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BILL OF COMPLAINT.

IN CHANCERY OF NEW JERSEY.

Between)
)
)
 ANNIE D. ROE & LOUISE) 10
 GABEL,)
 Complainants.)
)
 And) **QUIT TITLE,**
) **ON BILL TO**
 THE "THE" MAYOR AND) **&c.**
 ALDERMEN, OF JERSEY)
 CITY, and JOHN J. Mc-)
 MAHON, Register of Jersey) 20
 City, and the County of)
 Hudson and State of New)
 Jersey,)
 Defendants.)
)

To his honor Edwin H. Walker, Chancellor of
the State of New Jersey.

1st. Complaining, shows unto your Honor your ³⁰
oratrix, of Jersey City, County of Hudson, New
Jersey; and Louise Gabel, of the City, County,
and State of New York.

2d. Your oratrix, Annie D. Roe, shows that on
or about the 24th day of June, 1887, the premises
hereinafter described was conveyed to your orator
by Helen Tuttle, et all by deed duly recorded on
June 30, 1887, in Book 439, Page 480, &c., in the 40

County of Hudson, New Jersey, said deed your oratrix begs leave to refer or produce.

3d. Your oratrix, Annie D. Roe, shows that she is owner of the premises now being litigated in this Bill; and in peaceable possession; and now resides, and has so resided since the date of the aforesaid deed of conveyance to your oratrix.

10 4th. Your oratrix shows the said property is situated on the northeasterly corner of Newark Avenue and Ferris Street, said premises at the time of the said conveyance, consisted of two, three story houses, stores and dwellings, and known as No. 714 and 716 Newark Avenue, Block No. 593, lots one (1) and two (2).

20 5th. Your oratrix shows, after the said conveyance as aforesaid, there was erected a four story double apartment house at the cost of \$8,000 (dollars); the said house is known as No. 6, Ferris Street, as it faces on Ferris Street, the rear part of the lots on Newark Avenue and is designated for taxation purposes, as part of lot one and two; and also several thousand dollars was expended in repairing the two houses on Newark Avenue described before; and other money for taxes.

30

6th. Your oratrix shows at the time of the purchasing said property, and the delivering of said deed of June 24th, 1887, and the recording of the same, your oratrix believed and yet believes she bought and acquired a good title to the said lands and premises, in fee simple, and does now claim to own the same accordingly.

40 7th. Your oratrix title to the said lands, is de-

nied and disputed by the said Mayor and Aldermen of said Jersey City, a body corporate of the State of New Jersey, and the defendant therein, claim and are claimed and reputed to own said lands and premises, or some interest therein; under a pretended tax sale of seventeen years ago, but no record of said sale has been made, and no tax certificate has been filed; and nothing has been done by said city until August 30th, 1912, when the said City placed in the Registers office, three deeds to be recorded, for the said 714-716 Newark Avenue property, and the said No. 6 Ferris Street property, being all of the said premises; and no suit or action is pending to enforce or test the validity of said deed or deeds; and your oratrix charges that such claim by said defendants are utterly without foundation, unjust vexatious, fictitious and fraudulent; and by reason of such claim your oratrix property in said land is greatly affected, and the same cannot be sold as they otherwise could; the search of the Circuit Court is annexed to this bill and made a part thereof.

8th. Your oratrix shows on the tenth day of June, 1912 she entered into a contract with Louise Gabel, the other complainant herein, for the purchase of your oratrix Equity in said No. 6 Ferris Street, being the new house erected as aforesaid, and a sum of money has been paid by the said Louise Gabel, to your oratrix; and although the said Louise Gabel and your oratrix both desired to carry out said agreement, said Louise Gabel has refused and declined to so do, on account of the claim made by said defendants, and her apprehension that she might have difficulty in disposing of said house and lot, she Louise Gabel was to buy, as aforesaid, from your oratrix on account

of said defendants claim.

9th. That your oratrix has applied to said defendants, or some of them to release and relinquish their said claim or to bring in some Court of Law a suit which would test the validity thereof, and the said defendants refused to do either; and your oratrix hoped that the said defendants would have complied with such reasonable request, as in justice and equity they ought to have done, and your oratrix has done everything possible or within her knowledge and power, to force such proofs of such claim.

10th. Your oratrix charges the truth to be that the said claim is fictitious, and a concocting of the late Robert Davis, who was City Collector and his confederates, to cheat and defraud your oratrix out of her property, and degrading and injuring your oratrix by continuously advertising this property for sale, as the property of said Jersey City and as being in the possession of said Jersey City, and people annoying your oratrix because of said advertisements.

11th. Your oratrix is in danger of having her property taken from her without due process of law, as is guaranteed by the Constitution of the United States of America, Article XIV, Section 1, "to wit" property shall not be taken without due process of law, &c., or deny to any person its equal protection of the law.

12th. Your oratrix shows that on May 16th, 1912, A. Harry Moore, City Collector, sent through the mail, the following letter regarding the said premises to No. 6 Ferris Street, "to wit", Dear Sir:—I beg to advise you that your property ac-

ording to our books is eligible for the coming tax sale and will be sold unless the arrearages are paid at once. As the list is now being prepared you will avoid considerable expense, by giving this your immediate attention. Very respectfully, A. Harry Moore, City Collector." Block No. 593, Lot one and two and part of lot one and two, &c.; to this letter and several other letters from the said Jersey City, Collectors and several certified deeds of the said premises, that is certified by the city clerk, the said deeds were made by Robert Davis, who was City Collector in 1895 and also in 1908 and which deeds your oratrix begs leave to refer. 10

13th. Your oratrix shows that on the 28th day of August, 1912, there was placed in the Registers office in the County of Hudson, State of New Jersey, three deeds made by the said A. Harry Moore City Collector, to the Mayor and Aldermen of Jersey City, of the said premises now in question, dated August 10th, 1912. The same is about to be recorded or engrossed in the books of said Registry office and if the same be allowed to be registered, which at the present date they are not, the same will cause great hardship and work, great injury and irreparable damages to your oratrix and the said property. 20

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14. In consideration whereof, and for as much as your oratrix is relievable only in a court of equity, where matters of this sort are properly and according to the statutes of this state, in such cases made and provided, cognizable and relievable; to the end therefor, and said defendants the said "the" Mayor and Aldermen of said Jersey City, and every of them, may, without oath make to the best of their respective knowledge, 40

information and belief, full, true, direct and perfect answer make to all and singular the matters aforesaid; and more particularly that they, and every of them, in manner aforesaid, answer and set forth specifically what title or claim to said lands or any part thereof, or any interest therein, they, or either of them make or claim, and to what part or what instrument; and further
10 how and by what instrument such title or claim is derived or was created; and that by the determination and final decree of this court, the right of all the parties to this suit in and to the lands hereinbefore set forth, and every part thereof, may be fixed and settled; and that your oratrix may be decreed to have a perfect title thereto and the defendants to have no estate, interest in, or incumbrance on said lands, or any part thereof; and that their claim to the same are unjust, vex-
20 atious and void; and in the meantime, that the said defendants, the "the" Mayor and Aldermen of Jersey City," its officers and servants, its agents and each of them, be restrained by an order of this court from taking any steps or doing any act for the perfecting of any supposed claim or title to the said lands and premises, or take any proceedings to obtain possession thereof, under and by virtue of the said alleged tax, sales or deeds, or any action whatsoever, until the fur-
30 ther order of this court, and that your oratrix may have such other and further relief in the premises as the nature of the case may require and as they shall be entitled to, pursuant to the statutes in such cases made and provided.

15th. May it please your Honor, the premises considered, to grant unto your oratrix not only the restraining order and the state's most graci-
40 ous writ of injunction issued out and under the

seal of this honorable court, to be directed to the said, "the Mayor and Aldermen of Jersey City and to the said John McMahon the Defendant, restraining them, and its officers, its agents or its representatives, or either of them, or their successors from taking any further proceedings towards perfecting its title, or from engrossing or enrolling or registering in any book or liber or page or otherwise in the said Register's office, in the County of Hudson, State of New Jersey, or from selling, assigning or transferring any deed or deeds, or from further clouding the title or obtaining possession or any attempt to obtain possession of said lands and premises; and also the state's most gracious writ of subpoena issued out of and under the seal of this honorable court, to be directed to the said defendants, the "said Mayor and Aldermen of said Jersey City and the said John J. McMahon, commanding them and each of them at a certain day and under a certain penalty therein, to be specified, personally to be and appear before your Honor in this honorable court then and there full, true, direct and perfect answer make to all and singular the premises and further to stand to, abide and by and perform such order, direction and decree as to your Honor shall seem meet and as shall be agreeable to equity and good conscience.

And your oratrix may have such further or other relief in the premises as the nature of the case may require as shall be agreeable to equity and good conscience.

And your oratrix, as in duty will ever pray,
&c.

Dated September 16th, 1912.

ANNIE D. ROE,
LOUISE GABEL,

"In Person." 40

A true copy,
 SAMUEL K. ROBBINS,
 Clerk.

United States of America,)
 State of New Jersey,)ss.
 County of Hudson.)

I, John F. Crosby, Clerk of the County of Hud-
 10 son, aforesaid and also Clerk of the Circuit Court,
 and of the Court of Common Pleas holden therein
 the same being a Court of Record with a seal.

Do hereby certify, that I have searched the rec-
 ords, and minutes and files of my office for rule or
 order of confirmation or report 80, 85, of the com-
 missioners of adjustment of the City of Jersey
 City, from August 1st, 1892, to January 1st, 1893,
 and I do not find the same to be filed or recorded
 in my office.

20 In testimony whereof, I, have hereunto set my
 hand and affixed the seal of said Court and County
 at Jersey City, ths 28th day of March 1912.

JOHN F. CROSBY,
 Clerk of afore
 as aforesaid.

A true copy.
 SAMUEL K. ROBBINS,
 Clerk.

DEFENDANT'S ANSWER.

Between)
)
)
ANNIE D. ROE, and LOUISE)
GABEL.)
Complainants,) 10

and)
)
)
THE MAYOR and ALDER-)
MEN OF JERSEY CITY)
and JOHN J. McMAHON,)
Register of Jersey City, in)
the County of Hudson and)
State of New Jersey.) 20
Defendants.)
)

ON BILL TO
QUIT TITLE?
ETC.
ANSWER.

IN CHANCERY OF NEW JERSEY.

The answer of the Mayor and Aldermen of Jersey City to the bill of Complaint of Annie D. Roe and Louise Gabel. 30

The said defendant, the Mayor and Aldermen of Jersey City, answering said bill of Complaint, or so much and such parts thereof, as the defendant is advised it is material or necessary for it to make answer unto answering says:

SECOND. It has no knowledge concerning the allegations contained in the second paragraph 40

of said Bill of Complaint and leaves the Complainants to make such proof thereof as is advised is necessary and proper.

THIRD: As to the allegations contained in the third paragraph of said Bill of Complaint, this defendant denies that Annie D. Roe, is the owner of the premises now being litigated in this Bill and that she is in absolute peaceful possession, but admits the said Annie D. Roe, now resides in the said premises, and further alleges that the said Mayor and Aldermen of Jersey City is the owner of the premises, which said premises were sold by the City Collector of Jersey City, on the sixteenth day of April, and third day of October in the year Eighteen hundred and ninety-five, pursuant to an act commonly known as the Martin Act (P. L. 1886, p. 149), and purchased by the City Collector for the Mayor and Aldermen of Jersey City, and that three several deeds were delivered by A. Harry Moore, City Collector of the City of Jersey City, to the Mayor and Aldermen of Jersey City, bearing date, August tenth, Nineteen hundred and twelve, and recorded in the Register's office of Hudson County on the twentieth day of August, Nineteen hundred and twelve, in Liber 1134, pages 93, 94 and 96.

FOURTH. It admits that the property is situated on the northeasterly corner of Newark Ave. and Ferris Street, known as Nos. 714 and 716 Newark Avenue, Block No. 593, Lots Nos. 1 and 2, but it has no knowledge concerning the other allegations contained in the fourth paragraph of said Bill of Complaint and leaves the complainants to make such proof thereof as is advised is necessary and proper.

FIFTH.—It has no knowledge concerning the allegations contained in the fifth paragraph of said Bill of Complaint and leaves the complainants to make such proof thereof as is advised is necessary and proper.

SIXTH. It has no knowledge concerning the allegations contained in the sixth paragraph of said Bill of Complaint and leaves the complainants to make such proof thereof as is advised is necessary and proper. 10

SEVENTH. As to the allegations contained in the seventh paragraph of said Bill of Complaint, this defendant admits that the said Mayor and Aldermen of Jersey City, claim to own the land and premises and alleges that they are owners thereof and that the said Mayor and Aldermen of Jersey City, acquired title to the said lands under 20 and by virtue of the provisions of the Martin Act, which provisions of said Act, this defendant alleges have been complied with, as will fully appear in the further answer to this Bill, hereinafter made; but this defendant further alleges that the deed referred to in said seventh paragraph of said Bill were not recorded until the twentieth day of August, Nineteen hundred and twelve, by reason of the fact that since the purchasing of the premises described in the Bill by the said Mayor and Aldermen of Jersey City, at the Tax Sale herein referred to, the complainant, Annie D. Roe has by various actions in this court, and in the District Court of the United States, prevented and restrained the said Mayor and Aldermen of Jersey City, from recording any deeds given by the City Collector, conveying the said property to the said Mayor and Aldermen of Jersey City, by procuring restraining orders and injunctions from 40 30

the various Courts, and as soon as the restraints were removed by the Courts, the deeds from the City Collector were recorded, and this defendant begs leave to refer to the various proceedings hereinafter described.

10 EIGHTH. It has no knowledge concerning the allegations contained in the eighth paragraph of said Bill of Complaint and leaves the complainants to make such proof thereof as is advised is necessary and proper.

20 NINTH. This defendant denies the allegations contained in the ninth paragraph of said Bill of Complaint and alleges that in all the actions instituted by the complainant, Annie D. Roe, it was always necessary for this defendant, the Mayor and Aldermen of Jersey City, to move the actions so that they would be heard by reason of the fact that the complainant, Annie D. Roe, would seldom proceed with the action instituted by her until forced to do so by this defendant, as will appear by the records of the Chancery suits hereinafter referred to and to which this defendant begs leave to refer.

30 TENTH. It has no knowledge concerning the allegations contained in the tenth paragraph of said Bill of Complaint and leaves the complainants to make such proof thereof as is advised is necessary and proper.

ELEVENTH. It denies the allegation contained in the eleventh paragraph of said Bill of Complaint and alleges that the Mayor and Aldermen of Jersey City are the rightful owners of the premises described in the Bill of Complaint.

TWELFTH. It has no knowledge concerning the allegations contained in the twelfth paragraph of said bill of Complaint and leaves the complainants to make such proof thereof as is advised is necessary and proper.

THIRTEENTH. This defendant admits the allegations contained in the thirteenth paragraph of said bill and alleges that the said deed therein referred to have already been engrossed in the books of said Register's office and denies that the same will cause great hardship and work great injury and irreparable damages to the complainant, Annie D. Roe, by reason of the fact that the Mayor and Aldermen of Jersey are the rightful owners of the said premises. 10

FOURTEENTH. And this defendant further answering says, that the complainant, Annie D. Roe, in the Bill of Complaint which she filed, attacks the proceedings under which the Mayor and Aldermen of Jersey City acquired title to the lands in question in the same manner in which she attacked the proceedings in this Court on the seventeenth day of July, nineteen hundred and six and the Bill of Complaint filed by her at that time was dismissed on May third, nineteen hundred and eleven, with an opinion written by Hon. Eugene Stevenson, one of the Vice-Chancellors of this Honorable Court, and upon an appeal taken by the said Annie D. Roe to the said Court of Errors and Appeals, the decision was affirmed and reported in 79 N. J. E., 645 and this defendant alleges that the decision of this Honorable Court and the Court of Errors and Appeals may be considered as res adjudicata of complainants claim. 30

FIFTEENTH. And in order to set out the pro-40

ceedings taken by this defendant in acquiring title to the said premises, this defendant further alleges that under the provisions of the Act commonly known as the Martin Act entitled, "An act concerning the settlement and collection of arrearages of unpaid taxes, assessments and water rents or water rates in cities of this State, and imposing and levying a tax, assessment and lien in lieu and instead of such arrearages, and to enforce the payment thereof, and to provide for the sale of land subjected to future taxation and assessments (P. L. of N. J., 1886, p. 149), and the supplements and amendments thereto, Edward F. C. Young, Abraham Q. Garretson and William Muirhead, were appointed Commissioners of adjustment, by the Judge of the Hudson County Circuit Court who before entering upon the discharge of their duties, took and filed with the City Clerk of Jersey City, their required oath of office in accordance with the provisions of said Martin Act.

SIXTEENTH. And this defendant further answering says, that under the power and authority vested in the Commissioners of Adjustment, by virtue of the said Martin Act, the said Commissioners of Adjustment fixed, adjusted and determined the taxes, assessments and water rents chargeable against the lands and premises described in the Bill of Complaint, and made a report to the Hudson County Circuit Court, signed by Edward F. C. Young and Abraham Q. Garretson, two of the Commissioners appointed as aforesaid in accordance with the said Martin Act, and which said report covered the adjustment in said Bill of Complaint, for the years of Eighteen hundred and sixty-nine to Eighteen hundred and seventy-one and also for the years Eighteen hundred and eighty-seven to Eighteen hundred and

ninety-two, which said taxes and assessments for all of those years were rightfully chargeable to and were a lien upon the said premises in question and were rightfully adjusted by the said Commissioners of adjustment up to the time of making of their report as aforesaid.

SEVENTEENTH. And this defendant further answering says that in accordance with the provision of the said Martin Act, notice of the time and place of hearing any objections that may be made to the assessments, charges and liens so fixed and certified by the Commissioners was given to all persons pursuant to an order of the said Hudson County Circuit Court and thereafter on the thirtieth day of August, Eighteen hundred and ninety-two, the said report number Eighty-five of the commissioners of adjustment, was confirmed by the Honorable George T. Werts, then Judge of the Hudson County Circuit Court, in accordance with the said Martin Act and the statutes of the State of New Jersey in such case made and provided and the said original report certified by the County Clerk and Clerk of the Circuit Court was filed with the City Collector of Jersey City and a copy thereof with the County Clerk of Hudson County, as required by the said Martin Act, and upon the report having been so confirmed, the amount therein fixed and determined as properly chargeable against the lands and premises described in the Bill of Complaint, became a valid lien upon said lands having priority over all other lien, claims or demands whatsoever, except taxes, assessments and water rents, after the making of said report.

EIGHTEENTH. And this defendant further answering says, that the City Collector of Jersey 40

City, thereafter in pursuance of the said Martin Act, advertised for sale the lands and premises described in the said Bill of Complaint and that a public sale held on the sixteenth day of April Eighteen hundred and ninety-five, the said City Collector of Jersey City, purchased for the Mayor and Aldermen of Jersey City, a part of said lands and premises described in said Bill of Complaint for the sum of Two thousand, six hundred and eleven dollars and thirty cents (\$2,611.30), and also purchased part of lots two (2) in block five hundred and ninety-three (593), being also part of the lands and premises mentioned in complainants Bill of Complaint for the sum of One thousand, eight hundred and thirty-seven dollars and forty-nine cents. (\$1,837.49), being indicated on sale number five thousand, one hundred and twenty (5,120).

20

NINETEENTH. And this defendant further answers says, that on the third day of October, Eighteen hundred and ninety-five, by virtue of a public sale of the lands and premises made by the City Collector of Jersey City, which sale was duly advertised as required by the said Martin Act, the said City Collector of Jersey City purchased for the Mayor and Aldermen of Jersey City, part of lots one (1) and Two (2) in Block Five hundred and eighty-three (583) being part of the lands and premises in complainant's Bill of Complaint set forth, for the sum of Nine hundred and sixty-five dollars (\$965.00), which sale is indicated as Number Five thousand, five hundred and seventy-three (5,573).

TWENTIETH. And this defendant further answering says that at the time the said premises 40 were purchased by the Mayor and Aldermen of

Jersey City, a certificate of sale was delivered to the said Mayor and Aldermen of Jersey by the said City Collector of Jersey City.

TWENTY-FIRST. And this defendant further answering says, that the said Mayor and Aldermen of Jersey City caused notices to redeem to be served upon all persons having an estate or interest in, or mortgage or lien upon the said lands and premises described in said Bill of Complaint, which were sold pursuant to the provisions of the said Martin Act, but no person redeemed the said premises within the time provided by the said Martin Act and after such notices to redeem were served, and more than one year after said sale had elapsed, the said City Collector endeavored to deliver deeds to the Mayor and Aldermen of Jersey City for the property above described and so purchased by it, in pursuance of the said Martin Act, but was restrained from delivering the said deeds by Annie D. Roe, one of the defendants in the cause, who, by divers proceedings in Chancery of New Jersey prevented the delivering and recording of the said deed, and when the restraints by the Court of Chancery were finally removed, the said Annie D. Roe, filed a cross-bill to complainant's Bill of Complaint in this suit and obtained an order to show cause out of this Honorable Court, directing the Mayor and Aldermen of Jersey City to show cause before one of the judges of the District Court of the United States of America, for the District of New Jersey, in the City of Trenton, N. J., on the fifteenth day of July, Nineteen hundred and twelve, at ten thirty o'clock in the forenoon, or as soon thereafter as the same can be heard why any injunction should not issue restraining the said the Mayor and Aldermen of Jersey City, its officers and its agents or its repre-40

representatives, or servants or either of them, from taking any proceedings towards perfecting its titles, or from further clouding the titles or title, of the property now in question, or take any action or cause any action, to be taken, directly or indirectly, for the possession, or for the sale for taxes as so adjusted, under report eighty-five or take any action whatsoever, according to the prayer in said bill, and the said order to show cause further ordered that the agents, or servants, and each of them, in the meantime and until the further order of this court in the premises desist from and refrain from taking or delivering any deeds or deed or take any action of any kind, in the premises, for possession or otherwise, or do any act to cloud the title of said premises.

TWENTY-SECOND. And this defendant further answering says, that upon the return of the said rule to show cause, the Honorable Judge Cross, ordered that the rule to show cause, heretofore made in the above entitled matter and the restraining order therein contained, be vacated and discharged, unless the said Annie D. Roe, shall give within fifteen days a bond in the sum of Eight thousand dollars, (\$8,000.00) to be approved by Charles J. Roe, as Master for the purpose of indemnifying the Mayor and Aldermen of Jersey City.

TWENTY-THIRD. And this defendant further answering says, that no bond was filed by Annie D. Roe, in accordance with the order of the Honorable Joseph Cross and thereupon this defendant on the twenty-eight day of August, Nineteen hundred and twelve, recorded in the Register's Office of the County of Hudson, the deeds delivered to this defendant by the City Col-

lector of Jersey City.

TWENTY-FOUR. And this defendant further answering says, that since the year Eighteen hundred and sixty-eight, but one years taxes have been paid upon the premises described in the said Bill of Complaint and the amount of taxes which were adjusted together with the amount of taxes which have accrued to date, amounts to the sum of about Twenty thousand dollars (\$20,000.00). 10

Wherefore this defendant prays to be hence dismissed with its reasonable costs in this behalf most wrongfully sustained.

JAMES J. MURPHY,

Solicitor for and of
Counsel with the Ma- 20
yor and Aldermen of
Jersey City.

A true copy.

SAMUEL K. ROBBINS,

Clerk.

30

40

REPLICATION.

IN CHANCERY OF NEW JERSEY.

)	
Between)	
)	
10 ANNIE D. ROE, et als.,)	
)	
Complainants,)	
	)	BILL TO QUIT
And	)	TITLE.
	)	REPLICATION.
THE MAYOR and ALDER-)	
MEN OF JERSEY CITY,)	
et als.)	
20 Defendants.)	
)	

The Complainant joins issue on answer of the the defendants.

ANNIE D. ROE,

Per se.

30 A true copy.

SAMUEL K. ROBBINS,

Clerk.

ORDER.

IN CHANCERY OF NEW JERSEY.

Between)
))
ANNIE D. ROE, et als.,)
))
 Complainants,) 10
))
 And) **ON BILL.**
) **ORDER OF REF-**
) **ERENCE.**
THE MAYOR and ALDER-)
))
 MEN OF JERSEY CITY,)
))
 et als.)
 Defendants.) _____
))

20

This matter coming on to be heard, upon notice of application for an order of reference in the presence of James J. Murphy, Solicitor for the defendants, and Annie D. Roe, per se.

IT IS ORDERED, that the above entitled matter be referred to Charles J. Roe, Esq., an Advisory Master, to hear the same before him to report thereon to him and advise what order or decree should be made therein. 30

E. R. WALKER,

Chancellor of the State of New Jersey.

A true copy.

SAMUEL K. ROBBINS,
Clerk.

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by virtue of the provisions of an Act, entitled "An Act Concerning the Settlement and Collection of Arrearages of unpaid taxes, assessments, and water rents in City of this State, passed March 30, 1886 &c., and filed in the office of the City Collector, Aug. 30, 1892, pertaining to Lots 1 and 2c and 1a and 2b, in Block No. 593, on the Official Map of Jersey City, being the same premises, formerly designated as lots 5 and 6, Block No. 144. also formerly designated as lots One (1) and Two (2), Block No. 593, and you are further directed that you especially produce the record of the proceedings of said Commissioners wherein was entered their determination, relating and pertaining to the aforesaid premises, and being all and the same premises mention by you in three separate deeds made by you to the Mayor and Aldermen of Jersey City, filed in the Register's office, County of Hudson, N. J., Aug. 28, 1913, and that you produce at the time and place aforesaid, the tax books particularly pertaining to the property designated as Part of Lots One (1) and Two (2) on Ferris St., Block No. 593, for the years of 1869 to 1886 only. And that you produce all of any recording your office pertaining to the said property, as relating to the said Commissioners.

And this you are in no wise to omit, under the penalty of One hundred dollars.

WITNESS, Edwin Robert Walker, Esquire, Chancellor, of our said Chancery Court, at Trenton, the fifth day of March, One thousand nine hundred and thirteen.

SAMUEL K. ROBBINS,

WILBER A. HEISLEY,

Attorney for Complainant.

Hudson County) ss.

Stuart L. Dykes, being duly sworn on his oath says that on the sixth day of March, nineteen hundred and thirteen, he served the within Subpoena upon the within named A. Harry Moore, City Collector for the city of Jersey City, by showing him the original thereof, and delivering to and leaving with him a copy of said Subpoena. and at the same time paid to him the sum of one dollar, as a witness fee thereon.

Subscribed and Sworn before me,

this 6th day of March, 1913.

STUART L. DYKES.

20

JOHN BENTLEY,

Master in Chancery, New Jersey.

SUBPOENA DUCES TECUM.

Returnable, March 7th, 1913.

WILBER A. HEISLEY,

30

Attorney for Complt.

Subpoena to A. Harry Moore, City Collector for Jersey City, N. J.

A true copy.

SAMUEL K. ROBBINS,

Clerk.

40

IN CHANCERY OF NEW JERSEY.

Between)
ANNIE D. ROE, et als.)
Complts.,)
10) ON BILL, &c
And)
THE MAYOR and ALDER-)
MEN OF JERSEY CITY,)
Defts.)
)

20 Transcript of testimony and proceedings taken at the hearing of the above entitled cause, before Charles J. Roe, Advisory Master, at his office, No. 15 Exchange Place, Jersey City, New Jersey, on Friday, the seventh day of March, nineteen hundred and thirteen, at ten o'clock in the forenoon.

APPEARANCES:

30 Willbur A. Heisley, Esquire, on behalf of the Complainants.

James J. Murphy, Esquire, on behalf of the Defendants.

40 Mr. Heisley: If you Honor please this is a suit instituted by Annie D. Roe against the Mayor and Aldermen of Jersey City, under the statute authorizing a person to

file a bill in the Court of Chancery for the purpose of having the title quieted. We will show that Mrs. Roe in 1887 became the owner of the premises in question in Jersey City, and from that time has been and now is in peaceful possession of the premises. These I think are jurisdictional facts required under the statute to quiet title. Now it appears that the defendants claim title or interest in the land by reason of an alleged adjustment of taxes made under the provisions of the Martin Act passed in 1886, and the various supplements thereof, whereby the City alleges that there having been a large amount of taxes due from the years 1869 to 1892, the City proceeded under the Martin Act to have certain commissioners appointed by the Circuit Court of the County of Hudson, and it is alleged 20 that these commissioners proceeded to adjust these taxes and filed their report with the court, and that the property was sold—

The Court: When was the sale?

Mr. Heisley: It is claimed that the sale was made in 1895. Now we will show that the Martin Act was not complied with in hardly any respect. I don't want to make 30 any statement that I can't substantiate, but I think that hardly any of the requirements of the Martin Act were complied with. I believe that there is no record of the alleged fact that the Commissioners were ever appointed by the Circuit Court of this County; and we deny that they ever were appointed, and we claim that if these persons who claim that they were appointed acted 40

at all, they acted entirely without authority and that some of the essential requirements of the Martin Act were not complied with, and that therefore the defendants never acquired any title or interest in the property. Notwithstanding this alleged sale of 1895 or 1893, or whenever it was, the City authorities never attempted until within the last two or three months to make any effort to acquire possession of this property. We will show too that during all of the time that Mrs. Roe was in possession of the property that no tax bills, or if any, very few taxes were ever assessed against this property. Now there is no use of my making an extensive statement. Judge Murphy, who appears for the defendant, and I have agreed upon certain facts for the purpose of diminishing the amount of labor and expediting a speedy determination of the cause.

It is consented by counsel of both parties that the entire contents of the printed state of the case in the Court of Errors and Appeals of this State wherein Annie D. Roe was complainant and the Mayor and Aldermen of Jersey City were defendants, shall be admitted in evidence, without calling the witnesses who appeared and have been sworn in that cause and without requiring the documents, copies of which appear in that case; subject always to the right of the other side to object in this proceeding to the relevancy and materiality of such things.

Mr. Murphy: I desire to make an objection on the part of the defendant. First

that the evidence offered is an attempt to attack an assessment of taxes, and that cannot be done under a bill to quiet title.

Mr. Heisley: The admission concerning the book means simply this, that either side has the right to offer any of the contents of the book, without calling the witnesses or producing the original documents, subject to the right of either side to object to its relevancy. ¹⁰

Mr. Heisley: I now read, if your Honor please, from page 62 of the printed State of the Case referred to, the evidence of Pierce Fleming, who was a Clerk in the County Clerk's office, the following:

"By Mr. Bentley, (who then appeared ²⁰ as Solicitor for Mrs. Roe):

"Q. Mr. Fleming, will you produce from the records of the Circuit Court proof of public advertisement of the application for the appointment of Commissioners of Adjustment under report No. 85?"

It is admitted by counsel that the alleged Report No. 85 is the report by which these Commissioners are said to have adjusted the taxes in question. ³⁰

"A. I couldn't find any such report.

"(By the Court) Find what? A. Could not find any such record.

"Q. Such record as what? A. What he ⁴⁰

just asked me.

“Q. Well what did he ask you about?
A. Will you ask me that question again?”

“Q. (Question read by the stenographer). A. I say there is no such record.

“Q. As what? A. Well, you repeat it.

“Q. The Court wants to know what you looked for?

10

“A. Mr. Gritten told me all the papers connected with the case was here.

“Q. (By Mr. Murphy). Then you are testifying to what Mr. Gritten told you?
A. Yes, sir.”

Mr. Heisley: I now read the evidence of Edwin W. Gritten on page 90, as follows:

20

“Q. Mr. Gritten, you are the Deputy Clerk of Hudson County? A. Yes, sir.

“Q. And Deputy Clerk of the Circuit Court? A. Yes, sir.

“Q. And have been how long? A. I have been Deputy for 16 years.

“Q. And how long prior to that time were you in the County Clerk's office? A. In the County Clerk's office since 1886 or 1887.

30

“Q. Continuously? A. Yes, sir.

“Q. Have you been familiar with the practice of the Adjustment Commissioners relative to such papers as they file in your office? A. Yes, I know what they have done.

40

“Q. Have you made a search in your office, that is the Circuit Court Clerk's office, for papers or orders and other documents relating to the report of the Adjustment Commissioners No. 85? A. I ordered a

search to be made; I didn't go and look and handle the papers myself.

"Q. Have you from time to time made searches in your office? A. Yes, sir.

"Q. Can you tell us whether there is any rule or order on file in the office of the Circuit Court of Hudson County by the Circuit Court, confirming Report No. 85? A. None that I am able to find.

"Q. Have you made search and caused search to be made for it? A. Yes sir." 10

Mr. Heisley: I would like to call the attention of the Advisory Master to the fact that this evidence seems to be a little out of order but it relates to the confirming by the Court.

I now read in evidence from page 132 of 20 the printed case, Exhibit C. 8.

"United States of America,)
State of New Jersey,)ss.
County of Hudson,)

"I, Maurice J. Stack, Clerk of the County of Hudson, aforesaid, and also Clerk of the Circuit Court holden therein the same being Courts of Record with a Seal. 30

"Do hereby certify, that I do not find remaining of the files of my office any appointment of Edward F. C. Young, Abraham Q. Garretson and William Muirheid as Commissioners of Adjustment for Jersey City, New Jersey, as purported to have been made by the Circuit Court aforesaid as required by Section 1, Article 1, of Chapter 112, Sessions Laws of New Jersey, ap-40

proved March 30, 1886.

“In testimony where of, I have hereunto set my hand affixed the seal of said Courts and County at Jersey City, this fifteenth day of October, 1903.

(Seal) MAURICE J. STACK.

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“Clerk as aforesaid.”

Mr. Heisley: It will be admitted, will it not, that the Commissioners appointed, or the gentlemen who are alleged to have been the Commissioners appointed to make this particular adjustment were Edward F. C. Young, Abram Q. Garretson and William Muirheid.

20

Mr. Murphy: Yes, that is admitted.

30

Mr. Heisley: If your Honor please, Section 2 required that these Commissioners shall within thirty days after their appointment publish notice in two papers of the time and place where they will meet in not more than forty or less than thirty days from their first publication, and notices to be continued in papers once in each week.

ANNIE D. ROE, being duly sworn in her own behalf, testified as follows:

Direct Examination by Mr. Heisley:

Q. Mrs. Roe, you are the complainant in this
40 suit? A. Yes, sir.

Q. I want to know if you have looked in the office of the City Clerk of Jersey City and in the office of the Circuit Court of the County of Hudson, and whether there is any proof of publication of a notice by the Commissioners alleged to have been acting in this matter, of the notice or advertisement in two newspapers printed and circulating in Jersey City, making known that said Commissioners would meet at a time and place therein designated, not more than forty or less than thirty days from the date of publication of the notice, as required in Section 2 of the Martin Act; did you make such an examination yourself? A. Yes, sir. 10

Q. And did you find any such proof of advertisement in any or either of those offices? A. No, sir.

Q. When did you make that search and how did you make it? A. I went to the office in 1903, I think it was, and told the Clerk that I wanted to see any notice or publication of the intended application by the Commissioners. 20

Q. I am not asking that. I want to show whether you made any search or not in these offices to find out whether the Commissioners had published notice of the time and place when they would hear people on the subject of the adjustment of these taxes? A. Yes, sir, I went to the City Clerk in 1903, at the City Hall, and I went in with the Clerk around in the back part of the office, and after they looked some time they brought out different papers of one thing another, but there was no notice or any advertisement. 30

Q. What did you do yourself as to looking? A. I looked over the papers that they brought out.

Q. What about the County Clerk's office—the Circuit Court? A. I went up there on different occasions; once I went alone and once or twice I took somebody with me. Once Judge Hoffman 40

went over with me, but we couldn't find any record of any advertisement or anything.

Q. But about this thing I mean? A. Yes. I mean that, I took all of their actions from the beginning to the end, but I couldn't find anything there. I couldn't find any record relating to report 85.

10 Mr. Murphy: I want to object to all this testimony as irrelevant, incompetent and immaterial.

Mr. Heisley: I offer in evidence on behalf of the Complainant a deed of Helen Tutel and others, heirs at law of W. W. Gilman, to Annie D. Roe, dated June 24th, 1887, recorded in the Register's Office of the County of Hudson, on the 30th day of June, 1887, at 3.36 o'clock p. m., in Book 439 of Deeds, page 480.

20 It is admitted that this conveyance describes the premises involved in this suit, and that the complainant is the Annie D. Roe mentioned in that instrument.

Deed marked Exhibit C. 1.

30 Cross examination by Mr. Murphy:

Q. Mrs. Roe, you went to the City Clerk's office and to the County Clerk's office? A. Yes, sir.

Q. And from the search you made there and from the information you got there you couldn't find this notice that you have testified about? A. No, sir, I couldn't find any notice.

40 Mr. Heisley: I now offer in evidence

page 31 of a book taken from the County Clerk's office, entitled "Commissioners of Adjustment Report No. 85, County Clerk," said page being claimed by the defendant's to be a certified copy of the original report No. 85 said to have been made by the three commissioners.

Also page 32, alleged to be a continuation thereof. Also the map, in so far as it relates to the property on the corner of Ferris Street and Newark Avenue, as shown on the map annexed to the report, known as Block 593.

I call your Honor's attention to the fact that Section 3 of the Martin Act reads as follows.—In reference to this alleged report it says in effect that the Commissioners shall make reports "from time to time as they proceed to discharge their duties of the amount so charged and assessed, and shall file the same with said map in the office of the Clerk of the Court by which they were appointed; said reports shall be certified by the signature of at least two of said Commissioners. My point is this that the statute requires the filing of this original report with the County Clerk, or the Clerk of the Circuit Court; whereas the only report or attempted report to be filed with the County Clerk or the Clerk of the Circuit Court is the report which I have just offered and which purports to be a copy of an original.

Mr. Murphy: It is admitted that a copy of the report No. 85, which has been produced from the County Clerk's office, does not appear to have been certified by the

City Collector of Jersey City, or the City Comptroller.

It is admitted by the counsel of both parties that there is no original report of this alleged adjustment of taxes filed in the Clerk's office of the Circuit Court of the County of Hudson, and not now on file.

10 ROBERT A. ELLIOTT, a witness called on behalf of the complainant, being duly sworn according to law, testified as follows:

Direct examination by Mr. Heisley:

Q. Mr. Elliott, what is your official position in Jersey City? A. Chief Clerk in the City Collector's office of Jersey City.

Q. And How long have you been such clerk? A. Going on six years.

20 Q. You have produced a book entitled "Commissioners of Adjustment Report No. 85, City Collector?" A. Yes, sir.

Q. Is this the original book on file as you find it in the office of the City Collector? A. It is.

30 Q. Does this printed page which is purported to be dated the 26th day of July, 1892, and purported to be signed by E. F. C. Young and A. Q. Garretson, and marked in writing filed in City Collector's office August 30th, '92, at 11.40 a. m., P. H. O'Neill, Collector, by M. McCartin, is that particular page a part of the book to which I have just called you attention? A. It is.

By Mr. Murphy:

Q. Mr. Elliott, what else is thereon that printed page?

40 Mr. Heisley: I object to that on the ground that the page speaks for itself.

Mr. Heisley: I offer this book in evidence not for the purpose of admitting it has any binding force as against the complainant, but for the purpose of showing the various steps taken by these alleged commissioners and the defendants in their alleged attempt to adjust these taxes—believing that all the steps should be shown to the court.

By the Court:

10

Q. Is that an original record in your office? A. yes, sir; it is.

By Mr. Heisley:

Q. Mr. Elliott, I think you were subpoenaed by the complainant to bring other papers and things besides this book, were you not? A. Yes, sir. 20

Q. I call your attention, Mr. Elliott, to the fact that the subpoena served upon you calls upon you to produce, among other things, a record of the proceeding of the said Commissioners wherein was entered their determination relating and pertaining to the aforesaid premises, and being the same premises mentioned by you in three separate deeds made by you to the Mayor and Aldermen of Jersey City, and filed in the Register's office of the County of Hudson, August 28, 1913; and that you produce at the time and place above stated the tax book particular pertaining to the property in this suit, and that you produce all the records in your office pertaining to the said property and to the said Commissioners. I now ask you, Mr. Elliott, to produce the record of the proceedings of these alleged commissioners of adjustment? A. They are not in the City Collector's office. 30

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this P. should be 39

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ROBERT A. ELLIOTT—DIRECT

ANNIE D. ROE, heretofore sworn, called for further examination, testified as follows:

Mr. Heisley: I am now going to prove that Section 4 of the Martin was not complied with.

Direct examination by Mr. Heisley:

10 Q. Mrs. Roe, the Fourth Section of the Martin Act says that when the report of the Commissioners of Adjustment has been confirmed by the court that a certified copy of that report with the map shall be sent to the Comptroller of the city to be filed in his office; I want to know whether you know if a certified copy of the report and the map to which I have referred were filed with the Comptroller of Jersey? A. Yes.

20 Q. Were they? A. No, sir; there was not any filed.

Q. Why do you say that? A. Because I went to the Comptroller's office and asked to be shown a certified copy of the map and the report and they said there was no certified copy there.

Q. Did they say whether it ever had been there?

A. Yes, they said they didn't know of any ever having been there.

30

Mr. Heisley: Now going back to the second and third Sections, your Honor, the statute says that these Commissioners of Adjustment shall within thirty days after their appointment give a notice to be published by them in at least two newspapers, acquainting the public of the time and place when they will hear the persons interested in the re-assessment or readjustment. In order to show that they never

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Continue from P. 34

this P. should be 38

ANNIE D. ROE—DIRECT

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Q. Can you tell us in whose possession they are? A. No, sir.

Q. Are there any such proceedings filed in the City Collector's office? A. There are not.

Q. Have you brought with you the three deeds mentioned in this subpoena? A. They wouldn't be in our office.

Q. Who would be the proper official for us to subpoena to produce those deeds? A. The Comptroller. 10

Q. You have been called upon to produce the tax book; have you any tax book relating to this property? A. To the taxes on this property?

Q. Yes. A. For what years?

Q. For the years from 1869 to 1886? A. They are all in the tax office—all the records.

Q. Mr. Elliott, you could produce, could you, the tax books for the years 1869, 1870 and 1871? A. I am not positive as to 1869. 20

Q. Why; do you mean you are not positive it is in existence? A. Yes, it is in existence, but I am under the impression that the City Clerk had those two years, but if we have it I will produce it.

Q. Mr. Elliott, have you produced in court this morning all the papers shedding any light or relating to the adjustment of these taxes, excepting the tax books themselves; do you know of any other proceedings in your office in connection with the alleged proceedings of Commissioners to adjust taxes on this complainant's property which you have not produced this morning? A. No, sir. 30

RECESS.

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gave notice and therefore that the complainant had no opportunity to be heard, I will read from the testimony of Mr. McLean, who was at the time that he gave the testimony I am about to read a Clerk of the Commissioners of Adjustment of Taxes. I will read from page 67, as follows:—

10 “Q. Mr. McLean, have you produced the records of the Commissioners of Adjustment? A. I have produced a part of the records.

 “Q. Covering what period? A. I don't know just what period, but it includes report No. 85.

 “Q. All the proceedings relative to report 85? A. Yes.

20 “Q. Will you kindly turn to that part of the proceedings which shows the advertisement by the Commissioners to hear all persons interested in the reassessment or readjustment of property in the City of Jersey City, especially pertaining to report No. 85? A. My record doesn't show the advertisement of the hearing.”

Mr. Heisley read from the printed case:

30 He further says on page 68—“A. I don't find any record of the advertisement.”

 If you Honor please, Section 5 of the act says that the Comptroller is to deliver certificate of sale, and if the City buys it, the certificate shall be delivered to the Mayor, who shall give notice of the sale, to be served on the owner and mortgagee.

40 In order to acquaint the Court with the

full record, but without admitting any binding force as against my client, I will read from page 98 of the printed book the following:—"Mr. Murphy: The certificates I offer are numbered 2622, 2634 and 2843." These I understand the Counsel for the defendant claims are the certificates delivered by the City Collector to the defendants in effectuating the alleged sale of these premises. 10

If your Honor will look at the last part of Section 5, you will see that it provides that when sold to the City the certificate shall be delivered to the Mayor, who shall cause notice of the sale to be served on the owner and mortgagee.

I now desire to recall Mrs. Roe for the purpose of examining her as to whether there was any notice served by the defendants upon her of the sale. 20

ANNIE D. ROE, recalled for further examination, testified as follows:

Direct examination by Mr. Heisley:

Q. Mrs. Roe, where have you lived since you purchased this property in the deed which has already been offered in evidence? A. Right on the property. 30

Q. Continuously? A. Yes, sir.

Q. Never had any other residence? A. No, sir. I might have been away for a few weeks, but that has always been my residence.

Q. I want to know if at any time since you have lived in Jersey City, either at that house or at any other place, the Mayor or the Mayor and Aldermen of Jersey City have served you with 40

any notice, written or verbal, of an alleged sale for taxes by reason of this alleged adjustment of taxes involved in this suit? I refer to a notice telling you or acquainting you with the fact that it was claimed by the Mayor or the Mayor or Aldermen that your property had been sold for taxes; did they ever serve such a notice upon you? A. No, sir; they never served me with any such notice.

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Cross examination by Mr. Murphy:

Q. You say, Mrs. Roe, that no notice to redeem had been served by anybody on behalf of Jersey City on you? A. Not for this property.

Q. You remember having filed a bill in the Court of Chancery against the Mayor and Aldermen of Jersey City, and in which bill you alleged
20 that the City was proceeding against you by publication and that you were entitled to personal service, being a resident of Jersey City, and under that bill you got an injunction restraining the city from proceeding? A. Yes, sir.

Q. Do you remember that that case was referred by the Chancellor to Mr. Charles J. Roe to hear? A. Yes, sir.

Q. And do you remember that when that matter was before Mr. Charles J. Roe that the City
30 produced affidavits from the files of the City Clerk's office, which affidavits had been made by William J. Boucher, and in which affidavits he swore that he had made personal service on you of notice to redeem? A. Yes, sir; I remember that you offered something to that effect from the City Hall.

Q. Is it not a fact, Mrs. Roe, that the question in that proceeding was whether or not you had
40 been served with personally notice to redeem? A.

Well, that was not the question of that suit whether I was served, but the question of that suit was whether these advertisements were legal or not.

Q. Didn't you allege in that suit that you had not been served personally with notice to redeem?

A. Yes, and I say so now, regarding that place. I was not served with personal notice regarding that property.

Q. Do you recall that there was produced here before Mr. Roe in that case the affidavits of Mr. Boucher, in which he swore that he had served you personally with notice to redeem? A. No, I can't recall that because Mr. Boucher was not here and there was no proof of anything of the kind. Mr. Boucher was not here and this notice was not served on me and I never admitted that it was. I said I never received any notice from the city to redeem that property, and I say so now 20

Q. Do you know whether or not Mr. Charles J. Roe in that case had made a report dismissing your bill.

Objected to as incompetent. Question overruled.

Re-direct by Mr. Heisley:

Q. Mrs. Roe, there has been some discussion, 30 which is not on the record, as to whether you didn't admit in a previous hearing that you had had some notice served upon you, and you have said just now that you had a notice which didn't apply to your property. I ask you what paper this is which I now hand to you? A. It is the paper about which I have been talking about.

Q. Did you have this served upon you? A. Yes. 40

Q. Did you ever have any other notice served upon you? A. No, sir; I never had any other notice served upon me.

Q. Was your property ever known as part 1 in Block 59 upon an assessment map annexed to Report Number 85? A. No, sir; it never was.

10 Mr. Heisley: I offer this notice in evidence.

Notice marked Exhibit C. 2.

Mr. Heisley: I now call upon the defendants to produce any deed or deeds which they alleged were ever made in pursuance of the alleged proceedings of the supposed commissioners to adjust taxes.

20 I desire to urge for the consideration of the court the proposition that the Martin Act is unconstitutional, because its object is not expressed in its title; that the title refers to two objects, one relating to past due taxes and the other to taxes to be assessed in the future.

At the request of the complainant I read in evidence from page 79 of the printed book, the testimony of Charles J. Somers, as follows:

30 "Mr. Somers, what is your occupation? A. Deputy City Collector.

"Q. How long have you been such? A. Three years.

"Q. Were you subpoenaed to produce the papers in your office relative to Report No. 85? A. I was.

"Q. Have you produced it? A. I have.

40 "Q. Under Report 85 I call you attention to the property known as lots 1a and

2b and A and B in Block 593, and ask you whether that property was subsequently—what was done with that property? A. Well, our record shows that it was sold at a tax sale.

“Q. Have you any record of the advertisement prior to the tax sale? A. I believe Mr. Gormley would be the one for that.

“Q. Have you any record? A. No, I¹⁰ haven't any record.

“Q. Do you know how it was sold? (No answer).

“Q. Does your record show by whom that property was sold, or supposed to have been sold? A. Yes, it says the collector, Patrick H. O'Neil.”

I offer in evidence a certified copy of a deed, George H. Harrington and wife to²⁰ Daniel Loughridge, dated January 29, 1858, for the premises in question.

Marked Exhibit C. 3.

I also offer in evidence a certified copy of a deed from Andrew Mount, Sheriff of Hudson County, to Winthrop W. Gilman, dated April 6th, 1871.

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Marked Exhibit C. 4.

I also offer in evidence the original deed made the 10th day of January, 1872, from David M. Demarest and wife to William W. Gilman for the property in question, mentioning a consideration of \$78.50. This deed was recorded in Hudson County Clerk's office on December 31st, 1873, at⁴⁰

4.15 o'clock p. m. in Book 265 of Deeds, page 467, &c.

Marked Exhibit C. 5.

ANNIE D. ROE, recalled for further examination, testified as follows:

10 By Mr. Heisley:

Q. Mrs. Roe, did you make any search yourself in the City Clerk's office for the purpose of ascertaining whether this property had been sold for taxes while Mr. Gilman, one of the former owners of the property, owned it? A. Yes, sir.

Q. When did you make that search?

20 Mr. Murphy: I object to this on the ground that it is not the best evidence.

By Mr. Murphy:

Q. Mrs. Roe, did you go in the City Clerk's office for the purpose of making search? A. Yes, sir.

Q. What books did you examine? A. I ex-

Q. What books did you examine? A. I examined all the tax books of sales for taxes.

30 Q. And how many books did you examine? A. I examined all the books from 1865 to 1887.

Q. And you had never seen these books before?

A. No, I had never seen these books before.

Q. Did you examine books or papers? A. I examined books.

Q. And you are basing your testimony now upon the examination of books that you had found in the City Clerk's office? A. Yes, sir, found in
40 the City Clerk's office.

Q. And you had never made any search there before? A. Yes, sir; I had made search on the same property before; twice I went there and made search.

Q. When you examined these books did you look at the names of the people that they were assessed against? A. Yes, sir.

Q. And did you search against the names only? A. I searched against the names and I searched against the block number and the lot number. 10

Q. And did you find by that search any sales at all of this property for taxes? A. I found sales for '67, '68 and '69, and I found in 1869 the property had been sold twice that year for taxes,—once for taxes and once for water rents, and it was assessed to Daniel Loughridge. That was all the tax sales that the books showed at that time. There were no other tax sales.

Q. When did you make this search? A. I made one search in 1903. In 1903 I made search and that search disclosed that in 1895 the property had been sold. 20

Q. To whom? A. Sold to the Mayor and Aldermen of Jersey City.

Q. Under this alleged adjustment proceeding? A. Yes, sir—and between the years 1869 and 1895 there had been no tax sales during those years, and the City Collector gave me a search. At the second sale the property was assessed to Gilman and at the first sale from '66, '67 and '68 the property was assessed to Loughridge. 30

Re-direct by Mr. Heisley:

Q. Mrs. Roe, at the time you purchased this property, which I believe was in 1887, did you make any inquiry or investigation then to find out whether there was any unpaid taxes against 40

the property? A. Yes, sir.

Q. Just tell the court what examination and investigation you made and how? A. Well I had the record searched in the County Clerk's office, and then I went to Mr. Aldrich's office.

Q. Who was he? A. He was the agent for this place from '71 up until the time it was conveyed to me.

10 Q. Agent for whom? A. For Mr. Gilman.

Q. The former owner? A. Yes, sir.

Q. What did you find there? A. He showed me a lot of tax bills receipted up to 1885 that had been paid.

Q. That would be two years before you bought it? A. Yes, sir.

Q. Against what property were those bills? A. Against this property now in question.

20 Q. Why didn't you get these receipted tax bills when you paid for your property? A. Well the agent, Mr. Aldrich, said that the administrator of the estate had asked him for an accounting—

Objected to as incompetent.

30 Q. Why didn't you ask him for the receipted bills, or why didn't you take the receipted tax bills when you paid them for the property? A. I did ask him for them, and he said the administrator of the estate had made a demand on him for an accounting for the rents and he wanted these as vouchers for the rents that he had collected.

Q. How many of those papers were there? A. There was quite a bunch of them.

Q. Have you any idea how many years they ran down to? A. Well I remember seeing one in 1885.

40 Q. For that year or for some other year? A. No, sir; it was in 1885, and there was quite a

bunch of them.

Mr. Heisley: The complainant has just called my attention to the fact that she desires to make a statement, and of which she says I know nothing.

Q. What is that statement, Mrs. Roe? A. In 1895, in April and in October, I attended at the City Hall at two tax sales. At the first tax sale these three pieces of property were advertised. 10

Q. You mean the property mentioned in this suit. A. Yes, sir, the property mentioned in this suit was advertised. I went there in the morning and waited all day and the property had not been put up for sale, and after the sale was over I went up and asked a man why it was not sold, and he said

20

Mr. Murphy: I object to this.

He said because it was adjusted as improved property and the house had burned down since then and they didn't consider they had a right to sell it under that adjustment.

Q. Who told you this? A. The man who was selling the properties, the auctioneer.

Q. It was a person connected with the sale? A. Yes, sir; he was auctioneer at that sale. 30

Q. How do you know this was the sale which is claimed to have been made or attempt to be made in this alleged proceeding. how do you know that? A. I don't know it was that sale, but I know this was in April, 1895.

Q. That was the only sale held there that you knew of? A. That is the only sale that was held there that I knew of.

Q. Where was this sale? A. In the City Hall 40

building.

Q. What had called your attention to the fact that there was to be a sale of this property at the City Hall; had you seen it in an advertisement?

A. Yes, sir; I saw an advertisement in the paper.

Q. Was this occasion upon which you attended at the City Hall the occasion when you had seen an advertisement notifying the public that your property was to be sold at that time? A. Yes,
10 sir.

Q. Was it sold or not? A. No, sir; it was not sold.

Q. Were you there until the sale was adjourned? A. Yes, sir; I was there before it opened.

Q. And remained there continuously. A. Yes, sir; continuously.

Q. And what happened after that? A. And then in October there appeared in the paper one
20 piece of property, that is the Ferris Street property, and I attended that sale and waited until it was over, and I asked a man afterwards why it was not sold, and he said he didn't know, but that it was crossed off the book. Then I went in the City Collector's office and asked the man there why it was not sold, and he said he didn't know, and he said it is crossed off here—may be it has been paid.

Q. Had the property been burned prior to the
30 time when you attended the sale in 1895? A. Yes, sir; the property was totally destroyed.

Q. All the buildings on it? A. All the two buildings were burned down and completely destroyed.

Q. Is there anything else you want to say about that? A. No, sir.

Mr. Heisley: I offer in evidence a letter

signed by the City Collector of Jersey City,
dated May 12, 1912, which reads as fol-
lows:

“City Collector’s Office,
City Hall,
Jersey City, May, 1912.

“A. Harry Moore,
City Collector.

10

“Dear Sir:

“I beg to advise you that your property,
according to our books is eligible for the
coming tax sale, and will be sold unless
the arrears are paid at once.

“As the lists are now being prepared you
will avoid considerable expense by giving
this notice immediate attention.

“Very respectfully,

“A. Harry Moore,
City Collector.

20

“Name W. W. Gilman,

“Address, 6 Ferris St.

“Block 593.

“Lot 1-2c Newark Ave.

1a 2a.

“1909-10.

ROBERT A. ELLIOTT, heretofore sworn,
called for further examination, testified as fol-
lows: 30

Direct examination by Mr. Heisley:

Q. Mr. Elliott, you have produced at our re-
quest the book entitled Assessor’s Book, Tenth
Ward, for the year 1870? A. I have.

Q. And that contains the assessmnt of taxes on
property in that ward including the property in 40.

this suit, does it not? A. Yes, it does.

Q. Page 15 is the page where the assessment is recorded? A. Yes, sir.

Q. And does it not on page 15 name Daniel Lockridge in two places as the owner of the property in question? A. Yes, sir.

Q. I read you these two items—under the caption of owners of property and persons taxable appears the name “Daniel Lockridge”, and over
10 to the extreme right there is an entry under the title of “Remarks” Sold March 13, 1872”, is there not? A. Yes, sir.

Q. In the second entry under the title of “Owners of Property and Persons Taxable” appears the name “Daniel Lockridge”? A. Yes, that is right.

Q. And over to the right under the caption of “Remarks” is it not written in red ink as fol-
20 lows: “Sold March 13, 1872”? A. Yes, sir; that is right.

By Mr. Murphy:

Q. Mr. Elliott, why was that sold? A. It was sold for taxes arrears.

Q. For what years? A. For the years 1869 and 1870. This book says the year '70 and the
30 following book shows the year '71.

By Mr. Heisley:

Q. The two sales on March 13th were for what year? A. For the year 1870.

Q. For the year 1870? A. They were sold two years then after the tax was assessed? A. Yes, sir. It is dated on March 13, 1872, the City Collector sold to the Mayor and Aldermen of Jersey
40 City for the tax arrears of 1870.

Q. I call your attention to the book entitled, "Assessor's Book, Fourth District, 1871 and 1872"; does there not appear on page 38 under the caption of "Owners of Property and Persons Taxable" in writing the word "Daniel Lockridge" and through which name has been drawn a lead pencil and over that written in lead pencil "W. W. Gilman", is not that so? A. Yes, sir.

Q. And does it not say at the extreme right hand under caption of "Remarks" "Sold September 26, 1873"? A. Yes, sir; that is correct. 10

Q. Have you any other record of tax sales of that property in your possession or in your office? A. Yes, sir.

Q. For what years? A. For every year.

Q. Tax sales? A. Yes, sir; every year up until it was sold to the City.

Q. Do you mean to say that you can produce here before this court a record of your office showing a tax sale every year? A. To show that the property was sold for every years taxes that was in arrears. 20

By Mr. Murphy:

Q. Do you know whether the property was sold each year for taxes or not? A. No, sir; our records show that the adjustors' tax sale was had and all of these taxes were embodied. 30

Q. Do you know whether that property had been sold; and there is such a record there for each year? A. No, sir; I don't know that.

By Mr. Heisley:

Q. Is not this so, Mr. Elliott, that you have nothing in your office from the time subsequent to the record which I have just read from in the 40

Assessor's book for the Fourth District for the year 1871 and 1872, showing that there has been any sale made by the municipal authorities for years since 1873, excepting an attempted sale under these adjustment proceedings,—is not that so? A. I can't answer that question yes or no, because the books show that it was sold for adjusted taxes under Report 85.

10 Q. Is not that the only evidence that you have in your office of any attempt by the municipal authorities to sell the property since 1873, namely, the mere fact that under this alleged adjustment proceeding they undertook to sell the property? A. By fact of that adjustment, yes.

Q. From '73 to '95 you have nothing in your office to show that there was any sale made or attempted to be made by the municipal authorities, excepting that adjustment sale alleged to have been made in 1895, is not that so? A. I don't know.

Q. Well didn't you just say so? A. No, sir; I said I couldn't answer it one way or the other, but the best I understood was it was sold to adjust taxes.

Q. And that is the only way you know it has been sold since '73? A. Yes, sir.

By Mr. Murphy:

30 Q. Mr. Elliott, what is the last book you have there? A. 1871.

Q. What is the entry there as to sale? A. Sold September 26th, 1873.

Q. Do you know what year or years that sale embraced? A. The year 1871.

Q. Do you know from your experience in the City Collector's office whether the taxes are assessed against the owner or the property? A. Assessed against the property.

ADJOURNED until Monday, March 31, 1913,
at 10 a. m.

Continuation of the hearing before Charles J. Roe, Advisory Master, at his office, No. 15 Exchange Place, Jersey City, New Jersey, on Friday the fourth day of April, nineteen hundred and thirteen, at ten o'clock in the forenoon pursuant to adjournments.

10

APPEARANCES as heretofore.

ANNIE D. ROE, heretofore sworn, being recalled for further examination, testified as follows:

Direct examination by Mr. Heisley:

Q. Mrs. Roe, have you ever at any time made a search in the offices of the Clerk of the Circuit Court of Hudson County in order to ascertain whether or not there was on the files of that court or in the minutes of the court any application purporting to have been made by the Board of Aldermen, Common Council or other legislative body of Jersey City, with the concurrence of the Board or body having charge or control of the finance of the city, to the Circuit Court for the appointment of three freeholders to act under the provisions of Section 1 found on page 3371 of the General Statutes of this state? A. Yes, sir.

Q. When did you make such search? A. Well I made the search about 1906.

Q. Well did you find anything? A. No, I didn't find anything. I went and searched and then I had the Clerk search and we went through all the minutes and looked everywhere where there would be such a thing. We looked over all the

40

minutes; they brought the books out and we looked them over and there was no application.

Q. You found nothing? A. No, sir; I found nothing, and I have made other searches since without success.

Q. Mrs. Roe, you have a suit I think pending in the United States District Court of New Jersey, wherein you are complainant and these same defendants are the defendants in that suit? A.
10 Yes, sir.

Q. And I think there was an order made in that suit directing the defendants to give you tax bills? A. Yes, sir.

Q. The bills rendered for taxes which had been assessed against this property for certain years; is that right? A. Yes, that is right.

Q. Did they give you such bills? A. Yes, sir.

Q. I show you a bundle of papers purporting
20 to be I think statements of taxes and water rents? A. Yes.

Q. Where did you get this bundle of papers? A. got these from Mr. Murphy's office.

Q. Well are they the papers which were delivered to you pursuant to that order of the United States Court? A. Yes, sir. When the United States Court made this order—the next
30 day after I went to the City Hall and asked for the tax bills, and they told me that they didn't give out tax bills in the tax office and they sent me upstairs to the law office, and so I went up there, and I asked Mr. Hershenstein what they could do for me, and he said—

Q. These bills came from Mr. Murphy? A. Yes, sir.

Q. You mean the Counsel for the City? A. Yes, sir.

dle of papers which has just been shown to the witness. The substance of these papers I think will show that for every year beginning with 1893 down to and including 1912 taxes were assessed and water against this property in the name of W. W. Gilman.

Package of bills marked together Exhibit C. 2. 10

Q. I show you another bundle of papers purporting to be bills for annual taxes from the years 1892 down to and including 1911, I think; where did you get this bundle of bills from? A. From Mr. Murphy, the Attorney for the City.

Mr. Heisley: I offer this bundle of bills in evidence. These are also shown to be 20 in the name of W. W. Gilman.

Bundle of bills marked together Exhibit C. 3.

Q. I show you another bundle of papers; is this one of the batch of tax bills which the defendants gave you in pursuance of that order of the Court?

A. Yes, it is.

30

Mr. Heisley: I offer this bundle of papers. The taxes are assessed in these in the name of W. W. Gilman from 1892 down to and including 1911.

Bundle of bills marked Exhibit C. 4.

Mr. Heisley: If your Honor please, my idea in offering these is that it is relevant 40

by reason of the fact that it would be very unreasonable after the City had bought this property in '92 and '95 and had become the real owner, to continue up to 1912 in assessing it in the name of a private person.

10 Q. Mrs. Roe, I show you a paper upon the top of which is printed "City Collector's Office, Jersey City", and then in typewriting "March 21, 1906"; where did you get that paper from? A. I got it through the mail from the City Collector.

Paper referred to offered in evidence and marked Exhibit C. 5.

Mr. Heisley: I will read this letter in the record.

20

"City Collector's Office,
"Jersey City, March 2, 1906.

"Dear Sir:

"According to law we are now scheduling arrears of taxes and assessments.

30

Finding that you are a delinquent and your property liable to be sold under the law, which is mandatory. I take this means of calling your attention to the matter, so that the cost of advertising and collection is not added to the amount you already owe the the city.

"Hoping you will give this matter your immediate attention thereby saving yourself additional expenses.

"Yours respectfully,

"EDWARD FRY,

"City Collector."

40

"Name, W. W. Gilman.

Address, 716 Newark Ave.

“Block 593.

“Lot 1a, 2b.

“Folia 148.”

My idea is that this is relevant upon the same ground as these certificates of tax bills, that it would be unreasonable for the City to continue to notify her that she owed them when they in fact owned the property. 10

Q. I show you another paper without any date; where did you receive this from? A. I received it from the City Collector through the mail.

Mr. Heisley: I offer this letter in evidence. It reads as follows:

“City Collector’s office, Jersey City.

“Dear Sir: 20

“According to law we are now scheduling taxes and assessments in arrears. Under Section 7, Chapter 217, laws 1895, your property is liable to be sold for such portion of the enclosed assessment as is due under the law. Kindly give this matter your immediate attention, thereby saving yourself additional expense.

“Respectfully yours,

“EDWARD FRY, 30

“City Collector.”

“Bring this notice with you.

“August 6, 1906.”

Letter marked Exhibit C. 6.

Q. Mrs. Roe, I show you an envelope bearing the advertisement of the City Collector of Jersey City, and post marked “Jersey City, Aug. 6, 2 p. 40

m. 1906", and written upon it "Mr. W. W. Gilman, 6 Ferris Street, City"; is that the envelope in which this paper came? A. Yes, sir; it is.

Envelope offered and marked Exhibit C. 7.

10 Mr. Heisley: I offer in evidence certificate made by John F. Crosby, Clerk of the Circuit Court of the County of Hudson, bearing date the third day of April 1913, to the effect that there is nothing of record showing any application to the Court by the Mayor and Common Council for the appointment of Commissioners.

Certificate marked Exhibit C. 8.

20 I also offer in evidence a certificate by the same Clerk, bearing date the 28th day of March, 1912, certifying in effect that he does not find any appointment of Young, Garretson and Muirheid as Commissioners.

Certificate marked Exhibit C. 9.

30 I also offer a certificate by the same clerk, bearing date March 28th, 1912, certifying in effect that he did not find any rule or order of confirmation of Report 85.

Certificate marked Exhibit C. 10.

40 I also offer in evidence a certificate by the same official bearing date April 3, 1913, certifying in effect that he finds no order or notice made by the Circuit Court

of the time and place for the hearing of any objections to the assessmtnt to be made by the Commissioners.

Certificate marked Exhibit C. 11.

I also offer in evidence an exemplified copy (exemplified according to the acts of Congress) of the accounts of Alfred Gilman, Administrator of Winthrop W. Gilman, deceased, filed in the Circuit Court of the County of Sullivan, State of New York, on the 19th day of December, 1885; the purpose of this offer being to show that this administrator reported to the court and was allowed credit for receipted tax bills on the property of W. W. Gilman in Jersey City for \$2,167.13.

20

Mr. Murphy: I object to that offer on the ground that it is incompetent, irrelevant and immaterial.

Allowed subject to objection and marked Exhibit C. 12.

Q. Mrs. Roe, did you know W. W. Gilman in his life time? A. Yes, sir.

Q. What was his first name? A. Winthrop. 30

Q. How long did you know him? A. A good many years.

Q. When did you first get acquainted with him? A. I don't remember; it was long before 1885.

Q. Did you know him in 1885, Mrs. Roe? A. Yes, sir.

Q. Do you know where he lived? A. Yes.

Q. Where did he live? A. In New York City, and also in Sullivan County, New York. 40

Q. Did you also know Alfred Gilman? A. Yes, sir.

Q. What relationship, if any, did he bear to Winthrop W. Gilman. A. His son.

Q. Do you know whether Winthrop W. Gilman mentioned in this paper which has just been offered in evidence is the person who was the former owner of the property now in dispute in this cause? A. Yes, sir.

10 Q. How do you know that? A. I don't know how to answer that, how I know.

Q. Did he ever live there? A. No.

Q. Did you ever have any dealings with him about that property? A. Yes.

Q. Well tell us how you knew he was the same person who owned that property? A. Well, I think one time there was some trouble in Jersey City—there was some criminal case, as near as I
20 can remember, and I think Aldrich done some law work for W. W. Gilman—a horse was stolen and I was down there at the time—

Mr. Murphy: I object to all this as irrelevant and immaterial.

I know that W. W. Gilman at that time was the complainant in that affair. He had purchased
30 this horse and this man had stolen the horse and had sold it: he had stolen it from W. W. Gilman; and after the trial or whatever it was in the office, Aldrich and W. W. Gilman and Arthur Lucy and I went down to this property.

Q. The property in this suit? A. Yes, sir.

Q. Do you know whether Gilman owned any other real estate in Jersey City? A. I know that he did not.

40 It is stipulated by the parties that in an

answer filed by the City in the suit of Annie D. Roe against the Mayor and Aldermen of Jersey City, filed February 19th, 1903, Docket No. 25-422, that there is annexed an original notice dated July 10th, 1902, given to Annie D. Roe and others, similar to the Exhibit C. 2 already in evidence.

Mr. Heisley: The witness advises me¹⁰ that she wishes to make a statement.

(Witness). In 1895 I went over to the County Clerk's office or to the Clerk of the Circuit Court and looked up report No. 85. At that time this property was not in this report 85. I reported it to Judge Hoffman, who said that that couldn't be so. Then after that I got an official searcher from New York to go with me over the books and²⁰ the papers, and we couldn't find this property in Report 85. Then before the trial of the case in 1910, I think it was, Mr. Normal L. Rowe, Peter Bentley and I went to the office of the County Clerk and we searched every volume of these reports and every report from 1880 to 1890—ten volumes we searched, and that included this report 88. Mr. Rowe stood there and counted the volumes while we went over these ten books at least four times, and this property was not in any³⁰ of those volumes, and this included report 88. After that when there was another hearing in this case tried in 1912, the defendants produced a volume styled report 88 from the County Clerk's office that did have this property in it. This property was taken out of Report 88 in 1912 and put in Report 85 only at that date was this property placed in Report 85, and never before the date of 1912.

Q. How do you know that? A. Because I had searched this report 85 way back as early as 1895.

Q. Had you looked into report No. 88 before that? A. I certainly did, way back in 1895, I looked in it and looked in it many times.

By the Court:

Q. And it was not in Report 88? A. No, sir; not when I searched in 1910 it was not in Report 88.

10

By Mr. Heisley: With the exception that I would like to show that the Circuit Court of the County of Sullivan has made a judicial decree confirming this account. I think that the court has made this order and ought to have it, because if the Court has passed upon it, the matter is res adjudicata. With this exception we rest.

20

Mr. Murphy: If the Court please, on behalf of the City, I desire to offer in evidence the printed case in the New Jersey Court of Errors and Appeals, between Annie D. Roe, Appellant, and the Mayor and Aldermen of Jersey City, Defendant Respondent.

30

Mr. Heisley: I object to that on the ground that there is a great deal in that which is wholly irrelevant, and there are other portions which I think are entirely relevant, and I see no reason why the whole case should be offered in evidence, so that in case of an appeal in this case the record is to be burdened by that record.

40

Offer of book overruled as a whole, but the Counsel for the defendant will be al-

lowed to offer any portion thereof, subject to any objection that may be made as to its relevancy to this case.

Mr. Murphy: I offer from the printed book the pleadings and decree and the opinion of the Vice Chancellor.

Objected to as immaterial and irrelevant. 10

Mr. Murphy: I also desire to offer in evidence all the exhibits as appears in the printed book from page 124 to 135, inclusive, excepting Exhibits C. 1, and C. 2, which are already in evidence.

Mr. Heisley: If your Honor please, under our stipulation I waive the production 20 of the original of Exhibit C. 4., but I deny that any of the statements contained in that Exhibit have any binding force or effect as against the complainant in this suit. I object to the materiality of Exhibit C. 5. on the ground that it purports to be a mere statement made by a City Collector, a self-serving statement and not authorized by any statute of this state. I make the same objection to Exhibit C. 6. 30 I also object to C. 7., because there is no authority under the law for the City Clerk to make a certificate of which this C. 7. purports to be a copy, and that any statement there in contained can have no evidential effect against the complainant. I make the same objection to Exhibit D. 3. a certificate of sale.

Mr. Murphy: I want to offer in evidence the original Report 85 produced from the City Collector's office of Jersey City.

Mr. Heisley: I will admit that the alleged report which the counsel for the defendant produces is a document which is found on file in the office of the City Collector.

10

ROBERT A. ELLIOTT, heretofore sworn being called on behalf of the defendant, testified as follows:

Direct examination by Mr. Murphy:

Q. Mr. Elliott, you have produced a book here from the City Collector's office of Jersey City?

20 A. Yes, sir.

Q. I ask you what that book is?

Mr. Heisley: I object to that.

Q. What does it say on the cover of that book?

Mr. Heisley: If your Honor please, I submit that this witness cannot state what the book is, that the book must speak for itself; he must state where he found it and the book itself must be put in evidence.

30

Q. Mr. Elliott, where did you get this book?

A. From the City Collector's office, Jersey City.

Q. And what does it say on the outside of this book?

40

Mr. Heisley: I admit that the document about which we are now interrogating the witness is the same document that was ad-

mitted in evidence in the printed case of Roe vs. the same defendants, upon the assurance of Judge Murphy that it is the same document that he offered in evidence in the suit between the same complainant and the same defendant in the Court of Chancery.

Mr. Murphy: That is that this is the book that was offered in evidence as Report No. 85 of the Commissioners of Adjustment as filed in the City Collector's office of Jersey City? ¹⁰

Mr. Heisley: Yes.

Mr. Murphy: I now offer this book in evidence.

Book referred to offered and marked Exhibit D. 1. ²⁰

I desire to call attention to the first page signed by two of the Commissioners, E. F. C. Young and A. Q. Garretson, and the Certificate of the County Clerk and also Clerk of the Circuit Court.

Mr. Heisley: If your Honor please, I object to this offer of the first page, which purports to be an original report, on the ground that nothing therein contained can in any way effect the rights or interest of the complainant. I also object to the certificate of the County Clerk upon this paper, upon the ground that it is irrelevant for the following reasons:—That the certificate says that the report No. 85 was ³⁰ ₄₀

duly confirmed by George T. Werts, Esquire, Judge of said Circuit Court, on the twenty-seventh day of August, A. D. 1892, upon the ground that the statute says that the report is to be confirmed by the court and not by a judge.

Mr. Elliott, I desire to call your attention to page 31 of this report No. 85; does this include the property of Mrs. Roe? A. It does.

Q. There are three parcels? A. Yes, there are.

Q. What does this report say as to the amounts due on the different parcels?

Mr. Heisley: I submit that that shows for itself.

A. On page 31 of the Commissioners of Adjustment book on Report 85 it says "Block 593, Lot No. Part 1, Newark Avenue, assessed to William W. Gilman for taxes and water rents and assessments from 1869 to 1892, inclusive, total of \$2,198.90." On the same page "Block 593, Lot Part of 2, Newark Avenue, assessed to William W. Gilman for taxes, water rents and assessments for the years 1869 to 1892 inclusive, total of \$1,445.31. On page 32, Block 593, Lots Nos. Parts of 1 and 2, Ferris Street, assessed to W. W. Gilman for taxes water rents and assessments for the years 1869 to 1892, inclusive, \$780.95.

Q. Is this the property that is now owned by the complainant, Annie D. Roe, at the corner of Ferris Street and Newark Avenue, Jersey City?
A. Yes, it is.

Cross examination by Mr. Heisley:

Q. Mr. Elliott, is it not so that this Exhibit,

which you claim is the original report of the alleged adjustment, shows that there were taxes due and that the property was sold for taxes of 1969 and 1870, which were paid by a previous tax sale according to your testimony at the last hearing?
A. No, sir.

Q. You recollect at the last hearing there were tax deeds offered for certain years, for '69 and '70 or about that time or '71? A. I don't recollect seeing any tax deeds. 10

Mr. Murphy: At this time I desire to offer in evidence the cross examination of Joseph P. McLean as appears on pages 71, 72, 73 and 74, up to line 30.

Mr. Heisley: I object to the question on page 71—"Q. (By the Court). Is that the original report No. 85?" because it does not appear that the witness was possessed of any knowledge which enabled him to say whether or not it was the original report. I also object to the question— 20

"Which report was confirmed by the court?" and to his answer "Yes, sir.", for the reason that it does not appear that the witness was present in court or had any knowledge which enabled him to say that the report had ever been confirmed by the court. 30

Also to the question, "Q. Whom is that report signed by, Mr. McLean?" and to his answer, for the reason that the document should speak for itself, and also that it is now shown that the witness was familiar with the handwriting and signatures of the persons who were alleged to have signed it. 40

I also object to the last question on page 73—and the answer of the witness, because the witness there undertakes to tell what had been the practice of the alleged commissioners. The question in this case was not what was the practice of the Commissioners with other properties, but what they actually did with this particular property, and the same applies to what the witness undertakes to say was the practice of submitting a copy to the County Clerk and filing it with the City Collector.

10

Mr. Murphy: I also desire to offer in evidence the direct examination of Mr. Joseph P. McLean as appears on page 67 to line 30 on page 71.

20

Mr. Heisley: I also object to what the witness says at the bottom of page 70 and at the top of page 71, as to the practice, for the reasons above given; and also to the evidence of the witness on page 71 as to the Commissioners of Adjustment always filing a copy with the County Clerk of their findings, and also to the balance of the evidence, as not having any evidential force.

30

Mr. Murphy: I desire to offer in evidence the cross examination of Edwin W. Gritten as appears on page 102, beginning at line 40 and continuing up to and including page 109.

40

Mr. Heisley: I make a general objection to this evidence where it appears that the witness is speaking simply from conclu-

sion and not from actual knowledge.

Mr. Murphy: I desire to read the following on page 98, beginning at about line 21, as follows:—

“Mr. Murphy: I want to offer in evidence these three certificates of sale.

“The Court: You can describe them on¹⁰ the record, so as to avoid having the records marked.

“Mr. Murphy: The certificates I offer are numbered 2622, 2634 and 2843. I think these ought to be marked because they are duplicates and originals. These two can be marked and not the other one. [No. 2622 is marked D. 2, and 2623, D. 3.) 20

THOMAS K. HALSTEAD, a witness called on behalf of the defendants, being duly sworn according to law, testified as follows:

Direct examination by Mr. Murphy:

Q. Mr. Halstead, you are in the City Clerk's office? A. I am.

Q. And you have been in the City Clerk's office³⁰ how long? A. Forty-eight years.

Q. What is your position in the City Clerk's office? A. Chief Clerk.

Q. Have you in your possession any proofs of service of notice to redeem on Annie D. Roe? A. I have.

Q. Will you produce them?

(Witness produces papers).

Q. Where did you get these papers? A. From the files in the City Clerk's office.

Cross examination by Mr. Heisley:

Q. Mr. Halstead, who is William Boucher, the man who purported to make these three affidavits? A. Well I think he is a practicing attorney at the present time.

Q. He is living? A. Yes, he was not long ago.

10 Q. He is living now as far as you know? A. Yes, sir.

20 Mr. Murphy: I desire to offer in evidence three notices to redeem the property in question served by William Boucher. I desire first to offer the one marked No. 5573, Lot No. Part Lots 1 and 2, Block 593, fronting on Ferris Street. The notice was served according to the affidavit on the 19th day of November 1902, by William Boucher, and filed in the City Clerk's office December 4th, 1902. Also notice to redeem and proof of service, No. 5119, and also No. 5120.

Marked Exhibits D. 2. D. 3. and D. 4.

30 Mr. Heisley: I object your Honor, to the admission of these papers in evidence on the ground that there is no statute in this state which makes this notice and proof evidential, unless the service is proven by producing the person who actually served them, or accounting for his non production. In other words that Mr. Boucher cannot make an ex parte affidavit binding upon us in this matter. Secondly, that the alleged notice attached to the various affidavits does not comply with the statute

40

requiring the purchaser of property at tax sales to give notice to the persons in interest.

Mr. Murphy: I desire to read in the record the following as appears on page 83 of the printed book—

(Reading) “The Court: Do you offer these deeds in evidence? 10

“Mr. Bentley: Yes, I offer these three deeds in evidence and I will specify them as follows:

“A deed from Robert Davis, City Collector of the City of Jersey City, to the Mayor and Aldermen of Jersey City, dated the 24th day of December 1908, affecting parts of lot 1 and 2 in Block 593. 20

“(Admitted and marked Exhibit C. 4.)

“Mr. Bentley: Also deed from Robert Davis, Collector to the Mayor and Aldermen of Jersey City, dated the 24th day of December, 1908, unrecorded, affecting parts of lot 2 in block 593.

“(Admitted in evidence and marked Exhibit C. 5.) 30

“Mr. Murphy: It might be well to state that it has been recorded in the City Clerk’s office.

“Mr. Bentley: Yes. I also offer a deed from Robert Davis, Collector of the City of Jersey City, to the Mayor and Alder-40

men of the City, dated December 24, 1908, and affecting parts of lot 1 and 2 in block 593."

(From testimony of Francis Gormly page 83).

10 "Q. How long have these been in your possession, those three deeds marked C. 4. C. 5 and C. 6?

"A. I presume they have been in our possession since the date of the deed, or shortly afterwards."

20 Mr. Heisley: I object, your Honor, to this offer because while the deeds in question may have been evidential in that suit, it does not follow that they are evidential in this suit, because the court is unable in this suit to determine by this evidence whether these deeds have any evidential force or effect in the matters in controversy in the present suit. The deeds themselves ought to be produced or their contents proven.

30 JAMES J. MURPHY, being duly sworn according to law on behalf of the defendants, testified as follows:

I am the Solicitor for the defendant, the Mayor and Aldermen of Jersey City, and I appeared on behalf of the City in the trial of the case between the same parties before Vice Chancellor Stevenson, the record of which case is in the printed book to which we are referring. I offered in evidence on behalf of the defendant the certificates
40 of sale which were delivered by the City Collector

to the Mayor and Aldermen of Jersey City.

Mr. Heisley: I object to the witness stating his conclusion, unless he has personal knowledge that they were delivered.

Well I offered in evidence the certificates of sale mentioned in the printed book just referred to; and I also examined the deeds which were offered in evidence by Mr. Bentley on page 83 of the record. I examined the certificates of sale and the deeds, and they referred to and included the property in question. **The certificates of sale and the deeds were turned over to the Court as exhibits in the cause, and I have not seen the said certificates of sale or the deeds since. I have made inquiries of the stenographer, of Vice Chancellor Stevenson and also of the Sergeant-at-Arms Mr. Haggerty, in charge of the Chancery Chambers in Jersey City, and have also examined the original papers in that cause, but I have not seen the certificates of sale or the deeds since they were offered in evidence, nor have I been able to locate them.** When we were unable to find the deeds that had been offered in evidence in the other case, I directed the City Collector to issue new deeds, and those deeds I have now before me, and they are as follows: A. Harry Moore, Collector, to the Mayor and Aldermen of Jersey City, dated August 10th, 1912, and of record in the Register's office of Hudson County; and I now desire to offer these three deeds, which include the property in question, in evidence.

Mr. Heisley: I object to the offer upon the ground that even conceding for the sake of argument that the City Collector had authority to make these deeds, these

10 deeds have no binding force or effect against the complainant. I also object upon the ground that under the law there is no authority for a City Collector or his successor to make more than one deed; that if it is true that in 1908 the City Collector made deeds to these defendants for this property, and he then exercised his power, and if those deeds were lost, he could not make subsequent deeds. I also object upon the ground that the deeds of 1908, if they were in existence, are not still in existence, and could not be produced by reasonable search and inquiry.

Deeds offered marked Exhibits D. 5. D. 6. and D. 7.

20 ROBERT QUINLAND, a witness called on behalf of the defendants, being duly sworn according to law, testified as follows:

Direct examination by Mr. Murphy:

Q. Mr. Quinland, what is your business? A. Clerk in the City Comptroller's office.

Q. You have been in the City Comptroller's office how long? A. Five years.

30 Q. Have you got any papers with you that you brought from the Comptroller's office showing any taxes or liens against this property of Mrs. Roe's at the corner of Newark Avenue and Ferris Street? A. Yes, sir.

Q. Just show us what you have got; what is the paper you have got in your hand? A. It reads—

40 Mr. Heisley: I object as the paper speaks for itself.

Q. What is this paper that you have in your hand? A. Well that is really a memorandum or statement to show to the Comptroller that that amount of money has been paid to the City Collector and is applied to these different year's taxes.

Q. A statement made by whom? A. By the Collector.

Q. And it is filed where? A. With the Comptroller. 10

Q. And is it filed in your office as a record? A. Yes, sir; as a record.

Q. You have how many of these statements?

A. We have one for every sale.

Q. No, I mean in regard to this particular property? A. Three of them, one for each parcel.

Q. Is there one statement of that kind for each parcel sold? A. Yes, sir

20

Mr. Murphy: I offer in evidence these three papers taken from the records of the City Comptroller which are receipted bills by the City Collector to the City Comptroller, which the City Comptroller paid to City Collector for taxes on Adjusted Report 85.

Mr. Heisley: I object to the admission 30 of these papers in evidence for the reason that the statute does not make these papers evidential, and that they are self-serving declarations by the defendant and have no binding force or effect upon the complainant, and that they are irrelevant and immaterial.

Papers offered marked Exhibit D. 8. D. 40

9 and D. 10.

Q. Mr. Quinland, have you got any receipted tax bills for this property in question? A. I have.

Q. For what years? A. Well I have from 1892 to 1908 inclusive.

Q. Paid by whom to whom? A. By the City Comptroller to the City Collector, and there is also included some assessments in it.

O. For what year? A. Well, the assessments are for improvements.

Q. During those periods? A. Yes, sir.

By the Court:

Q. On this property of Mrs. Roe's? A. Yes, sir.

Q. How many of these bills are there altogether? A. There are three different sets of bills—a 20 bill for each year on three different lots of property.

Direct continued:

Q. So that there are three bills for each year, one bill on each lot? A. Yes, sir.

Mr. Murphy: I offer these bills in evidence.

30

Mr. Heisley: I object to them on the ground that such papers have no evidential force against the complainant; that they are private paper between persons not including the complainant; and also that they are immaterial because the question in this suit is whether these taxes were ever adjusted and the property sold by the alleged commissioners of adjust-

40

ment. The question is not whether some other outside party, whether this defendant or not, has paid the taxes. The question goes back primarily and solely to whether or not the property was ever sold by virtue of an adjustment proceeding under the Martin Act.

Q. What is the reason, if you know, for the City paying those taxes? A. I believe the law compels the City to do it. 10

Papers admitted in evidence subject to objection.

Marked Exhibit D. 12.

Cross examination by Mr. Heisley:

Q. How long have you been in the Comptroller's office? A. A little over five years. 20

Q. Can you tell me why it is, if the City of Jersey City has been paying taxes upon this property during the years you have just referred to, from '92 to 1908, why it is that during nearly all of those years the City Collector has been sending out tax bills against this very same property to W. W. Gilman? A. I don't know. 30

By Mr. Murphy:

Q. You are not in the City Collector's office?
A. No, sir.

Cross continued:

Q. You are in the Comptroller's office? A. Yes, sir. 40

Q. And you brought bills from the City Collector's office? A. I am paying bills for the City. These are bills paid by the Comptroller to the City Collector, and taken from the files of the Comptroller's office.

Q. You bring these from the Comptroller's office? A. Yes. from the Comptroller's office.

Q. Where is this law with regard to the City paying taxes upon property that it owns? A.
10 Why I think it is part of the Martin Act. That is my general understanding.

Q. You don't refer to any provision of the City charter of Jersey City? A. No, sir; I think it is some part of the act, but I can't say positively as to that, but that is my impression.

Q. You have there similar receipts for other property which the City has bought and paid the taxes for? A. Oh, yes; that is the way every-
20 thing is handled in that way.

ROBERT A. ELLIOTT, being recalled for further examination, testified as follows:

Direct examination by Mr. Murphy:

Q. There has been offered here by Mrs. Roe a notice sent her from the City Collector's office that this property would be sold for taxes; can
30 you explain why that was done? A. Yes.

Q. Now where do you get your books showing the taxes against property in Jersey City? A. From the Tax Assessor's office.

Q. Does the Tax Assessor's office make up the books and send them to your office? A. They do.

Q. Do you know where the Tax Assessor's office gets the names of the persons—the owners of the property? A. Yes, sir.

40 Q. Where? A. In the Court House.

Q. Where in the Court House? A. In the Register's office.

Q. Can you explain from your knowledge why this property was assessed in the name of Gilman, and yet the City had sold it under the Martin Act a number of years ago?

Mr. Heisley: I submit that he cannot state why another man who was the Assessor so assessed the property. 10

By the Court:

Q. Do you mean the assessment was made according to the record title as they found them in the Register's office. A. I understand—

Objected to.

Q. Do you know how the assessment was made of your own knowledge? A. I know what the Assessor did.

Q. What did he do? A. I know they go around and assess the property.

[Mr. Heisley: I object to that unless he knows personally what they do.

(Witness) I have been present when the Assessor assessed property in some parts of the city. 30

Q. How was the assessment made? A. Against the property.

Q. How is the name of the owner obtained? A. Why they get it from the Register's office.

Cross examination by Mr. Heisley:

Q. How do you know they get it from the Register's office? A. Because they have a man who goes up there and gets them.

Q. How do you know? A. I know the man who 40

does it.

Q. Did you see him do it. A. Yes, sir.

Q. Have you seen him making searches to find out the names of the owners of property? A. Yes, sir; I have seen him do it.

Q. If what you say is true that there is a search made at the Register's office to find out the name of the owner of the property, how do you account for the fact that this property has been assessed since '87 in the name of W. W. Gilman when in '87 the title to the property on the record in the Register's office was transferred to Mrs. Roe? A. That must have been an error of some kind.

Q. Well, he didn't search? A. I won't say that.

Q. Well, if he did search he didn't find that? A. I won't say that.

Q. And year after year he went there and searched and made this error every year is that right? A. He wouldn't search the property.

RECESS.

The Complainant calls the Court's attention to the fact that the two leaves in the book produced by Mr. Elliott and containing this property are loose leaves in the book.

30 Mr. Heisley: With the exception that I desire to obtain an exemplified copy of the judgment, if there be one in the Circuit Court of Sullivan County New York confirming the report of the Administrator of Winthrop W. Gilman which I have offered in evidence, the complainant rests.

Mr. Murphy: The defendant rests.

40 Adjourned for argument until Monday,
May 5 1912.

MEMORANDA OF CHARLES J. ROE, ADVISORY MASTER.

IN CHANCERY OF NEW JERSEY.

Between)		
)		
)		
ANNIE D. ROE	)		10
Complainant	)	ON BILL, &c.	
	)	MEMORANDA	
and	)	OF CHARLES J.	
	)	ROE, ADVISORY	
THE MAYOR AND AL-	)	MASTER.	
DERMEN OF JERSEY)		
CITY, et als.)		
Defendants)		
	)		20

Wilbur A. Heisley Attorney for the Comp't.

James J. Murphy, Attorney for the Def't.

The bill in this case is filed for the purpose of removing a cloud on the title of complainant's land. The allegation is that the complainant bought the land in question in 1887 and is in peaceful possession of the same; that her title is clouded by three deeds made by the Collector of Jersey City to the Jersey City and dated August thirtieth, nineteen hundred and twelve and recorded in the Hudson County Register's office; that these deeds are based upon a pretended tax sale made in 1895, under an alleged adjustment made by commissioners under the Martin Act, and she insists that the proceedings of these commissioners were irregular and void there being no

record of the appointment of the commissioners, of the application for the appointment of commissioners, no record of the sale; no proof of the surrender of the certificate.

The difficulty that I find in this case arises from the fact that the complainant, in 1906 filed a bill against the defendant in this case alleging substantially the same facts as contained in the present bill, and praying that these proceedings may
10 be declared null and void, and asking that if any deed or deeds for the said land have been executed that the same might be decreed null and void and delivered up to be canceled, and that all other proceedings had or taken thereunder should be adjudged null and void, and that the defendants be restrained from taking any steps toward perfecting any supposed claim or title to said land and premises.

20 This case was heard in the Court of Chancery on pleadings and proof and a decree made by the Court dismissing the bill. This decree was affirmed by the Court of Errors and Appeals, and the opinion reported in 79 N. J. Eq. page 645; that the reason given by the Court of Errors and Appeals for the dismissal of said bill, was "that the relief sought by the complainant was not one which the Court of Equity could grant, assuming
30 it to be true that the proceedings which were attacked, were invalid, her sole remedy was to apply for certiorari to the Supreme Court", and "the fact that the complainant had waited so long before applying to the courts of law as to be barred from her relief by certiorari, could not vest in the Court of Chancery the jurisdiction to grant her relief which she sought."

The deeds which she now complains of as a
40 cloud upon her title, are the deeds delivered un-

der that proceeding, after the decree dismissing the bill for the complainant, was entered.

This adjudication places the case before us squarely within the principles established in **Jersey City v. Lembeck, 31, N. J. Ep. 25**, which held that the act of 1870, to "Quiet Title" was not meant to be operative when a party in possession of lands has the means by the ordinary proceedings at law of testing the adverse claim that he wished to have settled. 10

That the complainant's mode of relief was by certiorari by which he can get adequate relief at law, and in the language of the court, "if the party in possession of land can throw a hostile claim into a court of law and thus get rid of a cloud overhanging his estate, why should he not do it? and what reason is there to say that this act was designed to help a party who was in no straight but of his own choosings." 20

Under the principles enunciated by this decision the court of equity is without power to adjudicate on any of the questions leading up to the delivery of the deeds which are now complained of by the complainant as being clouds upon her title, unless it be that the court of equity should acquire a jurisdiction independent of these considerations.

In this case the application of this principle is 30 further emphasized by the provisions of the Act under which the proceedings resulting in these deeds were had, was made. (Section 312 Comp. Statutes 5213.) where it is expressly enacted that "the title shall not fail or be defeated by reason of any irregularity or formal defect in the procedure taken under this act, upon which the sale shall have been made or the title conveyed as aforesaid, or by reason of any illegality in affix-40

ing and adjusting taxes, assessments and liens to enforce which said sales was made or in any proceeding for collecting the same.'

In view of the fact that no attack has been made upon the deeds as such, but only upon the facts leading up to the making of the deeds, I fail to see any equitable grounds for invoking the aid of this court. In other words; there is no independent equitable relief sought other than the state of facts already adjudicated upon by the Court of Errors and Appeals in which they decided that it was out of the power of a court of equity to give relief.

If the proceedings complained of had been decided by a court of law to be void and irregular, the deeds now complained of would have been nullities, and I think a court of equity could then have given relief by clearing the complainant's title of deeds that had been executed and recorded under such illegal proceedings, under the principle laid down in **Boogert vs. City of Elizabeth, 12 C. E. Greene, 569**, but not until the proceedings which are now alleged to be illegal, were adjudged to be so, by a court of law.

The deeds of the defendant now complained of must be considered evidences of title as against the complainant for lack of jurisdiction in this court to adjudge upon the legality of the proceedings upon which they are found.

In view of these considerations I shall advise a decree dismissing the bill.

IN CHANCERY OF NEW JERSEY

Filed, June 27, 1913.

Between)	
)	
ANNIE D. ROE,)	
)	
Complainant)	
	)	10
And	)	FINAL DECREE.
	)	ON BILL, ETC.
THE MAYOR and ALDER-)	
MEN OF JERSEY CITY,)	
)	
Defendants.)	
)	

This matter coming on to be heard in the presence of Wilbur A. Heisley, Esq., of counsel with the complainant, and James J. Murphy, Esq., of counsel with the defendant, upon the bill of complaint and the answer of the defendant, and the proofs offered on behalf of both sides having been taken, and argument of counsel having been heard; and it appearing to the Court the complainant is not entitled to any relief in this Court.

It is on this twentieth day of June, A. D., nineteen hundred and thirteen, on motion of James J. Murphy, solicitor for the defendant, by his Honor Edwin Robert Walker, Chancellor of the State of New Jersey, ordered, adjudged and decreed, and the said Chancellor doth by virtue of the power and authority of this Court, Order, adjudge and decree, that the bill of complaint filed in this cause be dismissed.

AND IT IS FURTHER ORDERED, ADJUDGED AND DECREED, that the complainant-40

ant do pay to the said defendant or to its solicitor the costs of this suit to be taxed, and that execution issue therefore, according to the practice of this Court.

Respectfully advised,

CHARLES J. ROE,

10 Advisory Master.

E. R. WALKER,
C.

A true copy,

SAMUEL K. ROBBINS,

Clerk.

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30

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NOTICE OF APPEAL

89

Filed, June 30, 1913.

NOTICE OF APPEAL, FILED JUNE 30, 1913.

IN CHANCERY OF NEW JERSEY.

ANNIE D. ROE, et als.,)	
)	
Complainant-Appellants,	)	10
)	
And)	
	)	ON BILL TO
	)	QUIET TITLE
THE MAYOR and ALDER-	)	NOTICE OF
MEN OF JERSEY CITY,	)	APPEAL.
et als.,)	
)	
Defendant-Respondents.)	
	)	20

TO JOHN BENTLEY, ESQ.,

Take notice that the complainant herein appeals from the final decree made in this court in the above stated cause on the twentieth day of June, nineteen hundred and thirteen, and said decree was filed on the twenty-eighth day of June, nineteen hundred and thirteen, complainant ap-³⁰peals from the whole and every part thereof, the said decree being erroneously made, to the Court of Errors and Appeals in the last resort in all cases.

June 30th, 1913.

ANNIE D. ROE,

In person. 40

90

NOTICE OF APPEAL

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

ANNIE D. ROE,
In person.

A true copy,

10 SAMUEL K. ROBBINS,
Clerk.

20

30

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Filed, July 18, 1912.

PETITION OF APPEAL, FILED JULY 18, 1912.

NEW JERSEY COURT OF ERRORS AND
APPEALS.

Between)	
	)	10
ANNIE D. ROE, et als.,)	
)	
Complainant-Appellants,)	
)	
And	)	PETITION ON
	)	APPEAL.
THE MAYOR and ALDER-)	
	)	20
MEN OF JERSEY CITY,)	
)	
et als.,)	
)	
Defendant-Respondents.)	
)	

To the Honorable the Court of Errors and Appeals in the last resort in all causes: 30

The petition of Annie D. Roe, and Louise Gable, the appellants in the above-stated cause, respectfully show that they find themselves much aggrieved by a final decree made in this cause in said Court by his Honor Edwin Robert Walker, Chancellor of New Jersey, on the twentieth day of June, nineteen hundred and thirteen, and filed in said Court on the twenty-eighth day of June, nineteen hundred and thirteen, and respectfully 40

advised by Charles J. Roe, special master, before whom the same was referred by the Chancellor. to hear and advise what decree should be made in the said above-entitled cause, in this respect, "to wit: that the complainants are not entitled to any relief in this Court that the bill of complaint be dismissed and the complainants do pay costs to be taxed and that execution issue therefor and your petitioners humbly appeal from all and each and every part of said decree made as afore-said upon the following grounds:

1. Because there is absolutely no evidence in the case upon which the Court below could have possibly predicated a judgment against the complainant and in favor of the defendants.
2. The evidence testimony and exhibits show meritorious right for relief affirmatively in said complainant and against the defendants.
- 20 3. The evidence submitted and heard by the said master should have been filed.
4. The bill of complaint was properly filed, to quit title under the act of March 2, 1870, P. L. 1870, P. 20, the evidence supported the allegations of the bill but the decree complained of violates the rights of complainant and she is denied the right and benefits of said act, and that the said peaceful possession of said complainant established by said preponderance of evidence.
- 30 5. Said decree so advised is erroneous it being contrary to Equity and the laws of New Jersey.
6. Said decree is erroneous it being contrary to the Constitution of this State "to wit: Property shall not be taken without due process of law or deny to any person equal protection of the laws, and in violation of the Constitution of the United States, Article XIV Section 1, as above

stated.

Your petitioners therefore pray that the said decree so advised and made by said Chancellor may be in the particulars aforesaid and in all other respects reversed set aside and for nothing holding. And that your petitioners may have such further relief in the premises as to this Honorable Court shall seem meet.

WILLIAM A. HEISLEY,

10

Sol. for Compl't-Appellant.

A true copy,

DAVID S. CRATER,

Secretary of State.

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NOTICE TO RESPONDANT TO FURNISH EXHIBITS FOR PRINTING, FILED OCT. 16, 1913.

IN CHANCERY OF NEW JERSEY

)	
	Between)	
10	ANNIE D. ROE, et als.,	)	ON BILL TO
	Complainants,	)	QUIT TITLE,
		)	ETC.
	And)	—
	THE MAYOR and ALDER-	)	Notice to furnish
	MEN OF JERSEY CITY,	)	Exhibits for print-
20		)	ing in appeal in
	Defendants.	)	the above matter.
)	

To John Bentley, Esq., Attorney for Defendants.

Please take notice that I am having prepared the printed case of appeal in the above entitled cause, in accordance with my notice of appeal heretofore served upon you, and I am desirous of obtaining copies of the Exhibits of Defendants, offered in evidence in the trial of the above entitled cause.

Demand is, therefore, made upon you that you furnish me forthwith the copies of said exhibits or the originals, so the same be included in the printed case.

NOTICE TO RESPONDENT 95

ANNIE D. ROE,

In person.

6 Ferris St., Jersey City.

Dated October 14th, 1913.

Service acknowledged,

10

JOHN BENTLEY,

Oct. 15, 1913.

A true copy,

SAMUEL K. ROBBINS,

Clerk.

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STIPULATION, FILED OCT. 18, 1913.

NEW JERSEY COURT OF ERRORS AND APPEALS.

	Between)
)
	ANNIE D. ROE, et als.,)
)
10	Complainant-Appellants,)
)
	And)
		) ON APPEAL, Etc.
	THE MAYOR and ALDER-	) STIPULATION.
)
	MEN OF JERSEY CITY,)
)
	et als.,)
)
20	Defendant-Respondents.)
)

It is hereby agreed and consented, that so much of the case above stated, that is not material to the Defendants, and Respondents, need not be printed, "to wit: "all notices, and motions, complainants objections to defendants answer and that the Exhibits may be shorten to the extent, of not jeopardizing any of the Defendants and 30 Respondents, rights.

Dated Oct. 16, 1913.

JOHN BENTLEY,

Attorney for the Mayor and Aldermen
of Jersey City.

A true copy,

DAVID S. CRATER,

40 Secretary of State.

EXHIBIT C. 1. DEED, DATED JUNE 24, 1887.

Deed from Helen Tuttle, et als., heirs at law of W. W. Gilman to Annie D. Roe, dated June 24th, 1887. Recorded in Hudson County, June 30th, 1887, book 439, page 480.

EXHIBIT C. 2.

TO ANNIE D. ROE,

You are hereby notified that at a public sale¹⁰ made by the City Collector of Jersey City on the 16th day of April, 1895 I purchased for the sum of Two thousand, six hundred and eleven dollars and thirty cents ALL the land and real estate situate in Jersey City, in the County of Hudson and State of New Jersey, fronting on..... which is laid down and designated as lot pt. 1 in block number 59 upon an assessment map annexed to a report number 85 made by the "Commission-20
ers of Adjustment" appointed in and for said City by the Circuit Court of the County of Hudson a certified copy of which report and map was filed in the office of the City Collector of Jersey City, on the 30th day of August, 1892, said report and map and said sale made pursuant to the provisions of an act of the Legislature of New Jersey, passed March 30th, 1886, entitled:

And you are further notified that you appear to³⁰ have an estate or interest in said land and real estate, and unless the said land and real estate shall be redeemed, as provided in said acts, before the expiration of six months from and after the service hereof, a deed for the same will be given conveying to the purchaser the fee simple of said land and real estate according to the provisions of the said acts.

Dated Jersey City, N. J., July 10th, 1902.

EXHIBITS

M. M. FAGAN, Mayor.

Purchaser.

Sale No. 511, Lot 1, Block No. fronting on
Newark Ave., in Jersey City, N. J. Purchaser.
Notice to Redeem.

EXHIBIT C. 3.

Deed dated January 29th, 1858.

- 10 George H. Harrington and Wife to Daniel
Loughbridge. Recorded January 30th, 1858 in
the Register's office, County of Hudson, State of
New Jersey, Book 63, page 651 &c.

EXHIBIT C. 4.

Dated April 6th, 1871.

- Deed to W. W. Gilman, from Andrew Mount,
Sheriff of Hudson County. Dated April 6th, 1871.
Recorded in Register's office, County of Hudson,
20 State of New Jersey, Book 226, page 146 &c., on
April 22d, 1871.

EXHIBIT C. 5.

(Dated January 10th, 1872.

- Tax Deed from Davit M. Demarest and wife to
W. W. Gilman. Record 31, day, Dec. 1873, Book
265, page 467, Hudson County; and recites in
parts "to wit" being the same property bought
30 by said Davit M. Demarest at a tax sale of late
City of Hudson on the 4th day of May, 1869, and
the "declarations of sale" for said sale filed in
the County Clerk's office of said County of Hud-
son, on the fourth day of September, 1871.

EXHIBIT C. 6.

City Collector's Office, City Hall.

Jersey City Hall, May, 1912.

- 40 "A. HARRY MOORE,

City Collector.

Dear Sir:

"I beg to advise you that your property, according to our books is eligible for the coming tax sale, and will be sold unless the arrears are paid at once.

"As the lists are now being prepared you will avoid considerable expense by giving this notice immediate attention.

"Very respectfully,

"A. HARRY MOORE,

City Collector.

10

"Name W. W. Gilman,

"Address, 6 Ferris St.

"Block 593.

"Lot 1-2c Newark Avenue.

1a, 2a.

"1909-10."

20

EXHIBIT C. 7-8-9.

Tax Bills to W. W. Gilman from 1892 to 1911.

By consent a part is printed only.

BRING THIS BILL WITH YOU WHEN PAYMENT IS MADE.

All persons paying taxes or assessments, will examine there bills and the City Maps, to see that they are paying upon the right property, as the City will not be responsible for or return money 30 paid in error on the wrong property.

COLLECTION DEPARTMENT, ROOM 1

CITY HALL.

District 4

Folio 58-148 &c.

Mr. W. W. Gilman. To The Mayor and Aldermen of Jersey City, Dr., for the annual tax due in November, 1892-93-94-95-96-97-98-99-1900-1901 2-3-4-5-6-7-8-9-1910-1911-1912.

40

Assessed for State School, County and City purposes.

Lots 1 and 2 and part of lots 1 and 2. Street No. 6 Ferris St., and 714-716 Newark Avenue.

City Clerks:—Patrick H. O'Neill, 1892, Edward Fry, 1893; Robert Davis, 1894-1895; Edward Fry, 1896-1897; Robert Davis, 1897-1898; Edward Fry, 1899 and A. Harry Moore, 1911, &c.

10

ENVELOPE EXHIBIT C-12.

Return in 5 days, City Collector, City Hall, Jersey City, N. J., W. W. Gilman, 6 Ferris Street, City. Occupant please give to Owner or Agent.

EXHIBIT C. 13.

United States of America,)
 State of New Jersey)ss.
 County of Hudson)

20 I, John F. Crosby, Clerk of the County of Hudson, aforesaid and also Clerk of the Circuit Court and Court of Common Pleas holden therein the same being a court of record with a seal.

Do Hereby Certify, that I have searched the files and minutes of my office and I do not find any record of any application to the Circuit Court by the Board of Aldermen of Jersey City, with the concurrence of the Board of Finance of said City, for the appointment of Commissioners of adjustment for the said City of Jersey City, as purported to have been made by the Circuit Court aforesaid as required by Section I, of the Laws of New Jersey, approved March 30, 1886. (Martin Act.)

30 In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court and County at Jersey City, this third day of April, 1913.

40 (Seal)

JOHN F. CROSBY,

Clerk aforesaid.

EXHIBIT C. 14.

United States of America,)
 State of New Jersey)ss.
 County of Hudson)

I, John F. Crosby, Clerk of the County of Hudson, aforesaid, and also Clerk of the Circuit Court and Court of Common Pleas holden therein the same being a Court of Record with a seal. 10

Do Hereby Certify, that I do not find remaining of the files of my office any appointment of Edward F. C. Young, Abram Q. Garretson and William Muirheid, as Commissioners of adjustment for Jersey City, New Jersey, as purported to have been made by the Circuit Court aforesaid as required by Section 1, Article 1, of Chapter 112, Sessions Laws of New Jersey, approved, March 30, 1886. 20

In Testimony Whereof, I have hereinto set my hand and affixed the seal of said Courts and said County, at Jersey City, this twenty-eight day of March, 1912.

(Seal)

JOHN F. CROSBY,

Clerk aforesaid.

EXHIBIT C. 15.

United States of America,) 30
 State of New Jersey)ss.
 County of Hudson)

I, John F. Crosby, Clerk of the County of Hudson, aforesaid, and also Clerk of the Circuit Court and Court of Common Pleas, holden therein the same being a court of record with a seal.

Do Hereby Certify, that I have searched the records, minutes and files of my office for rule or order of confirmation or report No. 85 of the Commissioners of Adjustment of the Circuit Court of 40

Jersey City, New Jersey from August 1st, to January 1st, 1893, and I do not find the same to be filed or recorded in my office.

In Testimony Whereof I have hereunto set my hand and affixed the seal of said Court and County at Jersey City, this twenty-eight day of March 1912.

(Seal)

JOHN F. CROSBY,

Clerk aforesaid.

10

EXHIBIT C. 16.

United States of America,)
 State of New Jersey)ss.
 County of Hudson)

I, John F. Crosby, Clerk of the County of Hudson aforesaid, and also Clerk of Circuit Court and Court of Common Pleas holden therein the same being a court of record with a seal.

20 Do Hereby Certify, that I have searched the minutes and files of my office for an order or notice made by the Hudson Circuit Court, of the time and place of hearing any objections that may be made to the assessments charges or liens fixed and certified by the Commissioners of Adjustment for Jersey City, to report No. 85 as made by them and filed in my office on the 30th day of August 1892, and do not find the same to be filed or recorded in my office.

30

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court and County at Jersey City, this third day of April, 1913.

(Seal)

JOHN F. CROSBY,

Clerk aforesaid.

In the Matter of the Estate of Winthrop W. Gilman, Exemplification of Account of Alfred Gilman, administrator.

40

EXHIBIT C. 17.

Note—By consent only a part of copy is printed
ed.

TO THE PEOPLE OF THE STATE OF
NEW YORK.

By the grace of God Free and Independent.
To all to whom these presents shall come or
may concern.

10

20

30

40

GREETING:

KNOW YE, That we, having examined the records and files in the office of the Surrogate of the County of Sullivan, and said State, do find there remaining a certain part of an account of Alfred Gilman, Administrator of Winthrop W. Gilman, deceased, in the words and figures following, to wit:

10 In the matter of the judicial settlement of the account of Alfred Gilman, Administrator of the goods and chattels and credits of Winthrop W. Gilman, deceased.

[TO THE SURROGATE'S COURT OF THE
COUNTY OF SULLIVAN.

I, Alfred Gilman of the County of Sullivan, do render the following account of my proceedings as Administrator of W. W. Gilman, deceased, on
20 the 19th day of December, A. D., 1885. Letters of Administration were issued to me.

SCHEDULE "A."

Hereto annexed contains a statement of all the property contained in said inventory sold by me at public or private sale, * * * * also contains a statement of all debts due the said estate and mention in said inventory, * * * * and also for all interest or moneys received by me for which I
30 am legally accountable.

Also a list of all debts collected by me, which list for convenience is placed first.

DEBTS COLLECTED BY ME.

Acct. Thomas Aldridge, by cash, house rents, Jersey City	\$ 50.00
Acct. Recptd. Tax Bills, W. W. Gilman Property, Jersey City.....	2167.13

ALFRED GILMAN.

40 All which we have caused by these presents to

be exemplified, and the seal of our said Surrogate's Court to be hereunto affixed.

Witness GEORGE H. SMITH, at the Village of Monticello in said County, the 27th day of June in the Year of our Lord, one thousand, nine hundred and five.

(Seal)

WM. H. HOLMES,

Clerk of the Surrogate Court. 10

State of New York,)

County of Sullivan.)

ss.

I, GEORGE H. SMITH, Surrogate of our said County, and sole presiding Magistrate of the Surrogate's Court, do hereby certify that William H. Holmes whose name is subscribed to the preced-20
ing exemplification, is the Clerk of the said Surrogate's Court of the County of Sullivan, and that full faith and credit are due to his official acts. I further certify, that the seal affixed to the exemplification is the seal of our said Surrogate's Court, and that the attestation thereof is in due form and according to the form of attestation used in this State.

Dated June 27, 1905.

30

GEO. H. SMITH,

Surrogate.

State of New York,)

County of Sullivan.)

ss.

I, WILLIAM H. HOLMES, Clerk of the Surro-40

gate's Court of the County of Sullivan, do hereby certify that George H. Smith whose name is subscribed to the preceding Certificate, is the sole presiding Magistrate of the Surrogate's Court of the County of Sullivan, duly elected, sworn and qualified, and that the signature of said Magistrate of said certificate is genuine.

10 In Testimony whereof, I have hereunto set my hand and affixed the Seal of said Court, at Monticello, aforesaid, this 27th day of June, 1905.

(Seal) |

WM. H. HOLMES,

Clerk of the Surrogate's Court.

20

30

40

Block No.	Lot No.	TAXES Am't Assessed	Water rents	Am't Assessed	Assessments	Am't Assessed
593	1-2	1869		9.00		
		1870		8.11		
		1871		9.84	Newark Ave. Imp.	4.00
		1872		8.10		
		1873		9.00		
		1874		7.11	Hoboken Ave. Imp.	4.50
		1875		8.04		
		1876		7.74		
		1877		7.62	Newark Ave. Sewer	10.00
		1878		7.08		
		1879		8.40		
		1880		8.94	Newark Ace. Imp.	10.99
		1881		8.70		
		1882		8.82		
		1883		9.84		
		1884		8.94		
		1885		8.76		
		1886		8.82		
		1887		8.64		
		1888		128.30	1889	38.35
		1889		114.65	1890	36.20
		1890		102.55	1891	34.00
		1891		104.40	1892	31.51
				<u>611.40</u>		<u>140.06</u>
						<u>29.49</u>

REPORT 85.

Those figures on these 3 pages show all that the Report shows or contains except a map and other properties not concerning this litigation.

Block No.	Lot No.	TAXES Am't Assessed	Water rents	Am't Assessed	Assessments	Am't Assessed
593	2	1869		48.70		
		1870		48.70		
		1871		47.88		
		1872		59.04		
		1873		48.60		
		1874	1869	54.00	16.50	Newark
		1875	1870	48.24	14.50	Ave. Impt. 10.00
		1876	1888	46.44	25.40	Hoboken
		1877	1889	45.72	30.65	Ave. Impt. 8.00
		1878	1890	42.48	25.90	Newark
		1879	1891	50.40	24.40	Ave. sewer 95.70
		1880	1892	53.64	22.62	
		1881		52.20		Newark
		1882		52.92		Ave. Impt. 100.00
		1883		59.04		
		1884		53.64		
		1885		52.56		
		1886		52.92		
		1887		51.84		
		1888		53.64		
		1889		50.40		
		1890		47.52		
		1891		51.12		
				<u>1171.64</u>	<u>159.97</u>	<u>213.70</u>

Also lot 1-2 is also included.

Total 1545.31

Block No.	Lot No.	TAXES Am't Assessed	Water rents	Am't Assessed	Assessments	Am't Assessed
593	1	1869 59.50	1869 16.50			
		1870 59.50	1870 14.50			
		1871 58.52	1872 17.00		Newark Ave. sewer	95.70
		1872 72.16	1873 28.00			
		1873 59.40	1874 28.00			
		1874 66.00	1875 28.00		Hoboken Ave. Imp.	8.00
		1875 58.96	1876 28.00			
		1876 56.70	1877 22.00			
		1877 55.88	1878 22.00		Newark Ave. Imp.	10.00
		1878 51.92	1879 22.00			
		1879 61.60	1880 21.40			
		1880 65.56	1881 21.40		Newark Ave. Imp.	120.00
		1881 63.80	1882 21.40			
		1882 64.68	1883 21.40			
		1883 72.16	1884 21.40			
		1884 65.56	1885 21.40			
		1885 64.24	1886 21.40			
		1886 64.68	1887 21.40			
		1887 63.36	1888 27.40			
		1888 59.60	1889 29.40			
		1889 61.60	1890 28.40			
		1890 58.08	1891 28.40			
		1891 62.48	1892 28.40			
		1426.00		539.20		233.70
					Total	2198.90

Item	Quantity	Unit Price	Total
101	1	1.00	1.00
102	1	1.00	1.00
103	1	1.00	1.00
104	1	1.00	1.00
105	1	1.00	1.00
106	1	1.00	1.00
107	1	1.00	1.00
108	1	1.00	1.00
109	1	1.00	1.00
110	1	1.00	1.00
111	1	1.00	1.00
112	1	1.00	1.00
113	1	1.00	1.00
114	1	1.00	1.00
115	1	1.00	1.00
116	1	1.00	1.00
117	1	1.00	1.00
118	1	1.00	1.00
119	1	1.00	1.00
120	1	1.00	1.00
121	1	1.00	1.00
122	1	1.00	1.00
123	1	1.00	1.00
124	1	1.00	1.00
125	1	1.00	1.00
126	1	1.00	1.00
127	1	1.00	1.00
128	1	1.00	1.00
129	1	1.00	1.00
130	1	1.00	1.00
131	1	1.00	1.00
132	1	1.00	1.00
133	1	1.00	1.00
134	1	1.00	1.00
135	1	1.00	1.00
136	1	1.00	1.00
137	1	1.00	1.00
138	1	1.00	1.00
139	1	1.00	1.00
140	1	1.00	1.00
141	1	1.00	1.00
142	1	1.00	1.00
143	1	1.00	1.00
144	1	1.00	1.00
145	1	1.00	1.00
146	1	1.00	1.00
147	1	1.00	1.00
148	1	1.00	1.00
149	1	1.00	1.00
150	1	1.00	1.00
151	1	1.00	1.00
152	1	1.00	1.00
153	1	1.00	1.00
154	1	1.00	1.00
155	1	1.00	1.00
156	1	1.00	1.00
157	1	1.00	1.00
158	1	1.00	1.00
159	1	1.00	1.00
160	1	1.00	1.00
161	1	1.00	1.00
162	1	1.00	1.00
163	1	1.00	1.00
164	1	1.00	1.00
165	1	1.00	1.00
166	1	1.00	1.00
167	1	1.00	1.00
168	1	1.00	1.00
169	1	1.00	1.00
170	1	1.00	1.00
171	1	1.00	1.00
172	1	1.00	1.00
173	1	1.00	1.00
174	1	1.00	1.00
175	1	1.00	1.00
176	1	1.00	1.00
177	1	1.00	1.00
178	1	1.00	1.00
179	1	1.00	1.00
180	1	1.00	1.00
181	1	1.00	1.00
182	1	1.00	1.00
183	1	1.00	1.00
184	1	1.00	1.00
185	1	1.00	1.00
186	1	1.00	1.00
187	1	1.00	1.00
188	1	1.00	1.00
189	1	1.00	1.00
190	1	1.00	1.00
191	1	1.00	1.00
192	1	1.00	1.00
193	1	1.00	1.00
194	1	1.00	1.00
195	1	1.00	1.00
196	1	1.00	1.00
197	1	1.00	1.00
198	1	1.00	1.00
199	1	1.00	1.00
200	1	1.00	1.00

New Jersey State Library

NEW JERSEY COURT OF ERRORS
AND APPEALS

)	
Between)	
ANNIE D. ROE,)	
Complainant-Appellant,	)	On Bill to
	)	Quiet Title.
vs.	)	Appellant 10
	)	Brief
THE MAYOR AND ALDER-)	
MEN OF JERSEY CITY,)	
Defendants-Respondants.)	
)	

First:—The evidence shows that Mrs. Roe, purchased this property by recorded deed, in 1887, it had been previously owned by Gilman, from 1872, to 1875 and from 1885 to 1887, was owned 20 by the heirs of Gilman, and from 1858 to 1872, was owned and in the possession of Lockbridge, See Ex. C. 3-4 P. 98 and Deed to Roe in 1887, Ex. C. I. P. 97. The taxes now being litigated are the taxes of Gilman and Lockbridge, from 1869 to 1892. See P. 107-8-9, and during all these years there was no sale by the city of the property.

The City Charter provides P. 122, Sec. 45, that 30 the City Collector shall Sell on the First Monday in June in each year, all the real estate belonging to the delinquent tax payers; xxx, the City, does not claim it sold during said years.

But the defendants claim, altho the record is barren of proof that on the 23d, of July 1887 Commissioners were appointed by the Hudson County Circuit Court, under the (Martin Act) to 40

Adjust alleged arrears of taxes; than on Aug. 30, 1892, those Commissioners filed a report, No. 85, of the adjustment of these taxes, with the Clerk of the Circuit Court; that the said Report was Confirmed by said Judge of said Court on Aug. 30, 1892; that on April 16th, 1895 a part of said property was sold, and on Oct. 8th, 1895 the balance of said property was sold under said Adjustment and Report No. 85 and that said
 10 adjustment and report covered all the years from 1869 to 1892.

Second—The validity of these alleged proceedings instituted for the purpose of taking property is not to be presumed. 16 Cyc, 1076 to 1079 particularly 1078.

An inspection of the records and minutes of
 20 the Circuit Court show jurisdictional and essential defects as follows:

A. No application for the appointment of commissioners as required by Section 1, page 149, P. L. 1886. See Exhibit 13 and 14 for complainant, page 100.

B. No appointment of commissioners.

30 C. No proof of the time and place of hearing of objections to assessments made by commissioners. See Exhibit 16, for complainant, page 102, and P. L. 1888, page 529.

D. No proof of Order of Confirmation of commissioners' report. See complainant's Exhibit 15, page 101; also P. L. 1888, page 579.

40 E. No sale by the commissioners.

—The Complainant seeing her three pieces of property advertised for sale, on the 16th of April 1895 under the alleged proceedings of said Commissioners, attended the sale and remained until the sale was closed; her property was not sold, or offered for sale; she asked the person in charge of the sale why this property was not sold or offered for sale, and was informed that because the two properties on Newark avenue, had been adjusted as improved property, and the houses had subsequently been totally destroyed by fire, the city was in doubt as to its right to make a sale; the said sale was not adjourned nor does the records of the City show adjournment. 10

—Afterwards, on October 8, 1895, the City advertised in the public press one portion of this property, being the house and lot on Ferris street, would be sold on said date, under said alleged proceedings; that at the designated time the Complainant attended and remained at said sale, until it closed, but the property was not put up or offered for sale, and at that time the Complainant asked the person in charge why this property was not sold pursuant to the advertisement, he replied because it was crossed off his schedule, "and that she had better ask the City Clerk." This sale was not adjourned and the Records of the City absolutely fail to show any evidence of any adjournment. Those are the only two advertisements or attempts that ever came to the notice of the Complainant, and the records of this case fail to show any other advertisements of sale. 20 30

See testimony of Annie D. Roe, P. 49, the Defendants did not deny or dispute this testimony. And yet these are the two occasions upon which 40

the City Claims it sold this property, and by which it claims to have acquired title.

10 Third:—The evidence shows that since the pretended sales, the city has annually notified the Complainant to pay taxes, clearly indicating that the City itself, did not think itself the owner of the property, the last one being sent May 12th, 1912, and recites in part: “I beg to advise you that your property according to our books is eligible for the coming tax sale, and will be sold unless the arrearages are paid at once. As the list is now being prepared, you will avoid considerable expense by giving this your immediate attention. Very respectfully, A. Harry Moore, City Collector, Name W. W. Gilman. See page 51.

20 Not one of those letters refers to any tax sale or notice to redeem. Harry Moore is the City Collector who made the three deeds to the property three months later, and which are the subject of this suit.

30 —Taxes are presumed to be paid after 20 years, 30 Cyc. page 1277-3, Cyc. 1167. **Complainant filed her bill under the Act to quiet title. The Advisory Master decided adversely to her upon the bare ground that in his judgement, the Court of Errors, in the Case of Jersey City vs. Lembeck, 31 New Jersey Equity Report, P. 255, and in the case of this complainant, 79 New Jersey Equity, P. 645, ^{had} decided that her relief must be sought by certiorari.**

40 From this opinion, we respectfully dissent, the latter case, it is true ~~from~~ the Court on page 646 says: “Assuming it to be true that the proceedings which she attacks were invalid, her sole

remedy was to apply for a certiorari to the Supreme Court." As an abstract proposition, it must be true that where by reason of an irregularity or something else which makes the proceedings invalid, and where the Supreme Court can give adequate relief, one must apply to that Court, and not burden the Court of Equity. In the case of *Jersey City vs. Lembeck*, the only thing alleged, see top of page 263, "was that the Commissioners omitted to state in their report, an incident essential to its validity; that is to say, they did not state "the amount assessed on the property owners for benefits, were not beyond the amount of the benefits received." The substance of the decision in the *Lembeck* case, is that ~~for~~ irregularities consisting in the failure to observe one essential to the validity of the proceedings does not give the Court of Chancery jurisdiction, and one of the reasons assigned for the refusing to grant her aid, see page 270 was that the Complainant, if guilty of laches in applying for certiorari, would not be justified in coming to the Court of Equity..

At the botton of page 271, the Chief Justice instances by negation, a class of cases where equitable relief could be obtained, and also distinctly indorses *Bogert vs. City of Elizabeth*, 12 C. E. Green, P. 568 in which the proceedings were upheld in equity "where the pretended lien was a conspicuous nullity" "**Conspicuous Nullity**" may arise from a number of instances. In the *Bogert* case it happened to arise from the Act being unconstitutional, and yet, it may be observed in passing that a writ of certiorari will issue to set aside proceedings upon an unconstitutional law. In any case where there is a remedy by certiorari, can it be said there shall be no remedy 40

in equity?

Fourth:—It depends upon the **adequacy of the remedy**, and incidentally, without regard perhaps to the adequacy, whether the proceedings set up in support of an unjust claim, constitute “**a Conspicuous Nullity.**”

- 10 Again it is to be observed, at the bottom of page 262 of the Lembeck case, court says in assigning a reason why the proceedings should not be entertained in equity, “Nor was it pretended that the Commissioners, whose conduct was overhauled, **were acting in the absence of due statutory authority.** In this case, that is just exactly what we claim.

20 Again, the fact that a remedy may exist at law, does not necessarily deprive a court of Equity of Jurisdiction, as is evidenced by the title of the Act to quiet title, which makes as one of the prerequisites to the filing of a bill in equity, “that no suit shall be pending to enforce or test the validity of such title, claim,” inferentially saying that there may be a suit in some other Jurisdiction pending.

- 30 In case at bar, the City shows an entire absence of legal proceeding amounting to a “**Conspicuous Nullity.**”

40 Dragging the alleged proceedings along from 1887, down to the recording of the alleged deeds in Aug. 1913 making claim against this property through all those years, not regularly, but spasmodically; threatening to sell her property, but never selling it; but claiming to own this property and 18 years after an alleged sale in 1895,

the City recods deeds, but take no measures at all to enforce its claim to possession. What the City has done by the alleged proceedings and recording the deeds, is merely to **assert** title. But has done nothing to enforce its alleged claim.

It may be said that she still has her remedy by certiorari, the two years have not expired subsequent to the recording of the deeds as provided by "**Supplement P. L. 1892, P. 430, Sec. 2.**" No writ of certiorari shall be allowed * * * or to set aside any deed * * * or to recover possession * * * after the expiration of two years from the Execution of such deed." The deed is dated August 10, 1912. I respectfully insist this is not of weight in this case, because:—

First:—The proceedings are a "**conspicuous nullity**, and notwithstanding a legal remedy, the doors of equity should not be closed.

Fifth:—Because if a certiorari should issue it would not be a complete remedy, the deed would still be on record, despite the decision of the Supreme Court; she would still have to come into court of Equity, to set aside the deeds; and the only way a person dealing with her property could negative the apparent defect in her title, as evidenced by the County Clrk's records, would be by the examination of the records of the Supreme Court. A decree in her favor can be recorded in the same office where the instrument complained of is recorded. The remedy in Equity is far more efficacious than that at law.

The City asserts it holds three deeds against

complainant's property, by virtue of proceedings had under the Martin Act.

The sale is alleged to have taken place in 1895.

The deeds were not recorded until 1912.

This suit is on a bill filed to quiet the complainant's titles.

In Conclusion:—

The City does not offer proof of the observance of a **single command** of the Martin Act.

There is absolutely **no** proof of proceedings conforming in the slightest degree with this or any other statute.

There is no proof of ~~any~~ ^{any} proceedings.

The Complainant proves affirmatively that that there were no proceedings; there was no sale, and yet the city by asserting worthless deeds, without the slightest evidence of their value, insists that the land owner must forfeit her land.

What presumption favors the validity and virtue of these deeds?

Is this the much vaunted "due process of law" by which the citizens property is so speedily and easily confiscated?

Was there ever a more glaring instance of a whole series of Conspicuous Nullities?

Supporting this monstrous claim of the City is robbing the Complainant of her sacred and inalienable rights.

To give her relief is not permitting her to escape payment of her taxes, because the city can institute proceedings to reassess the taxes..

Respectfully submitted,

10

WILBUR A. HEISLEY,

Counsel with Complainant.

The First Section of the Martin Act, prescribes as the jurisdictional prerequisite, that proceedings shall be taken by the City, only "with the concurrence of the board or body having charge or control of the finances of the City." Not the slightest proof offered of such concurrence. The contrary is proven; see page 55 of printed case.

The Surrogate's Court in New York, proves the payment of \$2167. of taxes; see pages 1-3-4 & 5 of printed case.

Remedy at law would require a writ to the Board of Aldermen; one to the Board of Finance; one to the City Clerk; one to the Collector; and one to the Clerk of the Circuit Court, because in all these various offices there should have been papers filed.

Multiplicity of suits at law, is a fact which of itself often confers jurisdiction in equity. A certiorari would be futile, because there ----is-- no record to bring up.

New Jersey State Library

NEW JERSEY
Court of Errors and Appeals.

ANNIE D. ROE, <i>Complainant-Appellant,</i> <i>and</i> THE MAYOR AND ALDERMEN OF JERSEY CITY ET AL., <i>Defendants-Respondents.</i>	}	<i>Bill to Quiet Title. On Appeal.</i>
--	---	--

Brief for Respondents.

The question before this Court is whether or not equity will take jurisdiction under a bill to quiet title to determine the validity of taxes and assessments as adjusted under the "Martin Act" (P. L. 1886, p. 149,) and declare void deeds made upon a sale thereunder because of strictly legal defects in the proceedings.

Complainant filed her bill under the statute ("An Act to compel the determination of claims to real estate in certain cases and to quiet the title to same." P. L. 1870, p. 20, Gen. Stat., Vol. 5, p. 3486) to remove an alleged cloud on the title of certain lands in Jersey City which complainant claims to own.

The alleged cloud consists of three deeds, made by the City Collector of Jersey City to Jersey City, dated August 30th, 1912, and recorded in the Hudson County register's office.

The answer:

- (1). Denies the peaceable possession by com-

plainant of *locus in quo* and claims ownership thereof;

- (2). Claims the benefit as *res adjudicata* of a decree entered in the Court of Chancery on May 3, 1911, in a cause between the same parties (*Roe v. Jersey City*, 80 N. J. Eq., 35; affirmed by this Court, 79 N. J. Eq., 645.
- (3). Sets out, step by step, the proceedings under which defendant acquired title to the *locus in quo*.

Upon the hearing it was claimed by complainant that the deeds in question were based upon a pretended tax sale, made in 1895, under an adjustment made by commissioners under the "Martin Act;" that the proceedings of the commissioners were irregular and void for various reasons.

The decree of the Court of Chancery should be affirmed.

I.

The bill of complaint being filed under "An Act to compel the determination of claims to real estate, etc.," was properly dismissed, because that statute was not meant to be operative when a party in possession of lands has the means, by the ordinary proceedings at law, of testing the adverse claim that he wishes to have settled.

Jersey City v. Lembeck, 31 N. J. Eq., 25.

Roe v. Jersey City, 80 N. J. Eq., 35.

Complainant's suit was instituted to review the legality of the proceedings preliminary to the making of the deeds—no attack was made upon the deeds themselves.

The Court of Chancery, therefore, was without power to adjudicate upon any question arising out of those proceedings, unless conferred by the existence of some other equitable ground.

No such equity is disclosed by an examination of the case.

II.

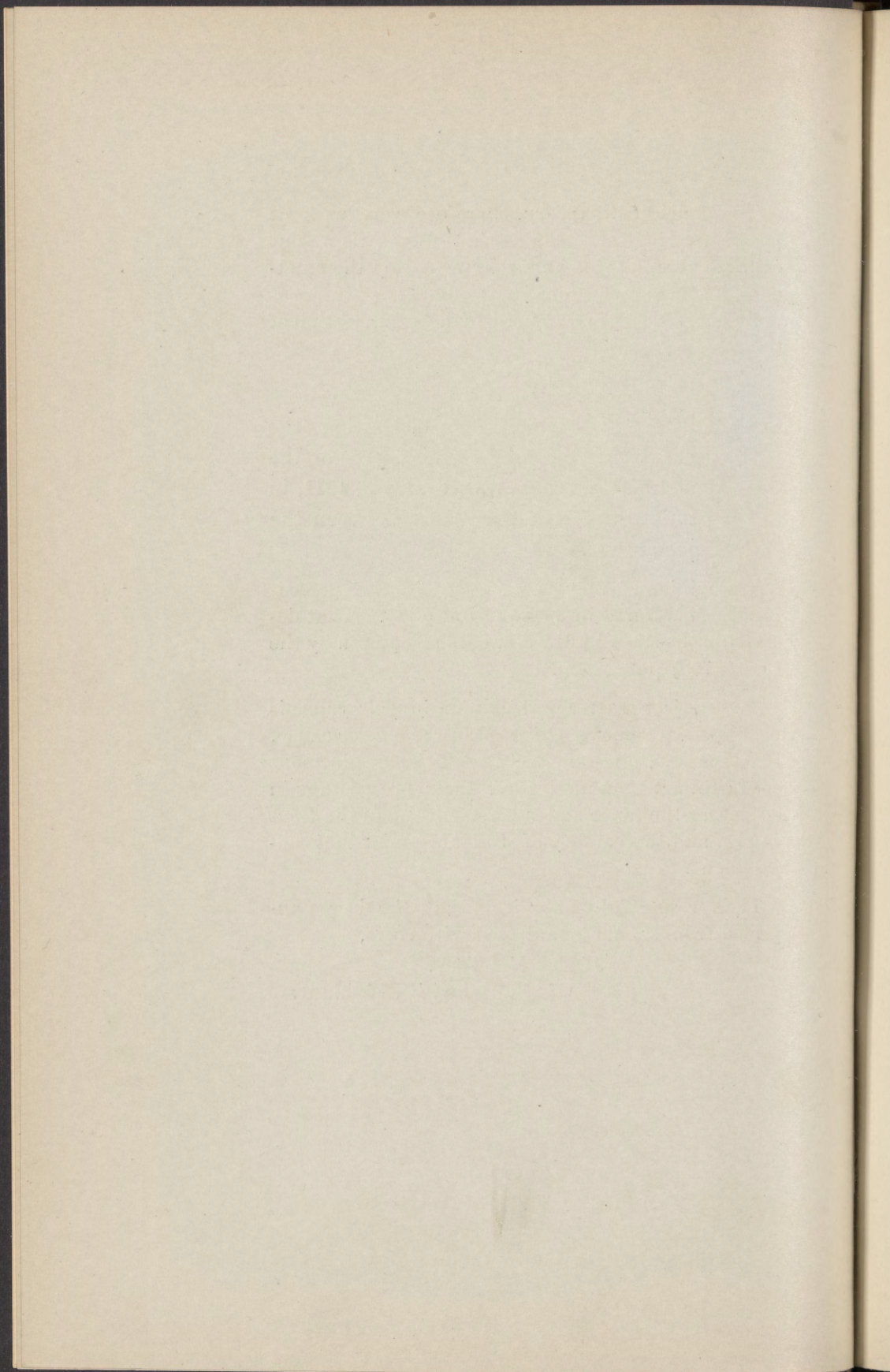
Complainant was barred from instituting the present suit by force of the decree of the Court of Chancery entered May 3, 1911, in a suit pending in that Court between the same parties.

The opinion of Stevenson, V. C., in the preceding cause is found in 80 Equity at p. 35. That decree was affirmed by this Court in an opinion by the Court (79 Equity, 645).

The subject-matter in litigation in this cause is precisely the same as litigated in the earlier cause. Both cases involved the legality of the appointment of Martin act Commissioners, their proceedings in adjusting the taxes and assessments upon the *locus in quo*, and the validity of the sale under that adjustment.

It is respectfully submitted that the decree appealed from should be affirmed with costs,

JOHN MILTON,
Of Counsel with Defendant.



#56

NEW JERSEY
Court of Errors and Appeals.

<p>ANNIE D. ROE, <i>Complainant-Appellant,</i></p> <p style="text-align: center;"><i>and</i></p> <p>THE MAYOR AND ALDERMEN OF JERSEY CITY ET AL., <i>Defendants-Respondents.</i></p>	}	<p><i>Bill to Quiet Title. On Appeal.</i></p>
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Brief for Respondents.

The question before this Court is whether or not equity will take jurisdiction under a bill to quiet title to determine the validity of taxes and assessments as adjusted under the "Martin Act" (P. L. 1886, p. 149,) and declare void deeds made upon a sale thereunder because of strictly legal defects in the proceedings.

Complainant filed her bill under the statute ("An Act to compel the determination of claims to real estate in certain cases and to quiet the title to same." P. L. 1870, p. 20, Gen. Stat., Vol. 5, p. 3486) to remove an alleged cloud on the title of certain lands in Jersey City which complainant claims to own.

The alleged cloud consists of three deeds, made by the City Collector of Jersey City to Jersey City, dated August 30th, 1912, and recorded in the Hudson County register's office.

The answer:

- (1). Denies the peaceable possession by com-

plainant of *locus in quo* and claims ownership thereof;

- (2). Claims the benefit as *res adjudicata* of a decree entered in the Court of Chancery on May 3, 1911, in a cause between the same parties (*Roe v. Jersey City*, 80 N. J. Eq., 35; affirmed by this Court, 79 N. J. Eq., 645.
- (3). Sets out, step by step, the proceedings under which defendant acquired title to the *locus in quo*.

Upon the hearing it was claimed by complainant that the deeds in question were based upon a pretended tax sale, made in 1895, under an adjustment made by commissioners under the "Martin Act;" that the proceedings of the commissioners were irregular and void for various reasons.

The decree of the Court of Chancery should be affirmed.

I.

The bill of complaint being filed under "An Act to compel the determination of claims to real estate, etc.," was properly dismissed, because that statute was not meant to be operative when a party in possession of lands has the means, by the ordinary proceedings at law, of testing the adverse claim that he wishes to have settled.

Jersey City v. Lembeck, 31 N. J. Eq., 25.

Roe v. Jersey City, 80 N. J. Eq., 35.

Complainant's suit was instituted to review the legality of the proceedings preliminary to the making of the deeds—no attack was made upon the deeds themselves.

The Court of Chancery, therefore, was without power to adjudicate upon any question arising out of those proceedings, unless conferred by the existence of some other equitable ground.

No such equity is disclosed by an examination of the case.

II.

Complainant was barred from instituting the present suit by force of the decree of the Court of Chancery entered May 3, 1911, in a suit pending in that Court between the same parties.

The opinion of Stevenson, V. C., in the preceding cause is found in 80 Equity at p. 35. That decree was affirmed by this Court in an opinion by the Court (79 Equity, 645).

The subject-matter in litigation in this cause is precisely the same as litigated in the earlier cause. Both cases involved the legality of the appointment of Martin act Commissioners, their proceedings in adjusting the taxes and assessments upon the *locus in quo*, and the validity of the sale under that adjustment.

It is respectfully submitted that the decree appealed from should be affirmed with costs,

JOHN MILTON,
Of Counsel with Defendant.

