector's report of sale, certificate of sale, or deed.

4. Defendant never gave written notice to prosecutor of his right to redeem the Chance cemetery property from the sale for taxes of 1913.

5. Defendant is without right, title, power or authority to sell to the Trustees of the Leesburg M. E. Church the property of prosecutor known as the "Chance Cemetery." 10

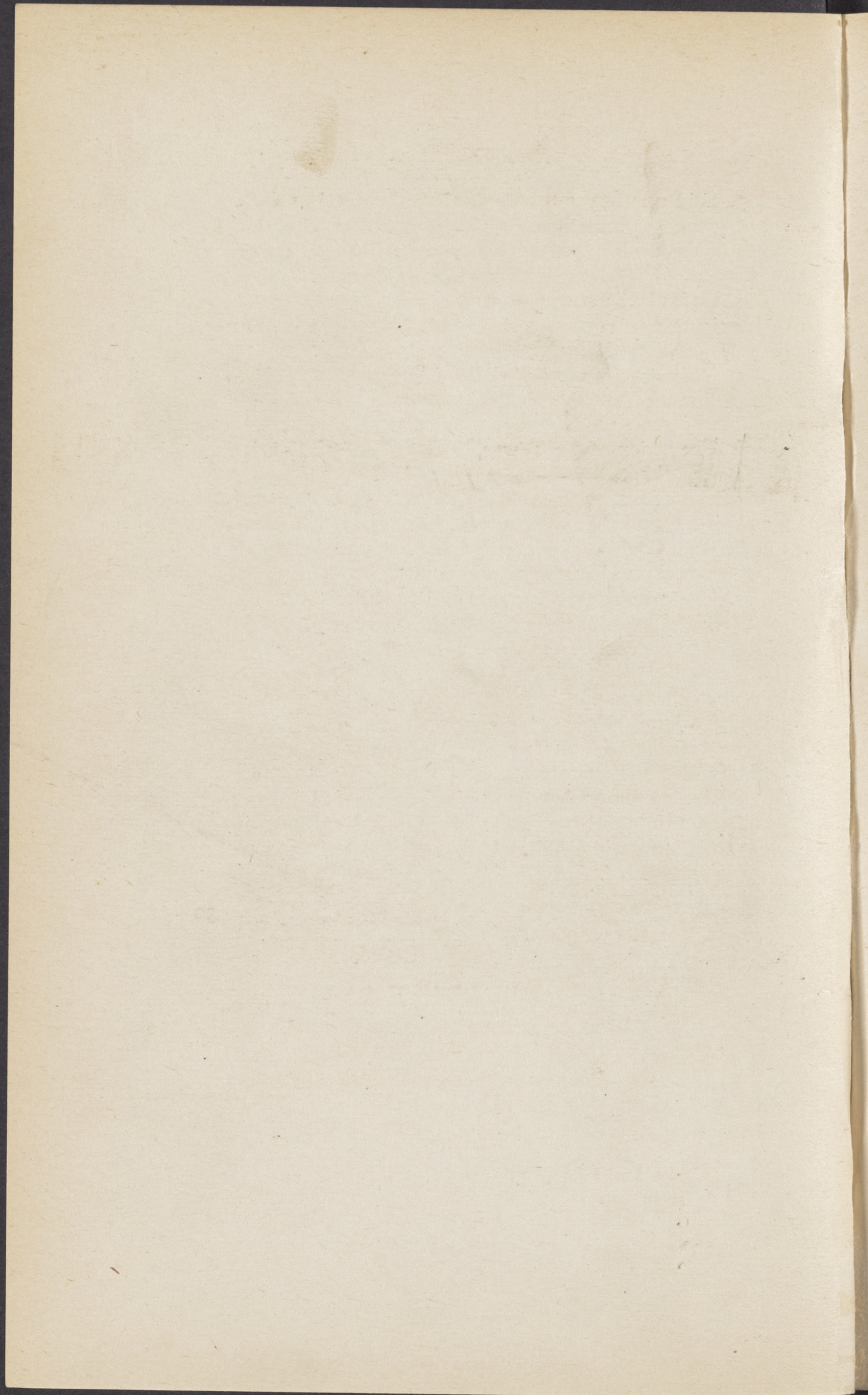
6. The action of the Township Committee of Maurice River Township, evidenced by copy of minutes forming part of the return to the writ, in advertising, selling and attempting to sell the property of prosecutor at Leesburg, Cumberland County, New Jersey, known as the Chance cemetery, is ultra vires, illegal and void.

7. The certificate of tax sale filed January 8, 1918, in the Clerk's office of Cumberland County is void and does not operate to convey the fee of said Chance cemetery because such certificate fails to show that there were no bidders at the tax sale for a shorter term, and thereby a sale in fee is excluded, and the return to the writ fails to show compliance with the law concerning sales of land for taxes, in divers other respects. 20

8. Prosecutor tendered to defendant the full amount of all taxes, interest, legal costs, charges and expenses in order to redeem said William Chance Homestead property from said tax sale before the time for redemption expired, which tender was refused.

9. The proceedings set out in the return to the writ fail to show a legal sale for taxes of the said William Chance Homestead property. 30

WALTER H. BACON,
Attorney for Prosecutor.



NEW JERSEY SUPREME COURT

JUNE TERM, 1918

JOSEPH W. SUTTON,

Prosecutor,

vs.

TOWNSHIP OF MAURICE RIVER,
&C.,

Defendant.

10

Submitted July 3, 1918; Decided

1918.

On certiorari.

Before Justices Parker and Minturn.

For the prosecutor, Walter H. Bacon.

20

For the defendant, Louis H. Miller.

Per Curiam.

Filed, Nov. 6, 1918.

The writ brings up a sale for unpaid taxes and proceedings on which such sale was based.

Several interesting questions are argued, but as we view the case it is unnecessary to discuss them as the matter is controlled by section 14 of the certiorari act of 1903, limiting a review of this character to three years from the date of the sale. *Bozarth v. Egg Harbor*, 85 N. J. L. 412. The later case of *Mitsch v. Riverside*, 86 N. J. L. 603, appears to be inapplicable since the limitation is invoked by counsel in this court and no constitutional right seems to be involved.

30

The writ will be dismissed.

SUPREME COURT OF NEW JERSEY

	JOSEPH W. SUTTON,	} ON CERTIORARI PETITION FOR RE- ARGUMENT
	<i>Prosecutor,</i>	
	vs.	
10	TOWNSHIP OF MAURICE RIVER, IN THE COUNTY OF CUMBER- LAND,	}
	<i>Defendant.</i>	

Filed November 20, 1918.

TO THE HONORABLE,
THE JUSTICES OF THE SUPREME COURT
OF THE STATE OF NEW JERSEY:—

20 Prosecutor respectfully applies for an order for re-
argument of the above-stated cause for the following
reasons:—

30 FIRST: The resolution of the Township Committee
which the Prosecutor sought primarily to review was the
one passed January 1, 1918, (Record pp. 23, 24) agree-
ing to sell Prosecutor's Cemetery to the Methodist
Church for \$100. Immediately upon the passage of this
resolution application was made to Mr. Justice Black for
allowance of the writ. The theory upon which the ap-
plication was made was that the attempt of the Township
Committee to justify the proposed sale to the Church
would necessarily disclose that the Cemetery was NOT
ASSESSED for taxes in 1913.

SECOND: A constitutional right is involved. If
the Cemetery was sold without an assessment, and with-
out strict compliance with the Tax Act, Prosecutor is
deprived of his property without due process of law.

The opinion of Mr. Justice Swayze in *Bounds vs. Chester Township*, 89 N. J. Law 375, clearly indicates this distinction, and that the statutory limitation does not apply to cases of this character.

THIRD: Prosecutor's printed brief was not clear on the precise point of the case, which is that the Township Committee are attempting to sell the Cemetery without any assessment for taxes as the foundation for such sale.

FOURTH: If possible, title to a Cemetery in which 10
hundreds of persons are buried, ought to be settled in a proceeding like this, rather than by an action of ejectment, tried locally before a jury.

FIFTH: Prosecutor is not guilty of laches. The sale of the "Chance Homestead" was never claimed to include the "Cemetery" until a lapse of 2 years and 364 days after the tax sale (Record p. 18). Meanwhile, the Cemetery had been assessed to Prosecutor for the taxes of 1917, which assessment was set aside by the County Tax Board on appeal. It was not until after this proceeding before the Tax Board that the Township Committee attempted to take possession of the Cemetery. 20

SIXTH: It is hoped that by a proper presentation of the matter, along the lines above indicated, the Court may find sufficient merit in Prosecutor's case to set aside the resolution of January 1, 1918, on the ground that the Township has failed to show by the return to the writ or by the proofs, that they have any title to Prosecutor's Cemetery.

Respectfully Submitted November 20, 1918. 30

WALTER H. BACON,

Attorney for Prosecutor.

I Certify that, in my opinion, the foregoing application is well founded and is not made for the purpose of delay.

WALTER H. BACON,

Of Counsel with Prosecutor.

NEW JERSEY SUPREME COURT

JOSEPH W. SUTTON,
Prosecutor,
 vs.
 TOWNSHIP OF MAURICE RIVER,
 IN THE COUNTY OF CUMBER-
 LAND,
Defendant.

ON CERTIORARI
 RULE DISMISSING
 WRIT

10

Filed November 8, 1918.

This cause coming on to be heard in the presence of the counsel of the respective parties, and the court having examined the return, and the depositions and other evidence having been read; and the argument of counsel thereon having been heard and considered; from all which it appears to the court that the writ of certiorari herein ought to be dismissed;

20

It is thereupon, on motion of Louis H. Miller, attorney of defendant, ordered that the said writ of certiorari be, and the same hereby is dismissed.

Entered Nov. 8, 1918,

On motion of

LOUIS H. MILLER,
Attorney of Defendant.

30

NEW JERSEY SUPREME COURT

	JOSEPH W. SUTTON,	}	
	<i>Prosecutor,</i>		
	vs.		ON CERTIORARI
	TOWNSHIP OF MAURICE RIVER,		RULE FOR ALLOW-
	IN THE COUNTY OF CUMBER-		ANCE OF COSTS
10	LAND,		
	<i>Defendant.</i>		

Filed November 12, 1918.

Application for this purpose being made in due time and the Court having ordered that the writ of certiorari herein be dismissed and it appearing that the defendant should have of the prosecutor its costs of this suit,—

20 It is therefore on this 29th day of November 1918 on motion of Louis H. Miller, attorney of the defendant, Ordered, that the said defendant recover of the prosecutor its costs of this suit, to be taxed.

Let this rule be entered. By the Court.

C. W. PARKER,
Justice of the Supreme Court.

Entered Dec. 12, 1918,

On motion of

30 LOUIS H. MILLER,
Attorney of Defendant.

NEW JERSEY SUPREME COURT

JOSEPH W. SUTTON,

Prosecutor,

vs.

TOWNSHIP OF MAURICE RIVER,
IN THE COUNTY OF CUMBER-
LAND,

Defendant.

ON CERTIORARI
NOTICE AND
GROUNDS OF APPEAL 10

Filed March 31, 1919.

TO LOUIS H. MILLER, ESQ., ATTORNEY FOR
DEFENDANT-APPELLEE:—

TAKE NOTICE that Joseph W. Sutton, Prosecu- 20
tor in certiorari, appeals to the Court of Errors and Ap-
peals of the State of New Jersey, from the whole of the
judgment rendered in this cause in the New Jersey Su-
preme Court on the following grounds:—

1. Because the Supreme Court dismissed the writ
of certiorari allowed in this cause, and refused to set
aside the proceedings of the defendant brought up for
review by said writ.

2. Because the Supreme Court decided that the case 30
at bar is controlled by Section 14 of the Certiorari Act
of 1903 limiting a review of this character to three years
from date of sale, whereas said Section of said Act is
not applicable under the facts in this case as disclosed by
the record.

3. Because the Supreme Court decided that the case
of Mitsch vs. Riverside, 86 N. J. L. 603, is inapplicable
to the case at bar because no constitutional right seems

to be involved, whereas a constitutional right is involved, namely, that prosecutor shall not be deprived of his property without due process of law.

4. Insofar as Section 14 of the Certiorari Act is used by defendant as a shield against attack upon a void tax sale, said Section is unconstitutional and void.

10 5. Because the cemetery which defendant is attempting to sell, in lots and otherwise, is exempt from taxation, and a sale for taxes of property exempt from taxation is a nullity.

6. Said cemetery property was not assessed for taxes nor sold for taxes by defendant, and defendant has no right or title thereto, hence the attempted sale thereof by defendant, under the proceedings sought to be reviewed, is illegal and void, and if allowed to proceed deprives prosecutor of his property without due process of law.

20 7. Said cemetery property was not described as such nor described in such manner that it could be identified, either in the assessment, tax notice, advertisement, collector's report of sale, certificate of sale, or deed.

8. Defendant never gave written notice to prosecutor of his right to redeem the Chance cemetery property from the sale for taxes of 1913.

30 9. Defendant is without right, title, power or authority to sell to the Trustees of the Leesburg M. E. Church the property of prosecutor known as the "Chance Cemetery".

10. The action of the Township Committee of Maurice River Township, evidenced by copy of minutes forming part of the return to the writ, in advertising, selling and attempting to sell the property of prosecutor at Leesburg, Cumberland County, New Jersey, known as the Chance cemetery, is ultra vires, illegal and void.

11. The certificate of tax sale filed January 8, 1918, in the Clerk's office of Cumberland County is void and

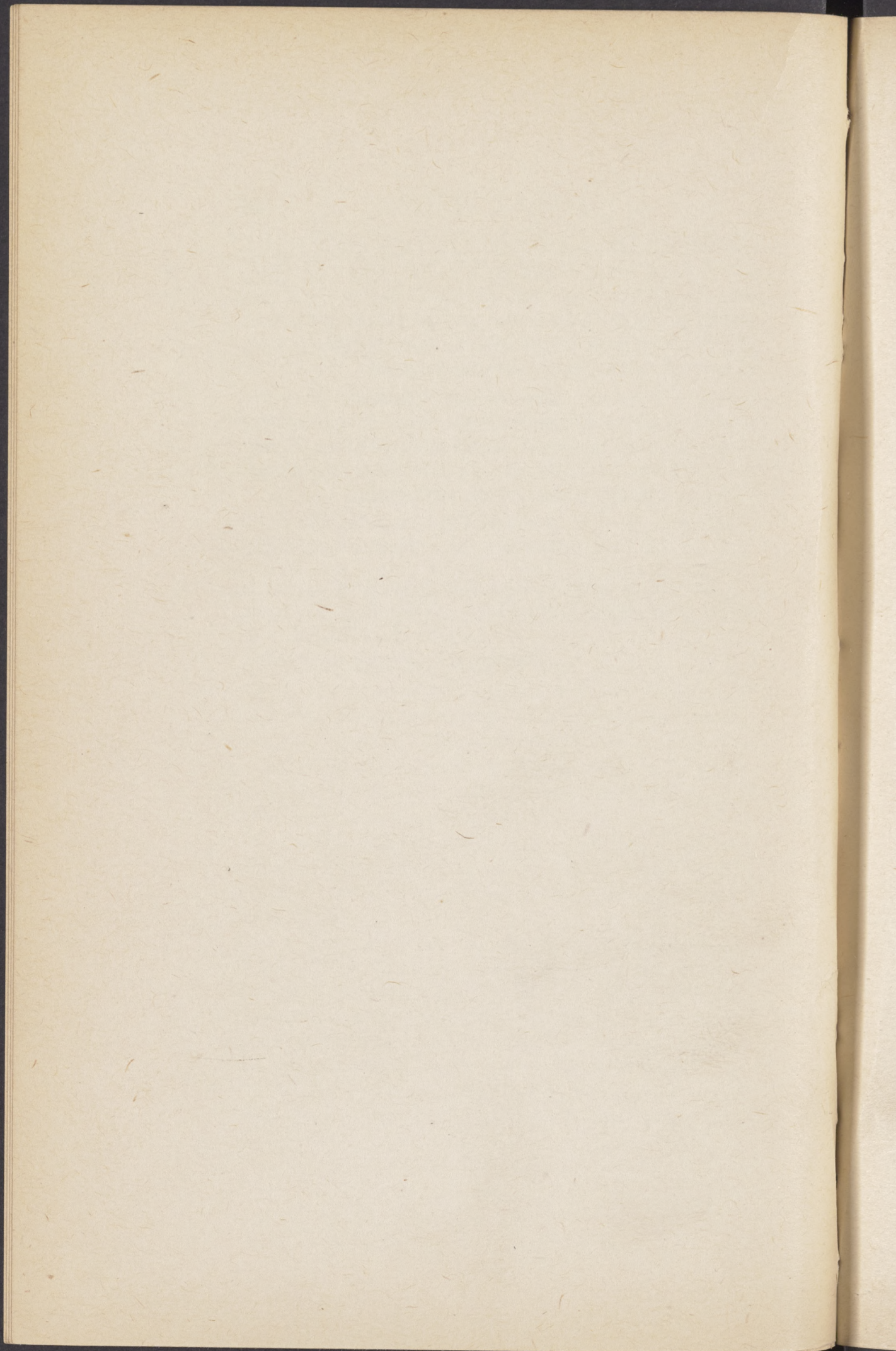
does not operate to convey the fee of said Chance cemetery because such certificate fails to show that there were no bidders at the tax sale for a shorter term, and thereby a sale fee is excluded, and the return to the writ fails to show compliance with the law concerning sales of land for taxes, in divers other respects.

12. Prosecutor tendered to defendant the full amount of all taxes, interest, legal costs, charges and expenses in order to redeem said William Chance Homestead property from said tax sale before the time for redemption expired, which tender was refused. 10

WALTER H. BACON,
Attorney for Prosecutor-Appellant.

Service of within notice and grounds of appeal is hereby acknowledged this 28 day of March, A. D., 1919.

LOUIS H. MILLER,
Attorney for Defendant-Appellee.



New Jersey
Court of Errors and Appeals

JOSEPH W. SUTTON,
Prosecutor-Appellant,

vs.

TOWNSHIP OF MAURICE RIVER
IN THE COUNTY OF CUMBER-
LAND,

Defendant-Respondent.

ON CERTIORARI

APPEAL FROM
SUPREME COURT

BRIEF FOR PROSECUTOR-APPELLANT

I

STATEMENT OF THE CASE

Following are extracts from minutes of sundry meetings of the Township Committee of Maurice River Township in the County of Cumberland.

Dec. 4, 1917, record page 22,

“By virtue of purchase of the Wm. Chance Homestead property, the Twp. Com. will sell burial lots therein.

Persons desirous of procuring lots may do so application to the Clerk.

By order Twp. Committee.

Moved and carried that Mr. Arthur go to Bridgeton and make copy of Map of Cemetery. He to receive \$5.00 for same.

The notice of lots in Cemetery for sale to be printed by Evening News for one week, a dozen copies be sent to the Clerk, a marked copy to be sent to Mr. Sutton, also notice to be posted in five different places and one on the ground."

Dec. 27, 1917, record page 23,

"There being no communications from the public a motion was made and carried to dispose of the Cemetery property, lately acquired by the Committee of J. W. Sutton for the non payment of taxes.

The motion is herein appended.

Motion is hereby made that the Township Clerk notify the Trustees of the Leesburg M. E. Church, that the Township Committee is willing to dispose of the property held by the Township known to the public as the Chance Cemetery. Same being bounded on the North by Harris Ave., on the South by south-east Ave., and in the East as far as Chance Homstead property extends on a line with Harris Ave., and that the same shall be sold for a consideration agreeable to both parties, and that a maximum price shall be fixed upon the lots before the sale so as to benefit the several communities.

By order of Twp. Committee."

Jan. 1, 1918, record pp. 23, 24,

"Communication from the Trustees of Leesburg Church was presented by Mr. Newcomb.

The Trustees of the $\frac{3}{4}$ Church took into consideration the offer made by the

Committee. They agreed to make an offer of \$100. to the Township for the Chance Cemetery.

They proposed not to charge more than \$40. for large lots and \$25. for small lots, 75 per cent. of the money chargeable for lots in the new cemetery to be placed in a fund and the interest therefrom to be used in the upkeep of the Cemetery and the other 25 per cent. to be expended in keeping up the general expense.

It was moved and carried that the proposition presented by Trustees of Leesburg Church to offer \$100.00 for the Cemetery be accepted by the Committee. The Township's Committee agreed to defend the title."

Jan. 8, 1918, Mr. Justice Black allowed a writ of certiorari.

The purpose of obtaining the writ was to challenge the right of the Township Committee to sell the Chance Cemetery, either to the public in lots, as advertised in the "Evening News", or to the Trustees of the Leesburg Church, as proposed by the resolution of January 1, 1918.

In their return to the writ, the Township Committee set out the proceedings by virtue of which they claimed to have acquired title to the Cemetery through a tax sale made in 1914.

These proceedings fail to show any assessment of the Cemetery or any lawful sale thereof, and prosecutor insists that he is being deprived of his property without due process of law.

The Supreme Court declined to consider the merits of the controversy saying, (p. 140),

“The writ brings up a sale for unpaid taxes and proceedings on which such sale was based.

Several interesting questions are argued, but as we view the case it is unnecessary to discuss them as the matter is controlled by section 14 of the certiorari act of 1903, limiting a review of this character to three years from the date of the sale. *Bozarth v Egg Harbor*, 85 N. J. L. 412. The later case of *Mitsch v Riverside*, 86 N. J. L. 603, appears to be inapplicable since the limitation is invoked by counsel in this court and no constitutional right seems to be involved.

The writ will be dismissed.”

Petition for re-argument was then filed in which the constitutional question was specifically urged. (pp. 141, 142).

The Supreme Court denied the application, saying (p. 143),

“An examination of the petition for rehearing in this cause fails to impress us of its merit. The application is therefore denied. If the decision be erroneous, and this is the gravamen of the application, prosecutor has full redress by a review in the Court of Errors and Appeals.”

Nov. 8, 1918, an order was entered dismissing the writ (p. 144).

II

GROUNDS OF APPEAL

1. Because the Supreme Court dismissed the writ of certiorari allowed in this cause, and refused to set aside the proceedings of the defendant brought up for review by said writ.

2. Because the Supreme Court decided that the case at bar is controlled by Section 14 of the Certiorari Act of 1903 limiting a review of this character to three years from date of sale, whereas said Section of said Act is not applicable under the facts in this case as disclosed by the record.

3. Because the Supreme Court decided that the case of Mitsch v Riverside, 86 N. J. L. 603, is inapplicable to the case at bar because no constitutional right seems to be involved, whereas a constitutional right is involved, namely, that prosecutor shall not be deprived of his property without due process of law.

4. Insofar as Section 14 of the Certiorari Act is used by defendant as a shield against attack upon a void tax sale, said Section is unconstitutional and void.

5. Because the cemetery which defendant is attempting to sell, in lots and otherwise, is exempt from taxation, and a sale for taxes of property exempt from taxation is a nullity.

6. Said cemetery property was not assessed for taxes nor sold for taxes by defendant, and defendant has no right or title thereto, hence the attempted sale thereof by defendant, under the proceedings sought to be reviewed, is illegal and void, and if allowed to proceed deprives

prosecutor of his property without due process of law.

7. Said cemetery property was not described as such nor described in such manner that it could be identified, either in the assessment, tax notice, advertisement, collector's report of sale, certificate of sale, or deed.

8. Defendant never gave written notice to prosecutor of his right to redeem the Chance cemetery property from the sale for taxes of 1913.

9. Defendant is without right, title, power or authority to sell to the Trustees of the Leesburg M. E. Church the property of prosecutor known as the "Chance Cemetery".

10. The action of the Township Committee of Maurice River Township, evidenced by copy of minutes forming part of the return to the writ, in advertising, selling and attempting to sell the property of prosecutor at Leesburg, Cumberland County, New Jersey, known as the Chance cemetery, is ultra vires, illegal and void.

11. The certificate of tax sale filed January 8, 1918, in the Clerk's office of Cumberland County is void and does not operate to convey the fee of said Chance cemetery because such certificate fails to show that there were no bidders at the tax sale for a shorter term, and thereby a sale in fee is excluded, and the return to the writ fails to show compliance with the law concerning sales of land for taxes, in divers other respects.

12. Prosecutor tendered to defendant the full amount of all taxes, interest, legal costs, charges and expenses in order to redeem said

William Chance Homestead property from said tax sale before the time for redemption expired, which tender was refused.

III

BRIEF OF THE ARGUMENT

THE CEMETERY WAS EXEMPT FROM TAXATION AND FROM SALE FOR UNPAID TAXES.

“The following property shall be exempt from taxation under this act, namely:—

* * * * *

Graveyards not exceeding ten acres of ground, cemeteries and buildings for cemetery use erected thereon.”

4 C. S. of N. J. Sec. 3, pp. 5077, 5083.

Simonton Tax Sales in New Jersey, p. 27 and cases cited.

The proofs show that this cemetery was established more than 30 years ago by William Chance. He laid out walks, drives and burial plots, erected a large sign at the entrance on which appear the words “Chance’s Cemetery”, filed a map in the County Clerk’s office, and sold more than 200 burial lots, in many of which interments have been made. The cemetery was fenced off from his other property. It contains a large number of monuments and tombstones, and is well known in the lower part of Cumberland County as a burial ground.

It is referred to by the Township Committee in their minutes (p. 23) as being “known to the public as the Chance Cemetery.”

Mr. Sutton bought the property February 2, 1912, (p. 124).

There are two descriptions in his deed. Lot No. 1 is the "Homestead" and Lot No. 2 is the "Cemetery."

In 1917, after this controversy arose, the property still being assessed to him, Mr. Sutton appealed from the assessment. The County Board of Taxation viewed the property, determined that it was a cemetery and exempt from taxation and, therefore, set aside the assessment for 1917. (See testimony of George Hampton, pp. 101-104). There being no evidence to the contrary, the presumption is that this judgment was founded on due proof and is conclusive.

Newton Trust Co. v Atwood, 77 N. J. L. 141.

APPELLANT IS NOT BARRED FROM HIS REMEDY BY SEC. 14 OF THE CERTIO- RARI ACT.

The act of 1903 provides (C. S. of N. J. 407) that,

"14. No writ of certiorari shall be allowed to review any sale of land to enforce any assessment or tax, unless such writ be allowed within three years from the date of any such sale."

As amended in 1915, (P. L. 580 Supp. to C. S. of N. J. 117) the time limit is reduced to 18 months.

Sec. 15 of the act relative to sales of land under a public statute, however, while protecting official conveyances from collateral attack, expressly provides that they,

“May be reviewed *at any time* by certiorari or other proper proceeding in the Supreme or Circuit Courts.”

The opinion of the Supreme Court in the case at bar, refusing to consider the merits of this case because of the provisions of Sec. 14 of the Certiorari Act, is in conflict with many previous decisions of that Court and with the opinion of this Court in the case cited as authority by the Supreme Court.

In *Walsh vs. Newark*, 78 N. J. L. 168, Mr. Justice Trenchard said, at p. 170,

“The statutory limitation upon the allowance of the writ of *certiorari* cannot be enforced for the protection of an assessment which the legislature could not constitutionally authorize”. (Citing authorities).

In *Waterman vs. Township of Shrewsbury*, 83 N. J. L. 286, the writ was allowed in 1911 or 1912 to review a tax sale made in 1898 for taxes assessed in 1897.

Defendant set up Sec. 14 of the *Certiorari* act.

Mr. Justice Kalisch said, (p. 289),

“We think the prosecutor is entitled to prosecute his writ, for two reasons: *First*. Because it is in aid of an action in ejectment, under which circumstance, it has been repeatedly held, that lapse of time cannot be set up as against the issuance of the writ. *State, Baxter, prosecutor, v. Jersey City*, 7 *Vroom* 188; *State, J. H. McCarthy, et al, prosecutor, v Mayor, &c. of Jersey City*, 15 *Id.* 136; *Brooks v Township of Union*, 39 *Id*

136; 4 *Comp. Stat.* p. 4679, Sec. 15. *Second.* The statute invoked as a bar is not applicable where no assessment has been laid or proper sale made. *Walsh v. Newark*, 49 *Vroom* 168."

In *Bozarth vs. Egg Harbor*, 85 *N. J. L.* 412, Mr. Justice Swayze said, (p. 413),

"The certiorari in this case is or may be prosecuted in aid of an ejectment to try the title to the land. It comes within Section 15 of the act relating to sales of land. *Comp. Stat.* 4679. The object of this act was to do away with the inconvenience of trying out the validity of tax sales, collaterally in an action of ejectment, which might result adversely to the claim under the tax sale and in the loss to the municipality of taxes justly due. As a substitute for this collateral attack, the legislature provided for a direct attack by *certiorari*, which, by the express language of the statute, might be 'at any time'. In an early case arising under this act we held that a delay of more than ten years was not fatal to the prosecutor's rights with respect to such objections as would otherwise have been available to him in an action of ejectment."

In *Bounds v Chester Township*, 89 *N. J. L.* 375, Mr. Justice Swayze said, (p. 376),

"The prosecutor seeks to set aside a certificate of sale for taxes. The taxes were for the year 1908; the sale was in September, 1909; the certificate is dated and acknowledged September 25th, 1909, and was recorded November 13th, 1909.

The prosecutor's writ was allowed January 14th, 1916, and he is met by the objection that it was too late. The act of 1915 enacts that no writ of *certiorari* shall be allowed to review any sale of land to enforce any tax unless allowed within eighteen months from the date of sale. The statute by its very terms applies only to sales of land to enforce a tax. The only sales of land to enforce a tax authorized by our legislation are in cases where the tax has been by proper proceedings made a lien on land. The only sales therefore to which the limitation on review by *certiorari* applies are sales to enforce a statutory lien. A sale to enforce a tax where there is no statutory lien would be without authority of law, and an attempt to take the taxpayer's property without due process of law, and such a sale could not be made effective by limiting the time within which a *certiorari* could issue. The case would then come within the rule of *Traphagen v West Hoboken*, 39 N. J. L. 232; 40 *Id.* 193, and the cases that have followed it. The *certiorari* was properly allowed."

In *Mitsch v Township of Riverside*, 86 N. J. L. 603, it was urged before this Court that Section 14 of the *Certiorari Act* was a bar. It was said, (p. 610),

"Since the point was not made in the Supreme Court, we need not consider it now. We ought not to do so since the limitation is not applicable in cases where the assessment is made in violation of constitutional rights. (Cases have been

recently collected by Mr. Justice Trenchard in *Walsh v Newark*, 78 N. J. L. 168). We do not know what facts might have been brought to the attention of the Supreme Court, if this point had been made there."

In the case at bar, the writ was applied for as soon as prosecutor knew the Township Committee were intending to interfere with his property rights. It was intended as an aid to ejectment. Since the decision of the Supreme Court, the Township Committee has commenced an action of ejectment against Sutton to oust him from possession of the cemetery and this appeal is prosecuted as an aid to his defense of that suit.

It is respectfully submitted that the Supreme Court in the case at bar reached an erroneous conclusion as to the legal effect of the decisions in the cases of *Bozarth v Egg Harbor*, 85 N. J. L. 412, and *Mitsch v Riverside*, 86 N. J. L. 603, cited by them.

The constitutional right involved is that prosecutor shall not be deprived of his property without due process of law.

THE PROCEEDINGS RETURNED WITH
THE WRIT AS THE FOUNDATION FOR
DEFENDANT'S CLAIM OF TITLE TO
PROSECUTOR'S CEMETERY ARE
FATALLY DEFECTIVE

The "Chance Homestead" and the "Chance Cemetery" are separate and distinct properties.

They are described separately in Mr. Sutton's deed (p. 124), and an abstract of the deed

was presented to the Township Assessor by the County Clerk as required by law (p. 126).

Defendant claims title by virtue of proceedings to sell the Cemetery for the tax of 1913.

Were such proceedings operative to that end?

There is no presumption in favor of the legality of a tax sale in New Jersey.

“The decisions generally recognize the following fundamental rules:—That a tax sale is invalid for every purpose unless the property was at the time liable for all the taxes for which it was sold; that where land is sold to pay the taxes due upon it, together with the taxes due upon other lands, whether belonging to the same or a different owner, the sale is void; and that each parcel of a person’s land, separately assessed, is only liable to sale for its own specific tax.” 37 Cyc. 1287.

“The delinquent list must contain such a description of the several parcels of land that they may be identified with reasonable ease and certainty, both in order that the owner may know that it is his land which is returned as delinquent and that intending purchasers may know what properties are to be offered for sale.” 37 Cyc. 1295.

“It is essential to a valid tax sale of land that the statutory directions as to notice thereof shall have been complied with substantially if not literally; and whether this notice is required to be indi-

vidual or general, and whether by personal service, published advertisement, or posting, the omission of it is not a mere irregularity but a defect which invalidates all subsequent proceedings."

37 Cyc. 1324.

"The notice of tax-sale must describe the lands to be sold with such certainty and particularity that they can be clearly identified, without any reasonable chance of mistake, so that the owner may know that it is his property which is advertised and an intending purchaser may know what lands are to be sold; if the description is insufficient for this purpose, the notice is fatally defective, as is also the case where the description, although clear and intelligible in itself, does not apply to the particular premises intended."

37 Cyc. 1329.

"The power to sell lands for taxes is a naked power, and the validity of a title derived from such a sale depends upon a strict compliance with the directions of the statute. The officer entrusted with the power of sale exercises a naked statutory and special authority, depending upon the letter of the law for its support. He must act in conformity with the law from which his power is derived; and a purchaser at such a sale is bound to inquire whether he has so acted. It is, therefore, a condition precedent to the passing of titles at such sales that all the proceedings of the officers who have anything to do with the assessment and collection of taxes, or with the advertisement and sale

of the property, shall be in compliance with the statute authorizing the sale. The *onus probandi* is upon the purchaser, and he must show affirmatively that everything has been done which the statute makes essential to the due execution of the power."

Woodbridge vs. Allen, 43 N. J. L. 262, at p. 270.

Bozarth vs. Egg Harbor City, 85 N. J. L. 412.

There was no lawful assessment of and sale for taxes of 1913, of the Cemetery property which the Township Committee is now proposing to sell.

"The only sales of land to enforce a tax authorized by our legislation are in cases where the tax has been by proper proceedings made a lien on land."

Bounds vs. Chester Township, 89 N. J. L. 375.

(a) THE CEMETERY WAS NOT ASSESSED IN 1913.

The tax notice (p. 3) shows the assessment for 1913 to be as follows:—

"Name, Joseph Sutton	
Number of Acres 5	
Value of land Chance Homestead	
Propt Lees	600.
Value of improvements	200. "

There was no specific assessment on the cemetery.

This tax notice is the sole foundation for defendant's claim that the Chance Cemetery was assessed for taxes in 1913.

The Cemetery not having been assessed, nor notice of assessment given the owner, all subsequent proceedings are a nullity.

Mitsch vs. Township of Riverside, 86 N. J. L. 603-606. .

The assessor testified (p. 75, line 28),

"I didn't assess any lots that were laid out as lots and kept up as the cemetery property."

The "Homestead" and "Cemetery" are separate and distinct parcels of land. They were separately purchased by Sutton. The Township Committee repeatedly recognize the distinction between them in the proceedings returned with the writ. (See pp. 19, 20, 23).

In the minutes of December 27, 1917, (p. 23) in describing "Cemetery" property they bound same on the "Chance Homestead". They are not proposing to sell to the Church the "Chance Homestead" which they bought at the tax sale, but the "Chance Cemetery" which they never bought and do not own.

The Cemetery could not be sold for taxes due on the Homestead.

Barkley v Elizabeth, 41 N. J. L. 517.

It was not until August 7, 1917, a period of 2 years 364 days after the tax sale, that the Township Committee first claimed that the sale of the Homestead included the Cemetery.

By Sec. 6 of the Tax Act of 1903 (*C. S. of N. J. Vol 4 p. 5085*) the assesor is required, after examination and inquiry, to "determine the full and fair value of *each parcel* of real prop-

erty situated in his taxing district at such price as, in his judgment, *each parcel* would sell for at a fair and *bona fide* sale by private contract on the twentieth day of May in said year, and shall make a list in tabular form of the names of the owners, and set down in proper columns opposite each name the *description and area of each parcel sufficient to ascertain its location and extent* and the value of each parcel as determined by the assessor."

This was not done in the case at bar.

(b) ADVERTISEMENT DEFECTIVE.

The cemetery is not mentioned in the advertisement (p. 7). The property advertised to be sold is "the Wm. Chance homestead, situated at Leesburg, containing about 5 acres."

This description is insufficient to give notice that the cemetery property was to be sold for taxes.

"The description in the advertisement for sale should be such as to warn the owner for what property he is assessed, and such as to secure a fair sale by showing to purchasers what property is to be sold."

Warshung vs. Hunt, 47 N. J. L. 256.

Waterman vs. Township of Shrewsbury,
83 N. J. L. 286.

The cemetery was set off from the homestead more than 25 years ago. There is and has been for 20 years, a sign over the entrance, "Chance's Cemetery." It was fenced off from the adjoining property on all sides. Doubtless

every adult inhabitant of Leesburg and the surrounding villages knew of the existence and location of the cemetery. It is obvious that the advertisement of the sale of the "Wm. Chance Homestead", was no notice to purchasers that the cemetery was also to be sold. The advertisement was misleading and injurious to Mr. Sutton as well as to prospective purchasers.

This defect in the advertisement is sufficient to invalidate the sale and the certificate given in pursuance thereof.

Waterman vs. Township of Shrewsbury,
83 N. J. L. 286.

By Sec. 54 of the Tax Act of 1903, (4 C. S. of N. J. p. 5134) the collector is required to make a report to the Township Committee of his sales of land for taxes.

Copy of this report for the tax sale of 1913 is annexed to the return to this writ, (p. 4) and is the only evidence of attempted compliance by the collector with the provisions of Sec. 51, with respect to notice of sale.

There is nothing in this report to show that the collector gave notice that "Chance's Cemetery" would be sold, or that one of the advertisements was posted, as required by the act, "on or near the premises to be sold."

This defect is fatal and cannot be supplied by parole evidence.

Jones vs. Landis Township, 50 N. J. L.
374, 378.

There is no reference to either the Chance homestead or the cemetery in the report, nor any statement that the property which was

struck off to the Township was so sold because there were no other bidders, or no person who would purchase for a shorter term than the fee.

The statement is, (pp. 4, 5).

“I also sold the premises assessed to Burto Bresnwidouce \$6.25 for the sum of six 25-100 * * * * (Here follows list of 28 names and amounts without any description whatever of the property sold).

To Maurice River Township for the term in ‘fee’ for the sum set opposite their respective names”, etc.

This fails to show compliance with the statute.

(c) CERTIFICATE OF SALE DEFECTIVE.

The collector certified under date of August 18, 1914, (p. 13) that at a public sale of real estate made August 8, 1914, for the purpose of making the taxes of 1913,

“All that certain real estate assessed to Joseph Sutton and described as follows, to wit:—the Wm. Chance Homestead, situate in Leesburg, containing about 5 acres, was struck off and sold to Maurice River Township for the term of in fee, the said Maurice River Township having bid and agreed to take the said real estate for the shortest term of years for which any person would take the same and pay the amount of tax, with the interest thereon and cost of sale.”

This certificate was recorded in the County Clerk's office and is the only conveyance under which the Township claims the cemetery property.

It is fatally defective not only because of the inconsistency in confusing a term of years with the fee, but because of the failure to show that there were no bidders for a shorter term and thereby a sale in fee is excluded.

Fairfield Dairy Co. vs. Peer, 80 N. J. L. 649.

There is no reference to the cemetery in this certificate.

The certificate bears date August 18, 1914, but was not filed in the County Clerk's office until January 8, 1918, which was the date the writ was allowed in this cause. This was after the time limited by the statute (4 C. S. of N. J. p. 5135 Sec. 56), for such filing had expired.

Surely title to land cannot be taken from a citizen by proceedings which are so seriously defective.

There is nothing in the certificate or return to show that the tax was unpaid; nothing to show proceedings to perfect a lien by filing with the County Clerk as required by Sec. 50. The tax duplicate does not show an assessment against the cemetery property, nor does the report of sale make any mention of the sale either of the cemetery or the homestead. By statute (Sec. 54) this report is required to be recorded and the record is made presumptive evidence of the proceedings therein recorded. The return to the writ fails to disclose the recording of this report. The record book was not offered in evi-

dence. No proof was offered outside of the return, showing compliance with the provisions of Sec. 51 with respect to notice of sale. Assuming, however, that the return to the writ shows all which the record would show if offered, the report is fatally defective because of failure to show compliance with Sec. 51.

The Township Clerk was called as a witness and the state of the case shows (p. 34, line 18) that Mr. Boggs, the Collector, was present when the depositions were taken.

Neither of them was called upon to supply by testimony any of the defects in the return.

The sale cannot be supported unless the record affords the necessary evidence.

Landis vs. Vineland, 61 N. J. L. 424, 427.

While some of the defects may be said to be of formal or technical procedure, others go to the substantial merits. The failure to mention the cemetery in any of the proceedings, the failure to post a notice of sale on or near it, and the failure to show by any record, return or recital that the Township became the purchaser in fee because there were no bidders for a shorter term, all go to the real foundation of a valid tax sale.

In addition to the cases already cited, See the following:—

Brooks vs. Township of Union, 68 N. J. L.

133.

Hasbrouck Heights Co. vs. Lodi, 66 N. J.

L. 102.

Landis vs. Vineland, 60 N. J. L. 271.

REDEMPTION

This is not an attempt on the part of a land owner to escape payment of taxes by resort to technical objections.

Mr. Sutton had, or thought he had, a fairly debatable matter for adjustment by the Township Committee of taxes on several properties which he had bought at public sale in 1912, formerly belonging to William Chance and members of his family.

He never refused to pay the taxes. He put it off, pending the promised adjustment. When he found the Township Committee could not or would not adjust the matter, he made every effort to redeem his properties from the sale and was permitted to redeem all except the Cemetery.

The purpose of the Township Committee is quite obvious.

The value of the property in question may be calculated by reference to the schedule of prices for lots set out on p. 24. As there are more than 200 unsold lots, a manifest gross injustice would be done prosecutor by taking this property for a tax which at the outside, could not amount to as much as the price of a single lot.

Regarding the Cemetery as an aggregation of separate lots, it is also submitted that the sale of more than 200 lots is illegal when the sale of one lot would have paid the tax.

The sale in question took place August 8, 1914.

The notice to redeem is printed on pp. 9, 12, of the state of the case.

Among other defects are the following:—

No reference is made to the cemetery.

Statement made, inter alia,

“Said municipality having bid and agreed to take said real estate for the shortest term of years for which any person would purchase the same”, etc. (p. 10).

The notices with respect to time for redemption are conflicting. In paragraphs 2 and 3 it is said the right to redeem will expire on August 8, 1916, which date was more than 8 months *before* the notice was served, while in paragraph 4 the time to redeem is fixed at 60 days *after* service of the notice.

The amount required to be paid in order to redeem is, (p. 11)

“The amount of the purchase moneys shown on the tax certificate, with interest at the rate of eight per centum per annum thereon from the date of sale, together with such other expenses that may have been incurred by the purchaser, its successors or assigns, under the tax laws of the State, for recording fees, fees paid for service of notices necessarily served and the fees and expenses in ascertaining the owner or owners, mortgagee or mortgagees, occupant or other person having an interest or lien in or on said premises so sold for taxes, as provided by Section 57 of the General Tax Act of this State, as

amended by Chapter 273 of the Laws of 1916.”

The notice is dated *July 3, 1917*, while the proof of service is dated *June 14, 1917*, and the affidavit shows service was made *April 25, 1917*. Proof of service was filed in the County Clerk's office *July 5, 1917*, and recorded in mortgage book No. 137, p. 552.

The proofs indicate that the notice was actually served in the latter part of April, 1917, and consequently the time to redeem expired in the latter part of June, assuming the notice to have been sufficient.

Five notices were served on Mr. Sutton at the same time. He “figured up” (p. 36) the amount called for by the notices and found it to be \$107.43 besides interest and costs. On May 19, 1917, he drew \$250. from the bank, took the money to the Chairman of the Township Committee, laid the money and the statement on the table and said he was ready to pay. Mr. Sutton made the amount, including interest and costs, “a great deal more” than \$107.43 but less than \$250. and he laid down the amount his statement or calculation called for. Mr. Henderson told him the amount was \$395. as near as he could tell, and gave Mr. Sutton a note to Mr. Schuman, the Township Clerk. (Exhibit P3 p. 126). Mr. Sutton told Mr. Henderson he would be obliged to ask for a little extension.

On several occasions after this Mr. Sutton went before the Township Committee and offered to settle the tax of 1913 and all interest and costs, but they refused to take his money. In July, 1917, Mr. Sutton presented the matter

to the Township Attorney who told Mr. Sutton to go and get legal tender money and offer it to the Committee. Mr. Sutton thereupon went to the Bank, drew out \$400. in gold certificates (p. 41), took them to the Township Committee, while in session, displayed the money and said he was ready to settle up his taxes, with interest and costs. While in the Township Attorney's office, Mr. Sutton heard him dictate a letter to the Township Committee advising them to accept Mr. Sutton's payment. On the day he made the tender, he made a separate one of a \$100. gold certificate in payment of the amount of tax claimed on the homestead and meadow (p. 42).

The reason Mr. Sutton did not take any action about paying his taxes for some weeks after he made the effort to settle in May, 1917, was because both Mr. Henderson and Mr. Newcomb, a majority of the Township Committee, told him, in substance, that they were in no hurry for the money; that they were paying only six per cent. for money and he was paying them eight per cent. (See pp. 62, 63).

He considered this an extension of time and did not take the matter up again until in July. It was not until the August meeting that anything whatever appears, in the minutes or otherwise, concerning the cemetery.

The various calculations shown by the exhibits indicate that the reason for the great difference between the sum total shown by the 5 notices to redeem, \$107.43 and the amount of \$432.77 demanded was because the Committee had added the taxes of 1914, 1915 and 1916, with interest and costs.

Sec. 53 of the tax act seems to authorize this in a proper case, but here such course was manifestly unjust because of the misleading character of the notice to redeem. This notice was not served until after the taxes of 1914, 1915 and 1916 were due, yet the notices to redeem made no mention of these taxes. All that the authorities called upon Mr. Sutton to pay in order to redeem was the tax of 1913 with interest and costs.

This he tendered in due season, frankly said he could not at that time pay the entire 4 years taxes, was told it made no difference when he paid, and was thereby misled.

The Township Committee should not be permitted to take advantage of a situation thus created.

Clift vs. Frenche, 83 N. J. E. 437.

The statute does not prescribe any particular form of notice to redeem, but in view of the importance of this notice as a step in the chain of title it should at least be consistent, intelligent and not misleading.

If the Township Committee intended to require Mr. Sutton to pay the taxes of 1914, 1915 and 1916 as a condition precedent to his right to redeem from the tax sale of 1913, they should have said so in their notice to redeem.

Obviously, they are not at all sure of their position because notwithstanding the proceedings set out in the writ, the same property was again assessed to Mr. Sutton in 1917. He took an appeal to the County tax board, the tax on the cemetery was cancelled because the ceme-

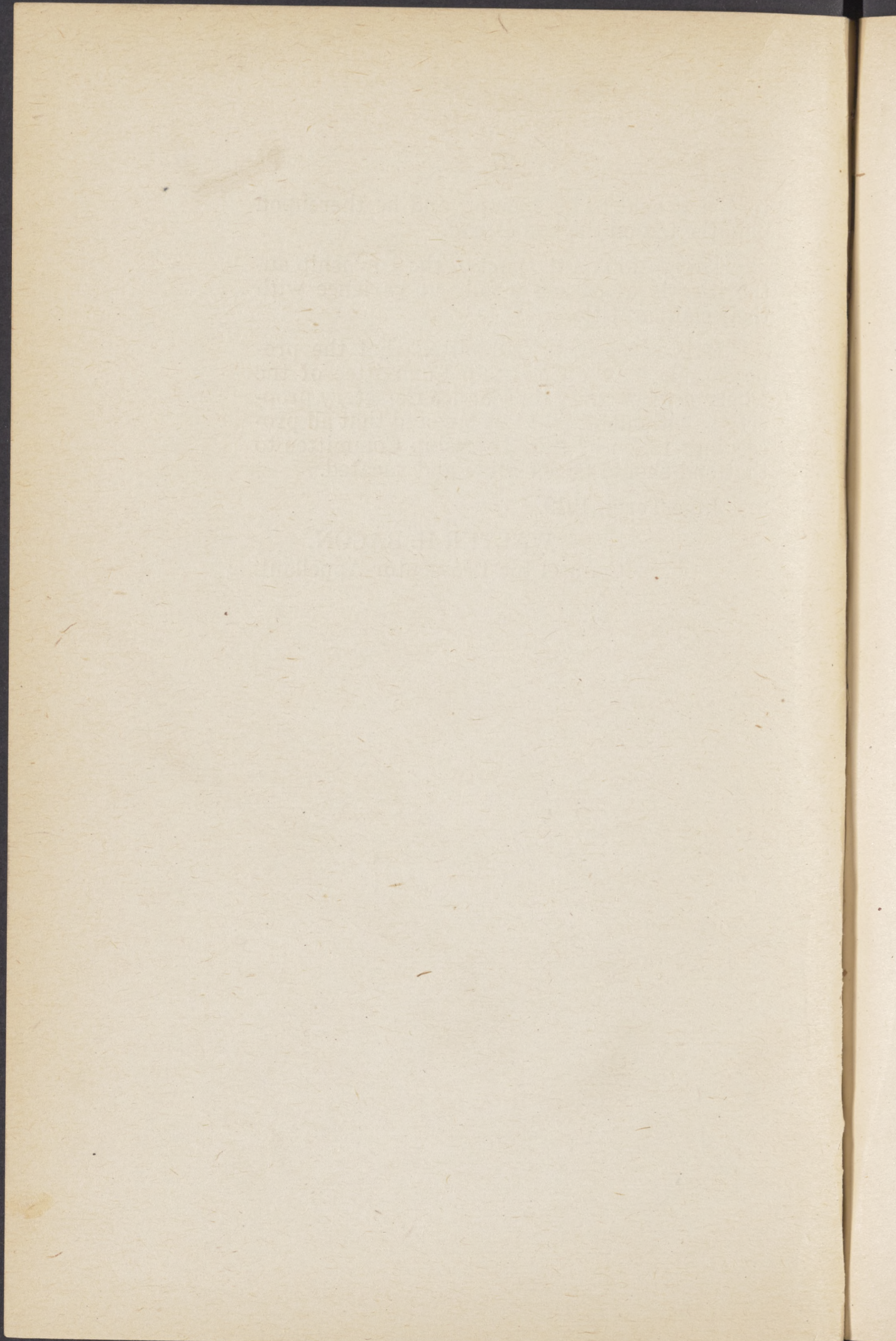
tery was held to be exempt, and he thereupon paid the tax on the homestead.

This action on the part of the Township authorities is of course wholly at variance with their claim of title.

It is respectfully submitted that the proposed sale by the Township Committee of the whole or of parts of the Chance Cemetery property is without warrant of law and that all proceedings taken by said Township Committee to that end should be set aside and vacated.

June Term, 1919.

WALTER H. BACON,
Counsel for Prosecutor-Appellant.



NEW JERSEY COURT OF ERRORS AND
APPEALS.

JOSEPH W. SUTTON,
Prosecutor-Appellant,
vs.
THE TOWNSHIP OF MAURICE
RIVER IN THE COUNTY OF
CUMBERLAND,
Defendant-Respondent.

ON CERTIORARI.
ON APPEAL FROM
SUPREME COURT.

BRIEF FOR DEFENDANT-RESPONDENT.

This writ brought before the court below for review all proceedings of the assessor and collector of taxes of the Township of Maurice River in the County of Cumberland and of the Township Committee of said Township in the matter of the assessment and sale, for taxes levied and assessed for the year 1913, of property of Joseph Sutton known and described as "the Wm. Chance Homestead situated in Leesburg containing about 5 acres" and of all subsequent proceedings whereby said Township Committee has sold or is attempting to sell, by means of advertisements or otherwise, burial lots in what is known as the "Chance Cemetery" in Leesburg, &c.

The return to the writ shows the following:

(1) An assessment against 5 acres of land; value of land, Chance Homestead property, Leesburg, \$600, value of improvements \$200, total value of real and personal property \$800; state tax, \$2.08, county tax, \$3.68, special school tax, \$6.48, local tax, \$5.04; total amount of tax, \$17.28. (Page 5.)

(2) Advertisement that on Saturday, August 8, 1914, certain lands of Joseph Sutton, the Wm. Chance Homestead, situated at Leesburg, containing about five acres, for delinquent taxes amounting to \$17.28, would be sold at public vendue "to any person that will purchase the same for the shortest term and pay the tax lien, including interest and cost of sale, or in fee where no one will bid for a shorter term." (Pages 6 and 7.)

(3) Report by Ellis Boggs, collector of Maurice River Township, that on August 8, 1914, he sold "the premises assessed to * * * * Joseph Sutton \$21.37 for the sum of twenty-one 37-100." (Pages 5 & 6.)

(4) Certificate of sale of lands for taxes, Ellis Boggs, collector, &c., to Maurice River Township, for taxes assessed in 1913, of "certain real estate assessed to Joseph Sutton and described as follows, to wit: the Wm. Chance Homestead, situate in Leesburg, containing about 5 acres," for \$21.37, being the amount of tax with interest thereon and costs of sale. (Page 13.)

(5) Certificate by the county clerk, endorsed on the certificate of tax sale, that said certificate of tax

sale was recorded in the office of the clerk of the County of Cumberland on September 4, 1914, in Book 9 of Tax Certificates, page 49, &c. (page 14.)

(6) Tax deed, to wit, the same certificate of tax sale, annexed to a notice to redeem, affidavit of service and affidavit that the sale has not been redeemed, recorded in the Deed Book of Cumberland County and filed with the county clerk, as provided by Section _____ of the Tax Act. See this tax deed at pages 9 to 15, inclusive, including certificate of the county clerk at page 15.

The testimony shows that Mr. Sutton did not attempt to redeem by payment of the tax to the collector, as required by the provisions of the statute (Tax Act of 1903, Sec. 57, as amended by P. L. 1916, page 580).

Nor did Mr. Sutton offer to make redemption by any legal tender to the township treasurer, or to the Township Committee, of the amount of delinquent tax of the Chance Homestead. It is true that he went to the house of the chairman of the Township Committee and negotiated for redemption of the lands, and tendered to him a certain sum of money for redemption of all of his lands, which tender was refused; and he did speak to the township treasurer concerning the redemption, but he permitted the time to redeem to expire without making any legal tender to the collector or any other officer of the amount of money required to redeem the lands.

In the proceedings the tract is sometimes referred to as a cemetery. The Chance Homestead is a quadrangular tract out of which, at one corner, was carved the church lot of the Leesburg M. E. Church the rear part of which church lot is used as a grave-

yard, and indeed it seems that there is no more space in the church yard available for burial plots. Some years ago, by map filed in the county clerk's office Jan. 21, 1903 (page 24, line 27), one Chance plotted out as a cemetery the part of his homestead lying in the rear of the Methodist Church lot. This plot he called Chance's Cemetery. He filed a map of this plot, a copy of which map is returned with the writ. He had no grant, license or franchise of any sort authorizing him to maintain a cemetery; no cemetery company ever was formed; but, nevertheless, he did make sale of a number of burial lots in which lots the purchasers interred various bodies. These graves are all adjoining or adjacent to the Methodist burying ground. In the rear of these graves a very large part of the so-called cemetery remained for years in a wild, uncultivated state, and that was its condition in 1912. In that year at sheriff's sale the original 5-acre tract was sold, by description as two parcels of land, to Sylvester Bishop, who conveyed the property to Sutton. Sutton, after some time, began to cultivate the land in the rear of the graves and grave-plots. He raised crops on that part of the *locus in quo* in 1917. On this set of facts prosecutor claims that the entire tract in the rear of the churchyard was wholly exempt from taxation in 1913, and that the levy of taxes and the sale and all proceedings thereunder are wholly void notwithstanding (1) no claim for exemption ever was made and, (2) the so-called graveyard and the rest of the homestead, which admittedly was taxable, was all taxed together as one 5-acre parcel; and (3) the so-called cemetery was sold as ordinary private property at Sheriff's sale and never has been erected into a public cemetery by any proceedings or by ancient user as such.

POINTS.

1. Prosecutor-appellant can not, on this appeal, argue some of the points presented for consideration of the Appellate Court, because the same were not raised in the court below.

2. The legality of the tax assessment and tax sale can not be raised in this suit because barred by Section 14 of the Certiorari Act. (1 C. S. p. 407.)

3. If the tax assessment or the tax sale can be attacked in this suit, neither the assessment nor the sale is void or voidable for any of the reasons assigned.

4. The tax sale is valid, and so is the tax deed.

5. If the tax sale is valid, there is no illegality in the action of the township committee (a) in offering the cemetery lots for sale or (b) in offering to sell the entire tract to the Leesburg M. E. Church.

I.

Prosecutor-appellant can not, on this Appeal, Argue some of the Points Presented for Consideration of the Appellate Court, Because the same were not Raised in the Court Below.

The following point is now attempted to be made (page 12 of appellant's brief):

“The constitutional right involved is that prosecutor shall not be deprived of his property without due process of law.”

1. This point is now argued for the purpose of avoiding the rule referred to by this court in the case *Mitch vs. Riverside*, 1 Gummere at page 610. It is a fundamental rule that an appellant may not avail himself, on his appeal, of points not raised in the court below. See the cases collected in the New Jersey Digest, title "Appeal and Error," Col. 327, par. 91 (d).

The constitutionality of an act will not be considered in an Appellate Court on grounds not urged in the lower court. *Borough of Park Ridge vs. Reynolds*, 45 Vr. 449, 451.

In connection with this subject it is further respectfully submitted that the point cannot be taken that the proceedings, whether in imposing the tax, or touching the sale to make the tax, is a taking of prosecutor's property "without due process of law;" for prosecutor under the laws of New Jersey was given ample opportunity to complain, claiming exemption from the tax, by appellate proceedings before the county tax board.

"Whenever, by the laws of a state or by state authority, a tax, assessment, servitude or other burden is imposed upon property for the public use, whether it be for the whole state, or for some more limited portion of the community, *and those laws provide for a mode of confirming or contesting the charge thus imposed, in the ordinary courts of justice, with such notice to the person or such proceeding in regard to the property as is appropriate to the nature of the case, the judgment in such proceedings cannot be said to deprive the owner of his property without due process of law, however obnoxious it*

may be to other objections." *Davidson vs. New Orleans*, 96 U. S., 97.

There must be an opportunity to be heard before the charge becomes finally fixed upon the taxpayer or his property. But the charge having become fixed, there is no constitutional objection to summary proceedings to enforce payment. 10 Am. & Eng., Enc. of L. (2nd Ed.) page 308.

"The requirement of due process of law is satisfied in tax proceedings where the property owner has notice and an opportunity to defend before his title to his property is actually diverted by issuance of a deed to another person." *State vs. Whittlesey*, 17 Wash. 417.

In the present case our laws gave Sutton ample relief, if he was entitled to relief, by appeal to the county tax board contesting the tax; and he had relief by way of certiorari for three years after the sale. It was too late for him to complain that his property was not taken by due process of law after he permitted the tax lien finally to become fixed. *Davidson vs. New Orleans, Supra.*

In the very recent case *Mt. St. Mary's Cemetery Ass'n. vs. Mullins*, 39 Sup. Ct. Rep., page 173 (decided Jan. 27, 1919) Mr. Justice Day, speaking for the United States Supreme Court, said (p. 175):

"This court has more than once declared that it does not interfere with the taxation and assessment laws of the states as violative of the Fourteenth Amendment unless the *state's action* has been palpably arbitrary or grossly unequal in its application to the persons concerned."

No such situation is disclosed in this case. Sutton had ample opportunity to be heard contesting the tax; and he was given three years time in which to certiorari the sale, and permitted his time to elapse. There was due process of law.

“The owner has had full opportunity to be heard, in judicial proceedings to enforce the tax. This is due process.” *Mt. St. Mary’s Cem. Ass’n. vs. Mullins*, *Ibid.*, citing *Davidson vs. New Orleans*, 96 N. S. 97, 24 L. Ed. 616; *Embree vs. Kansas City Road District*, 240 U. S. 242, 251, 60 L. Ed. 624.

Therefore because (1) prosecutor did not raise his point of no due process in the court below; and (2) it is not applicable to his present cause, the bar of the certiorari act set up by defendant below, and here next argued under Point II, is available against prosecutor.

2. It is not disclosed by the point of no due process whether prosecutor complains that the exercise of the taxing power was arbitrary, or whether the property was not taken in a lawful exercise of the power; nor in what particulars complaint is made. Prosecutor, in order to avail himself of the constitutional inhibition ought point out, with the certainty required of proper pleading, the constitutional defect. The mere allegation contained in his brief that, “the constitutional right involved is that prosecutor shall not be deprived of his property without due process of law,” (Prosecutor’s brief at p. 12) is not sufficient, because a mere generality. The more particular statement at page 3 of Prosecutor’s brief and in the 6th ground of appeal (p. 147) is, strangely enough, that (1) the cemetery never was assessed

for taxes and (2) never was sold for taxes and hence, the pleader concludes, "the proceedings sought to be reviewed, is illegal and void, and if allowed to proceed deprives prosecutor of his property without due process of law." The whole argument of prosecutor in the court below concerned the *tax sale*; and the writ reviews the *tax assessment and tax sale*. The reasons (S. of C., p. 138) all touch the tax assessment and tax sale.

Now prosecutor, in order to maintain that the Supreme Court erred, alleges that the purpose of the writ was to challenge the right of the township to sell the Chance Cemetery *because the cemetery was not included in the tax*. *But, if the cemetery lands are not contained in the tax deed, then the defendant is not deprived of his property by due process of law*. Further, his writ, on this state of the facts, must be dismissed; for it seeks to review a tax sale on grounds only available if prosecutor's lands are a lawful cemetery or burying ground.

Reference having been made in the foregoing argument to the points raised by prosecutor in the court below, a copy of his brief in the Supreme Court is lodged with the Appellate Court herewith for convenient reference. By examining the brief prosecutor presented to the Supreme Court, it will be seen how entirely novel is the aspect assumed by prosecutor in the court of appeals. Here we seem to have new facts, new points, to say nothing of new arguments.

II.

The Legality of the Tax Assessment and of the Tax Sale cannot be Raised in this Suit.

If this question is resolved against the prosecutor then the vitality of his brief is destroyed.

By Chapter 323 of the Laws of 1915 (P. L. p. 580) Section 14 of the Certiorari Act was amended so as to read as follows:

“14. No writ of certiorari shall be allowed to review any sale of land to enforce any assessment of tax, or any sale where assessments and taxes have been included together, unless such writ be allowed within eighteen months from the date of any such sale.” (P. L. 1915, p. 580.)

The assessment was made in 1913; the tax sale occurred August 8, 1914; and the writ of certiorari was allowed January 8, 1918. The purpose of allowing the writ cannot be known; but, having been allowed it cannot be used to review the sale made more than three years before the date of the allocatur. Even under Section 14 of the Certiorari Act (1 C. S. p. 407) no writ could be allowed to review a tax sale after the expiration of three years. Hence, even without the amendment of 1915, either the writ was allowed improvidently or the writ cannot be used in support of the reasons filed herein.

Prosecutor has given some consideration to a number of cases which, he contends, are contrary to the ruling of the Supreme Court on this point.

He first refers to *Walsh vs. Newark*, 78 N. J. L. 168, where it was held that “the statutory limitation upon the allowance of the writ of certiorari cannot

be enforced for the protection of an assessment which the legislature could not constitutionally authorize." The point in favor of the allowance of the writ in the Walsh case was that the assessment had been made without notice to prosecutor, actual or constructive. He was "led to believe that the general scheme of improvement was to be made at public expense and that no assessment would be levied against him." In these circumstances the Supreme Court held the assessment was wholly void. But of course no such situation is here shown, and the underlying principles are not at all applicable.

The next case cited by prosecutor, *Waterman vs. Township of Shrewsbury*, 54 Vroom 286, was a certiorari of a tax sale where the lands had been placed in the tax list but not appraised or valued for the purpose of taxation—where no tax whatever had been assessed. The subsequent alleged tax sale was held a nullity since there was no delinquent tax. Further the attempted description of the lands was held wholly misleading. Hence in that case the owner was not assessed with any tax from which he might appeal, and did not have notice of the illegal sale. No such facts are here shown by the record, for here there was a tax imposed and Sutton knew of the tax sale because the collector, Ellis Boggs, mailed him notice of it (p. 34) and Sutton must have known of the assessment in time to appeal (Book p. 33, lines 20 &c.).

The next case relied on by prosecutor is *Bozarth vs. Egg Harbor*, 85 N. J. L. 412. In that case the owner brought ejectment against one, Smith, who was in possession under color of a tax sale. The owner brought ejectment, and then, in aid of his ejectment, sued out a writ of certiorari. It was shown

that the tax sale was had under color of a special law that had been repealed prior to the time of the tax sale. Hence the writ was allowed to stand because the sale was wholly void and the writ was aid of an ejectment suit. Said Mr. Justice Swayze in that case (56 Vr. at page 414): "*The objections relied on are fundamental, going to the entire proceeding for the sale.*" This is not so in this case, which are the usual proceedings for sale of lands under the general tax act. Nor does prosecutor pursue his certiorari in aid of an ejectment; although it is respectfully submitted that, even if so, there is no technical rule awarding use of certiorari in all cases in aid of ejectment. If so Section 14 of the Certiorari Act has no real force. The decided cases are to the effect that the writ is allowable in aid of ejectment, in cases of tax sales, in the language of Judge Swayze, where "the objections relied on are fundamental, going to the validity of the entire proceeding for the sale." *Bozarth vs. Egg Harbor*, 56 Vr. at page 414.

The next and last case considered by prosecutor on this point is *Bounds vs. Chester Township*, 4 Gummere 375. In that case it quite clearly appears that the sale was to enforce a sale where the proceedings to make the tax a lien on the land were defective. "*Where the proceedings to make a tax a lien on the lands are defective, a writ of certiorari to renew a sale of land will be allowed although the eighteen months period for reviewing the sale have expired,*" is the language of the syllabus. In the text at page 376, Mr. Justice Swayze said, "The only sales of land to enforce a tax has been by proper proceedings made a lien on land. *The only sales, therefore, to which the limitation on review by certiorari applies*

are sales to enforce a statutory lien. A sale to enforce a tax where there is no statutory lien would be without authority of law." In this case there was a tax assessed on Sutton's land under the general tax act, and this tax assessment became and was, as the record shows, a lawful lien. Therefore review by certiorari of the sale for enforcement of this lien was limited by the Certiorari Act to three years from the date of the tax sale.

It is respectfully submitted that the Supreme Court properly dismissed the writ because the tax sale was not subject to review, for any of the reasons filed, by reason of the limitations contained in Section 14 of the Certiorari Act.

III.

If the Tax Assessment can be Attacked in this Proceeding, it is Neither Void nor Voidable.

(a) The right to exemption from taxation was not claimed. The assessment was made in 1913, and assuming that the parcel of the Chance Homestead prosecutor calls the Chance Cemetery was exempt, yet prosecutor neither claimed exemption nor did he make request to apportion his assessment and tax among separate and distinct parcels of his property as he might have done under the provisions of Section 27 of the Tax Act. In these circumstances it is too late for him now, years after the levy was made and payment of the tax enforced by tax sale, to question the validity of the assessment from any aspect.

In the first place, to permit him now to question the assessment will be to review the sale after the

elapse of eighteen months from the day of sale, which is contrary to the provisions of Section 14 of the Certiorari Act. But it is not necessary to strain the construction of statutes to reach principles which forbid prosecutor from now claiming exemption from taxation in the year 1913. The prosecutor sat idly by while the assessment was being made, had notice, or was by law obliged to take notice, of the assessment, but failed to make claim to the exemption.

“The right to exemption,” says, the court in *Hardin vs. Morgan*, 41 Vroom, at page 487, “is a favor which the statute confers upon a compliance with its requirements. It is essential to secure the exemption that it shall be applied for within the time and in the manner pointed out by the statute, otherwise the exemption is lost. *Flower Hill Cemetery vs. North Bergen*, 39 Vr. 488.” *Hardin vs. Morgan* was affirmed for the reasons given in the opinion of Mr. Justice Fort in the Supreme Court, 42 Vr. p. 343.

Conceding that the present Tax Act does not contain provisions making it mandatory to claim the exemption, as did the Act of 1885 cited in the *Flower Hill Cemetery* case (39 Vr. top page 489) yet the true spirit of the Act of 1903 does require the land owner to pursue his claim to exemption. The act requires the assessor to list all exempt realty, including cemeteries. “The assessor shall enter in a separate list a description of all cemeteries, &c., with the name of the owner, &c., and in each case he shall state the ground of exemption.” 4 C. S. 5087. It is the duty, to be sure, of the assessor to search such property out; but by Section 8 of the Tax Act a duty is likewise thrown upon the taxpayer to account for his taxable property; and by the act he is given a complete remedy by appeal to correct the assessor’s

errors. But the law does not permit the land owner, who might claim a tax exemption, to stand by and permit his exempt property to be placed in the tax list, to remain silent until after the time for appeal has gone by, to permit his property to be sold for non-payment of the tax, and then, years after, attack the levy because made against lands entitled to exemption under the statute. Such a law would work hardship to the municipality, which, having the property in the tax list, is obliged to pay over the county and state tax and resort to the lands for restitution. Upon the principles inhering in the Tax Act and laid down in *Flower Hill Cemetery Co. vs. North Bergen*, 39 Vr. page 487, the present claim to exemption comes too late, and must now be denied. At most the tax was *voidable*, and that question cannot be litigated.

(b) The tax cannot be held *void* in the face of the two decisions last above cited, where similar taxes, which might have been subject to a claim for exemption, were sustained.

IV.

If the Tax Sale is Subject to Attack, it ought not be set Aside for any of the Reasons Assigned.

1. The property was not exempt from taxation.

Even prosecutor must concede that *all* of the Chance Homestead was not, by any color or pretence, exempt. All of the tract except that in the rear of the churchyard confessedly is taxable; and if the so-called "cemetery" in the rear of the churchyard

was exempt but was coupled in the assessment with the non-exempt part of the Chance Homestead lot, then Sutton should have applied to have his taxes fairly apportioned among separate and distinct parcels of his property, under Sec. 27 of the Tax Act (4 C. S. 5106). But, if the assessor erred in including the disputed lands, Sutton could not escape liability for his just taxes by neglecting or refusing to pursue the remedy given him by Section 27. By failing to pursue his remedy he waived it.

But the property was not exempt from any viewpoint. Sutton could not, nor could Chance, the antecedent holder of the title, constitute the *locus in quo* a cemetery merely by mapping it as such. The right to establish a cemetery is now and at the time Chance mapped his cemetery was carefully guarded by our laws (1 C. S. 372). It is not contended that Chance or Sutton either in 1903 when the cemetery map was filed (p. 24, line 27) or at any time thereafter, ever attempted or intended to comply with the statutes regarding the establishment of cemeteries. Both Chance and Sutton merely invited people to buy the lots and the purchasers innocently broke the law by burying dead bodies therein. But, merely because Chance and Sutton sold off lots to a number of persons and those persons buried their dead in the ground they had purchased, that fact did not confer on the remainder of Sutton's land, not yet sold or used as a burying ground, the character of a cemetery. The lots sold became, perhaps, *de facto*, graveyards; but because A or B buried their dead in *their* lots, they did not thereby impart to Sutton's remaining farmland the immunity from taxation which attached to the graves of their dead. Sutton's land is neither a graveyard nor a cemetery. At most he held a tract of land which he persuaded persons to

buy and use for the purposes of interment. Because it is not a cemetery or a graveyard, it is not exempt from taxation.

2. The claim that the cemetery was not assessed is not clearly stated. The Township contends that the assessment covered the 5-acre Chance Homestead tract, excepting only those cemetery lots Chance and Sutton had sold to divers persons. See the testimony of the assessor, page 68, &c.

3. The advertisement was in no wise defective. The description was sufficient to identify the property. The entire testimony clearly shows that Sutton had notice of the property intended to be sold. The designation of the premises as "the Chance Homestead property" pointed out the land and was understood by the community. Moreover, it is here again respectfully pointed out that Sutton did not own the cemetery or graveyard, for that part of the ground occupied by graves had been conveyed away and was owned by others. It would have been improper to describe Sutton's land as "the Chance Homestead and Cemetery," for Sutton and Chance had sold off the Chance cemetery lots. All he owned was the Chance Homestead—not the Chance Cemetery. So the description of the lands contained in the advertisement was sufficient. The Township does not claim to own, under its tax deed, Chance's Cemetery, but it does claim to own the entire Chance Homestead, including all those unsold lots plotted out by Chance for a cemetery and not yet used for burial purposes.

4. Certain technical objections are made to the form of certificate, and the report of the tax sale.

The collector is required by Section 54 to make a report on the first Tuesday of February of each year following the sale "containing a schedule of all of the unpaid taxes on real property, &c., and his proceedings in making sales therefor and *stating all the particulars above required to be set forth in the certificate of sale to purchasers,*" &c. 'Sec. 54, pages 5134-35. The certificate of sale "shall set forth (1) that the property therein to be described has been sold by the collector to the purchaser; (2) the name of the delinquent owner as it appears on the books of the taxing district; (3) term for which sold; (4) amount of the tax with items of interest and costs in detail, the year for which assessed and the time when the right to redeem will expire."

All these points seem to be covered by certificate of the collector (page 13) and, indeed, the certificate seems to follow with fidelity the form of certificate published by the state board of taxation in their compilation of tax laws and forms issued in 1905, page 104.

It is here contended by the defendant that, while failure to comply, in fact, with any of the provisions of the tax law might invalidate a sale, yet it is not essential that a certificate or the report set forth all of the necessary proceedings, for the statute distinctly limits the requirements of fact to be recited in the certificate and in the report of the collector. Prosecutor, by his 7th reason, sets up a defect in the sale because the certificate *fails to recite that there were no bidders for a shorter term*, or that no notice was posted on the land, and the like. Now in truth there were no such bidders, as could be proven *aliunde* had any such reason been assigned. But prosecutor cannot require more to be inserted in the certificate or in the report than the law re-

quires. The statute makes especial provision saving the legality of tax sales where, in fact, the proceedings have been regular, "if it shall appear by other evidence that the land sold was in fact that assessed and that the sale was made pursuant to law." Sec. 60, p. 5138. But prosecutor did not challenge the sale on the ground that proceedings in fact were irregular but because the record did not show them regular—an entirely different thing. Hence, under the reasons filed, the point cannot be made that the reasons may be assumed to be irregular because the certificate and the report omit to recite certain essential matters of fact or of procedure at the sale.

But it is here again insisted that it is too late for prosecutor to attempt to attack the assessment and sale in the face of Section 14 of the Certiorari Act. The sale is not now subject to review.

V.

The Tax Deed is Valid as a Conveyance in Fee Simple and the Right to Redeem is cut off.

(a) The tax sale itself is not subject to review and must be taken as a valid certificate of the sale.

(b) The notice to redeem was in form required by law. The date of it, as shown by the printed book at page 12, was *July 3, 1917*; instead of *April 3, 1917*; but counsel for defendant thinks that the notice handed Sutton, referred to in his testimony at page 35, line 20, was correctly dated, and by it Sutton was duly notified to redeem within sixty days from the date of service. (P. 11, line 18.) It was

served April 25, 1917. This notice served on Sutton is in evidence (Exhibit D2, page 137) and ought, perhaps, be produced to the court, or a copy sent up by the prosecutor, because it has not been printed. It appears, however, that the erroneous date *July 3, 1917*, could not have been misleading or harmful because (1) Sutton's notice had the right date, as defendant's counsel recollects—although not clearly—and (2) Sutton never did redeem or offer to redeem either within sixty days of July 3, or at any other time. So the misdating of the original notice shown at page 12 is not material.

Counsel for prosecutor says at page 12 of his brief: "On several occasions after this Mr. Sutton went before the Township Committee and offered to settle the tax of 1913, &c.," but such offers to settle were not made until after the expiration of the sixty-day period allowed on redemption. He never attempted to redeem at the collector's office according to Sec. 57 of the Tax Act. (P. L. 1916, page 580.)

If the township attorney in August advised Sutton to appear before the governing body, that was because the sixty-day period had expired. After June 25, 1917, he no longer had a right to redeem at the collector's office and the governing body then was the only authority that could grant relief by surrendering his lands.

(c) The assessment to Sutton in 1917 of the *locus in quo* was entirely proper. The assessment was made as of May 20, 1917, at which date Sutton's right to redeem had not yet been cut off. So it properly was assessed in his name. The point attempted to be made at the bottom of page 26 of prosecutor's brief has, therefore, no force.

VI.

Neither the Offer to Sell the Cemetery Lots, nor the Negotiations for Sale of the Premises to the Leesberg M. E. Church, were Unlawful Proceedings.

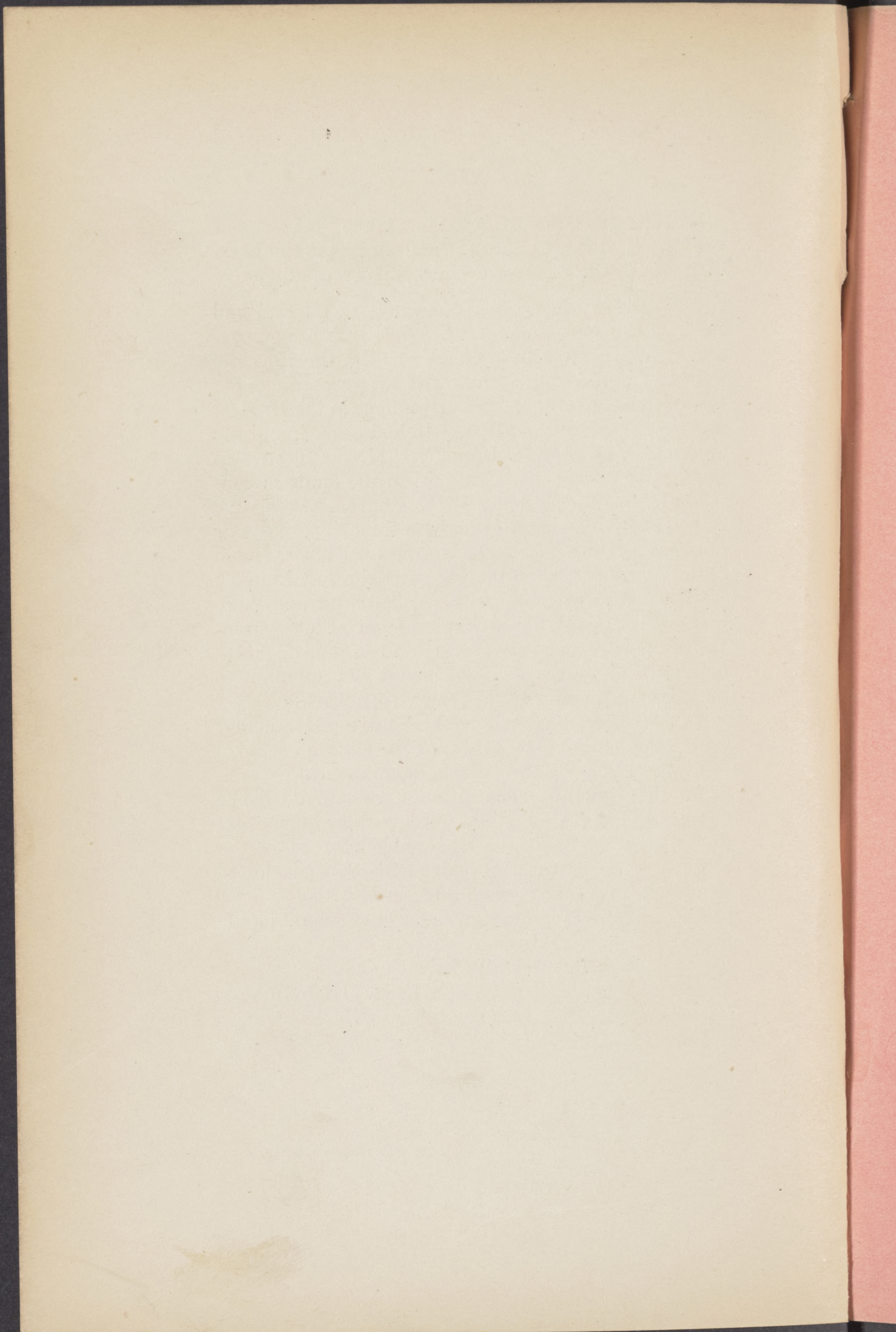
1. The Township owned the lands in fee and had full right to make sale of the whole tract or of parcels. But, in fact, by January 8, 1918, the time the writ was applied for and allowed, all proceedings for sale in pursuance of the advertisement in the *Bridgeton News* referred to at page 43 had ceased, and the minutes show that on Dec. 27, 1917, the Township Committee authorized a sale of all the lands in controversy to the Leesburg M. E. Church. (Pages 23, 24.) Indeed the minutes show a final agreement of sale by the Township to the church for \$100.00 (page 24). Therefore, when the writ was allowed January 8, 1918, there were not, and never had been, and there was not contemplated any sale of burial lots pursuant to the *News* advertisement; and so there is nothing, with reference to sale of burial lots pursuant to the advertisement, for this court to set aside.

As to the intended sale to the Leesburg Methodist Church, it may now be said that the church corporation appears to be the only person, natural or artificial, that lawfully may use the so-called Chance Cemetery lots in question for cemetery purposes; that such a sale will be a reasonable exercise of the powers of the governing body, will be beneficial to the public, and ought not be interfered with.

The judgment of the Supreme Court should be affirmed.

Respectfully submitted,
LOUIS H. MILLER,
Of Counsel with Respondent.

June term, 1919.



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