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COMPLAINANT'S EXHIBITS.

DEFENDANTS' EXHIBIT.

Notice of Appeal.

(Filed July 1st, 1929.)

In Chancery of New Jersey

Between

HARRINGTON COMPANY, a corporation,
Complainant,

and

CHARLES JONES, *et al.*,
Defendants.

71–46.
On Bill, etc.
Notice of Appeal.

The complainant, Harrington Company, a corporation of the State of New Jersey, hereby appeals from the decree fixing amount due for redemption, made in the above entitled cause on the 6th day of June, A. D., 1929, made by the Chancellor on the advice of Honorable Maja Leon Berry, one of the Vice Chancellors of this Court, from the whole and every part thereof, to the Court of Errors and Appeals in the last resort in all causes.

Dated, Jersey City, N. J., June 27th, 1929.

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

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

ADOLF L. ENGELKE,
Of Counsel with Complainant.

Service of a true copy of the foregoing Notice of Appeal is acknowledged this 29th day of June, A. D., 1929, by

CHARLES JONES,
Solicitor *pro se.*

Petition of Appeal.

(Filed July 20, 1929.)

[SAME TITLE]

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

The petition of Harrington Company, a corporation, the appellant in the above entitled cause, respectfully shows:

1. Petitioner finds itself aggrieved by a decree made in the Court of Chancery by his Honor, Edwin Robert Walker, Chancellor of the State of New Jersey, upon the advice of Honorable Maja Leon Berry, one of the Vice Chancellors of the Court of Chancery, bearing date the sixth day of June, A. D., 1929, in a certain cause in said Court of Chancery, wherein the said Harrington Company, a corporation, was complainant, and the said Charles Jones, and others, were defendants, in this respect, to wit, that the amount of moneys fixed by said decree, to be paid to complainant for a redemption, is inadequate and insufficient and said decree fails to allow the complainant certain other sums of money allowed by law, and to which complainant is entitled to receive in order to effect a redemption of the lands and premises particularly described in the bill of complaint filed in this cause.

Petition of Appeal.

2. And petitioner appeals from all of said decree which orders, adjudges and decrees as aforesaid, upon the ground that the same is erroneous:

(a) because the Vice Chancellor hearing said cause and advising said decree lacked any authority or jurisdiction to hear the same or to advise the decree complained of;

(b) because the said cause was not heard by the Chancellor or referred by the Chancellor to any one to hear the same and to advise the Chancellor as to what decree to make therein;

(c) Because the Chancellor to whom the bill in this cause was addressed did not refer the matters presented for issue to the Vice Chancellor who advised the decree appealed from or to any other Vice Chancellor;

(d) Because the procedure adopted by the defendant Jones was without warrant or authority in equity or Chancery practice;

(e) Because the matters in the decree purporting to be adjudicated are not the subject for a summary hearing and should have been presented by answer or other appropriate pleading in the cause;

(f) Because the amounts of moneys fixed by the said decree of the Chancellor as being due the complainant and upon the payment of which the defendant was decreed to be entitled to redeem the lands and premises described in the bill of complaint, are insufficient, inadequate and contrary to law;

(g) Because the Court refused to allow counsel fees to be paid to complainant's counsel by defendant upon a redemption of said lands;

(h) Because the Court erred in its findings and conclusions of fact and founded the exercise of its discretion on facts erroneously found;

(i) Because the Court held that notice to a delinquent tax payer is necessary before the bringing of foreclosure proceedings on a tax lien, which is contrary to the statute;

(j) Because the Court refused to exercise its discretion in favor of allowing counsel fees to complainant because the Court erroneously found as a fact that the complainant failed to give notice of its tax lien to the tax delinquent before foreclosure proceedings were commenced, whereas the evidence before the Court was that such notice had been given and received by the tax delinquent;

(k) Because the Court should have allowed to the complainant, to be paid by the defendant, and to be included in the amount of money necessary to redeem the lands and premises, in addition to the sums fixed in said decree by said Court, an amount of money in such sum as would be a reasonable fee for an examination of the title to the lands described in the bill of complaint in this cause, disbursements incurred by the complainant, the tax sale purchaser, and its counsel and counsel fees commensurate with the services rendered by counsel for the complainant, up to and including the making of the decree in this cause and the redemption of said lands;

(l) Because the Court erroneously concluded that Chapter 273, P. L. 1916, at p. 580, controlled the allowance of search fees or fees for the ex-

amination of the title to the lands and premises described in bill of complaint;

(m) Because the Court erroneously concluded that Chapter 211, P. L. 1928 at page 382, does not control the allowance of search fees;

(n) Because the Court did not use as a measure in ascertaining the fees to be allowed complainant for examining the title to the lands described in the bill of complaint, the provisions of the statute in such case made and provided and found in 2 C. S. at page 2290, paragraph 10.

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

HARRY B. BROCKHURST,
Solicitor for Appellant.

ADOLF L. ENGELKE,
Of Counsel with Appellant.

Service of a true copy of the within Petition of Appeal is hereby acknowledged this 19th day of July, A. D., 1929, by

CHARLES JONES,
Solicitor *pro se.*

Answer to Petition of Appeal.

(Filed Aug. 19, 1929.)

[Same Title]

The answer of Charles Jones and Frances M. Jones, his wife, the above named respondents, to the petition of appeal of the Harrington Company, the above named appellant.

These respondents, not admitting the truth of all or any of the matters in the said petition of appeal contained, for answer thereto nevertheless admit that a decree was on the 6th day of June, 1929, made and entered in the Court of Chancery of New Jersey, in the above entitled cause, for the purposes in said petition mentioned and as therein set forth; but as to the substance and form of said decree, these respondents beg leave to refer thereto when the same shall be produced.

These respondents are advised and believe that the said decree is agreeable to equity; and they pray that the same may be affirmed with costs to be taxed in favor of these respondents.

Charles Jones,
Solicitor for and of counsel with Respondents.

Sat below Hon. Maja Leon Berry, Vice Chancellor.

Endorsed:
Aug. 15, 1929.

I consent to the filing of this answer as of time.

Harry B. Brockhurst,
Sol'r of Complainant-Appellant.

Bill of Complaint.

(Filed Oct. 30, 1928.)

IN CHANCERY OF NEW JERSEY.

To the Honorable EDWIN ROBERT WALKER,
Chancellor of the State of New Jersey:

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

1. On December 20th, A. D., 1916, the municipal taxes lawfully assessed for 1916, by the duly constituted taxing authorities of the Township of New Barbadoes, Bergen County, a municipal corporation possessing by law the power of levying, assessing and collecting taxes on lands within its jurisdiction, remaining unpaid and being delinquent, became a lien upon the hereinafter described lands and premises, under and by virtue of the statute in such case made and provided; and remaining unpaid, has continued from thence hitherto to be and to remain a first lien thereon and paramount to all prior or subsequent alienations and descents of said lands or encumbrances thereon, except subsequent municipal liens.

2. That on the 30th day of March, A. D., 1918, Evan G. Runner, Collector of Taxes of said municipality in order to satisfy and collect said delinquent taxes and in performance of the duty imposed upon him by law, sold an estate in fee simple in and to said lands and premises to complainant, in due form of law; and certified to said sale by his certificate of sale in due form of law, duly

executed, acknowledged, and delivered; and received payment from complainant, of the sum of money certified therein to be due on said tax lien, before the close of said sale; and by virtue of the statute conveyed and passed said lien with said title to complainant.

3. That the said Evan G. Runner, Collector as aforesaid, duly executed and delivered to complainant, his official certificate of sale, in and by which he did certify and set out, among other things, that he had sold said lands to complainant for the sum of $36.13, subject to redemption; and that the right to redeem would in all cases extend for two years from the date of said sale; and that said sale was made in fee no one being willing to bid for a shorter term; that said certificate of sale was indexed in the office of the Clerk of the County of Bergen, as appears by the certificate of said Clerk of said County, endorsed upon the said certificate of sale, now in the possession of complainant, ready to be produced and proven at such time and place as this Honorable Court may designate and appoint for that purpose.

4. That two years and more have elapsed since the date of said sale and none of the defendants hereinafter named, nor any person or persons in their behalf have redeemed said lands from said sale; complainant therefore files its bill of complaint in this Honorable Court to foreclose the right or equity of redemption of the hereinafter named defendants, and of each of said defendants, in and to said lands, pursuant to the provisions of the statute in such case made and provided; and complainant brings the owners, mortgagees, occupants and other persons having an interest in said

lands, here into this Court to make redemption of said lands in accordance with the statute and under the rules and practice of this Court, or to be forever barred of such right of redemption, and to have this Court decree that the title, in fee simple, purchased by complainant, subject to redemption as aforesaid, be made absolute.

5. That heretofore and prior to the sale of said lands and premises aforesaid, said Collector of Taxes duly sold said lands and premises to complainant at other and previous sales held by said Collector according to law, to make and collect other and previous delinquent and unpaid municipal liens which had theretofore and at other and previous times become and remained first liens thereon, paramount to all prior or subsequent alienations and descents of said lands and premises or encumbrances thereon, except subsequent municipal liens; complainant further avers and shows that said later sales were made to complainant, in fee simple, subject to redemption according to law, and that the right to redeem said lands and premises would in all cases continue for the space of two years from the date of each of said respective sales thereof as hereinafter set out; that two years and more have elapsed since the date of each of said respective sales, and said lands and premises have not been redeemed from all or any of said sales; that the amounts due and to grow due on each of said respective sales and certificates of sale are added to the moneys due on the sale and certificate of sale set out in paragraphs 2 and 3 of this bill, and complainant prays that the said defendants hereinafter named shall by the decree of this Court be required to pay the full amount of all of said liens or to be barred and

foreclosed of all right and equity of redemption, in said lands and premises; that said sales are as follows:

(a) Sale dated May 10th, A. D., 1917, conveying lots numbered 47 to 53, both inclusive, in Block numbered 136, for the delinquent taxes assessed for the year 1915, to the complainant, in fee simple; said sale being made to make the sum of $35.07, being the amount of said taxes, together with the interest, from and expenses due thereon; said certificate of sale being indexed in said County Clerk's Office on January 31st, A. D., 1918, in Record of Unpaid Taxes.

6. That the said lands and premises purchased as aforesaid by complainant and which are set out and described by said Collector of Taxes in the certificate of sale aforesaid, as lots numbered 47 to 53, both inclusive, in Block numbered 136, on the Official Assessment Map of the Township of New Barbadoes, being located on Essex Street, and assessed to Charles Jones, as delinquent owner, may be more particularly described as follows:

ALL those seven certain lots, plots or parcels of land and premises, situate, lying and being in the City of Hackensack, in the County of Bergen, and State of New Jersey,

BEGINNING at a point in the southwesterly side of Essex Street, distant one hundred fifty (150) feet southeasterly from the intersection of the said side of Essex Street, with the southeasterly side of Rowland Avenue, and running thence (1) in a southwesterly direction and along the southeasterly boundary line of lot 46, as shown on Sheet 10 of a certain map entitled "Hackensack, Bergen County, N. J.," made by L. Lozier, Eng., Hacken-

sack, N. J., 1911, as revised in 1914, one hundred (100) feet to a point in the centre line of said Block, being the northeasterly corner of lot numbered 34, on said Map; thence running (2) in a southeasterly direction and along the centre line of said block, being the northeasterly boundary lines of lots numbered 34, 33, 32, 31, 30, 29 and 28, on said Map, one hundred seventy five (175) feet to a point in the northwesterly boundary line of Lot numbered 54, on said Map; thence running (3) in a northeasterly direction and along the northwesterly boundary line of lot numbered 54, on said Map, one hundred (100) feet to a point in the said southwesterly boundary line of Essex Street, which point is distant six hundred seventy five (675) feet, northwesterly from the northwesterly side of Prospect Avenue, on said Map; thence running (4) in a northwesterly direction and along the said southwesterly side of Essex Street, one hundred seventy five (175) feet to the point or place of Beginning.

Being known as lots numbered 47, 48, 49, 50, 51, 52, 53, in Block numbered 136, on the Map aforesaid; being also known as Lots Numbered 28, 29, 30, 31, 32, 33, 34, in Block numbered 8, on the map entitled "Hackensack Heights, William H. Reynolds, Bergen Co., N. J.," made by Williams Bros., Civil Engineers and Surveyors, Hackensack, N. J., 1892, and filed in the office of the Clerk of the County of Bergen, on August 25, 1894, as filed Map numbered 565.

Being the same premises conveyed by Saul N. Osder, a single man, to Charles Jones, by deed dated February 15th, 1912, and recorded in the said County Clerk's Office, in Book 819 of Deeds for said County, at page 301.

7. That on and prior to the 15th day of February, A. D. 1912, Saul N. Osder, was vested with the fee simple title in and to the said lands and premises; that afterwards and on the last mentioned date, the said Saul N. Osder, claiming to be a single man, conveyed the said fee simple absolute title in and to said lands, by deed of conveyance to the defendant Charles Jones; that said deed, after having been first duly acknowledged by the said grantor and delivered to the said grantee, was duly recorded in the office of the Clerk of the County of Bergen, in Book 819 of Conveyances for said County, at page 301.

8. That by virtue of the aforesaid conveyance or for some other reason unknown to the complainant, the said defendant Charles Jones pretends and claims to be vested with the fee simple title in and to the above described lands and premises, and to be the owner thereof, but this complainant avers and shows that complainant has a first and paramount lien to any and all right, title or interest had or claimed to be had by the said defendant in and to the above described lands and premises by reason of the tax sales hereinabove set out, and the aforesaid certificates of tax sale issued to complainant for the taxes aforesaid; that whatever right, title or interest the said defendant may have or may pretend and claim to have, in and to the said lands and premises is subject and subsequent to the lien and title of this complainant, under the aforesaid sales and certificates of sale issued thereon to complainant, and if the said defendant does not redeem the said lands and premises from the said tax sales and the said certificates of tax sale, said defendant will be forever barred and foreclosed of such

right of redemption, and the right, title or interest held or claimed to be held by the said defendant will cease, terminate and be extinguished.

9. Complainant shows the defendant Charles Jones is married and his wife's name is Frances M. Jones, who claims an inchoate right of dower therein.

10. That by reason of the aforesaid marriage said defendant Frances M. Jones pretends and claims to have and to hold a lien in, to and upon the hereinabove described lands and premises, or to have some other right, title, interest, lien, in and to the same, the nature and particulars whereof are unknown to this complainant; complainant therefore charges that said defendant has no title, interest, lien, encumbrance or other right in and to the hereinabove described lands and premises, except such as may by the law of this State vest in said defendant Frances M. Jones by virtue of said defendant Frances M. Jones being the wife of said defendant Charles Jones, as set out in the last preceding paragraph of this bill; complainant therefore further avers and shows the fact to be that complainant has a first and paramount lien to any right, title or other interest held or claimed to be held by said defendant in and to the hereinabove described lands and premises by reason of the tax sales and the certificates of tax sale hereinabove set out, and described and issued to complainant for the taxes aforesaid; complainant further avers and shows the fact to be that whatever right, title or other interest the said defendant may have or claim and pretend to have in and to said lands and real estate is subject and subsequent to the lien and title of this complain-

ant as aforesaid; and if said defendant does not redeem the said lands and premises from the said tax sales and the certificates of tax sale issued thereon, said defendant will be forever barred and foreclosed of all right of redemption, and the right, title or other interest held or claimed to be held by said defendant will cease, terminate and be extinguished and obliterated by the decree of this Court, according to law.

11. That in the month of November, 1921, the Township of New Barbadoes, changed its corporate name under and by virtue of the statute to City of Hackensack; that by reason of said change of name the said defendant municipality claims that all titles, liens, encumbrances and rights which at any time previous to said change of name had accrued to, or had become vested in said defendant under the name of Township of New Barbadoes, is now owned by and is vested in said defendant in its present name of City of Hackensack.

12. That the defendant City of Hackensack claims and pretends to have and to hold various unpaid delinquent taxes and assessments, and various certificates of tax sale for various delinquent and unpaid taxes and assessments, to wit, for the years 1912, 1913, 1914, which are indexed in the Record of Unpaid Taxes in the office of the Clerk of Bergen County; and for other years and for other assessments, or other certificates of tax sale, all of which complainant avers and shows were all levied and assessed prior to the 20th day of December, A. D. 1916, and which are not indexed in the said Record in said Clerk's Office, and which are all unknown to complainant.

13. That the said defendant City of Hackensack claims to hold a lien or liens for all or some of said delinquent taxes, assessments or certificates of sale upon the said lands and premises or to have some other right, title or interest therein or thereto; complainant therefore further avers and shows the fact to be that complainant has a first and paramount lien to all of the aforesaid delinquent and unpaid taxes, assessments and certificates, assessed or levied prior to the 20th day of December, A. D. 1916, and any and all other right, title or other interest held or claimed to be held by said defendant in and to the hereinabove described lands and premises by reason of the tax sales and the certificates of tax sale hereinabove set out and described and issued to complainant for the taxes aforesaid; complainant further avers and shows the fact to be that the said defendant City of Hackensack is estopped, both in law and equity, to assert or claim to have and to hold any right, title, lien, or other interest, by reason of the said sale of said lands for the delinquent taxes of 1916 to complainant and that all of said delinquent and unpaid taxes, assessments and certificates of sale aforesaid claimed to be held by said defendant City of Hackensack have been obliterated and made null and void by reason of the sale of said premises to complainant as aforesaid; but if this Court finds that said defendant has any lien or liens by reason of any of the aforesaid delinquent and unpaid taxes, assessments and certificates of sale aforesaid, then complainant avers and shows the fact to be that complainant has a first and paramount lien to any right, title or other interest held or claimed to be held by said defendant in and to the hereinabove

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

14. That afterwards and on the 20th day of August, A. D., 1918, Evan G. Runner, then Collector of Taxes of the Township of New Barbadoes, sold lots numbered 47 to 53, both inclusive, in Block numbered 136, for the delinquent taxes of 1917, to the Township of New Barbadoes, in fee simple, and issued thereon his certificate of tax sale dated August 28th, 1918, certifying that said sale was subject only to municipal liens accruing after July 1st, 1918, which certificate of sale was duly recorded in the office of the Clerk of the County of Bergen, on the 20th day of December, A. D. 1918, in Book 417 of Mortgages for said County, at page 442.

15. That the defendant City of Hackensack claims to hold liens for the delinquent taxes and assessments levied and assessed for years subse-

quent to the year 1917 and all of said liens have been added to the lien held by said defendant City of Hackensack, under the aforesaid certificate of sale aforesaid, all of which complainant has no knowledge; that said defendant City of Hackensack claims that all of the said liens held by it for municipal liens subsequent to December 20th, 1916, are prior and paramount liens to the said liens of complainant.

16. Complainant admits that all of said municipal liens levied or assessed subsequent to December 20th, 1916, are prior and paramount liens to complainant's liens; and that the amount of said liens be added to the lien set out in paragraph 14 of this bill under and by virtue of the statute, and complainant tenders payment thereof at such time and place as may be fixed by this Honorable Court and in such sum as may be found to be due said defendant.

17. That two years have expired since the date of said sale to complainant and the said premises have not been redeemed;

18. Complainant tenders itself ready and willing to pay all municipal liens assessed on and after the 20th day of December, A. D., 1916, up to and including the date of the filing of this bill.

19. Complainant is without adequate remedy in the Courts of law and therefore prays:

(a) That the said Charles Jones; Frances M. Jones and City of Hackensack a municipal corporation, the defendants in this suit may answer this bill of complaint without oath, and each statement therein made:

(b) That a time and place may be appointed by this Court wherein and whereat all moneys due complainant on said certificates of sale, together with all municipal liens which complainant may be compelled to pay pursuant to the statute to preserve its priority and paramount lien; that a time and place may also be fixed when and where redemption of complainant's and defendants' liens may be made.

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

(d) That complainant may be decreed to be lawfully seized, in its own right, of a good, absolute and indefeasible estate of inheritance, in fee simple, of in and to all and singular the said lands sold as aforesaid and hereinabove set out, freed of and discharged from all right, title, interest, lien, claim, encumbrance and demand of every nature and kind whatsoever, of the defendants, and all persons in privity with said defendants; and that said defendants and those in privity with said defendants have no right, title, interest, lien, claim, encumbrance or demand whatsoever in law or in equity, in and to the said lands and premises.

(e) That the sale and grant of the said lands and premises, by the Collector of Taxes aforesaid,

to complainant, in fee simple, under the statute, by the decree of this Court, may be made absolute.

(f) That all municipal liens due the defendant City of Hackensack, for liens accruing after December 20th, 1916, may be fixed and a time and place may be fixed when and where complainant may pay and satisfy the same and that all such liens so paid and satisfied by complainant may be assigned to complainant and added to the liens now held by complainant, and paid by defendants before redemption of said lands may be made; and that municipal liens assessed and levied prior to December 20th, 1916, and claimed by said defendant City of Hackensack may be decreed to be obliterated, made null and void and decreed to be cancelled of record in the offices of the Collector, Clerk and other municipal offices, and in the Register's and Clerk's Offices of Bergen County.

(g) That a writ of subpoena may issue commanding the defendants to answer this bill of complaint, without oath, and each and every allegation therein and to abide by such decree as this Court may make in the premises, and that complainant may have such other and further relief in the premises as the Chancellor shall think equitable and just.

HARRY B. BROCKHURST,
Solicitor for and of counsel with
complainant, Harrington Company.

Notice of *Lis Pendens.*

(Filed Oct. 30, 1928.)

NOTICE IS HEREBY GIVEN, pursuant to the Statute in such case made and provided

TO ALL TO WHOM IT DOTH OR MAY CONCERN,

of the pendency of a suit in the Court of Chancery of New Jersey, and that the title of said suit is as follows:

Between

HARRINGTON COMPANY, a corporation,

Complainant,

and

CHARLES JONES, FRANCES H. JONES, CITY OF HACKENSACK, a municipal corporation,

Defendants.

And that the general object of said suit is to foreclose the right of redemption under the Statute of the hereinabove named defendants, and each of them, in and to the hereinafter described lands and premises from the lien and effect of a certificate of tax sale, indexed in the Bergen County Clerk's Office, and entered in the Record of Unpaid Taxes and indexed.

That a description of the said lands and premises to be affected by said suit in the said Court of Chancery is as follows:

Being known as lots numbered 47, 48, 49, 50, 51, 52 and 53 in block numbered 136, on "Hackensack, Bergen County, N. J.," made by L. Lozier, Eng., Hackensack, N. J., 1911, as revised in 1914; being also known as Lots numbered 28, 29, 30, 31, 32, 33 and 34 in Block numbered 8, on the map entitled "Hackensack Heights, William H. Reynolds, Bergen Co., N. J.," made by Williams Bros., Civil Engineers and Surveyors, Hackensack, N. J., 1892, and filed in the office of the Clerk of the County of Bergen, on August 25, 1894, as filed Map numbered 565.

Dated, Jersey City, N. J., October 20th, 1928.

HARRY B. BROCKHURST,
Solicitor for Complainant.

Subpoena.

(Filed Nov. 15, 1928.)

New Jersey, to wit, The State of New Jersey, to Charles Jones; Frances M. Jones;

GREETING: Whereas a bill of complaint has lately been exhibited against you in our Court of Chancery by HARRINGTON COMPANY, a corporation to be relieved touching the matters therein contained.

[L. S.]

THEREFORE, we command you, if you intend to make a defense, that you file an answer to said bill in the office of the Clerk of our said court at Trenton, on or before the expiration of twenty days from and after the tenth day of November,

1928, and in default thereof such order or decree will be made against you as the Court shall think equitable and just.

WITNESS, his Honor, EDWIN ROBERT WALKER, Chancellor of our said State, at Trenton, the first day of November, in the year of our Lord one thousand nine hundred and twenty-eight.

THOMAS BARBER,
Clerk.

HARRY B. BROCKHURST,
Sol'r.

Endorsed:

Served the within Writ and tickets annexed Nov 5th, 1928, personally upon Charles Jones and Frances M. Jones, his wife, the within named defendants by delivering to them true copies thereof at their usual place of abode 10 Princeton Place, Montclair, N. J.

CONRAD DEUCHLER
Sheriff

By CHAS F. HUMMEL
Special Deputy

Ticket.

[Same Title]

You are made a party defendant, and subpoenaed to answer the bill of complaint exhibited in the above cause, because you claim to be vested with the fee simple title, or to have some other right, title or interest in and to the premises mentioned and described in the said bill, and by virtue thereof claim to have some lien upon or interest in the said premises.

Dated November 1st, 1928.

Your ob't serv't,

Harry B. Brockhurst,
Sol'r for Complainant.

To Charles Jones

[Same Title]

You are made a party defendant, and subpoenaed to answer the bill of complaint exhibited in the above cause, because you claim to have an inchoate right of dower, or to have some other right, title or interest in and to the premises mentioned and described in the said bill, and by virtue thereof claim to have some lien upon or interest in the said premises.

Dated November 1st, 1928.

Your ob't serv't,

Harry B. Brockhurst,
Sol'r for Complainant.

To Frances M. Jones

Subpoena.

(Filed Nov. 15, 1928.)

New Jersey, to wit, The State of New Jersey, to City of Hackensack, a municipal corporation

GREETING: Whereas a bill of complaint has lately been exhibited against you in our Court of Chancery by HARRINGTON COMPANY, a corporation to be relieved touching the matters therein contained.

[L. S.]

THEREFORE, we command you, if you intend to make a defense, that you file an answer to said bill in the office of the Clerk of our said court at Trenton, on or before the expiration of twenty days from and after the 14th day of November, 1928, and in default thereof such order or decree will be made against you as the Court shall think equitable and just.

WITNESS, his Honor, EDWIN ROBERT WALKER, Chancellor of our said State, at Trenton, the first day of November, in the year of our Lord one thousand nine hundred and twenty-eight.

THOMAS BARBER
Clerk.

HARRY B. BROCKHURST
Sol'r.

Endorsed:

On Nov. 7, 1928 duly served the within sub ad resp and ticket on the defendant City of Hackensack, a municipal corporation by serving their Clerk,

Ticket.

William Schaaf, at his place of business, State St., Hackensack, N. J., personally.

HARRY C. HARPER
Sheriff

JOS. P. WINTERS
Deputy Sheriff

Ticket.

[SAME TITLE]

You are made a party defendant, and subpoenaed to answer the bill of complaint exhibited in the above cause, because you claim to hold various unpaid delinquent taxes and assessments, and various certificates of tax sale for various delinquent and unpaid taxes and assessments, to wit, for the years 1912, 1913, 1914, and for other years and for other assessments, levied and assessed prior to December 20, 1916, and a certificate recorded in the office of the Clerk of the County of Bergen, in Book 417 of Mortgages, for said County, at page 442, covering the premises mentioned and described in the said bill, and by virtue thereof claim to have some lien upon or interest in the said premises.

Dated November 1st, 1928.

Your ob't serv't,

HARRY B. BROCKHURST
Sol'r for Complainant

To City of Hackensack, a municipal corporation

Notice of Motion.

(Filed Nov. 27, 1928.)

[Same Title]

Take Notice: That on Tuesday, the 27th day of November, 1928 at 10:00 in the forenoon, or as soon thereafter as counsel can be heard thereon, I shall move before the Chancellor at the Chancery Chambers, 1060 Broad Street, in the City of Newark, New Jersey:

First.—To strike out complainant's bill of complaint on the ground that it does not appear on the face of the bill how much the defendants or any of the defendants must pay in order to redeem the property from the sale.

Second.—At the same time and place, and in the alternative, for the purpose of making redemption of the property, I shall ask to have the Chancellor:

(a) Determine the amount due to complainant or the basis on which said amount shall be determined.

(b) Fix the amount of the fees and costs, if any, to which complainant is entitled, to the end that the defendants may be able to determine the amount of money to tender to the complainant for a cancellation of the tax lien, or in the alternative, to pay into this Court.

Charles Jones
Sol'r. of Defendants
Charles Jones, Frances M. Jones

To

Harry B. Brockhurst,
Sol'r. of Complainant, or
To Whom it May Concern.

Affidavit of Charles Jones.

[Same Title]

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

Charles Jones, being duly sworn according to law on his oath deposes and says:

1. I am one of the defendants in the above entitled cause. On Tuesday, the 20th day of November, 1928, I made inquiry of the Collector of Taxes of the City of Hackensack, formerly the Township of New Barbadoes, and found that the Harrington Company, the complainant herein, has not filed with the Tax Collector, or other collecting officer, authorized by law to receive taxes, an affidavit showing the amount or amounts of the expenses actually disbursed or incurred by them, nor has it filed with the Collector a short memorandum of search as required by the statute.

Charles Jones.

Sworn and subscribed to before me at Newark this 21st day of November, 1928.

John G. Trusdell,
Notary Public of New Jersey.

Endorsed:

Service of the within demand is hereby acknowledged this 21st day of November, 1928.

Harry B. Brockhurst
Sol'r. of Complainant

Notice.

(Filed .)

[Same Title]

To Harrington Company, or Harry B. Brockhurst, its Solicitor:

I hereby demand that you serve upon me within five days after service of this demand upon you, a copy of the certificate alleged to have been made to complainant by Evan G. Runner, Collector of Taxes, on March 30th, 1918; the date, book and page of the filing in the Clerk's office, also the certificate dated May 19th, 1917, wherein the Collector of Taxes is alleged to have sold to complainant the premises described in the bill of complaint for $35.07, together with the book and page of its registry in the County Clerk's office, both of which documents are referred to in the bill of complaint filed herein, but not annexed thereto or recited verbatim therein.

Charles Jones
Sol'r. of Defendants
Charles Jones and Frances M. Jones

Endorsed:

Service of the within notice is hereby acknowledged this 21st day of November, 1928.

Harry B. Brockhurst
Sol'r. of Complainant.

Transcript of Proceedings.

IN CHANCERY OF NEW JERSEY.

Between

HARRINGTON COMPANY, a corporation,
Complainant,

and

CHARLES JONES, *et als.*,
Defendants.

Transcript of proceedings in the above entitled cause before the Honorable Maja Leon Berry, Vice Chancellor, at the Chancery Chambers, Industrial Building, Newark, New Jersey, on Monday, January 21, 1929, at 10:30 A. M.

APPEARANCES:

ADOLF L. ENGELKE, Esq., for Complainant.
CHARLES JONES, Esq., for Defendants.

It is stipulated and agreed between the respective parties, as follows:

1. At a tax sale held by the Tax Collector of the City of Hackensack on March 30th, 1918, complainant purchased the premises described in the bill of complaint for the taxes of 1916 for $36.13.

2. At a tax sale held by the Tax Collector of Hackensack on May 19th, 1917, complainant purchased the premises described in the bill of complaint for the taxes of 1915 and paid therefor $35.07.

3. Said sales were entered by the Clerk of Bergen County in the record of unpaid taxes for said taxing district in the appropriate column opposite the entry of the delinquent tax for which said sale was made pursuant to the first option in Section 56 of the 1903 Act.

4. For the purpose of this suit, it is admitted that an affidavit of disbursements was filed with the Tax Collector of the City of Hackensack.

5. On November 21st, 1921, defendant Jones tendered in cash to the complainant $168.77, being as he contended, $134.29 in payment of the amount due on the tax sales and $34.48 taxed costs of suit.

Mr. Engelke: I offer certificate of tax sale in evidence—certificate of tax sale of the Township of New Barbadoes, covering lots 47 to 53, in Block 136, being on Essex Street, dated May 19, 1917.

(Marked Exhibit C-1.)

I also offer another certificate of tax sale of the Township of New Barbadoes to the Harrington Company, the complainant, also covering lots 47 to 53, both inclusive, in Block 136, dated March 30, 1918.

(Marked Exhibit C-2.)

ROWE E. WHITMAN, sworn for complainant:

Direct examination by Mr. Engelke:

Q. Are you connected in any way with the Harrington Company? A. I am secretary of the company.

Q. And as such, have you custody of the records and receipts of said company? A. I have.

Q. I show you a paper entitled "Notice to Re-

deem," directed to Charles Jones, also a card, bearing No. 4969, and a United States Registry Receipt, addressed to Harrington Co., Jersey City, New Jersey, and ask you whether these come from the records of the Harrington Company? A. Yes, sir; they do.

Mr. Jones: How is the card addessed? That is not me at all. You sent that to Claremont Avenue.

Q. Do you know what these records purport to cover? A. The white cards show the amount of money paid the Collector at the time of the purchase, together with the interest and the costs to the date of redemption—up to date. The notices to redeem and copies of the notices mailed to Charles Jones. The receipt cards are receipts for the letters or notices sent by registered mail to Charles Jones.

Mr. Engelke: I offer them in evidence.
The Court: They will be marked.
(Marked Exhibits C-3, C-4 and C-5.)

Q. I show you similar papers, namely: a notice to redeem, directed to Charles Jones, a card No. 6353, and a United States Registry receipt card, directed to Harrington Co., 550-552 Montgomery St., Jersey City, and ask you if you took these from the records of the Harrington Company? A. I did.

Mr. Engelke: I offer them in evidence.
(Marked Exhibits C-6, C-7 and C-8.)

Q. What do they show? A. A copy of the notice mailed to Charles Jones, and this is the receipt card. The white card shows the amount

paid the collector, together with interest due to date, and the costs of the redemption to date.

Q. I show you a book bearing on its face number two, entitled, "Firm Registration Book, Post Office Department, For the Use of the Harrington Company, 550 Montgomery Street, Jersey City, New Jersey," and ask you whether that book forms part of the records of the Harrington Company, of which you have custody? A. It does.

Q. What does that book purport to show? A. It shows a list of the notices which were mailed on the thirteenth day of June, 1917.

Q. Does it show other notices likewise? A. Yes, it shows all the notices that were mailed on that day.

Q. How does the book get into your possession? A. We keep this book at all times, and when we have a list of the notices that are to be registered we take it to the Post Office.

Q. Whose signature is that? Does it bear any signature? A. No, just the stamp of the Post Office that they received these letters; that they were posted at the Post Office, and they received them.

The Court: Does the record show to whom the letters were addressed?

The Witness: Yes. And among those is Charles Jones.

Q. Where was it directed? Read the entire record. A. No. 37257, Charles Jones, 324 Claremont Avenue, Montclair, New Jersey.

Mr. Engelke: I offer that in evidence.

(Marked Exhibit C-9.)

Q. I show you another book bearing on its face number three, entitled "Firm Registration Book, issued by the Post Office Department for the use of the Harrington Company, 550 Montgomery Street, Jersey City, New Jersey," and ask you if you took that book from the records of the Harrington Company? A. I did.

Q. What does that book purport to show?

Mr. Jones: I admit that he mailed them.

The Court: But you deny having received them.

Mr. Jones: He has mailed them to the wrong man. He mailed them to Charles S. Jones, 324 Claremont Avenue.

The Witness: It says "Charles Jones."

Mr. Jones: It is right on this card.

The Witness: The record shows Charles Jones, No. 37414, directed to Charles Jones, 324 Claremont Avenue, Montclair, dated May 7, 1918.

Mr. Engelke: I offer that book in evidence.

(Marked Exhibit C-10.)

Cross examination by Mr. Jones:

Q. Did you make an investigation? A. I looked up the records.

Q. How did you find out where Charles Jones lived? A. I didn't look up the address, because that was before I was secretary of the company; I can only go by the records.

Q. You notice that this Exhibit C-3, Registry Receipt card, is signed by Charles S. Jones, don't you? A. It is; it is signed by Charles S. Jones.

Q. How is the Registry Receipt card, Exhibit C-6, signed? A. Charles Jones.

Q. Will you look in the telephone book, Montclair, and see whether there are two Charles Jones there? A. Yes.

Mr. Engelke: I object; this is the book today; these were sent in 1917 and 1918.

The Court: This is cross examination. It may not be worth anything.

The Witness: Yes, Charles Jones and Charles S. Jones. This is the old issue. At the time that these were sent out, I was not with the company.

Mr. Jones: Charles S. Jones lives at the same place.

Q. What is the address of Charles S. Jones? A. 324 Claremont Avenue. Charles Jones, 10 Princeton Place.

Q. You never sent them to 10 Princeton Place? A. I haven't had occasion to send any.

Q. Does the card show 324 Claremont Avenue? A. Yes.

Q. That is where Charles S. Jones lives? A. At the present time, because I cannot say about him at that time.

Q. Do you know Mr. Brockhurst's signature? A. Yes.

Q. He was attorney for the Harrington Company? A. Yes.

Q. Did you send that letter out, or was that sent out by him personally? A. That is his letter. I had no occasion to write his letter.

Q. You know that is his signature? A. Yes.

Q. He is attorney for the company? A. Yes.

Mr. Jones: I offer this in evidence for identification.

(Marked Exhibit D-2 for Identification.)

Q. You never met me before? A. No.

HARRY B. BROCKHURST, sworn for complainant:

Direct examination by Mr. Engelke:

Q. You are an attorney and counsellor at law of the State of New Jersey? A. I am.

Q. And have been such since when? A. Attorney since 1900 and counsellor since 1906. I believe those dates are correct.

Q. You are the solicitor of the complainant in the case of Harrington Company against Jones, *et al.?* A. I am.

Q. Did you or did you not file a bill of complaint and issue subpoenas in this case? A. Yes, I did.

Q. And was there any other work entailed than the preparation of the bill of complaint up to the present time? A. Bills of that character, there is a great deal of work entailed previous to filing the bill.

Q. Such as— A. Locating the parties, searching the title, examining it carefully, ascertaining the different interests that parties hold, whether they should be made parties defendant or not.

Q. Did you do this work? A. I did.

Q. Were there any defendants in this case other than Mr. Jones? A. Without inspecting the bill, I cannot say.

Q. I show you this copy of your bill. Will you tell from that whether there are any other defendants beside Mr. Jones? A. In this bill it was only necessary to make Charles Jones and Frances M. Jones and the City of Hackensack parties defendant; they seemed to be the only persons, from an inspection of the search, that had interests that could be cut off.

Q. Did you have a search of the record of the property mentioned in the two tax sale certificates made? A. I did.

Q. I show you what purports to be a search of that title, and ask you if it is? A. That is a search of the title to lots 47 to 53 in Block 136 on the Hackensack Assessment Map, located facing Essex Street, which I had made to ascertain the state of the title back to 1864.

Q. Have you made a summary in accordance with the rules and practice of the Court of Chancery, of the number of books in deeds, mortgages, judgments, and so forth, that that search entailed?

Mr. Jones: I object.

The Court: Your objection is that the fees are fixed by law. I will receive it.

A. I did.

Q. Have you a schedule there, and tell us what the amount is. A. I have, and that schedule shows $107.68.

Q. Is that made up according to the practice and rules of this court? A. In accordance with the statute and practice.

Q. Can you tell us approximately the time it took in the preparation of the bill and the issuance of the subpoenas and so forth in this matter? Could you tell us the approximate time taken by you in the preparation of this bill and issuance of subpoenas and bringing the cause to the present posture? A. I cannot give you the exact time in the preparation of the bill, but in the dictation of the bill, it probably took between two and three hours to dictate, and the necessary transcribing and later correcting, and so forth, I think to the best of my belief, that it took a good part of the day.

Examination by the Court:

Q. Do you do much of this work in your office, Mr. Brockhurst? A. Yes.

Q. Do you mean to tell me that it would take two or three hours to prepare a tax foreclosure bill? A. Sometimes it takes very much more time. On this one, I would.

Q. Do you typewrite every bill, or do you have printed copies? A. Most of the bills are typewritten. As to this bill, this bill was one that was actually typewritten.

The Court: I can tell by examining it, when I examine the files.

Q. Bills are all in practically the same form? A. No, there is no bill that you could actually follow a set form, because in every search that you examine, you find different conditions, different interests, different rights, all of which have to be judged and dealt with separately and entirely distinct.

Q. That is true of any foreclosure bill, whether tax foreclosure or mortgage foreclosure, isn't it? A. Yes.

Q. At the same time, all foreclosure bills are practically the same form? A. A foreclosure bill on a tax certificate is entirely different from a foreclosure bill on a mortgage; no similarity at all.

Q. Mr. Brockhurst, I have foreclosed for your information, personally, thousands of tax certificates, so I come pretty near knowing the labor necessary to prepare a bill, and if I cannot prepare one in thirty minutes, I think I would be wasting time; that is all. A. May I answer you in regard to that?

Q. Yes. A. I have found—I don't know whom

you prepared the bills for, but I have found in the preparation of bills for municipalties, that they have not gone into it as carefully as I have gone into it for this company.

Q. I have gone into it carefully enough for the Title Company up here to insure the titles, and that is careful enough—the Fidelity Union. A. They are very careful; they have refused to guarantee a title as to its marketability under any circumstances for me.

The Court: What you are putting in proof for, I suppose is to estimate the allowance for counsel fee.

Further examination by Mr. Engelke:

Q. I show you a letter on the letterhead of Jones & Gleeson, dated July 20, 1918, directed to Harrington Company, and ask you if you recall receiving that. A. That letter is part of the files which were sent to me at the time that this foreclosure was instituted, and there appears in my handwriting the words, "What municipality. Harrington Co. F. A." That being written by me, on it. I don't remember the circumstances of it.

Q. What would you estimate your services to be worth, rendered in this case up to the present time? A. $100, in addition to the costs.

Cross examination by Mr. Jones:

Q. When you prepared the bill, did you get the official tax search before you made the City of Hackensack a party? A. I am very sure I did; my files will show whether I did or not.

Q. Here is an official tax search; look at that. A. That won't tell me; the question was whether

I received one. It would be an exception, which I cannot account for, if I didn't.

Q. Your bill was filed just a few months ago, wasn't it? A. I cannot give you the date.

Q. You remember it was only filed a few months ago? A. Yes; I cannot recall the date; two or three months ago.

Q. It was after April 18, 1925? A. I cannot answer it; the file is right there; I cannot give the exact time.

The Court: You just said it was two or three months ago, and that is certainly after 1925.

The Witness: I am only guessing, when I make a statement on it. (After examining paper.) Yes, I received a search, No. 6404 from Ruth M. Watson, the official tax searcher of Hackensack, dated October 13, 1928.

Q. Did that show any tax sales of the City of Hackensack unpaid? A. It does not show any tax sales to the City of Hackensack.

Q. I show you an official tax search April 23, 1925, which shows all these sales mentioned in the bill, and marked Receipted and Paid. Why, then, did you make the City of Hackensack a party? A. The title search showed there were unpaid tax liens in the County Clerk's office, which were liens of record, and it became necessary to wipe them out; notwithstanding the fact that the City might be estopped by this search certificate.

Q. But the City, except when it sold to outsiders, is obliged to show it on its tax certificate. A. They might be estopped by their tax certificate, but that would not put me in any position, when

my clients passed the title, for another lawyer to say there are liens on record which are not wiped out.

Q. You wrote this letter of November 14, 1927, to one George H. Gleeson, didn't you? A. That is my signature.

Q. Will you look at the next to the last paragraph? There seemed to be some confusion as to whether—who Mr. Charles Jones was. A. This letter was not written in this case; this was written in another case, where I foreclosed another lien against you.

Q. I ask you, in the next to the last paragraph, there is some question in your mind as to who Charles Jones was? A. In that other case.

Q. This was written November 14, 1927; that was after all these notices were purported to have been sent out? A. After the Harrington Company had sent out the notices, yes.

Q. And still after you sent all these notices, you write in this letter: "there is in my mind a question as to who is the Charles Jones, grantee in the deed to which you took the acknowledgment. Can you tell me whether he is the Charles Jones who resides at No. 324 Claremont Avenue, Montclair, or is it some other Charles Jones? If you know, won't you kindly give me his address?" That you written to the lawyer who took the acknowledgment. A. I wrote that letter in the case "G-299," but that and this case are entirely two different things.

Q. I asked you about Charles Jones. A. I wrote what that letter says on the date that it bears, to Mr. Gleeson.

Mr. Jones: I offer in evidence the letter marked Exhibit D-2 for Identification.

(Marked Exhibit D-2.)

Mr. Engelke: I rest.

CHARLES JONES, one of the defendants, sworn:

So far as I know, I never received any notice of any kind of this tax foreclosure until my wife and I were served at my home, at the beginning of this suit. I have never lived at 324 Claremont Avenue, Montclair. I can easily understand the confusion. There is another lawyer, a New York lawyer, Charles S. Jones, a friend of mine, who lived at 324 Claremont Avenue, Montclair, for the past twenty years. I have lived at 10 Princeton Place, Upper Montclair, for the past twenty years. I never received these notices, and these are not my signatures.

The Court: The two notices which have been offered in evidence, you never received them?

The Witness: No.

The Court: They evidently were not sent to you.

The Witness: These lots were property I owned and had forgotten. All the taxes were paid as shown by the tax search, which I now put in evidence.

(Marked Exhibit D-3.)

Cross examination by Mr. Engelke:

Q. I show you the receipt which has been offered in evidence and marked Exhibit C-6, being registry receipt No. 37414, and ask you if that isn't your signature? A. It certainly is.

Q. Then you were mistaken, a moment ago, when you said you did not receive these cards?

A. No, I don't think so. I distinctly see the signature Charles S. Jones, which I know very well, on that.

Q. Charles S. Jones is on one? A. If that is so, I missed it; that is my signature; there is no question about that.

Q. Then you were mistaken when you said you did not receive both of these notices? A. I received a notice subsequently on some other lots, 20 to 23.

Q. You were in 1918 a member of the firm of Jones & Gleeson? A. Yes.

Q. I show you a letter on their letterhead, which is marked Exhibit C-11 for Identification, dated July 20, 1918, and ask you if you know anything about that letter? A. I do not; this is the first time I ever saw it.

Q. Mr. Gleeson was associated with you in partnership? A. Yes.

Q. Is it likely that he wrote that letter at your request? A. No; I never heard of it. It was signed "Geo. H. Gleeson" and dictated by Mr. Gleeson.

Q. It refers to the property in question, does it not? A. Yes, undoubtedly. I never heard of it.

Mr. Engelke: I offer that letter in evidence, which has been marked heretofore Exhibit C-11 for Identification.

(Marked Exhibit C-11.)

Q. I show you another letter on the letterhead of Jones & Gleeson, dated September 25, 1919, signed by Mr. Gleeson apparently, and ask you if it is his signature, and if so, doesn't it relate to the same property? A. That is Mr. Gleeson's signature, the other is his stenographer's signature. This is Mr. Gleeson's own signature; no, I never heard of it.

Q. It does relate to the same property, does it not, the same numbers? A. No question about that; I say I simply didn't know anything about it.

Q. You never spoke to Mr. Gleeson about it? A. No, and he didn't speak to me.

Q. And you have no way for accounting for the writing of this letter? A. I don't account for his writing letters.

Q. Would he write a letter for redemption of Harrington Company property? A. He evidently did. No, I never heard of it.

Mr. Engelke: I offer it in evidence.
(Marked Exhibit C-12.)

Q. I show you another letter, under date of January 13, 1921, relating to property lots 47 to 53, also to some other lots, referring particularly to the sale of March 30, 1918, and written by Mr. Gleeson, and ask you if that is his signature? A. That is his stenographer's signature.

Mr. Engelke: That is on the letter paper of George H. Gleeson. I offer it in evidence.
(Marked Exhibit C-13.)

Q. You have no way of accounting for his interest in this property? A. Absolutely not.

Q. In 1921, had you severed your business relations with him? A. Yes.

Q. I show you another letter, dated January 24, 1921, signed by Mr. Gleeson, which does not refer to any particular lots, but refers to the same numbers in red ink which refer to our numbers. I ask you whether or not you know anything about that letter? A. No, these are all a surprise to me.

Q. You know nothing about these letters? A. No.

Q. And didn't authorize them? A. Absolutely not.

Mr. Engelke: I offer that letter in evidence.

(Marked Exhibit C-14.)

Q. You say that you know Charles S. Jones? A. Yes.

Q. You are sure that he did not mail to you this notice which was directed to Charles Jones and sent to Claremont Avenue? A. Absolutely he did not, nor did I hear of these tax searches in any way, directly or indirectly, because I should have immediately redeemed them.

Exhibit C-1; N. W. B.

TOWNSHIP OF NEW BARBADOES

To All To Whom These Presents Shall Come Or May Concern: Witnesseth:

Whereas, the property hereinafter particularly described was duly assessed for taxes for the year 1915 in accordance with the provisions of an act of the Legislature of the State of New Jersey entitled "An Act for the Assessment and Collection of Taxes," approved April 8th, A. D., 1903, and the various acts supplemental thereto and amendatory thereof, which taxes became a lien thereon on the 20th day of December following such assessment and on the 1st Tuesday in February next following, a list of all the unpaid taxes assessed for said year, under the oath of said collector, was filed with the County Clerk, which list set forth the amount of taxes due upon, a description of, and

against whom the said property is assessed, all as required by law; the said taxes, or a part thereof remained due and was in arrears on the first day of July in the year following the levying thereof, and has continued in arrears up to and including the date hereof, and in performance of the duty imposed upon me by law I gave public notice of the time and place fixed by me for the sale of said real estate, stating the name of the delinquent owner, the land to be sold and the amount of the delinquent taxes due thereon, by advertisement signed by me and published in a newspaper published in the said taxing district or county where said land lies, once in each week for at least four weeks successively next preceding the day appointed for the sale; and I caused copies of the notice aforesaid to be set up in five of the most public places in the said taxing district for and during the time last aforesaid, one of which places was on or near said premises, and I further caused a copy thereof with postage prepaid to be mailed to the post-office address of the delinquent owner, as the same appears on my books, prior to the date of said sale; that said owner did not tender or offer payment of said tax and costs or any part thereof to me at any time before sale;

NOW THEREFORE KNOW YE, that I, EVAN G. RUNNER, Collector as aforesaid by virtue of the statute aforesaid, and in performance of the duty imposed upon me by law, and in consideration of the sum of money hereinafter set out, the receipt whereof is hereby acknowledged, and at the time and place specified in the said notice of sale or last adjournment on Saturday, the nineteenth day of May, 1917, at two o'clock in the afternoon, at the Collector's office No. 131 Main Street, Hackensack,

in said Taxing District, I did duly sell at public auction, and by these presents do grant, bargain, sell, alien, assign, transfer, and set over unto

HARRINGTON COMPANY, a Corporation of New Jersey,

the purchaser thereof its heirs, successors and assigns, the real property hereinafter described, for the term sold as hereinafter set out, in as full, ample and beneficial a manner as by virtue of the act of the Legislature of the State of New Jersey entitled "AN ACT FOR THE ASSESSMENT AND COLLECTION OF TAXES," approved April 8th, A. D. 1903, and the various acts supplemental thereto and amendatory thereof, and the proceedings had and taken in pursuance thereof, I may, can or ought to convey the same; TO HAVE AND TO HOLD the same to its and their own use, benefit and behoof forever for the term hereinafter set out; SUBJECT to the provisions of the aforesaid act of the Legislature.

AND I DO CERTIFY, that the purchaser bid to purchase the hereinafter described property for the term of an estate in fee simple, no one bidding for a shorter term, I having first offered to sell the said parcel of real property for a term of years, and no person being willing to bid to purchase the same for a term of years and pay the tax lien thereon, including the interest and costs of sale, I did then offer to sell an estate in fee simple in said parcel;

AND I DO CERTIFY, that the property sold by me is described as follows: All that land and premises assessed in the name of the hereinafter named delinquent owner and shown on a certain map being the OFFICIAL ASSESSMENT MAP OF THE TOWNSHIP OF NEW BARBADOES and described as follows: Lots numbered 47 to 53 both inclusive in Block

numbered 136 on said map, being Number Essex Street,

I Do Further Certify, that the name of the delinquent owner is Charles Jones the term for which the property is sold is an estate in fee simple; the amount of the tax, with the items of interest and costs in detail is:

Amount of taxes due		$28.14
Interest due to date of sale		3.09
Costs.		
Printing advertisement 1.75; Forms .15		1.90
Postage		.02
Preparing and publishing notices of sale	.25	
Selling parcel of real property ..	.25	
Certificate of sale	.50	
Filing, recording and indexing delinquents	.07	
Acknowledgment, 50c; affidavit, 25c	.75	
Recording report	.10	1.92
Total amount paid Collector ...		$35.07

And I Do Certify that the right of all persons who are entitled to redeem said parcel of real property will expire twenty years after the purchaser has entered into open and continued possession of the property under this Sale; or the said right will expire on the nineteenth day of May, 1919, if written notice to redeem said property is served in accordance with the provisions of the statute aforesaid more than sixty days before said date; or, if written notice to redeem is served as aforesaid at any time thereafter, the right to re-

deem will expire sixty days after the date of such service.

In Witness Whereof I have hereunto set my hand and seal this nineteenth day of May in the year of our Lord, One Thousand Nine Hundred and Seventeen

Evan G. Runner (L. S.)
Collector of Taxes of

State of New Jersey }
County of Bergen } ss.:

Evan G. Runner being duly sworn on his oath according to law, deposes and says that he is the collector of Taxes of Township of New Barbadoes and State of New Jersey; that all the matters set out in the above Certificate are true to his own personal knowledge, and that he has in all respects complied with the provisions of the statute entitled "An Act for the Assessment and Collection of Taxes" approved April 8th, 1903, and the various acts supplemental thereto and amendatory thereof, in making such sale.

Evan G. Runner

Subscribed and sworn to this
twenty-ninth day of May, 1917,
at Hackensack, N. J., before me

Harry B. Brockhurst
Master in Chancery of New Jersey.

State of New Jersey }
County of Bergen } ss.:

Be It Remembered, That on this twenty-ninth day of May in the year of our Lord One Thousand Nine Hundred and Seventeen, before me, the subscriber, a Master in Chancery of New Jersey per-

sonally appeared EVAN G. RUNNER who, I am satisfied, is the person named in and who executed the foregoing CERTIFICATE, to whom I first made known the contents thereof, and thereupon he acknowledged that he signed, sealed and delivered the same as his voluntary act and deed, for the uses and purposes therein expressed.

HARRY B. BROCKHURST
Master in Chancery of New Jersey

Received in the Clerk's Office of the County of Bergen on the 31 day of Jan A. D., 1918 at 9 o'clock in the A M noon, and entered in the Record of Unpaid Taxes and indexed pg. 188

GEO VANBUSKIRK
County Clerk

Exhibit C-2; N. W. B.

TOWNSHIP OF NEW BARBADOES

TO ALL TO WHOM THESE PRESENTS SHALL COME OR MAY CONCERN: WITNESSETH:

WHEREAS, the property hereinafter particularly described was duly assessed for taxes for the year 1916 in accordance with the provisions of an act of the Legislature of the State of New Jersey entitled "AN ACT FOR THE ASSESSMENT AND COLLECTION OF TAXES," approved April 8th, A. D., 1903, and the various acts supplemental thereto and amendatory thereof, which taxes became a lien thereon on the 20th day of December following such assessment and on the 1st Tuesday in February next following, a list of all the unpaid taxes assessed for said year, under the oath of said collector, was filed

with the County Clerk, which list set forth the amount of taxes due upon, a description of, and against whom the said property is assessed, all as required by law; the said taxes, or a part thereof remained due and was in arrears on the first day of July in the year following the levying thereof, and has continued in arrears up to and including the date hereof, and in performance of the duty imposed upon me by law I gave public notice of the time and place fixed by me for the sale of said real estate, stating the name of the delinquent owner, the land to be sold and the amount of the delinquent taxes due thereon, by advertisement signed by me and published in a newspaper published in the said taxing district or county where said land lies, once in each week for at least four weeks successively next preceding the day appointed for the sale; and I caused copies of the notice aforesaid to be set up in five of the most public places in the said taxing district for and during the time last aforesaid, one of which places was on or near said premises, and I further caused a copy thereof with postage prepaid to be mailed to the post-office address of the delinquent owner, as the same appears on my books, prior to the date of said sale; that said owner did not tender or offer payment of said tax and costs or any part thereof to me at any time before sale;

Now Therefore Know Ye, that I, Evan G. Runner, Collector of Taxes by virtue of the statute aforesaid, and in performance of the duty imposed upon me by law, and in consideration of the sum of money hereinafter set out, the receipt whereof is hereby acknowledged, and at the time and place advertised as aforesaid, on Saturday,

March 30th, A. D., nineteen hundred and eighteen, at two o'clock in the afternoon of that day, in the office of the Collector of Taxes, in said Taxing District, No. 131 Main Street, Hackensack, New Jersey, I did duly sell at public auction, and by these presents do certify that I have granted, bargained, sold, aliened, assigned, transferred and set over unto

HARRINGTON COMPANY, a Corporation

the purchaser thereof its successors and assigns, the real property hereinafter described, for the term sold as hereinafter set out, in as full, ample and beneficial a manner as by virtue of the act of the Legislature of the State of New Jersey entitled "AN ACT FOR THE ASSESSMENT AND COLLECTION OF TAXES," approved April 8th, A. D. 1903, and the various acts supplemental thereto and amendatory thereof, and the proceedings had and taken in pursuance thereof, I may, can or ought to convey the same; TO HAVE AND TO HOLD the same to its and their own use, benefit and behoof forever for the term hereinafter set out; SUBJECT to the provisions of the aforesaid act of the Legislature.

AND I DO CERTIFY, that the purchaser bid to purchase the hereinafter described property for the term of an estate in fee simple, no one bidding for a shorter term, I having first offered to sell the said parcel of real property for a term of years, and no person being willing to bid to purchase the same for a term of years and pay the tax lien thereon, including the interest and costs of sale, I did then offer to sell an estate in fee simple in said parcel;

AND I DO CERTIFY, that the property sold by me is described as follows: All that land and premises assessed in the name of the hereinafter named

delinquent owner and shown on a certain map being the OFFICIAL ASSESSMENT MAP OF THE TOWNSHIP OF NEW BARBADOES and described as follows: Lots numbered 47 to 53 both inclusive in Block numbered 136 on said map, being Number Essex Street,

I DO FURTHER CERTIFY, that the name of the delinquent owner is CHARLES JONES the amount of the tax, with the items of interest and costs in detail is:

Amount of taxes due		$29.09
Interest due to date of sale		3.20
COSTS.		
Printing advertisement 1.75; Forms .15		1.90
Postage		.02
Preparing and publishing notices of sale	.25	
Selling parcel of real property ..	.25	
Certificate of sale	.50	
Filing, recording and indexing delinquents	.07	
Acknowledgment, 50c; affidavit, 25c	.75	
Recording report	.10	1.92
Total amount paid Collector ...		$36.13

AND I DO CERTIFY that the right of all persons who are entitled to redeem said parcel of real property will expire twenty years after the purchaser has entered into open and continued possession of the property under this Sale; or the said right will expire on the Thirtieth day of March, A. D. 1920, if written notice to redeem said property is served in accordance with the provisions of

the statute aforesaid more than sixty days before said date; or, if written notice to redeem is served as aforesaid at any time thereafter, the right to redeem will expire sixty days after the date of such service.

IN WITNESS WHEREOF I have hereunto set my hand and seal this thirtieth day of March in the year of our Lord, One Thousand Nine Hundred and eighteen.

EVAN G. RUNNER (L. S.)
Collector of Taxes of Township
of New Barbadoes

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

EVAN G. RUNNER being duly sworn on his oath according to law, deposes and says that he is the collector of Taxes of THE TOWNSHIP OF NEW BARBADOES that all the matters set out in the above CERTIFICATE are true to his own personal knowledge, and that he has in all respects complied with the provisions of the statute entitled "AN ACT FOR THE ASSESSMENT AND COLLECTION OF TAXES" approved April 8th, 1903, and the various acts supplemental thereto and amendatory thereof, in making such sale.

EVAN G. RUNNER

Subscribed and sworn to this eighth
day of April, 1918, before me

HARRY B. BROCKHURST
Master in Chencery of New Jersey.

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

BE IT REMEMBERED, That on this eighth day of

April in the year of our Lord One Thousand Nine Hundred and eighteen before me, the subscriber, a Master in Chencery of New Jersey personally appeared Evan G. Runner who, I am satitsfied, is the person named in and who executed the foregoing Certificate, to whom I first made known the contents thereof, and thereupon he acknowledged that he signed, sealed and delivered the same as his voluntary act and deed, for the uses and purposes therein expressed.

Harry B. Brockhurst
Master in Chancery of New Jersey

Received in the Office of the County of N. J., on the day of A. D., 19 ; at o'clock in the noon and Recorded in Book of Mortgages for said County, on pages Tax delinquent list reads 41. 42

Received in the Clerk's Office of the County of Bergen on the 4th day of February A. D., 1919 at 3:30 o'clock in the P. M. noon, and entered in the Record of Unpaid Taxes and indexed pg

Geo VanBuskirk
County Clerk

Exhibit C-3; N. W. B.

Post Office
Cancellation Stamp
June 14th

POST OFFICE DEPARTMENT
OFFICIAL BUSINESS

REGISTERED ARTICLE No. 37257
INSURED PARCEL No.
RETURN TO HARRINGTON CO
(Name of Sender)
JERSEY CITY,
NEW JERSEY.

RETURN RECEIPT.

Received from the Postmaster the Registered or Insured Article, the original number of which appears on the face of this Card.

CHARLES S. JONES
(Signature or name of addressee)

Date of Delivery, 6/13 1917

Exhibit C-4; N. W. B.

No. 4969; Date, May 19, 1917; Purchase in fee;
Proof filed July 22, 1917; Notices served 6/13/17;
Block 136, Lot 47 to 53;
Essex Street; New Barbadoes;
Assessed against, Charles Jones.

Paid Collector	35.07
Recording fee	.15
Interest to 1/21/29	32.73
	67.95
Expanses; Ascertaining owner, etc.	10.00
	$77.95

Forwarded on 4/1/28
to H. B. Brockhurst

Exhibit C-5; N. W. B.

In re, 4969 Sale of
Lot 47 to 53 Block 136
Assessment Map of Township of New Barbadoes
For Taxes of 1915
} Notice to Redeem.

To Charles Jones

PLEASE TAKE NOTICE, that at a public sale held by the Collector of Taxes of the Taxing District of the Township of New Barbadoes, in the State of New Jersey on the Nineteenth day of May 1917, the undersigned purchased,

ALL the lands, tenements and hereditaments situate in the Township of New Barbadoes County of Bergen and State of New Jersey, fronting on Essex Street which is laid down and designated as

Lot or Plot Numbered 47 to 53 in Block Numbered 136 as shown on the Assessment Map of the Township of New Barbadoes; said sale being made and held pursuant to the provisions of an Act of the Legislature of the State of New Jersey, entitled,

"AN ACT FOR THE ASSESSMENT AND COLLECTION OF TAXES" approved April 8th, 1903, and the various acts supplemental thereto and amendatory thereof.

AND YOU ARE FURTHER NOTIFIED that you appear to have a right, title, lien, interest, claim, or estate in or upon said lands and real estate and that unless the said lands and real estate shall be redeemed by you within the time and in the manner provided in said Act, your right to redeem said lands and real estate will terminate and all your rights therein and thereto will be barred and the title to said lands and real estate will become vested in accordance with the bid offered, absolutely thereafter, in the undersigned purchaser.

Dated June 13th, 1917.

HARRINGTON COMPANY
JOSEPH T. HARRINGTON,
Purchaser.

Exhibit C-6; N. W. B.

Post Office
Cancellation Stamp
May 10

POST OFFICE DEPARTMENT
OFFICIAL BUSINESS

REGISTERED ARTICLE
No. 37414
INSURED PARCEL NO.
RETURN TO HARRINGTON CO
(Name of Sender)

Street and Number
or Post Office Box } 550–552 Montgomery St.
Jersey City
N. J.

RETURN RECEIPT.

Received from the Postmaster the Registered or Insured Article, the original number of which appears on the face of this Card.

CHARLES JONES
(Signature or name of addressee)

Date of Delivery, May 10 1918.

Exhibit C-7; N. W. B.

No. 6353; Date, Mar. 30, 1918;
Proof filed May 6/18; Notices served May 7/18;
Block 136 Lot 47 to 53;
Essex Street; New Barbadoes;

Assessed against, Charles Jones.

Paid Collector	36.13
Recording fee	.15
Interest to 1/21/29	31.20
	67.48
Expenses; Ascertaining owner, etc.	10.00
	$77.48

Forwarded on 4/1/28
to H. B. Brockhurst.

Exhibit C-8; N. W. B.

In re, 6353 Sale of
Lot 47 to 53 Block 136
Assessment Map of Township New Barbadoes
For Taxes of 1916
} Notice to Redeem.

To Charles Jones

Please Take Notice, that at a public sale held by the Collector of Taxes of the Taxing District of the Township of New Barbadoes, in the State of New Jersey on the Thirtieth day of May 1918, the undersigned purchased,

All the lands, tenements and hereditaments situate in the Township of New Barbadoes County of Bergen and State of New Jersey, fronting on

Essex Street which is laid down and designated as Lot or Plot Numbered 47 to 53 in Block Numbered 136 as shown on the Assessment Map of Township of New Barbadoes; said sale being made and held pursuant to the provisions of an Act of the Legislature of the State of New Jersey, entitled,

"AN ACT FOR THE ASSESSMENT AND COLLECTION OF TAXES" approved April 8th, 1903, and the various acts supplemental thereto and amendatory thereof.

AND YOU ARE FURTHER NOTIFIED that you appear to have a right, title, lien, interest, claim, or estate in or upon said lands and real estate and that unless the said lands and real estate shall be redeemed by you within the time and in the manner provided in said Act, your right to redeem said lands and real estate will terminate and all your rights therein and thereto will be barred and the title to said lands and real estate will become vested in accordance with the bid offered, absolutely thereafter, in the undersigned purchaser.

Dated May 7th, 1918.

HARRINGTON COMPANY
JOSEPH T. HARRINGTON,
Purchaser.

Exhibit C-9; N. W. B.

(Extract from "Firm Registration Book, U. S. Post Office Department, for use of Harrington Company, 550 Montgomery Street, Jersey City, N. J., #2";)

No. of Article	Name of Addressee, Street and Post Office Address	Remarks
37257	Charles Jones, 324 Claremont Avenue, Montclair, New Jersey	4969

Received, June 13th, 1917. United States Post Office Receipt Stamp.

Exhibit C-10; N. W. B.

(Extract from "Firm Registration Book, U. S. Post Office Department, for use of Harrington Company, 550 Montgomery Street, Jersey City, N. J. #3";)

No. of Article	Name of Addressee, Street and Post Office Address	Remarks
37414	Charles Jones, 324 Claremont Avenue, Montclair	

Received May 7th, 1918. United States Post Office Receipt Stamp.

Exhibit C-11; N. W. B.

LETTER HEAD OF

CHARLES JONES GEORGE H. GLEESON

JONES & GLEESON
Counsellors At Law
738 Broad Street
Newark, N. J.

July 20th, 1918.

Harrington Company,
363 Montgomery Street,
Jersey City, N. J.

Gentlemen:

Please let me know the amount due on lots 20-23 Block 136, and lots 47-53 Block 136, and oblige,

Yours very truly,

GEO. H. GLEESON

G/M
What municipality?
Harrington Co.
F. A.

Exhibit C-12; N. W. B.

LETTER HEAD OF

CHARLES JONES GEORGE H. GLEESON

JONES & GLEESON
Counsellors At Law
738 Broad Street
Newark, N. J.

Sept. 25, 1919.

Harrington Company,
363 Montgomery Street,
Jersey City, N. J.

Gentlemen:

Kindly let me know the amount due to date on

Lots 47 and 53, Block 136, Assessment Map of New Barbadoes, also amount due on Lots 20 and 23, Block 136, same Township, and oblige,

Yours very truly,

G. H. GLEESON

H/M

Exhibit C-13; N. W. B.

LETTER HEAD OF

GEORGE H. GLEESON
Counsellor At Law
738 Broad Street
Newark, N. J.

Jan. 13, 1921.

Harrington Company,
550 Montgomery Street,
Jersey City, N. J.

#6351–6353

Gentlemen:

Kindly let me know the amount due up to and including January 15th, on lots 20 to 23, 47 to 53, Block 136, Assessment Map of Hackensack, Purchased March 30, 1918, and oblige,

Yours very truly,

G. H. GLEESON

G/M.

Exhibit C-14; N. W. B.

LETTER HEAD OF

GEORGE H. GLEESON
Counsellor At Law
738 Broad Street
Newark, N. J.

Jan. 24, 1921.

The Harrington Co.,
550 Montgomery St.,
Jersey City, N. J.

Reference 4967-4969-6353-6351.

Gentlemen:

I have your favor of the 14th inst. and wish to have the tax certificates assigned to me. Will you kindly prepare the assignments and notify me if there will be any additional charge according to your letter of the 14th, and I will forward check for same.

Yours very truly,

GEO. H. GLEESON

G/M.

Exhibit D-3.

No. 2701

SEARCH FOR TAX AND ASSESSMENT LIENS
(This application is made pursuant to Chapter 272 of the Laws of 1917)

Hackensack, N. J., Apr 23 1925

CITY TAX SEARCHER

The undersigned desires to have the records of

the taxing district of the City of Hackensack searched for municipal liens and a certificate given to him stating the results of such search, and specifying the amount and the character of all unpaid liens against the property indicated below.

Block No. 136 Lot No. 47/53 Street No. Essex
Description .....
Assessed to Charles Jones. Dimensions.....
Applicant Chas. Jones. Address 738 Broad St. Newark, NJ

I hereby certify that I have searched the records of the taxing district of the City of Hackensack affecting the above described property, and do not find any unpaid taxes, assessments or charges except as follows:

Tax lien held by City of Hack. for 1917—1918—1919—1920—1921—1922—1923—1924—406.50 + Interest—116.62=$523.12 Due.
subject to interest and costs.

Date Apr 23 1925

Search Fee $2.00

RUTH M. WATSON
City Tax Searcher of the Taxing District of the City of Hackensack.

(Stamped):

PAID
May 19 1925
Fred. W. Van Wetering
Collector

Notice of Motion.

(Filed June 4, 1929.)

[Same Title]

Take Notice: That on Tuesday, the 4th day of June, 1929, at Ten o'clock in the forenoon or as soon thereafter as counsel can be heard thereon, I shall move before the Chancellor at the Chancery Chambers, 1060 Broad Street, in the City of Newark, New Jersey (Vice-Chancellor Berry sitting) to fix the terms of the decree in the above matter.

Respectfully,

Charles Jones,
Solicitor of Defendants.

To

Harry B. Brockhurst, Esq.,
Solicitor of Complainant.

Conclusions.

[Same Title]

Berry, V.-C.:

This bill is filed to foreclose two certificates of tax sale covering the same property. The first sale was on May 19, 1917, for 1915 taxes amounting to $35.07 and the second was on March 30, 1918, for 1916 taxes amounting to $36.13. Jones, the owner, first learned of the tax sales when the subpoena in this suit was served and immediately gave notice of an application to redeem. He tendered to complainant the sum of $168.70, made up as follows:

Conclusions.

Tax sale dated March 30, 1918, for the year of 1916	$36.13
Interest on same from the date of sale at 8%	30.83
Tax sale dated May 19, 1917	35.07
Interest on same from the date of sale at 8%	32.26
Costs	34.48
	$168.70

He offered also to pay in addition whatever sums were found by the court to be due. Complainant refused the tender and demanded $385.70, made up as follows:

Harrington Co. lien for 1915 taxes		$102.21
Harrington Co. lien for 1916 taxes		101.17
U. S. District Court Search	$2.30	1.15
N. J. Supreme Court Search	3.24	1.62
Search of title		75.00
Costs of suit to date		29.55
Counsel fee		75.00
		$385.70

The only issue is as to the amount required for redemption. The sales were made pursuant to the 1903 Tax Act and the laws in force at the dates of the sales control. Rodgers *v.* Cressman, 98 N. J. Eq. 209. Complainant urges Chapter 273, P. L. 1916, page 580, and Chapter 211, P. L. 1928, page 382, as authority for the items of search fee and counsel fee in its statement of the amount required for redemption. Obviously, the 1928 act does not apply. The 1916 act limits the amount of search

fees to $10.00 provided the affidavit there indicated is filed with the Collector. This was done. But Chapter 212, P. L. 1915, page 383, provides that no search fee shall be paid on redemption unless the purchaser shall have filed a memorandum as therein dicated, together with a small diagram of the property sold. This was not done. The 1915 act was in full force and effect at the time of these sales and strict compliance therewith was a prerequisite to the collection of search fees on redemption. They will be disallowed here.

Counsel fees are in the discretion of the court. Harris *v.* McMurray, 92 N. J. Equity 1. No counsel fees will be allowed, as this suit smacks of an effort "to obtain an extra few dollars in costs" as was suggested by the Chancellor in Harris *v.* McMurray, *supra.*

The defendant Jones is a reputable and well-known practicing attorney of the City of Newark and his residence is at 10 Princeton Place, Upper Montclair, where he has resided for twenty years or more. He testified that he was able to pay the tax against the lots the subject of these sales and would have done so promptly had the matter been called to his attention. I have no doubt of it. By mistake of the complainant, notices were sent to Charles S. Jones, 324 Claremont Avenue, Montclair. By the exercise of reasonable diligence, the foreclosure suit could have been avoided.

The complainant also objects to the procedure for redemption in this cause, claiming that the court should have referred the matter to a master and now wants the matter referred, notwithstanding all the proofs are before the court. Why, except that additional costs might have been incurred, I cannot understand. The suggestion that

the court or Vice-Chancellor of the court has not as much authority as a master to whom the matter might be referred, is absurd.

The complainant is entitled to the following amounts on redemption: $36.13 with interest at 8% from March 30, 1918, to date of tender; $35.07 with interest at 8% from May 19, 1917, to date of tender; actual disbursements and recording fees; costs of suit to date of tender, now taxed at $35.96. I will advise a decree accordingly.

Decided April 19, 1929.

Decree Fixing Amount Due From Redemption.

(Filed June 6, 1929.)

[Same Title]

The defendant Charles Jones having heretofore moved to strike out the bill of complaint, or in the alternative to be permitted to redeem the lands and premises described in the bill of complaint by the payment of such sums as the Court may find to be due the complainant on its certificates of tax sale, and the motion having been duly argued and briefs submitted, and thereupon the Honorable Maja Leon Berry, a Vice-Chancellor, having fixed January 21st, 1929, to hear the defendant's proofs and the said defendant appearing *pro se* on the day last above mentioned, and the complainant Harry B. Brockhurst, its solicitor, and the complainant objecting to the jurisdiction of the Vice-Chancellor to hear the above entitled cause and to take proofs in the same, and the defendant having offered proofs and the complainant having offered proofs, and the Vice-Chancellor above named having heard and considered the same, and

being of opinion that the said defendant Charles Jones should be permitted to redeem the said lands and premises from the certificates of tax sale held by the complainant upon the payment of the amount of the said certificates of tax sale with accrued interest which amounts to $173.07, and the taxed costs of said proceedings and the disbursements of the complainant incurred to the date of the tender made by the defendant to the complainant, which disbursements it appears to the Court aggregate the sum of $2.80 and the taxed costs it appears to the Court amount to $35.96;

It is on this Sixth day of June, A. D. 1929, on motion of Charles Jones, Esq., solicitor *pro se* ORDERED, ADJUDGED AND DECREED that the complainant is entitled to the following amounts on redemption:

> $36.13 with interest at 8% from March 30, 1918, to date of tender, namely, November 21, 1928, and $35.07 with interest at 8% from May 19, 1917, to date of tender, namely, November 21, 1928, which sums, including interest, amount to $173.07, and also actual disbursements and recording fees, namely, $2.80, together with the costs of this suit to the date of tender, now taxed at $36.96;

and it is further Ordered that upon payment of the aforesaid sums of money by the said defendant Charles Jones, to the complainant herein, on or before the Twenty-sixth day of June, A. D. 1929, at ten o'clock in the forenoon of that day, at the office of the solicitor for the said complainant, the said complainant shall endorse the said two certificates of sale set out in the said bill of complaint

for cancellation and shall deliver the same over to the said defendant Jones;

And it is further Ordered that upon the said defendant producing at the time of redemption as aforesaid a proper warrant to satisfy the notice of *Lis Pendens* filed in the office of the Clerk of Bergen County to the solicitor for the complainant herein, the said solicitor shall execute and acknowledge such warrant for the proper discharge of said notice and shall deliver the same to the said defendant.

E. R. WALKER,
C.

Respectfully advised,
MAJA LEON BERRY,
V.-C.

Case #98

98 OCT.T.1929

New Jersey Court of Errors and Appeals

Between HARRINGTON COMPANY, a corporation, *Complainant-Appellant,* and CHARLES JONES, *et al.*, *Defendants-Respondents.*	On Appeal from Chancery.

APPELLANT'S BRIEF.

Concise Statement of the Case.

On October 30, 1928, appellant, as complainant below, filed its Bill of Complaint against the defendants-respondents Charles Jones and Frances M. Jones, his wife (Case, p. 7) to foreclose a certificate of tax sale held by the complainant, which certified to the sale of lands located in the Township of New Barbadoes (now City of Hackensack) on March 30, 1918 (Exhibit C-2, Case, p. 49); a Notice of Lis Pendens was filed October 30, 1928 (Case, p. 20) and subpoenas and tickets issued thereon November 1, 1928 (Case, pp. 21-25). The defendant Jones and wife were served November 5, 1928 (Case, p. 22).

On November 21, 1928, Jones served a Notice of a motion (Case, p. 26), (1) to strike out the complainant's bill, and (2) for the purpose of making redemption of the property, to have the Chancellor determine (a), the amount due to the com-

plainant and (b) to fix the amount of fees and costs if any, to which complainant was entitled.

The case is silent because there are no records to print therein, showing what transpired on the return of that motion. The fact is that, without having the matter referred to him, or having any pleadings wherefrom an issue to be tried was raised, the Vice-Chancellor directed counsel to take proofs before him in a summary manner.

On January 21, 1929, proofs were taken before the Vice-Chancellor (Case, pp. 29-44).

By these proofs it was established that the complainant held two tax sale certificates,—one, for a sale held March 30, 1918, for the taxes of 1916 (Exhibit C-2, Case, p. 49); and another for a sale held May 19, 1917 (Exhibit C-1, Case, p. 44); that on November 21, 1928, Jones tendered to complainant $168.77 being $134.29 due on both certificates and $34.48 taxed costs of suit (Case, p. 30).

The evidence further shows that "Notice to Redeem" (Exhibit C-8, Case, p. 59), was mailed to Charles Jones by registered mail May 7, 1918, addressed 324 Claremont Avenue, Montclair, N. J. (Case, pp. 31, 61; Exhibit C-10, Case, p. 61). A U. S. Post Office return receipt card for the registered letter was signed "Charles Jones" (Exhibit C-6, Case, p. 58), which the defendant admitted to be his signature (Case, p. 41, line 35).

The evidence further shows the mailing on June 13, 1917, of a "Notice to Redeem" (Exhibit C-5, Case, p. 56), to Charles Jones, addressed as before (Case, p. 31; Exhibit C-9, Case, p. 61) by U. S. Post Office registered mail, together with a receipt card (Exhibit C-3, Case, p. 55).

There are also in evidence two letters written on the letterhead of "Jones and Gleeson," to the Harrington Company, signed George H. Gleeson, each of which refers to the premises being fore-

closed in the Bill of Complaint (Exhibits C-11 and C-12, Case, p. 62), and two further letters written on the letterhead of "George H. Gleeson" to the Harrington Company and signed by him, relating to the same properties (Exhibits C-13 and C-14, Case, pp. 63, 64).

There is evidence showing the work performed by the solicitor for the complainant in the preparation of the Bill, in an examination of the title to the lands foreclosed, the statutory fees for which amount to $107.68 (Case, p. 36, line 25), the time it took, and his statement that $100 would be compensation to him as counsel in addition to the costs of the suit (Case, pp. 35-38).

Upon these proofs the Vice-Chancellor determined that Jones first learned of the tax sales "when the subpoenas in this suit were served" (Case, p. 66, line 35), that the only amount to which the complainant was entitled was the amount due on the tax sale certificates with eight per cent. interest and costs of suit taxed by the Vice-Chancellor at $35.96 (Conclusions of the Vice-Chancellor, pp. 66, 68, 69), and made a Decree on June 6, 1929 (Case, p. 69), ordering redemption on the payment to the complainant of the amount of the two tax sale certificates with interest at eight per cent., actual disbursements of $2.80, with the costs of the suit, $36.96.

Specification of the Particulars in Which the Decree Is Erroneous.

1. Because the Vice-Chancellor advising the Decree lacked jurisdiction to do so;

2. Because there was no issue framed, or issuable fact presented to the Court for adjudication in any pleading, and the Vice-Chancellor had no

jurisdiction to dispose of the matter in the summary manner in which he did do so, and the entire proceeding was without warrant or authority in Chancery or Equity practice.

3. Because the decree permits redemption from the tax sales, by the defendants, on the payment of sums of money insufficient, inadequate and contrary to law, in that the decree does not provide for the allowance of counsel fees to the complainant's counsel nor fees for the examination of the title to the lands involved in the suit, and costs taxed by the clerk.

4. Because the admitted and uncontradicted evidence is contrary to the Vice-Chancellor's finding of fact;

5. Because the Court found that Jones did not have notice of the complainant's tax lien which the evidence demonstrates not to be the fact and which the law does not require to be given.

The Court should have allowed to the complainant, to be paid by the defendant, in order to redeem the lands and premises, not only the sums fixed by the Court for the principal and accrued interest on the tax sale certificates, but also the costs of court, which should include reasonable fees for an examination of the title to the lands described in the Bill, disbursements incurred by the complainant and its counsel, and counsel fees commensurate with the services rendered, in addition to the other fees and expenses provided by the tax laws.

POINT I.

The Vice-Chancellor, who advised the decree made by the Chancellor, lacked jurisdiction to advise the same.

In order that a Court may make a binding decree or judgment, it has been the common practice to place before such Court in appropriate form, the contentions of the contending parties so that when the Court has adjudicated and its judgment or decree enrolled, it may be known to posterity what facts, or rather contentions, the Court has adjudicated. It is this requirement that gives to decrees and judgments the stability which is demanded of them under a plea of *res adjudicata.* While it is true that section 49 of the 1918 Tax Revision (P. L., p. 897) as amended by Chapter 211 Laws of 1928 (P. L., p. 382), provides that after bill filed "redemption shall be made *in said cause only* and the Court *shall,* upon application at any time * * *," allow redemption etc., upon terms therein expressed. The application that is to be made should be in such form as to satisfy the requirements above stated. The "Notice" served by the defendants of a motion of the dual character of the notice in this cause (Case, p. 26) is not the appropriate pleading or statement of the applicant's contention contemplated by the rules enforced by the Courts for centuries. Even if it were, there is no opportunity for, nor does there appear in the record, any answering contention. Consequently, there is not before the Court for adjudication an issue, nor yet an issuable fact, for its determination. In plainer words: The applicant Jones should have presented his contention by way of a petition or some other pleading in the cause, to which the complainant could have made answer,

and the issue thus presented could have been regularly referred to a Vice-Chancellor for adjudication and his decree then would have had the foundation of correct practice.

There is lacking in this proceeding statutory sanction or other authority, such as Order of Reference, which would have authorized and warranted the Vice-Chancellor in taking the course he did. It cannot be claimed that this proceeding is a summary proceeding. The Legislature has not so decreed, and a Vice-Chancellor has no more power than a Master of that Court to deal summarily with any situation that may arise. He hears and acts for the Chancellor when by him authorized to do so, except in certain particular cases designated in the rules.

And this situation is not cured by the fact that proofs were taken before the Vice-Chancellor and the complainant appeared and offered such proofs in its behalf, because it is a well known rule that jurisdiction cannot be conferred by consent over any subject-matter over which the Trial Court or its incumbent had no jurisdiction to act. It follows, therefore, that the decree is nugatory.

In re Thompson, 85 Eq. 221; 96 Atl. 102 at 116.

POINT II.

Any decree permitting a tax delinquent to redeem his lands from the foreclosure of a tax lien thereon, should provide for the payment by the party redeeming, of the amount for which the lands were sold, with interest at the rate shown by the certificate, with the costs of the suit taxed by the Clerk, in which shall be included a "search fee" and counsel fees commensurate with the services rendered by complainant's counsel.

One purchasing at a tax sale has two methods of perfecting the purchase so that the fee title conveyed to him under the Act may ripen into an absolute fee simple which the purchaser may, by deed or will, convey or devise.

The first method, and one resorted to by numerous tax sale purchasers, may be found in Section 48 of the Tax Sale Revision, P. L. 1918, page 896, which provides for the recording of the certificate of sale attached to which there should be a Notice to Redeem, and affidavits of service upon interested parties. This method was not adopted by the complainant in this suit.

The complainant in this suit proceeded to foreclose the equity of redemption of all persons having an interest in or lien upon the lands sold at tax sale in the Court of Chancery. This proceeding was taken by virtue of and under the provisions of Section 49 of the Tax Sale Revision, as amended by Chapter 211, Laws 1928, page 382.

The complainant filed its Bill and issued its subpoena and thereupon the orderly course of the suit was interrupted by the irregular proceeding

adopted by the defendant Jones in giving notice of his motions above referred to.

The complainant adopted the method of making absolute its purchase of a fee simple title by suit in the Court of Chancery which, it cannot be disputed, is the more equitable method and, in fact, is the method recommended to the Courts by the Legislature (Laws 1928, p. 382), when it provided:

> "This provision shall be liberally construed as remedial legislation to encourage the barring of the right of redemption by suits in the Court of Chancery, and for the decreeing of marketable titles therein, and to discourage barring the right of redemption by act of the purchaser in serving notices to redeem and filing and recording the proceedings as otherwise provided."

By this method it is provided that "on filing such bill, the right to redeem shall exist and continue until barred by the decree of the Court of Chancery."

To repeat,—rather than resort to the harsh method of giving a "Notice to Redeem" to parties interested in the lands and then months afterwards by the simple procedure of recording such notice and proof of its service with some other documents required, at once acquiring a title which could not be assailed by anyone interested in the lands, they having once had notice thereof, this complainant has presented its Bill to the Court of Chancery, thereby instantly reviving the defendant Jones' right to redeem which had at that time been barred by notice and service of notice upon him (Exhibit C-8, Case, p. 59; Exhibit C-6, p. 58; Exhibit C-10, p. 61).

With the practice up to this point the respondent Jones finds no fault. The difficulty lies beyond this point. The right to redeem being conceded,

the question under debate is what shall be the price of that redemption?

Equity being extended to the delinquent taxpayer whose lands have been sold to the complainant, it behooves the delinquent who, in his turn seeks equity, to do equity. Again, we are confronted with the question as to what is equity under the circumstances.

Defendant Jones, unwilling at first to benefit by the offer to allow redemption tendered by the complainant when it filed its bill, gives "notice" of his intention to "strike out the complainant's bill of complaint" (Case, p. 26), but failing in his effort to dislodge the complainant's bill then asks the Court to extend to him the friendly hand of equitable intervention that he may recover the lands he has lost through his neglect, untramelled by the burden of expense incurred by complainant, who by due operation of law, has assumed and paid his obligation.

Jones says, and the Vice-Chancellor agrees with him, that equity in the instant case is the payment of the amount of the taxes for which the lands were sold, with eight per cent. interest and the taxed costs of the complainant. An examination of the facts will demonstrate that this proposal of the defendant Jones is far from equitable.

Before the complainant, the tax sale purchaser, can file a Bill of Complaint to foreclose its tax lien, it must arm itself with facts sufficient to draw a Bill of Complaint which will not prove vulnerable to the attack of the parties or any of them whom the complainant brings into the suit. To do this intelligently, either counsel himself or some one employed by him, must make a careful and complete examination of the title to the lands described in the Bill of Complaint for a period that will satisfy him of every defect that must be cured.

Such search must extend over a period of 60 years, perhaps longer. Such a "search" of the title may and very often does present facts that involve profound study to determine the law applicable. In addition, there will be revealed, perhaps, doubtful questions of fact such as the devolution of the title by descent and the persons upon whom it did or did not descend, whether they be alive, single or married, and lastly, but not leastly, where they reside or how can process and notice of this suit be brought home to them. It is not the purpose of this argument to add illustration to illustration of the difficulties which may be encountered, but counsel hopes the members of this Court will exert their imagination when considering the possibilities that present themselves in a search of a title to some lands and particularly such lands as delinquent taxpayers permit to be sold at tax sale. Often days and even months, counsel has known to elapse, before questions of fact such as these are solved.

Again, the Rules of this Court (Chan. Rules 37, 38), promulgated without possibility of question, for the protection of absent defendants, require of counsel that either he or someone for whom he can honestly vouch, has made inquiry such as will reveal the necessary residence or post office address or those persons having an interest in or lien upon the premises sold at tax sale.

Can it be said to be equitable when, after a complainant's solicitor and counsel has exerted himself and expended the necessary time, labor, disbursements and energy to acquire knowledge of the facts and of the law as above indicated, the delinquent taxpayer, whose original fault created this train of circumstances, comes in to redeem, he should be permitted to ignore this vast amount of labor and expense and say to the tax purchaser

"Here is the money you have expended; thanks for reminding me of my delinquency; I will pay none of your expenses in finding and reminding me" and have a Court of Equity sanction this conduct and say it is equity? Or is it more equitable for the Court to say to such a delinquent "You have neglected a public duty and have set in motion this train of labor and expense; if you seek to recover the property which once was yours, pay what you owe and in addition, pay the disbursements and a fee commensurate with the labor these persons, the complainant and its counsel, have incurred and performed in compelling you to support your State, and then shall you have what once was yours." Argument should not be necessary to demonstrate which of these two propositions states the equities of the situation.

The Legislature in the cited Act, 1928, page 382, has declared that a tax delinquent should and must do equity and leaves it in the hands of the Chancellor to determine what that equity is under the circumstances of each case,—a wise, fair and equitable proposition.

The decree advised by the Vice-Chancellor in the instant case violates all these principles of equity and disregards utterly the provisions of the Act of 1928. On page 70 of the Case, will be found what the Vice-Chancellor allowed. Disbursements for recording fees, amounting to $2.80 and costs of this suit "now taxed at $36.96." Incidentally it may be remarked, that it does not appear in the case how these costs were taxed, by whom, nor how this amount is arrived at. Counsel does not know how the Vice-Chancellor arrived at the figures and there was no evidence offered by anyone as to the amount of these costs.

The Vice-Chancellor refuses to allow counsel or the complainant compensation for the expense of

making an examination of the title to the lands involved in the suit and likewise refuses to allow counsel counsel fees "commensurate with the services rendered."

It is difficult to discover on what ground the Vice-Chancellor bases the equity of his conclusions. He says (Case, p. 67), the sales were made pursuant to the 1903 Tax Act and the laws in force at the dates of the sale control, and cites *Rodgers* v. *Cressman,* 98 N. J. Eq. 209 and concludes that the Act of 1928 does not apply.

The Vice-Chancellor should have held the cited case inapplicable and the statute as the law governing this case. He should have found in the expressed intention of the Legislature, that this statute should be interpreted as remedial legislation, the "state policy" sought for by the Chancellor in the case of *Harris* v. *McMurray,* 92 N. J. Eq. 1, 116 Atl. 702.

The case of *Rodgers* v. *Cressman* (*supra*), hinges, not so much on the application of the Tax Acts of 1903 or 1918, as upon the constitutional effect of applying the 1918 statute to tax sales held under the 1903 Act. The Vice-Chancellor who decided the instant case also decided *Rodgers* v. *Cressman* and in the latter case held that the imposition of subsequent taxes, paid voluntarily by a tax sale purchaser under the 1903 Act, made a gratuitous payment, which he could not recover from the party redeeming because the 1903 Act was silent with respect thereto and that the 1918 Act, if it imposed that burden, would be unconstitutional.

Both the 1903 and 1918 Acts provide for the barring of the equity of redemption by a suit in Chancery. The imposition and collection of costs and counsel fees are incident to all suits in Chancery. They were incident to a suit started prior to the 1918 Act as well as one started subsequent thereto.

Costs in a suit at law and in equity have been incident thereto from time immemorial. Costs in equity have usually been discretionary and the Chancery Act (C. S., p. 442, Sec. 48), so provides. Even a successful party may be charged with costs (P. L. 1915, p. 185, subd. 6).

Counsel fees may be awarded by the Chancellor "in any cause, matter or proceeding in the Court of Chancery" (P. L. 1910, p. 427). It may be noted that this last provision was in force when the 1903 Act was operative and was the law of the state prior to the tax sales in this case. The Vice-Chancellor who decided this case does not disagree with this reasoning for in his conclusion (Case, p. 68, line 16) he says, "counsel fees are in the discretion of the Court."

The 1918 Act was passed to advise the Chancery Court that the policy adopted by the Legislature in cases involving foreclosure of tax liens was to be *liberal* in order to encourage suits of that character to be brought in that Court by allowing costs which *shall* include reasonable search fees, disbursements, and counsel fees. The words used by the Legislature in expressing the policy to be adopted by the Chancellor are, *"shall* * * * allow costs, which *shall* include reasonable fees for an examination of the title * * *, disbursements, * * * and counsel fees commensurate with the services rendered, *in addition to the other fees and expenses* in this act provided." The Legislature used the word *"shall"* in both instances, *"shall allow costs which shall include,"* etc. The policy expressed is mandatory except as to the amount of search fee, disbursements and counsel fees which is to be measured by reasonableness and shall be commensurate with the services rendered.

The Vice-Chancellor in the instant case refuses to allow counsel fees not so much because the stat-

ute of 1903 makes no provision for it or that the 1928 Act is not applicable, but for the reason that he has arrived at an erroneous conclusion as to the facts in the case. The reason he assigns for a refusal to allow counsel fees is because "this suit smacks of an effort to 'obtain an extra few dollars in costs.'" How this conclusion is warranted by facts, counsel fails to discover. The Vice-Chancellor seems to discover it in the fact that Jones "first learned of the tax sales when the subpoena in this suit was served," and finds that the complainant sent its notices to redeem to Charles S. Jones, 324 Claremont Avenue, Montclair, inferentially concluding that they did not reach Charles Jones, defendant below.

An examination of the facts, however, leads to directly the opposite result. By Exhibit C-9, Case, page 61, it is demonstrated that a registered article numbered by the U. S. Post Office, No. 37257, and bearing the number under the heading "Remarks," 4969, was sent to Charles Jones, 324 Claremont Avenue, Montclair, N. J., on June 13, 1917.

Jones admits that the notices were mailed (Case, p. 33, line 13). By Exhibit C-10, Case, page 61, it is demonstrated that an article bearing U. S. Post Office Registry number 37414 was mailed to Charles Jones, 324 Claremont Avenue, Montclair, N. J., on May 7, 1918. The articles mailed for which the receipts Exhibits C-9 and C-10 were given, were the "notices to redeem," Exhibits C-5, Case, page 56, and C-8, Case, page 59.

On page 41 of the case, Charles Jones testified that "so far as I know" I never received any notice of any kind, but on the same page, under cross examination by counsel, when shown Exhibit C-6, being the registry receipt card for the registered article numbered 37414 which contained the "notice to redeem" and was mailed May 7, 1918, he

frankly admits that his signature appears on that receipt card, thereby demonstrating without fear of contradiction the receipt of the "notice to redeem" on May 10, 1918 (see Exhibit C-6, Case, p. 58), so that Mr. Jones did have notice of the claim of the Harrington Company more than ten years before the bill was filed.

It is urged upon the Court that Mr. Jones not only received the notice mailed under registry No. 37414 as has just been demonstrated, but that he also received the notice sent under No. 37257 on June 13, 1917. While it is true that the registry receipt card Exhibit C-3, Case, page 55, is signed Charles *S.* Jones, it is significant to note that Charles S. Jones is a friend of Charles Jones (Case, p. 41, line 15). While there is no evidence showing that Charles S. Jones delivered the "notice to redeem" he received from the Harrington Company, to Charles Jones, yet will Charles Jones be believed when he says that he never received "these notices" and that "these are not my signatures" (Case, p. 41, line 20) when less than three minutes later he is forced to admit that one of the signatures is his signature?

In this connection there is an element more significant than any thus far referred to. It will be noted that by Exhibit C-11, Case, page 62, Charles Jones and George H. Gleeson were associated as partners in the practice of the law at 738 Broad Street, Newark, N. J., and that on July 20, 1918, two months after the receipt of the second notice to redeem which Jones admitted, Gleeson wrote to the Harrington Company asking to be informed of the amount due on the lands foreclosed in this suit and others.

Again, by Exhibit C-12, Case, page 62, Gleeson makes a like inquiry. The two letters just referred to are written on the partnership's stationery, but

in January, 1921, Gleeson on his own letterhead, but still at 738 Broad Street, Newark, N. J., again inquired the amount necessary to redeem, and most significant of all, we find that in his letter of January 24, 1921 (Exhibit C-14, p. 64), Mr. Gleeson refers to the article No. 4969 stated under the heading of "Remarks" in Exhibit C-9, Case, page 61. A strange coincidence, but one of the "small things" that demonstrate the truth. In this last letter Mr. Gleeson desires an assignment of these certificates to himself.

In view of such strong, almost demonstrative proof and the admission of Jones on the witness stand that he was a partner of Gleeson, what value can be ascribed to Mr. Jones' contradictions on Case, page 42, to the effect that he had never heard of Mr. Gleeson's correspondence with the Harrington Company? Is it to be presumed that Gleeson, without prompting and without reason so far as this case shows, wrote the letters to the Harrington Company referring with particularity to the lot and block number and even to the number inserted on the registration book of the U. S. Post Office? Jones did not want to admit his delinquency and Gleeson, his business partner and associate, was a man who could do it without entangling Jones into a statement or admission of any character. Is it to be believed that Gleeson was false to the partnership and his partner Jones and surreptitiously and secretly sought to obtain these certificates of tax sale? There is no evidence warranting such a belief. There is no evidence as to how Gleeson obtained knowledge that Harrington Company held these liens nor of the number 4969 except Mr. Jones' admission that he received the "Notice to Redeem" and signed the Registry Card No. 37414. What conclusion then ought the Court to come to? None other than that Jones received, read and con-

veniently forgot about the tax sale to the Harrington Company and that his law office corresponded with Harrington Company for the purpose of obtaining information thereon.

Notwithstanding the fact that the evidence so conclusively proves that Jones had notice, the Vice-Chancellor finds, in the face of such evidence, that Jones "first learned of the tax sales when the subpoena in the suit was served," and tries to impugn the integrity of the complainant by saying, "by the exercise of reasonable diligence, the foreclosure suit could have been avoided." Reasonable diligence? On whose part? It is impossible to find any evidence, oral or written, from which the Court could conclude that "this suit smacks of an effort 'to obtain an extra few dollars in costs.'" When a taxpayer, delinquent in the payment of his taxes, has received a "notice to redeem" which he ignores except to have his partner inquire as to the amount, and thereafter the tax sale purchaser uses the honorable and fair method of a suit in Chancery to perfect his title in accordance with the expressed legislative policy, is that conduct such as should be characterized as "smacking of an effort to obtain an extra few dollars in costs"? If it be, then each litigant who is compelled to resort to the courts is equally quilty. If it be, then the expressed legislative policy is meaningless. But counsel fears that the Vice-Chancellor fell into this error owing to a further confusion in his mind.

While it does not appear in the record, because it could not so appear, counsel *in opposition to the motion* (Case, p. 26), and *on the argument thereof,* urged that the Court should, since the defendants did not deny the Bill, refer the matter to a Master to ascertain the amount due. This request for a reference was repeated in counsel's brief submit-

ted on the argument of the motion and *prior to the taking of the oral proofs* by the Vice-Chancellor. This circumstance, wholly unrelated to the taking of the oral proofs before the Vice-Chancellor, is what was lurking in the Vice-Chancellor's mind when he wrote that "the complainant also objects to the procedure for redemption in this cause claiming that the Court should have referred the matter to a Master and now wants the matter referred notwithstanding all the proofs are before the Court. *Why, except that additional costs might have been incurred, I cannot understand.*"

Prior to the taking of oral proofs there was a suggestion as to what procedure should be adopted which the Vice-Chancellor whole-heartedly ignored and now seeks to penalize the complainant because of that suggestion. The matter is entirely irrelevant to and unconnected with the facts before the Court and it is surprising that the Vice-Chancellor should have alluded to the matter in any way, shape or form, and it indicates to counsel that this erroneous impression, gained by the Vice-Chancellor, prompted the conclusion to penalize this complainant with the loss of counsel fees.

One further question remains for discussion. The Court should have allowed "reasonable fees for the examination of the title to the lands described in the Bill of Complaint" (P. L. 1928, p. 382).

The Vice-Chancellor holds that this act does not apply, and concludes that the act of 1915 (p. 383), which requires the filing of an abstract of the title and diagram of the lands to be filed with the Tax Collector "before redemption has actually been made," bars the recovery of "search fees" in the instant case. The Vice-Chancellor further holds that the act of 1916 (p. 580), which provides that

the delinquent owner shall pay on redemption, among other things:

> "fees for the service of notices necessarily served and the fees and expenses in ascertaining the owner or owners, mortgagee or mortgagees, occupant or other person or persons having an interest or lien in or on such premises so sold for taxes; provided, that all such fees and expenses incurred by the purchaser, his heirs or assigns, in ascertaining the owner or owners, mortgagee or mortgagees, occupant or other person or persons having an interest in or lien in or on such premises sold for taxes, including all disbursements whatsoever, shall not exceed the sum of Ten dollars, besides the fees actually paid for recording the certificates; and provided further, no fees or expenses incurred as aforesaid shall be collectible unless the purchaser, or his heirs or assigns, shall have made and filed with such collector or other collecting officer, an affidavit showing the amount or amounts of such expenses actually disbursed or incurred";

does not apply. The 1916 act last cited is an amendment of section 57 of the 1903 act and concludes with a paragraph repealing *all acts inconsistent therewith.*

This repealer vitiates and annuls the requirements of the 1915 act.

The 1915 act provides that no purchaser shall be entitled to receive upon redemption any costs or expenses incurred in ascertaining the owner etc., UNLESS the purchaser shall file an abstract of title and diagram.

The 1916 act provides that the owner may redeem upon paying, among other things, the fees and expenses in ascertaining the owner, etc., "*provided*" that such expenses shall not exceed $10, "*and provided further* that" the fees and expenses incurred, as aforesaid, shall not be collectible

UNLESS the purchaser shall file with the collector an affidavit showing the amount of expenses actually disbursed or incurred.

The earlier act *requires the filing of an abstract,* the later act *requires the filing of an affidavit.* The later act is inconsistent with the former. While it is true that the provisos and conditions imposed upon the right to collect fees and disbursements by both acts, may be performed without one interfering with the other, it is equally true that the Legislature when adopting the later act *clearly expressed the condition necessary to be observed,* to require the owner to pay fees upon redemption. It refers to no previous or other conditions, but expressly legislates *that inconsistent laws are repealed.* The filing of an abstract is one thing, the filing of an affidavit another. The first is much more onerous than the latter. It is proper, therefore, to interpret the Legislature's intention to be to repeal the former and substitute the latter requirement.

However this Court views the effect of this legislation, it involves only the allowance of $10 on the redemption of the lands from each of two certificates held by the appellant. The Vice-Chancellor refused to allow it notwithstanding it was stipulated in the case that the proof of this disbursement was filed with the collector of taxes; by the course of reasoning just adopted, it is clear that he erred and that appellant is entitled to this allowance.

But this is not appellant's main objection to the Court's conclusions. The Vice-Chancellor refers to the case of *Harris* v. *McMurray,* 92 N. J. Eq. 1; 116 Atl. 702, *but not in support* of this conclusion.

Counsel refers to this case however, anticipating reference thereto in opposing counsel's brief.

The Chancellor wrote the opinion and counsel respectfully urges that in doing so our learned Chancellor fell into error.

These errors are few but vital. Although conceding that the owner might redeem by paying the amount due to the collecting officer, the Chancellor aptly says:

> "But it is obvious that making such payment to the collector and getting the redemption certificate *would not dispose of this suit.* * * * That being so, *seeking equity, she must do equity* and abide by the decree of this Court." * * *

The Chancellor, after discussing the Chancery practice of awarding costs according to the merits of the suit, concludes that although the complainant is entitled to his taxed costs, there should not be included therein, any part of the search fees provided by Section 92 of the Chancery Act (C. S., p. 446, Sec. 92), and bases his conclusion upon the fact that although the character of the suit is cognate to that of a suit to foreclose a mortgage, it is not the same and that further statutory authority being lacking, he was without power to tax search fees in the complainant's bill of costs.

In the condition the law was in at the time of the Chancellor's opinion, August 25, 1920, when the 1916 Act (P. L., p. 580) was in force and the provisions of the 1928 Act had not yet been adopted, the Chancellor was undoubtedly correct in his conclusions, but when the Chancellor says that he is unable to award a counsel fee, not because of the impossibility of such a course, but because it would not be justifiable, he errs.

Even before the adoption of the provisions of the 1928 Act, there was legislative sanction for the award of counsel fees in any Chancery suit (1 C. S. 442, Sec. 84). The right of the tax sale

purchaser to forclose his tax sale lien by an action in the Court of Chancery carried with it all the incidents of a Chancery litigation, including the collection, not only of taxed costs, but also of counsel fees if the circumstances of the suit warranted it. These circumstances which control the award of counsel fees in an equitable action are too well known to require repetition. It is sufficient to say of the instant case that defendant Jones received two notices to redeem; that years elapsed and no action was taken; that then the complainant resorted to the statutory remedy to gain its rights. To do this it was necessary to employ counsel, who must, and did, study the state of the law and of the title to the lands sought to be foreclosed, drew and filed the bill and Notice of Lis Pendens, issued process and only then the delinquent taxpayer, himself a lawyer, is spurred to action and does not adopt an orderly procedure for the sole purpose of redeeming, but instead, first moves to strike out the bill and failing in this then asks, still not by orderly procedure, but by a summary proceeding, to be permitted to redeem. This recital of the steps in the litigation lays no foundation for a refusal of, but does warrant the allowance of counsel fees.

Counsel fees constitute a compensation to the lawyer employed by the complainant for his services in conducting the litigation. Counsel has made a search of the title to the lands on which his client holds a tax lien. It is error to conclude that this search is the same search that was made by or for the tax sale purchaser at the time he acquired the tax sale certificate. It may be the same, but in most cases it is not the same. A foreclosure of a tax lien is postponed for two years after acquiring it. It may be presumed that the owner of the lands has in the meantime sold or encumbered the title and if the tax sale purchaser,

as did the complainant in the instant case, waits ten years before filing its bill to redeem, that much more time having elapsed, the greater likelihood of transfers and encumbrances and the greater necessity of continuing the search.

The Chancellor in the case of *Harris* v. *McMurray,* 92 Eq. 1, does not by any word indicate that counsel fees are not proper. He says that he refuses to incorporate in counsel fees expenses incurred by the solicitor for search fees and bases his refusal upon the reason that the Legislature when it adopted Section 57 of the Tax Act 1916, p. 580) fixed the policy of this State in awarding search fees to the extent of only $10. In this, it is respectfully submitted, the Chancellor erred again.

The section dealing with the amount of search fees applies in its language and import to redemptions made through the Collector's office and the true interpretation of this section must be that it refers to expenses incurred by a purchaser when seeking to ascertain within the two years after acquiring the tax title, the names of those interested in the lands, upon whom he may serve "notice to redeem" to bar redemption by the recording method. The section applying to barring redemption by the action in equity was utterly silent until the adoption of the 1928 Act.

There is no inter-dependence or the slightest connection between Section (59) of the Law of 1903 (C. S., p. 5137) which provides for the filing of a bill of strict foreclosure, and Section 57 which provides what shall be paid to redeem. The Legislature had not in mind when enacting Section 57 any expenses, costs or counsel fees of a suit in equity, because it dealt only with the subject of a redemption made by a purchaser in the ordinary course and not after litigation had taken effect. One illustration clarifies this argument: The pre-

liminary inquiry instituted in ascertaining the owner, &c., made by a tax sale purchaser *immediately after* the purchase, may reveal one set of owners, mortgagees, &c., whereas a search of the title to ascertain all outstanding interests, rights and defects made *two years thereafter,* or perhaps later, in preparation for filing a bill in equity, may reveal an entirely different set of owners, mortgagees, rights, defects and the like, and may, in fact does, frequently entail a far greater expenditure of time, money and legal acumen in the work.

A careful reading of Sections 57, 58 and 59, and especialy a contrasting of Section 57 and 59, will show the independence of these Sections, one from the other. Section 57 provides for redemption to be made at the Collector's Office. And as the Chancellor pointed out in *Harris* v. *McMurray* (*supra*), *such* redemption is of little avail where a suit is pending. The 1928 Act provides for this contingency and the defendants by their notice and application to this Court (Case, p. 26) have put themselves squarely under its provisions. Section 59 declares *two methods* whereby a tax sale purchaser can avail himself of the benefit of his purchase, but is silent as to a method of redemption; the Legislature leaving the Court of Equity to make disposition thereof as any other suit in that jurisdiction.

However this may be, were the Chancellor today writing his opinion, he could no longer say that "the Legislature, by the fixing of this limitation, has expressed the public policy of this state" because the Legislature has now spoken and fixes the policy of this State to be that one seeking equity should do equity, and that after a Bill is filed, the Court *shall* allow costs which *shall* include reasonable fees for searches and other expenses besides counsel fees commensurate with the services rendered.

Indeed, Chancellor WALKER'S opinion in *Harris* v. *McMurray, supra,* deals with a situation similar to the instant one. There sales were had under an earlier Act although between the date of the sales and the date of the filing of the complainant's bill, the Legislature had amended the Act concerning redemptions and fixed a lesser sum than that provided under the earlier Act under which the sales were held. He significantly says:

> "The amendment of 1916 fixes the maximum of search fees at $10. * * * Complainant's bill was not filed until after the 1916 amendment, *and it might, perhaps, be argued, that his rights are controlled thereby.*"

These words may be aptly used in this argument and it is respectfully submitted and urged upon the Court that today the 1928 Act controlled the Vice-Chancellor and that he erred in concluding to reject complainant's search fees.

Chancellor WALKER in the cited case, feels that his decision depends largely upon a public policy established by the Legislature. By the same token, the Vice-Chancellor should have been bound in the instant case, by the public policy, expressed in the Act of 1928, especially in view of the final paragraph of the first section of the 1928 Act which provides that *"this provision shall be liberally construed as remedial Legislation to encourage the barring of the right of redemption by suits in the Court of Chancery* * * *," and to discourage other proceedings for the perfecting of the tax sale purchaser's title.

If the Chancellor draws from the Legislation existing in 1920, an inference that the Legislature had established a policy that $10 should be the limit of the fees to which counsel might become entitled, when there is not contained in the entire subject of Legislation any word or words indica-

tive of such a policy, then most assuredly should the Courts today after the adoption and approval, on April 3, 1928, of the amendment to Section 49 of the 1918 Act, being the Laws of 1928 above referred to, determine that it is the policy of the Legislature to compensate the counsel of a tax sale purchaser who takes Chancery Court proceedings to bar the owner's right of redemption rather than taking the statutory method of recording the title. Under this Act, it is counsel's contention the Vice-Chancellor should have allowed the taxed costs, in which should have been included reasonable search fees, together with counsel fees, commensurate with the services rendered by the complainant's counsel.

What are reasonable search fees, is determined by an Act of the Legislature being found in the Revision of 1877, at page 409, incorporated in the Act relating to fees and costs (2 C. S., p. 2290, Section 10). Using this Legislation as a basis of computation, the solicitor of the complainant testified that he had computed the number of books examined and that at the rate provided by statute, the sum of $107.68 was the sum to which he was entitled.

Counsel fees commensurate with the services rendered should have been found and determined by the Vice-Chancellor, to whom the solicitor for the complainant again told of the services rendered and the work involved, and which he estimated to be worth the reasonable sum of $100.

It is respectfully submitted that these two sums, or such other reasonable sums as the Vice-Chancellor found to have been just, should have been included in the decree appealed from as a part of the moneys to be paid by the defendant Jones for the redemption of the lands described in the Bill of Complaint.

IN CONCLUSION.

Counsel respectfully submits that the Decree of the Court of Chancery should be reversed in all particulars, and the Chancellor directed to enter a Decree permitting the defendants Charles Jones and Frances Jones, his wife, to redeem the lands sold from the lien of the two certificates of tax sale held by the complainant, upon the payment of the moneys paid by the complainant, with interest at eight per cent. per annum from the date of the respective sales, besides the complainant's costs to be taxed by the Clerk of the Court of Chancery, which shall include such fees for the examination of the title to the lands described in the Bill filed, as the Chancellor shall determine to be reasonable, with disbursements shown by the purchaser to have been incurred by it and its counsel and such counsel fees as the Chancellor shall determine are commensurate with the services rendered by the complainant's counsel.

Respectfully submitted,

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Solicitor of Complainant.

ADOLF L. ENGELKE,
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New Jersey Court of Errors and Appeals

Between
HARRINGTON COMPANY, a corporation,
Complainant-Appellant,
and
CHARLES JONES, *et al.*,
Defendants-Respondents.

On Appeal from Chancery.

APPELLANT'S REPLYING BRIEF.

So many glaring misstatements of the facts in the record are contained in respondent's brief that it seems imperative for the appellant to reply thereto. Not only are there misstatements of fact, but there are interpolated into the alleged statement of fact, statements and allegations for which there is no foundation in the record.

While it is true that the respondent, Mr. Jones, owned the property "for many years prior" to the time of the sale, *he had forgotten that he owned it* (Case, p. 41, lines 29-30).

A layman obtaining a tax collector's search report might be misled into believing that the taxes and assessments there reported as unpaid constituted all the municipal liens, including tax sales to outsiders. Mr. Jones is a lawyer (Case, p. 68, line 23); he should have known and did know this (Case, p. 39, line 38) and that a tax sale removes from the tax collector's books, the lien of the taxes and transfers it to the purchaser (Laws 1918, Sec. 54, p. 899), and must be entered in the record in

the County Clerk's office within three months of the date of sale (Laws 1918, p. 284, Sec. 35).

It is idle to reply to the statement that suit was started against Mr. Jones without any preliminary letter or demand, because the matter is fully argued on pages 14, 15 and 16 of appellant's original brief.

On page 3, under Point I of respondent's brief, it is insinuated that appellant urged before the Vice-Chancellor that the Vice-Chancellor did not have power to determine the matter when a Master did. Any such assertion would be ridiculous. **No such urging or argument was made.** What actually took place can be found in appellant's original brief on pages 17 and 18. This seems to be an attempt on the part of the respondent to becloud the real issue. The argument before the Vice-Chancellor was, that the proper procedure to adopt under the circumstances was to deny Mr. Jones' motion, enter a decree *pro con,* because there was no real defense to the bill, and ascertain the amount to be paid by Mr. Jones to redeem his lands by a reference of that matter to a Master, all in accordance with the prayer of appellant's bill (see Bill of Complaint, Case, p. 18, prayer (b)). Counsel urges upon this Court to examine this bill and critically analyze this reasoning and it will be found that this and nothing else was what the appellant urged the Court to do.

It is counsel's distinct recollection of his early practice that when he asked the former and learned Vice-Chancellor GARRISON to compute a matter involving only calculation of figures, the learned Vice-Chancellor's rebuke "What do you think the Court has Masters for?" was well deserved. It was with the recollection of this experience that counsel urged what has been stated.

On page 4, under Point II, respondent says that

he and his wife are the only necessary and proper parties defendant.

The Court is referred to paragraph 12 of the bill of complaint (Case, p. 14) where it is shown that the City of Hackensack held liens for unpaid taxes and assessments, also the search of the title showed these liens open of record in the County Clerk's office (Case, p. 39, lines 28 to 37). Does the respondent mean to say that Hackensack, under such circumstances, is not a proper party defendant?

On the same page we are told that the respondent had an office at No. 738 Broad Street, Newark, and that complainant's solicitor knew him. There is no doubt that complainant's solicitor knew the Mr. Jones of No. 738 Broad Street, Newark. Mr. Jones had received hundreds of dollars from complainant's solicitor for work done, but the mere fact that complainant's solicitor knew Charles Jones of No. 738 Broad Street, Newark, cannot be convincing argument that the Charles Jones owning real estate in Hackensack, Bergen County, and who owed the taxes was the same Charles Jones. Jones is a most common name and the fact of the difference in the cities and counties was sufficient justification for appellant's doubt. This doubt is well expressed by appellant's solicitor in his testimony shown in Case, page 40, line 25, *et seq.* It must be remembered that the grantee and owner of a parcel of land must be connected up with a residence. The fact that Charles Jones of Newark, Essex County, who made judgment searches for the complainant's solicitor for years was the same Charles Jones who neglected to pay his taxes on lands in Hackensack, Bergen County, to the City of Hackensack, never occurred to the solicitor for the complainant. The name Jones is so common that it is no easy matter to determine that the

Charles Jones of No. 738 Broad Street, Newark, but who actually resides in Upper Montclair (Case, p. 41), of which fact neither appellant nor its solicitor had any knowledge, is the same Charles Jones who owns property in Hackensack.

The argument is made under Point II of respondent's brief that the fees and expenses which must be paid upon redemption should be definitely fixed by the Tax Act itself. If respondent has reference to the matter of Court costs in this assertion, then respondent has, himself, violated his own reasoning, for he says he has tendered *the costs of Court.* Costs of Court must fluctuate and cannot be fixed. They are dependent upon the circumstances of the litigation; there is no argument necessary to prove this, so that when the Legislature provides a method for the foreclosure of a tax lien it creates, by a suit in chancery, it does not fix definite fees and expenses and cannot do so.

The question sought to be raised by counsel on pages 4 and 5 of his brief is dealt with at length in appellant's original brief under Point II.

Respondent's counsel on page 8 of his brief again makes a mistake in saying that the revision of the Tax Act to be found in the Laws of 1918 was to take effect *January 1, 1919;* the Court's attention is called to Section 62 of that Act, wherein it is provided that this Act shall take effect July 1, 1918.

Again respondent's counsel makes the mistake at page 8, lines 1 and 2, in saying this 1918 Act "is an entirely new Tax Act." Attention of the Court is called to the title of this Act, wherein it appears that it is the "Revision of 1918," and also Section 1, at page 883, wherein it is enacted that this Act shall be known as the "Tax Sale Revision." By this law the Legislative Commission supervised by Senator Pierson revised the subject

of tax sales and provided that "its provisions shall extend to proceedings on and after that date (July 1st, 1918), relating to taxes, assessments for improvements or other municipal charges heretofore or hereafter assessed or imposed, or *which became a lien before,* on, or after that date." P. L. 1919, page 285, amending P. L. 1918, page 900.

Respondent's counsel, on page 8 of his brief, refers again to the imposition of costs and counsel fees as "penalties." This matter was dealt with in appellant's original brief under Point II, but it seems necessary to reply to this new phase, particularly since respondent seems to feel that the Legislature in adopting the 1928 Act doubled and trebled the "penalties" which once were fixed. Counsel fees and costs are not "penalties," but are to place the suitor in a position as nearly unharmed as he was in when forced to resort to litigation. It has never been held that it was imposing new obligations under a contract when costs are awarded in a suit for its breach. Any other application of principles of law would impose a "penalty" upon the suitor who was forced to resort to the Courts to obtain his rights.

In reply to appellant's brief, respondent argues that the 1928 Act *increases* the burden of redemption. This is fallacious. The burden of redemption, before that subject became one in litigation, was not increased. The payments of costs and counsel fees in a chancery suit are no part of the redemption amount, but are the incidents attached to Court proceedings from time immemorial. In order to encourage proceedings of this kind to be brought in the Court of Chancery the Legislature requests that Court to allow reasonable counsel fees and costs commensurate with the services rendered. That is the argument of counsel in the original brief and now in this replying brief.

Chancellor WALKER did not say in the *McMurray* case that costs and counsel fees as well as search fee *were not possible;* he said that in view of the legislation as then existing, such allowances *were not justifiable.* This conclusion of the Chancellor has never been reviewed and it is contended is not justified, but, however that may be, the Legislature has now spoken, and such fees are now not only *possible,* but are *justifiable.*

To unmistakably indicate the true policy and intention of this legislation the Legislature adopted the 1928 Act. Counsel doubts the sincerity of respondent's insinuations that complainant composes the entire Legislature of New Jersey, and guides its destinies in the matter of tax legislation. Counsel doubts the justness of respondent's imputation that the Assembly and Senate have no word or independent action. Counsel feels it is more generous and sportsmanlike to leave the innuendoes of respondent unanswered and to assume that both Houses of the Legislature, acting independently, and both believing the legislation good for the state, and especially for the financial welfare of its municipalities, adopted the Act of 1928. This conclusion, and no other, is warranted by the expression in the Act of 1928 that it *shall be construed as remedial legislation.*

It may be properly asked, why does the Legislature desire that its legislation with respect to tax sales be liberally construed? The answer is simple. Taxes are collected by municipalities for the upkeep of their government and of the counties and of the state, of which they form a part.

Taxes, like death, must be met by all; and, like death, many seek to avoid them. The taxpayer who pays performs his civic duty; one who fails to do so burdens not only the municipality, but also the remaining taxpayers, with his neglect. The

diligent taxpayer must make up the shortage. Were there no remedy the resulting conditions could not continue.

It follows that to protect itself and its municipalities the state must formulate a means to collect these taxes assessed for its maintenance. For that purpose the Tax Acts of 1903 (P. L., p. 394) and the Tax Sale Revision of 1918 (P. L., p. 883) were adopted.

The tax acts without a tax sale purchaser would be of no avail in perfecting the legislative scheme or of putting money into the treasuries of the municipalities so that they might continue to function. The tax sale purchaser, therefore, is not the hideous monster the respondent would make it, but a very valuable and distinctly necessary aid to the enforcement of the legislative scheme. Why, then, treat him as an orphan, a stepchild, or one to whom relief by the courts will be denied? Why find every intendment against him, as has been the practice of the courts? Public policy towards the purchaser is now known. The Legislature has now expressed itself and notified the Court of Chancery to treat a tax sale purchaser liberally, according to his legal rights and to its well-defined practice. Such liberal treatment certainly presupposes that when a tax sale purchaser has placed his money in the hands of a municipality to pay the delinquent taxpayer's obligation he is entitled, when the delinquent arises to a conception of his obligation, not only to a return of his money and interest, but also *to his expenses,* including not only those fixed by statute, but also those incurred by him in the necessary litigation when he has been compelled to go to court. This is all the Act of 1928 does.

Now, as to the instant litigation, respondent says "the fact that it (this litigation?) was done the way

it was, *so obviously to collect additional costs*" (Respondent's Brief, p. 10). How anything in this record demonstrates this to be the fact, or how this insinuation is justified, cannot be discovered.

It seems that the "question of notice is immaterial" (Respondent's Brief, p. 9). Respondent concedes appellant the right to file its bill "without any notice whatsoever" (Respondent's Brief, p. 9) but continues, without logical reason, to argue that he did not receive notice. His testimony, even that which says that the notice related to other lots, is unbelievable (see Appellant's Original Brief, pp. 14 to 17). The proof to the contrary is demonstrative. An owner, such as Mr. Jones, who forgot he owned the lands in question (Case, p. 41, lines 29 to 30) is equally likely to forget that he received a notice with respect thereto.

The respondent's lack of perspicuity is clearly demonstrated when he says (Brief, pp. 10-11):

> "The taxed costs of court in this case were allowed because respondent Jones had had these costs taxed by the Clerk and had tendered them *before the beginning of the suit.*"

A trifle early to get costs taxed; and quite unnecessary and impossible!

The statement besides being absurd is likewise incorrect: the amount allowed by the Court without evidence or proof is $35.96 (Case, p. 69); the amount taxed before suit was begun and tendered was $34.48 (Case, p. 30). Trifling? Absurd? Of course, but no more so, and not as much so, as the absurd argument criticized.

If notice of complainant's lien "would have resulted in an immediate redemption," how does respondent answer the appellant's argument (Brief, pp. 15-16) as to the "Jones and Gleeson" letters (Exhibits C-11, 12, 13 and 14)? There is no explanation regarding these letters either in

Mr. Jones' testimony or in his brief. Should the Vice-Chancellor have believed him; and will this Court believe him then when he says that notice would have brought "immediate redemption"?

Lastly, it seems inexplicable and quite reprehensible that on the last page of his brief, Jones should resort to inference, insinuation and innuendo, based on nothing more than his imagination. Nothing in the record, or, for that matter, outside of it, can be shown to support the inference that the solicitor of the complainant and the complainant "are one and the same."

Why didn't Mr. Jones ask complainant's solicitor when the latter was on the witness stand such questions as would have proven or disproven his suspicions? Does Mr. Jones wish, by the insinuations in a printed brief, to suggest to this Court what he has no proof of and dares not ask on the trial of the case? Probably it is more charitable to feel that these insinuations and innuendoes would not have been indulged in but for the heat engendered by personal interest in this suit and for that reason counsel will make no further criticism.

However, if the reason the Vice-Chancellor found against the complainant on the question of counsel fees is due to these insinuations and innuendoes, then it is an unjustifiable one and merits the reversal by this Court of his advised decree.

And no less would be the reason for such reversal were it a fact that the Vice-Chancellor found against the complainant on the question of counsel fees, if he founded such conclusion on any *supposition,* for there was no proof before him from which he might have found the fact, that "the alleged potential power to obtain these excessive costs (?), is the stock in trade of the appellant corporation."

In conclusion, counsel pleads with this Court to view this appeal from the law and the facts on which it rests, disregarding the unfounded suspicions, unworthy insinuations and hectic arguments advanced by the respondent.

Respectfully submitted,

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New Jersey Court of Errors and Appeals

Between HARRINGTON COMPANY, a corporation, *Complainant-Appellant,* *and* CHARLES JONES, *et al.*, *Defendants-Respondents.*	*On Appeal from Chancery.*

RESPONDENTS' BRIEF.

Facts.

On October 30, 1928, Harrington Company filed its bill of complaint seeking to foreclose a certain tax certificate (Exhibit C. 2) covering Lots 47-53, Block 136, on the Assessment Map of what is now Hackensack. The certificate is dated March 30, 1918, and sold the premises for the taxes of 1916, under the provisions of an Act entitled, "An Act for the assessment and collection of taxes, approved April 8, 1903." The premises were sold to Harrington Company for $36.13.

At the time of the sale and for many years prior thereto, the premises were owned by the respondent, Charles Jones. He obtained an official tax search made by the tax collector of Hackensack on April 23, 1925, and paid all the taxes and assessments shown thereon. (See the receipted official tax search, Exhibit D. 3.) Though the complainant and its solicitor knew the defendant Charles Jones, suit was started without any preliminary letter or demand. Defendant first learned that the premises had been sold when served with the subpoena in this suit. He forthwith wrote to complainant's solicitor and

received the letter set forth in the Vice-Chancellor's opinion (Case, p. 67), indicating that it would cost $385.70 to redeem. Defendant conceiving that the amount so demanded was unjust, illegal and excessive, tendered what he believed was the proper amount due; this amount is made up as set forth in the Vice-Chancellor's opinion (Case, p. 67). The amount so tendered was refused. Defendant desiring to pay whatever the Court should think was proper, served notice of motion (Case, p. 26) to strike out the complainant's bill of complaint, on the ground that the bill of complaint did not show the amount due to complainant, or any data from which it could be calculated, or in the alternative, to have the Court fix the amount due for redemption, interest and fees. On the return day of the motion, complainant urged that the Vice-Chancellor refer the matter to a master to calculate the amount due. The Vice-Chancellor refused. The Vice-Chancellor then directed that the facts be agreed upon so far as possible, and if any question of fact were left in dispute, he would take testimony on that particular point. A stipulation of facts was entered into and that stipulation was read into the record (p. 29). This fact is mentioned because appellant seems to indicate that the Vice-Chancellor had nothing on which to base his conclusions, whereas he had the pleadings, the notice of motion with affidavits attached, answering affidavits and the stipulation of facts. Only one question was left open and that was only important on the question of showing the spirit in which the foreclosure was started.

POINT I.

The Vice-Chancellor had power to hear and dispose of this motion under the general order of reference contained in the rules.

This was originally a preliminary motion either to strike out the bill or to find out how much the complainant was asking for to redeem. Motions to strike out pleadings and motions similar to the present one are heard every motion day before the Vice-Chancellors and disposed of. The proposition urged by the appellant that the Vice-Chancellor should refer it to a master when the only question was one of law, seemed a waste of time. To say that a master had power to determine it when a Vice-Chancellor did not, seemed ridiculous.

Complainant, however, appeared before the Vice-Chancellor, argued his case before the Vice-Chancellor, entered into an agreed state of facts, took testimony on the one point where there was a disagreement and consented to the form of the final order made by the Vice-Chancellor, all without any such objection as he now makes on the question of jurisdiction.

Even Chapter 211 of the Laws of 1928, referring to a situation like the present says:

> "After a bill in equity has been filed, redemption shall be made in said cause only and the court shall, upon application at any time after the bill filed, allow costs, etc."

Does counsel contend that this Act means that there must be an order of reference before applying to fix counsel fees? Some analogy may be found in the fixing of search fees and counsel fees in uncontested foreclosures. Does counsel contend that an application must be made to the Chancellor to fix counsel fees and search fees?

Such has never been the practice. Application is made to the standing advisory master in Trenton and they are fixed by him.

POINT II.

This is not a bill for redemption filed by the defendant but a bill for the foreclosure of a tax lien by the complainant and the fees are fixed by statute.

Complainant has dwelt at some length upon the vast amount of work that has to be done in certain cases, and tries to invoke the principle that he who seeks equity must do equity—a proposition that might have some force on a bill to redeem. Nor are we concerned with the difficult cases in complainant's counsel's practice. The present case is the only question.

Here the defendant Jones and his wife are the only necessary and proper parties defendant. He had owned the property for a great many years. Exhibit D. 3 shows that the tax office had his address in 1925 and tax bills have been sent to and paid by Charles Jones, 738 Broad street, Newark, N. J., ever since. Complainant and its solicitor knew the defendant Jones through frequent correspondence. This vast amount of work in making the search and the alleged inquiry can be reduced in the present case to almost a minus quantity.

The real dispute was and is, what statutory authority has the complainant to collect $385.70 for a tax sale made in 1918 for which it paid $36.13? The fees and expenses must be certainly and definitely fixed by the Tax Act itself, and no fees or expenses except such as are definitely and clearly provided for in the law itself can be raised by sale or imposed on the land. *Road*

Commissioners v. *Freeholders of Hudson*, 45 N. J. L. 173 (Errors and Appeals). The sale in the case at bar was under the Tax Act of 1903. The fees and costs collectable are fixed by that Act and any amendment or supplement to that Act *up to the date of sale.* The case of *Fitzsimmons* v. *Bonavita*, 77 Eq., p. 277, was a bill in equity for the foreclosure of a tax lien under the 1903 Act. Foreclosure was brought in 1906 and it was contended that the complainant had a right to collect search fees because it was necessary to bring the foreclosure to have a search made. In 1907, an act was passed fixing $10.00 as the search fee. It was held that the defendant's right to redeem was not affected by this subsequent legislation and that the $10.00 could not be collected. Moreover, from that case and the cases cited therein, whatever fees are collected must be definitely and clearly set forth in the law.

The amount for which the defendant can redeem therefor, is fixed *as of the time of the sale.* In the case of *Rodgers* v. *Cressman*, 98 Eq. p. 209, Vice-Chancellor Berry holds in a case like the present, that redemption must be made according to the 1903 Act and not according to the 1928 Act; that the amount for which defendants can redeem is fixed as of the time of the sale, and that no subsequent legislature can increase that burden.

When therefore, on March 30, 1918, this property was sold, the amount for which the defendant Jones could redeem was definitely fixed by the laws of 1903 and the amendments and supplements thereto.

The sale having been made under the 1903 Tax Act the procedure to foreclosure was properly

taken under that Act. *The Moore Securities Co.* v. *O. J. Hammell Co.*, 97 Eq. 292; *Welles* v. *Schaffer*, 98 Eq. 31.

What then were the rights of the defendant Jones to redeem under the 1903 Act?

Two amendments of the 1903 Act are pertinent, namely: Laws of 1915, p. 383; Laws of 1916, p. 580.

The amendment of 1915 provides that:

> "No purchaser * * * shall be entitled to receive upon redemption of such lands, any costs or expenses incurred or disbursed in ascertaining the owner or owners, mortgagee or mortgagees, occupant or other person having an interest in the land sold for taxes, unless such purchaser shall have filed with the Collector of Taxes or other collecting officer authorized by law to receive taxes, before redemption has actually been made, a short memorandum which shall show among other things, the following matters: Name or names of the owner or owners, mortgagee or mortgagees and other persons having any lien, estate or interest in or on the premises sold, whose estate, lien or interest appears as a matter of record in the offices of either the Surrogate, Register of Deeds or County Clerk of the County where the land lies, on the date of the sale of such lands, together with the book and page numbers of each and every of such records and the date of recording the same; also a small diagram of the property sold, sufficiently identifying such property by its dimensions and its distance from the nearest intersecting cross roads or streets."

The complainant in this case, it is conceded, did not comply with this Act at all. He says however, that the Laws of 1916, p. 580, repeals this. The exact language of the essential part of this Act is set forth on p. 19 of the appellant's

brief. It is the contention of the respondent that this was not intended and does not repeal the 1915 Act. Repeals by implication are not favored. All that the 1915 Act says is that if you want to collect for a search, you must file with the Collector certain data indicating pretty clearly that you have actually made a search; and the reason for that legislation was to stop the growing practice among these companies buying premises for taxes from filing immediately an affidavit indicating that a thorough search had been made, by compelling them to file data which would only be available if such a search had, in fact, been made. Moreover, nothing is said in this 1915 Act as to the cost of such search. The 1916 Act says in effect:

> "Even though your search is filed, you must make and file an affidavit to show how much you actually spent in making this search." One goes to the matter of bona fides in making the search and the other goes to the matter of expense. They do not cover the same ground; they are not inconsistent.

Inasmuch as this foreclosure is under the Act of 1903, and the amendments and supplements thereto, having failed to meet the requirements of the 1915 Act; and having given no data in any affidavit, the complainant is reduced to collecting the amount paid for the certificate at the time of sale plus interest from the date of sale at the rate of 8% (the statutory interest having been reduced from 12% to 8% under the 1916 Act).

Complainant however, contends that the Laws of 1928, p. 382, give him a right to add to this a reasonable search fee and reasonable counsel fee. It will be noted that the Act of 1928 is not an amendment to the 1903 Act but an amendment

to the 1918 Tax Act, which is an entirely new Tax Act, known as Chapter 237 of the Laws of 1918. It will be noted also that this Tax Act by the terms of its last paragraph, is to take effect as of January 1, 1919.

All of complainant's arguments on this point seem to be met squarely by the case of *Rodgers* v. *Cressman*, 98 Eq., p. 209. Almost the same question in principle was decided as is now raised. The syllabus reads as follows:

> "The rights of a private person purchasing at a tax sale are governed, as to the owner's right of redemption, by the law in force at the time of the sale, and a statute which takes away, reduces time for, or otherwise impairs a right of redemption which has already vested, is unconstitutional."

Applying this to the present case, the defendant Jones was liable at the time of the sale to certain known penalties. Is it possible that the legislature could come along later and double or treble those penalties which have once been fixed?

Furthermore, in the case of *Harris* v. *McMurray*, 92 Eq., p. 1 at p. 6, in spite of the fact that the statute at that time allowed search fees amounting to $160.00, the Chancellor refused to have it included in the costs in Chancery. At (p. 6) he says:

> "The provisions of section 92 of the Chancery Act authorize the taxing of search fees in the costs in only the two instances therein named, to wit, suits for partition and sale of lands and for the foreclosure of mortgages. I know of no other statute which conveys, or purports to convey, such authority in a suit for the foreclosure of tax sale redemption, and I conclude, therefore, that the complainant is not entitled to have these search fees taxed in his bill of costs."

So far as counsel can learn, there has been no change in this section. The Chancellor then goes on as follows, which seems to meet some of complainant's contentions:

> "Complainant's searches have cost him no more for foreclosure in equity than they would for foreclosure by service of notice under the statute. The legislature by the fixing of this limitation has expressed the public policy of this state in that behalf and this should be adhered to."

Replying to Some Points in Appellant's Brief.

Boiling down much of appellant's argument, it contends that though the sale was under the 1903 Act the burden to be borne by the owner of the land when he comes to redeem is increased by the 1928 Act. It contends that the Court of Chancery *must* allow costs and counsel fee. Respondent says that the 1928 Act does not apply; that his right to redeem is fixed as of the date of the sale. If respondent is correct in this all the latter part of appellant's brief falls to the ground.

The word *shall* in the 1928 Act (as quoted in appellant's brief, p. 13) is permissive. If given the construction appellant insists upon, then the Act would be unconstitutional as an unwarranted invasion of the rights and prerogatives of the Court of Chancery as they have always existed.

The appellant spends several pages in an endeavor to prove that the defendant Jones falsified when he said that he never received any notice of this sale. Probably all this question of notice is immaterial. Appellant undoubtedly had the right to file a bill in equity at any time after two years from the date of the sale without any notice whatsoever. The fact that it was done the

way it was, so obviously to collect additional costs, under a statute which has every earmark of having been composed and introduced by the complainant, may or may not have had some influence in affecting the discretion of the Court. Sweeping aside all innuendos, the fact is that the defendant Jones testified he received no notice directly or indirectly, and had absolutely no knowledge of the sale until he was served in the foreclosure suit. Nobody contradicts this. All the notices were admittedly sent to Charles S. Jones, 324 Claremont avenue, Montclair, N. J., which is the home of an entirely different man of similar name; they never reached the respondent. To be sure, one registry card was produced with the respondent Jones' signature; but this, Jones testified, was not for these lots but for entirely different lots. That testimony stands unchallenged (Case, p. 42, ll. 9-12).

The Vice-Chancellor apparently believed the respondent Jones.

Any costs at all are purely discretionary with the Court of Chancery, irrespective of the statute. As it says in *Harris* v. *McMurray*, 92 Eq., p. 1:

> "This however, is not a matter of inevitable right in complainant. By the Chancery Act of 1902 section 84, except where otherwise directed by statute, it is made a matter of discretion of this court to award or withhold costs in any case (and I know of no statute making mandatory the award of costs in any such case as the one under consideration). The Chancery Act of 1915, section 6, goes further and authorizes the court to award costs and counsel fee against a successful party."

The taxed costs of court in this case were allowed because the respondent Jones had had these costs taxed by the clerk and had tendered

them before the beginning of the suit (Case, p. 30). It was these taxed costs, which appellant professes to know nothing about, which the Vice-Chancellor allowed. Respondent urged upon the Court below that this appellant was simply using the process of the Court to exact more money—in fact, more than it was entitled to, knowing well, that in most instances, as a practical matter, it would cost more to contest it in court than it would be to pay it. He urged that an official tax search was obtained in 1925 from the tax collector (Exhibit D. 3); that the tax collector had his address; that, well knowing this respondent from other business and from other redemptions, without writing a letter or in any way indicating to this respondent that it had such a tax lien (which fact does not appear on the official search) knowledge of which would have resulted in an immediate redemption, this appellant filed its bill; and the first knowledge this respondent had of these delinquent taxes was when the sheriff served him. It was urged that this was a clear effort to glean added costs which appellant thought it might get under this 1928 act. Whether the Chancellor under circumstances like this should strain his discretion in favor of the appellant is very well dealt with by the language of the Chancellor in the first paragraph on p. 6 of the opinion in the case of *Harris* v. *McMurray* (*supra*):

> "The Chancery Act of 1915, section 6, goes further and authorizes the court to award costs and counsel fee against a successful party. So, if a mortgagee, knowing that the mortgagor was about to pay off his obligation, should hasten to file a foreclosure bill out of spite, or to obtain an extra few dollars in costs, this court is enabled not only to withhold costs from such a complainant, but to award costs and counsel fee against him, in favor of the intended victim."

It may be that the Court of Chancery is not altogether ignorant of many reported cases in which this appellant figured, and in which these high and lofty principles of equity which appellant's counsel expounds at length, were singularly absent, such as *Harrington Company* v. *Bogert*, 7 Ad. Rep., p. 112, recently affirmed in this court. It may be that the Court of Chancery is not entirely blind to the fact that the solicitor of the complainant and the complainant are one and the same, irrespective of the corporate name. It may be that the Vice-Chancellor thought that the filing of the bill of complaint against an attorney, whose whereabouts complainant knew well without any previous notice, "smacked" of a desire to glean a few extra dollars in costs. It may be that the Vice-Chancellor knows that the gleaning of these extra costs, or the alleged potential power to obtain these excessive costs, is the stock in trade of the appellant corporation, it knowing well that it costs more to fight than to pay. It may be that he felt that this situation would not be altered very much even though appellant's contention were true (which it is not), that it sent a notice to the respondent Jones eight years ago.

It is respectfully submitted that the amount tendered to the complainant was the lawful amount and that the order of the Court of Chancery should be affirmed with costs.

Respectfully submitted,

CHARLES JONES,
Solictor for and of Counsel
with the Defendants-Respondents.